

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

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

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

Case No. 80271
Electronically Filed
Oct 13 2020 11:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81052

APPELLANTS' APPENDIX
VOLUME 25

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1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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7

TITINA FARRIS, ET AL.,

8

Plaintiffs,

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vs.

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BARRY RIVES, M.D.,

11

Defendant.

12

13

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
MONDAY, OCTOBER 28, 2019

14

15

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10

16

APPEARANCES:

17

For the Plaintiff:

18

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

19

For the Defendant:

20

THOMAS J. DOYLE, ESQ.

21

22

23

24

25

RECORDED BY: SANDRA HARRELL, COURT RECORDER

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None

1 Las Vegas, Nevada, Monday, October 28, 2019

2

3 [Case called at 8:33 a.m.]

4 COURT RECORDER: On the record.

5 THE COURT: Okay. We're on the record outside the
6 presence of the jury in case number 739464.

7 So, counsel, since we've had a variety of different individuals
8 back and forth, whoever is here in any official capacity, you all want to
9 make appearances, please.

10 MR. LEAVITT: Yes, Your Honor. Jacob Leavitt on behalf of
11 Plaintiffs.

12 MR. JONES: Kimball Jones also on behalf of Plaintiffs, Your
13 Honor.

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

15 THE COURT: Okay. What I understand is, no one wishes to
16 wait for anybody else; is that correct?

17 MR. JONES: That is correct, Your Honor, on behalf of
18 Plaintiffs.

19 MR. DOYLE: That's fine, yes.

20 THE COURT: Well, I'd be more than welcome, willing to wait.
21 It's just do you want us to wait?

22 MR. DOYLE: No.

23 THE COURT: Okay. I just want to make sure.

24 Okay. So what we need to do is we need to go over a couple
25 of things so that we can have a smooth day.

1 So first thing we need to get fully taken care of is what are
2 you all doing -- let's go back to what was Exhibit
3 8/demonstrative/Defendant's, a variety of letters, including J through Z.
4 We need to get that 100% cleared up for Madam Clerk, okay, because as
5 you recall, what you did is you had an agreement for demonstratives 1
6 through 10 is what you called them. So is it now, but then previously
7 you all had stated at the calendar call that Exhibit 8, which were the
8 images, which were then on a jump drive, which seems not to be able to
9 open, it's in some type of proprietary state, and then at a DVD on
10 Defendant's side in part in a variety of letters.

11 Madam Clerk, just so I don't keep saying variety of letters,
12 can you say the D letters? I remember it was J through Z, but it was also
13 -- I could go back to October 8th. Let's go through October 8 to say what
14 it was, what you all said on October 8th.

15 Okay. Exhibit 8. Okay. So Exhibit 8, counsel for Defense, it
16 was your exhibit, your exhibit. So what's your letters, what was your
17 letters, counsel for Defense?

18 MR. DOYLE: I think it -- wasn't it J, Z, isn't that how it came
19 up?

20 THE COURT: No, it wasn't only J, Z. J,Z was the end of it. It
21 was other letters before that and then it was J through Z was the end of
22 it. That's why -- okay, let me go back. Okay. Counsel, I believe looking
23 at -- do you have the transcript from the 8th, since you ordered all the
24 transcripts, do you have the transcripts from the 8th? Look on page 25 of
25 the transcript from the 8th, which I know Defense ordered. I'm not sure,

1 Plaintiff, you ordered, as well.

2 Okay. So based on page 25, okay. So it was E, F, G, H, I and
3 then J through Z, okay, is what that parallels to Exhibit 8 from Plaintiff's
4 side. Then subsequently after I'll call it a variety of discussions, you then
5 said that you only utilized, I guess, and you then called them into
6 demonstratives 1 through 10.

7 So is it the parties -- the last and final word you all told this
8 Court was you were not using 8, you are not using Defendant's E, F, G,
9 H, I, J through Z, and you are just using the demonstratives 1
10 through 10.

11 But then towards the end of that testimony, then heard a --
12 when the Court was talking about any devices and making sure we're not
13 using it because remember the Madam Clerk couldn't even get into --

14 MR. JONES: Right.

15 THE COURT: -- the jump drive that was provided by Plaintiff
16 or the disk that was provided by Defendants, neither of them could be
17 gotten into. In fact, your Defense witness even said he couldn't get into
18 them. He had to try and look at things, I guess, individually, whatever,
19 but that doesn't matter if the witness was, but we couldn't -- nothing that
20 was provided to the Court could get gotten into, so it was not properly
21 provided.

22 So you all left it with demonstratives 1 through 10. Madam
23 Clerk just needs -- that's -- is that correct?

24 MR. JONES: That's it, Your Honor, and it's going to stay
25 exactly that way, they're demonstratives only and it's 1 through 10.

1 MR. DOYLE: That is correct, and they're not going to go to
2 the jury.

3 THE COURT: As demonstratives, they do not go to the jury,
4 yeah.

5 MR. DOYLE: Right.

6 THE COURT: Okay. So Exhibit 8 needs to be withdrawn as a
7 stipulated exhibit and its parallel E, F, G, H, I, J through Z, also needs to
8 be withdrawn as an exhibit potentially going back to the jury; is that
9 correct?

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

11 THE COURT: Is that correct, Defense counsel?

12 MR. DOYLE: Yes.

13 THE COURT: Okay. Madam Clerk?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Okay.

16 THE CLERK: Thank you very much.

17 THE COURT: No worries. I'm trying to take care of your --
18 okay.

19 Now, then we had -- so at this juncture, Madam Clerk, can
20 you refresh, Exhibit 1, was Exhibit 1, pages 1 through 600 and
21 something. Can you give me the last page number on that, please?

22 THE CLERK: Yes, Your Honor. Six hundred thirteen.

23 THE COURT: Okay. So what the Court has is based on what
24 -- and, Madam Clerk, is that the only document that you show that has
25 been admitted?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: Okay. So that's what we currently show as
3 exhibits admitted. Okay. Sorry?

4 THE CLERK: Exhibit 6 was also admitted into evidence.

5 THE COURT: Okay.

6 MR. JONES: That was from CareMeridian, correct?

7 THE CLERK: Yes.

8 THE COURT: Yes. Thank you so much. Okay.

9 So that's what's currently shown. Okay. So does anyone
10 think that they've introduced any other documents through witness
11 testimony that Madam Clerk does not show, since we had somebody
12 else helping us out on Thursday? We don't show anything was
13 introduced on Thursday, but we just want to clarify since our regular
14 Clerk's back today, those are the only exhibits that have been introduced
15 through witness testimony, correct, Plaintiff?

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

17 THE COURT: Defense, did you attempt to introduce any
18 exhibits through witness testimony?

19 MR. DOYLE: No, Your Honor.

20 THE COURT: Okay. So you've got Exhibit 1 and Exhibit 6.
21 Okay. That's where we're at with that.

22 Okay. The Court, also over the weekend and looking at
23 everything saw that we had the outstanding issue no one ever brought
24 up Vickie Center. She was objected to by -- are you okay? You're not
25 hearing, your assisted device is not working or?

1 UNIDENTIFIED SPEAKER: I apologize, Your Honor. I can't
2 hear you until I can get these to work.

3 THE COURT: Oh, no, is it not working?

4 UNIDENTIFIED SPEAKER: Correct, Your Honor.

5 UNIDENTIFIED SPEAKER: I can't --

6 UNIDENTIFIED SPEAKER: Not working.

7 UNIDENTIFIED SPEAKER: That first set not working.

8 THE COURT: Oh.

9 UNIDENTIFIED SPEAKER: I'll try to work with the --

10 THE COURT: Sure. I'll stop for a sec. Can you hear okay
11 now? I just want to make sure everyone can hear okay. So if that one's
12 not working, we need to make sure we have it -- get a ticket for it or
13 something.

14 [Parties confer]

15 THE COURT: Are you good to go?

16 UNIDENTIFIED SPEAKER: Yes.

17 THE COURT: Okay. Everybody else can hear clearly?
18 Everyone else is good to go, okay, around the courtroom. Okay.

19 UNIDENTIFIED SPEAKER: Thank you for checking, Your
20 Honor, I do appreciate that very much.

21 THE COURT: Sure. No, of course. We want to make sure
22 everyone's fully taken care of in every single [indiscernible]. We also
23 have our access. Remember, we are a place of public accommodation.
24 We make sure everyone has access, too.

25 So, Marshal, would you mind maybe just taking care of our

1 journalists while I'm kind of going through some of this?

2 THE MARSHAL: Yes.

3 THE COURT: I would appreciate it. Thanks so much. Make
4 sure we have our water and everything. I appreciate it.

5 Okay. So like I said, over the weekend in double checking
6 different things, saw outstanding there was an objection to Vickie Center
7 that was timely done. You all were supposed to bring it to the Court's
8 attention at some point. I'm not going to reiterate how many times I've
9 asked you all to bring things to the Court's attention if somebody had an
10 objection and then we wait, then you all don't, and then we've gotten to
11 the point of people being on the stand. We can't continue to have the
12 poor jury in that regard.

13 So, Defense counsel, do you still have an objection to Vickie
14 Center, because you've not brought that back to the Court's attention?

15 MR. DOYLE: I had not because it's my understanding that
16 Plaintiff is not going to be calling her as a witness, so in my mind the
17 issue was moot, but.

18 THE COURT: Okay. No one informed the Court. Once again,
19 the Court doesn't know what you all don't inform it, so I -- like I said, so
20 we don't have juries waiting out in the hallways for hours again. So is
21 she withdrawn as a non-issue and I can move on?

22 MR. JONES: We haven't withdrawn her, Your Honor, and
23 she --

24 THE COURT: You have or have not, I'm sorry?

25 MR. JONES: Have not. Have not withdrawn her. So I -- but

1 it's --

2 THE COURT: Did you all speak like the Court has been
3 requesting you all to do, to please get clear on your witnesses so that --
4 I'm more than glad to resolve issues, but the simple things on whether
5 or not witnesses are withdrawn or not, really -- just remember we've got
6 the jury coming in here in about 18 minutes, and we just, in fairness to
7 them, can't keep on having issues come up which are issues that could
8 have easily been resolved a long time ago.

9 I'm not going to go back into all those different examples,
10 but the simple question is, if you all have these issues, can you please
11 (a) give the Court advanced notice if you've got an objection or
12 something needs to be addressed, (b) before the witness is on the stand
13 so we can get these taken care of so the jury is not out there waiting.
14 And, of course, the Court would like to be fully prepared for everything
15 so that we don't keep bringing things up halfway through.

16 When I say you, that is not to any individual. I am making it
17 generic. Everybody knows who's doing it, who's not doing it, when
18 people are doing it. The Court's just using a generic term just so that we
19 have in fairness to the jury, in fairness to each party's respective clients,
20 we can move forward with some testimony and not be having all the
21 other constant issues which could have easily been avoided.

22 So let's walk through who today's witnesses are, see what
23 issues, if there's any issues we have to go through with today's issue
24 because I was about to get to Adornato, so let's just do it a different way.
25 Maybe we'll do it the way of -- who are the witnesses scheduled to be on

1 today?

2 MR. JONES: Your Honor, Doctor Juell is going to go out of
3 order. He is here for the Defense, so we're going to take him, finish his
4 cross-examination first.

5 THE COURT: 9 a.m., Doctor Juell; is that correct?

6 MR. JONES: Yes. I believe he's here already.

7 THE COURT: Okay. Thank you so much.

8 MR. DOYLE: We have two issues with Doctor Juell.

9 MR. JONES: Thereafter we have --

10 THE COURT: Wait. Two issues with Doctor Juell? These are
11 brand -- I'm not going into them yet, but nobody has told me about any
12 issues with Doctor Juell. If you all recall, I did ask.

13 MR. JONES: I don't know what these are, Your Honor.

14 THE COURT: I said I was going to be spending a good part of
15 my weekend, I stayed in town to work on this case even more because of
16 everything that you all have been bringing to me in the midst of a
17 witness, last minute, et cetera. So I specifically did make sure so that I
18 could take care of everything and no one told me anything about Doctor
19 Juell. We'll get back there in a second.

20 Who's after Doctor Juell, please?

21 MR. DOYLE: I have Doctor Lance Stone, one of my damage
22 expert witnesses who is here.

23 MR. JONES: No. We --

24 THE COURT: Excuse me. We're still in Plaintiff's case in
25 chief. Plaintiff has not rested, corrected?

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

2 THE COURT: Okay. So by agreement of the parties, Doctor
3 Juell is first thing; is that correct?

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

5 THE COURT: Okay. So I have to ask -- that's why I'm asking
6 Plaintiff --

7 MR. JONES: Right.

8 THE COURT: -- because they're still in their case in chief. If
9 there's a disagreement, I'll go to Defense counsel, but I've got to ask. I
10 was really hoping that you all at least would have talked over the
11 weekend.

12 MR. DOYLE: We did, but I --

13 THE COURT: Counsel, let me finish with Plaintiffs' counsel
14 first okay?

15 Plaintiff's counsel, this is your case in chief. You all are
16 finishing by agreement Doctor Juell, okay? Who, from your
17 understanding, is the next witness?

18 MR. JONES: The next witness will be Sky Prince, I believe is
19 her last name, and this is the daughter of the Plaintiff's or of Titina Farris,
20 and then it will be Lowell Pender, the son of Titina Farris, and then it will
21 be Patrick Farris, I believe, and then I believe it will be Addison -- what is
22 the last name?

23 MR. LEAVITT: Durham.

24 MR. JONES: -- Durham.

25 THE COURT: Okay.

1 MR. JONES: Who is the brother of the Plaintiff.

2 THE COURT: Okay. So let me go through your listing first
3 without the Court having to go back to double check. All of these
4 witnesses have been timely designated from Plaintiff's perspective?

5 MR. JONES: Of course, Your Honor.

6 THE COURT: Okay.

7 Have any of these witnesses been objected to from Plaintiffs'
8 perspective?

9 MR. JONES: No, Your Honor.

10 THE COURT: Okay.

11 So Defense, okay. So on any of these witnesses is there any
12 issues, because I looked through everything this weekend. Now, once
13 again, I did not see that there was any issues relating to any of these
14 individuals to these names. Is there anything relating to any of these
15 individuals that Plaintiff is aware of?

16 MR. JONES: No, Your Honor, none.

17 THE COURT: So now I'm going to go to Defense. I'm going
18 to ask about these witnesses and then I'm going to ask do you have --
19 apparently there's maybe a difference of opinion on witnesses. Let's go
20 to what Plaintiff says because they're still in their case in chief. Let's
21 walk through these witnesses first and then any difference of opinion by
22 Defense counsel so we can keep this in a nice organized manner. Okay.

23 So Doctor -- we're not going into issues. First let me get
24 through all these. So you say there's issues with Doctor Juell; is that
25 correct?

1 MR. DOYLE: Correct.

2 THE COURT: Okay. Sky Prince, daughter, I did not see any
3 objection or issues; is that correct?

4 MR. DOYLE: Correct.

5 THE COURT: Okay. Next is the son, Lowell. Is it L-O-W-E-L-
6 L?

7 MR. JONES: It is, Your Honor.

8 THE COURT: That's what I thought I saw. Okay. Okay. Any
9 issues or objections with regards to Lowell?

10 MR. DOYLE: No.

11 THE COURT: Okay. Patrick Farris, obviously the other
12 Plaintiff?

13 MR. DOYLE: No.

14 THE COURT: Do not see any issues. Okay.

15 MR. DOYLE: No.

16 THE COURT: And Durham, the brother?

17 MR. DOYLE: No issues, other than at some point, you know,
18 the testimony may become cumulative, but we won't know that until we
19 hear the testimony.

20 THE COURT: Okay. No worries. Okay.

21 So I'm going to deal with Doctor Juell in just a quick second.

22 Counsel for Defense, you were starting to -- when I was
23 asking Plaintiff, you were starting to say a different name, so.

24 MR. DOYLE: I informed Plaintiffs over the weekend that --
25 well, we have Doctor Naomi Chaney scheduled to testify today at 1:30

1 and Plaintiff has been aware of that for quite some time.

2 THE COURT: Now, when you say we, I have to have an
3 understanding is there any agreement between the parties with regards
4 to Naomi Chaney from your position in writing anywhere, emails,
5 anything?

6 MR. DOYLE: Well, we both subpoenaed her. I notified them
7 -- there's no --

8 THE COURT: Okay.

9 MR. DOYLE: -- there's no stipulation, there's nothing in
10 writing, other than Plaintiffs have known, you know, by way of
11 communications from me for quite some time that Doctor Chaney has
12 been scheduled for this afternoon.

13 THE COURT: Okay. When you say she's been scheduled,
14 both subpoenas are -- did your subpoena say this afternoon?

15 MR. JONES: Yes.

16 THE COURT: Was that by agreement with her or was that
17 you all did a subpoena and you picked this afternoon?

18 MR. DOYLE: It was by agreement with her. And she was
19 scheduled for a day last week and by subpoena from us and because of
20 the trial schedule, she was -- you know, she was not going to be able to
21 testify last week, so arrangements were made for her to cancel patients
22 this afternoon, accept the subpoena for this afternoon, and appear this
23 afternoon.

24 THE COURT: And when were those arrangements made?

25 MR. DOYLE: Sometime last week. I can't tell you --

1 THE COURT: I don't remember seeing a new filed subpoena,
2 that's why the Court's asking once again, you know, it's a pretty long
3 case and the Court can't --

4 MR. DOYLE: I vaguely recall it being filed, but I can't --

5 THE COURT: Okay.

6 MR. DOYLE: I could find out.

7 THE COURT: Okay. Did you have the agreement -- there's a
8 difference between -- what I'm trying to get an understanding is, as you
9 all know, there's been lots of challenges in this case about agreements
10 and people changing their mind, even as simple as when one person
11 agreed on whether a juror question could be asked, then the other side
12 said well, if they're going to agree with these, I'll change my mind. So
13 that would be one of Doctor Rives' questions, and we know who did that,
14 so in light of the challenges in this case with this regard, that's why the
15 Court's asking these specific questions, which are generally done in a
16 much more -- I wish you people had some kind of agreement.

17 So was there any agreement with Plaintiffs from Defense's
18 position that Doctor Chaney could come on at 1:30 this afternoon?
19 Defense counsel, your position?

20 MR. DOYLE: That they were notified of this some time ago
21 and never objected or raised an issue.

22 THE COURT: I'm sorry. I'm sorry. The Court's really trying
23 to ask the difference between notify and agreement. That's what I'm
24 trying to ask, okay.

25 MR. DOYLE: Well, I don't know --

1 THE COURT: So when you're saying they were notified,
2 meaning did you tell them a date and time --

3 MR. DOYLE: Yes.

4 THE COURT: -- or did you coordinate with them a schedule
5 of witnesses so that they knew, and they agreed that this would be fine
6 in light of their witness scheduling? That's what I'm trying to get an
7 understanding of, because I wasn't there, so I don't know. And you all
8 didn't do any of this in open court, so.

9 MR. DOYLE: The date and time was not coordinated with
10 Plaintiff's counsel in advance, it was coordinated with Doctor Chaney
11 and her office schedule and which day or part of a day would be most
12 convenient for her in terms of canceling patients so that she could
13 appear on the new date.

14 THE COURT: Okay. So --

15 MR. DOYLE: So my assumption was, we would be in
16 Defense case in chief by this afternoon. That has not proved to be true.
17 And so I assumed that there would be no issue or objection to her
18 coming in out of order under the circumstances, and I haven't been
19 informed that there's an objection to that until perhaps this moment in
20 time, but.

21 THE COURT: Okay.

22 MR. DOYLE: But I haven't actually heard anything.

23 THE COURT: So Doctor Chaney is what you're saying you
24 would like to have at 1:30 p.m. today?

25 MR. DOYLE: Correct.

1 THE COURT: Okay. Anybody else today from Defense's
2 standpoint?

3 MR. DOYLE: I have Doctor Lance Stone, who is one of my
4 damage expert witnesses, who is available today, as well.

5 THE COURT: When you say is available, was there any
6 agreement with Plaintiff's counsel that Doctor Lance Stone would be
7 testifying today?

8 MR. DOYLE: Not an agreement, per se, but I informed them
9 of the schedule of witnesses per the Court's -- we indicated that we
10 would let each other know what the proposed witness schedules were
11 going to be and I have done that.

12 THE COURT: When did you let them know?

13 MR. DOYLE: Over the weekend.

14 THE COURT: Okay. Because you recall the Court wasn't -- it
15 was supposed to be judicial days before -- okay.

16 MR. DOYLE: The Court said 24 hours in advance.

17 THE COURT: Counsel, feel free to read the transcripts. Okay.
18 So the Court listened to the disk. Okay. So you told -- but you told them
19 over the weekend, but Plaintiff hadn't rested as of Friday.

20 MR. DOYLE: Correct. We have been juggling these expert
21 witnesses. They've all been moved two or three times. And so on
22 Friday night and on Saturday I was trying to reschedule my remaining
23 expert witnesses so that they could testify over the -- you know, today or
24 Tuesday or perhaps Wednesday.

25 THE COURT: Okay.

1 MR. DOYLE: It's been a challenge trying to keep everyone
2 scheduled.

3 THE COURT: Okay. So those are the two. Is there anybody
4 else from Defense standpoint?

5 MR. DOYLE: Well --

6 THE COURT: Today.

7 MR. DOYLE: For just today?

8 THE COURT: I'm dealing with today.

9 MR. DOYLE: Just those two.

10 THE COURT: Okay. And you notified Plaintiff in writing. Did
11 you get any response from Plaintiff when you notified them about Doctor
12 Chaney and Lance -- Doctor Lance Stone?

13 MR. DOYLE: Yes.

14 THE COURT: And what was their response?

15 MR. DOYLE: I'll tell you in a moment. The response was --

16 THE COURT: By the way, the Court's looking. I don't see a
17 subpoena. That doesn't mean -- I just don't see anything.

18 MR. DOYLE: The response was, also, as you are aware, we
19 object to Doctor Stone's testimony and as with Doctor Adornato, and
20 Doctor Chaney, we request that he undergo voir dire outside the
21 presence of the jury prior to any testimony being offered to the jury.

22 THE COURT: What was your email to them? I'm just trying
23 to say, you specifically asked for Monday at specific times?

24 MR. DOYLE: Yeah. My email to them was, Doctor Juell is
25 returning and will be available at 9 a.m. I will be calling Doctor Chaney

1 presumably out of order at 1:30 p.m. Doctor Stone is also scheduled for
2 tomorrow, assuming the wild fires in Sonoma County do not prevent
3 him from leaving. What witnesses do you have left besides Mr. Farris?

4 THE COURT: Okay. So --

5 MR. DOYLE: And I was informed of Sky Prince, Lowell
6 Pender, Mr. Farris, of course, and Addison Durham.

7 THE COURT: Okay. Wait. Sky, Lowell. So the four
8 witnesses that they named you --

9 MR. DOYLE: Correct.

10 THE COURT: -- that they still had those witnesses to call?

11 MR. DOYLE: Correct.

12 THE COURT: Marshal, would you mind checking? There's
13 someone peering their head in the door. I'm not sure if that's a potential
14 witness or not. Thank you so much.

15 Okay. So counsel for Plaintiffs, we've got the jury and the
16 Marshal's going to check on the jury in just a second.

17 I'm going to ask a simple question and then we're going to
18 have to go to I guess if there's some Doctor Juell issues that the Court
19 was not aware of. So was there an agreement with Doctor Chaney to
20 testify today at 1:30?

21 MR. JONES: No, Your Honor. We objected to the original
22 subpoena. We have not seen any other subpoena. We do not have
23 necessarily a problem with her testifying in an extremely limited area.
24 She was not properly disclosed as an expert by anyone, so she can't
25 offer expert opinions. So essentially she can say that she was the

1 medical treating provider for the Plaintiff, and she can't offer any
2 diagnostic opinions about anything. So we have significant objections
3 as to Doctor Chaney.

4 THE COURT: Significant objections set forth where? Are
5 they timely objected to in various -- was she ever disclosed as an expert,
6 either as an expert --

7 MR. JONES: Objected when we first found out they were
8 going to subpoena her. So they subpoenaed her, and we objected
9 immediately --

10 THE COURT: Okay.

11 MR. JONES: -- to their subpoena on -- because it came to
12 our attention that they might be attempting to actually call her to testify
13 as an expert.

14 THE COURT: What I'm trying to get an understanding is, did
15 you all designate her as a treater?

16 MR. JONES: Not as a treating expert I don't believe, Your
17 Honor.

18 THE COURT: Okay. Was she designated as an expert or
19 rebuttal expert and provide a report by anyone?

20 MR. JONES: Not to my knowledge, Your Honor.

21 THE COURT: Okay. Because you can appreciate this Court
22 can't go --

23 MR. JONES: Of course.

24 THE COURT: -- back and look from 2016 through the entirety
25 of the record. That's why you all should be fully prepared to answer

1 these right and then the answer.

2 MR. JONES: They --

3 THE COURT: You understand I need to know --

4 MR. JONES: The Defense --

5 THE COURT: -- even when she is designated, how she was --

6 MR. JONES: The Defense may have listed her in an
7 inappropriate way within their disclosure, but it wouldn't be sufficient to
8 permit her to actually testify as an expert.

9 THE COURT: The Court was trying to be very clear. She was
10 your client's treater, correct?

11 MR. JONES: That is true, yes.

12 THE COURT: So that's why I asked you first was she
13 designated as a treater, because you know there's treater rules.

14 MR. DOYLE: Uh-huh.

15 MR. JONES: Right.

16 THE COURT: There's combo treater expert rules and there's
17 pure expert rules. I'm trying to go through all three. Did you designate
18 her as a treater?

19 MR. JONES: Yes, Your Honor. I expect she was designated
20 as a treater, I believe that's correct.

21 THE COURT: But you're not calling her as a treater; is that
22 correct?

23 MR. JONES: We're not.

24 THE COURT: Okay.

25 MR. JONES: In fact, we are not calling her at all, Your Honor.

1 THE COURT: Okay. So with that, 16.1, would she ever do an
2 expert report, 16.1, expert report, either as an initial or rebuttal?

3 MR. JONES: No, Your Honor.

4 THE COURT: Okay. And since you did not designate her as a
5 treater, you didn't do -- okay.

6 So, Defense counsel, do you agree that Doctor Chaney was
7 never designated, never prepared an expert report?

8 MR. DOYLE: She never prepared an expert report.

9 THE COURT: Okay.

10 MR. DOYLE: She was disclosed --

11 THE COURT: I asked --

12 MR. DOYLE: Okay. Correct, no expert report.

13 THE COURT: Okay. If you don't mind -- okay, so no expert
14 report. The parties agree. Okay.

15 Do you agree with Plaintiff that she was designated by
16 Plaintiff initially?

17 MR. DOYLE: Yeah. She's listed as a witness in their 16.1
18 disclosure.

19 THE COURT: Okay, that's fine. She's a 16.1. Did Defense
20 ever list her as a witness and, if so, when?

21 MR. DOYLE: I believe she's in our 16.1's, as well.

22 THE COURT: She is?

23 MR. DOYLE: Pardon me?

24 THE COURT: She is?

25 MR. DOYLE: I believe so.

1 THE COURT: And are we talking initial 16.1's or
2 supplementals; because if I need supplementals, I need to know the
3 timeframe for supplementals during the discovery or was it your pretrial
4 supplementals, 30 days before trial after discovery closed?

5 MR. DOYLE: I only have copies of my supplemental
6 disclosures going back to the 4th and she's -- she is --

7 THE COURT: She's in your fourth supplemental?

8 MR. DOYLE: Well, no, I -- let me just check something. She
9 was disclosed no later than the third supplemental. I can tell by what's
10 bolded and not bolded in the fourth. But I can get the third
11 supplemental.

12 THE COURT: A date? A date? I'm sorry. When would the
13 third or the fourth be? I'm trying to get before July 24th, 2019, which
14 pursuant to your --

15 MR. DOYLE: Oh, okay.

16 THE COURT: -- eighth stipulation would have been the close
17 of your discovery, right?

18 MR. DOYLE: So I'm looking at my third supplemental
19 disclosure filed on May 21, 2019. And in that disclosure Doctor Naomi
20 Chaney is disclosed in unbolded print, indicating to me that she's not
21 being disclosed for the first time in the third supplemental, so she would
22 have been disclosed previously, but the specific date I can't give you, but
23 it's certainly prior to May 21, 2019.

24 THE COURT: But never as an expert?

25 MR. DOYLE: Never as an expert.

1 THE COURT: Okay.

2 MR. DOYLE: She's a treating physician.

3 MR. JONES: And, Your Honor, we don't dispute anything
4 that he has said with respect to how they've designated her, but we will
5 say that the description they give for her is identical to 24 other people
6 disclosed.

7 THE COURT: That's what the Court's next question was
8 going to be, because the Court's going to need to see how she was
9 disclosed, right? What is the statement after her disclosure, please; what
10 does that say?

11 MR. DOYLE: It says --

12 THE COURT: I'm sure it's -- I have to find out if it's compliant
13 right within our CP 26. Is it a compliance statement that puts the other
14 side on full notice of what she's going to be testifying? Well, first, what's
15 the scope of her disclosure, please?

16 MR. DOYLE: It says Doctor Chaney is expected to testify
17 regarding her examination, treatment, diagnosis --

18 THE COURT: Just a sec. A little slower. Examination?

19 MR. DOYLE: Treatment.

20 THE COURT: Treatment.

21 MR. DOYLE: Diagnosis. And overall health conditions of
22 Plaintiff. And Doctor Chaney was also --

23 THE COURT: Just a sec, just a sec, hold on. Conditions of
24 Plaintiff. Okay.

25 MR. DOYLE: And she was also deposed.

1 THE COURT: Okay. I asked for disclosures first, that's what
2 I'm asking, okay? So that's the sum total of her designation; is that
3 correct?

4 MR. DOYLE: Correct.

5 THE COURT: Did Defense ever change that, did it ever make
6 it more detail compliant with anything else, yes or no?

7 MR. DOYLE: It was not changed, and I believe it was
8 compliant with the rules in existence at the time.

9 THE COURT: So it was never changed; is that correct?

10 MR. DOYLE: Correct.

11 THE COURT: Okay. Treatment, diagnose -- okay. I'm sorry,
12 the first word again before examination?

13 MR. DOYLE: Regarding her examination.

14 THE COURT: Regarding her examination, treatment,
15 diagnosis, and overall health condition of Plaintiff. Okay.

16 MR. DOYLE: Conditions of Plaintiff, yes.

17 THE COURT: Health conditions of Plaintiff. That's her
18 designation. Okay. So she was deposed, okay, but just deposed, but
19 never designated in any way as an expert. Okay. So she shows up as a
20 -- does she show as a trial witness anywhere, trial witnesses in
21 individual --

22 MR. JONES: The Defense listed her, Your Honor.

23 THE COURT: -- trial memorandums, right? Pretrial
24 memorandum, does she show up as a trial witness by Defense or by
25 Plaintiff?

1 MR. JONES: She does by Defense, Your Honor.

2 THE COURT: Okay. So she shows up as a trial witness by
3 Defendant. Okay.

4 MR. DOYLE: And by Plaintiff.

5 THE COURT: Okay. Any different designations by Defense
6 as a trial witness?

7 MR. DOYLE: Not in the pretrial disclosure. She was simply
8 listed as a witness.

9 THE COURT: Okay. So no other designation, other than that
10 initial. Okay. So it is what it is.

11 So for purposes, let's -- we're now at the 9:00 hour,
12 unfortunately, bringing these issues. So you all have Doctor Juell.

13 Marshal, can you check to see our jurors, please, because
14 they were told 9:00. It looks like they're unfortunately, they're waiting in
15 the hallway again.

16 Doctor Juell. We understood as we left Friday that Doctor
17 Juell was coming right back on and continuing examination. The Court
18 was not advised of any issues whatsoever with regards to Doctor Juell.

19 MR. DOYLE: But the Court is -- at the end of his testimony
20 there was an object -- the Court is well aware of the two issues. One has
21 to do with the --

22 THE COURT: The Court is not well aware, otherwise the
23 Court would not have said that the Court's not aware of any issues,
24 counsel. I don't say things that I don't mean, okay. When I say I'm not
25 aware of any issues, I'm not aware of any issues.

1 I asked before we left on Thursday to make sure because I
2 was staying home to spend my weekend to take care of this case to try
3 and help you all some more. So nobody said that there would be any
4 issues that the Court was going to need to resolve Monday morning with
5 regards to Doctor Juell. The Court asked you all to come here at 8:30
6 because of every other day there's been last minute things that have
7 happened and to not have the jury wait too long out in the hallway, to try
8 and avoid that, hoping that we could get these done and realized that
9 okay, I was still aware of -- I wanted to clear the exhibit thing.

10 MR. DOYLE: May I --

11 THE COURT: So no, the Court was not aware of anything
12 regarding Doctor Juell that the Court would need to resolve on Monday
13 morning. And I would have hoped that counsel, either counsel, if they
14 had any issues, would have let the Court know so that the Court could be
15 prepared first thing Monday morning.

16 So, no, the Court wasn't aware, but now that you're saying
17 that there's something, what, counsel for Defense, is an issue that you
18 would like the Court to address?

19 MR. DOYLE: Sure. The last question to Doctor Juell at the
20 end of the day on Thursday was words to the effect, Doctor, I want to ask
21 you about your malpractice. I objected because the question was going
22 to be I want to ask you about your malpractice history.

23 The Court called us to sidebar and at that point in time I
24 pointed out that we had submitted a trial brief on asking expert
25 witnesses about their medical malpractice history.

1 The Court indicated -- and at that point in time the jury was
2 sent home. And so it is a pending objection. You have the Court's trial
3 brief. And then Plaintiff submitted a trial brief over the weekend
4 indicating why they can ask Doctor Juell about his malpractice history.
5 That's one issue.

6 THE COURT: Excuse me, counsel. The Court has not
7 received any courtesy copies as Plaintiff would know of any trial briefs,
8 so please don't say I have, okay.

9 MR. JONES: I did file one over the weekend, I think on
10 Saturday, Your Honor, but.

11 THE COURT: It doesn't count as a trial brief --

12 MR. JONES: Of course.

13 THE COURT: -- until you hand it to the Court --

14 MR. JONES: Absolutely.

15 THE COURT: -- under EDCR 7.27. And so that's nice you
16 may have filed it. As you know, but if you don't give the Court courtesy
17 copies on things, the Court doesn't have them.

18 MR. JONES: Of course.

19 THE COURT: So if you'd like to provide the Court a courtesy
20 copy.

21 MR. JONES: Thank you, Your Honor.

22 THE COURT: You've already served opposing counsel. You
23 can provide the Court a courtesy copy. So, obviously, one would know,
24 since the Court's being handed now at 9:07 a courtesy copy that I haven't
25 had a chance to read, but I just got handed, so I don't know, and I didn't

1 get anything about that.

2 MR. DOYLE: And our trial brief -- I'm sorry.

3 THE COURT: There was, counsel -- and indicates I'm still
4 speaking, thank you.

5 And, in light of this, it looks like I'm going to have to tell the
6 jury that they're going to be outside because it looks like I'm going to
7 need to read this second brief in order to address the issue.

8 And, remember, there was not a question pending, so there
9 couldn't have been an objection to a question. The area of inquiry,
10 whatever. The transcript and the video just say what they say.

11 So the short answer is, Plaintiff's counsel, with Doctor Juell
12 coming back on the stand, are you requesting or stating that you have a
13 basis to inquire about Doctor Juell in some area that you just handed the
14 Court a brief on?

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

16 THE COURT: Are you planning on doing that first?

17 MR. JONES: No.

18 THE COURT: I'm trying to evaluate timeframe with regards
19 to you have a jury outside the hallway and with the Court needing to
20 read what you just handed it to me. So the timing stamp places you on
21 cross-examination. Is that intended to be? This is just a simple question
22 for timing and organization. Are you intending that to be your first area
23 of inquiry or is there a different area of inquiry you're intending to go
24 into first?

25 MR. JONES: Your Honor, I can go into another area for at

1 least 15 minutes before that comes up.

2 THE COURT: Okay. Only 15 minutes. Okay. I've got to
3 figure out that. Okay. So okay.

4 We'll circle back, then to counsel for Defense. The second
5 issue you'd like to bring up and can you please just tell me the issue
6 because I appreciate that you're saying some things which respectfully
7 I'm going to disagree with your characterization, so can we just have
8 what the issue is, please, so the Court can rule on it? Thank you. I
9 appreciate it. Thank you.

10 MR. DOYLE: It's the Sobe beverage issue, and the Court
11 indicated that --

12 THE COURT: Please don't say what the Court -- I would
13 appreciate if you not make representations what the Court purportedly
14 did or did not. If you have an issue, please just let me know what the
15 issue is so that the Court can resolve it and then the Court doesn't have
16 to circle back and restate things, okay. So what was your issue with
17 regards to Sobe, please?

18 MR. DOYLE: It is my intent with Doctor Juell to come back to
19 the issue of pulmonary aspiration syndrome based on Plaintiff's
20 cross-examination of Doctor Juell and that pulmonary aspiration
21 syndrome is mentioned in both of his reports. The Sobe beverage as a
22 cause of aspiration is mentioned in Doctor Rives' July 4th progress note
23 or the Sobe beverage, I'm sorry, is mentioned in the July 4th note by
24 Doctor Rives, which is in evidence.

