

**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.

Case No. 80271  
Electronically Filed  
Oct 13 2020 11:38 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 81052

**APPELLANTS' APPENDIX**  
**VOLUME 22**

ROBERT L. EISENBERG (SBN 950)  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
775-786-6868  
775-786-9716 fax  
[rle@lge.net](mailto:rle@lge.net)

*ATTORNEYS FOR APPELLANTS*

## **CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint (Arbitration Exemption Claimed: Medical Malpractice)	7/1/16	1	1-8
	<u>Exhibit 1</u> : Affidavit of Vincent E. Pesiri, M.D.	7/1/16	1	9-12
	<u>Exhibit 2</u> : CV of Vincent E. Pesiri, M.D.		1	13-15
	Initial Appearance Fee Disclosure (NRS Chapter 19)	7/1/16	1	16-17
2.	Defendants Barry Rives, M.D.; Laparoscopic Surgery of Nevada, LLC Answer to Complaint ( <i>Arbitration Exempt – Medical Malpractice</i> )	9/14/16	1	18-25
3.	Notice of Association of Counsel	7/15/19	1	26-28
4.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada LLC's Motion to Compel The Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time	9/13/19	1	29-32
	Declaration of Chad C. Couchot, Esq.	9/13/19	1	33-35
	Declaration of Thomas J. Doyle, Esq.	9/13/19	1	36-37
	Memorandum of Points and Authorities	9/13/19	1	38-44
	<u>Exhibit 1</u> : Notice of Taking Deposition of Dr. Michael Hurwitz	2/6/19	1	45-49
	<u>Exhibit 2</u> : Amended Notice of Taking Deposition of Dr. Michael Hurwitz	7/16/19	1	50-54

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 4)	Second Amended Notice of Taking Deposition of Dr. Michael Hurwitz (Location Change Only)	7/25/19	1	55-58
	<u>Exhibit 3</u> : Third Amended Notice of Taking Deposition of Dr. Michael Hurwitz	9/11/19	1	59-63
	<u>Exhibit 4</u> : Subpoena – Civil re Dr. Gregg Ripplinger	7/18/19	1	64-67
	Notice of Taking Deposition of Dr. Gregg Ripplinger	7/18/19	1	68-70
	<u>Exhibit 5</u> : Amended Notice of Taking Deposition of Dr. Gregg Ripplinger	9/11/19	1	71-74
5.	Defendants Barry Rives, M.D.; Laparoscopic Surgery of Nevada LLC’s NRCP 16.1(A)(3) Pretrial Disclosure	9/13/19	1	75-81
6.	Trial Subpoena – Civil Regular re Dr. Naomi Chaney	9/16/19	1	82-86
7.	Plaintiffs’ Motion for Sanctions Under Rule 37 for Defendants’ Intentional Concealment of Defendant Rives’ History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	9/18/19	1	87-89
	Affidavit of Kimball Jones, Esq. in Support of Plaintiff’s Motion and in Compliance with EDCR 2.34 and NRCP 37	9/18/19	1	90-91
	Memorandum of Points and Authorities	9/16/19	1	92-104
	<u>Exhibit “1”</u> : Defendant Dr. Barry Rives’ Response to Plaintiff Titina Farris’ First Set of Interrogatories	4/17/17	1	105-122

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 7)	<u>Exhibit “2”</u> : Deposition Transcript of Dr. Barry Rives, M.D. in the Farris Case	10/24/18	1	123-149
	<u>Exhibit “3”</u> : Transcript of Video Deposition of Barry James Rives, M.D. in the Center Case	4/17/18	1	150-187
8.	Order Denying Stipulation Regarding Motions in Limine and Order Setting Hearing for September 26, 2019 at 10:00 AM, to Address Counsel Submitting Multiple Impermissible Documents that Are Not Complaint with the Rules/Order(s)	9/19/19	1	188-195
	Stipulation and Order Regarding Motions in Limine	9/18/19	1	196-198
9.	Plaintiffs’ Motion to Strike Defendants’ Rebuttal Witnesses Sarah Larsen, R.N., Bruce Adornato, M.D. and Scott Kush, M.D., and to Limit the Testimony of Lance Stone, D.O. and Kim Erlich, M.D., for Giving Improper “Rebuttal” Opinions, on Order Shortening Time	9/19/19	1	199-200
	Motion to Be Heard	9/18/19	1	201
	Affidavit of Kimball Jones, Esq. in Compliance with EDCR 2.34 and in Support of Plaintiff’s Motion on Order Shortening Time	9/16/19	1	202-203
	Memorandum of Points and Authorities	9/16/19	1	204-220
	<u>Exhibit “1”</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC’s Rebuttal Disclosure of Expert Witnesses and Reports	12/19/18	1	221-225

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 9)	<u>Exhibit “2”</u> : Expert Report of Sarah Larsen, R.N., MSN, FNP, C.L.C.P. with Life Care Plan	12/19/18	2	226-257
	<u>Exhibit “3”</u> : Life Expectancy Report of Ms. Titina Farris by Scott Kush, MD JD MHP	12/19/18	2	258-290
	<u>Exhibit “4”</u> : Expert Report by Bruce T. Adornato, M.D.	12/18/18	2	291-309
	<u>Exhibit “5”</u> : Expert Report by Lance R. Stone, DO	12/19/18	2	310-323
	<u>Exhibit “6”</u> : Expert Report by Kim S. Erlich, M.D.	11/26/18	2	324-339
	<u>Exhibit “7”</u> : Expert Report by Brian E. Juell, MD FACS	12/16/18	2	340-343
	<u>Exhibit “8”</u> : Expert Report by Bart Carter, MD, FACS	12/19/18	2	344-346
10.	Court Minutes Vacating Plaintiffs’ Motion to Strike	9/20/19	2	347
11.	Plaintiffs’ Objection to Defendants’ Second Amended Notice of Taking Deposition of Dr. Gregg Ripplinger	9/20/19	2	348-350
12.	Plaintiffs’ Objections to Defendants’ Pre-Trial Disclosure Statement Pursuant to NRCP 6.1(a)(3)(C)	9/20/19	2	351-354
13.	Plaintiffs’ Objection to Defendants’ Trial Subpoena of Naomi Chaney, M.D.	9/20/19	2	355-357
14.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC’s Opposition to Plaintiffs’ Motion for Sanctions Under Rule 37 for Defendants’ Intentional Concealment of Defendant Rives’ History of Negligence and Litigation and Motion for Leave to Amend Compliant to Add Claim for Punitive Damages on Order Shortening Time	9/24/19	2	358-380

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
15.	Declaration of Chad Couchot in Support of Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	9/24/19	2	381-385
	<u>Exhibit A</u> : Defendant Dr. Barry Rives' Response to Plaintiff Vickie Center's First Set of Interrogatories	3/7/17	2	386-391
	<u>Exhibit B</u> : Defendant Dr. Barry Rives' Response to Plaintiff Titina Farris' First Set of Interrogatories	4/17/17	2	392-397
	<u>Exhibit C</u> : Partial Deposition Transcript of Barry Rives, M.D. in the Farris case	10/24/18	2	398-406
	<u>Exhibit D</u> : Partial Transcript of Video Deposition of Barry Rives, M.D. in the Center case	4/17/18	2	407-411
	<u>Exhibit E</u> : Defendant Dr. Barry Rives' Supplemental Response to Plaintiff Titina Farris' First Set of Interrogatories	9/13/19	2	412-418
	<u>Exhibit F</u> : Partial Transcript of Video Deposition of Yan-Borr Lin, M.D. in the Center case	5/9/18	2	419-425
	<u>Exhibit G</u> : Expert Report of Alex A. Balekian, MD MSHS in the <i>Rives v. Center</i> case	8/5/18	2	426-429
16.	Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Objection to Plaintiffs' Ninth	9/25/19	2	430-433

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 16)	Supplement to Early Case Conference Disclosure of Witnesses and Documents			
17.	Court Minutes on Motion for Sanctions and Setting Matter for an Evidentiary Hearing	9/26/19	2	434
18.	Plaintiffs' Objection to Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/26/19	2	435-438
19.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Objection to Plaintiffs' Initial Pre-Trial Disclosures	9/26/19	2	439-445
20.	Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time	9/27/19	2	446-447
	Notice of Hearing	9/26/19	2	448
	Affidavit of Kimball Jones, Esq. in Support of Plaintiff's Motion and in Compliance with EDCR 2.26	9/24/19	2	449
	Memorandum of Points and Authorities	9/25/19	2	450-455
	<u>Exhibit "1"</u> : Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Fourth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/12/19	2	456-470
	<u>Exhibit "2"</u> : Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/23/19	3	471-495

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
21.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Pretrial Memorandum	9/30/19	3	496-514
22.	Plaintiffs' Pre-Trial Memorandum Pursuant to EDCR 2.67	9/30/19	3	515-530
23.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's First Supplemental NRCP 16.1(A)(3) Pretrial Disclosure	9/30/19	3	531-540
24.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Supplemental Objection to Plaintiffs' Initial Pre-Trial Disclosures	9/30/19	3	541-548
25.	Order Denying Defendants' Order Shortening Time Request on Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Extend the Close of Discovery (9th Request) and Order Setting Hearing at 8:30 AM to Address Counsel's Continued Submission of Impermissible Pleading/Proposed Orders Even After Receiving Notification and the Court Setting a Prior Hearing re Submitting Multiple Impermissible Documents that Are Not Compliant with the Rules/Order(s)	10/2/19	3	549-552
	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Extend the Close of Discovery (9th Request) on an Order Shortening Time	9/20/19	3	553-558
	Declaration of Aimee Clark Newberry, Esq. in Support of Defendants' Motion on Order Shortening Time	9/20/19	3	559-562
	Declaration of Thomas J. Doyle, Esq.	9/20/19	3	563-595



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 25)	Memorandum of Points and Authorities	9/20/19	3	566-571
	<u>Exhibit 1</u> : Notice of Taking Deposition of Dr. Michael Hurwitz	2/6/19	3	572-579
	<u>Exhibit 2</u> : Amended Notice of Taking Deposition of Dr. Michael Hurwitz	7/16/19	3	580-584
	Second Amended Notice of Taking Deposition of Dr. Michael Hurwitz (Location Change Only)	7/25/19	3	585-590
26.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time	10/2/19	3	591-601
27.	Declaration of Chad Couchot in Support of Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time	10/2/19	3	602-605
	<u>Exhibit A</u> : Partial Transcript of Video Deposition of Brain Juell, M.D.	6/12/19	3	606-611
	<u>Exhibit B</u> : Partial Transcript of Examination Before Trial of the Non-Party Witness Justin A. Willer, M.D.	7/17/19	3	612-618
	<u>Exhibit C</u> : Partial Transcript of Video Deposition of Bruce Adornato, M.D.	7/23/19	3	619-626
	<u>Exhibit D</u> : Plaintiffs' Eighth Supplement to Early Case Conference Disclosure of Witnesses and Documents	7/24/19	3	627-640

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 27)	<u>Exhibit E</u> : Plaintiffs' Ninth Supplement to Early Case Conference Disclosure of Witnesses and Documents	9/11/19	3	641-655
	<u>Exhibit F</u> : Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Fourth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/12/19	3	656-670
	<u>Exhibit G</u> : Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/23/19	3	671-695
	<u>Exhibit H</u> : Expert Report of Michael B. Hurwitz, M.D.	11/13/18	3	696-702
	<u>Exhibit I</u> : Expert Report of Alan J. Stein, M.D.	11/2018	3	703-708
	<u>Exhibit J</u> : Expert Report of Bart J. Carter, M.D., F.A.C.S.		3	709-717
	<u>Exhibit K</u> : Expert Report of Alex Barchuk, M.D.	3/20/18	4	718-750
	<u>Exhibit L</u> : Expert Report of Brian E Juell, MD FACS	12/16/18	4	751-755
28.	Declaration of Thomas J. Doyle in Support of Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time	10/2/19	4	756-758
29.	Reply in Support of Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure Of Witnesses and Documents on Order Shortening Time	10/3/19	4	759-766
30.	Defendants' Proposed List of Exhibits	10/7/19	4	767-772

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
31.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Reply to Plaintiffs' Opposition to Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time	10/10/19	4	773-776
32.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Trial Brief Regarding Their Request to Preclude Defendants' Expert Witnesses' Involvement as a Defendant in Medical Malpractice Actions	10/14/19	4	777-785
	<u>Exhibit 1</u> : Partial Transcript Video Deposition of Bart Carter, M.D.	6/13/19	4	786-790
	<u>Exhibit 2</u> : Partial Transcript of Video Deposition of Brian E. Juell, M.D.	6/12/19	4	791-796
33.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Trial Brief Regarding the Need to Limit Evidence of Past Medical Expenses to Actual Out-of-Pocket Expenses or the Amounts Reimbursed	10/14/19	4	797-804
	<u>Exhibit 1</u> : LexisNexis Articles		4	805-891
34.	Plaintiffs' Renewed Motion to Strike Defendants' Answer for Rule 37 Violations, Including Perjury and Discovery Violations on an Order Shortening Time	10/19/19	4	892-896
	Memorandum of Points and Authorities	10/19/19	4	897-909
	<u>Exhibit "1"</u> : Recorder's Transcript of Pending Motions	10/7/19	5	910-992
	<u>Exhibit "2"</u> : Verification of Barry Rives, M.D.	4/27/17	5	993-994

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
35.	Defendants' Trial Brief in Support of Their Position Regarding the Propriety of Dr. Rives' Responses to Plaintiffs' Counsel's Questions Eliciting Insurance Information	10/22/19	5	995-996
	Declaration of Thomas J. Doyle	10/22/19	5	997
	Memorandum of Points and Authorities	10/22/19	5	998-1004
	<u>Exhibit 1</u> : MGM Resorts Health and Welfare Benefit Plan (As Amended and Restated Effective January 1, 2012)		5	1005-1046
	<u>Exhibit 2</u> : LexisNexis Articles		5	1047-1080
36.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Renewed Motion to Strike	10/22/19	5	1081-1086
	<u>Exhibit A</u> : Declaration of Amy B. Hanegan	10/18/19	5	1087-1089
	<u>Exhibit B</u> : Deposition Transcript of Michael B. Hurwitz, M.D., FACS	9/18/119	6	1090-1253
	<u>Exhibit C</u> : Recorder's Transcript of Pending Motions (Heard 10/7/19)	10/14/19	6	1254-1337
37.	Reply in Support of, and Supplement to, Plaintiffs' Renewed Motion to Strike Defendants' Answer for Rule 37 Violations, Including Perjury and Discovery Violations on an Order Shortening Time	10/22/19	7	1338-1339
	Declaration of Kimball Jones, Esq. in Support of Plaintiff's Reply and Declaration for an Order Shortening Time		7	1340
	Memorandum of Points and Authorities	10/22/19	7	1341-1355

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 37)	<u>Exhibit “1”</u> : Plaintiffs’ Seventh Supplement to Early Case Conference Disclosure of Witnesses and Documents	7/5/19	7	1356-1409
38.	Order on Plaintiffs’ Motion to Strike Defendants’ Fourth and Fifth Supplements to NRCP 16.1 Disclosures	10/23/19	7	1410-1412
39.	Plaintiffs’ Trial Brief Regarding Improper Arguments Including “Medical Judgment,” “Risk of Procedure” and “Assumption of Risk”	10/23/19	7	1413-1414
	Memorandum of Points and Authorities	10/23/19	7	1415-1419
40.	Plaintiffs’ Trial Brief on Rebuttal Experts Must Only be Limited to Rebuttal Opinions Not Initial Opinions	10/24/19	7	1420
	Memorandum of Points and Authorities	10/24/19	7	1421-1428
	<u>Exhibit “1”</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC’s Rebuttal Disclosure of Expert Witnesses and Reports	12/19/18	7	1429-1434
	<u>Exhibit “2”</u> : Expert Report of Bruce T. Adornato, M.D.	12/18/18	7	1435-1438
41.	Plaintiffs’ Trial Brief on Admissibility of Malpractice Lawsuits Against an Expert Witness	10/27/19	7	1439-1440
	Memorandum of Points and Authorities	10/26/19	7	1441-1448
	<u>Exhibit “1”</u> : Transcript of Video Deposition of Brian E. Juell, M.D.	6/12/19	7	1449-1475

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
42.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Trial Brief on Rebuttal Experts Being Limited to Rebuttal Opinions Not Initial Opinions	10/28/19	7	1476-1477
	Declaration of Thomas J. Doyle, Esq.	10/28/19	7	1478
	Memorandum of Points and Authorities	10/28/19	7	1479-1486
	<u>Exhibit 1</u> : Expert Report of Justin Aaron Willer, MD, FAAN	10/22/18	7	1487-1497
	<u>Exhibit 2</u> : LexisNexis Articles		7	1498-1507
	<u>Exhibit 3</u> : Partial Transcript of Examination Before Trial of the Non-Party Witness Justin A. Willer, M.D.	7/17/19	7	1508-1512
43.	Plaintiffs' Trial Brief Regarding Disclosure Requirements for Non-Retained Experts	10/28/19	7	1513-1514
	Memorandum of Points and Authorities	10/28/19	7	1515-1521
44.	Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Trial Brief Regarding Propriety of Disclosure of Naomi Chaney, M.D. as a Non-Retained Expert Witness	10/29/19	7	1522-1523
	Declaration of Thomas J. Doyle, Esq.	10/29/19	7	1524
	Memorandum of Points and Authorities	10/29/19	7	1525-1529
	<u>Exhibit 1</u> : Partial Deposition Transcript of Naomi L. Chaney Chaney, M.D.	8/9/19	7	1530-1545
	<u>Exhibit 2</u> : Plaintiffs' Expert Witness Disclosure	11/15/18	7	1546-1552

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 44)	<u>Exhibit 3</u> : Plaintiffs' Second Supplemental Expert Witness Disclosure	7/12/19	7	1553-1573
	<u>Exhibit 4</u> : Expert Report of Justin Aaron Willer, MD, FAAN	10/22/18	7	1574-1584
	<u>Exhibit 5</u> : LexisNexis Articles		8	1585-1595
	<u>Exhibit 6</u> : Defendant Barry Rives M.D.'s and Laparoscopic Surgery of Nevada, LLC's First Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	12/4/18	8	1596-1603
45.	Plaintiffs' Motion to Quash Trial Subpoena of Dr. Naomi Chaney on Order Shortening Time	10/29/19	8	1604-1605
	Notice of Motion on Order Shortening Time		8	1606
	Declaration of Kimball Jones, Esq. in Support of Plaintiff's Motion on Order Shortening Time		8	1607-1608
	Memorandum of Points and Authorities	10/29/19	8	1609-1626
	<u>Exhibit "1"</u> : Trial Subpoena – Civil Regular re Dr. Naomi Chaney	10/24/19	8	1627-1632
	<u>Exhibit "2"</u> : Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/23/19	8	1633-1645
	<u>Exhibit "3"</u> : Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Initial Disclosure of Expert Witnesses and Reports	11/15/18	8	1646-1650

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 45)	<u>Exhibit “4”</u> : Deposition Transcript of Naomi L. Chaney, M.D.	5/9/19	8	1651-1669
46.	Plaintiffs’ Trial Brief Regarding the Testimony of Dr. Barry Rives	10/29/19	8	1670-1671
	Memorandum of Points and Authorities	10/29/19	8	1672-1678
	<u>Exhibit “1”</u> : Defendants Barry Rives, M.D.’s and Laparoscopic Surgery of Nevada, LLC’s Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	9/23/19	8	1679-1691
	<u>Exhibit “2”</u> : Deposition Transcript of Barry Rives, M.D.	10/24/18	8	1692-1718
47.	Plaintiffs’ Objection to Defendants’ Misleading Demonstratives (11-17)	10/29/19	8	1719-1720
	Memorandum of Points and Authorities	10/29/19	8	1721-1723
	<u>Exhibit “1”</u> Diagrams of Mrs. Farris’ Pre- and Post-Operative Condition		8	1724-1734
48.	Plaintiffs’ Trial Brief on Defendants Retained Rebuttal Experts’ Testimony	10/29/19	8	1735-1736
	Memorandum of Points and Authorities	10/28/19	8	1737-1747
	<u>Exhibit “1”</u> : Plaintiffs Objections to Defendants’ Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)(C)	9/20/19	8	1748-1752
	<u>Exhibit “2”</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC’s Rebuttal Disclosure of Expert Witnesses and Reports	12/19/18	8	1753-1758



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 48)	<u>Exhibit “3”</u> : Deposition Transcript of Lance Stone, D.O.	7/29/19	8	1759-1772
	<u>Exhibit “4”</u> : Plaintiff Titina Farris’s Answers to Defendant’s First Set of Interrogatories	12/29/16	8	1773-1785
	<u>Exhibit “5”</u> : Expert Report of Lance R. Stone, DO	12/19/18	8	1786-1792
	<u>Exhibit “6”</u> : Expert Report of Sarah Larsen, R.N., MSN, FNP, C.L.C.P.	12/19/18	8	1793-1817
	<u>Exhibit “7”</u> : Expert Report of Erik Volk, M.A.	12/19/18	8	1818-1834
49.	Trial Subpoena – Civil Regular re Dr. Naomi Chaney	10/29/19	9	1835-1839
50.	Offer of Proof re Bruce Adornato, M.D.’s Testimony	11/1/19	9	1840-1842
	<u>Exhibit A</u> : Expert Report of Bruce T. Adornato, M.D.	12/18/18	9	1843-1846
	<u>Exhibit B</u> : Expert Report of Bruce T. Adornato, M.D.	9/20/19	9	1847-1849
	<u>Exhibit C</u> : Deposition Transcript of Bruce Adornato, M.D.	7/23/19	9	1850-1973
51.	Offer of Proof re Defendants’ Exhibit C	11/1/19	9	1974-1976
	<u>Exhibit C</u> : Medical Records (Dr. Chaney) re Titina Farris		10	1977-2088
52.	Offer of Proof re Michael Hurwitz, M.D.	11/1/19	10	2089-2091
	<u>Exhibit A</u> : Partial Transcript of Video Deposition of Michael Hurwitz, M.D.	10/18/19	10	2092-2097
	<u>Exhibit B</u> : Transcript of Video Deposition of Michael B. Hurwitz, M.D., FACS	9/18/19	10 11	2098-2221 2222-2261

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
53.	Offer of Proof re Brian Juell, M.D.	11/1/19	11	2262-2264
	<u>Exhibit A</u> : Expert Report of Brian E. Juell, MD FACS	12/16/18	11	2265-2268
	<u>Exhibit B</u> : Expert Report of Brian E. Juell, MD FACS	9/9/19	11	2269-2271
	<u>Exhibit C</u> : Transcript of Video Transcript of Brian E. Juell, M.D.	6/12/19	11	2272-2314
54.	Offer of Proof re Sarah Larsen	11/1/19	11	2315-2317
	<u>Exhibit A</u> : CV of Sarah Larsen, RN, MSN, FNP, LNC, CLCP		11	2318-2322
	<u>Exhibit B</u> : Expert Report of Sarah Larsen, R.N.. MSN, FNP, LNC, C.L.C.P.	12/19/18	11	2323-2325
	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	11	2326-2346
55.	Offer of Proof re Erik Volk	11/1/19	11	2347-2349
	<u>Exhibit A</u> : Expert Report of Erik Volk	12/19/18	11	2350-2375
	<u>Exhibit B</u> : Transcript of Video Deposition of Erik Volk	6/20/19	11	2376-2436
56.	Offer of Proof re Lance Stone, D.O.	11/1/19	11	2437-2439
	<u>Exhibit A</u> : CV of Lance R. Stone, DO		11	2440-2446
	<u>Exhibit B</u> : Expert Report of Lance R. Stone, DO	12/19/18	11	2447-2453
	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	12	2454-2474
57.	Special Verdict Form	11/1/19	12	2475-2476

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
58.	Order to Show Cause {To Thomas J. Doyle, Esq.}	11/5/19	12	2477-2478
59.	Judgment on Verdict	11/14/19	12	2479-2482
60.	Notice of Entry of Judgment	11/19/19	12	2483-2488
61.	Plaintiffs' Motion for Fees and Costs	11/22/19	12	2489-2490
	Declaration of Kimball Jones, Esq. in Support of Motion for Attorneys' Fees and Costs	11/22/19	12	2491-2493
	Declaration of Jacob G. Leavitt Esq. in Support of Motion for Attorneys' Fees and Costs	11/22/19	12	2494-2495
	Declaration of George F. Hand in Support of Motion for Attorneys' Fees and Costs	11/22/19	12	2496-2497
	Memorandum of Points and Authorities	11/22/19	12	2498-2511
	<u>Exhibit "1"</u> : Plaintiffs' Joint Unapportioned Offer of Judgment to Defendant Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC	6/5/19	12	2512-2516
	<u>Exhibit "2"</u> : Judgment on Verdict	11/14/19	12	2517-2521
	<u>Exhibit "3"</u> : Notice of Entry of Order	4/3/19	12	2522-2536
	<u>Exhibit "4"</u> : Declarations of Patrick Farris and Titina Farris		12	2537-2541
	<u>Exhibit "5"</u> : Plaintiffs' Verified Memorandum of Costs and Disbursements	11/19/19	12	2542-2550
62.	Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion for Fees and Costs	12/2/19	12	2551-2552

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 62)	Declaration of Thomas J. Doyle, Esq.		12	2553-2557
	Declaration of Robert L. Eisenberg, Esq.		12	2558-2561
	Memorandum of Points and Authorities	12/2/19	12	2562-2577
	<u>Exhibit 1</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Initial Disclosure of Expert Witnesses and Reports	11/15/18	12	2578-2611
	<u>Exhibit 2</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Rebuttal Disclosure of Expert Witnesses and Reports	12/19/18	12 13	2612-2688 2689-2767
	<u>Exhibit 3</u> : Recorder's Transcript Transcript of Pending Motions (Heard 10/10/19)	10/14/19	13	2768-2776
	<u>Exhibit 4</u> : 2004 Statewide Ballot Questions		13	2777-2801
	<u>Exhibit 5</u> : Emails between Carri Perrault and Dr. Chaney re trial dates availability with Trial Subpoena and Plaintiffs' Objection to Defendants' Trial Subpoena on Naomi Chaney, M.D.	9/13/19 - 9/16/19	13	2802-2813
	<u>Exhibit 6</u> : Emails between Riesa Rice and Dr. Chaney re trial dates availability with Trial Subpoena	10/11/19 - 10/15/19	13	2814-2828
	<u>Exhibit 7</u> : Plaintiff Titina Farris's Answers to Defendant's First Set of Interrogatories	12/29/16	13	2829-2841
	<u>Exhibit 8</u> : Plaintiff's Medical Records		13	2842-2877

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
63.	Reply in Support of Plaintiffs' Motion for Fees and Costs	12/31/19	13	2878-2879
	Memorandum of Points and Authorities	12/31/19	13	2880-2893
	<u>Exhibit "1"</u> : Plaintiffs' Joint Unapportioned Offer of Judgment to Defendant Barry Rives, M.D. and Defendant Laparoscopic Surgery of Nevada LLC	6/5/19	13	2894-2898
	<u>Exhibit "2"</u> : Judgment on Verdict	11/14/19	13	2899-2903
	<u>Exhibit "3"</u> : Defendants' Offer Pursuant to NRCP 68	9/20/19	13	2904-2907
64.	Supplemental and/or Amended Notice of Appeal	4/13/20	13	2908-2909
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	13	2910-2914
	<u>Exhibit 2</u> : Order on Plaintiffs' Motion for Fees and Costs and Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs	3/30/20	13	2915-2930
<b><u>TRANSCRIPTS</u></b>				
65.	<i>Transcript of Proceedings Re: Status Check</i>	7/16/19	14	2931-2938
66.	<i>Transcript of Proceedings Re: Mandatory In-Person Status Check per Court's Memo Dated August 30, 2019</i>	9/5/19	14	2939-2959
67.	<i>Transcript of Proceedings Re: Pretrial Conference</i>	9/12/19	14	2960-2970
68.	<i>Transcript of Proceedings Re: All Pending Motions</i>	9/26/19	14	2971-3042
69.	<i>Transcript of Proceedings Re: Pending Motions</i>	10/7/19	14	3043-3124

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
70.	<i>Transcript of Proceedings Re:</i> Calendar Call	10/8/19	14	3125-3162
71.	<i>Transcript of Proceedings Re:</i> Pending Motions	10/10/19	15	3163-3301
72.	<i>Transcript of Proceedings Re:</i> Status Check: Judgment — Show Cause Hearing	11/7/19	15	3302-3363
73.	<i>Transcript of Proceedings Re:</i> Pending Motions	11/13/19	16	3364-3432
74.	<i>Transcript of Proceedings Re:</i> Pending Motions	11/14/19	16	3433-3569
75.	<i>Transcript of Proceedings Re:</i> Pending Motions	11/20/19	17	3570-3660

#### **TRIAL TRANSCRIPTS**

76.	<i>Jury Trial Transcript — Day 1</i> (Monday)	10/14/19	17 18	3661-3819 3820-3909
77.	<i>Jury Trial Transcript — Day 2</i> (Tuesday)	10/15/19	18	3910-4068
78.	<i>Jury Trial Transcript — Day 3</i> (Wednesday)	10/16/19	19	4069-4284
79.	<i>Jury Trial Transcript — Day 4</i> (Thursday)	10/17/19	20	4285-4331
93.	<i>Partial Transcript re:</i> Trial by Jury – Day 4 Testimony of Justin Willer, M.D. [Included in “Additional Documents” at the end of this Index]	10/17/19	30	6514-6618
80.	<i>Jury Trial Transcript — Day 5</i> (Friday)	10/18/19	20	4332-4533
81.	<i>Jury Trial Transcript — Day 6</i> (Monday)	10/21/19	21	4534-4769
82.	<i>Jury Trial Transcript — Day 7</i> (Tuesday)	10/22/19	22	4770-4938

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
83.	<i>Jury Trial Transcript</i> — Day 8 (Wednesday)	10/23/19	23	4939-5121
84.	<i>Jury Trial Transcript</i> — Day 9 (Thursday)	10/24/19	24	5122-5293
85.	<i>Jury Trial Transcript</i> — Day 10 (Monday)	10/28/19	25 26	5294-5543 5544-5574
86.	<i>Jury Trial Transcript</i> — Day 11 (Tuesday)	10/29/19	26	5575-5794
87.	<i>Jury Trial Transcript</i> — Day 12 (Wednesday)	10/30/19	27 28	5795-6044 6045-6067
88.	<i>Jury Trial Transcript</i> — Day 13 (Thursday)	10/31/19	28 29	6068-6293 6294-6336
89.	<i>Jury Trial Transcript</i> — Day 14 (Friday)	11/1/19	29	6337-6493

#### **ADDITIONAL DOCUMENTS<sup>1</sup>**

91.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of, LLC's Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation And Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6494-6503
92.	Declaration of Thomas J. Doyle in Support of Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6504-6505

---

<sup>1</sup> These additional documents were added after the first 29 volumes of the appendix were complete and already numbered (6,493 pages).

