

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

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

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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APPELLANTS' APPENDIX
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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 NRCPP 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 NRCPP 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 NRCPP 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 NRCPP 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: MGM Resorts Health and Welfare Benefit Plan (As Amended and Restated Effective January 1, 2012)</u>		5	1005-1046
	<u>Exhibit 2: LexisNexis Articles</u>		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: Declaration of Amy B. Hanegan</u>	10/18/19	5	1087-1089
	<u>Exhibit B: Deposition Transcript of Michael B. Hurwitz, M.D., FACS</u>	9/18/119	6	1090-1253
	<u>Exhibit C: Recorder's Transcript of Pending Motions (Heard 10/7/19)</u>	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 She had to learn how to do everything all over again. First, they had
2 to -- I don't even know where to start, because she pretty much had to do
3 everything all over again. She had to learn how to sit up, she had to
4 learn to transfer from seat to seat. She had to try to learn balance, but
5 that wasn't -- that wasn't working.

6 They tried to get her -- like they do all the different leg
7 exercises, all this stuff, and eventually we got her to the point where they
8 could try to get her on a walker, but that was difficult for her. There was
9 just no chance of her walking without holding onto either a walker -- at
10 that point it was just a walker. But actually, I think the walker came later.
11 I think coming out of rehab, she might have just still been in the
12 wheelchair; the walker came soon after that. It was -- it's just -- that's a
13 lot for me to take in, so bear with me.

14 Q And so then you went home, and following going home,
15 what additional things did she end up having to do, even though she
16 was now at home?

17 A Well, we never --

18 Q And I apologize, Patrick, that was kind of a vague question.
19 What additional things did she have to do with respect to medical
20 professionals and such, to keep getting better, after she admits at home?

21 A Well, we had a nurse come to the house every day. I put all
22 the shower bars, and the bars for the inside the -- anything I could do to
23 help her grab onto something, if she was trying to take a shower, I
24 bought the shower chair. Anything you could think of, I put it in our
25 house. And we did all our therapy exercises every day. We tried,

1 actually we're still trying, you know, it's like an never-ending, it's never-
2 ending. I just --

3 Q Can you tell the jury about the process of dealing with the
4 colostomy, until that second surgery, or that third surgery, I guess?

5 A Well, after I found out she lost 10 inches, or 9 inches of her
6 colon she had to have that colostomy bag. I'm just going to say that that
7 was the nastiest thing a person ever has to do, and I have a lot of respect
8 for any person that has to go do that for elderly people. I wouldn't wish
9 that on nobody.

10 It's not like you're just coming out of the bathroom. It's ten times
11 worth, it's foul, it's uncontrollable, even in the middle of changing a bag.
12 I just wouldn't want to wish that on nobody, I don't ever want to have to
13 go through again. We've dealt with that for a year. I couldn't tell you
14 how many times I'd have to -- she would call me, and I would have to
15 leave work because she could smell it. And I probably left 30 or 40
16 times, and I can't even count.

17 But my work was gracious enough to -- they knew the situation,
18 and if my wife called they didn't -- they just let me go, and it was ugly
19 and I wouldn't wish it on nobody, not even a nurse. I don't know how
20 they do it.

21 Q How has your life changed at Titina's life changed, since this
22 July surgery?

23 A Well, it's pretty much still turned upside down. I mean, we --
24 we can do some things, and a lot of things we don't do anymore,
25 because it's either a chore, or it's too much hassle. Or if we're

1 somewhere like -- like we used to go down to Freemont Street and just
2 watch people, watch and have fun. People are rude and insensitive if
3 they get behind somebody that's slow, and we've already dealt with that,
4 and dealt with people saying remarks. We just -- we're just hermits
5 now, we don't do a lot.

6 I tried to get her out, but I just -- it's hard, she has a hard time -- she
7 has a hard time dealing with it. And I just won't do things without her. If
8 she doesn't go, I don't go; that's just what we do.

9 Q Can you tell the jury about sex, kind of compare it before and
10 after, any way that that's had an impact?

11 A Well, before, you know, not any more than anybody else,
12 maybe three times a month. And after -- after the surgery with
13 colostomy there was just none. My wife felt dirty. She didn't feel -- I'll
14 just say, she felt dirty, she didn't feel like a whole person, and to have
15 sex with your clothes off made her feel uncomfortable.

16 Since we got -- had the colostomy removed, it was about exactly a
17 year, we have sex probably once every four months, and that's about all
18 I want to say about that.

19 Q Thank you. And I'm sorry that you have to share that. What
20 have you learned from all this, Patrick?

21 A I learned that a person can fall in love with somebody twice,
22 and I think I fell in love with my wife all over again, just being needed as
23 much as I have been in the last four years; and that's all I got to say
24 about that.

25 Q Thank you, Patrick.

1 MR. JONES: Pass the witness.

2 THE COURT: Cross-examination, counsel for Defense.

3 MR. DOYLE: Yes, thank you.

4 CROSS-EXAMINATION

5 BY MR. DOYLE:

6 Q Good afternoon.

7 A Good afternoon.

8 Q I'd like to -- if we could please put up Exhibit 1-0041.

9 THE COURT: There's a request to look at it first.

10 MR. DOYLE: Well, hold on.

11 THE COURT: Just put it down, please.

12 MR. DOYLE: Take it down for a moment.

13 MR. JONES: What is it now?

14 MR. DOYLE: Page 41 of Exhibit 1. Okay. Will you put it up,
15 please.

16 THE COURT: Any objection by Plaintiffs' counsel? Please
17 wait until the Court says so. Okay.

18 Counsel for Plaintiff, is there any objection? Counsel for
19 Plaintiff?

20 MR. JONES: Your Honor, I apologize, there's a lot of
21 information on the page, I am just making sure there's not an issue.

22 THE COURT: No worries.

23 MR. JONES: Your Honor, I'm find with that.

24 THE COURT: Okay. Then we need to put it up.

25 MR. DOYLE: If we could highlight two-thirds of the way

1 down, the entry for 7/16, if we could highlight the first couple of lines.

2 BY MR. DOYLE:

3 Q Now, Mr. Farris, this is a note on July 16. It says: "Family
4 conference, husband, PT [meaning patient], RN." This would be the
5 meeting you were speaking about earlier, that took place on the morning
6 of July 16th, correct? And you mentioned there were other people
7 there?

8 A The hospital administrator.

9 Q Right. And so do you see where the note then says:
10 "Husband wants Dr. Rives to take patient to OR, but he states family
11 wants to consider all options first, and will make a decision later this
12 A.M." Do you see that?

13 A Yeah. I see that.

14 Q Is it your interpretation of this note that whoever -- you know,
15 the person who made the note indicated that on the morning of the 16th
16 at that meeting, you still wanted Dr. Rives to take your wife back to
17 surgery, but family wanted to consider all options," correct?

18 MR. JONES: Objection --

19 THE WITNESS: No.

20 MR. JONES: -- compound and speculation.

21 THE WITNESS: That is totally not right.

22 MR. DOYLE: All right.

23 THE COURT: Just second. I had a pending objecting, we had
24 multiple people speaking at the same time.

25 MR. JONES: Compound and speculation.

1 THE COURT: Okay. Well, the Court is going to sustain it as
2 compound, and I'm going to overrule as to speculation.

3 BY MR. DOYLE:

4 Q Mr. Farris, at this meeting, on the morning, on July 16th, did
5 you say to anyone that you wanted Dr. Rives to take your wife to the
6 operating room, to the OR?

7 A No.

8 Q Did you state to anyone that the family wanted to consider all
9 options, first?

10 A No. Our mind was made up.

11 Q And did you say to anyone at this meeting, that you will
12 make a decision later that morning?

13 A No. The meeting started at 9:30, and by 10:00 he was
14 removed.

15 Q The contents of this note, based on your memories, are the
16 contents inaccurate?

17 A They must be, because I -- we never wanted him on the 16th,
18 he was being removed. That was cleared on the 14th or 15th by family.
19 There's -- that was it, the choice was made. So whatever that says on
20 the 16th, we never asked for him to do the surgery.

21 Q Okay. Is the contents of this note, based upon your memory
22 in the meeting, inaccurate?

23 A Yes.

24 MR. DOYLE: Now if we can -- unhighlight that, and let's
25 move up to the entry for July 15th, and if we could highlight that.

1 BY MR. DOYLE:

2 Q This note on July 15th, again, we're still on page 41 of
3 Exhibit 1. It says: "Family conference, patient and husband." Do you
4 recall a family conference on July 15th?

5 A I don't remember 14th or 15th, but the family did make up
6 their mind to have him removed on the 16th.

7 Q Okay. So sometime on the 16th the decision was made to
8 remove him, correct?

9 A No. That decision was made by family, a day or two prior.

10 Q Right. But you didn't make that decision until the 16th,
11 correct?

12 A I couldn't make it until the administrator was in front of us.

13 Q All right. So you first made the decision to remove Dr. Rives
14 at that meeting on the 16th; is that what you're telling us?

15 A Me and the family decided on the 14th or 15th, we were
16 having him removed on the 16th, that's the earliest the administrator
17 could be in our room.

18 Q All right. Well, was there some reason you couldn't meet
19 with the administrator on the 14th?

20 A You would have to ask him that? All I could do is ask the
21 charge nurse that we needed to see the administrator and tell him why.

22 Q Did you ask to meet with the administrator on the 14th?

23 A No. I just put in the request for -- to the charge nurse.

24 Q Well, it sounds like, based upon your testimony here in court
25 today, that there was some angst and urgency on your part to have

1 Dr. Rives removed; is that a fair statement?

2 A I'm not in control of how the administration process is, but I
3 did what I was asked, and went through the process with the charge
4 nurse, and that's it. I mean, if you -- you would have to ask the
5 administrator, I don't know. But that's we were told, 9:30 on the 16th.

6 Q Did you ask for a meeting with the administrator on the 15th?

7 A No. I went by what the charge nurse said, she said the 16th
8 at 9:30 in the morning.

9 Q Now you saw Dr. Rives the evening of the 15th, correct?

10 A Yes.

11 Q And when you saw Dr. Rives the evening of the 15th, you
12 understood that a CT scan had been done that day, correct?

13 A I just knew -- I don't know what the CT scan, but I knew he
14 had said to me, he needed to do that -- he wanted to do that surgery
15 right then, and wanted me to give my permission right then.

16 Q Did he talk to you about a CT scan that had been
17 performed --

18 A I don't recall --

19 Q Sir --

20 A -- him talking to me about a CT scan. I recall him specifically
21 trying to get me to say, yes, to let him do the surgery, right then -- it was
22 9:00 or 10:00 at night.

23 Q Okay.

24 A And I said, no.

25 Q When you talked to Dr. Rives on the evening of the 15th,

1 were you aware that a CT scan had been performed that day, that
2 showed changes --

3 A I don't --

4 Q -- yes, or no?

5 A I don't recall, no.

6 Q All right. When you spoke to Dr. Rives on the evening of the
7 15th, did he indicate to you why he wanted to perform surgery right
8 away?

9 A No. I assumed that he had already knew he was going to be
10 in that room the next morning at 9:30. That was my impression why he
11 wanted to do the surgery, because he knew he was going to be removed.
12 And if I said, yes, then he wouldn't be removed.

13 Q All right. But that's speculation on your part as to what Dr.
14 Rives was think that day, right?

15 A That's how I feel. I was the one that was there.

16 Q Sir, in terms of what was going through Dr. Rives' mind, and
17 what he was thinking, that would be speculation on your part; fair
18 statement?

19 A Sure.

20 Q If we look at the note for July 15, it says "DW" and I'll
21 represent to you that means discussion with radiologist and Dr. Rives,
22 CT abdomen results." Do you see that?

23 A Yeah. I see something, "DW" something, yes.

24 Q Now did you just talk to a radiologist on July 15th about the
25 CT results?

1 A I don't recall talking to anybody about any CT.

2 Q Now there were a number of different doctors, different
3 specialists that were seeing and caring for your wife each day, correct?

4 A Yes. There was probably 10 or 15 that would come in every
5 day, one for every body part.

6 Q And you understood one of them was a specialty called an
7 "intensivist" or critical care specialist, correct?

8 A Yeah. I recall that.

9 Q Did you have a discussion with this intensivist, on July 15th,
10 about the CT scan results?

11 A You know, I may have. At this point, 15 day -- or 10-12 days
12 in, I'm a zombie. I don't -- I don't recall. I was -- I was to my -- to my
13 peak; I don't recall, honestly.

14 Q Did you talk to Dr. Rives every day, while your wife was in
15 the intensive care unit?

16 A For the most part. Sometimes I would miss him because he
17 would come super early, or sometime I might -- I might have went down
18 for lunch, and then he would show up and then I'd miss him. But for the
19 most part, a lot of the days, yes.

20 Q So between the day of surgery, July 3rd and this meeting on
21 the morning on July 16th, you saw Dr. Rives on multiple days; fair
22 statement?

23 A Yeah. Most of the days, not all of them.

24 Q But the majority of the days, true?

25 A Give or take, yeah.

1 Q Okay. And when you would see Dr. Rives, you would talk to
2 Dr. Rives about what was happening and going on with your wife,
3 correct?

4 A I would ask him questions, yes.

5 Q And he would answer your questions?

6 A Yes.

7 Q And you were asking him questions about the white blood
8 cell count, correct?

9 A Yes.

10 Q And you were asking him about, you know, your wife being
11 swollen, correct?

12 A Yes.

13 Q But what else were you asking him about?

14 A Well, for the first four or five days that was pretty much --
15 those were the questions, because his response to me was, you let the
16 antibiotics kick in, and after 3, or 4, or 5 days when that wasn't working,
17 and the white cell numbers were still the same, that's when we started
18 having questions about what he was doing, because his answer to me
19 was, "Just give it a couple of more days." Almost every day I heard that
20 same expression, "Just give it a couple more days."

21 Q Did Dr. Rives ever discuss with you any risks of taking your
22 wife back to surgery, in these conversations with him, on or before July
23 9th?

24 A No. I don't recall that.

25 MR. DOYLE: Your Honor, it's 4:30 and there was a request

1 for discs.

2 THE COURT: Counsel, why don't broth approach, please.
3 The jury will disregard the commentary in front of the jury. Counsel can
4 you please approach.

5 [Sidebar at 4:31 p.m., ending at 4:32 p.m., not transcribed]

6 THE COURT: Okay. Feel free to continue with your
7 questions. Thank you so very much.

8 BY MR. DOYLE:

9 Q Mr. Farris, do you recall at some point in time that a
10 tracheostomy was placed?

11 A Yes.

12 Q Did you have a discussion with Dr. Rives about the
13 tracheostomy?

14 A No. I don't believe he was there. They called him on the
15 phone to let them know what was going on, and then they wanted my
16 permission to say yes, or no.

17 Q And you gave your permission for that?

18 A I did.

19 Q And was that in a conversation with one of the other doctors,
20 taking care of your wife?

21 A I believe it was one of the nurses. Yeah. I believe it was one
22 of the nurses.

23 MR. DOYLE: If we could call up, please, Exhibit 1, page 363,
24 and hold on that.

25 MR. DOYLE: That's fine.

1 THE COURT: Okay. It's okay to put it up. Thank you.

2 BY MR. DOYLE:

3 Q If we could put up Exhibit 1, page 363, and this is a progress
4 note by Dr. Rives, on July 8th. Do you have that in front of you, Mr.
5 Farris?

6 A Yeah. I see something there, yeah.

7 Q And do you see where Dr. Rives indicated, "Discussed patient
8 progress of events with husband again, with nurse present." Do you see
9 that?

10 A Yeah.

11 Q Okay. Any reason to doubt the accuracy of that aspect of the
12 note?

13 A I don't know. I just recall they phoned him on the phone, to
14 let him know, at least that's my recollection.

15 Q This is July 8th at about 2:00 p.m., and what I'm just trying to
16 find out is, when Dr. Rives indicated he discussed your wife's progress of
17 events with you, again, with a nurse present, if you would agree that that
18 note is probably accurate?

19 A Are you still talking about the trach, the --

20 Q No.

21 A Okay. Well, you got me confused me then. Do you want to
22 re-ask, please?

23 Q All right. Why don't you take a moment, and read to
24 yourself, the entire note, the four lines.

25 [Witness reviews document]

1 THE WITNESS: Well, what I'm reading --

2 BY MR. DOYLE:

3 Q Sir, if you could just hold on for a question. Have you had a
4 chance to read it?

5 A Yeah. But I'm not understanding it all, but, yes.

6 Q All right. Do you have any reason to quarrel with the fact
7 that there was a conversation with you and a nurse, on July 8th?

8 A No.

9 Q Do you have any reason to quarrel that during this
10 conversation Dr. Rives explained to you prognostic signs and symptoms
11 we are looking for, and goals trying to achieve? Any reason to quarrel
12 with that?

13 A I'm not sure, but it's possible.

14 Q All right. And then he says that you also discussed
15 indications that she might need re-exploration. Do you recall a
16 conversation with Dr. Rives on July 8th, where he discussed with you
17 what he would need to see, in order to take your wife back to surgery?

18 A No. I don't -- I don't recall that at all.

19 Q And do you see his comment, "Have discussed this with the
20 husband over the last four days numerous times." Do you see that?

21 A I see it.

22 Q Right. Can you and I agree that each time Dr. Rives talked to
23 you, prior to July 8th, he discussed with you how she was doing?

24 MR. JONES: Objection, Your Honor. Vague.

25 THE COURT: Sustained.

1 BY MR. DOYLE:

2 Q Can we agree that each day you saw Dr. Rives and talked to
3 him, prior to July 9th, he explained to you what your wife's signs and
4 symptoms were?

5 A No. I got most of that from the nurses.

6 Q Do you see in this note where Dr. Rives, on July 8th, he
7 indicated: "Overall, explained patient's situation, continues to improve."
8 Did, Dr. Rives, on July 8th tell you that your wife's condition was
9 continuing to improve?

10 A Absolutely not. He did nothing.

11 Q Okay. When you talked to Dr. Rives on July 8th, did he
12 indicate to you that they were trying to get the fluid off of your wife, so
13 that she wouldn't be so swollen?

14 A I believe the nurses -- I believe the nurses, trying to get the
15 pressure off her, so she could breathe better, somewhere around those
16 lines. I don't believe what I'm reading here. I'm telling you right now, I
17 do not believe what I'm reading. He never asked, that she might be need
18 re-exploration, that was me telling him he needed to go back in. What
19 I'm reading is not -- I don't care what that says, that's not what
20 happened.

21 Q All right. So looking at Dr. Rives' note for July 8th,
22 everything in this note is wrong; is that what you're telling us?

23 A I'm not saying it's all wrong, I'm saying that a lot of this is --
24 this ain't true.

25 Q Okay.

1 A It's just simply not, that's all I can say.

2 MR. DOYLE: Let's go to, well, Exhibit 1, pages 145 through
3 149, is Dr. Rives' note for July 13th, and I want to put up the last page of
4 that note, page 149. It's okay?

5 THE COURT: Counsel, okay to do --

6 MR. JONES: Yeah. That's fine.

7 THE COURT: Okay. Go ahead.

8 MR. DOYLE: If we could put up page 149?

9 BY MR. DOYLE:

10 Q And, Mr. Farris, I want to direct your attention to the
11 paragraph under "plan" if you could read that to yourself for a moment.

12 [Witness reviews document]

13 MR. DOYLE: If we could highlight that paragraph.

14 THE WITNESS: Okay.

15 BY MR. DOYLE:

16 Q Does this refresh any recollections about your conversation
17 with Dr. Rives on July 13th?

18 A You know, I just don't remember. You know, I talked to a lot
19 of people.

20 Q Do you recall having a conversation with Dr. Rives, on or
21 around July 13th, where he told you that the white blood cell count, the
22 WBC was trending down; did he tell you that?

23 A I don't recall. I just don't recall that, because I never saw her
24 numbers go down.

25 Q All right. That wasn't my question. Did Dr. Rives ever tell

1 you that the white blood cell count was trending down?

2 A I don't recall that.

3 Q Did he tell you that the exam of your wife's abdomen was
4 improved?

5 A That never happened either.

6 Q Do you recall your wife requiring a suppository and fleet
7 enema, to treat the contrast material that had been used for the CT scan
8 on July 9th?

9 A I remember they gave her suppositories probably more than
10 once, but I don't know why, but they did.

11 Q Okay. So it's your testimony that Dr. Rives never discussed
12 with you the white blood cell count going down; fair statement?

13 A Because it never went down. If it did, one or two numbers,
14 three numbers, and then right back up.

15 Q All right. So you acknowledge, then, that at some point in
16 time the white blood cell count numbers did come down, true?

17 A The most I ever heard they went down was maybe to 20.

18 Q Okay.

19 A So if you call that going down, well, then that's going down
20 to you.

21 Q Well, you told us earlier that the white blood cell count never
22 went down. Do you remember telling us that within the last 30 or 45
23 minutes?

24 A Sure.

25 Q Okay. And now you're telling us that you do recall that the

1 numbers were going down at some point in time, true?

2 A I said that.

3 Q On July 13th, were you encouraged by the improvement in
4 your wife's condition?

5 A I never --

6 MR. JONES: Objection, Your Honor --

7 THE WITNESS: -- saw improvement --

8 MR. JONES: -- misstates --

9 THE WITNESS: -- in my wife's condition.

10 THE COURT: So, counsel, is there an objection or not?

11 MR. JONES: Yes, Your Honor. Objection. Misstates the
12 evidence.

13 THE COURT: The Court's going to sustain the objection
14 based on the prior testimony of this witness.

15 BY MR. DOYLE:

16 Q Did you ever see any improvement in any way, in your wife's
17 condition, between say July 6th and July 14th?

18 A No. Absolutely none.

19 Q Now in July of 2015 were you -- you were working nights?

20 A 4:00 a.m. to 12:00 in the afternoon.

21 Q So you were trying to go to work each night, and then you
22 would come to the hospital at about noon; is that correct?

23 A For the most part, when I wasn't off.

24 Q And last week were you working?

25 A Yes.

1 Q And the week before that were you going to work?

2 A Yes.

3 Q All right. Are you still working the 4:00 a.m. to 12:00 p.m.
4 shift?

5 MR. JONES: Your Honor, objection. It goes outside the
6 scope, relevance.

7 THE COURT: Overruled. That specific question, based on his
8 prior statement.

9 BY MR. DOYLE:

10 Q You can answer.

11 A We're 5:00 to 1:00 now, winter hours.

12 Q 5:00 a.m. to 1:00 p.m.?

13 A Yes.

14 Q Okay. I just want to make sure I heard you correctly. Before
15 Dr. Rives performed the surgery on July 3rd, you understood that the
16 surgery might take a couple of hours?

17 A Yeah. One to two hours, somewhere right around there.
18 About two hours or so, yeah.

19 Q All right. And you also understood, before the surgery on
20 July 3rd, that your wife would probably be in the hospital for a day or
21 two after the surgery, correct?

22 A Yes.

23 Q All right. So you were not under the impression, before
24 surgery on July 3rd, that she was going to come home the same day; fair
25 statement?

1 A Yeah. Probably the next day it would be about what I
2 remember him saying. Most people.

3 Q Now you remember your wife had surgery in 2014,
4 performed by Dr. Rives?

5 A Yes.

6 Q If I use the word lipoma, does that ring any bells?

7 MR. JONES: Your Honor, objection. It goes outside the
8 scope of testimony.

9 THE COURT: Sustained, as to the last question.

10 THE WITNESS: If that's --

11 THE COURT: I sustained --

12 THE WITNESS: Oh.

13 THE COURT: -- the objection, which means you can't answer
14 the question.

15 THE WITNESS: Oh, okay.

16 THE COURT: Thank you so very much. No worries.

17 THE WITNESS: Oh, okay. All right. All right.

18 THE COURT: So the jury would just regard the beginning of
19 the answer. Thank you so much, I appreciate it.

20 BY MR. DOYLE:

21 Q At some point after the surgery on July 3rd, Dr. Rives told
22 you that your wife was having some sort of a respiratory problem, true?

23 A Respiratory, yeah.

24 Q Yeah.

25 A I think it was the nurses that told us. Somebody came out

1 and told us.

2 Q All right. But do you recall telling me at your deposition, or
3 one of my colleagues, at your deposition, that it was Dr. Rives that told
4 you that your wife was having a respiratory problem?

5 A It may have been. I just got a lot right now.

6 Q Did you understand that after the surgery on July 3rd your
7 wife was not supposed to drink anything, or take anything in by mouth?

8 MR. JONES: Your Honor, I'm going to object. Relevance,
9 Your Honor, to begin with, but I don't know if we should approach?

10 THE COURT: You may both approach, if you wish. Madam
11 Court Recorder, would you like to turn on the white noise, please? Thank
12 you so much.

13 [Sidebar at 4:47 p.m., ending at 4:49 p.m., not transcribed]

14 THE COURT: Thank you so much. Okay. The Court is
15 sustaining that specific question the way it's phrased.

16 Counsel, feel free to move on to your question. Thank you
17 so much.

18 BY MR. DOYLE:

19 Q Mr. Farris, on July 3rd, after the surgery, did you observe
20 your wife drink any beverages?

21 A No. She was strictly ice chips from what they explained to
22 us.

23 Q And on July 4th, the next day, did you observe your wife
24 drink any beverages?

25 A No. Strictly ice chips.

1 Q Did you, on July 3rd bring anything in for your wife to eat or
2 drink?

3 A No.

4 Q On July 4th did you bring anything in for your wife to eat or
5 drink?

6 A No.

7 Q Did some family member, on July 3rd, bring in something for
8 her to eat or drink?

9 A Absolutely not.

10 Q Or on July 4th, did someone bring in something for her to
11 eat or drink?

12 A No.

13 Q Have you and your wife been to the movies in the last year?

14 A Yeah. We went to the movies last week.

15 Q When did you go to the movies, last week?

16 A I think it was Saturday.

17 Q All right. Did anyone else go with you?

18 A My wife's friend, and my daughter.

19 Q How often does she go to the movies?

20 A Not very often. A lot of times it's just too much of a hassle.

21 Q My question was, how often does she go to the movies?

22 A Not very often.

23 Q Does she go without you?

24 A Absolutely not.

25 Q She's never gone to a movie without you, since July of 2015?

1 A No.

2 Q Have you gone out to dinner in the last year or so?

3 A Yes.

4 Q What other social activities have you and your wife done in
5 the past year, besides movies and going out to dinner?

6 A Well, we may have went to the movies twice, out to dinner
7 maybe twice, maybe three times, but it's rare, because she's never --
8 she's always -- always depressed, or just a hermit. She just doesn't want
9 people looking at her.

10 Q Okay. But you encourage her to get up and out, don't you, to
11 improve her mental well-being, I guess?

12 A I try, but I don't succeed a lot; but I sure try.

13 Q Does the name, Dr. Mooney, ring any bells?

14 A It sounds familiar, I've heard that name before.

15 Q How about Dr. Akbar?

16 A I'm not sure about that.

17 Q Besides Dr. Rives, do you recall the names of any of the
18 multiple physicians that were seeing your wife each day, between July 4
19 and July 16?

20 A Honestly, I don't -- I don't remember all the -- all the doctors'
21 names. She had one for every body part, probably several -- several, 10,
22 15 nurses. I don't -- I don't recall the names; that was a long time ago.

23 MR. DOYLE: Okay. That's all I have, then. Thank you.

24 THE COURT: Okay. Counsel, is there redirect?

25 MR. JONES: No, Your Honor. None.

1 THE COURT: Okay. We do have one juror question. Thank
2 you so much.

3 [Sidebar at 4:53 p.m., ending at 5:02 p.m., not transcribed]

4 THE COURT: Okay. Ladies and gentlemen of the jury, if you
5 recall, sometimes certain questions can't be asked, and so don't take
6 offense, the question cannot be asked now.

7 Okay. So at this juncture, there being no further juror
8 questions, the attorneys having exhausted all of their questions, is this
9 witness excused for all purposes, or subject to recall. It's Plaintiff's
10 witness, I ask Plaintiff first?

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

12 MR. DOYLE: Subject to recall.

13 THE COURT: Okay. So this witness here is subject to recall,
14 and is excused subject to recall. So at this juncture feel free to watch
15 your step on the way down. I do appreciate it. Thank you so very much.

16 Okay. Being 5:00, ladies and gentlemen, I need to kind of
17 give to you some ballpark times, right, because that's what want, okay.
18 So I was check. So what we're doing tomorrow is -- attorneys are
19 getting her at 9:00, jury you're getting here at 10:15. Okay. So you we
20 have the attorneys, 9:00, Jury 10:15, okay.

21 And then, Wednesday. Wednesday, I'm going to tell you,
22 ladies and gentlemen of the jury, 9:00 right now, counsel 8:30 on
23 Wednesday, okay. And jury 9:00 on Wednesday. And ladies and
24 gentlemen of jury I may have to touch base with you tomorrow, about
25 possibly going into Thursday, okay. We'll know better tomorrow, okay.

1 So we'll get you that heads-up.

2 That's the best that we have at this juncture. You can
3 probably figure out I'm cleaning every single -- I've got about six, 700
4 other cases that are accommodating this to get this case handled in the
5 most efficient, and effective manner, and ensure that everyone has a full
6 opportunity to have the case heard on the merits of a full-due process.
7 Everyone gets everything heard, but at the same time, we're trying to
8 move as many things as we can off my motion calendar, so that we can
9 give you every possible moment.

10 So we've got it down to like two matters, tomorrow, or three,
11 whatever it is. But they'll be quick, so when the attorneys show up time,
12 so it doesn't matter. You all are at 10:16, attorneys are hear at 9:00.

13 Ladies and gentlemen, I need to give you an overnight
14 admonition, as welcome you to a very nice and relaxing evening, with
15 this nice cooler weather, fall weather here. So during this overnight
16 recess, ladies and gentlemen, you are admonished not to talk or
17 converse among yourselves, or with anyone else on any subject
18 connected with this trial.

19 You may not to read, watch or listen to any report, or
20 commentary of the trial, or any person connected with the trial, by any
21 medium of information, including, without limitation, social media, texts,
22 tweets, newspapers, television, internet, radio. Anything I have not
23 stated is also included.

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

1 Do not doing any posting or communications on any social networking
2 sites. Do not do any independent research, including, but not limited to
3 internet searches.

4 Do not to form or express any opinion, on any subject
5 connected with the trial, until this case fully and finally submitted to you
6 at the time of jury deliberations. I need the marshal to come here for one
7 quick second before he walks you out.

8 Marshal, if you don't mind, just one quick second?

9 THE MARSHAL: Yes, Your Honor.

10 [Court and Marshal confer]

11 THE COURT: I do appreciate it. With that ladies and
12 gentlemen, everyone heard the Court's admonition, I need the
13 affirmative nods. Right, you all heard it, understand it, will obey it? I'm
14 missing one. Yes, my last affirmative nod. I didn't see it sorry, moved a
15 little bit. My apologies, of course everyone did it. I do appreciate for the
16 affirmation. Have a great and wonderful evening, we'll see you back
17 tomorrow.

18 THE MARSHAL: All rise the jury.

19 THE COURT: Ladies and gentlemen, at 10:15. Thank you.

20 [Jury out at 5:05 p.m.]

21 [Outside the presence of the jury]

22 THE COURT: Just once second until we hear that door click.
23 Give us one second.

24 MR. JONES: The door has been left open. Do you want me
25 to go close it for you, Your Honor.

1 THE COURT: If you don't mind. Just so we make sure --

2 MR. JONES: It's pinned open.

3 THE COURT: -- there's nobody out in the hallway. Usually it
4 closes, but for some reason today it seeming like it's -- I can tell, it's
5 usually about nine seconds afterwards that we hear the click, but -- okay.
6 I'm sorry.

7 MR. DOYLE: And, Your Honor, I have the trial brief filed.

8 THE COURT: Oh, I do appreciate it. Thank you, yes.

9 MR. DOYLE: May I approach?

10 THE COURT: Of course you may. Of course you may. And
11 you can appreciate why we always take file-stamped ones, that way we
12 ensure fair and consistent to everyone is our intention. I'm not saying
13 that someone doesn't inadvertently give us one that we don't notice, be
14 we try and do it always file stamped. That way we ensure it has actually
15 been filed, and that way opposing side has also gotten the service of it
16 before the Court gets it.

17 Okay. So, counsel, we do have motion calendars. So I do
18 need you to clear the tables, I do appreciate it. We only have three
19 matters. Like I said, we moved everything else to give you even more,
20 and more, and more trial time, you're getting hours, and hours extra. I
21 do need to have you here.

22 Now for the Court, it's Chaney and Adornato, is that correct,
23 tomorrow? I need to have some idea what we're doing --

24 MR. JONES: Your Honor, we have Addison. We have one
25 more witness on our side that --

1 THE COURT: Correct.

2 MR. JONES: -- needs to go.

3 THE COURT: I meant for purposes of --

4 MR. DOYLE: Oh.

5 THE COURT: -- what is going to be addressed, so I can be
6 fully prepared, because --

7 MR. JONES: All of Defendant's experts I think need to be
8 addressed, that are remaining.

9 THE COURT: Okay.

10 MR. JONES: They've all been objected to.

11 THE COURT: When you say, they've been objected to, are
12 you talking about individual case conference, or are you talking about
13 supplement disclosure? Are you talk about --

14 MR. JONES: Yes --

15 THE COURT: -- the 7.27 brief that I got handed earlier today.

16 MR. JONES: So we objected within the pretrial memo, at the
17 2.67. We told him we objected to them, because they were improper
18 rebuttal witnesses. We actually filed a motion with the commissioner,
19 but it was late, and it got pulled back, so it wasn't actually heard. But we
20 -- and we have filed the trial brief that I think does cover the bulk of the
21 law, that relate to all of them.

22 THE COURT: Okay. Which ones, I just need names?

23 MR. JONES: Okay, yes.

24 THE COURT: Please.

25 MR. JONES: So, Dr. Adornato, we have one that is pretty --

1 THE COURT: Dr. Adornato --

2 MR. JONES: -- specific as to him. Dr. Stone, we didn't file
3 one that was really specific, that talked about him, but the information on
4 him is --

5 THE COURT: Counsel --

6 MR. JONES: That's fine.

7 THE COURT: -- it's after the 5:00 hour, in fairness, I do not
8 allow either side to educate the Court --

9 MR. JONES: Okay.

10 THE COURT: -- just give us names. If there's information --

11 MR. JONES: Yeah.

12 THE COURT: -- that's a resource that's been timely done the
13 Court would be more than glad to address it, timely and promptly on
14 either side. The Court's more than glad --

15 MR. JONES: And the only --

16 THE COURT: -- to address everything, right.

17 MR. JONES: So really, it's Adornato and Stone, primarily.

18 As derivative from Stone is Larson and Volk, the nurse and the
19 economist who rely on Stone for their opinions. And so --

20 THE COURT: Okay. Life care planner, and the people relying
21 thereon; is that what you're going at?

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

23 THE COURT: Okay.

24 MR. JONES: Yes.

25 THE COURT: So, counsel, for Defense, you've heard what

1 the various ones that they're objecting to?

2 MR. DOYLE: Yes.

3 THE COURT: Are you all going to ask for Chaney, tomorrow
4 morning, too?

5 MR. JONES: Yes, Your Honor. Chaney, I think needs to be
6 addressed. I don't know if she's ever going to be brought back or not. It
7 sounds like there might be an issue there, but --

8 THE COURT: The Court doesn't know until you all ask the
9 Court to address an issue, and the Court is more than glad to address an
10 issue that's timely brought.

11 MR. DOYLE: We'd like to address Dr. Chaney, tomorrow, if
12 there's time.

13 THE COURT: Well, I'm going to have -- yeah. Like I said, I
14 still have never seen -- I don't know if the brief you just handed actually
15 has some file subpoena or not. I've still never seen a subpoena, still
16 don't have any basis or information. The Court cannot address things in
17 a hypothetical sense. The Court is not allowed and cannot give advisory
18 opinions. The Court needs to have appropriate information for it make
19 its continued, well-reasoned decisions.

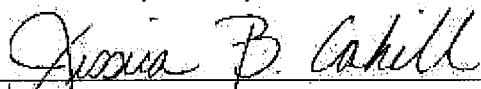
20 I'm sure you all know that as experienced litigators. With
21 that I wish you a very nice evening, tell Madam Court Recorder she's
22 going off the record. As you know, because of the timing today people
23 are not getting any discs, because given the fact you all decided to raise
24 all these issues. Lastly, we can't ask the court recorder again to stay past
25 5:00. It's already 5:10. You can't ask her to stay another half-hour again.

1 I appreciate we we're possibly going to start earlier, but you
2 are so far behind in this trial because of all these last-minute objections
3 that were raised, and issues not presented to the Court in a timely
4 manner, first thing this morning, which made this whole day go on past.
5 And I asked you all, specifically, Thursday before we left to bring it. So
6 it's not fair to Madam Court Recorder.

7 So with this we're going to go off the record. I'm sure you
8 all could appreciate no one would in any way do that, because you knew
9 what was going to happen. So thank you so very much, have a great
10 evening.

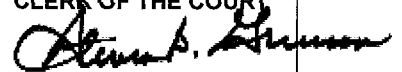
11 [Proceedings adjourned at 5:10 p.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

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

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

TITINA FARRIS, ET AL.,
Plaintiffs,

vs.

BARRY RIVES, M.D.,
Defendant.

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

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
TUESDAY, OCTOBER 29, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 11

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THOMAS J. DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

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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

Testimony80

WITNESSES FOR THE PLAINTIFF

ADDISON DURHAM

Direct Examination by Mr. Leavitt 80

Plaintiffs' Rest.....91

WITNESSES FOR THE DEFENDANT

BRUCE ARDONATO, M.D.

Direct Examination by Mr. Doyle..... 130

Cross-Examination by Mr. Leavitt 145

Redirect Examination by Mr. Doyle 199

BARRY RIVES, M.D.

Direct Examination by Mr. Doyle 20-3

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 EXHIBITSFOR THE PLAINTIFFMARKEDRECEIVED

None

FOR THE DEFENDANTMARKEDRECEIVED

None

1 Las Vegas, Nevada, Tuesday, October 29, 2019

2
3 [Case called at 9:33 a.m.]

4 [Outside the presence of the Jury]

5 THE COURT: Okay. So we're outside the presence of the
6 jury, in case number 739464, Farris v. Rives and Laparoscopic Surgery of
7 Nevada. I'm just have counsel really quick, if you don't mind, make your
8 appearances, just since so we kind of went straight from the motion
9 calendar to this today, if you don't mind?

