**Case No. _____**

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC,
Petitioner,



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 10 OF 14

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**April 18, 2019**

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF**
**VOLUME 10 OF 14**

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# TAB 14

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DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
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| AARON MORGAN,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID LUJAN<br><br>Defendant. | CASE#: A-15-718679-C<br><br>DEPT. VII |

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

MONDAY, APRIL 9, 2018

**RECORDER'S TRANSCRIPT OF HEARING**
**CIVIL JURY TRIAL**

*APPEARANCES:*

For the Plaintiff: BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

For the Defendant: DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

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WITNESSES FOR THE PLAINTIFF:

None

WITNESSES FOR THE DEFENDANT:

STEVEN SANDERS



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FOR THE DEFENDANT:

None

Las Vegas, Nevada, Monday, April 9, 2018

THE COURT: Good morning, Mr. Rands. How was your weekend? It's Monday.

MR. RANDS: Come on. It's Monday during trial. That's how my weekend was. I apologize, Your Honor. I just got a call from Mr. Gardner. He's almost here, but --

THE COURT: All right. Do you have your witness?

MR. RANDS: Dr. Sanders is sitting in the --

THE COURT: Excellent.

MR. RANDS: I apologize I wasn't here Friday afternoon. I had a matter in Reno I had to take care of. But did we get a complete copy of the jury instructions?

MR. CLOWARD: Yes.

MR. RANDS: The complete set.

MR. CLOWARD: Yes.

THE COURT: Yes.

MR. RANDS: Because there was those couple of additions.

MR. CLOWARD: Yeah.

THE COURT: Yeah. But we got -- Mr. Gardner should have it, but if you don't, do you need another one?

MR. RANDS: Did that include the jury forms, the verdict forms?

THE COURT: No. Oh, no. I forgot to ask Sylvia to do that. No. I'll get those right now.

MR. RANDS: Okay. Thank you. I was working off the last greatest set, but I'm sure it's not the last one because I didn't have the new

one. If Gardner has them, I'll grab them from him.

THE COURT: We'll get you a new one.

MR. CLOWARD: And then, Your Honor, I was hoping to have Dr. Sanders instructed outside the presence of what he's allowed to talk about and what he's not allowed to talk about. His report handed in 2016. We've never gotten a supplemental report. He also never reviewed the films in the case. He specifically set out in his report, he said, hey, I'd like to see the films. Those were never provided, so we never did a supplement. So anything past 2016, I don't think would be appropriate for him to discuss. Additionally, he never discussed the second car crash and so any mention of that I think would be off limits as well. So I was hoping that --

THE COURT: All right. That's fine.

MR. CLOWARD: Okay.

THE COURT: Can the doctor come in? He doesn't have to come all the way up. Good morning. How are you? So I just wanted to touch base with you before we call you to testify. As I understand it, your last report was sometime in 2016.

THE WITNESS: I think so, yes.

THE COURT: Okay. And you never addressed -- there was some subsequent accident that was never addressed by you.

THE WITNESS: Correct.

THE COURT: Okay. So just we just need to make sure that your testimony is limited to the things that you put in your report and not anything that you've learned after that's not in the report.

THE WITNESS: Correct. In my report, I think the patient did

mention there was a subsequent motor vehicle accident and he said he was fine and I never pursued that.

THE COURT: All right. So, anything else, Mr. Cloward?

MR. CLOWARD: Okay. No. I just wanted to make sure that the doctor was aware of that.

THE COURT: Great. Sir, if you want to just have a seat right here we're going to bring the jury in and then we'll have you come up to the stand once they're in. Just wherever, wherever you like.

MR. RANDS: Mr. Gardner just texted me. He's in the elevator, so he'll be here.

THE COURT: Good. In 10 or 15 minutes he'll be here.

MR. RANDS: Ten or fifteen minutes, exactly, the elevators here.

[Pause]

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

THE COURT: This one's for Mr. Gardner.

All right. Can you bring in the jury? All right. Mr. Rands, here's your jury instructions.

MR. RANDS: Thank you, Your Honor.

THE COURT: Take a look and see if -- will you guys look at that verdict form? I know it doesn't have the right caption. I know it's just the one we used the last trial. See if that looks sort of okay.

MR. RANDS: Yeah. That looks fine.

THE COURT: I don't know if it's right with what you're asking for for damages, but it's just what we used in the last trial which was similar

sort of.

THE MARSHAL: Please rise for the jury.

[Jury in at 9:13 a.m.]

THE COURT: We're back on the record in case number 8718679, Morgan v. Lujan. [indiscernible] Counsel and parties. Good morning, everyone. I hope you had a good weekend.

Mr. Gardner and Mr. Rands, if you'll please call your next witness.

MR. GARDNER: Yes, Dr. Sanders.

THE MARSHAL: Doctor, up here, please. If you would remain standing, raise your right hand, and face the clerk, please.

**STEVEN SANDERS**

[having been called as a witness and being first duly sworn testified as follows:]

THE COURT: Good morning, sir. Go ahead and have a seat, please. And if you'll please state your name and spell it for the record.

THE WITNESS: Steven Sanders, S-T-E-V-E-N, Sanders, S-A-N-D-E-R-S.

THE COURT: Thank you. Whenever you're ready, Mr. Gardner.

**DIRECT EXAMINATION**

BY MR. GARDNER:

Q Good morning, Doctor.

A Good morning.

Q Thank you for being here sincerely. Why don't you tell the jury

a little bit about yourself, where you went to med school, what you do for a living, things like that.

A Excuse me. My name is Steven Sanders. I'm a board certified orthopedic surgeon. I grew up in New York, attended undergraduate State University of New York at Buffalo. I was a cell and molecular biology major in the seventies. From there, I went to St. Louis University Medical School four years. When I finished there, my initial path was to do something related to internal medicine, so I began an internal medicine residency. I completed those three years, but during that time had some transitions in terms of my career goals and made the decision I would transition into orthopedics. So after finishing three years of internal medicine residency, I then transitioned, reapplied, and then did a five year orthopedic surgery residency at Northwestern University Medical Center in Chicago. After that I did a self-directed fellowship in Europe where I did a combination of some clinical experience and a little bit of research and during the course of that year took me from Sweden, Germany, France, Switzerland, and Israel.

After that year living out of a suitcase, I then came back to the United States and did a second year of fellowship that I had arranged before I left to avoid a gap. And that was in Southern California where we did [indiscernible] surgery joint replacements, prominently hip and knee, some shoulder, some hand, a smattering of cervical spine. At Northwestern in my residency, we covered the gamut of all body parts as a resident. After completing the second year of fellowship about 18 years from high school, I moved to Las Vegas and began practicing. And I've remained here in Las Vegas practicing since 1991. The name of the group I started is called Bone

and Joint Specialists. We're currently six doctors. When I came to town, I went to pretty much all the hospitals, as there weren't many. Now I'm pretty much on the west side of town where our offices are located. I've done 25, had about 23 years of trauma call, Level 1 at UMC from when I first arrived up until just a few years ago.

In addition to practice, I've been -- I'm past president of the Nevada Orthopedic Society. I've participated as a volunteer, both appointed and elected, various hospital positions on and off at Valley Hospital, maybe between six and eight years of being vice-chief of staff, chief of orthopedics there for at least ten years. At North Vista Hospital which used to be Lake Meade Hospital, I served as chief of ortho, chief of surgery. At one of the rehabilitation hospitals, I had a long run as a vice-chief of staff. There has been various committees I'm asked to serve on at various times, which I'm more than happy to do, even including sometimes not so pleasant, evaluating physicians for some type of problem, be it either performance or behavior. Sort of a blue ribbon panel, if you will, to evaluate if anything needs to be looked at further or if there are any actions needed.

Q Thank you. Thank you. Now, do you know what you're doing here today?

A I'm here to testify relating to an independent medical examination report that I generated a couple of years ago.

Q Would you just explain what an independent medical examination is to the jury?

A An independent medical examination is a process set up by attorneys. It does use physicians, as there is medical questions that need to

be answered or explored. The process allows me as the doctor, in this case, it's orthopedic problems. So it allows me to meet with, interview as I would a patient, and then examine the patient as I would one of my own. The differences between that, there are some differences. Number one, usually I'm charged with certain body parts to look at. So my history would not be what you'd call necessarily completely comprehensive. I wouldn't be asking the person about their knees if the problem is their neck and back.

When it comes to examining the person, my examination will be related to those body parts that I'm charged with looking at, so I wouldn't look at the person's knees per se, unless I thought there was some major deformity that might be affecting their spine. I'm allowed to speak to the patient and ask them questions. I'm not allowed to contact the patient in any way, shape, or form in the aftermath. I'm also not allowed in any way, shape, or form to contact any of their treating physicians. I'm not, as I tell the patient when they come to see me, and I sort of mention some of these -- I mention these things specifically. I'm not their treating doctor and therefore by rules of engagement the doctor patient relationship doesn't' exist to the point where that patient and I are discussing what's wrong with them and what I might recommend.

I explain to the patient that if I have any thoughts after talking to them and then reading the records and going through my thoughts and organizing them, anything I think of would be in the report that I generate and that, in this case since it's a legal issue, that report is available to all the interested parties that are obviously involved in the litigation. But I'm not permitted to contact them or if I say, darn, I missed a question and I don't know what the

answer. I'm not permitted to ask them if I remember something later and I'm not allowed to contact their doctors if I have any inquiries.

Q Did you have an opportunity to look at your report quickly this morning or --

A Yeah, I did. Timing was a little off, atypical, say, but yes.

Q What was your assignment in this case? Can you describe that to the jury?

A I was asked to perform an independent medical examination. I've done them since I came to town in August of '91. I think I may have done first record review or first independent medical examination either in mid to late -- I got here in August, so mid to late 91 or mid -- I think probably in 1992 probably did my first either record review or independent medical examiner, IME. So in this case I am given a patient to look at and I usually ask as to what body parts they're interested in me looking at simply because, a, I want to make sure I focus correctly, and b, sometimes there can be a mismatch between what the patient wishes or wants to talk about or include and what the person who's hiring me is specifically interested in what body part. So I ask for that so that I don't -- because there may be other body parts that people are not interested at this particular time, so I do ask for that sort of direction to look at those parts.

Q Can you remember which parts of the body you looked at in this case?

A For Mr. Morgan, I looked at spine and some shoulder. And I did -- there was medical records pertaining to the wrist, but I did not do an evaluation of his wrist.

Q Tell me one more time about your experience with the spine. Can you explain why you're qualified to talk about a spine?

A That's a good question because within the field of orthopedics, it's so broad, so many body parts, both bones and soft tissue, that there are a lot of subspecialties within orthopedics. We do a five year residency and then you can do what's called a fellowship, which is additional specific training in subspecialties of orthopedics. But I'm not testifying here or answering questions as a what you would call "spine surgeon". I'm not here to say that a screw was 2 millimeters to the left and should have been 2 millimeters to the right or they used this particular plate or that particular plate. They should have used a rod. I'm not testifying or answering questions as a "fellowship trained spine surgeon".

I am testifying as an orthopedic surgeon. So when we take orthopedic surgery residency, for instance at Northwestern, in addition to frequently doing spine, depending upon who you rotate with, mentors and the professors, for me personally there was a three month rotation through the spine trauma, which at the time Northwestern was the capture area for the Chicago area for acute spine trauma. So we have -- we're on call and so we get an introduction to acute spine injury and the acute management.

We do have some options during the five years, and for me, I took an option of returning to Children's Hospital. So actually I did two six-month rotations at Children's Hospital in Chicago and they have a very, very active spine subspecialty. There's lot of children, unfortunately we think of scoliosis, but there are lots of other conditions that do warrant or unfortunately lead to spine surgery. So we have a broad exposure there.

The chairman of my department was a spine surgeon, so if you're rotating with him and some of his colleagues, even if they're not doing spine, you're still going to work with him.

So, and spine is part of our board examination that we take. It's on your in-service exam, which is an exam you take every year while you're training to pass to keep going. It's in your board exam that you take written right after you graduate, but then two years later usually focus on your cases that you present to them two years later after you're in practice, but it can drift into whatever they want, so you are liable or responsible. It can represent anywhere from 5 to 20 percent, depends on the year, on the exam.

My fellowship, as I mentioned, we did a little bit of neck surgery mostly on rheumatoids. It was not trauma. And then in my practice, 27 years come this summer, I have an overlap with spine. Patients who present to me with shoulder pain, not unusual for them to sometime turns out it's their neck. They complain of shoulder arm pain, but it turns out to be their neck and it could be vice versa. And since I do a lot of shoulder surgery and I do hip surgery, the same for the hip. Patients present saying they've got pain in their thigh or their buttock and they think it's their hip. And then when you talk to them and examine them and think about it, turns out that it's their spine.

So, you know, recently, I work with the UFC MMA group. That's where I was this weekend, in New York, hence the communication issue, but there was some major -- I've diagnosed spine problems on a couple of major fighters that presented saying it's my hip or it's my arm and they've

gone on to have surgery. I don't do the surgery. That's the nuts and bolts so to speak. That would be obviously for the spine surgeon.

Q Okay. Thank you. Now, Doctor, would you agree that I hired you to work in this case if I represented to you that --

A Rands, Self & Gardner, yes.

Q Okay. Yeah. Thank you. And did you prepare any kind of a report in this case?

A Initially, back in October of 2016 I generated an independent medical examination report that was -- sorry -- 83 pages. And then three months later in January of 2017, I generated a first addendum that was three pages.

MR. CLOWARD: Your Honor, we've never seen that.

THE COURT: Counsel, approach.

[Bench conference begins at 9:28 a.m.]

MR. CLOWARD: We haven't seen that.

MR. GARDNER: I won't refer to it.

THE COURT: Okay.

MR. CLOWARD: If we didn't send it out [indiscernible].

THE COURT: I don't know if this has anything that's related, but I don't know [indiscernible].

MR. GARDNER: Okay.

THE COURT: You want to take a look at that real quick?

MR. CLOWARD: He said he's not going to refer to it.

THE COURT: All right.

[Bench conference ends at 9:29 a.m.]

BY MR. CLOWARD:

Q Okay. Doctor, what we're going to need to do today is go through all 83 pages, every word. Are you up for that?

A I don't know if anyone else is, but yes.

Q I wouldn't do that to you, me, or anyone. So what was the first thing you did? Was it a history or an examination? What did you do first, if you recall?

A Typically I try to be as consistent as possible in the format. So the very beginning, I do outline some of the things I just said earlier about the nature of an independent medical examination. Whether or not anyone's discussed with the patient the nature of an independent medical examination, I do go through with them saying that, again, I'm not their doctor. Obviously they're going to answer questions, you know, the best of their memory. Sometimes I see patients within months of an injury. Sometimes it could be years. And I always say whatever you remember, you remember. Whatever you don't, you don't. And, of course, asking them that they should be comfortable during the process. They can get up, move around, do whatever they need to do. They don't have to ask for permission. They don't have to wait for permission. So that's on the history taking side.

On the physical examination side, I go through the same process. I state that I'll be obviously focusing on the body parts in question. I focus on the fact that if they need to move around and do something to be comfortable, that's fine. I also ask them to be verbal during the physical examination. If I'm going to ask someone, in this case, a spine, if I'm going

to ask them to bend over, we tell them you're just going to do what you can do. This is not a tryout for a team. You're going to just simply do what you can do and then whatever you can't do, you stop, and then also to be verbal. Body language, facial expressions, et cetera, not always interpreted correctly, so we like patients to be verbal.

I also will mention at times that if a person says, let's say, it's their elbow and that their elbow has been hurting them quite a bit when they use and that's the history we're going to get, then when it comes to the physical examination, then I would expect during the exam they will notify me and let me know when it's hurting. So if they bend and extend their elbow it hurts. I expect during the exam when I ask them to bend and extend, it hurts. But that the examination is not a focus or red letter date in terms of changing their clinical or their health. In other words, if your elbow hurts to move it and you move it for me, it would be unusual for someone to say my elbow was only a certain level, but now it's gotten worse because of my physical exam. And I let patients know that ahead of time, that that's the process and that we're not taking them any further than they can go. I'm not going to manipulate. I'm not going to be forcing anything, et cetera. And then I ask them if they're ready to go forward, and if they can, they can, and we move on.

So the next thing is I just take their history. I ask them what happened to them at the time of the accident. The importance as an orthopedic surgeon is that although it's not always one for one, we do try to correlate what happened to someone based on what their complaints are and see if it makes sense. If a rock falls on your index finger and ten days later you say

my back hurts, that would be a hard connection. If someone says they were assaulted and thrown to the ground and kicked and twisted and et cetera and they say their back hurts, well, there is some mechanism of correlation there. So I do ask questions about what they remember, what happened to them physically during the course of the event that took place.

Once we get through that, I then will ask if they've had any prior problems with those body parts in the past, be it either symptoms or treatment or injuries. Following that, I'll also ask them about subsequent injury. As I said, sometimes I'm seeing someone at a distance from the original incident, so I ask them if they've had any subsequent injuries to those body parts and try to figure that out if it's important.

I ask them about when their symptoms started in relationship to the incident. Did it start right away, later, et cetera? And then I usually ask them if their symptoms are gone, have they resolved, yes or no. And then I'll ask the patient about the history of their treatment. It is in the medical records. However, I do not read the medical records before I see the patient. I don't want any prejudice as to whether the people in the record say he's the greatest guy in the world or he's not the greatest guy in the world. I would rather just hear what the patient has to say or at least what they remember and put in perspective what they say about how they were treated.

Q Did your examination or your review reveal anything to you that was important?

A Well, in terms of the history of treatment, Mr. Morgan was limited, I guess maybe is a good word, limited on being able to provide

details or at least a reasonable timeline about when treatment started or when it stopped in general or what the outcomes of certain treatments were. And on one hand one could say that over the course of two years you're not going to remember if it was 2:00 in the afternoon. But, I mean, when I hurt my back 50 years ago, I know exactly where I was and exactly what I was doing 50 years later. So when you have red letter dates that either take you out of work. I can't work, can't get a paycheck, or usually you have a better sense of timing and a perspective. So that was just in terms of the history.

Q Did the history support the things that Mr. Morgan was saying about his injuries? Did the history match that?

A Well, at that point just taking the mechanism injury, if a person says they're in an auto accident and that's what they're telling me happened and they describe a little bit of what happened to them and they say they have pain. At that point, I'm just taking that at face value and believing that statement. I was in an accident. I hurt. Okay. I take that at face value going forward. Now, when someone gets hurt, the question is did they get hurt, had a sprain or something or a bump and I'm better in 24 hours or did they get hurt and at an anatomic derangement. And I'm not up to that at that point. But at the beginning when someone says something happened to them, then we initially say, okay, let's keep exploring that.

Q Okay. Thank you. I'm going to just backtrack for a minute. Did I pay you to work in this case?

A Yes.

Q Do you happen to know how much?

A No.

Q Okay. Now, I'm looking at your report and I'm on page 5 and I'm looking at examinee's neck systems. Is this one of the body parts that you were asked to report on?

A Yes. I took his history relating to his neck and back.

Q Okay.

A In terms of symptoms.

Q Did that history tell you anything or help you in rendering your opinions in this case if you recall?

A Well, it all sort of plays in, and as you read that section, he described a fairly high level of symptoms. We use a very generalized pain scale, 0 to 10. 0 would be no pain, 10 can vary on the part of the doctor, how they want to describe it. Some describe it the worst pain ever. I say you're in so much pain that you might need to go to an emergency room. So in terms of level of pain, 0 to 10, he described pain right side of his neck at 7 out of 10, at worse 9 out of 10. And we discussed a little bit about what things make it worse and he mentioned holding his arms out in front of him. He mentioned lifting his arms out to the sides made his neck pain worse, some other things. He also mentioned some weakness. There were some aspects of the history taking that were more generalized as opposed to, I would say, more focal.

Q Okay. Anything else?

A Without reading every word, I haven't committed it, as I said, on short notice, committed it all to memory.

Q Okay. Did you take any kind of a history of his current medication?

A Yes.
Q Was that significant at all in your opinions?
A Yes.
Q Tell me how.
A On the current medications at that time when asked Mr. Morgan stated he was taking Ambien, which is a sleep aid, three to four times a week. It indicated he was taking Soma, which is a muscle relaxer, carisoprodol. He was taking that once or twice a day. He was taking Anaprox once a day, which is over the counter Aleve. And he indicated he was taking Oxycodone 10 mg twice a day. Oxycodone is Percocets.
Q Okay. Thank you. And that Oxycodone, that's a pretty powerful pain reliever, isn't it?
A That is a strong oral opiate medication, correct.
Q Okay. Did Mr. Morgan's past medical history or surgical history factor into your opinions at all? That's not a good question. Did you go through the past history and past surgical history with Mr. Morgan when he came in?
A Yes.
Q Okay. Can you tell us what you found there?
A On the medical, Mr. Morgan stated he had a history of some acid reflux, common problem. And under past surgical history, he had mentioned having had a hernia repair in 1992. I didn't explore that with him. But he did indicate that he had had surgery on his left wrist in December of 2015 by Dr. Grabow. And that was all I had in terms of past surgical history.
Q Okay. Thank you. And I'm going to represent that there's --

you didn't do anything about the left wrist in this report, did you?

A I did not explore his left wrist in any detail.

Q Okay. So we'll move on from that then. And what significant things, like on page 7, what significant things did you find in his physical examination?

A He's left-handed. When we start out evaluating the spine there's some simple tests we do. They both -- you can get lots of information from simple tests sometimes such as person's balance or a little bit of strength, coordination. So there's a simple test we do called a toe raise, going up on your toes, lifting your heels off the ground. And then we ask them to do the reverse, kind of just be on your heels raising your toes off the ground. And this takes all of a few seconds because it's not a, you know, we ask you to take one or two steps. That's it. And it's not a prolonged effort.

But in any event, when asked if he can do those two simple tests, he explained that he would not be able to do them. He indicated it would cause severe low back pain to the level such it would cause him to fall to the ground, which is a little atypical or first time I've had that answer. I then asked about obviously questions to perform some maneuvers which get to a person's either flexibility or physical capabilities. And again, we asked them if you can do this. If they can't, they can't. There's no coaching or imploring someone to do something. We just ask what their reasons for being unable to do it, is it pain or something else.

So we then do -- usually we ask people to sometimes do a deep knee bend or a squat, at least to the level of their ability. He indicated he was

fearful of doing that as it would induce low -- he said it would induce low back pain. When asked if he could then -- if I allowed him to then support himself in the course of doing so, he said he would be unable to use his left hand to support himself because of left wrist symptoms. And again, I was not charged with looking at his wrist. I didn't explore the depth, but from that alone it would say that, okay, it must mean he must not be comfortable leaning or putting pressure on his left hand or the left wrist.

Then we do, again, in terms of flexibility and mobility, we'll ask a spine patient to simply bend forward from the waist. Again, we're looking for their mobility, flexibility in doing so. He brought his fingertips forward. Excuse me. Leaning forward, his fingertips went down to about the level of his knees. And again, he said the limitation there was that he felt some tension in his low back when he was bending forward, but that he also felt tension between his shoulder blades and that by bending forward it caused the right side of his neck to throb.

The symptoms between the shoulder blades and the neck, well, the neck for sure is unusual. Between the shoulder blades, if he has complaints of pain from the middle of his back, then that might bother him to bend over. And then asking him to do the opposite of bending over, kind of stand and extend. We call extension or go backwards. And he felt sharp pain between his shoulder blades while doing that. That's a little unusual because there's really no motion at the thoracic spine, per se, doing that maneuver. So again, just something else for me to be thinking about. Rotating at the spine was limited. He had subjective complaints of pain. Rotating to the right, rotating to the left, those were limited. He mentioned

pain and I asked him pain is his limiting factor.

And then after just those sorts of observations and motion, then there comes a part of the exam we call palpation or to touch, to touch the affected body part. And the way I perform a palpation exam is first I'll circle the area with my finger making contact with the skin. And I say, "Is there any pain in this area?" And the patient can score it 0 to 10. And if the patient says there is 0 pain, then I start by indenting the skin and the subcutaneous fat and ask if there's pain. And if there's still no pain, then you can do a real exam and you can try to feel for things that are underneath the skin and fat.

But if a person already tells me before I touch them their pain is 4, any number actually, and certainly if it's 7 or 8 or 9, then the only examination I do for palpation is I'll touch their skin and their subcutaneous because if they're telling me I already hurt 6 out of 10, which is a high number, I'm interested in knowing if I just touch their skin or fat if that changes their pain. Physiologically, that shouldn't change their pain. It just shouldn't change your pain. So if a person then says, "I've got more pain doing that," well, I'm definitely not going to touch deeper because I do not want to cause any kind of conflict at that time and basically I already have my information as to the value of the palpation exam. It's not very valuable in that particular case.

So in my report, that's what I put. And then we'd talk about the midline. The midline is right in the center of your back where you can feel the bones right in the middle of the back and then to the sides where the muscles and soft tissues are. And prior to making contact in the midline of his spine, he had pain 7 out of 10. And then making contact with it, he said that it increased, but he wasn't able to give me a specific number for that in

the midline. And then for the muscles along the side of his spine on the left, he had no complaints prior to contact, but then with contact to the skin and the subcutaneous tissues, he said pain was 3 to 4. And regarding the right side of his low back, he had pain 6 out of 10 before contact. And then touching the skin and the subcutaneous tissue, he said it elevated to 7 out of 10.

And then let's see. Also, in his low back testing reflexes, those were okay. Then I did a sensory exam. We use a little wheel that rotates, little points on the end for sensation. And he had a little bit of -- when mentioning areas, he had a little bit of -- he wasn't numb, but he had a little relative decreased sensation on his left calf compared to the right side. And he also had some inconsistency testing on the bottom of his foot. First it was a little less. Then they were about equal. And he had a little bit of decreased sensation on the top of his foot. So that was the lumbar area.

Q Okay. Thank you, Doctor. Now you've twice said that there were some unusual findings. I think the first one is when he told you that he would fall to the ground if he was to do a particular test. And what was -- was there another unusual finding that you found? I think you testified to it. I just can't remember.

A Well, I mean, just asking someone to get up on their tippy toes for a few seconds and then sort of do the opposite, come back on your heels. If you're having some active back spasms, it might bother you. And a person could say, no, my back really hurts. I don't want to do that. But, as I said, I've never had anyone tell me that it would then precipitate a pain that would make me fall to the ground.

Q Okay. When you got that information, what goes through your mind? I mean, how does that work in context with what he's there to be doing?

A Well, it all factors in. There is no one thing that determines a finality of a report. The patient may have a horrible memory or have been terribly injured to point where they were on lots of pain medication or they were in and out of a hospital. And so when I'm asking them simple questions and they have vague memories of what actually happened, that sort of makes sense, but when you're seeing someone two years later and you're just sort of doing the physical examination part, you would expect them to behave or at least show traditional, normal, physiologic responses to an exam at that time and not necessarily what happened two years ago.

So you take all these as a factor. Is there one area where a patient is unusual about? You know, they can't remember any details of their treatment. Okay. A little unusual, but if everything else falls into line in terms of appropriateness and logical, then that may just be something idiosyncratic or special to that patient. So it's more a trend or a sense you have after treating patients for 30, 40 years that you get a feel for things because in a way when people are acting normal, that's a stereotype and that's what we're trained and you see that over 40 years. And when people act a little -- not abnormal -- we'll say either atypical or give a strange presentation, after 40 years' experience, that's also sort of a stereotype that can potentially fall into certain categories.

Q Is it safe to say then there were some inconsistencies between the verbal what you were being told and the physical testing you were

doing?

A What was the word you used between the two?

Q Inconsistent.

A Inconsistencies. Well, I don't know about inconsistencies. I would say that in terms of history, especially in a younger person. If I'm dealing with someone who's in the seventies or eighties you can sometimes, you know, there may be memory issues or there's more medical problems they have and they see lots of doctors, so it could be confusing. But when you have a young patient who has no ongoing significant medical problems and they can't tell you within the last two years about whether they were working or not when they got hurt. I can remember every job I had since third grade and not that I'm necessarily the standard of care, but if I'm working and I'm trying to make a living to not know whether you were making a living or not seems a little unusual unless the patient had a head injury and there was some reason for which we don't -- you know, I don't think they should be accountable for.