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 92)	<u>Exhibit A</u> : Partial Deposition Transcript of Barry Rives, M.D.	10/24/18	30	6506-6513
93.	<i>Partial Transcript re: Trial by Jury – Day 4 Testimony of Justin Willer, M.D. (Filed 11/20/19)</i>	10/17/19	30	6514-6618
94.	Jury Instructions	11/1/19	30	6619-6664
95.	Notice of Appeal	12/18/19	30	6665-6666
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	30	6667-6672
96.	Notice of Cross-Appeal	12/30/19	30	6673-6675
	<u>Exhibit “1”</u> : Notice of Entry Judgment	11/19/19	30	6676-6682
97.	<i>Transcript of Proceedings Re: Pending Motions</i>	1/7/20	31	6683-6786
98.	<i>Transcript of Hearing Re: Defendants Barry J. Rives, M.D.’s and Laparoscopic Surgery of Nevada, LLC’s Motion to Re-Tax and Settle Plaintiffs’ Costs</i>	2/11/20	31	6787-6801
99.	Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6802-6815
100.	Notice of Entry Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/31/20	31	6816-6819
	<u>Exhibit “A”</u> : Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6820-6834
101.	Supplemental and/or Amended Notice of Appeal	4/13/20	31	6835-6836
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	31	6837-6841



<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 101)	<u>Exhibit 2</u> : Order on Plaintiffs' Motion for Fees and Costs and Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs	3/30/20	31	6842-6857



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 TITINA FARRIS, ET AL.,  
9 Plaintiffs,

CASE#: A-16-739464-C  
DEPT. XXXI

10 vs.

11 BARRY RIVES, M.D.,  
12 Defendant.

13 BEFORE THE HONORABLE JOANNA S. KISHNER  
14 DISTRICT COURT JUDGE  
TUESDAY, OCTOBER 22, 2019

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 7**

16  
17 APPEARANCES:

18 For the Plaintiff:

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

19  
20 For the Defendant:

THOMAS J. DOYLE, ESQ.

21  
22  
23  
24 RECORDED BY: SANDRA HARRELL, COURT RECORDER  
25

INDEX

Testimony .....17

WITNESSES FOR THE PLAINTIFF

MICHASEL MAVROMATIC

Direct Examination by Mr. Hand ..... 17

TITINA FARRIS

Direct Examination by Mr. Jones ..... 26

Cross-Examination by Mr. Doyle ..... 54

Redirect Examination by Mr. Jones ..... 77

DAWN COOK

Direct Examination by Mr. Hand ..... 80

Cross-Examination by Mr. Doyle ..... 122

Redirect Examination by Mr. Hand ..... 146

Recross Examination by Mr. Doyle ..... 148

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXHIBITS

<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
6	.....18	.....23

<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

1 Las Vegas, Nevada, Tuesday, October 22, 2019

2  
3 [Case called at 10:39 a.m.]

4 THE CLERK: On the record.

5 THE COURT: On the record outside the presence of the jury  
6 in case number 739464. So Counsel, Court's got a couple of questions.  
7 We have all of our jurors. And so the question becomes when we left  
8 yesterday, we're about to do the juror questions with regards to Dr.  
9 Rives. What the Court didn't know, since Dr. Rives was the Defendant  
10 and was here presently, if rather you all were going to do a different  
11 witness because of the availability of witnesses, or whether you were  
12 going to wish to have the juror questions with Dr. Rives.

13 The Court is of course fine with whatever the parties jointly  
14 wish to do. And what the Court also wanted to remind the parties is,  
15 remember, the parties need to have a full opportunity for each of you all  
16 to present your case. And to the extent that there has been time over the  
17 last few days that there has been extensive argument over various  
18 issues, some of which took time out of Plaintiffs' case in chief.

19 Remember, Plaintiff has a full opportunity to present your  
20 entire case. Defense, you have an opportunity to present your entire  
21 case. And so, you all need to decide what you need to do. We needed to  
22 choose the witnesses you wish to call and as long as you are not being  
23 cumulative, redundant, and otherwise violating rules, everyone has a full  
24 opportunity to present your case, call your witnesses, nobody's being  
25 asked to reduce their witnesses or do things. Anything you all need to

1 do what you need to do to ensure each of your respective client's needs  
2 are taken care of so that they each have an opportunity, both on Defense  
3 and Plaintiffs' sides, to have their case heard.

4 MR. JONES: Your Honor, I -- if I may, I think that given that  
5 there is the possibility of having duplication --

6 THE COURT: Bless you.

7 MR. JONES: -- of the same -- of perhaps the same questions  
8 asked of Dr. Rives by the jury, maybe it makes sense to push off the  
9 written questions until he testifies again and have it at the end of his  
10 complete testimony, and we can go through all of those.

11 THE COURT: And the Court's going to hear what each  
12 party's position is with regards to that. I mean, the Court is going to hear  
13 Defense Counsel's position.

14 Defense Counsel, do you agree with Plaintiffs' position?

15 MR. DOYLE: I disagree. I --

16 THE COURT: Okay. And what is your basis on why that  
17 would be different than what was the established procedure that was set  
18 forth, both told to the jury and explained to Counsel at the beginning of  
19 trial, that it would be after a witness' entire testimony was exhausted by  
20 all parties, regardless of who called the witness. Then the juror  
21 questions would be asked.

22 So if you want it differently, the Court just wants to hear each  
23 side's position and your basis for doing so. No worries.

24 MR. DOYLE: Yeah. Well, Dr. Rives' testimony is part of our  
25 case in chief. Probably's going to come in bits and pieces to some extent

1 because of scheduling of expert witnesses and things. His cross-  
2 examine -- well, his examination by Plaintiffs during their case in chief  
3 has been completed. The questions that have been posed so far pertain  
4 to the testimony that he's given, and I think the appropriate thing to do is  
5 to answer the questions that the Court is willing to give, so that the jury  
6 has the answers to those questions in mind and does not over the next  
7 few days or perhaps early next week, forget the context in which they  
8 asked those questions.

9           So I would request that the questions be read to the jury -- or  
10 that the questions be dealt with this morning before we go into our first  
11 witness, and so that the jury has the answers in terms of the context of  
12 the questions that have come up so far.

13           THE COURT: But Dr. Rives testimony was also done in  
14 various bits -- your phrase, bits and piece. Okay, different time frames,  
15 different days during Plaintiffs' case in chief. And he presumably could  
16 be called both in Defense case in chief and potentially in Plaintiffs'  
17 rebuttal case. So are you suggesting three sets of juror questions  
18 potentially -- could be as much as three sets of juror questions?

19           MR. DOYLE: Well, no. I'd assume the rebuttal would come  
20 right after the cross-examine -- or I mean, the direct examination.

21           THE COURT: Rebuttal case in chief.

22           MR. DOYLE: Oh.

23           THE COURT: After Defense rests, your case in chief, right?  
24 Plaintiff has an opportunity to do their rebuttal case in chief and,  
25 hypothetically, I don't know if they would or wouldn't, but they could call

1 Dr. Rives potentially. I don't know. The Court takes no position. I just  
2 was trying to give a scenario. There could be three different instances  
3 potentially that Dr. Rives could be testifying, right? Plaintiffs' case in  
4 chief, Defense case in chief, and Plaintiffs' rebuttal case.

5 So in that scenario, unless you all were to stipulate to  
6 something different under the parameters that you all agreed to before  
7 the trial commenced, technically the jury could ask questions in each of  
8 those scenarios. Those would be three separate instances that they'd be  
9 asking juror questions and is that what the parties were intending?  
10 Because that would be different than any parties have ever suggested in  
11 any other trial.

12 MR. DOYLE: Well, I guess conceivably that could happen.  
13 But here's my concern, if there's been a topic that came up -- oh, I mean,  
14 Dr. Rives spent a lot of time on the stand and if there is a -- if there is a  
15 topic that has been discussed and thoroughly discussed, I would not go  
16 back through that topic during my direct examination. Because that -- I  
17 mean, I would see no reason to be cumulative and go back over ground  
18 that's already been plowed.

19 Which means then in that scenario, we potentially have a  
20 question that will have gone unanswered for one plus weeks, and I think  
21 under those circumstances it would be unfair and prejudicial to Dr. Rives  
22 for the jury to have to try and, you know, remember again the context of  
23 the question and put to it his answer some days later. I would request  
24 that we do the questions now.

25 MR. JONES: Your Honor, I think that it runs the risk of



1 having duplicate questions asked. I think that the jury will be fine  
2 especially since they will hear the questions that were posed being  
3 reread to them. I don't think that it's going to be something that they  
4 forget. Even if it does happen to be more than a day or two, maybe it is  
5 next Monday. I still don't think that that's a particular problem. And I  
6 think that the downside of just waste of time of having to go through  
7 questions over and over again with each iteration that Dr. Rives is up, I  
8 don't think makes a great deal of sense.

9 I think it makes much more sense the last time he is  
10 questioned, and we know it's his final time that he's being questioned,  
11 that we go over all the questions at that time and I think that that's the  
12 appropriate way to go.

13 THE COURT: And the Court's going to agree and here's the  
14 reasoning. One, there was this specific agreement on how the juror  
15 questions were going to be handled set forth at the beginning of the  
16 case, both explained to Counsel and explained to the jury. And, Counsel,  
17 you all agreed on it, and the jury was explained that process. It was that  
18 after the totality of a witness' testimony, but before the witness "left the  
19 stand in total," okay. And so, that was what was explained.

20 The other thing is, is that part of the questions and when a  
21 question gets asked or not asked, is you all can easily object that the  
22 information is cumulative and already has been discussed by the  
23 witness. And so, if the Court were to do these questions now, and then  
24 there was additional testimony, you risk that cumulative aspect and you  
25 risk three times the sets of questions, which could also have to either

1 Plaintiffs' detriment or Defense detriment that having Dr. Rives be  
2 subjected to three sets of questions could be adverse to either one side  
3 or the other side.

4           It could put unfair emphasis on Dr. Rives' testimony either  
5 towards or against either side. Don't know which way it could  
6 potentially do it. And that could be unfair to any of the other witnesses,  
7 including the fact that Plaintiff wouldn't have the opportunity to have  
8 three sets of questions potentially done because of the way that this is  
9 going. Don't know how you're going to do it or not, but at least the way  
10 you currently have set it. Or that any of the other witnesses wouldn't  
11 have that same opportunity. And so that presents a potentially unfair  
12 spotlight towards one witness i.e. one of the parties versus any of the  
13 other witnesses and parties.

14           And so the Court would find that that would be a challenge  
15 and not a good reason to do questions at this juncture. Also, the fact  
16 that you all have explained that you have experts and other individuals  
17 that have specific time frames. You already have the issue that you had  
18 with Dr. Hurwitz who had a specific time frame and because of  
19 inappropriate issues being raised about Dr. Hurwitz's deposition, Dr.  
20 Hurwitz's testimony was not completed on Friday.

21           I'm not saying that there couldn't have been other issues that  
22 could have been raised properly, but at least that issue took a significant  
23 amount of time because Dr. Hurwitz only testified for a very short  
24 amount of time. And I'm not saying he couldn't have testified other  
25 more lengthy for other reasons, but the Court did look at how much time

1 was spent on some of the issues that should not have been brought up  
2 at that juncture in the afternoon. And so that presents an additional  
3 issue with the fact that it could take that amount of time away from other  
4 witnesses.

5 In addition, one of the keys factors is it would be going  
6 contrary to what was specifically explained to the jury. And the Court's  
7 concerned if you go do something contrary that was specifically  
8 explained to the jury one way, could really impact the jury's verdict one  
9 way or another. Because they may wonder why we're doing it  
10 differently for this witness either to the advantage or disadvantage to  
11 one party or the other. And that would not be fair to either -- when I say  
12 one party, I'm talking parties, any of the Plaintiff parties or any of the  
13 Defense parties. But to any of the Defense parties or the Plaintiff parties.

14 And so I think being consistent with what was previously  
15 explained and following that procedure, it would be most appropriate to  
16 hold these questions because that would be consistent with everything  
17 and it would only subject Dr. Rives to having to answer questions at the  
18 end of his testimony consistent with all of the other witnesses'  
19 testimony, and consistent with explained to the jury and agreed to by the  
20 parties.

21 So the Court's going to wait until the end of Dr. Rives'  
22 testimony. But you have -- at this juncture, the Court's making this ruling  
23 because I have an understanding from what, Mr. Doyle, you said  
24 yesterday, that you are intending to call Dr. Rives in your case in chief; is  
25 that correct?

1 MR. DOYLE: That is correct.

2 THE COURT: Okay. So that's the reason why I'm saying this.  
3 Because if you weren't calling him, then I'd ask these questions now.  
4 But I'm making -- based on your statement yesterday that you were  
5 intending to call him in your case in chief is why the Court's ruling is in  
6 this regard now. Okay.

7 MR. DOYLE: Would we be able to look at them at some  
8 convenient time, or would we have to wait until his testimony is done  
9 and then look at them at that point?

10 THE COURT: Court's going to have to evaluate that. I don't  
11 think it's appropriate to evaluate that question, because I'm going to  
12 have to have you all discuss that among yourselves and see if there's an  
13 agreement among the parties. But while we have a jury outside, do you  
14 really think it's appropriate to go into that issue right now. Don't you  
15 think it's better left to let you all on your own breaks to discuss that  
16 among yourselves and see if there's a joint request versus a difference of  
17 opinion? Yes?

18 MR. DOYLE: Yes, Your Honor.

19 MR. JONES: Yes.

20 THE COURT: Does it make more sense? Okay. So that's  
21 what going to do, so you all can discuss among yourself first to see if it's  
22 a joint request or a difference of opinion. And then you need to bring it  
23 back to the Court's attention, so I know if it's objected to or a joint  
24 request, and rather than having the jury wait outside, okay?

25 MR. JONES: Your Honor, a very quick housekeeping matter.

1 We have signed a -- both sides have signed an order, Defendant's  
2 motion to strike, Defendant's 4th and 5th supplements.

3 THE COURT: Uh-huh.

4 MR. JONES: I understand that the Defense has submitted to  
5 Your Honor their proposed for our motion for Rule 37 sanctions.

6 THE COURT: I'm not aware of that. I have not --

7 MR. JONES: Oh.

8 THE COURT: -- seen it. I'm not aware of it.

9 MR. JONES: I just saw it e-filed, so I noticed -- or at least -- at  
10 least something along those lines. I saw it come electronically. In any  
11 event --

12 THE COURT: Okay. It would be improper to ever file a  
13 proposed order. All orders need to be submitted to the Court after  
14 circulated to the parties. To this Court's knowledge, when I looked  
15 before I came on the bench for this morning's motion calendar, Court did  
16 not see any proposed orders. I'm not saying it didn't come after I was on  
17 the bench. The Court did not see anything, so the Court is unaware of  
18 what you're saying. I'm not saying it did or did not happen. Just as of  
19 when I came on to the bench this morning, I was informed there was  
20 nothing on the Farris case. The only thing that came in afterwards was a  
21 binder, which was Defendant's opposition, which got left in the box  
22 sometime between 8:40 and 9:00.

23 MR. JONES: And, Your Honor, I saw it very briefly, so I don't  
24 want to misspeak. There could be some misunderstanding on my part.  
25 In any event, the parties don't have an agreement as to the order on

1 Plaintiffs' motion for Rule 37 sanctions. That my understanding is we'll  
2 vote and submit our proposed to you today.

3 THE COURT: I will have to see them and just please make  
4 sure that the Court gets them in a timely manner so the Court can review  
5 them. Because can appreciate we need to get those taken care of for you  
6 all, right?

7 MR. JONES: Absolutely.

8 THE COURT: Okay. Do appreciate, thank you for the heads  
9 up.

10 MR. JONES: So, Your Honor, should I -- may I approach to --

11 THE COURT: Is that signed by all parties?

12 MR. JONES: Yes, it is, Your Honor.

13 THE COURT: Okay. Let me get a cello so it does not  
14 get -- interfere with the other stuff. Okay.

15 And Counsel for Defense, you've had an opportunity to see  
16 what Plaintiffs' Counsel's handing to the Court?

17 MR. DOYLE: Yes.

18 THE COURT: Okay. Thank you so much. Okay, I'll put that  
19 over there for right now. Thanks very much. Okay. Are you all ready for  
20 the jury? And do you all agree who the next witness is then?

21 MR. JONES: Yes, Your Honor.

22 THE COURT: And who is the next witness, and do you wish  
23 the individual on the stand or do you call from out in the hallway?

24 MR. HAND: Judge, I have -- yeah, I'll bring him up. He's the  
25 administrator from CareMeridian.

1 THE COURT: Does the individual have a name?

2 MR. JONES: His name is Michael Mavromatis.

3 M-A-V-R-O-M-A-T-I-S, I believe. He'll spell it.

4 THE COURT: Okay. So do you wish him to be on the stand?

5 MR. HAND: Yes.

6 MR. JONES: Yes, Your Honor. He'll --

7 THE COURT: Okay. Any objection Defense Counsel? If  
8 we're consistent with others, he's been on the stand. Is that fine with  
9 you?

10 MR. DOYLE: That's fine.

11 THE COURT: Okay. Thank you so much. Okay.  
12 Would you like the jury brought in?

13 MR. JONES: Yes, Your Honor.

14 THE COURT: Marshal, could you please get our jury. Thank  
15 you so much.

16 And we will need to break in, oh, about 10 minutes. We'll  
17 break at noon and then we'll go to 1:15, 1:20. And I have to break a few  
18 minutes before noon. Okay, thank you so much. And the Court is aware  
19 that there was an audiovisual transmission request submitted, so --

20 MR. JONES: Yes, Your Honor. And I think we've arrived at  
21 a stipulation with respect to that as well, subsequently.

22 THE COURT: Oh, okay. What's that stipulation?

23 MR. DOYLE: So what we've agreed to is Dr. Brian Juell is my  
24 standard of care general surgeon. He will be available first thing in the  
25 morning tomorrow, whatever time we start. We've agreed that I can put

1 Dr. Juell on as part of my case in chief. I'm not sure where we'll be in  
2 terms of resting or not, but if -- and if necessary, we will interrupt him --

3 THE COURT: Just one second.

4 MR. DOYLE: -- to complete --

5 THE COURT: So he'll be out of order, okay.

6 MR. DOYLE: Yeah. He'll be out of order if they haven't  
7 rested, but we'll interrupt him to do Dr. Hurwitz. And then if necessary, I  
8 made arrangements for Dr. Juell to be available, you know, if it -- if for  
9 some reason it goes over to Thursday morning, he can spend the night.  
10 But --

11 MR. JONES: And so Dr. Hurwitz will be by video at 2:00 p.m.  
12 tomorrow. And Dr. Juell will start first thing tomorrow when we begin,  
13 and hopefully we'll be finished with Dr. Juell prior to Dr. Hurwitz.

14 THE COURT: So is there going to be any objection to the  
15 audiovisual request?

16 MR. DOYLE: No.

17 THE COURT: Okay. So there's no objection. So you know  
18 what you need to provide Dr. Hurwitz as far as what's required of all the  
19 exhibits? Court can't go over that right now, you just --

20 MR. JONES: Yes. Absolutely, Your Honor.

21 THE COURT: -- need to make sure it gets taken care of.

22 MR. JONES: Yes, we're -- we understand.

23 THE COURT: Okay. So since there's no objection, then the  
24 Court's gong to grant it and then you need to coordinate with IT to insure  
25 that was done if it hasn't already. Has it been done?



1 MR. JONES: It has. In terms of testing the technology, we  
2 did.

3 THE COURT: Okay. Then the Court's going to grant the  
4 audiovisual because there's no objection by Defense.

5 MR. JONES: No.

6 THE COURT: Okay. Thank you so much. Jury can come in,  
7 appreciate it. Wait, sorry. Marshal, wait one second. The witness needs  
8 to get on the stand first, please. Thank you.

9 THE MARSHAL: All rise for the jury.

10 [Jury in at 10:55 a.m.]

11 [Within the presence of the jury]

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

14 THE COURT: Welcome back, ladies and gentlemen. Hope  
15 everyone had a nice and relaxing evening. At this juncture, Counsel for  
16 Plaintiff -- same as we've done in the past, we already have the witness  
17 on the stand, but I'm still going to ask, Counsel for Plaintiff, would you  
18 like to call your next witness?

19 MR. HAND: Yes, Your Honor. Plaintiff calls Michael  
20 Mavromatis.

21 THE COURT: Okay, thank you so very much.

22 Madame Clerk, , can you please swear in the witness or  
23 affirm, have the witness affirm, whatever's appropriate. Thank you.

24 MICHAEL MAVROMATIS, PLAINTIFFS' WITNESS, SWORN

25 THE CLERK: Thank you, please be seated. Could you please

1 state and spell your name for the record.

2 THE WITNESS: Yes, it's Michael Mavromatis. That's  
3 M-A-V-R-O-M-A-T-I-S.

4 THE CLERK: Thank you.

5 THE COURT: Okay.

6 Counsel, feel free to commence, and do you need a pocket  
7 microphone or are you going to stay at podium?

8 MR. HAND: I'll try to keep my voice up and I'll stay here.

9 THE COURT: Okay, no worried. If you change your mind, I'd  
10 be glad to give you a pocket microphone. Feel free to commence with  
11 your questioning.

12 DIRECT EXAMINATION

13 BY MR. HAND:

14 Q Good morning, Mr. Mavromatis.

15 A Good morning.

16 Q By whom are you employed?

17 A CareMeridian LLC.

18 Q And what is your -- I'm sorry?

19 A It's CareMeridian LLC.

20 Q And what kind of facility is CareMeridian?

21 A It is a nursing home facility.

22 Q And what is your title with CareMeridian?

23 A I'm the administrator.

24 Q And how long have you been the administrator?

25 A I've been the administrator since September of 2015.

1 Q And where is CareMeridian located?

2 A It's 3391 North Buffalo Drive.

3 Q And that's a -- is that a rehab facility also?

4 A Yeah, it's a skilled nursing and rehab.

5 Q I'm going to ask you to look at the binder behind you,  
6 Plaintiffs' trial exhibit binder. If you could find it.

7 THE COURT: Counsel, Plaintiffs' 1, Plaintiffs' 2, feel free  
8 to -- Plaintiffs' 1--

9 THE WITNESS: Is it 1?

10 MR. HAND: It's number 2.

11 THE COURT: Plaintiffs' or Defendant's?

12 MR. HAND: Plaintiffs'. Plaintiffs' 2.

13 THE WITNESS: I'm sorry, Exhibit 2?

14 THE COURT: Sorry.

15 MR. HAND: No, it's Plaintiffs' Book 2.

16 THE COURT: Sure. And you can approach. I believe you're  
17 saying Plaintiffs' are the first two on the left and then they go to  
18 Defendant's, and I think they're marked separately. Thank you so much.

19 THE WITNESS: Plaintiffs' Book 2.

20 MR. HAND: That's okay.

21 BY MR. HAND:

22 Q Mr. Mavromatis, I'm pointing you to what's been marked as  
23 identification as Plaintiffs' Exhibit 6. Are you familiar with Plaintiffs'  
24 Exhibit 6?

25 [Plaintiffs' Exhibit 6 marked for identification]

1 A Yes.

2 Q Okay. Could you tell us what it is?

3 A This first page here is just the declaration from our medical  
4 records person who was Tyra Nelson [phonetic].

5 Q Tyra Nelson's a medical records custodian?

6 A Yes.

7 Q And turning to the next page, is that a face sheet? I'm  
8 looking at page 6-002.

9 A Yes, that's our -- that's our face sheet.

10 Q Okay. Does that indicate that Ms. Farris was -- or Mrs. Farris  
11 was admitted on August 11th, 2015, to your facility?

12 A That's correct.

13 Q And she was discharged on August 28th, 2015?

14 A Yes.

15 Q And looking further, looking at the next page, 6-003, is that  
16 the billing record for the facility?

17 A Yes.

18 Q And then, the rest of that exhibit is various medical records;  
19 is that correct?

20 A Yes. This would be -- yep.

21 Q All right. So how are these records prepared? Specifically  
22 the medical records, they're entries made contemporaneous with the  
23 treatment?

24 A Yes, I wasn't -- I'm not -- I'm familiar with the records --

25 Q Okay.

1           A     -- because I had gotten the records. But I was not there when  
2 she was there. But this would look like -- yeah, there's an H&P -- so, yes,  
3 this would be --

4           Q     Are your records kept the same way now as they were then?

5           A     Yes.

6           Q     All right. Is it the ordinary course of business for  
7 CareMeridian to keep a record such as we've marked as Exhibit 6?

8           A     Yes.

9           Q     Okay. And is it the -- was this record kept in the ordinary  
10 course of business of CareMeridian at that time period in 2015?

11          A     Yes.

12               MR. HAND: And, Judge, at this time, I offer that record into  
13 evidence.

14               THE COURT: Is that proposed Exhibit 6?

15               MR. HAND: Yes.

16               THE COURT: I'm not hearing any objection by Defense.

17               MR. DOYLE: No, no. I was waiting.

18               THE COURT: Okay.

19               MR. DOYLE: I object to page 6 -- I'm sorry, Exhibit 6, page 3,  
20 that no foundation and hearsay.

21               MR. HAND: Judge, I could clarify that. I'm going to --

22               THE COURT: Okay. You ask a few more questions first?

23               MR. HAND: Yes.

24               THE COURT: Okay, feel free to do so.

25               MR. HAND: Okay.

1 THE COURT: The Court will defer ruling.

2 BY MR. HAND:

3 Q Please look at page 3 of the -- of the exhibit. Is that term  
4 client account ledger?

5 A Yes.

6 Q Okay. Is that a -- who makes those entries in the -- in the  
7 record?

8 A That would be at our corporate office, which is Irvine,  
9 California.

10 Q Are those entries for the medical charges made  
11 contemporaneous when the charges are incurred?

12 A Yes. But we do bimonthly, so twice a month.

13 Q I'm looking at this Exhibit number 3, does it have dates of  
14 entry of billing from August 11th, August 12th all the way through  
15 August 27th, does it have entries for various medical services?

16 A Yes.

17 Q Okay. And you're familiar with this kind of bill and how it's  
18 kept?

19 A Correct.

20 Q Is this a true and accurate copy of the medical bill for  
21 CareMeridian for Tina Farris' admission?

22 A Yes.

23 Q Okay. And it's in the ordinary course business of  
24 CareMeridian to keep a record such as this?

25 A Correct.

1 Q And was this one in the ordinary course of business?

2 A Correct.

3 MR. HAND: Okay. I move to admit the exhibit, Judge.

4 MR. DOYLE: I object. No foundation and it's hearsay.

5 THE COURT: Counsel, would you both like to approach me.

6 Madame, Court would like to turn on the lovely white noise.

7 [Sidebar at 11:02 a.m., ending at 11:04 a.m., not transcribed]

8 THE COURT: Okay. As requested by counsel, the Court's  
9 going to defer all the questions.

10 Go ahead, counsel.

11 MR. HAND: Okay.

12 BY MR. HAND:

13 Q Mr. Mavromatis, looking at that medical bill on page 3,  
14 Exhibit 6.

15 A Yes.

16 Q Looking at the entry for August 11, 2015, was that charge  
17 actually incurred?

18 A Yes.

19 Q Okay. And what's your basis of knowledge for that?

20 A Because according to that face sheet she was admitted on 8-  
21 11.

22 Q Okay. Any other -- these other entries going down the bill,  
23 were these charges actually incurred?

24 A That would be correct. The face sheet says 8-28. We do not  
25 generally bill for day of discharge, so that's why you would not see 8-28

1 on this record.

2 Q And do you deal with these bills as part of the course and  
3 scope of your job at CareMeridian?

4 A I communicate with corporate. They prepare. And then I  
5 will, if there's any discrepancies, I would discuss that with them.

6 Q How many of these bills like this have you seen in your job?

7 A Dozens.

8 Q Does this seem to be the usual and customary, not the  
9 amount, but format for billing for a patient at CareMeridian?

10 A Yes.

11 Q Okay. Thank you.

12 MR. HAND: Judge, at this time I move to admit the exhibit.

13 MR. DOYLE: Object. There's no foundation.

14 THE COURT: I'm just going to overrule the objection in light  
15 of the additional testimony exhibit . The only objection was to page 3; is  
16 that correct, counsel?

17 MR. DOYLE: Correct.

18 THE COURT: Okay. Then Exhibit 6 is admitted. Thank you  
19 so very much.

20 [Plaintiffs' Exhibit 6 admitted into evidence]

21 THE CLERK: In its entirety?

22 THE COURT: Pardon?

23 THE CLERK: In its entirety?

24 THE COURT: Yes, in its entirety. Yes. Thank you so much.

25 MR. HAND: I have no further questions for the witness,



1 Judge.

2 THE COURT: Okay.

3 Cross-examination, Defense counsel?

4 MR. DOYLE: No, thank you, Your Honor.

5 THE COURT: Okay. There being no cross-examination, not  
6 seeing any juror questions, then is this witness excused for all purposes  
7 or subject to recall at some other part of the trial?

8 MR. HAND: For all purposes from our side.

9 THE COURT: Defense counsel?

10 MR. DOYLE: That's fine.

11 THE COURT: Okay. This witness is excused for all purposes.  
12 Thank you so very much for your time. Just watch your step on your  
13 way down, please. Thank you so very much. Just leave the binder  
14 there. We'll get that taken care for you. Thank you so much. I  
15 appreciate it.

