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REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUME  
TRIAL COURT CAUSE NO. 2010-14519

GERARDO A. JUAREZ ) IN THE DISTRICT COURT  
vs. ) HARRIS COUNTY, TEXAS  
CANAL CARTAGE COMPANY )  
AND JOSE APARICIO ) 281ST JUDICIAL DISTRICT

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**TRIAL TESTIMONY OF JAY MARTIN BARRASH, MD**

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On the 6th day of June 2012, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Sylvia A. Matthews, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

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Trial Testimony of Jay Martin Barrash, MD  
June 6, 2012

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**EXHIBITS OFFERED BY PLAINTIFF**

EXHIBIT	DESCRIPTION	OFFERED	ADM./DEN.
26	Censure	20 v1	20 v1
27	Advertisement	34 v1	35 v1

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**JAY MARTIN BARRASH, MD,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. GEALY

Q. Good morning. Could you please state your name for the jury?

A. Jay Martin Barrash.

Q. And, Dr. Barrash, I want to talk to you for a minute about your educational background, training, and experience. Can you tell the jury where you went to school?

A. Like college?

Q. Yes, sir.

A. I attended the University of Maryland in College Park, Maryland, from 1959 to 1962. I then went to University of Maryland Medical School from 1962 to 1966. I spent two years at Mercy Hospital in Baltimore, Maryland, which is one of the University of Maryland group of hospitals. They run a bunch of them. And I did a year of internal medicine training; and then I did a year of general surgery residency, finished that in June of 1968, moved to Houston in 1968, and spent four years at Baylor College of Medicine here in the Medical Center, doing my neurosurgery residency. And I've been here in Houston since that time.

1 Q. Are you currently board-certified?

2 A. Yes, sir.

3 Q. And can you explain to the jury what that  
4 means?

5 A. There are, I think, 23 or 24 boards approved by  
6 the American Board of Medical Specialists; and one of  
7 them happens to be neurosurgery. Others would be, like,  
8 pediatrics or internal medicine or OB/GYN or psychiatry,  
9 surgery. There are 23 or 24 of those. And what they do  
10 is they approve programs where residents, physicians,  
11 are trained.

12 And you have to go through an approved  
13 training program. You have to be certified by the man  
14 who trained you that you've met his requirements which  
15 reflect the requirements of the American Board of  
16 Neurological Surgery. You have to pass a written test  
17 in the basic sciences of our specialty. In our  
18 specialty those things would be things, like,  
19 neurophysiology and neuroanatomy and neuropathology,  
20 kind of the things that are laboratory rather than  
21 clinical. You have to be in practice a minimum of two  
22 years, write up every case that you've participated in.  
23 That's not just surgery, but every patient you've seen,  
24 what you've done to them, the results, if you've  
25 operated or not.

1           You submit that to the board. They review  
2 it. If you -- they feel it's adequate, they then let  
3 you sit for a day of oral examinations; and if you pass  
4 that, you then become board-certified.

5           And I'm one of the old people, and I don't  
6 have to do what the younger people do. Anybody that got  
7 board-certified after 1998, or '99, every ten years has  
8 to be reboard-certified. And they call me grandfathered  
9 in, and I appreciate that.

10          Q. Dr. Barrash, can you tell the ladies and  
11 gentlemen of the jury what hospitals and what positions  
12 you've held over the years?

13          A. Well, over the years I've -- when I was a  
14 resident, I was at Ben Taub. I was at the VA. I was at  
15 Texas Children's, Methodist, St. Luke's, TIRR. And  
16 since I've been in practice, I've worked at Memorial  
17 Hermann Hospital, Methodist Hospital, St. Luke's, TCH,  
18 Memorial Hermann Southwest, Memorial City; when they  
19 were open, Spring Branch and Sam Houston Hospital in  
20 Bellaire and Westbury, which are no longer in existence,  
21 and -- not all at the same time, obviously, but at  
22 various times.

23           And, currently, I still use only two  
24 hospitals. I use St. Luke's, and I use the one on the  
25 Southwest Freeway. It's the -- it used to be

1 Foundation. Now it's called the Houston Orthopedic and  
2 Spine Hospital.

3 And during my career -- I started in  
4 neurosurgery service at St. Luke's. They never had one.  
5 And we now do more neurosurgery there than, I think, any  
6 hospital does in Houston. I think they do about 2500 to  
7 3,000 neurosurgery cases a year there.

8 Q. And have you held any positions as a clinical  
9 instructor or professor?

10 A. Yeah. Even when I was a resident, I used to  
11 teach neuroanatomy to the medical students. And,  
12 subsequently, I was -- well, Baylor's my home. And so  
13 I -- I taught the residents. I've been a clinical  
14 instructor and clinical assistant professor of  
15 neurosurgery. I taught neurosurgery at M.D. Anderson  
16 where I was assistant chief of neurosurgery at  
17 M.D. Anderson for about 12 years. I was an instructor  
18 at the University of Texas, Hermann Hospital for, I  
19 don't know, 15 years. And when I stop going to those  
20 places, of course, I give up my teaching position. But  
21 I still go to St. Luke's and Baylor.

22 Q. Doctor, did we ask you to review the medical  
23 records and films of Gerardo Juarez?

24 A. Yes, sir.

25 Q. And can you explain to the ladies and gentlemen

1 of the jury what you -- what you have reviewed and  
2 looked at?

3 A. I reviewed medical records relative to the  
4 motor vehicle accident on 4/28/2008, and I reviewed some  
5 previous references to kidney stones as far back as  
6 1998.

7 MR. VUJASINOVIC: Judge, I object.  
8 There's a limine order on unrelated conditions. Kidney  
9 stones?

10 THE COURT: Okay. Let's -- that's  
11 sustained. Let's stick to just an answer to the  
12 question of which medical records were reviewed.

13 BY MR. GEALY

14 Q. And I'm sorry, Doctor. Perhaps my question  
15 wasn't clear. I'm really just asking for the records  
16 that were reviewed -- or that you reviewed pertaining to  
17 any procedures and medical records subsequent to the  
18 accident involving this lawsuit.

