

2008

John Boyle and Norrine Boyle v. Kerry Chirstensen : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOHN BOYLE AND NORRINE BOYLE,

Plaintiffs-Appellants

vs.

KERRY CHRISTENSEN,

Defendant-Appellee.

APPELLEE'S ANSWER BRIEF

Case No. 20080582-CA

Oral Argument Requested

On Appeal from the Third Judicial District Court, Salt Lake County
The Honorable Judge Tyrone E. Medley
Case No. 050912506

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STATEMENT OF JURISDICTION

This appeal comes from the order dismissing Norrine Boyle's loss of consortium claim, issued by the Third Judicial District Court, Salt Lake County, dated May 28, 2008. Plaintiff John Boyle also appeals two of the Third Judicial District Court's decisions during the Trial of this matter, dated June 3-6, 2008. The Utah Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(a)(j) and 78A-4-103(j).

ISSUES ON APPEAL

The following issues are presented to this Court for review:

1. Whether the trial court abused its discretion (*Barrett v. Peterson*, 868 P.2d 96, 98 (Utah Ct. App. 1993)) by asking Plaintiff's tort reform questions listed in his questionnaire in amended form and whether Plaintiff properly preserved this issue by simply proposing the jury questionnaire in the first place, but not objecting to the court's actions or requesting that the original questions be listed in the final questionnaire.
2. Whether the trial court abused its discretion when it overruled Plaintiff's objection to a harmless closing argument reference to a well-known case in an effort to defend her client against Plaintiff counsel's prejudicial use of a per diem damages analysis.
3. Whether the trial court correctly granted Defendant's Motion in Limine dismissing Norrine Boyle's loss of consortium claim.

SUMMARY OF THE ARGUMENT

Unhappy with the jury's decision, Plaintiff now attempts to get a second bite at the apple by appealing what he calls three "reversible errors" by the trial court. It is clear that Plaintiff is grasping as the "errors" alleged in appellants' brief are not errors at all, but simply instances in which the court made a decision that he did not particularly agree with. However, an essential component of disagreeing with a court's decision, is that counsel make that objection known to the court; Plaintiff's counsel failed to do so in during this trial.

Plaintiff is not entitled to have a jury questionnaire presented in the exact depth and extent as he claims. However, even if Plaintiff is entitled to have the exact questions he proposed on his questionnaire asked during voir dire, his attorney failed to preserve the issue for appeal when he did not object after the trial court elected to submit a questionnaire in amended form.

Moreover, defense counsel's harmless reference to the "McDonald's Coffee" case was properly ruled upon by the trial court judge. Defense counsel used the reference in an effort to cast light on Plaintiff counsel's attempt to inflate the damages by presenting them as part of a per diem analysis. Defense counsel's closing argument references were a valid attempt to expose opposing counsel's highly prejudicial technique and defend her client against an excessive judgment. Regardless, even if it was error, it was harmless.

Lastly, Plaintiff's wife, Norrine Boyle, was not injured in this case. The legislature has set forth very specific rules for a loss of consortium claims; Plaintiff's injuries simply do not rise to the level required for his wife, Mrs. Boyle to sustain her claim for loss of consortium.

STATEMENT OF MATERIAL BACKGROUND FACTS

1. On July 22, 2004 plaintiff John Boyle was hit by a vehicle which was traveling at a very low speed in a Smith's parking lot. Plaintiff described the impact as follows:

Q. Okay. Tell me what part of his vehicle struck what part of your body.
A. The left front bumper, hood and tire struck me.
Q. Okay.
A. And as near as -- as near as I can figure, he hit me on the left-hand side front and then I turned because I was bruised on my left side on my arm, my hip, my leg and my shin. So that's all I have to go by.
Q. Okay.
A. I was sore other places, but that was where the impact occurred.
Q. Okay. Were you able to remain upright?
A. I was. I rode up on his hood and grabbed the bumper and the wheel well and stayed upright, otherwise I would have gone down.

(R. 240, Plaintiff Dep. pp. 23:23-24:14; R244-245, 258-259.)

2. Mr. Boyle did not seek out medical attention for injuries allegedly related to this accident until five days after the accident, when he sought only chiropractic treatment from Walter Wagner for left-sided, lower back and buttock pain on July 26, 2004. (See Wagner Records, R. 245 at 267-316.)

3. Mr. Boyle was an existing patient of Dr. Wagner, having seen him for similar left lower back, buttock and leg problems several times prior to the subject accident. Indeed, Mr. Boyle received treatment from Dr. Wagner for these problems as recently as June, 2004, the month prior to the accident. (Id.)
4. Mr. Boyle's medical records and imaging studies demonstrate that he had been complaining of back pain for almost 40 years prior to the July, 2004 accident. Moreover, imaging studies demonstrate that Mr. Boyle was suffering from severe degenerative disc disease at L5-S1 as far back as January of 1990. (Id.)
5. From the date of the accident through May 9, 2005, Mr. Boyle sought chiropractic treatment from Dr. Wagner 23 times. However, 22 of the 23 treatments came in the ten weeks following the accident. After the 23rd treatment, on May 9, 2005, Mr. Boyle did not receive any chiropractic treatment for back pain or injuries for the twelve months. (Id.)
6. On May 19, 2006, Mr. Boyle began receiving chiropractic back treatments again after a separate and unrelated trip and fall accident at work.
(Plaintiff's Dep., R. 260-61(pp. 41:24-42:13.))
7. At the time of his deposition, Mr. Boyle was employed at O'Curran, an

inbound call center, and had been there since December 12, 2005. He made between \$20 to \$35 an hour (depending upon his sales numbers), put in 30 hours a week and received health insurance benefits. (Id. at R. 253-54 (pp. 9-10.)) Mr. Boyle had no plans to quit working at O'Curran. (Id.)

8. At the time of the accident, Mr. Boyle was working for Mascot Financial where he was doing almost exactly the same type of work that he currently does for O'Curran.

Q. Tell me what some of your job responsibilities are now currently on the phone.

A. I just take incoming phone calls, people who have an interest in getting out of debt, and then sell them the product, which is a \$350 product.

....

Q. Okay. Now, tell me what you did for Mascot Financial.

A. You generate your own leads calling people and it's a debt reduction plan as well.

(Id. at R. 254-55(pp. 10:8-11, 11:23-25))

9. Mr. Boyle testified that from August 2004 to December 12, 2005, he could not work anywhere because of his back pain and thus he was unemployed.
(R. 247(p. 13:1.))

10. However, Mr. Boyle admitted later in his deposition that he is an avid golfer and as such, worked at the Glenmoor golf course in West Jordan eight to 16 hours a week between August, 2004 and December of 2005. (R. 262-

266(pp. 46, 50:10-16.)) Presumably, Mr. Boyle slowed down at the golf course when he got the job at O'Curran on December 12, 2005.

Procedural History

11. Prior to trial, on May 21, 2008, the trial court granted Defendant's motion in limine to dismiss plaintiff Norrine Boyle as she had not met the statutory requirements for making a loss of consortium claim. (R. 532-34.)
12. Soon thereafter, this matter was tried before a jury from June 3-6, 2008.
13. Immediately preceding the trial, proposed jury questionnaires were provided to the court by each party. These questionnaires were received by the court and then implemented into a single questionnaire that was created according to the trial court's discretion. (R. 436-40; 596-600.)
14. Neither party objected to the questionnaire that was ultimately fashioned by the court. The court used the questionnaire it fashioned during oral voir dire and asked extensive follow-up questions while the jury was responding to the questionnaire; again, there were no objections. (R. 693, Jury Selection Transcript at pp. 25-89, attached as Addendum Exhibit A.)
15. After the oral voir dire, the trial court met in chambers with counsel for both parties. (*Id.* at 90:13-21.) At this time, there was only one challenge for cause by counsel for the defendant/appellee, which was denied by the

court. (Id. at 91:4-92:16.) During this meeting in chambers, there were no objections to the questionnaire as posed by the trial court and there were no requests to ask additional questions designed to reveal possible juror biases regarding tort reform or ask questions regarding tort reform issues. Indeed, the only request was by counsel for the defendant, who expressed a desire to ask further questions of juror number 8. (Id. at 92:21.)

16. When the jury pool was brought back before the judge, he asked many additional questions of juror number 8. (Id. at 93-97.) After his questioning, the court invited counsel for both parties up for a bench conference and specifically asked if they any further questions, and both parties indicated that they had nothing further. (Id. at 97:10-18.)
17. Both parties then passed the jury panel for cause, (id. at 97:21-98:3) and after the preemptory challenges were made, a jury was selected. At this point, both parties clearly indicated that the jury that eventually impaneled, was the jury that they had selected. (Id. at 99:10-20.)
18. Not one objection was raised during the entire jury selection process. Moreover, the only additional questions requested, were the follow-up questions requested by counsel for the defendant, which the court promptly asked.

19. During closing arguments, counsel for defendant made an innocuous reference to another case in order to make a point:

The third main issue in this case is Mr. Boyle's pain and suffering. What has he been like since the accident? What's expected in the future? Ladies and gentlemen, they want a lot of money for this. A lot of money. What's been written on the board is called a per diem analysis.

Sometimes people like to use that in --

MR. CHRISTENSEN: I object to this, your Honor.

THE COURT: Your objection is overruled.

MS. VAN ORMAN: It's a per diem analysis. How many days has it been since the accident? How many days for the rest of his life? And how much per day is that worth? That's what's been done here. That's how we get verdicts like in the McDonald's case with a cup of coffee.

MR. CHRISTENSEN: Objection.

THE COURT: What's the basis of your objection? You are not stating those succinctly, the legal basis.

MR. CHRISTENSEN: My objection is it's prejudicial and it's not in evidence.

THE COURT: Okay. Your objection is noted but overruled.

(Closing Argument Transcript at R. 695, pp. 48:7-49:5, attached as Addendum Exhibit

B.)

20. After having heard all the evidence, which included extensive medical expert testimony, the jury rendered a verdict for \$62,500.00, which was substantially more when interest was added. (R. 669-673.) Unhappy with the jury's decision, Plaintiffs' appealed. (R. 674-75.)

ARGUMENT

POINT I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ASKING ITS OWN VOIR DIRE QUESTIONS BECAUSE THE COURT HAS “CONSIDERABLE DISCRETION” AND PLAINTIFF DID NOT OBJECT.

The trial court properly fashioned the voir dire questionnaire for potential jurors because it has been granted with great latitude in conducting the jury selection process. Moreover, counsel for Plaintiff did not object to the court’s questionnaire, its extensive follow-up questions or ever request to ask additional tort reform related questions.

While the trial court is required to permit parties to supplement voir dire with questions that are material and proper, the court also has “considerable discretion to ‘contain voir dire within reasonable limits.’” Utah R. Civ Proc. Rule 47(a); Ostler v. Albina Transfer Co., Inc., 781 P.2d 445, 447 (Utah App. 1989). In similar cases, this court has held that whether the trial court abused its discretion is based on the “totality of the questioning.” Ostler, 781 P.2d at 447.

Further, to preserve the right to have a trial issue reviewed on appeal, “the challenging party must point to record evidence to show that they preserved the issue in the trial court.” Utah R. Civ. Proc. Rule 24(a)(5)(A); Ostler, 781 P.2d at 447. It is extremely important that the appellant raised the issue on appeal “in a timely fashion . . . specifically . . . and supported by evidence or relevant legal authority” because the trial court should be “given an opportunity to address a claimed error and, if appropriate,

correct it.” Utah R. App. Proc. Rule 24(j); Williams v. Bench, 193 P.3d 640, 649 (Utah App. 2008). Indeed, timely objection is such an important step that if appellants fail to make the necessary objection clearly and on the record, then they are “deemed to have waived the issue.” Lamb v. B & B Amusements Corp., 869 P.2d 926, 931 (Utah 1993).

A. The Questionnaire Adequately Addressed Tort Reform.

Thus, Appellants must show two things: (1) that they preserved their objection and (2) that the court’s ruling on their objection was an abuse of discretion.

In Ostler, the plaintiff brought a personal injury action against the driver of a commercial truck for an accident in which the plaintiff was paralyzed from the waist down. Ostler, 781 P.2d at 446. The jury found that the plaintiff’s own negligence was the “intervening and sole proximate cause” of the plaintiff’s injuries; plaintiff appealed. Id. One of the issues on appeal by the plaintiff/appellant was that the jury voir dire did not adequately reveal bias related to “tort reform.” Id. at 447. The judge refused to ask the plaintiff’s proposed questions and instead asked the potential jurors would object to providing a large claim (exceeding a million dollars), if they believed people should not resort to the courts to resolve disputes or recover damages, and whether any “believed they were incapable of rendering a fair and true verdict based on the evidence.” Id.

On appeal, the Utah Court of Appeals found that the trial court’s modified “questions [were] substantively responsive to plaintiff’s concerns and appear[ed]

sufficient to reveal ‘tort reform’ bias.” Id. Accordingly, the court upheld the trial court’s use of discretion when conducting the voir dire of prospective jurors.

Here, as in Ostler, the court asked the potential jurors fifteen questions that were sufficient, in their totality and in context, to reveal any tort reform bias, including:

13. Do you have any feelings or beliefs that would prevent you from being fair and impartial regarding persons who have personal injury disputes and who choose to resolve those disputes by going to court?
14. Do you have any personal religious or other beliefs that would prevent you from awarding damages in a large amount, small amount, or zero amount, if warranted and justified by the evidence and the law given you by the Court?
15. Given all considerations and everything you know about this case so far, can you be fair, impartial, neutral, judge of the facts and follow the law as given to you by the Court?

(R. 536)

Plaintiff’s contention that questions 13-14 did not address his tort reform questions is unfounded. Not only did the court, in its discretion, ask questions adequate to ferret out biases regarding tort reform, it asked extensive follow-up questions of the jury during oral voir dire in order to discover any potential bias or prejudice. The trial court is granted substantial discretion during the jury selection process and clearly did not abuse that discretion in this trial.

Plaintiff cites to Alcazar v. U. of U. Hosp., 188 P.3d 490 (UT. App. 2008) in support of his argument that the judgment in this case should be reversed. However, Alcazar is distinguishable from this case.

The underlying facts of Alcazar are different than the case at bar. In Alcazar, the underlying claim was for medical malpractice. Plaintiff proposed a jury questionnaire that contained questions specific to biases and prejudices with regard to medical malpractice claims. In this case, the underlying case deals with an auto/pedestrian accident, but the questions Plaintiff argues should have been asked deal with tort reform in general. Plaintiff's questions dealt with general tort reform opinions and the Court's modified questions also generally dealt with the issues related to tort reform. As such, the court's questions were just as adequate as Plaintiff's to garner information in order to make a preemptory challenge. Nevertheless, Plaintiff failed to preserve this issue for an appeal.

B. Plaintiff Did Not Preserve the Issue for Appeal.

Regardless of whether or not the court abused its discretion in opting not to ask the exact questions proposed by Plaintiff, the issue was simply not preserved for appeal. Plaintiff's silence during the trial on this issue is fatal to his appeal.

In Lamb v. B & B Amusements Corp., the court of appeals declined to consider an issue on appeal when the plaintiff failed to make an objection on the record. 869 P.2d at 931. In Lamb, the plaintiff objected to the admission of an expert's testimony and argued that "an appropriate objection was made at a side bar conference" to that part of the expert's testimony. However, the court found that this action was not sufficient because

the plaintiff's had not adequately preserved the objections on the record. Id.

In this case, counsel for the plaintiff did not even ask the court for a side-bar as in Lamb. Indeed, the record is completely devoid of any attempt by Plaintiff to object to the trial court's questionnaire or insist that he be allowed to ask tort reform related questions beyond what the court wanted to ask. Apparently, the appellant believes that this issue was preserved by the prior submission of his jury questionnaire, which contained different questions regarding tort reform. However, the record shows that the court accepted Plaintiff's questionnaire, along with the defendant's questionnaire, and fashioned a single questionnaire that addressed all the relevant issues. If Plaintiff had a problem with this course of action by the court, then he had an obligation to raise the objection before the court and give the judge a chance to fix the alleged mistake. Indeed, allowing the court a chance to remedy an error is the very reason an issue must be preserved before it can be appealed; no such opportunity was given to the trial court in this instance. Questionnaires were submitted from both sides, the court simplified them and put them together in a single questionnaire and Plaintiff never had problem with it, until after the verdict.