16 Okay, then, at this juncture as this witness is leaving, counsel  
17 for Plaintiff would you like to call your next witness?

18 MR. HAND: Yes, Your Honor. We're going to call Titina  
19 Farris.

20 THE COURT: Okay. Marshal is assisting with something  
21 else.

22 UNIDENTIFIED SPEAKER: Your Honor, I'm happy to assist.

23 THE COURT: Okay. Would you like to assist the witness.  
24 The Marshal's getting parking validations relevant to our jurors. He said  
25 he'd be back in a moment. Thank you. And does the witness need

1 anything else?

2 MR. JONES: We're okay, but I will help her.

3 THE COURT: Marshal? No, wait second.

4 MR. JONES: Would you like the Marshal to do it?

5 THE COURT: Marshal, would you mind assisting the witness  
6 if she needs any assistance? Thank you so much.

7 And the Clerk will swear in the witness. Thank you so much.

8 THE CLERK: Do you prefer to sit or stand?

9 MS. FARRIS: Sit.

10 THE COURT: That's fine. Please raise your right hand.

11 TITINA FARRIS, PLAINTIFF, SWORN

12 THE CLERK: Thank you. Could you please state and spell  
13 your name for the record.

14 THE WITNESS: Titina Farris, T-I-T-I-N-A. Farris, F-A-R-R-I-S.

15 THE CLERK: Thank you, ma'am.

16 THE COURT: Okay. Counsel, you can commence with your  
17 examination and you may need to -- are you going to be using any  
18 exhibits?

19 MR. JONES: I'm not, Your Honor. I'm not.

20 THE COURT: Okay. Then that's fine. And just with regards  
21 to the microphone, we may need to move it a little closer to the witness.

22 MR. JONES: Sure.

23 THE COURT: You may want to do that. Sometimes people  
24 are a little soft spoken. And then our recorder will let us know if she  
25 cannot hear at any point and then we'll get that taken care of, as well.

1 Madam Court Reporter, can you hear her so far?

2 COURT REPORTER: Nobody's spoke yet, sorry.

3 THE COURT: Okay. Sorry. We'll wait to hear the question  
4 and we'll see if there's any issues, we'll let you know. Thank you so  
5 much.

6 Go ahead, counsel, feel free to commence with your  
7 questioning.

8 DIRECT EXAMINATION

9 BY MR. JONES:

10 Q Good morning, Titina?

11 A Good morning.

12 Q Titina, I'm not going to go very long, but I'm going to ask you  
13 a number of questions. Can you tell the jury where you grew up?

14 A Well, I grew up in Pennsylvania, Springfield, Pennsylvania,  
15 and then we moved to Los Angeles. I was like nine when we moved  
16 there, so it was kind of a short while in Pennsylvania. I've got a lot of my  
17 relatives there.

18 Q And then when did you move to Las Vegas?

19 A I believe it's 2001.

20 Q And why did you move here; why did you move to Las  
21 Vegas?

22 A Eventually all my family was this way, so I decided to go  
23 because I missed them, so I moved there. You know, wherever my mom  
24 and dad go I seem to be really close to them, so I want to be there.

25 Q And this is where most of your family is now?

1           A     Oh, yeah. I mean like all of us. I have one brother in New  
2 Jersey, but the rest of us are here. There's like we had nine kids in our  
3 family, so, yeah, a big family. So it's, yeah, I wanted to be there.

4           Q     You had to be close to family?

5           A     Yeah.

6           Q     I want to talk to you, kind of get into it. Let's talk about your  
7 family. Obviously, Patrick has been here the same days that we had you  
8 attend. Can you tell the jury about your family?

9           A     Oh, yeah. My family of course is everything to me. When I  
10 woke up I was so grateful. And they were like right, you know, when  
11 they could be, right there. And I do everything, you know, of course. It's  
12 like you guys with your family, do everything with them, do family get-  
13 togethers and we have those all the time. We always meet over at my  
14 mom's house. All their families come over and we all just, you know,  
15 hang out and stuff.

16           But, yeah, they are really cool people, my husband especially. I  
17 mean the care that he took care of me, unbelievable. I mean it was just --  
18 it was amazing. I mean he did everything for me. And was taking care  
19 of the house and coming to see me. I mean he never missed a day.  
20 And my daughter was there. And my other daughter came from London  
21 to be with me and our son. And he was right there the whole time  
22 helping out and making sure that maybe that things would go better for  
23 me trying to see that, you know, be there and talk to them, you know,  
24 nurses and everybody. Everybody's there in the family, yeah.

25           Q     Titina, how many kids do you have?

1           A     I have three kids. I have Sky, she's 14. And then I have  
2 Lowell, he's 33. And then I have Sky, and she's 30 -- she just turned 31,  
3 but yeah.

4           Q     You said Sky twice.

5           A     Sky -- oh, Elizabeth. Elizabeth is 14. She acts like she's 17,  
6 but anyway, we've got Sky that's 31, and Elizabeth is 14, and Lowell is  
7 33. And those are my kids.

8           Q     And do you have grandkids?

9           A     Oh, yeah. I've got Tristan, he's ten and Elwood is seven.  
10 And he is so smart. And Tristan is, too, but I took care of Elwood for a  
11 while while they went to work and stuff and so I kind of bonded with him  
12 when he was a baby. And then I got to see Tristan again when he came  
13 back from London, which was great, so yeah, those are my grandkids.

14          Q     And when you had the opportunity to watch Elwood during  
15 that time bonding when he was a baby, that was obviously before the --

16          A     Yes.

17          Q     -- the surgery?

18          A     Yeah, because he's a fast little bugger. Yeah, he's, you know,  
19 he would get into things and stuff like that, so, yeah, you know, you have  
20 to be up on it, so.

21          Q     Okay. I want to talk about some things that -- well, let me ask  
22 you that. Is watching Elwood, for example, on a regular basis, was that  
23 something that you were able to continue after the surgery or is that  
24 something you had to let go of?

25          A     No. I had to let go of because I -- I mean I couldn't do it. You

1 know, you can't pick them up, you can't run to get them, you know. To  
2 be really slow at getting, you know, around, but he still would come by  
3 and see me and stuff, but I couldn't like play with him and stuff, but  
4 yeah.

5 Q I want to talk about some things that you loved to do before  
6 the surgery, things that were very important to you that you looked  
7 forward to.

8 A Well, in our family I'm the one that makes all the events and  
9 plans all the stuff and that's like my thing, I like that, you know, all the  
10 parties and stuff like that. So I get together and hang off with my sisters  
11 and stuff what we're going to do and everything.

12 And, I also would go to Elizabeth's school, and we would  
13 walk to school, and I would help in the classroom and help the other  
14 kids, you know, read to them, listen to them read, check some papers,  
15 make print copies of stuff, you know, for the teachers.

16 And then I would also take Elizabeth to dance class, which I  
17 loved dancing. I mean dancing is like, you know, it makes your day, you  
18 know. And so I would, you know, I miss it, you know. And you get like  
19 really excited when you see other people dancing and you can't. But,  
20 yeah, have you guys seen that show World of Dance? My God, I love it.  
21 So anyway I kind of live through that.

22 But, yeah, just a lot of things that you need to walk. I mean  
23 you never know what it's going to be like if you never walked again. You  
24 just -- you don't think about that. But I try my hardest and just, you  
25 know, go on, but yeah, that's what you have to do.

1           Q     Thank you. I want to talk about how you came to know  
2 Doctor Rives, and I want to skip ahead. You were referred by a primary  
3 care doctor, Doctor Chaney?

4           A     Yes.

5           Q     And you had a surgery with Doctor Rives in 2014 for a hernia  
6 and to remove a lipoma?

7           A     Yes.

8           Q     The hernia popped out some months later; is that right?

9           A     Yes.

10          Q     And you went back to Doctor Rives?

11          A     Yes, I did.

12          Q     All right. Can you tell me about the conversation you had  
13 with Doctor Rives when you went back to him for the hernia?

14          A     Well, I said my hernia came back, and I need you to fix it, you  
15 know, I'm surprised it came back so soon like, you know, And he said  
16 yeah, he could do it.

17          Q     Okay. Did he give you any indication of the type of surgery it  
18 would be or how hard it might be or easy it might be?

19          A     He said he was going to do laparoscopic. And I was kind of  
20 like, but didn't you open me up before, because I was opened up. And  
21 then he just was like no, I'm going -- I'm going to do it this way, it's not a  
22 big deal, you know, I do it all the time. I'm like oh, okay.

23          Q     Did he send you to get some tests done to make sure that  
24 you were healthy, things like that, and to get a CT scan done of the  
25 abdomen?

1           A     I don't recall that, but I just remember going in and him  
2     telling me that it's not going to be a big deal, you'll be out in an hour,  
3     you know.

4           Q     Okay. Was Patrick with you at all of those appointments that  
5     you had?

6           A     Yeah, I believe so, yeah. And Elizabeth came, too.

7           Q     Okay. All right. Do you recall what, if anything, Doctor Rives  
8     told you regarding the involvement in your colon with the surgery?

9           A     No. We didn't talk about that.

10          Q     He never -- he didn't mention the colon at all at this point?

11          A     No.

12               MR. DOYLE: Objection. Leading.

13               THE WITNESS: Not at all.

14               THE COURT: The Court's going to overrule the objection in  
15     light of the way it was rephrased in the second tense before the Court  
16     and not changeable. Go ahead.

17               MR. JONES: Thank you, Your Honor.

18     BY MR. JONES:

19          Q     Now, I know the answers to some of these next questions  
20     and so I don't want to belabor it, but can you tell the jury what you  
21     remember from the time that you walked into surgery on July 3rd and  
22     kind of just walk through your next couple of memories?

23          A     I remember going in and them prepping me. And then they  
24     put me to sleep like and then that was -- okay, so that happened. I can't  
25     remember after that. Like I just was like -- no, just that. You know, they



1 put me to sleep.

2 And then after that I don't know what day it was or anything  
3 or whatever, but I woke up in like an elevator. It was dim. And I could  
4 see like palm trees on the thing on the top. And I was really scared, but I  
5 felt like my skin was burning, you know, like just fire all over my body.  
6 And then I thought I was -- I thought I -- you know, that they could hear  
7 me. I started screaming for help. But I didn't realize I had a trach in my  
8 throat and all that stuff.

9 So the next thing I know, I guess I passed out or whatever and I  
10 don't know what time it was again, whatever, but I was in a hospital  
11 room.

12 Q And have you learned since then about what time it was that  
13 you woke up in the hospital room?

14 A Like days later. I mean not exact day, but it was days later.  
15 And I really -- I couldn't talk because they -- like my voice was gone and  
16 they had a thing, so I had to talk on the chalkboard, you know, to find out  
17 my information. And I really -- what I can remember right now is just like  
18 it was days later, you know, that -- yeah.

19 Q At some point do you recall being transferred to the hospital  
20 to another facility?

21 A Yes. I think it was like a couple weeks later, and yeah, they  
22 took me to CareMeridian, and I was there for several weeks. They tried  
23 to teach me how to move my body onto things, go to the -- you know,  
24 later, right before I left, you know, how to go to the bathroom again. Like  
25 if I couldn't take the catheter out, I couldn't go home. But I had to do

1 certain things before I could go home. And I remember the lady that was  
2 helping me try to walk, it was very difficult just to stand up, but she said  
3 finally, like -- it was like a week or so later, if you can make it across this  
4 floor, you know, over there, I'll see about sending you home. So that  
5 was my goal, to make it across the floor, you know. And then, you know,  
6 and then she'd say I could go home, so I could do my exercises there,  
7 things like that.

8 Q And, Titina, so you had to learn to sit up and then transfer  
9 from one seat to another?

10 A Yes. They were -- in the beginning they would just pull me  
11 up from the sheet, like up, because I couldn't sit up or anything. And so I  
12 just kept working on it, because my stomach was, you know, not right  
13 and my legs and feet were not right. And so, you know, just pull you up.  
14 And then they say, you know, hey, we're going to try, and have you gone  
15 in there and transfer you to -- you're going to learn how to get out of the  
16 wheelchair and get onto this part right there. And I did that, too. And it  
17 took a while because the strength -- my strength was like gone, but, you  
18 know, I kept doing it. And finally I could do it.

19 And then they show me how to get into a car, you know. You've  
20 got to -- you know, the way you transfer into a car, too, you know.

21 Just, you know, how to clean myself. In the beginning it was just  
22 hard washing my face and stuff. But then, you know, I had to, you know  
23 get going on there, so I -- they showed me how to wash up. It was like  
24 starting all over or something, you know, so yeah.

25 Q And when you talked about walking across the floor, was

1 that with the assistance of a walker or with --

2 A Oh, yeah. It was not like the one I have now, but the metal  
3 one. And, you know, you just have to learn how to, you know, get --  
4 because my feet, you know, would go like this or whatever, so you're  
5 trying to, you know -- I had braces on, too. I forgot. I had the braces to  
6 hold them straight. And then I could, you know, go -- you know, walk  
7 across the floor.

8 Q So talking about your braces, at some point you stopped  
9 using braces so much and you started using kind of boots. Can you tell  
10 the jury --

11 A Yeah. The boots help hold my ankle firm so that it doesn't  
12 go like -- you know, like that. So I started wearing more boots that hold  
13 my foot in control. And I was talking to one of the therapists there and  
14 they said the best thing you can do is just try and walk, just try, you  
15 know, just try and walk the best way you can, and that's like the best  
16 thing, you know. Although I was doing leg kicks and stuff like that, you  
17 know, like you have your legs sideways and you try to do it and  
18 everything. But, yeah, but the boots really keep it in line like, so.

19 Q And when you talked about the catheter, that was for urine?

20 A Yes.

21 Q Okay. Eventually were you able to walk that distance?

22 A Yeah, I did. And then she'd say well, okay, I'll see about  
23 letting you go home. And then like maybe two or three days later they  
24 said yes. And then I made it home. And then it was still difficult, but my  
25 -- being around my family put me more at ease, you know, to, you know,

1 start really thinking about what I'm going to do, you know, just keep  
2 doing it. And Patrick would help me.

3 And then we had a therapist that came to the house and showed  
4 me how to like make it into the kitchen, what to do, what not to do. And  
5 start doing that.

6 And then later I made it to outpatient like the physical therapy and  
7 was doing that. And that consists of like, you know, the bikes that go  
8 back and your feet go up and leg kicks again. And they also gave me  
9 something to work on my upper strength, too, because you're holding  
10 that walker makes you stiff and will always, you know, try to grip on it,  
11 so yeah.

12 Q And did the therapist give you exercises and things that you  
13 could do at home?

14 A He gave me a list of chores like to do and he says I want you  
15 to do that. When I come back, I'll give you some more stuff, you know.

16 Q And did you continue doing that even after therapy?

17 A Oh, yeah, and I still do. You know, even when I'm doing --  
18 watching TV, I forget, you know, watching TV and I'm doing them while  
19 I'm doing it because, you know, I'm there doing my best. So you just  
20 start kicking your legs and trying to, you know, make them feel better  
21 because some days are better than others, you know, yeah.

22 Q I want to -- I'd like you to tell the jury about housework and  
23 things that you could do around the house, how it was that you and  
24 Patrick divided things before and how you do it now.

25 A Well, he was in charge of the outside, the lawn and all that

1 stuff. And I was in charge of the inside, which I loved to do because I like  
2 to decorate and, you know, it -- they say I was weird because I would be  
3 so shining the stuff and my daughter would go why are you smiling, you  
4 know, I was scrubbing the stuff. So it was very -- and like I guess I was  
5 proud of when it was done, you know, but I can't really do the harder  
6 stuff. I could do some dishes sometimes and I do laundry, you know. I  
7 can take -- what I do is take my chair, throw clothes on it, roll it to the  
8 washing machine, throw it in, you know, and it does come in handy, but  
9 yeah. So I do that mostly.

10 And I try and take care of my dogs, most of them, but, you know, I  
11 can't walk them, you know, so Patrick does that now and my kids. But it  
12 was always fun to watch -- you know, walk them. They're cool dogs.

13 Q For a period of time afterwards, after you left CareMeridian,  
14 you had a colostomy bag, right?

15 A Yes.

16 Q And can you tell the jury about what that was like to have  
17 that for that year?

18 A How I came to find out about my colostomy bag, when I  
19 woke up, like I don't know, like a day later or whatever, I felt like I had to  
20 go to the bathroom, you know, really bad. So I'm calling the nurses,  
21 everything. Nobody's coming. So my son finally called and I'm like call  
22 the front desk or something, I've got to go to the bathroom, you know.  
23 And he goes mom, look on the side of you. And I couldn't believe it, I  
24 had a bag. So that was like wow.

25 And then afterwards, you know, you have no control of like,

1 you know, just going to the bathroom you've got this bag just going to  
2 the bathroom. And of course it smells really bad. And my husband had  
3 to change it, so he must really love me because it was bad. And so he'd  
4 clean it and do that for me.

5 But what really got me was, is you can't cover up that smell. You  
6 have to live with it and you -- when you go places and you smell like  
7 that, you don't feel good about yourself and you don't feel -- you just  
8 don't feel right, you know. So it's kind of ugly, but, you know. I think  
9 that was like the second worse thing. But I was very, very happy when  
10 they took it off, very.

11 Q Right now most of the time when you're getting around, how  
12 do you get around?

13 A Somebody has to take me around, you know. My husband  
14 and friends and family, they, you know, pick me up and we go. You  
15 know, we go to whatever. But sometimes, like I said, it feels like you're  
16 like kind of like a burden, but they don't make you feel that way, but you  
17 feel like it. And then you feel like, you know, you've got to pack up  
18 everything before you go that I never had to do.

19 And, you know, you know like going to -- you can't really go to  
20 concerts. I used to go to concerts all the time. And, you know, the  
21 theater, I would like to go to see the shows and stuff. Nothing was  
22 keeping me from Hamilton. I made it in there. That show's good.

23 But I'll tell you, I -- like I said, it was kind of like a struggle at first,  
24 you know, but I'm getting -- you get used to it, you know.

25 Q When you're going out and you're -- so when you're going

1 out and walking somewhere, do you usually use your walker, do you use  
2 your wheelchair?

3 A Most of the time my walker because it's more solid and when  
4 there's people around you don't want to get bumped because you're  
5 going to -- you know, something's going to happen. So I have to bring  
6 that most of the time. If I know I'm just going to my parents or  
7 something that I know, I'm not walking around a lot, I might bring both  
8 so that I can -- it's not in the way and if we go -- you know, you switch off  
9 or whatever. But mostly the walker, you know, because it just is more  
10 stable, balance, you know.

11 Q And can you tell the jury about volunteering at school that  
12 you used to do?

13 A I'd walk Elizabeth to school and then I'd go in her classroom  
14 and help the teacher, you know, whatever teacher she had. And, you  
15 know, if they say go make some copies of this for me, check off these like  
16 grades, make sure they did this. Like even with her plays and drama I  
17 would help out because I knew dance and so I would help the teacher to  
18 coordinate, you know, the kids, how they're doing, and things like that,  
19 so yeah, it was fun.

20 Q Titina, are you blaming the Defense in this case for  
21 conditions that you had before, like diabetes or anything like that?

22 A No, no. Just it's about my feet. You know, other things, it's  
23 not like my feet. My feet, you know, gets you around when you -- no, I'm  
24 not.

25 Q Titina, and what are you concerned about with respect to

1 your body being able to take care of yourself?

2 A Well, right now I'm not able to do the good things that could  
3 make your legs and feet feel good. Like acupuncture, I've done it a  
4 couple times. It was like helping somewhat like, you know, feel a little bit  
5 better. But that's like a lot. And with the water, I want to be able to have  
6 water involved in my therapy. And, you know, maybe then go see  
7 doctors that really know what they're doing about this. I mean I want to  
8 know. I'm not going to give up. I'm not going to say oh, this is it, but I  
9 want to keep trying.

10 Q Titina, what has -- what have you learned from this  
11 experience?

12 A I know that I'm grateful I'm alive. I mean I was told I died  
13 several times. I learned about love, my family, and what they mean to  
14 me. And, you know, I also never realized what people go through that  
15 these kind of things happen to them, you know. You don't think about  
16 that. But now I know, you know. But you look at some people and go  
17 wow, what they go through. And you think well, I could do this, I can  
18 make it because the things that you see in the rehabilitation, you know,  
19 you want to -- you just want to help everybody. You just want to reach  
20 out to them, talk to them. Some people don't have people that visit  
21 them, so you go visit them, too. But you've got to have that  
22 understanding, you know. You just don't know until it happens to you.

23 Q What did this experience teach you about the love that  
24 Patrick has for you?

25 A Wow, he's amazing. I just can't believe that he was so



1 understanding and good. When he came into the rehabilitation one day,  
2 you know, I couldn't wait until he walked down that hall. I was looking  
3 down that hall to see him coming up there, just made my day. So he  
4 was coming up the hall and he came in and he said you know what,  
5 we're in this together and we're going to make it. And so know that.  
6 And that just blew my mind.

7 Q Thank you, Titina.

8 MR. JONES: Your Honor, may we approach?

9 THE COURT: Of course you may. Madam Court Reporter  
10 turn on the white noise.

11 [Sidebar at 11:40 a.m., ending at 11:40 a.m., not transcribed]

12 THE COURT: Ladies and gentlemen, do you have any idea  
13 that it's 20 to 12? Instead of having you sit here, I think you'd rather go  
14 to lunch and have this discussed outside your presence rather than us  
15 sitting at the bench hearing lovely white noise.

16 So, ladies and gentlemen, we were going to send you out in  
17 about ten minutes anyway, so it's 20 to 12. That's going to take, let's see  
18 -- oh, boy. Okay. We're coming back at 1:20 because we've got some  
19 matters anyway and you'd rather be out there than in here listening to  
20 white noise, anyway.

21 So 1:20. Ladies and gentlemen, during this lunch recess you  
22 are admonished not to talk or converse among yourselves or with  
23 anyone else on any subject connected with this trial. You may not read,  
24 watch, or listen to any report or commentary on the trial or any person  
25 connected with the trial by any medium of information, including,

1 without limitation, social media, texts, tweets, newspapers, television,  
2 the internet, radio. Anything I'm not saying specifically is, of course, also  
3 included.

4 Do not visit the scene or the events mentioned during the  
5 trial or undertake any, excuse me, research, experimentation or  
6 investigation. Do not do any posting or communications on any social  
7 networking sites or anywhere else. Do not do any independent research,  
8 including, but not limited to internet searches. Do not form or express  
9 any opinion on any subject connected to the case in any manner  
10 whatsoever until it's fully and finally submitted to you for deliberations.

11 With that, have a nice relaxing lunch. We'll see you back at  
12 1:20, one-two-zero. Thank you.

13 THE MARSHAL: All rise.

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

15 [Outside the presence of the jury]

16 THE COURT: We're staying on the record. Okay. One  
17 second. Okay. We're now outside the presence of the jury. We're going  
18 to stay on the record for a brief few moments. It's up to you whether  
19 your client wishes to remain on the stand, or you wish to assist her. I  
20 was just going to start with the oral argument and then let the --

21 MR. JONES: She can stay there, Your Honor.

22 THE COURT: Okay, that's fine. And then we'll break for the  
23 lunch break and then we'll come back at 1:20. So you've got a few  
24 moments to argue. There was an issue brought up to the bench, so  
25 counsel for the Plaintiff bring up your issue and then Defense can

1 respond, and the Court will make a determination.

2 MR. JONES: Thank you, Your Honor. Yeah, it's something  
3 that I typically -- you know, I don't file motions on *Lioce* (phonetic) and  
4 things like that because we all know the rules in this case. There was -- I  
5 didn't think there would be a reason to file a motion on the issue of the  
6 fact that my client as a hobby or as something she does on the side acts  
7 as clairvoyant. And it's something that is potentially highly prejudicial,  
8 depending on the person that you're talking to, and it doesn't go to  
9 anything.

10 It didn't change with respect to my client -- well, and she's  
11 not asking for damages. She's not asking for anything in that respect.  
12 She's not asking for anything in terms of wage loss, she's not asking for  
13 anything with respect to her ability to gain wages in the future. That's  
14 not part of any part of requests that is being made for lost wages or loss  
15 of future earning capacity or even ability to perform work outside the  
16 house. That's not something that has ever been requested in this case,  
17 it's not something that's being requested now.

18 And, in addition, she has never been paid for being  
19 clairvoyant. She has done that on the side in an effort to try to help  
20 people. But she -- but, anyway, it doesn't go to anything in this case at  
21 all. And I bring it up only because it struck me yesterday when  
22 Defendant blurted out insurance and when other things were blurted out  
23 Sobe. And, you know, and with the improper cross-examination  
24 alleging medical records to the jury that didn't exist, that we have this  
25 pattern and practice by the Defense of throwing things out there in the

1 face of the jury that is absolutely inappropriate.

2 And so for that reason it's -- I thought that I'd better bring it  
3 to the Court now and apparently it's true because counsel said when we  
4 stopped that he intended to. And, frankly, Your Honor, it's the same,  
5 essentially, as raising to the jury, you know, something like a religious  
6 practice that some of the jurors might not like or something. And so it  
7 has the potential of being extremely prejudicial. It's the sort of thing that  
8 depending on one's religion, some people might feel that it's a bad  
9 thing, a sinful thing, and other people might feel differently.

10 The bottom line is, it's something that has a potential to be  
11 extraordinarily prejudicial and it has no probative value at all in the case.  
12 It goes to no damages, it goes to no claims, and it doesn't go to her  
13 credibility. It's akin to a religious issue.

14 Do you have any questions, Your Honor?

15 THE COURT: I do have one question, just because it didn't  
16 get brought up. Going to the damages aspect, inside the house, outside  
17 the house. So no wage loss whatsoever is being asserted; is that  
18 correct?

19 MR. JONES: As present and future, nothing, Your Honor.

20 THE COURT: Okay. How about with regards to the pain and  
21 suffering, you know, the non-economic damages component?

22 MR. JONES: Well, Your Honor, for that reason, for this and  
23 other reasons, we -- she didn't work out of the house before and she  
24 didn't have an intention -- I mean she has at times in the past, but not in  
25 a way that was significant in terms of wages. And there wasn't an

1 indication that she was going to have a grand high money -- you know, a  
2 high dollar money making career afterwards. So we haven't brought it  
3 up.

4 And you notice in my direct examination we didn't talk in any  
5 way about --

6 THE COURT: Is there going to be any witness that in any  
7 way is going to state that this ability to do these clairvoyant type things  
8 is part of going to impact her non-economic damages in any manner,  
9 either she or any other witness is going to say that there's been any loss  
10 in this area that would impact non-economic damages? I'm just trying to  
11 see if it has any relevance to the case whatsoever.

12 MR. JONES: Thank you, Your Honor. And no, no one will  
13 be.

14 THE COURT: Okay. So even in any future witnesses?

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

16 THE COURT: Okay, thank you.

17 Defense counsel, go ahead.

18 MR. DOYLE: So a couple of things, Your Honor. Based upon  
19 the discovery in this case, she did work outside the home before July of  
20 2015. She practiced her craft at a radio station or two. And as a result of  
21 doing readings on the radio station, she was able to generate clients and  
22 referrals. So it was a business of sorts for her prior to July 2015.

23 So to suggest that she never worked outside the home would  
24 not be entirely accurate. And, in fact, she testified at deposition that she  
25 has continued to do this activity since July of 2015, but now relies on

1 family or friends to get her to a radio station.

2 So I think yes, I agree there is no claim for loss of income.

3 THE COURT: Okay.

4 MR. DOYLE: Counsel said he wasn't going to file a motion  
5 about this because he thought it would be so prejudicial I would never  
6 dare bring it up. However, at our 2.67 and in that surrounding time  
7 period, we did discuss amongst ourselves proposed motions in limine to  
8 see what we could agree to or not agree to. And this was a topic that  
9 came up as a motion in limine they wanted to file.

10 But be that as it may, if she is able to work outside the home  
11 since July of 2015, and I don't have to go into the fact that she's a  
12 clairvoyant, but I think I'm entitled to explore with her in terms of the  
13 quality of her life and her non-economic damages and the things that  
14 she used to enjoy that she still enjoys and still can do, I'm entitled to  
15 explore with her, you know, have you been able to work outside the  
16 home since July of 2015 in a manner like or similar to what you were  
17 able to do before. How often do you do that? Do you enjoy doing that?  
18 And things along those lines.

19 It goes to the quality of life, the things she enjoys, and her  
20 non-economic damages.

21 THE COURT: Are you all in disagreement, then, because  
22 what I'm hearing is to the extent that Defendant is seeking the standard  
23 response to non-economic damages and is not going to directly or  
24 indirectly try and ask about, for lack of a better term, clairvoyant type  
25 activities, then I'm not hearing that Plaintiff is disagreeing because the

1 nature of what Defendant has said in the global context doesn't  
2 specifically -- you said you're not specifically -- are you going to  
3 specifically ask about her clairvoyant activities?

4 MR. DOYLE: No. And that's what I said at sidebar.

5 THE COURT: Yes, but I'm just -- what I'm trying to get an  
6 understanding is if you all are in disagreement, folks.

7 MR. JONES: As long as there's no insinuation or direct  
8 statement about the clairvoyance, then I'm okay with that. One thing  
9 that I think needs to be mentioned on the record --

10 THE COURT: Okay. So let's -- before you move to  
11 something else, let's get this pinned down, all right?

12 MR. JONES: Yes.

13 THE COURT: Let's do one at a time, right, step-by-step so  
14 we're clear. So if Plaintiff, your concern is that Defense not ask  
15 something that says are you still doing clairvoyant activities or are you  
16 still at a radio station that involves clairvoyant activities or some  
17 paraphrasing there of séances, I don't know what all the similes are in  
18 that regard, but is that your concern?

19 MR. JONES: Well, even did you work -- did you work at a  
20 radio station, you know, what did you do, right, or something.

21 THE COURT: Well, worked at a -- let's break it down. Work  
22 at a radio station, how would that be precluded?

23 MR. JONES: No, it's totally fine.

24 THE COURT: Okay.

25 MR. JONES: But the next question or suggestion --

1 THE COURT: What did you do? Your witness can answer the  
2 question the way she wishes to answer the question, right, saying a talk  
3 show or something like that or did a radio program. How would that be  
4 impermissible because your client, the witness, would be able to answer  
5 it in a manner that she wishes to do so, correct --

6 MR. JONES: Okay.

7 THE COURT: -- as long as it's honest and accurate, right?  
8 I'm trying to get the scope of where your objection is, right?