19 A. Okay. I reviewed the incident of 4/28/08 in  
20 the San Jacinto Methodist Hospital records, Dr. William  
21 Donovan, Memorial MRI and Diagnostic, Fry Chiropractic  
22 Clinic, and -- many, many visits, chiropractic visits; a  
23 Dr. Dent who works at Memorial MRI and Diagnostics, with  
24 an epidural steroid; Dr. Kahkeshani; Dr. Paul Vaughn;  
25 Specialty Hospital of America; Dr. Li, L-I; and, of



1 course, the X ray and imaging studies.

2 Q. And the MRIs?

3 A. The imaging, yes, sir, MRIs.

4 MR. GEALY: Your Honor, we need the screen  
5 down.

6 BY MR. GEALY

7 Q. And, Doctor, you're aware that Mr. Juarez had a  
8 cervical fusion?

9 A. I am.

10 Q. Doctor, I want to go to the records of the  
11 San Jacinto Methodist. And this is the ER admittance.  
12 And I just kind of want to go over these to start with.  
13 It says, "Location of pain/injuries." There's no  
14 indication of neck pain.

15 Then I want to go over to the other entry  
16 that notes that the neck is not -- "nontender." Can you  
17 explain to the jury in medical terms what "nontender"  
18 means?

19 MR. VUJASINOVIC: Your Honor, I would  
20 object. There's been no disclosure about any such  
21 opinions concerning the neck, lack of pain beforehand.  
22 It's not in any of his reports that --

23 THE COURT: So your objection is?

24 MR. VUJASINOVIC: Has not been properly  
25 disclosed.

1                   THE COURT: Overruled.

2           BY MR. GEALY

3           Q.     Doctor, my question is: Can you explain to the  
4 jury, from a medical standpoint, when a finding of the  
5 neck is nontender, what -- what does that mean?

6           A.     That means it doesn't hurt, no pain.

7           Q.     And the next entry says a painless range of  
8 motion.

9                   Can you explain to the ladies and  
10 gentlemen of the jury what "ROM," or range of motion,  
11 means?

12          A.     You turn the head to the right, left, up and  
13 down; and if it doesn't hurt, it's painless.

14          Q.     You have seen the MRI films, cervical fusion.  
15 And my question to you is this: If a cervical injury of  
16 that nature had occurred in this accident, would it be  
17 consistent or inconsistent, within reasonable medical  
18 probability, that post-accident there would be a  
19 painless range of motion and the neck would have no pain  
20 and be not tender?

21          A.     No, not compatible. When you rupture a disk,  
22 it's not fun. It hurts, and it hurts right away.

23          Q.     Doctor, the -- the testimony has been that  
24 Mr. Juarez underwent the cervical fusion, that he has  
25 not been back to a doctor in over two years, he's not

1 making a claim for lost wages.

2                   Are those things consistent with someone  
3 who has had a cervical fusion?

4           A.    Yeah, cervical fusions are very good operations  
5 when indicated. The results are very good. And a  
6 one-level, people go back and do whatever they please;  
7 and there are no restrictions. I don't put any  
8 restrictions on people that have a one-level fusion.

9           Q.    Doctor, did you have -- in looking at the  
10 medical records of Mr. Juarez, there's been some  
11 discussion about his -- his low back, or the lumbar  
12 area.

13                   Did you note any degenerative changes in  
14 those films?

15           A.    Yeah. He has a minimal annular degenerative  
16 bulge. It's nothing.

17           Q.    Can you explain to the ladies and gentlemen of  
18 the jury what degenerative changes are?

19           A.    Well, a degenerative change is wear and tear.  
20 The calendar catches us all. And some of it catches us  
21 earlier; some of it -- some of us get caught later. But  
22 it's a wear-and-tear process.

23                   And as your spine degenerates, the disk  
24 contents lose water. It's called "desiccation." We  
25 have a fancy word for everything. It means the water

1 content is left -- less. And as the water content gets  
2 less, there's not as much material to hold the -- the  
3 disk at its normal distance. It gets narrower. You  
4 know, Grandma, when she was 25 years old, was 5 foot 3.  
5 And she's 75 now, and she's 4 foot 10 or 4 foot 11. And  
6 that's a degenerative process from the disks getting  
7 narrow with age.

8                   Like the cushion that you're sitting on,  
9 when it was brand new, it was full. And as it's been  
10 sat on more and more, the cushion will get a little more  
11 compressed; and the edges of it, because they have  
12 material at the edges, will bulge out because you're  
13 sitting on it and there's less material stretching that  
14 edge out. So as it comes down, it bulges. And that's  
15 just -- I call it "calendar's disease." It's just a  
16 wear-and-tear process.

17           Q.     Doctor, I want to talk to you a little bit  
18 about medical expenses. Have you had a chance to review  
19 the medical expenses that have been asserted in this  
20 case?

21           A.     Yes, sir.

22           Q.     And I guess -- let me back up for a minute.  
23 You're familiar with Dr. Donovan, correct?

24           A.     Yes, sir.

25           Q.     Dr. Donovan has testified that he has a kind of

1 business that specializes in providing services to  
2 plaintiffs' lawyers. Is that generally consistent with  
3 his reputation in the medical community?

4 A. Yes, sir.

5 Q. How long has that been his reputation?

6 MR. VUJASINOVIC: Judge, at this point I  
7 would object. None of this has been disclosed.

8 THE COURT: Overruled.

9 A. Well, Dr. Donovan came to Houston in 1975; and  
10 he started doing a little bit of plaintiff work and a  
11 lot of regular work. And over the years, he's not doing  
12 any regular work, basically, and only does plaintiff  
13 work, as far as I know. I haven't seen a case in ten  
14 years that hasn't been plaintiff-generated.

15 BY MR. GEALY

16 Q. He -- he testifies that the way he gets paid is  
17 with a letter of protection so that he can get paid when  
18 a lawsuit resolves and if it resolves in his favor, he  
19 gets paid; if it doesn't resolve in his favor, he may  
20 not get paid.

21 Is that standard in the medical community?

22 A. I've been in practice 40 years. I've never  
23 taken a letter of protection.

24 Q. Do you think that the medical expenses that  
25 have been -- that you reviewed in this case are -- are

1 reasonable?

2 A. No, sir.

3 Q. Can you go through and explain to the jury what  
4 you think is not reasonable and why?

5 A. Every bill. There's not one of them that's  
6 reasonable.

7 Q. The total medical bills -- and I think -- I  
8 guess let me start with Surgery Specialty Hospital. And  
9 you have reviewed the billing from Specialty Surgery  
10 Hospital?

