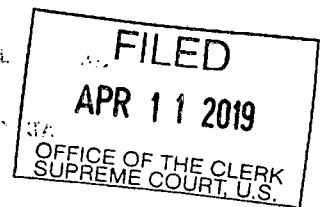

Michael DePietro
363 Jackson Mills Road
Freehold, NJ 07728
732-462-1455



MICHAEL DEPIETRO, Pro Se,

SUPREME COURT OF THE UNITED STATES

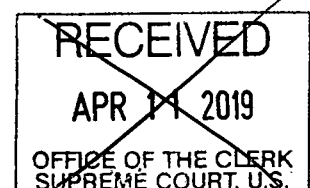
Docket No. 18-6700

NOTICE OF MOTION FOR OUT OF TIME

PLEASE TAKE NOTICE, that the undersigned hereby moves before the Supreme Court of the United States for a motion for out of time. This case has been happening for over nine and a half years and recently it has caused me multiple medical issues. For the past five months, the Veterans Affairs have been overseeing my health because of my condition. I have my appointment sheet from the VA to show that I have been visiting physicians for treatment. One of my appointments is to visit a plastic surgeon to reduce the numbness in my left hand. I have also had abdominal pains and have been seeing my primary care physician. Since the last case ended, I have been dealing with multiple medical issues that I mentioned above so I missed the reconsideration process. I have found other evidence to bring to the attention of the court. After 83 years that I have been in this system, I was under the impression that this was the best system in the world. What happened to me was like something you would expect from a foreign country, not from the best country in the world. I believe that I did not get a fair trial and it was politically motivated.


Michael DePietro

April 5, 2019



Michael DePietro
363 Jackson Mills Road
Freehold, NJ 07728
732-462-1455

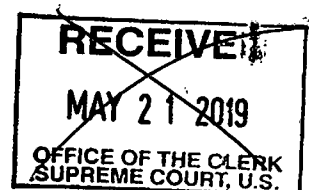
SUPREME COURT OF THE UNITED STATES

No. 18-6700

NOTICE OF MOTION FOR OUT OF
TIME AND RECONSIDERATION

Dear Scott S. Harris,

On April 5th, 2019 I had wrote to you a motion for out of time. You had sent me a letter on April 11, 2019 stating that I have to put the motion for out of time and the reconsideration together. My reason for reconsideration starts at September 19, 2014 when I had won my first case with six jurors and one alternate. I was 25% liable and they were 75% liable for the accident, which made me win the case. At that time, the judge told me to notify the insurance company and settle. I did get in touch with the insurance company and asked them what they would offer me for the case. They said that they couldn't tell me. Two weeks later, I received a notice from the defense lawyer that he was putting in a motion to overturn the case and have a new trial. The first thing that I felt like they had done me wrong was that they didn't give me the opportunity to have oral arguments at the scheduled date that I appeared. The clerk had told me to go home and that they would put their decision on paper. I told them that I am here for oral arguments and that I want to discuss the arguments of this motion to have a new trial. I felt that I had a duty to protect myself and to argue the case for him to not have a new trial. The judge granted him a new trial and he says on the transcripts that Mr. DePietro did not request oral arguments. That is not true and I know the system doesn't like to hear me say that but I have no



other means to say how I feel about this whole case. It was stamped by the court on August 27, 2014 to have oral arguments. They denied me the opportunity to be in the chambers of the judge to argue this case.

Throughout the trial, I am forwarding the transcript papers to the court to show them the injustice of what they had done to me. I felt like I did not receive a fair opportunity to present my side of denying the defense councils motion. I am not a lawyer, but I know that this should not have happened. I was dealing with Allstate and they seem to lobby throughout the country to get their way. This was an opportunity for someone who had no knowledge about the court system. I had won the case and it shocked them. I won the case fair and truthfully with six jurors and one alternate. That means that if the system wants to change their verdict because someone like me won, it is easy to do that by putting in a motion to the judge for a new trial. So if I would have lost this case in the beginning, it would have been a lot easier on me and that I would not have had to pay \$60,000 through litigation for a period of almost ten years. It was the jury's decision that I won. This should not happen in America of what they had done to me. I know to have it reinstated it would be quite hard because the system had made up their mind. I served this country in the service with an honorable service record and as an outstanding soldier 63 years ago. If I would have known then what I know now, I would have been in jail because I would have never went into the service to protect this country because of what they did to me. Now I find that the new evidence of one of the jurors had told the court the questioning was too lengthy. Mr. Prindiville stated "it is too late now to start complaining". That is something that pertains to evidence that he should not have brought to the jury's attention because of my other accident that had nothing to do with this accident. Mr. Prindiville prejudiced the jury against me by saying that

I had an accident prior to this accident. He said that my injuries weren't caused by the slip and fall and not the accident. That is not true, because the slip and fall occurred two years prior to the auto accident.

