

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

CAPRIATI CONSTRUCTION CORP.,	)	Supreme Court No: 80107
INC., a Nevada Corporation	)	District Court Case No: A718689
Appellant,	)	Electronically Filed
	)	Aug 12 2020 01:45 p.m.
v.	)	Elizabeth A. Brown
	)	Clerk of Supreme Court
	)	
BAHRAM YAHYAVI, an individual,	)	
Respondent.	)	
	)	
-----	)	
CAPRIATI CONSTRUCTION CORP.,	)	Supreme Court No: 80821
INC., a Nevada Corporation	)	
Appellant,	)	
	)	
v.	)	
	)	
BAHRAM YAHYAVI, an individual,	)	
Respondent.	)	
-----	)	

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**APPENDIX TO  
APPELLANT'S OPENING BRIEF  
VOLUME 12 of 12**

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Appeal from the Eighth Judicial District Court  
Case No. A718689

HUTCHISON & STEFFEN, PLLC

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 12 of 12** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 12<sup>th</sup> day of August, 2020.

*/s/ Kaylee Conradi*

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An employee of Hutchison & Steffen, PLLC

1 They sent him a letter.

2 Most times if you have lab results or if you a test result, you  
3 go and talk to the doctor, they explain it to you in person and in detail  
4 and what should we do about it? There's nothing to do about it. They're  
5 not saying hey, you need care or treatment, we're going to make a  
6 referral for you. That's why in isolation this means nothing to you. It's  
7 medically inconsequential.

8 Let's talk about clinical correlation. Even on that day as it  
9 relates to being degenerative disc disease, it says he has supple and full  
10 range of motion, no pain with full range of motion, no muscle spasm.  
11 He could just been having a backache, he could have just been stiff. He  
12 works six days a week, 60 hours a day mostly at a sedentary job but it's  
13 still demanding in its own way. But the point is, someone who had  
14 significant problems would have -- not have full range of motion, pain  
15 free range of motion.

16 And so let's think about -- I want to think between October  
17 25th and -- excuse me 2013, there is no clinical correlation of any kind,  
18 none. Now I want to walk through this for a minute. Number one, he  
19 was working five to six days a week, 60 plus hours. You heard from  
20 Kevin Mackey, he was a valuable employee of Chapman. He never  
21 missed any time at work, no work restrictions, no limitations of any kind.  
22 And what I did was, he earned during that period of time \$255,332.11.  
23 How do I know that? Exhibit 155 is a breakdown of all his payroll, and I  
24 added it up from October 25th, 2011 through June 19, 2013. He is at his  
25 peak performance. A person who's got ongoing systematic problems is

1 not going to be performing at that level. We saw what his performance  
2 was afterward.

3 He had a social life, he was skiing, he was boating We know  
4 in March of 2012 he went in because his knee was having some pain.  
5 Not one neck complaint. He's active. No treatment. Not even treatment  
6 was recommended for him in any way.

7 But here's the next record. By November 1st, 2012, we know  
8 he's pain free. So you don't get to have it both ways. November 1st,  
9 2012 it states he is feeling well without any physical complaint. That's  
10 how he remembers it all. And that's what's in his record. So you can't  
11 have it both ways. You can't use the one record from October and  
12 disregard this one. You can't. You've got to put all the pieces of the  
13 puzzle together. Not only that, it says no persistent pain, no headaches,  
14 no extremity numbness for paresthesia or weakness. That's significant  
15 for our case because he had the ongoing arm symptoms, which were  
16 critical. That's an important record.

17 And before the crash, this is questions from Dr. Tung,  
18 because in 2012 and early 2013 he wasn't doing any of these things  
19 namely the treatment we're talking about. Before this collision he wasn't  
20 undergoing any treatment that looked remotely like this? Answer, yes.  
21 He needed no care before this; no therapy, no injections, no medications  
22 of any kind.

23 And, finally, how was he doing one month before? He was at  
24 the doctor one month before this collision, May -- actually less, previous.  
25 May 23rd, 2013, less than a month. His medications were he had a

1 dermatitis, he had an ointment, and he was on high blood pressure  
2 medication. No pain medication of any kind, no neck complaints, no  
3 physical complaints, no physical exam findings, nothing. So that has to  
4 be ruled out. And every one of our experts who's involved in this care  
5 for years, they ruled it out.

6 But even Dr. Tung testified that -- and Dr. Tung said that all  
7 the treatments at the end of the summer of 2014, all those symptoms  
8 and all that treatment were reasonable and caused by this collision.  
9 That's more than a soft tissue injury. They're not doing MRI's. You don't  
10 go to a spine surgeon for a soft tissue problem. And so what he did was  
11 he drew an arbitrary line in the sand, like all right, August 30, 2014, that's  
12 the bright line right there to the left, yes, to the right, no. That's not fair.

13 So let's look at why that's arbitrary and not reasonable. If  
14 this is truly degenerative and this is ongoing for years, why would Dr.  
15 Tung even give him any treatment? Why would he say you can go to the  
16 hospital and go to the hospital and get checked out, but why say 14  
17 months? Dr. Perry, the surgeon, all the injections by Dr. Schifini, why  
18 would you relate that if this problem existed for years before? That  
19 makes no sense and it's intellectually dishonest.

20 Before this he had no neck complaint for 14 months, no  
21 exam findings, no pain medication, no therapy, chiropractic treatment,  
22 no MRI's, no pain management, no surgery, working full time, earning  
23 \$160,000 a year, living an active life. And I show this to you because  
24 remember this is the slide I had Dr. Tung -- we went through, we built  
25 this together in court. That's why I'm showing it to you.

1           After, an ambulance, altered consciousness, full trauma,  
2 activation, severe neck pain, left arm symptoms, physical therapy,  
3 chiropractic care, x-ray, CT's and MRI's, pain management, surgical  
4 evaluation, he was forced to resign his sales manager job at Chapman  
5 Dodge, and he had a substantial income loss.

6           But why -- why cut it off there, because what happens is,  
7 from September 1st it's the same. It doesn't change. That line, the  
8 August 30 line is arbitrated, it doesn't change the outcome. Persistent  
9 pain, more physical therapy, more chiropractic treatment, more  
10 injections, more x-rays, CT scans, more medication, permanent  
11 impairment reading by Dr. Oliveri, income to zero, permanently disabled  
12 from working, spinal cord stimulator recommended and planned.

13           The symptoms remain the same. There was never a change  
14 at any time, at any point in that. And so Dr. Tung admits that from  
15 September 1st to the present he agrees there's been persistent neck and  
16 arm symptoms. Persistent means it's been ongoing.

17           So what's happened since? What happened between June  
18 2013 and August 2014? One, the ambulance arrived, one ER trauma  
19 visit, nine x-rays, CT's, 21 doctor visits, 30 physical therapy, acupuncture,  
20 and nine spine injections. You're not doing that for a soft tissue injury  
21 because soft tissue injuries resolve within a few days or a few weeks,  
22 maybe a couple of months. When the pain still exists then, what  
23 happens is, you're left with a structural injury, which is what Bahram has  
24 to his spine.

25           And so since that -- since September of 2014, because of his

1 persistent pain, 60 doctor visits, 17 chiropractic -- excuse me -- 107  
2 physical therapy, chiropractic visits, eight CT scans and MRI's, 17 more  
3 spine injections, one spine fusion surgery and a spinal cord stimulator  
4 planned. All of that starting from the date of this collision.

5           Now, I want to demonstrate kind of the fallacy of Dr. Tung's  
6 analysis here. His August 11, 2014 visit with Dr. Perry, who's already  
7 recommended surgery by this point. Bahram states to him, his overall  
8 neck pain feels the same. September 22nd, 2014, persistent neck, as well  
9 as intermittent arm pain and paresthesia. It's the same symptoms.  
10 There's no -- August 30 doesn't stop the symptoms.

11           And then so when we get to September 22nd, it's your  
12 opinion that anything after September forward, the accident played no  
13 role, none at all, that's what they want you to believe to hopefully give  
14 them a pass and limit the amount of their accountability. I submit to you  
15 that's unfair. That's not clinically correlated. And you heard from  
16 physicians who are committed to treat patients in this community,  
17 including worker comp doctors, that all of these symptoms were caused  
18 by the motor vehicle collision.

19           So I'm comparing those two notes. So on one, August 11,  
20 everything is yes related. So by September 22nd, even though it's the  
21 same persistent symptom, the symptoms were identical, no. It really  
22 demonstrates how arbitrary the cutoff is, because he had to do it  
23 somewhere because he didn't want them to buy the whole thing. If he  
24 said yes, it's all related, you have to pay for everything. And he wanted  
25 to find a way to do that, so they hired the right guy, right?

1           The arm pain and symptoms remain constant from day one.  
2 This is the pain score. One thing that they said was, his degeneration is  
3 progressive. Well, let's look at the symptoms. Let's look at his report of  
4 pain scores because that will tell you that things got progressed, that  
5 means they got worse. It's been the same every time since. And this  
6 pain scoring for the individual, I think it's important to understand that  
7 because it shows the consistency of all from day one. That the  
8 chiropractor reported a pain of 7.5 out of 10. Dr. Perry, September 16,  
9 2013, brings his pain 8 to a 9. Currently rates his pain 6 to a 7 out of 10.  
10 He rated it there the same as Dr. Perry. That's the actual pain score  
11 itself.

12           This is with Dr. Schifini, at the Nevada Spine Clinic, Dr. Fisher  
13 5 to 6, sometimes at 9 at its worst. Dr. Oliveri, April 2015, as part of the  
14 impairment evaluation, 6 to 7. At its worst 7 to 8. November 2016,  
15 score between 6 and 7 on an average 6 to 8. Identical.

16           June 2019 with Dr. Schifini, he rates his pain on an average  
17 of 8 out of 10 with a high of 10 out of 10. It's been the same from day  
18 one. And so when you hear Mr. Kahn say he had progression, I want  
19 you to remember these scores, I want you to remember these symptoms  
20 because that evidence doesn't support that position.

21           Dr. Thalgott, March 2019, who confirmed the need for the  
22 spinal cord simulator. His score there was 7 out of 10, the same, the  
23 same stuff it was the day he went to the chiropractor's office.

24           One of the -- also the keys to truly understanding this case is  
25 the arm symptoms It's not just neck pain, it's arm symptoms.

1 Remember Dr. Kaplan said that's one of the reasons why I recommended  
2 surgery, not just the neck pain, but the arm symptoms. Let's look at Mr.  
3 Tung -- Dr. Tung said he developed these symptoms, the radicular  
4 symptoms, years later. That's false. He actually complained of arm  
5 problems the day of this collision in the ambulance. He hit his head on  
6 something. He had some kind of forehead pain, rear head pain, neck  
7 pain, and a left bicep. So he had a symptom in his left arm the day of the  
8 ambulance ride.

9 I also want to show you, he had a cut inside of his lip, as  
10 well. And there he has an abrasion on his knee. So remember there was  
11 a question about whether how he slid under there. So he had physical  
12 markings on his knee. He hit the dashboard or part of the car. He has  
13 cuts inside of his mouth, so it wasn't just from the glass to demonstrate  
14 the severity of this impact. But the neck and arm symptoms were there  
15 immediately.

16 The chiropractor reports radiant pain in the left arm. And the  
17 chiropractor really had it right from the beginning. She diagnosed him  
18 with cervical radiculitis. That's the same thing that Dr. Kaplan, the  
19 neurosurgeon diagnosed him with in 2017 and the reason why he did the  
20 surgery. The chiropractor had it right. It's shocking how many times  
21 they get this right, right from the beginning. All related to this motor  
22 vehicle collision.

23 Dr. Perry, September 2013, left greater than right arm pain  
24 and paresthesia, which is kind of a numbness and a tingling, loss of  
25 sensation.



1 Dr. Schifini, November of 2013, numbness and weakness in  
2 the hands on the left side greater than the right.

3 Dr. Fisher, December 2014, who he saw after Dr. Schifini,  
4 describes pain as nagging, dull, occasionally radiates down the left arm.

5 April 2015, Dr. Oliveri, reports intermittent shooting of pain in  
6 his left arm forearm with some numbness into the small finger on the  
7 left side. And this is important because remember Dr. Oliveri said that  
8 follows a certain pattern. When the pain goes into your left pinkie finger  
9 and the ring finger, that follows what they call a C8 distribution. So  
10 when you hear Mr. Kahn get up here and talk about C6-7, autofusion,  
11 that's irrelevant to this because that's two discs below. That's coming  
12 from another level. That's a new issue.

13 And, more importantly, think about this. Ask in your mind is  
14 he going to show me a record ever that left arm symptoms, pain or  
15 numbness, that predated this motor vehicle accident? I can tell you I'm  
16 an expert in these records and it's not there. And I encourage him to  
17 show you that. If he does, I stand corrected, but I don't think so. All of  
18 this was caused by this collision.

19 November 2016, Dr. Su, this is the third pain management  
20 doctor, neck pain radiating to the arms.

21 Dr. Kaplan, August 11, 2017, look at that diagnosis. Cervical  
22 radiculitis. And radiculitis that means like inflammation. It's irritating. It  
23 doesn't have to be a radiculopathy, you know, nerve root irritation,  
24 which is exactly what Bahram has and has had ongoing.

25 And look what Dr. Kaplan's diagnosis is the same as the

1 chiropractor from day one. He says he has neck pain all the time. He  
2 notes it shoots down the left arm and gets numbness in the pinkie and  
3 ring finger, the C8 distribution that Dr. Kaplan discussed that with us. I  
4 just showed you that little diagram how, if you have a problem with the  
5 Chapter 7-T1 level, it goes down a particular pattern of the body and the  
6 arm.

7           So did we clinically correlate the disc injury, we did, with  
8 overwhelming evidence. But also worker's compensation is involved  
9 here. They accepted the cervical spine as an injury to this case. And, in  
10 fact, more than that, what I'm showing here is, so we're clear, this is Dr.  
11 Schifini. He wrote in his note, because he does a lot of worker's  
12 compensation patients, the accepted body part was a cervical spine,  
13 which that's what we're talking about in this case, all the soft tissue  
14 injuries, those went away within a few weeks or few months.

15           Dr. Oliveri, worker's compensation, requested Dr. Oliveri to  
16 determine a permanent impairment to the cervical spine, which he did.  
17 It says Dr. Oliveri had this opinion back in April of 2015 before he  
18 reviewed everything through today based on his responses and based  
19 on my clinical impression as to the significance of his injury, he has a  
20 whole person impairment of eight percent at that time; because his  
21 symptoms are worse now and he's had a surgery, that rating is going to  
22 go up when they re-rate him substantially.

23           THE COURT: We're going to have to take a break. During  
24 this recess you're admonished do not talk or converse amongst  
25 yourselves or with anyone else on any subject connected with this trial

1 or read, watch, or listen to any report of or commentary on the trial or  
2 any person connected with this trial by any medium of information,  
3 including without limitations, newspapers, television, radio, or internet.  
4 Do not form or express any opinion on any subject connected with the  
5 trial until the case is finally submitted to you. That means don't go and  
6 talk about the case. Thank you.

7 Take ten minutes.

8 THE MARSHAL: Please rise for the jury.

9 [Jury out at 10:42 a.m.]

10 [Outside the presence of the jury]

11 THE COURT: Okay. We're on the record outside the  
12 presence. Yes?

13 MR. KAHN: I generally don't like to interrupt closing  
14 arguments because I feel it's disrespectful, but counsel made a reference  
15 to the testimony of Cliff Goodrich that was stricken by the Court in its  
16 entirety and he referenced in the statement he made that it was stricken.

17 I can show the Court in transcript page 29 where the Court  
18 said it's stricken in its entirety. So I would ask when the jury returns that  
19 he admonish and disregard any reference to the testimony of Cliff  
20 Goodrich because counsel referenced it in his closing argument.

21 MR. PRINCE: You have that in the instruction, Judge. He can  
22 argue whatever he wants. Your instruction was clear about you struck  
23 the testimony of Goodrich. You did.

24 MR. KAHN: This is instructing, Your Honor.

25 THE COURT: It was my intention that when he came back

1 that anything he said, which was only two questions, and it was certainly  
2 -- I don't even remember what he testified to three weeks ago and you  
3 have the transcript, but it wasn't my intention to strike his prior  
4 testimony.

5 MR. KAHN: Well, I prepared for closing what the Court's  
6 statement on page 29, line 1, I am striking his testimony in its entirety.  
7 That's what the Court said.

8 THE COURT: Well, okay. Then you should have inquired  
9 because --

10 MR. KAHN: The instruction [indiscernible].

11 THE COURT: -- it was not -- why would it have been my -- to  
12 strike his testimony from three weeks ago. And I meant his -- when he  
13 sat down and when -- all this was due to that day and not anything from  
14 three weeks ago. So I'm not sure.

15 I guess if I used that word, but it was certainly meant to  
16 address that day. I don't recall, quite candidly, what he said three weeks  
17 ago. You have the transcripts. I assume -- I know you've been getting  
18 dailies, you told me, but if you -- you're going to have hours, I think, to  
19 prepare anything else.

20 MR. KAHN: Okay. All I want to make sure is what the Court's  
21 saying is the intent of the Court's ruling was not to remove Mr.  
22 Goodrich's testimony from the first day and that's fair game for closing  
23 argument when I argue.

24 MR. PRINCE: Yeah, as long as you don't violate the Court's  
25 admonishment of you. You can't argue that somehow that you followed

1 the safety practice and he was allowed to drive a forklift that day. That  
2 argument is completely foreclosed, completely foreclosed.

3 THE COURT: Yeah. Those are two different issues and I  
4 doubt -- well maybe that was --

5 MR. PRINCE: Well, I'll make a contemporaneous objection.

6 MR. KAHN: Liability's decided, so a lot of this doesn't really  
7 seem relevant anyway, but.

8 THE COURT: I'm not sure, but if I was -- misused the word  
9 entirety, I meant as to that day. We all know that that was the problem,  
10 not three weeks ago. There could have been -- there certainly would  
11 have been -- well, he brought him in, so that wasn't at all my intention.

12 MR. KAHN: Okay. Understood. I was just going off the  
13 transcript. Thank you, Your Honor.

14 THE COURT: Okay. Yeah, ten minutes from now.

15 [Recess taken from 10:46 a.m. to 11:00 a.m.]

16 [Outside the presence of the jury]

17 THE COURT: All right. So I assume -- well, tell me if I'm  
18 wrong. The Plaintiff is certainly going to go through lunch.

19 MR. PRINCE: Oh, no. No, no. I have 30 minutes left.

20 THE COURT: All right.

21 MR. PRINCE: I usually am an hour and 15 minutes.

22 MR. KAHN: I'd ask we probably take an early lunch and --

23 THE COURT: Yeah.

24 MR. KAHN: -- come back fresh if that's okay, depending on  
25 time.

1 MR. PRINCE: He just wants to reload. I think you start -- let's  
2 move -- keep moving, use our time.

3 THE COURT: Well, we ordered them lunch at noon and  
4 Defense had I thought said two hours, was that --

5 MR. KAHN: That's my current estimate, Your Honor.

6 THE COURT: So I -- we'll just see, but probably we'll go to  
7 lunch early and then come back and this is going to go --

8 MR. PRINCE: Okay, I'm ready.

9 THE COURT: -- for quite some time. Bring them in.

10 THE MARSHAL: Yes, Judge.

11 THE COURT: Thank you. If you have two hours -- well, we'll  
12 have to discuss that.

13 MR. PRINCE: Talking about --

14 THE COURT: Two hours, there's obviously going to be a  
15 break after one of them so -- meaning one hour.

16 MR. PRINCE: And I'll only have 15 to 20 minutes max --

17 THE COURT: All right.

18 MR. PRINCE: -- no matter how long he goes --

19 THE COURT: We'll see where we are.

20 MR. PRINCE: -- of rebuttal. It'll only be -- I usually give  
21 myself 15 minutes.

22 THE MARSHAL: Please rise for the jury.

23 MR. PRINCE: -- 15 minutes.

24 [Jury in at 11:02 a.m.]