10 MR. JONES: Yes, Your Honor. Kimball Jones, Jacob Leavitt
11 and George Hand are all here for the Plaintiffs.

12 MR. DOYLE: And Tom Doyle for the Defendants.

13 THE COURT: Okay. So, counsel, what we're going to start
14 with is -- okay. One second, please, okay. The Court is going to start with
15 -- an issue came up yesterday -- sorry, Madam Court Recorder, just wait
16 one second. Okay. So she gave you the disc, yes, okay. Great.

17 MR. JONES: Oh, thank you.

18 [Court and Clerk confer]

19 MR. JONES: Your Honor, it doesn't need to be read. It's
20 more of a follow-along, and it does have some exhibits in that I'm going
21 to reference, that Mr. Doyle has, and just so that the Court will have them
22 as I make my argument.

23 THE COURT: Okay. So, just so we're clear with "what's this"
24 as you heard me mid-sentence, when I was about to say something else,
25 I deal with that in just a second. And obviously my law clerk just walked

1 in with yet another document, which -- okay, we'll get there in just a
2 second.

3 So what the Court was saying, is the Court is starting the
4 issue that happened yesterday with regards to Court's Exhibit 39, which
5 was the very last juror question with regards to the last witness. Patrick
6 Farris, when he was on the stand, is the parties who were taking that
7 particular witness, know that with regards to all the other juror questions
8 with regards to Mr. Farris, the parties had agreed with regards whether
9 they were, were not to be given, all those questions with regards to the
10 jurors.

11 However, with regards to the very last question, which was
12 Court's Exhibit 39, the -- and I'm going to read those two questions. The
13 question was, as is: "Did you wife have medical insurance during the
14 time of her July hernia procedure? If yes, what is the amount of cost to
15 you for all the surgery and rehab?"

16 Okay. Plaintiffs' counsel, Mr. Jones, said no to those
17 questions, both of them should not be asked. Defense counsel said, yes,
18 both those questions should be asked, correct?

19 MR. DOYLE: Yes.

20 MR. JONES: That's my recollection, Your Honor. Yes.

21 THE COURT: Okay. So that was the first one of those
22 questions that there was a difference, and the essence of the analysis
23 was that -- what I understood as Defense counsel saying, no, because
24 those were improper collateral source, and based on the fact that it says,
25 a self-funded ERISA should not be asked from Plaintiff, and from Defense

1 side, that there hadn't been a ruling and that this was not; and so that
2 was the insurance issue, so they would be properly asked.

3 The Court specifically paused for a moment, and then read
4 and then gave the specific citation, and cited *McCrosky*, M-C-R-O-S-K-Y
5 [sic]. I called it *McCrosky*-- I didn't say *v. Carson Tahoe Reno*, but I said
6 *McCrosky*. I then gave the citation, 133 Nev. Adv. Op. 115, and then the
7 Court specifically read from page 13, as I said I was reading specifically
8 from that page. And I specifically read the sentence from Justice
9 Davidson's opinion:

10 "Absent application of NRS 42.021 to federal collateral source
11 payments, we revert to the per se rule in Nevada that
12 collateral source payments may not be admitted in evidence.
13 See *Proctor*."

14 And I didn't specifically give this cite, but anyway. And I
15 cited it, of course that was the long-held case of *Proctor v.* -- other people
16 coming in as an additional person -- oh, sorry, that was same person.
17 Anyway, okay. And then the Court was, in citing that, said:

18 "Consistent with the fact that as stated in the Supreme Court
19 precedent case, which of course we must follow, since there
20 is that per se rule that collateral source payments may not be
21 admitted into evidence, absent the application, right of the
22 exception that would be under the statutory exception."

23 That, therefore, that is what the Court's ruling was. And of
24 course statutory exception would be, of course, under NRS 42. So
25 42.021, and of course since that's an exception the per se rule applies,

1 unless the exception comes into play, and the exception would come
2 into play, if so sought by appropriate motion, et cetera.

3 Well, this obviously highlights the need that this Court
4 thought this really kind of had been resolved, with allowing the parties a
5 full opportunity to brief the issue with regards to the pending Rule 37
6 sanctions motion, that this really was no longer going to be an issue, but
7 since it came up yesterday with regards to that particular juror question,
8 the Court is going to carve out just that ruling, I'm not going into the
9 whole Rule 37.

10 I am not addressing the sanction component, as far as the
11 conduct, but the Court is going to address the specific insurance issue,
12 okay. And so I'm going to do it as follows, I'm going to give you the
13 Court's inclination, give you a moment or two, if anybody wishes to
14 provide any type of response, which of course you all had more than
15 enough time to fully brief and prepare it.

16 Because you all know this came on early last week, and
17 Defense was even wanting the Court to rule that day, but I wanted to
18 ensure all parties had a full opportunity to research the issue, talk with
19 whoever they wish to talk with, including any other counsel that they
20 were consulting with, their clients that they may wish to consult with.
21 And all the various, there's -- you've got three law firms on either side,
22 at least on either side.

23 So I allow people to do that, to do the research, to go back
24 and look at the document, the health plan, the ERISA Health Plan that the
25 parties had timely disclosed, as everyone acknowledged the various

1 documents, which the Court is going to get to Court's Exhibit 13, in a
2 moment, which were the documents that were specifically taken out of
3 the proposed -- well then then proposed, but Joint Exhibit Number 1,
4 that was referenced on the calendar call, on 10/8.

5 MR. JONES: Those were removed from one of Defendant's
6 exhibits.

7 THE COURT: Oh, sorry, my apologies.

8 MR. JONES: Yes.

9 THE COURT: You are correct, sorry. It came out on the 8th,
10 it was right after the discussion of Exhibit 1. You are correct, my
11 apologies. It was discussed at the calendar call on October 8th, right
12 after the discussion of Exhibit 1, and then the Court will actually
13 reference the exact transcript from 10/8, so the Court will get that
14 clarification. But you are correct, it wasn't regarding Exhibit 1, it was
15 right after the discussion on Exhibit 1, about those additional documents.

16 So here is the Court's information, feel free to read along.
17 Okay. So it is clear, directly out of *McCrosky v. Carson Tahoe Regional*
18 *Medical Center*, 133 Nev. Adv. Op 115 (2017) case, Supreme Court, right,
19 by Justice Stiglich; a couple of things.

20 Jump ahead to the same citation that the Court referenced
21 yesterday from page 13, where the standard is, of course, that the per se
22 rule is that collateral source may not be mentioned. The Court then
23 notes, as specifically going to the background, as noted in *McCrosky*,
24 how McCrosky came up.

25 In McCrosky, as stated, and let me go that specifically,

1 McCrosky, a discussion. Okay. Just one moment. Okay. So section
2 starting on page 10, the advanced opinion. Okay. The section starting:

3 "The District Court erred in allowing CTRMC to introduce
4 evidence of collateral payments that were made on behalf of
5 McCrosky. With regard to the trial against CTRMC on the
6 issue of the hospital's alleged negligence, CTRMC --"

7 And this is an important point, right:

8 " -- moved in limine to introduce evidence that McCrosky
9 received collateral payments from Medicaid."

10 So here the important point is, because, in just a moment, as
11 the Court will note, as the Supreme Court noted, okay, it was motion in
12 limine by the Defense to try and get an exception to the, well, I might as
13 well read it, straight from the Supreme Court's words, right?

14 Okay. Well, the paragraph immediately before, what the
15 Court's about to read, is:

16 "Because the jury did not find it to be negligent, it did not
17 reach the issue of damages." But the Supreme Court says:

18 "However, this issue will almost certainly rise again at trial,
19 so we take this opportunity to address whether collateral
20 source evidence is admissible to reduce plaintiff's recovery
21 in a medical malpractice case."

22 So it's so very important, that even though that issue wasn't
23 before it, they're specifically telling the Court what to do. So here's what
24 the rule is. "Nevada has adopted a," and I'm reading straight from the
25 case, quote:

1 "per se rule barring the admission of a collateral source of
2 payment for an injury into evidence for any purpose. Citing
3 *Proctor v. Castelleetti*, 112 Nev. 88, 90, 911 P.2d 853, 854
4 (1996) ('collateral source evidence. . .greatly increases a
5 likelihood that a jury will reduce a plaintiff's award of
6 damages, because it knows the plaintiff is already receiving
7 compensation.'). NRS 42.021(1) created an exception to that
8 rule in the medical malpractice context, allowing defendant,
9 such as CTRMC, [and that was all caps any time they
10 referenced that], to introduce evidence of the collateral
11 payments that the plaintiff received from third parties.

12 "The purpose of this law, according to the summary that was
13 presented to voters in the valid initiative that enacted it, was
14 to prevent 'double-dipping' — that is, the practice of plaintiffs
15 receiving payments from both healthcare providers and
16 collateral sources for the same damages period."

17 The Court's not going to do the Secretary of State cite, that's
18 cited in the actual text of this opinion. So the Secretary of State cite
19 omitted. And then:

20 "Protect plaintiffs from having their awards overly
21 diminished, however the second half of enacted statute —
22 NRS 42.021(2) — prohibits collateral sources from also
23 recovering directly from plaintiffs."

24 And then it goes into, next paragraph:

25 "Federal law complicates matters, citation 42 U.S.C, §

1 2651(a) provides that when the United States is required to
2 pay for medical treatment on behalf of an individual, the
3 hospital becomes liable in tort to that individual, 'The United
4 States shall have the right to recover. . .the reasonable value
5 of the care and treatment so furnished,' and the United
6 States' right to payment is subrogated to the individual's
7 claim against that hospital. In short, § 2651(a) allows the
8 United States to recover from a plaintiff who prevails in a
9 medical malpractice suit, the Medicaid payments the plaintiff
10 receive — exactly what NRS 42.021(2) prohibits. When state
11 and federal law directly conflict federal law governs."

12 And then -- I'm not going to restate the citations, see
13 citations.

14 And then the Court says:

15 "Therefore Federal law preempts 42.021(2) from preventing
16 recovery of Federal collateral source payments, such as
17 Medicaid payments."

18 So it says, "such as." Okay. And it's got footnote 2. And
19 footnote 2, I'm going to read, because it makes a distinction. "We note,
20 however, that NRS 42.021 remains intact with respect to state or private
21 collateral source payments."

22 Okay. The Court's not going to read the next couple of
23 paragraphs, because there it really talks about whether or not the
24 preemption goes to each of the paragraphs. I'm going to skip that,
25 because for your purposes in this case the conclusion is where it goes to.

1 And then it says, the conclusion, after they analyze this, about whether
2 or not the two paragraphs of 42, one can be saved or not, the answer is:

3 "Absent application of NRS 42.021 to federal collateral
4 source payments we revert to the per se rule in Nevada that
5 collateral source payments may not be admitted into
6 evidence, see *Proctor*. Thus on remand, CTRMC may not
7 introduce evidence of Medicaid payments on behalf of
8 McCrosky."

9 And, actually, the Court should have gone back and read one
10 last sentence, immediately before what I just read, and it's actually, the
11 Court, after analyzing the two paragraphs of NRS 42.012(1) and (2)," then
12 says, I'm going to page 12, the last couple of sentences:

13 "There is no evidence that NRS 42.021 was intended to
14 effectuate a double reduction in a plaintiff's recovery.
15 Therefore, because severing NRS 42.021(2) from a statute,
16 result in 'unintended consequences[]' [and unintended
17 consequences was quoted, with a bracket after the 'e' in
18 consequence] of doubly reducing plaintiff's recover we must
19 strike the statute in its entirety, as applied to federal collateral
20 source payments. See *Finger*, 17 Nev. at 575-76 to 27 P.3d
21 at 84."

22 And then see application, what the Court had already just
23 read. So clear from this case, per se rule, *Proctor Castelleetti*, if
24 somebody wants an exception under the state law it must be done
25 properly through motion in limine, et cetera, and said preemption federal

1 in several different types of cases applies, and does fully preempt state
2 law, that's; (.1) case law, everyone needs to follow it, clearly.

3 Now we go to; (.2) in the Court's inclination; (.2) I am now
4 reading from Defendants' trial brief, in support of their position
5 regarding the propriety of Dr. Rives' responses to Plaintiffs' counsel's
6 question eliciting insurance information. I'm reading from page 7 of said
7 brief. Page 7, okay. I am going to line 15 -- actually, starting on line 17,
8 because it seems both parties are in agreement, starting at 17.

9 "Federal preemption does not apply to any and all ERISA
10 plans; it applies solely to employer self-funded plans. This is
11 a citation to *Coast Plaza Doctors Hospital v. Blue Cross, Cal.*
12 173 Cal. App 4th 1179, 1189, 93 Cal. Rpt. 3d 479, 486-87
13 (2009). ERISA plans that are not self-funded, but rather,
14 ERISA insurance plans are subject to ERISA insurance
15 savings clause, which subjects the plan to state regulation,
16 such as NRS 4201.021 in citing *FMC Corp. v. Holliday*, 498
17 U.S. 5261, 111 SCT 403, 409 (1990)."

18 And then the next sentence the opposition actually cites
19 "*McCrosky*, the federal preemption of 42.021 pursuant to *McCrosky v.*
20 *Carson Tahoe Regional Medical Center*, 408 P.3d 149." So all the Court
21 used the advanced Op., the opposition uses the other citation; they're
22 both fine, I would say. It says, "408 P.3d 149, Nev. 2017, applies only to
23 self-funded ERISA plans. In this case it says there's insufficient evidence
24 that Ms. Farris' health plan was a self-funded ERISA plan."

25 The point of the Court reading that section is, it appears both

1 Plaintiff and Defendant fully agree that the MGM plan, if a self-funded
2 plan preempts NRS 42 and therefore it would have been inappropriate
3 for insurance to have been mentioned.

4 Okay. Other points of law. Then we go to what was
5 provided, all parties agreed that the -- because it was attached both to
6 the opposition, as well as attached to the reply in support of and
7 supplement to the Plaintiffs' renewed motion to strike Defendants'
8 answer for Rule 37 violations, including perjury and discovery violations
9 on orders shortening time, filed on 10/22, 1/26 is attached thereto the --
10 a couple of things the Court will note.

11 The Court will note that it was attached as Exhibit 1,
12 Plaintiffs' 7th supplement early case conference disclosure, witnesses
13 and documents, electronically served 7/5/2019, so within the discovery
14 period, and included in that 7th supplement, included a witness
15 designation of -- one moment, please.

16 Number 25 on page 8, person with most knowledge or
17 custodian of records, MGM Resorts International/UMR Medical seal,
18 Russell Oliver Stephens, attorneys, Wheelis Drive, Memphis. And it
19 says:

20 "Person most knowledgeable under custodian of records for
21 MGM Resorts International/UMR Medical, expected to testify
22 his or her knowledge under the provisions, terms, claims or
23 payments regarding the subject MGM Resorts, Health &
24 Welfare Benefit Plan, regarding Titina Farris and Patrick
25 Farris."

1 And attached thereto also was the MGM Resorts Health &
2 Welfare Benefit Plan, as amended and restated, effective January 1,
3 2012, has Bate stamped numbers and it's also stated as being attached
4 in that supplement. Timely supplemented, the Health & Welfare Plan,
5 both in the reply, and in the brief that the Court just mentioned, the
6 opposition/brief, by Defendants. Different sections of that plan, which
7 clearly has subrogation provisions, clearly says what it says, and the
8 Court's going to get what it says, in just a moment.

9 Then we have, referring to the recorder's transcript, which is
10 the official recorder's transcript, electronically filed on 10/14, but it is the
11 recorder's transcript of the calendar call of 10/8, and that we have -- one
12 moment, please, starting on page 11, and so page 11, around line 5.

13 "MR. JONES: We have some issues with some of
14 Defendants' exhibits that we think need additional reaction.
15 But --

16 "THE COURT: Okay. What I'm hearing is we have some
17 issues in additional, sound like there's not the required
18 presentation, from the clerk right now. I guess I'm hearing
19 this stuff is not taken care of now because there is
20 redactions. It doesn't seem like it's supposed to be handed
21 over clean, 100 percent ready for madam clerk right now.
22 Reminding you all that was supposed to be done at the time
23 of the calendar call.

24 "MS. CLARK NEWBERRY: That's my understanding of what
25 we're doing this morning, Your Honor. I've been made

1 aware that there's a change in the St. Rose, there was a
2 disagreement changed in the St. Rose documents.

3 "MR. DOYLE: But the additional documents, I'm not sure that
4 those --

5 "MS. CLARK NEWBERRY: I --

6 "MR. DOYLE: Refer to --

7 "MR. JONES: Insurance-related, Your Honor, line 22.

8 "MR. HAND: We went through Defendants' yesterday and
9 found several --

10 "THE COURT: -- and insurance. Okay. Well, we --

11 "MS. CLARK NEWBERRY: Now on page 12 we had a
12 meeting.

13 "THE COURT: Let me make it abundantly clear, I'm going to
14 say these words, I'm going to recall you in a few moments. If
15 you understand, you cannot leave the courthouse, right,
16 hearings."

17 Okay. So then it goes again, and then -- okay. So then the
18 Court -- okay. So you all have stated that there was insurance-related
19 issues, so then you all go to the ante room. The Court says that -- okay.
20 I say:

21 "THE COURT: I made it abundantly clear, I'm going to say
22 these words, I'm going to recall you in a few moments. You
23 understand you're not leaving the courthouse and that your
24 hearing is --

25 "MR. JONES: Yes. Understood.

1 "MS. CLARK NEWBERRY: Understood.

2 "MR. JONES: Absolutely.

3 "THE COURT: A courtroom full of people, calendar call, tried
4 to give you first, but you were just supposed to be handing
5 over documents, that was supposed to be, but you can enjoy
6 the ante room. The Court will open it to you, because you've
7 got a courtroom full of people, and in fairness to everybody
8 else who's waiting, it looks like you're going to take a lot
9 longer than initially planned. So everyone else can get their
10 matters taken care of, and then you are going to the ante
11 room, and you get recalled."

12 So you all got recalled. So there was insurance-related
13 documents. But then it came to the Court's attention -- one moment,
14 hold on. Just a second, I have to look at all my little post-its. So clearly
15 that there was insurance documents that came to the Court's attention,
16 on 10/21 on the date that Defendant stated insurance, in front of the jury.

17 It was presented to the Court, Court's Exhibit 13, that there
18 were records from Defendants' own files, because the Court did ask the
19 question, thank you for the clarification from Plaintiffs' counsel. It was A
20 -- they were Bate stamped A20 through 26. The Court was handed those
21 documents as being represented being straight from Defendants' files.

22 Marshal, there's a couple of people peaking their heads --

23 THE MARSHAL: Yes, Your Honor.

24 THE COURT: -- can you see who those are? Thank you so
25 much.

1 But these came directly from Defendants' files that these
2 were the documents that had been removed from Defendants' proposed
3 exhibits back at the time of the calendar call. That these were the
4 referenced insurance documents that had been removed, based on what
5 was stated at the time of the calendar call.

6 And that these documents, including the Court asked some
7 questions, without going through from a time standpoint; those
8 questions the Court asked at 10/21, you all know what the Court asked.
9 But included the fact that this was Mr. Farris' -- it was an insurance card
10 that included MGM.

11 There was St. Rose Dominican documents, but the Court
12 then referenced -- I don't recall I referenced, which exactly page number
13 it was, but included there were documents that were Laparoscopic
14 Surgery of Nevada's order forms to patient -- regarding patient Titina
15 Farris, to primary insurance name, which included MGM Resorts.

16 And the Court did ask counsel for Defense questions about --
17 because it said MGM Resorts, wasn't it know that it was MGM Resorts,
18 i.e., a self-funded plan? And the Court's concept there was that since
19 laparoscopic surgery one of the Defendants would know who they had
20 contracted with, because the entity would know what insurance they
21 took, because the entity was one of the Defendants.

22 Counsel stated he didn't know, but once again, gave counsel
23 -- all counsel a full opportunity to research that, before anyone -- no one
24 was required to do a brief, everyone was given the optional, same exact
25 time to submit a brief, if they chose to do so, but no one was required.

1 But that gave everyone a chance to talk with whoever they
2 wanted to, including their clients, because now everyone is of course on
3 reasonable notice that it was MGM on the very documents coming from
4 Defendants' file. So if nobody had a notice, they could check with their
5 clients to see what they did or did not know.

6 People could easily, I'm not saying it was required to do
7 Google, but of course the Court doesn't independent research, but if
8 people want to Google and see if there was any information, the Court
9 had already mentioned *McCrosky*. People should have been aware of
10 *McCrosky* anyway, but could look up that, look up cases, relook at the
11 actual plan, and do anything they wish to do to fully prepare on that.

12 However, we're still at the Court's inclination. So what I have
13 here, is I have specific case law. I agreement of the parties on the self-
14 funded plans. I have the plan timely presented during insurance; I have
15 disclosures. I have representations of the parties at the calendar call. I
16 have the documents that were removed, so I have the actions of the
17 parties.

18 And I will say Defense on the 21st, I'm paraphrasing to say,
19 agreed that these were documents from Defense files, but said that they
20 do not specifically state on the 8th that there was a waiver. The Court
21 would say that nobody said that there was or was not. No one said
22 anything about these documents being taken out, that they would
23 somehow reserve any right to do collateral source.

24 Because remember, if somebody wants an exception, under
25 *McCrosky*, they would have had to move for the exception to the per se

1 rule.

2 Under *Proctor* nobody did so, and the Court in no way is
3 taking, although the Court's independent knowledge of whether MGM is
4 or is not self-funded, the Court did note that it did know the answer
5 independently. The Court in no way is taking that, the Court is only
6 utilizing the information presented pursuant to law, pursuant to the
7 parties' actions, pursuant to timely presented.

8 The Court's inclination is abundantly clear that both by law
9 there was nothing presented to request any exception to the per se,
10 under *Proctor v. Castelleetti*. By the document itself, timely presented,
11 the actions of the part from a factual standpoint, MGM is shown to be
12 self-funded. So whether you go by law that nobody has asked for an
13 exception, that would mean *Proctor v. Castelleetti* would apply
14 preemption, independently would apply by the actions of the parties, by
15 the very plan document that clearly shows the subrogation, shows there
16 it is an ERISA plan show it is self-funded.

17 The Court doesn't even really need to get to, the affirmative
18 responsibilities when the parties are put on notice when they file briefs,
19 and it says, "MGM to look at that independently," but that's what the
20 Court's inclination is.

21 Since counsel for Plaintiff, you raised the objection first, is
22 there anything you wish to be heard? I do realize it's now 10:00, but this
23 was so important, the Court was going to address this issue before we
24 got to anything else?

25 MR. JONES: Your Honor, all I'll say is, it is abundantly clear

1 what the law --

2 THE COURT: The Court's not going into sanction --

3 MR. JONES: I know. I absolutely understood. It's
4 abundantly clear what the law is, it's abundantly clear who has to move
5 to try to bring this sort of evidence into a case. It's not a disputed issue.
6 Moreover, there was plenty of evidence given to demonstrate, that they
7 already had on their own, but then there was additional evidence given
8 by the Plaintiffs, to demonstrate very clearly this was a self-funded
9 ERISA plan, that had subrogation rights under Federal law, so that we
10 didn't fall into any exception to the traditional rule here in Nevada.

11 And what the Defense apparently is trying to do is say, well,
12 sure, we have the records showing that in our billing, but we're not
13 experts on interpreting that, so I need a higher bar, so they have the
14 actual plan. Well, we need a higher bar. It's the absurdity of what has
15 happened here, and it's a pattern in practice, obviously, as we saw
16 yesterday with the other arguments that happened, where they're trying
17 to bring in these opinions, after Court orders saying they can't.

18 And so matter what they're presented with Mr. Doyle will not
19 follow the rules, as he didn't with this, as he repeatedly does not do
20 across the board. The rules are too simple, Your Honor, you've laid
21 them out, they're well-known by everyone here, but an effort to violate
22 them has been ongoing and continuous.

23 THE COURT: So do you agree or disagree with the Court's
24 inclination that insurance cannot --

25 MR. JONES: I agree fully.

1 THE COURT: -- collateral source cannot come into this case
2 pursuant to typical law; it is preempted both factually and legally?

3 MR. JONES: Absolutely, Your Honor, I agree, 100 percent.

4 THE COURT: So counsel for Defense, would you like to be
5 heard on the Court's inclination?

6 MR. DOYLE: I disagree with the inclination, but am willing to
7 accept it, and I don't have anything else that we need to add.

8 THE COURT: On what basis do you disagree with it, either
9 legally or factually?

10 MR. DOYLE: For the reasons set forth in the trial brief that
11 the Court cited. The primary reason being I am still not aware of any
12 evidence that this in fact is a self-funded ERISA plan.

13 THE COURT: Counsel, you do understand you're now
14 putting the Court in a situation that I'm going to have to ask you whether
15 you did due diligence, and even spoke with your client to see, in order to
16 reasonably make that assertion, right, which is what the Court was really
17 trying to avoid, by giving each party the time, particularly you, the time
18 to check into that, right, and specifically pointing out Exhibit 13 that said
19 MGM on its face, right?

20 To give you that time so you wouldn't -- so that if you were
21 going to make that argument, you could at least check with your client
22 first to see -- both clients, right? You've got both your insurance
23 representative who has been here throughout the trial, and you've got
24 Dr. Rives, on behalf of himself and on Laparoscopic, to check with both
25 clients to see if there's any reasonable basis to continue to make that

1 argument. I'm trying not --

2 MR. DOYLE: Yes.

3 THE COURT: -- to have to ask you that in open Court,
4 whether you've done that --

5 MR. DOYLE: Go ahead. I did, and to my client's knowledge,
6 MGM has multiple health plans. My client characterized the multiple
7 health plans, as you have health plans for executives, you have health
8 plans -- he is approved -- he is aware of multiple MGM health plans,
9 some of which he is on, some of which he is not on, and --

10 THE COURT: But the only he can be on, with regards to this
11 case, that affect this case, right, would have to be Titina Farris and
12 Patrick Farris. So the ones he's not on would not be an issue, right?

13 MR. DOYLE: Of course not.

14 THE COURT: Which we know which ones he is on, and
15 MGM, yes, they do have collective bargaining units as to here, but he
16 would know the insurance card that he took, he would know how he
17 billed, and whom he billed with, right?

18 MR. DOYLE: The insurance card does not say it's a self-
19 funded ERISA plan, and --

20 THE COURT: Counsel, I just -- I really --

21 MR. DOYLE: I don't know what else to say.

22 THE COURT: Does anyone assert that Patrick Farris -- are
23 you making a good-faith argument that Patrick Farris is an executive of
24 MGM?

25 MR. DOYLE: No. But I'm making a good faith argument that

1 neither me, nor my client have any knowledge that this plan is in fact a
2 self-funded ERISA plan.

3 THE COURT: Counsel, you understand, that would include
4 doing reasonable, good-faith due diligence before making those
5 arguments. If something is readily available, right, up to pretty much
6 judicially noticed, almost, right?

7 MR. DOYLE: You know, I don't have anything else to add,
8 Your Honor.

9 THE COURT: So you --

10 MR. DOYLE: I --

11 THE COURT: Okay. The Court's ruling is the Court's ruling
12 with regards to any sanction-type component aspect, that Court reserves
13 that to now. The Court's ruling is there will be no collateral source, okay.
14 Now the Court realizes that both Plaintiff and Defendant have said
15 something, how that gets addressed, the Court reserves towards the
16 sanction component, but it's clear, no collateral sources. Is everyone
17 clear no collateral source comes in, in this case? The Court also feels --

18 MR. JONES: Yes, Your Honor.

19 MR. HAND: Yes, Your Honor.

20 THE COURT: -- that everyone should have known that
21 beforehand, because it's abundantly clear; but is everyone clear from
22 now, for Plaintiffs' counsel?

23 MR. JONES: Yes, Your Honor.

24 THE COURT: Defense, counsel?

25 MR. DOYLE: Yes.

1 THE COURT: Okay. Cleared that up.

2 So now we'll go to witnesses, and with regards to witnesses,
3 a lovely lavender binder a few got while the Court was already on the
4 bench, but it's logged in 9:16. Obviously I was already at the bench and
5 saw when it came in. You all were already here, I had already called this
6 case, another brief handed to the Court, Plaintiffs' trial brief, and
7 Defendants' retained rebuttal expert testimony.

8 So what this Court needs to know is, who is the first witness
9 that's going to be testifying this morning, because the Court, in order not
10 to have the jury out there too long again this morning, is got to know
11 which experts? Now remember, you all have not done motions, so the
12 Court treats these briefs --

13 MR. JONES: Of course.

14 THE COURT: -- as 7.27 briefs --

15 MR. JONES: Correct.

16 THE COURT: -- in that context, which is the only way this
17 Court can do it.

18 MR. JONES: Of course.

19 THE COURT: Fair and equal to everyone, as 7.27 briefs. But
20 of course *Hallmark* standards, obviously are still full play, people needed
21 to do appropriate objections, fully and fairly get addressed in a timely
22 and fair and appropriate manner, as does everything else. So who's the
23 first witness and is that witness an issue.

24 MR. JONES: The first witness is Addison, he is not an issue,
25 Your Honor.

1 THE COURT: Okay. So after Addison, is Plaintiff intending --

2 MR. JONES: We will rest.

3 THE COURT: -- to rest? Okay.

4 MR. JONES: We do.

5 THE COURT: Okay. So then if Plaintiffs then intending to
6 rest, we then go to Defense. Who is Defense first intending to call?

7 MR. DOYLE: Well, I have three people here. I have
8 Dr. Adornato --

9 THE COURT: Who's the first witness the Defendant is going
10 to need to call.

11 MR. DOYLE: I can't answer that question yet, because I'm
12 still communicating with them, trying to juggle schedules, it will be
13 Dr. Stone or Dr. Adornato.

14 THE COURT: Okay. How long is Addison supposed to take,
15 please?

16 MR. JONES: Twenty minutes, Your Honor.

17 THE COURT: Okay. So as Defense knows, we'd have to have
18 a witness immediately thereafter. 10:15 is when the jury is coming, you
19 all had an estimate of the timeframes, with regards to the various
20 witnesses. So who will be the witness that will be available to go right
21 after Addison?

22 MR. DOYLE: Both of them are available.

23 THE COURT: Okay. So which witness would you like to
24 address first, with regards to objections Plaintiff has?

25 MR. DOYLE: Why don't we address Dr. Stone, first?

1 THE COURT: Okay. So Dr. Stone. Plaintiff any concept --

2 MR. JONES: Yes, Your Honor.

3 THE COURT: -- with regards to objections that were timely
4 raised in an objection-type context, what objections do you feel that the
5 Court can address, that were timely raised?

6 MR. JONES: Several, Your Honor. So in the process of
7 going through this and preparing for Dr. Stone, in the event that he
8 wasn't stricken, or that he was permitted to testify, we discovered last
9 night that Dr. Stone, they're same shenanigans regarding Center,
10 involved Dr. Stone in pretty severe way, directly; and so that's really the
11 reason why this trial brief was created.

12 THE COURT: Sure. Was there something you were going to
13 ask the Court to reference --

14 MR. JONES: Yes, Your Honor --

15 THE COURT: -- right now --

16 MR. JONES: -- I will.

17 THE COURT: -- since I just got handed it.

18 MR. JONES: What I'll do first, Your Honor, if you look at
19 Exhibit 1, Your Honor, which has also been provided to the Defense, it's
20 Plaintiffs' objections to Defendants' pretrial disclosure statement.

21 THE COURT: Okay.

22 MR. JONES: We filed this. We previously already filed a
23 motion to strike, but the motion to strike did not go forward, because it
24 was before the discovery commissioner, and it was filed I think with not
25 sufficient time. In any event, at 2.67 conference they were informed we

1 intended to strike him, and other conversations I believe prior to that, but
2 there's our object that we filed.

3 If you look at your objection, Your Honor, we specifically
4 address Dr. Stone in the second paragraph. Further Plaintiffs object to
5 any testimony by Defendants' rebuttal expert, Lance Stone, DO, Sarah
6 Larson, Bruce Adornato, and we have the list, then we have a footnote
7 that references the ongoing motion that had been filed at that time to
8 strike the witnesses.

9 The legal argument for striking Dr. Stone, there are a couple.
10 But the first, and I think the most obvious, and the most definitive, is that
11 Dr. Stone's disclosure fails to comply with Rule 16.1(a)(2)(B)(v), and
12 that's a mandatory prerequisite to testify in Nevada. Defendants, even
13 the day before, Stone's proposed testimony yesterday, and certainly
14 even as of today, have failed to cure this fatal defect. It requires that the
15 expert report must contain, is what 16(a)(2)(B) states --

16 THE COURT: And --

17 MR. JONES: -- the report must contain, quote: "A list of all
18 other cases in which during the previous four years the witness testified
19 as an expert at trial or by deposition."

20 THE COURT: And, counsel, I'm going to interrupt you for a
21 quick second.

22 MR. JONES: Yes, Your Honor.

23 THE COURT: Because I'm going to have to ask you which
24 version of the NRCP you're referencing, in coordination with when the
25 report came into play. Are you doing 2019 NRCP, with a report that's

1 pre-March 2019, or are you doing a pre-March 2019 NRCP with a report
2 that's pre-March 2019, just so that I have an understanding --

3 MR. JONES: Absolutely.

4 THE COURT: -- or are you saying that they're the same for
5 this particular --

6 MR. JONES: Your Honor, I believe they're the same, but I
7 can't actually answer that with certainty because I am -- I believe that the
8 one I included is the current version. I am unaware of any change in that
9 specific language, but I do not know the answer to that question actually.

10 THE COURT: No worries. Okay. Please go ahead.

11 MR. JONES: In any event -- let's see -- okay. So it's the
12 March 1st, 2019, version, Your Honor. Now, he was disclosed prior to
13 that, but certainly, it was never supplemented, as is required under
14 NRCP 26(e)(1) and 26(e)(2), so --

15 THE COURT: But this is prior trial testimony -- is prior cases,
16 right?

17 MR. JONES: That's right.

18 THE COURT: Okay. All right. Okay.

19 MR. JONES: Yes. Exactly.

20 THE COURT: Go ahead.

21 MR. JONES: And so despite the clarity of the rule, that the
22 Defendants have to provide that information, Dr. Stone -- as an excuse,
23 Defendants, in their rebuttal disclosure, which I attached as Exhibit 2,
24 Your Honor, and you'll have to go to page 2 of Defendant's rebuttal
25 disclosure. Dr. Stone is the third person listed. And if you go about

1 halfway down the paragraph, at line 20, it states, "Dr. Stone was asked to
2 identify the matters he has testified in during the prior four years. Dr.
3 Stone indicated he does not maintain a list of testimony. He recalled
4 having given approximately five depositions during the past four years.
5 The only matter in which he could recall the name of the case was *Baxter*
6 *v. Dignity Health*."

7 Believing it must have been an oversight, Plaintiffs' counsel
8 inquired about this at the deposition of Dr. Stone. And I've attached
9 relevant portions of the deposition transcript as Exhibit 3.

10 If you go, Your Honor, to page 10 of the deposition
11 transcription, beginning at line -- let's see -- beginning at line 8 and going
12 through 118 it states, "How many times have you testified as an expert in
13 a deposition?"

14 "Answer: Approximately 30.

15 "Mr. Hand: Chad, does he have a list of those depositions? I
16 didn't see it.

17 "Mr. Couchot: Included in the report there's some language
18 about the ones that he can recall doing. He doesn't maintain a list, but I
19 asked him to recall what -- what depositions he had given at -- at
20 trial -- and trial, and so there's a little bit of language reflecting that, but I
21 think it only describes one prior action that I had with him.

22 "Mr. Hand: Where is that in the report? I'm looking for that.

23 "Mr. Couchot: Oh, actually, you know what, George, it's
24 probably listed in our disclosure itself.

25 "Mr. Hand: Okay.

1 "Mr. Couchot: The case you testified that you recall was that
2 trial or deposition?

3 "Answer: The -- it was a trial.

4 "Question: What kind of case was that?

5 "Answer: That was recently a case of an individual who had
6 bilateral lower extremity amputation.

7 "Question: And the law firm that retained you in that case?

8 "Answer: The same law firm today, Sherman, Mr.
9 Couchot -- Schuering."

10 Oh, and, Your Honor, we have confirmed that the 2013
11 language is the same.

12 THE COURT: There's a redline version between the changes.

13 MR. JONES: Yes.

14 MR. LEAVITT: That's what we're referring to.

15 THE COURT: That's what you're looking at?

16 MR. JONES: Yep, that's correct, Your Honor.

17 MR. LEAVITT: Yeah, the 8010.

18 THE COURT: Yeah. Okay.

19 MR. JONES: So the language of that subsection has not
20 changed.

21 And so, Your Honor, what we do know is that there's this
22 *Baxter* case that was mentioned in the disclosure and Defense
23 counsel -- now, Your Honor, as of this morning at 8:00, I wasn't certain
24 that this other case of bilateral amputation was the *Center* case. And this
25 morning when I saw Mr. Doyle I asked him I said, it was Stone? Did you

1 hire him in the *Center* case, and he said, yes. So I have confirmed
2 now -- and if the nature of my brief -- my next subsection is Defendant's
3 failure to disclose Dr. Stone's role in *Center v. Rives* [phonetic], if true, is
4 a serious problem anyway, and it go into the conduct of that.

5 But the Defense -- Mr. Couchot is sitting there during this
6 deposition. He knows -- and this deposition just took place, Your Honor,
7 in July I believe, and so in July -- maybe in June -- here, let's actually
8 look at the date, I have it here -- oh, July 29th, 2019 -- and Mr. Couchot,
9 knowing about the Center case, knowing that he just testified for his own
10 firm in April, and knowing that he has failed to disclose that, he doesn't
11 include it there. And if you look at the language that is used there, Dr.
12 Stone was asked to identify prior matters he was involved in.

13 As though there's not a due diligence requirement for the
14 law -- for the lawyer to identify cases where he knows that he specifically
15 knows of and to supplement those as it goes forward, which was not
16 done in this case. It's a RPC Rule 3.4 violation, Your Honor.

17 THE COURT: Sorry. You're one of the witness --

18 MR. JONES: In addition --

19 THE COURT: Wait.

20 UNIDENTIFIED SPEAKER: No.

21 THE COURT: Okay. No worries. You're more than welcome.
22 I just saw her.

23 Go ahead, Counsel.

24 MR. JONES: In addition to being a violation under Rule 16
25 and 26, Your Honor -- 16.1 and 26 -- Your Honor, so now we know what

1 this testimony is. The intentionality of this concealment really cannot be
2 in doubt at this point, given there's already been sufficient evidence that
3 there was an intentional effort to conceal the Center case in this matter.

4 And now -- and Your Honor, whether or not I should have
5 seen this before, and should have identified this at an earlier time, I can't
6 say, given my involvement in the case, but I did read Dr. Stone's
7 testimony earlier and I never picked up on this particular issue until I was
8 preparing for his cross-examination, and I re-read this and I thought
9 unbelievable. An additional effort to conceal the Center matter from us
10 in this case and stop us from being able to investigate it.