Plaintiff cites to Alcazar v. U. of U. Hosp., 188 P.3d 490 (UT. App. 2008) in support of his argument that the judgment in this case should be reversed. However, Alcazar is distinguishable from this case.

In Alcazar, counsel for the plaintiff clearly preserved his objection when the trial court asked his tort reform questions in an amended form. This court's opinion reads that counsel "repeatedly attempted to persuade the trial court to give the requested voir dire questions, including briefing the rather direct authority from this court on the issue, the [trial] court declined and offered its own unique philosophical approach to voir dire[.]" In the case at hand, counsel for plaintiff did not say one word to object to the trial court's decision, to persuade the trial court that it was wrong, to encourage the trial court to allow him to ask tort reform questions or to brief the issue. This court's ruling in Alcazar is inapplicable to the case at hand because Appellant did not preserve the issue for appeal during the trial.

Plaintiff's failure to make an objection on the record effectively waived this issue and should bar this Court's consideration of the issue on appeal.

POINT II. TRIAL COURT'S RULING ON PLAINTIFF'S OBJECTION WAS NOT ERROR BECAUSE IT ALLOWED "LAWYER TALK" THAT WAS NOT PREJUDICIAL.

In her closing argument, counsel for the defendant was properly attempting to explain to the jury how Plaintiff was, in a prejudicial way, claiming unreasonable damages. In so doing, she made an innocuous statement about a case of national notoriety. This harmless statement allowed her to make a point and did not prejudice Plaintiff in the least bit—indeed, it was to undo the harmful affect of Plaintiff's prejudicial

per diem analysis. Accordingly, Plaintiff's objection was properly overruled and by no means resulted in a "miscarriage of justice." Hales v. Peterson, 360 P.2d 822, 824 (Utah 1961).

Statements offered during closing arguments are allowed at the discretion of the judge because "[t]he trial court is allowed considerable latitude of judgment as to what is permissible for counsel to argue, and as to what may be so prejudicial that a miscarriage of justice could result." Hales, 360 P.2d at 824. Even when a party makes an argument that may be improper or have no bearing to the facts of the case, it does not create reversible error unless it *causes prejudice to the opposing party and affects the fundamental fairness of the trial*. Jones v. Carvell, 641 P.2d 105, 112 (Utah 1982); Wright v. Downing, 211 P.2d 211, 215 (Utah 1949). Such prejudice must be predicated on more than mere "lawyer talk," which is not intended to substitute for evidence, because "the sensible and fair rule" with respect to presenting a mathematical per diem formula to the jury "is to leave the propriety of counsel's use of such argument to the sound discretion of the trial court." Olsen v. Preferred Risk Mutual Ins. Co., 354 P.2d 575, 576 (Utah 1960).

In Hales v. Peterson, a young girl was killed in an automobile/pedestrian accident. 360 P.2d at 824. During closing arguments, the defense stated the driver was not negligent because the highway patrol and investigating officers did not issue any citation

or arrest for wrongdoing. Id. The court recognized that whether a citation was issued was “immaterial” and had “no place in the argument to the jury.” However, the court also found the mere mention of the fact was not enough to cause prejudicial error that required a reversal. Id.

In the case Olsen v. Preferred Risk Mutual Ins. Co., which is particularly on-point, counsel for the plaintiff used a per diem calculation to help the jury determine damages for pain and suffering, and the defense objected. 354 P.2d at 576. The objection was overruled and the defendant appealed. In its appeal, the defendant asserted that the per diem argument was prejudicial—which it was. The Supreme Court affirmed and held that arguments for or against per diem calculations are simply statements or “lawyer talk” that are not meant “to be considered as evidence or a substitute therefor.” Id. However, the court further clarified that indeed a per diem type of argument is actually prejudicial towards defendants and the judge should proceed with caution when allowing plaintiff’s counsel to present it. Id. Nevertheless, the court did not find an abuse of discretion.

In the case at hand, defense counsel did not cast Plaintiff in a negative light by mentioning the “McDonald’s coffee case,” she simply used this reference to counter the prejudicial per diem argument presented by counsel for the plaintiff. Counsel obviously did not mean to offer the case as evidence or a substitute therefor, but simply as a statement offered to appeal to the jury’s common sense. Counsel was not drawing a

comparison between the facts of the case on trial and the “McDonald’s Coffee Case” as was done in State of Utah v. Alonzo, 973 P.2d 975 (Utah 1998). She was not making parallel arguments to another case, counsel was simply stating that Plaintiff’s prejudicial analysis results in excessive verdicts.

Regardless, even if this statement was immaterial or had no place in closing arguments, it did not affect the fundamental fairness of the trial. The statement did not prejudice the plaintiff because the trial court judge clearly instructed the jurors about the relevant issues. This single comment, clearly offered as “lawyer talk,” was not sufficient to create a miscarriage of justice. Consequently, this court should find that Plaintiff was not prejudiced and that the trial court’s ruling on the plaintiff’s objection was not reversible error.

POINT III. THE TRIAL COURT PROPERLY DISMISSED NORRINE BOYLE’S LOSS OF CONSORTIUM CLAIM.

Plaintiffs’ brief could not, and did not identify any factual context which created a issue of fact that is relevant and material to this motion. The evidence that Plaintiffs have presented simply identifies what we already know; that there is a dispute as to the causation and *extent* of Mr. Boyle’s lower back injury. However, Plaintiffs did not indicate any facts showing that Mr. Boyle sustained injuries that would entitle his wife to make a loss of consortium claim under Utah Code § 30-2-11 (“The Loss of Consortium Act” or “the Act”).

The Loss of Consortium Act is very clear; “injured” means a significant permanent injury to a person *that includes the following*:

- (i) a partial or complete *paralysis* of one or more of the extremities;
- (ii) *significant disfigurement*; or
- (iii) *incapability* of the person of *performing the types of jobs the person performed before the injury*.

Id. § 30-2-11(1)(a). (Emphasis added.)

It is undisputed that the relevant plaintiff, John Boyle, did not suffer any type of paralysis, he was not disfigured and he was not completely incapable of performing the types of jobs he performed before. In fact, Plaintiff is working in the same type of profession he did prior to the accident. Therefore, there is no evidence to support Norrine Boyle’s claim for loss of consortium and it should be dismissed before trial.

Plaintiff did not seek out medical attention for injuries allegedly related to this accident until five days after the accident, when he sought only chiropractic treatment from Walter Wagner for left-sided, lower back and buttock pain on July 26, 2004. (R. 267-316.)

Plaintiff’s argue that all of the experts, including those hired by defendant, agree that the impact was sufficient to cause a ruptured disc. Plaintiff claims he had bruises on his left arm, left side, left thigh, left shin and abrasions on his foot and very distinct

pinpointed back pain. While these injuries may seem severe, they simply do not amount to a paralysis.

Moreover, there are no facts to suggest that Plaintiff could no longer work in the same type of employment as before the accident. Plaintiffs suggest that Plaintiff's spine problems are "disabling," yet he is working almost forty hours a week at a job outside of the home that is substantially similar to his pre-accident employment. Moreover, he is still and avid and frequent golfer.

Plaintiff is currently employed at O'Currence, an inbound call center, and has been there since December 12, 2005. He makes between \$20 to \$35 an hour (depending upon his sales numbers), puts in 30 hours a week and receives health benefits. (R. 253-54.) At the time of his deposition, Plaintiff had no plans to quit working at O'Currence. (Id.) While it may or may not be true that Plaintiff is uncomfortable at work, he simply cannot deny the above-stated facts.

Plaintiffs claim that Mr. Boyle was doing substantially ~~unrelated~~ work before the accident despite the fact that he admitted in his deposition that prior to the accident he sold a debt reduction plan, just like he sells at O'Currence (Id. at R. 254-55.) Moreover, Plaintiff also trained employees at O'Currence, just like he previously (and occasionally) did at the job he had at the time of the accident, but quit because he could make more money selling the product at O'Currence. (Id. at R. 253.) At his job before the accident,

Plaintiff worked from home and only drove when going to his appointments and an occasional trip to the office. (Id. at R. 257-58.) At his current job, he sells the same type of product, over the phone at the office. By no stretch of the imagination is this “substantially different” work.

Furthermore, Plaintiff’s deposition reads as follows:

Q. Okay. What about your back, does your back prevent you from doing anything at work?

A. Not at that work [speaking of O’Currence]. I do work at the golf course on Saturday mornings from a half hour before daylight until 10:00 o’clock.

* * *

Q. . . . How long have you worked there on Saturdays?

A. Three years. Three years plus.

Q. All right. Prior to this accident --

A. Excuse me, I should tell you I did some work for them after the surgery, but all I was doing then was standing behind a counter and checking people in, checking people out. So during that time I was unemployed I still worked some hours. It would range from probably eight to 16 hours a week.

(Id. at pp. 49:10-14, 50:6-16.)

Plaintiffs’ brief also cites to his deposition testimony which he claims indicates a dispute between the parties as to the source, extent and duration of Mr. Boyle’s back injury. Whether the plaintiff has a disc herniation in his back because of the subject accident was disputed, not whether this injury included a partial or complete *paralysis* of one or more of the extremities, a *significant disfigurement*, or *incapability* of Plaintiff of *performing the types of jobs he performed before the injury*. In his deposition, Plaintiff

clearly indicated that he could work and still worked. Indeed, when asked if his back pain prevents him “from doing anything at work,” Plaintiff responded, “not at that work:”

Q. Okay. Is your work restricted currently? Are you able to do your job without any problems?

A. My lack of sleep causes problems in everything I do. I get frustrated much more quickly, I don't have endurance, I don't work eight hours a day because six is about all I can handle and some days I can't handle that. I wake up tired every day. Very often I try to go back to bed --not to bed, to the recliner for ten or 15 minutes just so that I can function. So that permeates everything I do and in lots of different ways. I don't know that I could tell all of the ways, but I honestly don't feel like I'm functioning on the same level that I did before because it's like being up for days at a time. I do not sleep through the night. I recall having slept through the night twice since the accident. One was the first day that this friend gave me a Lortab, gave it to me about 4:00 o'clock when we went to play golf, I came home and sat in my recliner shortly after 6:00 o'clock and I woke up the next morning at 6:00 o'clock. That's probably three times longer than I have slept in any time -- any one time since the accident so . . .

Q. Okay. What about your back, does your back prevent you from doing anything at work?

A. Not at that work. . . .

(Id. at R. 264-265.) Immediately prior to explaining how his injuries limit him at work, Mr. Boyle was speaking of his current job with O'Curran. Thus, it is clear from his own statement that Mr. Boyle's injuries do not prevent him from working at “that” work. In other words, Mr. Boyle's alleged injuries do not prevent him from performing the types of jobs that he did prior to the accident.

Plaintiffs would have this court believe that the test for whether or not a spouse of an injured party can bring a loss of consortium claim is whether the injured party

sustained “a significant permanent injury that substantially changes that person’s lifestyle, which also includes significant disfigurement, or the incapability of the injured person of performing the types of jobs the person performed before the injury.” (Appellant Brief at p. 22.) Plaintiff’s are incorrect about the applicable test. The correct test is whether Mr. Boyle’s significant injury “*includes*” either a partial or complete paralysis, a significant disfigurement or renders him incapable of performing the types of jobs he performed before the accident. § 30-2-11(1)(a).

There is no Utah case law that discusses the definition of the threshold elements outlined in the Loss of Consortium Act. However, there is no case law from Utah or any other jurisdiction that supports the argument that a surgical scar is a “significant disfigurement” or a back injury can be considered a “paralysis” of an extremity, for purposes of a loss of consortium claim. Regardless of how Mrs. Boyle personally feels, she was unable to make the statutory threshold showing necessary to state a claim for loss of consortium.

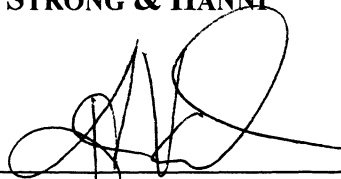
CONCLUSION

Based upon the foregoing points and authorities, the trial courts decisions and rulings should be affirmed on appeal.

DATED this 26 day of January, 2009.

STRONG & HANNI

By:

A handwritten signature in black ink, appearing to be 'K. VanOrman', written over a horizontal line.

Kristin A. VanOrman

Jeremy G. Knight

Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26 day of January, true and correct copies of the foregoing APPELLEE'S ANSWER BRIEF in hard copy and electronic (pdf.) format were served by mail, postage fully prepaid, upon the following:

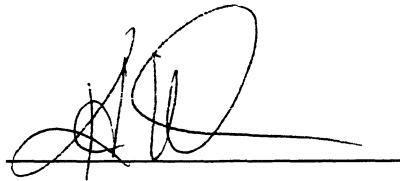
A handwritten signature in black ink, consisting of stylized initials and a surname, is written over a horizontal line.

EXHIBIT 1

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|------------------------|---|--------------------|
| JOHN BOYLE and NORINNE |) | |
| BOYLE, |) | |
| |) | |
| Plaintiffs, |) | Case No. 050912506 |
| |) | |
| vs. |) | |
| |) | Judge: |
| KERRY CHRISTENSEN, |) | |
| |) | Tyrone E. Medley |
| Defendant. |) | |
| |) | |

TRANSCRIPT OF JURY SELECTION

Date of Proceeding: JUNE 3-6, 2008

Reporter: Diana Kent, CSR, RPR, CRR
Notary Public in and for the State of Utah

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

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P R O C E E D I N G S

THE COURT: The record should reflect that this is Case No. 050912506 in the matter of John Boyle versus Kerry Christensen. Mr. Christensen, on behalf of your client, Mr. Boyle, are you ready to go forward, sir?

MR. CHRISTENSEN: Yes, Your Honor.

THE COURT: And Ms. Van Orman, on behalf of your client, Mr. Christensen, are you ready to go forward, as well?

MS. VAN ORMAN: Yes, Your Honor.

THE COURT: All right. Thank you.

Counsel, Members of the jury panel, first of all, I want to thank you very much for your appearance here today. I'm going to assume automatically that it's highly unlikely that any of you stood up and applauded when you received that final notification that you're going to be required to come to court today and render jury service. I'm certain that all of you, to one extent or another, have been inconvenienced and I would like for you to keep in mind and understand that myself and Counsel are going to jealously guard your time and move this case along in the most possible efficient and

1 thorough manner that we can.

2 I would also, however, like you to keep in
3 mind that your jury service here today is very
4 important. Your fair and impartial jury service, in
5 fact, will help ensure the rights and privileges that
6 all of us benefit from and enjoy as citizens of this
7 great country and state that we live in. And, in
8 fact, without citizens willing to make the necessary
9 sacrifices to render jury service in court cases,
10 whether it be in this state or in other states in
11 this country, of course, our third branch of
12 government would come to a screeching -- come to a
13 screeching halt.

14 I sort of view jury service high on the
15 list with other responsibilities of citizenship such
16 as voting and military service. So certainly on
17 behalf of myself, on behalf of the judiciary of this
18 state, on behalf of counsel and their clients, I want
19 to thank you very much for your service here today.

20 We're going to get started right away with
21 the jury selection phase of this particular case. I
22 would first like you to know and keep in mind that I
23 will be assisted throughout the course of this trial
24 by my clerks who are seated to my immediate left,
25 Tina and Stephanie, and I will also be assisted by my

1 primary bailiff Kathy. I think you've already met
2 her. I don't see her in the courtroom right at this
3 very moment but she periodically has to cover other
4 courts, as well. And I may have other bailiffs
5 substituting for her, as well.

6 Keep in mind also, Members of the Jury
7 Panel, that also during this course of the phase of
8 the case a number of questions are going to be put to
9 you. I think it's important for you to know up front
10 that none of these questions are really designed to
11 pry into your innermost private affairs and, in fact,
12 if you think a question touches upon some issue that
13 you would rather respond to in private, just let me
14 know that, and myself and Counsel and their clients
15 can retire to my chamber area and have you give your
16 answer to that type of a question in that format.

17 However, because of the nature of today's
18 case, I'm not sure that you will have any problems
19 responding to the questions that are going to be put
20 to you.

21 The first task that must be performed,
22 Members of the Jury Panel, is that the responses to
23 the questions that you're going to give must, in
24 fact, be under oath. So I do need for you to please
25 stand and raise your right hands at this time so you

1 can be placed under oath.

2 THE CLERK: You and each of you do
3 solemnly swear that you will answer truly such
4 questions as may be put to you testing your
5 competency to serve as trial jurors in the case now
6 before you, so help you God.

