

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 24

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

ATTORNEYS FOR APPELLANTS

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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
<u>TRANSCRIPTS</u>				
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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 DOCUMENTS¹

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

¹ 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
THURSDAY, OCTOBER 24, 2019

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 9**

16 APPEARANCES:

17 For the Plaintiff:

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

19 For the Defendant:

THOMAS J. DOYLE, ESQ.

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

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

Testimony10

WITNESSES FOR THE PLAINTIFF

AMY NELSON

Direct Examination by Mr. Jones 10

Cross-Examination by Mr. Doyle 19

CHRISTINE GARCIA

Direct Examination by Mr. Hand 23

WITNESSES FOR THE DEFENDANT

BRIAN JUELL, M.D.

Direct Examination by Mr. Doyle 35

Cross-Examination by Mr. Jones 107

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>
--------------------------	---------------	-----------------

None		
------	--	--

<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
--------------------------	---------------	-----------------

None		
------	--	--

1 Las Vegas, Nevada, Thursday, October 24, 2019

2

3 [Case called at 10:51 a.m.]

4 THE COURT: On the record?

5 THE COURT RECORDER: On the record.

6 THE COURT: Go on the record, outside the presence of the
7 jury. So Counsel, jury's ready, as you know, so I see somebody standing
8 up. So are we going to just let us know who that witness is going to be
9 on for today, by chance?

10 MR. LEAVITT: Sure. Your Honor, the list of witnesses is Tina
11 Garcia and Amy Nelson. Sorry. Amy Nelson's next, Tina Garcia, then
12 we're going to go back into the case in chief for Defendant's, it's Dr.
13 Juell,. Am I right, Tom?

14 MR. DOYLE: Correct.

15 MR. LEAVITT: Okay. Then it's going to be Dr. Juell. After
16 Dr. -- the Court looks confused. So did I say something --

17 THE COURT: No, the Court's not confused. The Court's
18 just --

19 MR. LEAVITT: I'm sorry. I misread --

20 THE COURT: You seemed to be ambitious and listening to
21 the ambitious schedule that you all have set up.

22 MR. DOYLE: Your Honor, I'd stipulate to that, the ambitious
23 part.

24 MR. LEAVITT: And then it will be Dr. Adornato.

25 THE COURT: Okay. Because -- so Ms. Nelson, Okay. That's

1 your first witness? Okay.

2 MR. LEAVITT: Yes.

3 THE COURT: And she's here and ready to go?

4 MR. JONES: She is. Now, Your Honor, one thing with Dr.
5 Adornato, and that's down the road several hours at least, but we would
6 want to voir dire him outside the presence of the jury because of some
7 specific issues that will be a problem.

8 MR. LEAVITT: If you may, Your Honor, that could be --
9 they've already been addressed at the 267. We expressed this with
10 counsel, I don't know where he's going with him, there's a question as
11 long as he's not offering opinions outside of a rebuttal expert his --

12 THE COURT: Well, he wouldn't be able to do that that would
13 be a per se violation NRCP 16.

14 MR. LEAVITT: Correct.

15 THE COURT: It would be a per se violation of *Fiesta Palms*.
16 I'm sure no one would do any of those per se violations when you all
17 know what the expert reports say, you all know what the rules are, and
18 you all know that the clear sanctions and everything that would occur if
19 somebody did such, so I'm sure no one would do such.

20 MR. LEAVITT: So I did file a trial brief with just the --

21 THE COURT: A trial brief?

22 MR. LEAVITT: Yes.

23 THE COURT: Has anyone provided the Court a courtesy copy
24 of said trial brief?

25 MR. LEAVITT: I do have a courtesy copy of said trial brief.

1 THE COURT: So that would be why the Court was --

2 MR. LEAVITT: Looking at --

3 THE COURT: The Court's not looking at anyone. The Court's
4 says when you say you filed a trial brief; the Court's words would be
5 courtesy copy to the Court. Because it's nice if things get filed -- Right? --
6 but we don't know about --

7 MR. LEAVITT: May I approach?

8 THE COURT: Of course you may.

9 MR. LEAVITT: Sorry.

10 THE COURT: 7.27 is alive and well and only gets utilized for
11 the purposes of compliance with 7.27. So the Court was just handed
12 Plaintiffs' trial brief on rebuttal experts must only be limited to rebuttal
13 opinions, not initial opinions. That's a statement of law, correct
14 statement of law. Okay.

15 MR. LEAVITT: That's it, Your Honor. I don't know if Mr.
16 Doyle's going to do that. I'm not saying he will, or he won't. That is just
17 a support in the event that it does come up.

18 THE COURT: So is the request for voir dire outside the
19 presence, is that what you're asking?

20 MR. LEAVITT: That's what we're asking, so we don't have
21 anything inadvertently going in front of the jury.

22 THE COURT: So what we're going to do, is we're going to
23 address that request, not this particular moment, because you got a
24 couple of other witnesses -- Right? -- they're waiting outside. We're
25 going to give you all a chance to talk among yourselves.

1 Didn't you have a chance the last 20, 25 minutes while you all were
2 sitting, but okay. So you're going to talk among yourselves at the lunch
3 break to see, and right after the lunch break you're going to tell the Court
4 whether there's an outstanding issue that needs to be addressed before
5 Dr. Adornato -- and if I'm mispronouncing it, my apologies, but close
6 enough -- comes on the stand or not. Okay?

7 MR. LEAVITT: Perfect.

8 THE COURT: So when you come back from lunch you will
9 tell me yes or no, Judge, we need to address something --

10 MR. LEAVITT: Very good.

11 THE COURT: -- with regard to Dr. Adornato.
12 Does that meet both parties' needs?

13 MR. DOYLE: Yes.

14 THE COURT: Does that meet Plaintiffs' counsels' needs?

15 MR. LEAVITT: It does, Your Honor, yes.

16 THE COURT: Okay.

17 MR. LEAVITT: Absolutely.

18 THE COURT: Is there anything else or would you like the jury
19 brought in?

20 Counsel for Plaintiff, are you finished?

21 MR. LEAVITT: No, nothing else, Your Honor.

22 THE COURT: Okay.

23 Now, to Counsel for Defense, you now stood up. What can I do to
24 address any concerns for Counsel for Defense?

25 MR. DOYLE: No, I was just standing up because the jury was

1 about ready.

2 THE COURT: Oh, okay. No worries. I just want to make sure
3 I take care of everyone's concerns. Okay.

4 So did you wish the witness on the stand first or did you
5 wish to call the witness once the jury's in?

6 MR. JONES: Happy to have her on the stand.

7 THE COURT: So that's Nelson, is that correct?

8 MR. JONES: Yes, Amy Nelson, Your Honor.

9 THE COURT: Amy Nelson. Please, Marshal. We just had
10 witnesses on the stand first thing. Thank you so much.

11 We have someone else helping us out today, who was actually here the
12 first, during part of voir dire, who's helping us out.

13 THE COURT: I'm sure that cell phone is completely off,
14 correct, not even on vibrate. Perfect, thank you.

15 It's going to be a few moments. We're going to wait until the jury comes
16 in then we'll do it. We just have the witness come to the stand first, then
17 we have the jury brought in. Appreciate it. Thanks so much.

18 So the Marshal's going to bring the jury in and he's going bring them to
19 our normal -- through the hallway, not through here.

20 Marshal, do we have the notebooks on the --

21 THE MARSHAL: All taken care of.

22 THE COURT: -- you're wonderful. I know you're 15 steps
23 ahead. Sorry. I shouldn't have even asked. Sorry. Thank you so much.
24 But we have a quick second. Since I do have a wonderful clerk, I should
25 have had you do quick appearances, although she probably knows who

1 you all are, but just in case. And since Mr. Leavitt is out, would you mind
2 doing the appearances of all?

3 MR. JONES: Absolutely. Kimball Jones, and Jacob Leavitt,
4 and George Hand --

5 THE COURT: On behalf --

6 MR. JONES: -- for the Plaintiffs.

7 MR. DOYLE: Tom Doyle for Defendants and Dr. Rives is here
8 as well.

9 THE COURT: Okay. We need to wait for your observer?

10 MR. DOYLE: No.

11 THE COURT: Okay.

12 THE MARSHAL: All rise for the jury.

13 [Jury in at 10:58 a.m.]

14 [Within the presence of the jury]

15 THE MARSHAL: You can be seated. Thank you.

16 THE COURT: Appreciate. Thank you.

17 Welcome back, ladies and gentlemen. I apologize for starting a little bit
18 late. You probably saw I had attorneys and parties walking right out of
19 the courtroom, as attorneys so unfortunately had some late attorneys
20 this morning. We had long case that needed a lot of explanation, so our
21 apologies. It should not, I should have been done a lot earlier, but
22 couldn't help it. When the attorneys weren't there, I can't hold the
23 motions without them.

24 So it was not any of the counsel, obviously, for your trial, it
25 was attorneys in my motion calendar. So total apologies from the

1 Court's standpoint if we could have done something different, we would
2 have. But you can appreciate all the cases on the Court's dockets. So
3 apologies we're starting a little bit late.

4 Without further ado, however, we have a witness on the
5 stand. Counsel for Plaintiff --

6 MR. JONES: Thank you, Your Honor.

7 THE COURT: -- back to counsel for Plaintiffs' case in chief.
8 Right? Plaintiffs' case in chief, would you like to call your next witness?

9 MR. JONES: Yes, Your Honor.

10 Calling Amy Nelson.

11 THE COURT: And the clerk will swear in the witness. I
12 appreciate. Thanks so much.

13 AMY NELSON, PLAINTIFFS' WITNESS, SWORN

14 THE CLERK: Please take a seat.

15 Would you please state and spell your first and last name for the record?

16 THE WITNESS: My name is Amy Nelson, N-E-L-S-O-N.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. JONES:

20 Q Ms. Nelson, could you introduce yourself to the jury, your
21 name, where you're from?

22 A Hi, I'm Amy Nelson, and I flew here from Austin, Texas.

23 Q And where did you grow up, Am?

24 A I was born in Austin and then I sort of, like, grew up in
25 Colorado, and California, and Tennessee, and I'm still growing up I

1 guess.

2 Q How did you meet Titina?

3 A We met -- I met Titina with my friend Kathy (phonetic) it was
4 back when I was living in California and we would come and drive out
5 here to visit Titina's grandmother, Edna, and who was like a
6 grandmother to my friend Kathy, too.

7 So we ended up meeting Titina, sort of just by chance at a show at
8 the Rio, and we hit it off with her immediately. So been friends ever
9 since.

10 Q Okay. And how often have you seen Titina over the years?
11 Sorry, did you say 1998?

12 A Uh-huh.

13 Q Okay. And how often --

14 A I used to see her a lot more when I lived in the coast, when I
15 lived in California, but then when I moved, it went to about once a year
16 because my dad would come and play here about once a year, maybe a
17 little bit more. And every time that he -- and I worked for him as a
18 massage therapist, so every time he would come here, I would look up
19 Titina and immediately try to start spending time with her.

20 Q Okay. And so you're a massage therapist for your dad's
21 show?

22 A Yes.

23 Q Who's your dad?

24 A Willie Nelson.

25 Q Okay. And he -- and every time you come -- he comes here

1 about once a year?

2 A Yeah, pretty much. Something like that. Maybe a little bit
3 more than that.

4 Q Okay. How long have you been working in that capacity as a
5 massage therapist?

6 A Oh, a little over 20 years now, I guess.

7 Q Okay. All right. And so I want you to tell the jury just a little
8 bit about when you would come here, although it was last, since you
9 moved to Texas, about once a year, what would you and Titina do once a
10 year when you would see her?

11 A I would- I would go, and, like, we'd go to the Fremont
12 Experience, and she would take me places, you know, go try and have
13 some drinks or something, go have some fun while I was in town.
14 Usually for only, like, you know, a couple of days or something, so we
15 just tried to get in a lot while I was here.

16 Q All right. Prior -- in a moment I want you to tell the jury
17 about when you found out about what had happened with Titina, but
18 prior to the incident that happened in 2015, were you aware of Titina
19 having any issues in terms of any medical issues at all?

20 A No. I think I remember at one point she had mentioned that
21 she had diabetes and that the doctor had told her to cut out sugar and
22 whatever, so she, you know, aside from that she was, you know, she was
23 perfectly active.

24 Q Do you remember that kind of impacting her life in terms of
25 just what she ate and her diet and things like that?

1 A Yeah, she did a little bit of a lifestyle change. She said she
2 was getting a little bit more exercise and cutting out sugar and stuff, but I
3 don't remember it being like a dire situation or anything that she needed
4 medicine for.

5 Q Did you ever notice that it impacted her ability to walk
6 around or to do anything else like that?

7 A No, definitely not. I danced all night with her at her wedding.

8 Q And when was that?

9 A I guess that was maybe two thousand -- it was after I got
10 married, it would be like 2007, maybe.

11 Q Okay. And in the years after that, you'd go around and be
12 active, and you didn't notice her having any issues?

13 MR. DOYLE: Objection. Leading.

14 THE COURT: Question sustained objection, rephrase.

15 BY MR. JONES:

16 Q So even after that in the years up until 2015, you mentioned
17 you'd go out. Did you ever -- were there any issues that you saw?

18 A Absolutely not. I mean we would, like, we would definitely
19 do, you know -- she would -- I noticed before the botched surgery she
20 would, you know, before that whole thing happened, we were -- she was
21 a lot more active as far as like, you know, traveling, and she came to t
22 truthfully to my wedding, you know, and I noticed that that sort of she'd
23 definitely, I mean, slowed down quite a bit. She doesn't get around as
24 much. She didn't complain.

25 MR. DOYLE: Your Honor, I move to strike that portion of that

1 answer as an inappropriate lay opinion.

2 THE COURT: Overruled. The way it was phrased, personal
3 observations.

4 BY MR. JONES:

5 Q Afterwards -- well, can you tell the jury about how you found
6 out that Titina had had a -- that Titina had an issue in 2015?

7 A I remember -- I know that she had a couple of -- she'd had
8 surgery before, and I wasn't -- to fix a hernia. And then all of a sudden
9 she was in the hospital for a long time and then I remember getting that
10 she was in a coma and that was like for about two and a half weeks she
11 was, like, unresponsive. And that's when I decided to just fly out and
12 spend some time with her at the hospital, because I didn't know if she
13 was going to survive.

14 Q And when you got there was Titina beginning to respond?

15 A She was -- she was alert. She was awake, so yes, she was no
16 long in the coma by the time I arrived. But I think I missed the coma by
17 maybe like a day and a half or something.'

18 Q Okay. And so you got there just a couple of days after the
19 second surgery?

20 A Uh-huh.

21 MR. DOYLE: Objection. Leading.

22 THE COURT: Sustained.

23 BY MR. JONES:

24 Q In terms of your understanding, when did you arrive to see
25 Titina with respect to the second surgery?

1 A I believe it was summer of 2015.

2 Q Okay. And do you have any recollection of approximately
3 how many days after the second surgery it was your understanding that
4 you had arrived?

5 A Well, I guess the surgery happened, she was, I guess it was
6 maybe a few weeks after that surgery.

7 Q After the first surgery?

8 A After the second surgery, I think. I mean there were three
9 surgeries, I think.

10 Q Yes.

11 A So the third one.

12 Q Okay. So I'll break it up like this: You've -- are you familiar
13 with the names of the surgeons that did the surgeries in this case?

14 A Sort of. If you quiz me on it I probably --

15 Q Have you heard the name Dr. Rives and the name Dr.
16 Hamilton?

17 A Yes.

18 Q Okay. All right. And you understand Dr. Hamilton did the
19 very last surgery?

20 A Right.

21 Q Okay. All right. How many days after -- what is your
22 understanding in terms of how many days after Dr. Hamilton's surgery
23 that you arrived?

24 A I believe that was -- I don't actually know. It was maybe like a
25 couple of weeks, a week. I don't know. I'm sorry.

1 Q No, no. That's okay.

2 A I don't remember the details.

3 Q Is it fair to say you don't recall exactly?

4 A I don't recall exactly.

5 Q Okay. All right. And you do know that you arrived, and your
6 best estimate is a day or so after she had come out of the coma?

7 A Well, I know - -

8 MR. DOYLE: Objection, Your Honor. It's leading.

9 THE WITNESS: I can say that when I arrived she was still --

10 THE COURT: Sorry. I have an objection; I need to address
11 the objection. So just one second.

12 THE WITNESS: Okay.

13 THE COURT: The last question sustained.

14 MR. JONES: I'll withdraw.

15 THE COURT: No worries. You're withdrawing?

16 MR. JONES: Yes, I'll withdraw, Your Honor. That's fine.

17 THE COURT: Since counsel is withdrawing, the Court need
18 not rule. The jury will disregard to the extent that the answer was
19 started. People will have an opportunity to [indiscernible]. Thank you so
20 much.

21 BY MR. JONES:

22 Q Can you express your understanding in terms of when it was
23 that you arrived

24 A When -- well, I guess, I arrived after she had -- a couple of
25 days after she had woken up. And at that point I had known that another

1 doctor had come in and actually kind of cleaned her up and fixed a lot
2 of -- a lot of things. I believe she had a hole that -- in other words, she
3 was leaking, and there was like, and she was septic. And so by the time
4 -- and so I know that by the time I saw her she was cut down. Like she
5 was cut down her chest from here, and she was so swollen that they
6 couldn't sew her up yet. So she was just laying there open for like days.

7 Like I don't know how long it was. Like I was only there for a few
8 days on that trip, but I knew that I couldn't, like, touch her. So I would
9 just massage, you know, I massaged her feet and was trying to be
10 present for her there.

11 Q Thank you. Can you tell the jury about massaging her feet,
12 about that experience?

13 A Well, when I arrived I wanted to help her somehow or just
14 give her some sort of healing energy and the only thing if felt like safe
15 doing was massaging her feet.

16 But I noticed that her feet were laying kind of -- they were kind of
17 laying like that and when I would massage them I didn't feel any -- like
18 she didn't move them. And she couldn't feel it when I was -- she
19 couldn't feel the sensation when I was massaging her. So I was
20 concerned then about her feet.

21 Q And did you continue massaging her feet anyway?

22 A Uh-huh. Yeah, because I was thinking that, you know, I
23 mean I just know that a lot of times with massage and that sort of thing
24 you can -- it's possible to, you know, bring around -- bring people around
25 that way and kind of wake up the tissue and wake up the nerve endings

1 and sort of thing.

2 Q So you were just hoping to help Titina in some way with
3 that?

4 A Yeah.

5 MR. DOYLE: Objection, Your Honor. Leading.

6 THE COURT: Okay. The Court's going to sustain the last --

7 MR. JONES: That's fine.

8 THE COURT: -- question for leading.

9 MR. JONES: Withdrawn.

10 THE COURT: And just friendly reminder. Sometimes who
11 aren't in court a lot people -- it's hard to take down uh-huhs, huh-uhs --

12 THE WITNESS: Oh, right.

13 THE COURT: -- and nods of the head.

14 THE WITNESS: Okay.

15 THE COURT: You have affirmative answers, now the last
16 answer you did one, but then you did a more complete answer. So --

17 THE WITNESS: I'll say yes and do from now on.

18 THE COURT: Do appreciate. Thank you. Our Madam Court
19 Recorder would appreciate it. Appreciate it.
20 So the Court did sustain the last, so please move forward with your next
21 question.

22 MR. JONES: Absolutely.

23 THE COURT: Thank you so much.

24 BY MR. JONES:

25 Q My last question, can you tell the jury why it was important

1 for you to come here today to testify?

2 MR. DOYLE: Objection. Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: The reason that I felt like it was important to
5 come testify is because I want to advocate for my friend who has been
6 through just so much trauma that I can't even imagine. I can't imagine
7 what it would be like to all of a sudden not be able to walk. And for
8 someone -- and for anyone, you know. And just the fact that I want to
9 help her in any way possible and just support her and, yeah, I love her
10 she's a beautiful person.

11 MR. JONES: Thank you.

12 Pass the witness, Your Honor.

13 THE COURT: Cross-examination, Counsel?

14 MR. DOYLE: Thank you.

15 CROSS-EXAMINATION

16 BY MR. DOYLE:

17 Q Good morning.

18 A Good morning.

19 Q Saying that two or three years prior to July 2015, how often
20 did you see Mrs. Farris?

21 A A little bit more than once a year.

22 Q And in the time period since July of 2015, how many times
23 have you seen her here in Las Vegas, separate and apart from when you
24 visited the hospital those couple of days?

25 A Three times.

1 Q You were out here for business?

2 A Some of it and I also came out to support her and be here for
3 her.

4 Q Okay. When you were doing the massage of her feet and
5 became concerned about the condition of her feet, you of course, said
6 something to one of the doctors, didn't you?

7 A No, I didn't.

8 Q You didn't feel it was necessary or important to bring to
9 bring to a doctor's attention your concern about the condition of her
10 feet?

11 A I just didn't meet her doctor. So --

12 Q Doctors were in and out of her room each day on multiple
13 occasions.

14 A I believe some nurse were in and out.

15 MR. JONES: Objection. Speculation, Your Honor.

16 THE COURT: The Court's going to sustain the objection on
17 speculation and just remind pause a second when I hear an objection so
18 that we have a clear record. But the Court did sustain that on
19 speculation.

20 Counsel, feel free to move forward with your next question.
21 Thank you so much.

22 BY MR. DOYLE:

23 Q When you were here visiting her in the hospital you were in
24 the room when doctors came in and out, fair statement?

25 A I was in the room when nurses came in and out; I wasn't -- I

1 don't know. I don't know who was a doctor and who was a nurse.

2 Q All right. Well, then, you brought to a nurse's attention your
3 concern about the condition of her feet based upon what you observed
4 when you massaged the feet, true?

5 A I don't remember doing that?

6 Q You didn't think that was important?

7 A I --

8 MR. JONES: Objection, Your Honor. Argumentative.

9 THE COURT: Sustained.

10 BY MR. DOYLE:

11 Q Why didn't you bring your concern about the condition of her
12 feet to one of the nurses?

13 A I think I said something to her husband.

14 Q My question was why didn't you bring it to the attention of
15 one of the nurses?

16 MR. JONES: Objection. Asked and answered, Your Honor.
17 Argumentative.

18 THE COURT: The Court is going to overrule it.

19 THE WITNESS: I guess I just don't really remember having
20 that conversation. I can't say whether I did or didn't. I just don't
21 remember having a conversation like that. I very well might have.

22 MR. DOYLE: Okay. Thank you. That's all I have.

23 THE WITNESS: Thank you.

24 THE COURT: Redirect, Counsel?

25 MR. JONES: Not at all, Your Honor.

1 THE COURT: I'm not seeing any juror questions, so Counsel
2 do I need to -- sorry. Okay.

3 There not being any further questions by either the counsel
4 and not seeing any juror questions, then is this witness excused for all
5 purposes or subject to recall?

6 MR. JONES: Excused for all purposes, Your Honor.

7 MR. DOYLE: Yes, Your Honor.

8 THE COURT: She's excused for all purposes.

9 Thank you so much for your time. Just watch your step on
10 the way down. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Appreciate it.

13 Okay, then, at this juncture, while this witness is leaving, Counsel for
14 Plaintiff, would you like to call your next witness?

15 Counsel for Plaintiff, would you like to call your next witness?

16 MR. HAND: Yes, we're calling Tina Garcia.

17 THE COURT: Okay, sure. Thank you, Marshal. Do
18 appreciate it.

19 CHRISTINE GARCIA, PLAINTIFFS' WITNESS, SWORN

20 THE CLERK: Please take a seat.

21 Will you please state and spell your first and last name for the record?

22 THE WITNESS: Christine Garcia, C-H-R-I-S-T-I-N-E G-A-R-C-I-
23 A.

24 THE CLERK: Thank you.

25 THE COURT: Counsel, you may commence at your leisure.

1 MR. HAND: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. HAND:

4 Q Ms. Garcia, how do you know Titina Farris?

5 A Well, we've been friends for 17 years. And we've been
6 longtime friends like sisters.

7 Q Where do you live now?

8 A I live actually in Kyle, Texas, it's right outside of Austin.

9 Q And when did you first meet Titina Farris?

10 A It was right around in the year 2002 through an acquaint --
11 another friend of mine and introduced us.

12 Q And in 2002, did you live in Las Vegas?

13 A Yes, I did.

14 Q When did you move to Texas?

15 A In 2008.

16 Q And when you moved to Texas, did you stay in contact with
17 Ms. Farris?

18 A Oh, yes. Most definitely.

19 Q How often would you be in contact?

20 A I would frequent -- well, we talked frequently, you know, but I
21 would come to visit definitely at least twice a year.

