



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JAMON T. BRIM, *
Plaintiff, * 10-CV-00369-IPJ
vs. * February 22, 2011
* Florence, Alabama
* 8:59 a.m.
MIDLAND CREDIT MANAGEMENT, *
INC., *
Defendant. *

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE INGE P. JOHNSON
UNITED STATES DISTRICT JUDGE

VOLUME I

FOR THE PLAINTIFF:

MR. LEONARD A. BENNETT, ESQ.
(No Appearance)
CONSUMER LITIGATION ASSOCIATES
12515 Warwick Blvd
Suite 100
Newport News, VA 23606
757-930-3660

MS. PENNY HAYS CAULEY, ESQ.
HAYS CAULEY
P O Box 509
Darlington, SC 29540
843-393-5200

MR. RONALD C. SYKSTUS, ESQ.
BOND, BOTES, SYKSTUS & LARSEN
415 Church Street
Suite 100
Huntsville, AL 35801
256-539-9899

CHERYL K. POWELL, CCR, RPR, FCRR
Federal Official Court Reporter
1729 Fifth Avenue, North
Birmingham, AL 35203
256-508-4050/wrd4wrdrpr@aol.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE DEFENDANT:

MR. ERIC B. LANGLEY, ESQ.
BALCH & BINGHAM
1710 Sixth Avenue North
P O Box 306
Birmingham, AL 35201-0306
205-251-8100

MR. JASON B. TOMPKINS, ESQ.
BALCH & BINGHAM
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203
205-251-8100

CHERYL K. POWELL, CCR, RPR, FCRR
Federal Official Court Reporter
1729 Fifth Avenue, North
Birmingham, AL 35203
256-508-4050/wrd4wrdrpr@aol.com

P R O C E E D I N G S

1
2 THE COURT: Have a seat. Good
3 morning. Let the record show this is CV10-369,
4 Jamon T. Brim versus Midland Credit Management,
08:59:28 5 Inc. And let the record show that the plaintiff
6 is present with his attorneys, Penny Cauley and
7 Ron Sykstus. The defendant is represented by
8 whom? I mean, I know you're here. The lawyers
9 are here. Eric Langley and Jason Tompkins. Who
08:59:46 10 is here as a representative?

11 MR. LANGLEY: Yes, Your Honor.
12 Our representative is Mr. Gabriel Edrozo for
13 Midland Credit Management.

14 THE COURT: Mister what?

08:59:50 15 MR. LANGLEY: Edrozo, E-D-R-O-Z-O.

16 THE COURT: Gabriel is the first
17 name?

18 MR. LANGLEY: Gabriel. He goes by
19 Gabe. And then Your Honor at the mediation on
09:00:00 20 November 30th met Chris Yang, who is inside
21 counsel.

22 THE COURT: All right. And while
23 Tammi is organizing the jury, let's just talk
24 about I have read plaintiff's voir dire questions
09:00:16 25 and defendant's voir dire questions.

1 Are there any objections by the defendant
2 to the plaintiffs?

3 MR. LANGLEY: We do have a couple
4 of small objections which I think can be handled
09:00:28 5 through tweaks to the questions. I think there
6 may be only two or three questions we have an
7 outright objection to.

8 You want me to go through them in order on
9 the plaintiff's list?

09:00:36 10 THE COURT: Yeah.

11 MR. LANGLEY: In Question Number 1
12 and 2, the questions seem to suggest that the
13 issue in the case will be whether the reporting
14 wasn't accurate which, of course, is not the main
09:00:52 15 issue. The main issue will be whether or not the
16 investigation of the dispute was reasonable.

17 And especially at this early stage in the
18 proceeding, we think it would be prejudicial to
19 the defendant for the jury to develop the
09:01:04 20 impression that the issue or especially the main
21 issue is whether the report was right or not.

22 THE COURT: Okay. That's
23 overruled. Next?

24 MR. LANGLEY: Your Honor, on Items
09:01:16 25 9, 10, and 11 -- excuse me. Nine, 10, 11, and

1 12, there are issues relating -- the questions
2 suggest that there are available to the plaintiff
3 damages relating to credit standing and
4 reputation. The damages, if available to
09:01:40 5 plaintiff at all, would be damages resulting from
6 credit denials and any emotional distress or
7 mental anguish that he's able to substantiate.

8 So we would urge that those portions of
9 the questions be reworded so as to not suggest
09:01:58 10 the category of damages that's not recoverable.

11 THE COURT: Well, credit denial
12 would be damage -- would be damaging to his
13 credit reputation.

14 MR. LANGLEY: One of the problems
09:02:24 15 here is we don't really know what credit
16 reputation means.

17 THE COURT: Well, I do. I don't
18 have -- it is a pretty normal term.

19 MR. LANGLEY: Well, if Your Honor
09:02:34 20 is overruling the motion --

21 THE COURT: I'm going to overrule.
22 Yeah.

23 MR. LANGLEY: Your Honor, the last
24 objection relates to Question 25. And our
09:02:46 25 objection to this is that it -- in essence

1 contains an instruction that the Court will give
2 regarding -- if punitive damages reach the jury,
3 it contains an instruction that is for the Court
4 to give for us to hash through at the charge
09:03:04 5 conference.

6 THE COURT: Well, I would sustain
7 that in part and deny it in part.

8 I think I would like for the plaintiff to
9 add to that the specific definition of punitive
09:03:22 10 damages will be given to you by the Court in its
11 instruction to you with respect to damages such
12 as this. And with that being said, you can ask
13 it.

14 MS. CAULEY: Yes, Your Honor.

09:03:32 15 THE COURT: And that's it?

16 MR. LANGLEY: Yes, Your Honor.

17 THE COURT: All right. And let me
18 ask you since I don't know that anybody has said
19 anything about it. I know you have a written
09:03:44 20 questionnaire?

21 MR. LANGLEY: We do. This was
22 something that we discussed at least in theory at
23 the pretrial conference, and it relates to some
24 of that very sensitive information that both
09:03:54 25 sides may want from the venire, especially the

1 defendant, about their prior experience with
2 credit disputes. And so that nobody is put on
3 the spot or inclined to not reveal the full
4 extent of their history on these issues, we think
09:04:14 5 the better way to handle it is private
6 questionnaire. If any side feels they need to
7 follow up on that, they can do that.

8 THE COURT: I thought we agreed I
9 was going to ask those questions. That's how we
09:04:28 10 were going to handle it.

11 MR. LANGLEY: I know we discussed
12 that. We're still open to that approach.

13 THE COURT: I don't mind asking
14 them. And I mean, I tell the jury anyway if they
09:04:36 15 have anything they want to say privately to me,
16 they just have to tell me they would prefer to
17 answer it privately, and we'll go from there.

18 MR. LANGLEY: If Your Honor is
19 willing to ask those questions, then we're fine
09:04:48 20 with that.

21 THE COURT: I will be glad to.
22 Any objections from the plaintiff to the
23 defendant's questions?

24 MS. CAULEY: Yes, Your Honor.
09:04:54 25 Just two.

1 On Number 12, the question asks if
2 evidence shows the plaintiff suffered no damages
3 as a result of Midland's conduct, could you
4 return a verdict for Midland, and the law under
09:05:04 5 the (s)(2)(B) provisions of the act allows for
6 either actual damages or statutory damages. So
7 it's not really a correct statement.

8 We might could correct it with a jury
9 instruction like we did on the plaintiff's
09:05:18 10 question regarding punitive damages. The Court
11 will instruct you on what damages are available.
12 But if you find that they didn't meet their
13 burden, you know, could you return a verdict. If
14 we could just reword that slightly.

09:05:26 15 THE COURT: That's fine.

16 MR. CAULEY: And then Number 15,
17 the -- I mean, we had an objection with the term
18 financial institutions, because that makes it
19 sound like Midland is a bank rather than a debt
09:05:40 20 collector.

21 THE COURT: Well, that's
22 overruled.

23 It's going to be interesting to see what
24 they answer to that question.

09:05:48 25 What do you have to say about Number 12?

1 MR. LANGLEY: Well, on Number 12,
2 if we can handle it the same way that Your Honor
3 suggested the punitive damages question be
4 handled, that will be fine. We will say the
09:05:58 5 Court will instruct you on when to award actual
6 damages, but if -- and then we'll follow with our
7 question.

8 THE COURT: I think you should say
9 the Court will instruct you as to what is
09:06:10 10 recoverable as damages in a suit such as this.
11 However, if the evidence shows -- and that's
12 fine.

13 MR. LANGLEY: Okay.

14 THE COURT: And then I'll ask them
09:06:20 15 these other questions. I don't mind.

16 And do y'all want to say anything else
17 about the motions in limine?

18 MR. LANGLEY: Your Honor, I think
19 we probably do. But --

09:06:38 20 THE COURT: I've read what you
21 filed. And I've read Penny's response.

