

Case No. _____

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC, Electronically Filed
Petitioner, Apr 18 2019 01:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
CHIEF JUDGE,
Respondent,

- and -

AARON M. MORGAN and DAVID E. LUJAN,
Real Parties in Interest.

District Court Case No. A-15-718679-C, Department VII

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 3 OF 14**

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April 18, 2019

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TAB 6B

TAB 6B

1 MR. CLOWARD: Can you tell -- can you tell me a little bit about
2 that?

3 PROSPECTIVE JUROR 21: A drunk driver ran a red light and
4 rear-ended me and I was in the hospital for at least two weeks.

5 MR. CLOWARD: Wow. Here -- here in Las Vegas?

6 PROSPECTIVE JUROR 21: Yeah. At UMC.

7 MR. CLOWARD: Wow. Well, I'm glad that you're with you now.
8 It seems like it was a pretty -- a pretty serious crash. Anything other than
9 that event? Were there other events, or is that the only one?

10 PROSPECTIVE JUROR 21: That's the only one.

11 MR. CLOWARD: Have you had ongoing residual problems
12 because of that?

13 PROSPECTIVE JUROR 21: No.

14 MR. CLOWARD: So you -- you healed up in the hospital bed?

15 PROSPECTIVE JUROR 21: Yeah.

16 MR. CLOWARD: Were you discharged straightaway from the
17 hospital, or did you have to go through some rehab and physical therapy in
18 order to --

19 PROSPECTIVE JUROR 21: I went to physical therapy, but I
20 was lucky.

21 MR. CLOWARD: How long did you do that?

22 PROSPECTIVE JUROR 21: About a month or two.

23 MR. CLOWARD: Did you hire a lawyer to help you with that
24 case?

25 PROSPECTIVE JUROR 21: Yeah.

1 MR. CLOWARD: Was that Kutner as well, or was that a
2 different --

3 PROSPECTIVE JUROR 21: It was Anna Bernstein.

4 MR. CLOWARD: Okay. Anything about that event that causes
5 you to see things one way or another or view personal injury cases?

6 PROSPECTIVE JUROR 21: No.

7 MR. CLOWARD: Okay. And that was the only accident that
8 you've been in?

9 PROSPECTIVE JUROR 21: Yes.

10 MR. CLOWARD: How about your partner, is this the only
11 accident he's been in?

12 PROSPECTIVE JUROR 21: Yes.

13 MR. CLOWARD: Was there anything that was discussed prior
14 to my discussion with you or the judge's discussion that -- you know, a topic
15 that came up, a subject that you felt like, you know what, I -- I ought to tell
16 them how I feel about that?

17 PROSPECTIVE JUROR 21: No.

18 MR. CLOWARD: Nothing at all?

19 PROSPECTIVE JUROR 21: Nothing.

20 MR. CLOWARD: Anything about lawsuits in general that you
21 have feelings about one way or another?

22 PROSPECTIVE JUROR 21: No.

23 MR. CLOWARD: Okay. Is there anything that you feel like the
24 parties would want to know about you?

25 PROSPECTIVE JUROR 21: No.

1 MR. CLOWARD: Nothing at all?

2 PROSPECTIVE JUROR 21: Nothing.

3 MR. CLOWARD: Okay. Mr. Ramos, can you tell me the three

4 things?

5 PROSPECTIVE JUROR 21: I'm passionate about music.

6 MR. CLOWARD: What kind of music?

7 PROSPECTIVE JUROR 21: A little bit of everything besides

8 the heavy, screaming, metal music.

9 MR. CLOWARD: You don't like [indiscernible]?

10 PROSPECTIVE JUROR 21: No. That would probably put me

11 [indiscernible] put me on a rampage or something, so I can't listen to it.

12 MR. CLOWARD: All right.

13 PROSPECTIVE JUROR 21: I like my job. You know, I like

14 dealing with customers and customer service, so that's why I chose the

15 supervising position for ticketing.

16 MR. CLOWARD: Gotcha.

17 PROSPECTIVE JUROR 21: And I will say Donald Trump.

18 MR. CLOWARD: Okay. What is it -- tell me a little bit about, I

19 guess, your position in customer service. What do you enjoy about that?

20 PROSPECTIVE JUROR 21: Meeting different people.

21 MR. CLOWARD: You like to problem-solve?

22 PROSPECTIVE JUROR 21: Yeah.

23 MR. CLOWARD: And, obviously, in customer service, you have

24 to -- you may have to listen to folks and find out what their concerns are and

25 find an equitable solution to those problems. Is that fair?

1 PROSPECTIVE JUROR 21: Yes. Like they said, there's
2 always two -- two sides to a story. So you've always got to listen to both
3 ends and then make your decision at the end.

4 MR. CLOWARD: Okay. And can you tell me what you -- what
5 you admire about President Trump?

6 PROSPECTIVE JUROR 21: Just like how he's going to do
7 things for America and how he was out here for the shooting on October 1st.
8 He came out here and, you know [indiscernible].

9 MR. CLOWARD: Okay. Sounds good. And then, I guess, the
10 final is just a catchall question. Is there anything else that you feel like -- you
11 know, I guess my biggest fear is -- my biggest fear is getting out of the
12 parking lot with the folks after a jury -- after a jury, you know, trial and having
13 them say, well, you know what, Mr. Cloward? If you just asked me this one
14 question, I would have told you about this and you wouldn't have kept me on
15 the panel, but, you know, sorry. You didn't ask -- ask that one question,
16 and, you know, I just -- I don't want that to happen. So is there anything that
17 you feel like would be important for me to know about you or the defense to
18 know about you?

19 PROSPECTIVE JUROR 21: No.

20 MR. CLOWARD: Okay. Fair enough. Thank you, sir.

21 PROSPECTIVE JUROR 21: Thank you.

22 THE COURT: All right. Mr. Gardner?

23 MR. GARDNER: You say you work at Fremont Street?

24 PROSPECTIVE JUROR 21: Yes.

25 MR. GARDNER: Okay. What do you do there?

1 PROSPECTIVE JUROR 21: Supervisor.
2 MR. GARDNER: What does that mean? What -- what do you
3 do?
4 PROSPECTIVE JUROR 21: I supervise with -- I make sure
5 everyone is doing their jobs. I supervise ten people.
6 MR. GARDNER: You supervise ten people?
7 PROSPECTIVE JUROR 21: Yes.
8 MR. GARDNER: Okay. And how long have you been doing
9 that?
10 PROSPECTIVE JUROR 21: Six months.
11 MR. GARDNER: Six months? Okay. Where did you come
12 from?
13 PROSPECTIVE JUROR 21: Texas.
14 MR. GARDNER: Before the six months, you came from Texas
15 to the Freemont Street?
16 PROSPECTIVE JUROR 21: I was an Uber driver for six
17 months.
18 MR. GARDNER: Okay. Okay. Now, these ten people that you
19 oversee, what kind of -- what kind of things do you do to check up on or to
20 follow up on to make sure they're doing what they're supposed to do?
21 PROSPECTIVE JUROR 21: Just make sure, you know, they're
22 just doing their jobs, to make sure their customers are being taken care of,
23 and to make sure they're not fooling around or on their cellphones or
24 anything.
25 MR. GARDNER: Okay. Are there -- are they there to do

1 cleanup, sweep logs, things of that nature, or what -- what do they do, the
2 [indiscernible]?

3 PROSPECTIVE JUROR 21: They do have a to-do list before
4 they start their shifts, which is, sweep and mopping, cleaning, a little bit of
5 everything.

6 MR. GARDNER: Okay. Okay. That's all I have. Thank you.

7 Pass for cause.

8 THE COURT: All right.

9 Ms. Garibay, ma'am.

10 PROSPECTIVE JUROR 22: My name is Hadassa Garibay and
11 I was born in Texas but raised in Vegas, so I've been here 47 years. I went
12 to Basic High School. I work for the Occupational and Physical Therapy
13 Department for the Clark County School District. I'm single and I have four
14 kids.

15 THE COURT: What do you do for the school? What do you --

16 PROSPECTIVE JUROR 22: I'm a secretary for them.

17 THE COURT: Okay. And then, how old are your kids?

18 PROSPECTIVE JUROR 22: Thirty-two, twenty-eight, twenty-
19 six, and fourteen.

20 THE COURT: What do they do, except for the 16-year-old [sic],
21 who is in school right now?

22 PROSPECTIVE JUROR 22: My oldest works at the Wynn, and
23 my other one, my 28-year-old, works for Solar City, and my 26-year-old,
24 she's between jobs right now, but she used to work for Community
25 Counseling Center.

1 THE COURT: All right. What did she do for them?
2 PROSPECTIVE JUROR 22: She was the secretary of the
3 psychiatrist there.
4 THE COURT: Okay. Ma'am, have you ever served as a juror
5 before?
6 PROSPECTIVE JUROR 22: No, ma'am.
7 THE COURT: Have you ever been a party to a lawsuit or a
8 witness in a lawsuit before?
9 PROSPECTIVE JUROR 22: No.
10 THE COURT: Have you or anyone close to you worked in the
11 legal field?
12 PROSPECTIVE JUROR 22: No.
13 THE COURT: Have you or anyone close to you had medical
14 training or worked in the medical field?
15 PROSPECTIVE JUROR 22: Just my daughter. Before that,
16 she used to work for acupuncture.
17 THE COURT: All right. So she's worked mostly with medical
18 providers of some sort?
19 PROSPECTIVE JUROR 22: Yeah.
20 THE COURT: Have you or anyone close to you suffered a
21 serious injury?
22 PROSPECTIVE JUROR 22: My son was carjacked when he
23 was 19 and he was in the hospital for a little while. He's okay now.
24 THE COURT: That's terrible. So that was -- I'm sorry. Which --
25 PROSPECTIVE JUROR 22: The 32-year-old.

1 THE COURT: Okay. So about 13 years ago?
2 PROSPECTIVE JUROR 22: Yeah. Yeah.
3 THE COURT: Is he all right now?
4 PROSPECTIVE JUROR 22: Yeah. He's -- he's better.
5 THE COURT: Can you wait to form an opinion until you've
6 heard all of the evidence?
7 PROSPECTIVE JUROR 22: Yes, ma'am.
8 THE COURT: Can you follow the instructions on the law that I
9 give you, even if you don't personally agree with them?
10 PROSPECTIVE JUROR 22: Yes, ma'am.
11 THE COURT: Can you set aside any sympathy you may have
12 for either side and base your verdict solely on the evidence and the
13 instructions on the law presented during the trial?
14 PROSPECTIVE JUROR 22: I can.
15 THE COURT: Is there any reason you couldn't be completely
16 fair and impartial if you were selected to serve as a juror?
17 PROSPECTIVE JUROR 22: [Indiscernible].
18 THE COURT: No? And if you were a party to this case, would
19 you be comfortable having someone like yourself as a juror?
20 PROSPECTIVE JUROR 22: Yes.
21 THE COURT: All right.
22 Mr. Cloward?
23 MR. CLOWARD: Thank you.
24 Ms. Garibay, how are you?
25 PROSPECTIVE JUROR 22: Good.

1 MR. CLOWARD: Good. So you're -- you're alum there, both in
2 Basic. What's the -- what's the mascot of Basic High anyway?

3 PROSPECTIVE JUROR 22: The Wolves.

4 MR. CLOWARD: That's the Wolves? Good. Now, you have
5 four children. You've discussed the -- your four children and kind of what
6 they do and so forth.

7 PROSPECTIVE JUROR 22: Yes.

8 MR. CLOWARD: Can you tell me your -- your daughter that
9 worked for the psychiatrist --

10 PROSPECTIVE JUROR 22: Uh-huh.

11 MR. CLOWARD: -- does she still work for the psychiatrist?

12 PROSPECTIVE JUROR 22: No. No.

13 MR. CLOWARD: Was that here in town?

14 PROSPECTIVE JUROR 22: Yes.

15 MR. CLOWARD: Do you know the name of that doctor?

16 PROSPECTIVE JUROR 22: I don't know the name of the
17 doctor, but I know the counseling center was on Sahara, East Sahara. I
18 don't know what their name was.

19 MR. CLOWARD: But she's -- she hasn't worked there for a
20 while?

21 PROSPECTIVE JUROR 22: No, it hasn't been that long. She's
22 between jobs. She's about to start working for another psychiatrist.

23 MR. CLOWARD: Doing the same kind of thing?

24 PROSPECTIVE JUROR 22: Yes.

25 MR. CLOWARD: And what is your -- the one that I didn't get

1 was your son. What does he -- what does he do --

2 PROSPECTIVE JUROR 22: Which one?

3 MR. CLOWARD: -- currently? The one that was carjacked?

4 Did you tell us what did?

5 PROSPECTIVE JUROR 22: Oh, he works at the Wynn as a
6 bus person.

7 MR. CLOWARD: Okay. I got that. He's the oldest?

8 PROSPECTIVE JUROR 22: He's the oldest.

9 MR. CLOWARD: Gotcha. And then one that works at Solar
10 City?

11 PROSPECTIVE JUROR 22: He's an installer.

12 MR. CLOWARD: And then --

13 PROSPECTIVE JUROR 22: The 26-year-old, that's the girl
14 that's between jobs and about to start working for a psychiatrist.

15 PROSPECTIVE JUROR 22: Okay. So that's three.

16 PROSPECTIVE JUROR 22: Three. And then the fourth one is
17 14; she's in high school.

18 MR. CLOWARD: Gotcha. I heard you say four kids.

19 PROSPECTIVE JUROR 22: Yeah.

20 MR. CLOWARD: I only heard three jobs. So I was kind of like,
21 I missed it here.

22 PROSPECTIVE JUROR 22: Yeah. She's [indiscernible].

23 MR. CLOWARD: Okay. Does she go to -- going to school?

24 PROSPECTIVE JUROR 22: Yeah.

25 MR. CLOWARD: Where does she go to school?

1 PROSPECTIVE JUROR 22: Yes.
2 MR. CLOWARD: What high school?
3 PROSPECTIVE JUROR 22: Rancho High School.
4 MR. CLOWARD: Okay. Now, Ms. Garibay, have you ever had
5 a car accident or an injury?
6 PROSPECTIVE JUROR 22: Yeah, I did not too -- May of 2016.
7 MR. CLOWARD: In 2016?
8 PROSPECTIVE JUROR 22: Yes, sir.
9 MR. CLOWARD: Was -- did you cause the accident, or --
10 PROSPECTIVE JUROR 22: No.
11 MR. CLOWARD: -- did somebody else cause it?
12 PROSPECTIVE JUROR 22: Somebody else caused the
13 accident.
14 MR. CLOWARD: What happened there?
15 PROSPECTIVE JUROR 22: Some guy was going pretty fast,
16 and he decided to do an illegal U-turn and didn't see my coming, and I
17 couldn't stop, so we collided.
18 MR. CLOWARD: Okay. And did -- did -- were you injured?
19 PROSPECTIVE JUROR 22: Yeah.
20 MR. CLOWARD: Did you -- is that resolved?
21 PROSPECTIVE JUROR 22: Yes. We got that resolved and we
22 settled out of court. We didn't have to go to court or anything.
23 PROSPECTIVE JUROR 22: Did -- did you hire a lawyer for
24 that?
25 PROSPECTIVE JUROR 22: Yes.

1 MR. CLOWARD: May I ask who?
2 PROSPECTIVE JUROR 22: Greg Jensen.
3 MR. CLOWARD: Craig [sic] Jensen?
4 PROSPECTIVE JUROR 22: Uh-huh.
5 MR. CLOWARD: I've never heard of him. Is he here in town?
6 PROSPECTIVE JUROR 22: Uh-huh. Yes, he is.
7 MR. CLOWARD: Okay. And what kind of injuries did you
8 have?
9 PROSPECTIVE JUROR 22: My back, my neck.
10 MR. CLOWARD: Are you having ongoing issues with that, or --
11 PROSPECTIVE JUROR 22: No, I'm better. Sometimes I do.
12 MR. CLOWARD: When you say somethings, what do you
13 mean?
14 PROSPECTIVE JUROR 22: My back just hurts sometimes
15 when I'm sitting too long.
16 MR. CLOWARD: Okay.
17 PROSPECTIVE JUROR 22: It bothers me.
18 MR. CLOWARD: Did you have that kind of problem before?
19 PROSPECTIVE JUROR 22: No.
20 MR. CLOWARD: So it was caused by the accident?
21 PROSPECTIVE JUROR 22: Yeah.
22 MR. CLOWARD: Okay. Were you -- were you happy with the -
23 - with the outcome?
24 PROSPECTIVE JUROR 22: Yeah, I guess. Yeah. Uh-huh.
25 MR. CLOWARD: You were maybe a little hesitant.

1 PROSPECTIVE JUROR 22: Well, because I already know the
2 laws of Nevada. I used to do insurance when I was -- for 20 years.

3 MR. CLOWARD: Okay.

4 PROSPECTIVE JUROR 22: So I know most of the policies
5 here don't pay much. So there's not much you can do about it.

6 MR. CLOWARD: Did you do casualty insurance?

7 PROSPECTIVE JUROR 22: Uh-huh. Property and casualty.

8 MR. CLOWARD: Were you an adjuster?

9 PROSPECTIVE JUROR 22: No. No, I just worked selling
10 insurance.

11 MR. CLOWARD: So you were on the sales side of things?

12 PROSPECTIVE JUROR 22: Yeah.

13 MR. CLOWARD: Did you happen to have clients, I guess, that
14 went through the process that you learned a little bit about?

15 PROSPECTIVE JUROR 22: Yeah, because I started doing that
16 in the '80s. So we pretty much didn't have computers in the '80s.

17 MR. CLOWARD: Uh-huh.

18 PROSPECTIVE JUROR 22: So we did a lot of the paperwork
19 by hand and I had to do some of them, you know, the car and, you know, the
20 accidents and reports and all of that --

21 MR. CLOWARD: Sure.

22 PROSPECTIVE JUROR 22: -- and turn them into the company,
23 so I learned a little bit.

24 MR. CLOWARD: Anything about that process, or, I guess,
25 about that -- your experience -- not with the process, but your experience in

1 doing that that causes you to see things one way or another?

2 PROSPECTIVE JUROR 22: No. I guess every case is
3 different. You've just got to listen to what's going on and how it's presented
4 and see, you know, it's either this way or that way.

5 MR. CLOWARD: What -- what about with your -- your own
6 personal crash; anything about that experience that cause you to, I guess,
7 see things one way or another or not be, maybe, fair to one party or to the
8 other?

9 PROSPECTIVE JUROR 22: No.

10 MR. CLOWARD: Okay. Anything that's been discussed so far
11 up to this point that you felt like, you know what, I'd -- I'd like to talk about
12 that?

13 PROSPECTIVE JUROR 22: No.

14 MR. CLOWARD: Okay. There would be nothing that, you
15 know, you would tell me in the parking lot down the road, a week from now,
16 saying, Mr. Cloward, if you had just asked me that one question?

17 PROSPECTIVE JUROR 22: No. Huh-uh.

18 MR. CLOWARD: Okay. How do you feel about this process?

19 PROSPECTIVE JUROR 22: It's long.

20 MR. CLOWARD: Tell me about it. I know. You know, I will say
21 the longest one -- voir dire I had was a week. Yeah, a week, but that's
22 nothing. Judge Bell, I know she's done some cases that are multi-month --
23 multi-month [indiscernible].

24 PROSPECTIVE JUROR 22: I don't know how she does it. I
25 really don't.

1 THE COURT: Not me.

2 PROSPECTIVE JUROR 22: Sitting there all day --

3 THE COURT: Judge Johnson down the hall does construction

4 [indiscernible].

5 MR. CLOWARD: Those things go on for half a year.

6 THE COURT: She takes all of those cases so I don't have to do

7 cases that last for months.

8 MR. CLOWARD: They will go on for half a year. So I really

9 think, hopefully, we'll be done with --

10 PROSPECTIVE JUROR 22: Yeah.

11 MR. CLOWARD: -- this part today.

12 PROSPECTIVE JUROR 22: Okay.

13 MR. CLOWARD: So we're getting -- we're getting really close.

14 We're cooking with gas as they would say, but we're definitely in the

15 homestretch. There's no question about that. So we're -- we're rolling

16 downhill.

17 So anything else that you think might be important for either

18 side to know?

19 PROSPECTIVE JUROR 22: No.

20 MR. CLOWARD: Nothing at all?

21 PROSPECTIVE JUROR 22: Nothing.

22 MR. CLOWARD: Okay. And could I ask the three questions?

23 PROSPECTIVE JUROR 22: Yeah. Bernie Sanders.

24 MR. CLOWARD: Okay.

25 PROSPECTIVE JUROR 22: What else? What was the other

1 question? My passion? My grandkids and my mother.

2 MR. CLOWARD: [indiscernible].

3 PROSPECTIVE JUROR 22: Taking care of my mom. It's my
4 turn to take her. And what else?

5 MR. CLOWARD: Your favorite job.

6 PROSPECTIVE JUROR 22: Oh, I like the job I'm in now.

7 MR. CLOWARD: Is it your favorite on though?

8 PROSPECTIVE JUROR 22: I don't know. I like the insurance
9 business. I like both of them.

10 MR. CLOWARD: Okay. Fair enough. All right. Well, I
11 appreciate your time. Thank you so much.

12 PROSPECTIVE JUROR 22: Okay. Uh-huh.

13 MR. CLOWARD: Your Honor, thank you.

14 MR. GARDNER: First of all, I think this is really funny. We've
15 got two Basic Wolves sitting next to each other; one who likes Sanders, the
16 other likes Trump.

17 PROSPECTIVE JUROR 22: No, wait.

18 MR. GARDNER: Do we need to separate the two --

19 PROSPECTIVE JUROR 22: I was born in Texas.

20 MR. GARDNER: Oh, okay. Oh, okay.

21 PROSPECTIVE JUROR 22: I was -- I was brought here at two
22 weeks old, so I claim Vegas.

23 MR. GARDNER: Okay. Fair enough. Fair enough. Fair
24 enough. Thank you.

25 That's all I have, Your Honor. Pass for cause.

1 THE COURT: All right. All right.
2 Folks, we're going to take a short break for about ten minutes.
3 During this break, you are admonished not to talk or converse among
4 yourselves or with anyone else on any subject connected with this trial or
5 read, watch, or listen to any report or commentary on the trial or any person
6 connected with this trial by any medium of information, including without
7 limitation newspapers, television, internet, radio, or form or express any
8 opinion on any subject connected with the trial until the case is finally
9 submitted to you. I will remind you, again, please do not do any
10 independent research, and we will see you back at -- let's just go quarter to
11 4, 3:45.

12 [Recess taken at 3:33 p.m.]

13 [Proceeding resumed at 3:52 p.m.]

14 THE MARSHAL: Please rise for the jury.

15 [Jury in at 3:53 p.m.]

16 THE MARSHAL: Please be seated.

17 THE COURT: Okay. We're back on the record in Case
18 Number A718679, Morgan versus Lujan. Let the record reflect the presence
19 of parties and counsel, and all of the prospective jurors.

20 All right. Ms. Salzman, ma'am, will you introduce yourself?

21 PROSPECTIVE JUROR 23: My name is Karin Salzman. I
22 have lived in Clark County -- well, this go 'round, I've lived here eight-and-a-
23 half years, but I also lived here when I was -- like, from fifth grade to tenth
24 grade, so before that, I lived in Arizona. I have a bachelor's degree in
25 elementary education. I currently am employed by the United Methodist

1 Church. I am a children's ministry director. My husband is -- I've been
2 married for eight years. My husband is a Clark County School District High
3 School teacher. I have two kids; they are five and seven.

4 THE COURT: All right. Thank you, ma'am. Have you -- go
5 ahead and have a seat.

6 Have you ever served as a juror before?

7 PROSPECTIVE JUROR 23: No.

8 THE COURT: Have you ever been a party to a lawsuit or a
9 witness in a lawsuit before?

10 PROSPECTIVE JUROR 23: I was a witness in a drunk driving
11 case a long -- it would be like 25 years ago.

12 THE COURT: And was that in Arizona?

13 PROSPECTIVE JUROR 23: No, it was here.

14 THE COURT: It was? Okay.

15 PROSPECTIVE JUROR 23: Yeah.

16 THE COURT: Have you or anyone close to you worked in the
17 legal field?

18 PROSPECTIVE JUROR 23: No.

19 THE COURT: Have you or anyone close to you had medical
20 training or worked in the medical field?

21 PROSPECTIVE JUROR 23: I was a nanny for ten years for a
22 doctor.

23 THE COURT: Okay. Have you or anyone close to you suffered
24 a serious injury?

25 PROSPECTIVE JUROR 23: I have a good friend that was rear

1 ended and had a traumatic brain injury because he had a -- like a motor --
2 an engine from a car in the backseat of his car, but he didn't --

3 THE COURT: How long ago was that?

4 PROSPECTIVE JUROR 23: Gosh. 20 years ago.

5 THE COURT: Can you wait to form an opinion until you've
6 heard all of the evidence?

7 PROSPECTIVE JUROR 23: Yes.

8 THE COURT: Can you follow the instructions on the law that I
9 give you, even if you don't personally agree with them?

10 PROSPECTIVE JUROR 23: Yes.

11 THE COURT: Can you set aside any sympathy you may have
12 for either side and base your verdict solely on the evidence and the
13 instructions on the law presented during the trial?

14 PROSPECTIVE JUROR 23: Yes.

15 THE COURT: Is there any reason you couldn't be completely
16 fair and impartial if you were selected to serve as a juror in this case?

17 PROSPECTIVE JUROR 23: No.

18 THE COURT: And if you were a party to this case, would you
19 be comfortable having someone like yourself as a juror?

20 PROSPECTIVE JUROR 23: Yes.

21 THE COURT: Mr. Cloward?

22 MR. CLOWARD: Thank you, Your Honor.

23 You were ready to rock and roll and get through this. All right.
24 Yeah, we are almost -- almost done. So let me ask you a couple of
25 questions. Did your husband bring you here to Vegas? You've been

1 married eight years; you've been back eight years.

2 PROSPECTIVE JUROR 23: He did, yes. I lived in Arizona
3 when we met, and then, yeah, I moved here. He was here and I was there.

4 MR. CLOWARD: Gotcha.

5 PROSPECTIVE JUROR 23: Yeah.

6 MR. CLOWARD: Where did you live before when -- I guess,
7 the first round in Vegas?

8 PROSPECTIVE JUROR 23: My dad is a Methodist minister,
9 and so, we moved around quite a bit, but we've always been in the
10 southwest. So, yeah, we lived here from fifth grade to tenth grade.

11 MR. CLOWARD: Gotcha. Then you moved to Arizona in the
12 meantime?

13 PROSPECTIVE JUROR 23: Yeah. Then we moved to
14 Arizona, and then I -- then I moved -- then I went to college in Arizona, and
15 then we moved back. Yeah.

16 MR. CLOWARD: Where did you go to college?

17 PROSPECTIVE JUROR 23: Northern Arizona University.

18 MR. CLOWARD: Okay. And what -- and your studies -- what
19 were your studies?

20 PROSPECTIVE JUROR 23: Elementary education.

21 MR. CLOWARD: Elementary education.

22 PROSPECTIVE JUROR 23: Uh-huh.

23 MR. CLOWARD: Okay. Do your folks still live in Arizona?

24 PROSPECTIVE JUROR 23: Part-time. They're here -- they --
25 they live here part-time, and then they live in Arizona part-time.

1 MR. CLOWARD: Okay. And are they still in the ministry?
2 PROSPECTIVE JUROR 23: Yes. My dad is supposed to be
3 retired, but he is being an interim minister for a congregation that's looking
4 for a pastor.
5 MR. CLOWARD: Cool. That's great. And he's done that since
6 you were little?
7 PROSPECTIVE JUROR 23: Yeah. Almost 50 years he's done
8 that.
9 MR. CLOWARD: Wow. That's awesome. Good for him. A lot
10 of service there.
11 PROSPECTIVE JUROR 23: Yeah.
12 MR. CLOWARD: Helping folks out.
13 PROSPECTIVE JUROR 23: Yep.
14 MR. CLOWARD: Okay. So your friend with the motorcycle
15 engine TBI, was it a mild TBI or a moderate TBI?
16 PROSPECTIVE JUROR 23: It was -- well, it was significant
17 enough that he was in Barrow Medical Center in Phoenix for a year, had to
18 learn to walk and talk again --
19 MR. CLOWARD: Right.
20 PROSPECTIVE JUROR 23: -- and those kinds of things, and
21 he still has some, like, short-term memory and those kinds of things, but he -
22 - I mean, the -- he is -- he is a dad -- he's married; he's a dad now, and it --
23 MR. CLOWARD: Wow. So he had a great recovery --
24 PROSPECTIVE JUROR 23: Yeah.
25 MR. CLOWARD: -- it sounds like?

1 PROSPECTIVE JUROR 23: Yeah.

2 MR. CLOWARD: Good for him. Good. That's -- that's great. A
3 lot of times, unfortunately, you don't have such a great recovery.

4 PROSPECTIVE JUROR 23: Yeah. He has a great story.

5 MR. CLOWARD: Good deal. Good to hear. Anything about
6 that experience that you would like my -- cause you to see things one way or
7 another?

8 PROSPECTIVE JUROR 23: No. I mean, every -- every case is
9 different. Every -- every case has different circumstances.

10 MR. CLOWARD: Okay. What are your thoughts and views?
11 We've discussed frivolous lawsuits. We've discussed money damages.
12 We've discussed pain and suffering. These are topics that most of the time
13 the entire veneer -- and veneer means the panel, most of the time the entire
14 panel has a view about something in that area. Like when folks aren't telling
15 me, you know, hey, I think about this or I think of that; it starts to worry me.
16 Maybe I'm not asking the questions the way I should, or -- but I just want to
17 make sure that -- you know, that I fully understand everybody's views.

18 PROSPECTIVE JUROR 23: Uh-huh.

19 MR. CLOWARD: [Indiscernible] you mind sharing with me how
20 -- how you feel about those subjects?

21 PROSPECTIVE JUROR 23: About frivolous lawsuits?

22 MR. CLOWARD: Sure.

23 PROSPECTIVE JUROR 23: I don't know. I mean, I worked for
24 a doctor who -- I mean, he was a foot doctor and was sued for pain and
25 suffering a couple of times, and you're -- you know, he was a really good

1 doctor, and I was kind of like, huh, that's interesting. And most of the time,
2 it's because people weren't actually following, like, his orders, and they
3 would --

4 MR. CLOWARD: [Indiscernible].

5 PROSPECTIVE JUROR 23: -- you know, walk on their foot
6 when they weren't supposed to and things like that, and so, you know, I
7 think that -- like everybody else has said, like, this process is necessary
8 because there are lots of -- there are lots of reasons that, you know, maybe
9 further down the line he's going to need care or whatever that we can't see.
10 But we don't -- we won't know that until we hear the facts of it, of the case.

11 MR. CLOWARD: Did you ever happen to hear the other side of
12 those folks stories, or just the doctor's side that you -- you had worked with?

13 PROSPECTIVE JUROR 23: Well, obviously, I only heard the
14 doctor's side, because I didn't go to court with him.

15 MR. CLOWARD: Sure.

16 PROSPECTIVE JUROR 23: I was watching the kids.

17 MR. CLOWARD: So, for instance, you don't know if maybe he
18 actually did make a mistake?

19 PROSPECTIVE JUROR 23: I don't know that, no. I would
20 imagine he didn't, but I don't know that for sure --

21 MR. CLOWARD: Okay.

22 PROSPECTIVE JUROR 23: -- because I'm not a doctor.

23 MR. CLOWARD: Sure. How would -- I guess, would it change
24 things for you if you -- if you knew that he had made a mistake? Would it
25 change, I guess, maybe the view of the folks that brought those -- those

1 suits? Like, for instance, with Mr. Knutson and his friend, Beau, the doctor
2 performed the surgery on the wrong level.

3 PROSPECTIVE JUROR 23: Right.

4 MR. CLOWARD: Where he went in saying, hey, you know,
5 here, I'm going to fix this in your lumbar spine; we're going to do, you know,
6 L -- L3-4, but the doctor actually went in and took out a disc at L5, S1, or,
7 you know, whatever the different level was.

8 PROSPECTIVE JUROR 23: Uh-huh.

9 MR. CLOWARD: Would it change for you to know, I guess, if
10 the doctor you worked with actually make a mistake?

11 PROSPECTIVE JUROR 23: Well, of course, yeah. I mean,
12 yeah.

13 MR. CLOWARD: Okay. Based on, I guess, working for
14 that -- that doctor, did that happen often, or just a couple of times?

15 PROSPECTIVE JUROR 23: No, just a couple of times. I
16 mean, I worked for him for ten years, and I think it -- I think, maybe, it was
17 twice.

18 MR. CLOWARD: Two times? Was it pretty stressful for him?

19 PROSPECTIVE JUROR 23: Yeah.

20 MR. CLOWARD: Other than those two experiences, were there
21 other things that -- other lawsuits that you're aware of that you -- you feel
22 like, maybe, you know, other people that you know, maybe coworkers,
23 friends of friends?

24 PROSPECTIVE JUROR 23: Not lawsuits. No.

25 MR. CLOWARD: What about injuries from like an accident or

1 other [indiscernible] --

2 PROSPECTIVE JUROR 23: Well, I've been in two car
3 accidents. One was 20 years ago, and then one was four years ago. I got
4 rear ended by a drunk driver on a motorcycle with my kids in the car, but --

5 MR. CLOWARD: He was on a motorcycle --

6 PROSPECTIVE JUROR 23: He was on a motorcycle, yeah.

7 MR. CLOWARD: -- and drinking?

8 PROSPECTIVE JUROR 23: And drinking, yes.

9 MR. CLOWARD: Not a good combination there.

10 PROSPECTIVE JUROR 23: No. Not a good combination at
11 all.

12 MR. CLOWARD: Not a good combination.

13 PROSPECTIVE JUROR 23: The good news is, I had a bigger
14 vehicle, so -- he didn't get hurt, though, because he was drunk, so --

15 MR. CLOWARD: Well --

16 PROSPECTIVE JUROR 23: He got right up. He was going to
17 drive away.

18 MR. CLOWARD: So you had to stop him?

19 PROSPECTIVE JUROR 23: Yeah.

20 MR. CLOWARD: You had to [indiscernible] --

21 PROSPECTIVE JUROR 23: We had to take his keys out of his
22 motorcycle.

23 MR. CLOWARD: Wow. And he was pretty [indiscernible]
24 .Anything about that experience that, I guess, did you -- did you file a claim?
25 Did he file a claim? Did -- anything like that?

1 PROSPECTIVE JUROR 23: From what I gathered, he had
2 done that several times before, because he didn't want me to call the cops --

3 MR. CLOWARD: Gotcha.

4 PROSPECTIVE JUROR 23: -- and his insurance company
5 settled very quickly. So -- and I -- and then, I was called after that, because
6 I believe he did that again, so --

7 MR. CLOWARD: Oh, wow. So you were called a witness?

8 PROSPECTIVE JUROR 23: I -- well, they called me, but I
9 never ended up in court, so --

10 MR. CLOWARD: Okay. That's what you mentioned to the
11 judge, I think, you testified or you had been -- did you mention that that you
12 had been called?

