

IN THE CIRCUIT COURT  
FOR TUSCALOOSA COUNTY, ALABAMA  
(TRANSFER FROM JEFFERSON COUNTY  
CIVIL DIVISION/BESSEMER)

RANDY WADE BICE, et al.,

Plaintiffs,

v.

CASE NO: CV 07-325

MICON, et al.,

Defendants.

REPORTER'S OFFICIAL TRANSCRIPT  
TRIAL TRANSCRIPT - VOLUME 4

BEFORE: HONORABLE JOHN ENGLAND  
Tuscaloosa County Courthouse  
714 Greensboro Avenue  
Tuscaloosa, Alabama 35401

LOCATION: Bama Theatre  
600 Greensboro Avenue  
Tuscaloosa, Alabama 35401  
AND  
Tuscaloosa County Courthouse  
714 Greensboro Avenue  
Tuscaloosa, Alabama 35401

DATE: Friday, September 3, 2010

COURT REPORTERS: Kimberly T. Hoff  
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## A P P E A R A N C E S

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**EXCERPT**

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## P R O C E E D I N G S

Friday, September 3, 2010

11:22 a.m.

(Whereupon, the following was held  
outside the presence of the jury  
venire.)

THE COURT: The primary purpose for asking  
y'all to come before the one o'clock session  
with the jury panel was to discuss what the  
Court intends to do in connection with that jury  
panel.

I have, as you would expect, received  
additional hardships, which I'm going to deal  
with, related to health and some related to  
employment. I will address those. But that's  
only three or four jurors.

What I have been considering is the  
proposal made by Mr. Wells on behalf of Dow.  
And as I understood that proposal, it was  
basically that the Court would excuse a number  
of the relatives and acquaintances of the  
plaintiffs who were identified in court.

I should point out that there were at least  
two jurors who came up to the Court, and because  
of what they perceived to be HIPAA issues, did

1 not disclose the fact that they had worked for a  
2 doctor or healthcare provider who treated some  
3 of the plaintiffs. Of course, we got that  
4 information. And, you know, if you don't have  
5 it, I will pass that on to you.

6 But the bottom line is that it's the  
7 Court's opinion that the Court should get to a  
8 panel of about 90, figure out a way to get to  
9 about 90. 90 would be -- we could actually seat  
10 90 in this courtroom. And that would allow the  
11 parties to do a much more effective voir dire.

12 The question is: How would I get to  
13 approximately 90 jurors? There are a couple of  
14 options.

15 Option number one would simply be to, by  
16 lots, draw 90 jurors from those who are -- from  
17 the approximately 215 or -16, after I've had the  
18 hardships. And then the parties could question  
19 them as they wish to question them during voir  
20 dire. That would be one option.

21 The second option would be to go ahead on,  
22 and, this afternoon, allow the parties to  
23 discuss and to question in some detail those  
24 jurors who expressed a relationship, either  
25 through kin or in-laws or who were friends of or

1 neighbors of and knew the jurors, to allow a  
2 questioning of those to determine whether or not  
3 any of those should be disqualified for cause.

4 And then, after doing that, pick 90.

5 So I wanted to hear from the parties  
6 regarding those proposals.

7 Of course, there is a third alternative,  
8 and that is, after I executed the hardships, the  
9 Court would simply conduct its -- or allow the  
10 parties to do their voir dire questions over at  
11 the Bama Theatre with the approximately 200  
12 prospective jurors.

13 Okay. So let's hear from the plaintiffs.

14 You can sit there. That mic works now.  
15 See, we are high tech now.

16 MR. STEWART: Judge, it was our thought  
17 that the Court had put in process a fair system  
18 for getting the jury in this case. You have  
19 indicated early on that you were going to summon  
20 a number of jurors from which we would draw the  
21 ultimate jury that would decide both our  
22 clients' fate and the fate of the defendants in  
23 this case.

24 And it's our understanding that the Bama  
25 Theatre has been rented, or, at least, we have

1 the opportunity for two days next week. And  
2 then sometime, as I understand it, in the week  
3 after that.

4 We have looked at the law about an  
5 impaneled venire. It's our understanding that  
6 this jury panel or venire has been impaneled for  
7 this particular case, was called for this  
8 particular case. And it's our understanding of  
9 the law that at this time, the jury or jurors  
10 can be dismissed in two ways. One is for cause,  
11 as we understand it, in looking at the statute,  
12 and the other is by peremptory strike. And we  
13 think the process is going along fine.

14 We have this problem. Based upon our  
15 understanding of the law and what can be done  
16 and what can be accomplished, the courts have  
17 said that, certainly, the Trial Judge has broad  
18 discretion in addressing hardship issues and  
19 cause issues that are personal to the jurors.  
20 And we think the Court has done that and  
21 exercised that discretion.

22 To take those people who are friends of and  
23 neighbors of the plaintiffs off the jury  
24 prevents us, frankly, from having the  
25 opportunity to find out, in an appropriate voir

1           dire questioning, whether or not those  
2           witnesses -- I mean, those jurors can set those  
3           feelings aside, whatever they might be, and  
4           render a fair and impartial verdict in this  
5           case. And we think that approach is something  
6           that we should at least be allowed the  
7           opportunity to do, to find out if they live next  
8           to them or if they went to school with them.  
9           Certainly, you are going to have that kind of  
10          situation. In a case where you don't have the  
11          number of plaintiffs that we have here, there is  
12          a distinct possibility that a person might have  
13          gone to school with somebody, gone to church  
14          with somebody, and in the normal circumstances.  
15          And we don't think these are abnormal  
16          circumstances as far as qualifying a juror is  
17          concerned. We should and our plaintiffs should  
18          have the same opportunity to do that. I think  
19          the system as it's presently set out is  
20          working.

21                        We have the added problem, Judge, of not  
22          being able to, if we understand the law -- and  
23          we may be incorrect about that, but I don't  
24          think we are -- if we understand the law to be  
25          this way, we have the added problem of, we do

1 have a large number of clients, and we don't  
2 have the opportunity to ask them if it's okay  
3 with them at this stage of the proceeding for us  
4 to give up something that we feel like is a  
5 right they have, which is to question these  
6 jurors who may live near them or who may have  
7 some kind of relationship with them and see if  
8 we can, in fact, find out, as we understand the  
9 law to give us the right do, as to whether or  
10 not they can render a decision that's fair in  
11 the case.

12 It would be similar to the woman who came  
13 up during the proceedings and indicated that she  
14 had found out something from one of the  
15 dismissed juror's wives on facebook about this  
16 case. And the Court indicated, and I think  
17 rightfully so, that the other side, under those  
18 circumstances, had the right to attempt to  
19 rehabilitate that person. The Court is  
20 absolutely right in connection with that  
21 process. And as I understood, we asked to ask  
22 questions. But as I understood, you wanted us  
23 to do that after you got through with the  
24 identification of those who might know or have  
25 some kind of relationship with some of our

1 plaintiffs in this case.

2 And so, for those reasons, we would have to  
3 object. We are doing it respectfully, but we  
4 would have to object to the process that the  
5 Court is talking about. Because as I understand  
6 the law, if the reason that a juror is dismissed  
7 at this stage -- and I may be all wet about it,  
8 but we've got a couple of cases we would like to  
9 give to the Court. But if a juror is dismissed  
10 at this stage, it has to be for reasons that are  
11 cause reasons. They have to be personal to the  
12 jurors.

13 And a random selection, we think, would  
14 be -- frankly, would fit the term arbitrary and  
15 capricious at this stage of the proceeding.

16 We would like to provide the Court with two  
17 cases that we have looked at that address this  
18 issue.

19 THE COURT: And it's Lamar Killingsworth,  
20 Jr., versus the State of Alabama. And the other  
21 case is Turner versus State of Alabama -- Darryl  
22 D. Turner versus the State of Alabama.

23 I hope you've got them highlighted.

24 MR. STEWART: Well, if you'll turn to page  
25 19, Judge.

1 THE COURT: Okay.

2 MR. WELLS: Is that Killingsworth?

3 MR. STEWART: Killingsworth case. I'm  
4 sorry, Tommy. Killingsworth case.

5 And it's on the right-hand side there. It  
6 begins, with regards to grounds for excusal of  
7 veniremen, and it refers to Section 12-16-63,  
8 Alabama Code 1975.

9 It just says: The Court, upon request of a  
10 prospective juror pursuant to this section shall  
11 determine on the basis of information provided  
12 during an interview with a prospective juror  
13 other competent evidence whether the prospective  
14 juror should be excused from jury service.

15 But then it goes on to cite a number of  
16 cases after that. And it says: A trial judge  
17 has broad discretion in excusing venire members  
18 based on sickness and personal reasons. But  
19 that decision must not be capricious or  
20 arbitrary.

21 And it goes on to say after that, and cites  
22 a number of cases. It generally held, however,  
23 that the Court in the exercise of sound  
24 discretion may excuse a juror before he's sworn  
25 for any reason personal to such person which

1 would make his service as a juror oppressive or,  
2 in fact, for any reason to which the Judge deems  
3 sufficient.

4 Judge, in the Turner case, the same  
5 language appears. And that's on page six of  
6 that case, the same language appears. On page  
7 six, it starts there at four. And it cites the  
8 statute again saying: The Court, upon request  
9 of a prospective juror or on its own initiative,  
10 shall determine on the basis of information  
11 provided on the juror qualification form or  
12 interview with a prospective juror or other  
13 competent evidence, whether the prospective  
14 juror should be excused from jury service. The  
15 jury commission shall enter this determination  
16 on the jury qualification form in the master  
17 list.

18 Then it goes on to B, a person who is not  
19 disqualified for jury service may be excused  
20 from jury service by the Court only upon a  
21 showing of undue hardship, extreme inconvenience  
22 or public necessity for a period that the Court  
23 deems necessary, at the conclusion of which the  
24 person may be directed to reappear for jury  
25 service in accordance with the Court's

1 direction.

2 It says in -- under Blackmon versus State,  
3 again, and it cites that, it generally held,  
4 however, that the Court in the exercise of sound  
5 discretion may excuse a juror before he's sworn  
6 for any reason personal to such person which  
7 would make his service as a juror oppressive or,  
8 in fact, for any reason for which the Judge  
9 seems sufficient.

10 And, Judge, that's the basis for our  
11 objection to this process that the Court is  
12 suggesting. As we say, we feel like we are  
13 raising this for four clients, but --

14 THE COURT: Yes, but -- thank you,  
15 Mr. Stewart. Let me just find out what your  
16 position is regarding alternative number two.

17 MR. STEWART: What is that alternative,  
18 Judge? I had just heard about those today. And  
19 if you could tell me, I would --

20 THE COURT: Alternative number one is that  
21 I would just simply -- you know, there are a  
22 couple of more hardships that I've gotten, some  
23 more medical stuff.

24 MR. STEWART: Right.

25 THE COURT: In fact -- and there's a -- the

1 lawyer who represents a number of the insurance  
2 companies, those are matters which I think will  
3 probably be persons who would be excused for  
4 cause in any event. And I can do them now  
5 rather than wait until the end to do them.

6 MR. STEWART: Certainly.

7 THE COURT: Apart from those, what I -- the  
8 three options I discussed was option one being,  
9 simply reduce the number after I excused the  
10 hardships to a manageable number that could be  
11 held here, which would be either by drawing lots  
12 or otherwise.

13 Option number two would be to, first of  
14 all, consider any challenges for cause such as  
15 kinship and relationships, and then ask -- allow  
16 the parties to question those persons to  
17 determine whether or not they should still  
18 remain in the pool, which would satisfy the  
19 concerns about counsel for both parties having  
20 an opportunity to question jurors who may be  
21 rehabilitated.

22 And then once we get -- once we have  
23 excused whoever should be excused on that basis,  
24 then determine a method for -- such as every  
25 other juror, reducing the venire to that so that

1 we can come over here.

2 My biggest concern, quite frankly, in that  
3 connection, is that, given the kinds of  
4 questioning that I think the parties will  
5 undertake, it's going to be very difficult to do  
6 that effectively over in the Bama Theatre  
7 because you can't hardly see the jurors in the  
8 back. I can't. And to make a judgment about  
9 how they are -- what their opinion is about a  
10 given matter, and to be able to question them in  
11 the way you want to question them -- it's going  
12 to be difficult if I had 90. But if I've 200,  
13 it's going to be even more difficult.

14 So that's really the -- if the  
15 defendants -- if the plaintiffs are objecting to  
16 not having an opportunity to rehabilitate,  
17 option two would allow that. You know, so that  
18 they would go -- and what would happen is that  
19 they would go back into the pool of  
20 approximately 200. And then it would be from  
21 that 200 that I would take either the every  
22 other one or draw lots. So there would not  
23 be -- it would not favor any party.

24 So, by that, there may be some who would be  
25 excluded. But I think the Court's

1 responsibility is to provide a cross-section to  
2 make sure it's fair to both parties.

3 So do you understand the second part, the  
4 second proposal?

5 MR. STEWART: Yes.

6 THE COURT: Okay. So now, is it -- is your  
7 primary objection, then, to the Court seeking to  
8 come up with a method to reduce the 200 to a  
9 number that could sit in this courtroom? Is  
10 that the primary focus of it? If I afford the  
11 parties the opportunity to rehabilitate any at  
12 this stage?

13 MR. STEWART: Well, I guess what I'm  
14 saying, Judge, in connection with proposal  
15 number two is, if the Court had in mind -- and  
16 as I understand it, the Court doesn't have that  
17 in mind -- but if the Court has in mind removing  
18 those people from the jury, I guess for some  
19 kind of cause that is established in the Court's  
20 mind now, because they have a relationship with  
21 the parties, before we have the opportunity to  
22 talk to them and see if that relationship would  
23 prevent them from rendering a fair and impartial  
24 verdict in the case, if they could put it aside,  
25 and then picking from the reduced number after

1           that, a number that would get us to 90, I do not  
2           think that would be fair to the plaintiffs.

3                     I think, if we went through the process  
4           that the Court is talking about, it may be --  
5           and there are a large number of those people,  
6           Judge, who indicated that they knew a number of  
7           people on this -- who are plaintiffs in this  
8           case.

9                     And I think if we went through the voir  
10          dire process -- all same saying is, if we went  
11          through the voir dire process, I don't think,  
12          based on what I've seen this jury do so far  
13          about hardships on their feelings about  
14          things -- in fact, one little lady was willing  
15          to correct the Court -- I think they would be  
16          honest with us and tell us what their feelings  
17          are, and we may get through with enough in that  
18          process, and for other reasons, get us down to  
19          the number as we move through the normal voir  
20          dire. That's all I'm saying.

21                    The first place, I don't think it would be  
22          fair to remove everybody who knows a plaintiff  
23          or lives near a plaintiff or graduated --

24                    THE COURT: Wait, wait. I don't want to  
25          debate something I've already said. That's not

1 the question I asked you. I want you to address  
2 the question I asked you. I want you to listen  
3 very carefully to me. Because you must not be  
4 in order to be making that point.

5 Here is what I'm saying: I am saying, at  
6 this point -- let's put it like this: Let's  
7 say, today, what I will do is allow the parties  
8 to question all of the -- okay. There are some  
9 individuals who said they were next-door  
10 neighbors. That doesn't disqualify them.

11 MR. STEWART: Right.

12 THE COURT: Okay. But it certainly raises  
13 a question.

14 MR. STEWART: Well, I agree with that.

15 THE COURT: All right. So everyone who  
16 knows a plaintiff, those persons would be voir  
17 dired or questioned individually. And then,  
18 after all of that is done, the Court will make a  
19 judgment as to whether or not, for that reason,  
20 they should be excused for cause. And that  
21 would be -- it would be done today. They  
22 wouldn't have to wait -- it might take us months  
23 to just do voir dire. You know, I don't know  
24 how deep and how extensive your questions will  
25 be. Although, you know, I reserve the right to

1 stop you if I think you are going too far. Not  
2 just you, but anybody.

3 MR. STEWART: All right.

4 THE COURT: But what I'm saying is, that  
5 process would be undertaken, and then we would  
6 try to do that today. And those individuals who  
7 ought to be excused for cause after that's done,  
8 that would be done today.

9 Now -- so no party would be giving up the  
10 right to rehabilitate someone who made a  
11 statement. You know, I don't think that the  
12 fourth cousin or the third cousin is a basis for  
13 an excuse. It certainly would require some  
14 further inquiry.

15 MR. STEWART: Certainly.

16 THE COURT: Now, I'm talking about doing  
17 that first. That's option two, doing that  
18 first. And then after that process has been  
19 completed, you then have a venire or a panel of  
20 jurors who have been excused for cause based on  
21 matters we know about at the time.

22 All right. And then I'm anticipating that  
23 group might result in anywhere from ten to 30.  
24 We still would have up to -- we would still have  
25 close to 200. We still would have probably 180,

1 190.

2 If, in fact, the Court determined that  
3 those persons should be struck for cause, that  
4 process would be determined today. And then the  
5 group that remains, the Court will look at a way  
6 to pare that down to bring them over here. And  
7 that's really what I'm asking the parties about,  
8 that last part.

9 So you don't have to argue about --

10 MR. STEWART: Oh, I understand.

11 THE COURT: -- your clients having the  
12 right to challenge those individuals who --

13 MR. STEWART: I understand that.

14 THE COURT: Okay.

15 MR. STEWART: I understand that.

16 THE COURT: Now, so, if you are challenging  
17 the Court doing that, then that's what I wanted  
18 to address. I want to address primarily if you  
19 are challenging the Court further reducing the  
20 panel after I have dealt with those cause  
21 issues.

22 MR. STEWART: Judge, I -- if the Court is  
23 insistent, we would have to object to that on  
24 the basis of the law as we understand it. But I  
25 understand what the Court is trying to do.

1           I would say this much, there are a large  
2           number of people who have indicated -- I have a  
3           list of those. And it may be that a number of  
4           them knew a number of people. But I think you  
5           are going to get more, if those people are  
6           straightforward and honest about it, than 10 to  
7           30. You may get far more than that. My only  
8           point would be that I think there are more  
9           reasons for perhaps somebody getting off a jury  
10          than just that. And that's all I was saying. I  
11          think we will get down, under the regular voir  
12          dire, to probably close to what the Court wants  
13          to do. I mean, that's my feeling about it.  
14          Because I know that there are some hardship --

15                 THE COURT: Well, hold on. I think we are  
16          not really communicating. I think we are really  
17          not communicating on that point. I don't think  
18          we will get down to that unless we come up with  
19          some way to cut from 180, 190 down to 90 or  
20          something like that.

21                 Otherwise, we will still be over at the  
22          Bama Theatre, still doing -- trying to question  
23          folks in that environment. And that's very  
24          difficult. I find that to be very difficult to  
25          really be able to assess the responses and to

1 talk to jurors more directly and understand what  
2 they are saying, you know. And that's really  
3 what I'm trying to address at this point.

4 I'm certain that I can -- we can go over  
5 there this afternoon, and we can have all of  
6 those jurors who either said they were friends,  
7 neighbors, worked with them, related to them,  
8 that we can ask those persons questions, and I  
9 can allow the parties to ask them questions  
10 about those relationships and make a cause  
11 determination for those individuals and see what  
12 number we will be left with.

13 I'm fairly certain -- for example, I know  
14 one juror who stated that a plaintiff was her  
15 uncle by blood. Well, I would be shocked if the  
16 defendants didn't challenge that person for  
17 cause. I'm sure the plaintiffs would be shocked  
18 if the defendants didn't challenge that person  
19 for cause.

20 Well, I propose to eliminate that person  
21 today. That's what I -- that's what I'm  
22 saying. Now, there may be others. For example,  
23 those two people who treated a couple of  
24 plaintiffs. You know, I would expect -- you  
25 know, the plaintiffs may want to try to

1           rehabilitate those persons. We would do that  
2           today. There are some people who --

3                   MR. STEWART: I have no problem with  
4           telling the Judge that at this particular stage  
5           of the proceedings, we wouldn't object to you  
6           dismissing both of those. That's what I'm  
7           saying. I think if we got to those kind of  
8           situations, where we could make those kinds of  
9           decisions, and I don't mind telling you that,  
10          then we very well may get to a lower number that  
11          the Court feels we would get to.

12                   And I don't mean to disagree with you out  
13          of disrespect or anything else --

14                   THE COURT: Oh, I'm not concerned about  
15          that.

16                   MR. STEWART: What I'm saying is, we've  
17          looked at some hardship issues that some of  
18          these people have. We've looked at some of  
19          these relationships that I'm certain, as I said,  
20          these jurors are going to be honest about if  
21          they can't put that aside. And I welcome the  
22          opportunity to do that part today. And I think  
23          the way the process would work is, we would  
24          winnow it down to a fair number fairly quickly  
25          in the process as it moves forward.

1           With all due respect, I did not think this  
2 Court could get through the 1400 plaintiffs, and  
3 neither did Mr. Wells. We said you were wrong.  
4 We said it would take three days, but you did  
5 it, and in less than three days, in one day.  
6 And we've got the information that we needed out  
7 of that. So sometimes the Court is smarter than  
8 us lawyers, so we are more than willing --

9           THE COURT: Did you say sometimes?

10          MR. STEWART: This Court is always smarter  
11 than the lawyers. I will --

12          THE COURT: That's fine, Mr. Stewart. Go  
13 right ahead on.

14          MR. STEWART: I would like to revise my  
15 remark.

16                We thought we had experience, and we  
17 thought we could do things, and it wasn't  
18 possible. But as it worked out, it was possible  
19 to do that. And so that's what I'm saying.

20                And if you get to the point where you need  
21 to do it, and you want us to say which process  
22 we think is fair, I think drawing lots is fair.  
23 I mean, that's just my thought about it.

24                I don't think that fits what the law allows  
25 you to do, and I say that in all respect.

1 THE COURT: Mr. --

2 MR. STEWART: But I have to put that -- I  
3 know, Judge. You say, don't say that, Donald.  
4 But I have to put that on the record to protect  
5 me and Mr. Davenport.

6 THE COURT: Okay. I will simply say that  
7 Nathan and I looked at this yesterday, as we  
8 tried to -- see, I put him in now whenever I --  
9 it adds more weight to anything that I say or do  
10 here. But we looked at this.

11 MR. STEWART: Yeah.

12 THE COURT: And ultimately, the conclusion  
13 was that we -- it would be -- it would place  
14 the -- we considered simply drawing lots or some  
15 other process to get down to a reasonable  
16 number. And we're uncertain about the Court's  
17 authority to do that, you know, absent  
18 hardships.

19 And we thought that the best way to proceed  
20 would be to try to go ahead on and at least  
21 address the hardships and the causes that we  
22 knew about so those persons don't have to come  
23 back. We don't have to pay them. We don't have  
24 to provide space for them -- we, meaning the  
25 state -- when we know they are going to be

1           excused, as opposed to what I typically do, is  
2           wait until all of the questions have been asked,  
3           then make judgments about, you know, for-cause  
4           strikes.

5                        So it was my thought, and after considering  
6           that, that an attempt would be made to eliminate  
7           or excuse not only the hardships, but the  
8           for-cause jurors today, and then have -- and  
9           then decide, after that's done, the tough issue  
10          of, can we get to a number that we can fit into  
11          this courtroom? And we counted that we could  
12          fit in about 90. We could get 90 in here.

13                       That's how I intend to proceed today.

14                       MR. STEWART: All right, Judge.

15                       THE COURT: And I guess what it comes down  
16          to is, let's hear from the defendants now that  
17          I've heard from the plaintiffs. I think the  
18          plaintiffs' position, as I interpret it is, if  
19          there are jurors who ought to be excused for  
20          cause -- we know ought to be excused for cause,  
21          we know that now, there is no reason not to go  
22          ahead on and excuse them today. I think that's  
23          about what I could -- but that's about the only  
24          thing that the plaintiffs would agree can occur  
25          today.

1 MR. STEWART: Yes.

2 THE COURT: Okay. And anything else, the  
3 plaintiffs would object to?

4 MR. STEWART: Absolutely.

5 THE COURT: Okay. I think I got it. All  
6 right. Let's hear from the defendants regarding  
7 the proposals.

8 MR. WELLS: Judge, Tommy Wells for Dow, and  
9 I think for all of the three defendants.

10 Your Honor, we think the proposal that you  
11 presented is probably workable. I do think we  
12 are going to end up -- I think, number one, we  
13 ought to go ahead and get rid of the people who  
14 said they were related now.

15 I mean, you asked yesterday could we just  
16 excuse the -- I think it was about 18 or 20 that  
17 stood up at the end that said they were  
18 related. As far as the defendants are  
19 concerned, we would be fine with that. Some of  
20 them probably don't precisely meet the degrees  
21 of relationship, but we would be fine with that  
22 rather than taking those up on an individual  
23 basis. Some of them clearly do. Like you said,  
24 the uncle and there is a brother-in-law.

25 So I think perhaps the most workable way to

1 do it would be to, first, let's go ahead and  
2 excuse the people who are related, which  
3 whatever ones we can agree on with the  
4 plaintiffs. And, like I said, we would be fine  
5 with all 18 or 20.

6 Then question the venire. And it would be  
7 a smaller group of the venire. I think there  
8 are probably 70 or so, -7, not counting the  
9 relations that said they knew the people. So  
10 our questioning would really be only of those,  
11 you know, 70 or so people. And go ahead and get  
12 rid of those for cause.

13 I think you are going to ultimately end up,  
14 however, with a bigger number than will fit in  
15 this courtroom. And so I think you are going to  
16 have to end up having to reduce it down to the  
17 90.

18 We disagree with Mr. Stewart about your  
19 authority to do that. The cases that he cited  
20 had to do with excuses. We've actually found a  
21 case. And unfortunately, I only have one copy  
22 that I was going to give to the Court.

23 MR. STEWART: Oh, my goodness.

24 MR. WELLS: I meant to copy it, and I  
25 forgot.

1                   THE COURT: We have a copy machine over  
2 there.

3                   MR. WELLS: I understand. And it's  
4 highlighted, Judge.

5                   THE COURT: Appreciate it.

6                   MR. WELLS: It's a case called Lewis versus  
7 State. And it's from the Court of Criminal  
8 Appeals, so it was dealing with the criminal  
9 side. But it really, I think, applies here.

10                   What happened in that case is, the -- there  
11 were -- it was a criminal case. They did the  
12 general qualifications. The attorneys conducted  
13 their voir dire. And they ended up, after the  
14 excuses for cause, with 49 jurors instead of  
15 48.

16                   And the defendants said, we object because  
17 the State now gets one more strike than we do.

18                   And the Court said, well, I will fix that,  
19 and instructed the clerk to give him a list of  
20 48 instead of 49. And I think that's pretty  
21 much the position you're in here.

22                   And so, I think you've clearly got the  
23 authority to further reduce the venire.

24                   We would be fine with what you indicated as  
25 your option two. I just think it would be we

1           could reduce the questioning further if we just  
2           agreed to let the relatives go. And I will give  
3           you this case, Your Honor. Or give it to Nathan  
4           and he can copy it.

5                         THE COURT: Yeah, give it to Nathan.

6                         MR. STEWART: May I comment on that case?

7                         THE COURT: Yes, uh-huh.

8                         Are you copying it, Nathan? Because I  
9           don't want Mr. Stewart to comment on a case he  
10          doesn't have a copy of. Unless you have it. Do  
11          you already have it?

12                        MR. STEWART: I don't have it, Judge. I  
13          just have something in the annotation of the  
14          rule that I cited about your authority. And I  
15          think in that case -- and I may be wrong about  
16          it, because I just glanced at this last night  
17          and this morning -- but my understanding is that  
18          in addition to getting it down to 48 so they  
19          would have equal strikes, there was a personal  
20          excuse considered by the judge in that case that  
21          was personal to the juror who was dismissed.  
22          That's just my understanding of it from what's  
23          stated in the little blurb about that case.

24                        They just said, the Court didn't abuse its  
25          discretion because he not -- didn't just get it

1 down to 48 so they would have equal strikes, but  
2 he also had something in the record about a  
3 personal excuse that was personal to that  
4 juror. That's my understanding of the case.

5 I don't have it, but I just read that  
6 either last night or this morning. If I can get  
7 the case, I can show you where that is, I think.

8 THE COURT: Okay. We've got another case  
9 that y'all should look at, Adams versus State,  
10 620 Southern -- I say we -- Nathan. I give  
11 credit where credit is due -- 620 So.2d 138.  
12 And it's -- I'll read to you what it says. It  
13 doesn't go into much detail, but it says, the  
14 record shows -- well, first of all, the  
15 appellant, that's the defendant, objected to the  
16 manner in which the jury venire was impaneled on  
17 the grounds that there was no random selection  
18 of venire members as required by \*12-1674 and  
19 \*12-16100.

20 Then it says, the record shows that the  
21 venire in this case contained too many members,  
22 and that, essentially, the trial court excused  
23 those members who did not want to serve in order  
24 to reduce the venire members -- membership to  
25 24. Here, the venire members were drawn and

1           excused on a nonselected basis in accordance  
2           with 12-16100.

3                       Here, the trial court did not select or  
4           single out which members to excuse. And so it  
5           said the appellant has failed to demonstrate  
6           that the trial court abused his discretion,  
7           excusing any member in the venire.

8                       So, you know, that's another case that  
9           y'all should look at, as we get to a point where  
10          this Court either decides to go with whatever is  
11          left after we make a for-cause excusal.

12                      So the question for me at this point is,  
13          how do we proceed when we go over there at one  
14          o'clock, to try to address those who ought to  
15          be -- to make a determination about excusing for  
16          cause? Any suggestions?

17                      ( A discussion was held off the  
18                      record, after which the following  
19                      occurred.)(attorney conference)

20                      MR. WELLS: I think Mr. Stewart and I are  
21          in agreement to -- and we will just have to look  
22          at the list -- excuse those that are clearly  
23          within the prohibited degree of blood or  
24          marriage relationship. And then start looking  
25          at the 70 or so that indicated they had some

1 other personal relationship with the plaintiffs.

2 THE COURT: Okay. Do we know who those  
3 persons are?

4 MR. STEWART: Judge, we have a list of  
5 those people, based on a compilation of all of  
6 our people who looked at that.

7 MR. WELLS: And we do too. And he can we  
8 can probably reconcile --

9 MR. STEWART: We'll be glad to compare that  
10 during the lunch hour and have been that list  
11 for the Court. I think that would be -- that's  
12 fine with me to do it here.

13 MR. WELLS: With that number, Judge, I  
14 think it's going to be a number that would fit  
15 over here. And so we could just bring those if  
16 you wanted to get out of the theatre, the 70 or  
17 so. And I'm guessing. It's no more than 90, I  
18 know. Particularly if we get rid of the blood  
19 relatives.

20 MR. STEWART: Yeah. And, as I understand  
21 it, the Court is going to get rid of some for  
22 cause, too, today. Is that --

23 THE COURT: Yeah, a couple of them.

24 MR. STEWART: Yeah, that's what I thought.

25 THE COURT: I'm going to take it up when I

1 get there with them. But, yes, that's my  
2 intent. I've got a couple more health concerns  
3 referenced by some of them, and I've got an  
4 employment concern. And we will take that up  
5 when we get over there.

6 Now, so what then should I do with the  
7 remainder? Send them home and tell them to be  
8 back Tuesday?

9 MR. STEWART: Judge, we would prefer you  
10 send them to the pep rally.

11 THE COURT: Is there a pep rally?

12 MR. STEWART: I don't know. I just know  
13 that some of them are probably pretty eager to  
14 get to whatever festivities there are. I think  
15 we have a few Bama fans over there too.

16 THE COURT: So should we then call out the  
17 names of those persons to be questioned further  
18 and ask them to reassemble here?

19 MR. STEWART: Yes.

20 MR. WELLS: Yeah, I think so, Your Honor.

21 MR. STEWART: I think so, Judge.

22 THE COURT: Okay. Now, we won't have a  
23 seating chart. But I guess we can get by.

24 MR. WELLS: It sure would be better with a  
25 seating chart with that number if we could get

1 one.

2 CLERK OF COURT: I could do one.

3 MR. STEWART: Judge, with the number of  
4 times they stood up, I feel like I know most of  
5 the 70 pretty well.

6 THE COURT: Okay. Why don't --

7 MR. WELLS: Judge, I apologize. I'm just  
8 raising a practical -- I'm just thinking about  
9 starting at 1:00 o'clock on Friday afternoon.  
10 I'm not sure how far we are going to get on  
11 Friday afternoon with -- even with the 70, other  
12 than, perhaps, getting them here and getting  
13 them organized and getting them seated in a  
14 seating chart. Maybe that may be the best way  
15 to proceed this afternoon, and --

16 MR. STEWART: And do what? Say the magic  
17 words?

18 MR. WELLS: Start talking to them on  
19 Tuesday.

20 MR. TAYLOR: And have the other ones come  
21 in in the afternoon.

22 MR. STEWART: Judge, I agree with  
23 Mr. Wells. I won't leave him out there by  
24 himself.

25 MR. WELLS: Let the record reflect, that

1 Mr. Stewart agreed with me.

2 THE COURT: Okay. Well, what I need to  
3 know is whether or not there will be an  
4 identification of those jurors who should be  
5 excused based on the relationship? Will we do  
6 that first?

7 MR. STEWART: Yeah, we can do that.

8 MR. WELLS: Yeah.

9 THE COURT: All right. And so are you  
10 telling me that the number still would be 70?

11 MR. WELLS: I'm not sure. I'm guessing  
12 it's around 70, Judge. And I hadn't --

13 THE COURT: I thought the 70 included those  
14 who claimed to be related.

15 MR. WELLS: I would have to look again.

16 MR. STEWART: We've got a pretty extensive  
17 list, Judge. I have not counted them. But we  
18 have a pretty extensive list of people who knew  
19 folks on this.

20 MR. WELLS: It's certainly less than 90.  
21 Once we get the relatives off, I know it's less  
22 than 90.

23 MR. BICKS: So, Judge, the numbers are 19  
24 who have the -- some degree of blood  
25 relationship. And then a total of 96 who have

1 indicated some connection, kind of, to the  
2 plaintiffs. And that 96 includes that -- what  
3 is it 19 -- the 19, right? So that's 70.

4 MR. WELLS: One way or another, we get  
5 below 90.

6 MR. STEWART: I would say this much, if you  
7 just take the blood kin out, we are almost at  
8 80-something. That's why I say, Judge, if you  
9 follow that process, we may be able to go  
10 through there fairly quickly.

11 THE COURT: I don't know where you get your  
12 math from, Mr. Stewart. But if you were to take  
13 all 90 of the folks that we are talking about,  
14 if all of them were to go, yeah. You know, we  
15 would be down to about a hundred, if --

16 But, I mean, if all 90 people who had  
17 some -- were to be excused for cause, we would  
18 get down there. But I don't expect that to  
19 occur.

20 MR. STEWART: Judge, though -- all I would  
21 say, though, is if you had 100, you could  
22 situate them in that auditorium, where you could  
23 get down on --

24 THE COURT: Oh, I see.

25 MR. STEWART: -- the floor and see those

1 people. And I think you could fairly quickly  
2 get to some that might go once we begin voir  
3 dire. That's all I'm saying. And it would be  
4 much easier to deal with --

5 THE COURT: Okay. The only -- and this is  
6 not a strong disagreement. Doing what we are  
7 doing in the Bama Theatre would be difficult.  
8 That's -- you know, I think that we would be  
9 better off. But doing what we are doing in the  
10 Bama Theatre would be difficult.

11 Okay. All right. When we get over there  
12 at 1:00, I'm going to go through the remaining  
13 hardships. And if y'all can identify the  
14 blood -- or if y'all can identify the relatives  
15 who ought to be excused for cause, I will excuse  
16 those individuals. If there is any questions  
17 about them, whether or not they satisfy the  
18 blood relative, I will just have them come up  
19 and we can find out in more detail, and I'll  
20 allow you to ask them questions to make sure we  
21 are clear on the blood relatives.

22 And after that's done, we will place them  
23 in recess for a period of time and ask them to  
24 assemble here. And during that time, the clerk  
25 can try to -- you can try to work on a chart for

1           that group.

2                   And perhaps if y'all gave her that number  
3 now, she could give it to some -- well, I guess  
4 they are on lunch now, aren't they?

5                   CLERK OF COURT: Well, not everybody. I  
6 mean, what are you talking about?

7                   THE COURT: See, they've got a list of  
8 those individuals. Now, I'm assuming they are  
9 alphabetical already.

10                   Don't you? So you can make -- you could  
11 actually be making out a chart for the  
12 courtroom, you know, now.

13                   CLERK OF COURT: Yeah, if you make me a  
14 list, I can check them off and make a new list.

15                   THE COURT: And then after we finish  
16 whatever we do over there, I can excuse everyone  
17 except those named individuals and ask them to  
18 be back at the Bama Theatre at 1:30 on Monday --  
19 I mean, Tuesday.

20                   MR. WELLS: Or nine o'clock Wednesday may  
21 be better because if --

22                   MR. WILSON: He's talking about the others.

23                   MR. WELLS: I think it would take us about  
24 a day.

25                   THE COURT: Oh, I plan to do some

1 questioning today.

2 MR. WELLS: Okay.

3 THE COURT: Once we get them seated, I plan  
4 on asking -- for example, my notes indicate that  
5 there are some jurors who live right next door  
6 to a plaintiff. So you know -- you know, we are  
7 going to start with those -- those like that.  
8 And then -- those that my notes indicate, they  
9 live next door. And those who may not be  
10 relatives who would be disqualified based on  
11 kinship certainly ought to be questioned. So we  
12 may be able to tell those they don't have to  
13 come back. That's what I'm trying to  
14 accomplish.

15 So we are talking about Tuesday here;  
16 correct?

17 MR. WELLS: That's correct, Your Honor.

18 THE COURT: And then Wednesday for the  
19 remainder --

20 MR. STEWART: Right.

21 THE COURT: -- at the Bama Theatre.

22 MR. DAVENPORT: Right.

23 THE COURT: All right.

24 MR. STEWART: Judge, out of curiosity, do  
25 y'all ever use this for prospective jurors,

1           this -- the jury box when you are doing voir  
2           dire?

3                         THE WITNESS: We use it for the  
4           organizational session, but we've never used it  
5           for -- but we can.

6                         MR. STEWART: Tommy, said you did six  
7           generally per bench and there's is 14 back  
8           there.

9                         THE COURT: We were thinking about seven,  
10          weren't we?

11                        CLERK OF COURT: We used to put seven to a  
12          bench and there is just --

13                        MR. WELLS: \*seven and seven will be 98.

14                        MR. STEWART: Out there? Well, if you  
15          added the 14, you could get a little over a  
16          hundred in here.

17                        THE COURT: You know, I would hate to be  
18          the one who decides who gets to sit there and  
19          who's going to sit out there.

20                        But, you know, I will just say you are  
21          chosen, Mr. Stewart. I will tell them -- I'll  
22          put it on you.

23                        MR. STEWART: Oh, come on, Judge.

24                        MR. WELLS: Just be sure and tell them he's  
25          the one that made them come back this afternoon.

1 MR. STEWART: I did not do that.

2 THE COURT: All right. So while you are  
3 eating, if you will see if there are any jurors  
4 that there is no question that they should be  
5 excused based on kinship. But we are going to  
6 have a few minutes because -- you will have a  
7 few minutes to continue doing that, because once  
8 we get over there, there are a couple of people  
9 I'm going to call up, so you can be working on  
10 that, too.

11 MR. STEWART: Could we get there, say,  
12 1:15, Judge?

13 THE COURT: Well, we told the jury to be --  
14 yeah, we told them to be there at 1:00, so I'm  
15 going to be there at 1:00.

16 MR. STEWART: All right. We will be there  
17 at 1:00.

18 THE COURT: Well, if y'all want to get  
19 there at 1:15, that's fine, but we are going to  
20 get there at 1:00.

21 MR. STEWART: Thank you, Judge.

22 THE COURT: But you may want to hear the  
23 hardships.

24 Do y'all have the names of those two  
25 jurors, who treated them? You don't?

1 MR. WILSON: Gills is one of them --

2 THE COURT: Those need to be added to that  
3 list.

4 MR. WILSON: He was excused. Gills.  
5 Charles Gills.

6 CLERK OF COURT: Charles Gills.

7 THE COURT: What was that lady's name?

8 MR. WILSON: I'm trying to find it, Judge.

9 I think it's Kristi Brown, Your Honor.

10 Demetrice Davis. I think that's it.

11 MR. DAVENPORT: He is -- these are people  
12 who worked at, like, a hospital?

13 MR. STEWART: Worked at a hospital and  
14 treated our plaintiffs.

15 MR. WILSON: Demetrice Davis and Charles  
16 Gills.

17 CLERK OF COURT: Demetrice is a female.  
18 Yeah, she is, I promise.

19 THE COURT: Okay.

20 MR. WELLS: Just so you know, the woman who  
21 got the facebook contact, Ms. Ward, we agreed to  
22 put her on that list with the -- treated with  
23 the people who came up too.

24 THE COURT: We hadn't already excused her?  
25 I thought y'all agreed to excuse her.

1 MR. WELLS: No, we had not, but we do now.

2 MR. STEWART: Judge, I want you to note for  
3 the second time, I've turned night into day.

4 THE COURT: That's right. Demetrice Davis,  
5 she treated three jurors. So those will be the  
6 two -- if they have not been, they should be  
7 added to that list.

8 MR. DAVENPORT: Okay.

9 THE COURT: So what I'm going to do then,  
10 is I'm going to call those lists of jurors and  
11 tell them to reassemble over here. And the  
12 remainder, I'm going to excuse them until  
13 Wednesday at nine o'clock at the Bama Theatre.

14 (Whereupon, the Court was in recess  
15 from 12:30 p.m. until 1:13 p.m.)

16 (Whereupon, the following was held  
17 inside the presence of the jury  
18 venire.)

19 THE COURT: May I have your attention,  
20 please? Someone who is driving a green Ford  
21 Explorer, parked right outside by the dumpster,  
22 that needs to be moved. It's blocking the  
23 street. Is anybody in here with that?

24 Okay. While we are waiting on you to come  
25 back, let me ask the following jurors to come

1 forward: Peggy Wilson. Is Peggy Wilson here?

2 The juror with the IT problem from the  
3 University. Do you know who you are?

4 PROSPECTIVE JUROR RACHNA AGRAWAL: I am.

5 THE COURT: Is that you?

6 PROSPECTIVE JUROR RACHNA AGRAWAL: Yes.

7 THE COURT: Okay. I need you to come  
8 forward. And Juror Cynthia Blount. If you will  
9 come forward.

10 I also need the juror dispatcher with the  
11 sheriff's department. Where is the dispatcher  
12 with the sheriff's department? I need you to  
13 come forward.

14 (Whereupon, the following was held  
15 outside the presence of the jury  
16 venire.)

17 PROSPECTIVE JUROR RACHNA AGRAWAL: Rachna  
18 Agrawal.

19 THE COURT: Okay. Now, the Court received  
20 a letter indicating that your presence was  
21 essential for the IT to operate during the next  
22 couple of months.

23 PROSPECTIVE JUROR RACHNA AGRAWAL: Yes,  
24 sir.

25 THE COURT: So what I need to do is get

1 some further explanation on that.

2 PROSPECTIVE JUROR RACHNA AGRAWAL: Okay.

3 THE COURT: And so tell me exactly what the  
4 problem is.

5 PROSPECTIVE JUROR RACHNA AGRAWAL: Well, my  
6 role is to support university student systems.  
7 And I'm the only one at this time. Because two  
8 people -- one is leaving on Tuesday, and one was  
9 just let out last Tuesday. So I'm the only one  
10 to support those services for the registrar's  
11 office at the university office.

12 THE COURT: Is that -- are they still in  
13 the admissions part of that?

14 PROSPECTIVE JUROR RACHNA AGRAWAL: It's not  
15 admissions. It's the university registrar's  
16 office.

17 THE COURT: I see. Okay. All right.  
18 Based on that circumstance, the Court is going  
19 to excuse you from further service.

20 PROSPECTIVE JUROR RACHNA AGRAWAL: Okay.  
21 Thank you.

22 THE COURT: All right. She is going to  
23 give you a card and you are excused.

24 PROSPECTIVE JUROR RACHNA AGRAWAL: Okay.

25 PROSPECTIVE JUROR CYNTHIA BLOUNT: Cynthia

1 Blount.

2 THE COURT: All right. Now, I have  
3 received a letter from your employer, which is  
4 saying that you are a key coordinator in a  
5 project that is underway right now, the  
6 installation and implementation of the  
7 electronic health record. And that, without  
8 your presence now, they will not be able to get  
9 that project going. And it is significant for  
10 that organization in seven west Alabama  
11 counties. That's the information I've gotten  
12 now.

13 And I want to confirm, are you the only  
14 person who can do that?

15 PROSPECTIVE JUROR CYNTHIA BLOUNT: Well,  
16 I'm the IT director there. And it's one other  
17 guy that works under me. But I'm a part of a  
18 network of community health centers. So I'm  
19 representing other projects while he's keeping  
20 things running at Whatley. I'm traveling,  
21 doing -- getting ready for this implementation.