25 And Doctor Juell, at his deposition, beginning on page 34 at

1 line 2, was asked questions about and explained his opinion about the
2 aspiration and the ideology of the aspiration and he referred to the Sobe
3 beverage not by name, but by the fact that Mrs. Farris was drinking
4 fluids, when in fact she was NPO.

5 And it was my understanding that I could not refer to the
6 Sobe beverage with an expert witness without first bringing it up with
7 the Court outside the presence of the jury.

8 THE COURT: Counsel, as you know, there's been no motions
9 in limine. Please point to what's referenced in any transcript with
10 regards to a Sobe beverage with regards to Doctor Juell, because there
11 have not been any determinations or requests or even mentioned what
12 the Sobe beverage and Doctor Juell presented to this Court. Now, I
13 would have preferred it had been presented to this Court before Doctor
14 Juell testified so that this Court could make a well-reasoned
15 determination, but nobody's mentioned Sobe to this Court and Doctor
16 Juell.

17 So please state -- you're stating that this Court made some
18 statement with regards to Doctor Juell and Sobe, please let me know
19 where you're stating that this Court did so, please.

20 MR. DOYLE: Well the Court ruled -- the Court ruled that
21 concerning the reference to Sobe beverage, that I -- that if I was going to
22 bring it up with Doctor Rives, I first needed to discuss it with the Court
23 outside the presence of the jury. And if I was going to bring it up with an
24 expert witness, the Court indicated I would need to show the Court
25 where in a report or deposition that that was mentioned outside the

1 presence of the jury.

2 THE COURT: Can you please state, counsel -- let's go back.
3 The same statements poorly attributed to this Court and I'm trying to ask
4 you, where's your basis for the statements that you're attributing to this
5 court, counsel?

6 MR. DOYLE: I read them in the transcript over the weekend.
7 I don't have the transcript with me.

8 THE COURT: Which transcript of which day?

9 MR. DOYLE: I can't tell you which day, but it's in the
10 transcript.

11 THE COURT: Counsel, which -- are you saying a trial
12 transcript?

13 MR. DOYLE: Yes.

14 THE COURT: Okay.

15 MR. DOYLE: Well, it's not an official trial transcript, it's a --

16 THE COURT: Well, excuse me. A trial transcript. You didn't
17 order any trial transcripts is where this Court was going to ask that
18 question because you've only ordered DVDs. So that's why when you're
19 using the term trial transcript, to this Court's knowledge you only have
20 asked for Madam Court Reporter to download DVDs, which as you recall,
21 she has stayed overtime in order to accommodate that request. But
22 you've only ordered DVDs, so there are no trial transcripts.

23 That's why the Court is asking the question if you're saying
24 that there's a trial transcript, there is no trial transcript. To this Court's
25 knowledge no one has ordered any daily trial transcripts. Madam Court

1 Reporter, has anyone ordered any daily trial transcripts? No? No? No
2 one's ordered any daily trial transcripts, so there are no daily trial
3 transcripts.

4 So the reason why for clarity here, because remember,
5 you've got to have clarity because if somebody used the term trial
6 transcripts, that has a term of art to gets utilized if anybody wishes to do
7 this down the road, right? You wouldn't want anyone to infer.

8 Now, to the extent that you're having I guess presumably
9 you're having somebody type something or do something --

10 MR. DOYLE: Right. So I have an unofficial typed --

11 THE COURT: It's not an official transcript. It's whatever you
12 want to call whatever you're doing, but please don't refer to it as the trial
13 transcript because that implies that there's something official about it.
14 Nobody has ordered any trial transcripts, okay? And what we would
15 never want any confusion, right, if down the road anybody needs this for
16 any other purposes, that somehow you're saying it's in the official trial
17 transcript, anything that the Court's approved, anything that's even been
18 asked or anything like that.

19 To the extent whatever you're doing for any private person is
20 whatever you wish to do, that's perfectly -- whatever you wish to do, but
21 it's not a trial transcript, okay? And we just need that clarity for the
22 record so if somebody's reading this down the road, they don't have that
23 confusion, okay?

24 So whatever typing you're getting, however you wish to do
25 it, that's perfectly fine if people wish to do it, but please just don't call it a

1 trial transcript, okay, just so we have clarity of the record. Thank you so
2 much.

3 Okay. So --

4 MR. DOYLE: It was during Doctor Rives' testimony. I will
5 email my office, and I will find out the date and approximate time that
6 this happened, but Doctor Rives, when he was testifying on cross-
7 examination, mentioned the Sobe beverage.

8 THE COURT: Okay. But you never brought it back to this
9 Court's attention with regards to Doctor Rives and the Sobe beverage is
10 why this Court was asking the question, right? Because there was some
11 statements by Doctor Rives, there was an objection, and there was a
12 Sobe beverage. And the Court said, it's paraphrasing because it's been a
13 few days because as you recall Doctor Rives testified on about three
14 separate days, there was some reference that came up in the middle of
15 his testimony with regards to a Sobe beverage.

16 So as the Court had not been provided any information that
17 this was in any way an issue, the Court asked that you all provide the
18 Court the background information so that the Court can address the
19 objection and address the issue if it was going to be an issue. But then
20 you all were supposed to -- whoever had the issue or was going to bring
21 it forth, was then supposed to bring it to the Court's attention in enough
22 time with background information so that the Court can have an
23 understanding of what the issue was and then could rule on the issue.
24 Since that time no one has mentioned it to the Court.

25 Now, at this juncture do you think it is appropriate to

1 mention it when you've released the witnesses in cross-examination of a
2 witness and you're potentially wanting to bring up -- I don't know if it will
3 or will not be a new issue because I haven't heard the cross-examination
4 of Plaintiff, a new issue, or maybe not a new issue, we don't know,
5 potentially on redirect, but from a Court's standpoint I'm going to
6 continue to ask the parties when you several days' notice to please say
7 things and bring it to the Court's attention so that I can have the
8 background, have the information, know what the issue is, so that I can
9 have an understanding so I can make a determination.

10 So at this juncture we're at the same or similar situation with
11 regards to bringing it while you now have a jury outside waiting in the
12 hallway, a witness that's partly through their testimony, and an issue
13 that could have been brought up days in advance to this Court so that
14 the Court can have an opportunity to have an understanding what the
15 issue is and then try and resolve the issue.

16 So, with regards to the Sobe beverage --

17 MR. JONES: And, Your Honor, I can definitely give some
18 clarification on this. I actually happened to watch the video yesterday.

19 THE COURT: Okay. So why don't you --

20 MR. DOYLE: Well, I haven't finished.

21 THE COURT: Okay. So let me let Defense finish. So
22 Defense, so you have an issue you want to bring up with Doctor Juell,
23 the pulmonary aspiration question, okay. And she says in Doctor Rives
24 report -- is that in Exhibit 1, by chance? You said it's an admitted exhibit.

25 MR. DOYLE: I'm referring to Doctor -- well, Doctor Rives'

1 progress note that mentions the Sobe beverage is in evidence.

2 THE COURT: Sorry. And that would have to either be Exhibit
3 1 or Exhibit 6, so.

4 MR. DOYLE: It's in Exhibit 1.

5 THE COURT: Page what, please, so I can go find it so I can
6 have some frame of reference of what you all are speaking about? You
7 can appreciate there's over 600 pages that the Court can't go flipping
8 through to have an understanding.

9 MR. DOYLE: No, no, of course.

10 THE COURT: I appreciate it. Thank you.

11 MR. DOYLE: Exhibit 1, page 0575.

12 THE COURT: 575. Okay.

13 So, counsel, you were finishing?

14 MR. DOYLE: Yes. And what Doctor -- and the Court several
15 times --

16 THE COURT: Please don't say what the Court, just say what
17 the issue is which you'd like to, please, because counsel --

18 MR. DOYLE: In his deposition --

19 THE COURT: Whose deposition?

20 MR. DOYLE: In his deposition, Doctor Juell was asked a
21 question beginning at page 33, line 21, what is your -- take me through
22 the steps you used to come to that opinion that she had aspiration
23 syndrome. And his answer was, well, her deterioration was fairly
24 progressive, you know, from the time that she had the operation. She
25 was fed early, you know, and/or at least she was taking fluids in that she

1 had vomited and then she developed this tachycardia and respiratory
2 failure.

3 So what Doctor Juell would testify to is that the -- her being
4 fed early and she was taking fluids in, that was the Sobe beverage as
5 documented by Doctor Rives at a point in time when Mrs. Farris was not
6 supposed to be taking anything in by mouth.

7 THE COURT: Was the Sobe beverage itself ever referenced
8 in his deposition or just the idea of fluids?

9 MR. DOYLE: He doesn't use the word Sobe, but the fluids he
10 is referring to is the Sobe beverage documented by Doctor Rives in his
11 July 4th note.

12 THE COURT: Okay. And you know that because?

13 MR. DOYLE: Because I have asked Doctor Juell and he has
14 told me that.

15 THE COURT: Okay. I don't know if it's somewhere else in
16 the deposition, if it came up somewhere. I'm just trying to understand --
17 okay.

18 So counsel for Plaintiff --

19 MR. JONES: Yes, Your Honor, so --

20 THE COURT: Without going -- I can't -- I'm trying to decide
21 timing real quickly because these are, as you know --

22 MR. JONES: Absolutely.

23 THE COURT: These are -- it's now 9:20. I would have told
24 the jury not to come in until 10:00 if -- this is what I keep asking you all to
25 do is tell me if there's going to be issues.

1 MR. JONES: Your Honor --

2 THE COURT: I asked if a half hour was enough, that's why I
3 said 8:30, but -- okay. So is there something in your cross-examination
4 that you feel is going to elicit on redirect an ability to go into this area?

5 MR. JONES: No. And I think it's important to say a couple of
6 things because I appreciate what has happened. We specifically
7 attempted to speak with counsel on Thursday when we were leaving and
8 he rejected our request to speak, didn't want to speak with us, and left.

9 So the idea that --

10 THE COURT: And, counsel --

11 MR. JONES: We have an issue with that.

12 THE COURT: Okay.

13 MR. JONES: And so anything -- we received emails
14 yesterday on any of these issues. Now -- well, we didn't even receive
15 anything on this.

16 In terms of the fact that the Plaintiff took in fluids post-
17 operative day one, which Juell stated in his direct, we don't dispute that
18 in any way. The Defense, in this case, withdrew their affirmative defense
19 of contributory comparative negligence, okay? So there is no
20 comparative evidence in this case. So the fact that an NPO order was
21 violated, if it was, is irrelevant. So it shouldn't be able to be brought up
22 in any form that there was any order violated.

23 Moreover, the records are definitive that Doctor Rives signed
24 the NPO order nine minutes before his note, which is the only note that
25 says he did -- that he says that she took fluids. And --

1 THE COURT: Wait, wait. Walk me back what you just said.

2 MR. JONES: Yes. So Doctor --

3 THE COURT: Doctor Rives authorized the fluids; is that what
4 you're saying?

5 MR. JONES: No.

6 THE COURT: Okay.

7 MR. JONES: The only NPO order that you have is put into
8 the compute and signed by Doctor Rives at 12:13 p.m., just afternoon,
9 post-op day one. Then he puts in a note at 12:22 p.m., nine minutes
10 later, that the patient has taken in fluids, has taken in this Sobe beverage.
11 It's important to note that his original order was not actually put into
12 effect until 12:22, one minute after his own note by the nurse.

13 So she didn't violate an NPO order. Moreover, there is no
14 claim of comparative negligence. So the idea of them trying to bring it in
15 as though the Plaintiff did something wrong here, is absurd.

16 THE COURT: Okay. And what evidence or basis that has
17 come out will establish this chronology? I mean I'm hearing you argue --

18 MR. JONES: Right.

19 THE COURT: -- I'm hearing Defense argue, but I have not
20 heard this chronology issue come out for either side to be able to get
21 into this area.

22 MR. JONES: Absolutely.

23 THE COURT: So that's where the Court's asking this
24 question.

25 MR. JONES: And, Your Honor, I think it's more fundamental

1 than that. The Plaintiff stipulates to the reality that the Plaintiff may have
2 taken in fluids post-op day one.

3 THE COURT: You said that with Doctor Rives, but --

4 MR. JONES: Absolutely. We said that with Doctor Rives, I
5 said that with Doctor Juell. I outlined that with him.

6 Now, Doctor Juell did say that the Plaintiff vomited in his
7 deposition, which is untrue and unsupported by any record at all in the
8 case. And so but -- and so that is one thing that I'll probably point out to
9 Doctor Juell that that actually -- that his opinion that there was vomiting
10 isn't supported by the record. But beyond that, that's all.

11 And so I'm not going to dispute the idea that she intook
12 fluids post-op day one. I don't have any reason to. But for them to bring
13 up Sobe, in particular, which they haven't brought up before, now it
14 brings in this potential separate argument of sugary or something like
15 that that has never come up before in any report, in any -- in his
16 deposition he didn't say it.

17 THE COURT: Who's the he?

18 MR. JONES: Doctor Juell.

19 THE COURT: Okay. I'm just --

20 MR. JONES: He indicated that there was fluid intake and no
21 one disputes that.

22 The reason they want to try to bring in Sobe is they want to
23 create this brand new causation theory associated with diabetes and
24 sugar that has never been brought up before. That's what they're trying
25 to do here, Your Honor.

1 And so it's absolutely inappropriate, it was never done, the
2 opinion was never given. And the maximum that was stated with
3 respect to this pulmonary aspiration syndrome was that she intook fluids
4 and that she vomited, which she didn't do, but she did intake fluids
5 according to Doctor Rives' note and Doctor Rives' note alone.

6 THE COURT: Okay. So are you saying there's nothing about
7 Sobe beverage that has come up, just the idea of fluids and the
8 aspiration?

9 MR. JONES: That is correct, Your Honor. Absolutely, that's
10 exactly how it is. And so no one has mentioned Sobe in this case. Not a
11 single expert has mentioned it, not once, on either side.

12 THE COURT: How do we have Sobe, it's even gotten into his
13 note that has not come up?

14 MR. JONES: Right. The Plaintiffs are as perplexed as
15 anyone else. So we have no idea.

16 And, by the way, his answer where he said Sobe has been
17 stricken without objection from the Defense. I requested the Court strike
18 it. It is not in the record. And the Defense did not object to my request
19 for the strike. So the entirety of that answer was stricken from the
20 record.

21 THE COURT: I have to -- once again, this is the type of thing
22 this Court likes to be prepared so I would have listened to it to have
23 some idea. I've just -- okay. People making assertions, this Court likes to
24 be prepared. That's why it's not appropriate to bring these outside --

25 Well, counsel for Defense do you disagree since you have

1 your own unofficial typed version, does it say that you objected to it
2 being stricken?

3 MR. DOYLE: I can't say yay or nay on that.

4 THE COURT: Don't you have it on the computer right there
5 with your IT person?

6 MR. DOYLE: No, I don't. And it would be an -- no, I don't
7 have it handy. But I don't think that's really the issue at this point.

8 THE COURT: Okay. What date and time is it? You just said
9 you listened over the weekend, Plaintiffs' counsel, the Court's going to
10 have to listen to that.

11 MR. JONES: Your Honor, and I can -- I can get a rough
12 estimate.

13 THE COURT: He testified for three different days. It's not
14 even one day, so.

15 MR. JONES: I can get a rough estimate. Yeah, I can get you
16 the day.

17 MR. DOYLE: May I respond while he's looking?

18 THE COURT: My simple question is, is Sobe mentioned
19 anywhere other than on page 575 of Exhibit 1? Does it come up in
20 deposition of Doctor Juell, did it show up in any of his reports at all?

21 MR. DOYLE: It shows up in his deposition in the language
22 that I quoted for you where he refers to fluid and liquids. That's the
23 Sobe beverage. He's referring to the July 4th note. As I --

24 THE COURT: My specific question was the word Sobe come
25 up, Sobe. Do the letters S-O-B-E show up anywhere other than on page

1 575 of Exhibit 1, the Saint Rose Dominican Hospital, St. Martin Campus,
2 progress note that's bated stamped 575 that's in Exhibit 1?

3 MR. DOYLE: The word Sobe does not appear elsewhere to
4 my knowledge.

5 THE COURT: Okay. And is it accurate that you withdrew
6 from your defense comparative negligence?

7 MR. DOYLE: Yes, but this has nothing to do with
8 comparative negligence. It goes to the issue of causation.

9 THE COURT: Okay.

10 MR. DOYLE: I'm not -- frankly, I had never even put -- I had
11 never thought about diabetes and sugar in a Sobe beverage until -- I
12 mean I had never thought of that as some possible argument to make.

13 THE COURT: So then why do you need to use the word Sobe
14 versus just saying liquids?

15 MR. DOYLE: Well, it's in evidence. It's in the evidence that
16 the Plaintiff stipulated to, the Sobe beverage.

17 THE COURT: The Court will actually -- you have a striking,
18 right, of Doctor Rives' testimony.

19 MR. DOYLE: But it's still in the -- it's still in the --

20 THE COURT: Can I finish my sentence, please.

21 Since it is stricken from the testimony and Doctor Juell does
22 not use the word Sobe anywhere in any document associated with him
23 in his deposition, how would he be able to use the word Sobe for the
24 first time on the stand unless his recollection was refreshed by you
25 showing him 575?

1 MR. DOYLE: Because at the time of his deposition testimony
2 when he gave the testimony I quoted, he was, in his mind, thinking of
3 the note by Doctor Rives on July 4th.

4 THE COURT: My question's a little bit different. Why do you
5 need to use the word Sobe versus using fluid, which would be consistent
6 with the term he used as you stated in his reports and in his deposition?

7 MR. DOYLE: Well, because Sobe is the fluid he was referring
8 to. I mean if the Court is ruling that I can ask Doctor Juell about her
9 taking in fluids when she was NPO and not mention Sobe, okay, I mean I
10 understand that.

11 But in addition, Plaintiff's arguments about Doctor Rives and
12 his orders and the timing of the orders, the challenge with that is, there
13 are no orders in Exhibit 1 that was put together by Plaintiff. And, in fact,
14 Doctor Rives' standard post-operative orders going back to July 3rd have
15 her being NPO. So I'm not sure what he's referring to when he's talking
16 about orders and whatnot, but there's certainly nothing in Exhibit 1
17 about that.

18 THE COURT: Okay. Two separate issues where the Court's
19 trying to ask if there's a perceived prejudice from using the term Sobe
20 and you're not trying to assert anything from a comparative negligence
21 or any aspect that you need to use the term Sobe and to the extent that
22 that could imply something that was her fault because of her diabetes,
23 because Sobe is a sugary drink, which would be interesting because no
24 one is even setting a foundation that Sobe is or is not a sugary drink, but
25 regardless, to avoid that confusion, right, and to avoid that potential

1 prejudice and to avoid the idea that could be implying that you're saying
2 comparative negligence when you have specifically withdrawn that
3 affirmative defense, the Court's question is, using the term fluids, does
4 that not equally meet your needs and if it doesn't why wouldn't it
5 because that was the term that he used in his report, you stated, and the
6 term he used in his deposition. So does that not meet Defense's needs
7 for --

8 MR. DOYLE: I mean I can live with testimony from Doctor
9 Juell and/or Doctor Rives that --

10 THE COURT: We're talking Doctor Juell specifically. He's the
11 witness on the stand. He's going to be all set, right?

12 MR. DOYLE: That she drank fluid or liquids at a time when
13 she was supposed to be NPO.

14 MR. JONES: No, there's no --

15 THE COURT: Okay. Counsel, we have two different issues
16 here.

17 MR. JONES: Absolutely.

18 THE COURT: I've got to focus on one at a time, right?

19 MR. DOYLE: Which goes to causation and has nothing to do
20 with comparative fault or negligence.

21 THE COURT: Okay. Two separate issues. If the issue is fluid
22 intake and the causation versus sugary beverage, there's a distinction,
23 okay? So the Court's first question.

24 The next question is, isn't it a matter for the jury and a matter
25 for each of you all to flush out on examination or cross-examination

1 whether there is or is not a chronology with regards to whether she was
2 or was not NPO and is that not a distinct issue from the specific beverage
3 she drank, which was more your prejudice argument versus you've
4 already agreed she drank some fluids.

5 And the issue then would become for you to, with whatever
6 witnesses and in an appropriate manner subject to things that the Court
7 can't advise and does not advise and does not ever provide advisory
8 opinions, but wouldn't that be both up to counsel to elicit the appropriate
9 testimony based on the witnesses in accordance with the applicable
10 rules as to whether she was or was not NPO at the time and isn't that a
11 distinct issue not really before the Court right now?

12 MR. JONES: Your Honor, I think it is a distinct issue, but I
13 think it also has a very obvious implication of comparative negligence or
14 contributory negligence if she did something against the orders that had
15 been given. And so while I do believe there's impeachment for that, I
16 don't think it's an appropriate argument to make. I think it goes directly
17 outside the scope of an argument the Defense could make.

18 THE COURT: But doesn't the Court have to listen to
19 questions to see how those questions get asked to see if they're in the
20 concept of a causation, because do you agree that Doctor Juell gave a
21 causation opinion on pulmonary aspiration?

22 MR. JONES: Yes, Your Honor.

23 THE COURT: And liquids do relate to a causation opinion on
24 pulmonary aspiration, whether you agree or disagree with the opinion,
25 whether you agree or disagree with the vomiting and the liquids' impact

1 on that, does that not go to part of the basis of his opinion?

2 MR. JONES: Yes, Your Honor.

3 THE COURT: Okay. So do we have an agreement that
4 Defense does not need to use the word Sobe and that you can use fluids,
5 which is consistent with his deposition testimony and his reports to
6 avoid the prejudice issue?

7 MR. DOYLE: I could live with that. I just at some convenient
8 point would need to make sure Doctor Juell doesn't use those words.
9 I've already cautioned him about not using them, but I would just want
10 to remind him.

11 THE COURT: Sure. And when were you most recently able
12 to caution Doctor Juell?

13 MR. DOYLE: Last week before he testified because this issue
14 had already come up.

15 MR. JONES: I'm fine with that, Your Honor.

16 THE COURT: Okay. So that made him?

17 MR. JONES: We can even caution him now if you would like.

18 THE COURT: Okay. So that issue is resolved. Is there
19 anything the Court really needs to rule on or it seems to me you all have
20 come to an agreement. Is there really something you need the Court to
21 rule on?

22 MR. JONES: No, Your Honor.

23 THE COURT: From Defense side, is there really something
24 you need the Court to rule on or didn't you all kind of work that out
25 among yourselves?

1 MR. DOYLE: As far as the beverage apparent -- yes. It seems
2 so.

3 THE COURT: It seems you worked it out or it seems you
4 need the Court to rule on something? I just don't want to leave
5 something hanging if you need the Court to rule on something.

6 MR. DOYLE: No, I think we're okay on that.

7 THE COURT: Okay. So now we get back to -- it looks like I
8 need to get back to the medical malpractice issue, right? The medical
9 malpractice issue, you can appreciate the Court's going to want to read
10 Plaintiff's brief in fairness because you just gave me a 727 brief. I've
11 already read Defense's, so I'm going to need to read that.

12 So it seems to me that maybe -- does this now give Defense
13 counsel an opportunity -- do you want Doctor Juell to go into the
14 anteroom to give Defense counsel an opportunity to touch base with his
15 witness on the Sobe issue and the Court gets a moment or two to read
16 the trial brief and then the Marshal can get the jury in while Defense
17 counsel is talking to the witness for a second on the Sobe issue?

18 The Marshal's walking the jury around the back door so they
19 won't see that, and the Court can start reading because you're not going
20 to do a malpractice issue, you're going to probably just at least give the
21 Court a head's up before you go mention it.

22 MR. JONES: I will.

23 THE COURT: So you can go to a new area and see if we
24 need a break before a new area?

25 MR. JONES: Yes, Your Honor.

1 THE COURT: Would that work for all parties?

2 MR. DOYLE: That's fine.

3 THE COURT: Is there anything different that you'd prefer?

4 MR. JONES: No, Your Honor, that's perfect.

5 THE COURT: Okay. And we're -- with Doctor Chaney, are we
6 just -- at the rate you're going, do you want to address Doctor Chaney at
7 the late morning break; would that work for the parties?

8 MR. JONES: Yes, Your Honor.

9 MR. DOYLE: That's fine.

10 THE COURT: Okay. Thank you, Marshal, I do appreciate it.

11 [Pause]

12 THE COURT: Counsel, just a nice friendly reminder.
13 Remember that the acoustics from the various counsel tables up here is
14 very, very good. So feel free to push --

15 COUNSEL: Push on this button?

16 THE COURT: -- if you're not wishing the acoustics to be as
17 good.

18 COUNSEL: Thank you, Your Honor.

19 THE COURT: Counsel, do you need a moment or are you
20 ready?

21 MR. JONES: We're ready.

22 THE COURT: Okay.

23 MR. DOYLE: Can we have Doctor Juell up on the stand?

24 THE COURT: That's what I was going to ask next, but I
25 wanted to make sure counsel's ready first. Okay.

1 Would you like Doctor Juell back up on the stand? Thank
2 you. Is there a particular binder you're going to want in front of him or
3 are you just going to address that when you get to it?

4 MR. JONES: No. I'll address it when I get to it, Your Honor,
5 thank you.

6 THE COURT: And did you not ask for a pocket microphone
7 yet this morning?

8 MR. JONES: I will need that, Your Honor.

9 THE COURT: Do you think you're going to stay at the
10 podium or do you think you're going to need a pocket microphone?
11 Glad to provide you one. Thank you so much.

12 THE MARSHAL: Ready, Judge?

13 THE COURT: Ready for the -- just one second. Okay,
14 Marshal, bring the jury back in. Thank you so very much.

15 THE MARSHAL: All rise for the jury.

16 [Jury in at 9:40 a.m.]

17 [Within the presence of the jury]

18 THE MARSHAL: All jurors are present. Please be seated.

19 THE COURT: I do appreciate it.

20 Welcome back, ladies and gentlemen. Thank you so very
21 much for your time. And sorry we're starting a few moments late. It is
22 what it is. Hopefully everyone had a nice long relaxing weekend, yes.
23 We got to see nice weather turn to chilly right before Halloween and
24 hopefully for those of you who have young children, they'll have warm
25 costumes later on in the week.

1 Okay. At this juncture if you remember we had the same
2 witness on the stand. Since he's already been sworn in, the Court will
3 just remind you under oath, you understand you're still under oath,
4 right?

5 THE WITNESS: Yes.

6 THE COURT: Thank you so very much.

7 Cross-examination because if you recall this was a witness
8 out of order from Defense's case in chief, so you've got cross-
9 examination by Plaintiff's counsel. You can commence, thank you so
10 very much, at your leisure.

11 MR. JONES: Thank you, Your Honor.

12 BRIAN JUELL, M.D., DEFENDANT'S WITNESS, PREVIOUSLY

13 SWORN

14 CROSS-EXAMINATION CONTINUED

15 BY MR. JONES:

16 Q All right. Doctor Juell, you recall we were discussing the
17 standards of care on Friday, correct?

18 A Yes.

19 Q Doctor, do you agree that a surgeon should keep complete
20 and accurate records to ensure patient's safety?

21 A Yes.

22 Q Do you agree that it's important to keep complete and
23 accurate records because a person, even a doctor, can forget things
24 about their own care?

25 A Yes.

1 Q And you also agree that other providers will predictably rely
2 on what the surgeon puts in his records for the treatment of the patient,
3 correct?

4 A Yes.

5 Q And a surgeon may become unavailable or be replaced,
6 correct, in a case?

7 A Yes.

8 Q Okay. And for all of these reasons it's important that a
9 surgeon keep accurate and complete records, correct?

10 A Yes.

11 Q Moreover, doctor, you're familiar with literature regarding
12 the high number of medical errors in the United States, correct?

13 MR. DOYLE: Objection. Hearsay.

14 THE COURT: I am going to sustain. Rephrase.

15 MR. JONES: Okay.

16 THE COURT: Thank you.

17 BY MR. JONES:

18 Q Doctor, are you familiar with literature regarding medical
19 errors in the United States?

20 A Yes.

21 Q Would you agree that based on the available studies of
22 medical errors, medical negligence is a significant problem?

23 A I think it's been over-exaggerated, but definitely medical
24 errors do occur.

25 Q Okay. You agree that the literature indicates that there are

1 thousands of medical errors in the United States that result in injury or
2 death, correct?

3 MR. DOYLE: Objection. Hearsay.

4 THE COURT: Sustained. Rephrase.

5 BY MR. JONES:

6 Q Doctor, are you familiar with literature that -- medical --
7 literature on medical error that specifically deals with the numbers of
8 deaths or significant injuries that are caused by medical error?

9 A There is medical literature.

10 Q Okay. And, doctor, what are the estimates that have come
11 out in terms of the number of deaths, for example, in the United States
12 caused by medical error on an annual basis?

13 MR. DOYLE: Objection. Hearsay.

14 THE COURT: Overruled.

15 THE WITNESS: Well, there's been some very recent
16 literature in the last few months that indicates that the previous
17 estimates are very much exaggerated, but there has been literature in
18 the past that's basically now validation of which has been called into
19 question maybe as many as 400,000 deaths per year I think, but that's
20 been significantly brought into question recently.

21 BY MR. JONES:

22 Q Okay. So you agree there have been scientific studies that
23 have indicated over 400,000 deaths a year from medical error, right?

24 A Yes. I mean it's a human endeavor.

25 Q Got it, got it.

1 A There are medical errors.

2 Q Okay. And to put that in perspective, that means that on a
3 daily basis it's an indication of more than a thousand Americans because
4 of medical error that die per day if those estimates were correct; is that
5 fair, doctor?

6 A That's your statement, yes.

7 Q Okay. Well, you agree that's what the medical literature
8 indicated, right?

9 A That number is definitely -- there's definitely -- that number
10 has been bantered around quite a bit in the last ten years, but it's
11 probably way over estimated.

12 Q Okay, doctor. Now, doctor, you agree that incomplete or
13 inaccurate medical records contribute to medical error, correct?

14 A That's certainly possible.

15 Q Okay. And, doctor, even if those estimates, let's say that they
16 were double reality, let's say that it was double reality, would you think
17 that that's an okay scenario to be in?

18 A Well, I mean obviously everyone wants to reduce the error
19 frequency as much as possible.

20 Q Right. Okay. And, doctor, you agree that one of the ways
21 that we reduce the error frequency is by holding those who commit
22 errors accountable for their errors, right?

23 A Yes.

24 Q Okay. All right. Doctor, is it below the standard of care for a
25 surgeon to maintain incomplete or inaccurate medical records?

1 A You really should maintain complete records, yes.

2 Q Okay. So if a surgeon does maintain inaccurate medical
3 records, that would be below the standard of care, correct?

4 A Well, I mean it would depend on what was not -- what
5 records were not kept, of course.

6 Q Okay. So is this sort of a situation like we have with the
7 suturing up of the colon where even if they do it, it's okay, but if they
8 don't do it, it's also okay under the standard of care?

9 MR. DOYLE: Objection, vague.

10 THE COURT: Overruled.

11 THE WITNESS: Can you be more specific about that?

12 BY MR. JONES:

13 Q Yes, doctor. So on Friday we discussed the suturing of the
14 colon.

15 A Yes, the stapling.

16 Q And we talked about how very clearly if the suture works,
17 then -- or the suture or the staple, if the staple holds, then it's within the
18 standard of care, but then if it fails, that's not to say it's not within the
19 standard of care, correct?

20 A Well, I mean --

21 Q It's a yes or no question, doctor.

22 A That's true.

23 Q Okay. And so what I'm getting at is do we have the same
24 situation when it comes to medical records; do we have a situation
25 where if they keep good medical records, it's within the standard of care

1 and if they keep bad medical records, it's also within the standard of
2 care?

3 A I suppose in certain circumstances that's true.

4 Q Okay. All right. Doctor, you agree that a surgeon must act
5 carefully and skillfully when performing a differential diagnosis of a
6 patient, correct?

7 A Yes.

8 Q Okay. Doctor, is it below the standard of care for a surgeon
9 to act less than carefully and skillfully when diagnosing a patient?

10 MR. DOYLE: Objection. Irrelevant.

11 THE WITNESS: It can be.

12 THE COURT: Okay. Overruled.

13 THE WITNESS: I'm sorry.

14 THE COURT: Untimely and overruled.

15 BY MR. JONES:

16 Q As a rule, is it below the standard of care, and I'm saying
17 across the board, is it below the standard of care any time a surgeon fails
18 to act carefully or skillfully in their diagnosis of a patient?

19 A It certainly can be, yes.

20 Q When you say it certainly can be, what I'm trying to answer,
21 what this jury needs to know is, is it below the standard of care or is it
22 not below the standard of care to lack carefulness and skillfulness when
23 diagnosing a patient?

24 A I think it just would depend on the specific example, but as a
25 general statement I think what you're saying is true.

1 Q Okay. So when it comes to diagnosis, you agree, then, that it
2 is below the standard of care to act in a way that is not careful or skillful?

3 MR. DOYLE: Objection. It's irrelevant and misstates the law.

4 THE COURT: Overruled in light of the witness' prior answer.

5 BY MR. JONES:

6 Q Is that correct?

7 A Was that a question or --

8 Q Yes. Yes. I just want to clarify and make sure that we all
9 understand this clearly. When it comes to diagnosing a patient, the
10 surgeon must be careful and skillful when doing so or they fall below the
11 standard of care?

12 A They certainly can.

13 Q Okay. Doctor, is reaching out to other doctors that are
14 treating a patient something that you would consider to be a careful
15 thing for a surgeon to do?

16 A Yes.

17 Q And is that particularly true if you have disagreements with
18 other doctors about the condition of the patient?

19 A Yes.

20 Q And, doctor, is reaching out to another surgeon that provided
21 a second opinion on your patient's case a careful thing for a surgeon to
22 do?

23 A It could be, yes.

24 Q Doctor, another thing I wanted to cover is Doctor Hamilton's
25 operative report.

1 A Yes.

2 Q We talked about that on Friday if you recall?

3 A Right.

4 Q Okay. Now, do you recall on Friday you and I went back and
5 forth a little bit on whether or not the Defense had withheld that
6 operative report from you prior to your deposition in June; do you recall
7 that?

8 A Yes.

9 MR. DOYLE: Objection. Argumentative and misstates the
10 evidence.

11 THE COURT: Overruled as phrased.

12 BY MR. JONES:

13 Q And last Friday you testified under oath that you had
14 reviewed it prior to your deposition, correct?

15 A Yes. In fact, my first report that I filed on this case referred to
16 that operative report.

17 Q Okay. You testified that you were certain that you had
18 reviewed it prior to your deposition, correct?

19 A Absolutely, yes.

20 Q Okay. Now, we talked about the fact that when you were
21 shown that report during your deposition, that the court reporter listed
22 that you stated I haven't, right, when you were asked have you seen this
23 before and it said I haven't. Do you recall that?

24 A Yes.

25 Q Okay. And you stated that that must have been a

1 typographical error, correct?

2 A It was.

3 Q All right. Doctor, when you were saying that on Friday,
4 testifying on Friday, did you recall that during your deposition you were
5 actually being video recorded, in addition to having it be typed up?

6 A Yes.

7 Q Okay. Doctor, would it surprise you if the video record also
8 shows that you said I haven't when asked if you had seen that before?

9 A Well, since you're referring to it, probably I did say that, but
10 it's not true.

11 Q Okay.

12 A I had seen it.

13 Q So I just want to be clear. So when you said I haven't during
14 your deposition in June, you're saying -- that was under oath, correct,
15 your deposition in June?

16 A Yes, it was.

17 Q And when you said I haven't, you were just mistaken?

18 A That's correct.

19 Q Okay. All right. But it's no typographical error, correct?

20 A Well, if you have the video evidence to the contrary, then I
21 have to concede that I may have said it, but I still had yet it.

22 Q Happy to show it to you if you'd like to see it. So I'll go either
23 way. I'm happy to show it to you for the jury.

24 A No. You probably will show it to me.

25 Q Okay. I certainly will if you want to see it.

1 A No, I'm okay.

2 Q Okay. Okay. So you acknowledge --

3 A In terms of had I seen the operative report, I had.

4 Q Okay.

5 A Of Doctor Hamilton.

6 Q Okay. But when you testified under oath and you were
7 shown that, you certainly didn't recall it or something at that time; is that
8 fair?

9 A I have no idea why I would say that, but mistakes happen.

10 Q Okay. But as of right now you don't dispute that during your
11 deposition you testified I have it when you were asked if you had seen it?

12 MR. DOYLE: Objection. Asked and answered.

13 THE COURT: Overruled.

14 THE WITNESS: I've already stated that I had seen it.

15 BY MR. JONES:

16 Q I understand. What I'm getting at --

17 A Whatever I said in my deposition, if in fact you have video
18 evidence that I said I haven't, then I was mistaken during my deposition.

19 Q Okay. But just so that we can just make sure that the issue is
20 clear, do you dispute that you said I haven't at your deposition when
21 under oath?