11 A. Yeah. I know the place very well.

12 Q. Okay. Can you explain to the jury generally  
13 what you think is unreasonable, or not reasonable, about  
14 the charges they have submitted?

15 A. Well, I know, because I have patients that have  
16 no insurance or no coverage --

17 MR. VUJASINOVIC: Judge, I need to object  
18 at this point, injecting insurance into the case.

19 THE COURT: Sustained.

20 Let's rephrase the question, please,  
21 Mr. Gealy.

22 THE WITNESS: I can change my answer.

23 THE COURT: Let's just hear the question  
24 again, please.

25 THE WITNESS: Okay.

Jay Martin Barrash, MD - June 6, 2012  
Direct Examination by Mr. Gealy

1 BY MR. GEALY

2 Q. The question was can you -- in reviewing the  
3 records from Surgery Specialty Hospital, can you explain  
4 what charges appear to be unreasonable?

5 A. Yes, sir. The procedure that was performed at  
6 Surgery Specialty Hospital can be at St. Luke's, a major  
7 hospital -- can be done and the normal billing for it is  
8 20 -- 20 to \$22,000 signed, sealed, and delivered. That  
9 includes the anesthesia, the operating room, the screws,  
10 the graft, the laboratory, the X rays. As a global fee,  
11 it's between 20 and -- say \$25,000.

12 Q. The services that were provided by Dr. Vaughn  
13 and Dr. Donovan, are those reasonable charges?

14 A. No, both.

15 Q. And let me kind of put this in context. The  
16 total billing at Surgery Specialty Hospital was \$70,000,  
17 and you're saying that the bill should have been closer  
18 to 25,000?

19 A. Yes, sir. That's what the normal payment is.

20 Q. The billings between Dr. Vaughn and Dr. Donovan  
21 are -- totaled approximately \$40,000. What do you think  
22 would have been a reasonable charge?

23 A. A reasonable payment would have been, for  
24 Dr. Vaughn's, between 2500 and \$3,000, and  
25 Dr. Donovan's, probably -- he charged for the EMG, which

1 someone else did; and I would say his bill should have  
2 been -- instead of -- I think it's 14 or \$17,000.  
3 Should have been probably 12 to 1500, 2,000 maybe.

4 Q. Does Dr. Donovan have a reputation of  
5 overcharging?

6 MR. VUJASINOVIC: Objection, Judge. This  
7 calls for speculation. No foundation has been shown.  
8 It's not been disclosed either.

9 THE COURT: Sustained as to foundation.

10 BY MR. GEALY

11 Q. How many cases have you had a chance to review  
12 where Dr. Donovan was involved in a plaintiff's case?

13 A. Probably between one and three hundred.

14 Q. Based on that review, do you have an opinion as  
15 to whether Dr. Donovan generally overcharges?

16 A. I have an opinion.

17 Q. What is that opinion?

18 A. Just like this case, the answer's yes.

19 MR. GEALY: Your Honor, I'll pass the  
20 witness.

21 THE COURT: Okay. Mr. Vujasinovic, any  
22 questions?

23 MR. VUJASINOVIC: Yes, Judge.

24 THE COURT: You may proceed.

25



**CROSS-EXAMINATION**

1  
2 BY MR. VUJASINOVIC

3 Q. Dr. Barrash, you have been censured by a major  
4 medical organization for providing biased testimony in a  
5 civil lawsuit; is that true?

6 A. Yes, sir.

7 Q. And that happened last year; is that true?

8 A. No. It actually happened -- the event happened  
9 probably seven or eight years ago.

10 Q. Really? And the organization that did that is  
11 called the American Association of Neurological  
12 Surgeons, right?

13 A. Yes, sir.

14 Q. And are you a member of that organization?

15 A. No. I resigned last year in protest.

16 Q. And is that the preeminent organization for  
17 neurosurgeons like you?

18 A. It's a very prestigious organization; and I was  
19 a member since 1972 or 3, '74, something like that.

20 Q. So you were a member for 40 years before they  
21 kicked you out?

22 A. They didn't kick me out.

23 Q. I'm sorry. I misunderstood, then. You  
24 resigned because they censured you?

25 A. Yes, sir.

1                   MR. VUJASINOVIC: Could we have the ELMO,  
2 please?

3           BY MR. VUJASINOVIC

4           Q.     And you fought that censure for seven or eight  
5 years, right?

6           A.     I went to New Orleans originally and -- no.  
7 The censure was -- originally, they wanted to suspend me  
8 for six months and --

9                   MR. VUJASINOVIC: Objection, Your Honor,  
10 to the responsiveness.

11                   THE COURT: Ask your question again,  
12 please.

13           BY MR. VUJASINOVIC

14           Q.     Okay. You battled this censure for seven or  
15 eight long years, right?

16           A.     No, no.

17           Q.     You were originally censured seven to eight  
18 years ago --

19           A.     No.

20           Q.     -- when a complaint was lodged?

21           A.     No.

22           Q.     What happened seven or eight years ago that  
23 started this process?

24           A.     It wasn't seven or eight years ago.

25           Q.     Excuse me.

1           THE COURT: Okay. One at a time.

2           THE WITNESS: Sorry.

3           THE COURT: He needs to get the question  
4 out, and then you answer so the court reporter can get  
5 everybody down.

6           BY MR. VUJASINOVIC

7           Q. Let's just go to the paper work.

8           THE COURT: Actually, has this document  
9 been admitted into evidence?

10          MR. VUJASINOVIC: No, it hasn't, Judge.  
11 It's a demonstrative only. It's the document  
12 substantiating what we're talking about here.

13          THE COURT: That doesn't really sound like  
14 a demonstrative to me.

15          BY MR. VUJASINOVIC

16          Q. Okay. The piece of paper I'm handing you, sir,  
17 is that a true and accurate copy of the notice of  
18 censure that we've been discussing?

19          A. No. This was published in a journal. It  
20 wasn't sent to me. It has never been sent to me.

21          Q. Is that a copy of a censure, talking about you  
22 being censured for giving biased testimony dated last  
23 year?