13 PROSPECTIVE JUROR 23: That was -- that was a long time
14 ago. I was -- I was like behind a car that got -- that got hit, and I actually did
15 testify in court for that.

16 MR. CLOWARD: Gotcha. Okay. So when you were rear
17 ended by the motorcycle, was it you that had -- had injuries, or was it your
18 kids?

19 PROSPECTIVE JUROR 23: You know, we -- we actually
20 weren't hurt because I was stopped and he just -- he didn't see that we were
21 stopped, and so, thank God my kids were in car seats and -- and, you know,
22 it was just more being shaken up and scared and --

23 MR. CLOWARD: Gotcha. Okay.

24 PROSPECTIVE JUROR 23: -- that kind of thing.

25 MR. CLOWARD: Fair enough. Fair enough. Anything about

1 that experience that put a bad taste in your mouth one way or another?

2 PROSPECTIVE JUROR 23: I don't really like drunk drivers.
3 I'm not a fan.

4 MR. CLOWARD: I don't blame you. I don't blame you. Okay.
5 Anything else that was discussed that you feel like might be important for us
6 to -- us to know? You were preparing your answers for the other questions?
7 Were you thinking about other things that might be important?

8 PROSPECTIVE JUROR 23: I don't think so. I mean, I think
9 everybody has pretty much said the same thing, which is, you know, that we
10 can't really make a decision until we hear all of the facts.

11 MR. CLOWARD: Uh-huh.

12 PROSPECTIVE JUROR 23: So --

13 MR. CLOWARD: Which -- which does concern me sometimes,
14 because, obviously, we're -- we're a diverse group, and I want to make sure
15 I fully understand everybody's -- everybody's view, and so, if you have a
16 view that's different than what everybody else has said, I'd love to know it or
17 love to hear it certainly.

18 PROSPECTIVE JUROR 23: Not really. I mean --

19 MR. CLOWARD: How do you feel about pain and suffering?

20 PROSPECTIVE JUROR 23: You know, it's hard to -- it's hard
21 to quantify that, because, like, I don't know. I mean, if you think about, like,
22 \$1 million or \$10 million or whatever it is, but he's a young guy. Like, that --
23 it could be a long time. Like, what if he can't work again? What if -- you
24 know, maybe he's going to need that money to live on or to take care of him.
25 I don't know that. So -- you know?

1 MR. CLOWARD: It would be a lot easier if -- if you jurors had a
2 button that we could just push that we had a receipt that says, okay, this is --

3 PROSPECTIVE JUROR 23: Right.

4 MR. CLOWARD: -- but that's, unfortunately, not the way it
5 happened, and that's why we have a collective group of -- of members of our
6 community that come together in a setting like this to -- to deliberate and to
7 discuss with one another those -- those types of things.

8 PROSPECTIVE JUROR 23: Uh-huh.

9 MR. CLOWARD: So is -- is that something you're willing to do?

10 PROSPECTIVE JUROR 23: If I have to, yes.

11 MR. CLOWARD: If you have to. You don't sound very
12 enthused.

13 PROSPECTIVE JUROR 23: Just because -- just because I
14 have -- you know, everybody has better things to do.

15 MR. CLOWARD: Sure. Okay. If you were selected, would you
16 -- would you serve?

17 PROSPECTIVE JUROR 23: Yeah. Yeah.

18 MR. CLOWARD: Okay. Obviously, it is -- it is difficult. Folks
19 come down and they stop what they're doing, and they come and
20 give -- give their time, and that's why we call it jury service.

21 PROSPECTIVE JUROR 23: Right.

22 MR. CLOWARD: It's one of the few things that, you know, you
23 don't have to vote; you don't have to do certain things, but jury service, that
24 is something that, you know, you get the summons in the mail and if you
25 don't do that, you can get in trouble.

1 PROSPECTIVE JUROR 23: Right.

2 MR. CLOWARD: And so, we certainly appreciate everybody
3 taking the time to -- to be here. There is no question about that. I know both
4 -- both parties appreciate that. So I thank you for your time. Thank you for
5 answering my questions. Is there anything else that you think might be
6 important for us to know?

7 PROSPECTIVE JUROR 23: [No audible response].

8 MR. CLOWARD: May I ask you the three -- the three things?

9 PROSPECTIVE JUROR 23: Okay. I'm passionate about kids
10 and -- and just loving on kids and making sure they know somebody cares
11 about them and loves them. My favorite job is the job I have now, which is
12 being a children's ministry person, because I can take care of my own kids
13 and be a mom and do that kind of stuff, and then do my job.

14 MR. CLOWARD: [Indiscernible] --

15 PROSPECTIVE JUROR 23: And -- and, you know, add a little
16 income, but, also, do it on my time. And then my person I look up is a
17 Christian author named Bob Goff who his -- his big motto is "Love God, love
18 people, and do stuff," so --

19 MR. CLOWARD: I like it.

20 PROSPECTIVE JUROR 23: -- he's a good guy.

21 MR. CLOWARD: "Love God, love people, and do stuff." I will
22 have to check that one out.

23 PROSPECTIVE JUROR 23: "Love Does" is his book. It's
24 good.

25 MR. CLOWARD: Okay. All right. Well, I appreciate it. Thank

1 you.

2 Your Honor, thank you.

3 THE COURT: All right.

4 Mr. Gardner?

5 MR. GARDNER: Well, I'd like to get to know you a little bit
6 better, but I'm not sure I could even ask you anything that hasn't been
7 answered. So thank you.

8 I think we're clear.

9 THE COURT: All right.

10 Ma'am, I have a question for you. Other than your parents, do
11 you have any other family that lives in Las Vegas?

12 PROSPECTIVE JUROR 23: My husband.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR 23: And my sister-in-law.

15 THE COURT: All right. Thank you.

16 PROSPECTIVE JUROR 23: Are you asking about the Salzman
17 name?

18 THE COURT: No. Actually, no. I was actually asking about a
19 friend of mine, so --

20 PROSPECTIVE JUROR 23: Oh.

21 THE COURT: You are not related to her.

22 PROSPECTIVE JUROR 23: Okay.

23 THE COURT: All right.

24 Mr. Hafer, sir.

25 PROSPECTIVE JUROR 24: My name is John Hafer. I've lived

1 in Clark County for about eight years. Before living here, I moved from Ohio
2 to southern California and lived there for about 15 years. I'm actively retired
3 now, and I am divorced and have no children.

4 THE COURT: All right. Sir, what do you do now that you're
5 retired?

6 PROSPECTIVE JUROR 24: Enjoy it. I'm also a futures trader
7 at home.

8 THE COURT: Okay. What hobby -- what do you do to enjoy
9 retirement? Do you travel? Do you --

10 PROSPECTIVE JUROR 24: Oh, I get up in the morning and
11 trade a little bit until about noon, and go out and cycle, and then have the
12 rest of the evening to enjoy.

13 THE COURT: Great. Have you ever served as a juror before?

14 PROSPECTIVE JUROR 24: Yes, Judge, I have. 2015, May,
15 Judge Herndon.

16 THE COURT: Okay. Thank you. Was that a criminal case or a
17 civil --

18 PROSPECTIVE JUROR 24: Yes, it was.

19 THE COURT: -- case? A criminal case?

20 PROSPECTIVE JUROR 24: Yes.

21 THE COURT: Without telling us what the verdict was, was the
22 jury able to reach a verdict?

23 PROSPECTIVE JUROR 24: I'm sorry. Would you --

24 THE COURT: Was the jury able to reach a verdict --

25 PROSPECTIVE JUROR 24: Yes, we were.

1 THE COURT: -- in the case? And were you the foreperson?
2 PROSPECTIVE JUROR 24: No, I was not.
3 THE COURT: Is there anything about that experience that
4 would impact your ability to sit as a juror in this case?
5 PROSPECTIVE JUROR 24: No.
6 THE COURT: And you understand this is a civil case, so the
7 instructions are going to be very different, including the legal standards than
8 the instructions that you had in the criminal case?
9 PROSPECTIVE JUROR 24: Yes.
10 THE COURT: And you will be able to follow these instructions -
11 -
12 PROSPECTIVE JUROR 24: Yes.
13 THE COURT: -- and forget those to the extent that you
14 memorized them? Have you ever been a party to a lawsuit or a witness in a
15 lawsuit before?
16 PROSPECTIVE JUROR 24: No.
17 THE COURT: Have you or anyone close to you worked in the
18 legal field?
19 PROSPECTIVE JUROR 24: No.
20 THE COURT: Have you or anyone close to you had medical
21 training or worked in the medical field?
22 PROSPECTIVE JUROR 24: No.
23 THE COURT: Have you or anyone close to you suffered a
24 serious injury?
25 PROSPECTIVE JUROR 24: No.

1 THE COURT: Can you wait to form an opinion until you've
2 heard all of the evidence?

3 PROSPECTIVE JUROR 24: Yes, Judge.

4 THE COURT: Can you follow the instructions on the law that I
5 give you, even if you don't personally agree with them?

6 PROSPECTIVE JUROR 24: Yes.

7 THE COURT: Can you set aside any sympathy you may have
8 for either side and base your verdict solely on the evidence and the
9 instructions on the law presented during the trial?

10 PROSPECTIVE JUROR 24: Yes.

11 THE COURT: Is there any reason you couldn't be completely
12 fair and impartial if you were selected to serve as a juror in this case?

13 PROSPECTIVE JUROR 24: No.

14 THE COURT: And if you were a party to this case, would you
15 be comfortable having someone like yourself as a juror?

16 PROSPECTIVE JUROR 24: Yes.

17 MR. CLOWARD: Thank you, Your Honor.

18 Mr. Hafer, how are you doing this afternoon?

19 PROSPECTIVE JUROR 24: Fantastic. Thank you.

20 MR. CLOWARD: Can I ask, what profession did you retire
21 from?

22 PROSPECTIVE JUROR 24: A business owner.

23 MR. CLOWARD: Okay. What kind of business?

24 PROSPECTIVE JUROR 24: I owned a moving and storage
25 company in southern California. I owned a bar and restaurant in southern

1 California, and [indiscernible] the company.

2 MR. CLOWARD: Indiscernible] company too. So you had a lot
3 of stuff going on?

4 PROSPECTIVE JUROR 24: Yes.

5 MR. CLOWARD: Cool. And now you're -- now you're a futures
6 trader?

7 PROSPECTIVE JUROR 24: Yes.

8 MR. CLOWARD: Can -- can you look into the future and tell me
9 when is the market going to stop going up?

10 PROSPECTIVE JUROR 24: It's kind of cloudy right now.

11 MR. CLOWARD: It's --

12 PROSPECTIVE JUROR 24: It's hard to say.

13 MR. CLOWARD: It's crazy.

14 PROSPECTIVE JUROR 24: Yes, it is.

15 MR. CLOWARD: I mean, it -- it just seems like how can it keep
16 going, but then it just keeps going.

17 PROSPECTIVE JUROR 24: Yes.

18 MR. CLOWARD: So -- yeah. I don't know what to think of the
19 whole situation.

20 PROSPECTIVE JUROR 24: I don't know, but as long as it
21 keeps going, we're all happy.

22 MR. CLOWARD: Yeah. Yeah. That's true. It makes me
23 wonder if there is going to be a big bubble, and then I worry about that, but --

24 PROSPECTIVE JUROR 24: I'm sure there is. Everything
25 seems to follow a cycle, and --

1 MR. CLOWARD: Yeah. So futures, you -- you do that now just
2 kind of for -- for sport, for fun --

3 PROSPECTIVE JUROR 24: For income.

4 MR. CLOWARD: -- it's a hobby? Oh, you do it for income as
5 well?

6 PROSPECTIVE JUROR 24: Yes.

7 MR. CLOWARD: But you're retired from all of your good
8 businesses in southern California?

9 PROSPECTIVE JUROR 24: Correct.

10 MR. CLOWARD: Can you -- what brought you here to Vegas?

11 PROSPECTIVE JUROR 24: When we sold the businesses, we
12 bought a motorhome and traveled for -- around the country for like three
13 years; lived in it and came, and we always used Vegas as a home base.

14 MR. CLOWARD: I see.

15 PROSPECTIVE JUROR 24: I bought a rent house here, and
16 when it became empty, moved into it.

17 MR. CLOWARD: Okay.

18 PROSPECTIVE JUROR 24: So I ended up here for a while.

19 MR. CLOWARD: Fair enough. It sounds -- it sounds pretty
20 cool. You're a cyclist?

21 PROSPECTIVE JUROR 24: Yes.

22 MR. CLOWARD: As in bicyclist?

23 PROSPECTIVE JUROR 24: Bicycling.

24 MR. CLOWARD: Okay. Do you ever do the Red Rock Loop?

25 PROSPECTIVE JUROR 24: I've done Red Rock Loop, but I do

1 Lake -- I live out by Lake Mead in Henderson, so I do that loop a lot.

2 MR. CLOWARD: Okay. Do you ever run into Mr. Boyd out
3 there? He's a cyclist as well.

4 PROSPECTIVE JUROR 24: I think I've seen him laying along
5 the road before and just kind of passed him. No, I have not.

6 MR. CLOWARD: You didn't -- you didn't render any aid? You
7 just kept on going?

8 PROSPECTIVE JUROR 24: Exactly.

9 MR. CLOWARD: Well, that's -- that's cool. So what about
10 anything that's been discussed? Tell me your views on -- on personal injury
11 lawsuits in general. What do you think about them?

12 PROSPECTIVE JUROR 24: Well, I mean, I'm sure there are
13 some good ones and some bad ones. I'm sure we wouldn't be at this stage
14 and here unless it had merit, and I'm sure that both of you will do your best
15 to show us both sides of the story.

16 MR. CLOWARD: Okay. Do you think that most lawsuits are
17 frivolous to be [indiscernible]?

18 PROSPECTIVE JUROR 24: No, I wouldn't say I think that. No.

19 MR. CLOWARD: Do you think that most defenses are
20 frivolous?

21 PROSPECTIVE JUROR 24: No.

22 MR. CLOWARD: Okay. What -- how do you feel about money
23 damages, number one? I guess, money damages. The plaintiff coming into
24 the court and asking jurors for money damages to begin with; how do you
25 feel about that as a concept, conceptually?

1 PROSPECTIVE JUROR 24: You know, pain and suffering has
2 a dollar amount, I'm sure, to be determined. I'm just very thankful that I'm
3 healthy enough to -- I wouldn't want to put a dollar on -- on my health.

4 MR. CLOWARD: Okay. Are you willing to sit in deliberation in
5 fellow jurors to discuss another person's --

6 PROSPECTIVE JUROR 24: Yes, sir.

7 MR. CLOWARD: -- misfortune? Okay. How do you feel about
8 the numbers that we discussed?

9 PROSPECTIVE JUROR 24: It's subjective. I mean, it's very
10 open. \$1 million today is not what a \$1 million was many years ago when I
11 grew up, so --

12 MR. CLOWARD: Sure.

13 PROSPECTIVE JUROR 24: -- you know, it's a different value
14 today.

15 MR. CLOWARD: Or what it will be in 10 years or 15 years --

16 PROSPECTIVE JUROR 24: Sure.

17 MR. CLOWARD: -- from now?

18 PROSPECTIVE JUROR 24: Sure.

19 MR. CLOWARD: Are you willing to listen to the facts and
20 evidence in a --

21 PROSPECTIVE JUROR 24: Of course.

22 MR. CLOWARD: -- in a manner that you set aside your
23 sympathy and your feelings, I guess, feeling bad, I guess, for one side or the
24 other?

25 PROSPECTIVE JUROR 24: Yes.

1 MR. CLOWARD: The outcome is what it is?
2 PROSPECTIVE JUROR 24: [No audible response].
3 MR. CLOWARD: Okay. Is there anything that I haven't asked
4 you that you feel like, you know, if I was a lawyer, I think he'd probably want
5 me to know this about him?
6 PROSPECTIVE JUROR 24: Nothing I can think of, no, except I
7 do like cherry pie.
8 MR. CLOWARD: I know. Hey, and I hope that I haven't
9 offended people [indiscernible]. Honestly, I don't -- Seth called me a cherry
10 pie hater. I really don't like it, you know? Let me ask you a dumb question.
11 Is there anything wrong with me for not liking it?
12 PROSPECTIVE JUROR 24: Well, George Washington didn't
13 either.
14 MR. CLOWARD: Is it okay for folks to have different views and
15 opinions on things?
16 PROSPECTIVE JUROR 24: Of course.
17 MR. CLOWARD: Okay. Will you hold that against me?
18 PROSPECTIVE JUROR 24: No, I do not.
19 MR. CLOWARD: All right. I had to ask. Let me see if there's
20 anything else that I wanted to ask you. So with Judge Herndon --
21 PROSPECTIVE JUROR 24: Yes.
22 MR. CLOWARD: -- did you enjoy that experience, or did you --
23 PROSPECTIVE JUROR 24: I did.
24 MR. CLOWARD: Okay.
25 PROSPECTIVE JUROR 24: It was a great experience. Very

1 positive experience. Like everyone else when you're sitting here, you have -
2 - hope you don't get picked, and then once you do, I mean, it was a very
3 positive experience. I'm very happy I went through it. It was a great
4 learning experience.

5 MR. CLOWARD: Okay. I only had one juror that told me
6 afterwards that they were -- that they didn't want to -- you know, that they
7 were upset with the [indiscernible] were like, man, that was really cool. I --
8 you know, I liked it.

9 PROSPECTIVE JUROR 24: Uh-huh.

10 MR. CLOWARD: So --

11 PROSPECTIVE JUROR 24: Yeah. I think this is the worst part
12 is going through this and --

13 MR. CLOWARD: Getting through all of the -- all the questions?

14 PROSPECTIVE JUROR 24: Yes.

15 MR. CLOWARD: Do you understand why we do -- why we ask
16 these questions, though?

17 PROSPECTIVE JUROR 24: Yes, I do.

18 MR. CLOWARD: Okay. And is there anything about your
19 views that you think that, you know what, my client might not have a fair fight
20 from the very beginning, or are your views such that, you know what, he's
21 going to get a fair shot whether he proves his -- his case or not, that's -- that
22 remains to be seen, but you know what, I'm -- I'm going to at least let him --
23 I'm going to let him present his case?

24 PROSPECTIVE JUROR 24: I'm a pretty common-sense guy,
25 and, you know, I think that everyone gets a fair chance.

1 MR. CLOWARD: Okay. Great. Well, sir, I appreciate it. Can I
2 have the three -- can I know the three things about you?

3 PROSPECTIVE JUROR 24: Yeah. I mean, I would say
4 someone like a Warren Buffet --

5 MR. CLOWARD: Yeah.

6 PROSPECTIVE JUROR 24: -- or someone along those lines.
7 The best job I have is the one I have right now. And --

8 MR. CLOWARD: I think we all aspire for that job.

9 PROSPECTIVE JUROR 24: And --

10 MR. CLOWARD: [Indiscernible].

11 PROSPECTIVE JUROR 24: -- I'm pretty passionate about
12 cycling or biking.

13 MR. CLOWARD: How -- how -- what's the longest you've ever
14 done, just curious?

15 PROSPECTIVE JUROR 24: I've -- so far this year, I've ridden
16 about 4,000 miles.

17 MR. CLOWARD: Wow.

18 PROSPECTIVE JUROR 24: So --

19 MR. CLOWARD: Have you ever heard of LoToJa?

20 PROSPECTIVE JUROR 24: No.

21 MR. CLOWARD: Logan to Jackson Hole? It's a -- how long is -

22 -

23 MR. BOYACK: 206 miles.

24 MR. CLOWARD: Yeah. He -- he does that.

25 PROSPECTIVE JUROR 24: Oh.

1 MR. CLOWARD: [Indiscernible]. He needs to be checked out.

2 PROSPECTIVE JUROR 24: Yeah. He's a lot younger than I
3 am.

4 MR. CLOWARD: Sir, thank you very much for your time.

5 PROSPECTIVE JUROR 24: Thank you.

6 MR. CLOWARD: I appreciate it. [Indiscernible] .

7 MR. GARDNER: Hello there.

8 PROSPECTIVE JUROR 24: Hi.

9 MR. GARDNER: I just want to make sure I'm clear on
10 something. You said that you didn't have any problems with the numbers
11 that they were talking about. And you're right, you know, these days you've
12 got to be a billionaire to be even in the discussion these days, you know?
13 Not like it used to be. But if -- if they didn't do what they're supposed to do
14 and get up over the threshold of what they were needing to prove, would you
15 have a problem finding that they got nothing instead of \$1 million?

16 PROSPECTIVE JUROR 24: No. Like I said, I'm pretty fair and
17 use a lot of common sense, and if it's not deserving, it doesn't matter what
18 you ask for.

19 MR. GARDNER: Okay. I'm good with that. Thank you.

20 THE COURT: All right. Mr. Chang?

21 MR. GARDNER: Pass for cause.

22 THE COURT: Would you introduce yourself?

23 PROSPECTIVE JUROR 25: Hello. I'm Brian Chang. I'm a
24 hospitalist working in the hospital, I practice hospital medicine, and I have
25 -- obviously, I have a medical doctorate degree, and I work for Sound

1 Physicians. And let's see, I'm married. I have two kids. I think that's about
2 it.

3 THE COURT: What's your spouse do?

4 PROSPECTIVE JUROR 25: Also a RN case manager.

5 THE COURT: And what -- in what specific area of nursing?

6 PROSPECTIVE JUROR 25: Basically, deal with discharge
7 planning.

8 THE COURT: Okay. For a hospital?

9 PROSPECTIVE JUROR 25: Yeah.

10 THE COURT: You can sit down, sir.

11 PROSPECTIVE JUROR 25: Okay.

12 THE COURT: For a hospital?

13 PROSPECTIVE JUROR 25: Yep.

14 THE COURT: Any particular department of the hospital?

15 PROSPECTIVE JUROR 25: All department.

16 THE COURT: And how old are your kids?

17 PROSPECTIVE JUROR 25: One is six and the other one is
18 nine.

19 THE COURT: Have you ever served as a juror before?

20 PROSPECTIVE JUROR 25: No.

21 THE COURT: Have you ever been a party to a lawsuit or a
22 witness in a lawsuit before?

23 PROSPECTIVE JUROR 25: No.

24 THE COURT: Have you or anyone close to you worked in the
25 legal field?

1 PROSPECTIVE JUROR 25: No.

2 THE COURT: Now, other than you and your spouse, anyone
3 close to you who has had medical training or works in the medical field?

4 PROSPECTIVE JUROR 25: Me. Yeah, because I grew up in a
5 medical family.

6 THE COURT: All right. Has anyone close to you suffered a
7 serious injury?

8 PROSPECTIVE JUROR 25: Yeah.

9 THE COURT: Can you tell me about that?

10 PROSPECTIVE JUROR 25: Well, that's my wife. She was
11 involved in a car accident, and -- about ten years ago. Fractured a bone,
12 and -- but, you know, this happened in a parking lot. You know, they all say
13 50-50 in the parking lot, so no -- no case.

14 THE COURT: Okay. Can you wait to form an opinion until
15 you've heard all of the evidence?

16 PROSPECTIVE JUROR 25: Yes.

17 THE COURT: Can you follow the instructions on the law that I
18 give you, even if you don't personally agree with them?

19 PROSPECTIVE JUROR 25: Yes.

20 THE COURT: Can you set aside any sympathy you may have
21 for either side and base your verdict solely on the evidence and the
22 instructions on the law presented during the trial?

23 PROSPECTIVE JUROR 25: Yes.

24 THE COURT: Is there any reason you couldn't be completely
25 fair and impartial if you were selected to serve as a juror in this case?

1 PROSPECTIVE JUROR 25: No.

2 THE COURT: And if you were a party to this case, would you

3 be comfortable having someone like yourself as a juror?

4 PROSPECTIVE JUROR 25: Sure.

5 THE COURT: Okay.

6 Mr. Cloward?

7 MR. CLOWARD: Your Honor, thank you.

8 Dr. Chang, how are you today?

9 PROSPECTIVE JUROR 25: Fine.

10 MR. CLOWARD: Obviously, I wanted to touch on some of your

11 training.

12 PROSPECTIVE JUROR 25: Uh-huh.

13 MR. CLOWARD: Where did you go to medical school?

14 PROSPECTIVE JUROR 25: Here. [Indiscernible] University of

15 Nevada.

16 MR. CLOWARD: Okay. And how long have you been a

17 hospitalist?

18 PROSPECTIVE JUROR 25: Four years.

19 MR. CLOWARD: And so, to become a hospitalist, is that like

20 four years of medical school, and then two years of internship?

21 PROSPECTIVE JUROR 25: Three years of residency, and

22 then you can start practicing.

23 MR. CLOWARD: Okay. Are you -- are you -- is there a

24 fellowship training for that type of a thing?

25 PROSPECTIVE JUROR 25: It depends. If you're want to go to

1 university level, there is fellowship.

2 MR. CLOWARD: Gotcha. If you want to be an instructor or

3 professor?

4 PROSPECTIVE JUROR 25: Yeah. Yeah.

5 MR. CLOWARD: Okay. And do you enjoy what you do?

6 PROSPECTIVE JUROR 25: Okay.

7 MR. CLOWARD: It's okay?

8 PROSPECTIVE JUROR 25: Yeah.

9 MR. CLOWARD: Do you work for Health South?

10 PROSPECTIVE JUROR 25: No, no, no, no. For Sound

11 Physician.

12 MR. CLOWARD: Oh.

13 PROSPECTIVE JUROR 25: It's a big -- it's a big national

14 group.

15 MR. CLOWARD: Gotcha. Sound Physician. I thought Health

16 South. So is that a -- I guess, a company that you kind of self-contract with

17 all of the different hospitals here in town?

18 PROSPECTIVE JUROR 25: Yeah.

19 MR. CLOWARD: Do you have privileges at a lot of the

20 hospitals here?

21 PROSPECTIVE JUROR 25: yes.

22 MR. CLOWARD: Do you mind telling me a few of them?

23 PROSPECTIVE JUROR 25: All of the St. Roses Hospitals,

24 some of the Valley Health System, and, also, UMC.

25 MR. CLOWARD: Okay. So you -- that's quite a -- quite a --

1 quite a bunch of them --

2 PROSPECTIVE JUROR 25: Yeah.

3 MR. CLOWARD: -- around. What do you do on a day-to-day
4 practice as a hospitalist?

5 PROSPECTIVE JUROR 25: I do admission, inpatient care, and
6 discharge planning.

7 MR. CLOWARD: Do you have occasion to treat folks who have
8 been involved in car crashes?

9 PROSPECTIVE JUROR 25: Yes.

10 MR. CLOWARD: And how do you -- how do you feel about
11 that?

12 PROSPECTIVE JUROR 25: Nothing. Indifferent. No particular
13 feeling.

14 MR. CLOWARD: Okay.

15 PROSPECTIVE JUROR 25: Yeah.

16 MR. CLOWARD: And it sounds like your -- your wife was in an
17 accident where she -- a parking lot accident where she broke a bone?

18 PROSPECTIVE JUROR 25: Yep.

19 MR. CLOWARD: How did that -- I'm just curious. Most parking
20 lot accidents are not, you know, high speed-type of --

21 PROSPECTIVE JUROR 25: I don't know, but it just occur.

22 MR. CLOWARD: Was it -- wait it a pretty low property-damage
23 kind of case?

24 PROSPECTIVE JUROR 25: Yeah. It wasn't high property
25 damage.

1 MR. CLOWARD: But she still broke a bone?

2 PROSPECTIVE JUROR 25: Yes.

3 MR. CLOWARD: Wow. Okay. In your setting as a hospitalist,
4 when you have folks that come into your hospital, and, you know, they've
5 been injured, do you go out into the parking lot and look at their bumper
6 before you evaluate them?

7 PROSPECTIVE JUROR 25: No.

8 MR. CLOWARD: Okay. So is there anything about, I guess,
9 your practice or your wife's history of being injured and not having recourse
10 due to it kind of being a parking lot incident, is there anything about those
11 experiences that maybe I would worry about, I should worry about or Mr.
12 Gardner should worry about on behalf of his client?

13 PROSPECTIVE JUROR 25: I've found that pain and suffering
14 is hard to quantify.

15 MR. CLOWARD: Yeah, it is.

16 PROSPECTIVE JUROR 25: Because it's very subjective. I
17 deal with day-to-day basis, you know, for my patient. Some patient little
18 thing, they would say ten out of ten.

19 MR. CLOWARD: Sure.

20 PROSPECTIVE JUROR 25: Where it would require a very high
21 dosage of a narcotic. Some, first, they have a great deal of trauma, yet they
22 told me, oh, do not give me any opiate. So --

23 MR. CLOWARD: How do you explain that?

24 PROSPECTIVE JUROR 25: I think it's a personal, subjective
25 thing, and then --

1 MR. CLOWARD: Do you think that -- that there's anything
2 wrong with the folks that maybe don't deal with pain as -- as well as others?

3 PROSPECTIVE JUROR 25: I usually look for objective
4 evidence. For example, you say you are in back pain. I'm going to do
5 imagings. If there is any imaging study to support your claim, then I tend to
6 have more sympathy and more willing to prescribe those medications.

7 MR. CLOWARD: So -- so basically, if somebody comes in and
8 they say, hey, doctor, my -- my neck is really hurting, then you send them off
9 and have the imaging, but the imaging comes back nothing wrong at all,
10 then you're going to -- you're going to worry a little bit more about that
11 patient; is that fair?

12 PROSPECTIVE JUROR 25: Nothing -- nothing wrong at all?

13 MR. CLOWARD: Yeah. There's -- it's a negative MRI.

14 PROSPECTIVE JUROR 25: Okay.

15 MR. CLOWARD: It's -- there is no positive finding on it at all.

16 PROSPECTIVE JUROR 25: Then I would try to be on -- on the
17 side of caution, because, you know, we have -- obviously, we have an opiate
18 epidemic in the United State.

19 MR. CLOWARD: Yeah.

20 PROSPECTIVE JUROR 25: So I try to do the right thing,
21 educate the patient. Sometime an opiate may not be the answer.

22 MR. CLOWARD: Yep. But fair to say if that same person
23 comes in and they're complaining of neck pain and you send them out for
24 the imaging, and the imaging shows, you know what, they actually -- they
25 have some -- some findings there. That one, you're not as -- as cautious

1 with, I guess? You're more trusting, maybe?

2 PROSPECTIVE JUROR 25: Yes. Definitely.

3 MR. CLOWARD: Okay. How -- I'm sure that you've treated a
4 lot of people, a lot of folks. I'm sure you've seen some folks that maybe
5 have very similar findings on radiographic findings. You know, that maybe
6 this individual has two-millimeter bulging; this individual has two-millimeter
7 bulging. One person says, you know what, I -- I'm in the worst pain ever,
8 doctor, and another person says, you know what, it's -- the pain is -- it's
9 discomfort, but I don't want any narcotics. How do you explain something
10 like that?

11 PROSPECTIVE JUROR 25: It all depends on the patient's past
12 experience. If someone had trauma before, they've dealt with pain and they
13 know what -- they know how to grade their pain level properly.

14 MR. CLOWARD: Okay.

15 PROSPECTIVE JUROR 25: Because I have a patient that just
16 lay on the bed and they're totally calm watching tv and tell me -- they tell me
17 they have ten out of ten pain. It's hard for me to believe that, you know?

18 MR. CLOWARD: Sure. Sure.

19 PROSPECTIVE JUROR 25: Where as if they're writhing in the
20 bed, you know, sweating --

21 MR. CLOWARD: Uh-huh.

22 PROSPECTIVE JUROR 25: -- I tend to believe that.

23 MR. CLOWARD: You -- you know that a little bit better?

24 PROSPECTIVE JUROR 25: Yeah.

25 MR. CLOWARD: And, also, obviously, you know, if -- if

1 somebody had a traumatic experience, maybe, you know, they're not
2 traumatic and it wouldn't be a great experience, but it would painful, like, you
3 know, giving birth. That would be something to kind of --

4 PROSPECTIVE JUROR 25: Exactly. They have some sort of
5 scale they could gauge, you know? And if they say, oh, okay, that's similar
6 to me giving birth or similar to me broke -- broke my hip before, then like I
7 said, wow, this patient know what they talking about.

8 MR. CLOWARD: Sure. Okay. Doctor, I appreciate your -- I
9 appreciate your time that you've given me. Is there anything about lawsuits
10 in general or the process, the system that you feel like, you know what, it's
11 broken? I don't really like folks that bring lawsuits, or I don't really like folks
12 that, you know --

13 PROSPECTIVE JUROR 25: Well, you know, obviously, I work
14 in the medical field. There is a lot of malpractice lawsuits running around. I
15 hear from a colleague that [indiscernible] lawsuit, but, you know, there's
16 some gray area. Just because you're associated with certain cases --

17 MR. CLOWARD: Sure.

18 PROSPECTIVE JUROR 25: -- you get named in the trial, and -
19 - but, you know, obviously, there is some gross negligence. Those cases
20 are obvious, but there's a lot of the lawsuits are in the gray area.

21 MR. CLOWARD: Yeah. Does that -- having friends, having
22 some of your colleagues get hauled into court for, you know, maybe just
23 being associated with a certain group, does that cause you to view cases,
24 personal injury cases, in a certain light?

25 PROSPECTIVE JUROR 25: No.

1 MR. CLOWARD: Okay. You're -- you'd -- you would be willing
2 to view the evidence in the case fairly regardless of --

3 PROSPECTIVE JUROR 25: Yes.

4 MR. CLOWARD: -- of your views?

5 PROSPECTIVE JUROR 25: Yes.

6 MR. CLOWARD: Okay. Is there anything at all that's been
7 discussed throughout the course of today, and we're getting pretty close to
8 the end, is there anything that's been discussed that, you know, you -- you
9 felt in your -- in your stomach that that's pretty important, and I'm going to --
10 I'm going to tell him when he asks me?

11 PROSPECTIVE JUROR 25: Well, I felt the monetary amount is
12 important, because for example, you know, if -- if it's, for example, a super
13 athlete like Lebron James break a leg versus a random Joe on the street
14 break a leg, the cause of the case is not going to be the same. Obviously,
15 one is impacting a -- someone's income in the hundred millions.

16 MR. CLOWARD: Sure.

17 PROSPECTIVE JUROR 25: And the other one is maybe a
18 couple million.

19 MR. CLOWARD: That would be a factual issue though?

20 PROSPECTIVE JUROR 25: Yeah.

21 MR. CLOWARD: Right?

22 PROSPECTIVE JUROR 25: Yeah.

23 MR. CLOWARD: Say, for instance, your neighbor there, Mr.
24 Hafer, you know, we don't know how much Mr. Hafer makes. Maybe he,
25 you know, makes millions and millions and millions of dollars doing the

1 futures trading, and maybe someone like him got into an accident. He
2 wasn't a professional athlete, but do you agree that that would all kind of be
3 fact dependent upon the situation, that issue?

4 PROSPECTIVE JUROR 25: Yes.

5 MR. CLOWARD: That's -- that's an area of -- of loss called lost
6 wages. But let me ask you this question, I'm going to ask you to search
7 inside and level with me on this one: Do you agree that -- that the pain that
8 individuals suffer, it shouldn't -- it shouldn't vary from maybe -- maybe
9 someone that's, you know, like Lebron James versus just another individual,
10 that the pain that folks suffer is the same regardless of their -- of their
11 occupation or status in life or --

12 PROSPECTIVE JUROR 25: Oh, maybe shouldn't -- their status
13 in life shouldn't affect the pain level, but comorbidity, what disease they have
14 and their body type can certainly affect their -- the pain they're experiencing.

