

1 PATIENTS, IS IT COMMON FOR PEOPLE TO EXPERIENCE STRESS
2 ABOUT AN EVENT THAT THEY'RE REALLY EXCITED ABOUT,
3 SOMETHING WHERE THEY WANT TO PERFORM WELL?

4 MS. CHANG: OBJECTION; LACKS FOUNDATION, CALLS
5 FOR SPECULATION.

6 THE COURT: OVERRULED.

7 THESE ARE MUSICIANS, ATHLETES AND
8 CELEBRITIES? OVERRULED. YOU MAY ANSWER.

9 THE WITNESS: YES.

10 MS. CAHAN: NOTHING FURTHER. THANK YOU,
11 DR. LEE.

12 MS. CHANG: I HAVE NOTHING FURTHER.

13 THE COURT: OKAY. THANK YOU, MA'AM. YOU MAY
14 STEP DOWN. THANK YOU.

15 MS. CHANG: THANK YOU, DR. LEE.

16 THE COURT: OKAY. LADIES AND GENTLEMEN, I GUESS
17 THE NEXT TIME WE SEE EACH OTHER IS TUESDAY; AND THAT
18 WILL BE AT 9:45. REMEMBER MY ADMONITION NOT TO DISCUSS
19 THE CASE, DON'T GO ON THE INTERNET AND LOOK AT
20 ANYTHING, DON'T READ ANYTHING ABOUT THE CASE, DON'T
21 EVEN THINK ABOUT THE CASE.

22 JUST COME FRESH ON TUESDAY, AND WE'LL SEE
23 YOU AT THE 9:45. OKAY? THANK YOU. HAVE A GOOD LONG
24 WEEKEND.

25

26 (THE FOLLOWING PROCEEDINGS WERE HELD
27 IN OPEN COURT, OUTSIDE THE PRESENCE
28 OF THE JURY:)

1 MR. PANISH: YOUR HONOR, I WAS GOING TO LEAVE,
2 REMEMBER? I HAVE TO LEAVE. I WANTED TO TELL YOU
3 THAT.

4 MR. PUTNAM: THEY'RE GOING TO ARGUE WITHOUT HIM,
5 REMEMBER?

6 THE COURT: OKAY.

7 MS. CHANG: YOUR HONOR, I HAVE AN ISSUE. MR. --
8 I THINK EVERYONE KNOWS, IT'S NO SECRET THAT THE
9 PLAINTIFFS' BAR HAS CAALA IN LAS VEGAS THIS WEEK.
10 MR. PANISH IS ABOUT TO LEAVE ON A PLANE TO GO TO
11 LAS VEGAS.

12 MR. PANISH: NO, I'M NOT.

13 MS. CHANG: I THOUGHT YOU WERE.

14 MR. PANISH: I'M GOING TO COLORADO.

15 MS. CHANG: I'M SORRY. I'M JUST SO CONFUSED.

16 IN ANY EVENT, THAT'S WHAT I'M SAYING. IS
17 THERE A REASON -- I THINK IT IS BENEFICIAL TO ARGUE IT
18 BEFORE WE ARGUE THE NONSUIT. BUT IS THERE A REASON, I
19 GUESS, GIVEN THAT MR. PANISH IS LEAVING -- BECAUSE I
20 THINK --

21 MR. PUTNAM: WE DID THIS, WE AGREED TO THIS,
22 PEOPLE MOVED THEIR HOLIDAY SCHEDULES FOR THIS.

23 MS. CHANG: I GUESS I SHOULDN'T FINISH MY
24 SENTENCE.

25 MR. PANISH: WE ALREADY AGREED IT'S OKAY.

26 THE COURT: I DON'T KNOW WHAT YOU'RE TALKING
27 ABOUT. YOU KEEP INTERRUPTING EACH OTHER AND NEITHER OF
28 YOU CAN GET A FULL SENTENCE OUT.

1 MR. PANISH: IT'S OKAY, YOUR HONOR.

2 THE COURT: ALL I GOT WAS MR. PANISH IS LEAVING
3 TO COLORADO. THAT'S ALL I GOT.

4 MR. PANISH: AND I WAS, AND IT WAS AGREED THAT IT
5 COULD BE ARGUED WHEN I WASN'T HERE. THAT WAS AGREED
6 UPON.

7 MS. CHANG: THEN I THINK I HAVE TO TALK TO
8 MR. PANISH. THIS IS A MESS.

9 MR. PUTNAM: MAY I SPEAK NOW?
10 YOUR HONOR, COUNSEL AGREED TO EXACTLY THE
11 SCHEDULE --

12 MR. PANISH: I DID.

13 MR. PUTNAM: -- AS MR. PANISH IS NOTING, TO
14 EXACTLY THE SCHEDULE, TO THE FACT THAT HE WOULD NOT BE
15 HERE.

16 MS. CHANG: WHY ARE YOU ARGUING WHEN YOU'RE ALL
17 IN AGREEMENT? I DON'T UNDERSTAND.

18 MR. PUTNAM: SO WE'RE OKAY?

19 MS. CHANG: I'M THE ONLY ONE THAT'S NOT OKAY.

20 MR. PANISH: WE ALL AGREED. I AGREED TO THAT
21 WITH COUNSEL, WITH THE COURT, THAT WAS AGREED UPON, SO
22 WE DON'T NEED TO DISCUSS THAT ISSUE ANYMORE. THAT'S
23 AGREED. THERE'S NO DEBATE ON THAT.

24 MR. PUTNAM: SEE YOU AT 1:45, YOUR HONOR.

25 MR. PANISH: I DID WANT TO SAY BEFORE I LEFT ON
26 THAT OTHER ISSUE, I WOULD JUST LIKE TO SAY ONE FACTUAL
27 THING, AND MS. CHANG CAN HANDLE THE MERITS. AND I
28 LOOKED AT THE RECORD, AND I DIDN'T SAY EVERYTHING. SO,

1 YOU KNOW, AT THE END OF THE DAY YESTERDAY, MS. LEE WAS
2 TESTIFYING. MS. CAHAN WAS QUESTIONING.

3 AT THE COUNSEL TABLE FOR THE PLAINTIFFS WAS
4 MS. CHANG AND MYSELF, ONE FEMALE, ONE MALE LAWYER. AT
5 THE COUNSEL TABLE FOR THE DEFENDANT WAS
6 MS. STEBBINS BINA AND MR. PUTNAM. AND MS. CAHAN WAS
7 QUESTIONING FROM THE LECTERN.

8 AND THE WITNESS BROKE DOWN, THE COURT
9 DECIDED AT THAT TIME AT APPROXIMATELY 4:15 TO CALL THE
10 DAY. AND THE WITNESS WAS UPSET. AT THAT TIME --

11 THE COURT: SHE WAS VERY UPSET, CRYING.

12 MR. PANISH: AS HAVE NUMEROUS WITNESSES
13 THROUGHOUT THE TRIAL -- KAREN FAYE, KENNY ORTEGA,
14 MRS. JACKSON, MS. ROWE -- WHERE NO ONE HAS APPROACHED,
15 NO ONE, NOT EVEN COUNSEL --

16 THE COURT: I DON'T THINK THAT'S ACCURATE, BUT --

17 MR. PANISH: THAT'S ACCURATE. I NEVER APPROACHED
18 MRS. JACKSON.

19 MS. CHANG: EVEN IF HE DID, IT'S HIS CLIENT.

20 MR. PANISH: BUT I DIDN'T.

21 THE COURT: I DON'T THINK THAT MAKES ANY
22 DIFFERENCE WHATSOEVER, THAT IT'S HIS CLIENT.

23 MR. PANISH: I DIDN'T APPROACH MRS. JACKSON.
24 OKAY? AND THE RECORD WILL SHOW WHAT OCCURRED. AND
25 THERE ALSO IS A VIDEO.

26 THE COURT: THE RECORD DOESN'T NECESSARILY
27 REFLECT IT.

28 MS. CHANG: JUST GET IT OUT AND THEN WE'LL ARGUE

1 IT.

2 THE COURT: GO AHEAD AND FINISH WHAT YOU WANTED
3 TO SAY.

4 MR. PANISH: YOU'RE INTERRUPTING.

5 MS. CHANG: SHE HAS THAT RIGHT, TO DO THAT. GO
6 AHEAD.

7 MR. PANISH: SO THERE WERE FIVE LAWYERS ON THE
8 SIDE OF THE RAIL, FIVE LAWYERS. MS. STRONG CAME FROM
9 THE AUDIENCE IN A PACKED COURTROOM WHERE THERE WERE
10 ALSO TWO RELATIVES OF THE WITNESS PLUS NUMEROUS OTHER
11 LAWYERS, AND MS. STRONG WENT UP INTO THE WITNESS BOX
12 WHILE THE JURY WAS STILL IN THE BOX AND PUT HER ARM
13 AROUND --

14 THE COURT: HALF THE JURY WAS IN THE BOX; BUT
15 YES, THEY WERE ALL FILING OUT.

16 MR. PANISH: THEY WERE LOOKING AT THE WITNESS.

17 THE COURT: TRUE.

18 MR. PANISH: AND SHE MADE --

19 THE COURT: HALF OF THEM WERE LOOKING AT THE
20 WITNESS.

21 MR. PANISH: SHE CAME FROM BACK IN THE AUDIENCE
22 WHILE FIVE ATTORNEYS WERE HERE. OKAY? THAT'S JUST A
23 FACTUAL RECITATION OF WHAT OCCURRED. SO I JUST WANTED
24 TO PUT THAT ON. MS. CHANG WILL ARGUE THIS AFTERNOON
25 ABOUT WHATEVER WILL HAPPEN.

26 THE COURT: I'LL LET THE OTHER SIDE -- IF THEY
27 WANT TO ADD OR DISPUTE ANY FACTS, THEY COULD DO THAT,
28 AS WELL.

1 MS. CHANG: THAT'S NOT OUR ARGUMENT. HE JUST
2 WANTED TO LAY A FACTUAL CONTEXT BECAUSE HE'S LEAVING.

3 MR. PANISH: I DIDN'T GET A CHANCE.

4 MS. CHANG: I AM GOING TO START FROM SCRATCH AND
5 ARGUE THIS AFTERNOON WHEN WE HAVE MORE TIME. HE JUST
6 WANTED TO GET HIS TWO CENTS IN BECAUSE HE'S LEAVING.

7 MR. PANISH: AND I'M JUST STATING WHAT MY VIEW
8 OF --

9 THE COURT: WHAT YOU SAW AND WHAT YOU --

10 MR. PANISH: WELL, I SAW SOME OTHER THINGS; BUT
11 WHAT I SAW. AND OTHERS CAN ADDRESS THAT. THAT'S ALL I
12 WANTED TO SAY WITHOUT --

13 THE COURT: OKAY.

14 MR. PANISH: AND THEN YOU CAN TAKE IT UP LATER.

15 THE COURT: OKAY. VERY GOOD.

16 ANYTHING ELSE? I MEAN, WE CAN DO IT WHEN
17 WE COME BACK.

18 MR. PUTNAM: WE CAN TALK ABOUT IT. I WISH
19 MR. PANISH GODSPEED ON HIS TRIP.

20 MR. PANISH: WHAT'S THAT?

21 MS. CHANG: HE'S WISHING YOUR PLANE WOULD CRASH
22 TODAY, HE SAID.

23 MR. PUTNAM: WOW.

24 THE COURT: DON'T SAY THAT.

25 MS. CHANG: I'M KIDDING. I'M TEASING.

26 THE COURT: SO I WILL SEE YOU AT 1:45.

27 MR. PANISH: HE DIDN'T SAY THAT. SHE'S JOKING.

28 MS. CHANG: I WAS READING BETWEEN THE LINES.

MS. CAHAN: THANK YOU, YOUR HONOR.

(THE NOON RECESS WAS TAKEN UNTIL
1:30 P.M. OF THE SAME DAY.)

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1 CASE NUMBER: BC445597
2 CASE NAME: JACKSON VS. A.E.G.
3 LOS ANGELES, CALIFORNIA AUGUST 29, 2013
4 DEPARTMENT NO. 28 HON. YVETTE M. PALAZUELOS,
5 JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: RHONDA NORBERG, CSR 9265
8 TIME: 1:49 P.M.

9
10 (THE FOLLOWING PROCEEDINGS WERE HELD
11 IN OPEN COURT, OUTSIDE THE PRESENCE
12 OF THE JURY:)

13
14 THE COURT: KATHERINE JACKSON VERSUS A.E.G. LIVE,
15 BC445597. GOOD AFTERNOON.

16 WE HAVE A FEW THINGS TO TAKE UP. LET'S
17 TAKE THE LONG MOTION -- LET ME GO THROUGH WHAT I THINK
18 ARE SOME OF THE REMAINING THINGS WE HAVE. WE HAVE THE
19 MS. STRONG ISSUE, WE HAVE THE KAREN FAYE ISSUE.

20 WE ALSO HAVE THE ISSUE -- I JUST THOUGHT
21 ABOUT THIS TODAY. IT WAS THE PLAINTIFFS' STATEMENT OF
22 DAMAGES. THAT ISSUE WAS FILED A WHILE AGO, AND I
23 HAVEN'T ADDRESSED IT.

24 DO YOU REMEMBER THAT, THE STATEMENT OF
25 DAMAGES?

26 MS. BINA: YES.

27 MR. PUTNAM: YES, YOUR HONOR.

28 MS. BINA: VAGUELY.

1 THE COURT: NO ONE HAS RAISED IT SINCE; BUT I
2 FIGURED SINCE IT'S OUT THERE, MAYBE WE SHOULD TALK
3 ABOUT IT, UNLESS THERE'S NO INTENT TO RAISE IT DURING
4 THE TRIAL.

5 MS. CHANG: YOUR HONOR, YOU DID RECEIVE THE
6 PLAINTIFFS' BRIEF ON THAT, RIGHT?

7 THE COURT: YES, I DID.

8 MS. CHANG: OKAY.

9 THE COURT: AND THEN THE LAST ISSUE I THINK IS
10 THE MOTION.

11 MS. BINA: THERE'S ONE MORE THAT'S OUTSTANDING,
12 YOUR HONOR, WHICH IS WE FILED A BRIEF RELATING TO
13 DR. EARLEY'S TESTIMONY ABOUT TEN DAYS AGO, I THINK,
14 HAVEN'T GOTTEN ANY RESPONSE FROM PLAINTIFFS.

15 OBVIOUSLY, WE'RE TRYING TO FINISH UP OUR
16 CASE AND WE NEED TO KNOW WHERE THAT'S -- WHAT THE
17 RULING IS GOING TO BE OR WHETHER THAT'S GOING TO BE
18 OPPOSED.

19 THE COURT: REMIND ME OF THAT, BECAUSE I DON'T
20 REMEMBER THE EARLEY MOTION.

21 MS. BINA: IT WAS ABOUT THE SCOPE OF HIS
22 TESTIMONY, I THINK, THE SCOPE OF THE CROSS-EXAMINATION.
23 I THINK IT WAS THE NATURE OF A MOTION IN LIMINE. IT
24 WAS ACTUALLY MS. CAHAN THAT FILED IT, BUT SHE ASKED
25 THAT I GET SOME CLARIFICATION ON WHEN AN OPPOSITION
26 WILL BE FILED. THEY'VE HAD IT I BELIEVE FOR TEN DAYS,
27 SO WE'D LIKE ONE FILED PROMPTLY.

28 THE COURT: THE ISSUE WAS SCOPE OF

1 CROSS-EXAMINATION?

2 MR. PUTNAM: FOR DR. EARLEY.

3 MS. BINA: YES, YOUR HONOR.

4 MS. CHANG: YOUR HONOR, AS YOU KNOW, I WAS GIVEN
5 THE ASSIGNMENT TO WRITE FOUR BRIEFS CONSECUTIVELY. IF
6 YOU GIVE ME A DEADLINE, WE WILL HAVE IT DONE. JUST
7 GIVE ME A DATE. I JUST WANT TO SAY THAT CAALA IS --
8 WE'RE LEAVING FOR CAALA LIKE TOMORROW MORNING. JUST
9 GIVE ME A DATE AND IT WILL BE DONE.

10 MS. BINA: HOW ABOUT MONDAY, YOUR HONOR? IT'S A
11 COURT HOLIDAY BUT THEY COULD SERVE IT BY MONDAY AND
12 FILE IT BY TUESDAY.

13 THE COURT: WHEN IS EARLEY --

14 MR. PUTNAM: IT COULD BE AS EARLY AS NEXT WEEK,
15 IF YOU'LL PARDON THE PUN. AS YOU KNOW, YOUR HONOR,
16 WE'RE TRYING TO FINISH THE FOLLOWING WEEK; AND WE HAVE
17 THREE COURT DAYS COMING UP, THAT'S ALL THAT'S LEFT, SO
18 IT'S GOING TO BE ONE OF THOSE THREE. WE'RE BALANCING
19 WHAT WE HAVE LEFT AND WHO WE NEED TO GO. SO THAT'S WHY
20 WE FILED IT TWO WEEKS AGO.

21 THE COURT: REMIND ME. EARLEY WE HAD BY
22 DEPOSITION, I THINK.

23 MS. BINA: PLAINTIFFS CALLED HIM BY DEPOSITION,
24 YOUR HONOR, A SMALL PORTION. DEFENDANTS ARE STILL
25 INTENDING TO CALL HIM LIVE, SINCE HE'S OUR EXPERT; AND
26 PLAINTIFFS HAVE ASKED THAT HE BE CALLED LIVE.

