

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARELL L. MOORE; AND CHARLENE)
A. MOORE, INDIVIDUALLY AND AS)
HUSBAND AND WIFE,)
Appellants,)
vs.)
JASON LASRY, M.D. INDIVIDUAL;)
AND TERRY BARTIMUS, RN, APRN,)
Respondents.)

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 81659

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable Kathleen E. Delaney, District Judge
District Court Case No.: A-17-766426-C

APPELLANT'S APPENDIX VOLUME XVII

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I	Dignity Health's Answer to Complaint dated January 17, 2018	AA00050- AA00059
I	Proof of Service of Amended Complaint upon Dignity Health dated January 17, 2018	AA00060
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of the law firm and that on this 21st day of July, 2021, I served a true and correct copy of the foregoing **APPELLANT'S APPENDIX VOLUME XVII** as follows:

- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent via facsimile (as a courtesy only); and/or
- to be hand-delivered to the attorneys at the address listed below:
- to be submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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Las Vegas, NV 89113

Keith A. Weaver, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 S. Rainbow Blvd., Ste. 6000
Las Vegas, NV 89118

By: /s/ E. Breen Arntz
An employee of E. Breen Arntz, Chtd.

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TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DARELL MOORE, ET AL,)
)
Plaintiffs,)
)
vs.)
)
JASON LASRY, M.D., ET AL,)
)
Defendants.)

Case No. A-17-766426-C
Dept. No. 25

JURY TRIAL

Before the Honorable Kathleen Delaney
Monday, February 10, 2020, 1:30 p.m.
Reporter's Transcript of Proceedings

REPORTED BY:
BILL NELSON, RMR, CCR #191
CERTIFIED COURT REPORTER

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APPEARANCES:

For the Plaintiffs: Breen Arntz, Esq.
Philip Hymanson, Esq.
Joseph Hymanson, Esq.

For the Defendants: Robert McBride, Esq.
Keith Weaver, Esq.
Alissa Bestick, Esq.

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I N D E X

M = McBride
B = Bestick

WITNESS	DR	CR	RDR	RCR
Charlene Moore	25	62-M 85-B	89	98-M
Darell Moore	107			

1 Las Vegas, Nevada, Monday, February 10, 2020

2 * * * * *

3
4 (Thereupon, the following proceedings were
5 had out of the presence of the jury.):

6 THE COURT: All right.

7 Anything outside the presence before we get
8 started?

9 MR. MC BRIDE: Yes, Your Honor.

10 Yesterday afternoon at about 1:27 to be
11 exact we, Mr. Weaver and I, received an e-mail from
12 Mr. Arntz where he advised for the first time that he
13 intended to call Dr. Wiencek today as a witness.

14 He said that in response to several e-mails
15 back and forth have he said that it only became
16 apparent to him the last couple of days that Mr.
17 Wiencek might be an essential witness, and that is
18 somewhat surprising, given the fact Dr. Wiencek was
19 the original surgeon who treated Mr. Moore for
20 several years since 2012 for issues relating to his
21 popiteal graft.

22 The concern that we have is -- I think
23 several-fold.

24 First of all, when on Friday Mr. Arntz said
25 in his e-mail he's been trying to reach out to Dr.

1 Wiencek for several days last week.

2 If there was what we discussed, the
3 schedule, the remaining schedule for this week and
4 the witnesses to be called, so we could advise the
5 jury and let them know how much longer the trial
6 would go, Mr. Arntz never mentioned that he had
7 reached out to Dr. Wiencek, or thought that he could
8 potentially call him.

9 He never let us or the Court know of that
10 in advance.

11 I think that our concern is, that at this
12 late stage to have him as a witness to testify on the
13 last full day before trial, after Defense -- all of
14 Defendants experts have testified, especially Dr.
15 Wilson, the vascular surgeon, to address the vascular
16 issues, it is actually a classic sandbagging by the
17 Plaintiff in this case.

18 There was no reason why we shouldn't have
19 been informed that there were efforts to try to get
20 Dr. Wiencek here before that.

21 We could have made arrangements to have Dr.
22 Wilson testify as our last witness, let them finish
23 experts their witnesses all together, and then make
24 arrangements to have him testify.

25 We didn't do that because the only expert

1 they retained in this case to testify, the only
2 vascular surgeon they indicated they were going to
3 call, was Dr. M.

4 So in this particular situation it creates
5 a huge detriment to the Defense in this particular
6 case.

7 It's also our position that he wasn't
8 properly identified on the Plaintiff's pre-trial
9 disclosures. In fact, he's only listed on the
10 pre-trial disclosures as the person most
11 knowledgeable, or custodian of records, there's no
12 scope of anticipated testimony he's supposed to
13 offer, and that is the same for a number of other
14 entities, St. Rose and other providers as well, the
15 same designations, not as an individual witness -- or
16 not they anticipated calling him.

17 So I think it's our position, and I'll let
18 Mr. Weaver chime in as well, because I think he has
19 some points to make, but it's our position at this
20 late stage that is an improper attempt to sandbag the
21 Defense and creates a difficult situation for us, and
22 I think that it is not proper pursuant to their
23 pre-trial disclosures.

24 THE COURT: Mr. Weaver, anything to add?

25 MR. WEAVER: Thank you, Your Honor.

1 I would briefly add, we briefed this issue
2 before the Court, as it wasn't just Mr. Arntz saying
3 that he he became aware a few days ago, he said,
4 quite a few days ago.

5 So at the same time while the Court is
6 telling the jury on Friday at the lunch break there
7 was two witnesses in the afternoon, Nurse
8 Practitioner Bartmus and Dr. Barcay, and two today,
9 and we would be done today, instructions tomorrow,
10 and it certainly wouldn't go into Wednesday, not a
11 word, not a peep, no heads up, no information, not
12 anything.

13 And what is particularly disturbing is,
14 every single day we talked about witnesses on
15 Thursday, I set out the discussion in part that
16 carried over until Friday, when even the Court
17 acknowledged based on the Court's information that
18 Mr. and Mrs. Moore were the final two witnesses
19 today, that part of what was happening on Friday, and
20 this is on the record, was if we're to not interfere
21 with Mr. and Mrs. Moore having the entire afternoon
22 to testify today, number one, would've fully
23 truncated the testimony of Nurse Practitioner
24 Bartmus, and in addition truncated and shortened the
25 testimony of Dr. Barcay, so we finished before 4 to

1 make sure that Mr. Arntz had all the time he needed
2 for cross-examination.

3 He said he would take an hour, took 30
4 minutes, but there was plenty of juror questions, but
5 all of that was done to make sure it didn't interfere
6 with the last two witnesses today.

7 Meanwhile, they've known for at least a
8 week, maybe ten days before that they were intending,
9 or hoping, or scheduling Dr. Wiencek for today.

10 So that we're trying to do what we can to
11 make sure we don't go past Tuesday and doing as well
12 what we can with the witnesses, we're getting
13 sandbagged, not knowing we're going to find out
14 yesterday when we are trying to prepare for Mr.
15 Moore, and trying to prepare for closing arguments, a
16 surprise to Dr. Wiencek is coming.

17 On Thursday afternoon I called, it was
18 hectic, and e-mailed Dr. Barcay when there was a
19 discussion about potentially -- this was at 3:30
20 about potentially Mrs. and Mrs. Moore having their
21 testimony on Friday afternoon to accommodate them to
22 get it done.

23 It was decided that the best thing would be
24 to leave them until today uninterrupted.

25 So to find out yesterday afternoon that

1 this was a set up to have the Plaintiff's case
2 continue over to today, and Dr. Wiencek, a surprise
3 witness, is quite frankly intolerable, just not fair.

4 What are we going to do, bring Dr. Wilson
5 back tomorrow?

6 That is not even likely possible.

7 But Dr. Wilson had every right to rely on
8 whatever Dr. Wiencek might say, not the other way
9 around.

10 THE COURT: Mr. Hyamson.

11 MR. P. HYMANSON: Phil Hymanson on behalf
12 of Mr. and Mrs. Moore.

13 This is not a sandbag.

14 This is what we call trial.

15 As of last Thursday the discussion between
16 counsel about whether they were going to call Dr.
17 Wiencek or not, and Mr. McBride said, no, it's not
18 their intention, Mr. Arntz was under the impression
19 they were, which was good because we were having
20 until Friday to get him, didn't think we would be
21 able to get him.

22 THE COURT: I don't have a lot of volume
23 today, so bear with me.

24 Can you just clarify?

25 You're using a lot of pronouns there.

1 You said, they were talking about it, they
2 were okay, they weren't.

3 I did not follow who you were saying.

4 As far as I'm getting what you gentlemen
5 are saying, Friday was the first time they heard
6 about him coming today, or maybe Sunday.

7 I'm sorry.

8 What's the first time they heard about Dr.
9 Wiencek?

10 MR. P. HYMANSON: I'll be clear on that.

11 Your Honor, that is absolutely correct.

12 We didn't know that Dr. Wiencek would be
13 available until a telephone conference yesterday, and
14 as soon as we learned from Dr. Wiencek he would be
15 available, we notified Defense counsel approximately
16 24 hours before they were going to testify.

17 We weren't aware of it until Sunday he was
18 in fact going to be able to testify.

19 He has some physical issues, and we didn't
20 think he was going to be able to.

21 THE COURT: When did you begin reaching out
22 to him?

23 MR. P. HYMANSON: I'll have to defer to Mr.
24 Arntz because I wasn't involved in the reach.

25 MR. ARNTZ: Probably about a week ago.

1 I think I was able to get ahold of him
2 through the office, and what he told me was, he was
3 not be able to come testify because he had bad
4 neuropathy, didn't want to come into your courtroom.

5 He said, if you can have me testify by
6 video conference, I'll agree to it.

7 I said, I don't think I can do that.

8 So I essentially gave up on it, but I
9 reached out to him one more time Friday, and it was
10 about 7:00 Friday night that I finally got a text
11 from him where he said -- he agreed to come.

12 I didn't make a decision then.

13 I wouldn't call him until I had a chance to
14 talk to him.

15 So I talked to him on Sunday, it was the
16 afternoon, the three of us were there on speaker
17 phone talking to him, and after that I decided to
18 call him, and I immediately notified counsel of my
19 decision.

20 There was no sandbagging. I just didn't
21 think I could get him here.

22 THE COURT: Well, let me go back to Mr.
23 Hymanson.

24 Whether or not the intent was there, the
25 sandbagging, it's just not sandbagging, if they were

1 standing up at the last witness with a witness you
2 had no idea was in play that day before that witness
3 was supposed to testify, you would not be up here
4 having that same thing?

5 MR. P. HYMANSON: No, Your Honor, I don't
6 think so.

7 I call that trial. I call that trial, Your
8 Honor.

9 It was quite clear on Friday after -- as
10 the Court said to them, we allowed them to put their
11 experts in out of place, it was quite clear after
12 their experts testified how critical this doctor was
13 going to be, and I specifically said to Mr. Arntz
14 after Friday that if Dr. Wiencek. If we have him
15 listed, and we tried to get him, we need to try and
16 get him one more time because based on Friday's
17 testimony that would be critical for him to be here.

18 This isn't a surprise to the Defense.

19 They've known of this doctor from the
20 beginning.

21 They are the ones mentioned him in their
22 opening statement.

23 They are the ones that had their experts
24 refer to him.

25 So there's no surprise.

1 He is a treating physician, no surprise
2 there.

3 And what he's going to testify to would be
4 quicker than what this argument is going to be.

5 THE COURT: One more follow-up to Mr.
6 Hymanson before the response.

7 MR. MC BRIDE: Sure.

8 THE COURT: Wait.

9 You all have to try to listen.

10 I'm speaking as loudly as I can.

11 One more follow-up to Mr. Hymanson.

12 What Mr. McBride indicated about the actual
13 pre-trial disclosures, those have some meaning. If
14 he's not disclosed on there as a potential witness,
15 how is it you're calling him now?

16 I know all day long trial is trial, but
17 their indication is, and I did not re-review that
18 because I had no idea about talking about
19 sandbagging, about this argument coming, so you know
20 what is the actual disclosure?

21 MR. P. HYMANSON: Number 22.

22 MR. MC BRIDE: 20.

23 MR. ARNTZ: No, 22.

24 The supplement.

25 MR. P. HYMANSON: It says:

1 Dr. Wiencek, these witnesses expect to
2 testify regarding Plaintiff's medical treatment, from
3 Dr. Wiencek, M.D., expected to testify to the facts
4 and circumstances surrounding the medical care,
5 treatment, and/or billing for said care and treatment
6 provided to Plaintiff.

7 THE COURT: What was the supplement?

8 MR. MC BRIDE: I don't have a supplement,
9 Your Honor.

10 MR. WEAVER: There's no supplement, Your
11 Honor.

12 MR. ARNTZ: Your Honor, Dr. Wiencek
13 actually has been named since the first supplement.

14 He's been in every supplement since then.

15 THE COURT: They indicated he was named,
16 but as custodian of records.

17 MR. MC BRIDE: I have the pre-trial
18 disclosures here, Your Honor, if you would like to
19 take a look at it.

20 THE COURT: I'm taking your
21 representations.

22 I was just told there was a couple numbers
23 there, I was wondering whether it was filed.

24 MR. ARNTZ: The 13th, and included in that
25 one and every other one.

1 THE COURT: Hold on, you guys are talking
2 over each other.

3 I'm checking the file.

4 MR. P. HYMANSON: The supplement was
5 November 21st, Your Honor.

6 THE COURT: The supplement you're reading
7 from now?

8 MR. P. HYMANSON: The 13th supplement,
9 11/21, Your Honor.

10 MR. ARNTZ: That wasn't the first
11 supplement we filed.

12 THE COURT: There's a difference, is there
13 not, gentlemen, between ongoing supplements along the
14 way of all the potential witnesses that might have
15 something to do with the case and the actual
16 pre-trial disclosure of witnesses?

17 MR. ARNTZ: Well, he's disclosed as a
18 witness.

19 THE COURT: I'm not in the mood, Mr. Arntz.

20 I just said I thought very clearly there is
21 not a difference between ongoing supplemental
22 disclosure, the requirements, as pre-trial
23 disclosures that is required under the EDCR when you
24 all get together and meet and confer and list out
25 your witnesses and list out your documents, and say

1 who you are calling.

2 If you are not required to update on the
3 pre-trial disclosures who you are actually going to
4 call and what they are going to be called for --

5 MR. ARNTZ: Well, it doesn't list on there
6 what -- doesn't recite the same paragraph that is in
7 the disclosure in the supplement, that's true.

8 THE COURT: Okay.

9 I'm not worried about that right now.

10 Final arguments?

11 MR. MC BRIDE: I do have the pre-trial
12 disclosure filed by Plaintiff December 27th, 2019.

13 Number 20, like I said, custodian of
14 records, and/or person most knowledgeable, and just
15 Robert Wiencek, M.D., St. Rose Sienna.

16 That is the same identification, nothing
17 more, the same identification they give for every
18 other potential witness, Paul Weazner Associates,
19 John Oh, M.D., Nevada Comprehensive, /PRO care, then
20 as Your Honor is aware as part of the pre-trial
21 disclosures it even says, has a section says,
22 Plaintiff's expect to present the following witnesses
23 at trial if a need arises, Plaintiff's reserve the
24 right to call any and all witnesses called by any
25 other party, and there is nobody identified.

1 There's also nobody identified by
2 deposition, nobody identified that they were
3 subpoenaed.

4 Our point, Your Honor, again goes to the
5 fact that this is a witness who is -- Well, first of
6 all, it was mentioned in passing as a treating
7 physician in my opening statement as part of my
8 chronology explaining who he treated with. That in
9 and of itself should have been enough for the
10 Plaintiff to identify that Dr. Wiencek likely had
11 some information that would be relevant to their case
12 in this particular issue, even if it's about as a
13 treating provider, or damages, or anything else.
14 That wasn't done.

15 Your Honor, you are absolutely correct, the
16 pre-trial disclosures are really the operative
17 pleading that takes effect for trial.

18 I understand Mr. Hymanson thinks that this
19 is all well and good to have a Perry Mason moment and
20 call Dr. Wiencek, and at the last minute, but what it
21 also does is, it complicates matters to the extent
22 even if the Court were to allow him to testify, and
23 limit his testimony, what that problem creates for
24 the jurors, who are all -- have been very attentive
25 and who ask questions, when they are not able to ask

1 questions that may go beyond the potential role as
2 just a treating physician, that opens up a whole
3 other cap of worms.

4 In this particular case, Your Honor, this
5 is classic sandbagging, and I think it's an absolute
6 detriment to the Defense, given the fact we've
7 already completed our experts, in particular Dr.
8 Wilson, who as Mr. Weaver pointed out would be the
9 key witness to comment on any testimony from Dr.
10 Wiencek.

11 THE COURT: Anything else to add, Mr.
12 Weaver?

13 MR. WEAVER: Briefly, Your Honor.

14 Again, it's not the trial, it's a sandbag.

15 They are not even on the same page with al
16 due respect.

17 Mr. Arntz said quite a few days now it been
18 known that Dr. Wiencek is a potential witness without
19 a word to us.

20 Mr. Hymanson just said, it became apparent
21 on Friday afternoon after our experts left.

22 They are not reconcilable, it don't make
23 sense, and the bottom line is in trial what makes
24 sense is to say, here are experts that we are
25 calling, how are we going to coordinate it?

1 What isn't trial is to conceal a witness
2 from the other side and not tell them until the day
3 before.

4 It's true we've gone back and forth, and
5 with all due respect it hasn't been total
6 accommodation for our experts. We've done what we
7 can to make our experts available, including Dr.
8 Wilson being here for this for three days in order
9 not to hold up any trial.

10 So the idea there's just this
11 over-accommodation for Defendants isn't even fair.

12 THE COURT: Okay.

13 So it hasn't been mentioned yet in
14 argument, but one of the things I recall -- I looked
15 it up while I was listening to your arguments -- was
16 there was also a stipulation and order on motions in
17 limine signed off on by all the parties, which again
18 technically has not been filed, but of course was
19 submitted to the Court prior to trial, I actually
20 have a stamp on it January 29th when it was submitted
21 to the Court, so it might have actually just been
22 after trial started, but stipulation order on motions
23 in limine, the sixth of which is, as a courtesy the
24 parties agree to provide reasonable advanced notice
25 of witnesses to be called to the extent possible.

1 Actually, when I was reviewing these
2 orders, I was very glad to see that because one of
3 the things as a Judge, I see counsel do it all the
4 time, is decide how they are going to do their case
5 and not necessarily share as things are evolving that
6 information with the other side.

7 I'm not going to call it sandbagging
8 because I don't disagree with Mr. Hymanson or Arntz,
9 it's very possible as the trial evolves they came
10 about their decision the way they came about their
11 decision.

12 The argument and calling it sandbagging is
13 like saying, by design they waited until the last
14 minute to call Dr. Wiencek.

15 I take it at face value, Mr. Hymanson's
16 representations. Although, Mr. Arntz may have
17 attempted to reach out sometime ago just to see if he
18 was available, and had given up, that that was going
19 to work.

20 Mr. Hymanson, after hearing the testimony
21 on Friday, said, let's try it again, and as luck
22 would have it Mr. Wiencek -- Dr. Wiencek was
23 available.

24 At the end of the day it was absolutely
25 obvious to this Court from the get go that Dr.

1 Wiencek could, potentially should, have been a
2 witness in this case.

3 Every single witness that testified, and
4 every single document we've looked at, has had Dr.
5 Wiencek all over it.

6 In fact, to the degree where I've actually
7 been sitting here concerned that the jurors don't
8 even know who the Defendants are because Dr.
9 Wiencek's name had come up so many times.

10 That said, all the testimony has come in
11 except for the Plaintiffs.

12 We are at the conclusion of this trial,
13 there are ample documentation affixed to this
14 involving Dr. Wiencek can be pointed to as need be to
15 clarify any of those issues.

16 This is far too late in the process to be
17 disclosing a witness.

18 The appropriate time to the disclose this
19 witness would have been when the decision was made to
20 reach out to see if he was available.

21 The Court deserved that courtesy, counsel
22 deserved that courtesy, it did not happen.

23 It was not included in the pre-trial
24 disclosure, that might have saved -- or might have
25 made some different impact on the Court's decision

1 here today.

2 If he had been listed in there the same way
3 he was listed in the November multiple supplements,
4 13, or whatever it was, but there's got to be some
5 benefit to the Court and to counsel these pre-trial
6 meet and confers, they are not just empty exercises
7 where everything is listed, they should not be that,
8 where everything just gets listed the way it's been
9 previously listed and cut and pasted by some staff
10 member, and we actually have no damn idea who's going
11 to be called at trial.

12 This Court has been every day at the end of
13 last week figuring out who is being called and when.

14 I didn't care who was being called and
15 when, I did not care how long a time it was going to
16 be taken, I just needed to know, so I could keep this
17 trial moving and going.

18 To find out now that on Sunday was the
19 first time Defense was notified Dr. Wiencek was in
20 play, and the Court didn't know until it came in here
21 today, I appreciate we were copied on some e-mail
22 yesterday as well, but that was not provided to me by
23 my staff this morning, and it's in the pile of
24 additional instructions and things we have now, but I
25 didn't get it until just now.

1 So as I came in here today I had zero idea
2 this was an issue.

3 At the end of the day, like I said, I think
4 ample testimony has been had from both sides related
5 to Dr. Wiencek's prior treatment, how that might have
6 impacted things, and certainly any confusion can be
7 cleaned up in closings.

8 We have the Plaintiff, and the Plaintiff's
9 to testify today, and I do not see any legitimate
10 legal or factual basis to allow Dr. Wiencek to be
11 called at this time based on the pre-trial
12 disclosures, based open the stipulated motion in
13 limine as a courtesy to provide information,
14 reasonable advanced notice, and ultimately the
15 communications up through and including Friday as to
16 what this trial proceedings would be.

17 So for all of those reasons Dr. Wiencek
18 will not be called today, and we will proceed as
19 schedules with the Plaintiffs.

20 Anything else we need to address?

21 MR. MC BRIDE: Thank you, Your Honor.

22 MR. ARNTZ: No, Your Honor.

23 MR. MC BRIDE: No, Your Honor.

24 THE COURT: Thank you.

25 Do you need to communicate with Dr.

1 Wiencek?

2 MR. ARNTZ: Yep.

3 (Thereupon, the following proceedings were
4 had in open court and in the presence of the jury.):

5 THE COURT: Thank you, ladies and
6 gentlemen, for your patience.

7 We had a few matters we had to resolve
8 before you joined us.

9 We've now resolved those matters.

10 At this point in time we're going to return
11 to the Plaintiffs' case in chief, and I'm asking
12 counsel for the Plaintiff to call their next witness,
13 please.

14 MR. J. HYMANSON: We'd like to call
15 Charlene Moore, Your Honor.

16 THE COURT: Mrs. Moore, make your way up to
17 the witness stand.

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CHARLENE MOORE,

who, being first duly sworn to tell
the truth, the whole truth, and
nothing but the truth, was examined
and testified as follows:

THE CLERK: Please have a seat.

Please state your full name, spelling both
your first and last name for the record.

THE WITNESS: My first name is Charlene,
C-h-a-r-l-e-n-e, last name Moore, M-o-o-r-e.

THE COURT: Thank you.

Mr. Hymanson, when you're ready.

MR. J. HYMANSON: Thank you very much, Your
Honor.

- - - -

DIRECT EXAMINATION OF CHARLENE MOORE

BY MR. J. HYMANSON:

Q. Good afternoon, Mrs. Moore.

Can you please introduce yourself to the
ladies and gentlemen of the jury?

A. I'm Charlene Moore.

I'm Darell's wife.

Q. Miss Moore, where were you born?

A. I was born in Camp Robert, California.

1 Q. Where did you grow up?

2 A. I grew up, most of my younger years were
3 spent in Germany.

4 My dad was in the Army intelligence, so we
5 moved around a lot, spent nine years in Germany,
6 sometime in Baltimore, and other places.

7 Q. When did you meet Darell?

8 A. I met Darell the first part of 1967.

9 We had moved into a neighborhood, and the
10 beginning of the year he moved in next door to us.

11 Q. How old were you then?

12 A. I was 14.

13 Q. Did you eventually start dating Darell?

14 A. We did.

15 Q. How long after you met him?

16 A. I would think probably maybe eight months
17 or so.

18 Q. And you eventually ended up getting married
19 to Darell, correct?

20 A. Yes.

21 Q. How old were you when you married Darell?

22 A. I was 16.

23 Q. And so how long have you been married to
24 your husband?

25 A. 51 years.

1 Q. We talked about it a little bit before, but
2 you have three children, correct?

3 A. I do.

4 Q. What do your children do?

5 A. My eldest is Eric, and he works in the
6 prison system.

7 My second son is -- you met -- he's
8 Christopher, he's been in interventional -- works in
9 the hospital.

10 And Jennifer is a Sergeant in the Air
11 Force.

12 Q. Okay.

13 Miss Moore, are you currently employed?

14 A. I am not.

15 I'm retired.

16 Q. What did you used to do for a living?

17 A. Well, there were a lot of things.

18 My first job was helping my dad in his
19 photo store.

20 Then later my mom and my mother-in-law and
21 I opened a children's clothing store that we had for
22 well over ten years.

23 Then I became a partner with my sister, she
24 had taken over my dad's photo store, so I worked with
25 her for a while.

1 And then I dealt poker in a small card room
2 in California.

3 I also managed the card room for a little
4 while.

5 Q. When you owned your own business, did you
6 always pay your debts?

7 A. Yes.

8 Q. Do you think you have ever lived a lavish
9 lifestyle?

10 A. No, not really.

11 Q. I want to transition a little bit talking
12 about your life with your husband before his
13 amputation.

14 So what does your husband do for a living?

15 A. He -- He started out when we first got
16 married as a bus boy, then he went into construction
17 with his father, became a partner, and worked with
18 him for many years.

19 And then at the same time I started dealing
20 cards in the card room he dealt cards in the card
21 room and became a manager of several card rooms.

22 Q. Did he ever have any issues with his legs?

23 A. He had issues with his legs for years and
24 years and years.

25 He first saw a vascular specialist when he

1 was about 19 or so, but in his 30's he developed open
2 ulcers on his legs, so he consulted a lot of
3 physicians through the years.

4 All they could do was tell him to wrap his
5 legs with a bandage, you have to put elastic like
6 over it, so it's like a lightweight cast, and he did
7 that for many years, so he could continue to work.

8 He was like so long, so long he had these
9 open ulcers, and sometimes they would come on his
10 right leg, but never as bad as his left leg.

11 And when we finally got referred to Dr.
12 Wiencek, he had a 2012 operation, he finally healed
13 and was much more mobile, and didn't have to do the
14 bandages anymore or anything like that.

15 Q. Let me just ask for a little bit of
16 clarification.

17 The 2012 operation, so I want to make sure
18 I understand what your testimony was.

19 You said for years he had open sores on his
20 legs?

21 A. Correct.

22 Q. And you talked about the bandages he would
23 wear, correct?

24 A. Yes.

25 Q. And when you would apply the bandage, would

1 his wounds go away?

2 A. Well, his right leg healed up quite often,
3 so he didn't have to bandage that very much.

4 But his left leg, sometimes he would have
5 several ulcers, sometimes only had one, kind of went
6 back and forth, but there was always for the whole
7 time he had some kind of open sore on his left leg.

8 Q. What kind of things did you and Darell do
9 for fun before -- let's talk about from 2010 until
10 2016, what kind of things did you and Darell do for
11 fun?

12 A. Well, 2010 to 2016?

13 In 2010 to 2012 we didn't do -- we had just
14 retired recently, didn't do a whole lot of traveling
15 or anything, but we would go to Tucson to visit my
16 mom, go back to the hometown to visit family.

17 You know, we would go out, have dinner, do
18 all those things.

19 After 2012, we were settled into
20 retirement, his legs were healed, and we were doing a
21 lot more.

22 We took a trip to Hawaii.

23 We took a trip to Florida.

24 We flew out to Florida.

25 We visited my mom regularly in Tucson, at

1 least a couple times a year.

2 So she moved to Mesquite, and then we would
3 go over there and see her like once a month.

4 We still traveled back to Paso Robles to
5 see family.

6 Now luckily enough most of my family moved
7 to Mesquite, so we can see them more often.

8 However, not so much now that he's lost his
9 leg.

10 Q. We talked about a noticeable difference
11 between what you and your husband would do before
12 2012 and after 2012, and you talked about 2012.

13 What was the surgery your husband had in
14 2012?

15 A. In 2012 he had several aneurisms addressed,
16 and he had the popiteal by-pass graft.

17 Q. The graft we've been talking about for the
18 last two weeks?

19 A. Yes.

20 Q. Did you notice a difference -- or first of
21 all, you said your husband had sores on his legs for
22 years before he had the by-pass, correct?

23 A. Yes.

24 Q. How did the by-pass affect your husband's
25 leg, his left leg?

1 A. All the ulcers healed.

2 He didn't have to put the bandage on
3 anymore.

4 Q. How did the 2012 by-pass affect your
5 husband's overall quality of life?

6 A. There was such a huge difference.

7 It was just so much better.

8 We were living life with him having open
9 sores on his legs, and the necessity of changing
10 bandages, and they were very painful, he used to
11 before the sores healed when he would go to bed, he
12 would have to hang his leg off the bed onto like a
13 little chair with pillows, so that they were -- the
14 level was down a little bit, which would ease the
15 pain, and help him sleep because gravity goes
16 downhill.

17 So he didn't have to do that anymore, he
18 could put his feet up on the bed and sleep like a
19 regular person.

20 Q. From 2012 to 2016 how often did your
21 husband exercise?

22 A. Well, he would walk more and do more, but
23 we didn't have like an exercise program, he didn't go
24 to the gym or anything.

25 Q. Okay.

1 You said you would walk.

2 Where would you walk?

3 Where would he walk?

4 A. He could come with me to the grocery store,
5 to Costco.

6 If we wanted to go to the car show at
7 Mandalay Bay, he could walk all the way back there.

8 If we went to the clinic, he could walk
9 around.

10 If we traveled somewhere, we wanted to stop
11 and go off course and hike a little bit, not major
12 hiking, but just to go see sights and that kind of
13 thing.