15 MR. CLOWARD: Great.

16 PROSPECTIVE JUROR 25: Yeah.

17 MR. CLOWARD: Great. Very, very smart comments.
18 Because, actually, I think that, you know, you could talk about factually that
19 somebody may be at the pinnacle of their profession, if they were unable to
20 do that, they might have a different mental process about what their not -- no
21 longer able to do. But those things would all be fact dependent. You could
22 also have somebody that, you know, really enjoyed what they did, and that
23 was taken away from them. Could you see that as well?

24 PROSPECTIVE JUROR 25: Yeah.

25 MR. CLOWARD: Are you willing to listen to the facts in a -- in a

1 way that you take the sympathy out of it and look at just the facts and the
2 evidence?

3 PROSPECTIVE JUROR 25: Yes.

4 MR. CLOWARD: Okay. Doctor, is it Chang?

5 PROSPECTIVE JUROR 25: Yes.

6 MR. CLOWARD: Dr. Chang, is there anything that I have not
7 asked you that you think might be important for either party to know about
8 you?

9 PROSPECTIVE JUROR 25: No.

10 MR. CLOWARD: Okay. I certainly appreciate it. Can I ask you
11 the three questions?

12 PROSPECTIVE JUROR 25: Uh-huh.

13 MR. CLOWARD: Your favorite -- favorite job, something you're
14 passionate about, and then a public figure that you admire?

15 PROSPECTIVE JUROR 25: Well, favorite job, so I think this is
16 my best job so far as far as the -- my favorite job.

17 MR. CLOWARD: Okay.

18 PROSPECTIVE JUROR 25: And favorite public figure?
19 Probably Bill Gates.

20 MR. CLOWARD: Okay.

21 PROSPECTIVE JUROR 25: And pastime, traveling.

22 MR. CLOWARD: Where is your favorite place to travel?

23 PROSPECTIVE JUROR 25: Favorite place to travel? No
24 particular favorite place. I've been to many places.

25 MR. CLOWARD: None of them stick out as the --

1 PROSPECTIVE JUROR 25: Yeah.

2 MR. CLOWARD: -- best? Okay. Fair enough. May I ask why

3 you -- why you look up to Bill Gates, other than he's like super rich?

4 PROSPECTIVE JUROR 25: Well, you know, mentor men are

5 wealthy people, but not many people fall into like, say, I'm going to put X

6 amount of money out there.

7 MR. CLOWARD: Yeah, give back. I don't think --

8 PROSPECTIVE JUROR 25: Give back. So he's a -- the Bill

9 and Melinda Gates Foundation.

10 MR. CLOWARD: Sure.

11 PROSPECTIVE JUROR 25: They do contribute to good

12 causes.

13 MR. CLOWARD: Okay. Dr. Chang, I appreciate it. Thank you.

14 PROSPECTIVE JUROR 25: Yep.

15 MR. CLOWARD: Thank you, Your Honor.

16 THE COURT: All right.

17 Mr. Gardner?

18 MR. GARDNER: Thank you, Your Honor.

19 Dr. Chang, hello.

20 PROSPECTIVE JUROR 25: Hi.

21 MR. GARDNER: Have you ever heard of the Bone and Joint

22 Specialists?

23 PROSPECTIVE JUROR 25: Yes.

24 MR. GARDNER: You have heard --

25 PROSPECTIVE JUROR 25: Yep.

1 MR. GARDNER: -- of that company? So do you know
2 Dr. Sanders? Stephen Sanders?

3 PROSPECTIVE JUROR 25: I don't know him personally. I
4 might have talked to him on the phone --

5 MR. GARDNER: Do you --

6 PROSPECTIVE JUROR 25: -- once or twice.

7 MR. GARDNER: Do you know anything of his reputation or
8 anything about him that -- that -- well, what do you know about him?

9 PROSPECTIVE JUROR 25: Just -- it's just casual conversation
10 and, you know, like, for example, because I'm a hospitalist, I'm admitting
11 patient, and then I would get, okay, this is an orthopedic case. I would just
12 call the -- call ortho and have it be Dr. Sander. You know, it could be other
13 orthopedic surgeon. It just [indiscernible] just a casual conversation. Not
14 like a -- anything specific, you know?

15 MR. GARDNER: Okay. It -- it -- you haven't heard anything
16 bad about him, have you?

17 PROSPECTIVE JUROR 25: No.

18 MR. GARDNER: Okay. What about Dr. Muir; do you know a
19 Dr. Muir?

20 PROSPECTIVE JUROR 25: No.

21 MR. GARDNER: How about Dr. Coppel?

22 PROSPECTIVE JUROR 25: Nope.

23 MR. GARDNER: K-a-p-p-e-l [sic]? No?

24 PROSPECTIVE JUROR 25: Nope.

25 MR. GARDNER: Have you ever performed a fusion, spinal-

1 type surgery before?

2 PROSPECTIVE JUROR 25: Well, I'm not a surgeon. I'm a
3 medicine doctor, so --

4 MR. GARDNER: Is that internal medicine?

5 PROSPECTIVE JUROR 25: Yes.

6 MR. GARDNER: Okay. Now, tell me the -- tell me the
7 difference, just -- just briefly.

8 PROSPECTIVE JUROR 25: Huh?

9 MR. GARDNER: Internal medicine versus a surgeon.

10 PROSPECTIVE JUROR 25: Well, internal medicine, you don't
11 have operating room privilege. And although I've been, you know,
12 observation of those cases during my residency training, but I've never
13 performed it myself. And so, where a surgeon, they tend -- tend to like to
14 just go to operating room and stick to that, and then leave all the medical
15 care to the medical doctor.

16 MR. GARDNER: Okay.

17 PROSPECTIVE JUROR 25: So that's the difference.

18 MR. GARDNER: All right. Are you familiar with the progression
19 of a -- of a patient and the care of a patient that they need to go through
20 before, perhaps, a particular type of surgery is performed? A terrible
21 question. I know. Now, what I'm trying to say is, if someone hurt their back,
22 would you just -- the first thing you do is go in there and perform a fusion
23 and fix their discs and everything else like that, or are there steps that you
24 would take to get up to that point?

25 PROSPECTIVE JUROR 25: Well, depending on the severity.

1 If you're coming to the -- for example, a lot of people with that kind of
2 problem, they always show up to the emergency room after trauma, and
3 then you find them, they're totally debilitated, and then you have
4 neurological symptoms, the next step is to do an MRI, and you found a
5 severe stenosis or impingement, and then usually is operating -- operating
6 room right away. But if there is no neurological symptom, only moderate
7 changes, and they tend to say get physical therapy and concerted medical
8 therapy first, and if you fail that, then you proceed with surgery.

9 MR. GARDNER: Okay. So there is a certain progression to
10 things that --

11 PROSPECTIVE JUROR 25: Yes.

12 MR. GARDNER: -- that a typical, efficient doctor would -- would
13 follow before they would just put someone into surgery, correct?

14 PROSPECTIVE JUROR 25: Yes.

15 MR. GARDNER: Okay. Okay. Do you know what a discogram
16 is?

17 PROSPECTIVE JUROR 25: Yes.

18 MR. GARDNER: Describe that to me, would you? Just --

19 PROSPECTIVE JUROR 25: Discogram?

20 MR. GARDNER: -- what do you understand it to be?

21 PROSPECTIVE JUROR 25: You inject a contrast material into
22 imaging. It could be -- it could even be a CT scan. It could be an MRI.

23 MR. GARDNER: And in that -- in that process, does the
24 discogram actually fix anything, or is it just a -- a process for determining
25 pain -- pain generators?

1 PROSPECTIVE JUROR 25: I think it's a diagnostic.
2 MR. GARDNER: It is a diagnostic. Okay.
3 PROSPECTIVE JUROR 25: Yeah.
4 MR. GARDNER: Yeah. All right.
5 If I could just have your indulgence, Your Honor, for one
6 minute?
7 THE COURT: Sure.
8 MR. GARDNER: I'm just checking my note on this.
9 Dr. Chang, have you ever been asked to perform an
10 independent medical examination?
11 PROSPECTIVE JUROR 25: No. Are you talking about the
12 Workman's comp-type of cases?
13 MR. GARDNER: Or a personal injury case. For example, we
14 have --
15 PROSPECTIVE JUROR 25: Oh, no. I don't do that.
16 MR. GARDNER: -- had the independent medical examination
17 in this case?
18 PROSPECTIVE JUROR 25: Nope.
19 MR. GARDNER: You've never done that? Have you ever
20 served as a -- an expert witness in any type of a case --
21 PROSPECTIVE JUROR 25: No.
22 MR. GARDNER: -- in court?
23 PROSPECTIVE JUROR 25: No.
24 MR. GARDNER: That's all I have, Your Honor. Thank you.
25 THE COURT: All right.

1 MR. GARDNER: Pass for cause.

2 THE COURT: Ms. Roberts, ma'am, if you could, introduce
3 yourself, please.

4 PROSPECTIVE JUROR 27: My name is Margaret Roberts.
5 I've lived in Clark County since 2005. I finished high school. I retired from
6 the Department of Health and Human Services and went back to work. I'm
7 currently employed now as a security guard. My husband is deceased, and
8 I have one daughter.

9 THE COURT: How old is your daughter?

10 PROSPECTIVE JUROR 27: Forty-seven.

11 THE COURT: What does she do?

12 PROSPECTIVE JUROR 27: She works at a radio station in
13 Michigan.

14 THE COURT: Ma'am, go ahead and have a seat. What did
15 you do for the Department of Health and Human Services?

16 PROSPECTIVE JUROR 27: I held many jobs there during my
17 tenure.

18 THE COURT: Generally what?

19 PROSPECTIVE JUROR 27: When I retired, I was a claims
20 authorizer processing claims for retirement.

21 THE COURT: All right. Have you ever served as a juror
22 before?

23 PROSPECTIVE JUROR 27: No.

24 THE COURT: Have you ever been a party to a lawsuit or a
25 witness in a lawsuit before?

1 PROSPECTIVE JUROR 27: No.

2 THE COURT: Have you or anyone close to you worked in the

3 legal field?

4 PROSPECTIVE JUROR 27: No.

5 THE COURT: Have you or anyone close to you had medical

6 training or worked in the medical field?

7 PROSPECTIVE JUROR 27: No.

8 THE COURT: Did you say yes, ma'am?

9 PROSPECTIVE JUROR 27: No.

10 THE COURT: Okay. Have you or anyone close to you suffered

11 a serious injury?

12 PROSPECTIVE JUROR 27: I have.

13 THE COURT: Can you tell me about that?

14 PROSPECTIVE JUROR 27: I'd rather not get into that,

15 because it's -- I'm undergoing it right now, and I'm currently in --

16 THE COURT: All right. Ma'am, how about --

17 PROSPECTIVE JUROR 27: -- therapy twice a week.

18 THE COURT: Why don't you come up here with the attorneys

19 and we'll talk about it up here.

20 [Bench conference begins at 4:40 p.m.]

21 THE COURT: All right. There we go. Now we got -- we've

22 finally got everybody.

23 All right, ma'am. So can you explain to me a little bit about what

24 happened?

25 PROSPECTIVE JUROR 27: I fell last year in March in the

1 parking lot while I was working. I completely dislocated my right shoulder,
2 rotary cuff, my arm was broken in three places, the rotary cuff was shattered
3 in seven. I had to have surgery and have it replaced, but it didn't --

4 THE COURT: Work.

5 PROSPECTIVE JUROR 27: -- it -- the blood flow didn't go back
6 properly, so it didn't heal properly. So I had to have surgery again this past
7 year in April, and they had to completely replace my right shoulder and a
8 portion of my right arm with --

9 THE COURT: That's a lot.

10 PROSPECTIVE JUROR 27: -- a prosthetic. Yeah.

11 THE COURT: Yeah. That's a lot.

12 PROSPECTIVE JUROR 27: So I'm currently in therapy twice a
13 week, also, they're trying to get back some use, but --

14 THE COURT: Okay. What -- was that --

15 PROSPECTIVE JUROR 27: -- basically, it's going to be gone.

16 THE COURT: All right. Was that a worker's compensation
17 case, then?

18 PROSPECTIVE JUROR 27: It was. They denied it, but I'm in
19 the process now of -- because it's been more than six months since I had
20 the second surgery, and I'm not in the same type of pain I was in, but with
21 the therapy, I'm still lost for use of my arm --

22 THE COURT: Yeah. That's --

23 PROSPECTIVE JUROR 27: -- and I am right-handed.

24 THE COURT: That's a lot to go through.

25 MR. GARDNER: Yeah, that's terrible.

1 PROSPECTIVE JUROR 27: And my doctor told me that
2 I'm -- with this prosthetic, I'm never going to be able to lift more than ten
3 pounds. And my hair is as short as it is, because I can't reach my hair to
4 comb my hair.

5 THE COURT: All right.

6 PROSPECTIVE JUROR 27: So that's where I am.

7 THE COURT: That's a lot.

8 PROSPECTIVE JUROR 27: And I have therapy scheduled
9 tomorrow and Thursday. Every Tuesday and Thursday.

10 THE COURT: What time do you have therapy at?

11 PROSPECTIVE JUROR 27: My therapy is at 1.

12 THE COURT: At 1? All right.

13 Mr. Cloward, do you have any questions you would like to ask?

14 MR. CLOWARD: May I ask who your surgeon was?

15 PROSPECTIVE JUROR 27: Dr. Kam [phonetic]. My second
16 surgery was Dr. Kam. My first surgery was Dr. Davis. Dr. Davis is military
17 at Nellis Air Force Base.

18 MR. CLOWARD: Okay.

19 PROSPECTIVE JUROR 27: She's not there right now,
20 because she got transferred back to Germany, but the second surgery was
21 going to be so complicated until -- she wanted to get a second opinion. So
22 she turned the case over to Dr. Kam and he took it from there, because he
23 specializes in, basically, the worst type of bone replacements and stuff that
24 you have to deal with. So he did the second surgery.

25 MR. CLOWARD: Geez. You poor woman. I don't have any

1 other questions. I'm sorry you've gone through all that. It's terrible.

2 THE COURT: All right. So do you think that's going to prevent

3 you from being a juror in this case?

4 PROSPECTIVE JUROR 27: I'm sorry.

5 THE COURT: Do you think that's going to prevent you from

6 being a juror in this case?

7 PROSPECTIVE JUROR 27: I don't think I want myself to try a

8 case at this point right now, and I'm just being fairly honest with you.

9 THE COURT: No, that's all we're asking. So --

10 PROSPECTIVE JUROR 27: Yeah.

11 THE COURT: All right, ma'am. So you're all right if I --

12 MR. CLOWARD: Yes. That's fine.

13 THE COURT: Okay.

14 MR. GARDNER: Yes.

15 THE COURT: So, ma'am, I'm going to excuse you and have

16 you go back to jury services. I really hope things go better for you.

17 PROSPECTIVE JUROR 27: I hope so too.

18 THE COURT: It sounds like you've had a --

19 MR. GARDNER: Good luck.

20 MR. CLOWARD: Good luck.

21 THE COURT: -- long haul. I'm sorry about that.

22 PROSPECTIVE JUROR 27: Thank you.

23 MR. CLOWARD: Good luck.

24 MR. GARDNER: Good luck.

25 PROSPECTIVE JUROR 27: Thank you.

1 [Bench conference ends at 4:44 p.m.]
2 THE COURT: All right. So we're going to excuse her.
3 And -- okay. We're going to have a juror come up and take the
4 seat that Ms. Roberts left.
5 THE CLERK: Juror Number 030, Daniel Wickizer.
6 THE COURT: All right. Sir, will you please introduce yourself?
7 PROSPECTIVE JUROR 30: Hi. My name is Dan Wickizer.
8 THE COURT: And if you could, just answer the questions that
9 are on that sheet.
10 PROSPECTIVE JUROR 30: I have lived in Clark County for 27
11 years. I graduated from UNLV in 1993 with a degree in business. I am
12 employed. I own a company here in town.
13 THE COURT: What kind of company.
14 PROSPECTIVE JUROR 30: It's a warehousing company called
15 Advantage Warehousing. I am married for 21 years, two kids; 13 and 10,
16 both boys.
17 THE COURT: Nice. All right. Go ahead and have a seat, sir.
18 Have you ever served as a juror before?
19 PROSPECTIVE JUROR 30: I have.
20 THE COURT: How many times?
21 PROSPECTIVE JUROR 30: Once.
22 THE COURT: And how long ago was that?
23 PROSPECTIVE JUROR 30: It was about eight years ago,
24 maybe --
25 THE COURT: And that was here in Clark County?

1 PROSPECTIVE JUROR 30: It was.
2 THE COURT: Was it a civil case or a criminal case?
3 PROSPECTIVE JUROR 30: Criminal.
4 THE COURT: Without telling us what the verdict was, was the
5 jury able to reach a verdict?
6 PROSPECTIVE JUROR 30: Yes.
7 THE COURT: And were you the foreperson?
8 PROSPECTIVE JUROR 30: Yes.
9 THE COURT: Really?
10 PROSPECTIVE JUROR 30: I'm a control freak.
11 THE COURT: All right. I have to tell you --
12 PROSPECTIVE JUROR 30: I'm a control freak.
13 THE COURT: No, I'm just --
14 PROSPECTIVE JUROR 30: Of course, I was.
15 THE COURT: So I have been a judge for nine years. You are
16 the first person I have had in jury selection who has been the foreperson of a
17 prior jury.
18 PROSPECTIVE JUROR 30: Really?
19 THE COURT: Yes. Is there anything about that experience
20 that would affect your ability to sit as a fair and impartial juror in this case?
21 PROSPECTIVE JUROR 30: No.
22 THE COURT: No. And you understand that the standards for
23 civil are different than criminal, so to the extent that you remember any of
24 those instructions, you need to just forget them and follow --
25 PROSPECTIVE JUROR 30: Yes.

1 THE COURT: -- the instructions that we give you in this case?
2 PROSPECTIVE JUROR 30: Yes.
3 THE COURT: You're fine with that?
4 PROSPECTIVE JUROR 30: [No audible response].
5 THE COURT: Okay. Have you ever been a party to a lawsuit
6 or a witness in a lawsuit before?
7 PROSPECTIVE JUROR 30: My business has, yes.
8 THE COURT: All right. And do you have any ongoing litigation
9 right now?
10 PROSPECTIVE JUROR 30: No.
11 THE COURT: And anything about that that would impact your
12 ability to sit as a juror?
13 PROSPECTIVE JUROR 30: Bitterness about it, but that's it.
14 THE COURT: All right. Were any of those cases personal
15 injury cases?
16 PROSPECTIVE JUROR 30: Yes, sort of.
17 THE COURT: Sort of?
18 PROSPECTIVE JUROR 30: Yeah.
19 THE COURT: What does sort of mean?
20 PROSPECTIVE JUROR 30: What's that?
21 THE COURT: What -- I mean, were any of the cases a case
22 where somebody got hurt and then was suing your business?
23 PROSPECTIVE JUROR 30: Yes.
24 THE COURT: Okay. And those are resolved?
25 PROSPECTIVE JUROR 30: They are.

1 THE COURT: Have you or anyone close to you worked in the
2 legal field?

3 PROSPECTIVE JUROR 30: No.

4 THE COURT: Have you or anyone close to you had medical
5 training or worked in the medical field?

6 PROSPECTIVE JUROR 30: My mother was a nurse.

7 THE COURT: What kind of nurse?

8 PROSPECTIVE JUROR 30: She was an ER nurse.

9 THE COURT: Here in Clark County?

10 PROSPECTIVE JUROR 30: She was, and then she moved up
11 to Cedar City.

12 THE COURT: Have you or anyone close to you suffered a
13 serious injury?

14 PROSPECTIVE JUROR 30: No.

15 THE COURT: Can you wait to form an opinion until you've
16 heard all of the evidence?

17 PROSPECTIVE JUROR 30: Yes.

18 THE COURT: Yes? Can you follow the instructions on the law
19 that I give you, even if you don't personally agree with them?

20 PROSPECTIVE JUROR 30: Yes.

21 THE COURT: Can you set aside any sympathy you may have
22 for either side and base your verdict solely on the evidence and the
23 instructions on the law presented during the trial?

24 PROSPECTIVE JUROR 30: Yes.

25 THE COURT: Is there any reason you couldn't be completely

1 fair and impartial if you were selected to serve as a juror in this case?

2 PROSPECTIVE JUROR 30: No.

3 THE COURT: And if you were a party to this case, would you
4 be comfortable having someone like yourself as a juror?

5 PROSPECTIVE JUROR 30: Yes.

6 THE COURT: Maybe? All right.

7 Mr. Cloward?

8 I'm going to let Mr. Cloward follow up with that.

9 MR. CLOWARD: Your Honor, thank you.

10 Mr. Wickizer?

11 PROSPECTIVE JUROR 30: Wickizer, yes.

12 MR. CLOWARD: You hesitated. You hesitated.

13 PROSPECTIVE JUROR 30: On the name?

14 MR. CLOWARD: No, on -- on the whether you would feel
15 comfortable having jurors with your frame of mind sit on the jury panel.

16 [Indiscernible].

17 PROSPECTIVE JUROR 30: It wasn't a pleasant experience
18 that I had going through the -- the cases.

19 MR. CLOWARD: And there were multiple cases?

20 PROSPECTIVE JUROR 30: There -- there were two. We were
21 selling our business and we had to clear them up before we could finish it.
22 We had a -- should I go into -- we had a courier company, and it was
23 actually something between the surgery center and the lab, and we were in
24 there for litigation, and they decided to add us to it.

25 MR. CLOWARD: So the surgery center had a beef with the lab;

1 they were suing each other, and they decided --

2 PROSPECTIVE JUROR 30: Well, the --

3 MR. CLOWARD: -- to pull you into it?

4 PROSPECTIVE JUROR 30: -- the person who had used the
5 surgery center had an issue. Like, it was a sample that was missing.

6 MR. CLOWARD: Oh.

7 PROSPECTIVE JUROR 30: And it was -- we picked up
8 something; we delivered something, and then they said it was the wrong
9 [indiscernible].

10 MR. CLOWARD: Gotcha.

11 PROSPECTIVE JUROR 30: So they decided to sue us as well.

12 MR. CLOWARD: And was that the only -- the only suit?

13 PROSPECTIVE JUROR 30: We had another one where a
14 driver for our courier service was leaving work and drove into one of our
15 trucks, and it was his fault and he still tried to sue us twice.

16 MR. CLOWARD: Wow. That's not good.

17 PROSPECTIVE JUROR 30: No, it wasn't pleasant.

18 MR. CLOWARD: Hopefully, you got those cases dismissed.

19 PROSPECTIVE JUROR 30: No, we had to pay the one to get
20 out of it so we could sell the business.

21 MR. CLOWARD: Wow. Well, I'm sorry to hear that.

22 PROSPECTIVE JUROR 30: It happens, but --

23 MR. CLOWARD: It's not good when people take advantage of
24 the system.

25 PROSPECTIVE JUROR 30: Uh-huh.

1 MR. CLOWARD: Let me ask you a question, if you would just --
2 PROSPECTIVE JUROR 30: Sure.
3 MR. CLOWARD: -- level with me on it.
4 PROSPECTIVE JUROR 30: Absolutely.
5 MR. CLOWARD: The fact you've had those experiences, do
6 you view personal injury cases a certain way?
7 PROSPECTIVE JUROR 30: They're all different. You have to
8 judge it on the merits of the case, so --
9 MR. CLOWARD: Do you want to be a juror on this case?
10 PROSPECTIVE JUROR 30: If --
11 MR. CLOWARD: Just being -- just being brutally honest. You
12 know, I just would like to know.
13 PROSPECTIVE JUROR 30: It would be a little difficult.
14 MR. CLOWARD: And, you know, it's okay that you've had
15 experiences in life.
16 PROSPECTIVE JUROR 30: Uh-huh. Yeah. And it shouldn't
17 reflect the --
18 MR. CLOWARD: Nope.
19 PROSPECTIVE JUROR 30: -- people involved.
20 MR. CLOWARD: 100 percent nothing wrong with that. It's like
21 my -- you know, my Aunt Nancy with her furniture store. There's nothing
22 wrong with her for that experience. The same thing with my mother-in-law,
23 nothing wrong with her.
24 PROSPECTIVE JUROR 30: Yep. Every case is different.
25 MR. CLOWARD: But I guess I just, you know, ask you to -- to

1 be brutally honest, even if it, you know, you think it might hurt my feelings;
2 it's okay. Do you think that those things would actually influence the way
3 that you view the evidence, and then because of that, because of those --
4 those very personal experiences that you've had --

5 PROSPECTIVE JUROR 30: Uh-huh.

6 MR. CLOWARD: -- my client might not start off on the right --
7 the same level, even playing field as the defendant because of the
8 experiences you've had? Do you think that's fair to say?

9 PROSPECTIVE JUROR 30: It could. I could do my best, but is
10 that in the back of my head? It could be.

11 MR. CLOWARD: Okay.

12 PROSPECTIVE JUROR 30: I don't want to lead you astray. I
13 mean --

14 MR. CLOWARD: No, and I -- I appreciate your candor. I
15 sincerely do.

16 PROSPECTIVE JUROR 30: Yeah.

17 MR. CLOWARD: And --

18 PROSPECTIVE JUROR 30: It's also 5:00, and everyone is a
19 little cranky.

20 MR. CLOWARD: [Indiscernible] we're going to get through this.
21 Do you think maybe you might be a better fit for a different type of a case,
22 like a contract case or a criminal case, but because this involved personal
23 injury claims, you're probably not the best fit for this type of a case?

24 PROSPECTIVE JUROR 30: I did the criminal before. That was
25 fine.

1 MR. CLOWARD: But the criminal didn't have the same kind of
2 components or aspects --

3 PROSPECTIVE JUROR 30: Correct.

4 MR. CLOWARD: -- as -- I mean, you -- you were sued, it
5 sounds like, by two people. It sounds like both of the cases arguably may
6 have been frivolous and --

7 PROSPECTIVE JUROR 30: Uh-huh.

8 MR. CLOWARD: -- I just want to make sure that that doesn't
9 color your perception of -- of things, because it's kind of like this: We all
10 have experiences in life. I'm a Dallas Cowboy fan, okay? Hopefully, people
11 don't hate me already, but, you know, you could objectively tell me, Ben,
12 well, look, you know, the Eagles are this; the Eagles are that; the Eagles are
13 -- you know, they've only lost two games this season; they're going to --
14 they're going to beat the Cowboys, and I would tell you I would disregard all
15 of that objective evidence and say, no, you know what, Zeek is going to run
16 right over them, and -- and that's just because it's who I am.

17 PROSPECTIVE JUROR 30: Right.

18 MR. CLOWARD: It's the way that I'm going to -- I'm going to
19 color the -- the way that I see that -- that matchup. And so, what I want to
20 make sure is, is that, that my client is given a fair opportunity, and I want to
21 make sure that your personal experiences aren't going to color the way you
22 see things --

23 PROSPECTIVE JUROR 30: Sure.

24 MR. CLOWARD: -- even if the evidence is the evidence and
25 you're trying your very best to put those things aside, I'd like -- I'd like to

1 know brutally honest if you think it would -- would affect the way you see
2 things.

3 PROSPECTIVE JUROR 30: I would like to say I could do my
4 best since it's my civic duty to do so. That's the most honest I can answer it.

5 MR. CLOWARD: Did you -- and I -- I hate to follow up, and I
6 don't mean to -- to --

7 PROSPECTIVE JUROR 30: Sure.

8 MR. CLOWARD: I understand that that's your desire, that you
9 want to.

10 MR. GARDNER: And, Your Honor, I need to object at this
11 point. I think he's answered the question several times. I just don't know
12 why this is necessary at this point.

13 THE COURT: All right. Well, Mr. Gardner, you can follow up as
14 soon as Mr. Cloward is done.

15 MR. CLOWARD: And I'm -- I'm sorry to --

16 PROSPECTIVE JUROR 30: No.

17 MR. CLOWARD: -- to ask these probing questions. I certainly
18 don't want to offend you.

19 PROSPECTIVE JUROR 30: That's cool.

20 MR. CLOWARD: I know that you want to. It sounds like you're
21 -- you're a man that's a fair individual and you want to do the right thing, but I
22 have to know on behalf of my client whether those experiences might
23 influence the way you see things, even if there's a small chance that he
24 might not get a fair -- a fair fight, a fair opportunity to present his case based
25 on your prior experience.

1 PROSPECTIVE JUROR 30: I don't know a good way to answer
2 that. I mean, really. I mean, I can say that I would do everything to not --

3 MR. CLOWARD: Uh-huh.

4 PROSPECTIVE JUROR 30: -- but I did have that experience.

5 MR. CLOWARD: Okay.

6 PROSPECTIVE JUROR 30: I mean, I can't ask -- answer any
7 more fair.

8 MR. CLOWARD: Sure. Okay. Is there anything else about the
9 process that has been discussed that you feel would be important for the
10 parties to know?

11 PROSPECTIVE JUROR 30: I'm interested in your McDonald's
12 analogy before.

13 MR. CLOWARD: What do you mean? Oh, you want to know
14 more about the frivolous lawsuits?

15 PROSPECTIVE JUROR 30: No, I actually go on the other side
16 on that one, because there was a whole documentary about that.

17 MR. CLOWARD: Okay. Tell me about that.

18 PROSPECTIVE JUROR 30: She sued McDonald's for medical
19 expenses. McDonald's refused to pay, and, actually, the jury got ticked off
20 and gave her the money, and it's always been misrepresented that she went
21 after the money, and that's not really what happened. She -- she wanted
22 something which she thought was fair, and they refused.

23 MR. CLOWARD: Okay. So you -- you've seen the other side of
24 that coin?

25 PROSPECTIVE JUROR 30: Uh-huh.

1 MR. CLOWARD: You know that the temperature of the coffee
2 was 180 degrees?

3 PROSPECTIVE JUROR 30: And that she was in a parked car
4 when she lifted the lid and was trying to put sugar in it.

5 MR. CLOWARD: And that it fused her skin together?

6 PROSPECTIVE JUROR 30: Yep.

7 MR. CLOWARD: Okay.

8 PROSPECTIVE JUROR 30: Yeah.

9 MR. CLOWARD: So I guess the -- the reason that I ask you
10 that is most folks have heard of that case --

11 PROSPECTIVE JUROR 30: Uh-huh.

12 MR. CLOWARD: -- because it was kind of sensationalized.

13 PROSPECTIVE JUROR 30: It was.

14 MR. CLOWARD: And that's why I talk about that case, just to
15 find out if folks have heard about it. And most folks associate that case with
16 being a frivolous case.

17 PROSPECTIVE JUROR 30: It really wasn't.

18 MR. CLOWARD: And, I guess, my only question is, is are you
19 willing to listen to the facts in this case to determine what the outcome
20 should be?

21 PROSPECTIVE JUROR 30: I can answer as I could do my
22 best.

23 MR. CLOWARD: Okay.

24 PROSPECTIVE JUROR 30: That's really the --

25 MR. CLOWARD: Fair enough.

1 PROSPECTIVE JUROR 30: I hate to sound evasive, but that's
2 really the best I can give you.

3 MR. CLOWARD: No, it's -- it is what it is.

4 PROSPECTIVE JUROR 30: Okay.

5 MR. CLOWARD: And then, on the -- the three -- I guess, the
6 three questions.

7 PROSPECTIVE JUROR 30: Uh-huh.

8 MR. CLOWARD: Someone that you look up to and why;
9 something you're passionate about, and maybe your favorite job.

10 PROSPECTIVE JUROR 30: Yeah. My favorite job is the one I
11 have now, running a business.

12 MR. CLOWARD: Okay.

13 PROSPECTIVE JUROR 30: Advantage Warehousing. A
14 person I look up -- I'm reading a great book by Danny Meyer who invented
15 Shake Shack, a hospitality; it's a fantastic book on how to treat customers.
16 And a hobby, I coach my kids' flag football teams. So two teams, and I love
17 it.

18 MR. CLOWARD: Okay. Well, I appreciate it. Thank you.

19 PROSPECTIVE JUROR 30: No problem.

20 THE COURT: Mr. Gardner?

21 MR. GARDNER: I pass the witness for cause, Your Honor.

22 THE COURT: All right.

23 MR. GARDNER: Thank you.

24 THE COURT: So will counsel approach?

25 [Bench conference begins at 4:57 p.m.]

1 MR. CLOWARD: Yeah. I -- obviously, he's -- he's got prior
2 issue. And Sanders v. Page talks about when people have beliefs that are
3 based on personal experiences, the risk of them being biased is so much
4 higher.

5 THE COURT: Are you making a challenge for cause?

6 MR. CLOWARD: Yes. Yes, I am.

7 THE COURT: All right. All right.

8 MR. GARDNER: [Indiscernible].

9 THE COURT: [Indiscernible].

10 MR. CLOWARD: Yes.

11 THE COURT: [Indiscernible] . Thank you.

12 MR. CLOWARD: Throw some case law in there.

13 THE COURT: Did you want to say anything?

14 MR. GARDNER: No. I'd like him in there. That -- that's
15 justification for cause right there, to get a guy off the jury just because he's
16 had some bad experiences? I don't --

17 THE COURT: No, because he has repeatedly said he's not
18 sure if he can be fair. Right? I mean, that's -- that's --

19 MR. RAND: Well, he said he would try. He didn't say he
20 couldn't be fair.

21 MR. CLOWARD: The standard requires unequivocal statement
22 that you can be fair. He's equivocated. Sanders v. Sears talks about how a
23 juror has to not equivocate, and he has been all over the place. Well, maybe
24 I can't. Well, I want to be. Well, I don't think I can. I might be.

25 MR. GARDNER: I don't care.

1 THE COURT: All right.

2 MR. GARDNER: He's an alternative anyway.

3 THE COURT: Okay. All right. Shh. Shh. All right.

4 [Bench conference ends at 4:58 p.m.]

5 MR. CLOWARD: I would waive the formal reading as long as

6 the Court allows, because I do like to just show the Complaint and the

7 Answer. If the Court doesn't allow that, then I say, well, I don't want to waive

8 and I would have the Court read that. So you know the parties have a right

9 to do that. Some Courts are fine with that, other Courts aren't. I can't

10 remember how --

11 THE COURT: I don't know that I've ever had this issue come

12 up. If I have, I don't remember, Mr. Cloward.

13 MR. CLOWARD: Okay. Do you have any objection to that?

14 MR. GARDNER: It's a matter of public record. I'm not sure

15 what objection I could have.

16 MR. CLOWARD: Yeah. I mean --

17 THE COURT: All right.

18 MR. CLOWARD: -- I've never really had an objection, but --

19 THE COURT: Well, if there's --

20 MR. CLOWARD: -- I didn't want to waive it --

21 THE COURT: -- but if there's something --

22 MR. CLOWARD: -- just in case.

23 THE COURT: -- that's abandoned, or something like I know

24 you have some things that are abandoned, so we need to --

25 MR. CLOWARD: Yeah. Clean it up?

1 THE COURT: Yeah. All right.

2 MR. CLOWARD: Yep. We're happy to do that.

3 THE COURT: Great.

4 MR. CLOWARD: Thanks.

5 [Bench conference ends at 5:25 p.m.]