25 [Within the presence of the jury]

1 THE COURT: Please be seated. The parties acknowledge the  
2 presence of the jury?

3 MR. PRINCE: Yes, Judge.

4 THE COURT: Defense?

5 MR. KAHN: Yes.

6 THE COURT: Please continue.

7 MR. PRINCE: Okay. When we left off before our break we  
8 were talking about Dr. Oliveri's impairment in April of 2015. And one of  
9 the terms you heard is a term maximum medical improvement. And  
10 that's a term I think that Mr. Kahn will try to use with you, like it sounds  
11 like oh, everybody's fine. But they're not fine. It doesn't mean they're  
12 pain free.

13 Every doctor, Dr. Oliveri, Dr. Kaplan, Dr. Schifini said  
14 maximum medical improvement just means they've hit a plateau and  
15 they're still in pain. They're just -- there's really no treatment maybe at  
16 that moment to do for them. Don't be fooled by this MMI. Sometimes  
17 you'll hear -- see MMI, that means maximum medical improvement.  
18 That does not mean pain free.

19 And to underscore my point, Dr. Tung, he's -- you know, he  
20 even agreed:

21 "Q And maximum medical improvement doesn't mean  
22 someone's pain free. Doesn't mean they will not require further care in  
23 the future?

24 "A Can't predict that."

25 But the point is, maximum medical improvement doesn't

1 mean pain free. So if you hear Mr. Kahn at any time during the course of  
2 the closing argument saying everybody's MMI and that's just fine, that's  
3 not true. Even by their own expert's standards.

4 Dr. Oliveri had it right in his diagnoses. Interestingly it  
5 remains the same in 2019, cervical spine likely motion segment origin,  
6 meaning one or more of the disc levels. Intermittent left upper extremity  
7 radicular symptomatology from the beginning.

8 Now we've talked about that. Dr. Oliveri graded for a  
9 permanent injury. How many -- just to compare this, how many doctor  
10 visits was there mentioning -- we've talked about hundreds of doctor  
11 visits, right? Hundreds and physical therapy visits. How many doctor  
12 visits were there before June of 2013? Throughout his life, they can  
13 discover the world if they wanted it. He had a primary care physician.  
14 How many doctor visits were there was neck pain ever referenced before  
15 this? One. That one visit, that one sentence. That's their whole hat.  
16 And I'm saying it's far more complex than that.

17 And what I've shown you, we believe, is overwhelming  
18 evidence that the onset of these symptoms started with a collision and  
19 they remain persistent, consistent and will be present for the rest of  
20 Bahram's life from the date of this collision.

21 Now Dr. Stuart Kaplan, Harvard trained, board certified  
22 neurosurgeon, trained at Washington University. You're going to hear I  
23 think the question's like well, Dr. Kaplan's surgery didn't work. That's  
24 not the issue. Was it reason -- the question is, was it reasonable for  
25 Bahram to undergo the surgery? Was it reasonable -- a reasonable



1 decision? And the answer to that question is, of course yes. Everybody  
2 supported that who's involved in his care, who have an interest in Mr.  
3 Yahyavi's care. But even Dr. Tung who's you know, hard to pin down  
4 and I said:

5 "Q By January 2018 he's exhausted all forms of conservative  
6 care. He tried physical therapy, chiropractic, medication. And he  
7 remains significantly symptomatic?"

8 "A "Yes."

9 Here's the point.

10 "Q And you know -- and don't you agree that Dr. Kaplan, he was  
11 reasonable in offering surgery as an alternative to Mr. Yahyavi?

12 "A Yes. I don't think I've ever criticized that."

13 He -- well, of course he's not going to relate it to this collision  
14 because then they'd have to pay for that, right? I mean, he's not going to  
15 do that as the hired gun. So blame it on the degeneration, but you can't  
16 use 20/20 hindsight just because the outcome wasn't good, which it  
17 wasn't sadly. And we're going to talk about a jury instruction.

18 And this is Dr. Tung's testimony, because Mr. -- when Mr.  
19 Kahn gets up here and says hey, look, the surgery, it wasn't indicated  
20 and look, it didn't work. That's not fair. And I want you to think about  
21 Dr. Tung when he does that. I know he's going to do it. Dr. Tung, his  
22 own expert's testimony, let's look at this carefully.

23 "Q You can't afford, you can't look at the outcome of a surgery,  
24 can you and say well, because of the outcome because the person  
25 actually didn't improve or worsen, that the surgery wasn't indicated in

1 the first place. You can't use hindsight on whether it was a reasonable  
2 recommendation for surgery?

3 "A That's right."

4 So he was -- we have a Harvard trained neurosurgeon who  
5 recommended surgery to Mr. Yahyavi after exhausting every form of  
6 conservative care. That was reasonable by any circumstances including  
7 Dr. Tung's analysis, whether caused by the crash or not.

8 So when Mr. Kahn gets up here and says hey, this posterior  
9 cervical spine fusion wasn't reasonable, you know Dr. Tung's testimony  
10 is opposite of that. And now we know this hardware is in place and  
11 permanently in place in Bahram's spine.

12 Now the risks of surgery. You know, it's the sad reality of  
13 this case that Bahram was number one, put in the position to have to  
14 make a surgical decision like this. You remember all the treatment.  
15 They hold him accountable. Well, Bahram was telling Dr. Perry, I don't  
16 want surgery; I want to hold off. So they kept repeating injections. And  
17 Dr. Perry said well, I'm not sure a surgery's going to help you or not. He  
18 doesn't say not to do it. He doesn't say you're not a surgical candidate.  
19 He's like, I'm not sure it's going to give you the benefit that you want.

20 So the very risk that he was worried about happened. He  
21 was worried about something going wrong. And sadly that happened  
22 for him all caused by this. And this is one of the risks of surgery. From  
23 Dr. Kaplan it says, "risk of a neurologic injury". And we know that  
24 Bahram suffers from a C5 nerve injury, neuropraxic injury related to the  
25 spine surgery. And Dr. -- that's been confirmed by Dr. Kaplan and others

1 that because of this he has difficulty raising his arm. His arm doesn't  
2 function. He has atrophy, nerve pain. He has to take a nerve drug called  
3 gabapentin, which is not an opioid. That's just for the nerve pain  
4 because nerve pain doesn't respond to an opioid. It doesn't respond to  
5 an anti-inflammatory. Now you have to have like an anti-seizure  
6 medication to control it hopefully, but it doesn't do that great of a job.

7 He never had a nerve medication ever in his life. He had an  
8 anti-inflammatory once. Think about what -- the medications he's had to  
9 deal with since this. And now he has to deal with this neuropraxic injury.  
10 And Dr. Tung confirmed, this is Dr. Tung again.

11 "Q And in this case, you don't doubt the accuracy of the records  
12 that he did, in fact, suffer a neuropraxic injury, correct?

13 "A No. I don't doubt it.

14 "Q And that further affected his left arm?

15 "A It's on his left arm, yes."

16 Because it did further affect his left arm. I want to make sure  
17 that we're clear on this. That this is just a risk of -- a complication of the  
18 surgery, even if it's done perfectly. This is Dr. Tung.

19 "Q And even if you're doing your level best, meaning even  
20 meeting and exceeding the standards of care, the risk of a complication  
21 of an injury to the C5 nerve root, that could still happen?

22 "A Absolutely. I have never held out that Dr. Kaplan did  
23 anything wrong in the surgery."

24 It's just one of the unfortunate complications. Like someone  
25 could die from anesthesia or become paralyzed. There's lots of

1 complications. And unfortunately because of this injury Bahram has to  
2 suffer the price of this.

3           Now I want to talk about this instruct -- jury instruction,  
4 number 39 because it's very important. Because even if the surgery was  
5 wrong, it was done wrong, he was further injured, the law says, if you  
6 caused the harm in the first place and you undergo medical care that  
7 hurts you further, you're paying for that too. Let's read this instruction  
8 carefully, because these rules, I want you to think about all these rules  
9 when Mr. Kahn stands up because he's going to want you to go beyond  
10 these and I want you to really think about them.

11           The law requires that if you find that Defendant Capriati  
12 caused the original injuries, which they did, you must also find Capriati  
13 liable for any subsequent, meaning after, medical services made  
14 necessary by that original injury and any further injuries or damages the  
15 Plaintiff may have suffered as a result of those medical services, even if  
16 they were done negligently.

17           So this means the complication is part of their legal  
18 responsibility also because he wouldn't have needed the surgery had  
19 this event not happened. So I want you to have that in your mind.

20           Future care. Sadly, there's really no other real options for  
21 Bahram. He has one. The only remaining option medically speaking is a  
22 spinal cord stimulator. We're at a point where there's no more surgery  
23 can be offered. He has to live with the pain, discomfort and suffering,  
24 both physically and emotionally for the rest of your life or try a spinal  
25 cord stimulator to hopefully improve the quality of your life. It's not

1 going to take away the underlying issue, but it's a way for modern  
2 medicine, it's the best technology they have to help control his  
3 symptoms and his pain to improve his function, improve his outlook on  
4 life and improve his pain levels so he has a better quality of life.

5           And what's concerning is, Dr. Tung and the Defense, they call  
6 this excessive. Limiting somebody's discomfort and improving the  
7 quality of their life is not excessive. And in fact, I submit to you, ladies  
8 and gentlemen, if the spinal cord stimulator is not an option, then you  
9 have to award more damages for the pain and suffering, because he'll  
10 have to suffer more and longer and harder. It'll make life more difficult.  
11 He needs this. Workers' Compensation has approved him. He's in the  
12 process of doing it and he's doing it. Because he doesn't have any other  
13 options. And the reason why he's in this position is -- with having one  
14 option left is because that forklift drove right through the front of his car.  
15 We're not talking about a spinal cord stimulator if that doesn't happen,  
16 ever.

17           So Dr. Thalgott who is sent the second opinion for Workers'  
18 Comp, he confirmed the need for a spinal cord stimulator. He also  
19 confirmed that he's not a good candidate for a trial. It says, "Patient has  
20 had post", meaning posterior, meaning from the back, "decompression  
21 and surgery of the fusion of the cervical spine and cannot have trial."  
22 May be able to do an open trial, means with an open wound, but this  
23 may not be possible because scarring is in the way. Every doctor you  
24 heard from has said that. Everyone who's participated in the care has  
25 said that. The trial is not an option.

1                   They're saying well, why make us pay for such an expensive  
2 device. No mistake about it; it's expensive, but it's his only hope. And  
3 they put him in this position. So if you put me in this -- Bahram in this  
4 position, that's part of your legal responsibility. If that's the only option  
5 left that is your responsibility. We -- he would love a trial. Everybody  
6 would love a trial, but sadly because of the surgery he had, that's not an  
7 option for him because of this. That should not be his problem. That  
8 should be the person or the company who put him in that position quite  
9 frankly.

10                   Dr. Schifini. So when you hear Mr. Kahn talking about oh,  
11 the trial, don't award it because he's going to do a trial. Every doctor  
12 says trial is not an option who participates in his care. The people who  
13 give him medical advice and recommendations who have done surgery  
14 and procedures, they all say it's not an option. "He has undergone" --  
15 this is Dr. Schifini in June of 2019. "He's undergone previous extensive  
16 posterior surgery which would eliminate the possibility of performance  
17 of a true spinal cord stimulator trial. As suggested by Dr. Kaplan, a  
18 permanent implantation would be the only way to go." Dr. Kaplan,  
19 February 2019 confirms "because he had a prior surgery we can't do a  
20 trial stimulator. I recommend proceeding with implantation because it's  
21 his only hope".

22                   So now what's Bahram's future? Well, we know he's going  
23 to have some doctor visits. Dr. Oliveri did a lifecare plan. The Defense  
24 has no lifecare plan, number one. We have doctor visits because he's  
25 going to need to go for medications, things like that. He's allowed for

1 additional physical therapy. While it's not going to remove the  
2 symptoms, it may help him improve a little bit. Some strengthening. He  
3 does his own. He does his best. His son, you saw Darian testify, who is  
4 obviously active in the fitness business. Helps him with stretching and  
5 strengthening which is all to his benefit. But he's allowed personal  
6 physical therapy, ongoing medication for the rest of his life and a spinal  
7 cord stimulator.

8           And the future cost of this, because we're going to put this in  
9 our verdict form, is 529,000. You may write this down. We're actually  
10 going to go through the verdict form. 260 -- \$529,260. And that's the  
11 present value. Remember we had the economist come in and calculate  
12 the cost of that. And understand that the Defense, because of their  
13 breaking the rules in court, their economist isn't allowed to testify. He  
14 was stricken because of their behavior. So they don't have any costs to  
15 even address it. Both on the cost of medical care or the loss of income.

16           So instruction 44, this is just -- I'm just sharing with you that  
17 he's got about a little more than almost 24 years to live. He's going to  
18 live until about 81 according to governmental tables. And his family is a  
19 long liver. We think this is just the average. He could very well live this  
20 out, but this is the number we have to use and I'm using in court  
21 because it's the statistical average by the government.

22           You know, what are the issues for you to decide? Number  
23 one, how much damages to award for the last six plus years of chronic  
24 severe neck and arm pain, disability, limitations and the loss of the  
25 quality of his life? Two, how much damages to award for having to

1 experience chronic severe neck, back -- neck and arm pain for the rest of  
2 his life, limitation and disability?

3 I think what it really brings about is the forefront of our  
4 discussion is what's the value of good health? What's the value of good  
5 health? I think we're -- I think we talked about it in the voir dire. I think  
6 health and wellness more than ever is in the forefront of our society.  
7 And we place a high value on peoples' physical health, emotional health  
8 and their mental health. And when that's taken from you then you're  
9 robbed. You only have one opportunity in this life. While he's thankful  
10 and grateful for his opportunity, a lot's been taken from him. And I  
11 would suggest to you, there is a very high value on good health.

12 The difficulty with -- this is really illustrative I think of what  
13 happened in Bahram's case. Chronic pain and chronic pain syndromes  
14 are very, very real. And pain, medication side effects, stigma, no social  
15 life, anxiety and depression. And it creates this cycle in you. And I  
16 represent clients, I have for decades now who suffer from this. And so I  
17 have a unique experience with that, but I uniquely understand this  
18 because they're tired because they wore out. And then because they're  
19 fatigued it makes the pain worse. They don't cope with it as well. Then  
20 it becomes distress.

21 And I remember one client, he taught me, he was a disabled  
22 veteran. He said Dennis, depression is looking backward and anxiety's  
23 really looking forward. Depression's like what could have been or what  
24 should have been. Anxiety is like oh my gosh, what's -- how's my  
25 future? How am I going to provide for myself? How am I going to take



1 care of myself financially? How am I going to pay my bills? How am I  
2 going to pay my rent or my mortgage? I've exhausted my savings. I  
3 can't work. I had to borrow my 401(k) money. I'm financially broke. I  
4 had to borrow money from my son. Think about being put in that  
5 position.

6           And so it's just really this cycle, it's a vicious cycle of pain  
7 and deconditioning. He's got atrophy. He doesn't go out; he has no  
8 social life. And it has strong psychological effects. And how do we  
9 know that? Well, number one because the doctor told you. But more --  
10 in this case Bahram recently went to a psychologist, Dr. Staci Ross.  
11 Went there, ordered by Dr. Thalgott and she's also part of this Workers'  
12 Compensation. So she saw him in April of this year. And I want to talk  
13 about the psychological effects of chronic pain and disability because  
14 she documented it.

15           It says, psychologically, he reports he's irritable, feeling sad,  
16 depression, anhedonia. I didn't know what that was. That means loss of  
17 enjoyment of your life. Dr. Schifini -- or Dr. Oliveri told us that. Low  
18 motivation, loss of confidence because he's unable to work. He feels  
19 stress secondary to his financial situation and ability to provide for his  
20 family. Anxiety, concerns on a regular basis. He's fearful going in a  
21 construction zone, which he should be, and he has flashbacks.

22           It says, "he continued to work after his injury, however his  
23 productivity and his income gradually declined as he was working on full  
24 commissions. His biggest barriers to returning to work are his pain and  
25 his interferences with his concentration and being consistent." And I

1 think it becomes insurmountable and to the point where that's when he  
2 finally just gave out and that's why he had to stop working September  
3 2016.

4 Dr. Schifini asked him as part of his updated evaluation, he  
5 came back in June of 2019 and he says he's borderline, he has clinical  
6 depression because of all of these ongoing issues, notwithstanding how  
7 hard he's worked to try to get through them.

8 And so what we're talking about in court -- and that's actually  
9 a picture of the courthouse, is fault and being accountable. And what  
10 that means is full responsibility. We're here for full responsibility. And  
11 respectfully while the instructions talk about sympathy, we don't need  
12 sympathy. He doesn't need sympathy. He has a family that loves him,  
13 children that love him and friends that love him. They'll give him all the  
14 sympathy. This case is about an accounting. That's what this case is  
15 about.

16 And so now over to the instructions to talk about what are  
17 the losses that the law allows you to recover. It says, in determining the  
18 amount of losses caused by the collision you can take into consideration  
19 the nature, the extent and the duration of the injuries and damages. And  
20 you're going to decide upon a sum of money to reasonably and fairly  
21 compensate for the following. Number one, the reasonable medical  
22 expenses he's incurred. So he's relying on his physicians; those are  
23 reasonable. From the date of the collision until now, meaning to this  
24 date and what he's going to have to incur in the future.

25 So we know that Bahram has incurred medical expenses

1 past. These are the reasonable medical expenses testified to and not  
2 contradicted by any defense witness. \$491,023.24. And so when you get  
3 back to the deliberation room you're going to have a verdict form. And  
4 that's, once you select a foreperson and you kind of deliberate you're  
5 going to make some decisions. And you're going to -- some of these are  
6 the simple part of it.

7           So the verdict form looks like this. And I'm going to -- we're  
8 going to work through filling this out together. It says we the jury in the  
9 above find for the Plaintiff and against the Defendant and assess the  
10 damages as follows. Well, the past medical expenses, uncontested as  
11 \$491,023.24. So you can insert that. So you may want to write these  
12 numbers down and take a few notes.

13           Now we know Workers' Compensation exists out there.  
14 There's a court instruction and so if it gets discussed in the jury  
15 deliberation room let's make sure you have this firmly in mind. It says, if  
16 you decide the Plaintiff is entitled to judgment against the Defendant you  
17 shall find damages in accordance with the Court's instructions and return  
18 your verdict in Plaintiff's favor without deducting the amount of any  
19 compensation benefits to or for the Plaintiff. It means, don't worry about  
20 the Workers' Compensation amounts paid. You can't reduce your  
21 judgment by it. The law provides a mechanism to deal with that  
22 afterward. That's not your role.

23           You need to determine what were the reasonable -- please  
24 go back to the instruction. The reasonable medical expenses necessarily  
25 incurred. So we're talking about the actual expenses. So that's what

1 we're talking about. And so jury instruction 41 tells you, while you know  
2 that there's Workers' Compensation you're not to think about that. It  
3 doesn't play a role. And it says, the law provides a means by which  
4 compensation benefits will be repaid. So that's out of your control.  
5 Remember, that's outside the four walls so don't consider it.

