

Case No. _____

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC, Electronically Filed
Petitioner, Apr 18 2019 01:42 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 9 OF 14**

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April 18, 2019

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 9 OF 14

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TAB 13

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 AARON MORGAN,
8 Plaintiff,

CASE#: A-15-718679-C
DEPT. VII

9 vs.

10 DAVID LUJAN

11 Defendant.
12

13 BEFORE THE HONORABLE **LINDA MARIE BELL**, DISTRICT COURT
14 JUDGE

15 FRIDAY, APRIL 6, 2018
16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **CIVIL JURY TRIAL**

18 **APPEARANCES:**

19 For the Plaintiff:

BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

21 For the Defendant:

DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

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1 Las Vegas, Nevada, Friday, April 6, 2018

2 THE COURT: Ms. Janssen, if you want to just come back on
3 up, you're welcome.

4 MS. JANSSEN: Sure.

5 MR. CLOWARD: You can take your coffee.

6 THE COURT: You absolutely can take your coffee.

7 MS. JANSSEN: It's the first of the day.

8 THE COURT: Very important. I might be on three, but who's
9 counting, right?

10 THE MARSHAL: Please rise for the jury.

11 [Jury enters at 9:14 a.m.]

12 THE COURT: We're back on the record in case number A-
13 718679, Morgan vs. Lujan. Let the record reflect the presence of all of our
14 jurors --

15 THE MARSHAL: Please be seated.

16 THE COURT: -- counsel, and parties.

17 MR. CLOWARD: Do you want to follow along with me on these
18 to make sure that I read it okay?

19 MR. RANDS: No, I think I'm okay with you reading it.

20 MR. CLOWARD: Okay.

21 MR. RANDS: I think you'd be silly to do it differently, so --

22 MR. CLOWARD: Okay. Well, I mean, if you -- I'm happy to.

23 MR. RANDS: I'll just come look over your shoulder, if that's
24 okay.

25 MR. CLOWARD: You got it. No problem, Judge. Not at all.

1 THE COURT: Perfect. Thank you.

2 ERICA JANSSEN

3 [having been called as a witness and having been previously sworn, testified
4 further as follows:]

5 **DIRECT EXAMINATION CONTINUED**

6 BY MR. CLOWARD:

7 Q Ms. Janssen, how are you this morning?

8 A I'm doing well. Thank you. How are you?

9 Q Okay. Good. I'd just like to finish up just a few questions, and
10 then we can -- we can move on, okay?

11 A Okay.

12 Q All right. So I'd like to read to you the testimony of Mr.
13 Lujan, the driver, in this -- in this case, okay?

14 A Okay.

15 MR. CLOWARD: Do you mind if I start there?

16 MR. RANDS: No.

17 BY MR. CLOWARD:

18 Q "Q Do you have any proof that negligence of Arron
19 caused or contributed to any injuries?

20 "A No."

21 Where you aware that Mr. Lujan testified to that?

22 A I am now.

23 Q Okay. Another question:

24 "Mr. Lujan, earlier you testified -- I don't want to put words
25 in your mouth so I'm going to ask you this way. Did you

1 testified earlier that you've never placed blame on Arron for this
2 accident?

3 "A No. I don't think I placed blame on Aaron."

4 Were you aware that Mr. Lujan testified to that?

5 A No.

6 Q "Q And you didn't tell the officer at the scene it
7 was Aaron's fault, correct?

8 "A No. I never placed blame."

9 Were you aware that he testified to that?

10 A No.

11 Q "Q You would agree with me that Aaron driving on
12 McLeod at this intersection had the right-of-way at the time of
13 the accident, correct?

14 "A Yes."

15 Are you aware that he testified to that?

16 A No.

17 Q Okay.

18 MR. CLOWARD: That's it.

19 MR. RANDS: Thank you.

20 BY MR. CLOWARD:

21 Q Now that you're aware of what Mr. Lujan testified to, is it still
22 your position that Mr. Morgan is at fault for this crash?

23 A I believe he has some comparative negligence.

24 Q Okay. Thank you.

25 A Ultimately it's the jury's decision.

1 Q Thank you.

2 **CROSS-EXAMINATION**

3 BY MR. RANDS:

4 Q Good morning, Ms. Janssen.

5 A Good morning.

6 Q You are here today as a representative of the Defendant,
7 correct?

8 A Correct.

9 Q And you're employed by the Defendant?

10 A Correct.

11 Q Okay. And how long have you been so employed?

12 A Four years.

13 Q Okay. And at the last trial of this matter, you were not present,
14 correct?

15 A No.

16 Q You were not here representing the Defendant in that matter?

17 A No.

18 Q So you didn't hear any of the testimony that's been read to you
19 today?

20 A No, I did not.

21 Q Okay. Now, some questions were read to you from an exhibit in
22 the -- that is the answer to the complaint.

23 A Yes, I have it here.

24 Q Do you know what an answer to the complaint is?

25 A A response to allegations raised in -- in the lawsuit.

1 Q And did you prepare that answer?

2 A No.

3 Q Did you have any -- anything to do with preparing that answer?

4 A I provided, I believe, the names of the correct Defendant.

5 Q Okay.

6 A Company Defendant, I should say.

7 Q And who prepared -- who signed it? Is -- look on the last page
8 there.

9 A Douglas J. Gardner, Esquire.

10 Q Okay. And is it your understanding that Mr. Gardner prepared
11 the complaint?

12 A Yes.

13 Q Okay.

14 A The answer, I should say.

15 Q The answer, I'm sorry. I'm starting to act like Mr. Cloward now.
16 I can't get my -- I can't get my things correct.

17 MR. CLOWARD: Hopefully you don't lose your hair.

18 MR. RANDS: I hope so, too. I told you I'd rather have it go
19 gray than go away, but --

20 BY MR. RANDS:

21 Q The answer to the complaint, and that's general -- in your
22 understanding, is that generally prepared by the attorney?

23 A Always.

24 Q Okay. And as the substance of the complaint, did you have any
25 input into that?

1 A The answer?

2 Q The answer. Oh, geez, I'm sorry. I'll write it big right here.

3 Answer.

4 A No.

5 Q Okay. And the answer to the complaint is the first pleading filed
6 in a lawsuit, or some -- most the time it's the first pleading filed the Defense
7 in the lawsuit; is that your understanding?

8 A Yes.

9 Q Okay. And it's your understanding that oftentimes things are
10 filed in the complaint in anticipation that information may come up during the
11 discovery process, correct?

12 A If you're referring to the answer.

13 Q The answer. I wrote it right here. I'm sorry. Maybe I'll borrow
14 some of your coffee. The answer to the complaint, correct?

15 A I'm sorry, can you repeat the question?

16 Q Okay. Is it your understanding, in filing an answer to the
17 complaint, that's generally something filed by the attorney?

18 A Yes.

19 Q And you didn't sign a verification of that complaint --

20 A No.

21 Q -- or answer, did you?

22 A No.

23 Q Okay. And it's anticipation that things may arise during the
24 discovery process, correct?

25 A Yes.

1 Q And it's your understanding that if those affirmative defenses
2 aren't made at the first, they can be waived?

3 A Yes, I am aware of that.

4 Q Okay. So if you don't make something anticipating that
5 something may arise, you waive that defense?

6 A Yes.

7 Q So you put things in that sometimes may or may not come to
8 fruition?

9 A Yes, that would be correct.

10 Q Okay. And the answer process is something that's generally
11 done in most lawsuits, correct?

12 A I think it's probably pretty much every time.

13 Q Uh-huh. And, again, you didn't have an opportunity to hear Mr.
14 Lujan testify?

15 A I did not.

16 Q And did you read the transcript of his testimony --

17 A No.

18 Q -- at any time?

19 A No.

20 Q That's all the questions that I have. Thank you for your time.

21 THE COURT: Anything else, Mr. Cloward?

22 MR. CLOWARD: Just a couple redirect.

23 **REDIRECT EXAMINATION**

24 BY MR. CLOWARD:

25 Q Ms. Janssen, isn't it true that you are a -- you're an employee in

1 risk management?

2 A Yes.

3 Q Okay. And have you testified in court before?

4 A I have.

5 Q On how many occasions?

6 A A number of times.

7 Q Okay. So you're familiar with the process?

8 A I am.

9 Q You're familiar with how lawsuits operate?

10 A Yes.

11 Q You're familiar that you don't have to come to court and assert
12 certain defenses, true?

13 A I disagree.

14 Q I mean, Mr. Rands just indicated that you can abandon or waive
15 certain defenses. Do you agree with that process -- that --

16 A We can, but we wouldn't want to.

17 Q Okay. And in this matter, you've continued to allege that Mr.
18 Morgan is at fault and that a third party is at fault, true?

19 A That's our answer.

20 Q Okay.

21 A And, ultimately, it's up to the jury to decide that.

22 Q Okay. Now, do you know what interrogatories are?

23 A Yes.

24 Q They're sworn -- sworn testimony in writing?

25 A Yes.

1 Q And you signed --

2 MR. CLOWARD: Well, may I approach, Your Honor?

3 THE COURT: Uh-huh.

4 MR. RANDS: May I also, Your Honor?

5 THE COURT: Yes.

6 BY MR. CLOWARD:

7 Q Do you recognize this?

8 A Okay.

9 Q Do you recognize that document?

10 A I do.

11 Q And are those the answers that were provided in response to
12 our interrogatories?

13 A Yes.

14 Q And, in fact, you were the one that prepared those?

15 A Actually, our attorney did.

16 Q Okay.

17 A I signed the verification.

18 Q So where it says, on interrogatory number 14, and you can
19 follow along with me:

20 "Please provide the full name of the person answering the
21 interrogatories on behalf of the Defendant, Harvest
22 Management Sub, LLC, and state in what capacity you are
23 authorized to respond on behalf of said Defendant.

24 "A Erica Janssen, Holiday Retirement, Risk Management."

25 A Yes.

1 Q That's what the document says, correct?

2 A Correct. Yes.

3 Q That's your signature, correct?

4 A It is.

5 Q Thank you.

6 MR. CLOWARD: No further questions, Your Honor.

7 **RECROSS-EXAMINATION**

8 BY MR. RANDS:

9 Q Again, we're going to give the jury a crash course in litigation.
10 Interrogatories are written questions that are -- is it your understanding that
11 interrogatories are written questions provided to either side?

12 A Yes.

13 Q And they're generally prepared, with the assistance of the
14 Defendant or a representative of the Defendant, by the attorneys, correct?

15 A Yes.

16 Q And you signed a verification. And let's read the verification.

17 A Yes.

18 Q Would you read that, please?

19 A Oh, I'm sorry. I don't have the document in front of me.

20 MR. RANDS: May I approach, Your Honor.

21 THE COURT: Go ahead.

22 THE WITNESS: Would you like me to read it out loud?

23 BY MR. RANDS:

24 Q Yes.

25 A Okay. I'll just start --

1 Q Verification at the top.

2 A "Verification. State of Oregon, County of Clackamas. I,
3 Erica Janssen, being first duly sworn, deposes and says I am
4 the Defendant's representative in this -- in the instant action. I
5 have read the foregoing Defendant's answers to Plaintiff's first
6 set of interrogatories and know the contents thereof, that the
7 answers made therein are true to the best of my knowledge
8 except as to those answers made on information and belief, and
9 as to those answers, I believe them to be true. "

10 Q Thank you. So would it be fair to say that after reviewing the
11 answers you signed that verification?

12 A Yes.

13 MR. RANDS: Okay. That's all I have. Thank you very much.

14 MR. CLOWARD: One more follow up, Your Honor.

15 THE COURT: Yes.

16 **FURTHER REDIRECT EXAMINATION**

17 BY MR. CLOWARD:

18 Q In addition to the documents that Mr. Rands mentioned, you
19 also reviewed documents that were within your investigative report, your file,
20 true?

21 A I have a file, yes.

22 Q And, for instance --

23 MR. CLOWARD: Your Honor, may I approach?

24 THE COURT: You may.

25 MR. RANDS: Can I see what you --

1 BY MR. CLOWARD:

2 Q Do you recognize this document?

3 A I do.

4 Q Okay. Can you tell the jurors what that document is?

5 A It's titled "Accident Information Card, Other Vehicle".

6 Q Okay. And that's a document that Mr. Lujan would have filled
7 out, true?

8 A There is no name or signature on it.

9 Q Is that one of your internal documents?

10 A It is.

11 Q Okay. So, obviously, if it's one of your company's internal
12 documents, Mr. Morgan would not have filled that out, true?

13 A In terms of who completed that document?

14 Q Yes.

15 A I believe it was our driver.

16 Q Okay.

17 A But I can't say that with certainty. He did not sign it or put his
18 name on it.

19 Q Okay. May I read to you what it says?

20 A Sure.

21 Q "I was pulling out of the driveway to cross McLeod Drive. Car
22 was on McLeod and did not see him. He ran into the bus." Do you agree
23 that's what the document says?

24 A Yes.

25 Q Do you agree that's the narrative that Mr. Lujan gave?

1 A I can generally agree with that, yes.

2 Q Okay. So you agree that he didn't see Mr. Morgan?

3 A If that's what he says.

4 Q Okay. Thank you.

5 A Thank you.

6 MR. RANDS: Nothing further, Your Honor.

7 THE COURT: All right. Any questions from the jury? No.

8 Thank you, ma'am. You can go back to your seat.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Cloward, please call your next witness.

11 MR. CLOWARD: We will call Mr. Morgan to resume the
12 testimony.

13 THE COURT: Sir, come back on up. Go ahead and have a
14 seat. I'll remind you that you are still under oath.

15 MR. CLOWARD: I'm sorry, Your Honor. Did you say I could --

16 THE COURT: Go ahead. Uh-huh.

17 MR. CLOWARD: Oh, okay. I didn't hear. I'm sorry.

18 THE COURT: I didn't say that, but you're welcome to go ahead.

19 MR. CLOWARD: Okay.

20 THE COURT: I just reminded Mr. Morgan that he was still
21 under oath. That's it.

22 MR. CLOWARD: Got you. Okay.

23 **AARON MORGAN**

24 [having been called as a witness and having been previously sworn, testified
25 further as follows:]

DIRECT EXAMINATION CONTINUED

BY MR. CLOWARD:

Q Aaron, how you doing?

A I'm okay. How are you doing?

Q Good. Tired. Long week. Okay. So I just had a couple of other things I wanted to follow up on, and then from there, we will go ahead and pass and the Defense will have some opportunity to ask you some questions.

A Okay.

Q I wanted to, I guess, kind of go over the accident or the crash. We didn't really talk about, I don't think, how your car moved and different things like. To the best of your recollection, can you just walk us through, again, the moment that you know that there's going to be an impact, what steps you took?

A I remember as soon as I saw in my peripheral the bus coming in front of me, I had jammed on my brake, turned to my right, and then I remember just bracing myself for impact.

Q And what happened after that?

A Whenever the impact occurred, I remember it -- my head hit the side of the car. I remember I grabbed the steering wheel really hard. And then I remember I felt like I was being pulling --

Q Like your body was --

A -- like I was being pulled to the right.

Q Okay. Like your --

A Yeah, it was like I was being spun around in a roller coaster, but

1 it was fun -- or not fun, and painful.

2 Q Okay. So now what I want to do is kind of shift the focus and
3 talk about some of the treatment. There was some discussion with the
4 doctors about -- like Dr. Coppel he treated from here until here. And so I
5 just wanted to establish a chronology.

6 MR. CLOWARD: Your Honor, I prepared a chart. I believe it --
7 there's an exception for the chart. I'd like to use the chart as a --

8 THE COURT: All right. Just -- have you shown it to Mr.
9 Gardner --

10 MR. BOYACK: We've got a copy for them, too.

11 THE COURT: -- or Mr. Rands?

12 MR. CLOWARD: Do you have any objection, Counsel?

13 [Mr. Gardner enters the courtroom]

14 MR. RANDS: I can't see any objection. It appears to be --

15 THE COURT: All right. Fine.

16 MR. CLOWARD: Okay. Your Honor, may I publish?

17 THE COURT: Go ahead.

18 MR. CLOWARD: Okay.

19 BY MR. CLOWARD:

20 Q All right. Aaron, so it --

21 THE BOYACK: Zoom in just a little bit. Zoom in just a little bit.

22 MR. CLOWARD: Oh, you can't see? Okay. There you go. Is
23 that visible? Is that visible? Okay.

24 BY MR. CLOWARD:

25 Q Okay. So, Aaron, fair to say on the emergency room, April 1,

1 that's when you -- that's when the crash took place?

2 A Yes.

3 Q And you followed up with the urgent care on April 8?

4 A Yes.

5 Q And then, from there, you started with Dr. Coppel on
6 approximately April 21?

7 A Yes.

8 Q And that was of 2014. And that treatment lasted until March 28
9 of 2017; is that correct?

10 A Yes.

11 Q During that period, you also were receiving the chiropractic care
12 -- this is April 21, but that's actually April 24.

13 A Yeah. Sorry.

14 Q That's okay. But you treated with the chiropractor from April 24
15 of 2014 until August 7 of 2015. Is that what you recall?

16 A Yes.

17 Q And then Dr. Grabow, for your wrists, you started treating with
18 him in June of 20 -- June 24th of 2014, and that treatment lasted until the
19 beginning of 2017, approximately February 8th; is that correct?

20 A Yes.

21 Q And then Dr. Muir, you started treating with him at the very --
22 pardon me -- very beginning -- pardon me -- of 2015, January, '15, and that
23 treatment is actually ongoing, correct?

24 A Yes.

25 Q Okay. Now, the MRI that you had of your cervical and mid-

1 back --

2 MR. CLOWARD: I'm sorry, Judge. Pardon me.

3 BY MR. CLOWARD:

4 Q The treatment of your -- the MRI with the cervical and thorax
5 was June of 2014; is that accurate?

6 A Yes.

7 Q And then you had an MRI of your left and right wrist of August
8 of 2014?

9 A Yes.

10 Q An MRI of your low back of July, 2014?

11 A Yes.

12 Q Now, you had procedures in 2015; one, two, three, four -- five
13 procedures in 2015; is that what -- is that accurate?

14 A Yes.

15 Q And then in 20 -- let's see. One, two, three, four -- actually six
16 in 2015. In 2016, you had one procedure; is that accurate?

17 A Yes.

18 Q And toward the end of 2016, that's when you go the second
19 opinion from Dr. Cash?

20 A Yes.

21 Q And then in 2017, in March, that's when you had the lower back
22 *transforaminal steroid injection* that gave you, as Dr. Coppel said, 50-
23 percent relief?

24 A Yes.

25 Q Okay. And that's about when you stopped taking the -- the

1 medication?

2 A Yes.

3 Q Okay. And then fast forward, the plasma disc decompression
4 was March 20th of 2018, and then the discogram was March 13th of 2018;
5 is that accurate?

6 A Yes.

7 Q Okay. Now, earlier there's been some testimony -- I wanted to
8 kind of give an indication to the jurors. Do you recall coming to -- coming to
9 court last April for a jury trial, and then that -- due to an emergency of one of
10 the parties, that had to be continued?

11 A Yes.

12 Q So that was right around here. And then this case, actually, we
13 came to trial and we had three days of trial. And then there was something
14 that happened in the trial, and so it got continued again. Do you recall that?

15 A Yes.

16 Q That was in November of 2017. So I just want to put those in
17 there. Fair to say there's been no resolution to this lawsuit to right now?

18 A Yes.

19 Q Okay. Thank you.

20 MR. CLOWARD: No further questions.

21 **CROSS-EXAMINATION**

22 BY MR. GARDNER:

23 Q Hello.

24 A Hello.

25 Q I apologize for being late.

1 MR. GARDNER: I intend to call this witness in my case in chief
2 also, so I'll just be a minute or two with him now, if that's okay?

3 THE COURT: However you would like to do it, Mr.
4 Gardner --

5 MR. GARDNER: Okay.

6 THE COURT: -- that's fine.

7 BY MR. GARDNER:

8 Q Look at that --

9 THE COURT: If you want to do your direct and cross at the
10 same time, that would also be fine. Just it's entirely up to you.

11 MR. GARDNER: Okay.

12 BY MR. GARDNER:

13 Q Looking at the sheet -- we'll put it up here again. I wrote some -
14 - I wrote some notes on here I want to ask about. Okay. Can you see that
15 okay?

16 A Yes.

17 Q Is that okay? Now -- all right. I just put some notes on here that
18 the accident is in 2014, correct?

19 A Yes.

20 Q And then in 2016, you had -- tell me again, how many
21 treatments during the year of 2016? Was it one?

22 A Yes.

23 Q Okay. And when did your lawyer get involved? When did you
24 hire your lawyer?

25 A I can't recall.

1 Q Okay. Was it in 2014?

2 A Yes.

3 Q Okay. It wasn't for the ER, I know that. But from the ER, where
4 did you go from the ER?

5 A To the urgent care.

6 Q Okay. And the ER told you to go to the urgent care, correct?

7 A Yes.

8 Q Okay. And then next was what?

9 A I believe they referred me to Dr. Coppel.

10 Q Okay. And that's the -- urgent care did?

11 A Yes.

12 Q Okay. When did your lawyer get involved in the case to start
13 referring you to people if you recall?

14 A I don't remember. I don't know.

15 Q Would it have been in 2014?

16 A I don't remember.

17 Q Okay.

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

19 THE COURT: All right.

20 MR. GARDNER: I will reserve my right to call him in my --

21 THE COURT: That's fine.

22 MR. GARDNER: -- in my case.

23 THE COURT: Yeah.

24 MR. CLOWARD: Okay.

25 THE COURT: Anything else, Mr. Cloward?

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REDIRECT EXAMINATION

BY MR. CLOWARD:

Q Just -- I just want to make it really clear because it's been suggested that we referred you to Dr. Coppel. Is that accurate?

A No.

Q It's been suggested that we referred you to Dr. Grabow. Is that accurate?

A No.

Q That was the urgent care that referred you there, correct?

A Yes.

Q And we didn't refer you to the urgent care, either, did we?

A No.

Q Okay.

MR. CLOWARD: No further questions, Judge.

THE COURT: All right. Anything from the jury? Yes? All right. Counsel, approach, please.

[Bench conference begins at 9:40 a.m.]

MR. GARDNER: Sorry for yesterday.

MR. CLOWARD: That's okay. It happens. It's stressful. I have my fair share of getting mad, too.

MR. GARDNER: There's no excuse.

MR. CLOWARD: It's all right, man.

MR. GARDNER: We just started, Judge.

THE COURT: I've seen worse.

MR. GARDNER: Your Honor, I'm sorry for yesterday.

1 THE COURT: Huh?

2 MR. GARDNER: I'm sorry for yesterday.

3 THE COURT: Oh, it's all right, Mr. Gardner. I walked out in the
4 middle of a sentencing once because I got so mad at the judge. That's how
5 -- it happens. I seriously did that. Can you even believe it?

6 MR. GARDNER: Yeah, well, I wasn't mad at you. I was mad at
7 myself.

8 THE COURT: It's all right. I was mad at the judge and I walked
9 out of the courtroom.

10 MR. CLOWARD: I made Judge Cory so mad one time, he
11 stood up -- it was a side bench. He stood up and he pointed at me and he
12 said, "Mr. Cloward, you are at risk of being sanctioned."

13 THE COURT: Wow. That's -- Ken's pretty --

14 MR. CLOWARD: Yeah, he's --

15 THE COURT: -- mild, too.

16 MR. CLOWARD: Yeah.

17 MR. GARDNER: Hopefully we're all friends now, again. Again.

18 THE COURT: Trials. It's all right. It's tough. Okay.

19 MR. CLOWARD: Hopefully we can ask that one. That's okay.

20 MR. GARDNER: Yeah.

21 MR. CLOWARD: Yeah.

22 THE COURT: That one is fine. Yeah. That's a good question.

23 MR. CLOWARD: Oh, man, that's a good question.

24 MR. GARDNER: That's a good question.

25 MR. CLOWARD: Yeah. I just conveniently forgot. "Are you

1 left-handed?" I -- he wrote that down.

2 THE COURT: Anyone else here left-handed?

3 MR. GARDNER: No.

4 THE COURT: Write -- that one goes here.

5 MR. CLOWARD: Yeah, that's a good question.

6 MR. GARDNER: I thought I already heard that, too. But I

7 didn't.

8 MR. BOYACK: No. No, I've been telling him to ask him.

9 MR. CLOWARD: I know, he's told me like three times. "Don't

10 forget to ask him. Don't forget to ask him."

11 MR. RANDS: Jurors think you're (Indiscernible).

12 MR. CLOWARD: Yeah. "Have you taken defense driving?"

13 No, that's not good for me.

14 MR. GARDNER: Well, you could ask him -- yeah, that's a good

15 one.

16 MR. BOYACK: (Indiscernible).

17 MR. CLOWARD: That's fine.

18 MR. GARDNER: That's good.

19 MR. CLOWARD: That's a good question.

20 MR. GARDNER: I don't have a problem with that. Yeah, it is.

21 MR. CLOWARD: Yeah.

22 MR. RANDS: I don't have a problem.

23 THE COURT: Great.

24 MR. GARDNER: Yeah.

25 THE COURT: Thank you.

1 MR. CLOWARD: Okay.

2 MR. RANDS: The one we're not asking, right?

3 MR. GARDNER: Yeah, that one.

4 THE COURT: We're not asking -- or writing the note right now,
5 Mr. Rands.

6 MR. RANDS: Just don't want it to get included.

7 THE COURT: Nope. I'm -- I haven't screwed that up, yet.

8 MR. RANDS: Okay.

9 THE COURT: There's always a first, I suppose.

10 [Bench conference ends at 9:43 a.m.]

11 THE COURT: All right. So, sir, I'm going to ask you some
12 questions. I'm going to ask you to look at the jury whenever you answer so
13 that they can hear you.

14 THE WITNESS: Okay.

15 THE COURT: When did you decide to sue?

16 THE WITNESS: Whenever I started to, I guess, have debt pile
17 up. I was worried about how I was going to pay for it.

18 THE COURT: Who advised you to take your case to the
19 lawyers?

20 THE WITNESS: That was my own personal decision to do so.

21 THE COURT: After you heard all the possibilities that could
22 happen to you after your initial surgery, that it will not be pain free after all,
23 are you still willing to go through with it?

24 THE WITNESS: Initial surgery. I'm not sure which initial
25 surgery. The initial one that I was looking at would be my wrist, and I ended

1 up doing that, so --

2 THE COURT: Have you taken a defensive driving class?

3 THE WITNESS: No.

4 THE COURT: If you looked right and left, how could you miss
5 the large vehicle?

6 THE WITNESS: I had seen it for a second or two before, but I
7 didn't have any idea it was going to pull in front of me.

8 THE COURT: Can you describe the cross streets?

9 THE WITNESS: It's going to be on McLeod and Thompson.
10 One of the cross streets, you go up Thompson, you're actually in the park.
11 The parking lot from the park goes straight into Thompson, and McLeod is
12 just a straight -- straight road up.

13 THE COURT: Were houses blocking your view to see other
14 vehicles?

15 THE WITNESS: No.

16 THE COURT: Are you left-handed?

17 THE WITNESS: Yes.

18 THE COURT: You stated just before the accident you saw a
19 bus to your right. How much time after seeing the bus was the accident,
20 and was this bus involved in the accident?

21 THE WITNESS: I saw a bus -- it was actually on my left side,
22 and I saw it for about two seconds before the accident occurred.

23 THE COURT: During your work -- during your workday, how
24 long do you stand?

25 THE WITNESS: For about seven hours, seven-and-a-half

1 hours.

2 THE COURT: All right. Follow up, Mr. Cloward?

3 MR. CLOWARD: Just one follow-up.

4 BY MR. CLOWARD:

5 Q Aaron, I want you to be brutally honest and level with the jurors.
6 If the -- the effects of the plasma disc decompression wear off, are you
7 going to have the fusion surgery?

8 A It's something I might consider if the pain proceeds and I --
9 that's something I might have to do.

10 Q Okay.

11 MR. CLOWARD: Thank you.

12 THE COURT: Mr. Gardner, anything else?

13 MR. GARDNER: No, thank you, Your Honor. I'm good.

14 THE COURT: Sir, you can go back to your seat. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Cloward, please call your next witness.

17 MR. CLOWARD: Your Honor, we'd call Alyssa Baker.

18 THE COURT: Come on up, ma'am.

19 THE BAILIFF: This way, ma'am. Go right up there, and if you
20 would please remain standing and raise your right hand, face the clerk to be
21 sworn in.

22 ALYSSA BAKER

23 [having been called as a witness and having been first duly sworn, testified
24 as follows:]

25 THE COURT: Okay. Go ahead and have a seat. Good

1 morning.

2 THE WITNESS: Good morning.

3 THE COURT: Could you please state your name and spell it for
4 the record?

5 THE WITNESS: Yes. It's Alyssa Baker; A-L-Y-S-S-A, Baker,
6 B-A-K-E-R.

7 THE COURT: Thank you. Could you -- you see that little
8 square thing? Just pull that towards, that's the microphone, and then scoot
9 up just a little bit so we can hear you.

10 THE WITNESS: Okay.

11 THE COURT: Great. Thank you.

12 Mr. Cloward, whenever you are ready.

13 MR. CLOWARD: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MR. CLOWARD:

16 Q I've asked Aaron to go into the other room so that you can be
17 brutally honest with the jurors about this -- about this case and you won't feel
18 like you're hurting his feelings, okay?

19 A Okay.

20 Q So, Alyssa, why don't you tell us a little bit about yourself.

21 A Well, I'm a architecture student, interior, actually, right now. I
22 work in an architecture firm. And I pretty much live and breathe in that field.