27 MR. PUTNAM: SPECIFICALLY --

28 MS. BINA: THAT'S WHY THERE'S SOME ISSUES

1 REGARDING SCOPE OF CROSS-EXAMINATION. I ASSUME
2 PLAINTIFFS WANT TO BE HEARD IN RESPONSE TO WHAT WAS
3 BASICALLY A MOTION IN LIMINE THAT DEFENDANTS FILED, BUT
4 WE HAVEN'T HEARD A PEEP OUT OF THEM, SO --

5 MS. CHANG: AGAIN, IF YOU COULD JUST GIVE ME A
6 DEADLINE, WE'LL HAVE IT READY. WE'VE BEEN EXTREMELY
7 BUSY.

8 MR. PUTNAM: YES, WE HAVE.

9 THE COURT: WELL, I WAS GOING TO GIVE A WEEK,
10 WHICH WAS BY SEPTEMBER 6TH.

11 MS. BINA: THE PROBLEM, YOUR HONOR, I THINK IS
12 THAT WE ARE HOPING TO HAVE COMPLETED THE BULK OF OUR
13 CASE BY THAT POINT, AND DR. EARLEY MAY BE TESTIFYING AS
14 SOON AS NEXT WEEK.

15 MR. PUTNAM: WHICH IS PRECISELY WHY, YOUR HONOR,
16 WE FILED IT TWO WEEKS AGO.

17 THE COURT: OKAY.

18 MS. CHANG: CAN I SAY --

19 THE COURT: WHEN ARE YOU BACK FROM CAALA?

20 MS. CHANG: I COULD COME BACK EARLY ON SUNDAY
21 IF -- IF --

22 THE COURT: WHAT ABOUT TUESDAY, THEN? CAN YOU DO
23 IT ON TUESDAY BY THE END OF TUESDAY?

24 MS. CHANG: TUESDAY IS FINE, BY THE END OF DAY.
25 THAT END OF DAY DOES HELP A LITTLE BIT.

26 THE COURT: SO END OF DAY TUESDAY THE 3RD.

27 MR. PUTNAM: FRIDAY IS THE 6TH. THAT'S THE DAY
28 WE GOT BACK.

1 THE COURT: SO THE 3RD BY THE CLOSE OF
2 BUSINESS.

3 MS. BINA: AND THE KAREN FAYE TEXT ISSUE, YOUR
4 HONOR, WE'RE GOING TO BE PUTTING AN OPPOSING BRIEF IN.
5 IT'S BASICALLY DONE NOW. I WAS JUST TELLING NELI WE
6 HAD SOME ISSUES WITH THE PRINTER. I WAS GOING TO BRING
7 IT TO COURT NOW. BUT IT SHOULD BE IN BY TOMORROW
8 MORNING.

9 THE COURT: OKAY.

10 MR. PUTNAM: WE WANTED TO GET IT TO YOU BY THE
11 WEEKEND, YOUR HONOR, JUST TO RUIN YOUR WEEKEND.

12 MS. BINA: WE COULD ARGUE THAT AS SOON AS
13 TUESDAY, I GUESS.

14 THE COURT: ALL RIGHT. ARGUE ON TUESDAY. AND
15 YOU PLAN TO GET IT TO ME BY --

16 MS. BINA: BY TOMORROW MORNING AT THE LATEST, AND
17 POSSIBLY BY CLOSE OF BUSINESS TODAY. IT'S LITERALLY
18 BEING PRINTED AND PUT TOGETHER AS WE SPEAK.

19 THE COURT: OKAY. BY TOMORROW MORNING -- NO
20 LATER THAN TOMORROW MORNING, TO BE ARGUED ON TUESDAY.

21 OKAY. ALL RIGHT. WHY DON'T WE START WITH
22 THE MS. STRONG ISSUE. I READ BOTH BRIEFS.

23 MS. CHANG: YOUR HONOR, CAN I JUST STATE OUR
24 POSITION FOR THE RECORD IN A CALM AND REASONED MANNER?
25 I UNDERSTAND THAT THIS TRIAL IS AN EXTREMELY EMOTIONAL
26 TRIAL WITH A LOT OF EMOTIONAL ISSUES.

27 I ALSO WANT TO STATE FOR THE RECORD THAT I
28 AM -- I KNOW WHAT IT IS LIKE TO BE A WOMAN ATTORNEY AND

1 ALSO A WOMAN ATTORNEY WHO DOES TRIAL WORK. I THINK OUR
2 PASSION AND OUR EMOTION IS OUR BEST ASSET. I ALSO KNOW
3 THAT AT TIMES IN COURT, I GET OVERCOME WITH EMOTION.

4 I THINK ANYBODY WITH A HEART GETS OVERCOME
5 WITH EMOTION. AND I HAVE NOTHING AGAINST SABRINA
6 STRONG. IN FACT, THE FIRST TIME SOMETHING CAME UP, I
7 WAS TOTALLY BELIEVING IN HER, SAYING SHE DID NOTHING
8 WRONG.

9 I ALSO THINK THAT DOES PUT SOMEONE ON
10 NOTICE THAT YOU DO -- YOU BE EXTRA CAREFUL TO FOLLOW
11 THE RULES. THERE ARE THINGS THAT HAPPENED IN THIS
12 COURTROOM MANY TIMES WITH MANY WITNESSES WHERE I THINK
13 THIS CASE, UNLIKE ANY OTHER I'VE EVER HAD, OR THAT I
14 WOULD ASSUME ANYBODY EVER HAD, HAS HAD POWERFUL MOMENTS
15 WHERE YOU WOULD BE INSANE NOT TO THINK, "I'M GOING TO
16 CRY, I'M GOING TO LOSE IT."

17 AND IT HAPPENS. BUT THERE ARE ALSO THINGS
18 THAT ARE INGRAINED IN EVERY TRIAL LAWYER'S BLOODSTREAM,
19 AND THAT IS THERE ARE CERTAIN LINES YOU DO NOT CROSS.
20 NOW, I KNOW MR. PUTNAM CRITICIZED THAT I DIDN'T HAVE A
21 CASE THAT I KNOW OF, BECAUSE I KNOW, BECAUSE I USED IT
22 IN OTHER JURISDICTIONS, IT IS NOT A CALIFORNIA CASE.

23 BUT I PUT TOGETHER A BRIEF. EVEN THOUGH I
24 HAD TO DO A CROSS AND PREPARE FOR THIS AFTERNOON'S
25 HEARING, I DID THE BEST I COULD; AND, HONESTLY, I DID
26 IT IN LIKE MINUTES. NOT EVEN AN HOUR. AND I DID THE
27 BEST I COULD TO EXPRESS WHAT I BELIEVE ARE THE SALIENT
28 POINTS.

1 AND THE SALIENT POINTS ARE THESE. WE HAVE
2 HAD VERY EXPERIENCED COUNSEL. I WILL SAY SOMETHING
3 NICE FOR THE RECORD ABOUT MR. PUTNAM. I KNOW HE'S A
4 VERY CARING INDIVIDUAL. I KNOW THAT PERSONALLY BECAUSE
5 THERE WAS A DAY IN COURT WHEN I WAS PERSONALLY VERY
6 UPSET AND CRYING AND HE COMFORTED ME.

7 HE DID THAT OUTSIDE OF THE PRESENCE OF THE
8 JURY IN A PROFESSIONAL MANNER. IF THERE'S ANYONE IN
9 THIS ROOM THAT I KNOW WOULD WANT TO CONSOLE A WITNESS,
10 IT WOULD BE MR. PUTNAM. HE KEPT HIS SEAT. MS. CAHAN
11 IS A VERY SYMPATHETIC, NICE PERSON. SHE WAS ADDRESSING
12 THE DOCTOR. SHE KEPT HER PLACE.

13 I BELIEVE MS. STEBBINS BINA WAS ALSO TO MY
14 LEFT, AND SHE IS A NICE, COMPASSIONATE PERSON WITH A
15 HEART. SHE KEPT HER PLACE. I CAN SPEAK FOR MYSELF AND
16 SAY I AM A VERY COMPASSIONATE PERSON. I WOULD LOVE TO
17 LEAP OVER AND DISPLAY COMFORT TO SOMEONE WHO IS CRYING.

18 MR. PANISH, FOR AS -- BEING AS -- I DON'T
19 KNOW WHAT THE WORD IS -- AGGRESSIVE IN SOME WAYS, HE
20 HAS THE BIGGEST HEART IN THE WORLD. HE IS LIKE A TEDDY
21 BEAR, AND HE -- HE IS. HE MAY NOT EXPRESS IT ALL THE
22 TIME, BUT HE TRULY IS. THERE'S NOT ANYONE IN THIS ROOM
23 THAT DOESN'T FEEL THE PASSION.

24 ALL OF US KEPT OUR PLACE. I HAVE NO QUALMS
25 OR DISPUTE WITH MS. SABRINA STRONG SHOWING HER SOFT
26 SIDE, BUT I DO WHEN IT HURTS MY CASE OR IT HURTS MY
27 CLIENT. AND WHAT I FEAR IS THIS.

28 EVEN THOUGH THE DEFENSE REPLY INDICATES

1 THAT THE JURY WAS GONE, AND THAT IT WAS OUTSIDE THE
2 PRESENCE OF THE JURY, I THINK THE RECORD WILL REFLECT
3 THAT AS THE JURY WAS FILING OUT -- AND I KNOW THIS
4 BECAUSE I REMEMBER THINKING I WISH THAT MR. PANISH
5 WOULD NOT HAVE STARTED HIS OBJECTION, BUT HE STARTED
6 THE OBJECTION BEFORE THE JURY WAS OUT, AND MY FEAR WAS
7 THAT HE WAS -- THAT THE JURY WOULD NOT UNDERSTAND AND
8 THINK THAT HE WAS OBJECTING TO DR. LEE CRYING BECAUSE
9 ALL THEY HEARD WAS, "YOUR HONOR, THAT'S NOT
10 APPROPRIATE," AND HE WAS TALKING ABOUT MS. STRONG.

11 IT WAS A GUTTURAL REACTION. AND THE RULES
12 ARE VERY CLEAR. YOU DON'T APPROACH A WITNESS WITHOUT
13 THE PERMISSION OF THE JUDGE. YOU DO NOT TRY TO HAVE
14 INAPPROPRIATE RESPONSES THAT COULD EITHER PREJUDICE THE
15 OTHER SIDE OR GAIN SYMPATHY OR CURRY WITH THE -- WITH
16 THE JURY. AND THE PROBLEM THAT WE HAVE IS THIS.

17 WE HAVE MS. LEE, WHO WAS ON THE STAND, NOT
18 THE FIRST WITNESS WHO CRIED, NOT THE FIRST WITNESS WHO
19 WAS UPSET, AND THERE -- SHE HAD HER OWN ATTORNEY IN THE
20 COURTROOM FROM HOWARD WEITZMAN'S FIRM, MS. MILLETT.

21 MS. BINA: NO; SHE LEFT.

22 MR. PUTNAM: SHE LEFT, ASKED US TO TAKE CARE OF
23 HER.

24 MS. CHANG: I STAND CORRECTED. I KNOW THAT SHE
25 WAS THERE EARLIER. SHE HAD TWO FAMILY MEMBERS THERE.
26 SHE IS NOT REPRESENTED BY MS. STRONG.

27 MS. STRONG, WHEN YOU -- THEY HAVE NO STATED
28 RELATIONSHIP; AND WHEN YOU REVIEW THE DEPOSITION,

1 YOU'RE KIND OF TAKEN ABACK AT -- IT SEEMED A LITTLE
2 ACRIMONIOUS TO ME, YOU KNOW. MS. MILLETT HAD TO STEP
3 IN AND SAY WHY DOES THIS HAVE TO DO WITH ANYTHING IN
4 THE DEPOSITION?

5 THERE SEEMED TO BE TENSION, AND IT JUST --
6 SO THAT THERE WAS -- THIS WAS NOT THE FIRST WITNESS
7 THAT THE DEFENSE CALLED THAT BROKE DOWN. DEBBIE ROWE
8 WAS CALLED BY THE DEFENSE AND WAS EXTREMELY UPSET TO
9 THE POINT THAT SHE HAD TO LEAVE. EVERYONE KEPT THEIR
10 SEATS.

11 IT WASN'T AS IF MS. STRONG WAS NEXT TO HER,
12 WHICH I COULD UNDERSTAND. SHE WAS ALL THE WAY SITTING
13 IN THE BACK. THERE ARE A LOT OF COURT ATTENDANTS; AND
14 WHEN YOU LOOK AT IT STRATEGICALLY, MR. PANISH AND I ARE
15 CLOSEST TO THE WITNESS, AND WE DON'T WANT TO LOOK
16 COLDHEARTED AND DOUBLY SO BECAUSE MR. PANISH REACTED TO
17 HER, BUT HE WAS OBJECTING ALMOST TO A CRYING WITNESS.

18 AND I BELIEVE THAT PREJUDICE IS DONE UNLESS
19 WE FIX WHATEVER HAPPENED. I THINK THERE ARE ALSO TIMES
20 IN THIS COURTROOM WHERE MR. PANISH HAS EXHIBITED
21 EXTREME PASSION IN THIS CASE, HAS BEEN CHASTISED -- FOR
22 EXAMPLE, I BELIEVE IN READING THE TRANSCRIPTS THAT HE
23 HAD TO APOLOGIZE TO A WITNESS FOR LAUGHING OR ACTING
24 INAPPROPRIATELY.

25 I THINK IN THIS CASE, WE ARE BEING
26 PENALIZED FOR ADHERING TO THE RULES, STAYING IN OUR
27 SEATS EVEN THOUGH OUR FIRST REACTION IS TO COMFORT, TO
28 HELP. BUT I WOULD HAVE ASKED THE JUDGE FOR PERMISSION

1 TO DO THAT FIRST. THERE HAVE BEEN MANY TIMES WHEN I
2 WANTED TO GO UP THERE, BUT I DID NOT.

3 AND IF -- I THINK -- IF WE IGNORE IT, THEN
4 I THINK REALLY I'M GOING TO TELL EVERYONE IN THE BACK
5 GET TENNIS SHOES ON AND YOU TACKLE ANYONE IN YOUR WAY
6 TO GET TO THE WITNESS FIRST.

7 THE COURT: I DON'T THINK YOU WANT TO DO THAT.

8 MS. CHANG: THAT IS NOT WHERE WE WANT TO GO.
9 BUT, IN ESSENCE, WE ALSO DON'T WANT THE A.E.G. COUNSEL
10 TO APPEAR TO BE THE ONLY KINDHEARTED SOULS IN THE ROOM,
11 AND THAT WE'RE AWFUL PEOPLE.

12 AND I THINK THAT THERE WOULD BE NOTHING --
13 ONE THING IS CLEAR, IS THAT PLAINTIFFS DID NOTHING TO
14 CREATE THIS SITUATION. THE OTHER THING THAT I THINK IS
15 CLEAR IS THAT MS. STRONG SHOULD HAVE KEPT HER SEAT. I
16 DON'T CRITICIZE HER FOR BEING KINDHEARTED.

17 I THINK SHE SHOULD HAVE KNOWN BETTER AND
18 THAT WE SHOULDN'T EVEN HAVE TO BE DISCUSSING THIS
19 ISSUE. BUT THAT -- AGAIN, I DON'T CARE ABOUT ANY OF
20 THOSE THINGS UNLESS I BELIEVE THAT MY CASE OR MY TEAM
21 OR MY CLIENT IS BEING PREJUDICED.

22 AND I DO THINK SOMETHING BIZARRE HAPPENED
23 AT THE END OF THE DAY, CAUSING A REACTION BY
24 MR. PANISH, AND I THINK THAT THEY JUST -- WHAT I
25 SUGGEST IS, I THINK, THREE THINGS.

26 NUMBER 1, THAT THE JURY IS TOLD THAT MANY
27 TIMES A WITNESS GETS UPSET, A THIRD-PARTY WITNESS, AND
28 THAT ATTORNEYS WHO ARE EVEN QUESTIONING THE WITNESS OR

1 IN THE PRESENCE OF A WITNESS ARE NOT TRYING TO
2 INTENTIONALLY HARM -- CAUSE TEARS; AND SECONDLY, THAT
3 THEY -- THEY APPEAR COLD OR UNFEELING BY NOT COMFORTING
4 THAT PERSON, BUT IT'S BECAUSE THERE ARE RULES THAT THEY
5 MUST ADHERE TO THAT HAS THEM NOT DO SO, AND THAT NO
6 PREJUDICE COULD BE -- THEY SHOULDN'T CONSIDER AN
7 ATTORNEY'S FAILURE NOT TO GO FORWARD.

8 THE COURT: FAILURE TO COMFORT?

9 MS. CHANG: WHEN ONE GOES UP AND THE OTHER
10 DOESN'T, IT MEANS THAT THE OTHERS ARE FOLLOWING THE
11 RULES. IN OTHER WORDS, JUST LIKE WE CAN'T APPROACH THE
12 JURORS, THEY SHOULDN'T APPROACH THE WITNESSES IN THE
13 PRESENCE OF THE JURORS IN THAT KIND OF SITUATION.

14 AND THEN THE THIRD THING IS THAT WHAT
15 MS. STRONG DID WAS INAPPROPRIATE, AND THAT'S WHAT
16 MR. PANISH WAS RESPONDING TO. THAT IS MY SUGGESTION
17 NOW.

18 WHEN WE WERE TOGETHER LAST TIME, WHICH LED
19 TO THE BRIEFING, ON THE RECORD, MR. PUTNAM SAID
20 ADMONISH HER, AND I SAID, "WELL, WE SHOULD DO IT IN
21 FRONT OF THE JURY," AND TO THAT, HE HAD A PROBLEM, TOO.
22 I TRIED THIS MORNING TO SAY, WELL, MAYBE WE COULD WORK
23 OUT SOMETHING.

