

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF BRUCE G. FAGEL & ASSOCIATES, A California Corporation; Petitioners,</p> <p>v.</p> <p>THE EIGHTH JUDICIAL DISTRICT COURT, in and for the County of Clark, State of Nevada, and THE HONORABLE JERRY A. WIESE II, District Judge; Respondents,</p> <p>And</p> <p>DARIA HARPER, an individual; and DANIEL WININGER, and individual; Real Parties in Interest.</p>	<p>Case No.</p> <p>Electronically Filed Aug 24 2021 10:25 a.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p>District Court No. A-20-814541-C Dept. No. 30</p>
---	---

PETITION FOR WRIT OF PROHIBITION
From the Eighth Judicial District Court
The Honorable Jerry A. Wiese II, District Judge

PETITIONER'S APPENDIX
VOLUME 2 OF 3

RILEY A. CLAYTON, ESQ.
Nevada Bar No. 005260
Email: rclayton@lawhjc.com
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, Nevada 89128
Telephone: (702) 316-4111
Attorneys for Petitioners

PETITIONER'S APPENDIX

Exhibit	Bates Nos
Amended Complaint and Summons, Proof of Service, IAFD	PA00001-39, Vol. I
Motion to Dismiss and Notice of Hearing	PA00040-109, Vol. I
Notice of Entry of Order	PA00565-582, Vol. III
Opposition to Motion to Dismiss	PA00110, Vol. I – PA00534, Vol. III
Order	PA00551-564, Vol. III
Reply to Opposition	PA00535-550, Vol. III

CERTIFICATE OF SERVICE BY ELECTRONIC SERVICE

I hereby certify that I am an employee of Hall Jaffe & Clayton, and that on August 23, 2021, I caused to be served a true and correct copy of the foregoing **Petitioner's Appendix for Writ of Prohibition** by way of electronic service via the Court's e-service program.

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
BLUMBERG LAW CORPORATION
444 West Ocean Blvd., Suite 1500
Long Beach, California 90802-4330
Attorney for Real Parties In Interest

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
MAIER GUTIERREZ & ASSC.
8816 Spanish Ridge Ave.
Las Vegas, Nevada 89148
Attorney for Real Parties In Interest

SERVICE BY U.S. MAIL ONLY

The Honorable Jerry A. Wiese, II
Department 30
Regional Justice Center, Courtroom 14A
200 Lewis Ave
Las Vegas, NV 89155
Respondent

Service by E-service

Dalton L. Hooks, Jr., Esq.
Sami Randolph, Esq.
HOOKS MENG & CLEMENT
2820 W. Charleston Blvd. Ste. C-23
Las Vegas, NV 89102
Attorneys for Copperpoint Defendants

Service by E-service

David A. Clark, Esq.
LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
Attorneys for Defendants Schoop and Alch

Service by E-service

Robert C. McBride, Esq.
Heather S. Hall, Esq.
MCBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Silberberg Defendants

Service by E-service

Robert L. McKenna, III, Esq.
James Kjar, Esq.
John Schwalbach, Esq.
KJAR MCKENNA &
STOCKALPER, LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
Attorneys for Silberberg Defendants

/s/ Lisa Rico

Employee of HALL JAFFE & CLAYTON

1 Q. I want to bring up Exhibit 5, which is a
2 letter dated June 17, 2016.

3 (Exhibit 5 marked.)

4 BY MR. BLUMBERG:

5 Q. Do you see the document?

6 A. I do. What's the date again, John? Let
7 me see.

8 Q. June 17, 2016.

9 A. Okay, right.

10 Q. And in this letter -- let me make it
11 bigger.

12 In this letter -- is this a variation of
13 a standard first letter to clients that your office
14 sends?

15 A. It looks like it.

16 Q. Now, in this letter it says, on the
17 second page, "We have also associated another law
18 firm into the case in order to allow us to represent
19 your interests in Nevada and Arizona. This was
20 necessary because Nevada courts require an attorney
21 with a Nevada bar license file a complaint and be
22 part of the case. In light of that requirement, we
23 associated with Bruce Fagel and Thomas Alch of the
24 Law Offices of Bruce Fagel."

25 Was that a true statement?

1 A. Yes, with respect to Nevada. We
2 didn't -- we didn't represent -- we did not
3 associate anybody with respect to anything in
4 Arizona.

5 Q. Why did you write "We have also
6 associated another firm into the case in order to
7 allow us to represent your interests in Nevada and
8 Arizona"?

9 A. That -- the Arizona part's just a
10 mistake. We were at that point examining whether or
11 not there was any -- any legitimate case in Arizona,
12 but that -- that statement including Arizona was
13 just -- just wrong.

14 Q. Was -- was it your understanding that
15 Tom Alch was also admitted to practice in Arizona?

16 A. I don't know. I mean, I have no idea.
17 If he was, then that statement's not incorrect, but
18 I don't know.

19 The way I'm reading that right now, that
20 statement is just -- is not correct.

21 Q. Now, there was discovery, written
22 discovery, in the case, where the defendants
23 propounded written interrogatories, special
24 interrogatories, to the plaintiffs. You're aware of
25 that, aren't you?

1 A. Sure, yeah.

2 Q. I'm going to bring up Exhibit 6.

3 (Exhibit 6 marked.)

4 BY MR. BLUMBERG:

5 Q. Exhibit 6 -- is Exhibit 6 on the screen?

6 A. Yeah, I have it.

7 Q. All right. And so this is Daria

8 Harper's response to special interrogatories from

9 Jeffrey Davidson?

10 A. Yeah.

11 Q. And do you see up at the top it has a

12 Las Vegas address for Thomas S. Alch?

13 A. I do.

14 Q. And do you see under that it has the

15 Beverly Hills address of Bruce Fagel?

16 A. I don't know if that's Bruce's address,

17 but I'll take your word for it.

18 Q. Now, my question is, with regard to this

19 document, would you have reviewed the responses --

20 let me just, you know, scroll through it -- before

21 the document was served on the defendants?

22 A. Would I have by custom and practice?

23 No.

24 Q. Okay. Well, let's do this two ways.

25 First, do you have any recollection of

1 having done so, and if you don't, then you can tell
2 me what you usually do in similar cases.

3 So let's start with the first. Do you
4 have any recollection of being involved in approving
5 this document before it was served?

6 A. No.

7 Q. Do you see that it has the signature of
8 Thomas S. Alch on page 16?

9 A. I do.

10 Q. And then there's an "S/" under that
11 where the names are Kenneth Marshall Silberberg and
12 William Stephens Collins. Do you see that?

13 A. I do.

14 Q. Is this a document that Will Collins
15 would have had some responsibility of putting
16 together and filing, or serving?

17 A. Yeah. Here in this office at this
18 point, my paralegal, Ellie (phonetic), put together
19 most of the responses, interacted with the clients
20 to get information, and then when the document was
21 prepared like this, normally one of the lawyers --
22 like Will -- (audio disruption) would have reviewed
23 it.

24 Q. Okay. I just lost your vocal feed.

25 Did you say that normally, after the

1 paralegal put together the answers, one of the other
2 lawyers in the office would read through it and
3 approve it?

4 A. Yes. That's basically how it worked.
5 And works.

6 Q. And you would not have gone through to
7 read the document before it was served; is that
8 correct?

9 A. That's correct.

10 MR. BLUMBERG: Let me bring up
11 Exhibit 7.

12 (Exhibit 7 marked.)

13 BY MR. BLUMBERG:

14 Q. Exhibit 7 is a similar document except
15 it is interrogatory -- responses to interrogatories
16 from defendant Jussa, and, again, it is signed on
17 page 14.

18 A. Hey, John, I don't have the document.

19 Q. Oh, thank you very much. It's a
20 multistep process I have to go through, and every
21 once in a while I don't take that last step. So...

22 A. You're doing a lot better than I could
23 do, I'll tell you that. I wouldn't even try it.

24 Q. It's sort of -- it's sort of like
25 spinning plates on the Ed Sullivan Show.

1 A. You know, the sad thing is you and I are
2 old enough to remember.

3 Q. Okay. All right. Is the document up?

4 A. Yes.

5 Q. All right. So the first page of
6 Exhibit 7 shows Daria Harper's response to
7 interrogatories from defendant Jussa. And page 14
8 is a signature page. It has the signature of Thomas
9 S. Alch and then an "S/."

10 Would your answer be similar to the
11 previous exhibit, that you would not -- that Will
12 Collins would have had ultimate responsibility to
13 check the accuracy of the responses before it was
14 served?

15 A. Yes.

16 Q. Are you aware of any responsibility that
17 Tom Alch had with regard to reviewing the
18 interrogatory responses?

19 A. I mean, if we sent them to him, he, I
20 assume, would look at them. Maybe not. I don't
21 know. You'd have to ask Tom.

22 I mean, it might be the ultimate
23 responsibility to get these things out was my
24 office, not Tom's, but you'd have to ask him.

25 Q. And do you know why it is that he signed

1 both responses to interrogatories?

2 A. Maybe that we weren't pro hac vice yet.

3 I don't know.

4 Q. Let me bring the document back up again.

5 The date this document was signed was

6 May 12, 2017. And was it your recollection that by

7 that date you were pro hac vice?

8 A. Yeah, I'm sure we were.

9 Q. Okay. Changing the subject now.

10 You were aware in the year 2016 that

11 CopperPoint Insurance Company was claiming a right

12 under Arizona law to a lien on the proceeds of any

13 recovery in the Nevada medical malpractice case; is

14 that correct?

15 A. I don't agree with your word "plan."

16 Can you rephrase it for me?

17 Q. Sure. I wasn't aware I used the word

18 "plan."

19 Were you aware in the year 2016 that

20 CopperPoint was claiming a right to a lien on the

21 proceeds of recovery in the Nevada medical

22 malpractice case?

23 A. No. I knew that they were claiming they

24 might have a claim, but they never filed and never

25 notified us that they were ever going to file a lien

1 in Nevada.

2 Q. Do you know what the law is in Nevada
3 with regard to the necessity of filing a lien?

4 A. Specifically, no, but I do know, because
5 we had these discussions, that in Nevada, in
6 specific, medical malpractice cases, the statute is
7 identical to that in California that workers' comp
8 does not have any lien rights, and, as a result,
9 they never did file a lien, never obtained any
10 relief for any lien monies in the Nevada case, and
11 never notified the courts or any of the defendants
12 or me that they were going to file a lien. Because
13 they had no statutory right to do so in Nevada.

14 Q. Were you aware or did you research
15 Arizona law with regard to the lien rights of an
16 Arizona workers' compensation carrier?

17 A. I did not, because we were in the
18 process of getting Daria -- we were hoping that
19 Daria would have counsel, workers' comp counsel, in
20 Arizona, in which she did have on at least two
21 occasions a lawyer to deal with those issues if they
22 were pertinent, which they were not, in my view.

23 Q. Would it be correct that you did not do
24 research of Arizona law with regard to the lien
25 rights of an Arizona workers' compensation insurance

1 company?

2 A. I did not.

3 (Exhibit 8 marked.)

4 BY MR. BLUMBERG:

5 Q. I want to bring up a couple of letters.

6 One is Exhibit 8.

7 A. I don't have it, John.

8 Q. You have to give me about 30 seconds
9 from the time I say I'm bringing it up.

10 A. Okay.

11 Q. Because I've got to click a lot of
12 different buttons here.

13 A. Okay.

14 Q. All right. Do you see the document?

15 A. Yes, I do.

16 Q. All right. This is on the letterhead of
17 Law Offices of Marshall Silberberg, dated
18 October 21, 2016. And this was a letter that you
19 wrote to an attorney for CopperPoint and to a claims
20 adjuster for CopperPoint, a two-page letter.

21 Do you recall this letter?

22 A. No, but I can see it.

23 Q. Can you take just a second and review it
24 to refresh your recollection. I'm not going to be
25 asking you a lot of detailed questions about it.

1 I'm going to be asking you in general if you sent
2 this letter trying to spur action by CopperPoint in
3 providing medical services.

4 A. Sure. Okay. John, can you go to
5 page 2? Thank you. Thank you.

6 Okay. I need to see a little bit more
7 of page 2. Okay. Perfect.

8 Thanks. I'm done. I'm good.

9 Q. All right. So would it be a correct
10 characterization that you were making a demand on
11 CopperPoint to provide certain medical services that
12 may not have been provided at that point?

13 A. Yeah. Yeah. I think the tenor of the
14 letter was they were trying to -- they were just
15 withholding things. So I tried to, you know,
16 advocate for Daria to get them to provide some care
17 for her.

18 Q. Is there a reason you cc'd Thomas Alch?

19 A. No. I mean, I have no idea why my
20 secretary -- my legal assistant cc's. Other than to
21 keep them in the loop, I guess.

22 Q. All right. And now let me bring up
23 Exhibit 9.

24 (Exhibit 9 marked.)

25 ///

1 BY MR. BLUMBERG:

2 Q. Exhibit 9 is another letter to the
3 CopperPoint attorney and claims adjuster. It's
4 dated January 27th, and it again is a two-page
5 letter.

6 Can you take a moment and see if this is
7 another letter similar to the first one where you
8 were trying to spur action for CopperPoint to
9 provide medical services.

10 A. It appears it is, yes.

11 Q. And there is a cc at the bottom to Greg
12 Bentley. Do you know why that -- why he was cc'd?

13 A. I think in the letter I'm threatening
14 some bad faith, and -- you know, it kind of appears
15 that way. And Greg is a -- used to be with
16 Shernoff's firm and is a bad-faith lawyer.

17 Q. Do you have a recollection that
18 CopperPoint periodically sent you letters asking --
19 let me start over again.

20 Would it be a correct statement that
21 CopperPoint periodically sent you letters asking for
22 the status of the Nevada medical malpractice case?

23 A. I believe that's correct.

24 (Exhibit 10 marked.)

25 ///

1 BY MR. BLUMBERG:

2 Q. I'm going to bring up as Exhibit 10,
3 this is a letter -- it's actually an e-mail, and
4 it's dated March 1, 2018, from Pam Fudge of
5 CopperPoint to Janette Dockstader.

6 Janette Dockstader is an employee of
7 yours?

8 A. Yes.

9 Q. And what is her position, or what was
10 her position at the time?

11 A. Same. She's my legal assistant. We
12 used to call them secretaries. We can't do that
13 anymore. So she's now my -- she's my legal
14 assistant.

15 Q. And in this March 1, 2018, e-mail, Pam
16 Fudge asks "Will you kindly provide me an update on
17 Ms. Harper's case?"

18 And then Will Collins sends an e-mail
19 back on March 5th that says, "Pam, can you give us
20 an estimate of what has been spent to date for
21 Ms. Harper's case. We have a trial date in
22 September."

23 Do you recall ever seeing this e-mail?

24 A. No.

25 Q. And when I say "this e-mail," I mean

1 either the one from Pam Fudge or the one in response
2 from Will Collins.

3 A. I did not see these.

4 Q. Did you -- did you know about it,
5 whether or not you actually saw it?

6 A. I don't recall knowing about it. I'm
7 not saying I didn't. I just don't -- you know, it's
8 March 2018.

9 MR. BLUMBERG: Okay. I'm going to bring
10 up as Exhibit 11.

11 (Exhibit 11 marked.)

12 BY MR. BLUMBERG:

13 Q. Exhibit 11 -- I'll put it on the screen
14 in a second. This is a document out of your file.
15 It's a memorandum from Will Collins, "File/MS."

16 "MS" would be you, right?

17 A. Yes.

18 Q. Okay. And this memorandum is five
19 pages, the first page being the memorandum itself
20 and then the other pages being citation to Arizona
21 law and Nevada law pertaining to workers'
22 compensation liens.

23 Do you recall seeing this memorandum?

24 A. No, I don't. Unfortunately, there is
25 a -- it looks like a Post-It up in the right-hand

1 corner. You know, it probably crossed my desk.

2 Normally, John, what I do when I review

3 a document, I put a checkmark in the lower

4 right-hand corner -- or in the upper right-hand

5 corner -- the lower right-hand corner. Let me get

6 this straight. And I don't see that. But if it has

7 my initials on it, I'm not saying I didn't see it.

8 I just don't have a recollection. And I don't see

9 my normal little mark. However, there are times I

10 don't do those marks, so...

11 Q. Do you know whose handwriting the word

12 "Important" is in?

13 A. No. Kind of looks like Janette's,

14 but...

15 Q. Do you know whose handwriting the name

16 "Harper" is in next to "Collateral Source Case"?

17 A. No.

18 Q. Do you recall -- well, have you seen

19 this document -- do you have a recollection of ever

20 seeing this document before today?

21 A. No.

22 Q. Were you present during the deposition

23 of Will Collins that I took a few days ago?

24 A. I was here when it started and then I

25 came in a couple of times, but I had a conference

1 call, and then I had a mediation brief due today, so
2 I was working with Susan on that. So I was in and
3 out, mostly out, and I don't recall -- I don't
4 recall any questions to Will on this document, so...

5 If you want to refresh my recollection
6 on what he said, I'll be happy to discuss it with
7 you.

8 Q. Let me ask this question.

9 A. Sure.

10 Q. Is it correct that you have no
11 recollection of ever seeing this document, up to and
12 including today, before I put it on the screen?

13 A. True.

14 Q. You have no such recollection; is that
15 correct?

16 A. That's correct, John, yeah.

17 Q. Do you recall having a conversation with
18 Will Collins around March 6, 2018, where he
19 expressed to you his concern that there may -- that
20 CopperPoint may have a lien on the case?

21 A. I recall conversations. I don't know if
22 it was in March of 2018. There were discussions
23 that we had about the CopperPoint potential claim,
24 and I expressed to him why I felt that CopperPoint,
25 in my view, did not have -- not only did not have a

1 lien in Nevada, but my view to him as to why I
2 didn't think they even had a proper claim in
3 Arizona.

4 Q. Well, let's get to that right now.
5 What is it that you told Will Collins with regard to
6 your opinion that there was no lien in Nevada or
7 Arizona?

8 A. One has to look at the history of
9 Daria's fall. Daria -- first of all, in Nevada
10 there's a specific statute that precludes it.
11 However, let's just put that aside.

12 Daria fell in August of 2014 at her
13 employment at the -- I think it was a trailer park.
14 And this initially -- thank you. Initially, the --
15 there was really -- she didn't feel there was any
16 connection. But there was some imaging done, and
17 there was a -- evidence that she had a injury to her
18 meniscus. In November of 2014, she underwent a
19 procedure, an arthroscopy, to just clean out that
20 area. That's November of 2014.

21 During the course of that procedure, the
22 orthopedic surgeon found that she had a Grade
23 3/Grade 4 chondromalacia, which is osteoarthritis.
24 She was at that point bone on bone, which can only
25 be secondary to years and years and years of Daria

1 being morbidly obese.

2 So she continued to -- and obviously
3 with bone on bone and having that degree of
4 osteoarthritic changes, which were chronic and took
5 years to develop, in May of 2015 the same orthopedic
6 surgeon did -- did a procedure which is known as a
7 UKA, which is a unicompartmental knee arthroplasty,
8 where he actually removed part of her joint because
9 of the severe nature of her osteoarthritis.

10 That had nothing at all to do with
11 her -- with her fall. Nothing. Zero. That had to
12 do with the fact that she, unfortunately -- and I'm
13 not saying this in a mean fashion -- she was a
14 morbidly obese woman with a body mass index of over
15 43. Anything over 30 is obese.

16 So she had years and years and years of
17 trauma to that knee as a result of her obesity. And
18 his surgery in May had nothing to do with her fall
19 at all. That had to do with obviously they put
20 instrumentation in.

21 Secondly along those lines is that
22 following that surgical procedure she was seen in
23 two or three post-op visits. She was doing fine.
24 She was walking. She was going to physical therapy.
25 There was no evidence of infection at all. So that

1 surgery was uneventful.

2 And as a result of that, you know, we
3 know on -- in June, starting around June 5th or so,
4 she started having symptoms of weakness, which
5 mandated -- which she ended up with a spinal
6 epidural abscess.

7 One of the risk factors -- when you
8 review the literature, one of the predictive risk
9 factors for spinal epidural abscess is morbid
10 obesity. So she develops a spinal epidural abscess,
11 again, most likely, predictive risk factor of her
12 obesity.

13 So there was no connection to her fall,
14 which -- which was why I felt she had no -- they
15 didn't even have a legitimate claim in Arizona. And
16 I put that in a letter to her in April of 2017, that
17 I didn't think that CopperPoint had even a
18 legitimate claim in Arizona.

19 So there was no connection to her fall
20 which occurred in August 2014, and she had -- she
21 had a clean-out procedure in November of 2014, at
22 which point they found that she had all these
23 arthritic changes, chronic, which necessitated and
24 instrumented a procedure in May of 2015. Just not
25 connected to her industrial accident at all.

1 So -- and, you know, but they were
2 making these claims, and we tried to get her to have
3 lawyers that could deal with those issues in
4 Arizona, because we're not workers' comp lawyers and
5 we have no responsibility with respect to her
6 workers' comp claims.

7 But her workers' comp and CopperPoint,
8 their payment, this money, had nothing to do with
9 her fall. She did not get an infection from the
10 surgery that was done in May. And so -- and she got
11 an abscess. She got an abscess as a result, most
12 likely, she might have had some sort of small
13 urinary tract infection, but obesity is a big-time
14 predictor risk factor.

15 So based on that -- and those are just
16 the facts, those are just the medical facts of her
17 case -- I told Will and I'm telling you, there was
18 no -- there was no lien rights, there was no claim
19 rights, because it wasn't connected to any fall or
20 industrial injury.

21 Q. Did any doctor ever tell you what you
22 have just related with regard to the fact that there
23 was no connection between the industrial injury and
24 the spinal abscess?

25 A. Yes, they did. Duncan McBride, who is

1 the chief of neurosurgery at Harbor UCLA, has seen a
2 lot of epidural abscesses because he deals,
3 obviously, down at Harbor UCLA -- John, as you know,
4 it's -- we both have dealt with that facility.
5 There's a lot of drug addicts that come in and out
6 of there.

7 He told me very clearly that the --
8 well, with respect to our -- that issue, once she
9 hit the floor at her home and started having
10 weakness, her -- her -- her abscess and her
11 neurological deficits were fixed.

12 But with respect to the relationship
13 between the surgery, I spoke and consulted again
14 with Mike Ritter, who -- and I met him. I remember
15 specifically meeting with Dr. Ritter at his office
16 at Mission Hospital. And I spoke with John Morris,
17 an orthopedic surgeon, who said that normally, with
18 respect to post-op, when you do this UKA, this
19 unicompartmental knee arthroplasty, those -- if you
20 get a post-op infection from the placement of
21 these -- of these instruments, the partial knee,
22 these infections normally pop up and manifest within
23 36 hours from the surgery. She did not. Her
24 post-op visit showed no infection, that her
25 range of motion was good. She went to physical

1 therapy, I believe it was June 3rd, and she was
2 getting along fine. And subsequently, even when she
3 got to Havasu Regional, that knee was fine. There
4 was no redness, no heat, no nothing.

5 And the proof is if she had a post-op
6 wound infection, they would have been mandated to
7 remove those instruments, the partial knee
8 replacement. They never did because there was never
9 any infection.

10 So from an orthopedic standpoint -- and
11 that's why we were looking into that case in
12 Arizona, and we were -- we were trying to establish
13 whether or not we could prove a case in Arizona. We
14 could not. I mean, we were told there is no
15 lawsuit.

16 And therefore, we -- and I spoke to
17 Daria and Daniel about that and sent them that
18 April 2017 letter, which they signed.

19 So yeah, we were told -- when we were
20 trying to explore whether or not there was any --
21 any viable litigation that we could pursue in
22 Arizona, we were told, "You got no case, dude," so
23 we didn't do it.

24 Q. You mentioned Duncan McBride. I didn't
25 see that he was one of the designated experts in the

1 case. Is that correct?

2 A. Correct.

3 Q. And I didn't see any bill that was paid
4 to Dr. McBride in the case; is that correct?

5 A. Probably, yeah, that's probably true. I
6 mean, when I spoke with Duncan, it was -- I think I
7 was speaking to him on another case and we,
8 curbside, and I asked him questions, very specific
9 questions, quite frankly, about spinal epidural
10 abscesses and neuro deficits, and he gave me some
11 very cogent and important information.

12 MR. BLUMBERG: We've been going about an
13 hour. Why don't we take a break.

14 THE WITNESS: Thanks. I need it.

15 THE VIDEOGRAPHER: We are off the record
16 at 11:45 a.m.

17 (A recess was taken.)

18 THE VIDEOGRAPHER: We are back on the
19 record at 12:00 p.m.

20 BY MR. BLUMBERG:

21 Q. All right. Let me go back and just
22 recap a few things.

23 First, in March of 2018, you were aware
24 that CopperPoint was claiming a lien on the proceeds
25 of the Nevada medical malpractice case, weren't you?

1 A. No. They never filed a lien on the
2 proceeds of the Nevada malpractice case.

3 Q. That wasn't my question. My question
4 was whether you had an awareness that CopperPoint
5 was claiming a right to a lien.

6 A. No.

7 Q. Okay.

8 A. No.

9 Q. So is it your testimony that you believe
10 CopperPoint was not claiming a right to a lien?

11 A. It is my position that CopperPoint knew
12 that they had no statutory rights to a lien in
13 Nevada, and, therefore, they never filed one.

14 Q. That wasn't my question. My question
15 was whether you were aware that CopperPoint was
16 claiming a lien on the proceeds of the Nevada case.

17 A. They never formally claimed a lien in
18 the Nevada case, Mr. Blumberg.

19 Q. Did they -- did they, by words, deeds or
20 writing, ever convey to you that they believed that
21 they had a right to a lien on the proceeds of the
22 Daria Harper Nevada medical malpractice case?

23 A. No.

24 Q. Your answer is "no"?

25 A. No.

1 Q. As I understand your testimony regarding
2 the knee surgery, the industrial injury and the
3 spinal abscess, was it your opinion that there was
4 no connection between any industrial injury and the
5 spinal abscess?

6 A. That's correct.

7 Q. And was it your opinion that there was
8 no connection between any payment made by
9 CopperPoint and the allegations that you made in the
10 Nevada medical malpractice case?

11 A. Could you repeat that, please? I didn't
12 follow the first part.

13 Q. Sure.

14 MR. BLUMBERG: Madam Court Reporter, can
15 you please repeat my question.

16 THE WITNESS: Thank you.

17 (The record is read by the reporter.)

18 MR. KJAR: Object to that question to be
19 ambiguous in the way it's phrased, John.

20 Can you maybe -- when you say "any
21 payment made by CopperPoint in the malpractice
22 case" -- I mean, if the witness understands it, he
23 can answer.

24 BY MR. BLUMBERG:

25 Q. Did you understand the question,

1 Mr. Silberberg?

2 A. Let me see if I can answer it and then
3 my answer may tell you whether I understood it or
4 not.

5 It's my understanding that if an
6 insurance carrier is making payments as part of
7 benefits or they're paying medical costs and they're
8 only making those payments because of the result of
9 the negligence of a third party, then they might
10 have a claim.

11 In this situation, there was no
12 connection, in my view, with the spinal epidural
13 abscess and any fall that occurred way back in
14 August 2014.

15 In addition, based upon my conversation
16 with two neurosurgeons as we were getting close to
17 mediation, Daria Harper was paralyzed, quadriplegic,
18 when she entered Havasu Regional Medical Center, and
19 that was never going to change. She was never going
20 to walk again and never have the normal activities
21 of daily living again. Therefore, I didn't think
22 they had any legitimate claim.

23 So...

24 Q. Let me ask the question this way.

25 A. All right.

1 Q. It was your opinion that no payment that
2 was made by CopperPoint to or for the benefit of
3 Daria Harper had anything to do with the spinal
4 abscess and the failure to treat it. Is that a
5 correct statement of your opinion?

6 A. Yeah, that's a fair statement of my
7 opinion.

8 Q. You made reference to an April 2017
9 document. Let me just put the document up and have
10 you identify it.

11 Is this the document -- April 5, 2017,
12 to Daria Harper -- that you were referring to that
13 they signed?

14 A. I think so, yeah.

15 MR. BLUMBERG: Madam Court Reporter,
16 what was the last exhibit that I referenced? Was it
17 Exhibit 11?

18 THE COURT REPORTER: Yes.

19 MR. BLUMBERG: Thank you.

20 (Exhibit 12 marked.)

21 BY MR. BLUMBERG:

22 Q. All right. I'm going to bring up as
23 Exhibit 12 an e-mail from Will Collins dated
24 March 9, 2018, to Janette Dockstader. And the
25 e-mail starts at the bottom. It's an e-mail from

1 Pam Fudge to Will Collins and says, "Will, I have

2 attached all current lien amounts paid to date."

3 And the total of the three is \$2,768,656.65.

4 Do you ever see this e-mail to Will

5 Collins from Pam Fudge?

6 A. Can you scroll down a little bit, John.

7 Q. There's a squiggle down there at the

8 bottom. Is that your initial?

9 A. No, but that's -- no. But that could be

10 something I put on there. Whether -- I don't know

11 if I saw it or not. I probably did. That squiggle

12 might be my squiggle. I mean, I give different

13 squiggles, you know.

14 Q. Okay. And then going up, it says --

15 this is from Will Collins to Janette -- "Please save

16 the liens to the system and print the e-mail for

17 Marshall to review."

18 A. Right.

19 Q. Okay. So would that be consistent with

20 your having seen the e-mail from Pam Fudge?

21 A. Sure.

22 Q. "Yes"?

23 A. Yes.

24 Q. For some reason, sometimes the

25 microphone's not picking you up and I see your mouth

1 forming the words. And so when I ask again, it's
2 because I didn't think that it picked up.

3 A. Okay. That's fine.

4 MR. BLUMBERG: I'm going to pull up
5 Exhibit 13 right now.

6 (Exhibit 13 marked.)

7 BY MR. BLUMBERG:

8 Q. Exhibit 13 is a letter dated
9 June 22, 2018. It is addressed to Law Offices of
10 Marshall Silberberg. And this is a letter from the
11 files of CopperPoint, not from your files.

12 Do you recall ever seeing this letter?

13 A. Can I just look at it real quick, John?

14 Q. Sure. Let me see if I can put the whole
15 thing on one screen. (Indicating.)

16 A. Okay. I don't -- I don't recall if I
17 saw that or not. I might have.

18 Q. I reviewed the files you produced. I
19 didn't see any response to that letter. Do you
20 recall ever sending a response?

21 A. I do not.

22 MR. BLUMBERG: I'm going to put up
23 Exhibit 14.

24 (Exhibit 14 marked.)

25 ///

1 BY MR. BLUMBERG:

2 Q. Exhibit 14 is an e-mail from Pam Fudge
3 to Will Collins, and it is dated July 18, 2018, and
4 it is asking for a status on the case.

5 Do you recall ever seeing this e-mail or
6 being told about this e-mail?

7 A. No.

8 Q. I'm not sure we have an answer.

9 A. I said "no," John.

10 Q. Okay. Thank you.

11 Do you recall the first time that you
12 either had a conversation with a CopperPoint
13 representative or wrote a letter or an e-mail to
14 CopperPoint stating that it had no lien?

15 A. No, I don't.

16 Q. Do you recall ever writing such a letter
17 or having such a conversation?

18 A. I do not.

19 Q. Was there a reason why you never told
20 anyone from CopperPoint that you believed that they
21 had no lien?

22 A. Because they never made a claim on the
23 Nevada lawsuit.

24 Q. Did you ever read the Nevada statute
25 governing liens in medical malpractice cases?

1 A. Yeah. Yes.

2 Q. Would that be NRS 42.021?

3 A. I think so.

4 Q. Do you recall the first time you read
5 that statute?

6 A. I don't -- do I recall when I first read
7 it? No.

8 Q. Do you remember the year you read it?

9 A. It would have been at or near the time
10 that the lawsuit was filed.

11 (Exhibit 15 marked.)

12 Q. I'm going to bring up as Exhibit 15 an
13 e-mail from Thomas Alch -- actually, it is a
14 forwarding by Janette Dockstader of a previous
15 e-mail from Thomas Alch to you and others dated
16 September 30, 2016, and it has the text of
17 NRS 42.021.

18 Would you have read this statute about
19 the date that Thomas Alch sent this e-mail to you?

20 A. Sure.

21 Q. "Yes"?

22 A. Yes.

23 Q. Do you remember having any discussions
24 with Thomas Alch on the subject of whether a medical
25 malpractice settlement barred any lien recovery by a

1 workers' compensation company?

2 A. I don't have a specific recollection of
3 talking with Tom on that. I mean, I have a vague
4 recollection. I have a vague recollection, John,
5 that I inquired, and Tom was of the view that the
6 statute precluded, as does California's, lien rights
7 from a workers' comp carrier, but that's a really
8 vague -- vague recollection.

9 Q. Did you arrive at an understanding of
10 Nevada law with regard to whether a settlement of a
11 medical malpractice lien would bar a workers'
12 compensation insurance company from claiming a lien?

13 A. Yes.

14 Q. And what was the basis of that
15 understanding?

16 A. The statute.

17 Q. Did you have any discussions with any
18 Nevada lawyer, other than Tom Alch, on the subject
19 of whether a medical malpractice settlement barred
20 any lien recovery by a workers' compensation
21 insurance company?

22 A. Yeah, Judge Bell. I believe that I --
23 again, this is really vague. I think I might have
24 had some discussions with John Cotton, a lawyer for
25 one of the defendants.

1 But I clearly had a discussion during
2 the mediation with the mediator, who was a
3 retired -- I don't know what they're called, circuit
4 court judge, superior court judge -- Judge Bell.

5 Q. And are you saying also that Attorney
6 Cotton told you that it was his opinion that a
7 settlement in a medical malpractice case barred
8 lien claims by a workers' compensation insurance
9 company?

10 A. Yes. As a matter of fact, in one of my
11 discussions I actually floated the idea that they go
12 ahead and assume negotiations, if they wanted to, of
13 the lien, and I was told to park that idea.

14 Q. Who told you that?

15 A. Judge Bell. During the mediation.

16 Q. Was that because of Judge Bell having an
17 understanding that there was no lien obligation, or
18 because Judge Bell told you that the defendants
19 weren't going to do that?

20 A. Both. Both. Because there was no lien
21 rights in the medical mal case.

22 Q. Were you aware of any appellate court
23 decision in Nevada saying that there were no lien
24 rights that a workers' compensation insurance
25 company had if there was a medical malpractice

1 settlement?

2 A. Was I aware of any appellate court --

3 no. No. I mean, a statute's a statute.

4 I mean, there was that case -- and I'm
5 going to butcher the name -- McCrasky (phonetic),
6 McCromski (phonetic), something -- that loosely
7 indicated that the statute -- I think that case
8 dealt with collateral source benefits, but the
9 statute was the statute. It was a proper statute.

10 But again, don't quiz me on everything
11 that case stood for because I don't recall.
12 Something to do with preemption of workers' comp and
13 federal law and stuff, but that's all I'm -- that's
14 all I'm good for on that.

15 MR. BLUMBERG: In the files that were
16 produced from your office, there was an article from
17 an Arizona Attorney magazine. I'm going to mark it
18 as Exhibit 16 and put it up.

19 (Exhibit 16 marked.)

20 BY MR. BLUMBERG:

21 Q. All right. On the screen is the first
22 page of the article. Do you recall ever seeing this
23 article?

24 A. Never.

25 Q. Do you know how it got into your file?

1 A. No. Do you want to enlighten me?

2 Q. Did you ever discuss it with

3 Will Collins?

4 A. Not that I'm aware of.

5 Q. Did you ever discuss with Will Collins

6 the effect of settling a -- a claim of an Arizona

7 workers' compensation insurance company, settling

8 the case -- strike that.

9 Did you ever discuss with Will Collins

10 or anyone else the effect of settling around an

11 Arizona workers' compensation insurance company and

12 the effect it might have on the claimant?

13 A. Did I ever have that discussion? Yeah,

14 probably.

15 Q. Do you recall anything about the

16 discussion?

17 A. No, other than what we've already talked

18 about with respect to the validity of the statute

19 and my feelings about there was no -- the statute

20 precluded it. And if you even go further, that

21 there was no -- there was no connection between

22 CopperPoint's payments and our case.

23 Q. You mentioned "validity of the statute."

24 What statute are you referring to?

25 A. The statute dealing with the no lien

1 rights by workers' comp and other carriers in med
2 mal cases.

3 Q. That's the Nevada statute you're talking
4 about, when you talk about the "validity of the
5 statute"?

6 A. Yes.

7 Q. Had you ever read the Arizona statute
8 pertaining to workers' compensation lien rights?

9 A. I don't think so. I didn't -- no. No.

10 Q. Did you ever talk to Tom Alch about any
11 Arizona legal issues?

12 A. Not that I recall.

13 Q. At some point in the case, you had to
14 determine whether there were any Medicare or
15 Medicaid liens?

16 A. Yeah, I assume so.

17 Q. Did you consider that identifying and
18 negotiating any such lien claims was part of your
19 firm's responsibility in representing Daniel and
20 Daria?

21 A. If she had had a Medicaid lien, which
22 I don't believe she did, yeah, we would have --
23 either we would have done it or we would have used
24 one of the services that we use to negotiate those
25 liens.

1 Q. Okay. Going now to the expert reports
2 that had to be filed in the case -- I'm not talking
3 about the initial ones, I'm talking about the ones
4 for trial -- did you have any involvement in
5 obtaining those expert reports?

6 A. No. Well --

7 Q. Let me put up Exhibit 17. I want to
8 make sure you have the document in front of you.
9 (Exhibit 17 marked.)

10 BY MR. BLUMBERG:

11 Q. All right. Exhibit 17 consists of
12 34 pages of expert reports. Let me just quickly
13 scroll through them --

14 A. Okay.

15 Q. -- just so you can put your eyes on what
16 I'm talking about. I don't expect you to read it.

17 A. Okay.

18 Q. They were all filed in April 2018.

19 A. Okay.

20 Q. And these are the reports of Dr. Dorros,
21 Dr. Ciacchi, Dr. Le, Dr. Pleasure, Dr. Ritter, and
22 Dr. Shaw.

23 A. Okay.

24 Q. And my question is: Did you have any
25 involvement in obtaining these expert reports that

1 were filed in April 2018?

2 A. No. I mean, Will made contact with
3 these experts.

4 You know, would I have reviewed them --
5 "them" being what you just put up -- before they
6 went out? Yes or no, I don't know. If he had some
7 questions, I'm sure I would have looked at them. I
8 would think so.

9 Q. Is it your recollection -- strike that.

10 Is it correct you have no recollection
11 of reviewing these reports before they were filed?

12 A. Yeah, I have no recollection. I can
13 tell you what my custom and practice would have
14 been, and that is I would have reviewed some of
15 them. I might not have reviewed Dorros and Ritter.
16 But, I mean, I don't know. Custom and practice is I
17 normally do, but I don't have any recollection of
18 doing it in this case.

19 Q. Do you recall speaking with all of those
20 experts at some point?

21 A. I -- I remember sitting down with Mike
22 Ritter. And early, early, early on I did talk with
23 Dr. Ciacci. But I have no recollection, I can't
24 even tell you who Dr. Shaw is.

25 But that's my recollection.

1 Q. You don't know who Kevin Shaw is, the ER
2 doctor?

3 A. No. Dr. Ritter's the ER doctor. Maybe
4 Shaw's an ER doctor as well.

5 Q. What authority did you give Will Collins
6 to make decisions about what experts to hire for the
7 case?

8 A. What authority? To hire experts that
9 were relevant to the issues in the lawsuit.

10 Q. Okay. And was it your understanding
11 that he could -- that he didn't need to discuss with
12 you who these experts were?

13 A. No. There wasn't an understanding one
14 way or the other. He would normally discuss with me
15 who he had contacted and would run by their
16 preliminary discussions, and if he had questions,
17 he'd come to me and I'd answer them. I don't
18 remember any, but he had the authority to -- to
19 go -- we'd used some of these experts in the past in
20 other cases, so, you know, they were known to us and
21 had a track record with us.

22 Q. Do you know a doctor whose name is Alisa
23 Gean, G-E-A-N?

24 A. No.

25 Q. The reason I ask is that in your cost

1 accounting it shows your firm paid \$5,000 to a
2 Dr. Alisa Gean, and I was wondering if that was a
3 mistake or if that's somebody that you or Will had
4 consulted with.