22 A Well, you can show me the video, I guess, if you think -- it's
23 probably going to lead to the record argument here or --

24 Q What's that?

25 A Is this going to lead back to this record argument here?

1 Q I don't know what you're referring to, doctor.

2 A Never mind. I'm sorry.

3 MR. JONES: Your Honor, I don't know what the appropriate
4 way to do, if we want to play it.

5 THE COURT: Counsel approach, please.

6 [Sidebar at 9:55 a.m., ending at 9:56 a.m., not transcribed]

7 THE COURT: There being no objection to the showing of the
8 video clip, counsel, you may proceed.

9 MR. DOYLE: If we could have the page and line.

10 THE COURT: Just one second. Counsel, for a hard copy
11 reference, Defense Counsel's asking for the hard copy parallel --

12 MR. JONES: Yes.

13 THE COURT: -- reference. Thank you so much.

14 MR. JONES: Your Honor, I do.

15 THE COURT: No worries. Right now as you're going to get
16 the JAVS, yeah.

17 MR. JONES: 61, lines 3 through 7, Your Honor.

18 THE COURT: Okay.

19 MR. JONES: And Your Honor, you know what, I don't think I
20 have it setup. I'm happy to -- Your Honor, we're going to go -- I'm going
21 to go ahead and move on. They're going to get it setup in the meantime
22 and I'll come back to this in a moment if that's appropriate.

23 THE COURT: That's fine. Sure. So there's not -- since
24 they're not a delay you can move onto your next question **9:58:45
25 there's not a delay. Screens are off, okay. Thank you.

1 BY MR. JONES:

2 Q Okay. All right, Doctor. So Doctor, as a follow-up to the
3 Hamilton records that we just discussed, were you ever given -- did the
4 Defense ever give you the pathology report from this case?

5 A I think I did read the pathology report, yes.

6 Q Okay. You agree that you never mentioned it in any of your
7 reports, correct?

8 A No.

9 Q Okay. You agree that you never mentioned the pathology
10 report at your deposition, correct?

11 A I don't believe I was asked about it, no.

12 Q Okay. You agree that the pathology report shows three holes
13 in the section of colon where Dr. Rives was operating, correct?

14 A I don't recall.

15 Q Okay. You don't recall?

16 A No. I'm sure there were holes.

17 Q Okay, all right. But you don't dispute the fact that there were
18 three holes identified in the pathology report, correct?

19 MR. DOYLE: Objection. Calls for speculation.

20 THE WITNESS: I could look at it for you but --

21 BY MR. JONES:

22 Q You don't recall?

23 A I don't recall. I know there were holes.

24 THE COURT: Okay. Just a sec. The Court has to sustain the
25 objection. I had to hear the testimony actually on this one due to

1 speculation in light of prior testimony, but okay.

2 MR. JONES: Okay.

3 THE COURT: So sustained for this witness.

4 MR. JONES: Okay.

5 BY MR. JONES:

6 Q And just -- this is just to clarify. You just don't recall how
7 many holes were indicated in the pathology report in the area where Dr.
8 Rives was operating, correct?

9 A I don't recall this morning how many. There were holes.

10 Q Okay. Doctor, have you ever been shown photographs of the
11 July 3rd, 2015 surgery?

12 A No.

13 Q Do you believe it could be helpful for you to see actual
14 photographs of the surgery if they were available?

15 MR. DOYLE: Objection. Lacks foundation and is --

16 THE COURT: Counsel, can you both approach? Wait, sorry.
17 What was your other objection, foundation and?

18 MR. DOYLE: Foundation and assumes facts not in evidence.

19 MR. JONES: Your Honor, if I could just have a little latitude
20 on this and I'm not making a suggestion.

21 THE COURT: Counsel --

22 [Sidebar at 10:00 a.m., ending at 10:02 a.m., not transcribed]

23 THE COURT: Counsel, are you withdrawing that last
24 question?

25 MR. JONES: I am, Your Honor.

1 THE COURT: Okay. So then the Court need not rule on the
2 pending objections because counsel's withdrawing them. Thank you so
3 very much.

4 BY MR. JONES:

5 Q Doctor, is it common for surgeons to take photographs when
6 they perform laparoscopic procedures?

7 A I think some surgeons do, yes.

8 Q It's very easy to do, correct? Because you have the camera
9 there and you just click to take the picture?

10 A Yes.

11 Q Okay. And like you said Doctor, if there had been pictures in
12 this case it would be helpful for you, correct?

13 MR. DOYLE: Objection. Speculation.

14 THE WITNESS: It just depends on to what issue I suppose.

15 THE COURT: The Court's going to overrule -- actually, sorry.
16 Court reverse's itself, my apologies. Court's going to sustain the
17 speculation objection.

18 BY MR. JONES:

19 Q Doctor, let's discuss your testimony history a little bit.

20 A Okay.

21 Q First, you testified in court at least once before, correct?

22 A Oh, yes. Multiple times.

23 Q Okay. Multiple times before you testified in court, okay.

24 A Now this is my first experience as an expert witness.

25 Q Got it. Just for medical malpractice cases you haven't

1 testified in court before, correct?

2 A That's correct.

3 Q Okay, all right. And in fact, you've been hired as an expert in
4 cases and you've testified and been involved in cases for the last 20
5 years, correct? Off and on.

6 A I've been hired as an expert to review cases, but this is the
7 first time that I've testified in court as an expert.

8 Q As an expert.

9 A And as a treating physician, I've testified multiple times.

10 Q Right, right. So again, as a medical -- in a medical
11 malpractice context, it's the first time?

12 A Yes.

13 Q But you've testified in court otherwise --

14 A Yes.

15 Q -- in other capacities, correct?

16 A Correct.

17 Q Okay. And you've done that off and on for the last -- well,
18 you've been hired as an expert even in cases that haven't gone to
19 court --

20 A Absolutely.

21 Q -- off and on over the last 20 years, correct?

22 A Correct.

23 Q Okay. And you agree that when you have testified about the
24 standard of care -- well, let me ask you this first. Doctor, you agree that
25 prior -- when you're first hired on a case you always review records and

1 then author a report, correct?

2 A Yes.

3 Q Okay. And you'd agree with me that that happens many --
4 several times typically -- or it's much more common for that to happen
5 than to actually testify in trial, correct?

6 A Yes.

7 Q Okay. And so it's a small number of cases that you've been
8 hired on of course where you actually do go to trial, correct? It's an
9 uncommon event, correct?

10 A That's correct.

11 Q Okay. Now Doctor, you agree that when testifying about the
12 standard of care in a civil action, whether it be deposition or in this case
13 a trial, you have always taken the side of the doctor and you have never
14 taken the side of the patient, correct?

15 A That's correct.

16 Q Okay. And in fact Doctor, you would agree that with the
17 report writing you have never authored a report that took the side of the
18 patient? In fact, every time you've been hired at all you have taken the
19 side of the doctor, correct?

20 MR. DOYLE: Objection. Compound and argumentative.

21 THE COURT: Overruled as to argumentative. Sustained on
22 compound.

23 BY MR. JONES:

24 Q Doctor, you agree that you've authored many reports,
25 correct?

1 A Correct.

2 Q And you would agree that in each and every one of those
3 reports you took the side of the doctor, not of the patient, correct?

4 A That's correct.

5 Q Okay. Doctor, how many times have you been hired by Mr.
6 Doyle or his law firm in the past?

7 A Five or six times, I think.

8 Q Would it surprise you if you said ten times when you were
9 asked the same question in your deposition?

10 A Oh, no. It could be true. That could be true.

11 Q Okay.

12 A I haven't kept good records though.

13 Q Okay. So if I told -- would you like to see your deposition
14 where you said ten times?

15 A No. I think I did say that actually.

16 Q Okay.

17 A You're correct.

18 Q So you've been hired by Mr. Doyle or his firm in ten prior
19 medical malpractice cases where you were in favor of the doctor,
20 correct?

21 A Yes.

22 Q Doctor, I'd like to discuss the money that you've made in this
23 case.

24 A Okay.

25 Q Is that all right?

1 A All right.

2 Q Doctor, you have a standard retainer that you ask attorneys
3 to sign when they hire you, correct?

4 A I think it's just an outline of charges, yes.

5 Q Okay. Doctor, prior to your first report, did you have a
6 conversation with Mr. Doyle or anyone from his office?

7 A Before I wrote it, yes.

8 Q Okay. And Doctor, whose idea was it? Was it your idea or
9 the attorney's idea to go after the pulmonary aspiration syndrome --

10 A That was my --

11 Q -- as a defense?

12 A That was my idea.

13 Q That was your idea?

14 A Uh-huh.

15 Q Okay. Doctor, if we take your estimate of 26.5 hours and we
16 multiply that by \$250.

17 A Okay.

18 Q You estimate that you have been paid \$6,600 in this case for
19 work that you've done in terms of writing reports and reviewing records,
20 correct?

21 A Yes.

22 Q Sorry; did that wash out my question?

23 A I didn't do the math. No. I heard you.

24 Q Okay.

25 A I think your math's correct.

1 Q Okay. So -- and I hope it is, but let's go ahead and take that
2 down. So 26.5 times 250 equals \$6,600, correct? And then Doctor --

3 A Okay.

4 Q -- separate from that, you were paid \$1,000 for your
5 deposition, right?

6 A I believe so.

7 Q Okay. Or was it 2,000?

8 A It might have been two.

9 Q Two-thousand, okay.

10 A I think it went over an hour.

11 Q Okay. And then Doctor, you testified that you charge \$1,500
12 per hour, correct?

13 A Yes.

14 Q For trial, okay.

15 A For out of town cases, yeah.

16 Q Well, even in-town cases you charge --

17 A No. It's --

18 Q -- 1,500 per hour, correct?

19 A No. I think it's 1,000 for in-town, 1,500 for out of town. I'm
20 not sure though.

21 Q Okay. Well, so --

22 A It's around that.

23 Q All right. Would it surprise you if it was 1,500 for both?

24 A No.

25 Q Okay. All right. In fact, you testified that your fee schedule

1 specifically states that you -- well, now your fee schedule Doctor, you
2 mentioned or responded to questioning about your fee schedule and
3 said that you don't actually put that together; that it's your whole
4 medical group that does, right? So --

5 A Yeah. It's the policy of our group.

6 Q Okay. So it's not really discretionary. You charge what the
7 group says you have to charge, right?

8 A Yeah. Well, that's the fee that we decided on.

9 Q Okay, all right. Got it. And for trial you testified that you
10 charge 1,500 per hour, correct?

11 A You're correct.

12 Q And Doctor, but 1,500 per hour isn't the complete story about
13 what you charge for trial testimony, correct?

14 A No.

15 Q Okay. And the complete story for trial testimony would also
16 say that any time you testify out of Reno you require a minimum of eight
17 hours per day, correct?

18 A Yes.

19 Q Okay. And so it's not 1,500. It's 1,500 times eight per day,
20 which is \$12,000, right?

21 A That's correct.

22 Q Okay, all right. And Doctor, since you've been here two days,
23 this is times two, right?

24 A That's correct.

25 Q All right. So \$24,000, okay. So if we add all of that up

1 Doctor, it looks like that's a total of, based on your estimate, \$32,600 if
2 we actually do the math, right?

3 A That's correct.

4 Q Okay, all right. Doctor, have you heard of the concept of
5 criminals or people dehumanizing their victims by not learning their
6 names or by distancing themselves from the victim's humanity or their
7 identity so that they, kind of a coping mechanism, to tolerate kind of the
8 bad things they're going to do to them? Have you heard of that?

9 MR. DOYLE: Objection. Lack of foundation, relevance and
10 48.035.

11 THE COURT: Sustained on lack of foundation and relevance
12 at this juncture.

13 BY MR. JONES:

14 Q Doctor, have you seen any crime shows?

15 A Yes.

16 Q Okay. Have you seen in crime shows there's a good guy and
17 a bad guy?

18 A Yes.

19 Q And there's usually a victim, correct?

20 A Okay.

21 Q Have you ever seen a crime show where the bad guy kind of
22 does things like instead of referring to the person as she or he refers to it
23 as it? Have you seen something like that?

24 A I don't specifically recall, but I'll go along with that.

25 Q Okay. Doctor, let's go over your first report a little bit. Well,

1 we're going to talk about your first report a little bit. Do you agree that
2 Titina -- well, first I'm going to ask you a series of questions. Do you
3 agree that that Titina had no role in making Dr. Rives use a thermal
4 energy device in approximation with the colon, correct?

5 A Well, I'm not sure that that occurred.

6 Q Okay.

7 A I know that he used it, but where he used it --

8 Q Doctor, you agree --

9 A -- was not specifically --

10 Q -- that Titina had no role in Dr. Rives' --

11 A That's correct.

12 Q -- decision to use a thermal --

13 A She had her confidence in Dr. Rives.

14 THE COURT: Okay. Counsel, witness.

15 THE WITNESS: Yes.

16 THE COURT: Witness, you need to listen to the end of the
17 question --

18 THE WITNESS: Okay.

19 THE COURT: -- before you answer, appreciate it.

20 THE WITNESS: Thank you --

21 THE COURT: And counsel, before you move onto --

22 THE WITNESS: -- for that reminder.

23 THE COURT: -- your next question.

24 MR. JONES: Certainly.

25 THE COURT: We just need to have a clear transcript.

1 THE WITNESS: Yes, I understand.

2 THE COURT: In order to have a clear transcript recording we
3 can't have people talking at the same time. So I think that might have
4 been jumbled up to the extent you may want to --

5 MR. JONES: Yeah. I'll make sure it's very clear.

6 THE COURT: No worries.

7 MR. JONES: Thank you, Your Honor

8 THE COURT: So everyone has a clear record. Thank you so
9 very much. Appreciate it.

10 BY MR. JONES:

11 Q Doctor, you agree that Titina had no role whatsoever in
12 causing Dr. Rives to choose to use a thermal energy device to separate
13 the colon from the mesh, did she?

14 A No.

15 Q Okay. Doctor, you agree that Titina had no role in making Dr.
16 Rives use a synthetic mesh after he had a contaminated surgical field,
17 did she?

18 A No.

19 Q Okay. Doctor, you agree that within 24 hours of surgery
20 Titina was sedated and generally unconscious, correct?

21 A About that time, yes.

22 Q And Doctor, you agree that this remained to be generally true
23 until a couple -- for a couple of weeks until a couple of days after Dr.
24 Hamilton's surgery on the 16th, correct?

25 A Well, she had periods of time when they lifted sedation.

1 Q Very brief, correct?

2 A Yes. They're called sedation vacations so that they can, you
3 know, assess what they're capable of doing in terms of breathing --

4 Q Absolutely.

5 A -- and stuff when they're in the ICU.

6 Q But you'd agree that the patient typically has very low
7 awareness during those periods of time also, correct?

8 A That's correct.

9 Q Okay. And Doctor, you agree that Titina had no choice in the
10 decision to wait 12 days before recommending to go back into an
11 operation, correct?

12 A It's not really --

13 Q Doctor, she didn't have any role in that --

14 A No.

15 Q -- decision, right?

16 A She didn't have any role in that decision. I mean, she --

17 Q Okay. Doctor --

18 A It was her disease.

19 Q Well, let's talk about that, Doc.

20 A She didn't have a choice about it.

21 Q Yeah. So let's talk about that. Doctor, in your initial report I
22 noticed that you continuously reduced Titina Farris's name to the initials
23 TF. And I noticed that on 14 occasions you wrote TF where you could
24 have written Titina, or Mrs. Farris, or Titina Farris. Does that surprise
25 you?

1 A No. That's true, I did.

2 Q Okay.

3 A And I referenced that in the first part of my report that I
4 would do so.

5 Q Perfect. And Doctor, on the other hand though, you did not
6 reduce Dr. Rives' name down to DBR for Dr. Barry Rives or to BR for
7 Barry Rives or to DR for Dr. Rives. Instead you wrote out the full Dr.
8 Rives 17 times. Does that surprise you?

9 A No.

10 Q Okay. I found that interesting Doctor, because then in that
11 first report --

12 A Uh-huh.

13 Q -- you go on to blame Titina for some of the events that
14 happened to her; does that sound correct?

15 A Yes.

16 MR. DOYLE: Objection; argumentative.

17 THE COURT: Sustained as phrased.

18 BY MR. JONES:

19 Q Doctor, you placed culpability on Titina for the things that
20 were done to her, correct?

21 A Well, she had some --

22 Q Doctor --

23 A -- she had risk factors --

24 Q -- it's a yes or no question.

25 A It's not really a yes or no answer, but --

1 Q If you can't answer it --

2 A I can --

3 Q -- you can say you can't.

4 A Okay.

5 Q So is it?

6 A Well, I don't think it's clear to just say yes or no.

7 Q Okay, all right. So let's go ahead and talk about that. On
8 page 2 you state, "She had demonstrated poor wound healing by failing
9 to heal her initial hernia repair".

10 A That's correct.

11 Q Okay. That's what you said, correct, Doctor?

12 A That's correct.

13 Q Now Doctor, is it possible that Dr. Rives just did a sloppy job
14 in 2014 resulting in a failed repair?

15 MR. DOYLE: Objection; relevance -- or I'm sorry,
16 argumentative.

17 THE COURT: Overruled.

18 THE WITNESS: That is a possibility, but that's not exactly
19 how --

20 BY MR. JONES:

21 Q Doctor, that's -- it's a yes or no question. But that's a
22 possibility, right?

23 MR. DOYLE: Objection. Argumentative.

24 THE COURT: Overruled.

25 THE WITNESS: Possibility.

1 BY MR. JONES:

2 Q Dr. Rives' 2014 hernia repair failed, correct?

3 A That's correct.

4 Q And you didn't state, it's possible that the doctor didn't do a
5 great job during the surgery, correct? You didn't say that, did you?

6 A No.

7 Q But you did say, she has demonstrated poor wound healing
8 based on one operation where the hernia failed, the hernia repair failed,
9 correct?

10 A That's correct.

11 Q Okay. And Doctor, as we talked about on Friday, you agree
12 that the second time he did a hernia repair it failed within six days,
13 correct?

14 A I think it had, yes.

15 Q Okay. Now Doctor, do you agree that your primary basis for
16 believing what Dr. Rives wrote in his operative report is that you're
17 familiar with what surgeons generally do and you trust that Dr. Rives
18 was honest in what he wrote down?

19 A Yes.

20 Q Okay. And you had to rely on what Dr. Rives claims because
21 you were not there, correct?

22 A Correct.

23 Q And during your deposition at one point, you were
24 specifically asked -- so as an example, there was a question posed to
25 you, is it your opinion the repair was adequate here and your response

1 was, that was the opinion of Dr. Rives, so I wasn't present at the
2 operation, correct?

3 A That's correct.

4 Q Okay. Now Doctor, if Dr. Rives previously testified that he
5 always took photographs of his laparoscopic surgeries, but in this case,
6 we know there are no photographs, would that make you less trusting of
7 Dr. Rives as to what happened in this case?

8 MR. DOYLE: Assumes facts not in evidence and calls for
9 speculation.

10 THE COURT: Sustained on the first ground.

11 BY MR. JONES:

12 Q Doctor, if you knew that Dr. Rives had a history of providing
13 false or incomplete testimony under oath, or false or incomplete
14 information under oath, would that make you less trusting of Dr. Rives?

15 MR. DOYLE: Objection. Calls for speculation.

16 THE COURT: Counsel, can you both approach please?
17 Madan Court recorder.

18 [Sidebar at 10:19 a.m., ending at 10:24 a.m., not transcribed]

19 THE COURT: Thank you. The only objection being
20 speculation, speculation objection's overruled because this witness
21 would be able to know whether something would or would not change
22 his own opinion. So the witness can answer the question.

23 BY MR. JONES:

24 Q Doctor, do you recall the question?

25 A That if Dr. Rives withheld information or made false

1 statements --

2 Q That if he had --

3 A -- would that change my opinion, is that --

4 Q Right. If you knew that Dr. Rives had a history of providing
5 false or incomplete information under oath, would that make you less
6 trusting of what Dr. Rives said?

7 MR. DOYLE: Objection. Assumes facts not in evidence and
8 calls for speculation.

9 THE COURT: Court is going to find that those objections are
10 untimely because the witness had just asked the question to be repeated.
11 It was the same question. So the Court has already previously ruled on
12 this prior same question. So the witness was just asking for the question
13 to be restated.

14 THE WITNESS: I would have to say yes.

15 BY MR. JONES:

16 Q Okay. That would have an impact on your opinion?

17 A It could have an impact on my opinion, yes.

18 Q All right. Doctor, going back to report -- your report, you
19 have a comment where you say, obesity is a known risk factor for poor
20 healing as well, correct?

21 A That's correct.

22 Q And Doctor, I -- what is the -- in the medical community
23 there's a certain body mass index that determines if a person is
24 overweight, is obese, et cetera, right?

25 A That's correct.

1 Q Okay. And Doctor, the body mass index that talks about
2 being -- going from being overweight to obese, what is that -- the
3 threshold there?

4 A Around 30, I think.

5 Q Thirty, correct?

6 A Uh-huh.

7 Q Pretty much everybody agrees with that, Mayo Clinic, CDC --

8 A Uh-huh.

9 Q -- it's pretty standard, right?

10 A Right.

11 Q And Doctor, what was Titina's BMI prior to going in for
12 surgery on July 3rd?

13 A I don't -- you know, I don't recall exactly, but I remember that
14 she was described as being obese by multiple physicians.

15 Q Doctor, would it surprise you if she began to be described as
16 moderately or morbidly obese near the end of her treatment with Dr.
17 Rives at the point where she was all distended?

18 A She got bigger from fluid for sure.

19 Q Okay.

20 A Yeah.

21 Q Would it surprise you if at the very beginning of her
22 treatment with Dr. Rives on July 3rd that she had a BMI of 29.5?

23 A Close.

24 Q Okay. Now 29.5 is not quite obese, right? It's overweight --

25 A Well, it doesn't --

1 Q -- but on the threshold?

2 A -- meet that standard of the BMI, but a lot goes into that.

3 Your weight, you know, is it muscle weight, or is it adipose tissue, you
4 know, I mean --

5 Q But it's a yes or no question, right? Since 38's the standard.

6 A She didn't meet that standard.

7 Q Okay, all right.

8 A If she was 29.5.

9 Q But Doctor, regardless of the actual medical standard at
10 issue, you stated in your report not just that she was obese, but she was
11 moderately obese, correct?

12 A Okay.

13 Q Now Doctor, is there a reason why you decided to call her
14 moderately obese in your report rather than accurately state her medical
15 status of being overweight, borderline obese?

16 A No. The only reason --

17 MR. DOYLE: Objection --

18 THE WITNESS: -- I made any --

19 MR. JONES: Objection --

20 THE COURT: Just a sec, just a sec.

21 MR. JONES: -- argumentative and assumes facts not in
22 evidence.

23 THE COURT: Okay. Overrule assumes facts not in evidence
24 because it's his own report. Overrule on argumentative. The witness
25 can answer. Thank you.

1 THE WITNESS: The only reason I reference that she had
2 obesity is just as a risk factor for --

3 BY MR. JONES:

4 Q Okay.

5 A -- poor wound healing.

6 Q All right. Thank you, Doctor. Now Doctor, then in your
7 report -- and I understand you don't know everything about Dr. Rives'
8 history, but then in your report you go on to say that when the bowel
9 perforation was established on the 15th that Dr. Rives was the first to
10 recommend reoperation, correct?

11 A Yes.

12 Q And the way that was written, it kind of added some praise to
13 Dr. Rives for his attentiveness and action, correct?

14 A Well, I think he was the only surgeon involved in the care of
15 the patient at that time so.

16 Q That's what I was going to ask you next. You read my mind.

17 A I mean --

18 Q Isn't it true that Dr. Rives was the only guy that could even
19 make that recommendation?

20 A That's absolutely right. He was the only surgeon involved in
21 the care of the patient at the time.

22 Q Okay. And you literally testified under oath in your
23 deposition that he would be the captain of the ship. That as much as the
24 other doctor may or may not want to recommend surgery, Dr. Rives is
25 the only guy who can actually do it, right?

1 MR. DOYLE: Objection. It's argumentative and misstates the
2 law.

3 THE COURT: Court's going to sustain it for the way it was
4 phrased. I need you both to approach. Madam court recorder, can you
5 turn on the white noise?

6 [Sidebar at 10:29 a.m., ending at 10:32 a.m., not transcribed]

7 THE COURT: Okay. So the Court in light of the clarification
8 with a follow-up question -- excuse me. Follow-up question the
9 Plaintiff's going to ask, the Court's going to overrule those objections
10 because the question asked if that's what this witness stated at his
11 deposition, is that correct, Counsel?

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

13 THE COURT: Okay. Then the Court overrules the objection
14 based on that clarification point. Thank you so much. Counsel, please
15 proceed with your next question.

16 MR. JONES: Thank you, thank you.

17 BY MR. JONES:

18 Q And Doctor, you acknowledge that's what you said at your
19 deposition, correct?

20 A Did I say that, the captain of the ship --

21 Q Yes.

22 A -- thing?

23 Q Yes.

24 A Okay.

25 Q And to be clear, you're not stating a legal standard where

1 there's only one person responsible for the ship --

2 A That's right.

3 Q -- correct? What you're saying though is in context of who
4 chooses to go back to surgery, there's one guy that makes that call right,
5 ultimately? And that's the surgeon.

6 A That's correct.

7 Q And that's Dr. Rives, correct?

8 A It was.

9 Q All right. Now Doctor, you've been through as you said, all
10 the medical records, related to the care and treatment of Titina Farris
11 when she was there at St. Rose, correct? You received those 8,000
12 something pages?

13 A Yes.

14 Q And Doctor, do you recall seeing the notes from Dr. Shaikh?
15 I believe it's Shaikh or maybe Shaikh, S-H-A-I-K-H, the infectious disease
16 specialist.

17 A Okay.

18 Q Do you recall that he in multiple notes between the 4th and
19 the 14th, he notes that the patient is septic, course worsening, and then
20 he puts in caps, possible surgical re-exploration, or something along
21 those lines just as to the surgery that he puts in all caps and everything
22 else lower case. Do you recall seeing that?

23 A No, I don't.

24 Q Okay.

25 A All caps he put "possible surgical exploration". I don't --

1 Q Yeah. So he puts his whole note there in lower case.

2 A I don't remember seeing that.

3 Q And then when he talks about surgical re-exploration, he
4 capitalizes that across the board, you notice that?

5 A Everything I saw was typed, but I don't remember seeing
6 that, no.

7 Q Okay. It was typed, just in capital letters.

8 A Okay.

9 MR. DOYLE: Objection. Calls for speculation.

10 THE WITNESS: I don't recall seeing that.

11 THE COURT: The Court's going to overrule the objection
12 with the way the question was asked, recall or not.

13 BY MR. JONES:

14 Q What would that mean Doctor, if you saw that in your own
15 practice, that an infectious disease doctor is putting all of his notes in
16 normal lower case and then when he talks about possible surgical re-
17 exploration or things along those lines, he puts that in caps. What would
18 that mean to you?

19 A Then obviously it's what everyone was wrestling with, you
20 know, that decision.

21 Q That's extra important, right?

22 MR. DOYLE: Objection. Speculation.

23 THE WITNESS: Okay.

24 THE COURT: Sustained.

25 BY MR. JONES:

1 Q So Doctor, would you place greater importance on the
2 capitalized lettering in your own practice if you saw that versus what was
3 not capitalized?

4 A Yes.

5 Q Would you take that as an indication that the infectious
6 disease doctor saying surgeon, you might want to look at this?

7 MR. DOYLE: Objection. Speculation.

8 THE COURT: Overruled with regards as phrased.

9 THE WITNESS: I mean, possible, yes.

10 BY MR. JONES:

11 Q Okay. Now Doctor, do you know when it was that the family
12 requested that Dr. Rives be removed from the case?

13 A I think after he proposed reoperation on the 15th.

14 Q And that's based on Dr. Rives' notes in the record, correct?

15 A I think there are nurses' notes and other notes in there that
16 support that as well.

17 Q Okay. That support that the request was made when?

18 A After the recommendation was made for reoperation.

19 Q Okay. So let's go over that a little bit. Do you know Doctor,
20 what time the CT results came back on the 15th?

21 A I don't recall a specific time.

22 Q Do you know what time Dr. Rives asked to do surgery on the
23 15th?

24 A I just -- I know once those results had come back that the
25 recommendation was made.

1 Q Okay. Doctor, after the July 15th CT results came back, you
2 testified that not recommending surgery at that point for sure was below
3 the standard of care, right?

4 A Yes.

5 Q Okay. So Doctor, how long would be an appropriate period
6 of time for Dr. Rives to wait following the CT results before
7 recommending surgery?

8 A Oh, I'm sure he would recommend it immediately.

9 Q How many hours?

10 A How long could you wait?

11 Q Sure.

12 A Well, you might want to make that recommendation in
13 person, you know. So a reasonable period of time, you know, several
14 hours perhaps.

15 Q How many?

16 A Couple hours.

17 Q Two?

18 A Yeah. Depending on what you're doing. You might be doing
19 another case or you know, you wanted to make sure the family was
20 present when you made the recommendation, you know, so that they
21 could answer questions. You know, some reasonable period. The
22 patient was stable enough, you know, that she could tolerate a short
23 delay for sure.

24 Q Okay. So is -- I just want to make sure that we're crystal
25 clear. How many hours would be an appropriate period of time to wait

1 after those results? You said a couple of hours. I just want to know, is
2 that two hours, one hour, three hours, four hours, ten hours?

3 A I think --

4 Q What are we looking at?

5 A -- it obviously depends on the situation with the patient, you
6 know.

7 Q Okay. Well, do you have any --

8 A The patient's in shock or bleeding to death. I mean, the
9 recommendation shouldn't wait you know.

10 Q Okay. Doctor, so what I think that everyone wants to know
11 then is how many hours?

12 MR. DOYLE: Objection, Your Honor, to comments by
13 counsel.

14 THE COURT: Jury will disregard that last comment by
15 counsel. Counsel, please rephrase the question.

16 MR. JONES: Certainly.

17 BY MR. JONES:

18 Q So Doctor, are you saying that there is no number of hours
19 that you would actually state for this jury where it would actually be
20 below the standard of care if you waited that long?

21 MR. DOYLE: Object. It's argumentative, and it's an
22 incomplete hypothetical.

23 THE COURT: Overruled on argumentative. Overruled on
24 incomplete hypothetical.

25 THE WITNESS: I think there's a reasonable period. You

1 know, it obviously depends on how the patient's -- you know, the
2 condition of the patient. She actually waited overnight I think and had an
3 operation the next day.

4 BY MR. JONES:

5 Q But what we're --

6 A So --

7 Q -- what we're talking about Doctor, is we're talking about the
8 surgeon actively on the case, how many hours is it okay for him to wait
9 before recommending that we go back to surgery?

10 A I just said, a reasonable period of time, but you know,
11 obviously the sooner the better for the patient.

12 Q Okay. Is a couple of hours the best estimate we're going to
13 get from you?

14 MR. DOYLE: Objection. Asked and answered.

15 THE COURT: Overruled.

16 THE WITNESS: I mean, yes. Several hours.

17 BY MR. JONES:

18 Q Okay, all right. All right, Doctor. Now would it surprise you
19 Doctor, if the evidence actually showed that the family asked for Dr.
20 Rives to be removed first and then several hours later after that Dr. Rives
21 then requested to do the second surgery?

22 MR. DOYLE: Objection. Assumes facts not in evidence and
23 misstates the evidence.

24 THE COURT: You know what, ladies and gentlemen, the
25 Court's going to -- and I realize it's already 10:30 -- 10:40, wow. We need

1 to give ladies and gentlemen breaks so the Court can evaluate that rather
2 than calling the parties to the bench. Ladies and gentlemen, it being
3 10:40, we're going to come back at 10:55.

4 Ladies and gentlemen, during your recess -- actually, you
5 know what, let me make it 11:00, right? Yeah. Let me make it 11:00.
6 Ladies and gentlemen, during this recess you are admonished not to talk
7 or converse among yourselves or with anyone else on any subject
8 connected with the trial.

9 You may not read, watch, or listen to any report or
10 commentary of the trial, or any person connected with the trial by any
11 medium of information, including without limitation, social media, text,
12 tweets, newspapers, television, internet, radio. Anything I've not stated
13 specifically is, of course, also included.

14 I'm seeing some affirmative nods. I need all my affirmative
15 nods. Thank you. I know it's been a long weekend. So I just want to
16 make sure I got all my -- do I see my last affirmative nod? Yes, I do.
17 Thank you.

18 Okay. Do appreciate it. Do not visit the scene of the events
19 mentioned during the trial. Do not undertake any research,
20 experimentation or investigation. Do not do any posting or
21 communications on any social networking sites or anywhere else. Do
22 not do any independent research, including, but not limited to internet
23 searches. Do not form or express any opinion on any subject connected
24 with the trial until the case is fully and finally submitted to you at the
25 time of jury deliberations.

1 With that we'll wish you a nice break. And for the juror who
2 had the issue with parking, don't worry. We've got a way -- we've
3 already got a solution taken care for -- I don't know if the marshal's yet
4 been informed, but we've already reached out to jury services, so you're
5 taken care of. Thank you so very much. Have a nice break.

6 THE MARSHAL: All rise for the jury.

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

8 [Outside the presence of the jury]

9 THE COURT: Okay. We're just staying on the record for one
10 quick moment just so the Court can let the parties know. You know what
11 I'm going to ask, you know I'm going to ask you. Since you said
12 assumes facts not in evidence, obviously this Court would need to see
13 whether it does or does not because this Court doesn't have the benefit
14 of knowing these specific answers.

15 So feel free during your break while my team is taking their
16 state and federally mandated morning break, to look it up and so that
17 you can show me whether it does or does not and so that the Court can
18 make a well-reasoned answer to that pending objection.

19 And I'm sure everyone understands what can and cannot be
20 discussed during the break. And I'm sure everyone's fully aware. And in
21 no way does that limit or expand applicable state law in any manner
22 whatsoever. So have a nice, relaxing, wonderful break. We'll see you
23 back in a moment or two before 11:00 o'clock. Thank you so very much.

24 MR. DOYLE: Thank you, Your Honor.

25 THE COURT: And feel free --

1 [Recess taken from 10:43 a.m. to 11:06 a.m.]

2 [Outside the presence of the jury]

3 THE COURT: Okay. We're on the record outside the
4 presence of the jury. I guess two points. One, I think your video person
5 needs to touch base. Are you set video-wise or do you need to touch
6 base with somebody? Because we can --

7 MR. JONES: I just wanted to check to test the launching.

8 THE COURT: Okay. So I think --

9 MR. JONES: And launch it.

10 THE COURT: -- you can to the testing, can't you, while they
11 argue, Madam Court Recorder? They could multitask, right?

12 COURT RECORDER: Yes, Judge.

13 THE COURT: Perfect.

14 COURT RECORDER: As long as the sound's not on.

15 THE COURT: Right. As long as you don't pour the sound on.
16 If you're just looking for a video picture, you can do that, okay? And then
17 I can address -- there was a pending objection right before we left. It was
18 assumes facts not in evidence and so the Court just needed to know,
19 because the Court hadn't been provided anything to be able to answer
20 that, so --

21 MR. JONES: We've resolved the matter, Your Honor.

22 THE COURT: Oh.

23 MR. JONES: I'm -- what we're going to do is I'm going to
24 withdraw the question. I'm going to rephrase it as a hypothetical and we
25 have agreed that that will be appropriate.

1 THE COURT: Does that meet your needs, Defense Counsel?

2 MR. DOYLE: Yes, it does.

3 THE COURT: Okay. Marsha -- ready to bring the Marshal to
4 have the jury brought back in? Counsel? Both counsel? Yes or no?

5 MR. DOYLE: Yes, Your Honor.

6 MR. JONES: We are.

7 THE COURT: Are you planning on finishing this witness
8 before lunch with regards to cross-examination or for the -- I'm trying to
9 address --

10 MR. JONES: Do we have a decision --

11 THE COURT: -- when the medical malpractice --

12 MR. JONES: -- on malpractice?

13 THE COURT: That's why I'm asking.

14 MR. JONES: I do think that there is a realistic chance I could
15 be finished around -- by lunchtime, Your Honor, but --

16 THE COURT: Then what I'm going to ask -- if that's going to
17 be the case -- I'm just trying to address from a timing to address your
18 malpractice, okay?

19 MR. JONES: Absolutely.

20 THE COURT: Because I -- would rather me address it now,
21 then, or if you think the witness is coming back after lunch, I'd have the
22 jury go out for a longer lunch and address it then. What's going to meet
23 your needs? Because you've got --

24 MR. JONES: I'd say now, Your Honor, just in case, but
25 what -- if we want -- we may need to go out a little bit early, if I finish

1 with my questions and haven't got the malpractice, perhaps, if it would
2 be better for the Court to address it in that order.

3 THE COURT: If you wish to do it that way, so that you have
4 the jury sitting outside less time, the Court's fine with that, because
5 you're still going to have -- counsel for Defense, you're going to have
6 redirect. Is that correct?