22 THE COURT: All right. Based on that, the  
23 Court is going to excuse you based on undue  
24 hardship. All right?

25 PROSPECTIVE JUROR CYNTHIA BLOUNT: Okay.

1 THE COURT: So if you will see the clerk,  
2 she'll give you a card -- she'll have further  
3 information for you.

4 PROSPECTIVE JUROR CYNTHIA BLOUNT: Okay.  
5 Thank you.

6 THE COURT: All right.

7 PROSPECTIVE JUROR SCOTT PAUL: Scott Paul.

8 THE COURT: I apologize for referring you  
9 to as the jury dispatcher.

10 PROSPECTIVE JUROR SCOTT PAUL: That's okay.

11 THE COURT: I have been informed about it,  
12 but I had not been able to talk to you about  
13 it. So what is your situation?

14 PROSPECTIVE JUROR SCOTT PAUL: I know we  
15 are shorthanded in dispatch. I have a partner  
16 out on maternity leave. I just called to inform  
17 them what the situation was here. And then I  
18 was just called and told that Chief Montgomery  
19 would be speaking to either you or Clerk Bobo.  
20 That's all I was told.

21 THE COURT: The information I got was that  
22 you were essentially it, based upon the  
23 maternity leave, and there is one other person.  
24 How many of them are there?

25 PROSPECTIVE JUROR SCOTT PAUL: I have two

1 partners. One is going to be gone this weekend  
2 already. One that's had a vacation planned for  
3 over a year, and then the other one is out on  
4 maternity leave.

5 THE COURT: All right. Based on that, the  
6 court is going to excuse juror -- what's your  
7 name again?

8 PROSPECTIVE JUROR SCOTT PAUL: Scott Paul.

9 THE COURT: Scott Paul.

10 Let me ask again: Is Juror Peggy Wilson  
11 present? Did she come in?

12 All right. I'm now going to ask the  
13 following jurors to please come forward. And by  
14 come forward, I mean come up on the stage.

15 As your name is called, please come forward  
16 to the stage. Candice Anthony, Brian  
17 Barrentine, Terri Lynn Burns, Lisa Clemons,  
18 Elizabeth Dailey, Krystle Edwards, James  
19 Englebert, Evetrice Gray, Lugene King, Jerry  
20 Layton, Hazel Lewis, Gail Roland, Regina  
21 Summerlin, Dora Thomas, Randy Tingle, Hosie  
22 Wells.

23 Okay. Come around. Y'all can come all the  
24 way around. Come all the way around.

25 All right. The individuals whose names I



1 PROSPECTIVE JUROR TERRI BURNS: Oh, no.  
2 That's it.

3 THE COURT: Okay. I'm not sure -- you are  
4 the one that corrected me, aren't you?

5 PROSPECTIVE JUROR TERRI BURNS: No. I  
6 don't know who you are talking about.

7 THE COURT: Okay. May I have your  
8 attention, counsel? The Court is reviewing some  
9 of the hardships which the Court denied earlier  
10 in the week. But I'm just making that review.  
11 What I called you over here for is, according to  
12 this list, there are four jurors who need  
13 further questioning on relationship.

14 And I'm prepared to do that now, or, you  
15 know, we can add that group to the list coming  
16 over to the courthouse.

17 MR. WELLS: I think it would be better to  
18 do it at the courthouse.

19 THE COURT: All right. But we need the  
20 list so she can make --

21 MR. STEWART: We are working on that right  
22 now. They are almost through, Judge, looking at  
23 that. And we will get that within the next, I  
24 guess, 15 or 20 minutes. I have to check.  
25 There are about four on their list so far that

1 we don't have on ours.

2 THE COURT: Well, if that's the case, just  
3 put them on there. We can eliminate them over  
4 there. It's always easier to -- in other words,  
5 just put them on there, and we will tell them to  
6 come on over. Just add them to it, and we will  
7 tell them to come on over. But I need to call  
8 them and let those know who's coming to come.

9 MR. STEWART: Okay.

10 THE COURT: So just work on that now. I've  
11 got -- there is one other matter I'm going to  
12 take up now that I think I can do now. I'm  
13 going to call that lawyer up and be done with  
14 him.

15 MR. STEWART: That's fine. And Ms. Ward?

16 THE COURT: Ms. Ward? That's right. I'm  
17 going to call those two people. I forgot that.  
18 Thank you for reminding me of that.

19 Juror Kimberly Ward? Is Juror Kimberly  
20 Ward present? Please come forward.

21 Juror Kristofor Sodergren, please come  
22 forward.

23 Juror Sean Rymond, R-Y-M-O-N-D.

24 All right. Mr. Sodergren?

25 PROSPECTIVE JUROR KRISTOFOR SODERGREN:

1 Yes, sir?

2 THE COURT: You are excused from further  
3 service. Thank you very much for your service.

4 PROSPECTIVE JUROR KRISTOFOR SODERGREN:  
5 Thank you, Judge. I appreciate it.

6 THE COURT: All right. Juror Ward?

7 PROSPECTIVE JUROR KIMBERLY WARD: Uh-huh.

8 THE COURT: You are excused from further  
9 service.

10 PROSPECTIVE JUROR KIMBERLY WARD: Thank  
11 you.

12 THE COURT: Thank you for your service.

13 Now, Mr. Rymond, I got a message from you  
14 concerning your employment.

15 PROSPECTIVE JUROR SEAN RYMOND: Yes, sir.

16 THE COURT: All right. What's the  
17 situation now?

18 PROSPECTIVE JUROR SEAN RYMOND: Well,  
19 basically, they don't feel they need to pay me.  
20 They found out I was off yesterday, didn't go  
21 into work. And I got drug in the office this  
22 morning. And all of a sudden after seven and a  
23 half years of working for them, no problems, I  
24 was told this morning that I was a bad employee,  
25 and I had an attitude problem, and I was that

1 far from being released from work.

2 THE COURT: All right. Now, I don't want  
3 you to be fired, Mr. Rymond. All right.

4 So what I'm going to do is, you tell them  
5 that I'm excusing you from service because you  
6 convinced me that it would be a hardship for you  
7 not to be with your employer. It would be a  
8 hardship for your employment. All right?

9 PROSPECTIVE JUROR SEAN RYMOND: (nods  
10 head.)

11 THE COURT: So you are being excused from  
12 further service on this jury.

13 PROSPECTIVE JUROR SEAN RYMOND: I  
14 appreciate that.

15 THE COURT: And have them to call me if  
16 they've got any questions. You were not there  
17 yesterday because I instructed you that you were  
18 still on jury duty.

19 PROSPECTIVE JUROR SEAN RYMOND: I told them  
20 that. And my boss told me that he would not pay  
21 me for time that I was off on recess, and he  
22 doesn't have to pay me because I haven't been  
23 chosen as a juror.

24 THE COURT: Well, you have been. You are  
25 on jury service. But we are not going to worry

1 about that. What I'm going to do is, if you  
2 want him -- if he has some more questions, tell  
3 him I'll be glad to talk with him.

4 PROSPECTIVE JUROR SEAN RYMOND: He won't  
5 call you.

6 THE COURT: But I'm excusing you and you  
7 may go home. And thank you very much for your  
8 service.

9 PROSPECTIVE JUROR SEAN RYMOND: Thank you  
10 very much.

11 THE COURT: All right. I appreciate you  
12 working with us.

13 I'm going to ask the following jurors to  
14 come forward. Juror Patricia Smith. Is juror  
15 Patricia Smith here?

16 PROSPECTIVE JUROR PATRICIA SMITH: Yes.

17 THE COURT: All right. How are you doing?

18 PROSPECTIVE JUROR PATRICIA SMITH: Fine,  
19 thank you.

20 THE COURT: I wanted to inquire about how  
21 your back was holding up.

22 PROSPECTIVE JUROR PATRICIA SMITH: Oh,  
23 it's -- it comes and goes, you know. Like, when  
24 we take our breaks, it's good. It's good to  
25 move around. But other than that, I'm taking my

1 medication for that.

2 THE COURT: So, now, given that we may be  
3 going three months, do you think you can make  
4 it? Or if you think you will have some  
5 difficulty making it, you need to let me know  
6 now.

7 PROSPECTIVE JUROR PATRICIA SMITH: I  
8 believe I could make it. I'm doing better than  
9 I thought I would.

10 THE COURT: All right. I just wanted to  
11 double-check.

12 PROSPECTIVE JUROR PATRICIA SMITH: All  
13 right.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR PATRICIA SMITH: Thank  
16 you, Judge England.

17 THE COURT: All right. Juror Harry  
18 Hodges?

19 PROSPECTIVE JUROR HARRY HODGES: Thank you,  
20 sir.

21 THE COURT: Don't thank me yet. How is the  
22 neck and back issues? How are you coming?

23 PROSPECTIVE JUROR HARRY HODGES: They are  
24 pretty bad. You know, I've been walking around  
25 back there.

1 THE COURT: I've noticed that.

2 PROSPECTIVE JUROR HARRY HODGES: It's bad.

3 THE COURT: All right. I've been watching,  
4 and I've noticed that you've been trying to do  
5 it.

6 PROSPECTIVE JUROR HARRY HODGES: I'm not  
7 kidding you. I'm being serious.

8 THE COURT: No. I'm not thinking that you  
9 are. I wanted to double-check. And you've done  
10 what I asked, and so based on that condition,  
11 the Court is going to excuse you.

12 PROSPECTIVE JUROR HARRY HODGES: Appreciate  
13 it.

14 THE COURT: All right. Please check with  
15 her before you go.

16 Is Shelby Falls present? How are you  
17 doing?

18 PROSPECTIVE JUROR SHELBY FALLS: Good.

19 THE COURT: I think I may have called you  
20 up by mistake. I'm sorry.

21 PROSPECTIVE JUROR SHELBY FALLS: That's  
22 fine

23 THE COURT: I really meant to call Sandra  
24 Farr -- or Sue Farr. Sandra Farr rather than  
25 Shelby Falls. I'm sorry, Ms. Falls?

1                   How are you doing?

2                   PROSPECTIVE JUROR SUE FARR:   Fine.

3                   THE COURT:    You are Ms.?

4                   PROSPECTIVE JUROR SUE FARR:   Farr.

5                   THE COURT:    Farr.  What's your first name?

6                   PROSPECTIVE JUROR SUE FARR:   Sue or

7                   Sandra.  Well, Sandra Sue.

8                   THE COURT:    Okay.  Now, earlier on, you  
9                   told me that you had some issues with your blood  
10                  sugar, and it gets very low, and you can get  
11                  incoherent at times.

12                  PROSPECTIVE JUROR SUE FARR:   Very much so.

13                  THE COURT:    So I'm trying to find out how  
14                  that's coming now.  Are you able to cope or do  
15                  you feel that you --

16                  PROSPECTIVE JUROR SUE FARR:   I don't know.  
17                  Because it wakes me -- even wakes me up at  
18                  night.  And when it wakes me up at night, I'm  
19                  very sick feeling.

20                  THE COURT:    Has that been coming up since  
21                  you've been here?

22                  PROSPECTIVE JUROR SUE FARR:   Oh, yeah.  
23                  I've already had it once, maybe two times.

24                  THE COURT:    Since you've been --

25                  PROSPECTIVE JUROR SUE FARR:   Since we've

1           been here, yeah.

2                   THE COURT: All right. Then based on that  
3 health condition, I'm going to excuse you. But  
4 I appreciate your staying --

5                   PROSPECTIVE JUROR SUE FARR: Thank you.

6                   THE COURT: -- and being here --

7                   PROSPECTIVE JUROR SUE FARR: Thank you, so  
8 much.

9                   THE COURT: -- and trying to serve. So you  
10 are excused.

11                   PROSPECTIVE JUROR SUE FARR: I've done  
12 fairly well. I've been drinking Coca-Colas.

13                   THE COURT: All right.

14                   Based on -- I've been informed that Joshua  
15 Kizziah has vertigo, and is unable to stand.  
16 It's been reported to me by the clerk. And for  
17 that reason, I'm going to excuse him based on a  
18 hardship.

19                   As your name is called, I'm going to ask  
20 you to please stand where you are, and I'll have  
21 further instructions after I call all of these  
22 names. All right.

23                   Patricia Aldridge; Kathryn Anderson; Lorene  
24 Archibald; Donald Ashcraft; Christina Baker;  
25 Tanya Baker; Evelyn Banks; Minnie Bonner; Daphne

1 Bolden; Jason Bowers; Charles Bridges; Kendrell  
2 Ray Broughton; Christy Waldrop Brown; Vincent  
3 Busche, B-U-S-C-H-E; Julian Carter, Patricia  
4 Collins; Rose Collins; Margaret Cooper; Karen  
5 Cottingham; Broderick Crawford; Bobby Creamer;  
6 Demetrice Davis; Javan Davis; Tonya Davis;  
7 Jeremy Dominick; Andre Lamar Dowdell; Tommy R.  
8 Easterwood; Jeffrey Easton; Christopher Essman,  
9 Shelby Falls; Betty Fields; Sherby Foster;  
10 Barbara -- Barbara Ann Gee; John William Gibson;  
11 Charles Gills; Jason Hallman; Debra Harland;  
12 Charles Hartley; Carolyn Hewitt; Lebastian  
13 Hopkins; Ronald Eugene Howard; Walter Jemison;  
14 James M. Johnson; Katherine Johnson; Rufus  
15 Johnson; Fannie Jones; Jeffrey Jones; Joseph  
16 Junkins; Samuel Kirkpatrick; Michele Mason; Alan  
17 McShan; Milton Milling; John Allen Mink; Joseph  
18 Mize; Timothy Nolen; Linda O'Rourke; Terry  
19 Owens; Justin Parker; Michael Pettaway; Norman  
20 Prince; Ashley Ragsdale, Elmore Rainer; Floyd  
21 Ramsey; Carolyn Rhinehart; LaWanda Rhodes;  
22 Joseph Rice; Nellie Rice; Robert Scott Ryan;  
23 Meritha Montgomery Stewart; Elizabeth Ann  
24 Stines; Michele Stinnett; Keenan Thomas; Nancy  
25 Turner; Terence White; Larry Douglas Wilkerson;

1 Cynthia Wilson, William Yeager.

2 All right. Those individuals who are  
3 standing, I'm going to ask you to please meet in  
4 my courtroom at the courthouse. That's a block  
5 away. And my courtroom is on the second floor  
6 on the 7th street side. If you will, go to my  
7 courtroom, and meet us there at 2 -- well, let's  
8 see. It's now 6 minutes till 2:00. I'm going  
9 to ask you to meet us there at 2:30.

10 So you can be in recess, but come to my  
11 courtroom at 2:30. And then you'll get further  
12 instructions at that time. But I need you to  
13 come -- go to my courtroom in the courthouse,  
14 one block down, on the second floor. And just  
15 have a seat in the courtroom. And we are going  
16 to reassemble at 2:30.

17 Thank you very much. And I'll see you at  
18 2:30.

19 All right. For those of you who still  
20 remain, first of all, there was some of you who  
21 approached the Court and discussed some health  
22 issues which you thought might constitute  
23 hardships. I have talked to a number of those  
24 jurors to find out how they were doing. And so  
25 if you were in that number, if you expressed a

1 hardship based upon health issues, I want to  
2 talk with you again to make sure you are doing  
3 okay.

4 But other than those persons, I'm going to  
5 ask the rest of you to be in recess until  
6 Wednesday morning at nine o'clock. So that  
7 means that you don't have to come tomorrow. Of  
8 course, tomorrow is Saturday. You don't have to  
9 come Sunday. You don't have to come Monday, nor  
10 do you have to come Tuesday.

11 But you should be back here on Wednesday  
12 morning at nine o'clock. So please be in recess  
13 until nine o'clock Wednesday.

14 Please don't allow anybody to discuss the  
15 case in your presence or in your hearing, and  
16 come back at that time.

17 So let me say thank you very much. And for  
18 those of you who are concerned about whether or  
19 not you should go to work, I will simply say  
20 that you may do so, if you wish.

21 Some employers have called the Court to ask  
22 me why could they not have you back at work if  
23 you didn't have to go to jury duty on Thursday.  
24 I told them that I had indicated to you that you  
25 were still on jury duty. That's what I intend

1 to tell them again.

2 But many employers who feel that you are  
3 critical to their operation, and they care a lot  
4 for you, they want you to come. And I say that  
5 not to tell you that you have to go to work or  
6 not. Simply to say that you may go if you  
7 wish. But you are still on jury duty and you  
8 should be back here on Wednesday at 9:00  
9 o'clock, and here at the Bama Theatre. Not the  
10 courthouse, the Bama Theatre, 9:00 o'clock on  
11 Wednesday.

12 Thank you very much. And I will see you  
13 Wednesday morning, 9:00 o'clock.

14 (Whereupon, the following was held  
15 outside the presence of the jury  
16 venire.)

17 PROSPECTIVE JUROR MARK FISHER: Mark  
18 Fisher. Just concerning work. I work at  
19 Mercedes-Benz. And if they want, can they make  
20 me come in Tuesday, I guess, is the question? I  
21 don't know what the law is on that, so I don't  
22 know what I need do.

23 THE COURT: Can they make you come in  
24 Tuesday?

25 PROSPECTIVE JUROR MARK FISHER: Uh-huh.

1 THE COURT: You are on jury duty. Okay?

2 PROSPECTIVE JUROR MARK FISHER: Yes, sir.

3 THE COURT: If they need -- if they've got  
4 some questions, ask them to call me. Okay?

5 PROSPECTIVE JUROR MARK FISHER: All right.  
6 I appreciate that.

7 THE COURT: And I will tell them that I  
8 told you that you are on jury duty.

9 There is the possibility that something may  
10 come up between now and then, and the clerk may  
11 be getting in touch with you to advise you of  
12 some development in the case.

13 So that's why I say, the short answer is,  
14 if there is a question and you are concerned  
15 about it, have them to call me. Because I don't  
16 want to create any bad blood between you and  
17 your employer.

18 PROSPECTIVE JUROR MARK FISHER: They  
19 haven't said anything about it. I just wanted  
20 to know, if the situation does arise. Thank  
21 you, Your Honor.

22 THE COURT: All right. Thank you.

23 PROSPECTIVE JUROR BEN LAKE: I got checked  
24 out yesterday. And I've got a few issues wrong  
25 with me. They said I have water in the lining

1 of my --

2 THE COURT: Can you speak up a little bit?

3 PROSPECTIVE JUROR BEN LAKE: Water in the  
4 lining of my heart, and I --

5 THE COURT: So you had the examination?

6 PROSPECTIVE JUROR BEN LAKE: Yes, sir. I  
7 have about 30 other things wrong with me.

8 THE COURT: When did you do that?

9 PROSPECTIVE JUROR BEN LAKE: Yesterday.  
10 Last night I went to Birmingham.

11 THE COURT: Where did you go to?

12 PROSPECTIVE JUROR BEN LAKE: To see  
13 someone.

14 THE COURT: Who?

15 PROSPECTIVE JUROR BEN LAKE: To see  
16 someone.

17 THE COURT: Who is that?

18 PROSPECTIVE JUROR BEN LAKE: She does --  
19 she works with frequencies through your body, so  
20 it picked up all kinds of frequencies. And that  
21 tells you -- it's split up and it tells you what  
22 exactly is wrong with you.

23 THE COURT: Okay. So you are telling me  
24 you have a health issue?

25 PROSPECTIVE JUROR BEN LAKE: Yes, sir.

1 THE COURT: Okay. Now, is that person you  
2 went to see, is that a doctor?

3 PROSPECTIVE JUROR BEN LAKE: Better than a  
4 doctor. Doctors don't test for this. Doctors  
5 won't be able to find out these things. I have  
6 a lot of chemical warfare in my --

7 THE COURT: I do too. I have a lot in mine  
8 too. So I'm just trying to -- are you not  
9 feeling well?

10 PROSPECTIVE JUROR BEN LAKE: No, sir. I  
11 need to be able to check up with her, routine.  
12 And I'm getting a shipment of what I'm supposed  
13 to be ingesting to help me get well.

14 THE COURT: Okay. Well, what's wrong with  
15 you? I mean, it's okay. That's why we're doing  
16 this privately.

17 PROSPECTIVE JUROR BEN LAKE: I have a  
18 parasite.

19 THE COURT: Sir?

20 PROSPECTIVE JUROR BEN LAKE: A parasite.

21 THE COURT: Okay. All right. I think I  
22 understand.

23 Magaria, I'm excusing Mr. Lake.

24 CLERK OF COURT: Okay.

25 THE COURT: All right, sir.

1                   Your name, sir?

2                   PROSPECTIVE JUROR SANDY PREWITT:   Sandy  
3                   Prewitt.

4                   THE COURT:    Sandy?

5                   PROSPECTIVE JUROR SANDY PREWITT:   Prewitt,  
6                   P-R-E-W-I-T-T.  I don't know an excuse or  
7                   nothing.  But I was just trying to confirm what  
8                   you were saying about the job.

9                   THE COURT:  Yeah.

10                  PROSPECTIVE JUROR SANDY PREWITT:  You know,  
11                  you said that we are on jury duty.

12                  THE COURT:  That's correct.

13                  PROSPECTIVE JUROR SANDY PREWITT:  And I  
14                  know my job, I work at night.  And I know they  
15                  are probably saying, well, if y'all are getting  
16                  out at 5:00 or whatever the case may be, why  
17                  can't you come to work?

18                  THE COURT:  No, you cannot.  We've dealt  
19                  with that on many occasions.  We don't --

20                  PROSPECTIVE JUROR SANDY PREWITT:  Because I  
21                  know how my employer -- they will say that, you  
22                  know --

23                  THE COURT:  You need to -- if there is a  
24                  question about that, they need to call me.

25                  Someone who --

1 PROSPECTIVE JUROR SANDY PREWITT: Call you  
2 directly?

3 THE COURT: Call me directly.

4 PROSPECTIVE JUROR SANDY PREWITT: Okay.  
5 Because I know how they are.

6 THE COURT: I understand. You don't get  
7 into that. I'm directing you that if you are --  
8 as long as you are on jury duty, and if you work  
9 a night shift, you will not be required to work  
10 at night.

11 PROSPECTIVE JUROR SANDY PREWITT: Right.  
12 Yes, sir. Okay.

13 THE COURT: All right. I mean, that's --  
14 if there are any questions, you make sure they  
15 bring that to my attention.

16 PROSPECTIVE JUROR SANDY PREWITT: Yes, sir.

17 THE COURT: You tell them to call me and  
18 I'll -- you know, I would be glad to explain  
19 that to them.

20 PROSPECTIVE JUROR SANDY PREWITT: Yes,  
21 sir. Thank you.

22 THE COURT: Yes, sir?

23 PROSPECTIVE JUROR MICHAEL SKINNER: Michael  
24 Skinner. You instructed me to come see you  
25 today if you did not call my name. I work for

1 Alabama Power.

2 THE COURT: Okay. Now, let's hear it  
3 again.

4 PROSPECTIVE JUROR MICHAEL SKINNER: If  
5 something happens, a storm comes or a hurricane  
6 or something like that, and I'm on this jury  
7 duty, I didn't know if I would be excused at  
8 that time if I had to go into work or not. And  
9 that's where we left it. You said you would  
10 take it under advisement.

11 THE COURT: Okay. Well, this is the  
12 season. I realize that. And you would not be  
13 excused if something came up like that. So if  
14 I'm going to do it, I'll need to do it now.

15 PROSPECTIVE JUROR MICHAEL SKINNER: Okay.

16 THE COURT: And so, based on that, I am  
17 going to excuse you.

18 PROSPECTIVE JUROR MICHAEL SKINNER: Okay.

19 THE COURT: Where did Magaria go?

20 MR. WILSON: I have her stuff. She had to  
21 go do the chart.

22 THE COURT: Go ahead. And we need to make  
23 sure we have the right address.

24 Yes, ma'am?

25 PROSPECTIVE JUROR CATHERINE HENDRIX: I'm

1 Catherine Hendrix.

2 THE COURT: Yes. You were going to check  
3 with your doctor; right?

4 PROSPECTIVE JUROR CATHERINE HENDRIX: Yes,  
5 sir. And I could not see him. It was too short  
6 of a notice.

7 THE COURT: How are you feeling now? Do  
8 you think you can make it?

9 PROSPECTIVE JUROR CATHERINE  
10 HENDRIX: (Shakes head.)

11 THE COURT: What's the problem again?

12 PROSPECTIVE JUROR CATHERINE HENDRIX: I had  
13 surgery for a herniated disk in my back. It was  
14 making it impossible to sit down. And I don't  
15 think I'm healed yet.

16 THE COURT: All right. I had asked you to  
17 try to get the doctor's -- more information  
18 about it. But I'm -- you know, I think you've  
19 tried. And has it been difficult for you?

20 PROSPECTIVE JUROR CATHERINE HENDRIX: Not  
21 as bad today, but we haven't been here that  
22 long.

23 THE COURT: Right. I know it's not bad  
24 today because we haven't been here but a few  
25 minutes. I meant the other days, that's what

1 I'm saying.

2 PROSPECTIVE JUROR CATHERINE HENDRIX: The  
3 long day, I was in a lot of pain.

4 THE COURT: All right. Well, that's what  
5 we will be doing during the rest of the week.  
6 So I'm -- what's your name?

7 PROSPECTIVE JUROR CATHERINE HENDRIX: It's  
8 Catherine Hendrix.

9 THE COURT: Catherine Hendrix. If you will  
10 see him, I'm going to excuse you.

11 PROSPECTIVE JUROR CATHERINE HENDRIX:  
12 Okay. Thank you, sir.

13 THE COURT: Yes, sir? What's your name?

14 PROSPECTIVE JUROR WALLACE WILLIAMS:  
15 Wallace Williams, I spoke to you yesterday  
16 afternoon about probably being the friend of the  
17 son of Richard --

18 THE COURT: Right.

19 PROSPECTIVE JUROR WALLACE WILLIAMS: And I  
20 am, he is the father.

21 THE COURT: Okay. Mr. Williams, I will  
22 need you to -- you need to -- all the people who  
23 had some --

24 PROSPECTIVE JUROR WALLACE WILLIAMS: Yes,  
25 sir.

1                   THE COURT:  You need to go over to my  
2                   courtroom and meet at 2:30.  And that's  
3                   Wallace --

4                   PROSPECTIVE JUROR WALLACE WILLIAMS:  
5                   Wallace Williams.

6                   THE COURT:  And thank you very much for --

7                   PROSPECTIVE JUROR WALLACE WILLIAMS:  He  
8                   called me back yesterday afternoon and said,  
9                   yeah, my father is a plaintiff in that case.

10                  THE COURT:  Okay.  Thank you very much.

11                  Yes, ma'am.

12                  PROSPECTIVE JUROR GEORGIA JORDAN:  Georgia  
13                  Jordan.

14                  THE COURT:  Yes, ma'am.

15                  PROSPECTIVE JUROR GEORGIA JORDAN:  I'm  
16                  going to have -- Wednesday I was supposed to  
17                  have a cataract removed off of my eye at the Eye  
18                  Foundation, and I can see you Thursday or  
19                  Friday.

20                  THE COURT:  What?  Say that again.

21                  PROSPECTIVE JUROR GEORGIA JORDAN:  I said  
22                  maybe I could come in Thursday or Friday, but  
23                  Wednesday, if I could, I would like to go to  
24                  Birmingham and have this cataract removed at the  
25                  Eye Foundation or unless I could get another

1 appointment.

2 THE COURT: Okay. All right. Do you want  
3 to see if you can get one?

4 PROSPECTIVE JUROR GEORGIA JORDAN: Another  
5 appointment?

6 THE COURT: Yes. If you can't, then let me  
7 know. Can you do that today?

8 PROSPECTIVE JUROR GEORGIA JORDAN: I don't  
9 know if Dr. Mays is in, but I'll call when I get  
10 home.

11 THE COURT: Yeah, just call his office and  
12 tell them that you are on jury duty and see if  
13 you can get it changed to Thursday or Friday.

14 PROSPECTIVE JUROR GEORGIA JORDAN: To  
15 Thursday or Friday?

16 THE COURT: Yeah, so if you can just get  
17 it, if they can move it from Wednesday to  
18 Thursday or Friday, see if you can do that.

19 PROSPECTIVE JUROR GEORGIA JORDAN: Yes,  
20 sir.

21 THE COURT: Now, if you can't, you need to  
22 let me know, okay?

23 PROSPECTIVE JUROR GEORGIA JORDAN: Just  
24 call you at your office?

25 THE COURT: Call me at the office and tell

1           them you are a juror. And I'm going to give you  
2           the number, okay?

3                       PROSPECTIVE JUROR GEORGIA JORDAN: Just  
4           call you at this number?

5                       THE COURT: Yeah, call me at that number,  
6           but now when you call me, tell them that you are  
7           a juror and, see, they'll come out there and get  
8           me because I'll be on the bench.

9                       PROSPECTIVE JUROR GEORGIA JORDAN: Have  
10          them to call you?

11                      THE COURT: No. You check and see if you  
12          can get the appointment changed.

13                      PROSPECTIVE JUROR GEORGIA JORDAN: Yes,  
14          sir.

15                      THE COURT: If you can't get the  
16          appointment changed, you can call me and let me  
17          know.

18                      PROSPECTIVE JUROR GEORGIA JORDAN: If I  
19          can't --

20                      THE COURT: That's right.

21                      PROSPECTIVE JUROR GEORGIA JORDAN: Okay.

22                      THE COURT: If you can't get it --

23                      PROSPECTIVE JUROR GEORGIA JORDAN: If I  
24          can, don't -- I don't have to call you.

25                      THE COURT: Yeah, if you can get it changed,

1 just be here Wednesday at nine o'clock.

2 PROSPECTIVE JUROR GEORGIA JORDAN: Yes,  
3 sir.

4 THE COURT: You be here at nine o'clock.

5 PROSPECTIVE JUROR GEORGIA JORDAN: If I  
6 can't, I'll call you.

7 THE COURT: That's right.

8 PROSPECTIVE JUROR GEORGIA JORDAN: Thank  
9 you, sir.

10 THE COURT: Yes, sir. Your name?

11 PROSPECTIVE JUROR JIMMY CAMMON: Jimmy  
12 Cammon.

13 THE COURT: Mr. Cammon.

14 PROSPECTIVE JUROR JIMMY CAMMON: Yeah, I  
15 didn't bring up the health issue, but I've got a  
16 bad leg and I can't stay on it too long and --

17 THE COURT: In the jury thing we will be  
18 sitting mostly.

19 PROSPECTIVE JUROR JIMMY CAMMON: Yeah, but  
20 most of the time I have to sit where I have to  
21 keep it up.

22 THE COURT: You have to keep your leg up?

23 PROSPECTIVE JUROR JIMMY CAMMON: Yeah, I've  
24 got a vein messed up in there and I have to wear  
25 a stocking on it.

1 THE COURT: Do you have it on now?

2 PROSPECTIVE JUROR JIMMY CAMMON: No, I  
3 don't have it on now. I put it on during the  
4 evening time.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR JIMMY CAMMON: Both of  
7 them is bad, but one of them is just badder than  
8 the other.

9 THE COURT: And you have to leave it up in  
10 order to --

11 PROSPECTIVE JUROR JIMMY CAMMON: Yes, sir.

12 THE COURT: All right then. You are  
13 excused. You are excused.

14 Tell me your name again.

15 PROSPECTIVE JUROR JIMMY CAMMON: Jimmy,  
16 Jimmy Cammon, C-A-M-M-O-N.

17 THE COURT: Just leave the button out as  
18 you go.

19 PROSPECTIVE JUROR JIMMY CAMMON: Thank you.

20 THE COURT: Yes, ma'am. Your name is --

21 PROSPECTIVE JUROR DONNA ROBERTS: Donna  
22 Roberts.

23 THE COURT: Yes, ma'am.

24 PROSPECTIVE JUROR DONNA ROBERTS: I got to  
25 work this morning and my boss man tells me that

1           they are only going to pay me for this week that  
2           we are in, and then after this weekend, they are  
3           going to put me off on a leave of absence. That  
4           way, I guess, so they don't have to pay me. I'm  
5           a single mom with three boys. I can't do that.

6                    THE COURT: Okay. Well, ma'am, I'm going  
7           to be candid with you. They can't do that, but  
8           I don't want to put you through that, okay?

9                    PROSPECTIVE JUROR DONNA ROBERTS: (Witness  
10          nods head.)

11                   THE COURT: I understand. It's got to  
12          be -- it's got to worry you over that. So I'm  
13          not going to put you at odds with your employer  
14          given that that's your sole source of income.

15                   PROSPECTIVE JUROR DONNA ROBERTS: Yeah,  
16          because I don't even get child support from  
17          their dad. I mean, mean, it's just me.

18                   THE COURT: All right. What I'm going to  
19          do is, I'm going to defer it to a shorter week.  
20          All right?

21                   PROSPECTIVE JUROR DONNA ROBERTS: (Nods  
22          head.)

23                   THE COURT: Have you ever been to jury duty  
24          before?

25                   PROSPECTIVE JUROR DONNA ROBERTS: No.

1                   THE COURT: All right. I'm going to allow  
2                   you to be -- have a deferment for you to get --  
3                   until we have a jury time when it's just one  
4                   week as opposed to as long this will be. All  
5                   right. So you are excused.

6                   PROSPECTIVE JUROR DONNA ROBERTS: Thank  
7                   you.

8                   THE COURT: Yes, ma'am.

9                   PROSPECTIVE JUROR RHONDA COTTON: Rhonda  
10                  Cotton.

11                  THE COURT: Yes.

12                  PROSPECTIVE JUROR RHONDA COTTON: My  
13                  brother asked that I submit that. It's just a  
14                  career-changing critical time at my office. We  
15                  have just been purchased by Walter Energy, and  
16                  I'm the lead on the new computer system that's  
17                  about to be implemented and --

18                  THE COURT: All right.

19                  PROSPECTIVE JUROR RHONDA COTTON: And I  
20                  want to do my civic duty. It's just a  
21                  career-changing time so --

22                  THE COURT: All right. You are Ms. --

23                  PROSPECTIVE JUROR RHONDA COTTON: Cotton --  
24                  Rhonda.

25                  THE COURT: You are excused. Thank you for

1 serving.

2 PROSPECTIVE JUROR RHONDA COTTON: Do I need  
3 to come on Wednesday?

4 THE COURT: Check with him and then leave  
5 the button out. What's your first name?

6 PROSPECTIVE JUROR RHONDA COTTON: Rhonda,  
7 R-H-O-N-D-A, C-O-T-T-O-N.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR JAMIE THOMPSON: Jamie  
10 Thompson.

11 THE COURT: What's your name? Jamie?

12 PROSPECTIVE JUROR JAMIE THOMPSON:  
13 Thompson, uh-huh, yes.

14 THE COURT: Yes.

15 PROSPECTIVE JUROR JAMIE THOMPSON: And I  
16 don't know if this constitutes a hardship, but I  
17 have to direct a wedding in North Carolina on  
18 the 19th of September, which I will be leaving  
19 on this Thursday beforehand. I mean, if it's,  
20 you know, if I need to make other arrangements,  
21 I need to kind of let my family know in North  
22 Carolina what I need do.

23 THE COURT: Have you made the plans? I  
24 mean, it's sort of like a trip where you've  
25 already made the plans and paid for it and they

1 would they suffer a loss if they cancel. Is it  
2 that type of situation?

3 PROSPECTIVE JUROR JAMIE THOMPSON: Yeah, I  
4 mean, I can change my flight, you know, plans to  
5 leave out, you know, for that weekend and not be  
6 there -- what I was going to do was be there  
7 that Thursday and Friday before the wedding,  
8 but, I mean, if worse came to worse, I mean, I  
9 can just fly out Friday and, you know, be  
10 there -- the wedding is on Sunday.

11 THE COURT: Are you sure you can change it  
12 out at this late hour?

13 PROSPECTIVE JUROR JAMIE THOMPSON: Uh-huh,  
14 uh-huh, I've already checked with the airlines,  
15 but I just wanted to.

16 THE COURT: Well, if you can change it out,  
17 then I guess it wouldn't be a hardship that I  
18 could grant you.

19 PROSPECTIVE JUROR JAMIE THOMPSON: Right,  
20 right, but I thought, well, I better mention  
21 that just in case.

22 THE COURT: What time does the flight leave  
23 on that Friday?

24 PROSPECTIVE JUROR JAMIE THOMPSON: I can  
25 get it anytime on that Friday.

1 THE COURT: Because we can probably break  
2 early if you are on the jury.

3 PROSPECTIVE JUROR JAMIE THOMPSON: Okay.  
4 Okay. I'll go ahead and do that and that way I  
5 will be for sure.

6 THE COURT: But now, if you are on the  
7 jury, you need to make sure you tell me so that  
8 we can leave early enough, we can quit early  
9 enough on that Friday for you to go because most  
10 Fridays we will be leaving early anyhow.

11 PROSPECTIVE JUROR JAMIE THOMPSON: When you  
12 say early, are you saying after lunch, though?

13 THE COURT: Probably right around lunch,  
14 maybe a few -- depending upon the witness, you  
15 know, there may be somebody whom we are trying  
16 to finish up or something like that.

17 PROSPECTIVE JUROR JAMIE THOMPSON: All  
18 right. Thank you.

19 PROSPECTIVE JUROR DAVID GRAHAM: David  
20 Graham.

21 I just want to verify something about the  
22 work. I understand when you say we are on jury  
23 duty, but it's up to us. Now, I'm a paramedic  
24 and we often -- it's not unusual to go to the  
25 mines and transport something up there. Now, if

1           that --

2                   THE COURT:   You need to make sure you tell  
3           these folks that.

4                   PROSPECTIVE JUROR DAVID GRAHAM:   Okay.  Is  
5           that something you want my to stay away from  
6           altogether?  I mean, that -- if I.

7                   THE COURT:   If you go to work and have to  
8           go to the mines?

9                   PROSPECTIVE JUROR DAVID GRAHAM:   Yes, sir.

10                  THE COURT:   If it's an emergency, that's  
11           fine.

12                  PROSPECTIVE JUROR DAVID GRAHAM:   That's  
13           fine.

14                  THE COURT:   I mean, if it's part of your  
15           employment, but now, you know, if you feel like  
16           you got to go, you know, that's fine, but --

17                  PROSPECTIVE JUROR DAVID GRAHAM:   Well, they  
18           are not -- they were really upset with me  
19           yesterday that I didn't go, because that was  
20           when the one guy that was from the phone company  
21           asked about -- I was under that instruction I'm  
22           not supposed to go.

23                  THE COURT:   Right, and I think I talked  
24           with him.

25                  PROSPECTIVE JUROR DAVID GRAHAM:   I think

1           you probably did.

2                   THE COURT:   That's what I'm saying.  I will  
3           leave it up to you, if you want to do that, you  
4           can go out there.  But you know what to do, I  
5           mean, you wouldn't -- if you run into anybody  
6           who you know who be a plaintiff, then you need  
7           to let us know.

8                   PROSPECTIVE JUROR DAVID GRAHAM:  Okay.  All  
9           right.  But really it's up to me then?

10                  THE COURT:  It's up to you.

11                  PROSPECTIVE JUROR DAVID GRAHAM:  All right.  
12           Thank you.

13                  THE COURT:  Yes, sir, what's your name?

14                  PROSPECTIVE JUROR RUFUS JOHNSON:  Rufus  
15           Johnson.

16                  I've got a question for you.

17                  THE COURT:  Yes, sir.

18                  PROSPECTIVE JUROR RUFUS JOHNSON:  I work  
19           two jobs.  I work for the City of Tuscaloosa.  
20           They are going to pay me.  I work for DCH  
21           laundry room, and my question is:  If you are  
22           chosen for jury duty, are they required to pay  
23           you while you are off?

24                  THE COURT:  That would be my opinion that  
25           they are.  But let me suggest that you just go

1 and -- you go and say that you are on this jury  
2 duty and they may --

3 PROSPECTIVE JUROR RUFUS JOHNSON: Well,  
4 they --

5 THE COURT: Have you asked them?

6 PROSPECTIVE JUROR RUFUS JOHNSON: I asked  
7 them and they say no, they don't pay you. Well,  
8 let me explain something.

9 THE COURT: I know DCH knows better than  
10 that.

11 PROSPECTIVE JUROR RUFUS JOHNSON: Well, let  
12 me explain something to you. I work for DCH,  
13 but I'm on the resource team. They got a -- I'm  
14 a full-time employee, but I'm on the resource  
15 team. I didn't take the benefits because I've  
16 got the job at the city that pays my benefits.  
17 I took the money at the hospital.

18 THE COURT: Sure.

19 PROSPECTIVE JUROR RUFUS JOHNSON: And that  
20 was my question.

21 THE COURT: Well, what did they tell you?

22 PROSPECTIVE JUROR RUFUS JOHNSON: They say  
23 no, but I was going to ask you.

24 THE COURT: Why did they tell you no?

25 PROSPECTIVE JUROR RUFUS JOHNSON: They just

1           said no. They didn't give me no answer. They  
2           just said no, but I wanted to ask you to see  
3           what you say.

4                    THE COURT: Okay. All right. All right.

5                    PROSPECTIVE JUROR RUFUS JOHNSON: That's a  
6           legitimate question, ain't it?

7                    THE COURT: Of course. Of course it's a  
8           legitimate question, but I can give you a short  
9           answer. But what I'm going to do is --

10                   PROSPECTIVE JUROR RUFUS JOHNSON: But like  
11          I said, I was chosen.

12                   THE COURT: Let's put it to you this way:  
13          There is no question that the law excuses you  
14          from working, okay?

15                   PROSPECTIVE JUROR RUFUS JOHNSON: Uh-huh.

16                   THE COURT: Now, your situation, the only  
17          thing that makes you a little different is the  
18          fact that you say you have two full-time jobs.

19                   PROSPECTIVE JUROR RUFUS JOHNSON: Uh-huh.

20                   THE COURT: That makes you a little  
21          different than the normal situation, but it  
22          would be my opinion that if jury duty prevents  
23          you from working --

24                   PROSPECTIVE JUROR RUFUS JOHNSON: It's a  
25          regular 40-hour-a-week job now.

1 THE COURT: You give that to them and tell  
2 them to call me. Call me about that.

3 PROSPECTIVE JUROR RUFUS JOHNSON: Okay.

4 THE COURT: England is my name.

5 PROSPECTIVE JUROR RUFUS JOHNSON: I was  
6 supposed to go to your room at 2:30.

7 THE COURT: You are one of them that's  
8 supposed to go --

9 PROSPECTIVE JUROR RUFUS JOHNSON: But I'll  
10 give that to them whenever I do go back to work.

11 THE COURT: All right. That's fine.

12 (Whereupon, the Court was in recess  
13 from 2:18 p.m. until

14 (Whereupon, the following was held  
15 inside the presence of the jury  
16 venire.)

17 THE COURT: Let me ask jurors Betty Fields,  
18 Shelby Foster, James Johnson and Joseph Rice to  
19 have a seat in the jury box.

20 Ladies and gentlemen, the reason why you  
21 were asked to come here was because each one of  
22 you responded to questions the Court asked  
23 earlier this week, indicating that you knew a  
24 plaintiff or plaintiffs. And so it was  
25 necessary to bring you here so that additional

1 questions could be asked of you regarding that  
2 relationship.

3 Now, the four of you who are sitting there,  
4 you indicated that you may be related by blood  
5 or marriage to a particular plaintiff. So it  
6 was necessary that you be asked questions about  
7 those relationships. And that's why we've got  
8 you up here.

9 So we are going to do that today. Now, we  
10 are going to, in effect, reorganize you and give  
11 you assigned seats. And then once we do that,  
12 we are going to let you go home, and then just  
13 come back Tuesday morning. But you can stay.  
14 You can stay until we all leave. But we'll  
15 still need you to come back Tuesday morning.  
16 But we intend to do that.

17 And the clerk is putting together a seating  
18 chart as we speak.

19 And so after you are given your assigned  
20 seat on the seating chart, you will be free to  
21 go. Or you can stay if you wish.

22 UNIDENTIFIED PROSPECTIVE JUROR: What time?

23 MR. BICKS: What time, Judge?

24 THE COURT: Well, I intend to let you know  
25 after we -- because I don't want you to leave

1 yet. So I'll let you know that shortly. But  
2 the clerk is reorganizing, and she'll be doing  
3 that very soon.

4 So what I'm going to do at this time is I'm  
5 going to get further information from you  
6 regarding your relationship with any particular  
7 plaintiff that you have for the four of you who  
8 are here.

9 Now, just to be sure, I want to make sure  
10 that there are no jurors in the audience who now  
11 know that they are related either by blood or  
12 marriage to any of the named plaintiffs.

13 THE COURT: Ms. Anderson?

14 PROSPECTIVE JUROR KATHRYN ANDERSON: May I  
15 please approach the bench to talk to you for a  
16 minute to ask you --

17 THE COURT: Okay.

18 (Whereupon, the following was held  
19 outside the presence of the jury  
20 venire.)

21 PROSPECTIVE JUROR KATHRYN ANDERSON: The  
22 first person that I recognized that I know at  
23 one time, he was married to a young lady that  
24 was like an adopted niece. They are no longer  
25 married. They are divorced. And their daughter

1 is like my Goddaughter. But they have no  
2 relationship. And I don't have any relationship  
3 with them.

4 THE COURT: That's fine. We will question  
5 you. Don't worry about that. Because you said  
6 you knew them, so at least you know them.

7 PROSPECTIVE JUROR KATHRYN ANDERSON: Yeah,  
8 I do. Thank you. I just wanted to --

9 (Whereupon, the following was held  
10 inside the presence of the jury  
11 venire.)