11 And then, Your Honor, additionally, I do believe -- I do
12 believe that that is sufficient, given the very, very clear language of
13 NRCP 16.1(a)(2)(b)(5). To me, it appears to be mandatory that the failure
14 to do this has precluded Dr. Stone from being able to testify. And we did
15 not weigh, we timely objected. We've objected along the way.

16 Dr. Stone's report, in addition, is flawed, and fails to meet the
17 standards of NRS 50.275.

18 Moreover, the opinions of Nurse Larson and the economist
19 Mr. Volk, are inadmissible as they entirely dependent on Dr. Stone's
20 inadmissible opinions.

21 So the rebuttal experts, first of all, Dr. Stone was provided as
22 a rebuttal expert. Rebuttal experts cannot offer new or novel opinions
23 regarding known elements of Plaintiffs' case-in-chief. The courts have
24 been very, very clear on this and those are words that are used over and
25 over again. You cannot produce new or novel opinions as a rebuttal

1 expert, particularly on areas that were known, or that should have been
2 known -- should have been anticipated by the Defense.

3 A number of cases that I think are -- that should be cited are
4 *Nunez v. Harper, R&O Construction Company, Amos v. Makita*. Now --

5 THE COURT: So wait. What are the asserted new opinions?
6 Let's go to his --

7 MR. JONES: Yes.

8 THE COURT: -- report and tell me -- let's go back to your
9 brief and tell me which are the asserted new opinions and which tab am I
10 looking at?

11 MR. JONES: Yes, Your Honor. And so what I -- so and I think
12 just as a kind of prerequisite concept of that, is the Plaintiffs' case-in-
13 chief, with respect to Plaintiff having foot drop that resulted from this,
14 and that being a permanent condition that she had, and the colostomy
15 bag -- that information was a well-known part of the Plaintiffs' case-in-
16 chief for years. And I'd like to go to Exhibit 4, just really quickly, which is
17 Plaintiffs' interrogatory response, so that it can be very, very -- it can be
18 made abundantly clear this is her response to Interrogatory Number 13.

19 THE COURT: This is the 12/29/2016, electronically served; is
20 that what --

21 MR. JONES: That is correct, Your Honor. Yes.

22 THE COURT: Okay.

23 MR. JONES: And Plaintiffs' response to Interrogatory
24 Number 13, the question is: "Describe the past, current, and future
25 physical, mental, and emotional injuries you are claiming in this lawsuit."

1 "Answer: I am in chronic pain and mental upset. I cannot
2 take care of myself, my husband, my daughter, or my home. I was
3 confined to a wheelchair for approximately one year after the surgery by
4 Dr. Rives in July 2015. I had to wear a colostomy bag for several
5 months. I am unable to walk or stand on my own. I also have constant
6 pain in my feet and my calves."

7 The Plaintiff had an EMG that was produced earlier on where
8 there's a -- it identifies there's absolutely no nerve function and it's not
9 coming back.

10 And her deposition was taken -- both Plaintiffs depositions
11 were taken. The depositions of their children were taken. So it was a
12 well-known reality that the Plaintiff had a permanent condition where
13 she wasn't going to be able to walk anymore, and she was going to have
14 this ongoing issue.

15 So with that said, Dr. Stone, in number 5, if you look at his
16 report, you can see kind of right off the bat that the Defense basically
17 gave him bad instructions, in terms of what he was supposed to opine
18 to, right. He identifies that he -- in the very first paragraph, "You
19 requested that I review the life care plan authored by" --

20 THE COURT: Sorry.

21 MR. JONES: -- "Dr. Alex Barchuk."

22 THE COURT: Counsel, exhibit again, please?

23 MR. JONES: Oh, I apologize.

24 THE COURT: I didn't hear what you said.

25 MR. JONES: Exhibit 5, Your Honor.

1 THE COURT: Thank you.

2 MR. JONES: And this is on the first page, first paragraph.

3 THE COURT: Thank you.

4 MR. JONES: It says, "You requested I review the life care
5 plan, LCP, authored by Dr. Alex Barchuk and attest to any separate and
6 divergent opinions I may hold." That goes outside the scope of pure
7 rebuttal, Your Honor, just on its face.

8 Then he goes into it and what he states -- he states that
9 he -- let's see -- okay. So he then goes through and he identifies the
10 information he reviewed, and his report is not numbered, Your Honor,
11 but this is I believe page 4.

12 THE COURT: Okay. Please tell me the first word or two on
13 the page.

14 MR. JONES: Yes, Your Honor.

15 THE COURT: Is that the one that has --

16 MR. JONES: Okay.

17 THE COURT: -- six --

18 MR. JONES: This is page 3, Your Honor. I apologize. So
19 after he finishes the 21 issues that he identifies that Dr. Barchuk has
20 noted, he then states, "Based on my independent review of Ms. Farris's
21 medical records" --

22 THE COURT: Okay.

23 MR. JONES: -- "I agree in general with Dr. Barchuk's
24 diagnosis" --

25 THE COURT: Just a second, please.

1 MR. JONES: Oh, yes.

2 THE COURT: I see the 21. I see future care
3 recommendations. Okay. So hold on a second. Counsel,
4 which -- what's -- following a list of diagnosis?

5 MR. JONES: Yeah. So it's page 3 of the -- of Exhibit 5, Your
6 Honor. And there's a list that ends of 21 and then it begins another list
7 that goes 1 through 15 on that page.

8 THE COURT: Okay.

9 MR. JONES: And there's a paragraph in between those two
10 lists.

11 THE COURT: Based on -- I got it. Thank you.

12 MR. JONES: Yeah. And so he states, "Based on my
13 independent review of Ms. Farris's medical records I agree in general
14 with Dr. Barchuk's diagnosis; however, the medical records I reviewed
15 support my conclusion that several medical problems were pre-existing
16 or unrelated to surgery."

17 So this is a new causation opinion that this is related to some
18 pre-existing condition that no one, at this point in the case -- no initial
19 expert has ever said that a pre-existing condition is the cause of any of
20 the symptoms. In fact, everyone in the case at that point, no one had
21 indicated that there was any source of the ongoing and permanent
22 disability, other than the complications associated with Dr. Rives's
23 surgery. This was information that was clearly an anticipated, and well-
24 known portion of Plaintiffs' case-in-chief that the Defense did not deal
25 with in -- with any initial expert.

1 Then he goes through and he forms the opinion that based
2 on the pre-existing diabetes and things of that nature that a number of
3 these issues are not related to the surgery.

4 THE COURT: And where are you referencing that from?

5 MR. JONES: If you go through each one, so for example,
6 one, ventral hernia, right below the paragraph we read.

7 THE COURT: Okay. So you're saying --

8 MR. JONES: Pre-existing condition.

9 THE COURT: -- the 21 examples -- the bold numbers 1
10 through 21?

11 MR. JONES: Yeah. Then he goes through 1 through 21.
12 And then he explains that these -- you know, where he throws down that
13 these are pre-existing conditions, or otherwise are unrelated.

14 And then he goes into 19 of those in somewhat more detail,
15 Your Honor, thereafter.

16 THE COURT: Okay.

17 MR. JONES: Thereafter, Your Honor, it also is the case that
18 the opinions he does hold are unscientific and do not meet the hallmark
19 standard. They are -- he is an expert in a very specific field. He testified
20 in his deposition to a number of things, but overall, many of his opinions
21 are based on assumptions, conjecture, and generalizations, speculation.
22 Not on anything scientific, Your Honor.

23 And so in his deposition, he states -- well, in his
24 deposition -- and I have attached a portion of his deposition, Your Honor,
25 which I believe is -- well, where is that.

1 Your Honor, I apologize. Oh, I do have his deposition. It was
2 Exhibit 3.

3 THE COURT: Okay.

4 MR. JONES: The relevant portions of his deposition, Your
5 Honor, he first of all, changes some opinions within his deposition. For
6 example, Dr. Stone claims that Titina Farris would become wheelchair
7 bound at some point in her life. In deposition he abandoned some of
8 those opinions and that can be found on pages 21-2, through 22-3.

9 Dr. Stone acknowledges that his opinion that Titina Farris
10 would have become wheelchair dependent regardless of Dr. Rives's care
11 is not based on any scientific support and this is on 43. This is probably
12 one that is worth looking at, because this is a significant portion of the
13 life care plan where he chops out a whole bunch of the value of her life
14 care plan on the basis that she would have become wheelchair
15 dependent regardless.

16 And if you look at the language there, beginning at line 3 on
17 page 43, and going through line 7 on page 44, he states that he
18 absolutely has no basis whatsoever, in terms of any studies, or anything
19 along those lines that would support his contention -- his opinions there.

20 The last question going from page 43 to 44, "Do you have
21 any data on the percentage of -- I'll start broadly -- the percentage of the
22 type -- type 2 diabetes that become wheelchair bound?"

23 "I don't."

24 And, you know, earlier on, on page 43, beginning at line 3,
25 "Okay. Then at the end you state, 'She would have become wheelchair

1 dependent regardless of her surgical complications.' What is the basis of
2 that statement?"

3 "Answer: Well, just looking over past history and
4 noncompliance and risk factors, you know, for future stroke, for future
5 MI, heart attack, for diabetic polyneuropathy involving the upper
6 extremities for diabetic arthropathy, so I think, in my experience,
7 individuals like this, who develop and have these severe medical
8 complications at a relatively young age, and that progressive, you know,
9 usually end up becoming very disabled over time with a shortened life
10 expectancy."

11 And then he has nothing to back it up whatsoever. He's
12 asked, well, are there any studies supporting this? No. No, I don't have
13 anything to back it up. I'm just saying that's kind of what I think.

14 THE COURT: So what, from Plaintiffs' position, do you
15 contend Dr. Stone can testify to? I'm trying --

16 MR. JONES: Nothing at all, Your Honor. He was not
17 properly disclosed under --

18 THE COURT: Okay.

19 MR. JONES: -- you know, 16.1, and so he cannot come and
20 testify.

21 THE COURT: Okay.

22 MR. JONES: I explained this to Defense counsel this was our
23 position in very clear detail at our 16.1 on September 11th, that Dr. Stone
24 was not --

25 THE COURT: The 2.67, September 11th?

1 MR. JONES: Yes. At our 267, Your Honor. At our 267
2 conference. And I made it abundantly clear that Dr. Stone could not
3 testify in this case. He had not been properly disclosed and this his
4 opinions were not those of a rebuttal expert.

5 THE COURT: And at any point was the deposition list or
6 anything in anyway supplemented, as required, under 16 and 26?

7 MR. JONES: Never, Your Honor.

8 THE COURT: Never. Okay.

9 MR. JONES: What I've shown you is everything I believe
10 there is in the record regarding us trying to -- us getting information
11 about that.

12 THE COURT: Okay. Was there any expressed waiver or --

13 MR. JONES: No, Your Honor.

14 THE COURT: -- implicit waiver?

15 MR. JONES: Absolutely not.

16 THE COURT: Any agreement that what he provided at
17 deposition was sufficient?

18 MR. JONES: No, Your Honor. Absolutely not.

19 THE COURT: Sorry, I'm going to have to ask Mr. Hand that
20 question, because he was at the deposition.

21 MR. HAND: No, Judge.

22 THE COURT: Okay. You understand --

23 MR. HAND: No, Your Honor.

24 THE COURT: -- because you were there, I've got to ask the
25 person --

1 MR. HAND: No, there was no waiver --

2 THE COURT: -- who was there.

3 MR. HAND: -- of anything.

4 THE COURT: Okay. And I appreciate it. It's not that I don't
5 take your representations, but since there's been issues in the past about
6 people being in depositions -- sorry -- I now have taken to ask --

7 MR. JONES: Oh, perfectly fair, Your Honor.

8 THE COURT: -- the person who was physically there,
9 so -- okay.

10 So back up position, in light of the deposition issue, in the
11 absence of the deposition issue, going to your hallmark issues, and the
12 rebuttal opinion issues, what testimony, if any, do you believe that Dr.
13 Stone -- separate and apart from the deposition, this 16.1 violation
14 contentions -- do you feel that he could testify to?

15 MR. JONES: Truly none, Your Honor.

16 THE COURT: Okay.

17 MR. JONES: As a rebuttal expert, there is no basis to form
18 new and novel opinions. And in this case he forms new and novel
19 opinions regarding pre-existing conditions, as to the specific medical
20 causation that the Defendants knew the whole time was fundamental to
21 Plaintiffs' case-in-chief.

22 THE COURT: How about his response to Dr. Barchuk? Are
23 you saying none of his opinions relate to responses to Dr. Barchuk?

24 MR. JONES: That's exactly right. They don't. And the
25 reason why is this: He agrees with -- he agrees with Dr. Barchuk's -- let

1 me make that clear. I don't want that to -- he is responding to Dr.
2 Barchuk. There is no question about that. We don't dispute that that's
3 what he says he's doing, but the way that he does it is not appropriate
4 for a rebuttal expert.

5 THE COURT: Okay.

6 MR. JONES: And so as -- if he were an initial expert, and had
7 been disclosed, and formed the opinions that some portion of her
8 treatment or care in the future would be related to some pre-existing
9 condition of some type, that would be appropriate, but as a rebuttal
10 expert, he is now limited to critiquing the methods, the pricing, things
11 along those lines. He cannot come up with a new and novel opinion that
12 a percentage of her foot drop, or her lack of mobility relates to diabetes,
13 right. That's a new and novel opinion.

14 The Defense knew for two and a half years that she had
15 diabetes and she was claiming a permanent impairment purely because
16 of this treatment. They can't wait until rebuttal experts, at a point where
17 we cannot bring in someone who is a diabetic expert, for example, to
18 rebut their conclusion, that there is some other causation opinion.

19 THE COURT: Okay.

20 MR. JONES: And then again, Your Honor, with respect to his
21 opinions are speculative, and what it -- and he doesn't actually provide
22 any life care plan. Instead, the nurse provides a life care plan and she
23 says that she is -- she is reliant on him -- and this is Exhibit 6, Your
24 Honor. If you look at the very first page.

25 THE COURT: Uh-huh.

1 MR. JONES: She walks through and she says, "I have
2 prepared a life care plan" -- the very first paragraph, "in connection with
3 the above-entitled matter. Based on my review of the expert reports,
4 deposition, and medical records provided, and upon the
5 recommendations of Lance Stone, M.D.", right.

6 And then you go down to the next paragraph, and you go
7 about a little more than halfway down there's a sentence that begins, "I
8 have consulted". It says, "I have consulted with Dr. Stone regarding his
9 opinions of future care needs for Ms. Farris. I have outlined the
10 recommendations of Dr. Stone in the life care plan report."

11 And so she is relying on him, and one of the things that is
12 additionally troubling about this, Your Honor, is Dr. Stone, himself,
13 doesn't offer any of these numbers. And in deposition, for example,
14 even though he blamed part of her lack of mobility, in his report, on her
15 pre-existing diabetic polyneuropathy or something that he came up with,
16 the -- he then, in his deposition, disagreed with his prior position, and
17 he -- and it's within what we've provided, and he says, well, yeah, it was
18 all caused by the critical illness neuropathy that she suffered as a
19 complication of the surgery. In his deposition he admits that.

20 But then the nurse doesn't fix it in her report. And so her
21 numbers do not relate to his numbers. And there was --

22 THE COURT: Are you saying her numbers are based on his
23 report and not on his subsequent deposition reversals -- what you
24 contend were his reversals in his deposition; is that what you're saying?

25 MR. JONES: Absolutely.

1 THE COURT: Or are you saying that he doesn't give you
2 numbers in his deposition or in his report and so she doesn't have a
3 basis, or are you saying both?

4 MR. JONES: He never gives numbers at all, but he says that
5 certain things relate to this or that. And then she takes that information
6 and creates a life care plan from it, presumably. That's what is being
7 said. But her life care plan does not match his opinions. It actually
8 doesn't fully match it, even based on his report, and it definitely doesn't
9 match it based on the things he changed in deposition.

10 Moreover, her basis of her entire life care plan are his
11 opinions, because she wasn't given our information. She was just given
12 his information and his opinions. And so there isn't, like, an alternate
13 method whereby she can go and figure this out. She's given his
14 opinions and obviously she wouldn't be qualified under *Williams* to
15 testify as to diagnosis, treatment, or any of those things anyway, so she
16 must be reliant on him.

17 THE COURT: So the Court is going to ask one question as
18 example hypothetically.

19 MR. JONES: Yes.

20 THE COURT: You contend, and you've pointed out page 41
21 in the deposition -- sorry -- 43 et. seq. of the deposition about a
22 contention that says that he opines that Ms. Farris is going to be
23 wheelchair bound regardless was your contention and say page 43 et.
24 seq. in the deposition.

25 MR. JONES: Yes.

1 THE COURT: Okay. So walk that through how that would
2 show up in the life care plan, if at all. Does it then show that
3 nothing -- the lift -- the various things, and et cetera -- so those all would
4 be wiped out, so there is no need in a life care plan?

5 MR. JONES: That is exactly right.

6 THE COURT: Does he have numbers -- are you saying he
7 doesn't have any numbers, or that therefore he says none of the items,
8 A, B, C, D are no longer necessary in the life care plan? I'm trying to get
9 your --

10 MR. JONES: Yes.

11 THE COURT: -- from point A to point B. What are you
12 saying? And I'm trying to use that one as a --

13 MR. JONES: Yes.

14 THE COURT: -- hypothetical example, or whatever example
15 you want to use.

16 MR. JONES: There is a degree of complication to it, so let
17 me explain one additional thing. They also hired an expert they're not
18 bringing today, who says she's going to have a shorter life. Okay. So
19 they use that as one basis to reduce everything. That is some guy
20 named Mr. Kush.

21 The Defense counsel said they're not bringing him.

22 THE COURT: Okay.

23 MR. JONES: So all of their numbers are actually wrong,
24 because they all relied on Kush also.

25 THE COURT: Okay. That's --

1 MR. JONES: So that's one other issue. And all of their
2 numbers are reliant on his estimate of her life expectancy. Since he's
3 not here, they can't rely on that.

4 But then separately, yes. So for example, the cost of, like, a
5 wheelchair for life, or her being immobile for life, right. If you said that
6 was all because of the critical illness neuropathy, which was all anyone
7 had said up until this report, then the cost obviously is significant over
8 the course of her life.

9 What they've done is because they've reduced it down and
10 they say well, she would have already gotten there anyway, is I think
11 they provide in their life care plan, like, \$37 a year for the cost of like
12 wheelchair related things, right. And now, he, Dr. Stone, never states a
13 number at all, nor does he specifically identify that he even really
14 reviewed the nurse's report, but he does say that he puts his stamp of
15 approval on the nurse's report.

16 So there's no -- there's never a time that he, like, goes
17 through and kind of explains it out, nor does he provide numbers
18 himself, but he puts his stamp of approval on her report. So there's an
19 indication probably sought.

20 THE COURT: Okay. I need to let Defense speak, because you
21 do realize it's now already --

22 MR. JONES: Yes, Your Honor.

23 THE COURT: -- 10:38 and we haven't -- okay.

24 Counsel for Defense, do you agree with Plaintiffs' position, or
25 would you like to be heard?

1 MR. DOYLE: I would like to be heard. Thank you.

2 THE COURT: Okay. Thank you.

3 MR. DOYLE: So my first general comment, Your Honor, is all
4 of the objections that have been raised today come from the brief that
5 we received early this morning. Those objections, the objections
6 verbalized today, and any objections that have taken place in the last
7 week or so concerning rebuttal expert witnesses, it's our position that
8 those objections are untimely and have been waived. And let --

9 THE COURT: Was there not a discussion -- do you disagree
10 that there was a discussion at the 2.67 conference?

11 MR. DOYLE: I don't doubt that there was that conversation,
12 but let me -- but I need to give you a factual background --

13 THE COURT: Okay.

14 MR. DOYLE: -- to explain why it has been waived.

15 So some important dates. Dr. Barchuk saw Mrs. Farris for his
16 evaluation and examination on March 20, 2018. He prepared his life care
17 plan report that doesn't have a date; however, we know Dawn Cook
18 creates her life care plan on June 6th, 2018, based upon Dr. Barchuk's
19 evaluation.

20 Then Dr. Clauretie prepares his report for the life care plan on
21 October 9, 2018, and we have the expert witness disclosure on
22 November 15, 2018. And for the first time we learn via Dr. Willer and Dr.
23 Barchuk that all of her current, and ongoing complaints, and problems,
24 and disabilities are due to the critical illness polyneuropathy. Some
25 people call it critical illness neuropathy, but all of her present injuries,

1 and damages, and complaints, and problems are due to this one entity
2 causing the foot drop and it's sequelae.

3 So at the time of the expert witness disclosure on November
4 15th, we first learn about Dr. Willer's opinions, which goes to, you know,
5 the -- you know, goes to Dr. Adornato as a rebuttal, but also Dr. Barchuk,
6 Ms. Cook and Dr. Clauretie.

7 We disclosed our rebuttal -- our rebuttal disclosure was
8 December 19th, 2018, and there was no objection to our rebuttal
9 disclosure until the first time there was any rebuttal -- or there was any
10 objection to our rebuttal disclosure was in response to our pretrial
11 disclosure.

12 Now, the life care plan -- well, one other comment, Your
13 Honor. At the time of disclosure of expert witnesses on November 15th,
14 2018, despite all the work that had gone before that, there was not yet a
15 computation of damages required by 16.1. And in fact, we never
16 received a computation of damages, whether they be past economic
17 damages, or future economic damages, until Plaintiffs' fifth
18 supplemental disclosure, which was on April 8, 2019.

19 So without having received a computation of damages prior
20 to the disclosure on November 15th, 2018, despite Dr. Barchuk and Ms.
21 Cook doing all of their work in March and June, I was frankly surprised
22 when we received the disclosure of expert witnesses. I was surprised by
23 Dr. Willer, who, you know, based on the records of Dr. Chaney and
24 others, it's clear that Mrs. Farris had a pre-existing diabetic -- had the
25 diabetes mellitus and a peripheral neuropathy and it was unexpected

1 and not anticipated that he was going to attribute all of her current
2 problems, injuries, and complaints to this foot drop.

3 THE COURT: Who is the he?

4 MR. DOYLE: Willer.

5 And so we retained doctor -- so we retained Dr. Adornato to
6 rebut Dr. Willer, but that's a separate discussion.

7 But anyway, we get the life care plan, and the economic
8 analysis, very extensive, very expensive, and very unexpected, and
9 unanticipated, given the fact that we had no prior computation of
10 damages. We then retained Dr. Stone to rebut Dr. Barchuk. Ms. Larson
11 to rebut Ms. Cook. And Eric Volt to rebut Mr. Clauretie to contradict and
12 to rebut -- to contradict and rebut that are all of her current problems,
13 complaints, and injuries, and damages are related to the foot drop,
14 which is a static problem, ignoring her pre-existing comorbidities that
15 are progressive problems.

16 Now, we've retained them to contradict and rebut what
17 future care was needed related to the foot drop only versus her pre-
18 existing medical problems, and to some extent the cost of those -- of that
19 care.

20 And then, Your Honor, at Plaintiffs -- oh, one other thought I
21 wanted to mention is the -- because Plaintiff brought up the discovery
22 responses from December of 2016. In addition to us not having a
23 computation of damages prior to the disclosure of expert witnesses,
24 there is the -- and I probably will not pronounce it correctly -- it's the
25 *Pizzaro-Ortega v. Cervantes-Lopez* case.

1 THE COURT: 133 Nev. Adv. Op. 37 that came out June 22nd,
2 2017. Yes.

3 MR. DOYLE: Correct. Where the Nevada Supreme Court
4 when looking at the computation of damages issue commented that
5 producing medical records during the case, or discovery responses
6 early -- well --

7 THE COURT: Came out in 2017.

8 MR. DOYLE: Right. But it's --

9 THE COURT: June, yes.

10 MR. DOYLE: Right, before the disclosure of the experts in
11 this case. But one can draw from the court's ruling and holding in that
12 case that simply producing medical records during a case or discovery
13 responses early in the case without any supplements is not a substitute
14 for the computation of damages.

15 So to the extent we have discovery responses from
16 December of 2016, and perhaps deposition testimony from Mr. and Mrs.
17 Farris, this does not trump and eliminate the need to provide us with the
18 computation of damages. And so just as a general proposition all of
19 these people were properly disclosed as rebuttal expert witnesses, given
20 the fact that the opinions expressed by Plaintiffs' damages experts was
21 unexpected and unanticipated.

22 And then failing that, Your Honor, just as a fallback
23 argument, in Plaintiffs' trial brief at the bottom of page 5 they quote from
24 the *R&O Construction* case, and the quote said, "Because the report is
25 not a rebuttal report, it is untimely and must be stricken, unless the party

1 producing the reports can show the untimely disclosure was
2 substantially justified or harmless."

3 Here, the disclosure was harmless because the disclosure
4 occurred long before discovery closed. Plaintiffs deposed Dr. Adornato,
5 Dr. Stone, and Eric Volk, and had the opportunity to depose Ms. Larson.
6 And in terms of substantially justified, none of them were retained prior
7 to the November 15th, 2018, disclosure date.

8 So from a fundamental or basic point of view, the rebuttal
9 disclosures were appropriate. The contents of the reports and the
10 opinions expressed, both in the reports and depositions were
11 appropriate rebuttal testimony, contradicting, and rebutting the experts
12 disclosed by Plaintiff, and that the rebuttals were necessary to deal with
13 the notion, as confirmed by Plaintiffs' counsel today, that their case is all
14 of her present problems, conditions, future needs, et cetera, are related
15 to the foot drop, and things flowing from the foot drop. When the
16 evidence is abundantly clear that it's a much more complicated picture.

17 THE COURT: When was Plaintiffs' deposition in this case?

18 MR. LEAVITT: It was in October of 2018, Your Honor. I can
19 look at the exact date.

20 MR. DOYLE: I think it was in October of 2018.

21 MR. LEAVITT: I believe it was either the 18th or 24th. Let me
22 find out.

23 THE COURT: When did Defendant provide its discovery -- it's
24 16.1 disclosures?

25 MR. DOYLE: Which ones, Your Honor?

1 THE COURT: Just one minute.

2 MR. DOYLE: The rebuttal disclosure?

3 THE COURT: One second, please. When did Defendant first
4 provide their mandatory 16.1 disclosures that were supposed to have
5 been done at the early case conference?

6 MR. DOYLE: I don't know if I have the very first -- can I look?

7 THE COURT: No worries. Because looking at your ECC --
8 your joint case conference report filed on October 31, 2016, it has a none
9 under Defendants. And it shows that the documents were provided by
10 Plaintiff, but it has a none under Defendants. That's why the Court's
11 asking the question.

12 MR. DOYLE: I don't have any reason to disagree with that.

13 THE COURT: That's why I am asking when you all provided
14 them.

15 MR. DOYLE: I'm not sure, provided what.

16 THE COURT: The document disclosures that would have
17 been required to have been provided at the early case conference, but
18 that according to the joint case conference report had not been provided
19 even as of October 31, 2016, based on the joint case conference report
20 signed by the pts.

21 MR. DOYLE: I would assume it was the first supplemental
22 disclosure.

23 THE COURT: Well, to supplement would usually mean that
24 you've provided something. That's why the Court was asking.

25 MR. DOYLE: I don't believe I have a copy of our first

1 supplement. I have some later ones, but I can't tell you from what I have
2 what specifically was in the first supplement.

3 THE COURT: I wasn't asking -- I just was wondering when
4 you actually even provided some documents, because as of your joint
5 case conference report that was filed on 10/31 and signed by Defendants
6 on 10/27, it say none for documents by Defendants.

7 MR. DOYLE: Okay.

8 THE COURT: You hadn't provided any documents as of that
9 late October date. So the Court was trying to look at that.

10 MR. DOYLE: You're talking about October 2016?

11 THE COURT: Correct.

12 MR. DOYLE: Yeah, okay.

13 THE COURT: Because you would have been required,
14 obviously, at the time of your initial early case conference to provide
15 those documents at the time of the ECC.

16 MR. DOYLE: Or by agreement of counsel, they can be
17 discussed and provided --

18 THE COURT: Really?

19 MR. DOYLE: -- subsequent.

20 THE COURT: Really?

21 MR. DOYLE: That was the custom.

22 THE COURT: Really?

23 MR. DOYLE: Yes.

24 THE COURT: The NRCP says that?

25 MR. DOYLE: Well, I'm not sure what that has to do with the

1 rebuttal expert issue, but --

2 THE COURT: Court's taking all the dates, all the compliance
3 or non-compliance into account when the Court's trying to do a
4 chronology, you raise a potential *Pizarro-Ortego* issue. The Court needs
5 to take into account, right, if they would have the documents, potentially
6 to do a damages calculation, in light of the fact that you're raising that
7 issue, which is why the Court would need to take that into account. This
8 Court needs to make well-reasoned determinations, know all the facts, all
9 the information, and all the dates, in order to evaluate everything.

10 MR. DOYLE: All the documents were -- *Pizarro-Ortego* came
11 out in June 22nd, 2017, which is why the Court was taking a look at to
12 see when the joint case conference report is, because as you know part
13 of the specific language in *Pizarro-Ortego*, the very case you're citing
14 says what has generally been a custom and practice in the Eighth
15 Judicial Circuit, so trying to hold people accountable for what the
16 Supreme Court says is custom and practice from October 2016, which I
17 mention the custom and practice in June of 2017, I have to look at dates,
18 I have to look at chronology, I have to look at what everyone's provided
19 at different dates, which is why I'm asking Plaintiff's counsel question on
20 certain dates, I'm asking Defense counsel a question on certain dates, so
21 that this Court has a fair and accurate chronology so that the Court can
22 make a well-reasoned determination on the various issues presented to
23 the Court, as the Court does on each and every case, on each and every
24 aspect.

25 MR. DOYLE: Very well.

1 THE COURT: Counsel for Plaintiff, I've got a question for
2 you.

3 MR. DOYLE: I can -- can I answer that question then?

4 THE COURT: Do you know what date you did the doctors?
5 That's the only question I'm asking.

6 MR. DOYLE: Well, no, but all the doctors --

7 THE COURT: That's the only question.

8 MR. DOYLE: -- came from Plaintiffs.

9 THE COURT: Defendant have -- your client would -- had
10 documents, right? His own records.

11 MR. DOYLE: But his own office records had nothing -- have
12 nothing to do with the damage aspect in this case.

13 THE COURT: Counsel, your client has an affirmative
14 obligation under NRCP 16, no matter what year you pick, to affirmatively
15 provided those documents. That why the Court was asking you the
16 question. It's a simple question, if you knew the date. And you don't
17 know the date. If you don't know the date, I'm moving on to ask Plaintiff
18 a question.

19 Okay, counsel for Plaintiff, with regard to the experts. Was
20 there -- I don't see any expert disclosures done contemporaneously with
21 the reports, or expert names provided previously. I just I don't see
22 anything in the file. Do you know.

23 MR. JONES: I'm not sure I understand the question, Your
24 Honor.

25 THE COURT: Were the expert names and reports given

1 simultaneously, or the expert names disclosed at --

2 MR. JONES: No, they were --

3 THE COURT: -- at some point previously?

4 MR. JONES: No, simultaneously, Your Honor.

5 THE COURT: And I saw rogs, were there any other -- I don't
6 see any other -- remember discovery doesn't have to be filed. Discovery
7 is served, doesn't have to be filed. Other than the interrogatories, was
8 there other discovery done before the expert disclosures, that you're
9 aware?

10 MR. JONES: Not that I'm aware of. Within the
11 interrogatories, there's another interrogatory that Titina Farris said she
12 had no prior disabilities.

13 THE COURT: Right. That came up during the deposition --

14 MR. JONES: Right.

15 THE COURT: That came up during trial testimony.

16 MR. JONES: And so that just kind of goes to show where
17 Plaintiff viewed her case. And that, obviously was as far back as
18 December 2016, but --

19 MR. LEAVITT: Deposition.

20 MR. JONES: Oh, okay, deposition of Titina, we have a
21 confirmed date October 11, 2018, Your Honor.

22 And Patrick was --

23 MR. LEAVITT: He was right around then.

24 MR. JONES: -- right around that time, as well.

25 THE COURT: So is it correct that in this case, you have joint

1 case early case conference, Plaintiff provides documents, Defendant
2 does not provide documents. Then you have joint case conference
3 report, which references that Plaintiff had provided documents,
4 Defendant had not provided documents. You have Defendant doing logs
5 2016 and then you have expert -- then you have expert disclosures,
6 rebuttal disclosures, you have depositions in 2018 forward?

7 MR. JONES: We have depositions early -- October 11th,
8 2018, and then I believe November 18th. So a month and seven days
9 later, was when expert disclosures were due initially. And then
10 rebuttals, I think were December 19th, Your Honor.

11 THE COURT: I'm going back and trying to look at your first
12 stipulation order to extend discovery to try and get a sense of what had
13 been as of that first time. And it said parties have propounded and
14 responded to written discovery. Okay. I was trying to get a sense of,
15 parties have propounded and responded to written discovery usually
16 indicates parties is plural, usually indicates both parties have
17 propounded and both parties have responded.

18 Once again, just taking plain English and the parties being a
19 plural word. So the Court's trying to get an understanding of, other than
20 just exchanging discovery documents. It says parties exchange
21 discovery documents and witness list, pursuant to NRCP 16.1, which is
22 why I was asking Defense counsel when they gave documents, because
23 the only date I've got is the joint case conference report, and it says
24 none. And the next thing I have is a stip. The stip says it's been done,
25 but there's nothing that shows between October 2016 and October 2017.

1 The only person that would be able to provide that information
2 presumably would be counsel.

3 I asked Defense counsel, because it's Defense counsel's
4 documents. Defense counsel doesn't know. So I moved on. So now I'm
5 asking about discovery. Is there anything else other than one set of
6 interrogatories that was done, at any point in 2000 -- between -- when
7 the case was first filed and when the first stip to extend was submitted in
8 October of 2017? Court received it October 30th, 2017.

9 MR. JONES: See, I -- so we're going through it now. I know
10 the Plaintiffs' written discovery was submitted in March of 2017 and
11 responded to in April.

12 THE COURT: Okay.

13 MR. JONES: But --

14 THE COURT: So Plaintiffs did --

15 MR. JONES: -- oh, Dr. Rives was October 24th, 2018.

16 THE COURT: So Dr. Rives was 2018. I was trying --

17 MR. JONES: His deposition.

18 THE COURT: -- to get -- so Plaintiff submitted discovery in
19 2017.

20 MR. JONES: That is correct. In March of 2017. And it was
21 responded to. That -- that was the unverified --

22 THE COURT: And you did --

23 MR. JONES: -- stuff that we talked about.

24 THE COURT: Right. That's -- we know about some of those
25 interrogatories that are subject to prior issues.

1 MR. JONES: Right.

2 THE COURT: Those interrogatories went into damages and
3 issues. Of course, trying to get an understanding to get chronology in
4 light of each of the parties' arguments.

5 Okay. Well, counsel for Defense, you did not respond --
6 okay, all parties have had a chance to fully respond? I mean you've both
7 argued for extended periods of times.

8 MR. DOYLE: Yes, Your Honor.

9 THE COURT: So here's the Court's ruling with regards to Dr.
10 Stone.

11 MR. DOYLE: Look, can I add one thing I forgot to mention
12 concerning Dr. Stone?

13 THE COURT: Of course, you may.

14 MR. DOYLE: Thank you. In the *Center* case, he was not
15 deposed. So there -- he wouldn't -- that case would not appear on a case
16 list for Dr. Stone ever. And he testified in the *Center* trial, in the spring
17 of last year, which was after the disclosure of expert witnesses, so he --
18 there would not -- the *Center* case would not have appeared on a case
19 list for a trial testimony.

20 THE COURT: Was it before his deposition? Did he testify in
21 the *Center* case, before his deposition in the Farris case?
22 Chronologically? Presumably the answer would be yes, because of the
23 timing of when the *Center* case was, vis-à-vis, when you told me the date
24 of Dr. Stone's deposition. Since the *Center* case had already been to
25 trial, right? Given the verdict that was recent -- you all previously stated

1 before the hearings?

2 MR. DOYLE: Dr. Stone's deposition was after the *Center* case
3 was tried.

4 THE COURT: Okay, so it would have considered in part a trial
5 testimony, it should have been disclosed under the NRCP, for purposes
6 of trial testimony before his deposition in the Farris case,
7 chronologically?

8 MR. DOYLE: I'm not aware --

9 THE COURT: Chronologically or not?

10 MR. DOYLE: I'm not aware of any requirement that an expert
11 witness's case disclosure be listed at the time of an expert witness
12 disclosure needs to be supplemented. I've never seen or heard of such a
13 thing.

14 THE COURT: Okay. At this juncture the Court has been
15 provided I think five different bases in which the objections timely done,
16 in the pretrial disclosures, there's no dispute that there was some type of
17 conversation at the EDCR2.67. The Court takes no position with regards
18 to a motion that was never heard, because it wasn't heard, it wasn't
19 heard. The Court takes no position on that. We have timely objections,
20 similar to the objections that the Court heard previously, with regards to,
21 when Defense raised the objection, with regards to a witness.

22 So consistent thereon, hearing these timely objections,
23 giving parties the full opportunity, you each chose to do what you chose
24 to do, with regards to a plethora of 7.27 briefs, which the Court already
25 was reviewing in regards to the terms of 7.27 briefs, and obviously the

1 NRCP provisions are the NRCP provisions.

2 Only in force and effect, everyone knows those standards,
3 Hallmark and everything. Those are always fully in force and effect. No
4 surprise to anyone. Those standards per whether or not any of those
5 happen in the case or not.

6 Well, there is a per se violation of not listing, there's are
7 NRCP 16 violation. It's been clearly articulated. It's clearly brought up
8 in the deposition. No one has provided this Court any waiver of the fact
9 that the NRCP 16 violation with regards to the background information,
10 the prior -- I'm going to just generically call it the testimonial aspect was
11 not provided. It was specifically referenced in a deposition back in July
12 29, 2019. It's undisputed since that time that there has been no
13 supplement. And so therefore that would be, well, let's go to the specific
14 assertion. 16.1(a)(2)(b), okay.

15 The report must contain a complete statement of all opinions
16 the witness will express, the basis, reasons for them, facts of data
17 considered by the witness informing them. Any exhibits that we used.
18 (V) a list of all other cases in which during the previous four years the
19 witness testifies an expert at trial, or by deposition. So it is clear, the
20 Court just got the whole clarity that, well, no, at trial, so at trial would be
21 including the *Center* case. Now the Court's going to defer the aspect
22 with regards to the *Center* case, for the sanction-type component to the
23 sanction hearing. And then the Court's independent. As you know, the
24 Court has the independent sanction hearing. So two of them, we have
25 the Rule 37 and we have the Court's, and those portions have to be

1 deferred, in fairness.