23 Q What are some of the things that you do -- that you do at your
24 firm? Like are there certain projects that you work on? Can you tell us a
25 little bit about -- tell the jurors a little bit about that?

1 A Sure. So it's a really, really small firm. I'm one of three
2 employees, and we just have the two principals. And, essentially, it's a
3 really great opportunity because it's project management straight out of the
4 gate. Usually you don't get to that until you're about five or six years into the
5 field, and -- so it's an amazing opportunity. I am in charge of a couple
6 projects right now, and we have a couple upcoming. On the 19th, I have an
7 opportunity over at NASA. We have a contract with them. So I'll be going
8 out to look at that site. And currently I'm working on the Veteran's home in
9 Boulder City. And we've done some stuff over at City Hall in Henderson.

10 Q Okay. When do you get to go out to NASA?

11 A On the 19th.

12 Q And you get -- you actually get to fly out there and --

13 A I think we're actually driving. Yeah, just a day trip. We're all
14 going to go out there and just look at the site.

15 Q Are you flying to -- because NASA is in Florida, though, right?

16 A We're going to the one in California. I'm not sure the exactly
17 location.

18 Q Oh.

19 A Yeah.

20 Q I didn't know they had a location in California.

21 A Yeah.

22 Q Learn something new every day. Okay. So how long have you
23 known Aaron?

24 A So I've known him 10 years, and we've been together for seven.

25 Q All right. What was the first -- I guess, the first time that you met

1 Aaron? Tell the jurors about that.

2 A So the first time that I laid eyes on Aaron was actually at youth
3 group, and he was dating a girl that went to the same church that I did. And
4 I would just see him around. And I just recall telling my friend that -- I was
5 like, wow, that girl is really lucky because he's really cute.

6 Q Did you have a crush on him?

7 A I did.

8 Q Did you have a boyfriend at the time?

9 A Probably.

10 Q And he had a girlfriend, so you weren't able to get together at
11 that -- that time?

12 A Correct.

13 Q All right. At that time, that you -- you met him, did you get to
14 actually interact with him? Did you get to know him better, or was it just kind
15 of you guys were in the same youth group?

16 A Just in the same youth group.

17 Q Okay.

18 A Uh-huh.

19 Q So when was it that you and Aaron, I guess, finally started to
20 date and how did that come about?

21 A So over summer, I think when I was 15, so I was about to start
22 my sophomore year, I was visiting my friend and that's when Myspace was a
23 big thing, and he had just reached out over Myspace and was like, "Hey, I've
24 seen you around. We should hang out." And so we went to a movie, and it
25 kind of just took off from there. And we were together for -- I would say until

1 December or so of that year, and we went to homecoming in October.

2 Q So you were still in high school?

3 A Yes. Yeah.

4 Q All right. And have you been together ever since then, or did
5 you --

6 A No. So after our little fling in high school, we both proceeded to
7 see other people. And then after I graduated in 2011, we got together that
8 summer, and that's -- we've been together since.

9 Q Okay. So you've -- you guys have been together since 2011?

10 A Yes.

11 Q All right. So why don't we talk a little bit about Aaron's -- you
12 live with Aaron part of the time; is that correct?

13 A Yes. Uh-huh.

14 Q Is -- does -- is there a basement in the home?

15 A No.

16 Q Okay.

17 A No.

18 Q And how long have you -- do you currently live with Aaron?

19 A No, not at the moment.

20 Q Tell us a little bit about that.

21 A So whenever we first got together, a couple of months after
22 being together, I had moved in with him and lived with him for a couple
23 years. Recently, we've decided to -- I've decided, rather, to go back and live
24 with my parents because of schedule conflicts. He and his family tend to
25 work nights. My family is more morning schedules. And between working

1 full time and going to school full time, it's just easier to make sure that I have
2 a schedule that works for everyone.

3 Q Okay. Can you give us a little bit of an insight as to Aaron's
4 father, and kind of what -- what are some examples of things that he does?

5 A So his father is a little -- little coo-coo sometimes. So in the
6 sense that whenever he comes home at night, you kind of have to feel his
7 mood out before you can really make your moves. Sometimes he's better to
8 be avoided until you know where he's at. He can come in the door and
9 either be fine, or he can see a plate or a crumb, or maybe one of the blinds
10 isn't up right, and he will start a huffing, cursing fit that everyone has to listen
11 to. And that's -- it's really rough sometimes, because you feel like it's your
12 fault even though you've already tried to clean the kitchen but it wasn't good
13 enough. But, I mean, he's really helpful when he needs to be. He's helped
14 me a bunch with my car. I'm not -- I don't know much about them. So he's
15 helped me with my air conditioning every summer, and, you know, made
16 sure I get the maintenance that I need to make sure that everything is
17 running smooth.

18 Q Okay. And it's my understanding that as a result of that, Aaron
19 moved -- moved out during high school; is that fair?

20 A I believe so, yeah.

21 Q And I believe when he met you, he actually was not living at
22 home; is that fair?

23 A Yes.

24 Q Okay. Now, why don't we go through and talk a little bit about
25 the day of the crash. Tell us where you guys were coming from. Were you

1 in the car with Aaron?

2 A No.

3 Q Okay. So why don't you just start off, let us know, I guess, what
4 happened that morning or that day. I think it was around -- around the
5 afternoon, kind of walk us through the progression there.

6 A Yeah. So that day, I actually had to take my car into the shop.
7 So we had carpooled -- or not carpooled to the mechanic, but rather I
8 dropped my car off with the mechanic and we were going to school together
9 at the time. So we carpooled to school. Carpooled back to the mechanic,
10 where -- and went inside and paid for my car, and then we both proceeded
11 to go to his house.

12 Q Okay. Now, were you directly behind him at the time of the
13 crash?

14 A No.

15 Q So tell us about that.

16 A So we both got majority of the way home, and then when we
17 were near his house, there was a light that he had made and I had missed it.
18 So I was probably two, three minutes behind.

19 Q And at some point, did you come up onto the crash scene?

20 A I did.

21 Q Tell us --

22 A Yes.

23 Q Tell us a little bit about that. What are -- your thought process,
24 what did you see, and so forth?

25 A So, yeah, that was surreal is the best word for that. I had made

1 my turn onto his street, because it had happened right up the street from his
2 house. Essentially, there's a park after -- or there's a park, and then there's
3 his street, and then his house is on this side. And, essentially, I was driving
4 by the park and I saw a car over to the side that looked like his. And I was
5 like, whoa, what's going on here. So I flipped around to investigate it.

6 Q And what -- what did you find?

7 A That it was Aaron's car, and that was -- I couldn't believe it. I
8 was like, wow, this just happened, obviously. I was right behind him up until
9 about two minutes ago. And I just remember seeing him and had tunnel
10 vision. I mean, that's all I could focus on was his face.

11 Q What -- tell us about that.

12 A It was a very strange look that he had on his face. He looked
13 extremely confused, would be the best word. I just remember looking at it
14 and being kind of just zoomed in on that, and hearing, "Go get my parents."

15 Q Okay. And I understand that you rode with Aaron to the
16 hospital --

17 A Yes.

18 Q -- in the ambulance?

19 A Uh-huh.

20 Q Okay. And can you tell us a little bit about, I guess, over the
21 next few months? Did Aaron end up starting to go see some doctors?

22 A Yes.

23 Q And were you -- did you ever go to any of the appointments with
24 him?

25 A I would take him to his appointments, yes. I wasn't there for --

1 like in the room for majority of them, but I would take him to them.

2 Q Okay. That semester, did Aaron finish that semester?

3 A That semester, yes.

4 Q All right. Now, did he also take classes in the summer after the
5 collision?

6 A Yes. We had an online class that we were taking together?

7 Q And did you finish that?

8 A Yes.

9 Q And what about the fall semester? Did Aaron take classes in
10 the fall?

11 A He had signed up for them, and he had attended a couple
12 weeks of them, and then dropped them.

13 Q Okay. Do you know why he dropped them?

14 A Since he -- I think he wasn't working at the time, and his father
15 was telling him he needed to get a job, and so he put school on hold and
16 found a job.

17 Q Okay. Where did he end up working?

18 A At LVAC.

19 Q And what was he initially doing?

20 A Initially, he was just the front person that checks you in, says,
21 hi, how's your day going, have a nice workout.

22 Q Did he eventually get promoted?

23 A He did.

24 Q Tell the jurors about that.

25 A So he -- I don't remember exactly how long he was there, but

1 he was promoted rather quickly into a sales kind of management position.

2 And he did really well, and he was one of the top salesman.

3 Q Was that -- was that atypical for Aaron to get promoted like
4 that?

5 A Oh, no. No. Whenever he was working his previous job at
6 Smith's, he was promoted multiple times and constantly got raises every six
7 months or so. And he was there for years.

8 Q Okay. So at some point, Aaron -- Aaron lost his job. He'd quit
9 LVAC about a year later; is that accurate?

10 A Yes.

11 Q Can you tell the jurors, I mean, why Aaron lost that job? He --
12 he had quit, but was he going to get fired?

13 A You know, I don't recall.

14 Q Okay. Did Aaron -- well, I guess, before we get to that, before
15 this crash, did Aaron drink a lot?

16 A No, just socially.

17 Q Tell the jurors, did that change after this crash?

18 A Eventually, yes.

19 Q Can you talk about that? Help us understand that.

20 A Yeah. So as the -- after -- after the crash, dealing with all of the
21 -- everything that was entailed with it, all the doctor visits, all these different
22 things, he began to struggle with depression and anxiety quite heavily. And
23 he started to rely on alcohol pretty heavily. And it kind of just, after a while,
24 got out of control for a while.

25 Q When you say out of control, what do you mean by that?

1 A I mean, he would start drinking in the morning, because that
2 was the only way he felt like he could deal with the day sometimes. Simple
3 tasks of trying to go to the grocery store, to the bank, or anything like that, it
4 was kind of like, oh, I have to take a sip of something before we go. He
5 wasn't going to family events without drinking beforehand. It was just a
6 complete crutch, but every day.

7 Q Okay. Was there ultimately a time when his drinking led to him
8 being hospitalized?

9 A Yes.

10 Q Why don't you talk to the jurors about that night? Start off, what
11 happened that night, were you with him, and so forth.

12 A So that night, particularly -- I remember he had just bought a
13 pair of shoes online the week before and they didn't fit properly. So we went
14 down to wherever Nike World was. I forget exactly. But we went to that
15 shopping center to make this return, and I just remember him kind of
16 stumbling around, so I was kind of supporting him as we were walking
17 through the hotel to get to Nike World. And we get the return finished and
18 we get home, and he just was -- just thrashing around. And I recall his mom
19 coming out and just saying like, "What's going on?" And he just wasn't
20 making complete sense. He was just kind of having like an angry outburst.
21 I don't recall over what. But eventually he was just sitting on the ground,
22 and I don't recall exactly who said to make the call, but we had to -- we had
23 to call the EMTs, and they took him away for the night. And that was his
24 wake-up call.

25 Q How much -- how much had he drank that night?

1 A At least a full bottle.

2 Q When you say a full bottle, how -- how big would that be?

3 A I guess, just like -- not the super-size, but the regular --

4 Q Not the half gallon, but the fifth?

5 A Yeah.

6 Q Okay. Was that typical for Aaron to drink that much in one day?

7 A Yes.

8 Q Did you have kind of a moment where you -- after that, after he
9 got out of the hospital, did you kind of pull him aside and lay down the law?

10 A I did. I remember at one point just telling him like, "Look, if you
11 keep doing this, like you're going to die. Like I'm afraid that you're not going
12 to wake up sometimes, or you're really had to bring -- to wake you up, and
13 it's not fair. It's not fair to me. It's not fair to your family."

14 Q When Aaron came home from the hospital, what was his dad's
15 reaction?

16 A When he got home, I just recall them hugging, and it was a
17 really long embrace. His dad was crying, glad that he was there. And the
18 night before, right after they took him away, I was still present, and I saw his
19 dad hanging onto his mom the same way, and just crying and blaming
20 himself and thinking that it was his fault.

21 Q To your knowledge, had Aaron's father ever kind of expressed
22 that type of emotion to him?

23 A He keeps a poker face. He's -- he'll express anger and
24 frustration when he really has other underlying emotions.

25 Q Was -- was that also kind of a realization to Aaron that, you

1 know, "I -- my parents care for me as well. My girlfriend cares for me. I -- I
2 got to turn this around"?

3 A Yes.

4 Q Okay. Now, after that event, how long after that did you kind of
5 pull him aside and have the discussion, like, "Aaron, you got to -- you got to
6 get your stuff together"?

7 A It was definitely around that time. I believe it was actually
8 maybe even a week before the hospitalization.

9 Q And the hospitalization, my understanding, was about
10 November of '15. Is that what you recall? If you don't remember, that's
11 okay.

12 A I can't remember.

13 Q Okay. So -- it's fine. Why don't you tell us a little bit about, I
14 guess, Aaron's turning point. So that's -- he kind of has that moment. Does
15 he eventually stop binge drinking like that?

16 A Yes.

17 Q Okay. And let the jurors know, like when -- when was actually
18 the last time that Aaron -- does he still binge drink?

19 A No.

20 Q When was the last time that you recall him binge drinking in that
21 manner?

22 A I can't recall exactly. He had a slightly weening off phase. But
23 whenever he was going through like the withdrawal symptoms of that, you
24 know, I was just trying to be encouraging. It was, obviously, rough to see
25 him sick constantly, but he was determined to do it. He was determined to

1 get over it.

2 Q Okay. Fair to say it's been a while?

3 A Oh, yeah.

4 Q Okay. So now if you could tell us a little bit of -- you've known
5 Aaron, you knew Aaron before the crash. Did Aaron, when you were dating,
6 or even to your knowledge, ever go see, you know, a doctor for his lower
7 back? Did he ever like have injections for his lower back or for his neck, or
8 go to physical therapy for his neck or his back, or anything like that?

9 A You said before the crash or --

10 Q Yeah.

11 A No.

12 Q And can you tell the jurors a little bit about, I guess, what effect
13 the crash had on Aaron in his neck and his back? Like what are some
14 things that maybe you've noticed that he does differently now?

15 A Now? He definitely can't lift things. He --

16 Q When you say lift things, are you talking like, you know, he
17 couldn't lift a bottle of water or heavy things?

18 A Heavier things.

19 Q Okay. What else?

20 A Well --

21 Q Like what activities did you used to do that maybe you don't do
22 now? Has there been a change there --

23 A Yeah.

24 Q -- or is it the same?

25 A Definitely. So before -- before the crash, we used to do a lot of

1 physical activities.

2 Q Like what? Tell the jurors, like what?

3 A So we used to go to the gym together. We would go hiking.

4 There's a rock-climbing gym near his house, and we used to go there pretty

5 frequently. So we used to just do a lot of things to stay in shape, be in

6 shape. That was a lifestyle that we really enjoyed. And, yeah, we haven't

7 done any of that in years now as a result of the crash. It's -- he comes home

8 from work, and the first thing he wants to do is just lay on the floor for

9 minutes before he even takes a shower, or changes clothes, anything like

10 that. He just goes to lay down on a hard surface because that feels good, I

11 guess. I lay on the surface and can't wait to get up, but --

12 Q You lay down next to him?

13 A He'll ask me to, and I can only stand it for about five minutes

14 and then I'm -- like I'm out.

15 Q How often does he do that?

16 A Every day after work. Yeah, after he's been on his feet for a

17 couple hours, it's --

18 Q Did he ever do that before --

19 A No.

20 Q -- the crash? Okay. You talked about the gym. Aaron -- his

21 physical condition now, I believe he's around 250, 260. Has he always

22 weighed that?

23 A No. Well, that's hard to say. Whenever he was in shape, just

24 because of how muscle and fat weigh differently. I don't his exact weight,

25 but he used to be extremely in shape. Large muscles that you could -- back

1 in high school -- he's always been that way. In high school, he would wear
2 skinny jeans, and I was afraid that his calves were going to rip them open
3 type of deal. I mean, he was just ripped, so --

4 Q He was showing off a little bit?

5 A Uh-huh.

6 Q Okay. How often would you say that Aaron worked out at the
7 gym before this crash?

8 A Four, five times a week, at least.

9 Q How often does he workout now?

10 A He doesn't.

11 Q How long has it been since he really worked out?

12 A He worked out up until the crash, but since then, he has not.

13 Q Okay. Are there other things that -- that you think would be
14 important for the jurors, I guess, to know about how this has affected him
15 either physically or emotionally?

16 A Not off the top of my head, no.

17 Q Okay.

18 MR. CLOWARD: No further questions, Your Honor.

19 THE COURT: Cross.

20 **CROSS-EXAMINATION**

21 BY MR. RANDS:

22 Q It's Ms. Baker?

23 A Yes.

24 Q Morning.

25 A Morning.

1 Q I'm Doug Rands. I'm one of the attorneys for the Defendant in
2 this matter. Could I ask you a couple of questions?

3 A Of course.

4 Q Let's talk a little bit about -- you're currently dating --

5 A Yes.

6 Q -- Mr. Morgan?

7 A Yes.

8 Q But you're not living together right now?

9 A Correct.

10 Q Okay. Where do you -- you live at your -- in your parents' --

11 A Yes.

12 Q And he lives with his parents?

13 A Yes.

14 Q Have you ever had an apartment together where you lived
15 separately?

16 A Not yet, no.

17 Q Okay. So when you were living with him, were you living at his
18 parents' place or your parents' place?

19 A At his parents'.

20 Q Okay. So you lived together with him --

21 A At his parents'.

22 Q -- at his parents' place?

23 A Uh-huh.

24 Q Okay. Did he have like his own room or something?

25 A Yeah.

1 Q Okay. And was that just a regular room in a house, or was it
2 like a mother-in-law suite or something, where you had your own little place?

3 A No, it's just a single, little bedroom.

4 Q Just a bedroom, and you shared a bathroom with the rest of the
5 family?

6 A Yes. It was a three-bedroom house, two bathrooms.

7 Q Okay. So I assume there's a bathroom in the master bedroom,
8 and then one for the house?

9 A Correct.

10 Q Okay. And total, how -- how long did you live in that
11 arrangement with him and his parents?

12 A I'd say probably about four years.

13 Q Okay. At the time of the accident, were you living there?

14 A Yes.

15 Q And right after the accident you stayed there?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q All right.

20 A Sorry.

21 Q It's just a -- an attorney thing. I apologize for that. Sometimes
22 we -- to get the record clean, we say you need to answer audibly. So we'll
23 jump on it. I'm not trying to make you feel uncomfortable in any way. It's
24 just -- it's a habit more than anything. I apologize.

25 But you still consider yourself today dating him -- with him?

1 You're his girlfriend?

2 A Yeah. Oh, yeah.

3 Q And, you know, you want what's best for him?

4 A Of course.

5 Q Okay. And you came here today to testify on his behalf, right?

6 A Yeah.

7 Q Okay. Try and help out?

8 A Uh-huh.

9 Q At the time you said that he was suffering from some problems
10 with alcohol, did that start immediately after the accident or was it sometime
11 later?

12 A It was a little after. Uh-huh.

13 Q Okay. I think, if my -- I may be wrong, and if I am, I apologize.
14 But I think the issue where he went to the hospital was almost two years
15 after the accident. Was that right?

16 A I can't recall exactly, but yeah.

17 Q A period of time after, anyway?

18 A Uh-huh. Yeah.

19 Q Was it right after --

20 A About two years. That sounds correct.

21 Q And you explained a little bit about what happened. You'd gone
22 out to -- one of the doctor's notes said that he'd trashed his house. Do you
23 remember him doing that?

24 A Yeah, I do.

25 Q So it was more than just coming home and sitting down? He

1 was actually throwing things around?

2 A Correct. Yeah. He was having some sort of an outburst, and
3 he had broken a plate. Uh-huh.

4 Q Okay. So -- and you were -- were you worried for your safety?

5 A I never really felt that my safety was in danger.

6 Q Okay.

7 A No.

8 Q But in any event, a decision was made to call an ambulance?

9 A Correct.

10 Q Or paramedics?

11 A Uh-huh.

12 Q And he was taken to the hospital?

13 A Yes.

14 Q Did he spend -- spend the night at the hospital?

15 A He did.

16 Q Okay. Did he come home the next day? I think --

17 A He did.

18 Q I may have written it down wrong, but I think you said that he
19 came home the next day?

20 A Correct. Yeah.

21 Q Okay. And you said he was drinking -- I think the -- I don't know
22 if you said it or if Counsel said it, but binge drinking? Drinking a lot?

23 A Correct.

24 Q And he -- does he still drink socially now?

25 A No. He's quit altogether.

1 Q Quit altogether?

2 A Uh-huh.

3 Q Well, that's good.

4 A Yeah.

5 Q Cold --

6 A A lot healthier.

7 Q It's a lot healthier. I agree with you there. We can agree on

8 that. But at the time -- you said in high -- well, I'm not going to put words in

9 your mouth. You said before the accident he was a social drinker?

10 A Correct.

11 Q He'd go out and have a beer or something?

12 A Uh-huh.

13 Q Is that right?

14 A Yes.

15 Q And you said that at the time of the accident -- or time of the

16 incident where he went to the hospital, he had drunken a -- I think it maybe it

17 was talk -- a fifth? I'm not a drinker so I don't know the --

18 A I'm not sure of the exact terminology, either, but, yeah, it was a

19 -- like the regular --

20 Q Regular sized bottle?

21 A -- sized bottle. Yeah.

22 Q And what was it? Was it whiskey?

23 A Likely. I don't recall exactly, but --

24 Q Okay. If you don't know, that's fine. But you, I think -- and,

25 again, I don't want to put words in your mouth, but there was something that

1 was said about depression. I don't know if Counsel said he was in
2 depression or you might have said it. But you were going with him
3 periodically to some of his doctors' appointments?

4 A Correct.

5 Q Did you ever mention to the doctors that he seemed to be
6 depressed?

7 A No.

8 Q Do you know if he ever sought out any kind of a -- like a
9 psychologist, psychiatrist for depression?

10 A No, he did not.

11 Q Do you know if any of the doctors put in their notes that he was
12 suffering from depression?

13 A Not to my knowledge.

14 Q Okay. And you never -- did you -- I apologize. Again, putting
15 words in your mouth. Did you ever suggest, "You need to go see a
16 counselor"?

17 A I had brought it up, yes.

18 Q That before the incident with the hospitalization or after?

19 A It would have been before, and probably before the drinking
20 even.

21 Q But you don't know that he ever followed up on that?

22 A No.

23 Q But you never insisted that he do it, either, correct?

24 A I'm sorry?

25 Q You never insisted that he get counseling or --

1 A No.

2 Q Okay. And do you know if he ever went to like AA or any of
3 those type of --

4 A No.

5 Q -- 12-step programs?

6 A Huh-uh.

7 Q You don't know, or he didn't do it?

8 A He did not.

9 Q Okay. You said that -- I believe you said like when he would
10 work at Smith's or work at LVAC, he was promoted pretty quick?

11 A Yes.

12 Q How long has he worked Subway?

13 A He's been there over a year now.

14 Q Okay. And he's still a sandwich maker?

15 A Yeah. There isn't really much room to move up there.

16 Q Okay.

17 A Yeah.

18 Q It's the same job when he started that he's doing now?

19 A Correct.

20 Q Okay. And you said his dad sometimes was a little coo-
21 coo?

22 A Yes.

23 Q Was that one of the reasons you don't live there anymore?

24 A At times, yeah. Sometimes I felt like he just needed his space,
25 and that might alleviate some of it. I don't know if that really worked or not.

1 Q And I think you said, as to why you don't live there, it was
2 scheduling issue, too, with your parents and his parents, and --

3 A Uh-huh.

4 Q -- you're going to school and --

5 A Correct.

6 Q -- his work schedule?

7 A Uh-huh.

8 Q Is that right?

9 A Correct.

10 Q And you said you're going to NASA --

11 A Yes.

12 Q -- in California? Is that in Livermore?

13 A I'm sorry?

14 Q Is that in Livermore, California?

15 A I'm not sure of the exact location.

16 Q Okay. I'm kind of a space geek, and I think it is, but that's --

17 A Okay.

18 Q That's neither here nor there. Thanks for your time.

19 THE COURT: Is there anything else, Mr. Cloward?

20 MR. CLOWARD: Just -- yeah, just a couple follow ups.

21 **REDIRECT EXAMINATION**

22 BY MR. CLOWARD:

23 Q Was Aaron ever suicidal?

24 A He had expressed that a few times to me, yes.

25 Q Okay. How come you and Aaron haven't moved out into your

1 own apartment or looked at getting a house or something?

2 A I'm sorry, I didn't hear the first part of the question.

3 Q How come you and Aaron haven't moved out and gotten a
4 house or something?

5 A We would like to. Right now, just with school and work, that's --
6 it's a lot to take on, a lot of responsibility. And right now, I just have my
7 family and everything just wanting me to, you know, continue on with the --
8 my career and school, and just get that out of the way first.

9 Q Okay. Is the -- okay. Fair enough.

10 Can you give the jurors an idea of how Aaron is now, after this
11 recent procedure, as compared to the way he was say even a year or two
12 ago?

13 A So there's been significant improvement. He still lays on the
14 floor when he comes home, but it's -- I'm not constantly hearing him
15 complain as much. It seems to have definitely helped him.

16 Q Okay. Thank you.

17 MR. RANDS: One --

18 THE COURT: Sure.

19 MR. RANDS: One question.

20 **RECROSS-EXAMINATION**

21 BY MR. RANDS:

22 Q And sometimes when attorneys say one question, it turns into
23 more, but I'll try to keep it to one.

24 The doctors and Aaron have said that he feels like he's almost
25 90 percent improved from -- from after the last procedure. Would you agree

1 with that?

2 A I'm -- that's hard for me to answer, but there's been significant
3 improvement.

4 Q Significant improvement. Thank you.

5 THE COURT: All right. Any questions from the jury? Yes. All
6 right. Counsel, approach, please.

7 [Bench conference begins at 10:19 a.m.]

8 MR. RANDS: That's the whole point.

9 MR. CLOWARD: I don't necessarily think I would ask the
10 question, but if --

11 MR. RANDS: That's a good question.

12 MR. CLOWARD: Uh-huh.

13 THE COURT: All right.

14 [Bench conference ends at 10:20 a.m.]

15 THE COURT: All right. Ma'am, I'm going to ask you a couple
16 questions. I'm going to ask you to look at the jury when you answer so they
17 can hear you, all right?

18 THE WITNESS: Okay.

19 THE COURT: Okay. Being Aaron's girlfriend for the past
20 several years, and being a well-suited advocate and knowing Aaron better
21 than anyone could argue, do you believe in Aaron's ability to continue to live
22 life to the fullest regardless of the outcome of this trial? Please elaborate for
23 each outcome to your best judgment.

24 THE WITNESS: Can you repeat -- read it one more time? I'm
25 so sorry.

1 THE COURT: I sure can. Let me just get to the question part.
2 Do you believe in Aaron's ability to continue to live life to its fullest
3 regardless of the outcome of this trial? Please elaborate for each outcome
4 to your best judgment.

5 THE WITNESS: Okay. So the answer is yes. He's definitely a
6 lot more positive looking forward towards the future. We've talked about our
7 plans for the future, so it's -- he's a lot healthier now. He's looking to pursue
8 school, no matter what happens, and start a career of his own, trying to
9 figure that out regardless of how the case goes, really. That's -- that's his
10 priority is finishing -- to continue to get better physically, and to stay better
11 mentally, and to move forward.

12 THE COURT: How is Aaron's relationship with your parents
13 and siblings?

14 THE WITNESS: It's great. Yeah, my family really likes him.
15 My brother adores him. Especially my brother loves him.

16 THE COURT: How is your relationship with Aaron's parents
17 and siblings?

18 THE WITNESS: So it is -- it's good. His parents enjoy my
19 company, it seems. I've always felt welcomed into their household, except
20 for whenever he comes home at night sometimes. And in regards to his
21 siblings, it's -- had some waves here and there but, ultimately, it's a -- they're
22 all positive relationships all around.

23 THE COURT: All right. Any follow-up, Mr. Cloward?

24 MR. CLOWARD: No.

25 MR. RANDS: No, but those were good questions.

1 THE COURT: No, Mr. Cloward?

2 MR. CLOWARD: Oh, I'm sorry. No, Judge.

3 MR. GARDNER: Oh, no. Thank you. No, Your Honor.

4 THE COURT: All right. Ma'am, you are free to go. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Cloward, please call your next witness.

7 MR. CLOWARD: We rest.

8 THE BAILIFF: Judge --

9 THE COURT: I'm sorry?

10 THE BAILIFF: A break.

11 THE COURT: Oh, yep. All right. Folks, we're just going to take

12 a short break. During this break, you are admonished not to talk or

13 converse among yourselves or with anyone else on any subject connected

14 with this trial, or read, watch, or listen to any report or commentary on the

15 trial by -- or anyone person connected with this trial by any medium of

16 information, including, without limitations, newspapers, television, the

17 internet, and radio, and form or express any opinion on any subject

18 connected with the trial until the case is finally submitted to you. I remind

19 you not to do any independent research. And we'll come back at 10:30.

20 THE BAILIFF: Please rise for the jury.

21 [Jury out at 10:23 a.m.]

22 THE COURT: All right. I'm going to eat all of these.

23 What is the -- Mr. Gardner, Mr. Rands, before you take off

24 there, what is your -- where'd my sticky go? Darn it. This is unacceptable.