12 THE COURT: All right. We are actually  
13 ready to organize now. But we still want y'all  
14 to remain right there. Okay. Okay. To my  
15 right, the first row. Let me ask to you please  
16 stand and, in a nice way, step aside.

17 (Whereupon, the jury venire was  
18 organized in the courtroom.)

19 THE COURT: Okay. Now, what I want y'all  
20 to do is to see where your seat is, just in  
21 case.

22 Okay. The two of you who are sitting right  
23 there, I'm pointing at you -- and let's see.  
24 What's your name?

25 PROSPECTIVE JUROR KAREN COTTINGHAM: Karen

1 Cottingham.

2 THE COURT: Ms. Cottingham. Okay. The row  
3 behind Ms. Cottingham. So what's your name in  
4 the row behind?

5 PROSPECTIVE JUROR BARBARA GEE: Barbara  
6 Gee.

7 THE COURT: Could you stand a minute?

8 PROSPECTIVE JUROR BARBARA GEE: Barbara  
9 Gee.

10 THE COURT: Okay. So that's where the two  
11 of y'all are. Okay. Now, that's Ms. Fields and  
12 Ms. Foster. Let's see.

13 Let's find out where James Johnson and  
14 Joseph Rice are. Okay. Okay. James Johnson is  
15 sitting next to Katherine Johnson. Where is  
16 Katherine?

17 Okay. You see, Mr. Johnson, that's where  
18 your seat is.

19 PROSPECTIVE JUROR JAMES JOHNSON: Yes, sir.

20 THE COURT: And Mr. Rice?

21 MR. STEWART: Next to LaWanda Rhodes.

22 THE COURT: Ms. Rhodes, would you stand?  
23 Okay. That's where you are seated.

24 All right. Now, sir, you were up here a  
25 minute, and I told you to go back and find your

1 seat. What's your name?

2 PROSPECTIVE JUROR WALTER JEMISON: Walter  
3 Jemison.

4 THE COURT: Walter Jemison, you can come  
5 on. Now do you see where you are?

6 PROSPECTIVE JUROR WALTER JEMISON: Yes.

7 THE COURT: All right. Now, if you will,  
8 each look in front of you and behind you and to  
9 the side. All right. If you will, come back  
10 Tuesday at 9:30. Not 9:00, but 9:30 Tuesday, in  
11 this courtroom. And sit in the assigned seats.

12 For those of you who want to stay, you're  
13 welcome to stay. But the rest of you can be  
14 excused until Tuesday at 9:30. Thank you very  
15 much.

16 Demetrice Davis and Charles Gills, I want  
17 y'all to sit up here too. Demetrice Davis and  
18 Charles Gills.

19 UNIDENTIFIED PROSPECTIVE JUROR: Can I be  
20 added to this too?

21 THE COURT: Yeah, sure.

22 (Whereupon, the following was held  
23 outside the presence of the jury  
24 venire.)

25 COURT REPORTER: Your name, sir?

1 PROSPECTIVE JUROR PATRICK MARTIN: Patrick  
2 Martin.

3 THE COURT: All right. Mr. Martin, go  
4 ahead.

5 PROSPECTIVE JUROR PATRICK MARTIN: I'm just  
6 here trying to see about my job, because I've  
7 been here -- I missed -- I'll be missing two  
8 weeks of work when I come back Wednesday. And I  
9 haven't received -- I won't receive no  
10 compensation for that. So I would love to be  
11 dismissed if I could, so I can get back to  
12 work. Because it ain't working out for me.

13 THE COURT: Now, that is not a hardship  
14 unless you are telling me that it could result  
15 in a bad relationship with your employer.

16 PROSPECTIVE JUROR PATRICK MARTIN: Exactly.

17 THE COURT: Have you ever been excused  
18 before?

19 PROSPECTIVE JUROR PATRICK MARTIN: No, sir.

20 THE COURT: Do you work overtime?

21 PROSPECTIVE JUROR PATRICK MARTIN:  
22 Sometimes, sir.

23 THE COURT: Now, are you the one that had  
24 indicated that you had been off work for a  
25 period of time and had financial difficulty?

1 PROSPECTIVE JUROR PATRICK MARTIN: Yes,  
2 sir. Just now went back to work. I was off for  
3 about a year, year and a half.

4 THE COURT: When did you go back?

5 PROSPECTIVE JUROR PATRICK MARTIN: I've  
6 been back now, probably, two and a half months  
7 maybe. About two months, I would say.

8 THE COURT: And what is your name?

9 PROSPECTIVE JUROR PATRICK MARTIN: Patrick  
10 Martin.

11 THE COURT: Okay. Mr. Martin, to avoid the  
12 hardship of the difficulty at your job, the  
13 Court is going to excuse you. What's your name  
14 again?

15 PROSPECTIVE JUROR PATRICK MARTIN: Patrick  
16 Martin.

17 THE COURT: All right. You are excused. I  
18 want you to check with him to make sure he has  
19 your right address.

20 PROSPECTIVE JUROR PATRICK MARTIN: Okay.

21 THE COURT: What's your name, sir?

22 PROSPECTIVE JUROR WALTER JEMISON: Walter  
23 Jemison. I just wanted to express my concern  
24 about being on the jury because of the nature of  
25 the work that I do in relation to the work that

1 miners do.

2 THE COURT: I understand. Just hold on.  
3 They will ask you questions about that. So just  
4 come back.

5 PROSPECTIVE JUROR WALTER JEMISON: Okay.  
6 Another question I had too now. Am I still  
7 under the restrictions of the jury, because, you  
8 know, I can go to work tomorrow and Sunday and  
9 Monday, and then come back Tuesday. But if  
10 it's --

11 THE COURT: Where do you work at?

12 PROSPECTIVE JUROR WALTER JEMISON: Hunt  
13 Refining Company.

14 THE COURT: No, you are not under any  
15 restrictions. If you want to go to work, you  
16 can go.

17 PROSPECTIVE JUROR WALTER JEMISON: Okay.

18 THE COURT: But the kinds of concerns you  
19 expressed, that's why we got y'all over here, to  
20 find out that information, that type of  
21 information.

22 PROSPECTIVE JUROR WALTER JEMISON: Okay.

23 THE COURT: So, if you will, express that  
24 when you come back. We will have further  
25 questions about that.

1 PROSPECTIVE JUROR WALTER JEMISON: Okay.

2 And I will just go on to work and then come  
3 back.

4 THE COURT: Yeah, you can go on to work.  
5 What we are trying to do is make sure that you  
6 don't be interacting with any plaintiffs.

7 PROSPECTIVE JUROR WALTER JEMISON: No, I  
8 won't be.

9 THE COURT: Okay. All right. Thank you,  
10 Mr. Jemison. And please be back at 9:30 on  
11 Tuesday.

12 Yes, ma'am? What's your name?

13 PROSPECTIVE JUROR LAWANDA RHODES: LaWanda  
14 Rhodes. I know this week is okay for me being  
15 here. But next week, I have GED orientation on  
16 Thursday. And that's from 1:20 to 5:00.

17 THE COURT: 1:20 to 5:00. We will not be  
18 in session at that time.

19 PROSPECTIVE JUROR LAWANDA RHODES: Okay.  
20 Can I still be dismissed?

21 THE COURT: No.

22 PROSPECTIVE JUROR LAWANDA RHODES: Because  
23 I have classes too starting.

24 THE COURT: But we -- see, we will not be  
25 in session on that Thursday. So that wouldn't

1 be a basis for me to excuse you.

2 PROSPECTIVE JUROR LAWANDA RHODES: What  
3 about the following week?

4 THE COURT: Well, we will know more about  
5 that when you come back Tuesday.

6 PROSPECTIVE JUROR LAWANDA RHODES: So do I  
7 need to let my job know that? Because I'm on  
8 the schedule to work next week as well. So do I  
9 need to let them know?

10 THE COURT: You should let them know. And  
11 at the end of the day, we will see if there is  
12 anything that's changed --

13 PROSPECTIVE JUROR LAWANDA RHODES: Okay.

14 THE COURT: -- on Tuesday. So that's 9:30.

15 PROSPECTIVE JUROR LAWANDA RHODES: All  
16 right.

17 THE COURT: Thank you.

18 Mr. McShan, how are you doing?

19 PROSPECTIVE JUROR ALAN MCSHAN: How are you  
20 doing, sir?

21 THE COURT: I'm fine.

22 PROSPECTIVE JUROR ALAN MCSHAN: I am  
23 related to Harold Jones. But I don't -- it's so  
24 distant, until I can't really tell you how I'm  
25 related to him. So I just wanted the record to

1 reflect that.

2 THE COURT: Okay. Well, you will probably  
3 be asked that when you come back Tuesday.

4 PROSPECTIVE JUROR ALAN MCSHAN: Okay. That  
5 would be cool.

6 THE COURT: They will delve into that more  
7 then.

8 PROSPECTIVE JUROR ALAN MCSHAN: Yes, sir.  
9 Thank you.

10 THE COURT: Yes, ma'am?

11 PROSPECTIVE JUROR KRISTI BROWN: My name is  
12 Kristi Brown. And I just wanted to know, am I  
13 still considered to be on jury duty? Do I go to  
14 work Monday?

15 THE COURT: On the holiday?

16 PROSPECTIVE JUROR KRISTI BROWN: Yeah. I'm  
17 a nurse.

18 THE COURT: Okay. I'm going to tell you --  
19 I'm going to give you the same answer I give the  
20 other jurors. It's up to you. You are still on  
21 jury duty. We don't have jury on holidays. So  
22 that may treat it a little differently. We  
23 don't have jury duty -- we don't have juries on  
24 holidays. Like, on the weekends. We don't have  
25 jury on the weekends. But you are on jury. So

1           you should be back here Tuesday at 9:30.

2                   PROSPECTIVE JUROR KRISTI BROWN:   Okay.   So  
3           do I or do I not go to work Monday?

4                   THE COURT:   I would probably go or at least  
5           I would call them.   Because we are definitely  
6           off for -- all jurors are off on those holidays  
7           unless I especially -- and I don't do that -- I  
8           don't have a session on a holiday.

9                   So my advice to you would be to call them  
10          and tell them that you are still on the jury, do  
11          they want you to come in to work on Monday.

12                   PROSPECTIVE JUROR KRISTI BROWN:   Okay.

13                   THE COURT:   That's what I would do.   And if  
14          they say yes, then I would.

15                   PROSPECTIVE JUROR KRISTI BROWN:   Okay.  
16          Thank you.

17                   THE COURT:   Yes, sir, your name?

18                   PROSPECTIVE JUROR MICHAEL PETTAWAY:   Mike  
19          Pettaway.   You told me to -- I told you I had a  
20          doctor's appointment on Wednesday.   I also think  
21          Wal-Mart short --

22                   THE COURT:   Hold on a second.   Let me look  
23          at this.

24                   Okay.   Go ahead.

25                   PROSPECTIVE JUROR MICHAEL PETTAWAY:

1           Secondly, I think a Wal-Mart short-term and  
2           long-term disability, I think it's paid by  
3           Hartford.

4                   THE COURT:   Okay.   That's something we will  
5           deal with later.

6                   PROSPECTIVE JUROR MICHAEL PETTAWAY:   All  
7           right.

8                   THE COURT:   Tell me about the appointment.  
9           When is it?

10                   PROSPECTIVE JUROR MICHAEL PETTAWAY:  
11           Tuesday.   The lab is the 12:30, and I see the  
12           doctor at 2:30

13                   THE COURT:   What are you seeing him for?

14                   PROSPECTIVE JUROR MICHAEL PETTAWAY:   I've  
15           got some internal problems.

16                   THE COURT:   All right.   I appreciate you  
17           bringing this.   And so, based on that condition,  
18           the Court is going to excuse you.

19                   PROSPECTIVE JUROR MICHAEL PETTAWAY:   All  
20           right.

21                   THE COURT:   And what is your name?

22                   PROSPECTIVE JUROR MICHAEL PETTAWAY:  
23           Michael.

24                   THE COURT:   Michael what?

25                   PROSPECTIVE JUROR MICHAEL PETTAWAY:

1           Pettaway, P-E-T-T-A-W-A-Y.

2                   THE COURT:   Okay.  I want you to check with  
3           her before you leave.

4                   All right.  Ladies and gentlemen, what we  
5           are going to do is, we are going to -- there are  
6           some follow-up questions that the parties will  
7           be asking you.  And so we are going to do this  
8           one at a time.  I'm going to begin with  
9           Mr. Mink.  Is that you?

10                   PROSPECTIVE JUROR CHARLES GILLS:  Gills.

11                   THE COURT:  Gills.  Yeah, that's right,  
12           Gills.  And then Ms. Davis, you will be next.  
13           Ms. Fields, then you will be third.  Then Ms.  
14           -- let's see here.  Ms. Foster, you will be  
15           fourth.  And then Mr. Rice, you will be fifth.  
16           And Mr. Johnson, you will be sixth.  Okay.  So,  
17           if you will, wait right outside.  Someone will  
18           come and get you when it's your turn.  Everybody  
19           except Mr. -- I keep forgetting that name.

20                   MR. STEWART:  Gills.

21                   THE COURT:  Gills.  I guess I'm just  
22           getting old.

23  
24                   PROSPECTIVE JUROR CHARLES GILLS,  
25           having been previously duly sworn,

1            was examined and testified as follows:

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1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. All right. Mr. Gills, yesterday -- no, was it  
4 yesterday? We were off yesterday, weren't we?  
5 Wednesday, you indicated that you had -- there  
6 was some plaintiffs that you were involved in  
7 the treatment of those plaintiffs.

8 A. Yes, sir.

9 Q. All right. And I realize that there are certain  
10 HIPAA regulations that you are bound to comply  
11 with?

12 A. Yes, sir.

13 Q. And so, as a part of this process, I'm going to  
14 direct you to disclose those persons as the law  
15 authorizes me to do.

16 Now, I'm not -- that's just going to be  
17 limited to the names and not what you treated  
18 them for.

19 A. Yes, sir.

20 Q. And if it became necessary to discuss that, then  
21 we will take that up at that time. But that's  
22 my understanding.

23 So, if you will, now, indicate the names of  
24 those persons and the circumstances under which  
25 you were involved in the treatment of them, if

1           you'll do that at this time. I'm going to let  
2           the parties ask you some follow-up questions for  
3           further clarifications.

4    A.    From 1987 until 1998, I worked for Dr. Lloyd  
5           White. And four of the families that were  
6           listed were patients of ours from that time  
7           period. And it was the Pfalzgraf family, Ed and  
8           Sheryl; the Price family, Cecil and Alice; the  
9           Rife family, the wife's name is Tina. I do not  
10          remember the husband's name.

11                   MR. STEWART: What was the last name, sir?

12                   PROSPECTIVE JUROR CHARLES GILLS: Ryfe,  
13           R-Y-F-E.

14    A.    And the Robinettes, R-O-B-I-N-E-T-T-E. And I  
15          think it's Thomas Robinette.

16                   They were the only Robinettes that were  
17           listed under the plaintiffs. And they have  
18           since moved out of state from where their  
19           address was listed.

20    Q.    All right. Now, as a general statement, the  
21           Court is going to ask you whether or not you can  
22           place the fact that you treated them during that  
23           period of time aside and base your verdict in  
24           this case solely on the evidence and the law?

25    A.    Yes, sir.

1 THE COURT: Are there follow-up questions  
2 regarding that from the plaintiffs?

3 MR. STEWART: No, sir.

4 THE COURT: Follow-up questions regarding  
5 that from the defendants?

6 MR. WELLS: I think there are a couple,  
7 Your Honor, if I could.

8 THE COURT: You may. You may proceed.

9 VOIR DIRE EXAMINATION

10 BY MR. WELLS:

11 Q. Now, Mr. Gills, do you know at the time they  
12 were being treated -- and I'm not asking you  
13 about what they were being treated for -- were  
14 the folks still working in the coal mines at  
15 that time? Or do you know?

16 A. I believe they all were. My work with Family  
17 Care started as an administrative worker. I  
18 worked filing insurance claims. And then later  
19 moved into -- I graduated nursing school in  
20 '94. So really from '94 to '96 -- or 94 to '98,  
21 I really worked more part-time than full-time.

22 I can't even tell you the years for sure  
23 that I saw any of these individuals after that  
24 time. Prior to that, it was pulling charts and  
25 filing insurance claims.

1                   MR. WELLS: I think that's all I've got  
2 right now.

3                   THE COURT: All right. Mr. Gills, if you  
4 will, please be back here at 9:30. We will have  
5 further questions or information.

6                   PROSPECTIVE JUROR CHARLES GILLS: Might I  
7 add one statement?

8                   THE COURT: Certainly.

9                   PROSPECTIVE JUROR CHARLES GILLS: I had  
10 mentioned that I knew Linda Linebarger, the wife  
11 of the Linebarger gentleman. That's a different  
12 Linda Linebarger. So I was incorrect in that.

13                   THE COURT: You don't know Linda  
14 Linebarger?

15                   PROSPECTIVE JUROR CHARLES GILLS: It was  
16 certainly not intentional. The Linebarger that  
17 I worked with at Partlow is not married and has  
18 never been married. So that's her maiden name  
19 and not her married name. Thank you.

20                   THE COURT: Let me just make sure about  
21 that. In light of that, are there any questions  
22 about that part of the statement?

23                   MR. WELLS: (Counsel shakes head.)

24                   MR. STEWART: No.

25                   THE COURT: So that you don't really --

1 other than those four people, you don't know any  
2 other individuals who were plaintiffs?

3 PROSPECTIVE JUROR CHARLES GILLS: I did  
4 mention one other name. David Ashcraft is a  
5 neighbor. He lives down the street from me at  
6 the entrance to our neighborhood.

7 THE COURT: Since you are here then, let  
8 me -- have a seat. Let's deal with that.

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Now, how do you know Mr. Ashcraft?

12 A. He lives at the entrance to our neighborhood.

13 And we go to church together.

14 Q. So Mr. Gills --

15 A. Yes, sir.

16 Q. Would the fact that you live in the same  
17 neighborhood as Mr. Ashcraft, and attended the  
18 same church -- and what church is that?

19 A. Valleyview Baptist.

20 Q. Do y'all sit near each other?

21 A. No, sir.

22 Q. Do y'all talk during the course of the church or  
23 neighborhood?

24 A. You know, we have 1,000 or 1,200 members. So I  
25 may talk to him at the end of services and ask

1           him how things are going. But we are not -- our  
2           kids don't play together. We are not -- we  
3           don't play Monopoly together or anything. So I  
4           don't -- I mean, we don't have that  
5           relationship.

6    Q.    So the question I'm about to ask you is whether  
7           or not the fact that he lives in your  
8           neighborhood, y'all attend the same church --  
9           and I understand it's a large church, though --  
10          can you put that fact aside and be fair to both  
11          parties -- I mean, all parties and base your  
12          verdict solely on the evidence and the law? Can  
13          you do that?

14   A.    Yes, sir.

15   Q.    Do you have any doubt in your mind as to whether  
16          or not you can do that?

17   A.    No, sir.

18   Q.    And would you have a problem with -- would you  
19          feel uncomfortable with serving on the jury  
20          knowing that you had a neighbor who was a  
21          potential plaintiff?

22   A.    I don't believe so. I've never been in that  
23          position, but --

24                    THE COURT: Any follow-up questions from  
25          the plaintiff?

1 MR. STEWART: I don't think so, Judge.

2 THE COURT: Any follow-up questions from  
3 the defendants?

4 MR. DODSON: Judge, John Dodson for Micon.  
5 I did have a question, not necessarily about  
6 that, but about his work with Dr. White.

7 THE COURT: Go ahead.

8 VOIR DIRE EXAMINATION

9 BY MR. DODSON:

10 Q. You said you worked with Dr. White for, looked  
11 like, almost ten years; is that right?

12 A. That's right.

13 Q. What type doctor is Dr. White?

14 A. Family practice.

15 Q. In your work, after you became a nurse, what  
16 were your responsibilities?

17 A. At his office, we would check -- you know,  
18 someone would have pulled the chart or we would  
19 pull the chart and take vital signs, and write  
20 down their complaint and what medicines they  
21 were taking, what allergies they had. If we  
22 knew there was lab work that needed to be drawn,  
23 we would draw their blood.

24 Q. And these -- the four plaintiffs that you  
25 identified that were patients of Dr. White, do

1           you recall all of those individuals?  When I say  
2           that, do you recall what their complaints and  
3           health problems were?

4    A.    Oh, no, sir.  I mean, we saw -- we had 30,000  
5           patients in that practice by the time we left.  
6           The only family that I would remember anything  
7           about was the Price family maybe, because they  
8           had a daughter that was killed in a car wreck  
9           about the time that I worked there.  And they --  
10          I remember how upsetting it was to their  
11          family.  But other than that, I can't.

12   Q.    Do you recall whether any of these plaintiffs  
13          had respiratory problems?

14   A.    No, sir.

15   Q.    If they did, is that something you think you  
16          would recall?

17   A.    I would think so.  Because we did certain -- we  
18          would also do certain tests like spirometries.  
19          And our individuals that had respiratory issues  
20          like emphysema or COPD or chronic asthma, we did  
21          yearly spirometries on them.  So I would think I  
22          would remember.

23                 But, like I say, when you see 30,000 people  
24                 over -- maybe 36,000 by the time you retire,  
25                 it's kind of hard to remember exactly.  You

1 know, I can picture five in my hand -- in my  
2 mind that we did spirometries on all the time,  
3 and it was not any of those four.

4 MR. DODSON: That's all I have. Thank  
5 you.

6 THE COURT: Thank you. If you will, be  
7 back at 9:30 on Tuesday.

8 PROSPECTIVE JUROR CHARLES GILLS: Yes, sir.

9  
10 PROSPECTIVE JUROR DEMETRICE DAVIS,  
11 having been previously duly sworn,  
12 was examined and testified as follows:

13  
14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Please state your name.

17 A. Demetrice Davis.

18 Q. All right. Now, Ms. Davis, I believe you  
19 indicated that you -- in the course of your  
20 career, you knew plaintiffs by virtue of having  
21 treated them or been involved in their  
22 treatment; is that correct?

23 A. I am the -- I was the receptionist at -- there  
24 was two patients -- do you want me to go into  
25 detail and tell you what happened?

1 Q. Well, what I want to tell you is that I'm  
2 going -- I understand you have concerns about  
3 the HIPAA law. And I'm directing you -- I'm  
4 ordering you to respond. But in terms of going  
5 into any details about what treatment they had,  
6 if a question is asked regarding that, then I'll  
7 take that up at that time.

8 A. Okay.

9 Q. But as far as responding about the circumstance,  
10 you may do so.

11 A. Okay. Two of them are previous -- my previous  
12 employment, which was Anesthesiology and Pain  
13 Management. And I was actually a receptionist/  
14 secretary. But with the physician we had, they  
15 were there two or three hours waiting on him.  
16 We were in a small close quarters, so I got  
17 really close to a couple of those. That was --

18 Q. What were their names?

19 A. Milton Douglas and David Blevins. And that was  
20 probably in 2000, 2001. I know David was a  
21 patient of ours, and his dad was killed in the  
22 mines.

23 Q. That's Milton Douglas and David Blevins?

24 A. Right.

25 Q. And that would have been in 2000?

1 A. 2000, 2001. I've been at my present job since  
2 2002. That was 2000, 2001.

3 Q. And what was the -- you were employed as a  
4 receptionist by whom?

5 A. Anesthesiology and Pain Management.

6 Q. Now, Ms. Davis, the question I want to ask you  
7 relates to this: The fact that you knew them  
8 through serving as a receptionist and seeing  
9 them for the period of time you've indicated,  
10 would that fact prevent you from sitting as a  
11 juror in this case and being fair to all  
12 parties?

13 Stated another way: Can you put that  
14 relationship or that experience aside and base  
15 your verdict solely on the evidence and the law?

16 A. Yes, sir, on those two,uh-huh.

17 Q. On those two?

18 A. Uh-huh.

19 Q. Are there others?

20 A. There is one more, Eddie Joe Graham.

21 Q. Who is Eddie Joe Graham?

22 A. He is one on the list. But he is a present  
23 patient where I work now.

24 Q. Okay. Tell me about that.

25 A. I do not know him personally. He may not know

1 me where the other two would. But I do handle  
2 his workmen's comp through Jim Walter's.

3 Q. I see. And so what about him? Can you do the  
4 same thing with him?

5 A. I can, uh-huh.

6 Q. When I say "the same thing," can you put the  
7 fact that you work with his workers' comp with  
8 Jim Walter's, the information you've got as a  
9 result of that, would you be able to put that  
10 aside and base your verdict solely on the  
11 evidence and the law?

12 A. Okay. Let me ask you something else. I know  
13 that we are treating him for a chemical  
14 problem. I don't know if that's going to be a  
15 problem in the court. I know that is his  
16 diagnosis is his chemical reaction.

17 Q. Okay. Well, now we are getting into an issue  
18 that deals directly with this case. So do you  
19 know what kind of chemical problems it is?

20 A. I do not know that.

21 Q. All right. Why don't you tell us what you do  
22 know.

23 A. I just know that we treat him on a regular  
24 basis. And the chemical diagnosis, that is what  
25 we treat him for. Workmen's comp does pay for

1           that. We filed with Jim Walter's. I time to  
2           Vann Wilhite every once in a while with that  
3           case.

4                    As far as what the doctors do, I don't  
5           know.

6                    THE COURT: All right. Questions on behalf  
7           of the plaintiffs?

8                    VOIR DIRE EXAMINATION

9   BY MR. STEWART:

10   Q. Ms. Davis, I'm Donald Stewart. I represent the  
11       plaintiffs in this case. You indicated that you  
12       worked with Jim Walter on his workers' comp. Is  
13       that what you are telling me?

14   A. I have to deal with Vann Wilhite sometimes to  
15       get things approved and to make sure they are  
16       going to cover certain things

17   Q. When you say, "things approved," are you talking  
18       about treatment that he's receiving?

19   A. Visits.

20   Q. Visits that he's receiving?

21   A. Uh-huh.

22   Q. What is the name of your doctor?

23   A. I'm at Tuscaloosa Ear, Nose & Throat. There's  
24       six of them. It's Shotts, Walburn, Loftin,  
25       Lake, Stephenson and Rosenstiel. And depending

1 on who is there is who sees him.

2 Q. Is that Hodo Walburn?

3 A. Uh-huh.

4 Q. How often do you see -- is it in Graham?

5 A. It's, yeah, Mr. Graham. He doesn't come as  
6 regular now as he used to. I don't really  
7 know. We see so many patients. His chart is  
8 that thick (indicating.)

9 Q. But you don't participate in any of the  
10 treatment?

11 A. No, sir. I'm strictly on the insurance, the  
12 filing part. So as far as -- I wouldn't know if  
13 he walked in the door.

14 Q. Do you participate in any of the diagnoses or  
15 see any of that?

16 A. I just key the charges.

17 Q. You what now?

18 A. I key the charges. The doctor marks the  
19 charges, and I just strictly key them.

20 Q. So when you see Mr. Graham or these other two,  
21 Mr. Douglas or Mr. Blevins, you see them in the  
22 waiting room or you deal with them on the  
23 business side?

24 A. Mr. Graham, I have not seen him personally. I  
25 just deal on the paperwork on his end.

1           The other two I have not seen in eight  
2           years, since I've been at the present employer,  
3           by they would know me. And I had conversations  
4           with them during that time when I worked with  
5           them at Anesthesiologist --

6    Q.    That was another -- I'm sorry. I didn't mean to  
7           cut you off.

8    A.    That's okay.

9    Q.    That was another medical entity that you worked  
10           for where you --

11   A.    Prior to this one.

12   Q.    But you didn't participate in the treatment at  
13           the other?

14   A.    No, sir.

15   Q.    And so the Court asked you, if you were to be  
16           called as a juror in this case, and I would ask  
17           again, knowing what you know about these people,  
18           would you be able to put that relationship that  
19           you have with them aside and follow the  
20           instruction and the law?

21   A.    Yes, sir.

22   Q.    And decided the case on an impartial basis?

23   A.    Yes, sir.

24                   MR. STEWART: Okay.

25                   THE COURT: Questions on behalf of the

1 defendants?

2 MR. WELLS: Yes, sir, Your Honor. If I  
3 could. It may be easier if I come up to the  
4 microphone. I see the court reporter nodding to  
5 come to the microphone.

6 VOIR DIRE EXAMINATION

7 BY MR. WELLS:

8 Q. Ms. Davis, my name is Tommy Wells. I'm one of  
9 the lawyers for Dow Chemical Company.

10 A. Yes, sir.

11 Q. So you are currently working for Tuscaloosa Ear,  
12 Nose & Throat?

13 A. That's correct.

14 Q. And when you say you key in the charges, I  
15 assume that means you put in the -- you know,  
16 there is the standard numbers for diagnoses that  
17 you get paid on?

18 A. Uh-huh, correct.

19 Q. Those are the kinds of things you key in?

20 A. The procedures, what they actually had done and  
21 their diagnosis.

22 Q. Okay. So you are pretty familiar with those  
23 code -- that coding, I take it?

24 A. Uh-huh.

25 Q. Because you have to do it all the time?

1 A. Right, uh-huh.

2 Q. Now, Ms. Davis, in this case, I expect there are  
3 going to be medical records and medical bills  
4 that are going to be introduced for the  
5 consideration of the jury in this case. And  
6 some of those medical bills are going to have  
7 some of those codings on it.

8 I guess my question to you is, can you sort  
9 of look at those codings and take them at face  
10 value, without saying, gee, if I had done this,  
11 I would have coded it a different way?

12 A. I have to do what the doctor says. I don't  
13 actually change the codings. I just put what  
14 the doctor has got on there.

15 Q. So the doctor does the actual coding?

16 A. Right. He does the actual coding. I just key  
17 it.

18 Q. Okay. Are you aware of any special codings for  
19 conditions that are caused by chemical  
20 exposures?

21 A. I mean, I know that he has one. But I don't  
22 know as far as -- what are you -- explain that  
23 again. What are you asking me exactly?

24 Q. Well, I'm asking, is there a specific number?

25 A. A code for his diagnosis?

1 Q. A code for --

2 A. His specific diagnosis?

3 Q. For his specific diagnosis --

4 A. I don't know what it is right off.

5 Q. -- as being caused by a chemical?

6 A. I know he is there for a chemical condition.

7 And Jim Walter is responsible and they pay for

8 it. I don't know the circumstances of how it

9 happened or -- I don't know all of that.

10 Q. Okay. And you don't even know what the chemical  
11 is?

12 A. I do not. It may be in his chart. I do not  
13 know.

14 Q. Okay. Do you know what he is being treated for,  
15 or do you recall what he's being treated for?

16 A. I know it's on there. But I could not tell you  
17 right now what it is.

18 Q. You would obviously have to type it in when the  
19 doctor handed you the bill?

20 A. Uh-huh, exactly.

21 Q. And this is Mr. Graham; is that right?

22 A. Uh-huh, uh-huh.

23 Q. Is he on disability from Jim Walter, or is he  
24 still working at Jim Walter, just getting his  
25 medical benefits paid for the visits?

1 A. I'm not positive, but I think he is on  
2 disability. But I'm not positive about that.

3 Q. You are not positive?

4 A. (Witness shakes head.)

5 Q. Do you know how Jim Walter pays?

6 A. How they pay?

7 Q. Uh-huh.

8 A. As far as?

9 Q. Yeah, I mean, do you get a check for -- from Jim  
10 Walter? Do you handle the checking?

11 A. Yeah, we get it from Jim Walter.

12 Q. Is it directly from Jim Walter as opposed to  
13 from, like, Blue Cross or somebody like that?

14 A. Huh-uh, it's from Jim Walter.

15 Q. Okay. Do you handle workers' comp for other Jim  
16 Walter miners?

17 A. Whoever -- there's two of us that kind of take  
18 turns doing charges. And so whichever day is  
19 mine, I just send it all through that day. So  
20 whoever keys in charges that day actually takes  
21 care of it. So there is actually two of us.

22 Q. Okay. So some days --

23 A. If it's on my day, yes, I do it.

24 Q. Okay. And before, when you were the  
25 receptionist at the Anesthesiology & Pain

1 Management, you weren't doing any of the medical  
2 key -- any of the keying that you are doing now?

3 A. The keying, yes, I was doing the keying. But  
4 that's been eight years ago. And I don't  
5 remember.

6 Q. Do you know whether either Mr. Douglas or  
7 Mr. Blevins were getting workers' comp from Jim  
8 Walter?

9 A. Milton Douglas was. Blevins, I'm not sure  
10 about.

11 Q. I'm just asking you this: Would it make a  
12 difference to you, in terms of trying to be fair  
13 on this jury, if you even knew or didn't know  
14 that workers' comp claims either had been or had  
15 not been filed for the conditions that they are  
16 suing on now?

17 A. I mean, I could be fair, listen to everything  
18 that's said. But still, in the back of my mind,  
19 I'm going to know that workmen's comp has  
20 actually been covering that.

21 Q. So you are going to know that it's --

22 A. I'm going to know that workmen's comp actually  
23 covered it, but --

24 Q. So you are going to know they are not  
25 out-of-pocket on all of this?

1 A. Uh-huh, yes.

2 MR. WELLS: All right. I think that's all  
3 I have.

4 THE COURT: Any further questions?

5 MR. BICKS: Yeah, Your Honor, if that's  
6 okay.

7 VOIR DIRE EXAMINATION

8 BY MR. BICKS:

9 Q. How are you, Ms. Davis?

10 A. I'm good. How are you?

11 Q. I was trying to keep notes -- my name is Peter  
12 Bicks -- of what people were saying when we were  
13 back in the theater. And did I get it right  
14 that you knew a couple of the plaintiffs? Was  
15 it Mr. Ashcroft?

16 A. Uh-huh, Ashcraft.

17 Q. Ashcraft. And was it Frankie Bailey?

18 A. Uh-huh.

19 Q. Could you just tell me a little bit about how  
20 you know those two folks?

21 A. Okay. I went to school with Frankie. He's a  
22 couple years older than me, I think. His -- we  
23 were not that close in school, but I knew him.  
24 His wife Deborah, our kids have played ball.  
25 The boys have played ball together, and his

1 daughter is my oldest son's age. They've just  
2 kind of gone through school all their life  
3 together. So we see each other at school, at  
4 the ballpark.

5 And then David, we go to church with them.  
6 Have been with them for years.

7 Q. So tell me, how would you feel in this case, you  
8 know, they are -- those folks are on one side,  
9 and then we represent companies on the other  
10 side. The company I represent is a company  
11 called Flexible. And there are going to be  
12 claims against our client in the case. And if  
13 you were in the case, these would be folks whom  
14 you know who would be on the other side.

15 Just share with me kind of your feelings  
16 about how it would be for you to sit on a case  
17 like that. Do you think kind of you may be  
18 leaning one way or the other? Or kind of tell  
19 me what you think.

20 A. I mean, I would be honest about it, depending on  
21 what I heard. It would be hard.

22 Q. Yeah. How would it be hard?

23 A. Because knowing that they are -- I don't know.  
24 I don't know what all happened between Frankie  
25 and them and David and them. I didn't know

1 anything was involved with them.

2 But depending on what all comes out, I  
3 don't know how they were injured, if it was -- I  
4 don't know. That's going to be tough.

5 Q. It would be the kind of thing, when you are  
6 listening to this, you know, you would be  
7 saying, I know these folks, these are friends, I  
8 know them, and --

9 A. I mean, I would have to listen to what everybody  
10 said, to be honest, to go by what actually  
11 happened.

12 Q. Uh-huh. Do you think sometimes we kind of have  
13 leanings one way or the other, when you hear  
14 things and you know people? Do you think you  
15 would be leaning kind of in their favor a little  
16 bit?

17 A. Probably not. I mean --

18 Q. And when you say "probably," tell me --

19 A. Until I heard the whole story, I don't know  
20 which way I would go. Whichever way it comes  
21 out as the truth. I don't know which side is  
22 actually right.

23 Q. Okay. Thank you.

24 A. Does that make sense?

25 Q. Yeah. I appreciate it. Thank you.

1 A. I would have to hear the whole story.

2 MR. TAYLOR: Your Honor, just one question.

3 VOIR DIRE EXAMINATION

4 BY MR. TAYLOR:

5 Q. Ms. Davis, I'm Bernard Taylor. And I also  
6 represent Flexible Products. And Mr. Giles was  
7 just in here a little while ago, and he goes to  
8 church with --

9 A. Mr. Gills, uh-huh.

10 Q. -- Ashcroft also?

11 A. Ashcraft, uh-huh.

12 Q. Do you know Mr. Giles?

13 A. Gills.

14 Q. Gills, that's right. Mr. Gills?

15 A. Uh-huh, I do.

16 Q. How well do you know Mr. Gills?

17 A. Just through church. I mean, we don't associate  
18 outside church together or anything.

19 Q. Are you on committees together at church?

20 A. Just in choir.

21 Q. Just in choir. So you sing in the choir  
22 together?

23 A. Uh-huh.

24 Q. Would the fact that you are in the choir with  
25 Mr. Gills, and you come to a point where you

1           have to make a decision about this case, if  
2           Mr. Gills is leaning one way and you are trying  
3           to decide which way you might want to lean in  
4           regards to making a decision in the case, would  
5           you tend to lean his way?

6    A.    No.

7                         MR. TAYLOR:  Ms. Davis, thank you very  
8           much.

9                         VOIR DIRE EXAMINATION

10   BY THE COURT:

11   Q.    Ms. Davis, I don't think I asked you this  
12           question.  I asked you about those persons that  
13           you treated -- not treated, but was involved  
14           with their treatment.  I didn't ask you about  
15           Mr. Ashcraft?

16   A.    Ashcraft.

17   Q.    And Mr. Bailey.  The relationship you have with  
18           them, can you put that aside and base your  
19           verdict solely on the evidence and the law?

20   A.    I think I can.

21   Q.    And can you be fair to both them and to the  
22           defendants in this case?

23   A.    (Witness nods head.)  I think so.

24   Q.    Can you do that?

25   A.    Yes.  Yes, I can.

1 THE COURT: Any further questions?

2 MR. STEWART: We have none, Judge.

3 MR. WELLS: (Counsel shakes head.)

4 MR. TAYLOR: None here, Your Honor.

5 MR. BICKS: No, sir.

6 THE COURT: All right. Thank you. Ask the  
7 next one to come in. And I'll see you at --

8 PROSPECTIVE JUROR DEMETRICE DAVIS: 9:30  
9 Tuesday.

10 THE COURT: Gentlemen, it's my practice  
11 here to -- well, I'll wait. I will just wait.

12 I generally do one lawyer per -- not trying  
13 to let everybody say what they want to say,  
14 generally, we do one per party.

15 MR. TAYLOR: Understood.

16 THE COURT: How are you doing?

17 PROSPECTIVE JUROR BETTY FIELDS: I'm fine.  
18 How are you?

19 THE COURT: I'm good. I'm doing good.

20

21 PROSPECTIVE JUROR BETTY FIELDS,  
22 having been previously duly sworn,  
23 was examined and testified as follows:

24

25

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. You indicated that you may be related to one of  
4 the plaintiffs.

5 A. He is married to my third cousin.

6 Q. Okay. And what is his name?

7 A. Kevin Simpson.

8 Q. Kevin Simpson?

9 A. Uh-huh.

10 Q. Okay. Do you know any other plaintiffs?

11 A. There was two that I go to church with. But I'm  
12 not really friends with them or anything. I  
13 just know them through church.

14 Q. And which two were they?

15 A. Howard Grammer and Randy Tindle, I think is his  
16 last name.

17 Q. Howard?

18 A. Grammer.

19 Q. And Randy?

20 A. Tindle.

21 Q. Tindle. And you go to church with them?

22 A. Yes, sir.

23 Q. Now, the one that you say you are third cousins  
24 with -- who was that now?

25 A. I'm third cousins with a lady named Pam. And

1 Kevin is her husband.

2 Q. And his name is Kevin?

3 A. Simpson.

4 Q. Simpson. I don't know how you get to be third  
5 cousins to someone, but I just -- I won't go  
6 into that.

7 What I'll do is ask you, how well do you  
8 know him, Kevin Simpson?

9 A. I don't know him very well at all.

10 Q. You just know that part --

11 A. I mean, I haven't seen him in four years. And I  
12 only seen him, like, once a year when I did see  
13 him, like, at a family reunion or something. I  
14 really don't know anything about him.

15 Q. Let me ask you, now, if the fact that you at  
16 least know him in the way you know him, Kevin  
17 Simpson, and that you are third cousins to his  
18 wife, I guess?

19 A. Yes.

20 Q. And the fact that you go to church with Howard  
21 Graham?

22 A. Grammer.

23 Q. Grammer, and Randy Tindle, can you put that  
24 aside and be fair to both parties in this  
25 case --

1 A. Yes, sir.

2 Q. -- and base your verdict solely on the evidence  
3 and the law?

4 A. Yes, sir.

5 Q. Would you be uncomfortable serving on a jury if  
6 either one of those people were parties in that  
7 case?

8 A. No.

9 Q. Would that make you uncomfortable?

10 A. Not at all.

11 THE COURT: Questions on behalf of the  
12 plaintiffs?

13 MR. STEWART: No questions, Judge.

14 THE COURT: Questions on behalf of the  
15 defendants?

16 MR. DODSON: Judge, I have a few. John  
17 Dodson for Micon.

18 VOIR DIRE EXAMINATION

19 BY MR. DODSON:

20 Q. Is it Betty?

21 A. Yes.

22 Q. Hey, Betty. Now, you said that you don't see  
23 Kevin Simpson very often. But your third cousin  
24 Pam, do you see Pam frequently?

25 A. No.

1 Q. Okay. Do they live in the same community you  
2 live in?

3 A. No. Last I heard, they was up towards  
4 Birmingham somewhere.

5 Q. Okay.

6 A. And I live down here in Tuscaloosa County.

7 Q. And what church is it that you go to?

8 A. Hepzibah Baptist.

9 Q. How many members in that church?

10 A. About 800.

11 Q. So it's a pretty good size church, huh?

12 A. Yes, sir.

13 Q. And how often do you see Randy Tindle or Howard  
14 Grammer?

15 A. Maybe about three times a year. My work  
16 schedule doesn't allow me to go to church, you  
17 know, on a regular basis like I would like.

18 Q. What is your job?

19 A. I work as a customer service rep with Home  
20 Depot.

21 Q. And you don't think the fact that you might see  
22 Mr. Grammer and Mr. Tindle at church a few times  
23 a year, if you were to sit on this jury and  
24 ultimately possibly find against them in the  
25 case, you wouldn't feel uncomfortable with

1 seeing them at church?

2 A. No, sir.

3 Q. And the same goes with your cousin's husband?

4 A. No, sir.

5 Q. Okay. That's all I've got. Thanks.

6 A. Thank you.

7 VOIR DIRE EXAMINATION

8 BY MR. BICKS:

9 Q. Hi, Ms. Fields. Of the folks you know that we  
10 were talking about, do you know or have any  
11 information about whether or not they have any  
12 health issues, any breathing problems or  
13 anything like that in any way related to any  
14 kind of chemicals?

15 A. No, sir.

16 MR. BICKS: Thank you.

17 THE COURT: All right. If there are no  
18 further questions, thank you very much. Please  
19 be back at 9:30 on Tuesday here in this  
20 courtroom.

21 PROSPECTIVE JUROR BETTY FIELDS: Thank  
22 you.

23

24

25

1                   PROSPECTIVE JUROR SHERBY FOSTER,  
2                   having been previously duly sworn,  
3                   was examined and testified as follows:  
4

5                   VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q.    Ms. Foster, I believe you indicated that you  
8        were related in some manner to a plaintiff?

9 A.    Yes, sir.

10 Q.   And who would that be?

11 A.    Well, it was several of them.   But I stated that  
12        I knew Michael Atmore.

13 Q.   Michael Atmore?

14 A.    Yes, sir.

15 Q.   And how do you know him?

16 A.    We share a granddaughter.   My son and his  
17        daughter has a daughter.

18 Q.   Okay.   Let's see.   Your son --

19 A.    My son and his daughter, they have a daughter,  
20        which is my granddaughter and his granddaughter.

21 Q.   But y'all are not related?

22 A.    No, no, no.

23 Q.   Okay.   Any others that you know?

24 A.    Charlie Blount.

25 Q.   And how do you know him?

1 A. Married to my sister.

2 Q. Charlie Blount is married --

3 A. He was married to my sister.

4 Q. So he's now divorced?

5 A. They are divorced now.

6 Q. Anybody else?

7 A. No, sir.

8 Q. So you don't know anybody else, any other  
9 plaintiffs?

10 A. Well, let me see. Is it a Larry Wilson? I'm  
11 thinking that that's his name.

12 Q. Let me see. Let me see if I can --

13 A. He's a member of my church.

14 Q. There is a Larry Wilson, Sr.; wife, Rosie  
15 Wilson.

16 A. Yes, they are members of my church.

17 Q. Okay. Now, based on the fact that you share a  
18 granddaughter with Plaintiff Atmore, and, well,  
19 that your sister used to be married to Plaintiff  
20 Blount, and that you go to church with  
21 Mr. Wilson --

22 A. Yes, sir.

23 Q. -- can you put those relationships aside and  
24 serve on the jury and be fair to both the  
25 plaintiffs and the defendants in this case?