9 MR. JONES: Right. I'm --

10 THE COURT: I mean if your witness says it, that's one thing.  
11 If it's being elicited by Defense counsel, that's a different thing. I'm  
12 hearing that you're objecting to Defense counsel saying it in a leading  
13 manner or saying it directly asking about that or using terms that are  
14 similar to the word clairvoyant.

15 MR. JONES: Or even going down that line and trying to elicit  
16 it through whatever subtle means he may try, right? There's no reason  
17 to bring it in, none.

18 THE COURT: It is where I'm trying to get where your scope  
19 of "it" is, okay. You both would agree that Defense counsel has a full  
20 opportunity to question the witness in response to non-economic  
21 damages that she's seeking, correct? In a general sense, non-economic  
22 damages, his question to see what she's doing before and after.

23 MR. JONES: Your Honor, yes, but where is the justification  
24 even for example to say -- to ask could you do a radio station before and  
25 now you can't? I mean all that does is add damages we're not even



1 trying to get.

2 THE COURT: Okay.

3 MR. JONES: And so I don't see even a justification for that  
4 initial question.

5 THE COURT: Let's focus on your narrow question instead of  
6 broadening out. If your narrow question is a concern more prejudice  
7 than probative because of the idea of clairvoyance --

8 MR. DOYLE: Yes.

9 THE COURT: -- because you said it has religious type  
10 implications, it has those different than a generic question of quality of  
11 life being able to do something that you enjoy, radio stations and  
12 hobbies. Two separate issues, I think you all would agree, right? Radio  
13 stations are you going to say are sinful and religiously based?

14 MR. JONES: No, of course not.

15 THE COURT: He's not asking if it has a particular radio  
16 station number that may be associated with something that may be  
17 religiously based, I don't know all the radio stations and whether they  
18 are or not, but absent that, a radio station in and of itself, please tell me if  
19 I'm wrong in today's day and age, but they may be out of date that  
20 people listen down with their own music, but in and of themselves radio  
21 stations normally don't have a pejorative determination with people,  
22 correct?

23 MR. JONES: Sure. That's fine.

24 THE COURT: Okay. So -- but let's focus on your narrow  
25 issue. We've only got a few moments because remember the team

1 needs their state mandated lunch break, as well.

2 So what I understand, Defense counsel is not going to use  
3 clairvoyance or similes thereof, correct?

4 MR. DOYLE: Correct.

5 THE COURT: Okay. Does that address your issue, that  
6 narrow issue?

7 MR. JONES: Yes, it does, Your Honor.

8 THE COURT: Okay. So that one. And if your witness says it,  
9 therein lies the -- I mean if she volunteers something, that's a different  
10 issue, right? So and if it's getting close to that, then you all need to bring  
11 it to the Court's attention, okay? So --

12 MR. DOYLE: And perhaps I could lead in that area and, you  
13 know, not draw an objection.

14 THE COURT: Cross-examination.

15 MR. DOYLE: Sure.

16 THE COURT: The Court, you know -- cross-examination is  
17 cross-examination rules. Okay.

18 So now you raise a different issue about some broader  
19 questions with regards to -- and the Court -- remember, the Court can't  
20 give broad analyses in general questions. Those have to be  
21 objectionable scope-by-scope.

22 Now, there's a distinction when there's pure prejudicial  
23 things you can't take back type issues, right, which you've raised a  
24 religious type issue, pure prejudice which you both agreed the Court  
25 could hear that in a general context. So but it's specific whether

1 something goes to quality of life, right? Isn't that -- the Court's going to  
2 have to hear that one question-by-question to see if that's permissible on  
3 the quality of life.

4 MR. JONES: I agree, Your Honor. I think we're fine as long  
5 as we know that that in a direct or subtle manner is not going to be  
6 coming up and would not be sought at, then I'm fine, Your Honor.

7 THE COURT: No questions at Ouija Board, séances?.

8 MR. DOYLE: I never had any intention of doing that.

9 MR. JONES: Okay.

10 THE COURT: So does that address your needs for that?

11 MR. JONES: It does, it does, Your Honor.

12 THE COURT: Okay. Is it fine to break for lunch and tell you  
13 all we'll see you back at 1:20?

14 MR. JONES: Yes, Your Honor.

15 MR. DOYLE: Absolutely.

16 THE COURT: Thank you so very much. Okay. so then  
17 someone will assist -- the Marshal will assist your client. Do you need  
18 the walker, is that taken care of for you? Okay.

19 Madam Court Reporter, we can go off the record.

20 [Recess at 11:55 a.m., recommencing at 1:19 p.m.]

21 MR. JONES: Your Honor?

22 THE CLERK: On the record.

23 THE COURT: Okay. Wait a second. Let's wait until we're on  
24 the record. Okay.

25 We're on the record outside the presence of the jury in case

1 number 739464.

2 Counsel, I understand the same witness is on the stand and  
3 the jury's all ready. So you're standing up, so what can the Court assist  
4 with?

5 MR. JONES: Your Honor, I would just like to provide the  
6 Court with Plaintiffs' proposed order on Plaintiffs' motion for Rule 37  
7 sanctions. They're from last week and I have all the exhibits, and  
8 everything attached.

9 THE COURT: Okay. Sure.

10 MR. JONES: That's all, Your Honor, because we didn't have  
11 agreement on this.

12 THE COURT: Okay. And Defense, are you going to submit  
13 today and, if so, when because we need to get this taken care of, as you  
14 know, because in the midst of trial we can't have --

15 MR. DOYLE: It's supposed to be submitted today. We were  
16 waiting for -- my understanding of the local rule is they submit theirs and  
17 we submit ours, but --

18 THE COURT: Actually, there isn't a -- the Court designates  
19 who does it under 7.21 within ten days of the hearing unless otherwise  
20 directed by the Court. But, okay. Today?

21 MR. DOYLE: Yes, today.

22 THE COURT: Okay. No worries. Okay.

23 MR. DOYLE: And I assume the Court would like a hard -- or  
24 courtesy copy in your box?

25 THE COURT: That's the only way I get it. It has to be

1 submitted in hard copy format. That's the only way the Court gets  
2 proposed orders because that's the only way the Court can determine  
3 which --

4 MR. DOYLE: Right.

5 THE COURT: -- order is accurate to determine if the Court  
6 should be signing which of the two orders of either or the Court creates  
7 its own order. I'm not sure what other option you would be mentioning.

8 MR. DOYLE: Okay. If I could just have a moment, I'm just --

9 THE COURT: Yes, sir. I'm just saying DCR specifically  
10 requires that 7.21, so I'm not sure what else you're mentioning. It's not a  
11 courtesy copy. The proposed order has to be provided to the Court in  
12 the Court's in box. So I'm not sure what you're referencing.

13 MR. DOYLE: I don't, either.

14 THE COURT: Okay. Do you want the Marshal to start  
15 walking the jury in slowly while you're --

16 MR. DOYLE: If I could just have 30 seconds.

17 THE COURT: Right, right. But he could just start walking  
18 slowly. He won't have them come in --

19 MR. DOYLE: Oh, oh, yeah.

20 THE COURT: -- he has to walk all the way down the hallway.

21 MR. DOYLE: Oh, yes, yes.

22 THE COURT: Right. Go ahead, Marshal, please. As usual, if  
23 you wouldn't mind. And as you all know, you are responsible to know  
24 all the EDCR's, NRCP's, NRS's. They are the requirements of Nevada  
25 attorneys. You got to swear one in today during the lunch break. Just in

1 case you think that we do -- I'm always doing other things during that  
2 hypothetical, right? It's either meetings or swearing in or doing things,  
3 so today we swore in one of our newest members to the Bar. It was  
4 quite nice.

5           The Court was going to rule on your EDCR 7.27 memoranda.  
6 Do you wish those to be taken care of or do you wish, since you have a  
7 witness and a jury ready, would you rather take care of that and then just  
8 at the afternoon break the Court will rule on the 7.27 motions and just  
9 have the jury out a little bit longer for a break; would that work for the  
10 parties?

11           MR. DOYLE: Yes, Your Honor, that would be perfect.

12           MR. JONES: Yes, that's fine.

13           THE COURT: Okay. The Court will do it that way, then.  
14 Okay. Thank you. And then the Court, also just a reminder, is you all --  
15 we still need to get the Exhibit 1 taken care of, so that's also going to be  
16 a little longer for the jury break so we can get you all taken care of on  
17 that, okay?

18           Marshal, is the jury out there? Is all counsel ready?

19           MR. JONES: Yes.

20           MR. DOYLE: Yes, Your Honor.

21           THE COURT: Okay. Thank you.

22           Please bring them in.

23           THE MARSHAL: All rise for the jury.

24                           [Jury in at 1:24 p.m.]

25                           [Within the presence of the jury]

1 THE MARSHAL: All jurors are accounted for. You may be  
2 seated.

3 THE COURT: I do appreciate. Welcome back, ladies and  
4 gentlemen. I hope everyone had a nice relaxing lunch.

5 As you recall before the lunch break we had the same  
6 witness on the stand and just because we did have a break, the witness  
7 understands you're still under oath, correct?

8 THE WITNESS: Yes.

9 THE COURT: Okay. And so at this juncture we'll continue  
10 with the examination. Counsel, feel free to continue with your  
11 examination. We are going to the --

12 Counsel for Plaintiff, were you finished with your  
13 examination?

14 MR. JONES: I was, Your Honor. Pass the witness.

15 THE COURT: I just need to confirm that you were passing  
16 the witness. Okay.

17 Since Plaintiff is passing the witness, we would now have  
18 cross-examination by Defense. Defense counsel, feel free to commence  
19 with your cross-examination.

20 MR. DOYLE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. DOYLE:

23 Q Good afternoon, Mrs. Farris.

24 A Good afternoon.

25 Q You were telling us earlier about volunteering at your

1 daughter's school. Have you done any volunteering at her school since  
2 July of 2015?

3 A No, I don't -- she was in middle school, so when she went  
4 into junior high, no.

5 Q Is there the opportunity to volunteer at the school now that  
6 she's in junior high or that was just in grade school?

7 A No, there is opportunity.

8 Q Have you attempted to volunteer at school?

9 A There wasn't -- I did, but the things that I usually would do I  
10 could not really do.

11 Q Okay. You mentioned something about having a cane at  
12 home. Do I recall correctly?

13 A Yes.

14 Q What type of cane is that?

15 A I don't know the brand.

16 Q What's the bottom look like; is it --

17 A It's got four thick prongs in it. It's more the stable one than  
18 those ones you see on TV with the little pivots. This one's more square  
19 with a bigger end on it.

20 Q In a typical day how often will you use the cane around the  
21 house?

22 A What was that again?

23 Q In a typical day how often will you use the cane around the  
24 house, inside the house?

25 A Depending on what I was doing. You know, if I was trying to



1 do some chores, I'd most likely try and use the walker. And the cane  
2 would be short, a very short distance, like if I'm in my bedroom, go to  
3 the bathroom, it's in the bedroom. You know, a short distance.

4 Q Do you use the cane outside the house, around the house?

5 A Outside of my house?

6 Q Yes.

7 A I walked out to the front before with it, yeah.

8 Q If you go somewhere in town, you know, out to dinner, for  
9 example, or to a mall, do you use your cane at all?

10 A Not -- no, nothing like that. Not to a mall, no.

11 Q Okay.

12 A No. It's too -- the walker is more sturdy, you know, for me. I  
13 feel safer with the walker. But it's not to say that I haven't went into a  
14 store, hold onto the cart, and put the cane inside the cart, because I'm  
15 holding onto the cart. So as long as I'm holding onto it, I'll be all right.

16 Q And when you say going to a store and holding onto a cart,  
17 are you referring to a grocery store and a grocery cart?

18 A Yeah, like a cart like that.

19 Q Yeah. How often will you do the grocery shopping now?

20 A Oh, hardly ever. I hate that. That's not my favorite shopping.

21 Q I'm sorry, what?

22 A That's not my favorite shopping, so no.

23 Q Did you like or dislike grocery shopping before July of 2015?

24 A I never liked it, but that's, you know, I like to shop for clothes  
25 and stuff. My husband likes that.

1 Q Okay. In the last six months or so when you've gone out  
2 shopping, where have you gone?

3 A Let's see. I've been to Target and I've been to Smith's, you  
4 know. And let me think. Hobby Lobby.

5 Q Have you been to any movie theaters?

6 A Yes.

7 Q When was the last time you went out and saw a movie?

8 A I saw a movie just the other day. It was really good. You  
9 have to see it Maleficent. It was a good movie.

10 Q When did you go see the movie?

11 A My friend and I went like a couple days ago, two or three  
12 days ago.

13 Q So today is Tuesday. So was it over the weekend, last week,  
14 or when was it?

15 A I think Saturday.

16 Q You and a friend. Did anyone else go?

17 A My husband.

18 Q Do you have a driver's license?

19 A No.

20 Q Did you have a driver's license before July of 2015?

21 A No. I do not like to drive.

22 Q So when was the last time, if ever, that you've driven  
23 yourself in a car?

24 A Never.

25 Q So prior to July of 2015, if you had to go out and go

1 somewhere, how would you get out and about?

2 A Well, someone would pick me up and take me to where I  
3 need to go.

4 Q Did you ever take public transportation, Uber, things of that  
5 sort?

6 A No, no.

7 Q Do you use Uber or Lyft currently?

8 A No.

9 Q Have you?

10 A Not for years. I mean I haven't been in a taxi for years.

11 Q Okay. You mentioned something about having an exercise  
12 program at home. Could you tell the ladies and gentlemen of the jury  
13 about your exercise program?

14 A Well, when they started out, they had me doing like leg kicks.  
15 They gave me the rubber band things and stretch my legs. And then  
16 they would have me walk with my walker to, you know, like try to go to  
17 the stove or maybe prepare something. Showing me how to, you know,  
18 do things, although I don't have a lot of mobility, so that was kind of  
19 hard for me. It's hard for me to turn now and things. So, you know,  
20 that's -- it's kind of limited.

21 Q Do you do exercises every day?

22 A Not every day, but I'd say at least three times a week.

23 Q So what sort of devices do you have and use when you're  
24 doing your exercise program?

25 A Well, like I said, I used the rubber band. And then I do just

1 like the floor kicks that they showed me how to do. You do like 20 reps  
2 and things like that. And you kind of do stretches, you know, for your  
3 legs, as well.

4 And when I was going to the other place where it was outside of  
5 my house, they had a bicycle that was leaned back, and you could just  
6 have your feet in it to like move. You can't do the whole thing, but, you  
7 know, that and they would just kind of, like I said, tell me to walk, you  
8 know. So I'd have to try and walk around with my whatchamacallit, right  
9 there.

10 Q Do you have any exercise equipment at home currently?

11 A No. I did have like a bike, but I didn't think it was appropriate  
12 for me, so. And I don't have the money to get, you know, one I'd like to  
13 or supposed to use, so no.

14 Q Okay.

15 A It's just you can't just ride any bike.

16 Q Have you and your husband taken any trips out of town in  
17 the last year or two?

18 A Only to see a doctor.

19 Q Out of town?

20 A Yeah.

21 Q Have you and any friends or other family members been on  
22 trips out of town in the last year or two?

23 A I'm thinking. We went to, but I didn't even get out of the car,  
24 we went to get this car that was originally from Arizona, but I haven't  
25 been out of town, no.

1           Q    In terms of your feet and how they function currently, does it  
2 seem to you that one foot is better than the other?

3           A    I'd have to say one foot is slightly better.

4           Q    Which foot is it that's slightly better?

5           A    My right foot.

6           Q    And has that always been the case or did the right foot  
7 improve some compared to the left?

8           A    From when?

9           Q    From 2015.

10          A    Well, I could say it like this. After I was in the rehabilitation  
11 place, they felt like the same. But then as the years went by, the right  
12 foot had a little like -- like a little bit of my toes could move, like three of  
13 my toes.

14          Q    You said something earlier this morning that, you know,  
15 currently, you know, getting around and we go to wherever, but family  
16 and friends will pick you up. Who were the friends that would pick you  
17 up and take you out?

18          A    Well, I have my sisters, they mostly did it. And then  
19 occasionally I had one or two friends come by and pick me up. But  
20 mostly my family.

21          Q    And are you able to get in and out of a car okay with some  
22 help?

23          A    With some help, yes.

24          Q    I can't remember if it was at your deposition or something  
25 you mentioned earlier this morning, but something about decorating for

1 Halloween.

2 A Uh-huh.

3 THE COURT: Wait a sec. One thing. We need to have verbal  
4 answers. Uh-huhs, nods and shakes the heads, in other words.

5 THE WITNESS: Oh, I'm sorry. Yes. Yes, absolutely.

6 THE COURT: Thank you so much.

7 BY MR. DOYLE:

8 Q This Halloween coming up, have you already started to  
9 decorate the house?

10 A I've done some inside stuff in my living room. I have a table  
11 that has pretty stuff on it. And my fire mantel, I have some stuff on it.  
12 And Patrick helped me to put most of that up.

13 Q Will there be decorations outside the house this Halloween?

14 A I only have, and Patrick did it, a mummy in the front on the --  
15 you know, I have a light post. We tied it to that. And, you know, some  
16 leaves on the door.

17 Q In the last year or two are there any other holidays that  
18 you've decorated the inside of the house more besides Halloween?

19 A Besides Halloween?

20 Q Right.

21 A A little bit. Like this last one, I didn't even really get to put up  
22 the tree and stuff I wanted because it was like too much work. I put up  
23 like a Charlie Brown tree. It was like the branches and stuff, but, you  
24 know, it was kind of exhausting.

25 Like I get so excited for the holidays to decorate, but it's so

1   upsetting when you can't do the stuff you want to do. You know, and  
2   then you've got to ask everybody else to get the stuff out for you, get it  
3   out of the garage, all that stuff, because I can't do any of that stuff. And  
4   then, you know, you've got to wait on everybody to do it. But I mean I'm  
5   thankful for that, but, you know, I like to do it myself. But I --

6           Q     If I -- I'm sorry, I didn't mean to --

7           A     No, no, no problem. Go ahead.

8           Q     If I used the term AFO or ankle foot orthotic, do you know  
9   what that means?

10          A     Excuse me? I'm sorry I --

11          Q     Just perhaps it's made of plastic, but a plastic device that  
12   goes up the -- behind your ankle and then the plastic piece continues on  
13   the underside of your foot. Do you know what I'm talking about?

14          A     Yes, I do. Yes, I do.

15          Q     Are you using those today to get around?

16          A     No.

17          Q     Do you use these devices routinely or regularly to get  
18   around?

19          A     In the beginning I did. And then I went to physical therapy  
20   and my therapist said just try and walk, don't use those. It's better if you  
21   just try and walk.

22          Q     And I think you mentioned something about using a boot  
23   instead to keep your foot flat when you're walking?

24          A     I use the boots, like I like to wear boots because they support  
25   me, yeah.

1 Q I want to look at Defense Exhibit AA for identification. And  
2 it's in a particular binder and I'm wondering --

3 THE COURT: Counsel, you can approach if you'd like to  
4 approach and get it or somebody else.

5 MR. DOYLE: Would you like to? It's in the second volume.  
6 I'm sorry it's Volume 1.

7 THE COURT: Okay, that's fine. Defense counsel, you can get  
8 it for the witness if you'd like.

9 BY MR. DOYLE:

10 Q Do you have that document in front of you, Mrs. Farris?

11 A Yes.

12 Q Does this document say on the first page, AA1, Plaintiff,  
13 Titina Farris' Answers to Defendant's First Set of Interrogatories?

14 A Yes.

15 Q If you go to page 11 of Exhibit AA, it's towards the back. I  
16 think it's the second to last page.

17 A To the end of this?

18 Q Right. You see there's little numbers down in the lower --

19 A Eleven, yeah, okay.

20 Q Do you have that?

21 A Yes.

22 Q Do you see where it says Verification at the top?

23 A Yes.

24 Q Is that your signature?

25 A Yes.



1 Q Did you date that?

2 A It looks like yes.

3 Q What date did you put down there?

4 A Dated the 29th day of December.

5 Q And then read for us out loud what it says, Titina Farris being  
6 duly sworn, if you could read that sentence.

7 A Titina Farris being duly sworn, states that she has read the  
8 foregoing answers to Defendant's first set of interrogatories to Plaintiff.  
9 And that the same are true to the best of her knowledge and belief.

10 Q Okay. Now, if you would turn to page 8 of Exhibit AA for  
11 identification, if you could find that, please.

12 A Okay.

13 Q Do you have page 8?

14 A Yes.

15 Q Do you see interrogatory number 24?

16 A Claims or Demands.

17 Q No, interrogatory number 24 at the top?

18 A Okay.

19 Q Are you on --

20 A I see it.

21 Q Okay. Tell us what interrogatory number 24 asked you.

22 A State all the physical, mental, emotional disabilities you had  
23 immediately before incident described in the complaint.

24 Q And then what was the answer that you gave that you  
25 verified that we talked about a moment ago; tell us what it says.

1 A Excuse me, I'm not -- what are you saying?

2 Q Sure. Read your answer to interrogatory number 24.

3 A My answer. I had no significant issues, other than the  
4 occurrence of a hernia, which led to the surgery. Okay.

5 Q Keep going.

6 A Yes. Doctor Rives, on July 3rd, 2015.

7 Q Okay. So it's clear, you answered, I had no significant issues,  
8 other than the reoccurrence of a hernia, which led to the surgery by  
9 Doctor Rives on July 3, 2015, correct?

10 A Yes.

11 Q All right. In fact, you did have significant issues prior to July  
12 3rd, 2015. For example, your diabetes; true?

13 A Yes, I have diabetes.

14 Q And you had diabetes prior to July 3, 2015?

15 A Yes.

16 Q And Doctor Chaney was the doctor who was taking care of  
17 your diabetes prior to July 3, 2015?

18 A Yes.

19 Q But can you tell us approximately when you started seeing  
20 Doctor Chaney, perhaps what year that was?

21 A I believe it was 2014.

22 Q All right. Do you recall whether you saw Doctor Chaney at all  
23 in 2013?

24 A I'm not sure about that. I think it was in 2014.

25 Q Well, let's say for the year prior to July of 2015 when you

1 were seeing Doctor Chaney, were you seeing her about once a month?

2 A Yes, I was.

3 Q And you were seeing her about once a month prior to July  
4 3rd, 2015, because of your diabetes, correct?

5 A Yes.

6 Q And in that -- in the year or two prior to July of 2015, your  
7 diabetes was uncontrolled?

8 A Yes.

9 Q You were having issues with your blood sugar?

10 A Yes.

11 Q You were having issues with your cholesterol?

12 A Yes.

13 Q You were having issues with your triglycerides?

14 A I'm not sure about that.

15 Q Okay. Prior to July 3rd, 2015, you were having problems  
16 with your feet because of the diabetes, correct?

17 MR. JONES: Objection, Your Honor.

18 THE WITNESS: I don't believe so.

19 MR. JONES: It calls for expert opinion.

20 THE COURT: Sustained the way the question was phrased.

21 BY MR. DOYLE:

22 Q Prior to July 3rd, 2015, you were having problems with your  
23 feet, correct?

24 A I can't say it's because of that, though. I don't know.

25 Q I'm not asking you how come, I'm just asking you if. So prior

1 to --

2 A I wouldn't say -- I have to say no because it wasn't anything  
3 that you would think that, you know, you're having problems with  
4 because I was doing so many things that it didn't -- it didn't feel like that  
5 was any issue about that. It just --

6 Q Well, prior to July 3rd, 2015, did Doctor Chaney ever tell you  
7 that she thought you had something called diabetic neuropathy?

8 A She thought that, but she also said she wasn't sure.

9 Q Okay. But she prescribed medications for diabetic  
10 neuropathy; didn't she, Cymbalta?

11 A That was for she told me depression.

12 Q Okay. She also prescribed Gabapentin; didn't she?

13 A Yes, because I didn't want to take like -- she said that was for  
14 pain. You know, a lot of people don't want to take the other stuff.

15 Q Prior to July 3rd, 2015, was Doctor Chaney prescribing pain  
16 medications for you, such as Norco?

17 A Yes, she did.

18 Q Percocet?

19 A Yes.

20 Q What other pain medications besides Norco and Percocet?

21 A That's all I can think of is that and the Gabapentin or  
22 whatever, but yeah.

23 Q What were you taking -- before July of 2015 what were you  
24 taking the Norco and Percocet for?

25 A She switched off of it because she said that the Gabapentin

1 didn't seem to be helping.

2 Q The Gabapentin didn't seem to be helping with what?

3 A With pain.

4 Q And where was the pain?

5 A Well, the pain was in different parts of, you know, like I  
6 would have a headache or, you know, different things all over.

7 Q Prior to July of 2015 were you having pain in your feet?

8 A Yeah, I had some.

9 Q Okay. Prior to July 2015 were you having sensory changes in  
10 your feet, such as pins and needles or burning sensation?

11 A After like I'd been sitting down for, you know, quite a while, I  
12 had like a little pinchy feel, you know, like after you stand up or  
13 whatever, it felt like that.

14 Q Prior to July 2015 were you having any problems with your  
15 left shoulder?

16 A Yes, I did.

17 Q Was the problem with your left shoulder interfering with  
18 your ability to get around or do things?

19 A No.

20 Q Prior -- did you see -- did Doctor Chaney refer you to any  
21 doctors for treatment of your left shoulder?

22 A Yes, she did.

23 Q Doctor Yee?

24 A Yes.

25 Q And Doctor Yee, did he indicate to you that you had

1 something in your left shoulder called an impingement syndrome?

2 A I don't remember having that kind of conversation with him.  
3 What he did do is give me a shot in my shoulder, some kind of cortisone  
4 or whatever, to relieve the pain.

5 Q Did Doctor Chaney refer you to see a podiatrist prior to July  
6 of 2015 because of problems in your feet?

7 A It was mentioned, but not necessarily referred.

8 Q All right. Prior to July 2015 did Doctor Chaney want you to  
9 see an endocrinologist because your diabetes was uncontrolled?

10 A Well, yeah, but you know what, I couldn't afford to pay the  
11 copay. I know that sounds --

12 MR. JONES: Your Honor?

13 THE COURT: Counsel, would you both like to approach.  
14 Madam Court Reporter, would you like to transfer noise and counsel,  
15 you can approach.

16 [Sidebar at 1:49 p.m., ending at 1:4 p.m., not transcribed]

17 THE COURT: Okay. Sorry for the interruption. Please go  
18 ahead.

19 BY MR. DOYLE:

20 Q Prior to July of 2015, were you having pain in your low back?

21 A Did I have pain, when, what time?

22 Q Prior to July of 2015?

23 A Yeah. Yeah. I think so.

24 Q Prior to July of 2015, did you have a problem with increased  
25 blood pressure?

1           A     I wasn't aware of -- I had medicine for that, but I don't -- I'm  
2 not aware of increased. I'm not knowledgeable about someone saying  
3 that to me. I had blood pressure issue, yeah.

4           Q     Okay. So, prior to July of 2015, you had blood pressure  
5 issues and Dr. Chaney prescribed one or more medications for you to  
6 treat the blood pressure, correct?

7           A     Yes.

8           Q     She also had prescribed for you medications to treat your  
9 cholesterol?

10          A     Yeah. Yes.

11          Q     And the diabetes that you had prior to July of 2015 required  
12 not only insulin but also an oral medication?

13          A     Yes. We were trying all different kinds of things to help me  
14 that would get it regulated and not have so many medicines.

15          Q     Now, prior to July 2015, when you're seeing Dr. Chaney  
16 about once a month for your health issues, and your diabetes is  
17 uncontrolled, what was your understanding what that meant,  
18 uncontrolled diabetes?

19          A     Well, your sugars would be not in line. You need to get them  
20 in check. And that was a little bit off putting up and down but there  
21 wasn't always like every time high, you know, what I mean. It's a high  
22 sugar, whatever. It was like sometimes. And so, but I wanted to get it  
23 right.

24          Q     Were there multiple visits with Dr. Chaney prior to July of  
25 2015 where she told you that your diabetes was uncontrolled, and you

1 needed to fix that?

2 A Actually, she told me both. She said I was doing good, and  
3 then she would say well, you need to get back in line, you know. Like I'd  
4 be doing good then I wasn't. And then she'd say I'm proud of you,  
5 you're doing good. Then she'd say well, you need to get back in line.  
6 So, it was kind of difficult up and down.

7 Q And Dr. Chaney, prior to July of 2015 was telling you that  
8 with uncontrolled diabetes you could develop problems in your feet?

9 A She told me what problems I could get in the feet, yes.

10 Q Pain?

11 A Yes.

12 Q Sensory changes?

13 A She just said pain. But, I'm sure that's something; yes.

14 Q Okay. So, she told you pain and sensory changes, correct?

15 A Yes.

16 Q And you did have pain in your feet prior to July of 2015, true?

17 MR. JONES: Asked and answered, Your Honor.

18 THE COURT: Overruled.

19 A Off and on there would be some pain; yes. And like I said, it  
20 was mostly after sitting down for a long time, and then I'd get up, but it  
21 wasn't steady.

22 BY MR. DOYLE:

23 Q I thought you said a moment ago that if you were sitting for a  
24 long time and got up, that you would have the sensory change?

25 A No, I didn't say that. I don't think I said that. But what I'm



1 saying is, yes, I had pain.

2 Q Did Dr. Chaney, prior to July of 2015 ever tell you that she  
3 was prescribing the Cymbalta, not for depression, but rather for  
4 problems related to your diabetes?

5 A No.

6 Q Prior to July of 2015, did you have issues with anxiety?

7 A Yes, I did.

8 Q Did you have issues with depression prior to July of 2015?

9 A No.

10 Q Did Dr. Chaney prescribe any medications for you to treat  
11 anxiety or depression?

12 A Depression, Cymbalta.

13 Q If you could, in that same binder, do you see the tab that says  
14 zero? I'm sorry. In that same binder, do you see the tab that says D, just  
15 above --

16 A DD?

17 Q No, single D. It's just above AA.

18 A Okay. There's D.

19 Q Do you have that?

20 A What's under it.

21 Q Can you look at pages D --

22 A Okay. Yeah, here's D. All right. I've got it.

23 Q I didn't mean to interrupt you, sorry.

24 A No problem. I got this.

25 Q Do you see D1, 2, 3 and 4? Those four pages. I want to find

1 out if this is your handwriting?

