

Case No. _____

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC,
Petitioner,

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Elizabeth A. Brown
Clerk of Supreme Court

vs.

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

- and -

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

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

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 6 OF 14**

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 6 OF 14

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TAB 12

TAB 12

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 AARON MORGAN,
8 Plaintiff,

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

9 vs.

10 DAVID LUJAN

11 Defendant.
12

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

15 TUESDAY, APRIL 3, 2018
16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **CIVIL JURY TRIAL**

18 APPEARANCES:

19 For the Plaintiff:

DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

21 For the Defendant:

BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

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24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

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WITNESSES FOR THE PLAINTIFF:

None

WITNESSES FOR THE DEFENDANT:

None

1 Las Vegas, Nevada, Tuesday, April 3, 2018

2 THE MARSHAL: Please rise for the jury.

3 [Prospective Jurors enters at 10:23:27 a.m.]

4 THE COURT: Back on the record in case number A-718679,
5 Morgan vs. Lujan. Let the record reflect that the presence of all our
6 prospective jurors.

7 MR. CLOWARD: Yes, Your Honor. Oh, I'm sorry.

8 THE COURT: All right.

9 MR. RANDS: I agree with him.

10 THE COURT: Good morning.

11 MR. RANDS: It's my only time today.

12 THE COURT: Okay. So I'm going to ask the following people if
13 they would go back to jury services and thank you for your time.

14 Ms. Pederson [phonetic], ma'am.

15 Mr. Sidaran Bacue [phonetic], sir.

16 Ms. Weferling [phonetic], ma'am.

17 And, Mr. Leong [phonetic]. So thank you all.

18 And we're going to call up some people to take their place.

19 THE CLERK: In seat number 7, badge number 38, Constantino
20 Toutoulis. In seat number 8, Kenji Hall, badge number 39. In seat number
21 11, badge number 40, James Lane. And in seat number 14, badge number
22 41, Daniel Sibelrude.

23 THE MARSHAL: Right over there, sir.

24 THE COURT: All right. Is it Mr. Toutoulis? Is that correct?

25 PROSPECTIVE JUROR NUMBER 38: Excuse me?

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1 THE COURT: How do you pronounce your last name?

2 PROSPECTIVE JUROR NUMBER 38: Toutoulis.

3 THE COURT: Toutoulis. All right, sir, if you will introduce
4 yourself, please?

5 PROSPECTIVE JUROR NUMBER 38: Yes. My name is
6 Constantino Toutoulis. I've lived in Clark County for 30 years. I have a
7 Bachelor's degree in criminal justice from UNLV. I work at UNLV at the
8 Parking Enforcement Department. I'm one of the supervisors over there. I
9 am not married and I don't -- I do not have any children.

10 THE COURT: All right. Sir, have you ever served as a juror
11 before?

12 PROSPECTIVE JUROR NUMBER 38: No.

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

15 PROSPECTIVE JUROR NUMBER 38: No.

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

18 PROSPECTIVE JUROR NUMBER 38: No.

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

21 PROSPECTIVE JUROR NUMBER 38: No.

22 THE COURT: Have you or anyone close to you suffered a
23 serious injury?

24 PROSPECTIVE JUROR NUMBER 38: No.

25 THE COURT: Have you or anyone close to you been in a car

1 crash?

2 PROSPECTIVE JUROR NUMBER 38: No.

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

5 PROSPECTIVE JUROR NUMBER 38: Excuse me?

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

8 PROSPECTIVE JUROR NUMBER 38: Yes.

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

11 PROSPECTIVE JUROR NUMBER 38: Yes.

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

15 PROSPECTIVE JUROR NUMBER 38: Yes.

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

19 PROSPECTIVE JUROR NUMBER 38: No.

20 THE COURT: And if were a party to the case, would you be
21 comfortable having someone like yourself as a juror?

22 PROSPECTIVE JUROR NUMBER 38: Yes.

23 THE COURT: Mr. Cloward?

24 MR. CLOWARD: Yes, Your Honor. Thank you. Just updating
25 my seating chart.

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1 Mr. is it Toutoulis?

2 PROSPECTIVE JUROR NUMBER 38: Toutoulis, yes.

3 MR. CLOWARD: How are you today?

4 PROSPECTIVE JUROR NUMBER 38: Good. How are you?

5 MR. CLOWARD: Good. I'm going to stand over here so I can
6 get a line of sight.

7 No, you're fine. You're fine. You're fine. I can move over.

8 So how have you been?

9 PROSPECTIVE JUROR NUMBER 38: So far so good.

10 MR. CLOWARD: Did we put you to sleep yesterday sitting in
11 the back or what did you think of the conversation?

12 PROSPECTIVE JUROR NUMBER 38: It's my first experience
13 here and it's very tedious.

14 MR. CLOWARD: A lot of questions and sometimes personal.
15 What were some of the things that you kind of maybe -- you had feelings
16 about when we were discussing things with the rest of the group?

17 PROSPECTIVE JUROR NUMBER 38: You know, I see
18 everyone has unique perspectives and opinions about their beliefs and what
19 they interpret things, but it's an interesting process.

20 MR. CLOWARD: Yeah. When we were talking yesterday with
21 some of the folks, I believe Mr. -- and I wrote over his name. I can't
22 remember. The person that was sitting next -- would have been sitting
23 where Mr. Hall is sitting, but he's no longer here. He felt like, you know, that
24 when I talked about the amount of money, that, you know, he felt like I was
25 here trying to fool him.

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1 How did you feel when I talked about those things?

2 PROSPECTIVE JUROR NUMBER 38: That you were trying to
3 fool him?

4 MR. CLOWARD: Yeah.

5 PROSPECTIVE JUROR NUMBER 38: Oh, I disagree, but me,
6 personally, I do not know the severity of the case. Of course a million
7 dollars is a lot of money.

8 MR. CLOWARD: Sure.

9 PROSPECTIVE JUROR NUMBER 38: But I can't -- myself, I
10 can't judge anything like that because I have no idea what the case is all
11 about, so, yeah.

12 MR. CLOWARD: Yesterday it seemed like there were a couple
13 of different reactions that came out that kind of were common reactions.
14 Some folks felt like when I talked about that amount some folks wondered,
15 well, I wonder what happened. Other folks kind of felt like, oh, that's, you
16 know, that's no way.

17 How did you feel?

18 PROSPECTIVE JUROR NUMBER 38: Myself, I don't like to
19 assume anything.

20 MR. CLOWARD: Okay.

21 PROSPECTIVE JUROR NUMBER 38: I mean, I've heard, you
22 know, stories in the past from different people. I mean, yes, are there
23 frivolous law suits happening around the world in the country? Of course,
24 yeah, you know. But every case is different and unique and you know, I'm
25 not going to generalize every single case and you know, maybe it's

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1 warranted. Maybe it's not. I don't know yet. I -- you know, I have to wait
2 and see, so.

3 MR. CLOWARD: Who, I guess, did you learn that from
4 somebody, kind of the -- that approach? Is that something you were taught
5 or just something?

6 PROSPECTIVE JUROR NUMBER 38: Well, through school,
7 through family experience, books I read; just life in general, life experience
8 and other people's experiences.

9 MR. CLOWARD: Got you.

10 PROSPECTIVE JUROR NUMBER 38: Not necessarily mine,
11 but just one. You know what I'm saying.

12 MR. CLOWARD: We have a couple Charles Duhiig fans.
13 Mr. Lane, it looks like has the same book *Power of Habit*. What are some
14 books that maybe you have -- we would find on your bookshelf, say, for
15 instance?

16 PROSPECTIVE JUROR NUMBER 38: Well, I've read a lot of --
17 I was interested in psychology in my --

18 MR. CLOWARD: Tell me about that.

19 PROSPECTIVE JUROR NUMBER 38: I taught myself a lot of
20 psychology, self-taught. Self-improvement books, growth, being self-
21 actualized, things like that. I have a Bachelor's degree from UNLV. And on
22 my own, I also studied psychology for a year on my own. I read books about
23 just the reality of life, you know, the -- just being a realist basically. And
24 things that help you reach your full potential, I supposed, so.

25 MR. CLOWARD: Okay. Yesterday Ms. Weberly, kind of talked

1 about how, in life, her view is that, you know, it's life happens and bad things
2 happen to people. It's kind of their cross to bear and so forth.

3 Do you think that or are you someone that believes that, you
4 know what, bad things do happen, but there also should be accountability if
5 somebody does something wrong?

6 PROSPECTIVE JUROR NUMBER 38: Well, bad things, you
7 know, life is unpredictable. So you know, whatever happens to you, you
8 know, and hopefully if it's good or bad, it's an experience and sometimes
9 those experiences can change people -- their perspective on things. There's
10 a saying, say there's, you know, in life ten percent of things happen to you
11 and 90 percent of the things is how you react to them. So but it's -- every --
12 you know, you never stop learning until the day you die. So, but nobody's
13 perfect. So -- but it's a learning experience day by day basically, so.

14 MR. CLOWARD: Okay. Do you believe that -- do you believe
15 in personal responsibility?

16 PROSPECTIVE JUROR NUMBER 38: Yes. I do.

17 MR. CLOWARD: Would you believe that if somebody acts a
18 certain way that harms another person there should be consequences or are
19 you an individual that kind of looks at it like, you know what, life is what it is
20 and?

21 PROSPECTIVE JUROR NUMBER 38: Well, everybody makes
22 a choice, and consequences can be negative or positive based on what that
23 choice was. And sometimes someone's actions can affect other people's
24 lives, personally for permanently or temporarily. But there's always
25 consequences to someone's actions. Always. Positive or negative. It's

1 always an effect. There's always some effect, so.

2 MR. CLOWARD: Okay. Getting a question here from Marge.

3 [Counsel confer]

4 MR. CLOWARD: You know, if you were selected as the juror
5 and you found that the, you know, the Defendant did do something wrong,
6 how would you feel holding someone else accountable?

7 PROSPECTIVE JUROR NUMBER 38: The Defendant did
8 something wrong?

9 MR. CLOWARD: Sure. I mean, if we prove -- if Aaron proves
10 his case --

11 PROSPECTIVE JUROR NUMBER 38: Uh-huh. Right.

12 MR. CLOWARD: -- how would you feel as a juror being put in
13 that situation? Is that something that would bother you or not?

14 PROSPECTIVE JUROR NUMBER 38: It would not bother me.

15 MR. CLOWARD: Was there anything yesterday that was
16 discussed that you had a strong feeling about or you were maybe surprised
17 at the way that you felt when somebody else was talking that it actually, you
18 know, got some emotions stirred up that maybe you hadn't really thought
19 about before?

20 PROSPECTIVE JUROR NUMBER 38: Off the top of my head,
21 I can't think of anything.

22 MR. CLOWARD: I appreciate everything that you've said to
23 me. I always ask this question. Is there anything else that you think we
24 might want to know about you in particular?

25 PROSPECTIVE JUROR NUMBER 38: No. Nothing. That's it.

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1 MR. CLOWARD: Okay. Thank you very much.

2 PROSPECTIVE JUROR NUMBER 38: You're welcome.

3 MR. CLOWARD: Your Honor, Thank you.

4 THE COURT: All right. Mr. Rands?

5 MR. RANDS: Thank you, Your Honor. You're too tall, and the
6 hair, you know?

7 As you know from the process, the Defendant always goes
8 second in this process. It always is. They've got the burden. Judge will talk
9 about that, but we always go second. The problem with being the
10 Defendant is you also can't ask questions that have already been asked, so,
11 you know, the Plaintiff's attorney, Mr. Cloward will be up here and he'll talk
12 for 20-30 minutes at a time. And oftentimes that leaves me with really
13 nothing to ask. And so, I don't -- you won't hold that against me, will you, if I
14 try and get you out of here quicker. You won't hold that against me?

15 I want to talk a little bit about what you said about personal
16 responsibility though from the other side. Do you believe that someone who
17 is maybe injured in an accident also has some personal responsibility?

18 PROSPECTIVE JUROR NUMBER 38: Of course.

19 MR. RANDS: And they just can't lay around and say, you know,
20 I've been hurt, now pay me millions of dollars, correct?

21 PROSPECTIVE JUROR NUMBER 38: Yes.

22 MR. RANDS: And as you said, a million dollars is a lot of
23 money.

24 PROSPECTIVE JUROR NUMBER 38: It is.

25 MR. RANDS: And they've already said they're going to be

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1 asking for a lot of money. If after the evidence comes in and you find -- even
2 if you find my client responsible for the accident, you still -- that's only part
3 one of what you're going to be doing. Part two is to assign damages. And if
4 you find that the damages are significantly less than a million dollars, will
5 you have a hard time looking at Mr. Morgan and saying, you know, you're
6 not going to get a million dollars?

7 PROSPECTIVE JUROR NUMBER 38: No. I won't.

8 MR. RANDS: You would listen to the evidence?

9 PROSPECTIVE JUROR NUMBER 38: I would --

10 MR. RANDS: Evaluate the evidence to make a reasonable --

11 PROSPECTIVE JUROR NUMBER 38: Of course.

12 MR. RANDS: -- verdict? Not just because this is, you know, an
13 accident that he was in.

14 PROSPECTIVE JUROR NUMBER 38: Right.

15 MR. RANDS: Now he needs to retire.

16 PROSPECTIVE JUROR NUMBER 38: Right.

17 MR. RANDS: I used to ask a question. And I've been doing
18 this for 30 -- a lot more years than I want to think right now. And we used to
19 ask a question, you know, what magazines do you read, but I found out
20 people don't read magazines anymore. So it's not a really good question.
21 You can't get much out of it. But are you someone who gets news on --

22 How do you get your news?

23 PROSPECTIVE JUROR NUMBER 38: Internet or on TV.

24 MR. RANDS: What kind of websites do you use for internet
25 news?

1 PROSPECTIVE JUROR NUMBER 38: Sometimes CNN,
2 Yahoo, kind of depending on the website. Some websites have better
3 sources than others, but usually it's either CNN or Yahoo or whatever.

4 MR. RANDS: I'm a football fan, a college football fan and I --
5 there's a site called Cougarboard that I go for all my BYU news, but anything
6 like that that you go to?

7 PROSPECTIVE JUROR NUMBER 38: Like sports websites?

8 MR. RANDS: Yeah.

9 PROSPECTIVE JUROR NUMBER 38: Oh, NFL or NBA. I'm a
10 football fan and basketball fan.

11 MR. RANDS: You going to be a Raider's fan?

12 PROSPECTIVE JUROR NUMBER 38: I'm actually a Rams fan.

13 MR. RANDS: Rams fan. Well, they're not coming here, but my
14 condolences.

15 PROSPECTIVE JUROR NUMBER 38: And a Raider's fan, so I
16 can --

17 MR. RANDS: That's okay. I'm a Chief's fan, so we used to be
18 in the same state there. I'm actually an Andy Reed fan, but that's -- I follow
19 him around more than anything. But you've said that you got your degree in
20 criminal justice.

21 PROSPECTIVE JUROR NUMBER 38: Yes.

22 MR. RANDS: And now you work for UNLV. Have you ever
23 worked in the law enforcement?

24 PROSPECTIVE JUROR NUMBER 38: Not worked. I used to
25 be an Explorer Metro. I wanted to be a police officer, and I just had a

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1 change of heart. But I was with them for three years and went on ride-a-
2 longs and I have some friends that are police officers who --

3 MR. RANDS: I understand the change or heart. I went to
4 premed all the way through my senior year and then ended up in law school.
5 So I can understand the change of heart.

6 But you've never worked in the law enforcement?

7 PROSPECTIVE JUROR NUMBER 38: No.

8 MR. RANDS: I guess technically you're quasi law enforcement.

9 PROSPECTIVE JUROR NUMBER 38: Parking enforcement,
10 yeah. So, yeah.

11 MR. RANDS: Parking enforcement. Anything about your job as
12 parking enforcement that you think would make you favor one side in this
13 dispute over another?

14 PROSPECTIVE JUROR NUMBER 38: No. Not at all.

15 MR. RANDS: Are you someone, if you get in the jury room, that
16 would -- you know, there -- it's a psychology kind of issue that you're going
17 to put, you know, a number of you, eight, I think is the general number into a
18 jury room and you will be given the case. And you'll be making the decision
19 on the -- at the law as it's given to you by the Judge and on the facts and
20 making a judgment on the case. So sometimes people get into a situation
21 like that and they kind of go along with the crowd, or sometimes they'll go in
22 and say, no, I think I saw it this way. And, you know, you have to deliberate.
23 And, you know, sometimes you didn't see it right.

24 But are you someone who's going to just go along with the
25 crowd? Are you going to be in there, at least make you opinion known?

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1 PROSPECTIVE JUROR NUMBER 38: No. I will make my
2 opinion known.

3 MR. RANDS: Have you ever been like a supervisor in
4 anything?

5 PROSPECTIVE JUROR NUMBER 38: I'm currently a
6 supervisor.

7 MR. RANDS: Okay. That's right. Should have listened better.
8 Let me go over by -- I'm sorry. I'm going over my notes, too. But I have to
9 check off the ones that have already been asked.

10 So one thing you'll find out in a case like this and it happens in
11 all -- almost all civil cases is there's going to be more witnesses on one side
12 than there are another. Reason for that is a lot of times the things that we
13 put in -- the evidence are done through cross-examination of their witnesses.
14 Or you know, again, we can't add -- we have to add -- we can't go over
15 things that are already done.

16 Are you going to be the kind of person that says, well they had
17 ten witnesses and they only had two, so the ten must win?

18 PROSPECTIVE JUROR NUMBER 38: No. Not necessarily.

19 MR. RANDS: You'll listen to the testimony; listen to cross-
20 examination by the Defense?

21 PROSPECTIVE JUROR NUMBER 38: Yes.

22 MR. RANDS: Because sometimes people do that. They'll say,
23 you know, they had ten witnesses, so ten's better than two, so they must
24 win. And hopefully Mr. Cloward will ask his standard question about what's
25 the worst thing that's happened to you in your life and how did you deal with

1 that. I'd kind of like to know since everybody else has given theirs, so?

2 PROSPECTIVE JUROR NUMBER 38: I would say a year and
3 a half ago my father passed away. And I was very close to him. And he
4 taught me a lot about life and people and, you know, it was -- I had a good
5 relationship with him. But that would be like the worst day of my life so far.

6 MR. RANDS: Yeah. I can imagine. My dad's 85 and he's still
7 hanging in there, but, you know, he's 85.

8 PROSPECTIVE JUROR NUMBER 38: Yeah.

9 MR. RANDS: So I understand life's not forever.

10 PROSPECTIVE JUROR NUMBER 38: No.

11 MR. RANDS: So how did you -- how have you dealt with it
12 yourself? Is it?

13 PROSPECTIVE JUROR NUMBER 38: I just, you know,
14 sometimes keep myself busy going out with friends, or reading things, just
15 having family and friends support, things like that.

16 MR. RANDS: Yeah. Well, that's great. Good that you have the
17 family support, too. That's always important in a situation like that. You've
18 ever heard the phrase, you know, get up by your bootstraps and move on?

19 PROSPECTIVE JUROR NUMBER 38: I think so.

20 MR. RANDS: And I'm not talking about you particularly, but
21 have you heard that in general?

22 PROSPECTIVE JUROR NUMBER 38: In some variation of it,
23 yeah.

24 MR. RANDS: And what do you think about that?

25 PROSPECTIVE JUROR NUMBER 38: It's -- you know, life

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1 goes on, you know, and you know, don't think about the past. And live in the
2 moment.

3 MR. RANDS: Live in the moment.

4 PROSPECTIVE JUROR NUMBER 38: You know, and you
5 control your future.

6 MR. RANDS: You control your own destiny, right? Thank you.
7 I appreciate your time. I hope I wasn't too overbearing.

8 THE COURT: All right. Mr. Hall, sir?

9 PROSPECTIVE JUROR NUMBER 39: Hi. Good morning. My
10 name is Kenji Hall. I have lived in Clark County for the last seven years,
11 prior to that in Louisiana. This is my third stint in Clark County. I have a
12 Bachelor's degree in hospitality at University of Nevada Las Vegas. I am
13 employed at San Manuel Casino in Highland, California as the chief
14 operating officer. I have -- have been married for 25 years with two children.
15 My wife works in retail currently. And my children are both adults: they are
16 23 and 21. One works for a medical supply company and for Cirque de
17 Soleil and the other works for the South Point Casino.

18 THE COURT: All right. Sir, have you ever served as a juror
19 before?

20 PROSPECTIVE JUROR NUMBER 39: I have not, ma'am.

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

23 PROSPECTIVE JUROR NUMBER 39: In a courtroom setting,
24 ma'am?

25 THE COURT: Yes, sir.

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1 PROSPECTIVE JUROR NUMBER 39: Only a couple times in a
2 courtroom setting and the [indiscernible] side, hundreds of times.

3 THE COURT: All right. So all related to your employment?

4 PROSPECTIVE JUROR NUMBER 39: Yes, ma'am.

5 THE COURT: Anything outside of your employment?

6 PROSPECTIVE JUROR NUMBER 39: No. Not outside of my
7 employment.

8 THE COURT: Have you or anyone close to you worked in the
9 legal field?

10 PROSPECTIVE JUROR NUMBER 39: My wife is a district
11 court clerk here in Clark County and just several friends that have been
12 judges and lawyers as well. I worked as a runner when I was in high school.

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

15 PROSPECTIVE JUROR NUMBER 39: No related family. Just
16 friends in the community.

17 THE COURT: Have you or anyone close to you suffered a
18 serious injury?

19 PROSPECTIVE JUROR NUMBER 39: Yes. My father had a
20 one-car crash -- car accident back when I was in high school; was in the
21 hospital for a long period of time. And then I had a couple of people that I've
22 mentored in the past that have been in major car accidents with my, you
23 know, people that I've worked with that have survived them, but month-long
24 visits in a hospital.

25 THE COURT: And other than what you just mentioned, have

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1 you or anyone close to you been in a car crash?

2 PROSPECTIVE JUROR NUMBER 39: I have as well as my
3 daughter. She is my crusher. She's been in three accidents. I've been in
4 two. I've driven a lot longer than her, but mine were two small fender
5 benders, which were settled outside of court in insurance. My daughter's,
6 two were settled out of court. One is currently pending.

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

9 PROSPECTIVE JUROR NUMBER 39: Yes.

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

12 PROSPECTIVE JUROR NUMBER 39: I have been struggling
13 to answer this question every time you've asked it. And it's -- in the form of
14 this case, I don't believe it would be an issue. But I do know that as a juror
15 and this jury that has a responsibility to make a decision. And sometimes if
16 the moral values and the moral compass outweighs the current law, I feel
17 like we have the right to overturn this.

18 THE COURT: All right. And I don't know that anything would
19 come up that's too --

20 PROSPECTIVE JUROR NUMBER 39: I don't believe so from
21 hearing what I have in this case. But I'd --

22 THE COURT: Controversial in a --

23 PROSPECTIVE JUROR NUMBER 39: -- realize I had to
24 answer the question --

25 THE COURT: Yes, I understand in a negligence case. I mean

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1 this used to come up in the context more of in criminal cases when
2 possession of marijuana was still --

3 PROSPECTIVE JUROR NUMBER 39: Right.

4 THE COURT: -- illegal in Nevada. And there were certain
5 people who felt very strongly that it should be legal. And that's mostly when
6 this used to come up, and that's the example that I give if somebody doesn't
7 quite understand what I'm asking. But thank you.

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

11 PROSPECTIVE JUROR NUMBER 39: I believe I can.

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

15 PROSPECTIVE JUROR NUMBER 39: I have a slightly
16 weighted opinion against -- because of my occupation and the number of
17 frivolous claims that come against me. I believe that I'm smart and logical
18 enough though to make the decision on appropriate matters.

19 THE COURT: Okay. State you think you can decide this case
20 based on this case?

21 PROSPECTIVE JUROR NUMBER 39: Yes.

22 THE COURT: And if were a party to the case, would you be
23 comfortable having someone like yourself as a juror?

24 PROSPECTIVE JUROR NUMBER 39: Oh, [indiscernible].

25 THE COURT: Okay. Mr. Cloward?

1 MR. CLOWARD: If you were the defendant, but -- does that
2 mean you would not feel comfortable if you were the Plaintiff?

3 PROSPECTIVE JUROR NUMBER 39: Yes.

4 MR. CLOWARD: And I appreciate that.

5 PROSPECTIVE JUROR NUMBER 39: You've asked for brutal
6 honesty and I apologize --

7 MR. CLOWARD: No.

8 PROSPECTIVE JUROR NUMBER 39: -- that there's some
9 things that will potentially come out of our questioning.

10 MR. CLOWARD: No. It's -- that's the great thing about this
11 society we live in is we all have different views and that it's nothing to
12 apologize about at all. Nothing wrong with my Aunt Nancy for her views
13 on --

14 PROSPECTIVE JUROR NUMBER 39: I was going to say, I
15 remember. I remember Aunt Nancy's story there.

16 MR. CLOWARD: nothing wrong with her views. Just the way
17 that her views are. And really the thing that we try to find and I appreciate
18 your brutal honesty is sometimes we think about things with our head, but in
19 our heart we feel a certain way. And it sounds like, you know, you've talked
20 about your moral values might outweigh a logical decision, that your heart
21 might actually influence a decision. And I appreciate you sharing that more
22 than anything, because that's -- you know, it's like the example I gave with
23 cherry pie. I could try to be fair, but I promise you I wouldn't be fair. I know
24 that about myself. I hate it. It's gross. I feel strongly about it. It's weird. It's
25 almost like having an aversion to it. And so I know that about myself, you

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1 know? Any other pie, man, give it to me, you know, and I'll eat the whole
2 thing. So thank you for sharing. Please don't feel like you have to
3 apologize.

4 What are some other reasons that -- and my tummy is growling
5 big time, so if anyone can hear that, sorry. Haven't eaten yet. Tell me what
6 are some other things, I guess, that you know about yourself. You know
7 about the way, in your heart of hearts, being brutally honest that you feel like
8 you maybe wouldn't be fair to the Plaintiff?

