Case No. _____

IN THE SUPREME COURT OF NEVADA

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HARVEST MANAGEMENT SUB LLC,
Petitioner,

vs.

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

- and -

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

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

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF VOLUME 9 OF 14

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Docket 80837 Document 2020-11098

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 9 OF 14

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TAB 15

TAB 15

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

FRIDAY, APRIL 6, 2018

RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL

APPEARANCES:

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

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

RECORDED BY: RENEE VINCENT, COURT RECORDER

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Las Vegas, Nevada, Friday, April 6, 2018

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

MS. JANSSEN: Sure.

MR. CLOWARD: You can take your coffee.

THE COURT: You absolutely can take your coffee.

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

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

THE MARSHAL: Please rise for the jury.

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

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

THE MARSHAL: Please be seated.

THE COURT: -- counsel, and parties.

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

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

MR. CLOWARD: Okay.

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

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

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

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

THE COURT: Perfect. Thank you.

ERICA JANSSEN

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

DIRECT EXAMINATION CONTINUED

BY MR. CLOWARD:

Q Ms. Janssen, how are you this morning?

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

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

A Okay.

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

A Okay.

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

MR. RANDS: No.

BY MR. CLOWARD:

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

"A No."

Where you aware that Mr. Lujan testified to that?

A I am now.

Q Okay. Another question:

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

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

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

Were you aware that Mr. Lujan testified to that?

A No.

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

"A No. I never placed blame."

Were you aware that he testified to that?

A No.

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

"A Yes."

Are you aware that he testified to that?

A No.

Q Okay.

MR. CLOWARD: That's it.

MR. RANDS: Thank you.

BY MR. CLOWARD:

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

A I believe he has some comparative negligence.

Q Okay. Thank you.

A Ultimately it's the jury's decision.

Q Thank you.

CROSS-EXAMINATION

BY MR. RANDS:

Q Good morning, Ms. Janssen.

A Good morning.

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

A Correct.

Q And you're employed by the Defendant?

A Correct.

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

A Four years.

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

A No.

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

A No.

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

A No, I did not.

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

A Yes, I have it here.

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

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

Q And did you prepare that answer?
A No.
Q Did you have any -- anything to do with preparing that answer?
A I provided, I believe, the names of the correct Defendant.
Q Okay.
A Company Defendant, I should say.
Q And who prepared -- who signed it? Is -- look on the last page there.
A Douglas J. Gardner, Esquire.
Q Okay. And is it your understanding that Mr. Gardner prepared the complaint?
A Yes.
Q Okay.
A The answer, I should say.
Q The answer, I'm sorry. I'm starting to act like Mr. Cloward now. I can't get my -- I can't get my things correct.
MR. CLOWARD: Hopefully you don't lose your hair.
MR. RANDS: I hope so, too. I told you I'd rather have it go gray than go away, but --
BY MR. RANDS:
Q The answer to the complaint, and that's general -- in your understanding, is that generally prepared by the attorney?
A Always.
Q Okay. And as the substance of the complaint, did you have any input into that?

A The answer?
Q The answer. Oh, geez, I'm sorry. I'll write it big right here. Answer.
A No.
Q Okay. And the answer to the complaint is the first pleading filed in a lawsuit, or some -- most the time it's the first pleading filed the Defense in the lawsuit; is that your understanding?
A Yes.
Q Okay. And it's your understanding that oftentimes things are filed in the complaint in anticipation that information may come up during the discovery process, correct?
A If you're referring to the answer.
Q The answer. I wrote it right here. I'm sorry. Maybe I'll borrow some of your coffee. The answer to the complaint, correct?
A I'm sorry, can you repeat the question?
Q Okay. Is it your understanding, in filing an answer to the complaint, that's generally something filed by the attorney?
A Yes.
Q And you didn't sign a verification of that complaint --
A No.
Q -- or answer, did you?
A No.
Q Okay. And it's anticipation that things may arise during the discovery process, correct?
A Yes.

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

A Yes, I am aware of that.

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

A Yes.

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

A Yes, that would be correct.

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

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

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

A I did not.

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

A No.

Q -- at any time?

A No.

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

THE COURT: Anything else, Mr. Cloward?

MR. CLOWARD: Just a couple redirect.

REDIRECT EXAMINATION

BY MR. CLOWARD:

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

risk management?

A Yes.

Q Okay. And have you testified in court before?

A I have.

Q On how many occasions?

A A number of times.

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

A I am.

Q You're familiar with how lawsuits operate?

A Yes.

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

A I disagree.

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

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

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

A That's our answer.

Q Okay.

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

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

A Yes.

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

A Yes.

Q And you signed --

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

THE COURT: Uh-huh.

MR. RANDS: May I also, Your Honor?

THE COURT: Yes.

BY MR. CLOWARD:

Q Do you recognize this?

A Okay.

Q Do you recognize that document?

A I do.

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

A Yes.

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

A Actually, our attorney did.

Q Okay.

A I signed the verification.

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

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

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

A Yes.

Q That's what the document says, correct?
A Correct. Yes.
Q That's your signature, correct?
A It is.
Q Thank you.
MR. CLOWARD: No further questions, Your Honor.

RECROSS-EXAMINATION

BY MR. RANDS:
Q Again, we're going to give the jury a crash course in litigation. Interrogatories are written questions that are -- is it your understanding that interrogatories are written questions provided to either side?
A Yes.
Q And they're generally prepared, with the assistance of the Defendant or a representative of the Defendant, by the attorneys, correct?
A Yes.
Q And you signed a verification. And let's read the verification.
A Yes.
Q Would you read that, please?
A Oh, I'm sorry. I don't have the document in front of me.
MR. RANDS: May I approach, Your Honor.
THE COURT: Go ahead.
THE WITNESS: Would you like me to read it out loud?
BY MR. RANDS:
Q Yes.
A Okay. I'll just start --

Q Verification at the top.

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

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

A Yes.

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

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

THE COURT: Yes.

FURTHER REDIRECT EXAMINATION

BY MR. CLOWARD:

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

A I have a file, yes.

Q And, for instance --

MR. CLOWARD: Your Honor, may I approach?

THE COURT: You may.

MR. RANDS: Can I see what you --

BY MR. CLOWARD:

Q Do you recognize this document?

A I do.

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

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

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

A There is no name or signature on it.

Q Is that one of your internal documents?

A It is.

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

A In terms of who completed that document?

Q Yes.

A I believe it was our driver.

Q Okay.

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

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

A Sure.

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

A Yes.

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

A I can generally agree with that, yes.

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

A If that's what he says.

Q Okay. Thank you.

A Thank you.

MR. RANDS: Nothing further, Your Honor.

THE COURT: All right. Any questions from the jury? No. Thank you, ma'am. You can go back to your seat.

THE WITNESS: Thank you.

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

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

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

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

THE COURT: Go ahead. Uh-huh.

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

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

MR. CLOWARD: Okay.

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

MR. CLOWARD: Got you. Okay.

AARON MORGAN

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

DIRECT EXAMINATION CONTINUED

BY MR. CLOWARD:

Q Aaron, how you doing?

A I'm okay. How are you doing?

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

A Okay.

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

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

Q And what happened after that?

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

Q Like your body was --

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

Q Okay. Like your --

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

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

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

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

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

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

THE COURT: -- or Mr. Rands?

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

[Mr. Gardner enters the courtroom]

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

THE COURT: All right. Fine.

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

THE COURT: Go ahead.

MR. CLOWARD: Okay.

BY MR. CLOWARD:

Q All right. Aaron, so it --

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

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

BY MR. CLOWARD:

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

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yeah. Sorry.

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

A Yes.

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

A Yes.

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

A Yes.

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

back --

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

BY MR. CLOWARD:

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

medication?

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

Q Okay. Thank you.

MR. CLOWARD: No further questions.

CROSS-EXAMINATION

BY MR. GARDNER:

Q Hello.

A Hello.

Q I apologize for being late.

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

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

MR. GARDNER: Okay.

THE COURT: -- that's fine.

BY MR. GARDNER:

Q Look at that --

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

MR. GARDNER: Okay.

BY MR. GARDNER:

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

A Yes.

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

A Yes.

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

A Yes.

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

A I can't recall.

Q Okay. Was it in 2014?
A Yes.
Q Okay. It wasn't for the ER, I know that. But from the ER, where did you go from the ER?
A To the urgent care.
Q Okay. And the ER told you to go to the urgent care, correct?
A Yes.
Q Okay. And then next was what?
A I believe they referred me to Dr. Coppel.
Q Okay. And that's the -- urgent care did?
A Yes.
Q Okay. When did your lawyer get involved in the case to start referring you to people if you recall?
A I don't remember. I don't know.
Q Would it have been in 2014?
A I don't remember.
Q Okay.
MR. GARDNER: That's all I have. Thank you.
THE COURT: All right.
MR. GARDNER: I will reserve my right to call him in my --
THE COURT: That's fine.
MR. GARDNER: -- in my case.
THE COURT: Yeah.
MR. CLOWARD: Okay.
THE COURT: Anything else, Mr. Cloward?

REDIRECT EXAMINATION

BY MR. CLOWARD:

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

A No.

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

A No.

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

A Yes.

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

A No.

Q Okay.

MR. CLOWARD: No further questions, Judge.

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

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

MR. GARDNER: Sorry for yesterday.

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

MR. GARDNER: There's no excuse.

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

MR. GARDNER: We just started, Judge.

THE COURT: I've seen worse.

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

THE COURT: Huh?

MR. GARDNER: I'm sorry for yesterday.

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

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

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

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

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

MR. CLOWARD: Yeah, he's --

THE COURT: -- mild, too.

MR. CLOWARD: Yeah.

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

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

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

MR. GARDNER: Yeah.

MR. CLOWARD: Yeah.

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

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

MR. GARDNER: That's a good question.

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

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

THE COURT: Anyone else here left-handed?

MR. GARDNER: No.

THE COURT: Write -- that one goes here.

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

MR. GARDNER: I thought I already heard that, too. But I didn't.

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

MR. CLOWARD: I know, he's told me like three times. "Don't forget to ask him. Don't forget to ask him."

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

MR. CLOWARD: Yeah. "Have you taken defense driving?" No, that's not good for me.

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

MR. BOYACK: (Indiscernible).

MR. CLOWARD: That's fine.

MR. GARDNER: That's good.

MR. CLOWARD: That's a good question.

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

MR. CLOWARD: Yeah.

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

THE COURT: Great.

MR. GARDNER: Yeah.

THE COURT: Thank you.

MR. CLOWARD: Okay.

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

MR. GARDNER: Yeah, that one.

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

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

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

MR. RANDS: Okay.

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

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

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

THE WITNESS: Okay.

THE COURT: When did you decide to sue?

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

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

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

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

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

up doing that, so --

THE COURT: Have you taken a defensive driving class?

THE WITNESS: No.

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

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

THE COURT: Can you describe the cross streets?

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

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

THE WITNESS: No.

THE COURT: Are you left-handed?

THE WITNESS: Yes.

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

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

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

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

hours.

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

MR. CLOWARD: Just one follow-up.

BY MR. CLOWARD:

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

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

Q Okay.

MR. CLOWARD: Thank you.

THE COURT: Mr. Gardner, anything else?

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

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

THE WITNESS: Thank you.

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

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

THE COURT: Come on up, ma'am.

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

ALYSSA BAKER

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

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

morning.

THE WITNESS: Good morning.

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

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

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

THE WITNESS: Okay.

THE COURT: Great. Thank you.

Mr. Cloward, whenever you are ready.

MR. CLOWARD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. CLOWARD:

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

A Okay.

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

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

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

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

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

A On the 19th.

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

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

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

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

Q Oh.

A Yeah.

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

A Yeah.

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

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

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

Aaron? Tell the jurors about that.

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

Q Did you have a crush on him?

A I did.

Q Did you have a boyfriend at the time?

A Probably.

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

A Correct.

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

A Just in the same youth group.

Q Okay.

A Uh-huh.

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

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

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

Q So you were still in high school?

A Yes. Yeah.

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

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

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

A Yes.

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

A Yes. Uh-huh.

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

A No.

Q Okay.

A No.

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

A No, not at the moment.

Q Tell us a little bit about that.

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

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

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

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

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

A I believe so, yeah.

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

A Yes.

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

in the car with Aaron?

A No.

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

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

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

A No.

Q So tell us about that.

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

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

A I did.

Q Tell us --

A Yes.

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

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

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

Q And what -- what did you find?

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

Q What -- tell us about that.

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

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

A Yes.

Q -- in the ambulance?

A Uh-huh.

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

A Yes.

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

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

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

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

A That semester, yes.

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

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

Q And did you finish that?

A Yes.

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

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

Q Okay. Do you know why he dropped them?

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

Q Okay. Where did he end up working?

A At LVAC.

Q And what was he initially doing?

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

Q Did he eventually get promoted?

A He did.

Q Tell the jurors about that.

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

he was promoted rather quickly into a sales kind of management position. And he did really well, and he was one of the top salesman.

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

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

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

A Yes.

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

A You know, I don't recall.

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

A No, just socially.

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

A Eventually, yes.

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

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

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

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

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

A Yes.

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

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

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

A At least a full bottle.
Q When you say a full bottle, how -- how big would that be?
A I guess, just like -- not the super-size, but the regular --
Q Not the half gallon, but the fifth?
A Yeah.
Q Okay. Was that typical for Aaron to drink that much in one day?
A Yes.
Q Did you have kind of a moment where you -- after that, after he got out of the hospital, did you kind of pull him aside and lay down the law?
A I did. I remember at one point just telling him like, "Look, if you keep doing this, like you're going to die. Like I'm afraid that you're not going to wake up sometimes, or you're really had to bring -- to wake you up, and it's not fair. It's not fair to me. It's not fair to your family."
Q When Aaron came home from the hospital, what was his dad's reaction?
A When he got home, I just recall them hugging, and it was a really long embrace. His dad was crying, glad that he was there. And the night before, right after they took him away, I was still present, and I saw his dad hanging onto his mom the same way, and just crying and blaming himself and thinking that it was his fault.
Q To your knowledge, had Aaron's father ever kind of expressed that type of emotion to him?
A He keeps a poker face. He's -- he'll express anger and frustration when he really has other underlying emotions.
Q Was -- was that also kind of a realization to Aaron that, you

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

A Yes.

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

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

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

A I can't remember.

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

A Yes.

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

A No.

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

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

get over it.

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

A Oh, yeah.

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

A You said before the crash or --

Q Yeah.

A No.

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

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

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

A Heavier things.

Q Okay. What else?

A Well --

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

A Yeah.

Q -- or is it the same?

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

physical activities.

Q Like what? Tell the jurors, like what?

A So we used to go to the gym together. We would go hiking. There's a rock-climbing gym near his house, and we used to go there pretty frequently. So we used to just do a lot of things to stay in shape, be in shape. That was a lifestyle that we really enjoyed. And, yeah, we haven't done any of that in years now as a result of the crash. It's -- he comes home from work, and the first thing he wants to do is just lay on the floor for minutes before he even takes a shower, or changes clothes, anything like that. He just goes to lay down on a hard surface because that feels good, I guess. I lay on the surface and can't wait to get up, but --

Q You lay down next to him?

A He'll ask me to, and I can only stand it for about five minutes and them I'm -- like I'm out.

Q How often does he do that?

A Every day after work. Yeah, after he's been on his feet for a couple hours, it's --

Q Did he ever do that before --

A No.

Q -- the crash? Okay. You talked about the gym. Aaron -- his physical condition now, I believe he's around 250, 260. Has he always weighed that?

A No. Well, that's hard to say. Whenever he was in shape, just because of how muscle and fat weigh differently. I don't his exact weight, but he used to be extremely in shape. Large muscles that you could -- back

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

Q He was showing off a little bit?

A Uh-huh.

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

A Four, five times a week, at least.

Q How often does he workout now?

A He doesn't.

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

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

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

A Not off the top of my head, no.

Q Okay.

MR. CLOWARD: No further questions, Your Honor.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. RANDS:

Q It's Ms. Baker?

A Yes.

Q Morning.

A Morning.

Q I'm Doug Rands. I'm one of the attorneys for the Defendant in this matter. Could I ask you a couple of questions?
A Of course.
Q Let's talk a little bit about -- you're currently dating --
A Yes.
Q -- Mr. Morgan?
A Yes.
Q But you're not living together right now?
A Correct.
Q Okay. Where do you -- you live at your -- in your parents' --
A Yes.
Q And he lives with his parents?
A Yes.
Q Have you ever had an apartment together where you lived separately?
A Not yet, no.
Q Okay. So when you were living with him, were you living at his parents' place or your parents' place?
A At his parents'.
Q Okay. So you lived together with him --
A At his parents'.
Q -- at his parents' place?
A Uh-huh.
Q Okay. Did he have like his own room or something?
A Yeah.

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

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

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

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

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

A Correct.

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

A I'd say probably about four years.

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

A Yes.

Q And right after the accident you stayed there?

A Uh-huh.

Q Is that a yes?

A Yes.

Q All right.

A Sorry.

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

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

You're his girlfriend?

A Yeah. Oh, yeah.

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

A Of course.

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

A Yeah.

Q Okay. Try and help out?

A Uh-huh.

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

A It was a little after. Uh-huh.

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

A I can't recall exactly, but yeah.

Q A period of time after, anyway?

A Uh-huh. Yeah.

Q Was it right after --

A About two years. That sounds correct.

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

A Yeah, I do.

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

was actually throwing things around?

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

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

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

Q Okay.

A No.

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

A Correct.

Q Or paramedics?

A Uh-huh.

Q And he was taken to the hospital?

A Yes.

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

A He did.

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

A He did.

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

A Correct. Yeah.

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

A Correct.

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

A No. He's quit altogether.

Q Quit altogether?
A Uh-huh.
Q Well, that's good.
A Yeah.
Q Cold --
A A lot healthier.
Q It's a lot healthier. I agree with you there. We can agree on that. But at the time -- you said in high -- well, I'm not going to put words in your mouth. You said before the accident he was a social drinker?
A Correct.
Q He'd go out and have a beer or something?
A Uh-huh.
Q Is that right?
A Yes.
Q And you said that at the time of the accident -- or time of the incident where he went to the hospital, he had drinken a -- I think it maybe it was talk -- a fifth? I'm not a drinker so I don't know the --
A I'm not sure of the exact terminology, either, but, yeah, it was a -- like the regular --
Q Regular sized bottle?
A -- sized bottle. Yeah.
Q And what was it? Was it whiskey?
A Likely. I don't recall exactly, but --
Q Okay. If you don't know, that's fine. But you, I think -- and, again, I don't want to put words in your mouth, but there was something that

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

A Correct.

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

A No.

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

A No, he did not.

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

A Not to my knowledge.

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

A I had brought it up, yes.

Q That before the incident with the hospitalization or after?

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

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

A No.

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

A I'm sorry?

Q You never insisted that he get counseling or --

A No.
Q Okay. And do you know if he ever went to like AA or any of those type of --
A No.
Q -- 12-step programs?
A Huh-uh.
Q You don't know, or he didn't do it?
A He did not.
Q Okay. You said that -- I believe you said like when he would work at Smith's or work at LVAC, he was promoted pretty quick?
A Yes.
Q How long has he worked Subway?
A He's been there over a year now.
Q Okay. And he's still a sandwich maker?
A Yeah. There isn't really much room to move up there.
Q Okay.
A Yeah.
Q It's the same job when he started that he's doing now?
A Correct.
Q Okay. And you said his dad sometimes was a little coo-coo?
A Yes.
Q Was that one of the reasons you don't live there anymore?
A At times, yeah. Sometimes I felt like he just needed his space, and that might alleviate some of it. I don't know if that really worked or not.

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

A Uh-huh.

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

A Correct.

Q -- his work schedule?

A Uh-huh.

Q Is that right?

A Correct.

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

A Yes.

Q -- in California? Is that in Livermore?

A I'm sorry?

Q Is that in Livermore, California?

A I'm not sure of the exact location.

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

A Okay.

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

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

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

REDIRECT EXAMINATION

BY MR. CLOWARD:

Q Was Aaron ever suicidal?

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

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

own apartment or looked at getting a house or something?

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

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

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

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

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

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

Q Okay. Thank you.

MR. RANDS: One --

THE COURT: Sure.

MR. RANDS: One question.