24 I JUST WANT TO EXPLAIN THE AWKWARD
25 STRANGENESS OF WHAT HAPPENED.

26 THE COURT: WE HAVE TO DO MORE -- IF WE'RE GOING
27 TO EXPLAIN, WE MAY NEED TO DO MORE EXPLAINING THAN JUST
28 THAT. THAT'S HOW I SEE IT.

1 BUT, ANYWAY, MR. PUTNAM?

2 MR. PUTNAM: YES, YOUR HONOR. I -- I DON'T MEAN
3 TO BELITTLE ANYTHING WE DO BEFORE THIS COURT, BUT I DO
4 THINK THAT THIS IS A -- A TEMPEST IN A TEAPOT.

5 I THINK THAT WHAT OCCURRED HERE -- AND I
6 KNOW THAT MY CO-COUNSEL, OPPOSING COUNSEL, BELIEVES THE
7 SAME BECAUSE WHEN I ASKED HER WHAT ORDER SHE WANTED
8 THIS MORNING, SHE SAID, "WHY DON'T WE GO TO THIS ONE,
9 IT'S NOT THAT BIG OF A DEAL TO ME."

10 AND I THINK THAT'S RIGHT, IT'S NOT THAT BIG
11 OF A DEAL TO THEM, NOR SHOULD IT BE. AND, IN FACT,
12 WHEN I LEFT HERE, YOUR HONOR, I WAS LIKE, "WHAT AM I
13 MISSING? ALL BUT TWO AND A HALF JURORS WERE OUT OF THE
14 ROOM, SOMEONE CAME UP TO MAKE SURE SHE WAS OKAY, AM I
15 BEING STUPID? WHAT AM I MISSING?"

16 SO I WENT BACK BECAUSE MS. CHANG SAID SHE
17 HAD THIS CASE THAT SAID DEFINITELY WHAT YOU CAN'T
18 DO -- I LOOKED NOT ONLY THROUGH ALL OF CALIFORNIA LAW,
19 AND WHEN WE COULDN'T FIND ANYTHING THERE, I LOOKED
20 NATIONALLY TO SEE WHAT WE COULD FIND.

21 ONE THING IS CLEAR, IT IS NOT MISCONDUCT
22 THAT OCCURRED HERE; AND MISCONDUCT IS THE ONLY THING
23 THAT RISES TO THE LEVEL TO GIVE TO THE JURY SOME KIND
24 OF ADMONITION AS TO THE COUNSEL, SOMETHING THEY'VE
25 DONE.

26 THE VERY CASES THAT THEY CITE, YOUR
27 HONOR -- I'M GOING TO MISPRONOUNCE IT -- THE CHOJNACKY
28 CASE, C-H-O-J-N-A-C-K-Y, MAKES CLEAR THAT MISCONDUCT

1 MEANS ONLY, QUOTE, A DISHONEST ACT OR AN ATTEMPT BY AN
2 ATTORNEY TO PERSUADE THE COURT OR JURY BY USE OF
3 DECEPTIVE OR REPREHENSIBLE METHODS.

4 THAT IS NOT WHAT HAPPENED HERE, YOUR HONOR.
5 AND, IN FACT, IF YOU GO THROUGH ALL THE CASES THAT ARE
6 CITED IN MS. CHANG'S BRIEF, NONE OF THEM TALK ABOUT
7 WHAT OCCURRED HERE, OF COMFORTING A WITNESS.

8 RATHER, THEY ALL TALK ABOUT THINGS WHERE,
9 OVER REPEATED OBJECTIONS, SOMEONE PUT SOMETHING BEFORE
10 THE JURY THAT SHOULDN'T BE, SUCH AS GOING AND
11 CLOSING -- ONE OF THEM IS IN CLOSING, SITTING THERE AND
12 GOING THROUGH SOMEONE'S PAST CRIMINAL RECORD AND SAYING
13 LITERALLY IN THE CLOSING, "BUT FOR THESE STUPID RULES
14 OF EVIDENCE, YOU WOULD HAVE SEEN THAT HE DID THE
15 FOLLOWING."

16 YES, THAT REQUIRES A CORRECTIVE ADMONITION,
17 I AGREE. BUT WHAT HAPPENED HERE YESTERDAY DOES NOT.
18 AND I THINK NOT ONLY DOES IT NOT, YOUR HONOR, I THINK
19 IT DOES A DISSERVICE TO WHAT WE HAVE BEEN DOING HERE
20 FOR THE LAST 18 WEEKS TO STOP AT THIS MOMENT AND SAY,
21 "SOMETHING HAPPENED YESTERDAY, AND LET ME EXPLAIN TO
22 YOU WHY EVERYONE DID IT."

23 I DON'T THINK IT WAS THAT NOTABLE. I THINK
24 MOST PEOPLE HAD LEFT THE ROOM. I THINK IT IS
25 UNDERSTANDABLE THAT SOMEONE WOULD GO TO COMFORT
26 SOMEONE, AND IT SHOULD BE NOTHING MORE THAN THAT, YOUR
27 HONOR. IT CERTAINLY ISN'T MISCONDUCT THAT RISES TO A
28 LEVEL TO WARRANT AN ADMONITION TO THE JURY.

1 MS. CHANG: YOUR HONOR, JUST FOR THE RECORD, I
2 WANT TO CITE 3.96 OF THE CALIFORNIA RULES FOR THE
3 LOS ANGELES SUPERIOR COURT. "BEFORE APPROACHING A
4 WITNESS FOR ANY PURPOSE, A PARTY MUST REQUEST
5 PERMISSION FROM THE COURT."

6 THERE IS ALSO RULE 3.110, "EXCEPT WITH
7 APPROVAL OF THE COURT, PERSONS IN THE COURTROOM MAY NOT
8 TRAVERSE THE AREA BETWEEN THE BENCH AND THE COUNSEL
9 TABLE. COUNSEL MUST SO INSTRUCT PARTIES THEY
10 REPRESENT, WITNESSES THEY CALL, AND PERSONS
11 ACCOMPANYING THEM."

12 IT IS A GOLDEN RULE. AND HOW WE KNOW
13 THAT -- SINCE MR. PUTNAM USED MY OWN WORDS AGAINST ME
14 THAT I SAID BEFORE THE COURTROOM, WE COULD USE HIS OWN
15 WORDS THAT HE SAID ON THE RECORD YESTERDAY, WHICH IS,
16 "SO ADMONISH HER." HE KNEW THAT THAT SHOULD NOT BE
17 DONE, AND IT SHOULDN'T.

18 THAT'S JUST PLAIN AND SIMPLE, WE ALL KNOW
19 THAT. I AM NOT CASTING DISPERSIONS OR ACCUSING HER. I
20 DON'T WANT TO BE FORCED TO DO THAT ON THE RECORD. IF
21 MR. PUTNAM FORCES ME TO, I WILL SAY OTHER THINGS. I
22 JUST WANT TO SAY IT SHOULDN'T BE DONE.

23 I DON'T WANT TO QUESTION HER HEART, AND I
24 DON'T THINK IT MATTERS IN THE END. I THINK WHAT
25 MATTERS IS THAT SOMETHING HAPPENED. I DISAGREE THAT
26 TWO AND A HALF JURORS -- I DON'T EVEN KNOW HOW YOU'D BE
27 A HALF OF A JUROR, BUT I GUESS HE'S SAYING HE WAS HALF
28 OUT THE DOOR.

1 I REMEMBER IT THAT THE ENTIRE JURY WAS
2 THERE, AND I WANT THAT CLEAR FOR THE RECORD, AND THEY
3 WERE GETTING READY TO FILE OUT.

4 THE COURT: I DON'T REMEMBER IF THE ENTIRE JURY
5 WAS HERE.

6 MR. PUTNAM: IT WAS TWO AND A HALF.

7 THE COURT: THEY WERE ALREADY ON THEIR WAY OUT.
8 MY RECOLLECTION WAS MAYBE HALF THE JURY WAS STILL KIND
9 OF IN THE BOX.

10 MS. CHANG: I'M JUST STATING MY RECOLLECTION.

11 MS. BINA: MY RECOLLECTION IS THAT THEY WERE
12 FILING OUT, MOST OF THEM WERE LOOKING AHEAD AT THE
13 OTHER JURORS. I DON'T KNOW HOW MANY WERE OUT BY THE
14 TIME THEY GOT TO THE DOOR, BUT THEY'D BEEN EXCUSED,
15 YOUR HONOR, AND WERE WALKING OUT. IT WAS AFTER THE
16 SESSION HAD ENDED.

17 MR. PUTNAM: THE LOCAL RULES THAT ARE BEING CITED
18 RIGHT NOW, I WOULD LIKE TO BELIEVE -- I CERTAINLY HOPE
19 YOUR HONOR BELIEVES THAT WE HAVE DONE EVERYTHING IN OUR
20 POWER TO REPRESENT OUR ADHERENCE TO THE RULES AND OUR
21 BELIEF IN THE RULES.

22 THAT SAID, WITHIN THIS COURTROOM THE WAY
23 WE'VE CONDUCTED THIS TRIAL, CERTAIN THINGS WE'VE NOT
24 BEEN VIGILANT ABOUT. I THINK ON PURPOSE, IN PART
25 BECAUSE OF THE LENGTH OF THE TRIAL. PART OF THAT IS
26 WHEN TO APPROACH A WITNESS.

27 IT IS NOT UNCOMMON, I WILL SAY, FOR
28 MR. PANISH TO APPROACH A WITNESS WITHOUT EVER

1 REQUESTING HE DO SO. HE'LL GO BACK AND FORTH, NEVER
2 ASKS. WHEN HE IS ASKING QUESTIONS HERE --

3 THE COURT: BOTH SIDES DO THAT.

4 MR. PUTNAM: THAT'S WHAT I'M SAYING. PEOPLE JUMP
5 UP FROM THE AUDIENCE, COME UP AND ARE GIVING NOTES.
6 THE VERY RULES THEY'RE QUOTING TO FOR AN ADMONITION
7 HERE ARE ONES THAT WE ARE BREAKING EVERY DAY.

8 I'M NOT SAYING THAT'S A GOOD THING, BUT I'M
9 SAYING IF THAT WOULD BE OUT OF THE ORDINARY, IT MIGHT
10 HAVE BEEN SOMETHING, BUT IN THIS INSTANCE, THAT WASN'T
11 OUT OF THE ORDINARY. WHAT WAS OUT OF THE ORDINARY WAS
12 THAT THERE WAS A WOMAN WAILING -- OKAY? -- HERE, SAYING
13 THAT SHE WAS GETTING SICK, AND SOMEONE WHO HAD BEEN IN
14 HER DEPOSITION WHO -- WHERE SHE GOT SICK MANY TIMES --
15 YOU HEARD THE WOMAN SPEAK -- YOU HEARD HER SPEAK TO HER
16 VARIOUS AILMENTS.

17 SHE HAD THOSE DURING THE DEPOSITION, HAD TO
18 LEAVE SICK SEVERAL TIMES, AND THE -- MY
19 UNDERSTANDING -- I WAS NOT THERE. I UNDERSTAND THIS
20 FROM THE ATTORNEYS THAT WERE THERE. ALL OF THEM LEFT
21 WITH HER BECAUSE OF HER ILLNESS AT THE TIME.

22 SO THE IDEA THAT SHE WOULD HAVE GONE UP TO
23 MAKE SURE SHE WAS OKAY -- I'M NOT SAYING THAT THAT
24 SHOULD HAVE BEEN ALLOWED. I UNDERSTAND WHAT WE'RE
25 SAYING HERE. BUT IT WAS CERTAINLY UNDERSTANDABLE THAT
26 IT WAS DONE IN THIS INSTANCE AND CERTAINLY DOESN'T
27 ARISE TO MISCONDUCT WARRANTING ANY KIND OF ADMONITION
28 TO THE JURY.

1 MS. CHANG: JUST TO BE CLEAR ON THE RECORD, SHE
2 DID SAY, "I CAN'T DO THIS ANYMORE." SHE DIDN'T SAY SHE
3 WAS ILL. AND I THINK THE SECOND THING IS, IN FAIRNESS,
4 MR. PUTNAM HAS TOLD ON MR. PANISH MANY TIMES.
5 MR. PANISH HAS BEEN MADE, IF I READ THE TRANSCRIPT --

6 THE COURT: TOLD ON HIM?

7 MR. PUTNAM: TOLD ON HIM?

8 THE COURT: I DON'T KNOW WHAT YOU'RE --

9 MS. CHANG: "HE FLIPPED ME OFF, HE --"

10 MR. PUTNAM: I DIDN'T TELL THAT.

11 THE COURT: ACTUALLY, MR. PUTNAM DID NOT TELL THE
12 COURT THAT. THE COURT LEARNED OF THAT FROM ANOTHER
13 SOURCE. I CAN TELL YOU THAT.

14 MS. CHANG: HE SAID SOMETHING ABOUT A WITNESS.
15 IN OTHER WORDS, WHAT I'M TRYING TO SAY IS EVERY TIME
16 MR. PANISH CROSSES A LINE -- HE WAS BEING MADE TO STAND
17 BY A CALENDAR AT ONE POINT, HE'S BEEN MADE TO APOLOGIZE
18 TO A WITNESS AT ONE POINT, AND I BELIEVE --

19 THE COURT: ACTUALLY, IF YOU WANTED TO CITE YOUR
20 BRIEF, ISN'T THERE A CASE HERE THAT TALKS ABOUT AN
21 ATTORNEY THAT LAUGHED OUT LOUD AT A WITNESS?

22 MR. PUTNAM: EXACTLY PARALLEL TO THE TATE CASE,
23 YOUR HONOR.

24 MS. CHANG: CORRECT. SO IT HAPPENED, AND HE WAS
25 CHASTISED. BUT THEY'RE SAYING, "SINCE IT'S FROM OUR
26 SIDE, GIVE US A GET OUT OF JAIL FREE CARD." IF IT'S A
27 VIOLATION, THE COURT SHOULD BE EQUAL IN HER DOLING OUT
28 A PUNISHMENT, SO TO SPEAK.

1 AND I AM PROPOSING ONE SET. I DON'T THINK
2 ANYONE IN THIS ROOM THINKS WHAT HAPPENED WAS
3 APPROPRIATE, AND I THINK THAT WHAT WE HAVE TO NOW DO IS
4 DEAL WITH IT. AND WHAT I'M SAYING IS NOT ONLY DO WE
5 HAVE THE ISSUE OF IT HAPPENED, BUT NUMBER 2, MR. PANISH
6 BLURTED OUT SOMETHING THAT WAS STRANGE AND CALLED
7 ATTENTION TO IT.

8 AND I THINK THAT THEY WANT NOTHING TO
9 HAPPEN, AND I DON'T THINK THAT'S EITHER FAIR OR
10 WARRANTED UNDER THE CIRCUMSTANCES.

11 THE COURT: MS. BINA, SOMETHING YOU WANTED TO
12 SAY?

13 MS. BINA: I DON'T NEED TO. YOUR HONOR, MY POINT
14 IS ANY CONCERN HERE WAS CREATED BY MR. PANISH IN AN
15 OVERREACTION TO SOMETHING THAT WAS REALLY NOT THAT BIG
16 A DEAL. THE JURY HAD BEEN EXCUSED, THEY WERE EXITING
17 THE COURTROOM.

18 MS. STRONG SAYS SHE HEARD THE WITNESS SAY,
19 "I'M GOING TO BE SICK," THAT WAS WHAT CAUSED HER TO
20 BRING THE WITNESS'S RELATIVES UP. IT WAS NOT SOME KIND
21 OF, YOU KNOW, NEFARIOUS MISCONDUCT, IT WAS REALLY A
22 PERFECTLY NATURAL REACTION THAT AT MOST WAS A TRIVIAL
23 VIOLATION OF A LOCAL RULE.

24 IT DOESN'T WARRANT BEING MADE INTO A BIGGER
25 MESS. YOU KNOW, WE'VE ALREADY, I THINK, SPENT MORE
26 TIME ON IT THAN THE SITUATION WARRANTS.

27 MR. PUTNAM: YOU SHOULD KNOW, YOUR HONOR, HER
28 ATTORNEY HANDED HER OFF TO US, SAID, "HERE SHE IS,

1 SHE'S YOURS," AND LEFT. WE MAY BE HAVING A DIFFERENT
2 ARGUMENT IF, AS THEY REPRESENTED, HER ATTORNEY WAS
3 HERE. SHE WASN'T.

4 THE COURT: LIKE MS. FAYE, MS. FAYE'S ATTORNEY
5 WENT UP AND DEALT WITH HER.

6 MS. CHANG: MS. FAYE DIDN'T HAVE AN ATTORNEY.

7 MR. PUTNAM: HER BOYFRIEND.

8 THE COURT: MS. ROWE. I'M SORRY. I MIS-CITED.
9 IT'S MS. ROWE.

10 MS. ROWE HAD AN ATTORNEY HERE; AND WHEN
11 MS. ROWE HAD A LITTLE BREAKDOWN, THEN HER ATTORNEY CAME
12 UP AND DEALT WITH THE ISSUE.

13 MS. CHANG: YOUR HONOR, I THINK THEY WANT TO
14 SWEEP IT UNDER THE RUG AND SAY WE'RE ALREADY SPENDING
15 TOO MUCH TIME. TO US, WE DON'T WASTE OUR TIME WHEN
16 WE'RE IN TRIAL. I WOULDN'T FILE A BRIEF IF I DIDN'T
17 THINK IT MERITED ATTENTION. I THINK THAT WE'VE BEEN
18 PREJUDICED, I THINK WE LOOK COLDHEARTED AND CALLOUS TO
19 THE JURY, AND I THINK THAT IT WAS NOT OF OUR FAULT.