5 A. I don't know, but I'll find out for you.

6 What was the name again, John?

7 Q. G-E-A N is the last name. Alisa Gean.

8 A. Okay.

9 Q. And the cost accounting -- the cost --
10 I'm sorry. Do you have a question?

11 A. Go ahead. I'm sorry.

12 Q. The cost accounting from your office
13 says that the -- that that doctor's bill did not
14 come in until after the mediation.

15 A. Okay. I don't know who it is. I will
16 find out.

17 Q. Did you have any conversations at any
18 time with Daria or Daniel before the mediation about
19 whether CopperPoint could enforce a lien on any
20 settlement?

21 A. Sure.

22 Q. Tell me about those conversations.

23 When -- first of all, do you know when they were?

24 A. Jeez, I mean, we had -- we had --
25 throughout -- throughout the time that I met him

1 in -- in Colorado -- whether or not we discussed
2 that then, I don't recall, but we had lots of
3 conversations -- when I say "lots," you know, in
4 excess of five conversations -- throughout the time
5 about CopperPoint's lien or claims, Nevada and
6 Arizona, and they would occasionally call and ask
7 questions. We'd answer them.

8 I gave them my firm belief about the
9 statute and also the fact that -- that Daria's
10 surgery in May was, you know, obviously related to
11 things other than her industrial fall.

12 We had -- we had multiple discussions
13 about -- that had -- on the -- you know, I wrote
14 that letter in April. There were e-mails about this
15 before the mediation. Daria, as I recall, told us
16 about the liens and wanted to know about the money.
17 There were ongoing discussions, John, with them
18 about these issues.

19 Which is one reason why, you know, we
20 tried to get her to keep the workers' comp lawyer in
21 Arizona.

22 Q. You wanted to get her to what a workers'
23 comp lawyer?

24 A. You know, she had a workers' comp
25 lawyer.

1 Q. I wasn't asking for you to reframe your
2 answer. I missed one of the words you said.

3 A. I'm sorry. We wanted her to have and
4 keep the workers' comp lawyer to deal with those
5 issues for her.

6 Q. So would it be correct that you advised
7 Daria and Daniel numerous times throughout the life
8 of the medical malpractice case of your belief that
9 CopperPoint did not have any valid lien claim on the
10 proceeds of the Nevada medical malpractice case,
11 correct?

12 A. Exactly right, in Nevada.

13 Q. Okay. Did you also tell Daria that you
14 believed that CopperPoint had no valid lien claim in
15 the Arizona workers' compensation proceedings?

16 A. You know, I don't know if I specifically
17 said. I remember telling her -- and a subject that
18 she didn't agree with -- that her surgery in May of
19 2015 was related to -- to, you know, the fact that
20 she had joint disease in her leg, in her right knee,
21 and that's why they did the -- they put the
22 artificial joint in that knee, you know. However,
23 those are issues that we did tell her that she had
24 to address with her workers' comp lawyers in
25 Arizona.

1 Q. I want to go now to the mediation brief
2 itself.

3 A. Okay.

4 Q. Did you write that entire thing
5 yourself?

6 A. I don't recall. Probably. I write a
7 lot of mediation briefs.

8 MR. BLUMBERG: I'm going to bring up
9 Exhibit 18.

10 (Exhibit 18 marked.)

11 BY MR. BLUMBERG:

12 Q. 18 is two pages -- let me bring it up.
13 Just a second.

14 A. Certainly.

15 Q. There we are. 18 is page 26 and 27, 27
16 being the signature page of the mediation brief.

17 Whose signature is that on page 27?

18 A. That's mine.

19 Q. Now, in this mediation brief on
20 page 26 -- and let me make it a little bigger --
21 starting at line 13, it says, "As indicated earlier
22 in this brief, Daria underwent knee surgery a couple
23 of weeks before she presented with the spinal
24 epidural abscess. That knee surgery was occasioned
25 because of an injury that she suffered at work, and

1 thus, all of Daria's expenses to date has been paid

2 by her workers' compensation carrier."

3 Did you dictate that or put that into

4 the mediation brief?

5 A. Yeah.

6 Q. And at line 17 it reads, "As of

7 March 7, 2018, Daria's workers' compensation carrier

8 sent a combined lien summary showing that the amount

9 paid through March 7, 2018, totaled \$2,768,656.65.

10 They, of course, would like to recoup this sum by

11 way of their claims for a lien."

12 A. Right. In their comp case. Right.

13 Q. And so you dictated or created that for

14 this -- for this mediation brief?

15 A. Sure.

16 Q. Let me bring the document back up again.

17 At line 22 and 23 and 24 it says, "In

18 addition, Daria and Daniel are each entitled to the

19 full \$350,000 limit for their general, noneconomic

20 damages."

21 Do you see that?

22 A. Yes.

23 Q. Had you ever read the Nevada statute

24 regarding the limitations on recovery of noneconomic

25 damages in medical malpractice cases?

1 A. I'm sure I did, yeah. My recollection
2 is I did.

3 Q. And was it your understanding after
4 reading that statute that in Nevada medical
5 malpractice cases there could be more than one
6 \$350,000 recovery for noneconomic damages?

7 A. Sure, of course.

8 Q. Did you ever discuss that with Tom Alch?

9 A. I don't believe so.

10 Q. Did you ever discuss that with any
11 Nevada lawyer?

12 A. I don't recall doing that.

13 Q. So it was your understanding that there
14 is a separate \$350,000 recovery allowed on a
15 spouse's loss of consortium claim in a medical
16 malpractice case?

17 A. Yes. Right. I mean, you know, in
18 the -- if you read the statute, it's the same as
19 California's. And so, you know, we assumed that the
20 Nevada law was the same as California, and I saw
21 nothing to the contrary when I read the statute.

22 Q. Was it -- is it your recollection that
23 the Nevada medical malpractice statute dealing with
24 noneconomic damages is the same as California's
25 statute?

1 A. Except it's an additional hundred
2 thousand bucks.

3 Q. Except that in California it's 250,000
4 and in Nevada it's 350,000?

5 A. That's right.

6 Q. And in all other respects it was your
7 understanding that the two statutes were virtually
8 identical?

9 A. Virtually. Actually, almost identical,
10 yes.

11 Q. Did you do any Nevada legal research
12 regarding whether Daniel's loss of consortium claim
13 could include any economic damages?

14 A. No. He would be entitled to his own
15 separate economic damages under what we call here
16 Haniff versus Housing Authority. Those would be
17 special damages.

18 Q. Haniff, H-A-N-I-F?

19 A. Yep. It may be two Fs, John.

20 Q. I think there maybe are two Fs.

21 A. Yeah.

22 Q. So was it your understanding in Nevada
23 that a -- that Daniel had a separate right to
24 recover economic damages?

25 A. Under the rationale of Haniff, yes, of

1 course.

2 Q. Do you know if Haniff was adopted by any
3 appellate court in Nevada?

4 A. No, but I know they're in jury -- jury
5 instructions are very similar to those in California
6 and talk about those damages are recoverable. At
7 least they're part of the jury instructions.

8 Q. When did you read jury instructions from
9 Nevada regarding this case?

10 A. I don't remember, but I -- I always make
11 it a habit of reviewing jury instructions on cases.

12 Q. Does Nevada have pattern approved jury
13 instructions like California?

14 A. They do.

15 Q. Yes, that's your understanding?

16 A. Yes, that's my understanding, yeah.

17 Q. And is it your recollection that you
18 actually read those pattern jury instructions for
19 medical malpractice cases that are used in Nevada?

20 A. I did.

21 Q. Now, let's go to the mediation itself.

22 A. Right.

23 Q. You attended the mediation with the
24 clients?

25 A. Yes.

1 Q. Was Will Collins there also?

2 A. Yes.

3 Q. Was Tom Alch there?

4 A. No.

5 Q. During the mediation, at any time did
6 you have a telephone conversation with Tom Alch?

7 A. No.

8 Q. Did you ever send him any texts or
9 e-mails?

10 A. Not that I remember.

11 Q. During the mediation, did you ever give
12 an estimate for the clients what their net recovery
13 would be?

14 A. I don't remember, but that would not be
15 unusual.

16 Q. And during the mediation, do you recall
17 any discussion with them about your opinion that
18 CopperPoint had no lien on their case?

19 A. Could you have the court reporter read
20 that back, John, please?

21 MR. BLUMBERG: Sure.

22 Madam Court Reporter, would you please
23 read the question back.

24 (The record is read by the reporter.)

25 THE WITNESS: Do I have a recollection

1 of that? A vague recollection that we had that
2 discussion, yeah. Again, I don't have any specific.

3 BY MR. BLUMBERG:

4 Q. Did you ever have -- did you ever write
5 a letter or send an e-mail or write a memo about the
6 conversation you had with the clients that there was
7 no lien? You know, that the advice you had given
8 them of your opinion that there was no lien, did you
9 ever put that in a letter before the settlement
10 releases were signed and the money distributed?

11 A. Yeah. I think that April 5th, 2017,
12 letter addresses that. Did I do it after that? Did
13 I do a memo? I don't recall one.

14 Q. And it's your recollection that the
15 April letter addressed lien rights?

16 A. Yeah, I believe that April -- if you
17 want to put it up again, I'll look at it. But I
18 believe I state in there -- I think lien rights are
19 discussed in there, and I think -- in that letter,
20 and I could be wrong. I think in that letter I also
21 addressed my view that even in Arizona I didn't
22 think there were any lien rights. But again, I
23 don't have that letter in front of me.

24 Q. Let me put it in front of you.

25 I'm putting Exhibit 34 in front of you.

1 Do you want to take a --

2 A. Sure.

3 Q. -- want to take a look at it and tell me
4 if that refreshes your recollection. Just tell me
5 when you need the page turned.

6 (Exhibit 34 marked.)

7 A. Okay. Okay. Okay.

8 Q. Does that refresh your recollection that
9 the letter of June 17, 2016, didn't mention anything
10 about lien rights?

11 A. It does. If you go to the first page.
12 Keep going. It says right here -- the second
13 paragraph, it says, "My recommendation is based upon
14 numerous factors. First, if we were to file a case
15 in Arizona, CopperPoint would attempt to assert a
16 lien against any money you received as a result of
17 your lawsuit. As of this moment, we do not believe
18 that CopperPoint would have a right to a lien
19 against a case in Arizona."

20 So it did address that right there.

21 Q. Were you aware of the agreement signed
22 by Daria with regard to a settlement of workers'
23 compensation housing needs?

24 A. Yes and no. I remember that she called
25 and said that they were -- "they" being

1 CopperPoint -- was wanting to contribute something
2 so they could have a house that was more conducive
3 to her type of life, but that's all I can remember
4 about that.

5 Q. Let me bring up Exhibit 19.

6 A. Sure.

7 (Exhibit 19 marked.)

8 BY MR. BLUMBERG:

9 Q. Exhibit 19, the first page of the
10 document -- and this is a fax of about
11 August 2, 2016, it looks like, "Attention Will or
12 Marshall" on the first page, and then there is a
13 letter from the attorney for CopperPoint and then
14 essentially an agreement regarding \$300,000.

15 A. Okay.

16 Q. Do you recall seeing this?

17 A. No.

18 Q. Do you recall discussing this with Will
19 or with Daria?

20 A. You know, John, as I said, I -- I have a
21 recollection of having a discussion with Daria or
22 Daniel, or both, that CopperPoint was going to help
23 them get a house. I don't remember seeing this
24 document. I don't remember seeing this document. I
25 mean, I'm not saying I didn't. I just don't recall

1 it.

2 Q. Paragraph 3 of the document on page 3
3 says, "The Applicant further agrees that the
4 \$300,000 settlement amount to be paid by the
5 Defendant Carrier under this Agreement shall be
6 included in Defendant Carrier's subrogation lien
7 described in paragraph 3 of the Factual and
8 Procedural Background Section herein above."

9 A. Okay.

10 Q. Were you aware that this document
11 granted a \$300,000 lien on Daria's recovery in the
12 Nevada case?

13 A. In the comp case. But no. In the comp
14 case, sure. Which I might add is even reason for
15 why we kept telling her that she needed to run these
16 issues by a workers' comp lawyer in Arizona.

17 Q. Going to paragraph -- the referred to
18 paragraph 3 on page 2, it says, "On August 19, 2015,
19 the Defendant Carrier issued a Notice of Claim
20 Status indicating that by virtue of ARS
21 Section 23-1023, the Defendants had a lien against
22 the Applicant's recovery from the third party
23 responsible for her injuries."

24 Were you aware of that?

25 A. I see that language, but that's not a

1 valid lien in Nevada pursuant to Nevada statutes.

2 And as I've indicated, it would have
3 been incumbent, in my view, on this carrier to do
4 their own independent investigation to see if there
5 was a third party responsible for her injuries
6 because there was not.

7 Q. Now, going to Tom Alch --

8 A. Yeah.

9 Q. -- you had mentioned earlier that you
10 were aware that he had left the Fagel firm and
11 joined the Shoop firm.

12 When that occurred, did you have any
13 discussion with Tom Alch or Bruce Fagel about his
14 continuing participation in the case?

15 A. No.

16 Q. So would it be correct that any
17 compensation that Tom Alch would be paid for working
18 on the case would be from Bruce Fagel?

19 A. Yeah. Yeah. The way it worked, John,
20 is they had an agreement, and when the case
21 resolved, I was informed what that percentage would
22 be, and I think I -- I think I sent Tom a check
23 consistent with that agreement.

24 Q. So it's your recollection that you had
25 no separate discussion with Tom Alch about his

1 continuing to be local counsel in the case?

2 A. That's correct. I just assumed it would
3 continue.

4 Q. Were you involved in the preparation or
5 the modification of any of the settlement agreements
6 after a settlement was reached with the Nevada
7 defendants?

8 A. I would have been involved in reviewing
9 them. I don't think we modified them, that I
10 recall.

11 Q. Do you know whether Tom Alch was
12 involved in editing or approving the settlement
13 agreements?

14 A. I do not know. I know that came up the
15 other day because Will asked me about it after the
16 depo.

17 And my recollection is -- is Tom -- my
18 recollection is that those releases came here, we
19 looked at them, I think we approved them and sent
20 them off to Daria and Daniel.

21 Q. So you have no recollection that Tom
22 Alch was involved in editing or approving any of the
23 settlement agreements?

24 A. That's correct. And my view is I don't
25 know why he would be.

1 Q. Let me bring up Exhibit 20.

2 A. Sure.

3 (Exhibit 20 marked.)

4 BY MR. BLUMBERG:

5 Q. 20 is an e-mail from Will Collins to
6 Daria Harper, and it says, "As we discussed on the
7 phone, attached is the release and settlement
8 agreement from Valley Hospital. Marshall and Tom
9 have both reviewed and approved the document."

10 Did you ever see this?

11 A. No.

12 Q. I'm going to bring up Exhibit 21 --

13 A. Was it sent to me? I didn't look. Was
14 I cc'd on it, John?

15 Q. No.

16 A. Okay. Then I don't recall seeing it.

17 MR. BLUMBERG: I'm going to bring up
18 Exhibit 21.

19 (Exhibit 21 marked.)

20 BY MR. BLUMBERG:

21 Q. Exhibit 21 is an e-mail that's -- that
22 starts at the bottom at page 3 from an Adam
23 Schneider at the Cotton firm. Did you know who Adam
24 Schneider was? No? Yes?

25 A. I'm sorry. I said yes.

1 Q. Okay. And it had to do with a proposed
2 release?

3 A. Yes.

4 Q. And then it has Will Collins asking Adam
5 Schneider, "Can you send along another page for Tom
6 Alch's signature. He informed me that he needs to
7 sign as well. If you can add it to its own page,
8 that might be easiest."

9 A. Okay.

10 Q. Were you aware -- were you aware of that
11 fact?

12 A. No, I wasn't. But you've clarified and
13 cleaned it up right here. Thank you.

14 Q. All right. And then the first page
15 shows that Will Collins sent the Janda release to
16 Tom Alch, and that Tom Alch sent back his signature
17 page.

18 A. Perfect.

19 Q. The last page of the document is a
20 signature page. Do you recognize that signature as
21 Tom Alch?

22 A. No. But it looks like it.

23 Q. It looks like how he signs his name,
24 that you're familiar with?

25 A. Yeah, yeah.

1 Q. And you see that down at the bottom it
2 identifies Shoop, A Professional Corporation?

3 A. Yes.

4 Q. I'm going to go to Exhibit 22 now.

5 MR. BLUMBERG: We've been going about
6 another hour. Are you good to go or do you want to
7 take a short break.

8 THE WITNESS: I'd love to go down and
9 use the little boys' room for about -- five minutes
10 at my age. I'll take about five minutes.

11 MR. BLUMBERG: Five minutes is fine.
12 We'll see you back here.

13 THE VIDEOGRAPHER: We are off the record
14 at 12:55 p.m.

15 (A recess was taken.)

16 THE VIDEOGRAPHER: We are back on the
17 record at 1:05 p.m.

18 MR. BLUMBERG: I'm going to bring up
19 Exhibit 22.

20 (Exhibit 22 marked.)

21 BY MR. BLUMBERG:

22 Q. 22 is two pages of notes. Do you
23 recognize these two pages?

24 A. Do I recognize them? That's my
25 handwriting.

1 Q. Can you describe what these two pages
2 are?

3 A. No. Just a breakdown of money,
4 annuities, fees, costs. There's a note down below,
5 "Jay." I don't know what that means.

6 I don't know. It's just a breakdown of
7 the fees and stuff.

8 Q. Where it says "Daniel" on page 2 of the
9 document, can you explain what these numbers mean?

10 A. 350 for loss of consortium, 350 for
11 wrongful death, and then 350 for extraordinary
12 services, I believe.

13 That's not my -- I don't know who wrote
14 that, but that's -- that's what that is.

15 Q. What extraordinary services?

16 A. What he was doing for his wife. His --
17 his care, his taking care of her over and above his
18 responsibilities as a husband. The fact that he
19 basically was her caretaker.

20 Q. Did your clients tell you to apportion
21 this amount for Daniel? By "this amount" --

22 A. Did they tell me?

23 Q. -- I mean the total of 350 times 3.

24 A. Did they tell me? No. Was it
25 discussed? Absolutely.

1 Q. When was it discussed?

2 A. During the course of the mediation. And
3 we met with them the night before the mediation and
4 I went through -- you know, obviously we went
5 through the sequence and what a mediation was about
6 and how we'd all be separated. You know, the
7 routine that most of us talk about our clients
8 about.

9 They were interested in the money. I
10 told them how we could segregate certain money out.
11 And they had no issues with any of that. The
12 ultimate decision is theirs.

13 And then during the mediation -- which
14 this might have been -- this might have been
15 prepared at the mediation, I don't know -- we went
16 through it, and they had no issues at all with it.

17 Q. You're not saying this document was
18 prepared in advance of the mediation, are you?

19 A. No, no. I said this might have been.
20 You asked me a question, did we go through a
21 breakdown during the course of the mediation, we
22 knew what the settlement was going to be.

23 This could have been done at the end of
24 the mediation. I don't know when this document was
25 prepared, John.

1 Q. You mentioned something about
2 segregating or to segregate money out. What did you
3 mean?

4 A. Well, identifying Daria's settlement and
5 Daniel's settlement. He was a proper party, had his
6 loss of consortium, also had his wrongful death
7 waiver and the extraordinary services portion. So
8 that's all.

9 Q. Why would it be necessary to segregate
10 out the recovery for Daniel?

11 A. Just to identify what damages that the
12 parties should agree to pay with respect to his --
13 (audio distortion) -- as a party. He's entitled to
14 get compensated.

15 Q. When you say to identify what the
16 settling parties had agreed to pay, was there any
17 apportionment in any of the settlement agreements
18 with regard to Daniel's claims or the amount
19 apportioned to Daniel?

20 A. I don't recall. I haven't read those
21 settlement agreements, but I'm sure they included
22 wrongful death in there. I'm sure they included the
23 causes of action that are set forth -- identified in
24 the complaint because they would have identified the
25 complaint by number, at least that's what is

1 normally done, and I'm sure they included a wrongful
2 death waiver.

3 MR. BLUMBERG: I want to go to
4 Exhibit 23 now.

5 (Exhibit 23 marked.)

6 BY MR. BLUMBERG:

7 Q. 23 is the distribution sheet. It's
8 actually three pages. Actually, this is the wrong
9 document. Give me a second here.

10 All right. This is a document from your
11 file, but I think it may be the wrong document that
12 I've called up as an exhibit. But the first page --
13 let me just go to that.

14 On the first page, it's a calculation of
15 fees and costs and distribution. Would that be an
16 accurate statement?

17 A. Yeah, looks like it.

18 Q. And did you approve this?

19 A. Sure. Ultimately I did, yeah, of
20 course.

21 Q. And this amount on Daniel's recovery of
22 \$1,050,000, that seems to match what was on the
23 previous exhibit, the 350 times 3?

24 A. Right.

25 Q. Would that be correct?

1 A. Yes, I agree with what you just said.

2 Q. Now, you would agree that none of the
3 settlement agreements allocated any amount to Daniel
4 separately?

5 A. You know, John, I'm going to take your
6 word for it. I do not know that. I haven't
7 reviewed them. But if you say that's true -- he's
8 part of the settlement. I'm sure his name is in the
9 release and I'm sure he signed it. Was there a
10 separate release just for him? Not that I'm aware
11 of.

12 Q. Now, this shows that you calculated your
13 attorney's fees based on an allocation of money for
14 each client. Would that be correct?

15 A. It appears that way.

16 Q. Which means that on -- for each client
17 you calculated the 40 percent of the first 50,000,
18 one-third of the second 50,000, 25 percent of the
19 next 600,000 -- excuse me -- of the next 500,000,
20 and then 15 percent of the remainder.

21 Would that be correct?

22 A. Yeah, if that's what the breakdown is in
23 Nevada. I don't have a -- as I am sitting here --
24 recollection. But that would have been the way it
25 was done.

1 Q. Based on my calculation here, you
2 deducted a hundred percent of the cost from Daria's
3 share to reach a net amount, but you didn't allocate
4 any of the costs to be deducted from Daniel's share.
5 Was there a reason for that?

6 A. No. Just based on discussions with
7 them. I mean, that's not uncommon -- in these cases
8 that the -- those that would have -- (audio
9 distortion).

10 Could we have done it a different way?
11 Sure. It was my judgment to do it this way. And
12 was there other ways to do it? I'm sure there were.

13 Q. Okay.

14 MR. BLUMBERG: Okay. Madam Court
15 Reporter, he kind of cut out on my end. Did you get
16 the testimony?

17 (Reporter clarification and record is
18 read by the reporter.)

19 BY MR. BLUMBERG:

20 Q. I want to go back to Exhibit 3, which
21 was the contingent fee agreement.

22 Now, in Exhibit 3 there is a reference
23 to California Business and Professions Code 6146.
24 Do you see it there at paragraph 5?

25 A. Yes.

1 Q. Was it your intent that the
2 attorney-client contract you entered into with Daria
3 and Daniel would be governed by California law?

4 A. No. But it's -- other than the -- other
5 than the 250 versus the 350, it's my understanding,
6 based on what I looked at -- and, again, I haven't
7 done it in a couple years -- it's basically the
8 same.

9 Q. Was it your intention that the -- that
10 the contract be governed by California law or
11 Nevada law?

12 A. You know, it was a Nevada case, so I
13 would -- I would think it would be governed by
14 Nevada law.

15 Did I specifically change the fee
16 agreement? No, I did not. Because to me, the fee
17 agreement's the fee agreement.

18 And the statutes, other than the
19 difference in limitations, is the same in both
20 states.

21 Q. When you calculated the attorneys' fees
22 due from the allocation that you made for Daniel,
23 did you go back to this document, the contingency
24 fee agreement, to see what it said about the payment
25 of attorneys' fees?

1 A. No.

2 Q. Up at the top here in the first
3 paragraph, do you see that it says that Daria Harper
4 and Daniel Winger are designated as "Client"?

5 A. Yes.

6 Q. Okay. And do you see at paragraph 9
7 that it talks about "Client agrees to pay for the
8 services herein described and prosecution of such
9 claims, the fee of 40 percent of the first \$50,000,"
10 et cetera?

11 A. Yeah, I see that.

12 Q. When you made the payments to the
13 clients of their share of the settlement, when you
14 sent checks, is it correct that those checks were
15 made out jointly to both?

16 A. I don't remember. I haven't seen those.
17 Might be.

18 MR. BLUMBERG: Let me bring up
19 Exhibit 24.

20 (Exhibit 24 marked.)

21 BY MR. BLUMBERG:

22 Q. All right. Here's 24. And that's your
23 signature on the check?

24 A. It is.

25 Q. And it's made out jointly to both

1 clients?

2 A. It is.

3 MR. BLUMBERG: And let me bring up

4 Exhibit 25.

5 (Exhibit 25 marked.)

6 BY MR. BLUMBERG:

7 Q. 25 has to do with electronic fund

8 transfer and it's an eight-page document. Was it

9 your understanding that the transfers of money,

10 electronic transfers of money that would go into

11 their accounts from the annuity payments would be

12 into a joint account?

13 A. If that's what they requested.

14 MR. BLUMBERG: And let's look at

15 Exhibit 26.

16 (Exhibit 26 marked.)

17 BY MR. BLUMBERG:

18 Q. Do you recall that there was a

19 structured settlement for both of them that you put

20 together?

21 A. I didn't put it together, but I know

22 there was a structured settlement.

23 Q. That was a clumsy question.

24 You arranged for that to be done by an

25 annuity broker, didn't you?

1 A. Yes.

2 Q. And so this is a letter from your file,
3 Exhibit 26, where it shows the annuity going to both
4 of them, correct?

5 A. Looks like it, yeah.

6 Q. So the attorneys' fees you charged to
7 Daniel was based on a separate calculation of the
8 40 percent one-third, 25 percent.

9 Why did you do that?

10 A. Because he's an individual client, he
11 had individual claims, and as a result of that, he
12 pays fees on his loss of consortium, his wrongful
13 death. I mean, I could have waited until Daria dies
14 and we file a wrongful death and you get fees. It's
15 standard, it's customary and it's done every day in
16 this business.

17 Q. Well, I move to strike your answer as
18 nonresponsive. Let me ask it a different way.

19 In your fee agreement, Daria and Daniel
20 were described jointly as "Client," weren't they?

21 A. They are identified as "Client," that's
22 correct.

23 Q. And the -- excuse me.

24 (Telephonic interruption.)

25 MR. BLUMBERG: Let me start over again.

1 Hang on one second.

2 THE WITNESS: Sure.

3 MR. BLUMBERG: Let me turn this thing
4 off.

5 BY MR. BLUMBERG:

6 Q. All right. In your attorney fee
7 agreement, Daria and Daniel are described jointly as
8 "Client," and the obligation to pay fees is
9 described in terms of "Client will pay 40 percent of
10 the first 50,000," et cetera.

11 You agree with that don't you?

12 A. Yes. That's what the document states,
13 Exhibit 3.

14 Q. Nowhere in the document does it say each
15 person will individually pay a separate 40 percent,
16 one-third, et cetera, correct?

17 A. I'd have to review it but probably not.

18 MR. BLUMBERG: I want to go now to
19 Exhibit 27. Exhibit 27, let me put it up.

20 (Exhibit 27 marked.)

21 BY MR. BLUMBERG:

22 Q. Exhibit 27 is an e-mail sent from Daria
23 Harper to you. It says, "Per our phone conversation
24 today, I am requesting that you send the rest of my
25 settlement by wire transfer. You stated CopperPoint

1 has no rights to my settlement, so I do not want my
2 money sitting there to negotiate with. You have
3 already paid yourself, Marshall, and paid Will. I
4 would like the rest of my settlement."

5 Do you recall seeing this?

6 A. Do I recall it? No. But I'm sure I
7 did.

8 Q. Is there a reason that you didn't pay
9 the money that was being withheld as of
10 September 6, 2018?

11 A. Because in my discussions with Daria and
12 Daniel, we did not feel that CopperPoint had any
13 lien rights in Nevada, but they were discussing
14 bringing claims, and I told Daria that I thought we
15 should hold back -- I can't remember the amount --
16 money in an effort -- in case they do come after her
17 so she could have money to pay for attorneys' fees
18 to handle the workers' comp issues that may arise in
19 the state of Arizona.

20 And so I did it in an effort to keep
21 money back to -- so she would have some money, in an
22 effort to protect her and to protect Daniel, so that
23 there would be a fund to help if that became --
24 became a reality.

25 Q. Is it your testimony that they

1 instructed you after September 6, 2018, to keep the
2 money in your trust account?

3 A. Sure. They -- we came to an
4 understanding that I would keep the money in my
5 trust account. And I did.

6 And then when Alan Schiffman got
7 involved, I sent him the money.

8 MR. BLUMBERG: I want to bring up as the
9 next exhibit 28.

10 (Exhibit 28 marked.)

11 BY MR. BLUMBERG:

12 Q. 28 is a letter you wrote on
13 September 18, 2018.

14 Do you recognize this letter?

15 A. I do.

16 Q. And in this letter you related reasons
17 why you didn't believe the law allowed CopperPoint
18 to have a lien.

19 Was there a reason why you never sought
20 to get a court declaration in Nevada of whether
21 there was a lien before you settled the case?

22 A. There was no lien claimed in the state
23 of Nevada.

24 Q. Do you know what Nevada law provides
25 with regard to how an insurance company claims a

1 lien in Nevada?

2 A. No. I know the statute doesn't permit a
3 lien in medical malpractice cases. How they do it
4 in other non -- cases, I didn't look. I just
5 reviewed what they could and could not do in a med
6 mal case.

7 Q. Now, in this letter -- let me make it a
8 little larger so it can be read easier.

9 A. I have my cheaters on, John, so I would
10 be able to see it.

11 Q. I could make it as large as you want.

12 A. I'm good.

13 Q. Now, in the last paragraph of the second
14 page, it says, "Given that risk, it is imperative
15 that funds be set aside not only to deal with
16 potential legal action by CopperPoint, but also to
17 pay a negotiated lien should the lien be found to be
18 appropriate by a court."

19 I don't see anywhere in this letter
20 where it says you are going to hold the money in
21 your trust account. Was there any letter or e-mail
22 that you're aware of that says that that's what you
23 were going to be doing?

24 A. It's in the distribution sheet which you
25 showed me that that money was withheld, and of

1 course it's going to be held in my trust account.

2 And it was held in my trust account. And when Alan
3 Schiffman got involved and requested it, I returned
4 it.

5 Q. Did you ever send a copy of an amended
6 distribution sheet that says that you were going to
7 be withholding money for a lien?

8 A. I don't believe so.

9 Q. We mentioned earlier there was about
10 \$6,000 that was paid to the clerk of the
11 Clark County District Court for out-of-state-party
12 security deposits. Do you recall that?

13 A. I recall you asking me about it.

14 Q. When was the last time that you tried
15 to -- strike that.

16 You know that because the case was
17 settled that money needs to be refunded from the
18 clerk, correct?

19 A. Yeah. Yes. And we sent a letter to the
20 clerk requesting the refund.

21 Q. When was the last time you requested the
22 clerk to send a refund?

23 A. I have no idea. I didn't do it. My
24 legal assistant, Janette, sent a letter, and I don't
25 know when that was or how often or -- I don't know.

1 Q. Well, is it your information that no
2 refund was ever paid of the money that was paid by
3 the clients?

4 A. I don't think there was any -- I don't
5 believe -- I think that's correct.

6 Q. What have you done to secure repayment
7 of that money?

8 A. I haven't done -- other than send the
9 letter. I can follow up with my legal assistant to
10 see what she's done. That's something she would do,
11 not me. I would have no vehicle to do that. But I
12 can ask you what she's done and get the status of it
13 for you. Be happy to report back to you.

14 Q. Were you --

15 A. And, John, let me just say this. If
16 there's an issue, I'll be happy to send -- send a
17 check for the 6 grand and then I'll make sure
18 Janette gets on it. But I have no problem with
19 that.

20 Q. Well, those kind of discussions I think
21 your attorney would prefer we have not on the
22 deposition record.

23 A. Okay. Well, then you talk to Jim. You
24 call him and work things out.

25 MR. KJAR: That's correct. I'm fine

1 with such discussions.

2 THE WITNESS: Right.

3 BY MR. BLUMBERG:

4 Q. So earlier this year your firm found
5 attorneys in Arizona and Nevada to represent Daria
6 Harper; is that correct?

7 A. That's my understanding.

8 Q. And the attorney in Arizona, his name
9 was Adam Palmer?

10 A. That's my understanding.

11 Q. Were you present during the deposition
12 of Will Collins when he testified about composing an
13 e-mail to Adam Palmer with your input?

14 A. No.

15 MR. BLUMBERG: Let me see if I can put
16 up the document. I think that's Exhibit 29.

17 (Exhibit 29 marked.)

18 BY MR. BLUMBERG:

19 Q. Do you recall being in the room with
20 Will Collins when he was writing an e-mail to Adam
21 Palmer?

22 A. I don't recall. I'm not saying I
23 wasn't. I certainly could have been.

24 Q. Well, he testified that when he was
25 writing this e-mail you were in the room with him

1 and you were kind of writing it together.

2 Do you have a recollection of that?

3 A. No. But if he said that, then I was.

4 Q. Okay. I'm going to put up 29.

5 A. Yeah, thank you.

6 Q. Do you recall seeing this e-mail before?

7 A. No. I'm looking at it right now.

8 Okay. I've read it.

9 Q. Do you recall seeing this e-mail before
10 it was sent?

11 A. I don't, but I'm not saying I didn't.

12 MR. BLUMBERG: I'm going to bring up
13 Exhibit 30.

14 (Exhibit 30 marked.)

15 BY MR. BLUMBERG:

16 Q. Exhibit 30 is an e-mail that you sent to
17 Alan Schiffman. There we go.

18 Do you recall sending this e-mail? It's
19 dated January 21, 2020.

20 A. Yeah, I would have sent this.

21 Q. And would you say --

22 A. Can you narrow it down, John? Because I
23 can't see the right-hand margin. It's -- you and
24 David and Karen are --

25 Q. (Indicating.)

1 A. That will do it.

2 Q. Is that better?

3 A. Yeah, perfect. Thank you very much.

4 Okay. The question?

5 Q. Was everything in the e-mail intended by
6 you to be true?

7 A. You have to let me read it.

8 Yeah, that still -- that's more or less
9 pretty accurate.

10 Q. Do you see the line where it says, "One
11 thing is certain re their lien claims, is that they
12 would have had the responsibility to pay these
13 benefits regardless of our lawsuit."

14 Do you see that line?

15 A. Yeah, I do.

16 Q. What benefits are you referring to?

17 A. Her -- her Arizona workers' comp
18 benefits. Once they started paying them -- in my
19 view, paying as a volunteer -- they were going to
20 continue. Point number one.

21 Point number two, Daria Harper, based
22 upon my discussions and my medical literature, once
23 she got to Havasu she was quadriplegic and that
24 wasn't going to get any better.

25 And so, you know, they weren't paying

1 because of the negligence of what happened after she
2 left Lake Havasu -- I mean Havasu Regional Medical
3 Center.

4 The next issue, as we already
5 discussed multiple times today, is that her surgery
6 for her knee replacement wasn't related to her
7 August 11th, 2014, fall.

8 Q. Right. I remember all that testimony.
9 My question is when you wrote "One thing is certain
10 re their lien claims, is that they would have had
11 the responsibility to pay these benefits regardless
12 of our lawsuit."

13 A. Once they started to pay, for whatever
14 reason, in my view they had a responsibility to
15 continue to pay, whatever their rationale for paying
16 it was to begin with.

17 The issue was, is that she was unable to
18 walk. She was quadriplegic before she got to
19 Valley. Valley's where the alleged negligence
20 occurred.

21 We had -- we'll get into it, I assume,
22 at some point, causation issues in this case, as I
23 said here in this e-mail. We weren't going to
24 overcome them.

25 But she was already quadriplegic at

1 Havasu Regional Medical Center. If that's the basis
2 upon which they were paying, they were going to have
3 to continue to pay, because her continued
4 quadriplegia and her inability and her neurological
5 status wasn't as a result of the negligence that
6 occurred at Valley, period. And that's what that
7 meant.

8 Q. Was it your opinion during the
9 litigation that Daria's entire disability and all of
10 her economic damages were unrelated to -- strike
11 that. Let me go about it this way.

12 Isn't it true that in your prosecution
13 of the Nevada lawsuit, that you claimed that Daria
14 Harper's entire disability and all of her economic
15 damages were caused by the malpractice in Nevada?

16 A. Did we advocate that position? Yeah, we
17 did. We -- we did advocate that position. But as
18 you well know, there's a distinction between
19 advocacy and reality.

20 Q. Well, I'm going to move to strike that
21 second sentence.

22 My question is, you advocated in the
23 Nevada lawsuit that all of her economic damages and
24 her entire disability were caused by the malpractice
25 of the Nevada healthcare providers, correct?

1 A. That's -- that's -- that's what we
2 advocated.

3 Q. Thank you.

4 And isn't it true that you filed
5 declarations of doctors that essentially said the
6 same thing?

7 A. No. You've got to read those
8 declarations very carefully because they were
9 very -- they were drafted in a fashion that was --
10 they were very carefully drafted with respect to the
11 causation issue in the case. And --

12 Q. Is it your opinion that Daria Harper was
13 paralyzed when she left Havasu, before she arrived
14 at Valley Hospital?

15 A. A hundred percent. Her diagnosis in the
16 emergency room was quadriplegia.

17 Q. I'm asking what your understanding was.

18 A. Yes.

19 MR. KJAR: He's trying to tell you.

20 THE WITNESS: I'm trying to tell you.

21 Yes, she was.

22 MR. KJAR: Do you want the basis of his
23 understanding?

24 THE WITNESS: She was paralyzed. She
25 was paralyzed when she got to Havasu, and she was

1 paralyzed when they intubated her to -- to protect
2 her airway, and she was paralyzed when she got in
3 that helicopter, and the triage diagnosis at Valley
4 was quadriplegia.

5 BY MR. BLUMBERG:

6 Q. I'm going to recall Exhibit 6. 6 is the
7 answers -- interrogatory answers propound -- the
8 answers to interrogatories propounded by
9 Dr. Davidson. Give me a second.

10 6 is -- excuse me.

11 Exhibit 6 is on the screen. I'm looking
12 at the answer to Interrogatory 15.

13 A. I got it. Okay.

14 You just lost me there.

15 Q. Is the document --

16 A. Yeah, could you scroll up a little bit,
17 John, please.

18 Q. Up or down?

19 A. The other way. Other way. Thank you.
20 Keep going. Stop. Stop. Okay. Got it.

21 Q. All right. So the interrogatory asks,
22 "If you contend that Defendant Jeffrey Davidson,
23 M.D., failed to comply with the standard of care
24 concerning your care and treatment, please state in
25 your own words how Dr. Davidson fell below the

1 standard."

2 And then in the answer it says, "The
3 failure to comply with the standard of care caused a
4 delay in diagnosis of an abscess, and Ms. Harper's
5 spinal cord was irreparably damaged, resulting in
6 paralysis."

7 A. Right.

8 Q. Okay? It says see also affidavit of
9 Michael Ritter filed with the complaint. Okay?

10 A. Yep.

11 Q. So let me bring up the declaration of
12 Dr. Ritter. And that is Exhibit 4. It's not on the
13 screen yet. I'm still doing some stuff here.

14 Is the document up?

15 A. It is, yeah.

16 Q. Okay.

17 A. John, can you scroll -- shrink it down a
18 little bit? Because I can't see the right-hand
19 side.

20 Q. Let me -- how's that?

21 A. Better. Perfect. Thank you.

22 Q. Paragraph 6 on page 2 of the Ritter
23 affidavit says, "It is also my opinion, to a
24 reasonable degree of medical probability, had
25 Ms. Harper received earlier medical treatment,

1 compliant with the standard of care, she would not
2 be paralyzed." Right?

3 A. Yes.

4 Q. You're getting some significant
5 backlighting from the -- from the blinds. I'm
6 wondering if you can turn them a different direction
7 so that it's not affecting the screen.