7 (Jury Panel answers yes in unison.)

8 THE COURT: You may be seated.

9 Members of the Jury Panel, the first thing
10 I would like to do is get some idea of the nature of
11 the case that's going to be tried. This case is what
12 we generally describe as a civil case. It is a
13 personal injury civil case. And in this case the
14 plaintiff, and the plaintiff is the party who files
15 the lawsuit, the plaintiff is John Boyle, and the
16 plaintiff in this case seeks to recover damages on
17 account of an automobile/pedestrian accident wherein
18 Mr. Boyle was struck by a vehicle operated by Mr.
19 Kerry Christensen.

20 Mr. Kerry Christensen admits he was
21 responsible for causing accident. However, he denies
22 that the accident caused Mr. Boyle injuries to the
23 extent claimed in this case. The accident occurred
24 on or about July the 22nd of 2004 at the Smith's food
25 store at 4080 West 90th South in West Jordan, State

1 of Utah.

2 Now, Members of the Jury Panel, the first
3 thing I would like to know is whether or not any
4 member of the panel is familiar with the particular
5 facts of this case. And if so, would you please
6 indicate this by raising your hand at this time?

7 The record should record that there are no
8 hands raised.

9 Now, next, Members of the Jury Panel, what
10 I would like to do is I'm going to turn to counsel
11 and have them introduce themselves to you. They're
12 also going to introduce their clients. They are also
13 going to identify by naming the witnesses they
14 anticipate will testify in this particular case. And
15 Members of the Jury Panel, once they have completed
16 identifying these individuals, I'm going to ask you
17 whether or not you know or are familiar with or have
18 any relationship whatsoever with any of these
19 individuals. So please pay particular attention.

20 Mr. Christensen.

21 MR. CHRISTENSEN: Yes. I'm Roger
22 Christensen. I've been an attorney for a number of
23 years. I'm with the law firm of Christensen &
24 Jensen, which is headquartered here in Salt Lake
25 City. This is Sue Harrison, who is a paralegal in

1 that firm who is going to be assisting in the trial.
2 This is John Boyle, who is the plaintiff in this
3 case. We anticipate calling the following witnesses
4 currently: Mr. Boyle; Mr. Christensen; a Dr. Lyle
5 Mason, an orthopedic surgeon who also works with the
6 Utah Jazz; Mr. Boyle's son Adam; his daughter Laura
7 Stice; Dr. Junius Clawson, an orthopedic surgeon with
8 the Intermountain Spine Institute, Felton Lancaster,
9 ^ someone who works part-time with Mr. Boyle at the
10 Glenmoor ^ Golf Course; Mr. Boyle's son, Tucker
11 Boyle; his wife Norrine Boyle; and potentially an
12 eyewitness, Chris Jones.

13 THE COURT: Thank you, Mr. Christensen.

14 Members of the Jury Panel, first of all, I
15 would like to start with Mr. Christensen and his
16 client, Mr. Boyle. I would like to know whether or
17 not any member of the jury panel knows, is familiar
18 with, or has any relationship whatsoever with Mr.
19 Christensen or his client, Mr. Boyle, and if so,
20 would you please indicate this by raising your hand
21 at this time. And the record should reflect that
22 there are two hands raised.

23 And Mr. Owen, did you have your hand
24 raised?

25 MR. OWEN: I did.

1 THE COURT: And I don't want you to go
2 into detail at all, Mr. Owen, but I just want you to
3 name who it is you recognize.

4 MR. OWEN: I'm an attorney and have
5 practiced in --

6 THE COURT: Well, who is it you recognize,
7 sir?

8 MR. OWEN: Christensen, Jensen & Powell,
9 that firm.

10 THE COURT: Okay. And that was why you
11 raised your hand?

12 MR. OWEN: That's correct.

13 THE COURT: Okay. Thank you very much,
14 Mr. *Lion -- And, Mr. Owen, I'll be coming back to
15 you in just a moment.

16 And do you pronounce is it "Ryman"?

17 MS. REIMANN: Yes, it is. Very good.

18 THE COURT: Ms. Reimann, who is it that
19 you recognize?

20 MS. REIMANN: My husband is a cousin of
21 Sue Harrison's husband.

22 THE COURT: I'm sorry, say that again.
23 Your husband?

24 MS. REIMANN: My husband is Sue Harrison's
25 cousin's -- husband's cousin, sorry.

1 THE COURT: Okay. Thank you very much,
2 ma'am. Did I miss any hands raised in response to
3 that question? The record should reflect that there
4 are no hands raised.

5 Next, Members of the Jury Panel, I would
6 like to know whether or not you know, are familiar
7 with, or have any relationship whatsoever, if you
8 have not already responded, to any of the potential
9 witnesses that Mr. Christensen identified may testify
10 in this case. And if so, would you please indicate
11 this by raising your hand at this time. The reflect
12 should reflect that Mr. Owen, you had a hand raised.
13 And which witness individual did you recognize?

14 MR. OWEN: I am acquainted with Chris
15 Jones. I don't know if that's the same one that's
16 going to be a witness.

17 THE COURT: And the Chris Jones that
18 you're familiar with, can you tell us how he's
19 employed?

20 MR. OWEN: Yes, he's a basketball coach.

21 THE COURT: Where is he coaching at now?

22 MR. OWEN: He just left the University of
23 Utah and went to Utah State.

24 THE COURT: Mr. Christensen, is that the
25 same or different Chris Jones?

1 MR. CHRISTENSEN: No This Chris Jones is
2 actually a woman.

3 THE COURT: Okay. And did I miss any
4 other hands raised in response to that question?
5 I'm sorry, Mr. Yeates, who did you think you
6 recognized?

7 MR. YEATES: Well, the physician here
8 that's going to testify, his name again? He's with
9 the Jazz; is that right?

10 MR. CHRISTENSEN: Lyle Mason.

11 MR. YEATES: Okay. If I have any
12 relationship it's a superficial relationship.

13 THE COURT: All right Did I miss any
14 hands raised in response to that question?

15 The record should reflect that there are
16 no other hands raised.

17 Ms. Van Orman, would you do the same,
18 please.

19 MS. VAN ORMAN: My name is Kristin Van
20 Orman. I'm with the law firm of Strong & Hanni. My
21 client, Kerry Christensen, is sitting next to me. We
22 will be calling, let's see, three other witnesses: A
23 Dr. Pontiff Nors, ^ he's a neurologist; Dr. Stephen
24 Marble, he's a physiatrist; and Dr Alan Goldman, a
25 neurologist.

1 THE COURT: Thank you very much, Ms. Van
2 Orman.

3 Members of the Jury Panel, I would like to
4 know, first, if any of you know or are familiar with
5 or have any relationship whatsoever with either Ms.
6 Van Orman or her law firm or her client, Mr.
7 Christensen in this case, and if so, would you please
8 indicate this by raising your hand at this time.

9 The record should reflect that there are
10 no hands raised.

11 And finally, Members of the Jury Panel, I
12 would like to know whether or not any of you know or
13 are familiar with or have any relationship whatsoever
14 with any of the potential witnesses that Ms. Van
15 Orman just identified, as well. And if so, would you
16 please indicate this by raising your hand at this
17 time.

18 The record should reflect that there are
19 no hands raised.

20 MR. CHRISTENSEN: Your Honor, I've been
21 reminded we have one additional witness.

22 THE COURT: Oh, I'm sorry, go ahead.

23 MR. CHRISTENSEN: Mr. Merrill Norman who
24 is a CPA and a financial expert.

25 THE COURT: And Members of the Jury Panel,

1 Mr. Christensen just identified an additional
2 potential witness, Mr. Merrill Norman. And if any of
3 you are familiar with, know, or have any relationship
4 whatsoever with Mr. Norman, would you please indicate
5 this by raising your hand at this time.

6 And the record should reflect that Mr.
7 Owen has his hand raised.

8 Mr. Owen, is it through your profession
9 that you know Mr. Norman?

10 MR. OWEN: Well, it's both. I have hired
11 him, he's worked for me, and he is a friend and I've
12 met him. ^

13 THE COURT: Thank you, Mr. Owen.

14 Did I miss any response to that follow-up
15 question? The record should reflect that there are
16 no additional hands raised.

17 Well, Members of the Jury Panel, I'm going
18 to take just a brief moment to summarize for you what
19 the roles and responsibilities to the participants in
20 this particular case are going to be. And at a later
21 point in time I will be going into a more detailed
22 description of the law that will apply in this
23 particular case which will also further define for
24 you what the respective roles and responsibilities
25 are. I would like to give you a summary of that

1 description at this time.

2 First of all, Members of the Jury Panel,
3 let me say to you, obviously it will be the role and
4 responsibility for plaintiff in this particular case
5 to present their evidence in an effort to establish
6 their case. And again, I will go into a more defined
7 definition of what those roles and duties and
8 responsibilities are in light of the nature of this
9 case.

10 It will be the role and responsibility of
11 Ms. Van Orman, in essence, to represent her client,
12 Mr. Christensen and to defend this case.

13 It will be the role and the responsibility
14 of the jury in this case, Members of the Jury Panel,
15 first of all to be fair and impartial to both sides
16 of this case. The jury will be required to fairly
17 and impartially decide what the facts are in this
18 case. And through that process the jury also will be
19 called upon to determine what weight should be given
20 to the various pieces of evidence and testimony
21 that's introduced during the course of this case.
22 The jury will be called upon to weigh the credibility
23 of the various witnesses that are going to be called
24 to testify in this case, as well.

25 Additionally, Members of the Jury Panel,

1 of course, it will be the jury's responsibility to
2 fairly and impartially render a verdict in this
3 particular case. It's very important for you to keep
4 in mind, Members of the Jury Panel, that it will be
5 my role and responsibility as the judge in this case
6 to decide the issues of law as those issues arise
7 during the course of this trial. You should keep in
8 mind and understand that it's very common for counsel
9 to make objections during the course of the trial to
10 a particular question or to a particular piece of
11 evidence. That's a normal part of the trial process.
12 And what's important for you to know and understand,
13 that when a lawyer makes an objection, that he or she
14 is simply asking the court, the judge, to make a
15 legal decision. So it will be my role and
16 responsibility to make those types of legal
17 decisions.

18 I would like for you to keep in mind that
19 I'm going to go out of my way to try to resolve those
20 decisions here in open court so that we don't
21 unreasonably delay this case. But you should also
22 keep in mind and understand, however, that the law is
23 fairly clear that there are some legal issues that I
24 must hear outside of your presence. So we may have
25 the occasion where I have you retire to the jury

1 deliberation room so I can listen to oral argument on
2 a particular point of law, resolve that issue, then
3 bring you back in. But again, I'm going to go out of
4 my way to try to reduce those occurrences.

5 You should also keep in mind and
6 understand that at the conclusion of the case,
7 Members of the Jury Panel, it will be my role and
8 responsibility to instruct you or give you the law
9 that applies in this particular case. And it will be
10 your sworn duty and obligation, Members of the Jury
11 Panel, as jurors on this case, to follow the law as
12 given to you by the Court.

13 And let me give you an example of a
14 portion of the law that I'm going to be instructing
15 the jury with at a later point in time in more
16 detail. I'm just going to give you an example, a
17 summarized example at this point in time.

18 Because of the nature of this particular
19 case, it's very likely that I'm going to be
20 instructing the jury on the subject matter of
21 damages. There is governing law in this state which
22 governs the issues of damages in this type of a case.
23 And our law in this state, in essence, defines
24 damages into two separate categories.

25 First, the first category is defined as

1 economic damages. And economic damages include
2 reasonable and necessary expenses for medical care
3 and other related expenses, both past and future.
4 That's the first category of damages that the law
5 recognizes in this type of a case. The second
6 category of damages that the law recognizes in this
7 type of a case is what the law defines as noneconomic
8 damages. And noneconomic damages include, for
9 example, damages for pain and suffering, both mental
10 and physical; the extent, if any, wherein one is
11 prevented from pursuing the ordinary affairs of their
12 life, and to the extent they may be limited in
13 enjoyment of their life.

14 That's a very brief, general description
15 of the types of damages that the law recognizes in
16 this particular case. But what is important for you
17 to keep in mind and understand, Members of the Jury
18 Panel, is that since it is my duty and responsibility
19 to instruct you or give you the law that applies in
20 this case, it is the jury's sworn duty and obligation
21 to follow the law as given to you by me, even if you
22 were to think that the law is different from what I
23 state it to be, or even if you think the law ought to
24 be different from what I state it to be.

25 The bottom line is, you don't get the

1 opportunity to be the Utah State legislature in this
2 particular case; you simply must follow the law as
3 given to you by the Court. Consequently, Members of
4 the Jury Panel, I would like to know if there is any
5 member of the Jury Panel who is of the opinion that
6 you would not be able to follow the law as given to
7 you by the Court. Would you please indicate this by
8 raising your hands at this time.

9 The record should reflect that there are
10 no hands raised.

11 Now, the next subject I would like to talk
12 to you about, Members of the Jury Panel, and I'm
13 going to utilize a little bit of history here, I
14 guess, I can remember a time when a jury panel member
15 could almost give any reasonable excuse and be
16 excused from jury service. Fortunately for
17 individuals like me who are responsible for
18 conducting jury trials, that day has come and gone.
19 It really takes some point, some basis which rises to
20 a level that would impair your duty and
21 responsibility to be fair and impartial to both sides
22 of this case. It really takes something that rises
23 to the level that would prevent you from giving this
24 case the conscientious attention that it deserves
25 before you can be excused from jury service.

1 Now, at the same time, Members of the Jury
2 Panel, Counsel and myself do not want to be
3 insensitive to what your individual needs are. So I
4 would like to give you a general overview of what I
5 anticipate the schedule and time demands of this case
6 are going to be.

7 First let me say that I'm describing this
8 case as a four-day case. And what I mean by that I'm
9 counting today as the first day, so in other words,
10 Tuesday, Wednesday, Thursday and Friday. I think
11 what you also should know and keep in mind in this is
12 that I do know that the goal, the shared goal of
13 Counsel is to complete all of the evidence of this
14 case by Thursday so that Friday can be reserved for
15 closing argument and jury deliberation.

16 I would like for you to also keep in mind
17 and understand that when I say four days, what I
18 anticipate is going to occur is this: That we will
19 start -- I expect to start promptly each morning at
20 9:00 a.m. I also anticipate taking a lunch break
21 promptly at noon and reconvening approximately at
22 1:15. I also anticipate breaking promptly at 5:00
23 p.m. at the end of each day. Of course, then you
24 will be recessed to return home. This is not a case
25 where you're going to be sequestered in a hotel for

1 the period of time of this trial.

2 I also expect that approximately each hour
3 we will be taking a 10-minute recess on each day, as
4 well. So that is the general overview of what I'm
5 expecting for this particular case.

6 Now, Members of the Jury Panel, with that
7 direction, and I'm going to actually take your
8 response to this next question row by row. And when
9 I say row by row, I mean starting on my far left with
10 who I believe is Ms. Allen-Kidder and going straight
11 across the front. Then we'll get to the second row
12 and third row and fourth row. But starting with the
13 front row with that direction and overview of the
14 schedule I gave you, is there any member of the Panel
15 on the front row who is of the opinion you have some
16 matter that is sufficiently pressing that would
17 prevent you from rendering fair and partial jury
18 service? And if so, would you please indicate this
19 by raising your hand at this time on the front row?

20 The record should reflect that there are
21 no hands raised.

22 Then going to the second row, starting
23 with I believe it's Ms. Hanson and going straight
24 across, Members of the Jury Panel, if you think you
25 have such a problem, would you please indicate this

1 by raising your hand at this time.

2 The record should reflect that there are
3 two hands raised. You may put your hands down.

4 Ms. Harrison, you had your hand raised?

5 MS. HARRISON: I did.

6 THE COURT: Ms. Harrison, can I get you to
7 stand so counsel won't have any problems seeing you?

8 MS. HARRISON: No problem.

9 THE COURT: Ms. Harrison, tell me why you
10 raised your hand in response to the --

11 MS. HARRISON: I'm a school teacher and
12 we're just closing school right now. But I also am
13 of the opinion if you really need me I'm here and I
14 can do things after I get through with the court
15 case.

16 THE COURT: I'm sorry, I didn't hear your
17 last statement.

18 MS. HARRISON: If I need to be here, I
19 will be here and I'll do things after. I'll just go
20 back to my school and finish what I need to in the
21 evening time if I need to do that.