7 MR. DOYLE: Yes.

8 THE COURT: Okay. So the witness is coming back after
9 lunch anyway, so you may just want the jury to get to every place other
10 than that and then you have the jury go out to lunch, you stay for a few
11 minutes. The Court can address it and then send you all out to lunch.
12 Would that work better?

13 MR. JONES: Your Honor, and I'm fine with that. And as long
14 as there's a stipulation with counsel that pending the Court's ruling, I can
15 bring it up, even if I pass the witness for example --

16 THE COURT: Sure.

17 MR. JONES: -- whatever needs to happen.

18 THE COURT: Okay. The Court's general inclination is
19 consistent with the practice of the Eighth Judicial District, consistent with
20 applicable case law. You're going to have a small area of inquiry for bias
21 and for --

22 MR. JONES: Absolutely.

23 THE COURT: -- competency, which generally is -- this is an
24 inclination. I'm not going to have an argument right now. I'm just giving
25 you a quick inclination. If you all -- I'll flesh it out a little bit, if you want it

1 later, so that you have an idea, so -- to prepare your argument, so --

2 MR. JONES: I'm very comfortable with that, Your Honor.

3 THE COURT: Okay. So it's usually something that goes --
4 you know what I mean, have you previously been sued for malpractice?
5 How many times? What was the outcome without going into details.
6 Unless you all stipulate for something else, because in this particular
7 case, looks like you have a court dismissal, a settlement, and dropped in
8 two cases, right? Those are the four. Is that correct?

9 MR. JONES: So Your Honor, I don't have those exact
10 questions. I don't want to show my questions in advance, but my
11 questions stay within the appropriate parameters and I only have like six
12 questions.

13 THE COURT: I'm just trying to say that's a general
14 conceptual --

15 MR. JONES: Absolutely.

16 THE COURT: -- framework that is utilized within the Eighth
17 Judicial District consistently in accordance with applicable law, because
18 to look for bias and to look for competency of the opinions of a particular
19 witness. So those are just a general inclination. Do you want that
20 addressed now or do you -- while the jury is waiting outside, or do you
21 want to wait and have the jury to go out to lunch --

22 MR. JONES: I'm happy to wait, Your Honor.

23 THE COURT: -- a little bit earlier? Pardon? Which one?

24 MR. JONES: Happy to wait, Your Honor.

25 THE COURT: Okay. Well then since it's your case, since your

1 questioning and so you don't want the jury delayed, that's what we're
2 going to do. Because you both have heard the inclination, you can
3 evaluate as you wish to. Would you like the witness on the stand before
4 the jury comes back in?

5 MR. JONES: Yes, Your Honor.

6 THE COURT: Thank you so very much. Thank you, Marshall.
7 Appreciate it. And do know that that is just an inclination to assist you
8 while you all are thinking about it. It's not obviously a ruling yet. Okay.
9 And the Marshal went to go get the jury. Thank you so much.

10 [Jury in at 11:11 a.m.]

11 [Within the presence of the jury]

12 THE MARSHAL: All rise. Jurors are present.

13 [Pause]

14 THE MARSHAL: You may be seated. All jurors are
15 accounted for.

16 THE COURT: I do appreciate it. Thanks. Welcome back,
17 ladies and gentlemen. As you know we are still in cross-examination.
18 Counsel for Plaintiff. I'm not sure if we asked you to turn off that pocket
19 mic during the break or not, but if so, whenever you're ready, feel free to
20 move forward.

21 MR. JONES: Yes, Your Honor. I think it's on.

22 THE COURT: Thank you so much.

23 MR. JONES: I think we're good. All right. Thank you, Your
24 Honor.

25 THE COURT: Oh, and counsel, since there was a pending

1 objection before the break, was that last question withdrawn or by
2 agreement of the parties? What was --

3 MR. JONES: Right. I'm going to withdraw it and I'm going
4 to rephrase it in a different way for the witness.

5 THE COURT: Okay. Since the last question was withdrawn,
6 then the Court may not rule. Okay. Thank you so much.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. JONES:

9 Q Okay. So Doctor, to -- well, I'm going to actually come back
10 to that point in just a minute. There are a couple of quick little loose
11 ends I wanted to tie up. We talked about whether or not you said I
12 haven't --

13 A Yes.

14 Q -- during the other deposition. Do you remember when you
15 were asked?

16 A I remember that, yeah.

17 Q Okay. All right. Would you like to see yourself saying I
18 haven't?

19 A If you would like me to.

20 Q Okay. Or well, are you comfortable that you did say that?

21 A I -- well, I'll just see it.

22 Q Okay.

23 MR. JONES: Go ahead. Please play the clip.

24 (Whereupon, a video recording, was played in open court from

25 11:13 a.m. to 11:13 a.m., not transcribed)

1 MR. JONES: Can you pause it for just a moment?

2 BY MR. JONES:

3 Q Doctor, this is you testifying on June 12th, 2019 at your
4 deposition, correct?

5 A Yes.

6 Q Okay.

7 (Whereupon, a video recording, was played in open court from
8 11:13 a.m. to 11:13 a.m., not transcribed)

9 THE WITNESS: Couldn't understand what I said there.

10 MR. JONES: Why don't you play that one more time, if it's
11 unclear? Go back to -- there -- the three minute mark approximately.

12 (Whereupon, a video recording, was played in open court from
13 11:13 a.m. to 11:14 a.m., not transcribed)

14 BY MR. JONES:

15 Q Comfortable that you said I haven't?

16 A I'm not sure if I said I haven't or not. I think it --

17 Q Okay.

18 A -- out of context, it's have you seen Exhibit 6 for the
19 deposition, and I may I have said I haven't seen it, because I was
20 referring to that I hadn't seen that exhibit.

21 Q Okay. So you said you hadn't --

22 A So I mean, it might have --

23 Q -- seen the Exhibit 6.

24 A -- been out of context in that -- have you seen Exhibit 6.

25 And --

1 Q But --

2 A -- I hadn't seen Exhibit 6 yet, but --

3 Q Got it --

4 A -- I had seen --

5 Q -- but you'd agree, of course that he said this is Doctor
6 Hamilton's report. It's Exhibit 6. Have you seen this? Right? That's
7 what he said, right?

8 A Right. But I think that maybe I meant in the context of the
9 deposition that day had I seen it.

10 Q Okay. Okay. All right. Dr. Rives, you also -- or sorry -- Dr.
11 Juell. I apologize. Do you also recall that I talked --

12 MR. JONES: I'd like to switch it over to the overhead, Your
13 Honor, if that's all right. Just hit this little button, I believe.

14 THE COURT: Sure can.

15 MR. JONES: Okay.

16 THE COURT: Put it down for a second. It takes a second to
17 focus. So once you --

18 MR. JONES: All right.

19 THE COURT: -- put the paper down, it'll take a second to
20 focus.

21 MR. DOYLE: What are we putting up?

22 MR. JONES: This is Exhibit 1, Joint Exhibit 1, page 474.
23 Should I hit it again, Your Honor, or --

24 THE CLERK: No, but you can hit the focus button, if you
25 don't want to wait.

1 MR. JONES: Okay.

2 THE CLERK: It takes a minute.

3 MR. JONES: Oh, there we go.

4 [Pause]

5 THE COURT: Just to let you know. If you let it sit there for a
6 moment or so, it's going to focus. When you move it around, it
7 continues to do a self-focusing, kind of like a camera does. So if you let
8 it sit there for a minute or so. See if it focuses it in and then you can --
9 because the more you move it, the more it tries to focus around.

10 MR. JONES: Okay.

11 BY MR. JONES:

12 Q I'm going to go ahead and just move on to some other
13 questions and hopefully this will pop up in a moment and then we'll go
14 over what we have there on the screen. Doctor, I'm going to lay out a
15 hypothetical chronology with you and I'd like you to tell me if for some
16 reason, you don't think that it could be real, okay?

17 First, Doctor, any reason for you to believe or to not believe that
18 the family made the request in the afternoon of the 14th or 15th? Any
19 reason for you to disagree with that?

20 A The request --

21 Q To remove Dr. Rives.

22 A -- to have a -- to remove Dr. Rives. I think it was on the -- I
23 don't know.

24 Q Okay.

25 A About the 14th. I think the 15th, when the CT --

1 Q Afternoon of the 14th or the 15th. That could be the case,
2 correct?

3 A It's possible.

4 Q Okay.

5 A 14th or 15th.

6 Q The CT scan, okay, that was on the 15th --

7 A Right.

8 Q -- you mentioned you didn't know what time that was, right?

9 A I don't recall the exact time.

10 Q Okay. Is it possible that the family had made the request
11 prior to that CT scan?

12 MR. DOYLE: Objection. Calls for speculation.

13 THE COURT: The Court is going to overrule the objection, in
14 light of his expert reports.

15 THE WITNESS: I don't recall that, but --

16 BY MR. JONES:

17 Q All right. Do you recall --

18 A It's bi --

19 Q Do you recall -- you said you don't recall the time of the CT
20 scan, either, correct?

21 A No.

22 Q Do you have any reason to disagree with me that it came out
23 at about 4:00 p.m.?

24 A No. I have no reason to disagree.

25 Q Okay.

1 A That's when the report came out or when the CT scan was
2 done?

3 Q It's -- I think it's the timestamp of the report.

4 A The report.

5 Q Right. So what would that mean, doctor? Does that mean
6 the CT would have been --

7 A Well, there's simply a delay, you know. Sometimes, you
8 know, a CT scan is done, then the actual typing of the report, you know,
9 can take time, but you know, it could have been communicated, the
10 results, at the time when the study was finished.

11 Q Got it. So the fact that if the report hypothetically was at
12 4:00 --

13 A Yes.

14 Q -- the CT may have been available for some period of time --

15 A Yes.

16 Q -- already, correct?

17 A It's possible.

18 Q Okay. Because that would be the time that the radiologist
19 already had an opportunity to review the CT, analyze it and as you said
20 in this case, you took a couple of hours doing that, correct?

21 A To look -- just the way it was formatted, because I had to look
22 at one picture at a time.

23 Q So however long it took the radiologist --

24 A Yeah.

25 Q -- to analyze it and then put it down as a report.

1 A Lot faster for them, but -- and they -- you -- I -- you know, I
2 don't know what the practice is at their hospital, so -- in terms of when
3 the actual formal report is transcribed.

4 Q Do you have any reason hypothetically to dispute that Dr.
5 Rives was informed by the administration that he had a 9:00 a.m.
6 appointment the next day when he was going to be removed off the
7 case?

8 A No. I don't know anything about that.

9 Q Okay. Okay. Then the CT is reviewed by Dr. Rives. And then
10 fifth, what time did Dr. Rives actually go and recommend surgery?

11 A I don't recall.

12 Q I don't remember the exact time. I want to say it's 9:20 p.m.,
13 that he has his note. But it's after 9:00 p.m. --

14 A Okay.

15 Q -- in the evening. Now, when I was asking you what would
16 be the standard of care, you said a couple of hours. Then you kind of
17 expanded it out towards reasonable, things like that, right?

18 A Yes.

19 Q Would you agree with me, Doctor, that 4:00 to 9:00 is more
20 than a traditional -- than the traditional conception of a couple of hours?

21 A Yes. But I think it's --

22 Q That's all doctor.

23 A -- a standard of care issue.

24 Q It's a yes or no question.

25 THE COURT: Counsel, can you double-check, see if we need

1 new batteries on the pocket microphone by chance?

2 MR. JONES: It's red.

3 THE COURT: There we go.

4 MR. JONES: Now it's going.

5 THE COURT: That's beautiful. Thank you so much.

6 Appreciate it.

7 MR. JONES: Thank you. Sorry.

8 THE COURT: No worries.

9 MR. JONES: Okay. All right.

10 BY MR. JONES:

11 Q So just to follow up on that, Doctor, let's see. Okay. The --
12 there's just the report on the CT there. And Doctor, can you see the time
13 of that CT?

14 A Yes.

15 Q And what time is that?

16 A 15:23 is the time that the procedure was done and the report,
17 I believe is issued at 4:06 p.m.

18 Q Got it.

19 A So that would be 16, so very quickly.

20 Q So there wouldn't have been a lot of time in this case. Just
21 about, I guess, 43 minutes --

22 A Okay.

23 Q -- between the exam and --

24 A That's good.

25 Q -- and the issuing of the report in this case.

1 A That's quite good.

2 Q Okay. And the report was issued at 4:06. Is that correct?

3 A Yes.

4 Q All right. And then the radiologist here -- this is on -- again,
5 Joint Exhibit 1, 595. It says here, doctor, that the radiologist discussed
6 the results with -- the findings with Dr. Mooney at 4:25, correct?

7 A Yes.

8 Q All right. Now Doctor, earlier I was talking about how on
9 several different days, Dr. Shaikh was perhaps suggesting --

10 A Okay.

11 Q -- in his record that maybe re-enter -- you know, that surgery
12 should be something to be considered and we talked about it being in
13 caps, correct?

14 A Okay.

15 Q Okay. And here's this, Doctor. This is on the -- you can --
16 this report, what's the date and time of this report, Doctor?

17 A Okay, yeah. I -- well, I'm hoping it's 7/6/2015. 14:44 is the
18 time.

19 Q That's what I have as well.

20 A Okay.

21 Q That's my understanding. And then Dr. Shaikh, he says there
22 that -- I highlighted a portion there, but let's just read that first
23 paragraph. Fifty-two year-old woman status post reduction of
24 incarcerated incisional hernia, operative nick to the colon and repair now
25 with postoperative abdominal pain, distention, sepsis, leukocytosis and

1 fever. This could represent fecal peritonitis. Did I read that correctly,
2 doctor?

3 A Yes.

4 Q And then, Doctor, down here at the bottom in -- it talks about
5 in this patient from the infectious disease, I would -- and he has a list of
6 recommendations. And in Subpart D there, it talks about CT scan and
7 imaging in the next three days. And then what's the part that's in caps
8 there, Doctor?

9 A It's and possible re-exploration of the abdomen.

10 Q Okay.

11 A Whether it means other things, I -- IV Vanco is capitalized,
12 respiratory failure, intubated.

13 Q Okay. Okay. So there -- he -- they -- he also mentioned that
14 respiratory failure, intubation, ICU, abdominal distention. So it looks
15 like --

16 A Yeah. Uh-huh.

17 Q -- it looks like he capitalized a couple of things, correct?

18 A Right, yeah.

19 Q Okay. Would you agree that things he capitalized appear to
20 be kind of urgent, emergent type of issues there?

21 THE WITNESS: I don't --

22 MR. DOYLE: Objection. Calls for speculation.

23 THE COURT: Overruled the way the question was phrased.

24 THE WITNESS: Yeah. I'm not sure. It's, you know, IV Vanco.
25 I don't know why, you know, he didn't capitalize meropenem, which is a

1 pretty broad spectrum antibiotic and then -- you know, in reading that
2 sentence, it just says patient should have follow up imaging in the next
3 three days and then possible exploration in the abdomen, surgical follow
4 up --

5 BY MR. JONES:

6 Q Okay. So --

7 A Wound care.

8 Q -- Doctor, you -- it would be your position --

9 A I'm not sure --

10 Q -- that the --

11 A -- that you can --

12 Q -- fact -- sorry. So the fact that he stated and possible re-
13 exploration of abdomen, you would not place any greater importance on
14 that?

15 A Well, I --

16 Q Than you would --

17 A No.

18 Q -- on the rest of the words?

19 A I don't think so. I mean, it's just --

20 Q Okay.

21 A -- it's all waiting for three days.

22 Q Thank you, Doctor. Oh, you know what, there's one
23 additional little -- Doctor, you'd agree that indicates at that time how's
24 she doing? Course.

25 A Oh, let's see. Worsening.

1 Q Okay.

2 A Is that from the same note or --

3 Q Yes, it is. It's the next page of the same note.

4 A I'll take your word for it.

5 Q Okay. Doctor, you say something again in your report on
6 that first report. You say, "The family's decision to replace him only
7 added to the difficulty of the delayed subsequent surgery."

8 So you're putting the blame on the family, correct?

9 MR. DOYLE: Objection.

10 BY MR. JONES:

11 Q That's what you're saying there?

12 MR. DOYLE: Objection. Argumentative.

13 THE COURT: Overruled.

14 THE WITNESS: No. But I mean, it did add to the delay.

15 MR. JONES: Okay. All right.

16 THE WITNESS: So I think the patient did okay, I mean --

17 BY MR. JONES:

18 Q So Doctor, are you being critical of the family there?

19 A No. I didn't mean to be.

20 Q Okay.

21 A It just -- there was a delay from the CT scan being done
22 until --

23 Q So --

24 A -- the next day, when the patient had surgery.

25 Q Well, and Doctor --

1 A But they had to replace the surgeon, so --

2 Q You'd agree there was a delay of five hours --

3 A There's a lot of delay there.

4 Q -- between the time that the CT scan, the -- even the report
5 was available --

6 A Uh-huh.

7 Q -- and when Dr. Rives even attempted to take any action,
8 correct?

9 MR. DOYLE: Objection. Mischaracterizes the evidence.

10 THE WITNESS: Yeah. There's -- there was --

11 THE COURT: Wait a second. Overruled in light of the
12 witness' prior testimony.

13 THE WITNESS: There was a delay. I --

14 BY MR. JONES:

15 Q Yeah. And Doctor -- and with him recommending surgery,
16 right -- the impetus could certainly be said that it related to the CT scan
17 that it happened five hours earlier. You could also -- hypothetically, it
18 could be related to the fact that he might have been worried he was
19 being kicked off the case, right?

20 MR. DOYLE: Objection. Calls for speculation.

21 MR. JONES: I'll withdraw --

22 THE COURT: Sustain --

23 MR. JONES: -- the question.

24 THE COURT: Since it was withdrawn, the Court need rule on
25 the pending question. Thank you.

1 BY MR. JONES:

2 Q Doctor, if it were your wife, mother, sister, daughter, and you
3 had been through this process with this surgeon, would you agree to let
4 Dr. Rives operate again?

5 MR. DOYLE: Objection. Relevance.

6 THE COURT: Sustained.

7 THE WITNESS: I don't really know --

8 THE COURT: Sustained.

9 THE WITNESS: -- what the family --

10 THE COURT: Sustained.

11 THE WITNESS: I'm sorry.

12 THE COURT: The jury will disregard the beginning of the
13 answer, because the Court sustained it. Thank you so much.

14 BY MR. JONES:

15 Q Doctor, I'm going to run through a number of opinions that
16 you have offered to simply -- primarily from your deposition, but to
17 simply confirm what your opinions are, okay?

18 A Yes.

19 Q Doctor, you agreed that Titina's high white blood cell count
20 was due to her septic syndrome, correct?

21 A Yes, her systemic inflammatory response --

22 Q And these are all going to be yes or no answers, doctor. Do
23 you agree with that? You agree Titina's high white blood cell count was
24 due to her septic syndrome, correct?

25 A No.

1 Q Okay. Let's go ahead and go to your deposition, page 23.

2 MR. JONES: It's already been --

3 THE COURT: Right.

4 MR. JONES: -- unsealed.

5 THE COURT: Right. It's right there.

6 MR. JONES: Oh.

7 THE COURT: I was going to let you know it was right there.

8 Just one step ahead.

9 BY MR. JONES:

10 Q So I'm going to ask it one other way, first?

11 A Okay.

12 Q Doctor, you agree at your deposition, you testified under
13 oath that Titina's high white blood cell count was due to her septic
14 syndrome, correct?

15 A We could look and see.

16 Q Well, go ahead and testify for this jury, please. You testified
17 under oath a few months ago.

18 A I don't remember my deposition, what I said.

19 Q You don't remember. Okay. So page 23, beginning at line
20 13 --

21 A Okay.

22 Q -- going through 15.

23 A Thank you.

24 Q Are you there, doctor? Okay. Question --

25 A Okay.

1 Q "Q Do you have an opinion as to the cause of the elevated
2 white blood count?

3 "A I think it was due to her septic syndrome," correct?

4 A Correct.

5 Q That's what you stated under oath at that time, correct?

6 A Yes. I did say that.

7 Q Okay. Doctor, you agree you testified a normal white blood
8 cell count is around 10,500, correct?

9 A That's correct.

10 Q Doctor, you agree that from July 4th to July 16th, 2015,
11 Titina's white blood cell count fluctuated, but never normalized and was
12 persistently high and did not improve, correct?

13 A That is correct.

14 Q Okay. So her white blood cell count did not improve,
15 correct? Doctor, it's a yes or no question.

16 A The white count did improve.

17 Q The white count did improve.

18 A I will state, since you're limiting me to yes or no, but I think it
19 needs further explanation.

20 Q Okay. So you're saying now the white cell -- the white count
21 did improve, correct?

22 A The type of white blood cells.

23 Q Doctor, the question was very simple. Titina's white blood
24 count fluctuated, but never normalized, was persistently high and did not
25 improve, correct?

1 A In terms of the total white blood cell count --

2 Q Doctor, it's a yes or no question.

3 A Yes.

4 Q Is that correct, or no?

5 A In terms of the total white blood cell count, yes.

6 Q Okay. You agree that at deposition, you were asked did the
7 white count improve and you said no. And then you went on to explain
8 that --

9 A In terms of the total.

10 Q -- it did not improve.

11 A Yes.

12 Q That's what you said at deposition, correct?

13 A Okay. It's the same thing.

14 Q And doctor, you never then went on to explain at deposition
15 that oh, but you know what, the types of white blood cell counts are a
16 little bit different. You didn't ever explain that, did you?

17 MR. DOYLE: Objection. Lacks foundation. He was asked.

18 THE COURT: Counsel, please no speaking objection.

19 MR. DOYLE: Lacks foundation.

20 THE COURT: The jury will disregard the additional
21 commentary. The objection is --

22 THE WITNESS: I don't recall.

23 THE COURT: -- over --

24 THE WITNESS: Just a second.

25 THE COURT: I'm sorry, just. You gotta wait. The objection

1 is overruled. I'll remind that we've gotta have one person speaking at a
2 time in order to have a clear record, please. Thank you so very much.

3 BY MR. JONES:

4 Q So Doctor, you never went on to explain that while the
5 numbers are always bad, the nature of the white blood cell counts
6 changed and so it wasn't quite as bad as it appears. You didn't say
7 anything like that, did you?

8 A No.

9 Q Okay.

10 A I wasn't asked.

11 Q Nor did you offer it, did you?

12 A No.

13 Q Okay. And you didn't say that in any of your reports, either,
14 after analyzing these 8,000 plus pages of records, correct?

15 A No, I did not.

16 Q Okay. All right. Doctor, at the time of your deposition, your
17 belief that Titina developed aspiration syndrome included as part of your
18 analysis the belief that Titina vomited, correct?

19 A Yes.

20 Q Okay. And Doctor, the medical records state that Titina
21 vomited, correct?

22 A That's correct.

23 Q Okay. Now, did Mr. Doyle tell you that Titina vomited?

24 A No.

25 Q Did someone else tell you that Titina vomited?

1 A No.

2 Q Okay. That was just a misunderstanding you had?

3 A I think I had assumed that.

4 Q Okay. Okay. But you agree that it's nowhere in the records
5 at all, correct?

6 A That's correct.

7 Q Okay. Doctor, you agree that even if it usually happens over
8 days, an intrabdominal infection can manifest immediately, correct?

9 A Depending on the underlying etiology.

10 Q Right. But you agree an intrabdominal infection can manifest
11 immediately. Isn't that true?

12 A With --

13 Q It's a yes or no --

14 A -- under certain circumstances --

15 Q -- question, Doctor.

16 A -- yes.

17 Q Okay. Doctor, at your deposition, you agree that Dr.
18 Ripplinger's note of July 9th should indicate to a surgeon that there
19 should be a fairly low bar to reoperation, correct?

20 A Yes.

21 Q Doctor, you agree that Titina's diabetes did not make Dr.
22 Rives cut holes in her colon, correct?

23 A No.

24 Q Meaning you agree with that statement?

25 A I agree with that, yes.

1 Q Okay. And Doctor, you agree that Titina's diabetes did not
2 make Dr. Rives' staple line give way, correct?

3 A Correct.

4 Q Doctor, you agree that source control is critical in the
5 definitive management of sepsis, correct?

6 A Yes.

7 Q Okay. And in fact, you agree that source control is the single
8 most important step in the definitive management of sepsis, correct?

9 A I agree.

10 Q Okay. Doctor, hypothetically speaking, if Dr. Rives testified
11 under oath that source control were not critical in the management of
12 sepsis, that would be wrong, correct?

13 A Well, I mean, it's a time context thing. I know --

14 Q No --

15 A -- you want yes or no answers.

16 Q Right. So I'm going to ask you again. If Dr. Rives, as a
17 general statement, previously testified under oath --

18 A Uh-huh.

19 Q -- that source control was not critical in the management of
20 sepsis, that would be contrary to the literature on the issue, wouldn't it?

21 MR. DOYLE: Objection. Hearsay and misstates the evidence.

22 THE COURT: Overruled on misstates the evidence,
23 hypothetical. The Court's going to overrule on both basis.

24 BY MR. JONES:

25 Q You can answer, Doctor.

1 A Okay.

2 Q Yes or no?

3 A Well, I mean, as an ultimate goal, yes. It isn't critical.

4 Q Okay. Well -- and in fact, a moment ago, I think, probably
5 within the last minute or so, you agreed that source control is the single
6 most important step, didn't you?

7 A Yes.

8 Q Okay.

9 A Among other -- there are lots of steps.

10 Q Got it.

11 A That's the most important one.

12 Q All right. And Doctor, source control is basically what it
13 sounds like, right? To control the actual source of where the infection
14 comes from, right?

15 A That's correct.

16 Q Okay. Doctor, in managing sepsis, you agree a delayed
17 diagnosis can contribute to an adverse outcome, correct?

18 A Yes.

19 Q Doctor, you agree with this statement. Yes -- do you agree
20 with this statement, yes or no? "It was known that there were at least
21 two holes created during the July 3rd, 2015 surgery. This should have
22 put Dr. Rives on noticed of a potential problem and the source of the
23 infectious process."

24 Do you agree with that statement?

25 A I'm sure he was concerned about it, yes.

1 Q Do you agree with that statement?

2 A Yes.

3 Q Okay. Doctor, do you agree with this statement, yes or no?

4 It was incumbent upon Dr. Rives with full knowledge that the colon had
5 been perforated and repaired during surgery to presume an
6 intrabdominal source of the sepsis until proven otherwise?

7 A I think it was a daily concern for him.

8 Q Doctor, do you agree with that statement?

9 A Yes.

10 Q Okay. All right. Doctor, you have not met Dr. Hurwitz,
11 correct?

12 A No.

13 Q But in deposition, you stated that you respect him, given his
14 board certifications, correct?

15 A Yes.

16 Q And that's because you appreciate it's difficult to become
17 board certified, correct?

18 A Yes.

19 Q And it shows a certain degree of expertise, doesn't it?

20 A It just shows that you're good at taking tests, yes.

21 Q Doctor, isn't it fair to say it shows more than that, because
22 part of your board certification as a surgeon is that they take you in to a
23 whole bunch of different rooms with fake patients and they make it
24 very -- they create difficult scenarios to see how you do handling the
25 patient with difficult circumstances?

1 A They didn't do that when I took my board examination, no.

2 Q Oh, they didn't so that on yours?

3 A No. They may have --

4 Q Yours was just a written test?

5 A -- changed it. I took a written test and an oral test.

6 Q Okay. So your oral test, you didn't go through diagnosing
7 patients with --

8 A Not in different rooms. I mean, they -- that was the oral test.
9 They gave you patient scenarios and then you know, you discussed
10 them.

11 Q Okay.

12 A Things would change, you know, while --

13 Q And so you'd kind of get an analysis of whether or not you
14 were good in the oral portion --

15 A You were being interviewed by other surgeons, yes.

16 Q Okay. All right. Doctor, do you agree with the statement,
17 "While board certification is not required to practice medicine, it is a
18 valuable tool for determining the expertise and experience of a physician
19 in a particular field of medicine?"

20 A Yes.

21 Q Doctor, do you agree with this statement, "For a physician,
22 board certification is a mark of distinction. It indicates the education that
23 he or she has undertaken beyond the minimal standards and
24 competency requirements in a chosen specialty."

25 Do you agree with that statement, Doctor?

1 A Yeah. I mean, it's -- it's a distinction, yes.

2 Q Doctor, you agree there are some hospitals that will not
3 permit people to operate there, not permit doctors to operate there,
4 unless they're board certified, right?

5 A That's correct.

6 Q Okay. Doctor, on Friday, I questioned your bias regarding --

7 A Yes.

8 Q -- favoritism you might show, if you were doing partial
9 records only, correct?

10 A Yes. I remember your point.

11 Q And you testified that you reviewed everything that was
12 provided to you, correct?

13 A Yes.

14 Q And we agreed that Mr. Doyle represented --

15 MR. JONES: Sorry, are we on break, Your Honor?

16 THE COURT: No.

17 MR. JONES: Oh.

18 THE COURT: No, no, no.

19 MR. JONES: Okay.

20 THE COURT: We're not hearing the microphone, so can you
21 tap it again?

22 MR. JONES: Is it not --

23 THE COURT: Yeah.

24 MR. JONES: Goodness. Keeps going off. Maybe I'm -- I
25 don't know.

1 THE COURT: Can we just switch them to microphones?

2 MR. JONES: I take full responsibility, Your Honor.

3 THE COURT: No worries. Let's just get it switched out. No
4 worries. Just take a quick second.

5 [Pause]

6 THE COURT: Okay.

7 MR. JONES: Okay. Everyone hear me okay?

8 THE COURT: Appreciate it. Thank you so very much.

9 MR. JONES: All right.

10 BY MR. JONES:

11 Q So we were just talking about what you had reviewed on
12 Friday and you agree that Mr. Doyle indicated you had been given 8,000
13 pages and you confirmed you thought that was reasonable?

14 A Yes.

15 Q And that was pertaining only to the hospital's records,
16 correct?

17 A I think the reference was to the hospital's records, yes.

18 Q Okay. And to be more clear, I think it was something like
19 8,600 pages.

20 A Okay.

21 Q Does that sound reasonable?

22 A Yes.

23 Q Okay. And you didn't recall how long Dr. Rives' pages -- how
24 long his records were, correct?

25 A No, I didn't.

1 Q Okay.

2 A I don't recall.

3 Q But we can agree that based on those representations, we're
4 certainly at least above 8,000 pages of documents reviewed, correct?

5 A Yes.

6 Q Now, you provided a number of estimates on your case in
7 terms of how you spent your time. Do you recall that?

8 A Yes.

9 Q Okay. We went through that in some detail, didn't we?

10 A Yes.

11 Q Do you recall that you estimated for the jury that you had
12 spent a lot of time on your first report, 10 to 12 hours, correct?

13 A Yes.

14 Q And we identified that if we took the higher of that, the 12
15 hours, then you would have spent eight hours reviewing records,
16 correct? For that first report, correct?

17 A I don't remember exactly what I testified, but that's not
18 unreasonable.

19 Q Okay. So -- because you estimated it was two-third, one-
20 third --

21 A Yes.

22 Q -- between your time. And so you said 10 to 12 hours.

23 A Okay.

24 Q And then I said okay, is it fair to say maybe eight hours that
25 you reviewed, and you said yes. Does that sound familiar?

1 A Uh-huh.

2 Q Okay.

3 THE COURT: Okay. One second. Just also, friendly
4 reminder. We need to have our audible yes, noes or --

5 THE WITNESS: Thank you.

6 THE COURT: -- or full response, not uh-huhs, huh-uhs.
7 Thanks so much. Just so we keep a clear record. Appreciate it. Thank
8 you so much.

9 THE WITNESS: All right.

10 BY MR. JONES:

11 Q Now, doctor, do you recall when I told you that I'd do the
12 math and get back to you?

13 A Okay.

14 Q Do you remember that?

15 A Yes.

16 Q I'm getting back to you, doctor.

17 A Okay.

18 Q Now, doctor, if I told you that the average literate person
19 cannot retain information, if they read faster than two pages per minute,
20 would you have any reason to disagree with that?

21 A No.

22 Q Okay. Now doctor, let's make this simple. What is 8,000
23 pages divided by eight hours?

24 A That's --

25 Q Doctor? Would you agree that that is in excess of one

1 thousand pages per hour?

2 A Yes.

3 Q Okay.

4 MR. JONES: Your Honor, no further questions, other than
5 the issues we discussed previously.

6 THE COURT: Okay. Ladies and gentlemen, then this is
7 probably a good time for our lunch break, so -- it's just a few minutes
8 before the noon hour. So ladies and gentlemen, it's a quarter of noon.
9 We're going to come at, let's say 1:00.

10 So ladies and gentlemen, during this lunch recess, you are
11 admonished not to talk or converse among yourselves or with anyone
12 else on any subject connected with this trial. You may not read, watch or
13 listen to any report or commentary on the trial or any person connected
14 with the trial by any medium of information, including without limitation
15 social media, text, tweets, newspapers, television, internet, radio.

16 Anything I've not stated specifically is, of course, also
17 included. Do not visit the scene of the events mentioned during the trial.
18 Do not undertake an research, experimentation or investigation. Do not
19 do any posting or communications on any social networking sites or
20 anywhere else.

21 Do not do any independent research, including, but not
22 limited to internet searches. Do not form or express any opinion on any
23 subjected connected with the trial until the case is fully and finally
24 submitted to you at the time of jury deliberations.

25 And also just remember the friendly reminder that none of us

1 can speak to you in any manner, so if you see any of us, we're not being
2 rude. We just can't speak to you. I know we talked about the last couple
3 weeks. Just wanted to give you a friendly reminder, since it's been a
4 long weekend. With that, have a very nice, relaxing lunch. See you back
5 at 1:00. Thank you so much.

6 THE MARSHAL: All rise for the jury.

7 [Jury out at 11:44 a.m.]

8 [Outside the presence of the jury]

9 THE COURT: Just one second. Okay. Hearing the click of the
10 door, we're outside the presence of the jury, so let's get to the medical
11 malpractice issue. Would you like the witness to go into the anteroom --

12 MR. JONES: Yes, Your Honor.

13 THE COURT: -- so it's not discussed outside, or do you wish
14 him to be here? What's the party's -- the request one way or another?

15 MR. DOYLE: I'd prefer him to stay.

16 THE COURT: Well, since it involves his testimony,
17 shouldn't -- counsel for Plaintiff, is there an agreement that he can stay?

18 MR. JONES: No, Your Honor.

19 THE COURT: Okay. Well, since he's --

20 MR. DOYLE: But, you asked.

21 THE COURT: -- not a -- okay. But since he's not a party, is
22 there any basis in which a witness who's on the stand in discussing his
23 potential testimony would have a basis to stay in the courtroom, when
24 one party is requesting that he leave?

25 MR. DOYLE: I believe in the interest of time and efficiency, if

1 he's allowed to hear what the issue is, he'll be able to deal with it more
2 expeditiously when we return.

3 THE COURT: Is there any legal basis, since I have an
4 objection from Plaintiff's counsel, that he be able to remain to stay
5 regarding his own testimony?

6 MR. DOYLE: I gave you my position.

7 THE COURT: Okay. Time and efficiency. Counsel, your
8 response?

9 MR. JONES: No, Your Honor. Of course it would prejudice
10 the Plaintiff for him to know what our issues and arguments or questions
11 are going to be, so any -- you know, he -- it would be extraordinarily
12 prejudicial to have him stay.

13 THE COURT: Okay. Based on those two positions, I've got
14 prejudice versus efficiency. For the very quick efficiency, the Court
15 would have to take prejudice potentially to a case over the potential
16 efficiency.

17 So counsel for Defense, do you wish him to be in the
18 anteroom, out in the hallway? Where would you like him to go? What
19 would you like?

20 MR. DOYLE: Hallway is fine.

21 THE COURT: Okay. Wherever Defense counsel is saying.
22 Thank you so very much. Do appreciate it. Okay. So then at this
23 juncture -- give me one second. Okay. Nobody else is a witness in this
24 case anticipated to testify, so does anyone have any objection to anyone
25 else staying here? It's a public courtroom. People are more than

1 welcome to be here.

2 UNIDENTIFIED SPEAKER: No, Your Honor.

3 MR. JONES: No objection.

4 THE COURT: Counsel for Defense, do you have any
5 objection to anyone remaining here?

6 MR. DOYLE: No.

7 THE COURT: Okay. So then the Court gave you the Court's
8 inclination after having an opportunity obviously to read each 7.27 briefs
9 and taking into note that in the 7.27 briefs and taking into note that in the
10 7.27 brief of Plaintiff's, it had several citations to cases in several other
11 jurisdictions, so I looked at a couple of those during the break and as far
12 as in Plaintiff's 7.27 brief -- I mean, excuse me -- in Defendant's 7.27
13 brief, the Court did notice there was relevancy and some other
14 generalized objections with the -- let me go through with the disclosure.

15 Also, have the waiver argument, obviously in Plaintiffs as
16 well, so there was not specific citation to any cases in Defendant's and
17 Plaintiff's. Like I said, they mentioned cases outside the jurisdiction.
18 Neither party cited cases specifically of any precedential import here in
19 the State of Nevada. The Court's aware of the general custom and
20 practice, obvious and looked at the guidance for cases outside the
21 jurisdiction, since both parties seemed to indicate that there was nothing
22 specifically in the jurisdiction.