9 PROSPECTIVE JUROR NUMBER 39: In my occupation we
10 get sued daily. I, you know, I had an incident happen last night at our
11 property, and I know that it will come around and somebody will be suing our
12 property for damages of some type. And I realize that, you know,
13 unfortunately it puts a bad image on attorneys that are public injury on that
14 side.

15 MR. CLOWARD: Sure.

16 PROSPECTIVE JUROR NUMBER 39: Especially when you're
17 advertising casino accidents.

18 MR. CLOWARD: Sure.

19 PROSPECTIVE JUROR NUMBER 39: And with the exact term
20 "accident" in those components there and the amount of money that we
21 spend for these frivolous claims in many cases where, you know, I see the
22 facts. I know what's going on with it, and it's easier for us to settle out of
23 court than it is to come to court because of the costs. So we'll settle for
24 \$20,000 for a case and somebody who really has no business getting the
25 money for it. And no offense to Aaron here, but, you know, I don't know the

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1 amounts, but I certainly would promise you that I will come up with what I
2 believe is a fair amount under the situation. And it might not be the same
3 amount that you would be asking for.

4 MR. CLOWARD: Sure. Do you believe that your experience
5 that even if the evidence show that it should be higher, you would probably
6 reduce that just based on your experience?

7 PROSPECTIVE JUROR NUMBER 39: You would have really
8 tough time proving the number that you're trying to get to.

9 MR. CLOWARD: Okay. I appreciate that. That's a fair
10 response. So I guess it would be fair to say that on the issues of damages,
11 Aaron would be starting off at a different spot than the Defendants and it
12 would a tougher job for him to prove his case with you?

13 PROSPECTIVE JUROR NUMBER 39: Yes.

14 MR. CLOWARD: Okay. I appreciate it. Another thing I wanted
15 to ask about was you -- you are going to throw the first pitch.

16 PROSPECTIVE JUROR NUMBER 39: I am.

17 MR. CLOWARD: That's a pretty big deal. Right?

18 PROSPECTIVE JUROR NUMBER 39: Well, again, yes. It's
19 pretty -- it's -- we donate a lot of money to a lot of organizations one of them
20 being the [indiscernible].

21 MR. CLOWARD: You don't get to do that every day?

22 PROSPECTIVE JUROR NUMBER 39: No.

23 MR. CLOWARD: Is that the first time you've ever done that?

24 PROSPECTIVE JUROR NUMBER 39: For a professional
25 team, yes.

1 MR. CLOWARD: do you think that that, you know, if you were
2 selected as the -- as a juror that that would weigh on your mind and would
3 prevent you from listening to the evidence and you'd kind of be upset?

4 PROSPECTIVE JUROR NUMBER 39: No. I think like Ms.
5 Keyho here was talking about with my job, you know, I have 1800
6 employees that report to me along the way that report through my chain.

7 MR. CLOWARD: That's a lot.

8 PROSPECTIVE JUROR NUMBER 39: And it's not about that
9 component of what I'm doing. That's just something that I was asked by the
10 Los Angeles Angels' Organization to do, but I have so many other things as
11 well that would probably add, you know, like Ms. Keyho was mentioning
12 there where we would rush through a little bit, because I'm thinking right now
13 of the things. I didn't even eat lunch yesterday because it was an hour's
14 work that I could get done. And when we complete at 6:00, I had two hours
15 of work, continue to speak to people that were, you know, still in my
16 jurisdiction at work.

17 MR. CLOWARD: Got you. Okay. I appreciate that clarification.
18 And I did forget to ask the other question about difficulties in life and I'm
19 sorry that I didn't remember that. It's on one of my cards; not on my outline
20 and that's how I forgot about it but would like to ask you, you know, is -- are
21 there things in your life that you've had to -- challenges that you've had to
22 face? And more particularly I'm interested to know if there are challenges
23 that you've had that looking back on it you kind of thing, you know what, I
24 didn't really handle that the way that I could have or should have?

25 PROSPECTIVE JUROR NUMBER 39: You know, I've had a lot

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1 of difficulties, but nothing to some of the extreme measures that some of our
2 friends here on the other jury have had. You know my father having an
3 accident when I was in high school, was out of commission. He was in, you
4 know, he was an alcoholic. He did a lot of bad things in his life, and couldn't
5 care for the family.

6 And I was working full time, going to school full time. I was
7 playing on the athletic team at UNLV full time, and I did all of this because I
8 needed to support Mom as well. And what would I have done differently?
9 There, again, I just know that I have to buckle down and survive.

10 I try and tell my team, you know, it's about meeting adversity
11 and beating it. I get -- I get with this job, I get to speak to amazing people
12 who do those things, who might have not [indiscernible] who couldn't walk
13 and came back and has done the crazy stuff he's done. But those are like
14 Michael Crosslin [phonetic] is another one of my dear friends that was from
15 Australia and beat cancer three times. And he's an amazing person.

16 And you see these things, and that's what I want myself to be.
17 So sometimes when I -- if I look back and say what could I have done better,
18 I think I could have been more inspirational to other people about being a
19 better person and doing more than you think you're capable of.

20 MR. CLOWARD: Is that something you that you've learned
21 over time, kind of having the perspective of the experience and wisdom that
22 comes from just age itself?

23 PROSPECTIVE JUROR NUMBER 39: I think part of that is that
24 and part of that is the association with great people. You know, when you
25 meet people like those type of inspirational people, it does something to you

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1 and it makes you want to be a better person. And I think that's always what
2 I would expect. I hope that, you know, I would love for everyone here to
3 listen to Michael Crosslin's story and think it's just inspirational of what he's
4 done along the way. I think that everyone deserves a better life and you are
5 what you make of it.

6 MR. CLOWARD: Sure. So for you it sounds like a big part of
7 that introspective review, I guess, of life has been your ability to associate
8 with like they say, Joel Osteen says, soar with the eagles.

9 PROSPECTIVE JUROR NUMBER 39: Absolutely.

10 MR. CLOWARD: Soar with the eagles rather than the turkeys,
11 right?

12 PROSPECTIVE JUROR NUMBER 39: Right.

13 MR. CLOWARD: Even though turkeys are great fliers, you
14 know, but does that kind of sum it up for you?

15 PROSPECTIVE JUROR NUMBER 39: Well, I think that, you
16 know, again, it's about not necessarily just associating with that but it's
17 about, you know, being one of those people. Not as well, not just
18 associating with them, converting your own life. And that's a component.

19 You know there are a lot of bad things that happen. Like my
20 friend sitting in front of me here with her daughter who's making something
21 great out of a bad situation. I hope her daughter becomes a genetics doctor
22 and solves the world's problems. I have confidence that she's going to do
23 amazing things because of the bad situations that have happened. That's
24 what I think that everyone should be doing in their life. I think that's just a
25 part of what we do as human beings. And I don't think we do enough of it.

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1 MR. CLOWARD: Sure. Okay. Thank you for sharing. I really
2 appreciate it. Thank you for giving me some insight. Thanks.

3 Thank you, Judge.

4 THE COURT: Mr. Rands?

5 MR. RANDS: Thank you.

6 Talked about a lot of inspirational people that have overcome
7 adversity. What's the common denominator with those people?

8 PROSPECTIVE JUROR NUMBER 39: They never give up.
9 They fight until the end and they won't stop unless and until they succeed.

10 MR. RANDS: They get knocked down; they get right back up?

11 PROSPECTIVE JUROR NUMBER 39: Absolutely.

12 MR. RANDS: Even if they're in pain and work through the pain?

13 PROSPECTIVE JUROR NUMBER 39: Yeah. Absolutely. I
14 mean, like I said, some of these stories that I've heard would make you cry
15 and the things that have happened. And you don't even -- like the one
16 gentleman I mentioned, this Australian guy, Michael Crosslin, who I've met
17 several times through friends. I've sent him emails back and forth now. You
18 know, a year ago he had been rediagnosed, had to go back in and have
19 another surgery. And it was his 30 or 40th surgery in his life there that he's
20 had. And he came out of it and his wife is now pregnant. And it's, you
21 know, it's one of those miracles. You're like this is an amazing thing. And I
22 love those kind of people that do those --

23 MR. RANDS: So it's painful, the cancer, the treatment, the
24 surgery --

25 PROSPECTIVE JUROR NUMBER 39: Absolutely.

1 MR. RANDS: -- it's all --

2 PROSPECTIVE JUROR NUMBER 39: Absolutely. I've seen
3 the pictures and heard stories about it.

4 MR. RANDS: I've never been close to it fortunately. I had an
5 assistant that went through some cancer therapy and the chemotherapy and
6 it's not a pleasant thing even though, knock on wood or whatever I can
7 knock on, she's doing good now and seems to be in remission.

8 So you talked a little bit about your -- well, I just wanted to
9 commiserate with your daughter thing, too, because I have three daughters.
10 My oldest was my accident prone one. In fact, I got in an accident with her
11 where I broke my neck that's always good for -- because I could say
12 remember that time you tried to kill me and -- but it's -- I guess one of the
13 things that is difficult in being a defense attorney and defending cases is,
14 you know, you hear the Plaintiff side first. And then you know, the Defense
15 comes second.

16 So, you know, a lot of times when you hear something you're
17 going oh, that's terrible. I can't believe that happened. I can't believe it.
18 And if you make up your mind at that point, then it's really over for me,
19 because you don't hear the full case. You didn't get the full argument. You
20 don't get everything.

21 Are you someone that gets emotionally involved in something or
22 can you kind of be a little more analytical?

23 PROSPECTIVE JUROR NUMBER 39: Yeah. In my job I have
24 to be that way. You have to hear both sides of the story to know that there's
25 a truth somewhere in the middle.

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1 MR. RANDS: Correct.

2 PROSPECTIVE JUROR NUMBER 39: You know, and that's
3 kind of, you know, with my daughter and her accident. I just come to brief
4 terms. You know, she had this accident. She rear-ended somebody and did
5 no damage to the car in front of that one. She was the third car in someone
6 else's -- had a third car in too, or the last car in and no damage to the front
7 car. However, there is, you know, I think it was a \$400 dent that was in the
8 car supposedly. So I can't say none, because I can't prove it; but thousands
9 of dollars in medical bills for something that was a tap.

10 And then the middle car has now thousands of dollars in
11 medical bills and pain and suffering and other things when there was, you
12 know, again, less than -- you know, the air bag didn't go off. Nobody was --
13 you know, everybody was fine afterwards there and, you know, right now,
14 the -- my insurance is fighting it. I'm sure two years from now we'll be in a
15 situation potentially similar to this over something like that. And those things
16 are just -- it's tough.

17 But -- so I know that I do believe that the people that she hit are
18 deserving of something. I certainly don't believe the numbers that they're
19 talking about is what they're deserving. And that's where I say the truth lies
20 somewhere in between the two.

21 MR. RANDS: and if you were to listen to this case and hear the
22 numbers that they're asking, they told you they're going to ask for millions of
23 dollars. If you feel like the evidence shows that it's somewhere less than
24 that, maybe even significantly less than that, would you have a problem
25 saying I'm sorry, but, you know, my opinion and the jury's opinion is that it's

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1 not a million dollar case. It's a --

2 PROSPECTIVE JUROR NUMBER 39: I think that's --

3 MR. RANDS: -- something less?

4 PROSPECTIVE JUROR NUMBER 39: -- that's what I do with
5 my job every day. You know, historically, we take cases and decide what
6 the true working value is and we, you know, attempt to settle for that value.
7 And, obviously, if there's usually a middle place and a determination of what
8 the cost of the case would be with lawyers, and so we find the middle
9 ground and suck it up.

10 MR. RANDS: And that's kind of what you do. Sometimes the
11 middle ground's not even really the middle. It's maybe --

12 PROSPECTIVE JUROR NUMBER 39: No. It never is.

13 MR. RANDS: -- closer one way or the other.

14 PROSPECTIVE JUROR NUMBER 39: Yes.

15 MR. RANDS: Also, it's not something I'm asking you to say
16 okay, they're asking for \$2 million, we're asking for zero. Let's give them a
17 million dollars in the middle. That's not really what a jury should do either.

18 PROSPECTIVE JUROR NUMBER 39: No. It's -- like I said, it's
19 somewhere in the middle. If there's -- you know, again, if your client is at
20 fault, then Mr. Cloward's client deserves something out of. It's what that
21 number truly needs to be is the question.

22 MR. RANDS: Yeah. Do you think it's important to use your
23 common sense?

24 PROSPECTIVE JUROR NUMBER 39: Absolutely.

25 MR. RANDS: And if you were called -- picked to be a juror,

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1 would you use your common sense?

2 PROSPECTIVE JUROR NUMBER 39: Absolutely, yes.

3 MR. RANDS: And you talked a little bit about, you know, the
4 little scratch or \$400 damage leading to hundreds of thousands of dollars or
5 thousands of dollars.

6 Mr. Cloward talked yesterday with some of the jurors about
7 frivolous defenses and we're talking about frivolous cases. And he was
8 talking about frivolous defenses.

9 Do you believe that just because someone comes into court
10 and says I want a jury to decide my case that's necessarily an indication that
11 they shouldn't be in court?

12 PROSPECTIVE JUROR NUMBER 39: No. It's not an
13 indication of that. I mean, again, without knowing the facts I can't tell you --

14 MR. RANDS: Sure.

15 PROSPECTIVE JUROR NUMBER 39: -- if this case is a
16 frivolous case or not. I've just seen so many that are that come to litigation,
17 some 90-plus percent of the ones that I see are in my head somewhat
18 frivolous there or they're -- the word I would use is that it's just somewhat of
19 an agreed principal that they're asking for more than what's deserved.

20 MR. RANDS: Somebody looking to win the lottery?

21 PROSPECTIVE JUROR NUMBER 39: Yes.

22 MR. RANDS: And you've indicated that you come in with a little
23 bit of a preconceived prejudice or against people bringing lawsuits; is that
24 correct?

25 PROSPECTIVE JUROR NUMBER 39: I wouldn't say against

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1 the -- well, to some degree, yes. I would say that. I think I probably think
2 more on, again, you told me not to apologize, but I blame it more on
3 personal injury attorneys on that side and, you know, again, I know that they
4 need to -- it's part of their job. They, you know, they get a portion of the cut
5 as well. So they are going to ask for more because the more they get, the
6 bigger their portion of the cut is.

7 MR. RANDS: is it something you could put aside though if you
8 were picked to be a juror on this case and listen to all the evidence and
9 make the decision based on the evidence presented?

10 PROSPECTIVE JUROR NUMBER 39: I think I could make a
11 fair decision based off the evidence presented. I don't think, again, it's -- I
12 think the evidence will speak the most, but I certainly, you know, know that
13 in my history typically asking prices [indiscernible].

14 MR. RANDS: Thank you so much. Appreciate your time.

15 THE COURT: All right. Mr. Lane, sir?

16 PROSPECTIVE JUROR NUMBER 40: Hi. My name's James
17 Lane. I actually go by Andy. It's my middle name, if anybody -- that's me.
18 I've been in Clark County for just under three years. Before that, lived a
19 couple years in Phoenix, and then originally from Chicago. Have a
20 Bachelor's degree in finance. Currently employed as director of sales and
21 marketing for Regent Street Advisors. It's an alternative investment fund
22 based in Salt Lake City. I am married for 21 years. I've got two children 20
23 and 18 -- excuse me, 20 and 16. My wife works in gaming loyalty. My son
24 goes to college here at the Art Institute. My daughter is a junior in high
25 school.

1 THE COURT: All right. Sir, have you ever served as a juror
2 before?

3 PROSPECTIVE JUROR NUMBER 40: No.

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

6 PROSPECTIVE JUROR NUMBER 40: No.

7 THE COURT: Have you or anyone close to you worked in the
8 legal field?

9 PROSPECTIVE JUROR NUMBER 40: My mother-in-law is in
10 charge of all of the admin for a large insurance defense group in Chicago.

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

13 PROSPECTIVE JUROR NUMBER 40: No.

14 THE COURT: Have you or anyone close to you suffered a
15 serious injury?

16 PROSPECTIVE JUROR NUMBER 40: No.

17 THE COURT: Have you or anyone close to you been in a car
18 crash?

19 PROSPECTIVE JUROR NUMBER 40: Yes. Minor.

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

22 PROSPECTIVE JUROR NUMBER 40: Yes.

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

25 PROSPECTIVE JUROR NUMBER 40: Yes.

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

4 PROSPECTIVE JUROR NUMBER 40: Yes.

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

8 PROSPECTIVE JUROR NUMBER 40: No.

9 THE COURT: And if were a party to the case, would you be
10 comfortable having someone like yourself as a juror?

11 PROSPECTIVE JUROR NUMBER 40: Yes.

12 THE COURT: Mr. Cloward?

13 MR. CLOWARD: Your Honor, can I approach you really
14 quickly?

15 THE COURT: Sure.

16 MR. CLOWARD: One little matter real fast.

17 [Bench Conference begins at 11:05:57 a.m.]

18 MR. CLOWARD: You indicated you wanted us to tell you if
19 we're going to -- I'm going to assert a cause challenge on the last juror.

20 THE COURT: Yeah. I figured.

21 MR. CLOWARD: So I'm just letting you know.

22 THE COURT: Thank you.

23 MR. CLOWARD: Do you need me to?

24 THE COURT: Nothing else. Nope. Thank you.

25 MR. CLOWARD: Thank you. Is that what you -- is that how

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1 you want it done, just basically --

2 THE COURT: Yeah. Just let me know so that I can --

3 MR. RANDS: May I -- I'm shocked that he's trying to cause
4 challenge.

5 THE COURT: Me, too.

6 MR. RANDS: It just shocks the crap out of me.

7 [Bench Conference ends at 11:06:26 a.m.]

8 MR. CLOWARD: Good afternoon. Or what is it?

9 UNIDENTIFIED SPEAKER: It's still morning.

10 UNIDENTIFIED SPEAKER: It's morning.

11 MR. CLOWARD: It's night. It's day. There are no windows. I
12 can't see the sun. That's my excuse.

13 How you doing today --

14 THE COURT: There actually is a window in here, Mr. Cloward.

15 MR. CLOWARD: Is there? That's a window. Okay. I guess
16 you can --

17 THE COURT: It's one of the few. Most of the courtrooms are
18 kind of like casinos. Most of them don't have one.

19 MR. CLOWARD: I need to get my --

20 Mr. Lane, how're you doing?

21 PROSPECTIVE JUROR NUMBER 40: I'm doing well. Thank
22 you.

23 MR. CLOWARD: Good. So you're a Charles Duhiig fan as
24 well?

25 PROSPECTIVE JUROR NUMBER 40: Yeah. Just started the

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1 book, but so far so good.

2 MR. CLOWARD: Have you read any of the other books that
3 he's written?

4 PROSPECTIVE JUROR NUMBER 40: I have not. No.

5 MR. CLOWARD: Okay. What do you like about that book?

6 PROSPECTIVE JUROR NUMBER 40: I do a lot of self-help,
7 that kind of stuff. I just enjoy all kinds of inspirational reading. The thought
8 of creating some good habits is always, I think, interesting.

9 MR. CLOWARD: Yeah. What are some other books that
10 maybe you've read that you enjoy?

11 PROSPECTIVE JUROR NUMBER 40: Geez. Anything by
12 Wayne Dyer. Recently read a lot of sale books by John [indiscernible]. I'm
13 an avid reader though; anything about finance or markets I love to read
14 about, too. So it goes well with my field.

15 MR. CLOWARD: And tell me a little bit about what you do? It's
16 based in Salt Lake, the company?

17 PROSPECTIVE JUROR NUMBER 40: The fund's based in Salt
18 Lake. I'm obviously here in Las Vegas and then I just try to raise capital for
19 the fund. So it's a hedge fund is the easiest way to describe it. So work with
20 accredited investors to try to just, you know, bring in money for the fund and
21 raise money.

22 MR. CLOWARD: And do you enjoy doing that?

23 PROSPECTIVE JUROR NUMBER 40: Yeah. I love it.

24 MR. CLOWARD: How long have you done that?

25 PROSPECTIVE JUROR NUMBER 40: I've only been with this

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1 group since January. I've worked in other facets of financial for a number of
2 years and then was a commodity trader for 15 years in Chicago. So I've
3 been in the financial markets for a long time.

4 MR. CLOWARD: Cool. Maybe you and Ms. Keyho can get
5 together and exchange numbers and, you know, talk a little bit. You
6 indicated that your wife was a gaming loyalty. I've never heard of that.

7 PROSPECTIVE JUROR NUMBER 40: Yes. So if you have a
8 M life card or similar, they do the database. Well, actually they sit on top of
9 the data, but they actually do the marketing. So they try to figure out how to
10 get you back in and they understand how much each person is worth per
11 person to come into the casino.

12 MR. CLOWARD: Wow.

13 PROSPECTIVE JUROR NUMBER 40: So they try to work with
14 the properties to provide incentives for you to come in.

15 MR. CLOWARD: Figure out who the wells are?

16 PROSPECTIVE JUROR NUMBER 40: Yeah. Well, just
17 everybody. Everybody -- it's crazy to think about the statistics they have on
18 -- there's a value for every person that comes in, so they just try to get
19 everybody in.

20 MR. CLOWARD: And the M life -- is that the M resort?

21 PROSPECTIVE JUROR NUMBER 40: That one's -- that's
22 MGM's loyalty.

23 MR. CLOWARD: Okay.

24 PROSPECTIVE JUROR NUMBER 40: But every -- I mean,
25 and there's, you know, everybody's familiar with Nom being in loyalty, too,

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1 and, you know, Red Robin or places like that.

2 MR. CLOWARD: Yeah.

3 PROSPECTIVE JUROR NUMBER 40: Smith's -- if you have a
4 Smith's card.

5 MR. CLOWARD: Southwest rewards/

6 PROSPECTIVE JUROR NUMBER 40: Same idea. Just trying
7 to track and reward people for coming in.

8 MR. CLOWARD: Got you. Does she actually work for MGM or
9 is it that she?

10 PROSPECTIVE JUROR NUMBER 40: No. It's a separate
11 company called House Advantage.

12 MR. CLOWARD: Okay.

13 PROSPECTIVE JUROR NUMBER 40: Yeah. Their own little
14 group.

15 MR. CLOWARD: Okay. And then I wanted to follow up on your
16 mother-in-law?

17 PROSPECTIVE JUROR NUMBER 40: Yes.

18 MR. CLOWARD: She works for an insurance defense group in
19 Chicago.

20 PROSPECTIVE JUROR NUMBER 40: Yes.

21 MR. CLOWARD: Can you tell me a little bit about that?

22 PROSPECTIVE JUROR NUMBER 40: So she's in charge of all
23 of the admin in the western region, so Chicago west. She oversees all the
24 admin staff. She's been a legal secretary for 40 years at least.

25 MR. CLOWARD: So is it an actual -- is it like a law firm that

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1 focuses on that type of things?

2 PROSPECTIVE JUROR NUMBER 40: Yeah. They do
3 insurance defense, so they -- their clients are insurance companies that are
4 being sued for different things that they become, you know, a part of helping
5 with that defense for the insurance companies.

6 MR. CLOWARD: There are a lot of different types of insurance
7 claims, subrogation, different things like that. Do you know what area of -- it
8 is?

9 PROSPECTIVE JUROR NUMBER 40: No. Not specifically.

10 MR. CLOWARD: Does she talk to you about that at all?

11 PROSPECTIVE JUROR NUMBER 40: No. Not specifically.

12 MR. CLOWARD: Okay. Is she more administrative or is she
13 actually working on some of the files and different things? Do you -- I guess
14 do you hear from her about the type of work that she does?

15 PROSPECTIVE JUROR NUMBER 40: She does work -- she
16 works for four of the partners. I'm trying to -- I don't know specifically what
17 she does. She does definitely work on some files for them, but then she
18 manages all of the, like I said, the admin staff for the, you know, for the rest
19 of the company. But they have -- they just, I think, just opened an office in
20 Las Vegas. They have an office in Phoenix. They're also in, I believe,
21 Houston. They're becoming pretty big actually.

22 MR. CLOWARD: What is the name of them?

23 PROSPECTIVE JUROR NUMBER 40: I'm trying to think of the
24 name of the group. Litchfield Cavo is the name of the group.

25 MR. CLOWARD: Okay. I think I've heard of them maybe.

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1 PROSPECTIVE JUROR NUMBER 40: Yeah. She works for
2 Dan Litchfield, who's the founder and partner.

3 MR. CLOWARD: Main guy.

4 PROSPECTIVE JUROR NUMBER 40: Yeah.

5 MR. CLOWARD: Okay. Anything about the experiences that
6 you've had that, I guess, what are your feelings on the issues that we've
7 talked about specifically lawsuits, the lawyers?

8 PROSPECTIVE JUROR NUMBER 40: I think like kind of most
9 people have said. I think we've all been kind of exposed to things that were
10 -- that seemed to be frivolous, but one of the things that I've thought about
11 since yesterday and since, you know, being here kind of watching everything
12 that was happening yesterday, is that you also think about, okay. You're
13 going about your daily life and something interrupts your daily life that you,
14 you know, wasn't, you know, something that you obviously intended or
15 wanted. And then now it's, you know, okay, well, everybody's talking about,
16 okay.

17 Well, we have to be strong and overcome things, but you don't
18 know how you're going to handle that when that happens to you or if that
19 happens to you. So I don't know how you compartmentalize that and say,
20 well, I would, you know, specifically act this way because, you know, being
21 here on jury duty is like a small, tiny little example of that, right? I mean,
22 we're living our daily lives and then I get a summons that says well, I have to
23 interrupt two days of my life to come here and be a part of a jury. What if
24 that were six months or a year or 20 years of my life?

25 MR. CLOWARD: Sure.

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1 PROSPECTIVE JUROR NUMBER 40: You know, I don't know
2 how I would react to that.