22 MR. LANGLEY: Okay. We can
23 probably make this easier on the Court. Penny
24 and I had some discussion before court convened.
09:06:50 25 Our motion in limine really addresses six issues.

1 One of which is uncontested by any of the
2 parties.

3 THE COURT: That's the Johnson
4 deposition.

09:07:02 5 MR. LANGLEY: Right. That was
6 Greg Johnson's --

7 THE COURT: That is actually moot,
8 but I will be glad to say it's granted. And that
9 is Number 6 in defendant's motion in limine. Any
09:07:12 10 deposition testimony of Greg Johnson because
11 plaintiff's counsel has indicated that plaintiff
12 is not going to use the deposition. And
13 consents.

14 MR. LANGLEY: With respect to --
09:07:30 15 I'm referring to our motion in limine. With
16 respect to Items 2 and 3, Item 2 being any
17 evidence of plaintiff's contacts directly with
18 Midland and Item 3, any credit report that
19 predates Midland's receipt of the dispute from
09:07:48 20 the CRA we're willing to withdraw those motions
21 in anticipation if the plaintiffs are afforded
22 the opportunity to develop contacts, we will be
23 afforded the same opportunity.

24 I anticipate both sides may have specific
09:08:02 25 objections along the way. But we're willing to

1 withdraw that as a motion in limine.

2 THE COURT: Okay. Two and Three
3 are withdrawn.

4 MR. LANGLEY: And that leaves us
09:08:12 5 really with two issues where I do think the
6 parties have some dispute.

7 The first is evidence relating to the
8 small claims court collection lawsuit filed by
9 Midland's subsidiary, called Midland Funding,
09:08:26 10 L.L.C., who is no longer a party to this case.

11 There are a couple of reasons that we
12 don't think evidence of that collection lawsuit
13 is admissible. First and foremost, it does not
14 bear on the plaintiff's damages at all, because
09:08:40 15 all of that activity, including the state court
16 collection lawsuit, occurred before the first
17 dispute in this case. And there's no contention
18 by the plaintiff that the duties on Midland's
19 part are triggered any earlier than our first
09:08:58 20 receipt of the dispute from the CRA which
21 happened in August, 2008.

22 The collection lawsuit and the collection
23 efforts, for that matter, had run their course by
24 spring of 2008. So it would, in essence, be
09:09:14 25 damages testimony that relates to a period of

1 time during which damages are not recoverable.

2 THE COURT: Okay. Let me see what
3 they -- are you through with that?

4 MR. LANGLEY: With that reason. I
09:09:24 5 had some others.

6 THE COURT: Okay.

7 MR. LANGLEY: Did you want to hear
8 them all?

9 THE COURT: No. That's fine.

09:09:28 10 MR. LANGLEY: The second reason is
11 that it really would be, in essence, a malicious
12 prosecution claim in FCRA clothing. And there's
13 no claim for malicious prosecution here. And the
14 entity that would be accused of maliciously
09:09:48 15 prosecuting is not even in the case anymore.
16 That's really the extent of our argument.

17 THE COURT: Ms. Cauley?

18 MS. CAULEY: Yes, Your Honor.
19 First off, the motion to dismiss the state court
09:10:00 20 lawsuit was not filed until February 10th of
21 2009.

22 So although the state court action to
23 collect the debt was filed previous to Mr. Brim's
24 first dispute in July of 2008 through the credit
09:10:12 25 bureaus, the state court lawsuit continued until

1 February of 2009. So it is occurring during the
2 same time that he is disputing with Midland.

3 It also goes to the intent and willfulness
4 of Midland's handling and investigation of the
09:10:28 5 ACDVs, because it shows whether or not they're
6 actually going to investigate that or whether
7 their intent is just to keep it on the credit
8 because that's their only real means of
9 collecting it.

09:10:38 10 THE COURT: Well, I think you're
11 mixing apples and oranges. Because what we're
12 talking about here is their duty to investigate.
13 And what they did there in the small claims court
14 was a collection. So we're talking about two
09:10:48 15 different things.

16 MS. CAULEY: Yes. It's not -- the
17 reason that we would offer the lawsuit is simply
18 to show, one, when it was filed, and that it was
19 filed after their records indicate the statute of
09:11:06 20 limitations had already run.

21 THE COURT: That is collection.

22 MS. CAULEY: Right. But it goes
23 to their whole intent of whether or not their
24 actions under FCRA were willful and their failure
09:11:18 25 to investigate Mr. Brim's dispute and why they

1 would not investigate. And the reason is they
2 had no other means of collecting it but putting
3 it on the credit report because, I mean, they
4 tried to sue, and they had to dismiss it. So I
09:11:32 5 mean, we think it's relevant. It is pending
6 during the time.

7 THE COURT: I'm going to withhold
8 my ruling on it. Don't discuss it in opening
9 statements, though.

09:11:42 10 MS. CAULEY: Okay.

11 MR. SYKSTUS: Your Honor, may I
12 add one thing to that?

13 THE COURT: Sure.

14 MR. SYKSTUS: The dismissal itself
09:11:46 15 was without prejudice, meaning they could bring
16 it again if they truly -- and this is after the
17 dispute was already received by Midland. If they
18 truly were going to renege on it, they would have
19 dismissed it with prejudice. But certainly
09:12:00 20 without prejudice, they could bring it again.

21 THE COURT: Okay. Fine.
22 Overruled. Overruled. What's the next one?

23 MR. LANGLEY: Your Honor, for
24 clarification, are you overruling our motion in
09:12:18 25 limine on that issue?

1 THE COURT: Yeah.

2 MR. LANGLEY: Your Honor, our next
3 item in the motion in limine relates to the
4 American Express.

09:12:28 5 THE COURT: Yeah. Now, I thought
6 we rehashed that at the pretrial conference when
7 we talked about the taking of the deposition of
8 American Express and what they were going to say
9 and -- did we not talk about all of this or did
09:12:40 10 I dream this?

11 MR. LANGLEY: We did talk about
12 this.

13 THE COURT: Okay. I'm going to
14 overrule it. We've already discussed that in
09:12:48 15 great detail. It's overruled. I mean, we're not
16 going to rehash anything. We talked about that
17 when I went through the objections to the
18 plaintiff's exhibit list. And you said you were
19 going to set it out more specifically in the
09:12:58 20 motion in limine. But we've already discussed
21 all this.

22 MR. LANGLEY: I will only make
23 arguments that Your Honor has not heard if you'll
24 permit me just a minute.

09:13:08 25 THE COURT: Sure.

1 MR. LANGLEY: Since that time, the
2 plaintiffs have opted not to take the deposition
3 of American Express for purposes of
4 authenticating the record that we contended was
09:13:18 5 unauthenticated hearsay.

6 What they've done is acquired what
7 purports to be an affidavit of records, saying
8 that it is a business record or a copy of a
9 business record from American Express. However,
09:13:32 10 what the custodian of records actually
11 authenticated, to use that term quite errantly
12 for purposes of argument, was a copy that
13 plaintiff's counsel sent to them.

14 Importantly, that declaration did not
09:13:48 15 contain the language that Rule 803(6) and Rule
16 902(12) require for purposes of self
17 authentication.

18 And the glaring omission in there is that
19 the record was kept in the ordinary course of
09:14:06 20 business. Both 803(6) and 902(12) use the word,
21 "kept," in the rule. And there is nothing in
22 this affidavit that says it was kept in the
23 ordinary course of business. In fact, the copy
24 of the letter that purports to have been
09:14:24 25 authenticated was the copy that plaintiff's

1 counsel sent to --

2 THE COURT: I mean, but you don't
3 dispute it was a copy of American Express' own
4 letter, do you?

09:14:34 5 MR. LANGLEY: We don't know
6 whether it is or isn't.

7 THE COURT: I thought you got it.
8 You got a copy of it. You know which one
9 American Express furnished.

09:14:44 10 MR. LANGLEY: No. American
11 Express could never furnish one. That's the
12 point we made at the last hearing. We subpoenaed
13 records from AmEx. They had no record of this.
14 Plaintiff subsequently sent their copy to AmEx in
09:14:58 15 an effort to get them to authenticate it. And
16 all the custodian of records could say is this
17 looks like a copy of something that we would have
18 sent. But it doesn't say -- and this is very
19 important for 803(6) and 902(12). It doesn't say
09:15:10 20 it was kept in the ordinary course of business.
21 Because, in fact, it was not kept. Had it been
22 kept, we would have received it in response to
23 our subpoena.

24 THE COURT: Okay. What does the
09:15:20 25 plaintiff say about that?

1 MS. CAULEY: Your Honor, the
2 reason that the deposition wasn't taken is that
3 their normal deponent that they put up for these
4 type of depositions was not available due to the
09:15:32 5 time constraints we were under.