23 So the Court -- the party's heard the Court's inclination and
24 so since there's an objection raised by Defendant, let's you have first -- if
25 you have a few moments -- just a few moments of arguments, because

1 we need to be out by noon. And obviously that gives you more than
2 enough time, because it raises the issue of the first time, so obviously
3 you thought it was going to be raised really, really quickly. And then
4 Plaintiff, you can respond, and the Court will make a final ruling. Thank
5 you so much.

6 MR. DOYLE: So the -- Your Honor, the cases are all remote in
7 time and part of this based upon what's in the deposition and part of it is
8 an offer of proof. But the first case was when Dr. Juell was a resident
9 many, many years ago, as a trauma patient, who had a complication
10 from an arterial line with a limb loss. And apparently in his mind, there
11 was some settlement on his behalf by the university. Certainly irrelevant
12 and would constitute 48.035.

13 THE COURT: How?

14 MR. DOYLE: Because it's remote in time. It has nothing to
15 do with the issues in our case and the medicine in that case and our case
16 have no relationship to one another at all.

17 THE COURT: Counsel, in light of the Court's inclination of
18 the few questions that would be allowed to be asked, that's what the
19 Court is really -- the reason I stopped you for a quick second, because
20 your --

21 MR. DOYLE: Well, then --

22 THE COURT: -- your argument is kind of broad-based. The
23 Court's very specific, you know, outlying in the inclination. It's very
24 specific and narrow to be allowing the witness to say what the outcome
25 was, right? So is that still a concern?

1 MR. DOYLE: Yes, it is, because in the case that I believe
2 Plaintiffs want to focus on, the case where in his deposition, he said it
3 was a vascular case with aspiration and pneumonia and the patient died,
4 in that case, which was more than ten years ago, it was a complex
5 vascular procedure and that what happened in that case is because of
6 the possibility of an excess exposure, Dr. Juell was compelled to consent
7 to a settlement. And once he consented to a settlement, then the
8 insurance company, contrary to his wishes and desires, settled the case
9 for the \$150,000 that he described in the case, so --

10 THE COURT: Counsel, are you saying that an insurance
11 company, absent a doctor's consent, the client's consent was able to
12 settle a case without the doctor's consent?

13 MR. DOYLE: That's not what I said, Your Honor. What I said
14 was he was compelled to consent to a settlement, because of the
15 possibility of an excess exposure, which is quite common in the situation
16 where there is the possibility of an excess exposure and having
17 consented, because he felt compelled to do so, then the insurance
18 company, contrary to his wishes and desires settled the case on his
19 behalf, so --

20 THE COURT: So counsel, I have to have -- I don't understand
21 what you're saying. If -- did anyone comp -- I don't -- you used the term
22 compel, so did anyone order him to do it or he gave his consent. I'm not
23 understanding how you're saying the insurance company can settle it
24 without his consent. If he evaluated the risks and decided he didn't want
25 the risk of excess exposure and then gave his consent, then I'm not

1 understanding how you're saying that the insurance company did it
2 without his consent. And maybe I just didn't fully understand what
3 you're saying, so would you mind explaining a second more --

4 MR. DOYLE: Yes.

5 THE COURT: -- if you -- thank you so much.

6 MR. DOYLE: He gave his consent to a settlement, based on
7 the reason that there was a possibility of an excess exposure. He had a
8 very good expert witness from an academic center, who completely
9 defended his care and treatment. Plaintiff's expert witness, in his view,
10 came from some small, rural town in the Midwest and in terms of
11 comparing the expert witnesses, he and his counsel, I understand,
12 thought that the case was a very defensible and winnable case, however,
13 solely because of the reason that there was a possibility of excess
14 exposure if the case went to trial and if the case was lost and if the ca --
15 because the jury disagreed with the defense presentation in the case,
16 then he would face an excess exposure.

17 I mean, if a physician in a malpractice case goes to trial not
18 having consented to a settlement and there is a verdict in excess of the
19 policy limits, the insurance company can take the position that well, you
20 never consented. Here's our policy limit. Now Plaintiff, you have to
21 chase the doctor individually for whatever is above the policy limit.

22 So when that situation exists, it is often the physician's
23 position, often in consultation with personal counsel, that the physician
24 is advised to consent to a settlement and then lay it in the lap of the
25 insurance company, so to speak, in terms of what to do. And that's what

1 happened in this case.

2 And while Dr. Juell did -- yes, technically he consented for a
3 specific reason, it had nothing to do with his concern about his care or
4 the quality of his care, once he did consent, then the insurance company
5 now can do what it wants. Dr. Juell's express desire, I am told, was that
6 the insurance company, even though he had consented, that they
7 continued to defend the case, that they not offer any money to settle the
8 case, but contrary to his wishes and desires, an amount of money was
9 offered, and it was accepted. And to have to go into all of this to explain
10 the context of the case and the outcome would certainly be irrelevant in
11 48.035, if we're speaking about the one case that I think Plaintiffs want to
12 focus on, because all the other cases were dismissed or dropped.
13 There's only the one case with a settlement.

14 THE COURT: So how would the Court's inclination be
15 impacted by that?

16 MR. DOYLE: So please repeat the inclination. I'm sorry.
17 Would you mind?

18 THE COURT: No, be glad to. The Court said its inclination
19 was basically the standard four questions. Have you been sued? The
20 number of times, the result and then generally anything else by
21 agreement or specific, you know, argument, discussion in front of the
22 Court.

23 MR. DOYLE: And so how is he going to discuss the result
24 without all the context I've given you and all of that context to explain
25 the result is irrelevant? And it's 48.035.

1 THE COURT: It's not to discuss the result. It's what is the
2 result.

3 MR. DOYLE: Well, the result was a settlement.

4 THE COURT: Okay. That's --

5 MR. DOYLE: Well -- and but now -- but then now on redirect,
6 I have to ask him, well, you know, the jury's left with an incomplete
7 impression. And for me to paint the picture and complete the picture,
8 we have to go into all of the stuff I just explained. That's my position.

9 THE COURT: Okay. Did you wish to address any of the cases
10 or anything that was cited in any of Plaintiff's?

11 MR. DOYLE: I didn't have a chance or time to carefully study
12 those.

13 MR. JONES: Your Honor, there was just one
14 misrepresentation that there was one that was settled. There were two
15 of the four that were settled. The -- we intend to be brief on this issue,
16 but there are certainly -- I mean, I will tell you, Your Honor, I have seven
17 questions total that are written on this. I do not go into depth exploring,
18 but I think it goes directly to the bias in this case.

19 We have a witness who has acknowledged that in his entire
20 career, he has done a whole bunch of reports over the last 20 years all in
21 favor of the defense, none in favor of the Plaintiffs, that he uses this --
22 you know, he's the first guy ever to say that this particular person has
23 aspiration pneumonia and he also used that in the defense twice in prior
24 cases.

25 And regard -- you know, so I think those are certainly, in

1 terms of having a lot of questions on it, I don't, but I think that those are
2 relevant facts to bring up. And the fact that he had two cases that
3 settled, resulted in a settlement, I think is perfectly appropriate, Your
4 Honor. And so I think it goes to his bias. It goes to his credibility. This is
5 his -- this is what he does. Not the malpractice itself, but the same types
6 of excuses. So -- and the bias has led him into improper conclusions,
7 improper opinions. Anyway -- so Your Honor, that's it. I mean, the
8 questions we have are very simple and straightforward. I have seven
9 questions.

10 THE COURT: Do they go out of the -- what the Court said.
11 You heard the Court's inclination. Have you ever been sued? The
12 number of times? What was the result? And then I said anything else by
13 agreement or specific discussion with the Court. When I say discussion,
14 argument, brought up to the Court, however you'd like to phrase it, so --

15 MR. JONES: And then was it settled? Was that one of your
16 questions?

17 THE COURT: The result. No. Ever been sued, the number of
18 times and what was the result.

19 MR. JONES: So Your Honor, I don't --

20 THE COURT: And those aren't specific.

21 MR. JONES: Right.

22 THE COURT: I mean, the result allows the witness to
23 respond how the witness wishes to respond, which some witness
24 respond monosyllabic, right? In just saying dismissed. It does not force
25 a witness to say something more than he or she wishes to do, to explain

1 something more than he or she wishes to do. It doesn't require the
2 witness to have this case delve into things that are not this case. This is
3 not an issue, like the pre-instruction as a result of a sanction, which was
4 a completely distinct issue, which the Court gave its full analysis on why.
5 And then the door opening by counsel for Defense's questions open that
6 door even more.

7 And -- but that's not where we are in this issue. This issue is
8 parallel by some analogies to a lien-type issue, which the Supreme
9 Court, since it's not something directly on point and most analogous
10 would be a lien-type for the bias type. And then you have the
11 additional -- the competency of his own even knowledge in this area and
12 to give the opinion. So you have those two areas and that's the very
13 narrow input, so your question's --

14 MR. JONES: Your Honor --

15 THE COURT: -- outside of what the Court's inclination was.

16 MR. JONES: All of them are within -- certainly within those
17 parameters, obviously using different words. The -- I have one question
18 that's outside and it's a very direct bias question. Has -- being sued by
19 patients in the past, is that cause to be biased or -- toward Plaintiffs,
20 essentially.

21 THE COURT: Okay. Well, that would be -- okay. Are you --

22 MR. JONES: I mean, it's directly on point for bias, right?

23 THE COURT: -- are you intending to ask the nature or in
24 details of the underlying cases, which involve those four past medical
25 malpractice that was attached -- well -- I got it -- on Defendant's brief.

1 Looks like it starts on page 92 of his deposition and had the deposition
2 also attached -- well, both briefs attached to the deposition. So I'm
3 referencing page 92 to page 94. Is that the scope of reference everybody
4 else is talking about? Because that's the only pages people have given
5 me.

6 Yes? Defense counsel?

7 MR. JONES: Yes. Yes.

8 MR. DOYLE: That was the only point in the deposition where
9 it was asked.

10 THE COURT: And so the only ones -- my question is a little
11 bit broader. I don't know if he got asked somewhere else or sometime
12 else. This is all you all have presented to me, so that's the only point of
13 reference this Court has when this Court said four times and what this
14 Court understands, because you all provided me those pages. Is there
15 some other malpractice action or something that's --

16 MR. DOYLE: Not that I'm aware of.

17 MR. JONES: Your Honor, not that we're aware of.

18 THE COURT: Okay.

19 MR. JONES: And our entire basis for questioning comes
20 from the deposition.

21 THE COURT: Okay.

22 MR. JONES: From his answers in deposition.

23 THE COURT: Okay. So that's why the Court has said that the
24 residency one -- he said he wasn't a party. He just said he was deposed.
25 Second one says he was deposed but dropped. And then it says the

1 settlement. And then he says the nerve injury was dismissed with
2 prejudice.

3 So is the Court misreading something from the deposition?

4 MR. JONES: The residency one. It says there was a
5 settlement made on my behalf by the university, 93, 7 and 8.

6 THE COURT: All right. Then it says I wasn't party to that
7 settlement resolution, but I was deposed, so --

8 MR. JONES: Well, it says I wasn't in trial, but it does --

9 THE COURT: I wasn't in trial, but I think there was a
10 settlement made on my behalf by the university. I wasn't party to that
11 settlement resolution, but I was deposed. Sorry.

12 MR. JONES: I see.

13 THE COURT: The Court had read that that because he was
14 a -- that he was not a party to that, because he just said he was deposed,
15 and he wasn't in trial.

16 MR. JONES: How is a settlement made on your behalf, if
17 you're not a party? And if you're deposed. I mean, I'm not intending to
18 explore that, because --

19 THE COURT: Because a resident is --

20 MR. JONES: -- beyond just saying --

21 THE COURT: -- resident is --

22 MR. JONES: A settlement was paid on your behalf.

23 THE COURT: Pardon?

24 MR. JONES: I mean -- right. I -- so I don't know what facts
25 he's right and wrong about there in terms of his own status. I'm not

1 gong to push that issue, but the fact that there was a settlement on his
2 behalf I think is a relevant question to ask him.

3 THE COURT: So counsel, the Court needs a little bit more
4 clarity. Okay. The last question, in general, asking if things would
5 present a bias is generally allowed as a last type of question, because it
6 goes to the heart of it. It gives the witness an opportunity to say yes or
7 no. That's the heart of a bias question. The concern is when you say
8 you're going to into -- want to explore some of these. That's where the
9 Court would have some concerns, because not -- without going into your
10 trial strategy and without realizing that we're about to have lunch a break
11 in just a moment.

12 The team needs their state and federally mandated lunch
13 break, but -- so I'm not asking you to do right before the lunch break to
14 tell the opposing side if you don't wish to [indiscernible] your questions
15 are. The Court in no way is implying or saying you need to do that in
16 any manner.

17 Just trying to get an understanding, so somebody doesn't
18 inadvertently run afoul of -- there's no ruling yet, right, but going into
19 these cases could present a challenge from your bias and competency
20 standards. Stay tuned for what may or may not get brought in on further
21 examination, if defense goes into it for opening door. We're not at
22 opening door issues. This would be your initial questions.

23 So how are we going into the facts of the underlying cases
24 go to competency or bias or some other basis that you would need to
25 ask him about underlying cases versus just the sued number of times

1 result and then this impacting for bias to get to your bias and
2 competency issues. How would anything else go to something for this
3 case?

4 MR. JONES: Your Honor, I think that it's -- I think that it's
5 something that I don't feel like I can say anything else without giving trial
6 strategy away, but it's certainly there's -- there are absolutely
7 appropriate basis to ask him some very limited questions on those facts.
8 And I'm not going to get out -- go outside of that.

9 THE COURT: Well, the challenge here is is do you know how
10 long ago that case was? Do you know if he was the only physician on
11 the case? Do we know anything about similarities on the case, out -- any
12 of those factors. I can only have the benefit of what you all provide me,
13 pages 92 to 94 of a deposition --

14 MR. JONES: Sure.

15 THE COURT: -- okay. When I look at all of that doesn't give
16 me a time element, doesn't give me who the person was, what -- you
17 know, what happened, how long ago, any of those factors that would
18 allow this Court to kind of see how inquiring into a case specific gets you
19 to bias or competency. I haven't heard his answers, so going outside of
20 the three quest -- well, four questions. Okay. So -- be -- ever been sued,
21 number of times, result and then has doing -- has being sued -- you
22 know, I mean, your bias towards plaintiffs.

23 Those seem appropriate questions consistent with the
24 general practice of the Eighth Judicial District, consistent with bias and
25 competency, which are appropriate for an expert witness and just in the

1 way those questions are allows the witness to explain what he or she
2 wishes to do on the stand in no way precludes them, because these
3 aren't yes and no on results, so they can say how they wish to phrase
4 and so they can say as little -- or if they wanted to get into explanations,
5 it doesn't limit them, so they can put it in the light that they wish to, so
6 it's not -- well, not an extremely long narratives, because that would be
7 impermissible in any manner, but it allows them to explain it and gets
8 you to bias and gets you to competency in how would a follow up
9 question as a particular case, without knowing names, dates, times and
10 other details be appropriate at this juncture.

11 Or do you wish the Court to hear your initial answers and
12 then if you think you need to ask a follow up question, that you ask to
13 approach the bench and then hear where we're going from there. Or
14 what are you requesting, counsel?

15 MR. JONES: Your Honor, what I -- the case law on this
16 issue -- although there is very little case law -- there's none that I can
17 think of that's really on point in Nevada, but as you go outside, it's very
18 clear that these types of questions are routinely appropriate to establish
19 bias or you know, the qualifications, the ability of the witness. And in
20 this case, I have questions that I think go just directly to that issue. And
21 so I'm not -- my intent is to -- I mean, like I said, I just have a few
22 questions. They will be very brief, but I think that I should be allowed to
23 go forward and ask my questions.

24 And if there is an objection to those questions, then an
25 objection can be asked, but there -- certainly there was no objection

1 during the deposition with respect to any of these questions or any of
2 the answers that he gave, and I have a couple of questions on things that
3 perhaps have similarities. And I'm not going to name any of his patients,
4 which I don't even think he did name. And Defense counsel is welcome
5 to say that this happened 30 years ago or whatever they -- you know -- or
6 have him identify that. I'm not seeking to go into it at that level at all.

7 THE COURT: Okay. Well --

8 MR. JONES: But, I mean, there's -- you know, it involves
9 some cases that have you know, high degree of trauma. It involves
10 cases where the same defense is made that he's made in this case.

11 THE COURT: Okay.

12 MR. JONES: And I think that those things are appropriate
13 inquiries.

14 THE COURT: Well, here's what the Court's going to have to
15 do, right? Remember, you all chose not to do motions in limine. If
16 somebody wishes this information to have been excluded, counsel for
17 the party wish to be excluded, could have filed a motion in limine or
18 other timely motions. No one chose to do anything in a timely manner.
19 So what the Court has before it is an admissible witness' testimony, an
20 objection being raised. The Court's fully evaluated the 7.27 briefs in the
21 context the Court can evaluate 7.27 briefs.

22 One of the briefs has a -- in the brief, it references 48 with
23 relevance evidence standards. It then goes into -- well -- it cites
24 privileges for relevance. And then it talks about 48.035 for confusion and
25 48.045, that is the citations provided to this Court. And there is some

1 general statements. And there is not in case law at all in defendants and
2 plaintiffs, there is several cases, albeit all different jurisdictions and some
3 have a lot more specific facts, like contemporaneous lawsuit, which
4 doesn't have, in this case, that anyone has told this Court about, because
5 pages 92 to 94 in the deposition do not provide this Court that
6 information.

7 So at this juncture, what the Court can say is number of
8 times, ever been sued. The answer to that is found in that answer. The
9 number of times -- allow the witness to do the results. And has there --
10 as you're being sued, have you had some type of bias towards Plaintiff?
11 Those would be -- Court can say those are specific questions. The Court
12 can say that those would be appropriate questions for bias and
13 competency. With regards to other questions in this area, all counsel, of
14 course are advised that they need to ask questions that are -- can
15 appropriate be asked in court.

16 Since nobody chose to do any type of motion in this regard,
17 no one has raised this in any manner as a timely motion, the Court has
18 to evaluate it as to just an objection that came when Plaintiff's counsel
19 said he was going into a new area on Friday and that's where the Court
20 has to take this in that context, the Court provided you all, you know, an
21 opportunity to present what you wish to present.

22 The Court took into consideration everyone's 7.27 briefs and
23 is obviously cautioning all parties that they must comply with their
24 questions, comply with the rules, only ask appropriate questions that can
25 be asked at the time of trial and at this regard, give them some guidance

1 on the type of questions, bias and competency that have been allowed
2 and then have to see if there's any objections for other things, but that in
3 no way tells me that they can or cannot -- that they cannot -- can ask
4 impermissible things.

5 Everybody knows what you can and cannot ask. If
6 somebody feels that something's been asked impermissible, there are
7 appropriate remedies in which to address those. And if somebody
8 wanted them done in advance, they could have filed the appropriate
9 motions in a timely manner. No one choose to do so. And with that, we
10 wish you all a very nice lunch. It's 12:10, which means my team
11 doesn't -- I have to see you back here at 1:20. Thank you so much.

12 MR. JONES: Thank you, Your Honor.

13 [Recess taken from 12:11 p.m. to 1:14 p.m.]

14 [Outside the presence of the jury]

15 COURT RECORDER: On the record.

16 THE COURT: Okay. We're on the record outside the
17 presence of the jury. You all ready to have the witness come in and go
18 on the stand?

19 MR. JONES: Yes, Your Honor.

20 MR. DOYLE: Yes, Your Honor.

21 THE COURT: Okay. And would you like the Marshal to go
22 get the jury?

23 MR. JONES: Yes, Your Honor.

24 THE COURT: Defense Counsel, Marsha's going to go get the
25 jury, okay?

1 MR. DOYLE: Yes. At some point we'll have -- we have Dr.
2 Juell in the hallway, so at some point --

3 THE COURT: Dr. Juell is right here.

4 MR. DOYLE: I'm sorry. Dr. Chaney in the hallway, so at
5 some point we'll need to --

6 THE COURT: At this juncture, you've got Plaintiff' witness
7 after this witness, so finish with this witness. Okay. I --

8 MR. DOYLE: Ask that we be allowed to take her out of order,
9 then

10 THE COURT: Counsel for Plaintiffs?

11 MR. JONES: No, Your Honor, we're not agreeable to that.

12 THE COURT: It's Plaintiff's case. Okay. We've got a witness
13 on the stand. We've got the jury coming in. Let's finish with this witness
14 before we address the -- we've got Plaintiff's case in chief. If there's not
15 an agreement between counsel, Plaintiff has an opportunity to call their
16 witnesses in the order, unless there's been some agreement and you all
17 have told the Court that there's not any agreement. The Court can't
18 enforce something that you all have not agreed to. On what basis would
19 you ask the Court to enforce something that Plaintiff's counsel's
20 objecting to and there was no agreement to?

21 MR. DOYLE: Because Plaintiff has known all along that I
22 would be calling Dr. Cheney has a treating physician at trial, that they
23 were notified that she would be testifying this afternoon. She cancelled
24 patients. She was -- they were notified she was going to be testifying
25 last week and we moved her because of the Court's schedule and I --

1 THE COURT: Not the Court's schedule. The Court's schedule
2 has not changed at all. In fact, you have gotten more trial time than you
3 otherwise were supposed to get, so please don't say the Court's
4 schedule, because the Court has given you all extra trial time than was
5 originally anticipated, so this Court has provided you lots of extra trial
6 time, so I don't even see a subpoena, but regardless of that, in the
7 absence of the agreement of Plaintiff's counsel, how can the Court -- if
8 you choose to send a subpoena during Plaintiff's case in chief and
9 there's not an agreement by Plaintiffs and you all had previously had an
10 agreement with Dr. Juell, how can the Court force Plaintiffs to allow you
11 to call a witness, if there's no agreement between the parties,
12 particularly when the Court had asked the parties that you were all going
13 to do agreements to please ensure you do it, offers you 7.50 to do it in
14 open court, offered you lots of opportunities?

15 And so on what basis could the Court enforce you to have a
16 witness, if you said you told Plaintiff's counsel over the weekend that she
17 was testifying today?

18 MR. DOYLE: I don't recall the rule, but I believe there's a rule
19 that allows the Court to control the flow of trial, of witnesses, testimony,
20 et cetera. And so under the or -- I believe under the Court's equitable
21 powers, if we can -- the Court can control the order of witnesses and
22 testimony.

23 THE COURT: But how would Plaintiff's case in chief, asking
24 the Court to require Plaintiff doing their case in chief not to call their
25 witnesses and instead call a Defense witness? That's what the Court's

1 asking, absent an agreement. Is there any support or authority when
2 Plaintiff's counsel told you that they object to it and there wasn't any
3 agreement to do so, there wasn't coordination on the subpoena or the
4 timing with them. You chose the time that you select -- the Defense
5 selected. I'm just asking if there's any basis you have that the Court can
6 do that. If you tell me that there's some agreements in writing, some
7 anything in which to do that.

8 MR. DOYLE: I can't say any more than I've already said. And
9 I don't see what the prejudice is to Plaintiffs taking a treating physician
10 out of order, but --

11 THE COURT: It's Plaintiff's case in chief. They're objecting to
12 being disrupted in their case in chief. There's no agreement. You stated
13 that you sent an email over the weekend. I don't even see a subpoena,
14 but that doesn't matter, whether there is or is not a subpoena. I don't
15 see one. That's not at -- that's a nonissue, but Plaintiffs objected. They
16 said they indicated they objected to you and you still had her come down
17 here.

18 The Court can't see a basis, if you can't provide me any basis
19 to force Plaintiff to stop their case in chief and have Defense call a
20 witness, when Plaintiffs wish to call their witnesses and they've
21 scheduled their witnesses, as they have told the Court they've scheduled
22 it and that they have communicated with you that they had scheduled
23 their witnesses and communicated with you over the weekend that they
24 were doing their witnesses.

25 So based on what you all have presented to me, I don't see

1 any equitable basis. You've not cited me to anything that would provide
2 this Court any basis to tell Plaintiff's counsel that they should stop their
3 case in chief and that the Court should order -- the Defense witness
4 should be called out of order over the objection of Plaintiff's counsel and
5 Plaintiff's counsel in their case in chief, because I don't see that there's
6 been any conduct or anything and they've told me that they wish to
7 move forward with the -- I'm going to ask again. Plaintiff's counsel,
8 you've heard Defense counsel's request. Would you like to reconsider?

9 MR. JONES: No, Your Honor.

10 THE COURT: Okay. Are your witnesses going to be available
11 right after Dr. Juell?

12 MR. JONES: They are, Your Honor. They're upstairs waiting
13 on the 15th floor.

14 THE COURT: Okay. So if I had that situation, there's no basis
15 that you've presented to this Court that I could order them not to do their
16 case in the ordinary course and their witnesses that they've called in
17 accordance with the schedule that you all said that you initially agreed
18 up, which Plaintiff's case and chief and then Defense case in chief,
19 subject to any agreement by the parties to call a witness out of order.
20 And this wasn't brought to the Court's attention previously, so there's
21 nothing that this Court could do. If you brought it to this Court's
22 attention earlier, the Court could do something, then --

23 MR. DOYLE: It wasn't an issue until this morning, when I
24 was told for the first time that they would not agree to take her out of
25 order, so -- but that's --

1 MR. JONES: Your Honor, I'd like to correct that. I'm --
2 personally, I would like to have the motion go forward on Rule 37. That's
3 an RPC 3.31(a) issue again. Counsel testified -- stated to the Court in open
4 court yesterday that he sent the email to us yesterday and received the
5 email yesterday. Excuse me. Now he's saying -- represent --
6 misrepresenting to the Court again, despite the several times and the
7 speaking objections. When are they going to stop, Your Honor? They're
8 not. Mr. Doyle -- that is misrepresentation, out and out to this Court.
9 And it's a 3.4 violation as well.

10 THE COURT: Simple answer. You all have agreed that Dr.
11 Juell could continue his testimony by agreement of the parties, correct?

12 MR. JONES: Correct.

13 MR. DOYLE: Yes, Your Honor.

14 THE COURT: Dr. Juell will be continuing his testimony. This
15 witness is on the stand. Probably would like to get back to his patients at
16 some point. You all ready for this jury at this juncture?

17 MR. JONES: Yes, Your Honor.

18 THE COURT: Okay. The jury may come in. Thank you so
19 much.

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 1:21 p.m.]

22 [Within the presence of the jury]

23 THE COURT: Always nice to see how quickly people notice
24 the new items put in there. I had a few Kind bars. I figured you all would
25 need some Kind bars. A little healthier option, but there's only some I

1 had and I'll look for more. And I don't need to give my candy and Kind
2 bar disclaimer, because obviously there's nuts, right? Everyone
3 understands. Enjoy. Hope you all had a nice lunch.

4 Marshal?

5 THE MARSHAL: All jurors are present and accounted for.
6 Please be seated.

7 THE COURT: Do appreciate it. Okay. Right before the lunch
8 break, everyone -- we were, as you know in the cross-examination and
9 so I'm going to ask counsel for Plaintiff if they're finished with their
10 cross-examination or if they still have some cross-examination
11 questions. And if they do, they can continue and the witness, just
12 because we had a lunch break, I always ask -- you understand you're still
13 under oath, correct?

14 THE WITNESS: I am under oath.

15 THE COURT: No worries. I always, as always ask the
16 witnesses when we come back. Thank you so much. Go ahead, counsel.
17 Feel free to continue with your cross-examination.

18 CROSS-EXAMINATION CONTINUED

19 BY MR. JONES:

20 Q Doctor, do you have any bitterness about or bias towards
21 patients that bring medical malpractice lawsuits, because of the fact that
22 you've been sued in the past?

23 A No.

24 MR. JONES: No further questions, Your Honor.

25 THE COURT: Okay. So then we go to redirect. Redirect,

1 counsel?

2 MR. DOYLE: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. DOYLE:

5 Q Dr. Juell, do you remember earlier today, you were asked
6 about, in your initial report of November 6, 2018, using the initials TF?

7 A Yes.

8 Q Would you explain to the ladies and gentlemen of the jury
9 what you had in your second paragraph that -- with the TF?

10 A I think I just referenced the patient's name and then put the
11 TF in parenthesis. I'm not a very good typer, so it was -- I thought it was
12 being efficient and so that's -- and the -- I think it referred to it as a
13 patient in some option, some -- you know, instances and then I referred
14 to her as TF.

15 Q Okay. Now this morning, when you said that the type of
16 white blood cell improved, would you explain what you were trying to
17 say to the -- would you explain that to the ladies and gentlemen of the
18 jury?

19 A Yes. I think I previously explained that under stress, the
20 white count goes up. And the reason is does is because of de-
21 margination from stress hormones, that the white blood cells are
22 normally inherent to the walls of the blood vessels. And when stress
23 hormones are released, the white blood cells enter into the circulation.
24 And then also under stress, immature white blood cells may appear from
25 the bone marrow and so in this case, there were less immature white

1 blood cells appearing over time, up until, you know, the acute
2 deterioration on the 14th and 15th.

3 Q And what was the significance of there being fewer and
4 fewer of the immature white blood cells over time?

5 A Well, I interpreted that as evidence of --

6 MR. JONES: Your Honor, objection. Goes --

7 THE WITNESS: -- improvement.

8 MR. JONES: -- beyond the scope of cross.

9 THE COURT: Just a second. I have an objection. One
10 second, please.

11 THE WITNESS: Yes, please.

12 MR. JONES: Goes beyond the scope of cross-examination,
13 Your Honor.

14 THE COURT: Court's going to sustain the objection to that
15 specific question.

16 BY MR. DOYLE:

17 Q Doctor, this morning when you were asked about the total
18 white blood cell count, would you explain what the total white blood cell
19 count means?

20 A The machines that read the CBC just reads white blood cells,
21 because they're bigger than the red blood cells. So it's cytometer and so
22 it just gives you a total number of --

23 Q And then if you look at the results of a CBC, what other
24 information do you obtain concerning the white blood cells, other than
25 their total count?

1 MR. JONES: Objection, Your Honor, goes outside the scope
2 of cross-examination.

3 THE COURT: Court's going to overrule that specific question
4 as phrased.

5 THE WITNESS: There are different types of white blood cells
6 that have different functions and also different levels of maturity.

7 BY MR. DOYLE:

8 Q What are bands?

9 A Bands are immature white blood cells.

10 MR. JONES: Objection, Your Honor. Goes outside the scope
11 of cross-examination.

12 THE COURT: Court's going to sustain that last objection and
13 the jury will disregard, since the answer came before the Court had an
14 opportunity to respond to the objection. Thank you so much.

15 BY MR. DOYLE:

16 Q Doctor, following up on your testimony this morning, which
17 type of white blood cell improved over time between July 4th and July
18 15th?

19 A The polymorph nuclear white blood cells were becoming
20 more mature in their forms.

21 Q What was the significance of that?

22 A I interpreted that as less stress and improvement.

23 Q Now, Doctor, if is a physician is granted hospital privileges, is
24 it typical that those privileges have to be reapplied or reapplication has
25 to be made from time to time?

1 A Yes.

2 Q What's the typical time period that privileges have to be
3 reapplied?

4 A Every two years.

5 Q Doctor, if one wanted to use a LigaSure and put a through
6 and through hole into the transverse colon, could you explain the steps
7 that would be necessary to do that?

8 MR. JONES: Objection, Your Honor. Outside the scope of
9 cross-examination.

10 THE COURT: Court's going to sustain the way that question
11 is phrased.

12 BY MR. DOYLE:

13 Q Doctor, can a LigaSure cause a through and through hole in a
14 transverse colon?

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

16 THE COURT: Sustained.

17 BY MR. DOYLE:

18 Q Doctor, in your review of this case, did you see any evidence
19 of the LigaSure causing a through and through hole?

20 MR. JONES: Objection, Your Honor. Leading and outside
21 the scope of the cross.

22 THE COURT: Sustained on leading.

23 BY MR. DOYLE:

24 Q Doctor, the hole -- Doctor, when you reviewed Dr. Hamilton's
25 operative report, how many holes did she describe?

1 A I think two or three.

2 Q And in your opinion, to a reasonable degree of medical
3 probability, what was the cause of what she found?

4 MR. JONES: Objection, Your Honor. There's numerous
5 objections. I think we should approach, Your Honor, based on some
6 prior discussion at the bench.

7 THE COURT: Evidentiary basis, counsel?

8 MR. JONES: Yes, Your Honor. This is outside -- the question
9 being asked right now is outside the scope of cross-examination and
10 he's seeking to create new opinions or something that this expert has
11 never offered before.

12 THE COURT: Okay. Counsel, will --

13 MR. JONES: In deposition or in testimony.

14 THE COURT: -- you approach? Madam Court Recorder,
15 could you please turn on the white noise?

16 [Sidebar at 1:28 p.m., ending at 1:31 p.m., not transcribed]

17 THE COURT: I'm going to suggest you all take a piece of
18 candy on the road.

19 At this juncture, ladies and gentlemen, it's going to make
20 more sense rather than you -- you just came back from lunch. You don't
21 want to hear some white noise right now. It's going to make a lot more
22 sense just to stretch your legs just kind of that last minute.

23 So, ladies and gentlemen, we're going to send you out for a
24 brief recess, ten minutes. It's 1:30, see you back at 1:40.

25 During this recess you are admonished not to talk or

1 converse among yourselves or with anyone else on any subject
2 connected with this trial. You may not read, watch, or listen to any
3 report or commentary on the trial, any person connected with the trial by
4 any medium of information, including, without limitation, social media,
5 texts, tweets, newspapers, television, internet, radio. Anything I'm not
6 stating you understand is specifically included. I see affirmative nods,
7 yes, I do. There we go. Thank you so much.

8 Do not visit the scene or the events mentioned during the
9 trial, do not undertake any research, experimentation, or investigation.
10 Do not do any posting or communications on any social networking sites
11 or anywhere else. Do not do any independent research, including, but
12 not limited to, internet searches.

13 Do not form or express any opinion on any subject
14 connected to the case until the case is fully and finally submitted to you
15 at the time of jury deliberations.

16 With that, see you back in about ten minutes. Thank you so
17 very much. I do appreciate it.

18 THE MARSHAL: All rise for the jury.

19 [Jury out at 1:32 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: Okay. We're outside the presence of the jury.
22 Counsel, you approached the bench, so I'm going to let the Defense ask
23 a question. Do you all wish the witness to be present during this or not
24 to be present during this?

25 MR. JONES: No, Your Honor, I think not present.

1 THE COURT: Okay.

2 Counsel for Defense, do you have a position, either request
3 by Plaintiff's counsel not to have the witness during this?

4 MR. DOYLE: That's fine.

5 THE COURT: Okay.

6 Would you mind -- so this witness, I don't -- do you have a
7 preference if the witness is out in the hallway, in the anteroom, or
8 somewhere else?

9 MR. DOYLE: Anteroom is fine.

10 THE COURT: Feel free, whatever, just watch your step.
11 Thank you so very much.

12 Okay. Does he need -- does he need to gather any of his
13 stuff? Okay. I didn't know if he needed any of the items. The Marshal
14 will ask him.

15 Okay. So, Plaintiff's counsel, you raised outside the scope
16 and prior issue. So, counsel, briefly.

17 MR. JONES: Yes, Your Honor, I'll be very brief. So last week
18 Defense counsel attempted to cause this witness to offer brand new
19 opinions that were never offered before in any report or during his
20 deposition. There was a lengthy go through of that that identified that in
21 fact this was a brand new opinion that had never been uttered before.

22 THE COURT: Let me interrupt you for one quick second.

23 MR. JONES: Yes.

24 THE COURT: Just so -- what is the opinion? Although you
25 stated it at the bench, you don't mind reiterating it so we have it clearly

1 on the record. Thank you.

2 MR. JONES: Absolutely. The opinion is an affirmative
3 opinion that Doctor Rives did not in fact have the ligature in
4 approximation of the colon, but instead that he had used it within a
5 sufficiently safe distance to cut through some scar tissue or something
6 like that. The first time that has ever been offered. Never has that come
7 up previously in this case at any time.

8 And so he was attempting to make -- to offer that opinion to
9 the jury on direct examination. I objected. And, of course, since it had
10 never been made before, it was not permitted to be offered by the doctor
11 at that time.

12 Then, on cross-examination, as anyone who was watching is
13 well aware, I may have asked two or three total questions that were not
14 yes or no questions. It certainly was the case that this witness attempted
15 on many occasions to go running off the side and answer other
16 questions that had not been asked in any way. But, regardless, he
17 generally was kept to the yes or no questions that were actually being
18 asked.

19 The witness, I did not open the door to any additional new
20 opinions of the type that are being talked about here whatsoever. And
21 whether or not counsel perhaps instructed him to try to run off and say
22 something along those lines, I can't say, but I do know that there was no
23 question by me that opened the door regarding a new opinion for this
24 expert.