6           Next is the future medical expenses. We already know those.  
7 Those are \$529,260. That's for all the future medical care. That's the  
8 present value including the spinal stimulator. Having to maintain that for  
9 the rest of his life since that's his only remaining option.

10           Now Mr. Kahn may get up here and say well, all the  
11 treatment, why was he going back if it wasn't working. So why would  
12 you go back for more chiropractic care? But you know what, Mr. Yahyavi  
13 had the right -- the Court's instructing you the law on this. He had the  
14 right to rely on the recommendations of his doctors and follow their  
15 advice. That's reasonable. The law says that's reasonable. And he did  
16 do that. And that's why these expenses were incurred. He tried  
17 everything he possibly could to avoid being in this situation.

18           Next, loss of earning capacity. This is not just we're going to  
19 be talking about in terms of like how much does he -- loss of his income  
20 and how that is. But it really has affected him in many more ways. He's  
21 disabled from working. He can't provide for himself in the way he once  
22 did. He was a peak performer. So it affects him as a man. He can't take  
23 care of his children the way he wants to. Can't provide for them. He's  
24 going to have grandchildren at some point. Not only is he worried about  
25 how am I going to play with my grandchildren. What would happen if I

1 had a spasm or heaven forbid I dropped one? But how is he going to do  
2 the things he would otherwise want to do, and be generous and be the  
3 way he'd like to be? That's been taken from him.

4 So we're talking about loss of earning capacity, but really it's  
5 much more than that. And the law provides this. It says, in addition to  
6 the medical expenses it says, loss of earnings or earning capacity from  
7 the date of the motor vehicle collision to the present, that's the past, and  
8 Plaintiff's loss of earning capacity in the future, discounted to present  
9 value which we did.

10 Now one thing you -- we're going to talk about this. I want  
11 you to remember this instruction too because this should play no role  
12 either. 43, you're not to discuss or even consider whether my client or  
13 Plaintiff was carrying any health insurance or any type of insurance to  
14 pay any expenses. But you're also not to discuss or consider whether  
15 he's receiving any social security disability benefits or the amount of  
16 that. That information is immaterial, and it should make no difference in  
17 any of your verdict. That's outside of you.

18 So even though you've heard he's on social security  
19 disability, the law tells you, you don't factor that in. You are to  
20 determine what his actual losses are. The Court will deal with the other  
21 issues as necessary. But for you and your deliberations I want you to be  
22 thinking about that if this comes up please remind your fellow jurors  
23 hey, we're not supposed to think about that. We're supposed to  
24 determine what his actual losses are.

25 And so we know in 2012 -- and this also goes to the point of

1 he was not having -- he was doing great in 2012. He made almost  
2 \$160,000 a year because it's actual. By the time of the accident he made  
3 almost \$70,000 by the middle of June, doing great. And so he stops  
4 working in September of 2016. We know he had other income losses,  
5 but because he stopped -- he worked. We didn't even factor in from 2013  
6 to 2016 any losses. So this is actually conservative what we're talking  
7 about.

8           We calculated for your purposes the losses from September  
9 2016 forward. So from June 2013 to September 2016 we're not asking  
10 for anything. Even though his income went down we're not asking for  
11 anything. We're starting from the date of his disability which is  
12 September 2016.

13           And so we can see what happened to his annual income.  
14 He's tried to work. Because he tried to work like hey, you know, that's on  
15 you. If you're trying to work then whatever your losses are. We could  
16 have asked that, but we're not asking for that because we want this to be  
17 conservative and so we did that.

18           The only evidence that the Defendant has that Mr. Yahyavi  
19 can work is Dr. Tung who saw him in 2016. August of 2016. Think about  
20 that date for a minute and how -- the difficulty Bahram was having in  
21 August of 2016. Remember that he had Mr. Bennett come up here and  
22 he's like well, I was instructed to only consider Dr. Tung, remember that?  
23 He didn't consider Dr. Oliveri, Dr. Schifini, Dr. Kaplan. So you know his  
24 view was bias. So the Defense only wanted him to consider their  
25 position only. But what did Dr. Tung really do? Nothing. And I asked

1 him this, and I'm showing you this, so you remember it when they're  
2 talking about him being able to go back to work because he -- clearly no  
3 one else supports this position.

4 "Q My question is this. You didn't document any of these  
5 difficulties he's having with work, daily living in your report?

6 "A Correct."

7 So when he sees him, and he flies out here to Las Vegas,  
8 gets paid by the Defense to see him. And the question was, remember I  
9 showed -- I compared to Dr. Oliveri, hey. How is he doing with activities  
10 of daily living? This is a critical time. He's one month away of stopping  
11 working. One month. He doesn't document any limitation in activities of  
12 daily living or work.

13 "Q Did you document anything -- any aspects regarding his  
14 work, work abilities, how it's affecting his symptoms? You don't  
15 document that at all, do you?"

16 He blamed it on Bahram. He actually blamed it on him.

17 "A No. He didn't tell me.

18 "Q The matter of fact is, you didn't ask?

19 "A I don't recall.

20 "Q So you can't tell this jury you asked him, can you?

21 "A I can't say I didn't ask; I can't say I did ask. I don't recall.

22 "Q So you can't say one way or the other?

23 "A I don't recall."

24 How is that a basis to say he can go -- he's not disabled; he  
25 can go back to work? That frankly is offensive. And what happened?

1 Why did they have -- and reexamine. They can re-examine after he had  
2 his surgery because things obviously changed. They didn't do that  
3 either. And remember Dr. Tung? My position remains the same. He's  
4 not disabled. That is grossly unfair. And speaks to his credibility  
5 volumes.

6 The Defendant has no economist to even calculate these  
7 losses. Remember as a -- look at number two. Because of not following  
8 the rules in court. Because of willful misconduct the court strikes all of  
9 Defendant's remaining witnesses, one of which was an economist. Mr.  
10 Kahn promised you were going to hear from an economist in his  
11 opening statement. Because of breaking the rules you don't. So that  
12 evidence doesn't exist. And they didn't calculate this; we did. That is the  
13 evidence. And in fact, that's -- our position is the right one we believe.

14 So in the end our calculations are this. From September  
15 2016 through September 2019, using 160,000, a little plus for earning  
16 capacity, the past loss of earning capacity is \$571,227. He was at his  
17 capacity doing his best and at peak performance. What's his future loss  
18 of earning capacity? \$1,885,152 for a total of -- the two numbers are  
19 actually the important ones. The total, you don't -- won't need that, but I  
20 just want you to know that, is \$2,456,379. This is only calculating if he  
21 had the ability to just work until age 67.

22 People work longer now. They live longer. He loved his  
23 career. He was in the same career his whole life. I think this is a  
24 conservative estimate. He was doing great at -- you remember Mr. Kevin  
25 Mackey? He said he was a valuable employee. He was forced to resign



1 his job. He couldn't stay in the same position. He had to go work part-  
2 time and kind of put together his hours. He's dealing with doctors --  
3 hundreds of doctors' appointments, still making 100 plus thousand a  
4 year managing that. Think about at one doctor appointment. It takes  
5 you almost an hour to get ready and go and drive there and get yourself  
6 settled, an hour for the appointment, an hour to get back. So it's about a  
7 two, three-hour process.

8           And I looked at the calculations of this. It was actually like --  
9 if you did it for all these doctor's appointments it would be you're at a  
10 doctor appointment for 24 hours consecutively for more than a month.  
11 Like 20 -- every day 24 hours in excess of a month. That's what he did.  
12 And he still managed to earn that kind of money. But you know, in  
13 fairness he earned it so we're not asking for the past loss, but that's fair.  
14 And actually, that's conservative. Because that doesn't allow him the  
15 growth he had. He was with that same company for six years. So those  
16 are real losses.

17           So for going back to your verdict form when you get this,  
18 we're asking you to insert for the past wages an earning capacity  
19 \$571,227. For future loss of wages, \$1,855,152. Now those are the easy  
20 numbers to calculate. That's over almost 3.5 million -- 3.4 million on  
21 their own.

22           But now the past pain, suffering and loss of enjoyment of  
23 life. And I want you to read and understand these instructions for a  
24 minute and understand how the law places high value on our physical  
25 well-being and our emotional well-being. Let's read it. The physical and

1 mental pain, suffering, anguish and disability endured by the Plaintiff  
2 from the date of the motor vehicle accident to the present. That's just  
3 the past from June 2013, September 2019.

4 But this instruction is also critically important, number 37.  
5 We talked about loss of enjoyment of life. This is where I get it from.  
6 The loss of enjoyment of life and compensation for loss of ability to  
7 participate and derive pleasure from the activities of daily life or for the  
8 Plaintiff's inability to pursue his talents, recreational interests, hobbies or  
9 avocations endured by the Plaintiff from the date of the collision until  
10 now and then going on into the future. But look, because there's  
11 enjoyment -- life is really not about a destination, it's about the journey.  
12 And like everybody -- everybody's life has their own ups and downs, no  
13 question. But it's really about looking back and looking at your life and  
14 thinking, that was fun. That was a fun ride. He doesn't get to have that  
15 same way now. Someone took that away from him.

16 How's he going to participate with his grandchildren? He  
17 can't teach them how to play soccer probably. He can't hold them when  
18 he wants to. He can't ski, he can't boat, he can't work. He loved -- he  
19 was passionate about his job. He can't even do that. And the law says,  
20 that's a high value. And he's stuck in this crazy chronic pain cycle. He  
21 worries about his health. He worries about, how am I going to pay for  
22 my expenses? How am I going to take care of myself when my son  
23 moves out?

24 And so those are all factors to consider. And I think this  
25 quote is, the price of anything is the amount of life you'll exchange for it.

1 And I submit to you that your health and health and well-being and your  
2 good health is extraordinarily high value.

3 And I bring this quote up, the most precious resource we  
4 have is time is by Steve Jobs, the founder of Apple. Because it is. And it  
5 really is important in a case like this because someone with chronic pain,  
6 time is an enemy. Because time stands still. Minutes feels like hours  
7 and hours feel like days and you're like in this weird cycle all the time.  
8 And you're hoping one day you wake up and this goes away, but it  
9 doesn't. That's the reality. You wake up every day, how am I doing  
10 today? Do I need medication today? Did I overdo it yesterday? I sat too  
11 long in court today. Now I'm going to have to lay down for two days. I  
12 can't do those things.

13 Those are all factors in this time. And really the value, you  
14 don't really appreciate -- people don't appreciate the value of their health  
15 until it's gone. You just take it for granted. I think we all do. But the  
16 minute it's gone, you have -- think about someone having a migraine, an  
17 excruciating migraine that never goes away. Because sometimes when  
18 people experience pain, I know I do, like oh my gosh, you get worried  
19 and you're like oh, I hope this goes away. I hope nothing more serious is  
20 wrong. And you're like [indiscernible] feel better, good. But that doesn't  
21 get to happen for him because of this.

22 And so I believe that health and wellness are extremely  
23 valuable. And so because of six years, six and a half years being robbed  
24 of his dignity, the ability to provide for himself, the loss of ability to work,  
25 living in a chronic -- think about 18 or plus hours a day he's in this severe

1 pain. Severe. Undergoing the surgery. Think how afraid he was for the  
2 surgery. He was -- the worst fear was realized, and he's had to live with  
3 this, and he has to face this every day.

4           So I suggest to you, ladies and gentlemen, for past pain,  
5 suffering, disability for the last six and a half years, 3,500,000 would be  
6 fair, reasonable and just for that. Being put -- placed in a physical prison  
7 of your own body and your own mind.

8           Now as to future. Also the law provides for future pain,  
9 suffering and loss of enjoyment of life. And this is, I'm just showing you,  
10 it's instruction 36 just to show you that it's also about the mental pain,  
11 suffering and anguish and disability you believe the Plaintiff will  
12 experience into the future for the rest of his life.

13           Same thing, 24 years left to live, that's his average. But I  
14 really want you to understand the time -- what the time period. What I  
15 do -- this is kind of a -- I'm almost done, but the time period. What does  
16 24 years really represent? So I always do this. We're going to look back.  
17 Let's see what's happened over the last 24 years. It's a lot more time  
18 than you think. And so let's go through a few things.

19           Gas was a \$1.09. A stamp was \$0.32. The average cost of a  
20 new home was \$113,000. We definitely [indiscernible]. Seinfeld was the  
21 top-rated TV show, Toy Story, Microsoft 95 debuts -- Windows, excuse  
22 me. Bill Clinton was president. And the bombing; do you remember  
23 that? And then the OJ Simpson, the -- he was convict -- actually  
24 acquitted of the crime. The Monica Lewinski scandal. The Columbine  
25 shooting. That's already been 20 years. And I'm going to tie this into

1 Princess Dianna, she died. The Sydney Olympics of 2000. George W.  
2 Bush was elected president. We had 9/11. That's been -- that's 18 years  
3 this month. We invaded Iraq. The Athens, Greece Olympics 2004. I'm a  
4 Boston Red Socks fan so they won the World Series after almost 100  
5 years. George W. Bush was elected again. John Kerry is from  
6 Massachusetts, so I put it up there. Hurricane Katrina. The Beijing  
7 Olympics 2008. The first African American president Barack Obama was  
8 sworn in as president. Michael Jackson died. Will and Kate, they got  
9 married and now they have two children. We captured Osama Bin  
10 Laden. Barack Obama was elected for a second term. We had the  
11 London 2012 Olympics. We had the Boston Marathon bombing. We had  
12 the Malaysia jet, the one that mysteriously disappeared, remember that?  
13 That was like six years ago now. Think about that. I'm still dumfounded  
14 by that. How could that disappear on this planet?

15           We had Deflategate, I'm also a Patriot's fan. Don't hold that  
16 against me. But we had Deflategate. The right of gays and lesbians to  
17 marry. The taking down the confederate flag in the south. Donald  
18 Trump was sworn in as president. Prince passed away. Golden Knights.  
19 Not only do we get the Golden Knights, I'm born and raised in Las  
20 Vegas, and knew nothing about hockey, but I'm passionate about hockey  
21 now obviously with the Knights and their first season they went to the  
22 Stanley Cup final which was amazing for our city. And sadly two years  
23 ago we're almost on the second anniversary now of Route 91 in a couple  
24 -- in a few days. Think about that and that shooting. Now we have  
25 Prince Harry and Meghan Markle they got married and now they have a

1 baby.

2           So that's the past. What's the -- what's 24 years going  
3 forward? A baby's going to be born, going to be an infant. Going to go  
4 to preschool. Then graduate from elementary school, then graduate  
5 high school, graduate college and get married. That's 24 years going  
6 forward. It's a long time. And Bahram really only has one chance. He  
7 has one chance to present all his case and I hope I've done that to the  
8 best of my ability, to give you the information you need and the tools  
9 you need to hold this Defendant accountable.

10           But Bahram has a long road ahead and it's not going to be an  
11 easy one; it's not going to be a smooth one. There's going to be lots of  
12 sunsets and -- I mean sunrises and sunsets for him. But over the next 24  
13 years, 18 or more hours a day, think about this, he's in pain. He can  
14 barely sleep. He's up every two to three hours, 18 hours per day or more  
15 every day. He's in constant excruciating pain, can't work, he's frustrated,  
16 angry and debilitated. And that is a difficult place to put somebody.

17           And so my belief based on the evidence of this case and my  
18 experience of doing this for over 27 years is that \$7,500,000 would be fair  
19 and reasonable and just compensation for Bahram Yahyavi given the  
20 totality of everything we've heard in this case.

21           Now when you go back to deliberate the first thing you do,  
22 you'll get settled in the deliberation room, it's a little room behind this  
23 wall and just the eight of you. You have to select a foreperson, that'll be  
24 your spokesperson in court. And as soon as six of you reach an  
25 agreement on these numbers you have a verdict. It doesn't have to be

1 unanimous. As soon as six of you agree that's final. You don't have to  
2 worry about getting the other two along because sometimes people  
3 disagree which is their right. And so once you have that then you have a  
4 verdict.

5           And the only protection we truly have when situations like  
6 this arise is in the law. And that's why I've taken the time to explain the  
7 law and the details of it and the evidence that you've seen so you'll  
8 understand when you hear from the Defense now and compare it to  
9 what we really heard. Because what we're asking for in this case is  
10 justice against this Defendant. Holding this Defendant accountable.  
11 Because Dr. King said, injustice anywhere is a threat to justice  
12 everywhere. And we're asking for you, because you're the only one that  
13 can -- they'll listen to. You have that power uniquely. So I'm asking you  
14 based on the evidence in this case to send a message to this Defendant  
15 that you need to accept responsibility and you need to be accountable  
16 for all of the harm that you caused my client.

17           And so we've answered all the three questions we talked  
18 about in the opening statement, who's at fault, was the Plaintiff injured  
19 and how much money is necessary to balance the harms and the losses.  
20 With that I thank you for your time, commitment, your service. Nothing  
21 about it's easy and it's never convenient, but I hope that you found it  
22 interesting and I'm looking forward to your verdict. Thank you.

23           THE COURT: Thank you. Ladies and gentlemen, we're going  
24 to take a little bit early lunch recess. We will have -- I'm going to send  
25 you back to the deliberation room for lunch because we provided for

1 lunch. But you are not to discuss the case. This is not the time. The  
2 Defense has their closing argument still and then there's going to be a  
3 rebuttal argument. We have I'm guess some serious time before we give  
4 it to you. I'm going to allow you to have your cell phones to call your  
5 loved ones if you want or check in or whatever, but please don't do any  
6 research.

7           And I will tell you because it is my decision, when you finally  
8 do go back to deliberate I'm going to ask you to leave your cell phones  
9 outside of the deliberation room for the simple fact that no matter how  
10 many times I, in the past have told jurors, not to do any research I've  
11 proven that -- whatever. Anyway, a jury did exactly that. So in order to  
12 avoid any problems when you go to deliberate, we'll ask that you leave  
13 your cell phones outside.

14           I think we're getting you lunch from Cipriani's, correct? Yes.  
15 So you'll have that, it should be sometime. They'll bring it in about  
16 noon. So again, I'll admonish you, during this recess you're  
17 admonished, do not talk or converse amongst yourselves, that means  
18 don't talk about the case at all.

19           Don't read, watch or listen to any report of or commentary  
20 on the trial or any person connected with this trial by any medium of  
21 information including without limitation newspapers, television, radio or  
22 internet. Do not form or express any opinion on any subject connected  
23 with the trial until the case is finally submitted to you. This is not  
24 deliberations. You are getting a free lunch, that's it. We could have -- I  
25 could have sent you out to eat on your own, but because of the timing I



1 think it's good to keep you, et cetera. No talking about the case.

2 MR. PRINCE: What time are we coming back, Judge?

3 THE COURT: It will be, let's say, because I'm hoping they get  
4 the lunch at 12:00, let's say ten after 1:00. Ten after 1:00. Steve will  
5 obviously tell me when lunch arrives, so I'll plan on that. Hopefully they  
6 get it to us when they said so at 12:00. So ten after 1:00. All right. We're  
7 in recess.

8 THE MARSHAL: Please rise for the jury. Folks, leave your  
9 notebooks and your jury instructions in here, but grab all your personal  
10 items. All your personal items. Leave your notebooks and instructions  
11 in here. You're going to follow me out this way.