3 MR. CLOWARD: Yeah. I'm sure that, you know, we think
4 about the Constitution. We think about, you know, the fundamental
5 freedoms and rights that we have. You know, you could think about jury
6 duty and think, you know, if I ever get jury duty I'm going to go down there
7 and do my civic part. And then all of a sudden you get the summons and it's
8 kind of like a different feeling when it happens.

9 PROSPECTIVE JUROR NUMBER 40: Yeah. It's been a really
10 eye-opening and enlightening experience. I just kind of relating that to, you
11 know, if I were in an accident, it wouldn't be just two days of my life being
12 interrupted. It would be some unknown period of time. And out of nowhere,
13 your life is all of a sudden disrupted and now you're dealing with something
14 that you never expected that you had to deal with. It wasn't part of your
15 daily routine; wasn't something that you asked for. So -- and there's
16 definitely a side to that that's, I don't know. I haven't really heard anybody
17 else say that they have to, you know, certainly consider that fact.

18 MR. CLOWARD: Yeah. Having something thrust upon you is
19 you never really know how -- how you'll act, so is that fair?

20 PROSPECTIVE JUROR NUMBER 40: Yes.

21 MR. CLOWARD: Okay. I appreciate that. As you -- I'm not
22 good at guessing ages, but we look about the same age.

23 PROSPECTIVE JUROR NUMBER 40: 45.

24 MR. CLOWARD: Pretty close.

25 PROSPECTIVE JUROR NUMBER 40: Younger than --

1 MR. CLOWARD: I'm actually only 39. People think I'm older
2 because I lost all my hair. Started early on. But -- are there moments, you
3 know, when you look back on life and you kind of think to yourself, you
4 know, when I dealt with that, didn't really handle that the right way or, you
5 know, I wish I'd have done this differently? Or have you always been the
6 type that, you know, you rose to the occasion?

7 PROSPECTIVE JUROR NUMBER 40: Well, that's such an
8 interesting question. I think that I'd like to say that I have been. I think my
9 commodity trading experience and, you know, the people that have been
10 kind of around markets or if you've even seen the markets for the last three
11 or four days, I mean, if you're a part of that on a daily basis and you're riding
12 that roller coaster is -- and this is kind of leading into one of the, you know,
13 times in my life where I've had to go through something that's hard. And that
14 was almost every day.

15 When you do well you're on top of the world and it's the best
16 thing ever. When you can't figure out how to make money and feed your
17 family, it's the worst thing ever. And so you have this roller coaster. I had
18 this roller coaster for 15 years where I went through that.

19 And it wasn't all bad. It was a phenomenal experience, but
20 anytime that you're feeling upset, depressed, you're going through
21 something like that, of course, like the things around you are affected by it
22 and I look back on things that were affected. You know, my marriage was
23 affected by that. My relationship with my kids was affected by that.

24 And so, yeah, I think the answer to the questions is, yes, could I
25 have handled those things better? Absolutely. And with more experience

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1 and going through more of those things, you know, in other stages of my life,
2 I absolutely have -- go through some trials a couple different times and
3 realized that it would be better to go a different way and I [indiscernible].

4 MR. CLOWARD: Yeah. Fair to say that you, based on just
5 your life experience, you'd handle those things better now than maybe you
6 did at the time?

7 PROSPECTIVE JUROR NUMBER 40: Yeah. Absolutely. I
8 appreciate that. What do you think about this whole concept of, you know,
9 the ability of someone to come into court and sue another person and ask
10 for money damages?

11 PROSPECTIVE JUROR NUMBER 40: Well, again, like I think
12 like a lot of people have said, I think we all want to understand and really
13 base our decision on what we're seeing and what the evidence is provided --
14 the proof that's provided. But I also think that for someone to come in and
15 ask for a lot of money, it's not something that's upsetting to me. Again, you
16 go back to like your life is completely changed by something that you didn't
17 invite into your life. It wasn't something that was particularly anything that
18 you wanted and it may not have been any fault of your own.

19 Now you have to deal with something that's a huge life-
20 changing event. And it -- there is an emotional attachment to it. I don't
21 know how to base an amount to that, but there has to be an emotional
22 attachment to -- you don't go through something like that in a vacuum where
23 you're just a robot and you wake up the next morning and now I've got to
24 deal with pain and rehab and the change in my life, just, without any
25 emotional attachment to it. So I don't think it's unwarranted if there is cause

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1 and there is reason. If there's supporting evidence, I don't think that that's
2 unwarranted.

3 MR. CLOWARD: It's not troubling to you, I guess? You're
4 willing to listen to the facts and the evidence and --

5 PROSPECTIVE JUROR NUMBER 40: Yes.

6 MR. CLOWARD: -- but certainly, just the fact that we're here
7 doesn't mean that you're not --

8 PROSPECTIVE JUROR NUMBER 40: No. Of course not.

9 MR. CLOWARD: -- going to listen to it?

10 PROSPECTIVE JUROR NUMBER 40: Because we're here
11 doesn't mean that one side's right and the other is, you know. We need to
12 understand what's -- what the facts are, but.

13 MR. CLOWARD: Yeah. Let me ask about, I guess, your kind
14 of decision-making. And, you know, when we talked earlier in the day
15 yesterday about the decisions. You know maybe if you're in the -- if you're
16 outvoted, but you feel strongly about something are you the type of a person
17 that will just kind of shut down, or are you the type of person that's willing to
18 have your voice be heard and try and let other folks know; like, look, let me
19 tell you the way that I see things. Are you the type that's going to just see,
20 you know, maybe there's five or six people that don't see it the way that I do,
21 so I'm just going to kind of recede and let things happen? Are you going to
22 be willing to give your voice?

23 PROSPECTIVE JUROR NUMBER 40: No. I'm definitely the
24 type of person that will give voice to, you know, what I'm feeling are the
25 facts. I don't have any problem voicing my opinion in a constructive way.

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1 MR. CLOWARD: Similarly are you willing to listen? That
2 maybe you're part of the majority on an issue, but there's a couple people
3 that see things differently. Are you willing to listen to their point of view as
4 well so that everybody has a voice or are you the type that is going to say,
5 hey, come on. You know, the rest of us see it this way. You know, you
6 better just get in line.

7 PROSPECTIVE JUROR NUMBER 40: No. I'm absolutely
8 reasonable. I like to listen to everybody's angle.

9 MR. CLOWARD: Great. Thank you.

10 THE COURT: Mr. Rands?

11 MR. RANDS: Good morning.

12 PROSPECTIVE JUROR NUMBER 40: Good morning.

13 MR. RANDS: All but the good morning. Sounds like you have
14 empathy for your fellow men.

15 PROSPECTIVE JUROR NUMBER 40: I would agree.

16 MR. RANDS: And sometimes that, I mean, that's a good thing,
17 but sometimes it can override facts. It can override other issues that you
18 may have.

19 Is that something that you feel like you could deal with if you
20 were called -- if you were asked to be a juror here?

21 PROSPECTIVE JUROR NUMBER 40: Yeah. Absolutely.

22 MR. RANDS: And the reason I say that is you've mentioned
23 that you feel like, you know, it's important that you compensate to the
24 Plaintiff for his injury and for the mental and emotional issues that it's caused
25 or that he claims that it's caused. But at the end of the day if the evidence --

1 if you feel the evidence shows that that's not worth a million dollars, would
2 you have any problems saying yes, you're going to get some money but it's
3 going to be a lot less than what you asked for?

4 PROSPECTIVE JUROR NUMBER 40: I wouldn't have any
5 problem with that. Again, it's -- to me it would be based on what we're
6 seeing as facts.

7 MR. RANDS: Okay. What the evidence shows?

8 PROSPECTIVE JUROR NUMBER 40: And what the evidence
9 shows, yeah.

10 MR. RANDS: And do you think that because somebody is
11 injured they're entitled just to shut down, say I'm injured, now come pay me?

12 PROSPECTIVE JUROR NUMBER 40: No. I don't feel that
13 that's the case either. Again, you know, it depends on facts and try to make
14 a reasonable judgment of what someone in that situation would -- should try
15 to do.

16 MR. RANDS: And, you know, unfortunately if somebody is hurt,
17 they still have to live the rest of their life, correct?

18 PROSPECTIVE JUROR NUMBER 40: Sure. Absolutely.

19 MR. RANDS: And they have to do the best they can do. Is that
20 correct?

21 PROSPECTIVE JUROR NUMBER 40: Yeah. I agree.

22 MR. RANDS: Would you agree with me?

23 PROSPECTIVE JUROR NUMBER 40: I would, yeah.

24 MR. RANDS: Okay. I believe you said you'd been in a minor
25 car accident?

1 PROSPECTIVE JUROR NUMBER 40: Yeah. Minor, very
2 minor.

3 MR. RANDS: And did you file a lawsuit on that?

4 PROSPECTIVE JUROR NUMBER 40: No.

5 MR. RANDS: Did you make a claim?

6 PROSPECTIVE JUROR NUMBER 40: Yeah. Filed through my
7 insurance, yeah.

8 MR. RANDS: Sure.

9 PROSPECTIVE JUROR NUMBER 40: Sure.

10 MR. RANDS: The insurance took care of it? Is that correct?

11 PROSPECTIVE JUROR NUMBER 40: That's correct, yes.

12 MR. RANDS: You've said that you were -- or you've told us that
13 you're in the finance world, I guess I'll call it?

14 PROSPECTIVE JUROR NUMBER 40: Yeah.

15 MR. RANDS: And, you know, sometimes in this area
16 particularly, they have what I'd like to call the casino mentality where people
17 don't value a dollar. You know, they -- people win megabucks. They win
18 millions all over the place, and sometimes people don't put the value on a
19 buck.

20 You can put the value on a buck, can't you?

21 PROSPECTIVE JUROR NUMBER 40: I feel like I can, yes.

22 MR. RANDS: You know, sometimes it's easy to make money
23 and sometimes it's awfully hard.

24 PROSPECTIVE JUROR NUMBER 40: Yes. Absolutely.

25 MR. RANDS: Depending on what the market's doing, and I

1 guess I haven't been watching it too closely. But the last few days have
2 been kind of a roller coaster, haven't they?

3 PROSPECTIVE JUROR NUMBER 40: Absolutely.

4 MR. RANDS: You said you liked to read and involved with self-
5 help and those type of things?

6 PROSPECTIVE JUROR NUMBER 40: Uh-huh. Absolutely.

7 MR. RANDS: What other kind of things do you like to read?
8 Other areas?

9 PROSPECTIVE JUROR NUMBER 40: I spend a lot of time on
10 market news, mostly Bloomberg, a lot of CNBC. Outside of that I coach
11 soccer and play soccer, so I spend a lot of time doing stuff in that regard as
12 well, so.

13 MR. RANDS: What level do you coach?

14 PROSPECTIVE JUROR NUMBER 40: I coach club here in Las
15 Vegas for the last couple of years and I've coached -- started my own club in
16 Phoenix for -- had a club down there for about four years, so.

17 MR. RANDS: And what age group is that?

18 PROSPECTIVE JUROR NUMBER 40: I've had all age groups.
19 Most recently it's been 16-year-old girls.

20 MR. RANDS: Is that your daughter?

21 PROSPECTIVE JUROR NUMBER 40: That's my daughter.

22 MR. RANDS: So your daughter wants to play soccer and dad
23 gets to be the coach.

24 PROSPECTIVE JUROR NUMBER 40: Yeah, which I would
25 prefer because it gives me a lot of great time with her.

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1 MR. RANDS: It does. It gives you a lot of --

2 PROSPECTIVE JUROR NUMBER 40: Absolutely.

3 MR. RANDS: I dealt with that with my daughters. I had three
4 daughters, too, and you kind of get involved --

5 PROSPECTIVE JUROR NUMBER 40: A great experience.

6 MR. RANDS: Probably the only dad at the JV game watching
7 the cheerleaders. It wasn't a creepy thing. It was my daughter. But that's
8 what makes it nice because you can take an afternoon and go spend some
9 time with the kids.

10 PROSPECTIVE JUROR NUMBER 40: Yeah. We get a lot of
11 time together.

12 MR. RANDS: Let me look at my --

13 Excuse me, Your Honor. Just give me a minute, please.

14 Do you believe that just because somebody brings a case in
15 court they're entitled money?

16 PROSPECTIVE JUROR NUMBER 40: No.

17 MR. RANDS: And do you believe just because they're injured
18 they're entitled to a lot of money?

19 PROSPECTIVE JUROR NUMBER 40: No. I don't believe that.

20 MR. RANDS: Okay. You'd listen to the evidence and --

21 PROSPECTIVE JUROR NUMBER 40: Absolutely.

22 MR. RANDS: -- make a reasoned decision?

23 PROSPECTIVE JUROR NUMBER 40: Absolutely.

24 MR. RANDS: Based upon all the evidence presented?

25 PROSPECTIVE JUROR NUMBER 40: Yes.

1 MR. RANDS: And the -- as I've talked, some of the other jurors,
2 you know, you recognize that as the Defendant everything we say has to
3 come last. So you're going to hear all the Plaintiff's stuff first and then what
4 evidence or witnesses we may want to bring second. Do you believe you
5 can wait until you hear the entirety of the case before you make your
6 decision?

7 PROSPECTIVE JUROR NUMBER 40: I do, yes.

8 MR. RANDS: And sometimes, it happens, the jurors will hear
9 something. They'll say well, that son of a gun, you know what? You know,
10 that's terrible. We're going to, you know, and then they hear something else
11 later on in the case that may affect that. And that just happens.

12 Will you agree to wait until the entirety of the case is in before
13 you make your decision?

14 PROSPECTIVE JUROR NUMBER 40: Yeah. Absolutely.

15 MR. RANDS: Thank you for your time.

16 THE COURT: Mr. Sibelrude, sir? Will you introduce yourself,
17 please?

18 PROSPECTIVE JUROR SIBELRUDE: I'm sorry, ma'am?

19 THE COURT: Will you introduce yourself, please, sir?

20 PROSPECTIVE JUROR SIBELRUDE: My name is Daniel
21 Sibelrude. I've lived in Clark County for 68 years. I went to the Navy for four
22 years and some college education at UNLV -- just courses. I am retired. I
23 used to work for NCR Corporation for 32 years and I worked for ADIA for
24 another eight years. I'm married. We've been married 53 years, and I have
25 two children. One a girl and one boy. The girl works for Boulder City

1 Hospital in the admin department. She used to work for USPI, which is
2 another hospital for almost 20 years. And my son, he's a Metro police
3 officer for 20 years.

4 THE COURT: All right. Sir, have you ever served as a juror
5 before?

6 PROSPECTIVE JUROR SIBELRUDE: Years ago.

7 THE COURT: Do you remember if it was a criminal case or a
8 civil case?

9 PROSPECTIVE JUROR SIBELRUDE: I can't remember. It's
10 been that long. I thought I was retired from jury duty.

11 THE COURT: So you -- you know what, sir? Actually, if you do
12 not want to be here I will excuse you, so it's up to you.

13 PROSPECTIVE JUROR SIBELRUDE: I have Parkinson's
14 Disease and at my age right now I'm going through a little bit of health
15 problems, so.

16 THE COURT: So do you want to be excused, sir?

17 PROSPECTIVE JUROR SIBELRUDE: Well, I would --

18 THE COURT: Because by statute, it's really up to you at this
19 point.

20 PROSPECTIVE JUROR SIBELRUDE: I would appreciate it,
21 yes.

22 THE COURT: All right, sir. You have a good afternoon. You
23 can go ahead and go back to jury services. Thank you for --

24 PROSPECTIVE JUROR SIBELRUDE: Thank you.

25 THE CLERK: In seat number 14, will now be badge number 43,

1 Karine Adamyan.

2 THE COURT: Ma'am, come on up and if you'll introduce
3 yourself, please?

4 PROSPECTIVE JUROR NUMBER 43: Hi. First of all, I want to
5 apologize because my English is bad. And also, I don't know if I might need
6 translations.

7 THE COURT: Okay. Seems like you're doing okay so far. So
8 why don't you go ahead and introduce yourself. Just answer the questions
9 on that card.

10 PROSPECTIVE JUROR NUMBER 43: Okay. So I'm Karine
11 Adamyan. I moved to Nevada in 2003. I have three kids. I have a
12 husband. He is working on the cab driver. And my two -- my eldest
13 daughter is like a working in the heart center hospital in my country. She's
14 not here yet. And my youngest daughter is taking care of her two little kids.
15 And my son is denture technician.

16 THE COURT: And what do you do for a living?

17 PROSPECTIVE JUROR NUMBER 43: And I'm working at the
18 Jockey Club as a hospitality operator.

19 THE COURT: Go ahead and have a seat, ma'am. Have you
20 ever served as a juror before?

21 PROSPECTIVE JUROR NUMBER 43: No.

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

24 PROSPECTIVE JUROR NUMBER 43: No.

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

1 legal field?

2 PROSPECTIVE JUROR NUMBER 43: Legal?

3 THE COURT: Yeah. Any lawyers, paralegals, anything like
4 that?

5 PROSPECTIVE JUROR NUMBER 43: No.

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

8 PROSPECTIVE JUROR NUMBER 43: You mean if my
9 daughter is working that's it?

10 THE COURT: Your daughter, anyone else doctors, nurses,
11 anything like that?

12 PROSPECTIVE JUROR NUMBER 43: My son is a denture
13 technician.

14 THE COURT: Okay. And has anyone close to you had a
15 serious injury?

16 PROSPECTIVE JUROR NUMBER 43: I had a serious injury. I
17 broke my spine during an accident. And I was with my husband. He was
18 the driver.

19 THE COURT: How long ago was that, ma'am?

20 PROSPECTIVE JUROR NUMBER 43: It was in 2012. I spent
21 three days in the hospital and then I was out of my job for about four or five
22 months. And then I went back but I couldn't work because of my back. And
23 I changed my place in the same department, but then I changed it again
24 because it was not good either. So I went to hospital.

25 THE COURT: All right. Other than what you just mentioned,

1 have you or anyone close to you been in a car crash?

2 PROSPECTIVE JUROR NUMBER 43: I had another car crash,
3 but it was not a big thing.

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

6 PROSPECTIVE JUROR NUMBER 43: I'll try.

7 THE COURT: Could you follow the instructions on the law that I
8 give you even if you don't personally agree with them? So could you follow
9 the law even if you were writing the law you would write a different law?
10 Could you follow the law that I -- in the instructions that I give you?

11 PROSPECTIVE JUROR NUMBER 43: I think, yeah.

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

15 PROSPECTIVE JUROR NUMBER 43: If I understand right, I
16 have to have the evidence to make a decision?

17 THE COURT: Yes. So you can make a decision based on the
18 evidence and not sympathy?

19 PROSPECTIVE JUROR NUMBER 43: Yeah.

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

23 PROSPECTIVE JUROR NUMBER 43: Yeah.

24 THE COURT: What is your concern, ma'am?

25 PROSPECTIVE JUROR NUMBER 43: To be fair?

1 THE COURT: Do you think you could be fair?

2 PROSPECTIVE JUROR NUMBER 43: I think so.

3 THE COURT: Okay. If were a party to the case, would you be
4 comfortable having someone like yourself as a juror?

5 PROSPECTIVE JUROR NUMBER 43: I wouldn't be I don't
6 want to play with the lives of people, like to change their life to bad. I don't
7 know.

8 THE COURT: Mr. Cloward?

9 MR. CLOWARD: Thanks, Judge.

10 How are you today?

11 PROSPECTIVE JUROR NUMBER 43: Good, thank you. How
12 are you?

13 MR. CLOWARD: Doing well. And it's Adamyan?

14 PROSPECTIVE JUROR NUMBER 43: Adamyan.

15 MR. CLOWARD: Adamyan. Okay. So can I ask you some
16 follow up questions? You mentioned that it -- you really wouldn't like to be --
17 tough to make a decision that affects people's lives. Even though it's -- I'm
18 sure it's tough for everybody. Is that something that you're willing to do?

19 PROSPECTIVE JUROR NUMBER 43: I actually don't like to be
20 in this buildings about judging and I don't like to judge people. And maybe
21 my decision is not right. I don't know, so that's why I don't want to play with
22 the lives of others.7

23 MR. CLOWARD: Is it something that you would be willing to do
24 though, that you would be willing to listen to the evidence and hear both
25 sides and deliberate with your fellow jurors?

1 PROSPECTIVE JUROR NUMBER 43: Yeah. I would do that.
2 I can hear both sides and if there is an evidence that proves that which side
3 is right, I'll do that.

4 MR. CLOWARD: Okay. Great. Tell me a little bit about --
5 sounds like you had a pretty serious car crash?

6 PROSPECTIVE JUROR NUMBER 43: Yeah. We had a car
7 crash, but we had no -- it was hit and run. And we claimed, but no one of
8 the attorneys took that case.

9 MR. CLOWARD: Because there was no other person -- you
10 couldn't find that person that caused it?

11 PROSPECTIVE JUROR NUMBER 43: Yeah. Yeah. So we
12 just left.

13 MR. CLOWARD: Are you doing okay now?

14 PROSPECTIVE JUROR NUMBER 43: I'm having still pain in
15 my back, but I can live with it.

16 MR. CLOWARD: Sure. Is there anything about that experience
17 that maybe you might be unfair to the Defendant or to my client, you think?

18 PROSPECTIVE JUROR NUMBER 43: I don't know. What is
19 the case about? What I can say?

20 MR. CLOWARD: Sounds like you want to just wait and hear
21 what the evidence is. Is that fair?

22 PROSPECTIVE JUROR NUMBER 43: I think so.

23 MR. CLOWARD: Okay. Was there anything that was
24 discussed that you felt strongly about that you, maybe you wanted to talk to
25 either myself or Mr. Gardner about?

1 PROSPECTIVE JUROR NUMBER 43: No.

2 MR. CLOWARD: Nothing? Okay. Is there anything that you
3 feel like might be important for us to know about you or your family or your
4 life experiences that might be important?

5 PROSPECTIVE JUROR NUMBER 43: I don't think so.

6 MR. CLOWARD: I appreciate your insight. Is there anything
7 maybe an experience that you've had in life where you felt like you could
8 have handled it differently?

9 PROSPECTIVE JUROR NUMBER 43: Handled what?

10 MR. CLOWARD: Have you ever had something hard an
11 experience that was hard for you to go through, but you look back on it now
12 and you kind of say to yourself, you know, I could have handled that
13 differently?

14 PROSPECTIVE JUROR NUMBER 43: I don't think about that I
15 think it -- I could handle it differently, but I've passed a very hard life before
16 moving to America. And the first years when I moved to America it was a
17 very hard life for me. But now, I think everything's going good.

18 MR. CLOWARD: Great. That's good to hear. Well, thank you
19 for talking to me. I appreciate it.

20 Thank you, Judge.

21 THE COURT: Mr. Rands?

22 MR. RANDS: Morning.

23 PROSPECTIVE JUROR NUMBER 43: Good morning.

24 MR. RANDS: Where did you come from?

25 PROSPECTIVE JUROR NUMBER 43: I came from Armenia.

1 MR. RANDS: Armenia?

2 PROSPECTIVE JUROR NUMBER 43: Armenia.

3 MR. RANDS: I thought with the Y-A-N it was probably Armenia,
4 but it's usually a clue with the Y-A-N on the end of your name. But my
5 concern, frankly, is that, you know, you've been involved in an accident and
6 you told Mr. Cloward that it was a hit and run. And you weren't able to track
7 somebody down to seek recovery for that accident. The attorneys wouldn't
8 help you. I represent the Defendant in this case, and my concern is that you
9 might be a little bit more prone to believe the Plaintiff because of your
10 experiences. Do you know -- do you see what I'm saying?

11 PROSPECTIVE JUROR NUMBER 43: Uh-huh [affirmative
12 response].

13 MR. RANDS: Would you --

14 PROSPECTIVE JUROR NUMBER 43: Like --

15 MR. RANDS: Do you think you'd have some sympathy for the
16 Plaintiff because he was hurt or we'll say he was hurt in an accident also?

17 PROSPECTIVE JUROR NUMBER 43: I didn't --

18 MR. RANDS: Excuse me?

19 PROSPECTIVE JUROR NUMBER 43: I don't understand.

20 MR. RANDS: Okay. Do you think you will feel like because he
21 was involved in an accident he should recover money because of your
22 experience?

23 PROSPECTIVE JUROR NUMBER 43: Oh, no. It doesn't
24 matter because we are different. These cases are different.

25 MR. RANDS: So you could listen to all the evidence, and if, at

1 the end of the day, you didn't feel like he's proven his case that he gets \$2
2 million or whatever he's going to ask for; you could maybe give him less?

3 PROSPECTIVE JUROR NUMBER 43: Maybe he deserved, if
4 his evidence is all there and they prove, so he will deserve it.

5 MR. RANDS: But if they don't prove it --

6 PROSPECTIVE JUROR NUMBER 43: If they don't, he won't
7 deserve it.

8 MR. RANDS: And you said you have a little bit of trouble with
9 English. Have you understood everything so far?

10 PROSPECTIVE JUROR NUMBER 43: I couldn't go to the
11 college. I went, but I left later because I had to work and my time wasn't
12 matching with the college time. And I couldn't leave my work because I had
13 to send money to my kids who were in Armenia at that time.

14 MR. RANDS: And I didn't -- I couldn't -- you have kind of a soft-
15 spoken voice. And I didn't hear my -- when he said he's 39. I'm almost 60,
16 so I'm a little bit older than him. But the ears aren't quite what they used to
17 be, okay? I've had people tell me I don't look 60. I like to hear that, but the
18 grey hair gives me away. But at least I have hair, so.

19 MR. CLOWARD: Your Honor, objection. There must be an
20 objection there at some point.

21 MR. RANDS: But I didn't hear what your children do for a living.
22 What do they do?

23 PROSPECTIVE JUROR NUMBER 43: Right now?

24 MR. RANDS: Yes.

25 PROSPECTIVE JUROR NUMBER 43: My son is a denture

1 technician.

