



Total Trial Solutions^{LLC}
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Focus Group Report

[REDACTED]

[REDACTED]

Date of Focus Group: [REDACTED]

Location: [REDACTED]

Number of Participants: 11

Prepared by John Kiselak, Esq.

[REDACTED]

N.B.: Without replicating the results limited conclusions can be drawn from a single focus group. Presenting the issues to two or more focus groups significantly increases the accuracy and predictability of the key takeaways and recommendations.

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Video Links:



Password:



List of Participants

Name	Age	Sex	Race	Education	Marital	Political	Working	Occupation	Children	County
Alison	19	F	White	Some College	Single	Democrat	Working	Personal Assistant	0	Ulster
Erin	50	F	White	Bachelors	Single	None	Not working	Owner-Massage Therapy	0	Dutchess
Gabriel	20	M	White	Trade	Single	Democrat	Working	Automotive Mechanic	0	Green
Jane	32	F	White	Some College	Single		Working	Retail	0	Orange
John	33	M	Hispanic	Masters	Single	Democrat	Working	Financial Analysis, Real Estate	0	Dutchess
Marlis	58	F	White	Masters	Married	Independent	Working	Teacher	2	Orange
Megan	44	F	White	Masters	Married	Independent	Working	Guidance Counselor	3	Ulster
Melanie	30	F	White	Bachelors	Married	Republican	Working	Merchandizing	1	Orange
Shari	60	F	White	Associates	Divorced	Independent	Working	Office Assistant	0	Dutchess
Victor	29	M	Hispanic	Bachelors	Single	Independent	Working	Consulting, Management	0	Dutchess
William	47	M	White	Bachelors	Married	Democrat	Working	Writer	Yes	Ulster

Virtual Seating Chart

Shari Erin Bill

Gabe John Jane Megan

Allison Marlis Victor Melanie

- Opening Statement¹
 - Liability JCGOFs
 - *No Manufacturer's Instructions:* After hearing the opening statement, the jurors could not get over the fact that Brownstone's owner/CEO and Director of Operations failed to obtain and review the safety installation instruction for the Lily Pads prior to installing them at the park and inviting the public to use them. Like the last FG, these jurors said it would have been simple for Brownstone to obtain these instructions online, or directly from the manufacturer, and it was their obligation to do so, prior to inviting the public. Alternatively, Brownstone could have hired an expert to install the equipment, rather than relying on the Director, who was unqualified for this purpose. One juror, John, was shocked that Brownstone would purchase used equipment and install it without instructions, considering how many paid customers would be invited to use the equipment, as opposed to a much smaller private use. When the jurors were asked WHY Brownstone installed the equipment without first obtaining the instructions, they responded that the owner/CEO wanted to get everything done cheaply; he wasn't concerned about safety issues stemming from the Lily Pads; and the Director was totally unqualified.
 - *Overall Case Frame: "Defendant Cared about the Wrong Things"*
 - *Sub Case Frames: "Profits over Safety," "Inevitability," "Do Your Job," "System Failure"*
 - Spread the Tentacles of Danger/Analogy: John said Brownstone was operating a waterpark with thousands of paying customers, NOT a backyard swimming pool, but their lax decision-making was more consistent with the latter.
 - ✓ Framing Defendant: Cared about the Wrong Things; Inexperienced; Unprofessional; No Concern for Safety
 - *Improper Installation:* The jurors said this event was preventable if there was a plastic sheath over the chain, as indicated in the safety installation instruction manual. Although there were a couple jurors who weren't certain that the chain caused [REDACTED] injury based on the opening alone, after the photos were later shown, all of the jurors agreed that his injury was preventable if there was a plastic covering over the chain. The jurors said the Director had no way of knowing that a plastic cover was needed at the time of installation, because he didn't obtain the instructions and he was unqualified. Of course, the owner/CEO set the Director up for failure, because the Director was unqualified to supervise this installation.

¹ See *Opening Responses* at the end of this report.

- Spread the Tentacles of Danger: Multiple female jurors said they were moved by hearing that a young girl's hair could have been caught in the uncovered chain, which really struck a chord.
 - *No Action after Prior Event*: The jurors could not believe that Brownstone took no action after the prior event, and this generated anger amongst them. The jurors said that an investigation should have been conducted after the prior event to determine what caused the prior guest's injury. Some jurors said the entire park should have been closed down, pending this investigation, while others at least expected the Lily Pads to be shut down. Further, the jurors expected there to be communication all the way up the chain of command about this prior event and, if that didn't happen, then this was a system failure.
 - *Marlis*: "I felt that there was extreme negligence every step of the way, from the very beginning when they first received the equipment. What does it take to obtain the instructions online, or to ask the previous owner how this works? They could anticipate or imagine possible injuries. So it started with that. Then every step of the way they chose to ignore safety measures. That was pretty shocking. This was not just a one-time mistake. This was extreme negligence."
- Jurors' Questions
 - *Government Oversight*: The jurors wanted to know if the state performed any inspections at Brownstone, and whether there are any regulations applicable to the installation of equipment, like these Lily Pads, that were violated. From the opening, the jurors' understanding was that Brownstone violated its own safety rules, but they expected there to be government rules and inspections as well.
 - *Capacity of Brownstone*: Some jurors were not clear, initially, about how many paying customers attended Brownstone on a daily basis. Once one juror explained that thousands of customers attended daily, other jurors, like John, reacted with a greater sense of anger toward the defendant.
 - There is an opportunity to further spread the tentacles of danger by emphasizing the capacity of Brownstone, and all the different people, of all ages, who attended.
 - *Whether any Investigation Occurred*: The jurors heard in the opening that someone (i.e., a Lifeguard) told ██████ that his foot was cut by an open connector in the chain, which led the jurors to question if this individual performed an inspection of the chain to discover this.
 - Consider removing the sentence from the opening referring to someone telling ██████ that the link was open, thereby implying

that an investigation was done in that regard. The photos carry the day on this issue, and it may not be helpful for jurors to believe anyone at the park performed due diligence after the event.

○ Safety Expert

- The jurors said it was important to learn that [REDACTED] attorney spoke with the safety expert for the manufacturer who drafted the manual for the Lily Pads, and that this expert says there should have been a plastic sheath over the chain. The jurors said Brownstone was definitely negligent for not installing the plastic sheath, and everyone agreed that this put [REDACTED] at greater risk of being injured. For some jurors, this increased risk of injury seemed to be enough to establish causation. However, there were a couple jurors who weren't convinced that [REDACTED] was injured by the chain based on the opening alone. . .

○ Causation Issue after Opening

- One juror, Bill, explained in detail his concern about causation after hearing the opening:
 - *Bill: "If I was the lawyer working for the other side, I would point out that this story lacked the main thing that it needs. A direct link between the faulty part and his injury. . . I did not hear the lawyer say that we have evidence, and we will prove to the jury, that this man's injury was directly caused by this open chain link that should have been covered in plastic. . . We had all kinds of details about the Lily Pads, and all kinds of details about what happened after he went to the doctor, but zero details about what exactly happened to cause his injuries. Does [REDACTED] not know what his foot hit? If he doesn't know what his foot hit, then how are we supposed to accept the theory that it was the open link. . . If it wasn't that, and they can't prove it was that, then I think all the other arguments are going to be thrown out. You can't just say the water park was generally negligent. They have to be negligent with respect to his exact injury."*
 - ✓ PHOTOS: Importantly, Bill completely flipped after he saw the photos, as described below.
 - ✓ INCIDENT REPORT: Bill was also persuaded, to a lesser extent, by the Incident Report, whereby [REDACTED] says that his foot "hit the chain or whatever was underneath" the Lily Pads. A sentence should be added to the opening referencing this report, because most jurors agreed that [REDACTED] would know what a chain felt like on his foot, even if he never saw it.

their kids to do it, the video certainly lent itself to assumption of risk, more so than any neglect by Brownstone.

- Lily Pads
 - Similarly, the jurors did not find the photos of the Lily Pads above the water to be especially helpful.
- Chain/Carabiner
 - When the jurors first saw photos of the chain, their initial impression was that the chain doesn't appear sharp, as they had expected. As such, a couple jurors initially questioned whether the chain could have caused [REDACTED] injury, as opposed to a rock or something else. On the other hand, other jurors explained how the open carabiner, albeit blunt, could have acted like a fish hook and grabbed [REDACTED] foot, as the full momentum of his body came down upon it.
- Wound (Day of Event) (JCGOF)
 - As soon as this photo was shown, the tone in the room changed. The jurors were shocked by the “grisly,” “gruesome,” “terrible,” “violent” wound on [REDACTED] left foot. And just like the jurors in the last FG, these jurors pointed out the red circular indentation in [REDACTED] flap of skin, which they said was consistent in size and shape with the screw part of the carabiner. As such, this was powerful evidence that [REDACTED] foot was in fact injured by the carabiner connector, as opposed to a rock or something else, which some jurors had previously considered a possibility. At this time, the jurors began to discuss in further detail how [REDACTED] full body momentum came down onto the open carabiner, thereby causing it to rip his skin upward, as shown in the photo. The jurors were no longer concerned that the chain didn't appear sharp, because it made perfect sense that this blunt hook could cause the damage shown.
 - *Shari: “You can see the circle on the piece of skin right there. . . That’s the part where he got stuck.”*
 - *Bill: “Yeah, the puncture. . . There was a small round impression in the skin that looked like a screw head. If it is the same size as the round part of the carabiner, that is something the jury would find compelling I would think.*
 - Causation Established: Taken together, the jurors agreed that the photos established causation for [REDACTED] injury. Furthermore, the jurors would later refer back to this photo when presented with the question of whether [REDACTED] nerve damage was caused by the impact (per the Neurologist and Plastic Surgeon), as opposed to scar tissue formation (per the Podiatrist). At that time, the jurors

said that such a violent impact was clearly shown in this photo, that the nerve damage must have been caused upon impact.