12 [Jury out at 11:47 a.m.]

13 [Outside the presence of the jury]

14 THE COURT: All right. We're outside the presence.

15 Anything?

16 MR. KAHN: No, Your Honor.

17 THE COURT: Plaintiff?

18 MR. PRINCE: I'm sorry, Judge?

19 THE COURT: Anything?

20 MR. PRINCE: No.

21 THE COURT: Okay. If they don't get their lunch until 12:30  
22 and I don't know that, then obviously you'll have to wait, but let's hope  
23 they're on time.

24 MR. KAHN: Thank you, Your Honor.

25 [Recess taken from 11:47 a.m. to 1:13 p.m.]

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[Outside the presence of the jury]

THE MARSHAL: Remain seated and come to order.

Department 28 is again in session.

MR. KAHN: Your Honor, we're having a technical issue with the trial tech.

THE COURT: All right.

MR. KAHN: There's some problem with this connection that hasn't happened during the entire process.

[Pause]

MR. KAHN: Now we should be good.

THE COURT: Okay. Bring them in.

Because I'm off Monday, assuming they can, I'm going to make --- I'm going to have them go until, like --

MR. KAHN: As late as they can?

THE COURT: Well, not past 9, but --

MR. PRINCE: Well, okay.

THE COURT: And then they're going to have to come back Tuesday.

MR. PRINCE: Yeah. Your Honor, just for edification, it's my wife's birthday, and we're having a dinner party at my house tonight starting at 7, and we're having a chef come in where there's going to be, like, 6 -- like, 14 people coming, so that's a limitation for me, but I guess Kevin could come down and take the verdict I guess.

THE COURT: If that happens --

MR. PRINCE: We'll deal with that.

1 THE COURT: Yeah.

2 MR. PRINCE: You know what, Kevin could come down and  
3 do the verdict.

4 THE COURT: I think, Mr. Kahn and I want to know why we  
5 weren't invited.

6 MR. KAHN: It's too full at the inn.

7 MR. PRINCE: Oh, I'm sorry.

8 THE COURT: He didn't even hear that?

9 MR. PRINCE: I didn't I'm sorry. We'd love to have you.

10 THE CLERK: We're all coming.

11 MR. PRINCE: It's going to be outside on our patio, so it's  
12 going to be nice. I mean, the women are getting their hair and makeup  
13 done so you'd have to be dressed up, Judge.

14 THE CLERK: Didn't they say there are 60 mile an hour winds  
15 today?

16 [Pause]

17 THE MARSHAL: Please rise for the jury.

18 [Jury in at 1:17 p.m.]

19 [Within the presence of the jury]

20 THE COURT: Please be seated.

21 The parties acknowledge the presence of the jury.

22 MR. PRINCE: Yes, Judge.

23 MR. KAHN: Yes, Your Honor.

24 THE COURT: Defense, closing argument. You may proceed.

25 DEFENDANT CLOSING ARGUMENT

1 BY MR. KAHN:

2 Thank you, Your Honor.

3 Your Honor, ladies and gentlemen of the jury, Plaintiff, and  
4 Counsel, as you know I'm the attorney for Defendant Capriati  
5 Construction. And this is really our only opportunity to speak to you  
6 directly about the case. The opening statement is more of a roadmap.  
7 The evidence hasn't been placed from the Court in front of you yet, so  
8 this is really it, as far as the Defendant's chance to give you their  
9 perspective.

10 And Plaintiff's counsel is correct about one thing: I am going  
11 to harp on the report of neck pain 21 months before the accident for  
12 years. And the reason I'm going to harp on it, is because that's the  
13 linchpin of their case.

14 In order for all of you to buy into all of their arguments, that  
15 this accident is the only problem -- the only thing that caused the Plaintiff  
16 problems, you have to believe that the report of neck pain for years -- 21  
17 months before the accident -- doesn't matter, or it's false, or something  
18 like that. And the Plaintiff never owned that medical record, so we are  
19 going to talk about that.

20 Why are we here? Why have you had to sit here for three  
21 weeks of your lives? You heard my clients, you know, and this case is  
22 now about damages. You're not deciding liability. The Court has  
23 already determined that my client is at fault.

24 All you are deciding is how much money to give the Plaintiff.  
25 And as the Plaintiff's counsel advised you, you have two sets of

1 materials that guide you: one, is the jury instructions from the Court;  
2 and the other one is the evidence in this case.

3           Now, what are the rules about how much money you're  
4 allowed to give the Plaintiff? You obviously heard the numbers that the  
5 Plaintiff's lawyer put up. If you add them up, it's about \$14 1/2 million.  
6 I'll say that again: Plaintiff has asked you this morning for \$14 one-half  
7 million. That's how much.

8           So essentially, Plaintiff is asking you to pay for his past  
9 medicals, and his future medicals, including the spinal stimulator he  
10 hasn't gotten yet. They're asking you to pay for his past loss of earnings,  
11 but only since the September of 2016, so about three years ago, which  
12 was three years after the accident. So they're not asking you to pay for  
13 the several hundred thousand dollars Plaintiff made after the accident.

14           And they're asking you for future loss of earnings, which is  
15 another 2 million or so dollars, which presumes that the Plaintiff can  
16 never work again, like he's saying, but on top of the past and future  
17 medical damages, and the past and future earnings losses, which are  
18 themselves millions of dollars, Mr. Prince is asking you to give Mr.  
19 Yahyavi another \$11 million. That's the number he suggested to you: 3  
20 1/2 million for past pain and suffering and 7 1/2 million for future pain  
21 and suffering.

22           So in essence, what's being asking of you is to pay for all this  
23 gentleman's past medical bills, all his future medical bills, all his past lost  
24 wages, all of his future lost wages, and then on top of that make him a  
25 multimillionaire. That's what's being requested.

1                   So the accident. Now, again, the Court's determined that my  
2 client is responsible, so there's no issue about that. My client is  
3 responsible. That's a given. The Court has instructed you, but some  
4 information did come out in the testimony and you're still allowed to  
5 consider that because you have to consider it for damages -- how much  
6 is it worth.

7                   One thing that the Plaintiff said is that he was going 30 miles  
8 an hour and he hit a forklift. He came to an immediate halt at 30 miles  
9 an hour. You've seen the pictures of the car. And you can use your  
10 common sense. The jury instructions allow you to use your common  
11 sense.

12                   No experts have testified about the accident. So you can use  
13 your common sense to make a determination does that car look like it hit  
14 a forklift going 30 miles an hour.

15                   Also, you heard the Plaintiff testify that he slid under the  
16 dashboard, even though he was wearing a seatbelt. And I believe one of  
17 you asked a question about it, and said how could that be possible, and  
18 there was an explanation, but again, you're not required to suspend your  
19 common sense and your, you know, your personal history, and your  
20 knowledge, and just buy into what the lawyers and the witnesses say.  
21 You're allowed to bring with you your common sense.

22                   Words. This case is about words. You're in court. You have  
23 lawyers talking to you. You have professional experts talking to you  
24 from both sides. You have witnesses talking to you. And it's all about  
25 the words that are used. So we're going to go over some of the

1 important words in this case.

2           And before we do that, I want you think. That's the first  
3 word. Think where my client would be in a case where we are being  
4 asked to pay -- the Defendant is being asked to pay \$14 1/2 million if the  
5 Defendant had never uncovered the medical record from Southwest  
6 Medical Associates from 21 months before the accident saying that the  
7 Plaintiff had neck pain for years, because as much time as the Plaintiff's  
8 experts, and the Plaintiff has spent disavowing that, and explaining to  
9 you, you shouldn't think about it, where would the Defense be if we  
10 hadn't uncovered that?

11           And remember, you heard the Plaintiff testify right before  
12 your eyes that he was asked at a deposition three years ago, "Had you  
13 ever hurt your back and your neck before? Had you ever gotten  
14 treatment?" And he said, "No." So we have no magic way on the  
15 Defense side of finding these things out.

16           In order to get records you have to go through a certain  
17 process for medical records. In order to get information, one of the  
18 sources -- the primary source is asking the Plaintiff. If the Plaintiff is not  
19 truthful, or if the Plaintiff forgets, there's little we can do.

20           MR. PRINCE: Objection, Your Honor. Move to strike  
21 regarding the discovery aspect to this case. I'm going to move to  
22 approach, please.

23           THE COURT: Approach.

24           MR. KAHN: What was that three minutes?

25                           [Sidebar begins at 1:23 p.m.]

1 MR. PRINCE: I'm going to ask you to move to strike what  
2 was at three minutes, that argument and comment from the record,  
3 Judge. That's first. That's absolutely pejorative.

4 THE COURT: Counsel, what is going on?

5 MR. PRINCE: Yes, I want you to --

6 THE COURT: Yes, he shouldn't -- or what's your objection?

7 MR. PRINCE: My objection is that there's already an order on  
8 this. He can't suggest that there's other records out there that we have  
9 no way of knowing --

10 MR. KAHN: I'm not.

11 MR. PRINCE: Yes, you did. Excuse me, I'm speaking. That  
12 somehow there's other records, we have to rely on the Plaintiff for  
13 truthfulness to get these records. There's no way for us to go get them.  
14 You know what, you have the records, and there's all the records there  
15 are. And that's the discovery process.

16 MR. KAHN: I'm not suggesting there's other records --

17 MR. PRINCE: Yes, you did.

18 MR. KAHN: -- I'm --

19 MR. PRINCE: Yes, you are.

20 MR. KAHN: -- repeating what he said on the witness stand.

21 MR. PRINCE: No, you --

22 MR. KAHN: That's your answer at his deposition that he  
23 didn't have any back problems.

24 THE COURT: All right.

25 MR. PRINCE: So I'm moving -- I'm objecting --



1 MR. KAHN: I'm not identifying any others that haven't been  
2 brought up.

3 MR. PRINCE: No, you've been talking about there's no magic  
4 deposit, we have to rely on him. We don't know if they're complete.  
5 You did say that. So I'm moving to strike that.

6 MR. KAHN: Go ahead.

7 THE COURT: It's definitely going to the fact that -- and we  
8 hear this on occasion that oh, there might be records out there, and  
9 that's not proper.

10 MR. PRINCE: Right.

11 THE COURT: So your argument -- and we are into argument  
12 that somehow you have to rely on him implies that there's something  
13 else.

14 MR. PRINCE: Right.

15 THE COURT: And I don't think it's proper. So I'm going to  
16 strike that and I'm not going to admonish you again, but your comment  
17 about three minutes --

18 MR. PRINCE: Well, I want to strike that -- I want you to strike  
19 both things, Judge. That's the only fair thing to do. You can't do that to  
20 me in front of this jury. That's repeated misconduct.

21 THE COURT: All right. Step back.

22 [Sidebar ends at 1:25 p.m.]

23 THE COURT: All right. I'm striking the comment about three  
24 minutes and the suggesting that there's potentially other -- I don't know  
25 the quote -- but other medical records out there. You're instructed to

1 disregard that.

2 Go ahead.

3 MR. KAHN: You, as the jury, collectively have the power to  
4 decide this case. And, like I said, there are rules -- the rules are the jury  
5 instructions, and you're bound by the evidence.

6 So all of my arguments here today are based on the evidence  
7 that you have heard, the documentary evidence that you've seen up on  
8 the screen, or that you have access to in the jury room, and the  
9 instructions of the Judge, but there is no rule saying exactly how much  
10 you have to award for damages. You're allowed to award zero dollars,  
11 or \$1, or whatever amount you want between zero dollars and the \$14  
12 1/2 million you've been asked for.

13 We'll go through the jury instructions at the end, but the fact  
14 that my client has been determined by the Court to be at fault, doesn't  
15 imply that you have to pay the dollar amounts that the Plaintiff is  
16 requesting. And in fact, you're only allowed to give the Plaintiff what's  
17 been proven according to the evidence. And the evidence includes your  
18 determination of the Plaintiff's credibility -- his believability.

19 The Plaintiff also has the burden of proof here. So it isn't on  
20 the Defendant to disprove things. Every dollar the Plaintiff gets the  
21 Plaintiff has to prove to you that it's a result of this accident and that the  
22 Plaintiff didn't bring those problems and that medical condition to the  
23 accident, and that's every element of damages.

24 Law versus medicine. You are not here to make a  
25 determination of how Mr. Yahyavi should treat medically. You're not

1 here to determine whether he should get a spinal cord stimulator or not.  
2 Your sole purpose in being here is to decide whether Capriati should pay  
3 for all of that. That's it.

4 So it's law versus medicine. These doctors weren't treating  
5 Mr. Yahyavi here in the courtroom. They were telling you their positions  
6 and their opinions, and they were being paid -- at least two of them, as  
7 paid experts by the Plaintiff. So that's not medicine, that's law. And  
8 while, Plaintiff accused Dr. Tung of certain things, it's no less the case for  
9 his experts.

10 They're being paid to come to court to try to convince you of  
11 something. So make no mistake about it that this is somehow isolated  
12 from the Court and the claim for millions of dollars of damages. This is  
13 law. This isn't medicine.

14 So we're back to words. And the first word is simple.  
15 Plaintiff wants this case to be about everything except that medical  
16 record from a couple of years before the accident. It's about me. It's  
17 about Capriati. It's about all these other things, but it's very simple,  
18 because you have to believe one of two things: either Plaintiff did report  
19 to Southwest Medical Associates 21 months before this accident that he  
20 had neck pain for years, which is documented in his medical record, or  
21 he did not.

22 And if he did tell them that, then it's at odds with having this  
23 accident and telling all the doctors -- remember all those visits the  
24 Plaintiff put up on the board -- hundreds and hundreds of visits -- 24  
25 hours, you know, for a month every day -- none of those doctors every

1 heard about the Southwest Medical records report of pain for years. So  
2 in order to buy into this that this accident is the only reason that the  
3 Plaintiff has these problems you have to suspend disbelief and ignore  
4 that record.

5           And remember what counsel said during his opening  
6 argument. He said the report of pain of years to the Plaintiff's neck was  
7 medically insignificant. I think that's the phrase he used. Medically  
8 insignificant. And you remember their doctors -- all their doctors getting  
9 up and explaining one way or another why the prior pain -- 21 months  
10 before -- the prior report of years of neck pain really didn't matter.

11           So Defendant thinks this case is a very simple case. Can you  
12 believe the Defendant -- I mean, Plaintiff -- sorry -- can you believe the  
13 Plaintiff or not? And can you believe him about the lack of pain? And  
14 can you discount the fact that his own medical records say he had years  
15 of neck pain in the same area that he's asking \$14 1/2 million for now?

16           So here's a record from September 16th, 2013, so this is  
17 about three months after the accident. This is Dr. Perry, his orthopedic  
18 surgeon. And this is the one when the Plaintiff was on the stand -- this is  
19 the one I think I asked him about -- and I say, look, it says, you deny  
20 having any history of significant neck pain prior to this accident. This is  
21 three months after the accident. This is less than two years after he went  
22 to Southwest Medical and reported that he had neck pain for years. So  
23 he's going to his orthopedic surgeon to treat for his neck and the  
24 orthopedic surgeon says specifically, that he denied having any history  
25 of significant neck pain prior to this accident.

1                   Now, let's compare that with what he told his own doctor  
2 two years before. Complains of neck pain for several years. October  
3 25th, 2011. So October 25th, 2011, complaining of neck pain for years.

4                   September 16th, 2013, less than two years later, denying  
5 neck pain to Dr. Perry, which is the same with every doctor. You've  
6 heard no other evidence in this case. None of his doctors knew about  
7 this prior reported pain until shortly before the trial.

8                   So I'm going to show it to you one more time, because it's in  
9 the exhibits, which you're allowed to look at. So P2110, have to find out  
10 what the Southwest Medical record is. So the Southwest Medical  
11 records are Exhibit 156, in case you want to look at this, and this  
12 is -- sorry -- this is P2110. They all have these little numbers on the  
13 bottom. And then this record is -- it says up here Exhibit 91 and it's  
14 Bates Numbers 286. So you see the Exhibit is in the left, and the Bates  
15 Number is right here, in case you want to look at these yourself. And  
16 you're allowed to go look at these exhibits.

17                   In fact, I encourage you to look at whatever you want to.  
18 You're allowed to look at the evidence in the case. But again, I'm  
19 replaying this several times because it's that important to the Defendant.

20                   He's complaining of neck pain for several years -- October  
21 21st, 2011. Less than two years later, September 16, 2013, he's denying  
22 to a doctor that he ever had neck pain before. Denies having any history  
23 of significant neck pain prior to this accident. And while the Plaintiff has  
24 given their spin on it, our spin on it is, complaining of years of neck pain  
25 to your doctor, getting an X-ray, and getting a letter from your doctor

1 about it, evidences significant neck pain.

2 Ongoing: So this is one of the things we spent hours and  
3 hours -- things we spent hours and hours -- or days and days about in  
4 this case. Is it ongoing? And remember all the Plaintiff's doctors said it's  
5 not ongoing. Why isn't it ongoing?

6 Well, we don't know if the report of neck pain for years is  
7 intermittent, or if it was, you know, once in a while, and so it's not  
8 ongoing. And again, this is words, not medicine. You heard Dr. Tung  
9 say people don't put the word ongoing in their -- in every medical record.

10 So what Defendant is telling you is, this is law. This isn't  
11 medicine. These are words that are being used, not medical terms  
12 necessarily: ongoing.

13 So in order to believe that years of neck pain is not ongoing,  
14 you have to go through the looking glass. This is Alice. You have to go  
15 through the looking glass and ignore the fact that he -- that the Plaintiff  
16 said his doctor documented years of neck pain.

17 And this is the other example I had, angels dancing on the  
18 head of a pin. How do you turn years of neck pain into it's not ongoing?  
19 And these are words you're allowed to interpret. You have the jury  
20 instructions.

21 So again, this is the same exhibit, I think 156, Southwest  
22 Medical record. This is now March 12th, 2012. Remember the whole  
23 dog and pony show the Plaintiff put on about you can't take one isolated  
24 record and you have to look at every one of his doctor visits and figure  
25 out these things, and he wasn't saying about his neck. Well, this is

1 March 12, 2012, P2110 -- I'm sorry -- 2120. And his doctor at Southwest  
2 Medical is saying that he has an active backache problem, which is  
3 exactly how they described the neck problems that he reported four and  
4 a half months earlier.

5 So he complains of neck pain for years on October 25th,  
6 2011, on March 12th of 2012, the backache is still active. That's four and  
7 a half months. And what did his doctors tell you about chronic pain? His  
8 own experts told you that that constitutes chronic pain.

9 Dr. Schifini said three months or more is chronic pain. And if  
10 you check your notes, for those of you who took any notes on it, it  
11 should say that.

12 Dr. Kaplan testified that pain more than three or four months  
13 was chronic. So the Southwest Medical records aren't just one isolated  
14 date. He goes back four and a half months later, and they say he still has  
15 this active backache problem. Still active March 12th, 2012. Four and a  
16 half months. His experts say more than three or four months is chronic.

17 Here's another word: chronic. Remember all the testimony  
18 that Plaintiff elicited from his experts, how nothing is ongoing, and  
19 nothing is chronic. And these are word games. This is a court of law.  
20 This isn't a doctor's office.

21 Six months -- that's the outer limit of what's chronic, by any  
22 of the doctor's testimony. Dr. Tung, I think, said six months. The other  
23 Plaintiff's doctor said six months, but two of his own doctors said three  
24 or four, so by their own definition, this is chronic pain, and it's ongoing.