2 MR. RANDS: Oh, denture technician. Okay.

3 PROSPECTIVE JUROR NUMBER 43: Yes. My youngest
4 daughter, she's taking care of her kids.

5 MR. RANDS: Good.

6 PROSPECTIVE JUROR NUMBER 43: But my eldest is still in
7 my country. She will be here in several months, but she's working in the
8 heart center.

9 MR. RANDS: In Armenia?

10 PROSPECTIVE JUROR NUMBER 43: In Armenia.

11 MR. RANDS: Okay. Is she coming here permanently?

12 PROSPECTIVE JUROR NUMBER 43: She's coming here, yes,
13 to stay.

14 MR. RANDS: Good. So you'll have your whole family together
15 then.

16 PROSPECTIVE JUROR NUMBER 43: Yes. Finally.

17 MR. RANDS: That's a good thing.

18 PROSPECTIVE JUROR NUMBER 43: After eight-nine years.

19 MR. RANDS: But again, have you understood what we've
20 talked about so far, as far as the English goes?

21 PROSPECTIVE JUROR NUMBER 43: Yeah, but you know I
22 don't know sometimes there are things that I don't understand and it may
23 affect the decision or --

24 MR. RANDS: In this case there will be a lot of medical
25 terminology. Do you understand -- do you have any background in medical

1 terminology? No? Okay.

2 PROSPECTIVE JUROR NUMBER 43: No.

3 MR. RANDS: I didn't either until I started this job, but it's -- and
4 what do you think about damages for pain and suffering?

5 PROSPECTIVE JUROR NUMBER 43: Damages. You know,
6 once my sister-in-law got in an accident and accident it means it wasn't a car
7 crash. She was just walking her dog outside. And other people's dogs, two
8 people's attacked her. And teared apart her dog and she had some bites
9 and bruises and no one took care of her.

10 MR. RANDS: Okay. Would that make you feel --

11 PROSPECTIVE JUROR NUMBER 43: And she changes
12 maybe two, three, four years, you know, and compensate her saying that the
13 guy who owned the dogs, he had no money. And she paid all her medical
14 bills on her.

15 MR. RANDS: So do you feel like if somebody comes into court
16 and they've been injured they need to be paid?

17 PROSPECTIVE JUROR NUMBER 43: If there was an injury, of
18 course. She spent so much money on her medical bills.

19 MR. RANDS: Just because --

20 PROSPECTIVE JUROR NUMBER 43: It wasn't her fault.

21 MR. RANDS: Just because she was injured she needs to be
22 paid?

23 PROSPECTIVE JUROR NUMBER 43: Of course.

24 MR. RANDS: Okay. Thank you.

25 THE COURT: All right. Folks, we're going to go ahead and

1 break for lunch. During this break you are admonished not to talk or
2 converse among yourselves or with anyone else on any subject connected
3 with the trial; or read, watch, or listen to any report or commentary on the
4 trial, or any person connected with this trial by any medium of information
5 including, without limitation; newspapers, television, internet, and radio; or
6 form or express any opinion on any subject connected with the trial until the
7 case is finally submitted to you. I remind you not to do any independent
8 research. And we will come back at 1:15.

9 THE MARSHAL: Please rise for the jury.

10 [Potential jury exits at 11:45:22 a.m.]

11 [Outside the presence of the potential jury.]

12 THE COURT: All right. Mr. Cloward?

13 MR. CLOWARD: Yeah. Your Honor, I have a cause challenge
14 for Mr. Hall. Upon the Court's questioning, not even upon my questioning,
15 he pointed out that he would be fair to the Defendant. And I got up and
16 asked him. I said, you know, you didn't mention the Plaintiff. Do you feel
17 like you would not be fair to the Plaintiff, and he says, no, I would not be fair.

18 And then I asked him well, you know, why don't you explain for
19 us what your thoughts are, why you wouldn't be fair, and he basically went
20 through his personal life experiences in managing, you know, a casino and
21 having lots of claims. Matter of fact, he had one last night. And that he feels
22 like, you know, the majority of those are frivolous and that they pay out just
23 to pay out even when they shouldn't pay out.

24 Also indicated that even if the facts in evidence were proved by
25 Mr. Morgan that he would hold down damages based on his experience.

1 And I just think he made a very clear record that, you know, he can't be fair
2 to my client.

3 THE COURT: Mr. Rands?

4 MR. RANDS: I like him.

5 THE COURT: I'm sure you do.

6 MR. GARDNER:

7 MR. RANDS: I don't have anything to say. I mean, clearly he
8 was --

9 THE COURT: So we'll be excusing Mr. Hall for cross.

10 MR. RANDS: He was clearly -- clearly what Mr. Cloward said.

11 THE COURT: Anything else?

12 MR. RANDS: I would also like to make a challenge for cause
13 for Ms. Adamyan. Number 43.

14 THE COURT: All right.

15 MR. RANDS: I believe, in again, in answer to the Court's
16 questions, she said she wouldn't want to -- the people or the parties to have
17 her as a juror. And in answer to my questions, I think it was clear that she
18 really didn't understand the English language well. I mean, I asked her a
19 question. She went completely off on a different answer. And then at the
20 end, she said, just because somebody's injured they need to be
21 compensated. I mean, she said that, and I think that would be prejudicial to
22 the Defense in the case. And I would like her removed for cause.

23 THE DEFENDANT: Your Honor, in response, I think she
24 professed to have a difficulty with the English language, however, when you
25 look at the totality of the circumstances as Sanders [indiscernible] requires

1 us to do, she answered all the questions. She didn't say I don't understand.
2 So it's clear that she has a very good grasp of the English language.

3 One of the thing that I think should be highlighted at the end
4 when Counsel was asking questions about well, you know, just because
5 your sister was hurt, do you think that she should be compensated?
6 Something she said was very important. She said yes, because it was not
7 her fault. And that's the big distinguishing factor.

8 Her position is not, hey, just because you're hurt you should get
9 compensated. Her distinction is if somebody else is at fault, then there
10 should be compensation. So she is not the -- an individual. She didn't
11 express anything that says, hey, just because we're here, we automatically
12 win. And I think that every juror expressed some hesitancy about judging
13 other people. I mean, that's not an easy thing for people to do.

14 There's going to be a winner. There can be a loser. And she
15 just expressed I don't like to judge people. But she never said that I'm not
16 willing to do it. Instead she said, I'm willing to listen to the facts and the
17 evidence. And so I disagree strongly. I don't think she said anything that
18 would rise to the level of a cause challenge at all.

19 MR. RANDS: And I do disagree totally. Her last question was
20 clearly and you believe just because somebody's injured they need to be
21 compensated and she said yes.

22 THE COURT: All right. So I'm going to grant the challenge for
23 cause with respect to Mr. Hall. I'm on the fence with Ms. Adamyan. I think
24 given her -- some of her struggles, and she really -- was really pretty good,
25 but she ran into some trouble in some of the more complicated concepts or

1 complicated phrasing of things.

2 And so I have some concerns on that regard perhaps more so
3 than concerns about her opinions. Because I think that she really didn't
4 seem to be particularly for one side or the other to me. Just seemed like
5 sometimes she wasn't precisely understanding the question even though I
6 think her English was, you know, really, not terrible. So I'm just concerned
7 about that, so for that reason, I'm going to grant the cause challenge for her.

8 So when we come back, I'm hoping we can get through the next
9 couple in, you know, 30 minutes or so and have a jury by 2:00, still do
10 openings and start with a witness.

11 How long do you anticipate your opening, Mr. Cloward?

12 MR. CLOWARD: I've practiced a couple times and depends on
13 how long-winded I am. I would say --

14 MR. RANDS: Two hours.

15 MR. CLOWARD: -- for sure no longer than an hour.

16 THE COURT: All right.

17 MR. CLOWARD: Worse case, I mean, it's for sure, no longer
18 than --

19 THE COURT: Okay. Fair enough.

20 MR. GARDNER: I'm probably half an hour, 45 minutes, maybe.

21 THE COURT: Okay. So we should -- we'll see. We'll see if we
22 get to a witness. You have a witness, right, Mr. Cloward, just in case?

23 MR. CLOWARD: Yes. Dr. Coppel is planning on being here at
24 2:00, so.

25 THE COURT: So let's try real hard to get to him.

1 MR. CLOWARD: Okay.

2 THE COURT: Okay. You might want to tell him three, so he's
3 not wasting time in the hall.

4 MR. RANDS: Are we taking a lunch break?

5 THE COURT: Yep. Until 1:15.

6 MR. RANDS: 1:15, thank you.

7 [Recess at 11:52 a.m.]

8 THE COURT: That's fine. I don't care about that stuff too much
9 when we don't have a jury in here.

10 [Pause]

11 THE COURT: Mr. Cloward?

12 MR. CLOWARD: Yes.

13 THE COURT: You submitted proximate cause instructions. Do
14 you prefer proximate or legal?

15 MR. CLOWARD: Proximate is fine. Proximate.

16 THE COURT: Okay.

17 MR. CLOWARD: That's without this, right?

18 THE COURT: Huh, without?

19 MR. CLOWARD: I think it's probably proximate.

20 THE COURT: Okay.

21 [Pause]

22 THE MARSHAL: Please rise for the jury.

23 [Prospective Jury in at 1:19 p.m.]

24 THE COURT: Back on the record --

25 THE MARSHAL: Be seated.

1 THE COURT: -- in case number A718679, Morgan versus
2 Lujan. Let the record reflect the presence of all of our prospective jurors,
3 counsel and parties.

4 Okay. So I'm going to ask the following folks to return to jury
5 services: Mr. Hall, sir, and Ms. Adamyon. Is that correct? All right. Thank
6 you. You two have a good afternoon. Thank you so much for your time.

7 PROSPECTIVE JUROR NO. 43: I can move?

8 THE MARSHAL: Yes.

9 THE COURT: Yep. Yes, ma'am. Thank you.

10 PROSPECTIVE JUROR NO. 43: Thank you.

11 THE COURT: Enjoy your game, sir.

12 PROSPECTIVE JUROR NO. 039: Thank you very much. I'm
13 excited. I just don't want to put in the dirt.

14 THE CLERK: In seat number 8, badge number 44, John
15 Turner. And in seat number 14, Derick Bledsoe, badge number 46.

16 THE COURT: Mr. Turner, sir, if you will introduce yourself,
17 please.

18 PROSPECTIVE JUROR NO. 44: Good afternoon. I'm John
19 Turner. I've lived in Clark County since 2004. A couple of years of college
20 back in Ohio. Self-employed currently. I do IT work, but for the past year,
21 I've been doing my own little thing. I work for Uber, I DJ on the side, so I'm
22 doing that. I am currently married, but I'm currently getting a divorce. I have
23 a 26-year-old daughter from my previous marriage.

24 THE COURT: What does she do, the 26-year-old?

25 PROSPECTIVE JUROR NO. 44: Pharmacy tech.

1 THE COURT: Okay. Sir, go ahead and have a seat. Have you
2 ever served as a juror before?

3 PROSPECTIVE JUROR NO. 44: No.

4 THE COURT: Have you been a party to a lawsuit or a witness
5 in a lawsuit before?

6 PROSPECTIVE JUROR NO. 44: No.

7 THE COURT: Have you or anyone close to you worked in the
8 legal field?

9 PROSPECTIVE JUROR NO. 44: No.

10 THE COURT: Other than your daughter that you already
11 mentioned, have you or anyone close to you had medical training or worked
12 in the medical field?

13 PROSPECTIVE JUROR NO. 44: No.

14 THE COURT: Have you or anyone close to you had a serious
15 injury?

16 PROSPECTIVE JUROR NO. 44: Yes.

17 THE COURT: Can you tell me about that?

18 PROSPECTIVE JUROR NO. 44: My brother was shot in the
19 face.

20 THE COURT: Oh, I'm sorry to hear that.

21 PROSPECTIVE JUROR NO. 44: I mean, he's doing fine now,
22 but --

23 THE COURT: How long ago was that?

24 PROSPECTIVE JUROR NO. 44: A little over 20 years ago, but
25 he's actually still getting surgeries for that.

1 THE COURT: All right. Have you or anyone close to you been
2 in a car crash?

3 PROSPECTIVE JUROR NO. 44: No.

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

6 PROSPECTIVE JUROR NO. 44: Yes.

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

9 PROSPECTIVE JUROR NO. 44: Yes.

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

13 PROSPECTIVE JUROR NO. 44: Most likely, yes.

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

16 PROSPECTIVE JUROR NO. 44: No.

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

19 PROSPECTIVE JUROR NO. 44: Again, that will be a most
20 likely.

21 THE COURT: Okay. Mr. Cloward.

22 MR. CLOWARD: Thank you. Mr. Turner, how you doing
23 today?

24 PROSPECTIVE JUROR NO. 44: Doing fine.

25 THE COURT: You almost made it.

1 PROSPECTIVE JUROR NO. 44: Almost made it.

2 THE COURT: What was the -- I guess, what's the most
3 important thing that's been discussed so far that -- to you?

4 PROSPECTIVE JUROR NO. 44: Most likely -- it definitely is
5 the amount of damages that the guy is receiving.

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

7 PROSPECTIVE JUROR NO. 44: I guess, since the '90s, I've
8 just heard so many frivolous lawsuits.

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 44: For me, going back to
11 McDonald's, you know, the hot coffee. Someone spilled it and then sued
12 and get millions of dollars for it, for something that they did.

13 MR. CLOWARD: Yeah, sure.

14 PROSPECTIVE JUROR NO. 44: And, you know, the lawsuits
15 that are being passed around today or, you know, the me-toos, and all that,
16 you never know what's real or, you know, if what they're asking for is legit.

17 MR. CLOWARD: Yeah. Do you have a perception that the
18 majority of lawsuits nowadays are frivolous?

19 PROSPECTIVE JUROR NO. 44: From what I'm hearing on the
20 news, the [indiscernible] hearing what he -- you know, some of the things
21 that he listens to on like CNN, and things like that. You know, I'm on CNN
22 every day. I got it on my -- on the app on my phone, you know, it's a lot of
23 these things that you hear, you know, I would tend to think that a lot of them
24 are not true.

25 MR. CLOWARD: I'm sorry, a lot of them are what?

1 PROSPECTIVE JUROR NO. 44: Not true.

2 MR. CLOWARD: Not true.

3 PROSPECTIVE JUROR NO. 44: Yeah. Whether they're just in
4 it for the money.

5 MR. CLOWARD: Meaning, frivolous --

6 PROSPECTIVE JUROR NO. 44: Correct.

7 MR. CLOWARD: -- basically?

8 PROSPECTIVE JUROR NO. 44: Yes.

9 MR. CLOWARD: Yeah, I can appreciate that. How do you
10 think that the jurors in those cases got off track? What would it be?

11 PROSPECTIVE JUROR NO. 44: I truly do not know. You
12 know, some of the things that -- well, for me, that appears to like a cut case,
13 you know, it falls a different way. I mean, true, I don't know the -- you know,
14 the particulars with everything, but, you know, I guess that's the -- that's --
15 you know, that's where it gets [indiscernible].

16 Now, with him here, I don't know the particulars, but --

17 MR. CLOWARD: Is that --

18 PROSPECTIVE JUROR NO. 44: -- but I mean, getting back to
19 that. I do agree that if something were to -- if someone were to do
20 something, you know, illegal or -- and, you know, it's proven that it needs to
21 be paid or, you know, that the amount is what it is, then sure. But I just hear
22 about it so much that I tend not to believe anything.

23 MR. CLOWARD: And I guess, we've all heard of those cases.

24 PROSPECTIVE JUROR NO. 44: Sure.

25 THE COURT: We've all heard of, you know, the McDonald's

1 case, we've all heard of the, you know, the cases like the -- I think there was
2 one against Wendy's a few years ago, the pants suit case. And I'm curious
3 to know whether we start off with a strike against us just because we're here
4 and the amount that we talked about is a lot of money. There's no question
5 it's a lot.

6 PROSPECTIVE JUROR NO. 44: Yeah.

7 MR. CLOWARD: And that's why, you know, I talk about it, is
8 there's -- you know, I promise to be brutally honest back, you know, and I
9 just want to find out if, you know, it's going to be harder for Aaron to prove
10 his case because it's this type of case versus if this was a contract case that
11 only had to do with, hey, do I get -- you know, should this person have to,
12 you know, follow through with what we promised to. Maybe a case like that
13 might not be -- the party might not start off at a different spot. Do you see
14 where I'm going with that?

15 PROSPECTIVE JUROR NO. 44: Right.

16 MR. CLOWARD: Could I ask you to search in your heart and
17 be brutally honest with me, if Aaron starts off differently because of your
18 experiences?

19 PROSPECTIVE JUROR NO. 44: And when you say "starting
20 off", you mean --

21 MR. CLOWARD: Sure.

22 PROSPECTIVE JUROR NO. 44: -- what, just immediately just
23 telling us what -- [indiscernible].

24 MR. CLOWARD: I guess, are you already to a sport where --

25 PROSPECTIVE JUROR NO. 44: Oh.

1 MR. CLOWARD: -- you already don't believe that this case has
2 merit just based on the fact that we're here, and that we talked about a lot of
3 money?

4 PROSPECTIVE JUROR NO. 44: It's not that I don't believe.

5 MR. CLOWARD: Okay.

6 PROSPECTIVE JUROR NO. 44: It's that from everything that
7 I've heard for 20 so years, my opinion is -- especially when you have a large
8 amount like that, that it shouldn't have to be that much.

9 MR. CLOWARD: Okay.

10 PROSPECTIVE JUROR NO. 44: I'm not saying that it's -- that
11 what happened to him is not -- you know, he's trying to get more than what
12 he should, but, you know --

13 MR. CLOWARD: Can I ask you a really brutally honest
14 question?

15 PROSPECTIVE JUROR NO. 44: No.

16 MR. CLOWARD: No, I can't?

17 PROSPECTIVE JUROR NO. 44: I'm just playing.

18 MR. CLOWARD: Okay. The fact that we've -- that I've told you
19 the amounts that we're going to ask for, do you already believe that we're
20 overreaching, that no matter what the evidence is, we're already hear in bad
21 faith?

22 PROSPECTIVE JUROR NO. 44: I don't -- I'm at a point where,
23 without knowing the actual -- what happened with him, because it could be --
24 I'm looking at him, he looks fine.

25 MR. CLOWARD: Sure.

1 PROSPECTIVE JUROR NO. 44: And then again, that's, you
2 know, subjective. I don't know if something happened to his family or
3 anything like that. So at this point, I don't know. But until then, until I've --
4 you know, I can hear the facts, from what I believe and what I've been
5 brought up to believe, not that you're guilty and you have to prove your
6 innocence, but for that amount of money, yeah.

7 MR. CLOWARD: So you feel that we're already kind of
8 overreaching; is that fair?

9 PROSPECTIVE JUROR NO. 44: I don't want to say it exactly
10 like that, but kind of, yes.

11 MR. CLOWARD: Okay. Well, I certainly don't want to
12 misrepresent or mischaracterize. I want to make sure that we have true
13 communication, where I fully understand where you're coming from. Could
14 you help me to understand a little better using maybe your words if how you
15 feel versus when?

16 PROSPECTIVE JUROR NO. 44: Well, a lot of this has, you
17 know, to do with -- with my brother.

18 MR. CLOWARD: Okay.

19 PROSPECTIVE JUROR NO. 44: He was shot. They never
20 found who shot him. And, true, he was doing something that he wasn't
21 supposed to be doing and he went to jail for eight years, you know, after
22 being shot, you know, after all the surgeries that he had to have. And there
23 was no justice for him for that. You know, it's like they -- you know, they
24 didn't want to pursue it for some reason. I don't know.

25 And then my wife, she has some issues, you know, as well. So

1 I -- it's personal, you know, from the things that I hear from family and
2 everything. So that's where I coming from. And then a lot of the things that I
3 hear.

4 MR. CLOWARD: Okay. I appreciate your many views. Thank
5 you. Thank you for sharing that.

6 What else was important that we talked about the last day and a
7 half that, you know, was important to you and you wanted to kind of talk
8 about?

9 PROSPECTIVE JUROR NO. 44: Nothing that important.
10 Nothing that I can think of. I mean, I know that things happen. And I know
11 that I'm not one of those people that, you know, if someone were to do
12 something, then, yeah, they need to pay for it or they need to be fair about it.
13 You know, everyone needs to be fair, that's all.

14 MR. CLOWARD: Sure, sure. And I appreciate your views on
15 that, certainly. I have my outline, but I wrote this on notecards, so I forget.

16 Have you always dealt with things in your life in the way that
17 you look back and you're like, you know what, I handled that perfectly, or
18 have you ever had situations where maybe you look back and you could
19 have done things differently?

20 PROSPECTIVE JUROR NO. 44: Oh, yeah. The way that me
21 and my ex-wife broke up and, you know, not that I left my daughter out, but
22 I've always been in contact with her. You know, I think I could have done
23 that a lot differently. You know, we're -- I mean, we're all in good spirits now
24 and, you know, everyone is friends and everything, but it was pretty rough
25 back then. I think -- well, I know I could have handled that better.

1 MR. CLOWARD: Uh-huh. Do you have expectations that other
2 people handle things a certain way or are you more understanding that --

3 PROSPECTIVE JUROR NO. 44: I believe everyone is -- has --
4 handles things differently. The way they [indiscernible] and the way that I
5 might handle something is not the way they might handle something. But
6 that's -- you know, that's how they handle it and that's the best way for them.

7 MR. CLOWARD: Okay. Thank you. Appreciate it.

8 MR. RANDS: Good afternoon, Mr. Turner.

9 PROSPECTIVE JUROR NO. 44: Hello.

10 MR. RANDS: I'm name is Doug Rands and I think you've heard
11 that maybe --

12 PROSPECTIVE JUROR NO. 44: Yes.

13 MR. RANDS: -- over the last day or so, but I'm one of the
14 Defendant -- representatives of the Defendant.

15 PROSPECTIVE JUROR NO. 44: Yes.

16 MR. RANDS: I want to talk to you a little bit. You indicated that
17 you have some concerns about, you know, money damages and things like
18 that, and I understand that. But I think you had also admitted and everybody
19 is in the same boat, you really don't know what this case is about yet, right?

20 PROSPECTIVE JUROR NO. 44: That's true.

21 MR. RANDS: You don't know what the damages are or the
22 allegations of damages, other than what you've heard here, which is really
23 nothing. Will you admit that?

24 PROSPECTIVE JUROR NO. 44: I do.

25 MR. RANDS: Okay. And part of the trial is to listen to the

1 evidence and make a decision after you've heard the evidence. Do you
2 understand that?

3 PROSPECTIVE JUROR NO. 44: I do understand.

4 MR. RANDS: So at some point in the next several days, if
5 you've chosen to be on the jury, there's going to be evidence that's going to
6 come in through testimony, there'll be witnesses who come up and testify,
7 and then other witnesses. And then at the end, the attorneys are allowed to
8 make argument as to what the evidence showed and you can -- and at that
9 point, the jury gets the case and make the decision. That's kind of what
10 happens.

11 Now, there may be something that comes into this trial that you
12 say, okay, I don't think so, but you can -- you know, there may be something
13 that will come into trial and you say, okay, you know, damages are
14 warranted; they've proven their damages. And they do have the obligation
15 to do that, they have to prove their damages. If that were to happen at that
16 point, could you make a determination based on a reasonable person?

17 PROSPECTIVE JUROR NO. 44: Most likely, yes.

18 MR. RANDS: Okay. And, you know, sometimes -- I mean, it's
19 a difficult thing. I mean, you're having to be basically a judge. You're a
20 judge of the facts as a juror, but you understand that, oftentimes, the
21 evidence will come in one way that will make you believe that this is the
22 amount that should be awarded, or maybe this amount, or maybe this
23 amount, or maybe nothing. That's only based on evidence and, at this point,
24 you can't tell which -- what you would award because you don't know the
25 evidence, right?

1 PROSPECTIVE JUROR NO. 44: Correct.

2 MR. RANDS: But at some point, you will hear the evidence,
3 and at that point, do you think you could evaluate the evidence and make a
4 reasonable determination?

5 PROSPECTIVE JUROR NO. 44: Most likely.

6 MR. RANDS: Okay. What is -- you said you're self-employed?

7 PROSPECTIVE JUROR NO. 44: Correct.

8 MR. RANDS: And that your brother had an issue, but you
9 haven't had any personal medical issues or no auto accidents or anything,
10 which is good. You said your daughter is a pharmacy tech. Where does
11 she work?

12 PROSPECTIVE JUROR NO. 44: Cleveland Clinic.

13 MR. RANDS: Excuse me?

14 PROSPECTIVE JUROR NO. 44: Cleveland Clinic.

15 MR. RANDS: Okay. And as a pharmacy tech, what does she
16 do?

17 PROSPECTIVE JUROR NO. 44: She fills prescriptions.

18 MR. RANDS: Okay. Do you ever talk to her about medical
19 issues or --

20 PROSPECTIVE JUROR NO. 44: No.

21 MR. RANDS: Okay. She's not your go-to person, and you say,
22 I've got a problem, I need to -- do I need to see a doctor?