RECROSS-EXAMINATION

BY MR. RANDS:

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

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

with that?

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

Q Significant improvement. Thank you.

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

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

MR. RANDS: That's the whole point.

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

MR. RANDS: That's a good question.

MR. CLOWARD: Uh-huh.

THE COURT: All right.

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

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

THE WITNESS: Okay.

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

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

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

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

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

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

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

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

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

MR. CLOWARD: No.

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

THE COURT: No, Mr. Cloward?

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

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

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

THE WITNESS: Thank you.

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

MR. CLOWARD: We rest.

THE BAILIFF: Judge --

THE COURT: I'm sorry?

THE BAILIFF: A break.

THE COURT: Oh, yep. All right. Folks, we're just going to take a short break. During this break, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report or commentary on the trial by -- or anyone person connected with this trial by any medium of information, including, without limitations, newspapers, television, the internet, and radio, and form or express any opinion on any subject connected with the trial until the case is finally submitted to you. I remind you not to do any independent research. And we'll come back at 10:30.

THE BAILIFF: Please rise for the jury.

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

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

What is the -- Mr. Gardner, Mr. Rands, before you take off there, what is your -- where'd my sticky go? Darn it. This is unacceptable.

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

Tell me your plan.

Oh, there it is.

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

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

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

THE COURT: I mean, I --

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

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

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

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

MR. CLOWARD: Okay. Thanks.

[Recess at 10:25 a.m.]

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

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

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

MR. RANDS: [Indiscernible].

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

instructions from the set from --

MR. CLOWARD: Than last night?

THE COURT: Yeah.

MR. CLOWARD: Okay.

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

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

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

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

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

MR. CLOWARD: Do you have it in writing?

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

THE COURT: -- through them maybe around lunchtime.

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

THE COURT: That'll work.

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

MR. BOYACK: Yes.

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

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

MR. CLOWARD: Ask him to type it up.

MR. BOYACK: Well --

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

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

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

THE COURT: Oh, I thought I fixed that.

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

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

MR. BOYACK: Oh, okay.

THE COURT: So my assistant would have had

MR. BOYACK: Number 29?

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

MR. BOYACK: On Number 29 that --

THE COURT: Yeah.

MR. BOYACK: Okay, perfect.

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

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

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

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

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

Do you want to get them back in?

THE MARSHAL: Please rise for the jury.

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

THE MARSHAL: Please be seated.

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

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

[PAUSE]

[COUNSEL CONFER]

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

Mr. Gardner, whenever you are ready.

AARON MORGAN

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

DIRECT EXAMINATION

BY MR. GARDNER:

Q Hello, Aaron.

A Hello.

Q We meet again.

A Yes.

Q I don't know why you left at -- watching your girlfriend testify. Every man in America would like to see his wife or girlfriend up on the stand like that. You can find out a lot of information.

But where are you working now?

A Subway.
Q Subway? Which location?
A It's going to be on Windmill.
Q Okay. And you are working there now?
A Yes.
Q And I just -- when your girlfriend -- what's her name again? What's your girlfriend's name?
A Melissa.
Q Okay. When Melissa was testifying, she indicated that you were getting much better, much better -- feeling much better. Is that accurate?
A Yes.
Q Okay. If you were to -- if you were to put a percentage on it, would you say you were ninety percent better? Eighty percent? What? Ninety-five?
A Seventy percent perhaps.
Q What did you want to do for a profession when you were in high school?
A What I wanted to do at the time was to maybe do something in the law field.
Q Think you wanted to be a lawyer, didn't you?
A Yes. That has changed though.
Q Why? Because of this?
A No. Different interests.
Q Okay. Because I was going to talk to you outside the presence

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

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

A Yes.

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

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

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

A The decompression on my lower back.

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

THE COURT: Sure.

[PAUSE]

BY MR. GARNDER:

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

A I'm so sorry?

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

A Something pertaining to business.

Q Any particular type of business?

A Yes.

Q Tell me. What is it?

A I was thinking about starting my own consignment shop for

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

Q Do you still drink alcohol?

A No.

Q Cold turkey?

A Yes.

Q Congratulations. That's good.

A Thank you.

Q That's the only way.

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

A Seven hours or so a shift.

Q Do you get breaks?

A Yes, I do.

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

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

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

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

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

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

Q When will that be?

A I'm going to try to go next semester. That's my intentions.
Q Good. Now, I've gotten the impression that perhaps I offended you earlier when I said you were a kid living in your parents' basement. Do you remember that?
A Yes.
Q Have you ever heard that expression before?
A Yes.
Q What do you take that to mean?
A That I'm living at their house.
Q Yeah. I --
A No, I'm not -- I'm not offended.
Q Okay. Are you living there now?
A Yes, I am.
Q Okay. Did you understand that that was just a saying --
A Yes.
Q -- the kid's living --
A Yeah. Of course.
Q Okay. Good. I didn't want to offend you on that.
A No, not at all. Thank you, Mr. Gardner.
Q Okay. Now, you indicated that a couple of seconds before this accident you saw a vehicle coming at you. Did I hear that right?
A No. I saw the vehicle in the parking lot.
Q Oh, okay.
A We were stopped.
Q Okay. Now, once you were -- as you were traveling, do you --

can you tell me where the vehicle came from?

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

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

A See that as in?

Q First time you saw it.

A What do you mean by "it"?

Q While you were traveling --

A Uh-huh.

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

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

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

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

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

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

Q Okay.

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

[PAUSE]

BY MR. GARDNER:

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

A Okay.

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

A Yes.

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

A Yes.

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

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

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

Would you like to step over?

May I approach just --

THE COURT: Sure.

BY MR. GARDNER:

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

A Yes.

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

A Right in here.

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

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

A Yes.

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

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

BY MR. GARDNER:

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

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

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

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

BY MR. GARDNER:

Q Okay. I'm moving it in here.

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

THE COURT RECORDER: It's not working.

THE COURT: All right.

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

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

MR. GARDNER: Okay.

BY MR. GARDNER:

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

THE COURT: They're not --

THE WITNESS: No.

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

THE WITNESS: He was coming from this way.

BY MR. GARDNER:

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

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

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

A She was in another vehicle.

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

Okay. So on McLeod you're headed --

A Northbound.

Q -- on this picture. Okay.

And where did my driver come in?

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

Q Where was the first time you saw him?

A He was over here.

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

A Yes.
Q Coming into the intersection.
A Where he was in the parking lot that -- and he's at the parking lot that connects to Tompkins.
Q Okay. Point where that is again.
A Right here.
Q Okay. And there's a driveway right there he could come out of?
A Yes.
Q Okay. Now, tell me where the accident occurred, will you? Can you point to that?
A Uh-huh (affirmative). It would be in the lane that I was going up, right about here.
Q Okay. Let me circle that. Was it right here? Can you see? Why don't you come and circle it for me. You can do a bigger circle.
MR. CLOWARD: Use blue. Maybe it will come out a little better.
THE WITNESS: It would be basically at that line.
BY MR. GARDNER:
Q Okay. It -- can you make that a little bigger because I want to ask you a couple questions about it.
A Sure.
Q Bigger.
A Okay.
Q There you go. Okay. So that's where you -- that's where you're saying the accident occurred, right?

A Yes.
Q Okay. Now, it looks like an intersection. This accident wasn't in an intersection, was it?
A It was a -- I mean, technically I guess it was -- oh, not like a light or anything there. There wasn't anything, an intersection. There was a stop for him, but.
MR. CLOWARD: Do you still need my pen? Just need to take some notes.
MR. GARDNER: Oh, thank you.
THE COURT: Are you done, Mr. Gardner? Can he go back to his seat?
MR. GARDNER: Excuse me?
THE COURT: Can he return to his seat?
MR. GARDNER: Oh, yeah. Yeah. Why don't we do that? Now, can he -- is your -- is that screen working? Can you see that, Aaron?
THE WITNESS: Yes, I can.
THE COURT: He can see it; he just can't write on it.
MR. GARDNER: Oh, okay. Okay.
BY MR. GARDNER:
Q Okay. Now, where were you headed? Were you headed --
A Northbound on McLeod.
Q Okay. So you were going to be -- oh boy. You were going to be going up here, right?
A Yes.
Q Okay. And the circle here you put, it looks like it's where -- it

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

A What do you mean made my turn?

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

A Yes.

Q Okay. And you were on what, Tompkins?

A I was on McLeod going northbound.

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

A No.

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

A I think five? Five or six.

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

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

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

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

MR. RANDS: You think so?

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

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

[PAUSE]

BY MR. GARDNER:

Q Okay. Can you see that okay?
A Yes.
Q Okay. So what we're seeing here is McLeod and you're going -- if you're looking at the picture you're going up, correct?
A That's northbound.
Q That's northbound.
A Yes.
Q And where did my client come from? Can you --
A He was coming from the west going eastbound.
Q Okay. Now let me move this around so we can see it better. Okay. Can you see with that course of view the area that my client came out of?
A Yes.
Q Where was that? Just point to that, if you would.
A It's going to --
Q Oh, sorry.
A It's going to be here.
Q Can you do that again so I can see it?
A Yes.
MR. CLOWARD: Your Honor --
BY MR. GARDNER:
Q Hold on. I can't see. Do it one more time, would you?
MR. CLOWARD: -- [indiscernible] multiple times.
BY MR. GARDNER:
Q Okay. Is there a driveway there?

A Yes.

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

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

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

BY MR. GARDNER:

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

A Yes.

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

A Maybe a second or two at the most.

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

A No.

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

A Yes.

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

A Yes.

Q Do you know why the bus was stopped?

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

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

a yield sign?

A Yes, there is.

Q What is it, a stop sign?

A It should be a stop sign.

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

A Yes.

Q Okay. Okay. So you see him. Which lane are you in? Let's just say it's a six lane road or --

A Uh-huh.

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

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

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

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

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

A Yes. Thank God I was.

Q How fast were you going?

A Between 25 and 30 miles per hour.

Q Is that the speed limit?

A Yes.

Q Had you been in this area before?

A Yes.
Q Had you ever seen anyone coming out of that park before?
A Yes.
Q Is this park notorious, in your mind, for drinking and partying and things like that?
A No.
Q What is that, the Paradise Park? What can they do? What can people do there?
A They can go for walks, they can have family barbecues, there's a rec center.
Q Okay.
A Have a nice day at the park. I don't know. It's just like any other park that I've seen, so [indiscernible].
Q That's all I needed to know. Thank you.
A Okay.
Q Okay. Did you have an opportunity to see my client after the accident occurred? I mean did you get close to him?
A Yes.
Q Was -- could you smell alcohol or anything on his breath?
A No.
Q Did you have any kind of a discussion with him about what had just happened?
A No. The only discussion would be he told me 911 was coming.
Q Do you know who called 911?

A He did.
Q How do you know that?
A He told me 911 was coming.
Q Okay. So from that you knew that he called 911. Okay.
A Yes.
Q How long did it take the emergency personnel to get there?
A I would say five minutes or so.
Q Did they come with sirens on and everything?
A Yes.
Q And the ambulance is there. How do they know where you are? Is someone waving them down, or was it just so open they could tell? What do you think?
A Can't remember. I assume they just knew what was going on by the scene, but.
Q All right.
A I don't know.
Q They wouldn't have known who was in the accident.
A I'm sure Mr. Lujan had told them.
Q Okay.
A So.
Q Was Mr. Lujan -- how was -- what was his demeanor when he was talking to you after the accident?
A Very short.
Q Was it rude? Was it --

A It could be taken as rude.
Q Really?
A Yes.
Q Describe that for me. What do you mean by that?
A Just -- he just came over to my car and was like the ambulance is on the way, then just walked away from me. That was my interaction with him.
Q Is that all your interaction has been?
A Yes.
Q Which hospital did you go to?
A I believe it was Sunrise.
Q Sunrise? Okay. Without telling me, because I'm going to find out, but which part of the hospital did you go to initially?
A I'm not sure.
Q Could it have been the emergency room?
A I believe so.
Q Okay. Let's say it was the emergency room. Tell me about what happened when you were in the emergency room, if you recall.
A I remember they had me on a stretcher whenever I got there, and I remember I was telling them at the time that I was really confused of what happened, my vision was really blurry, I had really bad head trauma in the accident. So I remember that at that moment they were concerned about my head so they said they were going to do a scan on it.

Q Did they?
A Yes.
Q And that was on your head?
A Yes.
Q Okay. Do you know the results of that scan?
A No.
Q Let me put it this way. Did you have a head injury?
A There was no internal bleeding. So I don't think anything significant.
Q Okay. And nobody's told you you had a head injury, have they?
A No.
Q All right. So after the emergency room where did you go in the hospital?
A I can't remember.
Q How long were you in the hospital that day?
A For about four or five hours.
Q What time did the accident happen?
A I believe around 2 or 3 p.m. that day.
Q Okay. So you may have gotten home at 6 or 7:00 that night; is that right?
A Somewhere around there, I believe.
Q Okay. Was your car drivable after this accident?
A Yes.
Q How did you get home from the hospital?

A My mother took me home.
Q Okay. And where was your car when you went -- left the hospital?
A It was at my house.
Q How did it get there?
A I'm not sure. My dad took care of that.
Q Did you have the vehicle repaired?
A We tried to. We got it estimated and it wasn't -- it was in really bad shape and it would have cost more than the car was worth to repair it, so.
Q Okay. Have you replaced that car?
A Yes.
Q What do you drive now?
A It is a 2004 Mustang.
Q Okay. 8.4 liter or do you know anything about the engine?
A 4.6 liter.
Q What is it?
A 4.6 liter.
Q 4.6, okay.
A V8.
Q Did you buy it new?
A No, from a third party.
Q Okay. Now I was -- I was interested in what your -- Melissa said, and she talked about perhaps you becoming -- having some depression.

A Yes.

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

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

Q What were you doing to show depression?

A I was self-medicating.

Q Where were you getting the medicine from?

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

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

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

Q But you did that anyway, right?

A Yes.

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

A It depends on which time in my life you're talking about. I've been an A student and I have been a F student. I've been on both sides of that spectrum, so.

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

[Counsel confer]

BY MR. GARDNER:

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

A With Mr. -- with Dr. Sanders?
Q Yes, Dr. Sanders.
A Yes. Yes, I do.
Q Okay. Tell me about that experience, will you? What -- how were you treated?
A He was nice. He had me do all of these random tests and I just tried to follow along to the best of my ability.
Q What kind of tests were they?
A Movement, I guess. Movement tests. A lot of questions about stuff.
Q Okay. Did you ever -- can you show us what kind of things he had you do?
A Yeah. He'd have me see how far I could turn my neck [indicating].
Q Okay.
A See how far I could turn my wrists [indicating] and whatnot.
Q Do you recall what he said when you were going through those steps?
A Somewhat.
Q Tell me about it. What was he saying?
A He was telling me to -- he was asking me the range of motion, how far I could move.
Q Did he tell you the results of his findings at the time, "Oh, you're moving just fine," or did he say anything like that while he was looking at you?

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

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

A He was nice.

Q He was nice?

A Yeah.

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

A Yes, and to my neck.

Q Back and neck, yeah.

A Yes.

Q And have you ever hurt those before this?

A No.

[Counsel confer]

BY MR. GARDNER:

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

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

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

Q Okay. It was a 70 or 80?

A Yeah.

Q Okay. What is it now?

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

Q Well --

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

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

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

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

A No.

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

A Two hours perhaps. Somewhere along there.

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

A They were all nice.

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

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

Q I hope she's here to hear that.

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

A Yes.

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

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

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

A With -- I'm so sorry?

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

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

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

A Hike, walk the trails.

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

A No, no.

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

A No.

Q Physically.

A No.

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

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

Q Have you done any hiking since this accident?

A No.

Q Where do you think you would feel discomfort?

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

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

A Yes.

Q When was the last time?

A Can't recall.

Q Is it now? Do you feel discomfort now?

A Yes.

Q Okay. Where?

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

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

A No, not at all.

Q Okay.

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

MR. GARDNER: Don’t make me talk about you.

BY MR. GARDNER:

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

A Yes.

Q What is hard about sitting down for you?

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

Q When you're sitting?

A Yes. Laying is more comfortable.

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

A Two hours, sometimes less.

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

A Sometimes.

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

A That is true.

Q Why is that?

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

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

A Nothing.
Q How long have you been medication free, so to speak?
A I think since the -- around the end of '16 I believe.
Q So a couple years, just give or take, couple years you've been off the medicine?
A Yes.
Q And but I understand you still had pain during that time; is that correct?
A Yes.
Q Was there a reason that you got off the medication? Was that your decision or a doctor's decision?
A It was a mutual decision at that point. I'm young so I don't need to be taking that stuff. It's not good.
Q Okay. Was that your decision or the doctor's decision?
A It was ultimately my decision.
Q Okay. He would have given you more medication if you wanted it?
A Yes.
Q Okay. So let's go back to the accident for a moment. You're on -- you're saying you're not on the far right-hand side of the street going north but you're a lane in from the right lane, correct?
A Yes, at least.
Q Okay. I just wanted to clarify that.
You were going, what'd you say, 25, 30?
A Yes.

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

A No.

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

A Yes.

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

A No.

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

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

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

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

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

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

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

MR. CLOWARD: Objection.

THE COURT: Sustained.

MR. GARDNER: What part was --

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

THE COURT: Yeah.

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

BY MR. GARDNER:

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

A Yes.

Q Okay. Could you see inside the bus?

A What do you --

Q Before the accident.

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

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

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

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

A (No verbal response).

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

A Yeah, I don't know.

Q Okay.

A I was -- yeah.

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

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

Q What did you hear from your tires?

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

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

A Yes.

Q Tell me about that.

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

Q Hold on --

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

THE COURT: Sustained.

[Counsel confer]

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

THE COURT: Sure.

[Counsel confer]

MR. CLOWARD: Your Honor, may we approach?

THE COURT: Sure.

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

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

MR. CLOWARD: Shh.

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

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

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

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

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

THE COURT: Right.

MR. CLOWARD: I can find it for you.

THE COURT: That was the first thing I said.

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

THE COURT: Well, the first thing I said is how is that relevant, and the second thing I said was that it's a collateral source issue, so.

MR. CLOWARD: Well, I probably learned it from you then.

MR. GARDNER: There you go. Thank you.

THE COURT: All right.

MR. CLOWARD: I must have. I learned a lot from you.

[Bench conference ends 11:19:45 A.M.]

MR. GARDNER: That's it, Your Honor. Thank you.

And thank you.

THE WITNESS: Thank you.

THE COURT: All right. Any cross?

MR. CLOWARD: I just have one, one follow-up.

[Counsel confer]

CROSS-EXAMINATION

BY MR. CLOWARD:

Q I'm just going to show you -- it's an overhead view. It's a little bit, a little bit closer.

MR. BOYACK: Zoom out on the thing, if you want, or keep it that way, whatever.

BY MR. CLOWARD:

Q Just a little bit closer up. Just want to make sure that everyone's aware how many lanes there are. So I can see a car here; is that accurate, that's a lane?

A Yes.

Q Okay. And then there's a -- looks like there's a turn lane, left turn lane there; is that accurate?

A Yes.

Q And then there's a middle lane, true?

A Yes.

Q And then there's the right turn lane?

A Yes.

Q Okay. So there were four lanes, not six?

A Yes.

Q And you were in this middle lane, right; is that --

A Yes.

Q Okay.

MR. CLOWARD: No further questions.

THE COURT: Anything else, Mr. Gardner?

[Counsel confer]

REDIRECT EXAMINATION

BY MR. GARDNER:

Q Which lane were -- which lane did the collision occur in?

A The same lane that I was going [indicating]. It was just right in that lane that I was proceeding northbound on.

Q Okay. Was your car pushed any way -- I mean, was it pushed to the right or anything like that when the impact --

A Yes.

Q Tell me about that.

A Whenever I hit him [indicating] and hit my brakes and turned a little bit, he was still going straight so it was dragging me to the side. So I get the impact and then I'm being dragged.

Q Okay. And you say you were being dragged.

A Yes.

Q Were you being dragged north or which direction were you being dragged?

A It's hard to say. I guess my car was kind of [indicating] --

I guess maybe to the right or -- I guess so my car is facing more east would be a more appropriate way to say so --

Q Okay.

A The front part of my car is facing east or so.

MR. GARDNER: That's all. Thank you.