22 THE COURT: And let's assume for a moment
23 you were required to serve. It sounds as if you're
24 going to be leaving your work here during the day and
25 then, you know, going home or back to school to

1 finish whatever is required there. Are you still
2 going to give this case the conscientious attention
3 it deserves?

4 MS. HARRISON: Yes, I would.

5 THE COURT: Thank you very much, Ms.
6 Harrison.

7 Ma'am, would you please stand. And is it
8 "Botger" or "Boatger"?

9 MS. BOETTGER: "Betger".

10 THE COURT: "Betger." Excuse me for not
11 pronouncing that correctly.

12 MS. BOETTGER: That's okay.

13 THE COURT: Why did you have your hand
14 raised?

15 MS. BOETTGER: It just concerns next week.
16 We're leaving for a vacation out of the country. So
17 if it were to fall in next week, that would be a
18 problem.

19 THE COURT: You know, let me say this:
20 It's always difficult to predict how long a case is
21 going to take so that -- I'm usually very reluctant
22 to give you a 100 percent guarantee, but I really
23 want to give you a 99.999 percent guarantee that
24 based upon what I know about this case, at this
25 point, for the life of me I can't see how we would

1 end up into next week . But I can't give you a 100
2 percent guarantee, but I appreciate that response.

3 Okay. Let's go next to the third row.
4 And I believe I will be starting with ^ Mr. Frost.
5 And those on the third row, if you have a response to
6 this question regarding the schedule, would you
7 please indicate this by raising your hand at this
8 time.

9 The record should reflect that there are
10 no hands raised.

11 And I would like to go next to the fourth
12 row and I think Mr. Mills is back there on my far
13 left. And if you have a response to this question,
14 would you please indicate this by raising your hand
15 at this time.

16 The record should reflect that there are
17 no hands raised.

18 MS. PRESTON: Your Honor?

19 THE COURT: Oh, did I miss one? Okay.
20 Just one moment. Is it Ms. Preston?

21 MS. PRESTON: Yeah.

22 THE COURT: Ms. Preston would you stand
23 for me, please.

24 MS. PRESTON: Sure.

25 THE COURT: Why did you nave your hand

1 raised, Ms. Preston?

2 MS. PRESTON: Okay. If I'm correct, this
3 is the schedule for the week?

4 THE COURT: Yes. I just described it.

5 MS. PRESTON: Okay. Tomorrow, I know this
6 doesn't sound like it's very important.

7 THE COURT: Well, ma'am, let's hear it.

8 MS. PRESTON: But I am an Avon
9 representative and tomorrow is our day of recognition
10 at a luncheon at -- well, it starts at eleven o'clock
11 in the morning at Ricotti ^ . And it's something we
12 look forward to from year to year.

13 THE COURT: So what is just the general
14 time frame, from 11:00 a.m. to --

15 MS. PRESTON: To about 3:00.

16 THE COURT: Thank you very much, Ms.
17 Preston. I appreciate that information.

18 Now, Members of the Jury Panel, did I miss
19 any hands raised in response to that last question?

20 The record should reflect that there are
21 no other hands raised.

22 Now, Members of the Jury Panel, what I
23 would also like to know from you, in light of the
24 general schedule that I just described for you, I
25 would like to know whether or not any Member of the

1 Jury Panel is currently suffering from any mental or
2 physical limitations or disabilities that would
3 prevent you from rendering fair and impartial jury
4 service on this case. And if so, would you please
5 indicate this by raising your hand at this time.

6 The record should reflect that there are
7 no hands raised.

8 Now, Members of the Jury Panel, we're
9 going to go next to the questionnaire that you have
10 in front of you, and I would like to explain to you
11 how we're going to do this. We're actually going to
12 do this on an individual basis and we're going to
13 start on my far left with Ms. Claudia Allen-Kidder.
14 And when your turn comes I'm going to have you stand,
15 and then I'm going to have you begin responding to
16 the questions that you have before you. What I would
17 like you to understand is don't be surprised or
18 caught off guard if I stop you or interrupt you,
19 because it's very likely that I'm going to engage you
20 with some additional follow-up questions depending
21 upon the response that you give.

22 Additionally, let me say to you that it's
23 not necessary for you to read the question and then
24 begin responding to it. You can simply begin by
25 responding to the question. Also let me say to you,

1 it may very well be that an appropriate answer to a
2 question would be no. So I would appreciate -- for
3 example, let's take question 7 as an example. If
4 your answer to Question 7 is "no," if you would say,
5 "The answer to Question 7 is no," that's an
6 appropriate response.

7 With that direction, let's start with Ms.
8 Claudia Allen-Kidder. Would you stand, ma'am, and
9 give us your name.

10 MS. ALLEN-KIDDER: Claudia Allen Kidder.

11 THE COURT: And your spouse's name?

12 MS. ALLEN-KIDDER: William Kidder.

13 THE COURT: Okay.

14 MS. ALLEN-KIDDER: I am a flight attendant
15 and also an operational field service manager for
16 Delta Airlines.

17 THE COURT: How long have you been
18 employed in that capacity?

19 MS. ALLEN-KIDDER: I have been there for
20 eight years, a little over eight years.

21 THE COURT: Okay.

22 MS. ALLEN-KIDDER: And my husband is
23 privately employed as a dentist ^ auto number 2. I
24 am currently in school and I have six years of
25 education getting ready to finish up my ^ cent.

1 THE COURT: And do you have a particular
2 field of expertise you're working on?

3 MS. ALLEN-KIDDER: Public administration.

4 THE COURT: And where are you currently
5 attending school?

6 MS. ALLEN-KIDDER: BYU.

7 THE COURT: Do you have an undergraduate
8 degree?

9 MS. ALLEN-KIDDER: Yes, I do.

10 THE COURT: And so are you working towards
11 a Master's or a doctorate?

12 MS. ALLEN-KIDDER: Master's.

13 THE COURT: And where did you get your
14 undergraduate degree?

15 MS. ALLEN-KIDDER: University of Phoenix,
16 and my associate from Dixie College.

17 THE COURT: Okay . Great. Question
18 Number 4?

19 MS. ALLEN-KIDDER: My leisure time
20 currently is spent studying. I have very little time
21 for leisure with working full-time and going to
22 school.

23 THE COURT: If you had leisure time, what
24 would be some of the first fun things you would be
25 interested in doing?

1 MS. ALLEN-KIDDER: Traveling is at the
2 very top.

3 THE COURT: Is that the very top?

4 MS. ALLEN-KIDDER: The very top, yes.
5 Hobbies, I am a fly fisherman. Fly fisherwoman, I
6 should say.

7 Clubs and organizations, I'm not in any
8 official organizations. My husband and I are members
9 of private duck hunting clubs in the State of Utah.
10 I am in a leadership position at work.

11 THE COURT: And what is your title at work
12 or what is the leadership position.

13 MS. ALLEN-KIDDER: I am an operational
14 field service manager.

15 THE COURT: Okay. And Number 6?

16 MS. ALLEN-KIDDER: I have received
17 training in the health profession. Prior to working
18 for the airline industry I was a licensed dental
19 assistant in the State of California and also a
20 receptionist who was involved in submitting claims.

21 THE COURT: Through the office you worked
22 in?

23 MS. ALLEN-KIDDER: Yes, uh-huh
24 (affirmative).

25 THE COURT: And for how many years were

1 you employed in that capacity?

2 MS. ALLEN-KIDDER: For 15 years, on and
3 off part-time. It was during the time when I was
4 raising my children, so it was normally part-time on
5 and off for about 15 years.

6 THE COURT: Okay. Question Number 7?

7 MS. ALLEN-KIDDER: Yes, I have served on
8 jury duty before.

9 THE COURT: When did you do that?

10 MS. ALLEN-KIDDER: It was approximately, I
11 want to say about ten years ago.

12 THE COURT: Was it here in Utah?

13 MS. ALLEN-KIDDER: Yes, it was.

14 THE COURT: Do you remember what kind of
15 case it was?

16 MS. ALLEN-KIDDER: Arson.

17 THE COURT: Excuse me. Do you believe it
18 to have been a criminal case?

19 MS. ALLEN-KIDDER: I think so.

20 THE COURT: Let me ask you this question:
21 Did the jury return a verdict of either guilty or not
22 guilty?

23 MS. ALLEN-KIDDER: yes, we did.

24 THE COURT: And what was the verdict?

25 MS. ALLEN-KIDDER: Guilty.

1 THE COURT: And anything about that case
2 at all that would prevent you from being a fair and
3 impartial juror on today's case?

4 MS. ALLEN-KIDDER: No. It was an entirely
5 different case.

6 THE COURT: And any other jury service?

7 MS. ALLEN-KIDDER: The last time I was
8 summoned to jury duty I was dismissed.

9 THE COURT: Okay. Question Number 8?

10 MS. ALLEN-KIDDER: A friend.

11 THE COURT: And close friend?

12 MS. ALLEN-KIDDER: Very close friend.
13 She's like a sister.

14 THE COURT: And what kind of case was it,
15 if you --

16 MS. ALLEN-KIDDER: It was a medical case,
17 an auto accident. She was rear-ended.

18 THE COURT: And did you have any
19 participation in that case at all?

20 MS. ALLEN-KIDDER: No, I did not. I was
21 not with her.

22 THE COURT: When did the event occur, the
23 accident occur?

24 MS. ALLEN-KIDDER: Oh, gosh. It was
25 several years ago, but it was just settled like

1 maybe, I want to say four years ago. But it happened
2 probably about eight years ago. It was kind of a
3 long, ongoing case.

4 THE COURT: And are you aware of the
5 nature of her injuries?

6 MS. ALLEN-KIDDER: Yes, I am.

7 THE COURT: And can you describe those
8 briefly for us.

9 MS. ALLEN-KIDDER: She has a lot of back
10 and neck injuries.

11 THE COURT: How often do you associate
12 with this friend?

13 MS. ALLEN-KIDDER: Often. She lives
14 across the street from me.

15 THE COURT: At least once a week, or more
16 than that?

17 THE WITNESS: I would say more than once a
18 week.

19 THE COURT: How would you describe her
20 current medical/physical condition, to the best of
21 your present knowledge?

22 MS. ALLEN-KIDDER: I would say that she's
23 in pain just about every day resulting from the
24 injuries that she sustained from the accident.

25 THE COURT: Any other response to Question

1 Number 8?

2 MS. ALLEN-KIDDER: No.

3 THE COURT: Now, let me ask this follow-up
4 question, Ms. Allen-Kidder. In light of that
5 response and my earlier description of the nature of
6 today's case, anything about that experience that
7 would prevent you from rendering fair and impartial
8 jury service on today's case?

9 MS. ALLEN-KIDDER: Hopefully not.

10 Because, again, I wasn't involved in that case.

11 THE COURT: Any other response to Question
12 Number 8?

13 MS. ALLEN-KIDDER: No.

14 THE COURT: Let's go on to Question
15 Number 9.

16 MS. ALLEN-KIDDER: Not that I'm aware of.

17 THE COURT: Question Number 10.

18 THE WITNESS: No.

19 THE COURT: And that question, obviously
20 to you, is calling for some situation other than to
21 which you've already responded?

22 MS. ALLEN-KIDDER: Right.

23 THE COURT: Question Number 11.

24 MS. ALLEN-KIDDER: Just a small -- I've
25 had a couple of small accidents myself, but nothing

1 that sustained injury.

2 THE COURT: Let me start with were they
3 auto/pedestrian accidents?

4 MS. ALLEN-KIDDER: Just one.

5 THE COURT: And when is the last time you
6 had such an occurrence?

7 MS. ALLEN-KIDDER: Oh, gosh, probably 22
8 years ago.

9 THE COURT: But were there any injuries
10 resulting from that occurrence?

11 MS. ALLEN-KIDDER: No.

12 THE COURT: Okay. Question Number 12.

13 THE WITNESS: No.

14 THE COURT: Question Number 13.

15 MS. ALLEN-KIDDER: No.

16 THE COURT: Question Number 14?

17 MS. ALLEN-KIDDER: No.

18 THE COURT: And Question Number 15.

19 MS. ALLEN-KIDDER: I can be fair.

20 THE COURT: Thank you very much, Ms.
21 Allen-Kidder.

22 Ms. May.

23 MS. MAY: Heather May. My spouse is Paul
24 May. I am employed as a registered nurse, clinical
25 analyst.

1 THE COURT: How long have you been
2 employed in that capacity?

3 MS. MAY: Five years.

4 THE COURT: And who do you work for?

5 MS. MAY: I work for Intermountain Health
6 Care.

7 THE COURT: And can you give us some more
8 definition of the type of work you do.

9 MS. MAY: Sure. I work clinically in the
10 trauma ICU for the University of Utah about once a
11 month, but I work primarily as an analyst doing
12 information systems and developing clinical
13 information systems for use in healthcare settings.

14 THE COURT: Okay. And how is your spouse
15 employed?

16 MS. MAY: He owns his own company as well
17 as works for an electrical contractor here in Salt
18 Lake.

19 THE COURT: And the company he owns, is
20 that in electrical contracting?

21 MS. MAY: No, it is not. It's in
22 expedition equipment.

23 THE COURT: And Question Number 3.

24 MS. MAY: I have a Master's degree in
25 nursing infomatics as well as two Bachelor's degrees,

1 one in business, one in nursing.

2 THE COURT: Where did you get your degrees
3 from?

4 MS. MAY: The University of Utah for the
5 business degree and the Master's in nursing
6 infomatics, and Westminster College for the nursing
7 degree.

8 THE COURT: And Question Number 4.

9 MS. MAY: I like to spend time outdoors.
10 I don't have a lot of leisure time, but I understand
11 that. ^ I like to read, bike, hike, camp.

12 THE COURT: Question Number 5.

13 MS. MAY: I am a member of Sigma Beta Tau,
14 it is a nursing honor society, as well as Phi Sigma
15 Kappa, which is another nursing honor society. I
16 also belong to the Healthcare Information Management
17 Systems Society, Utah Nursing Alliance, Nursing
18 Network Infomatics Alliance, American Medical
19 Infomatics Association.

20 THE COURT: Okay. Question Number 6.

21 MS. MAY: Yes.

22 THE COURT: And when you respond "yes" to
23 that question --

24 MS. MAY: I also, besides my healthcare,
25 besides my registered nurse practice, in 1998 I did

1 work for a company that processed medical claims.

2 THE COURT: What was the name of the
3 company?

4 MS. MAY: Health South, their insurance
5 division that was run here in Salt Lake.

6 THE COURT: And what were your particular
7 duties?

8 MS. MAY: I was a claims processor.

9 THE COURT: Okay. And how long were you
10 employed in that capacity?

11 MS. MAY: Six months. I have never been
12 on a jury. I have not or do not know anybody who has
13 been involved in a lawsuit.

14 THE COURT: Number 9.

15 MS. MAY: No.

16 THE COURT: Number 10.

17 MS. MAY: No.

18 THE COURT: Number 11.

19 MS. MAY: Yes. I did in 1999, I had a
20 close friend who actually hit a pedestrian.

21 THE COURT: Is that here in Utah?

22 MS. MAY: It was.

23 THE COURT: Did you have any involvement
24 in that occurrence at all?

25 MS. MAY: Other than going and picking her

1 up after that occurred, no.

2 THE COURT: And if I've understood you
3 correctly, your close friend was the driver of the
4 vehicle?

5 MS. MAY: Driver of the vehicle.

6 THE COURT: And is this close friend still
7 a close friend?

8 MS. MAY: No.

9 THE COURT: And how often do you see her?

10 MS. MAY: I've probably seen her once in
11 the last two years.

12 THE COURT: Does she live in Utah now?

13 MS. MAY: I believe she does.

14 THE COURT: And did you have -- do you
15 have any knowledge of whether or not any injuries
16 resulted from that occurrence?

17 MS. MAY: I do know that injuries did
18 result and that she was sued, but I was not a part of
19 the case at any point.

20 THE COURT: So do you know or have any
21 idea what the outcome of any lawsuit was?

22 MS. MAY: I believe she settled out of
23 court.

24 THE COURT: Is it correct that you don't
25 know any of the details, if there were such a

1 settlement?

2 MS. MAY: No, I have no idea.

3 THE COURT: Anything at all about that
4 experience that would prevent you from rendering a
5 fair and impartial jury service in light of the
6 nature of today's case?