25 What is your order of witnesses? What do you got going on?

1 Tell me your plan.

2 Oh, there it is.

3 MR. GARDNER: Well, we pushed our experts to Monday. I
4 can call them to see if we can get them here today, but I don't know if we
5 can do that. But I do intend to call the Plaintiff and Erica, and then our
6 accident reconstructionist and our doctor. But --

7 THE COURT: Mr. Gardner, I told you two days ago to have
8 them here today.

9 MR. GARDNER: I'm sorry, I misunderstood.

10 THE COURT: I mean, I --

11 MR. GARDNER: I'll see if I can get them.

12 THE COURT: Because, I mean, we knew that they were going
13 to finish in the morning today.

14 MR. GARDNER: I'll contact them, Your Honor.

15 THE COURT: All right. All right, folks. 10:30.

16 MR. CLOWARD: Okay. Thanks.

17 [Recess at 10:25 a.m.]

18 THE COURT: Did you both get -- I had put them up here but I
19 didn't tell you -- the new set of jury instructions.

20 MR. RANDS: I grabbed those and distributed them yesterday.

21 THE COURT: Right. Thank you, Mr. Rands.

22 MR. RANDS: [Indiscernible].

23 THE COURT: So it is not exactly what we had decided upon
24 before. There was just a couple of additional instructions and they're
25 reordered just a hair. But I incorporated what -- there were a few

1 instructions from the set from --

2 MR. CLOWARD: Than last night?

3 THE COURT: Yeah.

4 MR. CLOWARD: Okay.

5 THE COURT: So -- that I had incorporated. So just if there's
6 any additional instructions that anybody intends to propose, let me know.

7 MR. CLOWARD: I think there's one instruction that we wanted
8 to propose just regarding that -- the trials.

9 THE COURT: That's fine. So just make sure that you get it --
10 you get it emailed to me.

11 MR. RANDS: Yeah, I've gotten a copy of their -- and we've
12 talked a little bit with Bryan before about that. But now you've brought the
13 other one up, so I guess we're going to have to have them both.

14 THE COURT: So just make sure I get -- if you could get them
15 in writing to me, because I would like to go --

16 MR. CLOWARD: Do you have it in writing?

17 MR. RANDS: The only other issue was to --

18 THE COURT: -- through them maybe around lunchtime.

19 MR. CLOWARD: Your Honor, I have a handwritten --

20 THE COURT: That'll work.

21 MR. CLOWARD: -- apparently from Mr. Boyack.

22 MR. BOYACK: Yes.

23 MR. CLOWARD: Because Mr. Boyack's --

24 THE COURT: We'll see how Mr. Boyack's writing is.

25 MR. CLOWARD: Ask him to type it up.

1 MR. BOYACK: Well --

2 MR. RANDS: Instruction Number 20, Your Honor --

3 MR. CLOWARD: I'm throwing you under the bus.

4 MR. RANDS: Instruction Number 20 also has past and future
5 vocational loss --

6 THE COURT: Oh, I thought I fixed that.

7 MR. RANDS: I'm going to go find Mr. Gardner. I'll be right
8 back.

9 THE COURT: Oh, I see. You know what? It's -- it was an
10 editing error on my part. I circled it, but I didn't cross it out so --

11 MR. BOYACK: Oh, okay.

12 THE COURT: So my assistant would have had

13 MR. BOYACK: Number 29?

14 THE COURT: -- no way to figure out what I was trying to do
15 there.

16 MR. BOYACK: On Number 29 that --

17 THE COURT: Yeah.

18 MR. BOYACK: Okay, perfect.

19 THE COURT: I just -- I screwed it up.

20 MR. BOYACK: Well, we're all --

21 THE COURT: I knew I was taking it out, I just --

22 MR. BOYACK: Ben's pointed out my screw-ups, plenty of
23 those.

24 THE COURT: I wasn't very clear on that.

25 Do you want to get them back in?

1 THE MARSHAL: Please rise for the jury.

2 [JURY IN AT 10:35 A.M.]

3 THE MARSHAL: Please be seated.

4 THE COURT: Back on the record in case number A718679,
5 Morgan versus Lujan. [Indiscernible] present, all of our jurors present.

6 All right. Mr. Gardner, please call your first witness.

7 [PAUSE]

8 [COUNSEL CONFER]

9 THE COURT: All right. Sir, come back on up, please. Go
10 ahead and have a seat. Having been previously sworn, I'll remind you that
11 you are still under oath.

12 Mr. Gardner, whenever you are ready.

13 **AARON MORGAN**

14 [having been called as a witness and having been previously sworn, testified
15 further as follows:]

16 **DIRECT EXAMINATION**

17 BY MR. GARDNER:

18 Q Hello, Aaron.

19 A Hello.

20 Q We meet again.

21 A Yes.

22 Q I don't know why you left at -- watching your girlfriend testify.

23 Every man in America would like to see his wife or girlfriend up on the stand
24 like that. You can find out a lot of information.

25 But where are you working now?

1 A Subway.

2 Q Subway? Which location?

3 A It's going to be on Windmill.

4 Q Okay. And you are working there now?

5 A Yes.

6 Q And I just -- when your girlfriend -- what's her name again?

7 What's your girlfriend's name?

8 A Melissa.

9 Q Okay. When Melissa was testifying, she indicated that you
10 were getting much better, much better -- feeling much better. Is that
11 accurate?

12 A Yes.

13 Q Okay. If you were to -- if you were to put a percentage on it,
14 would you say you were ninety percent better? Eighty percent? What?
15 Ninety-five?

16 A Seventy percent perhaps.

17 Q What did you want to do for a profession when you were in high
18 school?

19 A What I wanted to do at the time was to maybe do something in
20 the law field.

21 Q Think you wanted to be a lawyer, didn't you?

22 A Yes. That has changed though.

23 Q Why? Because of this?

24 A No. Different interests.

25 Q Okay. Because I was going to talk to you outside the presence

1 of the jury and tell you a couple things about that.

2 When you testified earlier today, you indicated that you might
3 consider having surgery. Is -- did I get that right?

4 A Yes.

5 Q Okay. Did you -- what do you mean by "might consider"?

6 A I'll have to see how this surgery lasts and see how I'm feeling.
7 You know, when the pain's unbearable I have to make that decision. And
8 it's -- at this moment in time I -- it's hard to make that call.

9 Q And when you talk about "this surgery," what -- which surgery
10 are you talking about?

11 A The decompression on my lower back.

12 MR. GARDNER: Please, Your Honor, just a moment.

13 THE COURT: Sure.

14 [PAUSE]

15 BY MR. GARDNER:

16 Q Okay. Sorry about that. Tell me what you do plan on doing
17 now for your living.

18 A I'm so sorry?

19 Q What are you planning on doing now that you don't want to be a
20 lawyer?

21 A Something pertaining to business.

22 Q Any particular type of business?

23 A Yes.

24 Q Tell me. What is it?

25 A I was thinking about starting my own consignment shop for

1 high-end shoes and sneakers. Something that I have an interest in and
2 know a lot about.

3 Q Do you still drink alcohol?

4 A No.

5 Q Cold turkey?

6 A Yes.

7 Q Congratulations. That's good.

8 A Thank you.

9 Q That's the only way.

10 Now, you're going to be on your feet at Subway how long?

11 A Seven hours or so a shift.

12 Q Do you get breaks?

13 A Yes, I do.

14 Q Okay. Now, is the condition of your wrist going to affect the way
15 you work at Subway? I mean, is it going to affect you?

16 A No. It's -- it's gotten better than it was since the crash.

17 Q Okay. Do you feel like you could now have a profession and
18 maybe stay with the sandwich shop for a while now? I mean, your physical
19 doesn't get affected by that, does it?

20 A I'm sorry. You said stay with -- did you say stay with the
21 profession that I'm doing right now?

22 Q No, Subway. I mean, you don't have any plans on leaving
23 Subway any -- in the near future, do you?

24 A I do. I intend on going back to school and figuring that out, so.

25 Q When will that be?

1 A I'm going to try to go next semester. That's my intentions.

2 Q Good. Now, I've gotten the impression that perhaps I offended
3 you earlier when I said you were a kid living in your parents' basement. Do
4 you remember that?

5 A Yes.

6 Q Have you ever heard that expression before?

7 A Yes.

8 Q What do you take that to mean?

9 A That I'm living at their house.

10 Q Yeah. I --

11 A No, I'm not -- I'm not offended.

12 Q Okay. Are you living there now?

13 A Yes, I am.

14 Q Okay. Did you understand that that was just a saying --

15 A Yes.

16 Q -- the kid's living --

17 A Yeah. Of course.

18 Q Okay. Good. I didn't want to offend you on that.

19 A No, not at all. Thank you, Mr. Gardner.

20 Q Okay. Now, you indicated that a couple of seconds before this
21 accident you saw a vehicle coming at you. Did I hear that right?

22 A No. I saw the vehicle in the parking lot.

23 Q Oh, okay.

24 A We were stopped.

25 Q Okay. Now, once you were -- as you were traveling, do you --

1 can you tell me where the vehicle came from?

2 A It came from my left side, so it would be on the west side of me
3 going eastbound.

4 Q And when did you last see that vehicle? I mean, the first time --

5 A See that as in?

6 Q First time you saw it.

7 A What do you mean by "it"?

8 Q While you were traveling --

9 A Uh-huh.

10 Q -- did you see it any time before the accident?

11 A In my peripheral [indicating] I began to see it, but right before
12 the impact.

13 Q Okay. If you see it in your peripheral, was there anything that
14 went off in your mind that perhaps that you were going to have an accident
15 with that truck?

16 A Yes. My adrenaline started pumping and that's why I slammed
17 on my brakes and tried to turn my wheel.

18 Q Okay. You say you tried to turn your wheel. Did you turn your
19 wheel or --

20 A I said I tried to slam on my brakes and turn my wheel, yes. Yes,
21 I did.

22 Q Okay.

23 MR. GARDNER: Court's indulgence. I just need to get
24 something out of my bag.

25 [PAUSE]

1 BY MR. GARDNER:

2 Q I'm going to put an overhead up and I'm going to represent to
3 you, and you can tell me if I'm wrong, but I'm going to represent to you that
4 this is an aerial of the accident scene.

5 A Okay.

6 Q Let me see if I can -- okay. Do you see that okay?

7 A Yes.

8 Q Okay. Now, right in the middle I see Tompkins right here.

9 A Yes.

10 Q Are you familiar enough with the area that you could tell me a
11 little bit? So here's Tompkins and then Montara Meadows is where my
12 client is.

13 THE COURT: Would you like him to step down so he can point
14 out whatever on the screen?

15 MR. GARDNER: Oh, that's a great idea. Yeah. Thank you.

16 Would you like to step over?

17 May I approach just --

18 THE COURT: Sure.

19 BY MR. GARDNER:

20 Q Okay. By looking at this map just -- are you oriented to it?

21 A Yes.

22 Q Okay. Do you know -- can you tell us where the accident
23 occurred, roughly?

24 A Right in here.

25 Q Okay. I'm going to -- let me -- hang on for just a second. Okay.

1 Put your finger up there again. I'm going to circle it. Right here?

2 A Yes.

3 MR. CLOWARD: Why don't he just come circle your
4 [indiscernible]?

5 MR. GARDNER: Yeah, I do. That'll be all right, if that's okay.

6 BY MR. GARDNER:

7 Q Can you come and circle it on here? If that pen works.
8 Bigger. Bigger circle. Okay. Does that show up?

9 THE COURT: You can blow it up, Mr. Gardner?

10 MR. GARDNER: I'm trying to get it a different -- a brighter color
11 too or something.

12 THE COURT: All right. Mr. Morgan, why don't you just go
13 ahead and have a seat while we get this figured out.

14 BY MR. GARDNER:

15 Q Okay. I'm moving it in here.

16 THE COURT: Is our -- Renee? Renee? Is the screen working
17 on there?

18 THE COURT RECORDER: It's not working.

19 THE COURT: All right.

20 MR. GARDNER: Oh, it isn't? Okay.

21 THE COURT: No, no. It -- we -- generally the witness has the
22 ability to circle stuff on their screen and then it shows up, but it's not working.
23 We're getting it all upgraded and -- soon.

24 MR. GARDNER: Okay.

25 BY MR. GARDNER:

1 Q Can you show the jury -- just move your finger along as to
2 where you were coming from right before the accident. Do you need a
3 pointer or anything or --

4 THE COURT: They're not --

5 THE WITNESS: No.

6 THE COURT: -- going to be able to see that. You're going to
7 need to step down, sir.

8 THE WITNESS: He was coming from this way.

9 BY MR. GARDNER:

10 Q Let's start with you first. Where was -- where were you coming
11 from?

12 A I was coming from the automotive shop with my girlfriend.

13 Q Okay. And when you say with your girlfriend, she was
14 following, correct?

15 A She was in another vehicle.

16 Q Okay. And rub your finger on that one more time where you
17 were coming from so the jury can see it. [Indiscernible] so I can see it.

18 Okay. So on McLeod you're headed --

19 A Northbound.

20 Q -- on this picture. Okay.

21 And where did my driver come in?

22 A Where did he come in? Like where was --

23 Q Where was the first time you saw him?

24 A He was over here.

25 Q And -- okay. So he was on Tompkins?

1 A Yes.

2 Q Coming into the intersection.

3 A Where he was in the parking lot that -- and he's at the parking
4 lot that connects to Tompkins.

5 Q Okay. Point where that is again.

6 A Right here.

7 Q Okay. And there's a driveway right there he could come out of?

8 A Yes.

9 Q Okay. Now, tell me where the accident occurred, will you? Can
10 you point to that?

11 A Uh-huh (affirmative). It would be in the lane that I was going up,
12 right about here.

13 Q Okay. Let me circle that. Was it right here? Can you see?
14 Why don't you come and circle it for me. You can do a bigger circle.

15 MR. CLOWARD: Use blue. Maybe it will come out a little
16 better.

17 THE WITNESS: It would be basically at that line.

18 BY MR. GARDNER:

19 Q Okay. It -- can you make that a little bigger because I want to
20 ask you a couple questions about it.

21 A Sure.

22 Q Bigger.

23 A Okay.

24 Q There you go. Okay. So that's where you -- that's where you're
25 saying the accident occurred, right?

1 A Yes.

2 Q Okay. Now, it looks like an intersection. This accident wasn't in
3 an intersection, was it?

4 A It was a -- I mean, technically I guess it was -- oh, not like a light
5 or anything there. There wasn't anything, an intersection. There was a stop
6 for him, but.

7 MR. CLOWARD: Do you still need my pen? Just need to take
8 some notes.

9 MR. GARDNER: Oh, thank you.

10 THE COURT: Are you done, Mr. Gardner? Can he go back to
11 his seat?

12 MR. GARDNER: Excuse me?

13 THE COURT: Can he return to his seat?

14 MR. GARDNER: Oh, yeah. Yeah. Why don't we do that?
15 Now, can he -- is your -- is that screen working? Can you see that, Aaron?

16 THE WITNESS: Yes, I can.

17 THE COURT: He can see it; he just can't write on it.

18 MR. GARDNER: Oh, okay. Okay.

19 BY MR. GARDNER:

20 Q Okay. Now, where were you headed? Were you headed --

21 A Northbound on McLeod.

22 Q Okay. So you were going to be -- oh boy. You were going to
23 be going up here, right?

24 A Yes.

25 Q Okay. And the circle here you put, it looks like it's where -- it

1 almost looks like it's an intersection. Let's clear that up for a minute. Had
2 you made your turn by the time the accident happened?

3 A What do you mean made my turn?

4 Q You were going to go up McLeod, weren't you? Like this?

5 A Yes.

6 Q Okay. And you were on what, Tompkins?

7 A I was on McLeod going northbound.

8 Q Okay. So you never were on Tompkins, right?

9 A No.

10 Q Okay. Okay. Now, how many lanes, if you recall -- and
11 this isn't a deal breaker -- how many lanes does McLeod have?

12 A I think five? Five or six.

13 Q What would that be? Would that be perhaps two lanes on
14 the right, two lanes on the left, then a center? Do you remember even
15 about how much --

16 A I think it's three lanes on each side. Maybe it's only two. I
17 can't recall at this very moment.

18 MR. RANDS: Your Honor, is there some reason that this
19 screen's gone funny like that?

20 MR. GARDNER: Yeah, I probably pushed something here.

21 MR. RANDS: You think so?

22 MR. GARDNER: I may have. I don't know.

23 THE COURT: Renee, do you know what that is?

24 [PAUSE]

25 BY MR. GARDNER:

1 Q Okay. Can you see that okay?

2 A Yes.

3 Q Okay. So what we're seeing here is McLeod and you're
4 going -- if you're looking at the picture you're going up, correct?

5 A That's northbound.

6 Q That's northbound.

7 A Yes.

8 Q And where did my client come from? Can you --

9 A He was coming from the west going eastbound.

10 Q Okay. Now let me move this around so we can see it
11 better. Okay. Can you see with that course of view the area that my
12 client came out of?

13 A Yes.

14 Q Where was that? Just point to that, if you would.

15 A It's going to --

16 Q Oh, sorry.

17 A It's going to be here.

18 Q Can you do that again so I can see it?

19 A Yes.

20 MR. CLOWARD: Your Honor --

21 BY MR. GARDNER:

22 Q Hold on. I can't see. Do it one more time, would you?

23 MR. CLOWARD: -- [indiscernible] multiple times.

24 BY MR. GARDNER:

25 Q Okay. Is there a driveway there?

1 A Yes.

2 THE COURT: Yeah, the -- all right. The objection to
3 asked and answered is sustained.

4 MR. GARDNER: Okay. You're done. Yeah.

5 THE COURT: Go ahead and have a seat, sir.

6 BY MR. GARDNER:

7 Q Before the accident, I think you said you had seen the bus,
8 correct?

9 A Yes.

10 Q And how long before the accident did you see the bus?

11 A Maybe a second or two at the most.

12 Q Okay. When you saw it, was it moving?

13 A No.

14 Q Okay. So it was not moving and it was -- and then -- it was
15 right over here, I think. Am I right? No. Let's see. Okay. Good.
16 Okay. So you're going this direction, just like that, and my client was
17 coming from -- if you look at the picture, on the left side.

18 A Yes.

19 Q Left going right. Okay. And the first time you saw the bus,
20 it was stopped; is that what you said?

21 A Yes.

22 Q Do you know why the bus was stopped?

23 A I assume he was yielding to -- he was intending to wait his
24 turn to pull out.

25 Q Do you know whether there was a stop sign or any kind of

1 a yield sign?

2 A Yes, there is.

3 Q What is it, a stop sign?

4 A It should be a stop sign.

5 Q Okay. And that's coming out of a park, correct?

6 A Yes.

7 Q Okay. Okay. So you see him. Which lane are you in?

8 Let's just say it's a six lane road or --

9 A Uh-huh.

10 Q Doesn't really matter what number there is. But which lane
11 were you in -- if there's three lanes on your side, which lane were you
12 in?

13 A If it was three lanes I would probably be in the middle lane.

14 Q Okay. Let's just go over that for a minute. What if it's two
15 lanes?

16 A It would be not the one by the curb but the next one over,
17 the farther in lane.

18 Q Okay. So you were not by the curb, you were at least one
19 away from it; is that what I understand?

20 A Yes. Thank God I was.

21 Q How fast were you going?

22 A Between 25 and 30 miles per hour.

23 Q Is that the speed limit?

24 A Yes.

25 Q Had you been in this area before?

1 A Yes.

2 Q Had you ever seen anyone coming out of that park before?

3 A Yes.

4 Q Is this park notorious, in your mind, for drinking and
5 partying and things like that?

6 A No.

7 Q What is that, the Paradise Park? What can they do? What
8 can people do there?

9 A They can go for walks, they can have family barbecues,
10 there's a rec center.

11 Q Okay.

12 A Have a nice day at the park. I don't know. It's just like any
13 other park that I've seen, so [indiscernible].

14 Q That's all I needed to know. Thank you.

15 A Okay.

16 Q Okay. Did you have an opportunity to see my client after
17 the accident occurred? I mean did you get close to him?

18 A Yes.

19 Q Was -- could you smell alcohol or anything on his breath?

20 A No.

21 Q Did you have any kind of a discussion with him about what
22 had just happened?

23 A No. The only discussion would be he told me 911 was
24 coming.

25 Q Do you know who called 911?

1 A He did.

2 Q How do you know that?

3 A He told me 911 was coming.

4 Q Okay. So from that you knew that he called 911. Okay.

5 A Yes.

6 Q How long did it take the emergency personnel to get
7 there?

8 A I would say five minutes or so.

9 Q Did they come with sirens on and everything?

10 A Yes.

11 Q And the ambulance is there. How do they know where you
12 are? Is someone waving them down, or was it just so open they could
13 tell? What do you think?

14 A Can't remember. I assume they just knew what was going
15 on by the scene, but.

16 Q All right.

17 A I don't know.

18 Q They wouldn't have known who was in the accident.

19 A I'm sure Mr. Lujan had told them.

20 Q Okay.

21 A So.

22 Q Was Mr. Lujan -- how was -- what was his demeanor when
23 he was talking to you after the accident?

24 A Very short.

25 Q Was it rude? Was it --

1 A It could be taken as rude.

2 Q Really?

3 A Yes.

4 Q Describe that for me. What do you mean by that?

5 A Just -- he just came over to my car and was like the
6 ambulance is on the way, then just walked away from me. That was
7 my interaction with him.

8 Q Is that all your interaction has been?

9 A Yes.

10 Q Which hospital did you go to?

11 A I believe it was Sunrise.

12 Q Sunrise? Okay. Without telling me, because I'm going to
13 find out, but which part of the hospital did you go to initially?

14 A I'm not sure.

15 Q Could it have been the emergency room?

16 A I believe so.

17 Q Okay. Let's say it was the emergency room. Tell me
18 about what happened when you were in the emergency room, if you
19 recall.

20 A I remember they had me on a stretcher whenever I got
21 there, and I remember I was telling them at the time that I was really
22 confused of what happened, my vision was really blurry, I had really
23 bad head trauma in the accident. So I remember that at that moment
24 they were concerned about my head so they said they were going to
25 do a scan on it.

1 Q Did they?

2 A Yes.

3 Q And that was on your head?

4 A Yes.

5 Q Okay. Do you know the results of that scan?

6 A No.

7 Q Let me put it this way. Did you have a head injury?

8 A There was no internal bleeding. So I don't think anything

9 significant.

10 Q Okay. And nobody's told you you had a head injury, have

11 they?

12 A No.

13 Q All right. So after the emergency room where did you go in

14 the hospital?

15 A I can't remember.

16 Q How long were you in the hospital that day?

17 A For about four or five hours.

18 Q What time did the accident happen?

19 A I believe around 2 or 3 p.m. that day.

20 Q Okay. So you may have gotten home at 6 or 7:00 that

21 night; is that right?

22 A Somewhere around there, I believe.

23 Q Okay. Was your car drivable after this accident?

24 A Yes.

25 Q How did you get home from the hospital?

1 A My mother took me home.

2 Q Okay. And where was your car when you went -- left the
3 hospital?

4 A It was at my house.

5 Q How did it get there?

6 A I'm not sure. My dad took care of that.

7 Q Did you have the vehicle repaired?

8 A We tried to. We got it estimated and it wasn't -- it was in
9 really bad shape and it would have cost more than the car was worth
10 to repair it, so.

11 Q Okay. Have you replaced that car?

12 A Yes.

13 Q What do you drive now?

14 A It is a 2004 Mustang.

15 Q Okay. 8.4 liter or do you know anything about the engine?

16 A 4.6 liter.

17 Q What is it?

18 A 4.6 liter.

19 Q 4.6, okay.

20 A V8.

21 Q Did you buy it new?

22 A No, from a third party.

23 Q Okay. Now I was -- I was interested in what your --
24 Melissa said, and she talked about perhaps you becoming -- having
25 some depression.

1 A Yes.

2 Q Tell me what kind of things you did to determine whether
3 or not you had depression. Did you get that from a doctor or was
4 that --

5 A No, it was just my own interpretation of how I was
6 behaving.

7 Q What were you doing to show depression?

8 A I was self-medicating.

9 Q Where were you getting the medicine from?

10 A It wasn't medicine; it was alcohol, so, from Lee's store.

11 Q Okay. Did ever -- did anyone ever warn you that
12 excessive alcohol would make you depressed?

13 A I'm sure I learned that somewhere along the lines in
14 school, the D.A.R.E. program or whatnot, but.

15 Q But you did that anyway, right?

16 A Yes.

17 Q Okay. What kind of a student were you in high school?

18 A It depends on which time in my life you're talking about.

19 I've been an A student and I have been a F student. I've been on both
20 sides of that spectrum, so.

21 Q That's okay. You just describe me. So that's okay.

22 [Counsel confer]

23 BY MR. GARDNER:

24 Q Do you remember the medical examination that we asked
25 you to undergo?

1 A With Mr. -- with Dr. Sanders?

2 Q Yes, Dr. Sanders.

3 A Yes. Yes, I do.

4 Q Okay. Tell me about that experience, will you? What --
5 how were you treated?

6 A He was nice. He had me do all of these random tests and
7 I just tried to follow along to the best of my ability.

8 Q What kind of tests were they?

9 A Movement, I guess. Movement tests. A lot of questions
10 about stuff.

11 Q Okay. Did you ever -- can you show us what kind of things
12 he had you do?

13 A Yeah. He'd have me see how far I could turn my neck
14 [indicating].

15 Q Okay.

16 A See how far I could turn my wrists [indicating] and whatnot.

17 Q Do you recall what he said when you were going through
18 those steps?

19 A Somewhat.

20 Q Tell me about it. What was he saying?

21 A He was telling me to -- he was asking me the range of
22 motion, how far I could move.

23 Q Did he tell you the results of his findings at the time, "Oh,
24 you're moving just fine," or did he say anything like that while he was
25 looking at you?

1 A No. I remember whenever we were doing my neck portion,
2 though, he said, "Turn as far as you can." And I told him -- I got to a
3 certain point where I'm like, "Oh, that hurts." And he's like, "Good,"
4 and wrote it down. And that part actually confused me at that moment
5 because he told me before I started the exam I should never be in any
6 pain or discomfort and if I am to let him know. So I figured we'd get
7 back to that at some point, but we never did.

8 Q Okay. How did the doctor treat you? I mean, was he --

9 A He was nice.

10 Q He was nice?

11 A Yeah.

12 Q Okay. The injuries that you are talking about in this
13 lawsuit are to your back and to your wrist, correct?

14 A Yes, and to my neck.

15 Q Back and neck, yeah.

16 A Yes.

17 Q And have you ever hurt those before this?

18 A No.

19 [Counsel confer]

20 BY MR. GARDNER:

21 Q Can you estimate for the jury the -- if one is the worst, a
22 hundred is the best, right after the accident what would you have
23 calculated your level to be, pain-wise?

24 A It's hard for me to say at this very moment, but I remember
25 my whole body was sore afterwards. So if I had to put a number on it,

1 I'd -- it's hard for me to say in this moment. Maybe 70, 80? I've never
2 had any excruciating pain in my life, so.

3 Q Okay. It was a 70 or 80?

4 A Yeah.

5 Q Okay. What is it now?

6 A From whenever I started feeling all of my pain set in or
7 what? Like --

8 Q Well --

9 A -- from that moment to now, or what are you --

10 Q No. I'm sorry. Right now, a snapshot of you right now,
11 what are you -- if you started out at a 70, the lowest, what are you
12 now?

13 A I'd say 30, 40 maybe right now.

14 Q Have you had an opportunity to see Dr. Sanders' report?

15 A No.

16 Q How long were you in his office, if you can recall?

17 A Two hours perhaps. Somewhere along there.

18 Q How were you treated while you were there from the staff
19 and the doctor?

20 A They were all nice.

21 Q What are some of the hobbies or interests you have right
22 now going on in your life? What are you interested in?

23 A I like to go for little walks, enjoy the weather, I like to
24 browse the Internet, I like to hang out with my girlfriend a lot. That's
25 really important to me.

1 Q I hope she's here to hear that.

2 Okay. So walks and you like to read, is that what you
3 said?

4 A Yes.

5 Q Okay. Tell me about before the accident. What were you
6 interested in at that time?

7 A I used to like to go to the gym, go for hikes, hang out with
8 friends.

9 Q What did you do when you went with your friends to the
10 mountains? Is that what you said?

11 A With -- I'm so sorry?

12 Q Did you go -- did you say you went to the mountain with
13 your friends?

14 A No, those are separate hobbies, but I have gone with
15 friends to the mountains before.

16 Q Okay. What did you typically do when you were in the
17 mountains with your friends?

18 A Hike, walk the trails.

19 Q It wasn't hunting or anything like that --

20 A No, no.

21 Q Just hiking. Okay. Now, is there anything preventing you
22 from hiking today?

23 A No.

24 Q Physically.

25 A No.

1 Q Okay. So physically you could get in a car and go hiking
2 just like you did before this accident, correct?

3 A I'd probably be in some discomfort, but I'm sure I -- if I
4 tried really hard I could.

5 Q Have you done any hiking since this accident?

6 A No.

7 Q Where do you think you would feel discomfort?

8 A In my -- probably in my back and maybe my neck. I don't
9 know.

10 Q Have you ever been walking since the accident and felt
11 pain in your back or neck?

12 A Yes.

13 Q When was the last time?

14 A Can't recall.

15 Q Is it now? Do you feel discomfort now?

16 A Yes.

17 Q Okay. Where?

18 A In my right side of my neck, feels like I have a golf ball in
19 there right now, and then my back is a little tender. It's a lot better
20 than it was before, but.