2 Those get deferred. But for purposes of Dr. Stone, it's clear
3 here that it was not. The Court gave full opportunity to see if the
4 chronology is. There's been no explanation why it was not. Well, there
5 may be an explanation why it was not in the deposition. Clearly says
6 testified at -- testified as an expert at trial, or -- so it is an or, or by
7 deposition. Okay, that provision has not changed pre-2019, post-2019.
8 So it doesn't matter how you analyze it, it's not something that would
9 change. It was brought up in deposition, clearly brought up in
10 deposition.

11 And so therefore, fully aware that that was being required
12 and it was not provided, it was not supplemented, highlights the issue,
13 because of the aspect of yes, for purposes of why this would preclude
14 Dr. Stone from testifying, this is more egregious in this case, is the *Vickie*
15 *Center*, or the aspect in this case, that was already highlighted back in
16 2018 with Dr. Rives' deposition that the *Vickie Center* case was at issue
17 and that that was an issue specifically in that case, and you had the same
18 exact attorney that was at the deposition of Dr. Rives back in 2018, and
19 now you have it for Dr. Stone. And then you do have the recent trial
20 testimony. And so there would -- the Court can't find that there would be
21 any basis to have omitted particularly that one, and you have other ones.
22 And in particular when you have him stating in his deposition that he
23 had at least 30 others, him not keeping a list is not a justification.

24 Him not supplementing is not a justification, particularly in
25 this case, when the issue of supplementing and failure to supplement,

1 even if it had supplemented after September when the issue of
2 supplementing and the failure to supplement on the interrogatory issue
3 as the subject of the first sanction motions. How we cannot, then,
4 supplement other aspects and go back to the very counsel that was here
5 on September 26th. The law firm that was here. The law firm that was
6 subject to all of this, not go back and look and see if there's other
7 obligations that have already been brought out in this case for
8 supplementing, to ensure everything is accurate for trial. And the Court
9 specifically brings up that issue.

10 Because remember at this time, what you have the other
11 rubric of, two other orders from the Court, plus a memo from the Court
12 on the rules, plus you have the September 26th hearing. Plus you've
13 already had everything on the pending sanction motion. So to not
14 supplement in that regard, knowing full well that you have witness
15 issues, and you still had time, 30 days before trial, then. Okay. You still
16 had time when the sanction motion was first brought to the attention of
17 Defense counsel. More than 30 days before trial.

18 So way before the September 26th hearing, you had the 30
19 days before trial. Time to supplement. Or even thereafter, so
20 statements to say you could do a late supplementation. The issue of
21 supplementation comes up in the pleadings on that motion, full
22 availability to fully supplement. Nothing gets supplemented. The Court
23 cannot find. And Plaintiff had already explained the prejudice that a lack
24 of supplementation, the prejudice of not having the information, and the
25 specific prejudice of the *Vickie Center* case, on this trial, this issue. And

1 still no supplementation.

2 So yes, there is no good cause. There is prejudice to
3 Plaintiff. Plaintiff had fully done it. This Court had even made a
4 determination that there was prejudice in a different context, to still not
5 supplement in this context, this Court really finds inconceivable, which is
6 not a word that I don't think I've used in almost ten years of being on the
7 bench. Because this is such an issue. So yes, there is prejudice, because
8 the Court's already ruled there's prejudice in the context, fully, clearly,
9 on notice affirmative obligations to supplement.

10 To go back easily to supplement here, because this is already
11 an issue in the deposition, in preparing for this witness's case, knowing
12 that this deposition issue had happened, could easily supplemented, and
13 asked for some excusable neglect, and then give Plaintiffs some
14 opportunity, some time, because you knew that the witness was not
15 coming up until later on in the trial. And then the Court could have dealt
16 with that, if it had come up. So there was plenty of time, plenty of
17 issues, plenty of things. The Court's had multiple, multiple, multiple
18 hearing, the emphasis on supplementing and timeliness, and taking care
19 of these issues.

20 And even, if we were to go back to October 7th when there
21 was the issue about the untimely brief that was filed on the preceding
22 Friday, which Mr. Isenberg was initially blamed for, until the Court --

23 MR. DOYLE: That's not what I said.

24 THE COURT: The transcript speaks what the transcript said
25 until the Court asked the follow up questions. Okay, so the

1 Court -- maybe the word blame, I won't use the word blame. I'll take
2 back that word.

3 What was stated in that hearing is what's stated in that
4 hearing. And there's an official transcript of what was stated. And the
5 Court had to ask several follow up questions, okay. So there the Court
6 even again said that if there's issues about extensions of time, and
7 giving bases to file supplements, to file different things, order shortening
8 time. And so clearly said that those things could be done. And the
9 proper way to do those things, okay, that would be after a couple of
10 orders, where the Court's already named a whole bunch of rules. So
11 there is no basis whatsoever.

12 So that is a per se. This is not a miniscule rule in this case
13 because of the context, and because of the number of things. And
14 because of where we are in trial. That's one independent basis to strike
15 Dr. Stone.

16 Now, even if that itself would provide one basis.
17 Independent all on its own. However, Court not even need to go there
18 on an independent basis, because now I have to look at the totality of the
19 circumstances, which is really looking at the totality of the
20 circumstances, the Court were to view that as maybe something that still
21 should allow Dr. Stone to testify because that would be a partial basis,
22 and maybe there's other basis to let him testify. The Court now has to
23 look at all the other objections provided by Plaintiff.

24 When I look at the other objections provided by Plaintiff,
25 taking full into account everything that Defendant said. Taking full into

1 account the assertion with regards to whether or not it would have been
2 known if he would be potentially a rebuttal or initial, the Court does not
3 find merit to that argument. The Court finds that the damages asserted
4 in this case, there was discovery back and forth by the parties. The joint
5 case conference report, the initial complaint, asserting the injuries and
6 damages, even looking at the allegations. The report doesn't say that
7 they're true or not true, that's for the jury to decide.

8 Looking at the allegations and looking at the plethora of case
9 law on what distinguishes between an initial expert and a rebuttal
10 expert, it is clear causation and damages are in a medical malpractice
11 case, that the damages in both past and future damages are initial expert
12 in this case, because you also already had discovery. The Court can't
13 find that somehow Plaintiffs would be on notice in October of 2016 that
14 the Supreme Court on June 22nd, 2017 would come out with a case that
15 not only acknowledges the customary practices of something, but then
16 clears up that they shouldn't be the customary and practice.

17 I don't think that they would have a foreshadowing crystal
18 ball. If they do, I'd like to know where they got it, because I don't have
19 one. But I don't think anyone does have a crystal ball. But can't hold
20 them accountable, particularly when the Supreme Court has said it's
21 been the custom and practice. So you can't hold them accountable. And
22 even in *Pizarro-Ortego*, the Court still allowed the fact that there was that
23 failure to have it, and still allowed that to happen, and actually several
24 other issues that happened. Including new damages calculations,
25 because Dr. Duke was able to testify on the stand.

1 So they even still allowed it, even though they gave that
2 cautionary language. So they still didn't even hold that case
3 accountable. And still allowed some new damage calculations, including
4 future care to come on the stand in that case. But regardless, so the
5 Court doesn't find that that would excuse the facts to somehow name Dr.
6 Stone rebuttal. Looking at his report, the report on its face is an initial
7 face. It's not a rebuttal report. Because looking at everything that you
8 all have presented to this Court, he even clearly says, he's adding his
9 own. His own words say it. Looking at his deposition, he says it. And
10 then, so you have all of those issues. So that would be adding to it.

11 So now we have it's an improper rebuttal report. So is there
12 portions of that report that may arguably could have been rebuttal,
13 versus initial. Excuse me. A moment ago I inadvertently I think used the
14 word rebuttal and I meant to say initial. His titled rebuttal report is really
15 an initial expert's opinion and should have been designated as an
16 expert's opinion. The justifications and the reasoning presented by
17 Defense counsel, the Court does not find had merit that somehow would
18 allow it to be filed as a rebuttal report, rather than an initial. Because it is
19 the standard type opinions. It doesn't fall within the narrow exception of
20 *Williams* that would allow certain of those things to be considered as a
21 rebuttal report.

22 Even to the extent that taking the context of looking at the
23 deposition in conjunction with the report, that maybe some small
24 aspects thereof could be considered proper rebuttal, when the Court
25 then looks at the *Hallmark* analysis, and takes into account the particular

1 cited pages, including 43, yeah 43, with regards to the wheelchair, et
2 cetera, and the fact that there is not any analysis as to where these
3 reports go for future damages-type context, and goes to some specifics.
4 And there's -- let's go to the *Hallmark* analysis. He even acknowledges, I
5 don't think it would be directly related to the [indiscernible]. More likely
6 she has several comorbidities, she's diabetic. I mean these are new
7 opinions. But then he even says, I am basing it -- page 43, I'm basing
8 it -- I don't think there's any study we can find on this. I'm basing it on 30
9 years of experience, and you know, the current active hospital base
10 practice. I would say it's probably in the early mid-60's start broadly
11 percentage of two diabetics become wheelchair bound.

12 Okay. I don't -- and then it says do you have any data. He
13 acknowledges, I do not. Okay. And then you have -- so his very own
14 testimony shows it doesn't meet *Hallmark* standards. See *Hallmark*. I'm
15 not going to go over all of those for time standards right now. But you
16 all know the *Hallmark* standards wouldn't meet. See *Hallmark*.

17 Okay. Does anyone need me to go through the *Hallmark*
18 standards, or do you all understand when I say the *Hallmark* standards?
19 Does anyone need me to go through each of them?

20 MR. DOYLE: Yes. If you're -- if you're relying on a new
21 argument presented for the first time this morning, I would like you to go
22 through them.

23 THE COURT: It's not a new argument. It's --

24 MR. DOYLE: *Hallmark* was raised for the first time this
25 morning.

1 THE COURT: Counsel, every single expert by law has to
2 meet the *Hallmark* qualifications. That's not a new argument. Anybody
3 who's presented has to have *Hallmark*. Court doesn't view it's a new
4 argument. Any expert. That's what Hallmark is all about. That *Hallmark*
5 is the analysis of the statute. It gives examples, and then any other
6 factors that the Court finds that should be presented. The Court in no
7 way thinks it's a new argument. The Court's -- any expert has to meet
8 the *Hallmark* qualifications. It has to be peer reviewed. So the answer is
9 it's not peer reviewed, okay. It's not individual testimony. He has stated
10 he doesn't know.

11 He says he has no data, okay. So it doesn't meet the
12 statutory basis for an expert opinion. It's not an expert opinion.
13 *Hallmark* is just an informal way of saying there's criteria. If you'd like,
14 okay. It's not peer reviewed. It does not meet any of those criteria and
15 the Court does not find that it's a new argument. By definition any
16 expert has to have those aspects. *Hallmark* is just a way to enunciate
17 what those aspects are which experts need to have.

18 Okay. So then you have that aspect. And then you have the
19 next aspect. Well, you have the next aspect is, even looking at his
20 information he does not set forth how those opinions, even to the extent
21 that the opinions that go to Dr. Barchuk, to the extent that if you even
22 parse out what those are, which -- well, if he makes a statement. The
23 fact that he says he agrees in essence with Dr. Barchuk, even if trying to
24 take into a combination the nurses' statement to go to Lance Stone, to
25 try and find, based on -- once again this is what's been presented to the

1 Court, and the Court can only rely on what's been presented to the Court.
2 And not everyone to do offers of proof, do full arguments, et cetera, and
3 what's been presented to the Court is that in looking at this, he hasn't
4 even really attributed to how his response to Dr. Barchuk would reduce
5 the life care plan in the manner consistent with statutory authority, or
6 *Hallmark*. And there was not any response on any reduction of the life
7 expectancy. But that's really a non-sequitur, but I would even give the
8 wheelchair examples that the Court was asking about.

9 But the wheelchair example and how that would somehow --
10 his opinions on what he's saying generally may happen, what impact
11 that would go to the life care plan. The fact that he has approved the life
12 care plan, without any explanation that he's articulated anything that's
13 presented to this Court, the Court can't find that that would somehow
14 allow him to then testify to something.

15 So when the Court looks at it either independently on the per
16 se NR16, violation for the reasons specific to this case, and why that
17 rises to a higher level. Maybe it might in other cases, when the Court's
18 given other analysis in and of itself, one independent reason. Second
19 independent reason is totality of circumstances.

20 Taking into account all the statutory problems, all the facts.
21 And that these are new opinions that would be -- should have been
22 properly raised as initial expert, not a rebuttal expert. Taking all the
23 *Hallmark* independently, all of that, he needs to be stricken. And the
24 Court wouldn't be able to find that there's a basis -- it doesn't meet
25 50.275, et cetera. The Court has fully listened to everyone, taken

1 everything into account. Really taking into account this *Pizarro-Ortego*
2 argument. Taking into account the chronology everyone has presented.
3 The Court's fully listened to the interrogatories that have been presented,
4 to show that yes, these damages were asserted. Look at the various
5 pleadings, anyone's wanted me to look at. Giving people an opportunity
6 to ask the other doctors that have been presented, to see if those would
7 have brought anything. Looked at witness list, et cetera. And that's
8 what the Court has to make its ruling based on, so Dr. Stone needs to
9 be -- the objection needs to be sustained, and there's no basis in which
10 Dr. Stone would be able to testify.

11 That's what the Court's ruling needs to be, and that's what it
12 is. So --

13 MR. DOYLE: So then my --

14 THE COURT: -- at this juncture, we will need to move
15 forward with Plaintiff's witness, and then I will take on any other issues
16 after we finish with Plaintiff's next witness --

17 MR. JONES: Thank you, Your Honor.

18 THE COURT: -- so that the jury at least gets in here for one
19 witness before the lunch break, and then I'll take other issues after we at
20 least get the next witness on, so that Plaintiff can rest their case, and
21 then we'll address anything else right after that, okay.

22 MR. JONES: Thank you, Your Honor.

23 MR. DOYLE: Can I have a moment, just because everyone's
24 in the hallway. I'm going to release Dr. Stone. I'm going to release Sarah
25 Larson, because I assume the same analysis will apply to Sarah Larson.

1 THE COURT: The Court has not ruled on anyone other than
2 Dr. Stone because I'm realizing the time. It's 11:20. The jury's now been
3 waiting out there again another hour. Plus when we told them to come,
4 okay.

5 MR. DOYLE: Well --

6 THE COURT: I wanted to ensure everyone had a full
7 opportunity to argue everything that they wished to argue. And so that's
8 why the jury had to sit out there. But in fairness, Plaintiff always has an
9 opportunity because this got deferred so that Defense counsel didn't
10 have Dr. Stone waiting out there too much longer. Court did that. It had
11 Plaintiff's counsel's witness wait longer, as well. And so I wanted to do
12 that. So --

13 MR. DOYLE: Well, I'm --

14 THE COURT: -- the Court hadn't ruled on anybody else.

15 MR. DOYLE: No, I understand but I'm -- just for the record,
16 I'm going to release her, because like Dawn Cook, what Sarah Larson did
17 was she took Dr. Stone's opinions about the future care needs, relied on
18 his opinions for those needs and the frequency and what not, and like
19 Dawn Cook, simply costed them. So without the testimony from Dr.
20 Stone, there's nothing that Sarah Larson could testify about. So I'm
21 going to release her. Thank you.

22 THE COURT: Okay, so at this juncture --

23 MR. DOYLE: So can I just have a moment out in the hall?

24 THE COURT: Of course, you may. You want me to go off
25 the record for --

1 MR. JONES: Okay.

2 THE COURT: -- ten minutes and come back at 11:30. Thank
3 you, so much.

4 [Recess at 11:21 a.m., recommencing at 11:34 a.m.]

5 THE COURT: Just let us know when we're back on the
6 record, please.

7 THE MONITOR: On the record.

8 THE COURT: Okay. We're back on the record outside the
9 presence of the jury. So counsel, are you ready to bring the jury back in
10 and -- so Plaintiff can finish with their last witness?

11 MR. LEAVITT: We are, Your Honor. I just spoke with
12 counsel. We would like to split the cost of lunch for the jury if this Court
13 would allow it. I've done it in other trials. I'm not saying that that's
14 precedent. Please don't take it that way. If we ordered sandwiches from
15 Capriotti's [phonetic], and we would split it.

16 THE COURT: The reason why we can't do that --

17 MR. LEAVITT: Okay.

18 THE COURT: -- in the rule of trials because remember if we
19 put the jury back into the jury room, then I need to ask a member of
20 the --

21 MR. LEAVITT: Fair enough.

22 THE COURT: -- staff to take their lunch break to monitor and
23 oversee that. And in fairness to asking someone at 11:35 to all of a
24 sudden do that, I would not put someone on the spot in front of all
25 counsel. You can appreciate --

1 MR. LEAVITT: Absolutely.

2 THE COURT: -- and do that. While I have an amazingly,
3 wonderful team, I would not do that to them in front of you all. You
4 might notice I -- and I had -- well, it's going to be going somewhere else.
5 I guess we're getting a different cake this evening. I went and sliced up
6 ten slices of a cake that I was going to be doing for something else late
7 this evening for the jury to hopefully enjoy to gnaw on for a few
8 moments if no one has any objection to the jury eating said cake.

9 MR. LEAVITT: Oh, excellent.

10 THE COURT: Then --

11 MR. DOYLE: And Your Honor, I --

12 THE COURT: -- I was going to --

13 MR. DOYLE: -- have the --

14 THE COURT: Is that okay with everybody?

15 MR. DOYLE: Yeah. Oh, yeah.

16 MR. LEAVITT: Yes. Absolutely, Your Honor.

17 THE COURT: Okay. But we're still going to need to stop at
18 noon because remember the team has been here. So --

19 MR. DOYLE: Yes.

20 THE COURT: -- you said your witness was going to take less
21 than 20 minutes so --

22 MR. LEAVITT: Absolutely, Your Honor.

23 THE COURT: -- that meant -- so if that works, can the
24 marshal start to go get the jury and I can address -- if that's just handing
25 the Court something, I'll be glad to take it. But you can multi-task here.

1 Are you ready for the marshal to bring the jury in?

2 MR. DOYLE: Yes.

3 THE COURT: Does that work?

4 MR. LEAVITT: Absolutely.

5 THE MARSHAL: May I retrieve the witness, Your Honor?

6 THE COURT: Would you like -- do you want the witness --

7 MR. LEAVITT: Yeah.

8 THE COURT: -- on the stand first or do you wish to call the
9 witness? What would you like to do?

10 MR. LEAVITT: Let's put him on the stand if you don't mind.

11 THE COURT: Is that okay with Defense Counsel?

12 MR. DOYLE: Yep. Of course.

13 THE COURT: Okay.

14 THE MARSHAL: What's the name, counsel?

15 MR. LEAVITT: Addison Durham.

16 THE MARSHAL: Addison Durham.

17 THE COURT: Okay. So while the marshal is doing that,
18 Counsel for Defense, what may I assist you with?

19 MR. DOYLE: I have a courtesy copy of a trial brief about
20 Dr. --

21 THE COURT: Is it filed?

22 MR. DOYLE: Yes, it has been filed.

23 THE COURT: Okay.

24 MR. DOYLE: About Dr. Chaney because we are --

25 THE COURT: That's fine.

1 MR. DOYLE: -- tentatively have her -- she can come back
2 tomorrow afternoon, but she has to cancel patients. So we're hoping to
3 figure something out soon.

4 THE COURT: Just -- you just handed it to me two seconds
5 ago so --

6 MR. DOYLE: Well, but it was -- it's an issue that came -- I
7 mean Dr. Chaney's testimony came up I believe --

8 THE COURT: Right.

9 MR. DOYLE: -- yesterday by Plaintiffs.

10 THE COURT: I appreciate that, counsel, but the Court has
11 been asking for a while if there was any subpoena or anything that the
12 Court could take a look at so the Court could address it. There still hadn't
13 been as of at least yesterday any subpoena filed or any piece of paper or
14 anything for the Court to look at so the Court could look at anything until
15 somebody provided it for me. But we now have a different witness so,
16 marshal, can you go get the jury, please?

17 THE MARSHAL: Yes, Your Honor.

18 THE COURT: Do appreciate it. So --

19 MR. DOYLE: A subpoena was filed, e-filed and served this
20 morning for tomorrow.

21 THE COURT: I wouldn't know. I've been on the bench all
22 morning.

23 MR. DOYLE: Okay.

24 THE COURT: I don't know. You said there was two
25 subpoenas. The Court had nothing to look at so the Court said it would

1 be glad to address things if it gets provided the appropriate information,
2 be glad to address it.

3 Do you need a pocket microphone, or you look like you've
4 already got it --

5 MR. LEAVITT: I've got it.

6 THE COURT: -- hooked up. It looks like you're hooked up.

7 MR. LEAVITT: I hid it inside my jacket for fashion --

8 THE COURT: No worries.

9 MR. LEAVITT: -- purposes.

10 THE COURT: It looked like there was a clip on your lapel, but
11 I wanted to make sure. Is it on and ready to go?

12 THE MONITOR: It's not on.

13 MR. LEAVITT: It's not on yet.

14 THE COURT: No worries. Get that taken care of. Thank you
15 so much.

16 THE MONITOR: Now it's on.

17 MR. LEAVITT: Sorry.

18 THE COURT: Okay. Yeah.

19 So marshal will indicate to everyone it will be a courtesy
20 when the jury comes in everyone is asked to stand when the jury comes
21 in.

22 THE WITNESS: Okay.

23 THE COURT: Okay. No worries. Thank you so very much.

24 THE WITNESS: Stand now?

25 THE COURT: Perfectly fine if you wish to do so.

1 THE WITNESS: Okay.

2 THE COURT: And the Court will always remind you but also
3 might as well mention it now that answers need to be yeses, noes. The
4 Court can't -- not saying [indiscernible] answers but can't -- Court can't --
5 the record can't take uh-huhs, huh-uhs, nods of the heads, shrugs, et
6 cetera. So --

7 THE WITNESS: Like that?

8 THE COURT: -- articulate --

9 THE WITNESS: I just did.

10 THE COURT: I just saw you doing one so might as well
11 mention it now. The Court mentions it to witnesses just as a courtesy so
12 we ensure that we get a clear record that needs to be audible responses
13 whatever those audible responses are but in a manner that can be
14 recorded. Thank you so much.

15 THE MARSHAL: All rise for the jury.

16 THE COURT: Do appreciate it. Thank you so much.

17 [Jury in at 11:39 a.m.]

18 [Within the presence of the jury]

19 THE COURT: Appreciate it.

20 THE MARSHAL: All the jurors are present and accounted for.
21 Please be seated.

22 THE COURT: Welcome back, ladies and gentlemen.
23 Hopefully you had a nice and relaxing evening. Appreciate it. We
24 are -- at this juncture, we have a new witness to save a moment or so.
25 And there's some cake if anybody wishes some. Marie Antoinette, let

1 them eat cake, right?

2 Counsel, would you like to call -- we're still on Plaintiff's case
3 in chief. So Plaintiff's Counsel, would you like to call your next witness,
4 please?

5 MR. LEAVITT: Yes, Your Honor. I'll call my last witness,
6 Addison Durham.

7 THE COURT: Okay. And for just saving a moment or so, the
8 witness is already on the stand.

9 Madam Clerk, would you mind swearing in the witness,
10 please? Swearing or affirming. Thank you so much.

11 THE CLERK: Yes, Your Honor.

12 Will the witness please stand and raise your right hand?

13 ADDISON DURHAM, PLAINTIFF'S WITNESS, SWORN

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

16 THE WITNESS: Addison Durham, A-D-D-I-S-O-N. Durham is
17 D-U-R-H-A-M.

18 THE CLERK: Thank you.

19 THE COURT: Counsel, you may proceed at your
20 convenience. Thank you so much.

21 MR. LEAVITT: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. LEAVITT:

24 Q Good morning, Addison. Could you tell the jury where
25 you're from?

1 A Originally, I'm from Los Angeles, California.

2 Q Okay.

3 A And lived out here the last 22 years.

4 Q And do you have a family?

5 A Yes.

6 Q Okay.

7 A I have a wife and two kids.

8 Q Okay. Now, will you please tell the jury why you came to
9 choose to live in Las Vegas?

10 A I own a construction company. And while I was in Los
11 Angeles, it was slow, and Vegas was booming at the time. So I came to
12 Las Vegas, started doing construction out here and been here ever since.

13 Q Okay. Now, who is Titina Farris to you? Can you please tell
14 the jury who she is?

15 A She's my older sister. We're ten years apart so we had
16 grown up together in the house at one point in time. But as you know,
17 when they get older, they move out. I stayed in.

18 Q Okay. Very good. So growing up, how was she as a big
19 sister?

20 A Great. I mean she picked me up from school and walked me
21 home when I was a kid. So yeah, she was the one that looked after me
22 and my little sister.

23 Q Okay. And growing up with Titina, what type of activities
24 would you do other than walking -- taking you to school back and forth?

25 A She would -- we would really just hang out in her bedroom.

1 She put on music and danced to like early Prince and stuff like that and
2 showed me new stuff and new records that would come out. So that
3 was kind of cool.

4 Q Okay. There was an early Prince?

5 A Yeah. I mean, you know, the controversy, the 1999, yeah.
6 Early Prince.

7 Q Okay. Very good. So would you take family vacations
8 together --

9 A Oh, yeah.

10 Q -- growing up?

11 A Yeah.

12 Q What are some of the vacations you did?

13 A One we went to New York. Well, we had a family reunion in
14 Philly. And so we caught the train over to New York and we -- I think it's
15 called Grand Central Station. So we just walked around all of Manhattan
16 for the day. It was cool. It was me, her, my two other sisters and my
17 brother. And we just hung out and just basically walked around
18 Manhattan for the day. We were up until -- I think we got there probably
19 by, I don't know, it was still morning. It was probably late morning, like
20 10:00. So hung out all night. We didn't get back to the room until like
21 12.

22 Q Okay. When was that?

23 A About 2010.

24 Q Okay. Okay. Very good. What is one of your fondest
25 memories of Titina, your sister?

1 A I guess she put on like this Halloween party. And -- for her
2 birthday, she puts on Halloween parties because it's all around the same
3 time. So we would go over there, and she'd have music. She'd actually
4 have a DJ. She'd have a live DJ and put on like a whole club scene
5 atmosphere where you'd have costume competitions and dance
6 competitions and then hot potato for the kids. It was a cool event. So
7 she would hold those every year. And I thought that was a cool thing.
8 So just hanging out at one of her events was cool.

9 Q Okay. And you used the word events. Because -- is that
10 because it was so big?

11 A Because it beyond like just a little, you know, family party
12 because she invited all her friends and everybody else in the
13 neighborhood would come. So it was like a cool -- it was a cool little
14 scene that she had going there.

15 Q And during these friend and family events, what was Titina
16 doing? Was she competing? Was she dancing? What was she doing?

17 A She was doing a little of everything. She was trying to be
18 host so she was going around making sure everybody got like cupcakes
19 and candy corn and stuff for Halloween. But then she'd be out there
20 dancing with everybody else to make sure they had a good time. So that
21 was cool.

22 Q Now, do you recall when Titina went into surgery July 3rd,
23 2015?

24 A I do. I do remember -- I do remember her going in, yes.

25 Q Okay. And when were you notified that she wasn't coming

1 out within a couple days?

2 A It was probably about a week afterwards.

3 Q Okay.

4 A My mother called me and was like something ain't right.

5 And I said what do you mean. I assumed that she was already out. She

6 said something is not right. And I said why. She said Tina's in the

7 hospital.

8 MR. DOYLE: Objection. Hearsay.

9 THE WITNESS: Well, this is what my mother told me.

10 THE COURT: Excuse --

11 MR. LEAVITT: Hold on.

12 THE COURT: Okay. Hearsay as to the party, overruled.

13 THE WITNESS: So I went to the hospital to see what was

14 going on, and she was just unconscious, just really swollen. Really,

15 really swollen. And that's when I really got concerned.

16 BY MR. LEAVITT:

17 Q Okay. Can you tell the jury other than swollen, can you paint

18 the picture mentally of what your sister -- when you walked into the

19 hospital room, can you tell the jury what you saw exactly?

20 A She was unconscious. She had like a tube in her mouth, just

21 laying back there just like swollen with a -- if I remember like a bunch of

22 sheets over top of her. And her feet were -- I could see her feet. Her feet

23 were, you know, they were exposed, and they were like really puffy on

24 the top of the foot. And she just was out of it, you know, just out of it.

25 Q From that time you saw her until the second surgery of July

1 16th, 2015, did you ever get a chance to speak to her?

2 A Not that I can recall. I just remember speaking to the nurses.

3 Q Okay. Why couldn't you speak to her?

4 A She was -- she was still knocked out. I mean she was -- she
5 was unconscious.

6 Q Have you ever seen your sister like that before?

7 A No. Never.

8 Q How did that make you feel?

9 THE COURT: Just a sec. Counsel --

10 MR. DOYLE: Objection.

11 THE COURT: -- once again, we've got -- before I hear the
12 objection, let me just give you a caution. We had two people speaking at
13 the same time, starting to be a third, and you're speaking a little bit
14 softly. You might want to put the microphone a little closer to you so we
15 can make sure everything can be heard.

16 THE WITNESS: Sorry.

17 THE COURT: Let me here the objection. You may have to re-
18 ask the question anyway because --

19 MR. LEAVITT: Sure.

20 THE COURT: -- it may not have been heard. But counsel,
21 what's your objection?

22 MR. LEAVITT: Fair enough.

23 MR. DOYLE: Relevance.

24 THE COURT: The Court is going to actually -- since it
25 couldn't really hear the question partly because the answer was coming

1 in at the same time the Court was starting to say something to the
2 witness, what I'm going to do is the Court is going to ask counsel to
3 withdraw and re-ask the question. And then if Counsel for Defense has
4 an objection, you can restate your objection so we're just clear what the
5 question was. And the jury will disregard whatever that last
6 question/answer/objection was.

7 Go ahead, counsel.

8 MR. LEAVITT: Thank you, Your Honor.

9 BY MR. LEAVITT:

10 Q And the question is, is how did that make you feel?

11 MR. DOYLE: Objection. Relevance.

12 THE COURT: Sustained.

13 BY MR. LEAVITT:

14 Q Okay. Very good. Did you see Patrick at the hospital?

15 A Yes.

16 Q Now, what did you observe about Patrick while Titina was in
17 the hospital?

18 A Obviously, he looked upset, and he looked like he was pretty
19 much helpless, like he couldn't do nothing.

20 Q Do you recall going -- attending a meeting with the hospital
21 administration?

22 A Yes.

23 Q Without telling us what any others have said, what happened
24 in that meeting?

25 A I told Dr. Rives that he messed up. I used like a mechanic

1 analogy. I said if I brought my car to you once to get it fixed and it blows
2 up, if I bring it to you again and it blows up again, I'm not going to give
3 you a third opportunity to blow up my car. It's just not going to happen.
4 He said well, you know, this time I can get it right. This time let me -- I
5 can take care of it. The head of the hospital was there because that was
6 part of the meeting. And he said --

7 MR. DOYLE: Objection. Hearsay.

8 THE COURT: The Court needs a clarification who the he the
9 witness is about to refer to before the Court can rule.

10 THE WITNESS: He was the head of administration of the
11 hospital.

12 THE COURT: Then the Court sustains the objection as to
13 hearsay.

14 MR. LEAVITT: Okay.

15 THE WITNESS: And --

16 MR. LEAVITT: The objection is sustained so you can't --

17 THE WITNESS: Oh, it means can't go?

18 THE COURT: You cannot answer.

19 MR. LEAVITT: You cannot --

20 THE WITNESS: Sorry.

21 MR. LEAVITT: Okay.

22 THE COURT: You cannot set forth what the --

23 THE WITNESS: Sorry about that.

24 THE COURT: No worries. Since the Court sustained the
25 objection by counsel with regards to what you're about to say, the

1 administrator of the hospital, you cannot answer that portion of the
2 question. Thank you.

3 BY MR. LEAVITT:

4 Q After the meeting, was Dr. Rives removed from Titina's care
5 from your understanding?

6 A Yes, he was.

7 Q Did you see Titina after the second surgery?

8 A After the surgery --

9 Q On July 16th.

10 A Was that the one after Elizabeth Hamilton?

11 Q No. That's the one Ms. Hamilton did.

12 A After that, yeah, I seen Titina.

13 Q Can you tell the jury what Titina looked like after that
14 surgery?

15 A Oh, swelling went down. And she showed me her stomach
16 where it was like cut open. And she was actually talking so she was like I
17 wouldn't say back to normal, but she was, you know, she was actually
18 communicating back and forth with me like, you know, like wow, I
19 just -- what's going on. I was like nothing -- you don't realize you were
20 just out for like a long time. So she was -- she was a lot better. Put it like
21 that.

22 Q Okay. Very good. How often did you visit her?

23 A Probably every day. I might have missed one or two days.

24 Q Okay. Did you get a chance to visit Titina when she was in
25 the rehabilitation center?

1 A Yeah.

2 Q What did you observe?

3 A Spirits were a lot better. You know, from being unconscious
4 to me talking to her in the hospital to wow, I'm starting to figure stuff
5 out. I had to almost replay and tell her, you know, bring her up to speed
6 about you were out for X amount of days. And she was like, oh, okay.

7 Q Since the surgery, you've obviously spent time with your
8 sister?

9 A Yeah.

10 Q Okay. Have you seen Titina and Patrick interact at home
11 since the surgery?

12 A Yes.

13 Q Can you tell us what you've observed?

14 A He runs behind her like a little puppy and picks up stuff and
15 helps her here and does this and does that. So he's kind of like, you
16 know, he's -- I guess he's just, you know, like an on-hand gopher for her
17 and stuff because she's trying to get around on that walker and he's
18 helping her, assisting her. Because when they come to my house,
19 there's like a long driveway so he's got to assist, you know, help her
20 come in and out and up the stairs and everything like that. So he's like a
21 -- basically a full-time caregiver I guess you could say, yeah.

22 Q How would you -- how's your sister's spirits now?

23 A They're okay.

24 Q Okay.

25 A They're okay. Just okay.

1 Q Can you explain to the jury what's the difference between
2 Titina prior to July 3rd, 2015 and today?

3 A Loved to do a lot more stuff. Loved to do a lot more stuff.
4 She was -- prior she was like oh, let's go see Bruno Mars, let's go check
5 out this, let's go check out that. And I was like okay, cool. You know,
6 we'd get tickets. Let's do it. And now she's like do they have handicap,
7 you know, a handicap place that I can sit in there and do they have this,
8 and do they have that. And it's just a whole lot of restrictions that she
9 puts on herself.

10 I'm telling her like, you know, we could still go out. She's like I
11 don't want people to see me like this. My foot is flapping, and I don't
12 want people to see me. So she don't -- really don't like to go out as
13 much as she used to which I can kind of understand in a way, but --

14 MR. LEAVITT: Okay. Thank you. I have no further questions
15 for you --

16 THE WITNESS: Thank you.

17 MR. LEAVITT: -- Addison.

18 Your Honor, I pass the witness.

19 THE COURT: Thank you.

20 Cross-examination, counsel?

21 MR. DOYLE: No questions. Thank you.

22 THE COURT: Okay. Is this witness excused for all purposes
23 or subject to recall?

24 MR. LEAVITT: Your Honor, excused for all purposes on
25 behalf of the Plaintiffs.

1 MR. DOYLE: Agreed.

2 THE COURT: Okay. This witness is excused for all purposes.
3 Thank you so very much.

4 THE WITNESS: Thank you.

5 THE COURT: Okay. Then at this juncture -- please watch
6 your step. Oh, you're watching your step. Perfect. Okay.

7 THE WITNESS: Yeah.

8 THE COURT: So at this juncture, feel free to go to the double
9 doors and this witness is excused for all purposes.

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

11 MR. LEAVITT: Your Honor, Plaintiffs rest their case in chief.

12 PLAINTIFFS' REST

13 THE COURT: Okay. Since Plaintiffs' case -- rest their case in
14 chief, ladies and gentlemen of the jury, you know the next step would be
15 for Defense Counsel to call any witnesses -- additional witnesses. There
16 already was the witness outside by agreement of the parties. The
17 Defense to call any additional witnesses they wish in their case in chief.
18 Since it is a few minutes before the noon hour, while the Court is fully
19 appreciative that the testimony in this case, you can also appreciate that
20 the Court has been here doing since the early morning so it's probably
21 going to make the most sense to break for the lunch hour because you
22 can appreciate the Court and its staff has been here since the early
23 morning handling matters and needs to ensure that its staff gets its state
24 and federally mandated lunch break.

25 And so the Court is going to need to break for the lunch hour.

1 We're going to return at 1:00.

2 So ladies and gentlemen, during this lunch recess, you are
3 admonished not to talk or converse -- actually, you know what, ladies
4 and gentlemen, I'm going to say 1:15. 1:15. Sorry, my apologies. But
5 1:15, ladies and gentlemen.

6 During this lunch recess, you are not to -- you are
7 admonished not to talk or converse among yourselves or with anyone
8 else on any subject connected with this trial. You may not read, watch or
9 listen to any report or -- bless you -- commentary of the trial or any
10 person connected with the trial by any medium of information, including
11 without limitation, social media, texts, tweets, newspapers or television,
12 internet, radio or anything the Court has not stated specifically is, of
13 course, also included.

14 Do not visit the scene of the events mentioned during the
15 trial. Do not undertake any research, experimentation or investigation.
16 Do not do any posting or communications on any social networking sites
17 or anywhere else. Do not do any independent research including but not
18 limited to internet searches. Do not form or express any opinion on any
19 subject connected with the trial until the case is fully and finally
20 submitted to you at the time of jury deliberations. With that, we wish
21 you a nice and relaxed lunch. If anyone wishes to take a piece with you,
22 feel free to do so. If not, we'll --

23 THE MARSHAL: All rise for the jury.

24 THE COURT: -- wrap it up and make it for the afternoon.

25 Thank you so much.

1 [Jury out at 11:56 a.m.]

2 [Outside the presence of the jury]

3 THE COURT: Just one second until the door closes, please.
4 Okay. Before we go off the record just for one quick second, the Court
5 just wants to make a quick clarification. Although the Court did make a
6 clarification -- we're outside the presence of the jury. As we were -- just
7 one second. It's just the marshal just was coming back in. Okay. I just
8 wanted to make sure we still -- none of the jurors present.

9 Okay. The Court just wants to make one quick point of
10 clarification. Although the Court did clarify that the Court had used a
11 term which was the Court's -- oh, sorry.