22 Q Would you stay with --

23 A Yes, most definitely.

24 Q Let me ask you, do you know her husband, Patrick?

25 A Yes, I do.

1 Q Tell me who's in her family, her immediate family.

2 A How many --

3 Q There's her husband?

4 A Her husband and two daughters and a son. So --

5 Q How old -- she has one daughter, Elizabeth, how old is she
6 now?

7 A She's 13.

8 Q And the other daughter, Sky, is in her 30s and --

9 A Yes.

10 Q -- I think she said the other day, Titina, that Lowell's
11 (phonetic) in his 70s.

12 A Yes, correct.

13 Q So I want to direct your attention to the time period July
14 2015. You were in Texas at this time?

15 A Correct.

16 Q And did you learn that Titina was going in for a surgery in
17 July of '15?

18 A Right. She had spoken to me about a surgery and that it was
19 going to be, you know, a simple procedure.

20 Q And at some point did you learn that there were issues after
21 her surgery?

22 A Yes. On the day of the surgery, I couldn't get hold of Patrick
23 or her son on the phone. So I called her mom, and she told me that --

24 MR. DOYLE: Objection. Hearsay.

25 BY MR. HAND:

1 Q I just want to know what you know. Okay? Not what other
2 people said.

3 A Okay. Thank you so much.

4 THE COURT: Just a sec. So since the question portion was --

5 MR. HAND: I'll withdraw the question.

6 THE COURT: Withdrawn, the Court need not rule on any
7 objection. Go ahead.

8 BY MR. HAND:

9 Q At some point did you, in that time period, inf July of 2015,
10 come out to Las Vegas?

11 A Yes.

12 Q Did you go to see Titina in the hospital?

13 A yes.

14 Q About how many -- I'm going, just for point of reference, I'm
15 going to say to you, represent to you, the surgery was July 3rd, 2015. So
16 using that as a reference point, how long after that date did you come to
17 Las Vegas?

18 A I flew in on July the 10th.

19 Q And you went -- did you go straight to the hospital?

20 A I rented a car from the airport and went straight to the
21 hospital.

22 Q Could you describe -- well, did you go to her room?

23 A Yes.

24 Q Tell us briefly what you observed when you got to her room
25 and you saw her.

1 A Well, Titina was in ICU, and she was intubated with tubes
2 and lots of bags on her side, and she was not coherent, she was in a
3 coma and really bloated.

4 Q And how long did you stay with her?

5 A Well, I stayed that night with her, and the next morning I
6 went back to the house to relieve Patrick.

7 Q And how long did you stay when you came on that day or
8 that time period?

9 A I flew out on July the 13th.

10 Q You went back to Texas the 13th?

11 A Yes.

12 Q So when you were here for those days did you go the
13 hospital every day?

14 A Yes.

15 Q Were you able to speak to her at all?

16 A No.

17 Q Did you return to Las Vegas at any time or when did you
18 come back after that trip?

19 A I came back in October.

20 Q And at that time was she home?

21 A Yes.

22 Q And you went to see her at her house?

23 A Yes.

24 Q Tell us what her condition was in terms of was she walking
25 around --

1 A No, not at the time.

2 Q Did you observe how she moved around when you saw her
3 in October of '15?

4 A Yes.

5 Q How was that, explain?

6 A It was -- she was not able to walk at the time. She was -- we
7 were -- I was helping her and she was in a wheelchair at the time when I
8 came back the first time.

9 Q Prior to this July 15th surgery did Titina ever use a
10 wheelchair that you saw?

11 A No.

12 Q Did she have any issues walking or moving around?

13 A No.

14 Q Did she have any issues balancing that you observed?

15 A No.

16 Q Did she also have an issue with a colostomy bag that you
17 saw?

18 A Yeah, she -- when she was released from the hospital she
19 had a colonoscopy bag.

20 Q So how long did you stay on that visit?

21 A About seven days.

22 Q And did you help with --

23 A Oh, yes.

24 Q -- around the house; what did you do?

25 A Pardon?

1 Q What did you do when you were there?

2 A Oh, helped her with everything. You know, tidy the house
3 and things that she's not able to do; whatever -- it was dusting or
4 washing clothes or whatever I could do to help at that time. I came to
5 help that time, at that time.

6 Q When you saw her at that time period how, was she taking
7 care of herself when bathing and things like that?

8 A Well, she had to be assisted to bathe, and Patrick would have
9 to help her.

10 Q How about, like, moving around to go to the bathroom and
11 things like that?

12 A Right, yeah. She would have to -- she was in a wheelchair so
13 she would have to be wheeled right to the door.

14 Q And have you seen her since that October 15th; you'd said
15 you'd come back a few times a year?

16 A Yes.

17 Q How many times have you been back, say, since -- since that
18 October visit up until now, how many times?

19 A From 2015? Oh, my goodness. Probably about 10 times.

20 Q And in those 10 times you've been back have you seen Titina
21 walk on her own at any time?

22 A She can't walk on her own. She always has to have the
23 walker or a cane. She can't balance.

24 Q Have you observed whether she can stand alone and balance
25 herself?

1 A She has to hold onto something.

2 Q Now I'd like to talk about things around the house that -- like
3 the cleaning and the vacuuming and cooking since this happened. Have
4 you observed what happened in terms of those things at the house?
5 How does that work; does she do it; someone else help her or something
6 else?

7 A Well she has to have help. There's occasional times that
8 she'll do some things that she'll, maybe, set something on her walker
9 and, you know, go and place it, but she can't -- she has to hold onto
10 something. She can't do it on her own.

11 Q I'd like to talk about Titina prior to the surgery and I'm going
12 to ask you to tell us about -- if you could tell us what you guys did for fun
13 with Titina. You had social activities I assume?

14 A That's correct. When I would come and visit -- visit we would
15 go to concerts, and she loved to dance. It was always something she
16 loved as a child even and so just to go out dancing, even if we danced in
17 the house, but she loved to dance. And we'd play those video games
18 where you'd dance and dance off and was just really active and we
19 would go dress up and go in our heels to -- just to have dinner and have
20 a good time and have fun. I mean, there was no restrictions with her at
21 that time. She was very active and very sociable; very happy.

22 Q Is she able to do those things now?

23 A No.

24 Q Have you seen a change in her demeanor from before to --

25 A Oh, yes.

1 Q -- after, if you could explain that?

2 A Well she -- well now she gets depressed, you know, with her
3 situation that she can't -- and mostly because of her daughter. Her
4 daughter's young; she's 13 and she can't do a lot of things with her and
5 go and -- going forward was, like, Brownies and different things. She
6 can do some things, but not a whole lot. She'd get prepared and to
7 leave the house and try to do things with her. So Elizabeth's had to do
8 some things with her dad and if I'm here I take her and we do different
9 things and so forth, but it's been very -- that part of it -- it's been very sad
10 for Titina.

11 Q Let me ask you about the relationship with Elizabeth. When
12 this happened in '15 how old was Elizabeth?

13 A I think she was nine?

14 Q So she's in, at that time, maybe second, third grade;
15 something like that?

16 A Yes.

17 Q And where was the school in relation to their house; do you
18 know?

19 A The school was about four blocks away.

20 Q Did Titina ever walk her to the school?

21 A At -- she did. She walked her to school every morning and
22 walked to pick her up from school, after school, every day. Even in the --
23 even if it was drizzling, but yeah, she did.

24 Q So after this happened in July how would Elizabeth get to
25 school?

1 A That was a blessing. They have a -- Elizabeth had some
2 friends that live around not too far and the -- they live with their
3 grandmother and their grandmother would come by and pick up
4 Elizabeth.

5 Q Now prior to this were there things that you saw in terms,
6 like, mother-daughter things that she would do with Elizabeth?

7 A They would -- before this happened to her they would -- they
8 have dogs. So they would walk dogs, their dogs. She would, you know,
9 walk with Elizabeth to go ride her bike around the block or -- and her
10 friends, they would, you know, go on hikes and different things in the
11 park and have, you know, like a normal childhood and have her friends
12 over, Elizabeth's friends, and be active with them and decorate with
13 them and do projects and Brownies and all kinds of things, you know, as
14 family.

15 Q Does Elizabeth have to help her mom --

16 A Yes, she does.

17 Q -- around the house? Could you explain that to us?

18 A She helps pick up the house and Titina, you know, needs
19 something from the other side of the house and she's not able to get to it
20 quickly, or so forth, Elizabeth is there for her, but she has her chores, you
21 know, to help with dusting and so forth.

22 Q Does Elizabeth help her mom, like, with dressing and things
23 like that?

24 A Oh, yes. She -- yes, she help -- does help her. Sometimes
25 Titina can't reach in, you know, be able to reach in her closet on the top

1 and so Elizabeth has to help her get some of her clothing down and
2 she'll -- especially put her shoes on, socks and shoes.

3 Q Elizabeth helps her put her socks and shoes on?

4 A Right.

5 Q Now there's another daughter at home now too --

6 A Yes.

7 Q -- isn't that right? That's Sky(phonetic)?

8 A Sky.

9 Q Have you observed what Sky does around the house now?

10 A Yes, Sky does a lot of -- when Patrick's at work she does a lot
11 of errands for her. Although she works now, Sky's working, she does a
12 lot of errands for her so.

13 Q What about other things; does she do anything else besides
14 errands?

15 A Oh, yeah. She does.

16 Q Tell us about it?

17 A Well she will -- whatever may be needed. If the kitchen
18 needs to be cleaned up she'll come in and start cleaning up the kitchen
19 or if the dogs have made a mess she'll pick that up; whatever is needed
20 at the time Sky will interact with that to help.

21 Q Now, after this happened, did you observe anything to assist
22 any of -- Patrick had to do when you were visiting; could you -- what did
23 Patrick do to help her if anything?

24 A Everything.

25 Q Tell us about it?

1 A After this happened she came out with a colostomy bag and
2 he would definitely change that frequently for her. He helped her to just
3 get around and whatever it may be -- transfer her from the toilet to the
4 wheelchair. We all did, you know, helped her, but he helped her the
5 most. He helped her prepare her food, you know, everything that's
6 needed for her; whatever it may have been.

7 Q Does he still do that?

8 A Oh, yes. He still helps her.

9 MR. HAND: Thank you. I have no further questions; I pass
10 the witness.

11 THE COURT: Cross-examination by Defense counsel.

12 MR DOYLE: I don't have any questions. Thank you.

13 THE COURT: Okay. Not being any questions by Defense
14 counsel means there wouldn't be any redirect; I'm not seeing any juror
15 questions. Is this witness excused for all purposes or subject to recall?

16 MR. HAND: Excused for all purposes.

17 THE COURT: Counsel for Defense?

18 MR DOYLE: That's fine, yes.

19 THE COURT: Okay. Thank you so much. Your witness is
20 excused. Thank you so much. Watch your step on the way down;
21 appreciate it. Okay. Thank you so much.

22 So then at this juncture is the next witness being called pursuant to
23 agreement of the parties they'll be calling the prior witness?

24 MR. DOYLE: Yes.

25 THE COURT: Okay. So, Counsel for Defense, would you like

1 to recall the prior witness that is being recalled by agreement of the
2 parties?

3 MR. DOYLE: Yes, that would be Dr. Brian Juell, and he's out
4 in the hallway.

5 THE COURT: Thank you so very much.

6 Brian, would you please go get the next witness? Okay. And while the
7 witness is being brought in if you recall this -- by convenience of the
8 parties remember we stopped the witness of one witness testimony into
9 some other witnesses and now coming back to this witness's testimony.
10 Thank you so very much.

11 And what we're going to do for a couple of different reasons.
12 One because we have a wonderful clerk helping us out today who's not
13 our normal wonderful clerk; it's just been a couple of days. If you don't
14 mind we're just going to re-swear in the witness, so we make sure we
15 get all the dates, times, and -- well name and spelling everything correct.
16 So thank you so very much.

17 Madame Clerk, would you mind?

18 BRIAN JUELL, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

19 THE CLERK: Would you please state and spell your first and
20 last name for the record?

21 THE WITNESS: My name is Brian, B-R-I-A-N and my last
22 name is Juell, J-U-E-L-L.

23 THE CLERK: Thank you so much, sir.

24 THE COURT: Do appreciate. Okay. Thank you so very much
25 feel free to continue with your questioning.

1 MR DOYLE: Thank you.

2 DIRECT EXAMINATION CONTINUED

3 BY MR DOYLE:

4 Q Dr. Juell, in terms of imaging studies, X-rays or CT scans,
5 what is the term free air mean?

6 A Well it basically refers to air or gas outside the confines of --
7 of the internal intestines, free in that space that we were talking about
8 yesterday, the peritoneum, and not internal to the hollow viscus.

9 Q Would that be an abnormal finding?

10 A Yes, it can be non-pathological on rare occasions, but usually
11 is indicative of a hole in the bowel.

12 Q Now what about free air on an X-ray or CT scan. What does
13 that mean?

14 A Well that -- that refers to seeing those gas bubbles --

15 Q I'm sorry. I misspoke. Free fluid.

16 A Oh, free fluid.

17 Q Sorry.

18 A Free fluid is just, again, those intestinal structures they have
19 to move around, you know, by peristalsis. They're pushed up through
20 the rumens and so there's a potential space that's lined by the
21 peritoneum. So sometimes if there's fluid outside the, again, the internal
22 component of the intestine it can pool around the organs in the
23 abdomen and accumulate there.

24 Q Now after a laparoscopic surgery would you expect to find a
25 certain amount of air in the abdomen?

1 A Yes, because in the course of placing instruments through
2 the abdominal wall and then passing instruments in and out even
3 though there's a constant flow of carbon dioxide to pressurize the space
4 we use carbon dioxide because it's very readily absorbed after the
5 procedure and, also, non-flammable if we're using cautery, but the
6 atmospheric air enters into the abdomen and that, as you know, contains
7 a lot of nitrogen. And nitrogen's very slowly absorbed from the body
8 surfaces thus, you know, scuba divers get the bends, you know, because
9 of the nitrogen; comes back into their joints and stuff when they're
10 ascending from depth.

11 Q Now after a laparoscopic abdominal wall hernia repair would
12 you expect to see some fluid inside the abdomen after that surgery?

13 A Yes, and there's always a possibility of small amounts of
14 serum or blood accumulating after, you know, a surgical procedure into
15 those spaces and, also, sometimes there's irrigation fluid that's been left
16 over, you know, after, you know, when the -- cleanup phase you irrigate
17 the surfaces and you try to remove as much of that as possible, but
18 there's always a little bit of leftover fluid.

19 Q And, Dr. Juell, am I compensating you for your time away
20 from Reno and coming and testifying yesterday and today?

21 A Yes, you are.

22 Q And if you were not here yesterday what would you have
23 been doing?

24 A Well I probably -- it's typically an operating day for me so I
25 would have been in surgery most of the day. I usually have somewhere

1 between, you know, four and eight cases on surgery schedule.

2 Q And if you weren't here today testifying what would you be
3 doing?

4 A Well I was scheduled to be on trauma call starting today at
5 10:00. So that's a 24-hour shift in the hospital where I'm -- have to be
6 immediately available for injured patients that -- brought in.

7 Q Did you find someone to cover that?

8 A Yes, I have a partner that took my call for me today.

9 Q Okay. Now what is your fee for reviewing written materials,
10 meeting with attorneys, things of that sort?

11 A I charged, I think, \$250 an hour for that.

12 Q And how about --

13 A I mean, I can do that on my own time so.

14 Q -- and how about for depositions?

15 A I think we charge a thousand dollars an hour for deposition.

16 Q And is that a rate that's set by the group?

17 A Yes, our group decided on that -- that figure.

18 Q And then what is the group's rate for you, or another
19 member of the group, testifying at trial?

20 A I think we charge about \$1500 an hour for trial testimony.

21 Q Now, over the years, how many -- and by the way have you
22 ever testified in court before?

23 A No, I have testified in court on a number of occasions, but
24 only as a treating physician. A lot of those are criminal cases because
25 we, you know, we do trauma care, but this is the first time I've ever

1 testified in court on a litigation matter like this.

2 Q And over the years how many medical malpractice cases
3 would you say you've looked at as an expert?

4 A I probably looked on at 10 or 12 cases. In terms of litigation I
5 get called by the Board of Medical Examiners to look at, review, cases
6 that have been subject to malpractice actions, but that's, you know, on
7 the licensing standpoint. I probably been involved with 10 or 12 cases.

8 Q And have you looked at a couple of their cases for me or
9 others in my office?

10 A Yes, I have.

11 Q I want to ask you some questions about aspiration. First of
12 all what does that mean, just generally, that term?

13 A Well it can mean a variety of different things. Sometimes
14 just withdrawing fluid, you know, with a needle by a syringe is
15 aspiration, but in this case I spoke about aspiration as being -- taking
16 contents from your mouth or stomach into your lungs which, obviously,
17 most people know that's not a comfortable thing, but that can be -- it's a
18 frequent medical complication. It can predispose a patient to
19 pneumonia, and it can also precipitate this systemic inflammatory
20 response syndrome on occasion.

21 Q And what is pulmonary aspiration syndrome then?

22 A I use that as a term to describe when that aspiration occurs,
23 and the patient goes into fulminant respiratory failure and has
24 manifestations of shock.

25 Q And what is pneumonitis?

1 A Pneumonitis is another term for pneumonia or infection of
2 the lung.

3 Q Now, Doctor, in general surgery have you heard the term
4 source control or does that have some meaning to you?

5 A Yes.

6 Q What does that mean?

7 A Well if there's an infection, you know, controlling the source
8 is part of, you know, the primary treatment for the infection. For
9 example, if you -- if you have an abscess that draining -- the abscess we
10 talked about abscess yesterday, you know, as being a collection of puss.
11 I mean, some patients might benefit from antibiotic therapy, but
12 primarily surgical drainage of the puss to drain it and control it that's
13 what you're talking about in terms of source control.

14 Q And are there cases where, depending on the circumstances,
15 source control can be use of antibiotics alone?

16 A It can be. I think, for example, in urinary tract infection or,
17 perhaps, in pneumonia, meningitis means, kind of, hard to drain the
18 cerebral spinal fluid, you know, safely although that can be done.

19 Q I want to go back, for a moment, to Mrs. Farris when she was
20 in the intensive care unit prior to July 6th and what was the role of the
21 infectious disease doctors that were seeing her?

22 A I think it -- obviously this culture varies, you know, from
23 hospital to hospital. Some people use consultants, you know, more
24 heavily and, you know, certain hospitals had -- I think they were just --
25 they consulted infectious disease to address and optimize the number

1 and type of antibiotics that they thought the patient would benefit from.

2 Q And why is it necessary -- or how many different antibiotics
3 are there?

4 A There's quite a few and I don't know the answer to that. I
5 mean, you know, but many, 30 or more commonly used antibiotics I
6 would suspect. There are some and in the hospital there's concern
7 about emerging resistance to antibiotics and so in some hospitals the
8 formulary has antibiotics on it that are reserved as -- that can only be
9 prescribed with infectious disease consultation.

10 So they -- it's a way of restricting access to them, but also keeping
11 them, you know, as an antibiotic that doesn't have resistance in the
12 hospital because some hospitals have, you know, certain types of
13 bacteria that have high levels of antibiotic resistance.

14 So having one spared, you know, from common, you know,
15 prescription used by surgeons or other members of the staff and
16 restricted to the use, you know, of infectious disease and, perhaps, this
17 patient did have some risk factors, you know, with, you know, with some
18 pre-existing medical conditions that they thought having an infectious
19 disease doctor would be optimal.

20 Q The infectious disease doctors that were following Mrs.
21 Farris were they the ones primarily responsible for choosing the
22 antibiotics to treat the different possibilities of infection that were being
23 considered?

24 A Yes.

25 Q Okay. And then the term intensivist is that another word for

1 the critical care specialist?

2 A Yes.

3 Q And when you have a post-operative patient like Mrs. Farris
4 in the intensive care unit after surgery does the intensivist act as, sort of,
5 the hub of the wheel and then you have the different specialists as the
6 spoke of the wheel?

7 A Yes.

8 Q How does that work then in that interplay of roles?

9 A Only intensivists are, you know, usually their activities are
10 restricted to that ICU or, you know, like in our hospital we have multiple
11 ICUs and sometimes there's some overlap, but they're primarily there
12 doing any bedside procedures that need to be done and, also, watching
13 over the patients, you know, during their course of their work there
14 because things, you know, in the ICU change quickly. So then when
15 consultants come in, as we'd talked about yesterday, they seek out the
16 intensivist and have discussions with them and then they communicate
17 within the notes and the record, you know, and come up with a
18 consensus plan.

19 And the intensivist will call if they see a change in the patient's
20 condition. They may call the consultants to alert them, say, the
21 cardiologist. Patient's got a new rhythm disorder or something so that
22 they can come and help care for the patient.

23 Q Now for Mrs. Farris, between July 5th and July 15th, did Dr.
24 Rives see her every day?

25 A Yes.

1 Q Between July 5th and July 15th did a critical care specialist or
2 intensivist see her every day?

3 A Yes.

4 Q Did a hospitalist see her every day?

5 A Yes.

6 Q Did an infectious disease specialist see her every day?

7 A Yes.

8 Q Did a nephrologist see her every day?

9 A Yes.

10 Q And did a cardiologist see her on most of those days?

11 A Most of those days.

12 Q Now would you explain to the ladies and gentlemen of the
13 jury the difference between bacterial contamination and fecal peritonitis
14 when dealing with a post-operative patient like Mrs. Farris?

15 A She had, you know, the holes made in her colon by Dr. Rives
16 when he was attempting to remove the foreign body, mesh prosthesis,
17 that had been left over from the previous operation. That was, you
18 know, very important critical step for him to do because if he'd left that
19 mesh adherent to the colon, you know, it could have led to infection
20 down the line for the patient. So that really was needed to be done. And
21 so if you have exposure, you know, to -- and bacteria during surgery
22 that's contamination. You know it's, obviously, something we try to
23 avoid, but it's not obviously possible to avoid it all the time.

24 So we give patients antibiotics before surgery so that they have
25 high levels of antibiotics in their tissues and then we attempt to, you

1 know, obviously depending on the amount of contamination we make
2 decisions about how to manage that, but sometimes we'll irrigate it to
3 dilute the number of bacteria because bacteria have to have strength in
4 numbers to cause infection. So -- and then the antibiotics in the tissues
5 help, you know, the body's defenses, kind of, cleanse that off so as -- I
6 think I testified yesterday -- just because you have contamination doesn't
7 mean you'll have infection, but the risk go up.

8 So then in fecal peritonitis what you're referring to there is
9 established infection. There the bacteria have been present long enough
10 in sufficient numbers to overwhelm the body's defenses. It's like an
11 army going over the wall of a fortress or something. There have to be
12 enough of them in order to overwhelm the body's ability to deal with
13 that. And then you have invasion into the tissues where you can, you
14 know, where you develop what we call active infection. So that's what, I
15 think, fecal peritonitis is.

16 Q Now the giving of antibiotics prior to surgery like this is that
17 what is referred to as prophylactic antibiotics?

18 A Yes.

19 Q And did Mrs. Farris receive prophylactic antibiotics both
20 before her surgery and after her surgery for a period of time until she
21 became ill?

22 A I believe so.

23 Q Doctor, I want to focus now for a moment on the July 3rd
24 surgery, the laparoscopic abdominal hernia repair. Would you explain to
25 the ladies and gentlemen of the jury your opinion, to a reasonable

1 degree of medical probability, what Dr. Rives was doing and what
2 caused the two holes to develop?

3 A Well he described on the course of evaluating the hernia
4 opening which he -- that there was mesh left there from his previous
5 operation obviously had been pulled away and the hernia had recurred,
6 but the mesh was still partially adherent in there and that the colon, the
7 transverse colon underlying that defect, which was in the midline, was
8 adherent to the mesh. And so he realized that he needed to remove that
9 mesh and also separate it from the colon and so that he had to undertake
10 -- attempt at surgical dissection to remove it.

11 Q Is it your opinion, to a reasonable degree of medical
12 probability, that when he inadvertently created these two holes he was
13 not yet using the ligature?

14 MR. JONES: Objection, Your Honor. Seeking testimony
15 outside any prior testimony or any reports.

16 THE COURT: Can you both approach, please?
17 Madame Court Reporter, could you turn on white noise, please? Bring --
18 thank you.

19 (Sidebar at 11:49 a.m., ending at 11:52 a.m., not transcribed)

20 THE COURT: Okay. Court's -- after review at bench and
21 being shown different things Court has to sustain the objection to that
22 specific question. Counsel, you may proceed with your next question.