6 Mr. Garganian is very kind. He is the
7 official records custodian. He provided this
8 affidavit of records, confirming -- and we have
9 the original that was actually received on Friday
09:15:46 10 at 9:00 o'clock at night -- that the copy of the
11 letter that we provided is a true and correct
12 copy of the denial of credit letter provided to
13 Jamon Brim by American Express.

14 They are two pages of an original or an
09:16:00 15 exact duplicate of the original records from a
16 system of records in which letters are made in
17 the ordinary course of business at or near the
18 time that they are made. So we have this
19 affidavit --

09:16:10 20 THE COURT: Can I see that? You
21 read it really fast.

22 MS. CAULEY: I'm sorry.

23 THE COURT: Okay. Anything else
24 from anyone?

09:16:50 25 MR. LANGLEY: Your Honor, the last

1 thing I would point out is that Rule 902(12)(b)
2 is very specific on this issue. And it requires
3 that the purported custodian of records state
4 under oath that the document was kept in the
09:17:04 5 course of regularly-conducted activity. And that
6 simply has not been met here.

7 THE COURT: Okay. Well, I tell
8 you what. You read this differently from the way
9 I read it. And I'm going to overrule it. It
09:17:16 10 flat out says under oath in the original document
11 that I assume plaintiffs is going to introduce.

12 MS. CAULEY: That is the original.

13 THE COURT: Yeah. I'm going to
14 give it back to you. I'm not going to keep it.
09:17:32 15 It says, attached hereto are two pages of the
16 original or exact duplicate of the original
17 records from a system of records in which letters
18 are made in the ordinary, regular course of
19 American Express' business at or near the time or
09:17:48 20 reasonably soon thereafter. So that's overruled.
21 Next?

22 MR. LANGLEY: Your Honor, I
23 believe the last issue relates to certain
24 deposition excerpts from --

09:18:02 25 THE COURT: I'm just going to have

1 to do those as we go through the deposition. I
2 don't have the deposition up here with me. So
3 we're just going to have to go through that as
4 the deposition is read. And I can't rule on this
09:18:16 5 in advance. Sorry. I'm just going to hold my
6 ruling on this.

7 MR. LANGLEY: That's fine with us.

8 THE COURT: Okay. Is that okay
9 with you?

09:18:24 10 MS. CAULEY: Yes, Your Honor. We
11 were able to narrow down greatly. And I actually
12 have a copy of the depo. There's eight
13 provisions in the deposition that we were not
14 able to agree to that we have been -- you know,
09:18:40 15 we worked on all the other ones. Some we
16 withdrew our intention to read. Some he withdrew
17 his objections. There just remains eight
18 portions. We can take them up now or during the
19 deposition.

09:18:54 20 THE COURT: How close are we to
21 having the jury ready?

22 COURTROOM DEPUTY: I've got them
23 ready to bring down.

24 THE COURT: Let me just see them.
09:19:04 25 That's all right. Are those the eight points?

1 MS. CAULEY: I can give them to
2 you, Your Honor. The first one is Page 50 --

3 THE COURT: Well, are you going
4 through their motion in limine?

09:19:20 5 MS. CAULEY: Yes.

6 THE COURT: Okay.

7 MS. CAULEY: These are in response
8 to their motion in limine.

9 THE COURT: Just tell me which
09:19:26 10 ones you don't object to so I'll know which ones
11 you're talking about.

12 MR. LANGLEY: Your Honor, if I
13 may, may I present to the Court the issues that
14 we haven't resolved and then --

09:19:34 15 THE COURT: Just show me line
16 through line, page through page.

17 MR. LANGLEY: Page --

18 THE COURT: I have read it. I'm
19 trying to explain to y'all I got up at 4:30 this
09:19:44 20 morning to read all this. So I have read it. I
21 don't need to have an explanation when I've
22 already read it. I just need to know which parts
23 you are saying you have worked out.

24 MR. LANGLEY: We've worked out
09:19:56 25 everything but eight parts.

1 THE COURT: Which eight parts have
2 you not worked out?

3 MR. LANGLEY: Page 50, Line 1
4 through 5.

09:20:04 5 THE COURT: 50?

6 MR. LANGLEY: Yes, Your Honor.

7 THE COURT: Okay. One through
8 five. Okay.

9 MR. LANGLEY: Question: When was
09:20:10 10 the last deposition --

11 THE COURT: No. Just give me the
12 page number. I'll read it myself.

13 MR. LANGLEY: Page 50, 1 through
14 5. Next one is Page 50, Lines 12 through 17.
09:20:22 15 Next one is Page 51, Lines 5 through 9. Next one
16 is Page 55, Lines 4 through 11. Page 55, Lines
17 16 through 21.

18 MS. CAULEY: We agreed not to use
19 that one. 55:16 through 21 we've agreed not to
09:20:46 20 use.

21 THE COURT: I'll strike that.

22 MR. LANGLEY: Page 73, Line 15
23 through Page 74, Line 9.

24 THE COURT: Wait. Page 73, Line
09:21:02 25 15 through Page 74, Line 9?

1 MR. LANGLEY: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. LANGLEY: Page 89, Line 9

4 through 25.

09:21:14 5 THE COURT: Okay.

6 MR. LANGLEY: Page 91, Lines 1

7 through 11. But Your Honor, after further

8 review, we'll withdraw that one.

9 THE COURT: 91:1 through 11?

09:21:28 10 MR. LANGLEY: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. LANGLEY: And the last one is

13 Page 114, Lines 13 through 16.

14 THE COURT: Okay.

09:21:38 15 MR. LANGLEY: And Penny, we didn't

16 finish our conversation about whether y'all were

17 rethinking that one or --

18 MS. CAULEY: Your Honor, we're

19 reviewing the other evidence with respect to Page

09:21:50 20 114. We can -- the question was a little bit

21 ambiguous. So we'll withdraw that one. We'll

22 agree not to use.

23 THE COURT: Okay. Which one?

24 114 -- Page 114, Lines 13 through 16 you're not

09:22:04 25 going to use those?

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdpr@aol.com

1 MS. CAULEY: Yes, Your Honor.

2 THE COURT: Okay. What's your
3 argument about One through Five on Page 50? And
4 for that matter, 12 through 17 about the number
09:22:44 5 of depositions she has given and them being about
6 the FCRA?

7 MR. LANGLEY: Well, we don't think
8 that that -- depositions that she's given in a
9 prior case or how many are relevant. If there's
09:22:56 10 something offered for impeachment purposes,
11 that's fine.

12 THE COURT: What do you have to
13 say about it?

14 MS. CAULEY: Your Honor, she's not
09:23:04 15 here for us to offer any impeachment evidence.
16 This goes to their knowledge of the act and their
17 duty and responsibilities under the act. The
18 fact she's testified before shows she's familiar
19 with the act. She's put up as their corporate
09:23:18 20 representative under a Fair Credit Reporting Act
21 claim. Certainly this isn't the first time
22 they've ever been sued.

23 THE COURT: Defendant's motion in
24 limine on this point is granted. You don't go
09:23:30 25 into that. Don't read that.

1 MS. CAULEY: Okay. Was that One
2 through Five and 12 through 17?

3 THE COURT: Yeah. Same thing for
4 51:5 through 9. It's granted. What's wrong with
09:24:00 5 55:4 through 11?

6 MR. LANGLEY: Your Honor, our
7 concern with that is fairly similar to our
8 concern with the first two of plaintiff's
9 proposed voir dire questions in that it may
09:24:14 10 erroneously suggest to the jury that the issue is
11 the accuracy of the report which is covered under
12 a different section of the FCRA for which a
13 private right of action does not exist. So our
14 objection is relevance. If not relevance, then
09:24:30 15 Rule 403 objection.

16 THE COURT: It's overruled. You
17 may go into that. Okay. And your objection to
18 73 to 74?

19 MR. LANGLEY: Your Honor, our
09:25:04 20 objections to those are intertwined with our
21 objection to the evidence regarding the
22 collection lawsuit. And if I understood Your
23 Honor's ruling earlier, you've overruled our
24 motion on that. And so if evidence for
09:25:20 25 collection lawsuit is coming in, then I suppose

1 this would, too, although we would like the
2 record to reflect we object to that.

3 THE COURT: It's overruled. 89?

4 MR. LANGLEY: Your Honor, same
09:25:40 5 argument.

6 THE COURT: Yeah. It's overruled.
7 And that's it, right?

8 MS. CAULEY: Yes, Your Honor.

9 THE COURT: Do any of you need a
09:26:12 10 break before we get the jury in here? Let's just
11 get them in here.

12 (Short recess.)