14 Q. So you mentioned Dr. Wiencek was your
15 husband's vascular surgeon -- or is your husband's
16 vascular surgeon?

17 A. He still is.

18 Q. How did you -- or your husband -- find Dr.
19 Wiencek, do you remember?

20 A. He -- His left leg, one of the ulcers on
21 his left leg got infected, and we took him to the
22 emergency room at St. Rose, and they recommended that
23 he go to a clinic that he had -- that they have where
24 they did wound care, and he went to that clinic a
25 couple of times, and the second time the doctor that

1 was cleaning up his wound and whatever they do, I
2 don't know exactly, but that doctor was Dr. Simon,
3 and he said, you know, I think I can can help you
4 beyond the clinic, I have an office, and why don't
5 you make an appointment.

6 So he went to Dr. Simon several times, and
7 Dr. Simon tried to do some things that didn't seem to
8 be helping very much, so Dr. Simon ordered I believe
9 it was a CT, and after he got the results from the CT
10 he had Darell come in and said, you know --

11 MR. MC BRIDE: Objection, Your Honor.
12 Hearsay.

13 THE COURT: Is it being offered for the
14 truth of the matter asserted, or being offered -- For
15 what purposes is it being offered for?

16 MR. J. HYMANSON: For her recollection of
17 how they found Dr. Wiencek.

18 THE COURT: I'll overrule in this case, and
19 just for the purposes of understanding this is what
20 the Plaintiff is getting at.

21 MR. J. HYMANSON: Thank you, Your Honor.

22 THE WITNESS: Dr. Simon, after the CT
23 results said, you got some serious problems that need
24 addressed, and he actually called Dr. Wiencek while
25 we were in the office, and he arranged for Darell to

1 see him that day.

2 BY MR. J. HYMANSON:

3 Q. Miss Moore, did you ever go to your
4 husband's appointments with Dr. Wiencek?

5 A. I went to the office ever every time.

6 I also went into the back room with him
7 every single time.

8 Q. Why did you do that?

9 A. Because his problems were serious, and I
10 wanted to hear what the doctors said, rather than
11 getting it secondhand from Darell.

12 Q. You said you actually went back and in the
13 examination room each time your husband would go see
14 Dr. Wiencek?

15 A. Yes, I did.

16 Q. So did you watch the exam Dr. Wiencek would
17 do on your husband each time?

18 A. Yes.

19 Q. Did you ever see Dr. Wiencek check for a
20 pulse in your husband's legs?

21 A. Yes.

22 Q. Okay.

23 Do you remember seeing Dr. Wiencek check
24 for a pulse on your husband's left foot?

25 A. Yes.

1 Q. Was he ever able to palpate a pulse on your
2 husband's left foot, to your recollection?

3 MR. MC BRIDE: Objection.
4 Speculation.

5 MR. WEAVER: Join.

6 THE COURT: Sustained.

7 How would she know?

8 MR. J. HYMANSON: That's my question.

9 I'll move on, Your Honor.

10 BY MR. J. HYMANSON:

11 Q. Miss Moore, did you ever see -- Well, you
12 said that you saw Dr. Wiencek attempt to palpate a
13 pulse on your husband's left leg, correct?

14 A. I don't know if you would classify it as
15 palpate because he didn't -- he used a Doppler every
16 single time.

17 Q. Okay.

18 So did you see him attempt to palpate
19 before?

20 A. No.

21 Q. So you saw him use a Doppler?

22 A. He went straight to the Doppler.

23 Q. And every time that you were at Dr.
24 Wiencek's you saw Dr. Wiencek use a Doppler to check
25 your husband's pulse on his left leg?

1 A. Yes, I did.

2 And Dr. Wiencek did it himself, not an aid
3 or anybody else.

4 Q. I asked you this in one way before.

5 You said you went to every appointment with
6 Dr. Wiencek because you were very concerned about
7 Darell's leg, correct?

8 A. Yes.

9 Q. And you think your husband took his health
10 seriously?

11 A. Absolutely.

12 Q. Just briefly, I want to talk about smoking.
13 There's been a lot of talk about smoking
14 throughout this trial.

15 First, Miss Moore, do you smoke at all?

16 A. I do.

17 Q. How often, or how much, do you smoke a day?

18 A. I average three or four cigarettes a day.

19 I never smoke during the day time, only in
20 the evenings, unless we're out somewhere.

21 Q. How long have you smoked?

22 A. 30, 40 years.

23 Q. Okay.

24 And we learned throughout the course of
25 this trial that your husband Darell is a smoker,

1 correct?

2 A. Yes.

3 Q. And how long has Darell been smoking?

4 A. About the same duration.

5 Q. How much does your husband currently smoke
6 a day?

7 A. He smokes approximately a pack a day,
8 sometimes a little less because sometimes I smoke out
9 of the same pack.

10 Q. From 2012 to 2016 do you recall how much
11 your husband smoked a day?

12 A. About the same amount.

13 He smoked much less than that many years
14 ago.

15 Q. Okay.

16 So what -- Well, do you and Darell smoke in
17 the house?

18 A. We do not.

19 Q. And why not?

20 A. It makes the house stink.

21 Q. You're aware that smoking is bad for you?

22 A. Yes.

23 Q. And is your husband aware smoking is bad
24 for him?

25 A. Yes, he is.

1 Q. Why do you continue to smoke?

2 A. It's so many years of a habit, it makes it
3 hard to break, and then there's been a lot of stress
4 in our lives, and it's hard to break habits when you
5 are stressed.

6 You need some order in your life, things to
7 be the same, some things to be the same, changes are
8 hard.

9 Q. So you established both you and your
10 husband smoked, but I asked you earlier if your
11 husband takes his health seriously.

12 Do you think your husband takes his health
13 seriously?

14 A. Yes, he does.

15 If it were easy to quit, he would have
16 already done it.

17 Q. Does your husband go to his follow-up
18 doctors' appointments when he's supposed to?

19 A. Yes, he does.

20 Q. Does your husband take his medications on a
21 regular basis?

22 A. Oh, yes.

23 He makes sure that I make sure that his
24 medication is ordered through the pharmacy in a
25 timely manner.

1 He will not go one day without taking his
2 Xarelto.

3 Q. For a time period was your husband
4 instructed to wear any special type of anything on
5 his legs?

6 A. Well, of course after surgery he had to
7 wear the compression socks, and he wore compression
8 socks quite a bit.

9 They've also asked him to wear skin
10 preparation for his prosthetic, they had him wearing
11 a shaper on the other leg.

12 Q. I want to talk to you briefly about the
13 couple days before Christmas day in 2016, okay?

14 A. Okay.

15 Q. What -- Did you go to the casino a few days
16 before December 25th, 2016?

17 A. I did.

18 Q. Did your husband go with you?

19 A. Yes.

20 Q. What casino did you go to?

21 A. I wouldn't -- It's been a long time.

22 I would assume we went to The M because
23 that is usually where we go.

24 Q. Do you remember how much you walked around
25 with your husband in the casino that day?

1 A. Specifically, no.

2 I don't remember how long we were there.

3 I don't remember if we were winning, going
4 from machine to machine, or whatever, but he was
5 walking with a cane.

6 Q. Okay.

7 Was it an amount you think -- looking back
8 at it, was more than he would usually walk in a given
9 day?

10 A. I couldn't say, I don't remember.

11 Q. Okay.

12 Let's talk about now December 25th, 2016.

13 Do you remember how that day started?

14 A. Well, we were getting ready for Christmas
15 of course, my mom and her boyfriend were coming, so
16 we were -- but when he got up in the morning, he
17 said, you know, I think I have to get ready and go to
18 the emergency room because something is wrong.

19 Q. Okay.

20 Did you take your husband to the emergency
21 room that day?

22 A. I didn't.

23 Q. Why not?

24 A. Well, my son Christopher was available, and
25 I had the turkey in the oven and everything going,

1 and somebody had to wait for the company to arrive.

2 Q. Were you worried about your husband at all
3 on December 25th when he left for the hospital?

4 A. I was very worried, but I knew that my son
5 would call me if they kept him, and then Christmas
6 dinner, forget the whole thing, we're all going to
7 the hospital.

8 Q. Why were you worried about your husband on
9 December 25th?

10 A. Because after this 2012 by-pass two times
11 we had to take him to the emergency room because --
12 and they had to unblock the popiteal graft, so it
13 would get better blood flow.

14 Q. Was that in 2014?

15 A. 2014 and 2015.

16 Q. You've been here throughout most of this
17 trial, correct?

18 A. I have.

19 Q. Were you surprised to hear Dr. Lasry
20 testify that you were in the cafeteria with your son
21 on December 25th?

22 A. That's a big surprise to me.

23 Although, I don't remember hearing that, it
24 might have been at one point that I -- that we went
25 home early.

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Q. Okay.

But you were not at the hospital?

A. I was not at the hospital.

Q. Okay.

A. How would Dr. Lasry know I was in the cafeteria?

Q. Eventually your husband came home on December 25th?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did he have any discharge paperwork with him?

A. He did have discharge papers.

Q. Did you look at that paperwork at all?

A. Immediately when he came in.

He came in, he put them on the counter, he said, they said I could go home.

I said, I want to see it.

I read through the whole thing.

Q. Why did you do that?

A. Because I wanted to know what the doctors in the emergency room said about his problem.

Q. Did you see anything in that paperwork about your husband being told to follow-up with the

1 doctors or surgeon?

2 A. Absolutely nothing.

3 Q. Did you see anything in that paperwork
4 showing -- or stating there was an ultrasound that
5 said your husband's fem pop graft appeared occluded?

6 A. The only mention of ultrasound on the
7 discharge papers was that they did the test, nothing
8 about results.

9 Q. Okay.

10 If you had seen something in the discharge
11 paperwork that said that there was an ultrasound done
12 that day, that said that your husband's fem pop graft
13 appeared occluded, what would you have done?

14 A. I would have --

15 MR. MC BRIDE: Objection.

16 Calls for speculation.

17 THE COURT: Overruled.

18 THE WITNESS: I would have put him in the
19 car and taken him back.

20 BY MR. J. HYMANSON:

21 Q. Why?

22 A. Because it's really dangerous, the
23 situation, and he had had to have it addressed
24 before, and Dr. Wiencek told us that the first time
25 that his graft was occluded was the most difficult

1 for him because he didn't know what was happening.

2 So he waited a little longer to go to the
3 emergency room.

4 After that occasion when they got it all
5 cleared, Dr. Wiencek said to us, time is of the
6 essence, when you feel anything wrong with your leg,
7 you need to go to the emergency room immediately.

8 Q. All right.

9 I'm going to talk real quick about the days
10 in between December 25th and December 20th.

11 Did you look -- Do you have any
12 recollection of looking at your husband's foot on
13 December 26th or December 27th?

14 A. Not a bare foot.

15 He didn't really run around without his
16 socks on because his leg had all kinds of scars and
17 everything on it, and he always wore socks that go up
18 to the knee.

19 However, I would always look -- it's like a
20 habit because his legs would swell, they were always
21 swollen, but I would like look down at his foot and
22 in his slipper to see how much more it was swollen,
23 so if I thought it was getting excessive, I would
24 mention it to him and talk to him about how his leg
25 was feeling.

1 Q. Let's talk about December 28th, 2016.

2 Do you remember how that day started?

3 A. He got up, he said this is really bad, I
4 need to go back to the emergency room.

5 Q. Who took him to the hospital that day?

6 A. I did.

7 But before I went, I called Dr. Wiencek.

8 Q. What time of day do you think you got to
9 the ER, do you remember?

10 A. I don't.

11 Q. What did they do to Darell once he arrived
12 at the ER?

13 A. Well, of course he saw the triage nurse
14 real quick, then they took him back and put him in
15 one of those little cubbies on a bed, had him take
16 his shoes and socks off, and -- Do you want me to go
17 through the whole thing?

18 Q. We can go step-by-step.

19 Let me ask you real quick, you said they
20 had him lie down and took his shoes and socks off,
21 correct?

22 A. Yes.

23 Q. Did you look at your husband's foot then?

24 A. I did.

25 Q. What did it look like?

1 A. Purple.

2 Q. Was your husband in pain?

3 A. Yes.

4 Q. How much pain?

5 How could you tell your husband was in
6 pain?

7 A. Well, he told me, and he didn't look too
8 well.

9 Q. Did they eventually take your husband back
10 to have his leg imaged?

11 A. Yes, they did.

12 Actually, when he first saw the ER doctor
13 that day, not Dr. Lasry, he came, and he just barely
14 got in the room, and he said to somebody who was with
15 him, that is vascular, he had not even touched him or
16 gotten to his foot, and then he -- actually I think
17 he walked away and came back, he was already ordering
18 things.

19 And he came back and did an exam and sent
20 him for an ultrasound.

21 Q. After the ultrasound, did they attempt to
22 use any clot busters in your husband's leg?

23 A. They did.

24 Although, they did a CT first.

25 Q. Did the clot busters work?

1 A. No, they did not.

2 Q. Did they have any affect on your husband?

3 A. Well, they did because that procedure is
4 very -- it's very painful, but it didn't help.

5 Q. Did it leave any marks on your husband's
6 body?

7 A. Well, they have to cut him open and put it
8 in, put a tube down his leg to get -- or to direct
9 the medication to the right spot, and that in itself
10 didn't leave anything but the cut, but then they left
11 him -- left it in like overnight, and then when they
12 had all conferred and decided that this isn't going
13 to work, they pulled that tube out in his hospital
14 room, and when they did that, he was I would say
15 hemorrhaging.

16 It took two nurses, they -- one male nurse,
17 and I believe the other one was a lady, and they were
18 like changing pads, changing pads, changing pads,
19 putting pressure on.

20 Finally the male nurse -- it seemed like
21 forever at the time, but finally the male nurse kind
22 of got up on the bed and put his weight on it to make
23 it stop.

24 And after all that stuff he had a bruise
25 that went from here all the way down -- his upper

1 body all the way down, I think it may have gone all
2 if way down to his knees, but it was past this --

3 MR. MC BRIDE: Your Honor, could we have
4 her identify what portion of her body she's referring
5 to?

6 THE COURT: Yes.

7 For the record, Mrs. Moore, it's important
8 you indicate by describing what portion of your body
9 you are referring to.

10 THE WITNESS: Up towards his chest, and
11 well past his pelvic area.

12 BY MR. J. HYMANSON:

13 Q. Miss Moore, so we're talking about the
14 hospitalization now starting December 28th.

15 Eventually during this hospitalization we
16 talked about the clot busters not working, was the
17 decision eventually made to have your husband's leg
18 amputated above the knee?

19 A. Yes, it was.

20 Q. Miss Moore, how had your -- how has your
21 husband having his leg amputated above the knee
22 affected his life?

23 A. There's so many things, I couldn't possibly
24 say all of them, but of course the loss of a leg is
25 -- has a huge impact on your life.

1 You can't walk.

2 Everything takes longer.

3 You can't just go hop in the car and leave,
4 hop in the car and close the door.

5 No, we have to take the wheelchair out, get
6 in the car.

7 If we're out, we have two wheelchairs, so I
8 don't have to take them in and out every time, but
9 any time he leaves the vehicle when we are out, then
10 I have to get the wheelchair out, set it up for him,
11 and I -- the wheelchair he uses is in the car because
12 I can't lift the heavier wheelchair.

13 The real lightweight one the one he has
14 today, the wheels are small, so that he can't -- I
15 don't know how to describe it, but the bigger the
16 wheels are, the more him actually manually pushing
17 it, it's easier because he doesn't have to go back
18 and forth a whole lot.

19 So because then using that wheelchair it's
20 a little more difficult for him to move himself
21 around, then I push him most everywhere when we are
22 out.

23 I think I got lost in there and don't
24 remember the question.

25 Q. That's fine.

1 I'll ask you some more questions.

2 Is your husband able to access every room
3 in your house?

4 A. No, he is not.

5 Q. Where can't your husband access?

6 A. His wheelchair will not go into the --
7 either the toilet stall in our bathroom, or the other
8 bathrooms. The doorways are too small.

9 He can't access our closet.

10 He can't access the pantry.

11 I guess if we put a walker in every place,
12 he could have kind of access to them, but you can't have
13 multiples and move them around all the time.

14 When he uses the restroom in the hall, we
15 leave a walker right there at the door because the
16 wheelchair won't go in, so that he can get to the
17 toilet.

18 It is not impossible, but it's difficult to
19 get into the extra bedroom because with the hall it's
20 not wide enough to swing into them without beating up
21 the doorways.

22 Our bedroom itself the doorway's a little
23 small, but he can just barely fit it through, so he
24 beats up the doorway there, but he has to go in there
25 because that's the only shower that he can access.

1 He can't access the yard because it's too
2 difficult to roll the wheelchair across rocks or
3 grass.

4 Q. You mentioned the shower.

5 How does your husband shower?

6 A. Well, we use the same shower, so I move the
7 chair in and out, so that he has a chair in there to
8 shower.

9 And then he rolls up to the shower and
10 stands up and has to hop over the lift and get seated
11 on the chair.

12 I usually will -- I hang a towel over the
13 shower, so that he can reach it after he's done.

14 Q. We talked about the clotting, that he can't
15 activate the closet, right?

16 A. No.

17 Q. So where does he store his clothes?

18 A. His shirts hang -- Well, some of his shirts
19 hang on the towel rack in the bathroom, I put them
20 there so he has a choice of what to put on if we are
21 going somewhere.

22 I bought a little two-drawer chest I put
23 beside the vanity where I put his -- try and keep his
24 supply of socks and pants and underwear, so that he
25 can access those in the bathroom because otherwise if

1 they were in the closet, he couldn't get to them at
2 all, if they were in the dresser in the bedroom, he
3 would have to go back and forth and back and forth.

4 Q. I think you also said he can't access the
5 pantry, correct?

6 A. No.

7 Q. So what have you done to change the way
8 your house is set up in terms of that?

9 A. The kinds of things like snacks, butter, on
10 the counters, instead of putting them away because
11 that is the only place he can reach them.

12 He has a drawer where he keeps his tea bags
13 and extra snacks, so he can access it.

14 I try and keep in the refrigerator, try to
15 keep anything he uses regularly in a reachable area.

16 He can't reach anything but the bottom
17 shelf in our cupboards, so everything he might need
18 has to be there.

19 Q. Do you and your husband sleep in the same
20 room now?

21 A. We do not.

22 Q. Did you sleep in the same room before his
23 leg was amputated?

24 A. Yes, we did.

25 Q. Why don't you sleep in the same room?

1 A. Well, we don't sleep in the same room
2 because -- well, there's lots of reasons.

3 Number one, our bed is a little high that
4 is in the bedroom, so it's difficult for him to get
5 on and off it.

6 He sleeps kind of sideways, so there's not
7 a lot of room.

8 And then the mattress we have in there was
9 bothering him, so we bought one of those new foam
10 mattresses and put it in our study because for
11 several reasons.

12 Number one, that has helped a whole lot
13 with his pain, that type of mattress, but also it's
14 in the study because it's closer to the kitchen and
15 because the study has no door, so he doesn't have to
16 go through a doorway, we just have a curtain across,
17 like a four-foot opening or so, so we just have a
18 curtain across there, so he sleeps in there.

19 Q. You and your husband have been here for
20 every day we've been in trial, correct?

21 A. Yes.

22 Q. How has that been for you in terms of
23 getting to and from the courthouse?

24 A. It's difficult.

25 We have to get up early for both of us to

1 get ready.

2 It takes Darell a long time to shower and
3 then get dressed and do all the things necessary to
4 go out.

5 Some of the nights where we've had to come
6 out early to either meet at your offices, or come
7 mornings, and I could shower the night before to save
8 time because I really don't like to get up in the
9 morning, and --

10 Q. I want to talk a little bit about Dr. Fish
11 and his report.

12 He met with your husband for about an hour
13 and 15 minutes, is that correct?

14 A. Correct.

15 Q. Were you there during that meeting?

16 A. I was.

17 Q. Did you talk to Dr. Fish during that
18 meeting?

19 A. Some, but he was directing his attention
20 towards Darell, asking him questions.

21 I was mostly an observer.

22 Q. So you're aware Dr. Fish generated a
23 report, correct?

24 A. I am.

25 Q. When did you first see that report?

1 A. I --

2 Q. Actually, let me step back.

3 I apologize.

4 Do you remember when this hour and 15
5 minutes long meeting with Dr. Fish was?

6 A. It was in July, I think.

7 Q. Of what year?

8 A. 2019.

9 Q. Okay.

10 So then after you met with him, when did
11 you first see his report?

12 A. Months later.

13 Q. Okay.

14 A. In fact, it was only a couple of months ago
15 that Mr. Hoffman's office gave us that report.

16 Q. Did Dr. Fish go over details of that report
17 with you?

18 A. No.

19 Q. Did you understand what all of the
20 recommendations in Fish's report were?

21 A. Not exactly until he explained some of them
22 here.

23 Q. Okay.

24 So you were here while Dr. Fish was
25 testifying about the details of his report?

1 A. I was.

2 Q. How did you want to get what Dr. Fish
3 recommended in his report?

4 A. Listening to his testimony.

5 A lot of it made a lot of sense.

6 Q. Have you and Darell done everything that
7 Dr. Fish has recommended in his report so far?

8 A. No, that would take a long time.

9 Q. And my next question is:
10 Why haven't you done anything after reading
11 Fish's report?

12 A. Because we are still absorbing what needs
13 to be done.

14 You have to have a clear plan to tackle all
15 those things.

16 You have to start making appointments.

17 And you have to make sure you can get to
18 those places.

19 It's a little overwhelming just to look at.

20 Q. I'm going to transition again.

21 I want to talk about how your husband's
22 amputation has affected you.

23 First of all, do you have any of your own
24 health problems?

25 A. I do.

1 Q. And what are those?

2 A. I've been diagnosed with chronic renal
3 failure, so I see a nephrologist. It's a genetic
4 thing in my family. That is my main problem.

5 Although, along with that, my nephrologist
6 discovered, and I don't know the words for it, but
7 some kind of protein in my blood that could be
8 affecting the kidneys and could also turn cancerous,
9 what type, I don't know.

10 So I see a hematologist, I think it's a
11 hematologist.

12 I see a cancer blood doctor on a regular
13 basis to keep track of that protein and make sure
14 nothing is going wrong.

15 Q. How has the amputation of your husband's
16 leg affected you?

17 A. There's a lot of aspects to that.

18 There's a lot of sadness, but if we're
19 going to talk about physically, one of the things
20 that goes along with having chronic renal failure is,
21 you're tired all the time.

22 I'm also borderline anemic, and that
23 doesn't help.

24 So it's added a lot of things that I need
25 to do and keep up with, and being in the condition I

1 am it makes me very -- it's just exhausting and also
2 very stressful.

3 Q. Is your son, Chris -- he lives with you
4 right now, right?

5 A. Yes.

6 He's about to move.

7 Q. Okay.

8 And the ladies and gentlemen of the jury
9 met your son, but he is moving to Florida, correct?

10 A. He's moving to Florida, yes.

11 Q. And do you know when?

12 A. He keeps changing the date, but it's got to
13 be right within the week.

14 Q. Is there anyone else in your household to
15 take care of your husband, besides yourself?

16 A. No.

17 And Chris has never been able to help very
18 much because his job that he was doing, he was
19 working 60 hours or more a week, so he just wasn't
20 there very much.

21 Q. You said that you have been more -- I think
22 you said, correct me if I'm wrong, but more anxious
23 since your husband's amputation?

24 A. Yes, I worry a lot.

25 Q. How would you describe your mental

1 state since your husband's leg was amputated?

2 A. I try and stay positive.

3 There's times that it kind of gets to me.

4 I think there's been a lot more -- All I
5 can say is, that there's a lot more stress, you have
6 to worry about so many things, there's so many
7 doctors' appointments, and I worry about if anything
8 else is going to happen to him, and I worry about if
9 they are going to take good care of him, all of that.

10 Q. Have you ever been to a therapist to talk
11 about your anxiety, or the way the stress is
12 affecting you?

13 A. No, I haven't.

14 Q. Do you remember being asked in your
15 deposition if you would be open to that?

16 A. I remember being asked.

17 Right this second I don't remember what I
18 said.

19 Q. If I were to you that you said that you
20 didn't think it would help, would you agree with
21 that?

22 A. I probably said that.

23 Q. Okay.

24 How do you feel about that today?

25 A. After Dr. Fish's testimony, and how he

1 talked about things, it kind of makes me realize that
2 it might be worth a try.

3 MR. J. HYMANSON: Court's indulgence, Your
4 Honor.

5 THE COURT: Yes.

6 BY MR. J. HYMANSON:

7 Q. Just a couple more quick questions for you,
8 Ms. Moore.

9 Do you -- You have reviewed the facts of
10 what happened with your husband, correct?

11 A. Yes.

12 Q. And you have been here throughout the
13 course of this trial?

14 A. Almost all of it.

15 Q. Do you hold Nurse Practitioner Bartmus
16 responsible for your husband losing his leg?

17 A. I do.

18 Q. Do you hold Dr. Lasry responsible for your
19 husband losing his leg?

20 A. Absolutely.

21 MR. J. HYMANSON: I have no further
22 questions.

23 Thank you very much.

24 THE COURT: Mr. McBride, any questions for
25 this witness.

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MR. MC BRIDE: Thank you, Your Honor.

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CROSS-EXAMINATION OF CHARLENE MOORE

BY MR. MC BRIDE:

Q. Good afternoon, Miss Moore.

How are you today?

A. Tired.

Q. I hear you.

A. Just like everybody else here, I think.

Q. Now, Miss Moore, you and I met at your deposition when I took your deposition and your husband's deposition back in October of 2018, isn't that right?

A. We did.

Q. And at that time you answered all of my questions that I posed, as well as the questions from other counsel who were there, right?

A. Yes, I did.

Q. And have you had a chance to look at your deposition transcript before today, before testifying today?

A. I have.

Q. What was the last time that you looked at it?

A. I believe a couple days ago.

1 Q. And correct me if I'm wrong, but you have
2 not made any corrections to any of your testimony
3 before today, correct?

4 A. I haven't.

5 Q. Okay.

6 Now, Ms. Moore, you testified that you did
7 not go with your husband to the emergency room on
8 December 25th because you were busy preparing for
9 company to come to the house, is that right?

10 A. Yes, and Chris was available to take him.

11 Q. Right.

12 In fact, I think you told us in your
13 deposition that other than being informed by your
14 husband that things weren't right with his left leg,
15 you didn't really have any direct information about
16 what was going on with his leg, is that right?

17 A. No, I didn't get a lot of details from him,
18 and I just knew that he felt he needed to go, so that
19 was the thing to do.

20 Q. Right.

21 And so he just told you things didn't feel
22 right, and he needed to go to the ER, and you agreed
23 with that, right?

24 A. Well, yes.

25 It's his body.

1 He's got to know when he's got to go.

2 Q. Sure.

3 But you did not actually examine his leg on
4 December 25th at all to see if it looked any
5 different, isn't that right?

6 A. No, I didn't.

7 Q. And you never felt his leg to see if it was
8 cold to the touch, or anything like that, right?

9 A. No, I didn't even think of it.

10 Q. Okay.

11 But in fact on prior occasions -- Well, let
12 me ask you this:

13 You were there during Mr. Moore's
14 deposition, you sat in the room when I was asking
15 your husband questions, right?

16 A. Yes.

17 Q. Do you remember him saying that with his
18 prior occlusions that he had had, where he had been
19 hospitalized, and has the thrombolytic therapy, he
20 described the pain in his foot and does as so
21 excruciating it was like the pain was so severe and
22 cold it was like having your leg in a bucket full of
23 ice water, you remember him testifying to that?

24 A. Regarding which day?

25 Q. Back when he had his occlusions back in

1 2014 and 2015.

2 A. I don't remember it specifically, but I
3 know he had that kind of pain.

4 However, the main part of the pain he had
5 was always -- the worst of it was always after the
6 TPA when the cells start coming back to life, like
7 having --

8 Q. Ma'am, you are not a physician, correct?

9 A. Yeah.

10 Q. You don't have medical training, correct?

11 A. No.

12 Q. Okay.

13 I'm not asking for any -- I think that goes
14 beyond your qualifications as an expert.

15 I'm asking you just very quickly and
16 simply, do you remember him ever telling you that the
17 pain when he had those occlusions, that the pain upon
18 presentation to the emergency room in 2014, 2015 were
19 so severe and excruciating and cold it was like
20 having his leg in an ice bucket?

21 A. Do I remember him telling me that, or
22 remember him telling you that?

23 Q. Do you remember him testifying to that in
24 his deposition?

25 A. Specifically, no, but I only read his total

1 deposition once many, many months ago.

2 Q. Okay.

3 And the day that he went to -- December
4 25th, Christmas day, when he returned from that
5 visit, you said he brought some discharge papers,
6 right?

7 A. Yes.

8 Q. And you said you immediately looked at all
9 those, right?

10 A. Yes.

11 Q. And did your husband tell you that he was
12 told specifically to follow-up with his primary care
13 physician and his vascular surgeon, Dr. Wiencek?

14 A. Did he tell me that?

15 Q. Did he tell you that?

16 A. No, he did not.

17 That's not what he --

18 Q. So he didn't say anything about being
19 instructed to follow-up with his primary care
20 physician and Dr. Wiencek, true?

21 A. What he --

22 Q. Is that right, is that correct?

23 A. Am I suppose to say what he said, or only
24 supposed to answer what you asked me?

25 Q. Your counsel can follow up with more

1 specifics.

2 A. I wanted to make sure.

3 Ask it again.

4 Q. Let me ask it again.

5 You would agree that your husband did not
6 tell you that he was instructed by the emergency
7 department on December 25th to follow-up with his
8 primary care physician or Dr. Wiencek, true?

9 A. I would agree.

10 Q. All right.

11 The only thing that you were told by your
12 husband was, that he said that he was told he didn't
13 have a clot, and he could go home, right?

14 A. Now I can answer what he said to me?

15 Q. Well, if you have anything different to add
16 than that.

17 If it's something I've asked you that
18 question, if it's different than a yes or no --

19 A. Could you ask it again?

20 Q. Sure.

21 He told you that he had a clot -- Excuse
22 me.

23 He told you he didn't have a clot, and he
24 could go home, correct?

25 A. Correct.

1 Q. Okay.

2 And did he ever tell you that when he got
3 to the emergency room, and he was there for a few
4 hours, right?

5 A. He was there for a few hours.

6 Q. Did he ever tell you that no one, no one at
7 all in those entire few hours he was in the emergency
8 room, no one even examined his leg, did he ever tell
9 you that?