8 A. How's that?

9 Q. That's better. Thank you.

10 Give me one second. I've got to call up
11 another document here.

12 Okay. I'm going to bring up Exhibit 17,
13 which is the expert declarations. And specifically,
14 this is the declaration of Dr. Ciacci, at
15 paragraph 14.

16 Can you see the document?

17 A. Yes, very well. Thank you.

18 Q. Okay. And at paragraph 14 he says,
19 "Next, it is my opinion to a reasonable degree of
20 medical certainty that Ms. Harper's neurological
21 function was -- continued to be salvageable on
22 June 10, 2015. In that regard, it is my opinion to
23 a reasonable degree of medical certainty that had
24 Ms. Harper been properly evaluated and treated on
25 June 9, 2015, she would have been taken to surgery

1 to drain the abscess, which would have avoided
2 permanent injury to her spinal cord such that she
3 would not be paralyzed today."

4 Do you see that?

5 A. Yes.

6 Q. Do you know what kind of doctor Joseph
7 Ciacci is?

8 A. He's a neurosurgeon.

9 Q. Okay. Now going to the law firm in
10 Nevada that you had located. That was Pisanelli
11 Bice law firm. Do you recall that?

12 A. Yes.

13 Q. And you wanted that firm to file a
14 declaratory relief action in Nevada to establish
15 that CopperPoint had no lien, correct?

16 A. That was the discussion that this office
17 had with them.

18 Q. And do you recall signing their retainer
19 agreement?

20 A. I think if they sent it to me, I would
21 have signed it.

22 MR. BLUMBERG: All right. Let me bring
23 up Exhibit 31.

24 (Exhibit 31 marked.)

25 ///

1 BY MR. BLUMBERG:

2 Q. Do you see 31 on the screen?

3 A. Yes.

4 Q. "Yes"?

5 A. Yes. I'm sorry. Yes. Sorry.

6 Q. Okay. And this is a letter from

7 Pisanelli Bice dated January 27, 2020, and it's sent

8 to Daria Harper, care of your office.

9 A. Yes.

10 Q. And on the third -- excuse me, fourth

11 page, it appears to have your signature on the

12 document; is that correct?

13 A. Yes.

14 Q. Your firm sent a \$15,000 retainer to the

15 Pisanelli Bice firm. Do you recall that?

16 A. (Audio distortion.)

17 Q. What was the source of that money?

18 A. (Audio distortion.)

19 Q. You're cutting out.

20 (Reporter clarification.)

21 THE WITNESS: The source of the money

22 was money we held back in the trust account to cover

23 these types of expenses.

24 BY MR. BLUMBERG:

25 Q. Do you recall in the letter that you

1 agreed to that it said that you and your law firm,
2 Law Offices of Marshall Silberberg, have agreed to
3 be responsible for the firm's retainer and payment
4 of the firm's invoices?

5 A. Yeah.

6 Q. And what was your understanding of that?
7 That you would be responsible by paying the clients'
8 money?

9 A. Yeah.

10 Q. And you also paid the \$5,000 out of the
11 clients' trust account monies to Adam Palmer in
12 Arizona?

13 A. I believe so.

14 MR. BLUMBERG: I'm going to go now to --
15 well, let me just check one more box. Let me bring
16 up Exhibit 32.

17 (Exhibit 32 marked.)

18 BY MR. BLUMBERG:

19 Q. You received a demand from Alan
20 Schiffman to refund to Daria and Daniel all the
21 money you were holding in your trust account,
22 correct?

23 A. I believe I did, yes.

24 Q. Okay. I'm bringing up 32, and 32 is a
25 check from your office of \$259,000.

1 Do you recognize this check?

2 A. I do.

3 (Exhibit 33 marked.)

4 BY MR. BLUMBERG:

5 Q. Now, going to Exhibit 33, 33 has a
6 collection of four pages. The first page is a
7 distribution -- it says, "Distribution Sheet -
8 Fagel."

9 Do you recognize this?

10 A. No, but it's -- it's what we have.

11 Correct, I see it.

12 Q. And the second page is signed by Janette
13 Dockstader, a letter to Tom Alch enclosing a check
14 for \$28,268, which -- it says, "which represents
15 your portion of fees on the matter."

16 How did you know what the fees were?

17 A. I don't remember. I think Tom told me
18 what his -- what he had Bruce had agreed to.

19 Q. And the third page of the document has
20 copies of a check to Law Office of Bruce Fagel for
21 \$540,026, and a check to Tom Alch for \$28,268.

22 Were those the amounts you were -- you
23 were told by Tom Alch and Bruce Fagel to make the
24 checks out to?

25 A. (Audio distortion.)

1 Q. Is the answer "yes"?

2 A. (Audio distortion) -- that's between he
3 and Bruce.

4 Q. I'm sorry. Your answer cut out. I
5 don't know if the court reporter got it.

6 MR. BLUMBERG: Madam Court Reporter, did
7 you get this answer?

8 (The record is read by the reporter.)

9 THE WITNESS: No, that's not what I
10 said.

11 THE REPORTER: Repeat your answer.

12 THE WITNESS: The answer, John, is Tom
13 gave me the percentage breakdown between he and
14 Bruce, and based upon that, I issued the checks.

15 Did you get that?

16 BY MR. BLUMBERG:

17 Q. Yes, I got that.

18 So the information -- so the information
19 was solely from Tom Alch?

20 A. I believe so.

21 Q. And then the last page of this exhibit
22 is a letter to Kristyann Brodecki of Bruce Fagel's
23 office enclosing the check to Bruce Fagel.

24 And this was sent with your authority,
25 correct?

1 A. Yes.

2 Q. Was there ever a consent by the clients
3 for payment of these fees?

4 A. An actual written consent? I don't
5 believe so. I don't remember. They were advised
6 that I was -- I was --

7 (Audio distortion).

8 (Reporter clarification.)

9 THE WITNESS: They were told in that, as
10 you described it, as a generic letter, about Bruce
11 and Tom's involvement. And in the fee agreement it
12 says I may send referral fees to other lawyers.

13 But did they -- did they specifically
14 sign anything? I don't believe so.

15 MR. BLUMBERG: Okay. I don't have any
16 further questions. I'm going to take a recess right
17 now. I'm going to send the exhibits to -- you
18 wanted me to send it to Janette in your office?

19 THE WITNESS: Yeah. It's Janette --
20 J-A-N-E-T-T-E -- @Silberberglaw.com. I'll let her
21 know that they're coming.

22 Do you want to take ten minutes? Or
23 David, do you have questions?

24 MR. CLARK: If I do, there are very few,
25 but I would like to see the exhibits.

1 MR. BLUMBERG: Okay. I'm going to send
2 both of you a link. David, would you give me your
3 e-mail?

4 MR. CLARK: DClark -- D-C-L-A-R-K --
5 @LipsonNeilson.com. L-I-P-S-O-N-N-E-I-L-S-O-N, one
6 word, LipsonNeilson.com.

7 MR. BLUMBERG: S-O-N?

8 MR. CLARK: S-O-N, yes.

9 MR. BLUMBERG: I'm going to send a
10 download link to both of your offices so you can
11 download all these exhibits. Shall we take 15?
12 Would that work for everybody?

13 THE WITNESS: Why don't we do 20, John,
14 just so they can get it and review it.

15 MR. BLUMBERG: We can take 20 or 30.
16 Jim and David, what do you need?

17 MR. KJAR: How about 15 minutes and then
18 we'll come back? I have a few questions.

19 MR. CLARK: Can we do 20?

20 MR. BLUMBERG: 20 it is. All right,
21 we're off the record.

22 THE VIDEOGRAPHER: We are off the record
23 at 2:00 p.m.

24 (A recess was taken.)

25 THE VIDEOGRAPHER: We are back on the

1 record at 2:27 p.m.

2 EXAMINATION

3 BY MR. CLARK:

4 Q. I guess it's my turn.

5 A. Yeah, that's fine.

6 Q. Mr. Silberberg, my name is David Clark.

7 I'm an attorney representing Tom Alch and Shoop

8 Professional Law Corporation.

9 Can you hear me well enough?

10 A. I can.

11 Q. I don't have a whole lot of questions.

12 If I understood your testimony

13 correctly, it was your understanding that Tom Alch

14 was simply going to be local counsel, and then when

15 discovery started, he was going to have no further

16 involvement. Do I recall that correctly from your

17 testimony?

18 A. Yes. That's basically right, correct.

19 Q. Okay. As I understand it, he never

20 appeared at any depositions?

21 A. That's correct.

22 Q. Either defending or taking?

23 A. That's correct.

24 Q. If I understand, he never even appeared

25 as local counsel at the depositions; is that

1 correct?

2 A. That's correct.

3 Q. And he did not have any involvement in
4 creating the fee agreement that you had with the
5 plaintiffs?

6 A. That's correct.

7 Q. Okay. Do you know if he had any
8 discussions, direct communications, with either of
9 the plaintiffs?

10 A. I don't -- I don't have any recollection
11 that he did.

12 Q. Do you have any recollection or evidence
13 that you asked him to communicate directly with the
14 plaintiffs?

15 A. No.

16 Q. Okay. You already -- already testified
17 that he did not attend or participate in the
18 mediation; is that correct?

19 A. That's right.

20 Q. And when you had discussions with the
21 plaintiffs regarding your opinions on the validity
22 of CopperPoint's claim lien, was he involved in any
23 of those conversations with the plaintiffs?

24 A. No.

25 Q. When you -- when the plaintiffs -- when

1 the defendants paid their monies, all the monies
2 went to you, correct?

3 A. Right.

4 Q. And then you distributed them pursuant
5 to your agreement with the plaintiffs; is that
6 right?

7 A. That's correct.

8 Q. And did Mr. Alch have any involvement in
9 those decisions?

10 A. No.

11 Q. Okay. You had indicated in your letter
12 to the plaintiffs, I think it's Exhibit 5, that you
13 had worked with Bruce Fagel and Tom Alch in the
14 past. That was in the letter --

15 A. Yes. Yes.

16 Q. Did you have any prior professional
17 relationship with the Shoop Law Corporation?

18 A. No.

19 Q. To your understanding, in this matter
20 did you have any communication or involvement with
21 the Shoop Law Corporation aside from Tom Alch?

22 A. No.

23 Q. I'll represent to you that the principal
24 of Shoop Law Corporation is David Shoop. Do you
25 know him?

1 A. I do not.

2 Q. Okay. The ongoing efforts you made
3 to retain later Nevada counsel and Arizona counsel,
4 was Mr. Alch or Shoop involved in any of those
5 efforts?

6 A. No.

7 Q. Is it fair to say that after you sent
8 Mr. -- Mr. Alch his check, I think it was in August
9 of 2018, that he had no further involvement in these
10 related matters?

11 A. That's correct.

12 Q. Now, you indicated that when Mr. Alch
13 went from Bruce Fagel's firm to the Shoop firm, you
14 just assumed he was going to still be involved in
15 this case?

16 A. Yes.

17 Q. Okay. But did you ever communicate with
18 him directly to confirm that?

19 A. Not that I remember.

20 Q. Did you ever communicate with the Shoop
21 law firm to confirm that?

22 A. No.

23 Q. Did you ever confirm that with Bruce
24 Fagel?

25 A. No. I never talked to Bruce.

1 Q. I think in response to questioning on
2 Exhibit 8, which was a letter you sent to
3 CopperPoint in October of 2016, there was a copy to
4 Tom Alch indicated in that letter.

5 Do you recall that testimony?

6 A. I do. I recall that exhibit with the cc
7 to Tom Alch and I think to Anna Schiffman.

8 Q. Okay. I think in response to
9 Mr. Blumberg's questioning, you said you didn't see
10 any reason it was copied to him, just to keep him in
11 the loop?

12 A. Yeah, I don't know. I don't know what
13 the protocol was.

14 Q. Did Mr. Alch have any involvement in
15 negotiations with CopperPoint over their claimed
16 lien?

17 A. No.

18 Q. You expressed your opinion to the
19 plaintiffs that in your opinion CopperPoint did not
20 have a valid lien against the Nevada malpractice
21 settlement proceeds; is that correct?

22 A. Right.

23 Q. Was Mr. Alch involved in your coming to
24 that opinion?

25 A. No. I mean -- no.

1 Q. And I may have already asked this: He
2 was not involved in your communications of that
3 opinion to the plaintiffs, correct?

4 A. Correct.

5 Q. I will represent to you that in one of
6 the releases I've seen, I think it was one of the
7 million-dollar releases, there's a signature of
8 yours on behalf of Thomas Alch and the Shoop
9 Professional Law Corporation.

10 My question to you is did you have --
11 are you aware of any authority you had to speak for
12 the Shoop Professional Law Corporation during
13 this -- during this case?

14 A. No.

15 MR. CLARK: Okay. With that, I'll pass
16 the witness.

17 THE WITNESS: Thanks, David.

18 EXAMINATION

19 BY MR. KJAR:

20 Q. This is Kjar. I have a few questions.

21 Mr. Silberberg, as of the time of the
22 mediation, after you'd had a chance to fully work
23 this case up and you and Mr. Collins had a chance to
24 confer with your experts and evaluate this case, did
25 you have an opinion as to the likelihood of your

1 ability to win this case for Mr. and Mrs. Harper?

2 A. Yes.

3 Q. What was that opinion?

4 A. That we would most likely lose this case
5 on the second issue of causation.

6 Q. And could you explain the basis of
7 the -- of that opinion that you held when you
8 decided to settle this case --

9 A. Sure. Sure.

10 Q. -- for \$6.2 million?

11 A. Right. The -- the -- as we've discussed
12 and Mr. Blumberg and I discussed, the -- the issues
13 of negligence were not going to be an issue, but the
14 problem we had in this case was -- and before
15 mediation, was that the -- the literature did not
16 support our position.

17 Dr. Ciacci, who was a neurosurgeon, went
18 radio silence on us, and when we did get an
19 opportunity to speak with him, he said that
20 causation would be a very difficult issue, as did
21 Dr. Ritter. I had multiple discussions with Mike
22 Ritter, and he said that causation in this case
23 would be a very difficult issue to overcome.

24 In addition to that, as a result of
25 that, I spoke -- curbside consult -- with Ivar

1 Szper, who I think Mr. Blumberg probably knows at
2 that point was a neurosurgeon in Long Beach, and he
3 would not support the causation based upon the fact
4 that Daria had had motor symptoms three days before,
5 had collapsed at home, and was quadriplegic when she
6 got to Valley.

7 The literature supports the position
8 that what motor deficits you have at the time you
9 enter a healthcare facility is what you -- the best
10 you can expect.

11 As a result of that, I had a case with
12 Duncan McBride, the chief of neurosurgery at Harbor
13 UCLA. Duncan has seen a lot of these cases because
14 of his involvement at Harbor UCLA, and he echoed the
15 same opinions as did Dr. Szper --

16 (Audio distortion.)

17 (Reporter clarification.)

18 THE WITNESS: S-Z-P-E-R.

19 In addition, the defendants added some
20 substantial experts on the issue of causation.

21 One was a prominent spine neurosurgeon from
22 Georgetown --

23 (Audio distortion.)

24 (Reporter clarification.)

25 THE WITNESS: Georgetown University.

1 Georgetown.

2 In addition, there was a Dr. Park, a
3 neurosurgeon in -- affiliated with Cedars in
4 West L.A., all of which stated opinions that we had
5 received --

6 (Audio distortion.)

7 THE WITNESS: The problem was that in
8 these cases, the spinal epidural abscess cases,
9 which I've handled a few before this case, my
10 experience is that the fact that Daria had entered
11 the hospital in Lake Havasu with a quadriplegia and
12 had matriculated to Valley with the triage diagnosis
13 of quadriplegia, that there wasn't --

14 (Audio distortion.)

15 (Reporter clarification.)

16 BY MR. Kjar:

17 Q. Let me ask a new question.

18 Were there any other factors that
19 affected your decision to settle this case and
20 caused you to be concerned that you would not win
21 it?

22 A. Other than the causation issues --

23 Q. You were saying something about the
24 mediation?

25 A. At the mediation I certainly had

1 discussions with the mediator. The mediator had
2 discussions with our client. We had had discussions
3 with our clients about the likelihood of losing this
4 case on causation. Judge Bell, in discussions
5 with -- during the course of the mediation confirmed
6 that, indicating that, you know, 85, 90 percent of
7 med mal cases in the state of Nevada are won by the
8 defense.

9 So taking that into consideration, all
10 of that, it was obviously in our best interest to
11 settle this case, which we did for 6.25 million,
12 which was a lot of money when one considers what our
13 obstacles were.

14 Q. Now, your associate, Mr. Collins, did he
15 also speak with your experts, particularly experts
16 like Dr. Ciacci and your radiology expert,
17 Dr. Dorros?

18 A. Yes. He did the initial conversations
19 with them.

20 Q. Did you have any discussions with
21 Mr. Collins prior to and at the time you settled the
22 case about what he had learned from those experts,
23 particularly on causation?

24 A. Well, Dr. Dorros had made comments that
25 Dr. Jerome Barakos, who was the neuroradiologist

1 from San Francisco -- an expert who I have used in
2 the past, is a very persuasive expert -- was of the
3 view that the initial MRI taken on the 10th showed
4 infarctions which would have dated it back to at the
5 time probably before she got to Valley.

6 Dorros said he could -- he could play
7 with that or could dispute that; however, he also
8 said if pushed, those types of infarcts might not
9 present themselves for a couple of days.

10 So we were -- we were stuck with some
11 pretty persuasive adverse testimony as it related to
12 the June 10th MRI.

13 Q. Did you have an understanding through
14 Collins, through Dr. Dorros or your other experts as
15 to whether or not subsequent imaging studies
16 following the initial ones did, in fact, show large
17 infarcts to her spinal cord?

18 A. Yes, the entire cord. The abscess went
19 from her cervical all the way down to her lumbar,
20 and she did, in fact, infarct her cord.

21 Q. Did you have an understanding, based on
22 your discussions with Mr. Collins, as to whether or
23 not your radiology expert, Dr. Dorros, thought that
24 would be problematic for your case?

25 A. Yes. He thought it would -- indeed

1 thought it would be problematic for the case as to
2 the timing of her injury. Which corresponds with
3 the fact, of course, that she was indeed
4 quadriplegic at home and was quadriplegic when she
5 got to Valley Hospital.

6 Q. Based on your discussions with
7 Mr. Collins, what -- what did you learn
8 specifically, particularly for Dr. Dorros, as to why
9 the fact that subsequent imaging showed massive
10 infarcts of the spinal cord would be problematic for
11 your case?

12 A. Because they can take a period of time
13 before they manifest themselves, before there's a
14 signal intensity change on the MRI. And as a result
15 of that, he couldn't and he wouldn't support to a
16 reasonable degree of medical probability that it
17 wasn't --

18 (Audio distortion.)

19 (Reporter clarification.)

20 THE WITNESS: -- that it was not
21 present, as Dr. Barakos had stated in his
22 declaration.

23 BY MR. KJAR:

24 Q. Taking all of these factors into
25 consideration, why did you settle her case for

1 \$6.2 million instead of taking it to trial?

2 A. Well, because if you take it to trial
3 and lose, she gets nothing. With the \$6.25 million,
4 assuming that there isn't some sort of lien issue,
5 she is still going to obtain a net settlement of
6 well over a million dollars, which would take care
7 of a lot of her needs, and it was in her best
8 interest to settle the case.

9 She had the choice. We laid everything
10 out to her at the mediation. We gave our
11 recommendations.

12 But she and Daniel, as two competent
13 adults, made the decision to resolve the case and
14 not take the risk of getting zero and take the risk
15 of a potential cost fills by these defense lawyers
16 would be obviously reduced to use against her.

17 Q. Is it a fair statement that based on
18 your evaluation --

19 (Audio distortion.)

20 (Reporter clarification.)

21 BY MR. KJAR:

22 Q. Based upon your evaluation of the case
23 and the information you received from your medical
24 experts, particularly the neurosurgeons, a Dr. Szper
25 and McBride, as well as Dr. Ciacci and Dr. Ritter,

1 did you have an opinion to a reasonable legal
2 probability when you settled that case as to whether
3 or not you would win or not?

4 A. Yeah, I thought it was more probable.
5 Not that we would lose. I had been down that road
6 as a defense lawyer and won multiple cases on the
7 issue of causation when I was defending physicians
8 in hospitals. And if the defendants had admitted
9 negligence, it would have been even more probable
10 that we would not have prevailed. I thought it was
11 more likely that we would lose on that issue, and I
12 had to so advise my clients to that.

13 Q. Why did you think that if the defendants
14 admitted negligence, that would be -- make your case
15 more difficult to win?

16 A. Because the optics on the deviations
17 from the standard of care were pretty impressive.
18 There had been some mistakes. So they would reduce
19 all that. I mean, they would eliminate that. They
20 would eliminate those bad optics, come in and fall
21 on the sword that what they did, they delayed.
22 However, it's the all Chick Hearn, "No harm, no
23 foul." And they'd get rid of all of the sexy
24 arguments we would have had.

25 Q. Did you have an understanding from

1 things you learned at the mediation or speaking with
2 defense lawyers prior to the mediation that
3 conceding the negligence aspect of the case was
4 something they were tactically thinking of doing?

5 A. That was a -- an issue that they had --
6 they were considering. Now, nobody came to me and
7 said we are going to do it. But was it being
8 considered? Absolutely.

9 Q. Did that concern you?

10 A. Of course.

11 Q. Did you exercise your professional
12 judgment based upon your knowledge, your learning
13 and your experience in ultimately advising the
14 plaintiffs to accept \$6.2 million to settle this
15 case?

16 A. Of course.

17 Q. Did you think that was an appropriate
18 and reasonable exercise of your judgment?

19 A. It was actually the only logical and
20 prudent judgment that one could exercise taking into
21 account the issues that we were faced with.

22 Q. Did you consider that even if in some
23 way, shape or form CopperPoint was allowed to assert
24 a \$2.7 million lien against your clients'
25 recoveries, as to whether or not a \$6.2 million

1 settlement would still be of benefit to them?

2 A. Of course. I mean, A, there was no lien
3 rights. There was never any lien filed. There was
4 never any lien claimed.

5 But let's take your question at face
6 value. They still would have -- after fees and
7 costs, they still would have netted out well over a
8 million dollars.

9 Q. Did you have an opinion as to whether or
10 not that would have been able to assist her with
11 whatever future needs she had?

12 A. Sure.

13 Q. What was your general understanding as
14 to what Ms. Harper really needed in terms of future
15 needs, notwithstanding what was in your life care
16 plan?

17 A. Well, she had been at Craig Hospital
18 for -- I don't know, for what was -- a year. They
19 plateaued her and stabilized her with respect to her
20 physical and occupational therapy needs and had
21 gotten her ready. So those really weren't an issue.

22 She did need assistance -- I mean, she's
23 a tetraplegic -- and Daniel was providing that care
24 for her. She occasionally needed to go and see
25 neurologists and physical medicine physicians. But

1 those visits were few and far between.

2 So she obviously needed more -- more
3 frequent medical visits. Daniel was providing care
4 for her, which she needed.

5 And that was kind of what her needs
6 were.

7 Q. In your opinion, at any time while the
8 Nevada claim was filed and pending and being
9 litigated and right up to the day you settled that
10 case, did CopperPoint ever assert a lien in that
11 case?

12 A. No.

13 Q. Did they file any type of formal
14 pleading in the Nevada case attempting to assert a
15 lien?

16 A. No.

17 Q. Did they file a complaint in
18 intervention?

19 A. No.

20 Q. Did they file a notice of lien in your
21 case?

22 A. No.

23 Q. You received information from
24 CopperPoint about the amount of money that they had
25 paid to the plaintiff in terms of prior benefits,

1 correct?

2 A. Right.

3 Q. How would you use that?

4 A. Well, you use it -- if you had to go to
5 trial, you would use it as a benchmark for the past
6 medicals. You would try to board the money that
7 actually had been paid to show the extent of the
8 past medical specials.

9 Q. In your view, based on your research and
10 your understanding of Nevada law and your consulting
11 with any other lawyers who practiced in Nevada --
12 and by the way, did you consult with some of the
13 defense lawyers who had been practicing in Nevada
14 their whole career as medical malpractice lawyers as
15 to whether or not CopperPoint could assert a lien?

16 A. I did.

17 Q. And what -- what did you take away from
18 those discussions?

19 A. That the statute since its inception did
20 not permit liens.

21 Q. And based upon your research in Nevada
22 law, including this McCrosky case as you described
23 it, what did that show in terms of whether or not
24 CopperPoint could assert a lien?

25 A. Well, there was no caselaw that said --

1 that said the statute was not viable and
2 enforceable, and the -- that portion of the McCrosky
3 case upheld provisions of that statute. And so --
4 and quite frankly, I mean, there's a lot of
5 plaintiffs' lawyers in Las Vegas and other places
6 that I'm sure -- I'm sure attempted at some point to
7 try and challenge, and there had been no -- there'd
8 been no challenges, to my knowledge, that had been
9 successful.

10 So at that point when we had this case,
11 that was the law of Nevada. It was the law in
12 Nevada when we settled the case.

13 Q. Did you think it was reasonable for you
14 to settle this case on the assumption that
15 CopperPoint could not assert a lien against the
16 \$6 million recovery based upon all the factors
17 you've discussed: your legal research, your
18 speaking with plaintiff lawyers in Nevada, your
19 discussing this with the mediator, and your
20 discussions with the lawyers who were defending the
21 case who had been practicing medical malpractice
22 work in Nevada for many, many years?

23 A. Yeah, I don't think Daria and Daniel had
24 any choice. It was a case -- I think we had a
25 September, October trial date. So -- and we hadn't

1 designated -- we hadn't taken expert depositions yet. And
2 that would have, in my view, if we had gotten
3 involved in expert discovery, would have hollowed
4 out the value of this case, and especially if they
5 had admitted negligence.

6 So this was a case that was ripe for
7 mediation, the mediator agreed it was ripe for
8 mediation, and that was -- that was our position and
9 those were our recommendations, and they
10 independently evaluated our recommendations and
11 agreed to accept them.

12 Q. How many medical malpractice cases had
13 you tried as a trial lawyer when you settled this
14 case, approximately?

15 A. To verdict?

16 Q. Correct. Including arbitrations.

17 A. In excess of 250.

18 Q. Based upon your experience as a
19 medical -- by the way, did you try cases as a
20 defense lawyer too?

21 A. Oh, yeah. That's what I'm including in
22 the 250. As a plaintiffs' lawyer you don't want to
23 try cases.

24 Q. So based upon the 250 or so cases that
25 you arbitrated and tried as both a medical

1 malpractice defense lawyer and a medical malpractice
2 plaintiff lawyer, did you think your case was going
3 to get better or worse if it didn't settle at the
4 mediation?

5 A. Well, if we had to engage in expert
6 discovery, the causation issue, it would have gotten
7 a lot worse.

8 Q. Why did you hold that opinion when you
9 recommended to the Harpers that they accept
10 \$6.2 million to settle the case?

11 A. Because of the -- of the significant
12 danger and risk of losing the case on causation.

13 Q. And you learned that from discussions
14 with your experts; is that correct?

15 A. Yeah. And looking at the declarations
16 from the defense experts.

17 Q. And you had -- you had tried cases
18 involving paralysis, epidural abscesses, prior to
19 this, correct?

20 A. I had not -- I don't know if I tried
21 one, but I'd certainly handled them.

22 Q. Were you familiar with the medical
23 literature on the subject of how -- the degree of
24 recovery which a patient can expect following the
25 diagnosis of an epidural abscess and spinal cord

1 injuries?

2 A. Yeah, I was intimately familiar with the
3 literature.

4 Q. What did it tell you in that regard?

5 A. The literature was very clear that if
6 you enter a hospital with the primary symptom of
7 severe back pain but you're neurologically intact,
8 then there is a window of opportunity for surgery.

9 Those who enter a healthcare facility
10 who are -- have neurological deficits, it's very
11 clear that in 85 to 90 percent of those patients
12 those deficits don't get better and can, indeed, get
13 worse if there's a delay in making the diagnosis.

14 So those patients who enter with a fixed
15 neurological deficit, those deficits will remain.

16 And Daria entered Valley -- Valley -- excuse me,
17 Havasu Regional with complete flaccid paralysis, and
18 when she was transferred at 5:00 in the morning to
19 Valley, as I said before, the triage diagnosis upon
20 her entry was quadriplegia.

21 So that was the issue that Dr. Szper and
22 Dr. McBride said they couldn't -- you know, she was
23 never going to walk again, as I put in my e-mail to
24 Alan Schiffman.

25 Q. Was that your state of mind and your

1 understanding as to the problems with causation in
2 this case when you recommended settlement for
3 \$6.2 million?

4 A. Absolutely. And those are the
5 discussions that we had with Daria and Daniel at the
6 mediation, the night before the mediation, and we
7 actually had these discussions before we met them in
8 Las Vegas for the mediation.

9 So this was not a discussion that we had
10 with them just the day of. These are discussions we
11 had -- I don't know exactly when, but days or a week
12 or so before the mediation; we met them the night
13 before at Circus, where they were staying,
14 and had this long discussion with them; and then we
15 had the discussion with them during the course of
16 the mediation, as did Judge Bell in his discussions.

17 Q. So this fatal causation issue to their
18 case as you evaluated was not something new or
19 something you sprung on them at the mediation; it
20 was something that had been part of an ongoing
21 discussion for some time prior to the mediation. Is
22 that correct?

23 A. A hundred percent.

24 Q. Okay. In your opinion, had you made
25 them aware of these issues well prior to the

1 mediation so they had adequate time to consider
2 them?

3 A. Of course.

4 Q. All right. I want to turn now to the
5 issue of whether or not Daria Harper in your view
6 had a meritorious medical malpractice case in
7 Arizona.

8 A. Right.

9 Q. Did you reach an opinion on that issue?

10 A. I did.

11 Q. Did you discuss -- did you discuss that
12 issue with some of your experts?

13 A. I did. And with Daria and Daniel.

14 Q. And tell us what your opinion was on
15 whether or not she had a meritorious medical
16 malpractice case in Arizona.

17 A. Okay.

18 MR. BLUMBERG: You said in Arizona?

19 MR. KJAR: Correct, yes.

20 MR. BLUMBERG: Thank you.

21 THE WITNESS: There were two prongs to
22 the Arizona evaluation. Prong number one was
23 whether or not the surgery which she had performed
24 in May of 2015, was there anything done with respect
25 to -- anything done that would deviate from the

1 standard of care, and the issue was very clearly no.
2 She had had -- as I indicated, she had what's called
3 this UKA procedure where she had -- because she had
4 Grade 4 chondromalacia, or bone-on-bone
5 osteoarthritis. So with respect to her -- her
6 arthroplasty, that was done correctly, there was no
7 post-op infection, and she was making a good
8 recovery. And so that was done well.

9 The next issue would have been when she
10 got to Havasu Regional Medical Center on June 8th
11 with respect to did they do anything to mishandle
12 it. Dr. Ritter was very clear that the ER doc
13 started her on the appropriate antibiotics, ordered
14 a CT scan and figured out that she needed a higher
15 level of care, and consulted in triage with Valley,
16 set up the medical flight.

17 So they were -- they were
18 Johnny-on-the-spot with respect to getting her out
19 of -- of Havasu knowing that they did not have
20 neurosurgical coverage. And so she needed care.

21 So from that standpoint, we were told
22 there was just simply no evidence of any issue.

23 I discussed with Les Worcester, an
24 internist in Long Beach who does some infectious
25 disease stuff, and he said, Look, you know, the

1 cause in somebody like her of the epidural abscess
2 is -- is -- obesity is a known predictive risk
3 factor. There's no evidence of any infection
4 before, there's no evidence of infection, you know,
5 and because she was so morbidly obese, she did have
6 some issues with -- you know, some issues.

7 And so there was nothing we could even
8 correlate with respect to her epidural abscess. She
9 got it, you know, she was -- she was a person and a
10 patient who had risk factors for it, and that was
11 the issue.

12 So there was no case in Arizona, and we
13 so advised her, and we couldn't file it.

14 BY MR. KJAR:

15 Q. And I believe you were shown in a prior
16 exhibit where she signed off on a letter you sent
17 her agreeing to that recommendation?

18 A. Exactly.

19 Q. Did you have an understanding as to
20 whether or not CopperPoint could file -- strike
21 that.

22 Did you have any type of understanding
23 as to, assuming you did file a medical malpractice
24 case in Arizona, whether her comp carrier,
25 CopperPoint, could assert a lien in that case?

1 A. Well, I think technically they could
2 have. But in our view, there was no connection
3 between her epidural abscess and what they were --
4 and her fall which occurred on August 11, 2014, some
5 10, 11 months earlier. There was no just
6 connection.

7 Q. Let me go back to the Nevada case.

8 In your opinion and in your view as you
9 were handling this case, from the moment you filed
10 it until the moment you settled it, did CopperPoint
11 have a valid lien against that case?

12 A. No.

13 Q. Did they, in your view, ever attempt to
14 assert a valid, binding lien in the Nevada case?

15 A. No.

16 Q. And the opinion that CopperPoint didn't
17 have a lien in your Nevada case, as you've already
18 said, was based upon your review of the Nevada
19 statute precluding such liens, correct?

20 A. Right.

21 Q. Your review of the caselaw, including
22 the McCrosky case?

23 A. Right.

24 Q. Your conversations with plaintiff
25 lawyers who practiced in Nevada, correct?

1 A. Defense lawyers primarily.

2 Q. And defense lawyers.

3 The mediator, Judge Bell, correct?

4 A. Right.

5 Q. Now, you were shown Exhibit 19, and
6 specifically on page 2 there's a paragraph 3 here.
7 Now, it says, "On August 19th, 2015, the Defendant
8 Carrier issued a Notice of Claim Status indicating
9 that by virtue of ARS" -- that's an Arizona statute?

10 A. Right.

11 Q. -- "the Defendants had a lien against
12 Applicants' recovery from the third party
13 responsible for her injuries." Right?

14 A. That's what it says.

15 Q. Now, on August 19th, 2015, had you even
16 filed the complaint?

17 A. No.

18 Q. When was the complaint filed?

19 A. I believe June of 2016.

20 Q. All right. Is there any --

21 A. I wasn't even -- I hadn't even been
22 retained in the case on August 19th, 2015.

23 Q. Is there anything in paragraph 3, as you
24 read this, that grants CopperPoint a valid,
25 enforceable lien in the Nevada lawsuit that you

1 filed ten months later?

2 A. No. No. It doesn't even address
3 Nevada.

4 Q. In your view, did CopperPoint sending
5 you information about the amount of monies they paid
6 toward your client -- voluntarily, apparently --
7 through her workers' compensation benefits amount to
8 a formal lien in her Nevada lawsuit?

9 A. Of course not.

10 Q. Do you know who -- do you know who
11 CopperPoint sent this notice of claim status to on
12 August 19th, 2015?

13 A. I don't know. Let me look. I do not.

14 Q. And by the way, this statement of -- in
15 Exhibit 19 that you were shown, this is something
16 filed by CopperPoint in her workers' compensation
17 case in Arizona, right?

18 A. Right.

19 Q. Does that have -- did that -- does that
20 now or -- in your view, have any -- did that have
21 any effect on her pending medical malpractice case
22 in Nevada?

23 A. No. And there was no medical
24 malpractice case pending in Nevada at the time --
25 that I know of -- that they say they filed this, in

1 August of 2015.

2 Q. This -- in fact, Exhibit 9 says it's a
3 petition for approval of a compromise and settlement
4 of claim with credit?

5 A. Right.

6 Q. They're making a claim for a potential
7 credit?

8 A. Right.

9 Q. At some undefined point in the future,
10 correct?

11 A. That's what it looks like.

12 Q. But as far as you know, they never took
13 any legal steps to perfect and claim a lien in your
14 Nevada case; is that correct?

15 A. That's right.

16 Q. So is it correct that when you settled
17 this case for \$6.2 million on behalf of the Harpers,
18 in your view and to the best of your knowledge
19 CopperPoint did not have a valid lien, they had not
20 attempted to file a valid lien, and they would not
21 be permitted to file a valid lien and collect it in
22 your Nevada case; is that correct?

23 A. That's right.

24 Q. Okay. Why did you retain a law firm in
25 Nevada to evaluate the possibility of filing a

1 declaratory relief action?

2 A. To help Daria's potential issues in the
3 state of Arizona.

4 Q. Could you please expound upon that?

5 A. Sure. If she could get -- same thing as
6 what Mr. Blumberg has done in this case -- get a
7 declaratory relief action that there's no lien
8 issues and such, she could take that -- whether
9 it would be binding or not on the Arizona court
10 would be -- who knows, but it would certainly
11 try to assist her with respect to any issues that
12 were being set forth in an Arizona workers' comp
13 case.

14 Q. Now, did Mr. or Mrs. Harper ever agree
15 to allow that firm to represent them?

16 A. Yes. They eventually did.

17 Q. Okay.

18 A. Okay? They eventually did. And then
19 they withdrew for -- I don't know what reasons. I
20 have my suspicions, but I don't know.

21 Q. So that firm withdrew from representing
22 the Harpers?

23 A. Yes.

24 Q. Did you send them a \$15,000 retainer?

25 A. We did. And they sent two back.

1 Q. And what did you do with that?

2 A. It went into the trust account, and then
3 it was sent as part of the package back to
4 Mr. Schiffman.

5 Q. As far as you know, the Harpers suffered
6 no financial harm from the retention of that firm?

7 A. That's correct.

8 Q. Okay.

9 MR. KJAR: I think that's all I have.

10 MR. BLUMBERG: I have a few.

11 EXAMINATION

12 BY MR. BLUMBERG:

13 Q. Mr. Silberberg --

14 A. Yeah. My --

15 Q. I'm sorry?

16 A. My screen has gone blank. I'm looking
17 at a Microsoft. Can I have somebody come in and --
18 I can see you up there, John. I can see you up
19 there, so I'm good.

20 Q. Okay.

21 A. And I can hear you fine, so...

22 Q. You said Daria agreed to the Pisanelli
23 Bice firm representing her? You said that?

24 A. Yeah, she signed -- signed an agreement
25 with them, as I understand it.

1 Q. You never saw a signed agreement, did
2 you?

3 A. I'm not so sure. I think I did. I
4 think I saw a letter where she agreed, or an e-mail
5 to me that she'd agreed.

6 Q. Which is it? Is it an e-mail? Is it a
7 signed document?

8 A. Well --

9 Q. What is your testimony that she agreed
10 that they would represent her?

11 A. I don't remember.

12 Q. Isn't it true that the Pisanelli Bice
13 firm declined to handle the case and that's why they
14 sent the money back?

15 A. No. That's not my understanding.

16 Q. Did you have any conversations with or
17 read any of the e-mails from the attorney at
18 Pisanelli Bice who was handling the case at the
19 beginning?

20 A. I think I did initially. The subsequent
21 e-mails I don't recall.

22 Q. And you -- and it's your recollection
23 that it wasn't the Pisanelli Bice firm that declined
24 to continue representing Daria Harper; is that your
25 testimony?

1 A. No, no, no. They -- somewhat down the
2 road they did withdraw and said they wouldn't
3 continue with her representation.

4 Q. And do you -- and do you know why?

5 A. No. I don't know the exact reasons, and
6 I'm not -- I have my own views. I'm not going to
7 speculate as to them.

8 Q. You're entitled to your views. I'm
9 asking for your sworn testimony.

10 A. I don't know why.

11 Q. Okay. Now, when I asked you questions
12 about whether you consulted with any Nevada
13 plaintiff lawyers about whether or not Nevada law
14 prohibited a lien if there were settlements, you
15 told me you did not?

16 A. Well, I consulted with Tom Alch. Other
17 than that, you're right. But of course I consulted
18 with Tom Alch.

19 Q. So you have a recollection now that you
20 consulted with Tom Alch, who told you that in his
21 opinion there was no lien under Nevada law if there
22 was a settlement; is that correct?

23 A. He sent me -- we talked about, early on,
24 if you recall, Mr. Blumberg, I had talked with Tom,
25 and he said they don't have any lien rights, and it

1 was he who sent me the statute.

2 Q. Okay. So were you relying on the -- on
3 the advice given to you by Mr. Alch that CopperPoint
4 had no lien rights?

5 A. Absolutely not. I was relying upon my
6 reading of the statute and my understanding that
7 they hadn't filed a lien. So...