1 A. I can.

2 Q. Would you not be uncomfortable serving on the  
3 jury if you --

4 A. Well, you know, it's a bias thing, yes. It  
5 depends on, I guess, the main issue of it. You  
6 know, if it's a true and false, and you are  
7 understanding that, I could be true or false to  
8 whatever it is, agree upon what I feel like is  
9 right.

10 Q. Okay. So all I'm interested in is, I want to  
11 make sure that you wouldn't be --

12 A. I wouldn't have a problem with it.

13 Q. Okay. So you are telling me you can be fair to  
14 both the plaintiffs and to the defendants?

15 A. I could.

16 Q. And that you will listen to the evidence and you  
17 will listen to the law as I instruct you, and  
18 you would base it on that and not the fact that  
19 your -- well, I guess the person that you share  
20 a grandchild with --

21 A. Well, yeah, because I --

22 Q. -- does that bother you?

23 A. I visit their house kind of regular.

24 Q. You do?

25 A. Yeah.

1 Q. Whose house do you visit?

2 A. Mr. Atmore's.

3 Q. Okay. Despite that, you think you still can be  
4 fair?

5 A. I do.

6 Q. Well, if the evidence indicated that you should  
7 rule against him --

8 A. Then I would have to do that.

9 Q. Would you do -- can you do that?

10 A. Then I would have to do that, yeah.

11 THE COURT: All right. Questions on behalf  
12 of the plaintiffs?

13 VOIR DIRE EXAMINATION

14 BY MR. STEWART:

15 Q. Ms. Foster, I'm Donald Stewart, one of the  
16 lawyers representing the plaintiffs.

17 You had indicated that Mr. Blount was  
18 married to your sister?

19 A. Yes, sir.

20 Q. But they are now divorced?

21 A. Yes, sir.

22 Q. You know, sometimes in domestic relations  
23 situations, folks take sides.

24 A. That's true.

25 Q. And with your sister being involved, is there

1 any spillover of hard feelings maybe against  
2 Mr. Blount?

3 A. Oh, no.

4 Q. No problem there?

5 A. No. That's been quite a few years.

6 Q. How long ago was it?

7 A. Well, I'm thinking more than five.

8 Q. Okay. So there's no -- nothing --

9 A. No.

10 Q. No feelings on your part -- no feelings on your  
11 part toward him --

12 A. No, sir.

13 Q. -- that would prevent you if, let's say, you  
14 felt like he should prevail in this case, from  
15 holding that from him?

16 A. No.

17 MR. STEWART: All right. That's all I've  
18 got.

19 THE COURT: Questions of the defendants?

20 MR. WELLS: Yes, Your Honor, if I could. I  
21 will go up to the microphone.

22 VOIR DIRE EXAMINATION

23 BY MR. WELLS:

24 Q. Ms. Foster, my name is Tommy Wells.

25 A. Okay.

1 Q. And I represent one of the defendants in this  
2 case. Now, the grandchild that you and Michael  
3 Atmore share, I may have missed it, where does  
4 the grandchild live?

5 A. She is in college. But when she comes home, she  
6 lives in the house with her grandmother and them  
7 sometimes. Between her mother and them. So it  
8 doesn't -- I mean, you know, I don't know where  
9 she will be at at that time. But she does live  
10 with both of them, her mother and the  
11 grandmother.

12 Q. Okay. So that would be -- the grandchild would  
13 sometimes be living with the plaintiff Michael  
14 Atmore?

15 A. Right.

16 Q. Is that right?

17 A. Right.

18 Q. Do Michael Atmore or Ms. Atmore provide the  
19 grandchild any financial support for college or  
20 living expenses?

21 A. Well, I really don't know about that part of  
22 it. I just know they transport her back and  
23 forth every now and then to school when she have  
24 to go back. She's at A & M down there. And  
25 they usually take her back and forth and get her

1 set up in school.

2 Q. Back and forth to A & M?

3 A. Right.

4 Q. Okay. Now, obviously, that grandchild is both a  
5 blood relative of yours and of Michael Atmore's;  
6 right?

7 A. Yes. That's my big baby.

8 Q. I understand. I've got three grandchildren of  
9 my own. I know how you feel about them.

10 And I'm just wondering if -- given that,  
11 and given -- you know, I take it she's got a  
12 reasonably close relationship --

13 A. Yeah.

14 Q. -- with her -- with the grandfather?

15 A. Yeah.

16 Q. I would hope so, anyway.

17 A. Yeah.

18 Q. Are you saying you could put all of that aside  
19 and --

20 A. It will be hard.

21 Q. It would be pretty hard?

22 A. It would be hard.

23 Q. It would be hard for me, I can tell you that.

24 A. It would be hard, you know. It really would be  
25 hard. But if I had to do that, I would do

1           that.  But, like I said, it still would be hard.

2    Q.    Okay.  You don't think you might just lean just  
3           a little bit toward --

4    A.    Well, I want to be truthful because I try to be  
5           honest, myself.

6    Q.    I understand.  And I'm certainly not being  
7           critical in any way.

8    A.    Okay.

9    Q.    I just know, having a grandchild of my own, I  
10           would have a hard time trying to handle  
11           something --

12   A.    Well, I have three.  And I try to do the same  
13           for all three, you know.  And I will be there  
14           for whatever.  But if it's right and wrong, if  
15           you're wrong, you're wrong.

16   Q.    Okay.  So you think you could put all of that  
17           aside, and you wouldn't even lean a little bit?  
18           If it got to be a close call, you wouldn't just  
19           think, well, you know, that's my grandbaby's  
20           grandfather, I've got to go with his side?

21   A.    No, I couldn't do that.  I've been faced with  
22           the law before myself like this.  But, you know,  
23           I feel like right is right, you know.  And if  
24           it's wrong, it's wrong.

25   Q.    Yes, ma'am.  Okay.  I was going to ask you about

1 Mr. Blount, your former brother-in-law.

2 A. Okay.

3 Q. I know the divorce has been five years ago.

4 Does he still provide any support to your  
5 sister?

6 A. No. She is remarried.

7 MR. WELLS: Okay. All right.

8 VOIR DIRE EXAMINATION

9 BY MR. TAYLOR:

10 Q. Good afternoon, Ms. Foster?

11 A. How are you doing?

12 Q. Thank you for coming in and thank you for saying  
13 what you said about you're going to tell the  
14 truth. And we greatly appreciate it.

15 A. Yeah.

16 Q. Your granddaughter, the one granddaughter you  
17 have told us about that Mr. Atmore is the  
18 grandfather?

19 A. Right.

20 Q. And you said she is about 18 years old?

21 A. She's 20.

22 Q. She's 20 now?

23 A. She's 20. She is in her third year down there.

24 Q. So you've shared this granddaughter with him for  
25 a very long time?

1 A. A very long time.

2 Q. The evidence in the case may turn out that  
3 certain of the plaintiffs in this case,  
4 Mr. Atmore would be one of them, are contending  
5 that they have some health problems.

6 Have you observed any health problems that  
7 Mr. Atmore has experienced?

8 A. No, because I've had them myself. The last  
9 couple of years, I haven't really been around  
10 that much because of my illness. And I don't do  
11 a lot of traveling.

12 Q. Understood. Well, you indicated you visited the  
13 house regularly?

14 A. Just mostly during holidays when I take my  
15 grandson to be with her there. And I will sit  
16 for a minute. But other than that, as far as  
17 just hanging out, I don't do it.

18 Q. Okay. I appreciate that. And have you observed  
19 whether Mr. Atmore has had any respiratory  
20 problems that you have seen?

21 A. Well, you know, he's not usually there when I'm  
22 there.

23 Q. Okay.

24 A. Usually, it's just the wife and the kids, my  
25 granddaughter and a couple of her friends that

1 she might bring home from school or something,  
2 and then her mother and another aunt or  
3 something like that. But I really didn't be  
4 around Mr. Atmore that much. I just know he  
5 lives there, and he is the grandfather.

6 Q. All right. And you indicated that you have a  
7 couple more grandchildren?

8 A. I do.

9 Q. Are those children of Mr. Blount's children?

10 A. No. Those are my -- just my son's kids. I have  
11 got my grandson, raising him myself. And we  
12 have another little one that's not four.

13 Q. Thank you very much. I appreciate it.

14 A. Okay. All right.

15 THE COURT: All right. Thank you. I'll  
16 see you at 9:30 Monday -- I'm sorry, Tuesday.

17 PROSPECTIVE JUROR SHERBY FOSTER: I was  
18 fixing to say, are we coming to eat barbecue?

19 THE COURT: Do you have some?

20 PROSPECTIVE JUROR SHERBY FOSTER: We will.

21 THE COURT: Who is going to be cooking it?

22 PROSPECTIVE JUROR SHERBY FOSTER: I will.

23 THE COURT: Can you cook?

24 PROSPECTIVE JUROR SHERBY FOSTER: Melton's.

25 THE COURT: Oh, that's right. That's

1 right. You can.

2 PROSPECTIVE JUROR SHERBY FOSTER: Y'all  
3 have a good evening. See you Tuesday.

4 THE COURT: You won't have it ready at  
5 9:30. What time will you have it ready?

6 PROSPECTIVE JUROR SHERBY FOSTER: Huh-uh, I  
7 can't tell you that.

8

9 PROJECTIVE JUROR CHARLES RICE,  
10 having been previously duly sworn,  
11 was examined and testified as follows:

12

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Mr. Rice?

16 A. Yes, sir.

17 Q. I understand that you may be related to one of  
18 the plaintiffs.

19 A. Yes, sir. I wasn't sure the day you asked, you  
20 know, it was on Tuesday.

21 Q. Yes.

22 A. Jeff Cooley is married to my cousin, Margie.  
23 She was Margie Elliott. I haven't seen her in  
24 probably 25 years. The only reason I knew that  
25 she was married to him, she had friended me on

1           facebook a while back, and I thought that was  
2           kind of familiar, so I went back and checked her  
3           out on facebook and sure enough, they were  
4           married so --

5    Q.    All right. Did you know any other plaintiffs?

6    A.    David Grammar, I went to church with him.  
7           That's been probably 20-some-odd years ago. I  
8           haven't seen him in years, but I know him and,  
9           you know, we might speak to each other if we saw  
10          each other on the street.

11   Q.    So, basically, David Grammar. And what's the  
12          other person's name?

13   A.    Jeff Cooley was married to my cousin.

14   Q.    Okay. Now --

15   A.    And one more that I didn't realize, a William  
16          Scott, I hunted with him years ago. I didn't  
17          recognize him, I guess it was Wednesday, but one  
18          of the other jurors, we all used to hunt  
19          together. And he said, I can't believe you  
20          didn't stand up for William. And I know him as  
21          Wild Bill, and if you said Wild Bill, I probably  
22          would have recognized him but --

23   Q.    All right. Then, does the fact that you know --  
24          the relationship that you have with these  
25          individuals, Mr. Grammar, Mr. Cooley, and now,

1 Mr. Scott, Wild Bill, all right, can you put  
2 that aside and be fair to both the plaintiff and  
3 the defendants and base your verdict in this  
4 case solely on the evidence and the law?

5 A. Yes, sir, I could.

6 Q. Would you be uncomfortable serving on a jury and  
7 ruling against any of them if the evidence  
8 indicated it?

9 A. If the evidence, you know, was clear and it was  
10 without a doubt, then I would have no problem.

11 THE COURT: Okay. Questions on behalf of  
12 plaintiff?

13 MR. STEWART: No, sir.

14 THE COURT: Questions on behalf of the  
15 defendants?

16 MR. WELLS: No, sir.

17 VOIR DIRE EXAMINATION

18 BY MR. DODSON:

19 Q. Mr. Rice, my name is John Dodson, I represent  
20 Micon and MPI, a couple of companies in this  
21 case.

22 Now, your cousin -- and what's her name?

23 A. Margie.

24 Q. And how close a cousin is she to you?

25 A. Her grandfather and my grandfather were

1 brothers.

2 Q. Okay. How often do you see Margie?

3 A. I haven't seen Margie in probably 25 years.

4 Q. And y'all don't communicate?

5 A. Actually on facebook, I may see some pictures  
6 that she's posted, I may look at it and that's  
7 it. We may have chatted one time in the last  
8 year, so, I mean, it's nothing that we -- I  
9 haven't seen her in, like, 25 years.

10 Q. And have you ever met Jeff Cooley?

11 A. I have not.

12 Q. And you said David Grammar, you haven't seen in  
13 20 years, but William Scott you've hunted with?

14 A. That's been 15, 20 years. It's been a long time  
15 ago.

16 Q. You had indicated though that somebody in the  
17 jury pool with you --

18 A. Yeah, Mr. Easterwood said Wednesday that he knew  
19 William Scott and --

20 Q. Who was that? Easterwood?

21 A. Yeah, Tommy Easterwood. And he asked me did I  
22 not remember him. I said, you know, I didn't  
23 remember him as William, I remembered him as  
24 Wild Bill. We coon hunted together for years.  
25 I say for years, several times during the course

1 of a year, we might hunt together.

2 Q. And you haven't kept up with Wild Bill at all?

3 A. No. I haven't seen him in, like I said, at  
4 least 15 years.

5 MR. DODSON: That's all I've got. Thank  
6 you.

7 THE COURT: Further questions by any of the  
8 parties?

9 MR. BICKS: Nothing here, Your Honor.

10 THE COURT: All right. Thank you. See you  
11 at 9:30 on Tuesday.

12 PROSPECTIVE JUROR CHARLES RICE: All right.

13

14 PROSPECTIVE JUROR JAMES JOHNSON, JR.,

15 having been previously duly sworn,

16 was examined and testified as follows:

17

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. Mr. Johnson, I believe you indicated that you  
21 were related to one of the plaintiffs in this  
22 case or some of the plaintiffs. Which  
23 plaintiffs are you related to or not related to?

24 A. I'm not related to the plaintiffs. I'm related  
25 to the plaintiff's wife. Kenneth Cannon's

1 wife. Her name is Leronda.

2 Q. How are you related to her?

3 A. Leronda is -- she's my fourth cousin.

4 Q. All right. And are there any other plaintiffs  
5 that you know?

6 A. No, sir.

7 Q. Now, she is your fourth cousin. Do y'all  
8 socialize together?

9 A. No, sir, I haven't. I probably haven't seen her  
10 maybe one time in the last 20 years.

11 Q. All right. Well, that leads me to my next  
12 question.

13 A. Yes.

14 Q. Would the fact of that relationship and your  
15 having seen her you are saying once in the last  
16 20 years?

17 A. Yeah. I wouldn't know her if she walked through  
18 the door.

19 Q. Well, I just want to ask whether or not that  
20 relationship would prevent you from being fair  
21 to both parties and that you could put that  
22 aside and base your verdict solely on the  
23 evidence and the law? Can you do that?

24 A. Yes, sir?

25 Q. So you can be fair to both sides?

1 A. Yes, sir?

2 THE COURT: All right. Any questions by  
3 the plaintiffs?

4 MR. STEWART: Nothing.

5 THE COURT: Questions by the defendant?

6 MR. WELLS: (Counsel shakes head.) No, sir.

7 MR. TAYLOR: No.

8 THE COURT: All right. Mr. Johnson, if you  
9 will be back here at -- you are Mr. James  
10 Johnson; right?

11 PROSPECTIVE JUROR JAMES JOHNSON: Yes, sir.

12 THE COURT: 9:30 in this courtroom Tuesday.

13 PROSPECTIVE JUROR JAMES JOHNSON: Okay.

14 THE COURT: Thank you very much. All  
15 right. We've now heard from six jurors. The  
16 Court intends to act on any challenges for cause  
17 as to those jurors based upon either their  
18 kinship, or alleged kinship, with any plaintiffs  
19 or their relationship with them in terms of  
20 friendship or otherwise. And it's limited to  
21 that only.

22 There may be other reasons that may come up  
23 for which the parties may seek to challenge  
24 them. But for purposes of today, I am dealing  
25 with that so challenges on behalf of the

1 plaintiff, these are challenges for cause.

2 MR. DAVENPORT: For-cause, yeah.

3 MR. STEWART: We don't have any, Judge.

4 THE COURT: Challenges on behalf of the  
5 defendants?

6 MR. TAYLOR: Your Honor, could we have just  
7 a few minutes to confer?

8 THE COURT: Two.

9 MR. TAYLOR: Two minutes, okay. Two  
10 minutes.

11 MR. WELLS: Judge, speaking for the  
12 defense -- and I think I'm speaking on behalf of  
13 all of the defendants right now.

14 Tommy Wells for Dow.

15 I confess, I'm not an expert at the degrees  
16 of consanguinity or affinity, but I think  
17 Ms. Sherby Foster falls within the statutory  
18 prohibition.

19 THE COURT: Okay. Well, then you tell me  
20 how.

21 MR. REYNOLDS: Judge, we would say that  
22 she's blood kin just one step down. She is a  
23 grandmother.

24 THE COURT: She's a grandmother. We got --  
25 we are looking at her relationship to the

1 plaintiff. Plaintiff.

2 MR. REYNOLDS: I think she threw us off  
3 because she said they shared a grandchild.

4 THE COURT: Well, the thing is though,  
5 the -- we are looking at the relationship that  
6 she has to the plaintiff, okay? So she is not  
7 related to the plaintiff.

8 MR. REYNOLDS: Absent the marriage, that's  
9 correct.

10 THE COURT: So that's why I'm asking what  
11 the relationship is.

12 MR. REYNOLDS: I confess, that's one I  
13 don't know.

14 MR. WELLS: I was just trying to -- I'm  
15 sorry, Judge, go ahead. I didn't mean to cut  
16 you off.

17 MR. REYNOLDS: You didn't.

18 MR. WELLS: Go ahead. You know this a  
19 whole lot better than I do.

20 MR. REYNOLDS: I don't know this one  
21 better, obviously not.

22 THE COURT: We can start off by simply  
23 saying, first of all, we know there is no  
24 relationship between the plaintiffs -- the  
25 plaintiff and her in the sense that she's not

1 married to him. Nor is she related by blood or  
2 marriage to him.

3 Now, if the grandchild had been the  
4 plaintiff, that would have been a much more  
5 difficult call, but they would have a common  
6 blood relative. The grandchild. And so we  
7 would be -- we would be counting -- we would be  
8 counting those relationships. So I'm -- I know  
9 it's not a relationship by marriage because they  
10 didn't -- she was very clear about that. There  
11 is no marriage involved in it. And so there is  
12 no relationship between them bloodwise, because  
13 -- well --

14 MR. REYNOLDS: Judge, it's just late in the  
15 day, and I divert to the Court. I think you are  
16 correct on that.

17 THE COURT: Admittedly, I've never had that  
18 come up either.

19 MR. REYNOLDS: I don't feel so bad now.

20 THE COURT: But, you know, it bears  
21 thinking, I mean, the good part about what we  
22 are doing today is that it's not over with.  
23 There may be -- we may still -- somebody may  
24 bring a case that says, folks who share  
25 grandchildren together should be disqualified.

1 But we don't know that today, so I wouldn't be  
2 qualifying them on the basis of that today.

3 MR. WELLS: Okay. Thank you, Your Honor.

4 THE COURT: All right. So hearing none,  
5 then there are -- the Court would not disqualify  
6 any of the six that we've talked to based on  
7 what has been said today. Inasmuch as only one  
8 challenge for cause has been offered. That by  
9 the defendant, which the Court has denied. But  
10 it reserves the right to look at that again.

11 All right. I'm through for today. Next  
12 week I intend to start with -- start with the  
13 questioning on Monday -- on Tuesday. I think I  
14 want to do it quicker than we did this.

15 And I may not -- I was concerned about  
16 the -- I was particularly concerned about the  
17 two jurors who had been involved in the  
18 treatment of the plaintiffs. And that's why I  
19 thought it was important not to discuss that in  
20 the presence of the other jurors. I'm not as  
21 much concerned about that in connection with the  
22 jurors that we will be discussing relationships  
23 with, for example, a next-door neighbor.

24 It occurs to me, though, as I listened to  
25 some of the questions that you asked that you

1           may ask that particular juror whether or not  
2           they were aware of any health conditions of a  
3           prospective -- of a plaintiff. And I would be  
4           concerned about a juror responding in the  
5           presence of the other jurors on the question  
6           along those lines. So I still may wind up  
7           giving that. I may wind up questioning them  
8           individually as much as I do not want to do  
9           that.

10                        So I will think about that, and it may be  
11           that I will ask at the outset any juror who is  
12           aware of any health issues -- that any of the  
13           plaintiffs they know about, to ask them to stand  
14           and identify them and then talk with those  
15           persons individually.

16                        I do want to avoid any juror discussing  
17           that in the presence of the other jurors.

18                        MR. TAYLOR: That's good.

19                        THE COURT: So I may do that and then have  
20           those other questions addressed with the group  
21           as a whole.

22                        Now, schedule-wise, we have a mandatory  
23           sentencing conference that starts -- it goes,  
24           Wednesday, Thursday and ends, I think, midday  
25           Friday.

1 Am I right about that, Nathan?

2 MR. WILSON: Yes, Your Honor.

3 THE COURT: What time does it end on  
4 Friday? I told you I was going to check that  
5 out, and I forgot to do it.

6 MR. WILSON: I believe noon.

7 THE COURT: Noon. Well, I can probably  
8 leave at 11:00, probably, yeah.

9 MR. WILSON: I'll double-check that intel.

10 THE COURT: So, you know, of course next  
11 week is the Penn State weekend, so you will  
12 probably be here anyhow.

13 But there had been some requests that we  
14 discuss some pending motions, so I would allot  
15 some time for that Friday, and we will plan on  
16 1:30 Friday, and we will go into that  
17 afternoon.

18 The reason why I'm starting at 9:30 is --  
19 so I'll let you know that -- is I have a civil  
20 docket, nonjury docket, that I'm going to call  
21 and -- at nine o'clock and so I'll tell them  
22 whether or not there will be a judge coming in  
23 who will hear their cases or not.

24 But other than that, you know, I'll see you  
25 at 9:00 unless I see you at the football game

1 tomorrow. And if I do see you and if I don't  
2 speak to you, if I turn my back on you, it will  
3 be because I don't want to see you.

4 So unless anybody has a question, then  
5 that's it. I'll report to you too that --

6 How many -- Nathan, how many did we excuse  
7 for hardships?

8 MR. WILSON: About 16.

9 THE COURT: No, we excused for-cause and  
10 then we had some hardships all together. How  
11 many are now gone?

12 MR. WILSON: Let me find that list.

13 THE COURT: I think we said.

14 MR. WILSON: Do you want me to read the  
15 names out, Judge?

16 THE COURT: I just excused Georgia Jordan.

17 CLERK OF COURT: She is supposed to be back  
18 Wednesday.

19 THE COURT: She is excused because she has  
20 eye surgery on Wednesday morning and her doctor  
21 won't -- the doctor thinks she needs to be  
22 excused because it's critical. That's Georgia  
23 Jordan. I just wanted to make sure I got all of  
24 the excuses on the record.

25 Did you get that, Court Reporter?

1 COURT REPORTER: Yes, sir.

2 MR. WILSON: 17 plus the 16.

3 THE COURT: Okay. We started off with  
4 216. We've now, based upon those for-causes,  
5 that, in effect, the parties agreed should be  
6 struck, and then the hardships that the Court  
7 has excused, that's a total of 32. So it's 216  
8 less 32. That leaves us at --

9 MR. WILSON: 33.

10 THE COURT: 33. Okay, I'm sorry.

11 MR. WILSON: 180.

12 THE COURT: Nathan, you can correct me.  
13 The jurors can't.

14 MR. WILSON: Can attorneys?

15 THE COURT: No, they can't. So we are at  
16 185 now.

17 MR. WILSON: 183.

18 THE COURT: Which one is it?

19 MR. WILSON: 183.

20 THE COURT: So we are taking 216 and  
21 subtracting what?

22 MR. WILSON: 33.

23 THE COURT: And that gives us what?

24 MR. WILSON: 183.

25 THE COURT: Okay. So we are -- we got 183

1 jurors now, 183. We may have some additional  
2 for-cause Tuesday, but I plan to move through  
3 that fairly quickly. So I'm not going to  
4 tolerate any -- I'm not going to tolerate you  
5 asking them the same question too many times. I  
6 think you can only ask the same question maybe  
7 twice. Let's have a two-same-question rule.  
8 All right.

9 MR. TAYLOR: Your Honor, there may be one  
10 other question regarding whether the potential  
11 jurors have discussed the case with any of the  
12 people that -- any of the plaintiffs in this  
13 case. And I don't know if that's a question you  
14 would rather ask or -- I mean, we can ask that.

15 THE COURT: You mean to the 72 here?

16 MR. WELLS: To the ones here.

17 THE COURT: You mean the one I asked  
18 everybody in general and ask them to stand if  
19 they have?

20 MR. TAYLOR: Yeah.

21 THE COURT: Okay. So basically, right now,  
22 the questions would be aware of any health  
23 issues and discuss the case with any  
24 plaintiff -- because any aspect of the case with  
25 the plaintiff. Anything else?

1 MR. TAYLOR: We will probably think of it  
2 over the weekend.

3 THE COURT: Well, don't call me.

4 MR. TAYLOR: We won't.

5 THE COURT: Did you hear what I said?  
6 Don't call me.

7 MR. TAYLOR: All right.

8

9 \*\*\*\*\*END OF PROCEEDINGS\*\*\*\*\*

10 at 4:32 p.m.

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## P R O C E E D I N G S

1  
2 Tuesday, September 7, 2010

9:41 a.m.

3 (Whereupon, the following was held  
4 outside the presence of the jury  
5 venire.)

6 THE COURT: I plan to seat them. And then  
7 I plan to ask them -- all the jurors who have  
8 actually talked to a plaintiff about the case,  
9 ask those persons to stand. Then I intend to  
10 ask any juror who has talked to or discussed  
11 with any plaintiff that plaintiff's health  
12 circumstances, ask those persons to stand. And,  
13 of course, have them identified.

14 And we will then question those persons  
15 individually. Then I intend to ask the panel as  
16 a whole whether or not, based upon their  
17 relationship with a plaintiff, either as a  
18 neighbor, friend or otherwise, can they put that  
19 aside and base their decision solely on the  
20 evidence and the law? If anyone who feels that  
21 relationship would prevent them from doing that,  
22 ask them to stand and identify those persons.

23 And after that time, I'm going to -- at  
24 least I plan on those individuals who stand and  
25 say they've discussed the case with the

1 plaintiff -- with a plaintiff, I'm going to  
2 question them individually. And also those  
3 persons who indicated that they had discussed  
4 the plaintiff's health circumstances, I'm going  
5 to question those individuals.

6 Now, I will question individually anybody  
7 else that a party thinks ought to be questioned  
8 individually, except that I'm not going to  
9 accept someone saying, I just want to question  
10 everybody individually.

11 Now, if there is a reason to do it, I will  
12 allow it. But I'm just not going to have  
13 individual voir dire just -- without a basis  
14 being demonstrated to the Court.

15 So that's how I intend to proceed. And I  
16 thought I would let you know in advance to get  
17 your input, comments or criticisms or  
18 suggestions. In fact, I'll just consider  
19 anything you say, even if it's a criticism, as a  
20 suggestion. So have at it. Or objections. I  
21 forgot that. You can object.

22 MR. BICKS: Judge, can I raise an issue  
23 with you?

24 MR. TAYLOR: Right here, Your Honor.

25 THE COURT: Yeah, you know, microphone.

1           You know, the microphone, makes you -- it looks  
2           like you are coming from right here.

3                       MR. BICKS: I'm sorry. Your Honor,  
4           proposed two questions to start out. One was,  
5           have you discussed the case with any of the  
6           plaintiffs? And then the next question was  
7           going to be, have you discussed any health  
8           issues with the plaintiff?

9                       Our concern is, while I think it's unlikely  
10          that you are going to see a lot of hands on the  
11          question of the health issue, if -- your general  
12          first question, I think would probably cover  
13          that. And then we could follow up individually,  
14          if there were any discussions about any health  
15          issues. So at least I'm raising the concern  
16          that we not single that issue out in front of  
17          the entire group.

18                      As I say, if you ask people, have you  
19          discussed anything relating to this with any of  
20          the plaintiffs, you know, then when we get the  
21          folks individually, we can kind of bid out kind  
22          of what those discussions may have been.

23                      THE COURT: Are you suggesting that the  
24          Court not ask them about any discussions  
25          regarding their health?

1                   MR. BICKS: No. But I'm suggesting that we  
2 do that if we have somebody who says I've had  
3 some discussion with a plaintiff in any way  
4 relating to this case, that we then follow up  
5 with the health question when we're talking one  
6 on one.

7                   In other words, I think that would capture  
8 that. The concern is, if we start asking in  
9 front of an entire group, have you had  
10 discussions about health issues and a bunch of  
11 people start raising their hands, that could  
12 create the impression that, you know, there's --  
13 a lot of these folks, you know, are sick from  
14 something relating to the mines. And, you know,  
15 that would be the concern.

16                  THE COURT: That's fine with the Court.  
17 Actually, that idea came about as a result of  
18 some questions that the defense asked some of  
19 the prospective jurors last week.

20                  MR. BICKS: Judge, I totally understand.  
21 We were doing that one on one. And that, at  
22 least from our perspective, seemed to be a  
23 better, you know, environment in which to do  
24 it. Because not everybody is hearing or seeing  
25 a bunch of people raise their hands.

1 Understood.

2 THE COURT: Okay. We will see how that  
3 works.

4 MR. DODSON: Judge, I certainly don't have  
5 a criticism, but a comment as to your second  
6 question of asking whether the -- you've had a  
7 discussion with any plaintiff regarding a health  
8 condition.

9 THE COURT: I'm not going to ask that  
10 question.

11 MR. DODSON: Okay. I guess my --

12 THE COURT: Do you want me to ask it?

13 MR. DODSON: Well, I think this is a  
14 question I would like asked, which would be, are  
15 you aware of any respiratory problems that the  
16 plaintiff you know has? They may not have  
17 discussed it with a particular plaintiff, but  
18 they may be aware of it. And that would give us  
19 an opportunity to single those out.

20 THE COURT: You want me to ask that? I  
21 don't have a problem asking that.

22 MR. DODSON: That's the question I would  
23 like asked.

24 THE COURT: Well, it's got the same issue.  
25 If everybody gets up -- if everybody stands up

1 and says that, then the issue that was just  
2 raised comes right there. But I don't have a  
3 problem with it. I said "discussed," because  
4 everybody may be aware that they are doing fine.

5 MR. DODSON: My concern is, Judge, I don't  
6 know how we single them out.

7 THE COURT: Your question is, are you aware  
8 of -- how did you phrase it?

9 MR. DODSON: Of any respiratory problem  
10 that the plaintiff you know has.

11 THE COURT: You did ask that last week. I  
12 was trying to stay away from saying specifically  
13 that and leaving it at health. But, hey, I  
14 don't have a problem with asking that either.

15 MR. STEWART: Judge, I have some concerns  
16 about asking about that in front of the whole  
17 jury panel if -- I would prefer that be done on  
18 an individual basis.

19 THE COURT: Well, I'm not going to do that,  
20 Mr. Stewart. I told y'all I'm not going to do  
21 that. I will do that for those who identified  
22 as having that, but I'm not going to ask -- I'm  
23 not going to individually ask 70 jurors.

24 MR. STEWART: No, I didn't mean that. I  
25 just said general health question, I think, is

1 the question that should be asked and not the  
2 other. And then if they understand that a  
3 person has a general health issue, then we deal  
4 with that individually. That's our preference.

5 THE COURT: Okay. So your question -- your  
6 point is you don't want to be asked about  
7 respiratory. You would specifically -- the  
8 question would be, are they aware of any general  
9 health problems that the plaintiff that they  
10 know has.

11 MR. STEWART: Yeah.

12 THE COURT: That seems to be fairly  
13 neutral. Because general health problems could  
14 be headaches from a lot of pregnancies, you  
15 know. Go ahead.

16 MR. WELLS: And, Judge, I was just going to  
17 suggest, in asking that question, if you say,  
18 regardless of the cause of the problem, ask  
19 about health problem -- any health problem,  
20 regardless of cause.

21 THE COURT: What about that, Mr. Stewart?  
22 Any health problems, regardless of the cause.

23 MR. STEWART: That's fine with me, Judge.  
24 They're the ones that wanted the original  
25 question, but if they want that in addition to

1           it, we'd be glad to --

2                   THE COURT:   What about that, Mr. Dodson?

3                   MR. DODSON:   That's fine.

4                   THE COURT:   Those who say "yes," that would  
5           be a basis for me to question.  You know, I'll  
6           hold them back.  And you can go into the details  
7           individually.

8                   Now, everybody who stands and says that  
9           they have a -- you know, they have a problem  
10          serving on the jury if -- because of their  
11          relationship with the knowledge of, everybody  
12          who responds to that question, I will allow --  
13          that person will be -- not allow any party to  
14          ask that individual any follow-up questions, if  
15          you wish.

16                   Now, the only question is whether or not I  
17          should allow the follow-up question individually  
18          or just when they stand and say it.

19                   I was thinking about doing it like I did it  
20          earlier, which was -- you know, I asked them  
21          generally.  And if I had any questions about it,  
22          I asked them to follow up or have them come up.  
23          So I'll just see how they respond.

24                   Everybody can come on in.  Just bring them  
25          all in, but have him to come on up.

1 PROSPECTIVE JUROR TAVARUS COX: Tavarus  
2 Cox.

3 THE COURT: All right.

4 PROSPECTIVE JUROR TAVARUS: You told me  
5 earlier about bringing you a doctor's excuse or  
6 me going to the doctor, you know, when I told  
7 you I was going to the -- I had some doctor's  
8 appointments. I feel I won't be able to, you  
9 know, be in jury, you know. I won't be able  
10 to -- I would be too, you know -- I got -- my  
11 sickness is -- you know, doesn't allow me to  
12 just pay attention.

13 THE COURT: So now what has happened?  
14 You've been to the doctor?

15 PROSPECTIVE JUROR TAVARUS COX: No, sir.  
16 It's this Monday. This Monday, coming up, on  
17 September the 14th.

18 THE COURT: Okay. I'm not sure if I  
19 understand. What's the problem?

20 PROSPECTIVE JUROR TAVARUS COX: I don't  
21 feel I would be -- you know, I would be able to  
22 listen to what's going on.

23 THE COURT: Why?

24 PROSPECTIVE JUROR TAVARUS COX: My breath  
25 be short, and my ears be closing up, my head --

1 THE COURT: Is that why you are going to  
2 see a doctor?

3 PROSPECTIVE JUROR TAVARUS COX: Yes, sir.

4 THE COURT: And what are you going to see a  
5 doctor for?

6 PROSPECTIVE JUROR TAVARUS COX: Migraines,  
7 headaches, a whole lot of symptoms.

8 THE COURT: Okay. All right, then. Based  
9 on that health condition, this Court is going to  
10 excuse you.

11 PROSPECTIVE JUROR TAVARUS COX: Okay.

12 THE COURT: You need to see her, and she'll  
13 tell you what to do.

14 PROSPECTIVE JUROR TAVARUS COX: Yes, sir.

15 (Whereupon, the following was held  
16 inside the presence of the jury  
17 venire.)

18 THE COURT: Good morning. Is everybody  
19 seated in the their correct seat?

20 Anybody missing that you can tell me  
21 about?

22 PROSPECTIVE JUROR JUSTIN PARKER: I think  
23 there was somebody sitting here.

24 THE COURT: Okay. And let's see. You  
25 are?

1 PROSPECTIVE JUROR JUSTIN PARKER: Justin  
2 Parker.

3 THE COURT: I'm just trying to see who --

4 CLERK OF COURT: We excused Michael  
5 Pettaway Friday. Michael Pettaway, that should  
6 be by him, we excused him on Friday.

7 THE COURT: Okay. You're right. But he's  
8 been excused. So he won't be coming.

9 Okay. That's very good. Thank you very  
10 much.

11 PROSPECTIVE JUROR JUSTIN PARKER: No  
12 problem.

13 THE COURT: The reason why you are all here  
14 and the other jurors are reporting tomorrow is  
15 because each of you, in response to questions  
16 asked last week or the week before last -- I'm  
17 not sure which one -- you indicated that you  
18 knew a plaintiff in some manner. And that's the  
19 reason why you are here, so we can inquire  
20 further about that.

21 Now, the purpose of this process is to make  
22 sure that a fair and impartial jury is seated  
23 for the trial of this case. And what that means  
24 is that, to the fullest extent possible, we want  
25 to seat a jury that will be fair to both parties

1 and will not lean one way or the other, but  
2 would base any verdict arrived at upon the  
3 evidence that's presented, and the law, as the  
4 Court will instruct you.

5 So that's why it was necessary for this  
6 proceeding to be held, in order to get more  
7 information about your relationship with any  
8 party, in particular, the plaintiffs, because  
9 you are the ones who, as we went through the  
10 film or the pictures, indicated that you were  
11 familiar with a plaintiff or lived in the same  
12 neighborhood or neighbors or were either  
13 next-door neighbors.

14 So the first question that the Court is  
15 going to ask -- and please keep in mind the oath  
16 that the Court placed you under on your first  
17 day of service in responding to the questions.

18 So my first question is: Any of you who  
19 know a plaintiff or plaintiffs, have you  
20 discussed with that person or that plaintiff you  
21 know, or his family member, have you discussed  
22 this case with them? If you have had any  
23 discussions with them about this case, I'm going  
24 to ask you to please stand.

25 (Prospective jurors respond by

1 standing.)

2 THE COURT: I don't want you to tell us  
3 what you discussed. All I want is for you to  
4 give us your name.

5 PROSPECTIVE JUROR JEREMY DOMINIC: My name  
6 is Jeremy Dominic.

7 THE COURT: All right. Thank you,  
8 Mr. Dominic. I will be coming back to you, but  
9 just hold on a minute.

10 PROSPECTIVE JUROR WALLACE WILLIAMS: My  
11 name is Wallace Williams.

12 THE COURT: Wallace Williams?

13 PROSPECTIVE JUROR WALLACE WILLIAMS: Yes,  
14 sir.

15 THE COURT: Thank you. I will be coming  
16 back to you. All right.

17 PROSPECTIVE JUROR MINNIE BONNER: Minnie  
18 Bonner. I heard about the case years ago, but I  
19 didn't know it until now, from a friend of mine  
20 that's on this.

21 THE COURT: All right. We will -- we're  
22 going to come back. We want you to identify.  
23 Thank you.

24 All right. My next question, for those of  
25 you who have indicated that you know a plaintiff

1 or a neighbor or whatever the relationship would  
2 be, the question is: Are you aware of any  
3 health problems that that plaintiff had,  
4 regardless of the cause of those health  
5 problems?

6 So if you are aware of any health problems  
7 or health concerns that they have, regardless of  
8 what the cause of it or regardless of what it  
9 might be, if you are, please stand.

10 (Prospective jurors respond by  
11 standing.)

12 PROSPECTIVE JUROR MINNIE BONNER: Minnie  
13 Bonner.

14 THE COURT: Hold on a minute. Let's see.  
15 All right. Let's stay on this side.

16 PROSPECTIVE JUROR DAPHNE BOWDEN: Daphne  
17 Bowden.

18 PROSPECTIVE JUROR DEMETRICE DAVIS:  
19 Demetrice Davis.

20 PROSPECTIVE JUROR JOHN GIBSON: John  
21 Gibson.

22 PROSPECTIVE JUROR LINDA O'ROURKE: Linda  
23 O'Rourke.

24 PROSPECTIVE JUROR ELIZABETH STINES:  
25 Elizabeth Stines.

1 THE COURT: Thank you. All right.

2 PROSPECTIVE JUROR ROSE COLLINS: Rose  
3 Collins.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR VINCENT BUSCHE: Vince  
6 Busche.

7 PROSPECTIVE JUROR JEREMY DOMINIC: Jeremy  
8 Dominic.

9 PROSPECTIVE JUROR WALLACE WILLIAMS:  
10 Wallace Williams.

11 PROSPECTIVE JUROR LARRY WILKERSON: Doug  
12 Wilkerson, Larry Wilkerson.

13 PROSPECTIVE JUROR TERENCE WHITE: Terence  
14 White.

15 PROSPECTIVE JUROR NANCY TURNER: Nancy  
16 Turner.

17 THE COURT: All right. Okay. Now, my next  
18 question is as follows: Is there anyone among  
19 you, anyone on this jury panel, who, because of  
20 their relationship as a neighbor or friend or  
21 otherwise, feel that because of that  
22 relationship, they could not sit as a juror in  
23 this case and be fair to both parties? In other  
24 words, if that relationship would cause you to  
25 lean one way or the other toward one party, as

1           opposed to the other one?

2                     If so, if you fit in that category, please  
3 stand.

4                     (Prospective jurors respond by  
5 standing.)

6                     PROSPECTIVE JUROR MINNIE BONNER:   Minnie  
7 Bonner.

8                     PROSPECTIVE JUROR DAPHNE BOWDEN:   Daphne  
9 Bowden.

10                    PROSPECTIVE JUROR JASON BOWERS:   Jason  
11 Bowers.

12                    PROSPECTIVE JUROR TONYA DAVIS:   Tonya  
13 Davis.

14                    PROSPECTIVE JUROR JOHN GIBSON:   John  
15 Gibson.

16                    PROSPECTIVE JUROR JEFFREY JONES:   Jeff  
17 Jones.

18                    PROSPECTIVE JUROR NORMAN PRINCE:   Norman  
19 Prince.

20                    PROSPECTIVE JUROR KERRI OWENS:   Kerri  
21 Owens.

22                    PROSPECTIVE JUROR ROBERT RYAN:   Robert  
23 Ryan.

24                    PROSPECTIVE JUROR ELIZABETH STINES:  
25 Elizabeth Stines.

1 PROSPECTIVE JUROR ROSE COLLINS: Rose  
2 Collins.  
3 PROSPECTIVE JUROR VINCENT BUSCHE: Vince  
4 Busche.  
5 PROSPECTIVE JUROR JEREMY DOMINIC: Jeremy  
6 Dominic.  
7 PROSPECTIVE JUROR LEBASTIAN HOPKINS:  
8 Lebastian Hopkins.  
9 PROSPECTIVE JUROR WALTER JEMISON: Walter  
10 Jemison.  
11 PROSPECTIVE JUROR JOSEPH MIZE: Joseph  
12 Mize.  
13 PROSPECTIVE JUROR MILTON MILLING: Milton  
14 Milling.  
15 PROSPECTIVE JUROR ALAN MCSHAN: Alan  
16 McShan.  
17 PROSPECTIVE JUROR MICHELE MASON: Michele  
18 Mason.  
19 PROSPECTIVE JUROR SAMUEL KIRKPATRICK:  
20 Samuel Kirkpatrick.  
21 PROSPECTIVE JUROR ELMORE RAINER: Elmore  
22 Rainer.  
23 PROSPECTIVE JUROR FLOYD RAMSEY: Floyd  
24 Ramsey.  
25 PROSPECTIVE JUROR NANCY TURNER: Nancy

1 Turner.

2 PROSPECTIVE JUROR KATHRYN ANDERSON: I have  
3 a question. What if you --

4 THE COURT: We need you to give us your  
5 name.

6 PROSPECTIVE JUROR KATHRYN ANDERSON: My  
7 name is Kathryn Anderson.

8 THE COURT: All right.

9 PROSPECTIVE JUROR KATHRYN ANDERSON: What  
10 if you could make a fair decision, but the  
11 people -- the plaintiff might expect you that,  
12 you know, to lean toward their way. I mean, I  
13 think I could be fair. But I think that would  
14 be expected of me from the people I know.

15 THE COURT: Okay. That's a fair question.  
16 We will -- what we are going to do is question  
17 you individually about that.

18 PROSPECTIVE JUROR KATHRYN ANDERSON: Okay.

19 THE COURT: So that if there was -- if  
20 there is anybody else who shares that feeling --  
21 that is to say, Ms. Anderson just expressed the  
22 notion that she could be fair, but she knows  
23 that the individual that she knows would expect  
24 her to see things her way.

25 PROSPECTIVE JUROR KATHRYN ANDERSON:

1           Definitely.

2                   THE COURT:   Now, you know, that's obviously  
3           what we would expect to occur.   And the question  
4           is whether or not that expectation that that  
5           plaintiff, or that person you know, would have  
6           would cause you to lean toward them in such a  
7           manner that you couldn't put it aside and be  
8           fair to both parties?

9                   And what that means is that if the evidence  
10          indicated that you should find against a  
11          particular person you know, can you do that?   Or  
12          would you feel so much pressure that you would  
13          be uncomfortable with it or not able to do it?  
14          I mean, that's really the kind of thing it boils  
15          down to.

16                   If there is anybody else who feels that  
17          way, you know, that's perfectly okay.   You may  
18          stand, too.

19                   Okay.   That would be Ms. O'Rourke; is that  
20          right?

21                   PROSPECTIVE JUROR LINDA O'ROURKE:   Yes.

22                   THE COURT:   And then Mr. Wallace?

23                   PROSPECTIVE JUROR WALLACE WILLIAMS:   (Nods  
24          head.)

25                   THE COURT:   Is that right?   Mr. Wallace

1 Williams?

2 PROSPECTIVE JUROR WALLACE WILLIAMS: Yes,  
3 sir.

4 THE COURT: Okay. All right. Now, what we  
5 are about to do, we are about to question those  
6 persons individually. It won't take a long  
7 time, but we are going to question those persons  
8 individually. Now, let me -- and what I'm going  
9 to do is ask the remainder of you to be in  
10 recess until after lunch. So I'm thinking two  
11 o'clock.