25 One year is greater than six months.

1                   Years of neck pain is greater than six months. And no matter  
2 how it's spun, years of neck pain is chronic pain. These are  
3 determinations you get to make. Okay. You're going to read in the jury  
4 instructions you don't have to accept what the experts tell you on either  
5 side. You're going to use your common sense and make these  
6 determinations.

7                   Years of neck pain, like he reported in October 2011 is  
8 chronic neck pain, and their experts or their doctors have spun it  
9 otherwise. And why are they doing that? Why won't the Plaintiff just  
10 own this report of years of neck pain 21 months before? Think about  
11 that. Why is it such a horrible thing that they have to spend all this time  
12 going through all these other records and dancing around it and having  
13 their experts tell you why it's insignificant and it doesn't matter. It's  
14 medically insignificant.

15                   Because if you believe the Plaintiff's own medical record that  
16 he reported neck pain for years 21 months before this accident, then  
17 none of this position of the Plaintiff that this car accident caused all of his  
18 problems in his life. It had nothing to do with anything before is viable  
19 and he doesn't get money. He doesn't get money from you here today.  
20 That's why. And that's what the game is.

21                   This is about asking you to give him 14 1/2 --

22                   MR. PRINCE: Move to strike that this is a game, Your Honor.  
23 Improper argument by counsel.

24                   MR. KAHN: Submitted.

25                   THE COURT: Overruled.



1 MR. KAHN: Okay. So this again, the Exhibit 156, complaint  
2 of neck pain for years. Neck pain for several years.

3 Now, you've all given three weeks of your lives to this case  
4 and there's got to be some significant percentage of it that was spent  
5 trying to say neck pain for several years is not neck pain for several  
6 years.

7 Symptomatic versus asymptomatic, these are other words  
8 that you heard about over, and over, and over with the doctors.

9 Symptomatic means someone is reporting pain or has pain.

10 Asymptomatic means they're reporting pain, or they don't have pain,  
11 except all the doctors agree, in all but a very few situations, none of  
12 which are applicable here, the doctors can't measure pain. There's no  
13 way to measure pain.

14 So what does that mean? That means they rely on the  
15 Plaintiff's representation of his pain in this case. That the patient's -- his  
16 or her pain -- in this case, it's his.

17 So the doctors ask the patients if they're in pain. And if they  
18 say yes, they write down that they're symptomatic or in pain. And if they  
19 say no, they write down that they're asymptomatic, or not in pain.

20 Truth, credibility, veracity, believability, these are -- some of  
21 these words are in the jury instructions you're going to read, but the  
22 bottom line is, the Defendant is here because the Defendant thinks the  
23 prior report of neck pain is a significant issue that affects any damages  
24 and injuries being claimed by the Plaintiff from this injury. And should  
25 affect any of award to the Plaintiff -- dollar award -- monetary award

1 because of that. And I'm talking about the Plaintiff's truth, credibility,  
2 veracity, and believability, and I'm asking you to consider that in  
3 accordance with the jury instructions.

4           Is the Plaintiff telling the truth? This is something you will  
5 have to determine, based on the instructions that the Court has already  
6 provided you and once you take back to the jury room with you. You're  
7 not required to believe or disbelieve any witness in trial. There are rules  
8 about how to do that and they're in the jury instructions.

9           Truth, Jury Instruction Number 8. The purpose of the trial is  
10 to ascertain the truth. Think about that for a minute.

11           You've heard conflicting testimony from both sides. You've  
12 heard brain surgeons arguing about issues related to the Plaintiff.  
13 You've heard different people telling different stories about his medical  
14 problems and his ability to work again, but ultimately, regardless of how  
15 many Ivy League trained people are brought before you, it's up to you  
16 collectively, as a group, to make these determinations.

17           Complaining of neck pain for several years. It's evidence of  
18 chronic pain. And it's evidence of chronic pain 21 months before this  
19 accident.

20           So when the Plaintiff argues that the Plaintiff has constant,  
21 chronic, ongoing, severe pain now after this accident, in order for you to  
22 consider that that's only from this accident, you have to ignore the fact  
23 that 21 months before the accident he already had chronic pain. By the  
24 definition of all his doctors, unless you use their spin on it, which is well,  
25 if he took a day off from his pain in the years of neck pain, then maybe it

1 wasn't ongoing, and maybe it wasn't chronic.

2           And since the Plaintiff himself doesn't remember, there's  
3 really no way for his doctors to interpret that. And since his doctors  
4 didn't really know about that until just before trial -- remember Dr.  
5 Schifini testified he got the records the day before his testimony in the  
6 middle of this trial, after it started, after you had all been empaneled?  
7 There's no way for them to process that medically, if they don't know  
8 about it.

9           To the Defendant this is a critical piece of evidence. This  
10 issue of reporting of neck pain 21 months before the accident is  
11 essentially -- Mr. Prince is correct, that's our case. Our case is, the  
12 Plaintiff wants you to believe that he never had pain or problems before  
13 this accident. And the Defendant wants you to believe wants in the  
14 Plaintiff's own medical records that he reported years of neck pain before  
15 this accident.

16           It's not something to ignore. It's not medically insignificant.  
17 It does identify chronic pain. It does identify ongoing pain. And it does  
18 evidence that he had problems before this accident to the exact same  
19 part of his neck.

20           So how does the Plaintiff explain this? He certainly doesn't  
21 own it. He doesn't say yeah, I told my doctor that, but here's why. What  
22 does he say? Remember? I don't remember.

23           So that's this case. Give me -- Plaintiff is asking for \$14 1/2  
24 million because he remembers exquisite details about everything from  
25 right before the accident up to today, but the 21 months before when he

1 reports neck pain, he doesn't remember. He does not remember. And  
2 it's not just reporting the neck pain -- remember, his testimony here  
3 when I asked him are you changing your testimony, are you saying it did  
4 happen, or didn't happen, is it somebody else's neck, you know, he's just  
5 saying he doesn't remember.

6 He forgot about years of neck pain. He forgot. That's what  
7 he told you under oath. He doesn't remember.

8 Now, this is a little more complicated because you've seen a  
9 lot of medical evidence. You're allowed to look at all the medical records  
10 and all the bills. Okay. It goes back with you, or you can request it, if  
11 you don't have it handy, but the Plaintiff did not tell any of his doctors  
12 after this accident that he had years of preexisting neck pain. So think  
13 about that as well in the context of this case.

14 Dr. Schifini, Dr. Oliveri, Dr. Kaplan, they're all doing all these  
15 things, and writing all these records, and saying, you know, oh, it's all  
16 due to this car accident. It's all due to the car accident. Let's do surgery.  
17 Due to the car accident. Let's treat him with injections. Due to the car  
18 accident. Let's rate him for workers' comp due to the car accident, but  
19 they didn't know about the Southwest Medical records 21 months  
20 before.

21 All those things for years and years were done in the  
22 absence of knowledge that he had made that report. And then when it  
23 was time to come into court and ask you for \$14 1/2 million, they had  
24 very good explanations of why you should disregard it and ignore it.  
25 And the Defendant simply doesn't agree with that.

1                   Timing: Again, I already mentioned this, but Dr. Schifini  
2 testified that he got the Southwest Medical Associates records the day  
3 before his trial testimony. Think about the timing of that.

4                   Dr. Oliveri made workers' compensation and medical  
5 decisions without knowing about the report of a preexisting neck pain.  
6 He didn't have it when he did the workers' comp rating. He didn't have it  
7 when he wrote his records.

8                   Dr. Oliveri is now a paid expert for the Plaintiff in this case.  
9 He made rating decisions for workers' compensation without knowing  
10 about the Southwest Medical records. Dr. Oliveri started as a workers'  
11 comp rating doctor and then switched roles turning into a paid litigation  
12 expert in this case. So he wasn't here testifying as a workers'  
13 compensation doctor. He was here testifying as a paid, retained expert.  
14 The Plaintiff was paying him to come support their case and try to have  
15 you give them \$14 1/2 million, or whatever number it is they want.

16                   Same thing for Dr. Kaplan. When he did the surgery, he  
17 blamed everything on this accident. It's all because of this accident. But  
18 at the time, he didn't know about the Southwest Medical records.

19                   Same thing with him, he was the Plaintiff's surgeon and his  
20 treating doctor. Now, he got turned into a paid litigation expert for  
21 purposes of trial. So that means he's allowed to go beyond his  
22 treatment and tell you opinions that would help the Plaintiff in this case  
23 to try to collect the money.

24                   Remember, Dr. Kaplan, he's Joe Harvard. He's trained at  
25 Harvard. He worked at Harvard.

1 MR. PRINCE: Objection. Move to strike. Your Honor, just  
2 the regarding, "He's Joe Harvard." I mean, the pejorative, unprofessional  
3 conduct regarding him as Joe Harvard.

4 THE COURT: Counsel, I'm striking that.

5 MR. KAHN: Remember Dr. Kaplan was disciplined by the  
6 medical board and he was disciplined for records issues. And remember  
7 what was in his records. Remember that he testified that the  
8 Plaintiff -- testified that in his records he had the Plaintiff as never being a  
9 smoker, but then when you looked at the surgical records, it indicated  
10 the Plaintiff was a smoker. So his records in this own case, were a  
11 problem because they didn't reflect that the Plaintiff was a smoker. And  
12 while that's a minor issue, he also testified that's a risk factor for  
13 degenerative disk disease: smoking increases the problems with your  
14 neck and your spine, and the doctors agreed -- Dr. Kaplan agreed.

15 Medicine. What's the medicine in this case from the Defense  
16 perspective? You heard it from the Plaintiff's perspective. Dr. Tung says  
17 that the Plaintiff endured a straining injury after the accident. That's it.  
18 Dr. Tung is saying that give him 14 months of treatment from the date of  
19 the accident, June 19th, 2013, until about September 2nd or thereabouts,  
20 some part in -- some point in early September, whatever it is -- 14  
21 months of treatment.

22 Dr. Tung, who is a board certified neurosurgeon, is opining  
23 that that's an appropriate amount of time linked to this accident. And  
24 that what came after for the last five or so years is not related to this  
25 accident. That it's related to his preexisting degenerative disc disease,

1 which in part, is supported by the report of pain for years to Southwest  
2 Medical Associates, but is also supported by the X-ray the day at 2011.

3 Here are some more words: preexisting. That just means  
4 before. Medically preexisting is saying if Defendant -- sorry -- if the  
5 Plaintiff Mr. Yahyavi had preexisting problems, that just means he had  
6 them before this accident. Okay. So Dr. Tung saying he had preexisting  
7 cervical problems -- neck problems, what he's saying is, he brought them  
8 to the accident. He had them before this accident happened.

9 Now, again, to be clear: Defendant is not saying that they  
10 didn't cause some problems for Mr. Yahyavi, but Defendant is saying the  
11 problems that they caused for Mr. Yahyavi are minor compared to what  
12 he's asking for in this case -- \$14 1/2 million.

13 Progressive: that's another word. Progressive means  
14 getting worse. So you heard Dr. Tung talked about progressive,  
15 degenerative spinal disease, or progressive, degenerative disc disease.  
16 That just means it's getting worse over time.

17 Degenerative disc disease or degenerative spine disease,  
18 they're interchangeable, that's the condition that Dr. Tung says that Mr.  
19 Yahyavi had before this accident, at the time of the accident, up to today.

20 Multilevel degenerative disc disease: That just means it's at  
21 different levels in the spine. Remember you saw the spine model or the  
22 pictures of spines. That just means it isn't in one little slice of your neck,  
23 it's in -- of the Plaintiff's neck, rather -- it's in multiple slices, along a  
24 chunk of his neck. And again, this isn't something any of the doctors are  
25 disputing, and this is evidenced in the X-ray from 2011. It's just a

1 manner of what is the degree, and do you believe the Plaintiff when he  
2 says that he had no pain at the time of this accident, when he had  
3 reported pain less than two years before for years to the same part of his  
4 body?

5           Multilevel degenerative disc disease at the C3 to T1 cervical  
6 levels. It's the same thing, a little more detail. The doctor told you about  
7 the cervical spine and the thoracic spine, and he showed you the levels  
8 on the spine model. We looked at some photos. It just means several  
9 inches of Mr. Yahyavi's neck are a problem.

10           C6-7 spontaneous fusion: So this is a little more -- going into  
11 a little more detail of this one. This essentially means that he has a  
12 serious -- more serious problem at C6-7, which is the area that his  
13 doctors -- especially Dr. Schifini talked about as a pain generator;  
14 meaning, that's the level that's causing this pain that he's here about  
15 asking for the money for. And you can see from the X-ray from 2011 this  
16 already had issues that were documented.

17           Again, I think this Exhibit 156, this is P2119, in case you want  
18 to look at the X-ray report, P2119, Exhibit 156. And you've seen these  
19 things before -- most of them. This is something that was talked about  
20 during the trial, so this is nothing new, but essentially, he's got moderate  
21 or marked degenerative disc disease at C6-7, and this is 21 months  
22 before the accident.

23           Then he has mild to moderate degenerative disc disease at  
24 C5-6, C7, T1, to a lesser extent C3-4. So this is from C3 to T1, C3-4, C5-6,  
25 C6-7, C7-T1. He's got the reversal of the lordotic curvature. Again, 21



1 months before. Maybe due, in part, to muscle spasm pain, so they're  
2 identifying it as maybe it's pain.

3           Osteophytes -- an interior osteophytes are seen at the mid to  
4 lower C-spine cervical spine. Osteophytes. So again, that's the bone  
5 spurs --the calcific growths; this is 21 months before the accident. These  
6 things are documented in his own X-ray.

7           What cervical problems do all of the doctors -- and I mean all  
8 of them -- do Plaintiff's doctors and Dr. Tung, my expert doctor -- what  
9 do they all agree Plaintiff had before this accident? Degenerative disc  
10 disease or degenerative spine disease -- they're the same thing,  
11 sometimes doctors have different words for the same thing. So they all  
12 agree before this accident the Plaintiff had this condition.

13           Osteophytes: the bone spurs, the calcific growths. They all  
14 agree that was in place before the accident.

15           Narrowing of the spine, or you'll foraminal, F-O-R-A-M-I-N-A-  
16 L narrowing. They all agree that was in place before the accident.

17           Reversal of the lordotic curvature. There was some dispute  
18 about this, but you just saw an X-ray report from October 2011 that said,  
19 "Reversal of the lordotic curvature", so again, while they can say he was  
20 positioned differently, or maybe the X-ray wasn't right, why can't they  
21 just own it? Why do they have to back away from his own X-ray from  
22 2011? Think about that.

23           Why do they spend time having his doctors try and explain  
24 to you why an X-ray report from October 2011 that says reversal of usual  
25 C-spine cervical spine lordotic curvature -- says it right in his X-ray -- why

1 did they have their doctors tell you well, maybe his head could have  
2 been positioned differently and maybe that lordotic curvature that's  
3 reversed, maybe it wasn't reversed, maybe they just took the X-ray in a  
4 strange way, and, you know, that explains it. Maybe he didn't have  
5 reversal of his lordotic curvature, but it's in his X-ray report, so why are  
6 they spending so much time distancing themselves from his  
7 own -- Plaintiff's own medical records?

8           Finally, the auto fusion at the C6-7 level. Auto fusion means  
9 two of the Plaintiff's vertebra at the C6-7 level -- and you've seen a lot of  
10 pictures of vertebra and a lot of spine models have been discussed with  
11 doctors -- it means they've fused together on their own -- on their own.

12           Dr. Tung said that auto fusion means the vertebrae become  
13 bone on bone. Now, this is a condition the Plaintiff's own doctors say he  
14 had before this accident: auto fusion at C6-7. So it's not just my doctor  
15 saying these things.

16           I'm going to go back for a second.

17           So all the doctors seem to agree that all five of these things  
18 were in place before the accident.

19           Now, this is some more of the medicine and I laid it out with  
20 the Plaintiff kind of in chronological order, but I'm going to jump around  
21 a little bit now, because this is my only chance to talk to, and I've  
22 organized things to what I think are kind of more important to go over at  
23 the -- at least at the start. Encounter date June 18, 2013. So almost  
24 exactly a month after the accident. Center for Occupational Health and  
25 Wellness and this is I think Dr. Klausner and it's saying, "No cervical

1 paravertebral tenderness or muscle spasm."

2           So what does that mean? That means that doctors checking  
3 his vertebrae in the cervical region and he's not finding tenderness.  
4 Remember, the doctors told you about palpating. They touch around  
5 your neck and your back and if you tell them you have pain, they  
6 document it? This is saying, there's no tenderness. No muscle spasm  
7 to the cervical spine a month after the accident.

8           Progressive we talked about. Getting worse over time.

9           Preexisting we talked about. Was there before the accident.

10           Dr. Tung: who Plaintiff called a hired gun. He's a board  
11 certified neurosurgeon, or brain surgeon. He teaches neurosurgery at  
12 UCSD in San Diego. Teaches other doctors how to become  
13 neurosurgeons.

14           And what did he rely? What did he point to for his opinion?  
15 One thing is the patient's own report of years of pain from the Southwest  
16 Medical records in October 2011. He didn't ignore them. He doesn't say  
17 it's insignificant and unimportant.

18           He relied on the fact that four and a half months later it's still  
19 active. So when asked about ongoing and chronic issues, he said well,  
20 it's document in the Plaintiff's own medical records that he still had this  
21 four and a half months later. So it does show that it's ongoing.

22           He relied on the X-ray report -- and again, this is something  
23 to bear in mind -- remember, the Plaintiff said, he doesn't remember  
24 going to Southwest Medical Associates in October of 2011 and  
25 complaining that he had neck pain for years. Doesn't remember telling

1 them that, and he doesn't remember getting a cervical neck X-ray the  
2 same day. Doesn't remember the X-ray. And then they sent him a letter  
3 to his house. He doesn't remember receiving that either.

4           The early 2014 EMG nerve conduction study does not show  
5 radiculopathy. And again, this is -- gets complicated with the medicine,  
6 but basically, I think what Dr. Tung said was, if somebody says their neck  
7 hurts and they have pain, we don't operate. Just because somebody  
8 says they have pain, we don't operate. So we look for things to confirm  
9 it medically before we start doing surgery, especially for axial neck pain,  
10 or neck pain along the cervical spine.

11           So they do these nerve conduction studies. And you  
12 remember they were described to you there's two parts of them: one, is  
13 they put a little electrode in, and they send a mild electrical current  
14 through your body, and it tells the doctors information; and the other  
15 one is they use a pin, or a pinwheel and they touch it to your skin and  
16 that tells the doctors other information. And the reason they're doing  
17 this, is to determine -- the main reason is to determine whether there's  
18 radiculopathy, because that gives them information that allows them to  
19 make certain decisions going forward medically.

20           So he goes to Dr. Germin end of January, early February. He  
21 does the nerve conduction study. So this is -- I don't know -- seven and a  
22 half months or so after the accident. And it says -- and this has some  
23 medical words, but it says, "Number 1. No electrodiagnostic evidence  
24 for overt axonal loss C5 through T1 radiculopathy bilaterally."

25           So the two words that I want you to remember from this, in

1 case you go look at this yourself and it's P508, is, "No radiculopathy." So  
2 six or seven months -- seven or eight months after the accident they  
3 send the Plaintiff to this doctor just to determine if he radiculopathy and  
4 he says no. Again, this is February 4, 2014.

5 Then they do a needle exam. They have to do this twice,  
6 because they broke it up for whatever reason, but they do the needle  
7 portion of the exam in believe February.