Another reason I should have a new trial, is because of my lawyer. My lawyer didn't put into objection for what he was questioning me about. That is when I had to tell the judge I would like to have a mistrial. The judge told me it was too late and too costly to have a mistrial. How could I have justice and present my evidence to the court system when they denied everything I am saying. I did not get a fair trial and they did not want to hear that. Judge Kapalko was the judge in the last case for the new trial. The judge was very ill and he wasn't feeling up to par. I feel that the judge was too ill to hear my case. I feel that it was one of the last cases that he heard. He was a fine judge and he tried so hard to get everything right. But there was a lot of things that was happening and it did not go forward. He just waited for my attorney to object, which he didn't. I had to object and the judge said I was threatening the court. If that is the case, I do not want to be a part of this system with the way I was treated and that I did not get a fair trial. I know you don't like to hear this but how would you feel if you were in my position? It would be a different issue. Mr. Prindiville made it seem throughout the trial that I wasn't focused. That is totally wrong. I didn't spend all these years not to be focused to reach this point. The jury heard that I am a man of 83 years old and that I let the system know that I am very focused. I definitely did not get a fair trial and my attorney did not present me into this trial which I told Judge Kapalko that I did not want my attorney to present me any longer. That issue was not addressed. We went on with the case. The jury heard all the questions that I gave to the judge and the judge dismissed them for a short period of time. One of the jurors, in the transcripts that I am sending to the system,

would indicate how they felt. They had no choice in the close decision to deny me a new trial. Judge O'Brien had put in his order for a new trial and that was it. He had no opinion of why he granted a new trial. I hope the justice would take the time to review my reconsideration because it would mean so much to me. I am not one to have cases that Mr. Prindiville brought to the jury's attention to make them think that I sue companies to satisfy my needs. That is totally wrong. The auto accident left me with permanent injuries that have left me disabled. I worked all of my life and I am still trying to do things with my one arm. I never got anything that I didn't deserve. The slip and fall was not my fault just like the auto accident was not my fault. It just happened within a period of two years and Mr. Prindiville made it seem like I brought it to the court system for me to satisfy my needs. That is totally wrong. I would like to have the justice to make the decision favoring the evidence that I brought to them. How the court system conducted themselves in the lower court and the appellate court had their opinions that the jury didn't assess the first case correctly, that is why the case was overturned. The jury was part of the system and I was under the impression that this system was the best in the country. For them to overturn the jury and said that they made a mistake with judging the case, that was on the biggest things throughout my life that I heard was something else.

5/11/19

Michael D. Petru

APPOINTMENTS FOR: DE PIETRO, MICHAEL L

***-**-5549 PRINTED: 3/5/2019@11:42

PC Prov: ADLER, KARINA

Team: OCC PACT PINK

Nov 13, 2018	3:00 PM (30 MINUTES)	EAS PLASTIC SURGERY 3	BLDG 1, RM# A-215 (R
Nov 20, 2018	10:00 AM (30 MINUTES)	EAS PLASTIC SURGERY 3	BLDG 1, RM# A-215 (R
Nov 29, 2018	2:15 PM (60 MINUTES)	OCC/RMS/PT CORTEZ	BRICK
Dec 03, 2018	10:00 AM (20 MINUTES)	OCC/LAB	BRICK
Dec 10, 2018	2:00 PM (30 MINUTES)	OCC PACT PINK	JAMES
Dec 17, 2018	2:40 PM (15 MINUTES)	COMMUNITY CARE-DERMATOLOGY -X COMMUNITY CONS	
Dec 18, 2018	1:00 PM (30 MINUTES)	EAS PLASTIC SURGERY 3	BLDG 1, RM# A-215 (R
Dec 26, 2018	3:00 PM (30 MINUTES)	OCC PODIATRY	BRICK
Jan 15, 2019	1:00 PM (60 MINUTES)	OCC DENTAL 2	BRICK
Jan 29, 2019	1:30 PM (30 MINUTES)	EAS PLASTIC SURGERY 3	BLDG 1, RM# A-215 (R
*** CANCELLED BY HUNTLEY, JENNIFER R ***			
Feb 01, 2019	12:30 PM (30 MINUTES)	OCC/ALLERGY	BRICK
Feb 05, 2019	11:00 AM (60 MINUTES)	EAS DENTAL 5	BLDG 1, 3RD FL, #3-1
Feb 07, 2019	2:30 PM (30 MINUTES)	OCC CVT TELEPRIMARY CARE PAT B	BRICK
Feb 07, 2019	2:35 PM (30 MINUTES)	MOR CVT TELE PRIM CARE PROV B MORRIS	CBOC
Feb 19, 2019	2:30 PM (30 MINUTES)	EAS PLASTIC SURGERY 3	BLDG 1, RM# A-215 (R
Feb 21, 2019	2:00 PM (30 MINUTES)	OCC CVT TELEPRIMARY CARE PAT B	BRICK
Feb 21, 2019	2:05 PM (30 MINUTES)	MOR CVT TELE PRIM CARE PROV B MORRIS	CBOC
Feb 22, 2019	11:00 AM (60 MINUTES)	EAS DENTAL ORAL SURGERY 1	BLDG 1, 3RD FL, #3-
Mar 05, 2019	10:30 AM (90 MINUTES)	EAS DENTAL 5	BLDG 1, 3RD FL, #3-1

DATE	CLINIC	STATUS
MAR 07, 2019@14:30	OCC CVT TELEPRIMARY CARE PA...	FUTURE
MAR 07, 2019@14:35	MOR CVT TELE PRIM CARE PROV...	FUTURE
MAR 08, 2019@10:00	EAS PAIN PHYSIATRY	FUTURE
MAR 28, 2019@14:30	EAS DENTAL 5	FUTURE
APR 26, 2019@14:00	OCC PODIATRY	FUTURE
MAY 31, 2019@12:30	OCC/ALLERGY	FUTURE
JUN 06, 2019@10:00	OCC/LAB	NON-COUNT
JUN 13, 2019@12:30	OCC PACT PINK	CANCELLED BY CLINIC
JUN 13, 2019@13:30	OCC PACT PINK	FUTURE
JUN 20, 2019@11:00	OCC/OPTOMETRY	FUTURE