So it's a little unusual. It's not an end all. It's just a little unusual that you want to put into the big picture. And then when a patient is telling you that he can barely do simple physical things for you in the office, that's their prerogative. I don't force them to. It seems a little out of context when you look at the patient's physical abilities and their ability to walk in and out of the office. So these things just start adding up as you talk to a patient and examine them. And then eventually you look at the records to see how things mesh together.

Q Okay. Are you familiar with the term secondary gain?

A Yes.

Q Okay. Did you see any evidence of this person pushing for secondary gain based upon his answers at your physical examination?

A To make that determination, I would need to have -- there would be more information that I might want to look at that's not part of my assessment, but secondary gain could exist.

Q All right. Looking at page 8 of your report on the bottom paragraph, have you got that, Doctor?

A Yes, I have page 8.

Q Okay. What are you trying to say in this last paragraph starting with, "It is very interesting?" Could you just read that to yourself or --

A Well, the paragraph is two sentences. "It is very interesting that during the course of the history taking Mr. Morgan needed to at times lay down as well as perform stretching. When observed doing these things, he moved his neck much more than what he demonstrated on direct request."

Q Okay. What does that tell you when somebody is that inconsistent in that close a time together?

A I put that in there as a reminder to myself because, as in this particular instance, we see that I'm talking about something, you know, a year and a half after the report was generated. But I put that in there as also as a reminder as to what transpired during the course of the examination besides just a simple objective things of checking reflexes. It's just unusual behavior that would be inconsistent with someone who tells me or at least when I ask them to demonstrate motion shows very little motion.

Again, as I mentioned in the beginning, I do encourage a patient if

they need to do something to keep themselves comfortable, to do so, or if they need to move about, et cetera. But if you say you can't move for an exam, but then you sort of are stretching more than you actually can move, you're sort of doing your own self physical test more than I would be doing by just asking you to move your neck and head. So it makes me suspicious of an inconsistency.

Q Okay. Moving on to page 10, you've got a section called open ended questions regarding history. Do you see that?

A Yes.

Q What did you learn about these -- what did you learn when you asked these open ended questions?

A Well, the purpose of the open -- I have two open ended questions at the end of my IMEs which I've kind of added in the last number of years. I can't remember when. And what that is is it's an opportunity for, on the history taking, it's an opportunity for the patient to make sure they got to me any information they want about the subject we have at hand. No one should walk out to the parking lot saying, "Well, he never asked me about the fact that if I sleep on my left side, I'm woken up every night. He didn't ask me that and I didn't say." And I don't want them to be confused that they're only supposed to answer my questions and nothing else and that this is a, you know, yes, no process.

So I ask them and then I explain it. This is an open ended question. This is your opportunity to add, subtract, correct, delete, emphasize, and in some cases you can start all over if you think that I did not address what you're calling your neck pain or whatever it is. So no one should leave

thinking they didn't ask me the right question or I didn't know I was supposed to speak or any of those things. This is open. At no time can someone come back to me and say, "You didn't give the person an opportunity to explain something or talk about something."

Q Okay. Okay.

A So that's when it comes to the history.

Q You do that also with the physical exam, is that correct?

A Right.

Q What did you find with the physical exam regarding open ended questions?

A Well, regard to the history, he said he had nothing to add to his history regarding treatment symptoms, et cetera, so.

Q Okay.

A And then once that's completed I do the same for the physical exam. I ask him if there's anything about the physical examination I performed that they felt didn't cover things. And I tell them. I said, "You're not judging me. You're grading a physical exam because you're not the orthopedic surgeon, but you're certainly a patient and you can grade whether or not I did what -- I touched or examined some part that hurt you." So, and I'm not infallible. Sometimes a person could have a little lump or a bump that I'm examining a knee and I don't feel it. And then they direct me to where that little tiny little bump is so I can see it or feel it and if I do in fact feel it. So I do the same for the exam. Is there anything about your examination that I didn't touch or feel or check or you want me to look at or you want to remind me of. Again, so no one should leave saying, well, he

never did this or he never did that.

So in response to that open question, Mr. Morgan said I didn't examine his middle back and he stated that I did not examine the front side, the front right side of his neck, okay. And so when we discussed at that point the front of his neck, he said he had pain 6 out of 10. And when asked to indicate the area that he was discussing, he actually wasn't really pointing to his neck. He was pointing more to the muscle, the trapezius muscle, on the right side and not really his neck itself or the spine.

And then in regard to his thoracic spine or the middle back, he indicated that his pain at that level is actually at the lower level of his shoulder blade. He gave it a 7 out of 10 pain in the midline at that level, at that level of his thoracic spine, and to the right of the midline that goes to his shoulder blade with 7 out of 10. And general appearance of his thoracic spine, it's kind of straight or flat. He didn't have any evidence. The medical term is kyphosis, which is a curve of your back where you're kind of -- it's curved forward. So he didn't have any evidence of that, any deformity there in his thoracic spine.

Q What did that suggest to you as far as what was being told you to verbally versus the actual physical examination that you had performed?

A Well, in terms of perspective, and patients do have their own perspective, when asked about neck from his perspective the pain that he points to in his trapezius muscle, he's referring to as his neck. And that's why it's always important to have the patient kind of point to when they say a body part actually physically where they feel it. So in this particular case, his pain is coming more from a soft tissue, the trapezius muscle on the side, as

opposed to his actual neck, or at least that front pain that he wanted to inform me of. Regarding his thoracic spine, he complained of pain in the middle of his back and to the right of the back and going around to his scapular area.

Q Okay. Do you recall, did he really have any pain in his neck or was it just all misguided for the scapula, you say that he was saying he had neck pain, but it wasn't really his neck? What does that mean? Is that inconsistent with what you had been seeing so far in the records and examination?

A Well, it's not -- I wouldn't call it an inconsistency with the records. I would say it would be that my exam is -- my notes are reflecting accurately what the patient is saying as opposed to potentially seeing a patient with blinders on and not wanting to support what, when someone says my neck hurts, is it in fact my neck or something else because the patient is not reading the anatomy books. It's up to the doctor to explore that with the patient.

Q Okay. And did you find that he was telling you things about his neck that was inconsistent with what he had believed?

A I don't know about -- well, I would say that the patient is not inconsistent with themselves.

Q Okay.

A Whatever they say, I'm taking it at face value that that's what they say they have.

Q Okay.

A Then medically diagnosing it is another story.

Q Did you review any medical records in your work?

A I did.

Q Can you just, for sake of brevity, can you tell me whether there was any significant information within the medical records that you reviewed? And you can take your time and look through them if you'd like. Was there --

A Well, my review of the medical records presented to me starts on page 11 and ends on page 68. So that's like 50 pages of synopsis of each record that was provided to me by the various providers that he saw.

Q Okay. Let's not go through each one of those. I think I'd get in trouble for doing that. So let's keep moving on. Now, how do you determine what you're going to do as far as reporting on the independent medical examination? For example, this was a long report. Is this typical of what you do on these IMEs?

A Well, this style is, yeah, should be extremely typical of what I do. I view it as a college book report assignment when it comes to actually trying to generate something that is readable and makes sense in terms of a synopsis of all the factors, the experience of the independent medical examination and its features as well as combining and potentially contrasting that with what's contained within the medical records. So at the end of the medical record review, which as I said, is a synopsis of the medical records provided to me, and I should not to you that there's also what we call miscellaneous records where there's records which do not demand a separate entry or citation.

I then try to do what I feel is a reasonably good summary, if you will,

trying to put all of that together. Like reading three volumes of something and try to do the Monarch notes or the Cliff notes. And so I generated a summary, but that also took up -- a little not unusual, but in detail. That went from page 70 through the top of page 77. So there was a 7 page summary putting all these things together and overlapping them, so because to read them you don't see it in three dimensions. When I read these things, I read them. I highlight them. Then I go back and I take notes as if I'm going to take a test on it at the time. I write them down on yellow pages in different columns so that I can see if Dr. X saw them in March and this one saw them in May. There's no way I'm going to remember that, you know, 80 pages later, so I'm sort of making a diagram, but I'm putting down the notes so that I can see that if someone has seen someone four times, but then some other doctor saw them in the middle. And then from that, I'm able to generate what I think is a reasonable report or reasonable timeline that if people read they have a general good feel of what went on.

Q Okay. So if I were to direct somebody to find out what all of this was, essentially it would start on page 80 or 70 under --

A Seventy starts my summary. That is correct. And that tries to distill all of that massive individual entries into a narrative.

Q After the summary, what do you typically do next?

A So after the summary, I then will indicate some diagnosis. And those diagnosis can be ones that are just gleaned right out of the record. Like, for instance, I wasn't evaluating his fifth toe, but if in the record he had broken his fifth toe, that might well be listed as one of his diagnosis. So we have some that come just right out of the record and then you have some

diagnosis that may be past history if he had something specific, like had a previous spine fracture. That would be a previous diagnosis. And then there were diagnosis that I make. And so these all just come as a list.

Q Okay. In all fairness, what was your diagnosis after this exam?

A I made -- on this particular case, I listed ten. Sometimes you could list 100 because you could take an MRI and every line from an MRI you could potentially list as a quote unquote either diagnosis or observation, not necessarily a diagnosis. But in any event, I had ten. And the first one was neck pain with temporary soft tissue strain. The second diagnosis was disc bulges in the cervical spine, two levels, per Las Vegas Radiology. That's the radiology group that performed the cervical spine MRI.

I diagnosed a thoracic, posterior thoracic pain with soft tissue strain. And then my fourth diagnosis is a 2-millimeter disc bulge at one level in the thoracic spine, also diagnosed by Las Vegas Radiology. The fifth diagnosis was lumbar pain. My sixth diagnosis was lumbar disc bulges made by Las Vegas Radiology. The seventh diagnosis was facet hypertrophy. Hypertrophy means overgrowth and also overgrowth of a ligament in the spine called the ligamentum flavum at multiple levels, also by Las Vegas Radiology. The eighth diagnosis was in the lumbar spine, narrowing of the right neuroforamina at the L4-5 level made by Las Vegas Radiology. The ninth diagnosis was left wrist pain, soft tissue strain. And the fifth diagnosis -- sorry, tenth diagnosis -- was a left wrist partial TFCC tear made by Las Vegas Radiology.

Q Thank you for that. Now, I'm going to ask just a couple of questions about what you just said. Number two says cervical C4-5, C3-4,

1.4-millimeter disc bulge. Can you just dumb that down for me? What does that mean?

A Well, it could mean nothing, but it is a opinion on the part of Las Vegas Radiology on their MRI scan done of the cervical spine that, I think I wrote two levels, C3-4 and C4-5, that they recorded 1.4-millimeter disc bulges. And there are a lot of folks reading a film that might look at something and whether it's 1.4 millimeters, they may or may not agree with that size or measurement. They may not even comment on a millimeter disc bulge as not being a bulge, but as part of your normal anatomy or variation of your anatomy.

So our spine consists of bones and soft tissue between the bones column in order to support and be a shock absorber, but also to allow motion of a spine so we're just not a rigid rod. We have discs between the bones that do allow for some motion at each level and those discs have an integrity to them. And the outer rim is hard. The inner part is soft. And they will line up with the bone above them like a bamboo, so they'll line up with the bone above. But they don't have to necessarily line up perfectly matched. They can extend out a little bit.

And in pathologic conditions when there's damage to the disc, then you can sometimes have part of the disc extent out beyond its normal radius, okay. So a bulge, if, and this is the words of the radiologist, if there is a bulge they are describing a little bit of a bubble, if you will, or a little bit of an extension of this disc beyond the bone. A way to think about it would be a double stuffed Oreo that the cream is extending outside the rim of the cookie. So that's the best way to think of the disc. And if you're thinking

bulge, you're thinking some of the cream is kind of pushed out beyond the margin of the cookie.

Q Okay. Now, who would have the more rigid bone structure, an older person or a younger person?

A Well, they wouldn't have rigid bone structure. They would have more rigid soft tissues. Unfortunately, as we age, and unfortunately age can be in our thirties, we microscopically lose water from our tissues and different tissues at a different pace. And it's the lack of water, if you will, keeping it simple, that can lead -- that in combination with inactivity -- can lead to increasing inelasticity of our soft tissues. So if you're less elastic you become stiffer. Also, some soft tissues can calcify and if they calcify, they lose some of their elasticity. So a combination of genetics, lifestyle, age, other factors can lead to limited motion.

Q Okay. Now the young man that you were looking at was 22 at the time of this accident. Can you compare, for example in your experience, a 22-year-old versus maybe a 50 year old? Would there be a significant difference or could you explain that?

A I'd like to think not, but if you're calling 50 old. I would say that, again, there are life changes and things that can affect our abilities to be limber and mobile, et cetera. But if you're a betting man and you're putting a nickel down, you would say the 22-year old in general should be far more -- should be as limber or more limber than the 50-year-old.

Q Okay. Thank you. One more thing I want to find out about, the left wrist partial TPCC tear. What is that? That's number ten on your diagnosis.

A Right. The TFCC --

MR. CLOWARD: Your Honor, may we approach?

THE COURT: Sure.

[Bench conference begins at 10:11 a.m.]

MR. CLOWARD: He's already testified that he didn't formulate opinions regarding that, so any discussion on it, I don't know whether there's some plan to somehow suggest that this was, you know, injured in some other way, but it's not appropriate. It's already been determined by the Court. There's absolutely zero relevance to this line of questioning.

MR. GARDNER: It's actually helpful to you.

THE COURT: Well, then Mr. Cloward, I'm sure, will follow up with those questions. I'm going to sustain his objection. Thank you.

MR. GARDNER: Thank you.

[Bench conference ends at 10:12 a.m.]

BY MR. GARDNER:

Q Okay, Doctor. After you've completed your diagnosis, it looks like there's an apportionment. Will you describe number one, what an apportionment is and then let's go through his body parts? What is an apportionment?

A An apportionment is a -- is mostly a legal term to attempt and to determine or decipher if a particular condition has arisen or a particular injury has occurred, what percent, if you will, of that condition or injury, physical injury, would be related to the incident that actually did occur.

Q Okay. Now, did you do apportionment for each of these diagnosis that you had?

A Yes.

Q Okay. Let's start with the first one then. How much of that -- I mean, I'll let you talk, but how much of that first neck pain with temporary soft tissue strain is related to our motor vehicle accident?

A So, taking them in order, the first diagnosis of neck pain with a temporary soft tissue strain, I apportion that 100 percent to the motor vehicle accident.

Q Okay. Just briefly, why would you do that?

A Well, the next section after that where I list each ten and the apportionment, then I try to go through the explanation of how I came to that conclusion.

Q Okay.

A So the first -- if I'm allowed, just reading from that section relating to the first diagnosis, the first diagnosis was of a soft tissue strain involving the cervical spine which I apportioned 100 percent to the motor vehicle accident. The apportionment of 100 percent to the motor vehicle accident is based on the patient's subjective complaints following the motor vehicle accident. What comes into play here, of course, is the patient's reliability. Given the mechanism of the injury described, there is certainly potential for soft tissue injury to the cervical spine including especially the muscles of the neck posteriorly and especially the trapezius muscle.

With regards to the reliability of the patient, there are a couple of small red flags. One issue is Mr. Morgan's inability to simply be able to say whether or not he was working at the time that the motor vehicle accident occurred. Work is interrupted. Certainly patients would be aware as to

whether or not they were working. Also, an independent medical examination's physical exam with regards to his sensation was appropriate in that it demonstrated -- I'm sorry. It says -- it should be was inappropriate. He demonstrated a glove like distribution of decreased sensation in his arms and nowhere in the medical records prior to this had he ever demonstrated such a finding.

Range of motion of his neck at independent medical examination was far less than any of the documented examinations he had undergone prior to seeing me. And he also demonstrated more range of motion to his neck when talking to me and doing gentle movements in the office as opposed to simply moving when requested to do so for an examination. So I apportioned 100 percent to a temporary soft tissue strain to the para axial musculature -- that's the muscles along the side of the spine -- and the trapezius in relationship to the motor vehicle accident, but certainly can be questioned with regards to the patient's reliability.

Q Okay. Thank you.

A Second diagnosis was the 1.4-millimeter disc bulges at two levels in the cervical spine by MRI reading from Las Vegas Radiology. And I had apportioned my -- on that I indicated that the apportionment is questionable to the motor vehicle accident.

Q What does that mean?

A Now, well, in the legal world you have 51 percent, I'm told, that if you just fall to the other side of 50 percent, then it's related. If you fall one hair less than 50 percent, it's not related. And so at times I have to acknowledge that I'm not presented with enough information at the time of

the report to give an honest answer as to whether it is or is not related. And I have to therefore say that. So in this particular case, it would be based on when this report was written from me to be able to say related to unrelated, it's indeterminate. And so my comment explaining that is that I do not have the original x-rays that were interpreted by Las Vegas Radiology. I indicated I would not take their report at face value. Films would need to be produced and interpreted for the presence or absence of any pathologic changes within the discs.

And therefore the report indicating 1.4 millimeter disc bulges, it's indeterminate with relationship to the motor vehicle accident. My process of having those films reviewed is I will look at them and then I will take them at my own time to a neuroradiologist. I will not tell them -- they know nothing about the patient, name, age, et cetera, and I just say, "Can you look at this and what's your comments?"

Q Okay.

A And it's not unusual for something from one particular facility, in this case it would be Las Vegas Radiology, to comment and not unusual or rare, I should say that another radiologist may look at that and say it looks normal. And then I'll say, well, what about -- and then I will bring their attention to the other report not naming who it is. But I'll just say, "Well, what about 3 and 4 and 4 and 5? What do you think of those?" And I'll say, "Do you see anything? Are there any bulges?" They'll say no. Then if they look at it, maybe they'll change their mind or they might say, "No, that's a normal variant. I would not call that a bulge. I would not call that abnormal." So when I wrote the report, I didn't have that, so it's indeterminate.

Q Okay.

A Third diagnosis was back pain, posterior thoracic pain with soft tissue strain. I apportioned that to the motor vehicle accident, same as the neck, taking the patient at face value. And my commentary about whether or not it should or shouldn't be is the same as for the neck, whether or not other parties have any questions about the patient's reliability. Fourth diagnosis, a 2-millimeter thoracic disc bulge. I apportioned 0 percent to the motor vehicle accident.

Q Why?

A In my commentary about my thoughts on that question, I indicated that the patient was restrained at the time of the motor vehicle accident. I didn't think that would be a mechanism of injury to the thoracic spine that could lead to suffering disc injury. Also the same commentary regarding whether or not a quote unquote 2-millimeter disc bulge exists or not. And there was never any clinical symptoms that specifically related to the 2-millimeter bulge or any clinical findings on neurologic impairment described by any of the providers relating to that potential diagnosis. If diagnosis was low back pain or lumbar pain --

Q Oh, doctor, one thing.

A Oh, sorry.

Q We're not saying that there were no injuries. We're just saying that some things that he was reporting to you were part of this accident and some were not. Is that what we're doing?

A Well, that's a good question because you used the word injuries. And taking an MRI that shows no bulges, 2-millimeter bulge, 5-

millimeter bulge doesn't mean there's an injury. So there are variations of our anatomy at various times in our life that do sometimes correlate clinically and give us an injury. So what I'm commenting on here are two camps of information. One camp is the complaint, the subjective complaint on the part of the patient and whether or not that subjective complaint, could it be related to the accident. And subjective complaints means the patient just says this is what I'm complaining of.

And so if someone says they're in an accident and I don't have details other than what was given to me, then more times than not, generally -- well, I shouldn't more times than not. Initially, you just take the patient at his word. He said he was in an accident and something got moved around and his neck hurts, then that complaint I'm saying is from the neck. But then you get down to the anatomic aspects of the diagnosis. You get down to the anatomic issues of the neck. Did he have a fracture? Did he have a herniated disc? Did he have an MRI evidence of a torn muscle? Then those also have to be separately -- do those findings relate to the mechanism of injury described?

So when I'm talking about the bulges that are described by Las Vegas Radiology, I'm quoting Las Vegas Radiology as there being bulges in the first place. There may or may not be bulges in the eyes of a different -- of a neuroradiologist. I'm not exactly sure. I'd have to go back, whether a neuroradiologist even read those in the first place from Las Vegas Radiology. So these are questions.

Q Is it a standard practice for someone in your profession to rely upon another specialty reading? Say, for example, MRI films or x-ray films?

Is that a normal practice in your area?

A Well, orthopedic surgery, we rely heavily on imaging to support our clinical diagnosis. So we x-ray in the office, of course, but using CT scans, MRI scans, et cetera are -- I mean, they're essential to our being able to make accurate diagnosis at times. So we do send patients out to imaging centers and then we get the reports and we want to correlate those reports with the clinical findings.

Q So you know how to read these reports, but somebody else will initially do that and then you'll double check it before you'll commit surgery?

A Well, a neuroradiologist is going to read an infinite number of more neuro images than I am going to, okay, in terms of reading MRIs of the spine and MRI of the low back, okay. And I don't pretend to compete necessarily with a board certified neuroradiologist and would go to the mat arguing right or wrong. And so it runs the gamut from my looking at the film and looking at their reading and accepting it. And it's very unusual, but just recently on a worker's compensation patient who I'm seeing who has back pain and sciatica and the report came back negative and my calling the neuroradiologist and asking him to please review it. Because, again, don't think this is me specialist, just me having the patient in front of me, and asking him to review it. And it turns out he did change. He said, "Yeah, yeah, there is disc material out on the right that could cause this guy sciatic." And that's important because otherwise the guy is labeled as a potential fraud or something and it's important to have that anatomic correlation.

Q Okay.

A So it's a process, okay. It's not all or nothing. It's a process of

combining the history, the exam, and the images and making use of a neuroradiologist. In a city, Las Vegas, 2 million, we have a lot of neuroradiologists and you should take advantage of that level of expertise.

Q Okay. Now the fifth diagnosis was lumbar pain. What did you apportion that to the accident?

A Lumbar pain I apportioned 0 percent to the motor vehicle accident.

Q Tell us why.

A Let's see. Page 78 and 79. Okay. Well, the fifth, sixth, seventh, and eighth diagnosis, lumbar pain, a couple millimeter disc bulges, hypertrophy of the facet joints and ligamentum flavum, and the eighth diagnosis of some narrowing by Las Vegas Radiology of the right neuroforamina. Five, six, seven, and eight, all those diagnosis pertain to the lumbar spine and I apportioned 0 percent to the motor vehicle accident. The notes from the emergency room did not indicate low back problems. Those notes state he denied low back problems and their notes indicated he had good back motion and was nontender in the emergency room.

When he saw Dr. Coppel about three weeks after the accident specifically for problems relating to the motor vehicle accident, there were no back complaints indicated in his report and there were no complaints that apparently would have spurred Dr. Coppel to even perform a low back exam. So in the report there's no indication that he examined the low back. And he was seen a second time by Dr. Coppel in June of 2016, which is about three months after the motor vehicle accident. Again, there's no indication of a low back exam and there's no indication of any subjective or

any complaints from the low back.

And then I also write that despite the chiropractic notes, which I think there's comments on later, there's no indication of low back problems following the motor vehicle accident. It would appear that the low back problems might have been -- I use the term "symptom creep", where the patient initially had a set of symptoms following the motor vehicle accident, but over time for whatever reason, the patient has decided to extend the area of complaint beyond the initial presentation. In this particular case, medical records indicate almost three months of no low back complaints to the pain management doctor. Therefore, I would state that any and all low back issues, be it either subjective or findings on imagining, have nothing to do with the motor vehicle accident. And I comment, I say that I think that is pretty straightforward.

Q Okay. Thank you. Now, the patient, Mr. Morgan, underwent some chiropractic treatment, I think you were talking about earlier.

A He did.

Q How much chiropractic treatment would someone like this need to undergo? Would it be a set course of like three months' worth or six months' worth or something like that that you could quantify for us?

A Well, you can approach that from multiple direction, but first and foremost the way to approach the need for care is an accurate diagnosis. So you could argue that there isn't an absolute number. It just depends on what your working diagnosis is. And if you don't have a working diagnosis, then the question is what the heck are you doing in the first place. So if you have a working diagnosis of a soft tissue injury and the patient is of the

feeling that chiropractic care is an option for them, then that's perfectly reasonable.

Q Okay.

A But if time goes on and there's no anatomic diagnosis and the person continues to complain of the same pain and the chiropractor is doing his or her best effort to try to relieve that, you could certainly argue that upwards of six weeks would be way more than enough. And certainly, I've seen where people go three months. And I would never, again, go to the mat to argue that that's horrible and bad, but in general you would think somewhere in the neighborhood of four to six weeks. And again you need to put down your note, are we getting anywhere and is a person getting better or worse because if you're not getting anywhere, you know, the definition of insanity is doing the same thing over and over again expecting a different answer or different result. So if you failed at your chiropractic attempt, which is fine -- it's a noble try -- then you change horses. You go in a different direction. So this particular gentleman had 91 chiropractic visits. I think it took place over the course of a year, to me would be -- I don't know what that is. That doesn't make any sense.

Q Also, Mr. Morgan has gone on record as saying that the chiropractic was not really helping him. What would that suggest?

A Correct. Part of the history taking that I like to have from the history of your treatment is whatever got done to you, what did it do to you? You know, was it a benefit or not. And in this particular case, Mr. Morgan indicated that he felt chiropractic care was not helping him, so I don't really know what the impetus was, you know, who was directing him to keep trying

it.

Q All right. The next -- have we covered all the apportionments of the things that we thought were related to this accident?

A Correct. The last two diagnosis are not spine related.

Q I'm looking at your report now under the section review of care under page 79. What is that?

A Yes. Review of care. So in this particular case, that section is about two pages long. When you put it together, it's over three pages. And what I do on review of care is now that I've looked at the medical records and determined some diagnosis and some apportionment, so now comes, again, it's a huge amount of information. You know, how do we keep making narratives so that it can't be transmittable information or understandable information. So now you have review of care where I'll talk about what the patient experienced, you know, by the various providers and at times if it had a relationship to the motor vehicle accident, also whether or not it seemed appropriate for whatever the working diagnosis was.

Q Okay. So let's look in more detail about the review of care.

A Okay.

Q First you referenced the 91 visits to the chiro.

A Correct.

Q And in your opinion that was too much.

A Yes.

Q What other opinions do you have regarding the review of his care?

A Besides chiropractic?

Q Yes.

A Oh, okay. Let's see. I looked at the care provided by Dr. Coppel. I reviewed his medical records. It indicated Mr. Morgan was referred there from an urgent care about having his -- about his subjective complaints. And my feeling was initially when being seen by Dr. Coppel should have initially referred the patient to formal physical therapy. Second visit -- that would have been from the first visit. The second visit, still had clinical symptoms, had already undergone 24 visits of chiropractic care. And my thoughts might have been that might have given thought to switching from chiropractic to formal physical therapy, see if a different approach might help the patient's symptoms.

And it's unclear from Dr. Coppell's notes, or at least it's unclear from the notes, whether he at any time has read or reviewed any of the chiropractor's notes that are being generated at the same time that he's under Dr. Coppel's care, and especially if Dr. Coppel is going to direct care, whether they're coordinating or not or at least read his notes. From my perspective, it would appear that he had not had the opportunity to read the notes in sequence to see exactly what had been going on.

And then with regards to use of medications, I wrote back in 2016 before all the publicity that we're hearing about now, which is a good thing, that I disagreed with the onset of strong oral narcotic analgesics in the form of Norco 10. Norco is Hydrocodone. Norco 10 and then switching the patient to Percocet 10. Dr. Coppel, when he first saw the patient three weeks after the motor vehicle accident, there were subjective complaints of pain, but there were no neurologic deficits. He didn't have burning nerve

pain, you know, down his arm or his leg and there were no neurologic complaints and there was no real discussion about work and whether he can't. You know, so I just -- that would be my statement. You know, if it turns out to be prophetically good that I would not start this patient on narcotic analgesics.

Let's see. It's unclear whether or not Dr. Coppel had the opportunity to review the films, neck and thoracic spine. It's not clear at the time I wrote this report if these films had ever been reviewed by a musculoskeletal radiologist or a neuroradiologist. Dr. Coppel then recommended that he had neck injections in August of 2014, which is four months after the accident, but I indicate at that point the patient had still not been given a good conservative trial of formal physical therapy. I indicated there's no indication for the lumbar injections Dr. Coppel did as I felt the lumbar spine had nothing to do with the motor vehicle accident.