8 So then what happens? So now that was early 2014. Now,  
9 we're at the end of 2014. What's going on with the Plaintiff? So now  
10 we're past the point where Dr. Tung says you should be making the  
11 Defendant pay Plaintiff for this car accident. We're in late  
12 2014 -- November 10, 2014.

13 This is Desert Orthopedic Center, Dr. Perry. So what did his  
14 doctors tell him at the end of 2014 or early 2015? They told him don't get  
15 surgery and don't get more injections. Nothing is really helping you and  
16 we're not recommending surgery ultimately.

17 So here's what Dr. Perry says, November 10, 2014, "In my  
18 opinion, I do not feel confident that surgical intervention would result in  
19 any significant clinical improvement of this patient." In other words,  
20 November 2014, nearly five years ago, his own orthopedic surgeon is  
21 basically saying, don't get the surgery, it's not going to help you.

22 Then he gets some injections a couple of months later with  
23 Dr. Fisher. And remember, he started seeing Dr. Schifini -- the same  
24 gentleman who testified -- the same doctor, and he got some injections,  
25 but then he stopped, and he switched to Dr. Fisher. And what's Dr.

1 Fisher saying in March 11, 2015? So this is, what, 21 months after the  
2 accident, something like that?

3 Dr. Fisher is saying, "At this point, there is not much more to  
4 offer in terms of diagnostic or therapeutic interventions. He is at MMI  
5 status. I would like to send him for an FCE." That's the functional work  
6 exam that you've all heard so much about.

7 What basically Dr. Fisher is saying, don't do more therapeutic  
8 intervention since he's the one giving him shots, what he's saying is, no  
9 more injections. It's not helping him. Don't keep giving him injections.  
10 Again, this is four and a half years ago.

11 So 2011 we have the records that Dr. Tung started seeing.  
12 Then since then Dr. Tung reviewed a lot of records: MRIs, CT scans, X-  
13 rays, medical records, pain doctor records, hospital records, surgical  
14 records. Dr. Tung reviewed a lot of medical records in this case, so he  
15 wasn't just flying here and saying whatever he wanted like the Plaintiff  
16 contends. He was looking at a lot of medical records, which he testified  
17 that's what you do a neurosurgeon.

18 People come to you. You're kind of at the top of the food  
19 chain. It would apply to Dr. Kaplan, as well, so patients come, and they  
20 give you their records. You do a brief examination -- physical  
21 examination like he did before you with the attorney that works with me.  
22 And they look at the records and they make a determination.

23 So he looked at probably a lot more records for Mr. Yahyavi  
24 than he would look at with his patients he's treating, unless there was  
25 some reason to do a deep dive into records, because he was supplied

1 with and reviewed a significant volume of records, and he went through  
2 them.

3           So one of the things that Dr. Tung did -- and remember the  
4 whole thing about clinical correlation, so the argument that's probably  
5 coming is, you know, nobody on the Defense side can tell you anything  
6 because they can't clinically correlate like the doctors treating the  
7 Plaintiff. Well, if that were the case, then there wouldn't be a reason to  
8 go to trial because you'd just have to take the Plaintiff's doctor's words  
9 for everything and their experts.

10           So in this case Dr. Tung looked at records, but he physically  
11 met with the Plaintiff and did at least a brief physical  
12 examination -- neurological examination like he does with his patients.  
13 And he testified it's the same one he does with all his patients. You  
14 remember he went through all the different things.

15           He relied on his years of experience as a surgeon and  
16 medical professor. Okay. He told you how many patients he sees, how  
17 many surgeries he does, the kind of experience he's had. That all  
18 supports his opinion, not just the records in this case.

19           Dr. Tung said years and years ago before Plaintiff had this  
20 fusion surgery that he didn't think it would help the Plaintiff. He said two  
21 things. He said he didn't think it would help the Plaintiff at the time, and  
22 he also said it wouldn't be related to this accident.

23           Now, it's years, and years later. The Plaintiff's had the fusion  
24 surgery, and even Dr. Schifini essentially says it didn't really help him.  
25 Now, he wants to have another surgery.

1           The other surgery is the spinal cord stimulator and that's  
2 worth something like \$430,000, \$450,000 of these future medical  
3 expenses that the Plaintiff wants you to give him. Remember, the  
4 doctors were talking with him to replace the battery, and maintain it, and  
5 things like that.

6           So Dr. Tung on the witness stand told you that he doesn't  
7 think that's going to help him either this spinal cord stimulator. He  
8 doesn't think it's going to cure his pain.

9           But let me back up for a second. So just to be clear with all  
10 of you, the Defendant is not saying the Plaintiff shouldn't and can't do  
11 whatever he wants to do medically. Okay. The Defendant is not saying  
12 don't get the surgery or live in pain. What the Defendant is saying is, it's  
13 not related to this accident, so Capriati should not be asked to pay for it.  
14 That's all the Defendant is saying.

15           All of Dr. Tung's opinions were to a reasonable degree of  
16 medical probability.

17           So what about this treatment gap? Remember, you saw this  
18 a little bit. The Plaintiff essentially stopped treating for about a year from  
19 the middle of 2015 to the middle of 2016. Now, he explained it, but you  
20 have to compare that with what he's asking for, and he's saying here to  
21 you during this trial. Every day he's in horrible, constant, unrelenting  
22 pain that affects him so he can't do anything, yet for a year -- middle of  
23 2015 to the middle of 2016 he basically didn't treat at all.

24           So how are those two things -- how do you put those two  
25 things together? How does it make sense that he hasn't had a day



1 without horrible pain since this accident, but for a year he didn't really go  
2 to doctors? So he grafted out in quarters.

3           So this, you know, first quarter of 2015, second quarter of  
4 2015. So if you look, you can see -- and this is based on the medical  
5 records that are in evidence that you can check yourselves, if you'd  
6 like -- you can see that from about the third quarter of 2015, so that it'd  
7 be, you know, June to September to the first quarter of 2016, so that  
8 would be then to March he goes about nine months and he doesn't have  
9 any medical treatment.

10           If you look through all the bills, you shouldn't find any  
11 treatment during that period. June of '15 to about the end of March of  
12 '16, so it's that nine months, but then what's around it isn't much either.  
13 If you look at from the second quarter of 2015, which it start, you know,  
14 April 1st until the third quarter of 2016, which ends end of September,  
15 we're in the third quarter now. If you look at the medical charges that  
16 he's accumulated during this -- this is over a year, because this is the  
17 second quarter of '15, and this is the second quarter of '16. This is about  
18 15 months, \$1,150, \$100, and \$400. So if you add them up, \$500 and  
19 1,150 is about \$1,650 worth of treatment over a 15-month period from  
20 the middle of '15 to the middle of '16, under \$2,000 for over a year.

21           So then you have to ask: Why is the Plaintiff having minimal  
22 treatment for over a year when he had the same unrelenting, constant  
23 pain that's ongoing that he's asking you for all this money for today in  
24 this case? Why is he not treating? Why is he not going and seeing all  
25 these doctors that he goes and sees years later?

1                   And he told you -- he testified -- and counsel said repeatedly  
2 that he did everything to address his problems. He did absolutely  
3 everything, but for 15 months he basically didn't treat in the middle of  
4 this time frame between the accident and now.

5                   So there's an exacerbation in the middle of 2016. And the  
6 exacerbation is essentially unexplained. The Plaintiff's explanation is, I  
7 just got worse. I felt more pain. The Defendant is not taking issue with  
8 that. We're not disputing that maybe in the middle of 2016, three years  
9 after this accident his neck started hurting more.

10                  So you remember this record from early '17. This is Desert  
11 Valley Therapy. It's part of ATI, which is a physical therapy office he'd  
12 seen a couple of times. "January 18th, 2017, nature of injury, chronic  
13 since 2013 and exacerbated." And again, they don't have the records  
14 from the Southwest Medical two years before, so as far as they know,  
15 they're believing what the Plaintiff told them. This all started with the  
16 accident, because he doesn't tell them I had the neck pain two years  
17 before. "Exacerbated six to seven months ago", so let's do the math. It's  
18 January 18th, so at six or seven months ago would be -- of '17 -- six or  
19 seven months before that would be June or July or 2016.

20                  Now, this is at the end of that period where he had little  
21 treatment. So I'll rewind a little bit. So remember this ends in the third  
22 quarter, so end of September, so it's in this period that's between the  
23 second quarter and the third quarter. Second quarter would be end of  
24 June I think. So in the summer of 2016 he's having this exacerbation.  
25 He's not treating much. And now it's six or seven months later and he's

1 going to the physical therapist, and they're reporting that he had an  
2 exacerbation.

3 Now, the Plaintiff testified personally that he had no trauma  
4 in the middle of 2016. So this is another one of these subtle issues that  
5 I'm going to ask you to think about. If the Plaintiff had no trauma in the  
6 middle of 2016, but his pain got worse, what is the explanation for it?  
7 And Defendant's position is, the explanation for it is the same  
8 progressive degenerative spinal disease that he had two years before  
9 this accident happened. It's just progressing.

10 Shortly after this exacerbation in the middle of 2016 is when  
11 Plaintiff quits his job, but he doesn't really start treating a lot for another  
12 year and a half, until early '18.

13 We already talked about the fact that smoking is a risk factor  
14 for degenerative disc disease.

15 This is a minor issue, but remember, his son Darian -- I asked  
16 him on the witness stand do you remember your dad having any ski  
17 accidents end of 2011, early 2012 and he said no, but it's in the Plaintiff's  
18 medical records that he had a ski accident. Yeah, related to his knee, but  
19 he doesn't really remember that either I don't think.

20 Future claimed medical expenses: So these are the hundreds  
21 of thousands of dollars the Plaintiff is asking for, for the future, from  
22 today on, or until whenever the Plaintiff would stop treating. And you've  
23 got to look at the timing of these. The Plaintiff is asking you to have  
24 Defendant pay for a spinal cord stimulator. We're now over six years  
25 since the accident -- over six years.

1                   And what the Plaintiff is saying is, give me money for the  
2 spinal cord stimulator and then I'm going to get it put in. And remember  
3 also because of the scar tissue and whatever the doctor said they want to  
4 do this without the standard trial. Okay. All the doctors said the usual  
5 way of doing it is you do these tests leads. You put in a test, so you see  
6 if it actually works, and then if it works, then you use it. Put it in  
7 permanently. But they want to put it in permanently now, not knowing if  
8 it will even work, and they want you to pay for that now -- today.

9                   And remember, Dr. Clauretje, the Plaintiff's economist, I had  
10 him back out the spinal cord stimulator, and he said without the spinal  
11 cord stimulator the future damages reduce the present value money is  
12 about \$78,000. So if you do intend to award any future medical  
13 damages, that's the number Defendant is asking you to award, \$78,000;  
14 although, at the end of this, I'll talk about money. And we're not going to  
15 suggest you award future damages, based on what Dr. Tung says.

16                   The Defendant's position is that none of Plaintiff's future  
17 treatment is related to this accident. And the Defendant's position is  
18 also, that none of his treatment for the last five years, since September  
19 of 2014, is related to this accident. That's what Dr. Tung said. That's his  
20 medical opinion. That's his opinion as an expert witness. Yes, we paid  
21 him. Just like the Plaintiffs paid some of their doctors to testify.

22                   Most of Plaintiff's treatment is unrelated to this accident.  
23 Most of his treatment, most of his injuries, most of his problems are  
24 related to the things that he brought with him to this accident. All those  
25 five things we talked about, including degenerative disc disease, that's

1 getting progressively worse.

2           Again, Dr. Tung allows for about 14 months of treatment, so  
3 accident is June 19th of 2013. He said he's allowing to roughly early  
4 September. I think that his rationale was that's kind of when the early  
5 round of shots from Dr. Schifini were proven to really not prove any  
6 benefit, and that was it.

7           So Defendant would tell you that the bills that you have to  
8 look at and the bills exhibits, which you're allowed to look at, and it's  
9 Exhibits 116 top 128 -- that whole range -- have the Plaintiff's bills during  
10 that time period from the accident until about 14 months later -- but if  
11 you add them up, it's going to be about \$67,000. That's what the  
12 Defendant and the Defendant's expert is saying is related to this  
13 accident: \$67,000 worth of treatment for 14 months.

14           And this is just a pie chart comparing those numbers, you  
15 know, almost 67,000 of treatment for the 14 months compared to  
16 another \$420,000 for the rest of it -- for the last five years. So Defendant  
17 is saying, we agree -- Capriati agrees it should pay for the blue piece of  
18 pie, but it shouldn't pay for the red piece of pie. \$67,000 is proper and  
19 Capriati is not disputing that it should pay for all that treatment in the  
20 first 14 months.

21           So Defendant's position as to damages: You heard it today  
22 from the Plaintiff that they want \$14 1/2 million. So the question that  
23 may be in some of your minds is how much should we pay because,  
24 again, the Defendant -- I'm telling you, according to the jury instructions,  
25 and following the jury instructions, and the evidence, if you read the jury

1 instructions, there's nothing in there that should tell you, you can't  
2 award zero dollars, or \$1, or \$10, but Defendant is not saying that, but  
3 Defendant is also not saying \$14 1/2 million.

4 Defendant is saying 67,000 for the past -- for the medical  
5 treatment for 14 months is proper. And then adding money on top of  
6 that for pain and suffering, whatever you think is fair, is proper. Double  
7 it, triple it, whatever you want to do. \$135,000 would be doubling, and if  
8 you think that's too low, based on what you've heard, then Defendant  
9 would urge you to come as close to that number as you can. Whatever  
10 number you decide collectively is a fair number, but Defendant would  
11 suggest that number is not \$14 1/2 million, or anything remotely close to  
12 that.

13 You, the jury, have the power to decide. And again, based  
14 on what the Judge tells you in the jury instructions that you now have  
15 copies of, there are rules for you to follow. And I know this has taken a  
16 while and I appreciate your patience, and this is it for me. This is it for  
17 the Defendant. This is our only chance to talk to you. So I'm going to  
18 ask your indulgence and allow me to keep going and finish this because I  
19 have to go through the jury instructions as well and it's going to take a  
20 few minutes.

21 THE COURT: Counsel, would this be a good time to take a  
22 short break?

23 MR. KAHN: This would be fine, Your Honor.

24 THE COURT: During this recess, you're admonished, do not  
25 talk or converse amongst yourselves, or with anyone else on any subject

1 connected with this trial, or read, watch, or listen to any report or, or  
2 commentary on the trial, or any person connected with this trial by any  
3 medium of the information, including without limitation, newspapers,  
4 television, radio, or internet.

5 Do not form or express any opinion on any subject  
6 connected with the trial until the case is finally submitted to you.

7 We'll take ten minutes.

8 THE MARSHAL: Please rise for the jury.

9 Folks, we're going to go out this way.

10 [Jury out at 2:19 p.m.]

11 [Recess taken from 2:19 p.m. to 2:33 p.m.]

12 THE MARSHAL: Please rise for the jury.

13 [Jury in at 2:37 p.m.]

14 [Within the presence of the jury]

15 THE MARSHAL: Judge, it took some time to line them in  
16 formation.

17 THE COURT: I knew that. Just bring them in.

18 Please be seated.

19 Parties acknowledge presence of the jury.

20 MR. PRINCE: We do.

21 MR. KAHN: Yes, Your Honor.

22 THE COURT: Please proceed.

23 DEFENDANT CLOSING ARGUMENT CONTINUED

24 BY MR. KAHN:

25 Okay. As I'm sure you'd imagine, the Defense has its

1 position on the jury instructions as well. So you've seen some of them  
2 in the initial presentation by the Plaintiff.

3           So this is Number 10. They're all numbered and so if I refer  
4 to them, they all have a number in the corner. So this is the common  
5 sense one and Mr. Prince talked to you about this as well. So you don't  
6 have to check your common sense as human beings, as American  
7 citizens at the door. You're allowed to apply your common sense to this  
8 case and your decisions on this case and there's talk about reasonable  
9 judgment, and reasonable inferences, so you're allowed to use your  
10 common sense.

11           Instruction Number 7, again, my client is a corporation. The  
12 Judge read you the instruction, essentially treat him fairly. Not a big  
13 deal.

14           Number 8 we talked about this purpose of the trial is to  
15 ascertain the truth -- figure out the truth.

16           Number 11. This is credibility/believability. So this gives you  
17 some guidance from the Court. These are court instructions that the  
18 Court has already provided you, so you're allowed to follow these about  
19 how to deal with credibility issues of witnesses if you are trying to figure  
20 out are they telling the truth, are they not telling the truth, what do I do  
21 with it.

22           The credibility or believability of a witness should be  
23 determined by his or her manner upon the stand, his or her relationship  
24 to the parties, his or her fears, motives, interests, or feelings, his or her  
25 opportunity to have observed the matter to which he or she testified, the



1 reasonably of his or her statements, and the strength or weakness of  
2 his or her recollections. That's the first paragraph.

3           The second paragraph is also interesting. If you believe that  
4 a witness has lied about any material fact in the case, you may disregard  
5 the entire testimony of that witness or any portion of this testimony  
6 which is not proved by other evidence. This is Number 11.

7           Number 14. So I already talked briefly about burden of proof  
8 and we'll get to the jury instruction on it. So the Plaintiff -- remember the  
9 football field and he said they have to get it more than 50 yards, so that's  
10 essentially everything. Well, whatever they're trying to prove, whatever  
11 they're asking you to give money for, they have to prove that it's caused  
12 by my client and prove to you that the damages are fair and reasonable.

13           So Number 14, whether any of these elements of damages  
14 have been proven by the evidence is for you to determine. Whether any  
15 of these elements of damage have been proven by the evidence is for  
16 you to determine. Neither sympathy nor speculation is a proper basis for  
17 determining damages. However, absolute certainty as to the damages is  
18 not required. It is only required that Plaintiff prove each item of damages  
19 by a preponderance of the evidence. So for every piece of damages the  
20 Plaintiff wants, using their own analogy, they have to get beyond the 50-  
21 yard line on the football field, every single piece of damages, meaning  
22 every dollar you're going to end up giving them.

23           24. This is the burden of proof form. Whenever in these  
24 instructions I state that -- I, being the Judge -- state that the burden, or  
25 the burden of proof, rests upon a certain party to prove a certain

1 allegation made by him, the meaning of such an instruction is this: That  
2 unless the truth of the allegation is proved by a preponderance of the  
3 evidence, you shall find the same not to be true.

4           So if the Plaintiff doesn't get past the 50-yard line for any of  
5 its items that it's required to prove, according to the jury instructions  
6 you've been given, then you are finding them to be not true. You shall  
7 find the same to be not true. This instruction is telling you that: Number  
8 24.

9           25. A preponderance of the evidence: "Preponderance of the  
10 evidence" means such evidence as, when considered and compared with  
11 that opposed to it, has more convincing force, and produces in your  
12 mind a belief that what is sought to be proved is more probably true  
13 than not. So it's more true than it's not true. More probably true than  
14 not true.

15           In determining whether a party has met this burden, you will  
16 consider all the evidence, whether produced by Plaintiff or Defendant.  
17 So it doesn't matter if you get it on cross-examination, or from either  
18 side, or which side puts it in. It's part of the evidence in this case, you  
19 can consider it.

20           26. Now, this is important to the Defendant, because as you  
21 know, the Plaintiff had three doctors testify and the Defendant only had  
22 one doctor testify, so this is an instruction that would help you in that  
23 situation -- 26.