13 THE COURT: When do you want me to
14 ask those questions that the defendant has
09:27:00 15 proposed? Do you want me to ask them at the end
16 of all the voir dire? Wouldn't that be the best
17 time to ask them?

18 MR. LANGLEY: Your Honor, actually
19 I would like you to ask them at the beginning so
09:27:12 20 if there's a need to follow up or the plaintiff,
21 we would have that opportunity.

22 THE COURT: That will be fine.

23 (Short recess.)

24 THE COURT: I'm looking at the
09:30:30 25 agreed summary in the pretrial order. How much

1 of this do you want me to read to the jury? Just
2 the very first? Because I was really not going
3 to read a whole lot. But since y'all are going
4 to ask the -- you want me to ask the questions
09:30:46 5 first, what if I read: Jamon Brim filed this
6 action under the Fair Credit Reporting Act, 15 US
7 Code, Section 1681, and following, based on
8 defendant, Midland Credit Management's reporting
9 of the collection account as belonging to
09:30:58 10 Mr. Brim to the national credit reporting
11 agencies and the defendant's alleged failure to
12 conduct a reasonable investigation upon the
13 receipt of Mr. Brim's dispute through the credit
14 reporting agencies and let it go with that? Is
09:31:12 15 that all right with you?

16 MS. CAULEY: That's fine.

17 MR. LANGLEY: So it will end with
18 credit reporting agencies?

19 THE COURT: Yes, sir. And I
09:31:20 20 scratched out the line that says Alabama state
21 law.

22 MS. CAULEY: Right.

23 THE COURT: Because that was
24 dismissed. Without going into the details about
09:31:28 25 what he purchased and when he did it and all that

1 stuff?

2 MR. LANGLEY: We're okay with
3 that, Your Honor.

09:31:34

4 (In open court. Jury venire
5 present.)

09:38:02

6 THE COURT: Okay. All right.
7 Please be seated. Good morning. Hope everybody
8 had a nice long weekend. I guess not everybody
9 was off on President's Day. I still hope you had
10 a nice weekend. I know Saturday and Sunday were
11 beautiful.

09:38:16

12 I want to thank y'all for coming here
13 today. We can't try a case without you. So we
14 just appreciate you being here. As you can see,
15 there are some empty chairs. Some people
16 apparently did not show up, but I'm not going to
17 deal with that today. It's not my duty to do
18 that. The jury section in Birmingham will do
19 that. But I do want to thank everyone who did
20 come for being here.

09:38:26

21 The first thing I would like to do is to
22 introduce you to the parties in this case. We
23 only have one case we're going to select a jury
24 in for this week. And we're going to finish up
09:38:38 25 this week, just so you know that for your own

1 practical purposes. And the case is numbered
2 CV10-369 in the United States District Court for
3 the Northern District of Alabama.

4 The plaintiff, who is the one who brings
09:38:56 5 the lawsuit, is named Jamon Brim. And he is
6 seated on -- in the middle right there on my
7 right. This is Mr. Brim. You might want to turn
8 around so the jury back there can see you. Thank
9 you, Mr. Brim.

10 He's represented by two attorneys. Penny
11 Cauley and Ron Sykstus. And actually, he has
12 another attorney who will be here tomorrow, Len
13 Bennett. But he couldn't be here today but he'll
14 be here tomorrow.

15 The defendant in this case is Midland
09:39:26 16 Credit Management, Inc., and their representative
17 is Gabe Edrozo. He's seated on my left. And
18 they're represented by Eric Langley and Jason
19 Tompkins. And they're seated on my left, as
09:39:42 20 well. And their in-house lawyer is also present.
21 And that's Chris Yang. Thank you.

22 And the first thing I'm going to tell you
23 is -- well, I think I'm going to call the roll
24 just to make sure everybody's here who is
09:40:00 25 supposed to be. Joseph Aiello.

1 PROSPECTIVE JUROR 1: Yes.

2 THE COURT: Phillip Bess.

3 PROSPECTIVE JUROR 2: Here.

4 THE COURT: Jeffrey Bibbee.

09:40:04 5 PROSPECTIVE JUROR 5: Here.

6 THE COURT: Belinda Courtney.

7 PROSPECTIVE JUROR 8: Here.

8 THE COURT: Melissa Dobbins --

9 COURTROOM DEPUTY: Judge, I have a
09:40:14 10 few left. I lost them. They're right here.

11 THE COURT: Oh. Never mind.

12 Before I repeat who the parties are and the
13 lawyers are, I'm going to call the roll first.
14 That's the safest.

09:41:20 15 Joey Aiello. Phillip Bess. Jeffrey
16 Bibbee. Belinda Courtney. Are you James Davis?

17 PROSPECTIVE JUROR 9: Yes, ma'am.

18 THE COURT: Good morning. Melissa
19 Dobbins.

09:41:34 20 PROSPECTIVE JUROR 10: Yes, ma'am.

21 THE COURT: Stephen Drzycimski.

22 PROSPECTIVE JUROR 12: Here.

23 THE COURT: Beckie Edwards.

24 PROSPECTIVE JUROR 14: Here.

09:41:44 25 THE COURT: James Guess.

1 PROSPECTIVE JUROR 15: Here.

2 THE COURT: Monica Gregory.

3 PROSPECTIVE JUROR 16: Here.

09:41:50

4 THE COURT: Who's sitting in the
5 middle, then?

6 PROSPECTIVE JUROR 20: Marni Kent.

09:42:12

7 THE COURT: Okay. You need to
8 move. I'll tell you. Step out of the seats just
9 a minute. Okay. James Guess. Monica Gregory.
10 Would you scoot over a little bit? Charles
11 Hines.

12 PROSPECTIVE JUROR 19: Here.

09:42:20

13 THE COURT: Marni Kent. You're
14 supposed to sit next to Mr. Hines. And Jean
15 Kezo?

16 PROSPECTIVE JUROR 21: Here.

17 THE COURT: Frank Luther.

18 PROSPECTIVE JUROR 23: Here.

19 THE COURT: Chris Matthews.

09:42:22

20 PROSPECTIVE JUROR 24: Here.

21 THE COURT: Carl McGrady.

22 PROSPECTIVE JUROR 25: Here.

23 THE COURT: Casey Miller.

24 PROSPECTIVE JUROR 26: Here.

09:42:30

25 THE COURT: Donna Missildine.

1 PROSPECTIVE JUROR 27: Here.

2 THE COURT: Deborah Moody?

3 PROSPECTIVE JUROR 29: Here.

4 THE COURT: Stacey Moseley.

09:42:44 5 PROSPECTIVE JUROR 31: Here.

6 THE COURT: Gwen Naylor.

7 PROSPECTIVE JUROR 32: Here.

8 THE COURT: Robert Neutze.

9 PROSPECTIVE JUROR 33: Here.

09:42:52 10 THE COURT: Jerry Reyer.

11 PROSPECTIVE JUROR 34: Here.

12 THE COURT: Maurice Robinson.

13 PROSPECTIVE JUROR 35: Here.

14 THE COURT: Wendell Shields.

09:43:04 15 PROSPECTIVE JUROR 36: Here.

16 THE COURT: Lawrence Spiller.

17 PROSPECTIVE JUROR 38: Here.

18 THE COURT: Jane Wylie.

19 PROSPECTIVE JUROR 40: Here.

09:43:08 20 THE COURT: Peggy Whitt.

21 PROSPECTIVE JUROR 41: Here.

22 THE COURT: And Jan Williamson.

23 PROSPECTIVE JUROR 42: Here.

24 THE COURT: Okay. Let me just say

09:43:14 25 very briefly since we were having some people

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdrpr@aol.com

1 that were not in here when I told you who the
2 parties are -- for the ones of you who missed it,
3 this is Case Number CV10-369 in the United States
4 Court for the Northern District. And this is
09:43:34 5 Mr. Brim, Jamon T. Brim. He is the plaintiff.
6 And he's represented by Penny Cauley and Ronald
7 Sykstus. And tomorrow he will have another
8 lawyer who couldn't be here today named Len
9 Bennett. You will be introduced to him tomorrow.

09:43:52 10 The defendant is Midland Credit
11 Management, Inc. And their representative is
12 Gabe Edrozo, who is seated on my left. They are
13 represented by Eric Langley and Jason Tompkins.
14 And their in-house counsel, Chris Yang, is here,
09:44:06 15 as well.

16 And the first thing I'm going to ask
17 everyone to do is to stand and raise their right
18 hand and take the preliminary oath of a juror.

19 (Jurors sworn.)