- BUMPER STICKER: “A picture is worth more than 1,000 words”
 - ✓ Consider adding this to the opening, even if you aren’t permitted to show photos at that time, so that jurors know the powerful evidence they will see. The photos were a JCGOF for causation/damages and should be embraced.
- Carabiner Next to Wound
 - The jurors found it helpful to be able to see the open carabiner next to [REDACTED] wound from the day of the event. As described above, the jurors pointed out where the screw part of the carabiner matched up with the red circular indentation in [REDACTED] skin flap.
 - Consider blowing this up as a Demonstrative for use at trial, in addition to the individual chain and wound photos.
- Wound (Day after Event) (JCGOF)
 - This photo was critical, because it was EVEN MORE CLEAR that there was a perfectly circular opening in the skin flap, which the jurors said was consistent with the screw part of the carabiner.
 - *Bill: “The round hole is still there.”*
 - *Marlis: “That’s from the open part of the chain.”*
 - *Jane: “Yeah, now that makes more sense actually.”*
 - ✓ With every single photo that followed, the first thing the jurors looked for was the circular scar/indentation that they saw in these initial two injury photos.
- Liability Verdict #2 (After Photos)⁴
 - *Please see Liability Verdict #2 at the end of this report.*
 - After seeing the photos, all the jurors agreed that Brownstone was negligent and that their negligence was a substantial factor in causing [REDACTED] injury. Importantly, the jurors also generally felt the liability case was stronger against Brownstone as well, evidenced by their responses. It was telling when Bill, who previously refused to accept causation, totally flipped after seeing the photos:
 - *“Bill: “It could be something blunt like that, that just cuts in and rips. The fact that it isn’t sharp matches this wound. It just grabbed the flesh, and as he fell downward, it was caught on that blunt hook. That would definitely cause that kind of jagged tear, instead of a clean slice. It’s not inconsistent with that c-hook.”*

⁴ See *Liability Verdict #2* at the end of this report.

- Damages⁵

- *Please see the Damages section at the end of this report for the jurors' specific feedback about how they expect [REDACTED] life to be impacted by his injury, and what they would be willing to award for pain and suffering.*

- Life Impacts

- Generally: After hearing the opening, it was clear to the jurors that [REDACTED] was very physically active before the event, and that his life has been totally ruined by this injury. Taking walks, hiking, bike riding, skiing and coaching his kid's team will all be painful activities now. It was powerful when one juror, Jane, explained that [REDACTED] can't even take a walk around his block to regroup and get some fresh air, without pain. The jurors said [REDACTED] will be limited in anything that requires him to stand, including tasks as simple as walking to his car. The jurors also understood that [REDACTED] pain isn't limited to standing on his feet. In this regard, they said [REDACTED] has constant pain that interrupts his sleeping, and this is a very significant issue. Beyond that, the jurors expected [REDACTED] to have pain while sitting down as well, and they really didn't think there was any end to his pain. [REDACTED] lack of mobility, and the isolation resulting therefrom, definitely resonated with the jurors.
- Impacts on Family: The jurors said [REDACTED] entire family will be affected by his injury, including his two young children. In this regard, if [REDACTED] has pain and is unable to participate in an activity, this will have an emotional impact on both [REDACTED] and his family. The jurors expected [REDACTED] to be depressed, because an important part of his life was taken away. And they said [REDACTED] kids may become upset and even resent him at times, if he isn't able to do things as a father that he used to do.
 - The jurors appreciated the [REDACTED] has continued to step up for his family, including coaching his son's football team, despite pain.
- Work: Similarly, the jurors liked hearing that [REDACTED] has continued to work, despite his constant pain. They said [REDACTED] has pain on a daily basis, which is probably exacerbated by work, but he continues to provide for his family. The jurors understood that [REDACTED] cannot take narcotic pain medications and continue to work at his job. While one juror, Bill, said that [REDACTED] is choosing to have pain and work, rather than not working and potentially having less pain (i.e., with stronger pain meds); other jurors appreciated the decision [REDACTED] has made. Furthermore, most jurors didn't think that long term usage of narcotic pain medication was a good solution for anyone, and could lead to addiction and other issues.
 - Framing [REDACTED] Fighter; Provider; Family-Oriented

⁵ See *Damages Verdict* at the end of this report.

- *Mitigation Issue (Skin Graft Surgery/Severing Sural Nerve)*
 - Before [REDACTED] Experts
 - As soon as the jurors learned that the Podiatrist recommended that [REDACTED] undergo skin graft surgery[s], they immediately discussed how he would need to be off his feet for a long time, with more pain, and there would still be no guarantees of success. Standing alone, the lack of guarantee of success was enough reason for [REDACTED] to decline the surgery, according to the jurors. Then, when the jurors were told that [REDACTED] had just recently started his job, and that he would need to be off his feet for about a month per skin graft surgery (and 2 or 3 were surgeries were likely), the jurors readily agreed with [REDACTED] decision to refuse the surgery. Similarly, the jurors said that severing the sural nerve sounds like a drastic procedure, which would cause [REDACTED] to lose feeling in his foot. As such, the jurors already agreed with [REDACTED] decision to refuse these procedures, prior to hearing his experts' opinions.
 - After [REDACTED] Experts
 - The jurors immediately accepted the opinion of [REDACTED] Neurologist, who opines that [REDACTED] made a sound decision by refusing these procedures. And in this regard, all of the jurors agreed that the Neurologist is an expert on nerve pain, not a Podiatrist. The jurors were also familiar with phantom pain, as described by the Neurologist with respect to severing the sural nerve, and they agreed that it is a good thing [REDACTED] didn't have this radical surgery done. Although the Plastic Surgeon's opinion was not needed, the jurors said that 2 doctors' opinions are also more persuasive than 1.
- *Photos Showing Necrosis*
 - The jurors reacted with shock to the photos depicting necrosis in [REDACTED] wound, 3-4 weeks after the event. They said these photos are "gruesome," and there was clearly an infection that occurred, causing the skin to die and fall off.
 - These photos were helpful, because they enabled jurors to better grasp [REDACTED] pain and suffering during these initial weeks.
- *Recent Scar Photos*
 - When the jurors were shown the most recent scar photos, they were still able to clearly see the scar and the bluish color of [REDACTED] skin. The jurors fully understood that [REDACTED] has an underlying nerve injury, as a result of the impact, and they didn't minimize his suffering based on these photos.

- *RSD/CRPS*
 - No jurors had ever heard of Complex Regional Pain Syndrome or Reflex Sympathetic Dystrophy, so they weren't really able to fully grasp the potential impact of [REDACTED] condition in the future. The jurors understood that [REDACTED] has a permanent, pain producing, nerve injury, which causes him to have drill-bit like pain in the area of his scar. It will be important for the Neurologist to teach the jurors about the consequences of this condition in a way they can understand, and demonstratives may be helpful in this regard.
- *Back Complications*
 - The jurors fully expected [REDACTED] to have back pain problems as a result of compensating for his left foot pain. They did not view this as overreaching at all, and they said they would expect to hear about this at trial. Beyond this, the jurors said [REDACTED] hips may also be affected in the future, in addition to his back.
- *Pain and Suffering*
 - *Please see the Damages section at the end of this report with respect to the specific jurors' awards.*
 - It was very interesting to listen to Bill's reasoning for his relatively low award, as compared to John, who awarded the most. While Bill attempted to explain away why his award was low, supporting his Key Belief (i.e., Tort Reform), John had a perfect Reptile response, whereby he sought to set an example for the entire water park industry, and to prevent future non-compliance with safety rules by punishing Brownstone.
 - ✓ *COMPARE:*
 - ❖ *Bill: "I guess I'm the cheap guy. I said \$250K-\$500K. Pain is a subjective thing. I don't doubt that he has it. But I have no idea of the intensity. . . When you have to take somebody's word for it, I'm less likely to give \$5M. I guess I'm suspicious. I'm a suspicious person when it comes to lawsuits."*
 - ✓ *CONTRAST:*
 - ❖ *John: "With pain and suffering, can your number also include wanting to prevent future instances of non-compliance such as this? To prevent incidents like these . . . in the future. Something as simple as covering the chain? To prevent other parks from being negligent? Setting an example sort of thing?"*

- Another juror with a relatively low award was Allison, who seemed to have the Key Belief of Compassion Fatigue, and was also a millennial.
 - ✓ *Allison: “To some extent, emotional suffering is life. . . We all get dealt things we don’t deserve.”*
- On the other hand, two other millennials, Melanie and Gabriel, both decided to drastically increase their awards from \$1M to \$5M after hearing the reasoning of the other jurors, like John.
- Negative Attribution
 - There was essentially no negative attribution presented during the focus group. The jurors did not fault [REDACTED] for participating on the Lily Pads, and they didn’t have any problem with him electing not to have the skin grafting surgery[s] recommended by his Podiatrist.
 - One juror, Erin, questioned whether [REDACTED] kept his wound as clean as possible after the event, and whether he used any creams and antibiotics that were prescribed to him.
 - Add a sentence to the opening mentioning that [REDACTED] followed the doctors’ advice and used any cream and antibiotics prescribed.