12 One second. Okay. Let me tell you what -- we just got a
13 request from the jurors so let me just go into this. Juror request. I have
14 a 4 -- 5:15 meeting at Miracle Mile. Very important to my company. Is
15 there any way possible to leave at 4:30 p.m.? They lost a lot salespeople
16 due to this. So --

17 MR. DOYLE: That's fine.

18 MR. LEAVITT: Yes, Your Honor.

19 THE COURT: That would be ending today at 4:30.

20 MR. JONES: I have no problem, Your Honor.

21 MR. LEAVITT: Absolutely.

22 MR. DOYLE: Yeah. We chopped -- we cut some witness
23 time out so --

24 THE COURT: Is that able to be accommodated? It's up to
25 you all.

1 MR. DOYLE: Yes.

2 MR. LEAVITT: Yes, Your Honor.

3 MR. JONES: Yes, Your Honor. That's --

4 THE COURT: Okay.

5 MR. JONES: -- more than happy to.

6 THE COURT: Okay. So then we'll let that juror know.

7 What the Court was starting to say is the Court prior to the
8 jury coming in last time when the Court was explaining something, the
9 Court had made a statement, and the Court has said it was its own term.
10 It wasn't something that had been used by Mr. Doyle. But the Court just
11 wants to be clear that the statement that Mr. Doyle had said back on
12 October 7th. And I said the transcript would bear out what was actually
13 said, but I just want to be clear that Mr. Doyle's statement was "Your
14 Honor, after consultation with appellate counsel, a decision was made to
15 file the supplemental brief." So that was the statement that was made.
16 So I just want to be clear that that was the statement that was made.

17 The Court had used its own term because that's how the
18 Court had interpreted that initially. But then there was further
19 discussion. So I just want to be clear that that was the statement that
20 was made based on the transcript. Okay?

21 MR. DOYLE: Thank you.

22 THE COURT: I do appreciate it.

23 MR. JONES: Thank you, Your Honor.

24 THE COURT: Thank you so very much. At this juncture,
25 Madam Court Reporter, you can go off the record. I told the jury 1:15

1 since -- who is the witness anticipated first after the lunch break?

2 MR. DOYLE: Dr. Adornato.

3 THE COURT: Well, my team needs their break and it
4 depends on -- so you're going to have to come back at 1:10 and we'll see
5 how --

6 MR. DOYLE: Okay.

7 THE COURT: -- quickly you're going to address Adornato
8 and what you're going to do with the jury. Okay.

9 [Recess at 11:59 a.m., recommencing at 1:12 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: We're on the record outside the presence of the
12 jury in Case Number 739464. Okay, counsel since Plaintiff rested,
13 Defense counsel, understand your first witness is Dr. Adornato. I
14 understand that there's an objection from Plaintiff's counsel. Plaintiff's
15 counsel succinctly please set forth what your objection is. Succinctly
16 please for the jury's sake.

17 MR. JONES: Very simply -- very simply, Your Honor, under
18 NRCP 16.26 and Rule 37, it's not a properly disclosed rebuttal expert. He
19 has initial opinions. If I turn the Court's attention quickly just to page --
20 my second exhibit, which is Dr. Adornato's --

21 THE COURT: Okay, you've got to --

22 MR. JONES: That's it. Oh, I'm sorry.

23 THE COURT: -- since you all have given -- as you know, it's
24 been non-stop with these briefs while I'm sitting here. So you need to
25 give me a date and time of which brief you're referencing by title, please.

1 MR. JONES: Sure. It's rebuttal experts must only -- must
2 only be limited to rebuttal opinions.

3 THE COURT: Date and time because you guys have got a
4 couple with that title on it, so --

5 MR. JONES: It's -- my apologies. The 24 --

6 THE COURT: The 10/24 or 10/29 one?

7 MR. JONES: 10/24.

8 THE COURT: That's what I'm asking. Thank you.

9 MR. JONES: You're welcome.

10 THE COURT: Okay, so which page on that one?

11 MR. JONES: Exhibit 2, you should have an exhibit there.

12 THE COURT: Exhibit 2, December 18, 2018?

13 MR. JONES: Correct, Your Honor.

14 THE COURT: Okay, go ahead.

15 MR. LEAVITT: She said, go.

16 MR. JONES: Oh, go ahead. It says, per your request, I have
17 under -- Mr. Kucho [phonetic]. I have reviewed this matter to rebut
18 opinions of Justin Willer, and to comment on the causes of Titina Farris'
19 injuries. You go through his report. These are initial opinions.

20 THE COURT: So let's pinpoint which ones you assert are
21 initial opinions that were not properly disclosed in a timely manner,
22 please.

23 MR. JONES: Okay, let's flip to the first page just goes
24 through his CV, who he is, what he does.

25 THE COURT: Uh-huh.

1 MR. JONES: Page two of Mr. -- or Dr. Adornato's report. The
2 first paragraph, my review of the records have revealed the following
3 pertinent facts.

4 THE COURT: Okay. So can I have you just pinpoint which
5 ones you are saying are opinions that should have been initial opinions
6 versus rebuttal opinions. If you just pinpoint me to the paragraph, so we
7 can kind of focus them in. And then that way Defense can focus in for
8 his response, too?

9 MR. JONES: Yes, Your Honor, so paragraph one.

10 THE COURT: You're saying there's a new paragraph there?

11 MR. JONES: Yep,

12 THE COURT: Okay, which one?

13 MR. JONES: Says that -- it goes through and just says what
14 she is. Which is tethered to the -- his opinions, which he comes down to
15 one, two, three, four, fifth paragraph, which says Dr. Willer's Plaintiff is
16 lacking acknowledge -- and acknowledgement of Farris' pre-existent
17 diabetic as a significant factor in her disability.

18 Her pre-existent -- that whole paragraph is an initial opinion.
19 You can't get to -- what they're trying to do is segue in what should have
20 been an initial. That entire paragraph says look, there should have been
21 a way, looking at the pre-existing and not. And that's an initial.

22 THE COURT: Counsel, I -- can you maybe articulate that a
23 little bit more -- so the Court can understand what the this and the that
24 is?

25 MR. JONES: Sure.

1 THE COURT: Diabetic is in Dr. Chaney, her treating
2 physician's notes is what you all have previously stated in a previous
3 argument from the first week of trial, correct?

4 MR. JONES: Correct. What he --

5 THE COURT: Okay.

6 MR. JONES: Correct. What he is offering here --

7 THE COURT: Sure.

8 MR. JONES: -- is a new opinion that her foot drop --

9 THE COURT: Okay.

10 MR. JONES: -- is caused by diabetes.

11 THE COURT: Okay. Foot drop caused by diabetes. Okay, so
12 that's an opinion.

13 MR. JONES: And so --

14 THE COURT: Okay.

15 MR. JONES: Okay, here's a --

16 THE COURT: Gotcha.

17 MR. JONES: Here's a -- here's another opinion. He's saying
18 her neuro -- her pain in her legs --

19 THE COURT: Uh-huh.

20 MR. JONES: -- are caused from diabetic neuropathy.

21 THE COURT: Okay.

22 MR. JONES: So you have -- you have the pain -- and the loss
23 of sensation is also called by diabetic neuropathy.

24 THE COURT: So quick point of clarification. That's why I'm
25 interrupting. I just need a quick point of clarification. Is it accurate that

1 there were no initial experts in causation designated by Defense
2 counsel?

3 MR. JONES: That is correct, Your Honor. Dr. Jewell that this
4 Court just heard is the only initial.

5 THE COURT: Okay. So -- and he's testified what he's
6 testified to.

7 MR. JONES: He has, Your Honor.

8 THE COURT: Okay.

9 MR. JONES: He has not made a causal connection between
10 diabetes and neuropathy, foot drop, any of the others. He simply hasn't.

11 THE COURT: Okay. And Dr. Chaney -- just a point of
12 clarification. Dr. Chaney's records, she was initially disclosed in your
13 16.1 joint case conference report, correct?

14 MR. JONES: That is correct.

15 THE COURT: I saw her in your October documents that you
16 provided in October 2016, HIPAA releases of Dr. Chaney's records or
17 anything like that provided?

18 MR. JONES: I'd have to look at that. But, yes, all the -- all of
19 her records have been disclosed. In fact, Mr. Hand, who is behind me,
20 his office disclosed all of Chaney's records. And they did a blanket
21 HIPAA off.

22 THE COURT: Prior to the expert disclosure, is my question --

23 MR. JONES: Yes, Your Honor.

24 THE COURT: -- timewise. Okay, sorry. Go ahead. Please
25 continue.

1 MR. JONES: So --

2 THE COURT: So you have points for fellow experts.

3 MR. JONES: -- they've had --

4 THE COURT: Thank you.

5 MR. JONES: Right. They've had Chaney's records. They've
6 known that Ms. Farris is diabetic this entire time. It is not a surprise that
7 she's diabetic. Chaney's records on every single, just about every visit,
8 sets forth diabetic neuropathy, neuropathy, diabetes. It's been in there
9 throughout. In fact, this Court has heard it when the assertion -- Mr.
10 Doyle's addressed it several times, with many experts. Since 2014, she
11 has been seen for diabetic neuropathy. She has taken pain medications
12 for that. This has been known from the outset that Ms. Farris has
13 diabetes. So the argument that this is new or surprise to them is not
14 meritorious.

15 THE COURT: Okay.

16 MR. JONES: They've known about diabetes ever since --
17 from the beginning of this case. When the 16.1's came out, they had
18 authorization. They are the ones that disclosed Chaney's records in the
19 -- in the pre -- in their proposed exhibits. They've known, they've
20 deposed Titina Farris on 10/11/2018. They deposed Patrick Harris
21 10/11/20 -- 2018.

22 THE COURT: The Court -- the reason why I'm interrupting
23 you, wait, 10/11, so predating --

24 MR. JONES: Expert disclosures.

25 THE COURT: Expert disclosures. That's what I'm trying --

1 I'm trying to get dates predating expert disclosures. Thank you. Okay.

2 MR. JONES: So I was going to -- I was going to get there,
3 Your Honor.

4 THE COURT: Yeah.

5 MR. JONES: So they deposed -- Dr. Rives was deposed 20 --
6 or 10/24/2018. Dr. Rives in -- they have had the medical records which
7 show that she -- Titina Farris was diabetic. When she was in the hospital,
8 under the care of Dr. Rives. They have had that. That was in the 16.1.
9 Also -- so then I get to the initial disclosure -- initial expert disclosure
10 date of November 18, 2018. These opinions are not new and surprise.
11 There's nothing new in here that he's saying that should not have been
12 said in initial. It's akin to anybody who -- any other case. You have a --
13 you have a Plaintiff. You have duty, breach, causation, damages.
14 Causation, that's a big part of it. Typically, an IME is requested.

15 THE COURT: Uh-huh.

16 MR. JONES: Or Rule 35 exam --

17 THE COURT: Uh-huh.

18 MR. JONES: -- to be more specific. That wasn't done. They
19 have all the records. They had ample time to do any discovery they
20 needed. Discovery has been extended, as this Court knows, numerous
21 times. They didn't do that. They had every opportunity to get an initial
22 on known conditions.

23 THE COURT: Okay.

24 MR. JONES: That's it.

25 THE COURT: Counsel for Defense.

1 MR. DOYLE: So yes, I mean I agree and Dr. Adornato is
2 prepared to testify that Mrs. Farris had longstanding diabetes prior to
3 July 15, based upon all of the records that were available. And -- but
4 he's also prepared to testify that she had a significant painful diabetic
5 neuropathy prior to July of 2015. In part due to her poorly controlled
6 diabetes. And, you know, again according to those --

7 THE COURT: All right, counsel, the reason why I'm going to
8 interrupt you because remember the key issue here is, he was
9 designated as a rebuttal expert. And the objection is, is that he -- these
10 opinions should have been an initial expert, not a rebuttal because these
11 are not rebuttal expert opinions. These could have been provided in
12 initial expert. So --

13 MR. DOYLE: The surprise is Dr. Willer and his opinion that
14 Mrs. Farris had what Dr. Willer characterized, or calls a CIP, I forget what
15 it stands for. But anyway, Dr. Willer, in his initial report diagnosed Mrs.
16 Farris with chronic, I forget what CIP stands for. But the CIP, the
17 polyneuropathy. And Dr. Willer attributed -- Dr. Willer attributed all of
18 Mrs. Farris' physical problems, limitations and disabilities, if you will, in
19 her legs, to this critical illness, polyneuropathy. He did not attribute any
20 of it to the diabetic neuropathy. And in fact, he said so in his report. And
21 when I took his deposition, to confirm what he said in his report, he said
22 that Mrs. Farris, in fact, did not have a diabetic neuropathy prior to July
23 of 2015.

24 That Dr. Chaney was just plain wrong when she came to that
25 diagnosis and provided the treatment. So that was the surprising

1 opinion, so Dr. Adornato is in rebuttal to Dr. Willer's opinion of 100
2 percent of the problems in the lower extremities is due to the critical
3 illness polyneuropathy, which was surprising and unexpected, given the
4 information that we did have in the records. And Dr. --

5 THE COURT: Now let me break it down. I need to have an
6 understanding of what you're calling the polyneuropathy because -- are
7 you saying the foot drop?

8 MR. DOYLE: Yes.

9 THE COURT: So it was a surprise that the foot drop was a
10 result of the alleged malpractice of your client?

11 MR. DOYLE: No.

12 THE COURT: That was a surprise?

13 MR. DOYLE: No. The surprise was you have the critical
14 illness polyneuropathy causing the foot drop. Dr. Willer then says that
15 all of her -- all of her lower extremity problems, limitations, signs,
16 symptoms, however you want to phrase or characterize it are due to the
17 foot drop caused by the polyneuropathy.

18 THE COURT: The Court wants to breakdown --

19 MR. DOYLE: That was the surprise.

20 THE COURT: Here's what the Court needs to break down,
21 okay. Because counsel for Plaintiff broke it down into two categories. I
22 want to call it apples and apples, okay? Same lingo, same language,
23 right. Okay.

24 That the foot drop was caused by diabetes. Is Dr. Adornato
25 going to try and offer an opinion that foot drop is caused by diabetes?

1 MR. DOYLE: I don't know where counsel got that, because
2 no one has said in this case that the foot drop was caused by diabetes.

3 THE COURT: So is that a yes or a no?

4 MR. DOYLE: It -- he is not going to say that.

5 THE COURT: Okay. So that one is taken care of. Dr.
6 Adornato is not intending to offer that opinion, so that is not an issue. Is
7 that correct?

8 MR. DOYLE: Correct.

9 THE COURT: Okay. So Plaintiff's counsel, you're hearing
10 Defense counsel say that, right? So if that's --

11 MR. JONES: Wow, okay.

12 THE COURT: -- not an issue, we're moving forward, right?

13 MR. JONES: Sure.

14 THE COURT: Is that correct? Dr. Adornato is not going to
15 directly or indirectly --

16 MR. LEAVITT: Let me get the depo.

17 THE COURT: -- say that foot drop is caused by diabetes?

18 MR. DOYLE: Correct.

19 THE COURT: Okay. Plaintiff's counsel, does that resolve
20 your first issue? Yes or no. It's only yes or no.

21 MR. JONES: No, Your Honor, that's simply not the case.

22 THE COURT: It's not the case --

23 MR. JONES: I've got a depo that says otherwise.

24 THE COURT: -- does it resolve it, or does it -- you don't --

25 MR. LEAVITT: He's going to acknowledge that it's caused --

1 THE COURT: Okay. Well --

2 MR. JONES: If he's -- no, he apportions. That's the problem

3 THE COURT: Okay, well, let me --

4 MR. DOYLE: Well, he --

5 THE COURT: -- let me let Defense finish. Okay. Because you
6 told me there's two things. Foot drop caused by diabetes and that the
7 pain in the leg was caused by diabetic neuropathy, loss of sensation,
8 diabetic neuropathy. So that's what I understood were the two --

9 MR. LEAVITT: Correct.

10 THE COURT: -- opinions that you had a concern about. Is
11 that correct on the two opinions?

12 MR. JONES: Yes, Your Honor.

13 THE COURT: Okay. I'm trying to be simplistic here --

14 MR. JONES: That's fair.

15 THE COURT: -- and then we'll go to more distinct lingo, if we
16 need to. Okay, so first opinion, Defense counsel said that Dr. Adornato is
17 not going to say the foot drop was caused by diabetes. Is that correct,
18 Defense counsel?

19 MR. DOYLE: Correct.

20 THE COURT: Okay. So now let's go to the second opinion.

21 The second opinion is kind of a two-for, right? It says that the pain in
22 the legs and the loss of sensation is caused by diabetes. That's where I
23 see that you're having more of a disagreement between Defense counsel
24 and Plaintiff's counsel. Is that correct?

25 MR. DOYLE: Correct.

1 THE COURT: Okay, so now --

2 MR. DOYLE: Did she --

3 THE COURT: -- let's use plain English versus using some
4 more higher tech terms, so that we're all sure we're using the plain
5 English version. And then if we need to go more sophisticated, we will.
6 But let's use the plain English, right. Okay. The pain in the legs. Are you
7 anticipating that Dr. Adornato is going to say that the pain in Ms. Farris'
8 legs was caused by diabetic neuropathy. Is he intending to offer that
9 opinion? Would you like him to offer that opinion?

10 MR. DOYLE: Yes, he will -- he will testify that greater than 90
11 percent of her pain in her legs is due to the peripheral neuropathy and
12 less than ten percent is due to the critical illness polyneuropathy.

13 THE COURT: Okay. So now, is your basis for that, that this
14 was a surprise from Dr. Willer's report, or something else?

15 MR. DOYLE: The surprise was Dr. Willer's report, where he
16 would not acknowledge, or did not acknowledge the pre-existing
17 problems in her legs and feet due to the diabetes, and instead
18 attributes -- attributes all the pain, all the impaired sensation --

19 THE COURT: Okay.

20 MR. DOYLE: -- all the mobility problems, all the balance
21 problems --

22 THE COURT: No, counsel. We're breaking it down, right.
23 I'm right now at pain.

24 MR. DOYLE: Okay.

25 THE COURT: We're not going into any other thing.

1 MR. DOYLE: Okay, got it, okay.

2 THE COURT: I'm breaking it down so that we're simplistic
3 and everybody is on the same page. Pain.

4 MR. DOYLE: Yes.

5 THE COURT: Okay. Pain you said 90-10. 90 diabetes, 10 CIP,
6 correct?

7 MR. DOYLE: Correct.

8 THE COURT: Okay, so 90 percent diabetes, you're saying he
9 is rebutting Dr. Willer's report that says it's 100 percent CIP; is that
10 correct?

11 MR. DOYLE: Correct.

12 THE COURT: But he's not offering a new opinion that it is a
13 different source. Is that what you're asserting?

14 MR. DOYLE: Correct. I mean the greater than 90 percent
15 pain is due to the diabetic neuropathy.

16 THE COURT: Okay. I'm just trying to get a clarity of where
17 the distinction is. Okay, so that's a pain difference. I'm going to have to
18 circle back with you two, okay.

19 MR. JONES: Uh-huh.

20 THE COURT: So then we've got to loss of sensation due to
21 diabetes.

22 MR. DOYLE: Right, well --

23 THE COURT: I'm making it simplistic --

24 MR. DOYLE: All right.

25 THE COURT: -- calling it loss of sensation. So that's (b), loss

1 of sensation. Is he intending to offer an opinion regarding the loss of
2 sensation?

3 MR. DOYLE: Yes. He's going to say that the impaired
4 sensation or absent sensation and absent position sense that goes with
5 the sensation, that two-thirds of that is the diabetes and one-third of that
6 is the critical illness, polyneuropathy, CIP.

7 THE COURT: Okay. So now let's walk back to the first one
8 with regards to pain. How is he rebutting Dr. -- how is he -- how is that a
9 rebuttal opinion versus an initial opinion? Because presumably you
10 knew -- right, Defense knew that she had pains in her legs, right?
11 Because that's in the interrogatories from 2016, right? That's in the
12 complaint, and that's in other documents, at least Plaintiff has asserted
13 that Defense would have been aware, 2016-2017, maybe depo in 2018,
14 they've asserted, right? All pre-initial expert disclosure. So why would
15 that have not been initial expert disclosure, pains in the legs?

16 MR. DOYLE: Because Dr. Willer surprisingly and
17 unexpectedly attributed 100 percent of the pain. And so --

18 THE COURT: The Court's question -- I just want to be clear.
19 There's a distinction between percentages versus actual diagnostic for
20 diabetes, right? Because if Dr. Willer had -- why wouldn't it have been an
21 initial opinion for Dr. Adornato to say that the diabetes was a cause and
22 then a rebuttal to be a -- you know that there would be a difference in
23 how each of them quote an apportionment. Maybe one said 90-10 and
24 one said 100, the other way. But wouldn't the fact that diabetes existed,
25 right. And was already in Dr. Chaney's notes, right? And Dr. Rives'

1 notes, because Dr. Rives would know his own notes. Before the surgery,
2 he knew she had diabetes --

3 MR. DOYLE: Correct.

4 THE COURT: -- because she's already testified to that,
5 correct?

6 MR. DOYLE: Yes.

7 THE COURT: It's in Exhibit 1. It's in the CNA joint exhibit, so
8 that's already part of the testimony. So how is the fact of diabetes not a
9 factor that would have been an initial expert? Not the percentage
10 allocation, but the fact of diabetes being some factor, whatever.
11 Whether it was .0001 percent up to 100 percent. Being any factor in any
12 of the harm being pains in her legs, when everyone acknowledges pains
13 in her legs had come out interrogatories in 2016 and it had come out as
14 part of the injuries that had existed well before --

15 MR. DOYLE: Oh, no, no, no. The interrogatory responses
16 are describing her current injuries as a res -- after the surgery. There
17 were no -- there are no interrogatory responses describing her pre-
18 existing --

19 THE COURT: Okay, counsel --

20 MR. DOYLE: -- problem and --

21 THE COURT: -- are you saying these are -- counsel, where I
22 am going is right -- the pains in the legs, right, the pains in the legs, for
23 which causation opinion for pains in the legs, causation means what has
24 caused her pains in her legs after July 2015. I'm going to make life easy.
25 Whether you want to call it July 3rd, July 9th, July 15th, whatever. I'm

1 going to make my life easy and say July 2015, right.

2 MR. DOYLE: Right.

3 THE COURT: Point of potential, where a dollar might be
4 allocated to the Plaintiff, right. So July 2015, to make life easy.
5 Presumably is any -- is Defendant disputing that having pains in her legs
6 was not known prior to the initial expert disclosure that she had pains in
7 her legs?

8 MR. DOYLE: The interrogatory -- if you will recall the
9 interrogatory that I brought up with her, where we asked her about what
10 problems she had prior to July of 2015, the only thing she identified --
11 and that's the -- that's the -- interrogatory number 24, state all the
12 physical, mental, or emotional disabilities you had immediately before
13 the incident described in the complaint. She said I had no significant
14 issues, other than the recurrence of a hernia, which led to the surgery by
15 Dr. Rives on July 3rd.

16 So in her interrogatory responses she denies having any
17 significant problems beforehand. Her discovery responses about pain, et
18 cetera, in her legs, goes to the condition of her legs after July of 2015.

19 THE COURT: Right. Right. That's what the Court's asking
20 the question, right. But the pains in her legs is something that Plaintiffs
21 are seeking damages for, correct?

22 MR. LEAVITT: Yes.

23 MR. DOYLE: Right.

24 THE COURT: So that would be a causation and potential
25 damages opinion that Dr. Adornato is disputing. That the pains in Ms.

1 Farris' legs that have occurred at some point July 2015 to present and
2 possibly in the future, were in any way a result of any actions by Dr.
3 Rives, correct? That's --

4 MR. DOYLE: He is rebutting Dr. Willer's opinion that all of
5 the pain is due to the critical illness, polyneuropathy and foot drop.

6 THE COURT: I am appreciative of your very excellent slicing
7 and dicing my question narrowly when I'm asking it broadly.

8 MR. DOYLE: Okay, then I apologize.

9 THE COURT: No worries.

10 I'm asking -- the question is, does Defense acknowledge that
11 whether it be a penny or millions of dollars, it doesn't matter for the
12 purposes of Court's question, that at least Plaintiffs are asking and
13 Defendants knew prior to the initial experts being provided, that
14 Plaintiffs were asking for at least a penny for Ms. Farris having a pain in
15 her leg, as a result of conduct they allege was caused by Dr. Rives and/or
16 laparoscopic?

17 MR. DOYLE: The short answer to that is no. Because --

18 THE COURT: Are you saying that there's nothing that said
19 anything about any pains that would have been caused? That means
20 any pains that she would have felt from July 2015 to any date.

21 MR. DOYLE: Right. Foot drop doesn't cause pain. So again,
22 the -- the pain that she's complaining -- to our knowledge, the pain she's
23 complaining of after July 3rd is the pain that she had before July 3rd due
24 to the diabetes, because again, foot drop doesn't cause pain.

25 THE COURT: Then --

1 MR. DOYLE: That's what our thinking was.

2 THE COURT: But then this Court would have a question,
3 right. And maybe I need to ask Plaintiff's counsel. But how would they
4 be asking for any money? How would they be asking for any damages, if
5 they don't have any pain or injuries that they would be alleging against
6 your client? Usually those type of cases don't come to court.

7 MR. DOYLE: The foot drop itself.

8 THE COURT: Well, but --

9 MR. DOYLE: And how the foot drop impairs her mobility and
10 balance.

11 THE COURT: But --

12 MR. DOYLE: That's what we assumed what this case was
13 about, was the foot drop. The foot -- the foot drop. And the problems
14 that flow from the foot drop, which do not include pain or sensation
15 changes.

16 THE COURT: You're telling me in her deposition, she never
17 mentioned any pains in her legs or anything like that? And her
18 deposition was before the experts.

19 MR. DOYLE: Right, she mentions pains in her legs, which are
20 the -- which is the pain she was having before July 3rd, because of the
21 diabetic neuropathy.

22 THE COURT: Did she get asked that? Were these the same
23 pains -- you're -- once again, I don't have the benefit of having her entire
24 deposition before me. But are you saying as an officer of the court that
25 she was asked these questions in her deposition and through all of

1 discovery? And that the only thing that Plaintiff was asserting is
2 everything was fine and dandy with me before -- both before and after
3 the surgery? And the only thing I had was foot drop and I had no pain,
4 no loss of sensation or anything else?

5 MR. DOYLE: I don't have the deposition committed to
6 memory.

7 THE COURT: I just --

8 MR. DOYLE: But I'm giving you the -- my general -- the
9 general gist.

10 THE COURT: Because, that's not how -- hold on a minute.
11 I'm going back to -- I'm looking at the reference interrogatory that
12 Plaintiff's counsel gave me, for reference to Dr. Stone, right. They refer
13 the Court to the answer to Interrogatory 13, which was on page 5 of their
14 Exhibit 4, right?

15 MR. DOYLE: Right.

16 THE COURT: Of their 727 brief.

17 MR. DOYLE: Right.

18 THE COURT: It was their 12/29/2016 answer to
19 interrogatories. It wasn't that long ago, so my memory is -- their answer
20 was -- the question in Interrogatory 13. Describe the past, current, or
21 future physical, mental, or emotional injuries you are claiming in this
22 lawsuit. That was the question, right? And then the answer, and I'm
23 reading right from page 5, I am in chronic pain and mental upset. I
24 cannot take care of myself, my husband, my daughter, or my home. I
25 was confined to a wheelchair for approximately one year after the

1 surgery by Dr. Rives in July 2015. I had to wear a colostomy bag for
2 several months. I am unable to walk or stand on my own. I have
3 constant pain in my feet and calves.

4 So when I was asking the question of you earlier, my brain
5 was thinking, gosh, oh, golly, before the lunchbreak, Plaintiff's counsel
6 read this answer to me, and so I was remembering that they had read
7 this answer to me, feet and calves. With parts of legs from this Court's
8 understanding, legs is feet and calves. And maybe I should have asked
9 Plaintiff's counsel whether legs and calves was included. Or legs and --
10 calves and feet was included in legs. But generally, this Court
11 understood that that was included. So when I was asking Defense
12 counsel the question, I was thinking of the very answer they had read to
13 me shortly before, the answer to Interrogatory 13.

14 And that's why I was asking the question, because it seemed
15 to this Court that that was clearly stated back in December 2016, which is
16 why I was asking you the question.

17 MR. DOYLE: Right.

18 THE COURT: And why I was having trouble understanding
19 why you were saying it was a surprise. Does that make sense to you
20 now?

21 MR. DOYLE: Yes, because the injury is a foot drop, and foot
22 drop doesn't cause pain. So it's a surprise when an expert witness
23 prepares a report that attributes --

24 THE COURT: Okay.

25 MR. DOYLE: -- the foot drop, the pain, the change in

1 sensation, and everything, to an illness that does not produce all of that
2 symptom complex.

3 THE COURT: Okay, and you can appreciate what this Court is
4 going to say. I'm hearing what you're saying, but when you have a
5 direct response to an interrogatory in December 2016, where the Plaintiff
6 is specifically asserting, not only general chronic pain and mental upset,
7 but then says I also have constant pain in my feet and calves. And feet
8 and calves includes the legs, right. That that would put Defense counsel
9 from a reasonable person standpoint, on notice, that Plaintiff is alleging
10 in their damages, that there is leg pain.

11 And that if Defense wished to have an expert address leg
12 pain, and offer an opinion on leg pain, i.e., feet and calves as part of legs,
13 that that expert would have to be designated as an initial expert under
14 prior -- pre-2019 NCRCP, 2000 and -- okay, pre-2000, March 2019 version
15 of the NRCF. Or under NRCF March 2019 version because both would be
16 -- regardless of which one you're doing, giving you the benefit of the
17 doubt of either one, both would require that, because both would require
18 that that is the type of information that would put people on notice.

19 Not even taking the generic assertions from the complaint
20 and the affidavit, that interrogatory in and of itself from December, from
21 the witness's own statement would say I am making this claim. That
22 would put people on notice. Now, having medical expertise, you might
23 not agree with her, but at least puts it on notice that that is going to be
24 the type of information that would be claimed damage and claimed
25 causation opinion, i.e., something from an initial expert. And if you

1 looked at the drafter's notes, to the various amendments, whether you
2 look to the 2012 amendments, look to the 2019 amendments, I have
3 them all here. I'd be glad to reference them for you and read them.

4 But right -- you can read the NRCP, it's clear. Abundantly
5 clear. Those are all required. That would require an initial expert
6 disclosure. Which means that Dr. Adornato cannot assert an initial
7 opinion with regards to the diabetic pain in the leg, feet, and calves, as
8 being a cause, because that would be an initial expert opinion. The
9 Court's ruling in this regard does not preclude him from responding to
10 the percentages offset. A difference in a percentage allocation, because
11 a percentage allocation would be a distinction that he disagrees with the
12 percentages of it, but he can't attribute it as a new opinion that it is a
13 diabetic.

14 He can say what distinction of the percentages he disagrees
15 with, yes. But the Court doesn't find that this would be some surprise by
16 Dr. Willer, because you all were put on notice by the Plaintiff's very own
17 words in the interrogatories back in December, plus Plaintiff has
18 represented other things. That's just really the quickest, easiest one to
19 find that that's clear on its face.

20 So that would be a new opinion as to pains in the feet,
21 calves. Okay. So now we have loss of sensation. Loss of sensation
22 presents an interesting different challenge, because that same
23 interrogatory, I was confined to a wheelchair for approximately one year
24 after the surgery presents -- you're confined to a wheelchair, is
25 somebody going to say they're confined to a wheelchair and they have

1 sensation? Or is there a distinction? Can you explain what you mean by
2 loss of sensation?

3 MR. DOYLE: So loss of sensation in the feet is -- well again, I
4 mean she was in the wheelchair for that period of time that she was
5 rehabbing because of the foot drop and learning to use her feet again.
6 But in terms of the --

7 THE COURT: But was that due to loss of sensation?

8 MR. DOYLE: The loss of sensation -- again Dr. Adornato
9 attributes two-thirds to the pre-existing loss of sensation of the
10 peripheral neuropathy and one-third to the -- to the CIP -- to the CIP.

11 THE COURT: Sure. And where does he get his two-third
12 analysis? What is the root, what is the source? What is the documents
13 that he is getting that from?

14 MR. DOYLE: The records that he reviewed, both before and
15 after July 3rd, and his background, training, and experience as a
16 neurologist.

17 THE COURT: Well, let me go a little bit more specific.
18 Because records can mean thousands and thousands of pages. What
19 type of records? Because this -- looking at his report, what type of
20 records is he going to -- because remember I'm looking at his -- this
21 December 18th document, right. And what I don't see, it just says my
22 review of records. So he does not do like several other people do, list
23 the records, so that this Court would have the benefit of what records he
24 is referencing.

25 Is he referencing it from Dr. Chaney's records, that would

1 have otherwise been available to him and he could have been done as
2 an initial expert? Or are you contending that these are new records that
3 became available to him for the first time through Dr. Willer, or
4 something else, and so it could only have been done as a rebuttal
5 expert? That's what the Court's trying to get an understanding.

6 MR. DOYLE: Okay, well, if you look at the last paragraph on
7 the first page of Dr. Adornato's report, he does list the medical records.
8 He says I've reviewed extensive medical records, including those of --
9 and then he lists a number of people. And I think in addition to that, we
10 have the Southern Nevada Pain Center, which was dealt with in his -- the
11 second report, which the Court has already ruled on.

12 But otherwise he mentions Dr. Chang. He mentions having
13 Dr. Willer's report. He did have -- he does mention St. Rose Dominican
14 Hospital records. He does mention Dr. Chaney, Desert Valley Therapy
15 and Advanced Orthopedics. So those -- those are the records that he
16 reviewed and relied on.

17 THE COURT: But other than Dr. Willer's, is it correct, based
18 on what Plaintiff's counsel has told the Court, and what's in you all's
19 brief, right. In addition to looking at the joint case conference report,
20 is -- isn't it -- is it accurate that all the records other than the report of Dr.
21 Justin Willer for records from 2015 and so they could have been
22 available and so they could have been available and utilized for initial
23 expert report.

24 MR. DOYLE: All of the records listed in the first paragraph of
25 his report --

1 THE COURT: First paragraph or last paragraph on the first
2 page?

3 MR. DOYLE: I'm sorry, last paragraph, first page, were
4 available at the time of the expert disclosure. The -- but in his second
5 report, he does refer to updated records from another Southern Nevada
6 Pain Center, as of June of 2019, which obviously would not have been
7 available in December of 2018.

8 THE COURT: Okay, and I'm looking for -- okay, so give me a
9 second, because his second report, is that attached to anything --

10 MR. DOYLE: That was the subject of Plaintiff's motion to
11 strike our fourth and fifth supplemental. And what the Court ruled is,
12 based upon my notes, is that Doctor -- that the Court did not strike Dr.
13 Adornato's second report and that I can ask him if updated records,
14 including the referral to Southern Nevada Pain Center, as of June 2019
15 indicate increased pain in hands and legs, more consistent with
16 underlying and ongoing diabetic neuropathy.

17 I was allowed --

18 THE COURT: Right.

19 MR. DOYLE: -- to ask him that, but not expand or expound.

20 THE COURT: Which would -- well, definition when you're
21 talking about that report, because that would be -- that's why the Court's
22 remember, trying to get what's available when. If you're saying new
23 records, without going back looking at that, but based on what you're
24 stating, new records coming in after a particular time is going to get you
25 one version, because that's new records. That's why the Court's asking

1 this question based on this report.

2 MR. DOYLE: Uh-huh.

3 THE COURT: Remember we got to focus back on --

4 MR. DOYLE: Okay.

5 THE COURT: -- December 18th, 2018. I appreciate you
6 going to something else, but let's get a clear record on -- the Court's
7 looking at the December 18, 2018, right? Let's get that one taken care of.

8 MR. DOYLE: Got it.

9 THE COURT: On that one, first page, that's why the Court
10 asked the very specific question. First Page, on the December 18, 2018,
11 is it accurate that all the records, other than the Dr. Willer report were
12 available in -- from 2015?

13 MR. DOYLE: I'm not -- well, the records encompass her care
14 and treatment both before and after July of 2015. So I'm not sure what
15 you mean by --

16 THE COURT: Sure. Let me clarify.

17 MR. DOYLE: Yeah.

18 THE COURT: What I'm really just trying to get at, okay, is the
19 -- you've got two aspects, right? You got the timing aspect, right;
20 fairness aspect, and is it a new, or is it response? The first question is, if
21 the information is readily available that the information is there that a
22 person could provide an initial expert report. Right. So you look at the
23 timing of the records. Here there's not a situation where somebody is
24 saying these records were hidden from you. Okay. Because you've got
25 joint case conference report, you've got your own client's records, okay.

1 MR. DOYLE: Yes, Your Honor.

2 THE COURT: You've got hospital records. So you don't have
3 the hidden records issue. So the Court's not dealing with a hidden
4 records issue. So then what you have is, okay, this is not -- is this an
5 issue that the person could not do an opinion at the time of initial
6 disclosures, because records were not available to do that? Or is it that
7 records were available, and it just was a decision that the initial expert
8 was not done. Instead they waited until rebuttal, and whether or not this
9 is or is not a proper rebuttal. And that's what the Court's looking at. If
10 the records were available, that's why the Court was parsing out Willer
11 from the other records, right?

12 Now, I fully appreciate -- the Court fully appreciates that
13 there's not a quote, cut-off, in December of 2015. She may have had
14 some more rehab early part of 2016. But what the Court's trying to do a
15 cut-off is, is were the records reasonably available in time to do --
16 because remember, I don't remember what number extension you are
17 with this time, by the time you got to this expert disclosure. Remember
18 you had eight of them. So what number you were before this expert
19 disclosure was, what number it was, but at least had to be at least two or
20 three.

21 So it wasn't like the first go around on experts, right. So you
22 had several extensions. So by the time that this initial expert deadline
23 came around, were records available, that if Defense counsel wished to
24 disclose an expert on causation and damages, there was the information
25 available that Defense could have disclosed an expert on causation and

1 damages and could, but maybe didn't do so. That's really what the
2 Court's trying to get to. You wouldn't have had the Willer opinion. And
3 that's rebuttal-type information.

4 But Plaintiff is asserting that there was information available,
5 the diabetic information was available to Defense. And that Defense
6 could have disclosed an initial expert, if Defense wished to do so, related
7 to if they wanted to attribute the causation of injury and damages in
8 whole or in part. That's what I understood them to say. Is that correct?