09:44:34 20 THE COURT: Would you give us the
21 information -- well, let me just tell you: I'm
22 going to ask you some questions after you give us
23 some information. And then the lawyers are going
24 to ask you some questions. If the questions
09:44:48 25 apply to you, then -- you can go ahead and put it

1 up. If the questions apply to you, then the
2 first thing you need to do is give us your name
3 so the court reporter who is seated right there
4 can take down who is saying what because she's
09:45:06 5 got to take down what everybody says all day long
6 to make a record of what we're doing here in
7 court today. Then after you give us your name,
8 you need to give us your answer. If you're
9 seated behind the rail, if you would also stand
09:45:18 10 when you give us your answer -- there may be
11 questions that a lot of people have their hands
12 up for. You don't have to stand with your hand
13 up. But if -- when you give your answer, please
14 stand up so we can hear you better.

09:45:30 15 The rule is that if a question applies to
16 you, you answer it. If you're not sure whether a
17 question applies to you or not, please answer it.
18 We'd rather have one answer too many than you're
19 later on sitting in the jury box, thinking, now I
09:45:46 20 know what they're talking about and I should have
21 answered that.

22 If for some reason you feel like you
23 cannot answer the question and -- because you
24 need it clarified, speak up. Tell us what it is
09:45:56 25 you need clarified, and we'll clarify it for you.

1 If you don't answer a question because you don't
2 think it applies to you, even after a
3 clarification and we go on to the next question
4 or questions and you're sitting there, thinking
09:46:14 5 back and all of a sudden you realize you probably
6 should have answered a question that was asked
7 way back when, go back to that question and say,
8 I'd like to give an answer or supplement an
9 answer because I've thought about it.

09:46:26 10 Finally, even when you're -- if you're
11 seated as a juror in this case to hear this case
12 and you think of something you should have
13 answered when you're sitting actually in the jury
14 box, trying the case, give us whatever it is you
09:46:42 15 should have told us. Just give us that
16 information. We need it. And we'll make proper
17 use of it.

18 I do want to tell you that with respect to
19 any question asked, both of the Court and of the
09:46:54 20 lawyers, if there's any information you do not
21 want to stand up and give in front of all the
22 other jurors, you should feel free to tell me
23 that you want to do this privately, and we'll go
24 in chambers and do it privately outside the
09:47:08 25 presence and hearing of the rest of the jurors.

1 You certainly have that right. And you should
2 not hesitate to exercise it if you think that
3 would be best for you.

4 Now, the first thing I would like for you
09:47:20 5 to do is to answer the questions on the easel.
6 And then I'll ask you some more questions after
7 those have been answered. And we should start
8 with Mr. Aiello. You don't have to tell us
9 street address. Just the city you live in or the
09:47:34 10 county.

11 PROSPECTIVE JUROR 1: My name is
12 Joey Aiello. I live in Huntsville, Alabama. I'm
13 a plaintiff's personal injury lawyer. Morris,
14 Conchin, King & Hodge in Huntsville. My -- and
09:47:48 15 that's what I've done for the past five years.
16 My -- I graduated from law school at Alabama.
17 I'm married to Claire Aiello. And she works at
18 Channel 19 in Huntsville. And she is a web
19 content manager. And never been a juror. And I
09:48:06 20 like Alabama football.

21 THE COURT: Thank you.

22 COURTROOM DEPUTY: Phillip Bess.

23 THE COURT: Wait. Have you ever
24 been a plaintiff or defendant, witness?

09:48:16 25 PROSPECTIVE JUROR 1: Never been a

1 witness and never sued or been sued.

2 THE COURT: Okay. Thank you.

3 PROSPECTIVE JUROR 2: My name is
4 Phillip Bess. I've lived in Toney, Alabama the
09:48:28 5 last six years. I'm a quality engineering
6 manager for Navistar Diesel of Alabama. I've
7 been there four years. Before that, I was a
8 quality manager down in Cullman, Alabama for
9 another company. Highest level of school, I've
09:48:46 10 got four years of college, but have not got a
11 degree. I am married. My wife, Vickie, is a
12 safety manager for Selex Galileo in Huntsville.
13 I've never been a juror. Never been a witness.
14 I've never been sued or sued anybody. I have a
09:49:02 15 hobby farm, and I love Alabama football.

16 THE COURT: Thank you.

17 COURTROOM DEPUTY: Jeffrey Bibbee.

18 PROSPECTIVE JUROR 5: I'm Jeffrey
19 Bibbee. I live in Florence, Alabama. Prior to
09:49:14 20 that, my legal residence was Somerville, Alabama
21 while I was a graduate student in London. I am
22 an assistant professor of history at the
23 University of North Alabama and have been for
24 two-and-a-half years. Prior to that, I was a
09:49:26 25 research assistant at the London School of

1 Economics. I have a Ph.D. in history from the
2 University of London. I am unmarried. I have
3 never been a juror. I have never been a witness.
4 I have never been sued. And my special interests
09:49:40 5 would be travel, reading, cooking.

6 THE COURT: Thank you. Now, have
7 you ever sued anyone?

8 PROSPECTIVE JUROR 5: No, ma'am.

9 THE COURT: Okay. Travel,
09:49:50 10 reading, and cooking?

11 PROSPECTIVE JUROR 5: Yes, ma'am.

12 COURTROOM DEPUTY: Belinda
13 Courtney.

14 PROSPECTIVE JUROR 8: I live in
09:49:56 15 Meridianville. I've been there 20-something
16 years. I'm self-employed. Clean houses. Been
17 doing that for, like, five years. I finished
18 high school. I'm married. My husband does
19 computer work at SAIC. I have never been a
09:50:14 20 juror. I've never been a witness in court. And
21 I've never sued or been sued. And my hobbies are
22 camping.

23 THE COURT: Thank you.

24 COURTROOM DEPUTY: James Davis.

09:50:26 25 PROSPECTIVE JUROR 9: I'm James

1 Davis. Lived in Rogersville, Alabama all my
2 life. Work for Simcoe Construction. I'm
3 equipment operator. That's about all I got.
4 Never sued. Never been sued. All that.

09:50:48 5 THE COURT: No. Wait. Wait just
6 a minute. Did you go to high school?

7 PROSPECTIVE JUROR 9: Yes, ma'am.

8 THE COURT: Did you finish 12th
9 grade?

09:50:56 10 PROSPECTIVE JUROR 9: Yes, ma'am.

11 THE COURT: What does your wife
12 do?

13 PROSPECTIVE JUROR 9: She works at
14 Listerhill Credit Union.

09:51:02 15 THE COURT: And you've never sued
16 or been sued?

17 PROSPECTIVE JUROR 9: No, ma'am.

18 THE COURT: You've never been a
19 witness?

09:51:10 20 PROSPECTIVE JUROR 9: No, ma'am.

21 THE COURT: Never been a juror?

22 PROSPECTIVE JUROR 9: No, ma'am.

23 THE COURT: And do you do
24 something for fun?

09:51:16 25 PROSPECTIVE JUROR 9: Farm.

1 THE COURT: Thank you.

2 COURTROOM DEPUTY: Melissa

3 Dobbins.

4 PROSPECTIVE JUROR 10: I'm Melissa
09:51:20 5 Dobbins. I lived in Moulton, Lawrence County for
6 the past 18 years. I'm a nurse at Huntsville
7 Hospital. I work in the neonatal intensive care.
8 Been there for four years. And I worked at
9 Decatur General Hospital before that. I have an
09:51:36 10 associate's degree from Calhoun. I am married.
11 And he works at Nucor Steel.

12 THE COURT: Where?

13 PROSPECTIVE JUROR 10: Nucor
14 Steel. I have been a juror several years ago in
09:51:50 15 Lawrence County for -- it was a family case.
16 Would that be civil case? Where one part of the
17 family was suing the other family. Other part of
18 the family.

19 THE COURT: What did they sue for?

09:52:04 20 PROSPECTIVE JUROR 10: They -- a
21 daughter was saying that the son was taking
22 advantage of the father because he had
23 Alzheimer's.

24 THE COURT: That would be a civil
09:52:12 25 case.

1 PROSPECTIVE JUROR 10: Okay. I'm
2 not real big on court and stuff.

3 THE COURT: That's fine. So what
4 was the result?

09:52:18 5 PROSPECTIVE JUROR 10: He --

6 THE COURT: Who was the one that
7 brought the lawsuit? The son?

8 PROSPECTIVE JUROR 10: The
9 daughter brought the lawsuit. The son just had
09:52:28 10 to pay a small amount back.

11 THE COURT: So did y'all decide
12 that he had to pay some money back?

13 PROSPECTIVE JUROR 10: Yes.

14 THE COURT: Were you the
09:52:36 15 foreperson of the jury?

16 PROSPECTIVE JUROR 10: No, ma'am.
17 No. And I have never been sued or sued anybody.
18 And my hobbies are my kids and following them in
19 ball and stuff. That's about it.

09:52:48 20 THE COURT: Okay. Thanks.