12 Okay. Now, let me -- before I identify  
13 those we want to remain, and those who can be in  
14 recess until then -- and maybe not two o'clock,  
15 maybe nine o'clock tomorrow. But let's just --  
16 let me confer with the parties for a moment.

17 All right. Counsel, let me confer with  
18 y'all for a moment.

19 (Whereupon, the following was held  
20 outside the presence of the jury  
21 venire.)

22 THE COURT: All right. Here's what I am  
23 thinking about doing. I am thinking that, first  
24 of all, are there any other jurors, based on  
25 what you saw on the questionnaires, that you

1 want me to ask to remain? That's the first  
2 question. Any other jurors in this list that  
3 you want to remain?

4 MR. BICKS: There will be a handful,  
5 Judge. And we can get that together for you. I  
6 mean, as an example, there is the JWR fellow.

7 MR. TAYLOR: Yeah, Mr. Carter.

8 MR. BICKS: Yeah, Mr. Carter, whose  
9 supervisor is a plaintiff, and works with about  
10 five of the plaintiffs at the JWR Mine. He  
11 would be an example of somebody who we would  
12 want to talk to. He's right up there in the  
13 front row on the left, Mr. Carter.

14 And we can get that list together just in a  
15 few moments. But he's one who jumps to mind.

16 MR. TAYLOR: And we need to talk.

17 MR. WELLS: Yeah, we need to --

18 THE COURT: Well, the problem with that is,  
19 I'm fixing to do it now. I'm fixing to do this  
20 now. That's the problem. Because I'm going to  
21 excuse those --

22 MR. TAYLOR: He's getting the names right  
23 now. I'm sorry.

24 Let me see how much longer this will be,  
25 Your Honor.

1           Your Honor, I don't -- I can't tell because  
2 we wrote down the numbers of these people. That  
3 looks like Terence White has already been.

4           Floyd Ramsey, is he already there, 183?

5           Carolyn Rhinehart. Is she already there?

6           MS. LOGGINS: She is not.

7           MR. TAYLOR: 184? What's wrong? Something  
8 changed?

9           MR. WELLS: Yeah, I think so.

10          MR. STEWART: Yeah. We had a chance to  
11 consult.

12          MR. WELLS: Judge, I think for all of those  
13 people that couldn't be fair, I think we would  
14 agree to let them all go.

15          THE COURT: Okay.

16          MR. WILSON: Is that the 26 or --

17          MR. STEWART: One and two we would ask  
18 questions about individually. But the others  
19 that said they knew them, neighbors, friends,  
20 couldn't set that aside, that's all right with  
21 the plaintiffs to let them go.

22          THE COURT: All right.

23          MR. TAYLOR: Was that the three you are  
24 talking about? You are just talking about the  
25 three?

1 MR. STEWART: Question number three.

2 MR. TAYLOR: So that would be number 8 --  
3 number, okay. So we still --

4 MR. WILSON: But not including the others  
5 that stood up at the end of the question?  
6 Kathryn Anderson, Ms. O'Rourke and Wallace  
7 Williams.

8 MR. STEWART: I don't have a problem with  
9 those.

10 THE COURT: Ms. O'Rourke stood up on the  
11 health problems.

12 MR. STEWART: Just the person -- and then  
13 the rest of them we would ask the questions of.

14 THE COURT: So that would be -- I would ask  
15 those two or three to come forward and excuse  
16 them. I will ask that group to come forward and  
17 then I will excuse them. Okay.

18 And then I will tell the remaining members,  
19 I'm going to give them an order in which they  
20 are to be questioned. And then I see no reason  
21 that I wouldn't let the rest of them simply come  
22 back in the morning.

23 MR. BICKS: I mean, the only issue, Judge,  
24 is that -- should we have an opportunity to at  
25 least generally examine the folks who have

1 indicated that they have a relationship but  
2 haven't responded to any of your questions? I  
3 mean, they are going to get -- if they end up  
4 back in the general voir dire pool, however that  
5 shakes out, I mean, I think that would be  
6 something that I think both sides would at least  
7 want to explore and understand how it factors in  
8 here.

9 THE COURT: What do you want to do?

10 MR. TAYLOR: Well, go ahead. And then  
11 I'll -- I mean, what I was doing was going  
12 through the ones that we -- some of them didn't  
13 stand up that we would want to get a chance to  
14 do --

15 THE COURT: Right. I mean, that was the  
16 purpose of my asking what I asked you earlier.  
17 But you are asking for something different. So  
18 I'm trying to figure out what are you asking  
19 for?

20 MR. BICKS: Well, I'm just suggesting that  
21 we have an opportunity to examine the remaining  
22 group just generally about the nature of the  
23 relationships and whether or not it's going to  
24 have any impact here in any way. And I'm just  
25 raising the issue it may well be that that gets

1 folded into the general voir dire.

2 MR. STEWART: I assume that could be  
3 covered in general voir dire, Judge, and see how  
4 it shakes out.

5 THE COURT: Well, we've got more time,  
6 based on what y'all just told me. So if you  
7 want to ask them some questions, you can ask  
8 them.

9 MR. BICKS: Understood.

10 THE COURT: I mean, we can go on and deal  
11 with -- I mean, if you want to ask them some  
12 questions as a general panel, after I have  
13 excused the first group, y'all go on and be  
14 doing what you are doing. That is to say,  
15 identifying those that you want to question  
16 individually. And at the same time, if there is  
17 any questions that any of y'all want to ask the  
18 group as a whole, you may do so.

19 So I will give you a minute to think about  
20 that --

21 MR. BICKS: Okay. Maybe we will just talk.

22 THE COURT: -- while I get those up here  
23 and excuse them. But I want to do it for the  
24 record. These are the ones that I understand  
25 are to be excused. So let me get whoever is in

1 charge of that to start.

2 Okay. Are y'all ready? Do you have the  
3 numbers?

4 MR. DAVENPORT: Just names.

5 MR. TAYLOR: We have numbers and names.

6 MR. DAVENPORT: I've just got names.

7 THE COURT: Okay. 35, Vincent Busche.

8 This is what I have.

9 MR. TAYLOR: Okay.

10 THE COURT: 47, Rose Collins; 64, Jeremy  
11 Dominic; 111, Lebastian Hopkins; 120, Walter  
12 Jemison; 134, Samuel Kirkpatrick; 149, Michele  
13 Mason; 152, Alan McShan; 155, Milton Milling;  
14 157, Joseph Mize; 182, Rainer Elmore; 183, Floyd  
15 Ramsey; 226, Nancy Turner.

16 I did not include Kathryn Anderson in that  
17 group because she had -- was ambivalent.

18 All right. 25, Minnie Bonner; 26, Daphne  
19 Bowden; 28, Jason Bowers; 243, Tonya Davis; 82,  
20 John Gibson; 126, Jeffrey Jones; 165, Kerri  
21 Owens; 180, Norman Prince.

22 I did not include Linda O'Rourke in that  
23 group.

24 194, Robert Ryan; 212, Elizabeth Stines.  
25 See, it's much easier if you use the chart.

1           That's what I did. I used the chart. Much  
2           easier.

3                   MR. DAVENPORT: I will do that from now on,  
4           Judge.

5                   THE COURT: Okay. Now, I intend to bring  
6           those up here and excuse them while y'all  
7           consider if there are other jurors that you  
8           would like to have questioned individually.

9                   And then, those remaining, if you have any  
10          general questions you want to ask them, I'll let  
11          you ask them. All right?

12                   MR. TAYLOR: Thank you, Your Honor.

13                   THE COURT: All right. Please listen  
14          carefully. I'm going to ask the following  
15          jurors to come forward. And by come forward --

16                   CLERK OF COURT: There's a juror who said  
17          she had a question, while the attorneys were up  
18          here.

19                   (Whereupon, the following was held  
20          inside the presence of the jury  
21          venire.)

22                   THE COURT: Okay. I understand, Ms. Brown,  
23          you have a question.

24                   PROSPECTIVE JUROR KRISTI BROWN: I do. Ask  
25          it now?

1 THE COURT: Yes.

2 PROSPECTIVE JUROR KRISTI BROWN: Okay.

3 Regarding the question --

4 THE COURT: Can you stand, please? Okay.

5 PROSPECTIVE JUROR KRISTI BROWN: Regarding  
6 the question about health problems, I just  
7 remember --

8 THE COURT: Well, if you remember  
9 something, just hold on.

10 PROSPECTIVE JUROR KRISTI BROWN: But it's  
11 back problems, and I don't know if it was --

12 THE COURT: I understand. Just hold on.  
13 Thank you. Those persons in that category, we  
14 are going to ask you about it individually. So  
15 just give me a minute.

16 PROSPECTIVE JUROR KRISTI BROWN: So that  
17 would be considered -- okay.

18 THE COURT: Give me a minute. Thank you,  
19 though. That's okay.

20 All right. Now, what I need is the  
21 following individuals, as your name is called,  
22 please come forward right here at the bench.  
23 Surround me right here at the bench. That's  
24 what I do a lot of times when I have a  
25 defendant. But you won't be a defendant.



1 hallway. I can make sure I have their correct  
2 address.

3 THE COURT: Okay. The clerk will need to  
4 see you in the hallway on your way out. So  
5 before you leave, make sure you give her your  
6 jury button, and then she's going to confirm  
7 your address.

8 So, again, thank you very much for your  
9 service. And I know you are disappointed, but  
10 you are excused. And thank you again.

11 What's your name, sir?

12 PROSPECTIVE JUROR NORMAN PRINCE: Norman  
13 Prince. I was one of the ones that was in that  
14 group that just came up here.

15 THE COURT: Uh-huh. All right. The name  
16 was called. Yeah.

17 PROSPECTIVE JUROR NORMAN PRINCE. You  
18 didn't call my name.

19 THE COURT: It should have been called.  
20 Norman Prince.

21 PROSPECTIVE JUROR NORMAN PRINCE: I didn't  
22 hear you call it. I'm sorry.

23 THE COURT: Well, you should have been  
24 called. I guess we just missed it. But you  
25 should follow that group. You are excused.

1 PROSPECTIVE JUROR NORMAN PRINCE: Just go  
2 out through there?

3 THE COURT: Uh-huh, yes. Thank you very  
4 much.

5 (Whereupon, the following was held  
6 inside the presence of the jury  
7 venire.)

8 THE COURT: Out of an abundance of caution,  
9 is there anyone who indicated they could not put  
10 it aside and be fair?

11 Yes? Okay. And your name is?

12 PROSPECTIVE JUROR WALTER JEMISON: Walter  
13 Jemison.

14 THE COURT: That's right, Mr. Jemison. I  
15 don't know how we missed you, Mr. Jemison. Come  
16 on up.

17 (Whereupon, the following was held  
18 outside the presence of the jury  
19 venire.)

20 THE COURT: You are excused. And you  
21 should follow that group. You need to see the  
22 clerk in the hallway. And thank you for your  
23 service.

24 PROSPECTIVE JUROR WALTER JEMISON: All  
25 right. Thank you.

1                   (Whereupon, the following was held  
2                   inside the presence of the jury  
3                   venire.)

4                   THE COURT: All right. Ladies and  
5                   gentlemen, before we discuss or ask questions to  
6                   you individually, the attorneys for the parties  
7                   may have some questions that they want to ask  
8                   the group as a whole. And so I indicated to  
9                   them that I would allow them a brief period of  
10                  time to do that very thing.

11                  So I'm going to begin with the plaintiffs'  
12                  counsel. Do you have any questions you want to  
13                  ask the panel as a whole at this time?

14                  MR. STEWART: Not at this time, Judge. We  
15                  may have some follow-up questions.

16                  THE COURT: All right. That would be  
17                  fine. All right. Counsel for defendants, are  
18                  there any questions that you wish to ask the  
19                  panel as whole?

20                  MR. WELLS: I've got just a couple, if I  
21                  could, Your Honor.

22                  THE COURT: All right. You may proceed.

23                  MR. WELLS: Thank you. Ladies and  
24                  gentlemen, my name is Tommy Wells, and I  
25                  represent one of the defendants in this case,

1 Dow Chemical. I just have a couple of questions  
2 based on the fact that all of you have said you  
3 at least know or are acquainted with one or more  
4 of the people you saw the pictures of that are  
5 the plaintiffs in this case.

6 How many of you see one or more of the  
7 people that you said you knew at least once a  
8 month?

9 (Show of hands.)

10 MR. WELLS: And, Mr. Carter, I know you do.

11 PROSPECTIVE JUROR JULIAN CARTER: I see him  
12 every day.

13 MR. WELLS: I understand that. That's  
14 Julian Carter.

15 Right here, sir.

16 PROSPECTIVE JUROR DONALD ASHCRAFT: Donald  
17 Ashcraft.

18 MR. WELLS: Yes, sir, Mr. Ashcraft. How  
19 often do you see one or more of the people?

20 PROSPECTIVE JUROR DONALD ASHCRAFT: At  
21 least every couple of weeks.

22 MR. WELLS: Okay. All right. Thank you.  
23 Ms. Cottingham?

24 PROSPECTIVE JUROR KAREN COTTINGHAM: One of  
25 them, I see probably once every week or so. I

1 see their children every week. I see their  
2 children two and three times a week.

3 MR. WELLS: Okay.

4 PROSPECTIVE JUROR DEMETRICE DAVIS:  
5 Demetrice Davis. Two to three times a week.

6 MR. WELLS: Okay.

7 PROSPECTIVE JUROR JAVAN DAVIS: Javan  
8 Davis. At least two or three times a week, when  
9 I'm walking.

10 MR. WELLS: Okay.

11 PROSPECTIVE JUROR CHARLES GILLS: Charles  
12 Gills. I may see my neighbor as I'm pulling in  
13 the neighborhood. Not socially, just see him.

14 PROSPECTIVE JUROR SHERBY FOSTER: Sherby  
15 Foster. At least twice a month.

16 MR. WELLS: Okay.

17 PROSPECTIVE JUROR KATHERINE JOHNSON:  
18 Katherine Johnson. Maybe one or two months.

19 MR. WELLS: Once or twice a month?

20 PROSPECTIVE JUROR KATHERINE JOHNSON: I  
21 rarely see him. But when I do, it will probably  
22 be two or three months later when I see him.

23 PROSPECTIVE JUROR FANNIE JONES: Fannie  
24 Jones. Daily.

25 MR. WELLS: Daily?

1 PROSPECTIVE JUROR FANNIE JONES: Uh-huh.

2 PROSPECTIVE JUROR JUSTIN PARKER: Justin  
3 Parker. Once or twice a month, and sometimes a  
4 couple times a week. Just depends on what's  
5 going on.

6 MR. WELLS: Okay.

7 PROSPECTIVE JUROR LINDA O'ROURKE: Linda  
8 O'Rourke. Three to four times a week.

9 PROSPECTIVE JUROR MARGARET COOPER:  
10 Margaret Cooper. And I see the wife of one of  
11 the plaintiffs two to three times a week.

12 MR. WELLS: What about the plaintiff  
13 himself?

14 PROSPECTIVE JUROR MARGARET COOPER: I do  
15 not.

16 MR. WELLS: Okay.

17 PROSPECTIVE JUROR ANDRE DOWDELL: Andre  
18 Dowdell. And I might -- one of them is my  
19 next-door neighbor. So I might see him, you  
20 know, as I'm driving my car or something like  
21 that. I might say hi to him or something like  
22 that. So I see him maybe three times a week.

23 MR. WELLS: Okay.

24 PROSPECTIVE JUROR CAROLYN RHINEHART:  
25 Carolyn Rhinehart. Probably at least twice a

1 month I see the wife of one of the plaintiffs.

2 MR. WELLS: Okay. Do you see the plaintiff  
3 or just the wife?

4 PROSPECTIVE JUROR CAROLYN RHINEHART: Just  
5 the wife.

6 PROSPECTIVE JUROR LAWANDA RHODES: LaWanda  
7 Rhodes. And these are church members. So I see  
8 them probably once or twice a month.

9 PROSPECTIVE JUROR CYNTHIA WILSON: Cynthia  
10 Wilson. And I don't see the plaintiff, but I  
11 see the wife at the hospital two to three times  
12 a week.

13 PROSPECTIVE JUROR LARRY WILKERSON: I'm  
14 Larry Wilkerson. I've got sons the same age in  
15 school. So we bump into each other once or  
16 twice a month, the plaintiff, at school  
17 functions and just around the community.

18 MR. WELLS: Okay.

19 PROSPECTIVE JUROR WALLACE WILLIAMS:  
20 Wallace Williams. I see the son of a plaintiff  
21 about once a month.

22 MR. WELLS: For those of you that see the  
23 plaintiff regularly, how many of them -- I know  
24 we've got one on the back row that goes to  
25 church. How many of you go to church with

1           them?

2                           (Show of hands.)

3                   MR. WELLS:   Okay.   So that's Ms. Cottingham  
4           and Ms. Davis, Demetrice Davis.   We had another  
5           hand?   Mr. Gills, Ms. Foster.

6                   Was there one on the back row?   You're just  
7           scratching your head?

8                   Okay.   Yes, ma'am?   Ms. Rhodes, you go to  
9           church with them?

10                   PROSPECTIVE JUROR LAWANDA RHODES:   Uh-huh.  
11           (Nods head.)

12                   PROSPECTIVE JUROR TOMMY EASTERWOOD:   My  
13           name is Tommy Easterwood.   One of the plaintiffs  
14           came to my church about five years ago.   That's  
15           the only time he's ever been there, but  
16           periodically they drop their kids off.   And I  
17           think maybe twice a year.

18                   So I've only met him one time and brief.  
19           But his kids are dropped off for Sunday School  
20           at times.

21                   MR. WELLS:   Okay.

22                   PROSPECTIVE JUROR TOMMY EASTERWOOD:   But  
23           I've only met him one time.

24                   MR. WELLS:   Okay.   Thank you,  
25           Mr. Easterwood, have the people that you

1 know --

2 And Mr. Carter, I'm going to leave you off  
3 of this.

4 It's going to be obvious when I ask the  
5 question. Of the people that you know that are  
6 plaintiffs in this case, how many of you have  
7 had a discussion with them about their job about  
8 coal mining?

9 (Show of hands.)

10 MR. WELLS: Okay. We've got a few here.  
11 Mr. Ashcraft?

12 PROSPECTIVE JUROR DONALD ASHCRAFT: I've  
13 known Mr. Dockery for eight or ten years. We've  
14 gone out socially to eat, been on trips  
15 together. So during that time, I've asked him  
16 questions about his job, but nothing in  
17 particular.

18 MR. WELLS: Okay.

19 PROSPECTIVE JUROR CHARLES BRIDGES: Charles  
20 Bridges. I'm aware my friend works in the  
21 mines. I've known that for several years. And  
22 I'm aware that he has some health problems, but  
23 I don't know exactly what all they are.

24 MR. WELLS: Okay. Ms. Davis?

25 PROSPECTIVE JUROR DEMETRICE DAVIS:

1 Demetrice Davis. These are two different ones,  
2 not the church member. But about nine years  
3 ago, there was a couple of them that we were --  
4 we talked about it.

5 MR. WELLS: Talked about just coal mining?

6 PROSPECTIVE JUROR DEMETRICE DAVIS: Coal  
7 mining and they were there.

8 MR. WELLS: I think you have one right next  
9 to you, Judge.

10 PROSPECTIVE JUROR BOBBY CREAMER: I know  
11 Mr. Caddis since '99. And we discussed where he  
12 worked and -- Shoal Creek and -- up on Samantha  
13 up there.

14 MR. WELLS: Mr. Creamer?

15 PROSPECTIVE JUROR BOBBY CREAMER: And I  
16 know several people up there that worked there.  
17 But I didn't recognize none of the people.

18 MR. WELLS: Okay. It that Ms. Jones?

19 PROSPECTIVE JUROR FANNIE JONES: Yeah. I  
20 told you I had contact daily. But that's with  
21 the wife, not the plaintiff.

22 MR. WELLS: Oh, okay.

23 THE COURT: Who was that?

24 MR. WELLS: Ms. Jones, Fannie, I believe.  
25 Fannie Jones; is that right?

1 PROSPECTIVE JUROR FANNIE JONES: Uh-huh.

2 PROSPECTIVE JUROR JUSTIN PARKER: Justin  
3 Parker. I -- with Frankie Bailey and Mr. Hootie  
4 Daniels, we socially talked about it just doing  
5 stuff, talked about jobs and work and what they  
6 do and just general conversation, I guess.

7 MR. WELLS: Okay. Yes, ma'am? I'm sorry.  
8 I didn't mean to skip you.

9 PROSPECTIVE JUROR LINDA O'ROURKE: Linda  
10 O'Rourke. My next-door neighbor is Willie Mae  
11 Ryan. And she has several physical disabilities  
12 that she attributes to her working in the coal  
13 mines.

14 MR. WELLS: Okay. You talked to her about  
15 those?

16 PROSPECTIVE JUROR LINDA O'ROURKE: Yes.

17 MR. WELLS: Ms. Rhinehart?

18 PROSPECTIVE JUROR CAROLYN RHINEHART:  
19 Carolyn Rhinehart. I had talked a long time ago  
20 with David Grammer, you know, about his job in  
21 the coal mines. You know, not extensively or  
22 anything. But, you know, he came out and did  
23 some work at my house. He's an electrician,  
24 so --

25 MR. WELLS: How long ago was that?

1 PROSPECTIVE JUROR CAROLYN RHINEHART:

2 Probably 15 or 20 years.

3 MR. WELLS: Okay. I think Mr. Wilkerson  
4 had something behind you.

5 PROSPECTIVE JUROR LARRY WILKERSON: Do you  
6 want us to name them?

7 MR. WELLS: You can.

8 PROSPECTIVE JUROR LARRY WILKERSON: We  
9 coached baseball together. And I knew he worked  
10 at the coal mines. And I expected to see his  
11 name on that list, and he was.

12 MR. WELLS: Yeah. When did you coach  
13 baseball together?

14 PROSPECTIVE JUROR LARRY WILKERSON: That's  
15 been four or five years ago. Our oldest boys  
16 were a little bit younger.

17 MR. WELLS: What ages were you coaching?

18 PROSPECTIVE JUROR LARRY WILKERSON: It was  
19 tip pitch.

20 MR. WELLS: So past T-ball.

21 PROSPECTIVE JUROR LARRY WILKERSON: Past  
22 T-ball, not coach pitch, but tip pitch.

23 MR. WELLS: All right. I've got a general  
24 idea.

25 And, again, all of you have indicated you

1 know at least one or more of the plaintiffs.  
2 How many of you know them well enough that  
3 they've been over to your house or you've been  
4 over to their house?

5 Okay. Start at the front with  
6 Ms. Anderson.

7 PROSPECTIVE JUROR KATHRYN ANDERSON: Well,  
8 not recently. But James Brand has visited my  
9 home, and I visited his home at one time. Do  
10 you want me to say anything else about the  
11 relationship?

12 MR. WELLS: If you have something else to  
13 say, sure.

14 PROSPECTIVE JUROR KATHRYN ANDERSON: Okay.  
15 I taught him about 43 years ago.

16 Larry, he married a lady that -- they are  
17 now divorced. But he was married to her. And  
18 she calls me Aunt Kathryn, but we are not blood  
19 related. And they share a daughter. The  
20 daughter is my goddaughter. But I have no  
21 relationship with him, and -- now that they are  
22 divorced.

23 But I don't know how that would affect  
24 them. Because I do have a relationship with his  
25 former wife and I see her pretty often. You

1 asked about the plaintiffs. I did not indicate  
2 that I see her. She's bedridden. She's an  
3 invalid now. And she is a young lady in her  
4 early 50s. And I see her. I took her a package  
5 last week, so --

6 MR. WELLS: And is she one of the  
7 plaintiffs or is she the spouse?

8 PROSPECTIVE JUROR KATHRYN ANDERSON: She is  
9 the spouse.

10 MR. WELLS: Okay. I think Ms. Aldridge?

11 PROSPECTIVE JUROR PATRICIA ALDRIDGE:  
12 Patricia Aldridge. My husband worked with  
13 Michael Boyd's wife, Jenny. They are divorced  
14 now. But about 15 years ago, we moved into our  
15 house where we are at, and they came to visit  
16 one time. This was, I mean, 15 years ago. And  
17 that's the only time they've ever been to the  
18 house. And we never went to their house.

19 MR. WELLS: Okay. Thank you,  
20 Ms. Aldridge.

21 I think Mr. Ashcraft has something.

22 PROSPECTIVE JUROR DONALD ASHCRAFT: We have  
23 been to each others' house on several occasions  
24 playing cards and dominoes. And holiday get-  
25 togethers, we've visited before.

1 MR. WELLS: Okay. Ms. Baker?

2 PROSPECTIVE JUROR CHRISTINA BAKER: About  
3 32 years ago, I was in one of the plaintiff's  
4 homes. But it's been 32 years. You know, I was  
5 quite young then.

6 MR. WELLS: About 33. You are not --

7 PROSPECTIVE JUROR CHRISTINA BAKER: 32 yes,  
8 sir.

9 MR. WELLS: Mr. Bridges?

10 PROSPECTIVE JUROR CHARLES BRIDGES: I grew  
11 up with my friend. And we stayed together quite  
12 a bit. I also know his wife. And our families  
13 are close.

14 MR. WELLS: So you see him currently?

15 PROSPECTIVE JUROR CHARLES BRIDGES: Yeah, I  
16 see him occasionally at some family reunions or  
17 something like that or some family  
18 get-togethers.

19 THE COURT: All right. Ms. Davis, behind  
20 you.

21 PROSPECTIVE JUROR DEMETRICE DAVIS: Yeah,  
22 we have been to David's house on a couple of  
23 fellowships, but it's probably been eight to ten  
24 years ago.

25 MR. WELLS: Ms. Cottingham?

1 PROSPECTIVE JUROR KAREN COTTINGHAM:  
2 Growing up, my best friend lived next door to  
3 David Grammer. I went to church with him. I've  
4 been in his house several times, just playing  
5 with his children or whatever. I haven't  
6 recently been in his house. And I'm sure he's  
7 been in my parents' home a few times too.

8 We just went to church together forever.  
9 We don't currently go to church together, but --

10 MR. WELLS: Okay. How recently were you  
11 going to church together?

12 PROSPECTIVE JUROR KAREN COTTINGHAM: Ten  
13 years. That's nine years. Because I just  
14 figured up how long it's been since I changed  
15 churches Sunday. So it's not ten. It's nine.

16 PROSPECTIVE JUROR SHERBY FOSTER: Sherby  
17 Foster. I share a granddaughter with one. And  
18 I visit kind of regular, especially when she's  
19 home from school.

20 MR. WELLS: Yeah, I bet you do.

21 PROSPECTIVE JUROR KAREN COTTINGHAM: That's  
22 not the same person as the one I go to church  
23 with currently that I talked about before.  
24 That's not the same person.

25 MR. WELLS: So we can get it straight, who

1 do you go to church with currently?

2 PROSPECTIVE JUROR KAREN COTTINGHAM: I go  
3 to church and friends with his children some.  
4 He is a member of our church. It's Wilson,  
5 Steve Wilson.

6 MR. WELLS: Ms. O'Rourke.

7 PROSPECTIVE JUROR LINDA O'ROURKE: Also  
8 Willie Mae Ryan is my next-door neighbor, and  
9 our visitation is more of in-the-yard thing. We  
10 don't actually go and sit in each other's homes,  
11 but we sit there and talk in the yard two and  
12 three hours at a time. After 30 years we talk  
13 all the time.

14 MR. WELLS: I bet you do.

15 PROSPECTIVE JUROR JUSTIN PARKER: Justin  
16 Parker. Me and Mr. Bailey, we cooked out, we  
17 have beach trips with groups of us and his kids  
18 went. And then I've been to Mr. Hootie Daniel's  
19 place training dogs and all that when we was  
20 hunting, which that's been several years ago  
21 that we was in the same hunting club.

22 But I will probably see Frankie this week.  
23 I'm actually helping the lady that he's been  
24 dating flip a house right now, so I see him at  
25 night.

1 MR. WELLS: I'm sorry. How do you flip a  
2 house?

3 PROSPECTIVE JUROR JUSTIN PARKER: Take it  
4 and redo it, and then turn around and sell it.

5 MR. WELLS: Okay, I got it. I was thinking  
6 you are were going to lift it somehow. I got  
7 you.

8 Ms. Brown?

9 PROSPECTIVE JUROR KRISTI BROWN: Yeah,  
10 Kristi Brown. Randy Wiggins, I dated his  
11 brother, and I went to Randy's house one time,  
12 but gosh, that has been greater than ten years  
13 ago.

14 MR. WELLS: Okay.

15 PROSPECTIVE JUROR KRISTI BROWN: He's never  
16 been to my house.

17 MR. WELLS: Mr. Dowdell.

18 PROSPECTIVE JUROR ANDRE DOWDELL: My name  
19 is Andre Dowdell. And Mr. Burton, I've been  
20 over to his house, but it's been years since  
21 I've been over there. Me and his children, we  
22 used to go to the same school. And I graduated  
23 in '02, so it's been years since I've been over  
24 there, but he's my next-door neighbor.

25 MR. WELLS: Okay. Ms. Rhinehart.

1 PROSPECTIVE JUROR CAROLYN RHINEHART:

2 Carolyn Rhinehart.

3 Mr. Grammar has been to my house probably  
4 three times. The last time was probably at  
5 least 10 or 12 years ago. I've been to their  
6 house once or twice.

7 MR. WELLS: Has that been in the last ten  
8 years?

9 PROSPECTIVE JUROR CAROLYN RHINEHART:  
10 Probably right at 10 or 12 years ago.

11 MR. WELLS: Okay. Mr. Wilkerson.

12 PROSPECTIVE JUROR LARRY WILKERSON: Yes,  
13 sir. We used to go over to -- I would rather  
14 not name his name. You got it. I used to go  
15 over to their house, but they've separated and  
16 since divorced, and we are not in touch with  
17 them quite as much and they don't live together  
18 anymore, obviously, so --

19 MR. WELLS: I think just one last  
20 question. All of you have different  
21 relationships or acquaintances with one or more  
22 of the plaintiffs, and so you at least know  
23 something about them.

24 This question is kind of an important one  
25 so I would like you to think about it a minute.



1 MR. WELLS: I've got Ms. Rhinehart,  
2 Ms. Wilkerson.

3 Now, I'm sorry, Ms. Anderson, did you have  
4 a question?

5 PROSPECTIVE JUROR KATHRYN ANDERSON: The  
6 question is -- I'm Kathryn Anderson, again.

7 Are you asking if a stranger said the light  
8 is one color and a person you know said the  
9 light was another color, would you believe the  
10 person just because you knew the person?

11 MR. WELLS: (Nods head.)

12 PROSPECTIVE JUROR KATHRYN ANDERSON: I  
13 would believe it only if I thought -- if I knew  
14 that person and I know that person tells the  
15 truth and everything. But if he were a person  
16 who didn't tell the truth, just because I knew  
17 him, that wouldn't -- I wouldn't necessarily  
18 believe him, and so I don't think I could say  
19 that that's --

20 MR. WELLS: All right. Okay.

21 Thank you, Your Honor.

22 THE COURT: Further questions, follow-up  
23 questions?

24 MR. STEWART: Yes. I'm Donald Stewart and  
25 this is Andy Davenport. We represent the

1 plaintiffs in this case. I want to ask those  
2 who answered Mr. Wells' last question.

3 Mr. Ashcraft, would the fact that you know  
4 your friend who's a miner prevent you from  
5 rendering a fair and impartial verdict based on  
6 the evidence you hear from the witness stand  
7 back here and the law as the Judge instructs you  
8 despite the fact that you know a person who may  
9 be a plaintiff in this case?

10 In other words, could you listen to the  
11 evidence? Could you listen to the law as the  
12 Judge gives it to you and render your judgment  
13 as far as your decision in this case based on  
14 those two things?

15 PROSPECTIVE JUROR DONALD ASHCRAFT: I feel  
16 like right now, I could listen to the evidence  
17 and make a decision.

18 But if there was a question that I really  
19 didn't know, I would lean toward my friend's  
20 side because I know him and he don't lie.

21 MR. STEWART: Thank you, Mr. Ashcraft. I  
22 just wanted to follow up.

23 Mr. Bridges, I'll ask you the same  
24 question. Could you base your decision in this  
25 case on the law as the judge instructs you on

1 the evidence?

2 PROSPECTIVE JUROR CHARLES BRIDGES: Right  
3 now, not knowing a lot about the case, I can't  
4 form an opinion, but I believe if my friend was  
5 on the witness stand and testified, I believe I  
6 would be leaning more towards what he was saying  
7 as being the truth. I believe I would.

8 MR. STEWART: All right. Mr. Parker.

9 PROSPECTIVE JUROR JUSTIN PARKER: Yes, sir.

10 MR. STEWART: Let me just pose that same  
11 question to you.

12 PROSPECTIVE JUROR JUSTIN PARKER: That's  
13 about the same way I feel. If I knew more about  
14 it or if I knew, you know, as far as if it was  
15 evidence, I would say, yeah, you know, I would  
16 believe that.

17 But if it was just word against word or  
18 something I didn't know much about, then I'm  
19 going to lean towards my buddy who I've been  
20 trusting. And he ain't never lied to me before  
21 why would he start lying to me now?

22 MR. STEWART: So you would have --  
23 Mr. Parker, you would have some difficulty in  
24 setting aside the relationship you had? Is that  
25 what you are telling me?

1 PROSPECTIVE JUROR JUSTIN PARKER: No, sir,  
2 not that -- I could make -- if I had proof that  
3 this was evidence and this was the way it  
4 happened, that's fine. I could make a fair  
5 decision.

6 But if it's just, you know, something I  
7 don't know anything about, well, then I'm going  
8 to go with, you know, trusting him, and being in  
9 the relationship that I know him and I know he  
10 ain't going to lie to me, I'm going to listen to  
11 that.

12 MR. STEWART: All right. Thank you,  
13 Mr. Parker.

14 Mr. Mink?

15 PROSPECTIVE JUROR JOHN MINK: Yes, I could  
16 make a fair decision. I know the people but  
17 it's been ten years since I spoke with them, so  
18 I could probably make a fair decision.

19 MR. STEWART: So you could put that  
20 relationship aside --

21 PROSPECTIVE JUROR JOHN MINK: Yes, sir.

22 MR. STEWART: -- and render a decision based  
23 on the evidence as you hear it from the witness  
24 stand and the law as the Judge presents it to  
25 you?

1 PROSPECTIVE JUROR JOHN MINK: Yes, sir.

2 MR. STEWART: Thank you, Mr. Mink.

3 Ms. Rhinehart.

4 I'm sorry, Mr. Wilkerson, I was taking them  
5 in alphabetical order.

6 Go ahead, Ms. Rhinehart.

7 PROSPECTIVE JUROR CAROLYN RHINEHART: I  
8 believe I could listen to the evidence and make  
9 a fair decision.

10 MR. STEWART: Thank you, ma'am.

11 Now, Mr. Wilkerson.

12 PROSPECTIVE JUROR LARRY WILKERSON: That's  
13 hard for me to say. That depends on the case.  
14 But if it's somebody I know versus corporations  
15 I don't, so --

16 MR. STEWART: You might have some  
17 difficulty in --

18 PROSPECTIVE JUROR LARRY WILKERSON: Well,  
19 an individual versus corporations, so I don't  
20 know those corporations.

21 MR. STEWART: So you would have difficulty  
22 putting that relationship aside in making your  
23 decision?

24 PROSPECTIVE JUROR LARRY WILKERSON: No, I  
25 wouldn't say we were that close where it would

1 influence any over -- you know, I'm not going to  
2 be advocating for this guy so --

3 MR. STEWART: All right. Thank you very  
4 much.

5 That's all I have, Judge.

6 THE COURT: Any further questions for the  
7 panel as a whole by either party?

8 All right. Again, let me ask counsel to  
9 approach to see who will -- I'll ask to remain  
10 to question individually.

11 (Whereupon, the following was held  
12 outside the presence of the jury  
13 venire.)

14 THE COURT: All right. Gentlemen and  
15 ladies -- or ladies and gentlemen. At present,  
16 I intend to ask Kristi Brown, number 1 -- number  
17 32, to remain, Julian Carter, number 29, to  
18 remain. Terence White, number 232, to remain.

19 That's primarily based upon those jurors  
20 having indicated that they were aware of some  
21 health issues.

22 Wallace Williams, number -- he really  
23 doesn't have a number. He's all the way in the  
24 back.

25 MR. TAYLOR: 236.

1 THE COURT: But he would be 241 if he had  
2 one.

3 MR. WELLS: I think it's 236.

4 MR. TAYLOR: Yeah, 236. I believe that's  
5 correct.

6 THE COURT: Okay. If you say so, but the  
7 name is Wallace.

8 MR. TAYLOR: Wallace Williams.

9 THE COURT: Katherine Anderson, number 8, I  
10 would have asked Demetrice Davis, number 60, but  
11 I believe we've already had her so I'm not  
12 keeping her.

13 MR. WELLS: Uh-huh.

14 THE COURT: The same thing is true for  
15 Charles Gills and Ms. Foster. So what that  
16 leaves is Ms. O'Rourke, number 164.

17 So, now, are there any others? So far, I  
18 have six.

19 MR. WELLS: Judge, we've got a few others I  
20 think primarily based on questionnaire  
21 responses.

22 THE COURT: All right.

23 MR. WELLS: Karen Cottingham.

24 MR. STEWART: Is this on the health  
25 problems?

1 MR. WELLS: It's going to be a variety of  
2 things. I think it may be health problems.

3 MR. STEWART: (Counsel nods head.)

4 THE COURT: Okay.

5 Andre Dowdell, Charles Hartley.

6 THE COURT: What for? Why?

7 MR. WELLS: Again, Judge, I think -- isn't  
8 it the questionnaire responses?

9 MR. BICKS: Yes.

10 MR. WELLS: I don't know specifically. I  
11 just got the list. It's the questionnaire  
12 responses.

13 MR. TAYLOR: Which one?

14 MR. WELLS: Hartley.

15 THE COURT: Since I told y'all I'm just not  
16 doing individual voir dire, just -- I want to  
17 know why.

18 MR. WELLS: Okay.

19 MR. TAYLOR: You know there was --  
20 Mr. Larry Wilkerson responded on health  
21 problems. He's 234. I didn't hear the number.

22 MR. WELLS: I don't think he did.

23 THE COURT: We are talking about two  
24 different things.

25 MR. TAYLOR: I'm sorry.

1 THE COURT: Charles Hart, what's the reason  
2 for him?

3 MR. WELLS: Again, I'm going to have to  
4 check real quick.

5 MR. BICKS: Yeah, okay.

6 THE COURT: Now, certainly, there was a  
7 group of them. If Wilkerson is related to the  
8 fact that there are some questions, not whether  
9 he can be fair, I certainly need to keep him if  
10 that's what you are asking for.

11 As a group, Wilkerson, Ashcraft, because  
12 Mr. Stewart sought to rehabilitate them.  
13 Whether he did it successfully or not is an open  
14 question, but I thought y'all were probably  
15 going to visit on those, and they would have to  
16 remain, but then, if you are asking for those,  
17 that's fine. This is the time to tell me.

18 MR. TAYLOR: I think I misunderstood what  
19 we were doing. I thought part of what we were  
20 doing is making sure we held the health -- the  
21 people who responded on health problems also.

22 Was that part of it?

23 THE COURT: Yeah, Wilkerson.

24 MR. TAYLOR: Yeah, and Wilkerson was one of  
25 them.

1 MR. WELLS: He responded on health?

2 THE COURT: Yes, he did.

3 MR. WELLS: Judge, the list that I was  
4 giving you were people that based on either  
5 their responses and together with the  
6 questionnaires we thought had some  
7 extraordinarily strong relationship ties.

8 THE COURT: Charles?

9 MR. WELLS: Charles Hartley.

10 MR. BICKS: Rhinehart.

11 THE COURT: The problem is that one word.

12 MR. WELLS: I know. It's based on his  
13 questionnaire responses in terms of  
14 relationship.

15 THE COURT: Okay. What? What? What was  
16 the response to it?

17 MR. BICKS: I mean, the focus of these,  
18 Judge, again, it's based primarily on --

19 THE COURT: I understand. What, though?

20 MR. BICKS: I don't have the questionnaire  
21 in front of me, but it starts with the three of  
22 these. We are talking about Hartley --

23 THE COURT: How many do you have?

24 MR. WELLS: Three. Hartley, Rhinehart and  
25 Stewart.

1 THE COURT: Hartley, Rhinehart and --

2 MR. BICKS: Stewart.

3 THE COURT: All right.

4 MR. STEWART: Judge, before you start the  
5 questions, could we take a look at the notes of  
6 those we weren't, in our opinion, able to  
7 rehabilitate and get with the other side and let  
8 them go? I mean, I don't see any necessity in  
9 waiting on that.

10 THE COURT: Okay. Now, you know, really  
11 that's -- that would be Ashcraft.

12 MR. WILSON: John Mink.

13 MR. STEWART: He said he could make a  
14 decision. Possibly Rhinehart.

15 THE COURT: Possibly Rhinehart, possibly  
16 Wilkerson.

17 MR. STEWART: Judge, we agree over here to  
18 probably let them go.

19 THE COURT: Okay. All right. Y'all want  
20 to confer on that? That's what I want to do is  
21 tell these individuals the order they are going  
22 to come in, and then I'm going to excuse the  
23 rest of them. I'm going to excuse the rest of  
24 them until nine o'clock tomorrow.

25 MR. BICKS: Makes sense.

1 MR. STEWART: Let's confer on that so --

2 THE COURT: Are you going to take a long  
3 time?

4 MR. STEWART: No, sir, just a few seconds.  
5 (Pause in record.)

6 MR. STEWART: We are ready, Judge.

7 THE COURT: What do you have?

8 MR. STEWART: Bridges and Ashcraft, we will  
9 agree to let go. They may want to keep them,  
10 but I don't know.

11 MR. WELLS: Judge, I thought they were -- I  
12 thought they -- ultimately Bridges and Ashcraft  
13 probably got rehabilitated. We want to keep  
14 them and ask them some more questions, but I  
15 think we can.

16 THE COURT: All right. Just a minute.  
17 You have just said you -- Ashcraft and  
18 Bridges?

19 MR. STEWART: I didn't think they  
20 necessarily had rehabilitated them, Judge.

21 THE COURT: I didn't either.

22 MR. STEWART: But if they want to keep  
23 them, that's fine.

24 THE COURT: What's --

25 MR. DODSON: I did not think he really

1 rehabilitated them. I thought they were on  
2 their way home.

3 THE COURT: I didn't think so, but why are  
4 we keeping them?

5 MR. WELLS: Your Honor, we let them go.

6 THE COURT: Okay.

7 MR. WELLS: Okay.

8 THE COURT: Who, again, are we letting go?

9 MR. WELLS: Ashcraft and Bridges.

10 THE COURT: I'm not going to make the  
11 decision until I have to make it.

12 MR. WELLS: Okay, thank you.

13 THE COURT: Okay.

14 (Whereupon, the following was held  
15 inside the presence of the jury  
16 venire.)

17 THE COURT: All right. Let me ask Juror  
18 Ashcraft and Juror Bridges to please come  
19 forward.

20 (Whereupon, the following was held  
21 outside the presence of the jury  
22 venire.)

23 THE COURT: All right. Gentlemen, the two  
24 of you are being excused from further service.  
25 We thank you for your service and your

1 participation as part of the process.

2 We thank you for taking the time from your  
3 everyday life to come and serve as jurors, so  
4 you are excused. And if you will, see the clerk  
5 before you leave. You can see her right there.

6 PROSPECTIVE JUROR BRIDGES: Thank you,  
7 Judge.

8 THE COURT: Thank you.

9 (Whereupon, the following was held  
10 inside the presence of the jury  
11 venire.)

12 THE COURT: All right. Let me ask the  
13 following jurors to please stand: Kristi Brown,  
14 Julian Carter, Terence White, Larry Wilkerson,  
15 Wallace Williams, Kathryn Anderson, Linda  
16 O'Rourke, Karen Cottingham, Andre Dowdell,  
17 Charles Hartley, Carolyn Rhinehart, Meritha  
18 Stewart, Justin Parker.

19 All right. Now, those of you who are  
20 seated -- those of you who are seated, your  
21 instructions are as follows: You will be in  
22 recess until nine o'clock in the morning. You  
23 should report to the Bama Theatre and try to  
24 find the assigned seat you had at the Bama  
25 Theatre. So you are now excused until

1           tomorrow. In other words, you are in recess  
2           until nine o'clock tomorrow. Thank you very  
3           much.

4                       (Whereupon, some of the jury venire  
5                       was excused and others remained.)

6           THE COURT: Okay. You may have a seat.  
7           All right. The parties have some follow-up  
8           questions for those of you who are remaining.  
9           And what we are going to do is we are going to  
10          start doing that by this morning. I'm sure we  
11          are not going to be finished by lunchtime, so  
12          what I'm going to do is we are going to ask some  
13          of you to remain and the rest of you we are  
14          going to start after lunch.

15                      So the order that I have right here -- and  
16                      this is completely of my choosing -- but these  
17                      persons, I want you to remain and then the rest  
18                      of you, I want you to be back at 1:30 and then I  
19                      will give you the order at that time. I'm  
20                      anticipating that we can probably question five  
21                      this morning.