Reference Points

- PART I.
- 0:01 – 22:50
 - The moderator introduces [REDACTED], and then [REDACTED] proceeds to read the opening statement.
- 22:51 – 35:37
 - The moderator displays a word document with four questions for the jurors to answer via the chat feature of the Zoom meeting. The jurors answer the questions and submit their responses.⁶
- 35:38 – 1:06:20
 - The moderator asks the jurors what was important that they heard in the opening.
 - Allison says [REDACTED] can't be active anymore, and that was a big part of his life before. (Damages)
 - John says it was one thing for the park not to follow the installation instructions, but it was another thing altogether for them to fail to address the issue after the first person was injured. He says the park “went from being negligent to being completely reckless,” and “they just didn't care about their customers.” (JCGOF)
 - The moderator asks John what he would have expected to happen, that didn't happen.
 - John says the park should have closed down the Lily Pad attraction, or that part of the park altogether, until they discovered what caused the first person to be injured. He says the park should have “close[d] it altogether, to prevent injury to who know how many other people.” (Expectation) (STD)
 - Shari: “There was a prior injury.”
 - Erin says someone else cut their foot on the chain before, so the park should have been shut down until the safety issue was addressed.
 - Marlis: “I felt that there was extreme negligence every step of the way, from the very beginning when they first received the equipment. What does it take to obtain the instructions online, or to ask the previous owner how this works. They could anticipate or imagine possible injuries. So it started with that. Then every step of the way they chose to ignore safety measures. That was pretty shocking. This was not just a one-time mistake. This was extreme negligence.” (JCGOF) (Predictable = Preventable) (Case Frames = D Cared About the Wrong Things; Profits over Safety).
 - Jane asks if the Director of Operations ever told his boss, the owner, about either of the two incidents.

⁶ See *Opening Responses* at the end of this report.

- The moderator asks the jurors if they would expect the CEO of the park to be made aware about someone cutting their foot on the chain, or whether the lower level staff could take care of that.
- Allison says there should be a formal reporting process, when there is an injury.
- Bill says that the opening statement mentioned, on several occasions, that the camp didn't follow its own rules/protocols. He says one of the rules involved employees following up on the cause of the incidents, and the camp's employees ignored their own written rules.
- John says that managers are responsible for ensuring that employees adhere to the rules. He says that as long as the Director was aware of the incidents, then he should have taken action, and it doesn't matter if the CEO was aware.
- Jane disagrees, and she says the owner of the business should be made aware of any injuries that occur.
- Victor says the camp may not have had proper means of communication between staff members (Framing D). He asks if the manufacturer or prior owner of the equipment may hold responsibility.
- The moderator asks the jurors where the equipment came from.
- The jurors say they came from an auction.
- The moderator asks the jurors what they would expect to happen, if the equipment didn't come with instructions from the auction.
- Erin says the owner should have looked up the instructions online, or he could have contacted the manufacturer directly. She says "it is an important piece of your business that people are going to be on . . . it is a ride." (Expectation)
- Victor says there should be government oversight of sales like this at an auction.
- Marlis says she buys things "as is" at auctions all the time, and it is the responsibility of the buyer to determine how the equipment is supposed to be used, not the auctioneer.
- Melanie says ██████ was very active before, and his entire life has been altered physically and emotionally. She says ██████ relationship with his wife and kids has probably also been affected. She says the Lily Pads shouldn't have been purchased at an auction and then installed for public use without instructions, because that was "asking for an issue." (Case Frame = Inevitability)
- Megan says that the Director of Operations was unqualified, and that really stuck out to her. She says the camp had the responsibility to obtain the installation manual from the manufacturer. (Framing D) (Key Fact)
- The moderator asks the jurors why they think the equipment was installed without the instruction manual.
- Bill: "They were being cheap." (Framing D)
- Megan says there should be a plastic cover of some kind around the metal chain, since people would be around it. (JCGOF)

- John asks what the maximum capacity at the park was. He says it was *reckless* to install equipment from an auction like this if there were many people coming to the park on a daily basis, as opposed to a small number of people, like 10-15. He says “that seems like something you would do if you were installing a pool in your backyard or something” and “this should not occur at a park where they are charging for admission.” (Opportunity to STD) (Framing D: Unprofessional; Inexperienced; Not Concerned About Safety)
- Megan says she heard that millions of people come to the park.
- John says the park is way more negligent if there are this many people coming to the park, with school busses and so forth. He says the instructions should have been obtained, or a professional should have been hired to do the installation. He says there should be government oversight of the park as well, including certifications. (Framing D: Cared about the Wrong Things; Profits over Safety)
- Gabriel says that nobody at the park was qualified, and it was “very negligent” for the Director to simply run across the Lily Pads to test them. He says this event could have been prevented if someone inspected the chains after they were installed to make sure the “hook” was closed.
- Jane says she’d also like to know how much testing of the equipment was done, and why the nets were not utilized. She asks why the chain link was open.
- The moderator asks the jurors why the connector may have opened.
- Jane says because of the movement of the Lily Pad.
- Allison says there must be state inspection requirements that apply when a new attraction is opened at a water park. (Missing Info = Water Park Guidelines)
- Bill: “If I was the lawyer working for the other side, I would point out that this story lacked the main thing that it needs. A direct link between the faulty part and his injury. . . I did not hear the lawyer say that we have evidence, and we will prove to the jury, that this man’s injury was directly caused by this open chain link that should have been covered in plastic. . . We had all kinds of details about the Lily Pads, and all kinds of details about what happened after he went to the doctor, but zero details about what exactly happened to cause his injuries. Does █████ not know what his foot hit? If he doesn’t know what his foot hit, then how are we supposed to accept the theory that it was the open link. . . If it wasn’t that, and they can’t prove it was that, then I think all the other arguments are going to be thrown out. You can’t just say the water park was generally negligent. They have to be negligent with respect to his exact injury.” (CAUSATION) (DEFENSE POSITION) (MAIN ISSUE)
 - ✓ **NOTE: Causation is not clearly established until the photos (i.e., both chain and wound) are shown.**
- Shari says █████ told his doctor that he was cut by the metal chain connector. (Key Fact)

- Bill: “But the doctor wasn’t there. How does he know?”
- John: “The attorney did say that the injury occurred in a closed water environment. This didn’t happen in the open ocean, where who know what could be floating around. They were in control of this closed water.” (Key Fact) (Framing D: Who had control?)
 - ✓ NOTE: Although this is a lake/pond, it is still closed, and that is important.
- The moderator says the water body is similar to a lake, and the jurors will see a short video clip of it shortly.
- John: “Oh, maybe I misunderstood.”
 - ✓ NOTE: It is not helpful to call this a lake, because that implies that things could be floating around therein.
- Megan: “A lake with rocks at the bottom of it?” (Potential Issue)
- Erin: “A man-made lake?”
- The moderator confirms, and reiterates that the jurors will see a video.
- Melanie asks if the jurors will see photos of the chain as well as photos of [REDACTED] injury.
- The moderator confirms, and asks if that will be important to see.
- The jurors confirm.
- The moderator asks why it is important to see these photos.
- Melanie says it will confirm that [REDACTED] was injured there.
 - ✓ NOTE: Jurors are looking for proof of causation, and the photos are necessary.
- The moderator asks Bill if the photos will be helpful to him.
- Bill says the photo will help, but they will only show a chain that “could have” hurt [REDACTED] and won’t prove that it actually did.
 - ✓ **NOTE: Interestingly, the photos, taken together, are such powerful evidence that the chain caused [REDACTED] injury that Bill completely flips and takes the opposite position after he sees them.**
- The moderator asks if the jurors heard that [REDACTED] says it felt like his foot hit a chain, after the event, which is listed in the Incident Report.
- The jurors didn’t hear this. (Key Fact) (Add to Opening)
- Bill: “That is important. If he immediately thought that his injury was caused by a specific thing, and he said that, then that lends a lot of credence to the idea that it was the chain that caused the injury.” (Key Fact = Incident Report)
- Erin says the testing of the Lily Pads doesn’t really matter, because they didn’t put a plastic sheath over the chain to protect it. It wasn’t installed properly. She says that she also has the same concerns about causation that Bill has expressed, and [REDACTED] foot could have gotten infected at the hospital. She asks if [REDACTED] protected his foot after the injury with ointments, as he should have, to protect against infection. (JCGOF) (N/A)