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

10 THE COURT: They wish to attribute any portion of the
11 diabetes, right? That would have been an initial expert disclosure, and
12 information is readily available to Defendant to have done initial expert
13 disclosure to attribute diabetes as a cause for injury and damages, if
14 Defendant chose to do so. And by instead, doing it as -- calling it a
15 rebuttal is impermissible because it should have been done as an initial.
16 That's what I understood that Plaintiff was saying. That's the standard
17 argument the Courts get all the time on rebuttal versus initial. It's not
18 anything unique. I get it all the time. Is that a correct understanding of
19 what you're saying, Plaintiff's counsel?

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

21 THE COURT: Okay. I'm just short circuiting it. Okay, so in
22 that regard, what this Court looks at, and what every other Court looks at
23 is what was available to the side in which is being objected to and saying
24 that they did an improper rebuttal. Right. Did they have the information
25 available? That's why the Court was asking -- a long way of going

1 around this another time. Is that last paragraph, you reviewed X records,
2 right? It appears that those records, based on the all the testimony so
3 far that's coming into trial, and all the arguments that you all have done
4 is that all those records, that may be a single entry or two, that maybe
5 Dr. Chaney may have seen her some time close to the expert disclosure,
6 who knows, right?

7 But in essence, the bulk of all those records were available.
8 The idea of diabetes was known before the initial expert deadline came
9 about. And that only the Dr. Willer viewpoint is the one that that Dr.
10 Adornato would not have had the benefit of, as of the time of the initial
11 expert deadline. Is that correct or incorrect?

12 MR. DOYLE: That was a very long statement, and a very long
13 question.

14 THE COURT: Sure --

15 MR. DOYLE: But --

16 THE COURT: -- I'll cut to the chase.

17 MR. DOYLE: No, no, no --

18 THE COURT: The last paragraph and were all those records
19 available other than Dr. Willer's, is a short way of putting it?

20 MR. DOYLE: Yes, but the Court's suggestion that we made a
21 conscious --

22 THE COURT: The Court's suggestion --

23 MR. DOYLE: -- decision not to disclose someone initially
24 would not be accurate. We -- there was no foreseen need to disclose
25 someone like Dr. Adornato until we had Dr. Willer's report.

1 THE COURT: The Court makes no suggestion. There are
2 rules in place on what are initial disclosures, what are rebuttal
3 disclosures. There's some caveat sometimes, with regards to why
4 parties might be able to do things in the rebuttal deadline versus the
5 initial deadline. The Court was trying to go through any of those
6 exceptions to potentially apply any defense for the benefit of the doubt,
7 to see if any of those exceptions could potentially apply. That's why the
8 Court was asking the question.

9 The Court's not assuming anything, making any inferences.
10 It really was as simple as were these records available if Defendants
11 wanted to look at them.

12 MR. DOYLE: Yes.

13 THE COURT: That's really where I was going. Okay, so that
14 means that Dr. Adornato will not be able to offer an opinion as to
15 Plaintiff's loss of sensation by diabetic neuropathy, because that would
16 have been an initial opinion that could have been provided by the initial
17 expert disclosure deadline date. There is no loss of records issue. There
18 is all the availability. The records were readily available. There's
19 nothing been presented to this Court that could not have been done as
20 an initial opinion regarding standard causation and/or damages. See
21 *Fiesta Palms*. See NRCP16. See plethora of cases on this topic.

22 However, the Court's ruling does not preclude Dr. Adornato
23 from offering rebuttal opinions in that how he disagrees with Dr. Willer's
24 percentage allocations or Dr. Willer's viewpoints on the nature of the
25 injury, as long as it's not a new opinion that's saying it's based on

1 records that he reviewed. And clearly the distinction here is you look at
2 his first sentence that was pointed out by Plaintiff's counsel. Per your
3 request, I reviewed the matter to rebut the opinions of Dr. Justin Willer.
4 He can rebut the opinions of Dr. Justin Willer. Clearly, he may do so.

5 However, what he may not do is, starts after the and. And to
6 comment on the cause of Titina Farris' injury. He may not comment on
7 the cause of Titina Farris' injury. That -- and to comment on the cause of
8 Titina Farris' injury is an impermissible initial expert opinion that should
9 have been disclosed at the time of initial expert disclosures. You all
10 have several stipulations, no one presented anything that anyone was
11 precluded from doing initial expert disclosures. All records everyone
12 has told me were readily available. There's no hidden aspects.
13 There's -- the Court's listened to the analysis on the "surprise".

14 Based on what's been presented through the discovery
15 answers that have been presented to this Court, have been represented
16 that was stated in depositions, other pleadings, et cetera, the Court
17 doesn't find that the statements related to diabetic neuropathy would fall
18 within the surprise type category as described to this Court during oral
19 argument or any of the 7.27 briefs, after the court's been presented with
20 all the information and giving you all, once again, another hour of
21 argument.

22 So that is the Court's ruling. And it's really as clear as his
23 first sentence. He can rebut the opinions of Dr. Justin Willer, but he
24 cannot "comment on the cause of the injuries," because --

25 MR. DOYLE: So --

1 THE COURT: -- rebutting is appropriate rebuttal, causation,
2 opinions, or initial experts.

3 MR. DOYLE: So he can comment on the apportionment of
4 the pain, this impaired sensation and mobility, as I understand it.

5 THE COURT: C-A-N, yes. Can.

6 MR. DOYLE: Yeah.

7 THE COURT: Because that's rebuttal, yes.

8 MR. DOYLE: Okay. All right.

9 THE COURT: Okay, so take care of all the issues with Dr.
10 Adornato. Okay. Are you all ready for our wonderful jury to --

11 MR. DOYLE: Can I just --

12 THE COURT: -- remember at 4:30, you all had said that you
13 would stop, because that was the request of juror number -- the juror
14 that requested the mic; is that correct?

15 MR. LEAVITT: Yes.

16 MR. JONES: Yes.

17 THE COURT: 430, yes?

18 MR. JONES: Yes.

19 MR. DOYLE: Yes.

20 MR. LEAVITT: Yes.

21 MR. DOYLE: Can I just have a --

22 THE COURT: Is she informed of that?

23 MR. JONES: I'm sorry.

24 THE COURT: I'm asking the Marshal a question?

25 THE MARSHAL: Yes, Your Honor.

1 THE COURT: Okay. Do you need a few more moments,
2 Defense counsel?

3 MR. DOYLE: Can I talk to Dr. Adornato, just to clue him in?

4 THE COURT: Of course. Of course.

5 MR. DOYLE: Okay.

6 THE COURT: So then Marshals, can you just tell the jury it
7 will be another few more minutes and then, sure --

8 MR. DOYLE: Can I have the ante room?

9 THE COURT: Do you want the ante room? Sure. Is the ante
10 room open, Marshal?

11 THE MARSHAL: Yes, it is, Your Honor.

12 THE COURT: Okay, thank you, so much.

13 [Pause]

14 MR. DOYLE: Can he take the stand?

15 THE COURT: That's fine -- of course. Okay, and while we're
16 still outside the presence of the jury, as you know, the Court has said
17 with each of these rules, because these were timely objections, right.
18 The Court has found, you know, precursor. Remember the Court went
19 over procedure. Madam Court Reporter, we're still on the record,
20 correct? Yes? Okay, I want to make sure -- pardon? Then that is what it
21 is.

22 Okay, remember the Court stated all of these things. The
23 Court agreed that these objections were done timely, so the Court had
24 gone through all of the procedural aspect. And the Court, of course, has
25 found prejudice to the Plaintiffs. They have asserted the prejudice.

1 Obviously, the fact that where these opinions have been done, and so
2 they cannot prepare for the case in the basis of the asserted prejudice.
3 And there was not any good cause for the failure to disclose each of
4 these -- each of those procedural issues the Court had addressed,
5 specifically.

6 So in addition I went through the substantive of the fact that
7 they did not go through those in details, because the Court had, of
8 course, said that these were going to apply to each of these, but because
9 of the way you all have done these in the midst of trial, those were what
10 the Court was saying that each of these that I was handling, the same
11 things, when Defense raised the objection to Plaintiff's witnesses. And
12 everyone I'm sure understood that, but I'm reiterating that. And if you
13 want me to reiterate that for each and every one of these. I'm just trying
14 to not have you have your juries out there, outside.

15 Of course, when I'm doing each of these, I said that that is
16 the statements that you all have each argued that and that's why the
17 Court's ruling has been focusing on the substance and looking for rules,
18 because procedural problems have been met. And obviously there's not
19 been any good cause and there is obviously been prejudice to the other
20 side.

21 Okay, everybody ready for the jury to come back in. Yes?

22 MR. JONES: Yes, Your Honor.

23 MR. DOYLE: Yes.

24 MR. LEAVITT: Yes, Your Honor.

25 THE COURT: Okay, Marshal, feel free to go get the jury.

1 Thank you, so much. Witness can feel free to get on the stand. The
2 Marshal is going to have everyone stand up, and then the witness will be
3 sworn in and technically we'll ask Defense counsel to call you as a
4 witness, just to have you on the stand.

5 I'll give you a friendly reminder as I did other witnesses is
6 just to ensure that there is affirmative voice responses. Uh-huhs, huh-
7 uhs, shrugs can't be taken down by our JAVS system, so a friendly
8 reminder not to do that. And a friendly reminder also, is that we need
9 to only have one person speaking at a time, so that we get a clear record,
10 so that listening to the end of questions before answering. And if that --
11 sometimes people get more of a conversational tone, the Court will
12 politely remind everyone that we need to have one person speaking at a
13 time, so that Madam Court Recorder can have everything recorded
14 nicely and clearly in our JAVS system.

15 Thank you, so very much.

16 [Pause]

17 THE MARSHAL: All rise. Jurors are present.

18 [Jury in at 2:05 p.m.]

19 [Within the presence of the Jury]

20 THE COURT: Welcome back, ladies and gentlemen. I hope
21 you had a nice relaxing lunch. As you recall, right before the lunch
22 break, counsel for the Plaintiff -- correct, you had rested your case,
23 correct?

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

25 MR. LEAVITT: We have, Your Honor.

1 THE COURT: Okay, so since Plaintiff had rested their case, as
2 you recall, we stated when you came back from the lunch break, Defense
3 counsel -- oh, sorry, Marshal, would you like to --

4 THE MARSHAL: All present and accounted for, Your Honor.
5 Please be seated.

6 THE COURT: I do appreciate. Thanks so much. So Defense
7 counsel now will have an opportunity to call any additional witnesses
8 they wish in their case in chief. Because if you recall, we already had the
9 one witness by agreement of the parties that had been called out of
10 order.

11 So at this juncture, I would say to Defense counsel, would
12 you like to call your next witness. Another witness is on the stand
13 already. So counsel for Defense, would you like to call your next
14 witness?

15 MR. DOYLE: Yes, please. Dr. Bruce Adornato.

16 THE COURT: Thank you, so much. Madam Clerk, would you
17 like to swear the witness, please?

18 THE CLERK: Yes, yes, Your Honor.

19 BRUCE ADORNATO, M.D., DEFENDANT'S WITNESS, SWORN

20 THE CLERK: Thank you, please be seated, and could you
21 please state and spell your name for the record?

22 THE WITNESS: Bruce Adornato, A-D-O-R-N-A-T-O.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MR. DOYLE:

1 Q Good afternoon.

2 A Good afternoon.

3 Q Are you a medical doctor?

4 A I am.

5 Q Where did you go to medical school?

6 A UC San Diego.

7 Q What year did you finish medical school?

8 A 1972.

9 Q All right. What did you do by way of training after you
10 finished medical school?

11 A I was an internal medicine intern at University Hospital in
12 San Diego. Then I was an internal medicine resident at UCSF, University
13 of California San Francisco. I was then a neurology resident at UCSF.
14 And then following that, I was a Fellow at the National Institutes of
15 Health in Bethesda, Maryland for two years, until 1978.

16 Q What is the specialty of neurology? What does that mean?

17 A Neurology is the diagnosis and treatment of diseases of the
18 brain, the spinal cord and the nerves in our body.

19 Q Are you board certified in any areas?

20 A Yes. I'm board certified in internal medicine, in neurology
21 and in electric -- electro diagnosis, as well as in sleep medicine.

22 Q What is electro diagnosis? What does that mean generally?

23 A Electric diagnosis is the use of electrical stimulation, electric
24 shocks and recording to stimulate nerves in the -- in the periphery.
25 Generally in the arms and legs, which gives you some measurement

1 about the -- the quality of the responses. It's really an extension of the
2 physical examination.

3 Q Are you now semi-retired?

4 A I cut back to full time.

5 Q What -- what's the nature of your practice now?

6 A So what I do now is I stopped seeing patients in my office
7 about a year and a half ago. I currently continue to have privileges at the
8 Palo Alto V.A. Hospital where I attend. I see patients four weeks a year.
9 It's part of my duties in the School of Medicine teaching. I have medical
10 consultant for a number of companies. And -- and I do things like this.

11 Q Do you have any affiliation with Stanford?

12 A Yes, I have been on the adjunct clinical faculty since 1978.
13 Since about 1991 I've been an adjunct clinical professor of neurology in
14 the School of Medicine.

15 Q And what does that mean?

16 A Adjunct means I don't get paid. It means -- it means what I
17 am is a doctor in private practice, and we teach and see patients at the
18 hospital as our contribution to the School of Medicine.

19 Q Doctor, over the years have you seen patients who have
20 diabetes that come to you for a diagnosis of peripheral neuropathy?

21 A Many times.

22 MR. JONES: Objection, Your Honor. Relevance, foundation.

23 THE COURT: Overruled. Get your background.

24 BY MR. DOYLE:

25 Q Could you give us some idea of the number of patients

1 you've seen over the years, where you have diagnosed peripheral
2 neuropathy due to diabetes?

3 A It -- the -- it would number in the thousands. As you may
4 know, I was involved in primary research in finding treatments for
5 diabetic neuropathy with Gen-Intek (phonetic) back in the 1990's and did
6 a number of research studies attempting use of something called nerve
7 growth factor to treat patients in that condition, as well as seeing people
8 in my -- in my regular practice. It is probably the most common cause of
9 neuropathy.

10 Q And that term neuropathy --

11 MR. JONES: Your Honor, again, foundation. Relevancy,
12 speculation, and what was discussed.

13 THE COURT: You can approach. Madam Court Reporter,
14 too.

15 [Sidebar at 2:11 p.m., ending at 2:13 p.m., not transcribed]

16 THE COURT: Madam Court Reporter, thank you, so much.
17 Okay, the jury will disregard the witness's -- the last sentence that the
18 jury heard from this witness, based on this Court's prior order. So if you
19 wrote that down, please strike it out.

20 Counsel --

21 MR. DOYLE: Thank you.

22 THE COURT: -- please go forward with your next question.

23 BY MR. DOYLE:

24 Q Doctor, you mentioned something about research in the area
25 of peripheral neuropathy. Would you explain that a little bit more,

1 please?

2 A I've been involved in some studies in treating various types
3 of peripheral neuropathy using a developed medication that increases
4 nerve regrowth, calling human nerve growth factor. So I was involved in
5 the original studies and testing this in humans for the first time. And
6 then recruiting patients to my practice, in a national study, and other
7 neurology practices at the Mayo Clinic, and UCLA and places like that.
8 To test and see if this would benefit people with peripheral neuropathy.

9 Q Were there any publications that came with that research
10 that you published?

11 A Yes.

12 Q How many or in what areas?

13 A I think there were three or four. There was some with
14 diabetes and then we also treated patients with AIDS neuropathy with
15 the same medication.

16 Q Your Honor, may this witness offer his opinions as a
17 physician?

18 MR. LEAVITT: No objection, Your Honor.

19 THE COURT: No objection. He may offer his opinions. Feel
20 free to proceed.

21 BY MR. DOYLE:

22 Q Dr. Adornato, I just want to go through the list of records that
23 were provided to you that you reviewed in this case. Advanced
24 Orthopedics and Sports Medicine?

25 A Yes.

1 Q Desert Valley Therapy?

2 A Correct.

3 Q Dr. Naomi Chaney?

4 A Yes.

5 Q Some records from St. Rose Dominican Hospital San

6 Martine?

7 A Yes.

8 Q Dr. Bess Chang and her EMG report?

9 A Correct.

10 Q And then some recent records from Southern Nevada Pain

11 Center?

12 A Right.

13 Q Were you also provided with Dr. Justin Willer's report in this

14 case?

15 A Yes.

16 Q Doctor, by the way, am I compensating you for your time?

17 A Yes.

18 Q What is your fee structure?

19 A For court testimony I charge \$6,000 a day.

20 Q And how about reviewing cases and preparing reports, if

21 necessary?

22 A For reviewing records I charge \$575 an hour.

23 Q And for deposition?

24 A I believe it's \$700.

25 Q Have you and I worked on other cases before?

1 A I think the last time I saw you in court, I was testifying on
2 behalf of a Plaintiff, and you were on the Defense side.

3 Q Have you looked at cases for me over the years, none the
4 less?

5 A Yes, I think a couple of times over the last dozen years.

6 Q And how about other people in my office? Have you looked
7 at cases for them as well?

8 A Yes.

9 Q And will you look at cases for both sides? Plaintiff and
10 Defendant?

11 A Yes, I do.

12 Q What is the best estimate that you have for the amount of
13 time that you spent, before you prepared your report in this case in
14 December of last year?

15 A I would -- I have to think about that. Probably eight or ten
16 hours. Something like that.

17 Q Doctor, I want to go to Mrs. Farris and her peripheral
18 neuropathy and -- well, actually let me ask you a different question --

19 MR. LEAVITT: Your Honor, again, relevancy, foundation.

20 THE COURT: Court will disregard that commentary. Court
21 sustains the objection, and can you ask your question counsel?

22 MR. DOYLE: Right.

23 THE COURT: Do appreciate it. Thank you, so very much.

24 MR. DOYLE: Yeah. Yeah.

25 THE COURT: And I said the commentary of both counsel

1 obviously is what the Court meant. And feel free to ask your next
2 question counsel for the Defense. Appreciate it. Thank you, so much.

3 BY MR. DOYLE:

4 Q Doctor, the term critical illness polyneuropathy has been
5 used in this case. I think you have used the term critical care
6 neuropathy.

7 A Yes.

8 Q Are synonyms?

9 A Same thing.

10 Q I want to ask you some questions about Mrs. Farris' current
11 condition. In terms of the pain in her legs, what percentage of the pain
12 that she's having in her legs do you attribute to a peripheral neuropathy?

13 A I would -- I'm not sure I understand your question. That's
14 just different kinds of peripheral neuropathy.

15 Q Let me ask you this question. Looking at peripheral
16 neuropathy versus critical care neuropathy.

17 A Right.

18 Q Okay. Based on your background, training and experience,
19 to a reasonable degree of medical probability the pain that she has in her
20 legs, what percentage of that is due to the critical care neuropathy, or
21 CIP?

22 MR. LEAVITT: Your Honor, may we approach?

23 THE COURT: You may. Madam Court Reporter, would you
24 like to turn on the white noise?

25 [Sidebar at 2:18 p.m., ending at 2:19 p.m., not transcribed]

1 THE COURT: Appreciate it. Thank you, so much.

2 BY MR. DOYLE:

3 Q Dr. Adornato --

4 THE COURT: Sorry, counsel. Is that being withdrawn?

5 MR. DOYLE: Yes.

6 THE COURT: So the Court need not rule? Since it's being
7 withdrawn the Court need not rule. Thank you, so very much. Go
8 ahead, please.

9 BY MR. DOYLE:

10 Q Doctor, do you and Dr. Willer have a difference of opinion
11 about the cause or causes of the pain that Mrs. Farris is experiencing in
12 her legs?

13 MR. LEAVITT: Same objection, Your Honor. What he's
14 asking.

15 THE COURT: Court -- the way that's phrased, the Court's
16 going to overrule -- what was the nature of the objection? Sorry.

17 MR. LEAVITT: Foundation and relevancy.

18 THE COURT: Based on those two grounds, based on the way
19 the question is phrased, the Court overrules those two objections. Thank
20 you.

21 BY MR. DOYLE:

22 Q Looking at the pain in Mrs. Farris' legs and feet, could you
23 tell us where or how you disagree with Dr. Willer about the cause of that
24 pain?

25 A Yes. I believe that Dr. Willer attributed all of her pain, or the

1 majority of her pain to her critical care neuropathy.

2 Q And do you disagree?

3 A I disagree with that.

4 Q What is your opinion?

5 A My opinion is that there is an abundant evidence of a
6 significant neuropathy pain problem, which pre-existed her critical care
7 neuropathy --

8 MR. LEAVITT: Your Honor, I'm --

9 THE WITNESS: -- and which I would expect to continue.

10 THE COURT: Evidentiary basis, counsel?

11 MR. LEAVITT: Yes. Foundation, relevancy and prior
12 discussion. And outside the scope of a rebuttal. Offering new opinions.

13 THE COURT: Court is going to allow that response in and of
14 itself. Court is going to overrule that response consistent with the
15 Court's prior ruling. It's going to remind the parties of the Court's prior
16 ruling, and so the next question gets asked, counsel.

17 MR. DOYLE: Okay.

18 MR. LEAVITT: Thank you, Your Honor.

19 THE COURT: You may proceed with your next question.

20 BY MR. DOYLE:

21 Q Doctor, using percentages, can you tell us where you
22 disagree with Doctor -- or how you disagree with Dr. Willard, in terms of
23 what percentage of the pain in her legs and feet are due to this or that?
24 What is your opinion?

25 A My opinion that I would ascribe less than ten percent of her

1 pain in her feet to the critical care neuropathy.

2 Q Okay. And then same question for the -- does she have
3 impaired sensation in her legs and feet?

4 A Yes, she does.

5 Q Does the impaired sensation cause an absent position sense?

6 A Yes, it does.

7 Q Now do you and Dr. Willer disagree about the percentage
8 causes of the impaired sensation in her legs and feet?

9 A I believe so.

10 Q And how do you and Dr. Willer disagree about that, in terms
11 of percentages?

12 A Well, I can tell you, I don't know that Dr. Willer ever gave a
13 number percentages in his report. But I would say that Dr. Willer gave
14 short shrift to pre-existent or alternative cause and I would ascribe two-
15 thirds of her numbness, meaning loss of sensation and numbness and
16 loss of position sense to other -- to a neuropathy, other than the critical
17 care neuropathy.

18 Q Okay. And that term position sense, what does that mean?

19 A Well, position sense for example, in my finger, if I -- if I close
20 my eyes, and someone moves my finger up or down, I'll be able to tell
21 where my finger is in space. Whether it is vertical or aiming down or
22 sideways. And we have that same position sense in our ankles, in our
23 feet, in our toes, which enables us to close our eyes and stand up,
24 because we know where our feet are in space. We know the position of
25 our feet in space allows you to close your eyes, take a shower with soap

1 in your eyes, walk on irregular surfaces. It allows you to walk in the dark
2 or impaired lighting. So position sense is part of the normal sensation
3 that we have in our feet, hands, and joints.

4 Q Does an absent position sense in the feet effect one's
5 mobility or ability to walk and get around?

6 A Yes, it does.

7 Q How so?

8 A Well, it makes it difficult to work -- to walk in any situation
9 where you're not looking at your feet. In other words, we don't normally
10 have to look down at the surface. We can get feedback from where our
11 feet are, whether the surface is regular, irregular. If you're stepping on a
12 curb or a bump, or a rock or a rough floor surface, we get that feedback
13 from our feet. If you don't have that, you're going to fall down, and
14 you're going to have impaired balance. And you're going to have much
15 slower walking. You're going to be more fatigued in attempting to walk.
16 It's going to have a lot of ramifications.

17 Q And does Mrs. Farris have an absent position sense causing
18 mobility problems?

19 A Yes, she does.

20 Q And do you disagree with Dr. Willer, who attributes 100
21 percent of the absent position sense and mobility problems to this
22 critical care neuropathy/CIP?

23 A Yes, I do.

24 Q What is your opinion in terms of apportionment?

25 A Well, I attribute that two-thirds of the loss of sensation and

1 numbness was attributable to her other neuropathy. Her pre-existent
2 neuropathy and one-third to the critical care neuropathy.

3 Q But then how about the absent -- how about the mobility
4 problems then? Let's just focus on that. What -- tell us how you
5 disagree with Dr. Willer in terms of the percentages.

6 A Right.

7 Q So when I talk about mobility, we're talking about your ability
8 to walk and your ability to walk under impaired lighting situations. To
9 walk up ramps, to walk on rough surfaces. We're talking about fatigue.
10 We're talking about the whole package of walking and balance. And
11 the -- how do we walk and balance? Well, we have strength in our legs,
12 and we have sensation, which is the feedback of where our feet are in
13 controlling our movements.

14 So she has two different components to her mobility
15 problems. She has the foot drop, meaning weakness. Foot drop is a -- in
16 her sense it means some weakness of foot dorsal flexion. In other
17 words, when she's walking, she has a -- what we call a steppage gait.
18 Meaning you pick your feet up higher than you normally would. So your
19 toes don't catch. Kind of like walking through high grass, or walking
20 through light snow, where you pick your foot up so it didn't catch. That's
21 one component.

22 The other component is the loss of sensation and -- and the
23 painful, and painful feet, also is an impairment to people's walking and
24 agility and endurance. So I think overall when I put all of these things
25 together, I would attribute half of her mobility problem to the critical care

1 neuropathy and half to her other neuropathies.

2 Q And going back for a moment to the pain in her legs, why do
3 you attribute less than ten percent to the critical illness or critical care
4 neuropathy, and more than 90 percent to her other neuropathy?

5 A Because in reading the records, going back more than a year,
6 I find multiple entries by different healthcare providers that she had a
7 problem with nerve pain in her feet, dating back to 2012.

8 MR. LEAVITT: Your Honor, object. Outside the scope of
9 rebuttal.

10 THE COURT: Which is sustained the objection. Jury will
11 disregard that last answer.

12 BY MR. DOYLE:

13 Q Doctor, could you explain the basis for your opinion that the
14 impaired sensation is one-third the critical care neuropathy versus two-
15 thirds her other neuropathy?

16 MR. LEAVITT: Your Honor, objection as to the last phrase.
17 It's outside the scope. He's leading.

18 THE COURT: The Court sustains on leading.

19 BY MR. DOYLE:

20 Q Doctor, would you please explain how you came to the
21 conclusion that the impaired sensation one-third to the critical care
22 neuropathy, two-thirds to the other neuropathy?

23 MR. LEAVITT: Same objection, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: Because there is -- there's black and white

1 evidence in the record in 2014 that she had severely impaired --

2 MR. LEAVITT: Your Honor --

3 THE COURT: Counsel. I need you both to approach. Madam
4 Court Reporter, could you turn on the white noise?

5 [Sidebar at 2:30 p.m., ending at 2:33 p.m., not transcribed]

6 THE COURT: Sorry for the interruption.

7 Counsel, was there an objection pending or just that point of
8 clarification?

9 MR. LEAVITT: Just that point of clarification, Your Honor.
10 Thank you.

11 THE COURT: Do appreciate it. Thank you, sir.

12 So all right. Counsel, I know the witness was in the middle of
13 an answer, so if you need to re-ask it, or if the witness needs to respond,
14 whatever needs to be done. Thank you so much.

15 BY MR. DOYLE:

16 Q Doctor, I just -- I want to ask you about a data point, if you
17 will. Prior to July of 2015 -- not how or why, but did you see any
18 information in the records about impaired sensation and absent position
19 sense prior to July of 2015?

20 A Yes.

21 Q Do you recall which records you saw that in?

22 A It was in the podiatrist record, Dr. Kuruvilla in July 2014 -- a
23 year earlier.

24 Q And is Dr. Kuruvilla with Advanced Orthopedics & Sports
25 Medicine?

1 A Yes.

2 Q And just, again, what was it that Dr. Kuruvilla documented or
3 noted?

4 A He documented absent position sense, absent deep tendon
5 reflexes, and absent sensation to a, what's called a, Semmes Weinstein
6 Monofilament, which is a sensation testing device.

7 Q Okay. You mentioned something about reflexes, generally
8 what are reflexes?

9 A Reflexes that -- the -- what happens when the doctor hits
10 your kneecap with a little hammer that is a sensation that goes to your
11 spinal cord and then comes back down the nerves and causes the
12 muscle to contract. So that circuit is called a deep tendon reflex. And it
13 can be absent when there's an impairment in the nerve.

14 Q Now, do updated records, including a referral to the
15 Southern Nevada Pain Center, as of June of 2019, indicate increased
16 pain in the hands and legs more consistent with an underlying and
17 ongoing neuropathy, other than the critical care neuropathy?

18 A Yes.

19 Q Okay.

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

21 THE COURT: All right. Cross-examination by Plaintiffs'
22 counsel.

23 MR. LEAVITT: Yes, Your Honor.

24 [Pause]

25 CROSS-EXAMINATION

1 BY MR. LEAVITT:

2 Q Very good. Good afternoon, Doctor.

3 A Hello.

4 Q All right. Now, Doctor, during opening Mr. Doyle referred to
5 you as a Stanford neurologist; is that accurate? Are you a Stanford
6 neurologist?

7 A Yeah. I think in general I've been part of the Stanford
8 medical community since 1978. I was president of Stanford Medical
9 Staff. I've been up --

10 Q It was just a -- it was a --

11 A May I finish?

12 Q -- just a yes or no question. Are you a Stanford neurologist?

13 A Yes, I am.

14 Q Okay. Now, Doctor, have you seen the slide that Mr. Doyle
15 presented at opening by chance?

16 A I don't -- probably, I don't -- well, I haven't seen any slides.

17 Q Oh, you haven't seen them. Okay. No. Very good. All right.
18 So has Stanford given you -- or Mr. Doyle permission to put their
19 insignia on in open court?

20 A Could -- did who?

21 Q Stanford. Is this okay?

22 A I -- I think so. Yeah.

23 Q You think so? But do you know? Have you ever asked?

24 A I'm not a lawyer.

25 Q Okay.

1 A I don't think there's a problem with it.

2 Q Well, my question is: Have you ever asked?

3 A No.

4 Q Okay. Very good. Now, Doctor, you said you're an adjunct
5 professor; is that correct?

6 A Adjunct clinical professor.

7 Q Okay. So you don't teach classes at Stanford?

8 A I teach --

9 Q Do you teach classes, like --

10 A -- I teach --

11 Q -- in a classroom setting?

12 A -- I teach in the hospital.

13 Q Okay. Now, do you have an office at Stanford?

14 A No.

15 Q Okay. Your office is on Bovet Road; is that correct?

16 A Correct.

17 Q And that's about 20 minutes away from Stanford Medical
18 Center; is that about right?

19 A Currently. Majority of my practice --

20 Q It's just a yes or a no.

21 A May -- I want to clarify --

22 Q Doctor, I didn't ask you for --

23 MR. LEAVITT: Your Honor, could you please instruct the
24 witness?

25 THE COURT: Okay. Perhaps we just need friendly reminder,

1 we can't have two people speaking at the same time, so we can ensure
2 that we have a clear record.

3 If there's a question, just ask that you pause before anyone
4 gives an answer, so we have a clear record.

5 And, Counsel, if the question is yes or no, witness can
6 answer as been requested, and then can have redirect, if that's needed,
7 feel free to do so.

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

10 MR. LEAVITT: Thank you, Your Honor.

11 BY MR. LEAVITT:

12 Q Doctor, I want to be clear. Are you here from Stanford
13 University?

14 A I don't know what that means.

15 Q Okay. Are you representing Stanford University today?

16 A I'm not representing Stanford University, no.

17 Q Okay. Are you representing Stanford Medical Hospital
18 today?

19 A No, I don't represent them.

20 Q Okay. All right. Now, Doctor, Mr. Doyle went through your
21 CV. You didn't go to school at Stanford, did you?

22 A No, I didn't.

23 Q Okay. Let's see. Going through your honors and awards
24 here, it looks like you have a lifetime honorary staff membership at
25 Stanford Hospital; is that correct?

1 A That's correct.

2 Q Okay. You weren't trained at Stanford, were you, Doctor?

3 A No. I taught at Stanford.

4 Q Now, Doctor, yes or no question, are you familiar with the
5 bylaws at Stanford Medical Center?

6 A Yes.

7 Q All right. So to clarify, an adjunct professor -- or adjunct
8 clinical faculty, they're not paid, are they?

9 A No.

10 Q Okay. And in fact, yes or no, do you have privileges to admit
11 patients into Stanford Medical Center or Hospital?

12 A Not current --

13 Q Yes or no?

14 A -- not currently.

15 Q Okay. In fact, yes or no, can you treat patients in Stanford
16 Health Center?

17 A Not currently.

18 Q So to be clear, you can't admit or treat patients in Stanford
19 Health Center? I want to make that absolutely clear.

20 A Well --

21 Q It's a yes or no, Doctor.

22 A It depends on what you mean by Stanford Health Center.

23 Q I'm looking at the bylaws. It's just a yes or no.

24 A I -- I treat and admit patients

25 MR. LEAVITT: Your Honor.

1 THE WITNESS: I'm trying to answer your question.

2 THE COURT: Counsel, what's the request?

3 MR. LEAVITT: I'm asking a yes or no. If I could have the
4 Court's assistance into instructing the witness.

5 THE COURT: Counsel, if you're asking the witness --

6 MR. LEAVITT: A yes or no question.

7 THE COURT: Everyone just please speak one at a time.
8 Feel free to move on with your next question.

9 If the witness is being asked a yes or no, the witness
10 can -- you need to let the witness know if he can't answer yes or no, that
11 he needs to let you know though.

12 MR. LEAVITT: Sure.

13 THE COURT: -- so that he understands.

14 BY MR. LEAVITT:

15 Q Actually, Doctor --

16 MR. LEAVITT: That's fair enough. Thank you, Your Honor.

17 BY MR. LEAVITT:

18 Q If you can't answer yes or no, you can actually answer, I can't
19 answer that yes or no, and your attorney back there, he can ask follow
20 ups; is that fair, Doctor?

21 MR. DOYLE: Your Honor, I object to comments by counsel
22 misstates the evidence.

23 THE COURT: Since the Court did ask that the witness be
24 advised that if he couldn't answer yes or no that he could, just like every
25 other witness, say that he couldn't answer it yes or no. Then the Court

1 would find it's appropriate that he have an instruction --

2 MR. DOYLE: But that wasn't my --

3 THE COURT: -- that's --

4 MR. DOYLE: -- that wasn't my objection, but that's okay.

5 THE COURT: I'm sorry, Counsel. What was the objection?

6 MR. DOYLE: I think he's mischaracterized the relationship
7 between the two of us. I'm not his attorney.

8 THE COURT: Oh, okay.

9 The jury will disregard the comment. This is a witness.
10 Thank you so very much.

11 Please proceed.

12 BY MR. LEAVITT:

13 Q Doctor, do you grade papers at Stanford? Yes or no.

14 A Papers?

15 Q Yeah.

16 A No. I think they have papers at Stanford anymore.

17 Q Doctor --

18 A I don't think there are papers at Stanford anymore.

19 Q Doctor, there wasn't a question pending. Okay. Actually,
20 why don't I ask you this question. Doctor, there was a consult sitting at
21 Mr. Doyle's table during voir dire. Did she help prepare you for your
22 testimony today for this jury?

23 A Who?

24 Q Ms. Hanegan that was seated at Mr. Doyle's table.

25 A I don't know who that is.

1 Q Okay. So the answer is no?

2 A Yeah. I'll take no.

3 Q Okay. Very good. Doctor, isn't it true that you only go to
4 conferences at the Stanford Center? It's yes or no.

5 A That's a trick question. Yes, I do go to conferences at the
6 Stanford Center.

7 Q Okay. And you're not paid to go to those conferences, are
8 you? Yes or no.

9 A No.

10 Q Isn't it -- yes or no -- can you vote at the Stanford Medical
11 Hospital Committees as a honorary lifetime member?

12 A No.

13 Q And also, are you eligible to hold offices at the Stanford
14 Medical Staff Organization? Yes --

15 A Not currently.

16 Q Not at all -- not currently?

17 A Not currently.

18 Q Okay. So let's run through a quick list. You can't admit
19 patients, correct?

20 A I didn't answer your question. I can admit patients --

21 Q Yes or no.

22 A -- to a Stanford Healthcare facility.

23 Q Okay. All right. So I'm going to read you the bylaws.

24 MR. DOYLE: Your Honor, I would object. It's hearsay and
25 the document is not previously produced.

1 MR. LEAVITT: Your Honor, he said he's familiar with hit.

2 THE COURT: The Court's going to sustain it on hearsay,

3 Counsel.

4 MR. LEAVITT: Okay.

5 THE COURT: So much appreciated.

6 MR. LEAVITT: I'll move on.

7 BY MR. LEAVITT:

8 Q Doctor, would you agree with me that doctors should
9 accurately document their medical charts?

10 MR. DOYLE: Objection. Relevance and scope.

11 THE COURT: The Court is going to overrule the objection. I
12 thought it was his prior testimony and has a designation.

13 THE WITNESS: I didn't hear the answer to that.

14 THE COURT: The Court overruled the objection. So you can
15 answer.

16 THE WITNESS: Oh, yes.

17 BY MR. LEAVITT:

18 Q Okay. And you'd agree with me that staff and other
19 providers rely on accurate medical reporting?

20 A Yes.

21 Q You do that, don't you, Doctor?

22 A I try.

23 Q Okay. Very good. Doctor, what's the worst thing that could
24 happen to a patient if a doctor doesn't accurately chart a medical
25 document?

1 MR. DOYLE: I'll object. It's an incomplete hypothetical and
2 would call for speculation.

3 THE COURT: Sustained as phrased --

4 MR. LEAVITT: Okay.

5 THE COURT: -- on both grounds.

6 MR. LEAVITT: All right. Very good.

7 BY MR. LEAVITT:

8 Q Doctor, can we agree that medical charting -- accurate
9 medical charting protects patients?

10 MR. DOYLE: Same objections.

11 THE COURT: Overruled.

12 THE WITNESS: Yes.

13 BY MR. LEAVITT:

14 Q And can we agree that patient safety is a doctor's primary
15 concern?

16 MR. DOYLE: Objection. Relevance and scope.

17 THE COURT: Overruled. Sorry.

18 MR. DOYLE: And it's an incomplete hypothetical.

19 THE COURT: Overruled on all three grounds.

20 THE WITNESS: I would say it is one of the doctor's -- one of
21 the doctor's primary concerns.

22 BY MR. LEAVITT:

23 Q Okay. And we can agree that a doctor's accurate records
24 protect patients?

25 A Yes.

1 Q And can we agree that a careful, and accurate review of
2 patient medical records goes to patient safety?

3 A Yes.

4 Q When you were in practice -- I know you're not in practice
5 right now -- but when you were in practice, did you do that: a careful
6 and accurate review of your patients' charts?