10 A. That day, or any other time?

11 Q. That day.

12 A. No.

13 Q. Did he tell you that on December 28th?

14 A. I don't remember.

15 Q. All right.

16 And, in fact, did he ever tell you that no
17 one had even bothered to take off his sock to look at
18 his leg?

19 A. Yes, he did.

20 Q. Did he tell you that on December 25?

21 A. No.

22 Q. Did he tell you that on December 28?

23 A. I don't know.

24 Q. Okay.

25 Was it sometimes after he had his leg

1 amputated?

2 A. No.

3 Q. All right.

4 Well, was it --

5 A. I don't think so.

6 Let me think about that.

7 Q. Sure.

8 A. Ask that again, please.

9 Q. Sure.

10 Did he tell you that no one took off his
11 sock in the emergency room on December 25 until after
12 his leg was amputated?

13 A. I believe it was after his leg was
14 amputated.

15 Q. All right.

16 And your son also likewise didn't tell you
17 that it was strange that they didn't examine his leg
18 in the emergency room on December 25th, did he ever
19 tell you that?

20 A. Not at the time.

21 Q. Okay.

22 Did he ever tell you that on December 28th,
23 Chris?

24 A. I would doubt it because it was kind of an
25 upsetting day, so I don't really remember.

1 Q. Okay.

2 Again, your son works at Summerlin Hospital
3 and has worked at Summerlin for several years, right?

4 A. He no longer works there.

5 He had worked there for several years.

6 Q. And he was working there at the time of
7 2016, December 25, 2016, right?

8 A. Yes, he was.

9 Q. And did he say -- or ever tell you that no
10 doctor, and I'm talking about Chris, did Chris ever
11 tell you that no doctor or nurse ever actually
12 examined your husband's foot on December 25?

13 A. Well, he was still in the hospital.

14 Q. On December 25?

15 A. No, not December 25.

16 I'm thinking of the 28th.

17 Q. Right.

18 And you would agree with me at the time
19 that your husband went back to the emergency room on
20 December 28th, no one informed the emergency room
21 physicians at that visit that no one had examined
22 your husband's leg on the December 25th, you would
23 agree with that?

24 A. It could be.

25 It's not something I would remember.

1 Q. Have you seen those records from December
2 28th?

3 We've shown them I think several times.

4 Do you recall seeing anywhere in those
5 records from December 28th where it's reported that
6 it was you or your husband said that no one examined
7 him or his leg on December 25?

8 A. I don't see -- Why would he tell him that?

9 Q. I'm just asking you, ma'am.

10 A. Not that I know of.

11 Q. Okay.

12 Would you agree with me from December 25
13 until December 27 his foot looked, and his leg
14 looked, essentially normal?

15 A. His foot and leg never looked normal.

16 Q. Well, you testified in your deposition
17 there was nothing that changed with his foot or leg
18 between December 25 and December 27th, you recall
19 that?

20 A. I didn't observe any changes, and he said
21 that his pain level was about the same.

22 Q. And he was taking his Oxycodone for pain he
23 had in his ankles and his back for many years has
24 been prescribed by the doctor at the Nevada
25 Comprehensive Pain Center, correct?

1 A. He took the medication mainly for pain in
2 his leg.

3 He also had some ankle issues, the ankle
4 was bothering him.

5 As far as the back was concerned, the back
6 wasn't chronic like the other things, it would come
7 and go, depending on if he moved around, so it wasn't
8 a constant on the back, it was --.

9 Q. All right.

10 Fair enough.

11 And between December 25 and December 27
12 your husband did not take any extra doses of
13 Oxycodone or more pain medication than he had been
14 prescribed to deal with any issue in his foot, is
15 that true?

16 A. Not that I'm aware of.

17 Q. He was able to walk around from December 25
18 to December 27 without any problems, right?

19 A. Yes.

20 Q. In fact, he went -- when he went to the
21 emergency room on December 25, he was able to walk to
22 the emergency room, do you remember that?

23 A. He could walk both on the 25th and 28th.

24 Q. Okay.

25 And then you said, up until the 28th he was

1 able to walk normally?

2 A. He never walked normally.

3 Q. Well, he was able to walk?

4 A. Normal for him.

5 Q. Right.

6 A. He used a cane.

7 He had foot pain a lot.

8 Q. Right.

9 And in fact on that subject you have seen
10 Dr. Wiencek's notes from August of 2016, do you
11 recall us showing those records?

12 A. I saw you showing some records.

13 I don't -- I don't recall.

14 Q. Do you recall where Dr. Wiencek had
15 recorded learning from your husband that he was using
16 a cane, as well as a wheelchair, part of the time?

17 A. I didn't read -- I've been at the back of
18 the courtroom.

19 My vision's not too good, so I couldn't
20 read the whole thing when it was put up anyway.

21 Q. You would agree with me now that your
22 husband in August of 2016, up through December of
23 2016, would occasionally use a cane, or a walker, or
24 a wheelchair, to get around in the casinos?

25 A. He didn't use a walker.

1 If we were going to go long distances, he
2 would use a wheelchair sometimes, not always, just
3 depended on if his legs were bothering him.

4 He didn't use the wheelchair ever in the
5 house.

6 Q. Right.

7 But it was a wheelchair that you and your
8 husband owned?

9 A. Yes.

10 Q. And that you would take to the casinos if
11 you felt you were going to be moving more than
12 normal, or longer distances?

13 A. Actually, the wheelchair was kept in the
14 car, so if we were out, and his legs were bothering
15 him, we could use it.

16 We didn't have it in the house.

17 Q. All right.

18 On the morning of December 28th, we talked
19 a little bit about that, and I think that is when
20 your husband first reported this severe pain he had
21 in his left foot, do you recall that?

22 A. He said his pain increased.

23 Q. Right.

24 In fact, in your deposition do you recall
25 saying that you thought that there was a problem with

1 his foot because it had ballooned overnight, do you
2 remember saying that?

3 A. Yes, over night it had gotten a lot more
4 swollen than normally.

5 Q. And you also testified at your deposition
6 that the pain was strong and a sudden onset, do you
7 recall testifying to that?

8 A. I don't recall the specific words, but that
9 makes sense.

10 Q. Okay.

11 And again, when you got to the ER on
12 December 28th, the doctors at that time took off his
13 sock in the emergency room, and that's when you
14 noticed it was discolored, correct?

15 A. Correct.

16 Q. Had he told you he had seen it before he
17 got to the emergency room, Mr. Moore tell you that he
18 had noticed the foot had become discolored?

19 A. I -- He had not told me that.

20 I doubt that he knew because we didn't take
21 the time to take a shower and everything before we
22 left, and his foot was always in a sock.

23 Q. But you don't recall him mention anything
24 about seeing -- or observing his toes or his feet
25 being blue or discolored?

1 A. No, no.

2 Although, if he had, he probably wouldn't
3 have said anything because he probably wouldn't want
4 to worry me.

5 Q. Did you ever go with your husband to see
6 Dr. Tran, his regular physician?

7 A. I did not go in the back room with him with
8 Dr. Tran.

9 Q. Did you see the records we've shown -- and
10 if we could, it's Joint Defendant's Exhibit 106 from
11 Dr. Tran, page five -- do you recall your husband
12 going to see Dr. Tran on November 1, 2016?

13 A. Specifically, no.

14 Q. All right.

15 But he went to go see him on a fairly
16 regular basis to get refills for his blood pressure
17 medication?

18 A. Mainly for his blood pressure.

19 Q. All right.

20 And if we could blow up the section right
21 to the examination where it says, cranial nerve,
22 extremities, there we go, blow that up for us, now
23 this is the record from Dr. Tran's office on November
24 1, 2016.

25 It says, that your husband's extremities

1 showed a full range of motion, no clubbing, no edema,
2 normal bilateral pulses, normal dorsalis pedis, and
3 posterior tibial pulses, peripheral pulses normal.

4 Now, since you never went back into the
5 examination room, you never observed Dr. Tran
6 actually taking the pulses on your husband's feet,
7 correct?

8 A. Right.

9 What date was this?

10 Q. November 1, 2016.

11 A. November 1, 2016?

12 Okay.

13 Q. Okay.

14 So you don't have any knowledge about the
15 actual examination Dr. Tran performed, other than
16 what is noted in these records, correct?

17 A. No, I don't.

18 Q. All right.

19 How about the visit that we talked about to
20 the Nevada Comprehensive Pain Center on December 21,
21 2016, did you go with your husband to that
22 appointment?

23 A. I don't remember, but I never went in the
24 back office there either.

25 Q. So you don't know what they did in terms of

1 an examination at that time?

2 A. No.

3 Q. Now, in terms of being -- I think you
4 testified something to the effect that you were the
5 one that your husband would have to look after his
6 prescriptions to make sure they were filled, is that
7 right, generally speaking?

8 Were you the one that would call the
9 physicians to get refills for those prescriptions, or
10 was that your husband?

11 A. I imagine there were times when he called,
12 but in general I would take care of his prescriptions
13 by logging in on the website and clicking a button
14 the for a refill.

15 Q. Do you remember if that's what you did for
16 Dr. Wiencek's office?

17 A. I -- That's just generally what I did.
18 Whether it was for Dr. Wiencek, or Dr.
19 Tran, or what prescription, I don't know.

20 Q. That's why I'm trying to find out if you
21 have a specific recollection of actually doing that
22 for Dr. Wiencek's office.

23 A. I remember I have done it.

24 If you are asking me if I actually called
25 them the 21st, I have no idea.

1 That is over four years ago.

2 Q. Okay.

3 What about there's been a notation that was
4 shown earlier from Dr. Wiencek's records where Dr.
5 Wiencek at his office received a call for a refill of
6 the Xarelto on December 27th, 2016.

7 Did you make that call?

8 A. I have no idea.

9 Q. Do you know if your husband made that call?

10 A. I don't know if I did it.

11 I don't know if he did it.

12 Somebody did.

13 Q. Okay.

14 A. I don't know if the pharmacy did it.

15 Q. Well, actually that is a good point.

16 I'd like to show you an exhibit, it's Joint
17 Exhibit 115, and I don't know if it's been formally
18 admitted, but I'd move for its admission.

19 THE COURT: It's not.

20 MR. MC BRIDE: Okay.

21 Move for its admission, the record from
22 Walgreen's.

23 THE COURT: Any objection?

24 MR. ARNTZ: No.

25 THE COURT: Joint Exhibit 115 is admitted.

1 You may inquire.

2 BY MR. MC BRIDE:

3 Q. I wanted to show you if I could, it's 115,
4 page 25, Walgreen's was the pharmacy you and your
5 husband had your prescriptions filled at, is that
6 correct?

7 A. At that time, yeah.

8 Q. All right.

9 I wanted to show you, if you look at --

10 MR. ARNTZ: I'd just like -- I think
11 counsel and I have discussed this already, but
12 there's some redactions in maybe all these exhibits,
13 so I have no objection to it being admitted. We
14 still have to redact?

15 MR. MC BRIDE: That's fine.

16 I thought this one had been, but for the
17 most part, but if there's anything else, we can
18 specifically address that before it goes back to the
19 jury.

20 THE COURT: Just to be clear, when we
21 talked about redactions, we can't have anything filed
22 in a case might have personal identifying information
23 such as a social security number and things like
24 that, so that is the things typically removed.

25 I'm not seeing anything as we look at it

1 right now, but we'll certainly look before the final
2 version goes back to the jury.

3 Go ahead.

4 MR. MC BRIDE: Thank you.

5 BY MR. MC BRIDE:

6 Q. I just wanted to draw your attention to
7 that group -- This is for the Xarelto Dr. Wiencek --
8 it's a little bit above that I think it references
9 that it was prescribed, and there were 30 doses that
10 were -- excuse me, 30 tablets issued beginning on
11 July 25, 2016.

12 Do you see that at the top?

13 A. Down here July 25?

14 Okay.

15 Q. Yes.

16 Then you have it go down, and it says,
17 November 23, 2016.

18 Do you see that?

19 A. Yes.

20 Q. And then if you look over to the far right,
21 it says that it was actually filled on November 27th,
22 2016.

23 Do you see that?

24 A. Okay.

25 Q. And then if I could show you page 26, the

1 next page, we'll look at -- do you have a
2 recollection of -- does this refresh your
3 recollection rather of maybe contacting Dr. Wiencek's
4 office for a refill of the Xarelto on December 27,
5 2016?

6 A. It has the date the 27th.

7 Q. Right.

8 Do you have a recollection of actually
9 getting that -- or calling Dr. Wiencek's office for
10 that prescription?

11 A. As I said before, no.

12 Q. All right.

13 Because if you look over at the far right
14 where it had the indication, where it was the date it
15 was filled, you would agree with me there's no date
16 with that Xarelto prescription that appears as for a
17 date that it was actually filled.

18 For reference, I'll give you -- or have you
19 look up above, you see that 12/21/2016, that was from
20 another medication that was prescribed on December
21 19th and filled on December 21, you see that?

22 A. Okay.

23 Q. And do you see anything that it was filled
24 with -- Xarelto was filled on the 27th?

25 A. No, but the pharmacy had to contact the

1 doctors, and sometimes it would take time.

2 Q. Right.

3 And in this particular --

4 A. It says, see fax right below it.

5 Q. Exactly.

6 It says, see fax?

7 A. Okay.

8 Q. But it says, it's also the amount that was
9 filled was only six pills, do you see that?

10 A. I know what is happening there.

11 Q. Okay.

12 A. There have been times where he goes to fill
13 his prescription, and they don't have the full amount
14 of tablets, so they give you -- they can't fill the
15 prescription now, so they give you a few tablets to
16 tied you over till they can give you the complete
17 prescription.

18 Q. But would you agree with me, there's no
19 indication that that was actually filled or given to
20 your husband on December 27th, do you agree with
21 that, because there's no indication it was filled or
22 sold on that day?

23 A. We don't always pick up prescriptions on
24 the exact day that it's filled because he still got
25 some at home he's taking.

1 Q. Okay.

2 But you remember the last one I showed you
3 that the prescription, the 30 day supply would have
4 run out on November 27th, 2016?

5 A. Yeah, I remember, but that doesn't mean he
6 didn't have pills left over then either.

7 Q. Okay.

8 And if that's the case, you just don't have
9 any knowledge about whether this prescription,
10 whether you called it into Dr. Wiencek, or if it
11 wasn't filled on December 27th, 2016?

12 A. I don't even know if we picked it up
13 because we took him to the emergency room on the
14 28th, and he didn't need medications there, they took
15 care of everything.

16 MR. MC BRIDE: Okay, ma'am.

17 Thank you.

18 That is all I the questions I have.

19 Thank you.

20 THE COURT: Re-cross?

21 MR. MC BRIDE: I think Mr. Weaver might
22 have something.

23 THE COURT: I am sorry.

24 I just assumed maybe you all shared
25 everything.

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Mr. Weaver, anything?
MR. WEAVER: Miss Bestick does.
Thank you, Your Honor.

- - - -

CROSS-EXAMINATION OF CHARLENE MOORE

BY MS. BESTICK:

Q. Good afternoon, Mrs. Moore.
My name is Alyssa Bestick.

I'm one of the attorneys represents the
Defendants here.

A. Hello.

Q. So I just want to clarify some things with
this record.

I think you just mentioned something about
how you sometimes go to the pharmacy, and they give
you just enough medication to get by until you get
the next refill, or until the prescription is
available, is that correct?

A. Not the next refill, but until they have
enough supply to fill the whole prescription.

Q. Okay.

But do you agree with me here it appears to
indicate that this is actually the number of refills
that your husband has been authorized?

A. Where?

1 THE COURT: Is there a way to highlight
2 that?

3 I'm unable to see it and getting confused
4 as well.

5 BY MS. BESTICK:

6 Q. Do you have an opinion one way or the
7 other?

8 A. Since I've never read these kind of records
9 before, I have no idea.

10 Q. Okay.

11 I just want to make sure I heard your
12 testimony correctly a moment ago.

13 I believe you testified that prior to
14 December 26th, 2016 you went to every visit with Dr.
15 Wiencek, is that correct?

16 A. I believe so.

17 Q. And no one other than Dr. Wiencek ever
18 assessed your husband's pulses in his leg or foot, is
19 that correct?

20 A. Not that I recall.

21 Q. I think moment ago you testified you went
22 to every one, is that correct?

23 A. That's my recollection.

24 Q. Do you recall testifying in your deposition
25 that if Mr. Moore could ever get his prosthetic

1 working, he would of course be able to do many more
2 things?

3 A. I'm sure I said that, yes.

4 Q. So you went with your husband when he went
5 to his appointment with Dr. Wiencek on August 28th,
6 2019?

7 A. I assume so.

8 Q. At that appointment did Dr. Wiencek make a
9 recommendation to your husband for a new prosthetic
10 limb company?

11 A. Yes, he did.

12 He sent a referral to -- He said he was
13 going to send a referral to a company he thought
14 would work better for Darell.

15 Q. And that visit was what, about six months
16 ago, correct?

17 A. Pretty much.

18 Q. Do you know if Mr. Moore has taken Dr.
19 Wiencek's recommendation for the new company?

20 A. We have not spoken to them as yet because
21 Darell is going to need physical therapy before he
22 can use the -- the leg again.

23 He has to start all over because he cannot
24 straighten his residual limb.

25 In other words, he cannot stand up

1 straight.

2 He's been in a chair too much.

3 Q. Did Dr. Wiencek say that?

4 A. No, I can see it.

5 Q. Okay.

6 So you didn't reach out to the company Dr.
7 Wiencek recommended?

8 A. Not as yet.

9 He wanted to have a program of physical
10 therapy and exercise because they won't -- unless you
11 can do certain things, they won't give you a
12 prosthetic.

13 Q. Okay.

14 But you haven't reached out to the
15 prosthetic company?

16 A. No.

17 Q. Have you reached out to the physical
18 therapy clinic?

19 A. No, I haven't as yet done that.

20 We've talked about doing it.

21 Q. Okay.

22 That was recommended as long as six months
23 ago, is that correct?

24 A. I wouldn't say it was a recommendation.

25 Dr. Wiencek asked Darell, hey, do you think

1 would you like to work on getting a leg again,
2 getting your prosthetic going, and Darell said, yes,
3 and he said, well, I know a company that might be
4 able to do a better job for you.

5 MS. BESTICK: That's all questions I have.
6 Thank you.

7 THE COURT: Thank you.
8 When you are ready.

9 MR. J. HYMANSON: Thank you, Your Honor.

10 - - - -

11 **REDIRECT EXAMINATION OF CHARLENE BESTICK**

12 BY MR. J. HYMANSON:

13 Q. Mrs. Moore, you were just asked a few
14 questions about your husband and his prosthetic,
15 correct?

16 A. Yes.

17 Q. Okay.

18 When did your husband first start trying to
19 use his prosthetic?

20 A. He tried as soon as possible as he got it,
21 but that was quite sometime after the amputation.

22 Q. So we're talking about in 2017?

23 A. Correct.

24 Q. Okay.

25 Why did it take so long for him to receive

1 a prosthetic in 2017?

2 A. After the amputation, he had physical
3 therapists coming and was working on getting
4 conditioned to be able to use the leg.

5 Q. Just real quick, I want to make sure I
6 understand what you're saying.

7 So the physical therapy your husband was
8 getting was specifically trying to prepare him for a
9 prosthetic?

10 A. Actually, I never felt like it was because
11 they were just making sure he could get around, use a
12 walker, the things they were doing, but I know he had
13 to have certain things in order to use a prosthetic.

14 Q. Okay.

15 We were talking about the delay in getting
16 the prosthetic for your husband.

17 What was that delay about?

18 A. As I said, he was doing the physical
19 therapy and was really doing pretty well.

20 She would make him go around and around the
21 counter on his walker, and go back and forth, and
22 they would do stretches and all that kind of thing.

23 However, I forget the exact date, but the
24 day before the Superbowl that year that week he had
25 been complaining, he had a visiting nurse come

1 because he couldn't get out yet, and he was telling
2 her that he had a lot of pain up in here.

3 Q. And just for the record, when you say, up
4 in here, you are indicating where was he feeling
5 pain?

6 A. Somewhere in the chest area.

7 And they talked about it, and she said,
8 well, maybe it's muscle strain.

9 What does it feel like?

10 And he said, yeah, it could be a muscle
11 strain.

12 So she called Dr. Tran's office, his
13 primary care physician, said, I think he got muscle
14 strain, can you give him a prescription?

15 So she gave him a prescription for a muscle
16 relaxer.

17 As it turned out, I don't know exact
18 timing, but as it turned out the night before we took
19 him to Spring Valley Hospital he was just like in a
20 ton of pain, and we go to Spring Valley in the
21 morning, and he had had at this time a pulmonary
22 embolism.

23 Q. What time period are we talking about?

24 A. We're talking about after his amputation.

25 Q. While he was going to physical therapy,

1 awaiting the prosthetic?

2 A. Correct.

3 Q. He had a pulmonary embolism?

4 A. He did.

5 Q. And he was hospitalized for that?

6 A. He was kept overnight for observation.

7 They didn't keep him any longer because
8 they said that they couldn't really do very much
9 because they need to have him right away for an
10 embolism, so to really change things, so he had to
11 wait it out until his body dissolved it.

12 Q. So how did that affect his preparation for
13 using the prosthetic?

14 A. So after he -- After the embolism, and he
15 was home a day or two, he got like really sick, I
16 believe he caught some kind of flu or virus in the
17 hospital. I could tell you nightmare stories about
18 that hospital, don't go there, and he was vomiting,
19 couldn't eat for days and days, it seemed like
20 forever. I think it was like maybe ten days or so.

21 We didn't take him to the doctor at that
22 time because he did still have the people they were
23 sending to the home, but he lost over 20 pounds, so
24 he was very, very weakened by that event, and he
25 couldn't do his physical therapy.

1 And then to compound the problem, he had
2 gotten weakened and didn't have the same strength, to
3 compound the problem.

4 He had been seeing a prosthetist -- We were
5 made to understand they made the liners for his
6 prosthetic to fit him exactly, and he made them right
7 here in Las Vegas, he did that.

8 Well, he moved out of state, and they
9 assigned another prosthetist to him, and this person
10 did not make the liners.

11 So we got his leg, they like essentially
12 put like a cast like thing of plaster paris on his
13 leg to see how to make it, and he told us, well, it
14 will be ready in a week to ten days.

15 We were still waiting for it two months
16 later.

17 So as the time went on, and he was already
18 losing strength, and all those things because of the
19 delay --

20 Q. When your husband tried to use the
21 prosthetic, was he able to use it?

22 A. No.

23 Q. Why not?

24 A. Several reasons.

25 Number one, it didn't fit.

1 Number two, it was very painful.

2 And when they delivered it to him, they
3 actually delivered it to him, the liner didn't fit,
4 so the prosthetist had him put his leg in without the
5 liner, and he was telling me, this hurts, this hurts.

6 So then he put some like pad things in
7 there, and that didn't help.

8 And then he cut a big hole in it, and that
9 didn't help.

10 And the prosthetic was -- actually was a
11 little tall, I think maybe they make them a little
12 tall, so as you wear it you work your way farther
13 down it, but he's like off balance, and he had a lot
14 of nerve pain.

15 Q. Just briefly, I've been asking a lot of
16 questions, you have been shown a few records about
17 your husband and Xarelto.

18 Did you ever know your husband not to take
19 Xarelto, once he was prescribed Xarelto?

20 A. No.

21 Q. And was your husband taking Xarelto when he
22 went to the hospital on December 25th?

23 A. He was.

24 He would get paranoid and tell me, get my
25 prescription, get my prescription because after the

1 first time he had to have the -- it might have been
2 the second time -- when Dr. Wiencek put him on
3 Xarelto because he was having problems with the graft
4 occluding, then he told him that he really needs
5 this.

6 So he might get some other medicine
7 sometimes, although he doesn't because he takes all
8 his medications, but the Xarelto was always top of
9 his list of importance.

10 MR. J. HYMANSON: Thank you, Miss Moore.
11 I have no further questions.

12 MR. MC BRIDE: No questions, Your Honor.

13 MR. Weaver: No questions, Your Honor.

14 MS. BESTICK: No questions.

15 THE COURT: Any questions by a show of
16 hands from the jurors, please?

17 IT looks like we have few questions from
18 the jurors.

19 Any other questions?

20 No.

21 Okay.

22 You want to come up?

23 (Thereupon, a discussion was had between
24 Court and counsel at sidebar.)

25

1 THE COURT: All right.

2 Ms. Moore, if you wouldn't mind, it's a
3 juror question, please do the best of your ability to
4 answer them, and then counsel will have an
5 opportunity to follow-up.

6 Okay?

7 THE WITNESS: Okay.

8 THE COURT: Ms. Moore, what were the
9 circumstances of your husband's three falls?

10 THE WITNESS: I believe the first fall was
11 when my daughter bought a house in Northern
12 California area, she was still stationed there, there
13 was some things needed to be done to the house, so
14 this was the only time that Darell had gone places
15 without me basically because of his amputation.

16 He would, because of his construction
17 knowledge, he would go up there.

18 My nephew was there redoing doors and that
19 kind of thing, and -- but he didn't have the
20 knowledge that Darell had, so Darell would get up in
21 the morning, and we would get him in the car, and
22 then he would drive to my daughter's house where my
23 nephew would meet him and take him out of the car.

24 So that he could answer any questions, or I
25 imagine he worked on some of the door knobs because

1 that's about level with him, with the chair. That
2 was the only time he went without me.

3 Apparently one of the mornings he decided
4 he needed gas, and he decided that well, he had his
5 crutches because we always -- when he went in the car
6 alone, we made sure to put them in the car.

7 So he thinks to himself, well, I can gas
8 up.

9 It didn't work out really well.

10 He fell on -- it was difficult for him to
11 stand long enough with one crutch and do the gas
12 thing for any length of time, and he fell on the
13 island there.

14 One other time was actually in the
15 restroom, his primary care physician ordered a --
16 what is the name of it?

17 Whatever they do, so you don't have to go
18 have a colonoscopy, so you have to do certain things
19 in the restroom to get them a sample.

20 And when he was trying to work back and
21 forth to get that done, he fell at that time in the
22 restroom.

23 The third time I don't -- that he was
24 speaking about, I don't really know.

25 He doesn't always the tell me.

1 I imagine if he fell in the middle of the
2 night by the bed and couldn't get himself up, he
3 would call me, so I don't know.

4 THE COURT: Does that complete your answer,
5 Ms. Moore?

6 THE WITNESS: I think so.

7 THE COURT: Okay.

8 May I first turn to the gentleman, see if
9 you have any questions?

10 MR. J. HYMANSON: No further questions,
11 Your Honor.

12 THE COURT: Mr. McBride.

13 MR. MC BRIDE: Just a couple.

14 - - - -

15 **RECROSS-EXAMINATION OF CHARLENE MOORE**

16 BY MR. MC BRIDE:

17 Q. Miss Moore, the first one you described
18 where he was filling up the gas tank, that is really
19 actually an episode he recounted in his deposition,
20 do you recall that?

21 A. Specifically, no, but he probably did.

22 Q. And I believe we'll find out I'm sure when
23 he takes the stand here in a little bit, but he said
24 that he didn't suffer any injuries as a result, he
25 was just embarrassed because of the fall, do you

1 remember that?

2 A. Yes.

3 Q. All right.

4 In fact, I didn't mean to cut you off.

5 Were you finished with your answer?

6 A. I think so.

7 Q. Okay.

8 And the other time that he was in the
9 restroom, that was a restroom of the doctor's office?

10 A. No, at home.

11 Q. At home?

12 A. He had to do all these things rather than
13 having a colonoscopy, to follow all these procedures.

14 Q. And he didn't have to go to the doctor or
15 hospital as a result of that fall, right?

16 A. No.

17 Sorry, I went too fast.

18 No, he did not.

19 He did not complain of injury from falling.

20 MR. MC BRIDE: Great.

21 That's all I have.

22 Thank you, ma'am.

23 THE COURT: Miss Bestick.

24 MS. BESTICK: No, Your Honor.

25 THE COURT: Mr. Hymanson, anything?

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MR. J. HYMANSON: Nothing further, Your Honor.

Thank you.

THE COURT: Miss Moore, you may retake your seat behind counsel table there.

Ladies and gentlemen, we're going to take a little over a ten-minute break.

Come back at 4:00.

(Jury admonished by the Court.)

THE COURT: We'll see you back here at 4.

(Jury excused from the courtroom.)

(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: Let's just go ahead, take a break.

We'll come back in.

I have a question about the redactions, that still needs to be done.

(Thereupon, a recess was had.)

1 (Thereupon, the following proceedings were
2 had out of the presence of the jury.):

3 THE COURT: First of all, the redactions
4 that were mentioned earlier, who is taking the point
5 on that?

6 I can't believe we're still sitting here
7 with documents haven't been redacted by now.

8 MR. MC BRIDE: I thought my office actually
9 did redact the vast majority of anything.

10 I think Breen pointed out a couple that
11 weren't, there was information wasn't redacted.

12 I haven't seen that.

13 THE COURT: I've been frustrated with Mr.
14 Arntz on occasions.

15 That doesn't answer my question.

16 Who is taking points to fix it?

17 MR. MC BRIDE: I'm happy to take the point
18 if he identifies what particular records he says work
19 for that.

20 THE COURT: Do we know for sure there are
21 some?

22 I didn't see anything on that document, but
23 it was kind of hard to read.

24 MR. ARNTZ: It just has at the top
25 insurance something or other.

1 I can't remember the phrase.

2 MR. MC BRIDE: Nothing underneath that?

3 THE COURT: I don't know.

4 Y'all have staff, so either you yourself or
5 you staff undertake to make sure what we've admitted
6 so far doesn't have anything in it that needs
7 redaction.

8 MR. ARNTZ: I'm afraid the St. Rose records
9 made Medicare references, so we'll have to go through
10 those.

11 THE COURT: Somebody got to do it.

12 Now we have a little bit more time, but all
13 my clerk needs is the redacted replacements.

14 MR. MC BRIDE: I'll send an e-mail to my
15 paralegal right now, I'll have her search through
16 that right now and do -- or submit any exhibits to
17 the Court.

18 THE COURT: Either replacements with
19 redactions, or as Mr. Aren't pointed out, if it's not
20 a problem, pull records out that have it, so it's not
21 an issue.

22 Either way, the solution is fine. It just
23 need to make sure my clerk has time to do it.

24 MR. MC BRIDE: Perfect.

25 THE COURT: Yes, we still need to settle

1 the jury instructions.

2 If we didn't have to do it at 11, it
3 wouldn't be the worst thing, they were going to be
4 tight anyway.

5 I wasn't able to complete the process
6 yesterday, and the case is not over, I'm still a
7 little under the weather, and there was a
8 miscommunication with my staff, and I didn't actually
9 get the documents until this morning.