DEPARTMENT OF VETERANS AFFAIRS
VA NEW JERSEY HEALTH CARE SYSTEM
IMAGING SERVICE

Date: 3/22/19

Dear: DE PIETRO, MICHAEL

Please find below information regarding your appointment/s:

Date: 3/29/19

Time: 2:30

Location: 1ST FLOOR ROOM#203

Exam Type: CT SCAN

IMPORTANT INSTRUCTIONS TO PREPARE FOR YOUR STUDY

☒ IF THIS BOX IS CHECKED, YOU MUST FAST BEFORE THE EXAM. THAT MEANS NO SOLID FOOD OR DRINKS (EXCEPT FOR A SMALL AMOUNT OF WATER) FOR AT LEAST 8 HOURS BEFORE YOUR SCHEDULED APPOINTMENT

☐ IF THIS BOX IS CHECKED, YOU MUST DRINK AT LEAST 3-4 GLASSES OF WATER PRIOR TO YOUR SCHEDULED APPOINTMENT AND NOT URINATE. YOU WILL NEED A FULL BLADDER FOR THIS EXAM.

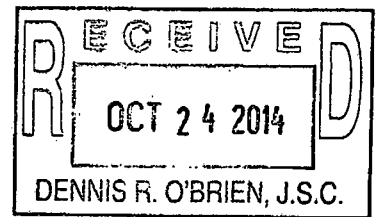
☐ IF THIS BOX IS CHECKED YOU MUST GET BLOOD WORK DONE AT LEAST 2 DAYS BEFORE YOUR SCHEDULED APPOINTMENT.

Please arrive at least 15 minutes prior to your scheduled appointment to allow for registration and any preparation that might be required. If you need to change this appointment, please contact us at 973-676-1000 ext. 1674 between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday; otherwise we expect to see you at the date and time specified.

NOTE: Only patients are allowed in the procedure areas. Children under the age of 18 are not permitted and cannot be left unattended in the Radiology/Nuclear Medicine waiting area. Please plan accordingly.

Scheduling Section
Department of Radiology/Imaging Service
VA New Jersey Health Care System
Location: E Orange, 1st floor, Rm 1-207

L3089-11



The questions I was going to ask on the motion

YOUR HONOR JUDGE O' BRIAN,

DePietro ✓ Werker

OBVIOUSLY, I DISAGREE WITH WHAT MR. PRINDIVILE SAYS OCCURRED DURING THE TRIAL. I READ THE CASES MR. PRINDIVILLE HAS IN HIS PAPERS. TRUE, THEY DO SAY THAT A NEW TRIAL MUST BE GRANTED IF THERE IS A "MISCARRIAGE OF JUSTICE."

1) THE JUDGE WHO PRESIDED OVER THE TRIAL (THAT WAS YOU, JUDGE) WAS ABLE TO VIEW AND ASSESS THE CREDIBILITY OF ALL THE WITNESSES INCLUDING MOST IMPORTANTLY, THE DEMEANOR OF THE JURORS.

2) ANYTHING I MAY HAVE SAID THAT MAY HAVE INFLUENCED THE JURY CLEARLY DID NOT. IF I DID SAY ANYTHING WRONG AND IF THE JURY VIEWED ME AS AN OLD MAN AGAINST A GIANT OR FELT SORRY FOR ME AS MR. PRINDIVILLE SAYS, THEN WHY DID THEY COME BACK OUT TO ASK QUESTIONS AND ALSO ASK TO LOOK AT THE PICTURES, AGAIN? BY THE JURORS DOING THIS, IT CLEARLY SHOWS THEY TOOK THEIR DELIBERATION VERY SERIOUSLY AND CONSIDERED THE EVIDENCE INCLUDING THE TESTIMONY, CREDIBILITY, AND DEMEANOR OF EACH WITNESS BOTH ON DIRECT AND CROSS-EXAMINATION, JUST AS YOU HAD DONE, YOUR HONOR.

3) I DID NOT HAVE A CHANCE TO ARGUE THE MOTION WHICH MYSELF AND THE DEFENDENTS LAWYER REQUESTED ALL ARGUMENTS WHICH HE DENIED AND HE PUT IT ON PAPER. THE REPORT WAS NOT GIVEN ON THIS MOTION OR VIDEO ON HIS FINDINGS. I HAD OTHER CASE LAW TO SHOW HIM BECAUSE HE PUT IT ON PAPER AND I DIDN'T HAVE THE CHANCE TO SHOW HIM, AND I THINK THAT WAS TOTALLY WRONG. I HAD NO CHANCE IN EXPRESSING MY ARGUMENT TO THE COURT. HOW DID HE COME TO HIS CONCLUSION BY GRANTING THE DEFENDANT A NEW TRIAL? NOW I'VE DONE ALRIGHT FOR FIVE YEARS ON MY OWN AND NOW HE'S FORCING ME TO GET AN ATTORNEY, WHICH I HAD THE JURY

C

DECIDED IN MY FAVOR. WHAT I AM SAYING IS THAT YOU, JUDGE, WERE ABLE TO SEE AND HEAR EVERYTHING ABOUT THE TRIAL AND GET A "FEEL" FOR WHAT WAS GOING ON DURING THE TRIAL. THE FACT YOU SAT AND HEADED OVER THE TRIAL JUDGE IS IMPORTANT AND EVEN THE CASES MR. PRINDIVILLE LISTS IN HIS MOTION PAPERS SAY THIS.