And there was a second set of neck injections by Dr. Coppel in March of 2015. I felt those were unrelated to the accident because once again he had not undergone a course of formal physical therapy. I felt the injections into the thoracic spine had nothing to do with the accident because these were facet injections and there's no evidence of a facet problem and certainly no indication of four levels being involved. And there's certainly no evidence of four levels both sides that you have to get eight injections, so I didn't follow that.

Let's see. Okay. So, from my perspective as an orthopedic surgeon seeing patients who come in with these problems, my feeling was the gentleman comes in. He gives me a set of symptoms. I would have

recommended anti-inflammatories. I would have recommended physical therapy, especially if he's already had some chiropractic care that hadn't turned the tide. I would have recommended that he do some home exercise. Some aerobic conditioning correlates with chronic neck and back problems. I certainly would not start him on Norco 10 milligrams. And that's -- and the other question is as you meet the patient you want to differentiate between a neurologic problem versus a myoligamentous problem. If a person just says I constantly have pain in my trapezius muscle, okay. Well, then you may want to work on the trapezius muscle, but you don't need to inject the neck or keep going down that road.

Q Okay. Now, Doctor, in all fairness to Morgan, to Mr. Morgan, most of us just go to the doctor and do what the doctor tells us to do. I'm not sure he was directing the doctor to give those injections, but why would a doctor do that when the underlying tests that would justify haven't been completed?

A Well, two points. First of all, I mentioned earlier that I said as to who would be directing Mr. Morgan to go through 91 visits of chiropractic care over the course of a year when he's indicating that it's not doing anything. So Mr. Morgan here is the patient, okay. He's not the orthopedic surgeon. He's not the neurologist. He has physicians and he is taking their advice at face value. There are some times when patients do interject or intervene and stop doing a particular form of care because from their perspective it's not working, and I think Mr. Morgan mentioned that.

I think there was some therapy -- it could have been after the wrist or something -- where wherever it was, he was doing something. He decided

not to go. That does not put him in a bad light. That's just him making analysis of his body and his care saying that's not helping me. So I am in total agreement. There's nothing here in my report that at any time indicates that Mr. Morgan is making bad choices in terms of what is being provided to him or what he's undergoing. He's the patient and he, at that time, was looking to his providers to give them what he thought was their best advice.

Q Okay.

A So, in terms of why these things would occur, great question and each and every one of those questions should be directed toward the doctor who provided that care. I have explained my thought process when it comes to how I would intervene and specifically related to Dr. Coppel's approach.

Q Okay. Did you have a chance to look at Dr. Muir's records?

A I did. And there is actually -- earlier I had alluded to that second report that I generated which --

Q We can't really go into that one.

A Okay. Well, only that it provided me some more records from Dr. Muir.

Q Okay.

A When I generated this report I had -- you know, there was limited notes from his office. But I do comment that the patient is complaining of a musculoskeletal problem and at the time there was a referral to Dr. Muir. I wrote it's appropriate that an orthopedic doctor should be seen because of musculoskeletal complaints. And I felt that Dr. Muir's evaluation of Mr. Morgan in relationship to the neck would be related to the

motor vehicle accident because I had ascribed his subjective complaints of pain to the accident. I felt his evaluation of the low back was not related because in my opinion his symptoms are not related to the accident. Dr. Muir recommended that the patient go on and have injections to the neck and when those didn't work, have them repeated. I would disagree with that recommendation.

Q Why would you do that? Why?

A Well, in this particular case, I initially I disagreed because as a spine surgeon, you know, they operate on a minority of their patients. I mean, you know, neck and back complaints are very common. And when you see these patients, you want to really try to focus on whether or not they have what problem you can treat conservatively. In this particular case, coming to Dr. Muir, to me it would have stood out like a sore thumb that he hasn't had formal physical therapy yet. So I felt that the transition initially or immediately to injections would have bypassed a step.

Q Okay.

A And I think that's pretty much at that time all I had from Dr. Muir. I may have alluded to Dr. Muir's notes in my summary, but that's another whole different area.

Q And is it fair to say you haven't seen Mr. Morgan since the time that you saw him for this independent medical examination?

A Right. Yes. That's the independent medical examination process. I don't see this patients again.

Q All right. You reviewed the medical billings going on to the next page to 81.

A Yes.

Q What did you find in the review of the medical billings? Were they reasonable, related?

A Well, that's also a page and a quarter of information. I commented on the charges generated by Mr. Muir's office. As an orthopedic surgeon, I have experience looking at a medical record and trying to decipher what information they gathered from the patient, what the physical examination consisted of, and then of course we like to see their reasoning and thought process as to what their recommendations are.

So the first visit with Dr. Muir -- oh, and I don't know if the jury is familiar -- we use codes for billing, levels of complexity. So you start out with a level 1 is the lowest and level -- it's a whatchamacallit. It's a five digit number, but the last number is all that matters, so the last number is either a 1 or a 5. And a 5 would indicate your most complex visit and a 1 would be the least complex visit, okay.

So, on the first visit, Dr. Muir gave a charge at the highest code of 5. He took basic information and then performed a simple neck exam, upper extremities. He did not review any of the medical records that had been generated to that point with regards to care that had taken place. And I felt that a highest code would not be justified lacking those other aspects of the report.

And then the second visit, also the follow up visit was also the second, was also the highest code. And the second visit was, I think, to look at the low back because when he came in with neck and back problems Dr. Muir just addressed the neck and then brought him back another time to do the

back. So when you're coming back to do the back, all the other information that's in that report is hit a button and it just all populates again, 1, 2, 3 pages, and then we're just dealing with the back. So, to charge a level 5 for that would be inappropriate.

And when it comes down to the conversation in the medical notes as to the complexity that Mr. Morgan might present with, he's had ongoing symptoms. He has a set of complaints. Whatever his physical findings were from Dr. Muir, one would expect to see some information in the note that might describe the doctor's thinking and how he -- in this case, he came up with his ideas. But when you read the medical note, there's like one or two sentences of information that state his symptoms. And then there are recommendations that he makes that are repeated in each report. And I'm not sure whether they were immediately followed on by Dr. Coppel.

There's charges from the chiropractor's office, 91 visits over 16 months. Charges were over $18,000. For better or worse, I'll use the word insane. The total amount charges insane along with the insane number of chiropractic treatments that were performed over and over and over again. As mentioned in my review of care, chiropractic benefits in this particular case I thought ran out after the first 15 visits, which took us two months after the motor vehicle accident. I thought we could add a few more visits to a total of 24 visits over three months or so, but the charges that you separate out for the lumbar would not be related, again, because in my opinion the lumbar was not related. So charges related to the neck, those would be appropriate.

Billing from Dr. Coppel I indicated was a little confusing. The dates

posted didn't correlate with the date the service was provided. And I've already commented on the fact about the injections and especially the lumbar and thoracic, in particular, I don't feel are related to the motor vehicle accident and therefore it didn't matter what they charged. It's not related.

Let's see. Oh, and then I just commented again on charges for the cervical injections on two occasions. I felt there was no indication for injecting in levels unless you've given a good description in your medical note as to why you're picking that level. And no specific discussions of symptoms, going down to the distribution of the nerves involved, whether they're related or not. I thought that there was no justification to state that the patient had a facet problem in the thoracic spine specifically. I didn't see charges entered from August 8, 2014. I didn't see charges entered on 3/20/15 from Dr. Coppel on injections. There is a charge of $7,500 for injecting three levels and using fluoroscopy. And if those were Dr. Coppel's, I couldn't tell. I'm not sure if that's the surgery center or if that's his, but I thought that was excessive.

And let's see. And then there was nothing provided about the actual OR time for what those charges would have been, how long the patient was actually there, and the actual anesthesia time that was given. The patient received IV sedation.

Q Why would that be? I would think that the records of a doctor that's charging this much would be accurate. Did it look intentional to you or did it just -- may have been a touch of the wrong type key or do you have any information about that at all?

A No.

Q Okay. Do you know anything about the mechanism of this accident? Was that brought up in your report at all?

A I did not have the Nevada -- I didn't have the State of Nevada traffic report.

Q Okay.

A I was not provided with any sort of accident reconstruction where people try to put mechanical vector forces involved and things like that. I was not provided with any photographs of the vehicles.

Q Okay.

A But I do have -- I can gather some history as to what happened with both taking in an interview with Mr. Morgan and then reading other medical notes where I assumed they asked the same questions and then he gave information. So my understanding is he's traveling in a direction on a surface street, not the highway, and another vehicle comes out from his left because his vehicle got hit on the front left. And then there is a discussion or at least mention, I should say, of him attempting to turn the wheel to attempt to avoid collision. Collision takes place by history. And that in my conversation with him, you don't really see much about that in any of the other providers' notes. You don't see anything in there of any detail about what may or may not have happened to him during the accident.

Q Why is that significant?

A Well, I don't know if significant is the right word. I would use the word interesting.

Q Interesting. Why is it interesting?

A Well, if you don't have a mechanism of injury you can treat

anything. So if you don't explore with a patient that says my neck hurts, but nothing happened to me, they might still have a neck strain and need treatment. But if a person says, "No, I actually was wearing an experimental harness where my head was strapped in and I couldn't possibly move like on a Disney ride," and the person then has five disc herniations of 2 millimeters, that would not correlate, but if you don't ask the question you don't have to worry about it.

Q Have all of your opinions been stated to a reasonable degree of medical probability?

A Yes.

Q Just one moment. I'll pass the witness, Your Honor.

THE COURT: All right.

**CROSS-EXAMINATION**

BY MR. CLOWARD:

Q Good afternoon, Doctor. How you doing?

A Good morning.

Q Make yourself comfortable. This is going to be a little bit. First off, the very first question I have is why do you not allow patients to videotape the medical examination you performed?

A Because it would generate a record that I have no control over.

Q Like an objective videotape of exactly what happened during the examination, correct?

A No. It would be a video that could be used or altered in any fashion beyond my control.

Q You agree you do not allow patients to videotape the supposed

independent medical examination that you perform, true?

A Correct.

Q Now, you indicated that the records are silent regarding how this crash took place and that Aaron didn't tell the other medical providers how the crash took place.

A I don't know what you just made up, but.

Q Okay. Let's go over this, Doctor. If you want to turn to --

THE COURT: Folks, we're just going to take a quick break. During this break, you're admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial or read, watch, or listen to any report or commentary on the trial or any person connected with this trial by any medium of information, including without limitation newspapers, television, the internet, and radio, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you. I'll remind you not to do any independent research and we'll just come back in about five minutes.

[Jury out at 10:49 a.m.]

THE COURT: All right. So both of you, I appreciate that this is cross-examination, but this is a courtroom and I expect everybody to behave completely professionally without snarky side comments or being rude in any way. I am sure that you are both totally capable of doing that. All right. I'm going to get some more coffee.

MR. CLOWARD: Thank you, Your Honor.

[Recess at 10:50 a.m., recommencing at 10:56 a.m.]

THE MARSHAL: Remain seated and come to order.

Please rise for the jury.

[Jury in at 10:57 a.m.]

THE COURT: We're back on the record in case number A-718679, Morgan v. Lujan. Let the record reflect the presence of all of our jurors, counsel, and parties.

Mr. Cloward, please continue.

BY MR. CLOWARD:

Q Thank you, Your Honor. Dr. Sanders, I think we were just about to go over some records. I believe you testified that Mr. Morgan did not explain the mechanism of injury or I guess how the crash took place to medical providers, is that fair? Did I misunderstand you?

A You did.

Q Okay. What was it that you testified to? Please refresh my memory.

A I had made comment that about mechanism of injury. There were some recordings, some information in the medical records and that in terms of the independent medical examination, he had answered some questions about what happened to him potentially inside the vehicle at the time of the accident.

Q Okay. So you agree that those were addressed with the physicians.

A You'd have to be more specific.

Q How his body moved within the vehicle.

A No, I don't believe that would necessarily be there --

Q Okay.

A -- to any great extent.

Q Let's turn to Exhibit 10, please. You did review all the records in the matter, correct?

A What would that be here?

Q There are tabs on the side.

A Or is it a specific record and date? I can pull it from my report.

Q Okay.

THE COURT: It would actually be better if you used the exhibits so that for the record we can refer to the page numbers that are given with the exhibits which might be different than what you have. Even though the records are different, the page number might be.

THE WITNESS: Which binder?

MR. CLOWARD: Doctor, if you look --

THE COURT: The first one.

BY MR. CLOWARD:

Q Yeah. If you flip open the binder, you can see there are tabs.

A Okay.

Q And if you go to tab 10, it's Dr. -- the chiropractor, one of the first records. Just start there.

A Okay.

Q And at the bottom you see where it says LVC00001?

A Correct.

Q Okay. So I'm just going to -- I'm going to read that and see if I read it accurately, okay? "Mr. Morgan was the driver in an automobile accident. He was driving a midsized car at the time of the accident. His

vehicle was traveling at approximately 25 miles per hour just prior to the collision. The impact of the accident was caused when Mr. Morgan's vehicle struck another vehicle. The point of impact on Mr. Morgan's vehicle was the driver's side front bumper. The other vehicle's point of impact was passenger side." Have I read that correctly so far?

A Yes.

Q Okay. Let me just continue. "Mr. Morgan was wearing a full lap belt or a full lap and shoulder restraint at the time of the accident. His vehicle did have a head restraint, which was adjusted in the middle position. Airbags were not deployed on Mr. Morgan's vehicle as a result of the impact. He stated that he was aware of the impending collision. His head and neck were in a forward facing position at the time of the impact. During the accident, Mr. Morgan's body was thrown to the side, left side, head struck car interior." Did I read that correctly?

A Yes.

Q Okay. Do you agree that Mr. Morgan is telling the providers about how his body moved within the vehicle in this example?

A Correct. And that's in my report as well.

Q Okay. Now, to summarize, I want to just kind of boil down your opinions in this case just to make sure that I accurately understand the opinions. And this is on page 77 of your report. You list ten diagnosis that were gone over with Mr. Gardner, true?

A I'm sorry. Diagnosis that I went over with him?

Q On your direct examination, 10, 15 minutes ago. Do you remember that?

A No.
Q Okay.
A I did not go over these diagnosis with Mr. -- oh, Mr. Gardner. I apologize.
Q Yeah.
A I thought you said Mr. Morgan. Yes, I did go over them.
Q Okay.
A Yes, correct. Sorry.
Q Okay. And then you basically determined whether or not those were caused by the motor vehicle crash and this 22-year old kid, true?
A Correct.
Q And your opinion ultimately is you say the neck is 100 percent related soft tissue strain. The second diagnosis of the MRI finding of 1.4 disc bulge, two levels, is questionable apportionment, so maybe.
A Correct.
Q Number 3, the posterior thoracic pain with soft tissue strain is 100 percent related to the crash, true?
A Yes.
Q But the fourth diagnosis of disc bulge apportioned 0 percent, the fifth diagnosis of lumbar pain, 0 percent to the crash in this 22-year old kid, right?
A Correct.
Q That's your position. And I believe that you testified that the reason that you don't diagnose or apportion -- excuse me -- words are important in this setting. The reason that you don't apportion the disc bulges

in the cervical spine is because you don't trust Dr. Kittusamy's read of the MRIs, true? You wanted to see them yourself.

A And my comment is that there's not validation of that information, correct.

Q Okay. So ultimately you don't trust Dr. Kittusamy's read and you wanted to see the films yourself, true?

A Combination of films and reviewed by neuroradiologist.

Q Oh, that's right. You wanted to take the films to a neuroradiologist to have the neuroradiologist tell you whether they were related, true?

A No, not related.

Q Whether they were caused by the collision.

A No.

Q Okay. Well, then --

A You're putting unfortunately a mischaracterization of what I said.

Q I apologize, Doctor.

A What I stated earlier is that the purpose of a neuroradiologist is to evaluate -- excuse -- neuroradiology films. And a great radiologist or a good radiologist is a photographer. Their assistants or their technicians generate the films, but the radiologist will interpret the films. They're not interpreting the films in terms of how the films got there in terms of what they see. They're just interpreting the anatomy as they see it.

Q Okay.

A So I never said that the neuroradiologist would be making any

comment whatsoever about an accident because the neuroradiologist wouldn't even know there had been any type of accident.

Q So you would want to see if the interpretation given by your own neuroradiologist was accurate, true?

A This would be a neuroradiologist that I've selected, not personally mine.

Q Okay. Who is this neuroradiologist anyway?

A It depends on who's available. They're not paid for it. They do it as a service. And I will approach, as I mentioned, my description of how I do it. I find out who's reading films at the time and when I have the time and if they have the time, I'll ask them to look at the films for me.

Q Can you tell me some names of folks that you've used?

A I've used a Dr. Agrawal [phonetic] from Desert Radiology.

Q Who else?

A I can't mention who I've used besides them. There's also some musculoskeletal radiologists, Chanor [phonetic]. One guy is retired. But it depends on who they have. They have over 100 radiologists at Desert Radiology.

Q Okay. You agree that -- one thing I wanted to follow up on is when you perform a surgery yourself as the surgeon you don't rely on the radiologist read of the films, true?

A No, I do rely on it. It's part of the whole package.

Q But you also look at the films yourself for a surgery that you, yourself, Dr. Sanders, performs, true?

A Correct.

Q Because you as the treating physician for that bone or joint, you want to know by your own direct visual examination before you cut somebody open, true?

A As best I can, yes.

Q And you agree that the spine surgeons, the spine fellowship trained surgeons in this case, Dr. Cash or Dr. Muir, would also look at the films themselves before performing a spine surgery, true?

A That should be the patient's expectation, yes.

Q Like the spine surgeons are not going to rely on a radiologist's read before they go in there and perform a complex spine surgery, true?

A You should ask the spine surgeon.

Q Do you agree with that as a general statement?

A As a general statement, if you're saying what they should or shouldn't do, the answer is they should.

Q Okay. Now, as I understand it, the reason that you say the low back is not related is because in your report on page 79 you say, and I quote, "It would appear that the low back problems might have been 'symptom creep'. This would be where a patient initially had a set of symptoms following a motor vehicle accident, but over time for whatever reason the patient has decided to extend the area of complaint beyond the initial presentation. In this particular case, the medical records indicate almost three months of no low back complaints to the pain management doctor. And therefore, I would state that any and all low back issues be either subjective or findings on imaging have nothing to do with the motor vehicle crash." Correct?

A That's what I wrote, yes.

Q Okay. So let's go over that. Your Honor, may I obtain the easel?

THE COURT: Sure. It's there if you can get it to work.

BY MR. CLOWARD:

Q Thank you. First off, Doctor, while I'm setting this up, is symptom creep, is that like a medical term that would be found in medical textbooks or is that your own Dr. Sanders term?

A That's my term and that's why it's in quotation marks in the report.

Q Okay. Because I was -- in preparation, have you ever heard of Google Scholar?

A No.

Q That's where you can go to Google and they actually filter the results to just peer reviewed articles. And I typed in symptom creep and only two results came up and it didn't have anything to do with spine cases, so --

A Did it have anything to do with medical?

Q Well, one was obsessive-compulsive and the other was some interstitial something or other. I have the results here. Oops. Interstitial cytitis [phonetic] in adolescents.

A Cystitis maybe.

Q What's that?

A Interstitial cystitis?

Q Yeah.

A It's a urologic problem.

Q Okay. So it doesn't have anything to do with the spine.

A And inflammation of the bladder that doesn't have anything to do with the spine, but can cause nerve injuries.

Q Okay. So let's go through the records. You have the binder in front of you. Very first thing I want you to do, Doctor, and I guess you agree you're here independent, right? Even though the Defense has paid you. You can't remember how much you were paid, but you're here independent, true?

A I'm here to give my opinions about this independent medical exam, correct.

Q All right. Have you ever changed your opinion after being presented with new information or possibly having a new perspective on the information you already received?

A Yes.

Q Okay. That's my endeavor right now. Are you willing to have a discussion with me to allow me to point a few things out that you may have overlooked?

A Yes.

Q Okay. First, Doctor, Exhibit binder, the photographs in this case there in front of you. Your Honor, may I approach the witness to find out?

THE COURT: Go ahead.

MR. CLOWARD: Okay.

MR. GARDNER: Your Honor, may we approach?

THE COURT: Sure.

[Bench conference begins at 11:11 a.m.]

MR. GARDNER: I don't know where this is going, but I'm not sure those photographs are in evidence, are they?

MR. CLOWARD: I'm going to move them into evidence actually.

THE COURT: Oh, 4 has been admitted?

MR. CLOWARD: Yeah.

MR. GARDNER: They need to be redacted then.

THE COURT: Well, somebody should have said that before because they were admitted at some point last week.

MR. GARDNER: And what about 5? 5 are the bus ones. I don't know. Maybe 3.

THE COURT: I think it might be [indiscernible].

MR. CLOWARD: I don't think they're in there. So the bus ones are not. Those are already in there.

THE COURT: What's that? 23?

MR. CLOWARD: Those are the photos, yeah. Those are shown.

THE COURT: 23 is not admitted. What needs to be redacted in this?

MR. GARDNER: Nothing. It's just there's a picture of [indiscernible]. The ones I have had [indiscernible] redacted.

MR. RANDS: We don't have a problem with these others.

THE COURT: So 23 can come in?

MR. GARDNER: Yeah.

THE COURT: Okay.

MR. GARDNER: But [indiscernible] Sanders four corners of his report and now [indiscernible] what's good for the goose is good for the gander.

MR. CLOWARD: Well, I thought that he reviewed the photos.

MR. GARDNER: He said he didn't review the photos.

MR. CLOWARD: Oh, I thought he said he did.

MR. GARDNER: No.

MR. CLOWARD: Okay. Never mind.

MR. GARDNER: He said he didn't review the photos. He hasn't seen them.

MR. CLOWARD: Okay. I'll move on then. I thought for some reason that he had.

UNIDENTIFIED MALE: That's just one more mistake they made in the case.

MR. CLOWARD: That's okay. That's okay.

THE COURT: All right.

MR. GARDNER: You can check, ask the question.

MR. CLOWARD: Yeah.

THE COURT: All right.

[Bench conference ends at 11:13 a.m.]

THE COURT: Are we still admitting 23 though either way?

MR. CLOWARD: No.

THE COURT: Okay.

BY MR. CLOWARD:

Q Okay. So, never mind. Doctor, fair to say I maybe misheard. You did not actually review the photographs as part of your evaluation of this matter, true?

A Correct.

Q Okay. So I'm not even going to ask you those questions then. Regarding some testimony that was given the other day by one of the other individuals in the case regarding correlation of impact to injury, you do not agree that injuries to an individual are always directly correlated with how severe the impact is, true?

A There's a couple of negatives in there. So what's the question for me?

Q You do not agree that injuries to an individual are always directly correlated with how severe the impact is, correct?

A All right. So you're asking me if I -- okay. So injury, you're saying injury -- the question is injury correlates 100 percent with impact, do I agree or disagree with that?

Q Correct.

A Well, since it's a vague statement, injury undefined, I would say that it does not necessarily always correlate.

Q And, in fact, you have previously explained that in your practice based on the extent of injured patients you see, you can see patients who have small damage to the vehicle and have serious injuries and patients who walk away from very serious car crashes.

A Right. That would agree with what I just said, correct.

Q Okay. I would like to talk about the mechanism of injury. What

is your understanding of the mechanism of injury and how these vehicles came together?

A This would have been from the history I gathered and from in the medical record, that this would have been to some extent more or all side versus straight on.

Q Okay. The way that it was described was the bus was going to cross the road. Aaron was coming down the road. At the last moment, he tried to turn. The collision took place kind of on an oblique angle and then the vehicles came together like that. The bus continued. Is that your understanding?

A Only up until the point where you said they made their -- he was trying to turn and they made contact. What happened after that, I don't know.

Q Do you know yourself how Aaron's body moved within the passenger compartment?

A Only his comment that he said he hit his head against the side and it could have been either the window or potentially even the -- whatever that bar is called between the windshield and your window.

Q The A pillar.

A If that's what it is, yes.

Q Okay. Doctor, if somebody did, if they were going forward and they hit that A pillar which then caused a secondary response backwards, so not just straight back like this, but actually backwards at an angle, would that compress the facet joint?

A It could potentially, yes.

Q Okay. And we've already talked about with the other doctors about their suspicions of what the injuries are. Before I even get there, do you agree that an injured facet capsule at C5 and or C6 would cause pain in the trapezius?

A It can.

Q And that's actually well documented in the literature. Do you agree with that, true?

A I would say that it can, yes.

Q Okay. I'm going to actually show you. Cervical facet capsule in its role in whiplash injury, biomechanical investigation. This is an article out of The Spine Journal. Is The Spine Journal a reputable source?

A Yes.

Q Okay. Doctor, this is the referred pain map used to determine which joint should be initially investigated in a patient with suspected cervical zygapophyseal joint pain. Now --

A Are we able to focus this?

MR. GARDNER: Is it just me or is it out of focus?

THE COURT: Mr. Cloward has to do it where he is.

THE WITNESS: That's good right there.

MR. GARDNER: That's better.

BY MR. CLOWARD:

Q Is that better?

A That looks good.

Q Okay. Now, just so that we're on the same page, zygapophyseal joint, that's the facet joint, correct?

A Correct.
Q And then right here, this indicates the area of distribution that one would expect for a C6-7 facet joint, true?
A Correct.
Q And that's where Aaron is complaining of pain, true?
A He had pain in those general areas, correct.
Q Similarly, this is the referral area for the C4-5 and then over here the C5-6, true?
A The C5-6 is determined. I'm really not quite sure how they're differentiating what's black from the grey.
Q Well, I have another chart if you'd like to look at that. Do you --
A I'm just commenting on that one.
Q Okay.
A That's all.
Q Well, maybe a better question would be do you agree that this area that I'm going to trace with my pen is common for a C5-6 facet joint injury, for a patient to have pain in that area?
A It can cause pain in that area, correct.
Q Okay. So you agree that at least the presentation of where Aaron is complaining of neck pain on your direct examination of pointing out pain in his trapezius is what you would suspect according to The Spine Journal if somebody had either a 5-6 or 6-7 facet injury?
A Correct. The distribution of the trapezius as well as potentially parascapular.
Q Okay. And you agree that the mechanism of injury that we just

described of him hitting his head on the A pillar and having that facet joint jammed would cause or could cause injury.

A Well, I don't know what happened to him specifically in the aftermath of hitting his head on the window. If you were just describing to me the generic action of going forward and back, that could be exactly a potential way to injure a facet.

Q Okay. Thanks, Doctor. Now, I would like to turn to the -- so we've kind of taken care of the neck. Now I want to focus a little bit on the lumbar spine. You agree that Aaron was actually transported to the emergency room at Sunrise, true?

A Correct.

Q So, Doctor, we're going to walk through these very systematically. I'd like for you to reference those. We're talking about Exhibit 6 in your binder.

THE COURT: Those have not been admitted, Mr. Cloward.

BY MR. CLOWARD:

Q Dr. Sanders, a foundational question, did you review the Sunrise medical records in this case?

A That's what I'm turning to now in my report to give you an answer.

Q Okay.

A Yes.

Q Okay.

MR. CLOWARD: Doctor, or Your Honor, at this time I'd move to have Exhibit 6 admitted.

MR. GARDNER: No objection.

THE COURT: 6 will be admitted.

[Plaintiff's Exhibit 6 received]

BY MR. CLOWARD:

Q All right. Dr. Sanders, if you would mind just turning to page -- it's Exhibit 6 in the binder. Would you like me to assist you?

A No. What page?

Q We're going to look at Sun, S-U-N 0009.

A Where are you getting 00?

Q Let me --

MR. CLOWARD: May I approach, Your Honor?

THE COURT: Yes.

BY MR. CLOWARD:

Q Okay. It's super-duper small.

A The first thing is a seven page preprinted thing from the hospital.

Q Oh, see it's -- you almost need to find --

A Oh, oh, past that?

Q No, I'm sorry, if you see right there.

A Oh.

Q It's just super duper small. It's really small.

A Wow. Okay, I think.

Q Sorry, Doctor.

A I think that's 9.

Q Okay. Do you agree that as documented in that record Aaron

was telling the providers that he had neck pain and a crunching sensation in his neck, true?

A Correct.

Q Aaron indicated he was driving down the street in his convertible Mustang when a shuttle bus pulled out in a parking lot into traffic. The patient had attempted to swerve out of the way and impact was on the left front corner of his car, true?

A Correct.

Q Okay. Now if you'll look at the time of arrival, do you agree that the time of arrival was 14:08, true?

A Yes, greeting time, 14:08.