24          A. Yes, sir.

25          Q. Okay. And does it say, "Dr. Jay Martin

1 Barrash, following an appeal to the AANS general  
2 membership on April 11 of 2011, has been censured for  
3 giving expert testimony without having seen the imaging  
4 studies relevant to that testimony and for failure to  
5 provide unbiased testimony during part of a deposition  
6 in a civil lawsuit"?

7 Did I read that correctly?

8 A. Yes, sir.

9 Q. Okay. That's what you were censured for,  
10 correct?

11 A. Yeah.

12 Q. Okay.

13 MR. VUJASINOVIC: We offer this as  
14 Exhibit 25, Your Honor.

15 MR. GEALY: Nobody objection, Your Honor.

16 THE COURT: Twenty-five is admitted.

17 BY MR. VUJASINOVIC

18 Q. I'll hold on to it.

19 THE COURT: Actually, I think it's 26.

20 MR. VUJASINOVIC: Twenty-six. I'm sorry.  
21 Let's make it 26.

22 BY MR. VUJASINOVIC

23 Q. Just so we're all on the same page, I'm putting  
24 Exhibit 26 up on the ELMO so we can all read it.

25 And that's what you were censured for,

1 correct?

2 A. That's what they allege.

3 Q. And you appealed it; and the medical  
4 organization denied your appeal and rendered this  
5 censure, correct?

6 A. That's partly true.

7 Q. And then you --

8 A. That's partly not true.

9 Q. And then you -- you quit the organization after  
10 that --

11 A. Yes, sir.

12 Q. -- that you had been a member of for 40 years?

13 A. Well, since probably 1974.

14 Q. And the -- one of the reasons you were  
15 censured, according to Exhibit 26, is because you were  
16 rendering opinions in a case just like this without  
17 having seen films, MRI films, or X-ray films; is that  
18 correct?

19 A. No, it's not correct.

20 Q. Is that what the document says?

21 A. That's what the document says --

22 Q. Okay.

23 A. -- and that's not correct.

24 Q. All right. And you rendered opinions in this  
25 case when you issued your first report dated February 4

1 of 2009, correct?

2 A. Yes, sir.

3 Q. And you rendered opinions in that report; and  
4 at that point you had not seen a single film or image in  
5 this case, correct?

6 A. Yes, sir.

7 Q. And, nevertheless, in that report you rendered  
8 opinions that minimized Mr. Juarez's claims, correct?

9 A. That's partly correct.

10 Q. And that's exactly what you were censured for  
11 and basically accused of being biased for, that -- by  
12 this medical organization; is that correct?

13 A. No.

14 Q. You've been doing this lawsuit work for over 25  
15 years; is that correct?

16 A. No, sir. Since 1986.

17 Q. '86. Fourteen plus --

18 A. Twenty-six years.

19 Q. Okay. So -- 14 plus 12 is -- so that is over  
20 25 years.

21 A. Twenty-six years, yes, sir.

22 Q. All right. You have made a profitable career  
23 criticizing other doctors, haven't you?

24 A. No, I don't criticize doctors. I just point  
25 out the information, whether it's true or not, whether

1 it's been amplified or not amplified, and whether it's  
2 verified by the medical records and, many times,  
3 examination and/or studies that have been done.

4 I don't criticize doctors. I just point  
5 out defects in their opinions.

6 Q. Out of all your lawsuit work, about 75 percent  
7 is accident cases, like this, and 25 percent is medical  
8 malpractice cases; is that correct?

9 A. No.

10 Q. What's the -- you've testified to that before,  
11 correct?

12 A. No, I haven't. You're getting a lot of things  
13 wrong.

14 *MR. VUJASINOVIC:* Objection to the  
15 responsiveness, Your Honor.

16 *THE COURT:* Sustained.

17 *BY MR. VUJASINOVIC*

18 Q. You've criticized over 50 doctors in Houston in  
19 all these kinds of cases, haven't you?

20 A. Yes, sir.

21 Q. Dr. Donovan, obviously, right?

22 A. Many times.

23 Q. Dr. Ghadially?

24 A. Yes, sir.

25 Q. Dr. Charles Neblett?

1 A. That was 30 years ago. Yes.

2 Q. And you've been doing this for 30 years. It's  
3 a career, right?

4 A. Well, maybe it's not 30. Maybe it's 25 years.

5 Q. Okay. Dr. Stephen Weiss?

6 A. Oh, yeah.

7 Q. Dr. Richard Royal?

8 A. I don't even know who he is.

9 Q. Okay. You forgot that one.

10 Dr. Charles Mitchell?

11 A. Yes, sir.

12 Q. Dr. Dave McNeill?

13 A. Yeah, one time.

14 Q. Dr. Zoran Cupic?

15 A. Oh, yes.

16 Q. Dr. Ajay Bindal?

17 A. Yes, sir.

18 Q. Dr. Bindal used to be the chief of neurosurgery  
19 at Memorial Hermann Southwest Hospital, didn't he?

20 A. I think he is. He used to work for me.

21 Q. Dr. Stephen Esses?

22 A. Yes, sir.

23 Q. The list goes on and on.

24 A. Yes, sir.

25 Q. It got to the point where you've actually been



1 sued by five different doctors for legal slander, right?

2 A. Yes, sir.

3 Q. And, most recently, the censure, correct?

4 A. Yes, sir.

5 Q. And you remember the John Carter case that went  
6 to trial in Galveston a few years ago?

7 A. No.

8 Q. Jason Itkin was the plaintiff's lawyer.

9 A. Who?

10 Q. Jason Itkin.

11 A. I don't know.

12 Q. Zoran Cupic was one of the treaters.

13 Can doctors have different opinions, sir?

14 A. Sure.

15 Q. Is that why people get second and third  
16 opinions all the time?

17 A. Of course.

18 Q. Isn't it common people get different answers  
19 from different doctors all the time?

20 A. Yes, sir.

21 Q. Nothing wrong with that, is there?

22 A. No, sir.

23 Q. And you understand the jury decides this case  
24 based on what's more likely true than not true?

25 A. Yes, sir.

1 Q. You make a lot of money doing lawsuit work,  
2 don't you?

3 A. I get probably 25 to -- probably 30 to  
4 35 percent of my income is from lawsuit -- or  
5 medicolegal work. It's not all lawsuits. I review a  
6 lot of cases for, like, the -- I've reviewed them for  
7 the State Medical Board. I'm on the workmen's Comp.  
8 Commission, the Medical Quality Assurance Committee.