OF IMPORTANCE, TOO, JUDGE, IS THAT I READ ONE OF THPSE CASES FROM THE NJ SUPREME COURT WHERE IT SAYS: THE JUDGE DECIDING THE MOTION FOR A NEW TRIAL TRIAL MUST DECIDE IN A LIGHT MOST FAVORABLE TO THE PREVAILING PARTY; THAT WAS ME JUDGE, BECAUSE THE JURY FOUND ME 25% LIABLE FOR THE ACCIDENT. THAT IS THEY FOUND MR. PRINDIVILLE'S CLIENT 75% LIABLE FOR THE ACCIDENT.

4) I DO NOT BELIEVE MR. PRINDIVILLE MADE HIS DEFENSE DURING THE TRIAL OR NOW, IN HIS MOTION AND ARGUMENT FOR A NEW TRIAL. I CLEARLY MADE MY CASE AND THE JURY SAW THIS. I COULD NOT HAVE SAID ANYTHING SO DAMAGING AS TO CREATE MISCARRIAGE OF JUSTICE.

5) IF MR. PRINDIVILLE THINKS I WAS SO BAD DURING THE FIRST TRIAL AND INFLUENCED THE JURY SO MUCH BY WHAT I SAID OR DIDN'T SAY, WHAT MAKES HIM THINK IT WONT HAPPEN AGAIN? I AM A PRO-SE LITIGANT JUDGE. I WAS ABLE TO MAKE MY CASE BEFORE SIX JURORS AND ONE ALTERNATE JUROR. BESIDES, HOW CAN MR. PRINDIVILLE OR ANYONE, AND WITH DUE RESPECT, INCLUDING YOU, YOUR HONOR, REMEMBER EXACTLY WHAT WAS SAID BY ME OR ANYONE DURING THE TRIAL? MR. PRINDIVILLE EXPECTS TO WIN THIS MOTION BY SAYING WHAT HE REMEMBERS OCCURRED OR WHAT I SUPPOSEDLY SAID AND EXPECTS THIS COURT, WITHOUT ANYTHING ELSE, TO GRANT HIS MOTION FOR A NEW TRIAL.

6) MR. PRINDIVILLE SHOULD NOT HAVE ANOTHER BITE AT THE APPLE. HE ALREADY HAS BIT AND HE TOOK MORE THAN HE COULD CHEW THE FIRST TIME AROUND. TO ALLOW HIM

✓

ANOTHER CHANCE TO DEFEND HIS CLIENT'S POSITION WOULD CLEARLY HURT ME, YOUR HONOR, AS I WOULD HAVE TO PREPARE ALL OVER AGAIN REGARDING THE LIABILITY ISSUES. ALSO, IF YOU GRANT MR. PRINDEVILLE'S MOTION, HE WILL HAVE ANOTHER ADVANTAGE OVER ME BECAUSE NOW HE KNOWS WHAT I CAN GOING TO ASK HIS WITNESSES. AS I SAID IN MY RESPONSE PAPERS, JUDGE, MR. PRINDEVILLE WOULD NOT BE ASKING FOR A NEW TRIAL IF THE JURY HAD FOUND ME ~~26~~ LIABLE AS ✓
THEY DID HIS CLIENT.

FOR THESE REASONS, JUDGE, I RESPECTFULLY ASK THAT YOU DENY THE DEFENDANT'S MOTION FOR A NEW TRIAL SO WE ALL CAN MOVE ON WITH THE TRIAL FOR DAMAGES.

(Proceeding commenced at 2:40 p.m.)

THE COURT: Okay. This is Michael DePietro v. Aviva Werther. It's docket L-3089-11. This is a motion for a new trial filed by the defendant. I have opposition from Mr. DePietro. Nobody requested oral argument. Actually, I stand corrected, Mr. Prindiville did, Mr. DePietro did not. So we did not schedule oral argument.

In any event, this is a motion for a new trial. The matter was listed for trial on August 4th of 2014. Mr. DePietro was pro se. Mr. DePietro was ready to appear -- was ready to proceed for trial, but he did not have his medical evidence, Dr. Fox, available to testify. The matter was carried to the next day, the 5th, and again we were told that Dr. Fox was not available.

Plaintiff made -- excuse me, defendant made a motion to dismiss the case with prejudice at that point because I believe it was the seventh trial listing. And the Court on its motion, rather than dismissing the case, which the Court had every right to do, the Court bifurcated the matter and allowed the plaintiff to proceed on liability only.

One of the reasons was the allegation was that the plaintiff had made a left turn, and causing

the accident. And the defendant was aggressively defending on liability. And in what the Court thought would be the interest of judicial economy, the Court thought that it would be best to proceed with liability only.

The Court thoroughly discussed with Mr. DePietro, since he was an older man representing himself, areas in which he could not inquire, discuss, present in any way, or shape or form to the jury, mainly the injuries because the only issue for the jury's consideration was liability.

During the trial, Mr. DePietro brought up all of those issues, his injuries, insurance, his opinions and theories about how the accident occurred, about whose burden of proof it was to produce items, to produce witnesses, et cetera. There were numerous objections over and over throughout the trial that were sustained. And even with the Court's admonitions and discussions, Mr. DePietro continued to violate them.

In any event, during the course of the trial -- well, strike that.