25 And counsel then, on redirect just now, once again went

1 down the same line of questioning and attempted to have this witness
2 testify to the same medical opinions --

3 THE COURT: Only because my Court Recorder's ears.

4 MR. JONES: Thank you, Your Honor, sorry.

5 THE COURT: I appreciate that you're -- we need to make sure
6 my Court Recorder still has some hearing after this, if you don't mind.

7 MR. JONES: Yes.

8 THE COURT: Not in any way --

9 MR. JONES: Thank you and I apologize.

10 THE COURT: It's not any inappropriate manner, it's just
11 sometimes --

12 MR. JONES: No, I'm being loud and I'm a little upset and I
13 apologize, Your Honor.

14 Then again counsel, in redirect, attempted the exact same
15 maneuver, acts as though it's related to some door opening that
16 absolutely didn't happen and is trying to elicit again brand new opinions
17 that he knows are not permitted. And he did so on the same opinion that
18 has already been determined he had never made before, that he had
19 been told he could not offer, and he did so without seeking leave of the
20 Court, asking the Court based on some door opening if it was
21 appropriate.

22 It was entirely inappropriate what counsel did and I thought
23 that it was important that it needed to be -- I think it's a direct violation of
24 the order for him to do it again under the circumstances and I think it's
25 something that needed to be stated on the record, Your Honor.

1 THE COURT: Okay. Okay. Counsel for Defense?

2 MR. DOYLE: Yes.

3 THE COURT: Your position, please.

4 MR. DOYLE: Yes. On cross-examination last Friday Doctor
5 Juell was asked questions about ligature, distance to bowel, injury to
6 bowel, partial injuries, other injuries. There were lots of general
7 questions to Doctor Juell about injury to bowel and LigaSure, perhaps
8 not using the specific term ligature always, but rather thermal device or
9 thermal injury or heat. But there were various questions to Doctor Juell
10 in a general sense last Friday about all of that.

11 The question that I posed to Doctor Juell today was not a
12 question specific to Mrs. Farris or Doctor Rives or the surgery on July
13 3rd. I asked him if one wanted to create a through-and-through hole on
14 the transverse colon with a ligature, how would one have to do that or
15 what steps would one need to take to create that kind of hole. It was a
16 general question about how the -- about the pathophysiology following
17 up on questions that came up on Friday.

18 THE COURT: But, counsel, the Court sustained that
19 objection, then you did a follow-up question.

20 MR. JONES: And, Your Honor, there's a correction that
21 needs to be made. He asked a question, in your opinion how --

22 THE COURT: Yes. Right. That's --

23 MR. JONES: -- were the holes in the colon in the pathology
24 report created.

25 THE COURT: That's why --

1 MR. JONES: That is an opinion he had never offered before,
2 absolutely.

3 THE COURT: Counsel, the Court was subtly politely trying to
4 get that the reported question that Defense counsel said he stated was
5 not the last question that raised the last objection. The Court had
6 sustained the question, but Defense counsel did it. I was giving him an
7 opportunity to state, in case he misunderstood what his last question
8 was, because it wasn't that one that he just stated to the Court. I
9 appreciate the question, but let Defense counsel in courtesy --

10 MR. JONES: I apologize, Your Honor. I should not.

11 THE COURT: He did not interrupt you. Let him finish, please.
12 Okay.

13 So, counsel, did you write down your questions by chance in
14 order, because that opinion -- the statement that you read to the Court a
15 second ago was not your last question because the Court did sustain that
16 objection for multiple reasons as stated by the objections raised by
17 Plaintiff. Then you asked a follow-up question and that's what elicited
18 the most recent objections.

19 MR. DOYLE: Right. And that question, again, came within
20 the scope of the examination of Doctor Juell from last Friday and this
21 morning.

22 THE COURT: Okay. But the Court asked you, when you
23 came to bench, I asked you to please bring the report of Doctor Juell and
24 asked you to point out to the Court that that opinion, because it was the
25 word opinion, right, his opinion, right, to acknowledge that you asked his

1 opinion.

2 MR. DOYLE: Right. The Court asked me to bring the reports
3 and asked me to show the Court where in the reports that opinion
4 existed and I indicated I don't believe that's contained in the reports, but
5 my position was instead that the door was open to the inquiry by virtue
6 of the cross-examination. And that my redirect examination is not
7 constrained by what is or is not in a report, but rather it is -- it can be
8 governed by the cross-examination.

9 THE COURT: Has this Court not specifically on multiple
10 occasions told counsel, all counsel, that if at any point anybody feels that
11 something -- the door's been open, they need to let the Court know first
12 before they inquire in any area to not run the risk of trying to go into
13 areas that would be impermissible, because that's already been an issue
14 in this case?

15 MR. DOYLE: The Court has had that -- the Court has had that
16 conversation on specific issues of law, for example, the Sobe topic, but
17 no, the Court has not issued a blanket order nor am I aware of any
18 authority for the Court to issue a blanket order that counsel must
19 anticipate all objections to scope or beyond the scope and take that up at
20 sidebar before asking a question.

21 THE COURT: Okay. Counsel for Defense, the Court's very
22 specific question was, the Court doesn't, quote, have conversations,
23 right? The Court gives specific directives to individuals, right, counsel?
24 I've given directives, I've given admonishments, I've given orders trying
25 to give everyone the benefit of the doubt first from a -- I take it when

1 people say that there's oopses, trying to give them the benefit of the
2 doubt, educational purposes, explanations and we've gone through
3 admonishments, orders, et cetera.

4 This Court has made it very clear, as does every Court, that if
5 there's an issue with an expert and an opinion that if somebody is not
6 saying that it's an opinion that would otherwise be governed under 16.1
7 and if you ask the [indiscernible] they're saying that there's, quote, a new
8 opinion that's issued in opening the door, that those would need to be
9 discussed with the Court first because it's not an opinion anywhere in
10 the reports, anywhere in the deposition, or any opinion that's been
11 previously in any manner provided in this case.

12 This issue did come before the Court, albeit not this specific
13 question, but the same conceptual issue did become before the Court
14 during direct examination. The Court did make specific rulings on this
15 issue and that this was a new opinion that could not occur.

16 So if anyone felt that the Court's ruling in that regard needed
17 to be modified, then of course it would be appropriate to let the Court
18 know, rather than just violate a ruling of a Court.

19 That is not something that a Court thinks it needs to say each
20 and every time with each and every witness, because attorneys are
21 supposed to follow the orders of the Court. And if a Court makes a
22 ruling or determination on a topic area with the same witness, then if it's
23 going to be already that witness, that topic area, if somebody wishes to
24 re-bring up the same topic area that the Court has already made the
25 ruling on that topic area as being precluded with that same witness, one

1 would hope that the attorney would ask the Court if they think that they
2 can now delve into it instead of running the risk of violating a Court
3 order, if not a conversation. This Court has to act in the rule of law, as
4 you know. Finders of fact, law, I have to make rulings on pending
5 matters.

6 So in that regard, the Court did make a determination there
7 was nothing presented to this Court to go into this area. Everybody
8 acknowledges that this is a new opinion. So now the question becomes,
9 even giving full consideration and the benefit of the doubt number --
10 whatever number it's gone up to as far as a benefit of the doubt of
11 whether or not there could be a reasonable benefit of the doubt that
12 somebody feels that an opinion from an expert could somehow be
13 examined on redirect when the Court has made a ruling on direct
14 examination, without revisiting the issue in some manner with the Court,
15 the Court doesn't see how that could occur. It doesn't see how there
16 could be a basis for that to occur.

17 But, however, even in the absence of that, if counsel for
18 Defense is saying somehow he felt he could do that, the Court's going to
19 evaluate it on a secondary basis and also evaluate it by looking at
20 whether or not there was any even potential door opening. The Court, in
21 trying to find any potential door opening, is going to ask -- I've listened
22 to both of the parties and heard -- was here and took extensive notes, as
23 you know I've done throughout this, okay.

24 The reason why the Court was double checking through its
25 notes is, when this issue came up on direct examination, the Court was

1 taking detailed notes on cross-examination for the very issue just to see
2 if it was going to come up. Give me one moment, please.

3 Which day of Doctor Juell do you say that it came up in
4 cross-examination, counsel for Defense?

5 MR. DOYLE: I'm not sure any more what specific piece of
6 information you're asking for. The ligature, the cause of the hole, the
7 pathology report, I don't know what you're asking.

8 THE COURT: Well, I'm asking, if you're saying that
9 cross-examination allowed you to ask in his opinion about the rupture,
10 okay, the Court was looking through its notes and it already had listened
11 to different things with trial testimony, and remember a witness cannot
12 open its own door for the side that it's testifying on behalf of.

13 So to the extent the witness answered things, which whether
14 they were objected to or not, the witness answering things that if it's
15 phrased as yes or no questions, can't open its own door. The Court
16 made several rulings in that regard, so that would not be appropriate.

17 The nature of the questions and the ligature, the Court
18 doesn't in its own notes, I don't see that there's any questions that
19 through cross-examination that would in any way be viewed as, quote,
20 opening the door to a new opinion, either as a matter of law or facts
21 specific in this case.

22 So I'm asking you, counsel, since you stated that there were
23 specific questions that you felt allowed you to do so, I'm trying to give
24 you the benefit of the doubt to ask you the dates and times and when
25 these said questions happened, because you stated that you got each of

1 the daily disks, you said you were getting all of these disks transcribed
2 for your own personal purposes. I use the word transcribed. I don't
3 know if you're using Dragon naturally speaking or having someone do it,
4 it doesn't really matter. You can use it for your own purposes, that's
5 perfectly fine. It's not anything official. But since you've gotten the
6 benefit of all of that, you'd have some idea as to dates and times in order
7 for you to have this line of questioning that you think you can utilize and
8 redirect. You have to have a good faith basis, right? So you have to
9 have some dates and times that you feel that the questions were done
10 that would have opened up the door.

11 So I'm trying to give you the benefit of the doubt to ask you
12 the dates and times of the various questions that would have opened up
13 the door. Do you have any of those dates and times?

14 MR. DOYLE: I don't have dates and times. I have my notes
15 that I am relying on. And as I understand the current focus or the
16 Court's --

17 THE COURT: So those notes are for particular dates?

18 MR. DOYLE: -- my understanding, the Court's comments go
19 to the last question about the presence of the hole found by Doctor
20 Hamilton. That was the last question as I understood it that was
21 objected to.

22 And Doctor Juell has previously testified that in his opinion
23 the hole found by Doctor Hamilton was due to a staple failure. And that
24 -- and then that was explored on cross-examination to some extent,
25 according to my notes. And that's where I was going. I wasn't going

1 anywhere with the ligature.

2 THE COURT: Okay. Counsel, the Court has the benefit of
3 how a question is asked in open court. And so I'm sure you can
4 appreciate. And how the question is asked, and an objection is raised
5 and based on the history of the testimony and evidence that's in a case,
6 the Court's rulings, et cetera.

7 The Court can't get into people's minds to know what they
8 are specifically intending. This Court tries -- gives everyone the benefit
9 of the doubt, which is why I'm asking you if your notes are such, you
10 have notes by a date because Doctor Juell testified on different days. So
11 I'm trying to get some essence. If you're saying it's on particular days or
12 times, you'd have those notes of those days or times of when he said
13 information that you felt in preparing this testimony for redirect, would
14 give you the basis to ask these questions that you thought opened the
15 door.

16 I'm trying to give you the benefit of the doubt to have some
17 understanding so that maybe I need to take a break and have Madam
18 Court Recorder maybe have me listen to some things. I can pull a disk
19 and listen myself. I have already listened to certain things. I'm not
20 aware of anything, but if you can point me to something that you think
21 supports your argument, I'm more than glad to listen to it. If you don't
22 have anything, then there's not a basis for me to try and listen to
23 something.

24 MR. DOYLE: I can't give you a date and time, no.

25 THE COURT: Any rough dates or times?

1 MR. DOYLE: No, I cannot.

2 THE COURT: Okay. So in the absence of any rough dates or
3 times, which would have had to have been the basis for you preparing
4 for your redirect, based on the Court's prior ruling on direct, based on
5 everything that's been stated here, and based on giving also the
6 opportunity for all three of his reports, gone through his depo, based on
7 the ruling I went through this with the direct examination and everything
8 that's been stated, and Defense cannot point to anything that shows,
9 quote, anything that was any door opening, even to the extent, giving
10 the benefit of the doubt that somehow a door could open, that the Court
11 doesn't see by independently -- doing an analysis, it's been a long day,
12 doing an analysis, the Court doesn't find that there's any basis to support
13 a statement that the door was somehow open, independent of even
14 looking at the aspect that it should have gone to the Court first.

15 So that independent analysis that there wasn't any door
16 opening after giving a full benefit and opportunity to provide anything to
17 the Court, the door not being open, it would be an improper question on
18 that basis, independent of the Court's first analysis.

19 Now, let's be 100% clear. If anyone feels that there is an
20 issue, and I've told you all this lots of times, feel free during break, we
21 just came back from a break, it would have been a perfect opportune
22 time if somebody thought they were about to ask a question, okay, we
23 had a break outside the presence of the jury, feel free. The Court doesn't
24 require you to give your trial strategy, but if you think there's an area of
25 inquiry instead, feel free to ask the Court of the issue that is potentially

1 going to risk a prior Court ruling, particularly in this case because you
2 chose not to do motions in limine or any type of motion practice that
3 would allow the written ruling.

4 So the Court's ruling is that objection is sustained for all
5 those bases, okay. And the jury will be instructed when the jury returns
6 that the objection was sustained. To the extent that the witness started
7 to answer the question, it will be disregarded, although the witness
8 didn't really start anything substantive, okay? That's going to be the
9 Court's ruling. That last question is going to be sustained.

10 Counsel for Plaintiff, you're looking like you're about to stand
11 up. You are standing up. Go ahead, I looked down for a second.

12 MR. JONES: Your Honor, I believe we need more than that.
13 This is the second time that this jury has heard the full walk-up to this
14 other opinion that had never been given before. And I believe there's
15 prejudice there for something that we now have to deal with. The jury is
16 not dumb. They have heard all of these lead-up questions to try to elicit
17 the obvious response that the doctor thinks it was cut in some other way.

18 THE COURT: Okay.

19 MR. JONES: And so I think that it would be appropriate to
20 have an admonishment of counsel in the presence of the jury stating that
21 there was a violation of a prior order so that the jury understands what is
22 going on here, so that it's just very clear to the jury that this is not
23 appropriate what happened and it's not just a mere one more objection
24 because he was leading, right? This is a very serious violation of a prior
25 Court order that had the potential to ring a bell and it may have been

1 rung. And, frankly, I can't help but think it might be an effort to create a
2 mistrial or something by going down this road again, which is what we
3 absolutely are not interested in.

4 And so it's two times that it's happened. It is prejudicial.
5 And I very much suspect that jurors have connected the dots of what the
6 Defense is trying to do, and they need to be admonished, I think, in the
7 presence of the jury. Anyway, something along those lines, Your Honor.

8 THE COURT: Counsel for Defense, you heard the additional
9 request of Plaintiff's counsel. Do you have a position?

10 MR. DOYLE: I object to the request because Doctor Juell has
11 testified about the cause of the hole. And I was simply going to follow
12 up and clarify what his opinion was concerning the cause of the hole,
13 staple failure, staple line failure.

14 It's not a new opinion, it's not something that was never
15 previously expressed. I was simply following up to clarify on redirect
16 something that I felt had been perhaps dealt with vaguely or in a
17 confusing way on cross.

18 THE COURT: Counsel, you do understand that most of the
19 analysis while we've been outside the presence of the jury was your
20 statement that they opened the door and that he could give a new
21 opinion. And now you're saying it's clarifying on something that he
22 previously said.

23 That being said, regardless of what you are --

24 MR. DOYLE: I'm trying to deal with shifting sands from
25 Plaintiff's side. I mean what opinion -- I guess I'm not sure, what opinion

1 is it that they say Doctor Juell has not previously expressed in some
2 form or fashion and is a new opinion that would be offered here right
3 now for the first time? I guess I don't understand.

4 THE COURT: Well, counsel, when I offer you the opportunity
5 to show me in any of his reports, any of his deposition, that he offered
6 the opinion that you are trying to elicit by that question and you tell me
7 you cannot, it's not in there. And instead you state that they opened the
8 door and so you could ask it in cross-examination. And then you
9 reiterate it in open court. This Court would have its challenges saying
10 that somehow Plaintiff would have to come up with the idea of what that
11 new opinion is when you state what you stated both at bench and then
12 in open court.

13 So the Court has to take you at your word of what you stated
14 you were doing and that it's your position you felt that they opened the
15 door. And so this juncture that is improper on both bases, because if
16 you felt it was open door, the Court should have asked, there was no
17 opening the door and you can't elicit a new opinion the first time on the
18 stand.

19 So I have a request by Plaintiff. The Court is going to do it in
20 a modified fashion. I think the Court would appropriately state that
21 before the jury went out, there was a pending objection, just like I've
22 done in the past, you had an opportunity, the Court is going to sustain
23 the objection and the objection is sustained as discussed off the record
24 and based on a prior Court ruling.

25 I think that is the appropriate way to do it because it is a prior

1 Court ruling, it's consistent with that. It does not in any way put any
2 negative viewpoint on either counsel. And it makes it clear that it was a
3 prior Court ruling, so therefore you don't have any confusion issues from
4 Plaintiff's standpoint. It in no way is anything negative towards either
5 side, because it's not saying which way, really, the prior Court ruling is,
6 so it's nothing negative to either counsel. It does not in any way impact
7 any of the parties to this case.

8 I appreciate that there's some other issues that Plaintiff's
9 counsel is going to have a full opportunity in having their motion heard.
10 And like I said, the Court will hear the motion and we'll all wish the
11 motion to be heard. I've been prepped and ready for that motion since it
12 was originally going to be heard, Wednesday at 1 p.m. I keep asking you
13 all, and as you all's courtesy to continue with your witnesses, the Court's
14 continued. I said you all need to let me know when you want it heard
15 and give me a little bit of time so I can get the folders out of my
16 chambers, but I'm more than glad to hear it.

17 So any other issues in that regard can be heard outside the
18 presence of the jury, so there's absolutely no prejudice because there
19 isn't going to be any prejudice to either parties. All the parties have a
20 chance to get their case fully heard. I'm not going to have that impacted.

21 And that's what the Court's going to do, so it's a modified
22 aspect of making clear it was a prior ruling and therefore it takes care of
23 that issue. It makes it clear that it was sustained. And therefore there is
24 no view of anything negative to any counsel, any parties. It makes it
25 clear so there's no confusion to the jury. And I think the jury has heard

1 enough objections in this case and heard the Court's ruling. I don't
2 believe that they're going to have a concern in this particular one and
3 have some confusion on that.

4 I'm going to also instruct the witness that that was to be
5 done outside the presence of the jury if the parties wish. It's perfectly
6 fine to instruct him that the Court's ruling it was sustained based on a
7 prior ruling and so that the witness doesn't inadvertently try and have
8 the answer come out in another manner to some other question,
9 because that way you can ensure that a witness does not inadvertently
10 try and answer something because he is not here listening to the Court's
11 ruling. That would be the other way, in addition, to ensure that you have
12 a nice clean trial where everyone's rights are fully protected, due
13 process, full opportunity to be heard, and there's no ambush with new
14 opinions and new questions.

15 Counsel for Plaintiff, does that meet your needs?

16 MR. JONES: Yes, Your Honor.

17 THE COURT: In a modified form. I appreciate it's not exactly
18 what you asked for, but I appreciate the modified form.

19 Defense counsel, does that meet your needs?

20 MR. DOYLE: Yes.

21 THE COURT: It's not exactly what you want, but at least it's
22 not having anything negative towards you. Does that meet your needs?

23 MR. DOYLE: Yes.

24 THE COURT: Okay. Would you like the witness to be
25 instructed on that before the jury comes in or would you like it in the

1 presence of the jury? The Court's preference is to do it outside the
2 presence of the jury unless there's an agreement by the parties to do it in
3 front of the jury.

4 MR. DOYLE: I'll go with the Court's preference.

5 MR. JONES: Outside the presence, Your Honor.

6 THE COURT: Okay. By agreement of the parties, we'll do it
7 outside the presence.

8 Can you bring the witness in?

9 Counsel, are you here for just observing? You're more than
10 welcome to.

11 MR. WEISS: If I could just briefly address the Court, Your
12 Honor, I represent Naomi Chaney, Doctor Naomi Chaney, who was
13 apparently scheduled to testify this afternoon.

14 THE COURT: She was not scheduled to testify by this Court
15 knowing anything about it, but --

16 MR. WEISS: That's what I was notified by Defense counsel.
17 She is here and this is the second time she has canceled a whole day of
18 patients to be here.

19 THE COURT: You do understand the Court was never
20 notified about any of these schedules and you understand that there's a
21 dispute, which the Court takes no position on, a dispute between the two
22 counsel whether or not there was any agreement with regards to her
23 testimony?

24 MR. WEISS: I was not aware of that, Your Honor. As I was
25 on my way here, I was told there was some sort of dispute.

1 THE COURT: Did she get a subpoena for today's date and
2 time? Because the Court never saw any subpoena.

3 MR. WEISS: There was subpoenas originally given, had that
4 entire week booked out.

5 THE COURT: Okay. Was she given a new subpoena in the
6 matter for today's date and time?

7 MR. WEISS: She was not, Your Honor.

8 THE COURT: She was not given a new subpoena?

9 MR. WEISS: No, Your Honor.

10 THE COURT: Okay. Just we never saw one on file and I
11 asked about that, so I --

12 MR. DOYLE: Do you understand that I --

13 MR. WEISS: I don't have --

14 THE COURT: Okay. When the Court's asking you a question,
15 I really would appreciate if Defense counsel does not turn around and try
16 and ask the attorney that I'm trying to ask a question of.

17 I'm just asking whether or not your own client got a
18 subpoena, okay?

19 MR. WEISS: Not that I was aware, Your Honor.

20 THE COURT: I can't have multiple -- counsel for Defense, I'm
21 going to have to ask you what you said to counsel. I was asking a
22 question, so you can appreciate for a clear record we can't have you
23 talking when the Court's trying to talk. So what did you say, please?

24 MR. DOYLE: I said we did send the subpoena.

25 THE COURT: Okay. I'm going to ask you if you'd please go

1 check with your client because would the subpoena have gone to you or
2 your client?

3 MR. WEISS: It should have gone to us, Your Honor.

4 THE COURT: You're representing her, right?

5 MR. WEISS: Both parties have been aware that we're
6 representing Doctor Chaney for over a week.

7 THE COURT: And, counsel, I'm going to ask you, as much as
8 I know who you are, would you mind identifying yourself?

9 MR. WEISS: Oh, yes. I'm sorry. Todd Weiss, Your Honor,
10 John Cotton & Associates.

11 THE COURT: Okay. So, Mr. Weiss, just for the point of
12 clarification, I just need to know if there is or is not a subpoena, because
13 if the subpoena, a new subpoena was issued and if it shows who it was
14 served upon and who was given notice on it, would you mind checking
15 that real quickly, please?

16 MR. WEISS: I will check, Your Honor.

17 THE COURT: I do appreciate it. Thank you so very much.

18 Okay. We're going to need to remain outside the presence of
19 the jury if you don't mind.

20 MR. JONES: Absolutely, Your Honor.

21 THE COURT: If you all have a dispute on this, I at least have
22 to have the understanding -- I didn't realize that we had personal counsel
23 out there. And like I said, the Court just didn't see anything in the file
24 and since no one can give me any information on it, I need to ask the
25 counsel. There's nothing on file. At least it wasn't on file before the

1 lunch break.

2 MR. JONES: We didn't receive anything, Your Honor.

3 THE COURT: I don't know if something got on file in
4 between the time because obviously I've been with you all, so.

5 MR. JONES: We did receive the first one. We didn't receive
6 one after that.

7 THE COURT: Counsel for Defense, I thought it was you. My
8 understanding from this morning was that you gave her two subpoenas;
9 is that correct?

10 MR. DOYLE: Correct. We subpoenaed her prior to trial, we
11 subpoenaed her for the first day of trial as is customary, not knowing or
12 having any idea when she would testify, with the understanding that we
13 would coordinate a convenient time.

14 I believe when we had to change the date, she did not yet
15 have -- I'm going to have to double check, but as I recall, when we
16 changed the date, she did not yet have counsel and we sent her a
17 subpoena directly that she agreed to accept. But without checking with
18 my office, I -- you know, I'm doing that from memory.

19 THE COURT: Sure. No worries. This morning I asked
20 because I hadn't seen any subpoenas filed in any manner whatsoever.

21 So, counsel, once again I'm in no way requiring you to
22 answer any question. I'm just trying to get -- and, counsel, just so you
23 understand, you don't really need to answer the Court's question. I'm
24 just trying to get clarity since there's some differences of opinion about
25 and since there's nothing filed, I'm just trying to clarify a point because

1 there was a difference of opinion, so.

2 MR. WEISS: The only subpoena that the doctor's ever
3 received was dated October 15 from Defense counsel that says she was
4 to appear on October 22nd. She has no subpoena after that. Now, she
5 was -- she had made plans to appear on the 22nd. In conversations with
6 Defense counsel, which I thought were also shared with Plaintiff's
7 counsel, they have been changed to this Monday afternoon. I have text
8 messages to that effect. I believed that was the agreement between the
9 parties. This is news to me that that was never agreed upon.

10 THE COURT: Okay. The Court takes no position. The Court
11 obviously is not anywhere on those text messages. I just know what I
12 get told in Court. So, okay. So there's only the one subpoena for the
13 22nd.

14 MR. WEISS: That's correct, Your Honor.

15 THE COURT: Then there's text messages?

16 MR. WEISS: With Defense counsel, yes, that said today in
17 the afternoon was her scheduled date, so she originally made plans to
18 cancel all patients on the afternoon of the 22nd. We were told the day
19 before the 22nd that would not work. And then the schedule -- the day
20 was changed to today, so she has again canceled all her patients this
21 afternoon and is waiting outside.

22 THE COURT: Okay. Well, I guess I need to find out from
23 counsel what they would like to do.

24 MR. WEISS: Okay.

25 THE COURT: Do you all wish counsel -- personal -- you're

1 personal counsel for Dr. Chaney, right?

2 MR. WEISS: Yes, Your Honor.

3 THE COURT: Do you wish personal counsel for Dr. Chaney
4 to remain in the courtroom or be outside the courtroom? Do you all
5 wish to get this addressed right now or do you wish Dr. Juell to come
6 back on the stand? First question is, with nothing negative to counsel,
7 whether you ask him to either be inside the courtroom or outside the
8 courtroom. Because Court's going to be fine with what you all have
9 requested one way or another. What --

10 MR. DOYLE: I think out, Your Honor, probably.

11 THE COURT: So if you don't mind, with that request --

12 MR. WEISS: Not a problem, Your Honor.

13 THE COURT: -- just -- okay. So do you all -- first question is
14 -- since you know Dr. Chaney and her counsel are standing outside in the
15 hallway, first question becomes, do you all wish to address this right
16 now, or do you not wish to address this right now because you also have
17 Dr. Juell either out in the hallway or in the anteroom, and you have a
18 jury out as well? So --

19 MR. DOYLE: I think we should not address it right now, Your
20 Honor. I think we should bring in -- I think we should bring in Dr. Juell,
21 Your Honor, finish up his examination, and then either continue on with
22 our case in chief, or else address it after that point. But I -- right. I think
23 that -- yeah, we need to get our witnesses done.

24 THE COURT: Okay.

25 MR. DOYLE: They're all here, and I've had them here most

1 days of this trial, you know, because to have them if there was a spot
2 ready. But, of course, every day has gone --

3 THE COURT: Okay. As Plaintiffs present -- okay.

4 MR. DOYLE: -- as -- right.

5 THE COURT: Now --

6 MR. DOYLE: Not blaming anything. Just saying it's the
7 nature of how things have gone, they've had to wait a lot.

8 THE COURT: It was the Court's understanding from this
9 morning, that it was Plaintiffs' position that there was no agreement for
10 Dr. Chaney to testify this afternoon. But I had understood that you had
11 been notified that that has been Defense counsel -- and I'm
12 paraphrasing, but the -- I'm trying to make the distinction between being
13 notified of potentially -- of testifying versus agreeing that she could
14 testify at 1:30. Can you just give that point of clarification --

15 MR. JONES: Yes, absolutely.

16 THE COURT: -- so that the Court has a clear understanding?

17 MR. JONES: Your Honor, at -- it rings a bell when I hear it
18 today that someone, I can't say who, mentioned to me that Dr. Chaney
19 might be available next Monday, or something like that. I, frankly, don't
20 remember that it was stated at a specific time or anything like that. Like
21 there was never any agreement on it or anything along those lines, but it
22 does ring a bell that I think that maybe at some point last week someone
23 mentioned that. And for some reason, I have that in my mind, I do
24 believe, even before the email sent on Sunday. I saw the email sent on
25 Sunday, and it specifically said 1:30 p.m., right, today that Dr. Chaney

1 would testify. I'm not agreeable to that. I wasn't agreeable. I responded
2 that I wasn't agreeable to it.

3 So was -- is it possible that I was vaguely aware that
4 someone thought Dr. Chaney might be available on Monday? Perhaps.
5 It's possible. I can't recall a specific conversation, but when I'm hearing
6 it right now, it sounds like maybe somebody said that last week at some
7 point. I just don't know.

8 THE COURT: Without putting anyone on the spot, I'm going
9 to ask the same questions to Defense counsel. Was there any, from your
10 understanding, agreement on the Plaintiffs' table -- I appreciate you go
11 three attorneys. Okay? And sometimes a fourth comes and observes,
12 right, and, I guess now even maybe a potential fifth. And on the other
13 side, you've got three law firms. Right? I mean, so we got more than
14 enough attorneys. Okay? Everybody's got lots of resources. No
15 worries. More than welcome. Everyone is more than welcome. But I'm
16 just trying to get an understanding. To your understanding that no one
17 on the Plaintiffs' side made an agreement for Dr. Chaney to testify today,
18 Monday, maybe set to a particular time?

19 MR. JONES: Yes, Your Honor. My --

20 THE COURT: Even versus being in -- somebody mentioning
21 it? I'm try -- you understand the distinction I'm trying to get.

22 MR. JONES: Absolutely.

23 THE COURT: I wasn't there.

24 MR. JONES: Oh, let me be very clear. My understanding is
25 that no one ever agreed to that on the Plaintiff's side, period. That's my

1 understanding, Your Honor.

2 THE COURT: Okay. Well, I got all three of you here. I
3 presume if one of you disagree, then one of the three of you would be
4 standing up and telling me something different. Okay? No one is
5 standing up.

6 Okay. Like I said, I'm not party to any of these conversations.
7 I'm trying to just get everyone's best understanding. Okay. Defense
8 counsel, you've heard Plaintiff's position. Do you have anything to show
9 that they agreed that Dr. Chaney could testify today versus being put on
10 notice that this is when you would like it to be?

11 MR. DOYLE: I don't have a stipulation or a formal written
12 agreement for her to testify this afternoon, no. All I have is common
13 courtesy, custom, and practice in how trials are typically conducted. I
14 think, in part, what is driving this is, I think I got a brief at noon -- I
15 haven't had a chance to look at, another trial brief shortly before noon
16 about Dr. Chaney. And in my conversation with Plaintiff's counsel before
17 we came back in after lunch, basically, I was told that all Dr. Chaney
18 could testify about anyway is the date range that she took care of
19 Mrs. Farris, and the dates that she took care of her. But it's their
20 position, apparently, in this brief I haven't really had a chance to look at
21 that she cannot offer any opinions or testimony about her care, her
22 diagnoses --

23 THE COURT: Okay. But --

24 MR. DOYLE: -- the bases of her diagnoses --

25 THE COURT: -- counsel, really --

1 MR. DOYLE: -- and all of --

2 THE COURT: -- my question was very specific, and I --

3 MR. DOYLE: And that's what's driving this, Your Honor.

4 THE COURT: Counsel, try really hard. Everyone are
5 wonderful professionals. We got a great collegial community. Really
6 want to ensure -- my real specific question was, do you have anything in
7 any manner that shows that there was an agreement? I'm trying to give
8 everyone the full benefit of the doubt. I was not present at any of these,
9 obviously. This is why Court asked you all over and over and over to get
10 all this done in advance and get it taken care of, so we don't have these
11 issues.

12 So my really simple question is, it was a yes or no question,
13 is do you have anything at all, after people had the advantage of hearing
14 personal counsel of Dr. Chaney, anything at all that you think shows that
15 there was an agreement for Dr. Chaney to testify today?

16 MR. DOYLE: And as I said, no, there's no stipulation --

17 THE COURT: Okay.

18 MR. DOYLE: -- or written agreement.

19 THE COURT: Okay. I wasn't narrowing it to a stipulation or
20 written agreement. I was making it very broad, anything.

21 MR. DOYLE: Well, with Plaintiff's counsel, apparently that's
22 what -- what's required.

23 THE COURT: Counsel, please do not make --

24 MR. DOYLE: And now there is -- there is no such --

25 THE COURT: Okay. I'm interrupting you because I'm trying

1 to minimize the negative comments between counsel because they're
2 not appropriate. Okay? That's why the Court very clearly was just
3 asking a yes or no. I asked it as a yes or no on Plaintiff's table because
4 there's three attorneys there. I used the term three attorneys, anyone at
5 Plaintiff's table, because they have three attorneys. At yours, you're the
6 only attorney who is usually has been making the representation, even
7 though you have counsel sitting in back who's not an official counsel.
8 You have other firms that you're associated with and other attorneys
9 coming in. You're the only person who has physically been here doing
10 trial questions, so that's why I've asked you. So, really, it was a yes or
11 no. And it was as broad as possible, if you have anything.

12 MR. DOYLE: No.

13 THE COURT: Okay. In the absence of anything, and since
14 Plaintiff's counsel would like to get Dr. Juell on the stand, at this
15 juncture, does anyone wish to report back, even from a courtesy, to
16 Dr. Chaney's personal counsel what is you all's intention about whether
17 or not she is going to testify today, or whether or not it's Plaintiff's
18 intention, after Dr. Juell testifies, to go with one of the Plaintiff's
19 witnesses during the Plaintiff's case in chief?

20 MR. JONES: Yeah, I think we should inform her that -- that
21 she won't be going on today. There won't be time, and that her status in
22 the future is unclear. We -- I mean, yeah, we object to her going on, and
23 certainly for her offering expert opinions. We've been pretty clear about
24 that. So --

25 THE COURT: Two different positions. The --

1 MR. JONES: Oh, of course.

2 THE COURT: Okay.

3 MR. JONES: Of course.

4 THE COURT: First off, another brief has yet been mentioned,
5 which the Court doesn't have courtesy copies of. So the Court's not
6 even going there. We're not going into substance. The Court's going
7 right now -- and I'm not saying that's not positive or negative. You
8 know, 727 briefs are what 727 briefs are, but, okay, yet another one.
9 Well, you can appreciate I didn't have it as of the words coming out of
10 my mouth. You're now handing it to me now, so --

11 MR. LEAVITT: My apologies.

12 THE COURT: No, it --

13 MR. LEAVITT: That's on me, Your Honor. That's on me.

14 THE COURT: Right. The Court's not saying -- I'm just
15 saying --

16 MR. JONES: Absolutely, Your Honor.

17 MR. LEAVITT: No, it's really on me, now that we're sitting
18 here.

19 THE COURT: The short answer is, if I don't have it, I can't --
20 you know, no crystal balls, folks. So would you like the Court to ask the
21 marshal to have Dr. Chaney's counsel come in? And if either Plaintiff for
22 Defense counsel wishes to inform of him of anything, do so. Or do you
23 wish him just to wait in the hallway and guess what's happening, or
24 some third option that the Court hasn't mentioned? I'm not saying those
25 are the only two options.

1 MR. JONES: Yeah, or the marshal could just inform him that
2 -- that it looks as though he -- that she won't be testifying today and --

3 THE COURT: Well, okay. The Court is not going to ask the
4 marshal to make said statement because there's a difference of opinion
5 between the parties, and I do not think it's fair to put the marshal in
6 between --

7 MR. JONES: Okay.

8 THE COURT: -- those statements. The Court is not doing
9 that to a wonderful marshal who's helping out this department. Thank
10 you.

11 MR. DOYLE: Can I speak to --

12 THE COURT: We love our team.

13 MR. DOYLE: Can I speak --

14 MR. JONES: Yes, Judge.

15 MR. DOYLE: -- to Mr. Weiss because I'm the one that made
16 these arrangements?

17 THE COURT: Well, the Court -- if there's no objection from
18 Plaintiff's counsel, then we can take a pause in the proceedings, if you're
19 okay with that. The Court was just going to make sure it was clear here
20 in court in case anyone was going to have any concerns about what
21 someone may or may not be saying to someone, so that you didn't have
22 this issue down the road. I do not want anyone to have any issues down
23 the road or to, in any way, interpret anything that this Court is saying or
24 not saying. Because this Court is very clear what it's saying. So if you
25 wanted him to come in, the Court was fine with it. If you all wish some --

1 MR. JONES: The Plaintiffs would request that, Your Honor.
2 Let's just bring him in to make sure there's a record.

3 THE COURT: Are you okay with him coming in?

4 MR. DOYLE: Sure, if you want us to stay on the record, of
5 course.

6 THE COURT: If there's a request by one, and there's no
7 objection from the other, then the Court's going to be fine with that as
8 well.