2 A Where it says Dr. Chaney and a date, is that what you're --

3 Q Well, it says up top, Advanced Orthopedics and Sports  
4 Medicine. Are you in the right place?

5 A Well, it's D, but it seems like a lot of pages here. Oh, got it.  
6 Got it. Okay. Yes.

7 Q All right. So, do you see D1, 2, 3 and 4?

8 A 1, 2, 3 and 4, yes.

9 Q And this is a form that you filled out?

10 A Yes.

11 Q And if you go to the last page, D4, can you tell us what date  
12 that is?

13 [Witness reviews document]

14 BY MR. DOYLE:

15 Q Do you see on the fourth page your signature?

16 A Yes. Okay.

17 Q And the date next to it?

18 A 7/2/14.

19 Q And just up above that, did you write Cymbalta?

20 A Yes.

21 Q And did you put down the reason you were taking Cymbalta  
22 was for diabetes?

23 A Yes, I did.

24 Q If you go to D1.

25 A D1. Okay.

1 Q The very first page.

2 A Okay.

3 Q Do you see that question --

4 A About x-rays?

5 Q Well, just under that, do you see the question that says  
6 please circle right or left for each -- both part involved; do you see that?

7 A Uh-huh. Yes, I do.

8 Q And you wrote feet, and then you circled both right and left?

9 A Uh-huh.

10 Q Is that right?

11 A Yes. Yes.

12 Q Thank you. And then did you also write arm slash shoulder,  
13 and then you circled left?

14 A Yes, I did.

15 Q And then do you see the question what do you think caused  
16 what we are seeing you for today; what did you write?

17 A I was told to go there and check out my nerves.

18 Q Ma'am, what did you write?

19 A Nerve -- nerve pain.

20 Q And where did you -- where did you have the notion, or  
21 where did that come from that you were having nerve pain in the feet?

22 A I believe that Dr. Chaney wanted to know, maybe, if it was,  
23 she wasn't sure.

24 Q Now, down the next line, it says what date did the problem  
25 start, do you see that?

1           A     Let's see, problem start. Yeah. That was about my shoulder,  
2 but I probably should have put like shoulder. Yeah. I put 2012. That's  
3 when I hurt my shoulder.

4           Q     When did you first start having pain in your feet?

5           A     I believe it was 2014, around there.

6           Q     Who was your primary care physician before Dr. Chaney?

7           A     I didn't have a doctor. I mean, I just didn't have a doctor.

8 And I had -- yeah, I didn't have a doctor for a long time.

9           Q     Prior to July of 2015 when you were seeing Dr. Chaney for  
10 your uncontrolled diabetes, was she providing you advice to follow?

11          A     Yes. She gave me some advice.

12          Q     Were there times when you did not follow her advice?

13          A     Not really. I tried to do everything she said. I mean I wanted  
14 it to work.

15          Q     Describe for us, a typical day, what do you do?

16          A     When? I mean now or?

17          Q     What did you do yesterday?

18          A     Yesterday, I tried to get some rest, you know, because I've  
19 been going, you know, here and stuff. And a little bit of laundry, and I  
20 washed my dog. Which is a tiny little baby -- I don't think it's a panda. I  
21 washed it.

22          Q     When you said you needed to get rest because you had been  
23 going, what did you mean by that?

24          A     Well, you know, I try to get like some sleep because I'm not  
25 the kind of person that can just fall asleep. So, I was trying to get some

1 rest. And that's what I mean by that.

2 Q What'd you do on Sunday?

3 A Sunday. Let's see. I think I went to see my mom.

4 Q Where does she live?

5 A She lives here in Vegas.

6 Q How about -- anything else you recall doing on Sunday, a  
7 couple days ago?

8 A I could probably forget. Sunday. Okay. Seen mom and dad.  
9 Maybe I went to the store, I'm not sure.

10 Q How about Friday, four days ago, what'd you do on Friday?

11 A Friday. I think I just was at home, just watching TV, every  
12 other Friday.

13 Q Okay. Was your husband going to work last week?

14 A No.

15 Q Did he stay home with you last week?

16 A Yes.

17 Q All right. Prior to July of 2015, you did work from time to  
18 time outside the home, true?

19 A Before that?

20 Q Yes.

21 A Years ago, I mean, I worked outside the home, yes.

22 Q Well, before July of 2015, you worked from time to time at a  
23 radio station, correct?

24 A Yes. I would go in and they'd have topic of the day, and I'd  
25 joke around with the DJs, yeah.

1 Q And since July of 2015, you have worked outside the home,  
2 true?

3 A I'm trying to think. I'm trying to think of what kind of work.  
4 Yeah. I helped my -- my dad has a landscape business, and sometimes I  
5 make calls for him, as well. So, that's one of the things I would do.

6 Q Have you been back to work to the radio station since July of  
7 2015?

8 A I went back one time to say hi to everybody.

9 Q Do you remember being interviewed by a woman named  
10 Dawn Cook for this case?

11 A Yes, I do.

12 Q Do you remember telling Dawn Cook that you had been back  
13 to work some since July of 2015?

14 A I don't remember that conversation.

15 MR. DOYLE: That's all I have then for now. Thank you,  
16 ma'am.

17 THE WITNESS: Thank you.

18 THE COURT: Redirect, counsel.

19 MR. JONES: Very briefly, Your Honor

20 REDIRECT EXAMINATION

21 BY MR. JONES:

22 Q Before the -- Tina, before the surgery in 2015, you knew that  
23 you had diabetes, correct?

24 A Yes.

25 Q You didn't consider that to be a disability?

1           A     No. I mean that was not even -- I mean, to me it was just  
2 something that I had to deal with, but it wasn't -- it wouldn't change me  
3 from doing anything else I would do. You know, that was not bringing  
4 me down to do anything. I just kept on doing what I normally do, having  
5 fun, and taking care of my family and all that stuff. Nothing changed like  
6 that.

7           Q     And so, when you wrote -- when you were asked what  
8 disabilities you had, you didn't need feel the need to put that down  
9 because of the --

10          A     Well, yeah. I mean I'm not thinking of me as disability. I  
11 think, yeah, I have diabetes, but why would I think that that's a disability  
12 for me.

13          Q     And are you asking for any wage loss claim from the  
14 Defendant?

15          A     No.

16          Q     Okay. You're not asking for lost wages in the future or in the  
17 past?

18          A     No.

19          Q     Okay. Do you have any idea why you were being asked  
20 questions about that?

21                   MR. DOYLE: Objection. Speculation.

22          A     No, I just thought it was --

23                   THE COURT: Wait. I have an objection on speculation.  
24 Sustained.

25                   MR. JONES: Okay. No further questions. Pass the witness.

1 THE COURT: Recross.

2 MR. DOYLE: No, Your Honor.

3 THE COURT: I'm not seeing any juror questions. There  
4 being no juror questions, and counsel you've exhausted your questions,  
5 is this witness excused for all purposes or subject to recall at some later  
6 stage in the trial?

7 MR. DOYLE: Subject to recall.

8 MR. JONES: Your Honor, I think that's something we may  
9 have to take up later.

10 THE COURT: Okay. The Court will address that later. At this  
11 juncture, the Court will just say thank you to the witness at this juncture.  
12 Okay. Thank you so very much. Counsel for Plaintiff, would you like to  
13 call your next witness?

14 MR. JONES: Yes, Your Honor. We are going to call Dawn  
15 Cook as our next witness.

16 THE COURT: Sure.

17 MR. JONES: She's outside so we'll go alert her and bring her  
18 in.

19 THE COURT: Okay. Thank you.

20 [Pause]

21 THE COURT: Thank you. Madam Clerk.

22 THE CLERK: Please raise your right hand.

23 DAWN COOK, PLAINTIFFS' WITNESS, SWORN

24 THE CLERK: Thank you. Please be seated. Could you please  
25 state and spell your name for the record?



1 THE WITNESS: Yes. Dawn Cook, D-A-W-N C-O-O-K.

2 THE CLERK: Thank you.

3 THE COURT: Counsel, you may proceed at your  
4 convenience.

5 MR. HAND: Thank you, Judge.

6 THE COURT: Do you need a pocket microphone, or are you  
7 doing the podium.

8 MR. HAND: I'm going to do the podium. Actually, maybe I  
9 should have a microphone.

10 THE COURT: Does your colleague -- I think it's on your  
11 counsel table. Thank you so much. Someone's cell phone is going off.  
12 Can someone take care of that immediately, it will be most appreciated,  
13 in a nice subtle way. Someone's cell phone is on vibrate. Thank you so  
14 very much. Counsel, you may commence at your leisure.

15 MR. HAND: Thank you.

16 DIRECT EXAMINATION

17 BY MR. HAND:

18 Q Good afternoon, Ms. Cook. How are you?

19 A Good afternoon. Well, thank you.

20 Q Could you tell us your profession?

21 A Yes. I'm a registered nurse and a life care planner.

22 Q And what is -- in plain English, what's a registered nurse  
23 compared to a regular nurse?

24 A Well, it means I'm a registered nurse. I'm licensed in the  
25 State of Nevada and California to practice nursing in the state.

1 Q And where did you go to nursing school?

2 A I graduated from Royal Jubilee Hospital in Victoria, Canada,  
3 1979.

4 Q And after graduating nursing school, what did you do in  
5 terms of your nursing career?

6 A I worked in a number of hospitals. Mostly in the intensive  
7 care unit. Also the emergency room and the recovery room. And I  
8 floated around.

9 Q And did you work at any hospitals in the United States?

10 A Yes. In 1986, I wanted to move to the United States, and I  
11 took the American nursing exam, it was called NCLEX. So, that was  
12 eight years after I graduated in Canada. And I passed that exam and  
13 became a licensed registered nurse in California, and I still have that  
14 license.

15 Q Okay. And you mentioned you worked in intensive care  
16 units, which hospitals did you do that?

17 A I haven't worked in Nevada, in a hospital in Nevada. But I  
18 worked in the intensive care unit in several places in Canada, in  
19 Honolulu, in California and in Arizona.

20 Q And do you do CLE to maintain your nursing license?

21 A Yes. I take ongoing education to maintain my license. It's 30  
22 hours every two years.

23 Q And are you -- do you have any certification in life care  
24 planning?

25 A Yes. So, I have two certifications as a life care planner. One

1 is called certified life care planner. I've had that since 2012. And I took a  
2 120-hour precertification course. So, I had to already be in health care as  
3 a registered nurse. And I took the 120-hour course, and then I was  
4 eligible to take the certification exam, and I became a certified life care  
5 planner. And then a couple years later after I'd done quite a bit of work, I  
6 was eligible to become a certified nurse life care planner. Which is,  
7 basically, the same kind of work, but it's a certification only available to  
8 registered nurses who are working in life care planning.

9 Q Did you have any special training in medical billing?

10 A So, when I took the 120-hour course in life care planning, one  
11 of the main things we learn, a life care plan is really compacting and  
12 bringing together all the recommendations for future medical care. It's  
13 like a lifetime plan of care and with the associated costs. So, in the  
14 course, and through the years as I've been practicing it, I learned how to  
15 identify the correct code that goes with every hospitalization, doctor's  
16 office visit, that kind of thing. And so, when I'm doing the past medical  
17 bill reviews, I'm applying the same knowledge and principles.

18 Q Are you -- do you have experience in what the medical costs  
19 are in the metropolitan Las Vegas area?

20 A Yes. I've done in total about 400 reports in life care planning  
21 and 200 in past medical bill reviews in the last seven years. And  
22 probably at least a third of them were here in Las Vegas.

23 Q So, you said you prepared about how many life care plan  
24 reports?

25 A 400.

1           Q     And are you a member of any organizations regarding  
2 nursing?

3           A     Yes. I'm a member of the American Nursing Association,  
4 which is the association over all registered nurses in the United States  
5 and then also a member of the Nevada Nursing Association.

6           Q     And are you a member of any organizations regarding life  
7 care planning or medical billing?

8           A     Yes. I belong to a few. The first one is the American  
9 Association of Nurse Life Care Planners. And that's a professional  
10 association that has quarterly journals, annual conferences and ongoing  
11 education. I also belong to the International Association of Rehab  
12 Professionals who have a branch of life care planning. And they also  
13 have quarterly journals and annual conferences. And I belong to the  
14 American Association of Professional Coders. And here in Las Vegas, I  
15 try to attend the chapter meetings which are held several times a year  
16 for ongoing education in coding.

17          Q     When you say coding, what do you mean by that?

18          A     That's medical codes, the codes that are associated with  
19 everything that would come on a medical bill. Your hospital bills, your x-  
20 rays, doctor's visits, physical therapy, those kind of things.

21          Q     And do you subscribe to any research publications regard to  
22 life care planning and medical costs?

23          A     Yes. Of course, both the associations I mentioned that have  
24 quarterly journals, I receive those. So, I receive about eight journals on  
25 life care planning each year. And I receive electronic articles from the

1 coding associations.

2 Q And in your career as a registered nurse, have you had  
3 experience with patients with foot drop?

4 A Oh, yes, certainly. It's relatively common taking care of  
5 people in the intensive care unit who've had foot drop, but I've also  
6 checked people in for surgery to have their appendix out that also  
7 happen to have drop foot. So, I have quite a bit of experience with  
8 people that have drop foot.

9 Q Have you testified in court before?

10 A Yes.

11 Q And what courts have you, generally speaking, have you  
12 testified in, which states?

13 A Besides Nevada, I've testified in California, New Mexico and  
14 federal courts, and I've testified here in this court, I think, four times  
15 before.

16 MR. HAND: Your Honor, at this time --

17 THE COURT: Would you like her to offer her opinions?

18 MR. HAND: Yes.

19 THE COURT: This witness can offer her opinions.

20 MR. HAND: Thank you.

21 BY MR. HAND:

22 Q Ms. Cook, are you being paid to come to court today to give  
23 your opinions in this case?

24 A Yes.

25 Q How much are you being paid?

1           A     \$3,000.

2           Q     Now, I'll just represent yesterday we spoke, and we heard  
3 from Dr. Barchuk who testified. Now, Dr. Barchuk's a life care planner,  
4 correct, as well as being a physical medicine and rehab doctor?

5           A     Yes, he is.

6           Q     Okay. So, your role in doing a life care plan for Tina Farris,  
7 could you explain what you're doing in relation to what Dr. Barchuk did?

8           A     Certainly. The method of doing a life care plan is generally  
9 to read all the medical records from when the occurrence happened,  
10 interview the person who was injured, Mrs. Farris, and communicate  
11 with physicians about what would be recommended. I'm not a physician  
12 so I can't say that they need surgery, or that they need therapy, or  
13 doctor's visits. So, I rely on a physician for all the things that a physician  
14 would order. And sometimes I get input from physicians on things that  
15 happen in the home that you might call nursing care or supplies or  
16 equipment. And in this case, you know, I got that.

17           And then I take all of those facts and put the price to them. And in  
18 this case, Dr. Barchuk also did a complete assessment, examination and  
19 interview with Mrs. Farris and her husband, and then he came up with  
20 the list of recommendations. So, I've taken those and added a couple  
21 little things to it just to flush them out, which I can explain. But I  
22 researched all the usual costs, which Dr. Barchuk hadn't done, and I  
23 researched all the usual costs and added it up.

24           Q     Okay. And what information did you learn, just briefly in  
25 summary fashion, from the review of her medical records concerning

1 Ms. Farris' history that brought her to the point where she is now, just in  
2 summary fashion?

3 A Oh, sure. I'm sure you've been hearing it. But she had a  
4 hernia that needed to be repaired, and she was admitted to the hospital  
5 for a hernia repair. She had complications and was on a life support for  
6 quite a long time and was immobilized because of her illness. And after  
7 recovering from surgery, going to rehabilitation for a few weeks and  
8 then home, it was evident she had foot drop to both of her feet. Which  
9 the nerves have been damaged in her lower calves, and she can't lift her  
10 toes up, or push her toes down. So, it's greatly affected her mobility.

11 Q And Ms. Cook, do you have an opinion to a reasonable  
12 degree of medical probability as to her future health needs, as it relates  
13 to her bilateral foot drop?

14 A Yes, I do.

15 Q And do you have an opinion as to the reasonableness of the  
16 future health needs for Ms. Farris as recommended by Dr. Barchuk?

17 MR. DOYLE: Objection. Lacks foundation.

18 THE COURT: Overruled.

19 A I'm sorry, could you repeat the question.

20 BY MR. HAND:

21 Q My question was, did you have an opinion as to the  
22 reasonableness of the future health needs for Titina Farris that were  
23 recommended by Dr. Barchuk?

24 MR. DOYLE: I'll object. It's an improper lay opinion.

25 THE COURT: Court's going to overrule it, in light of the

1 witness' prior testimony. Within the scope of how she's designated.

2 A Yes, I do have an opinion.

3 BY MR. HAND:

4 Q What is that?

5 A I have a total number, is that what you'd like to hear?

6 Q Let me go through this with you --

7 A Okay.

8 Q -- step by step. I'm going to try to do it that way, if that's all  
9 right.

10 So, let's start with do you have an opinion as to how long she will  
11 need assistance with future health needs?

12 A Yes. For the rest of her life.

13 Q And did you do any research into what are known as life  
14 expectancy tables?

15 A Yes.

16 Q Okay. Does the government put out life expectancy tables?

17 A Yes.

18 Q And have you dealt with those life expectancy tables in the  
19 course of your career as a life care planner or nurse?

20 A Yes. In life care planning to figure out what the costs are for  
21 the rest of someone's life, we use the national vital statistics report. It's  
22 updated sometimes annually, but it comes from the U. S. Census and all  
23 sorts of other things, and it divides people by how old they are now, and  
24 how much longer they're going to live.

25 Q And according to the government life expectancy table, what



1 is Ms. Farris' life expectancy?

2 MR. DOYLE: Objection. Hearsay.

3 THE COURT: Counsel, would you both like to approach  
4 please.

5 [Sidebar at 2:20 p.m., ending at 2:23 p.m., not transcribed]

6 THE COURT: The Court's going to overrule it based on what  
7 was provided at the bench. Counsel, you may proceed.

8 MR. HAND: Thank you, Judge.

9 BY MR. HAND:

10 Q Ms. Cook, what is Titina Farris' life expectancy according to  
11 the government tables?

12 A I calculated it last year when I wrote my report, and at that  
13 time she had 29 years left of her life.

14 Q So, I'd like to talk briefly about how you do this, your  
15 methodology for doing the life care plan. First, what is the first step you  
16 take?

17 A Reviewing medical records.

18 Q You said you've done that. What records did you review, just  
19 briefly?

20 A I reviewed basically from when she had the hernia surgery  
21 through to, I think I had a couple records from 2017.

22 Q Okay. Did you review Dr. Rives' records?

23 A Yes.

24 Q St. Rose Dominican, St. Martin campus?

25 A Yes.

1 Q Steinberg records, Medical Imaging?

2 A Yes.

3 Q Dr. Hamilton's records?

4 A Yes.

5 Q Dr. Chaney's records?

6 A Yes.

7 Q Desert Valley records?

8 A Yes.

9 Q Physical therapy records?

10 A Yes.

11 Q St. Rose Dominican, Siena records?

12 A Yes.

13 Q Pain Center records?

14 A Yes.

15 Q All right. So, after you reviewed the records, did you arrange  
16 for -- to speak to, at some point, Dr. Barchuk?

17 A Yes. First, I went and visited the Farrises.

18 Q What's the purpose of doing that?

19 A The purpose of visiting someone who I'm doing the life care  
20 plan on, is to hear how they really are today, how they're really doing. I  
21 prefer in their home, and I was able to interview them in their home. I  
22 talked with both Mr. and Mrs. Farris. I briefly talked with her daughter,  
23 Skye (phonetic). And I have a standard list of questions I ask about, you  
24 know, past medical history, how are you doing with each of your  
25 activities of daily living. And go through and find out what doctors she's

1 visiting, how often her appointments are, what kind of equipment she's  
2 using, and how it's working out, so I have a real clear understanding of  
3 how she actually is.

4 Q So, after you did that, what was the next step you took?

5 A Then, once I've kind of assembled what I think that she's  
6 possibly going to need, then I would speak with the doctor. And in this  
7 case, I received a report from Dr. Barchuk. He'd visited her just two days  
8 before I visited her. And so, we had seen her about the same time  
9 period. And he wrote a report. I called him to clarify a couple things in  
10 the report just so I understood what he meant. And I think I had to call  
11 him again. I wasn't quite sure on the pool therapy, what kind of therapist  
12 he wanted, so I did do two phone calls with Dr. Barchuk to make sure I  
13 understood correctly what he was recommending.

14 Q Okay. So, did you make -- looking at what Dr. Barchuk  
15 recommended, did you make a determination, from a nursing point of  
16 view, of what the goals and recommendations would be for future  
17 medical care?

18 A Yes. So, Dr. Barchuk recommended physician care, therapy,  
19 possible surgeries and equipment. And I went through all the list of all  
20 the things I knew she was doing and having and using to make sure  
21 nothing was missed.

22 Q So, did Dr. Barchuk make a recommendation as to future  
23 medical care?

24 A Yes.

25 Q And what kind of medical care did he recommend for her?

1           A     He recommended that she see a physical medicine and  
2     rehabilitation specialist. It's a kind of doctor not a lot of people know  
3     about, but Dr. Barchuk is one himself. And they specialize in people who  
4     have -- who are rehabilitating or have chronic physical needs. And he  
5     recommends that she see a doctor like that four times a year for the rest  
6     of her life.

7           Q     And do you, in terms of medical care, did you research what  
8     the costs of the medical care are?

9           A     Yes. I use the standard way I use to get medical care. And  
10    that is there's a published reference called medical fees in the U. S. and  
11    the current year. I looked in the book to find out what the current  
12    charges for an average visit. So, when you go to the doctor, there's  
13    actually a range of five different levels that they could be billing for, and  
14    they end in either a 1, 2, 3, 4 or 5. 99213 is the one I used. Three is right  
15    in the middle. I don't know if she'll be having really long visits but three  
16    is the most common charge there is for any doctor's visit and it's the one  
17    for in the future, if they're going to be going regularly I use. And in the  
18    book, it gives me a cost for the 50th percentile, the 75th percentile and  
19    the 90th percentile.

20                So, the 90th percentile means that 90 percent of doctors here  
21    in Las Vegas charge that much or less. And the 75th percentile means 75  
22    percent of doctors charge this lower amount or less. And the 50th  
23    percentile means that 50 percent of doctors charge that much or less. I  
24    always use 75th percentile. So, that in the future, she's likely to be able  
25    to find a physician who can see her because she would have a budget

1 that would cover 75 percent of doctors here in town.

2 And there's also a geographic adjuster. So, the book actually  
3 lists these codes for the whole nation. And each location has a different  
4 adjuster. You multiply by a number to come up with the actual number  
5 for Las Vegas. And the cost for one of these office visits --

6 MR. DOYLE: Objection, Your Honor. Hearsay.

7 MR. HAND: Your Honor, an expert could rely on material.

8 THE COURT: The Court's going to overrule under the  
9 standards. Go ahead.

10 A It's \$154.70- -- 77 cents per visit.

11 BY MR. HAND:

12 Q And how many visits were recommended per year for that?

13 A It's going to be four visits a year. So, that will cost about  
14 \$619.08 a year.

15 Q Did you multiply that number by her life expectancy?

16 A Yes.

17 Q And what was that number?

18 A It comes to \$17,953.32.

19 Q And then do you also have a recommendation for internal  
20 medicine primary care visits?

21 A Yes. So, Mrs. Farris has a regular doctor that she sees for  
22 her other problems, diabetes, high blood pressure and Dr. Barchuk felt  
23 that she would need to see a doctor like that two to four times more than  
24 for her regular office visits. So, say she went once a year or twice a year,  
25 this would be two to four visits a year more than she normally would see

1 and it's the same cost per visit. And because it was two to four visits a  
2 year, I took the average number three, and multiplied the same office  
3 cost times three.

4 Q And over her lifetime, what is the cost for that care?

5 A \$13,464.99.

6 Q And then was there a recommendation for orthopedics?

7 A Yes. He recommended that she see an orthopedic  
8 practitioner five to 10 times in her lifetime.

9 Q And did you project that number over her lifetime?

10 A Yes. I used a slightly higher code, the code that ends in the  
11 number four because it may be years between visits, and so this  
12 physician would have to do more -- spend more time on history and  
13 evaluations. So, the per visit charge is a light higher, \$226.13. And over  
14 her lifetime of five to 10 visits, so the average is 7.5 is \$1,695.98.

15 Q Was there also a recommendation for podiatry in medical  
16 care?

17 A Yes. So, that's a physician who specializes in feet. And he  
18 recommended six to 12 times for one year to get things going, and then  
19 four to six times a year after that.

20 Q And what is the cost over the lifetime for that?

21 A Well, for the first year, it would be \$2,035.17 and then for the  
22 remaining 28 years, it would be \$31,658.20.

23 Q Was there a recommendation for a psychologist, psychiatrist  
24 by Dr. Barchuk?

25 A Yes. He recommends that she see a psychologist or a

1 psychiatrist once a month for three to six months, so three to six visits.  
2 And then he said zero to eight visits per year after that. So, gives kind of  
3 a range. Some years she might not have any, some she might have  
4 more. I used the average of four visits a year. And it has a different  
5 code for a psychologist and the charge for the visit is \$193.97. And after  
6 the first year, the lifetime cost would be \$21,724.64.

7 Q And is there a recommendation for a plastic surgeon?

8 A And I'm sorry, I didn't mention that when she's seeing the  
9 psychologist or psychiatrist, the first time she comes, they need to do an  
10 evaluation, so they have a little bit different charge for that. So, once a  
11 year she would have an evaluation.

12 Yes. Plastic surgeon visits, who are hand surgeons, and they  
13 also do wounds; so there's a few things that they could be doing. And  
14 he said five to 10 times in her lifetime. So, again, I put the code that  
15 ends in four because she wouldn't be going regularly to this person.  
16 And the lifetime cost would be \$1,695.98.

17 Q So, for the total medical care, as recommended by Dr.  
18 Barchuk, and after you priced out the cost, what is the total figure for that  
19 category of the life care plan?

20 A It's \$98,503.98.

21 Q Okay. Do you have a category in your life care plan for  
22 something called allied health?

23 A Yeah. It's kind of therapy. This was Dr. Barchuk's category  
24 for people who are providing care but aren't physicians.

25 Q Okay. So, let's see if we could briefly go through those.

1 Dietician. What is the cost of a dietician?

2 A \$281.40. He recommended once a year. So, the lifetime cost  
3 is \$8,160.60.

4 Q That's over her lifetime?

5 A Yes.

6 Q Okay. How about physical therapy?

7 A So, he recommended that she have 12 to 24 visits in the next  
8 one or two years; and then she would be going down to six to 12 visits a  
9 year for her lifetime. And physical therapy has a different code. But I  
10 use the same research, and I use the 75th percentile for all of these, but  
11 the same type of research. And so, the physical therapy would be an  
12 annual evaluation to see how she's doing when she goes back, which  
13 would come to \$6,586.77. And the therapy in the first one to two years,  
14 would be \$7,597.80 and then after that, after the second year, and for her  
15 life expectancy, the total would be \$68,380.20.

16 Q Okay. There's a recommendation for occupational therapy  
17 evaluation?

18 A Yes. So, he recommended zero to six visits a year, and we  
19 also need an evaluation once a year. So, the evaluation every year  
20 would be a lifetime total of \$7,315.54. And the actual therapy, zero to six  
21 visits a year is \$24,481.80.

22 Q Okay. There's something here that he recommended, a pool  
23 program. Give us your understanding of that, if you could?

24 A Yeah. Well, when I saw it, I realized, you know, pool  
25 program would be great because she's not able to like to run on the



1 treadmill or walk very far, but in a pool program she could get more  
2 exercise. I did call him back about this. I wanted to know if he wanted a  
3 physical therapist to supervise the pool program, or if during the  
4 physical therapy evaluation, they can make the recommendation. And  
5 he said yes, we just need a physical therapy aide, and we're just going to  
6 do 30 minutes three times a week with the physical therapy aide for a  
7 pool program. And that's \$152.76.

8 Q This is done at some facility?

9 A Yeah. It would be done at a physical therapy department  
10 that has a pool so she can immerse in the pool, do exercises under  
11 water, and hopefully do some swimming.

12 Q And what is the annual cost for that?

13 A Annual cost is \$23,830.56.

14 Q And over the lifetime, what's that cost?

15 A \$679,170.96.

16 Q Was there also a recommendation for massage therapy?

17 A Yes. He recommended massage therapy six to 12 times a  
18 year, and the cost for that is \$176.88. So, her lifetime cost for massage  
19 therapy would be \$46,165.68.

20 Q And over her lifetime, what would that be?

21 A I'm sorry. That was the lifetime.

22 Q What was that again?

23 A \$46,165.68.

24 Q Was acupuncture therapy recommended by Dr. Barchuk?

25 A Yes. He did recommend acupuncture therapy and the cost

1 for each is \$326.64. He recommended twice a month for her lifetime.

2 Q And the annual cost for that?

3 A Annually, it's \$7,839.36.

4 Q And over her lifetime, what is the cost?

5 A \$227,341.44.

6 Q Now, is there a recommendation for a wound care clinic?

7 A Yes. He recommends that she go to a wound care clinic  
8 twice a week for three to six months, which would be about 36 visits: and  
9 then zero to eight visits a year for her lifetime.

10 Q What is the total for that?

11 A For the first three to six months, the cost would be \$8,972.64  
12 and then from year two for the rest of her life, the total would be  
13 \$27,914.88.

14 Q So, what is the total cost of care in the future for allied health  
15 and its related treatments?

16 A Yes. For all the therapies the lifetime cost is \$1,112,088.31.

17 Q Is there a recommendation for care for complications that Dr.  
18 Barchuk recommended?

19 A Yes. Dr. Barchuk called them complications, and it's an  
20 emergency room visit, and the physicians that would be seeing her in  
21 the emergency room. He said zero to one time a year. Which I kind of  
22 think of as every other year that she may end up in the emergency room  
23 because of these problems.