7 MS. MAY: No.

8 THE COURT: Okay. Let's go on to Question
9 Number 12, Ms. May.

10 MS. MAY: Yes, I have suffered back
11 injuries, most of my nursing friends have suffered
12 back injuries. It's --

13 THE COURT: Let's talk about yours for
14 right now. Any particular event that leads to that
15 experience or is it just part and parcel of the type
16 of work you do, or some other occasion?

17 MS. MAY: Part and parcel of the type of
18 work that I do. At the time where a lot of my
19 friends in college suffered back injuries, we had a
20 lot of ^ bariatric patients we were moving. In the
21 nature of the clinical work that I did, we moved a
22 lot of patients.

23 THE COURT: And describe for me what your
24 current situation is with your back.

25 MS. MAY: That's why I don't do clinical

1 bedside work a lot and I went into an area of nursing
2 where back injuries are not as prominent.

3 THE COURT: Are you currently receiving
4 any type of rehabilitation or do you receive medical
5 treatment or do you currently take any medical -- any
6 medication for your condition?

7 MS. MAY: No. I went through about six
8 months of physical therapy to get my back stronger.

9 THE COURT: Would you describe yourself
10 having back pain currently?

11 MS. MAY: No.

12 THE COURT: All right. Let's move on to
13 Question Number 13.

14 MS. MAY: No.

15 THE COURT: Number 14.

16 MS. MAY: No.

17 THE COURT: Number 15.

18 MS. MAY: No. Oh, wait, wait. Yes, I can
19 be fair and impartial.

20 THE COURT: Thank you very much, Ms. May.
21 Ms. Swenson.

22 MS. SWENSON: My name is Julie Swenson.
23 My husband's name is Curtis Swenson. I am mostly a
24 homemaker, mother. I do do massage therapy part
25 time.

1 My husband is -- he works in the mortgage
2 lending industry.

3 I went to BYU. Got s Bachelor's degree in
4 Health Sciences.

5 Some of my hobbies --

6 THE COURT: I'm sorry. I should ask you
7 when you graduated from the Y?

8 MS. SWENSON: Oh. It was '90 -- I believe
9 '91.

10 THE COURT: And did you do anything with
11 your Health Sciences degree? And by that, I mean did
12 you become employed in the Health Science field?

13 MS. SWENSON: Not really. No. No.

14 THE COURT: All right. Question Number 4?

15 MS. SWENSON: Number 4? Some sewing, some
16 dancing, some typing, reading.

17 THE COURT: Question Number 5?

18 MS. SWENSON: Not -- not -- I'm a primary
19 president.

20 THE COURT: Number 6?

21 MS. SWENSON: Well, no. Not in the health
22 care profession, just some health care training just
23 through my Bachelor's degree and then massage therapy
24 school.

25 THE COURT: Okay. Number 7?

1 MS. SWENSON: No. I haven't sat on a
2 jury.

3 No.

4 THE COURT: No to Question 8?

5 MS. SWENSON: No to Number 8.

6 THE COURT: Number 9?

7 MS. SWENSON: No.

8 THE COURT: Number 10?

9 MS. SWENSON: Number 10? No.

10 THE COURT: Number 11?

11 MS. SWENSON: No, on

12 automobile/pedestrian.

13 THE COURT: Number 12?

14 MS. SWENSON: Not -- not any serious. I
15 mean, my mother had some back problems, but mostly
16 from just doing too much. And she's better now.

17 No on Number 13.

18 No on Number 14.

19 And I -- I can be fair.

20 THE COURT: Thank you very much. Ms.

21 Swenson.

22 Mr. Vannoy?

23 MR. VANNOY: Thomas Vannoy. And I'm
24 divorced. I'm a receiving clerk for a company called
25 L-3 Communications, here in Salt Lake.

1 THE COURT: And how long have you worked
2 for L-3 Communications?

3 MR. VANNOY: Seven years.

4 THE COURT: Okay. Thank you.

5 Number 3?

6 MR. VANNOY: Highest grade is eleventh,
7 with a GED. And then I received an AA degree from
8 Mountain West College.

9 THE COURT: Did you go to school here in
10 Utah or somewhere else?

11 MR. VANNOY: Utah and California. High
12 school in California.

13 THE COURT: Number 4?

14 MR. VANNOY: I play drums in a band and
15 road trips in the mountains.

16 THE COURT: All right. Number 5?

17 MR. VANNOY: No.

18 THE COURT: Number 6?

19 MR. VANNOY: No.

20 THE COURT: Number 7?

21 MR. VANNOY: No on number -- well, I was
22 summoned to jury duty back in '90. It was dismissed.

23 THE COURT: Now that question, for the
24 panel members, really is designed to determine
25 whether or not you actually served on a jury.

1 MR. VANNOY: So no.

2 THE COURT: Okay. Number 8?

3 MR. VANNOY: I'm not quite sure. I have a
4 cousin who was just in a car accident and I'm not
5 sure if they are taking it to court or not.

6 THE COURT: And when did that accident
7 occur?

8 MR. VANNOY: I believe it was around
9 December.

10 THE COURT: You have any involvement at
11 all with that occurrence?

12 MR. VANNOY: No.

13 THE COURT: How often do you see your
14 cousin?

15 MR. VANNOY: Once a month.

16 THE COURT: And to your knowledge, was he
17 injured?

18 MR. VANNOY: He did suffer whiplash and he
19 has some back problems. I don't know the details of
20 what's taking place, if anything.

21 THE COURT: Anything at all about that
22 knowledge or experience that would prevent you from
23 being a fair and impartial juror on this case, Mr.
24 Vannoy?

25 MR. VANNOY: No.

1 THE COURT: Okay. Question Number 9?

2 MR. VANNOY: Again, I had a friend in
3 California that I think they settled out of court in
4 a car accident. He was injured.

5 And he since has been deceased also.

6 THE COURT: Okay. Did you have
7 participation or involvement in that situation at
8 all?

9 MR. VANNOY: No.

10 THE COURT: And do you -- are you familiar
11 with any of the specifics of the accident or how the
12 matter was resolved?

13 MR. VANNOY: I believe they settled out of
14 court. Again, I don't know how -- what the details
15 were. And it was out of state also.

16 THE COURT: Are you familiar with the
17 nature of his injuries?

18 MR. VANNOY: He had a neck injury from it.
19 And it was pretty severe. It was causing a lot of
20 problems.

21 THE COURT: Anything at all about that
22 experience that would prevent you from being a fair
23 and impartial juror on today's case?

24 MR. VANNOY: No.

25 THE COURT: Okay. Question Number 10?

1 MR. VANNOY: No.

2 THE COURT: Number 11?

3 MR. VANNOY: No.

4 THE COURT: Number 12?

5 MR. VANNOY: Uh --

6 THE COURT: That's other than what you've
7 already responded to.

8 MR. VANNOY: I, myself have neck and back
9 injuries from a car accident.

10 THE COURT: And when did you have that
11 accident?

12 MR. VANNOY: '80 -- '88.

13 THE COURT: What kind of accident was it?

14 MR. VANNOY: It was a motor vehicle
15 accident. I ran off the road and flipped my vehicle
16 and was ejected out of the window.

17 THE COURT: So it was a single car
18 accident?

19 MR. VANNOY: Single car

20 THE COURT: And what were the nature of
21 your injuries?

22 MR. VANNOY: I sustained a C-5 neck
23 injury, sublocated. And fractured my T-7 back.

24 THE COURT: And obviously you received
25 medical treatment for those injuries?

1 MR. VANNOY: I did. I had to wear a halo
2 for three months and some follow-up rehabilitation.

3 THE COURT: And when did the follow-up
4 rehabilitation cease?

5 MR. VANNOY: Well, it really never took
6 place because they never prescribed me going to
7 anybody. So it was sporadic. I just went to massage
8 therapists and chiropractors on my own. And I've
9 done that periodically.

10 THE COURT: Okay. And when you say you go
11 to a chiropractor periodically, how frequently do you
12 do that?

13 MR. VANNOY: When I can't get up out of
14 bed in the morning. But that's very, very, very
15 seldom. I'm pretty well functioning.

16 THE COURT: I'm trying to get a sense if
17 we're talking about a couple of times a year, once a
18 month, how frequent do you see a chiropractor for
19 those conditions you've just described?

20 MR. VANNOY: After the accident, I had a
21 personal friend who was a chiropractor and I probably
22 saw him maybe a dozen times within a year.

23 THE COURT: Well, let me come at this
24 question a different way.

25 In this year, 2008 --

1 MR. VANNOY: Zero.

2 THE COURT: -- have you seen a
3 chiropractor?

4 MR. VANNOY: I haven't seen a chiropractor
5 in probably five years.

6 THE COURT: Okay. And are you currently
7 experiencing back or neck pain?

8 MR. VANNOY: It's ongoing, but I'm
9 functionable. It's something I live with and deal
10 with on a day-to-day basis.

11 THE COURT: All right. Let's go then to
12 Question Number 13?

13 MR. VANNOY: No.

14 THE COURT: 14?

15 MR. VANNOY: No.

16 THE COURT: 15?

17 MR. VANNOY: I could be fair.

18 THE COURT: Let me ask you, Mr. Vannoy, in
19 light of your personal experience with the accident
20 you had, the neck issue and back issue which you've
21 just described, taking into consideration the nature
22 of today's case and if there is evidence in this case
23 related to neck and back pain, do you think you would
24 be able to be a fair and impartial juror to each side
25 of this case?

1 MR. VANNOY: I do.

2 THE COURT: Any question at all about
3 that?

4 MR. VANNOY: No.

5 THE COURT: All right. Thank you very
6 much, Mr. Vannoy.

7 Mr. Pearce?

8 MR. PEARCE: Yes. My name is Kent Pearce.
9 My wife is Marie.

10 I'm employed as a (unintelligible) foreman
11 for the Church of Jesus Christ of Latter Day Saints.

12 My spouse is employed at -- I don't
13 remember what it's called

14 THE COURT: We won't tell her that.

15 MR. PEARCE: Yeah. Well, Distribution
16 Services for the Church. Okay. That's what it is.
17 They just changed the name, that's why I was off.

18 My highest grade, high school. I had four
19 years in trade school.

20 THE COURT: Where did you get that
21 schooling at? Here in Utah?

22 MR. PEARCE: Yes.

23 I spend my leisure time -- I like to read
24 and draw.

25 My hobbies are fly fishing, hiking. I

1 snowshoe.

2 I don't have any health care training.

3 I have served on a jury before.

4 THE COURT: When was that?

5 MR. PEARCE: Well, I don't know.

6 THE COURT: Well --

7 MR. PEARCE: A long time ago.

8 THE COURT: What decade was it?

9 MR. PEARCE: 15 years ago at least.

10 THE COURT: Okay. Here in Utah?

11 MR. PEARCE: Yes.

12 THE COURT: Do you remember what kind of
13 case it was?

14 MR. PEARCE: It was an automobile car -- I
15 mean, a motorcycle/car accident.

16 And we were instructed by the judge to not
17 determine damages, just -- just negligence.

18 THE COURT: And do you remember what the
19 outcome of the case was?

20 MR. PEARCE: We determined that the
21 motorcycle was the negligent party. Yeah.

22 THE COURT: And was that party the
23 defendant or the plaintiff; do you remember?

24 MR. PEARCE: I think the defendant. But I
25 am not sure.

1 THE COURT: Okay. And anything at all
2 about that experience that would prevent you from
3 being a fair and impartial juror on today's case?

4 MR. PEARCE: No.

5 THE COURT: Any other juror service?

6 MR. PEARCE: No.

7 THE COURT: I guess I should also ask, are
8 you a member of any clubs or organizations?

9 MR. PEARCE: No. I am not.

10 THE COURT: Okay. Let's go then to
11 Question 8?

12 MR. PEARCE: Question 8 is no.

13 9 is no.

14 10 is no.

15 And 11 is no.

16 12 is yes. When I was about 10 or 11, I
17 was standing in my tree house next door and it broke.
18 I fell about 20 feet and injured my back. I received
19 treatment then, but I have no -- no problems with it
20 now. I did see a chiropractor maybe two or three
21 times a year. That keeps me from having any
22 complications at all. I can carry a backpack. I
23 think I can do anything.

24 THE COURT: Anything at all about that
25 experience that would prevent you from rendering fair

1 and impartial jury service on today's case?

2 MR. PEARCE: No.

3 THE COURT: Okay. Let's go to Question
4 Number 13, Mr. Pearce?

5 MR. PEARCE: 13 is no.

6 And 14 is no.

7 And 15 is yes.

8 THE COURT: Thank you very much, Mr.
9 Pearce.

10 Mr. Haslam?

11 MR. HASLAM: My name is Robin Haslam. I
12 don't have a spouse.

13 I'm employed with Cache Valley Electric
14 for 23 years.

15 THE COURT: What do you do there?

16 MR. HASLAM: I'm a project
17 manager/foreman.

18 Had four years of trade school.

19 THE COURT: Where did you get the trade
20 school?

21 MR. HASLAM: Community College.

22 THE COURT: Did you go to high school here
23 in Utah?

24 MR. HASLAM: Yes. Cyprus High School.

25 THE COURT: Okay.

1 MR. HASLAM: Leisure time, I'm a boater,
2 motorcycles, snowmobiler, camping, hiking.

3 I'm a member of the Salt Lake Chapter
4 Harley's Owners Group. I'm a member IBW local union
5 354.

6 I've not been trained in health care.

7 I served on a jury about --

8 THE COURT: What -- what about the legal
9 profession or --

10 MR. HASLAM: No.

11 THE COURT: Or profession that handles
12 claims, medical injury?

13 MR. HASLAM: No. I served on a jury five
14 years ago. It was a criminal case. A kid beat up a
15 girlfriend's car.

16 THE COURT: And do you remember what the
17 outcome of the case was?

18 MR. HASLAM: He was found guilty.

19 THE COURT: Anything at all about that
20 experience that would prevent you from rendering fair
21 and impartial jury service on today's case?

22 MR. HASLAM: No.

23 THE COURT: Okay. Any other jury service?

24 MR. HASLAM: No. That's it.

25 THE COURT: Question Number 8?

1 MR. HASLAM: Question Number 8. No to
2 Question 8.

3 Number 9, I was in a -- I got rear-ended
4 January 5th of this year by a drunk driver.
5 Currently the insurance companies are paying for
6 everything.

7 THE COURT: And let's talk about that for
8 just a moment.

9 Did you require any medical attention?

10 MR. HASLAM: Yes. I was taken to the
11 hospital. They x-rayed my back, my neck and
12 everything to make sure I was okay. My back was sore
13 for about a month afterwards. And after that I'm
14 good now.

15 THE COURT: So did you require any type of
16 rehabilitative treatment?

17 MR. HASLAM: No. No. No. They just
18 wanted to make sure my back and neck were okay.

19 THE COURT: Anything at all about that
20 experience, Mr. Haslam, that would prevent you from
21 rendering fair and impartial jury service on today's
22 case?

23 MR. HASLAM: No. Huh-uh (negative).

24 THE COURT: Okay.

25 MR. HASLAM: Let's see. Don't know

1 anybody that's done a claim against any person yet.

2 I've had one of my friends that I grew up
3 with got hit by a car and there was a huge claim on
4 it. I don't know what the dollar amount was on it.

5 THE COURT: What year did that occur?

6 MR. HASLAM: That was back in '65, '66.

7 THE COURT: Was it here in Utah?

8 MR. HASLAM: Yeah.

9 THE COURT: And did you have any
10 involvement at all with that situation?

11 MR. HASLAM: No.

12 THE COURT: And do you know the extent of
13 your friend's injuries when that occurred?

14 MR. HASLAM: Busted both legs, busted his
15 pelvis, broke his back. I think that's about it. He
16 was in the hospital for about nine months.

17 THE COURT: Do you associate with that
18 friend at all today?

19 MR. HASLAM: Yes. I snowmobile with him.

20 THE COURT: Say that -- I'm sorry?

21 MR. HASLAM: I snowmobile with him.

22 THE COURT: Anything at all about that
23 experience that would prevent you from rendering fair
24 and impartial jury service to either side of this
25 case?

1 MR. HASLAM: No. Huh-uh (negative).

2 THE COURT: And did I understand you to
3 say that you were not aware of any details of any
4 outcome of that situation in terms of court or any
5 kind of a crime?

6 MR. HASLAM: Just he was awarded a bunch
7 of money. I don't think they actually went to court.
8 I think it was settled out of court. They gave him a
9 bunch of money. I don't know a dollar figure.