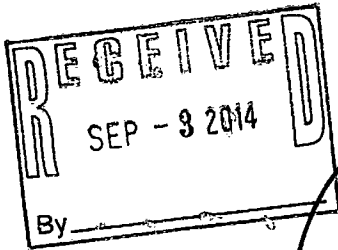
The case went to the jury. The jury came back and found liability on both parties, and split the liability between the plaintiff and the defendant 25/75. And clearly the defendant obviously thought

Oral Argument

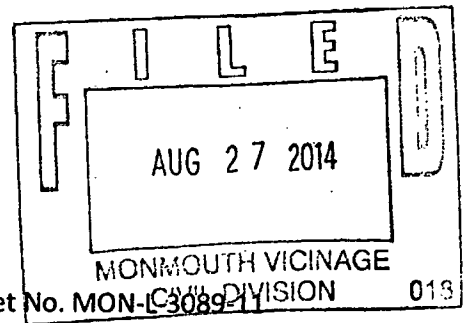
Michael DePetro

8/27/14





Michael DePietro
363 Jackson Mills Road
Freehold NJ, 07728



JP Benfile

Civil Action
Docket No. MON-LC3089-11

Deny a new trial

To; Monmouth County Court house

I, Michael DePietro of full age, hereby certify as follows. The adjournment was adjourned six or seven times and I only adjourned it twice, once for a lawyer and once for losing my granddaughter. Two for the defendants going to Arizona for vacation, and the only one that Mr. Prindiville went ahead and put in an adjournment because he couldn't be there at that time. Every time I had a trial date appear, I came in with the evidence and sat down and I saw Mr. Prindiville open up his brief case and prepare himself for trial. Then the judge called me to the bench and had told me that they can't hear the case today because of other cases ahead of me. Every time before I went to trial, I have always called up the court to respond if they were having the trial and they told me yes. The second time the same thing happened and they told me to go home. The third time when the trial was ready to be heard, I wanted to make sure before I brought my doctor in that it was going to be heard. Judge O' Brian had told me to call the doctor which I did, and he had patients that he was taking care of and he wouldn't have been able to come that week. Why I didn't call him before was because I thought it would be adjourned and if I would've called him I could've paid him and there would be no trial. So now that I know the trial is ongoing, he will be there at the time and place where he will be called.

Judge O' Brian had said on the fourth of August when the trial was being heard, he called in the jury to pick and he had asked each and every one of them questions. He accused one juror and he had six jurors and one alternate to hear the case. Judge O' Brian asked if I had any objections about the case. He asked me and Mr. Prindiville if we had any objections and we both responded no. When we came in

on August the fifth, he had told me and Mr. Prindiville that he came up with the idea of having partial trial. He said we will split it and that we will hear liability part of the case because, "Mr. DePietro if you don't have 50% more than the jury and all 49% you would have under 50%, you would lose and there would be no trial with the doctors to examine your condition, you would lose everything." I came up with this idea to start the trial because there was a period of time that it was held up. He asked if I understood what he was saying and if I was satisfied with the way it was going to be handled. I said, "Yes your honor".

Then he went ahead and told Mr. Prindiville the same thing, "Do you have any objections to this?" He said no so we will proceed. He swore on the jury and we proceeded. Mr. Prindiville actually had no evidence that I hit her and he made allegations in regard to that I was wrong. He called two witnesses to the bench, one was Aviva Werther and the other was the police officer that was on the scene which he did not see the accident. I myself cross examined both of them. Mrs. Werther when I cross examined her on the bench, I had said to her, "You claim that I hit you straight in the middle" she said yes. Then I asked, "How did you get on the other side of the road? And she said she doesn't remember and that she doesn't know. Then I asked her several questions and the answers were I don't know, or I don't remember. Her credibility wasn't worthy and the jury heard all of this. At the same time after I cross examined her, I cross examined the officer and I asked several questions as well. I asked "Did you see the accident"? He said no. Then I asked him, "How many lights are in that intersection?" He said maybe four or five; he didn't give a straight answer. I asked if it was congested and he said yes. I then asked him, "How many lanes are in it? He said, "I think two or three". Then I asked him, "How long is the one light to the other light from Kennedy Blvd. to County Line Road?" He said it's a long block, and that he has no idea how long it is. Then I had told him there's a gas station that takes the whole block, do you think the gas station is long? He said I don't know how long the gas station is. Then I asked him,

"Are the lights synchronized?" He said I don't know and I have no idea. Then I told him, "That's your route and you have no idea and you don't remember? He says, "Yes I don't remember."

Mr. Prindiville wants a new trial when he had the opportunity when you asked him if it's alright to have the trial today and he agreed. He had the opportunity when you asked him that he didn't want the trial today but he chose to have the trial to be heard and start on the fifth. He says in his brief that I didn't know what I was doing and the jury felt sorry for me because I am an old man. To get this far into the court system and be in front of 6 jurors and one alterate and professional people which I don't know and thave them decide and give a decision of ~~25%~~ to benefit me and 75% to the defendant. The evidence points out that the two witnesses seem to not know or don't remember and the jury heard all of that. It had nothing for them to feel sorry for me because I made the case and he's telling the courts that I don't know what I was doing and that he thought he did a good job to express and to tell what really happened. And the jury heard it and it brought the decision to the court.

The jury could see I'm old, I didn't have to tell them. I want the courts to deny his motion for a new trial. On the grounds that he was told and he made the decision himself on that day to have the trial heard. Because it wasn't to his advantage, he wanted a new trial, so that means if the jury decided the same conditions that he they gave me to him then he would not want a new trial. But being they didn't, he wants a new trial and that should be denied for the simple reason that it doesn't work that way. And this has nothing to do with case law because if he wants a new trial then jurors' have nothing to say. They did nothing wrong by giving their verdict and they liberated for 2 hours. Then, you had to tell him to leave and come back after lunch. They liberated for another hour and they came out to look at the pictures before this all happened to see my vehicle. So they didn't feel sorry for me, he's the one that didn't present the case that showed I hit her. She hit me and the pictures show that. Any question

was asked I gave them a direct answer to Mr.Prindiville. This has been a long case and I don't want to see it to go any further that what was originally planned in the system.