23 PROSPECTIVE JUROR NO. 44: No.

24 MR. RANDS: Okay. What do -- what do you like to do for fun?

25 PROSPECTIVE JUROR NO. 44: Bowl.

1 MR. RANDS: Bowling?
2 PROSPECTIVE JUROR NO. 44: Yeah, bowling.
3 MR. RANDS: Where do you bowl?
4 PROSPECTIVE JUROR NO. 44: White Rock.
5 MR. RANDS: Are you in a league?
6 PROSPECTIVE JUROR NO. 44: No. Either White Rock or
7 San Tan, either one of those two usually.
8 MR. RANDS: Have you ever bowled a 300 game?
9 PROSPECTIVE JUROR NO. 44: 299.
10 MR. RANDS: Oh. That last pin, huh? Oh, that's awful. So
11 what is that, 12 strikes and one nine?
12 PROSPECTIVE JUROR NO. 44: Yes. No, 11 strikes and a
13 nine.
14 MR. RANDS: Eleven strikes and a nine. That's brutal.
15 PROSPECTIVE JUROR NO. 44: Yeah, thanks for reminding
16 me.
17 MR. RANDS: Oh, no, now I put my foot in, haven't I? Do you
18 like to read or --
19 PROSPECTIVE JUROR NO. 44: I'm not really into books, but
20 being that I'm an IT tech, I'm always in front of a [indiscernible].
21 MR. RANDS: Well, what kind of websites do you like to use?
22 PROSPECTIVE JUROR NO. 44: Well, CNN.
23 MR. RANDS: Sure.
24 PROSPECTIVE JUROR NO. 44: Any technology-based sites,
25 since that's what I --

1 MR. RANDS: Sure.

2 PROSPECTIVE JUROR NO. 44: -- am normally on to keep up
3 on the technology sort of thing. That's pretty much it.

4 MR. RANDS: Other than bowling, any other sports?

5 PROSPECTIVE JUROR NO. 44: If craps is a sport.

6 MR. RANDS: A sport I'm not very good at.

7 PROSPECTIVE JUROR NO. 44: Right.

8 MR. RANDS: Yeah. Somebody once said the casinos weren't
9 built by the winners and I'm a living example of that.

10 PROSPECTIVE JUROR NO. 44: Bowling and -- when me and
11 my -- well, my soon-to-be ex-wife, we used to go to California [indiscernible],
12 so travel a little bit, so.

13 MR. RANDS: That's all I have. Thank you for your time.

14 THE COURT: All right. Mr. Bledsoe, sir, if you'll introduce
15 yourself.

16 PROSPECTIVE JUROR NO. 46: My name is Derick Bledsoe.
17 I've lived in Clark County for 20 years. I have a doctor of pharmacy degree
18 from Xavier University Louisiana. I'm a pharmacist with Smith's Food &
19 Drug. I'm married. My wife is a retail sales manager. I have two children,
20 12 and 10.

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

23 PROSPECTIVE JUROR NO. 46: No.

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

1 PROSPECTIVE JUROR NO. 46: No.

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

4 PROSPECTIVE JUROR NO. 46: No.

5 THE COURT: And you have medical training and work in the
6 medical field. How about anybody else who's close to you?

7 PROSPECTIVE JUROR NO. 46: No.

8 THE COURT: Have you or anyone close to you suffered a
9 serious injury?

10 PROSPECTIVE JUROR NO. 46: I had an uncle who died in a
11 car accident.

12 THE COURT: I'm sorry to hear that.

13 PROSPECTIVE JUROR NO. 46: That was 30-some-odd years
14 ago.

15 THE COURT: Okay. Anyone else close to you who's been in a
16 car crash for you?

17 PROSPECTIVE JUROR NO. 46: No, just minor fender-benders
18 for myself.

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

21 PROSPECTIVE JUROR NO. 46: Yes.

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

24 PROSPECTIVE JUROR NO. 46: Yes.

25 THE COURT: Can you set aside any sympathy you may have

1 for either side and base your verdict solely on the evidence and the
2 instructions on the law presented during the trial?

3 PROSPECTIVE JUROR NO. 46: Yes.

4 THE COURT: Is there any reason you couldn't be completely
5 fair and impartial if you are selected to serve as a juror?

6 PROSPECTIVE JUROR NO. 46: No.

7 THE COURT: If you were a party to this case, would you be
8 comfortable having someone like yourself as a juror?

9 PROSPECTIVE JUROR NO. 46: Yes.

10 MR. CLOWARD: Thanks. Mr. Bledsoe, how are you today?

11 PROSPECTIVE JUROR NO. 46: Good.

12 MR. CLOWARD: What -- we've been going at this and we're in
13 the home stretch. What's been important for you?

14 PROSPECTIVE JUROR NO. 46: For me, as echoed by some
15 of the others, I just, in general, feel most personal injury lawsuits are
16 frivolous. That's what I have to say on that.

17 MR. CLOWARD: Tell me a little bit about that, if you would.

18 PROSPECTIVE JUROR NO. 46: It's just my opinion. I work in
19 a grocery store. I've seen people see a wet spot on the floor and fake fall
20 and so I -- you know, I've seen that sort of thing happen. I see it kind of --
21 they see an opportunity for a money grab.

22 MR. CLOWARD: Okay. Kind of lawsuit lottery type of thing?

23 PROSPECTIVE JUROR NO. 46: Yeah.

24 MR. CLOWARD: What are your thoughts about this case?

25 PROSPECTIVE JUROR NO. 46: I don't know particulars. You

1 mentioned early on, there might be a large settlement that you're looking for.
2 The amount doesn't matter so much, but I figure, you know, you have to set
3 your sights high and hope you land somewhere, you know, in the middle.

4 MR. CLOWARD: You think that's what we're doing in this
5 case?

6 PROSPECTIVE JUROR NO. 46: To an extent.

7 MR. CLOWARD: What makes you feel that way?

8 PROSPECTIVE JUROR NO. 46: I think that's what lawyers do.

9 MR. CLOWARD: All lawyers?

10 PROSPECTIVE JUROR NO. 46: Most.

11 MR. CLOWARD: Do you think there are any lawyers that just
12 ask for what's fair?

13 PROSPECTIVE JUROR NO. 46: Sure.

14 MR. CLOWARD: What do you think about me?

15 PROSPECTIVE JUROR NO. 46: I wanted to file a lawsuit
16 against you for pain and suffering yesterday. It was just -- you kept going on
17 about the pie and I was like enough about the pie already.

18 MR. CLOWARD: I'm sure you could get some -- get these guys
19 to take that case.

20 PROSPECTIVE JUROR NO. 46: Yeah, yeah.

21 MR. CLOWARD: I appreciate your honesty. Thank you. Do
22 you think that, on behalf of my client, we're already starting off a little bit
23 behind the Defense?

24 PROSPECTIVE JUROR NO. 46: I wouldn't say that. It's just
25 you really have to just provide the proof, just prove your case, that -- I

1 wouldn't say starting off behind, but I'm just of the opinion most of these
2 cases are frivolous. That doesn't mean this one is necessarily. That's just
3 where I stand.

4 MR. CLOWARD: Do you feel the chances are higher that this is
5 a frivolous case just based on --

6 PROSPECTIVE JUROR NO. 46: Just based on percentages.

7 MR. CLOWARD: Okay. So we're already kind of categorized,
8 we're kind of in that area; is that fair?

9 PROSPECTIVE JUROR NO. 46: I guess.

10 MR. CLOWARD: Being brutally honest, in your heart of hearts.

11 PROSPECTIVE JUROR NO. 46: Yeah.

12 MR. CLOWARD: Okay. Can I ask a question. Based on that
13 feeling, is it going to be a little harder for me and my client -- in this particular
14 case versus maybe if this was not a personally injury case at all, if this was
15 like a water law dispute, is my client, the fact that we're here for money
16 damages for pain and suffering and for medical bills, is it going to be a little
17 bit harder for him in this particular case?

18 PROSPECTIVE JUROR NO. 46: I don't -- I wouldn't say it
19 would be harder, no.

20 MR. CLOWARD: Do you think that your views on those issues
21 are going to make it so that you're a little more skeptical that --

22 PROSPECTIVE JUROR NO. 46: I personally would call myself
23 a skeptic just in general.

24 MR. CLOWARD: Okay.

25 PROSPECTIVE JUROR NO. 46: You know, I have to be

1 shown or, you know, things have to be proven to me. You know, you can
2 hear somebody tell a ghost story or something like that, I'm just not going to
3 believe until I see it for myself, like that.

4 MR. CLOWARD: Okay. If you were a plaintiff, and you were
5 injured, and you had medical bills, would you want someone with your frame
6 of mind sitting on your jury, being the skeptical?

7 PROSPECTIVE JUROR NO. 46: Well, for me, I don't -- I don't
8 have a problem with the skepticism if -- as long as they can keep an open
9 mind. You know, if I -- I wouldn't bring the case forward if I didn't think I had
10 a legitimate case, me personally. So that being said, if I were to do that, I
11 would hope I would be able to convince them that my claims were
12 legitimate.

13 MR. CLOWARD: Would you require maybe more proof from
14 our side? Let's say that there's, you know, an issue that's contested, would
15 you require, you know, a lot more proof on our side because we've got to
16 prove it versus their side?

17 PROSPECTIVE JUROR NO. 46: Without --

18 THE COURT: Mr. Cloward, could counsel approach for a
19 second?

20 MR. CLOWARD: Yeah.

21 [Bench conference begins at 1:48 p.m.]

22 THE COURT: I'm sure you didn't intend to do this, but it's totally
23 incorrect to say that you have the burden of proof and you have no burden
24 at all, so you absolutely --

25 MR. CLOWARD: I said --

1 THE COURT: -- have to put up forward all of the evidence.

2 MR. CLOWARD: I said "a lot more", though. It doesn't require
3 a lot more proof.

4 THE COURT: You have to put on a lot more forward than they
5 do because they don't have to put forward anything, Mr. Cloward. They
6 have no burden.

7 MR. CLOWARD: Preponderance of evidence requires just a
8 little more.

9 THE COURT: I know, but that's not the question you asked.
10 That's what I said. I don't think you intended to say it that way, but what you
11 said was do they have to -- do we have to put more forward than them. You
12 absolutely have to put more forward than them. They don't have to put
13 forward anything. Do you understand what I'm saying?

14 MR. CLOWARD: I understand what you're saying, but I
15 respectfully disagree that that's what my question meant because I asked --

16 MR. RANDS: I think she said --

17 THE COURT: That's what I said.

18 MR. RANDS: Yeah.

19 THE COURT: I am sure you didn't mean it to come out that
20 way, but the question that you asked was, "Do we have to put more
21 evidence forward than the Defense?" You do have to put more evidence
22 forward than the Defense. I think what you are trying to ask is if he would
23 require you to do more than prove --

24 MR. CLOWARD: [Indiscernible.]

25 THE COURT: -- by a preponderance of the evidence --

1 MR. CLOWARD: The burden of proof.

2 THE COURT: -- in your case. It's not compared to the Defense
3 because they don't have to put forward any evidence at all.

4 MR. CLOWARD: I understand what you're saying. I just don't -
5 - in my mind, I'm going over the question that I asked. I'm not seeing how I
6 ran afoul because --

7 THE COURT: You said, "Do we have to present more evidence
8 than the Defense," than them.

9 MR. CLOWARD: Yeah, but I gave him the example. I said let's
10 say that there was one issue that they put forward some evidence and we
11 put forward some evidence. Would we have --

12 THE COURT: They don't have to put forward any evidence, Mr.
13 Cloward, ever. They can just sit there. They don't have to put any
14 evidence.

15 MR. CLOWARD: I understand that, but if there's a context, you
16 put some evidence on and other evidence. And I'm trying to find out are you
17 going to require us to prove a lot more.

18 THE COURT: But not than them, a lot more than your burden
19 that the law places on you, right? It's not compared to the Defense because
20 they don't have to put on any evidence at all.

21 MR. CLOWARD: But --

22 THE COURT: If you don't prove your case --

23 MR. CLOWARD: It is compared to them because that's what
24 the scales are. That's what they're -- the jury instruction preponderance of --

25 THE COURT: You're weighing the scale against yourself.

1 MR. CLOWARD: No, it's not, Judge.

2 THE COURT: They don't have to put on anything.

3 MR. CLOWARD: I understand that. There's a difference
4 between the burden of proof or who has the --

5 MR. RANDS: The burden of persuasion.

6 MR. CLOWARD: -- the burden of persuasion versus the burden
7 of proof. They're two different things. And when there are competing
8 evidentiary issues, they do weigh theirs versus mine. They don't weigh --
9 they don't put what I didn't put on one versus what I did put on the other.
10 They weigh what he says, they weigh what I say, and whoever --

11 THE COURT: Well, what if he doesn't say anything?

12 MR. CLOWARD: Then that's for them to consider. That's for
13 them to consider. Usually if they don't put anything, then it's a directed
14 verdict.

15 THE COURT: No, because if they don't think that you met your
16 burden, they don't have to put on --

17 MR. RANDS: The burden of proof, they don't have to.

18 THE COURT: -- any evidence at all, Mr. Cloward.

19 MR. RANDS: And I've done that before.

20 MR. CLOWARD: Yeah, I mean --

21 THE COURT: I mean it's not as opposed to the Defense. It's
22 did you meet your burden of proof.

23 MR. RANDS: By a preponderance of the evidence.

24 MR. CLOWARD: Well, I mean I can try and restate it, but --

25 THE COURT: You are only required to prove your case by a

1 preponderance of the evidence. I think what you're asking is, is he going to
2 hold you to a higher standard than that, not as opposed to the Defense but
3 just as opposed to the legal standard.

4 MR. CLOWARD: I'll try and rephrase.

5 THE COURT: Okay.

6 MR. CLOWARD: I didn't think -- I'm sorry. I didn't mean to --

7 [Bench conference ends at 1:52 p.m.]

8 MR. CLOWARD: So the Plaintiff has a certain burden to prove
9 the evidence. That's a different burden than, say, in a criminal case.
10 Criminal case, it's proof beyond a reasonable doubt. And in cases like
11 these, it's preponderance of evidence. And so what I'm asking from you is,
12 is let's say that we meet that burden and that burden, the judge will you at
13 the end, it's just more likely than not. It's just you put everything on the
14 scales and decide it tilts. And I guess the question I'm asking is because
15 we're asking for a lot of money, are you going to require that we prove more
16 than what the law requires.

17 PROSPECTIVE JUROR NUMBER 46: No. The money has
18 nothing to do with whether -- they aren't related. They don't correlate
19 necessarily. So you could be asking for \$5. That doesn't mean you have to
20 prove it any less. The same burden of proof, you know, the same standard
21 would apply.

22 MR. CLOWARD: Okay. Are we already starting off maybe with
23 something --

24 PROSPECTIVE JUROR NUMBER 46: I think you asked that
25 already, but I'll say again no.

1 MR. CLOWARD: Okay. Is there anything else about the way
2 that you see things that should be discussed?

3 PROSPECTIVE JUROR NUMBER 46: No.

4 MR. CLOWARD: Okay. Thank you.

5 THE COURT: Mr. Rands?

6 MR. RANDS: Good afternoon, Mr. Bledsoe. You said you're a
7 pharmacist in a grocery store. What store is that?

8 PROSPECTIVE JUROR NUMBER 46: Smith's.

9 MR. RANDS: Smith's. Which one?

10 PROSPECTIVE JUROR NUMBER 46: 2540 South Maryland
11 Park.

12 MR. RANDS: Okay. And you said your wife is a retail sales
13 manager?

14 PROSPECTIVE JUROR NUMBER 46: Right.

15 MR. RANDS: Where does she work?

16 PROSPECTIVE JUROR NUMBER 46: Lululemon Athletica.

17 MR. RANDS: Okay. You said you had an uncle that passed
18 away or died in a car accident. That was about 30 years ago, you said.
19 Would that have any effect on your decision in this case if you were asked to
20 be a juror?

21 PROSPECTIVE JUROR NUMBER 46: No.

22 MR. RANDS: And I also want to talk to you about cherry pie. I
23 love cherry pie. Sorry. I'm in favor of cherry pie, by the way, too. So if
24 you're a cherry pie fan. You said you've also been involved in a minor
25 fender bender or two? Anything about that that would affect your decision in

1 this case?

2 PROSPECTIVE JUROR NUMBER 46: No.

3 MR. RANDS: Now you talked a little bit with counsel about
4 burdens and other things. The judge will instruct you on all of that. I'm not
5 going to get into that right now. But, as a jury, one of your duties will be to
6 listen to the evidence, evaluate the evidence on that case and not any other
7 case that you're aware of or [indiscernible] and make a decision based on
8 the evidence presented in this case. Do you think you could do that?

9 PROSPECTIVE JUROR NUMBER 46: Sure.

10 MR. RANDS: And there will be argument at the end of the case
11 where they'll be able to argue their case and we can argue our position on
12 the case and then you can make a decision based on what you've heard
13 though. One thing the judge will tell you is nothing the attorneys say is
14 evidence. The evidence will come in through the exhibits and through the
15 witnesses.

16 You said also, I believe early, you know, it seems like a long
17 time ago, yesterday morning that you know of some of the doctors in the
18 case.

19 PROSPECTIVE JUROR NUMBER 46: Correct.

20 MR. RANDS: Do you know enough about those doctors
21 personally?

22 PROSPECTIVE JUROR NUMBER 46: No.

23 MR. RANDS: Do you know of any -- you think so, you might?

24 PROSPECTIVE JUROR NUMBER 46: I just fill prescriptions
25 and seen their name, some of the names on prescriptions before, and that's

1 pretty much it. I don't have any personal experience with them or opinions
2 about them.

3 MR. RANDS: Okay. So you wouldn't give one of them any
4 greater weight just because you filled a lot of prescriptions for one doctor
5 versus another?

6 PROSPECTIVE JUROR NUMBER 46: Right.

7 MR. RANDS: Okay. And I think in answer to one of the
8 question of counsel, you said that, you know, you would keep an open mind,
9 evaluate the evidence. Is that true?

10 PROSPECTIVE JUROR NUMBER 46: Correct.

11 MR. RANDS: Then make a decision based on what evidence
12 comes in and what you feel like as a juror using your common sense --

13 PROSPECTIVE JUROR NUMBER 46: Yes.

14 MR. RANDS: -- should be done? And you can do that?

15 PROSPECTIVE JUROR NUMBER 46: Yeah.

16 MR. RANDS: Nothing further, Your Honor.

17 THE COURT: Counsel, approach, please.

18 MR. CLOWARD: Did you say approach?

19 THE COURT: Yep.

20 [Bench conference begins at 1:58 p.m.]

21 THE COURT: [Indiscernible.]

22 MR. CLOWARD: Yes.

23 THE COURT: All right. I'm going to grant the cause to you with
24 respect to Mr. Turner but I'll deny it with respect to Mr. Bledsoe. We'll make
25 a record for it later.

1 MR. CLOWARD: Okay.

2 THE COURT: Okay.

3 MR. RANDS: Thank you. I'll argue about it later.

4 THE COURT: We can put it on the record, but I have a good
5 idea what you're both going to say.

6 MR. CLOWARD: We can put it on after if you want.

7 THE COURT: Actually, come here.

8 MR. CLOWARD: Doug?

9 THE COURT: You know what? Go ahead and tell me what
10 you're going to say because [indiscernible] from the Supreme Court because
11 I didn't take two minutes to get the record, so.

12 MR. CLOWARD: Oh, no. I meant to say I'm totally cool with
13 doing it after.

14 THE COURT: Yeah. But the problem is we're not doing it after.
15 If we make a more extended record, that's fine, but if I don't make a record
16 now and there's a [indiscernible] --

17 MR. CLOWARD: Oh.

18 THE COURT: It's just --

19 MR. CLOWARD: Gotcha. Okay.

20 THE COURT: Haste makes waste, so let's just take a second.

21 MR. CLOWARD: Sure. I'll do it really quickly. Mr. Bledsoe
22 indicated that he thinks that most lawsuits are frivolous, that his experience
23 working at Smith's, he's seen people go over and lay down in water puddles
24 and that he thinks, you know, that because of that, most lawsuits are
25 frivolous.

1 He also indicated that he's got a personal issue with me which
2 would, to me, suggest that it's more of an underlying the reason that I'm here
3 rather than me personally, but he doesn't like what I stand for, which is to try
4 and have a client be compensated for pain and suffering. And that's why he
5 doesn't like me personally. I don't think I said anything that would be
6 annoying yesterday. I was just simply talking about issues. So, to me, that
7 would suggest more of a deeper philosophical disagreement with the
8 principles that I'm advocating.

9 MR. GARDNER: I think it was a joke. I think he meant it as a
10 joke. It was taken by everybody else as a joke about the pie. As far as the
11 other stuff, he clearly said that he could listen to the evidence and make a
12 decision based upon the evidence presented.

13 THE COURT: All right. So --

14 MR. GARDNER: And if this were a slip-and-fall case, maybe
15 there would be something, but it's not. It's a [indiscernible] case.

16 THE COURT: I agree, so I'm going to deny the challenge for
17 cause with both respect to -- did you want to make any record with respect
18 to Mr. Turner?

19 MR. GARDNER: I agree with Mr. Cloward that it's --

20 THE COURT: Okay.

21 [Bench conference ends at 2:00 p.m.]

22 THE COURT: Okay. Mr. Turner, sir, I'm going to ask you to go
23 back to Jury Services. Thank you so much for your time. Mr. Turner, sir.

24 THE CLERK: In seat number 8, Badge number 47, Arthur St.
25 Laurent.

1 THE COURT: All right, sir. If you'll introduce yourself.

2 PROSPECTIVE JUROR NUMBER 47: Yes. I'm Arthur St.
3 Laurent. I've lived in Clark County for two years. I moved here from
4 California. I lived there for 20 years. And you might hear it in my speech
5 patterns, but I'm from New York, Brooklyn, New York. So the more I get
6 nervous, the more it comes out.

7 Let's see, I received a bachelor of science in psychology and a
8 master in administrative justice. Let's see, I also attended a technical
9 college when I was 18 years old and received a degree in electrical
10 technology. I am employed, although I came here to retire. My wife says
11 you're now around me 24/7. Maybe you should work. I laughed, too, but I
12 am working -- and I am working in security at Mandalay Bay and on the
13 convention side, convention security.

14 Yeah. What kind of work I do, right now I do security work, and
15 I come from law enforcement. After I did my technical work for about ten
16 years, I worked for Grumman Aerospace. And I always like to tell this story
17 because it was so exciting. It was back in 1962, 1963. And Grumman
18 Aerospace at the time won the contract from NASA to build the Lunar
19 Module, and I was directly responsible for research work. I work under a
20 physicist, and they were trying to determine what they wanted to build the
21 LEM [phonetic], the Lunar Module, out of. And so it was an exciting time in
22 my life, and I always like to share it. It was a lot of fun.

23 I am married. I have four children. All of them are adults right
24 now, thank god. And I have five grandchildren and one on the way. So --

25 THE COURT: What do your four children do?

1 PROSPECTIVE JUROR NUMBER 47: I'm sorry.

2 THE COURT: What do your four children do, sir?

3 PROSPECTIVE JUROR NUMBER 47: Oh, what do my four
4 children do, okay. One is in the technical field, computer science, and he
5 lives on the East Coast in Virginia. My second son was a helicopter pilot for
6 KGO and if you've ever gotten your traffic reports, he was the pilot there up
7 in San Francisco. And my third and fourth -- third and fourth child are twins,
8 a boy and a girl. And the boy is a manager at Whole Foods in California,
9 and my daughter is a manager at a branch bank in California.

10 THE COURT: All right. Sir, go ahead and have a seat. Have
11 you ever served as a juror before?

12 PROSPECTIVE JUROR NUMBER 47: No.

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

15 PROSPECTIVE JUROR NUMBER 47: I have.

16 THE COURT: Can you tell me about that?

17 PROSPECTIVE JUROR NUMBER 47: Yes. It was while I was
18 in law enforcement. I was asked to participate in a civil trial, and I was there
19 as a witness to -- to an incident that happened at a business location, and
20 the lawsuit was between the business and the insurance company.

21 THE COURT: So just related to your employment?

22 PROSPECTIVE JUROR NUMBER 47: Yes, it did.

23 THE COURT: Anything outside of your employment?

24 PROSPECTIVE JUROR NUMBER 47: No.

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

1 legal field?

2 PROSPECTIVE JUROR NUMBER 47: No.

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

5 PROSPECTIVE JUROR NUMBER 47: No.

6 THE COURT: Have you or anyone close to you suffered a
7 serious injury?

8 PROSPECTIVE JUROR NUMBER 47: Yes.

9 THE COURT: Can you tell me about that?

10 PROSPECTIVE JUROR NUMBER 47: There were two injuries
11 to myself. One was when I was a technician, I got hit by 40,000 volts and
12 survived and, although I think I lost my hair there. It hit me across the head,
13 and it was serious. But I ended up going back to work. And then the
14 second one was under employment, I was law enforcement at a crash
15 scene, my vehicle was hit while I was in the vehicle or exiting the vehicle.
16 And I had some back injury, but I was fine. And I got treatment, and then I
17 went back to work.

18 THE COURT: Have you -- other than the accident you just
19 described, have you or anyone close to you been in a car crash?

20 PROSPECTIVE JUROR NUMBER 47: No.

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

23 PROSPECTIVE JUROR NUMBER 47: Yes. Yeah.

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

1 PROSPECTIVE JUROR NUMBER 47: Yes.

2 THE COURT: Do you set aside any sympathy you may have
3 for either side and base your verdict solely on the evidence and the
4 instructions on the law presented during the trial?

5 PROSPECTIVE JUROR NUMBER 47: Yes, I can do that.

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

8 PROSPECTIVE JUROR NUMBER 47: No.

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

11 PROSPECTIVE JUROR NUMBER 47: Yes.

12 THE COURT: Mr. Cloward?

13 MR. CLOWARD: Thank you.

14 Mr. St. Laurent, it sounds like you've led an interesting life.

15 PROSPECTIVE JUROR NUMBER 47: Thank you. And I like
16 cherry pie, so let's get it off the table.

17 MR. CLOWARD: Sorry, you don't want to sue me for pain and
18 suffering --

19 PROSPECTIVE JUROR NUMBER 47: No, I would not, but I
20 would like to maybe talk to you about cherry pie.

21 MR. CLOWARD: We can definitely talk about it.

22 PROSPECTIVE JUROR NUMBER 47: Okay.

23 MR. CLOWARD: I was going to say we go to the same barber,
24 but I didn't -- I wasn't planning to do an electrocution. Tell me about that,
25 40,000 volts, geez Louise.