10 THE COURT: All right Question Number
11 12?

12 MR. HASLAM: Question 12. Just my back
13 was sore for a month after that wreck is all.

14 THE COURT: But again, you did not require
15 any types of medical treatment?

16 MR. HASLAM: No.

17 THE COURT: Any medications?

18 MR. HASLAM: No. They -- they -- well,
19 they gave me some pain and anti-inflammatory I used
20 for a month.

21 THE COURT: Okay.

22 MR. HASLAM: Other than that, no.

23 THE COURT: All right.

24 MR. HASLAM: 13? No. No.

25 THE COURT: 14 is no?

1 MR. HASLAM: Do you have any personal or
2 religious beliefs -- no.

3 Yes. I can give good --

4 THE COURT: And your answer to 15 is yes?

5 MR. HASLAM: Yes.

6 THE COURT: Thank you very much, Mr.
7 Haslam.

8 MR. HASLAM: Uh-huh (affirmative).

9 THE COURT: Okay. Now ma'am, you're going
10 to have to pronounce your last name for me.

11 MS. FICHIALOS: Sierra Fichialos. My
12 husband is Rich Fichialos.

13 THE COURT: Fichialos. Thank you very
14 much, ma'am.

15 MS. FICHIALOS: I am a high school
16 teacher. This is there graduation this week. Some
17 that are first generation. Like the whole century is
18 graduating.

19 My husband is --

20 THE COURT: And before you go on, I -- I
21 -- particularly because you didn't raise your hand in
22 response --

23 MS. FICHIALOS: I didn't -- I told my
24 students I'll see what I can do when I get in here.
25 They were on a (unintelligible).

1 THE COURT: I'm sorry. I know I keep
2 going back to this and you want to move on, but I
3 just want to make sure your response is clear.

4 If you were required to serve on this
5 jury, you would be able to make the necessary
6 adjustments and render fair and impartial jury
7 service?

8 MS. FICHIALOS: Yes.

9 THE COURT: Okay. All right. I'm sorry
10 for cutting you off, but I just wanted to be clear on
11 your answer.

12 MS. FICHIALOS: My husband is an
13 irrigation designer for Sprinkler World.

14 I'm currently getting a Master's degree in
15 School Counseling.

16 THE COURT: What grade do you teach?

17 MS. FICHIALOS: I teach high school. So I
18 teach tenth through twelfth.

19 THE COURT: Okay.

20 MS. FICHIALOS: Resource.

21 THE COURT: Okay.

22 MS. FICHIALOS: Leisure time, don't have
23 much, but when I do it's my children, reading,
24 traveling, outdoors and stuff.

25 THE COURT: Number 5?

1 MS. FICHIALOS: I'm a member of the PTA.
2 6, in-school counseling. We have mental
3 health classes and pieces to that. But nothing else.

4 Number 7, yes. I served on a jury about
5 four years ago. It was a rear-end car accident. We
6 were looking at the damages to award.

7 THE COURT: Here in Utah?

8 MS. FICHIALOS: Yes.

9 THE COURT: And do you remember what the
10 outcome of the case was?

11 MS. FICHIALOS: Well, it was on much was
12 going to be awarded. They -- but I don't remember
13 how much the award was.

14 THE COURT: But you do remember there was
15 an award?

16 MS. FICHIALOS: Yes.

17 THE COURT: And anything at all about that
18 experience that would prevent you from rendering fair
19 and impartial jury service on this case?

20 MS. FICHIALOS: No.

21 THE COURT: Do you remember any of the
22 facts of that case?

23 MS. FICHIALOS: Uh-huh (affirmative).

24 THE COURT: Give me a brief summary of
25 what you remember.

1 MS. FICHIALOS: It was a lady who was
2 medically fragile. She had had a bunch of accidents
3 in the past. And this teen girl had rear-ended her.
4 It just tipped over the scales of the medically
5 issues. And they were trying to decide how much was
6 her -- the third accident complicating what she had
7 already received in injuries before.

8 THE COURT: And can I assume it was here
9 in the Third District Court?

10 MS. FICHIALOS: Yes.

11 THE COURT: Wasn't in this courthouse; was
12 it?

13 MS. FICHIALOS: No.

14 THE COURT: It was in the older
15 courthouse?

16 MS. FICHIALOS: No. It was in this one.

17 THE COURT: Do you remember what judge
18 presided?

19 MS. FICHIALOS: It was a female.

20 THE COURT: Okay.

21 MS. FICHIALOS: My memory is not the
22 greatest.

23 THE COURT: But again, is there anything
24 at all about that experience that would prevent you
25 from rendering fair and impartial jury service on

1 this case?

2 MS. FICHIALOS: No.

3 THE COURT: Okay. Let's move on then to
4 Question Number 8?

5 MS. FICHIALOS: 8 is no.

6 9 is yes. A close friend was in a car
7 accident and received a lump sum for mostly neck and
8 injuries with -- as a result, like a migraine.

9 THE COURT: Does that friend live here in
10 Utah?

11 MS. FICHIALOS: Uh-huh (affirmative).

12 THE COURT: And when did this accident
13 occur?

14 MS. FICHIALOS: Over ten years ago.

15 THE COURT: And how often do you socialize
16 with this friend?

17 MS. FICHIALOS: Daily.

18 THE COURT: And do you know whether or not
19 this friend is still experiencing any physical --

20 MS. FICHIALOS: Yes, she is.

21 THE COURT: -- conditions related to the
22 accident?

23 MS. FICHIALOS: Yes. She still gets
24 cortisone shots in the neck and migraines.

25 THE COURT: Did you have any participation

1 or involvement in that case whatsoever?

2 (No verbal response.)

3 THE COURT: Anything about that experience
4 that would prevent you from rendering fair and
5 impartial jury service to either side in this case?

6 MS. FICHIALOS: No.

7 THE COURT: Okay. Let's move on then to
8 Question --

9 MS. FICHIALOS: 10 is no.

10 11 is no.

11 12 is no.

12 13 is no.

13 14 is no.

14 15 is yes.

15 THE COURT: Thank you very much.

16 Ms. Kipp?

17 MS. KIPP: My name is Carolyn Kipp. And
18 my husband's name was Herman, and he's deceased.

19 I am not currently employed.

20 Graduated from high school and had a year
21 of school at the University of Utah.

22 My leisure time is skiing in the winter,
23 playing golf in the summer and traveling.

24 I am in the Assistance League of Salt Lake
25 City.

1 THE COURT: You said the Assistance
2 League?

3 MS. KIPP: League.

4 THE COURT: And help me with what type of
5 organization that is, ma'am?

6 MS. KIPP: That is a women's organization.
7 We actually -- that I just joined. We help provide
8 clothing for children in needy schools and several
9 other youth projects.

10 I've never worked in the health care
11 industry.

12 I've never served on a jury.

13 8 is no.

14 9 is no.

15 10 is no.

16 11 is no.

17 12 is no.

18 13 is no.

19 14 is no.

20 15 is yes.

21 THE COURT: Ms. Kipp, how -- how -- how
22 long was your husband a lawyer in this state?

23 MS. KIPP: 50 years, I think.

24 THE COURT: If it's the same person I'm
25 thinking of, your husband was a very fine lawyer,

1 ma'am.

2 MS. KIPP: Thank you.

3 THE COURT: Thank you, Ms. Kipp.

4 Ms. Hanson?

5 MS. HANSON: Lynnette Hanson. I am
6 single.

7 I am employed as an office manager at a
8 local distributor for industrial supplies. I have
9 approximately four years of college, but no degree.

10 THE COURT: And where did you get those
11 four years of college at?

12 MS. HANSON: Mostly through BYU and
13 extension here in Salt Lake, through the Y.

14 THE COURT: Did you have any particular
15 fields of interest?

16 MS. HANSON: Humanities and history.

17 THE COURT: All right. Thank you.

18 MS. HANSON: Very limited leisure time. I
19 go every weekend to Idaho. I take care of my
20 93-year-old, invalid mother. I love to travel. And
21 my trips up there are part of that travel and leisure
22 time for me. I love history. I love to read.

23 I do belong to some circle organizations,
24 like Utah Circle Society, the VUP.

25 Right currently, I don't have any

1 leadership positions, except my job at work.

2 THE COURT: And what's your leadership
3 position at your job?

4 MS. HANSON: I'm the office manager.

5 THE COURT: Okay. Thank you.

6 MS. HANSON: I have not worked -- no, is
7 the answer to 6.

8 I have not served on a jury.

9 No to 8.

10 No to 9.

11 No to 10.

12 No to 11.

13 No to 12.

14 No to 13.

15 No to 14.

16 And yes to 15.

17 THE COURT: Thank you very much, Ms.
18 Hanson.

19 Ms. Harrison?

20 MS. HARRISON: I'm Barbara Harrison. My
21 husband's name is Joe Harrison.

22 I'm presently employed by Jordan School
23 District. I teach (unintelligible) science in high
24 school.

25 I have my teaching degree and Master's. I

1 teach at the U of U and other facilities.

2 In my spare time, I spend time with my
3 family, reading, camping.

4 And as far as organizations, I'm a member
5 of UFAC and also UCTE, (unintelligible). Let's see.
6 I'm also Department Chairman for my high school
7 department.

8 Number 6 is no.

9 Number 7 is no.

10 Number 8 is no.

11 9, no.

12 10, no.

13 11, no.

14 12, yes. I have an uncle that a garage
15 door fell down on him and he sustained a back injury.

16 THE COURT: When did that event occur, Ms.
17 Harrison?

18 MS. HARRISON: I believe in -- 30 years
19 ago. It's been quite a long time.

20 THE COURT: All right.

21 MS. HARRISON: 13 is no

22 14 is no.

23 And 15, yes.

24 THE COURT: Thank you very much, Ms.
25 Harrison.

1 Can you pronounce your name for me, again?

2 MS. BOETTGER: It's Boettger. Forget the
3 "O."

4 THE COURT: Okay.

5 MS. BOETTGER: I am Jill Boettger. My
6 husband is David Boettger.

7 I'm a speech pathologist and audiologist
8 for the State Health Department. I have a Master's
9 degree from Utah State University and a Bachelor's
10 from University of California Santa Barbara.

11 Let's see. I spend my time chasing after
12 my sons. And gardening, if there is any time left
13 over.

14 I'm a member of the American Speech and
15 Hearing Association and the Utah Speech and Hearing
16 Association.

17 No to 6.

18 No, I have not served on a jury before.

19 My husband and I were plaintiffs in a real
20 estate lawsuit that settled out of court.

21 THE COURT: And when was that case filed?

22 MS. BOETTGER: That was in 1992.

23 THE COURT: Was that here in Utah?

24 MS. BOETTGER: Yes.

25 THE COURT: And when did the case settle?

1 What year, approximately?

2 MS. BOETTGER: The same year, '92.

3 THE COURT: Anything at all about that
4 experience that would prevent you from being fair and
5 impartial to either side in this case?

6 MS. BOETTGER: No.

7 THE COURT: Any other response to question
8 Number 8?

9 MS. BOETTGER: Yes, actually. My husband
10 is a pediatrician. He is currently a defendant in a
11 medical malpractice suit.

12 THE COURT: Okay. And is that case here
13 in this district or somewhere else in the state?

14 MS. BOETTGER: In this district.

15 THE COURT: Okay. And do you have any
16 involvement at all regarding that case?

17 MS. BOETTGER: No. Just supporting him.

18 THE COURT: Okay. And anything at all
19 about that experience that would prevent you from
20 rendering fair and impartial jury service on this
21 case?

22 MS. BOETTGER: I don't think so.

23 THE COURT: Do you have any doubt or
24 question about it at all?

25 MS. BOETTGER: Well, of course in my

1 husband's case I haven't been paying any insurance
2 out.

3 THE COURT: That's sort --

4 MS. BOETTGER: (Unintelligible).

5 THE COURT: Let me finish. That sort of
6 is not my question.

7 MS. BOETTGER: Okay.

8 THE COURT: What I need to know is whether
9 anything regarding your husband's situation would
10 have any impact upon your duty and responsibility to
11 be fair and impartial to each side of this case?

12 That's what I'm -- that's what I'm really
13 after.

14 MS. BOETTGER: Yeah. I think probably
15 not.

16 THE COURT: And, you know, I'm not trying
17 to give you a hard time. I'm just trying to probe
18 your response. When you use the word "probably," it
19 made me think that maybe you had a hesitation?

20 MS. BOETTGER: Well, maybe there is a
21 little hesitation in terms of just supporting my
22 husband and this case making me -- feeling he's
23 unfairly being sued.

24 THE COURT: Do you -- are you of the
25 opinion that -- that that sense of unfairness you

1 would extend to this case?

2 MS. BOETTGER: I think I'd be able to
3 separate the two out.

4 THE COURT: Any other response to that
5 question?

6 MS. BOETTGER: No. That's it. That's
7 enough.

8 THE COURT: Okay. Question Number 9?

9 MS. BOETTGER: No to number 9.

10 No to Number 10.

11 No to Number 11.

12 And then I do have a history of back and
13 neck injuries.

14 THE COURT: Describe that history for us.

15 MS. BOETTGER: Starting probably about
16 1992, when I was lifting my firstborn son, who was
17 huge. And have had neck and back injuries since that
18 time.

19 Then when my second son -- he was huge,
20 too -- further injured my back and my neck.

21 THE COURT: And give us an idea of your
22 course of treatment over that period of time for
23 those conditions.

24 MS. BOETTGER: So far I've been able to
25 avoid surgery. I do -- I receive physical therapy

1 for those back injuries. And I do exercises daily to
2 help keep my back strong.

3 But I do have discomfort on and off. I
4 find it hard to sit for really long periods of time.

5 THE COURT: And have you been -- through
6 those treatment modalities, have you been diagnosed
7 with any particular condition of your back?

8 MS. BOETTGER: Yes. I have a herniated
9 disc, C-5. And (unintelligible) L-3/4.

10 THE COURT: Anything at all about that
11 experience that would prevent you from rendering fair
12 and impartial jury service in this case if, in fact,
13 there were evidence of, in this case, regarding back
14 problems?

15 MS. BOETTGER: No.

16 THE COURT: All right.

17 MS. BOETTGER: And no to 13.

18 And no to 14.

19 And yes to 15.

20 THE COURT: Thank you very much.

21 Ms. Rasmussen?

22 MS. RASMUSSEN: My name Elda Sue

23 Rasmussen. There is no Mr. Rasmussen.

24 I work for Qwest. I have done for

25 41 years.

1 THE COURT: What do you do there?

2 MS. RASMUSSEN: This year I collect bills
3 from the long distance carriers.

4 THE COURT: And prior years, what have you
5 done there?

6 MS. RASMUSSEN: I've worked with customer
7 service reps for residential, small business, direct
8 with complication when the old Mountain Bell had
9 telephone books. So a nice, long service career.
10 And now I want to play.

11 THE COURT: Question Number 3?

12 MS. RASMUSSEN: I had high school, some
13 college. Some at the University of Utah, not BYU.
14 Steven-Henager's Business College in business
15 classes.

16 I like to travel some and golf, reading,
17 music, needle work.

18 I don't belong to any big clubs or
19 anything.

20 I'm not in the medical or legal
21 profession.

22 I've never been on a jury.

23 And I'm going to answer Number 11, first,
24 yes. I had a nephew that was involved as a driver in
25 an automobile/pedestrian. I don't know of any

1 lawsuits. That took place three and a half years
2 ago. A young man wandered into traffic. Two cars
3 avoided him and my nephew had to be the one who hit
4 him. He died.

5 And other than that, I've been -- yes?

6 THE COURT: The -- I want to stick with
7 that question for a moment.

8 MS. RASMUSSEN: Okay.

9 THE COURT: As a result of that incident,
10 do you know whether or not any lawsuit was filed or
11 any claim of any nature --

12 MS. RASMUSSEN: I'm not aware of any
13 lawsuit.

14 THE COURT: Did you have any participation
15 in that situation at all?

16 MS. RASMUSSEN: No. Other than emotional
17 support.

18 THE COURT: Right. And I'm sorry, what
19 year did you say that occurred?

20 MS. RASMUSSEN: I think that was about
21 three and a half years ago.

22 THE COURT: And that was here in Utah?

23 MS. RASMUSSEN: Yes.

24 THE COURT: And again, you have no
25 knowledge of any type of action being taken?

1 MS. RASMUSSEN: I've never heard that
2 there was ever a lawsuit filed against him.

3 THE COURT: Okay. Anything about that
4 experience, would it prevent you from being fair and
5 impartial to either side of today's case?