My doctor would be there at the time and place when the trial continues with a new jury for proving my injuries. Not proving liability because it was already proven. You can't have both ways, a new trial because it didn't go his way. You talked about knitted communities to make the courts feel like I'm prejudice. I told you once before that I have Jewish people in my family and there are all nationalities that have knitted communities, including the Italians. He also said that I walked away from the court thinking I lost. You know I cannot hear and the hear aid device wasn't on so I didn't give up and you know me from day one when I told you they are not going to get away with this. I didn't hear what the jurors said. I didn't want to ask the judge because the jury was telling him how they voted and when they came to the vote, I didn't hear the verdict either because the hearing aid device was too low for me to hear properly. I was getting frustrated because of my inability to hear what was going on in this court. Mr. Prindiville's closing statement to the Jury was that Mr. DePietro tried to discredit my witness.

Michael DePietro

A handwritten signature in dark ink, appearing to read "Michael DePietro", is written over a horizontal line.

Dated: August 27, 2014

CC: John C. Prindiville

1 THE COURT: May I see counsel at sidebar,
2 please.

3 (Sidebar begins at 2:34 p.m.)

4 MR. HALLERAN: I have no (inaudible).

5 THE COURT: Yeah, he didn't (inaudible).
6 Here's the problem. You can cross-examine him on what
7 he understands it to mean, but (inaudible) unless you
8 have somebody here who is going to testify as to the
9 contents of this report, the contents of this report
10 are not to be put in front of the jury. It's a
11 diagnosis that's a medical opinion (inaudible).

12 (MR. PRINDIVILLE: This was provided to me)
13 (yesterday in your chambers by counsel;

14 THE COURT: That's the --

15 MR. PRINDIVILLE: All I asked about was
16 (inaudible) treated for cataracts and he said
17 (inaudible) that's all I'm asking.

18 MR. HALLERAN: He can't put the contents of
19 the report in front of the jury, and that's presenting
20 the contents of the report to the jury --

21 THE COURT: All right.

22 (Sidebar ends at 2:35 p.m.)

23 BY MR. PRINDIVILLE:

24 Q So, you never had any surgery, right?

25 A I can't hear you.

1 Q You didn't have any surgery, correct?

2 A No. I don't hear good -- after that, they checked
3 my eyes again.

4 Q And you're still driving, right?

5 A Excuse me?

6 Q You're still driving a car, right?

7 A Oh, yeah, I haven't stopped. I mean, I slowed
8 down a little bit because you know, I got a little
9 older, but I still know how to drive very well.

10 Q Okay. And you need two hands to drive a car,
11 right?

12 A I drive actually with one hand more than, the
13 right hand is just on, guiding it, like I don't have my
14 right hand touching the steering wheel.

15 Q Okay. Do you know the speed limit on Route
16 9?

17 A Excuse me, I can't hear you?

18 Q Do you know the speed limit on Route 9?

19 A This is not working right. What's that?

20 Q Do you know the speed limit on Route 9 where
21 the accident occurred?

22 THE COURT: Hold on, please.

23 Ladies and gentlemen, I apologize for
24 excusing you, but if there's some difficulty with the
25 equipment, I want to make sure there's not a problem

1 unless there's an objection. I can't be any clearer
2 than that.

3 THE WITNESS: Okay, Your Honor, can I say
4 something?

5 THE COURT: No, sir, no, sir.

6 THE WITNESS: Okay.

7 THE COURT: I'm gonna give you an opportunity
8 to spend a couple of minutes talking to your attorney
9 and then we will resume the process.

10 THE WITNESS: Okay. If he don't want to
11 object then I have to get another attorney.

12 MR. PRINDIVILLE: It's cross-examination by
13 the way.

14 THE COURT: Not to discuss the elements of
15 the case, obviously. I understand it's cross-
16 examination.

17 MR. PRINDIVILLE: If he's just gonna talk to
18 him to calm him down, that's fine. If he's gonna talk
19 to him about his testimony, then I object to that type
20 of --

21 THE COURT: I understand. I'm sure Mr.
22 Halleran, he is very familiar with the Rules of
23 Evidence, will not be discussing --

24 MR. HALLERAN: I'm gonna repeat what you told
25 him, that he should answer the question.

1 THE COURT: That's correct, so I'll give you
2 a minute or two off the record. I'll step out.

3 (Off the record at 3:28 p.m.)

4 (On the record at 3:33 p.m.)

5 (Jury not present)

6 THE COURT: Thank you everyone. Had you had
7 the opportunity to communicate with your client, Mr.
8 Halleran?

9 MR. HALLERAN: Yes.

10 THE COURT: And Mr. DePietro, have you had
11 the opportunity to speak with your attorney?

12 THE WITNESS: Yeah, I told him to relieve
13 himself of being my lawyer.

14 THE COURT: Mr. Halleran?

15 MR. HALLERAN: Your Honor, outside the
16 presence of the jury, I'd like to make a motion to
17 strike the testimony about the accident that had
18 nothing to do with the injuries on that basis, that's
19 what he wants me to do. I told him that there was a
20 subsequent accident. I don't know what's happened in
21 discovery before, how much John knows about that
22 accident, but it clearly has nothing to do with the
23 claimed injury which is now the rotator cuff is the
24 only injury. It probably is prejudicial to this case.

