



Three depositions were played today, those transcripts are not included here, the following are just attorneys arguments. We will post depo transcripts as soon as we have them.

Judge. Good morning, counsel.

Ms. Bina. And, your honor, very briefly, I understand yesterday an issue had come up in terms of a minute order relating to the proffer regarding Mr. Ackerman. So I just wanted to briefly sort of explain what was going on with that, and what the issue was, so if the court is inclined to let us recall Mr. Ackerman, I want to deal with that as soon as possible. And the issue, your honor, is the evidence contained in that proffer was evidence that had been in plaintiffs' motion in limine to exclude the collateral source evidence back in March. So all of that had been before the court in March, and the court had said, "no, I'm not allowing any of this in. It's covered by the collateral source rule." and your honor had put in the motion and limine and ruled that way. However, your honor had also said, you know, "I might allow an offset or something afterwards before the court." So what had happened in terms of the proffer, your honor had indicated you didn't want to be rearguing any motions in limine unless there was some new facts or law to change it. So rather than reargue it -- which we're perfectly willing to do if your honor is inclined to do something different -- the purpose of that proffer was twofold: one, because the rules require that it be submitted to the court in the form that it would have been presented to the jury had it -- had the motion in limine not been granted. So it's just for preserving appellate purposes. The other issue, your honor, was if your honor was inclined to allow an offset afterwards, we wanted to give you a sense of what the testimony would be before your honor to deal with that issue. So the minute order was a little confusing because it sort of seemed like you hadn't submitted it. It had all been dealt with months earlier, and that's why there had not been additional briefing and argument. But we wanted to make sure that was clear for the record and that if your honor was inclined to allow Mr. Ackerman to testify to any of those issues, he is more than willing to come back, and we would be happy to do that. But we had understood that your honor had already excluded all of that evidence, which is why we didn't argue it again at the time we submitted it.

Mr. Putnam. And if you recall, your honor, at the time we submitted it, we indicated just that; that we were putting it in for that reason, because the way the law looks, we probably have to. That's just the way I

purposed it; I try to only represent what I know definitively it looks like we were supposed to. So at the time that's actually what we said as we did that.

Ms. Bina. Yes. In fact, Mr. Ackerman was still on the stand at the time, your honor, when that was submitted. But the issue being was, it was all evidence that your honor had considered before; had ruled on before; had decided to exclude before, and that's why we didn't reargue it, because we understood there was a definitive order in place barring its admission. Again, if your honor would like to reconsider that, we're be more than happy to do that.

Judge. Well, let me say this: the motion in limine was 10 pages long. What you submitted was three or four inches of paper. When you tell me that was all before me, I'm a little skeptical. If it's just -- there was reference in the motion in limine to receipts, and now these are the receipts, okay?

Ms. Bina. The motion --

Judge. I get that. But it's -- the receipts themselves were not in front of me, and you need to be very clever about what you're saying when you say that was all before me when you filed the motion in limine.

Mr. Panish. Your honor --

Ms. Bina. Your honor, it actually was --

Mr. Putnam. It was.

Ms. Bina. -- in that -- the plaintiffs had cited those specific portions of Mr. Ackerman's testimony and the documents. I actually have it here, if needed, and can submit it to the court -- although it's not in the form to submit it -- literally the places where it matched up to that prior ruling. The other issue, your honor, is, again, the prior ruling was one of law, not one of evidence. In other words, that nothing related to post-trial income was going to come in, regardless of specificity or depth. So there may have been a small amount of additional evidence, but that's the majority of what was attached to plaintiffs' motion and declarations supporting therein. All of that evidence from Mr. Ackerman's deposition, the figures he relied on, all of that had been attached to plaintiffs' motion in limine or cited therein. And then there was a smaller finding of Mr. Ackerman's opinions that were included in the proffer. But the majority of the stack actually had been referenced in the prior motion in limine and specifically cited and discussed therein.

Mr. Panish. Can I say something now?

Ms. Bina. Well, I can be more specific if you want and actually pair them up where --

Judge. Let Mr. Panish speak.

Mr. Panish. Your honor, you said you were skeptical, as I was. They said that it was all before the court except for a small part. The record is clear as to what was before the court when the court made the ruling. I'm unaware of any law or statute that says you need to file all this additional information. They filed it. The record is clear what the court's ruling was based on, and so be it. I think we need to move on from that issue.