20 THE COURT: OKAY. LET ME SAY THIS. I DO THINK
21 IT WAS INAPPROPRIATE. I DO. I DON'T THINK IT'S
22 APPROPRIATE FOR ATTORNEYS TO COME UP AND DEAL WITH
23 WITNESSES ON THEIR OWN. THIS IS A RARE EVENT, AND
24 THAT'S WHY WE HAVE COURT STAFF.

25 COURT STAFF ARE THE ONES WHO USUALLY DEAL
26 WITH THE WITNESSES. SOMETIMES THEIR OWN ATTORNEYS
27 MIGHT COME UP; BUT EVEN THEN, IT'S USUALLY OUTSIDE THE
28 PRESENCE OF THE JURY. THE COURT USUALLY SENDS THE JURY

1 OUT, AND THEN WE DEAL WITH A WITNESS WHO IS CRYING OR
2 UPSET OR WHATEVER.

3 THAT BEING SAID, I'VE SEEN LOTS OF
4 WITNESSES, NOT JUST IN THIS TRIAL BUT IN MANY OTHER
5 TRIALS, CRY, GET UPSET, SHOUT. THEY DO ALL KINDS OF
6 THINGS, AND PEOPLE GET CAUGHT UP IN THAT. NOT JUST THE
7 WITNESSES, BUT THE ATTORNEYS AND OTHER PEOPLE. AND
8 IT'S UNDERSTANDABLE.

9 THAT BEING SAID, BEING EXPERIENCED TRIAL
10 LAWYERS THAT WE ARE, WE SHOULD KNOW THAT OUR PLACE IS
11 TO STAY IN PLACE AND LET OUR COURT STAFF DEAL WITH IT.
12 THE NEXT QUESTION IS, DOES IT RISE TO THE LEVEL OF A
13 JURY INSTRUCTION. I'M NOT CONVINCED THAT IT REQUIRES A
14 JURY INSTRUCTION.

15 IF THERE IS A JURY INSTRUCTION, THE ONLY
16 THING I COULD THINK OF THAT IT COULD POSSIBLY SAY IS
17 THAT THE FACT THAT ATTORNEYS DON'T COME UP TO COMFORT A
18 WITNESS IS NORMAL PROCEDURE SO THAT THE PLAINTIFFS FEEL
19 LIKE THEY SHOULDN'T BE PENALIZED BECAUSE THEY DIDN'T
20 RUN UP AND COMFORT THE WITNESS.

21 THAT'S ABOUT AS FAR AS I THINK WE SHOULD
22 GO. BUT I JUST DON'T -- THERE'S BEEN NO SUGGESTION IN
23 ANY OF THE BRIEFING THAT THERE'S ANY APPROPRIATE JURY
24 INSTRUCTION TO GIVE. THERE'S NO CITATION TO ANY TYPE
25 OF MISCONDUCT. THIS ISN'T SOMETHING THAT YOU REFER TO
26 THE STATE BAR OR ANYTHING THAT VIOLATES --

27 MS. CHANG: I THINK IT COULD BE, YOUR HONOR. IT
28 DEPENDS.

1 THE COURT: THAT HASN'T BEEN CITED TO ME.

2 MS. CHANG: IT DEPENDS ON THE INTENT OF
3 MS. STRONG. IT'S EITHER THAT SHE CAN'T CONTROL HERSELF
4 EVEN AFTER BEING CALLED UPON BY THE -- NOT THE COURT,
5 BUT BY SOMETHING PLACED IN THE RECORD ABOUT HER TRYING
6 TO INFLUENCE THE JURY -- EITHER SHE CAN'T CONTROL
7 HERSELF EVEN AFTER THAT, OR IT WAS INTENTIONAL.
8 THERE'S ONLY TWO CHOICES. AND EITHER --

9 THE COURT: INTENTIONAL OR UNINTENTIONAL.

10 MS. CHANG: INTENTIONAL OR UNINTENTIONAL.

11 AND EITHER ONE OF THEM I THINK -- UNDER THE
12 FACTS OF THE HISTORY IN THIS CASE AND MS. STRONG, I
13 THINK HAVE TO BE ADDRESSED, AND -- BUT THE ONLY THING
14 I'M WORRIED ABOUT IS THE PREJUDICE TO MY SIDE. THAT'S
15 WHAT I'M VERY WORRIED ABOUT. AND I DIDN'T CATCH WHAT
16 YOU WERE SAYING OF WHAT WE COULD SAY TO THE JURY OR NOT
17 SAY TO THE JURY.

18 THE COURT: WELL, JUST TO SAY THAT IF ATTORNEYS
19 DO NOT APPROACH WITNESSES WHO ARE SOBBING OR CRYING OR
20 ANGRY, IT'S NOT BECAUSE THEY HAVE NO SYMPATHY FOR THEM
21 OR HAVE NO REACTION TO THEM, BUT IT'S BECAUSE THE COURT
22 DOESN'T ALLOW IT, AND LEAVE IT AT THAT.

23 MS. CHANG: OKAY. I DO WANT TO ADD --

24 THE COURT: THAT'S THE BEST I THINK I CAN DO IN
25 TERMS OF A JURY INSTRUCTION.

26 MS. CHANG: I'M JUST SUGGESTING THIS TO DEFENSE
27 COUNSEL. AND I DON'T FEEL STRONGLY EITHER WAY, BUT SO
28 THAT WE DON'T MAKE IT SO POINTED, MAYBE WE COULD ADD

1 SOMETHING LIKE AND WHEN ATTORNEYS ASK QUESTIONS THAT
2 SOLICIT TEARS, IT'S NOT INTENTIONAL, EITHER. WE MAKE
3 IT MORE GENERAL SO THEY --

4 THE COURT: I THINK THAT'S FINE. I DON'T THINK
5 THE JURORS THINK THAT ANYBODY IS TRYING TO FORCE
6 ANYBODY INTO TEARS.

7 MR. PUTNAM: NEITHER DO I, YOUR HONOR.

8 MS. CHANG: IF THEY DON'T FEEL STRONGLY AND I
9 DON'T FEEL STRONGLY ABOUT IT, YOURS IS PERFECTLY
10 ACCEPTABLE.

11 THE COURT: I'M WILLING TO PUT THAT IN, TOO. BUT
12 I JUST -- I WOULD JUST NOTE FOR THE RECORD THAT THERE
13 WAS A TIME WHEN MS. JACKSON WAS ON THE WITNESS STAND
14 AND THE JURY WAS FILING OUT AND MR. PANISH APPROACHED
15 HER WHEN SHE BEGAN EXHIBITING SOME EMOTION.

16 MS. CHANG: HE DENIES THAT OCCURRED.

17 THE COURT: WELL, I SAW IT.

18 MR. PUTNAM: SO DID I.

19 THE COURT: SO, I MEAN, WAS I UPSET ABOUT IT?
20 NO. THE JURY WAS FILING OUT, EVERYBODY KNEW
21 MS. JACKSON WAS UPSET, AND -- HE DIDN'T RUSH UP HERE.
22 HE MOSEYED ON UP AND WAS TALKING TO HER IN A SOFT VOICE
23 TRYING TO GIVE HER SOME COMFORT.

24 MS. CHANG: MAYBE HE WAS GIVING HER LEGAL
25 COUNSEL.

26 THE COURT: WHATEVER HE WAS DOING. I MEAN, I
27 JUST -- YOU KNOW, IT'S A NATURAL REACTION THAT PEOPLE
28 HAVE.

1 MR. PUTNAM: AND BECAUSE IT'S A NATURAL REACTION,
2 YOUR HONOR, I'D JUST LIKE TO REPEAT, BECAUSE IT HAS
3 OCCURRED BEFORE, BECAUSE THEY'VE DONE THE SAME THING, I
4 THINK -- AND BECAUSE IT'S NOT MISCONDUCT, I THINK THAT
5 TO PROVIDE SUCH AN INSTRUCTION TO THE JURY -- IF YOU
6 DO, YOUR HONOR, IT'S FULLY WITHIN YOUR DISCRETION.

7 ONE THING I LEARNED IS IF IT DOESN'T OCCUR,
8 IT'S FULLY WITHIN YOUR DISCRETION. YOU CAN DO AS YOU
9 WISH AND THINK IS APPROPRIATE. ONE THING I WORRY ABOUT
10 IS IT MAKES IT SEEM THAT THE EVENT, FOR THOSE OF US WHO
11 SAW IT -- THAT IT WARRANTS THAT.

12 BECAUSE WHAT THE CASES TALK ABOUT THIS IS
13 THE REASON YOU HAVE SOLE DISCRETION, OBVIOUSLY, IS
14 BECAUSE YOU'RE PRESENT FOR WHAT OCCURRED; AND I THINK
15 THAT ANYONE PRESENT FOR WHAT OCCURRED YESTERDAY, I
16 BELIEVE, WOULD SEE THAT IT DIDN'T RISE TO THE LEVEL OF
17 WARRANTING SUCH AN INSTRUCTION; AND THAT'S MY CONCERN
18 IN GIVING IT, YOUR HONOR.

19 THE COURT: WELL, THE INSTRUCTION COULD BE WORDED
20 SUCH THAT "DURING THIS TRIAL YOU'VE SEEN A LOT OF
21 WITNESSES EXHIBIT STRONG EMOTIONS, ANGER, SADNESS,
22 UPSET," WHATEVER. WHY DON'T YOU TWO WORK ON A JURY
23 INSTRUCTION TO THAT EFFECT.

24 MS. CHANG: THAT'S FINE.

25 THE COURT: IT COULD BE COUCHED IN TERMS OF
26 "DURING THE TRIAL YOU'VE SEEN NUMEROUS WITNESSES
27 EXHIBIT" WHATEVER TYPES OF EMOTIONS. WE'VE SEEN -- WAS
28 IT DEBBIE ROWE WHO TOLD MS. BINA SOMETHING, "STOP

1 TALKING" OR "STOP LOOKING AT ME" OR SOMETHING?

2 MS. CHANG: SHE SAID WORSE IN THE HALL.

3 MR. PUTNAM: THE WORDS SHE USED WERE MUCH
4 WORSE.

5 MS. CHANG: THE WORDS SHE USED IN THE HALL WERE
6 MUCH WORSE.

7 THE COURT: I DIDN'T HEAR THOSE.

8 MS. BINA: I DON'T KNOW WHAT I DID TO OFFEND HER,
9 YOUR HONOR; BUT SHE SEEMED CONCERNED WITH ME FOR SOME
10 REASON.

11 MS. CHANG: IN ANY EVENT, WE'LL DO THAT. BUT
12 JUST -- SO AS TO PREVENT OUR WHOLE TEAM FROM GETTING
13 TRACK SHOES, CAN WE JUST HAVE A GENERAL ADMONITION NOW
14 TO ALL COUNSEL TO -- IF IT HAPPENS AGAIN, THAT WE STAY
15 IN OUR SEATS, WE DO NOT --

16 THE COURT: YES, WE CAN DO THAT, ALTHOUGH I'M NOT
17 SURE EVERYONE IS HERE. MS. STRONG IS HERE.

18 MS. STRONG: YES, I'M HERE, YOUR HONOR.

19 MS. CHANG: SO THAT THERE'S NO QUESTION IN THE
20 FUTURE.

21 MS. BINA: I THINK THE LOCAL RULES ARE CLEAR
22 ENOUGH, YOUR HONOR; AND I'M CERTAIN THIS IS NOT GOING
23 TO HAPPEN AGAIN. IF YOU FEEL AN ADMONISHMENT IS
24 NECESSARY OUTSIDE THE PRESENCE OF THE JURY, YOU CAN DO
25 THAT.

26 MS. CHANG: WE ARE --

27 THE COURT: THE ONLY THING IS HOW MANY MORE
28 WITNESSES DO WE HAVE THAT WE THINK THIS MAY HAPPEN

1 WITH?

2 MS. BINA: ZERO.

3 MR. PUTNAM: ZERO.

4 MS. CHANG: WE DON'T KNOW IF DR. EARLEY IS A
5 COMPASSIONATE MAN.

6 MS. BINA: I DON'T KNOW WHO PLAINTIFFS ARE
7 CALLING ON REBUTTAL.

8 MS. CHANG: THAT'S TRUE. KAREN FAYE.

9 THE COURT: OKAY. THERE'S SOMEBODY WHO MAY --

10 MS. CHANG: IT MIGHT HAPPEN.

11 MR. PUTNAM: ONE COULD ARGUE THIS LATER, IT'S NOT
12 THE APPROPRIATE TIME, BUT AS ONE KNOWS, THE APPROPRIATE
13 CASE FOR REBUTTAL IS THOSE YOU COULD NOT CALL
14 PREVIOUSLY. BUT WE'LL DISCUSS THAT WHEN IT COMES TO
15 REBUTTAL.

16 MS. CHANG: LET'S NOT GO INTO WHETHER WE CLOSED
17 OR RESTED YET.

18 MR. PUTNAM: WE KNOW YOU RESTED.

19 THE COURT: I'M TRYING TO FIGURE OUT IF WE MAY
20 RUN INTO ANOTHER EMOTIONAL WITNESS. WE'VE HAD A LOT OF
21 THEM.

22 SO ALL OF THE ATTORNEYS WHO ARE OUT THERE,
23 ALL OF YOU OUT THERE SITTING AT COUNSEL TABLE -- WE
24 HAVE TO REMIND MR. PANISH, WHO -- HE KNOWS HOW I FEEL
25 ABOUT HIM GETTING EMOTIONAL. HE KNOWS ABOUT THAT
26 ALREADY. YOU KNOW, DON'T APPROACH WITNESSES EVEN WITH
27 THE BEST INTENTIONS.

28 IT'S UNDERSTANDABLE THAT YOU HAVE THOSE

1 TYPES OF REACTIONS. I'VE SEEN IT LOTS OF TIMES. BUT
2 IT'S IMPORTANT THAT WE KEEP THE COURTROOM DECORUM. WE
3 HAVE COURTROOM STAFF, AND LET THEM DEAL WITH THOSE
4 WITNESSES.

5 OR WHEN I INVITE COUNSEL -- FOR EXAMPLE, IF
6 THE WITNESS HAS A LAWYER WHO IS PRESENT IN THE
7 COURTROOM, I WILL INVITE THEM TO COMFORT THEIR OWN
8 WITNESS, AS I DID WITH MS. ROWE. SO WE CAN HAVE THAT
9 ADMONITION.

10 MS. BINA: SOUNDS GOOD, YOUR HONOR.

11 WHY DON'T YOU PROPOSE AN INSTRUCTION.

12 MS. CHANG: OKAY. AND E-MAIL IT TO YOU?

13 MS. BINA: YES.

14 MS. CHANG: NO PROBLEM.

15 THE COURT: THANK YOU FOR YOUR THOUGHTS. YOU'RE
16 GOING TO DO AN OPPOSITION ON --

17 MS. BINA: ON THE FAYE TEXTS, YES.

18 THE COURT: WHAT ABOUT THE STATEMENT OF DAMAGES?
19 DID WE TALK ABOUT THAT ONE?

20 MS. BINA: I DON'T KNOW THAT I RECALL THE DETAILS
21 OF THAT ONE OFFHAND.

22 MR. PUTNAM: IT'S THE ONE WHERE THEY SAID THAT
23 WE'RE NOT ALLOWED TO ASK THE 40.2 BILLION THAT WAS
24 SUBMITTED ALMOST LIKE A --

25 THE COURT: DID YOU FILE A RESPONSE THAT?

26 MS. BINA: I DON'T --

27 THE COURT: BECAUSE I KNOW PLAINTIFFS FILED
28 SOMETHING.

1 MS. BINA: I DON'T KNOW WHETHER WE DID.

2 MR. PUTNAM: I THINK WE DID.

3 MS. BINA: I WILL LOOK INTO THAT, YOUR HONOR.

4 MS. CHANG: WE NEVER RECEIVED AN OPPOSITION.

5 THE COURT: I DIDN'T THINK SO, BUT --

6 MR. PUTNAM: I WILL CHECK, YOUR HONOR.

7 THE COURT: WE'LL CHECK; AND IF YOU INTEND TO
8 FILE SOMETHING IN WRITING, LET ME KNOW.

9 MR. PUTNAM: I'LL LET YOU KNOW ON TUESDAY.

10 MS. BINA: YES, YOUR HONOR.

11 THE COURT: WHY DON'T WE DO THE MEATY MOTION,
12 NOW, PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE FIRST
13 AMENDED COMPLAINT. AND AS YOU CAN SEE, MY TENTATIVE
14 WAS TO DENY THAT.

15 PLAINTIFF, DO YOU WANT TO BE HEARD?

16 MS. CHANG: YES, YOUR HONOR. IS IT ALL RIGHT IF
17 WE STAY SEATED?

18 THE COURT: YES.

19 MS. CHANG: IT'S BEEN SUCH A LONG DAY. AND
20 MR. PUTNAM IS SUCH A GENTLEMAN, HE STANDS, BUT HE
21 DOESN'T HAVE TO WEAR HEELS.

22 MR. PUTNAM: AT LEAST NOT IN THE COURTROOM.

23 MS. CHANG: THAT WE'VE SEEN.

24 YOUR HONOR, WE HAVE READ YOUR TENTATIVE;
25 AND I JUST WANTED TO POINT OUT A COUPLE OF ISSUES. ONE
26 IS IT IS ERROR TO REFUSE PERMISSION TO AMEND BY THE
27 TRIAL COURT WHERE THE REFUSAL ALSO RESULTS IN A PARTY
28 BEING DEPRIVED OF A RIGHT TO ASSERT A MERITORIOUS CAUSE

1 OF ACTION.

2 THE ARGUMENT, THE ISSUE THAT WE HAVE BEFORE
3 US, AND THAT YOUR HONOR HAD WHEN WE FILED OUR MOTION,
4 WAS WAS THIS ISSUE THAT WE ARE NOW RAISING IN THE
5 NEGLIGENT CAUSE OF ACTION CONSIDERED BY THIS COURT AND
6 ADJUDICATED UPON.