THE COURT: All right. Anything from the jury?

I'm sorry, Mr. Cloward. Did you have anything?

MR. CLOWARD: No.

THE COURT: All right. Counsel approach, please.

[Bench conference begins at 11:22 A.M.]

THE COURT: All right. So, Mr. Gardner, come on up [indiscernible].

THE MARSHAL: Counsel.

MR. CLOWARD: That's fine.

[Pause]

MR. CLOWARD: That's fine.

[Pause]

MR. CLOWARD: Fine with all of them.

THE COURT: Okay. So [indiscernible].

MR. GARDNER: I don't feel comfortable with that because we talked about future [indiscernible].

MR. CLOWARD: I don't -- that's --

THE COURT: Life experiences.

MR. CLOWARD: Experience.

MR. GARDNER: Experience.

MR. CLOWARD: That's fine. I don't --

MR. GARDNER: Excuse me. It's -- oh, it said [indiscernible].

THE COURT: Yeah, it's not life expectancy, it's experiences. I read it that same way myself when I first read it.

MR. GARDNER: Oh, okay.

THE COURT: All right.

[Bench conference ends at 11:24 A.M.]

THE COURT: All right. This is our first note.

THE WITNESS: Yeah.

THE COURT: So if you could look at the jury when you answer.

THE WITNESS: Okay.

THE COURT: What future life experiences that you have not yet [indiscernible] are you most excited for [indiscernible] your pain levels stayed low and [indiscernible].

THE WITNESS: Some would be I -- I'd like to travel the world at some point. I'd like to see everything. I'd like to pursue school again. That's something really important to me.

THE COURT: What was the difficulty of the hikes that you used to do?

THE WITNESS: Well, I wouldn't know. I don't know the grades. It would just be like Red Rock or Mount Charleston or whatever, whatever is up there, so.

THE COURT: What would a slip impact your condition?

THE WITNESS: I'm so sorry?

THE COURT: Would a slip impact your condition?

THE WITNESS: I'd assume so, yeah, it would.

THE COURT: Did you seek medical help for your anxiety and depression after the accident? Why or why not?

THE WITNESS: Unfortunately I didn't. I guess I just self-medicated, and I should have, and I regret not doing so because it probably would have gotten me out of the dark place I was in sooner, so.

THE COURT: Did you have any suicidal ideation after the accident? If so, did you seek psychiatric help for assistance?

THE WITNESS: Not immediately after the accident, but once I started getting really depressed, yes, I did feel like I wanted to kill myself at times. And fortunately I didn't. I didn't get the help I should have though.

THE COURT: Are you wearing a brace while you work?

THE WITNESS: No.

THE COURT: Did your doctors advise you to wear one to decrease you discomfort?

THE WITNESS: They gave me a brace for my wrist at one point, but after I did the physical therapy for it my wrist has been okay. Sometimes through a certain range of motion [indicating] it'll pinch and I have to kind of reset that motion, but I haven't needed a brace for my wrist. If you're talking about my back, no, but I've thought about looking into that. That's something that interests me.

THE COURT: Do you recall the color of the vehicle you struck?

THE WITNESS: It was white.

THE COURT: Any follow-up, Mr. Gardner?

MR. GARDNER: Just one moment.

BY MR. GARDNER:

Q Did I understand that you self-medicated with alcohol?

A Yes.

Q Is there anyone else in your family that suffers from depression?

A My sister does.

Q Okay. How do you know that?

A She had mentioned that she was taking lithium or some sort of medicine, and I just knew what that was. I found out about that really recently, actually.

Q Is she -- how is she doing now? Is she over it or --

A She seems to be okay. I'm sure it didn't cure her depression. Maybe it helped. But I don't know. We kind of -- I just heard that in passing, so I'm not sure.

Q How are you feeling today? I mean, are you still depressed?

A Yes. None of what we're doing right now is fun. I'm not really much of a public speaker, so. Yeah, I'm a lot better. I'm way better than I was before. I'm improving. By a lot.

[Counsel confer]

BY MR. GARDNER:

Q Did you ever receive any counseling from a psychiatrist?

A I did.

Q What was the psychiatrist's name?

A I wouldn't know. It was like when I was 10 or 11.

Q Oh, I'm sorry. Yeah. Actually I was thinking about after the accident. But 10 or 11 you suffered from some depression?

A We went to group counseling as a family. My whole family did at one point.

Q Do you know why you went as a family?

A We just had problems getting along, so. My dad had horrible anger problems, so we were trying to get that all resolved instead of having to, you know, break it all up.

Q So you went as a family. Did you sit together as a family and talk to the doctor? Is that the setting?

A At certain points we were together as a family. There was other times where they'd want to talk to us one on one as well.

Q What kind of treatment or anything did you get as a family, other than talking? Was there any medication given or anything?

A No. We ended up discontinuing it after some time. I think my -- one my -- my dad got offended or something perhaps and we just stopped going. I can't really remember the fine details, but.

[Counsel confer]

BY MR. GARDNER:

Q After this accident, have you had any psychological

treatment? After the accident.

A I don't think so.

Q Did I understand that -- have you ever had a back brace before? I mean after the accident.

A No.

Q Just one for your wrist, right?

A Yes.

MR. GARDNER: I think that's all I have. Thank you.

MR. CLOWARD: Your Honor, one follow-up.

RECROSS EXAMINATION

BY MR. CLOWARD:

Q Aaron, when you were hospitalized for drinking, that's not something that you're asking the jurors -- you didn't ask that as a damage, you're not here to try and --

A No, not at all. No.

MR. CLOWARD: Okay. Thank you. No further questions.

THE COURT: All right. Anything else, Mr. Gardner?

MR. GARDNER: Nothing further.

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

Mr. Gardner, please call your next witness.

MR. GARDNER: Your Honor, I don't have any expert -- any witnesses right now. I'll try to get someone here after lunch, if that's okay.

[Bench conference begins at 11:31 A.M.]

THE COURT: [Indiscernible] that we're going to use the

jurors' time wisely. If you cannot get witnesses here today, you're going to have to rest [Indiscernible] close because I am not going to ask these people whom [indiscernible] get this case hopefully to them today and also [Indiscernible].

MR. GARDNER: I mean, I can't object.

THE COURT: I'm not [Indiscernible].

MR. GARDNER: I think we covered what we could this morning.

THE COURT: All right. So you also had another lay witness [Indiscernible].

MR. GARDNER: That's been difficult to get a hold of. We may want to read his deposition in though.

THE COURT: Well, all right. When are you going to figure it out because we have -- you know, I mean, I wasn't [Indiscernible].

MR. GARDNER: [Indiscernible] him in now. Would that be --

THE COURT: Have you done those admissions? I mean, [indiscernible]. That's supposed to be done before the trial.

MR. RANDS: [Indiscernible].

THE COURT: [Indiscernible]. All right. So we'll go ahead and we'll break for lunch until 12:45, but you're going to need to get this all sorted out.

MR. GARDNER: Okay. Thank you.

MR. RANDS: Thanks, Judge.

THE COURT: Actually what I'll do is I'll have you guys

come back at -- you know what? I'm going to send the jury out to do the instructions right now and then come back at 12:45. Yeah, so that's what I'll do.

MR. GARDNER: Okay.

MR. CLOWARD: So come back at 12:45?

THE COURT: We're going to break for lunch and let's have the jury come back at 12:45, but we're going to do the jury instructions right now --

MR. CLOWARD: Oh, yeah.

THE COURT: -- so we're going to take five, ten minutes.

MR. CLOWARD: Good idea. Thanks.

THE COURT: All right.

[Bench conference ends at 11:33 A.M.]

THE COURT: All right, folks. We're going to go ahead and break for lunch. During this break you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial or read, watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including without limitation, newspapers, television, the Internet and radio or form or express any opinion on any subject connected with the trial until the case is finally submitted to you. Remind you not to do any independent research. We're going to come back at 12:45.

THE MARSHAL: Please rise for the jury.

[Jury out at 11:33:30 A.M.]

THE COURT: All right, folks. Let's just run through the jury instructions here real quick. So, all right. We have Number 1, it is now my duty as judge. Also, I have probably changed the -- I know we had a set. We've had some different things. There may be just some minor changes to remove pronoun references in the instructions. I don't give that masculine or feminine instruction that was submitted in the second group. So and if you happen to see something that isn't, let me know. Somehow those pronouns sneak their way into the instructions. But I think that they're in pretty good shape in that regard.

So 1 is it is now my duty as judge;

2, if in these instructions any rule, direction or idea;

3, if during this trial I have said or done anything;

4 was not submitted at any point in this case, but it's an instruction we generally give, the sympathy --

MR. CLOWARD: Yeah, that's fine. Fine with me.

THE COURT: Do you want -- is everybody fine with that?

MR. CLOWARD: Yeah.

MR. GARDNER: Yeah.

MR. RANDS: There's a spot that usually has that in there.

MR. GARDNER: Yeah, that's fine.

THE COURT: Yeah. It just wasn't. For whatever reason, it wasn't.

MR. GARDNER: Okay.

THE COURT: 5, one of the parties in the case is a

corporation.

MR. RANDS: Okay. I must have the wrong set.

THE COURT: Yeah, I apologize. We've had a few different.

MR. CLOWARD: I had my four exhibit binders that I've been -- so we just reprint them many times, and I have notes in --

MR. RANDS: Mine was --

THE COURT: One of the parties in this case is a corporation;

6 was not included by anyone, but I would like to give it and it's just you can't communicate with anybody by any electronic means until the verdict's returned.

MR. CLOWARD: Yeah, we're happy with that. Good.

THE COURT: 7, you must decide all questions of fact from this case. The instruction submitted did not have the last line that says "including the Internet or other online services." I assume everybody's fine with that.

8, although you are to consider only the evidence in reaching a verdict;

9, the evidence which you are to consider. This instruction was submitted with the line "if the parties stipulate to the existence of a fact you must accept that." That's actually a separate instruction so I removed that line.

10, there are two kinds of evidence, direct and circumstantial;

11, in determining whether any proposition has been proved;

12, if the parties -- if Counsel for the parties have stipulated to any fact.

And then 13 is the deposition interrogatory request for admission instruction, so I don't -- I can't recall if there's been any reference to an interrogatory request for admission.

MR. RANDS: Interrogatory request for admission --

MR. CLOWARD: We did the rogs, not the RFAs, though, the rogs.

THE COURT: So you want me to strike the last paragraph?

MR. RANDS: Yeah.

THE COURT: All right.

MR. GARDNER: Sure.

MR. CLOWARD: Yeah.

THE COURT: 14, the credibility or believability of a witness;

15, discrepancies in a witness's testimony;

16, an attorney Has a right to interview a witness;

17, a person who has specialized knowledge, skill, experience;

18, a question has been asked;

19, an expert witness has testified;

20, whenever in these instructions I state that the burden;

21, the preponderance or weight of evidence;

22, the Plaintiff seeks to establish liability in a claim of negligence;

23, the Plaintiff has the burden to prove;

24, when I use the word "negligence";

25, a proximate cause;

26, it has already been determined. All right. You know what? We have this instruction about the prior trials. I would probably put it in -- the next in line just --

MR. RANDS: Okay.

THE COURT: -- since there's some specific information there. I don't know that there's a great place to put this anywhere, but --

MR. BOYACK: Correct. No, I think --

THE COURT: All right. So this is the instruction that's proposed by the Plaintiff. There have been two prior trials previously held in this matter. The first trial was set in April 2017 but needed to be rescheduled on the first day for an emergency; the second trial was in November 2017 and lasted for three days but was not completed and no verdict was reached. You should not make any opinions or conclusions based on the fact that prior trials were held -- were held in this case. All right. Any objection from the --

MR. RANDS: Well, I kind of objected to it -- not objected to it. We talked beforehand that I didn't think it was necessary to put that first issue in, but then I guess Mr. Cloward did raise that in his --

THE COURT: All right. So I'm going to go ahead and give that as -- we'll make that 27.

MR. RANDS: Okay.

THE COURT: The next is Plaintiff may not recover damages. It's the comparative negligence instruction. I'm going to make that 28.

MR. RANDS: Uh-huh.

THE COURT: You are not to discuss or even consider, make that 29. Oh, wait. Wait, wait, wait. I might not have gotten to it yet. Let me see. Ah.

In determining the amount of losses, I would make that 30, and then I'm going to take out that three.

MR. CLOWARD: Okay.

THE COURT: That was just my missed error and how I edited it. I circled it instead of crossed it out.

31, no definite method or standard of calculation;

32, if you find Plaintiff suffered injuries;

33, according to the table of mortality;

34, whether any of these elements have been proven;

35, the Court has given you instructions;

36, if during your deliberation --

MR. RANDS: Just as a side note, in addition to issues that I don't like with the jury questions, this is another one I don't like because it kind of gives them the idea that they may be able to do it.

THE COURT: You know what? Actually, Mr. Rands, that's

not my experience. The one time we did not -- the one time that I didn't give this instruction -- we've never had a jury ask for a playback, except for the one time we didn't --

MR. RANDS: Didn't do it? Okay.

MR. CLOWARD: And then they asked for it?

THE COURT: Then they asked for a bunch of stuff. So, I mean, I think telling them, like, we don't encourage that is, at least in my experience, that's been helpful and doesn't give them ideas, because when we didn't tell them they definitely got ideas.

MR. RANDS: They did it. Okay. Mine's different, but, you know, I think sometimes when you put it in their mind they think, oh, yeah, we could -- we might get a reading.

THE COURT: 37, it is your duty as jurors;

38, when you retire to consider your verdict, and;

39, now you will listen.

Are there any other proposed instructions that the Court has not considered?

MR. CLOWARD: No, Your Honor.

MR. RANDS: Not from the Defense, Your Honor.

THE COURT: Okay. Any objections that have not been placed on the record?

MR. RANDS: Nope.

THE COURT: Great. So we'll get -- I'll get those couple changes made and then we'll get you, each side, a final set after lunch.

MR. RANDS: A clean set. Okay. Thank you.

THE COURT: And then I don't know if I have a verdict form or not, but since this is like my sixth car accident trial in a row, I have one from last year that will work great for this, I will just note that.

MR. CLOWARD: That would be perfect.

THE COURT: We'll put that together and then --

MR. RANDS: Will it -- it will include a comparative?

THE COURT: Yeah.

MR. RANDS: Okay.

THE COURT: This is my sixth car accident trial since the beginning of the year, and two of them were two weeks long.

MR. RANDS: Really?

MR. CLOWARD: Geez.

THE COURT: Okay. So --

MR. RANDS: Was Mr. Cloward involved in those?

THE COURT: You didn't have any of the ones that we had this year, have you --

MR. CLOWARD: That was last year.

THE COURT: That was last year.

MR. CLOWARD: Last year.

THE COURT: It's been different lawyers in every single one.

MR. RANDS: Really?

THE COURT: So I had Mr. Prince and I had -- they really

just all blur together. It's awful. I can't remember. But, no, not Mr. Cloward.

MR. CLOWARD: All right. Thank you, Your Honor.

MR. RANDS: Thanks, Judge.

THE COURT: All right.

[Recess at 11:44 A.M.]

[Outside the presence of the jury]

MR. GARDNER: Your Honor, I do have a witness coming. I expected him about 10 minutes ago. Could we -- I know it's asking a lot, but --

THE COURT: Well, yeah. Just have them hold off.

THE MARSHAL: Okay.

THE COURT: Yeah.

MR. GARDNER: Thank you. Appreciate that.

[Pause]

MR. GARDNER: In fact, if it would be all right, I'll go out and wait for him, so he --

THE COURT: Yeah.

MR. GARDNER: -- comes in the right place. Oh. He's right there.

THE COURT: Right.

[Pause]

MR. GARDNER: Your Honor, he's here.

THE COURT: All right.

[Pause]

THE MARSHAL: Please rise for the jury.

[Jury enters]

THE MARSHAL: Please be seated.

THE COURT: Back on the record in case A718679, Morgan versus Lujan. Let the record reflect the presence of all of our jurors, counsel, and parties.

Mr. Gardner, please call your next witness.

MR. GARDNER: It'd be John Baker.

JOHN E. BAKER

[having been called as a witness and having been duly sworn, testified further as follows:]

THE COURT: Good afternoon, sir. Go ahead and have a seat. Would you please state your name and then spell it for the record?

THE WITNESS: All right. It's John Edward Baker, B-A-K-E-R.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. GARDNER:

Q Okay. John, give me a head's up when you're ready to go.

A Go ahead.

Q Okay. What is your occupation?

A I'm a forensic engineer.

Q What does that mean?

A A forensic engineer is an engineer that does analytic work for use in public debate. So a setting like this would be a public debate.

Q Okay. Maybe I wasn't listening closely enough. But would you

-- the first part, what is it, a forensic --

A Forensic means prepared for public debate. I used to think it meant blood and --

Q Oh.

A -- fingerprints, but it means debate.

Q Fair enough.

A Yeah.

Q Fair enough. Have you ever testified in a trial before?

A Yes.

Q Can you estimate how many times?

A Between I'd say maybe 125 and 130, something.

Q Okay. I normally ask are you nervous. But are you nervous?

A That hadn't occurred to me. I don't think I've had time.

Q I just made you nervous, right?

A Thank you. Yes.

Q Okay. Do you have any specialties that you are trained in?

A Yes. I specialize in accident reconstruction and injury reconstruction. The latter means biomechanics, impact kinematics, and the degree to which motions occurred in -- essentially, like this, a motor vehicle accident.

Q How long did it take you to become schooled in this type of work you do?

A That was nine years in college, included five at graduate school, plus dedicated courses afterward.

Q What did you -- you got a four-year degree, right?

A Yes.
Q And then which school did you go to after? Not the name of it. But was it a master's program? What was it?
A Yeah. I went to Loyola University. Then I went to San Jose State University. I have a PhD from NC State University.
Q Okay. Was it always your dream to be someone that came in and testified in cases?
A No.
Q What were you planning on doing?
A You know, actually, at the time, I didn't know. I thought I'd do research in safety and accident reconstruction. Something like that.
Q Okay. Where is your residence? Where do you live?
A I live in Las Vegas.
Q How long have you lived here?
A Since 1999.
Q Almost a native.
A Almost.
Q Since 1999, yeah. I want to go through your education one more -- with a little bit more detail.
A Okay.
Q The master's, tell me how many years that is and classes. And tell us about that in a little bit more detail.
A Yeah. For me, it was two years at San Jose State University. I had a series of courses in human factors engineering as a specialty. So went off into that field when I went for my doctorate a year later.

Q Will you explain to me what human factors means?

A Sure. Human factors is the interaction of humans, equipment, and/or machines, and the environment. So if we look at the intersection of those three things, a motor vehicle on a street with weather with a person inside, that's a man-machine-environment application.

Q Were there any -- did you have any awards or anything or just get through college?

A I think I got through college.

Q Okay.

A I don't remember a lot of awards.

Q That's what I did.

A It was getting through the degree.

Q Yeah, okay. Did you prepare a report in this case?

A I did.

Q Do you have it with you?

A Yes.

Q Okay. Tell me, what kind of courses did you take to learn how to be a human factors --

A Okay. Well, as I mentioned, at the master's level, I took a series of courses in human factors engineering. And then I stayed with that at the doctoral level and majored in human factors engineering with an emphasis in biomechanics and stress physiology.

Q Okay.

MR. CLOWARD: Your Honor, I'm just going to object. Dr. Baker has not been designated as a human factors expert in this case. His

four-page report --

THE COURT: Counsel, approach.

[Bench conference begins at 1:30 p.m.]

MR. GARDNER: It's just one page. It's -- you can have that copy.

THE COURT: Oh, thank you.

MR. GARDNER: And, counsel, these were just introductory questions. I'm not going to be using this [indiscernible] on the [indiscernible].

MR. CLOWARD: Okay.

MR. GARDNER: Yeah. So it's okay. But --

THE COURT: Do you have his CV.

MR. GARDNER: Well, Your Honor, I'm not going to use him as a forensic specialist.

THE COURT: What's this one right here? Do you [indiscernible]?

MR. GARDNER: What's that?

MR. CLOWARD: But he gives no human factor opinion if you look through the -- there are no -- like he doesn't do an accident reconstruction. He doesn't do any sort of like perception-reaction. It's all biomechanical. That's a boilerplate statement at the end. He gives zero opinions on that.