7 A Well, I am in practice, sir. I do practice neurology currently.

8 Q Okay. So do you do that? Do you carefully and accurately
9 go through the patients -- your patients' charts?

10 A I believe so.

11 Q Now, Doctor, if there's a medical record or a medical history
12 of a patient that's available to you, would that be important for you to
13 review?

14 MR. DOYLE: Objection. Calls for speculation.

15 THE COURT: Overruled, as phrased.

16 THE WITNESS: It depends on the circumstance.

17 BY MR. LEAVITT:

18 Q So some records aren't -- you shouldn't -- you don't need to
19 review -- medical records?

20 A It -- it depends on the -- it really depends on the
21 circumstance.

22 Q Okay. Doctor, are you familiar with Johns Hopkins?

23 A I am.

24 Q Is Johns Hopkins a reputable source?

25 A It's an excellent facility in general.

1 Q So okay.

2 A I'm not sure what you mean by "source".

3 Q Sure. Doctor, Johns Hopkins says that medical errors is the
4 third largest cause of deaths in the US; would you disagree with that?

5 MR. DOYLE: Objection. Hearsay.

6 MR. LEAVITT: I've got the document, if you'd like to see it.

7 MR. DOYLE: Objection. Hearsay.

8 THE WITNESS: I'm sorry I didn't hear what you said.

9 THE COURT: Okay. I've got multiple people talking at the
10 same time, which we need to have a clear record.

11 The objection was hearsay. The Court is going to sustain the
12 objection, based on the way it was phrased.

13 MR. LEAVITT: I'll move on, Your Honor.

14 BY MR. LEAVITT:

15 Q Now, Doctor, we can agree that you just took an oath to tell
16 the truth today, right?

17 A Yes.

18 Q And we can agree that you're going to do just that?

19 A Yes.

20 Q We can agree that it's important for you to be honest,
21 correct?

22 A Sure.

23 Q Okay. Sure or yes?

24 A Sure, yes.

25 Q Sure, yes. Okay. Very good. All right. Doctor, you were

1 asked how much time you took to prepare your report. You said eight to
2 ten hours; is that correct?

3 A It was a rough -- as you know, I hesitated before I answered
4 that. That's kind of hard to think back to last December.

5 Q Sure.

6 A Something like that.

7 Q Okay. Not a problem. And what I'd like to do is counsel
8 asked you about some records that you went through in preparation of
9 your report and I'd like to pull those and kind of list them off for you.

10 All right. Doctor, I'm going to go to this here board. I'm
11 going to write some stuff down. All right. Now, Doctor, you had -- well,
12 let me ask -- let me ask you this: How did you get the records in this
13 case? Who sent them to you?

14 A Mr. Doyle's law firm.

15 Q Okay. Did he send you -- did he give you a paper copy like
16 the ones you see back there?

17 A My recollection is that they were electronic.

18 Q Okay. And you reviewed all those records, right?

19 A Yes.

20 Q Okay. And I want to go through those records with you. You
21 were given -- and I'm going to shortchange it here -- you reviewed St.
22 Rose Dominican Hospital?

23 A Yes.

24 Q St. Rose Hospital, SRH.

25 A Yes.

1 Q That's about 8,000 pages, right?

2 A I didn't get all 8,000 pages.

3 Q You didn't get all 8,000 pages?

4 A I don't think so.

5 Q How many pages did you get?

6 A I'm, like -- I don't know.

7 Q You don't know?

8 A Well, less than that. Probably a couple hundred.

9 Q So you got a couple of hundred pages? Do you remember
10 having your deposition taken in this case?

11 A Yes.

12 Q Okay.

13 MR. LEAVITT: Your Honor, can we open up this fine doctor's
14 deposition, lease?

15 THE COURT: Sure. Do you wish to publish the deposition of
16 the witness; is that correct?

17 MR. LEAVITT: That is correct, Your Honor.

18 THE COURT: Okay. Madam Clerk, thank you so much.
19 Looks like you're already taking care of it. Appreciate it.

20 THE CLERK: Just give me a few minutes.

21 THE COURT: Of course. It just takes a second to get it out of
22 the locker, so --

23 MR. DOYLE: Perhaps, we could get the page and line?

24 THE COURT: Should only take a second for her to get it out
25 of the --

1 MR. LEAVITT: Oh, no problem, Your Honor. I'm just --

2 THE COURT: -- lock the doors.

3 MR. LEAVITT: -- I'm happy to --

4 THE COURT: Okay. Counsel, I need you both to approach in
5 the interim, please.

6 Madam Court Reporter, could you turn on the white noise?

7 THE COURT: Counsel, both --

8 [Bench conference - not recorded]

9 THE COURT: White noise off. Thank you so much.

10 THE MARSHAL: Your Honor, all present and accounted.

11 THE COURT: Okay. So now I have all jurors present and
12 accounted for. Just appreciate it. So all three of our jurors
13 were -- appreciate going to the restroom when I had counsel at the
14 bench. The Court just had to instruct the witness that he had some
15 documents on the witness stand just to put them away.

16 Okay. And since some of you weren't here, I said I had to
17 mention it when I had you all here. No worries.

18 Okay. So, Counsel, the deposition is published. You can pick
19 it up, if you'd like. And if you can get a page number and line reference
20 so that --

21 MR. LEAVITT: I'm sure, Your Honor.

22 THE COURT: -- everyone can have it, that would be great.
23 Thank you so much.

24 MR. LEAVITT: There you go.

25 [Pause]

1 BY MR. LEAVITT:

2 Q Okay. If we could go to page 11 in your deposition -- well, let
3 me ask you this, Doctor.

4 THE COURT: Okay. I'm sorry. Defense Counsel --

5 MR. LEAVITT: Sorry. Page 11.

6 THE COURT: Thank you. Page 11. Okay. Thank you.

7 MR. DOYLE: What lines?

8 MR. LEAVITT: 2 and 3.

9 BY MR. LEAVITT:

10 Q Doctor, do you recall having your deposition taken in this
11 case?

12 A I do.

13 Q Okay. I'm going to -- I'm going to see if this -- I'm going to
14 read to you starting on page 2 --

15 MR. DOYLE: And I'll object, it's improper impeachment.

16 THE COURT: The Court's going to sustain, if you're going to
17 be reading from the depo. Thank you.

18 MR. LEAVITT: Sure.

19 THE COURT: As stated.

20 BY MR. LEAVITT:

21 Q Can you look at that what lines 2 through 8?

22 A Yes.

23 Q And see if that refreshes your recollection?

24 A Yes.

25 Q Does it refresh your recollection?

1 A Yes.

2 Q Okay. Did you read the entire record?

3 A I read the entirety of the records that I received.

4 Q Okay. And you don't know how many records you received,
5 did you -- do you? Did you receive 8,000 pages from St. Rose Hospital?

6 A I don't think so.

7 Q Do you know how many you received?

8 A Less than that.

9 Q How many would you estimate, Doctor?

10 A A couple of hundred.

11 Q Okay. So Mr. Doyle sent you only a couple of hundred pages
12 from Sunrise -- or St. Rose Hospital? So about 200, 300, what are we
13 talking, Doc?

14 A Something like that.

15 Q 300?

16 A Something like that. It's not critical.

17 Q Patient's records aren't critical; is that what you said?

18 A The number of pages is not critical.

19 Q But all the records aren't critical?

20 A There are some records that are more important than others.

21 Q But you didn't choose these 300, did you, Doctor? Mr. Doyle
22 did, didn't he?

23 A I don't know who chose them.

24 Q Well, Doctor, it's pretty simple. Did you choose 300 out of
25 8,000 pages or did Mr. Doyle choose 300 out of 8,000 pages?

1 A As a -- I don't know if Mr. Doyle or someone in his office did
2 that.

3 Q Okay. Well, let me clarify. Let me ask you the full question.

4 THE COURT: Counsel, is your microphone back on? I'm not
5 sure if we're hearing you completely. If you wouldn't mind, double-
6 checking that, that would be wonderful.

7 MR. LEAVITT: Sorry, I thought I speak loud enough. It's on.
8 Here, hold on. Let me move it a little closer.

9 THE COURT: No worries.

10 Are you hearing it okay?

11 MR. LEAVITT: How is that? Are we good?

12 THE COURT: Okay. Madam Clerk, can you hear okay?

13 MR. LEAVITT: Can you hear me?

14 THE CLERK: I can hear fine.

15 THE COURT: Okay. Perfect. Thank you.

16 MR. LEAVITT: Am I too loud? Okay.

17 BY MR. LEAVITT:

18 Q Now, Doctor, you're the doctor, right? That's what you're
19 here for.

20 A Yes.

21 Q Am I right? Okay. And Mr. Doyle and his entire law firm
22 they're the law firm, right?

23 A He has a law firm.

24 Q He does -- he does. He has a law firm. Now, my question is
25 this: If he's the lawyer and you're the doctor, he, Mr. Doyle, or

1 somebody in his law firm, since we want to be completely
2 accurate -- somebody from Mr. Doyle's law office over there took 300
3 pages out of 8,000, which that's not even 8,000 pages behind you, and
4 gave you a select 300; is that what you're tell -- is that your testimony
5 today to the jury?

6 A Yes.

7 Q So he selected which records are important to you, you
8 didn't?

9 A He -- I'm not -- I don't understand the part about what's
10 important to me.

11 Q No, I'm --

12 A If he selected what's important to me, no.

13 Q Oh, no. Did you tell him hey, look, these 300 looks to me like
14 there's 8,000 maybe I should look at some others? Did you tell him that?

15 A I did not need to do that.

16 Q You didn't. Oh, you didn't. Why didn't you need to do that?

17 A Because I believed that she did have critical care neuropathy
18 and that would be the only reason I would be looking at the hospital
19 records to make that decision. And there was enough data in the records
20 to confirm that I believe she did have critical neuropathy.

21 Q Wow. But you're here cutting down percentages rebutting
22 what Dr. Willer says, based on 300 pages. What about the other 7,700
23 pages? None of those are important, Doctor?

24 A It's irrelevant to Dr. Willer's opinion.

25 Q Okay.

1 MR. LEAVITT: Well, I'm going to move to strike that
2 response. I wasn't asking about Dr. Willer, Your Honor.

3 THE COURT: The jury will disregard the response. The Court
4 is going to strike that last response.

5 Counsel, feel free to move to your next question. Thank you
6 so much.

7 MR. DOYLE: Your Honor, I object to the histrionics.

8 THE COURT: Counsel, if there's an evidentiary objection, the
9 Court will be glad to address it. The jury will disregard the comments
10 between counsel. The jury will, of course, will disregard anything other
11 than the questions and the answers, if you recall what the Court said at
12 the beginning with regards to what is the evidence in this case, and what
13 the Court needs to -- the jury needs to consider as the triers of fact.

14 Thank you so very much.

15 Counsel, feel free to move forward with your next question. I
16 appreciate it.

17 MR. LEAVITT: Thank you, Your Honor.

18 BY MR. LEAVITT:

19 Q So 300 pages and you came up with your conclusions; is that
20 correct?

21 A No.

22 Q Well, now, so you read other records?

23 A I read a lot of other records.

24 Q Okay. Let's talk about -- here, I have some questions on what
25 you didn't get. Now, you have Mr. Doyle's office number, right?

1 A His telephone number?

2 Q Sure.

3 A Somewhere, yeah.

4 Q And you can communicate with him rather well, I'm
5 assuming?

6 A Yes.

7 Q Okay. So 300 pages, wow.

8 MR. DOYLE: Your Honor, I move to strike Plaintiffs' counsel's
9 comment.

10 THE COURT: The jury is reminded --

11 MR. LEAVITT: I'll withdraw my comment, Your Honor.

12 THE COURT: The comments is withdrawn.

13 The jury is reminded, of course, any comments or colloquy
14 between counsel gets disregarded. The jury was instructed at the
15 beginning of the trial what you're to focus on as the triers of the fact.
16 Thank you so very much. Appreciate it.

17 BY MR. LEAVITT:

18 Q Doctor, when you see a patient and give them a diagnosis,
19 do you see them in person?

20 A Usually.

21 Q Usually. Is that important or not important like the 7,700
22 pages?

23 MR. DOYLE: Objection. Argumentative.

24 THE COURT: Overruled as phrased.

25 THE WITNESS: I don't know what you mean.

1 THE COURT: Sorry. You've got to wait. Pause for a second.

2 Okay. Overruled as phrased.

3 Now, the witness may answer. Thank you so much.

4 BY MR. LEAVITT:

5 Q So is it important to you to see the patient or not? If you
6 have the ability, would you rather see the patient?

7 A In practice, yes.

8 Q In practice, that's -- but not in forensics like you're doing
9 here?

10 A That includes forensics.

11 Q Oh, in forensics as well? Now, you didn't see Titina, did you?

12 A No, I didn't.

13 Q Oh, okay. Did you ask to see Titina?

14 A I did.

15 Q Okay. Who did you ask your attorney to see Titina?

16 MR. DOYLE: Objection. Mischaracterized the relationship.

17 BY MR. LEAVITT:

18 Q Or sorry.

19 MR. LEAVITT: Your Honor, I will ask a different question.

20 BY MR. LEAVITT:

21 Q Did you ask Dr. Rives's attorney to see Titina?

22 A I asked if that was a possibility.

23 Q What'd he say?

24 A I don't recall specifically, but it didn't happen.

25 Q Okay. All right. So even in forensics, you would like to see

1 the patient?

2 A It depends on the circumstance.

3 Q Okay.

4 A It depends on what my question is being asked of me.

5 Q Okay. So did you review the deposition of Titina Farris?

6 A Yes, I did.

7 Q Prior to your report?

8 A No.

9 Q Okay. Prior to your report, did you review the testimony of
10 her husband?

11 A No.

12 Q Doctor, you know who Dr. Rives is, correct?

13 A Yes.

14 Q Okay. How many times have you spoken to Dr. Rives before
15 today?

16 A Zero.

17 Q Okay. So no conversation with -- did you ask to speak to
18 him?

19 A No.

20 Q Did you review -- before drafting your rebuttal, did you
21 review Dr. Rives's deposition?

22 A No.

23 Q Okay. Depo either. Did you review -- do you know
24 what -- you know what interrogatories are, right? Questions?

25 A Yes.

1 Q Okay. Have you ever answered interrogatories on your own
2 behalf in a medical malpractice suit?

3 MR. DOYLE: Objection. Relevance and 48.035.

4 THE COURT: In light of prior ruling, that specific question
5 will be allowed.

6 THE WITNESS: No.

7 BY MR. LEAVITT:

8 Q Have you been sued before for medical malpractice?

9 A No.

10 Q Okay. So you know what interrogatories are though?

11 A Yes.

12 Q Okay. Did you review Dr. Rives's interrogatory responses?

13 A No.

14 Q Did you review Titina's -- before making this report did you
15 review Titina's?

16 A No.

17 Q Is that because, like the 7,700 pages, none of these are
18 important for you for a rebuttal report?

19 A I don't believe they're relevant to the issue of causation.

20 Q Okay. So Titina's deposition is irrelevant to you to
21 causation -- a rebuttal on causation?

22 A There was nothing at her deposition, which was really --

23 Q Doctor, it's just a yes or no question.

24 A I'm answering your question. There was nothing in there
25 that affected --

1 Q Doctor --

2 A -- causation.

3 MR. LEAVITT: Your Honor --

4 THE COURT: Okay. Once again, we need to have one person
5 speaking at a time in order to have a clear record. So if there's a
6 question pending, you need to let the witness, and then move on to the
7 next question.

8 And if there's a request, the Court could address it.

9 Okay. So is there a question pending or not?

10 MR. LEAVITT: No, Your Honor. I'll withdraw it all.

11 THE COURT: No worries.

12 MR. LEAVITT: I'll ask if different.

13 THE COURT: Okay.

14 BY MR. LEAVITT:

15 Q Yes or no: Titina's depo important to you for a rebuttal
16 report, or can you not answer that?

17 A It was not important to my report.

18 Q Okay. How about Dr. Rives's depo, was that important? Yes
19 or no?

20 A That would not be important.

21 Q Okay. How about Titina's husband, Patrick, would that be
22 important? Yes or no?

23 A It was not important.

24 Q Wow. Now, Doctor, are you aware that interrogatories are
25 made under oath to tell the truth? Are you aware of that?

1 MR. DOYLE: Objection. Relevance..

2 THE COURT: Sustained on relevance.

3 BY MR. LEAVITT:

4 Q Doctor, are you aware that Dr. Rives withheld information
5 about another medical malpractice case to the Plaintiff in this case?

6 A I know nothing about that.

7 Q Doctor, do you withhold pertinent information from your
8 clients?

9 MR. DOYLE: Objection. Relevance.

10 THE COURT: Sustained.

11 MR. LEAVITT: Okay.

12 BY MR. LEAVITT:

13 Q Doctor, can we agree that you didn't review your EMG report
14 before -- the EMG report in this case before writing your December 18th,
15 2018, rebuttal?

16 A No.

17 Q Oh, we can't? Okay. If you could open up your deposition to
18 page 15. Okay. Can you read 1 through 7?

19 MR. DOYLE: Your Honor, I'd ask that we go through line 20.

20 THE COURT: Counsel, it's appropriate. The jury will
21 disregard that comment.

22 MR. LEAVITT: Your Honor, can we approach, based on his
23 last instruction to his witness?

24 THE COURT: The witness will disregard it, because the Court
25 told both the jury and the witness to disregard so the --

1 MR. LEAVITT: Okay.

2 THE COURT: -- witness would only be reading 1 through 7.
3 If you wish to approach, the Court is glad that you can approach, or you
4 can move forward.

5 MR. LEAVITT: No, I'll --

6 THE COURT: What would you like to do?

7 MR. LEAVITT: Thank you, Your Honor. You know what, I'll
8 just read with him.

9 BY MR. LEAVITT:

10 Q Read along with me, Doctor. Okay. Line 1, you see that?
11 "So -- so you would have printed all of these records out some point
12 between the date you received them in November and the time you
13 wrote your report in December; is that fair?" Did I read that accurately,
14 Doctor? Page 15.

15 A The -- yeah -- yes, you read the question.

16 Q Okay. Now, can you go ahead and read 5 to 7?

17 A It says, "Mostly. I think the only exception of that was when I
18 subsequently received the EMG report of Dr. Chang, so I actually printed
19 that out today."

20 Q And then it says on line 8, "When did you receive that,
21 Doctor?" Can you read line 9, please?

22 A "The Chang report?"

23 Q "Yes." 11.

24 A It said, "I'd say a couple of months ago."

25 Q Okay. So let's go through this. A couple -- so just a couple

1 of months ago your deposition -- let me get the date here -- was July
2 23rd of 2019; is that correct?

3 A Yes.

4 Q Okay. Based on that part of your deposition, it says a couple
5 of months ago, right? July 3rd, 2019. A couple of months ago. Let's
6 give you April, right. So June, May, around April, right, is when you got
7 Chang's report?

8 A I got the Chang's report actually before I wrote my report. As
9 I said in line 20.

10 MR. LEAVITT: Your Honor, the instruction --

11 THE COURT: The jury will disregard --

12 MR. LEAVITT: -- obviously wasn't heard.

13 THE COURT: -- the jury will disregard the comment of the
14 witness. The jury heard the Court's instruction.

15 The witness is specifically admonished in front of the jury.
16 The Court made a specific statement to the witness as to what could and
17 could not be done. The witness cannot disregard the Court's instruction.

18 The jury will disregard that comment.

19 Counsel, you may move forward. Thank you so very much.
20 Do appreciate it.

21 MR. LEAVITT: Thank you.

22 MR. JONES: Your Honor, could we have a brief recess?

23 MR. LEAVITT: Yeah, this is --

24 THE COURT: It's a wonderful time for -- 3:15 beautiful time
25 for an afternoon recess, isn't it.

1 Okay. It's about 3:12. We're going to come back at 3:30. And
2 don't worry we will be stopping today at 4:30.

3 Marshal, can you close the deposition that's currently on the
4 witness stand? Do appreciate it. Thank you so very much.

5 Okay. We're going to come back at 3:30. Ladies and
6 gentlemen, like I said, we will be stopping at 4:30 today.

7 So during this recess you are admonished not to talk or
8 converse among yourselves or with anyone else on any subject
9 connected with this trial. You may not read, watch, or listen to any
10 report or commentary on the trial, or any person connected with the trial
11 by any medium of information, including without limitation social media,
12 text, Tweets, newspapers, television, internet, radio, anything the Court
13 has not stated, you understand as the Court's also included.

14 Love those affirmative nods. Thank you so very much.

15 Do not visit the scene of the events mentioned during the
16 trial. Do not undertake any research experimentation or investigation.
17 Do not do any posting or communications on any social networking sites
18 or anywhere else. Do not do any independent research, including but
19 not limited to internet searches. Do not form or express any opinion on
20 any subject connected with the trial until the case is fully and finally
21 submitted to at the time of jury deliberations.

22 With that, please enjoy stretching your legs. We'll see you
23 back in a few. Thank you so much.

24 THE MARSHAL: All rise for the jury.

25 [Jury out at 3:15 p.m.]

1 [Outside the presence of the jury]

2 THE COURT: Okay. Hearing that nice click, at this juncture,
3 Counsel for Plaintiff, give you a brief moment, and then of course, my
4 team, as you know, needs their afternoon break as well.

5 MR. LEAVITT: Absolutely.

6 THE COURT: So --

7 MR. LEAVITT: Can we dismiss this witness for this section?

8 THE COURT: What we're going to do is we're going to give a
9 nice break to the team and then we're going --

10 MR. LEAVITT: Okay. And then come back?

11 THE COURT: -- to come back. Actually, you know what, let's
12 just finish this right now. Let's get this taken care of.

13 Witness can please be excused to the ante room or out in the
14 hallway. Please make sure you don't speak with any of the jurors. They
15 shouldn't be right nearby, but just in case.

16 Marshal, is the ante room open if the witness wants to be
17 either in the ante room or the hallway?

18 THE MARSHAL: Say that one more time, ma'am?

19 THE COURT: Oh, sorry. I spoke a little quickly. Let me slow
20 that down.

21 THE MARSHAL: That's okay.

22 THE COURT: No worries. I just said is the ante room open in
23 case the witness wishes to be in either in the ante room in the hallway,
24 whichever is fine.

25 THE MARSHAL: Yes, Your Honor.

1 THE COURT: Just so we can press --

2 MR. LEAVITT: Your Honor, he just -- I'm about done with this
3 witness.

4 THE COURT: I'm sorry was there an issue or concern?

5 MR. LEAVITT: Yes, he's intentionally locks eyes with me,
6 walks in, and brushes up against me. He's trying to intimidate an officer
7 of the court.

8 THE COURT: Okay.

9 MR. LEAVITT: Your Honor, I want him -- I would like to file
10 charges against him.

11 THE COURT: Okay. At this juncture, we have a JAVS. We
12 have JAVS. It has multiple cameras. The Court will review. If there's
13 any issues -- okay, so at this juncture, I will talk with the marshal who is
14 standing there, talk with various individuals, but at this juncture, let's just
15 see if there's an issue with regards to any testimony, and let everyone
16 have a nice break. Okay.

17 Marshal, please just --- the witness either wants to use the
18 ante room or the hallway, just make sure it's not near any witnesses. Do
19 appreciate it. Thank you so very much.

20 Okay. So, Counsel, as you can appreciate, want to make sure
21 everyone gets a full break as well, but was there an issue that you
22 needed, or did you just want a break?

23 MR. LEAVITT: No, Your Honor. I have a very brief issue.
24 One, Mr. Doyle pushed the bounds -- pushed the envelope of the prior
25 order. He's leading up to a diabetic neuropathy, so on and so forth. And

1 then his client -- his witness cannot follow instructions from the Court.
2 Twice this witness has been admonished.

3 Then Mr. Doyle coaches his witness, as I was going through
4 my questions trying -- and then he comes out and he makes me look like
5 I'm lying to the jury. I had a line of questioning. Mr. Doyle knows this
6 continues to happen.

7 His witness then comes off the stand, staring at me the entire
8 time. Your Honor, this behavior from this witness, who cannot listen to
9 the Court, nor can his counsel.

10 Again, Mr. Doyle continues, from this -- from his seat to try
11 and drive this case.

12 THE COURT: Okay. Counsel, let's walk through it. The Court
13 did --

14 MR. LEAVITT: Sure.

15 THE COURT: -- admonish the witness in front of the jury,
16 right, with regard to the inappropriate behavior, because the Court had
17 already asked one time not to look at things, because a witness knows,
18 and it should have been advised in advance the witness can't be looking
19 at various documents, particularly documents without the consent of the
20 other party brought to the witness stand, and looking at them.

21 The Court had already asked once. And the second
22 time -- did it once very casually. The second time, after bringing both
23 counsel to the bench, and notifying, you know, there was no objection,
24 that the Court was going to admonish in front of the jury, because
25 unfortunately we had three of the jurors that were out for restroom break

1 while you all were at bench. Had to do it a second time and still wouldn't
2 put it away, so the Court had to ask again nicely. Still wouldn't put it
3 away, so the Court did take care of that issue immediately.

4 With regards to conduct that may or may not have occurred,
5 you can appreciate the Court viewpoint is from the back. The Court --

6 MR. LEAVITT: Correct.

7 THE COURT: -- isn't in various places, so the Court would
8 have to look into any of those issues before the Court would address
9 everything. We have to talk to appropriate people. And then I don't
10 think you want the trial stopped at this juncture to do that --

11 MR. LEAVITT: I do not.

12 THE COURT: -- is that correct?

13 MR. LEAVITT: That is correct, Your Honor.

14 THE COURT: Okay. So then that will have to be looked at, at
15 a different time, right --

16 MR. LEAVITT: Okay.

17 THE COURT: -- in order -- if anybody has any viewpoints, I'm
18 sure people can find and talk to, but now probably wouldn't be the best
19 time, because everyone wants -- does everyone wish this trial to move
20 forward at this juncture versus stopping it right now to address that
21 issue?

22 MR. JONES: Your Honor, there is no way that this can go
23 forward with this witness as it is. Your Honor, there was -- what just
24 happened -- and I have --

25 THE COURT: What's the "just happened"? Realize this Court

1 has to have an understanding of what --

2 MR. JONES: Absolutely.

3 THE COURT: -- you mean by the thuses and the thises and
4 the that's. Okay.

5 MR. JONES: So let me explain. Your Honor, made it very,
6 very clear in the order, right -- in the order that causation was not
7 something he was allowed to talk about, and I understand there was a
8 distinction made that it was -- that it was talked about in diabetic
9 causation, because that's what he opined to in his report, but then the
10 travesty that just went on is we had Mr. Doyle walk him through
11 questions about diabetes --

12 THE COURT: You remember my poor court reporter is
13 listening to things --

14 MR. JONES: -- absolutely --

15 THE COURT: -- so please, for her ears -- thank you.

16 MR. JONES: -- walk him through questions about diabetes.
17 Then he followed up those questions about diabetes with her prior
18 condition -- causation. It was all about medical causation immediately
19 after laying out a foundation of diabetes.

20 Causation, Your Honor, your order was causation was not
21 permitted, and the boundaries got stretched and objections were made,
22 but the boundaries were stretched so far there is no possible way that
23 that is appropriate. Those are clearly initial opinions. They have been
24 offered. The only remedy is striking him.

25 Then, Your Honor, what I find --

1 THE COURT: Counsel, I'm going to stop you on that one --

2 MR. JONES: Okay.

3 THE COURT: -- because the Court, with the attorney that was
4 handling that witness, right, the Court addressed each objection on an
5 objection-by-objection basis and made its rulings. When there was a
6 point of clarification, I called the parties to bench and dealt with those.
7 Okay. And I appreciate there may be difference of opinion.

8 At this juncture, if there was something that immediately,
9 quickly get you done, but you realize in fairness the Court needs to be
10 doing this.

11 MR. JONES: Yes.

12 MR. DOYLE: Yes.

13 THE COURT: So I'm going to give you a moment --

14 MR. JONES: Your Honor, the only other thing that I think is --

15 THE COURT: -- because remember we're supposed to be
16 doing one horse, one rider, if there's an issue on a particular witness --

17 MR. JONES: Sure.

18 THE COURT: -- unless you're observing something from
19 where you're sitting that's distinct from where Mr. Leavitt would be, and
20 that would be fair to allow you to express that.

21 MR. JONES: I absolutely am, Your Honor. And when Mr.
22 Doyle made that comment about page 20 what it did -- and then followed
23 up by the --

24 THE COURT: Line 20.

25 MR. JONES: -- witness doing it --

1 THE COURT: Line 20, but yeah.

2 MR. JONES: -- line 20 -- there is not an instruction that the
3 Court has made that comes anywhere close to fixing that problem. What
4 it told the jury, Your Honor, was that Mr. Leavitt is lying to the jury and
5 hiding line 20 from the jury and saying that he did something wrong and
6 allowing that to stand is not --

7 THE COURT: The Court immediately said that the lines that
8 we looked at -- and that the witness shouldn't be looking at additional
9 lines, and for the jury to disregard Mr. Doyle's comment, that that was
10 inappropriate. Immediately addressed it. I said it was inappropriate. The
11 jury will disregard that. The witness will disregard that.

12 Mr. Leavitt then made a subsequent statement and the Court
13 said well, the witness wouldn't be looking at that because this Court just
14 specifically told the witness and the jury that that comment had to be
15 disregarded.

16 If you wish some additional remedy --

17 MR. JONES: Yes.

18 THE COURT: -- I will let you think about it over the break.

19 MR. JONES: Okay.

20 THE COURT: Right now we're going to go off the record,
21 because I'm going to need to give Mr. Doyle an opportunity to respond
22 as well. Now that you know the issues.

23 It's 3:22. My team also needs their afternoon break, so we'll
24 see you at 3:35, and unfortunately, this jury -- remember, we told the jury
25 4:30 by you all's agreement, because of the one juror's commitment, so

1 please do exit the courtroom very quickly so that my team get their
2 break, because their time is not going to start until everyone is out of
3 here. Okay. That means everyone is --

4 MR. LEAVITT: Your Honor, I do have one witness of what
5 just happened, and she has to leave with the doctor.

6 MS. BRETELL: Should I speak with just your marshal?

7 THE COURT: Okay. What we're going to need to do -- leave
8 with the doctor. I'm not sure what that means. Are you personal
9 counsel to the doctor?

10 MS. BRETELL: No, Your Honor. So Jacqueline Bretell,
11 12335.

12 THE COURT: Okay. So I'm going to let you speak, because --

13 MS. BRETELL: Okay.

14 THE COURT: -- in fairness because you said you need to
15 leave. Go ahead.

16 MR. LEAVITT: I'm a joke. Thank you, Mr. Doyle.

17 THE COURT: Okay. We're not going to have commentary
18 between counsel, please. We need to keep this -- remember, it is
19 about --

20 MR. LEAVITT: Okay.

21 THE COURT: -- your clients --

22 MR. DOYLE: I understand.

23 THE COURT: -- having a full and fair opportunity to have
24 their trial on the merits. I cannot have counsel making comments and in
25 anyway interfering with their clients. Okay.

1 This Court is ensuring your clients have a full and fair
2 opportunity to have their case heard. I am specifically instructing
3 counsel not to interfere with that. Okay.

4 Sorry, Ms. Bretell, I'm going to let you speak. Do you want to
5 stay -- you need to come a little bit closer to some microphone, because
6 you said you need to leave.

7 I'm going to stay on the record for a moment. I'm just going
8 to hear what you have to say. The Court is not taking any position, but
9 you said as an officer of the court you need to leave. I'm going to let you
10 speak. The Court is going to then go off the record, let everyone have a
11 break. And we'll address what we need to address at the appropriate
12 time.

13 Thank you so much. Please proceed.

14 MS. BRETELL: Yes, Your Honor. Jacqueline Bretell, Bar
15 Number 12335. At the start of the break I was standing just immediately
16 behind Plaintiff counsel's table, probably about 12 feet. And I did see the
17 same thing that Mr. Leavitt did describe, which was the witness get off
18 the stand, maintain eye contact with Mr. Leavitt, and then walk very, very
19 close to Mr. Leavitt, so that their chests were against each other
20 basically. And at that point in time, did finally turn and, to me, it looked
21 like there was some brushing up against him as well.

22 If it were me standing there, I would have been very
23 uncomfortable. So I have to leave, and I just wanted to make sure -- I
24 didn't know if I needed to tell somebody that before I left.

25 THE COURT: Okay. I do appreciate it. Thank you so much.

1 The Court is not going to take any position at this juncture.
2 I'm going to wish everyone a nice and relaxing break. I'm going to ask
3 Madam Court Reporter to go off the record. And ask everyone to please
4 leave the courtroom so my team gets their break.

5 [Recess taken from 3:25 p.m. to 3:40 p.m.]

6 THE COURT RECORDER: On the record.

7 THE COURT: Yes. Okay. On the record outside the presence
8 of the jury in case number 739464.

9 Okay. I wanted to make sure everyone had a nice relaxing
10 break.

11 And so at this juncture with the current witness on the stand,
12 who's not here. The witness is in the anteroom, Marshal, is that correct?

13 THE MARSHAL: Yes, ma'am, he is.

14 THE COURT: Okay. So what we're going to do is when the
15 witness comes back in, we're going to ensure that the witness comes
16 back. I'm just going to ask that the Marshal bring the witness through
17 the back hallway and put him on the stand that way, rather than have
18 him come --

19 MR. LEAVITT: I Can just stand over here, Your Honor, not a
20 big deal.

21 THE COURT: Pardon?

22 MR. LEAVITT: As long as I have room, yeah.

23 THE COURT: Okay. You're okay with him coming back in
24 through there?

25 MR. LEAVITT: Oh, absolutely. The thing is, I couldn't move

1 back because of my chair, and yeah, that's all right, I'm good, I'm solid.

2 THE COURT: All right, so we're good. Okay. Then we're fine
3 with that part.

4 So now at this juncture what the Court just needs to know, is
5 there any request or anything that needs to be dealt with before the
6 witness comes back in? And what I'm just going to ask, because I do
7 appreciate that there's different viewpoints, but --

8 MR. LEAVITT: Sure.

9 THE COURT: -- was there a request, because if so I'm just
10 going to need to succinctly, right? And then I'm going to let Defense
11 counsel respond if there is a request, okay, with this witness.

12 MR. LEAVITT: Yes, Your Honor. Your Honor didn't finish
13 quite -- I don't know if this Court heard or not, so as I was getting ready
14 to go, finish my questioning, he says well, look at line 20. I was getting
15 there. It's a complete coach from him. Obviously, that was after this
16 Court said -- told Mr. Doyle don't do that, he takes --

17 THE COURT: Are you talking about after the Court had
18 already said that line 20?

19 MR. LEAVITT: That's my recollection, right.

20 THE COURT: Because the Court did, when counsel said,
21 requested I'd like him to go to line 20, the Court did immediately say
22 that's inappropriate, the jury will disregard the Court's -- counsel's
23 comment, the witness. And then you went back to stand. You started to
24 say something else, and actually you said page 2 and you meant line 2,
25 but it wasn't really a big deal, and then you started to read back and

1 forth. And then he blurted out, line 20.

2 MR. LEAVITT: Go to line --

3 THE COURT: The Court again admonished him in front of
4 the jury that was inappropriate by the Court's prior ruling.

5 MR. LEAVITT: Okay.

6 THE COURT: Are you saying that that's not sufficient, that
7 you're requesting something else?

8 MR. LEAVITT: Yeah. I think that they can -- I think that the
9 proper remedy, I agree it's something we discussed outside, was that
10 Defense can't use his deposition now to rehabilitate him in any way after
11 this coaching. I mean this is coaching. I've had coaching in depositions,
12 handled it, but this is coaching from down here from an experienced,
13 good litigator. That is coaching from down here.

14 I think that the proper remedy was to -- is to prevent Mr.
15 Doyle from using Mr. -- or Doctor Adornato's deposition to rehabilitate
16 him. He clearly knows how to coach. I think that's a fair remedy, Your
17 Honor.

18 THE COURT: A deposition can only be utilized for certain
19 purposes in any event, so --

20 MR. LEAVITT: Correct.

21 THE COURT: -- let me see that issue. So Defense counsel,
22 what's your position?

23 MR. DOYLE: I don't have any plans to use the deposition to
24 refresh his recollection or try and impeach him.

25 MR. LEAVITT: Okay.

1 MR. DOYLE: I mean I don't know what else I could use it for.

2 MR. LEAVITT: That's fine, Your Honor.

3 THE COURT: Okay. So what the Court's going to do, based
4 on the request of Plaintiff's counsel, is if Defense counsel changes your
5 mind and you wish to utilize the deposition for any purposes, I'm going
6 to ask you just to say can we approach. Not say can we approach
7 because I want to use the deposition or anything like that, just a simple
8 can we approach, okay? Is that clear?

9 MR. DOYLE: Understood.

10 THE COURT: And then it will be addressed at bench and
11 we'll see if Plaintiff's counsel still has that request and I can address it at
12 bench. And then if you all request that instead of at bench it needs to be
13 done outside the presence of the jury and the jury needs to be excused,
14 the Court will consider that request. Does that work for all parties?

15 MR. DOYLE: Yes, Your Honor.

16 MR. LEAVITT: Yes, Your Honor, thank you.

17 THE COURT: Does that work? Is there any other remedies or
18 anything else that the Court is being requested at this juncture?

19 MR. LEAVITT: No, Your Honor, not on behalf of Plaintiffs.

20 THE COURT: Okay. So then at this juncture is there anything
21 else that needs to be done or would you like the witness to come back in
22 and continue with the examination?

23 MR. LEAVITT: Come back in and continue would be
24 Plaintiff's position.

25 THE COURT: Does that meet your needs, as well, Defense

1 counsel?

2 MR. DOYLE: It does.

3 THE COURT: Okay. So then after the witness comes back in,
4 is there anything that's being requested of the Court to say to the
5 witness outside the jury's presence or would you just like the jury to be
6 brought in and then counsel for Plaintiff you would continue with your
7 cross-examination?

8 MR. LEAVITT: Your Honor, a helpful reminder to the witness
9 about the order at this point I think would behoove all of us.

10 THE COURT: Which order are we referencing, because there
11 has been numerous ones and the Court wants to be clear what you're
12 requesting, if you don't mind. Thank you.

13 MR. LEAVITT: Right. Regarding causation in his rebuttal
14 report.

15 THE COURT: The Court would be concerned about saying it
16 in a manner that may be different than how he was advised by the party
17 that called him, right?

18 MR. LEAVITT: My point exactly, Your Honor.

19 THE COURT: The Court would be clear just to say that the
20 Court has made prior orders which he understands that he's already
21 been advised by counsel not to violate that order and that also he can't
22 refer to things without being directed to by counsel. I could say that
23 outside the presence of the jury. Would that meet your needs?