21 Q Did you just say that I was a pain in the neck?

22 A No, not at all.

23 Q Okay.

24 MR. CLOWARD: Objection, Your Honor. Pain in the neck.

25 MR. GARDNER: Don't make me talk about you.

1 BY MR. GARDNER:

2 Q Okay. Now, I've heard a lot of testimony from -- maybe
3 from you and some of the other witnesses that you have a hard time
4 sitting down; is that right?

5 A Yes.

6 Q What is hard about sitting down for you?

7 A It starts -- I start to get a throbbing pain in my neck and my
8 back, so it's hard to do.

9 Q When you're sitting?

10 A Yes. Laying is more comfortable.

11 Q How long do you need to sit to get that pain?

12 A Two hours, sometimes less.

13 Q Okay. And I thought you said you got up and you could
14 stretch and things like that and it would make you feel better?

15 A Sometimes.

16 Q The reason I ask you that is I've been keeping track of the
17 number of times that you stand up and walk around and things like
18 that. I don't see you standing up and stretching or doing anything very
19 often.

20 A That is true.

21 Q Why is that?

22 A I don't want to be a burden to the court, I guess. I -- I'm
23 just trying to get through. I'd like to, but I don't want to be taking away
24 from what's happening up here so I'm bearing through the pain.

25 Q Okay. What kind of medication are you on today?

1 A Nothing.

2 Q How long have you been medication free, so to speak?

3 A I think since the -- around the end of '16 I believe.

4 Q So a couple years, just give or take, couple years you've
5 been off the medicine?

6 A Yes.

7 Q And but I understand you still had pain during that time; is
8 that correct?

9 A Yes.

10 Q Was there a reason that you got off the medication? Was
11 that your decision or a doctor's decision?

12 A It was a mutual decision at that point. I'm young so I don't
13 need to be taking that stuff. It's not good.

14 Q Okay. Was that your decision or the doctor's decision?

15 A It was ultimately my decision.

16 Q Okay. He would have given you more medication if you
17 wanted it?

18 A Yes.

19 Q Okay. So let's go back to the accident for a moment.

20 You're on -- you're saying you're not on the far right-hand side of the
21 street going north but you're a lane in from the right lane, correct?

22 A Yes, at least.

23 Q Okay. I just wanted to clarify that.

24 You were going, what'd you say, 25, 30?

25 A Yes.

1 Q Okay. Stupid question, but do you know how fast my
2 driver was going at the impact?

3 A No.

4 Q I think the question that's been kind of bouncing around is
5 this was a big vehicle that you ran into, correct?

6 A Yes.

7 Q And was there -- is there anything wrong with your
8 peripheral vision?

9 A No.

10 Q So you saw the truck, you knew it was coming out, right?
11 Or it was at the area that it would leave the park, right?

12 A I didn't intend it was going to come out right as I was
13 passing it. But I had a feeling they were trying to go somewhere.

14 Q Okay. Okay. When you have that feeling, does that result
15 in any other type of thoughts or emotions in your mind?

16 A What do you mean "that feeling," the feeling?

17 Q I mean you said you felt like they were going to -- they
18 wanted to go someplace or go leave the park or something? That's
19 what I was talking about.

20 A Yes. And I figured since they were at a full stop they had
21 seen me and considered me and where I was going.

22 Q Okay. So they're at a full stop and you're going 25 miles
23 an hour, which is really slow --

24 MR. CLOWARD: Objection.

25 THE COURT: Sustained.

1 MR. GARDNER: What part was --

2 MR. CLOWARD: Your characterization of 25 miles an
3 hour.

4 THE COURT: Yeah.

5 MR. GARDNER: Twenty-five miles an hour being slow?
6 Okay.

7 BY MR. GARDNER:

8 Q Okay. So you're going 25 miles an hour, and the first time
9 you saw my guy his -- he was stopped?

10 A Yes.

11 Q Okay. Could you see inside the bus?

12 A What do you --

13 Q Before the accident.

14 A What do you mean "see inside the bus"?

15 Q Well, you say you saw the bus. Did you see inside the
16 bus?

17 A I mean, I saw the windows. I don't -- I really don't know
18 how to answer that question. I suppose so.

19 Q You're right. It probably wasn't a great question. But were
20 you able to see that there were people inside that bus?

21 A (No verbal response).

22 Q It's okay if you don't know. It's --

23 A Yeah, I don't know.

24 Q Okay.

25 A I was -- yeah.

1 Q Did you hear any sounds before the impact? Screeching
2 tires, anything like that, honked horns or anything?

3 A No, I -- well, I heard my tires, but aside from that no.

4 Q What did you hear from your tires?

5 A Just a skidding sound I guess, just trying to maintain
6 direction.

7 Q Okay. And you were actually -- a split second before the
8 impact you -- did you take any kind of evasive action?

9 A Yes.

10 Q Tell me about that.

11 A I hit my brakes and tried to turn my wheel [indicating].

12 Q Hold on --

13 MR. CLOWARD: I'm just going to object. This was asked
14 and answered about five times.

15 THE COURT: Sustained.

16 [Counsel confer]

17 MR. GARDNER: If I could just look through my notes for a
18 moment, Your Honor.

19 THE COURT: Sure.

20 [Counsel confer]

21 MR. CLOWARD: Your Honor, may we approach?

22 THE COURT: Sure.

23 [Bench conference begins at 11:18 A.M.]

24 MR. GARDNER: I'm officially gun-shy, but I wanted to ask
25 him about --

1 MR. CLOWARD: Shh.

2 MR. GARDNER: I wanted to ask him about the payment of
3 his bills, if he's paid them, if he's been sent to collections for them, or
4 if he's been sued for any of them that he hasn't paid.

5 THE COURT: How is that relevant, Mr. Gardner, to
6 whether he was injured in an automobile accident?

7 MR. GARDNER: Well, he's seeking damages for his
8 medications, and I'm just -- and I think that we all know that --

9 THE COURT: Right. That's the whole point of the
10 collateral source rule, Mr. Gardner, is we don't talk about that.

11 MR. CLOWARD: There's another thing. I actually was
12 educated on this issue just recently in a case. The bills and whether
13 they've been sent to collections and that emotional part is actually not
14 relevant. There's a case in Nevada --

15 THE COURT: Right.

16 MR. CLOWARD: I can find it for you.

17 THE COURT: That was the first thing I said.

18 MR. CLOWARD: Oh, that's what you said?

19 THE COURT: Well, the first thing I said is how is that
20 relevant, and the second thing I said was that it's a collateral source
21 issue, so.

22 MR. CLOWARD: Well, I probably learned it from you then.

23 MR. GARDNER: There you go. Thank you.

24 THE COURT: All right.

25 MR. CLOWARD: I must have. I learned a lot from you.

1 [Bench conference ends 11:19:45 A.M.]

2 MR. GARDNER: That's it, Your Honor. Thank you.

3 And thank you.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Any cross?

6 MR. CLOWARD: I just have one, one follow-up.

7 [Counsel confer]

8 **CROSS-EXAMINATION**

9 BY MR. CLOWARD:

10 Q I'm just going to show you -- it's an overhead view. It's a
11 little bit, a little bit closer.

12 MR. BOYACK: Zoom out on the thing, if you want, or keep
13 it that way, whatever.

14 BY MR. CLOWARD:

15 Q Just a little bit closer up. Just want to make sure that
16 everyone's aware how many lanes there are. So I can see a car here;
17 is that accurate, that's a lane?

18 A Yes.

19 Q Okay. And then there's a -- looks like there's a turn lane,
20 left turn lane there; is that accurate?

21 A Yes.

22 Q And then there's a middle lane, true?

23 A Yes.

24 Q And then there's the right turn lane?

25 A Yes.

1 Q Okay. So there were four lanes, not six?

2 A Yes.

3 Q And you were in this middle lane, right; is that --

4 A Yes.

5 Q Okay.

6 MR. CLOWARD: No further questions.

7 THE COURT: Anything else, Mr. Gardner?

8 [Counsel confer]

9 **REDIRECT EXAMINATION**

10 BY MR. GARDNER:

11 Q Which lane were -- which lane did the collision occur in?

12 A The same lane that I was going [indicating]. It was just
13 right in that lane that I was proceeding northbound on.

14 Q Okay. Was your car pushed any way -- I mean, was it
15 pushed to the right or anything like that when the impact --

16 A Yes.

17 Q Tell me about that.

18 A Whenever I hit him [indicating] and hit my brakes and
19 turned a little bit, he was still going straight so it was dragging me to
20 the side. So I get the impact and then I'm being dragged.

21 Q Okay. And you say you were being dragged.

22 A Yes.

23 Q Were you being dragged north or which direction were you
24 being dragged?

25 A It's hard to say. I guess my car was kind of [indicating] --

1 I guess maybe to the right or -- I guess so my car is facing more east
2 would be a more appropriate way to say so --

3 Q Okay.

4 A The front part of my car is facing east or so.

5 MR. GARDNER: That's all. Thank you.

6 THE COURT: All right. Anything from the jury?

7 I'm sorry, Mr. Cloward. Did you have anything?

8 MR. CLOWARD: No.

9 THE COURT: All right. Counsel approach, please.

10 [Bench conference begins at 11:22 A.M.]

11 THE COURT: All right. So, Mr. Gardner, come on up

12 [indiscernible].

13 THE MARSHAL: Counsel.

14 MR. CLOWARD: That's fine.

15 [Pause]

16 MR. CLOWARD: That's fine.

17 [Pause]

18 MR. CLOWARD: Fine with all of them.

19 THE COURT: Okay. So [indiscernible].

20 MR. GARDNER: I don't feel comfortable with that because
21 we talked about future [indiscernible].

22 MR. CLOWARD: I don't -- that's --

23 THE COURT: Life experiences.

24 MR. CLOWARD: Experience.

25 MR. GARDNER: Experience.

1 MR. CLOWARD: That's fine. I don't --

2 MR. GARDNER: Excuse me. It's -- oh, it said
3 [indiscernible].

4 THE COURT: Yeah, it's not life expectancy, it's
5 experiences. I read it that same way myself when I first read it.

6 MR. GARDNER: Oh, okay.

7 THE COURT: All right.

8 [Bench conference ends at 11:24 A.M.]

9 THE COURT: All right. This is our first note.

10 THE WITNESS: Yeah.

11 THE COURT: So if you could look at the jury when you
12 answer.

13 THE WITNESS: Okay.

14 THE COURT: What future life experiences that you have
15 not yet [indiscernible] are you most excited for [indiscernible] your
16 pain levels stayed low and [indiscernible].

17 THE WITNESS: Some would be I -- I'd like to travel the
18 world at some point. I'd like to see everything. I'd like to pursue
19 school again. That's something really important to me.

20 THE COURT: What was the difficulty of the hikes that you
21 used to do?

22 THE WITNESS: Well, I wouldn't know. I don't know the
23 grades. It would just be like Red Rock or Mount Charleston or
24 whatever, whatever is up there, so.

25 THE COURT: What would a slip impact your condition?

1 THE WITNESS: I'm so sorry?

2 THE COURT: Would a slip impact your condition?

3 THE WITNESS: I'd assume so, yeah, it would.

4 THE COURT: Did you seek medical help for your anxiety
5 and depression after the accident? Why or why not?

6 THE WITNESS: Unfortunately I didn't. I guess I just self-
7 medicated, and I should have, and I regret not doing so because it
8 probably would have gotten me out of the dark place I was in sooner,
9 so.

10 THE COURT: Did you have any suicidal ideation after the
11 accident? If so, did you seek psychiatric help for assistance?

12 THE WITNESS: Not immediately after the accident, but
13 once I started getting really depressed, yes, I did feel like I wanted to
14 kill myself at times. And fortunately I didn't. I didn't get the help I
15 should have though.

16 THE COURT: Are you wearing a brace while you work?

17 THE WITNESS: No.

18 THE COURT: Did your doctors advise you to wear one to
19 decrease you discomfort?

20 THE WITNESS: They gave me a brace for my wrist at one
21 point, but after I did the physical therapy for it my wrist has been okay.
22 Sometimes through a certain range of motion [indicating] it'll pinch and
23 I have to kind of reset that motion, but I haven't needed a brace for my
24 wrist. If you're talking about my back, no, but I've thought about
25 looking into that. That's something that interests me.

1 THE COURT: Do you recall the color of the vehicle you
2 struck?

3 THE WITNESS: It was white.

4 THE COURT: Any follow-up, Mr. Gardner?

5 MR. GARDNER: Just one moment.

6 BY MR. GARDNER:

7 Q Did I understand that you self-medicated with alcohol?

8 A Yes.

9 Q Is there anyone else in your family that suffers from
10 depression?

11 A My sister does.

12 Q Okay. How do you know that?

13 A She had mentioned that she was taking lithium or some
14 sort of medicine, and I just knew what that was. I found out about that
15 really recently, actually.

16 Q Is she -- how is she doing now? Is she over it or --

17 A She seems to be okay. I'm sure it didn't cure her
18 depression. Maybe it helped. But I don't know. We kind of -- I just
19 heard that in passing, so I'm not sure.

20 Q How are you feeling today? I mean, are you still
21 depressed?

22 A Yes. None of what we're doing right now is fun. I'm not
23 really much of a public speaker, so. Yeah, I'm a lot better. I'm way
24 better than I was before. I'm improving. By a lot.

25 [Counsel confer]

1 BY MR. GARDNER:

2 Q Did you ever receive any counseling from a psychiatrist?

3 A I did.

4 Q What was the psychiatrist's name?

5 A I wouldn't know. It was like when I was 10 or 11.

6 Q Oh, I'm sorry. Yeah. Actually I was thinking about after
7 the accident. But 10 or 11 you suffered from some depression?

8 A We went to group counseling as a family. My whole family
9 did at one point.

10 Q Do you know why you went as a family?

11 A We just had problems getting along, so. My dad had
12 horrible anger problems, so we were trying to get that all resolved
13 instead of having to, you know, break it all up.

14 Q So you went as a family. Did you sit together as a family
15 and talk to the doctor? Is that the setting?

16 A At certain points we were together as a family. There was
17 other times where they'd want to talk to us one on one as well.

18 Q What kind of treatment or anything did you get as a family,
19 other than talking? Was there any medication given or anything?

20 A No. We ended up discontinuing it after some time. I think
21 my -- one my -- my dad got offended or something perhaps and we
22 just stopped going. I can't really remember the fine details, but.

23 [Counsel confer]

24 BY MR. GARDNER:

25 Q After this accident, have you had any psychological

1 treatment? After the accident.

2 A I don't think so.

3 Q Did I understand that -- have you ever had a back brace
4 before? I mean after the accident.

5 A No.

6 Q Just one for your wrist, right?

7 A Yes.

8 MR. GARDNER: I think that's all I have. Thank you.

9 MR. CLOWARD: Your Honor, one follow-up.

10 **RECROSS EXAMINATION**

11 BY MR. CLOWARD:

12 Q Aaron, when you were hospitalized for drinking, that's not
13 something that you're asking the jurors -- you didn't ask that as a
14 damage, you're not here to try and --

15 A No, not at all. No.

16 MR. CLOWARD: Okay. Thank you. No further questions.

17 THE COURT: All right. Anything else, Mr. Gardner?

18 MR. GARDNER: Nothing further.

19 THE COURT: Sir, you can go back to your seat.

20 Mr. Gardner, please call your next witness.

21 MR. GARDNER: Your Honor, I don't have any expert --
22 any witnesses right now. I'll try to get someone here after lunch, if
23 that's okay.

24 [Bench conference begins at 11:31 A.M.]

25 THE COURT: [Indiscernible] that we're going to use the

1 jurors' time wisely. If you cannot get witnesses here today, you're
2 going to have to rest [Indiscernible] close because I am not going to
3 ask these people whom [indiscernible] get this case hopefully to them
4 today and also [Indiscernible].

5 MR. GARDNER: I mean, I can't object.

6 THE COURT: I'm not [Indiscernible].

7 MR. GARDNER: I think we covered what we could this
8 morning.

9 THE COURT: All right. So you also had another lay
10 witness [Indiscernible].

11 MR. GARDNER: That's been difficult to get a hold of. We
12 may want to read his deposition in though.

13 THE COURT: Well, all right. When are you going to figure
14 it out because we have -- you know, I mean, I wasn't [Indiscernible].

15 MR. GARDNER: [Indiscernible] him in now. Would that
16 be --

17 THE COURT: Have you done those admissions? I mean,
18 [indiscernible]. That's supposed to be done before the trial.

19 MR. RANDS: [Indiscernible].

20 THE COURT: [Indiscernible]. All right. So we'll go ahead
21 and we'll break for lunch until 12:45, but you're going to need to get
22 this all sorted out.

23 MR. GARDNER: Okay. Thank you.

24 MR. RANDS: Thanks, Judge.

25 THE COURT: Actually what I'll do is I'll have you guys

1 come back at -- you know what? I'm going to send the jury out to do
2 the instructions right now and then come back at 12:45. Yeah, so
3 that's what I'll do.

4 MR. GARDNER: Okay.

5 MR. CLOWARD: So come back at 12:45?

6 THE COURT: We're going to break for lunch and let's
7 have the jury come back at 12:45, but we're going to do the jury
8 instructions right now --

9 MR. CLOWARD: Oh, yeah.

10 THE COURT: -- so we're going to take five, ten minutes.

11 MR. CLOWARD: Good idea. Thanks.

12 THE COURT: All right.

13 [Bench conference ends at 11:33 A.M.]

14 THE COURT: All right, folks. We're going to go ahead
15 and break for lunch. During this break you are admonished not to talk
16 or converse among yourselves or with anyone else on any subject
17 connected with this trial or read, watch or listen to any report of or
18 commentary on the trial or any person connected with this trial by any
19 medium of information, including without limitation, newspapers,
20 television, the Internet and radio or form or express any opinion on
21 any subject connected with the trial until the case is finally submitted
22 to you. Remind you not to do any independent research. We're going
23 to come back at 12:45.

24 THE MARSHAL: Please rise for the jury.

25 [Jury out at 11:33:30 A.M.]

1 THE COURT: All right, folks. Let's just run through the
2 jury instructions here real quick. So, all right. We have Number 1, it
3 is now my duty as judge. Also, I have probably changed the -- I know
4 we had a set. We've had some different things. There may be just
5 some minor changes to remove pronoun references in the instructions.
6 I don't give that masculine or feminine instruction that was submitted
7 in the second group. So and if you happen to see something that
8 isn't, let me know. Somehow those pronouns sneak their way into the
9 instructions. But I think that they're in pretty good shape in that
10 regard.

11 So 1 is it is now my duty as judge;
12 2, if in these instructions any rule, direction or idea;
13 3, if during this trial I have said or done anything;
14 4 was not submitted at any point in this case, but it's an
15 instruction we generally give, the sympathy --

16 MR. CLOWARD: Yeah, that's fine. Fine with me.

17 THE COURT: Do you want -- is everybody fine with that?

18 MR. CLOWARD: Yeah.

19 MR. GARDNER: Yeah.

20 MR. RANDS: There's a spot that usually has that in there.

21 MR. GARDNER: Yeah, that's fine.

22 THE COURT: Yeah. It just wasn't. For whatever reason,
23 it wasn't.

24 MR. GARDNER: Okay.

25 THE COURT: 5, one of the parties in the case is a

1 corporation.

2 MR. RANDS: Okay. I must have the wrong set.

3 THE COURT: Yeah, I apologize. We've had a few
4 different.

5 MR. CLOWARD: I had my four exhibit binders that I've
6 been -- so we just reprint them many times, and I have notes in --

7 MR. RANDS: Mine was --

8 THE COURT: One of the parties in this case is a
9 corporation;

10 6 was not included by anyone, but I would like to give it
11 and it's just you can't communicate with anybody by any electronic
12 means until the verdict's returned.

13 MR. CLOWARD: Yeah, we're happy with that. Good.

14 THE COURT: 7, you must decide all questions of fact from
15 this case. The instruction submitted did not have the last line that
16 says "including the Internet or other online services." I assume
17 everybody's fine with that.

18 8, although you are to consider only the evidence in
19 reaching a verdict;

20 9, the evidence which you are to consider. This instruction
21 was submitted with the line "if the parties stipulate to the existence of
22 a fact you must accept that." That's actually a separate instruction so
23 I removed that line.

24 10, there are two kinds of evidence, direct and
25 circumstantial;

1 11, in determining whether any proposition has been
2 proved;

3 12, if the parties -- if Counsel for the parties have
4 stipulated to any fact.

5 And then 13 is the deposition interrogatory request for
6 admission instruction, so I don't -- I can't recall if there's been any
7 reference to an interrogatory request for admission.

8 MR. RANDS: Interrogatory request for admission --

9 MR. CLOWARD: We did the rogs, not the RFAs, though,
10 the rogs.

11 THE COURT: So you want me to strike the last
12 paragraph?

13 MR. RANDS: Yeah.

14 THE COURT: All right.

15 MR. GARDNER: Sure.

16 MR. CLOWARD: Yeah.

17 THE COURT: 14, the credibility or believability of a
18 witness;

19 15, discrepancies in a witness's testimony;

20 16, an attorney Has a right to interview a witness;

21 17, a person who has specialized knowledge, skill,
22 experience;

23 18, a question has been asked;

24 19, an expert witness has testified;

25 20, whenever in these instructions I state that the burden;

1 21, the preponderance or weight of evidence;
2 22, the Plaintiff seeks to establish liability in a claim of
3 negligence;
4 23, the Plaintiff has the burden to prove;
5 24, when I use the word "negligence";
6 25, a proximate cause;
7 26, it has already been determined. All right. You know
8 what? We have this instruction about the prior trials. I would probably
9 put it in -- the next in line just --

10 MR. RANDS: Okay.

11 THE COURT: -- since there's some specific information
12 there. I don't know that there's a great place to put this anywhere,
13 but --

14 MR. BOYACK: Correct. No, I think --

15 THE COURT: All right. So this is the instruction that's
16 proposed by the Plaintiff. There have been two prior trials previously
17 held in this matter. The first trial was set in April 2017 but needed to
18 be rescheduled on the first day for an emergency; the second trial was
19 in November 2017 and lasted for three days but was not completed
20 and no verdict was reached. You should not make any opinions or
21 conclusions based on the fact that prior trials were held -- were held in
22 this case. All right. Any objection from the --

23 MR. RANDS: Well, I kind of objected to it -- not objected
24 to it. We talked beforehand that I didn't think it was necessary to put
25 that first issue in, but then I guess Mr. Cloward did raise that in his --

1 THE COURT: All right. So I'm going to go ahead and give
2 that as -- we'll make that 27.

3 MR. RANDS: Okay.

4 THE COURT: The next is Plaintiff may not recover
5 damages. It's the comparative negligence instruction. I'm going to
6 make that 28.

7 MR. RANDS: Uh-huh.

8 THE COURT: You are not to discuss or even consider,
9 make that 29. Oh, wait. Wait, wait, wait. I might not have gotten to it
10 yet. Let me see. Ah.

11 In determining the amount of losses, I would make that 30,
12 and then I'm going to take out that three.

13 MR. CLOWARD: Okay.

14 THE COURT: That was just my missed error and how I
15 edited it. I circled it instead of crossed it out.

16 31, no definite method or standard of calculation;

17 32, if you find Plaintiff suffered injuries;

18 33, according to the table of mortality;

19 34, whether any of these elements have been proven;

20 35, the Court has given you instructions;

21 36, if during your deliberation --

22 MR. RANDS: Just as a side note, in addition to issues that
23 I don't like with the jury questions, this is another one I don't like
24 because it kind of gives them the idea that they may be able to do it.

25 THE COURT: You know what? Actually, Mr. Rands, that's

1 not my experience. The one time we did not -- the one time that I
2 didn't give this instruction -- we've never had a jury ask for a playback,
3 except for the one time we didn't --

4 MR. RANDS: Didn't do it? Okay.

5 MR. CLOWARD: And then they asked for it?

6 THE COURT: Then they asked for a bunch of stuff. So, I
7 mean, I think telling them, like, we don't encourage that is, at least in
8 my experience, that's been helpful and doesn't give them ideas,
9 because when we didn't tell them they definitely got ideas.

10 MR. RANDS: They did it. Okay. Mine's different, but, you
11 know, I think sometimes when you put it in their mind they think, oh,
12 yeah, we could -- we might get a reading.

13 THE COURT: 37, it is your duty as jurors;
14 38, when you retire to consider your verdict, and;
15 39, now you will listen.

16 Are there any other proposed instructions that the Court
17 has not considered?

18 MR. CLOWARD: No, Your Honor.

19 MR. RANDS: Not from the Defense, Your Honor.

20 THE COURT: Okay. Any objections that have not been
21 placed on the record?

22 MR. RANDS: Nope.

23 THE COURT: Great. So we'll get -- I'll get those couple
24 changes made and then we'll get you, each side, a final set after
25 lunch.

1 MR. RANDS: A clean set. Okay. Thank you.

2 THE COURT: And then I don't know if I have a verdict
3 form or not, but since this is like my sixth car accident trial in a row, I
4 have one from last year that will work great for this, I will just note
5 that.

6 MR. CLOWARD: That would be perfect.

7 THE COURT: We'll put that together and then --

8 MR. RANDS: Will it -- it will include a comparative?

9 THE COURT: Yeah.

10 MR. RANDS: Okay.

11 THE COURT: This is my sixth car accident trial since the
12 beginning of the year, and two of them were two weeks long.

13 MR. RANDS: Really?

14 MR. CLOWARD: Geez.

15 THE COURT: Okay. So --

16 MR. RANDS: Was Mr. Cloward involved in those?

17 THE COURT: You didn't have any of the ones that we had
18 this year, have you --

19 MR. CLOWARD: That was last year.

20 THE COURT: That was last year.

21 MR. CLOWARD: Last year.

22 THE COURT: It's been different lawyers in every single
23 one.

24 MR. RANDS: Really?

25 THE COURT: So I had Mr. Prince and I had -- they really

1 just all blur together. It's awful. I can't remember. But, no, not Mr.
2 Cloward.

3 MR. CLOWARD: All right. Thank you, Your Honor.

4 MR. RANDS: Thanks, Judge.

5 THE COURT: All right.

6 [Recess at 11:44 A.M.]

7 [Outside the presence of the jury]

8 MR. GARDNER: Your Honor, I do have a witness coming. I
9 expected him about 10 minutes ago. Could we -- I know it's asking a lot,
10 but --

11 THE COURT: Well, yeah. Just have them hold off.

12 THE MARSHAL: Okay.

13 THE COURT: Yeah.

14 MR. GARDNER: Thank you. Appreciate that.

15 [Pause]

16 MR. GARDNER: In fact, if it would be all right, I'll go out and
17 wait for him, so he --

18 THE COURT: Yeah.

19 MR. GARDNER: -- comes in the right place. Oh. He's right
20 there.

21 THE COURT: Right.

22 [Pause]

23 MR. GARDNER: Your Honor, he's here.

24 THE COURT: All right.

25 [Pause]

1 THE MARSHAL: Please rise for the jury.

2 [Jury enters]

3 THE MARSHAL: Please be seated.

4 THE COURT: Back on the record in case A718679, Morgan
5 versus Lujan. Let the record reflect the presence of all of our jurors,
6 counsel, and parties.

7 Mr. Gardner, please call your next witness.

8 MR. GARDNER: It'd be John Baker.

9 **JOHN E. BAKER**

10 [having been called as a witness and having been duly sworn, testified
11 further as follows:]

12 THE COURT: Good afternoon, sir. Go ahead and have a seat.
13 Would you please state your name and then spell it for the record?

14 THE WITNESS: All right. It's John Edward Baker, B-A-K-E-R.

15 THE COURT: Thank you.

16 **DIRECT EXAMINATION**

17 BY MR. GARDNER:

18 Q Okay. John, give me a head's up when you're ready to go.

19 A Go ahead.

20 Q Okay. What is your occupation?

21 A I'm a forensic engineer.

22 Q What does that mean?

23 A A forensic engineer is an engineer that does analytic work for
24 use in public debate. So a setting like this would be a public debate.

25 Q Okay. Maybe I wasn't listening closely enough. But would you

1 -- the first part, what is it, a forensic --

2 A Forensic means prepared for public debate. I used to think it
3 meant blood and --

4 Q Oh.

5 A -- fingerprints, but it means debate.

6 Q Fair enough.

7 A Yeah.

8 Q Fair enough. Have you ever testified in a trial before?

9 A Yes.

10 Q Can you estimate how many times?

11 A Between I'd say maybe 125 and 130, something.

12 Q Okay. I normally ask are you nervous. But are you nervous?

13 A That hadn't occurred to me. I don't think I've had time.

14 Q I just made you nervous, right?

15 A Thank you. Yes.

16 Q Okay. Do you have any specialties that you are trained in?

17 A Yes. I specialize in accident reconstruction and injury
18 reconstruction. The latter means biomechanics, impact kinematics, and the
19 degree to which motions occurred in -- essentially, like this, a motor vehicle
20 accident.

21 Q How long did it take you to become schooled in this type of
22 work you do?

23 A That was nine years in college, included five at graduate school,
24 plus dedicated courses afterward.

25 Q What did you -- you got a four-year degree, right?

1 A Yes.

2 Q And then which school did you go to after? Not the name of it.
3 But was it a master's program? What was it?

4 A Yeah. I went to Loyola University. Then I went to San Jose
5 State University. I have a PhD from NC State University.

6 Q Okay. Was it always your dream to be someone that came in
7 and testified in cases?

8 A No.

9 Q What were you planning on doing?

10 A You know, actually, at the time, I didn't know. I thought I'd do
11 research in safety and accident reconstruction. Something like that.