- The moderator asks Erin if she would expect [REDACTED] foot to be dirty from the pond water.
 - Erin: “Maybe, but there are probably people who swim in their daily with cuts who don’t get an infection.” (Head Fake)
 - Megan: “If he didn’t get cut there in the first place, then it wouldn’t matter.”
 - Erin nods her head and agrees.
 - Jane asks if there were any witnesses. She says it would be helpful for [REDACTED] family to testify what they saw when he was using the Lily Pads. (Key Fact)
 - The moderator says there is no question that [REDACTED] foot was cut when he came down into the water from the 5th Lily Pad, but the defense certainly argues that nobody knows what cut his foot underneath the water, as Bill mentioned.
 - Jane says [REDACTED] wound was deep, making an infection more probable, especially since there were bacteria in the open outdoor water. She points out that there is no chlorine in a pond like this. (Infection Likely)
 - Shari: “Did anybody go under the water afterward to see what it could have been?” (Expectation = Investigation after Injury) (Framing D: Don’t Care)
 - Erin says that someone found the carabiner to be open, according to the opening statement.
 - Bill asks if the park’s liability rests on the chain being the cause of [REDACTED] injury, as opposed to a log or something else. He asks if [REDACTED] signed a waiver saying he understood the dangers of using the equipment. (ISSUES)
- 1:06:21 – 1:12:05
 - The moderator asks the jurors if they have any other questions
 - The jurors have no other questions that haven’t been addressed.
 - The moderator asks the jurors if there was anything they disliked about the opening.
 - Bill: “It was repetitive. I think he used the same phrases too many times in a row. He said things about ‘the whole community,’ and he seemed to hit that too often.”
 - Erin: “I thought he didn’t have much inflection in his voice. I thought he was very monotone, and a little uninterested sounding. I liked how clearly and slowly he spoke, but it almost seemed like he was bored.” (Constructive Feedback)
 - Gabriel and John nod in agreement.
 - John: “I feel like he lacked energy and passion. . . He lacked that force you would expect.” (Constructive Feedback)
 - Gabriel: “I felt like it took him a little too long to get to the point.”
 - Marlis: “I thought that he was really passionate about justice. . . He highlighted that children were coming through, and that these laws were meant to protect everybody in all kinds of situations. The girl with the hair that might have gotten tangled up in the chain was an image that really stuck out to me. I thought he

really cared about justice, even though he was a bit monotone.” (Constructive Feedback) (Effectively STD)

- Victor: “I think overall he did a very good job. It is important to present the facts in a way that is unemotional and rational, and he does a very good job of doing that.”
 - ✓ NOTE: Victor is a very analytical, unemotional, juror, and he previously worked in life insurance.
- Allison says that she didn’t like how the opening was presented in chapters, because this seemed to separate the links between the events.
- Jane: “I liked the chapters. . . I felt like he was a little disengaged, up until the end. When he talked about the injuries, you really saw and felt his engagement. And that really is the most important thing. [REDACTED] life is difficult. That is what we should be focusing on. . . Perhaps he could engage more with the words. With the chapters. . .” (Constructive Feedback)
- The moderator asks the jurors how they felt about the length of the opening.
- Most of the jurors say the length was okay.
- Victor says the opening could have been more concise.
- Erin says she was also moved when she heard that a little girl could have gotten her hair caught in the chain. (STD Effectively)
- 1:12:06 – 1:15:27
 - The moderator asks if [REDACTED] injury was preventable.
 - The jurors agree that this was preventable.
 - The moderator asks how this was preventable, and by whom.
 - The jurors say the water park could have prevented this event.
 - Erin: “Proper installation of the equipment.” (JCGOF)
 - Jane: “Proper research of equipment bought from a 3rd party.”
 - Victor says the park would still be responsible, even if they followed the instructions.
 - The moderator asks how else this was preventable.
 - Jane: “By paying attention to the first injury, and by making sure they found out what went wrong and how they could prevent it. . . The first injury played a big part, where they did not do anything. That was the point of opportunity. Everything was preventable from that point on.” (JCGOF)
 - Shari says she doesn’t understand how there were no government inspections of this water park, because state inspectors should know how the equipment is supposed to be safely installed.
 - Erin says that common sense tells you that there should be something covering metal underneath water.
- 1:15:28 – 1:18:50
 - The moderator asks the jurors if they think [REDACTED] holds any responsibility.

- Most jurors say that ██████ does not hold responsibility.
- Bill says he still doesn't know exactly how ██████ got injured, so it's unclear. He says the 45 seconds where ██████ was running, falling and getting hurt was glanced over on the opening. (Causation Issue)
- The moderator asks if the jurors think ██████ assumed the risk of this sort of injury occurring.
- The jurors say no.
- Jane: "No, unless he signed a waiver." (Issue)
- The moderator asks the jurors if they think ██████ assumed the risk of getting cut by a chain underneath the water, if he did sign a waiver upon entering the park.
- Jane: "No."
- Other jurors agree with Jane.
- Victor says ██████ did assume a risk, but people assume risks every day when they leave their home. He says ██████ did assume some risks when he chose to participate with the Lily Pad activity. (Issue)
- The moderator says that everyone can agree that ██████ assumed the risk of spraining his ankle running across the Lily Pads, but there is a question of whether he assumed the risk of getting cut by a chain underneath the water.
- The jurors don't think ██████ assumed that risk. (Analogy is Helpful)
- Bill says ██████ only assumed the risk of what he expected to be present, and if something was negligently installed there, then he didn't assume that risk, because that is beyond his expectations. He says ██████ should expect rocks and logs, but not improperly installed equipment.
- 1:18:51 – 1:20:45
 - The moderator asks the jurors if they think the owner of the park was concerned about safety issues when he purchased the Lily Pads at the auction.
 - The jurors say safety wasn't a concern for the owner. (Framing D)
 - Victor: "One would assume that they did not know that there would be any issues."
 - The moderator says the Director of Operations, who installed the Lily Pads, looked at pictures of how they were installed at the prior indoor water park, but Brownstone is outdoors.
 - Bill asks if the plastic sheath was used at the prior park.
 - Victor says it wasn't reasonable for the Director to simply look at photos from the prior park, because these are two entirely different environments. He says the Director also wasn't trained to understand the difference. (System Failure)
 - Shari asks if the photos showed the plastic over the chain at the prior park.
- 1:20:46 – 1:23:55
 - The moderator asks the jurors what they heard about experts that ██████ lawyer spoke with for purposes of this case.

- John: “I think he hired the engineer for the manufacturer.”
- The moderator asks the jurors if they would want to hear from this expert, who actually wrote the safety manual for the Lily Pads for the manufacturer.
- The jurors say they would absolutely want to hear from this expert. (Key Expert)
- John: “The safety expert for the manufacturer testified that they were not installed properly. That immediately alludes that the park was negligent.” (JCGOF)
- Victor says that the question remains whether the equipment could have caused this sort of injury. (Causation Issue)
- Allison says that since the plastic sheath was supposed to be over the chain, clearly [REDACTED] was placed at an increased risk of injury by it not being present. She says if the camp followed the installation instruction, then [REDACTED] injury would not have occurred.
 - ✓ NOTE: Unlike Bill, Allison is willing to presume causation for [REDACTED] injuries based on the obvious increased risk posed by the chain being uncovered.
- Jane says [REDACTED] couldn’t see the chain underneath the water, so he had less expectation of the presence of a risk. Further, she says that [REDACTED] trusted the family-oriented park to put in their due diligence to keep customers safe. (Key Fact) (Framing Chain = TRAP) (Framing [REDACTED] Trusts D; Assumes risk of injuries he can foresee; Betrayed)

- [JURORS TAKE LUNCH BREAK]

- PART II.

- 0:01 – 5:39

- The moderator displays the Incident Report to the jurors and asks for their thoughts.
- Bill: “That certainly helps support the idea that it may have been the chain. This was right after this incident, and it is what he was saying happened.” (Key Fact) (Blow Up for Demonstrative?)
- The moderator asks the jurors if they think [REDACTED] would have been able to feel if it was a chain that injured his foot.
- The jurors agree that [REDACTED] would be able to tell the difference between a chain and a log.
- Victor says it would be hard for [REDACTED] to decipher what cut his foot underwater, with all the adrenaline he must have had. He says [REDACTED] statement in the Incident Report is ambiguous. (Head Fake)
 - ✓ NOTE: This is interesting. Victor is the only juror who doesn’t seem to think the Incident Report supports causation. Could this be related to the fact that he used to work for a Life Insurance company?