7 AND FOR MULTIPLE REASONS -- AND A CASE THAT
8 I BELIEVE IS DIRECTLY ON POINT THAT EVEN DISCUSSES THE
9 FLOWER CASE IS THAT THIS COURT NEVER CONSIDERED IT
10 BECAUSE THE PLAINTIFFS' COUNSEL NEVER CONSIDERED IT AND
11 NEVER RAISED IT.

12 AND I CAN SAY AS SOMEONE WHO CAME TO THE
13 CASE RATHER NEWER, CLOSER TO TRIAL, AND SAW THE
14 COMPLAINT FOR THE FIRST TIME, THAT FIRST CAUSE OF
15 ACTION WAS SOMEWHAT BAFFLING, AND IT WAS -- EVEN BY ITS
16 VERY TITLE, IT'S KIND OF BAFFLING.

17 THE COURT: IT IS, IT WAS.

18 MS. CHANG: AND I THINK YOUR HONOR, IN THE RULING
19 IN THE MOTION FOR SUMMARY ADJUDICATION, HAD A VERY
20 DETAILED ANALYSIS OF WHY NONE OF THE THEORIES THAT WERE
21 RAISED IN THAT FIRST CAUSE OF ACTION MERITED A DUTY.

22 AND WE DISCUSSED AND ARGUED AT THAT TIME A
23 JOINT RELATIONSHIP, A SPECIAL RELATIONSHIP, A VOLUNTARY
24 UNDERTAKING OF MEDICAL CARE. IT WAS VERY CONTORTED AND
25 IT WAS VERY IMAGINATIVE AND CREATIVE IN SOME WAYS, AND
26 YOUR HONOR ADJUDICATED THAT.

27 THE COURT: AND IT WAS UNDER A BREACH OF
28 CONTRACT.

1 MS. CHANG: UNDER A BREACH OF CONTRACT CAUSE OF
2 ACTION.

3 THE COURT: WHICH WAS ODD.

4 MS. BINA: IT WAS ACTUALLY TITLED "BREACH OF
5 CONTRACT BASED AND OTHER DUTIES OF CARE." SO I BELIEVE
6 THEY WERE CLAIMING THE NEGLIGENCE WAS BASED ON THE
7 CONTRACT.

8 MS. CHANG: IF I CAN JUST FINISH, AND THEN --

9 MS. BINA: BY ALL MEANS.

10 THE COURT: IT WAS AN INTERESTING CAPTION.

11 MS. CHANG: IT WAS AN INTERESTING CAPTION. I
12 BELIEVE -- BUT WHAT I CAN SAY WITH 100 PERCENT
13 CONFIDENCE IS THAT THE PLAINTIFFS' COUNSEL NEVER
14 CONSIDERED THE CLAIMS THAT WE ARE NOW RAISING IN THE
15 SECOND PROPOSED AMENDED COMPLAINT.

16 BECAUSE I WROTE IT, AND I WAS THERE
17 CONSIDERING IT, AND I WAS SITTING IN THIS ROOM IN MY
18 VERY SEAT THAT I AM WHEN I HEARD SHAWN TRELL TESTIFY.
19 TO ME, THE ENTIRE CASE UNFOLDED AND BECAME CLEAR TO ME
20 IN THE FOUR DAYS OF MR. TRELL'S TESTIMONY. IT JUST
21 WAS -- EVERYTHING BECAME SO CLEAR TO ME.

22 AND FROM THAT MOMENT, I STARTED WORKING ON
23 THE COMPLAINT. AND THEN I HEARD MR. PHILLIPS, AND I
24 HEARD SOME OF THE OTHERS WHO, FRANKLY, I THOUGHT THE
25 A.E.G. INDIVIDUALS WERE MUCH MORE COMPELLING IN
26 CLARIFYING OUR CASE THAN ANYTHING WE COULD HAVE DONE ON
27 OUR OWN.

28 AND IT IS BECAUSE OF THE VERY REASONS THAT

1 SOMETIMES ISSUES DO NOT BECOME CLEAR UNTIL YOU HEAR ALL
2 THE EVIDENCE UNFOLD AT TRIAL THAT OUR RULES ALLOW THE
3 COMPLAINT TO BE AMENDED, EVEN AFTER VERDICT. AND IN
4 THIS CASE, I THINK THAT WHERE THE PARTIES ARE GETTING
5 HELD UP ON IS BECAUSE WE USE THE WORD NEGLIGENCE, DUTY
6 OF CARE IN THE FIRST ONE, THAT AUTOMATICALLY MEANS THAT
7 ALL NEGLIGENT CLAIMS OR THEORIES WERE RAISED.

8 AND IN MY REPLY, I CITE TO THE CASE OF
9 JOHNSON VERSUS CHEW. AND THAT'S A 2011 CASE. AND IN
10 THAT CASE, THERE WAS A NEGLIGENCE CLAIM UNDER A MEDICAL
11 MALPRACTICE CLAIM, AND MOTION FOR SUMMARY JUDGMENT WAS
12 GRANTED ON THAT CLAIM, BUT BEFORE THE SUMMARY JUDGMENT
13 WAS ADJUDICATED, SHE -- THE PLAINTIFF HAD MOVED TO
14 AMEND THE COMPLAINT, AND THE --

15 THE COURT: WHAT DO WE HAVE HERE, THOUGH?

16 MS. CHANG: THE COMPLAINT IN THAT CASE WAS A
17 NEGLIGENT MAINTENANCE CLAIM THAT WAS NOT CONSIDERED BY
18 THE COURT DURING THE TIME OF THE NEGLIGENCE OF THE
19 MEDICAL MALPRACTICE.

20 THEREAFTER, THE DEFENDANTS IN THAT CASE
21 RAISED THE EXACT SAME ARGUMENTS THAT THE DEFENDANTS IN
22 THIS CASE RAISED, CLAIMING THAT THE FLOWERS CASE
23 PRECLUDED IT BECAUSE IT WAS ADJUDICATED UNDER THE
24 CATCHALL OF NEGLIGENCE; THAT THERE'S ONLY ONE
25 NEGLIGENCE; AND, IN FACT, FLOWERS WAS, IN FACT, A
26 MEDICAL MALPRACTICE CASE.

27 THE COURT BASICALLY MADE VERY CLEAR THAT
28 THE EVIDENCE PLAINTIFFS OFFERED IN SUPPORT OF THE

1 NEGLIGENT MAINTENANCE THEORY WAS NOT CONSIDERED BY THE
2 COURT WHEN IT GRANTED SUMMARY ADJUDICATION. THE LAW IN
3 CALIFORNIA IS SIMPLY NOT THAT YOU GET ONE CHANCE AND IF
4 YOU DIDN'T THINK OF IT OR IF YOU DIDN'T DO IT, YOU'RE
5 DONE AND YOU'RE SUNK JUST BECAUSE A LABEL OF NEGLIGENCE
6 IS ON IT.

7 THE ONLY QUESTION BY THIS COURT IS, "DID I
8 CONSIDER THIS BEFORE AT THE TIME IT WAS RAISED IN THE
9 MOTION FOR SUMMARY JUDGMENT?" AND FOR A VARIETY OF
10 REASONS, WE LIST OUT THAT THE COURT COULDN'T HAVE
11 BECAUSE WE NEVER THOUGHT OF IT UNTIL MR. TRELL, AND
12 THAT WE NEVER EVEN DID IT.

13 AND I WANTED TO ALSO RAISE IN --

14 THE COURT: IT WAS BASED ON THAT PARAGRAPH 8 OF
15 THE CONTRACT.

16 MS. CHANG: YES, PARAGRAPH 8.

17 THE COURT: WHICH YOU WERE AWARE OF, RIGHT?

18 MS. CHANG: WELL, AGAIN, WE DON'T HAVE -- IT'S
19 NOT LIKE, OH, YOU SHOULD HAVE BEEN AWARE OR WEREN'T
20 AWARE. CLEARLY, IT WASN'T CITED TO THE COURT AT THE
21 TIME OF THE MOTION FOR SUMMARY ADJUDICATION. CLEARLY,
22 NONE OF THE PARTIES -- IT DOESN'T EVEN APPEAR ANYWHERE
23 IN YOUR DECISION.

24 BUT I DO KNOW WHEN I GOT INVOLVED IN THIS
25 CASE ONE OF THE FIRST THINGS THAT I KEPT THINKING OF
26 WAS WHY IS A.E.G. EVEN VOLUNTEERING TO GET -- IT WAS
27 VERY UNCLEAR TO ME. THE PARAGRAPH THAT WE'RE TALKING
28 ABOUT -- AND YOUR HONOR STATES, FIRST OF ALL, ON PAGE 3

1 OF THE PROPOSED --

2 THE COURT: OF YOUR COMPLAINT OR MY TENTATIVE?

3 MS. CHANG: OF YOUR TENTATIVE.

4 -- STATES ON LINE 12 "IN LIGHT OF THE TRIAL
5 TESTIMONY AND EXHIBITS PERTAINING TO A.E.G. LIVE
6 COUNSEL SHAWN TRELL AND C.E.O. RANDY PHILLIPS,
7 PLAINTIFFS MOVE TO ADD A CONTRACTUAL COMMON LAW DUTY
8 THAT ATTACHES TO THE UNEXECUTED CONTRACT DRAFTED BY
9 A.E.G. LIVE AND BETWEEN A.E.G. LIVE,
10 DR. CONRAD MURRAY."

11 WE WOULD JUST SUBMIT THAT'S NOT REALLY OUR
12 CASE. WE'RE NOT CLAIMING THAT BECAUSE, NUMBER 1, FOR A
13 VARIETY OF REASONS, WE BELIEVE THERE IS AN ORAL
14 AGREEMENT; NUMBER 2, THERE'S AN IMPLIED-IN-FACT
15 AGREEMENT; AND NUMBER 3, MOST IMPORTANTLY WITH THE
16 NEGLIGENCE CLAIM, WHAT WE'RE SAYING IS KIND OF EXACTLY
17 WHAT YOUR HONOR STATES LATER ON IN THE TENTATIVE.

18 YOUR HONOR SAID THAT PARAGRAPH 8 AND THE
19 AGREEMENT BETWEEN MICHAEL JACKSON AND A.E.G. DOES NOT
20 DISCUSS MEDICAL CARE. OUR POINT IS YES, EXACTLY. IN
21 THIS INDUSTRY, A PRODUCER DOES NOT STEP IN BETWEEN WHAT
22 SHOULD BE A TWO-WAY RELATIONSHIP AND TURN IT INTO A
23 THREE-WAY RELATIONSHIP.

24 IN THIS CLAIM, WE'RE SAYING THE VERY ACT OF
25 APPROACHING DR. MURRAY AND STARTING THE NEGOTIATIONS
26 AND THRUSTING A DRAFT IN HIS FACE THAT SAYS "IF THIS
27 SHOW IS CANCELED OR POSTPONED, YOU WILL BE FIRED AND
28 YOU FORFEIT \$150,000" CREATES A HUGE PROBLEM, IS A

1 DEVIATION FROM THE STANDARD OF CARE, IS NEVER DONE.

2 NOW, IN THE CONTRACT BETWEEN THEM, WHAT
3 THEY'RE SUPPOSED TO DO IS TWO THINGS. THEY MANAGE THE
4 PRODUCTION, AND YES, THEY DO IT IN CONJUNCTION WITH
5 MICHAEL JACKSON; AND THEY ENGAGE THE SERVICES OF THIRD
6 PARTY VENDORS FOR THE PRODUCTION.

7 THAT'S WHAT THEY DO. IN THE -- IN THEIR
8 OWN TESTIMONY, WHAT A.E.G. LIVE SAID IS THEY PUT
9 DR. MURRAY AS A PRODUCTION COST; AND NUMBER 2, THEY PUT
10 HIM IN CHARGE WITH MR. PHILLIPS OF MAKING SURE HE
11 ATTENDS REHEARSALS, AND HE WORKED WITH MR. ORTEGA, WHO
12 HAD HIS NUMBER PROGRAMMED IN HIS CELL PHONE TO WORK ON
13 THE REHEARSAL SCHEDULE.

14 NEVER BEEN DONE BEFORE. AND WE SAY EXACTLY
15 OUR POINT. WHEN MR. JACKSON -- ALTHOUGH HE'S ALSO A
16 CONSULTANT ON IT, HE'S NOT GETTING PAID A 5 PERCENT
17 PRODUCTION FEE, A.E.G. LIVE IS. THIS IS ONLY THE
18 SECOND TIME OF A PRODUCTION LIKE THIS THAT TRAVELS
19 THAT'S NOT A COMPLETE TOUR OR PACKED TOUR THAT THEY'VE
20 DONE THIS.

21 THE FIRST ONE WAS PRINCE. IN THIS, THEY
22 HAD NO -- WHAT WE'RE SAYING IS BASED ON THAT AGREEMENT,
23 YOU'RE SUPPOSED TO MANAGE THE PRODUCTION, ENGAGE THE
24 SERVICES, AND YOU SHOULD NEVER HAVE GOTTEN INVOLVED IN
25 DOING WHAT YOU DID. THAT IS THE POINT.

26 AND LATER ON, WHAT'S NOT RELATED, AND
27 DOESN'T MAKE IT A NEGLIGENT HIRING, RETENTION OR
28 SUPERVISION CAUSE OF ACTION, IS WHEN ALL OF THESE SIGNS

1 AND FACTORS CAME UP, TO MANAGE A PRODUCTION REQUIRED
2 YOU TO SLOW IT DOWN AND STOP IT AND NOT TO KEEP IT
3 GOING, NOT MAKING THEM GO FORWARD AND FORWARD.

4 THE COMBINATION OF ALL OF THIS CREATED SUCH
5 A SITUATION WHERE DR. MURRAY KNEW THAT IF HE CANCELED
6 OR POSTPONED THE SHOW, THAT -- OR NOT HIM, BUT IF THE
7 PRODUCTION WAS CANCELED BECAUSE OF MR. JACKSON'S
8 INABILITY TO GET UP THERE AND FINISH AND DO HIS JOB AND
9 REHEARSE, OR PERFORM, THAT THE SHOW WOULD -- COULD BE
10 POSTPONED.

11 KENNY ORTEGA WAS ALREADY INDICATING THAT.
12 AND IF THAT HAPPENED, THEN HE WOULD NOT BE PAID. THAT
13 PUTS AN INCREDIBLE AMOUNT OF PRESSURE ON A DOCTOR, IT
14 IS A CONFLICT THAT SHOULD NEVER BE IN PLACE, AND THE
15 SHEER AMOUNT OF MONEY MAKES HIM WANT TO DO THINGS THAT
16 ARE NOT IN THE BEST SOUND MEDICAL JUDGMENT.

17 AND SO ALL OF THOSE THINGS DIFFERENTIATE IT
18 BETWEEN A NEGLIGENT HIRING, RETENTION AND SUPERVISION
19 CLAIM, AND ALL OF -- FOR THE EXACT POINT THAT YOU'RE
20 SAYING THAT, THE CONTRACT DOESN'T SAY MEDICAL CARE, WE
21 SAY EXACTLY, THEY SHOULD NOT BE DOING -- NO PRODUCER --
22 KENNY ORTEGA HAS 40 SOME YEARS OF EXPERIENCE, HE'S
23 NEVER SEEN THIS DONE.

24 SHAWN TRELL HAS NEVER SEEN IT DONE.
25 PAUL GONGAWARE HAS NEVER SEEN IT DONE. RANDY PHILLIPS
26 HAS NEVER SEEN IT DONE. THEY'VE SEEN ARTISTS HIRE
27 THEIR OWN PERSONAL PHYSICIANS, PAY FOR THEM THEMSELVES
28 UNDER THEIR OWN TERMS, BUT NEVER -- EVEN THEIR EXPERT,

1 CONFLICT OF INTEREST EXPERT, TESTIFIED -- MATHESON, I
2 THINK IT WAS, TESTIFIED --

3 MS. BINA: MATHESON WAS YOURS. DR. GREEN.

4 MS. CHANG: DR. GREEN. HOW COULD I FORGET?

5 DR. GREEN SAID HE HAD NEVER SEEN SUCH A
6 DOCUMENT BEFORE. IT'S EXTRAORDINARILY UNUSUAL, IT
7 TURNS THE INDUSTRY ON ITS HEAD. THEY TRIED TO -- AND
8 THAT'S WHY THEY DEVIATED FROM THE STANDARD OF CARE.
9 COUNTER ARGUMENTS CAN BE MADE, AS THEY ALWAYS ARE, BY
10 BOTH SIDES OF A PARTY.

11 BUT WE BELIEVE THAT ENOUGH EVIDENCE HAS
12 BEEN SUBMITTED IN THIS TRIAL TO SUPPORT A NEGLIGENCE
13 FINDING. WE BELIEVE THAT THIS COURT NEVER WAS GIVEN
14 THIS DURING THE MOTION FOR SUMMARY JUDGMENT.

15 THERE IS NOTHING IN CALIFORNIA LAW THAT
16 SAYS YOU BETTER GET IT ALL NOW OR YOU'RE SUNK. THEY
17 CITE A CASE, BUT THAT CASE, THE ENTIRE CASE WAS
18 DISMISSED.