Ms. Bina. Again, your honor, the court's ruling was that no evidence relating to plaintiffs' post-trial income could come in as a matter of law, and your honor found that was barred by the collateral source rule. There is some authority that says even if there is a motion in limine that's been granted as a matter of law, you still

have to show what the evidence would have shown, had that not come in. That was the purpose of the proffer, not to change your honor's mind, although, if your honor is inclined to consider that -- and your honor had also indicated that she might consider an offset afterwards, not putting the evidence before the jury, but having testimony before the court. So that proffer also sets forth what would come before the court if the court allowed such testimony afterwards. We'd ask that it be considered for that purpose as well. And if your honor thinks that there is any reason to reopen the motion in limine, we are more than happy to do that. It was a bit confusing to us when we got the order, because we understood the court had already ruled as a matter of law that it was not admissible.

Judge. Imagine my confusion. I already ruled, and I get a stack of documents four inches tall.

Mr. Putnam. We indicated on the record at the time why we were doing it. I'm sorry if it was confusing.

Ms. Bina. And, again, your honor, it may have been -- Ms. Strong said, you know: "this is just a proffer that we're going to submit into the record, just for the record. The court had already ruled on the parties' motions in limine related to collateral source and the motion to exclude certain portions of Mr. Ackerman's testimony. "so in that regard, we are going to submit a proffer that he was prepared to testify that plaintiffs have suffered no economic loss."

Judge. Okay.

Ms. Bina. That was the purpose of the proffer. We actually were surprised to get a minute order on it, your honor, but we wanted just to clarify.

Judge. I needed to make clear that whatever it was that you submitted was not something that was in front of me at the time.

Ms. Bina. But it was before your honor, whether it's evidence or otherwise, the legal issue was before your honor in the motion in limine.

Judge. Yes, that -- it was. The issue was in front of me.

Ms. Bina. The specific evidence and the specific opinions, the income the plaintiffs received from the estate; that the defendants' opposition to plaintiffs' M.I.I. No. 2 specifically stated that the defendants intended and are entitled to introduce evidence showing that plaintiffs have received and will continue to receive funds from the estate; evidence that plaintiffs continue to receive the same monies from the same assets now from the Jackson estate; that they have not suffered any economic loss. Plaintiffs' motion also specifically asked to exclude Mr. Ackerman's figures. Exhibit 8 included that first account current; it included the actual benefits given to the estate. So all of that actually was in plaintiffs' motion in limine and ruled on. What we had filed was simply further evidentiary support for opinions the court had already excluded. So that's -- and I apologize for any confusion, your honor, on that issue, but that's what it was, and it was because of these --

Judge. Further evidentiary support was not the support that was in front of me at the time.

Ms. Bina. Right.

Judge. That's all I was trying to note for the record. If it was there before, fine, it was there before; if it wasn't, it wasn't. But I was making clear it was not all in front of me at the time. I just want to make it clear. If

you want it for appellate purposes, it's there. But -- anybody can file anything. The clerk's office will not turn away anything you file.

Ms. Bina. I guess, your honor --

Judge. Believe me.

Ms. Bina. -- what I would ask is if that evidence would make a difference in your motion and would incline you to reconsider your motion in limine, that you please reconsider it and allow us to recall Mr. Ackerman, should that be your determination. If your honor is inclined to stick with the determination that collateral source bars this evidence, then we will abide by that ruling. But if the additional evidence would in any way allow your honor to consider your prior ruling, we ask it be considered for that purpose.

Mr. Panish. I don't even know what she said.

Judge. I haven't looked -- I didn't look at it. All I saw was that it was filed after I already ruled, so it was of no moment to me. So I didn't look at it because I had already ruled.

Ms. Bina. And there's no law in there different than the law cited before, your honor. It's just evidence -- if the evidence -- if you think there is a chance the evidence could change your legal ruling, we would ask you to consider the evidence. If your ruling is going to be the same regardless, then that's fine.

Judge. If you're asking me to reopen, I have to think about it. I realize I don't have a lot of time to do that, but I have to think about whether I want to do that at this junction.