22                      Now, my guess at five is just that. My  
23                      guess. We may be a little -- we may go a little  
24                      bit longer than 12:00 or a little bit shorter  
25                      than 12:00, but I'm going to ask Ms. Brown --

1           that is Kristi Brown. Okay. I'm going to ask  
2           Ms. Kristi Brown, Mr. Carter, Mr. White -- where  
3           is Mr. White? Okay. Mr. Wallace Williams and  
4           Ms. Anderson. If the five of y'all will remain  
5           and then the rest -- Ms. O'Rourke,  
6           Ms. Cottingham, Mr. Dowdell, Mr. Wilkerson,  
7           Mr. Hartley, Ms. Rhinehart, Ms. Stewart, and  
8           Mr. Justin Parker, if y'all will be back at  
9           1:30, just back in the courtroom at 1:30.

10                   Okay. I'm going to go in this order. I'm  
11           going to start off with Mr. Carter followed by  
12           Ms. Brown, Ms. Anderson, Mr. --

13                   PROSPECTIVE JUROR KRISTI BROWN: Do we  
14           change our seats? Do we just stay in our  
15           seats?

16                   THE COURT: Yeah. Well, I'm going to ask  
17           you to wait outside. I'm just giving you the  
18           order in which I want you to come up.

19                   PROSPECTIVE JUROR KRISTI BROWN: Okay.

20                   THE COURT: I'm just going to give you the  
21           order, but I just can't see because I have these  
22           lawyers standing up.

23                   MR. TAYLOR: Sorry, Your Honor.

24                   THE COURT: Now, let me see. One, two,  
25           three, four, five.

1                   Mr. Wallace, you are Mr. -- what's your  
2                   name?

3                   PROSPECTIVE JUROR TERENCE WHITE: Terence  
4                   White.

5                   THE COURT: Mr. White, okay.

6                   So I've got -- Mr. Carter is first,  
7                   Ms. Brown is second, Ms. Anderson is third.

8                   Mr. White, you are fourth. You will come  
9                   after Ms. Anderson and then Mr. Wallace  
10                  Williams, you will be after Mr. White, okay?

11                  So now, let me ask y'all to remain outside  
12                  and we'll come and get you or, you know, as we  
13                  call each one up. And you might want to take a  
14                  restroom break because I'm going to take a quick  
15                  one myself.

16                  Mr. Carter, you might want to take one too,  
17                  and then once you do you will be first, okay?  
18                  So let's take about four minutes and come back  
19                  here. Mr. Carter.

20                  (Whereupon, the Court was in recess  
21                  from 11:28 a.m. until 11:34 a.m.)

22                  (Whereupon, the following was held  
23                  outside the presence of the jury  
24                  venire.)

25                  THE COURT: Are you doing all right,

1 Mr. Carter?

2 PROSPECTIVE JUROR JULIAN CARTER: Yes, sir,  
3 doing fine.

4 THE COURT: Okay. I'm doing fine too. I  
5 believe that there are some follow-up questions  
6 for you. And I'm going to allow that to occur  
7 now.

8 Any questions on behalf of the plaintiffs?

9 MR. STEWART: Yes, sir, Judge.

10 THE COURT: All right.

11 PROSPECTIVE JUROR JULIAN CARTER,  
12 having been previously duly sworn,  
13 was examined and testified as follows:

14 VOIR DIRE EXAMINATION

15 BY MR. STEWART:

16 Q. Mr. Carter, I'm Donald Stewart, and, as I said,  
17 I represent the plaintiffs in the case. And I  
18 notice that you have indicated that you know a  
19 number of plaintiffs in connection with your  
20 work at the mines; is that correct?

21 A. Yes, sir.

22 Q. And one of those plaintiffs is a supervisor; is  
23 that correct?

24 A. Yes, sir, Mr. Boone.

25 Q. Mr. Boone. And do you see him on a regular

1 basis, I assume?

2 A. Beginning of the shift.

3 Q. Okay. And would your relationship with  
4 Mr. Boone create a problem for you in sitting on  
5 this jury?

6 A. No, sir.

7 Q. Okay. What about any of the other people that  
8 you know who are plaintiffs in this case?

9 A. No, sir.

10 Q. All right. So you --

11 A. I don't have a problem with anyone.

12 Q. All right. So you don't have a problem sitting  
13 as a juror, despite the fact that you work with  
14 some of these people, you know some of these  
15 people, and you have one of those -- one of the  
16 plaintiffs who is a supervisor?

17 A. Right.

18 Q. You could listen to the evidence and the law as  
19 the Court instructs you, and render a fair and  
20 impartial verdict based just on that alone?

21 A. Yes, sir.

22 Q. And could put aside whatever relationship you  
23 have with these other folks?

24 A. Well, I really don't have a relationship with  
25 them. I just work with them, so --

1 Q. You just work with them?

2 A. Right. But I could set it aside and judge,  
3 uh-huh.

4 MR. STEWART: All right. That's all I've  
5 got.

6 VOIR DIRE EXAMINATION

7 BY MR. BICKS:

8 Q. How are you doing, Mr. Carter?

9 A. How are you doing, sir?

10 Q. Great. My name is Peter Bicks.

11 MR. BICKS: And, Judge, what we did on the  
12 defense side is we divided this up among  
13 ourselves to try to --

14 THE COURT: Ask the questions. Just go  
15 forward. Just one per defendant.

16 MR. BICKS: Yeah.

17 Q. (BY MR. BICKS) Tell us, where do you work,  
18 Mr. Carter?

19 A. I work at Jim Walter Resources' Mine Number  
20 Four.

21 Q. Mine Number Four. And how long have you been  
22 there?

23 A. Not very long. I started July 12th of this  
24 year.

25 Q. And you told us your supervisor is Mr. Boone?

1 A. Well, he was my supervisor for that night. But  
2 at the beginning of the shift, he puts you where  
3 he needs you to go to work for that particular  
4 night, so -- for that night, he was my  
5 supervisor.

6 Q. And just tell us, as a supervisor, kind of how  
7 that works. What exactly does he do as it  
8 relates to you?

9 A. Well, he helps men that work under him, and  
10 about the job, whatever we need to get done for  
11 that night, like a citation or anything like  
12 that.

13 Q. So the question that we are talking about in  
14 this case is -- you know, people have leanings  
15 because of where they work and who they know.  
16 And do you know Mr. Boone? He's a plaintiff in  
17 this case.

18 A. Yes, sir. He's a -- like I say, he's a  
19 supervisor. And he just gives our orders.

20 Q. Right. And so, how -- if you were sitting on  
21 this case, how do you think you would feel if  
22 you would have to go back to work and see your  
23 supervisor and -- we haven't heard the evidence  
24 yet -- but come up with some kind of a ruling  
25 that might go against him? How do you think you

1 would feel if that happened to come about?

2 A. Well, I really don't have a problem with that.

3 But I sit that to the side, you know.

4 Q. Even though this is a job that you just started  
5 at, and he's your supervisor?

6 A. Right.

7 Q. Okay. Could you just walk us through the other  
8 plaintiffs that you know again, and just  
9 describe for me who they are and how long you've  
10 known them?

11 A. I don't know them for long. The only one I have  
12 known for a long period of time is my neighbor.

13 Q. And tell me who your neighbor is.

14 A. I think his name is David.

15 Q. Is that David Douglass?

16 A. Yes, sir.

17 Q. And how long have you been neighbors with  
18 Mr. Douglass?

19 A. Since '03, 2003.

20 Q. And how often do you see him?

21 A. Maybe once week, maybe.

22 Q. And I think you had already mentioned -- was it  
23 Roscoe Boyd?

24 A. Yes, sir. He's a shuttle driver.

25 Q. I'm sorry. A what?

1 A. A shuttle driver. He drives like a truck. He  
2 transports the coal to the conveyor.

3 Q. Is that over at Number Four?

4 A. Right.

5 Q. And just tell me how long you've known him. Is  
6 that since July?

7 A. Yes, sir, it's since July.

8 Q. Okay. And how about Mr. Bragg?

9 A. Since July.

10 Q. And he's somebody also over at JWR?

11 A. Right.

12 Q. Okay. And what about -- is it Mr. Chamblin?

13 A. Yes.

14 Q. And tell me how you know Mr. Chamblin.

15 A. Could you tell me his first name?

16 Q. Is it Leo?

17 A. I think one of them is over the mine. I mean,  
18 not the mine, but the union. He's an officer.

19 Q. Just tell me how you've come to know him or what  
20 kind of contact you have.

21 A. It was in a meeting. It was, like, five of us.  
22 And he came in and introduced himself. That's  
23 the only way that I know him.

24 Q. And then I think you mentioned Ms. McGee?

25 A. Right.

1 Q. Tell me how you know -- is it Ethel McGee?

2 A. Right, Ethel. I worked with her a couple of  
3 times. Just like overtime, she was working  
4 over. And we worked together.

5 Q. Uh-huh. And I guess so that if any of these  
6 folks came in the court, whether it was  
7 Mr. Boone, Mr. Boyd, Mr. Bragg, any of these  
8 folks that you've mentioned, and testified, do  
9 you think, because you know them, you might have  
10 a tendency to think what they are saying is the  
11 truth?

12 A. Yes, sir.

13 Q. Uh-huh. And can you explain why it is that you  
14 might have that tendency?

15 A. Well, it depends, the situation, you know, what  
16 happened, you know. I don't know what  
17 happened. But, you know, I would have to hear  
18 their side of the story, you know. And I would  
19 make my answer on that opinion.

20 Q. But as we are here today, do you think you might  
21 have a leaning to kind of favor them because you  
22 know them and one might be your supervisor?

23 A. No, sir.

24 MR. BICKS: Okay. Thank you.

25 THE COURT: Just a minute. Any further

1 questions?

2 MR. DODSON: Judge, I have just a couple.

3 VOIR DIRE EXAMINATION

4 BY MR. DODSON:

5 Q. Mr. Carter, I'm John Dodson. I represent a  
6 company called Micon.

7 Are you working underground at Number Four?

8 A. Yes, sir.

9 Q. Are you working as a general inside laborer? Is  
10 that your position?

11 A. Yes, sir.

12 Q. And so you're still sort of in the training  
13 process there, is that right --

14 A. Yes, sir.

15 Q. -- or are you through with that?

16 A. I'm still in training.

17 Q. Have you worked around a chemical in the mines  
18 they call RokLok? Are you familiar with that?

19 A. Yes, sir.

20 Q. You have?

21 A. Yes, sir.

22 Q. On how many occasions have you worked around  
23 that?

24 A. Maybe three times a week, maybe.

25 Q. Really? And is this a chemical they use to

1 support the roof in the mines?

2 A. Right.

3 Q. Is that what we're talking about?

4 A. Control the fire hazard.

5 Q. Fire hazards?

6 A. Right.

7 Q. Or just the roof from falling in?

8 A. The roof also. What it is, it's control the --  
9 from igniting.

10 (Whereupon, the court reporter  
11 asked for clarification.)

12 Q. (BY MR. DODSON) From igniting?

13 A. Right.

14 Q. Okay.

15 A. We have to cover it up and make sure the coal is  
16 covered.

17 Q. I think you're talking about rock dust, the  
18 ground-up rock they spread all over the mine.

19 A. Okay.

20 Q. I'm talking about a chemical they call RokLok,  
21 they inject into the roof.

22 A. Okay. Are you talking about the glue?

23 Q. The glue, yes. Have you worked around the glue?

24 A. No, sir, not yet.

25 Q. Have you been trained on how you use the glue in

1 the mine?

2 A. Yes, sir.

3 Q. And how did you receive that training?

4 A. Well, the trainee -- the guy that was over  
5 safety, he was explaining how it works. He  
6 drilled it there so far in the wall or the roof,  
7 and you insert the glue in, and you bolt it  
8 down. And you put a plate over it.

9 Q. And that -- is that sometimes called just the  
10 roof bolt?

11 A. Yes, sir.

12 Q. Okay. So you've been trained on roof-bolting?

13 A. Well, I haven't been trained, but they  
14 demonstrated what they do, you know. Like, you  
15 know, how you do a tour of a job?

16 Q. Right.

17 A. They pretty much explained how it happened.

18 Q. And just to take a step back, the chemical  
19 that's at issue in this case is not the chemical  
20 they use in the roof-bolting process. This is  
21 when -- a chemical that comes in barrels that's  
22 actually pumped into the roof. Are you familiar  
23 with that?

24 A. No, sir.

25 Q. Okay. Now, you are a member of the UMWA;

1 correct?

2 A. Yes, sir.

3 Q. And if you were to learn through your service on  
4 this -- on a jury that the UMWA was supporting  
5 this particular lawsuit, would that impact how  
6 you viewed this case?

7 A. I would have to think on that one, because they  
8 would take my job, so --

9 Q. So that could be something that would be  
10 important to you --

11 A. Right.

12 Q. -- as a juror? And if you found out that the  
13 union, the UMWA actually did support this case,  
14 that would be something that might keep you from  
15 being as fair and impartial as you believed you  
16 might have been otherwise?

17 A. Well, I can be fair, you know. It just depends  
18 on the situation about my job, would it  
19 interfere with my job or would I lose my job or  
20 not.

21 Q. But that would be a concern you would have?

22 A. Right.

23 Q. Okay.

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

1 Q. I'm not sure if I understand. What do you mean,  
2 if you lose your job?

3 A. If I had to testify against the union.

4 Q. Oh, okay. So, in other words, you would be  
5 concerned about some reprisal --

6 A. Right.

7 Q. -- getting back at you for testifying for --  
8 ruling in a way that would be against them?

9 A. Yes, sir.

10 Q. Okay. So that would affect your ability to be  
11 fair, if you thought that if you gave some  
12 testimony that was against the union -- not you  
13 giving testimony, but if you were to rule in a  
14 manner that would indicate it was against what  
15 the union wanted, that they may take some  
16 reprisals against you. Is that what you are  
17 saying?

18 A. In that sort, it would. But I would have to  
19 know more information about it, you know, before  
20 I made my final decision.

21 Q. Okay.

22 A. All right. I think that's all, Judge.

23 THE COURT: Any more questions?

24 MR. STEWART: Can I do a couple of  
25 follow-ups?

1 THE COURT: Certainly.

2 VOIR DIRE EXAMINATION

3 BY MR. STEWART:

4 Q. Mr. Carter, if you understood individuals were  
5 bringing the lawsuit who were members of the  
6 union, but the union wasn't bringing the  
7 lawsuit, would that change the answer that you  
8 gave?

9 A. Yes, sir.

10 Q. Okay.

11 A. It would.

12 Q. Okay. All right. So you could, in that  
13 situation, if you knew --

14 A. Testify against the plaintiff or --

15 Q. You are not called upon -- you mean -- I'm just  
16 asking if you would rule one way or the other if  
17 you knew it was individuals who brought these  
18 claims?

19 A. Oh, yes. I could testify against that.

20 Q. You could make a decision based on the law and  
21 the evidence in that situation?

22 A. Yes, sir.

23 MR. STEWART: All right.

24 MR. BICKS: Can I ask one follow-up,  
25 Judge?

1 THE COURT: Yeah, one.

2 MR. BICKS: Bicks.

3 VOIR DIRE EXAMINATION

4 BY MR. BICKS:

5 Q. Mr. Carter, if the union in the case took the  
6 position that the plaintiffs were sick, would  
7 that be something that would weigh in how you  
8 viewed any of this as kind of what you had  
9 talked about in relation to what the Judge asked  
10 you?

11 A. I think I could make a decision on that. As far  
12 as the being sick or not being, as far as being  
13 in the union, that's testifying for them or --

14 Q. If the union took the position in this case and  
15 said that the plaintiffs were sick, would you  
16 tend to put some weight on what the union had to  
17 say because you're a member of the union?

18 A. No, sir.

19 MR. BICKS: Okay. Thank you.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. So, Mr. Carter, so what you are telling me is  
23 that if you are on this jury -- if you are  
24 selected to be on the jury, and a question came  
25 up about something related to the employment at

1 the mines, which was different than what you  
2 union wanted, if the evidence indicated that you  
3 should find in a manner that would be against  
4 what the union wanted -- do you understand what  
5 I'm saying so far?

6 A. Okay.

7 Q. Would you be fearful that the union would --  
8 might affect your job if you were to sit on this  
9 jury and rule in a manner against what the union  
10 wanted? Do you understand what I'm asking?

11 A. Yes, sir. I don't want to testify against the  
12 union.

13 Q. No, you won't be testifying.

14 A. Okay.

15 Q. You understand, as a juror, you don't testify.

16 A. Okay.

17 Q. As a juror, you decide, you know?

18 A. Make a decision.

19 Q. You come back with a verdict. So let's say if  
20 the union -- you know, if the union's  
21 position -- or the union was in a position where  
22 it was saying, as counsel said, that these union  
23 workers were sick, the union was advocating that  
24 position, and so you are on the jury, and you've  
25 got to decide if they were sick or not, and the

1 union wants you to find that they were sick,  
2 would you feel uncomfortable finding something  
3 in a way different than what the union wants if  
4 you were on that jury?

5 A. No, I wouldn't feel uncomfortable. But you  
6 know -- I wouldn't feel uncomfortable about  
7 serving on the jury.

8 Q. So you could do that?

9 A. Yes, I could do it.

10 Q. Well, earlier, you said you were concerned about  
11 losing your job.

12 A. Yes. If the union have something to do with my  
13 job or losing my job or not taking care of me,  
14 you know -- you know, how the union is supposed  
15 to take care of you for your job?

16 Q. Uh-huh.

17 A. That's the only reason I said that.

18 Q. So would you be fearful that the union wouldn't  
19 take care of you if you were to rule in a way  
20 against them if you were on the jury? Would you  
21 have any fear of that?

22 A. No, sir, I wouldn't have any fear on that.

23 THE COURT: Okay. Any further questions or  
24 follow-up questions by either party?

25 MR. STEWART: Judge, we don't have any.

1 MR. DODSON: No, sir.

2 THE COURT: Thank you, Mr. Carter. Ask the  
3 next person to come in. I think it's Ms. Brown.

4 PROSPECTIVE JUROR JULIAN CARTER: Just wait  
5 in the hallway?

6 THE COURT: You can just come back -- just  
7 come back at nine o'clock tomorrow at the Bama  
8 Theatre. I'm sorry. I should have told you  
9 that. Just be back at nine o'clock in the  
10 morning.

11 How are you doing, Ms. Brown? Come up here  
12 right here so you can get in the microphone.

13 PROSPECTIVE JUROR KRISTI BROWN,  
14 having been previously duly sworn,  
15 was examined and testified as follows:

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Ms. Brown, you had said something about the  
19 issue or question about knowing a little bit  
20 about the health of somebody.

21 A. Yes.

22 Q. What was that?

23 A. It was about Randy Wiggins.

24 Q. Uh-huh.

25 A. I dated his brother, like I said. It's been

1 years ago. And I just remember he had --  
2 hearing that he had back trouble. But I don't  
3 know from what or any nature like that. And  
4 that's all I know --

5 Q. All right.

6 A. -- of health, which is nothing.

7 THE COURT: Okay. Does anybody -- any  
8 party wish to ask her any questions?

9 MR. STEWART: We don't have any, Judge.

10 THE COURT: Any questions on behalf of the  
11 defendants?

12 VOIR DIRE EXAMINATION

13 BY MS. LOGGINS:

14 Q. Hi, Ms. Brown. My name is Katie Loggins.

15 A. Hi.

16 Q. I am one of the attorneys for Dow Chemical in  
17 this case. I just have a few questions to ask  
18 you about.

19 A. Uh-huh.

20 Q. When -- you said you dated Randy Wiggins'  
21 brother. When was that?

22 A. Oh, gosh, it's been ten years ago.

23 Q. How long did y'all date?

24 A. To be honest with you, I don't even remember.

25 It was kind of off and on. And I couldn't give

1           you an exact time.

2   Q.   Was it ever a couple of years or just within a  
3       year?

4   A.   Just off and on.  I would probably say, if you  
5       could count it all, you know, it might be a  
6       couple of years.  But not many.

7   Q.   So this would be maybe in the late '90s?

8   A.   Somewhere in there.

9   Q.   '97, '98, '99, that time frame?

10  A.   (Witness nods head.)

11  Q.   What's his name, Randy Wiggins' brother?

12  A.   Brian.

13  Q.   Brian.  Do you stay in touch with him?

14  A.   He might call once in a blue moon, saying, Merry  
15       Christmas, or something to that nature.  And  
16       that's all.

17  Q.   Does he live in your neighborhood?  Do y'all  
18       live near each other?

19  A.   Oh, no.  The last time I heard, he was living in  
20       Kansas.

21  Q.   Do you recall the last time you talked to Brian?

22  A.   I can't recall.

23                   THE COURT:  Is this your last question?

24                   MS. LOGGINS:  Just about, Judge.

25                   THE COURT:  All right.

1 Q. And did you and Brian ever discuss Randy?

2 A. Huh-uh (Shakes head.) No, ma'am.

3 Q. Okay. I noticed that your dad had made a few  
4 claims for asbestos.

5 A. (Witness nods head.)

6 Q. Is that correct?

7 A. That's correct.

8 Q. And that arose out of his work?

9 A. Uh-huh.

10 Q. And where was he working?

11 A. BF Goodrich.

12 Q. BF Goodrich. Do you know how many claims he  
13 filed for asbestos?

14 A. I have no idea. He's a very private person,  
15 even though he's my dad. And he don't discuss a  
16 lot of things like that, so --

17 Q. Would the fact that your father has made claims  
18 for problems related to exposure at his  
19 workplace influence you, with respect to the  
20 plaintiffs in this case who are also making  
21 claims of exposure to a product?

22 A. No, ma'am. It would not.

23 MS. LOGGINS: That's all I have. Thank  
24 you.

25 THE COURT: Thank you. Please come to the

1 Bama Theatre at nine o'clock tomorrow with  
2 everybody else.

3 PROSPECTIVE JUROR KRISTI BROWN: Okay.  
4 Thank you.

5 THE COURT: So you are excused for today.

6 PROSPECTIVE JUROR KRISTI BROWN: Okay.

7 PROSPECTIVE JUROR KATHRYN ANDERSON,  
8 having been previously duly sworn,  
9 was examined and testified as follows:

10 THE COURT: Ms. Anderson, how are you  
11 doing?

12 PROSPECTIVE JUROR KATHRYN ANDERSON: Fine.  
13 How are you?

14 THE COURT: I'm just fine.

15 All right. Questions for Ms. Anderson on  
16 behalf of the plaintiffs?

17 VOIR DIRE EXAMINATION

18 BY MR. STEWART:

19 Q. Ms. Anderson, you indicated at one point -- I'm  
20 Donald Stewart. I represent the plaintiffs.  
21 You indicated at one point in the general  
22 questioning that you had some concerns that some  
23 of the plaintiffs might expect you to rule a  
24 certain way. Is that what you have told us?

25 A. I believe -- that's what I told you. But I

1 believe -- the answer to the question is, I  
2 believe they would, because I know them the way  
3 I know them.

4 Q. Because you taught them and had a relationship  
5 with them?

6 A. Right. That's why I think that they would,  
7 uh-huh.

8 Q. Would you be able to, as the Judge asked, just  
9 generally to put that aside, that feeling that  
10 you have aside, and render a judgment in this  
11 case were you to be chosen as a juror based on  
12 the evidence you hear from the witness stand and  
13 the law as the Court gives it to you?

14 A. Well, I'm not sure. Because I am a worrier.  
15 And I believe if they were upset with me if I  
16 ruled another way, it would hurt me, and I would  
17 worry about it afterwards. I think it would  
18 bother me to -- that I -- I don't know. I'm  
19 just being honest with the way I feel.

20 Q. Well, that's all we want you to do,  
21 Ms. Anderson.

22 A. That's the way I feel.

23 Q. That's certainly all we want you to do. And  
24 that's all the other lawyers and the Court wants  
25 you to do.

1           So are you telling us that you would have  
2           some difficulty in putting that feeling that you  
3           have or concern you have aside?

4    A.    You know, at first -- I think on the  
5           questionnaire, I answered that I could be fair  
6           and look at the evidence and make a good  
7           judgment. This morning, I said the same thing.  
8           But I'm feeling, I guess, more about them than I  
9           am myself. I don't know how I would feel.

10   Q.    How long did you teach?

11   A.    I taught 33 years.

12   Q.    All right.

13                   THE COURT: But you started when you were  
14                   six?

15                   PROSPECTIVE JUROR KATHRYN ANDERSON:  
16                   Pardon?

17                   THE COURT: You were only six years old  
18                   when you started; right?

19                   PROSPECTIVE JUROR KATHRYN ANDERSON: No. I  
20                   happen to be 70. So I taught for 33 years. And  
21                   then I've been retired for 14 years.

22                   MR. STEWART: Well, you don't look it.

23                   THE COURT: I was trying to give you a  
24                   compliment.

25                   PROSPECTIVE JUROR KATHRYN ANDERSON: Thank

1           you, thank you. I couldn't tell. I don't take  
2           compliments very well, I guess. I'm nervous for  
3           one thing.

4                        THE COURT: You've done well. No problem.

5                        MR. STEWART: I don't have any other  
6           questions at this time.

7                                VOIR DIRE EXAMINATION

8   BY MR. TAYLOR:

9   Q.   Ms. Anderson -- well, I guess it's afternoon  
10       now. Good afternoon. I'm Bernard Taylor, and I  
11       represent Flexible Products Company. And I want  
12       to thank you for your service thus far and  
13       coming and answering all of these questions  
14       truthfully. We greatly -- both sides greatly  
15       appreciate it. So thank you.

16                    You've indicated that you know quite a few  
17       of the plaintiffs in this case. I think I  
18       counted up about seven of them.

19   A.   That's true. And I was told I know a couple  
20       more --

21   Q.   A couple more?

22   A.   -- that I wasn't sure that I knew them. But  
23       someone reminded me that I know Big Red, I think  
24       his name is, and one other person. I just know  
25       of them, not really that well. But I've been in

1 the company of them.

2 Q. And the names I have are James Brand.

3 A. Correct.

4 Q. Eugene James?

5 A. Yes.

6 Q. Roy Edward James?

7 A. Yes.

8 Q. James Kelser?

9 A. Yes. Are you asking if I know them or if they  
10 are students?

11 Q. Know them or students?

12 A. Okay. James Kelser was not a student, but I  
13 know him. He's the brother of Leon Kelser, who  
14 is a student.

15 Q. Okay. And Leon was a student. And Samuel  
16 Linebarger?

17 A. I know his wife, uh-huh.

18 Q. And Felix Parker?

19 A. He's -- I know him. He's the father-in-law of  
20 James Brand.

21 Q. Okay. Thank you, ma'am. I'm sorry I took that  
22 time to go through that, but I just wanted to be  
23 sure I've got the names right.

24 You've known these people for a period of  
25 time?

1 A. I have.

2 Q. Do you have any reason to believe, based upon  
3 your knowledge of these folks, that they're not  
4 truthful?

5 A. I think they would be truthful, I think.

6 Q. And so getting back to the question then that  
7 you were asked earlier, that you were very  
8 poignant in the way that you responded to it,  
9 that if you believed these people to be truthful  
10 people, and the question came up about the green  
11 light question and the red light, whether the  
12 light was green or not, would you tend to  
13 believe them if they said the light was green  
14 because you believe them to be truthful?

15 A. I think I would.

16 Q. Okay.

17 A. Because if I didn't have any other reason to  
18 believe that they weren't telling the truth,  
19 then I would believe that they were telling the  
20 truth.

21 MR. TAYLOR: Thank you.

22 Your Honor, no further questions.

23 Thank you.

24 THE COURT: Any further questions from any  
25 party?

## 1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. Ms. Anderson, I still don't know what your  
4 position is.

5 A. I'm sorry. Maybe --

6 Q. I just -- you know what, as I said earlier, all  
7 we want is a fair and impartial jury. That's  
8 all we want, everybody that's on there. We  
9 understand that past experiences could affect  
10 whether or not they could be fair. And so  
11 you've raised some legitimate concerns and  
12 questions and issues. So what has to be  
13 determined here -- and you've heard it before --  
14 can you put it aside and base your verdict on  
15 the evidence and the law?16 If you can do that, that's what we want to  
17 know. If you've got doubts about whether you  
18 can do that, whether it's because you taught  
19 them, or whether it's because, you know, that  
20 you feel that they may be upset if you were to  
21 rule against them, if any of that would enter  
22 into your mind that would cause you not to be  
23 able to be fair to both parties and rule just on  
24 the evidence and the law, we want to know.

25 A. Okay. You know, I really want to be fair, I

1 really do, but I believe that I would have  
2 feelings about them not understanding if I ruled  
3 against them. I really do think that, and I  
4 think that I would be a bad --

5 Q. Would that enter into when you -- would that  
6 enter into your thinking when you're  
7 deliberating and trying to make a decision --

8 A. I don't know. I would have to hear the evidence  
9 first. I would have to hear both sides before I  
10 could really say what -- I cannot say what I  
11 would do without hearing it first.

12 I mean, I would need to hear and see the  
13 mannerisms, the body language and all of that  
14 before I would know whether I could -- because  
15 I'm not going to go against somebody just  
16 because they were my friend if I believed  
17 that -- I mean, if I think they are telling the  
18 truth. And then if the company is telling the  
19 truth, I wouldn't want to go --

20 So I wouldn't make a good juror. I'll just  
21 say it like that.

22 Q. Are you saying you wouldn't make one?

23 A. I wouldn't.

24 Q. Well, that's what they want. They want somebody  
25 who would go with the law and the evidence. If



1 tomorrow at the Bama Theatre.

2 PROSPECTIVE JUROR KATHRYN ANDERSON: But  
3 why?

4 THE COURT: Yes, ma'am, nine o'clock  
5 tomorrow.

6 PROSPECTIVE JUROR KATHRYN ANDERSON: I said  
7 I would be --

8 THE COURT: I look forward to seeing you at  
9 nine o'clock tomorrow. Thank you very much.  
10 You don't have to come back today. Just come  
11 back at 9:00 tomorrow.

12 PROSPECTIVE JUROR KATHRYN ANDERSON: All  
13 right. Thank you.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR KATHRYN ANDERSON: I'm  
16 not trying to get out of it.

17 THE COURT: I know you're not. Make sure  
18 you can find your seat tomorrow at the Bama. We  
19 will work with you to help you find it. Thank  
20 you.

21 PROSPECTIVE JUROR KATHRYN ANDERSON: Let me  
22 say another reason. May I please say another  
23 reason?

24 THE COURT: Yes, ma'am. You've got the  
25 floor.

1 PROSPECTIVE JUROR KATHRYN ANDERSON: Okay.  
2 Right now, I'm taking care of my 95-year-old  
3 mother. She has an arthritic knee. She's blind  
4 in one eye. She had a doctor's appointment  
5 today, which I had to cancel because I had to be  
6 here. So that's how much I -- my sister from  
7 Montgomery had a real bad cold, and I had told  
8 her that I didn't want her to come because I  
9 didn't want to add more to my mother because she  
10 was sick. So she called and said she's better,  
11 so they're at the doctor's office as we speak --  
12 well, it's a one o'clock appointment. It's a  
13 yearly appointment.

14 THE COURT: So you can make it.

15 PROSPECTIVE JUROR KATHRYN ANDERSON: I  
16 know.

17 THE COURT: Well, that's good.

18 PROSPECTIVE JUROR KATHRYN ANDERSON: So I  
19 have to pay somebody to see after her if I'm  
20 here, so it's really not a good choice for me to  
21 make, but I can help any other time. I'll be  
22 glad to help, Judge England. You know that.

23 THE COURT: Yes, ma'am. Thank you very  
24 much.

25 PROSPECTIVE JUROR KATHRYN ANDERSON: Okay.

1 Thank you.

2 THE COURT: So that's nine o'clock  
3 tomorrow.

4 PROSPECTIVE JUROR KATHRYN ANDERSON: Okay.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR KATHRYN ANDERSON: Thank  
7 you.

8 THE COURT: You're Mr. White; is that  
9 right?

10 PROSPECTIVE JUROR TERENCE WHITE: Yes, sir.

11 THE COURT: Mr. White, have a seat up  
12 here.

13 PROSPECTIVE JUROR TERENCE WHITE,  
14 having been previously duly sworn,  
15 was examined and testified as follows:

16 THE COURT: How are you doing?

17 PROSPECTIVE JUROR TERENCE WHITE: Okay.

18 THE COURT: Okay. Questions for  
19 Mr. White?

20 MR. STEWART: Judge, I don't think we have  
21 any at this time.

22 THE COURT: All right.

23 MR. HANKLE: We have a few questions, Your  
24 Honor.

25 THE COURT: All right.

1 VOIR DIRE EXAMINATION

2 BY MR. HANKLE:

3 Q. Mr. White, I'm Jim Hankle, and I represent Micon  
4 and MPI in this case. How are you doing?

5 A. All right.

6 Q. Now, from the information you gave us, I  
7 understand that you know one of the plaintiffs  
8 in this case; is that right?

9 A. Yes, sir, I've been -- I know him.

10 Q. That's Charles Blount?

11 A. Yeah, Charlie Blount.

12 Q. How long have you known Charlie?

13 A. Off and on, ever since we was small.

14 Q. You grew up with him?

15 A. Not with him, but I grew up around him.

16 Q. All right. Did you visit his home when you were  
17 kids?

18 A. Yeah.

19 Q. Okay. And how often do you see him now?

20 A. Oh, the last I saw him, when we was going to --  
21 out and he looked like he had nervous problems,  
22 and I asked him what was wrong, what had  
23 happened to his hand, and he said he got it --  
24 at work, some chemicals or something.

25 Q. All right. So when was the last time you saw

1 him?

2 A. Just about a year ago, sir.

3 Q. Okay. And is that when you asked him about --  
4 you noticed he had a nervous problem, you said?

5 A. Yeah, scars on his body, or something on his  
6 hand, burns on his hand or something.

7 Q. Burns on his hands?

8 A. Something. I can't remember what I saw.

9 Q. All right. Where were you when you saw this?

10 A. Over at a friend's house.

11 Q. And so you -- was he itching the hands, or you  
12 just saw the --

13 A. He probably was shaking a little bit and  
14 something else. Might have had some burns or  
15 something I thought I saw on his hands or arms  
16 or something.

17 Q. On his arms, too?

18 A. Yes, sir.

19 Q. He had short-sleeved shirts on?

20 A. On his leg, one of them. I can't remember what  
21 it was, but he looked like he had a nervous  
22 disorder or something like that.

23 Q. All right. Now, was the nervous disorder  
24 separate from what you saw on his hands?

25 A. Burns, yes, sir.

1 Q. Okay. And did you ask him about the nervous  
2 disorder?

3 A. Yeah. He said some chemicals got on him or  
4 something at work.

5 Q. So he told you that the nervous disorder he had  
6 was some chemical that got on him?

7 A. Yes, sir.

8 Q. Did he tell you how he got the chemical on him?

9 A. No. He just said it was at work.

10 Q. All right. And you know where he works; right?

11 A. Yeah. I saw it on the thing, in the mine, Dow  
12 Chemical or whatever.

13 Q. And did you ask him anything more about the  
14 chemical?

15 A. No.

16 Q. Do you know what the chemical that he said got  
17 on him, do you know what it was used for in the  
18 mines?

19 A. No, sir.

20 Q. Do you know if it has anything to do with this  
21 lawsuit?

22 A. I don't know. No, sir, I don't know.

23 Q. Did he tell you, back then a year ago, that he  
24 was a plaintiff in a lawsuit?

25 A. No, not that I remember.

1 Q. All right. And you haven't seen him since?

2 A. Off and on a little bit, just driving around in  
3 his car. I walk, he drives --

4 Q. Okay.

5 A. -- and I see him sometimes.

6 Q. Let me ask you this: How close do you live to  
7 him now?

8 A. Oh, I don't know where he lives at now.

9 Q. Okay.

10 A. I live way in Northport.

11 Q. All right.

12 A. When we was little, though, we lived around the  
13 street from each other.

14 Q. Right. But now, you don't even know where he  
15 lives?

16 A. No, sir.

17 Q. And it would just be a chance that you might run  
18 into him?

19 A. (Witness nods head.) That's right.

20 Q. Besides the -- you called it burns on his hands;  
21 right?

22 A. I might have been -- it might have been  
23 something I saw on him.

24 Q. You're not sure whether you saw it?

25 A. It might have been some burns or something on

1 his hands. Skin rashy -- his skin looked rashy.

2 Q. But did he say that that was due to the chemical  
3 at all?

4 A. Yes, sir.

5 Q. So he said -- both the nervous disorder and the  
6 burns on his hand, he said were due to a  
7 chemical?

8 A. Yeah.

9 Q. All right. But you don't know what the chemical  
10 was?

11 A. No.

12 Q. Besides those two things, do you know of any  
13 other health problems that Mr. Blount has?

14 A. No, sir.

15 Q. Do you know if he smokes?

16 A. (Witness shakes head.)

17 Q. You don't know?

18 A. No, sir.

19 MR. HANKLE: Thank you. That's all the  
20 questions I have.

21 VOIR DIRE EXAMINATION

22 BY MR. BICKS:

23 Q. How are you doing, Mr. White?

24 A. Fine.

25 Q. The question I wanted to throw out there is so

1           you would know a little bit about -- kind of  
2           about why we're here.

3           My question is: If we've got miners on one  
4           side of a case, including the fellow that you  
5           know, and then chemical companies on the other  
6           side, do you think that you might tend to favor  
7           the miner because of your friendship and other  
8           things that you might know about?

9    A.    I don't know. Yes, sir, maybe.

10   Q.    And could you just explain why you, you know,  
11           might feel that way?

12   A.    I don't know. Maybe he need -- just seeing his  
13           physical appearance, you know, he looked  
14           different than what he were. You know, he said  
15           some chemicals got on him at work.

16   Q.    And do you think, as you are here, that's  
17           something that's in the back of your mind that  
18           could have some influence when you hear about  
19           this?

20   A.    It could have some influence on that case, in  
21           fact, you know, stating that the plaintiff was  
22           injured.

23   Q.    That had some influence on you, hearing that?

24   A.    No, sir.

25                   MR. BICKS: Okay. Thank you.

1 PROSPECTIVE JUROR TERENCE WHITE: All  
2 right.

3 THE COURT: Any further questions?

4 MR. STEWART: Yes, sir, Judge.

5 VOIR DIRE EXAMINATION

6 BY MR. STEWART:

7 Q. Donald Stewart, I represent the plaintiffs in  
8 this case, Mr. White.

9 Could you put aside what you have heard  
10 from your friend, Mr. Blount, that you grew up  
11 with and listen to the evidence as it comes from  
12 that witness stand where you are and the law as  
13 the Court gives it to you and make your decision  
14 based on the facts and the law as the Court  
15 gives you?

16 A. Yes, sir.

17 Q. You could put that aside?

18 A. Oh, no, sir.

19 Q. You can't?

20 A. I didn't understand the question.

21 Q. Well, I want to make sure you do.

22 Can you put aside what you just got through  
23 telling these other gentlemen about and listen  
24 to the evidence -- you haven't heard the  
25 evidence yet --

1 A. Uh-huh.

2 Q. -- and listen to the instructions that the Court  
3 gives you and make your decision, if you were  
4 selected as a juror, based on what you hear from  
5 the evidence and what the Judge tells you about  
6 the law?

7 A. Yes, sir. I would be able to make a decision,  
8 right.

9 Q. Once you hear the evidence?

10 A. Yes, sir.

11 Q. And this other stuff you're talking about, your  
12 conversation with Mr. Blount, your relationship  
13 with him, it wouldn't interfere with your  
14 ability to do that?

15 A. No, sir.

16 MR. STEWART: All right.

17 THE COURT: Further questions?

18 MR. BICKS: No, Your Honor.

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Mr. White, when was the last time you saw  
22 Mr. Blount?

23 A. It was about a year ago.

24 Q. And you don't know where he lives now?

25 A. No, sir. I can't remember. I can't remember

1           where he lives.

2    Q.    All right.  Well, if the evidence indicated that  
3           you should rule in a manner that would not be in  
4           his favor, could you do that?

5    A.    No, I don't think so.

6    Q.    You would rule in his favor?

7    A.    Yes, sir.  I would say he was in bad health the  
8           last I saw him.

9    Q.    Okay.  So what I'm asking though, in this case  
10           here --

11   A.    Uh-huh.

12   Q.    -- if the evidence indicated that these  
13           defendants were not at fault in connection with  
14           his condition, if the evidence indicated that --

15   A.    Uh-huh.

16   Q.    -- could you rule against him, or would you  
17           still rule in his favor?

18   A.    No, I probably would -- I probably wouldn't rule  
19           against him if what evidence that said -- that  
20           stated that the chemicals did not cause his skin  
21           and stuff to do that.  Is that what you're  
22           saying?

23   Q.    Yeah, that's what I'm saying.

24   A.    Okay.

25   Q.    So you could do that?

1 A. Yes, sir, I would probably apply it for the  
2 plaintiff after -- you said before evidence;  
3 right?

4 Q. Well, I don't want to confuse you. I just want  
5 to make sure that you can be fair in the case,  
6 and all I was asking you is, if the evidence  
7 indicated that these defendants here, these  
8 chemical companies here --

9 A. Yes, sir.

10 Q. -- did not cause the problems with the skin --  
11 do you understand what I'm asking you so far?

12 A. Yes, sir, I understand you.

13 Q. If that's what the evidence indicated, could you  
14 rule against him?

15 A. No, sir, I don't know. No, sir, I wouldn't --

16 Q. What would you do? Rule in favor of him?

17 A. I would rule in favor of him.

18 Q. Would you do that even if the evidence indicated  
19 that you shouldn't?

20 A. Now, if the evidence indicated I shouldn't, I  
21 don't know, if he -- if the chemical caused  
22 that, his skin and stuff like that.

23 Q. Okay.

24 A. I don't understand that much of it but --

25 Q. I understand that, and the more you answer, the

1 more I'm confused, so that's why I'm trying to  
2 figure out.

3 A. I think I'd be for the miner because of his  
4 condition, and the chemicals might have caused  
5 that.

6 Q. Okay. So now, that's even if the evidence  
7 indicated that it didn't cause it, you would  
8 still be in favor of the miner?

9 A. No, I wouldn't. I don't know. If they didn't  
10 cause it, well, he would have to move the case  
11 on, wouldn't he?

12 Q. Well, it depends on what you would do. If it  
13 didn't cause it, could you rule in favor of the  
14 chemical companies and not in favor of him?

15 A. I guess so, yes, sir, if I understand.

16 THE COURT: Thank you, Mr. White.  
17 Anybody else got any follow-up questions?

18 MR. STEWART: I don't have any.

19 THE COURT: Thank you, Mr. White.

20 PROSPECTIVE JUROR TERENCE WHITE: All  
21 right. Thank you.

22 THE COURT: Oh, Mr. White, please come back  
23 at nine o'clock at the Bama Theatre in the  
24 morning.

25 PROSPECTIVE JUROR TERENCE WHITE: Okay.

1 Nine o'clock.

2 THE COURT: Nine o'clock. Thank you.

3 PROSPECTIVE JUROR WALLACE WILLIAMS,

4 having been previously duly sworn,

5 was examined and testified as follows:

6 THE COURT: Okay. Now, is it Wallace

7 Williams or William Wallace?

8 PROSPECTIVE JUROR WALLACE WILLIAMS: I've

9 been called both ways, but it's Wallace

10 Williams.

11 THE COURT: Okay. Questions for

12 Mr. Wallace Williams?

13 VOIR DIRE EXAMINATION

14 BY MR. STEWART:

15 Q. Mr. Williams, you indicated that you knew about  
16 the health problems with one of these  
17 plaintiffs. I'm Donald Stewart, and I represent  
18 the plaintiffs in this case.

19 A. Yes, sir. I know the son of Plaintiff Richard  
20 McRea. Several months ago, he had asked us to  
21 pray for his family because of health issues,  
22 but he didn't specify what those issues were.

23 Q. So you know that in your church, you were asked  
24 to pray for him?

25 A. Well, he asked us as a group individually. He

1           doesn't attend church with us anymore, but I've  
2           known him for ten years.

3    Q.    As the son or the plaintiff?

4    A.    His son.

5    Q.    Okay.

6    A.    I don't -- I probably met his father ten years  
7           ago when Ben was in the youth group, but I  
8           haven't had contact with his father or mother  
9           since that time. I just know Ben well.

10   Q.    So the son asked you to pray for the father?

11   A.    Yes.

12   Q.    And you don't know anything at all about the  
13          health issues?

14   A.    Nothing specific.

15   Q.    Okay. Nothing that you've learned about that  
16          would affect whether or not you could or could  
17          not serve as a juror in this case?

18   A.    Not right now.

19   Q.    All right. You could put that aside and listen  
20          to the evidence as you understand it from the  
21          witness stand and the law as the judge instructs  
22          you and render a fair decision?

23   A.    I try to live my life with honesty and integrity  
24          as a Christian should. I say that that's what I  
25          would do. But knowing Ben and all, I would feel

1 very uncomfortable with that situation.

2 Q. And is that because of what he asked you to do  
3 for his father?

4 A. Well, just knowing him.

5 Q. Just knowing him and knowing his father is a  
6 plaintiff?

7 A. Yeah, it would make me very uncomfortable to  
8 have to sit in that situation.

9 Q. Would that cause you, if the evidence was such  
10 that you perhaps should rule for the other side,  
11 not to rule for the other side, if the evidence  
12 and the law indicated you should?