Q Okay.

MR. CLOWARD: Your Honor, is it okay if I stand right here?

THE COURT: That's fine.

BY MR. CLOWARD:

Q Okay. So, Doctor, the time of arrival is 14:08. Now, at 14:19, do you agree that he was cleared to be removed off the backboard by a midlevel provider to be seen in the emergency room, correct?

A Where are you quoting that from? What page?

Q Sunrise 000012.

A 000012.

Q Yes.

A Top or bottom of the page?

MR. RANDS: Bottom.

MR. CLOWARD: Top?

MR. RANDS: Bottom portion.

THE WITNESS: Bottom portion.

MR. RANDS: And then under additional notes.

BY MR. CLOWARD:

Q Additional notes.

A All right. So he's talking about reevaluation progress one time 14:19.

Q Yes.

A Additional notes. Patient seen by midlevel provider. Cleared from backboard prior to being seen from ER physician. So I can't tell you exactly when they are entering their time whether they correlate second to second, minute to minute. It just gives you a good idea of the general timeline, correct?

Q Well, actually there's --

A If you're reading it correctly.

Q Actually, if you look, the first encounter, then the second encounter, then the third encounter. It actually lists each time that those encounters take place.

A No, I understand. I'm not arguing with you over that at all. I'm agreeing that you're reading it exactly as it appears it in the report.

Q Okay.

A You're just asking me if I'm validating it and I'm going to say that in the heat of the battle when we're taking care of patients you sometimes will enter things right away or sometimes in retrospect, but there's a timeline and it should be reasonable.

Q Sure. And you would anticipate that if the entry is made at 14:19 rather than, say, 17:20, it's pretty reasonable to suggest that the time that it was entered would be more suggestive to closer --

A To that time, correct.

Q Okay.

A Absolutely.

Q So you agree that we can say that at 14:19 he's cleared from the backboard.

A More or less, correct.

Q Okay. So cleared by backboard or cleared off of. All right. Now, the next one we have is 14:23 and this one would be an important entry because this is when he's administered 4 milligrams of morphine sulfate intravenously, true?

A Same page or different page? Oh, wait, same page. Correct. They indicate 2:23, morphine.

Q So that's four minutes later, true?

A By the entry, yes, correct. Well, the only comment I'll make and since you researched it, you'll give me more numbers, but just to not to be picky, but it says medication ordered was at that time. So I don't know whether -- and you may give me more information later, but that may -- I don't know if that represents ordered or given.

Q Doctor, what would a start time stop time be?

A That would, I guess, would just be the order, you know, the ordered start stop time because they don't time how long they push the medicine for.

Q Do you agree that that could also mean start time, that's when they order it, stop time is when they actually give it to the patient?

A No, I don't it would infer that I started something after 20 second after one minute and 5 seconds later I was done. That'd be way too much time taken to -- I would think they would just try to be as close as possible to when they actually administered the drug, but the heading from the time you're quoting, it just says medications ordered and then it has the time. And start and stop time for me at the hospital means when you would stop the drug. So if I start an antibiotic, I would indicate starts today and then seven days later it stops.

Q Okay.

A Or if it's a drug for 24 hours, it would stop 24 hours later.

Q Doctor, you agree that the last administrated of 15.00, that would at least give us the outer edge of when the medication was given.

A It said last -- right, so, well, that would be theoretically when it was given. They gave it at -- it was ordered at 2:23-ish and theoretically according to this it was given at 3:00, so about 30, 40 minutes later.

Q Okay. Do you agree that the fourth evaluation was at 15:55, nearly 55 minutes later?

A Reevaluation, progress number 4. What time do you have for that?

Q Sunrise 13, 15:55.

A 15:55, no, that's progress number three.

Q Progress number four.

A I don't see a time for number four.

Q It's on the previous page, reevaluation progress three.
A And then there's a -- yeah, it says reevaluation progress three. And then underneath it, it says time 15:55.
Q That's the third reevaluation. So the fourth reevaluation took place after that.
A Oh, yes, yes. I'm sorry. Yes.
Q Okay.
A I just don't see a time by progress number four, a time it actually took place.
Q Yeah, we know it's after 15:55. That's what I was trying to get the point.
A Correct. Definitely.
Q Okay. Now, at that time, it indicates that Aaron had no pain after morphine, true?
A He got the medication theoretically at 3:00 and we're saying that this is, you know, at 4:00 or later. That's correct.
Q All right. So when in this time frame, when was it in this time frame from 14:08 to 15:55 that the lumbar examination was performed?
A From just these pages you're giving to me, it doesn't detail what they at their "reevaluation progress one, progress two, and three."
Q Okay.
A So you'd have to cross-reference it to those notes specifically, what they contain. But in number four, we do in this particular part of the records because when you've got a note from the hospital, there's multiple notes. It's not just one note. You have notes that are generated from the

nursing staff. Then there's notes generated by the doctor, et cetera, or the middle provider. So in this particular note after number four, there's no -- in this particular sequence, there's no notes at all for one, two, and three, but under four you do have notes. And this is at the fourth progress note. No significant tenderness on exam. No midline tenderness throughout the cervical spine. Normal mentation. Thinks he heard crunching sounds in his neck, which you mentioned before. This appears to have resolved. CT of his head. CT of his neck. No acute process fracture dislocation. Cervical spine was cleared. No pain after morphine and Zofran, which is an anti-nausea medicine. Given prescriptions for home. No neurologic deficit. Normal gait. Reviewed with patient and he agrees to follow up.

Q Okay. You agree that was after the morphine was administered, true?

A Correct.

Q Okay. So let's move forward. You agree in those records Mr. Morgan reported having no primary or family physician, correct? Sunrise 19.

A Nineteen? Oh, this one, yes. Again, if you -- it's incredibly small print and if you want to point me in what direction of where on this page you're reading from, I'd be more than happy to agree if it's written there.

Q Okay.

MR. CLOWARD: Your Honor, may I approach?

THE COURT: You may.

BY MR. CLOWARD:

Q Okay. Let me find it.
A Yeah, it's really small print.
Q Yeah. I know that. Let's see.
A Heartrate, respirations, date occurred, [indiscernible] circulatory. I don't see anything, I mean one way or the other. I don't see any reference to whether he has a [indiscernible] or not. Might be a different page.
Q Well, I guess maybe a better question -- let me simplify this a little bit. Did you see any records where it was listed that Mr. Morgan had a primary care physician at the time?
A Oh, I wouldn't know that offhand. I don't know that offhand.
Q Do you disagree with that?
A I'm not agreeing or disagreeing with anything. I'm saying I don't know.
Q Okay. If a patient indicated in the emergency room that they did not have a primary care physician or a treating physician, would that suggest to you that they had not been to the doctor in a while?
A It's possible, yes.
Q Okay. All right. Now, at the time of discharge, you agree that the primary impression was that of cervical strain, true?
A I believe so, yes.
Q You agree that the secondary impression was blunt head trauma to the MVA or blunt head trauma MVA, motor vehicle accident, true?
A Which page are you reading from?
Q Sunrise 13. Oh, okay. This is going to go so much easier. I have several binders. I have them all highlighted in the binder, but I was

using the opposite binder. I'm so sorry. I'm wasting everybody's time. I'll get to this super duper quick now because I have this all highlighted. All right. So it's on Sunrise 0013, Doctor. And I can -- Your Honor, if I can approach, it'll probably go faster.

THE COURT: Sure.

THE WITNESS: 0013.

BY MR. CLOWARD:

Q Yes. Cervical strain, blunt head trauma, MVA, motor vehicle accident.

A Correct. Cervical strain, number one. Secondary, blunt head trauma with motor vehicle accident, correct.

Q Okay. So now, Doctor, may I set this right here?

THE COURT: Sure.

BY MR. CLOWARD:

Q Okay. Now, I want to ask you. You agree that at the time he was evaluated in the emergency room there was tenderness to palpation, no pain noted for the trapezius as noted on page Sunrise 00016, true? It's a handwritten note.

A 00016?

Q Yes.

A I don't have a handwritten.

Q Or 15.

A 15, sorry. Yeah, 15 is a preprinted form completed by hand. And it says pain to palpation, right trapezius.

Q Can you show me where that notation, that handwritten note of

pain to palpation right trapezius, made it into the computer generated form?

A I would have to go through all of the pages to say it's there or not.

Q Do you take my word for it that it's not there?

A No, but --

Q Okay. That's' fine, Doctor.

A It may be. I don't know.

Q That's fine. Go to Sunrise 00011.

A Okay.

Q You see this is where it says neck and back, neck, atraumatic, non-tender. Back, atraumatic, normal inspection.

A Okay. So neck, it says, correct, atraumatic, non-tender. And then under back it says atraumatic, normal inspection, full range of motion, no midline tenderness, no CVA tenderness, no muscle spasm.

Q Okay. So you agree that the pain to palpation right trapezius notation, handwritten notation, never made its way into those medical records, true?

A It's not in those notes, correct.

Q Okay. Now, let's go to the next thing, Doctor. Do you agree that Mr. Morgan followed up with an urgent care a week later?

A Yes.

Q So if you will turn to the urgent care records, that's Exhibit 7. Are you there?

A Oh, I'm sorry. What number?

Q It's Exhibit 7, so tab 7.

A Yep.
Q Now, these ones are a lot easier to read. Do you see there at the bottom where it says UCE0001 or 1 and so forth?
A Yes.
Q Okay. So these are much easier to read. Do you agree that on UCE0002 general medical record it indicates neck, upper back pain, left wrist, true?
A Correct.
Q However, on the next page, it indicates bilateral wrist at the top of the page, diagnosis.
A Correct.
Q Why would there be an inconsistency? Why would one record say left wrist, but the other wrist or the other record says bilateral wrist?
A You best ask the person who generated the records.
Q Okay. Now, Doctor, in the current complaints on UCE0002 you see it says neck upper back pain.
A Right.
Q Now, if you flip the page and you look at UCE0004, it says neck and back pain, headaches, pain in wrist, correct?
A Correct.
Q So you agree that at the very best it's somewhat ambiguous as to whether it's low back or midback.
A Based on the record, I would say I don't feel it's ambiguous, in your words.
Q Okay. You agree that the words used on page 4 are neck plus

back pain. The words used on page 2, neck, upper back pain.

A Correct.

Q Now, you agree that at that time Mr. Morgan was referred by the urgent care to specialist Dr. Grabow for the wrist.

A I believe so, yes.

Q And he was referred to pain management Dr. Coppel for the spine, true?

A I believe so, yes.

Q Do you agree that they performed both left and right x-rays of the wrist, true?

A Dr. Grabow or the urgent care?

Q The urgent care. On page 11 you see the billing, two entries.

A Yes, they're billing for wrist x-rays.

Q Two of them, correct?

A It's hard for me to interpret that. I'm reading more their notes. When they talk about x-ray wrist, it says no fracture, but they don't indicate, you know, obviously, as you said, one or both.

Q Do you agree that the discharge diagnosis and the urgent care referral form to Dr. Grabow on page UCE0008 was for bilateral wrist sprain, true?

A Correct.

Q All right. Now, I would like to focus on Dr. Coppel, his treatment. His treatment comes on April 21st, correct?

A What tab?

Q We are going to go -- it's tab 9 and it's page NCP00044. It's

super loud. Sorry. Do you agree that the first visit with Dr. Coppel is 4/21, correct?

A I'm sorry. Is what date?

Q 4/21.

A Yeah. Seen -- I don't know how they work it in the office, but seen by their PA.

Q And the reason for the visit is for new onset neck pain with headaches, midback pain, and left wrist pain that began after his motor vehicle accident on 4/1/14, true? Now I want to show you that record. I don't want to pick on Dr. Coppel here, but I do want to point some things out and ask you some questions, okay.

MR. CLOWARD: Your Honor, if this has been admitted, may I publish? May I publish?

THE COURT: Sure.

MR. GARDNER: What is it?

MR. CLOWARD: It's Coppel's, so it's admitted.

MR. GARDNER: Yeah. Yeah.

THE COURT: What exhibit is it from?

MR. CLOWARD: It's 9.

THE COURT: Exhibit 9?

MR. CLOWARD: Yeah.

THE COURT: What page?

MR. CLOWARD: Page NCP00044.

THE COURT: Thank you.

BY MR. CLOWARD:

Q Okay. So, Doctor, I'm going to just highlight this, 22-year old male. So he talks about new onset of neck pain with headaches, midback pain, and left wrist pain that began after the vehicle accident, true?

A Correct.

Q Now I'm going to show you another review of systems, the next page, so this is NCP00045. And again, I'm not trying to pick on Dr. Coppel here, but here review of systems, the patient complained of see current patient assessment, but denied foot pain, hand pain, hip pain, knee pain, leg pain, neck pain, back pain, myalgias, or thoralgias, gait abnormality, muscle weakness, muscle cramps, muscle swelling, joint swelling, joint arrhythmia, joint crepitus, shoulder pain, arm pain, elbow pain, and wrist pain. Is this part right here accurate based on what we've reviewed on the prior page?

A Well, his notes are inconsistent.

Q Okay. And we've talked about macros and how macros, do you agree that macros carry over from one visit to the next visit and a lot of times you just go in and hit the button and it will auto populate.

A So macros mean a computer template?

Q Correct.

A Correct.

Q Okay. Does that look like what happened here with the review of systems?

A It's possible.

Q Okay. Now on 4/21/14 you agree that Dr. Coppel did not perform a lumbar examination, correct?

A I'm just looking to confirm. Correct.

Q Okay. He did, however, perform a cervical examination and wrist examination and found that there was moderate tenderness along the paraspinal muscle groups, greater on the right, bilateral sides of the facet column were tender, muscle spasms over bilateral paracervical and upper trapezius muscle groups, correct?

A Yes. Just to play fair.

Q Sure.

A Because I don't know how Dr. Coppel runs his office. Different doctors run their office differently. The patient was seen by a physician's assistant and I could not nor do I wish to comment or would comment on exactly who did what, when, and where during the course of that visit. I don't know if Dr. Coppel was in the office the whole time.

Q Sure.

A I don't know if he never saw the patient. You know, the other end of the spectrum would be he never saw the patient.

Q That's a fair clarification.

A So, just as a background. But as you're reading what's written in this report, I agree that what you're reading is yes, in fact, in the report.

Q So we'll call it Dr. Coppel's office. Is that a fair qualifier?

A No, it's perfect.

Q Okay. Thank you, Doctor. So now, and you agree that the examination also indicated range of motion reproduced concordant pain with extension and rotation, correct?

A Yes.

Q There was also a thoracic, so a midback examination.

A Correct.

Q That revealed moderate tenderness along bilateral parathoracic muscle groups, bilateral sides of the facet column, correct?

A Correct.

Q Okay. Okay. Now can you -- so he looked at -- he actually examined the C spine, so we're going to put a C and he examined the T spine, correct?

A Yes.

Q He did not -- there is no examination of the lumbar spine, correct?

A Correct.

Q Are you testifying here that had he examined the lumbar spine he would not have found any findings suggestive of an acute injury?

A No. The implication of my testimony to this point would be that patients are sent to Dr. Coppel for many reasons, but a reasonable number are sent in the aftermath of a motor vehicle accident, in which case you would want to have as best or as wide ranging a capture of symptoms so you would know where to or what to treat. So for the pain management doctor who's referred someone in a car accident not to have a mention of their low back to me would be even more of a not a low back complaint patient at that time. So it's not the absence of the exam isolated. It's the idea that he didn't examine which is a reflection of the absence of back complaints because that would be the essence of his practice. The essence of his practice is to treat people who have spine complaints.

Q Okay. Well, I'd like to continue and point a couple of other

things out for your consideration. May I do that?

A Please.

Q Okay. Next visit is April. So this is Dr. Coppel. Next visit is Dr. Wiesner on 4/25/14. If you would please turn there, that would be very helpful. It's on Exhibit 10.

A Okay.

Q Okay. Now, let's go through this record. You agree that at that --

A Is this 001?

Q Yes, Doctor.

A Okay.

Q Thank you for pointing that out. We're going to go -- the important ones are 0001 and 0002. You agree at this time Mr. Morgan is in talking to the Dr. Wiesner and he's indicating how often I guess the frequency of the pain in different parts of his body, correct? That starts on page 1, subject of complaints.

A Yes, this particular -- right. This particular style they break down and they went under the subjective complaints. They try to break down the amount of time they experience their symptoms, correct.

Q Okay. So with regard to the neck, so with regard to -- I'm going to just -- let's say C, T, L. We're going to put a line across that one because that wasn't done, so CTL, so cervical spine. He's there at the provider. He's saying 0 to 25 percent of the time my neck hurts, correct?

A Correct. While he's awake, yes.

Q And then back, or excuse me, headache, 0 to 25 percent of the

time. Left and right wrist, 0 to 25 percent of the time. Midthoracic, so midback, T spine, 0 to 25 percent of the time, correct?

A Yes.

Q Now, lumbar, what does he say?

A Well, he says thoracal lumbar slash lumbar.

Q Okay.

A And he talks about frequency of symptoms is what we call frequent, between 50 and 75 percent.

Q So it's actually more painful than the other body parts at that time, correct?

A Not more painful, more frequent.

Q Okay.

A At least from that information. We haven't gotten to the rest.

Q All right. Now you agree that at that time Dr. Wiesner actually did perform a thoracic, cervical, and lumbar examination of Mr. Morgan's spine, true?

A He included the lumbar area, correct.

Q And you agree that -- well, first off, you agree that the range of motion in a lumbar spine was diminished, meaning that he did not have normal flexion, extension, left lateral rotation, right lateral rotation, left rotation, or right rotation in his lumbar spine at that time, true?

A He calls it thoracal lumbar, but the range of motion he recorded is less than what would be "normal".

Q Okay. Now, I want to be -- on the palpation, I want to make sure that we're being accurate here. You agree that he palpates both or all

three regions of the spine, neck, midback, and low back. So whether you call that cervical, thoracal lumbar, and lumbar, he's palpating all three regions of the spine, true?

A Correct. Here he differentiates like cervical, then thoracic, and then thoracal lumbar. And he does include that in his exam, correct.

Q Okay. And, Doctor, look, I want to be fair here. He actually, as one of the admitting diagnosis, is -- he gives thoracic sprain, correct?

A Oh, diagnosis on 004?

Q Yes.

A He puts down --

Q Thoracic sprain, cervical --

A -- a lot of diagnosis, but yes, he includes lumbar sprain.

Q Okay. That's --

A And thoracic strain and cervical -- well, several things with the cervical spine.

Q Okay. I just want to -- I mean, you agree that he's looked at the lumbar spine. He's actually made diagnosis of the lumbar spine. And he actually begins to treat the lumbar spine, true?

A Let me just check on the third part of your question. The answer is yes on the lumbar as well.

Q Okay. So now the next visit is -- so between 4/25/14 to June 26th of '14, you agree that Dr. Wiesner continues to treat him and he has 24 visits where Dr. Wiesner is treating his lumbar spine, correct?

A Let's look at my chart to confirm. All right. I have to look through each one, but pretty much in vague memory is that he does multiple

things and I'd have to go through each and every one to see if each and every modality or manipulation is done to his -- if his low back is included in each one of those treatment visits because we do break them down.

Q This is kind of important, so can you do that?

A No, no, absolutely, absolutely, absolutely.

Q Thank you.

A Okay. And as I said, not all aspects of care. There were multiple different types of care provided to the patient with each one of the visits with chiropractor. And you said to look through which date? June something.

Q 4/25/14, so the first visit with Dr. Wiesner, and then 6/24/14, the visit before Dr. Coppel sees him.

A Got you. So the answer is, yes, at each of those visits leading up to the second visit of June 26th with Dr. Coppel's office there is at least -- the lumbar spine is always mentioned as receiving at least some form of treatment or several.

Q Okay. Now, the next visit is 6/26/14. That's Dr. Coppel's visit. That's NCP00049. It's Exhibit 9.

A Yes.

Q Now, again, I don't want to pick on Dr. Coppel here. I'm not trying to pick on him, but I want to point out a couple of things. So first I'd like to show the jurors 4/22/14, history of present illness. Do you agree 22-year old male with new onset of neck pain with headaches, midback pain, left wrist pain that began after his motor vehicle accident of 4/1/14.

A Yes. That was -- are you talking about his first visit with Dr.

Coppel again?

Q Yeah. Yes.

A Okay. All right. Got it.

Q Now, do you agree that on the next visit it's word for word the same thing, 22-year old male with continued neck pain with headaches, midback pain, left wrist pain that began after his motor vehicle accident. True?

A Correct.

Q Now, how could that be when he has already been treating? He's had 24 visits with Dr. Wiesner for his lumbar spine.

A That's a good question for Dr. Coppel's office.

Q Okay. Now you agree at that time he doesn't address Aaron's back, correct?

A Not in that date, no, correct.

Q And it's on the first time that he sees him for I guess the lumbar complaint, it's noted on the 14th of July.

A Dr. Coppel's office note of 7/14?

Q Correct.

A Okay.

Q So, and now, importantly, this if after another seven visits of chiropractic with Dr. Wiesner and this is the first visit that Dr. Coppel addresses the lumbar spine and actually performs a lumbar examination, correct?

A Yes. It says that he now adds low back pain to the presentation. And let's see. And in his physical examination, he does

include specifically lumbar exam.

Q Okay. So he notes tenderness to palpation over the bilateral peril lumbar muscle groups, tenderness of palpation over bilateral facet columns. Lumbar range of motion is decreased. Facet loading produces non-concordant pain, or excuse me, concordant pain. Straight leg raise is negative in both legs. Sensation is normal in both legs. Strength is normal in both legs. But he's having pain in the lumbar spine, true?

A That's the history on this report, correct.

Q Okay. Now you agree that the musculoskeletal assessment here still indicates denied foot pain, hand pain, hip pain, knee pain, leg pain, neck pain, back pain, all of these things, arm pain, wrist pain, and so forth.

A That would be under this section of supposedly taking some history or review of systems with the patient.

Q You agree that this record is inconsistent with this record.

A Well, you would say that there's two parts within the same report that differ and that's a question for Dr. Coppel's office.

Q Okay. Okay. So now that you've had a chance to actually see the 24 plus 7 treatments that Mr. Morgan had received at the chiropractor starting on April 24th, you agree that the first documented complaint of lumbar spine was not three months later like you put in your report, true?

A Well, in my report, I wrote that the first documented back pain by the pain management doctor was three months later.

Q But you were using that as a basis to indicate that the lumbar spine was not injured in this crash.

A Correct. Part of the whole package, correct.

Q Okay. So do you just disregard those 31 visits at the chiropractor where he was getting treatment for his lumbar spine?

A In my assessment of the records, that was my determination, correct.

Q All right. Now, you're aware that Aaron doesn't have a history of any sort of back pain prior to this crash.

A He gave me -- I asked that question and he said he had no history of any back or neck problems before the motor vehicle accident, correct.

Q Now, you're not here to say that Aaron going to the chiropractor or going to the medical providers such as Dr. Coppel or Dr. Muir, that he did anything wrong in seeking out the care, true?

A True. And I mentioned that in my report.

Q Okay. And regarding this thought process of chiropractic versus physical therapy, is it your testimony that physical therapy provides substantial benefits over chiropractic care when treating the low back?

A That's a very good question and often misunderstood. You have overlap between the two subspecialties and how they physically approach a physical problem with the lumbar spine. There are some differences in that physical therapy will not employ the manipulation type training that a chiropractor has. My testimony is -- was today and has been in the past that they can be complimentary, if you will, but if you're sort of going down a road that's a dead end, eventually you've got to come back and pick a different path. So my commentary previously to put in perspective was that an advisor or the patient themselves and the acute

injury and medically appropriate can certainly choose chiropractic care, but up to a certain point that another discussion. It's not getting any better. Then you want to try to formulate a different plan of attack to help the patient. So in this case, physical therapy as opposed to the chiropractic care that wasn't helping.

Q Okay. So I'm going to just ask you, Doctor. Do you agree that the -- I just want to be very clear. The New England Journal of Medicine is a reputable source of information, correct?

A It can be.

Q Are you aware of any literature -- Mr. Gardner, I'm going to show this to the jurors. Are you aware of any literature that indicates that when they've actually -- they've compared physical therapy, chiropractic manipulation, and a provision of an educational booklet for the treatment of patients with low back pain. Are you aware of this study?

A That particular one? Maybe. I read stuff as stuff comes along, but the only comment I'll make about that is there is usually good information in their articles, although there have been scandals where articles have been debunked because of, unfortunately, payoffs and the articles have to be rescinded. But if you ask me to comment on any one of these articles, I can agree with you with whatever you highlight, but I would ask that you have to let me see the article to see the methodology upon how they came to the conclusion. But generally speaking, if you see something from the New England Journal of Medicine, it has usually gone through a pretty reasonable, rigorous screening, if you will, to hopefully state that that information is as accurate as it can be.

Q Okay. Do you agree that the conclusion here says, "For patients with low back pain, the McKinsey method of physical therapy and chiropractic manipulation had similar effects and costs and patients receiving these treatments had only marginally better outcomes than those receiving the minimal intervention of an educational booklet," true?

A So, again, when you say true, you're just asking me to confirm with you that what they wrote is what you're reading. My comment to you would be that: a] the New England Journal of Medicine does put out tremendously good information; and that b] you have to look at the methodology and the subject population. I.e. in the orthopedic literature we generally separate out worker's compensation patients from patients who have sports injuries or other issues. You have to separate out legal cases, people who have legal cases pending. That's also well known in the literature, that you have to separate them out. There's a different population of patients. So I agree you're reading what you're reading there correctly, but you have to see the methodologies of that particular study to know what the subject group was and whether it applies to Mr. Morgan here.

Q Okay. Talking about litigation before we get to this, are you aware of any articles from The Spine Journal that actually indicate -- and I'm happy to provide you a copy of this so you have it moving forward. And again, this is The Spine Journal. And the title of the article is Radiofrequency Medial Branch Neurotomy in Litigant and Non-litigant Patients with Cervical Whiplash. The conclusion is these results demonstrate that the potential for secondary gain in patients who have cervical facet arthropacy [phonetic] as a result of whiplash injury does not

influence response to treatment. Do you agree with that statement?

A Again, you'd have to give me that article in perspective, whether it's what the peer review commentary was. Most articles will have commentary on the part of other neurosurgeons or orthopedic spine surgeons in that same journal where I'll read an article and say, "Wow, this looks great. This is good information." And then I read the commentary and I find they could 100 percent agree or disagree. So when you quote a fact from The Spine Journal, which has been going on for decades and there's more than one Spine Journal. There's tons of information that comes out every month. You're asking me to comment on one article. It could easily be perfectly in context or out of context, so I have to apologize.

Q Are you a subscriber?

A No.

Q I am. Doctor, you agree that the conclusion in this Spine Journal study indicated that after six months of follow up chiropractic care and medical care for low back were comparable in their effectiveness. Physical therapy may be marginally more effective than medical care alone for reducing disability in some patients, but the possible benefits is small.

A So, again --

Q And just for the record, the title is A Randomized Trial of Medical Care With and Without Physical Therapy and Chiropractic Care With and Without Physical Modalities for Patients with Low Back Pain, Six Month Follow-up Outcomes from the UCLA Low Back Pain Study.

A Correct. You read that correctly.

Q Okay.

A So now the reality is if that article -- and again, I'm not saying it's a bad article. It could be a seminal perfect article. But if that article is in fact so seminal and perfect, then would there ever be any other articles that would say anything else? The answer is yes. So for that particular article, again, not talking about the gals who generated it. The question is: a] subject matter, you know, who's involved; b] what was the level of -- we grade articles now, level 1 through 4, and the level 4 would be the -- I can't remember if I have it backwards, but I think level 4 is the best, 1 is the worst. And that goes to whether or not it's what's called a double blinded study.

In other words, are the patients aware of what the goal of the study is. Are the doctors performing the evaluations of the study. So when we see something like that, that's always good important information. It's definitely useful. It goes into the bank of information we have. Coming from the spine, that's great. That's a good journal as opposed to what we call throw aways where you just get them in the mail for free as opposed to actively subscribing.

But again, to take one article and then you're going to base that. And then also please remember that we are here not discussing a general population. We're discussing a particular person. So if you have, like you mentioned, the car accident. Someone's in a car accident and they hurt their facet, my answer is, yes, absolutely. But once the accident is over and we start collecting our data, you're now talking about that person. You're not talking about a patient population. You're just talking about that person. So in this particular case it does indicate that physical therapy -- in this particular article, physical therapy may have some benefits, but I didn't

testify to say somehow physical therapy is a substitution or better than chiropractic care.