THE COURT: I have to tell you, Mr. Cloward, I'm not sure I really understand the difference between those two things.

MR. CLOWARD: Well, biomechanic is basically what are the

forces to the spine. Human factors are the way the people interact, whether they react or don't react. And he did not do --

THE COURT: That's a good explanation.

MR. CLOWARD: He didn't do any sort of an accident reconstruction. So I just want to make sure that they're going to stay within --

THE COURT: Right.

MR. CLOWARD: -- the confines of the report.

THE COURT: Yeah. He just has to stay --

Can I hang onto this?

MR. GARDNER: Yeah. You got it.

MR. CLOWARD: Yeah.

THE COURT: Just in case there's an issue.

MR. GARDNER: Absolutely.

THE COURT: But he just obviously needs to be limited to the opinions in this.

MR. CLOWARD: Thank you.

MR. GARDNER: Thanks.

[Bench conference ends at 1:32 p.m.]

BY MR. GARDNER:

Q Okay. How did you become involved with this case?

A Typically, in this case, I guess, as most cases, I'll get a call from the law office saying we have a motor vehicle accident. Typically, there's a short description of it, and is this something you can help with. I usually look into it and decide yes or no.

Q Now is there a file created in your office for --
A On this case?
Q Yes.
A Yes.
Q Okay. Do you have the ability to tell the jury how I contacted you? Is there a letter or something like that?
A You know, there typically is. There's a phone call and then, typically, a letter, and then there's file material that arrives.
Q Okay. What is an accident reconstructionist?
A Accident reconstructionist is somebody who looks at the -- in this case, a collision. But it doesn't have to be a collision. It can be a fall. It can be anything where there's an injury produced. And tries to replicate and evaluate the factors that put this together, that made this happen, you know. The step beyond that, just to add, so that you don't have to ask me, is that go from there to the injury reconstruction. So you have to do the accident reconstruction first. Then you figure out where the body moved, if at all, and then to the injury reconstruction.
Q Okay. Thank you. Let's see. Why did I hire you? What -- did I do instructions or -- when I did hire you, what did I send to you next? Can you tell me?
A Yeah. Go through the file that I received. There's certain items. You want me to read what those items were?
Q Yeah. Why don't you do that?
A Okay. There's the deposition transcript of Mr. Morgan. And it says complaint. That might be a typo. Indeed, the transcript is 93 pages.

All right. Then there's an IME, independent medical examination report by Dr. Sander. That's 83 pages. We have the state of Nevada accident reconstruction -- I'm sorry -- the accident report. That's six pages. We have color photographs. There are nine of those. Excuse me. We've got the Defendant's interrogatories, 15 pages. More color photographs, a vehicle repair estimate. That's what I received.

Q Did you have enough information to render some opinions?

A I did, at the level that I did.

Q Okay. Now you and me, we've worked together before, haven't we?

A We have.

Q Okay. How many times would you estimate?

A I think going back to -- I think we met maybe the early 2000s. So how many cases have there been? Ten, about.

Q Okay.

A I think a couple have gone to testimony.

Q Now you're not doing this for free today, are you?

A No.

Q Okay. How much are you being paid?

A The typical hourly on doing accident reconstruction work is $300 an hour.

Q Thirty?

A Three hundred.

Q Oh, 300. Okay.

A Three hundred. And sitting here in this seat is 400 per hour.

Q Okay. Have you been able to calculate how much that would be -- we're not going to hold you to it if it's too high. But can you estimate, because they're going to want to know, that you get paid for your --

A Do you mean through the end of today or up to today?

Q Through the end of today.

A I believe the work that went into this was maybe about eight hours' worth. So that times 300 is what I would have billed already. And then today, it's 1500 for half a day.

Q All right.

MR. GARDNER: You okay with that? Shocking.

BY MR. GARDNER:

Q What did you do to investigate during that eight hours?

A Several things. I did research on the vehicle, which is always important when we're looking at damage. So one of the things is I evaluated what we had in the way of specifications on the vehicle and what's available in the databases. Is there the graphic display of the vehicle, Mr. Gardner?

Q Yeah. Just a moment.

MR. GARDNER: Can we put that up, Your Honor? Can we put that on the screen, the photo?

THE COURT: Yeah. You'll need to put it on the screen.

Mr. Cloward, you've seen it?

MR. CLOWARD: I'm sorry. What was it?

MR. GARDNER: The photograph.

MR. CLOWARD: That's fine, Judge.

THE COURT: Sir, you can step down.

THE WITNESS: But how about for the panel?
THE COURT: Yeah. We'll put -- it'll be up on the television.
THE WITNESS: I definitely want that. Or do you need to see it.
MR. GARDNER: Well --
THE COURT: He needs to put it on the --
THE WITNESS: Oh, I see.
THE COURT: -- ELMO.
MR. GARDNER: Yeah.
THE COURT: And then it'll project onto the TV.
THE WITNESS: Got it.
THE COURT: Then the jurors will be able to see it.
THE WITNESS: Okay.
THE COURT: Yeah. If you want to step down, so that you can --
THE WITNESS: Sure.
THE COURT: -- show them on the TV, that might easiest.
THE WITNESS: We're not there, but yes, I would.
THE COURT: Got it.

BY MR. GARDNER:

Q Okay. Can you see that okay?

A I can, yes. Thanks.

Q Okay.

A I didn't realize this was an ELMO.

Q What else did you do?

A Like I said, the first thing we did was look at the specs on the

vehicle, when it was made, what the platform is, the manufacturer, what the weights are, you know, the whole thing about the vehicle, whether it's unibody or not, and determine what the general nature of the vehicle is, and then determine the nature of the striking vehicle.

And so, if we look at a collision, the two vehicles engage. What I want to do is know as much as I can about both vehicles. That's --

Q Why?

A Why? Then because we can evaluate -- it turns out to be Newton's third law, which is when two surfaces meet and pressurize each other, the forces are equal and opposite, so which would say that any force that made the damage that we see on the screen onto the Ford would have been the same pounds force into the bus. So the forces will be equal and opposite. So whatever force it took to make this damage will have been the same force in the bus, and vice versa.

Q Okay.

A All right. So that's a key thing. That -- I had to go through that, and I actually got into part of the accident reconstruction there as well. But that is what I had to start with.

Q Okay. How long have you been providing forensic testimony on work?

A I think first case was in 1991 and, you know, did some work on that. I think I testified around then the first time.

Q Now let me ask. In 1991, how many years had you been out of school?

A A few.

Q Ten years or --
A Yeah.
Q Okay.
A Ten, 11.
Q Okay. You ever follow up with the attorneys after the case is over to find out how you did?
A Yes and no. Sometimes they'll call me. Sometimes not. Typically, my job is over when I exit. And that's the end of it. Whether who wins or loses, that's up to the Court and panel. So I'm here pretty much to state opinions on this. And the jury is going to evaluate their opinion.
Q Okay. And we talked about the accidents. Do you have an estimate of how many accidents you've investigated?
A Yeah. But I wouldn't use the words investigated. I would use the word accident reconstructed or evaluated. But investigation comes really at the scene, typically with the police and sometimes an investigator. But in my case, it's after -- way after the fact, two, three years sometimes.
Q Okay. What is technical area?
A I'm sorry?
Q What is a technical area, technical area?
A Of?
Q Of what you did.
A Oh. Well, I would call this -- it was an accident reconstruction. And then based on it, we look at the forced motions of the vehicle and the occupant, leading to an injury reconstruction, which essentially is a biomechanics review of the mechanism of injury of the occupant.

Q What are the percentages of people like me hiring you, a defense attorney versus the plaintiff's side?

A Over the years I've tried to keep it 50/50. I try not to do -- you know, a lot of guys will have just only defense cases or only plaintiff. But I try to keep it in the middle. It really depends on who's calling me in a given week or year as to how many defense cases I have. But for the most part, over the years, it's been 50/50.

Q Have you ever worked for the opposing party?

A The opposing firm?

Q Yeah.

A Don't believe so.

Q You say this is an accident reconstruction?

A Yes.

Q Describe what an accident reconstruction consists of.

A All right. Well, what I'm trying to do when I look at the damages of the vehicles and then what's on the vehicle repair estimate is I'm trying to evaluate the mechanics of the accident and, as I said, then the mechanism of injury. But the mechanics of the accident involves the engagement of the vehicles and then the forced motions of the occupants inside, which is the key.

Q Okay. Do you hold any professional degrees?

A Well, I'm a PE, a registered professional engineer. I have been a licensed general contractor only so I could be a consultant in that field. And you're talking about licenses, Mr. Gardner.

Q Yes, please.

A I'm also a judge for the Nevada State Athletic Commission. I just Moutai fights professionally when they have them here.

Q You a fighter yourself?

A I trained for a number of years. I'm certainly not fighting now.

Q Okay.

A Fighters are 20. Yes.

Q Just one of the things that happen when you get older, right?

A Thank you.

Q Have you ever been -- have you ever failed in being able to testify as an expert in forensics?

A You mean as asked to leave?

Q Yeah.

A No.

Q Or not allowed to testify.

A No. I have had a couple of restrictions over the 125 trials based on foundation laid by my client to the Court, which was a mile above my head. But there were areas there within the law that I was not allowed to testify. They said we -- you can't testify here, but you can testify here.

Q Okay.

A That's all I know.

Q Okay. What kind of ongoing education did you undergo when you left college?

A You know, one of the things that was important in getting an accident reconstruction is seeing applied education in accident reconstruction. I mean my physics background at the mechanical

engineering level did go through that, but not in the detail though of motor vehicle accidents or even premises accidents. It's mainly physics. So I took a series of courses in accident reconstruction.

Q Now I think we already established that you did a report in this case, didn't you?

A I did.

Q Just broad strokes. What are you describing in this report? Are you reporting on human factors, reconstruction? What is your intent?

A This is a report that deals with the mechanics of the accident and the mechanism of the injury. So first thing, in any reconstruction that you hear about or of any evaluation in a courtroom, you first got to do the accident reconstruction. You've got to figure out that mechanics of the accident was that caused the damages. Then the damages go from whatever we see here to the movement of the occupant. There's only injury when we have movement of the occupant. There's not -- if the occupant is not moved or he's not moved very much. If it's within elastic range, then there's no injury. So it depends how much the occupant is moved. It's not about the damage of the vehicle. It's about the movement that is suddenly imposed on the occupant.

Q Okay. In your report, is there anything in there about human factors?

A There really is -- not human factors, per se. There is a biomechanics review, I believe.

Q Okay.

A And then there is certainly an accident reconstruction, which

ties into my mechanical engineering background. But human factors deals with things like vision, perception, reaction time, cognitive thought. I don't believe that's part of this case.

Q Yeah. So you're not here as a human factors expert. You're just here as a reconstructionist and a -- what else was that?

A Yeah. Accident reconstruction and injury reconstruction.

Q Okay. And is that the type of information that is in your report?

A It is.

Q Let's look at the report. If you want, go ahead and pull that out.

A Okay.

Q When did you prepare this?

A Well, the date on top here says November 4th of 2016.

Q And is there any difficulty in doing what you do the further away from the accident you get? For example, is your report going to be accurate even though it was like four years after the accident?

A Yes, if the data is there. If the data is not there, then no. But in this case, we had pretty much what I needed. I mean, obviously, we could have had more. But -- and I always say that.

Q Okay.

A But notwithstanding, there's plenty here to state an opinion, at least at the level that I did.

Q Can you tell us, individually, what type of information you used?

A Yeah. I did go through the documents earlier that we received. I had eight different documents arrive. And I think I cited those earlier.

Q Okay. Do you have an engagement letter in your file, do you

think?

A I recall looking at the file this morning. There is a letter from the law office. Yes.

Q Do you get work from others other than attorneys?

A I used to. I don't know. There's only -- I find there's only 24 hours in a day. And there's just so much work to do. This is about all I do anymore, just evaluate accidents.

Q You still do premises work?

A Yes, some. Yes.

Q Describe what that is.

A Premises is obviously about a building or some location where, typically, somebody falls and gets hurt. You want to look at the mechanics of why they got hurt, what the environment was, and what the factors leading into that injury were.

Q Okay. Is there any data analysis in this case? Did you just say there wasn't or --

A As in premises analysis? No.

Q Yeah. I mean -- okay. So that's completely separate.

A Correct.

Q So the recon and the premises or the vehicle and premises, is there any other specialty that you're involved with?

A This case was primarily about accident reconstruction and mechanical engineering, and injury reconstruction, mechanism of injury, and my biomechanics background.

Q I just want to make sure I've gone through your resume here.

Did you come up with any opinions in the area that you were hired to review about this automobile accident?

A I did.

Q Okay. In your mind, is there a -- is there one party that's more liable than the other?

MR. CLOWARD: Your Honor, I'm going to object. That's a fact decision for the jurors. Number two, it's outside the scope of his designation. Number three, he provided zero analysis regarding --

THE COURT: Objection sustained.

MR. GARDNER: Your Honor, what?

THE COURT: The objection is sustained. If he was --

MR. GARDNER: Okay. I was just asking -- regarding --

THE COURT: Just rephrase the question, Mr. Gardner.

MR. GARDNER: I've already forgot the question.

THE COURT: So just ask a new one.

BY MR. GARDNER:

Q Okay. You go by Dr. Baker with a PhD?

A It depends on the situation.

Q Okay. What does it depend on?

A How formal the environment is.

Q Okay. Is this a formal environment?

A This would be.

Q Okay. So I should call you Dr. Baker?

A If you like. It's not necessary.

Q Now the report that you prepared, you've got it in front of you,

correct?

A Yes.

Q How many pages does the report consist of?

A The total, I believe, was six pages. Actually, it's four pages of text. So it's four.

Q Okay. What else is there?

A I thought there was an appendix. I'm not seeing it here. So we'll go with the four.

Q Okay. I've got a couple of reports here. And I just want to clarify what they are. What's the date on the one that you're looking at?

A This report is dated November 4, 2016.

Q Okay.

[Counsel confer]

BY MR. GARDNER:

Q So and I understand you've worked on this about eight hours, or the report?

A Yeah. I have to go back to the exact records and the billing, but I believe that that was it. It was about that.

Q Okay. What was your intention when you prepared these reports?

A You know, as with any, it would be to evaluate the mechanics of the accident and the mechanism of the injury, if any, based on forced motions in the vehicle.

Q Can you --

A So again, the injury that we're looking at today is not about the

damage to the vehicle. It's about the individual.

Q Can you simplify that just a little bit for me?

A Sure. Typically, you hear of evaluations being based on damage. An injury is not really based on the damage to the car. We know the car has been injured. Looking at the individual and whether or not the individual's tissues were moved out of elastic ranges during that impulse to the vehicle.

Q Now what does that mean?

A Now it turns -- just -- if I could add one more thing. It turns out that the more damage, the more force applied. The less damage, the less force applied, typically. But it's not a straight line.

Q Okay. How did you characterize the vehicles in this case?

A Damage here on the Mustang, although it looks sort of dramatic, this, as I'm pointing here, is just sheet metal. So this would be considered --

Q Doctor, would you --

MR. GARDNER: Your Honor, may I have Dr. Baker go up to the --

THE COURT: Fine.

MR. GARDNER: -- screen?

THE WITNESS: Sure. Thank you.

BY MR. GARDNER:

Q All right. Start over.

A So if we look at the damage to the vehicle here, this fender is primarily sheet metal. It's not load bearing. What load bearing is is at this

level. So when we get deflection here, every inch of deflection of the bumper at the bumper level, typically about 14 inches up, that's going to be one inch -- one mile per hour speed change. So as we -- what we're looking at is how much this car was jarred when it was hit. If you hit the bumper, if you damage it an inch, you've got about a mile per hour speed change. So if it goes in a foot, it's been -- the speed has been changed about 12 miles an hour. Now that's an important concept. And if I haven't described it well, I should go over it again, because that's very important.

So what we're looking at here is a weaker material than there is behind this piece of plastic. And again, this fascia, which I'm outlining here with my finger, that's just a piece of plastic. The whole thing weighs maybe a pound. It just covers the actual bumper, which is underneath. Typically, there'll be a piece of foam under there. And then under that is a hard steel piece connected to the frame. So now, in this case, this is undoubtedly a unibody, where all that is really one piece. But the bumper is underneath this plastic. This is not really the bumper. This is not a bumper.

Now if we look up here where the damage is fairly profound, if you could see this clearly, there is a little bit of -- there's an impression here, but there's a little bit of direct contact damage at the top of it. You can't see it so much in this photo. You can see it in the smaller one. So there's direct -- the rest of this is referred. That means it's been bent. And again, this is only sheet metal. This is hard. This it not hard. This is sheet metal, which I can't say we could do that with a hammer. But certainly, it doesn't have the load bearing characteristics of the bumper underneath the fascia.

Mr. Gardner, you --

Q Yeah. Would you --

A -- want to go from there?

Q Would you tell us what sheet metal is?

A Sure. So if we've got the hood, the sides, the fenders, this is a thin sheet metal. It's hard metal, but it's thin. It deflects relatively easy compared to the bumper and frame that's underneath this plastic. So what we see in here in the way of six, eight inches of deflection would not be a speed change of six or eight miles per hour. It would be at this bumper height level but not at the fender level. This is lighter, thinner material.

Q And you --

A Does that make sense?

Q When -- yeah, I hope so. Now when you were describing the unibody, will you tell us a little bit more what that is, what that means?

A Yeah. A unibody is a concept come up with by the manufacturers to say that the frame and the body is going to be essentially one piece. And what it amounts to is in the olden days they use to make two railroad tracks. That was the frame. And they would put the body on top of it, and it would all get welded together. And it was pretty solid. That was easy to fix. This is not. This is sort of one piece. And to fix any of this, this is load -- this insight being loadbearing even though it's only sheet metal. But it ends up being one piece, and it is more difficult to repair, because it is the one piece.

Q You keep -- I know I've asked you this, and you've done a good job of explaining it. But --

A Uh-huh.

Q -- the sheet metal, I mean it's a hard material, isn't it?

A Yes.

Q Okay. And when you -- I think you described it as being weak metal.

A Well, it's week compared to the structural material under the bumper fascia. Fascia is the piece of plastic. There's a hard piece of steel underneath. That is the bumper. You can't see the bumper. It's under this plastic that's just a decorative.

Q We don't know, just by this photograph, whether the frame was damaged, do we?

A The only way we can know that is from the vehicle repair estimate. And we do have one entry here which I see in virtually all of these estimates. There is a line item for set up of frame rack and pull for diamond. All that means is what they want to do is they want to set this car on a track and decide if it's square. The pull for diamond typically is if it's off even an eighth of an inch, they wanted to bring it back that eighth of an inch. Typically, with unibody, it will get out that a eighth of an inch. Okay. Now with -- it's a lot easier when they had -- the old days where they had to frame rails and they put the body on top of it. Now the frame rails, that is, with unibody -- and this is most vehicles now. The frame rails and the body are essentially one piece.

Q What's the process that you would go through with trying to square the unibody -- I mean the metal -- the frame?

A This is done at a body shop -- or actually, a frame specialist. It's not even a body shop. The frame specialist will do it. But if a vehicle is

really pushed out of shape, they will pull on it until you get a rectangle again.

Q Well, if a unibody has been bent or damaged, can you get it back to new? If -- is there a machine to do that or --

A The body people will tell you can, but I don't know. There are certain specifications that the manufacturers put down for being square, and it's at the millimeter level. In other words, this has to get straightened that out, it's very, very tight tolerance.

Q Now when somebody is in a unibody car -- I don't know if you'll know this. If I understand you right, this car has a very good strong frame; is that true?

A Yes, it would. Sure.

Q And then the outer, the things that we can see, are much less hard or thick, or whatever?

A Well, that's partially true. What we have here essentially is the whole body in unibody becomes one structure. So even the thin fenders become part of this one piece. All right. The fact is the fenders, the sides, the hood, the roof are thinner. They will take deflection easier than the bumper underneath the fascia.

Q Okay. Look at this photograph. Does this car -- with everything being equal, does this car look like it could be repaired?

A It would to me, yes.

Q Then again, we don't know the -- if the frame was moved or hit or anything, do we?

A Well, the only thing we've got here is, again, they put -- they always do though. You see this in every one of these vehicle repair

estimates. It says frame rack and set up, pull for diamond. I used to see it on virtually every one of these. So I'm assuming they checked to see if it was square. And if it was off a little, they put it back.