6 THE COURT: All right. So the parties are waiving formal
7 reading of the pleadings.

8 Ladies and Gentlemen, you must base your verdict solely on
9 the evidence presented in the courtroom and the instructions on the law that
10 I give you. To protect the integrity of the jury process, it is very important
11 that you do not do any independent research about this case until the jury
12 has reached a final decision. You may not visit any location involved in the
13 case. You must not do any research or look up words, names, maps, or
14 anything else that may have anything to do with this case. This includes
15 reading newspapers, watching television, or using a computer, cell phone, or
16 the Internet or any other means to get information related to the case or the
17 people and places involved in this case. This applies whether you're in the
18 courthouse, at home, or anywhere else.

19 Additionally, until you are discharged from service as a juror,
20 you must not provide or receive any information about your jury service to
21 anyone including friends, coworkers, and family members. You may tell
22 people you have been picked for a jury and how long the case may take.
23 However, you may not give anyone any information about the case itself or
24 the people involved in the case. You must also warn people not to try to say
25 anything to you or write to you about your jury service or the case. This

1 includes face to face, phone, or computer communications.

2 In this age of electronic communication, I want to stress to you
3 that you must not use electronic devices or computers to research or talk
4 about the case including Googling, tweeting, texting, blogging, emailing,
5 posting information on a website or a chat room or any other means at all.
6 We're all depending on you to follow the rules so there will be a fair and
7 lawful resolution of the case.

8 So let me say something. In this day of the smart phone, okay.
9 I'm the worst offender. If I do not know something, I look it up right then and
10 there. It's so great, right? It's the greatest thing about smartphones
11 because you don't have to, you know, like go to the library and find
12 encyclopedias or something. You can just find out all of that information
13 right there.

14 When you are a juror you cannot do that. Even if it's something
15 very -- that seems very simple, like what day of the week was a particular
16 date. I had that happen in a trial, and it caused some issues, and I had to
17 have a hearing with the a juror that's very uncomfortable for me. I really
18 don't even want to be in a position of having to consider sanctions for a
19 juror, because something like that could cause us to have to do the trial all
20 over again, and we've already used all of this time of all of yours. It is very
21 expensive. It can cause tremendous issues, because it's very important that
22 you all receive the same information about the case, and that you all receive
23 that information from the courtroom: what the lawyers present to you about
24 the case. Otherwise, we don't have any confidence that there is integrity in
25 the jury process. And so, it can cause all kinds of problems. So I'm just

1 going to impress on you how important it is to not do that.

2 Once you're excused as a juror, you can make a film. You can
3 write a book, a blog. You can -- whatever you want to do. You know, we
4 had a guy once that was a filmmaker and I started saying that. It's funny.
5 You can do whatever you want to do relative to your jury service, talking
6 about your jury service once that you have completed it.

7 The trial's going to proceed in the following order. Tomorrow
8 morning, the parties will have the opportunity to make opening statements.
9 What is said in opening is not evidence. The statements simply serve the
10 purpose of an introduction to the evidence, which the party making the
11 statement intends to produce. The Plaintiff will introduce evidence in
12 support of the Plaintiff's claim. After the Plaintiff presents evidence, the
13 Defendant may present evidence, but is not obligated to do so. The parties
14 may then present rebuttal evidence.

15 After the evidence is presented, I will instruct you on the law
16 you are to apply in reaching your verdict. You must not be concerned with
17 the wisdom of any rule of law stated in these instructions or the instructions
18 which I will read to you after the evidence. Regardless of any opinion you
19 may have as to what the law ought to be, it would violate your oath to base a
20 verdict upon any other view of the law than what is in the instructions.

21 After the instructions on the law are read to you, each party has
22 the opportunity to present closing arguments in support of their case. The
23 Plaintiff, who has the burden of proof, goes both first and last. What is said
24 in closing argument is not evidence, just as what is said in opening
25 statements is no evidence. Closing arguments allow the parties to explain to

1 you what they think the evidence has shown, and what inferences they think
2 you should draw from the evidence.

3 The evidence in this case will consist of the sworn testimony of
4 witnesses -- all exhibits received in evidence regardless of which side
5 introduces the evidence. If the attorneys on both sides stipulate, which just
6 means that they agree, to the existence of a fact, you must, unless
7 otherwise instructed, accept the stipulation as evidence and regard that fact
8 as proven.

9 I may take judicial notice of certain facts or events, so the
10 example I just gave you a few minutes ago, like, so if I said, you know,
11 November 6th, 2017, I'm going to take judicial notice that it is a Monday,
12 then you must accept that fact as true. Usually when I do that I screw this
13 example up and I give the wrong day of the week. So I'm really glad that I
14 got it right, especially at this hour.

15 In every case, there are two types of evidence: direct and
16 circumstantial. Direct evidence proves a fact directly, such as testimony of a
17 witness who saw snow falling from the sky, as unlikely as that is in Las
18 Vegas. Circumstantial evidence proves a fact indirectly, such as testimony
19 of a witness who only saw snow on the ground. So in either instance, the
20 witness's testimony is evidence that snow fell from the sky, and you can --
21 but one of them actually saw it, and one of them is inferring it because the
22 snow is on the ground, and that's perhaps, the most likely explanation for it
23 being there.

24 You may consider both direct and circumstantial evidence in
25 deciding the case. The law permits you to give equal weight to both types of

1 evidence, but it's up to you to decide how much weight to give any particular
2 piece of evidence. You are to consider only the evidence in the case, but
3 you are not limited to solely what you see and hear as the witness is
4 testifying. You must bring to the consideration of the evidence, your
5 everyday common sense and judgment as reasonable people. You may
6 draw a reasonable inferences from the evidence as you feel are justified in
7 light of your experience, keeping in mind that such inferences should not be
8 based upon speculation or guess.

9 Your purpose as jurors is to find and determine the facts.
10 Under our system or civil procedure, you are the sole judge of facts. You
11 determine the facts from the testimony you hear and the other evidence
12 including exhibits introduced in court. It is up to you to determine the
13 inference which you feel may be properly drawn from the evidence. It is
14 especially important that you perform your duty of determining the facts
15 diligently and conscientiously for ordinarily there is no means of correcting
16 an erroneous determination of fact by the jury.

17 You also, as jurors, will need to make a decision based on the
18 facts that are presented during the trial. There's no perfect trial. And you
19 may go back to deliberate and you may have some questions and that's
20 really how cases generally go. There's not every single question is
21 sometimes answered. But the only thing you can base your decision on is
22 the information that's presented during the trial. And once you go back to
23 deliberate, we can't supplement the evidence with any additional evidence.

24 The parties may sometimes present objections to some of the
25 testimony or other evidence. It is the duty of a lawyer to object to evidence

1 which the lawyer believes may not be properly offered, and you should not
2 be prejudiced in any way against a lawyer who makes objections on behalf
3 of the party the lawyer represents. At some times I may sustain objections,
4 which means that I agree with the objection. And may also instruct you to
5 disregard certain testimony or exhibits. You must not consider any question
6 or evidence to which an objection has been sustained or which I have
7 instructed you to disregard.

8 Anything you may have seen or heard outside the courtroom is
9 not evidence, and must be entirely disregarded. Some evidence may be
10 admitted for a limited purpose only. When I instruct you that an item of
11 evidence has been admitted for a limited purpose, you must consider it only
12 for that limited purpose and no other.

13 During the trial it may be necessary for me to confer with the
14 lawyers at the bench, which just means up here at my desk, about questions
15 of law or procedure that I need to make a decision on. That's already
16 happened a few times. Sometimes you may be excused from the
17 courtroom for the same reason. We really try to limit the interruptions and
18 try to keep things on track as much as we possibly can. We want to be very
19 respectful of your time. But please understand if we take a break, that it is
20 necessary. We really appreciate your patience when that does happen.

21 Every once in a while, there is some sort of legal issue or
22 evidence issue that we need to sort out. Sometimes the few minutes that
23 we take up front will ultimately end up saving sometime later down the road,
24 and moving things a little bit -- moving things along a little bit more quickly in
25 the trial as well. We try to do that as much as possible when you aren't here

1 like after I send you home or before you come in. Every once in a while that
2 is not possible. So if you do end up waiting for a little bit, I'm just going to
3 apologize up front and ask for your patience.

4 In considering the weight and value of the testimony of any
5 witness, you may take into consideration the appearance, attitude, and
6 behavior of the witness, the interest of the witness in the outcome of the
7 case, if any, the relation of the witness to the Defendant or Plaintiff, the
8 inclination of the witness to speak truthfully or not, and the probability or
9 improbability of the witness's statements, and all of the facts and
10 circumstances in evidence. Thus, you may give the testimony of any
11 witness just such weight in value as you believe the testimony of the witness
12 is entitled to receive.

13 For those of you who are sworn in, you will receive a badge,
14 red -- red badge, which we request that you wear during your jury service
15 when you're around in the courtroom. And you'll get a new jury number, so
16 you'll have the number on your badge. We're going to just make it a little
17 more complicated. You will get a different jury number that corresponds with
18 your seat. We're going to ask you to wear the badge at all times while you
19 are in the courthouse or on a break.

20 During the course of the trial attorneys for both sides, court
21 personnel other than the marshal, and witnesses are not permitted to talk to
22 members of the jury. And it just goes back to that same issue of integrity of
23 the jury and making sure everybody's getting the same information from the
24 same place. But by this, I mean, not only can none of us talk to you, we --
25 about the case, we can't talk to you at all, not even to pass the time of day,

1 give you directions around the courthouse, anything like that. So the badge
2 helps us identify you as a juror so we can avoid you during the trial. Please
3 don't -- please understand we are not trying to be rude. It's just to insure the
4 absolute impartiality of the jury. We are bound by ethics rules and legal
5 rules to avoid contact with all of you until the case is decided.

6 During the trial, you may not discuss the case with anyone.
7 Until you go to the jury room to do -- to deliberate. Do not discuss anything
8 about the trial or the case even with each other. Not even stuff like, you
9 know, how cute the lawyer's shoes are or, you know, what a nice suit they're
10 wearing, or how grumpy that witness seemed, or how the judge is really
11 grouchy today. None of that stuff, all right? So if anyone involved in the
12 case tries to speak with you, or anyone says something about the case in
13 your presence, please inform the marshal immediately.

14 You may not declare to your fellow jurors any facts related to
15 this case of your own knowledge. And if you discover during the trial or after
16 the jury has retired that you or any other juror has personal knowledge of
17 any witness or fact in controversy in the case, you must disclose that
18 information to the marshal. Just give a note to the marshal outside the
19 presence of the other jurors, and then the marshal will take it from there.

20 So let's say a witness comes in. You didn't remember the name
21 from the list, but then you see the witness and you realize, oh, that's
22 somebody who their kid plays soccer on your kid's soccer team. And, you
23 know, you've known them for a year, but you really didn't know their name.
24 It just didn't ring a bell, whatever. So if something like that happens, if you
25 realize during the middle of the trial that you know someone or you know

1 something that you didn't realize when we were all going through this jury
2 selection process, please just give a note to the marshal and then we'll take
3 care of it.

4 You will have paper and pens for your use during the trial. You
5 are free to take notes during the trial if you wish, but please keep the notes
6 to yourself until you and your fellow jurors go back to the jury room to decide
7 the case. Be sure that your notetaking does not interfere with your listening
8 to and considering all of the evidence. We just want to make sure that
9 you're not missing something that the witness said because you're writing
10 something that they said before.

11 If you do take notes, do not discuss them with anyone before
12 you begin deliberations, and be sure to leave the notes here at the end of
13 each day. You should also rely on your own memory of what you said, and
14 not be overly influenced by the notes of other jurors. If jurors have
15 conflicting notes, you should not rely on the notes because the court
16 recorder's record contains the complete and authentic record of the trial.

17 I may type a lot of notes during the trial. Please don't take that
18 into consideration particularly if I'm typing during one part of the testimony
19 and not another. You are not to consider that testimony more important than
20 any other testimony. In fact, you are not to consider anything I say or do
21 during the trial that suggests that I am inclined to favor the claims of or
22 positions of any party. So I'm required to remain neutral.

23 Actually, this is one of my favorite things having a jury trial,
24 because it's the one time I get a break from making the decision. Right? so
25 you all make the decision and I just have to make sure that everybody

1 follows the rules to get you to that point. Right? So it would be wrong for
2 you to conclude that anything I say or do means that I am for one side or
3 another during the trial. Discussing and deciding the facts is your job alone.

4 Jurors are allowed to present questions for the witnesses. So
5 the procedure requires that you write your juror number and the question on
6 a sheet of paper. We actually have a form that you'll be given. It's on a little
7 pad. I'm just going to ask there's a place that says Judge's Notes. Please
8 don't write in that space. I really need that space. But it has a place for your
9 juror number, which will be the number that corresponds with your seat for
10 those of you who are selected, the date, the witness's name, and then a
11 place for you to write the question. And then, this is the really important
12 part. You need to give it to the marshal while the witness is still in the
13 courtroom. Because once the witness leaves, we can't ask the question.

14 I do ask that you wait until the lawyers have had the opportunity
15 to ask all of the questions that they have for the witness. Sometimes they'll
16 get to the question that you're thinking of and we want to let them present all
17 of their questions. The questions that you ask really should be to clarify, you
18 know, something that you're confused about with respect to the -- what the
19 lawyers have asked or that sort of thing. You also are not to give undue --
20 any particular extra weight to a question that's asked by a juror.

21 So once the witness is done with all the questions from the
22 attorneys, I will ask if you have any questions for the witness. If I forget to
23 do that, please raise your hand. I'm usually pretty good about it, but if I
24 forget, please raise your hand, because once the witness leaves then we
25 can no longer ask them the question. If you need a minute to write down

1 your question, let me know. Raise your hand. We'll wait. It's fine. So don't
2 feel like you're rushed. If you have a question that you thought of, the
3 witness is getting ready to go; just raise your hand. We'll wait until you write
4 your question and then the lawyers and I will look at the questions and see if
5 they're proper under the court rules. And if they are proper, then I will ask
6 the question.

7 Let me explain something that happens a lot; what would be an
8 improper question. Sometimes we have a witness on the stand who's
9 talking about something they saw and the jurors will submit a question that
10 says why have the lawyers asked so many questions of this witness. You
11 know, something that's general about the case that does not have
12 specifically to do with that witness. So it needs to be a question for that
13 particular witness. If not, we wouldn't be able to ask it.

14 All right. Finally, in fairness to parties to the law suit, you should
15 keep an open mind throughout the trial reaching your conclusion only during
16 your final deliberations and after all the evidence is in, and after you have
17 heard the attorneys' summations and my instructions to you on the law, and
18 then, only after an interchange of views with the other members of the jury.

19 All right. Give me one second here. [Pause.] All right. So I'm
20 going to ask the following folks to go over here -- there. All right.

21 Juror Number 2, Ms. -- I'm going to mess it up again. I'm sorry?

22 POTENTIAL JUROR NUMBER 02: Koanui.

23 THE COURT: Okay. Thank you, ma'am.

24 Juror Number 8, Mr. Bass.

25 Juror Number 9, Ms. Meegan.

1 Juror Number 11, Mr. Balva.
2 Juror Number 12, Mr. McManus.
3 Juror Number 13, Ms. Avery.
4 Juror Number 14, Mr. Yarush.
5 Juror Number 21, Mr. Ramos.
6 Juror Number 24, Mr. Hayfer.
7 And Juror Number 25, Dr. Chang.
8 Yes?
9 POTENTIAL JUROR NUMBER 15: I think I heard my last
10 name, but you didn't give my number correctly.
11 THE COURT: 15?
12 POTENTIAL JUROR NUMBER 15: It's 15. You said 14.
13 THE COURT: Oh. Yeah. I was just going --
14 POTENTIAL JUROR NUMBER 15: Okay.
15 THE COURT: There is no 14. So --
16 POTENTIAL JUROR NUMBER 15: I was wondering. If I --
17 THE COURT: -- yes, 15. Thank you for asking. All right. Do
18 we have the right number of people left? Yes. Last time one of our other
19 jurors tried to escape on us, so, all right.
20 So if you folks will please stand and raise your right hand, the
21 clerk is going to swear you in.
22 THE CLERK: You and each of you do solemnly swear that you
23 will well and truly try the case at issue and a true verdict render according to
24 the evidence so help you God?
25 THE JURY COLLECTIVELY: I do. Yes.

1 THE CLERK: Thank you.

2 THE COURT: All right. You folks have a seat for one second.
3 For those of you over there, I want to thank you for your time today. Those
4 of you who did not get up and answer questions, I know it probably doesn't
5 seem like you did very much. I wanted to tell you, sometimes we actually
6 run out of jurors and we have to get more. So your presence here today
7 was really valuable to the whole process. For those of you who did answer
8 questions, I really appreciate your honesty and your willingness to be here
9 and to serve on the jury. So thank you all. Have a great evening. You're
10 excused.

11 [Prospective jurors exit.]

12 THE COURT: Could I have the lawyers up here for a second?
13 Mr. Gardner? Mr. Rands?

14 [Bench conference begins at 5:46 p.m.]

15 THE COURT: So the meeting that I had at 10:30 tomorrow was
16 cancelled. It had to be rescheduled. So we can start a little bit earlier
17 tomorrow. I just don't want to -- that to cause anybody any issues since I
18 had already said we were going to start at 11. Are you good starting at
19 10:30?

20 MR. CLOWARD: Just be opening, so I think we'd be okay to do
21 that.

22 MR. GARDNER: Yeah. Sure.

23 MR. BOYACK: Yeah. Tomorrow's opening sand Muir.

24 MR. CLOWARD: Yeah. Muir's at 1, so we can knock openings
25 out of the way.

1 THE COURT: Okay. That's fine. Make sure that we get the
2 openings done and we'll start at 10:30?

3 MR. CLOWARD: Yeah.

4 MR. GARDNER: 10:30's perfect.

5 MR. CLOWARD: Yeah.

6 THE COURT: Okay. And then we should be able to get the
7 openings done by lunch?

8 How long do you think yours is going to --

9 MR. GARDNER: I don't know about this guy, but I'm not going
10 to be that long.

11 THE COURT: Okay.

12 MR. GARDNER: We're worried about him.

13 THE COURT: All right. So that sounds good.

14 MR. CLOWARD: Thanks, Judge.

15 [Bench conference ends at 5:47 p.m.]

16 THE COURT: Okay. So folks, we're going to start up at 10:30
17 tomorrow. I have on, Tuesdays and Thursday mornings, I hear motions in
18 civil cases in the morning starting at 9. And so, I have quite a bit of -- I have
19 quite a few things on tomorrow. So we're going to start at 10:30. And we'll
20 start with the openings. And during the break, you are admonished not to
21 talk or converse among yourselves or with anyone else on any subject
22 connected with this trial; or to read watch or listen to any report of, or
23 commentary on, the trial or any person connected with the trial by any
24 medium of information including, without limitation, newspapers, television,
25 the Internet, and radio, or form or express any opinion on any subject

1 connected with the trial until the case is finally submitted to you. I'll remind
2 you again, please do not do any individual research and I will see you
3 tomorrow morning at 10:30. Thank you. Everyone have a good evening.

4 THE BAILIFF: Please rise for the jury.

5 [Jury out at 5:48 p.m.]

6 [Outside the presence of the jury.]

7 THE COURT: All right. Is there anything that we need to take
8 care of outside the presence of the jury?

9 MR. RANDS: No.

10 MR. CLOWARD: No.

11 MR. GARDNER: No, Your Honor.

12 MR. BOYACK: No.

13 THE COURT: I'm going to try to get done as close to 10 as I
14 can with my calendar, so you'll all have time to get yourself organized.

15 MR. CLOWARD: Sounds good. Thank you, Judge.

16 MR. GARDNER: Thank you.

17 MR. RANDS: Thank you, Your Honor.

18 THE COURT: See you in the morning, everybody. Have a
19 good night.

20 MR. BOYACK: You, too.

21 MR. GARDNER: Thank you.

22 THE COURT: If we have a little time tomorrow, we may go
23 through the jury instructions, so just -- I -- everybody has a draft, of them?

24 MR. CLOWARD: Sounds good.

25 THE COURT: Do you want to take a look at those?

1 [Proceedings concluded at 5:49 p.m. resuming November 7, 2017.]

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8 ATTEST: We do hereby certify that we have truly and correctly transcribed
9 the audio-visual recording of the proceeding in the above-entitled case to
10 the best of our ability.

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15 Deborah Anderson, Transcriber, CET-998

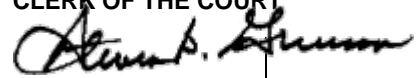
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17 Marie Moran

18 Marie Moran, Transcriber

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TAB 7

TAB 7



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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 AARON MORGAN,)

8 Plaintiff,)

9 vs.)

CASE NO. A718679

10 HARVEST MANAGEMENT SUB, LLC,)

DEPT. VII

11 Defendants.)
12

13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
14 TUESDAY, NOVEMBER 7, 2017

15 **TRANSCRIPT OF JURY TRIAL**

16 **APPEARANCES:**

17 For the Plaintiff:

BENJAMIN CLOWARD, ESQ.
BRYAN BOYACK, ESQ.

18 For the Defendants:

DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

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20 RECORDED BY: RENEE VINCENT, COURT RECORDER
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Las Vegas, Nevada, Tuesday, November 7, 2017

THE COURT: All right. Are you all ready to go? Yes? Okay.
He's getting the jury in.

[Pause while jury is summoned]

THE COURT: We're missing one? Just bring them all in then,
we'll --

THE MARSHAL: Please rise for the jury.

[Jury in at 10:39 a.m.]

THE MARSHAL: Please be seated.

THE COURT: All right. We're back on the record in case
number A718679, Morgan versus Lujan, and we are waiting for one of our
jurors, so we'll just wait for a second.

[Pause]

[Court and Marshal confer]

[Bench conference begins at 10:49 a.m.]

THE COURT: All right. So my Marshal's tried to call the juror
two times and has been unsuccessful reaching him by telephone and he's
now 20 minutes late. I don't know if you want to wait longer or if you would
prefer just to start and --

MR. GARDNER: [Indiscernible] one of the alternates I think we
can just go.

THE COURT: I won't --

MR. GARDNER: Just start.

THE COURT: -- issue an order to show cause and deal with

1 the juror later, so I'll excuse him from the jury, issue an order to show cause
2 then.

3 MR. CLOWARD: Yeah, I think we get going.

4 THE COURT: I don't want to hang up everybody anymore.

5 MR. CLOWARD: I agree.

6 MR. RANDS: I think the last time I tried a case we had to use
7 two alternates, so I think we're okay.

8 THE COURT: I think we'll be fine, but I'm obviously not going to
9 let that go without some --

10 MR. LAWYER: Something.

11 THE COURT: -- something because --

12 MR. LAWYER: And then they file --

13 THE COURT: -- the Marshal gives them his phone number so if
14 he had some sort of emergency. Obviously he was already instructed, you
15 know, whenever they go out after the first day he gives them all his cell
16 phone number so they have the ability to contact staff. Obviously they could
17 contact the department. If there's ever been an emergency or somebody's
18 running late, usually they text or call the Marshal. And the Marshal's tried to
19 reach him twice and has been unsuccessful reaching him --

20 MR. GARDNER: Yeah, no problem.

21 MR. CLOWARD: No problem with us either, thank you.

22 THE COURT: All right. Great.

23 [Bench conference ends at 10:50 a.m.]

24 THE COURT: All right. So we have now waited for about 20
25 minutes for Mr. Appah, who is Juror Number 10, and unfortunately we've

1 also tried to contact him by phone and been unsuccessful in doing so, so --

2 UNIDENTIFIED VOICE: There he is.

3 THE COURT: There he is. There we go.

4 UNIDENTIFIED JUROR: What were you going to say?

5 THE COURT: I was going to issue an order to show cause.

6 UNIDENTIFIED JUROR: What does that mean?

7 THE COURT: Well, it means that he was going to have to
8 come in and I was going to decide whether I was going to hold him in
9 contempt, so, fine or jail, yeah. Alrighty.

10 Sir, if you are running late I am a hundred percent certain that
11 my Marshal gave you contact information yesterday, because he always
12 does, you need to let us know. My Marshal tried to reach you twice and you
13 were not answering your phone.

14 So, if anybody is running late, please let us know. We
15 understand that things happen. I mean, we prefer that nobody be late so we
16 can get things going and not waste everybody's time. But it is really
17 imperative that you let us know what's going on, or if you have some sort of
18 emergency, we understand, that's happened too. We've had, you know,
19 jurors who have come in and unfortunately have been in car accidents, who
20 have had family emergencies arise. We understand. You really need to
21 communicate with us. All right. With that we have now all of our parties.
22 Mr. Cloward.

23 MR. CLOWARD: Yes, Your Honor, thank you. Okay. Your
24 Honor, may I approach and pull out the monitor just a little bit?

25 THE COURT: Absolutely.

1 MR. CLOWARD: Thank you.

2 [Pause]

3 MR. CLOWARD: Can everybody see that okay? Okay. Great.

4 **OPENING STATEMENT BY THE PLAINTIFF**

5 BY MR. CLOWARD:

6 So now is the time that we actually get to talk about the case. I
7 love this part because for the whole day prior we kind of talked cryptically
8 and we're not allowed to talk about the facts. We get to do that now, kind of
9 give you an overview of what the evidence in this case will be. So the
10 purpose of trial is to find out the truth, number one, if there's a dispute, and
11 then also to I guess restore -- it's a mechanism to restore imbalance that's
12 been caused by one party.

13 So this crash took place April 1 -- and it wasn't April Fools -- it
14 actually took place on April 1, 2004 [sic]. Very basic description of the facts:
15 Aaron is traveling north on McCloud and the Defendant is parked kind of on
16 a side street, a parking lot, and shoots across McCloud and doesn't give
17 himself enough time and Aaron hits the side of the vehicle. So this is kind of
18 an overview, Google Earth image overview. Aaron is traveling north, the
19 Defendant is parked right here. The Defendant kind of shoots out, tries to
20 beat traffic. This is --

21 MR. GARDNER: Object, argumentative, Your Honor. Just
22 maybe a description would be better.

23 THE COURT: Overruled.

24 MR. GARDNER: Thank you.

25 MR. CLOWARD: I mean, this is what the evidence is going to

1 show. So the evidence is going to show that Aaron is traveling north. He
2 doesn't have a stop sign, he doesn't have a yield. The Defendant, on the
3 other hand, is pulling from a parking lot. The speed limit on that road is 35
4 miles an hour. And as mentioned, what the evidence in the case will show
5 is that the Defendant pulled out in front of Aaron and the crash took place.

6 The police officers came and they did a report. They did kind of
7 an investigation, talked to all the parties, and determined I guess, you know,
8 what took place. The police officer's estimate was that Aaron was going
9 about 25 miles an hour. Aaron will tell you from the stand that he -- when he
10 saw what was, you know, the van pulling out in front of him, he tried to slam
11 on his brakes and swerve. Did everything he possibly could, but he didn't
12 have time to avoid the crash.

13 The officer says that the damage to his vehicle was major. And
14 here's a photograph of the scene that shows kind of his bumper, you know,
15 slanted. Here's another photograph later on that shows the damage to the
16 vehicle. And, ultimately, the damage to Mr. Morgan's vehicle was about
17 \$5,000. One thing that you'll notice in discussion, Aaron will talk about this,
18 is that the frame was bent. They had to put the frame on a special machine
19 to kind of straighten the frame around. That took about five hours of shop
20 time to do that.

21 And so you might be asking, Well, who is responsible? It
22 seems pretty clear. Well, the evidence is going to show that at the scene of
23 the crash the Defendant never told the police that it was not his fault. At the
24 scene of the crash the Defendant never told the police that it was Aaron's
25 fault. So the Defendant never said: Hey, it's not my fault, Officer. Never

1 said: Hey, Officer, it's his fault. That's not what took place at the scene of
2 the crash. Never told the police officer that he looked both ways carefully
3 before pulling onto the road. That never took place at the scene of the
4 crash.

5 But something interesting happened when Mr. Lujan went back
6 to his company the next day. The next day, 4/2/14, now both the company
7 and the driver blame Aaron. That's what the facts and evidence will show.
8 We're going to ask Mr. Lujan about that on the stand. Now Mr. Lujan claims,
9 the Defendant claims, well, you know what, I stopped, I looked both ways,
10 and I started to go and all of a sudden there was Aaron and he hit me. It
11 was his fault. The company actually claims that it was Aaron that didn't see
12 the Defendant, that it was Aaron that was not paying attention. Okay. Keep
13 in mind that's not what took place at the scene of the accident.

14 So over one year after the crash a lawsuit was filed on behalf of
15 Aaron. Another attorney at the firm, Adam Williams, had filed the complaint,
16 and in the complaint there are certain allegations that are set forth. Very
17 basic allegations like, hey, the Defendant did something wrong, you know
18 the Defendant was at fault.

19 What happens in response to a complaint is that Defendants file
20 an answer. They respond and basically say, yes, we did that, or, no, we
21 didn't do that. Well, in answer -- so it's very, very simple. Basically says that
22 the Defendant was negligent and it caused a collision. Very basic
23 allegations. Well, in the answer those things are denied. Defendants deny
24 each and every allegation.

25 But not only that, but now all of a sudden the finger and the

1 evidence will show that the Defendants claim that this was Aaron's fault.
2 And this is from the Defense. The Defendants claim that this was
3 completely unavoidable, that, you know, regardless of anybody's actions it
4 just was unavoidable. And also for the first time there I guess was some
5 third person that we still don't know who it is. We'll talk to the Defendant
6 about who that is. But some third person is -- was responsible for causing
7 this crash.

8 And so again, the timeline of events: The Defendant causes
9 the crash by pulling onto the street in front of Aaron. Aaron does not have a
10 stop sign, does not have a yield --

11 MR. GARNER: Object, Your Honor. We're going well into
12 argument.

13 MR. CLOWARD: That's what the evidence will show, Your
14 Honor.

15 MR. GARDNER: Well, you're not presenting it that way.
16 You're --

17 THE COURT: All right.

18 MR. GARDNER: -- presenting it as an argument.

19 THE COURT: Do you want to approach?

20 MR. GARDNER: Yes, please.

21 [Bench conference begins at 10:59 a.m.]

22 THE COURT: Let's not argue in front of the jury. You're both
23 better than that.

24 MR. CLOWARD: I'm entitled to show what the evidence will --

25 THE COURT: Yeah.

1 MR. CLOWARD: -- to say what the evidence will show. And
2 the fact of the matter is the evidence will show the Defendant pulled out in
3 front of Aaron. How is that argument? How is that argument?

4 MR. GARDNER: It's not that. I mean, I know how the crash
5 occurred.

6 THE COURT: Right. But he doesn't have to say the evidence
7 will show before everything he says. I don't think -- I think there's a line.
8 He's close, but not over, so I'm going to overrule the objection. Go ahead.

9 MR. CLOWARD: Thank you, Your Honor.

10 [Bench conference concluded at 10:59 a.m.]

11 **OPENING STATEMENT BY THE PLAINTIFF CONTINUED**

12 BY MR. CLOWARD:

13 So again, the timeline of events. So this is what the evidence is
14 going to show in this case. The evidence is going to show that the
15 Defendant pulls out in front of Aaron, that at the scene of the accident does
16 not dispute what took place. But then that story the next day changes. And
17 we'll talk to the Defendant about that. That is evidence that we're going to
18 present. We're going to show the Defendant some documents that he filled
19 out while he was back at the company. We're going to ask him some
20 questions about those things. That's just what the evidence is going to
21 show.

22 The evidence is also going to show that one year, 46 days later,
23 the Defendant is now saying that the crash was unavoidable and that it was
24 Aaron's fault and that it was a third party's fault. So that's the defense to I
25 guess who caused the crash. And then there's also an argument, there's a

1 dispute about whether or not Mr. Morgan's injuries are -- were caused by
2 this crash.

3 The very, very first thing that you're going to find out is that
4 Aaron never had a single history of any neck or back problems his entire life.
5 Okay. Never went to the doctor for a neck problem, never went to the
6 doctor for a back problem, never went to the doctor for any problems
7 associated with his spine. Gets into the accident and has a bunch of issues
8 that start.

9 So in this case you're going to hear from Dr. Steven Sanders.
10 And before we get into the medicine, I want to talk to you a little bit about
11 Steven Sanders. The evidence is going to show Mr. -- or Dr. Sanders, he is
12 not a spine fellowship trained surgeon. Dr. Sanders does not have
13 privileges at any hospital here in Nevada to perform any spine surgeries. So
14 he cannot go to a single hospital here to do a spine surgery. The evidence
15 is going to show that he does not testify on behalf of Plaintiffs. Okay.
16 Ninety-five percent of the time when he comes into the courtroom he
17 testifies for the defense. That's what the evidence will show.

18 The evidence will show also that Dr. Sanders' routinely charges
19 \$2500 for a deposition. For a one hour deposition. He does not charge
20 anything less than \$3500 to do a report in this type of a case. The evidence
21 will also show that there is a society called the North American Spine
22 Society. It's basically the society that kind of governs spine surgeons here
23 in the state of Nevada. Dr. Sanders is not a member of NASS.

24 There's a society that kind of governs the standards for pain
25 management doctors called the International Spine Intervention Society. I

1 think they're working on changing their name because it's ISIS. I think they
2 actually have changed it, truthfully, to like ISI or something like that. But
3 he's not a member of that organization. And, you know, the evidence is
4 going to show that not one time in his career has he done a neck surgery as
5 the lead surgeon, never a time in -- never once in his career has he ever
6 done a upper back or a lower back surgery as the lead surgeon. That's
7 what the evidence is going to show. Dr. Sanders has testified to those
8 things and we're going to talk to him about that. This is over a 30-year
9 history. He's never been the lead surgeon for any type of a spine issue.

10 What he has done, and what he will tell you is that he has
11 assisted in doing a couple of spine surgeries to hold things for the surgeon
12 to do their part. That's his experience with actually doing spine treatment.
13 Similarly, you're going to hear -- and I'm going to get into all the medicine
14 and it'll kind of become important. You'll recognize why it's important to talk
15 about Dr. Sanders and his qualifications right off the bat. He has never
16 done a discography study, he's never done a steroid epidural injection,
17 never done a medical branch block facet injection, rhizotomy, and so forth.

18 What you will hear from Dr. Sanders, however, is is that his
19 partner that works at the same clinic that he works at, Hugh Selznick, he is
20 fellowship trained and he is a spine surgeon. So, you know, there are other
21 folks in town that you'll hear about that do have this training.

22 So the evidence is going to show that Dr. Sanders criticizes the
23 treatment in this case. He criticizes Dr. Cash's treatment, criticizes Dr. Muir,
24 his treatment, criticizes Coppel's treatment and so forth. And so I'd like to
25 talk about I guess some of the treatment because Dr. Sanders, he does

1 agree, in fact, that Mr. Morgan was hurt. He says he was hurt, yeah, but I
2 just don't think he was hurt that bad.