Q Okay. I understand.

A I simply said that you have two roads to take and if this road is a dead end, well, it would make sense to try the other to see if we could get some improvement.

Q Okay. Fair enough. I just wanted to make sure that you weren't being critical of Aaron for continuing to try the chiropractic.

A The only criticism, no, not of the patient, not at all, but I am critical of those that were guiding him that after months of something where he says I'm not better, you almost don't even have to be a doctor to say have you tried something else.

Q Okay. Now, with regard to the injections, you agree that you have previously testified that injections are at time reasonable in both the neck and back in terms of potential treatment and even diagnosis to help with the patient's symptoms.

A Correct.

Q You just don't agree that the injections in this case that Dr. Coppel was trying to narrow down Aaron's pain generator, you just don't feel that they were appropriate.

A Well, again, I haven't memorized the 70, 80 page report. My comments in those reports are very kind of detailed and I hope reasonable thought out as to how I say those things. I didn't just come off the top and say, oh, no injections. My comments are made about a logical approach to where you get to doing injections. And then when you do injections, they

should be as, if you will, a surgical stripe or approach as opposed to shotgun, meaning if I think it's at a certain level -- for instance, you were mentioning on the diagram there of 5-6 might be the area that could cause pain in the trapezium area, which was well described. But then you would inject those areas specifically to get a correlation. In other words, did the pain go away when I injected just that area as opposed to I injected three to six areas of the spine.

Q Okay.

A And also the differentiation between my muscles still might hurt and it's not my spine to begin with.

Q Okay. You testified earlier that the definition of insanity is doing the same thing over and over and over again, correct?

A Expecting a different result.

Q Expecting a different result.

A You could do the same thing over and over again.

Q Well, here's a little diagram or a chart that we've used, we've referenced. You agree that Dr. Coppel did not repeat the same objection expecting a different outcome, true?

A I'd have to specifically go back to the two he did which if you give me the dates.

Q Sure. I can walk you through them. August 8, 2014 he does a C6-7 T1-2 right sided medial branch block.

A Okay. Hold on one sec, please. August 8th he did one, two, three, yeah, he did four injections on the right side.

Q Okay. At C6 through 7, T1 through 2.

A Correct.
Q Now on March 20, 2015, he does medial branch blocks at C3 through 6, so different levels, true?
A Hold on one sec, please.
Q Right sided again.
A Just looking for the date. Hold on.
Q That's okay.
A Correct. He did right side injections, four injections at upper levels.
Q Okay. Then next on August 28th he does injections in the thoracic T3 through T6, correct?
A Hold on. August 28th. Sorry, what date? August what?
Q 28th.
A August 28th.
Q 2015.
A Yes. Sorry. Okay.
Q And then you agree that on October 16 he receives medial branch blocks in the lumbar spine, so the focus kind of shifted to the lumbar.
A Correct.
Q And then medial branch blocks September 15, C5 through 7, correct?
A What year?
Q 2016. Oh, yeah, sorry. You didn't review those. Never mind. So, Doctor, fair to say that on the --
A My notes end September -- actually, June of 2016, sorry.

Q Okay. Fair to say, Doctor, that in the treatments that we've just reviewed, those were not identical treatments, correct?

A We could go look. Are you misquoting my report? Because my comment about doing the same thing over and over again I thought was related to chiropractic care, not to Dr. Coppel's care.

Q Oh, okay. Do you have criticism of Dr. Coppel and the treatment that he gave?

A Well, I commented on that in terms of that I felt that the lumbar spine injections were not related to the motor vehicle accident. And then I had also commented on about how you would approach the cervical as well.

Q Okay. Let's take the motor vehicle accident all the way out of the equation. We're not here to talk about causation. Take it all the way out of the equation. Dr. Coppel is a treating physician trying to figure out what's causing Aaron's pain. Do you have any criticism of the way that he went about that to try and systematically try and figure out what is generating the pain?

A Well, in general, again you're asking me to look back on something. You're actually asking me a hypothetical about a situation that doesn't exist. So given that backdrop, a hypothetical about a situation that doesn't exist, a patient that comes to see me with neck pain. The idea would be for me to examine and take a history of the patient and determine if there should be any cause for them to have any neck pain.

Q I'm not talking about causation. I'm not talking about causation.

A Well, you're asking me how I would evaluate a patient who wasn't in a car accident.

Q We're disregarding medical legal causation. We're just trying to figure out what the pain is.

A I understand, but when I see a patient it's a person with a set of symptoms and there is a potential ideology. And that speaks very loudly, especially in the spine, as to why the patient hurts and where they hurt and how we can correlate with their anatomy. The spine is very challenging in terms of correlating what we see on images to actual physical. And then when you do something to the spine, unfortunately we sometimes don't get the results we like when you compare outcomes to other parts of the body from a surgical perspective. So I don't know how you can divorce that because you're asking me to just take some simple set of facts of, oh, you have this piece of paper, an MRI with a disc, what do you do? Well, I might do nothing because you need to treat the patient, not the paper.

Q Do you agree that Mr. Morgan received some benefit from all of the injections you reviewed?

A I don't know about all. In my report, I commented that when he -- well, first I commented he didn't get better from the objections for any substantial length of time. And then when it was recorded on some of them, not all of them, that he had some post-procedure improvement, it's very important to understand that when people get injections for the low back and the neck, I've had one, so they're not pleasant, but -- and especially if you do it without any anesthesia at all. And in theory you're supposed to do it without any anesthesia. And when you do it with anesthesia, then it's difficult sometimes to make an "interpretation" because Propofol, which is usually the drug of choice frequently. In this case I didn't get the anesthesia

reports as to what drugs were used specifically, but certainly they can have a very positive effect on how you feel in the aftermath of the injection, aside from whatever the injection does or doesn't do.

Q Okay.

A So that's important data also.

Q Okay. Doctor, my question was very pointed, very direct. I appreciate all the additional information you gave me. Do you agree with me that the injections that you reviewed provided at least some benefit to Mr. Morgan as far as as to what --

A Again, I don't mean to --

Q May I finish?

A Sorry.

Q -- as quantified by a reduction in his pain scores, post-injection, pre-injection?

MR. GARDNER: Object, asked and answered.

MR. CLOWARD: He didn't answer it.

THE COURT: Overruled.

THE WITNESS: So again, you're asking a "good question", but unfortunately there's more information that just says yay or nay. Specifically the first injection of 8A24, there's a pre-pain level of 7 and there's a reported post pain level of 3. However, the patient did receive IV sedation, so you can't really interpret that accurately as meaning anything in relationship to his symptoms getting better from the injection alone or with the sedation alone or a combination thereof.

BY MR. CLOWARD:

Q And you're not fellowship trained in pain management, correct?
A I do not -- you're talking I do not perform the injections, that is correct.
Q Okay. You're aware that Dr. Coppel is fellowship trained in pain management.
A I don't know if he's fellowship trained or has boards. I don't know.
Q Okay. Let me ask you a couple of questions, just hypothetically general questions. You agree that with regard to internal disc disruption it, in and of itself, can be painful, true?
A Correct.
Q You agree that internal disc disruption can occur with or without a protrusion or herniation, true?
A Correct.
Q You agree that it can be painful with or without a protrusion or herniation, true?
A Correct.
Q You agree that the very most accurate way to diagnose internal disc disruption is by discography followed by having a post disc OCT scan, true?
A Performed correctly, correct.
Q You agree that internal disc disruption is basically an annular tear or annular fissure that has pain or symptoms emanating from the fissure or tear, true?
A The nerves surrounding the disc, correct.

Q You agree that you don't always see an annular tear or fissure on an MRI, true?

A That can occur. That is correct.

Q You agree that discography is commonly used as one of the tools for the spine surgeon to determine if there's internal disc disruption and then try to isolate the pain generator, correct?

A Correct.

Q And you agree with this statement that back surgery is indicated if a patient complains that back pain and functional restriction that they perceive is adversely affecting the quality of their life and then two things: 1] the individual fails conservative care whereabout the conservative treatment will not bring about long-term symptomatic improvement or clinical improvement of their disc complaints; and 2] you have diagnostic evidence that strongly supports and isolates the pain generator, correct?

A Correct.

Q You agree that if a patient has severe pain, they have failed conservative management and you have tried to narrow things down and there seems to be a reasonable location of the pain generator and the patient understands the risks and complications, then surgery is an option, correct?

A That is the patient's option, absolutely.

Q And that's your opinion to a reasonable degree of medical probability, correct?

A Correct.

Q Now, regarding the credibility or dishonesty or honesty of a

patient, you have testified that you don't feel comfortable making a judgment about somebody's truthfulness from just one interview with a patient, true?

A To some extent, yes, true.

Q You're not here to tell these folks that to a reasonable degree of medical probability Aaron was lying to you, correct?

A Correct.

Q You're not here to say that the medical providers have lied in their medical charts, true?

A I'm not here to testify on the truthfulness of their reports.

Q You agree that not a single treating physician has indicated that they thought that Aaron was a symptom magnifier, true?

A Those words are not in any of the reports.

Q You agree that not a single one of his treating physicians indicated that they felt that Aaron had secondary gain, true?

A Those words are not in any of their reports.

Q And you said that secondary gain could be something to be considered, but you're not here testifying to a reasonable degree of medical probability on a more likely than not basis that Aaron in fact exhibited secondary gain behavior when you examined him, true?

A Specifically secondary gain, no, because it's more than just behavior.

Q Doctor, you agree that it is much more likely that a finding such as an annular tear is traumatic in a young 22-year old patient with no history of back pain prior to an inciting event then degeneration that spontaneously becomes acutely symptomatic.

A Correct.

Q So it's much more likely that if Aaron has internal disc disruption, annular tears that became symptomatic at the time of this collision, that the collision was the cause of those in a 22-year old rather than having them just spontaneously become symptomatic.

A So are you speaking hypothetically or he has annular tears?

Q He has annular tears, Doctor.

A Okay. I haven't seen those records.

Q Doctor, I appreciate your time. Thank you.

**REDIRECT EXAMINATION**

BY MR. GARDNER:

Q Doctor, have you changed any of your opinions based upon that cross-examination?

A No.

Q Okay. Your opinions in the report, you still stand by those, correct?

A Correct.

Q Would an acute annular tear be symptomatic, painful, immediately?

A The thinking is is that an acute annular tear from an event or a trauma should be extremely painful and a red letter date in that person's history if it, in fact, is sort of the first time something happened to them. The lumbar spine is extremely deep in the body surrounded by at least -- depends on how you want to divide them -- at least three to four levels of muscles that are around the outside of the spine to help control it. And

some of them are short. Some of them go over longer distances. You then have -- underneath the muscles, you then have ligaments that connect one vertebral body to the next and then some will jump to cover three or four at a time. And then you have just the integrity of the disc and the bones themselves. So for someone to suffer an annular tear acutely from a trauma, one would expect a fairly high amount of energy then must be transmitted to that body in order for that to be an acute anatomic derangement in that patient's spine.

Q And based upon the records that you have reviewed, is there any evidence of an annular tear in Mr. Morgan?

A Well, from a clinical perspective, the onset of an annular tear from that motor vehicle accident, especially with a history that says I'm fine, I'm physically active, I can do anything I want, I would say it would be negligible, close to 0.

Q Okay. Have these opinions been stated to a reasonable degree of medical probability?

A Yes.

Q I would --

MR. GARDNER: Your Honor, I'd move to admit his report. I don't have the --

MR. CLOWARD: It's hearsay, Your Honor. Those are never admitted, I mean.

THE COURT: Okay. Counsel, approach.

[Bench conference begins at 12:24 p.m.]

MR. RANDS: I won't speak for Mr. Gardner, but I know

[indiscernible] .

MR. CLOWARD: It's hearsay.

THE COURT: Okay.

MR. GARDNER: He's already testified to it and read it in the record essentially, so.

THE COURT: That's fine. Thank you.

MR. CLOWARD: I just have a couple of follow up.

[Bench conference ends at 12:25 p.m.]

THE COURT: Good.

MR. CLOWARD: My understanding is the request to have that is withdrawn.

THE COURT: No, it was withdrawn, so go ahead, Mr. Cloward.

**RECROSS-EXAMINATION**

BY MR. CLOWARD:

Q Okay. Now, Dr. Sanders, are you aware that Dr. Andrew Cash, a spine fellowship trained spinal surgeon, testified to a reasonable degree of medical probability that he felt that it was 99 percent that the tears that he saw in Mr. Morgan, to a 99 percent confidence were caused by this collision. Are you aware of that?

A No.

Q Now, you're not a member of the North American Spine Society, correct?

A Correct.

Q You're not a member of the International Spine Intervention Society, correct?

A Correct.
Q You're not a member of the International Association for the Study of Pain, true?
A Correct.
Q You've never performed a neck fusion as the lead surgeon, true?
A Correct.
Q You've never performed a thoracic spine surgeon as a lead surgeon, true?
A Correct.
Q You've never performed a lumbar spine fusion as the lead surgeon, true?
A Correct.
Q You do not have privileges and never have had privileges to perform any spine fusion surgeries at any hospital ever a day in your life, true?
A In practice here in Las Vegas, correct.
Q You do not perform discographies tests, true?
A Correct.
Q You do not perform injections as far as transforaminal or selective nerve root blocks or facet blocks or medial branch blocks.
A Correct.
Q And when you're hired to do forensic work, you are hired by the Defense 100 percent of the time, true?
A Almost 100 percent of the time.

Q No further questions.

THE COURT: Anything else, Mister --

**FURTHER REDIRECT EXAMINATION**

BY MR. GARDNER:

Q Doctor, do you need to be members of these societies in order to be able to render opinions on this case?

A No.

Q Why is that?

A Well, the purpose of all of these subspecialty groups to have their own societies are I think useful in terms of collegiality amongst those that practice within that particular field. Also, I think it advances education in that they promote certain things related to their subspecialty. So in the spine you'd have these groups would sometimes promote meetings and then there's questions had and hopefully more research comes out of it to answer common questions or questions we can't answer. So being a member of these societies are useful for the collegiality of those that are doing spine surgery. And then again, some societies you may have to have specific qualifications. Others may just require sending in a check.

Q Okay. There was some discussion about you not being the lead doctor on some of these procedures. Do you need to be the lead doctor to be able to testify as to what -- as you did today?

A Well, that's absolutely -- no, you don't have to be. I've participated in a tremendous number of spine operations during the course of my long training. And I don't do anymore, but in the nineties when I came to town, the first few years I would participate in some spine surgeries,

especially if they were my patients that I had referred over to a spine surgeon for, you know, I had already worked them up and then now it came down to unfortunately a procedure to be done. But, as I mentioned earlier, I'm not testifying as a spine surgeon. And what I've testified to here has nothing to do with what a spine surgeon does or doesn't do.

Q Okay.

A I've testified to someone complaining of back and neck pain and how we address them orthopedically.

Q Thank you. I don't have any other questions.

THE COURT: Do we have any questions from the jury? No? Thank you, sir, we are free to go.

All right, folks. We are going to go ahead and break for lunch. During this break you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, read, watch, or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including and without limitation newspapers, television, the internet, and radio or form or express any opinion on any subject connected with the trial until the case is finally submitted to you. I'll remind you not to do any independent research. We'll come back at 1:30.

[Jury out at 12:29 p.m.]

THE COURT: Do you all have any additional witnesses or is that your last witness, Mr. Gardner?

MR. GARDNER: What was that?

THE COURT: Is that your last witness?

MR. GARDNER: Yes.

THE COURT: All right.

MR. GARDNER: It is.

THE COURT: So when we come back we'll be -- do you have any rebuttal witnesses, Mr. Cloward?

MR. CLOWARD: No.

THE COURT: Great. So when we come back you'll formally rest, we'll read jury instructions, and do closings.

MR. BOYACK: We have one thing.

THE COURT: All right.

MR. BOYACK: On the verdict form we just would like the past and future medical expenses and pain and suffering to be differentiated.

THE COURT: Yeah. Let me see.

MR. BOYACK: Just instead of the general.

THE COURT: That's fine. That's fine.

MR. BOYACK: Yeah. That's the only change.

THE COURT: That was just what we had laying around, so.

MR. BOYACK: Yeah.

THE COURT: So you want -- got it. Yeah. That looks great. I actually prefer that as well.

MR. BOYACK: Yeah. That was the only modification.

THE COURT: That's better if we have some sort of issue.

MR. BOYACK: Right.

THE COURT: All right. All right, folks.

[Recess at 12:31 p.m., recommencing at 1:31 p.m.]

THE COURT: We're on the record already?

THE CLERK: We're on the record now.

THE COURT: Okay. So we're just going to note the Defense objection to instruction number 26, which is an instruction relating to my prior ruling on the motion for summary judgment. And as I understand it, the Defense is not objecting to the accuracy of the instruction, but just the decision that led to the instruction.

MR. RANDS: That is correct, Your Honor, and I just wanted to preserve that for the record.

THE COURT: All right. Anything you want to say about that, Mr. Cloward or Mr. Boyack?

MR. CLOWARD: Just to note that there's been no offer of proof as to what Dr. Sanders would have testified to. He didn't have the opportunity to review those records. He formulated no opinions regarding that, so to the extent that the instruction or the prior ruling is not appropriate, there's been zero evidence submitted to the factfinders that the wrists were not injured, rather the record has indicated that they were. And therefore, you know, we would move -- I mean, if the Court had not already ruled, we would be moving for a directed verdict on that issue right now, but since the Court's already ruled, then we don't need to move for a directed verdict on that issue.

THE COURT: All right. Anything else we need to take care of before we bring the jurors in?

MR. GARDNER: No, Your Honor. Thank you.

MR. CLOWARD: Is there anything you've shown the jurors

that's not been admitted?

MR. RANDS: Did they --

MR. CLOWARD: Yeah, that's not admitted.

MR. RANDS: Okay. I didn't know whether he admitted it. I wasn't here yesterday when they did it, so I don't know if --

MR. CLOWARD: Just remember that since you are arguing.

THE COURT: Do you want to check and see what -- do you have a question about what's admitted?

MR. CLOWARD: Yeah. Why don't we go through the list of exhibits.

THE CLERK: Number 3, number 4, number 6, number 7, number 9, number 10, number 11, number 26, and number 30.

MR. RANDS: What was number 26?

THE CLERK: Number 26 is the Defendant's Answer to Plaintiff's Complaint.

MR. RANDS: Okay. Yeah. So those are not into evidence.

THE COURT: All right. So are there any additional exhibits that need to be admitted?

MR. CLOWARD: No. I mean evidence is closed. Our position would be no more evidence could be --

THE COURT: They haven't rested yet.

MR. RANDS: We haven't rested yet.

MR. CLOWARD: Okay.

THE COURT: And we haven't instructed the jury, so if everybody agrees, certainly we can admit something.

MR. CLOWARD: We would object. We don’t' agree unless they call a witness to authenticate or something.

THE COURT: All right, Mr. Cloward. I don't even know what they're -- I'm just saying if everybody agrees if there are any exhibits that didn't get admitted, I will admit them. If we don't agree, then I'll deal with that.

MR. RANDS: So could you run by that list just one more time?

THE CLERK: Sure, 3, 4, 6, 7, 9, 10, 11, 26, and 30.

MR. RANDS: So Dr. Muir's records were not admitted also? 12?

THE CLERK: 12 was not admitted.

MR. RANDS: Okay. Not Dr. Muir's records either.

THE COURT: All right. So is either side at this point requesting to admit any additional records that weren't entered?

MR. RANDS: I would like to admit the photo of number 23, but I don't have a witness and if there's no agreement, that's --

THE COURT: Mr. Cloward, how do you feel about admitting the photos in Exhibit 23?

MR. CLOWARD: We object, Your Honor. We don't --

THE COURT: All right.

MR. CLOWARD: There's no witness to admit them. And, Your Honor, I would also like to point out these are our exhibits. The Defense did not propose a set of exhibits. These are ours. They didn't join in this set. This is the Plaintiff's set.

THE COURT: They can propose to have an exhibit admitted if

it's proposed by either side.

MR. RANDS: Yeah.

MR. RANDS: But the overview of the scene, the Google Map thing was admitted, correct?

THE COURT: No. The only photos that were admitted were the photos of the car.

MR. BOYACK: Yeah, they weren't admitted. They was just used on the --

THE COURT: It was used as a demonstrative. Obviously since everybody has used it as a demonstrative, I don't have any issue with you using it in closing.

MR. BOYACK: I'm going to use it as a demonstrative in my closing then also.

THE COURT: Yeah.

MR. RANDS: Okay.

THE COURT: Okay. Anything else we need to take care of?

THE MARSHAL: Please rise for the jury.

[Jury in at 1:38 p.m.]

THE MARSHAL: Please be seated.

THE COURT: We're back on the record in case number A-718679, Morgan vs. Lujan.

So, does the Defense have any additional witnesses?

MR. GARDNER: No, Your Honor. We'll rest.

THE COURT: All right. Any rebuttal?

MR. CLOWARD: No, Your Honor. We rest.

THE COURT: Okay, folks. So you all have a copy or should be getting a copy of the jury instructions which I will read to you.

[The Court read the jury instructions to the jury.]

THE COURT: Mr. Cloward.

MR. CLOWARD: Thank you, Your Honor. May I have just one moment to set up here? It's been a long one. It's been a long one. This is my favorite part of the case because this means that the case is pretty much over. We get to go home and rest and relax a little bit.

When I was a little kid, I grew up in Utah, I remember one time one summer we had an old Astro van, the kind with the door that opened to the side, front bucket seats. And we were going on a family vacation. We were going down to Bryce Canyon. I was about 7 or 8 years old and I remember listening -- this is before ipods -- to an old Walkman. Remember the yellow Walkmans? I was listening to a tape of Don Williams, Good Old Boys like Me. Listening to that and we get down to the hotel and we were always as little kids excited about the souvies, souvenirs, things that you could get on vacation.

And I remember in that instance there was a shop next door to the hotel. I walked into the store and I had, you know, 20 bucks or however much a seven or eight year old kid has. And I was looking around and looking for the perfect souvenir. And I bumped the table and a figurine fell off the table onto the ground and broke. And immediately the store manager came over and he said, "Hey, you break it, you buy it." And I started to plead my case. "But I didn't mean to." My father walks over and kneels down and says, "Look, we need to have a discussion." We had a discussion

and I tried to plead my case. I said, "But, Dad, I didn't even want that. But, Dad, the figurine was too close to the side of the table." But, but, but all of these things.

My father just said, "You know what? Until you walked in there and bumped it, that figurine was just fine. You're the one, Ben, that walked in there and bumped it. You're the one that caused the damage. The store owner didn't do anything. It's not his fault. Why would it be fair for him to bear the burden of this?" So reluctantly I went and paid for the figuring. I told the shop owner I was sorry.

Well, in this case, they haven't even gotten to step one, which is to tell Aaron sorry. Still today on the -- what is it now, the sixth day of trial? I anticipate Counsel is going to stand up in five minutes, ten minutes, however long I take, and they're going to point the finger at Aaron. They're going to point the finger at Aaron despite the fact that when Erica Janssen, the corporate representative, took the stand, she didn't even know whether the driver had a stop sign. Yet they're still here contesting liability. They're still here trying to blame Aaron. They're still here trying to blame some third party.

When I asked Ms. Janssen, "Who's this mysterious third party that you guys have been blaming for the last four years?" "I don't know, but Dr. Baker is going to come and tell you who that person is." It's just to throw whatever they can against the wall to see what sticks so that they don't have to be responsible.

You know, when we talked to Ms. Janssen and said, "Did you even know at the last trial in this case that your driver, when he took the stand

and talked to the other set of jurors that had to take time out of their life to come down and listen to this case, did you even know that your driver told those jurors that he didn't blame Aaron?" "No, I didn't know that." "Did you know that your driver said that Aaron did nothing wrong?" "No, I didn't know that."

Yet still today I would imagine in about 10, 15 minutes, they're going to get up and they're going to continue to point a finger at Aaron. They're going to say, "Well, you know what? He should have reacted differently. He should have -- you know, he had time to react. This was a big bus."

Well, let's look at the numbers. Let's look at the calculations in the case because it's important. Dr. Baker testified. Remember what he said? Average human reaction time, setting aside whether the person is startled, nervous, upset, anxious, emotional, under, you know, like worried. Set all that aside. The average perception reaction time for anybody who's placed in an emergency situation where they're required to brake, 1.5 to 2.5 seconds. And then in addition to that, he said and then once you add the startling, once you add the surprise, once you add the emotion of the event, then you add on anywhere from .2 up to a second. So now the 1.5 to 2.5 goes from 1.7 to potentially 3.5.

You might ask, well, why is this important? Why is Mr. Cloward talking about perception and reaction time? The average road width is about 11 feet. We know this took place in the third road or the third lane. So Mr. Lujan had to travel 3 lanes of travel, 33 feet. How long would it take to get 33 feet? It's basic math. 5,280 feet in a mile. Divide that by 60. If it's 1 mile per hour, divide that by 60 to find out how many feet you would go in

1 minute. Then divide that by another 60 to find out how many feet you would go in a second. That's 1.44 feet per second at 1 mile an hour.

So why is that important? Well, if you take 1.44, times that by 10 miles an hour, which is what Dr. Baker said the bus was going, is 14 feet per second. 1.44 times 15 seconds, 21 feet per second. Aaron had 1.5 or 1 to 2 seconds to react. So in the 1 to 2 seconds to react, the bus basically is traveling anywhere from 14 to 30 feet or 14 to 20 feet in 1 second. In 2 seconds, it's 30 feet to 40 feet. So they're going to get up and they're going to say, you know, Aaron, he had time. He should have this. He should have that.

Well, guess what? He didn't have time. And that's what, number one, the science shows. And that's, number two, what the two witnesses to this event have testified, that he didn't have time. He didn't have time to react. He's driving around the road trusting that Mr. Lujan is going to follow the rules of the road like everybody else. That this company transporting our elderly members of the community is going to follow the rules of the road. Aren't we lucky that there weren't other people on the bus? Aren't we lucky? But you know what? It's his fault apparently and that's what you're going to hear in about ten minutes.

So when you are asked to fill out the special verdict form there are a couple of things that you are going to fill out. This is what the form will look like. Basically, the first thing that you will fill out is was the Defendant negligent. Clear answer is yes. Mr. Lujan, in his testimony that was read from the stand, said that Aaron had the right of way, said that Aaron didn't do anything wrong. That's what the testimony is. Dr. Baker didn't say that it

was Aaron's fault. You didn't hear from any police officer that came in to say that it was Aaron's fault. The only people in this case, the only people in this case that are blaming Aaron are the corporate folks. They're the ones that are blaming Aaron. So was Plaintiff negligent? That's Aaron. No. And then from there you fill out this other section. What percentage of fault do you assign each party? Defendant, 100 percent, Plaintiff, 0 percent.

Jury instruction number 28. You might be asking, well, why are they still here if the driver said it wasn't Aaron's fault. The police officer never came in and testified to that. Dr. Baker never testified to that. Why are they still here? Jury instruction number 28 is why. Jury instruction number 28 says the percentage of negligent attributable to the Plaintiff shall reduce the amount of such recovery by the proportionate amount of such negligence and the reduction will be made by the Court.

What does that mean? They want a discount because if you find that Aaron's 50 percent at fault, but you find that all of the treatment was related to this crash, it reduces the amount. They get a discount. That's why they're still pointing the finger at third parties that we've never heard anything about because they hope that it will get traction and that you will agree with their side of it, even though the driver and everyone else said that it was not Aaron's fault.

What else have we heard? What else have we heard? Well, the very first thing that you heard from Mr. Gardner was that this was a big conspiracy. That the doctors are in on it, the lawyers are in on it, Plaintiff's in on it. I believe his words were something along the lines of this is a great way for doctors to pad their pocketbook. You're going to hear evidence that

every single one of the doctors was referred by the Plaintiff's lawyer. Was that in the evidence? That wasn't in the evidence.