Q Okay. What would you consider to be a major off-balance? I know you're talking in millimeters. But are you talking if it's moved an inch or two inches, or whatever?

A That would be a lot, because if that were not straightened out, as the vehicle went down the road, it would have a cavitation to it that you really wouldn't like, and it would be unsafe.

Q Okay. Did you come up with any observations or opinions during the course of your employment?

A In the report, yes.

Q Let's start at the first one. I really just want to ask what the significance is to you. Under observations and opinions, it says at the -- well, you look at it.

MR. CLOWARD: Your Honor, I'm just going to object as to foundation and ask permission to voir dire the witness. Foundation.

MR. GARDNER: I have no objection.

THE COURT: Counsel, approach for a second.

[Bench conference at 2:03 p.m.]

THE COURT: Do you want to do that outside the presence of the jury or do you want to do that with the jury here?

MR. CLOWARD: I'm sorry?

THE COURT: Do you want to do that outside the presence of the jury or do you want to do it with the jury here?

MR. GARDNER: What's it matter?

THE COURT: Okay.

MR. GARDNER: Fine with that?

THE COURT: Yeah. I'm fine.

MR. GARDNER: Okay.

THE COURT: It's up to you all.

[Bench conference ends at 2:04 p.m.]

MR. CLOWARD: Permission to proceed, Your Honor.

THE COURT: Go ahead.

MR. CLOWARD: Okay.

VOIR DIRE EXAMINATION

BY MR. CLOWARD:

Q Dr. Baker, how are you?

A Well, thank you.

Q Good. I just want to confirm a couple of things? You ever heard the term show your work?

A Show my work?

Q Yeah.

A No.

Q So when you have like it -- you say you're in high school. You're in like a math class and the teacher says show your work on this math problem?

Have you ever heard that saying?

A No, but I can certainly envision what you mean.

Q Okay. In your report, which is essentially one-and-a-half pages

of opinions, and the first page and the second page are kind of going over things like your curriculum vitae, your fee schedule, list of testimonies, documents reviewed, and so forth, you agree with me that nowhere in your report do you put any calculations of anything in this case, true?

A Correct. The calculations are not there. Correct.

Q You agree that, certainly, an attorney such as myself, working on behalf of a client would want to verify your calculations to determine whether those were accurate?

A Sounds reasonable.

Q Okay. So my question is did you do calculations and you just didn't put them in your report or did you not do any calculations?

A No. I think what we've got here is a summary of what I've done. The file is usually substantially thicker than the four pages. This is a summary to be submitted.

Q Okay. I appreciate that. My question was very direct and very pointed. It was, A, did you perform calculations and you did not put those in your report or, B, did you do no calculations?

A There was area here where we did do calculations based on the crush damage that I saw on the struck vehicle.

Q Okay. Now, usually, crush damage is determined by photogrammetry, meaning there's a software that you plug the photos into and that gives you some sort of a calculation, correct?

A Yeah. What we're trying to do is determine the depth and the width of the particular damage you're describing.

Q And you use a software program to assist you -- a software

program that has been validated, tested, and certified as being reliable, true?

A You can. You can use that. There are several out there.

Q You did not do that in this case, did you?

A That's correct.

Q You eyeballed it, didn't you?

A I estimated from the scale of dimensions that I know on the vehicle.

Q Okay. And, doctor, is it fair to say that your eyeballing the crush damage in this case has never been peer reviewed, has never been subject to any sort of a review process to determine whether it is accurate, reliable, or a valid methodology?

A Which peer review are we talking about here? Is there a peer that would look at my evaluation of this crush and evaluate it? I'm not sure what you mean.

Q Yes.

A Who would that be?

Q A collection of your peers. Like a peer reviewed article that you could submit to the SAE, a peer reviewed article that you could submit to some crash forensics group, that could validate your methodologies as being accurate, reliable methodologies for calculating crush damage.

A So you're suggesting that I take my calculations on this and present it to a group before submitting the report. Is that what I'm hearing?

Q What I'm asking you, doctor, is have you ever submitted your eyeball method of calculating crush damage and extrapolating a delta V

based on your eyeball evaluation, have you ever submitted that to a group of your peers to determine whether it was reliable and whether that was a valid methodology for calculating crush damage and extracting --

A Now before --

Q -- a delta V?

A Sorry to interrupt you. Sorry.

Q Yes or no, doctor. Have you ever submitted it?

A On any case or on this case?

Q On any case?

A No.

Q Doctor, fair to say you did not list in your reports the vehicle weights, true?

A I don't believe that I did here. No.

Q Doctor, fair to say you did not know and did not list the principal direction of force, true?

A No, I did. It's not in the four-page report.

Q Doctor, on page number -- or on number 3, you indicate, quote, there is no point of impact. You did not know the point of impact, correct?

A Can you refer me to that paragraph?

Q It's paragraph 3, page 3, paragraph 3 of your report. And you can follow along and just verify that I read it correctly. Quote, there is no point of impact --

A On the police report.

Q Let me finish, doctor. Area of impact or skid mark specified in the state of Nevada traffic accident report, end quote. True?

A You're right. That's correct. That's what the police report says.
Q Did you ever make any sort of a mathematical calculation as to the point of impact, area of impact, or any determination as to whether there were skid marks in this event?
A You must understand that I have to go from the police report. If they don't indicate the presence of skid marks, I can't assume that there are any.
Q Okay. And, doctor, you agree with me that if you don't have data to enter into a formula or a calculation, you have to have inputs to do certain calculations, correct?
A Correct.
Q So, for instance, if you wanted to add two plus two, you would have to have two to begin with, and you'd have to have another two to add into that calculation, correct?
A Yes.
Q And in this case, you did not know the point of impact, true?
A That's correct.
Q You did not know the area of impact, true?
A That's the same thing. It's a different police term, but correct.
Q And you did not know whether there were any skid marks, correct?
A That's correct.
Q And you never went to the scene to determine whether there were any skid marks, correct?
A That's correct.

Q And you never tested the roadway surface to determine what the coefficient of friction was, true?

A Right.

Q You did not know what the speed of Mr. Morgan's vehicle was, true?

A What we're interested in is the speed change.

Q Yes or no.

A Not the speed. No. The answer is no.

Q You do not know what the speed of Mr. Lujan's vehicle was, correct?

A That's correct. We don't.

Q You did not physically inspect the actual vehicles involved, true?

A Correct.

Q You did not look at the airbag module, true?

A That's correct.

Q You did not look at the event date or record information for either vehicle, true?

A Correct.

MR. CLOWARD: Your Honor, I move to strike this witness' testimony as having improper foundation.

THE COURT: Counsel, approach.

[Bench conference begins at 2:12 p.m.]

THE COURT: Do you want to do that outside the presence of the jury, Mr. Cloward?

MR. CLOWARD: I'm sorry.

THE COURT: Right.

MR. GARDNER: Oh, I -- of course, I [indiscernible]. Your Honor, these are still foundational questions. The question should be why didn't you use these calculations.

THE COURT: All right.

MR. GARDNER: And --

THE COURT: I'm going to send the jury out --

MR. GARDNER: Yeah.

THE COURT: -- so we can sort this out.

MR. CLOWARD: Yeah.

[Bench conference ends at 2:12 p.m.]

THE COURT: -- converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial or any person connected with this trial, by any medium of information including, without limitation, newspapers, television, internet, and radio, or form or express any opinion or any subject connected with the trial until the case is finally submitted to you. I remind you not to do any independent research.

THE MARSHAL: Please rise for the jury.

[Jury exits the courtroom]

[Outside the presence of the jury]

THE COURT: All right. Mr. Gardner, do you want to follow-up with some questions?

MR. GARDNER: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. GARDNER:

Q I think we ended up with the speed calculations. You were going to talk about those. But I've got your report here, and it's a summary. Is it necessary to have any more information than you had in order to do what you've been doing for however long?

A Yeah. You know, that's a good question. There are two ways to evaluate the speed change of the two vehicles.

Q Are these reasonably accepted mechanical theories?

A These are the two methodologies that are taught in the accident reconstruction schools at Texas A and M, Northwestern, and the other places. There are essentially two ways. One involves the conservation of momentum. The other is the conservation of energy. The questions I was just answering, which I answered truthfully, make the conversation of momentum approach not applicable. Without the point of impact, without the point of rest, without the skid marks, I can't do a conservation of momentum approach to getting speeds and delta Vs. I can't do that.

Q Well, then --

A And then I'm required to look at crush damage to evaluate the energy that it took to cause the speed change. So in response to the previous questions, those are absolutely correct. We have no -- we don't know the skid marks. If there were any, they weren't recorded. We don't know the point of impact or the points of rest. Without that and the angles of departure and the angles of approach, without that, I can't use that methodology.

Q So what methodology --

A And I didn't.

Q -- did you use?

A I used the conservation of energy. And to do that, we have to evaluate the amount of crush damage, look at how stiff these particular surfaces are. And from certain research that's been performed over the years, evaluate then what the barrier equivalent velocity is for that crush. And it will give you, essentially, a number that's equivalent to the delta V. The delta V is the speed change. And that correlates, typically, with occupant injury.

Q Okay. Now you eyeballed this damage; is that right?

A Well, I certainly wouldn't use the word eyeball. I used my eyes.

Q Okay.

A And I know certain dimensions on the particular vehicle. And then we put what I believe these dimensions to be into an energy formula.

Q Is that a system that's generally accepted in your profession as being accurate?

A Absolutely.

Q Tell me why. Can you do that?

A Well, it's what we have. It's been proven, according to the laws of physics, that it is valid.

Q Okay.

THE COURT: Sir, what's the formula?

THE WITNESS: Ma'am?

THE COURT: The formula. What is the formula?

THE WITNESS: Oh, I couldn't cite it to you from memory. And typically, I would have all that with me. I was expecting to testify on Monday. I just got in the car and came down here today. So I don't have all my materials with me.

MR. CLOWARD: Well, I'd like to address that, because he has to go based on what's in his report in front of him, because that's the only thing that's been produced. So if he has more material that he didn't produce to us, that's not going to come in ever, because it was -- never been produced to us.

THE COURT: Well, I understand that, Mr. Cloward, but I asked him a question. And he was just responding to my question, because I asked him specifically what the formula was, because I thought that would help me figure this out a little bit.

MR. CLOWARD: And I guess the point that I'm -- that I was trying to make to the Court, and I didn't mean to --

THE COURT: I understand.

MR. CLOWARD: I know it was a little aggressive.

THE COURT: I don't think that the testimony could go before the jury, but I'm making a decision about the validity of this information. And so --

MR. CLOWARD: Well, the fact of the matter is, Your Honor, there are only two reliable accepted methodologies that I'm aware of, photogrammetry and specifically doing hands-on measurements, where you actually measure the crush damage, okay, because you can actually -- you know the depth. You know how much crush it is. The way that a barrier

equivalent velocity is determined is they basically -- they get a vehicle -- and can we excuse the doctor?

THE COURT: Sure. Sir, if you would step out for a minute.

THE WITNESS: Sure.

MR. CLOWARD: The way that they calculate the barrier equivalent velocity, Your Honor, is they take question damage. So they get 24 Ford Mustangs, and they ram them into a fixed barrier, a barrier that does not move. And basically, they know the speed. They know the input of the vehicle. So they -- first off, they'll take the first five and they'll run it into the barrier equivalent at five miles an hour. Then they'll do 10 miles an hour. Then they'll do 15 miles an hour. It's not this vehicle. It's new vehicles every time. It's the Institute of Highway Safety that does this.

After the vehicle gets crushed into the barrier, then they measure how much deformation there is. And based on that, they have a calculation. Okay. This is how much the bumper is going to be deformed. Okay. And they know a specific amount, because they take measurements. And you can actually look on the database and look at how much the measurements are, how much damage, how much intrusion and so forth. They do this for frontal impact, side-impact, rear impacts, the whole nine yards. They -- in doing that way, they know what the inputs are, because they create the inputs as they create the crash.

The second way of doing that is something called photogrammetry. So it's basically like geometry but photogrammetry. It's a mathematical science that takes a picture and calculates using the formula using the software. Okay. I can tell from, you know -- we know that the

bumper on this type of vehicle would normally be six feet wide. Well, we plug it into this software program, and this software program is giving us a calculation that based on the distortion in the photograph, the crush damage is X. Well if the crush damages ask, can go to the Highway Institute, and you can look up okay, if the crush damage is X, then we know that the barrier equivalent velocity was five miles an hour.

Well, Dr. Baker, what he's doing is he's basically eyeballing it. He's saying I'm looking at this, and it looks like it's, you know, a few inches off, and this and that. Well, the problem is that there is zero way to authenticate and determine whether his methodology is reliable. The photogrammetry, that is subject to peer review analysis. That is subject to court analysis. That is subject to Daubert. That is subject to Hallmark. You name the standard. It is subject to those parameters. There is research. There's articles. There is literature on photogrammetry. It's been validated and adopted and approved as a valid method of determining this damage. So it's basically either hand measurement -- and that's why you see -- when you do -- when you see folks do the accident reconstruction, the real pros will have hundreds of photographs with these big long take measures that go to the ground. And they take a ton of photographs with the tape measure in the background. So they can tell exactly what the distortion is in the incident.

You know, this is an issue that, you know, I actually know a little bit about. We had a case with Judge Smith. We argued to Judge Smith. We said look, this guy, Dr. Cannon (phonetic), he should not be allowed to talk to these jurors. He doesn't have the foundation. He doesn't have the

background. He has not done XYZ. Judge Smith allowed him to testify over our objection. We filed --

MR. GARDNER: Your Honor, just what -- I mean --

MR. CLOWARD: Let me finish making the record.

MR. GARDNER: -- what are we doing at this point? We're taking testimony from an attorney.

MR. CLOWARD: Let me please finish.

THE COURT: There's no jurors here, Mr. Gardner.

MR. CLOWARD: Making my record.

THE COURT: He's just arguing.

MR. CLOWARD: So in that case, we filed a motion for new trial, pointed out, again -- who filed a motion in limine. He denied the motion in limine. We pointed out all of the reasons and rationale as to why it was improper to allow that expert to testify in that case. And Judge Smith said you know what, you're right. Granted a new trial. They appealed. It went up to the Court of Appeals. It's McGruder versus Stafford is the written decision. The court went through and basically said yeah, you know what, cannon didn't have this information. He didn't have that information.

THE COURT: Is it published?

MR. CLOWARD: I don't -- it's -- well, it's at Court of Appeals. I don't know how they treat those.

THE COURT: They publish them. And if they're unpublished, you can't cite to them.

MR. CLOWARD: It's just -- it says it's an order of affirmance, July 15, 2016. It cited to Hallmark. So I -- you know, I'm not 100 percent.

THE COURT: It's unpublished.

MR. CLOWARD: Okay. Well, then I would cite to the language in Hallmark. It indicates that to meet the assistance requirement, the expert's testimony must be relevant and the product of reliable methodology. Here, Dr. Baker quote-unquote eyeballing the damage to determine the crush depth is not a reliable methodology. So he -- his testimony should be stricken. He does not have the foundational basis. He performed no calculations to determine the crush damage, therefore, to extrapolate the delta V calculation in this matter. Thanks, Your Honor.

MR. GARDNER: Our position would be that would go to the weight not the admissibility. And if we want to get into a little bit more of a detailed discussion with Dr. Baker about his background, we can do that.

THE COURT: Well, the issue has nothing to do with his background. He certainly is qualified in this area. I don't think there's any question about that. The question is whether --

MR. CLOWARD: I mean and --

THE COURT: -- estimating -- that's the best way to say it. Estimating the original number that you plug into a formula is a valid scientific method.

MR. CLOWARD: And, Your Honor, if I may. I have another report of Dr. Baker where he performs the exact type of analysis that I think that he should have performed in this. And I could show the Court that report. And he actually has calculations. He did measurements. And it's obvious that he actually went out and measured the vehicles, because he has a precise measurements. And he has calculations. If I could publish

that to the Court.

THE COURT: Sure.

MR. GARDNER: I would object, because of its relevance. But -- and every accident is different. And so, just to extrapolate from this case I think is inappropriate, and it's irrelevant, and it lacks foundation.

MR. CLOWARD: Your Honor, may I approach with this information?

THE COURT: Yeah. Yeah. Yeah.

MR. CLOWARD: There is specific pages of crush, but there are also other -- you can see it's quite lengthy.

THE COURT: Oh, there's the formula too. All right. All right. I'll just make this a court exhibit.

[Pause]

THE COURT: Here's the issue that I'm having. And it's really a very narrow issue, Mr. Gardner. But if a calculation is based on an assumption, then the entire calculation -- I don't know, you know, if he's a half inch off, does that change it by 5 miles an hour or 20 miles an hour. And I don't know the answer to that. So I don't know -- it is difficult to assess the reliability of the methodology when it is based on an assumption regarding, you know, basically, his guess of how much crush damage there is by looking at a photograph. Do you have any thoughts on that?

MR. GARDNER: Well, the -- first of all, the -- I think that we were talking a little bit about some things that we hadn't even talked to the doctor about. We could -- perhaps we could bring him back in and ask him some questions. I think he's already though that the peer review -- I don't

even know if there is such a body that could peer review this. We could ask him that. And we could also ask him --

THE COURT: If you want to ask him some additional questions to make a record or flush out the arguments, fine. Just bring him back in.

MR. CLOWARD: And, Your Honor, I could also, just for sake of the record, because the record is important --

THE COURT: The record is important, Mr. Cloward.

MR. CLOWARD: I would like to just cite the language in the Appellant's brief, in the McGruder case, of the testimony in that case. Specifically, the -- this is the direct examination -- or the voir dire. I did voir dire of the witness just last I did.

"Q What was Mr. Stafford's speed?

"A That's not known.

"Q What was Ms. McGruder's exact speed?

"A The only information I have is her testimony of approximately 20 miles per hour when all this began to happen.

"Q Do you know the exact speeds, sir?

"A Well, since we're on a continuum, I can't tell you. We know it starts out at a velocity that has zero velocity. So that changes.

"Q So fair to say that at the time of the impact, you don't know the exact speed?

"A That is correct."

Then further:

"Q Did you test Becky's vehicle to determine whether it was even capable of making skid or whether it had antilock brakes?

"A I did not test her specific vehicle.

"Q Can you tell me the distance that it would have taken to travel, in feet, from El Dora where the bot dots end to Edna?

"A If I knew the distances and the speed, I could tell you the time, and assuming the speed is uniform.

"Q Fair to say you don't know the distance?

"A No, I do not.

"Q Fair to say because you don't know the speed of either vehicle, you don't know how long it would have taken to drive from El Dora to Edna, true?

"A True. And her vehicle pulled forward slightly, a lot."

"How much?"

"A It has a negligible effect on her velocity, and it has to do with how fast she was going when the accident or the conduct occurs. So if she's going 20 miles per hour and the contact occurs, it's going to have a lot less effect than if she's going five miles per hours. And the reason I'm talking about the range is we really don't know here speed when the contact occurred."

So very similar lack of foundation in this case, Your Honor. Very similar.

THE COURT: All right. So let's bring the doctor back in.

MR. GARDNER: And for the record, I do object to that, because we had nothing but counsel testifying. And he doesn't have the qualifications to have been able to --

THE COURT: Well, Mr. Gardner is arguing --

MR. GARDNER: -- do this.

THE COURT: -- not testifying.

MR. GARDNER: Anyway.

THE MARSHAL: Doctor?

THE COURT: Doctor.

[Pause]

THE COURT: All right, Mr. Gardner. Mr. Gardner.

MR. GARDNER: Excuse me?

THE COURT: Are you going to ask the doctor any questions? We brought him in, so you could ask him questions.

MR. GARDNER: Oh, okay.

BY MR. GARDNER:

Q Have you ever heard of the photomacry (sic phonetic) -- how do you pronounce that, photomac- --

A Photogrammetry.

Q Photogrammetry. Have you ever heard of that?

A Sure.

Q And what does photogram mean?

A It's a methodology by which dimensions can be taken from two-dimensional services. So we could estimate. If we had a photogrammetry program here today, we can estimate the length, width, and height of the depths of this crush and it shapes using photogrammetry methods.

Q What other methods of reconstruction are available for you to do the job that you were hired to do? What other method?