10 Then of course I didn't look at them until
11 lunch because of the morning calendar.

12 So that is not the end of the world either.

13 The real question now becomes, the timing,
14 really just based on how long we think we're going to
15 be with Mr. Moore.

16 The only insight I have was in response to
17 the e-mail exchange also included information about
18 Dr. Wiencek.

19 Mr. Weaver committed to keeping his
20 questions to an hour, and I don't have an opinion on
21 what it should be, just want to know what it is.

22 I'm asking Plaintiff how long the direct
23 might take?

24 MR. ARNTZ: I could see the direct taking
25 an hour today and hour tomorrow.

1 THE COURT: So a couple hours?

2 MR. ARNTZ: A couple hours.

3 THE COURT: And then you got an hour.

4 And what do you need?

5 MR. MC BRIDE: Maybe 30 minutes.

6 I'm going to let Mr. Weaver go first, then
7 I'll bat clean-up.

8 THE COURT: All right.

9 That will complete that testimony to be
10 sure all the testimony is complete.

11 MR. ARNTZ: Is this courtroom available
12 tomorrow?

13 THE COURT: I don't know.

14 We'll find out.

15 I'll take care of it.

16 I would assume if they are not in trial
17 today, they wouldn't be in trial tomorrow, and the
18 only issue they had today was I'm guessing she has a
19 regular calendar tomorrow, so I don't know if she's
20 got any calendars -- It does indicate maybe there's a
21 trial setting tomorrow, so we'll have to find out.

22 There are plenty of other locations, it
23 just makes it that much more difficult.

24 But we'll figure it out.

25 We have time.

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MR. MC BRIDE: Thank you, Your Honor.

THE COURT: Okay.

Obviously if he's going to take the stand, we can't place that there because that will be his path of travel.

Anything else?

Yes, we'll review of the remainder of the afternoon tomorrow to resolve jury instructions.

I still will send you as I indicated the Court's tentative final draft incorporating the joint proposed, there was some additional Nurse Practitioner Bartmus counsel just to maybe flush out something, I also thought we did have some reference to some demonstratives in here, and there's instructions related to that nothing major in those regards, and obviously we have to settle loss of chance and the final version if we're going to go to the one the Plaintiffs are addressing and some of the stranger issues.

MR. MC BRIDE: Thank you.

THE COURT: Okay.

Anything else before we bring them back?

MR. ARNTZ: I don't think so.

THE COURT: Okay.

1 grandparents lived there.

2 And then we moved to San Jose and bounced
3 around, moved to Colorado from there for one year,
4 and back to 29 Palms, California, and then we ended
5 up in Banning, California.

6 Q. What was the reason for you bouncing around
7 so much?

8 A. My father was in construction, and if
9 things weren't going good in one area, sometimes we
10 had to go to another area.

11 We went to Denver was because my mother's
12 father was dying.

13 Q. Your mother's father was dying?

14 A. Yes.

15 So we went back there, so she could see him
16 because he had not seen him in years, so it was the
17 only opportunity we got to see him as I was a child.

18 And then after we got snowed in, and he was
19 in construction, we realized that work don't work to
20 well under six foot of snow outside, and we had to
21 leave and come back to California.

22 Q. What kind of longevity do you have in your
23 family?

24 A. Well, one side of my family, my mother's
25 father, which died I believe at about 69 years old,

1 he was born approximately 1890, so we just went back
2 there in '59, 1959.

3 Q. Okay.

4 A. My grandmother, she lived to about 82 years
5 old on that side.

6 And then my father's side, my grandmother
7 lived to be 89.

8 So and I can't really tell you exactly how
9 old my father's parents really were because the names
10 got changed over the years, and my grandmother took
11 it to her death bed on who may have been the real
12 father of my father, so --

13 Q. So your last name is Moore, but what was
14 your dad's last name?

15 A. My dad's last name was Smith.

16 My birth certificate says, Smith, but his
17 birth certificate, my father's, said Golden.

18 He took the name Smith from his stepfather,
19 and I took the name Moore from my stepfather.

20 Q. So we were talking a couple days ago you
21 were telling me about when you started working as a
22 kid.

23 How old were you?

24 A. Well, I worked off and on a little bit
25 helping out my dad since I was about nine years old,

1 but the first summer I actually worked a full summer
2 I was 13.

3 I helped my dad build a block savings and
4 loan building during that summer.

5 Then when I was approximately 14 years old,
6 I went to work in Palm Springs at a pancake house and
7 worked there for about a year-and-a-half.

8 Then we wound up moving for a while.

9 Q. So what brought you back to Paso Robles
10 from Palm Springs where you were at?

11 A. We were living in Banning at the time, and
12 I was working at Palm Springs and stuff, but we moved
13 because of business, and my father -- First we moved
14 to Delone and then McFarland for a while in
15 California, and then we ended up in Paso Robles, got
16 -- he got a job, so a full circle back.

17 Q. So this sort of rollercoaster of work, was
18 that because of the inconsistencies of construction
19 and where the work is?

20 A. Yes.

21 Q. Was that sort of a theme has gone through
22 your life?

23 A. Quite a bit.

24 Q. When you moved back to Paso Robles, how old
25 were you?

1 A. We moved back on New Years day 1967, so I
2 would have been 17.

3 Q. Okay.

4 And tell me how you met Charlene.

5 A. Well, the very first time I ever met her
6 she came over to say hello, and I was washing my car,
7 and as she talked to me I left my keys in the trunk
8 and shut the trunk.

9 So she was very small, she's not very much
10 bigger now, but she was pretty small, and back in
11 those days you could take the back seat out, and it
12 had a little porthole I asked her to go through to
13 get my keys, so I just met her, and then I'm
14 embarrassed because I shut me keys in the car, and
15 then I got a stranger going into my trunk.

16 Q. Where did she live?

17 A. She lived next door.

18 Q. And do you remember a story you told me
19 about how you introduced her to the class the first
20 day back?

21 A. Yeah, the first day in school I went in to
22 biology, and the teacher introduced me as the new
23 student, and she was sitting pretty close to the
24 front row, and we had this kind of a crazy biology
25 teacher, but she embarrassed me totally by telling

1 all the girls they should look at me, does this look
2 like someone they might be interested in, so I was
3 totally embarrassed.

4 Q. When did you start dating?

5 A. We started dating when she was probably 15,
6 and we dated for a few months, and then we separated.
7 She said she didn't think we should stay together
8 right then.

9 So I kind of moved on after being
10 heartbroken for a couple months, and all of a sudden
11 there is a knock at the door.

12 I go to the door, and could you see my wife
13 with long hair, usually longer than that back in
14 those days, well back in those days you had to almost
15 light a match to get the oven started, so she got to
16 talking and whatever in her house, and turned on the
17 gas, and by the time she lit the match it exploded
18 back on to her, and she was standing in my door with
19 hair not much longer than her chin, so after that we
20 got back together, she asked, how I looked?

21 She was all crying, nervous, and I said,
22 you look fine, and we have went back together.

23 Q. So when you moved to Paso Robles, what
24 grade were you in?

25 A. When we moved back to Paso Robles, I was a

1 sophomore.

2 Q. Okay.

3 Were you a 17 year old sophomore?

4 A. Well, actually I said I was 17.

5 At the end of '67 I would have been 17, so
6 I was 16, just got my driver's license, correct, I
7 was 16.

8 Q. Okay.

9 And so how long did you guys date before
10 you got married?

11 A. We dated a little over a year.

12 Q. Why did you get married?

13 A. Well, to a certain extent her and I decided
14 we would like to get married, and -- but my wife did
15 end up getting pregnant with my first son.

16 Q. And when you went to your parents to tell
17 them you were going to get married, what was their
18 reaction, both yours and hers?

19 A. They all said, no.

20 And I was arguing with them about she's
21 pregnant, I want to get married, I want to take care
22 of her, and they are saying, you are too young.

23 And finally Charlene stood up and told them
24 that regardless of what they say, we're probably
25 going to do what we want to do, so you might as well

1 let us be married.

2 So our mothers said, yes, I think you
3 should get married.

4 Our father's still objected.

5 But the marriage went on.

6 Q. Now, at this time were you working with
7 your dad?

8 A. I was working in a restaurant as a bus boy,
9 and mostly on weekends and stuff.

10 So I had some spending money, and my
11 father, he told me the reason why he objected to me
12 getting married was because he would have to support
13 me, that I couldn't make a living without him.

14 I told him that I know I can.

15 So we went ahead and got married, and I'd
16 started working full-time as a bus boy from 6 to 2, I
17 worked as a chef's helper early afternoon, and then I
18 worked as a dishwasher until the place closed at 11,
19 usually taking me until 1.

20 So I had to come to work about 5 a.m. in
21 the morning, between 5 and 5:30 in the morning, and I
22 didn't get out of the place until 12:30, 1:00 at
23 night.

24 And I remember my first big paycheck I had
25 320 hours in in one month, I got paid once a month,

1 and my net was 305, so I made 95 cents an hour.

2 Q. Okay.

3 A. But we made it.

4 Q. You weren't working for your dad anymore
5 after you got married, but you still still saw him?

6 A. I would see him several times during the
7 week, and on occasion probably in the year-and-a-half
8 that I stayed at the restaurant he asked me back at
9 least a half dozen times, so I would go back to work
10 for him.

11 But the first couple, three times he didn't
12 say that he apologized for his comments.

13 When finally around the fifth or sixth
14 time, somewhere in there, he apologized, said I
15 understand you can make a living, but you should be
16 working in construction, that's your field, so I
17 finally gave in and went back to work for him.

18 Q. All right.

19 So let's talk about what you did with your
20 father building your business.

21 When -- or what kind of construction did
22 you do?

23 A. Well, we held several licenses.

24 To begin with, we did concrete, block work,
25 and we had those two licenses, which we were doing a

1 lot of piecework for different contractors doing
2 foundations and fireplaces and stuff.

3 And we ran into a problem of we would do
4 the foundation, and all of a sudden they would be --
5 almost move people in, and we haven't even been paid
6 for the concrete work.

7 Well, that went on for a year,
8 year-and-a-half with them, and I finally told my dad,
9 somethings got to change here, I don't like waiting
10 on our money so long.

11 So he went to get his own license for
12 general construction, class B, which is so you can
13 build housing, and we went down and started building
14 houses.

15 The first thing I noticed when we went to
16 the bank, there was a five-draw system on most
17 contracts that you get from the bank to build a spec
18 house.

19 On the very first line it says, the minute
20 your foundation is in you are entitled to 20 percent
21 of your money.

22 So here we are waiting 60, 90 days for our
23 money, and it stated right there on the first page
24 the money was delivered to the contractor practically
25 the following day after the concrete was poured.

1 Q. So that changed your business model a
2 little bit?

3 A. It changed our business model a little bit,
4 went strictly to building our own houses and
5 financing them through the bank.

6 We had to buy our own property, and then
7 they would finance the construction.

8 Q. And this was in what, the late of 80s, or
9 '70's?

10 A. This was actually towards the end of, 72,
11 when we first got our license.

12 Q. And how did your business do?

13 A. The business did really well.

14 I come from a family that unfortunately
15 doesn't understand banking real well, and my dad
16 cared more about working hard than he did how much he
17 could bring home.

18 So we did really well, but yet we didn't
19 utilize the money maybe the way we should have, so by
20 1978 when I was 27 years old I went to my father and
21 I said, I would like to sell everything out, try to
22 divide the money up between us equally, and -- but
23 take so much money back into the business and
24 incorporate and start over again.

25 My father felt like that was quitting,

1 which it wasn't asking him to quit, but anyway long
2 story short he said, no, so we continued on building.

3 And then when interest hit 20, 22 percent
4 in our rural area, I think it hit 20 percent
5 everywhere, our area it went to 22, we lost
6 everything, we had several homes, some apartments
7 that we built up, and in a matter of just seven
8 years, and we couldn't pay the bank back right away,
9 and we had some of our own money, we wouldn't
10 necessarily borrow \$50,000 to build a house. If we
11 could put 20 of our own in, we only tried to finance
12 30 or 35 thousand in the beginning, so we had quite
13 an investment between the land and our own cash.

14 We were putting up about 350 the bank was
15 putting up about 50, and when times got hard, nobody
16 could buy a home or anything from us at 22 percent,
17 we had to forget about our land, forget about the
18 money we had in it, and drop the price to nothing.

19 Well, we ended up with about five or six
20 places that we couldn't can make the payment on for
21 over 16 months.

22 We finally sold the one house I was
23 actually building for my wife and I, and after escrow
24 sent a check to us for \$84,000, we took that to the
25 banker, told them, take out what I owe you, and give

1 me a check for what is left.

2 He come back and said, Darell, I'm sorry,
3 he said that, it's hurting me to look at this myself,
4 but he says, here's your check back.

5 Just paying the interest payments for 16 to
6 18 months on all that property that we owned, I got a
7 check back for \$3,000 out of 84,000.

8 Q. Was this at a time when contractors were
9 routinely going bankrupt because of the high interest
10 rates and the bad --

11 A. Almost 90 percent or more I would say -- As
12 a matter of fact, that was getting us started to
13 paying off just the interest on our back payments.

14 When we finally got around to selling the
15 places at a discount price, we paid the bank off, and
16 our banker told us that out of 140 contractors that
17 that bank dealt with, we are the third person only
18 that has paid off all their loans.

19 Q. Who was the last person you paid off?

20 A. The last person I paid off was the lumber
21 company. We owed about \$44,000 to the lumbar
22 company.

23 We first got the banks an everything paid
24 off, and then we went to the lumber company and told
25 them we're doing everything we can you will get every

1 dime we make, and for two years straight my father
2 and I were living off of Charlene and my mother's and
3 my mother-in-law's children's clothing store to hold
4 us and my father, and I gave all our money to the
5 lumber company.

6 Q. During that period of time, was there ever
7 a time -- or a debt you had that you didn't payoff?

8 A. Never.

9 Q. What did you do after, did your company
10 fold up, or what happened?

11 A. No, we, because of the struggling interest
12 rate at the time, we went back to doing concrete
13 block work, smaller jobs, whatever it took to make a
14 weekly living out of it, and we had done a couple of
15 bigger jobs, but my father was old school, old school
16 meaning, he believed in a handshake.

17 Handshakes when you go to Court or anything
18 don't pay the bills, you have to have paperwork.

19 I remember telling him that, and I loved
20 working with him, hardest working man you've ever
21 seen, but I told him, you get us in trouble, you will
22 do not do the change orders like you are supposed to
23 do, if you get us into one more year where we lose
24 all the profits for the year because of lack of
25 change orders, we didn't want to go to Court for

1 these, we just flat took the loss, but when you are
2 living on 15 to \$20,000 a year, you can't afford to
3 take a \$30,000 cut.

4 One or two jobs had overages, my father
5 wouldn't care about the paperwork, and just have to
6 it -- and I told him, you do this one more time to
7 me, and I'm going to be looking for another job.

8 And that is basically how it ended up I
9 starting managing poker rooms.

10 Q. Let's talked about card rooms.

11 Are we talking about legal card rooms in
12 California?

13 A. Legal card rooms in California, you can
14 only play poker.

15 Q. Okay.

16 A. There's no slot machines or anything like
17 that, just strictly 7-Card Stud, Hold 'Em-type games.

18 Q. How did you get into that?

19 A. Well, my wife, she ended up -- I always
20 played cards, and I was pretty good at it, but my
21 wife heard about the card room opened up, so we went
22 down to see it, and we walked in and played a little
23 bit the first night.

24 About the second or third time we went in
25 there she was asked if she would like to be a dealer.

1 So this lady took her over to the side to
2 see if she could shuffle properly without exposing
3 the cards, and lo and behold the next day she was a
4 dealer.

5 About a week later they asked me.

6 So I showed them I was capable of doing it
7 because I knew what my wife went through, I already
8 practiced, and I became a card dealer.

9 Probably within three weeks to a month the
10 manager was given the place, that owned the place, he
11 also worked in the oil field, so he spent most of his
12 time doing his oil field work, and the manager was
13 allowing her to have too much credit, she was a very
14 bad player, losing, leaving a lot of money on the
15 table, and the business had really built up because
16 the manager was giving away so much money that
17 everybody in two cities would come to our card room
18 to win.

19 But anyway, the gentleman asked me, he
20 said, what happened to my whole bank one night, and I
21 told him what had happened, her husband lost \$1,000,
22 she lost about \$500, there goes your thousand dollar
23 bank.

24 So he said, well, this can't keep up.

25 He said, how would you like to be my

1 manager?

2 I said, I can do that.

3 So he kept his old manager on as a dealer
4 but made me manager.

5 And it wasn't a month or two after that he
6 said, how would you like to become a partner?

7 So I became a partner in the first -- but
8 people move around, they get tired of losing at one
9 casino, they try another casino.

10 Living here in Vegas I'm sure everybody
11 feels that way, has done that.

12 So three or four times I moved around to
13 became manager in different card casinos, so --

14 Q. All right.

15 I'm going to come back to that in a second.

16 But let's talk about your family's history
17 with vascular disease.

18 Let me know a little bit about that.

19 A. That is one of the reasons we went to
20 Denver, was my grandfather had large probably three
21 or four inch opening sores on his legs, and he would
22 wrap them with just old bed sheets and stuff because
23 they didn't have the same type bandages we have
24 today.

25 And I remember as a nine year old I was

1 sitting there watching him wrap his legs every night
2 because he would.

3 And my aunt, a couple of my aunts, had
4 vascular disease, had varicose veins.

5 One of my aunts actually had holes opened
6 up in her leg similar to mine. Luckily hers closed
7 up easier.

8 But so I had several people in the family.

9 Q. When did you first start feeling as though
10 you were having any kind of vascular disease?

11 A. I was between 19 and 20 years old, I
12 noticed what looked like my veins were showing an
13 awful lot, so I went to a bigger city, to San Luis
14 Obispo, And talked to a vascular specialist up there.

15 He says, yes, I can see that in the future
16 years you're going to have some trouble with your
17 veins.

18 Q. Were you smoking at that time?

19 A. I was not smoking then.

20 Q. Did he talk to you about anything if you
21 were smoking?

22 A. In those days they never said a word about
23 it.

24 As a matter of fact, the DP Charlene and I
25 had after getting married, he actually would examine

1 you with a cigarette in his mouth.

2 They didn't talk about cigarettes the same
3 as they do today.

4 Q. Right.

5 So eventually you ended up having some
6 problems with your leg causes you to retire, correct?

7 A. Yes.

8 Q. So tell me about when you first started
9 having issues with your legs, and how that developed,
10 and help me move around a little bit in time.

11 A. In approximately 1980 we had owned a door
12 shop, which I haven't told you before, we bought a
13 door shop, outdoors for houses, front doors,
14 interior, and I went out into the yard, and they
15 there was steel laying out in the back of the yard
16 area, and I stepped on a piece of angle iron that
17 flipped up and hit the high part of my ankle.

18 Probably three or four days went by, it was
19 kind of black and blue, but after about a week a hole
20 opened up, this is in 1980. So I wrapped it, kept it
21 clean.

22 This went on for maybe a month or so, I
23 kept re-wrapping it and cleaning it, and I noticed it
24 wasn't closing up, so I started going to the doctor,
25 which sent me to a vascular specialist.

1 I ended up probably in a two or three year
2 period seeing at least five in our area.

3 Nobody could show me how to wrap my legs or
4 take care of them where they would close up.

5 Q. Did they tell you why you're having trouble
6 with the wound that wouldn't heal?

7 A. None of them exactly explained to me then
8 what was going on.

9 I went to Loma Linda Hospital And College,
10 and they showed me how to wrap an Unna boot they
11 called it around my leg.

12 Q. When -- What year was this?

13 A. This was probably in early '82 maybe, a
14 couple years after it began.

15 Q. So you are around 32, 33?

16 A. Yes.

17 Q. And was it a recurring wound, keep healing
18 up or --

19 A. Sometimes.

20 Q. Was it the same wound?

21 A. Sometimes it would get as big as half
22 dollar, and then go down to a dime, and go back up to
23 a quarter, sometimes it would almost close
24 completely, and I'm talking about my left leg, and
25 then in another area I might have two open up, small

1 ones that would get larger.

2 Q. Is this without any if kind of injury to
3 you, you would just end up with wounds?

4 A. I would just end up with wounds, and it was
5 explained to me a little bit when it first happened
6 that it was like stagnant blood causing the leg to
7 rot from the inside to the outside.

8 And that is why it came from the inside to
9 the outside and opened up a hole.

10 Q. Were you --

11 A. That's all I understood about that.

12 Q. Were you ever told when you were going to
13 the wound specialist in Loma Linda that your smoking
14 was contributing to these wounds?

15 A. They never said anything to me at the time
16 about smoking.

17 All they suggested was that if I had
18 insurance, they would put me in the hospital, elevate
19 my legs, give me a jacuzzi bath every day, but being
20 there's already been a couple years that I couldn't
21 get these to close, I couldn't see where just a
22 jacuzzi and elevating my legs was going to change it
23 that much, besides I had a family to support, and I
24 had no idea that maybe I could have got on Medicaid
25 or something, but I already had the construction

1 company, and I had to keep working.

2 Q. Right.

3 So when you started using the Unna boot --
4 I that right, Unna?

5 A. Unna.

6 Q. He do you spell that?

7 A. U-n-n-a.

8 Q. Okay.

9 And what exactly did the Unna boot do?

10 A. The Unna boot, you use antibiotics or
11 Cortisone and put it on the opening, and then they
12 have a zync oxide gauze bandage that is soaked in
13 zync oxide, you wrap that around your foot, putting
14 more pressure as you go up around your ankle, all the
15 way to just below your calf -- I mean, above your
16 calf, below your knee, and then you wrap it with an
17 elastic strap band, and it has glue on it, tapes it
18 to itself as you go up the leg and creates a mini
19 cast, it's about an eighth inch thick.

20 The only way to get that off is to cut it
21 off.

22 Q. And would you put this on every morning?

23 A. I put it on every day.

24 Q. A new one every day?

25 A. I would have to say, I put one on a couple,

1 three times a week.

2 They said it would be good if you did it
3 every day.

4 I found out every day wasn't making any
5 difference, and we're talking about early '80s, and
6 the bandages for wrapping was 30 bucks total cost.

7 So \$30 a day is more than I was making.

8 Q. All right. So --

9 A. I would like to say that, approximately --
10 I heard something somebody testified about
11 infections, and in 31 years of wrapping my legs
12 before my first operation I never had any disease
13 created or any infections.

14 I finally after 31 years had one, I thought
15 I had, and they treated it, but it really wasn't
16 infected, but for 31 years my son's in infection
17 control and says, it's almost unheard of for somebody
18 to be able to wrap wounds for 31 years and never have
19 an infection.

20 He said, dad, you took care of yourself.

21 Q. Let's get back to the card room.

22 How long did you work as a manager or in
23 some capacity in card rooms?

24 A. The first card room I went into I believe
25 was around '89, and I had to retire because of my leg

1 swelling too big in the end of 2005.

2 So almost 16 years.

3 Q. So explain this for me, what kind of
4 swelling were you getting, and did you ever find out
5 why?

6 If you can, explain the process.

7 A. My feet and legs pretty much were always
8 swollen, but finally after we've had games go 18
9 hours, 32 hours, sometimes they went two hours, but
10 you're on your feet a lot, and the older I got, all
11 of a sudden one day I'm standing there in the card
12 room, and about midnight, and my legs were tingling a
13 little bit, so I grabbed my pant leg, I'm wearing
14 blue jeans, I couldn't even pinch a little bit of
15 blue jean off my leg, it was swollen so much, just
16 filling the whole thing up.

17 Q. Did a doctor ever tell you why they were
18 swelling so much?

19 A. I was never told why they were swelling so
20 much, except by then I knew I was having more of a
21 vascular problem, but in the beginning he told me to
22 elevate my feet.

23 I tried elevating the feet, but I was
24 sitting there realizing that elevating the feet --
25 and thinking I was helping myself some, that

1 elevating my feet after about three or four months
2 started hurting, and I found myself I had to put a
3 chair and lower my feet, and then some of the
4 irritation and pain would go away, so it was more
5 important to lower my feet because of what was
6 happening to me.

7 Q. You ended up -- When did you end up moving
8 to Las Vegas?

9 A. We moved to Las Vegas in 2010.

10 We bought the house that we were living in
11 in the end 2008, but we didn't get over here for a
12 year-and-a-half because I had construction I was
13 doing on a commercial building and an apartment we
14 had in Paso Robles, I had to get it ready to rent and
15 lease out with hopefully no more problems to us
16 before we could come over here.

17 Q. Okay.

18 And when you moved here, was any family
19 living here then?

20 A. My son had already moved over here.

21 Q. Chris, the one who testified?

22 A. Christopher.

23 Christopher already moved over here, and
24 the first thing I think he said he was doing was
25 dealing a little bit of cards because he dealt for me

1 in a couple of the card rooms.

2 He came over here and dealt a little bit of
3 cards, he taught English, and then he got a job at
4 the health department.

5 Q. All right.

6 So at the time you moved to Las Vegas did
7 you have any businesses you were finishing up, or
8 just the card rooms?

9 A. Well, I finally left the card rooms and
10 stuff, and other than doing my own work on my
11 rentals, I was just retired.

12 Q. And --

13 A. But over almost half of my income is
14 because of one of my rentals.

15 Q. So let's talk about that.

16 What rentals do you have at the time you
17 moved to Las Vegas?

18 A. When I moved to Las Vegas, I had a
19 commercial building and --

20 Q. Where was it?

21 A. It was in the downtown area, so it was a
22 retail business.

23 Q. Downtown area of Paso Robles?

24 A. Paso Robles, yes.

25 And the upstairs was a two-bedroom

1 apartment for my wife and I.

2 And we bought that back in 2002, and I had
3 remodeled two or three times to upgrade everything to
4 be able to be prepared to try to move away from it
5 and not have a lot of problems with it.

6 But that same building I had remodeled when
7 we first moved to Paso Robles in '67 for another man.

8 So I was involved with two remodels on that
9 before we ever bought it.

10 Q. And did you end up having to do additional
11 construction, or remodeling, or repairs, to that
12 rental?

13 A. Yes.

14 Q. How long -- Do you still own that rental?

15 A. I still own it.

16 Q. And until -- When did you continue doing
17 the repairs yourself?

18 A. Up until I lost my leg.

19 Q. Okay.

20 During this time before you moved to Las
21 Vegas, did you have a -- like a treating physician,
22 somebody who regularly treated you for your vascular
23 issues, or were you just doing it yourself?

24 A. I was doing most of it before I came to Las
25 Vegas on my own, most of it.

1 I would see my general practitioner for
2 medicine, blood pressure medicine, and stuff like
3 that, but I had not been treated for my leg in a long
4 time.

5 Q. And were you able to essentially keep all
6 the wounds at bay, so they weren't getting worse?

7 A. I kept them at bay for the most part, and
8 then finally I thought I was probably -- This was
9 early 2012, I thought I might have an infection in
10 it, so I went --

11 Q. I'm not ready to go into that yet.

12 A. Okay.

13 Q. You're a little bit ahead of me.

14 So when you moved here in 2005, before you
15 ended up going to Dr. Simon, right?

16 A. Yes.

17 Q. Before you went to Dr. Simon, so in between
18 2005 and 2001, were you seeing anybody during that
19 time for any vascular issues?

20 A. Well, I always talked to people, but
21 basically I just had my general practitioner was
22 watching me with the blood pressure and everything,
23 so I had not had anybody that was actually taking
24 care of it.

25 Q. Was this general practitioner here, or in

1 Paso Robles?

2 A. Paso Robles.

3 Q. So I guess you would continue going down to
4 Paso Robles frequently?

5 A. I had gone several times to Dr. Reeves in
6 Paso Robles.

7 MR. ARNTZ: Your Honor, could we approach?

8 THE COURT: Yes.

9 (Thereupon, a discussion was had between
10 Court and counsel at sidebar.)

11 THE COURT: All right.

12 Mr. Moore, and for the jurors' information,
13 the reason Mr. Arntz asked to approach is because he
14 prefers this would be a good breaking point in Mr.
15 Moore's testimony for today.

16 I do need to inform the jurors that
17 obviously I should let you know Mr. Moore is the last
18 witness in this trial.

19 However, it will take probably the bulk of
20 tomorrow to complete his testimony once we complete
21 with counsel's cross-examination, final examination
22 of Mr. Moore's counsel, and then of course should
23 there be any jurors questions, which we all
24 anticipate from you.

25 For that reason, we will not be able to

1 begin reading the instructions to you, or the closing
2 arguments, to you tomorrow, as we had sincerely hoped
3 we would be able to do.

4 That means that the trial in this matter
5 will now complete on Wednesday, not Tuesday.

6 It was my sincerest hope, and I know it was
7 counsels and the parties, we would not have to give
8 that you information, we had hoped to tell you on
9 Friday with certainty when the trial would complete
10 this week because we understand very much the
11 difficulty that you face in terms of these moving
12 target deadlines, but at least I can assure you that
13 when we complete testimony tomorrow, and then we
14 finalize any last matters in terms of the exhibits
15 and everything for you, that will commence on
16 Wednesday with just instructions and just closings,
17 with time for you to deliberate on Wednesday.

18 I do sincerely apologies again on behalf of
19 the Court and counsel and the parties that we were
20 incorrect indicating to you we would be done on
21 Tuesday.

22 We thank you very much for your patience of
23 course with this process.

24 It's so very important we complete this
25 process after all the time we have obviously spent

1 together up to this point to insure all the testimony
2 is received and counsel have the opportunity at the
3 end to recapture or recount the information to you in
4 conjunction with the instructions on the law to help
5 you best do your jobs.

6 So we thank you for your patience very much
7 so.

8 We will return to this courtroom tomorrow
9 afternoon.

10 Judge Johnson, who is normally in this
11 courtroom, is going to switch locations with us for
12 her afternoon obligations, so we will be back in here
13 tomorrow.

14 If anything should change in that regard,
15 of course you will meet out here in front of 15-B,
16 we'll let you know then, but we do anticipate getting
17 back in here tomorrow, and then return to the regular
18 Courtroom 15-B on Wednesday.

19 (Jury now admonished by the Court.)

20 THE COURT: We'll see you tomorrow at 1:30.

21 We're in recess for the day.

22 (Jury excused from the courtroom.)

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(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: I want to make sure nobody had any issues.

Again, we'll be in here tomorrow.

We'll finish with settling jury instructions.