23 BY MR. DOYLE:

24 Q Your know, Doctor, how many reports did you prepare in this
25 case, if you recall?

1 A I believe three.

2 Q And in one or more of the reports did you discuss the issue
3 of --

4 THE COURT: Counsel, please approach.

5 Madame Court Recorder, can you please come forward?

6 (Sidebar at 11:53 a.m., ending at 11:55 a.m., not transcribed)

7 THE COURT: Okay. Ladies and gentlemen, it's five minutes
8 of noon and you probably saw that our team was going non-stop. So we
9 were breaking at noon anyway so probably makes the most sense,
10 rather than start part of a question, to give you a nice wonderful
11 lunchbreak.

12 So we'll see you back at 1:15, but of course before you leave,
13 ladies and gentlemen, during this lunch recess you are admonished not
14 to talk or converse among yourselves or with anyone else on any subject
15 connected with this trial.

16 You may not read, watch, or listen to any recorded
17 commentary on the trial, any person connected with the trial by any
18 medium of information including, without limitation, social media, texts,
19 Tweets, newspapers, television, internet, radio, anything the Court's not
20 stated specifically you know is also included. Love to see those
21 affirmative nods. I'm missing one affirmative nod. Do I see that last
22 affirmative nod? Yes, I did. Thank you so very much.

23 Do not visit the scene or the events mentioned during the
24 trial. Do not undertake any research, experimentation, or investigation.
25 Do not do any posting or communications on any social networking sites

1 or anywhere else. Do not do any independent research including, but
2 not limited to, internet searches. Do not form or express any opinion on
3 any subject connected to the trial until the case is fully and finally
4 submitted to you starting jury deliberations. With that, we wish you a
5 very nice relaxing lunch. We'll see you back at 1:15. Thank you so very
6 much.

7 [Jury out at 11:57 a.m.]

8 [Outside the presence of the jury]

9 THE COURT: Okay. So before we go out for lunch, Madame
10 Court Recorder, could you just stay on the record for one more moment
11 because the Court needs to note something at bench. What I'm going to
12 ask, if you don't mind, it's the -- is the witness excused and can he go out
13 to the anteroom because the Court just wants to mention something --

14 MR. JONES: Absolutely.

15 MR DOYLE: That's fine.

16 THE COURT: -- just to counsel only. Okay? And when I say
17 counsel obviously any spectators are more than welcome to remain, but
18 just probably not the witness on the stand. Okay.

19 Is anyone requesting the witness stay on the stand while the Court was
20 going to mention something about counsel at bench?

21 MR DOYLE: No.

22 MR. JONES: No, Your Honor.

23 MR. HAND: No, Your Honor.

24 THE COURT: Okay. No worries. Then thank you so very
25 much.

1 Court, at bench, is very concerned about what just happened at bench.
2 Two things happened at bench. One, the Court was ruling on an
3 objection and I say ruling on objection because it was the Court bringing
4 you all to bench because the question that was starting to be stated is,
5 after asking how many reports the witness authored, it was then stated --
6 and I may be missing a word or two, but I'm pretty darn close is in one
7 or more of those reports did you discuss -- and then the Court asked
8 counsel to please come to bench because what the Court was specifically
9 concerned about is the Court has just made a ruling that the prior
10 objection raised by Plaintiffs' counsel had to be sustained because the
11 witness was offering an opinion that was not consistent with NRCP 16
12 *Quest Palmis*, et cetera, appropriate case law and so, therefore, would not
13 be the opinion that could be done.

14 So that is a legal determination that the Court needs to make
15 and so to the extent that counsel was then trying to ask the witness
16 whether or not he had discussed the very opinion that the Court had said
17 was outside the scope of this witness and this witness could not discuss
18 and was doing that in front of the jury the Court wanted to ensure that
19 that was not done inadvertently and so I called the parties to bench, or
20 counsel to bench, to ensure that that was not happening so that couldn't
21 happen inadvertently because, obviously, no one would want that in
22 front of the jury; giving everyone, of course, the full benefit of the doubt.
23 At bench, however, while the Court was trying to talk counsel for
24 Defense said to the Court that he wasn't listening to the Court --

25 MR. DOYLE: That's a mischaracterization, Your Honor.

1 THE COURT: -- Court is -- the statement as Court understood
2 it is that it's not listening to the Court and so then the Court was trying to
3 explain to each of the counsel how important it was for counsel to,
4 please, listen to the Court because the rules require it, et cetera, and then
5 went through the litany of rules as the Court does during all these bench
6 conferences. The Court has its head go back and forth between each of
7 the counsel, start -- part in the middle; speaks in a very whispering voice.
8 In fact somewhat sets sometimes court recorder says nothing can even
9 be heard.

10 So -- and, in fact, oftentimes even though I am only 5'3, and
11 I'm short anyway. I duck down even lower so that I try and be behind
12 one of the consoles so that it's not clear that anyone could -- even if they
13 possibly could see my mouth move -- could read my mouth or even see,
14 kind of, from looking up, but I do intentionally go back and forth between
15 counsel the same way as I do when I review the juror questions. I go
16 back and forth; let each of you start one at a time so we go back and
17 forth.

18 So, however, there was another statement I'm going to
19 paraphrase because I'm not going to use exact wording because -- just
20 paraphrasing. It was indicated to the Court that then, somehow, the
21 Court -- the jury could hear which is why if anyone's wondering why I
22 then asked the jury if they could hear anything through the bench
23 conference. The jury all confirmed they could not hear anything at
24 bench conference which we had already told the jury before, several
25 times, if they could hear anything to please raise their hand. No one had

1 raised their hand, but to confirm with the jury that they could not hear
2 anything at bench conference.

3 It was also indicated that -- so we'll just make it clear that the
4 Court -- no one could hear the bench conference; the jury would confirm
5 they could not hear the bench conference and to the extent that counsel
6 for Defense made a misrepresentation that the jury could hear the bench
7 conference the Court made it very clear by asking the jury they could
8 not. So, with that, we will wish you all a very nice lunch. Counsel, --

9 MR. DOYLE: Your Honor, I need to --

10 THE COURT: -- the Court is going off the record.

11 MR. DOYLE: -- put something -- no, Your --

12 THE COURT: Counsel, the Court's --

13 MR. DOYLE: -- Your Honor -- then we need --

14 THE COURT: Counsel, the Court's going off the record. My
15 team needs their state and federally mandated lunchbreak. When we
16 come back be very glad to address any concerns you have. Thank you
17 so very much. We'll see you back at 1:10. Thank you so very much.

18 MR. JONES: Thank you, Your Honor.

19 THE COURT: Appreciate it. Thank you.

20 MR. HAND: Thank you, Your Honor.

21 [Recess at 12:01 p.m., recommencing at 1:16 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Are we waiting for a third counsel on Plaintiffs'
24 side or?

25 MR. JONES: No we can begin, whatever --

1 THE COURT: I think he's walking in right now anyway.

2 Thank you so much. Okay. Just one second.

3 So, Madame Court Recorder, are we on the record?

4 COURT RECORDER: Yes, Judge.

5 THE COURT: Okay. Just one second. Marshal, just before
6 we bring the jury in just -- would appreciate the candy -- well I appreciate
7 it. Thanks so much.

8 THE MARSHAL: Yes, Your Honor.

9 THE COURT: No worries.

10 Okay. We're outside the presence of the jury.

11 Counsel, for Defense, what can the Court assist you with?

12 MR. DOYLE: Your Honor, I apologize for my comments at
13 sidebar before lunch. The Court asked me to find a statement in one of
14 the three reports that -- to try and negate the objection that Plaintiff had
15 to the particular question. I knew there was a statement in one of the
16 reports that I believe gave me a good faith basis to ask the question to
17 which Plaintiffs objected. I was trying to find it and, no, I was not
18 listening and paying attention to what you were saying because I was
19 trying to find that statement.

20 After having left sidebar I found the statement in the
21 November 6th, 2018 report where Dr. Juell said mobilizing and freeing
22 the colon from the previously placed mesh, scar tissue and hernia was
23 complicated by an injury to the colon. So that was the statement I was
24 trying to find at sidebar that I could not and that's the statement I believe
25 gives me a good faith basis to ask Dr. Juell to explain and expound on

1 this statement and opinion that he made and explain that it was the
2 colotomies occurred during the blunt dissection. So I'd ask the Court --
3 one, I apologize and, two, I would ask the Court to reconsider now that I
4 was able to find the statement. And the statement was what was leading
5 me to the question that the Court stopped me from completing.

6 MR. JONES: Your Honor, if I could just --

7 THE COURT: Wait. Two different things, folks. Okay. The
8 Court stopped because two different things. The objection that the
9 Court sustained was after calling you both to bench, asking you to bring
10 whatever documents you wanted -- same as done throughout with either
11 side's experts to bring your report or whatever you deem is appropriate
12 to show the Court to support a position from either side; what would be
13 appropriate to ask a question.

14 It's the same thing we've been doing the entire trial; same
15 thing I do with every trial pretty much maybe minor exceptions when I
16 have a pro se litigant, but that doesn't apply here so. That you showed
17 me the December 17th, 2018 which was the rebuttal report you showed
18 me was around the third paragraph -- I say third paragraph the first one
19 was two sentences, so it wasn't really a paragraph. The second one was
20 about three inches thick and it was the third one and that -- what you
21 showed me in that section did not support it. So the Court sustained that
22 objection.

23 You all then returned to counsel table and it was then your
24 next question that you started to ask that the -- and that next question
25 was after the Court made that specific ruling based on the prior objection

1 that -- and that's the Court's job, as a matter of law, to make the
2 determination something is or is not a new opinion based on giving both
3 sides an opportunity to present your viewpoints; argue; provide me
4 whatever you wanted to show me. I was willing to see whatever you
5 wanted to show me and then you started out saying -- after you asked
6 him about how many reports he did; three reports -- and then in one of
7 those reports did you discuss.

8 That's when I stopped you midsentence; asked both counsel
9 to please come to bench because as the Court explained at bench -- and I
10 said it right before we went to lunch, right? I didn't want you to
11 inadvertently start to ask a question that couldn't potentially have a
12 curative because if you were going to ask the witness his own opinion as
13 to whether or not his -- was expressing an opinion that was inside or
14 outside of NRCP 16, *Fiesta Palms*, et cetera that would be impermissible
15 because the Court had just made that ruling on the immediately
16 preceding question so that would be per se impermissible to ask the
17 witness to make that legal determination because the Court had just
18 made it.

19 So that was the last question; that's why I called you to
20 bench that second time when the additional incorrect statements were
21 made. That being said, if you're asking two questions ago I have to hear
22 Plaintiffs' viewpoint because I don't know what your position is yet and,
23 obviously, I give everyone a fair opportunity to speak. So go ahead.

24 MR. JONES: Your Honor, there is a massive difference
25 between saying that in the process of separating these things colotomies

1 occurred which, if you read -- we have a record in this case, and we'd be
2 happy to pull it out to demonstrate. It specifically says that the ligature
3 was used to separate the mesh from the colon; that's the medical record
4 and you heard Dr. Rives testify on the stand that he didn't see colotomies
5 until after that process had occurred.

6 So they want their expert to now come in, because of that
7 harm that was done to their case, to now come in and offer a brand new
8 opinion that is not derivative of what he just said; that is affirmatively I
9 do not believe that Dr. Rives view -- like the Dr. Rives caused colotomies
10 with the use of the ligature. I believe it was caused in the tugging and
11 pulling only.

12 Now that is something -- if he wanted to separate those
13 things he has known about our position on this for a long time, like, a
14 year. And so the idea that the ligature was not part of the process in the
15 separation of the colon from the mesh for him to come up and say that's
16 my opinion that is certainly a very distinct, crystal clear, important
17 opinion in this case and it had to be offered with that degree of clarity
18 prior to trial. This isn't just some derivative, kind of, part of the I said
19 something about mesh being separated from the colon and so I don't
20 think the ligature was used; very different, Your Honor.

21 THE COURT: So let's go back to -- since, obviously, you
22 don't go back to two questions ago for something that you didn't provide
23 the Court for support. The Court made the well-reasoned ruling based
24 on what you all provided and still, no, like I said -- say this over and over
25 -- I would love to have a crystal ball; I'd love to be a fly on the wall. None

1 of those exist in the real world so I have to rely on the attorneys, very
2 experienced attorneys, in the case, provide me -- and you're given the
3 full opportunity to provide what you wish to provide me -- and then
4 make a reasoned ruling based on what you provided me. If you don't
5 provide me something then that's your issue.

6 So -- because I can't guess on what you haven't provided me
7 and guess and then make a ruling on something that hasn't been
8 provided to me because that would not be appropriate, and I don't do
9 that. So, Counsel for Defense, would you like to set forth -- without
10 giving your trial strategy away or however you'd like to do it -- what
11 question or questionings you're going to get so that this Court has an
12 understanding whether you are going to try to elicit a background factual
13 information from this witness or you are going to elicit an opinion as to
14 whether or not Dr. Rives did or did not follow the standard of care from
15 this witness's perspective as to something?

16 MR. DOYLE: My -- what I plan to ask and then follow-up on
17 was Dr. Juell's opinion looking at all the information available including
18 subsequent information or subsequent clinical course and data to form
19 an opinion which, as a causation opinion one can certainly incorporate to
20 the benefit of hindsight that -- and then explaining his comment in his
21 report which I have already read that further elaborating on that that it
22 was the two colotomies were created during the process of blunt
23 dissection not with the use of the ligature. And the statement again,
24 Your Honor, is --

25 THE COURT: No, can I see it? I need to see it in writing --

1 MR. DOYLE: Of course.

2 THE COURT: -- and I need to see it -- the context of it around
3 the rest -- of course you may.

4 MR. DOYLE: I have -- it's the one with the red brackets.

5 THE COURT: I need to see the context around -- the red
6 brackets. Okay. So I have to look at how it's done within the context of
7 the other sentences. Is it historical, informational, or is it opinion? And
8 I'll appreciate that -- he stated that -- make more sense now that he's
9 saying this is the first time actually testifying because this is not done in
10 a format where -- most people have sections, background, and then
11 opinion and this is not done that way.

12 So can have some -- large challenge. Okay. Because the
13 paragraph reads, TF returned to Dr. Rives nine months later with a
14 recurrent mass, period. A CT scan of the abdomen was obtained and
15 demonstrated a recurrent incisional hernia containing non-obstructive
16 colon, period.

17 Dr. Rives recommended a laparoscopic repair and TF agreed
18 to proceed, period. Surgery was performed on 7/3/2015, period. Okay.
19 Now is the section you have in red brackets. Mobilizing and freeing the
20 colon from previously placed mesh, comma, scar tissue and hernia was
21 complicated by an injury to the colon -- end of the red brackets and I got
22 to read the next two sentences just so we have context -- Dr. Rives
23 elected to repair the colon injuries with a laparoscopic gastrointestinal
24 stapler, period. Satisfied with these repairs he completed the hernia
25 repair with an inter -- and I always mispronounce this word --

1 interperitoneal, I'm pretty close, on leg prosthetic mesh; implementation
2 secured with concentric rows, a fixation tacks, period. Do you want me
3 to read the next sentence after that --

4 MR. DOYLE: No.

5 THE COURT: -- context? Do I need the context?

6 MR. DOYLE: I don't think that's necessary.

7 THE COURT: Does Plaintiff want me to read the next
8 sentence for context?

9 MR. JONES: I don't need another sentence for context,
10 Your Honor.

11 THE COURT: Okay. Like I said, I'm just trying to give
12 sentences on either side, so the Court has an understanding of context
13 and if anyone wanted me to read any more to get context. I start at the
14 beginning of the paragraph, but okay. So --

15 MR. JONES: But prior to your decision, Your Honor, I would
16 like to present additional information if you are inclined, in any way, to
17 go that direction.

18 THE COURT: Well I'm looking at the rest of this because I'm
19 -- as you know generally as in opposite situation that happened the other
20 day with Dr. Hurwitz when there was a different objection raised -- Dr.
21 Hurwitz's opinions were sectioned off -- you know what I mean? Boom,
22 boom, boom, boom which is -- that clarity aids the Court; lack of clarity
23 the Court has to read the context to see if it's an opinion or not. Okay.
24 His designation was what? Is he designated just for --

25 MR. JONES: He's an additional expert, Your Honor.

1 THE COURT: Initial expert -- okay. Designation as to give
2 causation?

3 MR. JONES: Standard of care, Your Honor.

4 THE COURT: So standard of care. There's not more specifics
5 on it?

6 MR. JONES: No, Your Honor. In fact he was not given any
7 records of pre-existing or post. He was only given the hospital records
8 and Dr. Rives' personal records.

9 THE COURT: Okay. I'm just -- do you have your
10 designation? You understand the right of Court reminds everyone of the
11 importance of Rule 26 disclosures actually being complied with?

12 MR. DOYLE: May I read from?

13 THE COURT: Yeah, please do.

14 MR. DOYLE: Dr. Juell is a general surgeon and will testify as
15 to the issues relating to the standard of care, causation, and damages if
16 any. Dr. Juell's report including fee schedule and list of deposition trial
17 testimony and CV including publication history are attached. So he was
18 disclosed --

19 THE COURT: See for next case whether that's permissible
20 under --

21 MR. DOYLE: Well I understand the rules have changed.

22 THE COURT: -- well the Court takes no position whether that
23 portion of the rule has changed. The Court -- it is what it is. The Court
24 was just listening to see if it had certain things in it. Court doesn't have
25 motions to strike. The Court's listening for opinions. I'm trying to find

1 any independent information that would help try and help guide the
2 Court as to whether or not there were some specifics on types of
3 opinions. Okay.

4 MR. JONES: He was entirely unaware of foot drop at his
5 deposition in June so.

6 THE COURT: Do appreciate -- no one's been provided -- no
7 one has provided anything from the Court for what he did or did not. So
8 was he asked -- because no one's given me any depo sites or anything. I
9 mean was he asked, during his deposition at all, what are the opinions
10 you're giving in this case; what are the opinions you're not giving in this
11 case? And if nobody wishes to answer that question you don't have to.
12 You have to understand. You're supposed to be bringing the
13 information to the Court. The Court's not supposed to be asking you --
14 and I'm saying you is a global term to all attorneys, right? I just --
15 because if you want to ask the -- if one side wants to ask a question
16 they're supposed to show to the Court that this is not a new opinion; this
17 is something that is covered within the scope of the disclosure.
18 Supposed to be able to look at a Rule 26 disclosure that's supposed to
19 outline specifically what those opinions are going to be.

20 MR. JONES: I --

21 THE COURT: The Rule 26 disclosure does not help me in any
22 manner because it doesn't outline those opinions.

23 MR. JONES: I can answer the question.

24 THE COURT: I'm not supposed to find a section in a
25 statement. Okay. So.

1 MR. JONES: Yes, what was asked in the deposition is --
2 specifically was asked what are your standard of care opinions on a
3 number of different points and then he was asked do you have any
4 additional opinions beyond what you've given in the deposition itself or
5 beyond your report and he said no. The only opinions I have are those
6 that I have outlined today in deposition or that are in my prior two
7 reports.

8 THE COURT: Counsel for Defense, do you agree with that
9 generalized statement?

10 MR. DOYLE: I don't have the data to say yes or no at this
11 moment. I'm looking at the deposition.

12 THE COURT: So --

13 MR. JONES: I'll find it, Your Honor, couple minutes.

14 THE COURT: And the question you wish to -- counsel for
15 Defense, I appreciate you giving me, kind of, a global where he's going
16 to go. He's going to say that your client didn't fall below the standard of
17 care. Got that; that's a standard defense expert opinion. Otherwise they
18 don't show up on the stand. So what I'm trying to get more specific is
19 the nature of the question, okay, was dealing with what was happening;
20 the distinction between what caused, right? Is it ligature versus pulling
21 apart, right?

22 MR. DOYLE: Right.

23 THE COURT: Pulling, causing this. So I'm trying to see in
24 what you're saying how it's --

25 MR. DOYLE: Your Honor, the --

1 THE COURT: -- explains that. So ligature with the
2 laparoscopic gastrointestinal stapler so the essence of what you're
3 saying is that the pulling apart has caused it?

4 MR. DOYLE: Right.

5 MR. JONES: Your Honor, if I could say something. This --

6 THE COURT: Of course.

7 MR. JONES: -- this is very important and so not only is this
8 completely absurd what is -- what he's attempting to do right now, but it
9 is not candid. If you look at his other report that is in December,
10 December 16th -- I have it in front of me --

11 THE COURT: That's what was shown to the Court at bench,
12 right?

13 MR. JONES: No, this is his next report. He makes it
14 abundantly clear that the use of the energy device is part of this case. He
15 says, Ms. Farris underwent laparoscopic hernia repair complicated by
16 colon injury and repair. The use of an energy device to free the colon
17 from the adherent mesh has been associated with an increase in risk of
18 bowel perforation and delayed leak development, right? He knows that
19 this has been used in this case. He --

20 THE COURT: The this was -- yeah, I need some description
21 with the this has been used in this case.

22 MR. JONES: He knows --

23 THE COURT: I have a double this. I don't know --

24 MR. JONES: -- the energy device. So ligature is an energy
25 device.

1 THE COURT: Right.

2 MR. JONES: And he knows, and he specifically says, the use
3 of the energy device to free the colon from adherent mesh, right, has
4 been associated -- so the fact that that is what happened here is not a
5 question. It is, literally, a question for the first time today, and they're
6 seeking to give an affirmative statement that it wasn't used.

7 THE COURT: That the ligature device was not used? I'm not
8 -- you say --

9 MR. JONES: That the ligature device was not used to
10 separate the colon from the mesh.

11 MR. DOYLE: No wait. We've never said that.

12 THE COURT: Okay. I'm trying to understand right now if
13 you all are even arguing about the same point, because it sounds like it's
14 changed back and forth. So I'd like -- that's why --

15 MR. DOYLE: I'd like to keep moving because --

16 THE COURT: -- I'm trying, but Counsel for Defense, that's
17 why I'm trying to ask you specifically what is the question, or two
18 questions, you're trying to get? Not a global concept of based on all --

19 MR. DOYLE: Right, right, right.

20 THE COURT: -- the evidence did your client follow the
21 standard of care? That's a given. Right? That's where your goal is; got
22 it.

23 MR. DOYLE: The question is did the ligature device cause
24 the two holes found by Dr. Rives that he repaired? No. Please explain
25 why not? Those are the questions.

1 MR. JONES: Your Honor, that is a new opinion.

2 THE COURT: Okay. I'm hearing two very different things
3 and I'm trying to have you all -- okay. Mobilizing --

4 MR. JONES: And, Your Honor, I did find it from the
5 deposition. Page 95, he says,

6 "Q And your opinions you've given here today are those your
7 complete opinions you intend to give in this case?

8 "A Yes."

9 THE COURT: The ligature device -- sorry, repeat the question
10 again. Did the ligature device -- because I had two people talking, so --
11 did the ligature device --

12 MR. DOYLE: Did the ligature device cause the two holes
13 found by Dr. Rives that he repaired? No.

14 THE COURT: Found by Dr. Rives that he repaired?

15 MR. DOYLE: Right.

16 THE COURT: Okay. So I'm looking through the
17 November 6th, 2018. I'm not seeing any -- now that is an opinion. That
18 question you just phrased it is an opinion. Did it cause it; did it not cause
19 it? It's got -- only because it has the magic word cause in it and I'm not
20 being so simplistic as that, but anyone would say that is a causation
21 opinion. Did X cause Y? All right? That is a causation opinion. So that
22 causation opinion has to have been previously disclosed to Plaintiffs.

23 The bracketed section, mobilizing and freeing the colon from
24 the previously placed mesh, scar tissue and hernia was complicated by
25 an injury to the colon -- to this Court in no way evidences the concept

1 that this is an opinion. Did the ligature device cause the holes found by
2 Dr. Rives that he repaired? Because while there is the concept of the
3 word colon in both -- I'm not trying to be too simplistic here by saying
4 the words colons in both, duh, I understand what body parts are at issue.
5 Excuse me. I shouldn't use the word -- the Court understands what body
6 parts are in issue, so, obviously the word colon would be there, but --
7 and then he says he elected to repair it with -- the colon injuries with a
8 laparoscopic gastrointestinal stapler.

9 See the most challenging on one -- one of the reasons why
10 the Court's so challenged by why Defense is saying this and why it won't
11 -- seeing Defense's position is because -- in fact the very next sentence
12 that you -- parts -- underlined in the blue which says satisfied with these
13 repairs, bless you.