You also heard that at the time Mr. Gardner, the Defendant's lawyer, deposed Aaron they had all of the medical records. They had the medical records. They know what's in the medical records. It's not like it's a surprise that all of the sudden for the first time I'm pointing out, hey, guess what? You see this referral from the urgent care to Dr. Grabow? You see this referral from Dr. -- or from the urgent care to Dr. Coppel? That's been in the records for four years. And if it's been in the records for four years why are you coming into Court and trying to convince jurors, trying to precondition them against Aaron? Because that's the whole attack. That's the whole case. The whole case is, you know what? Aaron's not worthy of consideration. He's not worthy of a verdict. He's lazy. He hasn't had any great jobs with benefits and things like that. He works at Smith's. He works at Subway, so he's a bum. You shouldn't consider him as a human being. He lives in his basement.

In the opening statement you heard about the mythical basement. He doesn't even have a basement. Yet three or four times you were told Aaron lives in his basement with his girlfriend. Aaron lives in his basement with his girlfriend. I don't have anything against Aaron, but you're going to find out that he lives in his basement with his girlfriend. That's what you were told over and over. What does that have to do with anything other than wanting you to see Aaron in a certain light?

Just like Dr. Baker or Dr. Sanders. Dr. Sanders takes the stand and says, "Well, you know, there are these unusual exam findings. You know,

Aaron was doing this and Aaron was doing that and, you know, it was just unusual." Okay, Dr. Baker. I can see, yeah, you think those things were unusual. Why don't you allow people to videotape the examination so that the jurors can see exactly what happens in the examination room, right? If you don't have anything to hide why not allow somebody to videotape the examination? Well, you know, I don't want it to be twisted. How could it be twisted? If that's what happened in the examination room, then that's what happened in the examination room. But instead he comes here and he testifies that Aaron is acting unusually and doing these things and it's Aaron's word against his word. Aaron has no way to prove it. He has no way to prove it. Why not allow it to be videotaped?

You know, another thing that I thought a lot about is why not have a neuroradiologist come in here and have you guys and show you folks and explain that what is on this is not actually in Aaron's back? Why not? They hired Dr. Baker. They hired Dr. Sanders. Why not bring somebody in and explain these tears? Instead, they don't even show Dr. Baker this information and they pick somebody that doesn't even do spine surgeries. That's a whole another question.

Jury instruction number 17. This is a witness who has special knowledge, skill, experience, training, or education in a particular science, profession, et cetera. The second sentence, "In determining the weight to be given such opinion, you should consider the qualifications of the expert and the reasons given for the expert opinion. You are not bound by such opinion. Give it weight, if any, to which you deem entitled."

So what does that mean? That means that you get to consider, you

should consider why they bring somebody that doesn't do any spine surgeries, never has done one as the lead surgeon a day in his life, yet this is a spine injury case. That'd kind of be like if, you know, your car was broke down and you wanted a mechanic to come in and give some opinions, but instead of bringing the mechanic in, you bring in a plumber. A plumber can fix things too. A plumber can fix things, but why not bring the mechanic?

You know, at the first of this case in openings Mr. Gardner suggested that we were going to try and portray Aaron as some choir boy. We were brutally honest with Aaron and with you. And Aaron took the stand and said things about his past that are not comfortable. They are downright embarrassing. But we promised to be brutally honest with you just like you are brutally honest with us.

Another thing I thought about before I get to the damages, but I thought about, you know, what if this were a case about a building? What if the Defendant driver had run into the side of a building because he wasn't paying attention, he didn't look both ways, he ran a stop sign, ran into the side of a building. And after running into the side of the building the sprinklers go off, the electricity starts to blink. And so everybody comes down and they start to do the repairs. They get the sprinklers figured out. They get the electricity figured out. And then three weeks later the building owner says, "Hey, you know what? I just noticed this, but there's a crack in the foundation."

Do you think we would allow the shuttle bus company to come in here and say, "Well, you know what? Sorry. Sorry. You know, first time it's documented in the records is three weeks later. Sorry. It's really

coincidental. Yeah, I know that it's really coincidental that the bus driver hit the side of the building and now there's a crack in the foundation. Sorry that you didn't find it the first time you looked. Sorry about that."

When I asked Dr. Sanders, I said, hey, let's talk about internal disc disruption. Let's talk about annular tears. Do you remember how surprised he was? He says, "Oh, is there an annular tear?" They hadn't even told him that. They hadn't even told him about the pathology here. And then I asked him. I say, "Well, Doctor, what is more likely, that a 22-year old kid has annular tears caused from a traumatic event or that just spontaneously around the same time they just spontaneously show up and become symptomatic? Which one is more probable?" And he says, "Well, it's more probable that the trauma would cause that."

But they're going to try and argue. In a few minutes they're going to try and argue that, you know what? Dr. Sanders, he said that these didn't show up for a little while later and so they're not related. It's just a big coincidence. We know that it's a big coincidence, but, you know, trust our doctor. Trust him. The one doctor out of every single one that for some reason just couldn't remember how much he got paid in this case. Isn't that interesting? Every other doctor knew exactly to the penny, but for some reason Dr. Sanders, he just couldn't remember, couldn't remember. And when you discuss the jury instruction on experts, that's something that you get to consider.

So I want to talk a little bit now about the medical bills. We've gone over this ad nauseum. I know that everybody has been paying attention because there have been great questions that have been asked by each

one of you. And so I'm not going to go super deep and spend a bunch more time. I just want to point a couple of things out.

The medical bills in this case to date are $248,650. And that's for the injections. That's for the plasma disc decompression. That actually includes into that amount the surgery by Dr. Coppel and the Surgery Center for the wrists that's already been determined by the Court. You're instructed on that issue. There's also future care and I want to talk a little bit about future care.

You remember Dr. Cash and Dr. Muir both talked about future care. Dr. Muir talked about the physician care, ancillary medical care, diagnostic testing, medications, and then lumbar surgery. Lumbar surgery, 29 years old. The reason that we put that number is, as you recall, when Dr. Muir was on the stand and Dr. Cash, both of them testified to a reasonable degree of probability that this plasma disc decompression, it's like a big Band-Aid. It's going to buy him some time. He's 25, 26 now. It's going to buy him a couple of years. But both of them testified with this type of injury, with this and this, he's going to have to have the surgery. There's no question about it.

And the one thing that confused me was they criticized Aaron in the opening for not mitigating his damages. That means you're not doing enough to get better. But then in the next sentence they said, "But you know what? He didn't rush in and get this surgery." And they're criticizing him for not getting this surgery. Well, who wants to go in, rush in and have this? You know, who wants to rush in and have this? And if Aaron had rushed in and done this at age 22 after three or four months of therapy, you

might start to wonder, like what is going on here. But instead of rushing in and having this surgery, Aaron, he's tried to put up with it. He's tried to put up with it.

And finally it got to the point where he just said, "You know what? I can't do it anymore. I've got to go get it done." And it gave him relief fortunately. How long will that last? Up to three years. Dr. Muir and Dr. Cash both testified it will give him anywhere between one to three years. And then what's going to happen is he's going to have to have this surgery, the fusion surgery, where they basically go in and they put rods right here and plates, or excuse me, plate right here, rods right here, rods right here, a plate right here. They're going to fuse this level and they're going to fuse this level. And what is that going to do? That's going to put pressure on this disc that's already torn. That's going to put pressure on this. It's going to put pressure on this. So the two good discs that Aaron has, now you're going to start to put pressure on those.

And so that's when Dr. Cash was talking about this phenomenon called adjacent segment breakdown, adjacent segment disease. It's like if you have a spring and the spring takes pressure. And you pinch off two of the coils on the spring. Well, now what happens is the level above, the level below, that spring now has to absorb that pressure that once the whole thing was taking on was allowed to do.

And so Dr. Cash said, he said, "Look, in 17 years it's guaranteed, 17 years Aaron will have to have another lumbar surgery," so at age 46. And Dr. Cash, if you remember when he explained that, he said, "Look, we know from longitudinal studies that 3 percent each year, so the first year 3 percent

of people that have this surgery, the very first year, the very first year 3 percent of them are going to have that surgery. In the second year, 6 percent of them are going to have it. In the third year, 9 percent. In the fourth year, 12 percent, and so forth, up to 51 percent, which is 17 years." Dr. Cash and Dr. Muir said, look, but the fact is that Aaron, because he's got two levels, he's going to degenerate faster. He's going to degenerate faster. He's going to have to have revisions. He's going to have adjacent segment breakdown. And he's going to have additional surgeries.

So if you look, if he had one at 46, he had one at 63. He's not going to have one at 80 because the life expectancy doesn't go that far, so you back that number out. But when you think about this and the amounts, asks yourselves, because you get to consider the instruction says you may draw reasonable inferences from the evidence which you feel are justified in light of common experience. Okay. Does it make sense that if somebody fuses these two levels that it's going to break down and you're going to have additional problems? Do we all know that once you start cutting into the back it leads one surgery to the next surgery to the next surgery.

The other thing to consider is this. We talked a lot about this in voir dire. We talked about how comfortable people feel providing thinking about somebody else's future into the long future. And the reason that that's important is this is the only opportunity that Aaron has to prove his case. This is it. If things go horribly south, if a year from now he has this surgery and he ends up with complications, he ends up in the ICU, he has a stroke, and he's on a ventilator 24 hours a day, he doesn't get to come back and ask you folks for more money. That's not the way that it works. This is the

only opportunity. This is it. This is it.

So this compensation, when you think about it, this is to fix things that Aaron is going to have into the future that were thrust unnaturally upon him. He had no choice in this matter. His health was taken from him. We don't like to have things taken from us. We don't' like to have things taken from us. Well, guess what? His health was taken from him. So when you think about the money, when you think about his future, when you talk about his future, I want to point out a couple of things.

Thirty-eight years ago in 1980, the average gallon of gas was 88 cents, 88 cents a gallon. The average home price was $68,000. Twenty-one years ago, 1997, the average gallon of gas is $1.29. The average home price was $146,000. Four years ago, average gallon of gas was $3.70. It actually was higher than it is now. Today it's $2.57 on the national average. But the average home price was $287,000. The average home price has actually gone up. So you think about the money and into the future, well, you have to consider that as well.

The last thing that I want to talk about is this concept, pain and suffering. This is the hardest part of the case because this deals with the human loss. This stuff, that's money that will go to pay a medical provider to render services for Aaron and it is great. It is great. It is very great because it helps him. It helps him get the things that he needs done, but that goes to someone else. Pain and suffering is to address what was taken from Aaron.

And during voir dire somebody asked, well, why do we allow that. There was discussion, why do we allow that. When you look at the way that it used to be back in the Biblical times, and unfortunately, some societies,

they still do this. If you read the Bible, it talks about that if you dig a pit and your neighbor's ox falls into the pit, you have to pay them for that. That's dealing with property. The way that they dealt with personal injury though, if you hurt someone, it was eye for an eye justice. If you did something dumb and you poked out your neighbor's eye, guess what? You got yours poked out too. Eye for an eye, tooth for a tooth justice. That's the way that it used to be to encourage people, hey, be careful out there. Be careful out there. So that's on one extreme.

True justice, true justice would be if there was some mechanism in the law that we could unwind this whole thing and give what's been taken from Aaron back to him, that would be true justice. If we could give him his 22-year old back back to make this thing not happen again, but unfortunately we can't do that. It's impossible. So do we turn a blind eye? Do we not have any justice at all? Do we just say, "You know what? Ladies and gentlemen, you can do whatever on earth you want to whatever other human being you want and there will be no accountability." Do we want no justice? Is that what our society wants is no justice or turn a blind eye to justice? We don't want that either. That's over on this extreme.

So instead we say we'll compromise. It's not eye for an eye and it's not blind justice. It's not tooth for a tooth, or excuse me. I'm getting them mixed up. On one end, it's eye for an eye. On the other end, it's turning a blind eye or no justice at all. You compromise and you hold people accountable for what they do. When somebody hurts someone else they come into court, they say sorry, and they try to make it right. That's not what's happened in this case. So when you talk about pain and suffering,

the way that it used to be back in the day, back in the old school days is basically you take the amount of the medical bills, whatever other losses there were, and you just times it by three. That's the way it used to be done in the sixties, seventies, eighties. You just times it by three. But that's not very thoughtful in my view. You guys can do it however you want to do it. It's completely -- you guys are the boss when it comes to this. The Judge isn't going to tell you how to do it. There's no definite standard. That's what the jury instruction says. You guys get to do it however you want.

This is my proposal. This is my suggestion. Imagine you're on the computer and you see an ad. And in the ad it says, listen, we're willing to pay X amount per hour for a willing candidate. You've got to be 22-years old. You've got to be willing to have discs in your back torn. You've got to be willing to have all of the memories into the future affected. When you have a good memory and when you're in the moment of a very important time in your life, when you're having fun and you reach down and your torn back reminds you you've got a torn back, you've got to be willing to do that. You've got to be willing to have your health condition affect the way that you interact with the people in your life, with your wife, with your parents, with your children, with your grandparents, with your coworkers.

Your medical condition will affect the ability for you to sleep, how many hours of sleep you get. It will wake you up in the night. It will prevent you from going hiking. It will prevent you from running. It will prevent you from lifting weights. It will prevent you from doing the things that you love to do in life. And we're willing to pay you $5 an hour, $5 an hour. Who's going to sign up for that? What about $10 an hour? Think somebody would sign

up for that?

So when you go back and you thoughtfully calculate what would be reasonable, what a reasonable person, because the problem here is that Aaron didn't' sign up for this job. Aaron had no choice in this job. He was forced into it. His health was taken from him unnaturally. The consequence of the decision made by Mr. Lujan was thrust unnaturally upon Aaron.

So when you think about what is a reasonable amount for somebody and then you calculate the hours in the day, then you calculate his life expectancy of 52 years and you see, first off, figure out the amount, the hourly amount that everyone can agree upon. And then once you figure that out, once you say if somebody says, you know what? It'd have to be X amount. Otherwise nobody would ever agree to that. It'd have to be this high or it'd have to be this amount. Once you figure that out, then calculate the number of hours a day and the number of days a year and the number of years that Aaron has to live with this. That's what I propose is fair and just because that's the reasonable trade value for his condition right now.

Ladies and gentlemen, I'll have a moment at the end of this to talk to you again after the Defense goes, so this is not the last time, but the second time I talk to you is always much shorter. Thank you.

THE COURT: Mr. Rands.

MR. RANDS: Would it be possible to take a quick break before I start?

THE COURT: Sure. Folks, during this break, you're admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or to read, watch, or listen to any

report of, or commentary on, the trial or any person connected with this trial by any medium of information including, without limitation, newspapers, television, the internet, and radio, or form or express any opinion on any subject connected with the trial until the case is finally submitted. I'll remind you not to do any independent research. We'll be back in just a couple of minutes.

THE MARSHAL: Please rise for the jury.

[Jury out at 2:33 p.m.]

[Recess at 2:33 p.m.]

[Jury enters at 2:42 p.m.]

THE MARSHAL: Please rise for the jury. Please be seated.

THE COURT: Back on the record in case number A-718679. Morgan vs. Lujan. Record reflect the presence of all of our jurors.

Mr. Rands, whenever you are ready.

MR. RANDS: Thank you.

Ladies and Gentlemen of the jury, you're one step closer to being done, and I just want to take this opportunity to thank you for your service. We certainly couldn't do this without you. You know, one of our founding fathers once said that if he could the citizens in the jury box or the ballot box, he would choose it in the jury box, because it's that important. And it really is.

You know, I told you, or told some of you during voir dire that it's kind of difficult sometimes being the defense, because you always get to go second. And I told you that, and I said, now just remember that because in the trial there's going to come times like this where you say,

wait a minute, you know. They're a scumbag. They shouldn't even be here. I don't even know why we're here. But I told you you also need to wait until the end of the case to make your determination.

One of the good things about being the Defense is you never have to do anything because he's already told you everything I'm going to say, so I could probably just sit down. But I don't do that for my client, and also, because there are somethings that I want to clarify.

You know, Mr. Cloward says why are they here. And I wish I had a good story to tell you, you know, so that I could get you know like knocking something off. I don't have -- there just aren't any good stories about defense attorneys. You know, you don't have a good story where you can go into a store and say I saw him do it. You ought to punish him or something like that. You know there just aren't any good stories for the defense side, so I apologize that I can't give you a story from my youth although, I was born in Utah, too, but grew up in New York, so it was a totally different lifestyle.

The purpose of closing is to tell you -- he asked why we're here, and the easiest way is maybe just to put it on here. [Counsel draws on paper.] And again, I'm an attorney because I don't do math. But that's the number that they're asking you to give to Mr. Morgan today.

Where did I get that number? I've added up everything they've asked. I did that little math trick that they do where they say it's only $5 an hour for the rest of your life five times 24 times 7 times 52 times 50. And that's the number you get. They do that because they don't want to put the number up there and say, well look at that number.

They want to say that's only five bucks and hour. It's only two bucks and hour. You have to decide, but it's only that for the rest of your life.

And I'll get to that in a little bit. I want to go through a couple of things first before we get there. You know, Las Vegas is known as a gambling town. We who live in Nevada get a significant portion of our state income because of people that come here to gamble.

And I'm not saying a trial is like gambling, you know, but I am saying that I think that Mr. Morgan here's asking for a jackpot. And it's up to you to listen, remember the evidence that you've heard, apply it in a fair and rational manner and come up with a decision at the end of the case. And sometimes trial is like rolling the dice. But unlike a lot of our gambling games, there are things that you can remember and that you can -- that you've heard from the witnesses including Mr. Morgan.

I told you during voir dire that a lot of the case would come in under cross-examination, that it wouldn't be witness for witness. That they'd have more witnesses on one side than the other and that's usually the case because a lot of the defense cases come in through the cross-examination, through the cross-examination of Mr. Morgan, the doctors, and other witnesses. And you're entitled to take all of that.

Now the Judge has given you jury instructions. And there are some instructions that I think are so important I'd like to take a minute and go through. Instruction Number 4, and you've got these in front of you. You must not be influenced in any degree by any personal feelings of sympathy for or prejudice against the Plaintiff or the Defendant. Both sides are entitled to the same fair and impartial consideration.

Instruction Number 8. Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration the evidence your everyday common sense and judgment as reasonable people. You're not limited solely to what you see and hear the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in light of the common experience keeping in mind such inferences should not be based on speculation or guess. A verdict may never be influenced by sympathy, prejudice, or public opinion. You decision should be the product of sincere judgment and sound discretion in accordance with the rules of law.

I would submit to you that most of Mr. Cloward's closing argument was to get you to have sympathy for his client. Think of all the things he'd going to have to put up with. You know, he may be at a -- I mean, there's been no evidence that he's going to be a coma next week, but he said, you know, he -- if you don't give him money here today, he may go down and have to go to the hospital and be in a coma and he's not going to be able to come back to you and say, hey, give me more money.

That's why those instructions are put in there for the jury. And this is the one I was talking about in determining whether the proposition has been proved, you should consider all the evidence bearing on the question without regard to which party produced it. That's Number 11.

Instruction Number 17. A person who has special knowledge, skill, or training or education in a particular science, profession, or occupation may give an opinion as an expert to any matter which the

person is skilled. In determining the weight to be given to such opinion, you should consider the qualifications and credibility of the expert and the reason for the expert's opinion. You're not bound by such opinion. Give it the weight, if any, you deem it entitled.

I put this up because it's not unusual to get an argument like Mr. Cloward made. Well, if you take your car to an auto shop and there's a problem with your car, you don't ask the plumber to do it. A plumber can fix things but he can't fix a car. The implication is, well, you know, the orthopedic surgeon, Dr. Sanders isn't qualified to testify about things like this because he's a plumber and he's not a car mechanic. Well, he testified regarding his qualifications and you heard him testify, and you're entitled to give him whatever weight you feel it's important. And I'll talk a little bit about it in a few minutes.

Now we have to talk a little bit about the case. There are basically I think four areas you need to consider. First is liability. Now I'm not here to tell you that Mr. Lujan shouldn't have pulled out in front of Mr. Morgan. I mean, he did and he shouldn't have. But Counsel wanted to talk about distances and timing and everything and I just want you to remember Mr. Morgan's testimony when he was on the stand where he said, yeah, I saw him. He was stopped in the parking lot of the park. And, excuse me. You saw this, this map where it showed --

May I approach the?

THE COURT: You may.

MR. RANDS: Where it showed the park here, McLeod here and Tompkins. And he testified that when he was driving up to one, two,

three seconds before the accident, he saw the bus, the big bus sitting right here. And then he says the next thing he knew it was right in front of him. Well, this is where you're entitled to use your common sense, because he put the math in and he says math and physics and everything. If the bus is sitting there at a stop and he's traveling at, he said 30 miles an hour, using the same math as Mr. Cloward used, that would be by the time Mr. Lujan left here, he would have been somewhere over -- somewhere up here 120 feet away going 30 miles an hour. If he sees him, how is that bus -- if he sees it stopped, how is that bus going to get in front of him if he's even paying minimal attention?

And if you notice the car -- and we showed you pictures of the car, you can see where the damage to the vehicle is. It's right here. And he testified that he swerved to the right, slammed on his brakes to try and avoid it.

Now Dr. Baker was here yesterday and I apologize I wasn't here yesterday. And I apologize to you. I had another matter coming up and unfortunately when we're in trial our other things come up, and I had something I had to do. And I apologize for being missing Friday afternoon. It wasn't any attempt to make -- to do anything, you know, to you guys.

But Dr. Baker testified, and he testified that that sheet metal problem right here was caused -- he suspected by something in the neighborhood of five to ten miles an hour. And there was some questioning in cross-examination I understand on how many percentages of accidents could happen in this type of thing with this type of setting.

And there was some numbers thrown away about 60 percent . But if you remember those numbers, about 45-50 percent of those were really insignificant injuries and the injuries claimed by Mr. Morgan would be in the remaining amount which would be a very small number compared to the overall injuries in that chart.

So in any event, Mr. Morgan has testified truthfully that he ran into Mr. Lujan. And this is where you're entitled to use your common sense. Is it really that -- what he testified to, does that even make any sense physically? Did he really not have any time to see him and avoid him or was he going fast? He was going about 30 miles an hour he said. And he said that one or two seconds before, he saw Mr. Lujan stopped at the -- in the park.

So this is why Ms. Janssen testified that he may have had some responsibility for the accident. I'm not saying that he caused the accident. There's no question Mr. Lujan should not have pulled out in front of him. He had the right of way. That's -- there's no question, but I'll talk to you in a little bit about the possibilities of comparative negligence.

We're not here and we never came in here saying that Mr. Lujan did nothing wrong. I've never said that. Now Mr. Cloward talked -- went through our Complaint in front of Ms. Janssen, and Ms. Janssen testified as -- that she never -- didn't prepare the Complaint. That was prepared by the attorneys. And -- or answers. I'm saying the Complaint again. I did it last time, too. I'm sorry. The answer to the Complaint.

The answer to the Complaint is prepared by the attorneys at

the beginning of a case for whatever might happen. He says, well, there was no third party. I don't believe Mr. Gardner in his opening said we're going to bring in the third party. Talked about the expert, but there was no -- I never said it, so, those are kind of things that are put into an answer to a Complaint by the attorneys at the beginning of a case just because you don't know where they're going to go.

Now the most difficult part of the case for the defense is damages. You don't like to talk about damages because that's where the money is and that's what they're claiming that they're entitled to recovery. But I have to talk about it. So let's talk a little bit about the medical expenses. They've asked for $250,000 in medical expenses, and he put a chart up there that showed what they were for.

Let's think about this case though. Mr. Morgan was in an accident. He went to the Emergency Room. And you'll have most of these in the jury room with you to review. This is a record from Sunshine ER on the day of the accident 4/1/14 where he says he denied lumbar pain.

Same day, ER, initial review -- initial inspection treatment back -- atraumatic, normal inspection, full range of motion, no midline tenderness, no CVA tenderness, no muscle spasm. Same day, patient was seen by a mid-level provider and cleared from backboard prior to being seen by ER physician. There's no question in the records that there's no indication that he had a back problem at the Emergency Room.

Now he said, I thought I told the doctors that my back was

hurting, but there were multiple, as Mr. Cloward walked you through in his closing, multiple opportunities for doctors to say, oh, yeah, and by the way, there's some complaining of back pain; complaining of low back pain. Next he went to the Urgent Care on the 8th of April, a week later. Neck and upper back pain. When he was released from the Urgent Care, they gave him some instructions for sprained wrist and neck injury, no back, no lumbar.

Now I may be wrong, and if I'm wrong I apologize and you can tell me I'm wrong. But I believe Mr. Cloward said that somewhere in the Urgent Care records there was some reference to the back, and but I couldn't find it. And I think it's important that when they sent him home they sent him instructions on care for the wrist and the cervical area.

And then he began treating with Dr. Coppell first on the 21st of April. Onset neck pain with headaches, mid-back pain, left wrist pain. And Mr. Cloward kind of beat me to the punch on Dr. Coppell's records. Seems like every time you put there, he said that see current complaints but denied foot pain, hip pain, knee pain, back pain. It was in most of his records, so he just probably doesn't punch the button. And I'm not going to -- I'll agree with Mr. Cloward that we'll just leave that to Dr. Coppell.

But in any event, he saw him again on the June 26th, 2014, and said he's -- pain -- continues to complain of axial neck pain, radiates to the trapezius scapular. The pain's rated six out of ten, four out of ten, to seven out of ten. But again, no back complaints and again, the next page where he says that there was no back pain under the musculoskeletal that seems to be on all of them.

On July 14th, 2014, patient reports over the last month his mid-back pain has been moving into the low back as well. Chiropractor is now doing treatment on the area. That's what the doctors said, and he has testified that he went to the chiropractor, that it wasn't getting much, much benefit but he did go.

You heard Dr. Sanders testify, but I think even more than that there's got to be a level of common sense. Both Dr. Muir and --

MR. CLOWARD: Cash.

MR. RANDS: Dr. Muir and Dr. Cash has testified that this spinal tear is very painful. And Dr. Sanders testified that too that if he has that it's very painful. But at a minimum he doesn't complain to anybody of the pain in his low back for a week or more after the accident. He doesn't talk to his pain specialist until four or five months after the accident saying that I've got a back -- low-back pain. That's one of the reasons that Dr. Sanders says he doesn't believe this is related to the accident.

And I know Counsel's going to say, well, but he's a 21-year-old man and there's no other way that this could have happened except for this accident, but this is where common sense comes in. If he had it and it happened at the accident like he says, there would have been pain, very significant pain, the doctors have testified. That's why Dr. Sanders testified that there -- that he doesn't believe that's related to the accident.

When somebody's in pain, what you really need to do is not look to what they're saying what their pain is but what they've done to fix

it. And this is kind of an awkward position to be in because a week restraining order, so before -- a couple weeks before this trial that we're here today, he went in and had a procedure by Dr. Muir. And right before the trial we got the records of that. So he has -- and he says he's got a 90 percent improvement from having that procedure.

But up until that time four years after the accident and a week or so, two weeks before we came in here to do this trial, he hadn't done that, the procedures. They'd been recommended for over a year by Dr. Muir, maybe even longer. Have these procedures. You need to have these procedures. He didn't do it.

Now I'm not going to tell him what he has to do, but when they're here asking for multi-million dollars, I think you need to consider it. He's gone four years without having the procedure until recently and they're testifying -- they're -- they've -- they're requesting that you give him all this money, you know, millions of dollars for pain and suffering. It's important that you remember the testimony and what the record says.

It's important be he testified that for the last year or so, maybe even longer, he hasn't been on active pain medication. He said that for the last couple of weeks after the procedure he's been 90 percent better. That's' why you can't just say $5 an hour for the rest of your life for pain and suffering. That's why it's difficult to be a juror, because you have to say what is this? What do we give him, if anything for his future pain and suffering?

The jury instructions say you can't use speculation, but you also can't just say well, I'm going to abrogate my duty and say I'm going

to give him $5 or $10 an hour for the rest of his life, either, because pain isn't constant. If you go through the records, you can see there's sometimes he says he's seven out of ten. There's sometimes he says he's four out of ten. There's sometimes he says he's 90 percent better. So you can't just say, you know, rest of his life we're going to give him five bucks an hour as Counsel suggested.

Now there have been the suggestion that Mr. -- or Dr. Sanders isn't a spine doctor, so we don't have to listen to what he has to say, that he's paid to be here to testify. Well, you know that all the doctors were paid to be here; paid thousands of dollars to be here. But Dr. Sanders met with Mr. Morgan and Mr. Morgan testified about that if you remember. He said, yeah, his office, they were good to me. They treated me well. Said Dr. Sanders was good, and he told him some things in that that Dr. Sanders testified to that maybe the -- all the chiropractic treatment he was getting, the $18,000 of chiropractic treatment wasn't all helping.