19 THE COURT: NO, NO. I DON'T THINK -- I DON'T
20 THINK YOU DISAGREE ON WHAT THE LAW IS IN TERMS OF HOW
21 LATE YOU CAN AMEND OR ANYTHING LIKE THAT. I DON'T
22 THINK THAT'S THE ISSUE.

23 MS. CHANG: OKAY.

24 THE COURT: I THINK THEY AGREE WITH YOU, YOU CAN
25 AMEND ALL THE WAY UP TO THE CLOSE-OUT OF THE --

26 MS. CHANG: THE OTHER THING I WANT TO NOTE IS
27 WHAT'S INTERESTING IN THE DEFENDANTS' OPPOSITION IS
28 THEY DON'T AT ANY POINT CLAIM PREJUDICE, SO THAT'S NOT

1 EVEN -- THAT'S A FACTOR THAT MANY TIMES THE COURT HAS
2 TO CONSIDER WHEN GRANTING OR -- OR NOT ALLOWING AN
3 AMENDMENT DURING TRIAL.

4 BUT IN THIS CASE, IT'S CONCEDED THERE IS NO
5 PREJUDICE. BOTH SIDES HAVE BEEN ARGUED, BOTH SIDES OF
6 THAT ISSUE, AND IT COMES IN, AND THEY SAY IT'S ALL
7 RELEVANT TO THE NEGLIGENT HIRING, RETENTION CLAIM, AND
8 WE SAY YES, THAT'S TRUE, TOO, BECAUSE THE VERY ACT OF
9 HIRING MEANS YOU DON'T DO THAT.

10 BUT THERE ARE OTHER THINGS, SUCH AS SLOWING
11 DOWN THE PRODUCTION, NOT RUSHING IT, NOT CAUSING IT TO
12 GO FORWARD. THAT'S PART OF MANAGING THE PRODUCTION.
13 THAT WAS NEVER CONSIDERED UNDER SECTION 8 OF THE
14 CONTRACT WHEN YOUR HONOR RULED ON THE MOTION FOR
15 SUMMARY JUDGMENT.

16 OUR POINT IS BASED ON THE CASE LAW, BASED
17 ON THE RULES, AND BASED ON THE ACTUAL REASONING FOR THE
18 RULES THAT SOMETIMES YOU JUST DON'T KNOW UNTIL IT COMES
19 OUT, ESPECIALLY WHEN IT COMES OUT FROM THE OPPOSING
20 SIDE, BECAUSE WE DON'T HAVE CONTROL OVER -- WE CAN'T
21 MEET WITH SHAWN TRELL, WE CAN'T, YOU KNOW, LEARN THINGS
22 FROM HIM.

23 BUT SOMETIMES YOU DON'T SEE IT UNTIL THE
24 TIME OF TRIAL. AND IN THAT CASE, IF YOUR HONOR TRULY
25 DID NOT CONSIDER WHAT WE'RE SAYING IN OUR MOTION, THEN
26 WE BELIEVE IT IS ERROR, REVERSIBLE ERROR, TO NOT ALLOW
27 A MERITORIOUS CLAIM TO GO BEFORE THE JURY.

28 THE PARTIES HAVE PUT SO MUCH INTO THIS CASE

1 THAT WE BELIEVE WE HAVE ONE SHOT TO THE JURY, WE WANT
2 TO MAKE IT OUR BEST SHOT TO THE JURY, AND WE BELIEVE
3 THAT THIS -- THE CLAIM WAS NOT RAISED AND COULD NOT
4 HAVE BEEN RAISED, AND THE REQUIREMENT IS -- ISN'T EVEN
5 COULD IT HAVE BEEN RAISED, BECAUSE THE FACT IS IT
6 WASN'T RAISED.

7 THAT'S THE ONLY POINT. AND IF YOUR HONOR
8 NEVER CONSIDERED IT, THEN IT IS NOT ADJUDICATED. IT
9 CAN'T BE ADJUDICATED IF IT WAS NOT BROUGHT OUT BY THE
10 COURT. AND WE BELIEVE THAT THERE'S ENOUGH EVIDENCE TO
11 SUPPORT IT, AND THAT'S WHY WE WOULD ARGUE THAT THE
12 TENTATIVE SHOULD BE REVERSED.

13 MS. BINA: YOUR HONOR, IF YOU'RE INCLINED TO
14 REVISIT ANYTHING IN THE TENTATIVE, I WOULD HAPPILY
15 ARGUE. I'M ALSO WILLING TO SUBMIT ON THE TENTATIVE.

16 SO I GUESS IF YOUR HONOR HAS QUESTIONS OR
17 HAS ANY -- IS IN ANY WAY CONCERNED THAT THE TENTATIVE
18 IS INCORRECT, I'M HAPPY TO ADDRESS THOSE BECAUSE THE
19 TENTATIVE IS EXACTLY RIGHT AND IT'S COMPELLED BY
20 CALIFORNIA LAW.

21 THE COURT: I'M TRYING TO THINK. I GUESS -- WHAT
22 ABOUT THE CLAIM THAT THE BREACHES OF THE -- THE TOUR
23 AGREEMENT VERSUS THE CONRAD MURRAY/MICHAEL JACKSON
24 AGREEMENT? THERE'S TWO DIFFERENT AGREEMENTS HERE.

25 MS. BINA: NO, YOUR HONOR. ACTUALLY, THEY'RE
26 ALLEGING THE SAME AGREEMENT. THE TOUR AGREEMENT WAS
27 THE SOURCE OF THE ORIGINAL CONTRACT-BASED DUTIES. AND
28 I ACTUALLY TOOK THE --

1 THE COURT: I MEAN, THAT WAS IN THE TENTATIVE,
2 BUT -- SAYING OKAY, THERE'S TWO SEPARATE -- I THINK
3 WHAT SHE'S SAYING IS THERE'S TWO SEPARATE CONTRACTS.

4 MS. BINA: NO, YOUR HONOR. SHE'S SAYING THERE'S
5 TWO SEPARATE PROVISIONS OF THE SAME CONTRACT. WHAT
6 SHE'S SAYING IS THAT PARAGRAPH 8.1 OF THE TOUR
7 AGREEMENT CREATES DUTIES THAT WERE NOT CONSIDERED WHEN
8 THE COURT CONSIDERED WHETHER THE ENTIRE TOUR AGREEMENT
9 CREATED ANY DUTIES.

10 MS. CHANG: SHE'S SAYING THIS IS NOT QUITE
11 RIGHT.

12 MS. BINA: I THINK THAT MIGHT NOT BE RIGHT. WHAT
13 MS. CHANG IS SAYING IS THE SAME THING THEY SAID IN
14 THEIR ORIGINAL CLAIM, WHICH IS THAT THE CONTRACT
15 BETWEEN A.E.G. LIVE AND MICHAEL JACKSON CREATED SOME
16 KIND OF TORT-BASED DUTY OF CARE.

17 THAT'S WHAT THEY SAID IN THEIR ORIGINAL
18 NEGLIGENCE CLAIM, THAT'S WHAT THIS COURT SUMMARILY
19 ADJUDICATED PROPERLY, AND THAT IS WHAT CANNOT BE
20 REVISITED NOW.

21 YOUR HONOR, WE ACTUALLY -- I KNOW MS. CHANG
22 CAME LATE TO THE CASE, SO PERHAPS SHE'S UNFAMILIAR WITH
23 ALL THE ARGUMENTS THAT WERE MADE BEFORE, BUT EVERY
24 SINGLE ARGUMENT, SAVE ONE PARAGRAPH, AND I'LL GET TO
25 THAT IN A MINUTE, WAS ACTUALLY MADE IN THEIR PRIOR
26 BRIEFING.

27 WE ACTUALLY TOOK EVERY PARAGRAPH OF THE
28 SECOND AMENDED COMPLAINT AND MATCHED IT AGAINST THE

1 FIRST AMENDED COMPLAINT IN THEIR M.S.J. BRIEFING AND
2 LITERALLY THE ENTIRE THING WAS DONE BEFORE. IF YOU
3 EVEN LOOK AT THE BRIEF ITSELF, YOU KNOW, THEY'RE
4 CLAIMING THESE ARE DIFFERENT THINGS.

5 YOU KNOW, THE FORMER COMPLAINT SAID A.E.G.
6 LIVE INJECTED THEMSELVES BETWEEN MICHAEL JACKSON AND
7 HIS TREATING PHYSICIAN. THE CURRENT COMPLAINT SAYS THE
8 INSERTION OF A.E.G. LIVE OR ANY OF ITS AGENTS OR
9 ATTORNEYS IN THE NEGOTIATION CREATED AN UNAVOIDABLE
10 CONFLICT OF INTEREST. THAT'S THE SAME CLAIM. IT'S THE
11 SAME CLAIM --

12 LET ME -- I LET YOU GO.

13 MS. CHANG: I'M SORRY.

14 MS. BINA: IT'S THE SAME CLAIM THAT THEY MADE ALL
15 THE WAY THROUGH, AND YOUR HONOR HAS IT EXACTLY RIGHT ON
16 PAGE 16 OF THE TENTATIVE -- OR 15 -- 14. PARAGRAPH 8.1
17 ADDS NOTHING RELEVANT OR NEW THAT HAS NOT ALREADY BEEN
18 ARGUED OR ADJUDICATED.

19 TO BE CLEAR, YOUR HONOR, PARAGRAPH 8.1 OF
20 THE CONTRACT SAYS A.E.G. LIVE WILL PRODUCE THE TOUR,
21 ESSENTIALLY; AND PART OF THAT INCLUDES ENGAGING
22 THIRD-PARTY VENDORS IN CONNECTION WITH TOUR SERVICES
23 AND PRODUCING THE TOUR.

24 THE COURT: WHICH IS WHAT MURRAY'S CONTRACT, THAT
25 WHOLE CONTRACT -- MURRAY, A.E.G. LIVE AND
26 MICHAEL JACKSON, THAT CONTRACT, THAT'S WHAT THAT IS.

27 MS. BINA: THEY'RE CLAIMING THAT'S A THIRD-PARTY
28 VENDOR CONTRACT THAT WAS ESTABLISHED PURSUANT TO

1 PARAGRAPH 8.1. EVEN IF THAT WERE TRUE, YOUR HONOR, IT
2 WOULDN'T CREATE SOME NEW KIND OF DUTY NOT TO HIRE
3 DR. MURRAY.

4 IT WOULD STILL BE THE SAME NEGLIGENT HIRING
5 LAW THAT APPLIES ALL THE TIME IN CALIFORNIA. THE
6 CONTRACT SAYS ENGAGE THIRD-PARTY VENDORS IN CONNECTION
7 WITH THE TOUR, IT DOESN'T SAY AND YOU MUST DO SO UNDER
8 SOME STANDARD OF CARE THAT IS DIFFERENT FROM CALIFORNIA
9 LAW.

10 AND FLOWERS IS EXACTLY ON POINT. YOU CAN'T
11 HAVE TWO DIFFERENT TORT DUTIES TO ACT DIFFERENTLY.
12 A.E.G. LIVE CAN'T HAVE A COMMON LAW DUTY TO HIRE
13 DR. MURRAY OR NOT HIRE DR. MURRAY IN ONE WAY, AND SOME
14 CONTRACT-BASED DUTY ON 8.1 TO DO SOMETHING ELSE.

15 IT'S ONLY ONE ACT WE'RE TALKING ABOUT HERE,
16 AND THAT'S WHY JOHNSON ISN'T APPLICABLE, BECAUSE
17 JOHNSON, THERE ARE TWO DIFFERENT THINGS, THERE WAS THE
18 DOCTOR'S MALPRACTICE AND THE NEGLIGENT MAINTENANCE OF
19 THE MACHINE.

20 THE COURT: IS THAT THE ONE YOU CITED IN YOUR
21 REPLY?

22 MR. PUTNAM: YES.

23 THE COURT: I DON'T THINK YOU CITED THAT.

24 MS. BINA: NO. IT JUST DISTINGUISHES IT, YOUR
25 HONOR, BECAUSE THERE WAS ONE ISSUE, DID THE DOCTOR
26 TREAT NEGLIGENTLY, AND THE OTHER, DID THEY
27 APPROPRIATELY MAINTAIN THE MACHINE. HERE, THERE'S ONE
28 ACT; HIRING, RETAINING AND SUPERVISING DR. MURRAY, AND

1 THAT'S THE CLAIM THAT'S BEING LITIGATED.

2 EVERYTHING IN THIS BRIEF RELATES TO THAT,
3 AND THE ONLY NEW THINGS, YOUR HONOR, ARE THE THINGS
4 THAT WERE ALREADY ADJUDICATED. FOR INSTANCE, THE CLAIM
5 THAT A.E.G. LIVE SHOULD HAVE CANCELED OR POSTPONED THE
6 TOUR BECAUSE THEIR DUTY AS PRODUCER OR BECAUSE OF A
7 SPECIAL RELATIONSHIP OR BECAUSE OF AN UNDERTAKING
8 REQUIRED THEM TO HAVE THESE TORT DUTIES TO
9 MICHAEL JACKSON.

10 ALL OF THAT WAS DEALT WITH AT LENGTH
11 BEFORE. AND, AGAIN, IF YOUR HONOR IS INCLINED TO
12 RECONSIDER ANYTHING, I CAN GO ON, BUT I DON'T WANT TO
13 WASTE THE COURT'S TIME.

14 THE COURT: WEREN'T THERE THREE THEORIES UNDER
15 THAT, UNDERTAKING, SPECIAL RELATIONSHIP --

16 MS. BINA: -- AND GENERAL NEGLIGENCE.

17 I WAS READING THE GENERAL NEGLIGENCE CLAIM
18 THIS MORNING. I THINK THIS IS PRETTY HELPFUL. THIS IS
19 THEIR OPPOSITION ON THE GENERAL NEGLIGENCE CLAIM.

20 THEY SPECIFICALLY SAID A.E.G. LIVE HIRED
21 DR. MURRAY TO PROVIDE MEDICAL TREATMENT HE KNEW WAS
22 LIKELY IN CONTRAVENTION OF MEDICAL STANDARDS, THEY
23 PROMISED TO PAY HIM EXORBITANTLY, TRIPLE WHAT GONGAWARE
24 CLAIMED WAS THE GOING RATE, BUT ONLY IF JACKSON
25 COMPLETED THE TOUR, AND PRESSURED MURRAY TO CONTINUE
26 TREATING JACKSON EVEN WHEN THERE WAS CLEAR INDICATIONS
27 THAT JACKSON WAS BECOMING VERY ILL.

28 THAT'S EXACTLY THE SAME CLAIMS THEY SEEK TO

1 ADD NOW, IT'S NOT ANY DIFFERENT, IT'S NOT -- THAT'S THE
2 SAME GENERAL NEGLIGENCE CLAIM THAT YOUR HONOR PROPERLY
3 ADJUDICATED BEFORE, SAYING THIS IS NOT A NEGLIGENCE
4 CLAIM, IT IS AT BEST A NEGLIGENT HIRING CLAIM.

5 AND WHAT THEY'RE TRYING TO DO, FRANKLY,
6 YOUR HONOR, IS GET AROUND THE STANDARD THAT HAS
7 DEVELOPED FOR NEGLIGENT HIRING. AND THEY SAY THAT
8 EXPRESSLY IN THEIR BRIEF. THEY SAY EVEN IF DR. MURRAY
9 WAS FULLY FIT AND COMPETENT, A.E.G. LIVE WAS NEGLIGENT
10 IN HIRING HIM.

11 THAT'S NOT THE LAW, THAT'S NOT THE LAW AS
12 IT'S DEVELOPED, AND THERE WOULD BE NO GOOD REASON TO
13 ESTABLISH A LAW THAT SAYS IT'S NEGLIGENCE TO HIRE A FIT
14 AND COMPETENT PHYSICIAN. SO, YOUR HONOR, I --

15 THE COURT: THAT'S A GOOD WAY OF ARGUING THAT.

16 MS. BINA: YOUR HONOR, I THINK THIS IS JUST --
17 THIS IS JUST A NON-ISSUE. IT WAS ADJUDICATED ALREADY,
18 THERE WAS A NEGLIGENT HIRING CLAIM, THEY'LL EITHER MEET
19 THEIR BURDEN ON THAT OR THEY WON'T, AND THAT'S IT.

20 THE COURT: THAT MAKES SENSE.

21 MS. CHANG: MAY I RESPOND?

22 THE COURT: YOU MAY.

23 MS. CHANG: YOUR HONOR, EVERYTHING THAT MS. BINA
24 SAID IS ABOUT THE ARGUMENTS. WHAT PLAINTIFFS WERE
25 TRYING TO DO WAS TRYING TO COME UP WITH A THEORY OF WHY
26 A.E.G. SHOULDN'T HAVE DONE WHAT THEY DID FOR A VARIETY
27 OF REASONS. BUT HERE'S THE TURNING, PIVOTAL POINT, AND
28 THAT IS THIS.

1 THE THREE THEORIES THAT THE PLAINTIFFS CAME
2 UP WITH AT THE TIME WAS SPECIAL RELATIONSHIP, JOINT
3 VENTURE, AND A VOLUNTARY UNDERTAKING OF HIS MEDICAL
4 CARE. AND YOUR HONOR TALKED ABOUT EACH OF THEM IN YOUR
5 DECISION, AND HERE'S THE PROBLEM. THEY DIDN'T HAVE TO
6 GO THROUGH THAT TORTURED ROUTE.