8 Q. Okay. Now, you were talking about a
9 conversation that you had with Dr. Dorros. Isn't it
10 true that you testified earlier that you had no such
11 conversations with Dr. Dorros and that the
12 conversations with Dr. Dorros were all with Will
13 Collins?

14 A. I don't recall that I said I didn't have
15 any involvement with Dr. Dorros. I said the initial
16 contact with the experts was done by Will, he
17 prepared the -- the declarations, and we had
18 subsequent dialogue with experts as we were going
19 along, especially after we received the -- the
20 declarations from the defense.

21 I mean, you have to understand how this
22 office operates. Will can be on a conference call
23 with Dr. Dorros in his office and I frequently go in
24 and participate. So --

25 Q. Do you have a specific recollection of

1 speaking with Dr. Dorros after the receipt of the
2 defense expert declarations?

3 A. I do not have a specific recollection.

4 Q. Did you read the memos to the file that
5 Will Collins made, particularly about his
6 conversation with Dr. Dorros after the defense
7 declarations were received?

8 A. No, but I'm sure I did.

9 Q. Is it -- well, then do you recall
10 reading that it was -- that Dr. Dorros, after he
11 read the defense declaration of Dr. -- is it
12 Barakos?

13 A. Barakos. Jerome Barakos.

14 Q. Barakos.

15 That after he read Dr. Barakos'
16 declaration, that he said that Dr. Barakos is making
17 stuff up?

18 A. I don't recall that.

19 Q. That he completely disagrees with the
20 opinions of Dr. Barakos?

21 A. I don't think he totally disagreed. And
22 I said that in my -- in my comments with the
23 questions from Jim.

24 Q. You said what?

25 A. I said that he could take issue with

1 Dr. Barakos on the issue of the signal changes on
2 the MRI. I specifically said that.

3 Q. So Dr. Dorros was not discouraged by the
4 defense declarations; he was steadfast in the
5 opinion that there was causation of the paralysis.
6 Isn't that true?

7 A. No, I don't think with that he was
8 steadfast.

9 Q. Okay. I'm going to put up a document,
10 and I'm going to number it 35.

11 (Exhibit 35 marked.)

12 A. I'm not going to be able to see it on my
13 screen.

14 MR. KJAR: But we can step up and look
15 at it.

16 BY MR. BLUMBERG:

17 Q. This is a -- do you see this document on
18 your screen? It says "Memorandum," and it's from
19 WSC regarding Dr. Dorros, and it's "Re: Defense
20 reports." Do you see it?

21 A. Yeah. Can you -- yeah, you don't have
22 to shrink it down. I see that. Right.

23 Q. Okay. Do you see the first sentence?
24 It says, "Dr. Dorros says he is not concerned with
25 the other two expert opinions. He said the only one

1 that we have to deal with is Barakos. He went over
2 the images again and concluded that Dr. B is making
3 stuff up."

4 Do you see that?

5 A. I'm reading it.

6 Yeah, I see that. I see what you're
7 pointing to.

8 Q. Okay.

9 MR. BLUMBERG: And Madam Court Reporter,
10 you're going to need to remind me to provide the
11 last two documents to you, which weren't in the
12 original set.

13 BY MR. BLUMBERG:

14 Q. Did it dishearten you, Mr. Silberberg,
15 when you were told by the mediator that the vast
16 majority of medical malpractice cases result in
17 defense verdicts?

18 A. Absolutely not. That's the same number
19 as we have out here, John.

20 Q. And so how many times and how many
21 mediations of -- in medical malpractice cases has
22 the mediator not said to you about the great
23 advantage that the defense has in medical
24 malpractice cases?

25 A. Oh, I'd say the vast majority don't

1 mention that.

2 Q. But you are aware that somewhere in the
3 range of 75 to 85 percent of cases, medical
4 malpractice cases, that go to juries result in
5 defense verdicts, correct?

6 A. Sure. There's a reason for that.

7 Q. I didn't ask about the reason or the
8 reasons. I asked about whether you were aware of
9 that statistic.

10 A. Yeah, I'm aware in Orange County,
11 California, it's even higher.

12 Q. Is it your testimony that any of the
13 experts whose declarations and affidavits were filed
14 in this case on behalf of plaintiff committed
15 perjury?

16 A. No.

17 Q. So you are not saying that the opinions
18 that were expressed by the experts whose
19 declarations your firm filed in this case were
20 knowingly untrue?

21 A. Well, there's a whole difference in
22 there, John. Opinions -- I don't think you can have
23 perjury on opinions. Perjury is when you
24 intentionally fabricate a fact. Opinions can
25 change. Opinions can alter. And experts change

1 their opinions all the time.

2 Q. All right. Let me ask it this way.

3 In your opinion, did any expert render
4 an opinion that was in a declaration they signed
5 under penalty of perjury in April 2018, is it your
6 opinion that any of those experts rendered opinions
7 that those experts knew were false?

8 A. Not that I'm aware of at that time.

9 Q. At the mediation, you gave advice to
10 Daria and Daniel that in your opinion there was --
11 CopperPoint had no enforceable lien and no way that
12 they would -- that CopperPoint would be able to
13 use -- strike that. I withdraw it. Let me ask it a
14 different way.

15 You told Daria and Daniel that
16 CopperPoint had no right to any of the proceeds from
17 the settlement, correct?

18 A. Told them that they had not filed a
19 lien, didn't have any lien rights, and at that point
20 had not set forth any rights to the proceeds of
21 their settlement.

22 Q. And so you told them that they did not
23 need -- that if they accepted the \$6,250,000, it was
24 not subject to a -- a lien by CopperPoint?

25 A. I did not say that, and read my

1 September 18th, 2018, letter. You'll see exactly
2 what had been discussed from the beginning of this
3 lawsuit till the time of that letter.

4 They were always advised that
5 CopperPoint might try to assert liens. They were
6 always told that they had -- that CopperPoint could
7 go after them in Arizona. That's why we emphasized
8 for a long, long time that they have competent
9 counsel in Arizona, which they initially did,
10 couldn't get along, got fired. We told them to
11 continue to get representation.

12 You can't force them to do something
13 they don't want to do. But they were told -- and
14 all that is set forth in that September 2018 letter.

15 Q. Did you discuss with them the
16 possibility -- "them" meaning Daria and Daniel --
17 did you discuss with them the possibility that
18 CopperPoint could assert a credit in the amount of
19 their settlement in Nevada with regard to any future
20 rights that -- any future obligation that
21 CopperPoint would have to make payments on their
22 behalf?

23 A. I think that was discussed from the
24 standpoint of -- of -- of -- with the settlement
25 amounts they could get, they certainly now had the

1 option to go out and sign up for the Affordable Care
2 Act and get their own independent insurance if
3 CopperPoint was going to try to get a credit for the
4 amounts against any future payments.

5 And we discussed them getting -- since
6 the preexisting conditions was not an issue, we
7 discussed with them getting their own independent
8 insurance.

9 Q. So is it your testimony that you had
10 discussions with Daria and Daniel that CopperPoint
11 might be able to assert a credit as to any ongoing
12 or future obligation to make payments as a result of
13 the Nevada settlement?

14 A. With respect to their Arizona issues,
15 that was a possibility. Therefore --

16 Q. Now, wait a minute. That's a yes or no.

17 A. No, it isn't a yes or a --

18 Q. I'm not calling for an explanation or a
19 therefore.

20 A. I told them that that could be a
21 potential in Arizona, therefore -- once again I'll
22 reiterate it again to you -- you'd better get
23 yourself a lawyer in Arizona to help you deal with
24 these issues.

25 Q. When did you tell them that they should

1 get a lawyer in Nevada to help deal with these
2 issues of the possibility of CopperPoint taking a
3 credit?

4 MR. KJAR: Nevada or Arizona?

5 THE WITNESS: You mean Arizona?

6 BY MR. BLUMBERG:

7 Q. Arizona.

8 A. My God, we were talking to them about
9 getting lawyers in Arizona from the get-go. They
10 had a lawyer back in 2016 who she fired, according
11 to the memos in my file. Schiffman got involved,
12 and then Daniel, according to Schiffman in his
13 e-mail, threatened bodily harm, so Schiffman gets
14 off the case. And then after that we tell them
15 continue to use and get lawyers who can get involved
16 and help you with the Arizona deal.

17 Those discussions were happening from
18 the get-go, from the filing of this lawsuit.

19 Q. When was the first time you told Daria
20 and Daniel --

21 A. We were the ones, through talking with
22 the plaintiffs' lawyer in Tucson, we got Alan and
23 Anna Schiffman's name, and then later on we got
24 another lawyer for them, which, you know, he backed
25 off because of some -- I do know this, that Alan

1 Schiffman got involved and made some unkind
2 comments. That's all I know about it.

3 Q. When was the first time you mentioned to
4 Daria and Daniel that CopperPoint might assert a
5 credit based on a settlement of the Nevada lawsuit?

6 A. I have no idea, other than I told them I
7 was not a workers' comp lawyer and they needed
8 advice from a comp lawyer in Arizona.

9 Q. Did you ever consider that there was a
10 possibility that CopperPoint might assert a credit?

11 A. Never in the Nevada case. They always
12 had a right if they wanted to try to bring some
13 actions in Arizona. But again, that's why she
14 needed competent legal counsel in Arizona.

15 Q. Did you ever write a letter or an e-mail
16 or any written communication to your clients that
17 CopperPoint might assert a credit on any ongoing
18 obligation to provide benefits if there was a
19 settlement in Nevada?

20 A. I -- I talked to them about lien
21 issues --

22 Q. Mr. Silberberg --

23 A. The answer --

24 Q. The question did not ask you about what
25 you talked to them about. My question specifically

1 was did you put anything in writing to them
2 regarding the possibility that CopperPoint could
3 assert a credit against any future obligation to
4 provide benefits.

5 A. Of course.

6 Q. You put that in writing, using the word
7 "credit"?

8 A. Well, I don't know if it says "credit."
9 We talked about lien issues, which --

10 Q. Okay.

11 A. Right.

12 MR. BLUMBERG: I have nothing further.

13 MR. CLARK: Mr. Silberberg, David Clark
14 here again.

15 THE WITNESS: Yeah, David. Nice to see
16 you again.

17 EXAMINATION

18 BY MR. CLARK:

19 Q. In response to questions from your
20 attorney, you listed a large number of doctors and
21 experts that you consulted with. Do you recall that
22 testimony?

23 A. Sure.

24 Q. Did you consult with Mr. Alch with
25 regard to any of those experts?

1 A. No.

2 Q. Is that a "no"?

3 A. No.

4 Q. Do you know if he was involved at all in
5 evaluating their opinions in this case?

6 A. He was not.

7 MR. CLARK: Thank you. No further
8 questions.

9 MR. KJAR: I have a couple.

10 EXAMINATION

11 BY MR. KJAR:

12 Q. Mr. Silberberg, what was the thrust
13 of -- as you understood it based on your discussions
14 with either Dr. Dorros or Will, who I understand had
15 a lot of discussions -- what was the thrust and
16 purpose of Dorros' declaration and what would have
17 been his testimony at trial?

18 A. The thrust would have been the timing of
19 the infarcts and the -- the evidence going back to
20 the CT scan that was done at Havasu as to the
21 displacement of the thecal sac, which was already
22 showing evidence of compression against the spinal
23 cord at the time that Daria got to the Havasu
24 Regional Medical Center, which would then explain
25 that the displacement of the thecal sac displaced

1 and put compression on the spinal cord, as to why
2 she had -- and was paralyzed when she got to the
3 hospital.

4 Q. Was it your understanding that the
5 statement of Dr. Dorros was something to the effect
6 that he couldn't see any evidence of an infarction
7 on the very first imaging studies taken of her spine
8 in Nevada?

9 A. The very first MRI done on June 10th.
10 That's it.

11 Q. And the defense expert from
12 San Francisco, whose name I forget --

13 A. Barakos. Jerome Barakos.

14 Q. -- disagreed and said there was
15 evidence, correct?

16 A. That's correct.

17 Q. Now, did you have an understanding based
18 on your discussions with Mr. Collins as to whether
19 or not Dr. Dorros raised any further concerns about
20 your case in terms of when the infarct would be
21 visible and show up and how that might be something
22 he could be subject to cross-examination on?

23 A. He did say there is things out there to
24 support that it may be there but not show up for a
25 day or two. You know, no question about that.

1 Q. And did you take the fact that
2 Dr. Dorros had told Will that if pressed he would
3 have to admit that the infarct could have been there
4 and was not visible on the x-rays in your decision
5 to recommend settlement?

6 A. I don't understand that question.

7 Q. Okay. Well, the fact that Dr. Dorros
8 had told, as you understood it, Mr. Collins that
9 even though the infarct wasn't visible to him on the
10 initial MRI, it still well could have been there and
11 could take some time to show up?

12 A. Sure. But let me just say this for
13 everybody. Dorros was not the big clog on the
14 causation. It was the fact that Daria -- and the
15 literature -- she showed up quadriplegic at Havasu.

16 Q. Radiologists don't treat epidural
17 abscesses, do they?

18 A. No.

19 Q. Neurosurgeons do that?

20 A. That's right.

21 Q. And what was your understanding as to
22 what the neurosurgeon experts, not only that you
23 consulted with but that the defense had ready to
24 testify, as well as many years of medical literature
25 in established peer-reviewed journals said on that

1 subject?

2 A. She had a fixed lesion when she got to
3 Havasu Regional Medical Center, and that fixed
4 lesion was the fact that she was paralyzed, was
5 quadriplegic, and as a result of that she had a
6 fixed lesion.

7 Q. Did you understand as to whether or not,
8 based upon the opinions of your experts as well as
9 the medical literature and the defense experts when
10 you settled the case, as to whether or not to a
11 reasonable medical probability her spinal cord
12 injury was complete when she got to Havasu in
13 Arizona?

14 A. That's -- that is a position that is
15 supported by the literature.

16 Q. Did you believe to a reasonable legal
17 probability you could prevail at trial on that
18 issue?

19 A. No.

20 Q. Did you have a discussion with the
21 mediator, Judge Bell, about not only the overall
22 statistical incidence of defense verdicts in Nevada
23 on medical negligence cases, but what he thought
24 your client's chances were in her individual case of
25 prevailing in this case?

1 A. He thought we would lose on causation.
2 That was his view. And he so expressed to me and to
3 her.

4 MR. KJAR: Thank you. Nothing further.

5 MR. BLUMBERG: I don't have anything
6 else. I think we're done.

7 MR. CLARK: Nothing further.

8 MR. KJAR: I don't remember, do we do a
9 stip?

10 MR. BLUMBERG: No. They don't allow it
11 in Nevada. We just have to go by their rules.

12 THE VIDEOGRAPHER: We are off the record
13 at 3:31 p.m.

14 THE REPORTER: Does anybody need a copy
15 of today's transcript.

16 MR. CLARK: Yes. David Clark. I'll
17 take an electronic version.

18 THE REPORTER: You got it.

19 Mr. Kjar?

20 MR. KJAR: Oh, yeah, I want that and I
21 want a copy of the video.

22

23 (The deposition concluded at 3:31 p.m.)

24 -oOo-

25

1	CERTIFICATE OF DEPONENT			
2	PAGE	LINE	CHANGE	REASON
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				

14 * * * * *

15 I, KENNETH MARSHALL SILBERBERG, deponent
16 herein, do hereby certify and declare the within and
17 foregoing transcription to be my deposition in said
18 action; that I have read, corrected and do hereby
19 affix my signature to said deposition under penalty
20 of perjury.

21 KENNETH MARSHALL SILBERBERG, Deponent

22
23
24
25

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
)SS:
3 COUNTY OF CLARK)

4

5 I, Karen L. Jones, a duly commissioned and
licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
taking of the deposition of the witness, KENNETH
7 MARSHALL SILBERBERG, commencing on Monday, November
9, 2020 at 10:44 a.m.

8

9 That prior to being examined, the witness was,
by me, duly sworn to testify to the truth. That I
10 thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript of
11 said deposition is a complete, true and accurate
transcription of said shorthand notes.

12

13 I further certify that (1) I am not a relative
or employee of an attorney or counsel of any of the
14 parties, nor a relative or employee of an attorney
or counsel involved in said action, nor a person
15 financially interested in the action; nor do I have
any other relationship with any of the parties or
16 with counsel of any of the parties involved in the
action that may reasonably cause my impartiality to
17 be questioned; and (2) that transcript review
pursuant to NRCP 30(e) was requested.

18

19

20 IN WITNESS HEREOF, I have hereunto set my
hand, in my office, in the County of Clark, State of
21 Nevada, this 22nd day of November, 2020.

22

23 KAREN L. JONES, CCR NO. 694

24

25

<hr/>	15:14,25 35:24 36:2 105:22 139:5	2014 13:15 40:12,18,20 42:20,21 49:14 100:7 139:4	2:27 113:1
<hr/>			<hr/>
\$			3
<hr/>			<hr/>
\$1,050,000 84:22	10th 123:3,12 159:9	2015 16:7 41:5 42:24 65:19 75:18 105:22,25 136:24 140:7,15, 22 141:12 142:1	3 15:19,22 19:20 75:2,7,18 78:22 81:23 84:23 86:20,22 91:13 140:6,23
\$15,000 107:14 143:24	11 37:10,11,13 50:17 139:4,5	2016 15:14,25 16:7,18 25:2,8 31:10,19 33:18 54:16 73:9 74:11 117:3 140:19 155:10	3/grade 40:23
\$2,768,656.65 51:3 67:9	11:45 46:16	2017 31:6 42:16 45:18 50:8,11 72:11	30 33:8 41:15 54:16 98:13,14, 16 112:15
\$2.7 127:24	11th 100:7	2018 36:4,15 37:8 39:18,22 46:23 50:24 52:9 53:3 60:18 61:1 67:7,9 92:10 93:1,13 116:9 152:5 153:1,14	31 106:23,24 107:2
\$259,000 108:25	12 31:6 50:20,23	2020 98:19 107:7	32 108:16,17,24
\$28,268 109:14,21	12:00 46:19	21 33:18 78:12,18,19,21 98:19	33 109:3,5
\$300,000 74:14 75:4,11	12:55 80:14	22 52:9 67:17 80:4,19,20,22	34 60:12 72:25 73:6
\$350,000 67:19 68:6,14	13 11:3,12,13 52:5,6,8 66:21	23 67:17 84:4,5,7	35 149:10,11
\$5,000 63:1 108:10	14 11:18 13:18 29:17 30:7 52:23,24 53:2 105:15,18	23-1023 75:21	350 81:10,11,23 84:23 87:5
\$50,000 88:9	15 12:6 13:18 54:11,12 85:20 103:12 112:11,17	24 67:17 88:19,20,22	350,000 69:4
\$540,026 109:21	16 12:12,17 28:8 57:18,19	25 85:18 89:4,5,7 90:8	36 44:23
\$6 131:16	17 25:2,8 60:7,9,11 67:6 73:9 105:12	250 87:5 132:17,22,24	3:31 162:13,23
\$6,000 95:10	18 53:3 66:9,10,12,15 93:13	250,000 69:3	3rd 45:1
\$6,250,000 152:23	18th 153:1	26 66:15,20 89:15,16 90:3	<hr/>
\$6.2 119:10 125:1 127:14,25 133:10 135:3 142:17	19 74:5,7,9 75:18 140:5 141:15	27 66:15,17 91:19,20,22 107:7	4 19:14,16,22 40:23 104:12 137:4
\$6.25 125:3	19th 140:7,15,22 141:12	27th 35:4	40 85:17 88:9 90:8 91:9,15
<hr/>	1:05 80:17	28 93:9,10,12	42.021 54:2,17
<hr/>	<hr/>	29 97:16,17 98:4	43 41:15
-	<hr/>	2:00 112:23	<hr/>
-ooo- 162:24	2		4
<hr/>	<hr/>		<hr/>
1	2 13:17,20,21,22 34:5,7 74:11 75:18 81:8 104:22 140:6		
10 9:13 11:1,2 13:25 14:3	20 78:1,3,5 112:13,15,19,20		

<hr/> <p style="text-align: center;">5</p> <hr/> <p>5 25:1,3 50:11 86:24 115:12</p> <p>50,000 85:17,18 91:10</p> <p>50-50 24:4</p> <p>500,000 85:19</p> <p>5:00 134:18</p> <p>5th 36:19 42:3 72:11</p>	<p>105:25 142:2</p> <p>90 122:6 134:11</p> <hr/> <p style="text-align: center;">@</p> <hr/> <p>@lipsonneilson.com 112:5</p> <p>@silberberglaw.com 111:20</p> <hr/> <p style="text-align: center;">A</p> <hr/>	<p>24:7</p> <p>action 34:2 35:8 83:23 94:16 106:14 143:1,7</p> <p>actions 156:13</p> <p>activities 49:20</p> <p>actual 111:4</p> <p>Adam 78:22,23 79:4 97:9,13,20 108:11</p>	<p>adverse 123:11</p> <p>advice 72:7 147:3 152:9 156:8</p> <p>advise 126:12</p> <p>advised 65:6 111:5 138:13 153:4</p> <p>advising 127:13</p> <p>advocacy 101:19</p> <p>advocate 34:16 101:16,17</p> <p>advocated 101:22 102:2</p>
<hr/> <p style="text-align: center;">6</p> <hr/> <p>6 27:2,3,5 39:18 92:10 93:1 96:17 103:6,10,11 104:22</p> <p>6.25 122:11</p> <p>600,000 85:19</p> <p>6146 86:23</p>	<p>a.m. 46:16</p> <p>ability 7:24 119:1</p> <p>abscess 42:6,9,10 43:11,24 44:10 48:3,5 49:13 50:4 66:24 104:4 106:1 121:8 123:18 133:25 138:1,8 139:3</p> <p>abscesses 44:2 46:10 133:18 160:17</p> <p>Absolutely 10:23 81:25 127:8 135:4 147:5 150:18</p>	<p>add 75:14 79:7</p> <p>added 120:19</p> <p>addicts 44:5</p> <p>addition 49:15 67:18 119:24 120:19 121:2</p> <p>additional 69:1</p> <p>address 23:19 27:12,15,16 65:24 73:20 141:2</p>	<p>affected 121:19</p> <p>affecting 105:7</p> <p>affidavit 19:18,20 104:8,23</p> <p>affidavits 19:7,11 20:6 151:13</p> <p>affiliated 121:3</p> <p>Affordable 154:1</p>
<hr/> <p style="text-align: center;">7</p> <hr/> <p>7 29:11,12,14 30:6 67:7,9</p> <p>75 151:3</p>	<p>accept 127:14 132:11 133:9</p> <p>accepted 152:23</p> <p>accident 42:25</p> <p>account 9:15 10:3,4,18,19 89:12 93:2,5 94:21 95:1,2 107:22 108:11,21 127:21 144:2</p> <p>accounting 9:17 63:1,9,12</p> <p>accounts 89:11</p> <p>accuracy 30:13</p> <p>accurate 84:16 99:9</p> <p>Act 154:2</p> <p>acting</p>	<p>addressed 52:9 72:15,21</p> <p>addresses 72:12</p> <p>adequate 136:1</p> <p>adjuster 33:20 35:3</p> <p>admit 160:3</p> <p>admitted 24:22,23,25 26:15 126:8,14 132:5</p> <p>adopted 70:2</p> <p>adults 125:13</p> <p>advance 82:18</p> <p>advantage 150:23</p>	<p>age 80:10</p> <p>agree 31:15 65:18 83:12 85:1,2 91:11 143:14</p> <p>agreed 21:13 83:16 108:1,2 109:18 132:7,11 144:22 145:4,5,9</p> <p>agreeing 138:17</p> <p>agreement 15:10,17,18 20:12,17 21:17, 23 24:6,10,16 73:21 74:14 75:5 76:20,23 78:8 86:21 87:16,17,24 90:19 91:7 106:19 111:11 114:4 115:5 144:24 145:1</p> <p>agreement's 87:17</p> <p>agreements</p>
<hr/> <p style="text-align: center;">8</p> <hr/> <p>8 33:3,6 117:2</p> <p>85 122:6 134:11 151:3</p> <p>8th 137:10</p>			
<hr/> <p style="text-align: center;">9</p> <hr/> <p>9 34:23,24 35:2 50:24 88:6</p>			

77:5,13,23 83:17,21 85:3 agrees 75:3 88:7 ahead 56:12 63:11 airway 103:2 Alan 93:6 95:2 98:17 108:19 134:24 155:22,25 Alch 11:21 12:9 21:3,13 22:5,18 23:15,19 24:7,11,20 25:23 26:15 27:12 28:8 30:9,17 34:18 54:13,15,19,24 55:18 59:10 68:8 71:3,6 76:7,13, 17,25 77:11,22 79:16,21 109:13,21,23 110:19 113:7, 13 115:8,13,21 116:4,8,12 117:4,7,14,23 118:8 146:16, 18,20 147:3 157:24 Alch's 79:6 Alisa 62:22 63:2,7 allegations 48:9 alleged 100:19 allocate 86:3 allocated 85:3 allocation 85:13 87:22 allowed 68:14 93:17 127:23 alter 151:25 ambiguous 48:19 amended 9:1 95:5 amount 20:24 67:8 75:4 81:21 83:18 84:21 85:3 86:3 92:15 129:24 141:5,7 153:18 amounts 51:2 109:22 153:25 154:4	Anna 117:7 155:23 annuities 81:4 annuity 89:11,25 90:3 answers 7:20 29:1 103:7,8 antibiotics 137:13 anymore 36:13 apparently 141:6 appeared 113:20,24 appears 15:14 35:10,14 85:15 107:11 appellate 56:22 57:2 70:3 Applicant 75:3 Applicant's 75:22 Applicants' 140:12 apportion 81:20 apportioned 83:19 apportionment 83:17 approval 142:3 approve 29:3 84:18 approved 70:12 77:19 78:9 approving 28:4 77:12,22 approximate 13:9 approximately 132:14 April 42:16 45:18 50:8,11 60:18 61:1 64:14 72:11,15,16	152:5 arbitrated 132:25 arbitrations 132:16 area 40:20 arguments 126:24 arise 92:18 Arizona 25:19 26:4,8,9,11,12,15 31:12 32:15,16,20,24,25 37:20 40:3,7 42:15,18 43:4 45:12,13,22 57:17 58:6,11 59:7,11 64:6,21 65:15,25 72:21 73:15,19 75:16 92:19 97:5,8 99:17 108:12 116:3 136:7,16,18,22 138:12,24 140:9 141:17 143:3,9,12 153:7,9 154:14,21,23 155:4, 5,7,9,16 156:8,13,14 161:13 arranged 89:24 arrangements 14:25 arrive 55:9 arrived 102:13 ARS 75:20 140:9 arthritic 42:23 arthroplasty 41:7 44:19 137:6 arthroscopy 40:19 article 57:16,22,23 artificial 65:22 asks 9:13 36:16 103:21 aspect 127:3 assert 73:15 127:23 129:10,14	130:15,24 131:15 138:25 139:14 153:5,18 154:11 156:4,10,17 157:3 assist 128:10 143:11 assistance 128:22 assistant 34:20 36:11,14 95:24 96:9 associate 26:3 122:14 association 21:15 assume 13:14 14:11,12 19:25 23:8, 21 30:20 56:12 59:16 100:21 assumed 68:19 77:2 116:14 assuming 23:8 125:4 138:23 assumption 131:14 attached 51:2 78:7 attempt 73:15 139:13 attempted 131:6 142:20 attempting 129:14 attend 114:17 attended 70:23 Attention 74:11 attorney 9:5 25:20 33:19 35:3 56:5 57:17 74:13 91:6 96:21 97:8 113:7 145:17 157:20 attorney's 23:25 85:13 attorney-client 11:19 15:10,17 87:2 attorneys 10:16 97:5 attorneys' 11:5 12:8 87:21,25 90:6
--	---	--	--

<p>92:17</p> <p>audio</p> <p>13:2 28:22 83:13 86:8 107:16,18 109:25 110:2 111:7 120:16,23 121:6,14 124:18 125:19</p> <p>August</p> <p>40:12 42:20 49:14 74:11 75:18 100:7 116:8 139:4 140:7,15,22 141:12 142:1</p> <p>authority</p> <p>62:5,8,18 69:16 110:24 118:11</p> <p>avoided</p> <p>106:1</p> <p>aware</p> <p>11:10,15,22 12:10,16 18:20 26:24 30:16 31:10,17,19 32:14 46:23 47:15 56:22 57:2 58:4 73:21 75:10,24 76:10 79:10 85:10 94:22 118:11 135:25 151:2,8,10 152:8</p> <p>awareness</p> <p>47:4</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back</p> <p>16:22 31:4 36:19 46:18,21 49:13 67:16 71:20,23 79:16 80:12,16 86:20 87:23 92:15, 21 96:13 107:22 112:18,25 123:4 134:7 139:7 143:25 144:3 145:14 155:10 158:19</p> <p>backed</p> <p>155:24</p> <p>Background</p> <p>75:8</p> <p>backlighting</p> <p>105:5</p> <p>bad</p> <p>35:14 126:20</p> <p>bad-faith</p> <p>35:16</p> <p>bar</p> <p>25:21 55:11</p> <p>Barakos</p> <p>122:25 124:21 148:12,13,14, 16,20 149:1 150:1 159:13</p>	<p>Barakos'</p> <p>148:15</p> <p>barred</p> <p>54:25 55:19 56:7</p> <p>based</p> <p>43:15 49:15 73:13 85:13 86:1,6 87:6 90:7 99:21 110:14 120:3 123:21 124:6 125:17,22 127:12 130:9,21 131:16 132:18,24 139:18 156:5 158:13 159:17 161:8</p> <p>basically</p> <p>21:4,9 29:4 81:19 87:7 113:18</p> <p>basis</p> <p>17:1 55:14 101:1 102:22 119:6</p> <p>Beach</p> <p>120:2 137:24</p> <p>bear</p> <p>15:14</p> <p>begin</p> <p>100:16</p> <p>beginning</p> <p>145:19 153:2</p> <p>behalf</p> <p>118:8 142:17 151:14 153:22</p> <p>belief</p> <p>64:8 65:8</p> <p>believed</p> <p>47:20 53:20 65:14</p> <p>Bell</p> <p>55:22 56:4,15,16,18 122:4 135:16 140:3 161:21</p> <p>benchmark</p> <p>130:5</p> <p>benefit</p> <p>50:2 128:1</p> <p>benefits</p> <p>49:7 57:8 99:13,16,18 100:11 129:25 141:7 156:18 157:4</p> <p>Bentley</p> <p>35:12</p> <p>Beverly</p> <p>27:15</p> <p>Bice</p> <p>106:11 107:7,15 144:23 145:12,18,23</p>	<p>big</p> <p>10:10 160:13</p> <p>big-time</p> <p>43:13</p> <p>bigger</p> <p>25:11 66:20</p> <p>bill</p> <p>46:3 63:13</p> <p>binding</p> <p>139:14 143:9</p> <p>bit</p> <p>34:6 51:6 103:16 104:18</p> <p>blank</p> <p>144:16</p> <p>blinds</p> <p>105:5</p> <p>Blumberg</p> <p>7:13 8:24 9:20 11:12 12:5 13:19,23 15:20,23 18:10 19:17 25:4 27:4 29:10,13 33:4 35:1 36:1 37:9,12 46:12,20 47:18 48:14,24 50:15,19,21 52:4,7,22 53:1 57:15,20 60:10 66:8,11 71:21 72:3 74:8 78:4,17,20 80:5,11,18,21 84:3,6 86:14, 19 88:18,21 89:3,6,14,17 90:25 91:3,5,18,21 93:8,11 97:3,15,18 98:12,15 103:5 106:22 107:1,24 108:14,18 109:4 110:6,16 111:15 112:1,7,9,15,20 119:12 120:1 136:18,20 143:6 144:10,12 146:24 149:16 150:9,13 155:6 157:12 162:5,10</p> <p>Blumberg's</p> <p>117:9</p> <p>board</p> <p>130:6</p> <p>bodily</p> <p>155:13</p> <p>body</p> <p>41:14</p> <p>bone</p> <p>40:24 41:3</p> <p>bone-on-bone</p> <p>137:4</p> <p>bottom</p> <p>35:11 50:25 51:8 78:22 80:1</p>	<p>Boulder</p> <p>14:22,23,24</p> <p>box</p> <p>108:15</p> <p>boys'</p> <p>80:9</p> <p>break</p> <p>46:13 80:7</p> <p>breakdown</p> <p>81:3,6 82:21 85:22 110:13</p> <p>briefs</p> <p>66:7</p> <p>bring</p> <p>13:16,19 25:1 27:2 29:10 31:4 33:5 34:22 36:2 37:9 50:22 54:12 66:8,12 67:16 74:5 78:1,12,17 80:18 88:18 89:3 93:8 98:12 104:11 105:12 106:22 108:15 156:12</p> <p>bringing</p> <p>33:9 92:14 108:24</p> <p>broader</p> <p>17:1,2</p> <p>Brodecki</p> <p>110:22</p> <p>broker</p> <p>89:25</p> <p>brought</p> <p>8:21</p> <p>Bruce</p> <p>11:6 20:11,13,17,22 21:4,5, 7,8,13 22:19,22 23:1,24 24:11,17 25:23,24 27:15 76:13,18 109:18,20,23 110:3,14,22,23 111:10 115:13 116:13,23,25</p> <p>Bruce's</p> <p>22:24 27:16</p> <p>bucks</p> <p>69:2</p> <p>building</p> <p>13:4</p> <p>business</p> <p>86:23 90:16</p> <p>butcher</p> <p>57:5</p> <p>buttons</p> <p>33:12</p>
---	--	---	--

<p style="text-align: center;">C</p> <p>calculated 85:12,17 87:21</p> <p>calculation 84:14 86:1 90:7</p> <p>California 32:7 68:20 69:3 70:5,13 86:23 87:3,10 151:11</p> <p>California's 55:6 68:19,24</p> <p>call 15:18 36:12 39:1 64:6 69:15 96:24 105:10 147:22</p> <p>called 19:7,18 56:3 73:24 84:12 137:2</p> <p>calling 154:18</p> <p>Carasso 13:25</p> <p>care 34:16 81:17 103:23,24 104:3 105:1 107:8 125:6 126:17 128:15,23 129:3 137:1,15,20 154:1</p> <p>career 130:14</p> <p>carefully 102:8,10</p> <p>caretaker 81:19</p> <p>carrier 32:16 49:6 55:7 67:2,7 75:5, 19 76:3 138:24 140:8</p> <p>Carrier's 75:6</p> <p>carriers 59:1</p> <p>case 13:11 14:20 16:2,9,12 17:8 18:24 20:13,19 21:1,16,24 22:3,13 24:13 25:18,22 26:6, 11,22 31:13,22 32:10 35:22 36:17,21 38:16 39:20 43:17 45:11,13,22 46:1,4,7,25 47:2,16,18,22 48:10,22 53:4 56:7,21 57:4,7,11 58:8,22 59:13 60:2 61:18 62:7 65:8, 10 67:12 68:16 70:9 71:18</p>	<p>73:14,19 75:12,13,14 76:14, 18,20 77:1 87:12 92:16 93:21 94:6 95:16 100:22 102:11 116:15 118:13,23,24 119:1,4,8,14,22 120:11 121:9,19 122:4,11,22 123:24 124:1,11,25 125:8,13,22 126:2,14 127:3,15 129:10, 11,14,21 130:22 131:3,10, 12,14,21,24 132:4,6,14 133:2,10,12 135:2,18 136:6, 16 138:12,24,25 139:7,9,11, 14,17,22 140:22 141:17,21, 24 142:14,17,22 143:6,13 145:13,18 151:14,19 155:14 156:11 158:5 159:20 161:10, 24,25</p> <p>caselaw 130:25 139:21</p> <p>cases 10:10 20:23,25 21:5,8,10 24:17 28:2 32:6 53:25 59:2 62:20 67:25 68:5 70:11,19 86:7 94:3,4 120:13 121:8 122:7 126:6 132:12,19,23,24 133:17 150:16,21,24 151:3,4 161:23</p> <p>causation 100:22 102:11 119:5,20,22 120:3,20 121:22 122:4,23 126:7 133:6,12 135:1,17 149:5 160:14 162:1</p> <p>caused 101:15,24 104:3 121:20</p> <p>cc'd 34:18 35:12 78:14</p> <p>cc's 34:20</p> <p>Cedars 121:3</p> <p>Center 49:18 100:3 101:1 137:10 158:24 161:3</p> <p>certainty 105:20,23</p> <p>cervical 123:19</p> <p>cetera 14:2 88:10 91:10,16</p> <p>challenge 131:7</p> <p>challenges</p>	<p>131:8</p> <p>chance 118:22,23</p> <p>chances 161:24</p> <p>change 49:19 87:15 124:14 151:25</p> <p>Changing 31:9</p> <p>characterization 34:10</p> <p>charged 90:6</p> <p>cheaters 94:9</p> <p>check 16:20 30:13 76:22 88:23 96:17 108:15,25 109:1,13, 20,21 110:23 116:8</p> <p>checkmark 38:3</p> <p>checks 9:21,22,23 88:14 109:24 110:14</p> <p>Chick 126:22</p> <p>chief 44:1 120:12</p> <p>choice 125:9 131:24</p> <p>chondromalacia 40:23 137:4</p> <p>chronic 41:4 42:23</p> <p>Ciacci 60:21 61:23 105:14 106:7 119:17 122:16 125:25</p> <p>circuit 56:3</p> <p>Circus 135:13</p> <p>citation 37:20</p> <p>claim 31:24 39:23 40:2 42:15,18 43:18 49:10,22 53:22 58:6 65:9,14 68:15 69:12 75:19 114:22 129:8 140:8 141:11</p>	<p>142:4,6,13</p> <p>claimant 58:12</p> <p>claimed 47:17 93:22 101:13 117:15 128:4</p> <p>claiming 31:11,20,23 46:24 47:5,10, 16 55:12</p> <p>claims 33:19 35:3 43:2,6 56:8 59:18 64:5 67:11 83:18 88:9 90:11 92:14 93:25 99:11 100:10</p> <p>clarification 86:17 107:20 111:8 120:17, 24 121:15 124:19 125:20</p> <p>clarified 79:12</p> <p>Clark 11:25 12:4,15 15:19,21 18:4 95:11 111:24 112:4,8,19 113:3,6 118:15 157:13,18 158:7 162:7,16</p> <p>clean 40:19</p> <p>clean-out 42:21</p> <p>cleaned 79:13</p> <p>clear 134:5,11 137:12</p> <p>clerk 95:10,18,20,22</p> <p>click 33:11</p> <p>client 9:15 85:14,16 88:4,7 90:10, 20,21 91:8,9 122:2 141:6</p> <p>client's 161:24</p> <p>clients 17:7,8 25:13 28:19 70:24 71:12 72:6 81:20 82:7 88:13 89:1 96:3 111:2 122:3 126:12 156:16</p> <p>clients' 108:7,11 127:24</p> <p>clog 160:13</p>
---	---	---	--

close 49:16	25 58:7,11 93:25	confer 118:24	continue 77:3 99:20 100:15 101:3 145:24 146:3 153:11 155:15
clue 23:6	compensated 83:14	conference 38:25 147:22	continued 41:2 101:3 105:21
clumsy 89:23	compensation 32:16,25 37:22 55:1,12,20 56:8,24 58:7,11 59:8 65:15 67:2,7 73:23 76:17 141:7,16	conferred 20:5	continuing 76:14 77:1
Code 86:23	competent 125:12 153:8 156:14	confirm 116:18,21,23	contract 11:19 87:2,10
cogent 46:11	complaint 17:18,24 18:3,6,10,19 19:12 22:1 24:19 25:21 83:24,25 104:9 129:17 140:16,18	confirmed 122:5	contrary 68:21
collapsed 120:5	complaints 18:11	connected 42:25 43:19	contribute 74:1
collateral 38:16 57:8	complete 134:17 161:12	connection 19:10 40:16 42:13,19 43:23 48:4,8 49:12 58:21 139:2,6	conversation 39:17 49:15 53:12,17 71:6 72:6 91:23 147:9 148:6
collect 142:21	completely 148:19	consent 11:4 12:7 22:23 111:2,4	conversations 39:21 63:17,22 64:3,4 114:23 122:18 139:24 145:16 147:11,12
collection 109:6	compliant 21:20 105:1	considered 127:8	convey 47:20
Collins 16:11 28:12,14 30:12 36:18 37:2,15 38:23 39:18 40:5 50:23 51:1,5,15 53:3 58:3,5, 9 62:5 71:1 78:5 79:4,15 97:12,20 118:23 122:14,21 123:14,22 124:7 147:13 148:5 159:18 160:8	comply 11:16 103:23 104:3	considers 122:12	copied 117:10
Collins' 16:24	complying 22:11	consistent 51:19 76:23	copies 109:20
Colorado 14:22 15:7 64:1	composing 97:12	consists 60:11	Copperpoint 31:11,20 33:19,20 34:2,11 35:3,8,18,21 36:5 39:20,23, 24 42:17 43:7 46:24 47:4,10, 11,15 48:9,21 50:2 52:11 53:12,14,20 63:19 65:9,14 71:18 73:15,18 74:1,13,22 91:25 92:12 93:17 94:16 106:15 117:3,15,19 127:23 129:10,24 130:15,24 131:15 138:20,25 139:10,16 140:24 141:4,11,16 142:19 147:3 152:11,12,16,24 153:5,6,18, 21 154:3,10 155:2 156:4,10, 17 157:2
combined 67:8	compression 158:22 159:1	consortium 68:15 69:12 81:10 83:6 90:12	Copperpoint's 58:22 64:5 114:22
comments 122:24 148:22 156:2	compromise 142:3	consult 22:8 119:25 130:12 157:24	copy 95:5 117:3 162:14,21
committed 151:14	conceding 127:3	consulted 44:13 63:4 137:15 146:12, 16,17,20 157:21 160:23	cord 104:5 106:2 123:17,18,20 124:10 133:25 158:23 159:1 161:11
communicate 114:13 116:17,20	concern 39:19 127:9	consulting 130:10	corner 38:1,4,5
communication 115:20 156:16	concerned 121:20 149:24	contact 61:2 147:16	
communications 114:8 118:2	concerns 159:19	contacted 13:10 62:15	
comp 32:7,19 43:4,6,7 55:7 57:12 59:1 64:20,23,24 65:4,24 67:12 75:13,16 92:18 99:17 138:24 143:12 156:7,8	concluded 150:2 162:23	contend 103:22	
company 31:11 33:1 55:1,12,21 56:9,	concurrently 18:19 19:12	contingency 87:23	
	conditions 154:6	contingent 15:18 86:21	
	conducive 74:2		