And then they got into the examination with Dr. Sanders. Well, you know, do you think that chiropractic is better than physical therapy or vice versa and he said, no, it's just if you're going down a road it's a dead end, why not change?

Now the reason all this is important is that a huge chunk of the records that Mr. Cloward has put on the board and is asking you to pay a huge chunk are related to the back issue. And if the back is related to this accident, they may have an argument. If it's not, they don't. Bulk of the past medical expenses are related to this back injury, the low back

injury particularly, the surgeries, the procedures, the spinal injections. At the end of the day, you're the only one as a jury that can decide how much to award if you find award is appropriate. I can't tell you what to do. Can't tell you what it is. But I can tell you that if you look through the records and what they're requesting is that the bulk of their past medical is for the back, the low back.

If you look at the records that may be related, clearly the Emergency Room visit and that would be related. Clearly, of course, the chiropractic would be related. Dr. Sanders said maybe 91 visits was too many, but he said for the first two months it would be reasonable to get chiropractic. Clearly a visit to the -- to Dr. Coppell would be reasonable that they were referred by the Urgent Care. He was referred by the Urgent Care to go see Dr. Coppell. Clearly those initial visits would be related. But after that it's going to be a jury question as to what's related.

Now the big issue and the big problem to discuss is the future medical expenses. You remember Dr. Muir on the stand testifying that there was about a million two or million three is future medical expenses that he believes are related? But if you remember when we started the cross-examination of him and went through them, he had to admit that a lot of them are things that haven't been done and that some of them have already been done. And they did back that off. But the number I have is about $425,000 for future physician care. But if you remember Dr. Sanders -- or Dr. Muir testifying he said that the -- those are numbers like 17,000 for the orthopedic spine or neurosurgeon to go up every five years to follow up for cervical or lumbar issues. That it's $126,000 to go

12 times a year to his pain management doctor.

And he said, no, that's for dealing with his medications. But he's already testified he's not taking any medication, and he's not going to visit the pain management doctor on a monthly basis. He's not going to see Dr. Coppell on a monthly basis. But they want you to give him the opportunity for the rest of his life or until 2068 to go see the pain management doctor 12 times a year. That's $126,000 that I think they haven't proven that's speculative. He's not doing it now. He -- we can't say what may happen, but he's not doing it now.

And then $157,000 for pain management; the facet radiofrequency ablation beginning in 2016 going to 26 -- and he's never had one of those. But they're asking you to give him the ability to do that. That's $157,000 even though he hasn't done any yet, and when this was prepared by Dr. Muir in 2016, he said it would be needed every -- once every two years, which is interesting. Because on the next page where he asks for $630,000 for the surgery center costs for the same thing. It's going to be once a year that he's going to have this radiofrequency ablation for $630,000. That's almost half of their future medical expenses for something he's never had and doesn't have scheduled. I think that's the definition of speculative.

Physical therapy that he's going to need every ten years for $27,000. He's not having physical therapy now. And he's asking you to give him $8,000 for Norco for once daily for management of pain. We've already testified he's not taking Norco now. The bulk of what they're asking for in future medical expenses is not for things that he's having or

it's reasonably anticipated to have.

But he said, oh, well, the doctors say he's going to need these three or four fusions because of the percentages and everything. And I listened to that, too. But if you remember Mr. Morgan's testimony where he said, I don't know if I'm going to have it. I'm going to have to wait and see. He didn't say, yes, I'm going to have those surgeries as soon as my doctor -- that's because he hasn't done it yet. And you say, well, you know, he's 20 years old. You don't rush into these things.

The down side of our justice system is they have to prove it and more likely than not. And more likely than that, the only testimony about whether he's going to have these, I mean they're recommended by the doctor. The doctor says, well, he's probably going to need them or he might need them. But Mr. Morgan says I don't know. I don't know if I'm going to have them or not. I'll have to wait and see; see how it feels, see what happens.

Additionally, in the future medical expenses, they're requesting there was $27,000 for his visits with his family physician.

No, I'm good. Thank you.

Visits with his family physician. Well, he's already testified he doesn't see his family physician now and doesn't have one. But $27,000 for yearly visits to his family physician is also built into that number. And that number for the back surgeries is $300,000 per they're requesting. Again, something that he said he doesn't know if he's going to have.

Now as Mr. Cloward said, the most difficult thing to talk about is pain and suffering. Other than my contact with Mr. Morgan in the brief

time I've been involved in this case, I don't know him very well. He's testified before you and you've had an opportunity over the last week at least to observe him, observe his mannerisms, observe the way he sits at trial. And he's testified that he can't sit for long periods of time. And I know I have a hard time sitting for long periods of time, too, as I get older. I hate to say it, but I'm almost 60. I'll be 60 this year. As you get older, as Mr. Cloward said and even some of the doctors your body starts breaking down a little bit. You're not as spry as you used to be.

And, you know, I have a little bit of sciatica going on and I have to get up and move around. You've maybe seen it at trial; seen me squirming a little bit, getting up, moving around a little bit. But I haven't seen him. He sat there the whole time. A man that's in extreme pain daily didn't have to get up and stretch, didn't have to get up and move around.

Why is this important? This is exactly what you -- the things you have to determine if you're going to make a -- or give him his request for pain and suffering. He's asking for millions of dollars in pain and suffering. But you've had an opportunity to hear him testify, and see him on the stand and in the courtroom. Like I said, I don't know him. I don't dislike him. I don't know him. But I'm just pointing out what I've observed.

Jury Instruction 31 says no definite standard or method of calculations prescribed by law by which to fix reasonable compensation for pain and suffering, nor the opinion of any witness is required as the reasonable amount of compensation. Furthermore, the argument of

Counsel as the amount of damages is not evidence of reasonable compensation. Making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damage you affix shall be just and reasonable in light of the evidence.

And what's the evidence? You've heard the evidence. I can't -- I can tell you what I remember the evidence showing, but I can't tell you. But you'll have the exhibits to go in. You'll have your recollection of what was said that he had some pain medication that he took for a period of time and then stopped taking it. He's been here in court. You've seen him, how he's moved and responded here in court, and they're asking you for $2.5 million for pain and suffering.

Just a brief moment, Your Honor. I promise I'm almost done.

I apologize. I can't find my verdict form, but there, I would fill it out like Mr. Cloward did. But you've got in your packet. You'll have it on --

THE COURT: Do you want one, Mr. Rands?

MR. RANDS: Excuse me? Thank you. Saved by the Judge.

This is the verdict form. You'll have to decide if the Defendant was negligent or not. For purposes of this, let's say yes, that you decided that Mr. Lujan was negligent; that he should have waited and yielded the right of way. Was the Plaintiff negligent? That's the next thing you need to decide. Did he have any responsibility for this accident? He was driving down the road, but as I said, he saw him over there, seconds, the things that you can think about.

And then you would have to put a percentage at fault. This

would be whatever you decide, but, you know, maybe 80 percent for the Defendant, 20 percent for the Plaintiff. Adds up to 100,000 -- 100 percent. And then you need to decide the medical expenses and pain and suffering. Again, those are something you're going to have to decide, but we have, you know, like I said, it's definitely going to get the Emergency Room, portion of chiropractic, those type of numbers. And I haven't done it in my head, but, you know, he's going to get, you know, maybe $25,000 for that.

The future medical expenses, I'll submit, are speculative. There's nothing in there that says the doctor said he's got to have that he's going to have. He's testified he doesn't want the surgery, and the other things are things he hasn't had to this point. So whatever number you put in here, I'm not sure what it would be: 5,000 for future pain and suffering, past pain and suffering.

I hesitate again to put numbers, because if I put a number here, what happens is I'm going to put numbers here and they're going to be really low, and you're going to say, man, that's way too low and he's asking for this so let's split the difference at $2 million. That's not what I'm asking you to do. I think that I have on behalf of my client the obligation to put something in here for past pain and suffering. You know, maybe another $25,000 for what he's been through. And he says he's 90 percent better, so you do the math. Maybe 7500 for the future and total of about $62,500, and then sign it.

And one other thing. I just want to make sure that I've covered the issue of the low-back pain and the issue that the doctors

have said, you know, none of the medical physicians, doctors, had any reference to his low back until significantly after the accident. Mr. -- Dr. Baker testified regarding the forces involved. Even the doctors have testified that the low back is really, especially when you're seat belted in, it's a real strong and protected. It's not something that -- get to your neck gets flown around because your head's a big bowling ball.

I know that one time I had one of those halo braces on and my big bowling ball head was, you know, completely immobilized. I couldn't do anything else, but the low back is different. And, you know, Dr. Baker testified. Dr. Sanders testified and even the other doctors testified that's a really strong area that's well protected. And the kind of forces that would be involved in this kind of accident just don't come to the level that would do that damage to that low back. It just doesn't.

And when you look at that car, and the sheet metal damage, now Counsel said there was -- the u-body or u-frame was dented or bent, too. But the total damage to the vehicle, it was about four grand. Anybody that's had a car in the shop or in a wreck knows four grand ain't -- isn't much. And you can almost make that kind of a dent on the car with a sledge hammer. And if he were sitting inside the car with those kind of forces, a sledge hammer-type force, you think that the effect would be such that it would do the damage it did. I submit to you that common sense says it would not.

Now could I have one moment, Your Honor?

Just kind of in closing, to get my gambling Las Vegas analogy back, the Plaintiff in order to recover has to prove that it's more likely than

not he's going to need all those surgeries and the future medical expenses. So you have to ask yourself would I take that bet ten years from now if I give him all the money he's asking for for medical treatments, he would actually have all those surgeries and spent that money on these medical treatments? If you wouldn't take even odds he's going to use all the verdict on surgeries instead of keeping the money in his pocket means you're not convinced enough.

I want to take this opportunity to thank you for listening to me. I know it's not easy and I can drone on. I'm an attorney and that's what we do. And unlike Mr. Cloward, I'm not going to have another opportunity to come up and talk to you again. What I've said and what I've done is the only chance I'm going to get. But I want to let you know how much I appreciate you being here. It is something that you didn't sign up for. And I guess you signed up for a driver's license, so that's probably how they track you down.

People used to think it was voting records, and I'm not going to register to vote, because then I'll have to serve jury duty. Well, in Nevada it's driver's license and car registration. So if you got a license, you got a car, you're in the pool. The only good thing is you're done for a while. If you got pulled up again, you can say, no, no, no. I've already served. I've done my time. But I hope it wasn't a terrible experience for you. We tried to use your time wisely.

I know sometimes when you're sitting out in the hall and you can tell we were in here arguing, you're thinking, oh, those SOBs, why don't they get us? We're just sitting out here. But some things happen

during that trial and that happens. And I apologize for any part I might have played in that and you being out there.

But at the end of the day, we couldn't do this without you. And like I said, I'm not going to have another opportunity to come up, so this is the worst part of the trial for a defense lawyer because you're going to sit down. And he's going to get up and start ripping on you. And I can't believe he said this. I can't believe he did that. What an SOB. Why did he do that? He's a terrible person. I don't think I'm a terrible person. I just have a job to do.

And I appreciate your help and I appreciate your time. And thank you very much.

THE COURT: Thank you.

Rebuttal?

MR. CLOWARD: Thanks, Your Honor.

Mr. Rands, I'm not going to rip on you.

MR. RANDS: Oh, that' s not true. I don't believe that.

MR. CLOWARD: I am going to talk about the facts in the case and that's what's important.

That right there is worth $62,000 for the Defendant. That right there is worth $62,000. His future, his life; $62,000. They sit there and they criticize Aaron for not coming in here and acting like he's in more pain than he is, and coming in here and trying to make it look like he's in more pain than he is.

Think about that for a minute? What does that suggest to you about the kind of a person that Aaron is? Is he laying down? Is he

stretching out? Is he walking around? Does he got the neck brace on coming in here? No. He said I don't want to distract this process.

Putting aside everything else, this is the reality of Aaron Morgan's back. Okay? This is the reality. They can talk about well, he didn't do this procedure yet. Or is he really going to do this or is he really going to do that?

We don't come back in five years from now and get to say, hey, Defendant Aaron can't bear the pain anymore. He's no longer able to work. We can't do that. We don't get to do that. The law doesn't allow it.

So instead, the experts come in and they testify to what's called a reasonable degree of medical probability. And what did our experts base their testimony on? Well, you know what? I just treat people and I go to UFC matches and I this and I that. They say, no. The literature and the research on this topic says this.

When I asked Dr. Sanders, hey doctor, let's talk about the literature and the research of the Spine Journal, the official publication of the North American Spine Society, which he's not even a member of. Hey, doctor, let's talk about the New England Journal of Medicine. What does he do? Rather than ask -- answer a very simple question, very simple question of isn't it true, doctor, that the literature suggests that physical therapy may have a teeny bit of a benefit better but not significant? What does he do? He starts talking about something way off.

Well, you know, some journals they've had corruption and

they've had payments, and they've had this and that. No, no, no. Doctor, no, no, no, no. Bring it back and answer the very simple question. You knew for a week, the Defendant's knew for an entire week that I was going to ask him about these studies. They had an entire week. They knew the answer to the question. Why not do your own research and bring in your own research to suggest otherwise?

You knew from Dr. Muir when he testified on Wednesday that the statistics for adjacent segments say 3 percent per year, that that's what the literature and the research says. You've got an entire week. Where is it? Instead they want to suggest that it's speculation. Well, he maybe have this problem. He maybe have this problem. No. He maybe doesn't have this problem.

Unfortunately, the fact of the matter, the black and white, there is no question he has a grade 5 tear here, a grade 4 tear here, and a grade 5 tear here. Okay? No, no. Excuse me. Five, five, four. There is no question; none. That's what the facts are. They're not asking you to speculate.

And I'm not saying, hey, you know what? I can't point to anything that's causing his pain, but I'm hopeful that you'll give us a million dollars to take care of some theoretical speculative medical problem that he might have. That's not what I'm here doing. What I'm here doing saying you know what? He's got three tears in his back due to their negligence.

And I love the gambling analogy. I absolutely love it. I love it because guess what? Their driver gambled with his safety and he's

been paying the consequence ever since and he will be paying the consequence ever since. Ten years from now he'll be the one that's paying for it. So do I have a problem standing in front of you and asking for millions of dollars? Heck, no. And let me show you the numbers.

And the reason that I don't give numbers, I don't give numbers specifically because I want you to have a thoughtful discussion and a thoughtful debate about what somebody actually would have to pay to get somebody to sign up for this job that was thrust upon him. I want you to have a thoughtful discussion without suggesting a number.

Here's what the numbers are. I have no shame whatsoever. Five dollars an hour at 433 -- 438 waking hours. That's 2.1 million. Ten dollars an hour, 4.3 million. Fifty dollars an hour, 21 million.

And let me ask you a question. You think if that corporate representative were to come up to Aaron when he's 22 years old with a suitcase full of money and said, hey, Aaron, guess what? I'm going to change your life. I'm going to change your life. But in exchange I'm going to give you this suitcase. If the answer is no, then you know you haven't put enough money in that verdict form, because I don't think anybody in their right mind would do this.

Matter of fact, we know F-22 pilots, $50 million plane, what are they instructed to do if that plane's going down? Bail out. He didn't have a choice in this matter because of their gambling with his safety. So I'm sorry, but it's not fair. It's not fair that they made the choice and then they come in and try to do the yeah, but. Yeah, but this. Yeah, but. Yeah, but. Yeah, but.

Interestingly, when Mr. Rand stands up here, he says, well, maybe give him 25,000 for past meds, maybe. Well, guess what? Your doctor, when he took the stand, he acknowledged when he took the stand, he acknowledged that 100 percent of the neck and 100 percent of the thoracic complaints were related to this crash. That was a lot more than 25,000. That's what the evidence showed. But despite their own doctor telling you that, they still want a -- they want a discount. They want a discount.

Don't give them a discount. Hold them accountable. Thank you.

THE COURT: All right. The clerk is now going to swear the officers in.

You want to grab Sylvia?

THE MARSHAL: What's that?

THE COURT: Want to get Sylvia, so she can swear in the officer to take charge of the jury?

[Marshal, Sworn]

THE COURT: All right. Folks, if you will just go with the marshal? Oh, we need to identify our alternates, too.

THE MARSHAL: Yes.

THE COURT: Yeah. So our alternates are Juror -- in seat number 9, Mr. Birch, and then Mr. Martinez in seat number 10.

THE MARSHAL: Please rise for the jury.

Bring all your notepads and everything with you.

[The jury retired to deliberate at 3:38 p.m.]

[Outside the presence of the jury.]

THE COURT: Folks, thank you so much. Let us know how to get a hold of you.

MR. BOYACK: What was that, Judge?

THE COURT: Let us know how to get a hold of you.

MR. RANDS: Mr. Rands, it's nice to see you again.

[Recess from 3:39 p.m. to 4:17 p.m.]

THE COURT: Is everyone here? Is everyone on the phone?

THE CLERK: Hello. Is all Counsel present?

MR. GARDNER: Yeah. This is Douglas.

MR. BOYACK: And Bryan Boyack.

THE COURT: So, folks, we have a question from the jury. It is from Juror Number 5. I'm guessing that must be the foreperson. Juror Number 5 is Mr. St. Laurent. And the question is amounts of life care amounts, where can we find the information? Which exhibit?

MR. BOYACK: Repeat that?

THE COURT: It says amounts of life care amounts, where can we find the information? Which exhibit?

MR. GARDNER: Bryan, I'm not sure. No.

MR. CLOWARD: Judge, this is Ben Cloward. I'm sorry. I'm not sure I understood the question. If the life care something then what?

THE COURT: It -- they want to know where they can find the life care amounts, which exhibit. That's the question, which it's not -- it's not in an exhibit.

MR. CLOWARD: That was in Dr. Muir's records. So I don't

think that that -- we forgot to have those moved into evidence when he was on the record or on the stand.

THE COURT: Yeah. So they're not in an admitted exhibit. What would you like me to tell them?

MR. CLOWARD: Just, you know, you'll have to rely on their notes or their memory I guess or something along those lines.

THE COURT: How about the Court is not at liberty to supplement the evidence?

MR. CLOWARD: That's fine.

THE COURT: Okay.

MR. GARDNER: Yeah.

THE COURT: All right.

MR. GARDNER: They were pretty [indiscernible] during the trial, so I'm with you, Ben. I think they ought to just see what they remember.

THE COURT: All right. Folks. Thank you.

MR. GARDNER: Is that it?

THE COURT: Yeah. That's it.

MR. GARDNER: Okay. Thank you so much.

MR. CLOWARD: Okay. Thanks.

MR. GARDNER: Bye.

[Recess from 4:24 p.m.]

THE MARSHAL: Please rise for the jury. Be seated.

THE COURT: On the record in case number A-718679, Morgan vs. Lujan. Let the record reflect the presence of our jurors, our

two alternates, parties and counsel.

Ladies and Gentlemen of the jury, has the jury selected a foreperson?

JUROR ST. LAURENT: Yes, we have.

THE COURT: All right. And, Mr. St. Laurent, it's your -- you are the foreperson?

JUROR ST. LAURENT: Yes, I am.

THE COURT: All right. Has the jury reached a verdict, sir?

JUROR ST. LAURENT: Yes, we have.

THE COURT: Could you please hand the verdict form to the Marshal?

JUROR ST. LAURENT: Yes.

THE MARSHAL: You don't have to come down.

JUROR ST. LAURENT: Yeah. I know.

THE MARSHAL: Thank you.

THE COURT: Now the Clerk will read the verdict out loud.

THE CLERK: District Court Clark County Nevada, Case number A15-718679, excuse me, dash C, Department 7, Aaron Morgan, Plaintiff versus David Lujan, Defendant. Special Verdict: We, the jury, in the above-entitled action find the following special verdict on the questions submitted to us. Question Number 1: Was Defendant negligent? Answer: Yes.

Question Number 2: Was Plaintiff negligent? Answer: No.

Question Number 3: What percentage of fault do you assign to each party? Defendant: 100 percent. Plaintiff: 0 percent

Question Number 4: What amount do you assess as the total amount of Plaintiff's damages? Past medical expenses is $208,480. Future medical expenses: 1,156,500. Past pain and suffering: $116,000. Future pain and suffering: 1,500,000 for a total of $2,980,98 dated this 9th day of April 2018, by foreperson Arthur J. St. Laurent.

Is this -- excuse me. Ladies and Gentlemen, is this your verdict as read?

GROUP RESPONSE: Yes.

THE COURT: Does either side wish to have the jury polled?

MR. CLOWARD: No, Your Honor. Mr. Boyack: No.

THE COURT: Mr. Gardner?

MR. GARDNER: No. That's fine.

THE COURT: All right. So, folks, I'm not going to read you that admonishment again. We don't have to do that anymore, thank goodness. I want to thank you so much for your time and attention to this case. I know you were all very attentive. You wrote great questions. I really appreciate everything that you've done for the -- for us for the past six days. And you do not have -- I'm not going to read you the admonishment. You can talk to people about the case now if you like. You can write a book. You can start a blog, you know, whatever. Put it on your Blackberry. And but the lawyers often appreciate if you have any feedback to give them. It can help them in future trials. So they -- if you want to just go home because it's Monday and it's been a long six days, you're welcome to do that. If you have a minute, I'm sure that they would appreciate it. Everybody have a great evening. Thank you again.

1800

THE MARSHAL: Please rise for the jury.

[Jury dismissed at 5:37 p.m.]

[Out of the presence of the jury.]

THE COURT: All right. Gentlemen, Thank you. I want to thank you all again. It's always a pleasure to have all of you here. you have this case on tomorrow on my calendar. I need some more information from you. The briefing on both sides was a little bit thin on -- in terms of --

MR. BOYACK: Okay.

THE COURT: -- the Brenzel factors [phonetic] were great. Just the award of fees with regard to the mistrial. There was really no -- there just wasn't much. So if I could get a little bit more.

MR. BOYACK: Okay.

THE COURT: I just didn't feel like I had enough information to make a decision on the --

MR. BOYACK: Yeah. For the Brenzel factors, you want more of?

THE COURT: Brenzel factors are fine. It's the ability to award fees in light of the mistrial.

MR. BOYACK: Oh, okay. Got you.

THE COURT: All right? So --

MR. BOYACK: You need case law for that?

THE COURT: Yeah. If you want to -- if you can get me something in a couple weeks, and Mr. Gardner, we'll give him a couple weeks. I'll just pass it like six weeks or so. Something like that.

MR. GARDNER: Thank you.

THE CLERK: Counsel, exhibits?

MR. BOYACK: Yeah. I'll grab mine. Thank you.

THE COURT: In fact, let me just give you a date today. Let's go, where are we?

MR. CLOWARD: Could we get a copy of that verdict, Judge?

MR. GARDNER: The way you presided was wonderful.

THE COURT: Thank you, Mr. Gardner.

MR. GARDNER: It was absolutely a terrific job.

THE COURT: I appreciate it. I appreciate all your efforts.

MR. GARDNER: Even regardless of the verdict, you did a great job.

THE COURT: Well, I don't make the decision, thank goodness. It's the one time I don't have to.

MR. RANDS: Yeah.

MR. BOYACK: She's going to give us a new date. So wait.

THE COURT: I'm going to give you a new date, so don't come tomorrow, which is the 10th. Let's go May 24th.

THE CLERK: Okay. Thank you.

MR. BOYACK: Let's keep talking. She's giving us six weeks. We're fine. Keep talking.

THE COURT: May 24th, so all right.

MR. BOYACK: All right. Talk. Thanks.

THE COURT: Have a good evening everyone.

[Proceedings adjourned]

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

Crystal Thomas

Crystal Thomas
Transcriber

Deborah Anderson

Deborah Anderson
Transcriber

Date: May 4,2018

1803

# TAB 15

# TAB 15

JI



**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

AARON M. MORGAN

Plaintiff,

vs.

DAVID E. LUJAN, HARVEST MANAGEMENT SUB LLC

Defendants.

CASE NO.: A-15-718679-C
DEPT. NO.: VII

# JURY INSTRUCTIONS

INSTRUCTION NO. 1

LADIES AND GENTLEMEN OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the following rules of law to the facts of the case, as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 4

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the plaintiff or defendant. Both sides are entitled to the same fair and impartial consideration.

INSTRUCTION NO. 5

One of the parties in this case is a corporation. A corporation is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

INSTRUCTION NO. 6

You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, Instagram, Snapchat, through any blog or website, through any Internet chat room or by way of any other social networking website, including Facebook, MySpace, LinkedIn, and YouTube, until your verdict is returned.

INSTRUCTION NO. 7

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works for additional information, including the Internet or other online services.

INSTRUCTION NO. 8

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable people. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 9

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel. Statements, arguments and opinions of counsel are not evidence in the case.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 10

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

INSTRUCTION NO. 11

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

INSTRUCTION NO. 12

If counsel for the parties have stipulated to any fact, you must accept the stipulation as evidence and regard that fact as proved.

INSTRUCTION NO. 13

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before trial and preserved in writing. You are to consider that testimony as if it were given in court.

During the course of the trial you have heard reference made to the word "interrogatory." An interrogatory is a written question asked by one party to another, who must answer it under oath in writing. You are to consider interrogatories ~~as~~ and the answers thereto the same as if the questions had been asked and answered here in court.

INSTRUCTION NO. 14

The credibility or "believability" of a witness should be determined by the witness's manner upon the stand, the witness's relationship to the parties, the witness's fears, motives, interests or feelings, the witness's opportunity to have observed the matter to which the witness testified, the reasonableness of the witness's statements and the strength or weakness of the witness's recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of the witness or any portion of this testimony which is not proved by other evidence.

INSTRUCTION NO. 15

Discrepancies in a witness's testimony or between the witness's testimony and that of others, if there were any discrepancies; do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a matter of importance or only to a trivial detail should be considered in weighing its significance.

INSTRUCTION NO. 16

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that a witness has talked to an attorney and told the attorney what the witness would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

INSTRUCTION NO. 17

A person who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give an opinion as an expert as to any matter in which the person is skilled. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the expert and the reasons given for the expert's opinion. You are not bound by such opinion. Give it weight, if any, to which you deem it entitled.

INSTRUCTION NO. 18

A question has been asked in which an expert witness was told to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the question has not been established by the evidence you should determine the effect of that omission upon the value of the opinion.

INSTRUCTION NO. 19

An expert witness has testified about the expert's reliance upon books, treatises, articles or statements that have not been admitted into evidence. Reference by an expert witness to this material is allowed so that the expert witness may tell you what the expert relied upon to form the expert's opinion. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the expert's opinion.

INSTRUCTION NO. 20

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by that party, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same not to be true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

INSTRUCTION NO. 21

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept that witness's testimony.

INSTRUCTION NO. 22

The plaintiff seeks to establish liability on a claim of negligence. I will now instruct on the law relating to this claim.

INSTRUCTION NO. 23

The plaintiff has the burden to prove:

1. That the defendant was negligent,

2. That the plaintiff sustained damage, and

3. That such negligence was a proximate cause of the damage sustained by the plaintiff.

The defendant has the burden of proving, as an affirmative defense:

1. That the plaintiff was negligent, and

2. That plaintiff's negligence was a proximate cause of any damage plaintiff may have sustained.

INSTRUCTION NO. 24

When I use the word "negligence" in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, to avoid injury to themselves or others, under circumstances similar to those shown by the evidence.

It is the failure to use ordinary or reasonable care.

Ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid injury to themselves or others under circumstances similar to those shown by the evidence.

The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

You will note that the person whose conduct we set up as a standard is not the extraordinarily cautious individual, nor the exceptionally skillful one, but a person of reasonable and ordinary prudence.

INSTRUCTION NO. 25

A proximate cause of injury, damage, loss, or harm is a cause which, in natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm, would not have occurred.

INSTRUCTION NO. 26

It has already been determined that Aaron Morgan injured his left and right wrists as a result of the crash on April 1, 2014 and that the treatment he received was reasonable and necessary. You are instructed that the billing amounts of $40,171 for that treatment was usual and customary for the Las Vegas community.

INSTRUCTION NO. 27

There have been two prior trials previously held in this matter. The first trial was set in April 2017 but needed to be rescheduled on the first day for an emergency. The second trial was in November 2017 and lasted for three days, but was not completed and no verdict was reached. You should not make any opinions or conclusions based on the fact that prior trials were held in this case.