- Bill says it may not be proof by itself, but when considered along with other factors, it paints the picture that the chain may be the cause.
 - Erin asks if people are able to go underneath the Lily Pads.
 - The moderator says there is nothing physically preventing someone from going underneath the Lily Pads, which simply rest on top of the water.
 - Shari asks how [REDACTED] knew it was a chain, if he couldn't see it from above the water.
 - The moderator says it felt like a chain to [REDACTED] when his foot struck it.
 - Victor says [REDACTED] works on aircraft, so he should be familiar with chains, but there remains insufficient proof that the chain caused the injury. (Causation)
- 5:40 – 13:40
 - The moderator displays the *Liability Verdict #1* Word document with a series of questions for the jurors to answer relating to liability for this event. The jurors answer the questions and submit their responses.⁷
 - The moderator asks the jurors to raise their hands if they said Brownstone was negligent.
 - 10/11 jurors raise their hands.
 - The moderator asks the jurors to raise their hands if Brownstone's negligence was a substantial factor in causing [REDACTED] injury.
 - 10/11 jurors raise their hands.
 - The moderator asks the jurors how strong the liability case against Brownstone is on a scale of 1-5, with 1 being not strong at all, and 5 being very strong.
 - Allison:4; Marlis 5; John 5; Shari 5; Gabriel 4; Megan 5; Melanie 5; Bill 2; Erin 4; Jane 5; Victor 3.
 - The moderator asks if anyone thinks [REDACTED] holds responsibility.
 - Bill and Erin raise their hands.
 - Bill says this was an outdoor pond, where many things could have cut [REDACTED] and it isn't clear that the chain was the cause.
 - Erin says [REDACTED] was part of the experience, because it happened to him.
 - John says [REDACTED] assumed the risk of natural objects, like logs, but certainly not a chain.
 - Bill says he isn't sure it was the chain and, even if it was, it is possible he could have been cut if it was properly installed.
 - 13:41 – 18:03
 - The moderator displays 2 minutes from the video clip taken at Brownstone (i.e., depicting kids using the Lily Pads) and asks the jurors for their thoughts.
 - Jane says the Lily Pads appear smaller than she thought.
 - Victor: "There is so much implied risk in that video."
 - ✓ NOTE: The video is not helpful.

⁷ See *Liability Verdict #1* at the end of this report.

- Bill says that the video isn't helpful one way or the other. He says a semi-dangerous activity is shown, but it's not something he would prohibit his kids from doing.
- The moderator asks if the jurors can envision how the event occurred.
- The jurors confirm.
- John says that Brownstone should have foreseen that someone could be cut by the chain. (Predictable = Preventable)
- 18:04 – 22:36
 - The moderator displays photos of the Lily Pads above the water, as well as photos depicting the chain underneath it, and he asks the jurors for their thoughts.
 - Victor: "Where is the sharp object?"
 - Other jurors agree that the chain doesn't appear sharp.
 - ✓ NOTE: Standing alone, the chain doesn't appear especially dangerous. However, once the wound is shown, the tone in the room changes dramatically.
 - Victor says the chain "doesn't seem consistent" with the injury described.
 - Erin says this sort of chain doesn't look like it could cause a puncture or a gauge in someone's leg. She says that she also expected a carabiner that didn't need to twist/screw open.
 - Other jurors agree that they wouldn't expect this chain to cause a deep wound.
 - Bill disagrees. He says that [REDACTED] flesh could certainly be torn when his foot came down onto the open carabiner. He says this doesn't look safe, and he wouldn't have a problem believing that this was the cause, if proven.
 - Jane says the photos don't show the sharp/dangerous condition she expected to see, BUT when she thinks about [REDACTED] momentum coming down onto the open carabiner, it does make sense that a tear could occur. (Framing the Event: Mechanism of Injury; [REDACTED] Momentum is Important)
- 22:37 – 28:35
 - The moderator displays the photo of [REDACTED] wound from the day of the event.
 - The jurors are shocked.
 - ✓ See 22:50 of Part #2
 - ✓ This is a powerful photo.
 - Megan: "That's a heck of a cut for a chain like that, geez. Did it get caught on the chain? Did it rip it?"
 - Bill: "It could be something blunt like that, that just cuts in a rips. The fact that it isn't sharp matches this wound. It just grabbed the flesh, and as he fell downward, it was caught on that blunt hook. That would definitely cause that kind of jagged tear, instead of a clean slice. It's not inconsistent with that c-hook."
 - ✓ NOTE: Bill completely flips after seeing the photos.
 - ✓ PHOTOS ESTABLISH CAUSATION, TAKEN TOGETHER

- The other jurors agree with Bill.
 - The moderator displays the demonstrative depicting the wound next to the open carabiner and asks the jurors for their thoughts.
 - Shari: “You can see the circle on the piece of skin right there. . . That’s the part where he got stuck.”
 - ✓ NOTE: Just like the last FG, the jurors see the red circular indentation in the flap of skin, which is consistent with the open carabiner.
 - Bill: “Yeah, the puncture.”
 - Victor doesn’t agree with the rest of the jurors, and he says he doesn’t see the consistency.
 - Bill: “There was a small round impression in the skin that looked like a screw head. If it is the same size as the round part of the carabiner, that is something the jury would find compelling I would think.” (JCGOF)
 - Megan asks if it is necessary to prove ██████ was injured on the chain, because he clearly got hurt at the park. She says “who cares, he obviously got hurt.”
 - ✓ Key Belief = Property Owner Responsible for Invitee’s Injuries
 - The moderator explains the notice issue, and that the defendant wouldn’t be responsible for a log floating in the water that they had no notice of.
 - Victor says the chain could have eroded over time as well. (Head Fake)
 - ✓ NOTE: Former life insurance worker, millennial, analytical thinker. . .
- 28:36 – 31:21
 - The moderator says that ██████ safety experts say that this event would have been prevented if the plastic sheath was over the chain.
 - Jane: “Right.”
 - Other jurors agree.
 - Bill says the water was at least 8 feet deep, since there were two 4-foot chains, and that is important, because there aren’t many things ██████ could have cut his foot on, unless there are 3-foot obstructions coming up from the bottom of the water. (Key Fact)
 - The moderator displays the *Liability Verdict #2* Word document and asks the jurors to respond with the written answers.⁸
 - 31:22 – 34:50
 - The moderator asks the jurors whether they think the liability case is stronger or weaker after seeing the photos of the chain and ██████ wound.
 - 9/11 jurors say the case is stronger.
 - 2/11 jurors disagree (i.e., Jane and Gabriel).
 - The moderator asks Jane and Gabriel why they think the photos don’t help the liability case.

⁸ See *Liability Verdict #2* at the end of this report.

- Jane says she would be nervous about trying to explain the physics of what happened underwater to jurors.
 - Gabriel says the injury “looks like it could be caused by a lot of things.” He says it is believable that the injury was caused by a chain, but it could just as easily have been caused by a rock or a log.
 - ✓ NOTE: SH millennial.
 - The moderator asks one of the other jurors to explain why they think the case is stronger with the photos.
 - Bill says the open carabiner is shaped like a fish hook, regardless of whether it is sharp. He says that if [REDACTED] foot was going down the chain, and then it came upon the open carabiner, it would rip his flesh like the top of a cereal box. (Analogy = Fish Hook)
 - Megan asks if anyone looked under the Lily Pad to discover if there was another possible cause.
 - The jurors ask if this was the chain that actually injured [REDACTED]
 - The moderator explains that this is one of the 5 Lily Pads, with its chain, that the camp had placed into storage.
- 34:51 – 40:00
 - The moderator explains that the jurors can assume 100% responsibility by the defendant for the rest of the discussion, which will be about [REDACTED] injuries. Then he begins describing [REDACTED] timeline of treatments. He shows the photo of [REDACTED] foot from the day after the event, 8/7/16, and asks the jurors for their thoughts.
 - Erin asks if [REDACTED] needed to take antibiotics.
 - Bill: “The round hole is still there.” (JCGOF for Causation)
 - Marlis: “That’s from the open part of the chain.”
 - Jane: “Yeah, now that makes more sense actually.”
 - ✓ NOTE: Now Jane is also convinced that the carabiner caused the round hole in [REDACTED] skin. **This day after photo is powerful**, because the perfectly round hole is clear and obvious.
 - Jane says it looks like the tear started with the round hole, and then the skin was ripped upward.
 - Other jurors agree.
 - Megan says the skin was just ripped over.
 - Bill says that a full-grown man falling would cause a tremendous amount of force, whereby his skin was grabbed by the blunt hook. He asks if the jurors are commenting on how [REDACTED] life will be affected.
 - The moderator confirms, and he asks Bill how he thinks [REDACTED] life will be affected.