Corporation 80:2 113:8 115:17,21,24 118:9,12 correct 8:5 18:2 21:13 22:6,15 26:20 29:8,9 31:14 32:23 34:9 35:20,23 39:10,15,16 46:1,2, 4 48:6 50:5 61:10 65:6,11 76:16 77:2,24 84:25 85:14, 21 88:14 90:4,22 91:16 95:18 96:5,25 97:6 101:25 106:15 107:12 108:22 109:11 110:25 113:18,21,23 114:1,2,6,18 115:2,7 116:11 117:21 118:3,4 130:1 132:16 133:14,19 135:22 136:19 139:19,25 140:3 142:10,14, 16,22 144:7 146:22 151:5 152:17 159:15,16 correctly 113:13,16 137:6 correlate 138:8 corresponds 124:2 cost 62:25 63:9,12 86:2 125:15 costs 49:7 81:4 84:15 86:4 128:7 Cotton 55:24 56:6 78:23 counsel 15:19 21:3,6,14 22:18 24:8 32:19 77:1 113:14,25 116:3 153:9 156:14 County 12:15 18:4 95:11 151:10 couple 33:5 38:25 66:22 87:7 123:9 158:9 court 12:15 48:14 50:15,18 56:4, 22 57:2 70:3 71:19,22 86:14 93:20 94:18 95:11 110:5,6 143:9 150:9 courts 25:20 32:11 cover 107:22 coverage 137:20	Craig 14:25 15:6 128:17 created 67:13 creating 114:4 credit 142:4,7 153:18 154:3,11 155:3 156:5,10,17 157:3,7,8 cross-examination 159:22 crossed 38:1 CT 137:14 158:20 curbside 46:8 119:25 current 51:2 custom 27:22 61:13,16 customary 90:15 cut 86:15 110:4 cutting 107:19 <hr/> D <hr/> D-C-L-A-R-K 112:4 daily 49:21 damaged 104:5 damages 67:20,25 68:6,24 69:13,15, 17,24 70:6 83:11 101:10,15, 23 danger 133:12 Daniel 9:16,23 10:4 11:5,20 12:8 14:10,25 15:15 45:17 59:19 63:18 65:7 67:18 69:23 74:22 77:20 81:8,21 83:10, 19 85:3 87:3,22 88:4 90:7,19 91:7 92:12,22 108:20 125:12	128:23 129:3 131:23 135:5 136:13 152:10,15 153:16 154:10 155:12,20 156:4 Daniel's 69:12 83:5,18 84:21 86:4 Daria 9:16,22 10:4 11:4,19 12:7,22 13:6 14:1,9,25 15:15 20:19 21:15 27:7 30:6 32:18,19 34:16 40:9,12,25 45:17 47:22 49:17 50:3,12 59:20 63:18 64:15 65:7,13 66:22 67:18 73:22 74:19,21 77:20 78:6 87:2 88:3 90:13,19 91:7,22 92:11,14 97:5 99:21 101:13 102:12 107:8 108:20 120:4 121:10 131:23 134:16 135:5 136:5,13 144:22 145:24 152:10,15 153:16 154:10 155:19 156:4 158:23 160:14 Daria's 40:9 64:9 67:1,7 75:11 83:4 86:2 101:9 143:2 date 13:9,10 14:7 15:13 16:19 24:25 25:6 31:5,7 36:20,21 51:2 54:19 67:1 131:25 dated 13:24 25:2 33:17 35:4 36:4 50:23 52:8 53:3 54:15 98:19 107:7 123:4 David 12:2 19:21 98:24 111:23 112:2,16 113:6 115:24 118:17 157:13,15 162:16 Davidson 27:9 103:9,22,25 day 7:17 77:15 90:15 129:9 135:10 159:25 days 10:17 38:23 120:4 123:9 135:11 DCLARK 112:4 dead 14:21 deal 32:21 43:3 65:4 94:15 150:1 154:23 155:1,16 dealing	58:25 68:23 deals 44:2 dealt 44:4 57:8 death 14:20 81:11 83:6,22 84:2 90:13,14 December 14:13 16:7 decided 119:8 decision 56:23 82:12 121:19 125:13 160:4 decisions 62:6 115:9 declaration 93:20 104:11 105:14 124:22 148:11,16 152:4 158:16 declarations 18:18,25 19:3,6,15 20:6 102:5,8 105:13 133:15 147:17,20 148:2,7 149:4 151:13,19 declaratory 106:14 143:1,7 declined 145:13,23 deducted 86:2,4 deeds 47:19 defendant 23:17 29:16 30:7 75:5,6,19 103:22 140:7 defendants 9:21 26:22 27:21 32:11 55:25 56:18 75:21 77:7 115:1 120:19 126:8,13 140:11 defending 113:22 126:7 131:20 defense 23:16 122:8 125:15 126:6 127:2 130:13 132:20 133:1, 16 140:1,2 147:20 148:2,6, 11 149:4,19 150:17,23 151:5 159:11 160:23 161:9,22
--	--	---	--

deficit 134:15 deficits 44:11 46:10 120:8 134:10, 12,15 degree 41:3 104:24 105:19,23 124:16 133:23 delay 104:4 134:13 delayed 126:21 demand 34:10 108:19 Denver 14:12,17 depo 77:16 depos 132:1 deposit 10:10 12:13 deposition 7:18 8:11 9:2 14:23,24 15:1 38:22 96:22 97:11 162:23 depositions 23:17 113:20,25 deposits 9:14 10:2,9,11,18 95:12 describe 8:14 81:1 designated 45:25 88:4 132:1 desk 38:1 detailed 33:25 determine 59:14 develop 41:5 develops 42:10 deviate 136:25 deviations 126:16	diagnosis 102:15 103:3 104:4 121:12 133:25 134:13,19 dialogue 147:18 dictate 67:3 dictated 67:13 dies 90:13 difference 87:19 151:21 difficult 119:20,23 126:15 diminish 7:24 direct 114:8 direction 105:6 directly 22:21 114:13 116:18 disability 101:9,14,24 disagreed 148:21 159:14 disagrees 148:19 discouraged 149:3 discovery 22:2,7 26:21,22 113:15 132:3 133:6 discretion 17:4 discuss 39:6 58:2,5,9 62:11,14 68:8, 10 136:11 153:15,17 discussed 64:1 72:19 78:6 81:25 82:1 100:5 119:11,12 131:17 137:23 153:2,23 154:5,7 discussing 74:18 92:13 131:19 discussion 56:1 58:13,16 71:17 72:2 74:21 76:13,25 106:16	135:9,14,15,21 161:20 discussions 32:5 39:22 54:23 55:17,24 56:11 62:16 64:12,17 86:6 92:11 96:20 97:1 99:22 114:8,20 119:21 122:1,2,4, 20 123:22 124:6 130:18 131:20 133:13 135:5,7,10,16 154:10 155:17 158:13,15 159:18 disease 65:20 137:25 dishearten 150:14 displaced 158:25 displacement 158:21,25 disposition 12:14 dispute 123:7 disruption 13:2 28:22 distinction 101:18 distortion 17:13 83:13 86:9 107:16,18 109:25 110:2 111:7 120:16, 23 121:6,14 124:18 125:19 distributed 72:10 115:4 distribution 84:7,15 94:24 95:6 109:7 District 12:15 95:11 doc 137:12 Dockstader 14:1 36:5,6 50:24 54:14 109:13 doctor 43:21 62:2,3,4,22 106:6 doctor's 63:13 doctors 18:18 19:2 102:5 157:20 document 8:14,20,25 9:3,9 10:6 11:8,	10,15,16,23 12:10 15:13 19:20 25:5 27:19,21 28:5,14, 20 29:7,14,18 30:3 31:4,5 33:14 37:14 38:3,19,20 39:4, 11 50:9,11 60:8 67:16 74:10, 24 75:2,10 78:9 79:19 81:9 82:17,24 84:9,10,11 87:23 89:8 91:12,14 97:16 103:15 104:14 105:11,16 107:12 109:19 145:7 149:9,17 documents 8:13 9:5,7,13 10:1 11:4,18 12:7,13,16 19:23,25 150:11 dollars 125:6 128:8 Dorros 60:20 61:15 122:17,24 123:6,14,23 124:8 147:9,11, 12,15,23 148:1,6,10 149:3, 19,24 158:14 159:5,19 160:2,7,13 Dorros' 158:16 download 112:10,11 draft 18:11 drafted 18:3,6,9 102:9,10 drafting 17:18 19:5 dragged 16:4 drain 106:1 drug 44:5 dude 45:22 due 39:1 87:22 Duncan 43:25 45:24 46:6 120:12,13 <hr/> E <hr/> e-mail 13:24,25 36:3,15,18,23,25 50:23,25 51:4,16,20 53:2,5, 6,13 54:13,15,19 72:5 78:5, 21 91:22 94:21 97:13,20,25
--	--	--	---

<p>98:6,9,16,18 99:5 100:23 112:3 134:23 145:4,6 155:13 156:15</p> <p>e-mails 64:14 71:9 145:17,21</p> <p>earlier 66:21 76:9 95:9 97:4 104:25 139:5 147:10</p> <p>early 61:22 146:23</p> <p>easier 94:8</p> <p>easiest 79:8</p> <p>echoed 120:14</p> <p>economic 69:13,15,24 101:10,14,23</p> <p>Ed 29:25</p> <p>editing 77:12,22</p> <p>effect 58:6,10,12 141:21 159:5</p> <p>effects 7:22</p> <p>effort 92:16,20,22</p> <p>efforts 116:2,5</p> <p>eight-page 89:8</p> <p>Eighth 12:15</p> <p>electronic 89:7,10 162:17</p> <p>electronically 10:7,12,21</p> <p>eliminate 126:19,20</p> <p>Ellie 28:18</p> <p>emergency 102:16</p> <p>emphasized 153:7</p> <p>employee</p>	<p>21:14 22:25 36:6</p> <p>employment 40:13</p> <p>enclosing 109:13 110:23</p> <p>end 22:7 82:23 86:15</p> <p>ended 42:5</p> <p>enforce 63:19</p> <p>enforceable 131:2 140:25 152:11</p> <p>engage 133:5</p> <p>enlarge 9:10</p> <p>enlighten 58:1</p> <p>enter 20:12 120:9 134:6,9,14</p> <p>entered 15:9 49:18 87:2 121:10 134:16</p> <p>entire 66:4 101:9,14,24 123:18</p> <p>entitled 67:18 69:14 83:13 146:8</p> <p>entry 134:20</p> <p>epidural 42:6,9,10 44:2 46:9 49:12 66:24 121:8 133:18,25 138:1,8 139:3 160:16</p> <p>ER 62:1,3,4 137:12</p> <p>essentially 16:24 74:14 102:5</p> <p>establish 45:12 106:14</p> <p>established 22:1 160:25</p> <p>estimate 36:20 71:12</p> <p>evaluate 118:24 142:25</p> <p>evaluated</p>	<p>105:24 132:10 135:18</p> <p>evaluating 16:2,9 158:5</p> <p>evaluation 125:18,22 136:22</p> <p>eventually 143:16,18</p> <p>evidence 40:17 41:25 114:12 137:22 138:3,4 158:19,22 159:6,15</p> <p>exact 146:5</p> <p>EXAMINATION 7:12 113:2 118:18 144:11 157:17 158:10</p> <p>examining 26:10</p> <p>excess 64:4 132:17</p> <p>excuse 85:19 90:23 103:10 107:10 134:16</p> <p>exercise 127:11,18,20</p> <p>exhibit 8:9,10,23 13:17,20,21,22 15:19,22 19:14,16 25:1,3 27:2,3,5 29:11,12,14 30:6,11 33:3,6 34:23,24 35:2,24 36:2 37:10,11,13 50:16,17,20,23 52:5,6,8,23,24 53:2 54:11,12 57:18,19 60:7,9,11 66:9,10 72:25 73:6 74:5,7,9 78:1,3, 12,18,19,21 80:4,19,20 84:4, 5,12,23 86:20,22 88:19,20 89:4,5,15,16 90:3 91:13,19, 20,22 93:9,10 97:16,17 98:13,14,16 103:6,11 104:12 105:12 106:23,24 108:16,17 109:3,5 110:21 115:12 117:2,6 138:16 140:5 141:15 142:2 149:11</p> <p>exhibits 111:17,25 112:11</p> <p>exist 10:6,8 11:8</p> <p>existence 11:22</p> <p>exists 10:14</p>	<p>expect 60:16 120:10 133:24</p> <p>expenses 67:1 107:23</p> <p>experience 17:6 121:10 127:13 132:18</p> <p>expert 60:1,5,12,25 105:13 122:16 123:1,2,23 132:1,3 133:5 148:2 149:25 152:3 159:11</p> <p>experts 45:25 61:3,20 62:6,8,12,19 118:24 120:20 122:15,22 123:14 125:24 133:14,16 136:12 147:16,18 151:13,18, 25 152:6,7 157:21,25 160:22 161:8,9</p> <p>explain 20:20 81:9 119:6 158:24</p> <p>explanation 154:18</p> <p>explore 45:20</p> <p>expound 143:4</p> <p>expressed 39:19,24 117:18 151:18 162:2</p> <p>extent 130:7</p> <p>extraordinary 81:11,15 83:7</p> <p>eyes 60:15</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabricate 151:24</p> <p>face 128:5</p> <p>faced 127:21</p> <p>facility 44:4 120:9 134:9</p> <p>fact 9:24 41:12 43:22 56:10 64:9 65:19 79:11 81:18 120:3 121:10 123:16,20 124:3,9 142:2 151:24 160:1,7,14</p>
---	---	--	---

161:4 factor 42:11 43:14 138:3 factors 42:7,9 73:14 121:18 124:24 131:16 138:10 facts 43:16 Factual 75:7 Fagel 11:6 20:11,13,17 21:13 22:5, 19 23:1,24 24:11 25:23,24 27:15 76:10,13,18 109:8,20, 23 110:23 115:13 116:24 Fagel's 22:22 110:22 116:13 failed 103:23 failure 8:16 50:4 104:3 fair 18:5 20:24 50:6 116:7 125:17 faith 35:14 fall 40:9 41:11,18 42:13,19 43:9, 19 49:13 64:11 100:7 126:20 139:4 false 152:7 familiar 79:24 133:22 134:2 fashion 41:13 102:9 fatal 135:17 fax 74:10 federal 57:13 fee 15:18 21:8 23:25 86:21 87:15,16,17,24 88:9 90:19 91:6 111:11 114:4 feed 28:24	feel 40:15 92:12 feelings 58:19 fees 11:5 12:9 81:4,7 84:15 85:13 87:21,25 90:6,12,14 91:8 92:17 109:15,16 111:3,12 128:6 fell 40:12 103:25 felt 39:24 42:14 figured 137:14 file 19:11 25:21 31:25 32:9,12 37:14 57:25 73:14 84:11 90:2,14 106:13 129:13,17,20 138:13,20,23 142:20,21 148:4 155:11 File/ms 37:15 filed 18:3,19,25 19:25 20:2 22:1, 10 24:19 31:24 47:1,13 54:10 60:2,18 61:1,11 102:4 104:9 128:3 129:8 139:9 140:16,18 141:1,16,25 147:7 151:13,19 152:18 files 52:11,18 57:15 filing 28:16 32:3 142:25 155:18 fills 125:15 finally 12:12 financial 144:6 find 63:5,16 fine 41:23 45:2,3 52:3 80:11 96:25 113:5 144:21 fired 153:10 155:10 firm 8:4 12:23 13:1,10 16:1 21:15 25:18 26:6 35:16 63:1 64:8	76:10,11 78:23 97:4 106:9, 11,13 107:14,15 108:1 116:13,21 142:24 143:15,21 144:6,23 145:13,23 151:19 firm's 59:19 108:3,4 fixed 44:11 134:14 161:2,3,6 flaccid 134:17 flight 137:16 floated 56:11 floor 44:9 follow 48:12 96:9 force 153:12 forget 159:12 form 127:23 formal 9:6 11:16 129:13 141:8 formally 8:6 47:17 formed 24:14 forming 52:1 formulate 7:20 forwarding 54:14 foul 126:23 found 40:22 42:22 94:17 97:4 four-page 15:13 fourth 107:10 Francisco 123:1 159:12 frankly	46:9 131:4 frequent 129:3 frequently 147:23 front 60:8 72:23,24,25 froze 17:19 Fs 69:19,20 Fudge 36:4,16 37:1 51:1,5,20 53:2 full 7:14,15 67:19 fully 118:22 function 105:21 fund 89:7 92:23 funds 94:15 future 128:11,14 142:9 153:19,20 154:4,12 157:3
G			
G-E-A 63:7 G-E-A-N 62:23 gave 23:10 46:10 64:8 110:13 125:10 152:9 Gean 62:23 63:2,7 general 34:1 67:19 128:13 generic 111:10 Georgetown 120:22,25 121:1 get along 153:10 get-go			

<p>155:9,18</p> <p>give 13:13,20 33:8 36:19 51:12 62:5 71:11 84:9 103:9 105:10 112:2</p> <p>glasses 9:11</p> <p>God 155:8</p> <p>good 9:11,12 20:25 34:8 44:25 57:14 80:6 94:12 137:7 144:19</p> <p>governed 87:3,10,13</p> <p>governing 53:25</p> <p>Grade 40:22 137:4</p> <p>grand 96:17</p> <p>granted 75:11</p> <p>grants 140:24</p> <p>gratitude 21:7</p> <p>great 150:22</p> <p>Greg 35:11,15</p> <p>guess 13:13 34:21 113:4</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H-A-N-I-F 69:18</p> <p>habit 70:11</p> <p>hac 24:23,25 31:2,7</p> <p>hand 11:20,21</p> <p>handle 92:18 145:13</p> <p>handled 121:9 133:21</p>	<p>handling 139:9 145:18</p> <p>handwriting 38:11,15 80:25</p> <p>Hang 91:1</p> <p>Haniff 69:16,18,25 70:2</p> <p>happened 100:1</p> <p>happening 155:17</p> <p>happy 39:6 96:13,16</p> <p>Harbor 44:1,3 120:12,14</p> <p>harm 126:22 144:6 155:13</p> <p>Harper 9:16 11:4,20 12:7,22 14:1,10 15:15 20:19 21:15 38:16 47:22 49:17 50:3,12 78:6 88:3 91:23 97:6 99:21 102:12 104:25 105:24 107:8 119:1 128:14 136:5 143:14 145:24</p> <p>Harper's 27:8 30:6 36:17,21 101:14 104:4 105:20</p> <p>Harpers 133:9 142:17 143:22 144:5</p> <p>Havasu 45:3 49:18 99:23 100:2 101:1 102:13,25 121:11 134:17 137:10,19 158:20,23 160:15 161:3,12</p> <p>healthcare 101:25 120:9 134:9</p> <p>hear 8:18 11:25 23:11 113:9 144:21</p> <p>hearing 12:25 17:13</p> <p>Hearn 126:22</p> <p>heat 45:4</p> <p>held 95:1,2 107:22 119:7</p>	<p>helicopter 103:3</p> <p>helped 22:9</p> <p>Hey 29:18</p> <p>higher 137:14 151:11</p> <p>Hills 27:15</p> <p>hire 62:6,8</p> <p>history 40:8</p> <p>hit 44:9</p> <p>hold 92:15 94:20 133:8</p> <p>holding 108:21</p> <p>hollowed 132:3</p> <p>home 44:9 120:5 124:4</p> <p>hoping 32:18</p> <p>hospital 15:1,6 44:16 78:8 102:14 121:11 124:5 128:17 134:6 159:3</p> <p>hospitals 126:8</p> <p>hour 46:13 80:6</p> <p>hours 44:23</p> <p>house 74:2,23</p> <p>housing 69:16 73:23</p> <p>how's 104:20 105:8</p> <p>hundred 69:1 86:2 102:15 135:23</p> <p>husband 14:21 81:18</p>	<hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 26:16 34:19 56:11,13 95:23 156:6</p> <p>identical 32:7 69:8,9</p> <p>identified 83:23,24 90:21</p> <p>identifies 80:2</p> <p>identify 10:9 50:10 83:11,15</p> <p>identifying 59:17 83:4</p> <p>illness 7:23</p> <p>images 150:2</p> <p>imaging 40:16 123:15 124:9 159:7</p> <p>impairment 7:24</p> <p>imperative 94:14</p> <p>important 38:12 46:11</p> <p>impressive 126:17</p> <p>inability 101:4</p> <p>inception 130:19</p> <p>incidence 161:22</p> <p>include 69:13</p> <p>included 75:6 83:21,22 84:1</p> <p>including 26:12 39:12 130:22 132:16, 21 139:21</p> <p>incorrect 26:17</p> <p>incumbent 76:3</p>
---	---	--	---

independent 76:4 154:2,7 independently 132:10 index 41:14 indicating 8:10 52:15 75:20 98:25 122:6 140:8 individual 90:10,11 161:24 individually 91:15 industrial 42:25 43:20,23 48:2,4 64:11 infarct 123:20 159:20 160:3,9 infarction 159:6 infarctions 123:4 infarcts 123:8,17 124:10 158:19 infection 41:25 43:9,13 44:20,24 45:6, 9 137:7 138:3,4 infections 44:22 infectious 137:24 information 28:20 46:11 96:1 110:18 125:23 129:23 141:5 informed 76:21 79:6 initial 16:3 22:2 51:8 60:3 122:18 123:3,16 147:15 160:10 initially 21:20 22:9 40:14 145:20 153:9 initials 38:7 injuries 75:23 76:5 134:1 140:13 injury 40:17 43:20,23 48:2,4 66:25 106:2 124:2 161:12	input 97:13 inquire 10:13 inquired 55:5 instructed 93:1 instructions 70:5,7,8,11,13,18 instrumental 19:5 instrumentation 41:20 instrumented 42:24 instruments 44:21 45:7 insurance 31:11 32:25 49:6 55:12,21 56:8,24 58:7,11 93:25 154:2, 8 intact 134:7 intended 99:5 intensity 124:14 intent 87:1 intention 87:9 intentionally 151:24 interacted 28:19 interest 122:10 125:8 interested 82:9 interests 25:19 26:7 internist 137:24 interrogatories 26:23,24 27:8 29:15 30:7 31:1 103:8	interrogatory 29:15 30:18 103:7,12,21 interruption 90:24 intervention 129:18 intimately 134:2 introduction 13:6 intubated 103:1 investigation 76:4 invoices 108:4 involved 16:2,8,12 21:2 28:4 77:4,8, 12,22 93:7 95:3 114:22 116:4,14 117:23 118:2 132:3 155:11,15 156:1 158:4 involvement 22:2,14 60:4,25 111:11 113:16 114:3 115:8,20 116:9 117:14 120:14 147:15 involving 133:18 irreparably 104:5 issue 44:8 96:16 100:4,17 102:11 119:5,13,20,23 120:20 125:4 126:7,11 127:5 128:21 133:6 134:21 135:17 136:5,9,12 137:1,9,22 138:11 148:25 149:1 154:6 161:18 issued 75:19 110:14 140:8 issues 32:21 43:3 59:11 62:9 64:18 65:5,23 75:16 82:11,16 92:18 100:22 119:12 121:22 127:21 135:25 138:6 143:2, 8,11 154:14,24 155:2 156:21 157:9 Item 11:1,2,3 Ivar 119:25	<hr/> J <hr/> J-A-N-E-T-T-E 111:20 Janda 79:15 Janette 13:25 16:21 36:5,6 50:24 51:15 54:14 95:24 96:18 109:12 111:18,19 Janette's 38:13 January 35:4 98:19 107:7 Jay 81:5 Jeez 63:24 Jeff 14:19,22 Jeffrey 27:9 103:22 Jerome 122:25 148:13 159:13 Jim 96:23 112:16 148:23 jive 14:4 John 8:19 16:3 19:13 23:2 25:6 29:18 33:7 34:4 38:2 39:16 44:3,16 48:19 51:6 52:13 53:9 55:4,24 63:6 64:17 69:19 71:20 74:20 76:19 78:14 82:25 85:5 94:9 96:15 98:22 103:17 104:17 110:12 112:13 144:18 150:19 151:22 Johnny-on-the-spot 137:18 joined 76:11 joint 41:8 65:20,22 89:12 jointly 88:15,25 90:20 91:7 Joseph 106:6
--	--	---	---

journals 160:25 judge 55:22 56:4,15,16,18 122:4 135:16 140:3 161:21 judgment 86:11 127:12,18,20 Judicial 12:15 July 53:3 June 25:2,8 42:3 45:1 52:9 73:9 105:22,25 123:12 137:10 140:19 159:9 juries 151:4 jury 70:4,7,8,11,12,18 Jussa 29:16 30:7 <hr/> K <hr/> Karen 98:24 Keane 14:22 Kenneth 7:15 28:11 Kevin 62:1 Kim 13:25 kind 15:3,4 17:13 35:14 38:13 86:15 96:20 98:1 106:6 129:5 kindly 36:16 Kjar 48:18 96:25 102:19,22 112:17 118:19,20 121:16 124:23 125:21 136:19 138:14 144:9 149:14 155:4 158:9,11 162:4,8,19,20 Kjar's 9:24	knee 41:7,17 44:19,21 45:3,7 48:2 65:20,22 66:22,24 100:6 knew 21:3 31:23 47:11 82:22 152:7 knowing 37:6 137:19 knowingly 151:20 knowledge 22:25 127:12 131:8 142:18 Kristyann 110:22 <hr/> L <hr/> L-I-P-S-O-N-N-E-I-L-S-O-N 112:5 L.A. 121:4 laid 125:9 Lake 100:2 121:11 language 75:25 large 9:9 94:11 123:16 157:20 larger 94:8 Las 23:5,9,13,14,19 27:12 131:5 135:8 law 8:4,6 17:25 23:15 25:17,24 31:12 32:2,15,24 33:17 37:21 52:9 55:10 57:13 68:20 87:3,10,11,14 93:17, 24 106:9,11 108:1,2 109:20 113:8 115:17,21,24 116:21 118:9,12 130:10,22 131:11 142:24 146:13,21 lawsuit 45:15 53:23 54:10 62:9 73:17 99:13 100:12 101:13, 23 140:25 141:8 153:3 155:18 156:5	lawyer 32:21 35:16 55:18,24 64:20, 23,25 65:4 68:11 75:16 126:6 132:13,20,22 133:1,2 154:23 155:1,10,22,24 156:7,8 lawyers 18:12 28:21 29:2 43:3,4 65:24 111:12 125:15 127:2 130:11,13,14 131:5,18,20 139:25 140:1,2 146:13 155:9,15 lawyers' 23:16 Le 60:21 learn 17:24 124:7 learned 122:22 127:1 133:13 learning 127:12 left 24:13 76:10 100:2 102:13 leg 65:20 legal 17:17,23 34:20 36:11,13 59:11 69:11 94:16 95:24 96:9 126:1 131:17 142:13 156:14 161:16 legitimate 26:11 42:15,18 49:22 length 19:21 Les 137:23 lesion 161:2,4,6 letter 12:18 25:2,10,12,13,16 33:18,20,21 34:2,14 35:2,5, 7,13 36:3 42:16 45:18 52:8, 10,12,19 53:13,16 64:14 72:5,9,12,15,19,20,23 73:9 74:13 90:2 93:12,14,16 94:7, 19,21 95:19,24 96:9 107:6, 25 109:13 110:22 111:10 115:11,14 117:2,4 138:16 145:4 153:1,3,14 156:15 letterhead	33:16 letters 33:5 35:18,21 level 137:15 license 21:3,6 22:23 25:21 lien 31:12,20,25 32:3,8,9,10,12, 15,24 39:20 40:1,6 43:18 46:24 47:1,5,10,12,16,17,21 51:2 53:14,21 54:25 55:6,11, 12,20 56:8,13,17,20,23 58:25 59:8,18,21 63:19 64:5 65:9,14 67:8,11 71:18 72:7, 8,15,18,22 73:10,16,18 75:6, 11,21 76:1 92:13 93:18,21, 22 94:1,3,17 95:7 99:11 100:10 106:15 114:22 117:16,20 125:4 127:24 128:2,3,4 129:10,15,20 130:15,24 131:15 138:25 139:11,14,17 140:11,25 141:8 142:13,19,20,21 143:7 146:14,21,25 147:4,7 152:11,19,24 156:20 157:9 liens 37:22 51:16 53:25 59:15,25 64:16 130:20 139:19 153:5 life 65:7 74:3 128:15 light 25:22 likelihood 118:25 122:3 limit 67:19 limitations 67:24 87:19 limited 16:25 lines 41:21 link 112:2,10 Lipsonneilson.com. 112:6 listed 157:20 literature 42:8 99:22 119:15 120:7
---	---	---	---

133:23 134:3,5 160:15,24 161:9,15 litigated 129:9 litigation 45:21 101:9 living 49:21 local 21:2,6,14,19,21 22:1,11,18 24:8 77:1 113:14,25 located 106:10 logical 127:19 long 120:2 135:14 137:24 153:8 looked 18:10 61:7 77:19 87:6 loop 34:21 117:11 loosely 57:6 lose 119:4 125:3 126:5,11 162:1 losing 122:3 133:12 loss 68:15 69:12 81:10 83:6 90:12 lost 28:24 103:14 lot 29:22 33:11,25 44:2,5 66:7 113:11 120:13 122:12 125:7 131:4 133:7 158:15 lots 64:2,3 love 80:8 lower 38:3,5 lumbar 123:19 <hr/> M <hr/> M.D.	19:19,21 103:23 machine 10:13 Madam 48:14 50:15 71:22 86:14 110:6 150:9 made 9:14 10:2,18 13:5 14:24 48:8,9,21 50:2,8 53:22 61:2 87:22 88:12,15,25 116:2 122:24 125:13 135:24 148:5 156:1 magazine 57:17 majority 150:16,25 make 10:9,10,11,25 17:20 21:20 25:10 60:8 62:6 66:20 70:10 94:7,11 96:17 109:23 126:14 153:21 154:12 making 22:10 34:10 43:2 49:6,8 134:13 137:7 142:6 148:16 150:2 mal 56:21 59:2 94:6 122:7 malpractice 17:8,25 31:13,22 32:6 35:22 46:25 47:2,22 48:10,21 53:25 54:25 55:11,19 56:7, 25 65:8,10 67:25 68:5,16,23 70:19 94:3 101:15,24 117:20 130:14 131:21 132:12 133:1 136:6,16 138:23 141:21,24 150:16,21,24 151:4 man's 13:7 mandated 42:5 45:6 manifest 44:22 124:13 March 15:14,25 16:7,18 36:4,15,19 37:8 39:18,22 46:23 50:24 67:7,9 margin 98:23 mark 38:9 57:17	marked 8:23 13:22 15:22 19:16 25:3 27:3 29:12 33:3 34:24 35:24 37:11 50:20 52:6,24 54:11 57:19 60:9 66:10 73:6 74:7 78:3,19 80:20 84:5 88:20 89:5,16 91:20 93:10 97:17 98:14 106:24 108:17 109:3 149:11 marks 38:10 Marshall 7:15 8:7 9:15 28:11 33:17 51:17 52:10 74:12 78:8 92:3 108:2 mass 41:14 massive 124:9 match 84:22 matriculated 121:12 matter 15:25 56:10 109:15 115:19 matters 116:10 Mcbride 43:25 45:24 46:4 120:12 125:25 134:22 Mccrasky 57:5 Mccromski 57:6 Mccrosky 130:22 131:2 139:22 meaning 153:16 means 81:5 85:16 meant 101:7 med 59:1 94:5 122:7 mediation 39:1 49:17 56:2,15 63:14,18 64:15 66:1,7,16,19 67:4,14 70:21,23 71:5,11,16 82:2,3, 5,13,15,18,21,24 114:18 118:22 119:15 121:24,25	122:5 125:10 127:1,2 132:7, 8 133:4 135:6,8,12,16,19,21 136:1 152:9 mediations 150:21 mediator 56:2 122:1 131:19 132:7 140:3 150:15,22 161:21 Medicaid 59:15,21 medical 17:8,24 31:13,21 32:6 34:3, 11 35:9,22 43:16 46:25 47:22 48:10 49:7,18 53:25 54:24 55:11,19 56:7,21,25 65:8,10 67:25 68:4,15,23 70:19 94:3 99:22 100:2 101:1 104:24,25 105:20,23 124:16 125:23 129:3 130:8, 14 131:21 132:12,19,25 133:1,22 136:6,15 137:10,16 138:23 141:21,23 150:16,21, 23 151:3 158:24 160:24 161:3,9,11,23 medicals 130:6 Medicare 59:14 medication 7:23 medicine 128:25 meet 14:17,25 meeting 44:15 memo 72:5,13 memorandum 37:15,18,19,23 149:18 memos 148:4 155:11 meniscus 40:18 mention 73:9 151:1 mentioned 45:24 58:23 76:9 83:1 95:9 156:3
--	---	---	---

meritorious 136:6,15 merits 16:2,9 met 14:12 15:6 44:14 63:25 82:3 135:7,12 Michael 19:19 104:9 microphone's 51:25 Microsoft 144:17 Mike 44:14 61:21 119:21 million 119:10 122:11 125:1,3,6 127:14,24,25 128:8 131:16 133:10 135:3 142:17 million-dollar 118:7 mind 134:25 mine 66:18 minute 154:16 minutes 80:9,10,11 111:22 112:17 mishandle 137:11 missed 65:2 Mission 44:16 mistake 26:10 63:3 mistakes 126:18 misunderstanding 9:25 modification 77:5 modified 77:9 moment 35:6 73:17 139:9,10	money 9:14 10:2 12:14 43:8 64:16 72:10 73:16 81:3 82:9,10 83:2 85:13 89:9,10 92:2,9, 16,17,21 93:2,4,7 94:20,25 95:7,17 96:2,7 107:17,21,22 108:8,21 122:12 129:24 130:6 145:14 monies 32:10 108:11 115:1 141:5 months 139:5 141:1 morbid 42:9 morbidly 41:1,14 138:5 morning 134:18 Morris 44:16 motion 44:25 motivation 21:12 motor 120:4,8 mouth 51:25 move 90:17 101:20 moved 14:22 MRI 123:3,12 124:14 149:2 159:9 160:10 multiple 64:12 100:5 119:21 126:6 multistep 29:20 <hr/> N <hr/> N-E-E-R 19:1 names 28:11 narrow 98:22	nature 41:9 necessitated 42:23 necessity 32:3 needed 21:2 22:18 75:15 128:14,24 129:2,4 137:14,20 156:7,14 Neer 18:25 19:10,21 negligence 49:9 100:1,19 101:5 119:13 126:9,14 127:3 132:5 161:23 negotiate 59:24 92:2 negotiated 94:17 negotiating 59:18 negotiations 56:12 117:15 nephew 13:3 net 71:12 86:3 125:5 netted 128:7 neuro 46:10 neurological 44:11 101:4 105:20 134:10, 15 neurologically 134:7 neurologists 128:25 neuroradiologist 122:25 neurosurgeon 106:8 119:17 120:2,21 121:3 160:22 neurosurgeons 49:16 125:24 160:19 neurosurgery 44:1 120:12 neurosurgical 137:20	Nevada 17:8,25 18:17 20:14,19 21:4 22:24 24:23 25:19,20,21 26:1,7 31:13,21 32:1,2,5,10, 13 35:22 37:21 40:1,6,9 46:25 47:2,13,16,18,22 48:10 53:23,24 55:10,18 56:23 59:3 64:5 65:10,12 67:23 68:4,11,20,23 69:4,11, 22 70:3,9,12,19 75:12 76:1 77:6 85:23 87:11,12,14 92:13 93:20,23,24 94:1 97:5 101:13,15,23,25 106:10,14 116:3 117:20 122:7 129:8,14 130:10,11,13,21 131:11,12, 18,22 139:7,14,17,18,25 140:25 141:3,8,22,24 142:14,22,25 146:12,13,21 153:19 154:13 155:1,4 156:5,11,19 159:8 161:22 162:11 Nice 157:15 night 82:3 135:6,12 noneconomic 67:19,24 68:6,24 nonresponsive 90:18 normal 38:9 49:20 note 10:25 81:4 notes 80:22 notice 8:10 9:1 75:19 129:20 140:8 141:11 notified 31:25 32:11 notwithstanding 128:15 November 13:15,25 14:3,13 40:18,20 42:21 NRS 54:2,17 number 9:13 11:18 12:6,12,17 83:25 99:20,21 136:22 149:10 150:18 157:20
---	---	---	--

numbers 81:9 numerous 65:7 73:14 <hr/> O <hr/> obese 41:1,14,15 138:5 obesity 41:17 42:10,12 43:13 138:2 Object 48:18 obligation 56:17 91:8 153:20 154:12 156:18 157:3 obstacles 122:13 obtain 125:5 obtained 32:9 obtaining 60:5,25 occasionally 64:6 128:24 occasioned 66:24 occasions 32:21 occupational 128:20 occurred 42:20 49:13 76:12 100:20 101:6 139:4 October 13:15 33:18 117:3 131:25 office 9:24 10:7,13 19:9 20:18,25 22:8,9 23:5,9,13,14 25:13 28:17 29:2 30:24 44:15 57:16 63:12 106:16 107:8 108:25 109:20 110:23 111:18 147:22,23 offices 8:6 23:16 25:24 33:17 52:9 108:2 112:10 olden 10:17	one-third 85:18 90:8 91:16 ongoing 64:17 116:2 135:20 154:11 156:17 operates 147:22 opinion 40:6 48:3,7 50:1,5,7 56:6 71:17 72:8 101:8 102:12 104:23 105:19,22 117:18,19, 24 118:3,25 119:3,7 126:1 128:9 129:7 133:8 135:24 136:9,14 139:8,16 146:21 149:5 152:3,4,6,10 opinions 19:11 114:21 120:15 121:4 148:20 149:25 151:17,22,23, 24,25 152:1,6 158:5 161:8 opportunity 119:19 134:8 optics 126:16,20 option 154:1 oral 20:16,17 Orange 151:10 order 22:17 25:18 26:6 ordered 137:13 original 150:12 orthopedic 40:22 41:5 44:17 45:10 osteoarthritic 41:4 osteoarthritis 40:23 41:9 137:5 out-of-state-party 95:11 outset 24:1 overcome 100:24 119:23 owner 8:4	<hr/> P <hr/> p.m. 46:19 80:14,17 112:23 113:1 162:13,23 package 144:3 pages 19:21 37:19,20 60:12 66:12 80:22,23 81:1 84:8 109:6 paid 23:4 46:3 51:2 63:1 67:1,9 75:4 76:17 92:3 95:10 96:2 108:10 115:1 129:25 130:7 141:5 pain 134:7 Palm 14:21 Palmer 97:9,13,21 108:11 Pam 36:4,15,19 37:1 51:1,5,20 53:2 paper 10:20 paragraph 73:13 75:2,7,17,18 86:24 88:3,6 94:13 104:22 105:15, 18 140:6,23 paralegal 28:18 29:1 paralysis 104:6 133:18 134:17 149:5 paralyzed 49:17 102:13,24,25 103:1,2 105:2 106:3 159:2 161:4 park 40:13 56:13 121:2 part 16:3 25:22 41:8 48:12 49:6 59:18 70:7 85:8 135:20 144:3 part's 26:9 partial 44:21 45:7 participate 21:23,25 114:17 147:24	participation 20:18 76:14 parties 83:12,16 partnership 24:14 party 49:9 75:22 76:5 83:5,13 140:12 pass 118:15 past 62:19 115:14 123:2 130:5,8 patient 8:22 133:24 138:10 patients 134:11,14 pattern 70:12,18 pay 83:12,16 88:7 91:8,9,15 92:8,17 94:17 99:12 100:11, 13,15 101:3 paying 49:7 99:18,19,25 100:15 101:2 108:7 payment 11:5 12:8 43:8 48:8,21 50:1 87:24 108:3 111:3 payments 49:6,8 58:22 88:12 89:11 153:21 154:4,12 pays 90:12 PC 8:7 peer-reviewed 160:25 penalty 152:5 pencil 10:20 pending 129:8 141:21,24 percent 85:17,18,20 86:2 88:9 90:8 91:9,15 102:15 122:6 134:11 135:23 151:3
---	--	--	--