24 Q So, for the annual cost for that, what did you use for that,  
25 what was the number for that --

1           A     Sort of like half a visit. So, an emergency room visit average  
2 ending again in the three, so it's the middle range of the one through five  
3 for the cost, one visit would be \$1,646.33 plus the emergency room  
4 physician with the same ending code, \$516.57.

5           Q     So, over her lifetime, what is the cost for that?

6           A     \$31,362.20.

7           Q     So, there was also recommendations for diagnostic testing,  
8 did you calculate the cost for the future care for that?

9           A     Yes. He recommended about five different types of tests.  
10 They're all radiology, x-rays, MRIs, ultrasounds, and EMG. So, the first  
11 one was an x-ray of the spine, shoulder or feet, zero to two a year. And  
12 this is kind of an estimate; he's not sure how many she'll need  
13 particularly. But I used an average cost of those three types of x-rays to  
14 come out to \$228.14 and that would be about one a year.

15          Q     And over the lifetime, what is the cost for that?

16          A     \$6,616.06.

17          Q     And then was there an MRI of the left shoulder  
18 recommended?

19          A     Yeah. Left shoulder just once, but an MRI of the left  
20 shoulder, which is \$2,132.61.

21          Q     How about an MRI of the spine or shoulder, did Dr. Barchuk  
22 recommend that?

23          A     He said one to three times in her lifetime she would need  
24 that. And I averaged the spine and the shoulder MRIs. And the lifetime  
25 charge would be \$4,346.64.

1 Q And was an EMG recommended?

2 A Yes. So, this would be for both upper extremities and lower  
3 extremities and he said one to three times in her lifetime. The charge for  
4 those are \$4,726.52 each. So, one to three times. I used two as the  
5 average. So, it would be \$9,453.04.

6 Q Over her lifetime?

7 A Over her lifetime.

8 Q And is there also a recommendation for an ultrasound  
9 doppler of her lower legs?

10 A Yes, exactly. Zero to two times in her lifetime. So, I just put  
11 in for once, which is \$773.85.

12 Q Totaling the future costs of care for diagnostic, what is the  
13 total for that category?

14 A The lifetime total is \$23,322.20.

15 Q Is there another category Dr. Barchuk recommended as to  
16 procedures she needs?

17 A Yes. He named three things for procedures. The first one is  
18 trigger point injections. This is where they just inject right where you're  
19 having pain, and he said she would likely need four to eight in her  
20 lifetime, and the total lifetime cost would be \$2,056.26.

21 Q Was there a category for arthroscopies, could you explain  
22 that?

23 A Yes. He recommended zero to one times in her lifetime. So,  
24 she might not need it, or she'll be need it once. And this is a shoulder  
25 arthroscopy where they go in with just a small incision, go into the

1 shoulder and look inside and fix what's wrong. And so, he  
2 recommended zero to once.

3 So I just put half the charge. I maybe should have put the full  
4 charge, but I put half the charge since it's zero to one times. And that  
5 includes a physician visit for preoperative workup and also a visit to the  
6 orthopedic surgeon who's going to be doing it, the preoperative visit.  
7 She'll need a preoperative x-ray, MRI; she'll need some labs. She'll  
8 need a chest x-ray, EKG and some blood tests. Is it alright just to keep  
9 talking?

10 Q Well, what's the associated cost --

11 A Sure. The preoperative --

12 Q -- for this arthroscopies; how much would that come to?

13 A The preoperative physician visit which I put with the number  
14 ending in a four, because it's going to be a longer visit to make sure  
15 she's clear for surgery, is \$226.13. To see an orthopedic surgeon to  
16 clarify the decision and book surgery is \$226.13. I've got a preoperative  
17 x-ray and that's \$185.93, and an MRI, \$2,132.61. The preoperative testing  
18 that I mentioned, blood tests, EKG and a chest x-ray, which are standard  
19 before surgery, those charges are \$332.66. There, I caught up with  
20 myself.

21 Q Okay.

22 A For a facility, an outpatient facility, because she wouldn't  
23 need to stay overnight for this, outpatient facility is \$21,403.64. And then  
24 the actual surgeon charge for doing the surgery is \$3,654.18, and this  
25 usually requires an assistant and the assistant is paid 20 percent of what

1 the main surgeon is being paid. So, the assistant surgeon would get  
2 \$730.84. And, of course, she'll need anesthesia and that's \$3,001.05.

3 Q So, what was the total for that category?

4 A So, I just put the half cost because it was zero to three. So,  
5 the half cost is \$15,946.61.

6 Q Did Dr. Barchuk recommend future treatment for carpal  
7 tunnel release?

8 A Yes. And it's kind of the same categories. Preoperative  
9 office visit to get cleared for surgery, \$226.13, seeing the surgeon before  
10 she goes to surgery is going to be also \$226.13. Preoperative x-ray,  
11 \$141.71, preoperative testing, the labs, EKG and chest x-ray, \$332.66.  
12 The facility charge is a little bit different, based on the codes for the  
13 surgery, so it's \$25,877.09. The surgeon's fees would be \$6,107.39, and  
14 the assistant surgeon, \$1,221.48. Anesthesia, \$2,334.15. I've got in the  
15 preoperative -- the postoperative physical therapy sessions that would  
16 be added on and some pain pills. And he recommended she would have  
17 this one to two times in her lifetime.

18 Q Okay. And what is the lifetime cost for that area?

19 A So, \$59,972.23.

20 Q All right. There's also a recommendation for homecare for  
21 Titina. Explain what homecare is, first of all, if you could?

22 A Homecare is when a provider comes to your home and helps  
23 manage things at home. They can help people bathe, get them in and  
24 out of bathtubs, dress them, do personal care. They can assist with  
25 tooth brushing or getting in and out of wheelchairs. Do some basic

1 housecleaning while they're there. They could change bed sheets, help  
2 prepare meals, tidy up after meals. They could take her to appointments,  
3 drive her in the car, accompany her, get the wheelchair in and out.  
4 Whatever kind of care that's not being a registered nurse, but being  
5 trained in personal care. They're sometimes known as certified nursing  
6 assistants, CMAs, home health aides, caregivers. There's different  
7 terminology all over. Dr. Barchuk called it companion care or attendant  
8 slash chore service needs. And he recommended some now and  
9 increasing as she ages.

10 Q So, what -- where are these people found to do the  
11 companion care?

12 A There's lots of companies in town. To get a reasonable  
13 charge for this, I called at least three places. I called Visiting Angels,  
14 TrueCare 24, and Advanced Personal Care Solutions. I do this kind of  
15 research all the time and the average -- the range went from a lower  
16 number to a higher number, but the average was \$21.50 an hour.

17 Q So, this companion care, why does she need this?

18 A Right now, when I visited her in 2018, she could not  
19 independently get dressed, she couldn't get in and out of the shower.  
20 She couldn't really get on and off the toilet and take care of her needs  
21 getting on and off the toilet. She couldn't walk independently. In fact,  
22 even with a walker, sometimes it's quite difficult. So, just for her basic  
23 activities of daily living, the things that you do in the morning to get  
24 yourself going, get up, go to the bathroom, shower, eat, get dressed, put  
25 on makeup, if you're a girl, you know, most of those things she needs

1 significant assistance with.

2 And the other activities that we consider, you know, instrumental  
3 activities of daily living, the things that have you connected with your  
4 community. Not just getting yourself ready in the morning, but cooking,  
5 cleaning, preparing meals, planning meals, shopping, driving, you know,  
6 going out in the community, taking care of your children, your pets.  
7 These are all things that are extremely difficult for her, and she needs  
8 assistance with them.

9 Q Is that over her lifetime?

10 A Yes. Dr. Barchuk recommended she have care now. And I  
11 certainly as a registered nurse agree that she needs assistance every  
12 day, all through the day. And he recommended that she have four to six  
13 hours per day now. And then he's got a scale. He said in five to 10  
14 years, so I used an average, seven and half years. But in five to 10 years  
15 from now, she would need to increase that to six to eight hours a day.  
16 And in another -- in 10 to 15 years from now, she would need to increase  
17 it to eight to 12 hours a day. And then in 15 to 20 years, and for the rest  
18 of her life, she would need 12 to 24 hours of care per day.

19 Q And what is the yearly cost of that care currently and if you  
20 could explain how it would increase?

21 A So, I broke it down a bit. Right now, with her needing four to  
22 six hours per day, the annual cost is \$39,237.50 per year. And in five to  
23 10 years when we're going to go up by a couple hours, it'll be \$54,932.50  
24 per year. And in 10 to 15 years when we go up to eight to 12 hours a  
25 day, it'll be \$78,475 a year. And then in 15 to 20 years from now, and for



1 the rest of her life, it'll be \$141,255 per year.

2 Q So, what's the total lifetime cost for companion care?

3 A Actually, I didn't total it because in the same category, Dr.  
4 Barchuk had two more suggestions, and they're all totaled together.

5 Q Okay.

6 A The other was home maintenance. So, she can't do her  
7 housework. She said she can sort of fold laundry a little bit but that's  
8 about it, you know she can't. Anyways, he recommended over and  
9 above the caregivers, and they're not allowed to do major cleaning.  
10 They're not allowed to like wash your floors or clean the bathroom. So,  
11 he recommended just two to four hours a month of someone to come in  
12 and actually do the deep cleaning and that would be \$2,367.22. I got the  
13 cost from ProMatcher.

14 And case management, which is someone like a nurse, he  
15 recommended four to eight hours a year. This is someone to help you  
16 find the right company for your homecare, where to find your  
17 equipment, how to get the best price, make sure you're able to follow  
18 through with all the recommendations from your physicians and  
19 therapists. And so, four to eight hours a year, that would be six hours.  
20 So, this is someone to make sure that she gets the most out of the  
21 money that she has for spending on her healthcare. And that's \$105 an  
22 hour.

23 And I got the price, where I always get the case from, Genex Care  
24 Management, which is a national company that supplies case  
25 management, and they have a price for Nevada. And the lifetime total

1 for that is \$18,270. So, I threw those in with the homecare because that  
2 was how Dr. Barchuk had it arranged in his chart.

3 Q What is the total lifetime cost for that area of future needs?

4 A \$2,672,685.13.

5 Q Now, was there an assessment made by Dr. Barchuk that  
6 some equipment is needed at the house?

7 A Yeah. She has some equipment, and she needs some  
8 additional equipment. And I really agreed that these things are needed.  
9 The first thing is an electric wheelchair or scooter. So, currently she's  
10 using a walker. She complains of pain in her shoulders, and her wrists  
11 from gripping on and holding herself up while she's going through the  
12 motions of walking on these two feet that aren't doing a very good job.  
13 And so, he's recommended an electric wheelchair or scooter. They cost  
14 about \$1,678.17 and need to be replaced about every seven years.

15 Q And what's the lifetime cost for that?

16 A \$6,712.68.

17 Q Is there a recommendation for a manual wheelchair? Why  
18 does she need a manual wheelchair, if she's got an electric wheelchair?

19 A Well, a manual wheelchair is really great, they're light,  
20 they're foldable, you can move them around very easily. A power  
21 wheelchair is extremely heavy. So, in order to move around a power  
22 wheelchair, you need, you know, like an adapted van or something to  
23 move it into.

24 But a manual wheelchair is very quick and easy. If she was having  
25 trouble in the house losing her balance, the caregiver could just quickly

1 get the manual wheelchair and put it underneath her and save her from  
2 falling. Could be used if she was just going out for a quick trip in the car,  
3 and the caregiver could fold it up and throw it in the car. Could also be  
4 used to move into someone else's house that doesn't have the ability to  
5 have the heavy weight of the chair. So, it's a really great backup. Plus,  
6 power wheelchairs run out of energy, they break down, they need  
7 repairs, and so, a manual wheelchair is always needed as a backup.

8 Q And then you have something for a cushion, why does she  
9 need a cushion?

10 A Well, sitting in a wheelchair all day is kind of limiting, you  
11 don't get to move around. If you sit on the couch, you're constantly  
12 readjusting your position, but a wheelchair kind of holds you in place.  
13 Just like the chairs you are in now; you can't adjust very much. So, it's  
14 standard to have a bit of a cushion underneath you.

15 Q Okay.

16 A And they're \$31.29, replaced every two years.

17 Q And the lifetime for that is what?

18 A \$469.35.

19 Q And you have something called a sliding board; what's a  
20 sliding board?

21 A A sliding board is a really simple wonderful device. It costs  
22 \$26.61 and it's a board with two hand holds, and you can use it to slide  
23 out of bed and into a wheelchair. You just sit on the edge of the bed, the  
24 caregiver puts this board under you, you can slide down to the  
25 wheelchair. So, it's great for times when she's not wanting to stand up,

1 if she's sick, if she's having any problems with standing up and then  
2 sitting down. And it can also be used to slide from one chair to another  
3 or onto a toilet, if there's problems with being able to stand up.

4 Q Okay. There's something called a Hoyer lift as a  
5 recommendation, what is a Hoyer lift?

6 A Yeah. If you've ever been in a hospital, sometimes you may  
7 have seen these strange things. They're usually silver colored with big  
8 legs, a pole that goes up, and a bar, and it can lower down over  
9 someone who is laying in bed, and you put a sling under Mrs. Farris,  
10 hook it up and then you can just crank her out of bed and into a chair,  
11 into a shower, or wherever you need to reposition her. If she's too weak  
12 to be getting out of bed, if she's too heavy for that particular caregiver to  
13 be confident that they can support her if she's having any issues with  
14 losing her balance.

15 Q Okay. And then Hoyer lift -- how much does a Hoyer lift  
16 cost?

17 A They're \$1,487.33. Dr. Barchuk just recommended once in  
18 the last one to three years of life. This is anticipating that, you know,  
19 when she's in her 80s that things will be so much worse that she's going  
20 to need someone to actually lift her in and out of bed periodically, or  
21 regularly. And the slings that come with it are -- you have two slings so  
22 that if one gets soiled, it can be washed while the other one is used.  
23 They're \$78.95 each, and she just needs to purchase two of them once  
24 when she gets the Hoyer lift there are the end of life.

25 Q All right. You have something called a reacher, what is that?

1           A     Reacher is a long stick with a little handle. So, if you're not  
2     able to bend over and pick things up, you can pick things up off the floor,  
3     like a piece of paper, or a pen, or a paperclip, or bring the remote closer  
4     to you, if you can't reach the cell phone. They're \$11.56 and usually  
5     replaced about every five years because they tend to fall on the floor and  
6     wear out.

7           Q     All right. You have a special mattress or bed for her?

8           A     Yes. So, one of the problems that she has, is getting  
9     positioned and getting out of bed. So, Dr. Barchuk is recommending a  
10    TempurPedic sleep number adjustable bed so that the head can be  
11    elevated and give her a good boost for getting out of bed.

12          Q     How much does that cost?

13          A     \$3,597.32, replaced every 10 years.

14          Q     What's the total over that?

15          A     \$10,791.96.

16          Q     And you have something here, showerhead, shower bench,  
17    why is that necessary to put in here?

18          A     So, for Mrs. Farris, she can't just stand in the shower and  
19    have a shower, she'll lose her balance. And so, she needs a bench to sit  
20    on, and when you sit on the bench, you can't really reach the shower.  
21    So, a showerhead is just one of those telephone showers so you can  
22    bring it down and give yourself a good wash. The shower bench,  
23    something to sit on. The showerhead costs about \$25.19, and they're  
24    usually replaced every five years.

25                So, the lifetime total is \$151.14. Shower bench are \$56.08. And I

1 was just going to tell you -- well, I can tell you at the end, how I got all  
2 the costs. But it's replaced every five years, so the lifetime costs are  
3 \$336.48. And grab bars are those suction cup grab bars by the toilet and  
4 the shower, \$14.66 every five years. And I should have just said where  
5 did I get the costs from.

6 Q I'm going to ask you, where did you get the costs for all  
7 those; how did you figure that out?

8 A So, for each thing, I've shown -- I got three costs. For the  
9 electric wheelchair, I used Amazon, Walmart and a company called  
10 1800wheelchair.com and got the average costs from that. Also  
11 compared to a scooter and it was the same sources. The manual  
12 wheelchair, I used Amazon, Walmart and Allegro Medical, which is a  
13 medical supply company. Same with the wheelchair cushions and the  
14 transfer board. The TempurPedic mattress, I looked on Amazon and  
15 Tempurpedic.com and sleepnumber.com. And for the adjustable bed,  
16 Amazon, Casper.com. It was a little harder to find the frame that fits  
17 these, and the sleepnumber.com for costs for that. The Hoyer lift was  
18 the same, Amazon, Walmart, and Allegro Medical, and the same with the  
19 reacher. The showerhead, the grab bars, the shower bench, those were  
20 all from the same, Amazon, Walmart and Allegra Medical.

21 Q You also have notes here for other items. Could you briefly  
22 explain what those are?

23 A Yes. A cane. A cane is really useful when you're in a tight  
24 spot and you just need something to help with balance, \$14.81, replaced  
25 every five years, for a lifetime total of \$88.86. The four wheeled walker is

1 what she is using. It has brakes on it so if you're going too fast, you can  
2 brake it, and it also usually has a little bench on it so you could sit down  
3 on it if you're able to turn around. You can also move a cup of coffee  
4 from the kitchen to the living room by putting it on the bench. So, it  
5 gives her a little more independence that way. She told me she's gone  
6 through three since she's been home. But we're going to do the average  
7 replacement of every five years, \$65.83 for a lifetime total of \$394.98.

8 Q Okay. And what else do you have in this category, if you  
9 could briefly summarize it?

10 A Abdominal binder for her hernia. Two pair of them, replaced  
11 every two years so one could be in the wash, and one could be used.  
12 They're \$66.10 each so the lifetime total is \$991.50. Then is the ankle,  
13 foot orthosis or the brace that goes on the back of the leg and under the  
14 foot so that her foot won't drop so much. So, Dr. Barchuk recommended  
15 that she has one for each foot; they're custom made and about \$66.30  
16 each. They'll need to be replaced every three to four years. So, the  
17 lifetime total for those is \$1,060.80.

18 And at nighttime, the pressure relieving ankle foot orthosis are  
19 kind of a spongy thing, boot, that you can put on; it keeps your foot from  
20 dropping more and getting more contracture so you can't have a natural  
21 position. But because she's -- I don't know if you've ever seen those  
22 films where it shows what you do when you sleep, but we normally  
23 move our feet in our sleep, and we move around all the time.

24 And she can't really feel her feet, so she won't know when she's  
25 been laying in a position too long, and she's not getting the normal small

1 movement. So, this will protect her from getting sores since she has no  
2 foot movement. They're \$236.30, and she needs them replaced every  
3 three to four years. And the lifetime cost is \$1,890.40.

4 Q I notice here, you have an accessible van, who recommended  
5 that?

6 A Dr. Barchuk didn't, I did.

7 Q Why?

8 A So, when Dr. Barchuk recommended a power or electric  
9 wheelchair or scooter, you can't really carry those in your car. And so,  
10 an accessible van is an ideal situation so she can just wheel right into the  
11 van and wheel off when she gets to whatever location. And I only  
12 included the cost of converting a regular van to having the wheelchair  
13 adaptable one. So, putting in the ramp, the side door. And that costs  
14 about \$22,240 to convert a van. So, they would still need to buy the van,  
15 we're just including here the cost of the conversion every seven years.  
16 And the lifetime cost is \$88,960.

17 Q Okay. And then you have portable ramps, what does that  
18 refer to?

19 A Right. So, she mentioned it to me but a portable ramp, you  
20 can buy these portable ramps, they're kind of big and bulky. But if you  
21 go to visit a friend who does not have a ramp going into their house, you  
22 can fold out the ramp and wheel the wheelchair or the walker to get in  
23 their house.

24 Q Okay. So, the total of that category of equipment, was how  
25 much?



1           A     For her lifetime, \$114,799.71.

2           Q     Okay. Now, there's one more category you have, home  
3 modifications. Explain why are home modifications necessary?

4           A     She needs home modifications because she's, you know,  
5 using adaptive devices. So, home modifications include installing  
6 permanent ramps into your house, into the garage, into the backyard so  
7 she can actually get to those places, especially when she becomes more  
8 wheelchair dependent. Widening doorways. So, a lot of doorways  
9 aren't really wide enough to have a wheelchair go through them, and  
10 they can be widened just a couple inches so then she can -- and a new  
11 door so she can get into bathrooms, bedrooms, all the rooms in their  
12 house with the wheelchair.

13               And the usual other thing is, making the shower easier to get into.  
14 So, eliminating the lip on the shower so you can shuffle or even use her  
15 walker to go right into the shower and sit on the shower bench. Then  
16 her caregiver could remove the walker while she has a shower.

17               So, those are the usual kind of adaptations and Dr. Barchuk  
18 recommended. And the cost is \$81,080. I used the -- this is the average.  
19 It could be more, it's not likely to be less. The Veterans Administration  
20 has a budget for veterans who are needing adaptations, modifications to  
21 their home, and this is the maximum that they will allow.

22           Q     Okay.

23               MR. HAND: Your Honor, could I ask Ms. Cook to step down  
24 and use the whiteboard for a second.

25               THE COURT: Sure. Counsel, do you all want to approach for

1 a brief moment.

2 [Sidebar at 3:10 p.m., ending at 3:11 p.m., not transcribed]

3 THE COURT: Ladies and gentlemen, realizing it's three  
4 minutes after the three o'clock hour, this being a good stopping point,  
5 we're going to just take your afternoon break, yes? Okay. I'm not seeing  
6 anyone saying no, okay. So, we're going to come back at 3:30.

7 So, ladies and gentlemen, during this recess, you're  
8 admonished not to talk or converse among yourselves or with anyone  
9 else on any subject conducted to this trial. You may not read, watch, or  
10 listen to any report or commentary of the trial or any person connected  
11 to the trial by any medium of information, including, without limitation,  
12 social media, texts, tweets, newspapers, television, internet, radio.  
13 Anything I have not named specifically is, of course, included.

14 Do not visit the scene of the events mentioned during the  
15 trial. Do not undertake any research, experimentation, or investigation.  
16 Do not do any posting or communications on any social networking  
17 sites. Do not do any independent research including, but not limited to  
18 internet searches. Do not form or express any opinion on any subjects  
19 connected with the case until it is fully and finally submitted to you at the  
20 time of jury deliberations.

21 With that, we wish you a nice and relaxing break.

22 THE MARSHAL: All rise for the jury.

23 [Jury out at 3:12 p.m.]

24 [Outside the presence of the jury]

25 THE COURT: Okay. Just one second until the door closes.

1           Okay. So, folks, we'll see you back -- thank you. Have a nice  
2 afternoon break. Everyone stretch and feel free to --

3           UNIDENTIFIED SPEAKER: Your Honor, before we do go off  
4 the record, we do have our reply.

5           THE COURT: Oh, okay. Yeah, before the four o'clock, right.  
6 Both of you needed to get it to me before four o'clock.

7           Defense, do you, by chance, have yours yet or you've got till  
8 four o'clock, so, that's fine. Oh, feel free to both provide it to the Court.  
9 Thank you. And your copies for opposing counsel presumably -- did you  
10 e-serve it?

11          UNIDENTIFIED SPEAKER: Yeah, we e-served it.

12          THE COURT: Okay. Thank you so much. I appreciate it.

13          THE CLERK: Here's the trial brief, Your Honor, regarding the  
14 insurance information.

15          THE COURT: It's supposed to be -- okay. If that's -- they got  
16 the opposition this morning and so this is yours.

17          Okay. Perfect. I appreciate it. Thanks so much.

18          THE CLERK: Off the record, Judge?

19          THE COURT: We can go off the record. Thank you.

20                 [Recess at 3:13 p.m., recommencing at 3:34 p.m.]

21                 [Outside the presence of the jury]

22          THE COURT: So, we're back on the record. The presence --

23          THE CLERK: On the record.

24          THE COURT: On the record, outside the presence of the jury.  
25 Thank you so much.

1           Counsel for defense is handing me your proposed order  
2 regarding the Court's prior hearing on Plaintiffs' motion for Rule 37  
3 sanctions. I'll take a look at that since I already got Plaintiffs' proposed  
4 order, confirming 2:00 p.m. is Dr. Hurwitz's audio-visual request; is that  
5 correct?

6           COUNSEL: Yes, Your Honor.

7           THE COURT: Okay. Because that has to be -- remember, a  
8 specific time just has to be coordinated with IT and so that request has to  
9 be done at a particular time, so our wonderful court recorder is going to  
10 be taking care of that, although -- anyway, she's taking care of that.

11           Okay. Here comes the jury.

12           And are you going to need a handheld microphone, Counsel;  
13 is that what you were about to say?

14           MR. HAND: I will at this time, yes.

15           THE COURT: So, we need handheld mics right  
16 there -- Madam Court Recorder is one step ahead.

17           Okay. So, just remember, you can't both talk at the same  
18 time and remember, if counsel needs to move in order to get a better  
19 view, feel free to do so, just probably Plaintiffs' counsel probably doesn't  
20 want you at their table, but anywhere else. So, and, obviously, the jury  
21 box --

22           MR. DOYLE: I'm fine, Your Honor.

23           THE COURT: -- is off limits, too, but other than that, feel  
24 free. Okay. Thank you so much.

25           THE MARSHAL: All rise for the jury.

1 [Jury in at 3:35 p.m.]

2 [Within the presence of the jury]

3 THE MARSHAL: All jurors are accounted for.

4 Please be seated.

5 THE COURT: I do appreciate it.

6 Welcome back, ladies and gentlemen. As you recall, before  
7 the break, we were in the midst of the witness' direct examination.

8 Counsel, feel free to continue.

9 MR. HAND: Thank you, Your Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. HAND:

12 Q Ms. Cook, did you do a review of --

13 THE COURT: Is this jack on? It was just sounding a little soft,  
14 I'm not sure if it went back on after the break or not or maybe it needs  
15 new batteries. Is it back on?

16 THE COURT RECORDER: It lights up with green.

17 MR. DOYLE: There's one here.

18 THE COURT: Just one second.

19 We have to make sure -- if he's using --

20 THE COURT RECORDER: It's on.

21 THE COURT: I appreciate it.

22 MR. HAND: Okay. It's on.

23 THE COURT: It is? Okay.

24 THE COURT RECORDER: It's fine.

25 THE COURT: If you're potentially using the handheld, we got

1 to make sure at least a B [sic] mic.

2 Go ahead, Counsel. Feel free. Thank you.

3 MR. HAND: Thank you.

4 BY MR. HAND:

5 Q Ms. Cook, did you do a review of the past medical bills of  
6 Titina Farris?

7 A Yes, I did.

8 Q Okay. Can you tell us what bills you reviewed.

9 A Certainly. I reviewed the bills from St. Rose Dominican San  
10 Martine and also St. Rose Dominican Siena; Dr. Barry Rives' charges for  
11 surgery; Dr. Hamilton's medical bills; the bill from CareMeridian, the  
12 rehabilitation hospital; Dr. Bess Chang, the neurologist; and also physical  
13 therapy at Desert Valley Therapy.

14 Q And did you also review the medical records in conjunction  
15 with those bills?

16 A Yes.

17 Q And tell us when you do a -- did you do what's called a  
18 "medical bill review"?

19 A Yes. I looked at the medical records, I looked at the charges  
20 and compared them.

21 Q Okay. And what source did you use to look at these charges?

22 A So, just as I did for the future medical costs, for every  
23 physician charge and physical therapy, there's a five-digit code and I  
24 used the medical fees in the U.S. to compare for seventy-fifth percentile.

25 And for the hospitalizations, I had to read the medical

1 records and determine the code for it. There's about a thousand codes  
2 that we group together -- diagnoses -- and so for the two  
3 hospitalizations, there were separate codes and to get the usual and  
4 reasonable customary charge for that code in Las Vegas, I subscribe to  
5 the American Hospital Directory and they receive bills and then post  
6 average costs for those -- average charges for those types of  
7 hospitalizations, here in Vegas.

8 Q Okay. Did you make a determination whether the St. Rose  
9 Dominican San Martine bill was usual and customary for the Las Vegas  
10 medical community?

11 A The St. Rose Dominican San Martine bill was a little bit high.  
12 Other bills were a little bit low. When I added all the charges together,  
13 they were all reasonable for the total charges for the research.

14 Q Okay. Did you have to make any adjustments to what you  
15 thought was the -- in your opinion -- was a reasonable and customary  
16 charge?

17 A Yeah. I wasn't asked to total that. Well, I did. I got the total  
18 reasonable charges and added them all together and they were a little bit  
19 more than the actual charges.

20 Q Okay. So, the bills for Dr. Hamilton, were those a usual,  
21 reasonable, and customary medical charge for the Las Vegas medical  
22 community?

23 A Yes, they were below the usual.

24 Q The medical bills for CareMeridian, was that the usual,  
25 reasonable, and customary charge for the Las Vegas medical

1 community?

2 A Yeah, it was below the usual and average.

3 Q Dr. Chang's bill, was that usable -- usual, reasonable, and  
4 customary for the Las Vegas medical community?

5 A They were a bit low.

6 Q And the Desert Valley, the physical therapy, was that  
7 usable -- usual, reasonable, and customary for the Las Vegas medical  
8 community?

9 A It was a bit low.

10 Q And the St. Rose Dominican Siena bill, were those bills  
11 usable -- usual, reasonable, and customary for the Las Vegas medical  
12 community?

13 A It was a bit low.

14 MR. HAND: Your Honor, I ask that Ms. Cook be able to  
15 approach the easel.

16 BY MR. HAND:

17 Q And I'm going to ask you to, based on your research and  
18 your review of the bills and medical records, to just write the figures for  
19 each past hospitalization and medical bill, the amount, if you could.

20 A Certainly.

21 [Witness approaches easel]

22 MR. HAND: I have a Magic Marker if you'd like?

23 THE COURT: There's some there and hopefully  
24 [indiscernible].

25 THE WITNESS: There's a black one here. I'll try it. Oh, it's a



1 little funny writing on this board.

2 THE COURT: We need to make sure that the microphone is  
3 close enough to you that we can hear you when you're speaking.