24           The preponderance, or weight of evidence, is not necessarily  
25 with the greater number of witnesses.

1           The testimony of one witness worthy of belief is sufficient for  
2 the proof of any fact and would justify a verdict in accordance with such  
3 testimony, even if a number witnesses have testified to the contrary. If,  
4 from the whole case, considering the credibility of witnesses, and after  
5 weighing the various factors of evidence, you believe that there is a  
6 balance of probability pointing to the accuracy and honesty of the one  
7 witness, you should accept his testimony.

8           So instruction 26 says if you believe Dr. Tung -- this is the  
9 interpretation -- if you believe Dr. Tung, that's enough. The fact that  
10 three other doctors are raid against him doesn't matter. It's up to you to  
11 decide who you believe.

12           28. These are the elements that the Plaintiff has to prove for  
13 negligence and at this point, really the number 3 the approximate cause  
14 of damages is the important one. That shows up in a couple of these  
15 jury instructions.

16           In order to establish a claim of negligence, the Plaintiff must  
17 prove the following elements by a preponderance of the evidence that  
18 Defendant was negligent. The Court's already made that decision, you  
19 don't have to decide it was Capriati's fault. The Court's already told you  
20 it was.

21           So all you have to decide is that the Plaintiff sustained  
22 damages and that Defendant's negligence was the proximate cause of  
23 damage to Plaintiff. And we've had this issue once before in the trial, so  
24 I'm just going to use the word cause.

25           The jury instructions define proximate cause and you can

1 read them yourself, but just because Capriati caused this accident  
2 doesn't mean Capriati has to pay for all the money the Plaintiff is asking  
3 for. The Plaintiff has to prove that Defendant's negligence was the  
4 proximate cause of damage to Plaintiff; in other words, it's this accident  
5 that caused -- is the cause for every dollar you're going to give the  
6 Plaintiff, and that's a different determination because, as you know, even  
7 the Plaintiff's own doctors say he brought with him those five things: the  
8 degenerative disc disease, the auto fusion, the osteophytes, all those  
9 things.

10           31. You're told that Capriati is responsible. Then it says, you  
11 must determine the amount of damages proximately caused by  
12 Defendant's negligence in accordance with these instructions. So again,  
13 proximately caused. So it's not just whatever the Plaintiff wants, it's  
14 whatever is proximately caused.

15           And this is the proximate cause instruction, 34. I'm not going  
16 to read it, but essentially there it is, and that'll explain proximate cause, if  
17 you want to read it.

18           36. Okay. In determining -- I'm just going to read the first  
19 sentence I think -- in determining the amount of losses, if any, suffered  
20 by Plaintiff, as a proximate result -- as the proximate result of the motor  
21 vehicle collision in question, you will take into consideration the nature,  
22 extent, and duration of the injuries, or damages you believe from the  
23 evidence Plaintiff has sustained, and you will decide upon a sum of  
24 money sufficient to reasonably and fairly compensate Plaintiff for the  
25 following items.

1                   So remember when I was talking about dollars and cents I  
2 said we've suggested a low number on the Defense side, but do  
3 whatever you think is fair collectively as a jury. The Defendant is urging  
4 you to come as close to the low number as possible though, but the jury  
5 instruction is telling you to do what's fair: reasonably and fairly  
6 compensate, but the reason I read this to you is because it says, "losses,  
7 if any suffered by a Plaintiff, as the proximate result of the motor vehicle  
8 collision in question."

9                   So the fact that he has these problems now isn't the end of  
10 your determination. It has to have been caused by this accident -- "by  
11 the motor vehicle collision in question", like Number 36 says, "proximate  
12 result of the motor vehicle collision in question."

13                   38. And this one is basically saying pain and suffering is up  
14 to you, so I'm going to stop on this one for a second, because the  
15 number you're being asked to award is \$11 million in pain and suffering.  
16 So I'll read it first.

17                   No definite standard or method of calculation is prescribed  
18 by law by which to fix reasonable compensation for pain and suffering.  
19 Nor is the opinion of any witness required as to the amount of such  
20 reasonable compensation. Furthermore, the argument of counsel as to  
21 the amount of damages is not evidence of reasonable compensation. In  
22 making an award for pain and suffering, you shall exercise your  
23 authority with calm and reasonable judgment and the damages you fix  
24 shall be just and reasonable in the light of the evidence.

25                   So again, reasonable, fair -- what this is telling you is for pain

1 and suffering, it's up to you. There's no magic number. You're not  
2 going to get more guidance beyond this. You collectively, as a jury, get  
3 to pick a number, or a series of numbers, past medical bill, future  
4 medical bills, past loss of earnings, future loss of earnings, past pain and  
5 suffering, future pain and suffering, if you believe that the Plaintiff  
6 deserves those awards, or those amounts, whatever the numbers that  
7 you pick. So essentially, it's up to all of you to pick some numbers if you  
8 feel the Plaintiff should get an award of money.

9           40. I'm going to read you the first line on this because this is  
10 the one that's important to the Defendant. I'm going to read it twice.

11           A person who has a condition or disability at the time of an  
12 injury is not entitled to recover damages therefor. I'm going to read it  
13 again.

14           A person who has a condition or disability at the time of an  
15 injury is not entitled to recover damages therefor.

16           So Mr. Yahyavi is not entitled to recover damages for the five  
17 things that all the doctors agree that he had, including degenerative disc  
18 disease, osteophytes, auto fusion, there's more to this, but you can read  
19 it yourself. It's Number 40. You'll have it with you.

20           45. Whether any of these elements of damage have been  
21 proven by the evidence is for you to determine. Neither sympathy nor  
22 speculation is a proper basis for determining damages. However,  
23 absolute certainty as to the damages is not required. It is only required  
24 that -- and this is the part that's important to Defendant -- Plaintiff prove  
25 each item of damage by a preponderance of the evidence.

1           So every dollar, if you decide to award money, every dollar  
2 that you award Plaintiff has to prove each of those damages items by a  
3 preponderance of the evidence.

4           If you don't believe Plaintiff: Bahram Yahyavi. You saw him  
5 on the witness stand when I asked him questions on cross-examination  
6 about the prior neck pain and then him telling a doctor a year or so later  
7 that he never had prior neck pain. He seemed to be changing his story  
8 on the witness stand, but that's up to you, based on what you heard him  
9 say and saw here in the court.

10           Then he was talking about being a manager. And what he  
11 first suggested to you was I had to quit Chapman Dodge because I  
12 couldn't be a manager. I had to go to be a salesperson, so I switched to  
13 Chapman Jeep. But then we found out -- because he testified that if you  
14 get a draw you're a manager, so then we found out he was a manager,  
15 but at Chapman Jeep -- a sister company -- this is from July 15th, 2016,  
16 so this is now three more years -- yes, he was a salesperson for a little  
17 while. Then he transitioned back to a manager at the other Chapman  
18 store, and then he was a manager for three more years. So again, if you  
19 think that you heard that, that he said I had to stop being a manager, but  
20 then we proved that he's a manager, that's something you can consider.

21           He didn't tell any of the doctors about his neck pain 21  
22 months before the accident. This, despite the hundreds, and hundreds,  
23 and hundreds of medical visits, and all the different providers that you  
24 have access to his bills and records. You can look at them. Essentially,  
25 there is no testimony to dispute that Bahram Yahyavi did not tell any of

1 his doctors after this accident about the prior report of neck pain for  
2 years. And then he says he doesn't remember.

3 This is a brief review of the witnesses because it's been a  
4 long time and this trial now goes back a couple of weeks. Darian  
5 Yahyavi: He says he built an exercise regimen for his dad. He talked  
6 about squats, wall pushups, hamstring exercises. And you remember,  
7 he came in here one day and testified that his dad does squats.  
8 Exercises four times a week. He helps him twice a week. He helps his  
9 dad do squats.

10 Dr. Oliveri. Would ask you to just ignore the report of pain  
11 for neck -- neck pain for years before this accident -- the Southwest  
12 Medical record. His opinion is you should just ignore it essentially.

13 Dr. Schifini, same thing. He'd have you report that -- ignore  
14 the reported neck pain for years before this accident, but of course, he  
15 only found out about it the day before he testified.

16 Sorry. Remember, Dr. Schifini said he's done 50 to 100  
17 spinal cord surgeries as the anesthesiologist, which is the pain  
18 management doctor's role, so he's not implanting them, but he's  
19 providing the medication -- the anesthesia for the patients.

20 He's done 50 to 100 and only once has he seen somebody do  
21 this spinal cord stimulator with no trial.

22 And he's also the one, in his medical records, said that the  
23 fusion surgery didn't help Plaintiff. Something like it didn't change his  
24 condition. We had showed that to you during the trial.

25 Dr. Kaplan. Again, forget about the -- forget about the pre-



1 existing -- or the pain report from 21 months before the accident -- the  
2 Southwest Medical records.

3 Dr. Tung. Dr. Tung says Plaintiff's problems existed before  
4 this accident. He says the preexisting cervical problems were  
5 aggravated by the accident resulting in a straining injury. He's allowing  
6 for 14 months of treatment and he's saying everything after early  
7 September 24th is unrelated to this accident. Again, the September  
8 2014, sorry -- the September 2014, the end of the 14 months, so he's  
9 saying first 14 months yes, last five years no.

10 Ed Bennett, a Defendant's vocational expert: He said he  
11 based his reports on -- his opinions on Dr. Tung's report, as such, he's  
12 saying the Plaintiff can either go back to work as a car salesman, or if  
13 not, then he's time off -- whatever time off he's claiming since  
14 September 2014 is unrelated to this accident. We know he worked  
15 through the middle of 2016.

16 Ira Spector, the Plaintiff's vocational expert: He basically  
17 says Plaintiff can never work again. Plaintiff can't do even the least  
18 strenuous of jobs. Nothing. There's nothing he can do. And he says the  
19 Plaintiff can't do squats, even though the day before Darian Yahyavi  
20 testified to you that the Plaintiff does do squats, and he helps him do  
21 them.

22 One other thing about Spector -- anyway, Dr. Clauretie is the  
23 economist. His role is limited. He reduces the future damages to  
24 present value, which is a legal requirement, but remember I had him  
25 back out the spinal cord stimulator and he's the one that came up with

1 the \$78,000 number.

2           This is the verdict form. You know, Mr. Prince has put  
3 hundreds of thousands and millions of dollars of numbers up there. The  
4 Defendant is urging to all of you is, if you're going to award money to  
5 the Plaintiff, give him 14 months of treatment, and whatever you think is  
6 fair for pain and suffering. And again, our suggestion is \$67,000, which  
7 is the actual amount of the 14 months of treatment and then whatever  
8 you feel is fair for pain and suffering after that -- two or three times  
9 that -- whatever the number is. And if you think it's worth more, and  
10 that's your fair decision, Defendant urges you to bring it as close to that  
11 number as possible.

12           So this one other thing, now, another doctor agrees with Dr.  
13 Tung, and you haven't heard this before right now. There's a doctor  
14 named Dr. Rimoldi. This is Exhibit 92, page 354. This is an admitted  
15 exhibit that you have not seen for three weeks, but it's admitted, which  
16 means you get to look at it, and I get to talk about it.

17           There's a doctor name Dr. Rimoldi. This is in the  
18 psychological evaluation report -- psychological evaluation that Plaintiff's  
19 counsel talked about in his closing argument -- and that woman that did  
20 the psychological evaluation I think her name was Staci Ross the  
21 psychologist that cleared the Plaintiff for whether he should -- whether  
22 he can get a spinal cord stimulator and he's, you know, psychologically  
23 okay for that, which is a standard thing that doctors do often. She did a  
24 medical chronology and indicated all these other records.

25           So this is what this doctor, Dr. Rimoldi said on August 15,

1 2018. This is, again, Exhibit 92, page 354, "Dr. Kaplan's surgical  
2 intervention and multiple pain specialists with multiple injections are  
3 from degenerative changes and not related to trauma."

4 I'm going to read that again. This is another doctor about a  
5 year ago essentially saying that the fusion surgery is unrelated to this  
6 accident. "Dr. Kaplan's surgical intervention and multiple pain  
7 specialists with multiple injections are from degenerative changes and  
8 not related to trauma."

9 Well, the accident would be trauma, so he's not attributing  
10 this to the trauma, and he's agreeing with Dr. Tung. And he has another  
11 sentence here on the same page in the same paragraph. "Changes  
12 noted in the cervical spine MRI scan were not related to the trauma of  
13 the motor vehicle accident," and remember there's only one motor  
14 vehicle accident, it's this one, "but related to degenerative change."

15 So again, this is Exhibit 92, 354, Dr. Rimoldi. It's about a year  
16 ago and he says, "Changes noted in the cervical spine MRI scan were not  
17 related to the trauma of the motor vehicle accident, but related to  
18 degenerative change." The same thing that Dr. Tung came and testified  
19 to you all here at this trial. So he's not alone, another doctor,  
20 independently, who is not a witness in this case, other than through this  
21 record, agrees with him, 100 percent.

22 So again, your decision is going to be how much money to  
23 award the Plaintiff what's fair. You have to make a decision and the  
24 decision is yours and yours alone, based on the evidence and the  
25 instructions that the Court has given you.

1 I only went through some of them. Take your time. Make a  
2 reason and fair decision.

3 The final word is appreciation. Obviously, similar to the  
4 Plaintiff, the Defendant thanks all of you for your time and your effort.

5 Thanks the Court and court staff for being polite and helpful.  
6 We all realize -- all of us in the legal system realize all of you are taking  
7 time away from your families, and your jobs, and your lives. It's part of  
8 the great wonder of our democracy, and we thank you -- all of us thank  
9 you for your time and your attention. And I hope, like Mr. Prince said,  
10 this has been somewhat interesting for you at least.

11 Thank you.

12 THE COURT: Thank you.

13 Rebuttal.

14 MR. PRINCE: Yes.

15 PLAINTIFF REBUTTAL CLOSING ARGUMENT

16 BY MR. PRINCE:

17 What was telling about Mr. Kahn's statements to you was  
18 really the attitude of the Defendant: the indifference that suggesting that  
19 we're playing some game here. That's the words he chose. He wants to  
20 be specific with his words, let's hold him to his word.

21 We're not playing a game at all. This is not a game and the  
22 way they've treated these proceedings hasn't been a game because  
23 they're the ones who've been sanctioned in this court for not following  
24 the rules. Maybe they should take the rules more serious. If they were  
25 taking the rules more serious, this collision wouldn't have happened, and

1 we're not here today.

2            Respectfully, this is not a game in any way. His life has been  
3 turned upside down completely and to suggest this is a game, and to  
4 underscore this point, and particularly coming from Mr. Kahn, who has  
5 been reprimanded before you, to refer to Dr. Kaplan, who went to  
6 the -- they consider Harvard the finest medical school in the United  
7 States, "He's Joe Harvard." He didn't come off like that. That's being  
8 condescending, and rude, and indifferent, and that shouldn't be  
9 appreciated at all, but that's the attitude.

10            And let me tell you -- suggest this, what they really want you  
11 to believe is that Bahram is a liar, cheat, and a fraud. Why don't you call  
12 him that? Have the courage to say that in front of you. You know, we  
13 don't believe him. We're asking you not to believe his testimony. Say it.  
14 Because the reason why is, they don't want to -- they don't have the  
15 courage to say that to you because they want you to believe that they're  
16 looking at one sentence -- one sentence and that's their whole case.  
17 Their hang their hat on -- he went on for 45 minutes just about that one  
18 sentence.

19            Why would you give a liar, cheat, and a fraud a quarter of a  
20 million dollars? Why would you say to him, oh, give you \$67,000,  
21 double, triple it in pain and suffering? That's over \$250,000. Why would  
22 you give a liar, cheat, and fraud \$250,000?

23            If this was all before, why give anything? Hey, it's an  
24 ambulance ride, a hospital visit, get checked out, you're good. Those  
25 positions are in conflict -- complete conflict. And quite frankly, they're

1 offensive.

2 If he is a liar, cheat, and a fraud, don't give him anything.  
3 That's what they should be saying to you, but they don't have the  
4 courage to say that. And they have the ability, credibility, believability,  
5 veracity. Well, the only people who had a problem in this courtroom is  
6 the Defendant's team, right?

7 They have an answer struck for not playing by the rules. The  
8 lawyer was sanctioned for not playing by the rules. He had to stand up  
9 and be admonished in front of you.

10 MR. KAHN: Your Honor, I'm going to object to this --

11 MR. PRINCE: -- for not being credible.

12 MR. KAHN: -- repetitive.

13 THE COURT: All right. Sustained.

14 Move on.

15 MR. PRINCE: And so what I'd like to do then for a moment is  
16 they talked about was this accident really 30 miles an hour. I don't know.  
17 It may have been.

18 But -- put the pictures up.

19 Look at the damage. I mean, it completely destroyed the  
20 front of the car. It buckled the roof of the car. It altered the door of the  
21 car. Next one.

22 Look what it did to that. I mean, it was a substantial impact.  
23 You know what they told you in the opening statement -- Mr.  
24 Kahn -- opening statement Mr. Kahn, like promises -- remember I kind of  
25 went through my road map with you? They said they're going to present

1 certain witnesses. They didn't get to do that, because those witnesses  
2 got struck.

3 One of the witnesses were going to talk about the speed, and  
4 all this other stuff. That didn't happen, did it?

5 MR. KAHN: Again, Your Honor. Objection.

6 MR. PRINCE: No, that's a broken promise. You said you're  
7 going to see that evidence and they didn't see it.

8 MR. KAHN: Objection, Your Honor.

9 THE COURT: All right. Move on.

10 MR. PRINCE: This was a substantial collision. What they're  
11 trying to do is suggest to you that Bahram is somehow lying about this  
12 collision too. He is lying from the beginning. He is lying before. He's  
13 lying about the collision. He's lying after. And I'm suggesting that you  
14 reject that, and you look at this case and objectively with the facts of this  
15 case.

16 Now, with regard to the Southwest Medical records, every,  
17 single one of my client's doctors talked about them. They looked at  
18 them. They looked at all the -- there's only a few. There's five pages.  
19 They're small. It made no difference in anybody's analysis; that's the  
20 important part.

21 And I want to talk about Dr. Oliveri specifically for a minute.  
22 He's the rating physician appointed by the State of Nevada. He rated a  
23 permanent impairment caused by this collision. If these records were  
24 significant, hey, just because he's coming to court, and I'm asking hey,  
25 look at some more records, and offered some -- yeah, that's for his time,

1 but he still has an obligation to the State as the workers' compensation  
2 appointed rating physician.

3           If that was going to change it, he would have changed it.  
4 And, you know what, worker's comp is paying for all those medical  
5 services to this day. They're accepting the spinal cord stimulator.  
6 They're accepting all of that.

7           Remember Dr. Schifini told you that? That he talked -- that  
8 every -- no one has a stake in the outcome of this case, except Bahram  
9 and these two parties. These doctors aren't going to place their license  
10 and their livelihood on the line to come in for Bahram Yahyavi. Why  
11 would they do that? It's because medically it was irrelevant. It was  
12 insignificant. And why do you know that? Why do you know that?

13           Because first off, if someone had -- they can't have it both  
14 ways. If he had a problem for years, where is the medical records  
15 showing that? You can't just have one sentence. He had obviously  
16 access to care. He had this problem. He went for medical treatment.  
17 Where are the records associated with medical problems for years?  
18 There are none -- none.