24 MR. LEAVITT: That would, Your Honor. That would be
25 sufficient. Thank you.

1 THE COURT: Is there any objection from Defense counsel to
2 that?

3 MR. DOYLE: That's fine.

4 THE COURT: Okay.

5 Marshal, can we first bring in the witness, please?

6 THE MARSHAL: Yes, Your Honor.

7 THE COURT: Thank you so very much.

8 Okay. So we're still outside the presence of the jury and I'll
9 tell the witness a couple of different things. One thing, when the jury
10 comes back in, one thing that's the Court's standard procedure is when
11 the jury returns and we've had a break is to remind the witness that
12 they're under oath. I will do the same thing with you, which I've done
13 with other witnesses to remind you and just have you acknowledge it in
14 front of the jury. Do you understand that?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Two other things come specifically to
17 you. One, there's been a request in light of certain issues that have
18 happened. As you understand that you are aware that the Court made
19 specific rulings with regards to your testimony, and you've been advised
20 of those rulings by Defense counsel; is that correct?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And so you need to ensure that you
23 abide by those rulings as you've been advised by Defense counsel; you
24 understand that, correct?

25 THE WITNESS: Yes.

1 THE COURT: Okay. Additionally, you've been advised by the
2 Court now more than once that you can't refer to things on the stand
3 unless directed to by counsel; you understand that, correct?

4 THE WITNESS: Yes.

5 THE COURT: Okay. So you may not do that at all. Okay.
6 Does that meet the needs of Plaintiff's counsel?

7 MR. LEAVITT: It sure does, Your Honor, thank you.

8 THE COURT: Counsel for Defense are you requesting
9 anything different?

10 MR. DOYLE: No.

11 THE COURT: Okay. Are all parties ready to bring the jury
12 back in?

13 MR. DOYLE: Yes.

14 MR. LEAVITT: We are, Your Honor.

15 THE COURT: Okay. Marshal, can you please bring the jury
16 in.

17 THE MARSHAL: All rise for the jury.

18 [Jury in at 3:49 p.m.]

19 [Within the presence of the jury]

20 THE MARSHAL: Your Honor, all jurors are present and
21 accounted for. You may be seated.

22 THE COURT: Okay. I do appreciate it.

23 Welcome back, ladies and gentlemen. Hope you all had a
24 nice break. As you recall, counsel was in cross-examination. The same
25 thing we said with other witnesses when we come back from break, the

1 witness understands you're still under oath, correct?

2 THE WITNESS: Yes.

3 THE COURT: I do appreciate it.

4 Counsel, feel free to continue with your cross-examination.

5 I'm not sure if the pocket mic is back on, if you need new batteries, feel

6 free to let us know. I do appreciate it.

7 MR. LEAVITT: Let me make sure. Okay, the red light's on.

8 THE COURT: Tap it. We're good to go. Perfect. Thank you
9 so much.

10 MR. LEAVITT: All right.

11 CROSS-EXAMINATION CONTINUED

12 BY MR. LEAVITT:

13 Q All right, Doctor, thank you. Very good. Now, doctor, can we
14 agree that Titina has foot drop?

15 A Yes.

16 Q Okay. Now that I've gone through this board, I'll just -- my
17 apologies. It gets loud on the mic. All right. So we can agree that she
18 has foot drop, right?

19 Now, you went over with your attorney, Mr. Doyle, mobility, you
20 said 50% due to -- you call it CCN and Dr. Willer calls it CIP, right?

21 What's the difference between the two?

22 A Either one.

23 Q Either one. What do you want to use? I want to use your
24 word.

25 A CCN comes up natural. Let's use CCN.

1 Q Okay. Let's call apples, apples, just for us, right? All right.
2 So CCN was 50% of her mobility?

3 A Yes.

4 Q All right. And what did you give for the pain for CCN?

5 A Less than 10%.

6 Q Less than 10%. Okay. Okay. Ten, maybe less, is that -- less
7 than ten?

8 All right. Okay. Maybe less. All right. What about -- what was the
9 other one, sensory?

10 A Sensory.

11 Q All right. What did you give to CCN?

12 A One-third.

13 Q One-third. Okay. So that's where you and Doctor Willer can
14 kind of agree, fair enough, on the percentages?

15 But Doctor Willer obviously attributes 100%, but this is what you're
16 saying that you're rebutting him on?

17 A Correct.

18 Q Okay. Thank you. Very good. Now, doctor, was -- did Titina
19 have mobility issues before the July 13th -- or July 3rd, excuse me, 2015
20 surgery?

21 A I believe that she did have some mobility issues even though
22 it's not clearly described in the record.

23 Q Okay. So it's not clearly described. Could she walk in the
24 dark?

25 A I don't know.

1 Q You don't know. Okay. Could she run? I'm referring back.
2 You were asked some questions in your deposition about running and
3 jogging; do you recall that?

4 A I do.

5 Q Okay. Now, could she run or jog or do you know?

6 A I said that based on my experience --

7 Q Okay.

8 A -- of someone with this degree of neuropathy I expect that
9 she could not run or jog.

10 Q Okay. So no run. I can't even spell. Or jog, j-o-g, got it. No
11 run, no jog. How about articulate on like a grass or, you know, like
12 uneven surfaces? You mentioned in your depo uneven surfaces or
13 ascending or descending stairs; do you recall that, roughly, what you
14 said?

15 A I would expect that she would have problems with that given
16 the degree of abnormality documented in the examination in 2014.

17 Q Okay. So stairs and uneven -- like grass, right, or uneven
18 surfaces, I guess?

19 A Uneven surfaces. It depends on your grass, whether you're a
20 putting green or a rough.

21 Q Fair enough. I don't know what putting green looks like, so.
22 I've seen it on shows. So uneven surfaces. Awesome. Okay, very good.
23 All right. Now, you came to these conclusions to rebut Doctor Willer in
24 2018 right here. And so let's go over. So you base that on medical
25 records that Doctor -- I want to be clear, Doctor Rives' attorney, Mr.

1 Doyle, or his office provided to you, right?

2 A Correct.

3 Q Okay. So the 8,000 pages you didn't review, right? I just
4 want to be clear.

5 A You're referring to the Saint Rose Hospital?

6 Q Yeah, I'm sorry.

7 A In their entirety, of the nurses' notes and the temperatures?

8 Q All that.

9 A No.

10 Q Okay, very good.

11 A Just the pertinent parts.

12 Q Just the pertinent. But, to be clear, who decided what the
13 pertinent parts were, you or Mr. Doyle? That's what I'm trying to get
14 clear. I can't -- you know, who did -- who decided -- who pulled the 8,000
15 pages and said these are the 300 that are pertinent; was that you,
16 because you didn't review the full eight, right?

17 A I have an understanding of it.

18 Q You have an understanding of it?

19 A Yes.

20 Q But so you don't know who pulled the 300; is this somebody
21 from Doyle's office?

22 A I know what pertinent records are.

23 Q Oh, okay. Okay. All right. So you came to these conclusions
24 based on 300 from Saint Rose Hospital, 300. You had some -- the foot
25 doctor, right, Chaney. That's -- I'm going to call him Doctor K, Doctor

1 Kurabella [phonetic], because I don't want to misspell his name. I have it
2 in my mind, but. Let's see what else you reviewed, huh? Well, let's see
3 here.

4 A Is that a question? I can tell you.

5 Q Oh, yeah, yeah, why don't you tell me so I can list it here.

6 A Doctor Chaney.

7 Q Okay, got it. About how many pages?

8 A Oh, office notes from 2014 through 2018.

9 Q A hundred pages?

10 A Maybe 100 pages.

11 Q Maybe 100. All right. Okay.

12 A Records of Doctor Yee, advanced --

13 Q Yee, uh-huh.

14 A Y-E-E.

15 Q Doctor Yee. How many pages, 50?

16 A Just a couple of consultations, thorough long consultations.

17 Q Okay. All right. Ten, 20?

18 A Probably less than that.

19 Q Oh, okay. Let's go less than ten, like with the percentage.

20 A That's fine.

21 Q Okay.

22 A PAC, Physician's Assistant Hough, H-O-U-G-H.

23 Q Okay.

24 A The EMG of Doctor Chang.

25 Q Okay.

1 A The Pain Clinic --

2 Q Okay.

3 A -- records. Oh, the Desert Physical Therapy.

4 Q All right. P.T., physical therapy. All right. So Pain Clinic,
5 how many pages?

6 A Maybe 20.

7 Q Okay. EMG, how many pages? Did you review the actual
8 EMG study, or did you read just the report?

9 A Well, you read the -- all the MG's --

10 Q The little squiggly lines, right; did you read that?

11 A You see that, but that's only a very small representation --

12 Q Okay.

13 A -- of what actually occurs and that's the standard of practice.

14 Q Okay. All right. So --

15 A You don't really ever -- unless you're there --

16 Q Gotcha.

17 A -- you don't see the whole process.

18 Q Oh, yeah, yeah, yeah. Okay. So you weren't physically
19 present is what you're saying?

20 A Correct.

21 Q Okay. So Doctor Chang, 10, 20 pages, less?

22 A Four or five pages.

23 Q Okay. Four or five. All right. PT, the rehabilitation center,
24 was that quite a bit?

25 A Probably 30 pages.

1 Q Okay. Now, we went through -- we've gone through -- I'm
2 going to leave some more off the board. We could continue this, but
3 let's not. I mean if you want we can, but do you know if any of these
4 were complete records that were sent to you?

5 A You never know what you don't know.

6 Q Fair enough. So you don't, right?

7 A No. I think that the records of Doctor Chaney seemed to be --
8 well, for all those office visits was complete.

9 Q Okay.

10 A And that seemed appropriate.

11 Q Okay.

12 A The number of pages to the average doctor's visit time over
13 two years, that looked like all the records.

14 Q Okay. But, again, you're relying on, and I'll be specific, thank
15 you for that. Doctor Rives' attorney, Mr. Doyle, his office sending those,
16 you're relying on that, right?

17 And then we went through --

18 THE COURT: Wait a second.

19 MR. LEAVITT: Oh, sorry.

20 THE COURT: We can't have nods of the head. We need
21 affirmative responses, sorry, in order for the Court to take --

22 THE WITNESS: I received all the records from his office.

23 BY MR. LEAVITT:

24 Q Okay. So he chose what you're going to see, right?

25 A Yes.

1 Q Now, did you see the video of Titina and her grandkid
2 playing in 2015?

3 A No.

4 Q You didn't see that? It was a nice video. Let me see if you
5 have seen it. She's running around with her grandchild in the grass and
6 then on to concrete, she's running, jogging. You didn't see that? It was
7 in April of 2015. Mr. Doyle didn't send you that or you didn't put it in
8 your report, which one?

9 MR. DOYLE: Objection. Compound.

10 MR. LEAVITT: That's fair enough. I'll split it, Your Honor. I'll
11 withdraw. Thank you.

12 BY MR. LEAVITT:

13 Q Did you see the video and not put it in your report?

14 A I did not see the video.

15 Q Okay. So you never received the video?

16 A I never received the video.

17 Q Okay. I just want to make sure. All right. So no -- no sent,
18 no sent, right. Did you see any other videos in this case?

19 A No.

20 Q All right. Now, as a rebuttal expert, is it fair to -- you've been
21 in a rebuttal -- you've been an expert before how many times?

22 A Do you mean preparing a rebuttal report?

23 Q Yeah, yeah.

24 A Very infrequently.

25 Q Very infrequently. Okay. You've testified in trial and I want --

1 I don't want to misstate you. When you testify in trial you're 90% -- 90%
2 of the times you testified for Defendants, right?

3 A Correct.

4 Q Okay. Now, as a forensic rebuttal expert, is that a fair
5 statement?

6 A Well, I've never -- no one's ever called me that before.

7 Q Oh, I'm sorry. Rebuttal expert, has anybody called you that?

8 A No.

9 Q Okay. Do you know what a rebuttal expert is?

10 A I've never heard anyone put those two words together. It
11 may be a local thing, I don't know.

12 Q Okay. Because you're here just to solely rebut Doctor Willer,
13 you understand?

14 A I understand, yes.

15 Q Oh, okay. I just wanted to make sure. I wanted to make sure
16 we're clear. So you've never heard that you're just a rebuttal expert?

17 A I've not heard that before.

18 Q Okay. All right. Well, as an expert in general, would it be
19 important to you to have -- to be impartial?

20 A Yes.

21 Q Okay. So in that would it be important to you to have all the
22 information available for your review?

23 A I always try to get as much information as I can, which is
24 reasonable.

25 Q Okay, which is -- like when you requested to see Titina in

1 person, right?

2 A Yes.

3 Q Sorry, I apologize. All right.

4 MR. LEAVITT: Your Honor, I have no further questions.

5 THE COURT: Okay. Redirect, counsel?

6 MR. DOYLE: Yes.

7 REDIRECT EXAMINATION

8 BY MR. DOYLE:

9 Q Doctor Adornato, when you used the term run and jog, what
10 did you mean by that?

11 MR. LEAVITT: Objection. Leading.

12 THE WITNESS: Run and jog?

13 THE COURT: Just a second. Was the objection leading?

14 MR. LEAVITT: Leading.

15 THE COURT: Sustained.

16 BY MR. DOYLE:

17 Q What does the term run, and jog mean?

18 A It means running. I'm not sure how to answer that question.
19 It's self-explanatory, I think.

20 Q Does it suggest any distance?

21 A Oh.

22 MR. LEAVITT: Leading.

23 THE COURT: Sustained.

24 BY MR. DOYLE:

25 Q When you use the term run and jog, what did you mean by

1 that term?

2 A I was thinking of patients, people I know, who go out and
3 exercise, do 30 minutes or 40 minutes or do that type of thing, who have
4 neuropathies and they usually tell me that they can't engage in that kind
5 of activity because it's painful or their legs are weaker, they fatigue
6 easily.

7 Q Did you have all the records you needed to carry out your
8 task?

9 MR. LEAVITT: Objection. Leading.

10 THE COURT: Sustained.

11 MR. LEAVITT: And speculation.

12 THE COURT: Sustained.

13 BY MR. DOYLE:

14 Q Were there any records that you thought you might need you
15 did not have?

16 MR. LEAVITT: Speculation.

17 THE COURT: Sustained.

18 BY MR. DOYLE:

19 Q Doctor, the term Stanford Health Center was used. What
20 does that term mean?

21 A That refers to all the Stanford facilities, the clinics and the
22 three hospitals.

23 Q What are the three hospitals?

24 A Stanford in Palo Alto, the Santa Clara Valley Medical Center,
25 and the Palo Alto V.A. Hospital.

1 Q Where do you practice currently when you see patients?

2 A At the Palo Alto V.A. Hospital.

3 Q And what is the relationship between Stanford and the Palo
4 Alto V.A.?

5 A It is part of the Stanford Health Care system and all of the
6 residents, all the doctors, all the medical students, are all Stanford
7 students, faculty.

8 Q Okay. Currently how often are you seeing patients at the
9 V.A.?

10 A Currently I spend four weeks a year there admitting and
11 treating patients.

12 Q And when you're seeing and treating patients there, what
13 role do you have, if any, for teaching?

14 A All the patients that I see, I see with the residents and with
15 the students, so we examine them together, we go through the
16 conclusion. You know, medical school and residency is an
17 apprenticeship, so they're hands-on taking care of patients, but I'm
18 responsible for the patient.

19 Q When did you last have privileges at the Stanford Medical
20 Center facility?

21 A 1917.

22 Q I'm sorry, when?

23 A 2017.

24 Q Okay. All right. That's all I have, thank you.

25 A I'm not that old.

1 THE COURT: Recross, counsel?

2 MR. LEAVITT: I was just going to clarify 1917, but no, Your
3 Honor. Thank you, doctor, I appreciate it.

4 THE COURT: Okay. Do we have any juror questions? I'm
5 not seeing any juror questions with regards to this witness. The Court's
6 confirmed there's no prior juror questions.

7 So there being no juror questions, is there -- and all
8 questions by counsel being exhausted, is this witness excused for all
9 purposes or subject to recall? I'll ask Defense first, it's your witness.

10 MR. DOYLE: All purposes is fine.

11 MR. LEAVITT: All purposes, Your Honor, thank you.

12 THE COURT: This witness is excused for all purposes. Thank
13 you so very much for your time. Please watch your step on the way out.
14 We do appreciate it. Okay.

15 The deposition, Marshal will get the deposition off the
16 witness stand. Thank you so much. I appreciate it. Just a moment.
17 Thank you so much.

18 Okay. So counsel for Defense, would you like to call your
19 next witness, please?

20 MR. DOYLE: Yes. We call Doctor Rives.

21 THE COURT: Okay. Thank you so very much.

22 And just because it's been about a week and now we've
23 switched to Defense case-in-chief, generally the protocol would be that
24 the Clerk would just re-swear in the witness because it's changed from
25 Plaintiff's case-in-chief to Defendant's case-in-chief. Go ahead, Madam

1 Clerk.

2 THE CLERK: Thank you, Your Honor.

3 BARRY RIVES, DEFENDANT, SWORN

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

6 THE WITNESS: Barry, with an "a", middle initial J. Last
7 name Rives, R-I-V-E-S.

8 THE CLERK: Thank you.

9 THE COURT: We do appreciate.

10 Counsel, please feel free to commence with your
11 questioning.

12 MR. DOYLE: Thank you.

13 DIRECT EXAMINATION

14 BY MR. DOYLE:

15 Q Doctor Rives, where did you grow up?

16 A Los Angeles, California.

17 Q Where did you go to college?

18 A University of California, San Diego.

19 Q What degree did you obtain?

20 A I got a bachelor's degree in Ammo Physiology, a minor in
21 English literature, and a minor in philosophy.

22 Q What year did you obtain your degree?

23 A 1988.

24 Q What did you do next by way of your education?

25 A I went to Hahnemann Graduate School and got a master's

1 degree in pharmacology.

2 Q What is pharmacology?

3 A Pharmacology is the study of drugs, their mechanism,
4 actions, their side effects, the way they work in the body.

5 Q And, I'm sorry, what type of degree did you get?

6 A A Master's of Science.

7 Q What year did you obtain the Master's of Science?

8 A That was 1993.

9 Q Did you remain at Hahnemann?

10 A I did.

11 Q And where is Hahnemann, by the way?

12 A Philadelphia. It's now incorporated under Drexel University.

13 Q What did you do after you obtained your master's degree at
14 Hahnemann?

15 A I went to medical school there.

16 Q How many years was medical school?

17 A Four.

18 Q Could you describe briefly what the four years entailed?

19 A Medical school is basically divided into the first two years of
20 book learning, didactics, lectures. And then the next two are clinical,
21 you're on the floors with attendees who are teaching you how to handle
22 patients.

23 Q And, I'm sorry, I might have asked, but what year did you get
24 your medical degree?

25 A 1998.

1 Q And did you do specialty training after medical school?

2 A Yes.

3 Q What type of training?

4 A I did a five-year residency in general surgery.

5 Q Where did you do that?

6 A At Kern Medical Center in Bakersfield, California, associated
7 with the University of California, San Diego.

8 Q And explain what you mean by it was affiliated with UC, San
9 Diego.

10 A We would go down to UC, San Diego for certain rotations
11 that we didn't have in Kern, such as burn, such as transplant,
12 cardiothoracic surgery. Their residents would come up to our program,
13 get some more hand's on experience, actually operate in the operating
14 room. Their professors would come up to our campus. They would go
15 through morbidity and mortality conference, they'd give special lectures,
16 and they'd be available to us for special consultations, as well.

17 Q You used the term rotations. What does that mean in terms
18 of a residency?

19 A So in a residency, even though it's general surgery, general
20 surgery encompasses a lot of subspecialties. So we would do different
21 rotations, usually four weeks or sometimes six weeks at a time. It could
22 be in pediatric surgery, vascular surgery, cardiothoracic surgery,
23 minimally invasive surgery.

24 Q What is minimally invasive surgery?

25 A Minimally invasive surgery is the broad term for

1 laparoscopy. Basically, when we do incisions and large surgeries on
2 people, we used to make a large incision on their abdomen. Minimally
3 invasive surgery means we use small incisions, fill the abdomen full of
4 CO2 so that we have a camera, can look in the abdomen and perform the
5 surgery that way.

6 Q What's the difference between the term laparoscopy and
7 laparotomy?

8 A Laparotomy means actually making a long incision, cutting
9 through the skin, cutting through the connective tissue of the muscle,
10 cutting through the muscle, cutting the inner lining of the abdominal
11 wall, and basically opening the patient up.

12 Laparoscopy, like I said before, you put a little needle into the
13 abdomen, you create an amphitheater so that you're looking at the entire
14 abdomen through a camera and you're looking up on a large monitor.

15 Q In the operating rooms at Saint Rose, San Martin, in 2015,
16 how many monitors would typically be present for a laparoscopy?

17 A There's usually three.

18 Q How big would these monitors be, perhaps compared to the
19 ones we see in the courtroom?

20 A Well, they're not that large. They're probably around 36
21 diagonal, maybe a little larger.

22 Q Now, you mentioned something about a camera for
23 laparoscopy. Would you explain what the camera is?

24 A The camera is composed of two components. There's the
25 camera head and the scope that's attached to it. The scope is sort of the

1 lens or actually is the lens of the camera. It's the part that goes into the
2 abdomen. It's the part that adjusts how you're looking at things.

3 There's a couple different types of scopes. There's zero degree
4 scopes where the end is flat, so you're looking directly at whatever your
5 object is. I prefer using a thirty degree scope so it's slightly beveled. It
6 gives you the appreciation where you can look on top of something and
7 just by moving the scope or the lenses, you can then look to the right,
8 you can flip it the other way, look to the left. You can even put it down
9 and look up at an object. And then the camera head is attached to the
10 scope and it goes over to the monitors or where the software is to put it
11 up on the monitors.

12 Q Now, your general surgery training at Kern Medical Center,
13 did it include laparoscopy?

14 A Yes.

15 Q Describe the training.

16 A For just laparoscopy or in general?

17 Q The training at Kern Medical Center in laparoscopy.

18 A So when I started there in 1998, laparoscopy was starting to
19 become more of a larger influence in general surgery. We were lucky to
20 have a program director who had been trained in that field, so he started
21 pushing the residents to learn more about laparoscopy while we had
22 other attendees who taught us the old school way of doing things.

23 So we got exposure very early on to laparoscopy, plus when I did
24 pediatric surgery in Madera County just above Kern, they do a lot of
25 laparoscopy for the pediatric patients, so we learned it there. And we

1 continued to advance it all during my five years to the point that we were
2 doing probably at least 60, 70% of the cases laparoscopically at that
3 point.

4 Q And as a general matter, if, let's say, you're going to take out
5 a gallbladder or appendix, what are the benefits to a patient, if any, of
6 doing it with the laparoscope, rather than doing the open procedure?

7 A The benefits are one, it's a lot less painful to the patient. The
8 incisions are a lot smaller, so they recover quicker, they're back to work
9 quicker. Laparoscopically you can see more of the abdomen. When you
10 did an open appendix, for instance, the object was to make as small an
11 incision as possible, so you didn't hurt the patient. But the problem with
12 that is, if the appendix was inflamed and there was pus everywhere, you
13 kind of blindly irrigate and drain the abdomen.

14 But when I do an appendix, let's say it's perforated,
15 laparoscopically I can actually see above the liver and if there's anything
16 that's pushed out up there, I can irrigate and drain it, I can evaluate the
17 sigmoid colon as it goes down the rectum for pockets of puss ,and then I
18 can also run the bowel easier laparoscopically if I need to.

19 Q What does that mean to run the bowel?

20 A Run the bowel means you take some instruments and you
21 just slide the bowel in front of the camera so that you can see all aspects
22 of the bowel, make sure there's no injuries.

23 Q And when you're running the bowel during a laparoscopic
24 procedure, are you typically able to see all 360 degrees of the bowel or
25 something different?

1 A Well, the bowel is attached to the back of your abdomen by
2 something called the mesentery. And the mesentery is the blood supply
3 going into the bowel and the blood supply leaving, as well as some
4 nerves and some lymphatics.

5 So we refer to the rest of the bowel that you can see as the
6 antimesenteric border. There's a thin strip that would be called the
7 mesentery border that you can't see because that's where all the blood
8 supply and nerves and lymphatics go into the bowel. And that's true for
9 the small bowel and large bowel.

10 Q You used the term irrigation and drainage. Would you
11 explain what that means, please.

12 A Laparoscopically we have a little hand-held device and it has
13 both irrigation and suction onto it. So it can go through what we call our
14 little trocars or sleeves and we can irrigate the abdomen and use it to
15 suck out any fluid or blood or anything else that we think is appropriate.

16 Q You mentioned a trocar. What's a trocar or sleeve?

17 A So after we put a little needle in and get the appropriate
18 amphitheater of air in there so we can see, we put a little trocar, which is
19 like a little sleeve. Usually we start with like a little small five millimeter
20 so we can make sure there's no damage for anything we've done so far.
21 Once everything looks appropriate, we'll put a larger sleeve in. And it
22 looks like -- well, it just looks like a sleeve. You can slide things in and
23 out of it. On the top part there's a little diaphragm so it tries to eliminate
24 any input or output of fluids or air from the abdomen.

25 Q And how do you get the sleeve or trocar from the outside to

1 the inside?

2 A You make a little incision on the outside of the skin that's,
3 you know, five millimeters, ten millimeters. And then there's two types
4 of trocars, there's bladed trocars and there's blunt. And blunt is exactly
5 what it sounds like. There's a plastic tip and you kind of have to push
6 really hard to get it in. Then bladed has a pressure sensitive blade so
7 that when you're pushing on it, the blade is exposed. But when the
8 blade hits negative pressure or less pressure, it retracts spontaneously.

9 Q Doctor, these sleeves, what function do they play in a
10 laparoscopic surgery?

11 A They allow us to introduce instruments into the abdomen to
12 perform the surgery.

13 Q Now, when you perform laparoscopic surgery, are your
14 hands ever actually inside the abdomen?

15 A No.

16 Q How are you manipulating the instruments and the organs
17 inside?

18 A Well, usually the scrub tech is holding onto the camera, so
19 you have two hands available to hold instruments. And the instruments
20 are small and thin, so they go through these sleeves and you're looking
21 up at the monitor and you're manipulating the tissue with these
22 instruments using your hands.

23 Q Now, what's your best estimate of the number of
24 laparoscopic surgeries you've performed during your residency from I
25 think you told us 1998 to 2003?

1 A Strictly all laparoscopic cases?

2 Q Right.

3 A Probably at least 800.

4 Q And what sort of procedures during your training did you do
5 laparoscopically? I mentioned an appendix. What were the other
6 common ones?

7 A Let's see. I did laparoscopic, diaphragmatic hernia repairs,
8 called nissen funduplications. I did laparoscopic incision of tumors of
9 stomach, cancers and non-cancerous lesions. I did laparoscopic what we
10 call lysis adhesions. When people have bowel obstructions and it's due
11 to scar tissue, we can remove those laparoscopically. Laparoscopic
12 gallbladder surgery. Laparoscopic appendectomies. Laparoscopic colon
13 resections. Laparoscopic ventral hernia repairs. Laparoscopic inguinal
14 hernia repairs. And then sometimes for trauma patients we did
15 diagnostic laparoscopy.

16 So instead of doing an exploratory laparotomy, we just put the
17 camera in, take a look around to assess if there was any injuries. So we
18 did those as a diagnostic laparoscopy.

19 Q You used the term ventral hernia. What does the term
20 ventral mean?

21 A Ventral just means the front of the abdomen.

22 Q The term abdominal wall hernia, is that the same thing as a
23 ventral hernia?

24 A Basically, yes.

25 Q What -- excuse me -- if a patient -- I want to ask you a couple

1 questions about abdominal wall hernias. Is there a term incisional and
2 another term spontaneous, I may have the wrong terms, to describe an
3 abdominal wall hernia or how it occurs?

4 A Well, you could have hernias that happen because of the way
5 that we're made. So around our bellybutton there's not a lot of muscle
6 or coverage there, so if you get a hernia through that area, it's an
7 acquired hernia.

8 For groin hernias, when men are little babies or fetuses, their
9 testicles are actually in their abdomen and they go through these canals
10 and descend into the scrotum. That leaves a little defect that's covered
11 with a membrane, but there's no real muscle there. So as you get
12 inguinal hernias from heavy lifting, sports, et cetera, those are an
13 acquired hernia.

14 If you get a hernia from somebody else's prior surgery where
15 somebody has cut the muscle layer, that would be surgical or an
16 incisional hernia.

17 Q And if an abdominal wall hernia is incarcerated, what does
18 that term mean?

19 A So incarcerated means that something is stuck inside the
20 hernia. So a hernia is an opening in your muscle, and it's lined with the
21 inner lining of your stomach or your abdomen called the peritoneum.
22 But when it's in there, we call that the hernia sac. So when that hernia
23 sac goes up and starts making a bigger cavitation, it will pull things from
24 the abdomen into the hernia sac and it will grab onto it.

25 Q And if -- what different body parts inside the abdomen can

1 become incarcerated?

2 A Pretty much anything inside the abdomen can get stuck
3 inside of a hernia sac.

4 Q If you have a portion of bowel stuck inside a hernia sac, does
5 that cause any or is there a risk of problems?

6 A There's multiple problems.

7 Q What are those?

8 A So if you envision this loop or tube going up inside of a tight
9 area, it's kind of like a kid putting their hand into a cookie jar. And if it
10 starts to swell, then that piece of bowel gets stuck and now a couple
11 things can happen. One, it could be obstructed because the bowel is a
12 hollow tube and if it's swollen, it closes shut. And if it closes shut,
13 everything backs up. You can get bloating, distension, nausea and
14 vomiting. If it stays stuck, it can twist on that what I call the mesentery,
15 the blood supply. And if it twists on that mesentery and cuts off the
16 blood supply, it then becomes strangulated. It can die, rupture,
17 perforate, and it could kill the patient.

18 Q Doctor, what did you do after you completed your residency
19 in 2003 by way of your career?

20 A I moved to Las Vegas.

21 Q Did you go into solo practice or join somebody?

22 A I joined somebody.

23 Q Any particular reason you picked Las Vegas versus
24 somewhere else?

25 A Las Vegas has a lack of surgeons, so there was a need for it.

1 So it was a good opportunity. It was close to my family in California and
2 Arizona without being right on top of them. And as much as I loved
3 California, there was just no feasible way to do that economically.

4 Q Now, how many years did you practice with another general
5 surgeon?

6 A Three years.

7 MR. LEAVITT: Your Honor, I'd like to move to strike the last
8 answer that he gave, and I think we need to approach. Also, we did
9 make a certain promise to the jury, so.

10 THE COURT: Okay. Why don't you both approach. Madam
11 Court Recorder, turn on the white noise and we'll get this taken care of.
12 Thank you so much.

13 [Sidebar at 4:27 p.m., ending at 4:27 p.m., not transcribed]

14 THE COURT: Okay. So here's what the Court's going to do.
15 The Court's going to sustain the objection based on discussion of the
16 defense. And the jury is going to disregard the ending of the witnesses'
17 statement with regards to why he did not remain in California. The jury
18 will disregard that last statement. Okay? And if you wrote it down, strike
19 it out, it needs to be disregarded.

20 And at this juncture, ladies and gentlemen, it's 4:27
21 consistent, we're going to wish you a nice afternoon. Okay?

22 We told you tomorrow -- this Court said 9 o'clock I believe. I
23 think I told attorneys 8:30 and the jury 9 o'clock, correct? Yeah. 9-ish,
24 right, remember the case in the -ish? Okay. That's what we're going to
25 do. I've moved everything off my whole Wednesday calendar so we can

1 get you taken care of.

2 And so, ladies and gentlemen, during this overnight recess,
3 you are admonished not to talk or converse among yourselves or with
4 anyone else on any subject connected to the trial. You may not read,
5 watch, or listen to any report or commentary of the trial or any person
6 connected with the trial, by any mean of information included without
7 limitation, social media, text, tweets, newspaper, television, internet,
8 radio, anything I'm not saying specifically is, of course, also included.

9 Do not visit the scene of the events mentioned during the
10 trial. Do not undertake any research experimentation or investigation.
11 Do not any posting or communications on any social networking sites or
12 anywhere else. Do not -- excuse me -- do any independent research
13 including but not limited to internet searches. Do not form or express
14 any opinion on any subject connected to the trial until the case is fully
15 and finally submitted to the time of jury deliberation.

16 With that, we wish you a nice, relaxing evening, and we'll
17 see --

18 THE CLERK: All rise.

19 THE COURT: -- you back here tomorrow. Thank you so
20 much.

21 [Jury out at 04:29 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Just one second until we hear the door click,
24 please. Just one moment, please.

25 Okay. Hearing the door click. The witness can either stay on

1 the stand, get off the stand, whatever wishes to do so. Counsel, we're
2 staying on the record because the Court is going to address the next
3 issue that I think was on your list, right?

4 Next issue was Dr. Chaney that you needed to know because
5 Dr. Chaney's anticipated potentially tomorrow; is that correct, Defense
6 counsel? Is that the next one on your list?

7 MR. DOYLE: Yes. And Eric Volk.

8 THE COURT: Well, not going to have time for probably two
9 at the rate you all are going unless you be really efficient with your
10 arguments. So the Court is going to address Dr. Chaney first because
11 that's the one that you all told the Court.

12 So here's what the Court understands, Court receives -- the
13 Court at least has some -- I would -- okay -- so here's what the Court
14 understands with regards to Dr. Chaney. The Court has 10/29 -- okay --
15 okay -- the Court still has never seen -- hold on one moment -- any trial
16 subpoena -- with this Court -- hold on just one moment -- it's looking --
17 it's looking -- there was a statement made that -- okay -- 10/28 -- okay --
18 the Court has never seen any trial subpoena prior to something that was
19 filed today -- something was filed today -- says trial subpoena and it's
20 dated today 7:29 a.m. That trial subpoena says to appear on
21 Wednesday, October 30th at the hour of 1:30 p.m.

22 So the Court's still never seen any trial -- the Court takes no
23 position whether it is or is not a valid trial subpoena. The Court's
24 referencing -- is there was representations made in Court at various
25 different days. That there were prior trial subpoenas sent to Dr. Chaney

1 to appear at different days at trial. The Court's never seen anything
2 that's been filed with regards to any prior trial subpoena. So the Court's
3 asked for that trial subpoena, the Court said that it couldn't address the
4 Dr. Chaney issue until it saw said trial subpoena. To this date and time,
5 the Court has still never been provided said pieces of paper of any prior
6 trial subpoena. I don't know why. I keep asking. I've asked for -- it's
7 been over a week. Gosh o'golly, I don't know why no one wants to give
8 it to me, but I don't -- I was about to do because Counsel, Mr. Doyle, you
9 said it was filed this morning.

10 So I was giving you the benefit of the doubt that it was filed
11 the prior trial subpoena, I'm looking at it first break. We've had it for two
12 seconds. There is nothing about any prior trial subpoena that has been
13 filed at least this Court can see.

14 MR. DOYLE: Well, it seemed that any prior trial subpoenas --

15 THE COURT: Counsel, is there one filed, like the Court's been
16 asking?

17 MR. DOYLE: I know for sure that prior to trial I filed a trial
18 subpoena for Dr. --

19 THE COURT: What date?

20 MR. DOYLE: I would have to find the date.

21 THE COURT: Okay. You got the Court thing. Can you please
22 find a date because I've been asking for over a week? No one has been
23 able to provide me any trial subpoena. I'll be glad to wait. Please find
24 the date of any trial subpoena that you filed, because you stated that
25 there were two trial subpoenas.

1 MR. DOYLE: Well --

2 THE COURT: That's what you stated in open Court, Counsel,
3 right? Because, in fact, you interrupted the Court when the Court was
4 trying to talk to counsel for Dr. Chaney and said that there was a second
5 one. And then I asked counsel if there was, and you came back and said
6 there wasn't, so. I can only know what I hear in Court. The Court said it
7 needed to see that reported subpoena in order to out some
8 understanding.

9 MR. DOYLE: Yes.

10 THE COURT: And it wasn't attached to the 727 Brief.

11 MR. DOYLE: On September 16th, 2019 at 10:20 a.m., we filed
12 a trial subpoena civil regular --

13 THE COURT: Hold on one second. The Court -- did you
14 attach it to your 727 Brief so that the Court would have it, so I didn't have
15 to go fishing for it?

16 MR. DOYLE: I don't believe so. No.

17 THE COURT: Is there any reason why you're asking me to go
18 back and go fishing for it?

19 MR. DOYLE: I'm not sure why the earlier subpoenas is
20 relevant because counsel for Dr. Chaney's agreed to accept a new
21 subpoena for tomorrow on her behalf.

22 THE COURT: The Court's specific question is, I really just
23 was asking you to provide it to me. I've been asking you to provide it to
24 me for a while.

25 MR. DOYLE: I can hand it to if you'd like.

1 THE COURT: You understand, I wanted to be prepared for
2 this argument, right? I've been asking people to ensure that I was fully
3 prepared. So unfortunately, since you chose not to give it to me, I'm not
4 prepared. I haven't had a chance to read it. I could not read through this
5 so I can't do the argument. I'm going to have to wish you all a very nice
6 afternoon.

7 Looks like you're going to have to address this tomorrow. I
8 don't know how you're going to address it. I don't know what you're
9 going to do about Dr. Chaney or not, but the Court can't do it right now.
10 Dr. Chaney, which you have is how she is designated, right? She's
11 designated the way she's designated. The rules are very clear. And our
12 CP-16 makes it very clear and makes it very clear that people are
13 designated as they're designated and that's the way it is.

14 She's not designated as a non-retained expert, there was
15 nothing done during discovery. The rules are the rules and the Court
16 can't address something if you won't even give me the very piece of
17 paper that the Court has been asking for so.

18 MR. JONES: Sorry.

19 THE COURT: This is really simple and so I don't know. So
20 that was the issue that the Court had to prepare -- thought it had
21 prepared for because I thought I was just going to look up that one
22 subpoena because it wasn't attached. And since it said it was filed this
23 morning, I thought you were referencing the earlier one that the Court
24 have been asking for so I was going to look for that one but since that's
25 not even it, the Court can't do it.

1 So at this juncture, I guess I'm going to have to wish you all
2 goodnight. Have a good evening, and I'll see you tomorrow at 8:30. I
3 don't know --

4 MR. DOYLE: Thank you, Your Honor.

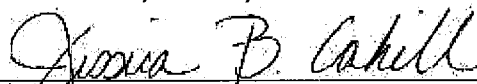
5 THE COURT: -- why you don't want to give me this stuff so I
6 can be prepared but if you don't -- you don't. So I can't.

7 Thank you so much. Have a good evening, everyone.

8 Now, the Court Reporter can go off the record.

9 [Proceedings adjourned at 4:36 p.m.]

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

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708