4 THE WITNESS: Oh.

5 THE COURT: Thanks so much.

6 Make sure the microphone is on so that we can get a clear  
7 record.

8 THE WITNESS: It is on. I was just commenting it's a little  
9 funny to write on here.

10 So, St. Rose Martine, the bill was \$908,033.12.

11 Surgeon charges were \$3,814.

12 Dr. Hamilton's charges, which included surgery and then  
13 aftercare in the clinic -- \$12,801.

14 My writing is smaller and smaller -- I'm sorry.

15 CareMeridian, the rehab hospital, the charges were  
16 \$28,747.63.

17 Dr. Chang, the neurologist -- \$1,018, even.

18 And then physical therapy, Desert Valley Therapy --  
19 \$4,473.15.

20 And the last one is St. Rose Sienna -- this is for the reversal  
21 of the colostomy -- \$104,120.04.

22 Do you want me to write the total?

23 BY MR. HAND:

24 Q Yes, if you could.

25 A The total is \$1,063,006.94.

1 Q Okay. Ms. Cook, I'd ask you to flip that page -- that's for past  
2 medical bills --

3 A Yes, it is.

4 Q -- from July 15 -- from 2015.

5 I'm going to ask you just briefly for the life care plan, same  
6 thing. Take a second, just --

7 A Okay.

8 Q -- summarize --

9 A Maybe I can write a little better this time.

10 Q I have another Magic Marker if that would work better.

11 A It's that the -- it moves.

12 Q So, medical care.

13 A Medical care -- this is all about doctor care over her  
14 lifetime -- \$98,503.98.

15 Allied Care, which is therapy -- \$1,112,088.31.

16 Complications -- uh-uh -- here we go -- which is really the ER  
17 visits -- \$31,362.20.

18 I'm sorry, I may have picked up the wrong piece of paper.

19 Diagnostics, which is radiology, x-rays, and MRIs --  
20 \$23,322.20.

21 Procedures, which is the trigger point injections, shoulder  
22 surgery, and carpal tunnel surgery -- \$77,975.10.

23 Home care, which is the caregiver in the home, plus some  
24 housekeeping and a case manager, the lifetime cost is \$2,672,685.13.

25 Equipment -- wheelchairs and shower supplies --

1 \$114,799.71.

2 And then the last one is the home modifications to widen  
3 doors and provide ramps -- \$81,080.

4 And then the total?

5 Q Yes, if you could total it for us.

6 A The total is \$4,211,816.63.

7 Q Thank you.

8 MR. HAND: I pass the witness.

9 Thank you.

10 THE COURT: Okay. At this juncture with a  
11 cross-examination, defense counsel?

12 CROSS-EXAMINATION

13 BY MR. DOYLE:

14 Q Now, Ms. Cook, you were hired as an expert witness in this  
15 case to prepare a life care plan, correct or price a life care plan?

16 A Yes. Basically, I was asked to create life care plan and then  
17 Dr. Barchuk was able to identify the future needs and then I did the  
18 costing for that.

19 Q And you did this past medical bill review, as well, correct?

20 A Yes.

21 Q And is it true you have not provided any patient care as a  
22 registered nurse since 2011?

23 A Yes, over 30 years of bedside care to patients, but I've been  
24 not doing bedside care since 2011.

25 Q Since 2011 you have been full-time work as an expert

1 witness in personal injury cases?

2 A I would say part time for most of it as I slowly got into it.

3 Q Currently full time?

4 A Currently.

5 Q And you charge \$375 an hour to review materials?

6 A Yes.

7 Q Four hundred and fifty dollars an hour for research -- oh,  
8 \$450 an hour if it's a rush?

9 A Yes.

10 Q Six hundred and fifty dollars an hour for a deposition?

11 A Correct.

12 Q And I think you told us you've given over 60 depositions over  
13 the years?

14 A Yes.

15 Q And then in terms of your work in this case, as you charged  
16 \$13,950 to price the life care plan, true?

17 A No, I did more than that.

18 I reviewed the medical records and summarized them. I  
19 interviewed the Farrises in their home. I communicated with  
20 Dr. Barchuk, created tables, and then did the pricing.

21 Q Okay. And it cost \$13,950 for you to do that?

22 A Yes.

23 Q And then this medical bill summary that you prepared, that  
24 cost \$4,211.25, correct?

25 A Correct.

1           Q    And then after that, you billed time to prepare for your  
2 deposition, the deposition, et cetera, correct?

3           A    Correct.

4           Q    And you also billed, I think, about four hours of time for  
5 reviewing various videos?

6           A    Yes, quite likely.

7           Q    And I think you told us at your deposition that last year you  
8 were hired in about 150 new cases; is that correct?

9           A    Yes.

10          Q    Now, when you're determining past medical expenses or  
11 future medical expenses or expenses of that sort, you have to look at the  
12 usual, reasonable, and customary charges, true?

13          A    Correct.

14          Q    And for purposes of today, I'm going to say "URC," okay?

15          A    Certainly.

16          Q    All right. And so, the U in URC -- usual -- that is what is usual  
17 in the community, correct?

18          A    It could be interpreted that way. In life care planning, we use  
19 the phrase "usual, reasonable, and customary" to reflect what is the  
20 average charge or the normal charge or the customary charge in the  
21 community.

22          Q    Have you in depositions, as an expert witness, indicated that  
23 usual means what is usual in the community?

24          A    I'm sometimes pressed to define each word like you were  
25 asking, and, you know, as general, we use the phrase, but, you know,

1 usual would be what's usual --

2 Q Okay.

3 A -- reasonable would be a reasonable amount --

4 Q All right. So, usual is what is usual in the community,  
5 correct?

6 A Yes.

7 Q And reasonable is the amount the community would  
8 consider reasonable for the most part for medical fees, correct?

9 A I guess so.

10 Q Well, that's a definition you have agreed to in the past,  
11 correct?

12 A I suppose if I'm pressed, but like I say, we usually don't break  
13 apart the words.

14 Q Okay. But bear with me, all right.

15 A Sure. Okay.

16 Q But you've agreed to that definition of reasonable in the past,  
17 correct?

18 A Perhaps.

19 Q Okay. And then in terms of the customary, now, you've  
20 provided us with a -- you've provided us in the past, as well as I think in  
21 this case, a definition of customary is the amount paid for medical  
22 services in a geographic area based on what providers in the area  
23 usually charge for the same or similar services, correct?

24 A That's one definition. I don't know what the paid amount is.  
25 I can only research the charges.

1           Q     And you've also indicated that the URC amount sometimes is  
2 used to determine the allowed amount, correct?

3           A     That's one definition, yes.

4           Q     All right. Well, you actually provided a definition of URC in  
5 your two reports, correct -- each one has a Footnote Number 1?

6           A     Yes, I think so.

7           Q     And what you define URC, putting all of those words  
8 together, is the amount paid for a medical service in a geographic area  
9 based on what providers in the area usually charge for the same or  
10 similar medical service. The URC amount sometimes is used to  
11 determine the allowed amount, correct?

12           Those are words from your two reports?

13           A     Yes, and it's a quote from a government source.

14           Q     So, when you're looking at this, you are looking at the  
15 amounts paid for the care, according to this deposition [sic] -- definition,  
16 right?

17           A     That's not what I'm saying that I'm doing. I'm looking at  
18 what would be a reasonable charge.

19           Q     Well, you're looking for a usual, reasonable, and customary  
20 charge, correct?

21           A     And the word is "charge" is the main point there.

22           Q     All right. But you provided -- I don't want to belabor the  
23 point, but you provided us with a definition in your reports, which I read  
24 a moment ago, true?

25           A     Yes. And it --

1 Q Okay.

2 A -- may not have been the best quote.

3 Q Well, I read it verbatim, didn't I?

4 A Oh, no, definitely did. I'm just saying that perhaps it's not  
5 the best quote, because usual, reasonable, and customary in life care  
6 planning and analysis is what are the usual charges.

7 I can't tell what was paid. I don't know what's going to be  
8 paid. I can only tell what the usual charges are.

9 MR. DOYLE: Okay. And, Your Honor, can we approach for a  
10 moment on a topic before?

11 THE COURT: Of course you may.

12 Madam Court Recorder, can you turn on the white noise.

13 [Sidebar at 3:55 p.m., ending at 3:56 p.m., not transcribed]

14 THE COURT: Feel free -- since there's not an objection  
15 pending, feel free to move forward, Counsel.

16 Thank you so much.

17 BY MR. DOYLE:

18 Q Have you ever been employed as a medical biller?

19 A No.

20 Q I think you told us earlier as part of your review of this case,  
21 you were provided with medical records, correct?

22 A Correct.

23 Q You were provided with medical records that you reviewed  
24 and summarized, correct?

25 A Correct.



1           Q    You were not provided any medical records for any of her  
2 care prior to July 3, 2015, correct?

3           A    Correct.

4           Q    Now, when you prepared your medical bill cost summary,  
5 you included charges by Dr. Chaney, correct?

6           A    Yes.

7           Q    I didn't hear Dr. Chaney mentioned today in terms of medical  
8 records that you reviewed subsequent to July 3rd.

9           Do I remember correctly, you didn't mention that?

10          A    I'm sorry, what are you asking?

11          Q    At the time you prepared your report, you were provided  
12 with medical records from Dr. Chaney, correct?

13          A    Chaney?

14          Q    Chaney.

15          A    The family doctor. Sorry, I thought you maybe said  
16 Dr. Chang -- I'm sorry.

17          Q    You were provided with records from Dr. Chaney, correct?

18          A    Yes.

19          Q    And these records were for care after July 3rd, 2015, correct?

20          A    Correct.

21          Q    And when you went through the list of records today that  
22 you were provided, you did not mention Dr. Chaney, true?

23          A    I don't know if I went through the list of records I was  
24 provided, but I went through the list of the bills that we're presenting  
25 today.

1 Q Okay. But you prepared a report that included Dr. Chaney's  
2 bills, but I don't see Dr. Chaney on the list, correct?

3 A Correct.

4 Q So, for some reason, you have deleted the reference to  
5 Dr. Chaney's bills that were in your report earlier, correct?

6 A Yes.

7 Q Did you delete that because you had been mistaken in  
8 including her care and bills?

9 A No, Mr. Hand asked me not to present those bills.

10 Q Did Mr. Hand explain to you why he didn't want you to  
11 present those bills?

12 A No.

13 Q Did you ask? Were you curious?

14 A He said, We're just not going to present them.

15 Q Did -- was there any discussion about whether there was  
16 information in Dr. Chaney's medical records at that you had reviewed  
17 and charges you had analyzed that were not helpful to the Farrises'  
18 case?

19 A No, I don't know anything of that.

20 Q Nothing about that was shared with you?

21 A No.

22 Q You were just told to drop it?

23 A Yes.

24 Q Would you agree with me that when you are preparing a life  
25 care plan, it's important to consider whether someone has preexisting

1 medical conditions?

2 A Yes.

3 Q And in this case, you were provided with no records, prior to  
4 July 3, 2015, that would tell you what her preexisting medical conditions  
5 were. Fair statement?

6 A I didn't have any before that date, but regularly through the  
7 records, it refers to her preexisting conditions.

8 Q But, again, you didn't actually have records for her  
9 preexisting conditions?

10 A Correct.

11 Q Would you agree with this statement that when looking at  
12 preexisting medical conditions while preparing the life care plan, if  
13 things were preexisting and not worsened by the current injury, then  
14 shouldn't be included in the plan? You would agree with that?

15 A Yes, basically -- uh-huh.

16 Q Now -- excuse me -- the interview that you with Mr.  
17 and Mrs. Farris, that was at their home, correct?

18 A Yes.

19 Q That was an interview on March 22, 2018, correct?

20 A Correct.

21 Q It lasted one and one-half hours, correct?

22 A Correct.

23 Q And you documented the information you found pertinent in  
24 that interview in your report for the life care plan?

25 A Correct.

1 Q And Mr. and Mrs. Farris live in a single-story home --

2 A Yes.

3 Q -- one step from the garage to the house, correct?

4 A Correct.

5 Q And when you interviewed Mrs. Farris, she indicated to you  
6 that since July of 2015, she had been going to a radio station and doing a  
7 radio show of some sort, correct?

8 MR. HAND: Objection, Your Honor.

9 THE COURT: Just -- what's the basis of the objection,  
10 Counsel?

11 MR. HAND: Can we approach?

12 THE COURT: I need an evidentiary basis, Counsel.

13 MR. HAND: No, I -- for what we discussed previously, but I'll  
14 withdraw it.

15 THE COURT: So, is there an objection pending, yes or no?

16 MR. HAND: No.

17 THE COURT: Okay. Go ahead.

18 BY MR. DOYLE:

19 Q Ms. Cook, looking at the bottom of page 11 of 60 of your  
20 report, I'm not interested in what work she is doing, but, rather, when  
21 you interviewed her, you indicated she was doing current work, correct?

22 A She was -- yes -- having guest spots at a local radio station.

23 Q Okay. And that is something that she's been -- that she's  
24 doing currently, correct?

25 A I don't know if she still is, but she was in 2018.

1           Q     Okay. And since you interviewed her and Mr. Farris in  
2 March of 2018, have you followed up with them to find out if there's any  
3 new or current information?

4           A     No, I saw her briefly in the hallway and said hi -- that's all.

5           Q     Now, you documented her health problems prior to July of  
6 2015, correct?

7           A     Correct.

8           Q     And that's on page 12 of your report, correct?

9           A     Yes.

10          Q     Under the heading of previous health problems, correct?

11          A     Correct.

12          Q     Now, based upon what Mrs. Farris told you, she had a  
13 history of diabetes type 2, correct?

14          A     Yes.

15          Q     And occasional pollen allergies for which she takes Claritin  
16 as needed, correct?

17          A     Correct.

18          Q     She did not share with you any other previous health  
19 problems, assuming there are such.

20                   Fair statement?

21          A     Yeah, I don't think we dwelled on that.

22          Q     Yeah, but that's important for you when preparing a life care  
23 plan to know what a person's previous health problems are so that those  
24 are not incorporated into the life care plan, correct?

25          A     Correct.

1 Q So, this is important information to you that you need to get  
2 from someone in an interview like Mrs. Farris?

3 A Yes.

4 Q And so, when inquired of her she told you about the diabetes  
5 and pollen allergies, correct?

6 A Correct.

7 Q Nothing else, correct, because if she had, you would have  
8 put it in your report?

9 A I suppose.

10 Q Did she share with you anything about her history of  
11 diabetes and whether it was uncontrolled or not?

12 A No.

13 Q Did she share with you any information about her diabetes  
14 and whether it was -- whether there were any complications associated  
15 with her diabetes, prior to July 2015?

16 A No.

17 Q I assume as a nurse you're familiar with the term "diabetic  
18 neuropathy"?

19 A Yes.

20 Q When preparing your life care plan, did you have any  
21 information about whether Mrs. Farris did or did not have a diabetic  
22 personal neuropathy prior to July of 2015?

23 A Yes, she had some.

24 Q Okay. And you saw that in subsequent records?

25 A Yes.

1           Q     So, when you obtained her previous health problems, she  
2 did not share with you her history of pain and pain medications prior to  
3 July 2015, fair?

4           A     Yeah, correct.

5           Q     She didn't share with you her history of hypertension and  
6 medications to treat her hypertension?

7           A     I think I have it somewhere else that she has hypertension,  
8 but I did know that she had hypertension.

9           Q     Okay. But in terms of her sharing with you her history, she  
10 did not share that with you, true?

11          A     Well, I don't recall. If it was just something I happened to not  
12 write down, but I was aware that she had high blood pressure.

13          Q     Okay. Well, then, on page 12 of 60, you also have a heading  
14 that says subsequent health problems, correct?

15          A     Yes.

16          Q     And she told you that one of her subsequent health  
17 problems, in other words, a health problem following July 2015, was  
18 pain in her back, true?

19          A     Yes, she has some back pain.

20          Q     Did she tell you she had back pain before July of 2015  
21 requiring pain medications?

22          A     Yeah, I saw that in the medical records.

23          Q     Something that she didn't share with you, though, correct?

24          A     I'm sure -- we discussed a lot of things, you know, not  
25 omitting things to hide anything -- it's well in their summary there that

1 she had some low-back pain.

2 Q Well, when you prior a summary like this, you understand  
3 other people are going to be looking at it, correct?

4 A Right.

5 Q Other people are going to rely on it, correct?

6 A Correct.

7 Q You want to be as accurate as possible so if people have to  
8 look at it and rely on it aren't misled or misinformed in some form or  
9 fashion, true?

10 A Sure, uh-huh.

11 Q On page 13 of 60, she told you that a physical therapist had  
12 set up for her a home exercise program with equipment, correct?

13 A Yes.

14 Q And Mrs. Farris, during this interview, she told you that she  
15 can walk up to two hours in a day with a wheeled walker, but this is  
16 variable, true?

17 A Yes.

18 And I probably should explain that -- I don't think I described  
19 it very well.

20 Q But that's what you put in the report, correct?

21 A Right. But I think I could elaborate on that a bit. She didn't  
22 need to have --

23 Q Okay. But perhaps counsel can ask that.

24 A Okay. Sorry.

25 Q Okay. Thank you.



1 Now, you asked her about the AFO or leg braces, correct?

2 A Yes.

3 Q And she told you she was no longer wearing them because  
4 they didn't fit well.

5 A Right.

6 Q And she told you they -- she couldn't afford to replace them,  
7 correct?

8 A Correct.

9 Q And each one cost what, again -- was it \$62.44?

10 A That was my research.

11 Q You have a section on page 15 called additional notes,  
12 correct?

13 A Yes.

14 Q And here you documented information you obtained from  
15 both Mr. and Mrs. Farris, correct?

16 A Yes.

17 Q Here, you documented that Mrs. Farris stated that she feels  
18 she can care for herself.

19 Did I read that correctly?

20 A Correct.

21 Q Then on page 17 of your report, you indicated she's  
22 developed a chronic musculoskeletal myofascial pain following the  
23 surgery in July of 2015, correct?

24 A Yeah, that's in the medical records.

25 Q And in your deposition you shared with us that it seemed

1 reasonable that Mrs. Farris was having pain before July of 2015 because  
2 she had the diabetic neuropathy, correct?

3 A Yes.

4 Q And diabetic neuropathy does cause pain, correct?

5 A Yes.

6 Q And it causes sensory changes in the legs, correct?

7 A Yes.

8 Q A diabetic neuropathy, in your experience, can also affect the  
9 muscles in the --

10 MR. HAND: Objection.

11 BY MR. DOYLE:

12 Q -- lower extremities, correct?

13 MR. HAND: Objection. Foundation.

14 THE COURT: The Court is --

15 MR. HAND: He's talking in general terms.

16 THE COURT: The Court is going to sustain the objection  
17 based on the designation of this witness.

18 BY MR. DOYLE:

19 Q Do you have employees?

20 A Yes.

21 Q These two reports, did you prepare them 100 percent by  
22 yourself or did others in your office prepare parts of these reports?

23 A My staff worked under my direct supervision and assisted  
24 me with think.

25 Q How many staff do you have?

1           A     Well, I have a nurse and a cost researcher and someone who  
2 helps manage the records; they're all part-time.

3           Q     So, when you were sharing with us earlier costs for different  
4 items, is that something your cost researcher looked into and then you  
5 incorporated that data into the life care plan?

6           A     Yes.

7           Q     So, it's not data that you, yourself, researched and  
8 determined, but rather, somebody in your office did the work, told you  
9 what they found, and then you put it in the report?

10          A     Not exactly.

11                Several of the things required my own research that we don't  
12 do regularly. I have taught and set the standards for how we research  
13 everything and then I check it.

14          Q     Okay. But I just want to make sure that it's clear when -- I  
15 mean, if you were to say that I did this or I did that and I researched this  
16 and this is what that costs, you're not necessarily referring to you,  
17 personally, true?

18          A     Well, I'm not sure. I mean, we could look at each part and  
19 talk about it, but, I mean, generally, I write the report. I sign it. The  
20 opinions are mine.

21          Q     Now, it's your opinion that this life care plan that has been  
22 prepared only addresses the foot drop and its sequelae, correct?

23          A     Well, the opinions of what are included are really  
24 Dr. Barchuk's opinions and it seems to be generally related to the foot  
25 drop, which is the biggest problem and then, you know, how that affects

1 her life.

2 Q Well, but you shared with us earlier that as a nurse you've  
3 treated lots of patients with foot drop.

4 Are you saying you incorporated that knowledge and experience in  
5 this case or you're relying 100 percent on Dr. Barchuk?

6 A I think that Dr. Barchuk's recommendations were reasonable,  
7 based on my knowledge, experience, and education, but, you know, I'm  
8 not a physician, so I couldn't say how many times she needs to see a  
9 physician or what surgery she needs, but they seem reasonable.

10 Q But, as far as you are concerned, it is your testimony and  
11 opinion in this case that the life care plan only addresses the foot drop  
12 and the problems associated with the foot drop, correct?

13 A I would say that the life care plan addresses the things that  
14 are a consequence of her prolonged mobilization hospitalization in 2015  
15 and the problems that have resulted from it.

16 Q So, isn't that what I just said?

17 A I'm not sure. You could have tricked me.

18 BY MR. DOYLE:

19 Q Okay. Let me ask it again.

20 Is it your opinion that the life care plan only addresses the  
21 foot drop and any problems associated with the foot drop?

22 A Well, I think so.

23 Q So, it's your opinion that the life care plan does not address  
24 or cover any of her other unrelated medical problems. Fair statement?

25 A Things that are totally unrelated.

1                   She has some problems that were, perhaps, worsened  
2 because of the difficulty she has because of her foot drop.

3           Q     Okay. So, in the life care plan, what you're telling me is it's  
4 looking at her baseline as of July 2015 and it's looking at what is new,  
5 related to the foot drop, as well as exacerbation of any underlying  
6 problems?

7           A     I guess so.

8           Q     Okay. Is that your opinion or would you be relying on  
9 Dr. Barchuk for that?

10          A     I'm really relying on Dr. Barchuk to decide what is related  
11 and what isn't, but it seems reasonable to me.

12          Q     Well, but if you're relying on him, do you even need to make  
13 your own assessment whether something is reasonable or  
14 unreasonable?

15          A     If I saw something that seemed out of place; for instance, if  
16 he recommended diabetic medication, I would point out that that wasn't  
17 related, and we wouldn't include it in the report.

18          Q     Okay. Now, when you did your medical bill review, I wanted  
19 to ask you about the charges from St. Rose Siena, which you testified  
20 about today.

21               And you indicated, and I think you indicated today -- I can't read  
22 that far -- that in your opinion, the recoverable charge for St. Rose Siena,  
23 is that the \$104,128?

24               MR. HAND: My objection.

25               THE COURT: Basis?

1 MR. HAND: Could we approach, Judge? I don't know how to  
2 say it.

3 THE COURT: Okay. Madam Court Recorder, could you turn  
4 on the white noise.

5 [Sidebar at 4:15 p.m., ending at 4:16 p.m., not transcribed]

6 THE COURT: Okay. Counsel, is that being withdrawn and  
7 rephrased?

8 MR. DOYLE: Yeah, I'm just going to rephrase.

9 THE COURT: Okay. No worries. Okay. So there's --

10 MR. DOYLE: So --

11 THE COURT: -- actually going to be no ruling from the Court.  
12 I appreciate it.

13 BY MR. DOYLE:

14 Q So Ms. Cook, when you determined the usual, reasonable,  
15 and customary charge for the St. Rose Siena bill, and put down a  
16 number today, that number was \$104,120.04, correct?

17 A Correct.

18 Q In your report, however, you had a different number for the  
19 URC, correct?

20 A Yes. These are the charges that are reasonable.

21 Q But my question was different. Did you have a different  
22 number in your report for the URC?

23 A Yes.

24 Q And in your report, when you calculated the URC for Siena,  
25 instead of \$104,120 and change, you came up with \$338,137, correct?

1 A Yes.

2 Q So when -- and then in this report, which you indicated  
3 people will review and reply upon, you indicated the allowable charge  
4 would be that same number, \$338,136, correct.

5 A That would be the researched cost.

6 Q Okay, but in terms of preparing your report, what you were  
7 telling people in this report is even though the charge was \$104,000 and  
8 change, what you thought should be usual, reasonable, and customary  
9 and allowable, was \$338,000 and change, correct?

10 A Yes.

11 Q Far more than what Mr. and Mr. Farris were billed for that  
12 hospitalization, correct?

13 A Correct.

14 Q Far more than they would ever owe or have to pay for that  
15 hospital bill, correct?

16 A Correct. The charge was lower.

17 Q Now, when you were talking about the home care and all of  
18 that, the price that you included is for an agency hire, correct?

19 A Correct.

20 Q And so with an agency hire, then someone pays the agency  
21 X dollars and the caregiver gets something less than X?

22 A Correct. The --

23 Q And there is another option called direct hire, correct?

24 A Correct.

25 Q That requires some ancillary expenses not associated with an

1 agency hired, correct?

2 A Correct.

3 Q And would you agree or disagree that one of the benefits of  
4 direct hire is that family members can be incorporated in the care of  
5 someone like Mrs. Farris?

6 A I -- I don't know. I suppose that could be an advantage.

7 Q But you never used direct hire option in your life care plans,  
8 fair statement?

9 A I don't for Plaintiff or Defense work. I always use agency  
10 prices because there's a journal article that I often refer to that shows the  
11 difference between hiring direct and hiring agency.

12 Q Thank you.

13 A Oh, sorry.

14 Q That's all right. I'm trying to -- I'm looking for the number --  
15 oh, sorry.

16 A I didn't write it very large. I'm sorry.

17 THE COURT: Counsel, I can't have you speaking if you're not  
18 near a microphone. You're more than welcome to be over there, but we  
19 either need to get you a pocket microphone or something if you're going  
20 to talk. Got one? Thank you so much.

21 BY MR. DOYLE:

22 Q And I'm sorry to jump around. You put down the usual,  
23 reasonable, and customary or allowable charge for St. Rose San Martin  
24 was -- tell me what that number is. It's a little --

25 A Yeah, this was the charge of \$908,033.12.



1 Q When you prepared your report, did you have a different  
2 number for the URC and allowable?

3 A Yes. I researched it and this bill was higher than my research  
4 showed.

5 Q Your research showed that the URC and the allowable for St.  
6 Rose San Martin for the July 5th admission would be \$802,877.66,  
7 correct?

8 A Correct.

9 Q Now, when you looked at this bill for the July 5th, 2015  
10 admission, did you make any effort to back out of the total bill charges  
11 that were incurred during the first day or two?

12 A No, I didn't.

13 Q Did you make any effort to back out of that hospital bill  
14 charges that would've been incurred anyway if there had not been a  
15 complication after surgery?

16 A No.

17 Q When you look at this hospital bill, I assume you saw that  
18 there was care provided to her for her pre-existing medical problems  
19 while she was in the hospital, correct?

20 A Correct.

21 Q Did you make any effort to back those figures out of the total  
22 of the hospital bill?

23 A No, and there's a reason for that. The --

24 Q Thank --

25 A -- code for the hospitalization is based on the main reason

1 that someone is in the hospital, and it takes into account, you know, all  
2 of the care. So this code was 003, being sick and on the mechanical  
3 ventilator for more than 96 hours.

4 Q Okay.

5 A And so whether she had diabetic care or -- it's all included.

6 Q All right. I guess maybe that's a better way to say it. The bill  
7 that you have -- the number that you have provided us includes care  
8 provided to her because of her pre-existing medical problems, plus her  
9 new problems, correct?

10 A Yes.

11 Q And you did not make any effort to back out the charges for  
12 her pre-existing medical problems, fair statement?

13 A No.

14 Q Okay.

15 A The charges are based on the main reason she was in the  
16 hospital, and we don't sort out any specific problems. For instance, you  
17 know, the main code for this --

18 Q Ma'am, I'm sorry to interrupt you.

19 A I'm just trying to help.

20 Q No, no, that's okay. I'm just -- if she was not in the hospital,  
21 she would've required insulin anyway, correct?

22 A Yes.

23 Q When you reviewed the hospital bill, did you go through the  
24 entire bill line by line, looking at the different items that were charged, or  
25 did you just go with the summary total?

1           A     Correct. I looked at the total, which was the \$908,000, but  
2 when I reviewed the entire hospital to determine the one code that's  
3 used for the entire hospitalization, the diagnosis related code, which all  
4 in-patient surgeries or hospitalizations have, then the most appropriate  
5 code included all of the care that she had, and was a lower charge than  
6 what they charged.

7           Q     Okay. But again, you didn't back out, for example, the insulin  
8 that was billed?

9           A     No. In fact, I don't recall it. It's very inexpensive, but the  
10 charges in a hospitalization are not -- although they'll list them in an  
11 itemization, that's not the reflection on how to charge for the entire  
12 hospitalization.

13          Q     All right. So what you did is you didn't go through the  
14 hospital bill line by line and determine whether each line item was usual,  
15 reasonable, and customary. Rather, you looked at the diagnosis, you  
16 applied a code, you looked up that code and some reference work, and  
17 came up with a number, correct?

18          A     Yes.

19          Q     Okay. Thanks.

20                MR. DOYLE: That's all I have.

21                THE COURT: Redirect, counsel?

22                MR. HAND: Yes, thank you.

23                               REDIRECT EXAMINATION

24           BY MR. HAND:

25          Q     Ms. Cook, you were talking about some issue with a

1 wheelchair, a wheel walker, a two-hour time. Can you explain what you  
2 were --

3 A Oh, yes. I'm so sorry that I wrote that that way. Sometimes  
4 you read your report and you wish you had written it another way.  
5 When she's been describing how much time she sits, I believe Dr.  
6 Barchuk may have said that she sits a total of five hours. It doesn't mean  
7 she sits for five hours solid, and when she said that she can walk for  
8 about two hours, she means in a whole day. In a whole day, the whole  
9 added minutes of how long she's been walking could be a maximum of  
10 two hours, not two hours at once.

11 Q You mentioned a term -- two terms -- direct hire and agency  
12 hire. First, can you tell us what direct hire is and what agency hire is?

13 A Sure. Direct hire is when you ask a neighbor or a friend or  
14 someone you've heard about to come and help, say, take care of your  
15 grandmother for a couple hours a day, and you may just pay them cash  
16 or you may, you know, have some kind of arrangement.