Mr. Putnam. And to be clear, your honor, we're only doing that as a result of the minute order. We read it, and it was like --

Ms. Bina. Is there a possibility this could be reopened? Because we had thought not, based on your proffer.

Mr. Panish. If this is going to reopen, we'd like our opportunity to file our own eight inches and re -- anyway, can I bring up an issue I think is relevant for today?

Judge. Yes.

Mr. Panish. Mr. Putnam advised me this morning -- and he'll, I'm sure, correct me if I'm wrong -- that he believes that he will finish Monday. I'm sorry. Wednesday by midday. He didn't say whether he has a witness, two witnesses, whatever. But he said we should be ready to call some witnesses by 1:30 on Wednesday. And he can correct me if I'm wrong. That was my understanding. Was I correct?

Mr. Putnam. Yes, I did say that.

Mr. Panish. Is that -- well, I just want -- is that right? Because I need to know for planning.

Mr. Putnam. So I did say that.

Mr. Panish. So that's correct? Okay. All right. So then whenever the 48 hours, I guess he'll tell us who he's going to call Wednesday morning, and we'll try to line up --

Mr. Putnam. They'll do the same, I suspect.

Mr. Panish. I'll see --

Mr. Putnam. He'll let us know 48 hours before. Since we were not allowed yesterday to know who you're calling, hopefully you'll tell us within the 48 hours.

Mr. Panish. You're correct. We will now do that. We'll now work to line up some witnesses.

Mr. Boyle. I apologize, your honor -- Kevin Boyle, for the record -- for being late. When we learned that information, I was out making calls, trying to get the wheels in motion to line someone up for that date. We'll let them know as soon as we know who can do it then.

Judge. Okay. What about Shimelman?

Mr. Putnam. I looked into the Shimelman matter. I'm not quite done looking into the Shimelman matter. What I've learned thus far confirms what we had told the court the prior time, which was the same. I think it may be reversible error, but I'm not -- because I don't like to represent to the court something definitive unless it is. We haven't quite done that. So as Mr. Boyle pointed out yesterday, our entire reason for calling this is, we want to show the video.

Judge. You're calling the witness live?

Mr. Putnam. No. We would want to call him to show the video. The court has said, "no, you can't do that. I'm going to demand he come live."

Judge. Right.

Mr. Putnam. And so I'm looking at the law into that, because I think that it's reversible error for us not to be able to do it by video.

Judge. By video.

Mr. Putnam. Right. But, again, your honor --

Judge. I would be surprised if the law is it's reversible error to refuse to allow a party to play a video. I can see why it might be reversible error to not call a witness, but to not play a video, I would be surprised.

Ms. Cahan. and, your honor --

Judge. I could be wrong.

Ms. Cahan. we did locate a case that indicates that. I want to make sure we thoroughly run this issue down, because, actually, we were looking under 2025.620(d) before. Under (c)(1), there's also -- there's more case law under (c)(1), which is the 150-mile rule. And so we're trying to -- we found some of that last night, we're continuing to look into it this morning. And I mentioned to plaintiffs' counsel this morning, we'll send them what we find, we'll probably submit a brief on this Monday morning.

Mr. Putnam. Monday morning.

Ms. Cahan. Since they're not going to be resting before that anyway, and we will certainly advise plaintiffs' counsel, as you directed us yesterday, where we net out on the law, because they're trying to coordinate with that live witness.

Judge. Well, the 150-mile rule --

Mr. Panish. What Ms. Cahan says does not apply.

Judge. But if the plaintiffs will bring him in live, he's not unavailable.

Mr. Putnam. The case on that point --

Ms. Cahan. the case I found, your honor, is the case that if the witness is -- it's reversible error to deny the party the right to display the deposition if the witness is more than 150 miles under 2025.

Judge. If the witness is unavailable.

Mr. Putnam. No. Even --

Ms. Cahan. Even if the witness had offered to come back to Los Angeles to testify live.

Judge. Oh, all right.

Ms. Cahan. And so I just want to make sure we're 100 percent sure on the law. This case strongly suggests it is reversible error.

Mr. Putnam. We'll check.

Mr. Panish. What's the name of the case?

Mr. Putnam. I'll get it for you.