3 And so let's talk now a little bit about the injuries that Aaron did
4 sustain in this case. So at the scene the AMR comes. Aaron tells the AMR,
5 the ambulance folks, he says: You know, I hit my head. Initially they say:
6 Well, do you want to go to the hospital? And he says: No, I don't want to go
7 to the hospital, I'm okay. Then his mom shows up and, you know, kind of
8 persuades him, look, you probably ought to go get checked out, you hit your
9 head. And so he's taken in the ambulance to Sunrise Hospital.

10 Now, when he's at Sunrise Hospital, what they do for him --
11 you'll hear the evidence -- they do a brain CT scan. The doctors are worried
12 enough about his complaints they do a brain CT scan, they do a neck CT
13 scan, and then they also -- they give him a shot of morphine. And then they
14 discharge him, they give him some -- leave him with some prescriptions for
15 Flexeril, there's a Norco, so some pain medication, some medication for
16 muscles, you know, muscle relaxer-type medication. They discharge him.

17 Now, about a week later, Aaron is still having some problems
18 and now he's noticing that he's having some wrist problems as well. So
19 what he does is he goes to the urgent care and the urgent care looks at his
20 neck and they look at his wrists and they make a couple of referrals. They
21 make a referral to a doctor by the name of Dr. Grabow, who is a hand and
22 wrist -- Dr. Grabow kind of specializes in from the shoulder down to the
23 hand. And then also Dr. Coppel. Dr. Coppel was a pain management
24 doctor.

25 Now, although Aaron receives the initial I guess referral to

1 Dr. Grabow, he doesn't go to see Dr. Grabow for a couple months. He tries
2 to do some conservative therapy, conservative modalities as in chiropractic
3 care and so forth.

4 And so a couple of weeks after the urgent care visit Aaron goes
5 to see Dr. Coppel, he sees Dr. Weisner at Las Vegas Valley Chiropractic
6 Center, and he begins to essentially do conservative therapy, conservative
7 treatment. And Dr. Muir will be here and Dr. Coppel and Dr. Cash and
8 they'll go into detail with all of these things. This is just kind of a general,
9 30,000 foot overview of the treatment in this case.

10 And so now I kind of want to talk about I guess the -- what
11 they're going to tell you about the spine. And this might be really simple for
12 a lot of you that have had some experience, but for the benefit of everybody
13 else I want to go into this for those folks that don't have experience with the
14 spine. So there are generally two really major sources of pain. You can
15 have a discogenic pain or you can have a what's called a facet or -- some
16 folks pronounce it fassit [phonetic] -- a facet joint or fassit joint pain. And
17 what those are is -- this white is the bone. The doctors will tell you this.
18 This is what's called a vertebral body. And then in between the vertebral
19 bodies you have a disc. Okay. And you have like the -- the full model
20 shows you have discs and vertebral bodies from your neck all the way down
21 to your coccyx or your, you know, the lower spine. And this is -- the neck is
22 called the cervical or C spine often, the mid is called the thoracic or T spine
23 often, and then the lumbar is the lower spine or L spine, low back, and then
24 you also have the sacrum and so forth.

25 So again, within the pain generators you can have -- and the

1 facet joint, just for everybody's benefit, that are these -- those are these
2 joints right here. And those joints are how the vertebral bodies move. So
3 when you stretch back like that, when you stretch forward, there's movement
4 in this little joint here, and the joint has a little capsule. And, again, there are
5 two major sources of pain: discogenic versus facet. And I'm going to talk
6 about each of those.

7 Because the disc, we'll talk about that one first. The disc, you
8 can have two types of a discogenic injury. You can have what's called kind
9 of a physical compression. That's where you might have cord compression,
10 you might have some stenosis, you might have what's called a pinched
11 nerve. Folks have often heard of a pinched nerve. But you can also have
12 what's called a chemical irritation. That's an annular tear or internal disc
13 disruption. We'll talk about that.

14 So the disc is kind of a material, it's like a shock absorber. It's
15 meant to absorb stresses and pressure between the vertebral bodies. It's
16 composed of two layers. You have the annulus fibrosis. That's the outer
17 portion. It's kind of a tough portion. Then you have the inside, which is
18 nucleus pulposus. You think of it kind of like a jelly donut. If you put a jelly
19 donut on the table and you push on it -- doctors will tell you this -- you push
20 on it the jelly sometimes will leak out into the outside portion.

21 And you can think of I guess a compression-type kind of like a
22 hose. When you kink the hose, that can cause problems. So your spinal
23 cord is protected. It goes down the middle of this, the spinal column. And at
24 each level on both sides you have what's called a nerve root. The nerve
25 root exits out of something called the foraminal opening. Foramen in Latin

1 just means hole. So nerve root comes out of the hole. And so you have a
2 nerve root at every single level. And if you have a discogenic injury, if you
3 have a herniated disc or, you know, a bulge or compression-type injury,
4 sometimes that nerve root will be compressed. Sometimes you can actually
5 have central cord compression where the herniation goes backwards and
6 actually compresses the spinal cord itself. And that's a central canal
7 compression-type injury.

8 But then the second type is an annular tear. And this just
9 shows I guess some, you know, the different types. You can have an
10 extrusion, protrusion, bulge and so forth. But the second type is a chemical
11 irritation, and that's like if you had a cut on your hand and you got some
12 lemon juice and you squeeze the lemon juice on it and it would hurt. Well
13 it's the same principle in the neck -- or in the spine with the discs.

14 When the disc gets torn, the disc at each nerve root, the nerve
15 roots have these follicles off the nerve roots and they -- it's called they
16 innervate. So they're woven into the annulus. So they're innervated into the
17 annulus. And so when you have a tear, when this is torn, and this material
18 comes in contact with these follicles, that can cause pain. And that's what
19 we call an annular tear or internal disc disruption.

20 Sometimes you will see on the MRI, well, that's not a -- it's not a
21 compression but they're having these radicular problems. That's called a
22 chemical radiculitis or a chemical irritation. Okay. So that's the discogenic
23 pain. So keep in mind discogenic you can have two broad types of
24 discogenic. You can have a compression, you could also have a chemical
25 irritation.

1 Now, the next thing -- there are other sources of pain. The next
2 thing is what we call facet, or facet, joint pain. And again, that's this little
3 joint back here. And keep in mind everybody from their head to their toe --
4 or from -- not to their toe -- the top of their spine to the bottom of their spine
5 they have two of these joints on every single side, all the way down. So this
6 is the lumbar spine. You have a joint here, joint here, joint here, joint here,
7 joint here, all the way up. Same thing on this side, joint, joint, joint, joint, all
8 the way up.

9 Now, the facet is a little bit tougher to diagnose because the
10 joint is much smaller. Okay. And it's the same thing with a neck MRI. Neck
11 MRIs are a little bit harder to read than lumbar MRIs just because the
12 vertebral bodies are bigger in the lumbar spine. Well, the facet joint is a
13 much smaller part of anatomy than, say, the disc. So it's a little bit harder to
14 diagnose. And this is kind of a picture of the facet joint here. So this joint
15 can become irritated. If this capsule has some strain or tearing, the joint
16 itself can cause pain, can become painful.

17 But also you can have what's called a medial branch irritation.
18 So medial branch -- and I'll go back to the spine. Out of the hole you have --
19 so at every level out of the hole comes the nerve root. Well, off the nerve
20 root is the -- is a branch. It's another nerve. It's called the medial branch.
21 So that nerve comes off of the nerve root and actually goes over across the
22 back of the facet joint. Medial branch can cause some irritation too.

23 And so the way that the doctors I guess figure out -- doctors,
24 physical therapists, chiropractors, practitioners figure out what's going on
25 with somebody there are a couple of things that they do. First, there's

1 radiographic imaging, things like MRIs, CT scan, x-ray. Then there's also a
2 physical examination. We kind of discussed that, touched on that a little bit
3 in the jury selection process, like, you know, is there a negative -- or, I
4 mean, excuse me, a positive orthopedic test, you know, things like that,
5 what is the doctor feeling upon palpation. Then you have the patient
6 reporting. So the patient comes in and they say, hey, Doctor, this is where
7 I'm hurting, this is what it feels like, this is how I describe it, and so forth.

8 There are also other methods: injection therapy by pain
9 management doctors that can help to isolate what's going on. And so let's
10 talk about the physical examination and the patient reporting in this case.
11 So what the doctors are looking for if it's a facet joint problem is -- let's say
12 this is the lumbar spine. The facets can cause pain into these areas. And
13 the doctors will tell you that. This is a -- from a journal article. They'll tell
14 you, look, this is what you would expect when you have a facet issue. In the
15 neck, this is what you would expect if, you know, these levels are affected.
16 So if someone has a C3-4 facet issue, this is kind of where you would
17 expect them to complain of the pain. This is what correlates clinically with
18 what the patient is telling you.

19 But it can be difficult for practitioners, the evidence will tell you,
20 and Dr. Muir and Dr. Coppel and the others will come in and tell you, look,
21 it's not a perfect science. There's some trial and error involved here. And
22 this is the reason why. Because the thoracic spine also has pain, and when
23 you look at the patterns a lot of the patterns overlap. But not only that, the
24 disc, when you injure the disc, the disc can also cause pain into these same
25 areas. This is what we call a dermatomal pattern. It's a -- it's kind of a

1 diagram that lets doctors know, look, if it's a C6-7 problem doctors often will
2 tell you, you know, 6-7 is probably the easiest one. The 6 nerve root is the
3 easiest one to remember because it's like a six shooter. This is how it's
4 going to affect you, thumb and forefinger. And so they have these ways that
5 they're taught in medical school if a patient is complaining of pain into their
6 pinky then it's usually this nerve root. If it's a thumb and forefinger it's this
7 nerve root. If it's a big toe it's this nerve root. If it's the bottom of the foot it's
8 this one, and so forth. It gives them an idea.

9 But the problem is, is that you have overlap. Okay. You have
10 overlap. And so Aaron is complaining of pain in his neck, in his mid-back,
11 and his low back and then his wrists bilaterally. And so let's talk about the
12 neck and back injuries first. So he attend the chiropractor and Dr. Weisner,
13 he starts to perform reasonable I guess -- not reasonable but conservative --
14 that's the word I'm looking for -- what we call conservative modalities. So
15 basically stretching, does some manipulation, things of that nature. And he
16 does that and when Aaron doesn't get better, after about two months he
17 says, you know what, Aaron, you're still having problems in these areas, I
18 think we need to send you off to get some MRIs to see what else is going on
19 here.

20 So he sends Aaron off to get some radiographic testing. And
21 again Aaron's complaining of neck, mid-back, low back, and wrist pain. And
22 so -- and he had already received a neck and brain CT scan. The doctors
23 will tell you the difference between the CT scan versus like an MRI. A CT
24 scan is a better tool to look for a broken bone, whereas an MRI is a better
25 tool to look for discogenic or soft tissue-type injury.

1 So he goes and has some MRIs, and he's had a couple of
2 them, repeats. And the MRIs show that he's got disc protrusions at two
3 levels in his cervical spine and that he's got a disc bulge at one level in
4 [indiscernible], and then he -- in his mid-back he's got a disc protrusion, and
5 then in his lumbar spine it's a little bit complicated because he has a disc
6 bulge with foraminal narrowing. So what that means is that the bulge has
7 caused some narrowing of the hole, okay. So where the nerve root exits it's
8 caused a little bit of a narrowing. And it's -- I believe it's -- the radiologist
9 called it as moderate to severe narrowing.

10 But he also has facet hypertrophy. So what that means is the
11 facet joint is kind of swollen. And those are the findings that the MRI that
12 the radiologist, the trained radiologist, finds and puts on the reports. And the
13 radiologist measures the spine, and you can see the differences in the
14 measurements that are provided, and that's how the radiologist -- they have
15 special tools that kind of, you know, help them to know what the distances
16 and so forth are. That was the -- this is the neck, the cervical spine. You
17 can see it's 1.26, 1.08, 1.12, and then .99, .02, and then .19. And the
18 doctors will tell you, you know, it doesn't seem like that big of a difference,
19 .99 to maybe .26, but when you think of it as a percentage it's, you know,
20 twenty-five percent more narrower, I guess, than the other. So it is more of
21 a significant. Doctors will tell you that. And then also we have 1.04, 1.02,
22 and the .87, so it's almost twenty percent smaller in the lumbar.

23 And the doctors will tell you that a normal healthy disc without
24 any problems, you want it to look like this. You want it to have a -- at the
25 bottom concave, moon, half moon-like shape. That's the shape of a normal

1 disc that's healthy. You have that concavity. When you have a rounded
2 disc like that, that's the bulge. The disc is not in the normal shape like it
3 should be.

4 So now let's talk about the wrist injuries that Mr. Morgan had.
5 So Mr. Morgan was sent out for MRIs of the left wrist and the right wrist. A
6 lot of times in -- the doctors will tell you like a frontal collision, someone's
7 holding onto the steering wheel type of a situation, that can cause this type
8 of an injury. So he has a 3mm by 5mm partial tear of the triangular
9 fibrocartilage complex at the ulnar aspect. That's up here. And then that's
10 the left wrist. And then the right wrist is 5mm by 4.5 partial tear of the same
11 thing. So tears on both sides of the wrists there.

12 And we touched on this a little bit. I want to kind of go into
13 detail now about the purposes of an injection. So the doctors will tell you an
14 injection is kind of like going to the dentist. When you go to the dentist the
15 dentist blows some air on your -- in your mouth if you go there with a
16 toothache, obviously. And if the doctor says: Hey, does that hurt? And if it
17 does hurt then the doctor puts some medication in there, and if it goes numb
18 then the doctor knows, okay, I've got the right nerve root for this toothache,
19 and then they go in there and they do the nerve -- or the root canal, is what
20 it's called. They do the root canal.

21 Sometimes the doctor will come in there, they'll blow the air,
22 you say: Ow, that hurts, and then the doctor puts the medication, comes
23 back in 10 minutes later, blows some more air on there and says: Hey,
24 does that still hurt? If it still hurts then they give you another shot, numb you
25 up a little bit more. And they do that until you're -- you receive, you know,

1 complete numbness. That lets the doctors know what nerves are at issue
2 here.

3 Same thing with injections. Injections are more for diagnostic
4 purposes than they are for therapeutic. That's an injection. That will -- that's
5 different than what we call a rhizotomy, and we'll talk about that in a
6 moment. But an injection, the doctors, based on the clinical presentation,
7 based on their physical examination, based on the MRIs, they kind of have
8 an idea. They have some puzzle pieces of where they think the pain
9 generator is.

10 So what they do in the wrist, the doctor went in there and the
11 doctor injected the wrist with some medication. And if that relieves the pain,
12 then the doctors know, ah-ha, the tear, that's what's causing the problems
13 so we're going to go in there and we're going to repair that.

14 And so Aaron has a couple of injections on his left wrist and one
15 on his right wrist. The injection on his right wrist fortunately actually helped
16 his wrist to heal. It helped to -- it helped him to get better. That's all that he
17 needed. However, on the left wrist, the left wrist continued to have some
18 problems and so he had to have a surgery for the left wrist. And so they go
19 in and they do an arthroscopic TFCC repair. So the doctor goes in there
20 and surgically repairs that tear. And the doctor did that with Aaron and
21 Aaron has received benefit from that.

22 Now, it is undisputed in this case that Aaron hurt his wrists, and
23 there's not an issue that \$40,171 has already been determined. That is not
24 an issue that you folks will even decide. That has already been determined.
25 It's not an issue in the case. What is in dispute are the injuries related to his

1 spine and the severity of those injuries.

2 So, again, when we talk about an injection therapy, the injection
3 therapy is very similar to, you know, like a nerve -- I mean a root canal
4 injection, very similar to say an injection into the shoulder or the knee or
5 what have you. The doctors, if the suspect, okay, I think this is a facet
6 mediated problem, I think the problem is coming from the facet joint, what
7 they do they have a special machine that's called a radiography -- I think
8 that's what it's called, I might be wrong on that. But it's -- the person lays
9 down on a table and there's a big machine. It's like a big seat. And the
10 machine actually goes over and under the person and it shoots x-rays down
11 through the person and it gives the surgeon -- there's actually a video
12 screen and they can in live action see what's going on.

13 So what they do, because you're dealing with the spine they
14 want to be super careful, so they slowly advance the needle, and there's
15 some dye. They'll advance a little bit of dye to give contrast on the machine,
16 and then they'll continue to advance it. Then once they feel like they have
17 the needle exactly where they want it, then they'll inject the medication. And
18 they usually inject two types of medication. They'll inject a -- like a lidocaine.
19 I think it's actually -- I'm not sure if it's lidocaine, but it's a numbing
20 medication. And then they also will inject a steroid to kind of reduce the
21 inflammation.

22 And so the doctors will do that to either the facet joint, the disc
23 through what's a transforaminal injection where they're basically injecting the
24 nerve root. They want to bathe the nerve root with this medication. Or
25 they'll do what's called a medial branch block, where instead of injecting the

1 facet joint itself they'll advance the needle and they will inject the medial
2 branch, that nerve.

3 And so over the course of Aaron's care, Aaron has had a lot of
4 injections. He's had, you know, multiple injections. And Dr. Coppel will talk
5 to you about that. Very first set of injections are kind of a combo of cervical
6 and mid-back injections. The doctor's looking at the -- and Dr. Coppel will
7 tell you, you know, why are you -- what was your thought process with
8 administering these injections? He'll tell you, well, you know, where he's
9 complaining of pain, where the tenderness is, and also the MRI findings.
10 That's kind of where I thought initially they'll start to look here.

11 And then the next procedure is -- he says, you know what,
12 okay, we're going to just focus in on the cervical spine this time. We're not
13 going to do a combo of the cervical and thoracic, we're just going to do the
14 neck. And he kind of moves through and now he's only doing the thoracic
15 spine. He's not doing a combo of the neck and back or neck and mid-back
16 or of just the neck, now he's kind of focusing in on the thoracic. And this --
17 the doctors will tell you it's not like the dentist where the dentist can come
18 back and 15 minutes later do another injection. What they do is they go in
19 there and they selectively pick where they're going to go, they inject the
20 patient, and then they bring them into post-op and post-op will ask him:
21 How you feeling? And they'll give him a pain score and then they follow up
22 with him like a few days later to say, hey, did this help you? Did it not help
23 you? How are you feeling, and so forth.

24 And so it's a little bit slower than going to the dentist where the
25 dentist can come right back in in 15 minutes so you've -- the doctors will tell

1 you it's a process, and sometimes it's -- you're playing Sherlock Holmes.
2 You're trying to figure this out. You're trying to figure out, okay, is this a
3 disc? Is this a facet joint? If it's a facet joint is it the joint or is it the medial
4 branch? If it's a disc is it the nerve root or is it the disc itself? And they 're,
5 you know -- or is this a cervical problem? Well, maybe it's a thoracic
6 problem. So they're trying to figure these things out.

7 And then there's some focus on the lumbar spine, some
8 injections there, and then also some more injections back on the neck. And
9 Dr. Coppel will come in and testify and the issue with the case, the big
10 contention that you'll hear from the Defense, is, hey, look, none of these
11 injections provided a hundred percent relief. Okay. And so because none
12 of the injections provided a hundred percent relief, well, you know, it's, you
13 know, it's too bad for Aaron.

14 And Dr. Muir, Dr. Coppel, Dr. Cash will all come in and testify,
15 look, this is not something that's easy. This sometimes takes some time to
16 figure out and we've -- these are the steps that we've done to try to figure
17 this out for Mr. Morgan. And then the last injection performed was what we
18 call a tessier [phonetic] transforaminal epidural steroid injection.

19 So what was the cause of the problems? What will the doctors
20 tell you? The doctors will tell you pretty simply, look, here you have a young
21 man that was 22 years old at the time of the crash. He's never gone to a
22 single doctor visit for any neck or back problems ever in his life. He gets
23 into this crash, he has the symptomatology, he has the objective findings on
24 the MRIs. He has good relief from the injections, not a hundred percent.
25 Some of the injections provided up to 70% relief. So he has relief, just not a

1 perfect, you know, textbook result. And they will testify that the problems
2 were caused by the crash.

3 You'll hear from Dr. Muir. You'll hear that Dr. Muir he's a
4 physical therapist. He went to physical therapy school at Stanford and then
5 practiced physical therapy for a few years, then decide, you know what, I
6 want to go back and I want to be a surgeon. So he goes back to medical
7 school and becomes a surgeon. He's spine fellowship trained. You'll hear
8 the significance from them of what that means, what it means to be spine
9 fellowship trained, what it means to actually perform surgeries and what's
10 involved in getting privileges at hospitals. I believe Dr. Muir currently or has
11 been recently the director of orthopedic spine surgery at Summerlin
12 Hospital. I think he's that -- currently that's his position right now.

13 Dr. Cash, you'll hear from Dr. Cash who is also a board certified
14 orthopedic surgeon. He went to the University of North Carolina School of
15 Medicine. He is also spine fellowship trained in spine surgery, and he has --
16 he routinely performs neck, mid-back, low back surgeries.

17 You're also going to hear from Dr. Coppel. Dr. Coppel went to
18 Johns Hopkins School of Medicine. He is triple board certified, so he has
19 actually -- I think -- I'm not a hundred percent, we'll ask him, but I think he
20 might be the only person in the Valley that has these three particular board
21 certifications. But it's in pain management, anesthesiology, addiction
22 medicine. And Dr. Coppel routinely performs injections of both the neck and
23 back as well as what we call rhizotomy procedures.

24 So in this case you're going to hear from Dr. Muir. Dr. Muir is
25 going to talk about what's called a life care plan. It's a projected forecast of

1 issues that Mr. Morgan will face down the road. And Dr. Muir will tell you
2 what that treatment entails and explain to you why he believes that Aaron
3 will be required to have that treatment. That treatment, the -- you know,
4 Aaron, at the time of this accident, was 22 years old. You'll also at the end
5 of this you'll hear from Dr. Muir about the life expectancy of Mr. Morgan and
6 how long he's going to live and so forth. This life care plan is to care for
7 Aaron well into the future, not just a year from now, not two years from now,
8 but 10 years from now. And we'll talk about that. Dr. Muir will talk about the
9 treatment protocol.

10 The total damages in the case -- and keep in mind you're going
11 to hear this is the evidence. The wrist surgery, that is not at issue. That's
12 already been determined.

13 MR. GARDNER: I want to object. Make sure there's an
14 objection on the record about the wrist, medicals and --

15 THE COURT: Counsel, approach.

16 [Bench conference begins at 11:35 a.m.]

17 MR. GARDNER: I'm sorry.

18 THE COURT: It's all right.

19 MR. GARDNER: I just want to make sure the record
20 [indiscernible] potential of an appeal regarding that motion in limine that was
21 [indiscernible] regarding the doctor. And that's all I wanted to do. That's all I
22 was going to say is I objected and move on.

23 MR. CLOWARD: If the record's been made then --

24 THE COURT: All right. Okay.

25 MR. RANDS: We'll do it off the record out of the presence of

1 the jury.

2 THE COURT: That's fine. We can make a make a more
3 thorough record then.

4 MR. CLOWARD: Thank you.

5 [Bench conference ends at 11:36 a.m.]

6 MR. CLOWARD: So, again, Ladies and Gentlemen, there is no
7 dispute regarding the wrist. That is not an issue you will be asked to
8 determine. And the total damages for the treatment that Mr. Morgan
9 received in this case up to date is \$173,459.60. Now, that is the past
10 medical bills. That's not to be confused with the future medical bills that Dr.
11 Muir will come and talk about. Now, the amount of the futures plus the past
12 is \$1,528,880.60. And you will be asked to evaluate in the case the
13 necessity of the treatment.

14 And the thing that's really neat about Nevada courtrooms,
15 individuals can ask questions, okay. So if you have questions of the
16 witnesses, write them down and they'll answer them right there on the stand.
17 So you guys can ask those questions and that's really your role is to
18 determine what injuries this accident caused.

19 And then the pain and suffering damages, you know, that's a
20 little bit more difficult. We'll wait to talk about that one in closing arguments
21 when you actually have the law read to you from the Judge on that.

22 So the only thing I would I guess just ask you to remember is
23 the standards that we talked about. And the purpose of trial is to find the
24 truth, so if you're not clear on something please go ahead and ask the
25 question because a lot of times the lawyers don't ask all the questions. We

1 try to get it right, but we don't. So thank you very much. Appreciate it.

2 THE COURT: Thank you, Mr. Cloward. Mr. Gardner.

3 MR. GARDNER: May I have the Court's indulgence for five
4 minutes? I'm trying to determine whether I want to waive my opening and
5 [indiscernible] case.

6 THE COURT: All right. So --

7 MR. GARDNER: I'm not doing that, I've just got to look at a
8 couple slides.

9 THE COURT: Do you want me to -- so why don't we just take
10 like a five-minute break.

11 During this break, you are admonished not to talk or converse
12 among yourselves or with anyone else on any subject connected with this
13 trial, read, watch or listen to any report of or commentary on the trial or any
14 person connected with this trial by any medium of information including,
15 without limitation, newspapers, television, the Internet and radio, or form or
16 express any opinion on any subject connected with the trial until the case is
17 finally submitted to you. I will remind you again not to do any independent
18 research. Don't go too far. I think we'll probably come back in about five
19 minutes.

20 THE MARSHAL: Please rise for the jury.

21 [Jury exits courtroom.]

22 [Recess taken at 11:39 a.m. and resumes at 11:46 a.m.]

23 THE COURT: I also need to talk to you just about a couple
24 things before we bring the jury back in and excuse them for lunch. Are any
25 of the exhibits stipulated to? Since both of you have done trials in here

1 recently I kind of skipped over a couple things I normally do in the beginning.
2 Are any of the exhibits stipulated to?

3 MR. GARDNER: I don't think -- you know what, we probably
4 could.

5 MR. CLOWARD: I don't think we stipulated to any exhibits, but
6 Mr. Gardner and I are in agreement that anything that I -- I told him what I
7 was going to the Judge.

8 THE COURT: All right. I know, but can I admit any of the
9 exhibits now? No? No? All right.

10 MR. CLOWARD: No. [Indiscernible] doesn't want to.

11 THE COURT: And then are -- is either side invoking the
12 exclusionary rule? We really haven't had anyone in here to exclude, but...

13 MR. CLOWARD: I don't --

14 MR. GARDNER: You know what? I think we ought to make
15 that decision based upon who's here. For example, Muir is coming up right
16 now. We're not going to have our doctor here watching him or anything else
17 like that, our loser of a doctor, Sanders, who doesn't know crap. So I'm
18 thinking that --

19 MR. CLOWARD: He told me I needed counseling one time,
20 Dr. Sanders did. He literally off the record he said: You need some
21 counseling.

22 MR. GARDNER: Oh, boy.

23 THE COURT: That's nice. Well, I'm looking forward to this
24 now.

25 MR. GARDNER: Yeah.

1 THE COURT: So, all right. Well, I mean, I think the experts --
2 MR. GARDNER: I am, too, now.
3 THE COURT: The experts are, you know, entitled to watch the
4 other experts. To the extent I think we really only have --
5 MR. CLOWARD: We've made up by then, Judge. I don't
6 anticipate --
7 THE COURT: Yeah, I know. I know. All right. So just let me
8 know. I mean, we have Mr. Morgan's mom?
9 MR. RANDS: Why don't we just invoke the exclusionary rule
10 and --
11 MR. CLOWARD: That's fine.
12 MR. GARDNER: Yeah.
13 MR. RANDS: -- and leave it to the parties to do it.
14 MR. GARDNER: Sure thing.
15 THE COURT: All right. So we'll invoke the exclusionary rule. If
16 you want to have somebody come in, just let me know and we can address
17 it at that time.
18 THE CLOWARD: No problem, Judge, thank you.
19 THE COURT: Okay. Let's bring them back in so we can
20 excuse them for lunch. Actually, you know what, let's just -- instead of
21 bringing them back in, let's just tell them to come back at 1:00. Does that
22 work?
23 MR. GARDNER: Okay.
24 THE MARSHAL: You're already given them the admonishment,
25 so...

1 THE COURT: Yeah. Yeah. So we'll just do it that way.
2 THE MARSHAL: Okay.
3 [Court, Counsel, and Marshal confer]
4 [Recess at 11:51 a.m., recommencing at 1:05 p.m.]
5 [Jury in at 1:05 p.m.]
6 THE MARSHAL: Please be seated.
7 THE COURT: All right. Back on the record in case number
8 A718679, Morgan versus Lujan. Let the record reflect the presence of all of
9 our jurors, Counsel.
10 MR. GARDNER: Yes, Your Honor.
11 MR. CLOWARD: Yes, Your Honor.
12 THE COURT: All right. So, Mr. Gardner, I understand that the
13 Defense is going to defer their opening until the Defense presents its case in
14 chief?
15 MR. GARDNER: That is correct, Your Honor. Thank you.
16 THE COURT: And, Mr. Cloward, please call your first witness.
17 MR. CLOWARD: The Plaintiff calls William -- Dr. William Muir.
18 THE MARSHAL: Right this way, Doctor.
19 THE COURT: Sir, come on up.
20 THE MARSHAL: Remain standing. Raise your right hand, face
21 the Clerk to be sworn in, please.
22 [Oath administered]
23 THE WITNESS: I do.
24 THE CLERK: Thank you.
25 THE COURT: Good afternoon, sir.

1 THE WITNESS: Good afternoon.

2 THE COURT: Go ahead and have a seat.

3 THE WITNESS: Thank you. Thank you, sir.

4 THE MARSHAL: You're welcome.

5 WILLIAM MUIR, M.D.

6 [having been called as witness and being duly sworn testified as follows:]

7 THE COURT: If you could please state your name and then
8 spell it for the record.

9 THE WITNESS: Certainly. William Muir, M-U-I-R, M.D.

10 THE COURT: Thank you.

11 Mr. Cloward, whenever you are ready.

12 MR. CLOWARD: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 BY MR. CLOWARD:

15 Q Dr. Muir, how are you doing today?

16 A I'm doing fine, thank you.

17 Q Okay, good. Let me just grab one other thing.

18 So, Dr. Muir, can you I guess just tell the jurors, before we get
19 into the treatment that you've rendered, can you explain to us a little bit of
20 your educational background. My understanding is you're a physician.

21 A Yes. My undergraduate study was at Brigham Young
22 University, then I went to Stanford University in California and obtained a
23 master's in physical therapy. I came here in the mid '70s and practiced
24 physical therapy in the Las Vegas area for a number of years. And then I
25 went to medical school at the University of Nevada School of Medicine. On

1 completion of my M.D. degree, I went to Phoenix, Arizona for my internship
2 and orthopedic residency program, which is five years. Then I went to North
3 Carolina for a spine fellowship and that was completed in -- around 1991,
4 1992. I went to Salt Lake City, practiced at the Spine Institute there and
5 where I practiced spine surgery, also did pain management as well.

6 I moved here in 2005 and I'm a solo practitioner at Summerlin
7 Hospital where I am the -- I have been the chief of orthopedic surgery and
8 chief of spine surgery for the last six years. My practice is limited to the
9 spine. Upon completion of my training as a spine fellowship-trained
10 orthopedic spine surgeon I did not do general orthopedics. The practice has
11 been limited to this, the spine, and I am board certified and recertified in
12 orthopedic surgery.

13 Q Okay. Now, Doctor, can you tell us is there any significance to
14 having a spine fellowship?

15 A Yes. An orthopedic residency program typically you'll get four
16 months, maybe six months of spine. The rest is in pediatric orthopedics,
17 trauma, different areas, total joints and hips. You get only a small portion of
18 training in the spine. So we have spine fellowships where it's dedicated just
19 to the spine with experts in the country that do nothing but spine so that it's
20 -- so you get that training necessary to do spine surgery. I'm not sure any
21 general orthopedic surgeons nowadays would do spine surgery unless
22 they're board -- unless they're -- they have a fellowship in spine.

23 Q Okay. Now, one thing I wanted to I guess ask about were
24 hospital privileges. You talked about Summerlin Hospital. You're the chief
25 there of the spine surgery department?

1 A I'm chief of spine surgery and chief of orthopedic surgery at
2 Summerlin Hospital, have been for about six years.

3 Q Okay. Now, does that mean that you could go in there and
4 perform any orthopedic surgery you wanted or do you still have to have
5 privileges, say, for instance, to do a specific type of a surgery?

6 A No. I -- you have to have privileges to do a specific surgery. If
7 someone wants to do a spine surgery, they have to have evidence that
8 they've had special training, that they've done a number of those cases, and
9 that they haven't had problems. And I review those, and if that's the case
10 then I'll sign them off. But if I wanted to do a total hip surgery today, even
11 though I'm chief of orthopedic surgery at Summerlin, I can't do that because
12 the last one I did was 27, 28 years ago.

13 Q Okay. And that's a way, I guess, to ensure that the most
14 qualified individuals are doing the surgeries that they're familiar with?

15 A Yes.

16 Q Okay. Now, my understanding is, Doctor, that you have
17 privileges to perform surgery on both the neck and the low back and other
18 parts of the spine; is that correct?

19 A Yes.

20 Q Okay. Doctor, can you just give us a brief estimate, if you can,
21 if you can't that's okay too, but of how many spinal surgeries you've been
22 involved in? That can be, you know, at any level of the neck -- or I mean of
23 the spine, neck, mid-back, low back, so forth

24 A I haven't counted the numbers, but over the -- my career,
25 probably typically six spinal surgeries a week, more lately I'm 66 now, so it's

1 more like three or four now a week

2 Q Okay. And that's been pretty consistent over the course of your
3 career?

4 A Yes, as well as pain management injections.

5 Q Okay. So you perform pain management injections as well?

6 A Yes. When I had my spine fellowship there was no such thing
7 as pain management physicians, and I was training in injections of the spine
8 and I continued to do those, and have done that for more than 25 years.

9 Q Okay. So fair to say the pain management field is a relatively
10 new in comparison field to maybe other practices?

11 A Yes.

12 Q Okay.

13 A Definitely

14 Q All right. So, Doctor, before we get into the I guess the specific
15 treatment of this case, what I want to do is spend a moment and just discuss
16 the basic kind of foundation of the spine and maybe some education about
17 the spine and help us to understand how the spine works and some of the
18 things that can be painful in the spine. So if you don't mind kind of walking
19 us through the spine and help us to understand, that would be great.

20 A Certainly. And I'll try to keep it relevant for this particular case.

21 Q Dr. Muir, I do have a small, little model if that would be helpful to
22 you to --

23 A It may be helpful so I could point that out to the jurors what
24 we're talking about.

25 MR. CLOWARD: Your Honor, may I approach the witness?

1 THE COURT: Go head. Yeah.

2 MR. CLOWARD: Okay.

3 THE WITNESS: May I get up?

4 THE COURT: Sure.

5 THE WITNESS: Thank you. Okay. I'll try to keep this to three,

6 four minutes. This is a model of the lower lumbar spine. The patient has a

7 problem in the lower lumbar spine as well as the neck. The neck is fairly

8 similar, but it's just smaller.

9 When patients have pain that lasts for more than a year or two

10 in the neck or low back, the pain almost always is coming from the joints or

11 the discs. The discs are the shock absorbers between the bones. The

12 joints are where the bones come together. And if I can rock that back and

13 forth, you see a little bit of motion right there. It's like shingles on a roof that

14 slide on the top of each other and that has cartilage and it has -- and it's

15 innervated, so it's a -- just like your knee is innervated, your shoulder, the

16 joints are innervated. So if you have damage to those joints, that can cause

17 pain.