<p>percentage 23:24 76:21 110:13</p> <p>perfect 34:7 79:18 99:3 104:21 142:13</p> <p>performed 136:23</p> <p>period 101:6 124:12</p> <p>periodically 35:18,21</p> <p>perjury 151:15,23 152:5</p> <p>permanent 106:2</p> <p>permission 22:19,23</p> <p>permit 94:2 130:20</p> <p>permitted 142:21</p> <p>person 91:15 138:9</p> <p>personally 16:1,8</p> <p>persuasive 123:2,11</p> <p>pertaining 37:21 59:8</p> <p>pertinent 32:22</p> <p>petition 142:3</p> <p>phone 78:7 91:23</p> <p>phonetic 28:18 57:5,6</p> <p>phrased 48:19</p> <p>physical 7:23 41:24 44:25 128:20,25</p> <p>physicians 126:7 128:25</p> <p>picked 52:2</p> <p>picking 51:25</p>	<p>Pisanelli 106:10 107:7,15 144:22 145:12,18,23</p> <p>placement 44:20</p> <p>places 131:5</p> <p>plaintiff 129:25 131:18 133:2 139:24 146:13 151:14</p> <p>plaintiffs 26:24 114:5,9,14,21,23,25 115:5,12 117:19 118:3 127:14</p> <p>plaintiffs' 131:5 132:22 155:22</p> <p>plan 31:15,18 128:16</p> <p>plateaued 128:19</p> <p>plates 29:25</p> <p>play 123:6</p> <p>pleading 23:18 129:14</p> <p>pleadings 23:22</p> <p>Pleasure 60:21</p> <p>point 10:11 14:9 16:11 21:21 24:12,24 26:10 28:18 34:12 40:24 42:22 59:13 61:20 99:20,21 100:22 120:2 131:6,10 142:9 152:19</p> <p>pointing 150:7</p> <p>pop 44:22</p> <p>portion 83:7 109:15 131:2</p> <p>position 36:9,10 47:11 101:16,17 119:16 120:7 132:8 161:14</p> <p>possibility 142:25 153:16,17 154:15 155:2 156:10 157:2</p>	<p>Post-it 37:25</p> <p>post-op 41:23 44:18,20,24 45:5 137:7</p> <p>potential 39:23 94:16 125:15 142:6 143:2 154:21</p> <p>practice 26:15 27:22 61:13,16</p> <p>practiced 130:11 139:25</p> <p>practicing 130:13 131:21</p> <p>precluded 55:6 58:20</p> <p>precludes 40:10</p> <p>precluding 139:19</p> <p>predictive 42:8,11 138:2</p> <p>predictor 43:14</p> <p>preemption 57:12</p> <p>preexisting 154:6</p> <p>prefer 96:21</p> <p>preliminary 62:16</p> <p>preparation 77:4</p> <p>prepared 19:3 28:21 82:15,18,25 147:17</p> <p>preparing 17:24</p> <p>present 38:22 97:11 123:9 124:21</p> <p>presented 66:23</p> <p>pressed 160:2</p> <p>pretty 99:9 123:11 126:17</p>	<p>prevail 161:17</p> <p>prevailed 126:10</p> <p>prevailing 161:25</p> <p>previous 30:11 54:14 84:23</p> <p>previously 17:7</p> <p>primarily 140:1</p> <p>primary 134:6</p> <p>principal 115:23</p> <p>print 51:16</p> <p>printout 10:3</p> <p>prior 17:17,23 19:3 20:2,5 115:16 122:21 127:2 129:25 133:18 135:21,25 138:15</p> <p>pro 24:23,25 31:2,7</p> <p>probability 104:24 124:16 126:2 161:11, 17</p> <p>probable 126:4,9</p> <p>problem 96:18 119:14 121:7</p> <p>problematic 123:24 124:1,10</p> <p>problems 135:1</p> <p>Procedural 75:8</p> <p>procedure 40:19,21 41:6,22 42:21,24 137:3</p> <p>proceedings 65:15</p> <p>proceeds 31:12,21 46:24 47:2,16,21 65:10 117:21 152:16,20</p>
---	---	--	---

process 29:20 32:18 produce 10:5,21 produced 9:5 11:9 52:18 57:16 producing 9:18 professional 80:2 113:8 115:16 118:9,12 127:11 Professions 86:23 prohibited 146:14 prominent 120:21 Prong 136:22 prongs 136:21 proof 45:5 proper 40:2 57:9 83:5 properly 105:24 proposed 79:1 propound 103:7 propounded 26:23 103:8 prosecution 20:13,19 21:24 22:13 24:13 88:8 101:12 protect 92:22 103:1 protocol 117:13 prove 45:13 provide 34:11,16 35:9 36:16 150:10 156:18 157:4 provided 34:12	providers 101:25 providing 34:3 128:23 129:3 provisions 131:3 prudent 127:20 pull 52:4 purpose 158:16 pursuant 76:1 115:4 pursue 45:21 pushed 123:8 put 7:20 8:9 15:12 19:11,14 21:18 28:18 29:1 37:13 38:3 39:12 40:11 41:19 42:16 50:9 51:10 52:14,22 57:18 60:7,15 61:5 65:21 67:3 72:9,17,24 89:19,21 91:19 97:15 98:4 134:23 149:9 157:1,6 159:1 putting 8:13 10:20 28:15 72:25 <hr/> Q <hr/> quadriplegia 101:4 102:16 103:4 121:11, 13 134:20 quadriplegic 49:17 99:23 100:18,25 120:5 124:4 160:15 161:5 question 15:5 16:4 27:18 39:8 47:3,14 48:15,18,25 49:24 60:24 63:10 71:23 82:20 89:23 99:4 100:9 101:22 118:10 121:17 128:5 156:24,25 159:25 160:6 questioning 117:1,9 questions 7:20 17:5 33:25 39:4 46:8,9 61:7 62:16 64:7 111:16,23 112:18 113:11 118:20	146:11 148:23 157:19 158:8 quick 52:13 quickly 60:12 quiz 57:10 <hr/> R <hr/> radio 119:18 Radiologists 160:16 radiology 122:16 123:23 raised 159:19 range 44:25 151:3 rationale 69:25 100:15 reach 86:3 136:9 reached 77:6 read 11:14 29:2,7 48:17 53:24 54:4,6,8,18 59:7 60:16 67:23 68:18,21 70:8,18 71:19,23, 24 83:20 86:18 94:8 98:8 99:7 102:7 110:8 140:24 145:17 148:4,11,15 152:25 reading 26:19 68:4 147:6 148:10 150:5 reads 67:6 ready 128:21 160:23 real 22:12 52:13 reality 92:24 101:19 reason 7:18 34:18 51:24 53:19 62:25 64:19 75:14 86:5 92:8 93:19 100:14 117:10 151:6,7	reasonable 104:24 105:19,23 124:16 126:1 127:18 131:13 161:11, 16 reasons 93:16 143:19 146:5 151:8 recall 13:7,9 16:10,14,15,17 18:1 19:13 20:4 23:20,22 24:12, 25 33:21 36:23 37:6,23 38:18 39:3,4,17,21 52:12,16, 20 53:5,11,16 54:4,6 57:11, 22 58:15 59:12 61:19 64:2, 15 66:6 68:12 71:16 72:13 74:16,18,25 77:10 78:16 83:20 89:18 92:5,6 95:12,13 97:19,22 98:6,9,18 103:6 106:11,18 107:15,25 113:16 117:5,6 145:21 146:24 147:14 148:9,18 157:21 recap 46:22 receipt 12:13 148:1 receive 9:17 22:22 received 9:21 12:14,20 73:16 104:25 108:19 121:5 125:23 129:23 147:19 148:7 recess 46:17 80:15 111:16 112:24 recognize 19:23 79:20 80:23,24 93:14 109:1,9 recollection 9:19 13:2 14:4 18:7 27:25 28:4 31:6 33:24 35:17 38:8, 19 39:5,11,14 55:2,4,8 61:9, 10,12,17,23,25 68:1,22 70:17 71:25 72:1,14 73:4,8 74:21 76:24 77:17,18,21 85:24 98:2 114:10,12 145:22 146:19 147:25 148:3 recommend 160:5 recommendation 73:13 138:17 recommendations 125:11 132:9,10 recommended 133:9 135:2
---	---	---	---

record 46:15,19 48:17 62:21 71:24 80:13,17 86:17 96:22 110:8 112:21,22 113:1 162:12 recoup 67:10 recover 69:24 recoverable 70:6 recoveries 127:25 recovery 31:13,21 54:25 55:20 67:24 68:6,14 71:12 75:11,22 83:10 84:21 131:16 133:24 137:8 140:12 redness 45:4 reduce 126:18 reduced 125:16 reference 50:8 86:22 referenced 50:16 referral 13:5 20:22 111:12 referred 12:23 13:1 20:24 75:17 referring 21:7,10 50:12 58:24 99:16 reflecting 12:17 reframe 65:1 refresh 33:24 39:5 73:8 refreshes 73:4 refund 12:19 95:20,22 96:2 108:20 refunded 95:17 refunds 12:14	regard 27:18 30:17 32:3,15,24 40:5 43:22 55:10 73:22 83:18 93:25 105:22 134:4 153:19 157:25 Regional 45:3 49:18 100:2 101:1 134:17 137:10 158:24 161:3 reiterate 154:22 related 43:22 64:10 65:19 93:16 100:6 116:10 123:11 relating 9:15 20:11 relationship 23:3 44:12 115:17 release 78:7 79:2,15 85:9,10 releases 72:10 77:18 118:6,7 relevant 62:9 relief 32:10 106:14 143:1,7 relying 147:2,5 remain 134:15 remainder 85:20 remember 9:18 19:8 24:15 30:2 44:14 54:8,23 61:21 62:18 65:17 70:10 71:10,14 73:24 74:3, 23,24 88:16 92:15 100:8 109:17 111:5 116:19 145:11 162:8 remind 150:10 remove 45:7 removed 41:8 render 152:3 rendered 152:6	rent 23:4 repayment 96:6 repeat 17:12 48:11,15 110:11 rephrase 31:16 replacement 45:8 100:6 report 96:13 reporter 48:14,17 50:15,18 71:19,22, 24 86:15,17,18 107:20 110:5,6,8,11 111:8 120:17, 24 121:15 124:19 125:20 150:9 162:14,18 reports 60:1,5,12,20,25 61:11 149:20 represent 25:18 26:2,7 97:5 115:23 118:5 143:15 145:10 representation 146:3 153:11 representative 53:13 represented 17:7 representing 17:7 59:19 113:7 143:21 144:23 145:24 represents 109:14 requested 89:13 95:3,21 requesting 12:19 91:24 95:20 requests 11:3 require 25:20 required 9:8 10:1,17 18:18 requirement 25:22 requires	11:18 12:6,12 research 17:17,23 32:14,24 69:11 130:9,21 131:17 resolve 125:13 resolved 76:21 respect 24:17 26:1,3 43:5 44:8,12,18 58:18 83:12 102:10 128:19 136:24 137:5,11,18 138:8 143:11 154:14 respects 69:6 response 9:6,18 11:7 27:8 30:6 37:1 52:19,20 117:1,8 157:19 responses 27:19 28:19 29:15 30:13,18 31:1 responsibilities 81:18 responsibility 28:15 30:12,16,23 43:5 59:19 99:12 100:11,14 responsible 75:23 76:5 108:3,7 140:13 rest 91:24 92:4 result 32:8 41:17 42:2 43:11 49:8 73:16 90:11 101:5 119:24 120:11 124:14 150:16 151:4 154:12 161:5 resulting 104:5 retain 14:2 116:3 142:24 retained 140:22 retainer 106:18 107:14 108:3 143:24 retention 144:6 retired 56:3 returned 95:3
---	---	--	---

review 33:23 38:2 42:8 51:17 91:17 112:14 139:18,21 reviewed 19:24 20:1 27:19 28:22 52:18 61:4,14,15 78:9 85:7 94:5 reviewing 30:17 61:11 70:11 77:8 rid 126:23 right-hand 37:25 38:4,5 98:23 104:18 rights 32:8,15,25 43:18,19 47:12 55:6 56:21,24 59:1,8 72:15, 18,22 73:10 92:1,13 128:3 146:25 147:4 152:19,20 153:20 ripe 132:6,7 risk 42:7,8,11 43:14 94:14 125:14 133:12 138:2,10 Ritter 19:1,10,19 44:14,15 60:21 61:15,22 104:9,12,22 119:21,22 125:25 137:12 Ritter's 62:3 road 126:5 146:2 role 16:24 room 80:9 97:19,25 102:16 routine 82:7 rules 21:20,21 22:1,11 162:11 run 62:15 75:15 <hr/> S <hr/> S-O-N 112:7,8 S-Z-P-E-R 120:18	Si 30:9 sac 158:21,25 sad 30:1 salvageable 105:21 San 123:1 159:12 save 51:15 scan 137:14 158:20 Schiffman 93:6 95:3 98:17 108:20 117:7 134:24 144:4 155:11, 12,13 156:1 Schiffman's 155:23 Schneider 78:23,24 79:5 screen 8:10,14,15,25 9:9 15:12 17:19 27:5 37:13 39:12 52:15 57:21 103:11 104:13 105:7 107:2 144:16 149:13, 18 scroll 27:20 51:6 60:13 103:16 104:17 secondary 40:25 seconds 33:8 secretaries 36:12 secretary 22:10 34:20 Section 75:8,21 secure 96:6 security 95:12 seek 22:22 segregate	82:10 83:2,9 segregating 83:2 send 71:8 72:5 79:5 91:24 95:5,22 96:8,16 111:12,17,18 112:1, 9 143:24 sending 21:5 52:20 98:18 141:4 sends 25:14 36:18 sense 21:7 sentence 101:21 149:23 separate 24:6 68:14 69:15,23 76:25 85:10 90:7 91:15 separated 82:6 separately 85:4 September 36:22 54:16 92:10 93:1,13 131:25 153:1,14 sequence 82:5 served 27:21 28:5 29:7 30:14 server 13:5 services 34:3,11 35:9 59:24 81:12,15 83:7 88:8 serving 28:16 set 83:23 94:15 137:16 143:12 150:12 152:20 153:14 settle 119:8 121:19 122:11 124:25 125:8 127:14 131:14 133:3, 10 settled 93:21 95:17 122:21 126:2 129:9 131:12 132:13 139:10 142:16 161:10 settlement 54:25 55:10,19 56:7 57:1	63:20 72:9 73:22 75:4 77:5, 6,12,23 78:7 82:22 83:4,5, 17,21 85:3,8 88:13 89:19,22 91:25 92:1,4 117:21 125:5 128:1 135:2 142:3 146:22 152:17,21 153:19,24 154:13 156:5,19 160:5 settlements 146:14 settling 58:6,7,10 83:16 severe 41:9 134:7 sexy 126:23 shape 127:23 share 21:8 23:25 86:3,4 88:13 Shaw 60:22 61:24 62:1 Shaw's 62:4 she'd 145:5 sheet 84:7 94:24 95:6 109:7 Shernoff's 35:16 Shoop 24:15 76:11 80:2 113:7 115:17,21,24 116:4,13,20 118:8,12 short 80:7 show 9:14 11:4,19 12:7,13 29:25 123:16 130:7,23 159:21,24 160:11 showed 44:24 94:25 123:3 124:9 160:15 showing 10:1,18 67:8 158:22 shown 138:15 140:5 141:15 shows 30:6 63:1 79:15 85:12 90:3
---	--	--	--

shrink 104:17 149:22 side 104:19 sign 79:7 111:14 154:1 signal 124:14 149:1 signature 15:15 19:19,22 28:7 30:8 66:16,17 79:6,16,20 88:23 107:11 118:7 signed 19:6 29:16 30:25 31:5 45:18 50:13 72:10 73:21 85:9 106:21 109:12 138:16 144:24 145:1,7 152:4 significant 105:4 133:11 signing 20:5 106:18 signs 79:23 Silberberg 7:16,17 8:7 9:15 28:11 33:17 49:1 52:10 108:2 113:6 118:21 144:13 150:14 156:22 157:13 158:12 silence 119:18 similar 28:2 29:14 30:10 35:7 70:5 simply 113:14 137:22 sitting 61:21 85:23 92:2 situation 49:11 skills 8:17 small 43:12 sole 8:4 solely 110:19 sort 29:24 43:12 125:4	sought 93:19 source 20:23 38:16 57:8 107:17,21 space 17:16 speak 14:9 19:2,9 118:11 119:19 122:15 speaking 46:7 61:19 127:1 131:18 148:1 special 26:23 27:8 69:17 specials 130:8 specific 32:6 40:10 46:8 55:2 72:2 147:25 148:3 specifically 9:7 32:4 44:15 65:16 87:15 105:13 111:13 124:8 140:6 149:2 156:25 speculate 13:14 146:7 spent 36:20 spinal 42:5,9,10 43:24 46:9 48:3,5 49:12 50:3 66:23 104:5 106:2 121:8 123:17 124:10 133:25 158:22 159:1 161:11 spine 120:21 159:7 spinning 29:25 split 24:2 spoke 14:12 44:13,16 45:16 46:6 119:25 spouse's 68:15 Springs 14:21 sprung 135:19 spur 34:2 35:8	squiggle 51:7,11,12 squiggles 51:13 stabilized 128:19 standard 25:13 90:15 103:23 104:1,3 105:1 126:17 137:1 standpoint 45:10 137:21 153:24 start 16:5 17:22 23:11 28:3 35:19 90:25 started 15:24 16:15 22:6,13 38:24 42:4 44:9 99:18 100:13 113:15 137:13 starting 10:17 42:3 66:21 starts 50:25 78:22 state 7:14 72:18 92:19 93:22 103:24 122:7 134:25 143:3 stated 91:25 121:4 124:21 statement 18:2,5 22:15 25:25 26:12,20 35:20 50:5,6 84:16 125:17 141:14 159:5 statement's 26:17 states 87:20 91:12 stating 53:14 statistic 151:9 statistical 161:22 status 35:22 53:4 75:20 96:12 101:5 140:8 141:11 statute 32:6 40:10 53:24 54:5,18 55:6,16 57:3,7,9 58:18,19, 23,24,25 59:3,5,7 64:9 67:23 68:4,18,21,23,25 94:2 130:19 131:1,3 139:19 140:9	147:1,6 statute's 57:3 statutes 69:7 76:1 87:18 statutory 32:13 47:12 staying 135:13 steadfast 149:4,8 step 29:21 149:14 Stephens 28:12 steps 142:13 Steven 19:19 stip 162:9 stood 57:11 Stop 103:20 straight 38:6 strike 22:16 58:8 61:9 90:17 95:15 101:10,20 138:20 152:13 structured 89:19,22 stuck 123:10 studies 123:15 159:7 stuff 13:4 57:13 81:7 104:13 137:25 148:17 150:3 subject 20:10 31:9 54:24 55:18 65:17 133:23 152:24 159:22 161:1 subrogation 75:6 subsequent 123:15 124:9 145:20 147:18
--	--	---	--

subsequently 45:2	120:1,15 125:24 134:21	145:9,25 146:9 151:12 154:9 157:22 158:17	100:5 150:20
substantial 120:20	T	tetraplegic 128:23	timing 124:2 158:18
successful 131:9	tactically 127:4	text 54:16	today 7:17,25 38:20 39:1,12 91:24 100:5 106:3
suffered 66:25 144:5	taking 9:1 81:17 113:22 122:9 124:24 125:1 127:20 155:2	texts 71:8	today's 8:11 162:15
suffering 7:22	talk 59:4,10 61:22 70:6 82:7 96:23	thecal 158:21,25	told 24:2 40:5 43:17 44:7 45:14, 19,22 53:6,19 56:6,13,14,18 64:15 82:10 92:14 109:17,23 111:9 137:21 146:15,20 150:15 152:15,18,22 153:6, 10,13 154:20 155:19 156:6 160:2,8
Sullivan 29:25	talked 22:20 58:17 116:25 146:23, 24 156:20,25 157:9	therapy 41:24 45:1 128:20	Tom 21:3,13,19 22:9,18,21,25 23:15,19 24:7,11,13,17,20 26:15 30:17,21 55:3,5,18 59:10 68:8 71:3,6 76:7,13, 17,22,25 77:11,17,21 78:8 79:5,16,21 109:13,17,21,23 110:12,19 113:7,13 115:13, 21 117:4,7 146:16,18,20,24
sum 67:10	talking 17:6 55:3 59:3 60:2,3,16 147:8 155:8,21	there'd 131:7	Tom's 21:6 22:23 30:24 111:11
summary 67:8	talks 88:7	thing 30:1 52:15 66:4 91:3 99:11 100:9 102:6 143:5	top 27:11 88:2
superior 56:4	task-by-task 17:1	things 17:4 22:10 30:23 34:15 46:22 64:11 96:24 127:1 159:23	total 51:3 81:23
support 119:16 120:3 124:15 159:24	technical 13:4	thinking 127:4	totaled 67:9
supported 161:15	technically 139:1	Thomas 11:21 12:9 25:23 27:12 28:8 30:8 34:18 54:13,15,19,24 118:8	totally 148:21
supports 120:7	technological 8:17	thought 92:14 123:23,25 124:1 126:4,10 161:23 162:1	track 62:21
surgeon 40:22 41:6 44:17	telephone 71:6	thousand 69:2	tract 43:13
surgery 41:18 42:1 43:10 44:13,23 48:2 64:10 65:18 66:22,24 100:5 105:25 134:8 136:23	telephonic 90:24	threatened 155:13	trailer 40:13
surgical 41:22	telling 43:17 65:17 75:15	threatening 35:13	transcript 162:15
Susan 39:2	ten 111:22 141:1	thrust 158:12,15,18	transfer 89:8 91:25
suspicious 143:20	tenor 34:13	till 153:3	transferred 134:18
sword 126:21	terms 91:9 128:14 129:25 130:23 159:20	time 15:24 33:9 36:10 53:11 54:4, 9 63:18,25 64:4 71:5 95:14, 21 118:21 120:8 122:21 123:5 124:12 129:7 135:21 136:1 141:24 152:1,8 153:3, 8 155:19 156:3 158:23 160:11	transfers 89:9,10
sworn 146:9	testified 97:12,24 114:16 147:10	times 38:9,25 65:7 81:23 84:23	
symptom 134:6	testify 7:25 160:24		
symptoms 42:4 120:4	testimony 47:9 48:1 86:16 92:25 100:8 113:12,17 117:5 123:11		
system 51:16			
Szper			

EXHIBIT 3A

EXHIBIT 3A

June 17, 2016

Daniel Wininger
Daria Harper
3485 S. Gaylord Court, Apt. C-332
Englewood, CO 80113

Re: ***Daria Harper v. Valley Hospital Medical Center, et al.***

Dear Daniel and Daria:

The purpose of this letter is to explain the general nature of the attorney-client relationship, as well as to provide you with information concerning what to expect during the pendency of your case.

By virtue of the fact that I now represent you, we have what is called an attorney-client relationship. The attorney-client relationship carries with it the attorney-client privilege. The purpose of this privilege is to encourage a free flow of information between us. With regard to this case, that means no third party, defendant or lawyer is entitled to obtain or request any written or verbal communications between yourself and my office.

However, third persons, defendants or their lawyers may be entitled to obtain confidential communications between us in the event the attorney-client privilege is waived. A waiver may occur if you communicate our confidential communications through others. As such, I must instruct you to keep all of our communications, both written and verbal, in the strictest of confidence. You are not to discuss your case or the facts of this case with anyone. Moreover, I encourage you to set up a confidential file, separate and apart from your other office records, in which to place our confidential written correspondence.

With regard to what to expect during your case, my office recently filed a Complaint in the Clark County Superior Court in Las Vegas Nevada, a copy of which is enclosed for your file. The Complaint has been sent out for service on all defendants which has officially started this case. At this time the Nevada complaint is only filed against Valley Hospital and the physicians at that facility. The reason for only filing against the Nevada parties is that Arizona has a two-year statute of limitation, which gives us additional time to try to pursue a settlement against the Nevada defendants before proceeding against Havasu Regional. Additionally, both Arizona and Nevada are several liability states, meaning that each defendant is only responsible for his or her negligence. Due to this, we determined that it was safer and more efficient to wait to file a

Re: *Daria Harper v. Valley Hospital Medical Center, et al.*

June 17, 2016

Page 2

complaint against the Arizona defendants in order to prevent any argument about their proportionate fault in the Nevada case.

We have also associated another law firm into the case in order to allow us to represent your interests in Nevada and Arizona. This was necessary because Nevada courts require an attorney with a Nevada bar license file a complaint and be part of the case. In light of that requirement, we associated with Bruce Fagel and Thomas Alch of the Law Offices of Bruce Fagel. We have worked with both Mr. Fagel and Mr. Alch on many cases. They are highly skilled and experienced medical malpractice litigators and are strong additions to your legal team. Please be advised that this association of counsel in no way impacts the percentage of your potential recovery.

The next phase is the "discovery" sequence wherein depositions are taken, both yours and the defendants and their agents, and reciprocal Interrogatories and Requests for Production of Documents are made. This phase will most likely take six to eight months to complete. Of course, I will represent you at your depositions and will take the depositions of all defendants and their agents. Further, we will make all court appearances on your behalf.

Once discovery is completed, I will make every effort to settle your case extra-judicially. Nothing will be done by way of negotiations or settlement without your expressed knowledge and consent. In the event the case does not settle, we may proceed to trial for judicial resolution.

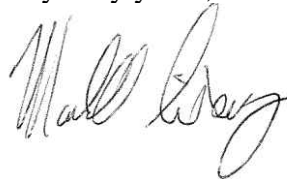
As I mentioned above, we have an additional year to file a complaint against the Arizona defendants. We anticipate filing that complaint in the first week of June 2017, assuming that Nevada lawsuit does not resolve before that time. If the Nevada lawsuit resolves by way of settlement, we will immediately proceed against the Arizona defendants.

As I explained to you in our initial meeting, there are no guarantees in your case. However, I assure you that my office will use all best efforts to advance your interests and resolve this matter in your favor. Also, rest assured that we will advise you of all significant developments as they occur.

Thank you for affording my office the opportunity to represent you in this matter.

I remain,

Very truly yours,

A handwritten signature in black ink, appearing to read "Marshall Silberberg", written in a cursive style.

Marshall Silberberg

MS/jd
Enclosure

EXHIBIT 3B

EXHIBIT 3B

DISTRIBUTION SHEET - FAGEL

CASE:
HARPER v. VALLEY HOSPITAL, et al.

DATE OF SETTLEMENT: **5/2/18**

SETTLEMENT AMOUNT: **\$6,250,000.00**

ATTORNEY FEES: **\$1,160,737.00**

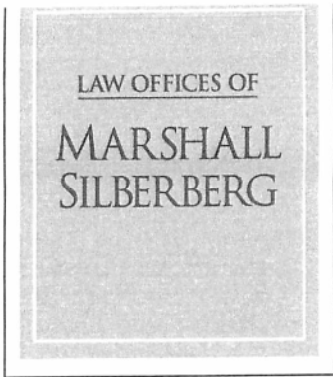
50% Attorney fees: **\$565,368.00**

Less 5% to Tom Alch **\$28,268.00**

\$537,100.00

Fagel Costs **\$2,926.00**

Balance to Bruce Fagel **\$540,026.00**



August 23, 2018

VIA FEDEX

Tom Alch
SHOOP | A PROFESSIONAL
LAW CORPORATION
350 S. Beverly Drive, Suite 330
Beverly Hills, CA 90212

RE: Harper matter

Dear Mr. Alch:

Relative to the above, enclosed with this letter is our firm's check no. 5101 in the amount of \$28,268.00, which represents your portion of fees on this matter.

Thank you for your assistance on this matter.

I remain,

Very truly yours,

A handwritten signature in dark ink, appearing to read "Janette", is placed above the typed name.

Janette Dockstader, Legal Assistant to
Marshall Silberberg

:jd
Enclosures

5102

LAW OFFICES OF MARSHALL SILBERBERG, PC
 ATTORNEY CLIENT TRUST ACCOUNT
 3333 MICHELSON DR STE 710
 IRVINE, CA 92612-1691

90-8578/3222
 90-8578/3222

DATE 8-18-18

PAY
 TO THE
 ORDER OF

Law office Bruce Fogel

\$ 540,026⁰⁰

Five hundred Forty Thousand Twenty Six & No/100

DOLLARS



PACIFIC PREMIER

1700 NEW KIDMAN AVE
IRVINE, CA 92614
909-261-1000

BANK

FOR

Cash & Costs - Haper

⑈005102⑈ ⑆322285781⑆ 717192133⑈

5101

LAW OFFICES OF MARSHALL SILBERBERG, PC
 ATTORNEY CLIENT TRUST ACCOUNT
 3333 MICHELSON DR STE 710
 IRVINE, CA 92612-1691

90-8578/3222
 90-8578/3222

DATE 8-18-18

PAY
 TO THE
 ORDER OF

Tom Alch

\$ 25,265⁰⁰

Twenty Five Thousand Two Hundred Sixty Eight & No/100

DOLLARS



PACIFIC PREMIER

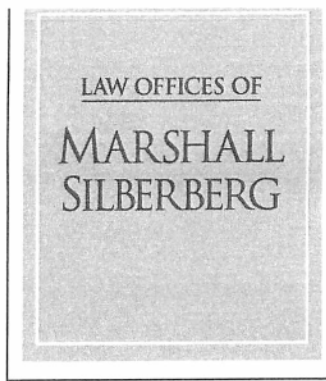
1700 NEW KIDMAN AVE
IRVINE, CA 92614
909-261-1000

BANK

FOR

Haper fees

⑈005101⑈ ⑆322285781⑆ 717192133⑈



August 23, 2018

VIA FEDEX

Kristyann Brodecki
Law Offices of Bruce Fagel
100 North Crescent Drive, Suite 360
Beverly Hills, CA 90210

RE: Daria Harper

Dear Kristyann:

Relative to the above, enclosed with this letter is our firm's check no. 5102 in the amount of \$540,026.00, which represents the fees and costs owed in this matter.

As always, it is a pleasure working with your office.

I remain,

Very truly yours,

A handwritten signature in dark ink, appearing to read "Janette Dockstader", is written over the typed name.

Janette Dockstader, Legal Assistant to
Marshall Silberberg

:jd
Enclosures

EXHIBIT 4

EXHIBIT 4

DECLARATION OF JOHN P. BLUMBERG IN SUPPORT OF
OPPOSITION TO FAGEL MOTION TO DISMISS

I, JOHN P. BLUMBERG, declare that I represent plaintiffs Daria Harper and Daniel Wininger and, based on my personal knowledge, can and would testify to the truth of the following facts:

1. I am an attorney duly licensed to practice law in California and admitted *pro hac vice* to represent plaintiffs in this lawsuit. I am knowledgeable of the facts contained herein and am competent to testify thereto.

2. I am over the age of eighteen and I have personal knowledge of all matters set forth herein. If called to do so, I would competently and truthfully testify to all matters set forth herein.

3. Attached as Exhibit "1" is a true copy of the Declaration of Thomas S. Alch that he filed in this action in support of the motion to dismiss of former co-defendant Shoop, A Professional Law Corporation.

4. Attached as Exhibit "2" is a true copy of the deposition that I took of Thomas S. Alch on December 29, 2020.

5. Attached as Exhibit "3" is a true copy of the deposition that I took of Kenneth Marshall Silberberg on November 9, 2020. Attached as Exhibits 3A and 3B respectively are exhibits "5" and "33" thereto.

6. Attached as Exhibit "5" is a true copy of the Supplemental Disclosure of Witnesses and Documents by Thomas S. Alch. Attached as Exhibit 5A are pages ALCH000891-000906 thereto.

7. Attached as Exhibit "6" is a true copy of the Deposition of William S. Collins that I took on November 6, 2020. Attached as Exhibit 6A is exhibit "14" thereto.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 4th day of June, 2021.

/s/ John P. Blumberg
JOHN P. BLUMBERG, ESQ.

EXHIBIT 5

EXHIBIT 5

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON NEILSON P.C.
DAVID A. CLARK
Nevada Bar No. 4443
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
dclark@lipsonneilson.com
Attorneys for Defendant, Thomas S. Alch

DISTRICT COURT

CLARK COUNTY, NEVADA

DARIA HARPER, an individual; and
DANIEL WININGER, an individual,

Case No. A-20-814541-C
Dept. 30

Plaintiffs,

v.

**DEFENDANT THOMAS S. ALCH AKA
THOMAS STEVEN ALCH'S FIRST
SUPPLEMENTAL DISCLOSURE OF
WITNESSES AND DOCUMENTS
PURSUANT TO NRCP 16.1(a)(1)**

COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY, an Arizona
corporation; COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF
MARSHALL SILBERBERG, P.C., a
California corporation; KENNETH
MARSHALL SILBERBERG aka
MARSHALL SILBERBERG aka K.
MARSHALL SILBERBERG, an individual;
THOMAS S. ALCH aka THOMAS STEVEN
ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION, a
California corporation; DOES 1-50, inclusive,

Defendants.

Defendants THOMAS S. ALCH aka Thomas Steven Alch ("Defendant"), by and through
his counsel of record, Lipson Neilson P.C., hereby submits his First Supplemental Disclosure of
Witnesses and Documents in accordance with NRCP 16.1(a)(1) as follows:

///

///

///

INITIAL DISCLOSURES

A. Individuals Likely to Have Information Discoverable Under Rule 26(b)

1. Bruce G. Fagel, Esq
Law Offices of Dr. Bruce G. Fagel and Associates
100 N. Crescent Drive, Suite 360
Beverly Hills, CA 90210
Telephone (310) 281-8700

Mr. Fagel is expected to testify regarding the facts and circumstances in this litigation.

2. Trudy Fagel
Law Offices of Dr. Bruce G. Fagel and Associates
100 N. Crescent Drive, Suite 360
Beverly Hills, CA 90210
Telephone (310) 281-8700

Ms. Fagel is expected to testify regarding the facts and circumstances in this litigation.

3. Thomas S. Alch, Esq. aka Thomas Steven Alch
c/o Lipson Neilson P.C.
9900 Covington Cross Dr., Suite 120
Las Vegas, Nevada 89144
Telephone (702) 382-1500

Mr. Alch is expected to testify regarding the facts and circumstances in this litigation.

4. Daria Harper
c/o Blumberg Law Corporation
444 West Ocean Blvd., Suite 1500
Long Beach, CA 90802
Telephone: 562.437.0403

-and-

c/o Maier Gutierrez & Associates
8816 Spanish Ridge Avenue
Las Vegas, NV 89149
Telephone: 702.629.7900

Ms. Harper is expected to testify regarding the facts and circumstances identified in the

Complaint.

///

///

5. Daniel Wininger
c/o Blumberg Law Corporation
444 West Ocean Blvd., Suite 1500
Long Beach, CA 90802
Telephone: 562.437.0403

c/o Maier Gutierrez & Associates
8816 Spanish Ridge Avenue
Las Vegas, NV 89149
Telephone: 702.629.7900

Mr. Wininger is expected to testify regarding the facts and circumstances identified in the Complaint.

6. NRCP 30(b)(6) Witness for Copperpoint Mutual Insurance Holding Company
c/o Hooks Meng & Clement
2820 West Charleston Blvd., Suite C-23
Las Vegas, Nevada 89102
Telephone: (702) 766-4672

The NRCP 30(b)(6) Witness for Copperpoint Mutual Insurance Holding Company is expected to testify regarding the facts and circumstances in this litigation.

7. NRCP 30(b)(6) Witness for Copperpoint General Insurance Company
c/o Hooks Meng & Clement
2820 West Charleston Blvd., Suite C-23
Las Vegas, Nevada 89102
Telephone: (702) 766-4672

The NRCP 30(b)(6) Witness for Copperpoint General Insurance Company is expected to testify regarding the facts and circumstances in this litigation.

8. Kenneth Marshall Silberberg aka Marshall Silberberg aka K. Marshall Silberberg
c/o Kjar, McKenna & Stockalper LLP
841 Apollo Street, Suite 100
El Segundo, CA 90245
Telephone: (424) 217-3026

Mr. Silberberg is expected to testify regarding the facts and circumstances in this litigation.

9. NRCP 30(b)(6) Witness for Law Offices of Marshall Silberberg, P.C.
c/o Kjar, McKenna & Stockalper LLP
841 Apollo Street, Suite 100
El Segundo, CA 90245
Telephone: (424) 217-3026

1 The NRCP 30(b)(6) Witness for Law Offices of Marshall Silberberg, P.C. is expected to
2 testify regarding the facts and circumstances in this litigation.

3 10. William Collins, Esq.
4 c/o Kjar, McKenna & Stockalper LLP
5 841 Apollo Street, Suite 100
6 El Segundo, CA 90245
7 Telephone: (424) 217-3026

8 Mr. Collins is expected to testify regarding the facts and circumstances in this litigation.

9 11. Defendant reserves the right to call any and all expert witnesses which he may after
10 select as the need arises during the course of litigation.

11 12. Defendant reserves the right to call any and all of any other party's proposed
12 witnesses, or any other witnesses of any party who become known as this litigation progresses and
13 as other witnesses are discovered or located.

14 13. All persons needed to lay a proper foundation for the introduction of exhibits and/or
15 deposition testimony.

16 14. Any necessary rebuttal witnesses.

17 15. Agents, representatives, employees of Plaintiff or Defendants with knowledge of the
18 claims and defenses asserted herein.

19 16. All individuals listed or identified in exhibits.

20 17. Individuals discovered pursuant to any document review.

21 18. Individuals identified during any subsequent discovery.

22 19. Individuals identified in any written discovery requests from any party.

23 20. Any witnesses listed by any other party, and the same may be called as an adverse
24 witness.

25 Defendant reserves the right to supplement this witness list as any other witnesses become
26 known as this litigation progresses and as other witnesses are discovered or located.