Mr. Panish. Well, she knows it. Why can't --

Ms. Cahan. It's the *Monroy* case. It's actually a case we used for a different purpose.

Mr. Panish. Could you spell it for me?

Ms. Cahan. m-o-n-r-o-y. In our prior briefing on the Shimelman issue.

Mr. Putnam. When we briefed this witness, argued this before.

Ms. Cahan. Have a factual-witness issue and a percipient-witness issue. And it addresses both prongs of the statute.

Mr. Panish. Okay. *Monroy*, that's listed in your prior briefs, so we'll find it.

Mr. Putnam. It's also in arguments we've made previously on this topic.

Mr. Panish. Well, whatever. We have that case, so, okay.

Judge. I'll look at that case.

Mr. Panish. All right. And other than that, I think we have enough to fill the day.

Ms. Cahan. Certainly do.

Ms. Bina. And a couple of things, your honor, are the statement of damages issue now that we briefed. I apologize for the delay. It also affects what we do on Wednesday. So if we can deal with that next week.

Mr. Panish. Right. We have two days.

Judge. We have Ms. Faye --

Mr. Panish. Yes, and Faye everything. And Monday and Tuesday we have all day.

Mr. Putnam. Right. And we understood that Ms. Chang would be well by Monday and argue on things she previously --

Mr. Panish. I sure hope so. I mean, if you want a doctor's note, I'll get it, but hopefully --

Mr. Putnam. I've never required a doctor's note, and I won't now.

Mr. Panish. I'm just saying, I hope she will be here.

Ms. Bina. We're just hoping that she feels better.

Mr. Panish. Thank you. And I'll express that to her, that you're so concerned about her. Thank you very much. Other than that, I think we can proceed for today.

Ms. Bina. Just one thing I didn't mention earlier. This week we were planning to submit some revised jury instruction and revised verdict form, and they will come in by midday so your honor will have that.

Mr. Panish. Okay.

Mr. Putnam. Your honor, we're showing video today. Our understanding is we were required to show video today because Mr. Panish would not be here. It appears his travel plans have changed, but we're going to proceed with the video since that's what we have to go with.

Ms. Bina. I'm going to trade out with Ms. Cahan.

Mr. Boyle. I'll speak for you, Mr. Panish. When Mr. Panish -- he did have plans, and he said -- we were going to come back on the trial today. He said, okay, it's already a day off. And he said, "if it's all video, no problem." in the interim, he decided he wanted to be here, considering all the issues popping up. He changed his travel plans. I don't think it's an issue because today is a full video anyway. It sounds like they didn't have live witnesses anyway, it was also indicated to us earlier in the week, you know, so whatever.

Mr. Putnam. As we represented to the court yesterday, there were a number of live witnesses, considering some of them we actually tried to queue up for the 6th. We were then told we could only do video.

Judge. Well, Mr. Panish, I think we're going to have move forward with witnesses, regardless of your travel plans.

Mr. Panish. Well, I understand that.

Judge. Because if you --

Mr. Panish. Your honor --

Judge. We tried to accommodate, but if it isn't that important, then --

Mr. Panish. Your honor, I was asked if we could have that day back available. I said, "yes." I didn't say "no"; okay? They have no live witnesses they're calling today.

Judge. But they might have.

Mr. Putnam. We would have.

Judge. They rearranged --

Mr. Panish. Who were they going to call?

Mr. Putnam. We get to do that again?

Judge. I don't think we need to go through that again. I mean, they made an effort to rearrange their witnesses --

Mr. Panish. Your honor, I changed it to later.

Judge. Mr. Panish, let me finish. -- based in part upon your schedule. Obviously your schedule has changed, but I don't think it's fair to keep requiring other parties to change their plans if your plans aren't that important, because you obviously can be here. So I'm just saying --

Mr. Panish. You want me to give the reasons all now why I had to change?

Judge. No.

Mr. Panish. And what happened and about a death --

Judge. You don't have to if you don't want to. I don't want to pry into your personal business.