18 BY MR. CLOWARD:

19 Q Just really quickly, what is the name of that joint? Is there a

20 specific medical name or a term that those are called?

21 A We call them facet joints.

22 Q Okay.

23 A Pophyseal or zygomatoid. Pophyseal is more a technical term,

24 but they're called the facet joints.

25 Q Okay. Thank you, Doctor. You may continue.

1 A Okay. And the type of patient -- the disc problem the patient
2 has is one where there's damage to the disc, not where there's disc is hitting
3 a nerve causing leg pain. It's one where there's damage to this rubber
4 bushing. And there's little nerves that innervate the -- this disc in the outer
5 portion, and so when that's damaged it causes irritation, both mechanical
6 and a chemical irritation to those little tiny nerves and causes back pain.

7 With the joints, they will refer pain in a certain pattern. But the
8 key is to figure out of all these discs, the lumbar and the seven in the neck,
9 with all the joints, two on each side, where the pain is coming from. Once
10 we know where the pain is coming from, then we can be a little more exact
11 on treatment options if the pain continues.

12 Q And, Dr. Muir, one thing that I discussed in the opening
13 statement was I guess a referral pattern. Do the facets have a specific
14 pattern that will kind of let the physicians know sometimes, hey, this is
15 where the problem is or give them a little bit of an idea?

16 A Well, if the pain is predominantly on one side, like the patient's
17 neck pain is predominantly on the right side, that helps to eliminate the left
18 side as the major source of the pain.

19 In the low back, in these joints, patient did have an injection
20 which indicated it wasn't the low back joints, but they would tend to refer
21 pain in a number of different areas and not a specific area. In the cervical
22 spine, it's a little more specific, but there's still overlap.

23 Q Before we get to that, what I want to do, we'll keep on the
24 lumbar. I want to just show you a diagram here. It's kind of a demonstrative
25 diagram. And can we get the ELMO on?

1 THE COURT: It's on.

2 MR. CLOWARD: It's on? Let's see here. Or I just don't know

3 how to work it.

4 [Counsel, Clerk, and Marshal confer]

5 THE COURT: Doctor, if you would like to have a seat you'll be

6 able to see that from up here --

7 THE WITNESS: Certainly.

8 THE COURT: -- and you can actually write on the one up here.

9 THE WITNESS: Thank you.

10 [Pause]

11 MR. CLOWARD: Your Honor, I can just hold it up, if that'd be

12 easier. Can I have the doctor come back off the stand?

13 THE COURT: I think the jurors will be able to see it. Can you --

14 just take a second and get it straightened out. It'll be fine.

15 [Pause]

16 BY MR. CLOWARD:

17 Q Okay. Doctor, this is an article download off of *Anesthesiology*

18 journal. It shows some diagrams here of the lumbar facets, the pain referral

19 patterns. Can you I guess explain to the jurors just very basically the pain

20 that can -- the facet in the lumbar spine can cause, and then we're going to

21 switch over to the cervical spine and then we're going to talk about disc

22 issues. So let's focus in here on the lumbar facet.

23 A All right. It -- if you had a problem in your hand and you say it

24 hurt there, that's where the problem's going to be, right there. Not over

25 here, not over there, it's right where you point to where the problem is. In

1 the low back it's not that simple because the body, the brain will interpret
2 where the problem is and it interprets it in a broad area. And so when it's a
3 joint problem in the low back, it's not where -- exactly where the patient feels
4 the pain. It often causes pain down -- can cause pain down the back of the
5 legs and actually any of the areas that I've circled there, it can cause pain in
6 those areas.

7 Q Okay. So that's when we're talking about the facet joint. Now,
8 using this diagram I guess, can you just explain what type of pain a patient
9 could experience if they had a discogenic pain generator, where they also
10 experience pain in those same areas?

11 A It's the same areas.

12 Q Okay. Does that often cause confusion? Can that cause
13 confusion in -- for doctors to try and figure things out?

14 A It is. And often we want to know where the problem is if the
15 problem persists, such as in this situation. And we can do that by
16 examination by the patient's symptoms that they have and by responses to
17 injections.

18 Q Okay.

19 A Typically an MRI scan is not very helpful for this type of a disc
20 problem, and certainly rarely is helpful for this type of a joint problem.

21 Q Okay. Now, what I'd like to do is I'd like to show another
22 diagram of the cervical facets and have you talk about that a little bit, same
23 kind of principle.

24 MR. CLOWARD: And is there a way to clear that off of the
25 screen?

1 MR. RANDS: You've got to make sure that your diagram
2 corresponds with it.

3 [Pause]

4 BY MR. CLOWARD:

5 Q Now, Doctor, this is an individual by the name of Nikolai
6 Bogduk, who I believe is the president of ISI, Interventional Spine
7 International Society. And this is the *Physician Medicine and Rehabilitation*
8 *Clinic of North America* journal. This is a diagram. Does this show -- and
9 it's not coming up super clear, the [indiscernible] on this, but that's the --
10 what the diagram shows. Draw that in a little bit because it's not coming up
11 super clear. But is that a -- I guess a distribution pattern of what a patient
12 could experience if they had a cervical facet problem?

13 A Yes. The one on the right here -- it didn't correspond. The C5-6
14 would be what's on the right side.

15 Q Okay.

16 A In other words, the 5-6 joint is in the middle lower portion of the
17 neck, but the pain goes from that area down into the upper scapular area
18 into this area, and the 6-7 level goes down further down the back. So with --
19 people with joint problems often at 5-6 or 6-7 they're going to have pain in
20 the thoracic region, so you have to figure out whether that's a separate
21 problem of the thoracic region or whether that's coming from the neck.

22 Q Okay. And staying focused on the neck, can a problem with an
23 individual's disc cause pain in those similar areas?

24 A Yes.

25 Q Okay. And specifically in regard to the 6-7 distribution here -- I

1 guess draw that on that there -- can an individual have a damaged thoracic
2 spine that can also cause pain into that distribution?

3 A Yes.

4 Q Okay. And does that complicate things somewhat?

5 A It does, but through injections we can get a better idea whether
6 that pain in the thoracic area in the upper scapula area whether that's from
7 the neck or the low back. If someone has with extension of the neck if that
8 hurts the most, as it did in this patient, that's an indication of a joint problem.
9 And when they do that, if it causes pain in that area that's an indication that
10 it's a referred type of pain. And then if one would have injections, you can
11 help rule out whether there's a separate problem in that scapular region or
12 whether it's coming from the neck.

13 Q Okay. And now we'll kind of shift to Mr. Morgan and the
14 treatment and care in his case. What were some of the complaints that he
15 had? Where was he I guess complaining of pain or to -- I guess we'll go
16 through this in a systematic way. But let's talk about the neck and then we'll
17 kind of shift and we'll talk about the back next. But let's stay focused here
18 on the neck while we're here.

19 A Well, the neck again is predominantly on the right side, which
20 would indicate more of a facet type of a problem than a disc problem. He
21 had more pain with extension and flexion, which would indicate more of a
22 joint problem. He had complaints of a sharp type of pain with certain
23 movements, and that's consistent with a joint problem as opposed to a disc
24 problem, which is more of an aching type of a pain. Those are the major
25 complaints and findings on examination. Also he had pain with moving

1 towards the right side, which jams the joint together and indicates a problem
2 with the joint on that side as well.

3 Q Now, was there -- were there any sort of diagnostic testing, not
4 talking about the injections, but radiographic testing performed like an MRI,
5 CT scan, x-ray, anything along those lines that kind of shed light on what
6 was causing the problems?

7 A It's documented regarding a joint problem that MRI scans and
8 CT scans are not very helpful. The patient did have a CT scan when he first
9 came into the hospital because he hit his head, he had some complaints of
10 the neck pain, they wanted to rule out fractures. CT scans are very good to
11 rule out any fractures or any bleeds into that area.

12 Subsequently, he had an MRI scan that showed multiple I'd call
13 relatively common changes in the MRI scan, nothing that you could put your
14 finger on and say, ah-ha, this is where the problem is, neither in the neck or
15 the low back. There's changes in a number of the discs, there were
16 changes in a number of the joints.

17 On x-rays, bending forwards and backwards it showed a 4mm
18 slip at C5-C6 level, and this is considered to be borderline hypermobile or
19 unstable when you have that much of a shift at a particular level. And I'm
20 not saying that that shift was caused by the accident or it may have been
21 pre-existing and just predisposed him to have problems at that level. It
22 could have been -- certainly could have been an asymptomatic finding
23 before, but it's one level that's loose. So when you're involved in a car
24 accident you're going to have more motion at that level and a greater
25 chance to have trauma at that particular level, and that's at the C5-6 level.

1 Q Okay. And I'm going to ask a question that's somewhat not
2 sequential, a little bit out of order, but I want to ask it while you brought up
3 this point. What does it mean to be asymptomatic versus symptomatic?

4 A Symptomatic means you have complaints. You have
5 symptoms, complaints. Asymptomatic means without complaints. For
6 example, everybody that's sitting there in the jury if you had an MRI scan of
7 your neck or back you'd find some disc bulges, some arthritic changes in the
8 joints, but the vast majority of you have no pain in those areas. Those are
9 asymptomatic findings.

10 Q Okay.

11 A Asymptomatic would be if you have some changes and you
12 have pain.

13 Q Okay. So basically pain or no pain; is that fair?

14 A Yes.

15 Q Okay. Now, while we're talking about that, are you aware of
16 any prior treatment, any prior history whatsoever of neck pain, back pain, or
17 low -- mid-back pain, low back pain that Mr. Morgan had before this crash?

18 A In the medical records, and I'm referencing Dr. Cash, he
19 indicated that there was a motor vehicle accident 10 years before this one
20 but had -- patient had no residual problems.

21 Q Okay.

22 A There's no other details other than that.

23 Q Okay.

24 A But he had not further problems.

25 Q And have you -- and I guess regarding that, are you aware of

1 whether he even treated for that or not?

2 A I don't know anything of it.

3 Q Okay. And you've -- it's my understanding you've been an
4 expert witness for both the plaintiff and the defense, right?

5 A I have.

6 Q And are you provided records that are -- I guess would help one
7 side or another? Like, say, for instance, if you're retained by the defense
8 where they provide you with certain records regarding a matter that they felt
9 like was important?

10 A Typically yes.

11 Q Okay. And obviously I don't know if Mr. -- if you ever worked
12 with Mr. Gardner, he's a fine lawyer, but to your knowledge has there been
13 any record of any treatment ever provided showing any history of neck,
14 back, or low back problems with Mr. Morgan?

15 A No.

16 Q Okay. So now let's move on to -- get back to the neck. So you
17 were talking about these -- the findings in the neck and you talk about the
18 hypermobility. And I guess what was your initial opinion as far as what was
19 causing the problems that he was having in his neck and what treatment did
20 you render?

21 A Well, I was most suspicious of the cervical facet joints. And in
22 my records you'll see sometimes I'll talk about certain levels and other times
23 other levels, depending on information that was provided to me. But it's like
24 a big puzzle, lots of pieces of the puzzle. If you look at one piece of the
25 puzzle it can become confusing. If you have all the pieces of the puzzle laid

1 out it becomes more clear where the patient's problem is. And as time went
2 on and we obtained information from different injections, the major source of
3 the pain became more clear.

4 Q Okay. And you had a chance to review all of the records in this
5 case?

6 A Yes.

7 Q Okay. So, Dr. Muir, just as a foundational question, I'd like to
8 go through and discuss the records that you reviewed in this matter. Okay?

9 A Yes.

10 Q Have you got a list of those or --

11 A I do.

12 Q Okay. If you could help me with those then and just let me
13 know all the records, if you'd just read them off what you --

14 A Traffic accident report, MedicWest Ambulance, Sunrise Hospital
15 Medical Center, Urgent Care, Grabow Hand and Shoulder Center, Nevada
16 Pain -- sorry, Nevada Comprehensive Pain Center, Las Vegas Valley
17 Chiropractic, Las Vegas Radiology, obviously my records, Pay Later
18 Pharmacy, Nevada Comprehensive Pain Center Surgical Suites, Advanced
19 Spine and Rehabilitation, Southern Hills Hospital, colored photographs of
20 the vehicles, records of Steven Brown, and expert -- defense expert reports,
21 Andrew Cash.

22 Q When you say expert report, Andrew Cash, that's -- he wasn't a
23 defense expert, right?

24 A No.

25 Q He -- that was a second record that you reviewed; is that

1 accurate?

2 A Yes. He's a local orthopedic spine surgeon like myself.

3 Q Okay. Do you recall the name of the defense expert that -- his
4 report that you reviewed?

5 A Steven Sanders.

6 Q Okay. Now, what I want to do is I guess talk about kind of the
7 treatment of a problem such as the one that Mr. Morgan presented to you
8 with and ask you I guess to help us understand how you go about treating
9 something -- a patient when they have symptoms in their neck. What is the,
10 you know, what do you do for folks?

11 A You try to treat a problem the most conservative way possible,
12 which is give them time to heal, provide medications so they're more
13 comfortable, physical therapy or chiropractic treatment. Then if they don't
14 improve, then typically what's done are what we call selective injections,
15 injections focused in a particular area, for two reasons: One, to help figure
16 out or confirm or rule out where the major source of the pain is coming from.
17 Also for potential therapeutic response, because injections, unlike the ones
18 that the patient had which were medial branch block injections, injections
19 can provide a -- can provide help for three months or so. Up to three
20 months. If a patient does not respond to time, conservative care, the things
21 we talked about, then often surgery is considered, depending on their
22 particular problem.

23 Q Doctor, are there any sort of a maybe red flags that you might
24 during the course of treatment that, you know, you might be on the lookout
25 for to determine whether somebody's actually hurt or whether they're, you

1 know, not hurt?

2 A Yes. In addition to have a sense as a physician treating
3 patients whether they're being accurate or not, we will do a test that's called
4 the Waddell's test and it's certain physical examination maneuvers, but the
5 patient really doesn't know why you're doing those. And depending on the
6 response, we can figure out whether the patient is being honest, whether
7 they're exaggerating their problem, whether they have any significant
8 psychological factors that are affecting their medical condition. And the
9 patient did not.

10 Q When you say the patient did not, meaning the patient did not
11 exhibit any of those signs that you'd be concerned about?

12 A Yes.

13 Q Okay. So although you performed some injections, you have a
14 practice that you perform those as well?

15 A Yes.

16 Q You also -- do you also work with pain management physicians
17 throughout the Valley?

18 A Yes.

19 Q Do they refer you cases as the spine surgeon?

20 A Yes.

21 Q And my understanding is there was a Dr. Coppel involved in the
22 care of Mr. Morgan?

23 A Yes.

24 Q Okay. Now, can you explain I guess how a physician such as
25 yourself, a surgeon, a spine surgeon, would work with a pain management

1 physician to try and figure out what was the source or the generator of an
2 individual's pain?

3 A Yes. If one is suspicious of a disc problem, then there is an
4 injection called a transforaminal epidural injection. If one is suspicious of a
5 joint problem, then either a medial branch block injection or a facet injection
6 is done. In this particular case, medial branch block injections were done.

7 Q Okay. And what levels for the first procedure back in August of
8 2014, what levels were performed?

9 A Well, half of C5-6, C6-7, and C7-T1 and -- were done.

10 Q Okay.

11 A On those on 8/8/14.

12 Q Now, were there radiographic findings, meaning were there
13 findings on the MRIs at those levels in the cervical and the thoracic spine
14 that would not, you know, give a for sure, hey, that's where the problem is,
15 but at least support a physician wanting to go in and do an injection at those
16 levels?

17 A Well, as mentioned, a CT scan or MRI scan typically is not very
18 helpful in pinpointing where a joint problem is. It's more by examination and
19 by ruling out or ruling in the level through an injection.

20 Q Okay. Were there examination findings of those areas of the
21 facet that would suggest, hey, those are problems, those are probably
22 causing some pain, we probably want to go in and try and isolate that?

23 A Yes. The upper levels of the neck don't refer patterns down into
24 the scapular region, as we saw on that initial diagram.

25 Q When you say upper levels, you're talking about like C1, C2,

1 C3?

2 A And C4 will just get the very top of the scapula. But the patient
3 was having pain down into the central mid portion of the scapula, which is
4 consistent with a C5-6 and C6-7 levels. So his symptoms were most
5 consistent with those levels.

6 Q And what type of benefit, if any, did Mr. Morgan have from the
7 injections that were performed on 8/8/2014?

8 A Again, these were -- there's two types of injections you can
9 have for a joint. One's the medial branch block, which was done in this
10 particular case. The advantage of that injection, it's considered more
11 diagnostic and more accurate in figuring out whether those levels are
12 involved or not as opposed to just putting it into the joint.

13 For me, a disadvantage is that even though Dr. Coppel puts a
14 little steroid in those little nerves before they come in the joint, there's really
15 nothing going into that joint. So often a medial branch block injection is not
16 as therapeutic. It's more of a -- it's considered nowadays more of a
17 diagnostic injection rather than a therapeutic injection. So the patient really
18 didn't have much of a therapeutic benefit from any of the medial branch
19 block injections, which is expected with that type of an injection.

20 Q Okay. With an analogy kind of similar using the, you know,
21 when you go to the dentist that, yeah, the dentist can inject your hurt tooth
22 and put some numbing medication on there, but, you know, a few hours
23 later your toothache is going to come back unless they actually do the nerve
24 root -- or I mean -- nerve -- root canal. I keep getting those two mixed up.
25 The root canal. Is that kind a similar kind of analogy?

1 A It'd be similar. If you had three teeth and you didn't know which
2 one's causing the pain, you could inject one after the other to see which
3 level is the problem. So the level that you inject -- if you inject to the wrong
4 side of the jaw it's not going to block the pain for a couple of hours. But if
5 you inject next to the bad tooth for a couple hours, even if you don't treat it, it
6 will feel better. At least you helped identify where the problem's coming
7 from.

8 Q But I guess the point I was trying to make -- it was a terrible
9 question. But the injection is not how you treat that. It gives you some
10 diagnostic benefit but not a therapeutic long-term -- it's not going to solve
11 your problem.

12 A No injection will alter the outcome. Even when we have
13 successful injections that they help three months, they can give you
14 temporary relief but they won't fix the problem.

15 Q Okay. Now, so there was some diagnostic value of that
16 injection but it did not provide long-term relief; is that fair?

17 A Yeah. The pain went from seven out of ten before the injection
18 to three out of ten immediately afterwards.

19 Q Okay.

20 A And the significance of that, if you have a drop in fifty percent of
21 the pain, then that indicates that those structures that you injected are
22 probably the major source, not necessarily the only source, but the major
23 source where the pain and the symptoms are coming from.

24 Q Okay. Now, it's my understanding that there was some -- there
25 were some additional injections after that on -- the next procedure that I

1 show is on 3/20 of '15. Is that the next procedure that you show?

2 A Yes.

3 Q And what procedure was that, Dr. Muir?

4 A These were again medial branch block injections for the C3-4
5 level, the 4-5 level, and the 5-6 level and half of the 7th level on the right
6 side.

7 Q Now, were there any thoracic or T-level injections on that visit?

8 A There were some thoracic injections that didn't provide much
9 information as far as diagnostic information, whether that's the source of the
10 pain, there's no support that the patient had source of pain, and they were
11 not very therapeutic.

12 Q Now, that was the next injection. What I mean is on that
13 specific visit, the 3/20/15 visit, other than the cervical injections were there
14 any other levels that were done?

15 A None that I recall other than those levels that I stated.

16 Q Okay. And then fast forward a few months until August 28th,
17 and I think that's the -- those are the ones you're referring to where it was
18 just the thoracic, not the cervical, now it's just focusing on the thoracic.

19 A Yes.

20 Q And those were the ones that provided no benefit you talked
21 about?

22 A As I mentioned, the patient had pain into the thoracic region and
23 this helped identify that the patient -- the problem wasn't coming from the
24 thoracic spine itself but more likely from the neck.

25 Q Okay. And I believe on those injections he only had -- Mr.

1 Morgan only had about a twenty percent benefit?

2 A Right. And that's not diagnostic. You need to have at least fifty
3 percent change.

4 Q Okay. Thank you, Dr. Muir. Now, what I'd like to do, so we've
5 kind of covered the injections to the cervical, the thoracic --

6 A There was one more.

7 Q Oh, sorry. When was that? What was the --

8 A 5/19/16.

9 Q Okay. Let's hit that while we're here and then we'll shift onto
10 the lumbar.

11 A That was on the right side again.

12 Q Okay.

13 A For the C5-6 and C6-7 joint, so it was more specific, just those
14 two joints, and it was the best response. The pain went from a seven out of
15 ten down to a two out of ten. And that indicates that the major pain
16 generator is coming from the 5-6 and/or C6-7 level and which corresponds
17 to the injection that he had before which covered half of the 5-6 and all the
18 C6-7 level.

19 Q Okay.

20 A But wasn't quite as diagnostic.

21 Q So after -- and was that the only injection in the neck?

22 A Those were the only injections in the neck, yes.

23 Q Okay. So after I guess having the chance to review everything
24 and take a look at the entire picture, as you sit here today what is the -- what
25 is your opinion as to the pain generator that is causing Mr. Morgan's

1 symptomatology in the cervical region that, you know, kind of the scapular
2 area?

3 A The C5-6 and/or C6-7 facet joints on the right.

4 Q Okay. And you could state that to a reasonable degree of
5 medical probability on a more likely than not basis?

6 A Absolutely.

7 Q All right. And before I move on, that's normally a question I ask
8 at the first of all the examination, but I would just ask that all of your opinions
9 be to a reasonable degree of medical probability on a more likely than not
10 basis. And if you cannot give an opinion to that standard, please just let me
11 know. Is that fair?

12 A I will.

13 Q Okay. Now, let's shift the focus and the attention to the lumbar
14 spine. Dr. Muir, can you walk us through a little bit of I guess the treatment
15 that Mr. Morgan had in that area?

16 A Yes. The low back was problematic. His pain was about five
17 out of ten. The neck was worse. So we were focusing more on the neck
18 than the low back and hoping that the low back would go away with time,
19 which it did not.

20 The patient on October 16, 2015, underwent these medial
21 branch block injections which are to help identify whether it's a joint problem,
22 and these were done for the bottom three levels of the lumbar spine. And
23 they did not block the patient's pain, indicating that more likely than not the
24 pain is not coming from the joints.

25 And as I mentioned, if you have a chronic back pain for more

1 than a year or two, almost always is either going to be the joints or the discs.
2 And so if it's not the joints then it's going to be the discs of the lower lumbar
3 spine.

4 Q Okay. Now, was there another injection that was performed
5 earlier this year for the lumbar spine?

6 A There was one for the two bottom discs at L4-S1 on March 10th
7 of this year. I never was able to see the response to the injection though.

8 Q Okay. And we can certainly have Dr. Coppel address that.
9 Dr. Muir, what -- I guess after reviewing the medical records,
10 reviewing in preparation for the, you know, the testimony today you -- I'm
11 sure you reviewed everything; is that fair?

12 A Yes.

13 Q What is your opinion as you sit here today, based on your
14 clinical examination, based on the subjective complaints, based on the
15 testing in the lumbar spine that Mr. Morgan did have, what do you think's
16 causing the problems there?

17 A The patient's low back pain is coming from the lower lumbar
18 discs. And I can't state at this time whether it'd be the bottom disc or the
19 second to bottom disc or even the third to bottom disc. That can be sorted
20 out with additional injections. This is not the type of a disc herniation where
21 you're hitting the nerve, putting pressure in the canal or the spinal cord. This
22 is a type where it's a rubber bushing that has innervation, there's damage to
23 that rubber bushing causing chronic back pain.

24 Q Okay. Assuming Mr. Morgan did have good benefit from the
25 injections that were performed on March 10, 2017 by Dr. Coppel -- and

1 when I say good response I mean greater than fifty percent -- what would
2 your opinion be as to the generator of pain in the lumbar spine?

3 A Then it would be coming from the L4-5 and/or L5-S1 levels.

4 Q Okay. And would that opinion be to a reasonable degree of
5 medical probability on a more likely than not basis?

6 A Yes.

7 MR. RANDS: I'm going to object to that, Your Honor. He said
8 he didn't even know what the results were and he's testifying that they're
9 reasonably related.

10 MR. CLOWARD: I asked him to base it on the assumption,
11 which is a proper thing for him to do.

12 THE COURT: All right. Objection's overruled.

13 MR. CLOWARD: Thank you.

14 THE WITNESS: Sorry. I hadn't quite completed the answer, so
15 I may have caused your confusion.

16 If we're looking at the injection alone, if it had greater than fifty
17 percent reduction of pain during the first three hours then that would be
18 diagnostic.

19 BY MR. CLOWARD:

20 Q Okay. Now, what I'd like to do, Dr. Muir, before we get into I
21 guess -- and you were specifically retained to prepare what's called a life
22 care plan; is that fair?

23 A Yes.

24 Q Okay. You were also retained to I guess review the treatment
25 records of the other providers in the case to determine whether or not that

1 was reasonable and necessary; is that fair also?

2 A Yes.

3 Q Okay. So before we get much further, what I'd like to do is just
4 kind of go through the past medical to talk about whether you believe that
5 that treatment was reasonable and necessary and whether the billing was
6 usual and customary for the Las Vegas community. So I'm just going to pull
7 that up really quick.

8 Now, the -- well just -- I'm going to go down kind of the list that
9 you have already given. So the MedicWest Ambulance bill was \$1,045.92.
10 Was it reasonable and necessary for Mr. Morgan to take the ambulance to
11 Sunrise Hospital after this collision?

12 A Yes.

13 Q And was the charge of \$1,045.92, was that usual and
14 customary for the Las Vegas community?

15 A Yes.

16 Q Okay. Now, Mr. Morgan went to Sunrise Hospital where they
17 performed some diagnostic testing. I believe they did a brain CT scan and a
18 neck CT scan and some other tests, gave some medications. Was that
19 reasonable and necessary for the injuries he sustained in the automobile
20 crash?

21 A Yes.

22 Q And I guess I didn't even ask the preliminary foundational
23 question. Is it your belief as you sit --

24 [Telephone ringing]

25 THE WITNESS: I'm sorry.

1 MR. CLOWARD: Objection, Your Honor, phone.
2 THE WITNESS: I thought it was on silent. I apologize.
3 THE COURT: That's all right. It happens to everybody.
4 MR. CLOWARD: I'm sorry, Dr. Muir [indiscernible].
5 MR. RANDS: Your Honor, I'd just like to put an objection on
6 the record, too. I understand he's gone through these and I've got the copy
7 of his report, but I don't think there's been any foundation laid that he's an
8 expert on ambulance costs in the Las Vegas area and the hospital costs and
9 he certainly --
10 THE COURT: All right. Counsel approach, please.
11 [Bench conference begins at 1:54 p.m.]
12 MR. CLOWARD: I'm happy to lay a foundation.
13 THE COURT: I would agree.
14 MR. CLOWARD: Thank you.
15 THE COURT: That was unnecessary, wasn't it? All right. They
16 got to stand up. That's good.
17 [Bench conference ends at 1:54 p.m.]
18 BY MR. CLOWARD:
19 Q While my co-counsel is helping me to get that up for the -- for
20 everybody to see, Doctor, I would like to just lay some foundation. Have you
21 prepared life care plans before?
22 A Yes.
23 Q How many occasions -- on how many occasions have you
24 prepared a life care plan?
25 A I haven't counted them but more than 50, probably close to a

1 hundred.

2 Q Okay. And in reviewing a life care plan, can you tell the jurors
3 and tell the Court what the process is that you go through to do that? Do
4 you review medical records? Do you review billing?

5 A Yes. A life care planner is one that will identify future costs
6 related to a specific injury. What's taken into consideration, the treatments
7 the patient's receiving, their particular problem, and what they may benefit
8 from -- regarding that injury. As a -- life care planners can be rehab
9 physicians. They're take a couple courses and they'll prepare life care
10 plans. They take a certifying course. As physicians, it's under our license
11 that we can do life care plans.

12 But what I did more than ten years ago is obtained books on life
13 care planning, the same training that the rehab people would have on life
14 care planning training, their courses, went through all those, research on the
15 Internet, researched life care plans. And this was more than ten years ago.

16 Since that time, on multiple occasions I've been admitted as an
17 expert in life care planning in the courts of Nevada, always been approved
18 to do such. And the -- so my job is to figure out what the patient's problem is
19 and what they may benefit in the life because of that particular problem.

20 Q Okay. Has a court in the state of Nevada ever precluded you
21 from testifying as an expert witness in the area of life care planning?

22 A Never.

23 Q Okay. And you have been certified in prior courts in Nevada in
24 this area?

25 A Multiple times.

1 Q Okay. And obviously in your training at the -- through your
2 position at Summerlin Hospital -- sorry, it's getting late in the day -- as your
3 position at the hospital there I'm sure that you're familiar with the charges
4 that hospitals charge for these services?

5 A I do. I do and I have for more than 10 years reviewed medical
6 records on a weekly basis. Most every weekend I'm reviewing medical
7 records. And these are related to spine, essentially to spine.

8 Q Okay.

9 A And so I'm very familiar with the charges of the ambulances and
10 charges of the hospitals for spine-related problems, the charges by pain
11 management physicians, for the charges for surgeries by the hospital or the
12 local surgeons here.

13 Q Okay.

14 A That's something that I see those charges on a weekly basis.
15 There are books that you can look those up, but I find that they're often
16 outdated, and included in those figures are discounted rates and it skews
17 the accurate cost -- true costs of a particular treatment.

18 Q And do those books also sometimes include other geographic
19 areas not solely limited here to Las Vegas?

20 A They do often. There are some that are specific for the area,
21 but again because you throw in the discounted rates the prices are not
22 accurate what it costs a patient to have a particular service.

23 Q Okay. Thank you, Dr. Muir. So what I'd like to do now is just to
24 kind of go back through those items. Mr. Boyack's been kind enough to put
25 this on the screen for me. Thank you.

1 So let's go through the charges there. Okay. So the first
2 charge was the MedicWest and that was \$1,045.92. And I believe you
3 testified that was a reasonable and customary and that that billing was usual
4 and customary -- reasonable and necessary and the billing was usual and
5 customary for the Las Vegas community; is that accurate?

6 A Yes.

7 Q And then for Sunrise Hospital the charge of \$9,689, was that
8 reasonable and necessary to treat Mr. Morgan's injuries?

9 A Yes.

10 Q And were those charges usual and customary for a hospital to
11 charge for like services here in the community of Las Vegas?

12 A Yes.

13 Q Moving on to the urgent care visit, \$350, was it appropriate,
14 reasonable and necessary treatment that Mr. Morgan received?

15 A Yes.

16 Q And was the charge of \$350 usual and customary for the Las
17 Vegas community?

18 A Yes.

19 Q Now, moving on to -- and we're going to skip Dr. Grabow.
20 That's not an issue of the case.

21 A I might state in my record I have 250. That might have been a
22 mistake on my part, either a mistake on my part or your part.

23 Q Let me see.

24 MR. RANDS: I was going to bring that up but after this.

25 [Pause]

1 BY MR. CLOWARD:

2 Q Well, while we get to that, let's move on to the Dr. Coppel -- Dr.
3 Coppel's charges for the services he rendered was \$30,250 for the
4 injections that he provided. Number one, were the injections reasonable
5 and necessary for the treatment that Dr. Coppel provided to Mr. Morgan?

6 A Yes.

7 Q And were the charges of 30,250 usual and customary for the
8 Las Vegas community?

9 A Yes.

10 MR. CLOWARD: There is some patient information I need to
11 white out here. Let me just --

12 [Pause]

13 [Counsel confer]

14 MR. CLOWARD: Okay. Your Honor, we have a stipulation the
15 amount is \$350 --

16 THE COURT: All right.

17 MR. CLOWARD: -- for the --

18 MR. RANDS: That's correct, Your Honor.

19 MR. CLOWARD: -- Urgent Care Extra.

20 BY MR. CLOWARD:

21 Q And, Dr. Muir, I would ask if your report does say 250 would
22 350 also be usual and customary as an amount to charge for an urgent care
23 visit?

24 A Yes.

25 Q Okay. And when services are provided, I guess just -- to just

1 explain, are there ranges that are allowed for certain services?

2 A Yes.

3 Q And that would fall within the range that's reasonable?

4 A Yes.

5 Q Okay. Now, the Nevada Surgical Suites, I believe that's where
6 Dr. Coppel does the surgery -- or the injection therapy, the injections.

7 Before we talk about the charge, can you explain how you -- how a doctor
8 goes about this type of an injection? Is that one that's, you know, it's like
9 when you go, you know, and get an injection in your shoulder for, you know,
10 the flu, or is there a little more to it?

11 A There's a lot more to it. You can't just stick a needle by the
12 spine because you have the spinal cord and you have nerves and you have
13 vessels. And if you inject in certain vessels you can actually cause strokes
14 or people can die from that. So you need to know where you're putting the
15 needles, so you use a fluoroscopy or fluoroscope, and it's like a movie
16 camera x-ray machine so we can see exactly where the needle is and we'll
17 look at different planes, and by looking at different directions or planes we
18 can determine whether the needle is exactly where we want it to be or not.

19 Q Is that like a sterilized setting, I mean patients are brought back
20 one by one or is it kind of a --

21 A Yes. I have a surgical suite in my office and you have to have
22 EKG equipment, you have to have resuscitation equipment, you have to
23 have all these -- this monitoring. The C-arm or the fluoroscopy that's -- I
24 paid \$200,000 for that. there's typically a half-million dollars involved
25 economically in that room. So you have all the equipment so that that

1 particular procedure can be done very safely.

2 Q Okay. And the charge for that, for those services for those
3 different injections, I believe five sets of injections was \$38,500 for the
4 Nevada Surgical Suites. Was that a usual and customary charge for those
5 services rendered for Mr. Morgan?

6 A It's slightly lower than the community standard but it's within the
7 normal range, yes.

8 Q Okay. Now, and was the treatment that Dr. Coppel provided of
9 those injections, was that reasonable and necessary to treat the injuries that
10 Mr. Morgan sustained?

11 A Yes. They were reasonable and necessary to be able to figure
12 out where the patient's problem's coming from because it didn't go away on
13 its own.

14 Q Okay. Now, the next charge is Las Vegas Radiology. I believe
15 Mr. Morgan had two MRIs of the neck, two of the back, and that was one
16 spaced two years apart. So there was one MRI and then --

17 [Defense counsel confer]

18 MR. CLOWARD: Oh. I see. Thank you.

19 BY MR. CLOWARD:

20 Q I'm sorry. The next one was Dr. Weisner, Las Vegas Valley
21 Chiropractic. And how long did Dr. Weisner provide treatment to Mr.
22 Morgan?

23 A I believe it was ninety -- approximately 94 treatments or 91
24 treatments.

25 Q Now, is 91 treatments, is that high? Do you -- is that a little high

1 for --

2 A It's within the range. If chiropractic provides him temporary
3 relief and it increases the patient's ability to carry out their functions in life,
4 then it's reasonable to go on -- go beyond this what we say two to three
5 months of reasonable chiropractic treatment.