9 I've reviewed them for the courts, for  
10 children when the Court wants to make sure that the  
11 child is being taken care of appropriately. I do them  
12 for the labor board. I've done them for the federal  
13 government. I've done them for Medicare. I've done  
14 them for outside review agencies.

15 So I do a lot of non -- it's not  
16 nonmedical, but it's not patient-related.

17 Q. You call it medicolegal work?

18 A. Some of it's -- yeah, if you want, as a broad  
19 term, yes, sir.

20 Q. You've made well over a million dollars doing  
21 medicolegal work, correct?

22 A. Yes, sir, over the last 26 years, yeah.

23 Q. And you make several hundred thousand dollars a  
24 year doing medicolegal work?

25 A. I don't think it's ever gotten to that. I

1 think probably between a hundred, 125, if I'm -- years  
2 ago I used to do a lot more than I do now, because of  
3 tort reform; but I would say I still make between a  
4 hundred, 125, and -- it's going down because there's  
5 less and less work that I do.

6 Q. That's a lot of money.

7 A. Well, it's -- it is, but it's not because --

8 Q. Oh, okay. You have a lot of various medical  
9 ventures, don't you?

10 A. I've had some.

11 Q. Business of CAT Scans and selling machines and  
12 businesses; is that right?

13 A. I own part of a CAT Scan at Sharpstown  
14 Hospital. About 1976 or '78, I was one of a group of  
15 people. I've had some imaging studies in the past.

16 Q. And you are -- I mean, you have substantial  
17 business dealings in investments, right?

18 A. Not now.

19 Q. You're a -- you're a entrepreneur, aren't you?

20 A. I used to be. I'm old now. I don't do that  
21 stuff.

22 Q. Okay. You've got -- your health care  
23 undertakings have included medical real estate holdings  
24 in outpatient surgical facilities, right?

25 A. Yeah. I owned -- it was bought by Surgical

1 Care Affiliates. I was one of a hundred people -- it  
2 was a surgery center in the building where my office  
3 was, and there were a hundred partners.

4 Q. Your entrepreneurship extends into investments,  
5 including several shopping centers, right?

6 A. Years ago I had a small interest in a bunch of  
7 things, couple of them.

8 Q. Apartment buildings?

9 A. I had one, one time. About 35 years ago, I  
10 did.

11 Q. And unimproved land?

12 A. Yeah. I bought a piece of land.

13 Q. And then your portfolio has included  
14 ownership --

15 *MR. GEALY:* Your Honor, at this point he  
16 seems to be going a little far.

17 *THE COURT:* So your objection is?

18 *MR. GEALY:* Irrelevant.

19 *THE COURT:* Sustained. Let's move along.

20 *BY MR. VUJASINOVIC*

21 Q. I guess with your business dealings -- there's  
22 nothing wrong if a doc happens to have some business  
23 interests on the side.

24 A. If it's a good -- good venture, no, there's  
25 nothing wrong.

1 Q. Okay. Because you do that.

2 A. I have done it.

3 Q. Okay. How much are you charging to be here and  
4 testify?

5 A. I think I charge \$1500 an hour.

6 Q. An hour?

7 A. Yes, sir.

8 Q. And that's --

9 A. Sitting here.

10 Q. Oh, okay. Well, who -- so the company's  
11 attorneys, the defense attorneys on this case, they  
12 hired you in this case?

13 A. Yes, sir.

14 Q. And you've worked with them before?

15 A. I don't think so.

16 Q. Mills Shirley law firm?

17 A. I don't think so.

18 Q. Been around 150 years, longer than you've been  
19 around?

20 A. I don't know. I wasn't around when they were  
21 formed.

22 Q. Okay.

23 A. I mean, I have no idea. This is the first time  
24 I've ever worked with them.

25 Q. Okay. And they -- they picked you?

1 A. Yes, sir.

2 Q. And they sent you the stuff?

3 A. Yes, sir.

4 Q. I didn't pick you.

5 A. No.

6 Q. Gerardo didn't pick you; the judge didn't pick  
7 you.

8 A. No, sir, of course not.

9 Q. And so what they did was they sent you some  
10 records.

11 A. Yes, sir.

12 Q. And what do you charge to review the records?

13 A. \$500 an hour.

14 Q. \$500 an hour?

15 A. Yes, sir.

16 Q. So record review, 500 an hour; and then you  
17 charge 1500 an hour for testifying at trial?

18 A. For my time here, yes, sir, while I'm on the  
19 stand, sir.

20 Q. And you've given depositions before?

21 A. Many, many, many.

22 Q. What do you charge at depositions?

23 A. Well, when I started, it was, like, \$500 an  
24 hour 26 years ago; but now it's up to probably \$1200 an  
25 hour.

1 Q. So even if it's a deposition over in your  
2 office, you charge 1200 an hour?

3 A. Yes, sir.

4 Q. And sometimes do you actually examine the  
5 patient in these cases?

6 A. Yes, sir.

7 Q. Is there a separate charge for that?

8 A. Yes, sir.

9 Q. How much is that?

10 A. I think it's gone up. This year it's now  
11 \$1100, which includes the review and the narrative, the  
12 report, which is usually a two-, three-, four-page  
13 report.

14 Q. So do you have your file on this case here?

15 A. Yes, sir.

16 Q. You want to just tell us how much you've  
17 charged, you know, not including today?

18 A. Well, I reviewed the records; and it was 25  
19 minutes. So it was 25 -- so that would be 5/12,  
20 about -- less than a half hour, so \$250 maybe.

21 Q. Could I just stop you?

22 Don't you send actual billing statements  
23 to the attorneys?

24 A. Yes, sir.

25 Q. Can you just look at those and tell us what

1 those --

2 A. Well, I don't have the bills here. That's kept  
3 on the computer.

4 Q. Okay.

5 A. I don't have bills here.

6 Q. You left those?

7 A. But when I review a record, I look at the  
8 clock. And I have 25 minutes written here.

9 Q. Okay. Fair to say for records review, you  
10 probably charged 3,000 bucks in this case?

11 A. No. Twenty-five minutes.

12 Q. Okay.

13 A. So less than \$250.

14 Q. So the records review, is that nonrefundable?

15 A. What I do is I get a retainer from folks. I  
16 bill against it. If I don't use the retainer, I send it  
17 back to them.