21 COURTROOM DEPUTY: Stephen
22 Drzycimski.

23 PROSPECTIVE JUROR 12: I live in
24 Laceys Spring, Alabama. I work for the U.S.
09:52:56 25 Government on Redstone Arsenal. I'm an engineer.

1 And work in the research and development
2 engineering center. Worked there for 17 -- 20
3 years, I guess. Something like that now. Let's
4 see. I haven't had any other jobs the last five
09:53:12 5 years. I graduated from college with a BS in
6 mechanical engineering. I'm married. My spouse
7 doesn't -- she does work. She does out of the
8 house. She's a -- she likes to buy junk and
9 antique things and sells them back on EBay. That
09:53:30 10 kind of thing. She has her own little business,
11 kind of thing.

12 THE COURT: Can I call her an EBay
13 trader?

14 PROSPECTIVE JUROR 12: Yeah. She
09:53:38 15 goes to yard sales and sells that or junk, things
16 like that. I have been a juror. Probably been
17 20-plus years ago. Heard one -- it was civil
18 case. Tax case. I don't really remember the
19 specifics of it. We heard one day of evidence,
09:53:50 20 and then it was pleaded out. And I haven't been
21 a witness. Haven't sued anybody. And I play
22 lots of tennis, lots of golf, and have a barbecue
23 competition team.

24 THE COURT: Thank you.

09:54:04 25 COURTROOM DEPUTY: Beckie Edwards.

1 PROSPECTIVE JUROR 14: I live in
2 Hanceville, Alabama. I've lived there for the
3 last 20 years. And I'm a retired postal worker.
4 But I have worked for Alabama Coal Cooperative
09:54:22 5 for the past ten years.

6 THE COURT: What do you do for
7 them?

8 PROSPECTIVE JUROR 14: I'm a
9 bookkeeper.

09:54:32 10 THE COURT: Okay.

11 PROSPECTIVE JUROR 14: And I
12 graduated from Wallace State Junior College. I
13 am divorced. And I have been a juror in a murder
14 trial. He was convicted. I've never been a
09:54:54 15 witness in court. I have been sued in traffic
16 accident. And I won. And my hobbies are my
17 grandchildren and Auburn athletics.

18 THE COURT: Thank you. Were you
19 the foreperson of the jury that heard the murder
09:55:12 20 case?

21 PROSPECTIVE JUROR 14: No.

22 THE COURT: Okay.

23 COURTROOM DEPUTY: James Guess.

24 PROSPECTIVE JUROR 15: James E.
09:55:34 25 Guess. I live in Fackler, Alabama for last 36

1 years. I'm retired person. I was an electrical
2 supervisor for TVA for those years. I do not
3 work now. I'm retired. The other jobs I've had
4 in the last five years is mowing lawns for the
09:56:10 5 public. I do a little bit of that on the side.
6 My highest level of education is two-year degree
7 from Northeast State Junior College. I'm
8 married. I have three children. My wife does
9 not work. She's retired from TVA. I've been on
09:56:28 10 a jury one time in Jackson County before. I've
11 never been a witness in court. Never sued
12 anyone. My hobbies is Alabama football.

13 THE COURT: Okay. Have you ever
14 been sued?

09:56:44 15 PROSPECTIVE JUROR 15: No, ma'am.

16 THE COURT: Can you remember what
17 case you heard as a juror?

18 PROSPECTIVE JUROR 15: Highway
19 patrol was injured in an accident, investigating
09:56:52 20 an accident. He had the court suit.

21 THE COURT: And do you remember
22 what the jury did?

23 PROSPECTIVE JUROR 15: Yes, ma'am.
24 He lost the court.

09:57:02 25 THE COURT: Okay. All right.

1 Were you the for person of the jury?

2 PROSPECTIVE JUROR 15: Yes, ma'am,
3 I was.

09:57:08

4 THE COURT: All right. Thank you,
5 sir.

6 COURTROOM DEPUTY: Monica Gregory.

09:57:18

7 PROSPECTIVE JUROR 16: I'm Monica
8 Gregory. Live in Hartselle, Alabama.
9 Previous -- I've been there almost five years.

10 Before that, we were in Portland, Tennessee, just
11 north of Nashville. I am a quality control

12 manager. A chemist for the last probably ten, 15
13 years. I work for a company called Southern

09:57:34

14 Water Consultants. I've only been there three

15 weeks. I just recently changed jobs. Before

16 that, I was employed with Bunge Corporation.

17 Make soybean oil. I have a bachelor's degree in
18 biology from the University of Tennessee Martin.

19 I am married. My husband is Jason. He does

09:57:50

20 project engineering for Southwestern

21 Communications which is jails and prisons. They

22 do the controls. Their company does. I've never

23 been a juror. I've never been a witness. I have

24 sued, I guess, or in -- my mother sued. My

09:58:12

25 father was killed in a car accident. That case

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdrpr@aol.com

1 never went to court. It was settled out. But I
2 guess I was part of that lawsuit because I was
3 over the age of 18. So --

4 THE COURT: Okay.

09:58:24 5 PROSPECTIVE JUROR 16: My hobbies
6 are two baby girls and baking.

7 THE COURT: Have you ever been
8 suit?

9 PROSPECTIVE JUROR 16: No, ma'am.

09:58:32 10 THE COURT: Thank you.

11 COURTROOM DEPUTY: Charles Hines.

12 PROSPECTIVE JUROR 19: I'm Charles
13 Hines. I live in Huntsville, Alabama. I'm
14 retired. I was electronic engineer and
09:58:44 15 electromagnetic compatibility engineer. I have a
16 bachelor's and master's and all but thesis toward
17 a doctorate. Let's see. Widowed. Was married
18 to a precious treasure for 29 years and lost her
19 in 2009. I was a jury foreman on a criminal
09:59:20 20 case. And.

21 THE COURT: What was the result?

22 PROSPECTIVE JUROR 19: He was
23 convicted.

24 THE COURT: Okay.

09:59:30 25 PROSPECTIVE JUROR 19: And I was

1 sued as a result of an automobile accident 30
2 years ago.

3 THE COURT: Who won that case?

4 PROSPECTIVE JUROR 19: They won.

09:59:42 5 The insurance company had to pay. And my hobby
6 is baking.

7 THE COURT: Thank you, sir.

8 COURTROOM DEPUTY: Marni Kent.

9 PROSPECTIVE JUROR 20: My name is
09:59:52 10 Marni Kent. I live in Cullman, Alabama. I work
11 for G.E. in Huntsville. And I work in the
12 technology group with the engineers. I do
13 technical documentation. I'm a technical writer.
14 And let's see. I finished high school. I've had
10:00:10 15 some college, but I don't have any degrees. I am
16 married. My spouse is Austin Kent. He works in
17 Cullman for Lumpkin Industries, and they do
18 industrial gear repair. I've not ever heard a
19 case as a juror. And I've not been a witness.
10:00:28 20 I've not been sued or sued anyone. And I like to
21 spend time with my family and extended family.

22 THE COURT: Thank you.

23 COURTROOM DEPUTY: Jean Kezo.

24 PROSPECTIVE JUROR 12: Hello. My
10:00:40 25 name is Jean Kezo. I live in Huntsville,

1 Alabama. I am a cashier with the South Parkway
2 Wal-Mart in Huntsville. I've had that job for
3 the past five-and-a-half years. Let's see. I
4 graduated from high school in Wisconsin in 1970.
10:01:00 5 Do not have any degrees. But I have also spent
6 some time as a creative freelance writer.
7 Creative writing is one of my hobbies also. I
8 did some freelance work for the local newspaper
9 in Wisconsin. That was part-time on my even --
10:01:20 10 you know, as a self-employed person. I am
11 divorced. I have three grown children. Yes. I
12 was a juror, but this was back, like, 20, 25
13 years ago back in -- for the county court in
14 Wisconsin. All the cases were sort of local and
10:01:38 15 sort of, you know, smaller cases. Nothing like
16 murder trials or anything like that. I don't
17 remember who won. I've never been a witness in a
18 court. And my hobbies are writing, reading, and
19 traveling.

10:01:54 20 THE COURT: Have you ever sued or
21 been sued?

22 PROSPECTIVE JUROR 21: No.

23 THE COURT: Thank you.

24 COURTROOM DEPUTY: Frank Luther.

10:02:00 25 PROSPECTIVE JUROR 23: Frank

1 Luther. I live in Madison. I work for the Hall
2 Metal Door Company. I'm the production
3 scheduler. Been there for the past 14, 15 years.
4 No other jobs. Education degree, University of
10:02:26 5 Texas. Married. My wife works as a floral
6 designer, Design World in Madison. I have heard
7 a case as a juror. It was a criminal DUI case El
8 Paso County.

9 THE COURT: I'm sorry. Who won?

10:02:42 10 PROSPECTIVE JUROR 23: Who won?