6 Q Okay. So the 91 visits was reasonable and necessary and
7 within this -- I guess the usual and customary range here in Las Vegas?

8 A Yes.

9 Q Okay. And the charges of 18,138 were also usual and
10 customary?

11 A Yes.

12 Q Okay. Now, the next was the Las Vegas Radiology, and my
13 understanding was Mr. Morgan had an MRI in 2014 and then a repeat in
14 2016 of the cervical, and then an MRI of the lumbar in 2014, then a repeat of
15 the 2016 -- or in 2016 and then also some wrist arthrogram tests. Is that
16 your understanding?

17 A Yes.

18 Q Can you tell us why would it be necessary to do -- or is it
19 necessary or not necessary to do a repeat of a test like that?

20 A Well, often MRI scans are repeated if it's been more than a year
21 and patient's still symptomatic, because there -- sometimes there's changes
22 on the MRI scan and we can see an MRI scan at a later date and say, ah,
23 this is where the problem is. It becomes more apparent. So we often will
24 order MRI scans periodically.

25 Q Okay. So was it reasonable and necessary to have two MRIs of

1 the neck and the low back?

2 A Yes.

3 Q And were the charges that Las Vegas Radiology made usual
4 and customary for the Las Vegas community for like similar services?

5 A Yes. In my review I have a smaller number because I don't
6 have all the imaging on that.

7 Q Okay. What is the number that you have?

8 A Seven thousand three hundred. That's just one cervical MRI
9 and thoracic, as well as the wrist MRI scans and arthrograms.

10 Q So you have one set of the neck and back and then the wrists?

11 A Yes.

12 Q Okay.

13 [Defense counsel confer]

14 BY MR. CLOWARD:

15 Q Okay. So we're going to put a placeholder there and we're
16 going to come back.

17 Now, Dr. Muir, the charges that you rendered in this case are
18 \$5,416, and you've talked to the jurors about that treatment. Is that
19 reasonable and necessary for the services that you provided?

20 A Yes.

21 Q And is the billing that you've charged usual and customary for
22 the Las Vegas community?

23 A Yes.

24 Q Okay. Now, the Pay Later Pharmacy, I believe that Mr. Morgan
25 had a series of time where he was on some narcotic pain medications as

1 well as medication called Flexeril; is that accurate?

2 A Yes. He was on also Soma, muscle relaxer, and a sleeping pill.

3 Q Okay. Now, is it within the proper protocol to prescribe
4 medications to patients who are having pain of sleep difficulties?

5 A Yes.

6 Q All right. And the charges that Pay Later Pharmacy has
7 charged of \$6,308, is that usual and customary for the Las Vegas
8 community?

9 A Again, I have prescriptions for 7/9 -- 7/29/15, 12/2/15, and
10 2/8/16 totaling \$4,972.

11 Q Okay. Four thousand seven -- what was it?

12 A \$972.46.

13 Q 972.46. Okay. So we'll -- we will put a placeholder there.

14 Now let's go to Dr. Roger Russell. Do you have that charge in
15 your -- I didn't see it [indiscernible] record.

16 A No.

17 Q Okay. So we'll move past that one. The Southern Hills
18 Hospital, that's no longer an issue so we're not going to have you discuss
19 that.

20 Las -- or, excuse me, Radiology Specialists, I believe that was
21 for an x-ray, and that was \$345. Is that a usual and customary charge for
22 the Las Vegas community for that?

23 A Most likely it was a radiologist reading. And what was the
24 reading of?

25 Q I believe it was an x-ray.

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[Defense counsel confer]

BY MR. CLOWARD:

Q Do you have that one? Did you review that one?

A No.

Q Okay. If you didn't review it, I'm not going to ask you to comment on it.

Let's move on to the [indiscernible] Emergency Services. Did you review that one?

A No.

Q Okay. How about PBS Anesthesia?

A Um -- no, but that would be related to the sedation for the injections.

Q Okay. And would a charge of \$1200 be usual and customary for the Las Vegas community?

A It's actually on the low side.

Q Does it fall within the usual and customary range?

A Yes.

Q Okay. And then Dr. Cash, there was a consultation there of \$1,250. Is that usual and customary for the Las Vegas community?

A Yes.

Q And was -- it was my understanding Dr. Cash provided a second opinion. Is it reasonable for folks to get a second opinion?

A Yes.

Q Okay. Now, did you review the ATI Physical Therapy?

A No.

1 Q Okay. Dr. Muir, thank you. Should have a record of those.

2 [Counsel confer]

3 BY MR. CLOWARD:

4 Q Okay. Now, before we go on to the life care plan that you
5 provided, what I would like to ask is, is it your opinion as you sit there on the
6 stand that the injuries that Mr. Morgan sustained were caused by the motor
7 vehicle accident of 4/1/2014?

8 A Yes, regarding the neck, wrist, and low back.

9 Q Okay. Was there any other source or cause that you think may
10 have contributed to those injuries?

11 A No.

12 Q Okay. That's the sole cause of the problems that Mr. Morgan
13 had was the car crash?

14 A Yes.

15 Q Okay. So now what I would like to do is finish discussing the -- I
16 guess the future care needs that you believe Mr. Morgan will have ongoing
17 into the future. Dr. Muir, have you got that?

18 A Yes.

19 Q Can we take just a moment and have you discuss that?

20 A Yes.

21 Q Do you believe that Mr. Morgan will have future care needs?

22 A Yes.

23 Q And what will those be?

24 A Again, a life care plan is based on the patient's problem, what
25 treatment they're having, and what -- also what treatments they may benefit

1 from. And there's different categories. There's a physician care, there's
2 ancillary care, diagnostic, medicines, and surgery are the major categories.

3 And regarding physician care it is my belief that the patient will
4 benefit from and most likely require a follow-up of a person such as myself
5 every five years regarding the neck and low back, that the patient would
6 benefit from periodic visits through the pain management once a month to
7 monitor medications and their condition, that he would most likely benefit
8 from a treatment called radiofrequency ablation. That's similar to an
9 injection but it's putting a needle next to the little nerves [indicating] by the --
10 going into the joint and cauterizing those nerves. Well, I did three of these
11 this morning. It's burning the little nerves that go into the joint. They grow
12 back again in a year, year and a half, sometimes faster, but you can get
13 good relief from that procedure and it can be repeated. Most of the time it
14 doesn't last longer than a year. And so in the life care plan I have built in
15 here regarding the cervical spine a -- that particular treatment once a year.

16 Also in there is the patient has been prescribed pain
17 medication. From my understanding, he may not be taking those at this
18 time, but he would benefit from those. And if he's taking pain medications,
19 he should see a family physician for some lab work to make sure his kidneys
20 and his liver are tolerating those pain medications.

21 Next category is ancillary medical care. I included a life care
22 plan that every ten years for the low back and every five years for the neck
23 that he'll require either therapy or chiropractic treatment or at least benefit
24 from that due to flare-ups. Also included in that category is a surgical center
25 to perform the radiofrequency ablation. Included in this is one additional

1 injection before he starts the radiofrequency ablation.

2 Q Why would you do that?

3 A He had not had that yet and there's some other injections that
4 were pending.

5 Q Okay.

6 A And I believe since the life care plan he may have had another
7 injection.

8 Q Okay.

9 A But if he proceeded -- well, also to -- if he proceeded with the
10 radiofrequency ablation in the near future, then that would be changed. The
11 life care plan is not set for life, meaning that this is good for his whole life.
12 His condition can wax or wane. And a life care plan is considered a
13 dynamic vehicle, dynamic structure, so from time to time it needs to be
14 updated depending on the patient's condition and how they're doing.

15 As far as diagnostic testing, I included that patient would most
16 likely undergo an MRI scan of the neck every ten years and x-rays every five
17 years.

18 Q And what would the purpose of that be?

19 A To evaluate the overall situation of the neck, to rule out other
20 potential sources of the pain.

21 Q Now, assuming that this car crash never took place, okay, the
22 Defendant never, you know, drove out onto the road and there was never a
23 collision, is there anything to suggest that Mr. Morgan would have had to
24 have these future care needs?

25 A No.

1 Q Okay.

2 A And then under medications, and I don't have that with me, but I
3 believe I included a pain pill, muscle relaxer, and anti-inflammatory.

4 Q Now --

5 A It actually was fairly conservative, putting one pill per day for
6 each one of those.

7 Q Okay.

8 A Next category, surgery. And what I put here is a procedure
9 that's similar to laser discectomy. It's a procedure that I do and there's
10 another pain management doctor that does that and apparently there's a
11 new laser center that's here that does these type of procedures. But it's a
12 way to address discogenic pain and not fusing the back.

13 If you talk to spine docs, I'm not sure if Dr. Cash comes in and
14 says what would you do for chronic back pain, or any spine doc, and they
15 said, well, if everything else fails you fuse it with screws and rods and cages
16 and bone graft. It's a -- it works fairly well, most of the time, but it's a big, big
17 procedure. I didn't include that in the life care plan on Aaron because you
18 try to avoid a lumbar fusion, especially at that young age.

19 But I believe he would benefit from a plasma disc
20 decompression. In fact, his plan, I've seen him fairly recently, we're
21 planning to do such. And it's done percutaneously, meaning there's no
22 incision, and essentially what it does is, like laser, it shrinks the disc. And by
23 shrinking the disc approximately two-thirds of people are helped from that
24 procedure and on a long-term basis approximately fifty percent

25 Q Okay. And is that I guess a less invasive procedure than a

1 fusion or are they about the same?

2 A It's 20, 30 times less invasive than a fusion.

3 Q Okay.

4 A It's done in the office.

5 Q Are there complications that a fusion could potentially have that
6 maybe that procedure wouldn't?

7 A Yes. A fusion you could get -- one out of 20 people are going to
8 get pain from loosened hardware. One out of ten the bone's not going to
9 fuse enough and you have to go back and add more bone. You can get
10 pain from scarring around nerves. You -- with a fusion there is a fairly high
11 percent that will have adjacent level breakdown requiring additional
12 treatment and even fusions, because if -- with a fusion it stiffens up a
13 segment, puts more stress on the other levels. And all those are avoided
14 with the procedure that I recommended.

15 Q Okay. So, Doctor, I guess in summary I'd like to go through
16 each of the main categories and just restate what you've testified to. The
17 categories that you listed: Number one, physician care; number two,
18 ancillary medical care; number three, diagnostic testing; number four,
19 medications; number five, surgery, lumbar; and then a summary of costs. Is
20 that accurate?

21 A Yes.

22 Q So the physician care you have listed follow up with either an
23 orthopedic spine surgeon or a neurosurgeon, pain management, family
24 physician and anesthesiologist in the lifetime cost of four hundred twenty-
25 four dollars and nine hundred and fifty-two -- four hundred -- I'm not real

1 good with numbers here -- \$424,952. Is that accurate?

2 A Yes.

3 Q Okay. And then ancillary medical care, that's for things like
4 physical therapy, surgery center, surgical center for radiofrequency
5 ablations, and then surgical center for medial branch blocks; is that
6 accurate?

7 A Yes.

8 Q And the total charge for that would \$669,563; is that accurate?

9 A Yes.

10 Q And then diagnostic testing you have some radiographs and
11 then MRI of the cervical spine repeated once every five years for the
12 radiographs, every ten years for the cervical MRI, for a total charge of
13 \$9,922; is that accurate?

14 A Yes.

15 Q And then medications you indicated Motrin, Norco, Flexeril, and
16 then a stool softener. What's that for?

17 A With pain medications they cause constipation.

18 Q Okay.

19 A And as you can see, the cost of stool softener is very, very
20 inexpensive.

21 Q Okay.

22 A And that's to help prevent that problem.

23 Q And the charges for the medications was \$34,493; is that
24 accurate?

25 A Yes.

1 Q Okay. Now, the future medical needs of surgery you have listed
2 the plasma disc decompression, the pain management discography study in
3 the lumbar, and then surgery center for the same procedure, and then
4 anesthesiologist charge for the same procedure and then a medical device,
5 the wand for the plasma disc decompression.

6 A Yes.

7 Q And that's a charge of 54,000; is that accurate?

8 A Yes.

9 Q Are the charges for the future treatment, the total lifetime cost,
10 the amount was different than what I had in the opening, the amount of
11 \$1,192,928, is that usual and customary for the services provided for those
12 services?

13 A Yes.

14 Q And in your view, in your opinion to a reasonable degree of
15 medical probability on a more likely than not basis, would those charges be
16 reasonable and necessary to treat the problems that Mr. Morgan is having
17 with his back and neck?

18 A Yes.

19 Q Okay. Dr. Muir, I believe those are all of the questions. Just a
20 final cleanup question for the record, for appellate purposes if necessary.
21 Have all of your opinions been stated to a reasonable degree of medical
22 probability on a more likely than not basis?

23 A Yes.

24 Q Thank you.

25 THE COURT: Mr. Rands, before we start let's just take a short

1 break, okay?

2 MR. RANDS: I was going to suggest that, Your Honor.

3 THE COURT: Ladies and Gentlemen, we're going to take a ten
4 minute break. During this break, you are admonished not to talk or
5 converse among yourselves or with anyone else on any subject connected
6 with this trial, or read, watch or listen to any report of or commentary on the
7 trial or any person connected with this trial by any medium of information
8 including, without limitation, newspapers, television, the Internet and radio,
9 or form or express any opinion on any subject connected with the trial until
10 the case is finally submitted to you. I will also caution you not to do any
11 independent research on the [indiscernible].

12 THE MARSHAL: Please rise for the jury.

13 [Jury out at 2:26 p.m.]

14 [Recess at 2:26 p.m., recommencing at 2:39 p.m.]

15 [Jury in at 2:39 p.m.]

16 THE MARSHAL: Please be seated.

17 THE COURT: Okay. We're back on the record in case number
18 A718678, Morgan versus Lujan. Let the record reflect the presence of all
19 jurors, counsel, and parties.

20 I will just remind you that you are still under oath.

21 And, Mr. Rands, whenever you're ready.

22 MR. RANDS: Thank you.

23 [Pause]

24
25 ///

CROSS-EXAMINATION

BY MR. RANDS:

Q Good afternoon, Dr. Muir. My name is Doug Rands. I'm one of the attorneys representing the Defendant in this matter. Talked -- before we get started, you are compensated for your time here today, correct?

A Correct.

Q And if my records are correct, you bill about \$6,000 for a half a day of testimony at trial?

A Yes.

Q Is that current?

A Yes.

Q Okay. And you also bill for depositions, if you were to give a deposition?

A Yes.

Q And I think in your billing rate you also bill for IMEs, if someone hires you to look at a case that you're not the treating physician on, that's an independent medical evaluation, correct?

A Yes.

Q And you do those?

A Yes.

Q And in doing an IME you would review the records, maybe evaluate or examine the patient?

A Yes.

Q For the Plaintiff. And then make a recommendation or a report --

1 A Yes.

2 Q Based on your findings, correct?

3 A Yes.

4 Q And you do that and you charge for that also, correct?

5 A Yes.

6 Q I think it you said you do \$1500 not including x-ray review for an
7 IME, at least the --

8 A Correct.

9 Q Okay. And you also testified that you've been retained or
10 testified in court on other cases, correct?

11 A Correct. Approximately 30 times in 25 years.

12 Q I've got quite a few here. I just wanted to go down some of
13 these. You testified that you testify for both the plaintiff, who is the one
14 bringing the case, usually a patient, and the defense, correct?

15 A About once a month I'm asked to do an independent medical
16 examination from the defense. But none of those that I know of have gone
17 to court.

18 Q So I would be correct -- I've been through these. This is a list of
19 the trials that you've been involved in or at least was provided as part of your
20 expert designation. Part of one of the things you have to provide to the
21 other side is a list of all the -- and I went through this. I couldn't find any that
22 were defense cases.

23 A No, they're -- the vast majority are my own patients, patients
24 that I've been asked to testify and people that I'm training -- that I treated,
25 but there are a handful, probably less than ten, where I've testified on

1 patients that I have not treated.

2 Q Okay. But most of it's based -- most of your work where you're
3 hired is because you've been a treating physician on a patient?

4 A Yes.

5 Q And the patient's generally the person bringing the case in a
6 litigation situation, correct?

7 A Yes.

8 Q Okay. So the vast majority of your testimony has been for the
9 plaintiff?

10 A Yes.

11 Q You talked a little bit about -- well, you talked in great length
12 about your opinion that all of the treatment related to this case or to this -- to
13 Mr. Morgan is related to this particular accident. By this accident I'm
14 referring to the accident of April 1st. You understand that?

15 A I do.

16 Q So for purposes of, you know, so I don't have to keep repeating
17 that every time, can we just understand that when I say "this accident" I'm
18 referring to the April 1st accident involving --

19 A Yes.

20 Q -- that we're here to talk about today. Okay.

21 Now, if someone were to, say, be treating for an accident,
22 hypothetically, and they got in a second accident during the treatment could
23 that affect the treatment?

24 A Yes.

25 Q Could it affect the duration?

1 A Yes.

2 Q Okay. And much of your evaluation -- you said you can't rely
3 specifically on x-rays, on CT scans, on MRI films when you're dealing with
4 the neck and back, correct?

5 A In this particular case, yes.

6 Q Correct. Okay. So the fact that when he went to the hospital
7 they did a CT scan while he was at the emergency room --

8 A They did.

9 Q -- and it was negative, correct?

10 A Correct.

11 Q Okay. And you talked --

12 A I'm sorry, it was negative for the things that they're trying to
13 screen. It's negative for fractures, it's negative for bleeding into -- in the
14 brain.

15 Q Okay. But it was negative?

16 A Yes, for the things they were looking for.

17 Q And you also have -- I think you testified earlier that of the MRI
18 scans they show some mild -- I'll say mild, I don't know if that was your word
19 -- but mild issues on the MRI scan but that could be just a normal MRI scan,
20 correct?

21 A Yes.

22 Q It doesn't necessarily correlate to the effect or what he's
23 claiming in this case?

24 A Does not.

25 Q Okay.

1 A Now when you --

2 Q And I believe -- I'm sorry, Your Honor -- or Your Honor. Sorry,

3 Doctor.

4 A Sorry.

5 Q I respect doctors so much that I call you Your Honor. I

6 apologize for that, Doctor.

7 THE COURT: I'm not sure if that's a promotion or a demotion.

8 [Laughter]

9 MR. RANDS: It may be either or.

10 THE WITNESS: Promotion.

11 BY MR. RANDS:

12 Q You answered my question, Doctor, and I appreciate that. In

13 fact, someone once said that disc protrusions can be a simple variation of

14 normal.

15 A Yes.

16 Q And you would agree with that?

17 A Yes.

18 Q Okay. I have a copy of the -- both the life care plan and the

19 report that you prepared in this case. Do you have the report in front of

20 you?

21 A I have the graphs.

22 Q Okay. You don't have your medical record review in front of

23 you?

24 A No.

25 Q Okay. And you said you have the graphs. What are those

1 graphs?

2 A The different categories and the breakdown of charges.

3 Q Oh, for the life care plan?

4 A Yes.

5 Q Okay. I'm referring to the report that you prepared, the --

6 A I do have that.

7 Q -- records review report.

8 A I do have that.

9 Q That's what I was referring to.

10 A Yes, I do.

11 Q Okay. All right. We're back on the same page. And the report I

12 have is stated date of service July 27th, 2016, the front page, top corner.

13 A Yes.

14 Q Okay. Is that the report that you have?

15 A Yes.

16 Q And it talks patient Aaron Morgan?

17 A Yes.

18 Q And the report I have is 11 pages in length?

19 A Yes.

20 Q Okay. So we're working off the same report. It has a list of

21 medical records reviewed, and the report I have the last one is 15, Steven

22 Brown, M.D., correct?

23 A Yes.

24 Q Okay. Have you subsequently reviewed the Defense expert

25 report and records from Andrew Cash?

1 A Yes.

2 Q Did you prepare a supplemental report?

3 A Yes, on 7 -- looks like November 28th, '16. I think there's a typo
4 on the date of the review, but up on top date of service November 8th --
5 28th, 2016.

6 Q And did anything in significance change in that report from the
7 July 27th?

8 A The patient had an additional injection, a medial branch block at
9 -- for the C5-6 and C6-7 levels which were diagnostic.

10 Q And that's what you already testified to.

11 A Right. I mean a change from my prior [indicating] report, but
12 essentially the opinions remain the same.

13 Q Okay. So he had one more block that wasn't in your first
14 report?

15 A Correct.

16 Q Okay. Let's go back to the first report then. Actually, this
17 wouldn't be the report, it would be actually your medical records on the
18 follow-up visit, date of visit 6/16/2016. Do you have that in front of you?

19 A What date?

20 Q 2016/6/16.

21 A 6/16 I don't.

22 Q Okay. You did see Mr. Morgan as a physician, a treating
23 physician, correct?

24 A Yes.

25 Q And so in addition to performing the I -- or the records review

1 and the life care plan, you were also one of his treating physicians, correct?

2 A Correct.

3 Q And on your report of July 27th, 2016, on the second page, do

4 you have that in front of you?

5 A Yes.

6 Q And this is the Urgent Care Extra we've already stipulated that

7 the charge was actually \$350, not \$250?

8 A Yes.

9 Q But you, as part of going through you records and your review,

10 you took I guess the information from the report and put it into your report,

11 correct?

12 A Yes.

13 Q Really summarized it?

14 A Yes.

15 Q Okay. And then on the Urgent Care on the 4/8/14, you see the

16 chief complaint there?

17 A Yes, neck, upper back pain, left wrist pain.

18 Q Okay. And that's when he went to the Urgent Care, correct?

19 A Correct.

20 Q And Sunrise Hospital, 4/1/14, up there, that is a -- the

21 emergency room visit on the day of the accident, right?

22 A Correct.

23 Q And his complaint there was of neck pain, correct?

24 A Yes.

25 Q Did you review the Sunrise Hospital records?

1 A Yes.

2 Q And, in fact, I noted when I reviewed it that the low back wasn't
3 an issue then. In fact, he had full range of motion and no pain in the low
4 back on that day. Is that your recollection?

5 A Well, in the macro that the emergency room had it stated that
6 he had full range of motion. But when you go into the emergency room they
7 look at the -- they try to rule out major trauma such as fractures, bleeds in
8 the head and the major areas. And those areas that they don't focus on
9 they have a macro. They don't go through and change the macro. The
10 macro just says normal for all that area.

11 So most likely, and I see this frequently, they were concerned
12 about hitting his head, had a potential bleed in his head, that he may have
13 had fractures in his neck, and ruled those out. And most likely, there was
14 nothing written down about the back and likely the patient didn't even
15 complain of that because that was not his major complaint at that time.

16 Q Yeah. If he'd have said, hey, I've got a -- my neck pain and I've
17 got low back pain, they would have checked the low back?

18 A Typically if he complained of low back pain they would have --

19 Q Checked it.

20 A -- put something down.

21 Q All right. And in the Urgent Care the next -- or a couple days
22 later, a week later, that was -- we've gone over that. And then he went to
23 the Nevada Comprehensive Pain Center. And you've gone through that.
24 I'm not going to spend a lot of time going through every detail of that report
25 because you've gone through it already.

1 On the first visit, 4/21/14, you put this in your report: The
2 patient presents with a new onset of neck pain, headaches, mid-back pain,
3 left wrist pain that began after the motor vehicle accident on 4/1/14, correct?

4 A Correct.

5 Q And they noted decreased range of motion on the cervical and
6 thoracic, moderate tenderness to palpation, he said, correct?

7 A Correct.

8 Q And that was the doctor that performed the evaluation or the
9 medical provider who performed the evaluation, correct?

10 A Correct.

11 Q It says: We have received results from the cervical and thoracic
12 MRIs and the pain -- on 7/14 he says that the pain has been moving into the
13 low back as well on that day. That's what was in the records.

14 A On which date?

15 Q 7/14/14.

16 A That's what it states in that record, yes.

17 Q Yes, okay. And then on the same page, on the 30th of 2014, it
18 says: The patient reports worsening of low back with standing. Correct?

19 A I'm sorry, which record are we looking at?

20 Q Same record, same page.

21 A Nevada Comprehensive?

22 Q Yes.

23 A On which date?

24 Q Page 3, 9/30/14.

25 A Yes, worsening of low back pain.

1 [Pause]

2 Q Okay. Now, one question. Next page, on page 4, there's a
3 significant entry and I believe it's dated 1/19/15. And at that point he said --
4 it says on the top of page 4 that he had a pending orthopedic specialist with
5 Dr. Muir. Where it talks about the lumbar, they're talking about the range of
6 motion that we've talked about before. But it says in there that the
7 neurological examination is normal. Does that mean he's not getting any
8 shooting down his legs or anything like that from the lumbar area?

9 A Well, it means that there's no indication of the nerves being
10 pinched. You could have a tear in the disc and have nerve irritation down
11 the leg, but on the physical examination there's no indication of a nerve
12 being pinched.

13 Q Okay. Now, I wanted to talk on the next page, going through it
14 rather quickly, but I promised I'd get everybody out of here by 5, so. On the
15 next page, page 5, this is where you're talking about the Las Vegas
16 Chiropractic, and you testified that 93 visits with the chiropractor over
17 probably close to a year is reasonable and customary in Las Vegas.

18 A I said it is reasonable and within the range of normal.

19 Q Okay.

20 A And that he had some temporary relief.

21 Q Did you review the chiropractic records, the actual SOAP
22 notes?

23 A Yes.

24 Q And I went through those. Appeared to be, at least in the -- like
25 the areas of May, June, that the chiropractor was putting in there -- and it

1 may just be something like you said that they put in there, but he wasn't
2 getting much relief, he wasn't getting much -- making much progress. With
3 those kind of notes would you still consider it prudent to continue with a
4 chiropractor?

5 A When I reviewed all the records, it seemed reasonable what the
6 -- because there was some temporary relief. There's certainly periods of no
7 relief, but there was some temporary relief and, therefore, it seemed to be
8 reasonable.

9 Q But you would agree with me that 93 visits to a chiropractor with
10 the kind of relief or non-relief he was getting would be a lot?

11 A It's within the normal range but the upper end of the normal
12 range.

13 Q Okay. We'll agree to talk about the upper end of the normal
14 range.

15 A But reasonable for this patient.

16 Q Okay. You said you reviewed Dr. Sanders' report. In that
17 report he puts that the patient told him the chiropractic wasn't really helping
18 him and that's why he quit chiropractic. Did you remember reading that in
19 Dr. Sanders' report?

20 [Pause]

21 A I don't recall at this time.

22 Q Okay. We'll talk to Dr. Sanders about that on Thursday.

23 And then on your report, the next one is Dr. William Muir, and
24 that's you, correct?

25 A Correct.

1 Q You've talked about your treatment. You saw him several
2 times.

3 A Approximately ten.

4 Q Approximately ten times. And during that ten times he was also
5 treating with Dr. Coppel, correct?

6 A Correct.

7 Q Did you have him on a regular course of physical therapy during
8 this time he was treating with you?

9 A The patient had chiropractic treatment. I'm trying to see if that
10 overlapped or not. I'd have to check the dates.

11 Q The question I asked, though, is did you prescribe him physical
12 therapy while he was treating with you?

13 A Not that I recall.

14 Q Okay. And, in fact, when you -- on one of the last visits with
15 you, at least the ones in your report on page 8, it's dated 12/31/15.

16 A Yes.

17 Q Follow-up for a post-injection, as of this visit he hasn't noticed
18 any relief from the injection, correct?

19 A Correct.

20 Q And you recommended -- let's just go down to the lumbar. You
21 recommended treatment options of allow more time to heal, continue
22 conservative measures. Is this the chiropractic care or the physical
23 therapy?

24 A It can be therapy -- conservative therapy refers to medication
25 and therapy, principally.

1 Q Okay. So the medication could be part of the conservative
2 care?

3 A Yes.

4 Q All right. Consider repeat injections, discogram, and then
5 discogram/plasma disc decompression. Is this -- that's the surgery that you
6 talked about?

7 A Yes.

8 Q The less invasive surgery than a fusion?

9 A Yes.

10 Q And it says: The patient would like to move forward with the
11 discogram and plasma disc decompression. Did you ever get that
12 scheduled?

13 A Tentatively we have it -- we had it scheduled but postponed it
14 because of the trial.

15 Q So you postponed the surgery because of the trial?

16 A Yes.

17 Q What would be the recovery time for a surgery like that? You
18 said it was an in-office procedure?

19 A It's when a patient walks out right afterwards, meaning 30, 40
20 minutes after the procedure, and recovery varies from patient to patient. I've
21 had patients that had immediate relief. Sometimes it takes three months. If
22 they're not better by three months, then typically they're not going to get
23 better. They're discouraged to do any heavy bending or lifting during that
24 three-month period of time.

25 Q And you said in your report, this is at page 11, that without

1 surgical intervention that patient's symptomology will persist, requiring
2 continued treatment.

3 A Yes.

4 Q Do you remember saying that?

5 A That's based upon a large study of looking at patients with
6 chronic back pain for a year or two to see how they did over years, 25 --

7 Q But the answer to the question was you said that, correct?

8 A Yes.

9 Q Okay. And the surgery you were talking about there is that
10 discectomy -- plasma discectomy?

11 A Plasma disc decompression.

12 Q Disc decompression. Sorry. Plasma disc decompression.
13 Okay.

14 Now let's talk a little bit just about your life care plan. And you
15 said you have -- don't have the actual introduction, but it appears to me the
16 introduction's pretty much what you put in your report.

17 A Yes.

18 Q So it's not -- I couldn't see a lot different between that and the
19 report, so.

20 A No.

21 Q But you did bring the -- I guess the charts or graphs I think you
22 called it.

23 A Yes.

24 Q Okay. Now, let's just go through a couple of them. The first
25 one is the physician care, correct?

1 A Yes.

2 Q And it says orthopedic spine surgeon or neurosurgeon, evaluate
3 him every five years, and it says beginning 2016 and ending 2068. So that's
4 -- my math is as bad as Counsel, but that's about 55 years, correct?

5 A [No verbal response].

6 Q Fifty-four and a half, actually, but.

7 A I get 53, but, yes.

8 Q Okay. You're right. My math is as bad. Fifty-three and a half
9 or fifty-two and a half. Anyway, it's over 50 years. Let's just say that and
10 move on.

11 A Yes.

12 Q Okay. So for the next 50 years you think -- you're saying that
13 he's going to go see a physician once every five years for follow up?

14 A Yes.

15 Q And that for 12 times a year for the next 50 years he's going to
16 see a pain management specialist?

17 A Yes.

18 Q And that one episode every two years to each area he's going
19 to require pain management facet radiofrequency ablation.

20 A Yeah. And that's -- it's not written well. It should state -- it
21 would be simplified saying once a year for a radiofrequency ablation.

22 Q And this is for the doctor, correct?

23 A Yes.

24 Q I looked through all the medical records to date, he hasn't had
25 one of those yet, has he?

1 A No, but he's a candidate now.

2 Q Okay. But he hasn't had one to date.

3 A No, because you have to have two medial branch blocks, which
4 he's had now.

5 Q And pain management M.D., medial -- you said he's already
6 had the medial branch blocks but you put it in here as an item that he's
7 going to need?

8 A I put as having one more before the radiofrequency, but as
9 stated earlier he could receive the radiofrequency ablation and that would
10 eliminate that additional injection.

11 Q You said he needed two, and he's had two, but then you put a
12 third into here?

13 A Yes. The first one included another level, and so it's
14 reasonable to be more specific but, as mentioned, it's optional. You could --
15 he could pursue the radiofrequency ablation now.

16 Q So may or may not need that?

17 A Correct.

18 Q Okay. Family physician. He testified in his deposition he
19 doesn't have a family physician, he doesn't go to a family physician, but you
20 put that in your report.

21 A Right. And I should, as a life care planner, because that's
22 something he would benefit from to have those tests.

23 Q And the anesthesiologist is once yearly for rhizotomies?

24 A Yes, that's the radiofrequency ablation, another name for it.

25 Q Okay. And that would be the person who would have to do the

1 anesthesia for that procedure?

2 A Yes.

3 Q Okay. Then next on the ancillary medical care you said he's

4 going to require physical therapy every ten years. Isn't this kind of

5 speculative?

6 A Well, you can't say exactly whether it'd be -- obviously he's had

7 more than what I am predicting, and it can change over years. But as a life

8 care planner, you have to take what the patient has and look in the future

9 and say this for this particular condition --

10 Q Doctor, I don't want to cut you off --

11 A -- this is what he would benefit from.

12 Q -- but I -- I understand.

13 A So --

14 Q The question was --

15 A -- is life care plan speculative? There's some speculation in it,

16 but it's based upon medical probability with their particular problem.

17 Q In fact, even in your report you say the frequency and duration

18 is quite variable --

19 A Uh-huh (affirmative).

20 Q -- on the first one, on physical therapy.

21 A On the therapy part, yes.

22 Q Yeah. So it could be more, could be less, could be none at all?

23 A And most likely, if anything it'd be more, but I tend to try to be

24 on the conservative side.

25 Q Okay. But it could be less?

1 A Could be less.

2 Q All right. Surgical center once a year. This is for that radio
3 ablation -- radiofrequency ablation?

4 A Yes.

5 Q \$12,000 a year once a year for 50-some years?

6 A Yes.

7 Q And again, is that something that you can say as you sit here
8 today he's going to have to do that?

9 A What I'm saying -- that's not a life care plan. What I'm saying is
10 that he would benefit from that once a year for the rest of his life.

11 Q Okay. But you don't have a crystal ball, you can't look into the
12 future and say he's going to do that every year for the next 50 years.

13 A Correct.

14 Q Okay. And the surgery -- surgical center once -- this is for the
15 medial branch that he may or may not need now?

16 A Correct.

17 Q Okay. And then this last one for the surgery, this is the surgery
18 that you're talking about that he had scheduled and -- or that you were going
19 to schedule but never did before trial?

20 A Correct.

21 Q Okay. And when you do a life care plan, is the amounts that
22 you're putting there is that to today's dollars or is that to present value or just
23 what it would cost today?

24 A It's today's dollars.

25 Q Okay.

1 A What it'd cost today.

2 Q And you would agree with me, would you not, that if the jury
3 were to give him the \$1.2 million that you've put in this report, say, yeah,
4 he's entitled to that, you don't know what he's going to do with that money,
5 correct?

6 A Correct.

7 Q He could save it and use it for this or he could do something
8 else with it.

9 A Correct.

10 Q Okay. And do you have a current appointment with him to see
11 him again?

12 A I didn't look at the schedule book, but I believe we do.

13 Q Okay. But you couldn't tell us today when that is?

14 A No. I don't keep track of those.

15 MR. RANDS: Could we just have a moment, Your Honor?

16 THE COURT: Okay.

17 [Defense counsel confer]

18 MR. RANDS: Thank you, Your Honor. That's all I have.

19 THE COURT: Counsel?

20 **REDIRECT EXAMINATION**

21 BY MR. CLOWARD:

22 Q Dr. Muir, have you heard of something called a medical trust,
23 you put money aside into a trust that protects the money for the future?
24 Have you heard of that before?