If my clerk has not already, we'll vacate the 11:00 setting, return here at 1:30 for the completion of the testimony.

If we do not complete -- If we do not have time to settle jury instructions, I'm not quite sure what we'll do about it, but we'll figure it out.

In the meantime, again sometimes in the morning I anticipate receiving an e-mail from you with my JEA with the Court's tentative final things.

Anything else we need to address?

MR. MC BRIDE: No, Your Honor.

(Proceedings concluded.)

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REPORTER'S CERTIFICATE

I, Bill Nelson, a Certified Court Reporter in and for the State of Nevada, hereby certify that pursuant to NRS 2398.030 I have not included the Social Security number of any person within this document.

I further Certify that I am not a relative or employee of any party involved in said action, not a person financially interested in said action.

 /s/ Bill Nelson

Bill Nelson, RMR, CCR 191

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APPEARANCES:

For the Plaintiffs: Breen Arntz, Esq.
Philip Hymanson, Esq.
Joseph Hymanson, Esq.

For the Defendants: Robert McBride, Esq.
Keith Weaver, Esq.
Alissa Bestick, Esq.

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I N D E X

M = McBride
B = Bestick

WITNESS	DR	CR	RDR	RCR
Charlene Moore	25	62-M 85-B	89	98-M
Darell Moore	107			

1 Las Vegas, Nevada, Monday, February 10, 2020

2 * * * * *

3
4 (Thereupon, the following proceedings were
5 had out of the presence of the jury.):

6 THE COURT: All right.

7 Anything outside the presence before we get
8 started?

9 MR. MC BRIDE: Yes, Your Honor.

10 Yesterday afternoon at about 1:27 to be
11 exact we, Mr. Weaver and I, received an e-mail from
12 Mr. Arntz where he advised for the first time that he
13 intended to call Dr. Wiencek today as a witness.

14 He said that in response to several e-mails
15 back and forth have he said that it only became
16 apparent to him the last couple of days that Mr.
17 Wiencek might be an essential witness, and that is
18 somewhat surprising, given the fact Dr. Wiencek was
19 the original surgeon who treated Mr. Moore for
20 several years since 2012 for issues relating to his
21 popiteal graft.

22 The concern that we have is -- I think
23 several-fold.

24 First of all, when on Friday Mr. Arntz said
25 in his e-mail he's been trying to reach out to Dr.

1 Wiencek for several days last week.

2 If there was what we discussed, the
3 schedule, the remaining schedule for this week and
4 the witnesses to be called, so we could advise the
5 jury and let them know how much longer the trial
6 would go, Mr. Arntz never mentioned that he had
7 reached out to Dr. Wiencek, or thought that he could
8 potentially call him.

9 He never let us or the Court know of that
10 in advance.

11 I think that our concern is, that at this
12 late stage to have him as a witness to testify on the
13 last full day before trial, after Defense -- all of
14 Defendants experts have testified, especially Dr.
15 Wilson, the vascular surgeon, to address the vascular
16 issues, it is actually a classic sandbagging by the
17 Plaintiff in this case.

18 There was no reason why we shouldn't have
19 been informed that there were efforts to try to get
20 Dr. Wiencek here before that.

21 We could have made arrangements to have Dr.
22 Wilson testify as our last witness, let them finish
23 experts their witnesses all together, and then make
24 arrangements to have him testify.

25 We didn't do that because the only expert

1 they retained in this case to testify, the only
2 vascular surgeon they indicated they were going to
3 call, was Dr. M.

4 So in this particular situation it creates
5 a huge detriment to the Defense in this particular
6 case.

7 It's also our position that he wasn't
8 properly identified on the Plaintiff's pre-trial
9 disclosures. In fact, he's only listed on the
10 pre-trial disclosures as the person most
11 knowledgeable, or custodian of records, there's no
12 scope of anticipated testimony he's supposed to
13 offer, and that is the same for a number of other
14 entities, St. Rose and other providers as well, the
15 same designations, not as an individual witness -- or
16 not they anticipated calling him.

17 So I think it's our position, and I'll let
18 Mr. Weaver chime in as well, because I think he has
19 some points to make, but it's our position at this
20 late stage that is an improper attempt to sandbag the
21 Defense and creates a difficult situation for us, and
22 I think that it is not proper pursuant to their
23 pre-trial disclosures.

24 THE COURT: Mr. Weaver, anything to add?

25 MR. WEAVER: Thank you, Your Honor.

1 I would briefly add, we briefed this issue
2 before the Court, as it wasn't just Mr. Arntz saying
3 that he he became aware a few days ago, he said,
4 quite a few days ago.

5 So at the same time while the Court is
6 telling the jury on Friday at the lunch break there
7 was two witnesses in the afternoon, Nurse
8 Practitioner Bartmus and Dr. Barcay, and two today,
9 and we would be done today, instructions tomorrow,
10 and it certainly wouldn't go into Wednesday, not a
11 word, not a peep, no heads up, no information, not
12 anything.

13 And what is particularly disturbing is,
14 every single day we talked about witnesses on
15 Thursday, I set out the discussion in part that
16 carried over until Friday, when even the Court
17 acknowledged based on the Court's information that
18 Mr. and Mrs. Moore were the final two witnesses
19 today, that part of what was happening on Friday, and
20 this is on the record, was if we're to not interfere
21 with Mr. and Mrs. Moore having the entire afternoon
22 to testify today, number one, would've fully
23 truncated the testimony of Nurse Practitioner
24 Bartmus, and in addition truncated and shortened the
25 testimony of Dr. Barcay, so we finished before 4 to

1 make sure that Mr. Arntz had all the time he needed
2 for cross-examination.

3 He said he would take an hour, took 30
4 minutes, but there was plenty of juror questions, but
5 all of that was done to make sure it didn't interfere
6 with the last two witnesses today.

7 Meanwhile, they've known for at least a
8 week, maybe ten days before that they were intending,
9 or hoping, or scheduling Dr. Wiencek for today.

10 So that we're trying to do what we can to
11 make sure we don't go past Tuesday and doing as well
12 what we can with the witnesses, we're getting
13 sandbagged, not knowing we're going to find out
14 yesterday when we are trying to prepare for Mr.
15 Moore, and trying to prepare for closing arguments, a
16 surprise to Dr. Wiencek is coming.

17 On Thursday afternoon I called, it was
18 hectic, and e-mailed Dr. Barcay when there was a
19 discussion about potentially -- this was at 3:30
20 about potentially Mrs. and Mrs. Moore having their
21 testimony on Friday afternoon to accommodate them to
22 get it done.

23 It was decided that the best thing would be
24 to leave them until today uninterrupted.

25 So to find out yesterday afternoon that

1 this was a set up to have the Plaintiff's case
2 continue over to today, and Dr. Wiencek, a surprise
3 witness, is quite frankly intolerable, just not fair.

4 What are we going to do, bring Dr. Wilson
5 back tomorrow?

6 That is not even likely possible.

7 But Dr. Wilson had every right to rely on
8 whatever Dr. Wiencek might say, not the other way
9 around.

10 THE COURT: Mr. Hyamson.

11 MR. P. HYMANSON: Phil Hymanson on behalf
12 of Mr. and Mrs. Moore.

13 This is not a sandbag.

14 This is what we call trial.

15 As of last Thursday the discussion between
16 counsel about whether they were going to call Dr.
17 Wiencek or not, and Mr. McBride said, no, it's not
18 their intention, Mr. Arntz was under the impression
19 they were, which was good because we were having
20 until Friday to get him, didn't think we would be
21 able to get him.

22 THE COURT: I don't have a lot of volume
23 today, so bear with me.

24 Can you just clarify?

25 You're using a lot of pronouns there.

1 You said, they were talking about it, they
2 were okay, they weren't.

3 I did not follow who you were saying.

4 As far as I'm getting what you gentlemen
5 are saying, Friday was the first time they heard
6 about him coming today, or maybe Sunday.

7 I'm sorry.

8 What's the first time they heard about Dr.
9 Wiencek?

10 MR. P. HYMANSON: I'll be clear on that.

11 Your Honor, that is absolutely correct.

12 We didn't know that Dr. Wiencek would be
13 available until a telephone conference yesterday, and
14 as soon as we learned from Dr. Wiencek he would be
15 available, we notified Defense counsel approximately
16 24 hours before they were going to testify.

17 We weren't aware of it until Sunday he was
18 in fact going to be able to testify.

19 He has some physical issues, and we didn't
20 think he was going to be able to.

21 THE COURT: When did you begin reaching out
22 to him?

23 MR. P. HYMANSON: I'll have to defer to Mr.
24 Arntz because I wasn't involved in the reach.

25 MR. ARNTZ: Probably about a week ago.

1 I think I was able to get ahold of him
2 through the office, and what he told me was, he was
3 not be able to come testify because he had bad
4 neuropathy, didn't want to come into your courtroom.

5 He said, if you can have me testify by
6 video conference, I'll agree to it.

7 I said, I don't think I can do that.

8 So I essentially gave up on it, but I
9 reached out to him one more time Friday, and it was
10 about 7:00 Friday night that I finally got a text
11 from him where he said -- he agreed to come.

12 I didn't make a decision then.

13 I wouldn't call him until I had a chance to
14 talk to him.

15 So I talked to him on Sunday, it was the
16 afternoon, the three of us were there on speaker
17 phone talking to him, and after that I decided to
18 call him, and I immediately notified counsel of my
19 decision.

20 There was no sandbagging. I just didn't
21 think I could get him here.

22 THE COURT: Well, let me go back to Mr.
23 Hymanson.

24 Whether or not the intent was there, the
25 sandbagging, it's just not sandbagging, if they were

1 standing up at the last witness with a witness you
2 had no idea was in play that day before that witness
3 was supposed to testify, you would not be up here
4 having that same thing?

5 MR. P. HYMANSON: No, Your Honor, I don't
6 think so.

7 I call that trial. I call that trial, Your
8 Honor.

9 It was quite clear on Friday after -- as
10 the Court said to them, we allowed them to put their
11 experts in out of place, it was quite clear after
12 their experts testified how critical this doctor was
13 going to be, and I specifically said to Mr. Arntz
14 after Friday that if Dr. Wiencek. If we have him
15 listed, and we tried to get him, we need to try and
16 get him one more time because based on Friday's
17 testimony that would be critical for him to be here.

18 This isn't a surprise to the Defense.

19 They've known of this doctor from the
20 beginning.

21 They are the ones mentioned him in their
22 opening statement.

23 They are the ones that had their experts
24 refer to him.

25 So there's no surprise.

1 He is a treating physician, no surprise
2 there.

3 And what he's going to testify to would be
4 quicker than what this argument is going to be.

5 THE COURT: One more follow-up to Mr.
6 Hymanson before the response.

7 MR. MC BRIDE: Sure.

8 THE COURT: Wait.

9 You all have to try to listen.

10 I'm speaking as loudly as I can.

11 One more follow-up to Mr. Hymanson.

12 What Mr. McBride indicated about the actual
13 pre-trial disclosures, those have some meaning. If
14 he's not disclosed on there as a potential witness,
15 how is it you're calling him now?

16 I know all day long trial is trial, but
17 their indication is, and I did not re-review that
18 because I had no idea about talking about
19 sandbagging, about this argument coming, so you know
20 what is the actual disclosure?

21 MR. P. HYMANSON: Number 22.

22 MR. MC BRIDE: 20.

23 MR. ARNTZ: No, 22.

24 The supplement.

25 MR. P. HYMANSON: It says:

1 Dr. Wiencek, these witnesses expect to
2 testify regarding Plaintiff's medical treatment, from
3 Dr. Wiencek, M.D., expected to testify to the facts
4 and circumstances surrounding the medical care,
5 treatment, and/or billing for said care and treatment
6 provided to Plaintiff.

7 THE COURT: What was the supplement?

8 MR. MC BRIDE: I don't have a supplement,
9 Your Honor.

10 MR. WEAVER: There's no supplement, Your
11 Honor.

12 MR. ARNTZ: Your Honor, Dr. Wiencek
13 actually has been named since the first supplement.

14 He's been in every supplement since then.

15 THE COURT: They indicated he was named,
16 but as custodian of records.

17 MR. MC BRIDE: I have the pre-trial
18 disclosures here, Your Honor, if you would like to
19 take a look at it.

20 THE COURT: I'm taking your
21 representations.

22 I was just told there was a couple numbers
23 there, I was wondering whether it was filed.

24 MR. ARNTZ: The 13th, and included in that
25 one and every other one.

1 THE COURT: Hold on, you guys are talking
2 over each other.

3 I'm checking the file.

4 MR. P. HYMANSON: The supplement was
5 November 21st, Your Honor.

6 THE COURT: The supplement you're reading
7 from now?

8 MR. P. HYMANSON: The 13th supplement,
9 11/21, Your Honor.

10 MR. ARNTZ: That wasn't the first
11 supplement we filed.

12 THE COURT: There's a difference, is there
13 not, gentlemen, between ongoing supplements along the
14 way of all the potential witnesses that might have
15 something to do with the case and the actual
16 pre-trial disclosure of witnesses?

17 MR. ARNTZ: Well, he's disclosed as a
18 witness.

19 THE COURT: I'm not in the mood, Mr. Arntz.

20 I just said I thought very clearly there is
21 not a difference between ongoing supplemental
22 disclosure, the requirements, as pre-trial
23 disclosures that is required under the EDCR when you
24 all get together and meet and confer and list out
25 your witnesses and list out your documents, and say

1 who you are calling.

2 If you are not required to update on the
3 pre-trial disclosures who you are actually going to
4 call and what they are going to be called for --

5 MR. ARNTZ: Well, it doesn't list on there
6 what -- doesn't recite the same paragraph that is in
7 the disclosure in the supplement, that's true.

8 THE COURT: Okay.

9 I'm not worried about that right now.

10 Final arguments?

11 MR. MC BRIDE: I do have the pre-trial
12 disclosure filed by Plaintiff December 27th, 2019.

13 Number 20, like I said, custodian of
14 records, and/or person most knowledgeable, and just
15 Robert Wiencek, M.D., St. Rose Sienna.

16 That is the same identification, nothing
17 more, the same identification they give for every
18 other potential witness, Paul Weazner Associates,
19 John Oh, M.D., Nevada Comprehensive, /PRO care, then
20 as Your Honor is aware as part of the pre-trial
21 disclosures it even says, has a section says,
22 Plaintiff's expect to present the following witnesses
23 at trial if a need arises, Plaintiff's reserve the
24 right to call any and all witnesses called by any
25 other party, and there is nobody identified.

1 There's also nobody identified by
2 deposition, nobody identified that they were
3 subpoenaed.

4 Our point, Your Honor, again goes to the
5 fact that this is a witness who is -- Well, first of
6 all, it was mentioned in passing as a treating
7 physician in my opening statement as part of my
8 chronology explaining who he treated with. That in
9 and of itself should have been enough for the
10 Plaintiff to identify that Dr. Wiencek likely had
11 some information that would be relevant to their case
12 in this particular issue, even if it's about as a
13 treating provider, or damages, or anything else.
14 That wasn't done.

15 Your Honor, you are absolutely correct, the
16 pre-trial disclosures are really the operative
17 pleading that takes effect for trial.

18 I understand Mr. Hymanson thinks that this
19 is all well and good to have a Perry Mason moment and
20 call Dr. Wiencek, and at the last minute, but what it
21 also does is, it complicates matters to the extent
22 even if the Court were to allow him to testify, and
23 limit his testimony, what that problem creates for
24 the jurors, who are all -- have been very attentive
25 and who ask questions, when they are not able to ask

1 questions that may go beyond the potential role as
2 just a treating physician, that opens up a whole
3 other cap of worms.

4 In this particular case, Your Honor, this
5 is classic sandbagging, and I think it's an absolute
6 detriment to the Defense, given the fact we've
7 already completed our experts, in particular Dr.
8 Wilson, who as Mr. Weaver pointed out would be the
9 key witness to comment on any testimony from Dr.
10 Wiencek.

11 THE COURT: Anything else to add, Mr.
12 Weaver?

13 MR. WEAVER: Briefly, Your Honor.

14 Again, it's not the trial, it's a sandbag.

15 They are not even on the same page with al
16 due respect.

17 Mr. Arntz said quite a few days now it been
18 known that Dr. Wiencek is a potential witness without
19 a word to us.

20 Mr. Hymanson just said, it became apparent
21 on Friday afternoon after our experts left.

22 They are not reconcilable, it don't make
23 sense, and the bottom line is in trial what makes
24 sense is to say, here are experts that we are
25 calling, how are we going to coordinate it?

1 What isn't trial is to conceal a witness
2 from the other side and not tell them until the day
3 before.

4 It's true we've gone back and forth, and
5 with all due respect it hasn't been total
6 accommodation for our experts. We've done what we
7 can to make our experts available, including Dr.
8 Wilson being here for this for three days in order
9 not to hold up any trial.

10 So the idea there's just this
11 over-accommodation for Defendants isn't even fair.

12 THE COURT: Okay.

13 So it hasn't been mentioned yet in
14 argument, but one of the things I recall -- I looked
15 it up while I was listening to your arguments -- was
16 there was also a stipulation and order on motions in
17 limine signed off on by all the parties, which again
18 technically has not been filed, but of course was
19 submitted to the Court prior to trial, I actually
20 have a stamp on it January 29th when it was submitted
21 to the Court, so it might have actually just been
22 after trial started, but stipulation order on motions
23 in limine, the sixth of which is, as a courtesy the
24 parties agree to provide reasonable advanced notice
25 of witnesses to be called to the extent possible.

1 Actually, when I was reviewing these
2 orders, I was very glad to see that because one of
3 the things as a Judge, I see counsel do it all the
4 time, is decide how they are going to do their case
5 and not necessarily share as things are evolving that
6 information with the other side.

7 I'm not going to call it sandbagging
8 because I don't disagree with Mr. Hymanson or Arntz,
9 it's very possible as the trial evolves they came
10 about their decision the way they came about their
11 decision.

12 The argument and calling it sandbagging is
13 like saying, by design they waited until the last
14 minute to call Dr. Wiencek.

15 I take it at face value, Mr. Hymanson's
16 representations. Although, Mr. Arntz may have
17 attempted to reach out sometime ago just to see if he
18 was available, and had given up, that that was going
19 to work.

20 Mr. Hymanson, after hearing the testimony
21 on Friday, said, let's try it again, and as luck
22 would have it Mr. Wiencek -- Dr. Wiencek was
23 available.

24 At the end of the day it was absolutely
25 obvious to this Court from the get go that Dr.

1 Wiencek could, potentially should, have been a
2 witness in this case.

3 Every single witness that testified, and
4 every single document we've looked at, has had Dr.
5 Wiencek all over it.

6 In fact, to the degree where I've actually
7 been sitting here concerned that the jurors don't
8 even know who the Defendants are because Dr.
9 Wiencek's name had come up so many times.

10 That said, all the testimony has come in
11 except for the Plaintiffs.

12 We are at the conclusion of this trial,
13 there are ample documentation affixed to this
14 involving Dr. Wiencek can be pointed to as need be to
15 clarify any of those issues.

16 This is far too late in the process to be
17 disclosing a witness.

18 The appropriate time to the disclose this
19 witness would have been when the decision was made to
20 reach out to see if he was available.

21 The Court deserved that courtesy, counsel
22 deserved that courtesy, it did not happen.

23 It was not included in the pre-trial
24 disclosure, that might have saved -- or might have
25 made some different impact on the Court's decision

1 here today.

2 If he had been listed in there the same way
3 he was listed in the November multiple supplements,
4 13, or whatever it was, but there's got to be some
5 benefit to the Court and to counsel these pre-trial
6 meet and confers, they are not just empty exercises
7 where everything is listed, they should not be that,
8 where everything just gets listed the way it's been
9 previously listed and cut and pasted by some staff
10 member, and we actually have no damn idea who's going
11 to be called at trial.

12 This Court has been every day at the end of
13 last week figuring out who is being called and when.

14 I didn't care who was being called and
15 when, I did not care how long a time it was going to
16 be taken, I just needed to know, so I could keep this
17 trial moving and going.

18 To find out now that on Sunday was the
19 first time Defense was notified Dr. Wiencek was in
20 play, and the Court didn't know until it came in here
21 today, I appreciate we were copied on some e-mail
22 yesterday as well, but that was not provided to me by
23 my staff this morning, and it's in the pile of
24 additional instructions and things we have now, but I
25 didn't get it until just now.

1 So as I came in here today I had zero idea
2 this was an issue.

3 At the end of the day, like I said, I think
4 ample testimony has been had from both sides related
5 to Dr. Wiencek's prior treatment, how that might have
6 impacted things, and certainly any confusion can be
7 cleaned up in closings.

8 We have the Plaintiff, and the Plaintiff's
9 to testify today, and I do not see any legitimate
10 legal or factual basis to allow Dr. Wiencek to be
11 called at this time based on the pre-trial
12 disclosures, based open the stipulated motion in
13 limine as a courtesy to provide information,
14 reasonable advanced notice, and ultimately the
15 communications up through and including Friday as to
16 what this trial proceedings would be.

17 So for all of those reasons Dr. Wiencek
18 will not be called today, and we will proceed as
19 schedules with the Plaintiffs.

20 Anything else we need to address?

21 MR. MC BRIDE: Thank you, Your Honor.

22 MR. ARNTZ: No, Your Honor.

23 MR. MC BRIDE: No, Your Honor.

24 THE COURT: Thank you.

25 Do you need to communicate with Dr.

1 Wiencek?

2 MR. ARNTZ: Yep.

3 (Thereupon, the following proceedings were
4 had in open court and in the presence of the jury.):

5 THE COURT: Thank you, ladies and
6 gentlemen, for your patience.

7 We had a few matters we had to resolve
8 before you joined us.

9 We've now resolved those matters.

10 At this point in time we're going to return
11 to the Plaintiffs' case in chief, and I'm asking
12 counsel for the Plaintiff to call their next witness,
13 please.

14 MR. J. HYMANSON: We'd like to call
15 Charlene Moore, Your Honor.

16 THE COURT: Mrs. Moore, make your way up to
17 the witness stand.

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CHARLENE MOORE,

who, being first duly sworn to tell
the truth, the whole truth, and
nothing but the truth, was examined
and testified as follows:

THE CLERK: Please have a seat.

Please state your full name, spelling both
your first and last name for the record.

THE WITNESS: My first name is Charlene,
C-h-a-r-l-e-n-e, last name Moore, M-o-o-r-e.

THE COURT: Thank you.

Mr. Hymanson, when you're ready.

MR. J. HYMANSON: Thank you very much, Your
Honor.

- - - -

DIRECT EXAMINATION OF CHARLENE MOORE

BY MR. J. HYMANSON:

Q. Good afternoon, Mrs. Moore.

Can you please introduce yourself to the
ladies and gentlemen of the jury?

A. I'm Charlene Moore.

I'm Darell's wife.

Q. Miss Moore, where were you born?

A. I was born in Camp Robert, California.

1 Q. Where did you grow up?

2 A. I grew up, most of my younger years were
3 spent in Germany.

4 My dad was in the Army intelligence, so we
5 moved around a lot, spent nine years in Germany,
6 sometime in Baltimore, and other places.

7 Q. When did you meet Darell?

8 A. I met Darell the first part of 1967.

9 We had moved into a neighborhood, and the
10 beginning of the year he moved in next door to us.

11 Q. How old were you then?

12 A. I was 14.

13 Q. Did you eventually start dating Darell?

14 A. We did.

15 Q. How long after you met him?

16 A. I would think probably maybe eight months
17 or so.

18 Q. And you eventually ended up getting married
19 to Darell, correct?

20 A. Yes.

21 Q. How old were you when you married Darell?

22 A. I was 16.

23 Q. And so how long have you been married to
24 your husband?

25 A. 51 years.

1 Q. We talked about it a little bit before, but
2 you have three children, correct?

3 A. I do.

4 Q. What do your children do?

5 A. My eldest is Eric, and he works in the
6 prison system.

7 My second son is -- you met -- he's
8 Christopher, he's been in interventional -- works in
9 the hospital.

10 And Jennifer is a Sergeant in the Air
11 Force.

12 Q. Okay.

13 Miss Moore, are you currently employed?

14 A. I am not.

15 I'm retired.

16 Q. What did you used to do for a living?

17 A. Well, there were a lot of things.

18 My first job was helping my dad in his
19 photo store.

20 Then later my mom and my mother-in-law and
21 I opened a children's clothing store that we had for
22 well over ten years.

23 Then I became a partner with my sister, she
24 had taken over my dad's photo store, so I worked with
25 her for a while.

1 And then I dealt poker in a small card room
2 in California.

3 I also managed the card room for a little
4 while.

5 Q. When you owned your own business, did you
6 always pay your debts?

7 A. Yes.

8 Q. Do you think you have ever lived a lavish
9 lifestyle?

10 A. No, not really.

11 Q. I want to transition a little bit talking
12 about your life with your husband before his
13 amputation.

14 So what does your husband do for a living?

15 A. He -- He started out when we first got
16 married as a bus boy, then he went into construction
17 with his father, became a partner, and worked with
18 him for many years.

19 And then at the same time I started dealing
20 cards in the card room he dealt cards in the card
21 room and became a manager of several card rooms.

22 Q. Did he ever have any issues with his legs?

23 A. He had issues with his legs for years and
24 years and years.

25 He first saw a vascular specialist when he

1 was about 19 or so, but in his 30's he developed open
2 ulcers on his legs, so he consulted a lot of
3 physicians through the years.

4 All they could do was tell him to wrap his
5 legs with a bandage, you have to put elastic like
6 over it, so it's like a lightweight cast, and he did
7 that for many years, so he could continue to work.

8 He was like so long, so long he had these
9 open ulcers, and sometimes they would come on his
10 right leg, but never as bad as his left leg.

11 And when we finally got referred to Dr.
12 Wiencek, he had a 2012 operation, he finally healed
13 and was much more mobile, and didn't have to do the
14 bandages anymore or anything like that.

15 Q. Let me just ask for a little bit of
16 clarification.

17 The 2012 operation, so I want to make sure
18 I understand what your testimony was.

19 You said for years he had open sores on his
20 legs?

21 A. Correct.

22 Q. And you talked about the bandages he would
23 wear, correct?

24 A. Yes.

25 Q. And when you would apply the bandage, would

1 his wounds go away?

2 A. Well, his right leg healed up quite often,
3 so he didn't have to bandage that very much.

4 But his left leg, sometimes he would have
5 several ulcers, sometimes only had one, kind of went
6 back and forth, but there was always for the whole
7 time he had some kind of open sore on his left leg.

8 Q. What kind of things did you and Darell do
9 for fun before -- let's talk about from 2010 until
10 2016, what kind of things did you and Darell do for
11 fun?

12 A. Well, 2010 to 2016?

13 In 2010 to 2012 we didn't do -- we had just
14 retired recently, didn't do a whole lot of traveling
15 or anything, but we would go to Tucson to visit my
16 mom, go back to the hometown to visit family.

17 You know, we would go out, have dinner, do
18 all those things.

19 After 2012, we were settled into
20 retirement, his legs were healed, and we were doing a
21 lot more.

22 We took a trip to Hawaii.

23 We took a trip to Florida.

24 We flew out to Florida.

25 We visited my mom regularly in Tucson, at

1 least a couple times a year.

2 So she moved to Mesquite, and then we would
3 go over there and see her like once a month.

4 We still traveled back to Paso Robles to
5 see family.

6 Now luckily enough most of my family moved
7 to Mesquite, so we can see them more often.

8 However, not so much now that he's lost his
9 leg.

10 Q. We talked about a noticeable difference
11 between what you and your husband would do before
12 2012 and after 2012, and you talked about 2012.

13 What was the surgery your husband had in
14 2012?

15 A. In 2012 he had several aneurisms addressed,
16 and he had the popiteal by-pass graft.

17 Q. The graft we've been talking about for the
18 last two weeks?

19 A. Yes.

20 Q. Did you notice a difference -- or first of
21 all, you said your husband had sores on his legs for
22 years before he had the by-pass, correct?

23 A. Yes.

24 Q. How did the by-pass affect your husband's
25 leg, his left leg?

1 A. All the ulcers healed.

2 He didn't have to put the bandage on
3 anymore.

4 Q. How did the 2012 by-pass affect your
5 husband's overall quality of life?

6 A. There was such a huge difference.

7 It was just so much better.

8 We were living life with him having open
9 sores on his legs, and the necessity of changing
10 bandages, and they were very painful, he used to
11 before the sores healed when he would go to bed, he
12 would have to hang his leg off the bed onto like a
13 little chair with pillows, so that they were -- the
14 level was down a little bit, which would ease the
15 pain, and help him sleep because gravity goes
16 downhill.

17 So he didn't have to do that anymore, he
18 could put his feet up on the bed and sleep like a
19 regular person.

20 Q. From 2012 to 2016 how often did your
21 husband exercise?

22 A. Well, he would walk more and do more, but
23 we didn't have like an exercise program, he didn't go
24 to the gym or anything.

25 Q. Okay.

1 You said you would walk.

2 Where would you walk?

3 Where would he walk?

4 A. He could come with me to the grocery store,
5 to Costco.

6 If we wanted to go to the car show at
7 Mandalay Bay, he could walk all the way back there.

8 If we went to the clinic, he could walk
9 around.

10 If we traveled somewhere, we wanted to stop
11 and go off course and hike a little bit, not major
12 hiking, but just to go see sights and that kind of
13 thing.

14 Q. So you mentioned Dr. Wiencek was your
15 husband's vascular surgeon -- or is your husband's
16 vascular surgeon?

17 A. He still is.

18 Q. How did you -- or your husband -- find Dr.
19 Wiencek, do you remember?

20 A. He -- His left leg, one of the ulcers on
21 his left leg got infected, and we took him to the
22 emergency room at St. Rose, and they recommended that
23 he go to a clinic that he had -- that they have where
24 they did wound care, and he went to that clinic a
25 couple of times, and the second time the doctor that

1 was cleaning up his wound and whatever they do, I
2 don't know exactly, but that doctor was Dr. Simon,
3 and he said, you know, I think I can can help you
4 beyond the clinic, I have an office, and why don't
5 you make an appointment.

6 So he went to Dr. Simon several times, and
7 Dr. Simon tried to do some things that didn't seem to
8 be helping very much, so Dr. Simon ordered I believe
9 it was a CT, and after he got the results from the CT
10 he had Darell come in and said, you know --

11 MR. MC BRIDE: Objection, Your Honor.
12 Hearsay.

13 THE COURT: Is it being offered for the
14 truth of the matter asserted, or being offered -- For
15 what purposes is it being offered for?