11 THE COURT: You said it was El
12 Paso County in Texas?

13 PROSPECTIVE JUROR 23: El Paso
14 County, Texas. It was a DUI case. The county
10:02:56 15 won on that one.

16 THE COURT: So y'all found him
17 guilty?

18 PROSPECTIVE JUROR 23: Ma'am?

19 THE COURT: Y'all found him
10:03:02 20 guilty?

21 PROSPECTIVE JUROR 23: Yes, ma'am.

22 THE COURT: Were you the
23 foreperson?

24 PROSPECTIVE JUROR 23: No, ma'am.

10:03:06 25 THE COURT: Any other juror

1 experience?

2 PROSPECTIVE JUROR 23: I'm sorry?

3 THE COURT: Any other juror

4 experience?

10:03:10 5 PROSPECTIVE JUROR 23: Show up and
6 get dismissed.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR 23: I've not
9 been sued. Or I have been, I guess, for a car
10:03:20 10 accident, but the insurance company handled it.
11 And my hobbies are my grandchildren and sports.

12 THE COURT: Thank you.

13 COURTROOM DEPUTY: Chris Matthews.

14 PROSPECTIVE JUROR 24: Hi. My
10:03:32 15 name is Chris Matthews. I'm a registered nurse.
16 I work in Highlands in the emergency department.
17 Prior to that, I worked for Walker Isbell
18 Surgeons for --

19 THE COURT: I'm sorry. You worked
10:03:40 20 where?

21 PROSPECTIVE JUROR 24: Now?

22 THE COURT: Yeah.

23 PROSPECTIVE JUROR 24: Presently I
24 work at Highlands in the emergency room. Prior
10:03:48 25 to that, I worked for Walker Isbell Surgeons. I

1 have an associate's from northeast. I am married
2 to Ryan Matthews. He works for TVA. He is an
3 operator. I've never heard a case as a juror. I
4 have never been a witness. I have never been
10:04:04 5 sued. I have never sued anyone. And my hobbies
6 are cooking, cleaning, and Auburn football.

7 THE COURT: Okay. Where do you
8 live?

9 PROSPECTIVE JUROR 24: I live in
10:04:18 10 Scottsboro.

11 THE COURT: Thanks.

12 COURTROOM DEPUTY: Carl McGrady.

13 PROSPECTIVE JUROR 25: My name is
14 Carl McGrady. I live in Florence. Been in
10:04:24 15 Florence since I was two months old. I'm almost
16 60. The work I do, I am a warehouse manager for
17 TNT Fireworks, which is American promotional
18 events. I've been there approximately ten years.
19 Before that, I worked for Reynolds Metal Company
10:04:42 20 and Wise Alloys. Highest level of schooling, I
21 have a degree from the University of North
22 Alabama in math and science. I am married. My
23 wife, 38 years, she is a housewife. She doesn't
24 work. Works around the house and keeps our
10:05:04 25 grandchildren. Heard a case as a juror. I was

1 appointed as a juror on the grand jury of
2 Lauderdale County for three months about 15 years
3 ago. That was involving if the D.A. had enough
4 evidence to bind those cases over to court. And
10:05:28 5 I have never been a witness in a court. I have
6 been sued as an individual. I mean, as an
7 accident, but my insurance company took care of
8 that. And on the suit case, I was with a group
9 that sued I think a corporation for Reynolds'
10:05:48 10 employees at that time for -- years ago for
11 benefits that they knocked us out of when they
12 sold the company. And my hobbies are my
13 grandchildren.

14 THE COURT: All right. Thank you,
10:06:00 15 sir.

16 COURTROOM DEPUTY: Casey Miller.

17 PROSPECTIVE JUROR 26: My name is
18 Casey Miller. I live in Florence, Alabama.
19 Before that, I lived in Sacramento, California.
10:06:10 20 Currently unemployed. Before that, I was a store
21 manager for Movie Gallery until they went out of
22 business. That was in Tuscumbia, Alabama. And
23 high school graduate. No college. Not married.
24 Yes. I was a juror. I was a juror -- I was a
10:06:36 25 member of a jury in I guess another civil case

1 where a gentleman had sued his lawyer for what he
2 felt he was -- misrepresentation from a previous
3 case that they had had. We heard about half a
4 day of arguments and testimony and evidence, came
10:06:52 5 back from lunch, and they had settled while we
6 were out at lunch.

7 THE COURT: All right.

8 PROSPECTIVE JUROR 26: Never been
9 a witness. Never been sued. Never sued anybody.
10:07:02 10 And I am a musician.

11 THE COURT: All right.

12 COURTROOM DEPUTY: Donna
13 Missildine.

14 PROSPECTIVE JUROR 27: My name is
10:07:10 15 Donna Missildine. I live in Falkville, Alabama.
16 And I am a preschool teacher. I work for Bethel
17 Baptist School in Hartselle. I've worked there
18 for 25 years. I have an associate's degree. And
19 I am married. My husband works for Family Dollar
10:07:30 20 as a store opener. And I have heard a case as a
21 juror. It was a DUI case. And I think she lost.

22 THE COURT: Were you the
23 foreperson?

24 PROSPECTIVE JUROR 27: No, ma'am.

10:07:50 25 THE COURT: Okay.

1 PROSPECTIVE JUROR 27: Never been
2 a witness. Never been sued. I never sued
3 anyone. My hobbies are reading, and I have a
4 brand new grand baby.

10:08:04 5 THE COURT: Congratulations.

6 COURTROOM DEPUTY: Deborah Moody.

7 PROSPECTIVE JUROR 29: My name is
8 Deborah Moody. I live in Killen, Alabama. I
9 work as a manager at the Green Hills Senior
10:08:20 10 Center. My former occupation was school teacher.
11 I have a master's degree in early childhood
12 education from Western Kentucky University. I am
13 married. My husband is disabled from Reynolds
14 Metals. I've never heard a case as a juror.
10:08:44 15 I've never been a witness. I had a case -- it
16 was settled out of court, but it was a car
17 accident.

18 THE COURT: Were you the plaintiff
19 or the defendant?

10:08:56 20 PROSPECTIVE JUROR 29: I would
21 have been the plaintiff. It was settled out.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR 29: And my
24 hobbies are bass fishing and Alabama football.

10:09:06 25 THE COURT: Thank you.

1 COURTROOM DEPUTY: Stacey Moseley.

2 PROSPECTIVE JUROR 31: My name is
3 Stacey Moseley. I live here in Florence for,
4 like, the last 16 years. I am an LPN office
10:09:20 5 nurse. I'm at this -- I've been at this job
6 since, like, November. Before that, I had worked
7 for another doctor for last -- the last five or
8 six years here in Florence.

9 THE COURT: Who do you work for?

10:09:32 10 PROSPECTIVE JUROR 31: Dr. Felix
11 Morris.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR 31: I have an
14 LPN certificate from Northwest Shoals. I'm
10:09:40 15 married. My husband does not work. He is
16 disabled. He's 13 years out from a heart
17 transplant. I have served as a juror. I've
18 never been a witness. And I've never sued or
19 been sued. And my hobbies and interests are
10:09:58 20 whatever my son is into and reading.

21 THE COURT: Okay. With respect to
22 being a juror, has that been here in Lauderdale
23 County?

24 PROSPECTIVE JUROR 31: Yes, ma'am.

10:10:06 25 THE COURT: And do you remember

1 what the case was about?

2 PROSPECTIVE JUROR 31: DUI charge.

3 THE COURT: Do you know who won?

4 PROSPECTIVE JUROR 31: Well, the
10:10:18 5 prosecution -- the defendant lost.

6 THE COURT: Was he found guilty?

7 PROSPECTIVE JUROR 31: Yes.

8 THE COURT: Were you the

9 foreperson?

10:10:26 10 PROSPECTIVE JUROR 31: No.

11 THE COURT: Thank you, sir.

12 COURTROOM DEPUTY: Gwen Naylor.

13 PROSPECTIVE JUROR 32: My name is
14 Gwen Naylor, and I live in Athens, Alabama. I
10:10:34 15 retired from TVA in 2001. In 2009, I started to
16 take some part-time jobs and things. I worked
17 for the census for the decennial census for a
18 year and just starting to do something part-time
19 from home. I have a BS degree in accounting. I
10:10:52 20 am married. My husband works for IBEC in
21 Madison. I have heard a case as a juror in this
22 court. It was a civil case. The defendant won.
23 I have --

24 THE COURT: What was it about?

10:11:08 25 PROSPECTIVE JUROR 32: It was

1 sexual harassment.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR 32: I have
4 never been sued nor have I sued anyone. And my
10:11:16 5 hobbies are just outdoor activities with my
6 family.

7 THE COURT: Thank you. Were you
8 the foreperson of the jury?

9 PROSPECTIVE JUROR 32: No, ma'am.

10:11:24 10 COURTROOM DEPUTY: Robert Neutze.