- Bill says his wife had surgery on her foot for something minor, and it is causing her outrageous amounts of pain because the bone is involved. (Personal Bias)
- Erin asks if [REDACTED] Achilles tendon was involved.
- Bill asks if [REDACTED] bone was involved.
- Shari says [REDACTED] has nerve damage.
- John says [REDACTED] can't take pain medication, as he would like, because of his job. He says that isn't [REDACTED] fault, and all of this arose due to the park's negligence. (Key Fact)
- 40:01 – 45:00
 - The moderator explains that [REDACTED] began treating with a podiatrist, Dr. Perez, on 8/10/16, and he reads the "History of Present Illness" and "Assessment" sections from the doctor's report for this first visit.
 - Jane says [REDACTED] foot was dusky in color because it got infected.
 - Erin asks if antibiotics were prescribed.
 - Bill says there is necrotic tissue because the skin is dead, due to the wound, and that is serious business.
 - The moderator asks the jurors if they are familiar with skin grafting, as suggested by the podiatrist.
 - The jurors are familiar with this.
 - Bill says this is usually done for burns.
 - The moderator asks the jurors if they would expect Bill to have this skin grafting done.
 - Melanie asks if there is a high success rate, and whether it will improve the nerve damage.
 - Gabriel says there is no guarantee of success.
 - Bill asks if the grafting was recommended for appearance or pain.
 - The moderator says for pain.
 - Bill: "And he turned it down?" (N/A)
 - Melanie asks why [REDACTED] turned it down.
 - The moderator asks why he might have turned it down.
 - Melanie says because there wasn't a high success rate, and he would have substantial down time, which could affect his job. (Key Facts)
 - Erin says the doctor also recommended severing a nerve.
 - The moderator confirms and asks the jurors for their thoughts about that.
 - The jurors say that severing a nerve sounds "terrible" and "drastic." (Key Fact)
 - ✓ Framing Podiatrist: Radical
 - Jane says that [REDACTED] would be left without feeling in parts of his leg if he elected to do that.
 - John: "The cons would outweigh the pros."
- 45:01 – 47:15

- The moderator displays photos from 8/27/16 and 9/1/16 (i.e., 3-4 weeks after the event) and asks the jurors for their thoughts.
 - The jurors are shocked by these photos, and they react with disgust to the necrotic tissue shown.
 - ✓ NOTE: These are powerful photos depicting the progression of the infection.
 - Jane says the black tissue is dead skin that is going to fall off.
 - Bill says the skin flap died, and the doctor was forced to remove it.
 - The moderator asks the jurors how they would describe what they see.
 - The jurors say “gross,” “absolutely horrible,” and “painful.”
 - Victor says ██████ may need an amputation soon.
 - Bill says jagged cuts are difficult to heal.
- 47:16 – 51:17
 - The moderator explains that ██████ declined to have the skin graft surgeries, and he explains the reasoning behind that decision.
 - Jane says ██████ didn’t want to go through multiple painful surgeries, with no guarantee of success.
 - The moderator explains that ██████ had just started his job a few months before the event, and he asks the jurors if they think he could continue to do this work if he was off his feet for an extended period of time.
 - The jurors say there is no way ██████ could do his job while recovering from multiple surgeries. (Key Fact)
 - The moderator asks if it was reasonable for ██████ to decline the skin graft surgeries, because there were no guarantees of success and it would impact his ability to keep his job.
 - The jurors say this was perfectly reasonable.
 - Bill says he can understand ██████ declining a surgery if the doctor told him that it may or may not resolve his pain.
 - Jane says that if ██████ had the surgery[s] then he would risk his job, and he might still end up losing his foot. She says ██████ will never be normal now.
 - Shari asks if the defense is blaming ██████ for not having the surgery.
 - The moderator confirms that the defense does argue that ██████ failed to mitigate his damages by not having the surgery[s] that his doctor recommended.
 - 51:18 – 54:44
 - The moderator explains that ██████ is not bringing a claim for lost wages, because his job has remained stable throughout this. Then he shows photos from November of 2016 and January of 2017, depicting ██████ scarring, and asks the jurors for their thoughts.
 - The jurors say they “can still see the hole” in ██████ scar, because that area remained red.

- ✓ NOTE: In each photo, the jurors continue to find evidence that the open carabiner caused the initial impact, and then pulled the skin upward.
 - Victor says the podiatrist’s recommendations are null and void, based on this, because the wound healed.
 - The jurors say [REDACTED] did not make a full recovery, because he has nerve damage and pain while standing as a result.
 - Jane says she couldn’t imagine [REDACTED] wanting to re-open this wound in order to have a skin graft done, which could make his injury worse.
- 54:45 – 58:44
 - The moderator explains that [REDACTED] to this day, continues to have a drill-bit like pain in the area of this scar. He explains that the Podiatrist has a very different opinion about the cause of [REDACTED] ongoing nerve pain than both a Neurologist and a Plastic Surgeon that he has seen, and that these conflicting opinions are an issue for the jurors to discuss. Then he explains the Podiatrist’s opinion about the cause of [REDACTED] nerve pain and asks the jurors for their thoughts.
 - Erin: “That is possible, but there is no way to prove that.”
 - Bill shrugs his shoulders.
 - The moderator explains [REDACTED] Neurologist’s conclusions and asks the jurors for their thoughts.
 - The jurors say they credit the Neurologist’s opinion over the Podiatrist.
 - Jane says that 2 doctors say the nerve damage occurred at the time of the event, while 1 doctor says it occurred later, so she would go with the majority.
 - The moderator asks if the Podiatrist or the Neurologist would be more of an expert on nerve pain.
 - The jurors all say the Neurologist would be the expert.
 - ✓ Framing Experts: Neurologist = Nerve Pain; Podiatrist = Feet
 - Bill: “The first photos we saw showed an injury that was so violent and so quick that I don’t think any reasonable person would have a problem believing that the nerve damage happened right then.”
 - ✓ **NOTE: In addition to proving causation for the event, the powerful photos also assist with defeating the Podiatrist’s opinion regarding causation for the nerve pain (i.e., that the nerve damage occurred at the time of the impact, and not later due to scar formation).**
 - The moderator explains the conflicting opinions between the doctors with respect to severing the sural nerve, and then he asks the jurors for their thoughts.
 - Erin says the Neurologist should be speaking on these issues.
 - Jane says she agrees with [REDACTED] decision. She says she has heard of phantom pain, and there would be no sense in doing something that wouldn’t improve the pain.
- 58:45 – 1:01:57

- The moderator explains that the Neurologist diagnosed [REDACTED] with RSD, or CRPS, and he asks the jurors if they have ever heard of this condition.
 - None of the jurors are familiar with RSD/CRPS.
 - The moderator explains that RSD/CRPS is a chronic nerve pain condition, and he says [REDACTED] has a constant drill-bit like pain in the area of his scar as a result. He says there is really no effective treatment for this condition, other than pain medication, including narcotics, which [REDACTED] cannot take.
 - Jane: “That sucks for [REDACTED]”
 - John says [REDACTED] would need to leave his profession altogether, if he were to take stronger pain medication, and there would still be no guarantees.
 - Jane says [REDACTED] could become addicted to narcotics in the future.
 - The moderator says that [REDACTED] takes Neurontin for nerve pain. He says the Neurologist says [REDACTED] may need trigger point injections and/or much more significant pain management in the future. He shows the recent photo of [REDACTED] foot, taken on the day of the focus group, and asks the jurors for their thoughts.
 - Megan: “Wow, that still looks fresh.”
 - Jane agrees.
 - The jurors say they are able to see the discoloration.
 - The moderator says that the bluish color and the cool temperature of the skin are indicative of RSD.
- 1:01:58 – 1:05:22
 - The moderator asks the jurors how they would expect [REDACTED] ability to take part in activities will be affected in the future.
 - Megan says anything that involves standing on his feet will be affected. She says bike riding and walking will be a problem, and he could have pain and work if he is on his feet a lot.
 - Jane: “Everything. Just living. . . Even just sitting down. He said it hurts all the time. He even has trouble sleeping. . . The pain is never ending. . . Not just sports. [He] can’t live his life.”
 - Megan says [REDACTED] can’t run around and participate in activities with his kids like he would have. (Key Fact)
 - The moderator asks the jurors what they think the impacts will be on [REDACTED] family, including Connor, 12, and Kylie, 10.
 - Megan says he will be less able to run around with the kids.
 - Marlis says family vacations, yard work, and other home improvements will be an issue now.
 - Melanie: “That can lead to depression too.”
 - John: “His quality of life has diminished in all respects.”
 - Marlis: “It sounds like a living hell.”

- Jane says that [REDACTED] can't even enjoy a simple walk around the block to get some fresh air. She says that simply walking to the car is a painful activity, and [REDACTED] will always think about that. (Framing [REDACTED] Lack of Mobility/Isolation)
- 1:05:23 – 1:06:14
 - The moderator asks the jurors what they would think if [REDACTED] back is now starting to bother him.
 - The jurors say this could absolutely be related to his foot.
 - ✓ NOTE: [REDACTED] back pain is not overreaching.
 - Allison says it makes sense that [REDACTED] is putting stress on his hips and his lower back, because he is trying to keep weight off his foot. (Key Fact)
 - Shari says this will lead to future back and hip complications.
 - Other jurors agree.
 - The moderator asks the jurors if they would want to hear about [REDACTED] back problems.
 - The jurors say “absolutely.”
- 1:06:15 – 1:08:27
 - The moderator asks the jurors how they think [REDACTED] would be affected emotionally, if at all.
 - Melanie says [REDACTED] may be depressed, because he was very active before, and that part of his life has been taken away. She says [REDACTED] would be depressed that he can't do things with his kids or keep up his house.
 - Megan: “I think it will affect everyone in the house. If he is feeling depressed or angry and can't do certain stuff with the kids, then they are going to feel upset or resentment.” (Framing [REDACTED] Family)
 - Bill says he would be worried about overreaching by focusing on the emotional impacts, because “the photographs are grisly.” He says the case should be more about [REDACTED] physical limitations and his physical pain.
 - ✓ NOTE: Non-emotional juror, with one of the lower pain and suffering awards, doesn't want to hear about the emotional harm.
 - The moderator reiterates the defense's damages arguments (i.e., [REDACTED] is able to work and do everything he was able to do before, and he chose not to have the skin graft surgeries).
 - The jurors understand both sides' arguments.
- 1:08:28 – 1:18:36
 - The moderator displays the *Damages Verdict* Word document and provides instructions. Then the jurors provide their written responses.⁹
 - Shari: “I have no idea. This is a life time thing for pain and suffering. I don't know. A couple million.”