14 UNIDENTIFIED SPEAKER: Thank you. Excuse me.

15 MR. DOYLE: Your Honor, if you would not share with
16 Plaintiffs now --

17 THE COURT: Oh, I'm sorry.

18 MR. DOYLE: -- so my work product, please.

19 THE COURT: Oh, I'm sorry. Underline -- you told me red
20 brackets. I didn't know that you would have --

21 MR. DOYLE: That's --

22 THE COURT: Okay. Those were four words; that's not --
23 okay. The Court in no way -- work product. It was the very next four
24 words which is in a report; the very next four words in the report,
25 satisfied with these repairs, he completed the hernia repair with the --

1 word that I have trouble pronouncing -- interperitoneal on length of
2 [indiscernible] mesh implantation served by the fixation. Nowhere does
3 it discuss anything on result or -- when the Court reads this paragraph
4 the Court reads it factual, informational. It's explained what happened
5 from a procedural standpoint. This is contextual -- usually it's -- it's on
6 the first page and I'm not even saying because the first page usually has
7 history and information and then you go into conclusions thereafter.

8 Even if I have Court doesn't go from that, which I'm not, it is
9 historical; explains -- because the beginning of the sentence, returned to
10 Dr. Rives nine months later with a re-occurrent mask. So it goes --
11 explains and then it explains the next paragraph starts with she
12 appeared poorly in the post-operative period -- and these are straight
13 from the report. So I'm not reading anything differently.

14 So this is informational; it's not explaining that he has a view
15 on whether what happened should or should not have happened. What
16 was the result of what did or did not happen. It's informational,
17 historical, factual. I'm not seeing any way that he's expressing any
18 opinion on this. If you can point me something in his deposition that he
19 expressed an opinion, where the holes came from -- you got a word
20 search, right, on the depo? You could -- I mean, didn't you have some
21 depos cites or something that you would have had for this?

22 MR. DOYLE: Right, but this is going to take a substantial --

23 THE COURT: Well if you want to --

24 MR. DOYLE: -- amount of time and --

25 THE COURT: Well you would have needed to be prepared if

1 you were going to ask him these type of questions to ensure that you
2 have the basis to do so.

3 MR. DOYLE: Yeah, I believe I did have --

4 THE COURT: You don't have it shown as opinions -- pardon?
5 You don't have it shown as opinions in any of his things; those are
6 subject to objections. And of course I'm not taking a position whether
7 you did or did not discuss this beforehand because you all have a
8 difference of opinion whether you did or did not.

9 So the Court can only go back to the -- if you have issues on
10 these things you need to bring it to the Court's attention not when the
11 witness is on the stand and you all knew your order that you were calling
12 a matter of order on the particular days you were calling matter of order
13 so could have just said, Judge, with all the other issues where do you --
14 one of these things in line.

15 I keep asking you just like you're obviously not having your
16 sanctions motions heard. Any time that we need to stop this and do the
17 sanctions motion you all need to let me know, but you all have told me
18 that you want to get your experts finish.

19 MR. DOYLE: Yes, I'd like to just keep moving forward.

20 THE COURT: Okay. Is that still your position, Plaintiffs'
21 Counsel? Move forward with the experts? The position you all told me
22 yesterday was not to have the pending sanction motions heard; it was
23 fine to continue with the experts. Is that what your still opinion is?

24 MR. JONES: Yes, Your Honor. This is ongoing, though, and
25 it is truly unfair to the Plaintiffs to have to deal with these brand new

1 opinions over and over. So I don't want to do the hearing now, but I
2 mean if this continues with this expert then I do not want to go through
3 another expert before having the sanctions hearing and talking about
4 this. This is a big deal, and it's over and over again. I mean, the white
5 blood cell thing we talked about it yesterday.

6 I mean, I didn't want to be objecting and, Your Honor, I'm --
7 you certainly did everything that I would have expected, and I thought
8 was correct, and I could have objected more, but for me to have to go in
9 every time that Defense counsel tries to do the wrong thing and object
10 eventually I spend my own, you know, credibility with the jury by doing
11 things that are bad for, in my opinion, with the jury and counsel does
12 this over and over again.

13 So I know that you can only take it one objection at a time,
14 Your Honor. I guess my answer is we are happy to move forward, but
15 I'm really troubled and I'm -- and it is quite upsetting what we've been
16 dealing with.

17 THE COURT: Just trying to balance everyone's needs with
18 pending motions and dates and I said I was willing to --

19 MR. JONES: I understand, Your Honor.

20 THE COURT: -- move it to do the witnesses if that was what
21 the parties wished to do; just want to make sure everyone's on the same
22 page because want to make sure I'm meeting everybody's needs. Okay.
23 So --

24 MR. DOYLE: I mean, I have the satisfactory explanation for
25 the Court's ruling on the objection, and I'd like to just get Dr. Juell back

1 on the stand and keep going.

2 THE COURT: Well, sorry. Are you still going to want to ask
3 this question?

4 MR. DOYLE: No. I mean, my understanding is that I can't.
5 So I'm not --

6 THE COURT: Well --

7 MR. DOYLE: -- I'm not planning to. That's what I'm
8 understanding --

9 THE COURT: The Court is trying to give you an opportunity
10 that if you think that there's some support for it. I keep trying to give you
11 the opportunity for some support to be able to say that this is not a new
12 opinion; that someone -- the extra opportunity after lunch that's why I
13 gave you the whole lunch hour to look for things. I figured you'd take
14 the lunch hour to look for things.

15 MR. DOYLE: The objection was it wasn't contained in the
16 report. I gave you what I thought was my basis for asking the question
17 and I -- the Court can rule, and we can get Dr. Juell back on.

18 THE COURT: Let's be -- way the Court understands the
19 objection it's an improper new expert opinion. The rule -- the Court rules
20 on what the applicable case law is. I appreciate that sometimes people
21 phrase things -- characterize it differently. Remember the Court's ruling
22 is based on appropriate law. So --

23 MR. JONES: Your Honor, in addition, I think now that we
24 have gone through this in detail and this has been laid out on the record
25 Mr. Doyle asked the question with the information in the question before

1 I had a chance to object. I think it is -- he testified that the ligature was
2 not used and then before the witness answered I objected and, Your
3 Honor, I think the only way -- if we do go forward with this witness -- the
4 only way we can is we start out and the jury is told that the prior
5 objection that we had -- we had a hearing on it, and that there was an
6 effort to bring out opinions that had never been disclosed and the Court
7 doesn't tolerate that or something along those lines.

8 THE COURT: Couple of different challenges. Remember
9 we've gone past that; you made the objection. The Court did sustain the
10 objection; counsel then moved forward with a next question. Now albeit
11 still not -- got an answer at bench on whether or not he was, anyway.

12
13 The next partial question which I needed to renew at bench to ensure
14 there was not something inadvertent and then because of certain
15 statements that were incorrectly misstated at bench which is why I then
16 had to ask the jury whether they heard things because it was
17 misstatements made so the Court had to ensure that the jury wasn't
18 hearing anything and then it was very clear the jury wasn't hearing
19 anything because you all see me; I completely look over there; told the
20 jury. I mean, deal with people sneezing; obviously I'm dealing with
21 people with the restroom; different things. You all see how many
22 different things taking care of everything definitely; very aware of what's
23 going on in this courtroom. I don't think anyone would ever challenge
24 that one.

25 So, that being said, you had moved on -- counsel moved

1 onto the next question so I'm appreciative in hearing what you're saying.
2 Court does view that you have waived it as far as that last question
3 because you hadn't raised anything else; Defense counsel moved on not
4 just because he moved onto something that was impermissible. That's a
5 different issue, but as far as your request the Court has to say no
6 because you didn't request that in a timely manner. Defense counsel
7 had already moved on and you had not requested any further relief and
8 you would have had the opportunity to do so if you chose to do so --

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

10 THE COURT: -- before the lunchbreak. Okay.

11 MR. JONES: Your Honor, --

12 THE COURT: Now as far as a go forward standpoint --

13 MR. JONES: We would prefer to go forward with the
14 hearing, Your Honor.

15 THE COURT: Okay.

16 MR. JONES: That's our preference.

17 THE COURT: Which hearing? Okay. Now I'm not sure which
18 way you all are saying. I'm -- when you're saying words hearing
19 remember, you all have been a very moving -- now remember what
20 happened the other day at bench when -- have to address that later. I'm
21 referring to question number 12 when Plaintiffs' counsel agreed on
22 something then Defense counsel said, well, since he changed his mind
23 I'm changing mine, and I want it to be asked. You all are completely -- I
24 need to know final answers. Is there agreement of the parties that Dr.
25 Juell is going to be able to complete his testimony before the Court was

1 going to be addressing the sanction motion? If that was the agreement
2 of the parties then the parties need to stick to that agreement and Dr.
3 Juell will come back on the stand.

4 MR. DOYLE: That was the agreement.

5 MR. JONES: Okay.

6 THE COURT: Was that an agreement of the parties?

7 MR. JONES: Our understanding was that the sanctions
8 motions was going to be this afternoon from what we discussed this
9 morning, but if it happens at the end of Dr. Juell's testimony I'm okay
10 with that, but I would say not after Adornato.

11 THE COURT: Okay.

12 MR. JONES: I'd say before Adornato.

13 THE COURT: Then we would address at least the issue of
14 when I'm going to hear it after Juell because we have, so far --

15 MR. JONES: Perfect.

16 THE COURT: -- an agreement that Dr. Juell's testimony is
17 going to be completed because you all haven't even had a cross-
18 examination to --

19 MR. JONES: Correct, Your Honor.

20 THE COURT: -- to the extent you choose to do any
21 cross-examination, Court takes no position, but we're still on direct
22 examination because of all these issues. So at this juncture, then, with
23 regards -- there is no question pending so the Court has not made a
24 ruling. However, Defense counsel, you did ask a reconsideration of two
25 questions ago. The Court can't reconsider a ruling that I made two

1 questions ago because the Court made the well-reasoned ruling based
2 on what you presented to the Court at the time at bench. Presenting
3 something new, even if the something new doesn't support it, but you
4 can't do reconsideration of an objection made two questions ago
5 because I think how that would go with a trial that just doesn't happen.
6 So the Court's ruling was appropriate based on everything you provided
7 to the Court. The Court properly sustained the objection then you move
8 forward.

9 If you're asking me to reconsider it then I have to reconsider
10 Mr. Jones' request about the additional relief sought. Are you asking me
11 to reconsider the ruling?

12 MR. DOYLE: No, Your Honor.

13 THE COURT: Okay. So since you're not asking me to
14 reconsider then I don't go back in time and Mr. Jones is also because
15 you moved on. So at this juncture then there's nothing currently
16 pending for this Court to rule on. You all know what's in the various --
17 what is appropriate within an expert. Do not in any way say that this
18 Court is in any way modifying applicable law or the NRCP or anything
19 else. My rulings are based on all of those.

20 The Court uses informational tools such as the expert reports
21 in order for it to make well-reasoned decisions and I gave you the
22 opportunity, if there's other sources of information that you think apply
23 to a ruling you're more than welcome to do those. However, I do find
24 that these are being improperly done in the midst of a witness's
25 testimony because these are the type of things could have easily been

1 brought forward beforehand. However, I'm still more than glad to deal
2 with them to ensure each of your clients has a full, fair, and impartial
3 trial. So with that, Counsel, is there any other issues that need to be
4 handled or would you like the jury to come in?

5 MR. DOYLE: Jury to come in.

6 THE COURT: Counsel for Plaintiffs, are you ready for the jury
7 as well?

8 MR. JONES: Yes, Your Honor.

9 MR. HAND: Yes, Your Honor.

10 THE COURT: Marshal, thank you so very much; one step
11 ahead. Do appreciate that.

12 THE MARSHAL: Your Honor, would you like the witness
13 first?

14 THE COURT: Would you all like the witness --

15 MR. DOYLE: Yes.

16 THE COURT: -- back on the stand?

17 MR. JONES: Sure.

18 THE COURT: Sure. I do appreciate; thanks so much for
19 asking, Marshal.

20 THE MARSHAL: Sure.

21 THE COURT: You do realize by end of day today we are
22 going to have to let this jury know if you're not thinking that you're going
23 to be done on the -- what day you truly think you're going to be done,
24 right? In fairness to them and their scheduling?

25 MR. DOYLE: Right.

1 THE COURT: I'm not asking it for right now.

2 MR. JONES: Yes, Your Honor.

3 THE COURT: Put that in the back of your minds, right?

4 MR. DOYLE: Yes.

5 [Pause]

6 [Jury in at 1:51 p.m.]

7 [Within the presence of the jury]

8 THE MARSHAL: All jurors are present and accounted for,
9 Your Honor.

10 THE COURT: Do appreciate. Welcome back, ladies and
11 gentlemen, hope everyone had a nice relaxing lunch and is enjoying
12 what downtown has to offer. So at this juncture we have the same
13 witness on the stand; the witness on the stand is he still under oath?
14 Yes? Perfect.

15 Counsel, feel free to continue with your questioning.

16 MR. DOYLE: Thank you, Your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. DOYLE:

19 Q Dr. Juell, I want to go over the bases for your opinion
20 yesterday that there was no hole or leaking staple line prior to that
21 abdominal X-ray on July 12. First, could you explain to the ladies and
22 gentlemen of the jury the timing of the onset of the sepsis and as a basis
23 for your opinion?

24 A Well as I've -- my opinion was is that her initial wave of
25 sepsis was very rapid and within the first 24 hours of operation which

1 would be atypical for an intraabdominal infection to present --

2 Q Did you say typical or atypical?

3 A Would be quite atypical for an infection from elective
4 operation and I think that that initial wave of sepsis was -- was long
5 related. Specifically aspiration pneumonia which I think later became
6 bacterial pneumonia. The basis for thinking that there was no hole prior
7 to the 12th was based on --

8 MR. JONES: Objection, Your Honor. Narrative response.

9 THE COURT: Sustained on narrative.

10 BY MR. DOYLE:

11 Q Doctor, what other bases are there for your opinion that
12 there was no hole or leaking staple line prior to that abdominal X-ray on
13 July 12th?

14 A The patient's clinical course and the serial imaging that the
15 patient had prior to or up until the 12th.

16 Q And we'll come to the serial imaging in a moment, but tell
17 the ladies and gentlemen of the jury what was the clinical information
18 that supports your opinion?

19 A The progress notes; physical examinations; and impressions
20 of all of the multiple physicians caring for the patient as well as her -- fact
21 that after her initial deterioration she had a period of clinical
22 improvement.

23 Q And what's the significance of the period of the clinical
24 improvement?

25 A That she responded to interventions to stabilize her condition

1 after her precipitous acute deterioration and then still was critically ill
2 and needed to be in the ICU but had relatively stable hospital course up
3 until the events starting after the 12th.

4 Q And that clinical course that you just described why would
5 that, I guess, be inconsistent with a hole or a leaking staple line earlier?

6 A Well as you previous asked me the control of, you know,
7 surgical infection has to do with source control and if that had remained
8 uncontrolled for the period of time from the operation up until the 12th
9 there would have been progressive deterioration during that time. There
10 wouldn't have been a period of stability.

11 MR. DOYLE: Your Honor, going to use some of the
12 demonstrative exhibits. Would it be okay to stand next to my tech
13 person with the microphone so that we can --

14 THE COURT: Let's test it real quickly to make sure everything
15 get -- heard from back there. Sure. Let's try it out.

16 [Pause]

17 MR. DOYLE: What I'd like to do is call up demonstrative
18 Exhibit Number 1.

19 THE COURT: Okay. And, once again, if other counsel needs
20 to move anywhere in the courtroom so you -- better view, perfectly
21 welcome to do so; same as any of the witnesses and any of these
22 personnel. Are you going to need the handheld mike at all or not?

23 MR. DOYLE: No, I think I'll have the witness remain on the
24 stand. Thank you.

25 THE COURT: Okay. No worries. Thank you.

1 BY MR. DOYLE:

2 Q Doctor, just for orientation tell us, generally, what we're
3 looking at?

4 A Well you can see from the annotation in the right-lower
5 quadrant or the image that this was a - a 7/5/15 image that's the date and
6 then this is a single slice out of a computerized CT scan of a patient's
7 abdomen. This particular slice is at the level of the repair of the ventral
8 hernia.

9 THE COURT: Okay. And just a friendly reminder. You may
10 not be as familiar with our newer more recently update -- there's a
11 mouse there. If you move the mouse the arrow shows on the screen.

12 MR. DOYLE: Okay. Thank you.

13 THE COURT: These are not touch screens. There you go.
14 Okay. Right, just as long as we have control of that and you're not --
15 you're just doing it up on the screen, correct? Okay. Perfect. That's fine.

16 MR. DOYLE: Oh, okay. I was going to have my tech person
17 do that, but we can have Dr. Juell do that. That's -- well let's see if this
18 works.

19 BY MR. DOYLE:

20 Q Dr. Juell, would you circle the hernia sac?

21 A It's right here.

22 Q Can you do it and create a line around it?

23 THE COURT: However you choose to do it. Some people
24 have difficulty with how it --

25 THE WITNESS: It moves the whole hand.

1 THE COURT: -- does it with the mice if they're not that
2 familiar with it. So I'm not sure how you're choosing to run it.

3 MR. DOYLE: Let's not use the mouse.

4 THE COURT: However counsel chooses to do it. The Court
5 takes no position whatsoever.

6 MR. DOYLE: Okay.

7 THE WITNESS: Well there's an arrow over there. I don't --
8 BY MR. DOYLE:

9 Q Doctor, we're just -- we're going to do it from back here.

10 A Okay.

11 Q What have we circled in red?

12 A All right. This is -- you have to remember this is second post-
13 operative day and what you're looking at here is the residual fluid and air
14 within the sac or the space previously occupied by the hernia. And then
15 you can see underneath that there's continuity of the abdominal wall
16 which, you know, obviously was affected surgically in the repair.

17 Q Can we see a staple line on this image?

18 A You can. There's single staple right here; this very bright
19 small dot there. It's the brightest thing on the screen; there's a similar
20 one over here on the abdominal wall, which is probably a electrode, you
21 know, sticky electrode because of their metallic density.

22 Q Doctor, is there any free air in the abdomen at this point in
23 time that would be unexpected given that surgery had occurred couple
24 days earlier?

25 A No, the only free air visible here is in the hernia sac itself

1 which is not an unusual finding at this point in time.

2 Q All right. Let's go to demonstrative Exhibit Number 2 and,
3 again, we're going to start by circling the hernia sac; give us a moment.
4 Okay. Doctor, tell us what the hernia sac looks like now to you compared
5 to July 5th?

6 A All right. This is from a 9th. This is the second CT scan that
7 was done, and it shows that there's still persistent fluid in there which is
8 not surprising. The body hates an empty space and will fill it with fluid.
9 There's actually more fluid in there than there was before, but there's
10 much less air. You can see the black areas are the air and -- because X-
11 rays pass very easily through air and so they're very dark on imaging.
12 And so there's just less, much less free air, but there is still fluid. Right
13 below that circle you can see that bright dot here which is a staple so
14 that -- that is in the area of the repair.

15 This structure here is colon as -- this is colon. You can tell by the
16 configuration of the indentations and that you can see there's contrast --
17 this is very white contrast -- within the lumen on both sides of where this
18 -- these staple lines are. Here you see a little bit of irregularity. That's
19 stool in there, but there is contrast mixed into it, so contrast is on both
20 sides of the repair also in the small bowel.

21 There is some fluid here in the abdominal wall because, you know,
22 recall the questions you had about anasarca. You can, kind of, see that it
23 -- these three layers of the abdominal wall are, kind of, have low density
24 changes. I mean, these are the lateral abdominal wall muscles which
25 would be the bacon in the pig so to speak and you can see there's a lot

1 of fluid, you know, in that space, but the area of interest, really, is right
2 here. This is not adverse change; it's an expected change of evolution
3 now on the 9th of July.

4 Q And what would you expect to see on this CT scan if there
5 was, at this point in time, a hole in the bowel or a leaking staple line?

6 A There are spaces here, you know, between these loops of
7 bowel that could contain fluid and there could be air, you know,
8 accumulations inside the abdomen not exclusive to the hernia sac where
9 the, you know, that we saw that air before. That air left in behind after
10 surgery has nitrogen in it and it's very slowly reabsorbed, you know, so
11 it diminishes slowly over the first week or possibly in -- longer, but if you
12 thought there was a hole in the colon there obviously you can see how
13 much air there is in the colon here. There would be a -- if nothing else,
14 an increased volume of free air.

15 Q Okay. Let's call up --

16 MR. JONES: Your Honor, I'd like to move to strike his last
17 answer. He added additional opinion and statements that he has in no
18 report or no prior testimony.

19 THE COURT: Counsel, can you both please approach?
20 Madame Court Recorder, can you turn on the white noise?
21 We need to take that down for a quick second if you don't mind while
22 we're at bench; appreciate it. Thanks.

23 [Sidebar at 2:03 p.m., ending at 2:11 p.m. , not transcribed]

24 THE COURT: Okay. At this junction, by agreement of
25 counsel, the Court's going to defer ruling. We're going to do it later

1 when you're all on a break. So -- okay. So the Court was deferring
2 ruling by agreement of counsel.

3 So Counsel, please move forward. Thank you so much.

4 [Pause]

5 BY MR. DOYLE:

6 Q Dr. Juell, let's take a look at demonstrative Exhibit Number 3.
7 Are there findings -- well, actually, why don't you use the mouse and
8 why don't you show us where the hernia -- well, what's the date of this
9 image?

10 A It is the 9th of July, 2015. This is a -- what we call a sagittal
11 view --

12 Q What's a sagittal view?

13 A A side view of the patient. Now, when you use the computer
14 to regenerate these images, you can look at them in different angles of
15 view, if you will. You can look at them transversely, which we were
16 looking at earlier. That was the -- like the loaf of bread cut. And then
17 you can look at them from the side view. And then also, you can use
18 what we call a coronal view.

19 But here, you're looking at the side view of the patient's abdominal
20 wall. And what you can see here is contrast in the bowel components
21 here. You see fluid in the hernia sac with a small amount of air.

22 This is the anterior abdominal wall and you can see the staple line
23 here. You know, there's some fluid -- I think this is in the bowel.
24 Basically again --

25 MR. JONES: Objection, Your Honor.

1 THE WITNESS: -- it just doesn't show --

2 MR. JONES: Narrative response.

3 THE COURT: Just a second. Just a second.

4 Excuse me. When I have an objection, sorry, if you don't
5 mind pausing for a quick second.

6 So what was the objection, counsel? I didn't hear. The two
7 of you were --

8 MR. JONES: Narrative response, Your Honor.

9 THE COURT: Okay. The Court's going to sustain on a
10 narrative.

11 Counsel, you need to break up the question so we can get it.

12 BY MR. DOYLE:

13 Q Doctor, can you show us the staple line?

14 A Yes. Here.

15 Q Can you show us where the abdominal wall is?

16 A Right here.

17 Q Can you show us where the spine is?

18 A This is the spine back here.

19 Q Can you show us the contrast in the colon?

20 A Yes. It's in here.

21 Q Is there any evidence on this image, or any other image in
22 this CT scan, of the contrast outside the lumen in the bowel?

23 A No.

24 MR. DOYLE: So we're going to put up, side by side,
25 demonstrative Exhibits 3 and 4 now.

1 BY MR. DOYLE:

2 Q Looking at these together, if there was a hole at this point in
3 time or a leaking staple line, what would you see that you do not see?

4 A Well, you would see more inflammatory changes, increased
5 amount of free air, and perhaps, localized fluid collections in the area of
6 the repair, which are all absent.

7 MR. DOYLE: Let's look at now demonstrative Exhibit 5.

8 BY MR. DOYLE:

9 Q And first of all, Doctor, tell us, what's the date of this
10 particular image?

11 A This was taken on the 12th of July, 2015.

12 Q Is this a CT scan?

13 A No. This is a plain film. So this is just where the X-ray film
14 was placed behind the patient and they took a film through the abdomen
15 or shot X-rays through the abdomen. It's just a single image.

16 MR. DOYLE: Can you show us the area -- there we go.

17 BY MR. DOYLE:

18 Q What we circled -- what do you see inside?

19 A Well, you can -- you can see -- this is contrast on both sides
20 of the portion of the transverse colon and this is where the repair was
21 done. You can see staples here. This is an overlying bleed. This is an
22 NG Tube which is probably the reason that the film was taken was for a
23 two position check. But this is the area of repair. This was taken on the
24 1212. And it does not show any leakage of contrast which is clearly on
25 both sides of the repair.

1 MR. DOYLE: Let's look at demonstrative Exhibit 6.

2 BY MR. DOYLE:

3 Q What you see on this -- now -- well, first of all, what's the
4 date?

5 A The date here is the 15th of July, 2015.

6 Q Is this a CT scan again?

7 A This is.

8 Q Tell us what you see now on the 15th?

9 A Well, it's dramatically different. There's now a large amount
10 of free air in the anterior abdominal wall. This is the area of the staple
11 that we previously referenced and there's an air fluid level now.