18 Q. Okay. How many times have you in your  
19 career -- well, let me just put it this way: You've  
20 given over a thousand depositions, correct?

21 A. No.

22 Q. Over 800?

23 A. Yes, sir.

24 Q. Okay. You've given between 800 and a thousand  
25 depositions, right?



1           A.     Between 8 and 900, depositions and/or court  
2 appearances.

3           Q.     Okay.  And you charge -- okay.  When was your  
4 last deposition?

5           A.     I did one either last week or the week before.

6           Q.     When was your last time you came to the  
7 courthouse?

8           A.     Yesterday.

9           Q.     You were in the courthouse testifying  
10 yesterday?

11          A.     Yes, sir.

12          Q.     In this same building?

13          A.     No, sir.

14          Q.     Where?

15          A.     Corpus Christi.

16          Q.     You went to -- and what kind of case was that?

17          A.     Malpractice case.

18          Q.     Medical malpractice?

19          A.     Yes, sir.

20          Q.     Were you criticizing a doctor?

21          A.     Yes, sir.

22          Q.     Okay.

23          A.     I wasn't criticizing a doctor.  I was pointing  
24 out the flaws of his method of treatment.

25          Q.     Right.  You advertise?

1 A. No.

2 Q. Are you familiar with ALM Experts?

3 A. No, never heard of them.

4 Q. Is your name Jay Martin Barrash, Houston  
5 Neurological Association, PA?

6 A. Yes, sir.

7 Q. Is your address 7515 Main Street, Suite 200,  
8 Houston, Texas?

9 A. No.

10 Q. What's your address now?

11 A. My address for the last eight years has been  
12 5959 West Loop South, Suite 400. Now I'm in Suite 300.

13 Q. Do you know another Jay Martin Barrash who's a  
14 neurosurgeon in the United States?

15 A. No.

16 Q. Okay. You appear on this advertisement, don't  
17 you?

18 A. I have no idea who they are.

19 Q. Okay.

20 A. I don't advertise anywhere, never have, never  
21 will.

22 *MR. VUJASINOVIC:* Judge, we would like to  
23 offer this as Exhibit 27.

24 *MR. GEALY:* Objection, Your Honor. It's  
25 got an address that doesn't confirm with where his

1 office has been, so object as irrelevant and no  
2 foundation.

3 *THE COURT:* Sustained.

4 *BY MR. VUJASINOVIC*

5 Q. Did you use to office at 7515 Main Street?

6 A. Yeah. I moved out of there in 19 -- I mean  
7 2003.

8 Q. Okay.

9 *MR. VUJASINOVIC:* We reoffer the exhibit,  
10 26.

11 *THE COURT:* Any objection?

12 *MR. GEALY:* Yes, Your Honor. Still no  
13 foundation in the sense that he -- the presentation is  
14 this is an advertisement, but it's apparently something  
15 that's eight years old. So it's irrelevant.

16 *THE COURT:* Sustained.

17 *BY MR. VUJASINOVIC*

18 Q. So before today, you had never met, seen,  
19 spoken to, or examined Gerardo Juarez, had you?

20 A. Unfortunately, no, sir.

21 Q. And all your opinions you gave is just from  
22 looking at the records that Defendants' counsel gave  
23 you; is that correct?

24 A. Yes, sir.

25 Q. There's no physician/patient privilege or

1 relation between you and Gerardo, is there?

2 A. No, sir. I've never met the gentleman.

3 Q. And, in fact, under -- under our laws, you are  
4 immune for liability for anything you do in connection  
5 with what you say Gerardo should do or should not do; is  
6 that correct?

7 A. No. There are laws of perjury. If I don't  
8 tell the truth, I can be arrested and charged with  
9 perjury; so I tell the truth.

10 Q. Except for at least that one time, right?

11 A. You didn't let me explain it, sir.

12 Q. I'll -- your attorney could do that, if he  
13 wants.

14 A. He's not my attorney, sir.

15 Q. You read -- you did a second report in  
16 September of '09; is that correct?

17 A. Yes, sir.

18 Q. And this was after you actually did look at the  
19 MRI films; is that correct?

20 A. Yeah. These are the films that I have  
21 requested in my initial note to Mr. Gealy.

22 Q. Yeah, because what they sent you was -- they  
23 didn't -- in their selection of the package they first  
24 sent you -- didn't send you the films, did they?

25 A. I don't know if they had them available or not;

1 but I did not see them, and requested them.

2 Q. And you pointed out in your report back to  
3 Mr. Gealy -- you said, "Hey, Mr. Gealy, I need to see  
4 these films," right?

5 A. Yeah, right.

6 Q. And once you got the films, you added a couple  
7 extra opinions there, didn't you?

8 A. Yes, sir.

9 Q. You agree that the neck MRI shows a small  
10 midline subligamentous disk herniation at the C4-5  
11 level, correct?

12 A. Yes, sir.

13 Q. And you saw that that disk in Gerardo's neck at  
14 C4-5 was indenting his thecal sac, correct?

15 A. Yes, sir.

16 Q. And the thecal sac is?

17 A. That's the dura, the covering of the spinal  
18 contents; that is, spinal cord, the nerve roots, the  
19 blood vessels, the spinal fluid.

20 Q. And the C4-5 level is the exact level that  
21 Gerardo's doctors operated on, correct?

22 A. Yes, sir.

23 Q. Let's see here. In -- I guess it was 1986 you  
24 had some kind of hand injury, right?

25 A. No. Arm injury.

1 Q. Arm injury. Okay. And then you went on  
2 disability, right?

3 A. Yes, sir.

4 Q. And you basically -- you tried to keep doing  
5 some surgeries, but then you kind of stopped and -- it  
6 got hard on you; and eventually you stopped doing  
7 surgeries altogether, correct?

8 A. Well, I had to stop. I was getting involuntary  
9 spasms in my dominant hand, and I would be -- and I  
10 thought nothing of it initially, you know, like I worked  
11 in the yard too much or I polished the car or I fixed  
12 something in the house. And I thought it was just from  
13 doing that.

14 And then one day I was operating on the  
15 neck, operating under a nerve root, and my hand went  
16 into spasm like this. And I held the instrument and  
17 took it away with my left hand and finished the hand --  
18 the operation left-handed, because I'm a genetic  
19 left-hander and I can work with either hand, and that  
20 was the last I operated. I felt that it was dangerous  
21 to operate, and I didn't want to take the risk of  
22 hurting somebody. I mean, you know, we're supposed to  
23 help people, not hurt them.