Mr. Panish. There's a totally legitimate reason why I changed. Things have happened in the interim. I still have the plans. I have been here since April 8th. I've had a day and a half off of court which coincided with a juror, one part of it. I've been here every single day since April 8th. I've been in trial in this building since January 13. The only reason I missed the motions in limine, I was in the hospital. I never missed a trial day on any trial, and I asked for this trial those days, and I made an exception -- I've been here every other day. For

this year, I've been in trial for 100-and-some days. I'm not a trial person trying to mistrial. I've been in trial in this court seven months in the last several years. I've never before asked the court for any time off. I've never made the court adjust for my schedule at any time in seven months or more of trial in this courtroom. And in this total seven months, I asked for one day next week, and a day and a half and this other day, which I was able to change, pull back because of the videos I wanted to see and be here because of all these other motions were coming up. So in 100-and-whatever days this year, I've had two days off that I've asked. I've never in seven months in this courtroom, other than that, asked for any days off. I've never had the court change anything for my schedule.

Judge. Oh, no. I'm not changing it for you.

Mr. Panish. I had the court go forward.

Judge. I'm saying opposing counsel was changing.

Mr. Panish. I was in the hospital. I didn't say anything about the motions in limine. I sent pictures to prove where I was. I didn't try to delay that in any way. I have never in my career tried to inconvenience counsel in any way. I apologize that I was able to come today. They're putting on their videos that they have to put on anyway, and I'm sorry that Mr. Putnam thinks that I was trying to pull something over or try to gain some advantage of this system, which I have never done.

Ms. Cahan. and, your honor, just for planning purposes, because the Van Valin video is quite long, when would you like to take the morning break so Ms. Bradford can make sure she pauses it at an appropriate moment?

Judge. Around 11.

Ms. Cahan. 11:00? Thank you, your honor.

Mr. Panish. Your honor, I want to point out, for the record, I could have just said, "no, I don't agree to let this case go on this day," and you would have allowed that, because it already had been agreed.

Judge. Mr. Panish, I don't know what you're saying.

Mr. Panish. Well, I'll bring it up.

Judge. You have the jurors coming in.

Mr. Panish. I understand.

(THE JURY ENTERED THE COURTROOM AT 9:56 A.M.)

Judge. Good morning, everybody.

The jury: good morning.

Judge. Juror no. 1, how you doing?

Juror no. 1: thank you. We're still waiting to hear other things, but pretty good.

Judge. Keep me apprised.

Juror no. 1: thank you.

Judge. Counsel, make your appearances.

Mr. Panish. Good morning, everyone. Brian Panish for plaintiffs.

Mr. Boyle. Good morning, everybody. Kevin Boyle for plaintiffs.

Ms. Bina. Jessica Stebbins Bina for the defendants.

Ms. Cahan. Kathryn Cahan for the defendants.

Mr. Putnam. And Marvin Putnam for the defendants.

Judge. Thank you. Ms. Cahan, you wanted to play some videos for us today?

Ms. Cahan. yes. Today will be video day. First, defendants call, by video deposition, Dr. William B. Van Valin. V-a-n, space, V-a-l-i-n, II.

(PORTIONS OF THE VIDEOTAPED DEPOSITION OF DR. WILLIAM VAN VALIN WERE PLAYED)

Ms. Cahan. your honor, this is probably a good place to stop for the morning break.

Judge. Okay. Let's take a 15-minute break. (the jury exited the courtroom at 11:04 a.m.)

Judge. Okay. Thank you.

Mr. Putnam. Thank you, your honor. (a recess was taken.)

Mr. Panish. Can I say more in my defense?

Judge. Sure. Defend yourself.

Mr. Panish. Also, when we were going through the scheduling, this day was already going to be off, and it was asked whether we could put it onto the calendar to -- in other words, crossed off this date, which I agreed to. If I would have said, "no," the court wouldn't have forced me to do it. And I was trying to work and get an extra day in, and now I'm being chastised for it. So I just wanted to put that on the record. And I know how the

court has handled these in the past. The court has been very accommodating to counsel. And if I said, "no court, I can't" -- you know, you would have understood that, so --

Mr. Boyle. And for the record, I was mad at Mr. Panish for agreeing to put it back on because I had, based on it being an off day, planned a family trip that I had to cancel because he had it planned. So I don't think he was intentionally trying to do anything about this day.

Mr. Panish. I was trying to get it on the calendar to move it along.