⁹ See the *Damages Verdict* sheet at the end of this report.

- John: “\$5M - \$10M.”
- Marlis: “I said \$1M.”
- Megan: “I put \$5M.”
- Bill: “I guess I’m the cheap guy. I said \$250K-\$500K. Pain is a subjective thing. I don’t doubt that he has it. But I have no idea of the intensity. . . . When you have to take somebody’s word for it, I’m less likely to give \$5M. I guess I’m suspicious. I’m a suspicious person when it comes to lawsuits.” (Key Belief = Tort Reform)
 - ✓ NOTE: See also Bill’s Written Responses, where he implies that [REDACTED] lawyer could have fed him the fact that the chain caused his injury.
- John: “With pain and suffering, can your number also include wanting to prevent future instances of non-compliance such as this?” (Key Belief = Large Award Can Lead to Deterrence)
- The moderator asks John to explain his thought process.
- John: “To prevent incidents like these . . . in the future. Something as simple as covering the chain. To prevent other parks from being negligent. Setting an example sort of thing.”
 - ✓ NOTE: John has a perfect Reptile response, whereby he hopes to prevent future harm by setting an example for the entire waterpark industry.
- The moderator asks the other jurors if they think that their award in this case could have an impact on the decisions of this water park, and other parks, in the future.
- Some other jurors agree with John’s standpoint.
- Victor begins discussing insurance, and the moderator tells the jurors that they won’t be discussing insurance at all.
- Erin: “\$1.8M.”
- Allison: “Probably around \$250K-\$500K. . . . To some extent, emotional suffering is life. . . . We all get dealt things we don’t deserve.” (Key Belief = Compassion Fatigue) (Millennial)
- Bill: “He chose his job and the pain, instead of losing his job and the possibility of not feeling as much pain.” (Head Fake) (N/A)
 - ✓ NOTE: Now Bill is reaching, in order to support his Key Belief and keep the value down.
- Shari says the lawyers will get 1/3.
- Melanie: “I put \$1M, but I had a really hard time putting a number on it, because it is a lifetime injury, and it is probably never going to get better. I don’t know. Maybe I’d put \$5M.”
- John: “He’s a relatively young guy too.”
- Victor says he would award \$3.5M-\$3.8M, based on [REDACTED] age, time until retirement, and inflation.

- Jane: “I would second that. I put \$2M-\$5M, because the impact is fairly serious. Also, he is doing the best he can. He is still showing up for his family, under tremendous pain. He is still trying to live his life and he deserves security.”
(Framing ██████ Fighter, Family-Oriented)
- Gabriel: “I put down \$1M, but I’m kind of leaning toward the \$5M range now after hearing what everyone says.”
 - ✓ NOTE: Both Melanie and Gabriel were willing to shift from \$1M to \$5M after listening to the other jurors.

Opening Responses

After hearing the opening statement, the moderator asked the jurors the following questions:

- 1) What are 3 or 4 important takeaways from the opening statement that you just heard?*
- 2) What else would you like to know?*
- 3) Was there anything that you disliked about the opening statement? If so, what?*
- 4) Please provide any constructive feedback that you have for Jim (i.e., the reader of the opening). Did you like him? Was his presentation what you would expect from a lawyer? Why? Why Not?*

1) What are 3 or 4 important takeaways from the opening statement that you just heard?

Alison: 1) The severe detriment which the incident had on the normal functioning of [REDACTED] including the impediment the incident had on his athletic and active lifestyle; the lack of safety precautions taken by many actors within the company; the presence of a prior injury with the same cause; and the apparent lack of remorse by the company.

Bill: 1. A) Mgt. did not obtain installation instructions for equipment. B) Mgt. did not complete a full safety test on equipment after installation. C) Mgt. did not investigate the cause of first injury. D) Mgt. did not attempt to fix equipment after the first injury.

Erin: 1. Park didn't follow proper instructions when putting equipment together.
2. The company hasn't taken responsibility for the injury. [REDACTED] life has changed.

Gabriel: 1. Second hand equipment was bought without proper safety instructions. No one that was hired had safety training. Equipment hurt someone who went to get medical attention and nothing was reported to have changed. The equipment was quickly installed without the proper covers to prevent harm.

Jane: What stood out to me was negligence of safety, that was really clear. The extent of the injuries. The irresponsible hire of non-professional staff. Also, the ignored incident. These 4 things stood out clearly.

John: The park's negligence in failing to follow installation instructions is bad enough, but the fact that they did not close access to the park to other customers or fix the problem after the injury to [REDACTED] occurred speaks volumes of the park's lack of disregard for the safety and well-being of its customers. This simply rises to reckless conduct/behavior. Also, it's appalling that they would hire completely inexperienced people to perform these installations/manage the park.

Marlis: 1. The severity of the injury
2. The extreme negligence of the company

3. The pain and suffering
4. [REDACTED] practiced common sense

Megan: 1. Unqualified operations manager was employed; the injuries were due to non-compliance of safety installation; more than 1 injury was caused due to improper installation, after the 1st injury occurred; and equipment should have been looked at.

Melanie: 1. We learned what kind of a man [REDACTED] was before and after the injury, and the issues the injury has caused to him physically.

Shari: 1. There was a previous injury prior to [REDACTED]
2. No one, including the owners as well as the staff, had any water park experience.
3. Apparently, there is no mandated ACCT inspection to open a waterpark?

Victor: 1. Important takeaways:
a. Safety of consumers come first.
b. Staff and management must be qualified and trained as well as certified.
c. Appropriate regulations and oversight must always be in place.
d. Appropriate and immediate action must be taken at all times.

2) What else would you like to know?

Alison: I would like to know what the medical expenses [REDACTED] incurred were. I feel as though this would be a factor which is important in considering the influence of the incident on the well-being of both [REDACTED] and his family.

Bill: More about the events surrounding the injury itself. We heard lots of details about what happened before [REDACTED] was at the water park, and some details about his medical options/choices pain, but I think the story of exactly how he cut his foot, why he thinks it was the chain/connector that specifically cut his foot, events immediately after the injury, how he was treated by staff when he first was injured (if at all), etc. is missing. Was the chain immediately suspected of being the cause? *Or did this suspicion come only after investigation by lawyers working for [REDACTED] or only after they learned that the chain had been blamed for the first injury?* (KEY BELIEF REVEALED)

Erin: I would like to know why the company is not backing up their information with “proof.” For example, saying [REDACTED] wasn’t following the “rules” but not offering what rules they are talking about. I would like to know if Brownstone offered to pay his medical bills.

Gabriel: Were the covers available and accessible during the purchase? Was there a reason the initial incident wasn’t reported properly so it could be fixed? Why weren’t the covers also purchased with the lily pads or purchased at a later date?

Jane: I am curious if there is a law that calls for safety confirmation and final approval by another professional assigned by superior party to make sure equipment installed is safe for the public?

- John:** I'd like to know what the defense claims caused [REDACTED] injury because it was obvious the injury happened in the water park while [REDACTED] was there and nothing suggests [REDACTED] perhaps acted negligent in some way. Also, I'd like to know if the state/local government requires any permits/inspections prior to a water park being able to open to public access.
- Marlis:** I would like to know how the company installed the other equipment at the park and how they viewed the safety or customers (i.e. other measures they took for other aspects of the park).
- Megan:** Emotionally (not being able to do activities with his children like he was able to prior to the injury) how the injury has gotten in the way of his dream job. We learned that this injury has changed his life completely, all because of the negligence of the water park for not complying with safety measures.
- Melanie:** I would like to know more about the mental challenges that this injury has most likely caused him. Especially for someone who was so active prior, was an athlete, etc. I want to know why the water park had not taken proper safety measures even AFTER they knew what could happen.
- Shari:** Why is there no formal inspection of equipment before opening of the waterpark?
- Victor:** I would also like to know:
- What role did the First brother play in establishing the waterpark and further management?
 - Should the company who sold the equipment without instructions also be held responsible?
 - How much of total sum is the plaintiff suing the Waterpark for?
 - How has this injury effected the plaintiff in his ability to lead and live his life in the future?

3) Was there anything that you disliked about the opening statement? If so, what?

- Alison:** I disliked the presentation of the facts as "chapters." It made me feel disconnected from the story at times.
- Bill:** I feel that the statement was longer than it needs to be, there was repetition of phrases, and the story was structured incorrectly. I think we should hear about [REDACTED] as a person first, then injury, then the story of the used equipment/bad management, etc.
- Erin:** I liked the clarity and format of the opening statement. There wasn't anything about the words he used that I didn't like.
- Gabriel:** I felt like it took too long to get to the point, and I feel like the way it was structured was a bit difficult to follow until the end.
- Jane:** I didn't enjoy the jury flattery in the beginning. I didn't expect it, perhaps it's a personal thing with me but I want to add that with the progression of the story I looked back on it

as a form of a soft opening due to the very serious case and trauma of an individual. It was fitting after the fact hearing the rest of the presentation.