7 WE DIDN'T HAVE TO GO THROUGH THAT TORTURED
8 ROUTE. IT WAS ALL IN 8.1 AND 8.3, AND THERE -- AND
9 THAT -- WHAT ALL THE PARTIES WERE DOING AT THAT DATE
10 LONG AGO WAS TRYING TO FIND A SOURCE OF THE DUTY; AND
11 IT WAS IN 8.1 AND 8.3 THAT BECAME CLEAR WHEN MR. TRELL
12 WAS ON THE STAND.

13 THAT IS THE DIFFERENCE. WE DON'T HAVE TO
14 CREATE A SPECIAL RELATIONSHIP. SPECIAL
15 RELATIONSHIPS --

16 THE COURT: ARE YOU TRYING TO ARGUE FOR A
17 DIFFERENT DUTY?

18 MS. CHANG: OKAY. HERE IS THE ISSUE.

19 THE COURT: I GUESS I'M --

20 MS. CHANG: LET ME TRY --

21 THE COURT: THE POINT THAT MS. BINA RAISED IS A
22 GOOD POINT.

23 MS. CHANG: WHAT IS MS. BINA'S GOOD POINT?

24 THE COURT: IS IT A DIFFERENT OR THE SAME DUTY?
25 BECAUSE IT SOUNDS LIKE THE SAME DUTY. IT HAS TO BE THE
26 SAME DUTY.

27 MS. BINA: IT'S TO ENGAGE VENDORS IN A
28 NON-NEGLIGENCE MANNER, WHICH IS --

1 MS. CHANG: I THOUGHT I WAS BEING GOOD. WHEN
2 CHASTISED BY MS. BINA, I SAID, "YOU'RE RIGHT," AND I
3 STOPPED TALKING. IF I COULD HAVE MY ONE MOMENT TO MAKE
4 MY POINT, AND THEN WE CAN ALL GO HOME.

5 THE POINT IS THIS. A DUTY ARISES BY LAW OR
6 BY LEGAL DUTY; AND IN THE ABSENCE OF A LEGAL DUTY,
7 COMMON LAW HAS CREATED THEORIES SUCH AS A SPECIAL
8 RELATIONSHIP. WHEN YOU HAVE A LEGAL DUTY, SUCH AS THAT
9 BASED IN CONTRACT, YOU DON'T HAVE TO GO AS FAR AS TO
10 LOOK FOR A SPECIAL RELATIONSHIP.

11 THAT'S VERY CLEAR UNDER THE LAW. WHERE THE
12 PLAINTIFFS GOT STUCK, AND THE COURT, LAST TIME, IS THAT
13 THEY COULD NOT FIND A LEGAL CONTRACTUAL DUTY, AND THEY
14 WERE CREATING -- TRYING TO CREATE ONE OUT OF COMMON
15 LAW. THE FIRST CHOICE THEY MADE WAS COMMON LAW --
16 SPECIAL RELATIONSHIP.

17 FOR A VARIETY OF REASONS, YOUR HONOR WAS
18 NOT PERSUADED THAT THERE WAS A SPECIAL RELATIONSHIP.

19 THE COURT: RIGHT. VERY LIMITED CIRCUMSTANCES.

20 MS. CHANG: THE SECOND WAY PLAINTIFFS TRIED WAS
21 BY A JOINT VENTURE. YOUR HONOR WAS NOT SWAYED. THE
22 THIRD WAY THEY TRIED BY COMMON LAW WAS A VOLUNTARY
23 UNDERTAKING OF THE MEDICAL CARE.

24 UNDER THE FACTS PRESENTED BY THE PLAINTIFFS
25 AT THAT JUNCTURE, YOUR COURT SAID, "WE'RE TRYING REALLY
26 HARD TO CREATE THIS DUTY, BUT I CAN'T FIND ONE." THAT
27 HAS ALL CHANGED NOW, AND NOW WHAT I PROPOSE TO THE
28 JUDGE IS HERE IS WHAT WAS MISSING BEFORE.

1 WE DIDN'T HAVE TO GO THROUGH THOSE THREE
2 ROUTES, WE ONLY HAD TO TURN TO SECTION 8 BECAUSE
3 SECTION 8 CREATES A LEGAL DUTY, A CONTRACTUAL DUTY, FOR
4 THEM TO BE THE PRODUCER, ADD A PRODUCER'S FEE, TO
5 MANAGE THE PRODUCTION AND ENGAGE THE SERVICES OF
6 THIRD-PARTY VENDORS.

7 THE LAW IS CLEAR ON THAT. WHEN YOU HAVE A
8 CONTRACTUAL DUTY, GOING ALONG WITH THAT IS THE DUTY TO
9 DO IT NON-NEGLIGENTLY. YOU'RE BEING PAID A FEE, YOU'D
10 BETTER DO YOUR JOB CORRECTLY, AND YOU COULD BE SUED
11 UNDER TORT FOR A BREACH OF THAT CONTRACT. THAT IS --

12 THE COURT: THAT'S KIND OF RARE. I MEAN, USUALLY
13 IT'S A STRAIGHT BREACH OF CONTRACT. IT'S RARE THAT YOU
14 CAN DRAFT TORTS OUT OF THAT. THOSE ARE VERY LIMITED
15 CIRCUMSTANCES. NORMALLY IT'S A STRAIGHT BREACH OF
16 CONTRACT. BUT WE DIDN'T REALLY ANALYZE THAT.

17 MS. CHANG: YOUR HONOR, I THINK THE CASE LAW IS
18 VERY CLEAR; AND, IN FACT, WE HAVE MANY CASES IN TORT
19 THAT RESULTED FROM A BREACH OF A CONTRACT. AND THERE
20 IS A DUTY, AND I THINK THE CASE LAW IS VERY CLEAR THAT
21 WHEN YOU ARE GETTING PAID, AND YOU HAVE A DUTY, YOU
22 MUST DO IT DILIGENTLY.

23 THAT IS -- IT'S A CONTRACTUAL LEGAL DUTY.
24 THAT IS WHAT WAS MISSING AT THE MOTION FOR SUMMARY
25 JUDGMENT. PEOPLE WERE CONTORTING IN ALL SORT OF WAYS
26 TO FIND A DUTY; AND THEY WENT TO SPECIAL RELATIONSHIP,
27 THEY WENT TO JOINT VENTURE, THEY WENT TO VOLUNTARY
28 UNDERTAKING.

1 AND YOUR HONOR DID AN EXHAUSTIVE ANALYSIS
2 OF EACH COMMON LAW THEORY AND COULDN'T FIND ONE IN THIS
3 CASE. AND WHAT WE'RE SAYING NOW IS WHAT BECAME VERY
4 CLEAR IN THIS CASE IS THAT THEY WERE HIRED -- A.E.G. --
5 WHEN I SAY "HIRED," A.E.G. WAS NOT ONLY THE PROMOTER IN
6 THIS CASE, THEY WERE THE PRODUCER.

7 WHAT ELSE DID WE HEAR IN THIS TRIAL? THEY
8 DON'T HAVE AS MUCH EXPERIENCE BEING A PRODUCER AS THEY
9 DO A PROMOTER. NUMBER 3, AS THE PRODUCER, NOT THE
10 PROMOTER, THEY DECIDED TO ENGAGE IN HIRING A LOT OF
11 PEOPLE, ONE OF WHICH WE SAY YOU HAD NO BUSINESS
12 INTERFERING WITH.

13 THAT IS ALL PART OF THE LEGAL DUTY. SO
14 EVERYTHING THAT MS. BINA SAYS IS TRUE IN THE SENSE THAT
15 WE WERE TRYING TO SAY THIS IS THAT OR THIS IS THE SAME
16 DUTY OR THAT. WE WERE TRYING TO THINK WHERE DOES THAT
17 DUTY COME FROM, AND THAT'S THE DIFFERENCE. BECAUSE THE
18 STATUTE SAYS ISSUE OF DUTY.

19 THAT'S WHAT -- LET ME CITE IT FOR YOU SO I
20 HAVE IT DIRECTLY.

21 THE COURT: IS THIS THE SAME DUTY, THOUGH?

22 MS. BINA: IT IS THE SAME. THAT'S THE PROBLEM,
23 YOUR HONOR.

24 MS. CHANG: CAN I FINISH, AND THEN I WILL LET HER
25 ARGUE?

26 BECAUSE I THINK SHE'S ADDRESSING ME BECAUSE
27 I HAVE THE FLOOR NOW.

28 BUT SHE IS BEING MUCH BETTER.

1 OKAY. THIS IS THE SECTION THAT THE
2 DEFENDANTS OMITTED WHEN THEY CITED IN THEIR OPPOSITION
3 OF THE SUMMARY ADJUDICATION STATUTE. "THE FACT THAT A
4 MOTION FOR SUMMARY ADJUDICATION IS GRANTED AS TO ONE OR
5 MORE CAUSES OF ACTION SHALL NOT OPERATE TO BAR ANY
6 CAUSE OF ACTION OR ISSUE OF DUTY AS TO WHICH SUMMARY
7 ADJUDICATION WAS EITHER NOT SOUGHT OR DENIED."

8 SO IF THIS JUDGE DIDN'T CONSIDER AN ISSUE
9 OF DUTY THAT WAS NOT -- IF YOU DID NOT CONSIDER IT,
10 THEN IT'S NOT -- IT'S NOT ADJUDICATED. AND I THINK
11 THAT'S WHAT THE CHEW CASE STANDS FOR, IS THAT THE ISSUE
12 OF DUTY WE'RE SAYING FOR THE FIRST TIME IS NOT COMMON
13 LAW. IT IS LEGAL, BASED ON THE CONTRACT.

14 THAT WAS NEVER RAISED. SO THAT NOW WE'RE
15 SAYING, YOUR HONOR, WE WERE WRONG BEFORE. WE DIDN'T
16 HAVE TO GO TO A SPECIAL RELATIONSHIP. WE DIDN'T HAVE
17 TO GO TO A JOINT VENTURE. WE DIDN'T HAVE TO GO TO A
18 VOLUNTARY UNDERTAKING. WE HAVE A LEGAL DUTY UNDER
19 CONTRACT.

20 THAT WAS NEVER RAISED. THAT ISSUE OF DUTY
21 IS BRAND-NEW, AND IT -- I KNOW BECAUSE I WROTE IT AND I
22 KNOW BECAUSE I KNOW THE MOMENT THAT IT BECAME CLEAR TO
23 ME. THAT DUTY IS WHAT WE'RE HERE ON NOW, AND THAT
24 ISSUE HAS NEVER BEEN RAISED. AND I THINK THAT THE --
25 THE CASE -- THE STATUTE IS WRITTEN VERY CLEARLY.

26 IT SAYS "CAUSE OF ACTION," WHICH WOULD BE
27 NEGLIGENCE, "OR," NOT "AND," "OR ISSUE OF DUTY." AND
28 OUR ISSUE OF DUTY RIGHT NOW IS VERY DIFFERENT THAN WHAT

1 WAS EVER RAISED BEFORE. AND I THINK THAT IS CLEAR
2 BECAUSE BEFORE, NO ONE --

3 THE COURT: DESCRIBE TO ME WHAT THE DUTY IS.

4 MS. CHANG: THE ISSUE OF DUTY --

5 THE COURT: WHAT IS THE DUTY THAT ARISES FROM
6 THAT PROVISION, 8.1?

7 MS. CHANG: TO MANAGE THE PRODUCTION PURSUANT TO
8 THE STANDARD OF CARE AND TO ENGAGE THE SERVICES OF
9 THIRD-PARTY VENDORS PURSUANT TO HOW PRODUCERS PRODUCE
10 FIRST-CLASS TOURS OF THAT KIND, WHICH MEANS YOU DON'T
11 HIRE A PERSONAL DOCTOR, YOU DON'T ADDRESS A DOCUMENT IN
12 FRONT OF THEM, YOU DON'T ENGAGE SOMEONE --

13 THE COURT: YOU DO IT NON-NEGLIGENTLY.

14 MS. CHANG: YOU DO IT NON-NEGLIGENTLY. THAT IS
15 WHAT THE DUTY IS.

16 THE COURT: YOU DON'T HIRE SOMEONE NEGLIGENTLY,
17 YOU DON'T SUPERVISE THEM NEGLIGENTLY.

18 MS. CHANG: AND YOU DON'T RUSH THE PRODUCTION.

19 MS. BINA: YOUR HONOR, THIS IS JUST NOT ANYTHING
20 NEW. I MEAN, PARAGRAPH 8.1 SAYS MANAGE THE PRODUCTION
21 AND HIRE VENDORS IN CONNECTION WITH THE PRODUCTION.
22 CONTRACTS DON'T CREATE TORT DUTIES.

23 THEY IMPOSE A DUTY TO CARRY OUT A CONTRACT
24 NON-NEGLIGENTLY; AND IF THAT HAPPENS TO RISE TO A LEVEL
25 OF A TORT, THEN IT'S GOVERNED BY TORT LAW, BUT YOU
26 CAN'T HAVE TWO DIFFERENT STANDARDS FOR NEGLIGENT
27 HIRING. IN OTHER WORDS, A.E.G. LIVE'S DUTY IS TO NOT
28 HIRE NEGLIGENTLY, AND THAT IS A WELL-DEVELOPED TORT IN

1 CALIFORNIA.

2 YOU DON'T GET AROUND THAT BY SAYING, WELL,
3 WE HAVE A DUTY TO ENGAGE THIRD-PARTY VENDORS, WHICH, BY
4 THE WAY, NO ONE IS ALLEGING THEY EVER BREACHED, YOU
5 KNOW, THE CONTRACT --

6 THE COURT: YOU WOULD THINK YOU WOULD ALLEGE A
7 CAUSE OF ACTION -- THERE WOULD BE A BREACH OF CONTRACT
8 CLAIM FOR BREACHING IT.

9 MS. BINA: FOR NOT ENGAGING VENDORS. BUT THE
10 CONTRACT SAYS THEY'LL ENGAGE VENDORS, THEY'RE CLAIMING
11 WE SHOULDN'T HAVE ENGAGED VENDORS, SO IT'S NOT A VERY
12 COHERENT THEORY UNDER 8.1 ANYWAY, BUT IT'S CLEAR THAT
13 EVEN IF IT WERE, THE ONLY DUTY IS TO NOT ENGAGE IN
14 NEGLIGENT HIRING, WHICH IS THE CLAIM WE'RE ALREADY
15 TRYING.

16 MS. CHANG: THE LAW STATES -- I'M QUOTING NORTH
17 AMERICAN CHEM COMPANY VERSUS SUPERIOR COURT. "A
18 COMPANY UNDER CONTRACT HAS A COMMON LAW DUTY TO PERFORM
19 WITH CARE, SKILL, REASONABLE EXPEDIENCE AND
20 FAITHFULNESS THE THING AGREED TO BE DONE, AND A
21 NEGLIGENT FAILURE TO OBSERVE ANY OF THESE CONDITIONS IS
22 A TORT AS WELL AS A BREACH OF CONTRACT."

23 AND HERE WHAT WE'RE SAYING IS THAT A.E.G.
24 LIVE HAD A DUTY FOR A HEFTY 5 PERCENT FEE TO PERFORM
25 ITS CONTRACTUAL DUTIES WITH THE REQUISITE EXERCISE OF
26 REASONABLE CARE, SKILL, KNOWLEDGE AND FAITHFULNESS
27 REQUIRED BY PRODUCERS OF FIRST-CLASS TOURS AND SHOWS.

28 AND IN SUCH CIRCUMSTANCES THE DUTY OF CARE

1 ROSE BY REASON OF A CONTRACT AND THE CAUSE OF ACTION
2 ARISES OUT OF THE NEGLIGENT MANNER IN WHICH THE
3 CONTRACTUAL DUTY IS PERFORMED, AND THERE'S A VARIETY OF
4 CASES CITED ON PAGE 4 OF OUR MOTION.

5 THE COURT: THE NEGLIGENT MANNER OF PERFORMING
6 THE CONTRACT WOULD BE NEGLIGENT HIRING, RETENTION AND
7 SUPERVISION.

8 MS. CHANG: I AGREE WHOLEHEARTEDLY EXCEPT BUT FOR
9 SLOWING DOWN THE PRODUCTION AND NOT ALLOWING IT TO GO
10 FORWARD. HERE'S -- I LAID OUT WHICH ONES ARE NOT
11 NEGLIGENT HIRING.

12 THE COURT: THAT WOULD BE A STRAIGHT BREACH OF
13 CONTRACT, WOULDN'T THAT?

14 MS. CHANG: I WILL TURN TO WHAT I PUT AS NOT THE
15 NEGLIGENT HIRING AND -- THE STANDARD IN THE INDUSTRY
16 REQUIRED A.E.G. LIVE TO DECLINE MICHAEL JACKSON'S
17 UNUSUAL REQUEST, REQUIRED MICHAEL JACKSON TO RETAIN HIS
18 OWN PHYSICIAN ON HIS OWN TERMS EVEN IF HE WAS FIT OR
19 COMPETENT.

20 A.E.G. LIVE DEVIATED FROM THE STANDARD IN
21 THE INDUSTRY AND/OR FAILED TO ACT REASONABLY BY
22 INSERTING ITSELF IN THE NEGOTIATION PROCESS. THEY
23 CLAIM HE WASN'T EVEN HIRED AT THAT POINT.