A Well, just to put that into context, and for your question earlier,

the idea of evaluating the size of the crush is important. And the photogrammetry will get it to you in a tenth of an inch if done correctly. That is for use in one particular methodology, which is a conservation of energy. The previous questions on skid marks and positions, all that can't happen, because it's a different methodology. We don't have that information. So here, if we can evaluate the stiffness of those surfaces -- that's why I went through that -- and how much their damaged, we can then determine what it would take energy wise to make that damage into a rigid barrier. That typically is equivalent to delta V. Delta V is the instantaneous speed change. And when you hit a barrier, it's all speed change. There's no bounce. There's no spring. It's you hit it. If you're going five miles an hour, the delta V is five.

THE COURT: Right.

THE WITNESS: All right. So it's going to do certain damage. And what we want to do, in evaluating this photo and its crush, is to determine what it would take to do that damage if we were to compress it into a wall at a certain speed.

THE COURT: So how do you figure that out from a photograph any way that could be reproduced by another person?

THE WITNESS: Well, even with photogrammetry there's probably going to -- oh, I think I just turned it off.

THE COURT: That's okay.

THE WITNESS: I think there's going to be a margin for error any time.

THE COURT: There's always a margin of error.

THE WITNESS: Okay. But insofar as did I evaluate that based on scales of the vehicles, because I do know the dimensions of the vehicles -- I know how long the hood is. I know how high the wheel is. I know different dimensions on it, because I looked them up in a database that I have of information on each vehicle. So then I can take from that, known dimensions and scale to this crush and come up with a fairly accurate size of the compression area.

THE COURT: So what does fairly accurate mean to you?

THE WITNESS: Anywhere between, say, half an inch or so would be accurate.

THE COURT: So if you have an error of half an inch, how does that ultimately impact the final calculation?

THE WITNESS: Good question. It would be I'd say within -- it depends on the level of magnitude, of course. But it would be I'd say within maybe a mile-per-hour.

THE COURT: Do you have questions you want to -- any additional questions you want to ask, Mr. Gardner?

MR. GARDNER: Yeah.

BY MR. GARDNER:

Q The delta V method, what is that again?

A Yeah. Can we turn his back on, Mr. Gardner?

Q Yeah.

THE CLERK: It's on the side.

THE MARSHALL: It's on the side.

BY MR. GARDNER:

Q On the side, the right side.

A I touched something.

Q Okay?

A Thank you. Okay. Yes, sir.

Q What does delta V mean? What is that?

A Delta V is the instantaneous change of velocity of a vehicle as a result, essentially, in this case, of a collision. So each vehicle would have a change of velocity. Each vehicle would have its own delta V.

Q Okay. Is that -- now what method did you use to come up with your opinions in this case?

A For me to develop delta V, we couldn't do it with skid marks and the points of rest and points of impact and angles of approach and departure. Could not do that. We had to just look at the vehicle and determine crush damage.

Q How can you do that with just eyeball?

A Well, I was just telling Her Honor. There are certain dimensions on this vehicle that I looked up in a database that I have of all vehicles on the road. It tells me the dimensions of these vehicles.

THE COURT: Sir, you didn't actually measure the car itself though, right?

THE WITNESS: That's -- the actual car?

THE COURT: Because when you're dealing with a two-dimensional -- so what dimensions do you have? Tell me what dimensions you have of the vehicle?

THE WITNESS: Well, we have the height of the -- from the

ground to the top of the tire. We have that. We know what that is. We know what the height of the wheel well is. We know what the length of the hood is. I know the height of the beginning of the A pillar. You see where that is at the windshield? I know that. I know the height of the windshield. All these come out of a database that I have.

THE COURT: Okay.

THE WITNESS: Now this particular vehicle, this Ford Mustang, is of a certain platform, of a certain number of years. So what that means is that the manufacturer used that particular frame and body for three, four, five years. Probably five or six years. And any evaluations of measurements during that period of time will be valid.

THE COURT: I see.

THE WITNESS: Okay. So I have that database. I use those dimensions. And then I can evaluate the crush damage. And this is the way it's done. I'm not sure about submitting this to a committee. I've never done that, nor has anybody else I know.

THE COURT: Well, so once you have those, then what do you do? So you have the measurements of the car.

THE WITNESS: Yeah. You have the measurements of the crush. We know -- we took the measurements of the car --

THE COURT: Uh-huh.

THE WITNESS: -- to develop the measurements of the crush.

THE COURT: Well, how -- but how do you develop the measurements of the crush? So explain that to me.

THE WITNESS: By scaling from -- for example, I know a true

height of that bumper -- and not necessarily in this photo, because this is oblique. We never want oblique photos. This is not a good photo. What we want are perpendicular photos to the damage and the vehicle itself. You always want perpendicular. And you don't ever want on an angle, because they're not true height. But given that --

THE COURT: Do you have those photos?

THE WITNESS: Well, there's other photos in the package. There's at least 9 in this strip, and I think there's 16 others. So between that I can come pretty close to dimensions of the crush. I take that crush, knowing what surface has been damaged. And that is it has a certain stiffness to it. That I look up as well for this vehicle. And given that, I can then determine what energy it would take to do this particular damage. Now what does that do for us? We can --

THE COURT: My issue is more about how you came up with the initial number, because obviously the initial number is not based on a scientifically reliable methodology, whatever you get at the end is not either, right? So my concern is how you measured the crush damage from a two-dimensional photograph. That's my --

THE WITNESS: From the assortment of photographs and known dimensions I have of this vehicle that I can scale off of with a micrometer. So, for example, with the height of the tire -- and I don't remember what it was. But the height of the tire is a certain number of inches based on the tire that it is. I know what that is. Given that, if I set a micrometer on that, I know how many percentage of an inch that is. And I can then relate that to the size of the dimensions of the crush and look at it.

And I think there were 9 plus 16 photographs.

So I look all through those. And several of which had the crush. And what I do is I come up with a number. And then I use the equation that we haven't talked about, which relates crush damage to energy. And that ultimately gives us a [indiscernible] velocity, which gives us a delta V. Delta V correlates with injury.

THE COURT: Mr. Cloward, do you have questions you'd like to --

MR. CLOWARD: Yes, I have some additional questions.

THE COURT: Okay.

VOIR DIRE EXAMINATION

BY MR. CLOWARD:

Q Dr. Baker, you didn't take into consideration that the tires on a vehicle are not stock, did you?

A Well, there's a number of different dimensions here that are no. The tires could be anything.

Q Doctor, yes or no.

A No, huh-uh.

Q And you agree that the profile of the tires would vary the height of the wheel well, true?

A It could, yes.

Q That would also vary the height of the A pillar, true?

A Yes, but we're looking at a fixed dimension not just height from the ground.

Q That would also vary the height of the fender, true?

A If we're only looking from the ground, and you have a larger tire, the answer is yes.

Q And the height of the tire would actually be varied if these were custom rims, true?

A It can, sure.

Q Doctor, does that look like a custom hood to you with the pins there?

A You know, over the years they had certain modifications made. I don't know if that's customer or standard. It doesn't look particularly standard.

Q It looks more custom, doesn't it?

A Just the way the pins are, it could be.

Q And you didn't take any consideration into a custom hood, did you?

A No. The vehicle wasn't available.

Q Okay. So again, you agree that the way that you calculated this was basically by eyeballing it?

A Based on known dimensions that are fixed on the vehicle, yes.

Q Okay.

A I don't use the word eyeball, but it's an estimate based on the photographs that we have and true length.

MR. CLOWARD: We reassert our challenge on his qualifications and the assistance on Hallmark.

THE COURT: All right. So I'm going to deny that based on the testimony of Dr. Baker that he used known measurements to obtain a

measurement of the crush damage to essentially obtain a scale, so that the crush damage could be measured based on other known measurements. I think, at that point, comes an issue more for cross-examination than to exclude the testimony. Let's just take like five minutes, and then I'll bring the jury back in since it's almost 3.

MR. CLOWARD: Okay.

[Recess taken from 2:49 p.m. to 2:59 p.m.]

THE MARSHAL: Please rise for the jury.

[Jury enters the courtroom.]

THE MARSHAL: Please be seated.

THE COURT: Back on the record on case number A 718769, Morgan versus Lujan. We have the presence of all of our jurors, counsel, and parties.

Mr. Gardner.

MR. GARDNER: Could I have the last question read back to me? I'm not even sure where I was.

THE COURT: We don't have the ability to do that. We have a recording system.

MR. GARDNER: Oh, okay. Okay. All right.

DIRECT EXAMINATION

BY MR. GARDNER:

Q The -- is there any name for the method you use to come up with your opinions? Like photomotography (sic phonetic), or whatever it is.

A Yes.

Q What is it called?

A Well, there were two available. One was not acceptable, because we didn't have the data. The other is based on the conservation of energy that exists in a motor vehicle collision. That is, energy is not created or disposed of. The one that's not available to us is the conservation of momentum, which is much more complex and is not available in this accident scenario, as we don't have the data. We don't have skid marks. We don't have points of impact. We don't have points of rest. So to answer your question, we used the conservation of energy to develop a speed loss for this particular vehicle based on the crush damage.

Q Is this a generally accepted method in your line of work?

A Yes, those are the two. And to answer your question, when you asked about photogrammetry, photogrammetry is a software process. It's a particular piece of software or type of software that will look at a two-dimensional surface in certain ways and determine the dimensions of certain points on the photograph.

So, for example, using a photogrammetry program, you could develop a feel for what the quest dimensions on that dent were.

Q How does that work? How do you -- how can you come up with those?

A Well, typically, what -- and I have the program. What it does is it'll actually plot this particular shape and move it around to -- computationally and try to determine length, width, width, and depth, which is a tricky thing, because we're looking at two dimensions here. So that's what the software does.

MR. GARDNER: Your Honor, may I have Dr. Baker go by the

screen?

THE COURT: That's fine.

BY MR. GARDNER:

Q I just want to make sure that we're clear on this and that the jury knows exactly what you're pointing to.

A Sure.

Q Okay. You were just describing the crush, weren't you?

A Yes. So we've got a fairly good size dent here. And what it amounts to is using this particular program, it will look at this two-dimensional photograph and come up with a three-dimensional idea of what these dimensions are, length, width, width, and depth.

And with that, very accurately, you can get an estimate of what the dimensions of that crush were.

Q Do you use that method at all on anything?

A I have in other years. It's a good method. I use it. Sometimes I don't use it. I didn't use it here. I'm reasonably accurate with looking at dimensions that I know from the vehicle and then scaling with a micrometer off the photograph to parts of the crush that I want to measure.

Q Okay. And that's a generally accepted in your profession?

A Everybody I know uses that, yes.

Q Okay. Thank you. Now did you have any opinions about this vehicle accident regarding speed, velocity, G forces, or --

A Yeah. And let mention -- well, it just came up, G force. She is an acceleration. It can be negative. It can be a negative deceleration. It can be minus, but it's not a force. G is an acceleration or deceleration.

Force can be derived from acceleration or deceleration. But we don't have the -- G force is like Xerox copy. It's a term. G is, for example, if I drop a pencil, it falls and it accelerates as it reaches the Earth. That's one G.

Q Would you explain that to me like I'm a child? I don't -- didn't understand everything you just said.

A Sorry.

Q Take it down a little bit, would you? Explain that a little bit more simply, would you?

A Okay. And I think it's an important concept, that you have G and gravity. Based on physics that's beyond my scope and, you know, even my education -- I never got into quantum physics. But we have the Earth and it's got a certain amount of mass. As a result, it attracts things. And it is so much bigger than everything else than when we drop it, whether it be a tree or a pencil, it literally falls at about the same acceleration. And that's because compared to the size of the Earth, the difference is negligible. So when we drop something, it gets faster and faster and faster. It gets down to the Earth. That's 1G.

Q Okay.

A That is numerically equivalent to 32.2 feet per second squared, which means every second the speed gets 32 feet a second faster as it's falling. That is 1G.

Q Okay. And did you say that all objects fall at the same G level or --

A Yeah. They actually don't, but the decimal point is way out. And for our purposes, yes.

Q Okay. Say that. What does that mean, member?
A Well, and again, if we got the big ball, the Earth.
Q Yeah.
A And we've got my pencil -- we've got -- or my pen, the massive difference in mass, it's so substantial that --
Q What's mass?
A -- as I drop it, it accelerates toward the Earth.
Q Describe mass.
A The Earth attracts it.
Q What is mass again?
A Mass is size.
Q Okay.
A Now pounds is one measurement of mass, but it goes beyond that. It's a little bit involved. But it's about size.
Q Now let's -- you've got your report in front of you; is that right?
A I do.
Q Okay. Are your opinions about this accident contained in that report?
A Yes.
Q Okay. Let's do this then. Let's go to the report. And I want you to tell me where are your opinions found? What page?
A Well, they start on page 3, which I refer to observations and opinions. Observations are things that I see, and opinions are things that are derived from what I see. So most reports I will separate them. In this particular report I didn't. They're together.

Q Okay. What is your first opinion?

A The first of which is an observation. And it talks about Mr. Morgan. It says at the time of the incident, he was 22 years old, 6'5, 230 pounds. He worked in an athletic club. It's an --

Q Well, why is that significant?

A -- observation.

Q Dumb it down for me, because I don't understand all this.

A Yes, sir.

Q Why is that an important figure for you to put into a report? What does it do?

A Well, it is important, because we've got certain things there that affect the degree to which somebody will or will not be injured given a certain impulse to the vehicle. And that would be -- we've got age. We've got size. And we've got a certain feel for athleticism. Typically, I would extrapolate the difference between, say, Goldberg with the World Wrestling Federation and maybe, you know, another female driver in her late eighties. You know, they both drive vehicles, but they're going to respond to impulse differently.

Q Okay.

A So there are factors that affect injury vulnerability in these collisions. And this particular first activation points out a couple.

Q Okay. What's your next opinion or observation?

A It talks about what was found -- this is an observation. It talks about what was found at the ER. And in that report by Dr. Sanders, now he indicates that the Sunrise Hospital Emergency Room indicated that the CT

scan on the cervical spine was negative. This is on the intake. Cervical spine was cleared. Patient had full range of motion of his neck on intake. Report also indicated that the CT scan of the brain showed no acute process, that is, no protrusion, no mass, no fractures, no hemorrhage. There was no mention in the cited emergency room report of a traumatic head strike, which is, of course, important. Those are not my words. Those are from Dr. Sanders.

Q And --

A So he's citing what he found at the emergency room.

Q Now why is that important in this analysis?

A Well, I don't want to get -- I don't want to make a medical opinion, which I'm not allowed to do, which I don't want to do. But as far as what Dr. Sanders is saying in here, what he's saying and what I observed him saying is that on intake at the ER, there is not significant neck trauma.

Q Is there anything else in there from Dr. Sanders that talks about what nonsignificant means?

A Well, nonsignificant is atraumatic, A as in not traumatic, nontender, essentially asymptomatic on intake at the ER.

Q Okay. So nothing wrong. Is that what it's saying?

A That's what it says.

Q Okay. What is your third opinion?

A This also an observation pointed out by counsel earlier about there being no point of impact, no area of impact, which on the police report is the same thing. They used to call it POI. Now they call it AOI. It's the same thing. It's where it happened. It doesn't list it on this particular police

report. So given that, there is no point of impact listed. There is no area of impact listed. There are no skid marks listed in the State of Nevada traffic accident report.

So that means we cannot use the conservation of momentum approach, because it needs points of rest, points of impact, angles of approach, and angles of departure with any skid marks. That will give us pre-collision speeds of both vehicles --

Q Okay.

A -- knowing the masses, which we can look up. But given that, we can't do that. We can't use that here, because we don't have -- as counsel pointed out earlier in those questions, we don't have point of impact. We don't have skid marks. We don't know. We have to go to a different methodology, which I cite in the rest of item 3. So, however, there is a method that we can use from the inspection of the photographs and the vehicle repair estimate.

Q And that's the system you use?

A Yes. And one thing I would like to point out and that is going to come out this particular opinion -- do you have the photograph of the bus handy? Is it --

Q I think I do, but I don't know where it is right now.

A Well, I think it's important that we bring up the idea that whatever did the damage on this vehicle, the force is going to be equal and opposite on the bus. So whatever we have on the bus, whatever that was, that's the same force required to do this array of things that we see on the Mustang. And again, not to be technical, but that's Newton's third law.

They're going to be equal and opposite.

Q Okay.

A Okay. So given that, if we can evaluate what these crushes we can develop a feel for how much energy it took to make this crush and relate it to what that would be if it struck a barrier. Not another car but a barrier. And the reason I want to do that is because I want to determine speed change of that vehicle. If you hit another car, you get essentially a spring. But we can get a number if we base this on hitting a barrier. That change of velocity and hitting a barrier would be equivalent energy wise to whatever we see in crush. So what I want to do is I wanted to develop a barrier equivalent velocity of that dent. I want to see how many miles per hour into a barrier it would take to make this dent.

Q Okay.

A That's essentially what we did. That's number three.

Q What's number -- what's your next opinion?

A That is also a combination of an opinion and an airbag -- I'm sorry -- an opinion and an observation. It was about the airbag.

Q What about the airbag?

A So the airbags did not deploy on impact with the bus.

Q Why is that significant?

A And that is significant because we know how they set airbags. They set airbags -- we talked about striking a barrier. They strike them so that a front-end collision into a barrier at 10 to 14 miles per hour will make their bag deploy. Now that would be a delta V. Delta V is the change of velocity, how many miles per hour it changed as a result of hitting the

barrier. That would be 10 to 14 miles per hour to make it deploy?

Q Okay. Now --

A So if we don't deploy, we must assume that the delta V of this collision with the sheet metal is below 10 to 14 miles per hour into a barrier. Not into a car, into a barrier.

Q And what's significant of a barrier versus a car?

A Well, the idea of the barrier, if you're going to strike a rigid barrier with a car, whatever the approach speed is, 5 miles per hour, or 20 miles, whatever it is, that's the delta V. It's going to be all speed change. So we're always looking for a change of vehicle, because that correlates with injury. So more speed change, more potential for injury. Less speed change, less potential for injury, but it's not a straight line.

Q What does that mean?

A It means there's no Mason Dixon line between injury and noninjury at a certain mile per hour. It depends on lots of variables.

Q Just give us a few variables.

A A few variables, age, size, conditioning, gender, smoking versus nonsmoking, pre-existing conditions. Over the years I've accumulated I think 14 of them. But it's along those lines. And it's what makes us different from each other and how we respond to the impulse that's going to happen when this vehicle collides with another vehicle.

Q Okay. Now look at the photograph of the vehicle. It looks like there was impact on the left front. Would that crush normally or naturally set off an airbag or would it have to be straight on?

A Typically, it would not. No, it is straight on. That is the idea.

The damage -- again, there is a component here that is straight on. That's the part we're interested in. Even if it was oblique.

Q Can you stand up and show the jury what you're talking about?

MR. GARDNER: If that's okay, Your Honor.

THE COURT: Uh-huh.

THE WITNESS: Even if the angle approach to this vehicle was oblique in tis collision.

BY MR. GARDNER:

Q What does that mean, oblique?

A Oh, on an angle. It's on an angle. It's not perpendicular and it's not parallel. It's on an angle. Even though it's on this angle, there's going to be a component that's front to back. And that front to back is going to either set off or not set off the airbag monitor. And so, at 10 to 14 miles per hour of this vehicle into a barrier, we'll have an airbag deployment. Again, the idea of the barrier is a number related to the speed change of the car which correlates with the movement of the injury -- of the individual in the driver's seat.

Q And why is that significant then in your analysis?

A Well, again, with delta V, the higher the delta V the more the occupant is going to be moved. And the more movement there is the more likely there is for injury there is, and vice versa.

Q So the less movement we have -- and again, it's not about damage. It's about this person. So it's about whether his tissues respond to this impulse or not. So given this, if we have a lot more damage, we're going to have a lot more motion of that individual inside. And just to add one

additional thing, given that the crush is here, with the individual inside, when this strikes he is coming forward and leftward.

Q Thank you. What is your next opinion?

A Well, within number four, I had an evaluation of delta V. And I said, in my opinion, it's between the calculations I did. It's between 5 and 10 miles per hour. So that means that vehicle changed speed between 5 and 10 miles per hour as a result of this collision. Low speed change, low potential for injury. High speed change, high potential. But it's not a straight line.