12 Q Okay. Where is your residence? Where do you live?

13 A I live in Las Vegas.

14 Q How long have you lived here?

15 A Since 1999.

16 Q Almost a native.

17 A Almost.

18 Q Since 1999, yeah. I want to go through your education one
19 more -- with a little bit more detail.

20 A Okay.

21 Q The master's, tell me how many years that is and classes. And
22 tell us about that in a little bit more detail.

23 A Yeah. For me, it was two years at San Jose State University. I
24 had a series of courses in human factors engineering as a specialty. So
25 went off into that field when I went for my doctorate a year later.

1 Q Will you explain to me what human factors means?

2 A Sure. Human factors is the interaction of humans, equipment,
3 and/or machines, and the environment. So if we look at the intersection of
4 those three things, a motor vehicle on a street with weather with a person
5 inside, that's a man-machine-environment application.

6 Q Were there any -- did you have any awards or anything or just
7 get through college?

8 A I think I got through college.

9 Q Okay.

10 A I don't remember a lot of awards.

11 Q That's what I did.

12 A It was getting through the degree.

13 Q Yeah, okay. Did you prepare a report in this case?

14 A I did.

15 Q Do you have it with you?

16 A Yes.

17 Q Okay. Tell me, what kind of courses did you take to learn how
18 to be a human factors --

19 A Okay. Well, as I mentioned, at the master's level, I took a
20 series of courses in human factors engineering. And then I stayed with that
21 at the doctoral level and majored in human factors engineering with an
22 emphasis in biomechanics and stress physiology.

23 Q Okay.

24 MR. CLOWARD: Your Honor, I'm just going to object. Dr.

25 Baker has not been designated as a human factors expert in this case. His

1 four-page report --

2 THE COURT: Counsel, approach.

3 [Bench conference begins at 1:30 p.m.]

4 MR. GARDNER: It's just one page. It's -- you can have that
5 copy.

6 THE COURT: Oh, thank you.

7 MR. GARDNER: And, counsel, these were just introductory
8 questions. I'm not going to be using this [indiscernible] on the
9 [indiscernible].

10 MR. CLOWARD: Okay.

11 MR. GARDNER: Yeah. So it's okay. But --

12 THE COURT: Do you have his CV.

13 MR. GARDNER: Well, Your Honor, I'm not going to use him as
14 a forensic specialist.

15 THE COURT: What's this one right here? Do you
16 [indiscernible]?

17 MR. GARDNER: What's that?

18 MR. CLOWARD: But he gives no human factor opinion if you
19 look through the -- there are no -- like he doesn't do an accident
20 reconstruction. He doesn't do any sort of like perception-reaction. It's all
21 biomechanical. That's a boilerplate statement at the end. He gives zero
22 opinions on that.

23 THE COURT: I have to tell you, Mr. Cloward, I'm not sure I
24 really understand the difference between those two things.

25 MR. CLOWARD: Well, biomechanic is basically what are the

1 forces to the spine. Human factors are the way the people interact, whether
2 they react or don't react. And he did not do --

3 THE COURT: That's a good explanation.

4 MR. CLOWARD: He didn't do any sort of an accident
5 reconstruction. So I just want to make sure that they're going to stay
6 within --

7 THE COURT: Right.

8 MR. CLOWARD: -- the confines of the report.

9 THE COURT: Yeah. He just has to stay --

10 Can I hang onto this?

11 MR. GARDNER: Yeah. You got it.

12 MR. CLOWARD: Yeah.

13 THE COURT: Just in case there's an issue.

14 MR. GARDNER: Absolutely.

15 THE COURT: But he just obviously needs to be limited to the
16 opinions in this.

17 MR. CLOWARD: Thank you.

18 MR. GARDNER: Thanks.

19 [Bench conference ends at 1:32 p.m.]

20 BY MR. GARDNER:

21 Q Okay. How did you become involved with this case?

22 A Typically, in this case, I guess, as most cases, I'll get a call from
23 the law office saying we have a motor vehicle accident. Typically, there's a
24 short description of it, and is this something you can help with. I usually look
25 into it and decide yes or no.

1 Q Now is there a file created in your office for --

2 A On this case?

3 Q Yes.

4 A Yes.

5 Q Okay. Do you have the ability to tell the jury how I contacted
6 you? Is there a letter or something like that?

7 A You know, there typically is. There's a phone call and then,
8 typically, a letter, and then there's file material that arrives.

9 Q Okay. What is an accident reconstructionist?

10 A Accident reconstructionist is somebody who looks at the -- in
11 this case, a collision. But it doesn't have to be a collision. It can be a fall. It
12 can be anything where there's an injury produced. And tries to replicate and
13 evaluate the factors that put this together, that made this happen, you know.
14 The step beyond that, just to add, so that you don't have to ask me, is that
15 go from there to the injury reconstruction. So you have to do the accident
16 reconstruction first. Then you figure out where the body moved, if at all, and
17 then to the injury reconstruction.

18 Q Okay. Thank you. Let's see. Why did I hire you? What -- did I
19 do instructions or -- when I did hire you, what did I send to you next? Can
20 you tell me?

21 A Yeah. Go through the file that I received. There's certain items.
22 You want me to read what those items were?

23 Q Yeah. Why don't you do that?

24 A Okay. There's the deposition transcript of Mr. Morgan. And it
25 says complaint. That might be a typo. Indeed, the transcript is 93 pages.

1 All right. Then there's an IME, independent medical examination report by
2 Dr. Sander. That's 83 pages. We have the state of Nevada accident
3 reconstruction -- I'm sorry -- the accident report. That's six pages. We have
4 color photographs. There are nine of those. Excuse me. We've got the
5 Defendant's interrogatories, 15 pages. More color photographs, a vehicle
6 repair estimate. That's what I received.

7 Q Did you have enough information to render some opinions?

8 A I did, at the level that I did.

9 Q Okay. Now you and me, we've worked together before, haven't
10 we?

11 A We have.

12 Q Okay. How many times would you estimate?

13 A I think going back to -- I think we met maybe the early 2000s.
14 So how many cases have there been? Ten, about.

15 Q Okay.

16 A I think a couple have gone to testimony.

17 Q Now you're not doing this for free today, are you?

18 A No.

19 Q Okay. How much are you being paid?

20 A The typical hourly on doing accident reconstruction work is
21 \$300 an hour.

22 Q Thirty?

23 A Three hundred.

24 Q Oh, 300. Okay.

25 A Three hundred. And sitting here in this seat is 400 per hour.

1 Q Okay. Have you been able to calculate how much that would
2 be -- we're not going to hold you to it if it's too high. But can you estimate,
3 because they're going to want to know, that you get paid for your --

4 A Do you mean through the end of today or up to today?

5 Q Through the end of today.

6 A I believe the work that went into this was maybe about eight
7 hours' worth. So that times 300 is what I would have billed already. And
8 then today, it's 1500 for half a day.

9 Q All right.

10 MR. GARDNER: You okay with that? Shocking.

11 BY MR. GARDNER:

12 Q What did you do to investigate during that eight hours?

13 A Several things. I did research on the vehicle, which is always
14 important when we're looking at damage. So one of the things is I evaluated
15 what we had in the way of specifications on the vehicle and what's available
16 in the databases. Is there the graphic display of the vehicle, Mr. Gardner?

17 Q Yeah. Just a moment.

18 MR. GARDNER: Can we put that up, Your Honor? Can we put
19 that on the screen, the photo?

20 THE COURT: Yeah. You'll need to put it on the screen.

21 Mr. Cloward, you've seen it?

22 MR. CLOWARD: I'm sorry. What was it?

23 MR. GARDNER: The photograph.

24 MR. CLOWARD: That's fine, Judge.

25 THE COURT: Sir, you can step down.

1 THE WITNESS: But how about for the panel?
2 THE COURT: Yeah. We'll put -- it'll be up on the television.
3 THE WITNESS: I definitely want that. Or do you need to see it.
4 MR. GARDNER: Well --
5 THE COURT: He needs to put it on the --
6 THE WITNESS: Oh, I see.
7 THE COURT: -- ELMO.
8 MR. GARDNER: Yeah.
9 THE COURT: And then it'll project onto the TV.
10 THE WITNESS: Got it.
11 THE COURT: Then the jurors will be able to see it.
12 THE WITNESS: Okay.
13 THE COURT: Yeah. If you want to step down, so that you
14 can --
15 THE WITNESS: Sure.
16 THE COURT: -- show them on the TV, that might easiest.
17 THE WITNESS: We're not there, but yes, I would.
18 THE COURT: Got it.
19 BY MR. GARDNER:
20 Q Okay. Can you see that okay?
21 A I can, yes. Thanks.
22 Q Okay.
23 A I didn't realize this was an ELMO.
24 Q What else did you do?
25 A Like I said, the first thing we did was look at the specs on the

1 vehicle, when it was made, what the platform is, the manufacturer, what the
2 weights are, you know, the whole thing about the vehicle, whether it's
3 unibody or not, and determine what the general nature of the vehicle is, and
4 then determine the nature of the striking vehicle.

5 And so, if we look at a collision, the two vehicles engage. What
6 I want to do is know as much as I can about both vehicles. That's --

7 Q Why?

8 A Why? Then because we can evaluate -- it turns out to be
9 Newton's third law, which is when two surfaces meet and pressurize each
10 other, the forces are equal and opposite, so which would say that any force
11 that made the damage that we see on the screen onto the Ford would have
12 been the same pounds force into the bus. So the forces will be equal and
13 opposite. So whatever force it took to make this damage will have been the
14 same force in the bus, and vice versa.

15 Q Okay.

16 A All right. So that's a key thing. That -- I had to go through that,
17 and I actually got into part of the accident reconstruction there as well. But
18 that is what I had to start with.

19 Q Okay. How long have you been providing forensic testimony on
20 work?

21 A I think first case was in 1991 and, you know, did some work on
22 that. I think I testified around then the first time.

23 Q Now let me ask. In 1991, how many years had you been out of
24 school?

25 A A few.

1 Q Ten years or --

2 A Yeah.

3 Q Okay.

4 A Ten, 11.

5 Q Okay. You ever follow up with the attorneys after the case is
6 over to find out how you did?

7 A Yes and no. Sometimes they'll call me. Sometimes not.
8 Typically, my job is over when I exit. And that's the end of it. Whether who
9 wins or loses, that's up to the Court and panel. So I'm here pretty much to
10 state opinions on this. And the jury is going to evaluate their opinion.

11 Q Okay. And we talked about the accidents. Do you have an
12 estimate of how many accidents you've investigated?

13 A Yeah. But I wouldn't use the words investigated. I would use
14 the word accident reconstructed or evaluated. But investigation comes
15 really at the scene, typically with the police and sometimes an investigator.
16 But in my case, it's after -- way after the fact, two, three years sometimes.

17 Q Okay. What is technical area?

18 A I'm sorry?

19 Q What is a technical area, technical area?

20 A Of?

21 Q Of what you did.

22 A Oh. Well, I would call this -- it was an accident reconstruction.
23 And then based on it, we look at the forced motions of the vehicle and the
24 occupant, leading to an injury reconstruction, which essentially is a
25 biomechanics review of the mechanism of injury of the occupant.

1 Q What are the percentages of people like me hiring you, a
2 defense attorney versus the plaintiff's side?

3 A Over the years I've tried to keep it 50/50. I try not to do -- you
4 know, a lot of guys will have just only defense cases or only plaintiff. But I
5 try to keep it in the middle. It really depends on who's calling me in a given
6 week or year as to how many defense cases I have. But for the most part,
7 over the years, it's been 50/50.

8 Q Have you ever worked for the opposing party?

9 A The opposing firm?

10 Q Yeah.

11 A Don't believe so.

12 Q You say this is an accident reconstruction?

13 A Yes.

14 Q Describe what an accident reconstruction consists of.

15 A All right. Well, what I'm trying to do when I look at the damages
16 of the vehicles and then what's on the vehicle repair estimate is I'm trying to
17 evaluate the mechanics of the accident and, as I said, then the mechanism
18 of injury. But the mechanics of the accident involves the engagement of the
19 vehicles and then the forced motions of the occupants inside, which is the
20 key.

21 Q Okay. Do you hold any professional degrees?

22 A Well, I'm a PE, a registered professional engineer. I have been
23 a licensed general contractor only so I could be a consultant in that field.
24 And you're talking about licenses, Mr. Gardner.

25 Q Yes, please.

1 A I'm also a judge for the Nevada State Athletic Commission. I
2 just Moutai fights professionally when they have them here.

3 Q You a fighter yourself?

4 A I trained for a number of years. I'm certainly not fighting now.

5 Q Okay.

6 A Fighters are 20. Yes.

7 Q Just one of the things that happen when you get older, right?

8 A Thank you.

9 Q Have you ever been -- have you ever failed in being able to
10 testify as an expert in forensics?

11 A You mean as asked to leave?

12 Q Yeah.

13 A No.

14 Q Or not allowed to testify.

15 A No. I have had a couple of restrictions over the 125 trials based
16 on foundation laid by my client to the Court, which was a mile above my
17 head. But there were areas there within the law that I was not allowed to
18 testify. They said we -- you can't testify here, but you can testify here.

19 Q Okay.

20 A That's all I know.

21 Q Okay. What kind of ongoing education did you undergo when
22 you left college?

23 A You know, one of the things that was important in getting an
24 accident reconstruction is seeing applied education in accident
25 reconstruction. I mean my physics background at the mechanical

1 engineering level did go through that, but not in the detail though of motor
2 vehicle accidents or even premises accidents. It's mainly physics. So I took
3 a series of courses in accident reconstruction.

4 Q Now I think we already established that you did a report in this
5 case, didn't you?

6 A I did.

7 Q Just broad strokes. What are you describing in this report? Are
8 you reporting on human factors, reconstruction? What is your intent?

9 A This is a report that deals with the mechanics of the accident
10 and the mechanism of the injury. So first thing, in any reconstruction that
11 you hear about or of any evaluation in a courtroom, you first got to do the
12 accident reconstruction. You've got to figure out that mechanics of the
13 accident was that caused the damages. Then the damages go from
14 whatever we see here to the movement of the occupant. There's only injury
15 when we have movement of the occupant. There's not -- if the occupant is
16 not moved or he's not moved very much. If it's within elastic range, then
17 there's no injury. So it depends how much the occupant is moved. It's not
18 about the damage of the vehicle. It's about the movement that is suddenly
19 imposed on the occupant.

20 Q Okay. In your report, is there anything in there about human
21 factors?

22 A There really is -- not human factors, per se. There is a
23 biomechanics review, I believe.

24 Q Okay.

25 A And then there is certainly an accident reconstruction, which

1 ties into my mechanical engineering background. But human factors deals
2 with things like vision, perception, reaction time, cognitive thought. I don't
3 believe that's part of this case.

4 Q Yeah. So you're not here as a human factors expert. You're
5 just here as a reconstructionist and a -- what else was that?

6 A Yeah. Accident reconstruction and injury reconstruction.

7 Q Okay. And is that the type of information that is in your report?

8 A It is.

9 Q Let's look at the report. If you want, go ahead and pull that out.

10 A Okay.

11 Q When did you prepare this?

12 A Well, the date on top here says November 4th of 2016.

13 Q And is there any difficulty in doing what you do the further away
14 from the accident you get? For example, is your report going to be accurate
15 even though it was like four years after the accident?

16 A Yes, if the data is there. If the data is not there, then no. But in
17 this case, we had pretty much what I needed. I mean, obviously, we could
18 have had more. But -- and I always say that.

19 Q Okay.

20 A But notwithstanding, there's plenty here to state an opinion, at
21 least at the level that I did.

22 Q Can you tell us, individually, what type of information you used?

23 A Yeah. I did go through the documents earlier that we received.
24 I had eight different documents arrive. And I think I cited those earlier.

25 Q Okay. Do you have an engagement letter in your file, do you

1 think?

2 A I recall looking at the file this morning. There is a letter from the
3 law office. Yes.

4 Q Do you get work from others other than attorneys?

5 A I used to. I don't know. There's only -- I find there's only 24
6 hours in a day. And there's just so much work to do. This is about all I do
7 anymore, just evaluate accidents.

8 Q You still do premises work?

9 A Yes, some. Yes.

10 Q Describe what that is.

11 A Premises is obviously about a building or some location where,
12 typically, somebody falls and gets hurt. You want to look at the mechanics
13 of why they got hurt, what the environment was, and what the factors
14 leading into that injury were.

15 Q Okay. Is there any data analysis in this case? Did you just say
16 there wasn't or --

17 A As in premises analysis? No.

18 Q Yeah. I mean -- okay. So that's completely separate.

19 A Correct.

20 Q So the recon and the premises or the vehicle and premises, is
21 there any other specialty that you're involved with?

22 A This case was primarily about accident reconstruction and
23 mechanical engineering, and injury reconstruction, mechanism of injury, and
24 my biomechanics background.

25 Q I just want to make sure I've gone through your resume here.

1 Did you come up with any opinions in the area that you were hired to review
2 about this automobile accident?

3 A I did.

4 Q Okay. In your mind, is there a -- is there one party that's more
5 liable than the other?

6 MR. CLOWARD: Your Honor, I'm going to object. That's a fact
7 decision for the jurors. Number two, it's outside the scope of his
8 designation. Number three, he provided zero analysis regarding --

9 THE COURT: Objection sustained.

10 MR. GARDNER: Your Honor, what?

11 THE COURT: The objection is sustained. If he was --

12 MR. GARDNER: Okay. I was just asking -- regarding --

13 THE COURT: Just rephrase the question, Mr. Gardner.

14 MR. GARDNER: I've already forgot the question.

15 THE COURT: So just ask a new one.

16 BY MR. GARDNER:

17 Q Okay. You go by Dr. Baker with a PhD?

18 A It depends on the situation.

19 Q Okay. What does it depend on?

20 A How formal the environment is.

21 Q Okay. Is this a formal environment?

22 A This would be.

23 Q Okay. So I should call you Dr. Baker?

24 A If you like. It's not necessary.

25 Q Now the report that you prepared, you've got it in front of you,

1 correct?

2 A Yes.

3 Q How many pages does the report consist of?

4 A The total, I believe, was six pages. Actually, it's four pages of
5 text. So it's four.

6 Q Okay. What else is there?

7 A I thought there was an appendix. I'm not seeing it here. So
8 we'll go with the four.

9 Q Okay. I've got a couple of reports here. And I just want to
10 clarify what they are. What's the date on the one that you're looking at?

11 A This report is dated November 4, 2016.

12 Q Okay.

13 [Counsel confer]

14 BY MR. GARDNER:

15 Q So and I understand you've worked on this about eight hours, or
16 the report?

17 A Yeah. I have to go back to the exact records and the billing, but
18 I believe that that was it. It was about that.

19 Q Okay. What was your intention when you prepared these
20 reports?

21 A You know, as with any, it would be to evaluate the mechanics of
22 the accident and the mechanism of the injury, if any, based on forced
23 motions in the vehicle.

24 Q Can you --

25 A So again, the injury that we're looking at today is not about the

1 damage to the vehicle. It's about the individual.

2 Q Can you simplify that just a little bit for me?

3 A Sure. Typically, you hear of evaluations being based on
4 damage. An injury is not really based on the damage to the car. We know
5 the car has been injured. Looking at the individual and whether or not the
6 individual's tissues were moved out of elastic ranges during that impulse to
7 the vehicle.

8 Q Now what does that mean?

9 A Now it turns -- just -- if I could add one more thing. It turns out
10 that the more damage, the more force applied. The less damage, the less
11 force applied, typically. But it's not a straight line.

12 Q Okay. How did you characterize the vehicles in this case?

13 A Damage here on the Mustang, although it looks sort of
14 dramatic, this, as I'm pointing here, is just sheet metal. So this would be
15 considered --

16 Q Doctor, would you --

17 MR. GARDNER: Your Honor, may I have Dr. Baker go up to
18 the --

19 THE COURT: Fine.

20 MR. GARDNER: -- screen?

21 THE WITNESS: Sure. Thank you.

22 BY MR. GARDNER:

23 Q All right. Start over.

24 A So if we look at the damage to the vehicle here, this fender is
25 primarily sheet metal. It's not load bearing. What load bearing is is at this

1 level. So when we get deflection here, every inch of deflection of the
2 bumper at the bumper level, typically about 14 inches up, that's going to be
3 one inch -- one mile per hour speed change. So as we -- what we're looking
4 at is how much this car was jarred when it was hit. If you hit the bumper, if
5 you damage it an inch, you've got about a mile per hour speed change. So
6 if it goes in a foot, it's been -- the speed has been changed about 12 miles
7 an hour. Now that's an important concept. And if I haven't described it well,
8 I should go over it again, because that's very important.

9 So what we're looking at here is a weaker material than there is
10 behind this piece of plastic. And again, this fascia, which I'm outlining here
11 with my finger, that's just a piece of plastic. The whole thing weighs maybe
12 a pound. It just covers the actual bumper, which is underneath. Typically,
13 there'll be a piece of foam under there. And then under that is a hard steel
14 piece connected to the frame. So now, in this case, this is undoubtedly a
15 unibody, where all that is really one piece. But the bumper is underneath
16 this plastic. This is not really the bumper. This is not a bumper.

17 Now if we look up here where the damage is fairly profound, if
18 you could see this clearly, there is a little bit of -- there's an impression here,
19 but there's a little bit of direct contact damage at the top of it. You can't see
20 it so much in this photo. You can see it in the smaller one. So there's direct
21 -- the rest of this is referred. That means it's been bent. And again, this is
22 only sheet metal. This is hard. This it not hard. This is sheet metal, which I
23 can't say we could do that with a hammer. But certainly, it doesn't have the
24 load bearing characteristics of the bumper underneath the fascia.

25 Mr. Gardner, you --

1 Q Yeah. Would you --

2 A -- want to go from there?

3 Q Would you tell us what sheet metal is?

4 A Sure. So if we've got the hood, the sides, the fenders, this is a
5 thin sheet metal. It's hard metal, but it's thin. It deflects relatively easy
6 compared to the bumper and frame that's underneath this plastic. So what
7 we see in here in the way of six, eight inches of deflection would not be a
8 speed change of six or eight miles per hour. It would be at this bumper
9 height level but not at the fender level. This is lighter, thinner material.

10 Q And you --

11 A Does that make sense?

12 Q When -- yeah, I hope so. Now when you were describing the
13 unibody, will you tell us a little bit more what that is, what that means?

14 A Yeah. A unibody is a concept come up with by the
15 manufacturers to say that the frame and the body is going to be essentially
16 one piece. And what it amounts to is in the olden days they use to make
17 two railroad tracks. That was the frame. And they would put the body on
18 top of it, and it would all get welded together. And it was pretty solid. That
19 was easy to fix. This is not. This is sort of one piece. And to fix any of this,
20 this is load -- this insight being loadbearing even though it's only sheet
21 metal. But it ends up being one piece, and it is more difficult to repair,
22 because it is the one piece.

23 Q You keep -- I know I've asked you this, and you've done a good
24 job of explaining it. But --

25 A Uh-huh.

1 Q -- the sheet metal, I mean it's a hard material, isn't it?

2 A Yes.

3 Q Okay. And when you -- I think you described it as being weak
4 metal.

5 A Well, it's week compared to the structural material under the
6 bumper fascia. Fascia is the piece of plastic. There's a hard piece of steel
7 underneath. That is the bumper. You can't see the bumper. It's under this
8 plastic that's just a decorative.

9 Q We don't know, just by this photograph, whether the frame was
10 damaged, do we?

11 A The only way we can know that is from the vehicle repair
12 estimate. And we do have one entry here which I see in virtually all of these
13 estimates. There is a line item for set up of frame rack and pull for diamond.
14 All that means is what they want to do is they want to set this car on a track
15 and decide if it's square. The pull for diamond typically is if it's off even an
16 eighth of an inch, they wanted to bring it back that eighth of an inch.
17 Typically, with unibody, it will get out that a eighth of an inch. Okay. Now
18 with -- it's a lot easier when they had -- the old days where they had to frame
19 rails and they put the body on top of it. Now the frame rails, that is, with
20 unibody -- and this is most vehicles now. The frame rails and the body are
21 essentially one piece.

22 Q What's the process that you would go through with trying to
23 square the unibody -- I mean the metal -- the frame?

24 A This is done at a body shop -- or actually, a frame specialist.
25 It's not even a body shop. The frame specialist will do it. But if a vehicle is

1 really pushed out of shape, they will pull on it until you get a rectangle again.

2 Q Well, if a unibody has been bent or damaged, can you get it
3 back to new? If -- is there a machine to do that or --

4 A The body people will tell you can, but I don't know. There are
5 certain specifications that the manufacturers put down for being square, and
6 it's at the millimeter level. In other words, this has to get straightened that
7 out, it's very, very tight tolerance.

8 Q Now when somebody is in a unibody car -- I don't know if you'll
9 know this. If I understand you right, this car has a very good strong frame; is
10 that true?

11 A Yes, it would. Sure.

12 Q And then the outer, the things that we can see, are much less
13 hard or thick, or whatever?

14 A Well, that's partially true. What we have here essentially is the
15 whole body in unibody becomes one structure. So even the thin fenders
16 become part of this one piece. All right. The fact is the fenders, the sides,
17 the hood, the roof are thinner. They will take deflection easier than the
18 bumper underneath the fascia.

19 Q Okay. Look at this photograph. Does this car -- with everything
20 being equal, does this car look like it could be repaired?

21 A It would to me, yes.

22 Q Then again, we don't know the -- if the frame was moved or hit
23 or anything, do we?

24 A Well, the only thing we've got here is, again, they put -- they
25 always do though. You see this in every one of these vehicle repair

1 estimates. It says frame rack and set up, pull for diamond. I used to see it
2 on virtually every one of these. So I'm assuming they checked to see if it
3 was square. And if it was off a little, they put it back.

4 Q Okay. What would you consider to be a major off-balance? I
5 know you're talking in millimeters. But are you talking if it's moved an inch
6 or two inches, or whatever?

7 A That would be a lot, because if that were not straightened out,
8 as the vehicle went down the road, it would have a cavitation to it that you
9 really wouldn't like, and it would be unsafe.

10 Q Okay. Did you come up with any observations or opinions
11 during the course of your employment?

12 A In the report, yes.

13 Q Let's start at the first one. I really just want to ask what the
14 significance is to you. Under observations and opinions, it says at the --
15 well, you look at it.

16 MR. CLOWARD: Your Honor, I'm just going to object as to
17 foundation and ask permission to voir dire the witness. Foundation.

18 MR. GARDNER: I have no objection.

19 THE COURT: Counsel, approach for a second.

20 [Bench conference at 2:03 p.m.]

21 THE COURT: Do you want to do that outside the presence of
22 the jury or do you want to do that with the jury here?

23 MR. CLOWARD: I'm sorry?

24 THE COURT: Do you want to do that outside the presence of
25 the jury or do you want to do it with the jury here?

1 MR. GARDNER: What's it matter?

2 THE COURT: Okay.

3 MR. GARDNER: Fine with that?

4 THE COURT: Yeah. I'm fine.

5 MR. GARDNER: Okay.

6 THE COURT: It's up to you all.

7 [Bench conference ends at 2:04 p.m.]

8 MR. CLOWARD: Permission to proceed, Your Honor.

9 THE COURT: Go ahead.

10 MR. CLOWARD: Okay.

11 **VOIR DIRE EXAMINATION**

12 BY MR. CLOWARD:

13 Q Dr. Baker, how are you?

14 A Well, thank you.

15 Q Good. I just want to confirm a couple of things? You ever
16 heard the term show your work?

17 A Show my work?

18 Q Yeah.

19 A No.

20 Q So when you have like it -- you say you're in high school.

21 You're in like a math class and the teacher says show your work on this
22 math problem?

23 Have you ever heard that saying?

24 A No, but I can certainly envision what you mean.

25 Q Okay. In your report, which is essentially one-and-a-half pages

1 of opinions, and the first page and the second page are kind of going over
2 things like your curriculum vitae, your fee schedule, list of testimonies,
3 documents reviewed, and so forth, you agree with me that nowhere in your
4 report do you put any calculations of anything in this case, true?

5 A Correct. The calculations are not there. Correct.

6 Q You agree that, certainly, an attorney such as myself, working
7 on behalf of a client would want to verify your calculations to determine
8 whether those were accurate?

9 A Sounds reasonable.

10 Q Okay. So my question is did you do calculations and you just
11 didn't put them in your report or did you not do any calculations?

12 A No. I think what we've got here is a summary of what I've done.
13 The file is usually substantially thicker than the four pages. This is a
14 summary to be submitted.

15 Q Okay. I appreciate that. My question was very direct and very
16 pointed. It was, A, did you perform calculations and you did not put those in
17 your report or, B, did you do no calculations?

18 A There was area here where we did do calculations based on the
19 crush damage that I saw on the struck vehicle.

20 Q Okay. Now, usually, crush damage is determined by
21 photogrammetry, meaning there's a software that you plug the photos into
22 and that gives you some sort of a calculation, correct?

23 A Yeah. What we're trying to do is determine the depth and the
24 width of the particular damage you're describing.

25 Q And you use a software program to assist you -- a software

1 program that has been validated, tested, and certified as being reliable,
2 true?

3 A You can. You can use that. There are several out there.

4 Q You did not do that in this case, did you?

5 A That's correct.

6 Q You eyeballed it, didn't you?

7 A I estimated from the scale of dimensions that I know on the
8 vehicle.

9 Q Okay. And, doctor, is it fair to say that your eyeballing the crush
10 damage in this case has never been peer reviewed, has never been subject
11 to any sort of a review process to determine whether it is accurate, reliable,
12 or a valid methodology?