13 A. No, sir, I don't. I would think that I would  
14 rule as honestly as I could.

15 Q. So you could put that aside and render a fair  
16 verdict?

17 A. I would try.

18 MR. STEWART: All right. Thanks,  
19 Mr. Williams.

20 VOIR DIRE EXAMINATION

21 BY MR. DODSON:

22 Q. Mr. Williams, my name is John Dodson. I  
23 represent one of the defendants in the case, a  
24 company called Micon.

25 You say that you're good friends or go to

1 church at least with Mr. McRea's son. Did you  
2 say his name was Ben?

3 A. Yes.

4 Q. Okay. And you would say you're good friends  
5 with him? Is that how you would describe the  
6 relationship?

7 A. I would describe him as a friend.

8 Q. Okay. And I think you just said you would feel  
9 somewhat uncomfortable --

10 A. Yes, sir.

11 Q. -- sitting on this jury. Do you go into this  
12 process, knowing that Ben's father is a  
13 plaintiff, already leaning towards one side?

14 A. Since I don't know anything about the case, I  
15 don't lean one way or the other. It's just the  
16 fact that sitting there knowing that I'm going  
17 to make this decision or if it's going to be  
18 this situation, it's going to affect him or his  
19 family, that weighs on me a little bit.

20 Q. So much so that you don't think that you could  
21 be fair and impartial in this case?

22 A. I won't say that it won't make me my fair and  
23 impartial.

24 Q. You think you can try to do that?

25 A. I can try to do that.

1 Q. All right. And I know you said you may have met  
2 Richard McRea. That was many years ago;  
3 correct?

4 A. Probably about ten years ago.

5 Q. And you don't know anything about his current  
6 health situation other than Ben asked you to  
7 pray for him?

8 A. That's correct.

9 Q. And you don't know any other miners --

10 A. No, sir.

11 Q. -- that are a part of this case; right?

12 A. None that I know of.

13 MR. DODSON: Thanks. That's all.

14 VOIR DIRE EXAMINATION

15 BY MR. TAYLOR:

16 Q. I'm Bernard Taylor, and I represent Flexible  
17 Products Company. Thank you for coming in and  
18 speaking with us. I appreciate it.

19 You indicated you would try, and I think I  
20 understand that. But you know the question I'm  
21 going to ask you.

22 A. Yes, sir.

23 Q. Will you -- can you be able to put those aside  
24 and be fair in regards to my client's issues in  
25 this case? I represent Flexible Products

1 Company. We formulate one of the chemicals  
2 that's at issue in this case --

3 A. Yes, sir.

4 Q. -- and of course, we want a juror who -- I mean,  
5 there's nothing wrong with being biased for a  
6 lot of good reasons.

7 The question is: Can you set that aside?  
8 And if you can't set it aside, that's what we  
9 want to talk to you about here today.

10 A. I'm not a perfect person.

11 Q. Yes, sir.

12 A. So, you know, once I'm sitting in that  
13 situation, I just do not know how I'm going to  
14 react. I just know that I'm going to feel a  
15 little bit of feeling and pressure on me because  
16 I do know Ben.

17 Q. And if you got to the point where -- you're  
18 right at the point and you're trying to make a  
19 decision on whether you vote for the miners or  
20 whether your vote is going to be for the  
21 defendants in this case, my client, would those  
22 feelings you have for Ben and his father and his  
23 family cause you to maybe lean the other way and  
24 probably vote in their favor?

25 A. It might. I would try for it not to, but it

1           might.

2                       MR. TAYLOR: Thank you. Appreciate your  
3 responses.

4                       THE COURT: Further questions?

5                       MR. STEWART: No, sir.

6                       THE COURT: All right. Thank you. Please  
7 come to the Bama Theatre at nine o'clock in the  
8 morning.

9                       PROSPECTIVE JUROR WALLACE WILLIAMS: Yes,  
10 sir.

11                      THE COURT: Okay. I will see y'all at  
12 1:30.

13                      (Whereupon, the Court was in recess  
14 from 12:37 p.m. until 1:45 p.m.)

15                      PROSPECTIVE JUROR LINDA O'ROURKE,  
16 having been previously duly sworn, was  
17 examined and testified as follows:

18                      THE COURT: How are you doing?

19                      PROSPECTIVE JUROR LINDA O'ROURKE: I'm  
20 okay. I'm fine.

21                      THE COURT: Good. There was some follow-up  
22 questions that the parties wanted to ask of you,  
23 and that's why we've got you here, so those  
24 follow-up questions can be asked.

25                      We will start with the plaintiff.

VOIR DIRE EXAMINATION

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BY MR. STEWART:

Q. Ms. O'Rourke, I'm Donald Stewart. And, along with Andy Davenport, I represent the plaintiffs. I have a few questions.

You indicated that you were aware of a health problem that was associated with one of these plaintiffs; is that --

A. Yes.

Q. And what is the nature of that health problem?

A. Ms. Ryan, Willie Mae Ryan is my next-door neighbor. She has, in years past, had a lot of surgery on her knees, on her legs. And just in talking to her, she always attributes it to her working in the mines.

Q. And that's what you know about her health problems?

A. That's all, her saying it.

Q. Okay. Now, you've indicated also that you know a large number of these plaintiffs or a fair number of these plaintiffs?

A. Yes.

Q. You were -- Mr. Hyche you've known for some time.

A. Now, some of them, I knew their spouses.

1 Q. Isaac Hyché, H-Y-C-H-E?

2 A. Oh, yes, yes. He -- well, you didn't ask me.

3 Q. There's a James McCollins. You used to work  
4 with his wife?

5 A. Yes.

6 Q. Mr. Brown you knew as a pastor?

7 A. Yes.

8 Q. Jerry Burton. You worked with his -- Jerry  
9 Burton, or is it Jesse Burton, you worked with  
10 his wife?

11 A. Yes.

12 Q. Did you also go to church with that individual?

13 A. No.

14 Q. What about Leon Brown? You used to work with  
15 his wife?

16 A. Yes.

17 Q. Percy Crummie, you knew him and his wife?

18 A. I knew his wife. I know him, but I know his  
19 wife better.

20 Q. How is it that you know his wife?

21 A. In a business endeavor. She used to sell Noni  
22 juice. And she attempted to get me to work with  
23 her in that endeavor. So we got to be friends  
24 through that.

25 Q. And then you worked for the wife of Roosevelt

1 Harris?

2 A. And she also is my sorority sister. And I work  
3 with her every day.

4 Q. And Ms. Ryan is the one you mentioned a minute  
5 ago about the health problems who is your  
6 next-door neighbor?

7 A. Yes.

8 Q. Now, based on your knowledge of all of these  
9 folks, would you be able to put aside the  
10 relationship that you have with them and decide  
11 this case based on the evidence you hear from  
12 the witness stand that comes out in the trial of  
13 the case, and the law, as the Judge gives it to  
14 you at the end of the case, and from time to  
15 time during the case, and render a fair and  
16 impartial decision for either side?

17 A. Yes.

18 Q. You would not have any difficulty?

19 A. No.

20 MR. STEWART: All right. That's all I have  
21 at this time, Judge.

22 VOIR DIRE EXAMINATION

23 BY MR. WELLS:

24 Q. Hello, Ms. O'Rourke. My name is Tommy Wells,  
25 and I represent one of the defendants in this

1 case. And I hope you understand, we're not --  
2 none of us here, Mr. Stewart or me or anybody  
3 else, we are not trying to pry. I'm sure you  
4 understand that. We just want to make sure we  
5 get a fair and impartial jury for all of the  
6 parties in this case.

7 A. All right.

8 Q. Now, earlier this morning, Ms. O'Rourke, you, I  
9 think, raised your hand when Ms. Anderson said  
10 she thought that the people that she knew that  
11 were plaintiffs in this case would expect her to  
12 at least lean their way?

13 A. Uh-huh (Witness nods head.)

14 Q. And is that also what you think?

15 A. You want me to expound on that?

16 Q. If you would, I would appreciate it.

17 A. When you asked the question, I raised my hand  
18 because I wanted more input. Leaning toward one  
19 or the other, I wanted you to explain further,  
20 saying without any information or after given  
21 more information. And I didn't hear that prior  
22 to my raising my hand, so that's why I raised my  
23 hand.

24 And I think you came back, and someone  
25 asked, with information and Judge instructions,

1           then it would be different.  But before that, it  
2           was just a straight, cut and dry yes or no,  
3           so --

4   Q.    Okay.  Now, you know Roosevelt Harris' wife?

5   A.    Yes, sir.

6   Q.    She's a sorority sister of yours?

7   A.    Yes.

8   Q.    So y'all have been friends for a fair amount of  
9           time?

10  A.    Yes.

11  Q.    And you say you still work with her every day?

12  A.    Yes.

13  Q.    Would it make you uncomfortable if you had to go  
14           back and tell Ms. Harris that you were sitting  
15           on this jury and -- or you sat on this jury and  
16           you had to rule against her husband in this  
17           case?

18  A.    Not with -- not if that's the way I felt.  I  
19           wouldn't feel uncomfortable.

20  Q.    Okay.  Now, Willie Mae Ryan is your next-door  
21           neighbor?

22  A.    Yes.

23  Q.    Is that right?

24  A.    Yes.

25  Q.    And I think you said she's the one you visit

1 with in the yard?

2 A. Yes.

3 Q. Sometimes two to three hours at a time?

4 A. Yes.

5 Q. Would you feel uncomfortable in having to go  
6 back and talk to Willie Mae Ryan, your next-door  
7 neighbor, and tell her you sat as a juror in  
8 this case, and you had to rule against her in  
9 this case?

10 A. I would probably feel more uncomfortable talking  
11 with her, being that she is my next-door  
12 neighbor, and I know a lot about the things  
13 she's gone through, just her children and all.  
14 I would probably feel more uncomfortable after  
15 it's all over telling her -- having to say that  
16 to her.

17 Q. Okay. Now, you also know James Brown, Reverend  
18 Brown?

19 A. I knew Reverend Brown.

20 Q. Knew Reverend Brown. I'm sorry. I believe  
21 Reverend Brown has passed away; is that right?

22 A. Yes, right.

23 Q. I'm sorry. I didn't realize that until we were  
24 here, actually. And Leon Brown, I think, is  
25 related to Reverend Brown?

1 A. I don't know Leon Brown.

2 Q. You don't know Leon Brown?

3 A. No.

4 Q. Okay. But Percy Crummie. You know Percy  
5 Crummie and you also know -- you just explained  
6 you know his wife?

7 A. Yes.

8 Q. And based on your relationship with Percy  
9 Crummie and his wife, would you have trouble  
10 going back to both of them and telling them you  
11 sat on this jury, and you had to rule against  
12 them?

13 A. No.

14 Q. Okay. And you also know Jerry Burton or his  
15 wife?

16 A. I know his wife, Eula.

17 Q. Does she work with you also?

18 A. She used to work -- I used to work with her some  
19 years ago.

20 Q. And Ike Hyche I think you said you knew?

21 A. Years ago.

22 Q. Okay. And James McCollins?

23 A. Yes.

24 Q. And is Ms. --

25 A. His wife.

1 Q. Is Ms. McCollins a neighbor of yours?

2 A. They live a block over from me.

3 Q. Do you see them very often?

4 A. Basically in passing.

5 Q. Just in passing?

6 A. Just in passing.

7 Q. Okay. Would you have any trouble going back to  
8 Mr. and Mrs. McCollins and tell them you sat as  
9 a juror in this case and had to rule against  
10 them because that's what the evidence showed?

11 A. No.

12 Q. Now, you talked about Ms. Ryan that used to --  
13 you used to live next door to or --

14 A. Still do.

15 Q. Still do?

16 A. (Nods head.)

17 Q. So that's Ms. Willie Mae Ryan; right?

18 A. Yes.

19 Q. And you said that she attributed some of her  
20 health problems to working in the mines?

21 A. Yes.

22 Q. Did she ever talk to you about what she thought  
23 caused some of her problems?

24 A. Yes.

25 Q. And tell me what y'all talked about.

1 A. She would just say the work was hard and that --  
2 the heaviness of being a female and working in  
3 that environment, she attributed to the  
4 deterioration in her legs and her knees. She  
5 used to tell me about hard work, being a female,  
6 that it messed up her legs.

7 Q. Okay. Did she ever talk to you about being  
8 exposed to any chemicals in the mine?

9 A. Oh, no.

10 Q. And as far as you know, from being her next-door  
11 neighbor and talking to her two or three  
12 times -- or two or three hours at a time in the  
13 yard, do you know whether or not she's got any  
14 respiratory problems?

15 A. I don't have any knowledge of that.

16 Q. Okay. If she had some respiratory problems, I  
17 take it you would probably notice if you talked  
18 to her as much as you talk about being in the  
19 yard and -- wouldn't you?

20 A. I would -- it depends on the degree of the  
21 respiratory problems. But if it was that  
22 severe, I'm sure I would.

23 Q. Okay. If it was severe enough that she had  
24 symptoms, that she got short of breath or she  
25 wheezed or coughed a lot, that would be

1 something that you would notice, wouldn't it?

2 A. Yes.

3 Q. Had you noticed have you noticed any of that  
4 with Ms. Ryan?

5 A. No, I have not.

6 Q. When was the last time you talked to her?

7 A. Last week. Last week.

8 Q. Okay. And y'all have never talked about the  
9 fact that she's a plaintiff in this case or --

10 A. No.

11 Q. You didn't know she was a plaintiff in this case  
12 until you saw her picture?

13 A. No.

14 Q. Okay. All right.

15 MR. WELLS: I think that's all, Your Honor.

16 THE COURT: Further questions?

17 Thank you, ma'am. Please be back at the  
18 Bama Theatre at nine o'clock tomorrow.

19 PROSPECTIVE JUROR LINDA O'ROURKE: Okay.

20 THE COURT: And by the way does, that Noni  
21 juice, did it work?

22 PROSPECTIVE JUROR LINDA O'ROURKE: Does it  
23 work?

24 THE COURT: You said --

25 PROSPECTIVE JUROR LINDA O'ROURKE: Oh, I

1 didn't take it.

2 THE COURT: You didn't take it?

3 PROSPECTIVE JUROR LINDA O'ROURKE: No, I  
4 didn't take it.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR LINDA O'ROURKE: I  
7 probably should have.

8 THE COURT: You think so?

9 PROSPECTIVE JUROR LINDA O'ROURKE:  
10 Probably.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR KAREN COTTINGHAM,  
13 having been previously duly sworn, was  
14 examined and testified as follows:

15 THE COURT: Ma'am, have a seat right here  
16 in this witness chair, and speak into the mic.

17 You are Ms. Cottingham; right?

18 PROSPECTIVE JUROR KAREN COTTINGHAM:  
19 Correct.

20 THE COURT: The parties have some follow-up  
21 questions for you.

22 So we are going to begin with the  
23 plaintiff.

24 PROSPECTIVE JUROR KAREN COTTINGHAM: Okay.

25 VOIR DIRE EXAMINATION

1 BY MR. STEWART:

2 Q. Ms. Cottingham, did you mention that you knew  
3 about a health problem that one of these  
4 plaintiffs had that you knew?

5 A. No, sir.

6 MR. STEWART: Okay. I believe I don't have  
7 any questions, Judge, except I may have some  
8 follow-up later.

9 VOIR DIRE EXAMINATION

10 BY MR. DODSON:

11 Q. Ms. Cottingham, my name is John Dodson. I  
12 represent one of the defendants in the case.  
13 And we certainly don't mean to pry, but I do  
14 want to ask you a few questions.

15 You had identified several of the  
16 plaintiffs that you were familiar with or knew,  
17 one of which was David Grammer. You had  
18 indicated that at one time y'all had gone to  
19 church together; is that correct?

20 A. Yes, sir.

21 Q. And that you see -- that you are still really  
22 good friends with the Grammer family; is that  
23 right?

24 A. No, I'm not friends with them at all.

25 Q. But did you say you were friends with one of the

1 plaintiffs?

2 A. I grew up with the Grammer family, going to  
3 church with them for probably 23 to 25 years. I  
4 went with their entire family. Grew up with  
5 their children. Just -- they lived next door to  
6 my best friend. We frequented their house or  
7 their yard, you know, playing with their kids.

8 Q. But that was more in the past than it is  
9 current; right?

10 A. Uh-huh, yes.

11 Q. When was the last time that you saw Mr. Grammer?

12 A. Maybe a year ago at a church service. Because  
13 he still attends the same church, and I visit  
14 there every once in a while.

15 Q. And you are not familiar with his current health  
16 situation?

17 A. No.

18 Q. Okay. Are you still friends with his children?

19 A. No. I'm not friends with any of them anymore.  
20 I don't care for the family. I don't --

21 Q. Jack Henley. You used to go to church with the  
22 Henleys as well?

23 A. At the same church, yes.

24 Q. And have you seen Mr. Henley?

25 A. Same thing. Just at that -- probably a year ago

1 at that service that I went to. I've seen his  
2 daughter several times.

3 Q. And you are not familiar at all with his health  
4 condition?

5 A. No.

6 Q. And is there a Mr. Hannig.

7 A. Hannig. (Nods head.)

8 Q. You used to live across the street from the  
9 Hannig family?

10 A. They used to live across the street from me for  
11 a time.

12 Q. You haven't seen them in a while?

13 A. I've seen them several times. I actually  
14 scheduled tennis appointments with his wife for  
15 my daughter. But then it didn't work out where  
16 my daughter could go in the past couple of  
17 years. Our children went to school together  
18 since elementary school. He's one year older  
19 than my daughter. And my mom babysat his child,  
20 their baby, when he was a baby, for a little  
21 while.

22 Q. And is that -- your children interact with his  
23 children still; is that --

24 A. Not now, no. He graduated.

25 Q. All right. And then the Wilson, Philip Wilson?

1 A. I'm sorry.

2 Q. Is it Philip Wilson?

3 A. No.

4 Q. What was the name of the --

5 A. It's Steve Wilson.

6 Q. Steve. I just wrote it down wrong. I'm sorry.

7 A. That's okay.

8 Q. And what's your relationship with Steve Wilson?

9 A. Steve Wilson is a member of my church, went to  
10 my church for -- off and on for a couple of  
11 years or so. His children still attend my  
12 church. I play softball, church league  
13 softball. And I played on the coed team. And I  
14 played with both of his sons. He would come to  
15 the ballpark and watch us, this past summer,  
16 just recent, you know.

17 Q. Now, does the fact that your -- you go to church  
18 with the Wilsons, and play softball with the  
19 Wilsons -- Mr. Wilson's sons, would that impact  
20 in any way your feelings about this case as we  
21 go into it?

22 A. I guess it would depend on the circumstance. I  
23 mean, I don't -- I mean, I would be truthful.  
24 But, I mean, it depends on the circumstances. I  
25 mean -- I mean, I --

1 Q. You don't feel like, as we sit here today,  
2 knowing several of these plaintiffs, that you  
3 might be leaning more towards the plaintiffs  
4 than the companies that are the defendants in  
5 this case?

6 A. I mean, I can't say that I would be -- if he --  
7 I don't know how to put it. If he was sick and  
8 something -- I don't know that he is. But if he  
9 was sick and it affected him, I mean, it would  
10 affect his children. And, you know, his  
11 children -- you know, I would want his children  
12 to be okay and taken care of. And whatever  
13 affects him, I'm sure it affects them.

14 But I would be truthful. I mean, if that's  
15 what you are asking. I would be -- I mean, I'm  
16 not going to --

17 Q. The fact that you know his children wouldn't  
18 influence you, you don't think, in how you view  
19 the evidence or the law in this case?

20 A. No. I mean, I would be -- I mean, I know -- I  
21 mean, I can keep a level head, yes. I mean, I  
22 can -- if that's what you are asking.

23 Q. All right. That's what I'm asking. Thank you.

24 A. Okay. You're welcome.

25 THE COURT: Any further questions?

1 MR. TAYLOR: None here, Your Honor.

2 MR. STEWART: None here, Judge.

3 THE COURT: Thank you. Please be back at  
4 nine o'clock tomorrow morning.

5 PROSPECTIVE JUROR KAREN COTTINGHAM: Can I  
6 refer back to a question while I'm in here that  
7 you asked earlier?

8 THE COURT: Certainly, uh-huh.

9 PROSPECTIVE JUROR KAREN COTTINGHAM: You  
10 asked --

11 THE COURT: Speak into the mic.

12 PROSPECTIVE JUROR KAREN COTTINGHAM: I'm  
13 sorry. You asked if we were a party to any  
14 trials or hearings coming up, if we were a  
15 witness in anything coming up. But then you --  
16 after that, you said, but take note that these  
17 will be continued, because they are in my  
18 courtroom.

19 I am a witness in a case that is coming  
20 up. But I'm sure it's going to be cancelled --  
21 I mean, continued.

22 THE COURT: Is it a case that I have?

23 PROSPECTIVE JUROR KAREN COTTINGHAM: Yes.

24 THE COURT: Okay. When is it?

25 PROSPECTIVE JUROR KAREN COTTINGHAM:

1           It's -- I don't know the exact date. It's next  
2           week or the next week, one. I don't know the  
3           exact date.

4                   THE COURT: We'll make adjustments. That  
5           wouldn't have any impact on --

6                   PROSPECTIVE JUROR KAREN COTTINGHAM: Okay.  
7           I was just letting you know. I mean, after you  
8           said that, I thought -- I didn't say anything.  
9           But this weekend, I -- because you said it would  
10          be continued. And then I just wanted to let you  
11          know that I am a witness in a case that is  
12          coming up before you, and --

13                   THE COURT: Okay. Do you know, is it a  
14          criminal case or --

15                   PROSPECTIVE JUROR KAREN COTTINGHAM: Yes.

16                   THE COURT: And you will be a witness in  
17          it?

18                   PROSPECTIVE JUROR KAREN COTTINGHAM: Yes.

19                   THE COURT: Okay. I have a docket that's  
20          supposed to start the -- I think it's the 13th,  
21          which is Monday.

22                   PROSPECTIVE JUROR KAREN COTTINGHAM: Right.

23                   THE COURT: Well, all of those cases have  
24          been passed. So that won't be coming up, if  
25          that was the docket you were on. And that is a

1 criminal docket. That has been passed because  
2 all of those cases have been resolved or have  
3 been continued to the next docket.

4 PROSPECTIVE JUROR KAREN COTTINGHAM: Okay.  
5 I just wanted to make you aware of that.

6 THE COURT: Okay. Thank you very much.  
7 So that would be nine o'clock in the  
8 morning at the Bama Theatre.

9 Ask Mr. Dowdell, and tell Mr. Wilkerson  
10 that he will be next.

11 PROSPECTIVE JUROR ANDRE DOWDELL,  
12 having been previously duly sworn,  
13 was examined and testified as follows:

14 THE COURT: How are you doing,  
15 Mr. Dowdell?

16 PROSPECTIVE JUROR ANDRE DOWDELL: Doing  
17 fine.

18 THE COURT: Okay. There were some  
19 follow-up questions that the parties wanted to  
20 ask you. And so that's really why you are here,  
21 for them to ask you those follow-up questions.

22 Any questions on behalf of plaintiffs?

23 MR. STEWART: Yes, sir, Judge.

24 VOIR DIRE EXAMINATION

25 BY MR. STEWART:

1 Q. Hey, Mr. Dowdell. I'm Donald Stewart. I just  
2 want to ask you a few questions about the people  
3 you indicated that you knew. My notes indicate  
4 that you were next-door neighbors with  
5 Mr. Sesson, Emmett Sesson; is that correct?

6 A. Yes, sir, that's correct.

7 Q. And Mr. Jesse Burton?

8 A. Yes, sir, uh-huh.

9 Q. And then Samuel Linebarger. Is that the way you  
10 pronounce his name Barger?

11 A. I think it's Linebarger, I think.

12 Q. Linebarger?

13 A. Yes, sir.

14 (Whereupon, a discussion was had off  
15 the record.)

16 Q. (BY MR. STEWART) Two of those folks live next to  
17 you; is that correct, Mr. Sesson and  
18 Mr. Linebarger?

19 A. Mr. Burton, he stays right across the street  
20 from me.

21 Q. Across the street?

22 A. Yes, sir. And Linebarger, he stays all the way  
23 on the end of my street.

24 Q. Okay.

25 A. And Mr. Sesson, he stays on the opposite end of

1 my street.

2 Q. So they are not actually next-door neighbors.  
3 They just live on the same block, and one across  
4 the street?

5 A. That's correct, yes, sir. Uh-huh.

6 Q. And you see them, I assume, in passing in the  
7 neighborhood?

8 A. Yes. I mostly see Mr. Burton because he stays  
9 right across the street from me. But the  
10 others, I might see them every once in a while,  
11 just driving. You know, might see them out in  
12 the yard or something like that.

13 Q. How often do you see Mr. Burton?

14 A. Well, I think he goes to work in the morning.  
15 So if I do see him, it will be in the  
16 afternoon. And even then, I still only see him  
17 maybe -- like I said, maybe two or three times a  
18 week. I mean, that's just driving by, you know,  
19 passing by.

20 Q. Just maybe wave at him as he goes by?

21 A. Yes, sir, uh-huh.

22 Q. Despite those folks being your neighbors and you  
23 knowing -- I think Mr. Burton, you've indicated  
24 you've known all your life, Mr. Dowdell, would  
25 you be able to listen to the evidence in this

1 case and hear the instructions that the Court  
2 gives you and make your decision in this case  
3 based solely on that, putting aside what you --  
4 the fact that you know these folks who are  
5 potential plaintiffs in this case or who are  
6 plaintiffs in this case?

7 A. Yes, sir, uh-huh.

8 Q. If it came to ruling against them, would you  
9 have the ability to do that if the evidence and  
10 the law indicated you should?

11 A. Yes, sir, uh-huh.

12 Q. Wouldn't have any problem doing that?

13 A. I mean, if it's evidence that's for or against,  
14 then I would have no other choice but to, you  
15 know, choose the right -- you know, the right  
16 thing, you know.

17 Q. And you could put aside your relationship with  
18 these folks and do it based solely on the  
19 evidence and the law?

20 A. Yes, sir, uh-huh.

21 MR. STEWART: Thanks.

22 VOIR DIRE EXAMINATION

23 BY MR. TAYLOR:

24 Q. Good afternoon, Mr. Dowdell. I'm Bernard  
25 Taylor, and I represent the Flexible Products

1 Company in this case, one of the defendants.

2 And I want to thank you for coming in and  
3 spending a little time with us.

4 A. Yes, sir.

5 Q. You indicated earlier that I understand you  
6 have, I guess, Mr. Sesson, Mr. Burton and  
7 Mr. Linebarger?

8 A. Yes, sir.

9 Q. They all live on the street with you?

10 A. Yes, sir.

11 Q. You visit in their homes?

12 A. I've only been inside Mr. Burton's house.  
13 That's the one across the street from me. But  
14 the others, I mean, I only know them because my  
15 dad -- well, my parents, they are closer with  
16 them than I am. So I just -- you know, just my  
17 neighbors.

18 Q. Do you know them to be truthful people?

19 A. Yes, sir.

20 Q. And since you believe them to be truthful  
21 people, would you be inclined, if you're trying  
22 to make a decision between something they say  
23 opposed to what someone you don't know has to  
24 say about a particular issue, who would you tend  
25 to believe?

1 A. Well, it would have to be -- I would believe  
2 them only if they are -- there is no evidence  
3 proving that what they are telling me, you know,  
4 is true.

5 Q. Okay.

6 A. You know --

7 Q. Thank you. I appreciate that.

8 A. Yes, sir.

9 Q. Your father is retired from JWR?

10 A. Yes, sir, uh-huh.

11 Q. And he was a union member; correct?

12 A. I think so, yes, sir, uh-huh.

13 Q. I think -- I was looking at your questionnaire.  
14 And I think it said he was a member of the  
15 United Mine Workers of America.

16 A. I'm not sure. I want to say yes, but I'm not  
17 sure. I never really asked him.

18 Q. All right. If it turns out that your father was  
19 a member of the United Mine Workers of  
20 America -- and you are proud of your father, I  
21 know that; right?

22 A. Uh-huh, yes, sir.

23 Q. And I'm sure you are proud of his service as a  
24 miner to our country; right?

25 A. Yes, uh-huh.

1 Q. And if it turns out that the union, the United  
2 Mine Workers of America basically takes the  
3 position that these miners are injured, they are  
4 sick as a result of being exposed to our  
5 product, how would that affect your decision on  
6 whether or not you believe that or not?

7 A. Are you saying if there's evidence against --

8 Q. I didn't say it right.

9 A. Okay.

10 Q. If the union just comes in and says, I want you  
11 to believe that these products caused these  
12 people to become sick, would you believe that  
13 just because the union said it?

14 A. No. That wouldn't be right. No. No, sir.

15 Q. Now, you indicated that -- and I appreciate that  
16 also. And you indicated that, you know,  
17 obviously, you see Mr. Burton, Mr. Linebarger  
18 and Mr. Sesson a good bit.

19 Have you noticed them having any breathing  
20 problems or shortness of breath or any problems  
21 like that?

22 A. No, sir. I never really, you know, talked to  
23 them that much to even know what they go --  
24 especially the job. I know I don't talk to them  
25 about the job, so --

1 Q. Okay. But --

2 A. -- I wouldn't know.

3 Q. I'm sorry. I cut you off.

4 A. Oh, no. I was just going to say I wouldn't  
5 know, not that I know of.

6 Q. Okay. So you -- although you see them  
7 frequently, you've never noticed any of them  
8 having any kind of breathing or shortness of  
9 breath problems; is that --

10 A. That's correct. No, sir.

11 Q. Now, and the fact that you see them a good bit,  
12 have you discussed this case at all with them?

13 A. No, sir.

14 Q. Have you discussed any problems that they've had  
15 at the mine with them?

16 A. No, sir.

17 Q. Mr. Dowdell, thank you very much, sir. I  
18 appreciate it.

19 A. You're welcome. All right.

20 THE COURT: Further questions?

21 MR. DODSON: I do have just a quick  
22 follow-up.

23 VOIR DIRE EXAMINATION

24 BY MR. DODSON:

25 Q. Mr. Dowdell, my name is John Dodson. I

1 represent one of the defendants in this case.

2 Do you live with your family?

3 A. Yes, sir.

4 Q. You live with your father?

5 A. Well, with my mom and my dad, yes, sir.

6 Q. Who was a miner at Jim Walter; is that correct?

7 A. Yes, sir.

8 Q. Have you and your father had any discussion  
9 about this case?

10 A. No. No, sir.

11 Q. Does he even know that you are on jury duty on a  
12 case involving coal miners out at JWR.

13 A. Well, I think he might know of it only because  
14 of an article that was in the newspaper. But  
15 other than that, I don't know what else he knows  
16 about it.

17 Q. So you and your father haven't discussed at all  
18 the chemicals that are at issue in this case?

19 A. No. No, sir.

20 Q. And you think if you were to get on this jury  
21 that -- and serve for possibly a couple of  
22 months, that you could avoid talking to your  
23 father about it and avoid asking him questions  
24 about his experiences at JWR?

25 A. Yes, sir. Yeah.

1 MR. DODSON: Thank you.

2 THE COURT: All right. Thank you,  
3 Mr. Dowdell. Please be at the Bama Theatre at  
4 nine o'clock in the morning.

5 PROSPECTIVE JUROR ANDRE DOWDELL: Okay.

6 THE COURT: That's the Bama Theatre.

7 PROSPECTIVE JUROR ANDRE DOWDELL: Okay.  
8 Thank you.

9 THE COURT: Thank you. Get Mr. Wilkerson,  
10 and then tell Mr. Hartley that he's next.

11 (Whereupon, a discussion was had off  
12 the record.)

13 THE COURT: Okay. Mr. Wilkerson, the  
14 parties have some follow-up questions for you.

15 PROSPECTIVE JUROR LARRY WILKERSON: Yes,  
16 sir.

17 THE COURT: So we are going to start with  
18 the plaintiff. Any questions?

19 MR. STEWART: Yes, sir, Judge,

20 PROSPECTIVE JUROR LARRY WILKERSON,  
21 having been previously duly sworn, was  
22 examined and testified as follows:

23 VOIR DIRE EXAMINATION

24 BY MR. STEWART:

25 Q. Mr. Wilkerson, I'm Donald Stewart. And Andy

1 Davenport and I represent the plaintiffs in this  
2 case. And you had indicated in some of the  
3 follow-up questions that were done by the other  
4 side -- or maybe by the Court -- that you knew  
5 about a health problem that one of these people  
6 had; is that correct?

7 A. Well, I almost didn't answer that question. But  
8 I know Frankie had a -- he drank a lot. And I  
9 speculated maybe he was an alcoholic. But I  
10 don't know if that's a health problem or not.  
11 That was it.

12 Q. All right.

13 A. You know, always beer on his breath, even when  
14 he was coaching baseball.

15 Q. All right. Thank you, Mr. Wilkerson.

16 A. All right, sure.

17 VOIR DIRE EXAMINATION

18 BY MR. BICKS:

19 Q. Hi, Mr. Wilkerson.

20 A. Yes, sir.

21 Q. My name is Peter Bicks. And I represent  
22 Flexible in the case. And thanks for coming  
23 here today.

24 A. Sure.

25 Q. Walk me through how well you know Mr. Bailey.

1 A. How well?

2 Q. Yeah.

3 A. Just mainly through baseball. And his son  
4 Conner and my son Brooks play baseball, go to  
5 school together. Well enough to know that he  
6 works for the coal mines; well enough to know  
7 they're divorced. And, you know, greet each  
8 other. I wouldn't say we were buddies.

9 Q. Uh-huh. In any of those times that you all were  
10 together, any discussions with him about things  
11 at the coal mine?

12 A. No, not really. No. I can't recall anything  
13 specific.

14 Q. Anything general? Kind of anything at all?

15 A. I can't remember. I don't even -- I'm not sure  
16 how I knew he worked for the coal mines. But I  
17 just was looking for his name on that list. So  
18 I knew he did. I don't even know how I knew  
19 that.

20 Q. And anybody other than Frankie Bailey come to  
21 mind on that whole list?

22 A. No.

23 Q. Okay. And so the real question you heard from  
24 the Judge, all we're here today is just to talk  
25 about people who have leanings one way or the

1 other for either side.

2 A. Right.

3 Q. Everything you know about because Mr. Bailey, or  
4 anything, as we are sitting here today talking,  
5 anything kind of sitting in your gut to say, I'm  
6 kind of leaning one way or the other?

7 A. Because of Mr. Bailey?

8 Q. Or anything, really. But really focusing on  
9 Mr. Bailey.

10 A. Not because of Mr. Bailey.

11 Q. Okay.

12 A. You know, I've just got a general -- I mean,  
13 my -- I share -- my interests are the same as a  
14 guy like Frankie. It's generally not the same  
15 as a big company like Dow Chemical.

16 Q. Uh-huh. And so, kind of knowing and having  
17 those kind of interests, and having those things  
18 in common with him --

19 A. Right.

20 Q. -- I mean, kind of tell me what you think about,  
21 if you were in this case, and Mr. Bailey on the  
22 one side and some other miners, and then -- you  
23 mentioned Dow Chemical. Our client is  
24 Flexible.

25 A. Right.

1 Q. There is another company, Micon.

2 A. Right.

3 Q. How do you think that would be on you, kind of  
4 given those feelings?

5 A. I'm a computer person, engineering. I'm pretty  
6 analytical. I feel like I could evaluate these  
7 things pretty fairly. But I am -- you know, I  
8 have pretty matter-of-fact views when it comes  
9 to companies about what they care about. And  
10 that doesn't mean that companies are always  
11 wrong.

12 But I just -- you know, I think I can weigh  
13 the evidence fairly. But, you know, I think  
14 companies care about their shareholders and  
15 their officers and whatever serves those  
16 interests.

17 So that's why I said, I probably -- I  
18 worked for IBM for six years, first job out of  
19 college, one of the biggest companies in the  
20 world. So developed feelings other that period  
21 of time. I work for a not-for-profit at the  
22 moment, which was, you know, kind of appealing  
23 to me.

24 Q. And in terms of kind of feelings that you talked  
25 about being at IBM and some of the other things,

1 does that kind of make you lean in favor of, for  
2 example, the plaintiffs against the companies?

3 A. All things being equal, probably. I mean, I  
4 haven't heard one shred of evidence. I mean,  
5 you tell me -- you know, evidence is evidence.  
6 And a winning argument is a winning argument;  
7 right?

8 So all things being equal, yes, I have more  
9 in common with, you know, a coal miner than I do  
10 Dow Chemical, and I would probably lean that  
11 way, all things being equal.

12 Q. Uh-huh. So, I mean, it's an interesting thing.  
13 You are talking about all things being equal.  
14 So say we just were -- where we are now,  
15 starting out in the case, and nothing has  
16 happened.

17 A. Your word against theirs or a chemical  
18 company -- the company's versus the miners?

19 Q. Yeah. I mean, let's -- you don't know a lot of  
20 nothing about the case other than we are  
21 standing here talking now.

22 And the question is, you know, we kind of  
23 start on a -- like a starting line at a race.

24 A. Are you making me decide?

25 Q. No, no, no. I'm saying, do you think kind of

1           you lean towards one side versus the other right  
2           now as we are talking?

3    A.    Probably not, probably not.

4    Q.    And just the word "probably," help me out with  
5           the "probably."

6    A.    It's closer to no, I'm not leaning one way or  
7           another.  When you say right now, all things  
8           being equal, that's kind of what I'm saying.  
9           All things being equal, I lean toward a worker  
10          or a person or someone who's like me versus, you  
11          know, a giant corporation.

12   Q.    Yeah.

13   A.    So I'm trying to answer your question without --

14   Q.    And you are doing -- I mean, I appreciate it.

15   A.    Okay.

16   Q.    In terms of the -- you mentioned IBM and your  
17          experiences there.  Is there anything there that  
18          kind of impacts the leanings that you are  
19          talking about?

20   A.    Well, probably.  Just what I -- I mean -- and  
21          this doesn't make them wrong.  It just makes  
22          them -- it is what it is.

23   Q.    Right.

24   A.    Companies exist to make money.  And, you know,  
25          like I said, shareholders, board of directors,

1 officers. Everything else is overhead.

2 Now, that doesn't make that inherently  
3 bad. But I don't believe any nature of goodness  
4 of the corporation. And so it was kind of a  
5 meat grinder. And it wasn't a great experience  
6 for me. I left on my own free will. It's not a  
7 bitter thing, I just was sick of it.

8 MR. BICKS: Okay. Thank you.

9 THE COURT: Further questions?

10 All right. Mr. Wilkerson, please be back  
11 at nine o'clock at the Bama Theatre tomorrow.

12 PROSPECTIVE JUROR LARRY WILKERSON: Gladly.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR LARRY WILKERSON: Thank  
15 you.

16 THE COURT: Get Mr. Hartley, and tell  
17 Ms. Rhinehart that she's next.

18 PROSPECTIVE JUROR CHARLES HARTLEY,  
19 having been previously duly sworn, was  
20 examined and testified as follows:

21 THE COURT: Mr. Hartley; is that correct?

22 PROSPECTIVE JUROR CHARLES HARTLEY: Yes,  
23 sir.

24 THE COURT: The parties wish to ask you  
25 some follow-up questions.



1           Yes, me and -- myself and his son played  
2 ball together in high school. He was only a  
3 year older than me. So that's the main reason I  
4 know him.

5 Q. Do you keep up with his son?

6 A. His son is also actually married to my third  
7 cousin.

8 Q. Okay.

9 A. But I don't -- we don't really communicate a  
10 whole lot.

11 Q. Okay. And if you don't keep up with Mr. Payne's  
12 son, do you keep up with Mr. Payne?

13 A. My dad actually works on the farm. And they --  
14 I think Mr. Payne does chicken houses or  
15 something now. So they kind of communicate  
16 together as far as farm stuff. But as far as  
17 myself, no.

18 Q. All right. Do you know anything about  
19 Mr. Payne's health condition?

20 A. No, I don't.

21 Q. Does the fact that you were friends with  
22 Mr. Payne's son and knew Mr. Payne as you grew  
23 up, do you think that will impact the way you  
24 view this case in any way?

25 A. I wouldn't think so. I mean, I strictly go on



1 that she is next.

2 (Whereupon, a discussion was had off  
3 the record.)

4 THE COURT: Ms. Rhinehart, how are you  
5 doing?

6 PROSPECTIVE JUROR CAROLYN RHINEHART: I'm  
7 okay. How are you?

8 THE COURT: I'm okay. I know you've  
9 already answered a lot of questions today. But  
10 there were a few more that the parties wanted to  
11 ask you, sort of like follow-up. So that's why  
12 you are here, for them to ask you a few  
13 follow-up questions.

14 Questions on behalf of plaintiff?

15 PROSPECTIVE JUROR CAROLYN RHINEHART,  
16 having been previously duly sworn, was  
17 examined and testified as follows:

18 MR. STEWART: Judge, we have none. I  
19 believe this is one of the other follow-ups, if  
20 I'm not mistaken.

21 THE COURT: All right.

22 VOIR DIRE EXAMINATION

23 BY MR. WELLS:

24 Q. Thank you, Ms. Rhinehart. I'm Tommy Wells. I'm  
25 one of the lawyers that are representing Dow

1 Chemical in this case.

2 Now, I believe, Ms. Rhinehart, you  
3 indicated you worked with David Grammer's wife.

4 A. Yes, sir.

5 Q. For 25 years or so?

6 A. Probably. Let's see. I worked directly with  
7 her every day probably for ten or 12 years. I  
8 still see her at work probably off and on, you  
9 know, every couple of weeks, you know, depending  
10 on -- if another case manager is out, I might  
11 see her every day for a while.

12 Q. Would the fact that you know Ms. Grammer that  
13 well, would that make it uncomfortable for you  
14 to sit on a jury to have to decide whether or  
15 not Mr. Grammer's case was valid or not?

16 A. No.

17 Q. You think you could still put that aside? You  
18 wouldn't have any trouble going back to work and  
19 telling Ms. Grammer you sat on the jury and you  
20 found against her husband?

21 A. Well, my problem would be, I will still have to  
22 go to work while all of this is going on on the  
23 weekends and stuff. I'll probably still see her  
24 and may be taking care of some of the other  
25 plaintiffs while I'm at work.

1 Q. Okay. Now, you had a former neighbor that was  
2 injured in the mines; is that right?

3 A. Yes.

4 Q. Tell me about that, if you would.

5 A. His name was Dave Stanley.

6 Q. Uh-huh.

7 A. I think he now lives in West Virginia, I think.

8 Q. And --

9 A. And he was run over by something in the mines  
10 that crushed his pelvis and injured and disabled  
11 him.

12 Q. Okay. So, obviously, this didn't have anything  
13 to do with any chemicals being used in the mines  
14 to hold up the roof --

15 A. No.

16 Q. -- or help with ventilation?

17 A. (Shakes head.) No.

18 Q. Now, ms. Rhinehart, do you suffer from asthma?

19 A. Yes.

20 Q. And you have asthma in your family, I take it  
21 too?

22 A. Yes.

23 Q. Now, Ms. Rhinehart, if the plaintiffs in this  
24 case are all claiming they have come down with  
25 asthma as a result of an exposure to a chemical,

1 would the fact that you've got asthma and you've  
2 got asthma in your family make you more likely  
3 to lean their way to think that they ought to  
4 prevail in the case because they've got the same  
5 condition you've got?

6 A. I don't think so.

7 Q. You think could you put that aside?

8 A. Yes.

9 Q. The asthma in your family is -- do you know what  
10 the cause of it is? Do you know what caused  
11 your asthma, for example?

12 A. More than likely, I have a whole bunch of  
13 allergies.

14 Q. A whole bunch of allergies?

15 A. Yeah, a whole bunch of them.

16 Q. You are a registered nurse; right?

17 A. Yes, sir.

18 Q. There's a word for that, isn't there? Isn't it  
19 atopic, if you have a lot of allergies?

20 A. Oh, I have no idea. I'm not sure.

21 Q. Okay.

22 A. I was thinking atopic had to do with people who  
23 couldn't react to some things. I may be  
24 thinking of something else.

25 Q. You probably know it better than I do, I

1           guarantee you, Ms. Rhinehart.

2                    What about your family members that have  
3           asthma? Tell me about that.

4    A.    Both of my children, my mother, and my father  
5           had it. I think my sister has it.

6    Q.    So both your mother and your father, and your  
7           sister, and yourself and your children --

8    A.    Uh-huh.

9    Q.    -- all have asthma? Are all of you on asthma  
10           medication?

11   A.    Not that I know of.

12   Q.    Okay. It's just something --

13   A.    I've got something that I can use as needed, but  
14           I'm not on regular medication.

15   Q.    Okay. It's just some things that you are  
16           allergic to would trigger an allergic  
17           reaction --

18   A.    Yes, sir.

19   Q.    -- right? Is that the same for the rest of your  
20           family?

21   A.    I think so.

22   Q.    Okay. Given the fact that so many of your  
23           family have asthma, do you think you probably  
24           know more about asthma -- and the fact you are a  
25           registered nurse, you probably know more about

1           asthma than the average person on the street, I  
2           would think, don't you?

3    A.   Probably.

4    Q.   Okay.  In working as a registered nurse, do you  
5           treat people that come in with asthmatic  
6           symptoms?