16 MR. J. HYMANSON: For her recollection of
17 how they found Dr. Wiencek.

18 THE COURT: I'll overrule in this case, and
19 just for the purposes of understanding this is what
20 the Plaintiff is getting at.

21 MR. J. HYMANSON: Thank you, Your Honor.

22 THE WITNESS: Dr. Simon, after the CT
23 results said, you got some serious problems that need
24 addressed, and he actually called Dr. Wiencek while
25 we were in the office, and he arranged for Darell to

1 see him that day.

2 BY MR. J. HYMANSON:

3 Q. Miss Moore, did you ever go to your
4 husband's appointments with Dr. Wiencek?

5 A. I went to the office ever every time.

6 I also went into the back room with him
7 every single time.

8 Q. Why did you do that?

9 A. Because his problems were serious, and I
10 wanted to hear what the doctors said, rather than
11 getting it secondhand from Darell.

12 Q. You said you actually went back and in the
13 examination room each time your husband would go see
14 Dr. Wiencek?

15 A. Yes, I did.

16 Q. So did you watch the exam Dr. Wiencek would
17 do on your husband each time?

18 A. Yes.

19 Q. Did you ever see Dr. Wiencek check for a
20 pulse in your husband's legs?

21 A. Yes.

22 Q. Okay.

23 Do you remember seeing Dr. Wiencek check
24 for a pulse on your husband's left foot?

25 A. Yes.

1 Q. Was he ever able to palpate a pulse on your
2 husband's left foot, to your recollection?

3 MR. MC BRIDE: Objection.
4 Speculation.

5 MR. WEAVER: Join.

6 THE COURT: Sustained.

7 How would she know?

8 MR. J. HYMANSON: That's my question.

9 I'll move on, Your Honor.

10 BY MR. J. HYMANSON:

11 Q. Miss Moore, did you ever see -- Well, you
12 said that you saw Dr. Wiencek attempt to palpate a
13 pulse on your husband's left leg, correct?

14 A. I don't know if you would classify it as
15 palpate because he didn't -- he used a Doppler every
16 single time.

17 Q. Okay.

18 So did you see him attempt to palpate
19 before?

20 A. No.

21 Q. So you saw him use a Doppler?

22 A. He went straight to the Doppler.

23 Q. And every time that you were at Dr.
24 Wiencek's you saw Dr. Wiencek use a Doppler to check
25 your husband's pulse on his left leg?

1 A. Yes, I did.

2 And Dr. Wiencek did it himself, not an aid
3 or anybody else.

4 Q. I asked you this in one way before.

5 You said you went to every appointment with
6 Dr. Wiencek because you were very concerned about
7 Darell's leg, correct?

8 A. Yes.

9 Q. And you think your husband took his health
10 seriously?

11 A. Absolutely.

12 Q. Just briefly, I want to talk about smoking.
13 There's been a lot of talk about smoking
14 throughout this trial.

15 First, Miss Moore, do you smoke at all?

16 A. I do.

17 Q. How often, or how much, do you smoke a day?

18 A. I average three or four cigarettes a day.

19 I never smoke during the day time, only in
20 the evenings, unless we're out somewhere.

21 Q. How long have you smoked?

22 A. 30, 40 years.

23 Q. Okay.

24 And we learned throughout the course of
25 this trial that your husband Darell is a smoker,

1 correct?

2 A. Yes.

3 Q. And how long has Darell been smoking?

4 A. About the same duration.

5 Q. How much does your husband currently smoke
6 a day?

7 A. He smokes approximately a pack a day,
8 sometimes a little less because sometimes I smoke out
9 of the same pack.

10 Q. From 2012 to 2016 do you recall how much
11 your husband smoked a day?

12 A. About the same amount.

13 He smoked much less than that many years
14 ago.

15 Q. Okay.

16 So what -- Well, do you and Darell smoke in
17 the house?

18 A. We do not.

19 Q. And why not?

20 A. It makes the house stink.

21 Q. You're aware that smoking is bad for you?

22 A. Yes.

23 Q. And is your husband aware smoking is bad
24 for him?

25 A. Yes, he is.

1 Q. Why do you continue to smoke?

2 A. It's so many years of a habit, it makes it
3 hard to break, and then there's been a lot of stress
4 in our lives, and it's hard to break habits when you
5 are stressed.

6 You need some order in your life, things to
7 be the same, some things to be the same, changes are
8 hard.

9 Q. So you established both you and your
10 husband smoked, but I asked you earlier if your
11 husband takes his health seriously.

12 Do you think your husband takes his health
13 seriously?

14 A. Yes, he does.

15 If it were easy to quit, he would have
16 already done it.

17 Q. Does your husband go to his follow-up
18 doctors' appointments when he's supposed to?

19 A. Yes, he does.

20 Q. Does your husband take his medications on a
21 regular basis?

22 A. Oh, yes.

23 He makes sure that I make sure that his
24 medication is ordered through the pharmacy in a
25 timely manner.

1 He will not go one day without taking his
2 Xarelto.

3 Q. For a time period was your husband
4 instructed to wear any special type of anything on
5 his legs?

6 A. Well, of course after surgery he had to
7 wear the compression socks, and he wore compression
8 socks quite a bit.

9 They've also asked him to wear skin
10 preparation for his prosthetic, they had him wearing
11 a shaper on the other leg.

12 Q. I want to talk to you briefly about the
13 couple days before Christmas day in 2016, okay?

14 A. Okay.

15 Q. What -- Did you go to the casino a few days
16 before December 25th, 2016?

17 A. I did.

18 Q. Did your husband go with you?

19 A. Yes.

20 Q. What casino did you go to?

21 A. I wouldn't -- It's been a long time.

22 I would assume we went to The M because
23 that is usually where we go.

24 Q. Do you remember how much you walked around
25 with your husband in the casino that day?

1 A. Specifically, no.

2 I don't remember how long we were there.

3 I don't remember if we were winning, going
4 from machine to machine, or whatever, but he was
5 walking with a cane.

6 Q. Okay.

7 Was it an amount you think -- looking back
8 at it, was more than he would usually walk in a given
9 day?

10 A. I couldn't say, I don't remember.

11 Q. Okay.

12 Let's talk about now December 25th, 2016.

13 Do you remember how that day started?

14 A. Well, we were getting ready for Christmas
15 of course, my mom and her boyfriend were coming, so
16 we were -- but when he got up in the morning, he
17 said, you know, I think I have to get ready and go to
18 the emergency room because something is wrong.

19 Q. Okay.

20 Did you take your husband to the emergency
21 room that day?

22 A. I didn't.

23 Q. Why not?

24 A. Well, my son Christopher was available, and
25 I had the turkey in the oven and everything going,

1 and somebody had to wait for the company to arrive.

2 Q. Were you worried about your husband at all
3 on December 25th when he left for the hospital?

4 A. I was very worried, but I knew that my son
5 would call me if they kept him, and then Christmas
6 dinner, forget the whole thing, we're all going to
7 the hospital.

8 Q. Why were you worried about your husband on
9 December 25th?

10 A. Because after this 2012 by-pass two times
11 we had to take him to the emergency room because --
12 and they had to unblock the popiteal graft, so it
13 would get better blood flow.

14 Q. Was that in 2014?

15 A. 2014 and 2015.

16 Q. You've been here throughout most of this
17 trial, correct?

18 A. I have.

19 Q. Were you surprised to hear Dr. Lasry
20 testify that you were in the cafeteria with your son
21 on December 25th?

22 A. That's a big surprise to me.

23 Although, I don't remember hearing that, it
24 might have been at one point that I -- that we went
25 home early.

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Q. Okay.

But you were not at the hospital?

A. I was not at the hospital.

Q. Okay.

A. How would Dr. Lasry know I was in the cafeteria?

Q. Eventually your husband came home on December 25th?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did he have any discharge paperwork with him?

A. He did have discharge papers.

Q. Did you look at that paperwork at all?

A. Immediately when he came in.

He came in, he put them on the counter, he said, they said I could go home.

I said, I want to see it.

I read through the whole thing.

Q. Why did you do that?

A. Because I wanted to know what the doctors in the emergency room said about his problem.

Q. Did you see anything in that paperwork about your husband being told to follow-up with the

1 doctors or surgeon?

2 A. Absolutely nothing.

3 Q. Did you see anything in that paperwork
4 showing -- or stating there was an ultrasound that
5 said your husband's fem pop graft appeared occluded?

6 A. The only mention of ultrasound on the
7 discharge papers was that they did the test, nothing
8 about results.

9 Q. Okay.

10 If you had seen something in the discharge
11 paperwork that said that there was an ultrasound done
12 that day, that said that your husband's fem pop graft
13 appeared occluded, what would you have done?

14 A. I would have --

15 MR. MC BRIDE: Objection.

16 Calls for speculation.

17 THE COURT: Overruled.

18 THE WITNESS: I would have put him in the
19 car and taken him back.

20 BY MR. J. HYMANSON:

21 Q. Why?

22 A. Because it's really dangerous, the
23 situation, and he had had to have it addressed
24 before, and Dr. Wiencek told us that the first time
25 that his graft was occluded was the most difficult

1 for him because he didn't know what was happening.

2 So he waited a little longer to go to the
3 emergency room.

4 After that occasion when they got it all
5 cleared, Dr. Wiencek said to us, time is of the
6 essence, when you feel anything wrong with your leg,
7 you need to go to the emergency room immediately.

8 Q. All right.

9 I'm going to talk real quick about the days
10 in between December 25th and December 20th.

11 Did you look -- Do you have any
12 recollection of looking at your husband's foot on
13 December 26th or December 27th?

14 A. Not a bare foot.

15 He didn't really run around without his
16 socks on because his leg had all kinds of scars and
17 everything on it, and he always wore socks that go up
18 to the knee.

19 However, I would always look -- it's like a
20 habit because his legs would swell, they were always
21 swollen, but I would like look down at his foot and
22 in his slipper to see how much more it was swollen,
23 so if I thought it was getting excessive, I would
24 mention it to him and talk to him about how his leg
25 was feeling.

1 Q. Let's talk about December 28th, 2016.

2 Do you remember how that day started?

3 A. He got up, he said this is really bad, I
4 need to go back to the emergency room.

5 Q. Who took him to the hospital that day?

6 A. I did.

7 But before I went, I called Dr. Wiencek.

8 Q. What time of day do you think you got to
9 the ER, do you remember?

10 A. I don't.

11 Q. What did they do to Darell once he arrived
12 at the ER?

13 A. Well, of course he saw the triage nurse
14 real quick, then they took him back and put him in
15 one of those little cubbies on a bed, had him take
16 his shoes and socks off, and -- Do you want me to go
17 through the whole thing?

18 Q. We can go step-by-step.

19 Let me ask you real quick, you said they
20 had him lie down and took his shoes and socks off,
21 correct?

22 A. Yes.

23 Q. Did you look at your husband's foot then?

24 A. I did.

25 Q. What did it look like?

1 A. Purple.

2 Q. Was your husband in pain?

3 A. Yes.

4 Q. How much pain?

5 How could you tell your husband was in
6 pain?

7 A. Well, he told me, and he didn't look too
8 well.

9 Q. Did they eventually take your husband back
10 to have his leg imaged?

11 A. Yes, they did.

12 Actually, when he first saw the ER doctor
13 that day, not Dr. Lasry, he came, and he just barely
14 got in the room, and he said to somebody who was with
15 him, that is vascular, he had not even touched him or
16 gotten to his foot, and then he -- actually I think
17 he walked away and came back, he was already ordering
18 things.

19 And he came back and did an exam and sent
20 him for an ultrasound.

21 Q. After the ultrasound, did they attempt to
22 use any clot busters in your husband's leg?

23 A. They did.

24 Although, they did a CT first.

25 Q. Did the clot busters work?

1 A. No, they did not.

2 Q. Did they have any affect on your husband?

3 A. Well, they did because that procedure is
4 very -- it's very painful, but it didn't help.

5 Q. Did it leave any marks on your husband's
6 body?

7 A. Well, they have to cut him open and put it
8 in, put a tube down his leg to get -- or to direct
9 the medication to the right spot, and that in itself
10 didn't leave anything but the cut, but then they left
11 him -- left it in like overnight, and then when they
12 had all conferred and decided that this isn't going
13 to work, they pulled that tube out in his hospital
14 room, and when they did that, he was I would say
15 hemorrhaging.

16 It took two nurses, they -- one male nurse,
17 and I believe the other one was a lady, and they were
18 like changing pads, changing pads, changing pads,
19 putting pressure on.

20 Finally the male nurse -- it seemed like
21 forever at the time, but finally the male nurse kind
22 of got up on the bed and put his weight on it to make
23 it stop.

24 And after all that stuff he had a bruise
25 that went from here all the way down -- his upper

1 body all the way down, I think it may have gone all
2 if way down to his knees, but it was past this --

3 MR. MC BRIDE: Your Honor, could we have
4 her identify what portion of her body she's referring
5 to?

6 THE COURT: Yes.

7 For the record, Mrs. Moore, it's important
8 you indicate by describing what portion of your body
9 you are referring to.

10 THE WITNESS: Up towards his chest, and
11 well past his pelvic area.

12 BY MR. J. HYMANSON:

13 Q. Miss Moore, so we're talking about the
14 hospitalization now starting December 28th.

15 Eventually during this hospitalization we
16 talked about the clot busters not working, was the
17 decision eventually made to have your husband's leg
18 amputated above the knee?

19 A. Yes, it was.

20 Q. Miss Moore, how had your -- how has your
21 husband having his leg amputated above the knee
22 affected his life?

23 A. There's so many things, I couldn't possibly
24 say all of them, but of course the loss of a leg is
25 -- has a huge impact on your life.

1 You can't walk.

2 Everything takes longer.

3 You can't just go hop in the car and leave,
4 hop in the car and close the door.

5 No, we have to take the wheelchair out, get
6 in the car.

7 If we're out, we have two wheelchairs, so I
8 don't have to take them in and out every time, but
9 any time he leaves the vehicle when we are out, then
10 I have to get the wheelchair out, set it up for him,
11 and I -- the wheelchair he uses is in the car because
12 I can't lift the heavier wheelchair.

13 The real lightweight one the one he has
14 today, the wheels are small, so that he can't -- I
15 don't know how to describe it, but the bigger the
16 wheels are, the more him actually manually pushing
17 it, it's easier because he doesn't have to go back
18 and forth a whole lot.

19 So because then using that wheelchair it's
20 a little more difficult for him to move himself
21 around, then I push him most everywhere when we are
22 out.

23 I think I got lost in there and don't
24 remember the question.

25 Q. That's fine.

1 I'll ask you some more questions.

2 Is your husband able to access every room
3 in your house?

4 A. No, he is not.

5 Q. Where can't your husband access?

6 A. His wheelchair will not go into the --
7 either the toilet stall in our bathroom, or the other
8 bathrooms. The doorways are too small.

9 He can't access our closet.

10 He can't access the pantry.

11 I guess if we put a walker in every place,
12 he could have kind of access to them, but you can't have
13 multiples and move them around all the time.

14 When he uses the restroom in the hall, we
15 leave a walker right there at the door because the
16 wheelchair won't go in, so that he can get to the
17 toilet.

18 It is not impossible, but it's difficult to
19 get into the extra bedroom because with the hall it's
20 not wide enough to swing into them without beating up
21 the doorways.

22 Our bedroom itself the doorway's a little
23 small, but he can just barely fit it through, so he
24 beats up the doorway there, but he has to go in there
25 because that's the only shower that he can access.

1 He can't access the yard because it's too
2 difficult to roll the wheelchair across rocks or
3 grass.

4 Q. You mentioned the shower.

5 How does your husband shower?

6 A. Well, we use the same shower, so I move the
7 chair in and out, so that he has a chair in there to
8 shower.

9 And then he rolls up to the shower and
10 stands up and has to hop over the lift and get seated
11 on the chair.

12 I usually will -- I hang a towel over the
13 shower, so that he can reach it after he's done.

14 Q. We talked about the clotting, that he can't
15 activate the closet, right?

16 A. No.

17 Q. So where does he store his clothes?

18 A. His shirts hang -- Well, some of his shirts
19 hang on the towel rack in the bathroom, I put them
20 there so he has a choice of what to put on if we are
21 going somewhere.

22 I bought a little two-drawer chest I put
23 beside the vanity where I put his -- try and keep his
24 supply of socks and pants and underwear, so that he
25 can access those in the bathroom because otherwise if

1 they were in the closet, he couldn't get to them at
2 all, if they were in the dresser in the bedroom, he
3 would have to go back and forth and back and forth.

4 Q. I think you also said he can't access the
5 pantry, correct?

6 A. No.

7 Q. So what have you done to change the way
8 your house is set up in terms of that?

9 A. The kinds of things like snacks, butter, on
10 the counters, instead of putting them away because
11 that is the only place he can reach them.

12 He has a drawer where he keeps his tea bags
13 and extra snacks, so he can access it.

14 I try and keep in the refrigerator, try to
15 keep anything he uses regularly in a reachable area.

16 He can't reach anything but the bottom
17 shelf in our cupboards, so everything he might need
18 has to be there.

19 Q. Do you and your husband sleep in the same
20 room now?

21 A. We do not.

22 Q. Did you sleep in the same room before his
23 leg was amputated?

24 A. Yes, we did.

25 Q. Why don't you sleep in the same room?

1 A. Well, we don't sleep in the same room
2 because -- well, there's lots of reasons.

3 Number one, our bed is a little high that
4 is in the bedroom, so it's difficult for him to get
5 on and off it.

6 He sleeps kind of sideways, so there's not
7 a lot of room.

8 And then the mattress we have in there was
9 bothering him, so we bought one of those new foam
10 mattresses and put it in our study because for
11 several reasons.

12 Number one, that has helped a whole lot
13 with his pain, that type of mattress, but also it's
14 in the study because it's closer to the kitchen and
15 because the study has no door, so he doesn't have to
16 go through a doorway, we just have a curtain across,
17 like a four-foot opening or so, so we just have a
18 curtain across there, so he sleeps in there.

19 Q. You and your husband have been here for
20 every day we've been in trial, correct?

21 A. Yes.

22 Q. How has that been for you in terms of
23 getting to and from the courthouse?

24 A. It's difficult.

25 We have to get up early for both of us to

1 get ready.

2 It takes Darell a long time to shower and
3 then get dressed and do all the things necessary to
4 go out.

5 Some of the nights where we've had to come
6 out early to either meet at your offices, or come
7 mornings, and I could shower the night before to save
8 time because I really don't like to get up in the
9 morning, and --

10 Q. I want to talk a little bit about Dr. Fish
11 and his report.

12 He met with your husband for about an hour
13 and 15 minutes, is that correct?

14 A. Correct.

15 Q. Were you there during that meeting?

16 A. I was.

17 Q. Did you talk to Dr. Fish during that
18 meeting?

19 A. Some, but he was directing his attention
20 towards Darell, asking him questions.

21 I was mostly an observer.

22 Q. So you're aware Dr. Fish generated a
23 report, correct?

24 A. I am.

25 Q. When did you first see that report?

1 A. I --

2 Q. Actually, let me step back.

3 I apologize.

4 Do you remember when this hour and 15
5 minutes long meeting with Dr. Fish was?

6 A. It was in July, I think.

7 Q. Of what year?

8 A. 2019.

9 Q. Okay.

10 So then after you met with him, when did
11 you first see his report?

12 A. Months later.

13 Q. Okay.

14 A. In fact, it was only a couple of months ago
15 that Mr. Hoffman's office gave us that report.

16 Q. Did Dr. Fish go over details of that report
17 with you?

18 A. No.

19 Q. Did you understand what all of the
20 recommendations in Fish's report were?

21 A. Not exactly until he explained some of them
22 here.

23 Q. Okay.

24 So you were here while Dr. Fish was
25 testifying about the details of his report?

1 A. I was.

2 Q. How did you want to get what Dr. Fish
3 recommended in his report?

4 A. Listening to his testimony.

5 A lot of it made a lot of sense.

6 Q. Have you and Darell done everything that
7 Dr. Fish has recommended in his report so far?

8 A. No, that would take a long time.

9 Q. And my next question is:
10 Why haven't you done anything after reading
11 Fish's report?

12 A. Because we are still absorbing what needs
13 to be done.

14 You have to have a clear plan to tackle all
15 those things.

16 You have to start making appointments.

17 And you have to make sure you can get to
18 those places.

19 It's a little overwhelming just to look at.

20 Q. I'm going to transition again.

21 I want to talk about how your husband's
22 amputation has affected you.

23 First of all, do you have any of your own
24 health problems?

25 A. I do.

1 Q. And what are those?

2 A. I've been diagnosed with chronic renal
3 failure, so I see a nephrologist. It's a genetic
4 thing in my family. That is my main problem.

5 Although, along with that, my nephrologist
6 discovered, and I don't know the words for it, but
7 some kind of protein in my blood that could be
8 affecting the kidneys and could also turn cancerous,
9 what type, I don't know.

10 So I see a hematologist, I think it's a
11 hematologist.

12 I see a cancer blood doctor on a regular
13 basis to keep track of that protein and make sure
14 nothing is going wrong.

15 Q. How has the amputation of your husband's
16 leg affected you?

17 A. There's a lot of aspects to that.

18 There's a lot of sadness, but if we're
19 going to talk about physically, one of the things
20 that goes along with having chronic renal failure is,
21 you're tired all the time.

22 I'm also borderline anemic, and that
23 doesn't help.

24 So it's added a lot of things that I need
25 to do and keep up with, and being in the condition I

1 am it makes me very -- it's just exhausting and also
2 very stressful.

3 Q. Is your son, Chris -- he lives with you
4 right now, right?

5 A. Yes.

6 He's about to move.

7 Q. Okay.

8 And the ladies and gentlemen of the jury
9 met your son, but he is moving to Florida, correct?

10 A. He's moving to Florida, yes.

11 Q. And do you know when?

12 A. He keeps changing the date, but it's got to
13 be right within the week.

14 Q. Is there anyone else in your household to
15 take care of your husband, besides yourself?

16 A. No.

17 And Chris has never been able to help very
18 much because his job that he was doing, he was
19 working 60 hours or more a week, so he just wasn't
20 there very much.

21 Q. You said that you have been more -- I think
22 you said, correct me if I'm wrong, but more anxious
23 since your husband's amputation?

24 A. Yes, I worry a lot.

25 Q. How would you describe your mental

1 state since your husband's leg was amputated?

2 A. I try and stay positive.

3 There's times that it kind of gets to me.

4 I think there's been a lot more -- All I
5 can say is, that there's a lot more stress, you have
6 to worry about so many things, there's so many
7 doctors' appointments, and I worry about if anything
8 else is going to happen to him, and I worry about if
9 they are going to take good care of him, all of that.

10 Q. Have you ever been to a therapist to talk
11 about your anxiety, or the way the stress is
12 affecting you?

13 A. No, I haven't.

14 Q. Do you remember being asked in your
15 deposition if you would be open to that?

16 A. I remember being asked.

17 Right this second I don't remember what I
18 said.

19 Q. If I were to you that you said that you
20 didn't think it would help, would you agree with
21 that?

22 A. I probably said that.

23 Q. Okay.

24 How do you feel about that today?

25 A. After Dr. Fish's testimony, and how he

1 talked about things, it kind of makes me realize that
2 it might be worth a try.

3 MR. J. HYMANSON: Court's indulgence, Your
4 Honor.

5 THE COURT: Yes.

6 BY MR. J. HYMANSON:

7 Q. Just a couple more quick questions for you,
8 Ms. Moore.

9 Do you -- You have reviewed the facts of
10 what happened with your husband, correct?

11 A. Yes.

12 Q. And you have been here throughout the
13 course of this trial?

14 A. Almost all of it.

15 Q. Do you hold Nurse Practitioner Bartmus
16 responsible for your husband losing his leg?

17 A. I do.

18 Q. Do you hold Dr. Lasry responsible for your
19 husband losing his leg?

20 A. Absolutely.

21 MR. J. HYMANSON: I have no further
22 questions.

23 Thank you very much.

24 THE COURT: Mr. McBride, any questions for
25 this witness.

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MR. MC BRIDE: Thank you, Your Honor.

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CROSS-EXAMINATION OF CHARLENE MOORE

BY MR. MC BRIDE:

Q. Good afternoon, Miss Moore.

How are you today?

A. Tired.

Q. I hear you.

A. Just like everybody else here, I think.

Q. Now, Miss Moore, you and I met at your deposition when I took your deposition and your husband's deposition back in October of 2018, isn't that right?

A. We did.

Q. And at that time you answered all of my questions that I posed, as well as the questions from other counsel who were there, right?

A. Yes, I did.

Q. And have you had a chance to look at your deposition transcript before today, before testifying today?

A. I have.

Q. What was the last time that you looked at it?

A. I believe a couple days ago.

1 Q. And correct me if I'm wrong, but you have
2 not made any corrections to any of your testimony
3 before today, correct?

4 A. I haven't.

5 Q. Okay.

6 Now, Ms. Moore, you testified that you did
7 not go with your husband to the emergency room on
8 December 25th because you were busy preparing for
9 company to come to the house, is that right?

10 A. Yes, and Chris was available to take him.

11 Q. Right.

12 In fact, I think you told us in your
13 deposition that other than being informed by your
14 husband that things weren't right with his left leg,
15 you didn't really have any direct information about
16 what was going on with his leg, is that right?

17 A. No, I didn't get a lot of details from him,
18 and I just knew that he felt he needed to go, so that
19 was the thing to do.

20 Q. Right.

21 And so he just told you things didn't feel
22 right, and he needed to go to the ER, and you agreed
23 with that, right?

24 A. Well, yes.

25 It's his body.

1 He's got to know when he's got to go.

2 Q. Sure.

3 But you did not actually examine his leg on
4 December 25th at all to see if it looked any
5 different, isn't that right?

6 A. No, I didn't.

7 Q. And you never felt his leg to see if it was
8 cold to the touch, or anything like that, right?

9 A. No, I didn't even think of it.

10 Q. Okay.

11 But in fact on prior occasions -- Well, let
12 me ask you this:

13 You were there during Mr. Moore's
14 deposition, you sat in the room when I was asking
15 your husband questions, right?

16 A. Yes.

17 Q. Do you remember him saying that with his
18 prior occlusions that he had had, where he had been
19 hospitalized, and has the thrombolytic therapy, he
20 described the pain in his foot and does as so
21 excruciating it was like the pain was so severe and
22 cold it was like having your leg in a bucket full of
23 ice water, you remember him testifying to that?

24 A. Regarding which day?

25 Q. Back when he had his occlusions back in

1 2014 and 2015.

2 A. I don't remember it specifically, but I
3 know he had that kind of pain.

4 However, the main part of the pain he had
5 was always -- the worst of it was always after the
6 TPA when the cells start coming back to life, like
7 having --

8 Q. Ma'am, you are not a physician, correct?

9 A. Yeah.

10 Q. You don't have medical training, correct?

11 A. No.

12 Q. Okay.

13 I'm not asking for any -- I think that goes
14 beyond your qualifications as an expert.

15 I'm asking you just very quickly and
16 simply, do you remember him ever telling you that the
17 pain when he had those occlusions, that the pain upon
18 presentation to the emergency room in 2014, 2015 were
19 so severe and excruciating and cold it was like
20 having his leg in an ice bucket?

21 A. Do I remember him telling me that, or
22 remember him telling you that?

23 Q. Do you remember him testifying to that in
24 his deposition?

25 A. Specifically, no, but I only read his total

1 deposition once many, many months ago.

2 Q. Okay.

3 And the day that he went to -- December
4 25th, Christmas day, when he returned from that
5 visit, you said he brought some discharge papers,
6 right?

7 A. Yes.

8 Q. And you said you immediately looked at all
9 those, right?

10 A. Yes.

11 Q. And did your husband tell you that he was
12 told specifically to follow-up with his primary care
13 physician and his vascular surgeon, Dr. Wiencek?

14 A. Did he tell me that?

15 Q. Did he tell you that?

16 A. No, he did not.

17 That's not what he --

18 Q. So he didn't say anything about being
19 instructed to follow-up with his primary care
20 physician and Dr. Wiencek, true?

21 A. What he --

22 Q. Is that right, is that correct?

23 A. Am I suppose to say what he said, or only
24 supposed to answer what you asked me?

25 Q. Your counsel can follow up with more

1 specifics.

2 A. I wanted to make sure.

3 Ask it again.

4 Q. Let me ask it again.

5 You would agree that your husband did not
6 tell you that he was instructed by the emergency
7 department on December 25th to follow-up with his
8 primary care physician or Dr. Wiencek, true?

9 A. I would agree.

10 Q. All right.

11 The only thing that you were told by your
12 husband was, that he said that he was told he didn't
13 have a clot, and he could go home, right?

14 A. Now I can answer what he said to me?

15 Q. Well, if you have anything different to add
16 than that.

17 If it's something I've asked you that
18 question, if it's different than a yes or no --

19 A. Could you ask it again?

20 Q. Sure.

21 He told you that he had a clot -- Excuse
22 me.

23 He told you he didn't have a clot, and he
24 could go home, correct?

25 A. Correct.

1 Q. Okay.

2 And did he ever tell you that when he got
3 to the emergency room, and he was there for a few
4 hours, right?

5 A. He was there for a few hours.

6 Q. Did he ever tell you that no one, no one at
7 all in those entire few hours he was in the emergency
8 room, no one even examined his leg, did he ever tell
9 you that?

10 A. That day, or any other time?

11 Q. That day.

12 A. No.

13 Q. Did he tell you that on December 28th?

14 A. I don't remember.

15 Q. All right.

16 And, in fact, did he ever tell you that no
17 one had even bothered to take off his sock to look at
18 his leg?

19 A. Yes, he did.

20 Q. Did he tell you that on December 25?

21 A. No.

22 Q. Did he tell you that on December 28?

23 A. I don't know.

24 Q. Okay.

25 Was it sometimes after he had his leg

1 amputated?

2 A. No.

3 Q. All right.

4 Well, was it --

5 A. I don't think so.

6 Let me think about that.

7 Q. Sure.

8 A. Ask that again, please.

9 Q. Sure.

10 Did he tell you that no one took off his
11 sock in the emergency room on December 25 until after
12 his leg was amputated?

13 A. I believe it was after his leg was
14 amputated.

15 Q. All right.

16 And your son also likewise didn't tell you
17 that it was strange that they didn't examine his leg
18 in the emergency room on December 25th, did he ever
19 tell you that?