25 A Yes.

1 Q Okay. So let's talk about some of the questions that you were
2 asked, specifically about a CT scan. Oftentimes come to court and I hear
3 cross-examination about a CT scan, well the CT scan was negative. If a
4 negative CT scan means that somebody's not hurt, why don't we just stop
5 treating people at that point? I'm -- this is a serious question.

6 A No, it's true. Because they have a problem that the CT scan
7 just does not pick up their problem.

8 Q I mean, goodness sakes, if a CT scan that's negative is
9 dispositive why do we even have physical therapy, chiropractic, pain
10 management, orthopedic spine surgery, neuro spine surgery, why do we
11 even continue to treat folks? Why don't we just say, hey, you know what,
12 negative CT scan or positive CT scan, if it's negative they're hurt -- or I mean
13 they're not hurt, they're okay; if it's positive then we're going to continue the
14 treatment.

15 A Because the emergency rooms are looked at screening of bad
16 things, meaning bleeding of the brain or fractures in the neck. That's --
17 they're not concerned about potential chronic neck pain or back pain in the
18 emergency room. But they -- their job is to rule out the potential bad things.
19 And that's what they're looking for. I see CT scans from ERs often saying
20 negative, and but I can see a lot of different changes in there. They're
21 saying negative for fractures, negative for dislocations.

22 Q Okay. Is it fair to suggest that a negative CT scan means that
23 Mr. Morgan was not hurt?

24 A No.

25 Q Now, a lot of discussion about the lumbar spine. It's true, Mr.

1 Morgan's lumbar spine complaints did not show up until April 25th, 2014;
2 isn't that true?

3 A That's the first time it was documented.

4 Q Okay. First time it was documented. How many visits had he
5 had to medical providers prior to that? Had he been treating like three times
6 a week, four times a week, five times a week?

7 A Well, he had the one emergency room visit, the urgent care
8 center.

9 Q Okay.

10 A And then I don't think there's many treatments. I'd have to -- I
11 can look. Only once to pain management. As far as the chiropractic, 4/25,
12 indicates low back pain five out of ten.

13 Q Okay. Now --

14 A On the first visit.

15 Q So there were -- there was -- and the question initially was how
16 many visits did he have prior to that. I think you said there was a Sunrise
17 Hospital, one treatment, that was the day of the crash; a week later the
18 urgent care, and then pain management shortly before the chiropractic. So
19 basically three visits, three visits after the accident; is that fair?

20 A Yes.

21 Q Okay. Is it unusual for patients to have pain in other parts of
22 their body begin to manifest in the days and weeks after a traumatic event?

23 A No.

24 Q I mean, if we look at this case, he had an MRI that proved he
25 had tears in his wrists and he had surgery to repair that wrist; is that not

1 true?

2 A That's true.

3 Q But he didn't say a word about the wrist on the treatment to the

4 Sunrise Hospital. Does that mean that --

5 MR. RANDS: Objection, Your Honor. He -- can we approach?

6 THE COURT: Sure.

7 [Bench conference begins at 3:13 p.m.]

8 MR. RANDS: [Indiscernible].

9 MR. CLOWARD: I'm using it as an analogy and I think it's a fair

10 analogy. And the pain and suffering for the wrist is a part of the case.

11 Medical treatment is not.

12 THE COURT: That's fine. So can you [indiscernible]? The

13 way I understood it was Mr. Cloward's point was that not every -- even the

14 no medical things aren't in every single record.

15 MR. CLOWARD: Yeah, exactly.

16 THE COURT: So I'm going to overrule it on that basis.

17 MR. CLOWARD: Thank you, Your Honor.

18 [Bench conference ends at 3:14 p.m.]

19 BY MR. CLOWARD:

20 Q Okay. I don't even remember what -- the question I asked. Let

21 me think for a minute.

22 A Must be time to go home then.

23 Q Oh, we were talking about the wrist. Okay. We were talking

24 about the wrist. So, Mr. Morgan, he had MRIs of his wrist, true?

25 A True.

1 Q Showed a tear, true?

2 A Yes.

3 Q He had surgery to repair the tear in his left wrist?

4 A Yes.

5 Q Okay. He didn't mention the wrist at Sunrise Hospital, so does
6 that mean that, you know, he wasn't hurt?

7 A No.

8 Q Okay. So again the question is, is it unusual for patients to
9 have pain manifest in the days and weeks after a traumatic event?

10 A No, especially when there's multiple injuries.

11 Q Now, you were asked a lot of questions about the life care plan.
12 And you did not include a fusion surgery in there, did you?

13 A Did not.

14 Q What, hypothetically, if he had a two-level lumbar fusion, what is
15 the cost of a two-level lumbar fusion?

16 A Approximately 250,000 to \$350,000.

17 Q So 250 to \$350,000 for one surgery?

18 A Yes.

19 Q The surgery that you recommended was a plasma disc
20 decompression was 50,000?

21 A Yes.

22 Q Why didn't you just throw in the lumbar fusion? It's a lot more
23 money.

24 A It could be done. I'm in hopes that the plasma disc
25 decompression would be sufficient. And we're dealing with medical

1 probability and it's slightly more probable that the plasma disc
2 decompression will be sufficient, so I did not put that in.

3 Q Okay. What happens when somebody has what's called failed
4 fusion syndrome?

5 A Failed fusion syndrome is one that's had fusion and they still
6 have symptoms, either from the area of surgery or an adjacent level. And
7 those are patients that require typically treatment such as therapy,
8 medications, injections, or additional surgeries.

9 Q Isn't there actual literature that suggests that folks that have a
10 fusion are more likely than not to have adjacent segment disease
11 breakdown and require an additional fusion down the road? I believe this --
12 the probabilities are about every 17 years?

13 A There's different opinions and different records on that. Often
14 what's quoted is one that says in ten years there's a twenty-nine percent
15 chance of adjacent level breakdown, but that's with the cervical spine.

16 If someone has an already damaged disc above where you're
17 fusing but it may not be bothering them, then it be -- goes into the probability
18 of adjacent level breakdown. If they have a normal-looking disc at adjacent
19 level, then usually you don't have adjacent level breakdown.

20 Q Okay. And I believe the study you probably are referring to is
21 the Hillenbrand [phonetic] study?

22 A That's the one with twenty-nine percent in ten years.

23 Q Twenty-nine percent at ten years, over fifty percent at
24 seventeen years; is that accurate?

25 A Yes.

1 Q That's a *Spine Journal* article, correct?

2 A Yes.

3 Q They did a comprehensive study, looked at the probabilities of
4 fusions, outcomes, and the probability analysis of an adjacent level breaking
5 down after a fusion; is that correct?

6 A Yes.

7 Q Okay. So if Mr. Morgan -- the life care plan that you provided,
8 you could have easily put in there, you know what, he needs a lumbar
9 fusion, it's 250 to \$350,000, and he's going to have to have another one
10 every 17 years. You could have done that, huh?

11 A Could have.

12 Q You didn't do that, though, did you?

13 A Nope.

14 Q Why not? It would have been a lot more money.

15 A I have to look at probabilities. And I believe that with the
16 plasma disc decompression that would be sufficient. I could put -- I could
17 have put it down as a possibility. Sometimes I do that in my life care plan,
18 but I didn't put it down as a probability because I believe more likely than not
19 the plasma disc decompression will be sufficient.

20 Q Okay. Fair enough. Now, you weren't allowed to answer this
21 question, but you said it was -- you felt like it would be important for him to
22 follow with a family physician even though he doesn't currently go to a family
23 physician. Why?

24 A Because in the life care plan it's designed what the patient
25 would benefit from. And he's taken these same medicines in the past. And

1 if you took these medicines most likely you would have some relief from
2 pain, slight improvement in his function. And when you take pain medicine,
3 as I mentioned before, that can cause problems in different organs and you
4 should have periodic blood tests to make sure those organs are tolerating
5 those medications.

6 Q Okay. And obviously a patient's symptoms can change over
7 time, they can get worse?

8 A Yes.

9 Q Okay. So is it possible that the life care plan that you've
10 outlined actually may not be sufficient to cover Mr. Morgan's needs into the
11 future?

12 A Yes.

13 Q Is it possible that he actually may have to have that lumbar
14 fusion into the future as he grows older?

15 A Yes.

16 Q Is there anything to suggest that without this crash he would
17 have been a candidate for a two-level lumbar fusion without the crash?

18 A No.

19 Q Okay. Thank you, Dr. Muir. No -- and have all your opinions
20 been stated to a reasonable degree of medical probability on a more likely
21 than not basis?

22 A Yes.

23 Q Thank you.

24 THE COURT: All right. Mr. Rands?

25 ///

RECROSS-EXAMINATION

BY MR. RANDS:

Q I didn't see anywhere in the records that you recommended a two-level fusion.

A Did not.

Q Okay. And a lot of that's due because of his age?

A His age and the likelihood of the plasma disc decompression being sufficient.

Q So you believe that in your medical opinion the plasma disc decompression would be sufficient in this case?

A Yes.

Q Okay. And counsel said that it could get worse over time. It could get better over time, too, right?

A The statistics are, because they looked at big numbers of patients like -- just like the patient, over years. Fifty percent stayed the same, twenty-five percent got worse, twenty-five percent got better. So there's a twenty-five percent chance that he would get better, seventy-five percent chance he'll stay the same or get worse.

Q Or stay the same or get better.

A That's twenty-five percent.

Q Seventy-five percent if he stays the same and gets better?

A Yes. There's a seventy-five percent chance that he'll stay the same or get better.

Q Okay. Thanks.

MR. RANDS: That's all I have.

1 THE COURT: All right. Are there any questions from the jury?
2 Counsel, approach, please.
3 [Bench conference begins at 3:22 p.m.]
4 [Reading questions from jurors]
5 THE COURT: [Indiscernible].
6 MR. LAWYER: I think that would be more appropriate for the
7 Plaintiff [indiscernible].
8 THE COURT: [Indiscernible].
9 MR. RANDS: This would just have to be crafted more to in the
10 records that you've reviewed or your visits with him are you aware of any
11 other intervening --
12 THE COURT: [Indiscernible].
13 MR. RANDS: [Indiscernible].
14 MR. CLOWARD: I'm fine with all of them; they just don't make
15 a lot of sense. They're kind of somewhat confusing to me.
16 MR. RANDS: [Indiscernible].
17 THE COURT: That's fine.
18 MR. RANDS: If you want to [indiscernible].
19 MR. CLOWARD: Yeah, that's fine with me.
20 THE COURT: Okay.
21 MR. CLOWARD: We're fine reading them to the jury.
22 THE COURT: [Indiscernible].
23 MR. CLOWARD: I mean, asking them to --
24 THE COURT: They're fine [indiscernible] no objections.
25 MR. CLOWARD: Yeah.

1 MR. RANDS: Yeah.

2 THE COURT: Great. All right.

3 [Bench conference ends at 3:24 p.m.]

4 THE COURT: All right, sir. I'm going to ask you questions. I'm
5 going to ask you to look at the jury, instead of me, when you answer so that
6 they can hear you.

7 THE WITNESS: All right.

8 THE COURT: Between doctor visits, was it asked if Mr. Morgan
9 has done any other activities besides the crash that may have or could have
10 brought on different?

11 THE WITNESS: It's always a possibility. There's nothing
12 documented in the records where -- the only documentation of anything that
13 should be considered is Dr. Cash indicated that during his treatment he had
14 a motor vehicle accident but it did not alter his symptoms, and the medical
15 records didn't indicate that it altered his symptoms.

16 There's nothing in the records that he did to make things worse.
17 And if you look at anybody here, say in the next two years, are you going to
18 have problems with your neck or back from something that you do where
19 you're going to actually need treatment, probably not. Is it possible that he
20 had something else going on? It's possible, but not likely. There's a
21 constant flow of the medical records of him having persistent
22 symptomatology and there's no indication of anything, activity, that
23 increased his symptoms or changed on his examination to any great extent.

24 THE COURT: Could any work or sport-type activity like lifting,
25 pushing, or sitting for long periods of time affect Mr. Morgan or may have

1 been a part of what medical conditions he has now?

2 THE WITNESS: Again you're talking -- we're talking about
3 possibilities. But those are activities that one can do and you wouldn't need
4 to have -- you wouldn't have seven out of ten neck pain or five out of ten low
5 back pain requiring medications, including narcotics and injections, even
6 considerations of surgery. So those activities most likely did not result in
7 any alteration of his symptoms.

8 THE COURT: In Mr. Morgan's condition, does he have and still
9 have a doctor's note stating for him not to lift heavy objects as this could
10 affect his back or neck?

11 THE WITNESS: Dr. Cash in his notes he had some
12 recommendations, and I don't want to misquote him so I'll just -- I can find
13 this right away. He said no -- he recommended no repetitive bending,
14 twisting, stooping, crawling, climbing, squatting, or lifting more than 10
15 pounds or -- frequently or 20 pounds occasionally. And those are all
16 reasonable. I try to tell patients to be as active as they can but use their
17 common sense, don't do any -- it's not ideal to do any heavy lifting because
18 it can aggravate that.

19 THE COURT: All right. Any follow up, Mr. Cloward?

20 MR. CLOWARD: No. Those are great questions. None for the
21 Plaintiff.

22 MR. RANDS: No, Your Honor.

23 THE COURT: Thank you, sir. You are free to go.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: Have a good evening.

1 [Witness excused]
2 THE COURT: Mr. Cloward, if you'll please call your next
3 witness.
4 MR. CLOWARD: Your Honor, may we approach briefly?
5 THE COURT: Sure.
6 [Bench conference begins at 3:28 p.m.]
7 MR. CLOWARD: We had planned on --
8 THE COURT: You're not going to tell me we're going to stop an
9 hour and a half early, right?
10 MR. CLOWARD: We don't --
11 THE COURT: You have your client here?
12 MR. CLOWARD: He's completely on -- we haven't even
13 prepared for that. I didn't -- I thought that Dr. Muir would go longer than that,
14 but we thought that we could take up the jury instruction issue so that we're
15 still working, using the time that we have. We kind of discussed the timing
16 with opposing counsel. I apologize, Your Honor. I thought we could use the
17 time to iron out the jury instructions.
18 THE COURT: It's going to take us 15 minutes to go through the
19 jury instructions, Mr. Cloward. I am not going to send the jury home an hour
20 and a half early.
21 MR. CLOWARD: Even though we're on schedule? We're still
22 on schedule. Because we're going to have some down time on Thursday is
23 the problem with Dr. Sanders, so.
24 THE COURT: Have you had any luck getting him here sooner?
25 MR. GARDNER: Oh, no, he cannot. In fact, I had them call

1 again today and he's just -- can't do it. I'll try again.

2 THE COURT: He could. He doesn't --

3 MR. GARDNER: Well, yeah --

4 THE COURT: He chooses not to do it.

5 MR. GARDNER: I'll try again.

6 THE COURT: He doesn't --

7 MR. GARDNER: Well, yeah.

8 THE COURT: He chooses not to do it.

9 MR. GARDNER: [Indiscernible].

10 THE COURT: But he chooses not to. Like, he could if he really wanted to.

11 He just chooses not to.

12 MR. GARDNER: It's my staff that's calling. I'll call him

13 personally, see what we can do.

14 MR. CLOWARD: That's, you know -- we will -- Plaintiffs will one

15 hundred percent finish on time, even if we finish a little early today we will

16 never go past the time that we've given the Court, even if we don't use the

17 hour and a half right now. I can assure the Court that we will not go over. I

18 promise you that. So as far as the ultimate schedule that the Court's

19 given --

20 THE COURT: All right, Mr. Cloward. Here's the deal. I will

21 stop today. But --

22 MR. CLOWARD: He won't --

23 THE COURT: -- I expect that tomorrow we will have a full day.

24 MR. CLOWARD: Absolutely.

25 THE COURT: So when we finish --

1 MR. CLOWARD: One hundred percent.

2 THE COURT: -- with Dr. Cash, then I expect that your client is

3 going to go on the stand. This is --

4 MR. CLOWARD: Hundred percent, Your Honor.

5 MR. GARDNER: Yep.

6 THE COURT: -- extraordinarily unacceptable to me, so...

7 MR. CLOWARD: Okay.

8 [Bench conference ends at 3:30 p.m.]

9 THE COURT: All right. Folks, we're just a little bit ahead of

10 schedule, so that's good news. We're going to go ahead and wrap up for

11 today. We have another -- because of the physician's schedule we have

12 another doctor that's scheduled to come in at -- he's coming in at 10, right?

13 MR. CLOWARD: Yeah, first thing in the morning.

14 THE COURT: At 10:00 tomorrow morning. So we just have a

15 little bit of a gap, but the good news is that we're running a little bit ahead of

16 schedule. So we're going to go ahead and break for the evening. During

17 this break, you are admonished not to talk or converse among yourselves or

18 with anyone else on any subject connected with this trial, or read, watch or

19 listen to any report of or commentary on the trial or any person connected

20 with this trial by any medium of information including, without limitation,

21 newspapers, television, the Internet and radio, or form or express any

22 opinion on any subject connected with the trial until the case is finally

23 submitted to you. I will remind you again not to do any independent

24 research. Everybody have a good evening. We'll see you tomorrow at 10.

25 THE MARSHAL: Please rise for the jury.

1 [Jury out at 3:31:45 p.m.]
2 [Counsel confer]
3 MR. GARDNER: Your Honor, may I make a record of
4 something at this point?
5 THE COURT: Absolutely. Good time to do this.
6 MR. GARDNER: The motion in limine that granted the
7 Plaintiff --
8 [Plaintiff and Defense counsel confer]
9 MR. GARDNER: -- summary judgment --
10 THE COURT: Hang on. Just one second.
11 Mr. Morgan, if you don't -- we're going to go over the jury
12 instructions and make a record on this. You certainly are welcome to leave
13 if you want. Don't feel like you are obligated to stick around.
14 MR. CLOWARD: We're his ride, so...
15 THE COURT: All right.
16 MR. RANDS: You can sort of walk around outside if you want.
17 THE COURT: Then you're just stuck here, but --
18 MR. GARDNER: Excuse me. As the MSJ partial summary
19 judgment, I just want to make sure that there is a clean, clear record that we
20 oppose that and we -- it's our position that there has not been adequate
21 foundation laid for this hand doctor or wrist doctor reports coming in.
22 THE COURT: All right.
23 MR. CLOWARD: Your Honor, would you like to address the
24 jury instructions now or --
25 THE COURT: Yes, I would. Hold on. I'm just going back to -- I

1 just wanted to [indiscernible].

2 [Pause]

3 THE COURT: All right. So, I mean, the issue was that there
4 was no expert by the Defense to -- that's what I recalled as well -- that there
5 was no expert providing any opinion about the issues related to the wrist
6 from the Defense side.

7 MR. CLOWARD: But there was no genuine issue of disputed
8 fact.

9 THE COURT: All right.

10 MR. GARDNER: Thank you, Your Honor.

11 THE COURT: Yeah. So let's go ahead and go through the jury
12 instructions. So everybody should have a [indiscernible].

13 MR. BOYACK: Yeah, I think there was only one change that
14 we needed to make.

15 MR. RANDS: Two changes that we have to make and then I --

16 THE COURT: Okay. So let's just start -- I want to start from the
17 beginning.

18 MR. BOYACK: Okay.

19 MR. RANDS: Okay.

20 THE COURT: So the first one it is -- Number 1 will be it is my
21 duty as judge;

22 2, if in these instructions any [indiscernible] or idea;

23 3, if during this trial I have done -- said or done anything.

24 MR. RANDS: You're so demonstrative we need that in here.

25 THE COURT: All right. Or it's the big sign that I hold up with

1 the arrows.

2 MR. GARDNER: Your Honor, I'm going to switch tables if that's
3 okay.

4 MR. CLOWARD: While we were there, Judge, I actually -- I
5 was pointing out to counsel one thing you taught me at the last trial we did
6 was there's a new Supreme Court case or pretty recent federal -- or criminal
7 case that -- because we were having some dialogue outside your presence
8 about the appropriateness of asking a judge to identify an expert, and we
9 don't do that anymore, right?

10 THE COURT: No. And, you know, I'm not sure that's a criminal
11 case but I don't recall the -- I can never remember the case name. No,
12 because it's considered vouching for the expert. So if there's some issue
13 about the qualifications of the expert then we would take that up outside the
14 presence of the jury, but we don't say any more like we used to. And
15 [indiscernible] I want to say like a good four, five years old. But we don't say
16 any more like we used to that they're qualified to testify as an expert, simply
17 because it gives some additional perhaps unnecessary credibility to the
18 witness. So we can say, you know, they're permitted to testify. I think
19 generally that case actually disfavors the lawyers asking that question in
20 front of the jury, if I'm recalling --

21 MR. CLOWARD: Yeah.

22 THE COURT: -- what the case says correctly.

23 MR. CLOWARD: Yeah, and I believe --

24 THE COURT: Of course I don't remember the name of the
25 case.

1 MR. RANDS: And I believe it should be handled in a motion in
2 limine outside the presence of.

3 THE COURT: Yeah, right, or outside the presence of the jury
4 with respect to the -- and, you know, obviously whenever anybody has an
5 expert they're going to want to establish just, you know, the foundation of the
6 expert's opinions with the jurors. But if there's some foundational issue
7 about the expert being able to give an opinion, that's supposed to be
8 handled outside the presence of the jury. And if I looked for a few minutes I
9 could find the name of the case, but. I can remember -- always remember
10 the facts and the point but I -- the case names are --

11 MR. RANDS: That's what Lexus is for.

12 THE COURT: -- escape me completely. All right. So 4 is the
13 evidence which you are to consider;

14 5, if the counsel for the parties have stipulated to any facts.
15 Okay.

16 So with respect to instruction Number 6, I added the last phrase
17 just including the Internet or other online services from what was provided to
18 me. It's just in addition to the stock instructions.

19 I also -- I find the organization of the stock instructions a little bit
20 weird and so I have reordered these two so that I go -- the general
21 instructions, instructions about evidence, instruction about witnesses,
22 general, then expert, instructions about the parties, instructions specific to
23 the case -- well, instructions about burden of proof, then instructions specific
24 to the case, and then the concluding instructions. So I've just reshuffled
25 these a hair.

1 MR. RANDS: Yeah.

2 MR. GARDNER: That makes a lot more sense.

3 THE COURT: Because that's what --

4 MR. RANDS: I don't know about --

5 THE COURT: Well, I don't know if it makes more sense but it
6 makes more sense to me.

7 MR. RANDS: I don't know about Counsel, but when I submit
8 instructions to the judge usually it's just how they are in my computer, you
9 know. This is my order, it's not --

10 THE COURT: Well, I mean, I think generally people give them
11 in the order that the stock instructions are, and I don't know why they are
12 how they are or who decided them to be on the structure. Like, for example,
13 the last instruction that we have always given is not the last instruction in the
14 stock instructions.

15 MR. RANDS: Yeah.

16 THE COURT: Okay. So 6, you must decide all questions of
17 fact, with the addition of that last phrase about Internet, online;
18 7 are the -- though you are to consider only the evidence in the
19 case;

20 8, there are two types of evidence. And Mr. Cloward submitted
21 it with the correct punctuation. Yay for him.

22 MR. CLOWARD: Thanks. Good job, Bryan.

23 THE COURT: It's about the fifth time that's ever happened.

24 MR. BOYACK: We'll keep a clean set then.

25 THE COURT: That makes me happy.

1 MR. CLOWARD: Yeah, I know. I want to make sure I have that
2 one for the future.

3 THE COURT: Instruction 9, in determining whether any
4 proposition has been proved.

5 Instruction 10, certain testimony has read from a -- been read
6 from a deposition. Are we anticipating using depositions?

7 MR. RANDS: Not at this time. Not to put testimony in. There
8 may be some impeachment, but it wouldn't be just to do testimony.

9 MR. GARDNER: Right.

10 MR. BOYACK: So I would say for right now let's keep it in, but
11 it may change.

12 MR. CLOWARD: [Indiscernible].

13 MR. BOYACK: The only deposition there is available is our
14 client's deposition. And so once we get through him, we can then decide to
15 take that out or not.

16 THE COURT: Do you want me to put it --

17 MR. RANDS: Why don't we take it out and then put it in if we
18 need it?

19 THE COURT: We can put it in as an A if we need to.

20 MR. BOYACK: Okay.

21 THE COURT: All right. So I'll hang onto that one. We'll call
22 that if we need to. All right. Then I have during the course of the trial --
23 have we talked about interrogatories or does anybody anticipate doing that?

24 MR. CLOWARD: No.

25 MR. GARDNER: Perhaps. Perhaps.

1 MR. CLOWARD: [Indiscernible].

2 THE COURT: Okay. So I'll hang onto that one as well. And

3 then I have request for admissions. Anybody planning to reference any

4 request for admissions?

5 MR. GARDNER: We're not, Your Honor.

6 MR. RANDS: Defense, no.

7 THE COURT: Mr. Cloward?

8 MR. CLOWARD: No, Your Honor.

9 THE COURT: All right. So we'll pull that one out.

10 The credibility or believability of a witness then will be

11 instruction Number 10.

12 Oh, and I pulled out the gender neutral instruction. I just make

13 the instructions gender neutral. It's just easier.

14 MR. BOYACK: Okay.

15 MR. CLOWARD: No problem.

16 THE COURT: Instruction -- then I have the preponderance or

17 the weight of evidence, and that will be 11. They got switched up from the

18 packet.

19 Then the next is discrepancies in a witness's testimony. That'll

20 be 12.

21 Then an attorney has a right to interview a witness. Everybody

22 wants that instruction?

23 MR. GARDNER: Fine.

24 MR. CLOWARD: Yeah.

25 MR. RANDS: Yep.

1 MR. BOYACK: Yep.

2 THE COURT: Okay. So that'll be 13.

3 A person who has special knowledge, skill, experience and

4 training, that'll be 14.

5 An expert witness has testified about reliance on articles and

6 books. Are we -- I guess we did have a little of that --

7 MR. RANDS: He kind of had the little thing, yeah.

8 THE COURT: Okay. So we're good with that one, and that will

9 be -- the submitted instruction had just a typo -- a couple typographical

10 errors so --

11 MR. RANDS: Uh-oh.

12 THE COURT: -- so it says: An expert witness has testified

13 about his reliance upon article and books, and then the word "that" was

14 omitted. So we added: that have not been admitted into evidence.

15 Reference by the expert witness to this material is -- and a -- there -- D was

16 missing on allowed so that the expert -- so we corrected those two things.

17 MR. CLOWARD: Mr. Boyack submitted that, Your Honor.

18 MR. RANDS: So how fleeting it -- so how fleeting your --

19 THE COURT: That'll be instruction 15.

20 MR. CLOWARD: I submitted all the good ones.

21 MR. RANDS: All right. Sorry.

22 THE COURT: A hypothetical question, that will be 16.

23 MR. RANDS: This is one we're going to have to change, Your

24 Honor.

25 THE COURT: Okay. You are not to discuss -- okay. So what

1 are we doing with this?

2 MR. RANDS: It references loss of earnings. Loss of earnings
3 are not a part of this particular case at this time, so.

4 MR. BOYACK: That's fine. We can just omit the loss of --

5 THE COURT: Oh, all right. So you are not to discuss or even
6 consider whether the Plaintiff was carrying insurance to cover medical bills
7 or any other damage?

8 MR. RANDS: Yeah.

9 THE COURT: We'll just remove loss of earnings.

10 MR. RANDS: Correct.

11 THE COURT: And -- all right. And so then with that one
12 change, that will be Instruction Number 17.

13 We don't need the corporation instruction. I'm not sure how that
14 snuck in. Oh, because you gave it to me.

15 MR. BOYACK: No.

16 MR. CLOWARD: There is a company.

17 MR. BOYACK: Yeah, it's a corporation.

18 MR. RANDS: There are two defendants.

19 THE COURT: Oh, right. That's why. Okay.

20 MR. RANDS: Individual and the corporation.

21 THE COURT: Got it. Forgot about that. So that'll be 18.
22 Nineteen. So the next instruction is whenever in these
23 instructions -- oh, and this is -- there's a typo in this one. Oh, no, that's not
24 right. Okay. Got it. There's not a typo. I just read it wrong. Whenever
25 these instructions I state that the burden or burden of proof, the stock

1 instruction has the truth of the allegation is proved by a preponderance of
2 the evidence, you shall find the same not to be true. I have generally added
3 in my instruction: in other words more likely than not. Just to clarify the --

4 MR. CLOWARD: That's a great change.

5 THE COURT: -- preponderance of the evidence.

6 MR. RANDS: No problem.

7 THE COURT: Everyone's all right with that. I've added that in
8 both paragraphs.

9 MR. CLOWARD: I love it.

10 THE COURT: Okay.

11 MR. RANDS: The one that I've got only has it in the second
12 paragraph. I don't want to be --

13 THE COURT: It says --

14 MR. RANDS: Oh, more likely than not.

15 THE COURT: Yeah.

16 MR. RANDS: Okay. Got it. Thank you.

17 THE COURT: Okay. And so that will be 19. I wish our
18 instructions generally -- you know, we have so many that we have to give
19 that just don't make any sense at all to the -- our jurors. Okay. And then --

20 MR. RANDS: This is about the time their eyes glaze over
21 anyway, so.

22 THE COURT: 20, the Plaintiffs seek to establish a claim of
23 negligence.

24 Then 21, the Plaintiff has the burden to prove;

25 22, when I use the word negligence;

1 23, proximate cause of injury;
2 24, ordinary care;
3 25, the Plaintiff may not recover damages. And this should
4 actually say his. Comparative negligence is greater.
5 MR. RANDS: Well, actually line 3 there's a --
6 THE COURT: Three actually. It's on the first line that they're
7 lined and seventh line. We'll get that straightened out.
8 MR. RANDS: Yep.
9 THE COURT: Okay. That's otherwise all right?
10 MR. RANDS: Uh-huh.
11 THE COURT: That'll be 25. There's some weird capitalization
12 thing going, too, here. I think it's the -- okay. So generally the Plaintiff and
13 the Defendant are capitalized throughout, so I'm going to do that in the -- I
14 don't know. I'm going to fix that so it's all consistent.
15 So 26, if you find the Plaintiff suffered injuries;
16 27, in determining the amount of losses.
17 MR. RANDS: This was another one that we're going to have
18 strike the -- they're trying to slip in the number 3, the past [indiscernible] and
19 vocational laws is in here.
20 THE COURT: All right.
21 MR. RANDS: I don't want to open the door on that.
22 THE COURT: Just to make it consistent, do you have any
23 problem if I take out the Plaintiff's name and just put in The Plaintiff?
24 MR. CLOWARD: That's fine.
25 THE COURT: Okay. And for whatever reason it's not

1 capitalized in the sixth line, so I'm going to fix that. And then -- so that'll be
2 27;

3 28, no definite standard or calculation;

4 29, according to a table of mortality, I will leave his name in
5 here but I'm going to just not all caps it because we don't need to do that.
6 According to the table of mortality, so that will be 29.

7 Whether any of these elements of damage will be 30.

8 The Court has given you instructions, that'll be 31.

9 If during your deliberation, that'll be 32.

10 If -- it is your duty as jurors, that'll be 33.

11 When you retire, that'll be instruction 34.

12 And now you will listen is 35.

13 All right. Are we anticipating any additional instructions?

14 MR. RANDS: Not from the Defense, Your Honor.

15 MR. BOYACK: The only one that we would have is how we
16 want the jurors to be informed about the summary judgment on the wrist. I
17 mean, we referred to it, but do we want to do that in an instruction form?

18 THE COURT: It's your case.

19 MR. CLOWARD: We would propose a --

20 THE COURT: You tell me what you want.

21 MR. CLOWARD: We would propose a jury instruction that
22 indicates that it is not in dispute -- there is no dispute regarding the wrist
23 treatment which has been determined to be X-dollar amount.

24 THE COURT: All right. Where would you like to put that?

25 MR. CLOWARD: I would say after the --

1 MR. BOYACK: The damages?
2 THE COURT: Do you have something written up yet?
3 MR. CLOWARD: No, but I can take five seconds and do that.
4 It'd be handwritten, if that's okay, or I can type it.
5 THE COURT: No. that's fine.
6 [Counsel confer]
7 MR. CLOWARD: This may be a little wordy. That's probably a
8 little wordy.
9 [Pause]
10 MR. RANDS: Okay. I guess it says it all.
11 MR. CLOWARD: You're on board?
12 MR. RANDS: Yeah. Yeah, go ahead.
13 MR. CLOWARD: May I approach, Your Honor?
14 THE COURT: Yes.
15 MR. CLOWARD: I'm sure you would have some better
16 changes than that.
17 THE COURT: All right.
18 [Pause]
19 THE COURT: All right. So, Mr. Cloward. So it has already
20 been determined that Mr. Morgan injured his left and right wrist as a result of
21 the crash on April 1st, 2014 and that the treatment he received was
22 reasonable and necessary. And then you say and caused by the crash, but
23 I think that's a little redundant of the first --
24 MR. CLOWDER: Redundant, yeah.
25 THE COURT: So I'm just going to take that out.

1 MR. CLOWDER: Okay.

2 THE COURT: And instead of saying, again it has already been

3 determined, how about if I say: You are instructed the billing amounts of

4 40,171 for that treatment was usual and customary for the Las Vegas

5 community?

6 MR. CLOWDER: Yeah.

7 MR. RANDS: That's fine.

8 MR. CLOWDER: That's fine.

9 THE COURT: All right. This is going to mess up my numbers.

10 MR. RANDS: Yeah. We'll have to do an A anyway.

11 THE COURT: It's all right. No, I'll just fix it right now because

12 we haven't -- we're not -- go back.

13 [Pause]

14 THE COURT: All right. So I'm going to put this -- I'm going to

15 make this 25.

16 MR. CLOWDER: Perfect.

17 THE COURT: And then the Plaintiff may not recover will be 26.

18 I also took out the his and just put Plaintiff's instead.

19 MR. CLOWDER: That's fine.

20 THE COURT: Yeah. I really don't like using pronouns. It just

21 gets confusing sometimes.

22 So then if you find the Plaintiff, that will be 27. I fixed the

23 capitalization thing there.

24 In determining the amount of losses, I'll make that 28.

25 No definite standard or amount, that will be 29.

1 According to a table of mortality, that will be 30.
2 Whether any of these elements, that will be 31.
3 Court has given you instructions, that will be 32.
4 If during your deliberation, that will be 33. It is your duty as
5 jurors, that'll be 34.
6 When you retire, that will be 35.
7 And 36 will be now you will consider. Okay.
8 So we should have probably by lunch tomorrow we'll have a
9 final set for you of these, and then I'll just hang onto these couple and we'll
10 add them in as it may, if that becomes necessary during the rest of the trial.
11 I appreciate you all getting the instructions to us [indiscernible] trial. It helps
12 the time because I can see that part first and obviously these were fairly
13 straightforward but it [indiscernible]..
14 MR. CLOWDER: Okay.
15 THE COURT: And then you have a nice final set that you can
16 use for closings, too, which is nice. Okay. Thank you, folks. I'll see you
17 tomorrow at --
18 MR. BOYACK: Ten.
19 THE COURT: Ten.
20 [Proceedings adjourned at 4:00 p.m.]
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24
25

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of my ability.
4
5
6

7 Lee Ann Nussbaum

8 Lee Ann Nussbaum, Transcriber
9

10 Date: February 5, 2018
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