9 Marshal, will you see if he wishes to come in? Thank you so
10 much.

11 THE MARSHAL: Thank you, Your Honor.

12 THE COURT: I'm not sure when you're going to have me tell
13 the jury, and I'm not sure what you're doing to this jury as far as their
14 timing.

15 So --

16 MR. WEISS: Hello, Your Honor.

17 THE COURT: -- I appreciate it. Thank you for your time.

18 MR. WEISS: No problem.

19 THE COURT: So at this juncture, if either Plaintiff or Defense
20 counsel wishes to inform you of anything, they have an opportunity to
21 do so. We're still on the record. So Plaintiff or Defense, do you wish to
22 tell counsel, to Dr. Chaney, anything?

23 MR. DOYLE: I guess, I -- I would like Dr. Chaney to remain
24 under the subpoena that she received last week and see if we can make
25 arrangements for her to return before the end of trial.

1 THE COURT: Counsel for Plaintiff, do you have any position
2 or anything you wish to state?

3 MR. LEAVITT: Just briefly. There was -- there was no second
4 subpoena that we noted, plus we've objected to a lot of her testimony,
5 which is subject to the Court's ruling. The scope of what she's going to
6 be offering, if any, as a -- just a treating physician, not a treating expert,
7 not a retained expert, anything of that --

8 THE COURT: The Court has no position at this juncture. The
9 Court has not seen any said subpoena. The Court has heard what it's
10 heard in open court, and the Court had just received a brief about two
11 minutes ago, between the time when you left and when you returned.
12 And the Court has not made any specific rulings with regards to the
13 witness, because it had not yet been brought to the Court's attention, the
14 substance and scope of any said aspects. The Court takes no position.
15 The Court is here to do this trial. In the Plaintiff's case in chief, there's a
16 current witness on the stand. That's what the Court is currently aware
17 of.

18 MR. WEISS: Well, Your Honor, so Dr. Chaney is not currently
19 under subpoena by either party as of now. Plaintiff's subpoena expired
20 as of last Friday, and no other subpoena was ever received from the
21 Defendants besides the 22nd, which obviously did not move forward.
22 And no -- I did notice that no other subpoena has been issued since that
23 time.

24 THE COURT: The Court takes no position. The Court doesn't
25 know. The Court has never seen anything. This issue has not yet been

1 raised fully for the Court. So I'm allowing anybody who wishes to state
2 whatever they wish to state. The JAVS system is on. The Court takes no
3 position until whoever wishes to bring the issue to the Court's attention,
4 then the Court will be glad to hear whatever argument the parties wish
5 to have -- parties or any other individuals -- the term parties is not
6 narrowly defined. I will use parties in a global sense.

7 Any individuals, representatives of individuals, parties,
8 representatives of any other entities, individuals, et cetera -- at a date
9 and time that anyone wishes to bring it to the Court's attention as long
10 as the Court is given some notice, the Court will be glad to address it. As
11 currently scheduled, the trial, the jury has been told, ends on
12 Wednesday.

13 The Court takes no position whether that is or is not going to
14 happen. The Court is ensuring that all parties have a full and fair
15 opportunity to have all their case heard in its entirety, appropriately.

16 MR. WEISS: Okay. Your Honor, obviously, my concern is
17 that as soon as I leave here, we're going to get a subpoena for tomorrow
18 or Wednesday or Thursday. Dr. Chaney is a doctor. She can't just
19 willy-nilly move the entire schedule with her patients. If I have to move
20 to quash any subpoena, I -- I guess I'll do that. The inconvenience that's
21 been imposed on Dr. Chaney at this point is astronomical. I'm not sure
22 what the issue is with scheduling. I shouldn't be in between these two
23 trying to schedule a witness.

24 So I don't think it's fair that we don't get a -- you know, quick
25 subpoenas or anything as soon as I walk out this door and expect to be

1 back here tomorrow or the next day. So I guess I'll -- I could file a
2 motion to quash if that comes to fruition.

3 THE COURT: Pardon? Could you hear? I'm sorry.

4 THE CLERK: Yeah, I can hear.

5 THE COURT: Oh, you can hear? That's -- okay. That's what I
6 wanted to make sure.

7 The Court is here, either motion calendar or in trial.
8 Anything that's brought to the Court's attention, as you know, this Court
9 handles things immediately and reviews things, and things need to be
10 done. But if something needs to be done on an appropriate shortened
11 time in any case, in any manner, at any time, everybody knows the
12 appropriate procedure to do so. Because if the Court doesn't know that
13 something needs to get handled on short -- in any expedited manner,
14 then the Court would have no way to know if it's sitting here in trial. The
15 Court takes no position on anything. The Court was no aware of any
16 issues.

17 MR. WEISS: Neither was I, Your Honor. Okay.

18 THE COURT: So I appreciate --

19 MR. DOYLE: So the Court is releasing her from the
20 subpoena?

21 THE COURT: No, the Court is not taking --

22 MR. DOYLE: Okay.

23 THE COURT: Counsel, did you not hear a single word I just
24 said?

25 MR. DOYLE: I heard absolutely every --

1 THE COURT: How many times did the Court say -- the Court
2 said --

3 MR. DOYLE: -- word you just said, and I -- and I did not hear
4 you rule on my request that she be -- that she be bound by the subpoena
5 that she -- that she's already received. The Court did not address that.

6 THE COURT: Counsel, the Court -- you have not provided the
7 Court with, A, a subpoena. You've not filed said subpoena. You've not
8 provided the Court with said subpoena. The Court has no basis or
9 information, which is all the factors stated it needed to have, in order for
10 the Court -- that's why the Court said the Court would be glad to address
11 any issue -- I thought I made it very clear. Parties, any person, entity --
12 parties not to be defined to just the parties here. Any individual, entity,
13 person, whoever wishes to bring it to the Court's attention at the
14 appropriate time and in the appropriate manner, the Court will be glad to
15 address it.

16 But at this juncture, the Court has to have no opinion
17 because the Court has absolutely nothing before it. I have no subpoena.
18 I have no information that I have through an evidentiary basis. I have
19 some people's various differences of opinion. I currently have a different
20 witness, who's out either in the hallway or in the anteroom, on the stand.
21 I have Plaintiff's counsel in their case in chief. I trust that they're --
22 actually, I have Defense counsel in his redirect of his witness that was
23 agreed to be on outside the ordinary course. That is the witness that's
24 currently, hypothetically, on the stand, meaning he's physically not
25 there, but he was on the stand until the recent break.

1 So the Court will be more than glad to address anybody's
2 issues if it's properly brought to this Court's attention. The Court can't
3 do things in the abstract without anything before it, including even the
4 basic alleged subpoena or two subpoenas, or any information
5 whatsoever. The Court appreciates people's arguments, but the Court
6 needs something before it in order for it to rule on. And the Court has
7 nothing about that. It was mentioned this morning, Plaintiff -- it's
8 Plaintiff's witnesses they were intending to call, Defense -- the Defense
9 wished to call.

10 The Court, in order to make it's well-reasoned decision --
11 continue to make its well-reasoned decisions needs accurate information
12 before it in a timely manner by whoever wishes to bring it, and the Court
13 will be more than glad to address it from whomever. And whomever
14 includes any third parties, okay? Third parties.

15 And she may or may not be under subpoena, so the Court is
16 not taking any position, the Court has said that multiple times, until
17 somebody brings it to the Court attention in a manner that the Court can
18 actually see something and make a well-reasoned ruling, have
19 something in front of it that it can actually rule on. Not something that is
20 a hypothetical that doesn't even have anything that's filed, anything, or
21 in any manner whatsoever.

22 So everyone is clear. You all know how to do it. You all
23 have multiple law firms working for you, multiple people, and be -- the
24 Court is glad to take care of it at any juncture whenever anybody would
25 like this Court to do it in accordance with the rules. So that's equal to

1 everybody. So --

2 MR. WEISS: Understood, Your Honor. Thank you.

3 THE COURT: I appreciate, and apologies to the extent that
4 there was anything unforeseen. The Court is addressing everything in a
5 timely and efficient and effective manner, with full due process to
6 everyone that's brought to its attention.

7 MR. WEISS: Understood, Your Honor. Thank you --

8 THE COURT: Thank you so very much.

9 MR. WEISS: -- for your time.

10 THE COURT: Okay. So then, at this juncture, since I do not
11 have a subpoena or anything I can address in that regard, we currently
12 have Dr. Juell either in the hallway or in the anteroom. You currently
13 have the jury out in the hallway. Obviously, it was not ten minutes. So
14 what would you all like to do here? In the redirect examination of
15 Dr. Juell, the Court has ruled on the pending objection, gave you all full
16 oral argument in that regard, plus a long break between that.

17 So do you realize at the rate you're going -- you're getting
18 close to the afternoon break. Because while the jury has been out,
19 remember, the team has still been here. They still have their rights.
20 They still need to get their afternoon break. So, once again, you're
21 getting a few minutes of trial time because of all these objections and
22 issues that are coming up. And the Court's more than glad to address
23 each and every one of them, but be conscious of your jury because you
24 told them that they're done Wednesday, and that was an -- originally,
25 you told them Tuesday. I told them Wednesday to give them the extra

1 buffer day, but -- are you still planning on being done Wednesday,
2 throwing this to a jury, counsel for Plaintiff?

3 MR. JONES: Your Honor, if Dr. Juell gets finished quickly,
4 we will -- we'll have our case-in-chief done today.

5 THE COURT: Counsel for Defense, do you anticipate this
6 going to a jury on Wednesday? Just simply a yes or no.

7 MR. DOYLE: No.

8 THE COURT: You all better really talk at the afternoon break
9 because you know you're going to lose some jurors. They told you
10 specifically that they had plans and other things going on. Okay? So
11 you're going to have to anticipate a plan A, a plan B, and also, if you're
12 going to have less than eight jurors, potentially, because of this trial
13 lasting longer than represented to these jurors even on the outside.

14 So it may or may not happen, but you all are going to need
15 to talk about some contingencies, and at the end of the afternoon break,
16 be able to tell the Court when you are having this go to a jury, okay, to
17 be fair to your jurors. Because I'm -- unless you're all thinking you're
18 having this go to a jury Halloween and asking the people who have
19 young children to be sitting here Halloween night deliberating, I need to
20 know. Because, as you know, this Court also has other things that we
21 specifically asked you about when making other scheduling.

22 But no worries. We'll make sure everybody gets a full and
23 fair opportunity to have everything heard and everything taken care of.
24 But it must be presented to the Court in order for this Court to take care
25 of it. I can't deal with hypothetical pieces of paper without being shown

1 those hypothetical pieces of paper.

2 You ready for the jury -- to bring the witness back in first and
3 put him on the stand, and then the jury? Is that what you wish?

4 MR. JONES: Yes, Your Honor.

5 THE COURT: Does that meet your needs, Defense counsel?

6 MR. DOYLE: Yes.

7 THE COURT: Marshal, please do so.

8 THE MARSHAL: Yes, Your Honor.

9 THE COURT: Thank you. I do appreciate it. Welcome back.

10 And, counsel, just once you're done with your conversation,
11 just remember when the jury comes back in to make sure that we get
12 that on -- your pocket microphone is on at that juncture. It doesn't need
13 to be on right now, but just when you do --

14 MR. LEAVITT: Defense examination, so --

15 THE COURT: Oh, I'm sorry. You are a hundred percent
16 correct. My apologies. Defense, counsel, do you need a pocket
17 microphone, or are you staying at counsel table?

18 MR. DOYLE: I'm staying where I am.

19 THE COURT: Okay. If you change your mind, we'd be glad
20 to get you a pocket microphone. I just saw, Plaintiff's counsel, you still
21 had yours on, that's why I was thinking -- so --

22 MR. JONES: No, no, I don't have it on.

23 THE COURT: Oh, you had your hand up there. I thought --

24 MR. JONES: Yes.

25 THE COURT: -- you still had it on --

1 MR. JONES: I just have my hand up. No.

2 THE COURT: -- like it was up there. My apologies.

3 And so the witness -- before the jury comes in, the witness --
4 the Court had made a ruling outside of your presence with regards to the
5 last question that was posed to you. The Court made a ruling and it's
6 going to state in front of the jury that I sustained the objection of
7 Plaintiff's counsel that the last question was inappropriate, and that the
8 opinion that was sought to be asked by that last question could not be
9 asked.

10 And so the Court sustained the objection. The Court, when
11 the jury comes back in, is going to inform the jury, as it's done in the
12 past, that that objection was sustained based on a prior court ruling.

13 Yes, Marshal, you may bring in the jury. Thank you so much.

14 THE MARSHAL: All rise. Jurors are present.

15 [Jury in at 2:27 p.m.]

16 [Within the presence of the jury]

17 THE COURT: Uh-oh. Well, I didn't get to -- oh, you're looking
18 at the basket so sadly. You want some more? Okay. Marshal.

19 THE MARSHAL: All the jurors are present. You may be
20 seated.

21 THE COURT: I do appreciate it. Thanks so much.

22 Can you grab the basket, because I can see more needs to be
23 put in there for them? Thank you so much.

24 THE MARSHAL: Yes, Your Honor.

25 THE COURT: Appreciate it. Thank you so much.

1 Ladies and gentlemen, right before we went out before the
2 break, if you recall, there was a pending objection by Plaintiff's counsel
3 to Defense's last question. The Court -- after hearing full oral argument,
4 the Court sustained the objection. So to the extent that the witness may
5 have started to provide an answer, of course, the jury would have to
6 disregard that answer, and that objection was sustained based on a prior
7 Court ruling.

8 Counsel for Defense, feel free to move forward with your
9 next question. Thank you so much.

10 MR. DOYLE: Thank you.

11 REDIRECT EXAMINATION CONTINUED

12 BY MR. DOYLE:

13 Q Dr. Juell, I wanted to ask you about pulmonary aspiration
14 syndrome. And in your opinion, based upon your review of the records,
15 what was the cause of the aspiration?

16 A The patient was fresh post-op from abdominal surgery. The
17 record reflected that she was drinking fluids and developing increasing
18 abdominal distention. This became apparent -- and also was developing
19 respiratory problems, and this became apparent to Dr. Rives, who
20 ordered an NG tube be placed down into the patient's stomach to --

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

22 THE COURT: Sustained on narrative.

23 BY MR. DOYLE:

24 Q Doctor, what was Dr. Rives' response to the drinking of the
25 fluid and the abdominal distention?

1 A He ordered a nasogastric tube to be placed for
2 decompression.

3 Q And what's a nasogastric tube?

4 A It's a tube that goes down through the nose into the stomach
5 to aspirate the fluid from the stomach.

6 Q Was there difficulty by the nurses placing that?

7 A Yes.

8 Q Is that a risk for aspiration as well?

9 A Yes. Frequently it can promote, you know, vomiting or
10 regurgitation.

11 Q Now, when -- at the point in time when Mrs. Farris was
12 drinking fluids, was she what is called NPO?

13 A Yes.

14 Q What does NPO mean?

15 A She -- there was an order that she was to take nothing by
16 mouth.

17 Q Is that a typical post-operative order?

18 A It is.

19 Q Now, doctor, given the cross-examination that you had
20 Friday and today, can you tell the jury whether you continue to believe
21 all of Dr. Rives' care was within the standard of care?

22 A Yes, I do.

23 Q All right. Is -- do you continue to believe all of his care was
24 within the standard of care?

25 A Yes, I do.

1 Q Anything he did or didn't do that was below the standard of
2 care?

3 A No.

4 Q All right. Thank you.

5 MR. DOYLE: That's all I have.

6 THE COURT: Recross-examination, counsel.

7 MR. JONES: Yes, Your Honor, very briefly.

8 RECROSS-EXAMINATION

9 BY MR. JONES:

10 Q Doctor, would you agree that there was no indication in the
11 records during any of that process that any vomiting had actually
12 occurred, correct?

13 A Yes, I think you're correct.

14 Q Okay. And, doctor, in terms of the NPO ordered, what time
15 was that entered?

16 A I don't -- I never saw the orders that --

17 Q Okay.

18 A -- were written.

19 Q Would it -- well, let me ask you this way first. Would it
20 surprise you, doctor, if the NPO order was put into place by the nurse at
21 12:23 p.m., just after noon, one minute after Dr. Rives said that the
22 patient had been drinking?

23 MR. DOYLE: Objection; assumes facts not in evidence.

24 MR. JONES: Yeah, I'm --

25 THE COURT: The Court's going to allow that question, and

1 then hear the answer. And then if I need to change the ruling, I'll do so.

2 THE WITNESS: I didn't see that in the record?

3 BY MR. JONES:

4 Q You don't have any reason to disagree with me, right?

5 MR. DOYLE: Objection. Calls -- it's argumentative.

6 THE COURT: Overruled on argumentative.

7 THE WITNESS: I have no knowledge on when --

8 BY MR. JONES:

9 Q Okay. Got it.

10 A -- the order was put in.

11 Q Doctor, once again, you were asked in your deposition in this
12 case, in a very straightforward way, if her white-blood-cell count --
13 Titina's white-blood-cell count improved at any point between July 4th
14 and July 16th, correct?

15 A The total white-blood-cell count.

16 Q You were asked if the white count improve -- if the white
17 count improved at any point between July 4th and July 16th. You were
18 asked that question, correct?

19 A I don't recall.

20 Q Okay. So do you recall your answer to that question?

21 A No.

22 Q Okay. Should we read it really quick? Would that help
23 refresh your recollection, doctor?

24 A Yes.

25 Q Okay.

1 A Thank you.

2 Q Doctor, this is on page 56 of your deposition. Okay. We're
3 beginning at line 9 and we're going down through line 12. Tell me when
4 you're ready, doctor.

5 A Yes.

6 Q Okay, doctor. So the question is, "Over the course of that
7 period, July 4th to July 16th, did her white-blood count improve?" The --
8 you agree that I read that correctly, Doctor?

9 A Yes.

10 Q Okay. And then your answer, "No. I think she did have a
11 persistent leukocytosis. It fluctuated, but never normalized." Did I read
12 that correctly, doctor?

13 A You did.

14 Q Okay.

15 MR. JONES: No further questions, Your Honor.

16 THE COURT: Re-redirect, counsel?

17 MR. DOYLE: Thank you.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. DOYLE:

20 Q Doctor, would you please explain the answer that was just
21 read to the jury?

22 A Would I explain -- please explain what?

23 Q Please explain your answer that you -- that was just read to
24 the jury about the white-blood-cell count.

25 MR. JONES: Your Honor, it exceeds the scope of --

1 THE WITNESS: Yes, it --

2 THE COURT: Just, counsel --

3 THE WITNESS: -- the total white-blood-cell count never
4 improved.

5 THE COURT: I have an objection. I have to rule, sorry --

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: -- so the jury can -- counsel, exceeds -- I --

8 MR. JONES: Exceeds the scope of the examination.

9 THE COURT: Just one moment, please. The Court's going
10 to overrule that objection. You may answer.

11 MR. DOYLE: May I re-ask it?

12 THE COURT: Yeah, sure.

13 MR. DOYLE: Okay.

14 BY MR. DOYLE:

15 Q Doctor, the question was, "Over the course of that period,
16 July 4th to July 16th, did her white-blood-cell count improve?" The
17 answer was, "No. I think she did have" --

18 THE COURT: Counsel, you asked if you could re-ask the
19 same question.

20 BY MR. DOYLE:

21 Q Doctor, would you please explain the answer that you gave
22 at your deposition concerning the white-blood-cell count?

23 A That the patient had persistent leukocytosis.

24 Q And what does that mean?

25 A Meaning that her white count -- total white count remained

1 elevated.

2 Q And what is total white-blood-cell count?

3 A Again, that's a -- just a total number of white blood cells, you
4 know, in a sample.

5 Q And were there other white-blood cells that were improving?

6 A As I previously stated, the maturity and the --

7 MR. JONES: Your Honor, I'm just going to object.

8 THE WITNESS: -- white-blood cell wasn't --

9 MR. JONES: He's going outside the scope of examination.

10 THE COURT: Court's going to sustain to the last question
11 asked. Jurors, disregard the meaning of the answer.

12 MR. DOYLE: Okay. Thank you.

13 THE COURT: Right, exceed the scope. Yes.

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

15 THE COURT: Re-recross?

16 MR. JONES: None, Your Honor.

17 THE COURT: Okay. Counsel, we have some juror questions.
18 Would you like to approach, please?

19 [Sidebar at 2:36 p.m., ending at 2:42 p.m., not transcribed]

20 THE COURT: Thank you so much. Okay. So what the Court
21 does is, I read the questions just as is from the juror questions, okay?
22 Can CT scans give false-negative results?

23 THE WITNESS: Yes.

24 THE COURT: Okay. Was Ms. Farris being treated for
25 pulmonary aspiration syndrome between July 3rd and July 16, question

1 mark?

2 THE WITNESS: Yes.

3 THE COURT: Is --

4 THE WITNESS: Is it permissible to explain why or you just --
5 I know that the Plaintiff's attorney limited you to yes or no.

6 THE COURT: The way the question is phrased, unless I have
7 agreement by counsel, since I read it just as-is, and that was your answer
8 -- both the attorneys have an opportunity for follow-up to the specific
9 questions asked by the jurors. Okay? Is there any agreement by
10 counsel?

11 MR. JONES: That's fine. I don't care. I'm fine with it. I don't
12 mind it explained.

13 MR. DOYLE: He can explain. That's fine.

14 THE COURT: Okay. Well, there, agreement by counsel, if
15 you wish to explain.

16 THE WITNESS: Yeah, I mean, she was on a -- you know, a
17 mechanical ventilator and receiving antibiotics, which is treatment for
18 aspiration syndrome and pneumonia.

19 THE COURT: Okay.

20 THE WITNESS: Which was illustrated on serial CAT scan in
21 the dependent portions of the right lung.

22 THE COURT: Okay. Next question. Is sepsis common in the
23 type of surgery Mrs. Farris had, question mark? And then there's a
24 second part to this. Could infected mesh cause sepsis?

25 THE WITNESS: The answer to the first part of the question,

1 is sepsis a common complication of elective laparoscopic hernia repair,
2 and the answer would be no. And the second part of the question is, can
3 sepsis arise from infected mesh, and the answer to that question is yes.
4 But, generally, when you're concerned about mesh infections, they're
5 usually late complications, months after the initial repair, because the
6 foreign body can harbor bacteria that can then reactivate and cause
7 secondary infection.

8 As I explained previously, the mesh itself is inert, and it does
9 not promote infection in the acute -- in the acute implantation. It's just a
10 foreign body, but it doesn't make the infection any worse or any less in
11 the acute -- you know, the initial phase.

12 THE COURT: Okay. How come you're blaming Mrs. Farris
13 for not healing properly, question mark?

14 THE WITNESS: I'm sorry. Can you repeat that?

15 THE COURT: Sure. How come you're blaming Mrs. Farris for
16 not healing properly, question mark?

17 THE WITNESS: I just -- the reason that people's hernia
18 repairs fail, I think, is because variation in the patient. Pay -- we're not
19 the same. We're all the same species, but how we heal, how we react to
20 injury, there are genetic factors involved. And that as a surgeon, when I
21 fix hernias, I do the same procedure. You know, I pick out the best
22 procedure for that patient, and I do the same procedures over and over
23 again, but yet a certain percentage of my patients fail. Their hernias
24 recur. And so where's the variation? It's not in my technique,
25 necessarily, because I'm doing the same thing that I think works best, but

1 it's their response to the operation. And there are identified risk factors
2 for patients to have hernia recurrence, and they've been very well
3 validated and studied.

4 So in Mrs. Farris' case, she had some risk factors. Her -- she
5 had -- she was overweight. She had had previous failure. So once
6 you've had one failure, the risk of having a second failure is increased.
7 And she had diabetes. The main risk factor she did not have, which is
8 cigarette smoking. That has -- is clearly a major risk factor and,
9 fortunately, she didn't smoke. But she was -- still had other identifiable
10 risk factors for failure.

11 THE COURT: Okay. So the practice has been, is since this
12 was a Defense witness, I ask first Defense counsel if you have follow-up
13 questions to those juror questions?

14 MR. DOYLE: Thank you.

15 FURTHER DIRECT EXAMINATION

16 BY MR. DOYLE:

17 Q Dr. Juell, given all the information available in this case
18 concerning Mrs. Farris, was the CT scan on July 9th a false negative?

19 A Well, I mean, there was -- it was negative for evidence of
20 perforation. Whether it was falsely negative or truly negative, it basically
21 didn't show evidence of perforation. So that was why the test was done.
22 Did it show evidence? The answer was no. Clinically, the patient was
23 improving at that point to some degree. And so although she still had
24 this persistent leukocytosis, so they were still trying to make it --

25 MR. JONES: Objection, Your Honor.

1 THE WITNESS: -- make a diagnosis.

2 MR. JONES: Narrative response.

3 THE COURT: Okay. Court's going to sustain for a narrative
4 response.

5 BY MR. DOYLE:

6 Q What was the significance of the fact that she was improving
7 at the point in time when the CT scan was done on July 9th?

8 A Just the fact, clinically, I think, when they were seeing her
9 every day, she was -- you know, initially, she obviously was quite ill.
10 After the first two days, but then her condition somewhat plateaued. In
11 fact, there was some intermittent encouraging improve -- signs of
12 improvement. Less oxygen requirements, you know. Her heart rate
13 improved. Her urine output improved. Her kidney function improved.

14 And, you know, yet she still had this elevated white count. You
15 know, she was very distended, very difficult to examine. There really
16 wasn't any clinical evidence, but she wasn't getting better. So that's why
17 the second, you know, doctor was brought in as a consultant and did the
18 -- you know, recommended another CAT scan be done, which it was.

19 Q If, on July 9th, there was a quarter-size hole in the transverse
20 colon, would there probably had been the contrast material coming out
21 seen on the CT scan?

22 MR. JONES: Objection, Your Honor; it goes outside the
23 scope, along with speculation.

24 THE COURT: Sustained on both grounds.

25 MR. DOYLE: That's all I have.

1 THE COURT: Counsel for Plaintiff, any follow-up questions to
2 the juror questions?

3 MR. JONES: Yes, just a couple.

4 FURTHER RECROSS-EXAMINATION

5 BY MR. JONES:

6 Q Doctor, you'd agree with me that in the 8,000-plus pages of
7 records that you apparently reviewed, that there's not a single time that
8 the phrase pulmonary aspiration syndrome can be found; isn't that true?

9 A Not that particular phrase, no.

10 Q Right. Never stated, correct?

11 A Not in the record, no.

12 Q Pulmonary aspiration doesn't come up either, does it?

13 A No.

14 Q Okay. And so, Doctor, when the question came to you a
15 moment ago where they were asked if there was specific treatment for
16 pulmonary aspiration syndrome, you said that there was, correct?

17 A Yes, what the doctors were doing.

18 Q No, Doctor, please answer my questions.

19 A I did say yes.

20 Q Good. And, Doctor, you'll agree with me that there was no
21 targeted treatment whatsoever for pulmonary aspiration syndrome from
22 the 4th through the 15th, was there?

23 A There was no what?

24 Q Targeted medical treatment for that condition.

25 A Absolutely there was.

1 Q Okay. Now, Doctor, what you actually mean is there was
2 medical treatment provided to fight off the infection and the fecal
3 peritonitis, which was the diagnosis people believed --

4 A Right.

5 Q -- was correct, right?

6 A The treatment that she received was the appropriate
7 treatment for pulmonary aspiration syndrome --

8 Q Right.

9 A -- even though it wasn't mentioned as a specific diagnosis.

10 Q Right. Doctor, so pulmon -- somebody suffering from
11 pulmonary aspiration syndrome potentially could have benefitted from
12 the treatment she received, correct?

13 A Yes.

14 Q But it wasn't targeted to pulmonary aspiration syndrome,
15 was it?

16 A It was -- it was empiric therapy.

17 Q Okay.

18 A You know, a broad spectrum. Like they cast a net to cover all
19 options.

20 Q Okay. Doctor, the mesh can harbor feces or bacteria
21 immediately after an operation, correct?

22 A That's true.

23 Q And feces or bacteria that gets harbored in that mesh can
24 immediately cause inflammation, infection, fecal peritonitis, can't it?

25 A But there -- it's an independent --

1 Q Doctor, it's a yes or no question.

2 A It's -- the mesh has nothing to do with the infection.

3 Q The mesh can harbor feces, bacteria that comes out of those
4 holes in the colon, and can immediately contribute to the fecal
5 peritonitis, can't it?

6 A It's the bacteria that caused the infection.

7 Q Okay. Can the mesh harbor that bacteria, doctor --

8 A In a long-term --

9 Q -- immediately?

10 A -- it's a risk.

11 Q Can that mesh harbor that bacteria immediately, doctor?

12 A Well, I mean, I'm sure it's in contact with it, but it isn't an
13 adjuvant for infection.

14 Q And then -- and then, doctor, thereafter, it can kind of protect
15 that bacteria so that it can, over time, still be there, correct?

16 A No, the mesh is --

17 Q Okay. Doctor, it's a yes or no question. Your answer is no?

18 A Well, it's not really a yes or no answer, I don't think.

19 Q So you can say that you can't answer it yes or no. Is that
20 what you're saying, doctor?

21 A I can't answer that question yes or no.

22 Q Okay.

23 MR. JONES: No further questions.

24 THE COURT: Okay. And counsel having the opportunity to
25 ask follow-up questions, each side had their opportunity, then there

1 being no further jury questions -- the process of any side has one
2 opportunity to ask follow-up questions to the jury. And so there being
3 no further juror questions at this juncture, is this witness excused from
4 all purposes or subject to recall? Defense counsel, it's your witness, I
5 ask you first.

6 MR. DOYLE: Subject to recall if necessary.

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

8 [Sidebar at 2:52 p.m., ending at 2:53 p.m., not transcribed]

9 THE COURT: Okay. So, counsel, subject to recall? Plaintiffs'
10 counsel?

11 MR. JONES: Your Honor, we have no further need of this
12 witness.

13 THE COURT: Okay. So the witness has heard the positions
14 of the parties, thank you so very much for your time, please watch your
15 step on your way out. Appreciate it, thank you so very much.

16 At this juncture, since we're still in Plaintiffs' case-in-chief,
17 Plaintiffs' counsel, would you like to call your next witness?

18 MR. HAND: Yes, Your Honor. the Plaintiffs call Sky Prince.

19 THE COURT: Okay. Marshal, would you mind getting the
20 next witness, as this witness is exiting? Thank you so much for your
21 time. Appreciate it. Thank you so much.

22 [Pause]

23 THE MARSHAL: Please step over here, and raise your right
24 hand to be sworn.

25 SKY PRINCE, PLAINTIFFS' WITNESS, SWORN

1 THE CLERK: Thank you. Please be appreciated.

2 THE COURT: We do appreciate it. Marshal, is there a depo?

3 THE MARSHAL: Yes, there is.

4 THE COURT: Beautiful, you're one step ahead. Thank you so
5 very much.

6 THE CLERK: Could you please state and spell your name for
7 the record.

8 THE WITNESS: My name is Sky Prince, that's
9 S-K-Y P-R-I-N-C-E.

10 THE CLERK: Thank you.

11 THE COURT: Okay. Counsel, feel free to commence with
12 your questioning.

13 MR. HAND: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. HAND:

16 Q Can you tell us your relationship with Titina Farris?

17 A She's my mother.

18 Q She's your mother?

19 A Yes.

20 THE COURT: Okay. One thing, I'm just going to give you a
21 quick heads-up. Do you mind putting the microphone just a little closer?
22 Sometimes when people are, you know, whatever, just a little soft
23 spoken, we just need to make sure the --

24 THE WITNESS: Okay.

25 THE COURT: -- microphone is close to you, so that

1 everything can be heard on our system. We do appreciate it. Thank you
2 so much.

3 Go ahead, counsel.

4 BY MR. HAND:

5 Q How old are, Sky?

6 A I'm 31.

7 Q And where do you live now?

8 A I live with my mother.

9 Q What's the address?

10 A 6450 Crystal Dew Drive, Las Vegas, Nevada 89118.

11 Q Now I'm going to direct you back to July of 2015; where were
12 you living at that time?

13 A I was living in England.

14 Q And when did you come back from England?

15 A In February of 2018.

16 Q So when this treatment and surgery took place on July 15th,
17 you were overseas at that time?

18 A Yes.

19 Q I want to talk to you briefly about your mother, and what she
20 was like prior to July of 2015.

21 A Okay.

22 Q Tell us a little bit about her, what kind of mother was she to
23 you?

24 A She was very loving and playful.

25 Q What do you mean by that?

1 A Well, we'd always joke around and like do little dances
2 together, and she was just really fun to be around.

3 Q We've heard from other people she liked to dance; what do
4 you mean, can you tell us about that?

5 A Well, we used to have Halloween parties, and she would love
6 to dance there. We'd always have like D.J. and she would dance. And
7 we used to play video games they have, you know, like the Wii Dance,
8 and Just Dance, on the Xbox.

9 Q And what did she like to do, before July 15th; for fun, what
10 did she like to do?

11 A Go to the movies, she goes to dinner. She would go
12 sightseeing, people watching, things like that.

13 Q Did she have any problems walking?

14 A Not at all.

15 Q Any problems with her balance?

16 A No.

17 Q What was her personality like, just generally?

18 A Upbeat, really joking all the time, almost excessively. Yeah.
19 Very, very funny.

20 Q When you came back from England in February of 2018 did
21 you see any difference in your mother?

22 A I've never seen her so depressed in my entire life.

23 Q Now when you came back and saw her did you move back
24 home with her?

25 A Yes.

1 Q And --

2 THE COURT: Once again, just --

3 THE WITNESS: Oh, sorry.

4 THE COURT: You are soft-spoken, so we either need you to
5 speak up a little bit, or make sure that microphone is nice and close --

6 THE WITNESS: Okay.

7 THE COURT: -- to you.

8 THE WITNESS: I'm sorry, I'll speak up.

9 THE COURT: No worries. Appreciate it. Thank you.

10 BY MR. HAND:

11 Q So before July 15th did she take care of the house?

12 A Yes. She was excessively clean.

13 Q Washing dishes, vacuuming --

14 A Washing the dishes. Even cleaning like the baseboards, or
15 like weekly, things like that.

16 Q She did this by herself?

17 A Yes.

18 Q Let's go to when you got back from England. Was she able
19 to do any of those things?

20 A No.

21 Q When you got back from England was she in a wheelchair, a
22 walker, or something else?

23 A She had a walker, occasionally she'd be in the wheelchair.

24 Q So doing the tasks of keeping the house up, when you got
25 back in February of 18, who took care of that?

1 A Me, and my stepdad, Patrick.

2 Q And how about her -- did she have problems or need
3 assistance with getting to the bathroom, bathing, those kind of things?

4 A Yes. I've always had to help her. She has like a shower
5 chair, and I'd have to help her in and out of the shower. I'd help her do
6 her hair, her makeup, anything that she needed done.

7 Q Do you still do that?

8 A I still do a lot of that, yes.

9 Q What do you have to do now?

10 A I still help her with hair and her makeup still, in and out of the
11 shower, pretty much all the same things. She -- it's dangerous for her to
12 be able to do it on her own, so --

13 Q What do you mean?

14 A I don't -- she's not very well balanced, and we don't want her
15 to fall over.

16 Q So tell us some of the things your mom really enjoyed doing
17 before this? Was there things, she had some special --

18 A Oh, you know what, she used to love to garden, plant
19 flowers, you know. She just -- she loved to be outside.

20 Q And could she do that?

21 A No. She can't like get on the ground and, you know, dig the
22 little holes and stuff for the plants.

23 Q And when you were -- she has another daughter, Elizabeth --

24 A Yes.

25 Q -- correct? How old is Elizabeth?

1 A She's 13.

2 Q So when this happened she was 8 or 9-years-old --

3 A Yeah.

4 Q -- or something like that?

5 A Yeah.

6 Q And when you were that age was your mom involved with
7 your school activities?

8 A Yes. She especially liked to go on the field trips with us.

9 Q When the kids would go on field trips?

10 A Well, yeah. You know, we had like a parent to help, it usually
11 my mother that would come.

12 Q And before this happened, was she active with Elizabeth,
13 doing things like that?

14 A Yes, she was.

15 Q Tell us about that?

16 A She used to go inside our classroom, and everything. They
17 used to do like a cake baking competition, and she would go into the
18 school with my sister, and they would do things like that. It was really
19 actually quite cute.

20 Q Does she do that now?

21 A No.

22 Q Has she tried to do it?

23 A She can't really, no.

24 Q How about Elizabeth getting-- how does Elizabeth get to
25 school now?

1 A She either -- she usually walks, or has a friend pick her up.

2 Q Prior to this, in July 15th, did your mom take Elizabeth to
3 school?

4 A My mom used to walk her to school.

5 Q How far is the school from your house?

6 A Less than a mile, maybe about a half-a-mile, maybe a little bit
7 like in between a half-mile, and a mile.

8 Q Now these dancing you talk about, did she watch dancing
9 shows? Can you tell us something --

10 A She still watches dancing shows, that's her favorite thing to
11 watch, is like the World of Dance, and I don't remember -- it's the dance
12 competition show, yeah, she loves it.