6 MS. RASMUSSEN: No. It would make me
7 probably more aware and fair, not to judge too
8 harshly one way or the another.

9 THE COURT: Okay. You may go on, ma'am.

10 MS. RASMUSSEN: 8, 9 and 10, I'm not aware
11 of any. Nor 12.

12 No to 13 and 14.

13 And yes to 15.

14 THE COURT: Thank you very much, Ms.
15 Rasmussen.

16 Mr. Cotterman?

17 MR. COTTERMAN: My name is Michael Stanley
18 Cotterman. I go by Stan. But me legal name is
19 Michael.

20 THE COURT: And let me iust stop you
21 there, Mr. Cotterman.

22 Members of the Jury Panel, let me just
23 tell you, we're -- since we've been in here awhile,
24 we're getting very close to taking a ten-minute
25 recess. So if you can, be patient with me.

1 Go ahead, Mr. Cotterman.

2 MR. COTTERMAN: Okay. My wife's name is
3 Marilyn.

4 I'm retired, but I am employed part time.

5 THE COURT: What are you retired from,
6 sir?

7 MR. COTTERMAN: Just retired. I was 65.

8 THE COURT: Well, how were you mainly
9 employed when you were working?

10 MR. COTTERMAN: Well, I work part time.

11 THE COURT: Well, you work part time
12 currently?

13 MR. COTTERMAN: Yes.

14 THE COURT: At this -- at what type of
15 work do you do?

16 MR. COTTERMAN: Ace Automotive Warehouse.
17 I'm an auto parts counterman.

18 THE COURT: How long have you worked part
19 time?

20 MR. COTTERMAN: About three years.

21 THE COURT: Where did you work before
22 that?

23 MR. COTTERMAN: Auto parts, same thing.

24 THE COURT: So you've been employed in
25 that area for some time?

1 MR. COTTERMAN: Yeah. Since the mid-'60s
2 actually.

3 THE COURT: Okay. All right.

4 MR. COTTERMAN: And my wife's name is
5 Marilyn. She's a hair stylist. Has her own beauty
6 shop up in Holladay.

7 And highest grade was 12.

8 THE COURT: Was that here in Utah?

9 MR. COTTERMAN: Yes.

10 THE COURT: What high school did you go
11 to?

12 MR. COTTERMAN: West High.

13 THE COURT: All right

14 MR. COTTERMAN: Leisure time, since I have
15 quite a bit, I walk a lot. Golf a little bit and
16 spend a lot of time in coffee shops.

17 THE COURT: What's a "little bit" of golf?

18 MR. COTTERMAN: Maybe once every week or
19 two. About it.

20 THE COURT: Where do you usually golf at?

21 MR. COTTERMAN: Oh, I don't know. I iust
22 spread it around. It's -- it's --

23 THE COURT: I don't want you to give me an
24 exact address -- let me finish my question. I don't
25 want you to give me an exact address of where you

1 live, but do you golf mainly in Salt Lake City?

2 MR. COTTERMAN: In Salt Lake. Right.

3 Uh-huh (affirmative).

4 THE COURT: But in Salt Lake City or in
5 the County or both?

6 MR. COTTERMAN: Salt Lake City.

7 THE COURT: When is the last time -- if
8 you have, when is the last time you golfed in
9 Glenmoor.

10 MR. COTTERMAN: Probably about five years
11 ago.

12 THE COURT: How many total times have you
13 golfed at Glenmoor?

14 MR. COTTERMAN: Oh, probably 20.

15 THE COURT: 20?

16 MR. COTTERMAN: It's decreased. My golf
17 game has decreased a lot through the years. Just
18 haven't gotten any better, to tell you the truth. I
19 find doing it less and less (unintelligible).

20 THE COURT: Any other response to Question
21 Number 4 in terms of your leisure time?

22 MR. COTTERMAN: No.

23 As far as hobbies go, I love trains.
24 Always have. Since I grew up around them when I was
25 young. Every chance I get to ride on railroads, I

1 do. And I've ridden Frontrunner three, four -- about
2 four times already, to Ogden and back. So that kind
3 of shows --

4 THE COURT: Number 5?

5 MR. COTTERMAN: Number 5. no.

6 No on Number 6.

7 Yes on Number 7.

8 THE COURT: When did you give jury
9 service?

10 MR. COTTERMAN: It was the early '90s
11 somewhere. I would say probably '93, '94. Somewhere
12 there.

13 THE COURT: Here in Utah?

14 MR. COTTERMAN: Yeah.

15 THE COURT: Do you remember what kind of
16 case it was?

17 MR. COTTERMAN: It was involving a
18 concealed weapon. I don't remember too many details
19 about it.

20 THE COURT: Was there a guilty or not
21 guilty verdict?

22 MR. COTTERMAN: Guilty

23 THE COURT: Okay. Anything at all about
24 that experience that would prevent you from being
25 fair and impartial to either side in this case?

1 MR. COTTERMAN: No. Not at all.

2 THE COURT: Any other jury service?

3 MR. COTTERMAN: No. That's it.

4 THE COURT: Okay. Let's go to Question
5 Number 8?

6 MR. COTTERMAN: No.

7 THE COURT: Number 9?

8 MR. COTTERMAN: And no on Number 9.

9 No on Number 10.

10 No on Number 11.

11 Yes on Number 12.

12 THE COURT: Why did you answer 12 yes?

13 MR. COTTERMAN: Okay. My brother was
14 involved in a -- he had a serious -- some serious
15 back problems. Had them ongoing for quite awhile.
16 He was under some pretty extensive medication and
17 stuff for them. And I think it was in '78, if I
18 remember right, he -- he was out at the Murray -- I
19 don't remember what hospital it was out there, a
20 hospital in Murray somewhere, and he just kind of
21 freaked out and went crazy, was under such severe
22 pain. And didn't have medication. I guess he went
23 out there trying to get medication, had a weapon.
24 And the Murray police shot him.

25 THE COURT: What year was that?

1 MR. COTTERMAN: Killed him. '78, I
2 believe.

3 THE COURT: Okay. And the back problems
4 that you described that he had, was there some
5 singular event that led to those problems or not?

6 MR. COTTERMAN: You know, not that I'm
7 aware of. I didn't really see an awful lot of him at
8 that particular time. But not that I'm aware of.
9 No. I think it had just built up.

10 THE COURT: Anything at all about that
11 experience that would prevent you from being a fair
12 and impartial juror to either side of this case?

13 MR. COTTERMAN: No.

14 THE COURT: Okay. Let's go on then to
15 Question Number 13?

16 MR. COTTERMAN: No.

17 And no on 14.

18 And yes on 15.

19 THE COURT: Thank you very much, Mr.
20 Cotterman.

21 Ms. -- is it Mahler or Mahler?

22 MS. MAHLER: Mahler.

23 THE COURT: Thank you, Ms. Mahler.

24 MS. MAHLER: I am Annette Mahler. My
25 spouse is Michael Mahler.

1 I am employed at the Utah Medical
2 Association.

3 THE COURT: What do you do there?

4 MS. MAHLER: I'm the Director for some
5 subspecialty medical societies.

6 THE COURT: And give me a better -- more
7 detailed description of the type of work you do.

8 MS. MAHLER: It's a -- it's a physician
9 membership organization. So anything to do with
10 physicians. I do -- I'm the Director for
11 Ophthalmology and the Executive Administrator for
12 OB/GYNs.

13 THE COURT: Okay. All right.

14 MS. MAHLER: I have three-plus years at
15 the University of Utah. Did not graduate.

16 THE COURT: I'm sorry. I may have missed
17 this. Did you say anything about your spouse?

18 MS. MAHLER: He's employed as a loan
19 officer at a mortgage company.

20 THE COURT: Okay. Go ahead. Number 3?

21 MS. MAHLER: Number 4, I bike and golf.

22 THE COURT: And I'm sorry, Ms. Mahler. I
23 missed your response to Question Number 3, your level
24 of education?

25 MS. MAHLER: Three-plus at the University

1 of Utah.

2 THE COURT: Okay.

3 MS. MAHLER: Three-plus years.

4 THE COURT: Any particular --

5 MS. MAHLER: Psychology.

6 THE COURT: Psychology. Okay. All right.

7 I'm sorry. Number 4?

8 MS. MAHLER: I golf and I ride a bike.

9 THE COURT: How often do you golf?

10 MS. MAHLER: In the summertime typically
11 maybe two, three times a month.

12 THE COURT: And where do you usually golf
13 at?

14 MS. MAHLER: I just played Hill Air Force
15 Base. That's the last time I golfed. It can vary.

16 THE COURT: So you golf all over?

17 MS. MAHLER: All over. But not Glenmoor.

18 THE COURT: Have you ever golfed at
19 Glenmoor?

20 MS. MAHLER: No. Not that I can recall.

21 THE COURT: All right. Any hobbies?

22 MS. MAHLER: I read and travel quite a
23 bit. I -- I travel quite a bit with my -- my
24 position at the Medical Association.

25 THE COURT: And when you travel for your

1 work, what types of events are you usually traveling
2 to and the locations?

3 MS. MAHLER: It varies. The annual
4 meeting for OB/GYNs, I do some legislative traveling
5 as well.

6 I have obviously worked in the health care
7 profession. I have worked several different
8 positions within a medical office, a clinical office,
9 medical manager. I've worked for BlueCross.
10 BlueShield as the Coordinator for the HIP Program,
11 which is the Health Insurance Pool.

12 THE COURT: When did you -- how long were
13 you employed in that capacity?

14 MS. MAHLER: Two years at BlueCross.
15 Approximately 15 years in the medical profession.

16 Number 7, no.

17 8, no.

18 9, no.

19 10, no.

20 11, no.

21 12, no.

22 13, no.

23 14, no.

24 And 15, I believe I can be fair and
25 impartial, yes.

1 THE COURT: Thank you very much, Ms.
2 Mahler.

3 Mr. Wright?

4 MR. WRIGHT: My name is Denton Wright. My
5 wife's name is Karen.

6 I'm employed as a truck driver. And she's
7 employed as a banker.

8 THE COURT: And when you say you're
9 employed as a "truck driver," I mean. independently,
10 for a company?

11 MR. WRIGHT: No. Penske Delivery
12 Industries.

13 THE COURT: And do you drive -- where do
14 you drive?

15 MR. WRIGHT: Just locally.

16 THE COURT: Okay. Go ahead.

17 MR. WRIGHT: 24 years accident free.

18 THE COURT: Okay. Number 3?

19 MR. WRIGHT: Eleventh grade.

20 THE COURT: Here in Utah?

21 MR. WRIGHT: Yeah.

22 THE COURT: Okay.

23 MR. WRIGHT: I spend my leisure time
24 boating.

25 My hobbies, I play with my grandkids.

1 And no on 5.

2 No on 6.

3 No on 7.

4 No on 8.

5 No on 9.

6 10, no.

7 11, no.

8 12, no.

9 13, no.

10 14, no.

11 And 15, yes.

12 THE COURT: Thank you very much, Mr.

13 Wright.

14 Ms. Glazier?

15 MS. GLAZIER: Yes. My name is Cheree

16 Glazier. My husband is Scott Glazier.

17 I am employed through Jordan School

18 District as a teacher's assistant for a kindergarten
19 class.

20 And my husband is employed through a sign
21 company as an install foreman.

22 My highest grade is 12th grade, West
23 Jordan High School, here in Utah.

24 Leisure time with my kids, reading,
25 playing the piano.

1 Member of the PTA.

2 I have no -- Number 6 is no.

3 7, no.

4 8, yes.

5 THE COURT: And why did you answer yes to
6 8?

7 MS. GLAZIER: Well, my husband was a
8 witness in an automobile accident It was actually
9 part of -- got -- it was nine years ago.

10 THE COURT: And when you say he was a
11 "witness," does that mean he actually testified in
12 court?

13 MS. GLAZIER: He did have to go to court.
14 I don't believe he was ever called up.

15 THE COURT: Okay. And did he have any
16 other role in that incident you just described?

17 MS. GLAZIER: As in the trial or --

18 THE COURT: Yeah. In the -- in the
19 accident itself?

20 MS. GLAZIER: He was actually -- it was an
21 automobile accident. The driver was under the
22 influence. My husband was injured in it. Yes.

23 THE COURT: And what was --

24 MS. GLAZIER: He was in the car. He was
25 not driving. He was in the car with the driver.

1 THE COURT: And what were the extent of
2 your husband's injuries, if I heard you correctly.

3 MS. GLAZIER: Just had to have his ear
4 partially sewn back on, his lip. Had a bunch of
5 cracks and stuff in his head.

6 THE COURT: And did you have any other
7 participation in that situation at all?

8 MS. GLAZIER: No.

9 THE COURT: And do you have any idea as to
10 what the outcome of any lawsuit was?

11 MS. GLAZIER: I do not know what the
12 outcome was.

13 THE COURT: Okay. Any other response to
14 Question Number 8?

15 MS. GLAZIER: Yes. My parents were
16 involved -- my -- well, let's take care of two.

17 My brother was hit by a car walking home
18 from school. And I don't know if it was my parents
19 -- well, I know my parents were involved in the
20 process, the legal process. I believe they were --
21 they received partial -- his medical bills were paid
22 partially by the driver.

23 THE COURT: When did that event occur?

24 MS. GLAZIER: That was about 20 years ago.

25 THE COURT: How old was your brother at

1 the time?

2 MS. GLAZIER: He was 15, I believe. Yeah.
3 Right before he turned 16.

4 THE COURT: I'm sorry to do this to you --

5 MS. GLAZIER: That's okay.

6 THE COURT: -- how old were you at the
7 time?

8 MS. GLAZIER: I was -- well, he's six
9 years older than I. So I was 9.

10 THE COURT: And what can you tell me, if
11 anything, about your brother's injuries?

12 MS. GLAZIER: He broke both of his legs.
13 He had problems with his face. He had to have teeth
14 broken out, sewn up.

15 THE COURT: And to your knowledge, does
16 your brother still currently deal with any of the
17 issues or conditions resulting from that accident?

18 MS. GLAZIER: With his knee, yes.

19 THE COURT: And describe that briefly.

20 MS. GLAZIER: He -- it's not enough -- I
21 mean. He's a runner. So -- but he has suffered from
22 the knee injuries. But he does not -- he's not
23 treated for it.

24 THE COURT: Anything at all about that
25 experience that would prevent you from rendering fair

1 and impartial jury service to either side of this
2 case?

3 MS. GLAZIER: I don't believe so.

4 THE COURT: All right. Any further
5 response to that question?

6 MS. GLAZIER: My parents were also
7 involved in a lawsuit because my brother -- a
8 different brother -- in an automobile accident, where
9 they were suing for personal injury.

10 THE COURT: What year did that accident
11 happen?

12 MS. GLAZIER: It was a long time ago as
13 well.

14 THE COURT: More than ten years ago?

15 MS. GLAZIER: Yes.

16 THE COURT: And do you know what injuries
17 your other brother sustained?

18 MS. GLAZIER: My brother was not injured.
19 It was the other person, the person who hit him.

20 THE COURT: So it was your brother, you
21 believe, was being sued?

22 MS. GLAZIER: He was a minor.

23 THE COURT: Okay. Do you have any
24 knowledge of any -- of the outcome of that situation
25 at all?

1 MS. GLAZIER: I -- I don't believe. I --

2 THE COURT: Is there anything -- is there
3 anything about that particular experience that would
4 prevent you from being fair to either side of today's
5 case?

6 MS. GLAZIER: No.

7 THE COURT: Any other response to that
8 question?

9 MS. GLAZIER: I don't think so.

10 THE COURT: Question Number 12?

11 MS. GLAZIER: No. Not that I know of.

12 THE COURT: 13?

13 MS. GLAZIER: No.

14 THE COURT: 14?

15 MS. GLAZIER: No.

16 THE COURT: And 15?

17 MS. GLAZIER: Yes.

18 THE COURT: Thank you very much, Ms.
19 Glazier.

20 Members of the Jury Panel, we are going to
21 take a -- I'm going to call it a 15-minute recess at
22 this time.

23 Please -- it's very important, number one,
24 that when you return to the courtroom, that you
25 return to the same seats that you're currently

1 sitting in.

2 Additionally, Members of the Jury Panel,
3 during this recess, it's very important that you go
4 out of your way to have no contact whatsoever with
5 any of the lawyers, their clients or any of the other
6 participants in this particular case.