17 An agency hire is when you contact a company like Visiting Angels  
18 and ask them to provide the service, and it costs more. Initially, it looks  
19 like it costs more because \$21.50 is not what the individual caregiver is  
20 being paid, but when you do look at doing direct hire for putting in a  
21 lifecare plan, you have to consider that the direct hire may be sick, or  
22 unsuitable, or take vacation time, and the person, you know, will have to  
23 have a whole backup of people, and the agency has all of the  
24 replacement people.

25 You will need to have some kind of accounting to pay for their

1 taxes, FICA and other deductions, workers' compensation, insurance.  
2 And the report that I've relied on and that I use regularly in lifecare  
3 planning, whether I'm working for the Plaintiff attorney or the Defense  
4 attorney shows that it's about the same cost, but it's safer to use an  
5 agency cost because we can easily identify how much it's going to cost  
6 per hour, and they will be able to provide care, as needed, how many  
7 hours.

8 If there's sick calls or if you don't like the caregiver that you've got,  
9 or any other kind of circumstance, so I always like to use the agency hire  
10 price for all the care.

11 Q Thank you.

12 MR. HAND: No further questions.

13 THE COURT: Any recross, counsel?

14 MR. DOYLE: Yeah.

15 RECROSS-EXAMINATION

16 BY MR. DOYLE:

17 Q In terms of the home care that you have outlined here, I  
18 mean, is Mrs. Farris obligated by some law to spend the money as it's  
19 been outlined in the lifecare plan or can she pick or choose some, none,  
20 or all of these?

21 A I don't know. I'm not a lawyer.

22 Q Okay. How many times have you followed a person who has  
23 recovered money pursuant to one of your lifecare plans to see how --

24 THE COURT: Counsel, would you both like to --

25 MR. HAND: Objection.

1 THE COURT: -- approach.

2 Madam Court Recorder, if you'd like to turn on some white  
3 noise. Thank you so very much.

4 [Sidebar at 4:27 p.m., ending at 4:29 p.m., not transcribed]

5 THE COURT: Okay. No worries. Sorry for that interruption.  
6 Okay.

7 Sorry, counsel. I interrupted you partway through.

8 MR. DOYLE: I'll withdraw the question in the --

9 THE COURT: Okay.

10 MR. DOYLE: Thank you.

11 THE COURT: Counsel is withdrawing the question. There's  
12 no reason for the Court to rule at this juncture. And obviously, you know  
13 when a question is withdrawn, the jury disregards a partial question,  
14 right? I see all those affirmative nods. Perfect. Thank you so very much.

15 I'm sorry, counsel. Did you need to move on to your next  
16 question?

17 MR. DOYLE: I don't have any more questions.

18 THE COURT: Okay. So then I go to re-redirect for Plaintiffs'  
19 counsel.

20 MR. HAND: No questions, Judge.

21 THE COURT: And I should have kept you at bench because  
22 we have a couple juror questions. So counsel, would you mind re-  
23 approaching? Thank you so very much.

24 Which means, Madam Court Reporter, can you put on some  
25 white noise? I do appreciate it. Thank you so much.

1 [Sidebar at 4:30 p.m., ending at 4:35 p.m., not transcribed]

2 THE COURT: Okay. So what I do with juror questions, I read  
3 them as is, okay? And a friendly reminder to the jury, remember, there's  
4 certain questions that don't get asked for a variety of different reasons,  
5 including that sometimes, it may be more appropriate for a different  
6 witness and there's other reasons it can't be asked, but don't take any  
7 offense if certain questions don't get asked.

8 Okay, so I read these as is.

9 Are there any services/products in her lifecare plan that  
10 would benefit progressing diabetic symptoms? Which ones?

11 THE WITNESS: So I understand that, did I include any  
12 equipment that she would've needed anyways because of her diabetes  
13 or as her diabetes worsens? Does that sound like I have that?

14 THE COURT: The Court read the question as is, and so you  
15 need to answer the question --

16 THE WITNESS: Yeah, I have to interpret it.

17 THE COURT: -- as is. Thank you.

18 THE WITNESS: I don't think so. Certainly, with diabetics,  
19 they could get worse over time. Sometimes, people have more  
20 imbalances in their blood sugars, may lead to vision problems. You  
21 know, there's all sorts of problems that could happen. I'm relying on Dr.  
22 Dr. Barchuk to say that he thinks that this is just because of the problems  
23 from the surgery and the things that she has, and it seems reasonable to  
24 me. So I would say that not really, and I would rely on Dr. Barchuk to  
25 confirm that.

1 THE COURT: Okay. Next. Many elderly people wouldn't be  
2 able to do many of these therapies (e.g. pool therapy) in their later years.  
3 Why do you calculate costs for their entire life expectancy?

4 THE WITNESS: Again, it's a little bit because Dr. Barchuk  
5 said so. He recommended pool therapy for the rest of her life. I don't  
6 know, I've seen quite a few very old people at the pool sometimes  
7 working out regularly, so I wouldn't rule it out, but again, I would rely on  
8 Dr. Barchuk.

9 THE COURT: Okay. There's another part on this one. Would  
10 many people in their 80s need a wheelchair, scooter, Hoyer lift, etcetera?

11 THE WITNESS: It's hard to say. I don't know -- did you hear  
12 the question? Yeah. I don't know of any statistics on, say, what  
13 percentage of the population ends up in a wheelchair or a Hoyer lift is a  
14 pretty specific thing if you have a stroke or paralysis or different reasons,  
15 but I don't know of any statistics that would say that a certain percentage  
16 would need this equipment anyways, and I would rely on Dr. Barchuk to  
17 confirm that he still thinks it's reasonable.

18 THE COURT: Okay. Questions answered to the satisfaction  
19 of the jurors that asked them? I'm seeing affirmative nods. Since this  
20 was Plaintiffs' witness in their case and chief, Plaintiffs' counsel, do you  
21 have follow-up questions to those juror questions?

22 MR. HAND: No, Judge. Thank you.

23 THE COURT: Okay. So then I go to Defense counsel. Do you  
24 have follow-up questions for those juror questions?

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



1 THE COURT: Okay. There being no follow-up questions to  
2 those jurors' questions, not seeing any further juror questions and the  
3 questions being asked that could be asked, by agreement of the parties,  
4 at this juncture, is this witness excused for all purposes or subject to  
5 recall in some portion of the case, and if so, when?

6 MR. HAND: Plaintiff is excusing her for all purposes.

7 MR. DOYLE: Subject to recall based on our discussion at  
8 sidebar.

9 THE COURT: Okay. Then the Court, with that caveat, is  
10 going to excuse the witness at this juncture, and I wish you -- and please  
11 just watch your step. Thank you so very much.

12 THE WITNESS: Thank you.

13 THE COURT: Okay.

14 MR. HAND: Judge, can we approach?

15 THE COURT: Of course you may.

16 Madam Court Reporter, would you like to turn on some white  
17 noise?

18 [Sidebar at 4:39 p.m., ending at 4:41 p.m., not transcribed]

19 THE COURT: Thank you so very much. Okay. Understand  
20 there's a request to be able -- we were able to move a lot of things. We  
21 start a 9:45. Would that meet everybody's needs tomorrow? 9:45, good  
22 to go. Okay. 9:45 is when we'll start tomorrow, okay? So we'll do that.

23 So ladies and gentlemen, we're going to make more sense if  
24 we take care of something outside your presence rather than you sitting  
25 here listening to white noise, as much as I know how much you like that.

1           So ladies and gentlemen, we're going to wish you a very nice  
2 and relaxing rest of your afternoon and evening, and we'll start again  
3 tomorrow at 9:45.

4           So during this overnight recess, you are admonished not to  
5 talk or converse among yourselves or with anyone else on any subject  
6 connected with the trial. You may not read, watch, or listen to any report  
7 or commentary of the trial, any person connected with the trial by any  
8 medium of information, including without limitation, social media, text,  
9 tweets, newspapers, television, internet, radio. Anything I've not stated  
10 specifically is, of course, also included.

11           Do not visit the scene or the events mentioned during the  
12 trial. Do not undertake any research experimentation or investigation.  
13 Do not do any posting or communications on any social networking sites  
14 or anywhere else. Do not do any independent research, including, but  
15 not limited to internet searches. Do not form or express any opinion on  
16 any subject connected with the trial until the case is fully and finally  
17 submitted to you during the time of jury deliberations.

18           With that, we wish you a nice and relaxing evening, and wish  
19 everyone a nice morning until we see you.

20           THE MARSHAL: All rise for the jury.

21                           [Jury out at 4:43 p.m.]

22                           [Outside the presence of the jury]

23           THE COURT: Okay. One second until I hear the click. We're  
24 going to stay on the record for a few moments, if you don't mind,  
25 Madam Court Reporter and Madam Clerk, because there was an issue at

1 the bench.

2 But before we go to your issue, I need, for Madam Clerk's  
3 sake, this goes back to the -- well, back to the calendar call question.  
4 Back to the calendar call. At that juncture, there was a statement by the  
5 parties at Exhibit 1, which then was Exhibit 1, pages 1 through 613, that  
6 was in Plaintiffs' binder that was provided to the Clerk at that time. It  
7 was a stipulated and admitted exhibit. Since that time, there's been  
8 some other colloquy, so Madam Clerk just needs to know because when  
9 it was referenced earlier, this last week, with regards to another witness,  
10 it was said it was admitted, and then there was another statement.

11 So was it pages 1 through 613, which was the binder that  
12 was presented to Madam Clerk at the time of the calendar call, was a  
13 stipulated and admitted exhibit?

14 MR. JONES: Yes, Your Honor.

15 MR. DOYLE: And as I explained on the first day of trial, I did  
16 not -- and I think we had a discussion about this on the record. I did not  
17 realize that Plaintiffs had added to Exhibit 1, which was supposed to be  
18 just the hospital records, but they had added two pages concerning the  
19 billing records, but we had -- but the Court, as I recall, had indicated that  
20 I had waived any objection to that by stipulating to it at the calendar call.  
21 So --

22 THE COURT: Is it a correct statement the parties stipulated,  
23 at the time of the calendar call, Exhibit 1, pages 1 through 613? That's  
24 the binder that the Clerk received. That is why I'm saying pages 1  
25 through 613 because that's the binder in the format that Madam Clerk --

1 It is 1 through 613; is that correct?

2 THE CLERK: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. JONES: Your Honor --

5 THE COURT: That's the binder that Madam Clerk received.

6 That's the only reason why I'm mentioning these numbers, and just for a  
7 point of clarification. The Court is not revisiting anything. It's just if  
8 there has been any subsequent agreement between the parties because  
9 this case has been somewhat of a moving target with certain things, so I  
10 just need to know, has there been any change from both parties  
11 understanding jointly since the calendar call?

12 MR. JONES: No, Your Honor.

13 THE COURT: A joint understanding.

14 MR. DOYLE: Well, there was the joint  
15 understanding/misunderstanding on my part of the calendar call, but  
16 again, we discussed that, and I understand the Court's ruling based on  
17 our discussion. So my understanding is it is in evidence.

18 THE COURT: Okay. The Court is taking no position.  
19 Whatever is, is. Court neither -- my question is not to say what may or  
20 may not have been said in court. It's just really going back to the  
21 calendar call, so I was trying to be specific. Pages 1 through 613, if those  
22 were stipulated as admitted on that date. That's okay, get your points of  
23 clarification. That got that taken care of. Okay.

24 So you all asked to approach at the end of Ms. -- testimony.

25 So this Court needs to know, you know, if you all have an issue, you

1 need to let me know since I do remind you lots of times, and it's -- not  
2 really sure how else to do it, folks, because if you think there's going to  
3 be an issue about a witness, what common would say, you bring it to the  
4 Court's attention before the witness gets on the stand, even -- anyway,  
5 the Court has specifically directed that you have to do it, but the Court  
6 doesn't need to have to direct that. You have to do it.

7           The rules of professional conduct, protecting your own  
8 clients, all of those things require you to do it, but yet we keep on having  
9 this situation where things are happening in the middle of witnesses  
10 being on the stand. The Court has directed the parties -- and I'm just  
11 generically saying the word "parties". Don't anyone say that that means  
12 I'm talking to everyone. I'm just using the word "parties", okay? That  
13 you must do it before the witnesses get on the stand so the Court can be  
14 fully informed and make its continued well-reasoned decisions.

15           But now, I had again, another issue. So is there or is there  
16 not a difference of opinion about whether or not Mrs. Farris' employer is  
17 subject to an ERISA plan? Is there? Yes or no? Is she subject to an  
18 ERISA plan? Is there a dispute or not?

19           MR. JONES: No dispute as far as I'm concerned, Your  
20 Honor.

21           THE COURT: Okay. Is there a dispute? Is she subject to an  
22 ERISA plan?

23           MR. DOYLE: There is a dispute whether she is subject to a  
24 self-funded ERISA plan, which would trigger federal preemption. A plain  
25 old ERISA plan would not.

1 THE COURT: I will rephrase the question more precisely.

2 Is there any doubt on whether or not there is the preemption  
3 issue in this case? Because no one ever brought it to this Court as an  
4 issue. Either side, regardless of who it is, would've had to have brought  
5 it to this Court's attention if you wished it to be resolved. You can't bring  
6 it to send to go to an area of questioning for any witness unless  
7 somebody brings it to the Court's attention. Either somebody brings it to  
8 the Court's attention to say, the medical malpractice exception applies,  
9 state law applies, or on the flip side, Federal court doesn't take a  
10 position.

11 Who should have brought it to the Court's attention? You  
12 both -- whoever wants to ask the questions has to bring it to the Court's  
13 attention because it's the person who wants to ask the questions who is  
14 saying that they get to ask the questions that they want to ask, and  
15 therefore, needs to bring it to the Court's attention that they have an  
16 opportunity and a right to bring the questions that they wish to bring to  
17 the Court's attention to have the ability to ask those questions.

18 So McCrosky says -- so that Madam Clerk and Madam Court  
19 Recorder, let's do the citation. McCrosky v. Carson Tahoe. McCrosky is  
20 spelled M-C-C-R-O-S-K-Y, versus Carson Tahoe Regional Medical Center,  
21 133 Nev. Adv. Op. 115, 2017 case. The Nevada Supreme Court says  
22 what the Nevada Supreme Court says, and so it makes it clear about the  
23 preemption aspect, when the preemption aspect applies with regards to  
24 the preemption aspect, with regards to the 41A, and when it doesn't.

25 So if anybody is either trying to assert the NRS 41A, the

1 exception to the collateral source rule prohibition, then they need to  
2 bring it to the Court's attention that they're asking for that. Anybody  
3 who is then -- so whoever is trying to bring the issue and ask the  
4 questions needs to bring it to the Court's attention because otherwise,  
5 they potentially are asking impermissible questions. No one has brought  
6 it to the Court's attention, so at this juncture, we are where we are. So  
7 do you all say that there is or is not preemption, self-funded --

8 MR. JONES: There's certainly preemption, Your Honor.

9 THE COURT: And your basis of that is what?

10 MR. JONES: Healthcare plan with MGM. It specifically says  
11 that it's ERISA. It says they have rights for subrogation under ERISA. It  
12 says it right there within the plan. We've outlined it in our brief today,  
13 Your Honor.

14 THE COURT: Which you know where I've been --

15 MR. JONES: I do not --

16 THE COURT: -- because every single second, you all have  
17 either been providing me with briefs --

18 MR. JONES: Of course.

19 THE COURT: -- raising these new issues in the middle of  
20 witnesses, so you can appreciate -- well, you gave it to me by the  
21 deadline.

22 MR. JONES: Of course.

23 THE COURT: That's not an issue getting it by the deadline,  
24 but you can appreciate I haven't had a second to do it because the midst  
25 of all the objections during the trial. Okay. So --

1 MR. JONES: It is --

2 THE COURT: -- that --

3 MR. JONES: -- in there --

4 THE COURT: You're saying that provision -- that plan with  
5 that language has been provided during discovery to Defense counsel; is  
6 that a --

7 MR. JONES: Of course.

8 THE COURT: -- a yes or no?

9 MR. JONES: Yes.

10 THE COURT: Okay. Defense counsel, did you receive a plan  
11 that has language that says it has subrogation rights during discovery?

12 MR. DOYLE: That language is there, but there is no language  
13 in the plan that's it a self-funded plan as we explained in the brief that we  
14 submitted this afternoon. It's not enough to be simply an ERISA plan.  
15 All employer sponsored plans are ERISA plans. The importance is  
16 whether it's self-funded or not, and as we explained in the brief we  
17 submitted this afternoon, we reviewed the policy that was provided to us  
18 and there's nothing in what Plaintiff has given us that has said this is  
19 anything other than your garden variety plan, which is subject to the  
20 waiver of the collateral source rule.

21 THE COURT: What do you mean by your garden variety  
22 plan, counsel?

23 MR. DOYLE: Well, there are -- under Federal law, under  
24 ERISA, there are two types of health plans, generally.

25 THE COURT: Um-hum.



1 MR. DOYLE: One where the employer provides health  
2 insurance to an employee through a health insurance company. The  
3 health insurance company to whom premiums are paid then adjust the  
4 claims and pays the claims. In a self-funded ERISA plan, the employer  
5 sets up --

6 THE COURT: Has a TPA.

7 MR. DOYLE: -- has a TPA that adjust the claims, but the  
8 claims are paid by the employer. They're not paid by a health insurance  
9 company. And under Federal law --

10 THE COURT: But you have the answer to that. You have the  
11 answer to that, don't you?

12 MR. DOYLE: Well --

13 THE COURT: You have it as an CPA, don't you?

14 MR. DOYLE: No.

15 THE COURT: The exhibits on the --

16 MR. DOYLE: All I have is what the Plaintiff gave us.

17 THE COURT: The insurance documents that were taken out  
18 that were provided as Exhibit 12 or 13. I believe it's Court's Exhibit 13.

19 THE CLERK: Oh, okay. Yes.

20 THE COURT: Court's Exhibit 13, I believe.

21 THE CLERK: Here you go.

22 THE COURT: All right. But do you all stipulate when you  
23 want them, too?

24 Okay. Does not -- the very documents that you stipulated to  
25 take out answer your question -- the very documents that you all

1 reviewed that were provided -- okay. As you know, the Court doesn't do  
2 any -- you provided to this Court the documents that you stipulated that  
3 you took out of the exhibit when you went back to the anteroom on the  
4 day of the calendar call back on October 8th, correct?

5 MR. DOYLE: Those are from my client's chart, I believe, if I  
6 recall correctly.

7 THE COURT: Pardon?

8 MR. DOYLE: I believe they are from my client's chart if I  
9 recall correctly.

10 THE COURT: Who's A00022? Whose Bates stamping is that?  
11 Defense?

12 MR. DOYLE: That is my -- yes.

13 THE COURT: So your client, right -- and you can feel free not  
14 to answer this question, but it's going to kind of be a challenge, right?  
15 Your client, in billing his patient, to Tina Farris, through his -- you have  
16 two clients, right? Dr. Rives and Laparoscopic, right? They presumably,  
17 in billing to Tina Farris for the work performed by Dr. Rives, and through  
18 Laparoscopic, whether it was done directly through Dr. Rives or through  
19 Laparoscopic, would have billed to Tina Farris for work performed,  
20 whether it was the prework in 2014 for the hernia related, right, or for the  
21 2015 work, because he testified as such already on the stand. And it's  
22 included in the very billed that you took out. Does that not -- does your  
23 client not have that very record in who he billed and the name of the  
24 entity of who he billed?

25 MR. DOYLE: I have no idea what the Court is saying.

1 THE COURT: Primary insurance name on the very billing  
2 from your own client's record is what I'm saying.

3 MR. DOYLE: And what does it say?

4 THE COURT: You can feel free to approach and take a look at  
5 it. It's the very records you all gave me as the Court's exhibits. The  
6 Court takes no position, but it seems to me that this was already in you  
7 all's own records.

8 MR. DOYLE: I think it says, primary insurance name, UMR,  
9 MGM Resorts. That doesn't tell us whether it's a self-funded insurance  
10 plan.

11 MR. JONES: Your Honor, we'd like to -- this is -- well, this is  
12 Dr. Chaney's record. It's a record we found that has not been, I guess,  
13 fully redacted, but it says something similar.

14 May we approach?

15 THE COURT: Well, I mean, it hasn't been provided. The  
16 Court can't look at it, but folks, it's a real easy question, isn't it?

17 MR. DOYLE: Apparently not.

18 THE COURT: Well, the Court actually knows the answer to  
19 the question, but the Court can't utilize its independent knowledge, okay,  
20 that it gained prior to being on the bench, but it's very easy. You have  
21 the records. You know how things were billed. Your client billed things.  
22 They know they billed it to a health insurance company, right? Or they  
23 know if they billed it to a self-funded plan. There's only certain -- the  
24 Department of Insurance only regulates certain entities here in the State  
25 of Nevada, and they know who they regulate, and they know who they

1 self-funded. It would be --

2 MR. DOYLE: Well, I'll stand on the arguments we made in  
3 the brief we submitted this afternoon.

4 THE COURT: The Court's not taking any position, but it has  
5 the very insurance card. Her very insurance card has this information on  
6 it. That's why this Court is having a challenge.

7 MR. DOYLE: I've looked at all of that, and none of that says  
8 it's self-funded. What I have seen in other cases is a witness is produced  
9 for a deposition or in some other form or fashion who lays the  
10 foundation and provides the information necessary to figure this out, but  
11 that has not occurred in this case.

12 THE COURT: But you're the one that wants to ask the  
13 questions.

14 MR. DOYLE: No, no, no.

15 THE COURT: In order for you to get -- right? In order for you  
16 to be able to ask the questions to say, you've been provided with the  
17 documentation that provides and says it's on its face, and if you don't  
18 believe on its face that it has the preemption aspect and McCrosky  
19 applies, you're the one that wants to ask a witness a question about  
20 insurance, and you want to apply the State law. So then you would need  
21 to show that the Federal preemption doesn't apply, because you're the  
22 one that wants to ask the questions, Counsel.

23 MR. DOYLE: I disagree with you. It's not my burden to bring  
24 that forward to the Court. It's Plaintiffs' burden to make the motion  
25 timely to preclude me from utilizing the State law based on Federal

1 preemption. I am entitled to use the State law until the Plaintiffs  
2 establish that Federal preemption applies.

3 THE COURT: And can --

4 MR. DOYLE: You're flipping the burden.

5 THE COURT: No, I'm not flipping the burden, because at this  
6 point, what you all have told the Court thus far -- the Court hasn't read  
7 the information -- is that you have stipulated, agreed, that the insurance  
8 information was properly precluded from the exhibit binders. That's  
9 what this Court has, which is distinct from other cases, is that you all  
10 stipulated and agreed that it was improper to have the insurance  
11 information in the proposed exhibits, so I have you all's agreement that  
12 is improper. That's where there's a distinction in this case.

13 If you were asserting that right back at the time of the  
14 calendar call, then this Court would have something different from the  
15 information, but I have you both agreeing that the insurance information  
16 was properly taken out, because that was raised in Court, and you both  
17 went to the anteroom, took it out, since you agreed that it was taken out.  
18 Remember? I asked you all if you needed to go to the anteroom to take  
19 care of the issues with regards to your exhibits, and it was raised that  
20 there was an issue with regards -- there was multiple issues.

21 There was the Exhibit 1 issue, and then there was the exhibit  
22 issues for Defendant, but these issues, you all were supposed to resolve  
23 back in the anteroom, no one raised an issue with the Court that there  
24 was any challenge with regards to the insurance documentation could  
25 properly come in, in this case. This Court has to take that as a

1 stipulation, oral stipulation, in open court, as if it were in writing under  
2 EDCR 7.50.

3 That's where I have a distinction in this case. That's the  
4 reason why this Court asked these questions in front -- in advance of  
5 trial, so that we don't have these issues. I don't have an issue where  
6 nobody said anything, and nobody did anything. That's the reason why  
7 the Court goes over these things at the time, right, of the calendar call,  
8 because I make sure, if there's issues, let's get them taken care of so we  
9 don't deal with them at the time of trial.

10 That's where this Court has made a distinction. The Court's  
11 not flipping any burdens. I have both, Plaintiffs' counsel and Defense  
12 counsel, telling this Court, on October 8th, at the calendar call, that you  
13 properly removed all the insurance information from the proposed  
14 exhibits because it was improper to have the insurance information. So  
15 the --

16 MR. DOYLE: No, that was not the intent and that's not what  
17 we did.

18 THE COURT: Okay.

19 MR. DOYLE: The request was made to me to remove it, I  
20 agreed to remove it, but I did not waive any right to -- I did not waive any  
21 of my rights under 42.020.

22 THE COURT: And remember, the Court only knows what you  
23 tell it in open court, and you put in pleadings. If you didn't say that, then  
24 I know what you all said in court, right, and the court has to take what  
25 the officers of the court say in court and that's what this court has to rely

1 on, which is said in court and you put in your pleadings, right? So that's  
2 where --

3 MR. DOYLE: It's one of our affirmative defenses that we did  
4 not waive. It's still an affirmative defense in our answer, 42.020. There  
5 was no waiver of that answer --

6 THE COURT: Okay.

7 MR. DOYLE: -- that in Defense.

8 THE COURT: Once again, the Court's going to have to review  
9 all the pleadings. With regards to this witness, the information that the  
10 Court had at the time that the witness was on, which once again, okay,  
11 there wasn't an objection raised. It was -- you were going to deal with it,  
12 you said you'd deal with it later. You want to deal with it later, perfectly  
13 fine, the Court was going to address it, but I told you all, I can't do it -- if  
14 you have a witness, and there's an issue outstanding, then you've got to  
15 let the Court know, so I can address the issue before the witness comes  
16 on. Can't keep having these things happen and then having a pending  
17 issue.

18 So I guess you've got 1:00 tomorrow. We'll see what  
19 happens at 1:00 tomorrow after the Court has an opportunity to read all  
20 the briefs. The Court has to take the totality of officers of the court's  
21 statement in open court, and take those for what you say, and I can't  
22 read peoples' mind to know what people intend. I can hear what people  
23 say, you know, for the Court, and take them in their plain meaning, and  
24 look at the documents that are provided, and the Court will review  
25 everything and make its worries and determination after I review

1 everything

2 But since we've got a moment, I'm going to tell you my  
3 inclination. We're going to take a moment on the 727. We're going to  
4 get that taken care of, the 727 briefs. I can give you my inclination. I've  
5 had an opportunity to read your briefs. I'm going to give you my  
6 inclination and give you a moment or two to argue if you feel it's  
7 necessary to argue.

8 The Court's inclination is this. The Court's inclination is  
9 EDCR 7.27 is clear on its face. The Court is going to review any  
10 memoranda that were provided to the Court, and it says that they're 727  
11 briefs. Only in accordance with 727 because that's what they're stated  
12 they are, and that's what the Court is going to take them as, 727 briefs.  
13 They are not any affirmative motions requesting any relief because they  
14 can't be. They can't be untimely motions in limine, they can't be  
15 untimely motions for partial summary judgment, so the Court will take  
16 them in the confines of EDCR 7.27.

17 So in light of that, the Court's inclination is that the motion to  
18 strike the 727 briefs would only be denied without prejudice to the extent  
19 that the Court is not going to preclude the briefs in their EDCR 7.27  
20 context. To the extent any of those briefs is asking for an affirmative  
21 relief, which should have been filed as a motion in limine or should have  
22 been filed as a motion in limine or should've been filed as a motion to  
23 strike or should've been filed as an untimely motion for summary  
24 judgment, then of course, the Court cannot take EDC -- something that's  
25 labeled in EDCR 7.27 brief as anything other than what it's labeled,



1 because I presume that that would be a per say Rule 11 violation.

2 If an attorney files something and calls it an EDCR 7.27 brief,  
3 then they know I can only take it in the capacity as an informational  
4 purposes under EDCR 7.27, and it can't be taken as a motion in limine, it  
5 cannot request affirmative relief, it cannot be done as a motion for  
6 summary judgment, and otherwise, it would've been impermissibly  
7 labeled one thing and really being requested to be treated as something  
8 else, and so only in that regard, just procedurally because the Court is  
9 only taking it as a 7.27 is always why, technically, I have to do it as  
10 denied without prejudice. That's the Court's inclination.

11 Counsel, for Plaintiff?

12 MR. JONES: Your Honor, if this Court is going to look at  
13 them as a 7.27, that's fine. I mean, the basis of them is they are a motion  
14 in limine. That's spelled out. Again, Mr. Doyle seems to file whatever he  
15 wants to file, and that's why I'm bringing it up to the Court. If this Court  
16 is going to look at it as a 7.27, I'm fine with that if -- because they  
17 specifically request relief.

18 THE COURT: The only thing this Court can do is what EDR  
19 7.27 allows this Court to do, which is to treat it for the information  
20 purposes, as a trial memoranda or EDCR 7.27.

21 Counsel for Defense, you heard the Court's inclination.  
22 Would you like to be heard further?

23 MR. DOYLE: Not necessary. Thank you.

24 THE COURT: Okay.

25 MR. JONES: Very good. Thank you, Your Honor.

1 THE COURT: The Court has made its ruling and taken care of  
2 that one. Do you all feel that -- I just need an order so -- you can just --  
3 the order, I was just going to say, the only reason why it's denied  
4 without prejudice is because the Court just made it clear that the Court is  
5 only treating those briefs under EDCR 7.27 to the extent that those briefs  
6 are requesting anything that would otherwise be treated as untimely  
7 motions. The Court can't, and that's reading it just as it's requested,  
8 EDCR 7.27. Okay?

9 MR. JONES: Very good.

10 THE COURT: So just procedurally.

11 MR. DOYLE: Thank you.

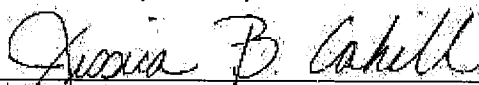
12 THE COURT: Okay. Thank you so very --

13 MR. JONES: Thank you, Your Honor.

14 THE COURT: Thank you so very much. Have a great  
15 evening. We can go off the record.

16 [Proceedings adjourned at 5:06 p.m.]  
17  
18  
19  
20

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