27 ///
28 ///

B. Copy or Description by Category of Document Within Defendant's Possession that May Be Used to Support Defenses

DESCRIPTION	BATES NO.
Declaration of Joseph D. Ciacci, M.D.	ALCH000001-ALCH000005
Declaration of Stephen Dorros, M.D., FACR	ALCH000006-ALCH000009
Declaration of Phuoc Le, M.D.	ALCH000010-ALCH000016
Declaration of Samuel Pleasure, M.D., Ph.D.	ALCH000017-ALCH000023
Declaration of Michael Steven Ritter, M.D., FAAEM, FACEP	ALCH000024-ALCH000027
Declaration of Kevin Shaw, M.D.	ALCH000028-ALCH000033
Economic Losses Report from Peter Formuzis	ALCH000034-ALCH000049
Life Care Plan prepared by Greg Vigna, M.D., JD, CLCP	ALCH000050-ALCH000111
Paid Medical Bills for Selected Claim	ALCH000112-ALCH000113
Harper v. Janda, et al. Full General Release and Indemnity Agreement	ALCH000114-ALCH000126
Harper v. Janda, et al. Mediation Settlement Agreement	ALCH000127-ALCH000128
Settlement Disbursement Sheet – Bruce Fagel	ALCH000129
Insurance Policy.pdf	ALCH000130-ALCH000161
<i>Payment from Bruce G. Fagel</i>	<i>ALCH000162-ALCH000163</i>
<i>Emails</i>	<i>ALCH000164-ALCH000916</i>

As Plaintiffs' counsel is aware, Defendant was employed by the Law Offices of Bruce G. Fagel and Associates ["Fagel"] during a substantial portion of the subject litigation. Defendant does not have access to any materials on the Fagel servers or computers. Additionally, Defendant does not have access to any emails from his email account that was used when he was employed by Fagel. Defendant reserves the right to supplement his disclosures should he locate related documents at a later date. Discovery and investigation continue.

C. Computation of Any Category of Damages

Not applicable.

D. Any Insurance Agreement or Agreement by Person in the Insurance Business

Please see ALCH000130-ALCH000161.

1 **E. Disclosure of Expert Testimony**

2 Defendant has not yet determined what, if any, experts will be used at trial in this matter
3 and reserves the right to call any and all expert witnesses which he may hereafter select as the need
4 arises during the course of litigation. Defendant reserves the right to supplement these disclosures
5 at a later date.

6 DATED this 2nd day of February, 2021.

7 LIPSON NEILSON P.C.

8 /s/ David A. Clark

9 By: _____

10 DAVID A. CLARK

11 Nevada Bar No. 4443

12 9900 Covington Cross Drive, Suite 120

13 Las Vegas, Nevada 89144

14 *Attorneys for Defendant, Thomas S. Alch*

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 2nd day of February, 2021, I electronically transmitted the **DEFENDANT THOMAS S. ALCH AKA THOMAS STEVEN ALCH FIRST SUPPLEMENTAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1(a)(1)** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
(admitted pro hac vice)
BLUMBERG LAW CORPORATION
444 West Ocean Blvd., Suite 1500
Long Beach, California 90802-4330

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
jrm@mgallaw.com
Attorneys for Plaintiffs

Dalton L. Hooks, Jr., Esq.
HOOKS MENG & CLEMENT
2820 West Charleston Blvd., Suite C-23
Las Vegas, Nevada 89102
Attorneys for Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company

James Kjar, Esq.
Jon Schwalbach, Esq.
KJAR, MCKENNA & STOCKALPER LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
Attorneys for Defendants Kenneth Marshall Silberberg and Law Offices of Marshal Silberberg

/s/ Debra Marquez
An employee of LIPSON NEILSON P.C.

EXHIBIT 5A

EXHIBIT 5A

From: Will Collins wcollins@silberberglaw.com
Subject: RE: Harper - Reports / Declaration
Date: Mar 2, 2018 at 12:24:14 PM
To: Thomas Alch thomas.alch@shooplaw.com

The reports are now due 4/16/18, we moved the date via stipulation two weeks ago.

I am free Tuesday. What time?

William S. Collins

Attorney

LAW OFFICES OF MARSHALL SILBERBERG
3333 Michelson Drive Suite 710
Irvine, CA 92612
Tel: (949) 718-0960
Fax: (949) 266-5811

PRIVILEGED COMMUNICATION: This e-mail and any attachments are confidential and subject to the Attorney-Client Privilege and, as documents prepared in the course of or in anticipation of litigation, are also subject to protection as Attorney Work Product. If you are not the intended recipient, any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and delete this copy from your system. You may also call (949) 718-0960 for assistance. Thank you for your cooperation.

From: Thomas Alch [<mailto:thomas.alch@shooplaw.com>]
Sent: Friday, March 2, 2018 12:21 PM
To: Will Collins <wcollins@silberberglaw.com>
Cc: Janette Dockstader <janette@silberberglaw.com>
Subject: Re: Harper - Reports / Declaration

Thanks Will. When are they due? If possible I would like to talk on Tuesday.

Thomas S. Alch
Attorney at Law

**SHOOP | A PROFESSIONAL
LAW CORPORATION**

350 S. Beverly Drive, Suite 330
Beverly Hills, CA 90212
(310) 277-1700 (p)
(310) 277-8500 (f)
thomas.alch@shooplaw.com

The information contained herein may constitute a confidential and privileged attorney-client communication or work product intended only for the individual or entity to whom it is addressed. Any unauthorized use, distribution or photocopying of this communication is strictly prohibited. If you are in receipt of this communication in error, please notify sender immediately.

On Mar 2, 2018, at 12:03 PM, Will Collins <wcollins@silberberglaw.com> wrote:

Tom,

Following up on the email below. Please let me know when you have some time to review and discuss the reports we have generated thus far.

William S. Collins

Attorney

LAW OFFICES OF MARSHALL SILBERBERG
3333 Michelson Drive Suite 710
Irvine, CA 92612
Tel: (949) 718-0960
Fax: (949) 266-5811

PRIVILEGED COMMUNICATION: This e-mail and any attachments are confidential and subject to the Attorney-Client Privilege and, as documents prepared in the course of or in anticipation of litigation, are also subject to protection as Attorney Work Product. If you are not the intended recipient, any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and delete this copy from your system. You may also call (949) 718-0960 for assistance. Thank you for your cooperation.

From: Will Collins
Sent: Tuesday, February 6, 2018 1:35 PM
To: 'Thomas Alch' <thomas.alch@shooplaw.com>
Cc: Janette Dockstader <janette@silberberglaw.com>
Subject: RE: Harper - Reports / Declaration

Tom,

Have you had a chance to look over the reports. I want to get these finalized and need your guidance.

Thanks

William S. Collins

Attorney

LAW OFFICES OF MARSHALL SILBERBERG
3333 Michelson Drive Suite 710
Irvine, CA 92612
Tel: (949) 718-0960
Fax: (949) 266-5811

PRIVILEGED COMMUNICATION: This e-mail and any attachments are confidential and subject to the Attorney-Client Privilege and, as documents prepared in the course of or in anticipation of litigation, are also subject to protection as Attorney Work Product. If you are not the intended recipient, any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and delete this copy from your system. You may also call (949) 718-0960 for assistance. Thank you for your cooperation.

From: Thomas Alch [<mailto:thomas.alch@shooplaw.com>]
Sent: Wednesday, January 10, 2018 11:09 AM
To: Will Collins <wcollins@silberberglaw.com>
Cc: Janette Dockstader <janette@silberberglaw.com>
Subject: Re: Harper - Reports / Declaration

Thank you Will.

Thomas S. Alch
Attorney at Law
IMG_0594 - Copy

**SHOOP | A PROFESSIONAL
LAW CORPORATION**

350 S. Beverly Drive, Suite 330
Beverly Hills, CA 90212
(310) 277-1700 (p)
(310) 277-8500 (f)
thomas.alch@shooplaw.com

The information contained herein may constitute a confidential and privileged attorney-client communication or work product intended only for the individual or entity to whom it is addressed. Any unauthorized use, distribution or photocopying of this communication is strictly prohibited. If you are in receipt of this communication in error, please notify sender immediately.

On Jan 10, 2018, at 10:15 AM, Will Collins <wcollins@silberberglaw.com> wrote:

Tom,

I have attached the reports that we prepared for our experts. The only one that is not yet finalized is Dr. Le (our hospitalist expert). The remainder are largely finalized, with signatures pending completion of the remaining depositions. As you will see, we have experts to opine on the resident hospitalist, the resident and attending neurologist, the

emergency room doctor, neurosurgery and neuroradiology. Neurosurgery is our main causation guy. We should have the life care plan shortly.

William S. Collins

Attorney

LAW OFFICES OF MARSHALL SILBERBERG

3333 Michelson Drive Suite 710

Irvine, CA 92612

Tel: (949) 718-0960

Fax: (949) 266-5811

PRIVILEGED COMMUNICATION: This e-mail and any attachments are confidential and subject to the Attorney-Client Privilege and, as documents prepared in the course of or in anticipation of litigation, are also subject to protection as Attorney Work Product. If you are not the intended recipient, any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and delete this copy from your system. You may also call (949) 718-0960 for assistance. Thank you for your cooperation.

<Declaration-Report - Le.pdf>
<Declaration-Report - Shaw.pdf>
<Declaration-Report - Dorros.pdf>
<Declaration-Report - Ritter.pdf>
<Declaration-Report - Ciacchi.pdf>
<Declaration-Report - Pleasure.pdf>

From: **Janette Dockstader** janette@silberberglaw.com
Subject: **RE: Daria Harper re jury fees**
Date: **Mar 5, 2018 at 11:14:21 AM**
To: **Will Collins** wcollins@silberberglaw.com
Cc: **Silvana** silvana@fagellaw.com, **Tom Alch**
(Thomas.Alch@shooplaw.com) Thomas.Alch@shooplaw.com

I don't see anything in our file that jury fees have been posted. I don't know how to go about this in NV. Silvana and Tom – will you please advise on how we get this paid and filed? THANK YOU!

From: Will Collins
Sent: Monday, March 05, 2018 11:11 AM
To: Janette Dockstader <janette@silberberglaw.com>
Subject: FW: Daria Harper re jury fees

FYI

William S. Collins

Attorney

LAW OFFICES OF MARSHALL SILBERBERG
3333 Michelson Drive Suite 710
Irvine, CA 92612
Tel: (949) 718-0960
Fax: (949) 266-5811

PRIVILEGED COMMUNICATION: This e-mail and any attachments are confidential and subject to the Attorney-Client Privilege and, as documents prepared in the course of or in anticipation of litigation, are also subject to protection as Attorney Work Product. If you are not the intended recipient, any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and delete this copy from your system. You may also call (949) 718-0960 for assistance. Thank you for your cooperation.

From: Brenda <brenda@fagellaw.com>
Sent: Monday, March 5, 2018 11:10 AM
To: Marshall Silberberg <MS@silberberglaw.com>; Will Collins
<wcollins@silberberglaw.com>
Subject: Daria Harper re jury fees

Bruce would like you to please confirm that the jury fees have been posted in the Daria Harper case.
Please advise.

Brenda Assfy
Legal Assistant to Bruce G. Fagel, M.D., J.D.

Law Offices of
Bruce G. Fagel MD, JD
and Associates
Telephone: (310) 281-8700
Facsimile: (310) 281-5656
e-mail: brenda@fagellaw.com

Confidentiality Notice: This message and any attachments hereto may contain confidential and privileged communications or information and/or attorney client communications or work-product protected by law. The information contained herein is transmitted for the sole use of the intended recipient(s). If you are not the intended recipient or designated agent of the recipient of such information, you are hereby notified that any use, dissemination, copying or retention of this e-mail or the information contained herein is strictly prohibited and may subject you to penalties under federal and/or state law. If you received this e-mail in error, please notify the sender immediately and permanently delete this e-mail.

From: **Bruce Fagel** brucefagel@fagellaw.com
Subject: **FW: 2 Nevada Cases re [REDACTED] and Daria Harper**
Date: **Mar 5, 2018 at 11:50:17 AM**
To: **Thomas Alch** tommyalch@gmail.com

[REDACTED]

[REDACTED]

Bruce G. Fagel, M.D., J.D.
LAW OFFICES OF BRUCE G. FAGEL & ASSOCIATES
100 North Crescent Drive, Suite 360
Beverly Hills, CA 90210
Telephone: (310) 281-8700
Facsimile: (310) 281-5656
e-mail: brucefagel@fagellaw.com

Confidentiality Notice: This message and any attachments hereto may contain confidential and privileged communications or information and/or attorney client communications or work-product protected by law. The information contained herein is transmitted for the sole use of the intended recipient(s). If you are not the intended recipient or designated agent of the recipient of such information, you are hereby notified that any use, dissemination, copying or retention of this e-mail or the information contained herein is strictly prohibited and may subject you to penalties under federal and/or state law. If you received this e-mail in error, please notify the sender immediately and permanently delete this e-mail.

From: Brenda
Sent: Monday, March 05, 2018 11:49 AM
To: Bruce Fagel <brucefagel@fagellaw.com>
Subject: RE: 2 Nevada Cases re [REDACTED] and Daria Harper

I have no idea – Tom handled that.

From: Bruce Fagel
Sent: Monday, March 05, 2018 11:48 AM
To: Brenda <brenda@fagellaw.com>
Subject: RE: 2 Nevada Cases re [REDACTED] and Daria Harper

When did we post in Parnell? That was the last Nevada case we had

From: Brenda
Sent: Monday, March 05, 2018 11:09 AM
To: Bruce Fagel <brucefagel@fagellaw.com>
Subject: RE: 2 Nevada Cases re- [REDACTED] and Daria Harper

Know the date of what?
I am asking you when we are to post jury fees?

From: Bruce Fagel
Sent: Monday, March 05, 2018 11:07 AM
To: Brenda <brenda@fagellaw.com>
Subject: RE: 2 Nevada Cases re Wendy Gaea and Daria Harper

Marshall is handling Harper, but confirm that with his office
I need to call Joe Bonjoivi about Gaea – but we may need to post jury fees – I need to know the date

From: Brenda
Sent: Monday, March 05, 2018 11:04 AM
To: Bruce Fagel <brucefagel@fagellaw.com>; Richard Akemon <richardakemon@fagellaw.com>
Subject: 2 Nevada Cases re- [REDACTED] and Daria Harper

Do you know when you are to post jury fees in Nevada cases?
[REDACTED] trial date is 7-9-2018 and Daria Harper the trial is 9-4-2018.

Please let me know.

Brenda Assfy
Legal Assistant to Bruce G. Fagel, M.D., J.D.

Law Offices of
Bruce G. Fagel MD, JD
and Associates

Telephone: (310) 281-8700

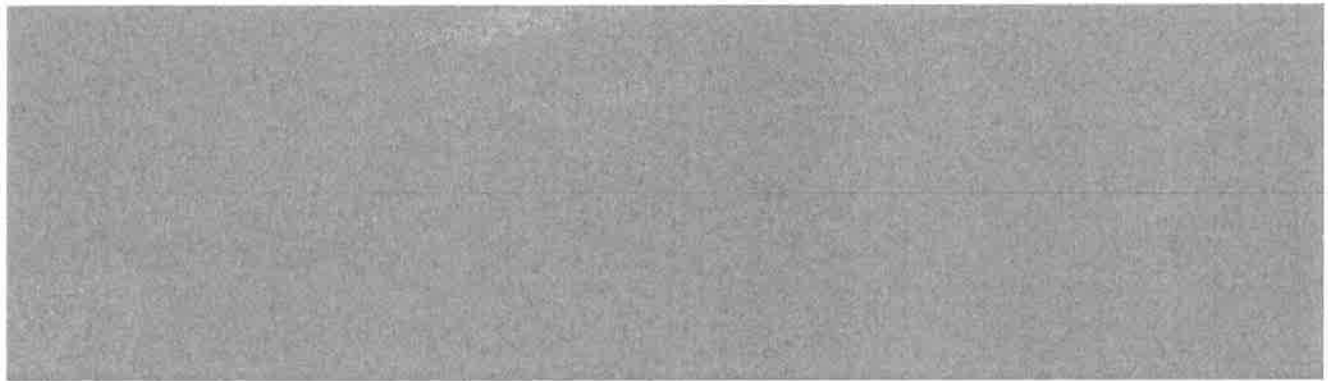
Facsimile: (310) 281-5656

e-mail: brenda@fagellaw.com

Confidentiality Notice: This message and any attachments hereto may contain confidential and privileged communications or information and/or attorney client communications or work-product protected by law. The information contained herein is transmitted for the sole use of the intended recipient(s). If you are not the intended recipient or designated agent of the recipient of such information, you are hereby notified that any use, dissemination, copying or retention of this e-mail or the information contained herein is strictly prohibited and may subject you to penalties under federal and/or state law. If you received this e-mail in error, please notify the sender immediately and permanently delete this e-mail.

From: Thomas Alch thomas.alch@shooplaw.com
Subject: Jury Fees in [REDACTED] and Harper
Date: Mar 5, 2018 at 1:28:36 PM
To: BRUCE FAGEL brucefagel@fagellaw.com, BRENDA ASSFY
brenda@fagellaw.com, janette@silberberglaw.com,
ms@silberberglaw.com, wcollins@silberberglaw.com, Silvana
RINCOVER silvana@fagellaw.com
Bcc: thomas.alch@shooplaw.com

The Clark County Local Rules, EJDc 1.76, jury fees are paid at the conclusion of the trial.



witnesses must stand ready to proceed to trial upon reasonable oral notification by the court to the attorneys involved.

Rule 1.76. Deposit of jurors' fees for civil trials.

(a) As an exception to NRCP 38, allowable thereunder and pursuant to NRCP 83, the clerk shall not charge from the party demanding a civil trial by jury as otherwise would be required by said sections of the Nevada Procedure.

(b) All jurors' fees and expenses shall be determined subsequent to the conclusion of the civil trial and then accordingly.

[Added; effective January 4, 2010.]

Rule 1.80. Assignment of overflow cases. An overflow judge or judges may be selected by the appropriate. When a district judge is not presiding at the trial of a case, that judge shall take an overflow case description which the chief judge might assign to her or him. However, the chief judge shall assign to judge family division only overflow cases within the family division.

[As amended; September 20, 1999.]

Rule 1.90. Caseload management.

(a) Delay reduction standards.

(1) Time to disposition. For criminal cases, the aspirational standard of the court is for 50% of all cases within 6 months, 90% of all cases to be resolved within 1 year (with the last 10% being only life sentence cases) and for 100% of the cases to be resolved within 2 years. It is the goal of the court to achieve a final disposition of its civil cases within 24 months of filing and a final resolution in 95% of its cases within 36 months of filing. The court recognizes that there will be exceptional cases which will not be resolved within 36 months and recognizes that 100% of all cases must be resolved within 60 months from the date of filing, unless stipulation by the parties to extend deadlines under NRCP 41(e).

(2) Time limits for discovery commissioner. Except in complex litigation as defined in NRCP 16, the commissioner shall ensure that pretrial discovery is completed within 18 months from the filing of the joint report. Discovery in complex litigation shall be completed within 24 months from the filing of the joint report.

(3) Time Limits for pretrial discovery. All pretrial discovery shall be heard and decided no later than

(3) Time limits for pretrial motions. All pretrial motions shall be heard and decided no later than date scheduled for trial.

(4) Time limits for matters under submission. Unless the case is extraordinarily complex, a judge or judicial officer shall issue a decision in all matters submitted for decision to him or her not later than 20 days after submission. In extraordinarily complex cases, a decision must be rendered not later than 30 days after said submission. The prevailing party shall submit a written order to the judge or judicial officer not later than 20 days from the date of the decision.

(5) Time limits for entry of judgments. Unless the case is extraordinarily complex, a judge or judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law not later than 20 days following trial. In extraordinarily complex cases, the attorney for the prevailing party shall prepare a written judgment and findings of fact and conclusions of law to the judge or judicial officer not later than 30 days following trial.

(6) Time limits for remands from Nevada Supreme Court. Any case remanded for further action by the Nevada Supreme Court shall be scheduled for a status check no later than 30 days from issuance of the remittitur.

(b) Civil caseload management.

(1) Responsibility of trial judge. It is the clear responsibility of each individual trial judge to manage the caseload in an efficient and effective manner. Each judge is charged with the responsibility for maintaining a trial calendar.

(2) Dismissal calendar. Each department shall review its civil caseload for complaints not served within 180 days of filing and for civil cases pending longer than 12 months in which no action has been taken within 180 days of filing. The cases shall either be disposed of or moved forward by means of a dismissal calendar held at least monthly by each department.

(3) Scheduling orders. The discovery commissioner shall issue a scheduling order in a civil case not later than 60 days from the filing of the joint case conference report. The scheduling order shall indicate whether the case is to be tried within 4 weeks to try and at least 5 dates consistent with the settlement program on which the parties are required to appear. Settlement conference be scheduled when all counsel plus those persons with settlement authority are available at 10:30 a.m. Tuesday through Friday.

(4) Trial setting. Upon receipt of a scheduling order from the discovery commissioner, the trial judge shall set the trial setting order within 60 days, setting the matter for trial no later than 12 months from the date of the discovery commissioner's order set forth in the scheduling order.

(5) Trial date. The trial shall go forward on the date originally set, unless the court grants a continuance showing of good cause. No trial date shall be continued pursuant to stipulation of the parties without approval of the judge. At the time a continuance is granted, the trial judge must set the case for trial at a time and date certain. The trial date shall be set at the earliest available date within 9 months of original trial date.

<https://www.leg.state.nv.us/CourtRules/EnglishDCR.html>

Thomas S. Alch
Attorney at Law



This image is no longer available.
Visit tinypic.com for more information.

SHOOP | A PROFESSIONAL
LAW CORPORATION
350 S. Beverly Drive, Suite 330
Beverly Hills, CA 90212
(310) 277-1700 (p)
(310) 277-8500 (f)
thomas.alch@shooplaw.com

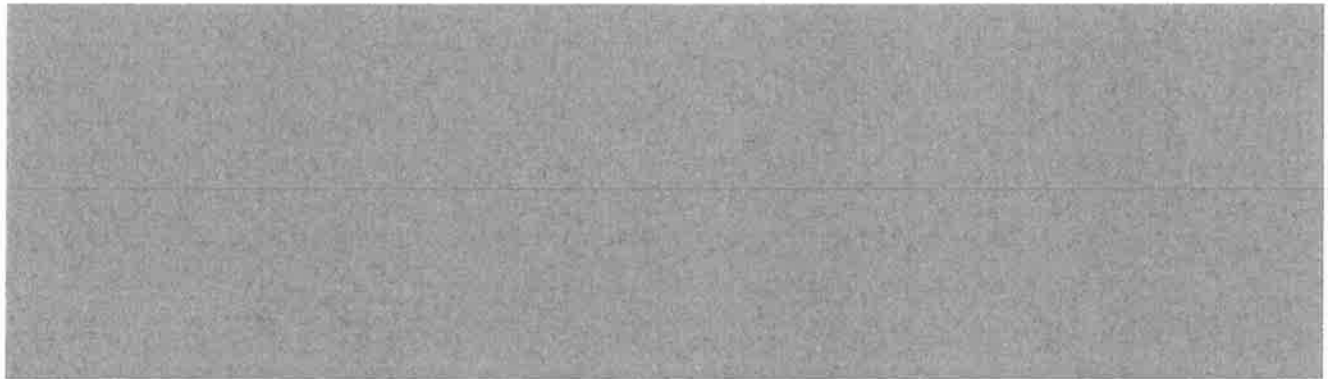
The information contained herein may constitute a confidential and privileged attorney-client communication or work product intended to whom it is addressed. Any unauthorized use, distribution or photocopying of this communication is strictly prohibited. If you receive this communication in error, please notify sender immediately.

From: Janette Dockstader janette@silberberglaw.com
Subject: RE: Jury Fees in Gaea and Harper
Date: Mar 5, 2018 at 1:43:20 PM
To: Thomas Alch thomas.alch@shooplaw.com

Thanks so much Tom!

From: Thomas Alch <thomas.alch@shooplaw.com>
Sent: Monday, March 05, 2018 1:29 PM
To: BRUCE FAGEL <brucefagel@fagellaw.com>; BRENDA ASSFY <brenda@fagellaw.com>; Janette Dockstader <janette@silberberglaw.com>; Mar <MS@silberberglaw.com>; Will Collins <wcollins@silberberglaw.com>; Silvana RINCOVER <silvana@fagellaw.com>
Subject: Jury Fees in Gaea and Harper

The Clark County Local Rules, EJDc 1.76, jury fees are paid at the conclusion of the trial.



witnesses must stand ready to proceed to trial upon reasonable oral notification by the court to the at litigants) involved.

Rule 1.76. Deposit of jurors' fees for civil trials.

(a) As an exception to NRCP 38, allowable thereunder and pursuant to NRCP 83, the clerk shall not c from the party demanding a civil trial by jury as otherwise would be required by said sections of the Nev Procedure.

(b) All jurors' fees and expenses shall be determined subsequent to the conclusion of the civil trial and t accordingly.

[Added; effective January 4, 2010.]

Rule 1.80. Assignment of overflow cases. An overflow judge or judges may be selected by the appropriate. When a district judge is not presiding at the trial of a case, that judge shall take an overflow c description which the chief judge might assign to her or him. However, the chief judge shall assign to juc family division only overflow cases within the family division.

[As amended; September 20, 1999.]

Rule 1.90. Caseload management.

(a) Delay reduction standards.

(1) Time to disposition. For criminal cases, the aspirational standard of the court is for 50% of all c within 6 months, 90% of all cases to be resolved within 1 year (with the last 10% being only life sentenc cases) and for 100% of the cases to be resolved within 2 years. It is the goal of the court to achieve a final of its civil cases within 24 months of filing and a final resolution in 95% of its cases within 36 months of The court recognizes that there will be exceptional cases which will not be resolved within 36 montl recognizes that 100% of all cases must be resolved within 60 months from the date of filing, unless stipulation by the parties to extend deadlines under NRCP 41(e).

(2) Time limits for discovery commissioner. Except in complex litigation as defined in NRCP 16, commissioner shall ensure that pretrial discovery is completed within 18 months from the filing of the joi report. Discovery in complex litigation shall be completed within 24 months from the filing of the joi report.

(3) Time limits for pretrial motions. All pretrial motions shall be heard and decided no later than date scheduled for trial.

(4) Time limits for matters under submission. Unless the case is extraordinarily complex, a judge or judicial officer shall issue a decision in all matters submitted for decision to him or her not later than 20 days after submission. In extraordinarily complex cases, a decision must be rendered not later than 30 days after said submission. After the decision of the judge or other judicial officer, the prevailing party shall submit a written order to the judge or judicial officer not later than 20 days from the date of the decision.

(5) Time limits for entry of judgments. Unless the case is extraordinarily complex, a judge or judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law not later than 20 days following trial. In extraordinarily complex cases, the attorney for the prevailing party shall prepare a written judgment and findings of fact and conclusions of law to the judge or judicial officer not later than 30 days from the conclusion of trial.

(6) Time limits for remands from Nevada Supreme Court. Any case remanded for further action by the Nevada Supreme Court shall be scheduled for a status check no later than 30 days from issuance of the remittitur.

(b) Civil caseload management.

(1) Responsibility of trial judge. It is the clear responsibility of each individual trial judge to manage the caseload in an efficient and effective manner. Each judge is charged with the responsibility for maintaining a trial calendar.

(2) Dismissal calendar. Each department shall review its civil caseload for complaints not served within 180 days of filing and for civil cases pending longer than 12 months in which no action has been taken. The cases shall either be disposed of or moved forward by means of a dismissal calendar held at least monthly in each department.

(3) Scheduling orders. The discovery commissioner shall issue a scheduling order in a civil case no later than 30 days from the filing of the joint case conference report. The scheduling order shall indicate whether the case is to be tried within 4 weeks to try and at least 5 dates consistent with the settlement program on which the parties are required to appear. The settlement conference be scheduled when all counsel plus those persons with settlement authority are available at 10:30 a.m. Tuesday through Friday.

(4) Trial setting. Upon receipt of a scheduling order from the discovery commissioner, the trial judge shall set the trial within 60 days, setting the matter for trial no later than 12 months from the date of the discovery conference set forth in the scheduling order.

(5) Trial date. The trial shall go forward on the date originally set, unless the court grants a continuance showing of good cause. No trial date shall be continued pursuant to stipulation of the parties without approval of the judge. At the time a continuance is granted, the trial judge must set the case for trial at a time and date certain. The trial date shall be set at the earliest available date within 9 months of original trial date.

<https://www.jeg.state.nv.us/CourtRules/EighthDCR.html>

Thomas S. Alch
Attorney at Law



This image is no longer available.
Visit ttypic.com for more information.

**SHOOP | A PROFESSIONAL
LAW CORPORATION**

350 S. Beverly Drive, Suite 330
Beverly Hills, CA 90212
(310) 277-1700 (p)
(310) 277-8500 (f)
thomas.alch@shooplaw.com

The information contained herein may constitute a confidential and privileged attorney-client communication or work product intended only for the individual addressed. Any unauthorized use, distribution or photocopying of this communication is strictly prohibited. If you are in receipt of this communication in error, please notify the sender immediately.

EXHIBIT 6

EXHIBIT 6

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 DARIA HARPER, an individual;) Case No.: A-20-814541-C
and DANIEL WININGER, an)

5 individual,) Dept. No.: 30

6)
Plaintiffs,)

7 vs.)

8 COPPERPOINT MUTUAL INSURANCE)
HOLDING COMPANY, an Arizona)

9 corporation; COPPERPOINT)
GENERAL INSURANCE COMPANY,)

10 an Arizona corporation; LAW)
OFFICES OF MARSHALL)

11 SILBERBERG, P.C., a California)
corporation; KENNETH MARSHALL)

12 SILBERBERG aka MARSHALL)
SILBERBERG aka K. MARSHALL)

13 SILBERBERG, an individual;)
THOMAS S. ALCH aka THOMAS)

14 STEVEN ALCH, an individual;)
SHOOP, A PROFESSIONAL LAW)

15 CORPORATION, a California)
corporation; DOES 1-50,)

16 inclusive,)

17)
Defendants.)

18 _____)

19 VIDEORECORDED VIDEOCONFERENCE DEPOSITION
OF

20 WILLIAM S. COLLINS, ESQ.

21 Taken remotely on Friday, November 6, 2020
At 10:33 a.m.

22 By a Certified Court Reporter and Legal Videographer

23

24 Reported by: Dawn Bratcher Gustin, CCR 253, RPR, CRR
California CSR 7124

25 Job No. 41839

1 APPEARANCES:
(All participants appearing remotely)

2
3 For the Plaintiffs:

4 JOHN P. BLUMBERG, ESQ.
5 BLUMBERG LAW CORPORATION
6 444 West Ocean Boulevard
7 Suite 1500
8 Long Beach, California 90802-4330
9 advocates@blumberglaw.com

10 - and -

11 JASON R. MAIER, ESQ.
12 MAIER GUTIERREZ & ASSOCIATES
13 8816 Spanish Ridge Avenue
14 Las Vegas, Nevada 89148
15 jrm@mgalaw.com

16 For the Defendants Kenneth Marshall Silberberg and Law
17 Offices of Marshall Silberberg:

18 JAMES KJAR, ESQ.
19 KJAR, McKENNA & STOCKALPER LLP
20 841 Apollo Street
21 Suite 100
22 El Segundo, California 90245
23 kjar@kmslegal.com

24 - and -

25 ROBERT C. MCBRIDE, ESQ.
McBRIDE HALL
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
rcmcbride@mcbridehall.com

1 APPEARANCES (Continued):
(All participants appearing remotely)

2

3 For the Defendants Shoop, A Professional Law
Corporation, and Thomas S. Alch:

4

DAVID A. CLARK, ESQ.
LIPSON NEILSON P.C.
9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144
dclark@lipsonneilson.com

8

9 The Videographer:

10 DYLAN THOMAS, Legal Videographer

11

12 Also Present:

13 MARSHALL SILBERBERG, ESQ.
14 VIRGINIA WONG, ABOTA Intern with Mr. Kjar

15

16

* * * * *

17

18

19

20

21

22

23

24

25

1 I N D E X

2 WITNESS PAGE

3 WILLIAM S. COLLINS, ESQ.

4 Examination by Mr. Blumberg 7

5 Examination by Mr. Clark 66

6

7

8 E X H I B I T S

9 EXHIBIT DESCRIPTION MARKED

10 Exhibit 1 Subpoena Duces Tecum (Testimony and Documents) (9 pages) 9

11 Exhibit 2 3/10/16 Contingent Fee Agreement 13
12 (4 pages)

13 Exhibit 3 6/3/16 Affidavit of Michael 15
Steven Ritter, MD, FAAEM, FACEP;
14 6/2/16 Affidavit of David Neer,
MD (7 pages)

15 Exhibit 4 Plaintiff Daria Harper's Response 17
16 to Special Interrogatories (Set One)
Propounded by Defendant Jeffrey
17 Davidson, MD (18 pages)

18 Exhibit 5 Plaintiff Daria Harper's Response 19
to Special Interrogatories (Set One)
19 Propounded by Defendant Murad
Jussa, MD (17 pages)

20 Exhibit 6 CopperPoint 3/9/18 email re liens 24
21 (CLIENT FILE 016299 to 300)

22 Exhibit 7 Alch email re NRS 42.021 26
(CLIENT FILE 016144 to 152)

23 Exhibit 8 3/6/18 Collins memo (5 pages) 28
24

25

1 EXHIBITS

2 NUMBER DESCRIPTION MARKED

3 Exhibit 9 Arizona Workers' Comp article 33
4 entitled "Settling Third-Party
5 Claims Without Carrier Approval"
6 (5 pages)

7 Exhibit 10 Expert declarations (34 pages) 43

8 Exhibit 11 Mediation brief page 26 (1 page) 50

9 Exhibit 12 7/26/16 CopperPoint housing 52
10 statement letter (2 pages)11 Exhibit 13 House settlement and lien 52
12 (8 pages)13 Exhibit 14 6/1/18 email re Alch involvement 55
14 (1 page)

15 Exhibit 15 Settlement Disbursement Sheet 56

16 Exhibit 16 2/4/20 Email to Adam Palmer 59
17 (1 page)18 Exhibit 17 Emails to Dustin Holmes (3 pages) 64
19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are on the record. Today
3 is November 6th, 2020. The time is 10:33 a.m. This is
4 the remote deposition of William Collins in the case
5 Harper vs. CopperPoint.

6 I am Dylan Thomas with Oasis Reporting
7 Services. I will be monitoring the proceedings and the
8 recording of both the video and the audio today.

9 At this time I will ask counsel to identify
10 themselves, state whom they represent, and agree on the
11 record that there is no objection to the court reporter
12 administering a binding oath to the witness through
13 remote videoconferencing. If no objection is stated, we
14 will proceed forward with the agreement of all counsel.
15 We will begin appearances with the noticing attorney.

16 MR. BLUMBERG: John Blumberg representing
17 Plaintiffs.

18 MR. MAIER: Jason Maier, local counsel for
19 Plaintiffs.

20 MR. CLARK: David Clark for Defendants Alch and
21 Shoop.

22 MR. McBRIDE: Robert McBride, local Nevada
23 counsel for Marshall Silberberg.

24 MR. KJAR: Jim Kjar for Marshall Silberberg;
25 the law firm of Silberberg; and the witness, Will

1 Collins.

2 THE VIDEOGRAPHER: Okay. Is -- is that
3 everybody?

4 Okay.

5 All right. The court reporter today is Dawn
6 Gustin with Oasis Reporting Services. The reporter may
7 now swear in the witness.

8 (Witness sworn.)

9 THE COURT REPORTER: Please pro- --

10 WILLIAM S. COLLINS, ESQ.,
11 having been first duly sworn, was
12 examined and testified as follows:

13 EXAMINATION

14 BY MR. BLUMBERG:

15 Q. Would you state your full name, please.

16 A. William Collins.

17 Q. Mr. Collins, you are an attorney licensed in
18 California?

19 A. I am.

20 Q. And you know that this is your deposition where
21 you are testifying under oath.

22 A. I do.

23 Q. Are you feeling capable today mentally and
24 physically to be able to give your deposition testimony
25 understanding questions and formulating answers?

1 A. Yes.

2 Q. Can you think of any reason why you would not
3 be able to do so today?

4 A. No.

5 Q. Are you currently employed as an attorney?

6 A. Yes.

7 Q. And who employs you?

8 A. The law offices of Marshall Silberberg.

9 Q. Do you have any ownership interest in that
10 firm?

11 A. No.

12 Q. You were licensed to practice in what year?

13 A. Oh, gosh. 2012 or 2013. I don't remember off
14 the top of my head.

15 Q. And is your practice primarily civil litigation
16 or entirely civil litigation?

17 A. Entirely civil litigation.

18 Q. Have you ever acted as first chair in any jury
19 trial?

20 A. No.

21 Q. Have you reviewed any documents that have been
22 filed in this legal malpractice case?

23 MR. KJAR: I think "filed" is a bit vague.

24 But if you can answer, go ahead.

25 THE WITNESS: Are you referring to the pending

1 case?

2 BY MR. BLUMBERG:

3 Q. I mean the case of Harper vs. CopperPoint,
4 Silberberg, and others.

5 A. I saw the complaint after it was served and
6 read that briefly. I skimmed it. And then I have seen
7 a request for production. I'm not sure if that was in
8 discovery or attached to my deposition notice, but --
9 and then I have also seen a recent order on several
10 motions, and I believe that's it.

11 MR. BLUMBERG: I'm going to mark as Exhibit 1
12 the subpoena duces tecum requiring production of
13 documents for this deposition. I'm going to do a screen
14 share and put that document up, hopefully.

15 (Exhibit 1 was marked.)

16 BY MR. BLUMBERG:

17 Q. All right. This is the subpoena duces tecum
18 requiring the production of documents today. And
19 Exhibit 1 to the subpoena duces tecum lists the
20 documents to be produced.

21 Is this the document that you reviewed
22 requiring document production?

23 A. I don't believe it's this specific document. I
24 believe it was something substantially similar.

25 Q. Now, your attorney, Mr. Kjar, provided numerous

1 documents, and I want to focus on some categories where
2 documents were not produced, at least I did not find
3 them.

4 Going to Number 10 of the subpoena duces tecum,
5 do you see the document on the screen?

6 A. Yes.

7 Q. It requires all documents, including electronic
8 and hard copy, that show deposits made and money
9 withdrawn from the client trust account of Marshall
10 Silberberg relating to Daria Harper and Daniel -- Daniel
11 Wininger.

12 That document, if it was produced, I never saw
13 it. Are you aware that such a document has been
14 produced?

15 A. The only thing I could say, Mr. Blumberg, is I
16 have no access to that information. So I would be
17 purely speculating as to any responsive documents.

18 Q. All right. With regard to Number 13, all
19 documents, including electronic and hard copy, that show
20 consent by Daria Harper and Daniel Wininger to the
21 payment of any attorney's fees to Bruce G. Fagel, are
22 you aware of the existence of any such document?

23 A. I'd have to give you the same response. I
24 don't have access to that type of information relating
25 to monies being paid to clients or anything like that,

1 so I would be speculating as to the existence or
2 nonexistence.

3 Q. Well, this doesn't ask about money paid. This
4 is a document that would have been signed by your
5 clients, Daria Harper and Daniel Wininger, regarding
6 payment of attorney's fees.

7 Are you aware or have you ever seen such a
8 document?

9 A. I don't handle that type of stuff; so I don't
10 know if it exists or not.

11 Q. When you say you don't handle that kind of
12 stuff, can you tell me what you mean.

13 A. Referral fee agreements are between Marshall --
14 generally held -- handled by Marshall, not me. So I
15 don't know if these documents exist or not.

16 Q. Okay. And for the remainder of the deposition,
17 I might -- or I will probably refer to Daria Harper as
18 Daria and Daniel Wininger as Daniel. Will you
19 understand who I'm referring to?

20 A. Of course.

21 Q. Going now to Number 14, it required all
22 documents, including electronic and hard copy, that show
23 an attorney-client contract between Daria Harper and
24 Daniel Wininger on the one hand and Thomas S. Alch on
25 the other.

1 Have you ever seen such a document?

2 A. No.

3 Q. And Number 16 requiring all documents,
4 including electronic and hard copy, that show receipt,
5 deposit, and disposition of refunds of money received
6 from the Eighth Judicial District Court of Clark County,
7 have you ever seen any documents relating to the refund
8 of money paid to the Eighth Judicial District Court?