13 A Which peer review are we talking about here? Is there a peer
14 that would look at my evaluation of this crush and evaluate it? I'm not sure
15 what you mean.

16 Q Yes.

17 A Who would that be?

18 Q A collection of your peers. Like a peer reviewed article that you
19 could submit to the SAE, a peer reviewed article that you could submit to
20 some crash forensics group, that could validate your methodologies as
21 being accurate, reliable methodologies for calculating crush damage.

22 A So you're suggesting that I take my calculations on this and
23 present it to a group before submitting the report. Is that what I'm hearing?

24 Q What I'm asking you, doctor, is have you ever submitted your
25 eyeball method of calculating crush damage and extrapolating a delta V

1 based on your eyeball evaluation, have you ever submitted that to a group
2 of your peers to determine whether it was reliable and whether that was a
3 valid methodology for calculating crush damage and extracting --

4 A Now before --

5 Q -- a delta V?

6 A Sorry to interrupt you. Sorry.

7 Q Yes or no, doctor. Have you ever submitted it?

8 A On any case or on this case?

9 Q On any case?

10 A No.

11 Q Doctor, fair to say you did not list in your reports the vehicle
12 weights, true?

13 A I don't believe that I did here. No.

14 Q Doctor, fair to say you did not know and did not list the principal
15 direction of force, true?

16 A No, I did. It's not in the four-page report.

17 Q Doctor, on page number -- or on number 3, you indicate, quote,
18 there is no point of impact. You did not know the point of impact, correct?

19 A Can you refer me to that paragraph?

20 Q It's paragraph 3, page 3, paragraph 3 of your report. And you
21 can follow along and just verify that I read it correctly. Quote, there is no
22 point of impact --

23 A On the police report.

24 Q Let me finish, doctor. Area of impact or skid mark specified in
25 the state of Nevada traffic accident report, end quote. True?

1 A You're right. That's correct. That's what the police report says.

2 Q Did you ever make any sort of a mathematical calculation as to
3 the point of impact, area of impact, or any determination as to whether there
4 were skid marks in this event?

5 A You must understand that I have to go from the police report. If
6 they don't indicate the presence of skid marks, I can't assume that there are
7 any.

8 Q Okay. And, doctor, you agree with me that if you don't have
9 data to enter into a formula or a calculation, you have to have inputs to do
10 certain calculations, correct?

11 A Correct.

12 Q So, for instance, if you wanted to add two plus two, you would
13 have to have two to begin with, and you'd have to have another two to add
14 into that calculation, correct?

15 A Yes.

16 Q And in this case, you did not know the point of impact, true?

17 A That's correct.

18 Q You did not know the area of impact, true?

19 A That's the same thing. It's a different police term, but correct.

20 Q And you did not know whether there were any skid marks,
21 correct?

22 A That's correct.

23 Q And you never went to the scene to determine whether there
24 were any skid marks, correct?

25 A That's correct.

1 Q And you never tested the roadway surface to determine what
2 the coefficient of friction was, true?

3 A Right.

4 Q You did not know what the speed of Mr. Morgan's vehicle was,
5 true?

6 A What we're interested in is the speed change.

7 Q Yes or no.

8 A Not the speed. No. The answer is no.

9 Q You do not know what the speed of Mr. Lujan's vehicle was,
10 correct?

11 A That's correct. We don't.

12 Q You did not physically inspect the actual vehicles involved,
13 true?

14 A Correct.

15 Q You did not look at the airbag module, true?

16 A That's correct.

17 Q You did not look at the event date or record information for
18 either vehicle, true?

19 A Correct.

20 MR. CLOWARD: Your Honor, I move to strike this witness'
21 testimony as having improper foundation.

22 THE COURT: Counsel, approach.

23 [Bench conference begins at 2:12 p.m.]

24 THE COURT: Do you want to do that outside the presence of
25 the jury, Mr. Cloward?

1 MR. CLOWARD: I'm sorry.

2 THE COURT: Right.

3 MR. GARDNER: Oh, I -- of course, I [indiscernible]. Your
4 Honor, these are still foundational questions. The question should be why
5 didn't you use these calculations.

6 THE COURT: All right.

7 MR. GARDNER: And --

8 THE COURT: I'm going to send the jury out --

9 MR. GARDNER: Yeah.

10 THE COURT: -- so we can sort this out.

11 MR. CLOWARD: Yeah.

12 [Bench conference ends at 2:12 p.m.]

13 THE COURT: -- converse among yourselves or with anyone
14 else on any subject connected with this trial, or read, watch, or listen to any
15 report of or commentary on the trial or any person connected with this trial,
16 by any medium of information including, without limitation, newspapers,
17 television, internet, and radio, or form or express any opinion or any subject
18 connected with the trial until the case is finally submitted to you. I remind
19 you not to do any independent research.

20 THE MARSHAL: Please rise for the jury.

21 [Jury exits the courtroom]

22 [Outside the presence of the jury]

23 THE COURT: All right. Mr. Gardner, do you want to follow-up
24 with some questions?

25 MR. GARDNER: Yes, Your Honor.

1 **DIRECT EXAMINATION**

2 BY MR. GARDNER:

3 Q I think we ended up with the speed calculations. You were
4 going to talk about those. But I've got your report here, and it's a summary.
5 Is it necessary to have any more information than you had in order to do
6 what you've been doing for however long?

7 A Yeah. You know, that's a good question. There are two ways
8 to evaluate the speed change of the two vehicles.

9 Q Are these reasonably accepted mechanical theories?

10 A These are the two methodologies that are taught in the accident
11 reconstruction schools at Texas A and M, Northwestern, and the other
12 places. There are essentially two ways. One involves the conservation of
13 momentum. The other is the conservation of energy. The questions I was
14 just answering, which I answered truthfully, make the conversation of
15 momentum approach not applicable. Without the point of impact, without
16 the point of rest, without the skid marks, I can't do a conservation of
17 momentum approach to getting speeds and delta Vs. I can't do that.

18 Q Well, then --

19 A And then I'm required to look at crush damage to evaluate the
20 energy that it took to cause the speed change. So in response to the
21 previous questions, those are absolutely correct. We have no -- we don't
22 know the skid marks. If there were any, they weren't recorded. We don't
23 know the point of impact or the points of rest. Without that and the angles
24 of departure and the angles of approach, without that, I can't use that
25 methodology.

1 Q So what methodology --

2 A And I didn't.

3 Q -- did you use?

4 A I used the conservation of energy. And to do that, we have to
5 evaluate the amount of crush damage, look at how stiff these particular
6 surfaces are. And from certain research that's been performed over the
7 years, evaluate then what the barrier equivalent velocity is for that crush.
8 And it will give you, essentially, a number that's equivalent to the delta V.
9 The delta V is the speed change. And that correlates, typically, with
10 occupant injury.

11 Q Okay. Now you eyeballed this damage; is that right?

12 A Well, I certainly wouldn't use the word eyeball. I used my eyes.

13 Q Okay.

14 A And I know certain dimensions on the particular vehicle. And
15 then we put what I believe these dimensions to be into an energy formula.

16 Q Is that a system that's generally accepted in your profession as
17 being accurate?

18 A Absolutely.

19 Q Tell me why. Can you do that?

20 A Well, it's what we have. It's been proven, according to the laws
21 of physics, that it is valid.

22 Q Okay.

23 THE COURT: Sir, what's the formula?

24 THE WITNESS: Ma'am?

25 THE COURT: The formula. What is the formula?

1 THE WITNESS: Oh, I couldn't cite it to you from memory. And
2 typically, I would have all that with me. I was expecting to testify on
3 Monday. I just got in the car and came down here today. So I don't have all
4 my materials with me.

5 MR. CLOWARD: Well, I'd like to address that, because he has
6 to go based on what's in his report in front of him, because that's the only
7 thing that's been produced. So if he has more material that he didn't
8 produce to us, that's not going to come in ever, because it was -- never been
9 produced to us.

10 THE COURT: Well, I understand that, Mr. Cloward, but I asked
11 him a question. And he was just responding to my question, because I
12 asked him specifically what the formula was, because I thought that would
13 help me figure this out a little bit.

14 MR. CLOWARD: And I guess the point that I'm -- that I was
15 trying to make to the Court, and I didn't mean to --

16 THE COURT: I understand.

17 MR. CLOWARD: I know it was a little aggressive.

18 THE COURT: I don't think that the testimony could go before
19 the jury, but I'm making a decision about the validity of this information. And
20 so --

21 MR. CLOWARD: Well, the fact of the matter is, Your Honor,
22 there are only two reliable accepted methodologies that I'm aware of,
23 photogrammetry and specifically doing hands-on measurements, where you
24 actually measure the crush damage, okay, because you can actually -- you
25 know the depth. You know how much crush it is. The way that a barrier

1 equivalent velocity is determined is they basically -- they get a vehicle -- and
2 can we excuse the doctor?

3 THE COURT: Sure. Sir, if you would step out for a minute.

4 THE WITNESS: Sure.

5 MR. CLOWARD: The way that they calculate the barrier
6 equivalent velocity, Your Honor, is they take question damage. So they get
7 24 Ford Mustangs, and they ram them into a fixed barrier, a barrier that
8 does not move. And basically, they know the speed. They know the input
9 of the vehicle. So they -- first off, they'll take the first five and they'll run it
10 into the barrier equivalent at five miles an hour. Then they'll do 10 miles an
11 hour. Then they'll do 15 miles an hour. It's not this vehicle. It's new
12 vehicles every time. It's the Institute of Highway Safety that does this.

13 After the vehicle gets crushed into the barrier, then they
14 measure how much deformation there is. And based on that, they have a
15 calculation. Okay. This is how much the bumper is going to be deformed.
16 Okay. And they know a specific amount, because they take measurements.
17 And you can actually look on the database and look at how much the
18 measurements are, how much damage, how much intrusion and so forth.
19 They do this for frontal impact, side-impact, rear impacts, the whole nine
20 yards. They -- in doing that way, they know what the inputs are, because
21 they create the inputs as they create the crash.

22 The second way of doing that is something called
23 photogrammetry. So it's basically like geometry but photogrammetry. It's a
24 mathematical science that takes a picture and calculates using the formula
25 using the software. Okay. I can tell from, you know -- we know that the

1 bumper on this type of vehicle would normally be six feet wide. Well, we
2 plug it into this software program, and this software program is giving us a
3 calculation that based on the distortion in the photograph, the crush damage
4 is X. Well if the crush damages ask, can go to the Highway Institute, and
5 you can look up okay, if the crush damage is X, then we know that the
6 barrier equivalent velocity was five miles an hour.

7 Well, Dr. Baker, what he's doing is he's basically eyeballing it.
8 He's saying I'm looking at this, and it looks like it's, you know, a few inches
9 off, and this and that. Well, the problem is that there is zero way to
10 authenticate and determine whether his methodology is reliable. The
11 photogrammetry, that is subject to peer review analysis. That is subject to
12 court analysis. That is subject to Daubert. That is subject to Hallmark. You
13 name the standard. It is subject to those parameters. There is research.
14 There's articles. There is literature on photogrammetry. It's been validated
15 and adopted and approved as a valid method of determining this damage.
16 So it's basically either hand measurement -- and that's why you see -- when
17 you do -- when you see folks do the accident reconstruction, the real pros
18 will have hundreds of photographs with these big long take measures that
19 go to the ground. And they take a ton of photographs with the tape measure
20 in the background. So they can tell exactly what the distortion is in the
21 incident.

22 You know, this is an issue that, you know, I actually know a little
23 bit about. We had a case with Judge Smith. We argued to Judge Smith.
24 We said look, this guy, Dr. Cannon (phonetic), he should not be allowed to
25 talk to these jurors. He doesn't have the foundation. He doesn't have the

1 background. He has not done XYZ. Judge Smith allowed him to testify over
2 our objection. We filed --

3 MR. GARDNER: Your Honor, just what -- I mean --

4 MR. CLOWARD: Let me finish making the record.

5 MR. GARDNER: -- what are we doing at this point? We're
6 taking testimony from an attorney.

7 MR. CLOWARD: Let me please finish.

8 THE COURT: There's no jurors here, Mr. Gardner.

9 MR. CLOWARD: Making my record.

10 THE COURT: He's just arguing.

11 MR. CLOWARD: So in that case, we filed a motion for new
12 trial, pointed out, again -- who filed a motion in limine. He denied the motion
13 in limine. We pointed out all of the reasons and rationale as to why it was
14 improper to allow that expert to testify in that case. And Judge Smith said
15 you know what, you're right. Granted a new trial. They appealed. It went
16 up to the Court of Appeals. It's McGruder versus Stafford is the written
17 decision. The court went through and basically said yeah, you know what,
18 cannon didn't have this information. He didn't have that information.

19 THE COURT: Is it published?

20 MR. CLOWARD: I don't -- it's -- well, it's at Court of Appeals. I
21 don't know how they treat those.

22 THE COURT: They publish them. And if they're unpublished,
23 you can't cite to them.

24 MR. CLOWARD: It's just -- it says it's an order of affirmance,
25 July 15, 2016. It cited to Hallmark. So I -- you know, I'm not 100 percent.

1 THE COURT: It's unpublished.

2 MR. CLOWARD: Okay. Well, then I would cite to the language
3 in Hallmark. It indicates that to meet the assistance requirement, the
4 expert's testimony must be relevant and the product of reliable methodology.
5 Here, Dr. Baker quote-unquote eyeballing the damage to determine the
6 crush depth is not a reliable methodology. So he -- his testimony should be
7 stricken. He does not have the foundational basis. He performed no
8 calculations to determine the crush damage, therefore, to extrapolate the
9 delta V calculation in this matter. Thanks, Your Honor.

10 MR. GARDNER: Our position would be that would go to the
11 weight not the admissibility. And if we want to get into a little bit more of a
12 detailed discussion with Dr. Baker about his background, we can do that.

13 THE COURT: Well, the issue has nothing to do with his
14 background. He certainly is qualified in this area. I don't think there's any
15 question about that. The question is whether --

16 MR. CLOWARD: I mean and --

17 THE COURT: -- estimating -- that's the best way to say it.
18 Estimating the original number that you plug into a formula is a valid
19 scientific method.

20 MR. CLOWARD: And, Your Honor, if I may. I have another
21 report of Dr. Baker where he performs the exact type of analysis that I think
22 that he should have performed in this. And I could show the Court that
23 report. And he actually has calculations. He did measurements. And it's
24 obvious that he actually went out and measured the vehicles, because he
25 has a precise measurements. And he has calculations. If I could publish

1 that to the Court.

2 THE COURT: Sure.

3 MR. GARDNER: I would object, because of its relevance.

4 But -- and every accident is different. And so, just to extrapolate from this
5 case I think is inappropriate, and it's irrelevant, and it lacks foundation.

6 MR. CLOWARD: Your Honor, may I approach with this
7 information?

8 THE COURT: Yeah. Yeah. Yeah.

9 MR. CLOWARD: There is specific pages of crush, but there are
10 also other -- you can see it's quite lengthy.

11 THE COURT: Oh, there's the formula too. All right. All right.
12 I'll just make this a court exhibit.

13 [Pause]

14 THE COURT: Here's the issue that I'm having. And it's really a
15 very narrow issue, Mr. Gardner. But if a calculation is based on an
16 assumption, then the entire calculation -- I don't know, you know, if he's a
17 half inch off, does that change it by 5 miles an hour or 20 miles an hour.
18 And I don't know the answer to that. So I don't know -- it is difficult to assess
19 the reliability of the methodology when it is based on an assumption
20 regarding, you know, basically, his guess of how much crush damage there
21 is by looking at a photograph. Do you have any thoughts on that?

22 MR. GARDNER: Well, the -- first of all, the -- I think that we
23 were talking a little bit about some things that we hadn't even talked to the
24 doctor about. We could -- perhaps we could bring him back in and ask him
25 some questions. I think he's already though that the peer review -- I don't

1 even know if there is such a body that could peer review this. We could ask
2 him that. And we could also ask him --

3 THE COURT: If you want to ask him some additional questions
4 to make a record or flush out the arguments, fine. Just bring him back in.

5 MR. CLOWARD: And, Your Honor, I could also, just for sake of
6 the record, because the record is important --

7 THE COURT: The record is important, Mr. Cloward.

8 MR. CLOWARD: I would like to just cite the language in the
9 Appellant's brief, in the McGruder case, of the testimony in that case.
10 Specifically, the -- this is the direct examination -- or the voir dire. I did voir
11 dire of the witness just last I did.

12 "Q What was Mr. Stafford's speed?

13 "A That's not known.

14 "Q What was Ms. McGruder's exact speed?

15 "A The only information I have is her testimony of approximately 20
16 miles per hour when all this began to happen.

17 "Q Do you know the exact speeds, sir?

18 "A Well, since we're on a continuum, I can't tell you. We know it
19 starts out at a velocity that has zero velocity. So that changes.

20 "Q So fair to say that at the time of the impact, you don't know the
21 exact speed?

22 "A That is correct."

23 Then further:

24 "Q Did you test Becky's vehicle to determine whether it was even
25 capable of making skid or whether it had antilock brakes?

1 "A I did not test her specific vehicle.

2 "Q Can you tell me the distance that it would have taken to travel,
3 in feet, from El Dora where the bot dots end to Edna?

4 "A If I knew the distances and the speed, I could tell you the time,
5 and assuming the speed is uniform.

6 "Q Fair to say you don't know the distance?

7 "A No, I do not.

8 "Q Fair to say because you don't know the speed of either vehicle,
9 you don't know how long it would have taken to drive from El Dora to Edna,
10 true?

11 "A True. And her vehicle pulled forward slightly, a lot."

12 "How much?"

13 "A It has a negligible effect on her velocity, and it has to do with
14 how fast she was going when the accident or the conduct occurs. So if
15 she's going 20 miles per hour and the contact occurs, it's going to have a lot
16 less effect than if she's going five miles per hours. And the reason I'm
17 talking about the range is we really don't know here speed when the contact
18 occurred."

19 So very similar lack of foundation in this case, Your Honor.
20 Very similar.

21 THE COURT: All right. So let's bring the doctor back in.

22 MR. GARDNER: And for the record, I do object to that,
23 because we had nothing but counsel testifying. And he doesn't have the
24 qualifications to have been able to --

25 THE COURT: Well, Mr. Gardner is arguing --

1 MR. GARDNER: -- do this.

2 THE COURT: -- not testifying.

3 MR. GARDNER: Anyway.

4 THE MARSHAL: Doctor?

5 THE COURT: Doctor.

6 [Pause]

7 THE COURT: All right, Mr. Gardner. Mr. Gardner.

8 MR. GARDNER: Excuse me?

9 THE COURT: Are you going to ask the doctor any questions?

10 We brought him in, so you could ask him questions.

11 MR. GARDNER: Oh, okay.

12 BY MR. GARDNER:

13 Q Have you ever heard of the photomacry (sic phonetic) -- how do
14 you pronounce that, photomac- --

15 A Photogrammetry.

16 Q Photogrammetry. Have you ever heard of that?

17 A Sure.

18 Q And what does photogram mean?

19 A It's a methodology by which dimensions can be taken from two-
20 dimensional services. So we could estimate. If we had a photogrammetry
21 program here today, we can estimate the length, width, and height of the
22 depths of this crush and its shapes using photogrammetry methods.

23 Q What other methods of reconstruction are available for you to
24 do the job that you were hired to do? What other method?

25 A Well, just to put that into context, and for your question earlier,

1 the idea of evaluating the size of the crush is important. And the
2 photogrammetry will get it to you in a tenth of an inch if done correctly. That
3 is for use in one particular methodology, which is a conservation of energy.
4 The previous questions on skid marks and positions, all that can't happen,
5 because it's a different methodology. We don't have that information. So
6 here, if we can evaluate the stiffness of those surfaces -- that's why I went
7 through that -- and how much their damaged, we can then determine what it
8 would take energy wise to make that damage into a rigid barrier. That
9 typically is equivalent to delta V. Delta V is the instantaneous speed
10 change. And when you hit a barrier, it's all speed change. There's no
11 bounce. There's no spring. It's you hit it. If you're going five miles an hour,
12 the delta V is five.

13 THE COURT: Right.

14 THE WITNESS: All right. So it's going to do certain damage.
15 And what we want to do, in evaluating this photo and its crush, is to
16 determine what it would take to do that damage if we were to compress it
17 into a wall at a certain speed.

18 THE COURT: So how do you figure that out from a photograph
19 any way that could be reproduced by another person?

20 THE WITNESS: Well, even with photogrammetry there's
21 probably going to -- oh, I think I just turned it off.

22 THE COURT: That's okay.

23 THE WITNESS: I think there's going to be a margin for error
24 any time.

25 THE COURT: There's always a margin of error.

1 THE WITNESS: Okay. But insofar as did I evaluate that based
2 on scales of the vehicles, because I do know the dimensions of the vehicles
3 -- I know how long the hood is. I know how high the wheel is. I know
4 different dimensions on it, because I looked them up in a database that I
5 have of information on each vehicle. So then I can take from that, known
6 dimensions and scale to this crush and come up with a fairly accurate size
7 of the compression area.

8 THE COURT: So what does fairly accurate mean to you?

9 THE WITNESS: Anywhere between, say, half an inch or so
10 would be accurate.

11 THE COURT: So if you have an error of half an inch, how does
12 that ultimately impact the final calculation?

13 THE WITNESS: Good question. It would be I'd say within -- it
14 depends on the level of magnitude, of course. But it would be I'd say within
15 maybe a mile-per-hour.

16 THE COURT: Do you have questions you want to -- any
17 additional questions you want to ask, Mr. Gardner?

18 MR. GARDNER: Yeah.

19 BY MR. GARDNER:

20 Q The delta V method, what is that again?

21 A Yeah. Can we turn his back on, Mr. Gardner?

22 Q Yeah.

23 THE CLERK: It's on the side.

24 THE MARSHALL: It's on the side.

25 BY MR. GARDNER:

1 Q On the side, the right side.

2 A I touched something.

3 Q Okay?

4 A Thank you. Okay. Yes, sir.

5 Q What does delta V mean? What is that?

6 A Delta V is the instantaneous change of velocity of a vehicle as a
7 result, essentially, in this case, of a collision. So each vehicle would have a
8 change of velocity. Each vehicle would have its own delta V.

9 Q Okay. Is that -- now what method did you use to come up with
10 your opinions in this case?

11 A For me to develop delta V, we couldn't do it with skid marks and
12 the points of rest and points of impact and angles of approach and
13 departure. Could not do that. We had to just look at the vehicle and
14 determine crush damage.

15 Q How can you do that with just eyeball?

16 A Well, I was just telling Her Honor. There are certain dimensions
17 on this vehicle that I looked up in a database that I have of all vehicles on
18 the road. It tells me the dimensions of these vehicles.

19 THE COURT: Sir, you didn't actually measure the car itself
20 though, right?

21 THE WITNESS: That's -- the actual car?

22 THE COURT: Because when you're dealing with a
23 two-dimensional -- so what dimensions do you have? Tell me what
24 dimensions you have of the vehicle?

25 THE WITNESS: Well, we have the height of the -- from the

1 ground to the top of the tire. We have that. We know what that is. We
2 know what the height of the wheel well is. We know what the length of the
3 hood is. I know the height of the beginning of the A pillar. You see where
4 that is at the windshield? I know that. I know the height of the windshield.
5 All these come out of a database that I have.

6 THE COURT: Okay.

7 THE WITNESS: Now this particular vehicle, this Ford Mustang,
8 is of a certain platform, of a certain number of years. So what that means is
9 that the manufacturer used that particular frame and body for three, four,
10 five years. Probably five or six years. And any evaluations of
11 measurements during that period of time will be valid.

12 THE COURT: I see.

13 THE WITNESS: Okay. So I have that database. I use those
14 dimensions. And then I can evaluate the crush damage. And this is the way
15 it's done. I'm not sure about submitting this to a committee. I've never done
16 that, nor has anybody else I know.

17 THE COURT: Well, so once you have those, then what do you
18 do? So you have the measurements of the car.

19 THE WITNESS: Yeah. You have the measurements of the
20 crush. We know -- we took the measurements of the car --

21 THE COURT: Uh-huh.

22 THE WITNESS: -- to develop the measurements of the crush.

23 THE COURT: Well, how -- but how do you develop the
24 measurements of the crush? So explain that to me.

25 THE WITNESS: By scaling from -- for example, I know a true

1 height of that bumper -- and not necessarily in this photo, because this is
2 oblique. We never want oblique photos. This is not a good photo. What
3 we want are perpendicular photos to the damage and the vehicle itself. You
4 always want perpendicular. And you don't ever want on an angle, because
5 they're not true height. But given that --

6 THE COURT: Do you have those photos?

7 THE WITNESS: Well, there's other photos in the package.
8 There's at least 9 in this strip, and I think there's 16 others. So between that
9 I can come pretty close to dimensions of the crush. I take that crush,
10 knowing what surface has been damaged. And that is it has a certain
11 stiffness to it. That I look up as well for this vehicle. And given that, I can
12 then determine what energy it would take to do this particular damage. Now
13 what does that do for us? We can --

14 THE COURT: My issue is more about how you came up with
15 the initial number, because obviously the initial number is not based on a
16 scientifically reliable methodology, whatever you get at the end is not either,
17 right? So my concern is how you measured the crush damage from a two-
18 dimensional photograph. That's my --

19 THE WITNESS: From the assortment of photographs and
20 known dimensions I have of this vehicle that I can scale off of with a
21 micrometer. So, for example, with the height of the tire -- and I don't
22 remember what it was. But the height of the tire is a certain number of
23 inches based on the tire that it is. I know what that is. Given that, if I set a
24 micrometer on that, I know how many percentage of an inch that is. And I
25 can then relate that to the size of the dimensions of the crush and look at it.

1 And I think there were 9 plus 16 photographs.

2 So I look all through those. And several of which had the crush.
3 And what I do is I come up with a number. And then I use the equation that
4 we haven't talked about, which relates crush damage to energy. And that
5 ultimately gives us a [indiscernible] velocity, which gives us a delta V. Delta
6 V correlates with injury.

7 THE COURT: Mr. Cloward, do you have questions you'd like
8 to --

9 MR. CLOWARD: Yes, I have some additional questions.

10 THE COURT: Okay.

11 **VOIR DIRE EXAMINATION**

12 BY MR. CLOWARD:

13 Q Dr. Baker, you didn't take into consideration that the tires on a
14 vehicle are not stock, did you?

15 A Well, there's a number of different dimensions here that are no.
16 The tires could be anything.

17 Q Doctor, yes or no.

18 A No, huh-uh.

19 Q And you agree that the profile of the tires would vary the height
20 of the wheel well, true?

21 A It could, yes.

22 Q That would also vary the height of the A pillar, true?

23 A Yes, but we're looking at a fixed dimension not just height from
24 the ground.

25 Q That would also vary the height of the fender, true?

1 A If we're only looking from the ground, and you have a larger tire,
2 the answer is yes.

3 Q And the height of the tire would actually be varied if these were
4 custom rims, true?

5 A It can, sure.

6 Q Doctor, does that look like a custom hood to you with the pins
7 there?

8 A You know, over the years they had certain modifications made.
9 I don't know if that's customer or standard. It doesn't look particularly
10 standard.

11 Q It looks more custom, doesn't it?

12 A Just the way the pins are, it could be.

13 Q And you didn't take any consideration into a custom hood, did
14 you?

15 A No. The vehicle wasn't available.

16 Q Okay. So again, you agree that the way that you calculated this
17 was basically by eyeballing it?

18 A Based on known dimensions that are fixed on the vehicle, yes.

19 Q Okay.

20 A I don't use the word eyeball, but it's an estimate based on the
21 photographs that we have and true length.

22 MR. CLOWARD: We reassert our challenge on his
23 qualifications and the assistance on Hallmark.

24 THE COURT: All right. So I'm going to deny that based on the
25 testimony of Dr. Baker that he used known measurements to obtain a

1 measurement of the crush damage to essentially obtain a scale, so that the
2 crush damage could be measured based on other known measurements. I
3 think, at that point, comes an issue more for cross-examination than to
4 exclude the testimony. Let's just take like five minutes, and then I'll bring the
5 jury back in since it's almost 3.

6 MR. CLOWARD: Okay.

7 [Recess taken from 2:49 p.m. to 2:59 p.m.]

8 THE MARSHAL: Please rise for the jury.

9 [Jury enters the courtroom.]

10 THE MARSHAL: Please be seated.

11 THE COURT: Back on the record on case number A 718769,
12 Morgan versus Lujan. We have the presence of all of our jurors, counsel,
13 and parties.

14 Mr. Gardner.

15 MR. GARDNER: Could I have the last question read back to
16 me? I'm not even sure where I was.

17 THE COURT: We don't have the ability to do that. We have a
18 recording system.

19 MR. GARDNER: Oh, okay. Okay. All right.

20 **DIRECT EXAMINATION**

21 BY MR. GARDNER:

22 Q The -- is there any name for the method you use to come up
23 with your opinions? Like photomotography (sic phonetic), or whatever it is.

24 A Yes.

25 Q What is it called?

1 A Well, there were two available. One was not acceptable,
2 because we didn't have the data. The other is based on the conservation of
3 energy that exists in a motor vehicle collision. That is, energy is not created
4 or disposed of. The one that's not available to us is the conservation of
5 momentum, which is much more complex and is not available in this
6 accident scenario, as we don't have the data. We don't have skid marks.
7 We don't have points of impact. We don't have points of rest. So to answer
8 your question, we used the conservation of energy to develop a speed loss
9 for this particular vehicle based on the crush damage.