13 Q Have you watched those shows with her now?

14 A Yes. She -- I can tell that she enjoys, but it makes her feel a
15 little bit depressed at the same time, if you know what I mean. Like it's
16 hard to watch it, but she likes to watch it, because that's one of her
17 favorite things to do, or was to do.

18 Q Okay. Thank you, Sky.

19 A You're welcome.

20 MR. HAND: No further questions. Pass the witness.

21 THE COURT: Cross-examination, counsel?

22 CROSS-EXAMINATION

23 BY MR. DOYLE:

24 Q When did you move to England?

25 A In 2014.

1 Q When you moved to England where were you living?

2 A In Nottingham, England.

3 Q I'm sorry, poor question. Before you moved to England in
4 2014 where were you living?

5 A In Las Vegas.

6 Q Were you living with your mother?

7 A No, I wasn't.

8 Q Prior to moving to England in 2014, when did you last live
9 with your mother?

10 A Maybe a few years before that.

11 Q About how many years?

12 A Four, roughly. I don't really remember. I'd stay there off and
13 on, but not anything extensively; I had a husband and child.

14 Q Now you said you help your mother with her hair; is that
15 correct?

16 A Yeah.

17 Q Does she have problems with her arms or hands?

18 A No. Just it makes her tired to do too much, so I try to help
19 her as much as I can.

20 Q All right. So she doesn't have any problems with her hands
21 and arms?

22 A I mean, she has pains in her hand, yes.

23 Q And you said you help her with her makeup. Is that just
24 because that's something you enjoy doing with her?

25 A I do enjoy doing it with her, but she needs the help.

1 Q Again, because of problems that's she's having with her
2 hands?

3 A She's had pain in her hands, yes.

4 Q Has she indicated to you whether the pain in her hands is
5 due to diabetes?

6 A She has not said that it was due to diabetes.

7 Q Before you moved away to England in 2014, were you aware
8 that your mother has diabetes?

9 A Yes.

10 Q Were you aware that she required insulin?

11 A Yes.

12 Q Before you moved to England were you aware of problems
13 she was having in her feet, because of the diabetes?

14 A No.

15 Q Was she having any problems in her hands, due to the
16 diabetes?

17 A Not that I can remember.

18 Q What year did you graduate from high school?

19 A 2006.

20 Q At that point in time were you living in Reno, or Las Vegas?

21 A I lived in Reno for a little bit with my grandparents.

22 Q While your mother was in the hospital in July and August of
23 2015, you had one conversation with her?

24 A It wasn't even a conversation. One of my aunts put her on
25 like a Face Time, and I could see that she was not doing too well.

1 Q So did you have any conversations, yourself, with your
2 mother, while she was in the hospital?

3 A No.

4 Q And how long after she came home from the hospital, while
5 you were still in England, did you first have a conversation with her?

6 A I honestly can't remember the dates.

7 Q It was a month -- some weeks or months?

8 A Probably a few weeks. I know she had to go to like a
9 rehabilitation center, and so I didn't really get to speak to her much, or at
10 all. I just got updates from like, you know, my family.

11 Q When she came home, finally --

12 A Right.

13 Q -- were you still getting updates from family?

14 A Yeah. I mean, I talked to my mom occasionally. But she
15 wasn't -- she was very depressed and didn't want to be on the phone.

16 Q Okay. But --

17 A They also didn't want to upset me, because I was so far
18 away.

19 Q Okay. But when you say you were talking to her
20 "occasionally" what was that, once a month, once every other month, or
21 two, or three?

22 A Maybe a few times a month.

23 Q You're aware that Dr. Chaney is your mom's primary care
24 physician?

25 A Yes.

1 Q That you've driven her --

2 MR. HAND: Objection. Beyond the scope of direct.

3 THE COURT: Sustained. Jury, just disregard that answer.

4 Thank you, everyone. Thank you so much. Go ahead, counsel.

5 BY MR. DOYLE:

6 Q Do you know whether your mother had high blood pressure
7 before July of 2015?

8 MR. HAND: Objection. Beyond the scope of direct.

9 THE COURT: Sustained.

10 BY MR. DOYLE:

11 Q Do you know if your mother has high blood pressure,
12 currently?

13 MR. HAND: Objection. The same objection, Your Honor.
14 Beyond the scope of direct.

15 THE COURT: Sustained.

16 BY MR. DOYLE:

17 Q Does your mother currently have a wheelchair?

18 A Yes.

19 Q Can we agree that she doesn't use it very often?

20 A Yes.

21 Q She typically uses her walker?

22 A Yes.

23 Q And she has a couple of canes, as well, doesn't she?

24 A She has one or two, yeah.

25 Q And one cane is just -- has point at the end, and the other

1 cane has four points?

2 A I have never seen her use one with just one point on it.

3 Q But she uses the cane with the four points?

4 A To say -- to say using it would be an extreme. Like I've -- she
5 doesn't really use it. She uses the walker for pretty much everything.

6 Q Well, does she use the cane at all?

7 A Maybe to move from the walker to the bed.

8 Q Do you have any -- have you had conversations in the last
9 few months with your mother, about her feet?

10 MR. HAND: Objection. Beyond the scope of direct.

11 THE COURT: The Court's going to overrule that objection, in
12 light of prior testimony.

13 BY MR. DOYLE:

14 Q Have you had any discussions in the last few month, with
15 your mother, about her feet?

16 A Only her saying that they're in pain, nothing in detail.

17 Q And do you know if she was having pain in her feet before
18 July of 2015?

19 A I don't think so.

20 MR. DOYLE: I believe that's all I have. Thank you.

21 THE COURT: Redirect, counsel?

22 MR. HAND: No, Your Honor. Thank you.

23 THE COURT: Okay. Since this is Plaintiffs' witness, is this
24 witness excused for all purposes, or subject to recall?

25 MR. HAND: Excused for all purposes.

1 THE COURT: I'm sorry. Is there a juror question?

2 THE MARSHAL: Just checking.

3 THE COURT: Okay. Just making sure, okay. Didn't see any,
4 that's why I looked over there first. Okay, sorry.

5 MR. HAND: Excused for all purposes.

6 THE COURT: Counsel, for Defense?

7 MR. DOYLE: Excused is fine.

8 THE COURT: Okay. This witness is excused for all purposes.
9 Thank you so very much, just watch your step on the way out. And as
10 this witness is leaving I'm going to ask counsel for Plaintiff, to please call
11 your next witness.

12 MR. HAND: The Plaintiff calls Lowell Pender.

13 THE MARSHAL: What was the first name, Counsel?

14 MR. HAND: Lowell.

15 THE MARSHAL: Thank you, counsel.

16 [Pause]

17 THE MARSHAL: Please step into the box, please. Face the
18 clerk over here, raise your right hand to be sworn.

19 LOWELL PENDER, PLAINTIFFS' WITNESS, SWORN

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

22 THE WITNESS: My name is Lowell Pender, L-O-W-E-L-L,
23 Pender, P-E-N-D-E-R.

24 THE CLERK: Thank you, sir.

25 THE COURT: Counsel, you may proceed with your

1 questions.

2 MR. HAND: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. HAND:

5 Q What's your relationship to Titina Farris?

6 A That's my mother.

7 Q What's your address?

8 A Currently?

9 Q Yes.

10 A It's 3620 Mountain River, Las Vegas, Nevada.

11 Q And how old are you, Lowell?

12 A Thirty-four.

13 Q And do you have any children?

14 A Yes, I do.

15 Q How many children?

16 A I have one.

17 Q How old is your -- is it a boy or girl?

18 A He's a boy, and he'll be seven on November 8th, so he's six-
19 years-old right now.

20 Q So I'd like to talk to you about your mom, and the time
21 surrounding the July 2015 hospitalization.

22 A Okay.

23 Q Were you living in Las Vegas at that time?

24 A Yes, I was.

25 Q Were you living at the address you just gave us, or a different

1 address?

2 A No. I was living with my mother at that time.

3 Q And at that time who was at the house, in July of '15?

4 A Living there?

5 Q Yeah.

6 A Me, my mother, my son was there five days a week, and me
7 and her sister Elizabeth.

8 Q So at some -- tell us briefly --

9 A -- Kendrick [phonetic].

10 Q -- about your mom, prior to the surgery? And what I mean
11 by that is, what kind of things did she like to do?

12 MR. DOYLE: Objection. Cumulative.

13 THE COURT: Overruled.

14 THE WITNESS: She -- she took a lot of joy in keeping her
15 house clean. She liked cleaning her house. She liked watering her
16 flowers out front, dancing, dancing around the house while she was
17 cleaning, just kind of being a little goofy, just silly, so like a very happy
18 person.

19 BY MR. HAND:

20 Q Did she have any issues with walking, or balance, or
21 anything like that, prior to July of 2015?

22 A No.

23 Q So I want to direct you now to when this surgery happened,
24 that time period. I'll represent to you the surgery was July 3rd, 2015, so
25 we have a point of reference, okay?

1 A Okay.

2 Q Was there a time that you visited your mother in the hospital,
3 after the July 3rd, '15 surgery?

4 A Yes.

5 Q Do you know how soon after the July 3rd surgery it was?

6 A There -- there were numerous visits, so I don't recall the
7 exact days, but the first visit had to have been, besides being there when
8 the initial surgery took place, that had been July 5th, two days later.

9 Q And when you went to the hospital on that day, what did you
10 observe, just generally?

11 A If I remember correctly that was the day that they -- I showed
12 up, she was heavily medicated, but she was showings signs of like a
13 fever, and they to go in with an IV to administer -- I can't think of the
14 word; the antibiotics to help with the fever and the swelling.

15 Q So how many times did you go to the hospital, prior to say
16 July 16th?

17 A About four or five times.

18 Q And each time you went there you observed your mother, of
19 course?

20 A Yes.

21 MR. DOYLE: Objection. Leading.

22 THE COURT: Sustained.

23 BY MR. HAND:

24 Q So when you went to the hospital on your visits, what --
25 after that visit you talk about the PICC line. The next time you went,

1 generally, what did you observe?

2 A That's when she had been moved from the upstairs' floor,
3 down to a lower floor, where she was really heavily medicated, and her
4 body was showing signs of swelling.

5 Q Describe what swelling you saw?

6 A I saw my mom's stomach, and it was swollen to the point
7 that her skin was tearing, and her legs were swollen. It's just bad. Like it
8 was -- to me, if I could say the "gross" it was gross.

9 Q Did you ever see her doctor, her surgeon Dr. Rives, at the
10 hospital?

11 A I only saw him twice.

12 Q So the first time you saw him was that in the room?

13 A No. It was her room. It was a couple of day after she had
14 been moved downstairs, and Dr. Rives and my stepfather, Patrick, were
15 having a conversation.

16 Q Okay. So you did not have any direct conversation with
17 Dr. Rives; is that a fair statement?

18 A That's fair.

19 Q So then another time were you in the presence of Dr. Rives,
20 at the hospital?

21 A The second time was on the 16th, when we asked that he be
22 removed from my mother's case.

23 Q So on July 16th, explain to us briefly what happened in
24 regard to that issue?

25 A We set up a meeting. We showed up around 9:30 a.m.

1 There was an administrator, Dr. Rives, another representative of the
2 hospital, I'm assuming, there was one other person with them. My
3 mother, who was laying up in the bed, Patrick, Addison and myself.

4 Q So this was in a hospital when this happened?

5 A Yes. Yes.

6 Q Did you speak during this meeting?

7 A Yes, I did.

8 Q What did you say?

9 A I asked -- I asked, at what point would it -- would it have been
10 a good decision to open her up to find out why she was septic, why there
11 was leaking going on?

12 Q Did anybody respond to that?

13 MR. DOYLE: Objection. Hearsay, as phrased.

14 THE COURT: Overruled.

15 MR. HAND: I'll rephrase it. I'll rephrase it.

16 THE COURT: Okay. Well, the Court did not rule.

17 BY MR. HAND:

18 Q Was there a response to your question, by anyone?

19 A To my direct question, no.

20 Q How long did that meeting take?

21 A I would say we were in there for about 30 minutes, the whole
22 group of us.

23 Q Now back in April of 2015, did you have a cell phone?

24 A Yes, I did.

25 Q Was that cell phone capable of taking video?

1 A Yes, it was.

2 Q And did you take a video on April 13, 2015, on your phone?

3 A Yes, I did.

4 Q Okay. Did you have experience in taking videos on your
5 phone?

6 A Yes, I do.

7 Q How many times did you use your phone to take videos?

8 A I used it often.

9 Q Okay. And on April 13th, '15, what kind of phone did you
10 have?

11 A I had a Galaxy, a Samsung Galaxy.

12 Q And on that day was your phone in good working order?

13 A Yes, it was.

14 Q And that phone, did it have the ability to record images?

15 A Yes.

16 Q And did you use that phone to record video on that day?

17 A Yes, I did.

18 Q And did you make a recording, a video recording at your
19 mother's house, on that day?

20 A Yes. I --

21 Q About what time did you?

22 A It was around 11:00 a.m.

23 Q Who, if anyone, was on the video?

24 A My mother and my son.

25 Q What scene was it? Was it in the front of the house, back of

1 the house, inside the house?

2 A They were in the backyard.

3 Q And did you review that video before coming here today?

4 A Yeah.

5 Q And did I show a video we've marked for identification as
6 Plaintiffs' Exhibit 10; did I show you that?

7 A Yes.

8 Q And did you look at that video?

9 A Yes, I have.

10 Q Is that the same video that you had on your phone from
11 April 13, 2015?

12 A Yes, it is.

13 Q And was that exhibit, the video I represented was Exhibit 10
14 for identification, a true and accurate depiction of the activity you filmed
15 on April 13, 2015?

16 A Yes.

17 Q Is that video still on your phone?

18 A It is.

19 MR. HAND: Your Honor, at this time I move into evidence -- I
20 request that the video be moved into evidence. I have a CD in playable
21 form. May I approach the clerk, Judge?

22 THE COURT: Any objection by Defense?

23 MR. DOYLE: Yes. If it includes -- well, if it's --

24 THE COURT: Okay. Can you base an objection, evidentiary
25 basis, or ask me to approach?

1 MR. DOYLE: It's contains hearsay, it has audio. If it's the one
2 that I was given.

3 MR. HAND: I don't see how it's hearsay, Your Honor. It's an
4 accurate, in-time video of Mrs. Farris and her grandchild; there's no
5 spoken words on the video.

6 THE COURT: The Court is going to -- are you asking to have
7 it played, or just admitted at this juncture?

8 MR. HAND: I'd ask to have it admitted, and then published
9 and played, yeah.

10 THE COURT: So you're asking to play video with no audio;
11 is that what you're asking?

12 MR. HAND: I'm asking it to be played with audio too.

13 THE COURT: Can you both approach, then. Madam Court
14 Recorder, can we have some white noise, please? Thank you.

15 [Sidebar at 3:22 p.m., ending at 3:28 p.m., not transcribed]

16 THE COURT: Ladies and gentlemen, it's time for our
17 afternoon break, isn't it, 3:27, we'll come back at 3:45. During this
18 afternoon recess you are admonished, of course, that during this recess
19 you may talk or converse among yourselves, or with anyone else on any
20 subject connected with this trial.

21 You must not read, watch or listen to any report, or
22 commentary on the trial, any person connected with the trial, by any
23 medium of information. including without limitation, social media, text,
24 tweets, newspapers, television, internet, radio. Anything I've not stated
25 specifically, is of course also included. I'm seeing those affirmative

1 nods, but I'm missing a couple of them, there we go. Thank you so
2 much, I appreciate it.

3 Do not visit the scene or any of the events mentioned during
4 the trial. Do not undertake any research, experimentation, or
5 investigation. Do not do any posting or communications on any social
6 networking sites, or anywhere else. Do not do any independent
7 research, included but limited to internet searches, thank you.

8 Do not form or express any opinion, on any subject
9 connected with the case, until the case is fully and finally submitted to at
10 the time of jury deliberations. With that we wish you a very nice break,
11 see you back at 3:45. Thank you.

12 THE MARSHAL: All rise for the jury.

13 [Jury out at 3:29 p.m.]

14 [Outside the presence of the jury]

15 THE COURT: One second, please.

16 Okay. What I understand from my bench, by agreement of
17 counsel, is that correct that counsel, you're going to have your video
18 person show Defense counsel what the video is --

19 MR. HAND: Yes.

20 THE COURT: -- but you're going to do it like in the ante
21 room, because of course with the afternoon, which of course mean team
22 gets State and Federally mandated afternoon break, which I'm sure that
23 means everybody is going to enjoy the hallway. Because at this
24 juncture, though, you're going to need the ante room, correct?

25 So as long as everyone agrees they're not coming back into

1 the courtroom, right --

2 MR. HAND: Yeah.

3 MR. DOYLE: That's fine.

4 THE COURT: -- we'll not lock the doors?

5 Now does the witness understand the distinction of what can
6 and cannot be done when the witness in the middle of testifying?

7 MR. HAND: Yes, I will -- I will inform him.

8 THE COURT: I'm sure. Counsel's directed to make sure that
9 that gets taken care of. I'm sure I leave that to you because you all know
10 what needs to be done, and not be done. I do appreciate it.

11 At juncture I'm going to tell Madam Court Recorder to go off
12 the record, and ask everyone -- Marshal, are we just going to let them
13 use counsel, Defense counsel, video and I think maybe one of Plaintiffs'
14 counsel, if needs be, can be in the ante room, and everyone else is going
15 excuse themselves so everyone can have their break. But they say that
16 they're not going to come back into the courtroom, so that the three
17 individuals can use the ante room, if they need to do so, just to look at
18 one little video, okay?

19 MR. HAND: Understood.

20 THE COURT: Appreciate it. Thank you so very much.

21 [Recess taken from 3:30 p.m. to 3:46 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Okay. We're on the record outside the
24 presence of the jury. Were counsel able to look at the video of the
25 proposed Exhibit 10, that was asked to be shown by Plaintiffs' counsel;

1 did you all have a chance to look at it:

2 MR. HAND: Yes.

3 MR. DOYLE: Yes.

4 THE COURT: Okay. Is there an objection to it, or is it good to
5 go?

6 MR. DOYLE: It's okay.

7 THE COURT: Okay. Are we ready to bring back the jury?

8 MR. HAND: Yes.

9 MR. DOYLE: Yes. I do have a trial brief, if I could just give it
10 to the Court --

11 THE COURT: Sure.

12 MR. DOYLE: -- in response to theirs, concerning
13 Dr. Adornato.

14 THE COURT: Has it been --

15 MR. DOYLE: It --

16 THE COURT: I can't take it unless they're filed, remember?
17 We've got to make sure they're all filed. It has to have a file stamp on it;
18 has it been filed?

19 MR. DOYLE: I just signed it, so we weren't going to file it --

20 THE COURT: I have to have it filed. The Court can't take
21 unfiled documents.

22 MR. DOYLE: Does it have to say "filed" on it?

23 THE COURT: Yes.

24 MR. DOYLE: For the courtesy copy?

25 THE COURT: Yes.

1 MR. DOYLE: Okay.

2 THE COURT: Consistent with what the Court has done for
3 every other person's one. Because that way we ensure it's filed with
4 everyone, right, so that they can just get you a new face page and it's
5 filed, so that we do it consistently with everyone, so that the Court gets
6 the same version as what gets filed. Files served and then a courtesy
7 copy to the Court, yes; according EDCR 2.27 and 7.27.

8 It's actually on counsel table, just like it's also --

9 MR. DOYLE: I understand. But --

10 THE COURT: Oh, no, it's --

11 MR. DOYLE: -- it concerns a witness that's going to testify in
12 the morning, so --

13 THE COURT: Pardon? Well, we'll see, it's 10 minutes to 4:00
14 folks. If you give me something -- remember, we're supposed to have at
15 least a judicial day's notice for the Court to be able to review things in
16 order for things to be heard, but we'll see. I can't know what I don't
17 have.

18 Are you all ready to bring the jury in?

19 THE MARSHAL: Yes, Your Honor.

20 MR. LEAVITT: Yes, Your Honor. I'm standing to bring the
21 witness from the ante room.

22 THE COURT: Do you want the witness back in first? Okay.

23 MR. HAND: Sure.

24 THE COURT: And is your tech set up, or does the tech need
25 something, or is tech ready to go too?

1 MR. HAND: Can I confirm?

2 THE COURT: Sure. Is the screen on, Madam Court
3 Recorder?

4 [Court and Court Recorder confer]

5 THE COURT: Yes. Do you want to check to see if the screens
6 are ready for you?

7 MR. HAND: They're good, Your Honor. Thank you.

8 THE COURT: You're good to go. Okay. Everyone have their
9 screens on at their respective counsel tables, to the extent they wish
10 them on at the counsel tables?

11 MR. HAND: Yes.

12 THE COURT: Okay. The witness can feel free to go back to
13 the stand, that's perfectly fine. The jury is being called in, in just a
14 second. And the only thing I ask is, can we have that down -- do I want it
15 up or down, counsel for Defense? Do you have position on whether it
16 should be up or down, before the jury comes up? Right now he's just
17 got it that be.

18 MR. HAND: It can be down. Or up --

19 [Court and Court Recorder confer]

20 THE COURT: No, leave it up.

21 MR. DOYLE: That's fine.

22 THE COURT: We'll just -- okay, the blue screen is fine.

23 So, counsel, then are you going to say "by agreement of the
24 parties this is going to be shown," or do wish the Court to do so? What
25 would the parties like the Court to do? Because there was a pending

1 objection, I need to let the jury know. Counsel, for Defense?

2 MR. DOYLE: That's fine.

3 THE COURT: Okay. Just --

4 MR. HAND: Fine, if you want to just say that, "by
5 agreement."

6 THE COURT: By agreement. Okay. It'll be shown in just a
7 sec. Okay, sure.

8 [Pause]

9 THE MARSHAL: Ready, Judge?

10 THE COURT: We are, thank you.

11 THE MARSHAL: Jurors are present.

12 [Jury in at 3:50 p.m.]

13 [Within the presence of the jury]

14 THE MARSHAL: All jurors are present and accounted for,
15 you can be seated.

16 THE COURT: I do appreciate it. Thank you so very much.
17 Welcome back, ladies and gentlemen. Okay. Right before the break
18 there was a video by agreement of counsel. I understand that there's
19 going to be a clip shown; is that correct?

20 MR. HAND: Yes, Your Honor.

21 THE COURT: Counsel for--

22 MR. DOYLE: Yes, Your Honor.

23 THE COURT: Okay. Go ahead, counsel, play.

24 (Whereupon, an audio recording, Plaintiffs Exhibit 10 was played in
25 open court at 3:51:06 p.m. and not transcribed:)

1 THE COURT: Counsel, you may continue with your
2 questioning, go ahead.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HAND:

5 Q Lowell, who are the people shown in that video?

6 A That was my mother and my son.

7 Q It's your son?

8 A Yeah.

9 Q And that was on April 13, 2015?

10 A Correct.

11 MR. HAND: No further questions, Judge. I would like to
12 move that video into evidence.

13 THE COURT: That was proposed Exhibit 10; is that correct?

14 MR. HAND: Yes, that's correct.

15 THE COURT: Any objection by Defense counsel?

16 MR. DOYLE: No objection.

17 THE COURT: There being no objection, Exhibit 10 will be
18 moved into evidence. Okay. Thank you.

19 [Plaintiffs' Exhibit 10 admitted into evidence]

20 THE COURT: Okay. So then the witness is passed.
21 Cross-examination by Defense?

22 MR. DOYLE: No questions. Thank you.

23 THE COURT: There being no questions by Defense then, is
24 this witness excused for all purposes, or subject to recall, Plaintiffs'
25 counsel?

1 MR. HAND: Excused for all purposes?

2 THE COURT: Defense counsel, do you have a different
3 position, or the same position?

4 MR. DOYLE: Same.

5 THE COURT: Okay. This witness is excused. Thank you so
6 very much. Please watch your stop on your way out. Thank you so very
7 much.

8 Okay. Plaintiffs' counsel, would you like to call your next
9 witness?

10 MR. JONES: Yes, Your Honor. Patrick Farris.

11 THE COURT: Okay. Marshal, would you mind getting Mr.
12 Farris?

13 THE MARSHAL: Farris?

14 THE COURT: Yes, please. Thank you so much.

15 [Pause]

16 THE MARSHAL: Face the clerk, raise your right hand.

17 PATRICK FARRIS, PLAINTIFFS' WITNESS, SWORN

18 THE CLERK: Thank you, please be seated. Could you please
19 state and spell your name for the record?

20 THE WITNESS: Patrick Farris, F-A-R-R-I-S.

21 THE CLERK: Can you spell Patrick, please?

22 THE WITNESS: P-A-T-R-I-C-K.

23 THE CLERK: Thank you, sir.

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

1 MR. JONES: And, Patrick, there is water there if you need
2 any.

3 DIRECT EXAMINATION

4 BY MR. JONES:

5 Q Now Patrick, so you're a Plaintiff in this case, and what's your
6 relationship to Titina Farris?

7 A She's my wife.

8 Q And, Patrick, can you tell the jury a little about where you
9 grew up, and how you came to live in Las Vegas?

10 A Well, I grew up in California. I moved here when I was 26,
11 that would be around 1996, here, and I met Titina in 2004.

12 Q Can you tell the jury a little about how you and Titina met?

13 A Well, I was working two jobs, and I was waiting to clock in,
14 standing out in front of the store, and Titina, and her mother and sister
15 come walking out of the store, and we just locked eyes, and it was just
16 love at first sight, and that was it. We've been tight ever since.

17 Q And can you tell the jury about what you and Titina enjoyed
18 doing, the things you guys liked to do, prior to July of 2015?

19 A Well, we take a lot of vacations, or we used to. We love
20 walking our dogs. Do a lot of -- a lot of events. Of course this is Las
21 Vegas, so there's always something to do. Just pretty much, just
22 everything, we did everything together.

23 Q And I want to go through the 2015 surgery. Leading up to
24 that surgery do you recall there being some appointments that Titina had
25 with Dr. Rives?

1 A I remember one appointment the day of the surgery.

2 Q Did you go with Titina to some of her appointments, or all of
3 her appointments?

4 A Most of them. The ones I couldn't, her daughter would drive
5 her.

6 Q And would you typically be present in the appointment itself,
7 or would you just be there outside?

8 A No, I'd be -- I'd be present.

9 Q Okay. Now, Doctor, what -- I've been to doctors lately,
10 Patrick. Now, Patrick, can you explain to the jury what your
11 understanding was of the procedure, that was about to take place?

12 A Well, my understanding, the questions I asked Dr. Rives,
13 "How long -- how long would this procedure take?" He said, "Two to
14 three hours," somewhere around there, and that she would probably be
15 out the next day, at the most two days.

16 I asked him why he was doing a laparoscopic, laparoscopic
17 surgery, and his response to me was that it was too soon to do the other
18 type of surgery that he'd done before, where he just opened her up and
19 did the surgery.

20 Q Do you recall, during any of the appointments you attended,
21 a discussion about the colon being involved in the surgery?

22 A Absolutely not. It was strictly hernia.

23 Q So the surgery happened, and after the surgery when was
24 the first time that you saw Dr. Rives?

25 A Probably when they took her to the second floor. When she

1 first came out they put her in ICU, and they wouldn't even let me see her.
2 So I would probably say a day or two, once she got to the second floor.

3 Q Okay. And so -- well, let's start with this. When you went
4 into the surgery on the 3rd, you went in with Titina?

5 MR. DOYLE: Objection.

6 THE WITNESS: Yes.

7 MR. DOYLE: Leading.

8 THE COURT: Sustained on leading.

9 MR. JONES: Absolutely.

10 BY MR. JONES:

11 Q So where did you wait at the hospital?

12 A I believe it was just the waiting room.

13 Q And then when were you informed that there was a
14 complication, or something along those lines?

15 A Oh, probably after the surgery.

16 Q And then how long was it until you were able to see Titina
17 again?

18 A Oh, a good day.

19 Q And then when you saw Titina again, what was her condition
20 like?

21 A She was in bad shape. She was blow-ed up, extended out,
22 probably twice the size of a pregnant woman, just cut from one end to
23 the other. It didn't look good at all.

24 Q And I want to talk a little bit about that; first just Titina's
25 condition. How did it change, if at all, over the two weeks that she was

1 there, prior to Dr. Hamilton getting involved?

2 MR. DOYLE: Object. It's overbroad, and calls for a narrative.

3 THE COURT: Overruled.

4 THE WITNESS: Her condition never changed, it just got, to
5 me, worse. Her stomach went down, it didn't matter, they probably gave
6 her 30 bags of antibiotics, it didn't matter. She started getting fevers at
7 one point, it didn't matter. She just never got better.

8 BY MR. JONES:

9 Q Can you tell the jury about the conversations that you had
10 with Dr. Rives; let's talk about first, prior to the second opinion? Before
11 the second opinion.

12 A Okay. A couple of the ones I remember, my questions to him
13 was, "Why is she still so extended?" It looked to me like her skin was
14 about to rip. I mean, you have your stretch marks, but it was beyond
15 that. So I'd always ask him, "Why is she not getting smaller? Why does
16 she -- why she looks to me like getting bigger? And why aren't the white
17 cell numbers going down, like you said they were going to go down."

18 Two days they should have went down, but we're -- we're
19 way beyond that, and they're just still right where they're at, like she just
20 came out of the surgery that day.

21 Q And then why is it that you requested to have a second
22 opinion on the case?

23 A I felt he wasn't doing anything. I talked it over with family
24 members and they said, "Get the second opinion." And I just felt he
25 wasn't -- wasn't doing anything.

1 Q Do you remember having a conversation with Dr. Rives,
2 following the second opinion, and if you do, can you explain that to the
3 jury?

4 A After the second opinion?

5 Q Yes.

6 A I remember talking to him, about, again, why is she still so
7 extended. This is -- I don't know the exact date, but it was -- she had
8 been in there for a while, well over a week, or a week at least. But I was
9 concerned about that those white cell numbers aren't going down, and
10 she's as big, as big can be.

11 And I told him, I said, "You can look at her and tell she's in
12 distress". Anybody, any person can look at my wife and say she's in
13 distress, with not even a second doubt in your mind. And I asked him, I
14 said, "I want you to go back in and open her up, something's wrong."
15 And his response to me was, some -- I took as it a smart Alek or snippy.
16 His response to me was, "You're not a medical professional, you didn't
17 go to school for ten years," somewhere around that lines. "I'm the
18 doctor, I'll make the decisions."

19 And I remember being throwed back when he said that, he kind of
20 took me back a little bit. And at that point, me not knowing any better,
21 because I've never been in a hospital situation, I took him for his word,
22 and he said, "Give it a couple of more days for these antibiotics to kick
23 in," and since I didn't know any better I went along with it.

24 Q Now, Patrick, you went along with it a couple more days, and
25 then eventually what did you request?

1 A I went to the charge nurse and asked her to get a hold of the
2 administrator, I wanted to have him removed as our doctor; and that was
3 the process.

4 Q And, Patrick, approximately when did that happen, when did
5 you make that request of the charge nurse?

6 A Around the 14th or the 15th. I don't know -- I'm not sure
7 what exact day it was, but it was one of those days.

8 Q And what time of day was it that you made that request?

9 A It was probably afternoon, I don't really remember.
10 Afternoon.

11 Q Can you say with certainty, whether it was before you heard
12 about the final CT scan or not?

13 MR. DOYLE: Objection. Leading.

14 THE COURT: Sustained.

15 MR. JONES: Okay.

16 BY MR. JONES:

17 Q The 14th or the 15th in the afternoon, is that your best
18 estimate, Patrick?

19 A Yeah. It could have been around 5:00 or 6:00, but that's --
20 that's my best estimate.

21 Q And eventually, after you spoke with them, what did they tell
22 you?

23 MR. DOYLE: Objection. Hearsay.

24 THE COURT: Sustained as phrased.

25 BY MR. JONES:

1 Q Was something eventually done about your request?

2 A Yes. The charge nurse came back to me and told us that --

3 MR. DOYLE: Objection. Hearsay.

4 THE COURT: The Court is going to sustain, that the answer
5 is starting to elicit hearsay, out of the question to direct that.

6 BY MR. JONES:

7 Q Patrick, without -- go ahead and answer the question the same
8 way, but without saying what any person specifically told you, okay?

9 A Okay. Well, the process was that you had to go to the charge
10 nurse. She'll make the request of the administrator, and then she tells
11 her, to come back and tell us what time it is. So she had come back and
12 told us that 9:30 in the morning on the 16th we would have the
13 administrator in our office, and for us to have any family members that
14 had questions for -- for him, or Dr. Rives; and that's what we did.

15 Q At some point after you made that request was there a
16 meeting of any -- well, let me rephrase it. Can you tell the jury about any
17 meetings that you had, after making that request with Dr. Rives, or any
18 conversations?

19 A I think I only saw him one time, and that was on the 15th, and
20 I just happened to be leaving the hospital; but it was late, it was 9:00 or
21 10:00 at night, and he just happened to be coming in. And I pretty much
22 knew at that point he had already been told in the morning he was going
23 to be in our room, and his conversation was -- to me was, that he needed
24 to do that surgery right then, and he wanted my okay to do it, at 10:00 or
25 9:00, and I said, "No." Because I knew in the morning, nine hours from

1 that point we were having him removed.

2 Q At that point what was your trust level with Dr. Rives, given
3 what you had been through over the past couple of weeks?

4 A I had absolutely none. He'd done nothing up to that point,
5 absolutely nothing.

6 Q Can you tell the jury about the meeting that happened on the
7 morning of the 16th.

8 MR. DOYLE: Objection, to the extent it calls for hearsay.

9 THE COURT: The Court's going to sustain the objection, to
10 the extent to ask him to elicit the testimony from parties not here.

11 BY MR. JONES:

12 Q Yeah. So I'm just going to give you a little bit of direction to
13 help you out, okay?

14 A All right.

15 Q When you're answering this question you can go ahead and
16 tell them about it, but besides Dr. Rives and yourself, don't tell them
17 about the specific words that someone mentioned. Okay. So go ahead
18 and you can describe the meeting.

19 A Okay. Right at 9:30 it was Dr. Rives, the administrator, I
20 believe a clergyman, and there was two other people that the
21 administrator brought. And it was me, my stepson and my wife's
22 brother, we were all in the room, and the administrator I guess let us go
23 first, to have our say. So I let the son and brother go first, and they said
24 their peace to Dr. Rives, and then I went last.

25 Q The ultimate resolution of the meeting ended up -- well, what

1 ended up happening as a result?

2 A I told Dr. Rives I did not want him being my wife's doctor
3 anymore, and that he was being removed immediately.

4 Q And then who was placed on the case after that meeting?

5 A About two hours later the administrator came back to me
6 and said, "We found you a great surgeon," and two hours after that she
7 was being operated on.

8 Q And what was the name of that surgeon; do you recall?

9 A Dr. Hamilton.

10 Q Now, Dr. Hamilton, before going into the conversation, do
11 you recall having a conversation?

12 A Yes.

13 Q Can you tell the jury about that conversation?

14 MR. DOYLE: Objection. Hearsay.

15 THE COURT: Sustained as phrased.

16 MR. JONES: Withdrawn, Your Honor. I'm going to just
17 cover something else.

18 THE COURT: So is the question being withdrawn?

19 MR. JONES: It is. I'll withdraw the question, it was hearsay.
20 Unintended, but it was.

21 BY MR. JONES:

22 Q Patrick, can you tell the jury about what you observed,
23 watching your wife, over the days, following Dr. Hamilton's surgery?

24 A Within the -- I believe it was within the first two days her
25 white cell count dropped probably by half. Her size of her stomach

1 shrunk, by a good third, she was just -- she was -- she was doing better,
2 you could just see it by looking at her. It was just an amazing
3 turnaround, just from a simple surgery.

4 Q And when did she become conscious again, Patrick?

5 A A couple of days, two or three days, she became conscious,
6 and a day or two after that she started talking again for the first time.

7 Q And, Patrick, how much longer after that do you recall that
8 she continued to be in the hospital before being transferred to a rehab
9 facility?

10 A I don't know the exact day, but I'd probably say a couple of
11 weeks; I'm not sure exactly.

12 Q Patrick, during the entire time that your wife was in the
13 hospital, can you tell the jury about how much time you spent at the
14 hospital, and what else -- what other things you were responsible for in
15 your life?

16 A Well, I burned up a month's vacation, still managed to get to
17 work as much as I could. Everything fell on me at that point. You know,
18 we have a household, a 13-year-old daughter. I didn't want to leave my
19 wife's side, but I didn't have a choice sometimes. Luckily the hospital let
20 me stay until 2:30 in the morning, because that was my time I get up,
21 and I'd go to work and be back by noon. Any time I couldn't be there
22 one of the family members stepped in.

23 Q Patrick, I'd like you to tell the jury about your experience,
24 about your wife, during the time that she was in rehab?

25 A Rehab was tough for her. That -- that was really hard for her.