12 Q What does that mean, "An air fluid level?"

13 A Just like if you think of the patient laying down flat, the
14 meniscus of the horizon of fluid that's present would lay her out flat.
15 And so that's a -- there's air here, the black. Fluid here. So there's a
16 layering fluid collection. There's also --

17 MR. JONES: Objection, Your Honor.

18 THE WITNESS: -- air near the abdominal wall.

19 MR. JONES: Narrative response.

20 THE COURT: Just a second.

21 We're going to sustain the objection on narrative, counsel.

22 BY MR. DOYLE:

23 Q Doctor, what's the significance of the air in the abdominal
24 wall?

25 A Well, I think it's under tension. You know, it's spreading. It

1 could be an air-forming organism now as -- associated with this
2 infection.

3 MR. DOYLE: What I'd like to do is put side by side -- we'll
4 keep this image and we'll move it to the right. And if we could put up on
5 the left demonstrative Number 4.

6 BY MR. DOYLE:

7 Q And for reference, demonstrative Number 4 is done on July
8 9th, correct?

9 A That's correct.

10 Q And what we're looking at on the right is July 15th?

11 A Yes.

12 Q So could you compare and contrast for the ladies and
13 gentlemen of the jury what we're looking at. And what tells you no
14 leaking staple line, no hole on the 9th, but yes on the 15th?

15 MR. JONES: Objection, Your Honor. Compound.

16 THE COURT: Sustained.

17 BY MR. DOYLE:

18 Q Doctor, can you look at these and compare and contrast
19 them and explain to the jury why there's no evidence of a hole on the
20 9th?

21 A Well, as we previously said, there's a -- there's fluid in the
22 hernia sac. That's an expected finding. And there's less of these gas
23 bubbles than previously. So this is the staple line. This is contrast in the
24 colon. This is the abdominal wall. So I do not think this has -- is
25 diagnostic --

1 MR. JONES: Objection, Your Honor. Narrative --

2 THE WITNESS: -- of a leak.

3 MR. JONES: -- response.

4 THE COURT: Gentlemen. Pardon? What was it?

5 MR. JONES: Narrative response, Your Honor.

6 THE COURT: Sustained.

7 BY MR. DOYLE:

8 Q Doctor is there any evidence on the image on the left of a
9 leaking staple line or hole in the bowel?

10 MR. JONES: Objection, Your Honor. Leading.

11 THE COURT: Sustained.

12 BY MR. DOYLE:

13 Q Doctor is there a hole on the July 9th image?

14 MR. JONES: Objection, Your Honor. Leading again.

15 THE COURT: Sustained.

16 BY MR. DOYLE:

17 Q Doctor, what do you see on the July 9th image concerning
18 the presence or not of a hole?

19 A I see no radiologic evidence of a leak in the bowel on the 9th
20 of July CT scan.

21 Q And what do you see on the 15th on the right?

22 A I see evidence of a hole, now, based on the increased
23 amount of free air.

24 Q Now, Doctor, you mentioned earlier that in addition to the
25 imaging findings --

1 MR. DOYLE: We can take that down.

2 BY MR. DOYLE:

3 Q In addition to the imaging findings that there was no hole or
4 leak, you also spoke about her clinical condition, and we have already
5 covered the ways in which she was improving. But can you tell us the
6 ways that she was remaining stable?

7 A Well, in term -- in terms of her vital signs, her fever curb. If
8 you -- you know, you have relatively flat fever curb, obviously, there's
9 inflammation going on there. There might be a base or elevation of
10 temperature, but it wouldn't be spiking, you know, or changing. Over
11 time, heart rate, laboratory values, physical examination. You know,
12 changes in the way the abdomen would look. You can see from those X-
13 rays that the fluid is very close to the surface. You know, the skin. I
14 mean, there would be skin changes. So multiple parameters.

15 Q What do you mean by "Skin changes?" What would you
16 expect to see if there was a hole or a leak?

17 A Well, if there was a hole on the 9th, you can see that fluid is
18 just like very close to the surface of the skin. There would be some skin
19 change; redness, you know. Swelling. I mean, even in a patient who's
20 being sedated, you know, they were describing that there was soft fluid
21 fluctuance on physical examination. But there would have been -- you
22 know, if there was an infection there for, you know, five days --

23 MR. JONES: Objection, Your Honor.

24 THE WITNESS: -- he'd have --

25 MR. JONES: Narrative response.

1 THE WITNESS: -- some changes, you know.

2 THE COURT: Just a second. I heard an objection. Sorry.
3 Appreciate it. Just so we have a clear record.

4 Sustained. Again, Counsel, please.

5 BY MR. DOYLE:

6 Q Doctor, if there had been a leak and spillage of bowel
7 contents for four or five days by -- as of July 9th, what sort of skin
8 changes would you see?

9 MR. JONES: Objection, Your Honor. Foundation,
10 speculation.

11 THE COURT: Sustained based on the designation of this
12 witness.

13 BY MR. DOYLE:

14 Q Doctor, generally, what would one see by way of skin
15 changes if there is an underlying infection?

16 A Well there would be redness, swelling, possibly blistering.

17 Q Did any of the physicians --

18 MR. DOYLE: Well, strike that.

19 BY MR. DOYLE:

20 Q Between July 4th and July 14, can you tell us whether there
21 were multiple physicians documenting examinations of the abdomen?

22 A Yes.

23 MR. JONES: Objection, Your Honor. Leading.

24 THE COURT: Sustained.

25 BY MR. DOYLE:

1 Q Doctor, were there any abdominal examinations between
2 July 4 and July 14th?

3 A Yes, there were multiple examinations by --

4 Q Can you --

5 A -- multiple physicians.

6 Q Did anyone document any abnormal skin changes?

7 A No.

8 Q Did anyone document any peritoneal signs on those
9 abdominal examinations?

10 MR. JONES: Objection, Your Honor. Leading.

11 THE COURT: Sustained.

12 BY MR. DOYLE:

13 Q What are peritoneal signs?

14 A We refer to peritoneal signs as evidence of irritation of the
15 lining of the abdomen. Usually, patients that have -- they'll have
16 tenderness, but they'll also have guarding. Like, they don't want you to
17 push on their abdomen. They'll resist that. So that's a parred sign.
18 You'll have rebound tenderness where you can push on one part of the
19 belly and then the patient may feel pain, and then remote location where
20 the peritoneal is stretched and you can feel it. That's a hard peritoneal
21 finding. And then you can have both direct and indirect rebound. And
22 you'll have a lot of guarding. We described it as board-like rigidity. You
23 know, where you push, and the patient will not let you push on their
24 belly because of the irritation.

25 Q What causes peritoneal signs?

1 A Inflammation or infection of the lining of the abdomen.

2 Q Did anyone document any peritoneal signs?

3 A No.

4 MR. JONES: Objection, Your Honor. Leading.

5 THE COURT: Sustained. The jury will disregard what the
6 Court's sustaining, even in the answer.

7 BY MR. DOYLE:

8 Q Doctor, did you review the records?

9 A Yes.

10 Q Did you review the abdominal examinations that were
11 performed?

12 A Yes.

13 MR. JONES: Objection, Your Honor. Leading.

14 THE COURT: Overruled on "The did" for review. And
15 actually, overruled on this specific contexts.

16 BY MR. DOYLE:

17 Q What did you find when you reviewed the various abdominal
18 examinations concerning peritoneal signs?

19 A There were no documented peritoneal signs on physical
20 examination up until the time before the surgery of the 15th.

21 Q Okay.

22 MR. DOYLE: I'd like to bring up Exhibit 1. We'll start with
23 page 10 and this is Dr. Ripplinger's consultation.

24 BY MR. DOYLE:

25 Q Doctor did you review this consultation as part of your

1 evaluation?

2 A Yes.

3 Q What was your understanding of Dr. Ripplinger's role?

4 A Dr. Ripplinger was brought in at the request of the family for
5 a second surgical opinion. He is a general surgeon.

6 Q Do we see at the top the date of the consultation.

7 A Yes, 7/9/2015.

8 Q And who's listed as the referring physician?

9 A Dr. McPherson.

10 Q And how do you interpret that?

11 A He is an intensivist.

12 Q Do we see the reason for the consultation?

13 A For a second surgical opinion.

14 Q And then the indications section of this note, what
15 information, generally, is contained in that note?

16 A Dr. Ripplinger summarizes the circumstances that he
17 believes led to them asking him for an opinion.

18 Q If we go to Exhibit 1, page 11, is there a section for Dr.
19 Ripplinger's physical examination?

20 A Yes, there is.

21 Q Is there a section for his examination of the lungs?

22 A Yes. He has decreased breath sounds in the bases.

23 Q Is his examination findings of the lungs normal or abnormal?

24 A It's generally abnormal.

25 Q Now is there an examination of the abdomen?

1 A Yes.

2 Q What is that first sentence mean, "Obese and quite
3 distended" to you as a general surgeon?

4 A Just that, you know, that she's heavy and also that her belly
5 is somewhat distended, you know, or taut.

6 Q Is that the anasarca again?

7 A I --

8 MR. JONES: Objection, Your Honor.

9 THE WITNESS: It doesn't say.

10 MR. JONES: Leading.

11 THE WITNESS: But --

12 THE COURT: Just a second.

13 MR. JONES: Leading.

14 THE COURT: It was?

15 MR. JONES: Your Honor, objection. Leading, foundation.

16 THE COURT: Sustained on both grounds.

17 BY MR. DOYLE:

18 Q Based on your review of all the records, do you have an
19 opinion why her abdomen was quite distended at this point in time?

20 MR. JONES: Objection, Your Honor. Foundation.

21 THE COURT: Overruled on foundation.

22 BY MR. DOYLE:

23 Q Do you have an opinion?

24 A Well, I think it's due to --

25 Q Well, no. First, do you have an opinion?

1 A Yes, I do.

2 Q What is your opinion?

3 A That she had fluid overload.

4 Q And what is fluid overload?

5 A When she had required a fluid, you know, resuscitation at the
6 time of her initial collapse. And I know just from the pattern and review
7 of the records that they were -- they were making efforts to try to
8 decrease positive fluid balance. But looking at the CAT scans, she's not
9 that gassy, so I think it's mostly fluid in the abdominal wall and fatty
10 tissues that are making her appear that way.

11 Q Dr. Ripplinger noted she has some fluctuance in the area of
12 her incisional hernia. How do you interpret that as a general surgeon?

13 A Well, I think it's not a pointing abscess. You know, when you
14 have an abscess it's infected. It gets really hard. You know, it wants to
15 come out. We call it a pointing. But this is soft fluid, and you can feel
16 soft fluid in the sac.

17 Q Tell us whether we could see that fluid on the CT scans --

18 A We --

19 Q -- with her?

20 A -- can.

21 Q Okay. He then goes on to say, "Which I believe is fluid or air
22 between the mesh and skin." What does that mean?

23 A Well, that's where he's palpating. He's reporting this
24 fluctuance. He -- I mean, he knows it's the hernia sac.

25 Q He says, "Her wounds are healing." What wounds is he

1 referring to based on your knowledge of this case?

2 A The laparoscopic incisions that Dr. Rives had made to access
3 the abdomen.

4 Q And when he says, "Nonerythematous," what does that
5 mean?

6 A It says they're not red.

7 Q And when he says, "There's no drainage," what does that
8 mean?

9 A That there isn't any fluid coming out of them.

10 Q And to you, as a general surgeon, what is the significance of
11 such wounds being nonerythemtous without drainage?

12 A The significance is is that there's no infection clinically.

13 Q Then we see a section for radiologic studies, correct?

14 A That's correct.

15 Q Does Dr. Ripplinger have any comments about CT scans?

16 A Yes.

17 Q Does he comment on the abdomen and pelvis?

18 A Let's see.

19 [Witness reviews document]

20 A Yes.

21 Q Does he comment on the lungs?

22 A He does. He says --

23 Q What does he say concerning the lungs?

24 A He says, "There's consolidation of the lungs." He says,
25 "Bibasilar." That means in both lungs. And consolidation means that

1 there's abnormalities in the tissue. That it's solidified. You know, the
2 lungs are primarily air. You know, exchanging organs, there's not a lot
3 of substance. But here there is substance.

4 Q Then --

5 A And he says, "There's a right pleural effusion," which means
6 there's a small amount of fluid around the right lung in the space
7 between the lung and the chest wall.

8 Q Under impression and plan, what is your interpretation of Dr.
9 Ripplinger's plan or recommendation?

10 MR. JONES: Objection, Your Honor. Foundation.

11 THE COURT: Sustained.

12 MR. JONES: And speculation.

13 THE COURT: Sustained on both grounds.

14 BY MR. DOYLE:

15 Q Doctor, read the first sentence of the impression and plan,
16 please.

17 A "Patient is -- is basically saying that we" --

18 Q No. Just read it, please.

19 A "Obese female whose status post repair of an incisional
20 hernia with placement of mesh, who is on a ventilator with an elevated
21 blood -- white blood cell count."

22 Q Okay. Read the next sentence, please.

23 A "I think there is a reason to be concerned for possible leak
24 from one of the two colon repairs or an early aggressive infection of the
25 mesh causing some of the patient's problems.

1 Q What does he have next?

2 A "I would recommend a repeat CT scan of the abdomen and
3 pelvis done with intravenous oral and rectal contrast to help rule out a
4 leak from the colon."

5 Q And was that CT scan completed?

6 A Yes.

7 Q Is that the one we were looking at earlier?

8 A It is.

9 Q What does Dr. Ripplinger have after then -- or what -- tell us
10 what the next sentence says?

11 A It says, "I think there should be a fairly low threshold for at
12 least a diagnostic laparoscopy or even a laparotomy if there are any
13 significant abnormalities noted on the CT scan, especially if there is
14 increase in free fluid in the abdomen. I would be concerned for a
15 possible bowel leak."

16 Q Was there any increase in free fluid in the abdomen?

17 A No.

18 Q Were there any significant abnormalities?

19 A No.

20 Q What does Dr. Ripplinger record next?

21 A He says he discussed these findings with Dr. McPherson,
22 who's the intensivist, you know, in the ICU.

23 Q And then going over to Exhibit 1, page 12, what do we have?
24 What does the sentence continue to say?

25 A He discussed it with him, and he would order the CT scan

1 with oral IV and rectal contrast. Then he says, "This is a second opinion,
2 general surgical opinion, and we will not actively follow this patient
3 while she is in the hospital. If we can be of any further assistance, please
4 do not hesitate to contact us."

5 Q Doctor, based on all the information that was available as of
6 July 9, 2015, including the CT scan findings, did the standard of care
7 require Dr. Rives to perform surgery that day?

8 A No.

9 Q Did the standard of care require him to perform surgery the
10 next day, July 10?

11 MR. JONES: Objection, Your Honor. Leading.

12 THE COURT: Sustained.

13 BY MR. DOYLE:

14 Q Doctor, when did the standard of care, in your opinion, first
15 require Dr. Rives to think about taking Mrs. Farris back to surgery?

16 A The -- when the CT scan of the 15th was obtained, the
17 standard of care would require reoperation.

18 Q Now, I want to come back to the aspiration. Did any of the
19 radiologists who looked at the different imaging studies have anything
20 about aspiration or aspiration syndrome?

21 A I don't believe so.

22 Q Did any of the physicians caring for Mrs. Farris have such
23 documentation?

24 A Not specifically, no.

25 Q Your opinion that there was aspiration and aspiration

1 pneumonia, pneumonitis, which is it?

2 A I believe she had an episode of pulmonary aspiration that led
3 to her abrupt deterioration. And that she subsequently developed
4 pneumonitis.

5 Q Now, did your opinion in part rely on different imaging
6 studies of the lungs?

7 A Yes.

8 Q All right. Let's look at those.

9 MR. DOYLE: If we call up demonstrative Exhibit 7.

10 BY MR. DOYLE:

11 Q Doctor, first of all, tell us what is this?

12 A This is a chest X-ray.

13 Q Do you see -- can you look at the lower right corner and
14 identify for us the date and time?

15 A This is from the 4th of July, 2015.

16 MR. DOYLE: And then let's just go to demonstrative Exhibit
17 8 for a moment. And then we'll come back to 7. But let's put up 8.

18 BY MR. DOYLE:

19 Q If you could look in the right lower corner, what's the date
20 and time of this chest X-ray?

21 A The same date, 7/4/15.

22 MR. DOYLE: All right. Let's put these side by side. Let's put
23 the number 7 to the left and number 8 to the right.

24 BY MR. DOYLE:

25 Q Doctor, would you explain to the ladies and gentlemen of the

1 jury what you found --

2 MR. DOYLE: No.

3 THE CLERK: Sorry.

4 MR. DOYLE: There we go.

5 BY MR. DOYLE:

6 Q What you found in these chest X-rays that you believe
7 supports your opinion about aspiration?

8 A Yes. This is -- these are two X-rays that are done several
9 hours apart. This is when the patient was beginning to have an abrupt
10 deterioration which was essentially pulmonary. She had a high heart
11 rate, high respiratory rate, had increasing requirements for oxygen.

12 So the X-ray was obtained, and it shows -- this is the one done at 4
13 -- or 3:51 p.m. You can see this is how the lung looks. It's a little bit
14 compressed and slightly wet looking. This is the heart. But in the right
15 upper lobe, you see this -- this band of fluid in the right upper lobe which
16 is very atypical. You can also see there's some fluffiness --

17 MR. JONES: Objection, Your Honor. Narrative response.

18 THE COURT: Sustained.

19 Counsel.

20 BY MR. DOYLE:

21 Q Doctor, let's do it step by step.

22 A Okay.

23 Q Looking at the one on the left, tell us the first finding that
24 supports your opinion about aspiration. And then we'll go to the second,
25 and we'll go to the third.

1 A That's --

2 Q What's the first one?

3 A This right upper lobe infiltrate. It's the lobe of the lung that's
4 most vulnerable to fluid aspiration.

5 Q Is there a second finding on this X-ray we're looking at?

6 A You see some lower lobe perihilar infiltrate here. This little
7 fuzziness. The hilum is where the blood vessels and the breathing tubes
8 come into the lung.

9 Q Is there a third finding?

10 A No.

11 Q So let's go to the X-ray on the right now. What's the first
12 finding that supports your opinion?

13 A So this is four hours later. And now you can see this upper
14 lobe infiltrate has increased.

15 Q Is there a second finding?

16 A This perihilar infiltrate here has also increased or blossomed.

17 Q Is there a third finding?

18 A No. Those two are the most important.

19 MR. DOYLE: Let's go to demonstrative exhibits -- well, we'll
20 start with number 9.

21 BY MR. DOYLE:

22 Q Doctor, first of all, tell us the date of this image that we're
23 looking at?

24 A This is from the 5th of July.

25 Q Okay. And can you tell us the time?

1 A This is at 10:30 a.m.

2 Q Is this an X-ray or a CT?

3 A This is a CT scan.

4 Q What is it a CT scan of?

5 A This is of the chest.

6 Q Are there any findings on this demonstrative Exhibit 9 that
7 support your opinion about aspiration? And just yes or no.

8 A Yes.

9 Q One finding or more than one finding?

10 A There's one finding.

11 Q What is it, please? Tell us.

12 A You can see around these air tubes thickening or
13 inflammation, acute inflammation, around the lung tubes. This is -- they
14 had -- they're black because they contain air. And also you see collapse
15 of the lower lung fields here. This is consolidation.

16 Q And let's look at demonstrative Exhibit 10. What are we
17 looking at now?

18 A This is a CT scan of the chest from 7/15/2015.

19 Q And in looking at this are there any findings that support
20 your opinion about aspiration, causing the aspiration pneumonitis, if I
21 recall correctly?

22 A Yes.

23 Q How many?

24 A One.

25 Q What is it?

1 A Consolidation of the lung.

2 Q What does that mean, "Consolidation of the lung?"

3 A Can I explain on the X-ray?

4 Q Sure.

5 MR. JONES: Your Honor, I'm just going to object to narrative
6 response and also it's going outside of his report of prior opinions.

7 THE COURT: Counsel, would you like to approach, please?

8 [Sidebar at 2:42 p.m., ending at 2:48 p.m., not transcribed]

9 THE COURT: One, two, three, four, five, six, seven, eight.
10 Perfect timing.

11 After counsel at the bench, seeing the documents, the
12 objection is sustained.

13 MR. DOYLE: Thank you, Your Honor.

14 THE COURT: Thank you.

15 BY MR. DOYLE:

16 Q One other area, Dr. Juell. Would you explain to the ladies
17 and gentlemen of the jury the bases for your opinion that there was a
18 staple line that failed sometime between July 12 and July 15. Just list
19 for us the bases.

20 A Of findings at the time of operation.

21 Q What else?

22 A When the patient was reoperated. I mean, the radiologic
23 findings and the clinical syndrome changed abruptly --

24 Q Okay.

25 A -- on the 14th and the 15th.

1 Q Okay. Thank you.

2 MR. DOYLE: That's all I have then.

3 THE COURT: Okay. We're about to -- timing is everything.

4 Okay. We normally take a break around the 3:00 hour so it
5 makes the most sense to take it now rather than Defense [sic] starting
6 your cross-examination then taking it about ten or 15 minutes.

7 And so ladies and gentlemen, it's going to make more sense
8 to do it now. So we're going to come back at 3:10.

9 So ladies and gentlemen, during this recess, you are
10 admonished not to talk or converse among yourselves or with anyone
11 else on any subject connected with the trial.

12 You may not read, watch or listen to any reported
13 commentary of this trial or any person connected with the trial. By any
14 medium of information including, without limitation, social media, text,
15 tweets, newspapers, television, internet, radio. Anything the Court has
16 not stated specifically is, of course, also included.

17 Do not visit the scene or the events mentioned during the
18 trial. Do not undertake any research, experimentation or investigation.

19 Do not do any posting, communications on any social
20 networking sites or anywhere else.

21 Do not do any independent research, including but not
22 limited to internet searches.

23 And do not form or express any opinion on any subject
24 connected with this trial until the case is fully and finally submitted to
25 you at the time of jury deliberations.

1 With that, I wish you a very nice afternoon break. Go stretch
2 your legs. We'll see you back at 3:10. Thank you so much.

3 THE MARSHAL: All rise for the jury.

4 [Jury out at 2:50 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: Counsel, before you go, I would like you -- wait
7 for just one quick second.

8 You all were supposed to let me know after lunch whether or
9 not there was going to be an issue with regards to the next witness, Dr.
10 Adornato, but in light of the intervening issues, and if we are even going
11 to get to that witness today, or is that something not to address today?

12 MR. DOYLE: Well, I don't know how long their cross is going
13 to be. And my direct of Dr. Adornato is not very long. And we had a
14 discussion, and we could not agree.

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

16 THE COURT: Okay. So -- well, I guess that answers that
17 question. Okay. So --

18 MR. DOYLE: And he's downstairs and ready to go.

19 THE COURT: Have a nice break. We'll see you at 3:10.
20 Thank you so much.

21 [Recess taken from 2:50 p.m. to 3:07 p.m.]

22 THE CLERK: On the record.

23 THE COURT: Okay. On the record outside the presence of
24 the jury. So, you all ready for the jury?

25 MR. HAND: We are, Your Honor.

1 THE COURT: Okay. Counsel for Defense, yes or no?

2 MR. DOYLE: Yes.

3 THE COURT: Okay. If you'll go get the jury. While the
4 Marshal's going and getting the jury, just a friendly reminder, today is
5 the Thursday before a holiday. I'm sure you're not going to be going too
6 close to the 5:00 hour, knowing that this jury needs to be out of here, and
7 knowing that you've had my poor team here late every day. So,
8 remember, if you want --

9 MR. HAND: What time, Your Honor, would you like?

10 THE COURT: -- if anybody's launching a DVD, right, has to
11 be done by 4:30. That was the agreement at the beginning of the trial,
12 right, so things can be downloaded. So --

13 MR. HAND: Does that mean I'm to shut down at 4:30, or at
14 some point before?

15 THE COURT: Right. Because remember, it takes about 15
16 minutes for her to upload the day and then another 15 minutes to upload
17 the disc. So, you all both ordered things. So, if either of you want -- are
18 either of you going to want one for today?

19 MR. DOYLE: No. We can -- I'd rather --

20 MR. HAND: We do, Your Honor. And I will tell you that even
21 if we went until 5:00, I wouldn't be done with Dr. Hurwitz-- or with Dr.
22 Juell.

23 THE COURT: Okay. Then, in light of that, then that's not
24 going to make a difference anyway. If you told me it was going to make
25 a difference, I was going to try and accommodate you.

1 MR. HAND: It will not.

2 THE COURT: But if it's not going to make a difference then
3 okay. Then that's the issue with all the matters outside the presence,
4 and all the issues being raised. Okay. It's not going to make a
5 difference, is that what you're saying?