INSTRUCTION NO. 28

The plaintiff may not recover damages if the plaintiff's comparative negligence is greater than the negligence of the defendant. However, if the plaintiff is negligent, the plaintiff may still recover a reduced sum so long as the plaintiff's comparative negligence was not greater than then the negligence of the defendant.

If you determine that the plaintiff is entitled to recover, you shall return by general verdict the total amount of damages sustained by the plaintiff without regard to the plaintiff's comparative negligence and you shall return a special verdict indicating the percentage of negligence attributable to each party.

The percentage of negligence attributable to the plaintiff shall reduce the amount of such recovery by the proportionate amount of such negligence and the reduction will be made by the court.

INSTRUCTION NO. 29

You are not to discuss or even consider whether or not the plaintiff was carrying insurance to cover medical bills, loss of earnings, or any other damages the plaintiff claims to have sustained.

You are not to discuss or even consider whether or not the defendants were carrying insurance that would reimburse the defendants for whatever sum of money the defendants may be called upon to pay to the plaintiff.

Whether or not either party was insured is immaterial and should make no difference in any verdict you may render in this case.

INSTRUCTION NO. 30

In determining the amount of losses, if any, suffered by the plaintiff as a proximate result of the accident in question, you will take into consideration the nature, extent and duration of the injuries you believe from the evidence plaintiff has sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate plaintiff for the following items:

1. Past and future medical expenses; and
2. Past and future physical and mental pain, suffering, anguish, and disability.

INSTRUCTION NO. 31

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

INSTRUCTION NO. 32

If you find that plaintiff suffered injuries as result of the defendants' negligence, you must award reasonable and fair past suffering damages as a result of these injuries.

INSTRUCTION NO. 33

According to a table of mortality, Plaintiff Aaron Morgan, who is age 25, is expected to live 52 additional years. This figure is not conclusive. It is an average life expectancy of persons who have reached that age. This figure may be considered by you in connection with other evidence relating to probable life expectancy including evidence of occupation, health, habits and other activities. Bear in mind that many persons live longer and many die sooner than the average.

INSTRUCTION NO. 34

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that a plaintiff prove each item of damage by a preponderance of the evidence.

INSTRUCTION NO. 35

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case including that of damages must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

INSTRUCTION NO. 36

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can find the testimony. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 37

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any questions submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

INSTRUCTION NO. 38

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in court.

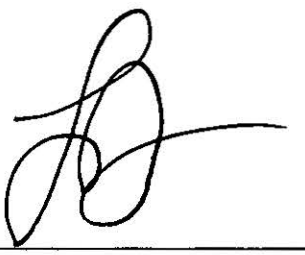
During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon the verdict, you must have the verdict signed and dated by your foreperson, and then return with them to this room.

INSTRUCTION NO. 39

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

GIVEN:



LINDA MARIE BELL
DISTRICT COURT JUDGE

# TAB 16

# TAB 16

*DISTRICT COURT*

*CLARK COUNTY, NEVADA*

CASE NO: A-15-718679-C

DEPT. NO: VII

AARON MORGAN,

Plaintiff,

vs.

DAVID LUJAN,

Defendant.

**SPECIAL VERDICT**

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

**QUESTION NO. 1:** Was Defendant negligent?

**ANSWER:** Yes ✓ No _____

If you answered no, stop here. Please sign and return this verdict.

If you answered yes, please answer question no. 2.

**QUESTION NO.2:** Was Plaintiff negligent?

**ANSWER:** Yes _____ No ✓

If you answered yes, please answer question no. 3.

If you answered no, please skip to question no. 4.

///

A-15-718679-C
SJV
Special Jury Verdict
4738215

**QUESTION NO. 3:** What percentage of fault do you assign to each party?

Defendant: 100

Plaintiff: 0

Total: 100%

Please answer question 4 without regard to you answer to question 3.

**QUESTION NO. 4:** What amount do you assess as the total amount of Plaintiff's damages? (Please do not reduce damages based on your answer to question 3, if you answered question 3. The Court will perform this task.)

| | |
|---|---|
| Past Medical Expenses | $ 208,480.00 |
| Future Medical Expenses | $ 1,156,500.00 |
| Past Pain and Suffering | $ 116,000.00 |
| Future Pain and Suffering | $ 1,500,000.00 |
| **TOTAL** | $ 2,980,980.00 |

DATED this 9th day of April, 2018.

Arthur J. St. Laurent

FOREPERSON

ARTHUR J. ST. LAURENT

# TAB 17

# TAB 17

# Register of Actions
## Case No. A-15-718679-C

**Aaron Morgan, Plaintiff(s) vs. David Lujan, Defendant(s)**

| | |
|---|---|
| Case Type: | **Negligence - Auto** |
| Date Filed: | **05/20/2015** |
| Location: | **Department 7** |
| Cross-Reference Case Number: | **A718679** |
| Supreme Court No.: | **77753** |

### Party Information

| | | Lead Attorneys |
|---|---|---|
| **Defendant** | **Harvest Management Sub LLC** | **Dennis L. Kennedy**<br>*Retained*<br>7025628820(W) |
| **Defendant** | **Lujan, David E** | **Douglas J Gardner, ESQ**<br>*Retained*<br>702-940-2222(W) |
| **Plaintiff** | **Morgan, Aaron M** | **Micah S. Echols**<br>*Retained*<br>702-382-0711(W) |

### Events & Orders of the Court

**DISPOSITIONS**

08/30/2017 **Partial Summary Judgment** (Judicial Officer: Bell, Linda Marie)
Debtors: David E Lujan (Defendant), Harvest Management Sub LLC (Defendant)
Creditors: Aaron M Morgan (Plaintiff)
Judgment: 08/30/2017, Docketed: 08/31/2017

04/09/2018 **Verdict** (Judicial Officer: Gonzalez, Elizabeth)
Debtors: David E Lujan (Defendant)
Creditors: Aaron M Morgan (Plaintiff)
Judgment: 04/09/2018, Docketed: 12/17/2018
Total Judgment: 2,980,980.00

12/17/2018 **Judgment Upon the Verdict** (Judicial Officer: Gonzalez, Elizabeth)
Debtors: David E Lujan (Defendant)
Creditors: Aaron M Morgan (Plaintiff)
Judgment: 12/17/2018, Docketed: 12/17/2018
Total Judgment: 3,046,382.72

**OTHER EVENTS AND HEARINGS**

05/20/2015 **Case Opened**
05/20/2015 **Complaint**
*Complaint*
05/28/2015 **Affidavit of Service**
*Affidavit of Service - Harvest Management Sub LLC*
06/01/2015 **Affidavit of Service**
*Affidavit of Service - David E Lujan*
06/16/2015 **Answer to Complaint**
*Defendants' Answer to Plaintiff's Complaint*
06/16/2015 **Initial Appearance Fee Disclosure**
*Initial Appearance Fee Disclosure (NRS Chapter 19)*
06/16/2015 **Demand for Jury Trial**
*Demand for Jury Trial*
10/14/2015 **Commissioners Decision on Request for Exemption - Granted**
*Commissioner's Decision on Request for Exemption*
12/04/2015 **Arbitration File**
*Arbitration File*
12/11/2015 **Arbitration File**
*Arbitration File*
12/21/2015 **Joint Case Conference Report**
*Joint case Conference Report*
01/21/2016 **Scheduling Order**
*Scheduling Order*
02/03/2016 **Order Setting Civil Jury Trial**
*Order Setting Civil Jury Trial*
08/30/2016 **Stipulation to Extend Discovery**
*Stipulation and Order to Extend Discovery and Continue Trial*
09/16/2016 **Order Setting Civil Jury Trial**
*Second Order Setting Civil Jury Trial*

11/29/2016 *CANCELED* **Status Conference** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated - per Stipulation and Order*
12/29/2016 **Status Conference** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Status Conference: Status of Case Re: Trial Setting*
Parties Present
Minutes
Result: Matter Heard
01/31/2017 *CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated - per Stipulation and Order*
02/06/2017 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated - per Stipulation and Order*
02/22/2017 **Pre-Trial Disclosure**
*Plaintiff's Pre-Trial Disclosures and Objections Pursuant to N.R.C.P. 16.1 (a)(3)*
02/23/2017 **Notice**
*Notice of EDCR 2.67 Conference*
02/27/2017 **Joint Pre-Trial Memorandum**
*Plaintiff Aaron M. Morgan's and Defendants David E. Lujan and Harvest Management Sub, LLC's Joint Pre-Trial Memorandum*
03/06/2017 **Stipulation and Order**
*Stipulation and Order to Exclude Defendant's Biomechanical Expert John Baker, P.E., PH.D.*
03/06/2017 **Notice of Entry of Stipulation and Order**
*Notice of Entry of Order*
03/07/2017 **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes
Result: Matter Heard
03/07/2017 **Notice of Appearance**
*Notice of Appearance*
03/07/2017 **Order Setting Civil Jury Trial**
*Third Order Setting Civil Jury Trial*
03/13/2017 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated - per Judge*
04/04/2017 *CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated*
04/04/2017 **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes
Result: Trial Date Set
04/20/2017 **Notice of Association of Counsel**
*Notice of Association of Counsel*
04/24/2017 **Jury Trial - FIRM** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes
Result: Off Calendar
05/10/2017 **Motion for Partial Summary Judgment**
*Plaintiff's Motion for Partial Summary Judgment Regarding Plaintiff's Past Medical Expenses*
05/11/2017 **Notice of Hearing**
*Notice of Hearing*
05/16/2017 **Status Check** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Status Check: Status of the Case*
Parties Present
Minutes
Result: Matter Heard
06/02/2017 **Opposition**
*Defendant's Opposition to Plaintiff's Motion for Summary Judgment*
06/13/2017 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Plaintiff's Motion for Partial Summary Judgment Regarding Plaintiff's Past Medical Expenses*
Parties Present
Minutes
Result: Granted
08/22/2017 **Reporters Transcript**
*Court Reporters transcript of Proceedings - June 13, 2017*
08/29/2017 **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes
Result: Trial Date Set
08/30/2017 **Order**
*Order Granting Plaintiff's Motion for Partial Summary Judgment Regarding Plaintiff's Past Medical Treatment and Expenss*
08/31/2017 **Notice of Entry**
*Notice of Entry of Order*
09/05/2017 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated*
09/25/2017 **Pre-trial Memorandum**
*Defendants David E. Lujan and Harvest Management Sub LLC's Individual Pre-Trial Memorandum*
10/03/2017 **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes

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Result: Matter Heard
10/09/2017 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated*
10/31/2017 **Brief**
*Plaintiff's Bench Regarding Demonstrative Exhibits*
10/31/2017 **Brief**
*Plaintiff's Bench Regarding the Issue of Jury Selection*
11/06/2017 **Jury Trial** (9:00 AM) (Judicial Officer Bell, Linda Marie)
**11/06/2017, 11/07/2017, 11/08/2017**
Parties Present
Minutes
Result: Trial Continues
11/06/2017 **Jury List**
11/07/2017 *CANCELED* **Status Check** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Vacated - On in Error*
*Status Check: Settlement Documents*
11/09/2017 **Status Check** (10:30 AM) (Judicial Officer Bell, Linda Marie)
*Status Check: Trial Setting*
Parties Present
Minutes
Result: Matter Heard
02/08/2018 **Reporters Transcript**
*Court Reporters transcript of Proceedings (Civil) - Jury Trial - Day 1*
02/08/2018 **Recorders Transcript of Hearing**
*Day 2 - Jury Trial - Transcript of Proceedings - 1-7-2018*
02/08/2018 **Transcript of Proceedings**
*Transcript of Proceedings - July Trial - Day 3*
03/06/2018 **Calendar Call** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes
Result: Matter Heard
03/07/2018 **Memorandum of Costs and Disbursements**
*Plaintiff's Memorandum of Costs and Disbursements*
03/07/2018 **Motion for Attorney Fees and Costs**
*(4/11/2018 Withdrawn) Plaintiff's Motion for Attorney Fees and Costs of Mistrial*
03/08/2018 **Pre-Trial Disclosure**
*Plaintiff's Supplement to Pre-Trial Disclosures and Objections Pursuant to N.R.C.P. 16.1(a)(3)*
03/08/2018 **Notice of Hearing**
*Notice of Hearing*
03/19/2018 **Motion to Strike** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)
*Defendant Harvest Management Sub LLC's Motion to Strike Portions of Plaintiff Aaron M. Morgan's Reply in Support of Motion for Attorney;s Fees and Costs; Or in the Alternative, Motion for Leave to File Sur-Reply on Order of Shortening Time*
03/26/2018 **Opposition**
*Defendant's Opposition to Plaintiff's Motion for Attorney Fees and Costs of Mistrial*
03/27/2018 **Motion**
*Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire or In the Alternative for More Liberal Jury Selection on Order Shortening Time*
03/27/2018 **Receipt of Copy**
*Receipt of Copy - Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire or In the Alternative for More Liberal Jury Selection on Order Shortening Time*
03/30/2018 **Trial Brief**
*Plaintiff's Trial Brief*
04/02/2018 **Jury Trial - FIRM** (9:00 AM) (Judicial Officer Bell, Linda Marie)
**04/02/2018, 04/03/2018, 04/04/2018, 04/05/2018, 04/06/2018, 04/09/2018**
Parties Present
Minutes
Result: Trial Continues
04/02/2018 **Motion** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire or In the Alternative for More Liberal Jury Selection on Order Shortening Time*
Result: Denied
04/03/2018 **Jury List**
04/04/2018 **Reporters Transcript**
*Court Reporters transcript of Proceedings (Civil) - Defense Opening - 4-3-2018*
04/09/2018 **Amended Jury List**
04/09/2018 **Special Jury Verdict**
04/09/2018 **Jury Instructions**
04/10/2018 **Motion for Attorney Fees and Costs** (9:00 AM) (Judicial Officer Bell, Linda Marie)
**04/10/2018, 05/24/2018**
*Plaintiff's Motion for Attorney Fees and Costs of Mistrial*
Minutes
Result: Matter Continued
04/11/2018 **Notice**
*Notice of Plaintiff's Withdrawal of Motion*
04/26/2018 **Substitution of Attorney**
*Substitution of Attorneys*
04/26/2018 **Errata**
*Errata to Substitution of Attorneys*
05/09/2018 **Reporters Transcript**
*Court Reporters transcript of Proceedings (Civil) 4-2-2018 - Jury Trial*
05/09/2018 **Recorders Transcript of Hearing**

*Recorder's Transcript of Jury Trial - 4-3-2018*

05/09/2018 **Recorders Transcript of Hearing**
*Recorder's Transcript of Jury Trial - 4-4-2018*

05/09/2018 **Reporters Transcript**
*Recorder's Transcript of Jury Trial -4-5-2018*

05/09/2018 **Recorders Transcript of Hearing**
*Recorder's Transcript of Jury Trial - 4-6-2018*

05/09/2018 **Recorders Transcript of Hearing**
*Recorder's Transcript of Jury Trial - 4-9-2018*

06/06/2018 **Stipulation and Order**
*Stipulation and Order To Vacate Hearing on Plaintiff's Motion for Attorney Fees and Cost of Mistrial Filed on March 7, 2018*

06/06/2018 **Notice of Entry of Order**
*Notice of Entry of Order*

06/29/2018 **Order to Statistically Close Case**
*Civil Order to Statistically Close Case*

07/02/2018 **Case Reassigned to Department 11**
*Reassigned From Judge Bell - Dept 7*

07/30/2018 **Notice of Appearance**
*Notice of Appearance*

07/30/2018 **Motion for Entry of Judgment**
*Plaintiff's Motion for Entry of Judgment*

08/06/2018 **Notice of Change of Hearing**
*Notice of Change of Hearing*

08/16/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 1 of 4*

08/16/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 2 of 4*

08/16/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 3 of 4*

08/16/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 4 of 4*

08/16/2018 **Opposition**
*Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment*

09/07/2018 **Reply in Support**
*Plaintiff's Reply in Support of Motion for Entry of Judgment*

11/06/2018 **Motion for Judgment** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)
*Plaintiff's Motion for Entry of Judgment*

Parties Present

Minutes

*09/14/2018 Reset by Court to 09/20/2018*

*09/20/2018 Reset by Court to 11/06/2018*

Result: Motion Denied

11/28/2018 **Order**
*Order on Plaintiffs' motion for Entry of Judgment*

11/28/2018 **Notice of Entry of Order**
*Notice of Entry of Order on Plaintiff's Motion for Entry of Judgment*

12/17/2018 **Judgment on Jury Verdict**
*Judgment Upon the Jury Verdict*

12/18/2018 **Memorandum of Costs and Disbursements**
*Plaintiff's Verified Memorandum of Costs*

12/18/2018 **Notice of Appeal**
*Notice of Appeal*

12/18/2018 **Case Appeal Statement**
*Case Appeal Statement*

12/20/2018 **Objection**
*Defendant Harvest Management Sub LLC's Limited Objection to Plaintiff's Verified Memorandum of Costs*

12/21/2018 **Motion for Entry of Judgment**
*Defendant Harvest Management Sub LLC's Motion for Entry of Judgment*

12/21/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment - Volume 1 of 4*

12/21/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment - Volume 2 of 4*

12/21/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment - Volume 3 of 4*

12/21/2018 **Appendix**
*Appendix of Exhibits to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment - Volume 4 of 4*

01/02/2019 **Notice of Entry of Judgment**
*Notice of Entry of Judgment*

01/09/2019 **Stipulation and Order**
*Stipulation and Order to Extend Deadlines for Opposition and Reply to Motion for Entry of Judgment*

01/10/2019 **Notice of Entry of Stipulation and Order**
*Notice of Entry of Stipulation and Order to Extend Deadlines for Opposition and Reply to Motion for Entry of Judgment*

01/15/2019 **Opposition and Countermotion**
*Opposition to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment and Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues*

01/18/2019 **Transcript of Proceedings**
*Transcript of Proceedings: Hearing on Plaintiff's Motion for Entry of Judgment*

01/22/2019 **Motion for Attorney Fees and Costs**
*Plaintiff's Motion for Attorney's Fees and Costs*



01/23/2019 **Reply in Support**
*Reply in Support of Defendant Harvest Management Sub LLC's Motion for Entry of Judgment; and Opposition to Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues*

01/25/2019 **Motion for Judgment** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
**01/25/2019, 02/19/2019, 03/05/2019**
*Defendant Harvest Management Sub LLC's Motion for Entry of Judgment*
Parties Present
Minutes
*02/12/2019 Reset by Court to 02/19/2019*
*02/19/2019 Reset by Court to 02/19/2019*
Result: Referred

01/25/2019 **Opposition and Countermotion** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
*Opposition to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment and Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues*
Result: Granted

01/25/2019 **All Pending Motions** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
Minutes
Result: Minute Order - No Hearing Held

02/06/2019 **Stipulation and Order**
*Stipulation and Order to Extend Briefing Schedule for Plaintiff's Motion for Attorney's Fees and Costs and to Continue Hearing on the Motion*

02/07/2019 **Order**
*Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues*

02/07/2019 **Notice of Entry of Stipulation and Order**
*Notice of Entry of Stipulation and Order to Extend Briefing Schedule for Plaintiff's Motion for Attorney's Fees and Costs and to Continue Hearing on the Motion*

02/07/2019 **Notice**
*Defendant Harvest Management Sub LLC's Notice of Objection and Reservation of Rights to Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues*

02/07/2019 **Notice of Entry of Order**
*Notice of Entry of Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues*

02/07/2019 **Stipulation and Order**
*Stipulation and Order to Continue Hearing on Defendant Harvest Management Sub LLC's Motion for Entry of Judgment*

02/08/2019 **Notice of Entry of Stipulation and Order**
*Notice of Entry of Stipulation and Order to Continue Hearing on Defendant Harvest Management Sub LLC's Motion for Entry of Judgment*

02/14/2019 **Stipulation and Order**
*Stipulation and Order to Extend Briefing Schedule For Plaintiff's Motion For Attorney's Fees and Costs and to Continue Hearing on the Motion (Second Request)*

02/15/2019 **Notice of Entry of Stipulation and Order**
*Notice of Entry of Stipulation and Order to Extend Briefing Schedule For Plaintiff's Motion For Attorney's Fees and Costs and to Continue Hearing on the Motion (Second Request)*

02/19/2019 **Stipulation and Order**
*Stipulation and Order to Reschedule February 19, 2019 Hearing to March 5, 2019*

02/21/2019 **Notice of Entry of Stipulation and Order**
*Notice of Entry of Stipulation and Order to Reschedule February 19, 2019 Hearing to March 5, 2019*

02/22/2019 **Opposition**
*Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Attorney's Fees and Costs*

02/22/2019 **Opposition**
*Defendant's Opposition to Motion for Attorneys Fees*

03/05/2019 **Supplement**
*Supplement to Harvest Management Sub LLC's Motion for Entry of Judgment*

03/06/2019 **Objection**
*Plaintiff's Objection to Supplement to Harvest Management Sub LLC's Motion for Entry of Judgment*

03/06/2019 **Response**
*Defendant Harvest Management Sub LLC's Response to Plaintiff's Objection to Supplement to Harvest Management Sub LLC's Motion for Entry of Judgment*

03/08/2019 **Reply**
*Plaintiff's Reply in Support of Motion for Attorney's Fees and Costs*

03/13/2019 **Motion to Strike**
*Defendant Harvest Management Sub LLC's Motion to Strike Portions of Plaintiff Aaron M. Morgan's Reply in Support of Motion for Attorney's Fees and Costs; or, in the Alternative, Motion for Leave to File Sur-Reply on Order Shortening Time*

03/14/2019 **Minute Order** (2:00 PM) (Judicial Officer Bell, Linda Marie)
Minutes
Result: Minute Order - No Hearing Held

03/14/2019 **Notice of Department Reassignment**
*Notice of Department Reassignment*

03/19/2019 **Motion for Attorney Fees and Costs** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Plaintiff's Motion for Attorney's Fees and Costs*
*03/01/2019 Reset by Court to 03/08/2019*
*03/08/2019 Reset by Court to 03/15/2019*
*03/15/2019 Reset by Court to 03/19/2019*
*03/19/2019 Reset by Court to 03/19/2019*
Result: Stayed

03/19/2019 **Status Check** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Status Check: Decision*
Result: Matter Heard

03/19/2019 **Motion to Strike** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*Defendant Harvest Management Sub LLC's Motion to Strike Portions of Plaintiff Aaron M. Morgan's Reply in Support of Motion for Attorney's Fees and Costs; or, in the Alternative, Motion for Leave to File Sur-Reply on Order Shortening Time*
Result: Stayed

03/19/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Bell, Linda Marie)
Parties Present
Minutes

1850

Result: Matter Heard

03/28/2019 **Reporters Transcript**
*Court Recorder's transcript of Proceedings (Civil) - 3-5-19 - Bell*

04/02/2019 **Status Check** (9:00 AM) (Judicial Officer Bell, Linda Marie)
*STATUS CHECK: DECISION*
Parties Present
Minutes
Result: Matter Heard

04/05/2019 **Decision and Order**
*Deleted, wrong document attached Decision and Order*

04/05/2019 **Decision and Order**
*Decision and Order*

04/05/2019 **Minute Order** (4:30 PM) (Judicial Officer Bell, Linda Marie)
Minutes
Result: Minute Order - No Hearing Held

## Financial Information

**Defendant** Harvest Management Sub LLC

| | | | | |
|---|---|---|---|---|
| | Total Financial Assessment | | | 30.00 |
| | Total Payments and Credits | | | 30.00 |
| | **Balance Due as of 04/10/2019** | | | **0.00** |
| 06/16/2015 | Transaction Assessment | | | 30.00 |
| 06/16/2015 | Efile Payment | Receipt # 2015-62947-CCCLK | Harvest Management Sub LLC | (30.00) |

**Defendant** Lujan, David E

| | | | | |
|---|---|---|---|---|
| | Total Financial Assessment | | | 223.00 |
| | Total Payments and Credits | | | 223.00 |
| | **Balance Due as of 04/10/2019** | | | **0.00** |
| 06/16/2015 | Transaction Assessment | | | 223.00 |
| 06/16/2015 | Efile Payment | Receipt # 2015-62946-CCCLK | Lujan, David E | (223.00) |

**Plaintiff** Morgan, Aaron M

| | | | | |
|---|---|---|---|---|
| | Total Financial Assessment | | | 926.00 |
| | Total Payments and Credits | | | 926.00 |
| | **Balance Due as of 04/10/2019** | | | **0.00** |
| 05/20/2015 | Transaction Assessment | | | 270.00 |
| 05/20/2015 | Efile Payment | Receipt # 2015-53059-CCCLK | Morgan, Aaron M | (270.00) |
| 05/10/2017 | Transaction Assessment | | | 200.00 |
| 05/10/2017 | Efile Payment | Receipt # 2017-43043-CCCLK | Morgan, Aaron M | (200.00) |
| 05/25/2018 | Transaction Assessment | | | 371.00 |
| 05/25/2018 | Payment (Window) | Receipt # 2018-35738-CCCLK | Counter Transaction | (371.00) |
| 08/01/2018 | Transaction Assessment | | | 3.50 |
| 08/01/2018 | Efile Payment | Receipt # 2018-51045-CCCLK | Morgan, Aaron M | (3.50) |
| 09/10/2018 | Transaction Assessment | | | 3.50 |
| 09/10/2018 | Efile Payment | Receipt # 2018-59708-CCCLK | Morgan, Aaron M | (3.50) |
| 12/17/2018 | Transaction Assessment | | | 3.50 |
| 12/17/2018 | Efile Payment | Receipt # 2018-82694-CCCLK | Morgan, Aaron M | (3.50) |
| 12/18/2018 | Transaction Assessment | | | 3.50 |
| 12/18/2018 | Efile Payment | Receipt # 2018-83158-CCCLK | Morgan, Aaron M | (3.50) |
| 12/18/2018 | Transaction Assessment | | | 27.50 |
| 12/18/2018 | Efile Payment | Receipt # 2018-83174-CCCLK | Morgan, Aaron M | (27.50) |
| 12/19/2018 | Transaction Assessment | | | 5.00 |
| 12/19/2018 | Payment (Window) | Receipt # 2018-83318-CCCLK | Marquis Aurbach Coffing | (5.00) |
| 01/02/2019 | Transaction Assessment | | | 3.50 |
| 01/02/2019 | Efile Payment | Receipt # 2019-00078-CCCLK | Morgan, Aaron M | (3.50) |
| 01/10/2019 | Transaction Assessment | | | 3.50 |
| 01/10/2019 | Efile Payment | Receipt # 2019-01831-CCCLK | Morgan, Aaron M | (3.50) |
| 01/10/2019 | Transaction Assessment | | | 3.50 |
| 01/10/2019 | Efile Payment | Receipt # 2019-02025-CCCLK | Morgan, Aaron M | (3.50) |
| 01/16/2019 | Transaction Assessment | | | 3.50 |
| 01/16/2019 | Efile Payment | Receipt # 2019-03284-CCCLK | Morgan, Aaron M | (3.50) |
| 01/23/2019 | Transaction Assessment | | | 3.50 |
| 01/23/2019 | Efile Payment | Receipt # 2019-04852-CCCLK | Morgan, Aaron M | (3.50) |
| 02/07/2019 | Transaction Assessment | | | 3.50 |
| 02/07/2019 | Efile Payment | Receipt # 2019-08188-CCCLK | Morgan, Aaron M | (3.50) |
| 02/07/2019 | Transaction Assessment | | | 3.50 |
| 02/07/2019 | Efile Payment | Receipt # 2019-08414-CCCLK | Morgan, Aaron M | (3.50) |
| 02/20/2019 | Transaction Assessment | | | 3.50 |
| 02/20/2019 | Efile Payment | Receipt # 2019-11108-CCCLK | Morgan, Aaron M | (3.50) |
| 02/21/2019 | Transaction Assessment | | | 3.50 |
| 02/21/2019 | Efile Payment | Receipt # 2019-11268-CCCLK | Morgan, Aaron M | (3.50) |

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| | | | | |
|---|---|---|---|---|
| 03/06/2019 | Transaction Assessment | | | 3.50 |
| 03/06/2019 | Efile Payment | Receipt # 2019-14409-CCCLK | Morgan, Aaron M | (3.50) |
| 03/08/2019 | Transaction Assessment | | | 3.50 |
| 03/08/2019 | Efile Payment | Receipt # 2019-15155-CCCLK | Morgan, Aaron M | (3.50) |

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