24 Q. And the last time you were lead surgeon on a  
25 spine surgery was over 15 years ago?

1 A. No. I think it was somewhere like '98.

2 Q. Okay.

3 A. '99.

4 Q. Let's see. '98. Ten, 12 -- let's say 14 years  
5 ago.

6 A. Somewhere around ten to 12, 13 years, somewhere  
7 like that.

8 Q. And you had that arm injury in '86, right?

9 A. Right. And I had it operated on. It got  
10 better, never well; and then about ten, 12, 15 years  
11 later, I started getting these spasms.

12 Q. And '86 is the same year you started this  
13 medicolegal work, right?

14 A. Right. I was -- because I had a bunch of time  
15 and people had always asked me to do it. And I never  
16 had time. I was doing 250, 300 surgeries a year.

17 And now all of the sudden, I had huge  
18 amounts of time that I never had in my whole life.

19 Q. Last question here. You said everybody  
20 overcharged Gerardo, all the doctors overcharged him,  
21 right?

22 A. Yes, sir.

23 Q. And you specifically include the San Jacinto  
24 Methodist Hospital emergency room. Those folks  
25 overcharged Gerardo, according to you, correct? Yes or

1 no, sir.

2 A. No, sir. According to what was paid, they did.

3 MR. VUJASINOVIC: All right. I pass the  
4 witness?

5 THE COURT: Any questions?

6 MR. GEALY: Yes, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. GEALY

9 Q. Dr. Barrash, you were asked a lot of questions  
10 about a case. Can you tell the jury about the case that  
11 you were asked about?

12 A. The case was a case in Waco, Texas, and a  
13 neurosurgeon who had been practicing for about four  
14 months came out and a man had a herniated disk and he  
15 did a two-level fusion on him with hardware and he  
16 didn't need it and the man had right-leg pain and when  
17 he woke up, he had left-leg pain and they had put a bone  
18 graft in and he had horrible pain.

19 They sent him home that way. Two weeks  
20 later, he came back in the hospital. They did a plain  
21 X-ray that didn't show anything. They did a CAT Scan  
22 and it showed that the bone graft was pushing on the  
23 nerve on the other side. It was improperly placed. He  
24 took him back to the operating room, took it out. He  
25 got infected. He mismanaged the infection. The guy got



1 osteomyelitis. Wound up he --

2 Q. Can you explain what osteomyelitis is?

3 A. It's an infection in the bone because of the  
4 mismanagement of the infection that he got in his back  
5 after the second surgery.

6 MR. VUJASINOVIC: Judge, at this point I  
7 would object to relevancy, this narrative answer as  
8 well --

9 THE COURT: Could you maybe ask a more  
10 narrow question --

11 MR. VUJASINOVIC: -- and disclosure.

12 THE COURT: -- more narrow question?

13 MR. GEALY: Yes, Your Honor.

14 BY MR. GEALY

15 Q. What happened after the infection in the bone?

16 MR. VUJASINOVIC: Same objection, Judge.  
17 I mean, it's not been disclosed.

18 THE COURT: Overruled.

19 A. He had to have three more surgeries. They had  
20 to take out the hardware. He wound up -- had a pain  
21 doctor, on methadon and all kinds of pain medicine. It  
22 ruined his life.

23 And when I reviewed the case, the  
24 plaintiff attorney and the doctor would not release the  
25 plain X-rays that were done in the operating room on the

1 day of surgery.

2 MR. VUJASINOVIC: Judge, I object. This  
3 is not relevant. It's not been disclosed, and it's just  
4 argumentative.

5 THE COURT: I believe the door has been  
6 opened by you. Overruled.

7 MR. VUJASINOVIC: Okay.

8 THE COURT: Please ask the question,  
9 Mr. Gealy. Let's go question and answer.

10 MR. GEALY: All right.

11 BY MR. GEALY

12 Q. Dr. Barrash, I appreciate it, and I -- let me  
13 try to take it one step at a time, because -- the  
14 allegation is that you gave expert testimony without  
15 having seen the imaging studies.

16 Now, what imaging studies are being  
17 discussed here?

18 A. That's a misquotation. It was plain X-rays  
19 that were done in the operating room on the day of  
20 surgery and --

21 Q. And what were the films that were done in the  
22 operating room on the day of surgery?

23 A. A lumbar cross-table lateral X ray, just a  
24 spine X ray while a man's on the table.

25 Q. And you said that that -- the treating

1 physician would not release that?

2 A. Correct. So I could never review them.

3 Q. Did you review other records in the case?

4 A. Yes, sir.

5 Q. Did you review the records that were made  
6 available?

7 A. Yes, sir.

8 Q. Did you provide testimony based on the other  
9 records you had reviewed?

10 A. I did.

11 Q. And was that the source of your protest, or  
12 resigning in protest?

13 A. No. What had happened is -- I said in my  
14 deposition that the bone graft was out of place and I  
15 hadn't seen the X rays. And that was verified later.  
16 When they took him back into the hospital and did a  
17 CAT Scan, the bone graft was out of place. I was right,  
18 and they were wrong.

19 Q. What was the basis for your opinion that the  
20 bone graft was out of place?

21 A. He had pain in the opposite leg, which he  
22 didn't have before surgery. And he put a bone graft in  
23 the disk on the opposite side, and the disk was not --  
24 the bone graft was in the wrong place, and that's the  
25 only thing that could cause the opposite leg the pain --

1 to hurt. His right leg was the one that hurt before.  
2 He put a bone graft in to fuse them, which he didn't  
3 need. And he got pain in the opposite leg.

4 Q. Let's talk about neurology just for a minute.  
5 Can you explain to the ladies and gentlemen of the jury  
6 how would -- from a neurological standpoint, which is  
7 your specialty, how would -- what would your -- or  
8 neurosurgery. I'm sorry.

9 What would have led you to believe that  
10 the bone graft was out of place because the pain had  
11 been on the right and now it was on the left?

12 A. There was nothing else that was done that could  
13 have possibly caused it. He had -- he didn't have a  
14 footdrop, a neurological deficit. He just had horrible,  
15 unremitting, grinding, terrible pain. And there's  
16 nothing else that could have caused it.