1 PROSPECTIVE JUROR ST. LAURENT: Yeah. It was during --
2 part of my job as a research technician was to run experiments -- actually
3 what it was, what they were worried about, one of the things they were
4 worried about was called micro meteor rights --

5 MR. CLOWARD: Uh-huh.

6 PROSPECTIVE JUROR NUMBER 47: -- and damage to the
7 skins of the spacecraft. And at the time we were running experiments trying
8 to duplicate what damage it would be to materials due to high velocity of
9 small tungsten spheres. If you looked -- it felt like talcum powder, but if you
10 looked under a microscope, you could see these small spheres that looked
11 like ball bearings.

12 Well, needless to say, during the experience what we were
13 doing was we were ionizing hydrogen gas to get the positive ions to impinge
14 upon the micro -- the little spheres and then accelerate them. Well, during
15 those experiments, I had to make an adjustment, and when I went in, the
16 lens that focused the hydrogen beam was sitting at 40,000 volts. And at the
17 time, I had lots of hair. And the spark came across, hit me across the head.
18 And the thing that saved me is that behind me, because I had to bend into
19 the apparatus, was a ground plate. So the spark actually crossed the top of
20 my head, hit the ground plate, but threw me across the room.

21 MR. CLOWARD: That's wild. That is wild.

22 PROSPECTIVE JUROR NUMBER 47: And here I am.

23 MR. CLOWARD: Well, we're glad you're still with us.

24 PROSPECTIVE JUROR NUMBER 47: Yeah, so am I. And my
25 children and grandchildren.

1 MR. CLOWARD: Yeah. That's a --

2 PROSPECTIVE JUROR NUMBER 47: Yes.

3 MR. CLOWARD: -- crazy story. A crazy story. Can I ask about
4 some of your other work jobs, your other careers?

5 PROSPECTIVE JUROR NUMBER 47: Yeah. I was in law
6 enforcement in New York. It was a county police department outside the
7 City of New York. I was there for 22 years as a patrol officer, and also I
8 worked -- my last four years I worked in our planning division, which
9 reported to the commissioner of police.

10 MR. CLOWARD: Okay. now you're currently security with
11 Mandalay Bay?

12 PROSPECTIVE JUROR NUMBER 47: Correct.

13 MR. CLOWARD: It's been a difficult time for Mandalay Bay.
14 I'm sorry to -- do you have any experiences like Mr. Bledsoe where you have
15 seen people, you know, laying down trying to, you know, say that they're
16 hurt in water or anything like that? If you do security, do you do the guest
17 reporting where you go and --

18 PROSPECTIVE JUROR NUMBER 47: Well, that comes
19 across. People do have accidents and they get injured. And my job at the
20 time is to help them hopefully prevent those types of things, but when
21 someone does get hurt, my job was to -- is to help them contain the area,
22 make the area safe, and get them the assistance that they need.

23 MR. CLOWARD: As part of that, do you do, you know, the
24 investigation, take the photographs and different things?

25 PROSPECTIVE JUROR NUMBER 47: Yes. Actually, I have

1 done more of that in police work than I have in security. I just recently got
2 the security job. But, yeah, I've taken reports and you look for the facts, you
3 look for witnesses. And the things is to gather the information because
4 somewhere down the road there's going to be people who are looking at this
5 who were not at the incident --

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NUMBER 47: -- much like this
8 situation here.

9 MR. CLOWARD: Yeah. Very much like it. Has that experience
10 caused you to see personal injury cases in a certain way? For instance, Mr.
11 Bledsoe indicated he feels like most personal injury cases are probably
12 frivolous. Do you have feelings one way or the other on that?

13 PROSPECTIVE JUROR NUMBER 47: No, I don't. I think it
14 would be based on the facts and the evidence and the information. And I
15 think I would view that as like in police work. Police work starts at a level of,
16 you know, what would be a reasonable person think of the same -- you
17 know, when we're investigating something, it's what would a reasonable
18 person think. You know, why are you here at night at 3:00 in the morning in
19 a back alley with [indiscernible] go in a window. So it's what would a
20 reasonable person think. And so that's what I've always based my actions
21 on.

22 MR. CLOWARD: Okay. Fair enough. Do you have any views
23 about this case before we've started to talk about the facts? Do you have
24 any thoughts about --

25 PROSPECTIVE JUROR NUMBER 47: Well, the only views is

1 things that have already been shared from you. We right now only have that
2 information that you have shared, and it sounds like a serious thing that has
3 to be considered. And I think all of us here are capable of doing that.

4 MR. CLOWARD: Sure. Is there anything -- any issue that has
5 been discussed that you had strong feelings about that you felt like, you
6 know what, I probably should talk about those feelings?

7 PROSPECTIVE JUROR NUMBER 47: Yeah. There's been
8 one thing. I know you mentioned about a runaway jury.

9 MR. CLOWARD: Yeah.

10 PROSPECTIVE JUROR NUMBER 47: I understood -- I
11 understand the comment. That might have to do with maybe a lot of
12 sympathy involved. But the other thing I hear about types of civil lawsuits is
13 also the term deep pockets, right?

14 MR. CLOWARD: Absolutely.

15 PROSPECTIVE JUROR NUMBER 47: And so that's -- when
16 you said about runaway juries, I thought about that other comment about
17 these types of civil lawsuits where the deep pockets. So it just gave me
18 some thought as to, okay, there's pain and suffering, which I certainly could
19 understand --

20 MR. CLOWARD: Uh-huh.

21 PROSPECTIVE JUROR NUMBER 47: -- and then the idea of
22 deep pockets. And so that concept I was just giving it some thought that,
23 you know, is it -- is there more pain and suffering because the pockets are
24 deeper.

25 MR. CLOWARD: That's a great point.

1 PROSPECTIVE JUROR NUMBER 47: And so that -- I mean
2 that's what I'm thinking of right there.

3 MR. CLOWARD: Yeah.

4 PROSPECTIVE JUROR NUMBER 47: And I don't -- I don't
5 know if I've ever come to a conclusion about that.

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NUMBER 47: I haven't come to any
8 judgment on that, but I wonder about that.

9 MR. CLOWARD: That's a great point. That's a great point.
10 Thank you for sharing that. There was some discussion yesterday about, I
11 guess, the ability to pay a verdict. And, quite frankly, that's not something
12 whether they're deep pockets, that's not something that will even be
13 discussed. And I want to know does that bother you. Does it bother you
14 that you won't even hear evidence of that, that it's not something you're even
15 allowed to consider?

16 PROSPECTIVE JUROR NUMBER 47: No. Because I respect
17 the process.

18 MR. CLOWARD: Okay.

19 PROSPECTIVE JUROR NUMBER 47: And there's going to be
20 rules of evidence and there's going to rules of law, and I know that's what
21 the judge is here for is to guide us through that and that's what I will respect.

22 MR. CLOWARD: Okay. Anything else about you that you care
23 to share or that you think that we should know?

24 PROSPECTIVE JUROR NUMBER 47: No. I always felt myself
25 to be a reasonable person, a happy person. And I enjoy life, and I hope to

1 maybe in this process contribute even if I'm selected or not.

2 MR. CLOWARD: Great. We certainly appreciate your
3 participation. As the last kind of question that I've asked the others, you've
4 shared some experiences and getting electrocuted in that way, that would
5 be pretty darn serious. So I won't ask you any more questions about that.
6 But as you look back on your life, were there times where maybe you didn't
7 handle something the way that you had hoped that you would have when
8 you're placed into that situation?

9 PROSPECTIVE JUROR NUMBER 47: Yes, and that's a
10 personal matter. I don't mind sharing it. It had to do with a time in my life in
11 our marriage where we were separated and divorced. And at that time, I
12 wish I had made better decisions. The one happy thing is that we remarried
13 after five years and now we continue in a good life. But at that moment, I
14 think it would have -- not that I would want to go back, but I might have done
15 things differently.

16 MR. CLOWARD: Okay. I can appreciate that. Thank you very
17 much.

18 PROSPECTIVE JUROR NUMBER 47: Okay. Thank you.

19 THE COURT: Mr. Rands?

20 MR. RANDS: May we approach for just a minute, Your Honor?

21 THE COURT: Sure.

22 [Bench conference begins at 2:16 p.m.]

23 THE COURT: I need you to stop clicking

24 [indiscernible] --

25 MR. RANDS: [Indiscernible].

1 THE COURT: -- for two hours. I --

2 MR. RANDS: I'll put the pen away and get a different
3 one.

4 THE COURT: Thank you. I'll give you one that doesn't click
5 if you need one.

6 MR. RANDS: I've got one that doesn't click. I'll just
7 change pens right now.

8 THE COURT: Yeah.

9 MR. RANDS: This gentleman works Mandalay Bay security.
10 I didn't know if he's going to get up here and I don't think it's an issue. But
11 my partner Brett South does work for him. [indiscernible] has worked for
12 Mandalay and does some [indiscernible] type stuff. I don't think he's ever
13 met him. He said he had never met him, but --

14 MR. CLOWARD: I think if he just --

15 MR. RANDS: Can I just ask him if he's ever worked with an
16 attorney named Brett South?

17 MR. CLOWARD: Yeah. But what I don't want to have happen
18 is to say, hey, my partner --

19 MR. RANDS: No.

20 MR. CLOWARD: -- defends MGM.

21 THE COURT: He already said he didn't know --

22 MR. RANDS: Okay. Just leave it at that.

23 THE COURT: -- anybody here, so I [indiscernible].

24 MR. CLOWARD: Yeah.

25 MR. RANDS: It's such a big property. There's literally no

1 chance he's ever worked with him. Brett's had a case or two, but.

2 THE COURT: I can't -- and he's only been there for
3 [indiscernible].

4 MR. RANDS: I just didn't want to get him to -- for that very
5 reason.

6 THE COURT: I mean unless you have some concern on that.

7 MR. CLOWARD: No.

8 THE COURT: I don't either.

9 MR. RANDS: I'll just leave it alone then.

10 MR. CLOWARD: Yeah.

11 THE COURT: Yeah.

12 MR. CLOWARD: That's fine.

13 THE COURT: All right. Thank you.

14 MR. CLOWARD: Thanks.

15 [Bench conference ends at 2:18 p.m.]

16 MR. RANDS: Mr. St. Laurent?

17 PROSPECTIVE JUROR NUMBER 47: Yes.

18 MR. RANDS: You said you worked on the Lunar Module?

19 PROSPECTIVE JUROR NUMBER 47: Yes, I did.

20 MR. RANDS: You recognize that you're under oath to tell the
21 truth?

22 PROSPECTIVE JUROR NUMBER 47: Yes.

23 MR. RANDS: Did we really land on the moon or was that
24 something in Hollywood?

25 PROSPECTIVE JUROR NUMBER 47: I've been asked that

1 many times. I would have to say, yes, we did because there were a lot of
2 moments, especially if you remember Apollo 13, which is after the moon
3 landing and that was a very serious set of circumstances. And, yes, we did
4 land on the moon.

5 MR. RANDS: I just figured I had somebody under oath. I might
6 as well get the answer now.

7 PROSPECTIVE JUROR NUMBER 47: Yes.

8 MR. RANDS: You said that you were -- have your degrees, and
9 one of them administrative justice, a master's?

10 PROSPECTIVE JUROR NUMBER 47: Yes.

11 MR. RANDS: And you said you worked for -- in law
12 enforcement?

13 PROSPECTIVE JUROR NUMBER 47: Correct.

14 MR. RANDS: Was that in New York?

15 PROSPECTIVE JUROR NUMBER 47: Yes, it was a county
16 police department outside the City of New York. It's called Nassau County
17 Police Department. We serviced 1-1/2 million people.

18 MR. RANDS: Okay. How long did you work for them?

19 PROSPECTIVE JUROR NUMBER 47: Twenty-two years.

20 MR. RANDS: And was that where you worked immediately
21 before retiring and moving to Las Vegas?

22 PROSPECTIVE JUROR NUMBER 47: No. I retired in 1992,
23 and our family moved to California from New York. We had -- my brother
24 and sister and parents lived in California, so we moved. And I worked in --
25 for a community college, Monterey Peninsula College in Monterey,

1 California, and I was the director of security.

2 MR. RANDS: For the community college?

3 PROSPECTIVE JUROR NUMBER 47: Correct.

4 MR. RANDS: And then you came from California to Vegas?

5 PROSPECTIVE JUROR NUMBER 47: That's correct, two
6 years ago.

7 MR. RANDS: Okay. Counsel talked a little bit about your
8 injury. I think he talked about the sexy injury with the electrical. You also
9 said you had a back injury at work?

10 PROSPECTIVE JUROR NUMBER 47: That's correct.

11 MR. RANDS: Was that when you were working for the police
12 department?

13 PROSPECTIVE JUROR ST. LAURENT: That's correct.

14 MR. RANDS: For the sheriff's department?

15 PROSPECTIVE JUROR NUMBER 47: Yes.

16 MR. RANDS: And anything about you having that injury,
17 recovering that injury you think would affect your ability to be a fair juror in
18 this case?

19 PROSPECTIVE JUROR NUMBER 47: No. I don't -- no, other
20 than it was an auto accident, and it was a back injury. No. I understand the
21 facts and the circumstances of the situation and I recovered well. And I was
22 under workman's comp and so there was no personal lawsuits for myself. It
23 was a dangerous situation. It was a snowstorm, and we were covering an
24 accident. And the car coming from behind us was blind. We were on a hill,
25 and we were on the bottom side of the hill. When the car came over, it had

1 no chance to stop.

2 MR. RANDS: One of those Eastern ice storms or snowstorms?

3 PROSPECTIVE JUROR NUMBER 47: It was. Yeah, it was in
4 front of the black ice-type situation. Yeah.

5 MR. RANDS: You said in answer to one of counsel's questions
6 that these are serious things that have to be considered, and you'll take your
7 obligation if you're picked to be one of the jurors seriously?

8 PROSPECTIVE JUROR NUMBER 47: Yes.

9 MR. RANDS: But you believe that just because somebody was
10 injured that they need to necessarily have a recovery? If you feel they don't
11 prove their case?

12 PROSPECTIVE JUROR NUMBER 47: Oh, they don't prove
13 their case, in other words, the pain and suffering; is that what you're looking
14 at?

15 MR. RANDS: Yeah. So, for example --

16 PROSPECTIVE JUROR NUMBER 47: No. I would think so. I
17 think that's a different level than maybe just getting compensation for the
18 cost of the accident. And the pain and suffering situation, I can understand
19 that it could exist. I mean I don't know what the extent of the injuries were
20 and how it may affect their life moving forward. So I would have to -- you
21 know, I would have to hear the evidence and the facts and make a decision
22 based on that.

23 MR. RANDS: The question I was asking is some people have
24 said, well, just because somebody's injured and brought a lawsuit that
25 they're entitled to a judgment or a recovery. Do you believe that?

1 PROSPECTIVE JUROR NUMBER 47: No. Oh no.

2 MR. RANDS: They have to prove their case first, right?

3 PROSPECTIVE JUROR NUMBER 47: I would -- oh, I would
4 think so, yes. Yes, very strongly. Yeah.

5 MR. RANDS: And just because they've asked you for millions
6 of dollars, if you were a juror and you felt like maybe there was some liability
7 but the damages weren't nearly that amount, could you award a lesser figure
8 in good conscience?

9 PROSPECTIVE JUROR NUMBER 47: I think what I would
10 base it on is what -- as a private person looking at this information is what
11 appears to be reasonable --

12 MR. RANDS: Sure.

13 PROSPECTIVE JUROR NUMBER 47: -- and how that was
14 proved and how the evidence brings you to that as a --

15 MR. RANDS: That it's reasonable, apply your common sense.

16 PROSPECTIVE JUROR NUMBER 47: Correct. And I think as
17 a group, we can come to that conclusion.

18 MR. RANDS: Okay. As the height of you applying your
19 common sense?

20 PROSPECTIVE JUROR NUMBER 47: Yes.

21 MR. RANDS: Okay. Thank you for your time.

22 THE COURT: All right. Counsel approach.

23 [Bench conference begins at 2:24 p.m.]

24 THE COURT: All right with that?

25 MR. CLOWARD: We're good.

1 THE COURT: Okay. Just so we're entirely clear,
2 [indiscernible]. These are to be exercised for jurors in seats 1 through 16.

3 MR. CLOWARD: I like that way. I think it's smart to do it that
4 way. I think we should circulate this to every other judge.

5 THE COURT: So Ms. [indiscernible] or Ms. [indiscernible],
6 right?

7 MR. CLOWARD: Yeah.

8 THE COURT: So those jurors, for those four.

9 MR. CLOWARD: Yeah.

10 THE COURT: The last one is to be exercised for jurors number
11 17, 18, 19, and 20.

12 MR. CLOWARD: Okay.

13 THE COURT: If you waive any of your challenges, then we'll
14 just get rid of them from the bottom of either category, so it's completely
15 separate. Alternates are completely separate from the [indiscernible] jurors.

16 MR. CLOWARD: Okay. Perfect. Thanks.

17 THE COURT: Return and then we'll read the [indiscernible].

18 [Bench conference ends at 2:25 p.m.]

19 THE COURT: All right, folks. If you call from when we talked in
20 the beginning of this that the lawyers have the opportunity to exercise
21 peremptory challenges, so. And they have five per side, so they can ask
22 that jurors be excused without giving any reason for that. So while they're
23 figuring out who they would like to exercise peremptory challenges against, I
24 am going to read you some instructions.

25 So for half of you, this will not be important at all and you can

1 forget it as soon as you walk out the door. For the other half of you, it's
2 really important, so I'm just going to ask that everybody pay attention for
3 right now.

4 First, we would like you to be as comfortable as possible while
5 you're here. So if you are having trouble seeing or hearing anything during
6 the course of the trial, please raise your hand. It's very important, obviously,
7 that all of the jurors can see and hear everything during the trial. If you need
8 to go to the restroom, you feel ill, or you're having any other sort of problem,
9 please let us know. It's very hard to pay attention if you are not feeling well
10 or having some other sort of issues, so we want to make sure that you're
11 able to focus.

12 I also encourage you strongly to stand up and stretch in
13 between witnesses or when the lawyers are up here talking to me. It is very
14 bad to sit for long periods of time, and you will be able to pay attention better
15 if you do that as well. The items on that sort of off-white cabinet at the end
16 of the jury box over there are for your convenience. We usually have tissue,
17 water. There might be candy. Anything that's there, please help yourself.
18 That's for you.

19 During the trial, we'll generally, as we have, meet around 9:30
20 or 10:00 and end around 5:00. And we generally won't stay past until 5:00
21 unless we're in the middle of a witness and then we absolutely won't stay
22 pay 6:00. During the day we'll break for lunch for an hour or so and then
23 have an afternoon break as well.

24 This is a civil case commenced by Aaron Morgan, the Plaintiff,
25 against David Lujan, the Defendant. The case is based upon a complaint,

1 which the Defendant has filed a response which we call an answer. Will the
2 counsel waive the formal reading of the pleadings?

3 MR. CLOWARD: Yeah.

4 MR. RANDS: Yes, Your Honor.

5 THE COURT: Thank you.

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

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

1 In this age of electronic communications, I want to stress to you
2 that you must not use electronic devices or computers to research or talk
3 about the case, including googling, tweeting, texting, blogging, emailing,
4 posting information on a website or chatroom, or any other means at all. We
5 all depend upon you to follow the rules so there is a fair and lawful resolution
6 of the case.

7 So in the age of the smartphone -- I love my smartphone -- the
8 thing I like the most about my smartphone is that I can look up anything. If I
9 don't know a word meaning or I want to know, you know, the capital of New
10 Hampshire and I can't remember that from fifth grade, I can find out right
11 now. The reason that you can't do that when you're a juror is that it is critical
12 that all the jurors make a decision based on the same information, and that's
13 the information that's presented to you in court.

14 So if one person has information that they get from an outside
15 source, it can cause us to have to do the trial all over again. And as you can
16 see, you know, trials take a lot of time. They use a lot of resources. And it
17 is -- would be a shame to have to waste everybody's time because
18 somebody couldn't follow that rule and they looked up something. Even if it
19 seems like it's not a big deal, I can tell you an issue that I had in a trial a
20 couple of years ago. A juror looked up what day of the week a date was,
21 and that seems really insignificant but depending on the facts of the
22 particular case, it literally could cause us to have to mistry the case, do it all
23 over again, and waste everybody's time. So I can't emphasize strongly
24 enough how important it is for everybody to follow that rule.

25 When you are excused from jury service, you can research this

1 to your heart's content. You can write a book. You can make a movie. You
2 can anything you want. But just until you are done with jury service, it's
3 really important that you not communicate about the case in any way and
4 that you don't do any research.

5 The trial will proceed in the following order. The parties have
6 the opportunity to make opening statements. What is said in opening
7 statements is not evidence. The statements simply serve the purpose of an
8 introduction to the evidence, which the party making the statement intends
9 to produce. The Plaintiff will introduce evidence in support of the Plaintiff's
10 claim. After the Plaintiff presents evidence, the Defendant may present
11 evidence but is not obligated to do so, and the parties may present rebuttal
12 evidence. After all of the evidence is presented, then I will read you the
13 instructions on the law you are to apply in reaching your verdict.

14 You must not be concerned with the wisdom of any rule of law
15 stated in the instructions or the instructions that I'm reading to you right now
16 or the instructions that I will read to you after the evidence is in. Regardless
17 of any opinion you may have as to what the law ought to be, it would violate
18 your oath to base a verdict upon any other view of the law than what is given
19 in the instructions.

20 After the instructions on the law are read to you, each party has
21 the opportunity to present closing arguments in support of their case. The
22 Plaintiff, who has the burden of proof, goes first and last. What is said in
23 closing argument is not evidence, just as what is said in opening statement
24 is not evidence. Closing arguments allow the parties to explain to you what
25 they think the evidence has shown and what inferences they think you

1 should draw from the evidence.

2 The evidence in this case will consist of the sworn testimony of
3 witnesses, all of the exhibits received into evidence regardless of which side
4 introduces the evidence. If the attorneys on both sides stipulate, which just
5 means agree, to the existence of a fact, you must, unless otherwise
6 instructed, accept the stipulation as evidence and regard that fact as proved.
7 I may take judicial notice of certain facts or events, like I might take judicial
8 notice that April 3rd, 2018 is a Tuesday. If I take judicial notice of a fact or
9 event, you must accept that fact as true.

10 In every case there are two types of evidence, direct and
11 circumstantial. So I'm going to give you the law school example, which is a
12 terrible Las Vegas example in April, when the weather is so beautiful. But
13 direct evidence proves a fact directly, such as if a witness came in and
14 testified they saw snow falling from the sky, right? That would be direct
15 evidence that it snowed. Circumstantial evidence proves a fact indirectly.
16 So if that witness came in and said I walked out of my house and there was
17 snow on the ground, that would be evidence that snow fell from the sky,
18 right, but they didn't see it directly. They just know that there was snow on
19 the ground when they walked out of their house.

20 You may consider both direct and circumstantial evidence in
21 deciding the case. The law permits you to give equal weight to both types of
22 evidence, but it is up to you to decide how much weight to give a particular
23 piece of evidence. You are to consider only the evidence in the case, but
24 you are not limited to solely what you see and hear as the witnesses testify.
25 You must bring to the consideration of the evidence your everyday common

1 sense and judgment as reasonable people. You may draw reasonable
2 inferences from the evidence as you feel are justified in light of your
3 experience keeping in mind that such inferences should not be based on
4 speculation or a guess.

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

13 The parties may sometimes present objections to some of the
14 testimony or other evidence. It is the duty of a lawyer to object to evidence
15 which the lawyer believes may not be properly offered and you should not
16 be prejudiced in any way against a lawyer who makes objections on behalf
17 of the party the lawyer represents. At times I may sustain objections which
18 means that I agree with the objection. I may also instruct you to disregard
19 certain testimony or exhibits. You must not consider any question or
20 evidence to which an objection has been sustained or which I have
21 instructed you to disregard.

22 Anything you may have seen or heard outside the courtroom is
23 not evidence and must not entirely disregards. Some evidence may be
24 admitted for a limited purpose only. When I instruct you that an item of
25 evidence has been admitted for a limited purpose, you must consider it only

1 for that limited purpose and no other.

2 During the trial, it may be necessary for me to confer with the
3 lawyers at the bench, which just means my desk up here -- you've already
4 seen that a hundred times -- about questions of law or procedure that I need
5 to make a decision on. And sometimes you may be excused from the
6 courtroom for the same reason. We really do value your time. If we have to
7 take a break to talk about some legal issue before we can move forward with
8 the trial, please understand it's absolutely necessary. And sometimes when
9 we take a break and you're waiting, it will ultimately shorten the course of
10 the trial, but we try to limit that as much as we possibly can. And I do
11 appreciate your patience if there are times where we have you waiting. We
12 try to avoid that whenever possible.

13 In considering the weight and value of the testimony of any
14 witness, you may take into consideration the appearance, attitude, and
15 behavior of the witness, the interest of the witness in the outcome of the
16 case, if any, the relation of the witness to the Defendant or Plaintiff, the
17 inclination of the witness to speak truthfully or not, and the probability or
18 improbability of the witness's statements, and all the facts and
19 circumstances in evidence. Thus, you may give the testimony of any
20 witness just such weight and value as you believe the testimony of the
21 witness is entitled to receive.

22 So for those of you who are sworn in to move forward and hear
23 the trial, you will have a badge that is red. All right. You'll get a different
24 badge than the one you have right now. It's red. And we'll ask you to wear
25 that badge at all times when you are in the courthouse or on a break. As I

1 explained yesterday, during the course of the trial, the attorneys, parties,
2 witnesses, and court staff other than the marshal are not permitted to talk to
3 jurors, and it goes back to the same thing about the compute research, right.
4 It's to protect the integrity of the jury process. We would make sure that
5 somebody just doesn't say something to you even accidentally that could
6 impact the course of the trial.

7 And so, we can't talk to you about the case. We can't talk to
8 you even just to pass the time of day, say hello, anything like that. So the
9 badge lets us easily identify you so we can avoid you during the course of
10 the trial. Please do not be offended by that. It's just we're required to do so
11 by the rules.