19           Remember the Defense catch 22? Remember when he  
20 was -- after he completed all those injections after two years of care,  
21 well, then he's out for treatment. They did exactly what I said they were  
22 going to do. Oh, how could he be in that much pain, he's not going to  
23 the doctor, but then they're critical of him going to Dr. Fisher, the second  
24 pain physician. Why are you going to this -- for these injections?  
25 They're not working?



1                   So it doesn't matter, he loses either way. But using their  
2 logic, if he had a problem for years, why wasn't he going for care? Why  
3 wasn't he? Why don't we have the records of that? We have the  
4 Southwest Medical records here. They're all there. But they only want  
5 you to focus on one, and they focus on the one sentence -- go to  
6 2110 -- and they want to mislead with this.

7                   This is the one -- the October 25th, I want this sentence. And,  
8 but I want to talk about -- and go to the neck exam, pull that up and  
9 compare.

10                  It says, "Supple with full range of motion." Every expert who  
11 testified in front of you -- you're not going to have full, pain-free range of  
12 motion if you have substantial problem going on caused by disc  
13 degenerative. You're not.

14                  Remember Dr. Oliveri? He said it was impossible. The rating  
15 physician said that -- the one appointed by the State. I didn't pick him.  
16 The State picked him. I asked him to do some more work to review  
17 records. I did do that, of course, because he was already involved in the  
18 case well before anybody else was involved.

19                  He no muscle spasms at all that day. So what clinical  
20 correlation -- they sent him a letter about his X-ray. They didn't ask him  
21 to even follow up. They didn't recommend any treatment. If they had  
22 recommended some treatment for this, you might have something to  
23 talk about.

24                  But then I want to go to the March 2012, and I want to  
25 suggest to you that it's the Defense who is being misleading to you.

1                    Show that one medical summary that says backache and  
2 active problem. This is kind of a, like a clinical summary. Show all of  
3 those things.

4                    He's got active -- all these are active -- allegedly active  
5 problems: contact dermatitis, nicotine dependency, smoke,  
6 hypertension, a backache, and he's got a high triglycerides -- all those,  
7 but let's look at the actual encounter that day. The actual record is 2108  
8 of March 12, 2012, and let's just see why he's there. This is -- I'm going  
9 to tie this together for you, reason for visit, he's there today for  
10 complaint of right knee pain, no backache, none. No neck pain. No neck  
11 pain.

12                    If you're going to use the October 25th, 2011, record with  
13 back -- neck pain for years, and it's an active problem, I'm not just saying  
14 this to you, I'm assuring you, it is not here. Not another day. Nowhere.  
15 You can comb it. I've read it 50 times. It's not there, because if it was  
16 there, they would certainly show you again.

17                    Let's go to the knee -- the diagnosis on that day, 2109, for  
18 that March 2012 visit, the one where allegedly it's a backache, and that's  
19 the active problem. It's right at the top.

20                    Knee joint pain, right knee sprain. That's why he was there  
21 because he was skiing. Someone who has got an ongoing neck problem  
22 like Bahram has now, he's never been skiing again after this. He was  
23 skiing and active. Here, I told you in that period \$255,000, October 2011  
24 through June of 2013.

25                    Okay. Let's keep going. Why did Mr. Kahn -- why did he

1 stop short -- why did he stop short of the November 2012 visit? Let's  
2 make sure that's clearly in our mind.

3 2106. And this is why their position lacks credibility.  
4 Subjective. This is less than a year before the collision. "State's patient  
5 is feeling well without any physical complaints."

6 Now, if you have a chronic problem, why aren't you having  
7 it? If it's persistent, it would be documented? It's the same medical  
8 facility. It's the same physician group. Nothing. Absolutely nothing.

9 Go to the musculoskeletal exam and the neurologic exam.

10 How you like musculoskeletal? When we're talking about  
11 chronic pain, we're talking about something is persistent and consistent.  
12 These doctors document no persistent muscular pain. There's no  
13 numbness, paresthesia weakness, exactly what we have now in the left  
14 arm. I didn't just that one date to be selective. We embraced the  
15 October 2011. We know it exists, of course. We know the X-ray exists.

16 We've talked about the degeneration was there. It was there.  
17 That's what makes him vulnerable to the injury. We know this. That  
18 hasn't changed at all.

19 So when Mr. Kahn is talking about the October 2011 visit,  
20 why does he ignore -- have you ignore this visit? You can't ignore that,  
21 because they want you to make a decision based on incomplete  
22 information and deprive my client of his right to justice. That's what  
23 they want.

24 Why would you offer if somebody's a liar, cheat, and a fraud  
25 \$250,000? That's silly and absurd quite frankly.

1                   So that's October -- that's November 2012. Let's keep going  
2 in time. Same facility, May 2013. 2104.

3                   Let's go to the reason for the visit, meds, and subjective.

4                   50-year-old today presents today -- at the clinic today follow  
5 up to the Summerlin Hospital. He had some gastrointestinal problems.  
6 He had some upper GI problem.

7                   He was on an ointment for a dermatitis and he was on his  
8 high blood pressure medication. If he had ongoing, persistent, chronic  
9 pain, where is your pain medication? Where is the diagnosis associated  
10 with that?

11                  Look at his review assistance.

12                  It says he's follow up after going to the hospital. That here is  
13 the what I'm -- denies any chest pain, shortness of breath, no  
14 palpitations, still feels a little tired, but no lightheaded or dizziness, taking  
15 medication regularly for his blood pressure. That's one month  
16 before -- one month -- that's how he's doing immediately before; and  
17 more importantly, if he needed any care, you would have known, you  
18 would have heard it from Dr. Tung that he required care for his neck,  
19 therapy, injections, surgery, something. No doctor has said he needed  
20 any medical treatment before this motor vehicle collection.

21                  When you put all of this into context and you look at all the  
22 records, not just hang your hat on one sentence that's out of context, he  
23 was pain free, living fine, and doing well until this bomb went off that  
24 they caused. You can't just use one sentence and carry -- run that the  
25 whole way of the trial because there's too much other -- so we want to

1 use the words, why didn't Mr. Kahn use those words?

2 Why didn't he use one of those pain free, no persistent pain?

3 I showed you every record. I showed you those records from the  
4 opening statement. I showed them to my expert witnesses, because we  
5 had to embrace them. They're there. It's the truth.

6 Does he have a recollection of it? No. Did he have those  
7 problems? No. Records can be wrong. I'm sure maybe he did report,  
8 but obviously, they ordered an X-ray so something must have been  
9 happening that day. We can't deny that. I can't deny that. But they're  
10 not going to say -- if it was real problem, they're not just going to send  
11 you a letter, and send you on your merry way. They would have made  
12 recommendations for treatment.

13 And I've showed you every visit after that -- every single one  
14 to make sure you had the full context. I want you to have the full story,  
15 because none of this would make sense, unless you have the full story.

16 And another -- with regard to Dr. Schifini -- you can take that  
17 down -- Dr. Schifini is a work comp appointed pain physician. He was  
18 involved in 2013 and '14, and again in 2019. His sole role is in treating  
19 injured workers. He has no stake in this outcome. He relates the  
20 ongoing, the failed surgery to the neck, to this collision, and no other  
21 reason.

22 He relates the need for the spinal cord stimulator to this  
23 collision, and no other reason. He's full aware of the degeneration. It's  
24 not the degeneration that makes you surgical and need treatment. It's  
25 the symptoms.

1                   Degeneration by itself needs nothing clinically. You need  
2 more than that. It's symptoms -- quality of the symptoms. How long  
3 have they been there? What do they do? It's putting all those pieces of  
4 the puzzle together that we've been talking about for the last few weeks.  
5 It's not a sound bite of information. It's the overwhelming amount of  
6 evidence that you've seen and heard in this case.

7                   But Dr. Schifini continues to treat him through workers'  
8 comp and he says I have no stake in this outcome, in fact, I'm mostly on  
9 the Defense in these types of cases. My last trial he was on the Defense.  
10 He's never on my side. But the workers' compensation they've accepted  
11 it, they've rated it, and they continue to treat this as a permanent injury  
12 from this motor vehicle collision.

13                   Do you think for one second that if they felt there's  
14 something going on before that they could rate or get rid of, they  
15 wouldn't do it? They certainly would. No one is going to accept  
16 something not related and treat it permanently. They're just not going to  
17 do it. That's just not how the real world works.

18                   And so we've given you the numbers that we think are  
19 appropriate and fair. We talked about the need for treatment. We talked  
20 about the need for future care. And there is, if you look at the balance of  
21 all of the evidence, not just one sentence, it's overwhelming that this  
22 collision caused a devastating effect on my client's life that's never been  
23 the same -- he's never going to be the same again. He never is.

24                   To give short shrift, to like no one's ever heard of doing a  
25 spinal cord stimulator without doing a trial, well, that is true, but he has a

1 five-level posterior fusion that makes it impossible, and that's his only  
2 option, so they would want to back that out. If you back that out, actually  
3 he's going to suffer more, so you could make a good argument -- and I  
4 am -- you'd have to give him more for pain and suffering than if you take  
5 away the stimulator, right? Because the stimulator helps control the  
6 symptoms or better and he's going to suffer less, but he's going to suffer  
7 more without it.

8 I think the more humane thing and the more how you treat  
9 people is, give him the option, but he deserves that benefit. He's been  
10 through enough. He's been through enough.

11 And as you go through your deliberations, I also want you to  
12 think about one other thing, Mr. Kahn said, oh, it's got -- his symptoms  
13 were progressive. I'm not going to do this for now, but I showed you  
14 every pain score from the day 1 visit all the way through 2019, the pain  
15 score between 6 and 8 out of 10, it's the same then, it's the same now.  
16 Where is the progression? What progression?

17 The only person talking about progression is them, but  
18 there's no progression of this disease. There's no progression of  
19 symptoms. The symptoms remain the same. It's the onset of the  
20 symptoms caused by the trauma, that's the difference maker, and that's  
21 what drives the outcome of this case.

22 And Mr. Kahn talked about the C6-7 auto fusion. That's  
23 there, that's for sure, but number one, there's no recommendation for  
24 treatment before that, but moreover -- show the dermatome  
25 slide -- where Bahram had his problem, was really at C8 nerve root. It's

1 not -- remember it goes down into the -- these two fingers, not at C6-7.  
2 So physiologically, that auto fusion doesn't even play a role in those arm  
3 \*\*3:15:45. It's another disc level. So don't be misled by that. It is  
4 definitely there, and it's degenerative, and it was there, but it's now  
5 symptomatic. And that's the aggravation of the underlying condition.

6           The trauma aggravated this permanently. And remember  
7 what Dr. Kaplan, Schifini, and Oliveri, all who participated in Bahram's  
8 care for years said, when you use the word aggravation that means  
9 something permanent, and that's what we're talking about in this case: a  
10 permanent onset of these symptoms that's going to last for the balance  
11 of his life until he's 81 years old. He shouldn't go to the grave with these  
12 symptoms. And sadly, this isn't going to get better with time, as he  
13 ages. It will get worse. So it's not like he's at a point where oh, at some  
14 point it's all going to go away. It's not sadly.

15           And so those symptoms are going to get progressively  
16 worse with time. That's why they're trying to offer him the spinal cord  
17 stimulator so that it's more -- it's the humanity of it, right? The humanity  
18 to give somebody a little piece of mind, a little less pain, anxiety, fear,  
19 improve your function, and your quality of your life.

20           And so for those reasons, we believe that what we proposed  
21 is fair and appropriate, and based on this evidence. All of it was based  
22 on this evidence.

23           Again, I want to thank you for time, and we look forward to  
24 your verdict. Thank you.

25           THE COURT: Thank you.



1 Swear them in.

2 [The Clerk swore in the officers to take charge of the jury during  
3 deliberations]

4 THE COURT: Thank you.

5 Ladies and gentlemen, I want to thank all of you. You've  
6 been here for three weeks now and participated fully. Spent your time  
7 and effort and it is very important to our system of justice.

8 Two of you are alternates. You are not released as  
9 alternates, except we're going to -- you're going to go with the  
10 temporary JEA -- alternate JEA -- not my usual JEA, that's judicial  
11 executive assistant -- anyway, she's going to take your cell phone  
12 numbers.

13 I have had to call alternates back to serve. It unfortunately  
14 happens. So please don't talk to anybody about the case until you get a  
15 call that the case is over one way or the other, or you have to come back.

16 So the alternates are Jennifer Stephens and Lawrence  
17 Thomas. You will go with the JEA. She will take your phone numbers  
18 and the rest of you will go with Steve back into the jury deliberation  
19 room where you will now be able to deliberate.

20 He will bring the exhibits in a minute or two and you will  
21 have those, along you have the jury instructions. You will have the  
22 verdict form, and you can begin your deliberations.

23 Go ahead.

24 THE MARSHAL: Folks, you're going to bring your notebooks  
25 now and bring your jury instructions with you, as well. And grab all your

1 personal items, and you're all going to come with me.

2 The two alternates will stay with JEA.

3 Please rise for the jury.

4 [The jury retired to deliberate at 3:19 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: All right. The attorneys give your cell phone  
7 numbers to the clerk.

8 MR. KAHN: Yes, Your Honor.

9 THE COURT: And we will be in touch.

10 [Recess taken from 3:20 p.m. to 7:40 p.m.]

11 MR. STRONG: Your Honor, would it be -- I know we talked  
12 about this before --

13 THE COURT: Getting him on the phone? No. It took you  
14 over a half hour. Forty minutes we've been waiting. It's usually you're  
15 supposed to be within 15 minutes.

16 MR. STRONG: Okay. That's fine.

17 THE COURT: We're done. We're bringing them in.

18 MR. STRONG: All right.

19 THE COURT: They've been waiting.

20 MR. STRONG: Understood.

21 THE COURT: And, you know, if somebody was to blurt  
22 something out on the phone, it's not good. So --

23 MR. STRONG: Understood.

24 THE COURT: -- he's at a party, he should be having fun.

25 MR. STRONG: Understood, Your Honor.

1 THE COURT: Make sure he's telling them to bring them in.  
2 He was lining them up. Just bring them in.

3 After we're done, I take them -- or I let them go back, get their  
4 stuff, I shake their hand. Does anybody want to talk to them afterwards?

5 MR. KAHN: We may. It's 8:00, so I guess not many will want  
6 to stay.

7 THE COURT: Well, it's certainly going to be their option.

8 MR. KAHN: Yeah. I would just tell them they're allowed to,  
9 and I don't think we need to do a room or anything like that.

10 THE COURT: No, it'll be out there. As a matter of fact,  
11 depending you may have to leave because everybody's on overtime.

12 [Jury in at 7:41 p.m.]

13 [Within the presence of the jury]

14 Just sit anywhere, sit anywhere. Sit anywhere, please.

15 Please be seated. The parties acknowledge the presence of the jury?

16 MR. STRONG: Yes, Your Honor.

17 MR. KAHN: Yes, Your Honor.

18 THE COURT: Ladies and gentlemen, have you chosen a  
19 foreperson and, if so, who's the foreperson?

20 UNIDENTIFIED JUROR: Number five.

21 THE COURT: Have at least six of the jurors come to a  
22 decision on the issues presented to the jury?

23 JUROR NO. 5: Yes, Your Honor.

24 THE COURT: Please present it to the Marshal. That's the jury  
25 instructions. All right. The Clerk will now read the verdict to the jury.

1 THE CLERK: 8th Judicial District Court, Clark County,  
2 Nevada, Bahram Yahyavi v. Capriati Construction Corporation, case  
3 number A-718689, Department 28.

4 Verdict. We, the jury, in the above-entitled action find for the  
5 Plaintiff and against the Defendant and assess the total amount of  
6 Plaintiff's damages as follows: Past medical and related expenses, \$491  
7 -- sorry -- \$491,023.24. Future medical and related --

8 THE COURT: Hold on.

9 THE MARSHAL: The jury's not agreeing with that.

10 THE COURT: Let me see that.

11 THE CLERK: Sorry.

12 THE COURT: 491,023.24. Future medical and related  
13 expenses, 529,260, five hundred and twenty-nine thousand, two hundred  
14 and sixty dollars. Past loss of wages and earning capacity, 300,000.  
15 Future loss from wages and earning capacity, 1,550,000. Pain. Past pain  
16 and suffering, disability, and loss of enjoyment, 500,000. Future pain  
17 and suffering, disability and loss of enjoyment of life, 2,500,000.

18 THE CLERK: Ladies and gentlemen of the jury, is this your  
19 verdict as read?

20 THE JURORS: Yes.

21 THE COURT: Does anyone wish to have the jurors  
22 individually polled?

23 MR. KAHN: Yes, the Defendant would like that, Your Honor.

24 THE COURT: Poll the jurors.

25 THE CLERK: Elisa Dolson, is this your verdict, as read?

1 JUROR No. 670: Yes.

2 THE CLERK: Shantoya Mitchell, is this your verdict, as read?

3 JUROR NO. 840: Yes.

4 THE CLERK: Bienvenido Suarez, is this your verdict, as  
5 read?

6 JUROR NO. 678: Yes.

7 THE CLERK: Dennis Dewindt, is this your verdict, as read?

8 JUROR NO. 679: Yes.

9 THE CLERK: Bryan Roach, is this your verdict, as read?

10 JUROR NO. 661: Yes.

11 THE CLERK: Kisun Choi, is this your verdict, as read?

12 JUROR NO. 663: Yes.

13 THE CLERK: Manuel Deasis, is this your verdict, as read?

14 JUROR NO. 761: Yes.

15 THE CLERK: Jacob Whipple, is this your verdict, as read?

16 JUROR NO. 537: Yes.

17 THE COURT: The verdict of the jurors shall now be recorded  
18 and the minutes accord.

19 Thank you, ladies and gentlemen, you're now released from  
20 your obligation. You're free to discuss with anybody the case.

21 What I'm going to ask, I want to thank you and shake  
22 everybody's hand, so I think there's still stuff, by the way, in there. You'll  
23 go collect your belongings. I'll shake your hand. It's somewhat late.

24 If you want to talk to the parties, they may have questions,  
25 it's always a learning experience. It is late and as I started to tell them,

1 everybody's on overtime, so we're limited. You can do it downstairs in  
2 the -- I forget what they call it.

3           The canyon -- it's called a canyon downstairs because those  
4 people are there 24/7, but probably usually Steve will walk you to the  
5 parking lot. It's no longer as safe as it used to be. So it's not going to be  
6 very long, you know, if you even want to. If you don't want to, you don't  
7 have to, and we'll make arrangements to see that you get to the parking  
8 lot.

9           I want to thank you. You've spent three weeks here and  
10 certainly everybody appreciates it. We know you've -- it's been, you  
11 know, a long case and all I can say is thank you, you've done your  
12 service to the nation, really, and you should be proud of it.

13           So having said that, you're released and thank you.

14           THE MARSHAL: Please rise for the jury.

15                           [Jury excused at 7:46 p.m.]

16                           [Outside the presence of the jury]

17           THE COURT: All right. Thank you everybody. I will ask them  
18 if they want to discuss it, go down to the canyon through the main  
19 doors, and certainly Steve will tell you whether they want to stay and  
20 talk or if not and that's pretty much it.

21           MR. KAHN: Thank you, Your Honor.

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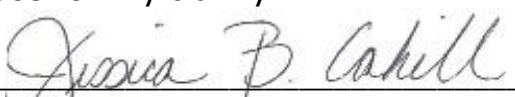
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MR. STRONG: Thank you, Your Honor.

MR. KAHN: And thank the staff for coming in late.

[Proceedings concluded at 7:47 p.m.]

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

  
\_\_\_\_\_  
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