20 A. Not at the time.

21 Q. Okay.

22 Did he ever tell you that on December 28th,
23 Chris?

24 A. I would doubt it because it was kind of an
25 upsetting day, so I don't really remember.

1 Q. Okay.

2 Again, your son works at Summerlin Hospital
3 and has worked at Summerlin for several years, right?

4 A. He no longer works there.

5 He had worked there for several years.

6 Q. And he was working there at the time of
7 2016, December 25, 2016, right?

8 A. Yes, he was.

9 Q. And did he say -- or ever tell you that no
10 doctor, and I'm talking about Chris, did Chris ever
11 tell you that no doctor or nurse ever actually
12 examined your husband's foot on December 25?

13 A. Well, he was still in the hospital.

14 Q. On December 25?

15 A. No, not December 25.

16 I'm thinking of the 28th.

17 Q. Right.

18 And you would agree with me at the time
19 that your husband went back to the emergency room on
20 December 28th, no one informed the emergency room
21 physicians at that visit that no one had examined
22 your husband's leg on the December 25th, you would
23 agree with that?

24 A. It could be.

25 It's not something I would remember.

1 Q. Have you seen those records from December
2 28th?

3 We've shown them I think several times.

4 Do you recall seeing anywhere in those
5 records from December 28th where it's reported that
6 it was you or your husband said that no one examined
7 him or his leg on December 25?

8 A. I don't see -- Why would he tell him that?

9 Q. I'm just asking you, ma'am.

10 A. Not that I know of.

11 Q. Okay.

12 Would you agree with me from December 25
13 until December 27 his foot looked, and his leg
14 looked, essentially normal?

15 A. His foot and leg never looked normal.

16 Q. Well, you testified in your deposition
17 there was nothing that changed with his foot or leg
18 between December 25 and December 27th, you recall
19 that?

20 A. I didn't observe any changes, and he said
21 that his pain level was about the same.

22 Q. And he was taking his Oxycodone for pain he
23 had in his ankles and his back for many years has
24 been prescribed by the doctor at the Nevada
25 Comprehensive Pain Center, correct?

1 A. He took the medication mainly for pain in
2 his leg.

3 He also had some ankle issues, the ankle
4 was bothering him.

5 As far as the back was concerned, the back
6 wasn't chronic like the other things, it would come
7 and go, depending on if he moved around, so it wasn't
8 a constant on the back, it was --.

9 Q. All right.

10 Fair enough.

11 And between December 25 and December 27
12 your husband did not take any extra doses of
13 Oxycodone or more pain medication than he had been
14 prescribed to deal with any issue in his foot, is
15 that true?

16 A. Not that I'm aware of.

17 Q. He was able to walk around from December 25
18 to December 27 without any problems, right?

19 A. Yes.

20 Q. In fact, he went -- when he went to the
21 emergency room on December 25, he was able to walk to
22 the emergency room, do you remember that?

23 A. He could walk both on the 25th and 28th.

24 Q. Okay.

25 And then you said, up until the 28th he was

1 able to walk normally?

2 A. He never walked normally.

3 Q. Well, he was able to walk?

4 A. Normal for him.

5 Q. Right.

6 A. He used a cane.

7 He had foot pain a lot.

8 Q. Right.

9 And in fact on that subject you have seen
10 Dr. Wiencek's notes from August of 2016, do you
11 recall us showing those records?

12 A. I saw you showing some records.

13 I don't -- I don't recall.

14 Q. Do you recall where Dr. Wiencek had
15 recorded learning from your husband that he was using
16 a cane, as well as a wheelchair, part of the time?

17 A. I didn't read -- I've been at the back of
18 the courtroom.

19 My vision's not too good, so I couldn't
20 read the whole thing when it was put up anyway.

21 Q. You would agree with me now that your
22 husband in August of 2016, up through December of
23 2016, would occasionally use a cane, or a walker, or
24 a wheelchair, to get around in the casinos?

25 A. He didn't use a walker.

1 If we were going to go long distances, he
2 would use a wheelchair sometimes, not always, just
3 depended on if his legs were bothering him.

4 He didn't use the wheelchair ever in the
5 house.

6 Q. Right.

7 But it was a wheelchair that you and your
8 husband owned?

9 A. Yes.

10 Q. And that you would take to the casinos if
11 you felt you were going to be moving more than
12 normal, or longer distances?

13 A. Actually, the wheelchair was kept in the
14 car, so if we were out, and his legs were bothering
15 him, we could use it.

16 We didn't have it in the house.

17 Q. All right.

18 On the morning of December 28th, we talked
19 a little bit about that, and I think that is when
20 your husband first reported this severe pain he had
21 in his left foot, do you recall that?

22 A. He said his pain increased.

23 Q. Right.

24 In fact, in your deposition do you recall
25 saying that you thought that there was a problem with

1 his foot because it had ballooned overnight, do you
2 remember saying that?

3 A. Yes, over night it had gotten a lot more
4 swollen than normally.

5 Q. And you also testified at your deposition
6 that the pain was strong and a sudden onset, do you
7 recall testifying to that?

8 A. I don't recall the specific words, but that
9 makes sense.

10 Q. Okay.

11 And again, when you got to the ER on
12 December 28th, the doctors at that time took off his
13 sock in the emergency room, and that's when you
14 noticed it was discolored, correct?

15 A. Correct.

16 Q. Had he told you he had seen it before he
17 got to the emergency room, Mr. Moore tell you that he
18 had noticed the foot had become discolored?

19 A. I -- He had not told me that.

20 I doubt that he knew because we didn't take
21 the time to take a shower and everything before we
22 left, and his foot was always in a sock.

23 Q. But you don't recall him mention anything
24 about seeing -- or observing his toes or his feet
25 being blue or discolored?

1 A. No, no.

2 Although, if he had, he probably wouldn't
3 have said anything because he probably wouldn't want
4 to worry me.

5 Q. Did you ever go with your husband to see
6 Dr. Tran, his regular physician?

7 A. I did not go in the back room with him with
8 Dr. Tran.

9 Q. Did you see the records we've shown -- and
10 if we could, it's Joint Defendant's Exhibit 106 from
11 Dr. Tran, page five -- do you recall your husband
12 going to see Dr. Tran on November 1, 2016?

13 A. Specifically, no.

14 Q. All right.

15 But he went to go see him on a fairly
16 regular basis to get refills for his blood pressure
17 medication?

18 A. Mainly for his blood pressure.

19 Q. All right.

20 And if we could blow up the section right
21 to the examination where it says, cranial nerve,
22 extremities, there we go, blow that up for us, now
23 this is the record from Dr. Tran's office on November
24 1, 2016.

25 It says, that your husband's extremities

1 showed a full range of motion, no clubbing, no edema,
2 normal bilateral pulses, normal dorsalis pedis, and
3 posterior tibial pulses, peripheral pulses normal.

4 Now, since you never went back into the
5 examination room, you never observed Dr. Tran
6 actually taking the pulses on your husband's feet,
7 correct?

8 A. Right.

9 What date was this?

10 Q. November 1, 2016.

11 A. November 1, 2016?

12 Okay.

13 Q. Okay.

14 So you don't have any knowledge about the
15 actual examination Dr. Tran performed, other than
16 what is noted in these records, correct?

17 A. No, I don't.

18 Q. All right.

19 How about the visit that we talked about to
20 the Nevada Comprehensive Pain Center on December 21,
21 2016, did you go with your husband to that
22 appointment?

23 A. I don't remember, but I never went in the
24 back office there either.

25 Q. So you don't know what they did in terms of

1 an examination at that time?

2 A. No.

3 Q. Now, in terms of being -- I think you
4 testified something to the effect that you were the
5 one that your husband would have to look after his
6 prescriptions to make sure they were filled, is that
7 right, generally speaking?

8 Were you the one that would call the
9 physicians to get refills for those prescriptions, or
10 was that your husband?

11 A. I imagine there were times when he called,
12 but in general I would take care of his prescriptions
13 by logging in on the website and clicking a button
14 the for a refill.

15 Q. Do you remember if that's what you did for
16 Dr. Wiencek's office?

17 A. I -- That's just generally what I did.
18 Whether it was for Dr. Wiencek, or Dr.
19 Tran, or what prescription, I don't know.

20 Q. That's why I'm trying to find out if you
21 have a specific recollection of actually doing that
22 for Dr. Wiencek's office.

23 A. I remember I have done it.

24 If you are asking me if I actually called
25 them the 21st, I have no idea.

1 That is over four years ago.

2 Q. Okay.

3 What about there's been a notation that was
4 shown earlier from Dr. Wiencek's records where Dr.
5 Wiencek at his office received a call for a refill of
6 the Xarelto on December 27th, 2016.

7 Did you make that call?

8 A. I have no idea.

9 Q. Do you know if your husband made that call?

10 A. I don't know if I did it.

11 I don't know if he did it.

12 Somebody did.

13 Q. Okay.

14 A. I don't know if the pharmacy did it.

15 Q. Well, actually that is a good point.

16 I'd like to show you an exhibit, it's Joint
17 Exhibit 115, and I don't know if it's been formally
18 admitted, but I'd move for its admission.

19 THE COURT: It's not.

20 MR. MC BRIDE: Okay.

21 Move for its admission, the record from
22 Walgreen's.

23 THE COURT: Any objection?

24 MR. ARNTZ: No.

25 THE COURT: Joint Exhibit 115 is admitted.

1 You may inquire.

2 BY MR. MC BRIDE:

3 Q. I wanted to show you if I could, it's 115,
4 page 25, Walgreen's was the pharmacy you and your
5 husband had your prescriptions filled at, is that
6 correct?

7 A. At that time, yeah.

8 Q. All right.

9 I wanted to show you, if you look at --

10 MR. ARNTZ: I'd just like -- I think
11 counsel and I have discussed this already, but
12 there's some redactions in maybe all these exhibits,
13 so I have no objection to it being admitted. We
14 still have to redact?

15 MR. MC BRIDE: That's fine.

16 I thought this one had been, but for the
17 most part, but if there's anything else, we can
18 specifically address that before it goes back to the
19 jury.

20 THE COURT: Just to be clear, when we
21 talked about redactions, we can't have anything filed
22 in a case might have personal identifying information
23 such as a social security number and things like
24 that, so that is the things typically removed.

25 I'm not seeing anything as we look at it

1 right now, but we'll certainly look before the final
2 version goes back to the jury.

3 Go ahead.

4 MR. MC BRIDE: Thank you.

5 BY MR. MC BRIDE:

6 Q. I just wanted to draw your attention to
7 that group -- This is for the Xarelto Dr. Wiencek --
8 it's a little bit above that I think it references
9 that it was prescribed, and there were 30 doses that
10 were -- excuse me, 30 tablets issued beginning on
11 July 25, 2016.

12 Do you see that at the top?

13 A. Down here July 25?

14 Okay.

15 Q. Yes.

16 Then you have it go down, and it says,
17 November 23, 2016.

18 Do you see that?

19 A. Yes.

20 Q. And then if you look over to the far right,
21 it says that it was actually filled on November 27th,
22 2016.

23 Do you see that?

24 A. Okay.

25 Q. And then if I could show you page 26, the

1 next page, we'll look at -- do you have a
2 recollection of -- does this refresh your
3 recollection rather of maybe contacting Dr. Wiencek's
4 office for a refill of the Xarelto on December 27,
5 2016?

6 A. It has the date the 27th.

7 Q. Right.

8 Do you have a recollection of actually
9 getting that -- or calling Dr. Wiencek's office for
10 that prescription?

11 A. As I said before, no.

12 Q. All right.

13 Because if you look over at the far right
14 where it had the indication, where it was the date it
15 was filled, you would agree with me there's no date
16 with that Xarelto prescription that appears as for a
17 date that it was actually filled.

18 For reference, I'll give you -- or have you
19 look up above, you see that 12/21/2016, that was from
20 another medication that was prescribed on December
21 19th and filled on December 21, you see that?

22 A. Okay.

23 Q. And do you see anything that it was filled
24 with -- Xarelto was filled on the 27th?

25 A. No, but the pharmacy had to contact the

1 doctors, and sometimes it would take time.

2 Q. Right.

3 And in this particular --

4 A. It says, see fax right below it.

5 Q. Exactly.

6 It says, see fax?

7 A. Okay.

8 Q. But it says, it's also the amount that was
9 filled was only six pills, do you see that?

10 A. I know what is happening there.

11 Q. Okay.

12 A. There have been times where he goes to fill
13 his prescription, and they don't have the full amount
14 of tablets, so they give you -- they can't fill the
15 prescription now, so they give you a few tablets to
16 tied you over till they can give you the complete
17 prescription.

18 Q. But would you agree with me, there's no
19 indication that that was actually filled or given to
20 your husband on December 27th, do you agree with
21 that, because there's no indication it was filled or
22 sold on that day?

23 A. We don't always pick up prescriptions on
24 the exact day that it's filled because he still got
25 some at home he's taking.

1 Q. Okay.

2 But you remember the last one I showed you
3 that the prescription, the 30 day supply would have
4 run out on November 27th, 2016?

5 A. Yeah, I remember, but that doesn't mean he
6 didn't have pills left over then either.

7 Q. Okay.

8 And if that's the case, you just don't have
9 any knowledge about whether this prescription,
10 whether you called it into Dr. Wiencek, or if it
11 wasn't filled on December 27th, 2016?

12 A. I don't even know if we picked it up
13 because we took him to the emergency room on the
14 28th, and he didn't need medications there, they took
15 care of everything.

16 MR. MC BRIDE: Okay, ma'am.

17 Thank you.

18 That is all I the questions I have.

19 Thank you.

20 THE COURT: Re-cross?

21 MR. MC BRIDE: I think Mr. Weaver might
22 have something.

23 THE COURT: I am sorry.

24 I just assumed maybe you all shared
25 everything.

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Mr. Weaver, anything?
MR. WEAVER: Miss Bestick does.
Thank you, Your Honor.

- - - -

CROSS-EXAMINATION OF CHARLENE MOORE

BY MS. BESTICK:

Q. Good afternoon, Mrs. Moore.
My name is Alyssa Bestick.

I'm one of the attorneys represents the
Defendants here.

A. Hello.

Q. So I just want to clarify some things with
this record.

I think you just mentioned something about
how you sometimes go to the pharmacy, and they give
you just enough medication to get by until you get
the next refill, or until the prescription is
available, is that correct?

A. Not the next refill, but until they have
enough supply to fill the whole prescription.

Q. Okay.

But do you agree with me here it appears to
indicate that this is actually the number of refills
that your husband has been authorized?

A. Where?

1 THE COURT: Is there a way to highlight
2 that?

3 I'm unable to see it and getting confused
4 as well.

5 BY MS. BESTICK:

6 Q. Do you have an opinion one way or the
7 other?

8 A. Since I've never read these kind of records
9 before, I have no idea.

10 Q. Okay.

11 I just want to make sure I heard your
12 testimony correctly a moment ago.

13 I believe you testified that prior to
14 December 26th, 2016 you went to every visit with Dr.
15 Wiencek, is that correct?

16 A. I believe so.

17 Q. And no one other than Dr. Wiencek ever
18 assessed your husband's pulses in his leg or foot, is
19 that correct?

20 A. Not that I recall.

21 Q. I think moment ago you testified you went
22 to every one, is that correct?

23 A. That's my recollection.

24 Q. Do you recall testifying in your deposition
25 that if Mr. Moore could ever get his prosthetic

1 working, he would of course be able to do many more
2 things?

3 A. I'm sure I said that, yes.

4 Q. So you went with your husband when he went
5 to his appointment with Dr. Wiencek on August 28th,
6 2019?

7 A. I assume so.

8 Q. At that appointment did Dr. Wiencek make a
9 recommendation to your husband for a new prosthetic
10 limb company?

11 A. Yes, he did.

12 He sent a referral to -- He said he was
13 going to send a referral to a company he thought
14 would work better for Darell.

15 Q. And that visit was what, about six months
16 ago, correct?

17 A. Pretty much.

18 Q. Do you know if Mr. Moore has taken Dr.
19 Wiencek's recommendation for the new company?

20 A. We have not spoken to them as yet because
21 Darell is going to need physical therapy before he
22 can use the -- the leg again.

23 He has to start all over because he cannot
24 straighten his residual limb.

25 In other words, he cannot stand up

1 straight.

2 He's been in a chair too much.

3 Q. Did Dr. Wiencek say that?

4 A. No, I can see it.

5 Q. Okay.

6 So you didn't reach out to the company Dr.
7 Wiencek recommended?

8 A. Not as yet.

9 He wanted to have a program of physical
10 therapy and exercise because they won't -- unless you
11 can do certain things, they won't give you a
12 prosthetic.

13 Q. Okay.

14 But you haven't reached out to the
15 prosthetic company?

16 A. No.

17 Q. Have you reached out to the physical
18 therapy clinic?

19 A. No, I haven't as yet done that.

20 We've talked about doing it.

21 Q. Okay.

22 That was recommended as long as six months
23 ago, is that correct?

24 A. I wouldn't say it was a recommendation.

25 Dr. Wiencek asked Darell, hey, do you think

1 would you like to work on getting a leg again,
2 getting your prosthetic going, and Darell said, yes,
3 and he said, well, I know a company that might be
4 able to do a better job for you.

5 MS. BESTICK: That's all questions I have.
6 Thank you.

7 THE COURT: Thank you.
8 When you are ready.

9 MR. J. HYMANSON: Thank you, Your Honor.

10 - - - -

11 **REDIRECT EXAMINATION OF CHARLENE BESTICK**

12 BY MR. J. HYMANSON:

13 Q. Mrs. Moore, you were just asked a few
14 questions about your husband and his prosthetic,
15 correct?

16 A. Yes.

17 Q. Okay.

18 When did your husband first start trying to
19 use his prosthetic?

20 A. He tried as soon as possible as he got it,
21 but that was quite sometime after the amputation.

22 Q. So we're talking about in 2017?

23 A. Correct.

24 Q. Okay.

25 Why did it take so long for him to receive

1 a prosthetic in 2017?

2 A. After the amputation, he had physical
3 therapists coming and was working on getting
4 conditioned to be able to use the leg.

5 Q. Just real quick, I want to make sure I
6 understand what you're saying.

7 So the physical therapy your husband was
8 getting was specifically trying to prepare him for a
9 prosthetic?

10 A. Actually, I never felt like it was because
11 they were just making sure he could get around, use a
12 walker, the things they were doing, but I know he had
13 to have certain things in order to use a prosthetic.

14 Q. Okay.

15 We were talking about the delay in getting
16 the prosthetic for your husband.

17 What was that delay about?

18 A. As I said, he was doing the physical
19 therapy and was really doing pretty well.

20 She would make him go around and around the
21 counter on his walker, and go back and forth, and
22 they would do stretches and all that kind of thing.

23 However, I forget the exact date, but the
24 day before the Superbowl that year that week he had
25 been complaining, he had a visiting nurse come

1 because he couldn't get out yet, and he was telling
2 her that he had a lot of pain up in here.

3 Q. And just for the record, when you say, up
4 in here, you are indicating where was he feeling
5 pain?

6 A. Somewhere in the chest area.

7 And they talked about it, and she said,
8 well, maybe it's muscle strain.

9 What does it feel like?

10 And he said, yeah, it could be a muscle
11 strain.

12 So she called Dr. Tran's office, his
13 primary care physician, said, I think he got muscle
14 strain, can you give him a prescription?

15 So she gave him a prescription for a muscle
16 relaxer.

17 As it turned out, I don't know exact
18 timing, but as it turned out the night before we took
19 him to Spring Valley Hospital he was just like in a
20 ton of pain, and we go to Spring Valley in the
21 morning, and he had had at this time a pulmonary
22 embolism.

23 Q. What time period are we talking about?

24 A. We're talking about after his amputation.

25 Q. While he was going to physical therapy,

1 awaiting the prosthetic?

2 A. Correct.

3 Q. He had a pulmonary embolism?

4 A. He did.

5 Q. And he was hospitalized for that?

6 A. He was kept overnight for observation.

7 They didn't keep him any longer because
8 they said that they couldn't really do very much
9 because they need to have him right away for an
10 embolism, so to really change things, so he had to
11 wait it out until his body dissolved it.

12 Q. So how did that affect his preparation for
13 using the prosthetic?

14 A. So after he -- After the embolism, and he
15 was home a day or two, he got like really sick, I
16 believe he caught some kind of flu or virus in the
17 hospital. I could tell you nightmare stories about
18 that hospital, don't go there, and he was vomiting,
19 couldn't eat for days and days, it seemed like
20 forever. I think it was like maybe ten days or so.

21 We didn't take him to the doctor at that
22 time because he did still have the people they were
23 sending to the home, but he lost over 20 pounds, so
24 he was very, very weakened by that event, and he
25 couldn't do his physical therapy.

1 And then to compound the problem, he had
2 gotten weakened and didn't have the same strength, to
3 compound the problem.

4 He had been seeing a prosthetist -- We were
5 made to understand they made the liners for his
6 prosthetic to fit him exactly, and he made them right
7 here in Las Vegas, he did that.

8 Well, he moved out of state, and they
9 assigned another prosthetist to him, and this person
10 did not make the liners.

11 So we got his leg, they like essentially
12 put like a cast like thing of plaster paris on his
13 leg to see how to make it, and he told us, well, it
14 will be ready in a week to ten days.

15 We were still waiting for it two months
16 later.

17 So as the time went on, and he was already
18 losing strength, and all those things because of the
19 delay --

20 Q. When your husband tried to use the
21 prosthetic, was he able to use it?

22 A. No.

23 Q. Why not?

24 A. Several reasons.

25 Number one, it didn't fit.

1 Number two, it was very painful.

2 And when they delivered it to him, they
3 actually delivered it to him, the liner didn't fit,
4 so the prosthetist had him put his leg in without the
5 liner, and he was telling me, this hurts, this hurts.

6 So then he put some like pad things in
7 there, and that didn't help.

8 And then he cut a big hole in it, and that
9 didn't help.

10 And the prosthetic was -- actually was a
11 little tall, I think maybe they make them a little
12 tall, so as you wear it you work your way farther
13 down it, but he's like off balance, and he had a lot
14 of nerve pain.

15 Q. Just briefly, I've been asking a lot of
16 questions, you have been shown a few records about
17 your husband and Xarelto.

18 Did you ever know your husband not to take
19 Xarelto, once he was prescribed Xarelto?

20 A. No.

21 Q. And was your husband taking Xarelto when he
22 went to the hospital on December 25th?

23 A. He was.

24 He would get paranoid and tell me, get my
25 prescription, get my prescription because after the

1 first time he had to have the -- it might have been
2 the second time -- when Dr. Wiencek put him on
3 Xarelto because he was having problems with the graft
4 occluding, then he told him that he really needs
5 this.

6 So he might get some other medicine
7 sometimes, although he doesn't because he takes all
8 his medications, but the Xarelto was always top of
9 his list of importance.

10 MR. J. HYMANSON: Thank you, Miss Moore.
11 I have no further questions.

12 MR. MC BRIDE: No questions, Your Honor.

13 MR. Weaver: No questions, Your Honor.

14 MS. BESTICK: No questions.

15 THE COURT: Any questions by a show of
16 hands from the jurors, please?

17 IT looks like we have few questions from
18 the jurors.

19 Any other questions?

20 No.

21 Okay.

22 You want to come up?

23 (Thereupon, a discussion was had between
24 Court and counsel at sidebar.)

25

1 THE COURT: All right.

2 Ms. Moore, if you wouldn't mind, it's a
3 juror question, please do the best of your ability to
4 answer them, and then counsel will have an
5 opportunity to follow-up.

6 Okay?

7 THE WITNESS: Okay.

8 THE COURT: Ms. Moore, what were the
9 circumstances of your husband's three falls?

10 THE WITNESS: I believe the first fall was
11 when my daughter bought a house in Northern
12 California area, she was still stationed there, there
13 was some things needed to be done to the house, so
14 this was the only time that Darell had gone places
15 without me basically because of his amputation.

16 He would, because of his construction
17 knowledge, he would go up there.

18 My nephew was there redoing doors and that
19 kind of thing, and -- but he didn't have the
20 knowledge that Darell had, so Darell would get up in
21 the morning, and we would get him in the car, and
22 then he would drive to my daughter's house where my
23 nephew would meet him and take him out of the car.

24 So that he could answer any questions, or I
25 imagine he worked on some of the door knobs because

1 that's about level with him, with the chair. That
2 was the only time he went without me.

3 Apparently one of the mornings he decided
4 he needed gas, and he decided that well, he had his
5 crutches because we always -- when he went in the car
6 alone, we made sure to put them in the car.

7 So he thinks to himself, well, I can gas
8 up.

9 It didn't work out really well.

10 He fell on -- it was difficult for him to
11 stand long enough with one crutch and do the gas
12 thing for any length of time, and he fell on the
13 island there.

14 One other time was actually in the
15 restroom, his primary care physician ordered a --
16 what is the name of it?

17 Whatever they do, so you don't have to go
18 have a colonoscopy, so you have to do certain things
19 in the restroom to get them a sample.

20 And when he was trying to work back and
21 forth to get that done, he fell at that time in the
22 restroom.

23 The third time I don't -- that he was
24 speaking about, I don't really know.

25 He doesn't always the tell me.

1 I imagine if he fell in the middle of the
2 night by the bed and couldn't get himself up, he
3 would call me, so I don't know.

4 THE COURT: Does that complete your answer,
5 Ms. Moore?

6 THE WITNESS: I think so.

7 THE COURT: Okay.

8 May I first turn to the gentleman, see if
9 you have any questions?

10 MR. J. HYMANSON: No further questions,
11 Your Honor.

12 THE COURT: Mr. McBride.

13 MR. MC BRIDE: Just a couple.

14 - - - -

15 **RECROSS-EXAMINATION OF CHARLENE MOORE**

16 BY MR. MC BRIDE:

17 Q. Miss Moore, the first one you described
18 where he was filling up the gas tank, that is really
19 actually an episode he recounted in his deposition,
20 do you recall that?

21 A. Specifically, no, but he probably did.

22 Q. And I believe we'll find out I'm sure when
23 he takes the stand here in a little bit, but he said
24 that he didn't suffer any injuries as a result, he
25 was just embarrassed because of the fall, do you

1 remember that?

2 A. Yes.

3 Q. All right.

4 In fact, I didn't mean to cut you off.

5 Were you finished with your answer?

6 A. I think so.

7 Q. Okay.

8 And the other time that he was in the
9 restroom, that was a restroom of the doctor's office?

10 A. No, at home.

11 Q. At home?

12 A. He had to do all these things rather than
13 having a colonoscopy, to follow all these procedures.

14 Q. And he didn't have to go to the doctor or
15 hospital as a result of that fall, right?

16 A. No.

17 Sorry, I went too fast.

18 No, he did not.

19 He did not complain of injury from falling.

20 MR. MC BRIDE: Great.

21 That's all I have.

22 Thank you, ma'am.

23 THE COURT: Miss Bestick.

24 MS. BESTICK: No, Your Honor.

25 THE COURT: Mr. Hymanson, anything?

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MR. J. HYMANSON: Nothing further, Your Honor.

Thank you.

THE COURT: Miss Moore, you may retake your seat behind counsel table there.

Ladies and gentlemen, we're going to take a little over a ten-minute break.

Come back at 4:00.

(Jury admonished by the Court.)

THE COURT: We'll see you back here at 4.

(Jury excused from the courtroom.)

(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: Let's just go ahead, take a break.

We'll come back in.

I have a question about the redactions, that still needs to be done.

(Thereupon, a recess was had.)

1 (Thereupon, the following proceedings were
2 had out of the presence of the jury.):

3 THE COURT: First of all, the redactions
4 that were mentioned earlier, who is taking the point
5 on that?

6 I can't believe we're still sitting here
7 with documents haven't been redacted by now.

8 MR. MC BRIDE: I thought my office actually
9 did redact the vast majority of anything.

10 I think Breen pointed out a couple that
11 weren't, there was information wasn't redacted.

12 I haven't seen that.

13 THE COURT: I've been frustrated with Mr.
14 Arntz on occasions.

15 That doesn't answer my question.

16 Who is taking points to fix it?

17 MR. MC BRIDE: I'm happy to take the point
18 if he identifies what particular records he says work
19 for that.

20 THE COURT: Do we know for sure there are
21 some?

22 I didn't see anything on that document, but
23 it was kind of hard to read.

24 MR. ARNTZ: It just has at the top
25 insurance something or other.

1 I can't remember the phrase.

2 MR. MC BRIDE: Nothing underneath that?

3 THE COURT: I don't know.

4 Y'all have staff, so either you yourself or
5 you staff undertake to make sure what we've admitted
6 so far doesn't have anything in it that needs
7 redaction.

8 MR. ARNTZ: I'm afraid the St. Rose records
9 made Medicare references, so we'll have to go through
10 those.

11 THE COURT: Somebody got to do it.

12 Now we have a little bit more time, but all
13 my clerk needs is the redacted replacements.

14 MR. MC BRIDE: I'll send an e-mail to my
15 paralegal right now, I'll have her search through
16 that right now and do -- or submit any exhibits to
17 the Court.

18 THE COURT: Either replacements with
19 redactions, or as Mr. Aren't pointed out, if it's not
20 a problem, pull records out that have it, so it's not
21 an issue.

22 Either way, the solution is fine. It just
23 need to make sure my clerk has time to do it.

24 MR. MC BRIDE: Perfect.

25 THE COURT: Yes, we still need to settle

1 the jury instructions.

2 If we didn't have to do it at 11, it
3 wouldn't be the worst thing, they were going to be
4 tight anyway.

5 I wasn't able to complete the process
6 yesterday, and the case is not over, I'm still a
7 little under the weather, and there was a
8 miscommunication with my staff, and I didn't actually
9 get the documents until this morning.

10 Then of course I didn't look at them until
11 lunch because of the morning calendar.

12 So that is not the end of the world either.

13 The real question now becomes, the timing,
14 really just based on how long we think we're going to
15 be with Mr. Moore.

16 The only insight I have was in response to
17 the e-mail exchange also included information about
18 Dr. Wiencek.

19 Mr. Weaver committed to keeping his
20 questions to an hour, and I don't have an opinion on
21 what it should be, just want to know what it is.