10 Q Is this a generally accepted method in your line of work?

11 A Yes, those are the two. And to answer your question, when you
12 asked about photogrammetry, photogrammetry is a software process. It's a
13 particular piece of software or type of software that will look at a two-
14 dimensional surface in certain ways and determine the dimensions of certain
15 points on the photograph.

16 So, for example, using a photogrammetry program, you could
17 develop a feel for what the quest dimensions on that dent were.

18 Q How does that work? How do you -- how can you come up
19 with those?

20 A Well, typically, what -- and I have the program. What it does is
21 it'll actually plot this particular shape and move it around to --
22 computationally and try to determine length, width, width, and depth, which
23 is a tricky thing, because we're looking at two dimensions here. So that's
24 what the software does.

25 MR. GARDNER: Your Honor, may I have Dr. Baker go by the

1 screen?

2 THE COURT: That's fine.

3 BY MR. GARDNER:

4 Q I just want to make sure that we're clear on this and that the jury
5 knows exactly what you're pointing to.

6 A Sure.

7 Q Okay. You were just describing the crush, weren't you?

8 A Yes. So we've got a fairly good size dent here. And what it
9 amounts to is using this particular program, it will look at this
10 two-dimensional photograph and come up with a three-dimensional idea of
11 what these dimensions are, length, width, width, and depth.
12 And with that, very accurately, you can get an estimate of what the
13 dimensions of that crush were.

14 Q Do you use that method at all on anything?

15 A I have in other years. It's a good method. I use it. Sometimes I
16 don't use it. I didn't use it here. I'm reasonably accurate with looking at
17 dimensions that I know from the vehicle and then scaling with a micrometer
18 off the photograph to parts of the crush that I want to measure.

19 Q Okay. And that's a generally accepted in your profession?

20 A Everybody I know uses that, yes.

21 Q Okay. Thank you. Now did you have any opinions about this
22 vehicle accident regarding speed, velocity, G forces, or --

23 A Yeah. And let mention -- well, it just came up, G force. She is
24 an acceleration. It can be negative. It can be a negative deceleration. It
25 can be minus, but it's not a force. G is an acceleration or deceleration.

1 Force can be derived from acceleration or deceleration. But we don't have
2 the -- G force is like Xerox copy. It's a term. G is, for example, if I drop a
3 pencil, it falls and it accelerates as it reaches the Earth. That's one G.

4 Q Would you explain that to me like I'm a child? I don't -- didn't
5 understand everything you just said.

6 A Sorry.

7 Q Take it down a little bit, would you? Explain that a little bit more
8 simply, would you?

9 A Okay. And I think it's an important concept, that you have G
10 and gravity. Based on physics that's beyond my scope and, you know,
11 even my education -- I never got into quantum physics. But we have the
12 Earth and it's got a certain amount of mass. As a result, it attracts things.
13 And it is so much bigger than everything else than when we drop it, whether
14 it be a tree or a pencil, it literally falls at about the same acceleration. And
15 that's because compared to the size of the Earth, the difference is negligible.
16 So when we drop something, it gets faster and faster and faster. It gets
17 down to the Earth. That's 1G.

18 Q Okay.

19 A That is numerically equivalent to 32.2 feet per second squared,
20 which means every second the speed gets 32 feet a second faster as it's
21 falling. That is 1G.

22 Q Okay. And did you say that all objects fall at the same G level
23 or --

24 A Yeah. They actually don't, but the decimal point is way out.
25 And for our purposes, yes.

1 Q Okay. Say that. What does that mean, member?

2 A Well, and again, if we got the big ball, the Earth.

3 Q Yeah.

4 A And we've got my pencil -- we've got -- or my pen, the massive
5 difference in mass, it's so substantial that --

6 Q What's mass?

7 A -- as I drop it, it accelerates toward the Earth.

8 Q Describe mass.

9 A The Earth attracts it.

10 Q What is mass again?

11 A Mass is size.

12 Q Okay.

13 A Now pounds is one measurement of mass, but it goes beyond
14 that. It's a little bit involved. But it's about size.

15 Q Now let's -- you've got your report in front of you; is that right?

16 A I do.

17 Q Okay. Are your opinions about this accident contained in that
18 report?

19 A Yes.

20 Q Okay. Let's do this then. Let's go to the report. And I want you
21 to tell me where are your opinions found? What page?

22 A Well, they start on page 3, which I refer to observations and
23 opinions. Observations are things that I see, and opinions are things that
24 are derived from what I see. So most reports I will separate them. In this
25 particular report I didn't. They're together.

1 Q Okay. What is your first opinion?

2 A The first of which is an observation. And it talks about Mr.
3 Morgan. It says at the time of the incident, he was 22 years old, 6'5, 230
4 pounds. He worked in an athletic club. It's an --

5 Q Well, why is that significant?

6 A -- observation.

7 Q Dumb it down for me, because I don't understand all this.

8 A Yes, sir.

9 Q Why is that an important figure for you to put into a report?
10 What does it do?

11 A Well, it is important, because we've got certain things there that
12 affect the degree to which somebody will or will not be injured given a
13 certain impulse to the vehicle. And that would be -- we've got age. We've
14 got size. And we've got a certain feel for athleticism. Typically, I would
15 extrapolate the difference between, say, Goldberg with the World Wrestling
16 Federation and maybe, you know, another female driver in her late eighties.
17 You know, they both drive vehicles, but they're going to respond to impulse
18 differently.

19 Q Okay.

20 A So there are factors that affect injury vulnerability in these
21 collisions. And this particular first activation points out a couple.

22 Q Okay. What's your next opinion or observation?

23 A It talks about what was found -- this is an observation. It talks
24 about what was found at the ER. And in that report by Dr. Sanders, now he
25 indicates that the Sunrise Hospital Emergency Room indicated that the CT

1 scan on the cervical spine was negative. This is on the intake. Cervical
2 spine was cleared. Patient had full range of motion of his neck on intake.
3 Report also indicated that the CT scan of the brain showed no acute
4 process, that is, no protrusion, no mass, no fractures, no hemorrhage.
5 There was no mention in the cited emergency room report of a traumatic
6 head strike, which is, of course, important. Those are not my words. Those
7 are from Dr. Sanders.

8 Q And --

9 A So he's citing what he found at the emergency room.

10 Q Now why is that important in this analysis?

11 A Well, I don't want to get -- I don't want to make a medical
12 opinion, which I'm not allowed to do, which I don't want to do. But as far as
13 what Dr. Sanders is saying in here, what he's saying and what I observed
14 him saying is that on intake at the ER, there is not significant neck trauma.

15 Q Is there anything else in there from Dr. Sanders that talks about
16 what nonsignificant means?

17 A Well, nonsignificant is atraumatic, A as in not traumatic,
18 nontender, essentially asymptomatic on intake at the ER.

19 Q Okay. So nothing wrong. Is that what it's saying?

20 A That's what it says.

21 Q Okay. What is your third opinion?

22 A This also an observation pointed out by counsel earlier about
23 there being no point of impact, no area of impact, which on the police report
24 is the same thing. They used to call it POI. Now they call it AOI. It's the
25 same thing. It's where it happened. It doesn't list it on this particular police

1 report. So given that, there is no point of impact listed. There is no area of
2 impact listed. There are no skid marks listed in the State of Nevada traffic
3 accident report.

4 So that means we cannot use the conservation of momentum
5 approach, because it needs points of rest, points of impact, angles of
6 approach, and angles of departure with any skid marks. That will give us
7 pre-collision speeds of both vehicles --

8 Q Okay.

9 A -- knowing the masses, which we can look up. But given that,
10 we can't do that. We can't use that here, because we don't have -- as
11 counsel pointed out earlier in those questions, we don't have point of impact.
12 We don't have skid marks. We don't know. We have to go to a different
13 methodology, which I cite in the rest of item 3. So, however, there is a
14 method that we can use from the inspection of the photographs and the
15 vehicle repair estimate.

16 Q And that's the system you use?

17 A Yes. And one thing I would like to point out and that is going to
18 come out this particular opinion -- do you have the photograph of the bus
19 handy? Is it --

20 Q I think I do, but I don't know where it is right now.

21 A Well, I think it's important that we bring up the idea that
22 whatever did the damage on this vehicle, the force is going to be equal and
23 opposite on the bus. So whatever we have on the bus, whatever that was,
24 that's the same force required to do this array of things that we see on the
25 Mustang. And again, not to be technical, but that's Newton's third law.

1 They're going to be equal and opposite.

2 Q Okay.

3 A Okay. So given that, if we can evaluate what these crushes we
4 can develop a feel for how much energy it took to make this crush and relate
5 it to what that would be if it struck a barrier. Not another car but a barrier.
6 And the reason I want to do that is because I want to determine speed
7 change of that vehicle. If you hit another car, you get essentially a spring.
8 But we can get a number if we base this on hitting a barrier. That change of
9 velocity and hitting a barrier would be equivalent energy wise to whatever
10 we see in crush. So what I want to do is I wanted to develop a barrier
11 equivalent velocity of that dent. I want to see how many miles per hour into
12 a barrier it would take to make this dent.

13 Q Okay.

14 A That's essentially what we did. That's number three.

15 Q What's number -- what's your next opinion?

16 A That is also a combination of an opinion and an airbag -- I'm
17 sorry -- an opinion and an observation. It was about the airbag.

18 Q What about the airbag?

19 A So the airbags did not deploy on impact with the bus.

20 Q Why is that significant?

21 A And that is significant because we know how they set airbags.
22 They set airbags -- we talked about striking a barrier. They strike them so
23 that a front-end collision into a barrier at 10 to 14 miles per hour will make
24 their bag deploy. Now that would be a delta V. Delta V is the change of
25 velocity, how many miles per hour it changed as a result of hitting the

1 barrier. That would be 10 to 14 miles per hour to make it deploy?

2 Q Okay. Now --

3 A So if we don't deploy, we must assume that the delta V of this
4 collision with the sheet metal is below 10 to 14 miles per hour into a barrier.
5 Not into a car, into a barrier.

6 Q And what's significant of a barrier versus a car?

7 A Well, the idea of the barrier, if you're going to strike a rigid
8 barrier with a car, whatever the approach speed is, 5 miles per hour, or 20
9 miles, whatever it is, that's the delta V. It's going to be all speed change.
10 So we're always looking for a change of vehicle, because that correlates
11 with injury. So more speed change, more potential for injury. Less speed
12 change, less potential for injury, but it's not a straight line.

13 Q What does that mean?

14 A It means there's no Mason Dixon line between injury and
15 noninjury at a certain mile per hour. It depends on lots of variables.

16 Q Just give us a few variables.

17 A A few variables, age, size, conditioning, gender, smoking
18 versus nonsmoking, pre-existing conditions. Over the years I've
19 accumulated I think 14 of them. But it's along those lines. And it's what
20 makes us different from each other and how we respond to the impulse
21 that's going to happen when this vehicle collides with another vehicle.

22 Q Okay. Now look at the photograph of the vehicle. It looks like
23 there was impact on the left front. Would that crush normally or naturally set
24 off an airbag or would it have to be straight on?

25 A Typically, it would not. No, it is straight on. That is the idea.

1 The damage -- again, there is a component here that is straight on. That's
2 the part we're interested in. Even if it was oblique.

3 Q Can you stand up and show the jury what you're talking about?

4 MR. GARDNER: If that's okay, Your Honor.

5 THE COURT: Uh-huh.

6 THE WITNESS: Even if the angle approach to this vehicle was
7 oblique in tis collision.

8 BY MR. GARDNER:

9 Q What does that mean, oblique?

10 A Oh, on an angle. It's on an angle. It's not perpendicular and it's
11 not parallel. It's on an angle. Even though it's on this angle, there's going to
12 be a component that's front to back. And that front to back is going to either
13 set off or not set off the airbag monitor. And so, at 10 to 14 miles per hour of
14 this vehicle into a barrier, we'll have an airbag deployment. Again, the idea
15 of the barrier is a number related to the speed change of the car which
16 correlates with the movement of the injury -- of the individual in the driver's
17 seat.

18 Q And why is that significant then in your analysis?

19 A Well, again, with delta V, the higher the delta V the more the
20 occupant is going to be moved. And the more movement there is the more
21 likely there is for injury there is, and vice versa.

22 Q So the less movement we have -- and again, it's not about
23 damage. It's about this person. So it's about whether his tissues respond to
24 this impulse or not. So given this, if we have a lot more damage, we're
25 going to have a lot more motion of that individual inside. And just to add one

1 additional thing, given that the crush is here, with the individual inside, when
2 this strikes he is coming forward and leftward.

3 Q Thank you. What is your next opinion?

4 A Well, within number four, I had an evaluation of delta V. And I
5 said, in my opinion, it's between the calculations I did. It's between 5 and 10
6 miles per hour. So that means that vehicle changed speed between 5 and
7 10 miles per hour as a result of this collision. Low speed change, low
8 potential for injury. High speed change, high potential. But it's not a straight
9 line.

10 Q Okay. And that --

11 A And that's the end of number four.

12 Q That seems common sense to me. But is there a law, Newton's
13 law or anything, that establishes that?

14 A No. You know, it's just the opposite. I mean I see a lot of
15 people say well, over five miles an hour you're going to be injured in under
16 five you can't be injured. It's not that way at all. It's based on those
17 variables we talked about a minute ago. And, you know, that really is the
18 bottom line. So it depends on each individual in each collision.

19 Q And what factors in this collision -- if you -- I'm not even sure if
20 I'm asking it the right way. But what factors were the most important to you
21 when you evaluated this change or this -- came up with these opinions?

22 A Well, certainly, the damage to the vehicle was the basis of the
23 evaluation. And then looking at it, coming up with a speed change, which it,
24 at best, is estimated. Again, we can't -- even with the fine equations we
25 have based on the law of physics, we -- you know, we can't get this to a

1 tenth of a mile per hour. But based on the speed change, we can determine
2 what happened to the to the occupant. And that's the goal.

3 Q Do you have an opinion on what happened to the occupant
4 inside the car?

5 A Yeah. I already stated. So he would have gone forward and
6 leftward with this particular crush as we see it here.

7 Q All right. Do you have any other opinions or observations?

8 A Well, there's several more listed on the report.

9 Q You can take a minute and read them if you'd like.

10 A I do indicate what I just said here, that the upper body would
11 have moved forward in flexion, in a direction towards that damage. So it'd
12 go forward and to the left. Based on Newton's first law, he'd continue
13 forward at the speed he was driving before this all happened. And that's
14 why he continues to go forward, because of Newton's first law, which states
15 that we're going to continue motion in the direction we're traveling until
16 acted upon by an outside force. Obviously, the outside force is the shoulder
17 belt is going to restrain him, which I believe it does engage, and any bracing
18 that he does. So those are the forces.

19 Q Do you have any opinions about whether this type of an
20 accident can cause bodily injury damages?

21 A Bodily injury?

22 Q Yes.

23 A It depends on the individual. It depends on the individual.
24 There's a wide array of individual differences between people. I've seen
25 them at no delta Vs. And racecar drivers have delta Vs of 60, and they don't

1 get hurt. So it really depends on a lot of factors. There is no Mason-Dixon
2 line between injury and no injury at so many mile per hour delta V speed
3 change.

4 Q So you're saying, at 10 miles an hour, you're not going to get
5 this severity of an injury, and so forth, 10 miles, 15 miles, 20. They don't
6 correlate with certain types of injuries?

7 A It correlates to a certain degree, but it's not a straight line
8 correlation. In other words, as the --

9 Q Describe that.

10 A -- number gets bigger -- I'm sorry?

11 Q Describe that straight-line thing again.

12 A Sure. The idea of if we have 5, 10, 20 mile-per-hour delta Vs,
13 that is change in velocity of the vehicle, the higher that number the more
14 likely you're going to have more movement of individuals. The more
15 movement we have the more likely tissues is going to get moved out of an
16 elastic range. And we all have elastic ranges, and everyone's is different
17 from everyone else's.

18 Q Okay.

19 A All of -- say me, for example. All of these tissues are all
20 different from every other when I have. So it just depends on those
21 particular tissues. The question is did the impulse from this collision move
22 tissue out of an elastic range. That's the question. That's the basis of the
23 whole debate here.

24 Q And your opinion on moving tissue?

25 A Well, again, that would be a medical opinion. That would be a

1 medical opinion. Did he see injury? Okay. I'm telling you how it happened
2 or didn't happen. But whether it did happen has to come from a medical
3 eval.

4 Q Okay.

5 A Okay. Now I read you one that was the ER intake.

6 Q Okay.

7 A Okay. I think we did complete number five.

8 Q Did you already talk about what the -- your observations were of
9 the ER? I can't remember.

10 A I did, yeah. Dr. Sanders cited the ER report. And that's when
11 we went through the nontender, a traumatic, negative CT, on and on. We --
12 I read that a little bit ago.

13 Q All right. Any other opinions or observations?

14 A Well, one thing I think is important to note is that when a
15 shoulder belt engages. And typically, that will be at three-quarters of -- or .7,
16 three-quarters of a G. So if I'm going to decelerate at three-quarters of a G,
17 there's a point at which the harder I decelerate, the more likely that total belt
18 is going to be to engage.

19 Q Okay. Did you come up with any opinions about speed of the
20 vehicles?

21 A Yeah. I believe I already cited that. The fact is that -- and
22 again, it's not about speed of collision that's indicative of injury, because you
23 could have 65 miles an hour striking 60, and that's really a five mile per hour
24 accident. So it's really not the -- you know, it's not the speed of the
25 collisions. What it is, it's the change of speed that we're interested in, in

1 determining injury mechanism. And in this particular one, I felt it to be a
2 speed change of between 5 and 10 miles per hour. That's the key number
3 not how fast they were going.

4 Q And with a speed change such as that, do you have an opinion
5 on whether that speed change could have caused injuries?

6 A Well, it depends on the individual.

7 Q Well, based upon your reading of the ER report and Sanders'
8 report.

9 A Well, the ER report says no.

10 Q Okay.

11 A The ER -- now I was not there and nor is that my field, you
12 know. I don't do the medical eval, but those who did said no. But, you
13 know, they're going to have to get them in this --

14 Q Okay.

15 A -- place. All right.

16 Q I understand. Anything else? Any other opinions or --

17 A Well, that was number four. I think we want to look at Mr.
18 Morgan's anthropometrics (sic). Anthropometrics are, anthropo- being man,
19 metrics being measurement, is body sizes. 22 years old, 6'5, 230. That's
20 the larger individual that's in the maybe top one percentile of the bell-shaped
21 curve of people that would be on a [indiscernible]. That's a larger individual.
22 In my experience, a lot fewer people at 22 are injured than at 42. That's just
23 my expense from my cases over the years.

24 Q Say that again.

25 A A lot fewer people are -- I'm sorry. Did I say a lot more injured?

1 They're less injured.

2 Q Let's make sure that -- yeah.

3 A If I said that wrong, I apologize. A lot more people are injured at
4 42 than 22.

5 Q Okay.

6 A And that's because the elasticity of the tissues become worn
7 down, and they age.

8 Q Okay.

9 A Okay. So Mr. Morgan being 22 at the time, this is not an age
10 where I see, in my practice -- I can't say this medically. In my practice, I
11 don't see a lot of 22-year-olds in collisions claiming injury. That's about
12 5,000 cases.

13 Q What else? What other opinions do you have?

14 A I think Mr. Morgan did say something about a head strike. And
15 I'm not entirely sure. I'd have to go back to the records. But I believe there
16 was a claim of a head strike. Thought he may have been unconscious. At
17 this level of speed change, that would not be common. I certainly can't say
18 anything is impossible, but it wouldn't be common. He is a larger, taller
19 individual. Can [indiscernible]? The answer is yes, but I haven't seen it. I
20 haven't seen head strikes at this speed in this type of collision.

21 Q What's your next opinion?

22 A I think I already stated it. We were talking about, you know,
23 tissues are more pliable at 22 than 40 -- 42. The bottom line in any injury,
24 and in the accident is this. It is whether tissue is moved out of an elastic
25 range. It's not about the bumper, you know. It's not about the skid marks.

1 It's whether tissue was moved out of the elastic range. If it happens, there's
2 stretching and tearing. If it doesn't, it doesn't.

3 Q Now is it your opinion that the delta -- or the accident -- this
4 accident was too minor to cause injuries?

5 A It is on the lower side of speed change. It's not the lowest I've
6 seen by any means but is on the lower side. Low tends to be eight miles per
7 hour speed change and below. This is sort of in that zone, this being 5 to
8 10, roughly, 7.5 in the middle. It's going to be about that area. This would
9 be considered a lower speed.

10 Q Okay. What's your next opinion?

11 A It was to go back to the medical report where they cited disc
12 issues, disc bulges, lumbar pain, thoracic pain, facet hypertrophy, neck pain.
13 What I saw described in my practice -- and again, I haven't seen every
14 accident that's out there. I've seen about 5,000. All right. But that's not
15 every accident. But in my practice, these injuries are indicative of more
16 traumatic collision, a higher speed collision than what we're seeing here.

17 Q Okay. So you think that the photographs show a higher speed
18 collision than a lower speed?

19 A No. No. The injuries that we're having cited are more
20 consistent with a higher speed accident in my practice.

21 Q Okay. What's your next opinion?

22 A That was the last one.

23 Q That's your last one. Overall, when you look at the report and
24 the photographs and evidence and things, can you just summarize your
25 opinion regarding the type of accident and the type of injuries you would

1 expect from that?

2 A Well, you know, again, we have a -- we don't have a
3 perpendicular accident. We have an angled accident, a collision. It does a
4 certain amount of damage to sheet metal primarily, not at the bumper level.
5 It's easier to crush the sheet metal than it is at the bumper level, which is to
6 say that this change of the car itself is going to be lower for the same
7 amount of damage to sheet metal then to something really hard. And that's
8 -- that would make sense. So in other words, something that's soft, it bends
9 easy and shows damage. Something that's very firm does not bend as
10 easily.

11 Q Okay.

12 A All right. So we've got damage to sheet metal. The bottom line
13 though, it's not about the sheet metal. It's about the person. And the person
14 then would have a certain movement as a result of this collision. The
15 question of the panel and me and you is did that tissue move out of elastic
16 range --

17 Q Okay.

18 A -- as a result of this impulse to the sheet metal.

19 Q Are there any other opinions that we haven't covered?

20 A Well, and to summarize that, this is at the lower end. It's not at
21 the higher end. It's at the lower end, just to add that. That's the opinion.

22 Q Okay.

23 MR. GARDNER: That's all the questions I have.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Cloward.

1 MS. CLOWARD: Yes.

2 **CROSS-EXAMINATION**

3 BY MS. CLOWARD:

4 Q Okay. Dr. Baker, let's get into this. You just said that the type
5 of injuries you saw in this case are the type you usually see in a more
6 serious crash, true?

7 A Correct.

8 Q And in this case, you could have used the photogrammetry to
9 have a more precise evaluation of the damage in this case, but you chose
10 not to, true?

11 A Photo what?

12 Q Photogrammetry.

13 A Yes.

14 Q And you didn't use that, did you?

15 A Did not, no.

16 Q You had that option?

17 A Yes.

18 Q Instead, you eyeballed it?

19 A I didn't use that term. I estimated it.

20 Q Okay.

21 A Based on known dimensions of the Mustang that I have from
22 the database.

23 Q He didn't take into consideration that the wheels on this vehicle
24 were custom, true?

25 A Did not.

1 Q You didn't take into consideration that the hood is custom, true?

2 A Correct.

3 Q You didn't take into consideration that the scoop of the bumper
4 is custom, did you?

5 A You want to point that out to me?

6 Q Yeah, certainly. Right here.

7 A Correct.

8 Q You didn't evaluate the bumper sensor to determine whether or
9 not the airbag module was even intact, true?

10 A Well, that wasn't available, but that's correct.

11 Q You didn't determine whether there were any recalls on this
12 vehicle for an airbag, true?

13 A No.

14 Q You could have done that, true?

15 A I have software that'll do that. Sure.

16 Q Yeah. You're routinely -- I cross-examined you back in 2012, in
17 trial. And you testified, at that time, that you had testified in approximately
18 130 jury trials.

19 A It's in that area somewhere.

20 Q So has it gone down since 2012?

21 A No.

22 Q So since 2012, it was 130 jury trials. Now you testified earlier I
23 thought it was 125.

24 A Between that and 130, somewhere in that area. I haven't been
25 called a lot in the last couple of years. Most of the cases I've been on have

1 settled. Very few trials.

2 Q Okay.

3 A In previous years, I was testifying once a week.

4 Q You've previously testified, have you not, that people can be
5 injured in bumper car amusement rides?

6 A That they can?

7 Q Yes.

8 A You'd have to read that back to me. There's a -- there is one
9 paper on that where they used two subjects, who are both athletes, and
10 neither gets injured.

11 Q I'm happy --

12 A The delta Vs are between four and five.

13 Q I'm happy to read it to you.

14 A Sure.

15 Q It's case A10-622287-C, Graniere versus Deyer [phonetic], in
16 front of Judge Weiss [phonetic]. The question was:

17 "Doctor, you've testified that people can get hurt in impacts like
18 a bumper car, true?

19 "A It depends on the individual, the direction, and the amount of
20 impact.

21 "Q You have testified previously to that, true?

22 "A In a bumper car?

23 "Q Yes.

24 "A Sure. If you got a bumper car 5 to 6 mile-per-hour delta V, it
25 can happen."

1 A Okay. I thought you were talking about the paper that's been
2 written on the subject. Yes. If you have a 5 to 6 --

3 Q Doctor, have you testified that people can get hurt in bumper
4 car --

5 A I don't remember that particular dialogue. However, I can tell
6 you that at 5 to 6, it's possible and it's not impossible.

7 Q Okay.

8 A It's based on those factors that we talked about earlier.

9 Q Doctor, you recently authored a report for an attorney in town.
10 It's Sharon Torada [phonetic], where you're retained as a rebuttal expert.

11 A Yes.

12 Q I believe you authored the report February 9, 2018. So --

13 A That case is ongoing. You have a report of an ongoing case?

14 Q Yes, I do.

15 MR. GARDNER: Well, Your Honor, I would object. If it's an
16 ongoing case, then --

17 THE WITNESS: It --

18 MR. GARDNER: -- I don't think that should be a proper issue
19 for cross-examination.

20 MS. CLOWARD: It's a matter of public record.

21 THE COURT: Overruled.

22 BY MS. CLOWARD:

23 Q Doctor, in that case, you were hired for the plaintiff, true?

24 A Yes.

25 Q And you stated in that case that you had actually collected data,

1 a 15-year study from the U.S. Department of Transportation, National
2 Highway Traffic Safety Administration, and that at delta Vs of 0 to 5 miles
3 per hour, 29.69 percent of the 2,688 people had minor, moderate, or serious
4 injuries.

5 A Either AIS 0, 1, or 2. Not sure what you're reading, but that's
6 what it is.

7 Q Okay.

8 A AIS 1, 0, or 2.

9 Q And --

10 A Up to -- that's the -- and again, I didn't take that data. That's the
11 government's study that I was citing.

12 Q So 29 percent of the people in those crashes sustained injury
13 that was minor, moderate, or serious, true?

14 A In 0 to -- I'd have to see the chart, because --

15 Q Zero to 5 miles per hour.

16 A I hope you're quoting me correctly.

17 Q Well, this was, in fact, on your website. You have a website
18 that's devoted to your work, true?

19 A It's not active, but yes, there is one.

20 Q It's called JohnEBakerPhD.com, true?

21 A That's correct.

22 Q And you listed myths and facts of low speed crashes, true?

23 A You're correct.

24 Q Okay. So this data is also on your website.

25 A Correct.

1 Q Okay. So another reference in this report and on your website
2 that you gave is that for delta Vs of 6 to 10 miles per hour, 65.45 percent of
3 the 25,202 occupants either had minor, moderate, severe, or serious,
4 critical, or fatal injuries; isn't that true?

5 MR. GARDNER: Objection. I think that he ought to be able to
6 see the report to refresh his recollection before there's a --

7 MS. CLOWARD: It's on his website.

8 THE WITNESS: You know, it's not a report. It's a table per --
9 published by the federal government more than 15 years ago, reflecting a
10 15-year study that relates delta V to AIS injury level, AIS 0 being no injury, 1
11 being very minor, then minor, then severe. And it goes up from there. I'd
12 have to see that table, because I don't feel you're quoting me correctly.

13 MS. CLOWARD: Okay. May I approach?

14 THE COURT: Sure.

15 [Counsel confer]

16 BY MS. CLOWARD:

17 Q Do you recognize this document, doctor?

18 A Sharon Torada, I do. Yeah. I was deposed on that about two
19 weeks ago.

20 Q Is that a copy of the report that you prepared in this case?

21 A Yes.

22 Q Do you see the numbers written on the yellow path? Did I read
23 those numbers accurately?

24 A Yes.

25 Q Thank you. Dr. Baker, how come you took your website down?

1 A It's too much work to stay up with it. And I have so many cases
2 and engagements. I really don't have time to work with it.

3 Q I'm going to read some of the myths that you wrote on your
4 website, and I wanted to see if you still agree with those myths, okay?

5 A Sure.

6 Q Myth number one, no damage equals no injury.

7 A That's a myth.

8 Q Myth number two, below 5 mile per hour delta V equals no
9 injury.

10 A Now we've talked about that today. That is a myth.

11 Q Number three, myth, human volunteers not injured in stage
12 collisions equal no injury.

13 A If there's -- in stage collisions, which they do under testing
14 conditions, the fact that nobody gets hurt does not extrapolate to a
15 real-world situation. So that's a myth.