7 Additionally, I'm going to have to require
8 that you have no discussions or conversations with
9 anyone regarding anything that's taken place here
10 this morning so far. And that means no conversations
11 amongst yourselves about this case as well.

12 We'll recess for 15 minutes at this time.

13 And Counsel, in about five minutes, I
14 think I'd like to see you in chambers.

15 We are in recess.

16 (Recess taken at 11:15 to 11:30 a.m.)

17 (Discussion held in chambers.)

18 THE COURT: We are on the record.

19 And -- and the record should reflect,
20 again, this is case number 050912506. I have in
21 chambers Mr. Christensen and Ms. Van Orman.

22 And we're at a point in the jury selection
23 phase of the case where we have questioned 16 panel
24 members.

25 And I understand that Ms. Van Orman wishes

1 to challenge for cause one of the first 16 panel
2 members.

3 Go ahead, Ms. Van Orman.

4 MS. VAN ORMAN: Yes. I would challenge
5 for cause Juror Number 1, Claudia Allen-Kidder. She,
6 when questioned, talked about her very close friend
7 who lives across the street who was rear-ended and
8 was a plaintiff in a lawsuit. She said that she --
9 her friend was in pain every day from back problems
10 resulting from the motor vehicle accident. And that
11 she -- appeared that she was very concerned about
12 that.

13 When she was asked if this would effect
14 her ability to be impartial in this case, her
15 response was "hopefully not." I feel that that shows
16 that there is some partiality there. She did not
17 answer unequivocally. And therefore. I think she
18 would be partial.

19 And there is a challenge for cause.

20 THE COURT: Do you wish to respond, Mr.
21 Christensen?

22 MR. CHRISTENSEN: Yes. I don't think that
23 the level of concern that's been raised there is any
24 higher than we may raise over several others. I
25 don't think it arises to the level of a valid

1 challenge for cause.

2 THE COURT: Now let me say that in my
3 questioning of Ms. Allen-Kidder, I think she
4 responded substantially consistent with the manner in
5 which Ms. Van Orman described it. I had a different
6 view of her response, though. I was satisfied, based
7 upon her response, that she could be fair and
8 impartial. I did attempt to probe her with more
9 detail as it related to her neighbor, who she
10 indicates that she has these problems -- that has the
11 problems, back and neck injury, that she associates
12 with frequently.

13 But I am satisfied that she did, in fact,
14 give sufficiently satisfactory responses, that she
15 could, in fact, be fair and impartial. So I'm going
16 to deny the challenge for cause.

17 Ms. Van Orman, are there any other
18 challenges for cause as it relates to the first 16
19 panel members who have been questioned?

20 MS. VAN ORMAN: Not at this time. Unless
21 -- I -- I would like to question Juror Number 8.

22 THE COURT: And let me tell you what I'm
23 intending to do. When we recess, I'm going to go
24 back out and I'm going to start in with Ms. Kipp and
25 get some additional information from her. And then

1 once we have her responses on the record, then what
2 I'm going to ask is with -- whether or not you pass
3 the panel for cause, with the exceptions already
4 taken. If you pass the panel for cause, then I'm
5 going to have you commence exercising your preemptory
6 challenges.

7 And I just want to make clear on the
8 record, you have no challenges for cause; is that
9 correct, Mr. Christensen?

10 MR. CHRISTENSEN: Correct.

11 THE COURT: Okay. Anything else?

12 MS. VAN ORMAN: No.

13 THE COURT: How long -- how long do you
14 think your opening statements are going to be?

15 Even though I think what we're going to do
16 is recess for lunch and come back.

17 MR. CHRISTENSEN: My guess is 30 minutes.

18 THE COURT: Yeah. We'll get the jury
19 picked. Then we'll recess and come back. Okay.

20 (Recess taken from 11:34 to 11:37 a.m.)

21 THE CLERK: All rise.

22 The Court is again in session.

23 Please be seated.

24 THE COURT: The record should reflect that
25 the jury panel has returned to the courtroom. And

1 counsel and their clients are also present.

2 Mrs. Kipp, I'm going to ask that you
3 stand. I have some additional follow-up questions
4 I'd like to put to you.

5 You previously described for us that -- I
6 think you said, anyway, your husband was a lawyer in
7 this community for 50 years; is that correct?

8 MS. KIPP: Yes. Uh-huh (affirmative)
9 (affirmative) (affirmative).

10 THE COURT: And to the best of your
11 knowledge, are you -- what firms was he associated
12 with?

13 MS. KIPP: He had his firm, Kipp &
14 Christensen.

15 THE COURT: And was that the only firm he
16 worked with?

17 MS. KIPP: Yes. He started it.

18 THE COURT: And -- I know this question
19 may seem obvious to you, and I'm not looking for an
20 exact year, but as best as you can remember, what
21 year was the firm established?

22 MS. KIPP: Well, it was Kipp & Charlier
23 when he graduated -- right out of law school. Kipp &
24 Charlier started a law firm. And then it became Kipp
25 & Christian.

1 But you know, it was probably 50 years
2 before. Yeah. He had that firm and he didn't go
3 anywhere else.

4 THE COURT: And did your nusband have a
5 specialty in his legal practice?

6 MS. KIPP: He did insurance defense. He
7 did malpractice. He did business -- did some
8 plaintiff work also, but a lot of defense.

9 THE COURT: And -- and you may not know
10 the answer to this question because you've stated
11 that he did mostly defense.

12 Do you have any way of determining, just
13 by estimate, the percentage of work he did on the
14 defense side versus on the plaintiff's side?

15 MS. KIPP: Yeah. Probably 70 percent.
16 You know, I'm just guessing.

17 THE COURT: When you say "70 percent," 70
18 percent on the --

19 MS. KIPP: Defense.

20 THE COURT: -- defense side?

21 MS. KIPP: Uh-huh (affirmative)
22 (affirmative) (affirmative).

23 THE COURT: And maybe 30 percent on the
24 plaintiff's side.

25 Did you often discuss the cases he worked

1 on with him?

2 MS. KIPP: Not a lot. Yeah. I kind of
3 knew what was going on. You know, if they were big
4 cases, I guess we did. It's been so long ago.

5 I also worked as a legal secretary. I
6 forgot to say that in that one thing we said.

7 THE COURT: Where did you work at as a
8 legal secretary?

9 MS. KIPP: Kipp & Christian; Ray, Quinney
10 and Nebeker, and Jones and something.

11 THE COURT: Jones Waldo maybe?

12 MS. KIPP: No. It was small.

13 THE COURT: No. Okay. What --
14 approximately what years did you work as a legal
15 secretary?

16 MS. KIPP: I worked as a legal secretary
17 until 1977. So it was in my earlier life.

18 THE COURT: Okay. I'm curious to know as
19 a result of the -- I'll describe it as legal
20 experience that you've had, have you formed any
21 opinions that would prevent you from being fair and
22 impartial to either the plaintiffs or the defendants
23 on this case?

24 MS. KIPP: Not at all. Not at all.

25 THE COURT: Are you satisfied that with

1 the experience you've described, that you can be a
2 fair and impartial juror?

3 MS. KIPP: Yes. Very much.

4 THE COURT: Did you have any particular --
5 you had no particular field of expertise as a legal
6 secretary or did you?

7 MS. KIPP: Just --

8 THE COURT: Did some of everything?

9 MS. KIPP: Yeah.

10 THE COURT: All right. Counsel, would you
11 approach?

12 And you may be seated.

13 MS. KIPP: Thank you.

14 (Bench conference held.)

15 THE COURT: Did you have any other
16 questions you want me to put to her?

17 MS. VAN ORMAN: That's fine. Thank you.

18 MR. CHRISTENSEN: No.

19 (Bench conference concluded.)

20 THE COURT: Now counsel, starting with Mr.
21 Christensen, do you pass the panel for cause, with
22 the exception of the exceptions already taken?

23 MR. CHRISTENSEN: Yes, to the extent we've
24 questioned the jurors.

25 THE COURT: Ms. Van Orman?

1 MS. VAN ORMAN: Yes, your Honor.

2 THE COURT: Okay. Thank you.

3 Members of the Jury Panel, what that means
4 at this point is that counsel are going to exercise
5 what the Rules call their preemptory challenges. The
6 Rules give each side of the lawsuit a certain number
7 of -- there is no other way, but to say strikes.
8 They are called preemptory challenges. It simply
9 means that counsel can strike certain panel members'
10 names off of the jury panel list.

11 You should know that they don't need my
12 permission to exercise their preemptory challenges at
13 this point.

14 And as soon as the -- counsel have
15 exercised their preemptory challenges, what we will
16 do next then is identify those who have been selected
17 to hear this case and then we will immediately excuse
18 those who have not been selected.

19 And then for those who are selected, I
20 have some brief preliminary instructions for you and
21 then we're going to take the lunch recess.

22 Just one moment.

23 And counsel, you may begin to exercise
24 your preemptory challenges.

25 (Jury selection process from 11:43 to

1 11:50 a.m.)

2 THE COURT: Members of the Jury Panel --
3 excuse me -- as your names are called, would you
4 please stand, step forward and have a seat in the
5 jury box at the Clerk's direction.

6 THE CLERK: Heather May, Kent Pearce,
7 Carolyn Kipp, Lynnette Hanson -- Lynnette Hanson,
8 Barbara Harrison, Elda Sue Rasmussen, Michael Stanley
9 Cotterman, Annette Mahler.

10 THE COURT: Mr. Christensen, is this the
11 jury you've selected, sir?

12 MR. CHRISTENSEN: Yes, your Honor.

13 THE COURT: Ms. Van Orman, is this also
14 the jury you've selected?

15 MS. VAN ORMAN: Yes, your honor.

16 THE COURT: And counsel, do either of you
17 have any objection with the remaining panel members
18 being discharged at this time?

19 MR. CHRISTENSEN: No.

20 MS. VAN ORMAN: No.

21 THE COURT: You may be seated.

22 Members of the Jury Panel who have not
23 been selected, again, thank you very much for your
24 appearance and participation here today. We will
25 keep you no longer and you are excused at this time.

1 Thank you very much.

2 And Counsel, at this time, you may reverse
3 your seating as well at this time.

4 (End of requested portion of transcript.)

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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Lanette Shindurling, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That on June 30, 2008, I produced transcript pages 1 through 37 from electronic medium at the request of Attorney Roger Christensen;

That the testimony of all speakers was reported by me in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said testimony is set forth in the preceding pages, according to my ability to hear and understand the tape provided;

That the original transcript was sealed and delivered to Attorney Roger Christensen for safekeeping.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 5th day of July, 2008.

Lanette Shindurling, RPR, CRR
Notary Public

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Kelly Fine-Jensen, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That on June 30, 2008, I produced transcript pages 37 to 98 from electronic medium at the request of Attorney Roger Christensen;

That the testimony of all speakers was reported by me in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said testimony is set forth in the preceding pages, according to my ability to hear and understand the tape provided;

That the original transcript was sealed and delivered to Attorney Roger Christensen for safekeeping.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this
5th day of June, 2008.

Kelly Fine-Jensen, RPR
Notary Public

EXHIBIT 2

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|------------------------|---|--------------------|
| JOHN BOYLE and NORINNE |) | |
| BOYLE, |) | |
| |) | |
| Plaintiffs, |) | Case No. 050912506 |
| |) | |
| vs. |) | |
| |) | Judge: |
| KERRY CHRISTENSEN, |) | |
| |) | Tyrone E. Medley |
| Defendant. |) | |
| |) | |

TRANSCRIPT OF CLOSING STATEMENTS

Date of Proceeding: JUNE 3-6, 2008

Reporter: Diana Kent, CSR, RPR, CRR
Notary Public in and for the State of Utah

1 to your employer,' or, 'Here, stay off work for a
2 month'?" No.

3 "Well, what about work restrictions, if
4 you could only work five hours a day, not ten hours a
5 day, or you can't do heavy lifting or anything like
6 that?" No.

7 Dr. Clawson, I asked him, "Dr. Clawson,
8 you perform these L4-5 discectomies all the time.
9 When do most of your patients go back to work after
10 the surgery?"

11 "About three to five weeks."

12 "Did you ever tell Mr. Boyle he couldn't
13 go back or he had to reduce his time at work?"

14 "I don't recall."

15 The fact is, Mr. Boyle left -- had the
16 accident, he left Mascot Financial. He didn't look
17 for a job. He didn't even try and look for a job.
18 Didn't go back to work until December of 2005. So
19 what was he doing with all of his time? Well, we
20 know from the records he was sure golfing. Golfing a
21 lot. If you can golf 18 holes once a week, can't you
22 go back to a desk job?

23 I thought about this and, you know, I'm
24 not a real big golfer, but the time it would take to
25 golf 18 holes once a week, wouldn't that make up for

1 this ten hours a week that he says he can't work,
2 this 25 percent of the time? He can only work 30
3 hours a week instead of 40 hours a week, and so
4 that's that 25 percent projected loss. If you don't
5 do the golfing and you go back to work, doesn't that
6 take care of it?

7 The third main issue in this case is
8 Mr. Boyle's pain and suffering. What has he been
9 like since the accident? What's expected in the
10 future? Ladies and gentlemen, they want a lot of
11 money for this. A lot of money. What's been written
12 on the board is called a per diem analysis.
13 Sometimes people like to use that in --

14 MR. CHRISTENSEN: I object to this, your
15 Honor.

16 THE COURT: Your objection is overruled.

17 MS. VAN ORMAN: It's a per diem analysis.
18 How many days has it been since the accident? How
19 many days for the rest of his life? And how much per
20 day is that worth? That's what's been done here.
21 That's how we get verdicts like in the McDonald's
22 case with a cup of coffee.

23 MR. CHRISTENSEN: Objection.

24 THE COURT: What's the basis of your
25 objection? You are not stating those succinctly, the

1 legal basis.

2 MR. CHRISTENSEN: My objection is it's
3 prejudicial and it's not in evidence.

4 THE COURT: Okay. Your objection is noted
5 but overruled.

6 MS. VAN ORMAN: The reason I've brought up
7 golf in this case, there's a reason for it, okay?
8 One of the things that have been, or the items that
9 have been admitted into evidence are the UGA records.
10 How did I get these records? Well, you go on line on
11 the internet. You guys can't do that. I did this.
12 And then I also subpoena the records from the golf
13 association. And what do they do? They list the
14 date, the course, the number of holes played, the
15 score, the rating, the slope, and the handicap
16 differential. These are for scores that are
17 reported. These aren't even all the scores; these
18 are scores that are reported.

19 Now, Mr. Boyle testified, "I golf nine
20 holes, not 18, nine holes every Thursday." All
21 right. So I look at the records and they show -- and
22 you'll see it. It just goes down the line and this
23 is from most recent. This shows you how -- this
24 isn't even updated. This is March 26 of '08. If
25 you'll remember, Felton Spencer, I think it was, the

1 golf friend, said that they went like the week before
2 Memorial Day, so there's been golfing since that
3 time.

4 But from here, holes, just going down the
5 line: 18, 18, 9, 18, 9, 18, 9, 9, 18, 18, 9, 18. It
6 just goes down. You can look at this yourself. The
7 records don't show that he golfs nine holes. The
8 record shows sometimes he golfs 9, sometimes he golfs
9 18.

10 Mr. Lancaster was on the stand and he
11 said, I just thought this was so interesting, he
12 said, "I golf." And I said, "When was the last time
13 you golfed with him?"

14 "Well, right before Memorial Day."

15 Okay. "Well, how often do you golf with
16 him?"

17 "Once a week."

18 "Great. So do you golf with Mr. Boyle on
19 Thursdays?" Because Mr. Boyle said that he golfs on
20 Thursdays.

21 He said, "No, I don't golf with him on
22 Thursdays." All right. So are we up to two times a
23 week now?

24 I also looked at this UGA record and it's
25 got the dates and I looked on the calendar to see

REPORTER'S CERTIFICATE

[illegible]

I, Diana Kent, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That on June 30, 2008, I produced a transcript from electronic medium at the request of Attorney Roger Christensen;

That the testimony of all speakers was reported by me in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said testimony is set forth in the preceding pages, according to my ability to hear and understand the tape provided;

That the original transcript was sealed and delivered to Attorney Roger Christensen for safekeeping.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 5th
day of June, 2008.

Diana Kent, CSR, RPR, CRR
Notary Public
Residing in Salt Lake County