12 During the trial, you may not discuss the case with anyone until
13 you go to the jury room to deliberate. Do not discuss anything about the trial
14 or the case even with each other. So don't discuss, you know, the cute outfit
15 the witness was wearing or how, you know, if you think the lawyers asked
16 too many questions or anything like that. Don't discuss anything about the
17 case.

18 I know that's really weird, right? We've put you in a room and
19 we have you doing something all day long and then we tell you whenever
20 you're on a break, absolutely don't talk about that, right? But it is important
21 for this process that the jurors don't talk about the case until you go to
22 deliberate because we don't want anybody to make their mind up based on
23 maybe side conversations that people have. So it is critical to wait until the
24 end.

25 If anyone involved in the case tries to speak with you or if

1 anyone says anything about the case in your presence, please let the
2 marshal know immediately. You may not declare to your fellow jurors any
3 facts relating to this case of your own knowledge, and if you discover during
4 the trial or after the jury has retired that you or any other juror has personal
5 knowledge of any witness or fact in controversy in the case, you must
6 disclose that information to me outside the presence of the other jurors.

7 So let's say a witness came in and they read you that list, you
8 know, as yesterday. You probably don't even remember it. But a witness
9 comes in and you realize, oh, that person's kid is on my kid's soccer team,
10 and either didn't know their name or I didn't recognize their name. And so if
11 something like that happens, please just let us know. Give the marshal a
12 note, and we'll just take it from there.

13 You will have paper and pens for your use. You are free to take
14 notes during trial if you wish, but please keep the notes to yourself until you
15 and your fellow jurors go to the jury room to decide the case. Be sure that
16 your note-taking does not interfere with your listening to and considering all
17 of the evidence. If you do take notes, do not discuss them with anyone
18 before you begin deliberations, and be sure to leave your notes here at the
19 end of each day.

20 You should also rely on your own memory of what was said and
21 not be overly influenced by the notes of others. If jurors have conflicting
22 notes, you should not rely on the notes because the court recorder's record
23 contains the complete and authentic record of the trial.

24 I will probably type a lot of notes during the trial. Please don't
25 take this into consideration. If I begin to type during a testimony, you're not

1 to consider that more important than other testimony. Sometimes I do it just
2 so I can follow along, and sometimes I don't do it because my hand is tired
3 or I just don't feel like it.

4 In fact, you are not to consider anything I say or do during the
5 trial that suggests I'm inclined to favor the claims or position of any party.
6 I'm required to remain neutral, and it would be wrong of you to conclude that
7 anything I say or do means I'm for one side or the other. Discussing and
8 deciding the facts is your job alone. This is the one time I get a break, right?
9 I have to make hundreds of decisions every day in my job. This is the one
10 time somebody else gets to do that for me, and I am really happy for all of
11 you to do that instead of me, so I'm going to leave all of that to you.

12 Jurors are allowed to submit questions for witnesses. The
13 procedure -- so we have a form for this that you will all be given who are
14 staying with us. And the form has this place for you to write your juror
15 number which will be different. We have so many numbers. I'm sorry about
16 that. But for those who remain with us, your number will correspond to the
17 seat you're in. It will be a different number.

18 So you write that number, the date, the name of the witness,
19 and the question on the form. And then you'll give it to the marshal while the
20 witness is still in the courtroom. There's a space at the bottom that says
21 something like "court notes", I think that's what it says. Please do not write
22 in that space because I need that space to make some notes for our
23 records. Also, if you are one of those people that has lots of questions,
24 please feel free to use more than one form. Don't write on the back because
25 if we ever have to make copies of it, I don't want to lose the question on the

1 back of the form.

2 So this is how this will work. The lawyers will call a witness,
3 and they'll get to ask all of the questions that they have. It's possible that the
4 question you think of, two questions in will be get asked and answered
5 during the course of that. At the end, if there's something that you need to
6 have clarified, something that you didn't understand, then you could submit
7 the written questions at that point. And the lawyers and I will look at the
8 questions to see if they're proper under the court rules. If they are, I'll ask
9 the witness.

10 So one of the things that happens sometimes is that the
11 questions that we get from the jurors are maybe not a question for that
12 particular witness. It's something more general in nature. Keep in mind that
13 the questions you submit have to be for that particular witness, and they're
14 designed to clarify any of the testimony that may have been unclear. It is
15 very critical that you ask -- that you submit the questions while the witness is
16 still in the courtroom. I'm generally very good about asking at the end of the
17 witness testimony if there are any questions, but if for some reason I forget,
18 please raise your hand because once the witness leaves, obviously, we
19 cannot ask them your question.

20 It is important that you are not overly influenced by the question
21 of -- questions of other jurors, which are, you know, to be given the same
22 weight as any other question asked by anyone else. In fairness to the
23 parties to the lawsuit, you should keep an open mind throughout the trial,
24 reaching your conclusion only during your final deliberations and after all the
25 evidence is in and after you've heard the attorney summations and my

1 instructions to you on the law, and then only after and interchange of views
2 with the other members of the jury.

3 How's is going? Okay. We're almost done. So if you folks
4 want to stand up and stretch for a second, we'll be done in just a second
5 here.

6 [Pause in proceedings]

7 THE COURT: All right, folks. I'm going to ask the following
8 people to go over and have a seat over there: Mr. Elmore, Mr. Carter, Ms. --
9 is it [indiscernible], ma'am? Ms. Humphries, Ms. Hobbs, Mr. Bledsoe, Mr.
10 Forester, Ms. Quedo, Ms. Davis, and Ms. Melaney [phonetic]. If you could
11 all go over there for a second.

12 And let me just make sure we got the right number here. Okay.
13 If you folks could stand and raise your right hand, the clerk is going to swear
14 you in, the folks remaining in the jury box.

15 [Jury, Sworn]

16 THE COURT: All right, folks. Go ahead and have a seat. For
17 those of you who are not going forward on the jury, I want to thank you for
18 your time. I really appreciate your honesty in answering the questions. And,
19 obviously, it's critical to have all of you as part of the process. So if you will
20 all go to Jury Services -- and, Ms. Davis, could you just come up here for a
21 second? But the rest of you can go. Thank you so much.

22 [Bench conference begins at 2:46 p.m.]

23 THE COURT: I just want to say I think you [indiscernible].

24 [Bench conference ends at 2:46 p.m.]

25 THE COURT: All right. So we're going to just take a quick

1 break, folks, and then we'll come back and get started with everything.
2 During this break, you are admonished not to talk or converse among
3 yourselves or with anyone else on any subject connected with this trial; or
4 read, watch, or listen to any report of or commentary on the trial or any
5 person connected with this trial by any medium of information, including
6 without limitation, newspapers, television, internet, and radio; or form or
7 express any opinion on any subject connected with the trial until the case is
8 finally submitted to you. I'll remind you not to do any independent research.

9 And we'll just take -- how much time do you need, Mr. Cloward?

10 MR. CLOWARD: Five minutes.

11 THE COURT: We'll go ten minutes?

12 MR. CLOWARD: Ten, sure.

13 THE COURT: All right.

14 THE MARSHAL: Please rise for the jury.

15 [Jury out at 2:47 p.m.]

16 THE COURT: Is either side going to invoke the exclusionary
17 rule?

18 MR. CLOWARD: Sure. [Indiscernible] Sorry, no.

19 THE COURT: Yes, no? Exclusionary rule, yes or no? I mean I
20 don't know that there's really a whole lot to exclude, but just let us know.

21 MR. RANDS: Let's just say yes. We'll --

22 THE COURT: Okay.

23 MR. RANDS: -- invoke the exclusionary rule.

24 MR. CLOWARD: Okay. Fair enough.

25 MR. RANDS: It makes it easy.

1 MR. CLOWARD: That should have been an easy one.

2 [Recess at 2:47 p.m.]

3 [Outside the presence of the jury]

4 MR. CLOWARD: -- problem. The only question that I have is
5 after conferring with counsel, I don't think we would have more than 15, 20
6 minutes with Doctor --

7 THE COURT: That's fine. Just let him go.

8 MR. CLOWARD: Okay.

9 THE COURT: Yeah.

10 MR. CLOWARD: We're going to bring him back. Thanks.

11 THE COURT: Yeah.

12 [Counsel confer]

13 MR. CLOWARD: Your Honor?

14 THE COURT: Hold on. Let me just look and see if it's 10:00 or
15 10:30 real quick. All right. I'm going to say 10:15 tomorrow.

16 MR. CLOWARD: Thank you.

17 [Pause]

18 THE MARSHAL: Ready, Judge?

19 THE COURT: Yeah. Oh, yeah.

20 [Pause]

21 THE MARHSAL: Please rise for the jury.

22 [Jury in at 3:33 p.m.]

23 THE MARSHAL: You can be seated.

24 THE COURT: Back on the record in Case Number A718679,
25 Morgan vs. Lujan. Let the record reflect the presence of all of our jurors,

1 counsel, and parties.

2 Ladies and gentlemen, I'm so sorry. I had something that I had
3 to take care of during the break and it took a little longer than I anticipated.
4 So I'm sorry that I made you wait, but it was entirely my fault.

5 All right. Mr. Cloward, are you ready?

6 MR. CLOWARD: Yes, Your Honor. Thank you.

7 OPENING STATEMENT BY THE PLAINTIFF

8 MR. CLOWARD: Good afternoon. This is the time that we
9 finally get to talk about the case, talk about the facts [indiscernible]. Keep in
10 mind what the attorneys say is not the evidence. This is just kind of a
11 preview of what the evidence will show.

12 So drivers must stop at stop signs. Drivers must look both ways
13 to make sure that it's safe before driving out into an intersection. These are
14 pretty basic rules that we're -- that we learn in driver's ed.

15 Let me tell you about what happened in this case. And this
16 case starts off with the actions of Mr. Lujan, who's not here. He's driving a
17 shuttlebus. He worked for a retirement [indiscernible], shuttling elderly
18 people. He's having lunch at Paradise Park, a park here in town.

19 Tompkins goes east and west and actually dead-ends at
20 Paradise. Up ahead is McLeod. And at McLeod, for traffic going west and
21 east, there is a stop sign. There is not a stop sign for traffic going north and
22 south on McLeod.

23 Mr. Lujan gets in his shuttlebus and it's time for him to get back
24 to work. So he starts off. Bang. Collision takes place. He doesn't stop at
25 the stop sign. He doesn't look left. He doesn't look right.

1 Aaron, who had been driving home from CSN that day, is
2 driving along McLeod when all of the sudden, out of nowhere, the shuttlebus
3 appears in front of him. He does what he thinks that he can do. He slams
4 on the brakes and tries to swerve, but the collision takes place. He doesn't
5 have time to react. He doesn't have time to brake fast enough because
6 Mr. Lujan didn't stop at the stop sign.

7 Now, when the collision takes place, Aaron is gripping onto the
8 steering wheel. He's gripping onto the steering wheel and he jams his
9 wrists, tearing the cartilage in both wrists. His head hits forward, hits the
10 A-pillar in the vehicle. His neck is jammed. His back is jammed. He
11 actually -- the doctors find out he tears three discs in his back.

12 Mr. Lujan continues driving. He continues down the road.
13 Aaron, in his mind, he's thinking, oh my gosh, is this a hit and run? Is he
14 even going to stop? What's going on? I got this -- and he starts to feel the
15 pain in his neck and in his wrists.

16 Eventually, about a hundred yards down, Mr. Lujan finally stops.
17 Aaron, not knowing what to do -- he's never been in a accident before. At
18 the time, he's 21 years old. Never had this happen before. He's trying to
19 assess like is everything okay? Did I lose consciousness? Did I -- you
20 know, what's going on?

21 Mr. Lujan comes over, 911's on the way. Very dismissive.
22 Doesn't ask if he's okay. Basically tells Aaron that the paramedics are on
23 the way.

24 Aaron's family, they don't live too far from there, so Aaron's
25 mom and dad come to the scene. The ambulance comes to the scene and

1 they lay Aaron down into a -- the stretcher, do the full spine precaution
2 where they basically tighten him in there very tight to make sure so when he
3 goes to the hospital, make sure that he hasn't broken any bones, that there
4 isn't paralysis, that he's got a concussion, those types of things. That starts
5 this new life for Aaron into motion.

6 So as we get into the evidence, you're going to hear from the
7 doctors. You're going to hear that Aaron was taken to the emergency room
8 by ambulance. In the emergency room, they basically -- the injuries are --
9 he's in so much pain that they actually give him Morphine. They give him a
10 shot of Morphine to calm things down.

11 They say, look, if these problems -- if this continues, what you
12 need to do is you need to go follow up with the doctor. So at some point, he
13 follows up with an emergency -- urgent care. He goes to the urgent care.
14 They evaluate him. Gets referred to Dr. Coppel. Dr. Coppel is on the list of
15 providers for the urgent care.

16 Goes to see Dr. Coppel. Dr. Coppel refers him to a chiropractor
17 named Dr. Wiesner. And he begins what we call conservative therapy.
18 Conservative therapy is physical therapy or chiropractic care.

19 And the doctors are going to come in. You're essentially going
20 to hear from four main medical providers. You'll hear from Dr. Andrew Cash
21 who went to the University of North Carolina, Dr. Alain -- and Dr. Cash is a --
22 what's called an orthopedic spine surgeon. Dr. Alain Coppel, he's a pain
23 management doctor. He went to Johns Hopkins. He's got, you know, triple
24 board certifications in pain and addiction medicine and anesthesiology.
25 You're going to hear from Dr. Muir. Now, Dr. Muir is kind of unique. He

1 actually went to physical therapy school first. He went to Harvard -- or,
2 excuse me, Stanford, started to practice physical therapy and then decided,
3 you know what, I don't necessarily want to do that, so I'm going to go back.
4 And he went to medical school and now he's an orthopedic spine surgeon.
5 You're also going to hear from Dr. Kittusamy. She is a radiologist.

6 And those doctors are going to tell you about the medicine.
7 And I want to take a moment and talk about the medicine. When an
8 individual hurts their neck or back, because you -- it's not necessarily
9 objective -- you can't tell just by looking at the skin a lot of times -- the
10 doctors do tests. And they do orthopedic tests. They ask the patient, hey,
11 where are you hurting, and they try to put the puzzle pieces together based
12 on, number one, what they're being told; based on, number two, what are
13 called orthopedic evaluations; and then also, number three, there are some
14 radiographic tests that could be done that let the doctors know what's going
15 on underneath, to look at the anatomy.

16 So, for instance, maybe you've heard of a CT scan. Maybe
17 you've heard of an x-ray. Maybe you're heard of an MRI. Those are tests
18 that can be performed to help the doctors know what's going on.

19 So Aaron, he has neck pain, he has mid-back, and he has low
20 back pain. And he's going to see the doctors. They're trying to figure things
21 out.

22 The problem with the spine is that it's very complex. You're
23 going to -- before the end of this trial is over, you guys will all be experts in
24 the field of spine medicine. Basically, the spine, when there is a very fast --
25 what we call rapid acceleration and deceleration event, the spine is taken

1 outside of its normal limits. And it's like if you were to go to the gym and put
2 300 pounds on the bench press without doing any warmup and try and
3 bench press 300 pounds right off the bat. It's not going to go well. You've
4 got to do warmup sets to get the body ready for that motion.

5 Well, in an accident, in a traumatic event, your body has zero
6 time for that. It's subjected to a collision. The body parts are taken within
7 the ranges of motion very quick and that's what injures the body.

8 So you'll hear evidence that there are two main types of spine
9 injuries. One is a disc injury. And this is kind of like a half model. This is
10 just one little segment. You have the vertebra. That's the bone. Then you
11 have the disc and then the vertebra. On the back side, you have what's
12 called a facet joint. Or a very technical term is a zygapophysial joint. I think
13 I pronounced that correctly. And that's where this connects to this. So it's
14 basically a joint that connects those two segments.

15 And you can have a disc, when it -- when there's a bulge like
16 that that presses on the nerve root. Think of that like a hose. When you
17 have a hose and you kink the hose, the water on the other end stops coming
18 out.

19 Well, these facet joints also get irritated. And at every level of
20 the spine there are what we call nerve roots. And the nerve roots are kind of
21 like the hose. So the nerve roots come out and they actually come out of
22 this little space right here. This is called the foraminal opening. Now,
23 foramen, in Latin, that's a fancy way of saying hole. So the nerve roots
24 come out the hole. And at every level on both sides, those nerve roots exit
25 the spine. You can see them right here.

1 Well, what happens is if you have a disc derangement or a disc
2 injury, you have what's called -- people have heard of a protrusion,
3 herniation, extrusion, bulge. You have those injuries. And that's where the
4 disc is actually pressing on that -- or on that nerve root.

5 What can happen, though, is, is that the inside of the disc can
6 actually become disrupted. So it's like an egg. The inside of an egg
7 becomes scrambled and that can cause problems.

8 Maybe people have heard of what's called an annular tear. So I
9 want to show a diagram of an annular tear. Now, the disc -- it's going to be
10 important. This is a big part of the case and the case presentation, the
11 things that you'll hear. The disc is comprised of two main parts: the annulus,
12 which is this, and then the nucleus, which is this. Think of it like an egg.
13 Here's the yolk, the yellow part. Here's the white part. When you tear this
14 portion, this stuff right here comes out and makes contact with little nerve
15 fibers that go into the annulus. And that is painful.

16 Another way to think of that is like if you cut your hand. Okay?
17 If you cut your hand and you get a pen and you push on it, that's going to
18 hurt. That's like a compression. That's like the bulge. However, if you cut
19 your hand and you get a lemon and you squeeze that lemon juice on that
20 open cut, that hurts, too. Okay?

21 This material causes irritation when it comes in contact. The
22 annulus keeps this nice and safe in the middle. And when it's nice and safe,
23 it acts as a shock absorber. It's nice and contained there. However, when it
24 comes into contact with these nerve fibers, it's like lemon. The lemon juice
25 is getting out. Okay?

1 So what the doctors do is over time, the doctors, they try to
2 figure out what is causing someone's pain. They look at the MRI. They ask
3 the patient, where are you feeling pain. And they try to figure out, okay, is it
4 this facet joint that's irritated that's causing the pain? Is this a disc injury
5 that's causing pain? What is it that's going on?

6 Well, the way the doctors do that is kind of like what dentists do.
7 When you have a tooth that's hurting you, you go into the dentist and you
8 say, dentist -- they -- actually, they lay you down and you tell them -- you
9 point to the tooth that hurts and then they come in with the air and they blow
10 on that tooth. And you're like, ow, that hurts. So the dentist says, okay,
11 says, you know, okay, we're going to numb this. They go back in. They
12 inject a medication. And then five minutes later, they come back in, they get
13 out the air, they blow on the tooth again. If you say ow again, then that lets
14 them know there's more than one nerve involved. So then they do another
15 injection. Come back in five minutes later. Blow the air again. And if at that
16 point you're numb, you're not feeling it, then they do a root canal or they drill
17 out the cavity. Okay?

18 You're -- you'll her evidence in this case that it is very similar,
19 the process, with the spine. However, it takes a lot longer. And this is the
20 reason why. The doctors have a suspicion of where the pain is going to be.
21 But unlike the dentist where they can wheel the patient in and out of the
22 surgery center -- so what happens is if the pain -- if the patient's pain does
23 not go away after a certain period of time, then they realize, okay, it must be
24 something deeper. This is not just soft tissue. This is not just a strain or a
25 sprain. This is something more serious.

1 So they bring the patient to a facility. They lay them down on a
2 table. And they actually insert a needle and they do what's called either a
3 facet injection where they put the needle right next to the facet and squirt
4 some medicine into that joint. It's a very controlled amount. They don't do a
5 whole ton. They put it right where they want to.

6 And there's actually a radio fluoroscopy machine. It's like a big
7 C-arm. Let's say this is where the patient is. The C-arm goes over the
8 patient and it shoots live x-ray. So it's shooting live x-ray. The doctor is
9 over there looking at the screen. He's watching his needle slowly be
10 advanced. And before he places the medication, he puts a little bit of dye to
11 let him know, okay, I'm right where I need to be or I need to put it in a little
12 farther. And then he'll put the medication in there.

13 And then what happens is, the patient goes into the recovery
14 room and the doctor will ask how did that make you feel, did it take away
15 your pain. Because the medication that they put in there, it's actually
16 numbing medication. It's Lidocaine. So it's just like when you go to the
17 doctor and they put Marcaine in your mouth. Same kind of principle. If the
18 patient has a good response, then they know that's what's causing the
19 problem. Okay?

20 Now, if the patient doesn't have, say, a perfect response, like a
21 hundred percent pain relief, then that lets the doctor know, okay, there's
22 probably something else going on. So they usually schedule, you know, six
23 weeks down the road, come back, and they do another set of injections.
24 Say, for instance, this time they'll maybe do a nerve injection, what's called a
25 transforaminal steroid epidural injection or a selective nerve root block. The

1 doctors will call it -- it's a TESI or a STRB?. Those are the quick ways. And
2 they also do the same thing. They put the medication right next to the
3 nerve, try to figure out if that's going to relieve the patient's pain. If that
4 doesn't, then six or eight weeks later they come back.

5 Sometimes, patients can have multiple pain generators. They
6 can have a disc causing problems and they can have the facet joint that's
7 causing problems. So it's a lot of trial and error.

8 In Aaron's case, Dr. Muir -- back in 2006 [sic], Dr. Muir said,
9 look, Aaron, I think that you have an annular tear. I think that you have this
10 thing called internal disc disruption. That's where the egg is scrambled. But
11 the problem is, is that the only way that you can diagnose that with some
12 very limited exceptions is you have to do what's called a discogram,
13 provocative discography study. And it's very painful. It's one of the few
14 tests in medicine where the doctor actually tries to put the patient in pain.
15 They try to reproduce the patient's pain.

16 So what they do is they lay the patient down on usually their
17 stomach, sometimes on their side, and they insert a big, long needle.
18 Whoops. Sorry about that. They insert a big, long needle actually right into
19 the middle of the disc. And they pressurize the disc because they want to
20 try and recreate the pain. And the patient is actually conscious because the
21 patient has to be able to respond. He has to say, yeah, doctor, that's the
22 usual type of pain that I have, or no, doctor, that doesn't hurt.

23 But the other thing that they do is this -- that they inject this with
24 dye. So after the provocative part, the patient then goes and they have a
25 CT scan the same day, right after, within a couple hours. So they go and

1 they do a CT scan. And you can actually see -- and there is a -- okay.
2 There is actually a system to grade the discs. So you have the discs.
3 There's actually six levels and it's called the Dallas Scale. Dallas was a
4 doctor that basically developed this scale to rate how severe the fissure or
5 the tear is. So you have grade zero, grade one, grade two, grade three,
6 four, and five.

7 And when we show you this, there ain't no question. This is not
8 subjective. This is as objective as it comes. Okay? Aaron has two grade
9 four tears and one grade five tear. And you can actually see the tears.

10 The way that you see the tears is this. Imagine having a bike
11 tire that you've got a razorblade and you've cut the side of the bike tire.
12 Now, you get a pump and you sit and you pump it up. And you're wondering
13 why isn't it getting bigger. A few more minutes. You're wondering what's
14 going on. Until finally you realize, oh, there's a big tear in the side of this so
15 it's not going to keep the air.

16 Well, it's the same principle with a disc. Okay? A disc -- the
17 annulus, this acts as a block. It's a strong block. It does not let this material
18 come out unless there's a tear. So when they inject the middle of this, if
19 there's no tear, you will see a big bright signal -- it's like a ball -- right in the
20 middle of the disc. However, if you have a tear, then it starts to sneak out.
21 And the worse the tear, then the more it starts to sneak out. And by five, it's
22 not only sneaking out of the tear, but it's leaking way out of the disc.
23 Because that's the dye material.

24 So Dr. Muir back in 2016, he says, look, Aaron, you need to do
25 this test because I need to figure out -- I think you have internal disc

1 disruption. And after we do this, then we'll do what's called a plasma disc
2 decompression or a nucleoplasty. That's where at another time you come in
3 and you insert a probe and you actually super heat the middle of the nucleus
4 to remove some of that material in the hopes that you can kind of shrink that
5 disc so that it's no longer painful.

6 Aaron, when this is recommended, he's 24 years old. He says
7 to himself, Doctor, I don't know if I want to do that. Matter of fact, when he's
8 deposed by Mr. Gardner in 2016, Mr. Gardner asked him about it and he
9 says I'm just nervous, that's why I haven't done it.

10 Well, Aaron finally got to a point where he decided that the
11 discography study along with a PDD were necessary and so he went and
12 had those procedures very recently. And it provided him with about
13 90-percent pain relief. And the doctors for the first time have been able to
14 see exactly this is what's going on, this is what's going on. Up until then,
15 they had been doing these injections and the injections would provide some
16 benefit, give him 40-percent relief, 50-percent relief, sometimes 60-percent
17 relief, but not complete relief. And so, fortunately, they finally figured out
18 what's going on with Aaron.

19 So you're going to hear from Dr. Coppel and Dr. Coppel will
20 walk you through the process of how these injections are performed and so
21 forth. Dr. Muir will also talk about that. Aaron also has a problem in his
22 neck. The doctors feel like they have gotten that figured out. Dr. Muir will
23 tell you, look, I'm fairly certain I know that this is going to be the problem,
24 this is what the problem is, this is how we treat it.

25 So in this case, we had to look at a few things. We had to look

1 at, you know, look -- before we brought this case to court, we had to look at,
2 you know, is there anything that Aaron did or that he could have done,
3 number one, to avoid the collision. Was Aaron speeding, for instance? Was
4 he on the cell phone? Was he texting? Was he doing something that he
5 shouldn't have been doing?

6 You will hear zero evidence throughout the course of this trial
7 that Aaron did anything wrong. You will hear zero evidence that the police
8 came and said, you know what, you were going way too fast. You will hear
9 zero evidence that he was on the phone. You will hear zero evidence that
10 he was texting. He wasn't doing anything that contributed to the crash.