16 Q Myth number four, Gs less than on roller coasters equal no
17 injury.

18 A Gs less than?

19 Q On roller coasters equal no injury.

20 A Well, that's in reference to the roller coaster paper. That would
21 be a myth.

22 Q People do get injured on roller coasters?

23 A They do.

24 Q Myth number five, delta V less than in bumper cars equals no
25 injury?

1 A Read that again, please.

2 Q Myth number five, delta V less than in bumper cars equals no
3 injury.

4 A That would be a myth.

5 Q Because people get injured in bumper cars, as you've
6 previously testified, true?

7 A They do.

8 Q Myth number six, Gs less than Gs in everyday life equal no
9 injury?

10 A That would be a myth.

11 Q Number seven, low damage equals no occupant movement can
12 occur?

13 A That's definitely a myth.

14 Q Myth number eight, low damage equals there is no mechanism
15 of injury.

16 A Again, please.

17 Q Low damage equals there is no mechanism of injury.

18 A That's a myth, but it depends on a series of factors, including
19 the stiffness of the vehicle and the energy management system. But as it
20 states, that is a myth.

21 Q You actually reference a video by Thomas Zobbo [phonetic],
22 showing how people get injured at delta Vs of 1, 2, 3, 4, and 5 miles per
23 hour, correct?

24 A Correct.

25 Q How come you didn't bring that video in to show and educate

1 these jurors on how people get injured?

2 A What you've got to do is you got to cite it correctly though. I'm
3 not saying they're injured at 1, 2, 3, 4, and 5. What I'm saying is they do
4 move. They do move. If you have movement that moves tissues out of an
5 elastic range, then you can have stretching and tearing. But there will be
6 movement, and that's what the myth is about.

7 Q Okay. How come you didn't bring that video in to show the
8 jurors?

9 A Well, that's a rear-end collision. This is a front-end collision.
10 The mechanics are entirely different.

11 Q Okay. Dr. Baker, I want to just make sure exactly what you did
12 and did you refer to. You agree that you didn't actually review any of the
13 medical records yourself, true?

14 A I can't recall. I think what I saw the two years ago was the ER
15 report and Dr. Sanders' report.

16 Q Okay. If you want to just pull up your --

17 A You quoted him.

18 Q Okay. If you want to just pull up your report. We'll start on
19 page 2.

20 A Yes.

21 Q Number one, you say -- you state deposition transcript of Aaron
22 Morgan. Number two, independent medical examination report of Steven
23 Sanders. Number three, traffic accident report. Number four, nine color
24 digital photographs of the damage, 2007 E450 bus. Number five, Plaintiff's
25 responses to the Defendant's interrogatories. Number six, 16 color

1 photographs of the damaged Mustang. Number seven, vehicle repair
2 estimate. Number eight, video file, second footage taken at the scene.

3 That's all that's listed as documents that you reviewed, true?

4 A Correct.

5 Q So it's fair to say that you did not review any of the medical
6 records yourself in this case?

7 A It seemed to me I thought I saw the ER report, but I don't have it
8 listed here. I do have Dr. Sanders' report, 83 pages, which may have
9 included it. I'm not -- I can't remember. I think it did.

10 Q Do you know why you weren't provided all of the medical
11 records, so that you could see the medical records from the actual medical
12 providers in this case?

13 A You were asking me why the law firm didn't provide this to me?

14 Q Sure.

15 A I don't know the answer to that.

16 Q Would you have liked to seen those?

17 A Typically, yes.

18 Q Okay. Now I want to make it clear. I you did estimate the
19 speed of the vehicle of the bus, correct?

20 A I believe that I did, but that was an estimate based on the crush
21 to this vehicle and the crush to the bus.

22 Q And you estimated the bus was going approximately 10 to 15
23 miles per hour?

24 A At collision, yes, that's what it appeared.

25 Q Okay. Now one other question. You've previously testified that

1 the -- for braking, human reaction time is 1.5 to 2.5 seconds?

2 A It really -- it actually can be anything. The number we typically
3 use is 1.5 seconds. But if somebody has fear, panic, dissonance, disbelief,
4 can except what's happening, it could go to several seconds. But typically,
5 the number we use is 1.5 seconds.

6 Q That's the very minimum, correct?

7 A Not really. It can be one second.

8 Q Okay. And then once an individual actually recognizes a
9 danger, and once they take steps to avoid that danger, let's say they put
10 their foot on the brake, there is something called vehicle lag. Have you
11 heard of that?

12 A Of course. But what you've cited is -- includes the reaction. It's
13 not just the perception time. The one-and-a-half is the perception-reaction
14 time.

15 Q Correct.

16 A Then followed by the vehicle lag, which is about, in this case,
17 may be 3/10 of a second.

18 Q And you've authored reports that have the vehicle lag up to one
19 second, true?

20 A It just -- it depends on the situation. It can be, especially with a
21 semitruck.

22 Q Okay.

23 A Semitruck, for sure, will be one full second.

24 Q Okay.

25 MS. CLOWARD: Your Honor, just Court's indulgence. One

1 moment. I'm just checking my notes.

2 [Pause]

3 BY MS. CLOWARD:

4 Q And you're not here to testify that the forces in this incident
5 were not sufficient to cause injury to Mr. Morgan, true?

6 A Actually, whether he's injured or not has to come from a
7 medical practitioner. I'm telling you where the bodies went and how hard or
8 how not hard they were moved.

9 Q Okay.

10 A So I guess the answer to your question is yes. I'm not here to
11 testify whether he's injured or not.

12 Q And you've previously listed that an delta V -- motor vehicle
13 accidents with a delta V of 6 to 10 miles per hour, 65 percent of those folks
14 suffered minor, moderate, serious, critical, or even fatal injuries, true?

15 A Yeah. I want to go back to that. But it is a noticeable number.
16 Yes.

17 Q I read your report correctly.

18 A I want to see the table again. Let me put it that way.

19 Q Okay. Are you representing that I misrepresented the -- your
20 report?

21 A No, I'm not doing that.

22 Q Okay.

23 A But that seems high to me. But notwithstanding there is a real
24 database from the federal government with no ax to grind, that relates delta
25 V to AIS level, abbreviated injury scale level injury, over a 15-year period.

1 Q Doctor, I'm going to approach and hand you a copy of the --
2 your website. Printed the pages from your website. I just want to have you
3 take a look at it and see if it's an accurate copy of your website, okay?

4 A Sure.

5 MS. CLOWARD: May I approach, Your Honor?

6 THE COURT: Go ahead.

7 THE WITNESS: Okay. I'll check that. But yes, that's what it
8 says.

9 BY MS. CLOWARD:

10 Q Okay. Thank you.

11 MS. CLOWARD: No further questions, Your Honor.

12 THE COURT: Mr. Gardner.

13 **REDIRECT EXAMINATION**

14 BY MR. GARDNER:

15 Q Have all your opinions been to a reasonable degree of
16 mechanical and factors standards?

17 A Tell me what that means.

18 Q Did you sit up there and lie about your credentials and the delta
19 V and things like that?

20 A No.

21 Q And you used methods generally used in your profession to get
22 these numbers; is that correct?

23 A Correct.

24 Q Is that correct?

25 A That is correct. Yes.

1 MR. GARDNER: I have nothing further.

2 THE COURT: Mr. Cloward.

3 MS. CLOWARD: I don't have anything further.

4 THE COURT: All right. Anything from the jury? Great.

5 Counsel, approach.

6 You're not done yet. Hold on. Sorry.

7 [Indiscernible bench conference begins at 3:54 p.m.]

8 THE COURT: So, Mr. Baker, I'm going to ask you a question.

9 If you could just look at the jury when you answer so they can hear you.

10 THE WITNESS: Sure.

11 THE COURT: Were you able to observe any rotational

12 movement of Mr. Morgan's vehicle?

13 THE WITNESS: Of the vehicle?

14 THE COURT: Yes.

15 THE WITNESS: There should have been a slight rotation
16 based on the fact that the primary direction of force is inward. There might
17 have been a slight rotation counter clockwise. However, I don't see that to
18 have been significant.

19 THE COURT: Any follow up?

20 THE WITNESS: Not as in a spin or a real hard rotation, no. I
21 don't see that.

22 THE COURT: All right. Thank you, sir. You are now free to go.

23 THE WITNESS: Yes, ma'am.

24 MR. GARDNER: Your Honor, we're ready to start with the read
25 in. I have my gentleman here.

1 AARON O'DELL, SWORN

2 THE COURT: Sir, go ahead and have a seat. Good afternoon.
3 Can you please give us your real name and then spell your real name for
4 the record?

5 MR. O'DELL: My real name?

6 THE COURT: Your actual name.

7 MR. O'DELL: Aaron O'Dell.

8 THE COURT: Can you spell that for me?

9 MR. O'DELL: A-A-R-O-N, O-D-E-L-L.

10 THE COURT: Okay. And you will be reading, do we have that
11 so we can publish it?

12 MR. GARDNER: I've got, this is Morgan's original. I'm
13 looking --

14 THE COURT: What --

15 MR. GARDNER: What's that?

16 THE COURT: Do you have Mr. Lujan's, right?

17 THE CLERK: Yes.

18 MR. GARDNER: Yes, I'm getting that.

19 THE COURT: Okay. So [indiscernible] the original so she can
20 publish it.

21 MR. CLOWARD: Your Honor, I'm not sure if we have, if he has
22 the original, but we wouldn't oppose a copy, printing a copy out.

23 THE COURT: All right.

24 MR. CLOWARD: Just trying to speak --

25 THE COURT: So we just need something -- if we can publish a

1 copy, but the published copy goes into the Clerk. So we need something to
2 publish.

3 MR. GARDNER: Did we submit Mr. Long's to Court, to the
4 Court?

5 THE COURT: No.

6 MR. CLOWARD: Your Honor, I have an extra copy.

7 THE COURT: Thank you. Thank you, Mr. Gardner.

8 MR. GARDNER: Thank you.

9 MR. CLOWARD: Yes, you're good. We have another copy, so
10 we could give it to Mister--

11 THE COURT: Well, we'll publish this one and then we'll give it
12 to him.

13 UNIDENTIFIED SPEAKER: Correct, they'll give it to --

14 THE COURT: All right, so the reader will be reading from the
15 deposition of --

16 MR. GARDNER: It's actually from the last jury trial.

17 THE COURT: Oh, it's -- okay, I see. I see, from the prior
18 testimony of Mr. Lujan. Got it.

19 MR. GARDNER: And I think we -- didn't we agree I'm not going
20 to read the objections?

21 THE COURT: Sir, can I just see that real quick? Counsel,
22 approach for a second.

23 [Bench conference begins at 3:59 p.m.]

24 THE COURT: I just wanted to make sure that we don't have
25 any issue here. When I say could counsel approach for a second, right here

1 at the time right when I said it. So, all right. Why is this print out?

2 UNIDENTIFIED SPEAKER: I don't know why the okay is
3 marked out.

4 THE COURT: It looks like there's much of it.

5 UNIDENTIFIED SPEAKER: Oh, we marked out, obviously --

6 THE COURT: What he's not reading?

7 UNIDENTIFIED SPEAKER: The objections that deal with other
8 attorney issues that --

9 THE COURT: Okay, so you guys don't have any issues
10 though --

11 UNIDENTIFIED SPEAKER: Correct.

12 THE COURT: -- with what's being read?

13 UNIDENTIFIED SPEAKER: This is actually our version that we
14 presented.

15 UNIDENTIFIED SPEAKER: And if I do, stop me.

16 THE COURT: All right, fine.

17 [Bench conference ends at 4:00 p.m.]

18 MR. GARDNER: Okay, I'm going to ask you, Mr. O'Dell, to turn
19 to the bottom of 108, page 108. Can you see that?

20 MR. O'DELL: Yes.

21 MR. GARDNER: Okay. Now I'm going to be the Court, you're
22 going to be the Witness. Fair enough?

23 MR. O'DELL: Yes.

24 MR. GARDNER: Okay. Start at the top line, the Witness.

25 MR. O'DELL: 108?

1 MR. GARDNER: Yes.

2 [Counsel confer]

3 MR. GARDNER: Okay, do you see near the bottom where it
4 says Direct Examination?

5 MR. O'DELL: Yes.

6 MR. GARDNER: Okay. I'm going to start right there.

7 [Prior testimony of David Lujan was read into the record.]

8 MR. GARDNER: All right, Mr. Lujan, at the time of the accident
9 of April 2014, were you employed with Montera Meadows?

10 MR. O'DELL: Yes.

11 MR. GARDNER: And what was your employment?

12 MR. O'DELL: I was the bus driver.

13 MR. GARDNER: Okay. And what is your understanding of the
14 relationship of Montera Meadows to Harvest Management?

15 MR. O'DELL: Harvest Management was our corporate office.

16 MR. GARDNER: Okay.

17 MR. O'DELL: Montera Meadows is just the local.

18 MR. GARDNER: Okay, all right. And this accident happened
19 on April 1st, 2014, correct?

20 MR. O'DELL: Yes, sir.

21 [Counsel confer]

22 MR. GARDNER: All right, go to page 111. Just tell me when
23 you're there.

24 MR. O'DELL: I'm here.

25 MR. GARDNER: Okay. I'm starting at the top. Okay, so this

1 accident happened on April 1st, 2014, right?

2 MR. O'DELL: Yes, sir.

3 MR. GARDNER: And it happened, you pulled out of the --
4 what's that park, Paradise Park?

5 MR. O'DELL: Yes.

6 MR. GARDNER: Pulled out of the parking lot and drove right in
7 front of Mr. Morgan; is that right?

8 MR. O'DELL: Well, I looked both ways and then I didn't see any
9 traffic coming. And then, so I proceeded across three lanes. And then we
10 collided in the right lane where he was going north, I believe.

11 MR. GARDNER: Okay, all right. And at the scene of the
12 accident, did you speak to anyone?

13 MR. O'DELL: Just the officer, and then briefly him and his
14 mother. I mean his mother and I were talking about him being -- I was
15 concerned about him.

16 MR. GARDNER: Okay. And isn't it true that you said to his
17 mother you were sorry for this accident?

18 MR. O'DELL: Yes.

19 MR. GARDNER: And that you were actually pretty worked up
20 and crying after the accident?

21 MR. O'DELL: I don't know that I was crying, I was more
22 concerned that I was crying.

23 MR. GARDNER: Okay.

24 MR. O'DELL: Because I never been in an accident like that.

25 MR. GARDNER: Okay. And isn't it true that you continued to

1 apologize to Mr. Morgan's mother for this crash?

2 MR. O'DELL: I apologized. I don't know if I did it continuously,
3 but I did apologize.

4 MR. GARDNER: Okay. And in fact you were so concerned
5 about Erin after the accident, isn't it true that you told her mother that you
6 would continue to pray for Aaron?

7 MR. O'DELL: Yes.

8 MR. GARDNER: Okay. So this was a big accident?

9 MR. O'DELL: Well, it was for me because I've never been in
10 one in a bus. So, it was for me.

11 MR. GARDNER: Okay, but you were so concerned about
12 Aaron and what he may have injured that you felt the need to pray for him.

13 MR. O'DELL: Well, based on my religion, I can't speak for
14 anybody else, but my, I'm a religious person. So, you know, prayer is at
15 least, in our church, something you would do for somebody who you think
16 might be ill or sick.

17 MR. GARDNER: Okay. And you spoke to the officer, correct?

18 MR. O'DELL: Yes.

19 MR. GARDNER: And you didn't tell the officer at the scene it
20 was Aaron's fault, correct?

21 MR. O'DELL: No, I never placed blame.

22 MR. GARDNER: Okay. And so tell me how this works. You
23 caused this accident, and how does it work corporate wise? You got to fill
24 out paperwork?

25 MR. O'DELL: Yes, I go.

1 MR. GARDNER: First of all, let me object to the form of the
2 question. I think he's referenced cause and I'm not sure that's been
3 established. Go ahead and read [indiscernible]. And this is from Mr.
4 Boyack You can answer. What's the --

5 MR. O'DELL: The protocol was I was then back to the facility. I
6 was sent for immediate drug and alcohol tests and I filled out our accident
7 report.

8 MR. GARDNER: Okay, all right. I've got those copies here.
9 This is Defense Exhibit A that I'm going to show you, the incident accident
10 report. Is that your handwriting?

11 MR. O'DELL: Yes.

12 MR. GARDNER: Okay. And I'm just going to scroll down. If
13 you can, read for us what you wrote here, or there.

14 MR. O'DELL: It says that I stopped at the driveway. I looked
15 both ways and then I pulled out. I pulled out and I did not see him. And
16 then that's when the collision happened, or --

17 MR. GARDNER: Right. Just read it word for word if you can. I
18 can zoom in if you want me to.

19 MR. O'DELL: All right. I stopped at the driveway and looked
20 both ways and pulled.

21 MR. GARDNER: Go to 114, please.

22 MR. O'DELL: Okay.

23 MR. GARDNER: Yes, there you go. Yes, there you go. Sorry.

24 MR. O'DELL: Okay. Again, I stopped at the driveway, looked
25 both ways, pulled out, and he hit the bus by the passenger door.

1 MR. GARDNER: Okay. By you writing he hit the bus are you
2 putting fault on Aaron?

3 MR. O'DELL: I was saying where the vehicle struck our vehicle.
4 I wasn't placing blame.

5 MR. GARDNER: Okay. Now I'll have you look at, I think, which
6 is Exhibit B, the driver's statement report, if you can read that.

7 MR. O'DELL: I was pulling out of the driveway, stopped and
8 looked both, or stopped and looked and pulled out, and the Mustang hit the
9 bus.

10 MR. GARDNER: Okay. Then is this the bottom of it? This is
11 all your handwriting?

12 MR. O'DELL: Yes.

13 MR. GARDNER: Okay.

14 MR. O'DELL: It was --

15 MR. GARDNER: Okay, hold on. Go to the next page, 118. Go
16 to 126, Aaron, if you would.

17 MR. O'DELL: Okay.

18 MR. GARDNER: Okay?

19 MR. O'DELL: I'm here.

20 MR. GARDNER: Mr. Lujan, earlier you testified, I don't want to
21 put words in your mouth so I'm going to ask you it this way. Did you testify
22 earlier that you've never placed blame on Aaron for this accident?

23 MR. O'DELL: Do I start down here? Okay.

24 MR. GARDNER: Go to line 16.

25 MR. O'DELL: Okay.

1 MR. GARDNER: Read that.

2 MR. O'DELL: No, I don't think I placed blame on Aaron.

3 MR. GARDNER: Okay.

4 MR. O'DELL: Or I wasn't.

5 MR. GARDNER: Okay.

6 MR. O'DELL: I mean I wasn't.

7 MR. GARDNER: Okay. So when you filled out reports and
8 other documents with your corporation, your intent was never to place blame
9 on Aaron?

10 MR. O'DELL: Right. I was just, I was stating what had
11 happened with the accident.

12 MR. GARDNER: Okay.

13 MR. O'DELL: That's what the report says, state what
14 happened.

15 MR. GARDNER: Okay, all right. I'm going to show you a
16 document that is a court document. I'm going to show you portions of it.
17 [Indiscernible] spoke about this in his opening about the answer to our
18 complaint. The complaint's a law suit. The answer is filled by the attorneys
19 in the matter. And there's a section called affirmative defenses. Can you
20 see that on your screen?

21 MR. O'DELL: Yes.

22 MR. GARDNER: Okay. If you will look at -- oh, go to page 128.

23 MR. O'DELL: I'm here.

24 MR. GARDNER: Okay. If you will look at, I highlighted this
25 portion, but a second affirmative defense it says negligence the Plaintiff

1 caused or contributed to any injuries or damages that the Plaintiff may have
2 sustained. And the negligence of Plaintiff in comparison with the alleged
3 negligence of Defendant, if any, requires that the damages of Plaintiff be
4 denied or be diminished in proportion to the amount of negligence
5 attributable to the Plaintiff. Let's just focus on that highlighted section.

6 Do you have any proof that negligence of Aaron caused or
7 contributed to any injuries?

8 MR. O'DELL: No.

9 MR. GARDNER: Thank you. Also, third affirmative defense.
10 First section, the Plaintiff had knowledge of and was fully aware of the
11 condition existing at the time of the accident and assumed any risks. Are
12 you aware of any proof that Aaron was aware of the condition of your
13 vehicle entering McLeod Drive?

14 MR. O'DELL: No.

15 MR. GARDNER: Now we'll focus on number six, the
16 occurrence during which Plaintiff received said injuries, if any, as alleged in
17 the complaint was the result of an unavoidable accident and occurred
18 without the fault of either the Plaintiff or the Defendant. Do you have any
19 proof that this crash was the result of an unavoidable accident or occurred
20 without the fault of either side?

21 MR. O'DELL: No, I don't have any proof.

22 MR. GARDNER: Seventh affirmative defense, that the injuries
23 sustained by the Plaintiff, if any, were caused by acts of unknown third
24 persons who were not agents, servants, or employees of these answering
25 defendants, who were acting on behalf of these answering defendants in

1 any manner or form, and as such, these defendants are not liable in any
2 manner to the Plaintiff.

3 130. Are you aware of any unknown third party or person that
4 is involved in this accident and is at fault?

5 MR. O'DELL: No. No.

6 MR. GARDNER: All right. And I did want to just go through
7 real fast, I believe this is Exhibit D, accident information card, other vehicle.
8 Is this your handwriting?

9 MR. O'DELL: Yes.

10 MR. GARDNER: If you can, read for us the description of
11 events.

12 MR. O'DELL: I was pulling out of the driveway to cross on
13 McLeod Drive. The car was on McLeod Drive. I did not see him. He ran
14 into the bus.

15 MR. GARDNER: So you wrote you did not see Aaron or his
16 vehicle?

17 MR. O'DELL: Right.

18 MR. GARDNER: Is that true today?

19 MR. O'DELL: Yes.

20 MR. GARDNER: And yet you pulled out onto McLeod Drive in
21 front of his vehicle and the crash happened.

22 MR. O'DELL: After looking both ways.

23 MR. GARDNER: Can you state that answer again, sorry.

24 MR. O'DELL: After looking both ways. Okay, I don't think I
25 have any -- oh, sorry. I'll stop there.

1 MR. GARDNER: Would you agree with me that Aaron driving
2 on McLeod at this intersection had the right of way at the time of the
3 accident, correct?

4 MR. O'DELL: Yes.

5 MR. GARDNER: Okay.

6 MR. O'DELL: Yes.

7 MR. GARDNER: And you would agree with me Aaron did
8 nothing to cause this accident.

9 Hold on. Go ahead and read line 16.

10 MR. O'DELL: No, I mean yes. I agree. Sorry.

11 MR. GARDNER: No other questions. Thank you.

12 [The readout of prior trial testimony concluded.]

13 MR. GARDNER: I just have a couple of more questions for
14 you, Aaron. Just kidding. Get out of here.

15 THE COURT: All right. Counsel approach for a second.

16 [Bench conference begins at 4:15 p.m.]

17 THE COURT: All right, so what time is your doctor coming
18 Friday?

19 UNIDENTIFIED SPEAKER: Monday.

20 THE COURT: Monday. All right.

21 UNIDENTIFIED SPEAKER: It's okay. I would love to go home
22 early.

23 THE COURT: Well, we don't have any other witnesses.

24 UNIDENTIFIED SPEAKER: I will tell you that I'm still
25 negotiating with the doctor as to what time. I won't have him here in the

1 afternoon, it would be in the morning. And if --

2 THE COURT: Do you mean what time? He needs to be here
3 at 9 o'clock.

4 UNIDENTIFIED SPEAKER: Okay, 9 o'clock?

5 THE COURT: So just tell him I said he needs to be here at 9
6 o'clock.

7 UNIDENTIFIED SPEAKER: Okay.

8 THE COURT: He's subpoenaed, I'm assuming. If he's irritated
9 with me, then he can, well you can subpoena him and tell him he needs to
10 be here at 9 o'clock.

11 UNIDENTIFIED SPEAKER: Okay.

12 THE COURT: Or I'll put him in jail.

13 UNIDENTIFIED SPEAKER: Sweet.

14 THE COURT: That would be super fun, wouldn't it? All right.

15 UNIDENTIFIED SPEAKER: Judge Weis (phonetic) did that one
16 time with Dr. Janssen Dr. Janssen's like I can't come back tomorrow. He's
17 like I don't care. You will be here. It was awesome.

18 THE COURT: Well, I mean, I appreciate that doctors have very
19 difficult jobs and very difficult schedules. Us too. But you know, we're not
20 trying to [indiscernible] because they can't sort themselves out. So, there
21 we go.

22 UNIDENTIFIED SPEAKER: Okay, cool.

23 THE COURT: Okay. So you just have Dr. Sanders, that's it?

24 UNIDENTIFIED SPEAKER: Yes. Yes.

25 THE COURT: Okay. So the plan is, how long are we going to

1 take with Dr. Sanders? Do you have an idea?

2 UNIDENTIFIED SPEAKER: An hour maybe. Hour and a half,
3 two hours. No more than two hours.

4 UNIDENTIFIED SPEAKER: Your direct exam?

5 THE COURT: Total?

6 UNIDENTIFIED SPEAKER: Oh, I was thinking total between
7 direct and cross. But I'll only have him for maybe just under an hour.

8 UNIDENTIFIED SPEAKER: About the same, probably.

9 THE COURT: Okay. So if we start at 9:00, then we should be
10 able to, yes, we should be able to just wrap it up [indiscernible] probably.
11 How long do you think closing's going to take? Do you think an hour and an
12 hour? Maybe what we'll do is do Dr. Sanders, read the instructions, break
13 for lunch. You guys can get set up and organized, and then we'll do
14 closings right after lunch.

15 UNIDENTIFIED SPEAKER: Perfect.

16 UNIDENTIFIED SPEAKER: Thank you.

17 THE COURT: Does that work?

18 UNIDENTIFIED SPEAKER: Sounds great.

19 THE COURT: I think we should have the jury out by 3:00 which
20 will give them a couple hours to deliberate. I don't like juries going out too
21 late.

22 UNIDENTIFIED SPEAKER: Perfect.

23 UNIDENTIFIED SPEAKER: Thank you.

24 UNIDENTIFIED SPEAKER: Thank you very much, Your Honor.

25 [Bench conference ends at 4:17 p.m.]

1 THE COURT: All right, folks. So here is our plan. We have a
2 doctor who's scheduled to come at 9:00 on Monday morning. At this point,
3 the parties can obviously change their minds because we're not done with
4 the case, but at this point I anticipate that will be our last witness unless
5 something happens. We'll finish up with the doctor's testimony. I would
6 anticipate that I would then read you the jury instructions. We'll break for
7 lunch, and then have closings immediately after lunch tomorrow and get you
8 the case to deliberate by midafternoon. So we'll reconvene Monday at 9:00
9 a.m.

10 During this break you are admonished not to talk or converse
11 among yourselves or anyone else on any subject connected with this trial, or
12 read, watch, or listen to any report or commentary on the trial or any person
13 connected with this trial by any media information including, without
14 limitation, newspapers, television, internet, and radio or form or express any
15 opinion on any subject connected with the trial until the case is finally
16 submitted to you. I remind you to not do any research. Everybody have a
17 good weekend, we'll see you Monday.

18 THE MARSHAL: Please rise.

19 [Jury out at 4:20 p.m.]

20 THE COURT: Mr. Boyack?

21 MR. BOYACK: Yes.

22 THE COURT: I have final sets of instructions I'm just going to
23 give you. One for Mr. Gardner, one for you.

24 MR. BOYACK: Thank you.

25 THE COURT: This is mine.

1 MR. BOYACK: This is the new set of instructions.

2 THE COURT: That's the final set. So if you have any other
3 ones, get rid of them. All right, anything else we need to take care of this
4 evening?

5 UNIDENTIFIED SPEAKER: No, Your Honor.

6 MR. GARDNER: No, Your Honor.

7 MR. CLOWARD: Thank you, Judge. Well, I think he probably
8 said enough. But I would just say I'm not sure whether Dr. Baker stated his
9 opinions to a reasonable degree of probability. But I don't know. I just, I'm
10 not moving to strike or anything, I'm just --

11 THE COURT: All right. I wasn't entirely clear on that myself,
12 Mr. Cloward. But I mean, I think he --

13 MR. CLOWARD: I would be curious to review the transcript.
14 But I think he kind of --

15 THE COURT: Well, what he said was can you tell me what that
16 means. And then he said that they were -- that he used methods that were
17 generally accepted in his field, which to me is the same thing. Yes, I mean,
18 he didn't use the magic language that, you know, the magic legal language.
19 But I think that what he said afterwards was really the same thing, that it
20 was, you know --

21 MR. CLOWARD: Okay. Can we leave the boards here?

22 THE COURT: Oh yes, you can leave everything. Nothing's
23 going to happen here over the weekend.

24 THE MARSHAL: We're going to [indiscernible] this portion of
25 the courtroom. [Indiscernible] to do this, so just leave your boxes and your

1 [indiscernible] and stuff like that on this side because we're doing that this
2 weekend.

3 [Proceedings adjourned]
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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 our ability.

4 Antoinette M. Franks

5 Antoinette M. Franks
6 Transcriber

7 Michelle Rogan

8 Michelle Rogan
9 Transcriber

10 Tami S. Mayes

11 Tami. S. Mayes
12 Transcriber

13 Lee Ann Nussbaum

14 Lee Ann Nussbaum
15 Transcriber

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17 Date: May 4,2018
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