Mr. Putnam. If we are going to go through the whole thing, then what actually occurred, your honor, was that I simply said before, fine, thank you. But if we're going to tell what actually happened on the record, what is apparently necessary, what occurred was, when it got to the point at the end of their 14 weeks of going, then we were looking into, then, what days to take off. And plaintiffs' counsel asked for every Friday of three Fridays, sometimes the half Thursday beforehand, such that defense counsel would now have two and a half, three days a week, every week. The reason asked? Because he said he wanted to go see his daughter to play soccer. I said, you know what? I'd really rather, given we only get two and a half days a week in this time period, I'd rather not do that. I indicated to the court specifically that I would rather we not do that for such a reason. The court determined to do so, which I did not complain about in any measure. When we then got to the put of our turn, I said, "can we please have some of those days back? Could we not go, or could something change?" we were told, "no." and then I asked, "is there any way we could do it? What if we played videos that day?" First, what I was told, actually, was, "No, you can't have it back." I said, "How about if we play a video, and you don't have to be there?" and he said, "Okay. You know what? That's what you can do. You can play video, and I won't be there, and that won't be a problem." That's what actually occurred, your honor. It wasn't about last week when they were going to go to their conference that they were underwriting in Vegas. It wasn't that or anything else. It was for this. And then what happened was, yesterday as we were leaving court, not until yesterday when we were leaving court, I heard, "Oh, I'm going to be here tomorrow." and all I was saying is, it would have been the nice thing to do, when we were asked to get it back so we could call witnesses, when we've sat here and said we're trying everything in our power to juggle people, including people that were available on the 6th, that we then had to change plane tickets for and everything else for next week, to be told that before yesterday afternoon. That's all I was trying to articulate.

Mr. Panish. I didn't ask for every Friday off. Friday, the 23rd of August, was juror no. 10; Friday, the 20th, is some other reason. The 27th is juror no. 7. I mean, it's just -- I rest my case. This whole thing -- this whole case has been like this.

Mr. Putnam. Yes, the whole case has been exactly like this.

Mr. Panish. You're absolutely right, Mr. Putnam. And it's just incredible. I've never been involved in anything like it. I hope I never am again.

Mr. Putnam. That makes two of us.

Mr. Panish. We agree on something.

Mr. Putnam. I suspect we agree on many things.

Judge. Let's bring our jurors in.

(THE JURY ENTERED THE COURTROOM AT 11:23 A.M.)

Judge. You may continue with your video.

(PORTIONS OF THE VIDEOTAPED DEPOSITION OF DR. WILLIAM VAN VALIN WERE PLAYED)

Ms. Cahan. your honor, we can break here for lunch if you'd like.

Judge. All right. I have one motion this afternoon, so I'm going to ask you to return at 1:45; okay? 1:45. Thank you.

(THE JURY EXITED THE COURTROOM AT 12:04 P.M.)

Judge. Okay. I guess I'll see you at 1:45.

Mr. Putnam. Thank you, your honor.

(AT 12:05 P.M. THE LUNCH BREAK WAS TAKEN UNTIL 1:45 P.M. OF THE SAME DAY.)

(THE JURY ENTERED THE COURTROOM AT 1:45 P.M.)

Judge. Good afternoon. Okay. Let's continue.

Ms. Cahan. thank you, your honor. And if it's okay with you, we'd like to pick up the last question and answer before the lunch break because it was in the middle of a series.

Judge. Okay.

(PORTIONS OF THE VIDEOTAPED DEPOSITION OF DR. WILLIAM VAN VALIN WERE PLAYED.)

Ms. Cahan. your honor, that concludes the playing of the video deposition of dr. Van Valin. There are three exhibits that defendants want to move into evidence that were shown and authenticated by dr. Van Valin that you were shown during his deposition. The first is Van Valin deposition exhibit no. 2, which is trial exhibit 9824. And it runs up to page no. 35.

Mr. Panish. And I have no objections to the pages that he referenced and referred to, and we can deal with the rest of it later.

Judge. Okay.

Ms. Cahan. the second is deposition exhibit 3, trial 2073, which is a plaintiffs' trial exhibit. Runs up to page 7.

Ms. Cahan. and the third is deposition exhibit no. 5, plaintiffs' trial exhibit 2704, running up to numbered page 24.