17 Q. And you said that the subsequent imaging  
18 studies confirmed your opinion?

19 A. Yes, sir.

20 Q. Doctor, not all surgeries go as planned, do  
21 they?

22 A. Of course not.

23 Q. And sometimes the medical community -- people  
24 may consider it's wrong within the community to  
25 criticize other medical doctors; is that fair to say?

1           A.     Well, that's why this thing is here, because I  
2 was -- I took the audacity to criticize a neurosurgeon.  
3 And this committee that reviewed it, they have never  
4 criticized anyone that's testified for the defense,  
5 whether they lied or distorted information. And that's  
6 why I've sought legal action against the Society.

7           Q.     Doctor, do you think that you have an  
8 obligation to review medical records to determine if  
9 inappropriate medical treatment has been provided?

10          A.     I think I have an obligation to review medical  
11 records objectively; and if it doesn't meet the standard  
12 of care, it needs to be pointed out.

13                     And everybody's entitled to three strikes.  
14 After three strikes, I send the information to the Texas  
15 State -- to the Texas Medical Board, and they act  
16 appropriately. If it's something that I do with the  
17 Workmen's Compensation Commission, I send it to them.

18                     But I think all of us need to practice a  
19 standard that's good not for me, not for the doctor, but  
20 for the patient. We work for the patient. They aren't  
21 a piece of beef that we use to make a living. We work  
22 for them. They don't work for us. And I think a lot of  
23 doctors have forgotten that.

24          Q.     Doctor, one of the things that you asked for  
25 after we sent you the documents was -- was to review the

1 films, correct?

2 A. Yes, sir.

3 Q. And you did review the films in this case,  
4 correct?

5 A. I had disks of the films, yes, sir.

6 Q. All right. And you've not given an opinion  
7 that Mr. Juarez did not need the cervical fusion,  
8 correct?

9 A. Well --

10 MR. VUJASINOVIC: Judge, I object at  
11 this -- I mean, that's not -- he's about to get into it,  
12 but there's been no disclosure about not needing  
13 surgery. And I didn't -- I didn't get into that on  
14 mine.

15 THE COURT: Response?

16 MR. GEALY: Your Honor, I thought I was  
17 pointing out the obvious. He has not criticized the  
18 need for surgery, based on his review of films.

19 MR. VUJASINOVIC: We stipulate to that.

20 THE COURT: All right. So I don't hear an  
21 objection. Move along.

22 BY MR. GEALY

23 Q. True?

24 A. Yes, sir.

25 MR. GEALY: I'll pass the witness, Your

1 Honor.

2 MR. VUJASINOVIC: Just a couple of  
3 follow-ups.

4 **RECROSS-EXAMINATION**

5 BY MR. VUJASINOVIC

6 Q. You said I was right and they were wrong,  
7 right?

8 A. Yes, sir.

9 Q. And -- but the AANS said you were wrong, right?

10 A. Yes, sir.

11 Q. And now you've sued them?

12 A. They're being sued under RICO.

13 Q. By you?

14 A. By me and the plaintiff attorneys. There's a  
15 national group of plaintiff attorneys.

16 Q. And where is that lawsuit pending?

17 A. Well, the AANS is in Chicago, so I guess  
18 they'll file it there.

19 Q. Cook County?

20 A. Yeah, Chicago.

21 Q. Okay.

22 A. I would think so. That's where the AANS is.

23 Q. And last question. Just tell us who's on the  
24 committee that said you were wrong.

25 A. It was a bunch of good-old boys. One was

1 Volker Sonntag. Volker Sonntag is a very well-known  
2 neurosurgeon in Phoenix, Arizona. He's now retired.  
3 And he was a very outspoken person at that committee.  
4 It's called the PCC, Professional Conduct Committee.  
5 And Dr. Volker Sonntag and I have had verbal fights on  
6 the phone. And he should have recused himself, excused  
7 himself, but he didn't. He was nasty.

8                   And he's been -- I've filed a complaint  
9 with the ethics committee about him.

10       Q.     Okay.

11       A.     Another one was Robert Heros, who's a  
12 neurosurgeon who's chairman of the department at the  
13 University of Miami. And I stopped a malpractice case  
14 against him.

15                   Another one was Papadopoulos is a  
16 neurosurgeon in -- I think he's in California.

17       Q.     These guys' names are worse than mine.

18       A.     I wouldn't attempt to spell yours.

19       Q.     Just -- I don't know if you want to keep going,  
20 but how many neurosurgeons were on the committee?

21       A.     There were, I want to say, six or seven on the  
22 PCC committee.

23       Q.     Okay. That was unanimous, right?

24       A.     No.

25       Q.     What was the breakdown?



1           A.    You don't know the vote, but it was not  
2 unanimous.

3           Q.    Okay.  Thank you, sir.

4                         *MR. VUJASINOVIC:*  I'll pass the witness.

5                         *THE COURT:*  Anything else?

6                         *MR. GEALY:*  No more questions, Your Honor.

7                         *THE COURT:*  You may step down.

8                                 (Testimony concluded.)

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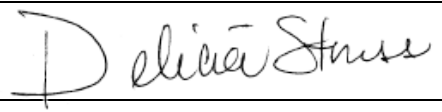
Trial Testimony of Jay Martin Barrash, MD  
June 6, 2012

1 STATE OF TEXAS  
2 COUNTY OF HARRIS

3  
4 I, Delicia Struss, official court reporter in and  
5 for the 281st District Court of Harris County, state of  
6 Texas, do hereby certify that the above and foregoing  
7 contains a true and correct transcription of all  
8 portions of evidence and other proceedings requested in  
9 writing by counsel for the parties to be included in  
10 this volume of the reporter's record in the above-styled  
11 and numbered cause, all of which occurred in open court  
12 or in chambers and were reported by me.

13 I further certify that this reporter's record of the  
14 proceedings truly and correctly reflects the exhibits,  
15 if any, offered by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this reporter's record is \$ 325.00 and  
18 was paid/will be paid by Mr. Vujasinovic.

19   
20 \_\_\_\_\_

21 Delicia Struss, CSR  
22 Texas CSR 4065  
23 Official Court Reporter  
24 281st District Court  
25 Harris County, Texas  
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