9 A. I have not.

10 Q. Are you aware of whether a request for such
11 refund has been made?

12 A. I am aware that it has been made.

13 Q. All right. Do you know how Daria Harper was
14 referred to the firm? And when I say "the firm" or
15 "your firm," I'm referring to the Law Offices of
16 Marshall Silberberg.

17 A. I understand.

18 I am not aware how she was referred here.

19 Q. In reviewing documents, it appears that your
20 firm was first contacted by Daria Harper around December
21 2015. Would that comport with your recollection?

22 A. No, with the caveat being I'm not sure I had
23 started working here at that time.

24 Q. When did you begin working with Marshall
25 Silberberg?

1 A. I think it was April 2016. I -- it could have
2 been April 2015. I -- I don't remember. I know it was
3 in April.

4 Q. Do you recall the first time you ever spoke to
5 Daniel or Daria?

6 A. No, I don't remember the first time.

7 Q. Do you remember the circumstances?

8 A. No.

9 Q. Do you recall the first time that you met her
10 face-to-face?

11 A. Yes.

12 Q. Do you recall when that was?

13 A. It was, I believe, before her deposition in Las
14 Vegas.

15 Q. Have you ever seen the retainer agreement that
16 Daria and Daniel signed in this case in -- in your
17 firm's case?

18 A. I believe I have.

19 MR. BLUMBERG: I'm going to put up as Exhibit 2
20 what appears to be a retainer agreement.

21 (Exhibit 2 was marked.)

22 BY MR. BLUMBERG:

23 Q. And are you seeing the agreement on the screen?

24 A. Yes, I see it.

25 Q. And I'm just scrolling through it, and on page

1 4 there are signatures. Does this appear to be the
2 retainer agreement that was signed by Daria and Daniel
3 and Mr. Silberberg?

4 A. It appears to be, but I was not present when
5 this was signed.

6 Q. Were you personally involved in evaluating the
7 merits of the case? And let me just focus my question a
8 little better than that.

9 Were you involved before the retainer agreement
10 was signed in evaluating the merits of the case from
11 a --

12 A. I --

13 Q. -- medical standpoint?

14 A. Sorry. I didn't mean to interrupt you.

15 I don't believe I was.

16 Q. Do you recall the first involvement that you
17 had in the case?

18 A. Specifically the first thing I did, I do not.

19 Q. When you first became involved in the case,
20 what was your understanding of what your role would be?

21 A. To do what I'm told.

22 Q. Okay. Were you told that you would have
23 certain responsibilities?

24 A. Specifically, no, but it was implied as an
25 associate that I would have responsibilities.

1 Q. What -- did you have an understanding of what
2 your responsibilities would be?

3 A. In a general sense, yes.

4 Q. And in a general sense, what was your
5 understanding?

6 A. Organize medical records. Create a chronology
7 of medical records. Make sure we had sufficient
8 records. Making sure we had imaging studies. You know,
9 if you want me to take you through the litigation
10 process, it would also include communicating with the
11 client when necessary, preparation for depositions, and
12 up through expert discovery and coordinating with
13 experts for review opinions, et cetera.

14 MR. BLUMBERG: I'm going to put up as Exhibit 3
15 some expert declarations that were filed concurrently
16 with the complaint in Clark County.

17 (Exhibit 3 was marked.)

18 BY MR. BLUMBERG:

19 Q. Exhibit 3 consists of the declaration of
20 Dr. Ritter and the declaration of Dr. Neer. Were you
21 involved in any way in obtaining these declarations?

22 A. I don't see the exhibit, Mr. Blumberg.

23 Q. And thank you for pointing that out.

24 A. Um-hum.

25 Q. Let's try this again.

1 A. There you go.

2 Q. All right. So the affidavit of Dr. David Neer,
3 which was signed in June 2016, and the affidavit of
4 Dr. Ritter also signed in June 2016.

5 Did you have any involvement in talking with
6 either of these doctors and obtaining these affidavits?

7 A. I -- I don't think so with regard to these
8 affidavits that were attached for purposes of initiating
9 the lawsuit.

10 Q. Were you involved at all in drafting the
11 complaint that was filed in Clark County?

12 A. I don't recall being involved in drafting the
13 complaint.

14 Q. In the -- in connection with your role and
15 responsibilities in the case, did you take any
16 depositions?

17 A. No, I did not.

18 Q. Did you defend any depositions?

19 A. Just Daria and Daniel.

20 Q. Were you responsible once the case was filed in
21 Las Vegas to propound any written discovery?

22 A. I don't recall specifics.

23 Q. Okay. Do you -- you don't recall propounding
24 any written discovery in the case?

25 A. I know we propounded discovery. I don't recall

1 if I did it or someone else did it. Quite frankly, a
2 lot of discovery has been propounded since that time so
3 it's all kind of hazy.

4 Q. Okay. What about responding to discovery? Do
5 you recall responding to any discovery in the case,
6 written discovery?

7 A. Typing the responses, I did not, but I
8 generally review all responses before they go out. I
9 just -- I don't remember specifics in this case.

10 MR. BLUMBERG: All right. Let me bring up
11 Exhibit 4.

12 Give me a second here.

13 There we go.

14 (Exhibit 4 was marked.)

15 BY MR. BLUMBERG:

16 Q. All right. Exhibit 4 is on the screen. It is
17 Plaintiff Daria Harper's response to special
18 interrogatories propounded by Jeffrey Davidson, MD. Let
19 me show you the first page and show you the last page.

20 Does -- does this document refresh your
21 recollection of whether you were responsible in any way
22 for the production of this -- of these interrogatory
23 answers?

24 A. When you say production, are you just -- are
25 you talking about the actual responses being typed in or

1 are you talking about sending them over to co-counsel to
2 be then filed.

3 Q. Well, when I say "production," I mean having
4 any input at all into the answers that ended up on these
5 pages, whether it was doing file research, whether it
6 was talking to the clients. I don't care who typed it.

7 A. In our office at that time, our paralegal
8 communicated with the clients and then prepared
9 responses which would then be reviewed, approved, and
10 then sent out.

11 Q. All right. Do you -- based upon your
12 recollection, do you know whether you reviewed these
13 responses?

14 A. I don't have an independent recollection of
15 reviewing these responses, but generally we review
16 everything before it goes out.

17 Q. Okay. The royal "we" is sometimes hard to
18 determine who you're talking about. When you say "we,"
19 who do you mean?

20 A. The handling attorney on the case. So if I was
21 handling this at this time, I would have reviewed these
22 before they went out.

23 Q. All right. You would have reviewed them before
24 they went out?

25 A. Yes.

1 Q. And is it your general protocol when you are
2 reviewing the interrogatory responses that have been
3 prepared by a paralegal that if it doesn't say exactly
4 what you think it should say, you make corrections on it
5 before it is put into final form?

6 A. If necessary, we make corrections, yes.

7 MR. BLUMBERG: Now, the next document I'm going
8 to bring up is Exhibit 5.

9 (Exhibit 5 was marked.)

10 BY MR. BLUMBERG:

11 Q. And Exhibit 5 is Daria Harper's response to
12 interrogatories propounded by Defendant Murad Jussa, MD.
13 Same question as previously. Before these interrogatory
14 responses went out, would you have reviewed them for
15 accuracy and completeness?

16 A. That would be the custom and practice here,
17 yes.

18 Q. Okay. Now, you'll notice on page 14 of the
19 document under where it says "Law Offices of Marshall
20 Silberberg" and then it says "by," and there's two
21 names: Kenneth Marshall Silberberg and William Stephens
22 Collins, and then there's an S/ in the -- on the line.

23 Would that refer to you or to Mr. Silberberg?

24 A. I don't know. I don't recall doing a /S/. I
25 don't -- I don't remember.

1 Q. All right. Between you and Mr. Silberberg --
2 strike that.

3 Do you believe that Mr. Silberberg reviewed
4 this document before it went out?

5 A. I have no idea.

6 Q. Based upon your understanding of how things
7 worked in the firm around May 2017, would he have
8 reviewed this document before it went out?

9 A. I -- I have no idea. I hesitate to speculate.
10 I couldn't tell you.

11 Q. Well, in some firms the boss wants to see
12 everything that goes out with no exceptions, and in
13 other firms, the boss will delegate to another attorney
14 in the firm the responsibility of reviewing the
15 documents so that he or she can be relieved of that --
16 that task.

17 With regard to this case, do you know whether
18 you were the one who was tasked with the ultimate
19 responsibility of reviewing the document?

20 A. In a general sense, yes, it would be me
21 reviewing it or the handling attorney reviewing it, but
22 there are times where Marshall will review things as
23 well. I just can't give you specific as to this case.

24 Q. At the -- at the time, how many attorneys were
25 there in the firm?

1 A. There were three total, maybe four. I don't
2 remember when the fourth attorney joined us.

3 Q. Who was the -- well, who are the three for sure
4 besides Mr. Silberberg and you?

5 A. Kim Carasso.

6 Q. And who is the fourth?

7 A. Susan Dahlin, D-a-h-l-i-n.

8 Q. Did you have the responsibility of locating
9 expert witnesses in the case?

10 A. Solely me? No.

11 Q. What was your responsibility with regard to
12 locating expert witnesses?

13 A. My responsibility was if we needed an expert,
14 it was to contact the person Marshall wanted to use or
15 to get some names and then run them by Marshall for
16 approval if it was someone that was new or we were
17 unfamiliar with.

18 Q. Do you know between you and Mr. Silberberg who
19 had more verbal conversations with the clients?

20 A. I don't know who had more. There was
21 significant verbal communication with the clients by
22 everyone in this office.

23 Q. Between you and Mr. Silberberg, do you know who
24 had more email communication with the clients?

25 A. No, I don't know who had more. There was a lot

1 of emails, though.

2 Q. Between you and Mr. Silberberg, do you know who
3 had more text messaging with the clients?

4 A. I don't know who had more. I had almost no
5 text messaging with them. Some, but not many.

6 Q. Based on a conversation with Mr. Kjar, it was
7 my impression that you had gone through the file to
8 assist in the production of the file for purposes of
9 this lawsuit. Did -- is that correct, that you -- that
10 you have gone through the file to make sure that
11 everything that needed to be produced was produced?

12 A. I went through the file to make sure you had
13 the entire electronic file.

14 Q. To your knowledge -- well, let me back up.
15 Have you, before the original files were sent
16 to me, gone through the -- the hard copy of the files?

17 A. No, I don't believe I did go through the hard
18 copy of the files.

19 Q. Are you aware that -- whether Mr. Silberberg
20 ever wrote memos to the file regarding this case?

21 A. I'm sure he did. I can't think of any off the
22 top of my head, though.

23 Q. Have you ever seen any that you recall?

24 A. Not that I recall.

25 Q. And do you recall seeing any electronic memos

1 when you were going through the electronic records?

2 A. There are a lot of electronic memos.

3 Q. From Mr. Silberberg?

4 A. I believe so, but I don't recall off the top of
5 my head.

6 Q. Are you aware of letters that Mr. Silberberg
7 wrote to CopperPoint regarding the care that it was
8 required to provide to Daria Harper?

9 A. Yes.

10 Q. And you were aware that CopperPoint was
11 claiming a right under Arizona law to a lien on the
12 proceeds of any recovery in your case?

13 A. I was aware that CopperPoint was threatening
14 action in Arizona.

15 Q. Were you aware of a claim of lien; that is,
16 CopperPoint had informed you or Mr. Silberberg that they
17 claimed the right to a lien in the case?

18 A. I was aware they were claiming a right to
19 reimbursement, but I never saw what was characterized as
20 a formal lien.

21 Q. When you say you're -- you're not sure you saw
22 something called a formal lien, I want to make sure
23 we're talking about the same thing.

24 Did you see any documents from CopperPoint
25 whereby they claimed a right of reimbursement?

1 A. Yes, they sent a very long spreadsheet of care
2 costs, for lack of a better word.

3 Q. And in addition to the spreadsheet, did you
4 also see documents in which they claimed a right of
5 reimbursement?

6 A. I don't believe I saw a document saying they
7 claimed a right of reimbursement, but by sending the
8 spreadsheet, they were claiming something. They were
9 claiming reimbursement, presumably.

10 Q. From the beginning of your involvement in the
11 case until the mediation in the case, did you have any
12 conversations with anybody from CopperPoint?

13 A. I don't recall conversations with people from
14 CopperPoint before mediation or after.

15 Q. And from the beginning of the case until the
16 mediation, do you recall exchanging any written
17 correspondence, including emails, with anyone from
18 CopperPoint?

19 A. I believe Pam Fudge would send that spreadsheet
20 along, but I am not sure if we corresponded back and
21 forth. I don't recall that.

22 Q. Okay.

23 MR. BLUMBERG: All right. I'm going to bring
24 up as Exhibit 6 --

25 (Exhibit 6 was marked.)

1 BY MR. BLUMBERG:

2 Q. -- an email from Will Collins dated March 9,
3 2018, and it is to Janette Dockstader and Ellie Tucker
4 giving an instruction that says:

5 "Please save the liens to the system and print
6 the email for Marshall to review."

7 Do you see that?

8 A. Yes.

9 Q. And under that, it says:

10 "Ellie - FYI 2.7 m lien."

11 What does that mean?

12 A. 2. -- for your information, 2.7 million lien.

13 Q. Now, under that is the email that you forwarded
14 that is from Pam Fudge dated March 9, 2018, where she
15 makes reference and attaches all of the current lien
16 amounts.

17 Do you see that?

18 A. Yes.

19 Q. And that's what you forwarded?

20 A. Correct.

21 Q. At some point, you were admitted to practice
22 pro hac vice in Nevada; correct?

23 A. Yes.

24 Q. And at some point, would it be correct to state
25 that you read the Nevada statute governing the right to

1 lien claims of insurance companies in medical
2 malpractice cases?

3 A. Yes, if we're referring to the same statute,
4 42.021, I think it was. Yes, I saw that statute.

5 MR. BLUMBERG: I'm going to bring up as Exhibit
6 7 --

7 (Exhibit 7 was marked.)

8 BY MR. BLUMBERG:

9 Q. 7 should be in front of you. It's an email.
10 At the top it says Janet or Janette Dockstader. Is that
11 what you're looking at?

12 A. Yes.

13 Q. Okay. And this is an email that was sent from
14 Tom Alch to Marshall Silberberg, Will Collins, Janette
15 Dockstader on September 30, 2016. You recall seeing
16 this statute at or around that time?

17 A. I don't remember seeing it at that time, but if
18 it was emailed to me, I would have seen it, yes.

19 Q. Do you recall whether this was the first time
20 you had seen it?

21 A. I don't recall if it was the first time I had
22 seen it.

23 Q. Had you ever been involved in representing a
24 client in Nevada before?

25 A. No.

1 Q. Now, by the time you received this email from
2 Mr. Alch, September 30, 2016, do you recall having done
3 any legal research on Nevada law pertaining to medical
4 malpractice cases?

5 A. I remember doing some research. I don't
6 remember if it was before or after this email.

7 Q. What research do you recall doing?

8 A. Looked at NRS 42.021 and was looking to see if
9 it was good law and if the statute was valid and
10 determined it was a valid statute.

11 Q. When you say a valid statute, do you mean it
12 had not been overturned or modified by appellate or
13 Supreme Court decisions?

14 A. I believe the only modifying factor was in the
15 Kroske case, which explicitly dealt with federal
16 peremption but left the statute intact otherwise. And I
17 recall a footnote in that decision saying that.

18 Q. At any point during your representation of
19 Daria and Daniel, did you do any Nevada legal research
20 on the subject of whether a medical malpractice
21 settlement barred any lien recovery by insurance
22 companies?

23 A. I remember doing research on the lien issue and
24 then collateral source issue, but we were looking at
25 workers' comp specifically.

1 Q. Would it be correct to say that you were
2 looking at the Nevada workers' compensation statutes
3 with regard to the provisions that permitted recovery of
4 workers' compensation liens?

5 A. The workers' comp statutes themselves, I'm not
6 sure, but we were looking -- or I was looking in general
7 at that statute that we just discussed and looking to
8 see if workers' comp had a lien in Nevada on a medical
9 malpractice case.

10 Q. I'm going to bring up as Exhibit 8 a memorandum
11 dated March 6, 2018, from WSC. That's you; right?

12 A. That is me.

13 (Exhibit 8 was marked.)

14 BY MR. BLUMBERG:

15 Q. And let me ask you, you wrote this memo?

16 A. Yes.

17 Q. After you wrote this memo, did you have
18 discussions with Marshall Silberberg regarding your
19 research in the case?

20 A. Yes.

21 Q. And do you recall the discussions? Do you
22 recall what was said?

23 A. The specifics, no, but generally the concern
24 was always what would CopperPoint do if her case
25 settled. And I went to Marshall and said, "Marshall,

1 they may try and claim a lien," and I showed him this.

2 And then he said, "Reread the Nevada statute."

3 And I think that's when Janette re-forwarded me
4 that email you previously showed me about NRS 42.021.

5 Q. Okay. Now, Exhibit 8 has as its first page
6 your memorandum.

7 A. Um-hum.

8 Q. And then the following pages, page 2, has the
9 Arizona statute and the Nevada workers' comp lien
10 statute, NRS 616C.215. Those were attached to your
11 memo?

12 A. Yes.

13 Q. And did you see where the Arizona statute did
14 not prohibit a workers' compensation insurance company
15 from claiming a lien right in a medical malpractice
16 case?

17 A. I put the Arizona law in here for that reason,
18 that there was a conflict of law between Arizona and
19 Nevada.

20 Q. So after Mr. Silberberg asked you or suggested
21 to you that you go back and read the Nevada statute, NRS
22 41.021 [sic], you did that?

23 A. 42.021, yes, I did.

24 Q. And after rereading it, did you have a further
25 conversation with Mr. Silberberg?

1 A. I -- I believe I did.

2 Q. And what was the conversation?

3 A. The conversation generally was Arizona law
4 seems to allow a lien while the Nevada statute does not
5 allow a lien, and the conversation was this is a Nevada
6 case with potentially a Nevada recovery and that we were
7 worried CopperPoint would do something, may do
8 something, but that we needed -- that -- that the Nevada
9 law was -- was -- the statute was valid. That was the
10 sum and substance of the conversation.

11 Q. Did you discuss what the effect would be of
12 42.021 if there was a settlement rather than a trial
13 where evidence was introduced?

14 A. If there were a trial? I don't think we ever
15 discussed this statute as it pertains to a trial. Trial
16 was not on our mind, quite frankly, at that time.

17 Q. Were you assuming that if there was a
18 settlement, that under Nevada law CopperPoint would be
19 precluded from claiming a lien?

20 A. We looked at the statute, and it was valid.
21 So, yeah, we -- it said that medic- -- or comp -- excuse
22 me -- workers' comp could not assert a lien in a medical
23 malpractice case.

24 Q. Did it say that that applied to settlements?

25 A. It's -- it said in a medical malpractice case.

1 A settlement is part of a medical malpractice case.

2 Q. At the time you wrote this memo and at the time
3 that you had this conversation with Mr. Silberberg about
4 whether there might be a lien that is claimed by
5 CopperPoint, was it your understanding of the Nevada law
6 42.021 that a settlement of a medical malpractice case
7 under 42.021 would preclude CopperPoint from a lien
8 claim?

9 A. Yeah. The statute was the statute.

10 Q. And you read the statute?

11 A. Yes.

12 Q. Did you consult with any Nevada medical
13 malpractice attorneys other than Tom Alch regarding
14 whether a medical malpractice settlement would bar a
15 workers' compensation lien claim?

16 A. Just Mr. Alch, who was our local counsel.

17 Q. Okay. What was discussed with Mr. Alch in that
18 regard?

19 A. I don't believe I was part of those
20 discussions.

21 Q. You have no recollection of a discussion with
22 Mr. Alch in that regard with -- about the applicability
23 of NRS 42.021?

24 A. I don't remember specific discussions with him,
25 with me. I don't remember.

1 Q. Do you recall discussing with Mr. Silberberg
2 whether he had had such discussions with Mr. Alch?

3 A. I don't remember discussing Mr. Silberberg's
4 discussions that he had with Mr. Alch, no.

5 Q. Do you recall discussions with Mr. Silberberg
6 that if there was a settlement and if Nevada law
7 applied, there would be no lien?

8 A. Discussions with me?

9 Q. Do you recall having discussions with
10 Mr. Silberberg regarding the -- regarding whether NRS
11 42.021 would preclude a lien by CopperPoint?

12 A. Yes.

13 Q. And did the two of you -- I withdraw that
14 question.

15 Did Mr. Silberberg say to you that he believed
16 that it would preclude a lien?

17 A. Yes.

18 Q. In the files that were produced, there was an
19 article from "Arizona Attorney" magazine, and that's
20 going to be marked Exhibit 9.

21 And here's the question: Did that document
22 show up?

23 A. No, it did not.

24 Q. Oh, okay. That's one of the things I've
25 learned about doing this. Every new document you have

1 to stop the screen share and then start all over again.

2 So --

3 A. Doing pretty good, Mr. Blumberg.

4 Q. Oh, thank you. Okay. Flattery will get you
5 everywhere.

6 (Exhibit 9 was marked.)

7 BY MR. BLUMBERG:

8 Q. Okay. So this document is now on the screen,
9 and it is an article from "Arizona Attorney" dated April
10 2000.

11 Do you see this?

12 A. Yeah.

13 Q. Do you recall at some point reading this
14 article?

15 A. I don't recall reading it specifically, but I
16 remember this article.

17 Q. Do you remember when it was obtained?

18 A. Alan Schiffman sent it to us.

19 Q. Do you recall when?

20 A. I don't remember when.

21 Q. Was it in the year 2020?

22 A. No. This was way before that. 2016, 2017,
23 maybe 2018. I don't remember.

24 Q. And you would have read it about the time that
25 it was sent to you by Mr. Schiffman?

1 A. I don't specifically remember reading it, but I
2 remember printing it.

3 Q. Do you think you read it?

4 A. I think so.

5 Q. Did you discuss this article with
6 Mr. Silberberg?

7 A. I don't believe I discussed it with him.

8 Q. Did you discuss this article with Mr. Schiffman
9 or any other Arizona attorney?

10 A. I remember Mr. Schiffman sent this article, but
11 I don't remember the discussion.

12 Q. In the couple of months before the mediation in
13 this case, in your case, did you have an understanding
14 that if there was a settlement of a workers'
15 compensation case without the consent of the workers'
16 compensation carrier, that there could be significant
17 forfeiture consequences for the client?

18 A. Did I have an understanding that if the case
19 was settled, there would be consequences for the client?
20 Is that your question?

21 Q. That's right.

22 A. My understanding was and the instruction I had
23 been given was that the statute was valid and it meant
24 there was no lien. So I was not a workers' compensation
25 attorney in Arizona, which is -- was not part of my job

1 responsibility as to what may happen in Arizona.

2 Q. You stated earlier that you recognized that
3 there might be a conflict of law issue between Arizona
4 and Nevada?

5 A. On the -- the statutes on their face
6 conflicted.

7 Q. And did you personally come to any conclusion
8 which state's law would apply with regard to Daria and
9 Daniel's case?

10 A. After discussing with Mr. Silberberg, the
11 conclusion was that the Nevada statute applied to the
12 Nevada medical malpractice case.

13 Q. How sure were you and Mr. Silberberg about
14 that?

15 A. I can't speak as to Mr. Silberberg, but the
16 statute on its face was valid and clear as to medical
17 malpractice cases.

18 Q. I'm talking about in a conflicts of law
19 situation where the law of one state may be applied as
20 opposed to the law of another state. Did you consider
21 how it would be determined which state's law would
22 apply?

23 A. My consideration was this was a Nevada lawsuit
24 with a Nevada injury which meant Nevada law would apply.

25 Q. Was it your opinion at the time that it was

1 highly unlikely that Arizona law would apply or

2 impossible that Arizona law would apply?

3 A. I didn't formulate an opinion as to Arizona

4 law. We --

5 Q. I'm not talking -- let me stop you.

6 I'm not talking about an opinion about Arizona

7 law. I'm talking about an opinion regarding the

8 application of Arizona law versus the application of

9 Nevada law.

10 A. I spoke to Mr. Silberberg about this, and he

11 instructed me after looking at the statute that this was

12 a Nevada medical malpractice case with a Nevada injury

13 and Nevada law would apply. And at that point the

14 discussion ended, and I was told what to do, so to

15 speak.

16 Q. When you say you were "told what to do," what

17 were you told what -- what were you told to do?

18 A. To listen to what he told me.

19 Q. Did he tell you --

20 A. I work for him.

21 Q. Did he tell you -- yeah.

22 Did he tell you, okay, now here's your next

23 assignment in the case or here's what I want you to do

24 in the case? That's what I'm asking.

25 A. Well, that's a hard question to ask because I

1 don't remember when this conversation necessarily took
2 place, but, of course, the instruction was let's keep
3 moving the case forward. So we, you know, went on about
4 the work of moving forward a medical malpractice case.

5 Q. This would -- would this have been -- would
6 this have been after you wrote your memo, your March
7 2018 memo, these conversations?

8 A. I believe the conversation took place right
9 after that memo and after he looked at it. And that's
10 pretty much where the conversations with me stopped.

11 Q. At any time did you do any Nevada legal
12 research regarding the limitations on the recovery of
13 noneconomic damages?

14 A. No.

15 Q. Did you ever read the statute on what a
16 plaintiff can recover by way of noneconomic damages?

17 A. I don't remember specifically reading the
18 statute, but I was -- had an understanding of what it
19 was.

20 Q. And what was your understanding -- well, when
21 you say you don't specifically recall, do you have any
22 recollection at all of reading the Nevada statute on
23 noneconomic damages?

24 A. As I sit here right now, no, I do not.

25 MR. KJAR: John, can we go off the record?

1 MR. BLUMBERG: Do you need a break, Jim?

2 MR. KJAR: Yeah.

3 MR. BLUMBERG: Sure. How long do you need?

4 MR. KJAR: At least five minutes.

5 MR. BLUMBERG: Did you say five, f-i-v-e?

6 MR. KJAR: Yes.

7 MR. BLUMBERG: Okay. See you in five.

8 THE VIDEOGRAPHER: Okay. We are off the record

9 at 11:30 a.m.

10 (A recess was taken from 11:30 a.m. to

11 11:40 a.m.)

12 THE VIDEOGRAPHER: We are back on the record at

13 11:40 a.m.

14 BY MR. BLUMBERG:

15 Q. Mr. Collins, during the break did -- did you
16 come to any realization that an answer that you had
17 previously given was inaccurate and you needed to
18 revisit the -- the question?

19 A. I don't think so.

20 Q. No epiphanies?

21 A. I don't get paid to have epiphanies,
22 Mr. Blumberg.

23 MR. KJAR: How about you? Did you get any,
24 John? Because epiphanies can run both ways.

25 THE WITNESS: Epiphanies -- (Zoom skipped) --

1 I'm told.

2 (Reporter interruption.)

3 THE WITNESS: I'm sorry. It was me.

4 BY MR. BLUMBERG:

5 Q. Oh, by the way, I hear voices in the -- you
6 know, on the screen, but I don't know where those voices
7 are. Is anyone in the room with you?

8 A. Mr. Kjar.

9 Q. Okay. Anyone else?

10 MR. KJAR: No.

11 THE WITNESS: No.

12 BY MR. BLUMBERG:

13 Q. Okay.

14 MR. KJAR: Don't tell me you're hearing voices,
15 John.

16 BY MR. BLUMBERG:

17 Q. When we left off before the break, I had been
18 asking about whether you had done any Nevada legal
19 research on the Nevada medical malpractice statute that
20 dealt with noneconomic damages, and you said that you
21 didn't recall having done any.

22 A. I don't.

23 Q. Did you have an understanding from any source
24 what -- whether there were any caps on recovery of
25 damages, noneconomic damages, in a Nevada medical

1 malpractice case?

2 A. My understanding from Mr. Alch and
3 Mr. Silberberg was that Nevada statute was like
4 California's except for their general damages cap was
5 350 and not 250.

6 Q. And you never compared the two statutes?

7 A. No.

8 Q. And Mr. Alch told you that the statutes were
9 virtually identical except instead of 250,000 it was
10 350,000?

11 A. I don't remember if Mr. Alch told me that
12 specifically. My understanding was the 350 versus 250.

13 Q. Did you have an understanding of whether there
14 was a separate \$350,000 recovery on a spouse's loss of
15 consortium claim in a medical malpractice case?

16 A. I had no understanding one way or the other.

17 Q. So -- so you had not -- strike that.

18 So when you say you had no understanding one
19 way or the other, can you tell me what you mean?

20 A. I did not contemplate that issue at any point
21 in time, nor was I asked to do that.

22 Q. Did you ever do any Nevada legal research
23 regarding whether Daniel's loss of consortium claim
24 could include economic damages?

25 A. No, I did not.

1 Q. Did you ever discuss that issue with Tom Alch?

2 A. No.

3 Q. Did you ever discuss that issue with

4 Mr. Silberberg?

5 A. No.

6 Q. Were you tasked with determining whether there

7 were any Medicare or Medicaid liens?

8 A. I don't think I was tasked with doing that.

9 Q. Do you know who in your office had that

10 responsibility?

11 A. Generally in our office with respect to

12 Medi-Cal and Medicare, our paralegal does that.

13 Q. When you have handled cases in Mr. Silberberg's

14 office -- and let me just ask this broadly:

15 Are there any cases where you are the handling

16 lawyer?

17 A. Yes.

18 Q. Okay. When -- when I asked you and used the

19 word "handling" lawyer, what did that mean to you?

20 A. Handling is day-to-day. That's what I mean,

21 handling.

22 Q. Okay. So let me use the word primary

23 responsible lawyer.

24 A. Okay.

25 Q. And using an example, there are some cases that

1 a lawyer is tasked with doing various things during a
2 case but it's another lawyer's responsibility to oversee
3 everything.

4 A. Okay.

5 Q. Other situations, a lawyer is tasked with
6 handling everything in the case and the boss could be
7 consulted on -- on various things but -- but the other
8 lawyer is responsible for -- for working on and
9 developing the whole case.

10 A. Okay.

11 Q. With regard to your role in the Law Offices of
12 Marshall Silberberg, do you have any cases where you are
13 the primary responsible lawyer?

14 A. Yes.

15 Q. Now, when your firm represents clients whose
16 cases are subject to liens, do you or Mr. Silberberg
17 negotiate reductions of those liens on behalf of your
18 clients?

19 A. At times, yes.

20 Q. So, for example, if there's an insurance
21 company lien, you would negotiate with the insurance
22 company to see if you could get a reduction in their
23 claim?

24 A. Yes, for example, in auto cases.

25 Q. And if there is a Medicare lien, you negotiate

1 with the government representatives to see what kinds of
2 reductions you can get in the case?

3 A. At times, yes.

4 Q. To your knowledge, does the firm ever charge
5 clients anything in addition to the contingent fee for
6 negotiating those liens?

7 A. There are times where we have contracted with
8 outside entities to handle reductions and --

9 Q. And?

10 A. -- that cost, to my understanding, is passed on
11 on the client ledger at times.

12 Q. Did you have some involvement in obtaining the
13 expert reports that had to be filed in the spring of
14 2018?

15 A. I did.

16 MR. BLUMBERG: I'm going to put up as Exhibit
17 10 --

18 (Exhibit 10 was marked.)

19 BY MR. BLUMBERG:

20 Q. -- a collection of expert declarations. And
21 these declarations -- and the exhibit is 34 pages in
22 length. There's Dr. Dorros, Dr. Le, Dr. Pleasure,
23 Dr. Ritter, Dr. Shaw. I thought there was one more in
24 here. I think there was one more.

25 /////

1 A. Yes, Dr. Ciacci.

2 Q. Ciacci. I'm just looking to see if that's
3 included here.

4 A. I didn't see it there when you were scrolling.

5 Q. There it is. Ciacci.

6 You spoke with all of these experts, didn't
7 you?

8 A. Extensively.

9 Q. And when you say extensively, what do you mean?

10 A. This was a complex case. There was a lot of
11 phone calls and communication.

12 Q. And so did you discuss with them, for example,
13 all of their opinions in the case and their responses to
14 the opinions that the defense experts had expressed,
15 that sort of thing?

16 A. Yes.

17 Q. And did all of these doctors agree to testify
18 at trial consistent with what was in their declarations?

19 A. Not all.

20 Q. All right. Did you prepare these declarations
21 for their signature?

22 A. Yes.

23 Q. And everything that you put in these
24 declarations was what your understanding was of what
25 they had told you were their opinions?

1 A. Yes. I put in the opinions that would help our
2 case.

3 Q. That wasn't my question.

4 When you drafted these declarations, did you
5 make stuff up that they hadn't told you?

6 A. No.

7 Q. Okay. So when you drafted these declarations,
8 is it an accurate statement that you wrote in the
9 declaration for the doctor to sign under penalty of
10 perjury those opinions that the doctor had given you?

11 A. Yes.

12 Q. And with regard to every opinion that was
13 listed in the declaration, did the doctor say that he
14 would testify to that in deposition and in trial?

15 A. Did the doctors use those words? I don't
16 recall. But these were sent to the doctors for review
17 and signature.

18 Q. And it was your understanding that by signing
19 the declarations, you could count on them to give that
20 opinion when their deposition was taken.

21 A. I'm not sure how I can answer that.

22 Q. Well, wouldn't you be surprised if they
23 testified in a way that was contrary to something that
24 was in their declaration?

25 A. Of course. Anyone would be surprised if an

1 expert flipped.

2 Q. And so it was your expectation that they would
3 testify consistently with what you had put in the
4 declarations that they signed; correct?

5 A. I can't answer if they would testify. I knew
6 the experts signed the declarations and were comfortable
7 with what was in them.

8 Q. Fair enough.

9 Did you personally have any conversations at
10 any time with Daniel or Daria before the mediation about
11 whether CopperPoint could enforce a lien on their
12 settlement?

13 A. I don't remember specific conversations, but I
14 remember there were conversations between this office
15 and Daria and Daniel about CopperPoint.

16 Q. I'll get to this office in a minute. I'm right
17 now asking about what your recollection was of what you
18 said to them with regard to whether CopperPoint could
19 enforce or attempt to enforce a lien on their
20 settlement.

21 A. I don't remember specifics, but generally there
22 were conversations that Nevada didn't permit a lien, but
23 that didn't guarantee CopperPoint wouldn't take some
24 form of action against them in Arizona.

25 Q. Did you ever tell them words to the effect that

1 in your opinion, Nevada law, where the case was -- where
2 the case was pending, did not permit CopperPoint to have
3 a lien?

4 A. I don't remember if I said that to them
5 specifically, but generally there were conversations,
6 and it was put in writing.

7 Q. When you say "it was put in writing," what
8 writing?

9 A. September 18th, 2018, there was a letter sent to
10 Daria and Daniel specifically addressing the issues of
11 Nevada law, Arizona law, and CopperPoint.

12 Q. Do you recall ever seeing anything in writing
13 on that subject prior to September 18, 2018?

14 A. I'm not sure. Specifically I can't recall
15 anything. There may have been emails, but I don't
16 remember.

17 Q. I want to talk about the mediation now. You
18 attended the mediation?

19 A. I did.

20 Q. And at the mediation were Daniel and Daria
21 there in attendance?

22 A. They were.

23 Q. Mr. Silberberg was also there?

24 A. He was.

25 Q. Was Mr. Alch there?

1 A. I don't think so.

2 Q. Do you recall having any discussions by
3 telephone with Mr. Alch during the mediation?

4 A. I did not have any discussions with Mr. Alch by
5 telephone during the mediation.

6 Q. Do you recall seeing or hearing Mr. Silberberg
7 having conversations with Mr. Alch during the mediation?

8 A. I don't have a recollection of that. I am not
9 sure if it happened.

10 Q. Did you draft the mediation brief?

11 A. No.

12 Q. Did you write any part of it?

13 A. I can't say that I wrote any part of it. I
14 believe Marshall dictated it.

15 Q. Did you read it?

16 A. I think so.

17 Q. At any time before the commencement of the
18 mediation, do you believe that it is more likely than
19 not that you read the mediation brief?

20 A. I believe I read it when it was ready to go
21 out.

22 Q. Do you recall discussing it with
23 Mr. Silberberg?

24 A. No.

25 Q. Do you recall pointing out anything in the

1 brief that might not be inaccurate -- that might not be
2 accurate?

3 A. I don't recall that.

4 Q. If you had seen something inaccurate or
5 unclear, would you have pointed that out to
6 Mr. Silberberg?

7 A. I don't recall seeing anything that I pointed
8 out. I don't get paid -- well, I voice my opinion when
9 I'm asked my opinion. I don't remember pointing
10 anything out to him.

11 Q. Let me ask it this way: If you -- by that
12 time, by the time the mediation brief was written, you
13 had spent a lot of time talking with the experts;
14 correct?

15 A. That's true.

16 Q. You had spent a lot of time talking with the
17 clients; correct?

18 A. True.

19 Q. You had defended their depositions; correct?

20 A. Yes.

21 Q. You had been involved in providing responses to
22 written discovery; correct?

23 A. I think so.

24 Q. So in reading the mediation brief, if you saw
25 something that you knew was incorrect, would you keep

1 that to yourself?

2 A. If I saw something that I believed needed to be
3 addressed, I would have voiced my opinion.

4 Q. And by "needed to be addressed," what do you
5 mean?

6 A. Something that I thought should be included or
7 something that I had a question about, but I don't
8 remember that happening.

9 MR. BLUMBERG: I'm going to mark as Exhibit 11
10 a page from the mediation brief.

11 (Exhibit 11 was marked.)

12 BY MR. BLUMBERG:

13 Q. It is page 26. Just take a second and look at
14 the page, and then I'm going to ask you if you recall
15 reading this page. Is it large enough for you to see?

16 A. Yes, I can see it.

17 Okay.

18 Q. Is there anything on that page that you
19 believed at the time or believe now is incorrect?

20 A. I don't think so.

21 Q. During the mediation, did you or Mr. Silberberg
22 give an estimate to the clients what they would net from
23 the settlement?

24 A. I did not give any such estimate. I believe
25 Mr. Silberberg did some math to give them an idea.

1 Q. When you say "did some math," was that on any
2 paper that ultimately found its way into the file?

3 A. I don't know.

4 Q. During the mediation, was there any discussion
5 that you heard or participated in with the clients about
6 CopperPoint's lien or their lien claim?

7 A. I remember generally there was a discussion
8 about whether or not the defendants would pay the lien
9 or assume the lien.

10 Q. You mean in addition to the settlement amount?

11 A. Correct.

12 Q. And that was a discussion -- was that part of
13 the negotiation that was going on, or was that a
14 discussion apart from the negotiation that was had with
15 the clients?

16 A. I believe it was part of the negotiation, and
17 the discussion was with the mediator, Judge Bell.

18 Q. Do you remember whether that was before or
19 after the six -- 6,250,000 had been offered?

20 A. I don't recall. I just recall it was during
21 the mediation.

22 Q. If the -- strike that.

23 Was one of the demands that you recall during
24 the mediation that was made on behalf of Plaintiff that
25 the defendants assume the lien or pay the lien?

1 A. I believe so.

2 Q. During the development of the case, are you
3 aware of the agreement that was signed by Daria
4 regarding what I'll call a housing settlement?

5 A. Between Daria and CopperPoint?

6 Q. Yes.

7 A. Yeah. I was aware of that, yeah.

8 MR. BLUMBERG: I'm going to put up as Exhibit
9 12 a -- I'll call it a letter. I'll put it up.

10 (Exhibit 12 was marked.)

11 BY MR. BLUMBERG:

12 Q. It's almost a first-page memo that says
13 "Subject: Settlement Letter," and the date is July 26,
14 2016.

15 Do you recall seeing this document?

16 A. Zoom out just a bit.

17 Q. Sure.

18 A. I don't know if I've ever seen this letter, but
19 I was aware of something having to do with her housing
20 in CopperPoint.

21 MR. BLUMBERG: I'm going to bring up as Exhibit
22 13 --

23 (Exhibit 13 was marked.)

24 BY MR. BLUMBERG:

25 Q. This is a -- kind of looks like a fax. The