6 MR. HAND: Yes, Your Honor. My projection is probably
7 three hours.

8 THE COURT: Okay.

9 MR. HAND: Of cross-examination.

10 THE COURT: Three hours. And it's 3:09 so that's after. You
11 can appreciate you can't go past 6:00. We told this jury they'd be out of
12 here at quarter of, 10 till 5:00.

13 MR. HAND: I will look for a good place to stop right around
14 quarter after, Your Honor.

15 THE COURT: But what I was saying, if you're talking five or
16 10 minutes or something then be glad to accommodate. But if you're
17 talking an hour and 10 minutes plus and that's not even counting any
18 potential redirect, then that's not going to happen today, is it. If you get
19 earlier, let us know and if it's only going to be a few minutes, it changes
20 based on whatever, you think it's going to be done -- I'm not in any way
21 rushing you, I'm just saying.

22 MR. HAND: Of course, Your Honor.

23 THE COURT: If your own viewpoint is something is
24 changing, feel free to let the Court know if you need accommodations.
25 Thanks so much.

1 MR. HAND: I certainly will do.

2 THE COURT: Same for each side because we've gone late to
3 accommodate everybody's witnesses. But an hour and 10 minutes can't
4 be done. Because that would not be fair to the jury who have rides
5 home and different things that they're doing. You know some of them
6 are going away, they told you, remember. Remember when this trial
7 ends next -- this trial -- are you still estimating the 29th or the 30th, or are
8 you estimating something different.

9 MR. DOYLE: What days of the week are they?

10 THE COURT: Tuesday and Wednesday. 29th is what you
11 had said your last -- your last, one of you had said the 29th. At one point
12 you thought it might go to the jury early on the 30th, but.

13 MR. DOYLE: Well, Wednesday seems to be the earliest, and I
14 have I have to figure out when I can get Dr. Juell back here.

15 THE COURT: Okay. Well, when you say it's the earliest,
16 we're going to lose some jurors, remember. They told you they had
17 plans. Marshal, feel free to bring the jury in. Thank you so much.

18 THE MARSHAL: I'm sorry, say that again.

19 THE COURT: Oh, feel free to bring the jury in. I appreciate it.
20 Thank you so much.

21 THE MARSHAL: Yes, Your Honor. Jurors are present.

22 [Jury in at 3:11 p.m.]

23 [Within the presence of the jury]

24 THE MARSHAL: All jurors are present, Your Honor. Please
25 be seated.

1 THE COURT: Appreciate it. Thank you so very much.
2 Welcome back, ladies and gentlemen. Counsel for Defense, had you
3 passed the witness, is that correct, right before the break?

4 MR. DOYLE: Yes.

5 THE COURT: Okay. So counsel for Defense passed the
6 witness, and now will be cross-examination by Plaintiff since this was a
7 Defense witness. Go ahead, counsel.

8 MR. JONES: Thank you, Your Honor.

9 [Pause]

10 CROSS-EXAMINATION

11 BY MR. JONES:

12 Q Dr. Juell, did the Defendant's consultant help you prepare in
13 any way for your testimony over the last couple days?

14 A No.

15 Q Doctor, do you agree with the statement that the quality of
16 your opinions are based on the quality of the information that you are
17 provided?

18 A Yes.

19 Q Okay. So, if you're given false or incomplete information,
20 you agree that your opinions could suffer, they could be wrong or
21 misleading, correct?

22 A Yes.

23 Q Okay. I'd like to go through some of your opinions, some of
24 your testimony. According to your testimony yesterday, you spent about
25 25 hours on this case, correct?

1 A Yes.

2 Q Now, has that gone up since yesterday?

3 A Just the trial period that I've been here.

4 Q Are you charging for any additional meeting time that you've
5 had in between or anything like that?

6 A I had a meeting with counsel, with Mr. Doyle, for about an
7 hour and a half after I came down from Reno.

8 Q After your testimony yesterday?

9 A No. When I came down on Tuesday night.

10 Q Okay. Have you had subsequent meetings since?

11 A Not specifically to the trial, no.

12 Q Okay. All right. And so, in addition to the 25 hours, about an
13 hour and a half more that you've met with him in preparation for your
14 testimony?

15 A Yes.

16 Q Okay. All right. I'd like to break that down a little bit. Now,
17 you'd agree that your testimony -- or that the 25 hours or 26 and a half
18 hours, includes time to review records, to read reports of other experts,
19 to read deposition transcripts, to review films, to speak with counsel, to
20 have your deposition taken, all of those things, correct?

21 A Yes. It was kind of an estimate. I'm sure I could give you a
22 formal billing, but I was just giving you an estimate of the number of
23 hours.

24 Q Okay. Do you have your formal billing with you?

25 A I do not.

1 Q Oh, you didn't bring it?

2 A I did not.

3 Q Okay. All right. You didn't bring it at your deposition either,
4 correct?

5 A I don't recall.

6 Q Okay. Well, we'll go over that in a minute.

7 So, I'm just going to ask you for your best estimates then --

8 A Okay.

9 Q -- since you didn't bring your actual billing to tell the jury
10 how much you actually charged, is that okay?

11 A Okay.

12 Q Okay. Now, of those 26 and a half hours, let's break that
13 down. How much of that was to, let's say read reports of other experts?

14 A I would probably say two or three hours.

15 Q Two to three hours. Okay. And what about reading
16 deposition transcripts?

17 A Probably about the same.

18 Q Two to three hours?

19 A Two hours, maybe.

20 Q How much discussing the case with counsel?

21 A Probably a couple hours. Filing reports and you know,
22 review.

23 Q So, we had an hour and a half that just happened. In
24 addition to that, over the prior year or so, what would you estimate?

25 A Probably three hours.

1 Q Three hours total?

2 A Yes. Including maybe some emails or something.

3 Q Okay. So, that would include email time in addition?

4 A Yes.

5 Q Okay. All right. And how about time reviewing films?

6 A That took quite a while actually. Getting the films and
7 reviewing the films, I probably spent two or three hours.

8 Q Okay. Because those films that you reviewed, there were
9 many, many films, and those were the ones that you chose to show the
10 jury, correct?

11 A Correct.

12 Q Okay. And so, you said how many hours?

13 A Probably two or three hours. Because the format that I
14 received them in, it was like I had to look one at a time. It wasn't like
15 given to me in like a viewable format.

16 Q Okay. Got it. And then your time actually writing your
17 reports, because you wrote up three reports in this case, correct?

18 A Yes. That's where the bulk of the time, that and reviewing
19 the primary records.

20 Q So, let's split that up. The time reviewing the records and the
21 time writing your reports, how would you divide that?

22 A Probably two-thirds reviewing the records and a third of the
23 time preparing the reports.

24 Q Okay. All right. So, two-thirds review and one-third
25 preparing.

1 All right. Okay. So, I'm going to do the math in a couple of minutes --

2 A Okay.

3 Q -- and we'll go through it. But is that your best estimate
4 under oath to this jury of how you can split of time in this case?

5 A Yes.

6 Q Okay. All right. Now, yesterday you gave a little medicine
7 lesson regarding types of white blood cells. And you agree that you
8 never broke that down or explained that in any of your reports, or during
9 your deposition, correct?

10 A I don't recall. I don't think so in my reports.

11 Q Okay. All right. In your reports, you're sure that you didn't
12 because you reviewed those recently?

13 A Yes.

14 Q Okay. All right. And in your deposition, you don't recall
15 doing that?

16 A I don't recall that discussion.

17 Q Okay. All right. Is that something that Mr. Doyle asked you
18 to do for the trial?

19 A No. I think it just came up in his questioning.

20 Q So, it just came up spontaneously?

21 A Yes.

22 Q Oh, okay. You never discussed it with him before?

23 A I don't believe so.

24 Q Hmmm. Let's see. Doctor, during your testimony yesterday,
25 I wrote down something you said, and I tried to write it down word for

1 word, but I may have -- I may not be exactly right. But do you recall
2 generally explaining to the jury that it is critical to analyze all of the
3 information, or you really cannot reach a fair conclusion?

4 A Yes.

5 Q Okay. Do you recall saying something along the lines of you
6 have to put all of the data together to make a good clinical decision,
7 including labs, vitals, imaging, physical examination, and I think you
8 listed one or two more things.

9 A Okay.

10 Q Does that sound about right?

11 A I can agree with that.

12 Q Okay. All right. Doctor, your deposition took place in June --
13 June 12th, 2019, correct?

14 A I think that's correct, yes.

15 Q And you received notice for that deposition, correct?

16 A Yes.

17 Q Now, that notice told you what you needed to bring to the
18 deposition, correct?

19 A I don't recall.

20 Q Okay. You don't recall if the notice told you what you
21 needed to bring to the deposition, Doctor?

22 A No. I don't even recall seeing the notice so. I think it was
23 delivered to my office, and it showed up.

24 Q Okay. So, you're acknowledging that there was a notice, but
25 you're saying that you don't recall what was on the notice.

1 MR. JONES: Your Honor, I'd like to approach the witness
2 and just see if I can refresh his recollection.

3 THE COURT: Okay. Not hearing any objection, please go
4 ahead and do so.

5 BY MR. JONES:

6 Q Doctor, what is it that you're holding there?

7 A Says notice of the taking of the videotaped deposition of
8 Brian E. Juell, M. D.

9 Q All right. Now, if you flip the page.

10 A Okay.

11 Q I just want to see if you could go ahead and just take the time
12 that you need, but go through all of the items, and I apologize, one
13 through 11, just so you're familiar with what those are, and then I'm
14 going to ask you some questions, okay.

15 [Witness reviews document]

16 THE WITNESS: Okay. I've read those.

17 BY MR. JONES:

18 Q Okay. Now, Dr., the notice told you the things that you
19 needed to bring to your deposition, correct, on June 12th?

20 A Yes.

21 Q Okay. And Dr., some of the things listed there, and I'm not
22 going to go through an exhaustive list of every single thing, but all of the
23 records you had reviewed, right?

24 A Yes.

25 Q You needed to bring all of your billing for the case, right?

1 A It says that, yes.

2 Q Okay. You needed to bring all of your communications with
3 Defense counsel, right, such as your emails, such as any letters that had
4 been written from you to them, or them to you, correct?

5 A Yes.

6 Q Okay. It says that you needed to provide all of your notes,
7 right; as you're going through the records, the notes you had written,
8 right?

9 A Yes.

10 Q Okay. It says that you needed to bring any literature that you
11 relied on, correct?

12 A Yes.

13 Q All right. Now, Doctor, you agree that it would be important
14 for the opposing side, or the jury, to see those sorts of items because to
15 be able to identify if there is anything that biased your testimony, does
16 that make sense?

17 MR. DOYLE: Objection. Compound and speculation.

18 MR. JONES: I'll withdraw and rephrase, Your Honor.

19 BY MR. JONES:

20 Q Doctor, you'd agree that those items potentially could
21 demonstrate bias, right?

22 MR. DOYLE: Objection. Speculation.

23 THE COURT: Court's going to overrule.

24 THE WITNESS: Not necessarily.

25 BY MR. JONES:

1 Q I didn't say necessarily; I said potentially it could show bias?

2 A You mean that I could be in possession of materials that
3 could show bias?

4 Q Sure. Potentially, correct?

5 A Potentially.

6 Q Right, right. Okay. And so, you understand how kind of in
7 this process that there is some value for everybody to be able to see
8 what you actually did, and what you actually received?

9 A Yes.

10 Q And you can see how it would be important for everybody to
11 be able to see what did you actually bill, what is your actual billing,
12 right?

13 A I'm not sure.

14 Q Well, maybe your billing isn't what you say it is; wouldn't it
15 be valuable for the other side to see what the real billing is?

16 A I don't know how that would be germane to the specific data
17 of the case.

18 Q I didn't ask you that. Oh, I apologize.

19 MR. DOYLE: Objection, Your Honor.

20 THE COURT: Just a second.

21 MR. JONES: I'll allow him to go ahead and say that. I think
22 you got it out, but you can restate it. I apologize for interrupting.

23 MR. DOYLE: My objection was argumentative.

24 THE COURT: The Court's going to overrule on
25 argumentative. So, this witness is allowed to fully answer the question,

1 based on that.

2 THE WITNESS: Could you ask the question again?

3 MR. JONES: Yes.

4 BY MR. JONES:

5 Q I said, can you -- I think I asked, can you see how potentially
6 your billing could demonstrate bias?

7 A No.

8 Q You don't; you don't see that at all, is that right?

9 A Bias.

10 Q You don't see that if someone was paid a lot of money to
11 offer opinions that some people might be susceptible to bias?

12 A Oh. You mean in terms of what I was paid, or what I
13 charged --

14 Q Either one.

15 A -- for the number of hours.

16 Q What you were paid, right; what you charged?

17 A I suppose that could occur, but not with me.

18 Q Okay. All right. You're just above those sorts of
19 temptations?

20 A Well, it hasn't really been primarily a financial interest of
21 mine.

22 Q Okay. Got it, got it. But you haven't shown us your billing to
23 show what kind of financial interest it actually is, have you?

24 A Well, I've given you --

25 Q Doctor, please answer my question.

1 A Okay.

2 MR. DOYLE: Your Honor --

3 Q You haven't actually provided your billing --

4 THE COURT: Just a second. Is there an objection, counsel?

5 MR. DOYLE: Yes. He's arguing, and he's interrupting the

6 witness.

7 THE COURT: Overruled on argumentative, in light of the
8 witness' last response. I do need to make sure we only have one person
9 at a time speaking, so we have a clarity of record. Thank you so very
10 much. Appreciate it.

11 MR. JONES: Thank you, Your Honor.

12 BY MR. JONES:

13 Q Did you hear my question? It was a yes or no question?

14 A I did -- I did hear that question.

15 Q And the question was, you haven't given us your billing so
16 we can't say one way or another, right?

17 A I --

18 MR. DOYLE: Objection. Speculation.

19 THE COURT: Overruled.

20 A I do recall this being an issue at the time of the deposition,
21 and I'm not sure that my --

22 BY MR. JONES:

23 Q Doctor, it was a yes or no question.

24 A I know. I can't answer it with yes or no.

25 Q Okay, that's fine. All right, Doctor. Also, you can see how if

1 we don't actually get the file you were given, we can't tell whether or not
2 certain pages had been removed so that you didn't see certain opinions
3 and that could potentially influence someone's testimony, right?

4 MR. DOYLE: Foundation and speculation.

5 THE COURT: Let me see. Overruled the way that the
6 question was phrased on both grounds.

7 A It's possible.

8 BY MR. JONES:

9 Q Now, Doctor, at your deposition you didn't bring those items,
10 and you stated that you believed that you might have accidentally
11 destroyed your whole case file, is that correct?

12 A I was in the process of moving my office.

13 Q Doctor, you can answer the question, please, as it was asked.
14 Is it correct -- it's a yes or no question. Your attorney is welcome to ask
15 you things of that nature, I'm asking you a yes or no question.

16 MR. DOYLE: Your Honor, this is not question and answer.

17 THE COURT: Counsel, objection.

18 MR. DOYLE: This is argumentative.

19 THE COURT: The jury will disregard the colloquy between
20 counsel the objection is argumentative. Overruled. Cross-examination.

21 BY MR. JONES:

22 Q At your deposition, you stated under oath that you might
23 have accidentally destroyed your whole case file, including all of your
24 notes, all of the records, everything, right?

25 A Yes.

1 Q Okay. And as a result, the Plaintiff, my office, the jury will
2 not have an opportunity to see those items, fair?

3 A Well, I received almost everything by --

4 Q I asked you, is that fair, is that --

5 A Do you want to know --

6 Q Yeah. Just tell me yes or no, is that fair or not?

7 A I got it all by attachments to email. So, they're available.

8 Q Okay.

9 A But I just didn't produce them at the time of the deposition.

10 Q Okay. So, they were all in email format?

11 A Virtually.

12 Q Okay. All right. Did you tell anyone that at the deposition?

13 A Yes.

14 Q Okay. All right. So, did you -- now you'd agree with me that
15 all of your emails with counsel were something you were required to
16 produce at the deposition, correct?

17 A Yes, according to this document.

18 Q Okay. And so, let's go down that road. So, even if it wasn't
19 destroyed, you never provided a copy of your emails, did you, at the
20 deposition or since then?

21 A Well, I think, it was made clear --

22 Q Dr., will you please answer my question yes or no; it's a yes
23 or no question. Did you produce the emails?

24 A Did I personally provide that, is that --

25 Q Did you provide that information so that it could be provided

1 to the Plaintiff so that it could be evaluated?

2 A I'm not sure.

3 Q Okay. All right. But as far as you know, you never did; you
4 have no knowledge of doing it, is that fair?

5 A One way or another, I don't.

6 Q Okay. Now, again, on your billing, right, you knew that it
7 was an issue at the deposition, but you never produced it after that
8 either, did you?

9 A Personally, I did not.

10 Q Okay.

11 A My office may have; I directed them to do so.

12 Q Okay. But you didn't bring it here today either, did you?

13 Your records --

14 A It wasn't my understanding that I needed to do so.

15 Q All right. Now, Doctor, I'm going to move on to some other
16 things. Prior to your deposition in this case, the Defense paid you to
17 write two reports, correct?

18 A Yes. I believe three reports.

19 Q And the third report came after your deposition, September
20 9th?

21 A Yes. It was an explanation to the deposition.

22 Q Okay. All right. So, two reports which were written in
23 November and December of 2018, correct?

24 A Okay.

25 Q Does that sound right?

1 A Yes.

2 Q You've reviewed them recently, correct?

3 A Yes.

4 Q Okay. And you were paid to author two reports prior to your
5 deposition?

6 A Yes.

7 Q Okay. And in your reports, you're required to list the basis
8 for all of your opinions, correct?

9 A I don't think the format was specified.

10 Q Okay. You understand that within your reports you need to
11 lay out everything you reviewed, correct?

12 A Yes.

13 Q Okay. You did understand that, correct?

14 A I think I did.

15 Q Okay. And so, certainly I can appreciate that some people
16 might list them all out at the top, or they might say them throughout,
17 correct; but you understood that at some point you needed to put that in,
18 correct?

19 A Yes.

20 Q And you did that, right?

21 A I believe so.

22 Q All right. Now, in your reports, you wrote in your first report,
23 we'll start with that one, you wrote that you had been provided the
24 hospital records, and Dr. Barry Rives' records, correct?

25 A Yes.

1 Q And that's all, correct? That's everything you were provided
2 for your first report, correct?

3 A I believe that's correct.

4 Q And Doctor, do you recall how many pages of records you
5 received from Dr. Rives' company, or from Dr. Rives directly, his actual
6 records?

7 A No.

8 Q Any recollection at all?

9 A No.

10 Q You wouldn't be able to say whether it was 10 pages versus
11 a thousand pages?

12 A I can't remember.

13 Q Okay. And how many records did you receive from the
14 hospital?

15 A Quite a few.

16 Q Okay. Can you give an estimate?

17 A Hundreds of pages.

18 Q Hundreds or thousands?

19 A Could be thousands.

20 Q So, yesterday when you were being questioned, he said
21 8,000 something pages, Mr. Doyle did?

22 A Yes.

23 Q Do you know that to be true?

24 A It doesn't sound unreasonable. I didn't count the pages.

25 Q Okay. All right. Now, did you receive all of those just

1 together as one big document or was it split up into separate
2 documents?

3 A I think it was one document.

4 Q Did you receive a second smaller document that had like the
5 records that they really wanted you to focus on?

6 A I don't recall.

7 Q You don't recall that?

8 A No. You might be right though.

9 Q Okay. All right. Did you verify that you had a complete set of
10 the hospital records?

11 A No.

12 Q Okay. Do you recall reviewing just one big set or a mini set?

13 A There might have been a mini set like nurses notes and stuff.
14 Is that what you're referring to?

15 Q I'm referring to if there was a mini set. To date I've never
16 received it.

17 A I'm not sure. I'm trying to remember.

18 Q Okay. All right. So, you don't know if there was a mini set?

19 A No.

20 Q Okay. Is that --

21 A It could have been.

22 Q Okay.

23 A I just don't remember.

24 Q You just don't remember one way or the other?

25 A No.

1 Q Okay. All right. And so, is it fair to say that if there was a
2 mini set, you don't remember how long it was or what was in it?

3 A That's fair.

4 Q Okay. You can see how if there was a mini set, that by
5 focusing on the records that the Defense finds particularly favorable,
6 rather than just reading through all the information and forming your
7 opinions, that that could kind of influence your opinions in a case, do
8 you see that?

9 A I read everything.

10 Q Okay. You read everything. Did you read everything
11 carefully, making sure you're not skipping over anything?

12 A No. But I think I looked at every page.

13 Q Okay. All right. So, you looked at every single page, made
14 sure that you understood what was on the page?

15 A Yeah. Well, obviously, I was looking for specific data. There
16 was sometimes there'd be the same data that had been previously
17 presented, or just activity data, like the nurses documenting how they
18 took care of the patient, moving the patient or whatever, and I probably
19 would thumb through those pages.

20 Q All right. Now, to be clear, when you wrote the first report
21 again, the only information you had were the hospital records, and Dr.
22 Rives' records, correct?

23 A I believe that's true.

24 Q And how much did you charge Mr. Doyle for that report?

25 A You know, I don't recall.

1 Q Do you have an estimate?

2 A No.

3 Q You don't have any estimate at all?

4 A It took quite a while, there were quite a few records so.

5 Q More than 10,000, less than 10,000?

6 A Oh, dollars?

7 Q Yes.

8 A Oh, probably much less. I only charge 250 an hour. Maybe I
9 spent 10 or 12 of those hours, I reported on that first report.

10 Q Okay. So, 10 or 12 hours on that first report. So, eight of
11 those probably would have been review, four of those would have been
12 writing up?

13 A That's fair.

14 Q Okay. You agree that the conclusions you reached in your
15 first report is that Dr. Rives did nothing wrong, did not commit
16 malpractice in any way, correct?

17 A That's correct.

18 Q And you also formed the opinion that the major cause of
19 Titina's troubles was that she developed pulmonary aspiration
20 syndrome, correct?

21 A Yes.

22 Q Okay. And Doctor, now pulmonary aspiration syndrome,
23 that's when a patient throws up and it goes in the lungs, or they have
24 fluid that goes in the lungs from some other source, correct?

25 A Yes.

1 Q And the opinion from there leads to this big cascade of
2 events that you mentioned today, correct?

3 A I'm not sure when I mentioned, but it was during my
4 testimony.

5 Q Okay. Possibly yesterday?

6 A Okay.

7 Q Okay. Now, Doctor, would you mind, when I refer to
8 [indiscernible] we're going to be talking about it a little bit more, if I just
9 call it the magical cascade defense.

10 MR. DOYLE: Objection, Your Honor. It's argumentative.

11 MR. JONES: I'm asking if he minds.

12 THE COURT: Okay. First off, the jury will disregard any
13 chuckling by the witness, any colloquy between counsel, and the Court is
14 going to sustain the objection with the titling of how that was phrased in
15 some document related thereto.

16 MR. JONES: Got it. I will move on, Your Honor.

17 BY MR. JONES:

18 Q Do you agree that in the records you reviewed, Doctor -- so,
19 you did have this idea, this cascade idea, right, that you put in there in
20 your first report, correct?

21 A Yes.

22 Q With everything kind of starting from the lungs and all that,
23 right?

24 A Yes.

25 Q Okay. All right. Now, you agree that in the records you

1 reviewed, not a single treating provider diagnosed Titina with pulmonary
2 aspiration syndrome, correct?

3 A Yes, that's true.

4 Q Okay. And do you agree, Doctor, that the radiologist that
5 reviewed the x-rays and the CT scans did not say that Titina developed
6 pulmonary aspiration syndrome, correct?

7 A No. It's a clinical diagnosis.

8 Q Okay. And you disagreed with her treating doctors that were
9 treating her clinically, they didn't say pulmonary aspiration syndrome,
10 correct?

11 A No, I didn't disagree with them. I thought their treatment
12 was appropriate.

13 Q Doctor, it's a yes or no question.

14 A In terms of their operating diagnosis.

15 Q The question was this, Dr. You agree -- well, the last
16 question was, you agree the treating physicians did not diagnose her
17 with pulmonary aspiration syndrome, correct?

18 A I do agree with that.

19 Q Okay. And that includes pulmonologists, right lung
20 specialists, correct?

21 A All the intensivists. I'm not sure what their training is.

22 Q Okay. The intensivists. Did he happened to be a
23 pulmonologist?

24 A He could have been.

25 Q Okay. And that's a common thing for an intensivist, right?

1 A It is.

2 Q He didn't diagnose her with that, did he?

3 A Not specifically.

4 Q Okay. And the radiologist didn't state it, right; didn't state
5 suspicion of or anything like that with respect to pulmonary aspiration
6 syndrome, specifically, correct?