Q Okay. And that --

A And that's the end of number four.

Q That seems common sense to me. But is there a law, Newton's law or anything, that establishes that?

A No. You know, it's just the opposite. I mean I see a lot of people say well, over five miles an hour you're going to be injured in under five you can't be injured. It's not that way at all. It's based on those variables we talked about a minute ago. And, you know, that really is the bottom line. So it depends on each individual in each collision.

Q And what factors in this collision -- if you -- I'm not even sure if I'm asking it the right way. But what factors were the most important to you when you evaluated this change or this -- came up with these opinions?

A Well, certainly, the damage to the vehicle was the basis of the evaluation. And then looking at it, coming up with a speed change, which it, at best, is estimated. Again, we can't -- even with the fine equations we have based on the law of physics, we -- you know, we can't get this to a

tenth of a mile per hour. But based on the speed change, we can determine what happened to the to the occupant. And that's the goal.

Q Do you have an opinion on what happened to the occupant inside the car?

A Yeah. I already stated. So he would have gone forward and leftward with this particular crush as we see it here.

Q All right. Do you have any other opinions or observations?

A Well, there's several more listed on the report.

Q You can take a minute and read them if you'd like.

A I do indicate what I just said here, that the upper body would have moved forward in flexion, in a direction towards that damage. So it'd go forward and to the left. Based on Newton's first law, he'd continue forward at the speed he was driving before this all happened. And that's why he continues to go forward, because of Newton's first law, which states that we're going to continue emotion in the direction we're traveling until acted upon by an outside force. Obviously, the outside force is the shoulder belt is going to restrain him, which I believe it does engage, and any bracing that he does. So those are the forces.

Q Do you have any opinions about whether this type of an accident can cause bodily injury damages?

A Bodily injury?

Q Yes.

A It depends on the individual. It depends on the individual. There's a wide array of individual differences between people. I've seen them at no delta Vs. And racecar drivers have delta Vs of 60, and they don't

get hurt. So it really depends on a lot of factors. There is no Mason-Dixon line between injury and no injury at so many mile per hour delta V speed change.

Q So you're saying, at 10 miles an hour, you're not going to get this severity of an injury, and so forth, 10 miles, 15 miles, 20. They don't correlate with certain types of injuries?

A It correlates to a certain degree, but it's not a straight line correlation. In other words, as the --

Q Describe that.

A -- number gets bigger -- I'm sorry?

Q Describe that straight-line thing again.

A Sure. The idea of if we have 5, 10, 20 mile-per-hour delta Vs, that is change in velocity of the vehicle, the higher that number the more likely you're going to have more movement of individuals. The more movement we have the more likely tissues is going to get moved out of an elastic range. And we all have elastic ranges, and everyone's is different from everyone else's.

Q Okay.

A All of -- say me, for example. All of these tissues are all different from every other when I have. So it just depends on those particular tissues. The question is did the impulse from this collision move tissue out of an elastic range. That's the question. That's the basis of the whole debate here.

Q And your opinion on moving tissue?

A Well, again, that would be a medical opinion. That would be a

medical opinion. Did he see injury? Okay. I'm telling you how it happened or didn't happen. But whether it did happen has to come from a medical eval.

Q Okay.

A Okay. Now I read you one that was the ER intake.

Q Okay.

A Okay. I think we did complete number five.

Q Did you already talk about what the -- your observations were of the ER? I can't remember.

A I did, yeah. Dr. Sanders cited the ER report. And that's when we went through the nontender, a traumatic, negative CT, on and on. We -- I read that a little bit ago.

Q All right. Any other opinions or observations?

A Well, one thing I think is important to note is that when a shoulder belt engages. And typically, that will be at three-quarters of -- or .7, three-quarters of a G. So if I'm going to decelerate at three-quarters of a G, there's a point at which the harder I decelerate, the more likely that total belt is going to be to engage.

Q Okay. Did you come up with any opinions about speed of the vehicles?

A Yeah. I believe I already cited that. The fact is that -- and again, it's not about speed of collision that's indicative of injury, because you could have 65 miles an hour striking 60, and that's really a five mile per hour accident. So it's really not the -- you know, it's not the speed of the collisions. What it is, it's the change of speed that we're interested in, in

determining injury mechanism. And in this particular one, I felt it to be a speed change of between 5 and 10 miles per hour. That's the key number not how fast they were going.

Q And with a speed change such as that, do you have an opinion on whether that speed change could have caused injuries?

A Well, it depends on the individual.

Q Well, based upon your reading of the ER report and Sanders' report.

A Well, the ER report says no.

Q Okay.

A The ER -- now I was not there and nor is that my field, you know. I don't do the medical eval, but those who did said no. But, you know, they're going to have to get them in this --

Q Okay.

A -- place. All right.

Q I understand. Anything else? Any other opinions or --

A Well, that was number four. I think we want to look at Mr. Morgan's anthrometrics (sic). Anthropometrics are, anthropo- being man, metrics being measurement, is body sizes. 22 years old, 6'5, 230. That's the larger individual that's in the maybe top one percentile of the bell-shaped curve of people that would be on a [indiscernible]. That's a larger individual. In my experience, a lot fewer people at 22 are injured then at 42. That's just my expense from my cases over the years.

Q Say that again.

A A lot fewer people are -- I'm sorry. Did I say a lot more injured?

They're less injured.

Q Let's make sure that -- yeah.

A If I said that wrong, I apologize. A lot more people are injured at 42 than 22.

Q Okay.

A And that's because the elasticity of the tissues become worn down, and they age.

Q Okay.

A Okay. So Mr. Morgan being 22 at the time, this is not an age where I see, in my practice -- I can't say this medically. In my practice, I don't see a lot of 22-year-olds in collisions claiming injury. That's about 5,000 cases.

Q What else? What other opinions do you have?

A I think Mr. Morgan did say something about a head strike. And I'm not entirely sure. I'd have to go back to the records. But I believe there was a claim of a head strike. Thought he may have been unconscious. At this level of speed change, that would not be common. I certainly can't say anything is impossible, but it wouldn't be common. He is a larger, taller individual. Can [indiscernible]? The answer is yes, but I haven't seen it. I haven't seen head strikes at this speed in this type of collision.

Q What's your next opinion?

A I think I already stated it. We were talking about, you know, tissues are more pliable at 22 than 40 -- 42. The bottom line in any injury, and in the accident is this. It is whether tissue is moved out of an elastic range. It's not about the bumper, you know. It's not about the skid marks.

It's whether tissue was moved out of the elastic range. If it happens, there's stretching and tearing. If it doesn't, it doesn't.

Q Now is it your opinion that the delta -- or the accident -- this accident was too minor to cause injuries?

A It is on the lower side of speed change. It's not the lowest I've seen by any means but is on the lower side. Low tends to be eight miles per hour speed change and below. This is sort of in that zone, this being 5 to 10, roughly, 7.5 in the middle. It's going to be about that area. This would be considered a lower speed.

Q Okay. What's your next opinion?

A It was to go back to the medical report where they cited disc issues, disc bulges, lumbar pain, thoracic pain, facet hypertrophy, neck pain. What I saw described in my practice -- and again, I haven't seen every accident that's out there. I've seen about 5,000. All right. But that's not every accident. But in my practice, these injuries are indicative of more traumatic collision, a higher speed collision than what we're seeing here.

Q Okay. So you think that the photographs show a higher speed collision than a lower speed?

A No. No. The injuries that we're having cited are more consistent with a higher speed accident in my practice.

Q Okay. What's your next opinion?

A That was the last one.

Q That's your last one. Overall, when you look at the report and the photographs and evidence and things, can you just summarize your opinion regarding the type of accident and the type of injuries you would

expect from that?

A Well, you know, again, we have a -- we don't have a perpendicular accident. We have an angled accident, a collision. It does a certain amount of damage to sheet metal primarily, not at the bumper level. It's easier to crush the sheet metal than it is at the bumper level, which is to say that this change of the car itself is going to be lower for the same amount of damage to sheet metal then to something really hard. And that's -- that would make sense. So in other words, something that's soft, it bends easy and shows damage. Something that's very firm does not bend as easily.

Q Okay.

A All right. So we've got damage to sheet metal. The bottom line though, it's not about the sheet metal. It's about the person. And the person then would have a certain movement as a result of this collision. The question of the panel and me and you is did that tissue move out of elastic range --

Q Okay.

A -- as a result of this impulse to the sheet metal.

Q Are there any other opinions that we haven't covered?

A Well, and to summarize that, this is at the lower end. It's not at the higher end. It's at the lower end, just to add that. That's the opinion.

Q Okay.

MR. GARDNER: That's all the questions I have.

THE WITNESS: Yes, sir.

THE COURT: Mr. Cloward.

MS. CLOWARD: Yes.

CROSS-EXAMINATION

BY MS. CLOWARD:

Q Okay. Dr. Baker, let's get into this. You just said that the type of injuries you saw in this case are the type you usually see in a more serious crash, true?

A Correct.

Q And in this case, you could have used the photogrammetry to have a more precise evaluation of the damage in this case, but you chose not to, true?

A Photo what?

Q Photogrammetry.

A Yes.

Q And you didn't use that, did you?

A Did not, no.

Q You had that option?

A Yes.

Q Instead, you eyeballed it?

A I didn't use that term. I estimated it.

Q Okay.

A Based on known dimensions of the Mustang that I have from the database.

Q He didn't take into consideration that the wheels on this vehicle were custom, true?

A Did not.

Q You didn't take into consideration that the hood is custom, true?
A Correct.
Q You didn't take into consideration that the scoop of the bumper is custom, did you?
A You want to point that out to me?
Q Yeah, certainly. Right here.
A Correct.
Q You didn't evaluate the bumper sensor to determine whether or not the airbag module was even intact, true?
A Well, that wasn't available, but that's correct.
Q You didn't determine whether there were any recalls on this vehicle for an airbag, true?
A No.
Q You could have done that, true?
A I have software that'll do that. Sure.
Q Yeah. You're routinely -- I cross-examined you back in 2012, in trial. And you testified, at that time, that you had testified in approximately 130 jury trials.
A It's in that area somewhere.
Q So has it gone down since 2012?
A No.
Q So since 2012, it was 130 jury trials. Now you testified earlier I thought it was 125.
A Between that and 130, somewhere in that area. I haven't been called a lot in the last couple of years. Most of the cases I've been on have

settled. Very few trials.

Q Okay.

A In previous years, I was testifying once a week.

Q You've previously testified, have you not, that people can be injured in bumper car amusement rides?

A That they can?

Q Yes.

A You'd have to read that back to me. There's a -- there is one paper on that where they used two subjects, who are both athletes, and neither gets injured.

Q I'm happy --

A The delta Vs are between four and five.

Q I'm happy to read it to you.

A Sure.

Q It's case A10-622287-C, Graniere versus Deyer [phonetic], in front of Judge Weiss [phonetic]. The question was:

"Doctor, you've testified that people can get hurt in impacts like a bumper car, true?

"A It depends on the individual, the direction, and the amount of impact.

"Q You have testified previously to that, true?

"A In a bumper car?

"Q Yes.

"A Sure. If you got a bumper car 5 to 6 mile-per-hour delta V, it can happen."

A Okay. I thought you were talking about the paper that's been written on the subject. Yes. If you have a 5 to 6 --

Q Doctor, have you testified that people can get hurt in bumper car --

A I don't remember that particular dialogue. However, I can tell you that at 5 to 6, it's possible and it's not impossible.

Q Okay.

A It's based on those factors that we talked about earlier.

Q Doctor, you recently authored a report for an attorney in town. It's Sharon Torada [phonetic], where you're retained as a rebuttal expert.

A Yes.

Q I believe you authored the report February 9, 2018. So --

A That case is ongoing. You have a report of an ongoing case?

Q Yes, I do.

MR. GARDNER: Well, Your Honor, I would object. If it's an ongoing case, then --

THE WITNESS: It --

MR. GARDNER: -- I don't think that should be a proper issue for cross-examination.

MS. CLOWARD: It's a matter of public record.

THE COURT: Overruled.

BY MS. CLOWARD:

Q Doctor, in that case, you were hired for the plaintiff, true?

A Yes.

Q And you stated in that case that you had actually collected data,

a 15-year study from the U.S. Department of Transportation, National Highway Traffic Safety Administration, and that at delta Vs of 0 to 5 miles per hour, 29.69 percent of the 2,688 people had minor, moderate, or serious injuries.

A Either AIS 0, 1, or 2. Not sure what you're reading, but that's what it is.

Q Okay.

A AIS 1, 0, or 2.

Q And --

A Up to -- that's the -- and again, I didn't take that data. That's the government's study that I was citing.

Q So 29 percent of the people in those crashes sustained injury that was minor, moderate, or serious, true?

A In 0 to -- I'd have to see the chart, because --

Q Zero to 5 miles per hour.

A I hope you're quoting me correctly.

Q Well, this was, in fact, on your website. You have a website that's devoted to your work, true?

A It's not active, but yes, there is one.

Q It's called JohnEBakerPhD.com, true?

A That's correct.

Q And you listed myths and facts of low speed crashes, true?

A You're correct.

Q Okay. So this data is also on your website.

A Correct.

Q Okay. So another reference in this report and on your website that you gave is that for delta Vs of 6 to 10 miles per hour, 65.45 percent of the 25,202 occupants either had minor, moderate, severe, or serious, critical, or fatal injuries; isn't that true?

MR. GARDNER: Objection. I think that he ought to be able to see the report to refresh his recollection before there's a --

MS. CLOWARD: It's on his website.

THE WITNESS: You know, it's not a report. It's a table per -- published by the federal government more than 15 years ago, reflecting a 15-year study that relates delta V to AIS injury level, AIS 0 being no injury, 1 being very minor, then minor, then severe. And it goes up from there. I'd have to see that table, because I don't feel you're quoting me correctly.

MS. CLOWARD: Okay. May I approach?

THE COURT: Sure.

[Counsel confer]

BY MS. CLOWARD:

Q Do you recognize this document, doctor?

A Sharon Torada, I do. Yeah. I was deposed on that about two weeks ago.

Q Is that a copy of the report that you prepared in this case?

A Yes.

Q Do you see the numbers written on the yellow path? Did I read those numbers accurately?

A Yes.

Q Thank you. Dr. Baker, how come you took your website down?

A It's too much work to stay up with it. And I have so many cases and engagements. I really don't have time to work with it.

Q I'm going to read some of the myths that you wrote on your website, and I wanted to see if you still agree with those myths, okay?

A Sure.

Q Myth number one, no damage equals no injury.

A That's a myth.

Q Myth number two, below 5 mile per hour delta V equals no injury.

A Now we've talked about that today. That is a myth.

Q Number three, myth, human volunteers not injured in stage collisions equal no injury.

A If there's -- in stage collisions, which they do under testing conditions, the fact that nobody gets hurt does not extrapolate to a real-world situation. So that's a myth.

Q Myth number four, Gs less than on roller coasters equal no injury.

A Gs less than?

Q On roller coasters equal no injury.

A Well, that's in reference to the roller coaster paper. That would be a myth.

Q People do get injured on roller coasters?

A They do.

Q Myth number five, delta V less than in bumper cars equals no injury?

A Read that again, please.
Q Myth number five, delta V less than in bumper cars equals no injury.
A That would be a myth.
Q Because people get injured in bumper cars, as you've previously testified, true?
A They do.
Q Myth number six, Gs less than Gs in everyday life equal no injury?
A That would be a myth.
Q Number seven, low damage equals no occupant movement can occur?
A That's definitely a myth.
Q Myth number eight, low damage equals there is no mechanism of injury.
A Again, please.
Q Low damage equals there is no mechanism of injury.
A That's a myth, but it depends on a series of factors, including the stiffness of the vehicle and the energy management system. But as it states, that is a myth.
Q You actually reference a video by Thomas Zobbo [phonetic], showing how people get injured at delta Vs of 1, 2, 3, 4, and 5 miles per hour, correct?
A Correct.
Q How come you didn't bring that video in to show and educate

these jurors on how people get injured?

A What you've got to do is you got to cite it correctly though. I'm not saying they're injured at 1, 2, 3, 4, and 5. What I'm saying is they do move. They do move. If you have movement that moves tissues out of an elastic range, then you can have stretching and tearing. But there will be movement, and that's what the myth is about.

Q Okay. How come you didn't bring that video in to show the jurors?

A Well, that's a rear-end collision. This is a front-end collision. The mechanics are entirely different.

Q Okay. Dr. Baker, I want to just make sure exactly what you did and did you refer to. You agree that you didn't actually review any of the medical records yourself, true?

A I can't recall. I think what I saw the two years ago was the ER report and Dr. Sanders' report.

Q Okay. If you want to just pull up your --

A You quoted him.

Q Okay. If you want to just pull up your report. We'll start on page 2.

A Yes.

Q Number one, you say -- you state deposition transcript of Aaron Morgan. Number two, independent medical examination report of Steven Sanders. Number three, traffic accident report. Number four, nine color digital photographs of the damage, 2007 E450 bus. Number five, Plaintiff's responses to the Defendant's interrogatories. Number six, 16 color

photographs of the damaged Mustang. Number seven, vehicle repair estimate. Number eight, video file, second footage taken at the scene.

That's all that's listed as documents that you reviewed, true?

A Correct.

Q So it's fair to say that you did not review any of the medical records yourself in this case?

A It seemed to me I thought I saw the ER report, but I don't have it listed here. I do have Dr. Sanders' report, 83 pages, which may have included it. I'm not -- I can't remember. I think it did.

Q Do you know why you weren't provided all of the medical records, so that you could see the medical records from the actual medical providers in this case?

A You were asking me why the law firm didn't provide this to me?

Q Sure.

A I don't know the answer to that.

Q Would you have liked to seen those?

A Typically, yes.

Q Okay. Now I want to make it clear. I you did estimate the speed of the vehicle of the bus, correct?

A I believe that I did, but that was an estimate based on the crush to this vehicle and the crush to the bus.

Q And you estimated the bus was going approximately 10 to 15 miles per hour?

A At collision, yes, that's what it appeared.

Q Okay. Now one other question. You've previously testified that

the -- for braking, human reaction time is 1.5 to 2.5 seconds?

A It really -- it actually can be anything. The number we typically use is 1.5 seconds. But if somebody has fear, panic, dissonance, disbelief, can except what's happening, it could go to several seconds. But typically, the number we use is 1.5 seconds.

Q That's the very minimum, correct?

A Not really. It can be one second.

Q Okay. And then once an individual actually recognizes a danger, and once they take steps to avoid that danger, let's say they put their foot on the brake, there is something called vehicle lag. Have you heard of that?

A Of course. But what you've cited is -- includes the reaction. It's not just the perception time. The one-and-a-half is the perception-reaction time.

Q Correct.

A Then followed by the vehicle lag, which is about, in this case, may be 3/10 of a second.

Q And you've authored reports that have the vehicle lag up to one second, true?

A It just -- it depends on the situation. It can be, especially with a semitruck.

Q Okay.

A Semitruck, for sure, will be one full second.

Q Okay.

MS. CLOWARD: Your Honor, just Court's indulgence. One

moment. I'm just checking my notes.

[Pause]

BY MS. CLOWARD:

Q And you're not here to testify that the forces in this incident were not sufficient to cause injury to Mr. Morgan, true?

A Actually, whether he's injured or not has to come from a medical practitioner. I'm telling you where the bodies went and how hard or how not hard they were moved.

Q Okay.

A So I guess the answer to your question is yes. I'm not here to testify whether he's injured or not.

Q And you've previously listed that an delta V -- motor vehicle accidents with a delta V of 6 to 10 miles per hour, 65 percent of those folks suffered minor, moderate, serious, critical, or even fatal injuries, true?

A Yeah. I want to go back to that. But it is a noticeable number. Yes.

Q I read your report correctly.

A I want to see the table again. Let me put it that way.

Q Okay. Are you representing that I misrepresented the -- your report?

A No, I'm not doing that.

Q Okay.

A But that seems high to me. But notwithstanding there is a real database from the federal government with no ax to grind, that relates delta V to AIS level, abbreviated injury scale level injury, over a 15-year period.

Q Doctor, I'm going to approach and hand you a copy of the -- your website. Printed the pages from your website. I just want to have you take a look at it and see if it's an accurate copy of your website, okay?

A Sure.