Mr. Panish. And my position would be the same. Any exhibits referenced, there's no objection; otherwise, we can discuss it with the court.

Judge. They're received subject to the discussion that we'll have.

Mr. Panish. Right.

Ms. Cahan. and the next video we have is dr. Neil Ratner. That's 24 minutes, so it should take us right to the afternoon break, if that's okay, your honor. And there was no errata notice for dr. Van Valin. There will be no errata notice for dr. Ratner. And it's Neil Ratner. R-a-t-n-e-r.

(PORTIONS OF THE VIDEOTAPED DEPOSITION OF DR. NEIL RATNER WERE PLAYED.)

Ms. Cahan. your honor, that concludes the playing of the video deposition of dr. Ratner. Just to be clear, there are some errata spelling issues, nothing substantive. And I don't think I need to read any of the spelling changes into the record.

Judge. How about exhibits?

Ms. Cahan. no exhibits, your honor.

Mr. Putnam. No exhibits.

Judge. Okay. So we'll take a break, then?

Mr. Boyle. Yeah.

Judge. 3:15.

Judge. You have one more?

Ms. Cahan. Yes, your honor. And that one is close to two hours. Play the first 45 minutes today until we break at 4:00, and then finish it on Wednesday morning for about an hour, hour and 15.

Judge. Okay.

Ms. Cahan. Thank you, your honor

(THE JURY ENTERED THE COURTROOM AT 3:24 P.M.)

Judge. You may continue.

Ms. Cahan. thank you, your honor. At this time the defendants call by video dr. Allan Metzger. A-l-l-a-n m-e-t-z-g-e-r.

Judge. Okay. Thank you.

(PORTIONS OF THE VIDEOTAPED DEPOSITION OF DR. ALLAN METZGER WERE PLAYED.)

Ms. Cahan. your honor, this is probably a good place to break because we're about to go into the complete medical records of dr. Metzger, and we wanted to stop at 12:00. There's about an hour and 15 minutes left, and we'd like to finish on Wednesday morning, with your honor's permission.

Judge. All right. So let's adjourn today. I'm going to have the jury return on Wednesday at 10:00 a.m. And in the meantime, remember the admonition not to discuss the case, read anything about it; okay? All right. Thank you. See you on -- have a good weekend, and see you Wednesday at 10:00.

(THE JURY EXITED THE COURTROOM AT 4:01 P.M.)

Judge. Okay. Before I let you go -- go ahead and have a seat. Juror no. 1 had communicated with my staff yesterday, I think.

The clerk. yesterday.

Judge. It was yesterday. And I guess her mother-in-law's ill, and her mother-in-law is living in another state.

The clerk. correct.

Judge. And she wasn't sure whether she needed to travel with her husband to the other state. And -- but she, I guess, determined that she didn't need to do that, and she would be able to come today to court. But I guess during the course of today, she just wasn't feeling all that great, so that's part of the reason why we broke at 4:00. She's going to call on Monday to let us know, kind of update what's going on with her mother-in-law. So, you know, I had told my staff that if we had to skip today altogether, that we would skip today if she needed to fly because she would have today through Wednesday, if she needed, to visit, but she came today.

Mr. Panish. Okay.

Judge. I don't know what will happen come Monday, but that's where we are with her.

Mr. Panish. All right. Thank you.

Judge. Okay. And, counsel, you're going to be here on Monday at 10:00?

Mr. Panish. Yes.

Mr. Putnam. Yes, your honor.

Ms. Bina. I don't know if your honor would have the tentative on the nonsuit motion. And if not, it would be useful to have something to look --

Judge. I will, but not before.

Mr. Putnam. Earlier on Monday?

Ms. Bina. Should we come in here to -- come early or pick them up at 10:00? I know sometimes it's easier to have --

Mr. Putnam. We don't need to have them in advance at all. If it's a question, if you have it, we'll pick it up; if you don't, we won't.

Judge. My normal thing is to have it when you show up. If you need time to look at it, I'll give you time to look at it.

Mr. Putnam. Hopefully we'll be prepared enough that reading it will be adequate.

Mr. Panish. Thank you, your honor.

Judge. Okay.

Mr. Panish. Have a nice weekend.

Judge. You, too.