7 A I don't recall. I don't believe they did.

8 Q Okay. All right. But you disagree with those treating
9 doctors, correct?

10 A Just in terms of the diagnosis, not the treatment.

11 Q Sure. You made it very clear in your report, and in your
12 deposition, that you didn't believe anyone, any of the other doctors fell
13 below the standard of care in their treatment of Titina Farris, correct?

14 A That's correct.

15 Q Okay. And so, but you disagree with their diagnosis because
16 you thought that she had pulmonary aspiration syndrome, correct?

17 A Yes.

18 Q Okay. Now, Dr., a moment ago, Mr. Doyle asked you
19 questions, and he said something -- he suggested that your opinions
20 were based on the imaging, correct, before you started to the imaging,
21 we cut out the imaging with the jury, do you remember that?

22 A The clinical cores.

23 Q Do you remember when he did that?

24 A When he asked me?

25 Q Yeah.

1 A No. Is that the way he phrased it?

2 Q Yeah. So, when -- a couple of minutes ago, right before you
3 started --

4 A Yes.

5 Q -- talking about the imaging, Mr. Doyle asked you something
6 along the lines of you used this imaging to reach your conclusions --

7 A Oh, yes.

8 Q -- in this case, right?

9 A Okay.

10 Q Okay.

11 A I understand you now.

12 Q Do you recall that?

13 A Yeah. I'm with you now.

14 Q You said yes, right?

15 A Yes.

16 Q All right. But to be clear, you had formed all those opinions,
17 and you hadn't seen the imaging at that time, right?

18 MR. DOYLE: Your Honor.

19 A There was other clinical information.

20 Q Okay. But you had already --

21 THE COURT: What was the basis of the objection?

22 MR. DOYLE: We're not going to have a record.

23 THE COURT: Counsel. What the basis of the objection,
24 counsel?

25 MR. DOYLE: We need questions asked and answered in a

1 fashion where we can have a record.

2 THE COURT: Counsel, what is the evidentiary objection?

3 MR. DOYLE: Badgering and arguing with the witness.

4 THE COURT: Overruled.

5 BY MR. JONES:

6 Q So, Doctor --

7 THE COURT: Based on his answer, he agreed.

8 BY MR. JONES:

9 Q And so, Doctor, I just want to be very clear. At the time that
10 you came to the conclusion that she had pulmonary aspiration
11 syndrome, and you put that in your report, you knew at that time that
12 none of her treating physicians, including intensivists and radiologists
13 agreed with that or had diagnosed that, at least, correct?

14 A Well, I wouldn't know whether they would agree with it or
15 not because she had acute respiratory failure.

16 Q I know we keep doing this, but I'm asking you a yes or no
17 question.

18 A Yeah, I can't answer yes or no.

19 Q Then what you can do, is you can say that. You can say I
20 can't answer that question yes or no

21 A All right.

22 Q Okay. So, is that true, yes or no, that you formed the opinion
23 in November of 2018 that she had suffered pulmonary -- I have my own
24 way that I refer to it so I have to go back through and look at this,
25 pulmonary aspiration syndrome in November of 2014 (sic), at a time that

1 you knew the doctors that had treated her, including intensivists and
2 including the radiologist, that none of them had diagnosed her with that
3 condition, correct?

4 A That's correct.

5 Q Okay. And Doctor, you had not seen the films, correct?

6 A That's correct. But there was other information in the record
7 that supported that.

8 Q Doctor, once again, go ahead and answer and --

9 A Okay.

10 Q -- if your attorney wants to try to bring something up, he's
11 welcome to, okay.

12 A Okay.

13 Q All right. So, to be clear, what we just talked about in the
14 imaging, that was not part of the information you used at all to arrive at
15 your diagnosis, correct?

16 A The reports in the chart were used.

17 Q The imaging, Doctor, we just talked about?

18 A The imaging was not.

19 Q Okay. Thank you.

20 MR. DOYLE: Your Honor, could we approach for a moment.

21 THE COURT: Is there an objection, counsel?

22 MR. DOYLE: Yes. The witness is not being allowed to finish
23 his answers.

24 THE COURT: Overruled. Cross-examination.

25 MR. DOYLE: The witness should be allowed --

1 THE COURT: Counsel.

2 MR. DOYLE: -- to finish their answer.

3 THE COURT: Counsel, counsel, counsel, can you please not
4 argue in front of the jury. Thank you. The Court made a ruling. Thank
5 you so much. The jury will disregard the additional commentary. Thank
6 you so much. I appreciate it.

7 BY MR. JONES:

8 Q Now, Doctor, you then authored a second report in
9 December of 2018, correct?

10 A Yes.

11 Q And the only new information that you had reviewed at that
12 time, was that you received the deposition testimony of Dr. Barry Rives,
13 and you had received some expert reports in the case, correct?

14 A That's correct.

15 Q Okay. And your opinions on that report, were essentially the
16 same as they had been in the first report, though you mentioned some
17 specific disagreements with Dr. Hurwitz, who was the expert on the
18 Plaintiffs' side, correct?

19 A Yes.

20 Q Okay. And at that time you continued with the lung opinion,
21 the same lung opinions, correct?

22 A In terms of the patient's initial deterioration.

23 Q Right. Is that correct?

24 A Yes.

25 Q Actually, your opinions didn't change at all. They stayed the

1 same on the lung opinion whether it was initial or late, right?

2 A Yes.

3 Q Is that fair?

4 A They haven't changed.

5 Q Okay. Now then about seven months later, like the day
6 before your deposition in this case, you then reviewed the x-rays and the
7 CT scans, correct?

8 A Right.

9 Q Okay. So that it's very clear, I want to walk through this
10 chronologically. You first reviewed the medical records and did not
11 diagnose Titina -- you first reviewed the medical records that did not
12 diagnose Titina with pulmonary aspiration syndrome, correct?

13 A I believe the records support that diagnosis.

14 Q Doctor, did I ask you if the records supported the diagnosis
15 for pulmonary aspiration syndrome?

16 A Records don't make diagnosis.

17 MR. JONES: Your Honor, I don't know if it's appropriate to
18 instruct this witness to answer the questions that are asked.

19 THE COURT: The Court's going to remind the witness that
20 you need to listen to the question that's being asked.

21 THE WITNESS: Could you ask the question again.

22 MR. JONES: Sure.

23 THE COURT: Thank you so much. Appreciate it. Thank you.

24 BY MR. JONES:

25 Q Doctor, you reviewed medical records that did not contain

1 any diagnosis that Titina had any pulmonary aspiration syndrome,
2 correct?

3 A Correct.

4 Q And those records included opinions from radiologists and
5 lung experts, correct?

6 A Yes.

7 Q And from those records that did not diagnose Titina with
8 pulmonary aspiration syndrome, you concluded that Titina did have
9 pulmonary aspiration syndrome, correct?

10 A That was my opinion, yes.

11 Q Okay. And then six or seven months later, you reviewed the
12 x-rays and CT scans, and said those show pulmonary aspiration
13 syndrome, correct?

14 A I believe so.

15 Q Okay. Now, Doctor, you're not a radiologist, correct?

16 A No, I'm not.

17 Q You're not a pulmonologist or a lung expert, correct?

18 A Well, I have -- my critical care board is in surgical critical
19 care.

20 Q Are you a pulmonologist, Doctor?

21 A But I am not a pulmonologist.

22 Q Okay. You're not a pulmonologist?

23 A No.

24 Q Okay. Now, Doctor, you were given Dr. Rives' deposition in
25 this case where he tells his side of the story, correct?

1 A Yes.

2 Q You were not given the depositions of the Plaintiffs in this
3 case, correct?

4 A The Plaintiffs?

5 Q Yes.

6 A No.

7 Q Titina Farris?

8 A No, I was not given those.

9 Q Or her husband, Patrick Farris?

10 A I was not given those.

11 Q You weren't given the depositions of the other friends who
12 came and were at her bedside that watched things happen day by day,
13 correct?

14 A Okay. No, I did not.

15 Q That's correct? Okay. Doctor, you were never given the
16 neurology records, correct?

17 A Of her subsequent care?

18 Q Outside of anything that might have been inside the
19 hospital?

20 A Yeah. I just reviewed the records through the 15th of July.

21 Q Right. But you weren't given any physical therapy records,
22 primary care records, correct?

23 A You mean following discharge from the hospital?

24 Q At any point; at any point at all?

25 A No.

1 Q Okay. And Doctor, as we've spoken about, you can't be sure
2 that the records you received even from the hospital are complete,
3 correct?

4 A No.

5 Q Doctor, do you recall at the time of your deposition you were
6 shown Dr. Hamilton's report?

7 A Her operative report?

8 Q Yes.

9 A Yes.

10 Q Okay. And you recall that was attached as an exhibit to your
11 deposition?

12 A Okay.

13 Q Okay. And Doctor, do you recall at your deposition you were
14 asked if you'd ever seen that report before, correct?

15 A I believe so.

16 Q Okay. And you said no, I have never seen this before, do you
17 recall that?

18 A Her operative report of the 15th. No, I don't -- if I said that,
19 that would be an error. I think I did review that.

20 Q Okay. Let's go ahead and let's --

21 MR. JONES: Your Honor, I'd request to open the deposition
22 of Dr. Juell.

23 THE COURT: Dr. Juell's deposition can be published.

24 THE COURT: Counsel, just for Madam Clerk, can you just
25 reiterate the spelling.

1 MR. JONES: J-U-E-L-L.

2 [Pause]

3 MR. JONES: Your Honor, I know that this one was one that
4 actually was not sealed. It was sent to Defense counsel unsealed, and
5 we stipulated to it.

6 THE COURT: Yes. Ladies and gentlemen, the reason why
7 you're not seeing a cutting is because by agreement of the parties, it was
8 submitted in a format not in its original envelope. So, by agreement of
9 the parties, it's perfectly fine to be used as if it were the original. So,
10 that's why you're not hearing the cuttings that you've seen in the other
11 ones. Thank you so much. Counsel correct, that was the agreement of
12 the parties at the time of the calendar call?

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

14 THE COURT: Defense counsel.

15 MR. DOYLE: I think so.

16 THE COURT: That was the one that was opened?

17 MR. DOYLE: I believe so.

18 THE COURT: Okay. Thank you so much.

19 BY MR. JONES:

20 Q All right. Dr. Juell, I'm just going to hand this to you, and
21 then I'm just going to -- let's go ahead and let's turn to page 61 of your
22 deposition.

23 A Okay. I've got it.

24 Q All right. On page 61, there's a question by Mr. Hand
25 beginning at line 3, and we're going to go down through line 7, which is

1 your answer.

2 "Q Now, I'm going to show you Dr. Hamilton's operative
3 report from July 16th, 2015, it's Exhibit 6. Have you seen that"? Answer.

4 BY MR. JONES:

5 Q You can go ahead and answer, Dr.

6 A This says I haven't, but that was incorrect.

7 Q Okay. So, at the time of your deposition on June 12, when
8 you were shown the operative report of Dr. Hamilton, you testified under
9 oath that you had not seen it before, correct?

10 A Well, I think it's a typographical error.

11 Q Okay. So, you think that it's a typographical error?

12 A Yeah. I mean I think I said I have seen it because I had seen
13 it.

14 Q Okay. Have you asked to review your deposition since that
15 time to make sure --

16 A I've had the opportunity, but I did not do so.

17 Q Oh, okay. Have you reviewed the deposition prior to this
18 moment today?

19 A No.

20 Q You have not at any time reviewed your deposition in
21 preparation for your testimony today?

22 A No.

23 Q Okay. Mr. Doyle never requested that you take a look at your
24 deposition?

25 A I don't recall that he did.

1 Q Okay. But, in any case, you never reviewed your deposition
2 until this moment?

3 A That's correct.

4 MR. DOYLE: Objection. Asked and answered.

5 THE COURT: Overruled. It was phrased from a clarity
6 standpoint.

7 BY MR. JONES:

8 Q But to be clear, you're just saying the court reporter got it
9 wrong?

10 A I believe that's correct here.

11 Q Okay.

12 A Because the subsequent discussion sounds like I had seen it.

13 Q Well, you had it in front of you at that point, correct?

14 A But out of context it says I haven't, but I think I have.

15 Q But Doctor, you'd agree that as you're going through it, you
16 -- well, let's go ahead and let's follow it. You said that the subsequent
17 comments indicate that you had seen it. Well, we finished at line 7
18 where you said I haven't. So, I'm just going to go down a little bit more
19 through line 10. So the next question to you is, "Now looking -- let me
20 know when you've had a chance to look at it." And then you answer --

21 A You handed it to me at my deposition and I was looking at it.

22 Q Okay. And then you answer, I'm ready for a question. After
23 looking at that, correct?

24 A Uh-huh.

25 Q Okay. So, you're saying that when you said I haven't seen

1 this before, that you actually had, that you said you had, and that was a
2 typographical error, correct?

3 A I believe that's correct, yes.

4 Q And then Mr. Hand continued on with his questioning and
5 wanted to make sure you had time to review it right then because you
6 had already seen it before, is that what you're telling the jury?

7 A Well, he was -- I think he was going to ask me questions
8 about the document, so I was refreshing my memory.

9 Q Okay. In any event, Doctor, you'd agree with me that Dr.
10 Hamilton's report is clearly a part of the hospital record, correct?

11 A Yes.

12 Q Okay. And since your medical file, or your case file, was
13 destroyed, we can't verify if that was actually withheld from you or not,
14 right?

15 A Well, I don't know that it was destroyed. I just wasn't able to
16 produce it, and I subsequently remembered that I got most of it by email,
17 you know, by attachment.

18 Q Got it. So, when you testified under oath at deposition that
19 it may have been destroyed, you may have just been wrong at that time
20 under oath?

21 A Yeah. There may have been notes and things that I
22 misplaced.

23 Q Okay. Doctor, at some point you did review Dr. Hamilton's
24 record, correct?

25 A Yes.

1 Q And you agree that when Dr. Hamilton came on the scene,
2 Titina was in bad shape, correct?

3 A She was sick, bad shape.

4 Q If I say correct, you can just answer yes or no.

5 A Yes, sir.

6 Q Okay. Thank you. Now, that operative report shows feces in
7 several places throughout the abdomen, right?

8 A It was pretty localized.

9 Q Okay. That record shows that Dr. Rives' mesh had failed,
10 correct?

11 A You know, I looked at that and I can't remember --

12 Q Doctor, I'm just asking you yes or no?

13 A I can't remember whether his mesh failed.

14 Q If you don't remember -- if as of the 16th, during Dr.
15 Hamilton's operation, you don't remember if the mesh had failed?

16 A In terms of whether was it still covering the defect.

17 Q Okay. Doctor, do you remember testifying under oath at
18 your deposition that the mesh had failed by the 9th?

19 A I think it had, based on my opinion. But I don't know if it was
20 reflected in Dr. Hamilton's note; I didn't read that.

21 Q Oh, okay. So, you're saying that when I asked you that, you
22 actually did know that the mesh had failed, but that you weren't sure if it
23 said it in the report?

24 A I can't remember whether or not it said in the report.

25 Q You can answer yes or no, Doctor?

1 A I think that's fair, yes.

2 Q Okay. So, you knew when I just asked you that question
3 about the mesh failing, you knew it had failed by then, right?

4 A I suspect it did from looking at the CT scans.

5 Q Right. And Doctor, you had testified under oath that you
6 believed the mesh failed, as of the 9th, correct?

7 A Yes.

8 Q Okay. Thank you, Doctor. Doctor, after Dr. Hamilton gained
9 source control and cleaned up the abdomen, we can agree that Titina
10 began getting better, didn't she?

11 A Slowly. Yes, she did.

12 Q She did. Across the board. All of her vitals began to
13 normalize, correct?

14 A Yes.

15 Q Including the white blood cell, correct?

16 A That ultimately did.

17 Q Okay. And you'd agree that just a couple of days later, after
18 she had been generally unconscious, just a couple days later, she
19 became conscious again, correct?

20 A She was showing improvement prior to the operation.

21 Q Doctor, will you answer my question the way it's asked? Did
22 she become --

23 A She did.

24 Q -- conscious a couple days later, yes or no, Doctor?

25 A She did.

1 Q Okay. I understand you want to be an advocate --

2 A Okay.

3 Q -- for your side of this --

4 MR. DOYLE: Your Honor. Argumentative.

5 Q -- but you have to answer my questions.

6 A Okay, sir.

7 MR. DOYLE: Your Honor, it's argumentative and it's not
8 phrased as a question.

9 THE COURT: The Court overrules it on the second ground,
10 based on the ending of the statement.

11 MR. JONES: I'll withdraw what I said, Your Honor, at the end
12 there.

13 THE COURT: Okay. So, since it's being withdrawn, the Court
14 may not rule on the first basis.

15 BY MR. JONES:

16 Q All right. So, I'm just -- because that could have been
17 disruptive, I just want to make sure that it's very, very clear. We agree
18 that her vital signs began improving almost immediately after Dr.
19 Hamilton's surgery, correct?

20 A Yes.

21 Q And the surgery was on the abdomen, not on the lungs,
22 correct?

23 A That's correct.

24 Q Okay. And she became conscious just a couple of days later
25 after that surgery, correct?

1 A Yes.

2 Q Okay. And within a few weeks, her vital signs were basically
3 normal, correct?

4 A Yes.

5 Q And that includes white blood cells just like the average
6 person might have, correct?

7 A Yes.

8 Q Okay. And the holes Dr. Rives reported at the time of the
9 surgery, in the operative note it indicates they were very small little
10 nicks, right?

11 A Correct.

12 Q And Doctor, a hole in the colon -- but on the other hand, the
13 hole in the colon identified during Dr. Hamilton's surgery, was identified
14 as being the size of a quarter, maybe a little bigger, correct?

15 A That's correct.

16 Q Okay. So, Doctor, are you -- I just want to make sure this is
17 clear, are you certain you had Dr. Hamilton's report earlier?

18 A Yes.

19 Q Okay. All right. Doctor, if Dr. Rives testified here at some
20 point during this case, that his expectation was for Titina to go home the
21 day of the surgery or the next day, you wouldn't have any reason to
22 disagree with that, would you?

23 A No.

24 Q Okay. And as you testified in your deposition, the
25 complications that followed obviously related to the initial complications

1 during that June 3rd, 2015 surgery, correct?

2 MR. DOYLE: Objection. Hearsay.

3 A They could have been separate events.

4 THE COURT: Hold on a second. We've got a pending
5 objection. Just one second, please. Overruled. It's the way the question
6 is phrased. Overruled.

7 BY MR. JONES:

8 Q Did you understand my question?

9 A I think I did.

10 Q Okay. It's a pretty simple yes or no. I'm happy to re-read it
11 for you if you need that?

12 A I don't think I can answer it yes or no.

13 Q Okay. So, I'm going to re-read it and you just tell me if you
14 can't answer that, okay?

15 A Okay.

16 Q As you testified in your deposition, the complications that
17 followed relate to the initial complications during the July 3rd, 2015
18 surgery, correct?

19 A I believed --

20 Q I'm not asking what you believed; is that correct?

21 A I can't answer that yes or no.

22 Q Okay. That's fine. Okay. Doctor, let's go ahead and go to
23 page 58 of your deposition.

24 A Okay. Starting at line 2, we're going to go down through line
25 15, okay.

1 "Q When you talk about surgical compli- --

2 MR. DOYLE: MR. DOYLE: Your Honor, I haven't had a
3 chance to look at it. May I please have a chance?

4 MR. JONES: I apologize. Go ahead, please.

5 [Pause]

6 MR. DOYLE: I object. It's not impeachment, it's therefore,
7 hearsay.

8 THE COURT: Do you have a question, counsel.

9 MR. JONES: You know what, Your Honor, I'm going to go
10 ahead; I'll just move on. I'll just move onto something else, so we don't
11 take the time of going through that.

12 THE COURT: Okay. No worries.

13 BY MR. JONES:

14 Q Doctor, you agree the initial complication in the July 3rd,
15 2015 surgery was the creation of holes in Titina Farris' previously healthy
16 colon, correct?

17 A Yes.

18 Q And Doctor, you'd agree with me that you are aware that
19 Titina's complicated course included a colostomy, but you're unaware of
20 her condition today, correct?

21 A That's correct.

22 Q All right. The Defense did not provide you with any
23 information about Titina's current condition, correct?

24 A No. Not to my knowledge.

25 Q All right. Doctor, you agree that patient safety is the most

1 important thing, right?

2 MR. DOYLE: Objection. It's vague and it's irrelevant.

3 THE COURT: Overruled on both grounds.

4 A Yes.

5 BY MR. JONES:

6 Q Doctor, do you agree it is important to have standards of care
7 that protect patients from negligent medical care, correct?

8 A I'm not sure what you mean by that exactly. The standards
9 are not to treat the patient negligently, yes.

10 Q Okay. So, I'll say it again.

11 A In terms of -- okay.

12 Q And if you disagree, that's perfectly fine, or you answer it the
13 way -- so, here we go, Doctor. Doctor, do you agree it's important to
14 have standards of care that protect patients from negligent medical care,
15 correct?

16 A Correct.

17 Q Okay. You agree with that?

18 A Yes. I agree with that.

19 Q Okay. Do you have any hesitation agreeing with that,
20 Doctor?

21 A I just haven't heard it in that context exactly. But I'll await
22 your next question.

23 Q Okay. Doctor, you agree that a surgeon should not subject a
24 patient to unnecessary risk of injury, correct?

25 A Yes.

1 Q Okay. Doctor, do you, personally, always sanitize or glove
2 your hands before touching an admitted patient?

3 MR. DOYLE: Objection. Irrelevant.

4 THE COURT: Counsel, would you both like to approach.
5 Madam Clerk, turn on some white noise, please. Thank you so much.

6 [Sidebar at 4:04 p.m., ending at 4:06 p.m., not transcribed]

7 THE COURT: Thank you. Based on the question was
8 phrased, Court sustains the objection.

9 BY MR. JONES:

10 Q Doctor, within your -- within -- what hospital do you work at?

11 A I work at St. Mary's Regional Medical Center, Renown South
12 Meadows and Northern Nevada Medical Center.

13 Q Okay. At St. Mary's, do they have a requirement that
14 physicians either sanitize or glove their hands before touching admitted
15 patients?

16 A It's generally a policy.

17 Q And that's typically really at hospitals that --

18 A Yes.

19 Q -- you're familiar with? Okay. Doctor, prior to your
20 testimony today did you review any video of any portions of this case
21 that have gone on?

22 A No.

23 Q Were you told about any specific testimony that had
24 happened that you thought would be important to look at?

25 A Not to my knowledge.

1 Q All right.

2 A Recollection.

3 Q Now Doctor, you would agree that you were hired in this
4 case to determine whether or not Dr. Rives' care was outside the
5 accepted standards of care, correct?

6 A Yes.

7 Q And Doctor, do you -- you are aware and familiar with Dr.
8 Hurwitz' testimony, correct?

9 A Yes.

10 Q Doctor, you agree that you will not be agreeing with the
11 standards of care outlined by Dr. Hurwitz, correct?

12 A I think we have the same standards, but I don't believe that
13 Dr. Hurwitz was correct.

14 Q Okay, got it. Got it. Well, let's go through that a little bit. So
15 you believe that you have the same standards as Dr. Hurwitz. And --

16 A Yes.

17 Q -- you believe that you have the same view as him?

18 A Yes. I believe he's a general surgeon so I would hold him to
19 the same standards I hold myself.

20 Q Oh, certainly. But the question is, you're not going to be
21 agreeing with the standards of care that Dr. Hurwitz said are the
22 standards of care for a surgeon in this case, correct?

23 A You know, I don't really recall what his were, so I guess we
24 can go through them.

25 Q Let's go through them, all right. You're aware that Dr.

1 Hurwitz concludes that Dr. Rives fell below the standard of care by using
2 a thermal energy device in approximation to the colon, correct? You're
3 aware of that, yes?

4 A Yes.

5 Q Okay. You agree that the use of thermal energy in
6 approximation to the bowel is contraindicated, correct?

7 A It's a relative -- you've got to be safe with its use as I
8 explained yesterday.

9 Q Okay.

10 A I mean, sometimes you could use it, but you know, because
11 it's shielded.

12 Q So you're saying it's relatively contraindicated and
13 yesterday --

14 A Well, there's a risk of using it in close proximity to hollow
15 viscus, yes.

16 Q Got it. So if there's something safer, you must use what is
17 safer, right?

18 A No. I mean, it may be your only option or that may be the
19 tool you're most familiar with.

20 Q Doctor, that's not what I asked you. I said, if there's
21 something safer you must use the safer option, correct?

22 MR. DOYLE: Objection; it's an incomplete hypothetical.

23 THE COURT: Okay.

24 THE WITNESS: Yeah. If there was something safer --

25 THE COURT: Hold on a sec. I've got an objection.

1 THE WITNESS: -- I could agree with that.

2 THE COURT: Well, since the witness has answered,
3 presumably the witness understands the question so the Court's going
4 to have to overrule the objection.