MS. CLOWARD: May I approach, Your Honor?

THE COURT: Go ahead.

THE WITNESS: Okay. I'll check that. But yes, that's what it says.

BY MS. CLOWARD:

Q Okay. Thank you.

MS. CLOWARD: No further questions, Your Honor.

THE COURT: Mr. Gardner.

REDIRECT EXAMINATION

BY MR. GARDNER:

Q Have all your opinions been to a reasonable degree of mechanical and factors standards?

A Tell me what that means.

Q Did you sit up there and lie about your credentials and the delta V and things like that?

A No.

Q And you used methods generally used in your profession to get these numbers; is that correct?

A Correct.

Q Is that correct?

A That is correct. Yes.

MR. GARDNER: I have nothing further.

THE COURT: Mr. Cloward.

MS. CLOWARD: I don't have anything further.

THE COURT: All right. Anything from the jury? Great.

Counsel, approach.

You're not done yet. Hold on. Sorry.

[Indiscernible bench conference begins at 3:54 p.m.]

THE COURT: So, Mr. Baker, I'm going to ask you a question. If you could just look at the jury when you answer so they can hear you.

THE WITNESS: Sure.

THE COURT: Were you able to observe any rotational movement of Mr. Morgan's vehicle?

THE WITNESS: Of the vehicle?

THE COURT: Yes.

THE WITNESS: There should have been a slight rotation based on the fact that the primary direction of force is inward. There might have been a slight rotation counter clockwise. However, I don't see that to have been significant.

THE COURT: Any follow up?

THE WITNESS: Not as in a spin or a real hard rotation, no. I don't see that.

THE COURT: All right. Thank you, sir. You are now free to go.

THE WITNESS: Yes, ma'am.

MR. GARDNER: Your Honor, we're ready to start with the read in. I have my gentleman here.

AARON O'DELL, SWORN

THE COURT: Sir, go ahead and have a seat. Good afternoon. Can you please give us your real name and then spell your real name for the record?

MR. O'DELL: My real name?

THE COURT: Your actual name.

MR. O'DELL: Aaron O'Dell.

THE COURT: Can you spell that for me?

MR. O'DELL: A-A-R-O-N, O-D-E-L-L.

THE COURT: Okay. And you will be reading, do we have that so we can publish it?

MR. GARDNER: I've got, this is Morgan's original. I'm looking --

THE COURT: What --

MR. GARDNER: What's that?

THE COURT: Do you have Mr. Lujan's, right?

THE CLERK: Yes.

MR. GARDNER: Yes, I'm getting that.

THE COURT: Okay. So [indiscernible] the original so she can publish it.

MR. CLOWARD: Your Honor, I'm not sure if we have, if he has the original, but we wouldn't oppose a copy, printing a copy out.

THE COURT: All right.

MR. CLOWARD: Just trying to speak --

THE COURT: So we just need something -- if we can publish a

copy, but the published copy goes into the Clerk. So we need something to publish.

MR. GARDNER: Did we submit Mr. Long's to Court, to the Court?

THE COURT: No.

MR. CLOWARD: Your Honor, I have an extra copy.

THE COURT: Thank you. Thank you, Mr. Gardner.

MR. GARDNER: Thank you.

MR. CLOWARD: Yes, you're good. We have another copy, so we could give it to Mister--

THE COURT: Well, we'll publish this one and then we'll give it to him.

UNIDENTIFIED SPEAKER: Correct, they'll give it to --

THE COURT: All right, so the reader will be reading from the deposition of --

MR. GARDNER: It's actually from the last jury trial.

THE COURT: Oh, it's -- okay, I see. I see, from the prior testimony of Mr. Lujan. Got it.

MR. GARDNER: And I think we -- didn't we agree I'm not going to read the objections?

THE COURT: Sir, can I just see that real quick? Counsel, approach for a second.

[Bench conference begins at 3:59 p.m.]

THE COURT: I just wanted to make sure that we don't have any issue here. When I say could counsel approach for a second, right here

at the time right when I said it. So, all right. Why is this print out?

UNIDENTIFIED SPEAKER: I don't know why the okay is marked out.

THE COURT: It looks like there's much of it.

UNIDENTIFIED SPEAKER: Oh, we marked out, obviously --

THE COURT: What he's not reading?

UNIDENTIFIED SPEAKER: The objections that deal with other attorney issues that --

THE COURT: Okay, so you guys don't have any issues though --

UNIDENTIFIED SPEAKER: Correct.

THE COURT: -- with what's being read?

UNIDENTIFIED SPEAKER: This is actually our version that we presented.

UNIDENTIFIED SPEAKER: And if I do, stop me.

THE COURT: All right, fine.

[Bench conference ends at 4:00 p.m.]

MR. GARDNER: Okay, I'm going to ask you, Mr. O'Dell, to turn to the bottom of 108, page 108. Can you see that?

MR. O'DELL: Yes.

MR. GARDNER: Okay. Now I'm going to be the Court, you're going to be the Witness. Fair enough?

MR. O'DELL: Yes.

MR. GARDNER: Okay. Start at the top line, the Witness.

MR. O'DELL: 108?

MR. GARDNER: Yes.

[Counsel confer]

MR. GARDNER: Okay, do you see near the bottom where it says Direct Examination?

MR. O'DELL: Yes.

MR. GARDNER: Okay. I'm going to start right there.

[Prior testimony of David Lujan was read into the record.]

MR. GARDNER: All right, Mr. Lujan, at the time of the accident of April 2014, were you employed with Montera Meadows?

MR. O'DELL: Yes.

MR. GARDNER: And what was your employment?

MR. O'DELL: I was the bus driver.

MR. GARDNER: Okay. And what is your understanding of the relationship of Montera Meadows to Harvest Management?

MR. O'DELL: Harvest Management was our corporate office.

MR. GARDNER: Okay.

MR. O'DELL: Montera Meadows is just the local.

MR. GARDNER: Okay, all right. And this accident happened on April 1st, 2014, correct?

MR. O'DELL: Yes, sir.

[Counsel confer]

MR. GARDNER: All right, go to page 111. Just tell me when you're there.

MR. O'DELL: I'm here.

MR. GARDNER: Okay. I'm starting at the top. Okay, so this

accident happened on April 1st, 2014, right?

MR. O'DELL: Yes, sir.

MR. GARDNER: And it happened, you pulled out of the -- what's that park, Paradise Park?

MR. O'DELL: Yes.

MR. GARDNER: Pulled out of the parking lot and drove right in front of Mr. Morgan; is that right?

MR. O'DELL: Well, I looked both ways and then I didn't see any traffic coming. And then, so I proceeded across three lanes. And then we collided in the right lane where he was going north, I believe.

MR. GARDNER: Okay, all right. And at the scene of the accident, did you speak to anyone?

MR. O'DELL: Just the officer, and then briefly him and his mother. I mean his mother and I were talking about him being -- I was concerned about him.

MR. GARDNER: Okay. And isn't it true that you said to his mother you were sorry for this accident?

MR. O'DELL: Yes.

MR. GARDNER: And that you were actually pretty worked up and crying after the accident?

MR. O'DELL: I don't know that I was crying, I was more concerned that I was crying.

MR. GARDNER: Okay.

MR. O'DELL: Because I never been in an accident like that.

MR. GARDNER: Okay. And isn't it true that you continued to

apologize to Mr. Morgan's mother for this crash?

MR. O'DELL: I apologized. I don't know if I did it continuously, but I did apologize.

MR. GARDNER: Okay. And in fact you were so concerned about Erin after the accident, isn't it true that you told her mother that you would continue to pray for Aaron?

MR. O'DELL: Yes.

MR. GARDNER: Okay. So this was a big accident?

MR. O'DELL: Well, it was for me because I've never been in one in a bus. So, it was for me.

MR. GARDNER: Okay, but you were so concerned about Aaron and what he may have injured that you felt the need to pray for him.

MR. O'DELL: Well, based on my religion, I can't speak for anybody else, but my, I'm a religious person. So, you know, prayer is at least, in our church, something you would do for somebody who you think might be ill or sick.

MR. GARDNER: Okay. And you spoke to the officer, correct?

MR. O'DELL: Yes.

MR. GARDNER: And you didn't tell the officer at the scene it was Aaron's fault, correct?

MR. O'DELL: No, I never placed blame.

MR. GARDNER: Okay. And so tell me how this works. You caused this accident, and how does it work corporate wise? You got to fill out paperwork?

MR. O'DELL: Yes, I go.

MR. GARDNER: First of all, let me object to the form of the question. I think he's referenced cause and I'm not sure that's been established. Go ahead and read [indiscernible\. And this is from Mr. Boyack You can answer. What's the --

MR. O'DELL: The protocol was I was then back to the facility. I was sent for immediate drug and alcohol tests and I filled out our accident report.

MR. GARDNER: Okay, all right. I've got those copies here. This is Defense Exhibit A that I'm going to show you, the incident accident report. Is that your handwriting?

MR. O'DELL: Yes.

MR. GARDNER: Okay. And I'm just going to scroll down. If you can, read for us what you wrote here, or there.

MR. O'DELL: It says that I stopped at the driveway. I looked both ways and then I pulled out. I pulled out and I did not see him. And then that's when the collision happened, or --

MR. GARDNER: Right. Just read it word for word if you can. I can zoom in if you want me to.

MR. O'DELL: All right. I stopped at the driveway and looked both ways and pulled.

MR. GARDNER: Go to 114, please.

MR. O'DELL: Okay.

MR. GARDNER: Yes, there you go. Yes, there you go. Sorry.

MR. O'DELL: Okay. Again, I stopped at the driveway, looked both ways, pulled out, and he hit the bus by the passenger door.

MR. GARDNER: Okay. By you writing he hit the bus are you putting fault on Aaron?

MR. O'DELL: I was saying where the vehicle struck our vehicle. I wasn't placing blame.

MR. GARDNER: Okay. Now I'll have you look at, I think, which is Exhibit B, the driver's statement report, if you can read that.

MR. O'DELL: I was pulling out of the driveway, stopped and looked both, or stopped and looked and pulled out, and the Mustang hit the bus.

MR. GARDNER: Okay. Then is this the bottom of it? This is all your handwriting?

MR. O'DELL: Yes.

MR. GARDNER: Okay.

MR. O'DELL: It was --

MR. GARDNER: Okay, hold on. Go to the next page, 118. Go to 126, Aaron, if you would.

MR. O'DELL: Okay.

MR. GARDNER: Okay?

MR. O'DELL: I'm here.

MR. GARDNER: Mr. Lujan, earlier you testified, I don't want to put words in your mouth so I'm going to ask you it this way. Did you testify earlier that you've never placed blame on Aaron for this accident?

MR. O'DELL: Do I start down here? Okay.

MR. GARDNER: Go to line 16.

MR. O'DELL: Okay.

MR. GARDNER: Read that.
MR. O'DELL: No, I don't think I placed blame on Aaron.
MR. GARDNER: Okay.
MR. O'DELL: Or I wasn't.
MR. GARDNER: Okay.
MR. O'DELL: I mean I wasn't.
MR. GARDNER: Okay. So when you filled out reports and other documents with your corporation, your intent was never to place blame on Aaron?
MR. O'DELL: Right. I was just, I was stating what had happened with the accident.
MR. GARDNER: Okay.
MR. O'DELL: That's what the report says, state what happened.
MR. GARDNER: Okay, all right. I'm going to show you a document that is a court document. I'm going to show you portions of it. [Indiscernible] spoke about this in his opening about the answer to our complaint. The complaint's a law suit. The answer is filled by the attorneys in the matter. And there's a section called affirmative defenses. Can you see that on your screen?
MR. O'DELL: Yes.
MR. GARDNER: Okay. If you will look at -- oh, go to page 128.
MR. O'DELL: I'm here.
MR. GARDNER: Okay. If you will look at, I highlighted this portion, but a second affirmative defense it says negligence the Plaintiff

caused or contributed to any injuries or damages that the Plaintiff may have sustained. And the negligence of Plaintiff in comparison with the alleged negligence of Defendant, if any, requires that the damages of Plaintiff be denied or be diminished in proportion to the amount of negligence attributable to the Plaintiff. Let's just focus on that highlighted section.

Do you have any proof that negligence of Aaron caused or contributed to any injuries?

MR. O'DELL: No.

MR. GARDNER: Thank you. Also, third affirmative defense. First section, the Plaintiff had knowledge of and was fully aware of the condition existing at the time of the accident and assumed any risks. Are you aware of any proof that Aaron was aware of the condition of your vehicle entering McLeod Drive?

MR. O'DELL: No.

MR. GARDNER: Now we'll focus on number six, the occurrence during which Plaintiff received said injuries, if any, as alleged in the complaint was the result of an unavoidable accident and occurred without the fault of either the Plaintiff or the Defendant. Do you have any proof that this crash was the result of an unavoidable accident or occurred without the fault of either side?

MR. O'DELL: No, I don't have any proof.

MR. GARDNER: Seventh affirmative defense, that the injuries sustained by the Plaintiff, if any, were caused by acts of unknown third persons who were not agents, servants, or employees of these answering defendants, who were acting on behalf of these answering defendants in

any manner or form, and as such, these defendants are not liable in any manner to the Plaintiff.

130. Are you aware of any unknown third party or person that is involved in this accident and is at fault?

MR. O'DELL: No. No.

MR. GARDNER: All right. And I did want to just go through real fast, I believe this is Exhibit D, accident information card, other vehicle. Is this your handwriting?

MR. O'DELL: Yes.

MR. GARDNER: If you can, read for us the description of events.

MR. O'DELL: I was pulling out of the driveway to cross on McLeod Drive. The car was on McLeod Drive. I did not see him. He ran into the bus.

MR. GARDNER: So you wrote you did not see Aaron or his vehicle?

MR. O'DELL: Right.

MR. GARDNER: Is that true today?

MR. O'DELL: Yes.

MR. GARDNER: And yet you pulled out onto McLeod Drive in front of his vehicle and the crash happened.

MR. O'DELL: After looking both ways.

MR. GARDNER: Can you state that answer again, sorry.

MR. O'DELL: After looking both ways. Okay, I don't think I have any -- oh, sorry. I'll stop there.

MR. GARDNER: Would you agree with me that Aaron driving on McLeod at this intersection had the right of way at the time of the accident, correct?

MR. O'DELL: Yes.

MR. GARDNER: Okay.

MR. O'DELL: Yes.

MR. GARDNER: And you would agree with me Aaron did nothing to cause this accident.

Hold on. Go ahead and read line 16.

MR. O'DELL: No, I mean yes. I agree. Sorry.

MR. GARDNER: No other questions. Thank you.

[The readout of prior trial testimony concluded.]

MR. GARDNER: I just have a couple of more questions for you, Aaron. Just kidding. Get out of here.

THE COURT: All right. Counsel approach for a second.

[Bench conference begins at 4:15 p.m.]

THE COURT: All right, so what time is your doctor coming Friday?

UNIDENTIFIED SPEAKER: Monday.

THE COURT: Monday. All right.

UNIDENTIFIED SPEAKER: It's okay. I would love to go home early.

THE COURT: Well, we don't have any other witnesses.

UNIDENTIFIED SPEAKER: I will tell you that I'm still negotiating with the doctor as to what time. I won't have him here in the

afternoon, it would be in the morning. And if --

THE COURT: Do you mean what time? He needs to be here at 9 o'clock.

UNIDENTIFIED SPEAKER: Okay, 9 o'clock?

THE COURT: So just tell him I said he needs to be here at 9 o'clock.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: He's subpoenaed, I'm assuming. If he's irritated with me, then he can, well you can subpoena him and tell him he needs to be here at 9 o'clock.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: Or I'll put him in jail.

UNIDENTIFIED SPEAKER: Sweet.

THE COURT: That would be super fun, wouldn't it? All right.

UNIDENTIFIED SPEAKER: Judge Weis (phonetic) did that one time with Dr. Janssen Dr. Janssen's like I can't come back tomorrow. He's like I don't care. You will be here. It was awesome.

THE COURT: Well, I mean, I appreciate that doctors have very difficult jobs and very difficult schedules. Us too. But you know, we're not trying to [indiscernible] because they can't sort themselves out. So, there we go.

UNIDENTIFIED SPEAKER: Okay, cool.

THE COURT: Okay. So you just have Dr. Sanders, that's it?

UNIDENTIFIED SPEAKER: Yes. Yes.

THE COURT: Okay. So the plan is, how long are we going to

take with Dr. Sanders? Do you have an idea?

UNIDENTIFIED SPEAKER: An hour maybe. Hour and a half, two hours. No more than two hours.

UNIDENTIFIED SPEAKER: Your direct exam?

THE COURT: Total?

UNIDENTIFIED SPEAKER: Oh, I was thinking total between direct and cross. But I'll only have him for maybe just under an hour.

UNIDENTIFIED SPEAKER: About the same, probably.

THE COURT: Okay. So if we start at 9:00, then we should be able to, yes, we should be able to just wrap it up [indiscernible] probably. How long do you think closing's going to take? Do you think an hour and an hour? Maybe what we'll do is do Dr. Sanders, read the instructions, break for lunch. You guys can get set up and organized, and then we'll do closings right after lunch.

UNIDENTIFIED SPEAKER: Perfect.

UNIDENTIFIED SPEAKER: Thank you.

THE COURT: Does that work?

UNIDENTIFIED SPEAKER: Sounds great.

THE COURT: I think we should have the jury out by 3:00 which will give them a couple hours to deliberate. I don't like juries going out too late.

UNIDENTIFIED SPEAKER: Perfect.

UNIDENTIFIED SPEAKER: Thank you.

UNIDENTIFIED SPEAKER: Thank you very much, Your Honor.

[Bench conference ends at 4:17 p.m.]

THE COURT: All right, folks. So here is our plan. We have a doctor who's scheduled to come at 9:00 on Monday morning. At this point, the parties can obviously change their minds because we're not done with the case, but at this point I anticipate that will be our last witness unless something happens. We'll finish up with the doctor's testimony. I would anticipate that I would then read you the jury instructions. We'll break for lunch, and then have closings immediately after lunch tomorrow and get you the case to deliberate by midafternoon. So we'll reconvene Monday at 9:00 a.m.

During this break you are admonished not to talk or converse among yourselves or anyone else on any subject connected with this trial, or read, watch, or listen to any report or commentary on the trial or any person connected with this trial by any media information including, without limitation, newspapers, television, internet, and radio or form or express any opinion on any subject connected with the trial until the case is finally submitted to you. I remind you to not do any research. Everybody have a good weekend, we'll see you Monday.

THE MARSHAL: Please rise.

[Jury out at 4:20 p.m.]

THE COURT: Mr. Boyack?

MR. BOYACK: Yes.

THE COURT: I have final sets of instructions I'm just going to give you. One for Mr. Gardner, one for you.

MR. BOYACK: Thank you.

THE COURT: This is mine.

MR. BOYACK: This is the new set of instructions.

THE COURT: That's the final set. So if you have any other ones, get rid of them. All right, anything else we need to take care of this evening?

UNIDENTIFIED SPEAKER: No, Your Honor.

MR. GARDNER: No, Your Honor.

MR. CLOWARD: Thank you, Judge. Well, I think he probably said enough. But I would just say I'm not sure whether Dr. Baker stated his opinions to a reasonable degree of probability. But I don't know. I just, I'm not moving to strike or anything, I'm just --

THE COURT: All right. I wasn't entirely clear on that myself, Mr. Cloward. But I mean, I think he --

MR. CLOWARD: I would be curious to review the transcript. But I think he kind of --

THE COURT: Well, what he said was can you tell me what that means. And then he said that they were -- that he used methods that were generally accepted in his field, which to me is the same thing. Yes, I mean, he didn't use the magic language that, you know, the magic legal language. But I think that what he said afterwards was really the same thing, that it was, you know --

MR. CLOWARD: Okay. Can we leave the boards here?

THE COURT: Oh yes, you can leave everything. Nothing's going to happen here over the weekend.

THE MARSHAL: We're going to [indiscernible] this portion of the courtroom. [Indiscernible] to do this, so just leave your boxes and your

[indiscernible] and stuff like that on this side because we're doing that this weekend.

[Proceedings adjourned]

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

Antoinette M. Franks

Antoinette M. Franks
Transcriber

Michelle Rogan

Michelle Rogan
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Tami S. Mayes

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Date: May 4,2018

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