7    A.   Yes.

8    Q.   Is that something on a regular basis?

9    A.   Yes.

10   Q.   Do you know if you treated any of the plaintiffs  
11           in this case?

12   A.   I have absolutely no idea.

13   Q.   Okay.  None of them -- you didn't recognize them  
14           when you saw their pictures or heard their names  
15           anyway?

16   A.   (Witness shakes head.)  No.

17   Q.   Okay.  Are either your mother, your father, your  
18           children or your sister taking any asthma  
19           medication now?

20   A.   Well, my mother is deceased.  My sister lives in  
21           Huntsville.  And I don't see her a whole lot.  
22           But I don't think she's on anything.  My  
23           children are not taking anything.

24   Q.   Okay.  Does your asthma interfere with your  
25           ability to work other than trying to avoid

1 things that you are allergic to, obviously?

2 A. It's really hard to avoid things that I'm  
3 allergic to.

4 Q. I would think in a hospital it probably would  
5 be, wouldn't it?

6 A. Well, you would think you wouldn't get exposed  
7 to perfumes a whole lot in a hospital, but you  
8 do.

9 Q. I bet. That's one of the things that trigger  
10 you?

11 A. Uh-huh, yes, sir.

12 MR. WELLS: Okay. I think that's all.  
13 Thank you, Ms. Rhinehart.

14 VOIR DIRE EXAMINATION

15 BY MR. STEWART:

16 Q. Ms. Rhinehart, where do you work?

17 A. DCH Regional Medical Center.

18 Q. And how long have you worked there?

19 A. January will be 30 years.

20 Q. Okay. And what part of the hospital do you work  
21 in?

22 A. I work in nursing service on Five North, Five  
23 Center and the Acute Stroke Unit.

24 Q. What kind of patients are seen on that floor?

25 A. All kinds.

1 Q. All kinds. Just general population is housed  
2 there?

3 A. We are supposed to be primarily stroke  
4 patients. But we get a lot of medical patients  
5 and surgical patients.

6 Q. When you say throat patients --

7 A. Stroke.

8 Q. Stroke. Oh, I'm sorry. I misunderstood you.

9 All right. Thank you very much,  
10 Ms. Rhinehart.

11 THE COURT: Okay. Please be back at nine  
12 o'clock in the morning at the Bama Theatre.

13 PROSPECTIVE JUROR CAROLYN RHINEHART: Okay.

14 THE COURT: Thank you very much.

15 PROSPECTIVE JUROR CAROLYN RHINEHART: Thank  
16 you.

17 THE COURT: Ask Ms. Stewart to come in.  
18 And then tell Mr. Parker that he will be next.

19 PROSPECTIVE JUROR MERITHA STEWART,  
20 having been previously duly sworn, was  
21 examined and testified as follows:

22 THE COURT: You are Ms. Stewart; right?

23 PROSPECTIVE JUROR MERITHA STEWART: Yes,  
24 sir.

25 THE COURT: If you will, speak into the

1 mic.

2 Some of the parties wish to ask you some  
3 follow-up questions, and that's why we asked you  
4 to remain. Okay?

5 PROSPECTIVE JUROR MERITHA STEWART: Okay.

6 THE COURT: All right. Questions for  
7 Ms. Stewart?

8 VOIR DIRE EXAMINATION

9 BY MR. TAYLOR:

10 Q. Good afternoon, Ms. Stewart. I'm Bernard  
11 Taylor. And I represent the Flexible Products  
12 Company. And I know we are here in Roll Tide  
13 country, but I want to thank you for wearing  
14 your Chipper Jones' jersey from Atlanta.

15 A. Larry Wayne, Junior.

16 Q. And I appreciate that.

17 A. Okay.

18 Q. I only have a few questions for you. It looks  
19 like you've -- you know Mr. Filbrick Williams.  
20 Is that -- are my notes right on that?

21 A. I know Filbrick Williams, my neighbor.

22 Q. And George Jones?

23 A. Joey Jones (Nods head.)

24 Q. And I think, based upon the notes I have, you  
25 were raised with Mr. Michael Atmore?

1 A. Yes, sir.

2 Q. Okay. Do you still know Mr. Atmore?

3 A. I know him, yes, sir.

4 Q. Can you tell me -- do you still see these --  
5 Mr. Williams and Mr. Jones and Mr. Atmore? Do  
6 you see them frequently?

7 A. I haven't seen Joey Jones in years. We used to  
8 drill together. We were in the reserves  
9 together. So I haven't seen him in 25 years  
10 maybe.

11 Q. All right.

12 A. Michael Atmore, I might see him at a restaurant  
13 or something. Probably seen him about three  
14 years ago, three or four years ago.

15 Q. Now, Mr. Williams and Jones and Atmore, during  
16 the time that you interacted with them and spent  
17 time with them, did you notice if they had any  
18 health problems?

19 A. No, sir.

20 Q. Okay. Didn't notice if they had any respiratory  
21 problems or anything like that?

22 A. No, sir.

23 Q. Okay. Did you discuss at all, while you were --  
24 spent time with them, any issues or problems  
25 that were going on in the -- with their job in

1 the coal mine?

2 A. No, sir.

3 Q. Now, you indicated that your husband knows  
4 something about polyurethanes; is that correct?

5 A. Yes, sir. He worked at JVC for about 15 years.  
6 And he works at Goodrich now.

7 I asked him because it was on the  
8 questionnaire that was sent to me at home. So  
9 he just said, yes, he did. And I wrote, yes, he  
10 does.

11 Q. He didn't tell you what -- how -- whether or not  
12 he did anything with the chemical or --

13 A. He didn't go into specifics, no, sir.

14 Q. Okay. Do you know if your husband is suffering  
15 any health problems at all as a result of --

16 A. No, sir.

17 Q. -- working around polyurethanes?

18 A. No, sir.

19 Q. Okay. Ms. Stewart, thank you very much. I  
20 appreciate it.

21 A. Okay.

22 THE COURT: Let's see if there are any  
23 other follow-up questions --

24 MR. STEWART: (Counsel shakes head.)

25 THE COURT: -- from any other party?

1                   Okay. That's it, so -- for today. So  
2 please be back at nine o'clock tomorrow at the  
3 Bama Theatre.

4                   PROSPECTIVE JUROR MERITHA STEWART: Yes,  
5 sir.

6                   THE COURT: Okay. And I look forward to  
7 seeing you tomorrow at nine o'clock.

8                   PROSPECTIVE JUROR MERITHA STEWART: Yes,  
9 sir.

10                  THE COURT: Thank you.

11                  PROSPECTIVE JUROR JUSTIN PARKER,  
12 having been previously duly sworn, was  
13 examined and testified as follows:

14                  THE COURT: You're Mr. Justin Parker;  
15 right?

16                  PROSPECTIVE JUROR JUSTIN PARKER: Yes, sir.

17                  THE COURT: How are you doing?

18                  PROSPECTIVE JUROR JUSTIN PARKER: I'm  
19 good. How are y'all?

20                  THE COURT: Okay. Some of the parties  
21 wanted to ask you some follow-up questions. I  
22 know you've already been asked a lot of  
23 questions, but we have a few more.

24                  PROSPECTIVE JUROR JUSTIN PARKER: Okay.

25                  THE COURT: Okay. We will start with the

1 plaintiff. Questions for Mr. Parker?

2 VOIR DIRE EXAMINATION

3 BY MR. STEWART:

4 Q. Mr. Parker, you've been previously asked a  
5 number of questions about -- I'm Donald Stewart,  
6 by the way, and I represent the plaintiffs. But  
7 you've been asked about the people that you know  
8 who are plaintiffs in this case. And I won't go  
9 through the details of that.

10 But I just want to ask you if you can --  
11 and you were asked about this earlier, but I  
12 just want to make sure about it. Because I want  
13 to make sure I have your answer correct for me  
14 and for the other side. We want to try to find  
15 as fair a jury as we possibly can and jurors to  
16 hear the case.

17 You indicated that you felt like you could  
18 put aside your feelings about Mr. Christian,  
19 Mr. Bailey and Mr. Daniel and make your decision  
20 about this case based on the evidence that comes  
21 from the witness stand and the law as the Judge  
22 gives you.

23 A. Yes, sir.

24 Q. Okay. And you wouldn't have any difficulty if  
25 that meant you found for the defendants in the

1 case as opposed to the plaintiffs, of which  
2 these folks are members of that plaintiffs'  
3 group, you wouldn't have any difficulty doing  
4 that?

5 A. No, sir.

6 MR. STEWART: All right. That's all I've  
7 got.

8 VOIR DIRE EXAMINATION

9 BY MR. BICKS:

10 Q. Hi, Mr. Parker. My name is Peter Bicks, and I  
11 represent Flexible Products.

12 A. Yes, sir.

13 Q. I have a couple of questions for you.

14 A. All right.

15 Q. The Judge said when we started out, that this is  
16 kind of about finding out about leanings one way  
17 or the other. We all want to be fair,  
18 obviously. And that's what both sides want.

19 And what we are really talking about is  
20 because people who know folks and have known  
21 them for a long time, whether it be hunting, you  
22 know, or in some other way, how is that going to  
23 influence them in a case like this? And that's  
24 really kind of where I'm coming from.

25 How -- let me ask you this: How would you

1           feel just being on a jury where there were folks  
2           involved that you know real well, kind of along  
3           the lines that you've told us?

4    A.    I mean, as long as I'm -- I have an  
5           understanding of what's going on and I know  
6           that, you know, they are getting done right or,  
7           you know, by -- and it's proven with evidence or  
8           that it's a legit reason, either way, I mean,  
9           I'm fine with that. I mean, I'm going to have  
10          to do what I have to do, I guess.

11                 In other words, I'm not going to go against  
12           them just because I know them. But, you know,  
13           if something that is against them, and there is  
14           evidence showing that's what it is, then I don't  
15           have a problem with it.

16   Q.    And in terms -- because at least one of the  
17           folks you know from hunting and things like  
18           that. Do you think it may make it hard for you  
19           if you go back to an activity like going out  
20           hunting with somebody, if you've been on a case  
21           and deciding whether or not they are entitled to  
22           get any money, how do you think that might make  
23           you feel if you went hunting with them and, say,  
24           maybe you were inclined to rule against them?

25   A.    I mean, I imagine there'd probably be some --

1           there could be some hard feelings there. You  
2           know, I mean, that's just -- there is nothing  
3           you can do about it. The truth is the truth or  
4           what it is, is what it is. But, I mean, there  
5           would probably be some aggravation there, I  
6           would imagine.

7                     I think it would be something to be worked  
8           by, you know. I would have to do what I would  
9           have to do for myself, I guess, in other words.

10    Q.    I'm sorry. When you say "aggravation," tell me  
11           what you mean.

12    A.    I mean, if that's what they are fighting for,  
13           and you know this is their side of it, and then  
14           it's ruled against that, and I'm on the jury,  
15           well, you know, I mean, they was going for what  
16           they stood for and what they thought was right  
17           and what they deserved. I imagine there would  
18           probably be a little bit of frustration or, you  
19           know, aggravation, hardship, hard feelings  
20           toward it, I guess, maybe. But then, again,  
21           they would have to see it that I had to do what  
22           I had to do to what evidence I had and what I  
23           had to go on. So we'd just have to either get  
24           over it or move on.

25    Q.    Yeah. Got it. And so, as we are sitting here

1           today, starting out, the plaintiffs on the one  
2           side, and the folks that you know, and then on  
3           the other side here, you heard Dow Chemical, and  
4           our clients Flexible, and Micon, and we are up  
5           to the starting line, does anybody start out  
6           ahead, behind or kind of all starting out the  
7           same?

8    A.    As far as -- for what I know, I don't know  
9           enough about it to say either way if there's a  
10          head start or not. I just -- I don't know  
11          anything about it to say either way. I mean,  
12          right now. I don't have an opinion on that  
13          because I don't know anything about the  
14          situation.

15                   MR. BICKS: Okay. Thank you.

16                   VOIR DIRE EXAMINATION

17   BY MR. DODSON:

18   Q.    Mr. Parker, my name is John Dodson. I represent  
19          one of the defendants in the case.

20                  Now, I understand you and Mr. Daniel are in  
21          the same hunting club.

22   A.    Yes, sir, previously.

23   Q.    And how long have y'all been hunting together?

24   A.    Actually, it's been -- since I swapped jobs, I  
25          haven't seen Mr. Daniel in a while, probably

1 several months. But we probably hunted together  
2 two years, two and a half years, something like  
3 that.

4 Q. So with hunting season starting up -- or dove  
5 season started up last weekend --

6 A. We mainly coon-hunted. We done that year-round  
7 when we were hunting together, working with coon  
8 dogs and stuff.

9 Q. So you expect you will be seeing Mr. Daniel?

10 A. Anytime I can -- yes, sir, probably. I don't  
11 know. I mean, when I get up there -- I actually  
12 hunted with him and some of my other friends.  
13 So just kind of -- when we line a hunt up, we  
14 go.

15 Q. So you think sometime this fall, you will  
16 probably run into Mr. Daniel again?

17 A. Yes.

18 Q. Do you think you would be able to interact with  
19 Mr. Daniel and not talk to him about this case?

20 A. I don't see a problem about it. I mean, I  
21 don't -- I mean, if I'm told not to, no.

22 I mean, you know, we don't talk about work  
23 that much when I'm not at work anyways.

24 Q. And so you haven't spoken with Mr. Daniel much  
25 in the past in your hunting dealings with him

1 about his work?

2 A. Not really. Not -- huh-uh. I mean, I knew  
3 where he worked or where he -- I think he's  
4 retired now. But we never talked about work.

5 Q. When y'all go coon hunting, do y'all go out in  
6 the swamp walking or do y'all ride ATVs?

7 A. Both.

8 Q. Has he ever shown any health problems when you  
9 were hunting with him?

10 A. Uh-huh.

11 Q. Have any respiratory problems, get short of  
12 breath when y'all were walking out in the swamp?

13 A. If he did, it was -- he said it's because of  
14 age. And I've never heard nothing about nothing  
15 like that.

16 Q. So he hasn't complained to you?

17 A. Uh-huh.

18 Q. Now, in the questionnaire I think you indicated  
19 that your father had some breathing problems?

20 A. Yes, sir.

21 Q. Tell me about that.

22 A. He smoked for 20-something years. And he's --  
23 ends up now, he's got chronic bronchitis and  
24 emphysema. And then plus he drove a truck and a  
25 bunch of chemicals and stuff, and asphalt and

1 smoke and all of that. And I think it's a  
2 little bit of everything. And then some asthma.

3 Q. Is he doing okay now?

4 A. Fairly.

5 Q. He has emphysema?

6 A. Yes, sir.

7 Q. You said he had been smoking most of his life?

8 A. He smoked for 20-something years, I think.

9 Q. That's all I've got. Thank you.

10 A. Yes, sir.

11 THE COURT: Further questions?

12 MR. STEWART: No.

13 THE COURT: So what do y'all -- you go coon  
14 hunting?

15 PROSPECTIVE JUROR JUSTIN PARKER: Yes,  
16 sir.

17 THE COURT: What do you y'all do with the  
18 coons once you catch them?

19 PROSPECTIVE JUROR JUSTIN PARKER: We've got  
20 some people that like to eat them.

21 THE COURT: Really? Okay. See you at nine  
22 o'clock tomorrow, the Bama Theatre.

23 PROSPECTIVE JUROR JUSTIN PARKER: All  
24 right.

25 THE COURT: Mr. Bicks, do y'all eat coons

1 in New York?

2 MR. BICKS: You know, I was really going to  
3 ask him -- not only do we not eat coons, I was  
4 just trying to figure out what would you do with  
5 a coon once you hunt it. But I felt if I asked  
6 him that, he would be, like, you don't know  
7 that?

8 THE COURT: Okay. Thank you.

9 Mr. Broughton, that's all we are doing.  
10 We're just talking about coons and stuff like  
11 that in here.

12 Ms. Bobo, the circuit clerk, told me that  
13 you looked and saw that you may know some  
14 witnesses or something like that.

15 PROSPECTIVE JUROR KENDRELL BROUGHTON: I  
16 overlooked the witnesses when I filled the  
17 paperwork out. It was dark in there. And I  
18 just -- I folded my paperwork back. And when I  
19 got to the place to sign, I thought I was  
20 through. And I did not see the list of  
21 witnesses.

22 THE COURT: Okay. Have you seen them now?

23 PROSPECTIVE JUROR KENDRELL BROUGHTON: No.

24 THE COURT: Okay. So you need to look at  
25 those?

1 PROSPECTIVE JUROR KENDRELL BROUGHTON:

2 Right.

3 THE COURT: Okay. Can we get him a list,  
4 and then you can let us know tomorrow?

5 Okay. We are going to get you a list now.

6 Have you ever gone coon hunting?

7 PROSPECTIVE JUROR KENDRELL BROUGHTON: One  
8 time.

9 THE COURT: One time. Okay. Did y'all  
10 catch any?

11 PROSPECTIVE JUROR KENDRELL BROUGHTON: No.

12 THE COURT: You were glad too, weren't you?

13 Okay. So we will see you tomorrow, nine  
14 o'clock.

15 PROSPECTIVE JUROR KENDRELL BROUGHTON: Just  
16 take this with me?

17 THE COURT: Yes, you can take it with you.

18 Mr. Davenport, you know I'm going to ask  
19 you this question. Have you ever been coon  
20 hunting?

21 MR. DAVENPORT: I have not, Your Honor. Do  
22 I look like a coon hunter?

23 THE COURT: I don't know. I figured if you  
24 were with Mr. Stewart -- because I know he has.

25 MR. STEWART: No, sir, Judge, I never

1 have.

2 THE COURT: Oh, didn't you do that in D.C.?  
3 Didn't y'all do a lot of that in D.C.?

4 MR. STEWART: We did a lot of things in  
5 D.C., but I don't remember that as being one of  
6 them.

7 THE COURT: I see.

8 (A discussion was held off the record,  
9 after which the following occurred.)

10 THE COURT: Now, we've now questioned 13  
11 jurors, so is there -- you know, my intent is to  
12 take up any for-cause based on where we are now  
13 with respect to those jurors. That would be  
14 Ms. Brown, Mr. Carter, Mr. White, Mr. Wallace  
15 Williams, Ms. Anderson, Ms. O'Rourke,  
16 Ms. Cottingham, Mr. Dowdell, Mr. Wilkerson,  
17 Mr. Hartley, Ms. Rhinehart, Ms. Stewart and  
18 Mr. Parker.

19 On behalf of the plaintiffs?

20 MR. STEWART: We don't have any, Judge.

21 THE COURT: On behalf of the defendants?

22 MR. WELLS: I'll try to kick it off on  
23 behalf of the defendants, Your Honor.

24 THE COURT: All right.

25 MR. WELLS: Tommy Wells on behalf of Dow.

1 THE COURT: All right.

2 MR. WELLS: Judge, we would move to excuse  
3 Julian Carter for cause. Quite frankly, it  
4 didn't dawn on me until after we had started  
5 questioning him. Jim Walter Resources, his  
6 employer, was an originally named defendant in  
7 this case in addition to what he told us from  
8 the stand. And I think the fact that he's  
9 currently working at Jim Walter Number Four  
10 gives him certainly, I think, if not an  
11 absolute, then a distinct possibility that he  
12 knows facts about coal mining or about things  
13 that would become important in the case that  
14 he's never going to hear from the witness  
15 stand. And so we would move to excuse Julian  
16 Carter.

17 THE COURT: Well, certainly, if he was the  
18 employee of a party, that information would  
19 constitute a basis for disqualification, but to  
20 say that he was an employee of Jim Walter, who  
21 was an original defendant in this case, or who  
22 is not a defendant in this case, and there has  
23 never -- I don't think there has been any  
24 indication given to him, and certainly not to  
25 me, that Jim Walter was a party in the case. It

1 would be difficult for the Court to disqualify  
2 him on that basis.

3 I'm not aware of any provision that would  
4 cause the Court to disqualify him, though I  
5 would certainly think that the fact that he  
6 works -- that a supervisor -- that his  
7 supervisor, though he doesn't have much direct  
8 contact with his supervisor, but still his  
9 supervisor, nonetheless, would at least  
10 establish, you know, probability that he was --  
11 that he might be prejudice.

12 But it would appear that he was really  
13 consistent and adamant that he would -- that  
14 that would not affect him. It would probably  
15 affect me, you know, but he says it wouldn't.

16 So under those circumstances, what do I do  
17 with that, Mr. Wells?

18 MR. WELLS: Well, Judge, first, I think on  
19 the questionnaire, when we listed the parties,  
20 we listed everybody that was listed on Alacourt  
21 as a party, and Jim Walter was on that list.  
22 Jim Walter Resources was on the list that all of  
23 the jurors filled out. There were about 15  
24 parties.

25 THE COURT: Okay.

1           MR. WELLS: So he would have known from  
2 looking at that, that his employer was a party  
3 and --

4           THE COURT: I didn't look at it. I didn't  
5 look at that. So I guess what I'm saying  
6 essentially is that there was no identification,  
7 Jim Walter as a party in this case, that  
8 occurred during the course of our exchanges  
9 here.

10           Go ahead.

11           MR. WELLS: Well, Your Honor, those are  
12 basically the grounds. He said he was worried  
13 about his job. He's a member of the mine  
14 workers' union, which the vast majority of the  
15 plaintiffs are also members of. As you said,  
16 his supervisor is a plaintiff.

17           Like you said, I think it would affect me.  
18 I know he said it wouldn't affect him, but those  
19 are the grounds that we would state to excuse  
20 Mr. Carter.

21           THE COURT: All right. Mr. Dodson, you've  
22 got something in addition?

23           MR. DODSON: Yes, Your Honor. My concern  
24 with Mr. Carter was his statement that he was  
25 worried about the impact of being a member of

1 the UMWA might have on his keeping his job if he  
2 were to side against the UMWA. And while he was  
3 a little bit equivocal about the ultimate impact  
4 of that, he was very clear that he was very  
5 concerned about that, and that that -- the  
6 potential for him to remain concerned about that  
7 exists if he were to become a member of the  
8 jury. I think that concern, he expressed it,  
9 was sufficient to show bias.

10 THE COURT: What says the plaintiff --  
11 anything else from any other defendant?

12 MR. BICKS: Judge, I just observed the  
13 other thing, is that he knows a lot about what's  
14 going to be at issue in this case because he's  
15 at JWR. The safety practices, the training and  
16 the use of these products is going to be a  
17 critical issue. And he has familiarity with  
18 that, outside of the courtroom, that he talked  
19 about.

20 And the other thing is on the union  
21 point -- and I know, kind of, the questioning  
22 went back and forth from the Court. But there  
23 are going to be a lot of union witnesses,  
24 including senior people from the union, who are  
25 going to be witnesses in this case. And to have

1           somebody in that kind of a position, given what  
2           he said about the concerns of reprisal -- and I  
3           know he went kind of back and forth on that, but  
4           I think, you know, that's additional reasons for  
5           a cause challenge here.

6                     THE COURT:   Hear from the plaintiffs.

7                     MR. STEWART:   Judge, I think what the Court  
8           has said is that he was pretty consistent in his  
9           responses to the -- not only our questions but  
10          to the Court's questions about the fact that he  
11          could render a decision in the case based on  
12          what he heard from the witness stand and the  
13          law, even though he was asked.

14                    And I think the Court went through a series  
15          of questions with him about his concerns about  
16          the union, and that, as I remember it, was  
17          related to job protection.   But then when he was  
18          asked specifically if that would prevent him  
19          from rendering a decision when the union took  
20          the other side, it's my recollection -- and I  
21          don't claim to remember it exactly, but just  
22          paraphrasing -- that he indicated that he could  
23          still render a verdict even if it went against  
24          what the union had asked about.

25                    That was my recollection of it.

1 THE COURT: Well, anything else from the  
2 defendants?

3 MR. STEWART: That was when he found out  
4 according to Mr. -- I'm sorry, Judge.

5 THE COURT: No, go ahead.

6 MR. STEWART: When he found out that the  
7 union was not a party, and they're not. We  
8 asked him about the individuals, the plaintiffs,  
9 and he indicated, as a result of that, that it  
10 wouldn't bother him.

11 THE COURT: All right. Anything on that  
12 from the defendants?

13 MR. WELLS: Nothing further, Your Honor.

14 THE COURT: All right. This is close.  
15 This is close. I find it difficult -- if a  
16 party were to rule against a supervisor, the  
17 supervisor might assign him somewhere he  
18 wouldn't want to go to, though he said he didn't  
19 have a problem with it. Obviously, I've got  
20 questions about that.

21 And I have questions about the -- I think  
22 that's a valid point, that there would be a  
23 number of union persons testifying as a part of  
24 the -- not only the conspiracy. But I see it,  
25 so I'm going to grant it as to Mr. Carter.

1 Any others?

2 MR. WELLS: Yes, sir. Your Honor, the next  
3 one on my list is Kathryn Anderson.

4 THE COURT: Okay.

5 MR. WELLS: My notes indicate she -- today  
6 when she was testifying, said she was not sure  
7 she could be fair. She worries about ruling  
8 against the plaintiffs. She knows, at least, by  
9 my count, nine.

10 I think she said, without another reason,  
11 she would believe the plaintiffs over the  
12 defendants because she knows them, so I believe  
13 that's sufficient to show cause why Ms. Anderson  
14 should be excused.

15 THE COURT: Hear from the plaintiffs.

16 MR. STEWART: I don't oppose that.

17 THE COURT: Well, she certainly does want  
18 to serve, but it's clear that she was trying to  
19 be honest, and I admire that. She was trying to  
20 be honest in her service.

21 It will be granted as to Ms. Anderson.

22 What's your next one?

23 MR. WELLS: Mr. White, Your Honor. He is  
24 friends with Plaintiff Charlie Blount, who he  
25 indicated had chemical burns and a nervous

1 disorder from what Mr. Blount told him were  
2 chemicals that got on him at work.

3 He was, I think, not extraordinarily  
4 consistent in his responses to either of the  
5 questions asked by counsel or by the Court. We  
6 believe, based on that, Mr. White should be  
7 excused.

8 THE COURT: What says the plaintiff?

9 MR. STEWART: Judge, I found Mr. White to  
10 be fairly consistent. I listened to him fairly  
11 carefully. He may have had difficulty  
12 understanding some things a couple of times, but  
13 when he did understand it, he indicated that he  
14 could be fair to both sides in the case. That's  
15 what I heard him say.

16 I just didn't hear what the other side  
17 said.

18 THE COURT: All right. Further statements  
19 from the defendants?

20 MR. BICKS: On Mr. White, the Court should  
21 know, we have his questionnaire. I asked him  
22 one question on the questionnaire where he said  
23 that he would probably favor the miner. I asked  
24 him about that. He said that was the case, and  
25 then there was kind of back and forth that the

1 Court had with him.

2 He also said on his questionnaire that --  
3 Question 46 says: Do you believe corporations  
4 and government conspire to hide important health  
5 and safety information from the public?

6 He says that he was positive that they  
7 conspire. I bring that to the attention of the  
8 Court, because if we do bring him back -- and I  
9 think we'll go through this with him.

10 THE COURT: Yeah, I think you'll need to do  
11 that. I believe Mr. Stewart is probably  
12 accurate, that Mr. White may have gotten  
13 confused about the last question, which really  
14 was the question -- Mr. White seemed to be  
15 consistent, and I believe he stated that it had  
16 been a year since he had last seen the  
17 individual.

18 MR. STEWART: He did.

19 THE COURT: And so I think -- I think  
20 that's a valid concern you just raised, and it  
21 may require you to go further.

22 But based on what has been said, at this  
23 point in my impression, that my question,  
24 inartfully asked, confused him, though I tried  
25 to straighten it out. So I'm not going to grant

1 a challenge now. I don't think there's enough  
2 at this point.

3 Okay. Next one.

4 MR. WELLS: Your Honor, next, defendants  
5 would challenge for cause Linda O'Rourke. The  
6 basis for this is her close relationship with  
7 the next-door neighbor, Willie Mae Ryan, who is  
8 a plaintiff in this case.

9 And it's clear -- and Ms. O'Rourke knows at  
10 least four other plaintiffs. The difference is  
11 she deals with Ms. Ryan, as she says, talking to  
12 her two to three hours at a time in their front  
13 yard. So she is aware of her physical  
14 condition. She, therefore, has facts, again,  
15 that will, I believe, influence her decision  
16 from things that will occur outside the witness  
17 stand.

18 She testified she didn't think -- while  
19 Ms. Ryan is apparently disabled because of her  
20 knees, she said that she thought if she had a  
21 serious breathing problem, she would notice it.  
22 She didn't notice any serious breathing  
23 problem. And that's clearly facts that are  
24 going to be at issue in this case, are going to  
25 be the health status of the individual

1 plaintiffs. And because she knows about her  
2 physical condition from outside the court, we  
3 would challenge Ms. O'Rourke.

4 THE COURT: Any other comments from  
5 defendants regarding Ms. O'Rourke?

6 I only recall one comment that was  
7 concerning to the Court. Ms. O'Rourke appeared  
8 to have -- to be clear about where she was, but  
9 she said that she would be very uncomfortable  
10 telling her neighbor that she ruled against  
11 them. She did point that out. She indicated  
12 she would be -- wouldn't have any problems with  
13 anyone else, and she said it in a manner that  
14 was very convincing to the Court.

15 So let me hear from the plaintiffs  
16 regarding Ms. O'Rourke.

17 MR. STEWART: That was the only comment,  
18 Judge, that I heard Ms. O'Rourke make. And she  
19 did not indicate in connection with that comment  
20 that she couldn't render a fair verdict. She  
21 just said she would feel uncomfortable going  
22 back and telling her if she did.

23 That was my understanding of it and --  
24 but -- you know, that's our only position with  
25 regard to Ms. O'Rourke.

1 THE COURT: All right. Anything from the  
2 defendants on Ms. O'Rourke? Any further  
3 information --

4 MR. WELLS: No

5 THE COURT: -- in light of counsel's --

6 MR. WELLS: No.

7 THE COURT: All right. Denied.

8 Next one.

9 MR. WELLS: That's all we had, Your Honor.

10 THE COURT: All right. In the morning I'm  
11 going to excuse Mr. Carter, I'm going to excuse  
12 Ms. Anderson, and I'm going to -- and also,  
13 there's one other one? Who was that? Was it  
14 just those two?

15 MR. WILSON: Yeah, just those two.

16 THE COURT: Anderson, Carter and --

17 MR. STEWART: That's it, I think, Judge.

18 THE COURT: All right. Okay.

19 Okay. This question is directed to the  
20 clerk: Ms. Bobo, do you think you could take  
21 what we've got now and do another chart that  
22 would utilize the - all across the rows as  
23 opposed to going far back?

24 CLERK OF COURT: You mean down there?

25 THE COURT: Yes.

1 CLERK OF COURT: Across all three?

2 THE COURT: Yes, across all three.

3 CLERK OF COURT: I can try. I can try.

4 THE COURT: Okay. That's all we would  
5 ask. So we're going to try to do that. That  
6 will get everybody closer to the front in the  
7 light.

8 CLERK OF COURT: Do you want me to use the  
9 front row instead of sitting kind of back? It's  
10 hard for them to see that very front row.

11 THE COURT: You mean the front row of the  
12 theatre?

13 CLERK OF COURT: Uh-huh.

14 THE COURT: Okay. You can be the judge on  
15 that.

16 MR. STEWART: Front row will work.

17 CLERK OF COURT: Front row will work.  
18 Okay.

19 THE COURT: What we want to do is just try  
20 to go straight across.

21 CLERK OF COURT: Okay. Like all three  
22 sections?

23 THE COURT: That's right. That way, we  
24 won't go as far back.

25 CLERK OF COURT: Okay.

1           THE COURT:  So what you'll do is take  
2           what's left here -- I know that's asking a lot,  
3           come to think of it.

4           CLERK OF COURT:  That's okay.  I can work  
5           it out.

6           THE COURT:  What I'd do is start with, you  
7           know, the back row and start putting them on the  
8           side and leave the -- do it any way you want to  
9           do it.

10          CLERK OF COURT:  I will.

11          THE COURT:  See what you can come up with.  
12          Yeah, I'm about to confuse things more.

13          All right.  All I expect -- all I intend to  
14          do tomorrow is, when we've got everybody  
15          assembled, and perhaps in a seating chart, you  
16          can -- unless we -- unless between now and then  
17          we come up with an agreed upon method for  
18          reducing it to, I would say, 80, between 80 and  
19          90 -- because I think we can get probably --  
20          what did we calculate?  90 plus 14.  We could  
21          probably get -- we could probably get 100, so we  
22          would have to eliminate approximately 60 -- how  
23          many, Nathan?  About 58?

24          MR. WILSON:  Correct.

25          THE COURT:  Our estimates are -- there are

1           now 158. And so in order to do the rest of the  
2           questioning here, we would have to figure out a  
3           way to get to less than 100. Less than 100  
4           could be 90, 95, or even 100. But if I did 100,  
5           I'd have to use the jury box.

6                        So absent some kind of an agreed method of  
7           doing that, as soon as we get everybody seated  
8           tomorrow, I will simply turn to the plaintiffs  
9           and say, you may question the jury and explain  
10          to them about the voir dire process. And, of  
11          course, we -- when we have to -- I am certain  
12          we're not going to finish tomorrow, given the  
13          still large number and just giving me -- getting  
14          some indication about the questions that have  
15          not even been asked of the jury, you know,  
16          about -- you know, the standard old questions  
17          that lawyers ask in voir dire, or voir dire if I  
18          was from New York. So I guess we break Thursday  
19          and start back Monday.

20                       We have it Monday? Don't we have it  
21          Monday?

22                       MR. WILSON: We have it Monday. We do not  
23          have it Thursday.

24                       THE COURT: I know we don't have it  
25          Thursday, nor do we have it Friday. I'm

1 saying --

2 MR. WILSON: We have it Monday.

3 THE COURT: Monday. So hopefully, maybe by  
4 the end of today, we can come up with a way to  
5 get it down to a number that we can bring over  
6 here. If not, we will be back at the Bama  
7 Theatre.

8 MR. WILSON: And I believe we have it  
9 Monday until one o'clock, so Monday we have to  
10 be out early.

11 THE COURT: Oh, okay. Well, do we have it  
12 Tuesday?

13 MR. WILSON: We do.

14 THE COURT: All right. So tomorrow I  
15 expect the plaintiffs to be prepared to conduct  
16 a standard voir dire.

17 MR. STEWART: All right, Judge.

18 THE COURT: All right. Let me hear from --  
19 Mr. Wells, you want to say something?

20 MR. WELLS: I was just going to, again,  
21 Judge, once again, urge the Court to consider  
22 cutting down the venire, as I think it's within  
23 your inherent power to do so, by simply asking  
24 the Court to -- I mean, asking the clerk to  
25 randomly select a given number, whether it's 80

1 or 90 or 100 to get in the -- to put into the  
2 courtroom. I feel like you've got the authority  
3 to do that, and I think we can do the voir dire  
4 a whole lot more effectively here than we can do  
5 it at the Bama Theatre.

6 THE COURT: Mr. Wells, I agree that we can  
7 do the voir dire more effectively here than we  
8 can at the Bama Theatre. I do agree with that.

9 Counsel for plaintiffs argued last week  
10 that this Court -- as I read it, as I understood  
11 their arguments, that this Court could excuse  
12 for hardships. And I've got the parties to  
13 agree, or at least the parties have agreed to  
14 excuse for cause along the way, rather than wait  
15 until the end.

16 And so the question is, at this stage,  
17 where I have already excused a number of jurors  
18 for cause, may I now simply use an arbitrary  
19 method, draw lots or every third juror to get  
20 down to a representative number that way? I'm  
21 not sure at this point if I can do that and --  
22 because I'm not sure -- I am sure that I can do  
23 it the way we're doing it, but I'm not sure,  
24 and -- you know, my -- you know, the closest  
25 thing to authority I've got hasn't made me

1           sure.

2                     Can I be sure about that yet, Nathan?

3           MR. WILSON:   I don't think so.

4           THE COURT:   So that's where I stand on it.

5           I'm going to try to avoid as many bases for an  
6           appeal as I can.

7                     All right.  Anything else?

8           MR. TAYLOR:   Yes, sir.  Mr. Stewart?

9           MR. STEWART:  No.

10           MR. TAYLOR:  Your Honor, there were a  
11           couple of things.  You had indicated that you  
12           were going to have motions argument on Friday  
13           afternoon, and I wonder if the Court is still  
14           entertaining that.  And if the Court is, what  
15           motions would be argued?  Because as I  
16           understand it, the sanctions issue has now been  
17           fully grieved, and I don't know if the Court is  
18           going to rule on that, on briefs, or if you want  
19           additional argument.

20                     I mean, there's been a lot of argument on  
21           it already.  And we have at least three Frye  
22           motions that the plaintiffs have filed --  
23           response will be filed tomorrow pursuant to  
24           agreement with counsel.  And they could be  
25           argued if the Court was going to entertain

1 arguments on Friday. And I'm asking that so we  
2 can all get prepared to do whatever needs to be  
3 done.

4 THE COURT: Well, I was thinking that it  
5 would go quicker if you were not prepared. You  
6 disagree with that idea?

7 Well, it looks like at this point, we're  
8 going to have to stop at one o'clock on Monday  
9 anyhow so that -- let's say -- I think I do want  
10 to hear any comments either side has about their  
11 submissions regarding the subsequent sanction  
12 filings. So that's where we will start. Now,  
13 as --

14 MR. STEWART: Is that on Friday, Judge?

15 THE COURT: Friday, that's right. We'll  
16 start on that.

17 Also, you know, we've been sort of holding  
18 up on the parties' discussions regarding  
19 those -- the deposition testimony of other  
20 plaintiffs. That's sort of been rocking along,  
21 and I think that needs to be -- I need to hear  
22 one way or the other how y'all intend to deal  
23 with that.

24 Now, as far as the Frye motions, I suppose  
25 we can do those Frye motions Monday, Frye

1 motions relative to the plaintiffs' Frye  
2 motions. Now, once we finish the sanctions and  
3 I find out whatever you want to do regarding  
4 those plaintiff depositions, which defendants  
5 have offered as -- in the initial trial -- y'all  
6 know what I'm talking about; right?

7 MR. STEWART: Yes, sir.

8 MR. TAYLOR: Yes, sir, the big box you  
9 had --

10 THE COURT: Right, I want to try to deal  
11 with that because it's sort of in the way as I  
12 get in my desk. Then I want -- since the  
13 plaintiffs have now filed its -- made a filing  
14 on the disclosure of the settlements, that needs  
15 to be addressed. Now, we --

16 MR. STEWART: Either Monday or Friday?  
17 Monday or Friday?

18 THE COURT: Well, I was thinking about,  
19 since you filed it prior to -- have y'all gotten  
20 it?

21 MR. WELLS: Yes, sir.

22 THE COURT: Okay. I see no reason we can't  
23 deal with that on Friday.

24 MR. STEWART: All right.

25 THE COURT: And so we may wind up not doing

1 the Frye motions until Monday afternoon.

2 MR. STEWART: Judge, if you could hold  
3 those until Monday because -- when did you say,  
4 Mr. Taylor, y'all filed the responses?

5 MR. TAYLOR: Well, with agreement of Andy,  
6 we're filing it Wednesday.

7 MR. STEWART: Okay.

8 MR. TAYLOR: Tomorrow, yes.

9 THE COURT: Well, that's fine. So we'll  
10 just do what I just said then.

11 MR. TAYLOR: Yes, sir.

12 THE COURT: Now, let me just say that one  
13 issue that has come up in connection with that  
14 relates to the fact that it is one thing to --  
15 since we will only be dealing with damages as it  
16 relates to eleven plaintiffs, the issue of  
17 allocating what the settlement amounts for those  
18 eleven plaintiffs and the possible prejudice  
19 that would come if the plaintiffs were put in a  
20 position where they have to disclose the  
21 settlement for the whole group of plaintiffs,  
22 when you only have eleven.

23 Now, how the Court will deal with that is  
24 something I think that the defendants will have  
25 to deal with, or at least give me some -- I'm

1 giving you a heads-up on what I'm looking at.

2 MR. TAYLOR: Understood, Your Honor. Yes,  
3 sir.

4 THE COURT: Okay.

5 MR. TAYLOR: Your Honor, one other issue --  
6 two other very quick issues if you're about  
7 to --

8 THE COURT: There's always one other one.

9 MR. TAYLOR: That's why I said two.

10 THE COURT: That's good. I'm glad.

11 MR. TAYLOR: One, we still have the Court's  
12 ruling on the Rock Frye motion that we filed and  
13 argued. There was a Frye motion on Dr. Rock --

14 THE COURT: Uh-huh.

15 MR. TAYLOR: -- and the Court reserved  
16 ruling on that. And we would encourage or  
17 request that the Court let us know when  
18 you're -- obviously, when you're ready --

19 THE COURT: Okay. I will.

20 MR. TAYLOR: -- what your ruling would be.

21 THE COURT: I promise you, I'll let you  
22 know when I'm ready.

23 MR. TAYLOR: Okay. And the Court raised  
24 the point about voir dire and the fact that  
25 we've got one party, and you've got Mr. Bicks

1           and I both representing Flexible. And I  
2           understand the Court's ruling as it relates to  
3           individual voir dire.

4                       But in general voir dire, it is likely that  
5           we will be splitting up subject matter, and it  
6           may turn out that if we did it that way, that we  
7           might be asking the same juror questions, but it  
8           will be questions on different subject matter  
9           that would fall into the general voir dire. And  
10          I wanted to be sure that we weren't, you know,  
11          transgressing upon -- that that wouldn't be  
12          viewed as a transgression of the Court's  
13          predilection here.

14                      THE COURT: The only thing I can say is  
15          that -- how many lawyers have you got with you,  
16          Mr. Stewart?

17                      MR. STEWART: You mean in the case?

18                      THE COURT: Yes.

19                      MR. STEWART: We listed, I think, eight or  
20          nine.

21                      THE COURT: Mr. Taylor, you think I'm going  
22          to let eight or nine of Mr. Stewart's lawyers  
23          get up and do different voir dire questions?

24                      MR. TAYLOR: No, sir, I don't think you  
25          would.

1 THE COURT: So you just want me to limit  
2 it -- you want me to just limit it so that the  
3 two of y'all can, if y'all choose to?

4 MR. TAYLOR: And it's only because it's  
5 general voir dire.

6 MR. STEWART: Judge, we just don't want  
7 them doubled up on us. Y'all need to flip a  
8 coin. We're scared of both of you together.

9 MR. TAYLOR: I don't think the Court  
10 believes that.

11 THE COURT: Okay. How many will be  
12 speaking on behalf of Dow, Mr. Wells?

13 MR. WELLS: One, myself.

14 THE COURT: Okay. How about Micon and  
15 MPI?

16 MR. DODSON: There will just be one.

17 THE COURT: There will just be one.

18 So you want to be able to do two for  
19 Flexible Products?

20 MR. TAYLOR: That was the way we planned  
21 it, Your Honor. But what I was trying to do was  
22 to figure out the Court's position on that, and  
23 if the Court's position is that we only have  
24 one, then we will deal with that.

25 THE COURT: You know, what I can probably

1 do --

2 MR. TAYLOR: Yes, sir.

3 THE COURT: -- if you want to, if you want  
4 to get up and say that on this part, this  
5 attorney will be speaking for Flexible, and then  
6 sit down and that person do it, you know,  
7 that -- you know, that -- I'll let that work.

8 MR. TAYLOR: All right. We will figure  
9 that out. All right. Thank you, Your Honor.

10 THE COURT: All right. I'm not going to --  
11 I was going to ask is there anything else, but  
12 I'm not going to ask that.

13 I will see y'all at two o'clock on  
14 Friday -- what did I say?

15 MR. WELLS: 1:30 on Friday, I think, you  
16 said.

17 THE COURT: Okay. Well, two o'clock now.

18 MR. WELLS: Two o'clock.

19 MR. STEWART: Nine in the morning.

20 THE COURT: Nine in the morning and two  
21 o'clock Friday.

22 So, Mr. Stewart, unless something changes,  
23 what I expect to happen is -- and that's right,  
24 if you want to, at some point, say I request  
25 that Mr. Davenport now take over, that's -- I'll

1 let you do that.

2 MR. STEWART: Based on the way we planned  
3 it, I think if I did that, Mr. Davenport would  
4 shoot me. I am prepared for it. He didn't.

5 THE COURT: Now, is that -- would that be a  
6 bad thing if he were to -- what about that,  
7 Mr. Davenport? What do you think?

8 MR. DAVENPORT: Judge, I'm going to decline  
9 comment on that.

10 THE COURT: All right. Thank you y'all.  
11 Bama Theatre tomorrow.

12

13 \*\*\*\*\*END OF PROCEEDINGS\*\*\*\*\*

14 at 3:29 p.m.

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CERTIFICATE

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STATE OF ALABAMA  
AT LARGE

We hereby certify that the above and foregoing proceeding was taken down by us in stenotype and the questions and answers thereto were transcribed by means of computer-aided transcription and that the foregoing represents a true and correct transcript of the testimony given by said witnesses upon said proceeding.

We further certify that we are neither of counsel nor of kin to the parties to the action, nor are we in anywise interested in the result of said cause.

Kimberly T. Hoff, CCR, RPR, RMR, CLR  
Alabama CCR License Number 184  
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Commissioners and Notaries Public