11 What you will hear is, is that Aaron tried his very best to avoid
12 this crash, but he just wasn't able to because he wasn't given time. You
13 won't hear that Aaron had a stop sign. Aaron had the right of way. This was
14 not a four-way stop. This was a two-way stop. Aaron had the right of way.

15 But despite that, the Defense will try to claim that Aaron bears
16 some responsibility. And matter of fact, they'll claim that a third party is
17 responsible. They've been asserting that since the beginning of this case.
18 There was actually another trial. They asserted that the third party was at
19 fault. We still don't know who this third party is. So we'll ask the Defendant,
20 who is this third party that was at fault?

21 There are some defenses also. You're going to hear from the
22 doctors -- and I'm going to be brutally honest. We're paying the doctors
23 thousands of dollars to be here. They're paying their doctors thousands of
24 dollars to be here. All of the doctors in this case have active practices.
25 What does that mean? They all treat patients. So when they come to court,

1 they have to take time away from their practice. They have to reschedule
2 patients. And they have to be paid for that.

3 So the doctors in this case have different opinions. And you're
4 going to hear basically two main medical opinions in the case. Number one,
5 Dr. Sanders, their physician -- and it's worth noting Dr. Sanders will even
6 admit on the stand that he's not a spine surgeon. Matter of fact, he's never
7 performed a spine surgery as the lead surgeon ever. That's the doctor that
8 they're going to bring to come and talk about spine issues.

9 Dr. Sanders will testify to two main things. He'll say, look,
10 number one, Aaron had chiropractic treatment. He didn't have physical
11 therapy treatment. And if he'd have had physical therapy treatment, all of
12 his problems would have gone away. Okay? That's what he's going to
13 claim.

14 So we looked at that. I wanted to know, is that actually
15 accurate? Is there a benefit to chiropractic versus physical therapy? So we
16 did some research. Dr. Muir is going to talk about his training and expertise
17 as a physical therapist and he's going to talk about studies. There are
18 actual journal articles in a multitude of journals -- *New England School of*
19 *Medicine* [sic], *The Spine Journal* -- that have looked at the differences
20 between physical therapy versus chiropractic. And there's not really a
21 significant difference. There is a minimal difference to physical therapy, but
22 it's not what we call clinically significant. So it's not really a big difference.

23 The second thing that Dr. Sanders will talk about, Dr. Sanders
24 is going to say, look, ladies and gentlemen, his back pain didn't start for
25 three weeks. It's not documented anywhere in the records for three weeks.

1 And so I talked to Aaron because it is true, the evidence will show, the back
2 pain does not get documented until the second visit with Dr. Coppel.

3 So Aaron goes to the emergency room. They're focused on the
4 head. They're focused on the neck. They're focused on the left wrist. He
5 goes to the emergency care. They're not focused on the back. They're
6 focused on other body parts. He goes to see Dr. Coppel. They're not
7 focused on the low back. And then the second visit, Dr. Coppel finally notes
8 low back pain.

9 And I asked Aaron about that. Aaron, what do you say about
10 that? He says, look, I know that I hurt. Okay? If the doctors didn't put that
11 in there, I can't explain it. I don't argue what's in the records. My whole
12 body hurt. I know that my neck hurt and my wrist hurt a lot worse. And if
13 the doctors didn't document it, then they didn't document it, but I know that
14 my whole body hurt.

15 I also asked Dr. Muir. I said, Dr. Muir, tell me about this. You
16 know? Here we have tears. We have tears to the annulus. What about
17 that? Is it possible that that -- you know, that those things get worse or that
18 the pain is not as bad at first? And Dr. Muir says, actually, that's true.
19 There's an article, a 2013 article, that talks about the way that annular tears
20 cause pain. It says what happens is think of it like a pencil. When you
21 break a pencil as a little kid, sometimes you're able to put the pencil back
22 together. Put a little piece of tape and you keep writing with it. Other times,
23 the pencil doesn't quite go back together. But it is the regrowth of these
24 fibers into those tears that causes the pain. So when these regrow into the
25 nucleus, when they come in contact with the nucleus, that's what causes the

1 pain. And that healing process doesn't happen overnight.

2 So Dr. Muir will tell you that it's very reasonable. We see this all
3 the time. He say number -- there are a couple of things. Number one,
4 patients usually focus on the thing that's hurting the worst. Number two, I
5 see this all the time with internal disc disruption. Dr. Cash also talks about
6 that as well.

7 The third defense in the case, it's not a medical defense. It's
8 not a medical defense. It's a defense that I highly doubt they'll even say out
9 loud. They don't like who they think Aaron is. They think that Aaron gets
10 into this crash and says to himself, you know what, this is a payday. He sits
11 around and doesn't do anything and waits, waits for a verdict. That's what
12 they think about Aaron.

13 But the truth of the matter is this. You'll hear that Aaron,
14 despite having an extremely rough home life, having a father that is angry
15 that goes bananas over the littlest things, that despite that, Aaron didn't
16 crawl into a hole because of that. Matter of fact, when that was going on,
17 when Aaron was being raised, he moved out at 16. He moved out of the
18 house, lived with a friend to get away with it -- or to get away from it.

19 And matter of fact, that's where he met Alyssa, his girlfriend,
20 who you'll also hear from. They met at church. Now, at the time, Aaron
21 was -- he had a girlfriend and Alyssa had a boyfriend, so the timing didn't
22 match up. But they did get together a couple of years later and you'll hear
23 about that.

24 After he moves out from the friend, then he moves in with his
25 grandma, stays there. He's at Smiths working. He starts off at Smiths

1 making \$9 an hour. But because of his hard work and the way that he is, he
2 gets promoted, and promoted again, and promoted again. And by the time
3 he leaves Smiths several years later, he's making almost \$15 an hour. He
4 goes from 9 to 15 in a span of two or three years because he gets
5 promoted.

6 At the time of this crash, Aaron's in school. He's at CSN. But
7 the picture that they'll try to paint is that Aaron is just looking for a handout.
8 You'll hear that after this crash -- or that right when the crash took place,
9 Aaron was focusing on school, so he wasn't employed. But after the crash,
10 he gets a job at LVAC. After the crash, he goes to work. That's the
11 evidence.

12 He starts off at an entry level position. Again, because of hard
13 work, he gets promoted. At the time he ends the relationship at LVAC, he's
14 actually a nighttime manager at the ripe age of 22, 23 years old.

15 But here's where Aaron starts to have some problems. And
16 Aaron is actually going to admit this. Aaron will tell you during the middle of
17 this four years, he lost hope and he did give up for a very short period of
18 time.

19 You see, Aaron's working at the gym and he's seeing all of
20 these people come and go. And fitness was a huge thing for Aaron. He
21 loved to be physically fit. He loved to lift weights. He loved to be really
22 ripped and look great. Well, he's not able to do that. He's not able to do
23 that and it starts to work on upstairs. He starts to worry because he starts to
24 gain weight. He starts to think, she's going to leave me.

25 He starts to get depressed. He starts to self-medicate. He

1 starts to drink. It gets so bad that he's drinking a bottle a day. And it gets so
2 bad that he loses his job at LVAC. Technically, he quit, but he'll tell you,
3 look, it was my actions, I deserved to be fired, I would have been fired had I
4 not quit. He winds up in the hospital in the psychiatric ward because he's
5 drinking so much.

6 But thank God that Alyssa, she knows Aaron before. She
7 knows the man that he can become. She sticks with him. After the event,
8 the hospitalization, she says to him, listen, enough is enough. You got to
9 stop this. You got to stop pushing those emotions down.

10 And so Aaron does what not a lot of people are able to do. He
11 stops drinking to medicate himself. Aaron's working right now. He works at
12 Subway. He's been working for the last year. He works fulltime. He works
13 40 hours a week. He's excited for this semester to get back into school.
14 And that's where Aaron is right now.

15 A lot of this problem that Aaron had with the emotion came
16 when after a surgery on his wrist he didn't have the greatest outcome. He
17 had the surgery at the end of '15 and his wrist didn't get any better. And he
18 was -- it was difficult for him to move his wrist, to use his wrist, and it started
19 to wear on him. Fortunately, about a year after the surgery, he went to
20 physical therapy, did the physical therapy, and now his wrist is a lot better.
21 The tear to his right wrist, fortunately, there was an injection in that wrist and
22 the pain went away. He had to have surgery on the left one.

23 In this case, you will not decide the wrist issues. That's already
24 been determined by the Judge. The back and the neck are things that you
25 will discuss and you will be decided -- or you will be requested to decide.

1 There's also this issue of pain and suffering. And I want to talk
2 about that for a minute. Okay? Because at the end of this case, you'll find
3 the medical bills are around \$200,000. He'll have future medical that we'll
4 talk about. The future medical are around \$1 million.

5 The future medical are for things like this. Dr. Muir will talk to
6 you about disc injuries and he will talk to you -- and Dr. Cash as well -- and
7 they will explain that this plasma disc decompression, this nucleoplasty, it's
8 a band aid. And that Aaron is 26 years old. That he's going to have to have
9 future treatment. That this is not going to magically get better on its own.
10 He has tears. He has grade five and grade four tears of his disc. This is not
11 something that is going to just get better.

12 So Dr. Muir forecasts that based on his experience in treating
13 other patients -- he's got 30-some-odd years of treating patients and so he
14 looked -- based on his experience, based on the literature, based on what
15 he knows of what can be expected for Aaron. And he'll talk about this
16 surgery. And this is a nasty surgery. It's actually a two-part surgery.

17 The first thing they do is they go in through the stomach. They
18 cut the individual open from the stomach. They move everything to the side.
19 And then they actually dig this disc out. This material is called rongeur.
20 Rongeur in French means rat tooth. So it's a tool that acts as a rat tooth.
21 Basically grabs the disc material, pulls it out, grabs the disc material, pulls it
22 out.

23 And then they get a spacer. And it's usually either bone from
24 your hip or bone from a cadaver. They get a hammer, pound that in
25 between the disc. Then they put some screws -- or a plate on the front.

1 Then they actually flip the patient over -- oops. I'm getting
2 attacked here by these. So then they flip the patient over. And in the neck,
3 usually you only have to do the front. But in the back, because it's a lot
4 more supportive of the entire body, they have to do front and back. So then
5 they go in and they cut this open and remove the facet joints like this, the
6 same kind of thing. And then they put in basically these rods. And that
7 holds everything into place. It's kind of like belts and suspenders. You want
8 to hold everything into place so that it doesn't move around.

9 And that's what the future care part of the case is. It's for
10 surgery. It's for additional injections, physical therapy, and so forth.

11 Now, I also want to talk about the pain and suffering and take a
12 moment there. The pain and suffering is not about an amount of money that
13 Aaron gets. That's not why we ask for pain and suffering. We ask for pain
14 and suffering based on the things that are taken from him. Because five
15 years from now, like we talked about, Aaron's not going to be able to come
16 back into this courtroom and reassemble everybody and tell everybody,
17 look, these are the problems that I'm having. He's not going to be able to
18 come in 15 years from now and ask for your help.

19 This injury was thrust upon him by the Defendant running the
20 stop sign. Aaron had no choice in this matter. This is his reality. And he
21 has to deal with the consequences of the future treatment.

22 But he also has to deal with the consequence of five, six years
23 from now, when he and Alyssa have a two or three year old toddler, the
24 toddler comes up and says, daddy, hold you me. And he reaches down and
25 is reminded. Or he has to make the decision of do I pick up my own child or

1 do I risk flaring up my back.

2 The potential embarrassment 15 years from now. He's going
3 across the country, going for a -- you know, a seminar or something. And
4 he's 6'5". He's a big guy. And he has to whisper to the flight attendant, can
5 I -- could you help me with my carryon bag. And see the scorn from the
6 other passengers looking at him like, dude, your 6'5", like what -- huh?

7 He has to deal with the potential of his six or seven-year-old
8 daughter wanting him to teach her how to ride a bike. Can he hold the bike
9 and run down the road? Or is it all of a sudden going to tie up his back?

10 Pain and suffering is not what somebody gets. It's what's taken
11 from them. It's how their life is changed. How this injury was thrust upon
12 him with no choice of his own. That's what pain and suffering is about. And
13 those are the real losses. Because the medical bills, that just goes to pay a
14 doctor. That goes to pay a doctor.

15 The last thing that you might hear is from Dr. Baker. All I can
16 say is I hope that they call Dr. Baker. It'll get interesting. And I'm just going
17 to leave you with that suspense. Thank you.

18 THE COURT: All right. Let's just take -- we're just going to take
19 five minutes to let the -- to let Mr. Gardner get set up.

20 So during this break, you are admonished not to talk or
21 converse among yourselves or with anyone else on any subject connected
22 with this trial or read, watch, or listen to any report of or commentary on the
23 trial, or any person connected with this trial by any medium of information,
24 including without limitation newspapers, television, internet, and radio, or
25 form or express any opinion on any subject connected with the trial until the

1 case is finally submitted to you. I remind you not to do any independent
2 research.

3 We'll just make it real -- like five minutes.

4 THE MARSHAL: Please rise for the jury.

5 [Jury out at 4:22 p.m.]

6 THE COURT: Mr. Rands, were there any instructions from the
7 Defense, jury instructions? I only have the Plaintiff's.

8 MR. RANDS: We had a group last time, but I don't have them
9 with me.

10 THE COURT: Okay. Could you just make sure that those
11 get --

12 MR. RANDS: Yes.

13 THE COURT: -- emailed to us? Great. Thank you.

14 [Recess taken at 4:23 p.m.]

15 THE MARSHAL: Please rise for the jury.

16 [Jury in at 4:28 p.m.]

17 THE MARSHAL: Please be seated.

18 THE COURT: Back on the record in Case Number A718679,
19 Morgan vs. Lujan. Let the record reflect the presence of all of our jurors,
20 counsel, and parties.

21 Okay. Mr. Gardner?

22 MR. GARDNER: Thank you, Your Honor.

23 [Pause]

24 OPENING STATEMENT BY THE DEFENSE

25 MR. GARDNER: Hello, everyone. Good afternoon. You know,

1 you might wonder after that emotional plea from counsel why are the
2 Defendants even defending this. I mean, he had me convinced. But there's
3 a problem and we're going to show you that problem throughout the course
4 of this case.

5 Now, some of the things he said about what I was doing, I'll tell
6 you, he was accurate on some of these things because, yeah, those are
7 some of the defenses we're going to prove in this case. Okay? But we're
8 going to avoid allowing the Plaintiff to have an answer for everything. Okay?
9 Meaning he didn't get the surgery because he was too young. He didn't do
10 this or do that because of another reason. Okay? That's kind of like you
11 see a chink in the armor and you just find something to justify it. Okay?

12 We're going to do something different than that. We're going to
13 bring in some witnesses that are going to talk about the timing. Timing
14 issues are big in this case. We're going to show you about the timing of the
15 medical, about the timing of the -- his age. Now, I haven't spoken to him for
16 two years. The last time I talked to him was when I took his deposition. So
17 there might be some new things that he's going to testify to here today or
18 throughout this trial. But we're going to show that there's not going to be an
19 answer for everything. Okay?

20 Just bear with me for a minute.

21 [Counsel confer]

22 MR. GARDNER: Now, what was this accident all about? What
23 happened in this accident? Did we just -- we're going to show you the
24 actions of our driver were not reckless. They weren't wild. The impact did
25 occur. We agree with that.

1 Most of the things we're going to show you are going to show
2 you some inconsistencies with the testing that was done on him. We'll show
3 you that -- of course, these doctors were referred to by the attorneys.
4 Okay? That's okay. That happens. And they've got a program and a plan
5 that gives them the ability to make these arguments about the damages.
6 Okay?

7 Now, this is a tough business because, you know, I don't like to
8 make a habit of just tearing on people, you know, calling them bad people.
9 Don't do -- I don't ever do that. But there are times like in a courtroom
10 where I'm defending my client and I'm defending my client against their
11 allegations. And we'll do that. We'll provide you with that information.

12 Now, we're going to show you that this young man was living at
13 home in the basement with his girlfriend. No big deal. You know? That's
14 no big deal. But we're going to show you that he wasn't this motivated guy
15 to -- that we ruined, you know? We're not going to let them say just that.

16 We'll show you that the motivation for this case is the money.
17 That's a ton of money. And they're going to ask for 2, 3, whatever million.
18 We're going to show you that he'll never have surgery. We'll show you that
19 those damages are a little less than what they were talking about. But they
20 have an answer for everything. And we'll show you that they're wrong.
21 Okay?

22 It's hard to criticize somebody, but that's kind of what goes on in
23 a trial. So that's what we're going to do to some degree. Okay?

24 Now, there is a road -- or a path, I should say. If you're going to
25 have test A, you need to have test B done first. Okay? You can't just go

1 into a doctor and say I've got these problems. If they're going to test for the
2 problems, that's fine. But the next problem comes along and all of a sudden
3 everything that they're talking about relates back to one event. Okay?

4 Relates back to one event.

5 Now, he -- this young man didn't play sports in high school. No
6 big deal. He was living in the basement. No big deal. And I'm going to
7 show you that this young man was not the future Einstein and he's now had
8 his life crushed. It wasn't that way. It wasn't that way at all.

9 Okay. The other thing I'm going to show you during this trial is
10 that even though he may have had opportunities to mitigate his damages,
11 he didn't. He did not do anything to further his career. Okay? Now, I know
12 he's left-handed and he hurt his left wrist. Okay? He couldn't write. But
13 there are so many -- we're going to show you there's so many other ways of
14 taking notes than having to write. You know, I dictate into a Dictaphone.
15 You know, there's lots of ways that you can do that. You don't need to just
16 quit living life because you've had an incident. Okay?

17 Now, when I saw the -- those blowups, I thought, wow, that
18 looks pretty complicated. Don't buy it. We'll show you it's not. Okay?

19 Let me -- excuse me for just one minute. I need to get this.

20 [Counsel confer]

21 MR. GARDNER: So you'll hear that I don't know him. He
22 doesn't know me. All I get is -- I look at his records and that's all I know of
23 him. I did take his deposition about two years ago. I haven't talked to him or
24 thought about him in that last two years. So it will be a little surprising to
25 hear him testify about the troubles he had and the things he's had to

1 overcome. Okay? Don't buy into it.

2 MR. CLOWARD: Your Honor, this is argument.

3 MR. GARDNER: Okay. You're right. You're right. You're right.

4 THE COURT: Sustained.

5 MR. GARDNER: So if you think of at least two things from this
6 opening, I would suggest that one of them would be timing. When did he
7 have test? When did things come up? Why did they come up? Why did he
8 wait so long? Okay?

9 And then the other thing we'll talk about is the extent of the
10 injuries and whether he has again mitigated his damages to the point where
11 he's doing now everything he can to earn a living and to work, things of that
12 nature. But that's not always been the case. But that's what he's doing
13 now. I didn't know that. I haven't seen him for two years, so --

14 So timing is the -- is a critical thing we're going to show you.
15 And then the other thing is we're going to show you the extent of the
16 damages.

17 Now, first of all, we're going -- I'm not going to do that. Counsel
18 was right. You know, these doctors, they've got kind of a routine. Okay?
19 They refer in between each other and do it all the time and show up in court
20 and testify about damages and injuries. Okay? Yeah, they get paid. Big
21 deal. You know? If they're going to take their time out, of course they're
22 going to get paid, just like our doctor and our witnesses and things like that.
23 That's not a big deal. Okay?

24 The big deal is if the -- we're going to show you that the first
25 referral was from the attorney to a doctor. Okay? Now, you might think to

1 yourself, well, that's not a big deal. Well, we're going to show you that it is a
2 big deal because we're going to claim and I think we're going to show that
3 this injury is more litigation-driven than is realistic. We're going to show you
4 litigation driven. And what that means is you start with the lawyer and then
5 the lawyer refers to a particular doctor and then that doctor goes boom,
6 boom, boom to these other doctors. And it's a really nice package. Okay?
7 That's what we're going to show you, that it's -- I'm not even sure the way
8 they diagnose things is -- is it accurate? I don't know. Okay? That might
9 not be true. I -- okay? We've heard that.

10 But we will show that this was not the dramatic, screaming
11 boom like he did at the first -- scared me to death. But it's not that. It's not
12 that case. Okay? You've seen him. He stands up. He walks around. He's
13 doing fine. He's not in a wheelchair. Big, tall, good-looking kid. No big deal.
14 You know?

15 Kids, we're going to show you they can take a lot more than old
16 geezers like me. They can take a lot more. But they can't just give up on
17 life. Okay? That is not the way to do it.

18 Got one more note to look at.

19 [Pause]

20 MR. GARDNER: Now, we'll show you that two years ago, he
21 told me, you now, in sworn testimony in a deposition that he had
22 affirmatively decided to have the discogram and the treatment that -- again, I
23 don't know if he's had it. I don't know. We'll show you that it's not as
24 dramatic as it has been made out to be.

25 We'll talk about the property damage, what happened to the

1 cars. You know, did they -- were they totaled, what happened there. We
2 know that there was an impact. We don't doubt that at all. Okay? But what
3 we do doubt is the accuracy of the damages to him. And we'll show you
4 why throughout the course of this trial.

5 To kind of underscore the concept that the motivation just isn't
6 there -- and that's more of a problem than anything. So he lives at home.
7 No problem. But he doesn't even do the lawn. He doesn't mow the lawn. I
8 mean, he has his dad mow the lawn. Maybe his dad loves it. I don't know.
9 I'll ask him about that. But he lives there in the basement with his girlfriend
10 and he won't even do the lawn.

11 Well, that's what we're dealing with here. And, you know, each
12 to his own about how they live, but don't come in here and -- there was a
13 period of time he -- when he didn't work and he wasn't in school. And again,
14 he'll claim it's because he couldn't write with his left hand. Understandable.
15 That's reasonable. But we'll show you there was really no effort to get
16 anywhere, even if he did have a hand that was hurt. Okay? He didn't do
17 online. He didn't use a recorder for his notes. He didn't do anything. He
18 just languished. That's what we're going to show you.

19 And again, I don't -- you'll see I don't have anything personal
20 against the man. You know? But there are several things that need to
21 come to light and which we will. We'll bring to light the fact that, you know,
22 okay, the injury happens, but you've got to mitigate your damages
23 [indiscernible] I mean, that's just it. That's a given. And we didn't see that.
24 We didn't see the mitigation.

25 And these future surgeries, we'll show you that they should

1 have been done. If they really truly believed that they needed, it should
2 have been done. We'll show you that due to this network of doctors that do
3 this, that they'll take things on liens. They don't take money. They'll do
4 these -- they'll do the surgery and then they'll just put a lien on the file. And
5 if there's a recovery, then they'll get paid. Okay? So when they come in
6 here and testify, just -- we'll show you that what they're doing is they're trying
7 to protect their own bank accounts. Okay? And again, it's something that'll
8 be kind of fun to show you.

9 Now, self-medication. I can't remember the excuse that was
10 used for that. But self-medication, that's something that shouldn't go on.
11 And we certainly didn't cause him to self-medicate. Oh, yeah, you might
12 say, well, you guys caused the crash, so you buy everything. Anything that
13 goes wrong, you buy it. We're going to show you that that's not the way it is.
14 That's not the way it should be.

15 Also, there was a -- there were -- there was a little bit of an
16 indication that after the accident, my client, he was running, trying to get
17 away. But we'll show you even the Plaintiff doesn't believe he was doing
18 that. Okay? He did go up the road a little bit, but not even the Plaintiff
19 believed that he was trying to run from his responsibility there.

20 Let me tell you, his biggest problem is he told me he wants to
21 be a lawyer so he can do this all day.

22 Let me just check my notes one more time.

23 [Counsel confer]

24 MR. GARDNER: Finally, I just want to make sure that you
25 know that we're going to show that this accident wasn't a huge thing. I

1 mean, yeah, the accident occurred. We agree with that. But it wasn't as
2 significant and serious as to give someone a couple million dollars. It just
3 wasn't. We'll show that. And so that's what we're going to do. And thanks
4 for your attention.

5 THE COURT: All right, folks. So we're going to go ahead and
6 break for the evening. We will come back tomorrow at 10:15 and we'll get
7 started with the presentation of the evidence.

8 During this break, you are admonished not to talk or converse
9 among yourselves or with anyone else on any subject connected with this
10 trial or read, watch, or listen to any report of or commentary on the trial, any
11 person connected with this trial by any medium of information, including
12 without limitation newspapers, television, internet, and radio, or form or
13 express any opinion on any subject connected with the trial until the case is
14 finally submitted to you. I'll remind you not to do any independent research.

15 Everyone have a good evening.

16 THE MARSHAL: Please rise for the jury.

17 [Jury out at 4:49 p.m.]

18 THE COURT: All right, folks. Anything we need to take care of
19 outside the presence of the jury?

20 MR. BOYACK: Not from our end.

21 THE COURT: All right.

22 MR. RANDS: I'm sure I'll think of some things by tomorrow,
23 Judge.

24 THE COURT: I'm sure you will [indiscernible]. I look --

25 MS. BELL: He makes me stay up at night --

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THE COURT: I look --

MS. BELL: -- coming up with new stuff to talk about.

MR. RANDS: I always love [indiscernible] being sued?

THE COURT: I look forward to that. I love creative arguments.

MR. RANDS: I love coming into trial the next morning and saying, hey, we've got to talk to the Judge up at the front. We're going to get you for sanctions.

MR. GARDNER: Those are all [indiscernible].

MS. BELL: I don't think that's going to happen.

THE COURT: All right. Everyone have a good evening.

MR. CLOWARD: Thank you.

MR. GARDNER: Thank you.

[Proceedings adjourned at 4:51 p.m.]

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Dipti Patel

5 Dipti Patel
6 Transcriber

7 Liesl Springer

8 Liesl Springer
9 Transcriber

10 Erin Perkins

11 Erin Perkins
12 Transcriber

13 Deborah Anderson

14 Deborah Anderson
15 Transcriber

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17 Date: May 4,2018
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