25 THE COURT: I'll address the objection.

OK

1 MR. PRINDIVILLE: What is the objection? I
2 asked him a question about a subsequent accident and
3 whether or not he's claimed that that subsequent
4 accident made it difficult for him to do things on the
5 farm. He says no. ←

6 THE COURT: For the limited --

7 MR. PRINDIVILLE: And just because he doesn't
8 want the jury to hear about --

9 THE COURT: For the limited purpose of
10 determining to what extent the injuries that he
11 suffered subsequent to this accident may impact his
12 ability to conduct himself and the activities that he's
13 complained of in front of the jury on direct
14 examination, the jury has the right to hear it. If
15 somebody fractures their leg and they have difficulty
16 walking now, it might prevent them from doing things on
17 a farm that they would otherwise have previously done,
18 it's certainly permissible to go into those areas.

19 How is that not to some degree relevant?

20 MR. HALLERAN: Well, because he says he can't
21 do any of the things that he used to do on the farm
22 because he can't use his right arm.

23 THE COURT: Well, he indicates that but if
24 there are other things he still can't do on the farm
25 irrespective of the shoulder, the jury gets to know

1 that, because obviously the defendant here is not
2 responsible for other disabilities that the plaintiff
3 may have, and the jury has to take those into
4 consideration in weighing what the impact is from this
5 accident.

6 MR. HALLERAN: What's the offer? What was
7 the injury that was claimed? You mentioned something.

8 MR. PRINDIVILLE: He says he hurt his wrist
9 and his ankle.

10 THE COURT: Pardon me?

11 MR. PRINDIVILLE: He claimed he hurt his
12 wrist and ankle, and he doesn't want the jury to hear
13 that, and that's why in front of this jury, you heard
14 him say what he said --

15 THE COURT: It is certainly permissible, my
16 opinion, to discuss the nature and extent of other
17 injuries or other disabilities that the witness may
18 have so that the jury can assess the impact of this
19 injury on his life.

20 MR. HALLERAN: But he asked him about claims.
21 He said did you sue --

22 THE COURT: In that part I agree with you, OK
23 there should be no reference to any lawsuit that may
24 have been filed or what the outcome of that lawsuit may
25 be. r

1 MR. HALLERAN: I don't know what the outcome
2 is but he --

3 THE COURT: There should be no reference to
4 any lawsuit that may have been filed.

5 MR. PRINDIVILLE: Unless it's to the extent
6 he made a claim in that lawsuit that he could not
7 operate his farm --

8 THE COURT: Whether he -- pardon me?

9 MR. PRINDIVILLE: If he claimed in that suit
10 that he had difficulty working his farm, it's not
11 relevant?

12 THE COURT: You can certainly point out to
13 any statements that he may have previously made as to
14 the impact that those injuries may have had. I'm not
15 saying you can't do that. What I'm saying is it's not
16 necessarily appropriate nor is it necessary that you
17 bring up that it came up in the context of a claim or a
18 lawsuit. You can ask him if he was injured. You can
19 ask him if he -- what his injuries were. You can ask
20 him what impact that's had, and if he says none, you
21 can cross-examine him on statements he may have made.

22 MR. PRINDIVILLE: All right. And if he
23 claimed a permanent injury from that case, can I ask
24 him that, when he's claiming a permanent injury in this
25 case? Of course I can.

1 THE COURT: Of course you can.

2 MR. PRINDIVILLE: Right. So that's all I
3 asked --

4 THE COURT: Without --

5 MR. PRINDIVILLE: -- and he doesn't like it.

6 MR. HALLERAN: What was the date of the --

7 THE COURT: Excuse me, gentlemen.

8 MR. PRINDIVILLE: I'm sorry.

9 THE COURT: Without necessarily referring to
10 any lawsuit.

11 MR. PRINDIVILLE: All right, I'll leave that
12 out.

13 THE COURT: Right?

14 MR. PRINDIVILLE: That's fine, that's good.

15 THE COURT: All right, everybody understand?

16 MR. PRINDIVILLE: Yes.

17 THE COURT: So I'm gonna sustain your
18 objection as it relates to the reference to any lawsuit
19 that may have been filed, but I'm certainly gonna
20 overrule it to the extent that testimony regarding
21 subsequent injuries and the impact that plaintiff
22 himself may have said it had on his life must be
23 considered by the jury because this defendant is not
24 responsible for those injuries and whatever impact they
25 may have on his normal daily activities.

1 understand that, I'm sure.

2 So if you want a minute or two more to talk
3 to Mr. Halleran, I'll give you a minute or two more to
4 talk to him about it and then you can tell me what you
5 decide, and then we'll decide if Mr. Halleran is gonna
6 continue to be here or you prefer to handle it
7 yourself. All right?

8 THE WITNESS: I would want another attorney
9 if Mr. Halleran and me don't decide --

10 THE COURT: Well, we're in the middle of this
11 trial. And what you're asking me to do is to terminate
12 the representation of an attorney during the middle of
13 a trial and then ask for the trial, for me to mistry
14 the case, discharge this jury and cause counsel to
15 incur all of the expense of the time and the costs
16 associated with it --

17 THE WITNESS: But it's not my fault. I
18 didn't start this --

19 THE COURT: With all due respect, if you're
20 deciding to terminate your lawyer in the middle of the
21 trial, that's a decision you're making; nobody else.