22 I'm asking Plaintiff how long the direct
23 might take?

24 MR. ARNTZ: I could see the direct taking
25 an hour today and hour tomorrow.

1 THE COURT: So a couple hours?

2 MR. ARNTZ: A couple hours.

3 THE COURT: And then you got an hour.

4 And what do you need?

5 MR. MC BRIDE: Maybe 30 minutes.

6 I'm going to let Mr. Weaver go first, then
7 I'll bat clean-up.

8 THE COURT: All right.

9 That will complete that testimony to be
10 sure all the testimony is complete.

11 MR. ARNTZ: Is this courtroom available
12 tomorrow?

13 THE COURT: I don't know.

14 We'll find out.

15 I'll take care of it.

16 I would assume if they are not in trial
17 today, they wouldn't be in trial tomorrow, and the
18 only issue they had today was I'm guessing she has a
19 regular calendar tomorrow, so I don't know if she's
20 got any calendars -- It does indicate maybe there's a
21 trial setting tomorrow, so we'll have to find out.

22 There are plenty of other locations, it
23 just makes it that much more difficult.

24 But we'll figure it out.

25 We have time.

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MR. MC BRIDE: Thank you, Your Honor.

THE COURT: Okay.

Obviously if he's going to take the stand, we can't place that there because that will be his path of travel.

Anything else?

Yes, we'll review of the remainder of the afternoon tomorrow to resolve jury instructions.

I still will send you as I indicated the Court's tentative final draft incorporating the joint proposed, there was some additional Nurse Practitioner Bartmus counsel just to maybe flush out something, I also thought we did have some reference to some demonstratives in here, and there's instructions related to that nothing major in those regards, and obviously we have to settle loss of chance and the final version if we're going to go to the one the Plaintiffs are addressing and some of the stranger issues.

MR. MC BRIDE: Thank you.

THE COURT: Okay.

Anything else before we bring them back?

MR. ARNTZ: I don't think so.

THE COURT: Okay.

1 grandparents lived there.

2 And then we moved to San Jose and bounced
3 around, moved to Colorado from there for one year,
4 and back to 29 Palms, California, and then we ended
5 up in Banning, California.

6 Q. What was the reason for you bouncing around
7 so much?

8 A. My father was in construction, and if
9 things weren't going good in one area, sometimes we
10 had to go to another area.

11 We went to Denver was because my mother's
12 father was dying.

13 Q. Your mother's father was dying?

14 A. Yes.

15 So we went back there, so she could see him
16 because he had not seen him in years, so it was the
17 only opportunity we got to see him as I was a child.

18 And then after we got snowed in, and he was
19 in construction, we realized that work don't work to
20 well under six foot of snow outside, and we had to
21 leave and come back to California.

22 Q. What kind of longevity do you have in your
23 family?

24 A. Well, one side of my family, my mother's
25 father, which died I believe at about 69 years old,

1 he was born approximately 1890, so we just went back
2 there in '59, 1959.

3 Q. Okay.

4 A. My grandmother, she lived to about 82 years
5 old on that side.

6 And then my father's side, my grandmother
7 lived to be 89.

8 So and I can't really tell you exactly how
9 old my father's parents really were because the names
10 got changed over the years, and my grandmother took
11 it to her death bed on who may have been the real
12 father of my father, so --

13 Q. So your last name is Moore, but what was
14 your dad's last name?

15 A. My dad's last name was Smith.

16 My birth certificate says, Smith, but his
17 birth certificate, my father's, said Golden.

18 He took the name Smith from his stepfather,
19 and I took the name Moore from my stepfather.

20 Q. So we were talking a couple days ago you
21 were telling me about when you started working as a
22 kid.

23 How old were you?

24 A. Well, I worked off and on a little bit
25 helping out my dad since I was about nine years old,

1 but the first summer I actually worked a full summer
2 I was 13.

3 I helped my dad build a block savings and
4 loan building during that summer.

5 Then when I was approximately 14 years old,
6 I went to work in Palm Springs at a pancake house and
7 worked there for about a year-and-a-half.

8 Then we wound up moving for a while.

9 Q. So what brought you back to Paso Robles
10 from Palm Springs where you were at?

11 A. We were living in Banning at the time, and
12 I was working at Palm Springs and stuff, but we moved
13 because of business, and my father -- First we moved
14 to Delone and then McFarland for a while in
15 California, and then we ended up in Paso Robles, got
16 -- he got a job, so a full circle back.

17 Q. So this sort of rollercoaster of work, was
18 that because of the inconsistencies of construction
19 and where the work is?

20 A. Yes.

21 Q. Was that sort of a theme has gone through
22 your life?

23 A. Quite a bit.

24 Q. When you moved back to Paso Robles, how old
25 were you?

1 A. We moved back on New Years day 1967, so I
2 would have been 17.

3 Q. Okay.

4 And tell me how you met Charlene.

5 A. Well, the very first time I ever met her
6 she came over to say hello, and I was washing my car,
7 and as she talked to me I left my keys in the trunk
8 and shut the trunk.

9 So she was very small, she's not very much
10 bigger now, but she was pretty small, and back in
11 those days you could take the back seat out, and it
12 had a little porthole I asked her to go through to
13 get my keys, so I just met her, and then I'm
14 embarrassed because I shut me keys in the car, and
15 then I got a stranger going into my trunk.

16 Q. Where did she live?

17 A. She lived next door.

18 Q. And do you remember a story you told me
19 about how you introduced her to the class the first
20 day back?

21 A. Yeah, the first day in school I went in to
22 biology, and the teacher introduced me as the new
23 student, and she was sitting pretty close to the
24 front row, and we had this kind of a crazy biology
25 teacher, but she embarrassed me totally by telling

1 all the girls they should look at me, does this look
2 like someone they might be interested in, so I was
3 totally embarrassed.

4 Q. When did you start dating?

5 A. We started dating when she was probably 15,
6 and we dated for a few months, and then we separated.
7 She said she didn't think we should stay together
8 right then.

9 So I kind of moved on after being
10 heartbroken for a couple months, and all of a sudden
11 there is a knock at the door.

12 I go to the door, and could you see my wife
13 with long hair, usually longer than that back in
14 those days, well back in those days you had to almost
15 light a match to get the oven started, so she got to
16 talking and whatever in her house, and turned on the
17 gas, and by the time she lit the match it exploded
18 back on to her, and she was standing in my door with
19 hair not much longer than her chin, so after that we
20 got back together, she asked, how I looked?

21 She was all crying, nervous, and I said,
22 you look fine, and we have went back together.

23 Q. So when you moved to Paso Robles, what
24 grade were you in?

25 A. When we moved back to Paso Robles, I was a

1 sophomore.

2 Q. Okay.

3 Were you a 17 year old sophomore?

4 A. Well, actually I said I was 17.

5 At the end of '67 I would have been 17, so
6 I was 16, just got my driver's license, correct, I
7 was 16.

8 Q. Okay.

9 And so how long did you guys date before
10 you got married?

11 A. We dated a little over a year.

12 Q. Why did you get married?

13 A. Well, to a certain extent her and I decided
14 we would like to get married, and -- but my wife did
15 end up getting pregnant with my first son.

16 Q. And when you went to your parents to tell
17 them you were going to get married, what was their
18 reaction, both yours and hers?

19 A. They all said, no.

20 And I was arguing with them about she's
21 pregnant, I want to get married, I want to take care
22 of her, and they are saying, you are too young.

23 And finally Charlene stood up and told them
24 that regardless of what they say, we're probably
25 going to do what we want to do, so you might as well

1 let us be married.

2 So our mothers said, yes, I think you
3 should get married.

4 Our father's still objected.

5 But the marriage went on.

6 Q. Now, at this time were you working with
7 your dad?

8 A. I was working in a restaurant as a bus boy,
9 and mostly on weekends and stuff.

10 So I had some spending money, and my
11 father, he told me the reason why he objected to me
12 getting married was because he would have to support
13 me, that I couldn't make a living without him.

14 I told him that I know I can.

15 So we went ahead and got married, and I'd
16 started working full-time as a bus boy from 6 to 2, I
17 worked as a chef's helper early afternoon, and then I
18 worked as a dishwasher until the place closed at 11,
19 usually taking me until 1.

20 So I had to come to work about 5 a.m. in
21 the morning, between 5 and 5:30 in the morning, and I
22 didn't get out of the place until 12:30, 1:00 at
23 night.

24 And I remember my first big paycheck I had
25 320 hours in in one month, I got paid once a month,

1 and my net was 305, so I made 95 cents an hour.

2 Q. Okay.

3 A. But we made it.

4 Q. You weren't working for your dad anymore
5 after you got married, but you still still saw him?

6 A. I would see him several times during the
7 week, and on occasion probably in the year-and-a-half
8 that I stayed at the restaurant he asked me back at
9 least a half dozen times, so I would go back to work
10 for him.

11 But the first couple, three times he didn't
12 say that he apologized for his comments.

13 When finally around the fifth or sixth
14 time, somewhere in there, he apologized, said I
15 understand you can make a living, but you should be
16 working in construction, that's your field, so I
17 finally gave in and went back to work for him.

18 Q. All right.

19 So let's talk about what you did with your
20 father building your business.

21 When -- or what kind of construction did
22 you do?

23 A. Well, we held several licenses.

24 To begin with, we did concrete, block work,
25 and we had those two licenses, which we were doing a

1 lot of piecework for different contractors doing
2 foundations and fireplaces and stuff.

3 And we ran into a problem of we would do
4 the foundation, and all of a sudden they would be --
5 almost move people in, and we haven't even been paid
6 for the concrete work.

7 Well, that went on for a year,
8 year-and-a-half with them, and I finally told my dad,
9 somethings got to change here, I don't like waiting
10 on our money so long.

11 So he went to get his own license for
12 general construction, class B, which is so you can
13 build housing, and we went down and started building
14 houses.

15 The first thing I noticed when we went to
16 the bank, there was a five-draw system on most
17 contracts that you get from the bank to build a spec
18 house.

19 On the very first line it says, the minute
20 your foundation is in you are entitled to 20 percent
21 of your money.

22 So here we are waiting 60, 90 days for our
23 money, and it stated right there on the first page
24 the money was delivered to the contractor practically
25 the following day after the concrete was poured.

1 Q. So that changed your business model a
2 little bit?

3 A. It changed our business model a little bit,
4 went strictly to building our own houses and
5 financing them through the bank.

6 We had to buy our own property, and then
7 they would finance the construction.

8 Q. And this was in what, the late of 80s, or
9 '70's?

10 A. This was actually towards the end of, 72,
11 when we first got our license.

12 Q. And how did your business do?

13 A. The business did really well.

14 I come from a family that unfortunately
15 doesn't understand banking real well, and my dad
16 cared more about working hard than he did how much he
17 could bring home.

18 So we did really well, but yet we didn't
19 utilize the money maybe the way we should have, so by
20 1978 when I was 27 years old I went to my father and
21 I said, I would like to sell everything out, try to
22 divide the money up between us equally, and -- but
23 take so much money back into the business and
24 incorporate and start over again.

25 My father felt like that was quitting,

1 which it wasn't asking him to quit, but anyway long
2 story short he said, no, so we continued on building.

3 And then when interest hit 20, 22 percent
4 in our rural area, I think it hit 20 percent
5 everywhere, our area it went to 22, we lost
6 everything, we had several homes, some apartments
7 that we built up, and in a matter of just seven
8 years, and we couldn't pay the bank back right away,
9 and we had some of our own money, we wouldn't
10 necessarily borrow \$50,000 to build a house. If we
11 could put 20 of our own in, we only tried to finance
12 30 or 35 thousand in the beginning, so we had quite
13 an investment between the land and our own cash.

14 We were putting up about 350 the bank was
15 putting up about 50, and when times got hard, nobody
16 could buy a home or anything from us at 22 percent,
17 we had to forget about our land, forget about the
18 money we had in it, and drop the price to nothing.

19 Well, we ended up with about five or six
20 places that we couldn't can make the payment on for
21 over 16 months.

22 We finally sold the one house I was
23 actually building for my wife and I, and after escrow
24 sent a check to us for \$84,000, we took that to the
25 banker, told them, take out what I owe you, and give

1 me a check for what is left.

2 He come back and said, Darell, I'm sorry,
3 he said that, it's hurting me to look at this myself,
4 but he says, here's your check back.

5 Just paying the interest payments for 16 to
6 18 months on all that property that we owned, I got a
7 check back for \$3,000 out of 84,000.

8 Q. Was this at a time when contractors were
9 routinely going bankrupt because of the high interest
10 rates and the bad --

11 A. Almost 90 percent or more I would say -- As
12 a matter of fact, that was getting us started to
13 paying off just the interest on our back payments.

14 When we finally got around to selling the
15 places at a discount price, we paid the bank off, and
16 our banker told us that out of 140 contractors that
17 that bank dealt with, we are the third person only
18 that has paid off all their loans.

19 Q. Who was the last person you paid off?

20 A. The last person I paid off was the lumber
21 company. We owed about \$44,000 to the lumbar
22 company.

23 We first got the banks an everything paid
24 off, and then we went to the lumber company and told
25 them we're doing everything we can you will get every

1 dime we make, and for two years straight my father
2 and I were living off of Charlene and my mother's and
3 my mother-in-law's children's clothing store to hold
4 us and my father, and I gave all our money to the
5 lumber company.

6 Q. During that period of time, was there ever
7 a time -- or a debt you had that you didn't payoff?

8 A. Never.

9 Q. What did you do after, did your company
10 fold up, or what happened?

11 A. No, we, because of the struggling interest
12 rate at the time, we went back to doing concrete
13 block work, smaller jobs, whatever it took to make a
14 weekly living out of it, and we had done a couple of
15 bigger jobs, but my father was old school, old school
16 meaning, he believed in a handshake.

17 Handshakes when you go to Court or anything
18 don't pay the bills, you have to have paperwork.

19 I remember telling him that, and I loved
20 working with him, hardest working man you've ever
21 seen, but I told him, you get us in trouble, you will
22 do not do the change orders like you are supposed to
23 do, if you get us into one more year where we lose
24 all the profits for the year because of lack of
25 change orders, we didn't want to go to Court for

1 these, we just flat took the loss, but when you are
2 living on 15 to \$20,000 a year, you can't afford to
3 take a \$30,000 cut.

4 One or two jobs had overages, my father
5 wouldn't care about the paperwork, and just have to
6 it -- and I told him, you do this one more time to
7 me, and I'm going to be looking for another job.

8 And that is basically how it ended up I
9 starting managing poker rooms.

10 Q. Let's talked about card rooms.

11 Are we talking about legal card rooms in
12 California?

13 A. Legal card rooms in California, you can
14 only play poker.

15 Q. Okay.

16 A. There's no slot machines or anything like
17 that, just strictly 7-Card Stud, Hold 'Em-type games.

18 Q. How did you get into that?

19 A. Well, my wife, she ended up -- I always
20 played cards, and I was pretty good at it, but my
21 wife heard about the card room opened up, so we went
22 down to see it, and we walked in and played a little
23 bit the first night.

24 About the second or third time we went in
25 there she was asked if she would like to be a dealer.

1 So this lady took her over to the side to
2 see if she could shuffle properly without exposing
3 the cards, and lo and behold the next day she was a
4 dealer.

5 About a week later they asked me.

6 So I showed them I was capable of doing it
7 because I knew what my wife went through, I already
8 practiced, and I became a card dealer.

9 Probably within three weeks to a month the
10 manager was given the place, that owned the place, he
11 also worked in the oil field, so he spent most of his
12 time doing his oil field work, and the manager was
13 allowing her to have too much credit, she was a very
14 bad player, losing, leaving a lot of money on the
15 table, and the business had really built up because
16 the manager was giving away so much money that
17 everybody in two cities would come to our card room
18 to win.

19 But anyway, the gentleman asked me, he
20 said, what happened to my whole bank one night, and I
21 told him what had happened, her husband lost \$1,000,
22 she lost about \$500, there goes your thousand dollar
23 bank.

24 So he said, well, this can't keep up.

25 He said, how would you like to be my

1 manager?

2 I said, I can do that.

3 So he kept his old manager on as a dealer
4 but made me manager.

5 And it wasn't a month or two after that he
6 said, how would you like to become a partner?

7 So I became a partner in the first -- but
8 people move around, they get tired of losing at one
9 casino, they try another casino.

10 Living here in Vegas I'm sure everybody
11 feels that way, has done that.

12 So three or four times I moved around to
13 became manager in different card casinos, so --

14 Q. All right.

15 I'm going to come back to that in a second.

16 But let's talk about your family's history
17 with vascular disease.

18 Let me know a little bit about that.

19 A. That is one of the reasons we went to
20 Denver, was my grandfather had large probably three
21 or four inch opening sores on his legs, and he would
22 wrap them with just old bed sheets and stuff because
23 they didn't have the same type bandages we have
24 today.

25 And I remember as a nine year old I was

1 sitting there watching him wrap his legs every night
2 because he would.

3 And my aunt, a couple of my aunts, had
4 vascular disease, had varicose veins.

5 One of my aunts actually had holes opened
6 up in her leg similar to mine. Luckily hers closed
7 up easier.

8 But so I had several people in the family.

9 Q. When did you first start feeling as though
10 you were having any kind of vascular disease?

11 A. I was between 19 and 20 years old, I
12 noticed what looked like my veins were showing an
13 awful lot, so I went to a bigger city, to San Luis
14 Obispo, And talked to a vascular specialist up there.

15 He says, yes, I can see that in the future
16 years you're going to have some trouble with your
17 veins.

18 Q. Were you smoking at that time?

19 A. I was not smoking then.

20 Q. Did he talk to you about anything if you
21 were smoking?

22 A. In those days they never said a word about
23 it.

24 As a matter of fact, the DP Charlene and I
25 had after getting married, he actually would examine

1 you with a cigarette in his mouth.

2 They didn't talk about cigarettes the same
3 as they do today.

4 Q. Right.

5 So eventually you ended up having some
6 problems with your leg causes you to retire, correct?

7 A. Yes.

8 Q. So tell me about when you first started
9 having issues with your legs, and how that developed,
10 and help me move around a little bit in time.

11 A. In approximately 1980 we had owned a door
12 shop, which I haven't told you before, we bought a
13 door shop, outdoors for houses, front doors,
14 interior, and I went out into the yard, and they
15 there was steel laying out in the back of the yard
16 area, and I stepped on a piece of angle iron that
17 flipped up and hit the high part of my ankle.

18 Probably three or four days went by, it was
19 kind of black and blue, but after about a week a hole
20 opened up, this is in 1980. So I wrapped it, kept it
21 clean.

22 This went on for maybe a month or so, I
23 kept re-wrapping it and cleaning it, and I noticed it
24 wasn't closing up, so I started going to the doctor,
25 which sent me to a vascular specialist.

1 I ended up probably in a two or three year
2 period seeing at least five in our area.

3 Nobody could show me how to wrap my legs or
4 take care of them where they would close up.

5 Q. Did they tell you why you're having trouble
6 with the wound that wouldn't heal?

7 A. None of them exactly explained to me then
8 what was going on.

9 I went to Loma Linda Hospital And College,
10 and they showed me how to wrap an Unna boot they
11 called it around my leg.

12 Q. When -- What year was this?

13 A. This was probably in early '82 maybe, a
14 couple years after it began.

15 Q. So you are around 32, 33?

16 A. Yes.

17 Q. And was it a recurring wound, keep healing
18 up or --

19 A. Sometimes.

20 Q. Was it the same wound?

21 A. Sometimes it would get as big as half
22 dollar, and then go down to a dime, and go back up to
23 a quarter, sometimes it would almost close
24 completely, and I'm talking about my left leg, and
25 then in another area I might have two open up, small

1 ones that would get larger.

2 Q. Is this without any if kind of injury to
3 you, you would just end up with wounds?

4 A. I would just end up with wounds, and it was
5 explained to me a little bit when it first happened
6 that it was like stagnant blood causing the leg to
7 rot from the inside to the outside.

8 And that is why it came from the inside to
9 the outside and opened up a hole.

10 Q. Were you --

11 A. That's all I understood about that.

12 Q. Were you ever told when you were going to
13 the wound specialist in Loma Linda that your smoking
14 was contributing to these wounds?

15 A. They never said anything to me at the time
16 about smoking.

17 All they suggested was that if I had
18 insurance, they would put me in the hospital, elevate
19 my legs, give me a jacuzzi bath every day, but being
20 there's already been a couple years that I couldn't
21 get these to close, I couldn't see where just a
22 jacuzzi and elevating my legs was going to change it
23 that much, besides I had a family to support, and I
24 had no idea that maybe I could have got on Medicaid
25 or something, but I already had the construction

1 company, and I had to keep working.

2 Q. Right.

3 So when you started using the Unna boot --
4 I that right, Unna?

5 A. Unna.

6 Q. He do you spell that?

7 A. U-n-n-a.

8 Q. Okay.

9 And what exactly did the Unna boot do?

10 A. The Unna boot, you use antibiotics or
11 Cortisone and put it on the opening, and then they
12 have a zync oxide gauze bandage that is soaked in
13 zync oxide, you wrap that around your foot, putting
14 more pressure as you go up around your ankle, all the
15 way to just below your calf -- I mean, above your
16 calf, below your knee, and then you wrap it with an
17 elastic strap band, and it has glue on it, tapes it
18 to itself as you go up the leg and creates a mini
19 cast, it's about an eighth inch thick.

20 The only way to get that off is to cut it
21 off.

22 Q. And would you put this on every morning?

23 A. I put it on every day.

24 Q. A new one every day?

25 A. I would have to say, I put one on a couple,

1 three times a week.

2 They said it would be good if you did it
3 every day.

4 I found out every day wasn't making any
5 difference, and we're talking about early '80s, and
6 the bandages for wrapping was 30 bucks total cost.

7 So \$30 a day is more than I was making.

8 Q. All right. So --

9 A. I would like to say that, approximately --
10 I heard something somebody testified about
11 infections, and in 31 years of wrapping my legs
12 before my first operation I never had any disease
13 created or any infections.

14 I finally after 31 years had one, I thought
15 I had, and they treated it, but it really wasn't
16 infected, but for 31 years my son's in infection
17 control and says, it's almost unheard of for somebody
18 to be able to wrap wounds for 31 years and never have
19 an infection.

20 He said, dad, you took care of yourself.

21 Q. Let's get back to the card room.

22 How long did you work as a manager or in
23 some capacity in card rooms?

24 A. The first card room I went into I believe
25 was around '89, and I had to retire because of my leg

1 swelling too big in the end of 2005.

2 So almost 16 years.

3 Q. So explain this for me, what kind of
4 swelling were you getting, and did you ever find out
5 why?

6 If you can, explain the process.

7 A. My feet and legs pretty much were always
8 swollen, but finally after we've had games go 18
9 hours, 32 hours, sometimes they went two hours, but
10 you're on your feet a lot, and the older I got, all
11 of a sudden one day I'm standing there in the card
12 room, and about midnight, and my legs were tingling a
13 little bit, so I grabbed my pant leg, I'm wearing
14 blue jeans, I couldn't even pinch a little bit of
15 blue jean off my leg, it was swollen so much, just
16 filling the whole thing up.

17 Q. Did a doctor ever tell you why they were
18 swelling so much?

19 A. I was never told why they were swelling so
20 much, except by then I knew I was having more of a
21 vascular problem, but in the beginning he told me to
22 elevate my feet.

23 I tried elevating the feet, but I was
24 sitting there realizing that elevating the feet --
25 and thinking I was helping myself some, that

1 elevating my feet after about three or four months
2 started hurting, and I found myself I had to put a
3 chair and lower my feet, and then some of the
4 irritation and pain would go away, so it was more
5 important to lower my feet because of what was
6 happening to me.

7 Q. You ended up -- When did you end up moving
8 to Las Vegas?

9 A. We moved to Las Vegas in 2010.

10 We bought the house that we were living in
11 in the end 2008, but we didn't get over here for a
12 year-and-a-half because I had construction I was
13 doing on a commercial building and an apartment we
14 had in Paso Robles, I had to get it ready to rent and
15 lease out with hopefully no more problems to us
16 before we could come over here.

17 Q. Okay.

18 And when you moved here, was any family
19 living here then?

20 A. My son had already moved over here.

21 Q. Chris, the one who testified?

22 A. Christopher.

23 Christopher already moved over here, and
24 the first thing I think he said he was doing was
25 dealing a little bit of cards because he dealt for me

1 in a couple of the card rooms.

2 He came over here and dealt a little bit of
3 cards, he taught English, and then he got a job at
4 the health department.

5 Q. All right.

6 So at the time you moved to Las Vegas did
7 you have any businesses you were finishing up, or
8 just the card rooms?

9 A. Well, I finally left the card rooms and
10 stuff, and other than doing my own work on my
11 rentals, I was just retired.

12 Q. And --

13 A. But over almost half of my income is
14 because of one of my rentals.

15 Q. So let's talk about that.

16 What rentals do you have at the time you
17 moved to Las Vegas?

18 A. When I moved to Las Vegas, I had a
19 commercial building and --

20 Q. Where was it?

21 A. It was in the downtown area, so it was a
22 retail business.

23 Q. Downtown area of Paso Robles?

24 A. Paso Robles, yes.

25 And the upstairs was a two-bedroom

1 apartment for my wife and I.

2 And we bought that back in 2002, and I had
3 remodeled two or three times to upgrade everything to
4 be able to be prepared to try to move away from it
5 and not have a lot of problems with it.

6 But that same building I had remodeled when
7 we first moved to Paso Robles in '67 for another man.

8 So I was involved with two remodels on that
9 before we ever bought it.

10 Q. And did you end up having to do additional
11 construction, or remodeling, or repairs, to that
12 rental?

13 A. Yes.

14 Q. How long -- Do you still own that rental?

15 A. I still own it.

16 Q. And until -- When did you continue doing
17 the repairs yourself?

18 A. Up until I lost my leg.

19 Q. Okay.

20 During this time before you moved to Las
21 Vegas, did you have a -- like a treating physician,
22 somebody who regularly treated you for your vascular
23 issues, or were you just doing it yourself?

24 A. I was doing most of it before I came to Las
25 Vegas on my own, most of it.

1 I would see my general practitioner for
2 medicine, blood pressure medicine, and stuff like
3 that, but I had not been treated for my leg in a long
4 time.

5 Q. And were you able to essentially keep all
6 the wounds at bay, so they weren't getting worse?

7 A. I kept them at bay for the most part, and
8 then finally I thought I was probably -- This was
9 early 2012, I thought I might have an infection in
10 it, so I went --

11 Q. I'm not ready to go into that yet.

12 A. Okay.

13 Q. You're a little bit ahead of me.

14 So when you moved here in 2005, before you
15 ended up going to Dr. Simon, right?

16 A. Yes.

17 Q. Before you went to Dr. Simon, so in between
18 2005 and 2001, were you seeing anybody during that
19 time for any vascular issues?

20 A. Well, I always talked to people, but
21 basically I just had my general practitioner was
22 watching me with the blood pressure and everything,
23 so I had not had anybody that was actually taking
24 care of it.

25 Q. Was this general practitioner here, or in

1 Paso Robles?

2 A. Paso Robles.

3 Q. So I guess you would continue going down to
4 Paso Robles frequently?

5 A. I had gone several times to Dr. Reeves in
6 Paso Robles.

7 MR. ARNTZ: Your Honor, could we approach?

8 THE COURT: Yes.

9 (Thereupon, a discussion was had between
10 Court and counsel at sidebar.)

11 THE COURT: All right.

12 Mr. Moore, and for the jurors' information,
13 the reason Mr. Arntz asked to approach is because he
14 prefers this would be a good breaking point in Mr.
15 Moore's testimony for today.

16 I do need to inform the jurors that
17 obviously I should let you know Mr. Moore is the last
18 witness in this trial.

19 However, it will take probably the bulk of
20 tomorrow to complete his testimony once we complete
21 with counsel's cross-examination, final examination
22 of Mr. Moore's counsel, and then of course should
23 there be any jurors questions, which we all
24 anticipate from you.

25 For that reason, we will not be able to

1 begin reading the instructions to you, or the closing
2 arguments, to you tomorrow, as we had sincerely hoped
3 we would be able to do.

4 That means that the trial in this matter
5 will now complete on Wednesday, not Tuesday.

6 It was my sincerest hope, and I know it was
7 counsels and the parties, we would not have to give
8 that you information, we had hoped to tell you on
9 Friday with certainty when the trial would complete
10 this week because we understand very much the
11 difficulty that you face in terms of these moving
12 target deadlines, but at least I can assure you that
13 when we complete testimony tomorrow, and then we
14 finalize any last matters in terms of the exhibits
15 and everything for you, that will commence on
16 Wednesday with just instructions and just closings,
17 with time for you to deliberate on Wednesday.

18 I do sincerely apologies again on behalf of
19 the Court and counsel and the parties that we were
20 incorrect indicating to you we would be done on
21 Tuesday.

22 We thank you very much for your patience of
23 course with this process.

24 It's so very important we complete this
25 process after all the time we have obviously spent

1 together up to this point to insure all the testimony
2 is received and counsel have the opportunity at the
3 end to recapture or recount the information to you in
4 conjunction with the instructions on the law to help
5 you best do your jobs.

6 So we thank you for your patience very much
7 so.

8 We will return to this courtroom tomorrow
9 afternoon.

10 Judge Johnson, who is normally in this
11 courtroom, is going to switch locations with us for
12 her afternoon obligations, so we will be back in here
13 tomorrow.

14 If anything should change in that regard,
15 of course you will meet out here in front of 15-B,
16 we'll let you know then, but we do anticipate getting
17 back in here tomorrow, and then return to the regular
18 Courtroom 15-B on Wednesday.

19 (Jury now admonished by the Court.)

20 THE COURT: We'll see you tomorrow at 1:30.

21 We're in recess for the day.

22 (Jury excused from the courtroom.)

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(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: I want to make sure nobody had any issues.

Again, we'll be in here tomorrow.

We'll finish with settling jury instructions.

If my clerk has not already, we'll vacate the 11:00 setting, return here at 1:30 for the completion of the testimony.

If we do not complete -- If we do not have time to settle jury instructions, I'm not quite sure what we'll do about it, but we'll figure it out.

In the meantime, again sometimes in the morning I anticipate receiving an e-mail from you with my JEA with the Court's tentative final things.

Anything else we need to address?

MR. MC BRIDE: No, Your Honor.

(Proceedings concluded.)

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REPORTER'S CERTIFICATE

I, Bill Nelson, a Certified Court Reporter
in and for the State of Nevada, hereby certify that
pursuant to NRS 2398.030 I have not included the
Social Security number of any person within this
document.

I further Certify that I am not a relative
or employee of any party involved in said action, not
a person financially interested in said action.

 /s/ Bill Nelson

Bill Nelson, RMR, CCR 191

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