5 MR. JONES: Okay.

6 BY MR. JONES:

7 Q And I think I heard the question. You said if there was
8 something safer --

9 A Sure. I mean, it makes sense --

10 Q -- and available to use --

11 A -- to me that you would use the safest instrument --

12 Q -- you would --

13 A -- available.

14 Q Okay, all right. Got it. Doctor, do you agree that the use of a
15 thermal energy device to free the colon from adherent mesh has been
16 associated with an increased risk of bowel perforation, correct?

17 A Yes.

18 Q And that means, Doctor, bowel perforation, just means a
19 hole in the bowel, right? A hole in the colon.

20 A Yes.

21 Q Okay. So just to lay that out a little bit more. That means
22 that the use of a thermal energy device to free the colon from mesh has
23 been associated with an increased risk of putting holes in a patient's
24 previously healthy colon, correct?

25 A Yes.

1 Q And Doctor, you also agree that the use of a thermal energy
2 device to free the colon from mesh is associated with an increased risk of
3 delayed leak development, correct?

4 A Yes.

5 Q And that can be, for a couple of different reasons. It could be
6 because you can damage tissue that necrotizes later or dies over time,
7 correct?

8 A Yes.

9 Q And it can also be because even if you fix holes, that the
10 tissue that you're fixing, that you're using to staple through, can
11 necrotize and deteriorate over time, correct?

12 A It's conceivable, yes.

13 Q And so both of those are reasons why a leak can develop
14 over time if you use a thermal energy device in approximated to the
15 colon, correct?

16 A That's correct.

17 Q Okay. And you agree that obviously that's very bad for a
18 patient if the colon starts leaking after the patient is already sewn up,
19 correct?

20 A Yes.

21 Q Okay. Doctor, you agree that in this case -- well, let me ask
22 you first, because it has not been discussed. You know what, I'm just
23 going to -- I'll move onto something else. Doctor, you agree that a
24 surgeon should avoid doing things that unnecessarily increase the
25 patient's risk of having holes cut in their colon, correct?

1 MR. DOYLE: Objection; that's an incomplete hypothetical.

2 THE COURT: Overruled, given the designation of this
3 witness.

4 THE WITNESS: Could you restate the question please?

5 BY MR. JONES:

6 Q Absolutely. Doctor, would you agree that a surgeon should
7 avoid doing things that unnecessarily increase the risk of a patient --
8 increase a patient's risk of having holes cut in their colon, correct?

9 A Yes.

10 Q You agree a surgeon should avoid doing things that
11 unnecessarily increase the patient's risk of developing a delayed leak
12 that starts leaking after a surgery ends, correct?

13 A Yes.

14 Q Doctor, you agree that tearing, cutting or burning holes in a
15 patient's colon takes it from a clean surgery to a contaminated surgery,
16 correct?

17 A Yes. At least a clean contaminated. There's a difference
18 but --

19 Q Sorry, say that again.

20 A There's a difference between contaminated and clean
21 contaminated.

22 Q Okay. Now there's a number chart of this, correct?

23 A Yes.

24 Q And the moment that you punch a single hole in the colon,
25 even if we're talking about just a pinhole, then it changes it from I think a

1 one to a three?

2 A Yeah.

3 Q Right?

4 A Uh-huh.

5 Q And so -- and that's bad, right? I mean, a three is still
6 something that you want to be very concerned about, right?

7 A It's statistically still favorable, but it is worse.

8 Q Ten times the risk of infection?

9 A That's correct.

10 Q Right? Ten times the risk of infection if you have a pinhole in
11 the colon, correct? Now Doctor, if you have a second hole, you actually
12 cut two holes in the colon, that would likely increase it further, correct?

13 A It would degree -- depend on the degree of contamination,
14 but it doesn't really go up, you know, like --

15 Q Well, we --

16 A -- exponentially or anything.

17 Q Is it fair to say that we don't really know because there's not
18 a tremendous amount of literature pointing that out?

19 A Yes.

20 Q Okay.

21 A I think that's reasonable.

22 Q But there's plenty of literature identifying that if there's a
23 pinhole in the colon you have an increased risk of infection by like ten
24 times or so, correct?

25 A Yeah.

1 Q So is it a fair --

2 A There's a range.

3 Q -- conclusion -- I apologize. Did you say something else?

4 A There's a range.

5 Q Got it.

6 A And it's not all literature says ten percent. You know, there's
7 like a range from --

8 Q Absolutely.

9 A -- you know, seven to fourteen percent or something.

10 Q Right. And I chose ten because --

11 A Okay.

12 Q -- that's what you had testified to --

13 A Okay.

14 Q -- is that reasonable?

15 A Okay.

16 Q Okay. Now -- and that's why I picked that within that range.

17 Now Doctor, is it fair to say that if there are two holes then, given that
18 information, that it is likely more susceptible to infection?

19 A It's not directly related.

20 Q Okay. Now Doctor, are you aware that Dr. Hurwitz concluded
21 that Dr. Rives compounded the danger of infection to the patient by
22 implanting permanent synthetic mesh in a contaminated field?

23 MR. DOYLE: Object; it mischaracterizes his testimony.

24 THE WITNESS: I --

25 THE COURT: Okay. Hang on a second.

1 MR. DOYLE: Doctor, wait.

2 THE COURT: Court is going to need the parties to approach.

3 MR. JONES: Your Honor, just I'll withdraw the question.

4 THE COURT: Okay, no worries.

5 MR. JONES: I'll move onto the next thing.

6 THE COURT: Okay. Feel free to --

7 MR. JONES: All right.

8 BY MR. JONES:

9 Q Doctor, you agree that implanting permanent synthetic mesh
10 in a contaminated surgical field, as we had here, can lead to late
11 prosthetic infection, correct?

12 A That's correct, late.

13 Q Okay. And when you say late Doctor --

14 A Like --

15 Q -- how many days?

16 A Many days.

17 Q Can it happen in two days?

18 A Yes. Well, no. It wouldn't happen in two days. That would
19 be an immediate infection, not a late infection. But something that
20 would show up in a matter of weeks to months.

21 Q You're saying it couldn't happen in the matter of a couple of
22 days?

23 A It's not an adjament [phonetic] the presence of a synthetic
24 mesh would harbor bacteria that could eventually proliferate to the point
25 where they can develop late infection. But in terms of putting permanent

1 mesh in the setting of contamination in terms of an acute infection, it is
2 not an adjament to --

3 Q Okay.

4 A -- increase that risk.

5 Q Okay. So you're saying that the placement of permanent
6 mesh there you're saying doesn't have any impact on infection within
7 the first few days?

8 A No.

9 Q Okay, all right.

10 A It doesn't increase or decrease the likelihood.

11 Q All right. But you do agree Doctor, that implanting
12 permanent synthetic mesh in a contaminated field certainly leads to the
13 late prosthetic infection rate, right?

14 A There is a risk.

15 Q Right? I mean, it's predictive, correct?

16 A Yes.

17 Q Okay. Now Doctor, you're aware that Dr. Hurwitz also
18 concludes that Dr. Rives fell below the standard of care in failing to
19 adequately repair the colon injuries, correct?

20 MR. DOYLE: Objection --

21 BY MR. JONES:

22 Q You saw that in his report?

23 MR. DOYLE: -- mischaracterizes his testimony.

24 THE WITNESS: I believe he --

25 THE COURT: I'm going to --

1 MR. DOYLE: Doctor, wait.

2 THE COURT: The Court's going to overrule the objection.

3 THE WITNESS: I believe that was his opinion.

4 BY MR. JONES:

5 Q You read his report, correct --

6 A Yes.

7 Q -- Doctor? And his opinion was he specifically said that; did
8 he not?

9 A Yes.

10 Q Okay, all right. And Doctor, are you aware that Dr. Hurwitz
11 concluded that Dr. Rives should not have felt confident in those staples
12 because he had used a thermal energy device in approximation to the
13 tissue being stapled?

14 MR. DOYLE: And I'll object; it mischaracterizes Dr. Hurwitz's
15 trial testimony.

16 THE COURT: Court's going to -- jury will disregard --
17 counsel, evidentiary objection?

18 MR. DOYLE: Mischaracterizes the testimony.

19 THE COURT: Okay. The Court's going to overrule the
20 objection in light of what previous documents the Court's seen from the
21 parties. Counsel.

22 BY MR. JONES:

23 Q Do you remember my question, Doctor?

24 A Are you going to ask it again?

25 Q I'll ask it again --

1 A Okay.

2 Q -- if that will help.

3 A Thank you.

4 Q Doctor, you're aware that Dr. Hurwitz concluded Dr. Rives
5 should not have felt confident in the staples because he had used a
6 thermal energy device in approximation to the tissue being stapled,
7 correct? You recall that as being the idea?

8 A I think so.

9 Q Okay. And because Dr. Hurwitz believed the tissue was likely
10 compromised by the thermal energy device making it a poor candidate
11 for stapling, correct?

12 MR. DOYLE: Objection; it mischaracterizes his trial
13 testimony.

14 THE COURT: Overruled.

15 BY MR. JONES:

16 Q Doctor, and did --

17 A In that --

18 Q Let me ask you this, Doctor. You, yourself just a moment
19 ago acknowledged that the thermal energy -- that a thermal energy
20 device in approximation to the colon can do exactly that, correct?

21 A It could.

22 Q Yes, okay. Now Doctor, you're aware that Dr. Hurwitz
23 concludes that after surgery Dr. Rives fell below the standard of care in
24 many ways during his treatment from July 4th through July 15th,
25 correct?

1 MR. DOYLE: Your Honor, that is a --

2 THE WITNESS: Certainly --

3 MR. DOYLE: -- mischaracterization --

4 THE COURT: Counsel, Counsel --

5 MR. DOYLE: -- of the testimony --

6 THE COURT: -- please don't raise your voice, Counsel.

7 MR. DOYLE: -- many ways.

8 THE COURT: Counsel, please no talking. Just evidentiary --

9 MR. DOYLE: It's --

10 THE COURT: -- objections. Counsel, please. The jury will
11 disregard anything in addition other than just the objection. Can I hear
12 the end of the question please so the Court can hear the end of the
13 question before it makes a ruling please?

14 BY MR. JONES:

15 Q The question was Doctor, you are aware that Dr. Hurwitz
16 concludes that after surgery Dr. Rives fell below the standard of care in
17 many ways during his treatment from July 4th through July 15th,
18 correct?

19 THE COURT: The Court is -- the way that -- I need you both
20 to approach for a brief moment please. Madam court recorder, can you
21 turn the white noise please?

22 [Sidebar at 4:20 p.m., ending at 4:21 p.m., not transcribed]

23 THE COURT: Okay. Thank you for that point of clarification.
24 The Court overrules the objection. Is it not turning back on?

25 MR. JONES: No. Or I may be incapable of --

1 THE COURT: No worries.

2 MR. JONES: -- making a small device function.

3 THE COURT: What we can do, madam court recorder can
4 you move the --

5 MR. JONES: Oh, it worked.

6 THE COURT: Oh, actually, you got it back on. You're back,
7 you're good.

8 MR. JONES: It's back, we're good.

9 THE COURT: No worries.

10 MR. JONES: All right.

11 THE COURT: If not we just move the other mic closer to you.
12 No worries.

13 MR. JONES: This is a little more tricky. It has a button
14 function.

15 BY MR. JONES:

16 Q All right. Okay. Doctor, the last question, I'm going to say it
17 again just in case you've forgotten or the jury's forgotten. Doctor, you're
18 aware that Dr. Hurwitz concludes that after the surgery Dr. Rives fell
19 below the standard of care in many ways during this treatment from July
20 4th through July 15, correct?

21 A I don't recall that.

22 Q Okay. For example, Dr. Hurwitz concludes that Dr. Rives fell
23 below the standard of care by not timely diagnosing or treating Titina
24 Farris for fecal peritonitis, correct?

25 A That's -- I'm sorry, the question is Dr. Hurwitz stated that?

1 Q Yes.

2 A Yes.

3 Q Okay. All right. And you're aware that Dr. Hurwitz concluded
4 Dr. Rives should have operated on the 5th and each day after that but
5 that failing to operate by the 9th was clearly below the standard of care --

6 MR. DOYLE: And that --

7 BY MR. JONES:

8 Q -- correct?

9 MR. DOYLE: -- I object; it mischaracterizes the testimony; the
10 opinions and it calls for speculation on the part of this witness as to his
11 trial testimony.

12 THE COURT: Jury -- evidentiary objections only please. Jury
13 will disregard the additional commentaries on the evidentiary objection
14 which the Court needs to rule on. The Court is going to -- counsel, I --
15 can you read that question one more time please?

16 MR. JONES: Yes. Your Honor --

17 THE COURT: There was an ending word I needed --

18 MR. JONES: Okay.

19 THE COURT: -- to hear back.

20 MR. JONES: Well, you're aware that Dr. Hurwitz concludes
21 Dr. Rives should have operated on the 5th and each day after that, but
22 that failing to operate by the 9th was clearly below the standard of care,
23 correct?

24 THE COURT: The Court is going to sustain the objection for
25 the way that question was specifically phrased, particularly the word

1 clearly.

2 MR. JONES: Okay.

3 BY MR. JONES:

4 Q You're aware that Dr. Hurwitz concluded Dr. Rives should
5 have operated on the 5th or the 6th or the 7th, but that failing to operate
6 by the 9th was below the standard of care, correct?

7 MR. DOYLE: Objection, mischaracterizes the testimony and
8 is speculation.

9 THE WITNESS: I don't recall --

10 THE COURT: The Court's going to --

11 MR. DOYLE: Doctor, wait.

12 THE WITNESS: -- exactly what Dr. Hurwitz --

13 THE COURT: -- Court's going to -- hold on a sec. Sorry.

14 THE WITNESS: -- said about that.

15 THE COURT: Excuse me. Okay.

16 THE WITNESS: Oh, sorry.

17 THE COURT: In light of the prior testimony of this witness
18 and the designation, the Court overrules each of those objections.

19 MR. JONES: Thank you.

20 BY MR. JONES:

21 Q I think I understood your answer. You're just not sure?

22 A I'm just not sure --

23 Q Okay.

24 A -- what Dr. Hurwitz said about that.

25 Q Fair enough. Now Doctor, I understand you do not agree

1 with Dr. Hurwitz' conclusions regarding the standard of care, but you
2 agree they are relatively easy to understand, correct?

3 A Yes.

4 Q Okay. And it's pretty easy to identify if Dr. Rives complied
5 with or did not comply with each of those standards; is that fair? Is that
6 fair, Doctor?

7 A Well, I mean --

8 Q It's a yes or no question, Doctor.

9 A No. I'll have to say no. That --

10 Q Okay. Doctor, regarding the standard of care that you
11 advocate in this case, you agree there's a standard of care -- first of all,
12 you do agree there is a standard of care for the method of repairing
13 colotomies, correct? Or holes in the colon.

14 A Yes.

15 Q Now Doctor, do you recall the standard of care that you
16 advocated at your deposition --

17 MR. DOYLE: Objection --

18 BY MR. JONES:

19 Q -- with respect to the method of repairing holes in the colon
20 like those we have in this case?

21 MR. DOYLE: Objection, argumentative.

22 THE COURT: Overruled.

23 THE WITNESS: I don't recall my exact testimony in my
24 deposition, but --

25 BY MR. JONES:

1 Q Do you recall saying this? I'm going to read you a quote
2 from your deposition, "Well, I mean, as long as it achieves the outcome it
3 would meet the, you know, as we just stated, it would meet the standard
4 of care"?

5 A Yes.

6 Q Okay. That sounds right?

7 A An adequate repair.

8 Q Okay. So as long as it achieves the outcome it would meet
9 the standard of care?

10 A Yes.

11 Q Okay. So that's the standard of care that you think is
12 appropriate, correct?

13 A Yes.

14 Q Okay. So standard of care. And that is with respect to the
15 colotomies, correct? To closing holes in the colon that you've created,
16 correct?

17 A Yes.

18 Q Okay. So if the repair effectively does close the hole then the
19 standard has been met, right?

20 A Yes.

21 Q On the other hand, you also gave the opinion that it is not
22 below the standard of care if the hole -- if the staple line breaks back
23 open, correct?

24 A If it's not due to technical reasons.

25 Q Oh, okay. Well, in -- so but to be -- so if there are technical

1 reasons that it breaks back open, then it is, but otherwise it's not?

2 A I mean, I -- suture lines failure common --

3 Q Doctor, this is a yes or no question.

4 MR. DOYLE: Your Honor --

5 THE WITNESS: Okay. Ask me the question again. I can
6 answer it.

7 BY MR. JONES:

8 Q Thank you.

9 MR. DOYLE: -- the witness should be allowed --

10 THE COURT: Counsel --

11 MR. DOYLE: -- to answer --

12 THE COURT: Counsel, if you have an objection?

13 MR. DOYLE: Yes.

14 THE COURT: Evidentiary objection please, Counsel.

15 MR. DOYLE: Badgering the witness and not allowing to
16 finish his answers.

17 THE COURT: First one, objection overruled. Second one is
18 not an objection, but -- and to that extent in cross-examination. As long
19 as we have one person speaking at a time, so we have a clarity of record.
20 Everybody should remember that please, but --

21 BY MR. JONES:

22 Q So Doctor, no matter what they do under your standard of
23 care, as long as it closes the hole then they did it right, correct?

24 A Well, I mean, they're -- you could close a hole.

25 Q Doctor, I asked you a simple question.

1 A By any method, I mean, that's -- you're making a pretty broad
2 statement.

3 Q Well --

4 A As long as it's a standard method and it's --

5 Q Well, Doctor, this is what I'm asking.

6 A -- adequately closed, it meets the standard.

7 Q Okay. This was what you said at your deposition.

8 A But I didn't say by what -- any method.

9 Q You did not, you did not.

10 A Yeah.

11 Q So is it fair to say that perhaps your standard requires that
12 the surgeon use something that would be typical or something --

13 A Right.

14 Q -- I guess? Okay. You want -- so if it achieves the outcome
15 then it is. But you do not -- but your standard does not say that it was
16 against the standard of care if it fails, correct?

17 A No.

18 Q Okay.

19 A I agree with that.

20 Q So Doctor, so those things, two things together, I just want to
21 kind of analyze that. So number one, when you look at those two things,
22 if the repair holds, then it is within the standard of care. And if the repair
23 fails then it is also within the standard of care, correct?

24 A As long as it's promptly recognized and treated.

25 Q Okay. So Doctor, can we agree that your standard, if it were

1 true, would be really helpful to negligent surgeons, because Doctor, if
2 the repair holds, they're within the standard and if the repair fails, they're
3 within the standard?

4 MR. DOYLE: Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: No. I wouldn't --

7 BY MR. JONES:

8 Q No.

9 A -- agree that that would be helpful --

10 Q Okay.

11 A -- to the negligent surgeon.

12 Q Doctor, can we agree that that standard would likely not be
13 very helpful to injured patients that were the victims of negligent
14 surgeons?

15 MR. DOYLE: Objection; argumentative and it's overbroad
16 and lacks foundation.

17 THE COURT: Court's going to over --

18 THE WITNESS: In terms of what I said --

19 THE COURT: Just a sec -- hold on just a second.

20 THE WITNESS: -- was the standard it's --

21 THE COURT: Court's going to overrule. Two of those are
22 evidentiary objections. Court overrules that.

23 MR. JONES: All right.

24 THE COURT: The third one is not an evidentiary objection.

25 The Court would still overrule it in any regards based on the prior

1 designation of this witness, the testimony -- prior testimony of this
2 witness. Witness can answer, thank you.

3 BY MR. JONES:

4 Q Doctor, you agree that your standard would likely not give
5 very much help to injured patients that were injured by a negligent
6 surgeon in the process of closing a hole in the colon, yes or no?

7 A I mean, no patient is going to benefit from a failed
8 anastomosis.

9 Q All right. Doctor, I want to chat a little bit about your
10 malpractice history.

11 MR. DOYLE: Your Honor, I'll object as to relevance and other
12 reasons.

13 THE COURT: Court's going to overrule.

14 BY MR. JONES:

15 Q Doctor --

16 THE COURT: If the parties -- it's appropriate, if parties would
17 like to come to the bench the Court would be glad to have you come to
18 the bench, but the parties cannot engage in colloquy in front --

19 [Sidebar at 4:31 p.m., ending at 4:34 p.m., not transcribed]

20 THE COURT: THE COURT: Ladies and gentlemen, tomorrow
21 is the official Nevada day. Not the real one, the official Nevada Day, of
22 course is October 31st, 1864, right. Only Nevada was admitted into
23 union. But ladies and gentlemen, everyone's thinking that since this
24 witness is not going to be done by 5:00 o'clock anyway that probably
25 you all want to get started on your nice longer weekend for those of you

1 who are off tomorrow for Nevada Day. So we are going to give you the
2 recess admonition lest you be gone for the weekend and see you back
3 on Monday. Let me just double check real quickly what we set it for
4 Monday. Make sure we're still on the same page. I show 9:00 a.m. is
5 what I told you and that's bingo, that's what everyone else shows, okay.
6 Perfect.

7 We do not have any motion calendar, so we don't have to
8 worry about late attorneys or anything it's -- okay. So subject to traffic
9 accidents and things which gosh, we hope does not happen, right. So
10 okay. But so it's all about you all first thing Monday morning. I have no
11 morning calendar at least that anyone's told me about so far, right.
12 Okay. So ladies and gentlemen, we'll see you Monday morning start at
13 9:00 a.m.

14 During this weekend recess you are admonished not to talk
15 or converse among yourselves or with anyone else on any subject
16 connected with the trial. You may not read, watch, or listen to any report
17 or commentary of the trial, any person connected with the trial by any
18 medium of information, including without limitation, social media, text,
19 tweets, newspapers, television, internet, radio. Anything I've not stated
20 specifically is, of course, also included.

21 Do not visit the scene of the events mentioned during the
22 trial. Do not undertake any research, experimentation or investigation.
23 Do not do any posting or communications on any social networking
24 sites. Do not do any independent research, including, but not limited to
25 internet searches. Do not form or express any opinion on any subject

1 connected with the case -- or the trial until the case is fully and finally
2 submitted to you at the time of jury deliberations.

3 With that we wish you a very nice and relaxing long
4 weekend. We'll see you Monday to start again at 9:00 a.m. Thank you
5 so much. Have a great weekend.

6 [Jury out at 4:35 p.m.]

7 [Outside the presence of the jury]

8 THE COURT: Okay. Just one sec. Thank you so much.
9 Appreciate it. Thank you so very much. Appreciate it. Okay. Just one
10 sec until we hear the click of the door. Okay. Do appreciate we've heard
11 the click of the door. So we're now outside the presence of the jury. Oh,
12 don't worry. We'll get the depo after you leave, so you're perfectly fine
13 leaving it there. My marshal will take care of it when he gets back from
14 the jury; don't worry about that.

15 Okay. So since one of the sides did want to have a disk; is
16 that correct?

17 MR. DOYLE: Yes. Both sides.

18 MR. JONES: We did, Your Honor. Both sides.

19 THE COURT: Oh, both sides now do, okay. I'm sorry. At
20 first, I thought it was just Plaintiffs' side. So since both sides want a disk
21 that means we're ending now at you all's request in order to do that.
22 And that means of course you won't be able to do a motion. So 9:00
23 a.m. Do you all want to get here -- I'm trying to find you time to -- keep
24 offering you time to get your other matters taken care of so they're not in
25 front of juries and having juries waiting. Do you all want to get here at

1 8:30 on Monday so we can get some of these taken care of?

2 MR. JONES: That would be greatly appreciated on behalf --

3 THE COURT: Okay.

4 MR. JONES: -- of the Plaintiffs.

5 THE COURT: Sure.

6 MR. DOYLE: That's fine.

7 THE COURT: We can -- does that work for both sides?

8 MR. DOYLE: Yes.

9 THE COURT: Okay. So then we'll ask counsel to be here at
10 8:30 if that's what you all are wishing to do. My team will accommodate.
11 So we'll see you at 8:30 and then the jury to start a few minutes before
12 9:00. And you all decide who's going to be the witness. Have a great
13 weekend. We're going to go off the record so madam court recorder can
14 download everything for you.

15 [Proceedings adjourned at 4:37 p.m.]

16

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