22 THE WITNESS: The circumstances.

23 THE COURT: That's a decision you're making
24 and no one else. I'm just pointing that out to you in
25 advance.

1 THE WITNESS: The circumstances.

2 THE COURT: Well, the circumstances may be
3 that if in fact you decide to terminate Mr. Halleran,
4 the likelihood is that you try the case yourself. If
5 you are going to bring an issue concerning whether or
6 not I should adjourn the matter when you unilaterally
7 decide to let your attorney go, then particularly where
8 I don't perceive that Mr. Halleran is doing anything
9 improper --

10 THE WITNESS: No, no, I didn't say that.

11 THE COURT: In that situation, then it may
12 not be permissible for me to declare a mistrial because
13 this is a decision that quite frankly you're making
14 unilaterally.

15 THE WITNESS: No, I don't want a mistrial. I
16 want the trial to go on, but I want him to object where
17 it's necessary, and that was one point I'm trying to
18 bring out.

19 THE COURT: But you see, Mr. DePietro, he's
20 the attorney with background and a vast amount of
21 experience in trial and knowledge of evidence. You,
22 sir, are not an attorney. While respectfully I
23 understand what you think may be right or wrong, that
24 may be different from what the Rules of Evidence of the
25 Courts of the State of New Jersey dictate. And

OK

1 therefore, what Mr. Halleran does is based upon his
2 overall view of the case, and what he thinks is right
3 or wrong to do, okay?

4 And it's his decision to make when it comes
5 to the law and the Rules of Evidence.

6 THE WITNESS: Yeah, but he didn't do anything
7 to stop him from saying a lawsuit. I had to stop it,
8 you know. And I think that being that I have a little
9 knowledge, I don't want to do it myself because I done
10 it already and I won, now it's too late, they heard
11 everything, the jury, and they're gonna favor now
12 against me, no doubt in my mind --

13 THE COURT: Mr. DePietro, I don't perceive
14 that a vague mention is gonna have any impact on the
15 outcome of this case one way or the other.

16 THE WITNESS: What he says --

17 THE COURT: And I'm gonna give you an
18 opportunity to speak to Mr. Halleran for you to
19 determine whether you want to proceed with Mr. Halleran
20 or you want to proceed on your own, okay?

21 THE WITNESS: Yeah.

22 THE COURT: All right.

23 (Off the record at 3:45 p.m.)

24 (On the record at 3:51 p.m.)

25 (Jury not present)

1 MR. HALLERAN: -- a mistrial on the basis of
2 the fact that John has prejudiced this jury by bringing
3 up the lawsuit situation. Maybe I missed that, I
4 should have objected, I definitely should have
5 objected. I couldn't object about the prior, the
6 injury, I understand that, but the lawsuit he believes,
7 and I believe he's right, is gonna affect this jury to
8 think he's just a litigator. He's right.

9 MR. PRINDIVILLE: Nothing improper about the
10 question at all.

11 THE COURT: Well, as I said, I disagree with ✓
12 you in that regard, Mr. Prindiville. I think that
13 discussing prior litigation or the fact that a lawsuit
14 was filed is not filed and did not need to be
15 addressed, but I don't think that it is sufficient to
16 warrant the granting of a mistrial in this case. I've
17 given a cautionary instruction, the jury understands
18 the cautionary instruction. They understand they're to
19 focus only on what happened in this case and what its
20 impact is. And they also understand that there are
21 elements of any subsequent accident that are germane to
22 the evaluation of this case because they may have a
23 bearing on the functionality and the quality of life of
24 the plaintiff, and it's for the jury to determine to
25 what extent that as opposed to this accident impacts

1 his quality of life.

2 MR. HALLERAN: I'm not arguing about the fact
3 of the possible injury. That's not the argument. The
4 argument is the prejudice by thinking that this fellow
5 is a litigator.

6 THE COURT: I understand that and that's why
7 I gave the jury a cautionary instruction. I believe
8 that the cautionary instruction is sufficient for the
9 jury to understand that and to disregard it in that
10 respect.

11 If it comes up again of course I will be
12 happy to re-entertain an application or any application
13 you may have in that regard, but I don't believe it is
14 sufficiently prejudicial at this point in time to
15 warrant a mistrial.

16 MR. HALLERAN: I didn't (indiscernible) at
17 the time. One of the jurors said she thought we tended
18 to be a little too litigious. I understand but now
19 this is coming more into focus, so that's a concern.

20 One of them in the back I think said that and
21 you asked her that question.

22 THE COURT: I understand that.

23 MR. PRINDIVILLE: Followed by do you think
24 you can sit and follow the law and be fair which she
25 said she could. It's too late now to start complaining

1 about a juror.

2 THE COURT: Thank you. Gentlemen, as I said,
3 I don't believe that there is a sufficient problem in
4 order to grant a mistrial.

5 I would also point out that there have been a
6 number of objections based on comments that the
7 plaintiff has made during the course of his testimony
8 that I have sustained, and likewise on behalf of the
9 defense, I don't believe that there is a basis for a
10 mistrial either. None was applied for, but I simply
11 note that parenthetically.

12 During the course of any trial, there may be
13 information that is presented to the jury that should
14 not be heard by the jury, and the Court has to weigh
15 and determine whether or not it is so egregious as to
16 constitute a basis for a mistrial. ✓

17 I'm gonna deny your request at this time.

18 MR. HALLERAN: I understand, and with due
19 respect, when the party witness says something, that's
20 fine, but when the attorney, you know, brings up a
21 litigation knowing it's improper --

22 THE COURT: Well, I don't know that Mr.
23 Prindiville --

24 MR. PRINDIVILLE: I object that it's
25 improper, by the way it's the truth, so for him to sit