24 WE'RE SAYING THE PROCESS IS NEGLIGENT,
25 A.E.G. LIVE DEVIATED FROM THE STANDARD IN THE INDUSTRY
26 AND/OR FAILED TO ACT REASONABLY BY NOT RECOGNIZING THAT
27 THE AMOUNT DEMANDED BY DR. MURRAY WAS SO OUTRAGEOUS
28 THAT THEY SHOULD HAVE BEEN ALERTED TO THE FACT THAT HIS

1 SERVICES WERE ILLICIT AND/OR HE WAS GOING TO BE
2 PROVIDING DRUGS TO MICHAEL JACKSON.

3 THAT'S NOT HIRING -- YOU'RE NOT AT THE
4 HIRING STAGE, WE'RE AT THE BEFORE HIRING STAGE. AND
5 THEN A.E.G. LIVE DEVIATED FROM THE STANDARD IN THE
6 INDUSTRY AND/OR FAILED TO ACT REASONABLY BY FAILING TO
7 POSTPONE OR CANCEL THE "THIS IS IT" TOUR AFTER LEARNING
8 OF MICHAEL JACKSON'S WORSENING DEBILITATED AND PHYSICAL
9 CONDITION.

10 SO WITH THOSE, I'M SAYING PART OF THE
11 ARGUMENT I HEARD FOR -- SINCE APRIL HAS BEEN WE NEVER
12 HIRED HIM, HE DIDN'T -- MICHAEL JACKSON DIDN'T SIGN IT,
13 WE DIDN'T SIGN IT. AND I'M SAYING YOU'RE NEGLIGENT BY
14 ENTERING INTO A NEGOTIATION WITH HIM. WHEN YOU THRUST
15 THAT DOCUMENT IN FRONT OF THAT DOCTOR, BAD THINGS ARE
16 GOING TO HAPPEN, AND THEY DID HAPPEN.

17 AND THAT'S WHERE IT'S DIFFERENT. AND I
18 THINK IT DOESN'T MATTER IF THEY OVERLAPPED. CAUSES OF
19 ACTION CAN OVERLAP.

20 THE COURT: SO ARE YOU SAYING THAT JUST THE FACT
21 THAT THEY NEGOTIATED -- IF THEY'VE NEVER HIRED HIM AT
22 ALL, JUST THE FACT THAT THEY WERE TALKING TO HIM IS A
23 TORT?

24 MS. CHANG: YES, THAT'S WHAT WE'RE SAYING. WE'RE
25 SAYING THAT THE STANDARD IN THE INDUSTRY -- AND WE
26 HAVE, AND I CITED --

27 THE COURT: IS THERE A CASE THAT TALKS ABOUT THAT
28 ANYWHERE? THAT SAYS THAT JUST TALKING TO SOMEBODY

1 ABOUT HIRING THEM IS A TORT?

2 MS. CHANG: I THINK, YOUR HONOR, YOU'RE STILL --

3 THE COURT: BECAUSE YOU'RE TELLING ME THAT IT'S
4 EVERYTHING THAT HAPPENS BEFORE HE'S HIRED.

5 MS. CHANG: AND -- AND AFTER. WE HAVE -- AS YOU
6 KNOW, YOUR HONOR --

7 THE COURT: I'M TRYING TO UNDERSTAND YOUR
8 ARGUMENT.

9 MS. CHANG: I'M SAYING THAT OUR CLAIM IS NOT
10 NEGLIGENT RETENTION, HIRING OR SUPERVISION.

11 THE COURT: RIGHT. SO IT HAS TO BE SOMETHING
12 BEFORE HIRING.

13 MS. CHANG: IN ITS ENTIRETY.

14 IN OTHER WORDS, THERE ARE -- I AGREE WITH
15 MS. BINA THAT THERE ARE SOME BULLET POINTS IN THE
16 COMPLAINT THAT OVERLAPS NEGLIGENT RETENTION, HIRING AND
17 SUPERVISION; BUT THERE ARE SOME THAT DO NOT, AND THAT
18 THEY'RE INDEPENDENT.

19 AND THERE'S NOTHING WRONG WITH OVERLAPPING.
20 YOU CAN HAVE ALTERNATIVE THEORIES ALL THE TIME. THAT
21 HAPPENS ALL THE TIME. THE SAME FACTS COULD GIVE RISE
22 TO DIFFERENT CAUSES OF ACTION.

23 THE COURT: BUT THOSE ARE ADJUDICATED, AND THAT
24 WAS ONE OF MY POINTS, THAT YOU DID PLEAD THOSE AND I
25 ADJUDICATED THEM.

26 MS. CHANG: I'M GOING TO REITERATE THE ISSUES OF
27 DUTY WERE NEVER ADJUDICATED BECAUSE WE ONLY -- ONLY
28 BROUGHT FORWARD TO THIS COURT COMMON LAW SOURCE OF

1 DUTY. THE NEW ISSUE OF DUTY THAT HAS NEVER BEEN
2 CONSIDERED BY THE COURT IS THE LEGAL DUTY OF CARE THAT
3 ARISES FROM THE CONTRACT. NEVER CONSIDERED BY THE
4 COURT.

5 MS. BINA: YOUR HONOR, IF THEY'RE SAYING THAT A
6 CONTRACTUAL OBLIGATION TO MANAGE A TOUR PRODUCTION
7 CREATES A DUTY NOT TO NEGOTIATE ON SOMEONE'S BEHALF, OR
8 NOT TO -- I DON'T EVEN KNOW -- TALK TO DR. MURRAY, I
9 THINK THAT'S WELL BEYOND ANYTHING THAT'S EVER BEEN
10 RECOGNIZED BY CALIFORNIA LAW.

11 MS. CHANG: WELL, WE HAD AN EXPERT STATE IT.

12 MS. BINA: AND WHAT THEY'RE CLEARLY TRYING TO DO,
13 YOUR HONOR, IS GET AROUND THE REQUIREMENTS OF THE
14 NEGLIGENT HIRING, SUPERVISION AND RETENTION TORT, AND
15 THAT'S NOT APPROPRIATE. THEY ALSO SPECIFICALLY SAID IN
16 THEIR OPPOSITION BRIEF ON SUMMARY JUDGMENT THAT THE
17 COMPLAINT SOUNDED IN SIMPLE NEGLIGENCE, AS WELL, AND
18 RAISED ALL OF THESE ISSUES BEFORE.

19 MS. CHANG: BUT NOT THE SAME ISSUE OF DUTY. I
20 LIVE, BREATHE AND EAT AND DIE, AND I WILL ALL THE WAY
21 UP ON THIS PART THAT IS ON PAGE 2, WHICH IS 437C(N)(1),
22 AND THAT WAS OMITTED BY THE DEFENDANTS IN THEIR BRIEF,
23 BUT IT SAYS THAT YOUR HONOR'S ADJUDICATION ON THE
24 MOTION FOR SUMMARY JUDGMENT SHALL NOT OPERATE TO BAR
25 ANY CAUSE OF ACTION OR ISSUE OF DUTY AS TO WHICH
26 SUMMARY ADJUDICATION WAS EITHER NOT SOUGHT OR DENIED.

27 AND I THINK THAT ANYONE COULD LOOK AT THE
28 FIRST AMENDED COMPLAINT AND THE SECOND AMENDED

1 COMPLAINT AND LOOK AT IT AND SAY THAT NO ONE EVER
2 RAISED THE LEGAL DUTY ARISING FROM THE CONTRACT AS A
3 PRODUCER IN 8.1 AND 8.3.

4 AND IF IT WAS NOT CONSIDERED, THEN THAT
5 ISSUE OF DUTY WHICH IS A LEGAL ONE ARISING FROM THE
6 CONTRACT THAT IS ALSO A TORT MEANS THAT IT WAS NEVER
7 ADJUDICATED. IF IT WAS NEVER ADJUDICATED, THEN THE
8 ISSUE IS, IS THERE PREJUDICE, AND IF THERE IS NOT,
9 BECAUSE THEY CLAIM THERE IS NOT, IT IS REVERSIBLE ERROR
10 TO NOT ALLOW A MERITORIOUS CLAIM --

11 THE COURT: YOU'RE RIGHT ON THAT. I AGREE. I'M
12 NOT DISPUTING THAT.

13 MR. PUTNAM: THAT'S NOT WHERE WE ARE.

14 MS. BINA: YOUR HONOR, DO YOU WANT TO HEAR
15 ANYTHING FURTHER FROM ME, OR ARE WE GOOD? I HAVE
16 RESPONSES TO ALL OF MS. CHANG'S STATEMENTS, BUT I DON'T
17 WANT TO BELABOR THE --

18 THE COURT: LOOK ON PAGE 17, WHERE I SAY
19 DEFENDANTS OBSERVE, HOWEVER, THAT CALIFORNIA LAW
20 REQUIRES THAT WHEN ALLEGED FACTS FIT -- OR MORE
21 PROPERLY FIT ONE THEORY OF NEGLIGENCE, PLAINTIFF CANNOT
22 CIRCUMVENT --

23 MS. CHANG: I'M SORRY. CAN YOU TELL US WHERE WE
24 ARE?

25 THE COURT: PAGE 17, LINE 3. DEFENDANTS OBSERVE,
26 HOWEVER, THAT CALIFORNIA LAW REQUIRES THAT WHEN ALLEGED
27 FACTS MORE PROPERLY FIT ONE THEORY OF NEGLIGENCE, THE
28 PLAINTIFF CANNOT CIRCUMVENT THE THEORY'S REQUIREMENTS

1 BY RE-CHARACTERIZING THE CLAIM UNDER SOME OTHER
2 NEGLIGENCE THEORY. AND I THINK THAT'S WHAT YOU'RE
3 TRYING TO DO. IT REALLY IS THE SAME THEORY.

4 MS. CHANG: IF IT IS THE EXACT SAME THEORY, I
5 THINK YOU'RE RIGHT; BUT I HAVE POINTED OUT THAT SLOWING
6 DOWN THE PRODUCTION AND -- AND -- RUSHING IT -- WE
7 THINK ONE OF THE DEVIATIONS FROM THE STANDARD OF CARE
8 FOR A RESPONSIBLE PRODUCER WAS UNDER THE CONTRACT A
9 LEGAL DUTY, WAS TO KEEP THIS SHOW ON THE ROAD -- THE
10 SHOW MUST GO ON, EVEN WITH THE REPORTED CONDITION OF
11 MR. JACKSON.

12 THAT IS NOT ANYTHING TO DO WITH HIRING,
13 RETENTION OR SUPERVISION OF DR. MURRAY. THAT IS ALL ON
14 THEM. AND WE'RE SAYING, "YOU HEARD ALL THESE REPORTS,
15 YOU DID ALL THIS, AND YOU DID NOTHING." THAT IS ALL
16 ALONE IN A LITTLE BULLET OUT THERE, AND THAT'S A
17 MERITORIOUS CLAIM THAT WE HAVE BASED ON THE EVIDENCE
18 PRESENTED, BASED -- THAT ARISES FROM MANAGING THE
19 PRODUCTION THAT THEY GOT A FEE FOR THAT WE'RE SAYING
20 THAT THEY DEVIATED FROM THE STANDARD OF CARE IN.

21 AND THAT IS MERITORIOUS, AND WE HAVE A
22 RIGHT TO BRING THAT TO THE JURY. THAT WAS NEVER
23 CONSIDERED BY THIS COURT.

24 MS. BINA: YOUR HONOR, READING FROM THE -- FROM
25 THE DISMISSED CLAIM, RATHER THAN ACT REASONABLY AND
26 RELAX THE REHEARSAL SCHEDULE SO THAT MR. JACKSON COULD
27 RECUPERATE FROM HIS PHYSICAL PROBLEMS, A.E.G. INSISTED
28 THAT HE ATTEND EVERY REHEARSAL ON A GRUELING SCHEDULE

1 THREATENING THAT IF HE MISSED EVEN ONE MORE, THEY WOULD
2 CANCEL THE TOUR. NOT POSTPONING OR CANCELING THE TOUR
3 WAS AN ACT OF INDEPENDENT NEGLIGENCE DIRECTED AT
4 JACKSON.

5 MS. CHANG: BECAUSE IT IS THE SAME EXACT
6 SENTENCE, WE DID IT UNDER SPECIAL RELATIONSHIP, OF
7 WHICH THERE WAS NONE, JOINT VENTURE, OF WHICH THERE WAS
8 NONE, VOLUNTARY UNDERTAKING, OF WHICH THERE WAS NONE.
9 NOW I'M HERE TO SAY IT'S ALL IN SECTION 8 OF THE
10 CONTRACT.

11 THE COURT: MS. CHANG, ISN'T THAT A WORD GAME?
12 THAT'S WHAT I THINK WAS DISCUSSED IN ONE OF THESE
13 CASES, IS THAT YOU CAN CHARACTERIZE IT HOWEVER YOU
14 WANT, BUT THE COURT ADJUDICATED THE SAME FACTS. YOU
15 CAN CALL IT ONE THING, BUT --

16 MS. CHANG: YOUR HONOR, I WOULD AGREE WITH YOU.
17 YOU TRIED TO ADJUDICATE IT UNDER COMMON LAW THEORIES OF
18 SPECIAL RELATIONSHIP, JOINT VENTURE, AND VOLUNTARY
19 UNDERTAKING BECAUSE NO ONE COULD TELL YOU WHERE THE
20 DUTY CAME FROM.

21 NOW I'M TELLING YOU THE DUTY IS LEGAL, AND
22 IT IS BASED ON CONTRACT OF SECTION 8, TOTALLY MISSING.
23 AND I JUST KNOW THAT PERSONALLY BECAUSE I'M THE ONE
24 THAT NOW -- WHEN MR. TRELL WAS ON THE STAND, I SAID NOW
25 I KNOW WHERE THE DUTY WAS.

26 I KEPT READING YOUR OPINION LIKE THE BIBLE;
27 AND AS I KEPT READING IT, I SAID, OH, MY GOD, NO ONE
28 COULD ARTICULATE WHERE THIS DUTY CAME FROM. WHEN HE

1 SPOKE, I FOUND THE DUTY; AND IT'S IN THE CONTRACT.
2 THEY'RE THE PRODUCER OF THE SHOW.

3 BEFORE, WE WERE GOING ON THEY'RE A
4 PROMOTER, THEY WERE IN A SPECIAL RELATIONSHIP, THEY DID
5 A JOINT VENTURE WITH MR. JACKSON, AND THEY VOLUNTARILY
6 UNDERTOOK TO DO ALL THESE THINGS. THERE IS NO
7 VOLUNTARY UNDERTAKING.

8 THEY WERE THE PRODUCER; AND UNDER THE
9 CONTRACT, IT WAS A LEGAL DUTY, THERE IS A DUTY -- AN
10 ISSUE OF DUTY THAT WAS NEVER RAISED BY THE COURT, AND I
11 THINK I'VE MADE THE RECORD PRETTY CLEAR.

12 THE COURT: OKAY. I'M GOING TO DENY THE
13 MOTION.

14 MS. BINA: THANK YOU, YOUR HONOR.

15 ANYTHING ELSE WE NEED TO COVER TODAY?

16 MS. CHANG: YES. WE HAD SOME OTHER ISSUES THAT
17 YOUR HONOR STATED AT THE BEGINNING.

18 MS. BINA: I THOUGHT WE ADDRESSED THEM ALL. THE
19 FAYE TEXTS WE'RE DEALING WITH TUESDAY. AND WE GOT OUR
20 BRIEF. THE STATEMENTS OF DAMAGES, WE'RE GOING TO SEE
21 IF WE FILED AN OPPOSITION; AND IF NOT, WE'LL EITHER SAY
22 WE'RE NOT FILING ONE OR GET ONE ON FILE.

23 MS. CHANG: DR. EARLEY DEPO IS DUE ON TUESDAY BY
24 THE END OF THE DAY.

25 MS. BINA: I THINK THAT'S IT.

26 THE COURT: OH, THE MS. FAYE --

27 MR. PUTNAM: WE HAVE THE BRIEF NOW, YOUR HONOR.

28 WE CAN GIVE IT TO YOU.

1 THE COURT: AND YOU'RE GOING TO WORK ON THIS
2 INSTRUCTION, RIGHT?

3 MS. CHANG: YES. I'LL START IT, GIVE IT TO
4 YOU.

5 MS. BINA: I'LL RESPOND, WE'LL TRY TO BE
6 CIVILIZED ABOUT IT.

7 MR. PUTNAM: YOUR HONOR, I UNDERSTAND THAT YOU
8 HAVE A CALENDAR TOMORROW, SO ANYTHING WE HAVE TO GET IN
9 TO YOU BY 2:00 TOMORROW.

10 MS. BINA: BECAUSE THE NONSUIT REPLIES ARE DUE
11 TOMORROW.

12 THE COURT: OKAY.

13 MS. BINA: JUST IN CASE YOU WERE ACTUALLY
14 THINKING OF ENJOYING THE HOLIDAY WEEKEND.

15 THE COURT: REASONABLE. I WAS PLANNING ON
16 LEAVING EARLY, BUT I'LL WAIT UNTIL YOU FILE YOUR
17 PAPERS.

18 MR. PUTNAM: WE CAN GET IT TO YOU EARLIER.

19 THE COURT: WHENEVER YOU CAN GET IT IN.

20 MS. BINA: WE'LL GET IT TO YOU AS EARLY AS WE
21 CAN, YOUR HONOR.

22

23 (PROCEEDINGS ADJOURNED TO TUESDAY,
24 SEPTEMBER 3, 2013, AT 9:45 A.M.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE

KATHERINE JACKSON, ET AL.,) NO. BC445597
)
PLAINTIFFS,)
)
VS.) REPORTER'S
) CERTIFICATE
AEG LIVE, LLC, ET AL.,)
)
DEFENDANTS.)
_____)

I, RHONDA NORBERG, CSR NO. 9265, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES, 15520 THROUGH 15669, COMPRISE A FULL,
TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND
TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED
CAUSE ON AUGUST 29TH, 2013.

DATED THIS 29TH DAY OF AUGUST, 2013.

_____, CSR 9265
RHONDA NORBERG, OFFICIAL REPORTER