John: I didn't dislike anything in particular about the opening statement. Although, I think the attorney could have showed a bit more energy/passion in really showing how reckless the park was.

Marlis: No. I felt the opening statement was thorough and well presented. I found the organization (the chapters) particularly helpful.

Megan: Opening statement was informative. It gave a lot of important facts

Melanie: I thought Jim did a good job with the opening statement He seemed to really emphasize [REDACTED] life prior to the injury.

Shari: No.

Victor: I was indifferent to the opening statement. There were clear points and it seemed to be true although holding a prevailing bias.

4) Please provide any constructive feedback that you have for Jim (i.e., the reader of the opening). Did you like him? Was his presentation what you would expect from a lawyer? Why? Why Not?

Alison: I enjoyed his description and the thoroughness he used to develop his defense (such as the extent they went to show that the expectations of behavior were universal expectations and therefore there is no excuse not to follow). I disliked his levelness. While it is a positive attribute to be matter-of-fact, the emotional draw to [REDACTED] story was only from the circumstance, and not so much from the delivery which could add great affect.

Bill: Covered that in #3, but in general, less repetition, more focus on the injury and why you think it was caused by the chain.

Erin: I liked how calm Jim was and that he presented slowly and clearly. He seemed to lack inflexion and was monotone in his voice which, to me, came across as him being bored and a little uninterested.

Gabriel: Be less monotone in your speech, and be more direct with what you're talking about in the beginning. I didn't care for his presentation because it was too monotone and it felt dragged out.

Jane: The technical explanation about the chain in the opening in the beginning was confusing but later became more clear when Jim used hand gestures. I'm sure Jim would be more animated and more emotionally engaged with the text when reading to a real jury, but if I were to say anything it would be to be more engaged and more dramatically paced.

John: Jim could show a bit more passion/energy. His presentation was good but I felt he just was not forceful enough. Perhaps it was the online setting of this?

Marlis: Yes, this was exactly what I would expect from a lawyer. I felt the lawyer was passionate about justice, honest, and logical. Everything seemed clear.

Megan: Jim was calm, good demeanor, spoke clear.

Melanie: I liked Jim. I thought he came off very straight to the point and was unbiased and just stated the facts. It seems like he really wanted the court to know about [REDACTED] prior to the injury and how it has affected his life negatively since. I am wondering for what reason did [REDACTED] decline the surgeries other than it would interrupt working his dream job. Did the doctor say there was a chance they would not repair nerve damage? Was there a low recovery rate of some sort? I'm just trying to understand why he declined them although I feel the water park 100% deserves to be held accountable and sued.

Shari: I thought he gave a good presentation. I liked him. Presentation is what I would expect.

Victor: Jim was a great and clear presenter. He was indifferent and seemed to be in proper alignment to serve his role.

Liability Verdict #1

The moderator showed the jurors a liability verdict sheet and asked them to answer the following questions:

- 1) Was Brownstone negligent?
- 2) If you answered Yes to Question 1, then was Brownstone's negligence a substantial factor (i.e., not slight or trivial) in causing [REDACTED] injury?
- 3) On a scale of 1-5, with 1 being the weakest and 5 being the strongest, how strong would you say the liability case against Brownstone is?
- 4) Does [REDACTED] hold any responsibility for his own injury?
- 5) Did [REDACTED] assume the risk of his injury occurring?

Juror	Was Brownstone negligent?	Was Brownstone's negligence a substantial factor?	How strong is liability case against Brownstone? (1-5)	Does [REDACTED] hold responsibility for his injury?	Did [REDACTED] assume the risk of his injury?
Alison	Yes	Yes	4	No	No
Bill	No	----	3	Yes	Yes
Erin	Yes	Yes	4	Yes	No
Gabriel	Yes	Yes	4	No	No
Jane	Yes	Yes	5	No	No
John	Yes	Yes	5	No	No
Marlis	Yes	Yes	5	No	No
Megan	Yes	Yes	5	No	No
Melanie	Yes	Yes	5	No	Yes
Shari	Yes	Yes	5	No	No
Victor	Yes	Yes	3.5	No	Yes

Liability Verdict #2

The moderator showed the jurors a liability verdict sheet and asked them to answer the following questions:

- 1) Was Brownstone negligent?
- 2) If you answered Yes to Question 1, then was Brownstone's negligence a substantial factor (i.e., not slight or trivial) in causing [REDACTED] injury?
- 3) On a scale of 1-5, with 1 being the weakest and 5 being the strongest, how strong would you say the liability case against Brownstone is?
- 4) Are the photos helpful in determining whether Brownstone was negligent?
- 5) Does [REDACTED] hold any responsibility for his own injury?
- 6) Did [REDACTED] assume the risk of his injury occurring?

Juror	Was Brownstone negligent?	Was Brownstone's negligence a substantial factor?	How strong is liability case against Brownstone? (1-5)	Are the Photos helpful in determining negligence?	Does [REDACTED] hold responsibility for his injury?	Did [REDACTED] assume the risk of his injury?
Alison	Yes	Yes	5	Yes	No	No
Bill	Yes	Yes	4	Yes	Yes	No
Erin	Yes	Yes	4	Yes	No	----
Gabriel	Yes	Yes	4	Yes	No	No
Jane	Yes	Yes	5	Yes	No	No
John	Yes	Yes	5	Yes	No	No
Marlis	Yes	Yes	5	No	No	----
Megan	Yes	Yes	5	Yes	No	----
Melanie	----	----	----	----	----	----
Shari	Yes	Yes	5	Yes	No	No
Victor	Yes	Yes	4	Yes	No	No

Damages Verdict

The moderator gave the jurors a damages verdict sheet with the following questions:

1) How do you think [REDACTED] will be affected by his injury in the future? What limitations do you expect him to have, if any? What will some of the biggest impacts on his life be?

2) How much would you award [REDACTED] for his past, present and future pain and suffering resulting from this event?

1) How do you think [REDACTED] will be affected by his injury in the future? What limitations do you expect him to have, if any? What will some of the biggest impacts on his life be?

Alison: I believe the injury will result in serious deficit in emotional functioning. Specifically, major depressive disorder which can be attributed to a decreased quality of life and limitations of activities which he previously thrived on. Additionally, there is the risk of back, hip, and knee issues on his right side due to the decreased function of his left side and his active attempts to decrease his use of the injured foot.

Bill: All activities come with pain. Trouble sleeping.

Erin: His continued discomfort and lack of mobility.

Gabriel: I think [REDACTED] will be limited in his mobility greatly and will be resigned to a chair to a large degree.

Jane: The biggest impact [REDACTED] will have is the emotional aspect of living with constant pain, being limited in his prior activities, and the inability to sleep w/o medication. As well as depression and anxiety from his now changed body, and impacted relationships

John: He will be very affected in both his professional life and quality of life due to his inability to do what he was previously able to do. His limitations will be primarily due to lack of movement and his ability to be active. Also, future potential complications may arise as to other body parts being put under more stress and health issues related to medications.

Marlis: His entire life will change. He has lost his identity, since all that he enjoyed or participated in is no longer an option for him to engage in. Or, if he does engage in these activities, he can no longer enjoy them because of the tremendous pain he experiences. His life has become a living hell.

Megan: I think [REDACTED] will be limited with all physical activities- work, home life, and rec. activities. All aspects of life usually include some sort of walking and using your feet. [REDACTED] has children and will not be able to participate in many activities.

Melanie: I think [REDACTED] will be affected in many ways in the future. He won't be able to do simple things on his feet without pain. Walking, bike riding, and sports will all be issues for him in the future. This will lead to both physical and emotional issues. It can lead to depression also for someone who was once so active and now can no longer do things.

Shari: Biggest impact on [REDACTED] is the possibility of other injuries because of the foot pain as well as future arthritis and depression.

Victor: The biggest impact on [REDACTED] life will include PTSD. Lowered quality of life. Emotional and physical limitations. Over all, a faster decline in overall physical and mental health through time decay.

2) How much would you award [REDACTED] for his past, present and future pain and suffering resulting from this event?

Juror	Amount (\$)	Explanation
Alison	\$150K	
Bill	\$250K - 500K	
Erin	\$1.8M	
Gabriel	\$1M	
Jane	\$3-5M	\$3-5 million should be reasonable for emotional impact. He's doing the best that he can to remain vigilant for his family and showing up to his job, and still trying to remain active with his sports. He deserves security
John	\$5-10M	
Marlis	\$1M+	\$1 million (may change that to \$2 million, after considering the ongoing pain that may last for decades.) He does deserve compensation, but life is what you make of it. More money would not necessarily improve his life. Also, he is still able to work, so he does not have any loss of wages to consider.
Megan	\$5M	
Melanie	\$1M	Since this is for life, I would say it is hard to be able to put a number on this but I would say \$1 million because this is a lifetime injury.
Shari	\$2M+	I think [REDACTED] should be awarded at least \$2 million dollars as he is still young and has a long time to go until his retirement.
Victor	\$3.5M	Award amount is unknown, although for pain and suffering all medical costs, plus present and future physical and other therapies as well as a living modified age payment.

Photos Displayed

1.



2.



3.



4.



5.



6.



7.



8.



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10.



11.



12.



13.