11 PROSPECTIVE JUROR 33: I live in
12 Huntsville, Alabama. I work at NASA for CSC as a
13 systems engineer. Highest degree, four years at
14 UAH. Computer software. I'm widowed. I have
10:12:00 15 heard multiple criminal cases. Mixed bag. Some
16 innocent, some guilty.

17 THE COURT: I got the part where
18 you said I've heard multiple criminal cases.
19 Mixed bags?

10:12:16 20 PROSPECTIVE JUROR 33: Some
21 guilty, some innocent. So this would be my
22 fourth jury selection. Never been a foreman on
23 any of the juries.

24 THE COURT: Okay.

10:12:26 25 PROSPECTIVE JUROR 33: I have been

1 a witness to an auto accident trial. I've never
2 been sued nor have a sued anyone. And my hobbies
3 are golf, home improvement, college sports.

4 THE COURT: Thank you.

10:12:42 5 COURTROOM DEPUTY: Jerry Reyer.

6 PROSPECTIVE JUROR 34: I'm Jerry
7 Reyer. I've lived in Ardmore, Alabama all my
8 life. Worked for WYLE Laboratories 32 years. My
9 wife is Paula Reyer. She's an Avon
10:12:56 10 representative. I served on one trial thing. It
11 was food poisoning. They lost on it.

12 THE COURT: Okay. Stop. You're
13 losing me. Okay. Where do you work?

14 PROSPECTIVE JUROR 34: WYLE
10:13:16 15 Laboratories. Huntsville, Alabama.

16 THE COURT: And what do you do
17 there?

18 PROSPECTIVE JUROR 34: I'm an
19 electrician by trade.

10:13:16 20 THE COURT: Okay. And highest
21 level of education?

22 PROSPECTIVE JUROR 34: High school
23 graduate.

24 THE COURT: And your wife works
10:13:22 25 for Avon as a representative?

1 PROSPECTIVE JUROR 34: She is a
2 manager.

3 THE COURT: And you have been a
4 juror?

10:13:28 5 PROSPECTIVE JUROR 34: Before in a
6 case. And it was on food poisoning, and they
7 lost on it.

8 THE COURT: Who sued whom?

9 PROSPECTIVE JUROR 34: In Athens,
10:13:36 10 there was an individual that eat at a restaurant
11 and got food poisoning. He sued the restaurant.
12 Proved it wasn't food poisoning is what it boiled
13 down to.

14 THE COURT: Okay. Thank you.

10:13:50 15 Were you the foreperson?

16 PROSPECTIVE JUROR 34: No, ma'am.
17 And I've never sued anybody or been sued either.
18 My hobby is Alabama football.

19 THE COURT: Thank you.

10:14:00 20 COURTROOM DEPUTY: Maurice
21 Robinson.

22 PROSPECTIVE JUROR 35: Maurice
23 Robinson. And I live in Triana, Alabama. And I
24 work for -- I'm a contractor for Redstone
10:14:12 25 Arsenal. And I'm a HVAC mechanic. And I'm a

1 high school graduate. I graduated from high
2 school. And I'm married. My wife, she runs a
3 strip mall. I can barely see this.

4 THE COURT: Can you scoot it over?

10:14:40

5 PROSPECTIVE JUROR 35: I've been
6 on -- I have been a juror. On a murder trial.

7 THE COURT: Was he found guilty or
8 not guilty?

9 PROSPECTIVE JUROR 35: Guilty.

10:14:56

10 THE COURT: Were you the
11 foreperson?

12 PROSPECTIVE JUROR 35: No.

13 THE COURT: Okay. Any other
14 trials?

10:15:00

15 PROSPECTIVE JUROR 35: No, ma'am.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR 35: And I have
18 never been a witness. I have never been sued.
19 And my hobbies are chess.

10:15:14

20 THE COURT: Chess?

21 PROSPECTIVE JUROR 35: Chess.

22 THE COURT: Have you ever sued
23 anybody?

24 PROSPECTIVE JUROR 35: No, ma'am.

10:15:18

25 THE COURT: All right. Thank you,

1 sir.

2 COURTROOM DEPUTY: Wendell

3 Shields.

4 PROSPECTIVE JUROR 36: My name is
10:15:34 5 Wendell Shields. I live in Town Creek, Alabama
6 for the last 15, 16 years.

7 THE COURT: Where?

8 PROSPECTIVE JUROR 36: Town Creek.
9 I am a truck driver for the last 22 years. I
10:15:46 10 work for LLL Farms now. I'm a high school
11 graduate. My wife, she's a manager for Dollar
12 General in Sheffield. I have been a juror on a
13 case in Lawrence County. That was about six
14 years ago, seven years ago. It was a lady rolled
10:16:16 15 into another lady at a red light. And lady was
16 rolled in to, she said she had neck problems.
17 And she lost.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR 36: And I've
10:16:26 20 never been sued nor have I ever sued anyone. And
21 my hobbies are whatever my grandson wants to do
22 that day.

23 THE COURT: What?

24 PROSPECTIVE JUROR 36: Whatever my
10:16:38 25 grandson wants to do that day.

1 THE COURT: Okay. All right.

2 Thank you.

3 COURTROOM DEPUTY: Lawrence

4 Spiller.

10:16:42 5 PROSPECTIVE JUROR 38: My name is
6 Lawrence Spiller. I live in Hampton Cove,
7 Alabama. I'm retired after 28 years as a sales
8 manager, sales and sales manager with Hercules,
9 Incorporated. I don't work anymore. I have a BS
10:17:08 10 is mechanical engineering from the University of
11 Maine. I am married for 36 years. My wife is a
12 part-time physical therapist. I've never heard a
13 case as a juror. I've never been a witness.
14 I've never been sued or sued anyone. I like golf
10:17:32 15 and fishing and just about anything.

16 THE COURT: Thank you.

17 COURTROOM DEPUTY: Jane Wylie.

18 PROSPECTIVE JUROR 40: Can you
19 move the board over in the middle? I can't see
10:17:44 20 it.

21 My name is Jane Wylie. I live in
22 Sheffield, Alabama. I'm a housewife. I have a
23 high school education and two years at the
24 University of North Alabama. I've been married
10:18:12 25 for 32 years. My husband is a retired

1 communications supervisor with the Alabama State
2 Troopers. I did jury duty in Colbert County, but
3 I was not chosen for a case. I did federal grand
4 jury in Birmingham for two years. Do you want to
5 know what I heard?

10:18:42

6 THE COURT: No. Not grand jury.

7 PROSPECTIVE JUROR 40: Okay. I've
8 never been a witness. Never sued anyone. Never
9 been sued. My interests are antiques and Kenny
10 Chesney.

10:18:58

11 THE COURT: Thank you.

12 COURTROOM DEPUTY: Peggy Whitt.

13 PROSPECTIVE JUROR 41: Yes. I'm
14 Peggy Whitt. I live in Madison, Alabama. I've
15 lived there basically in that area all my life.
16 I work for Dynetics IT Services. We have a
17 contract with NASA. I'm on a LITES contract.
18 I've been working out at the Arsenal since 1985.
19 Prior to that, I was in banking for about 13
20 years. I have a high school degree with some
21 technical classes, courses. I'm married to my
22 husband, Larry Whitt. He's retired now. He was
23 in the procurement department. I have never been
24 a juror. I've always wanted to be called. I
25 have never been a witness. I've never been sued.

10:19:06

10:19:56

1 Can't read the last line.

2 THE COURT: Have you --

3 PROSPECTIVE JUROR 41: Travel and
4 reading.

10:20:08 5 THE COURT: Have you ever sued
6 anybody?

7 PROSPECTIVE JUROR 41: No, ma'am.

8 THE COURT: Thank you.

9 COURTROOM DEPUTY: Jan Williamson.

10:20:14 10 PROSPECTIVE JUROR 42: Jan
11 Williamson. I live in Hampton Cove, Alabama.
12 Been there for about 16 years. I am currently
13 working with UAH as a program coordinator for the
14 atmospheric sciences researchers. I've been
10:20:30 15 there for just six or seven months. Prior to
16 that, I was a prospect researcher with the
17 university's fundraising division. I have a
18 degree in business from the University of
19 Pennsylvania. And I am married to Allen
10:20:46 20 Williamson. He is a vice-president of ADS
21 Environmental. I have been a juror on a case in
22 Madison County. It was a civil case. At
23 first -- first case, not the one I heard, there
24 was a young man who was charged with drunk
10:21:08 25 driving. He was found guilty. During that

1 accident, there was someone hurt. The case that
2 I was a juror on was the followup where the
3 plaintiff, the accident victim, was suing for
4 damages. The plaintiff won that case. And I was
10:21:22 5 not a foreperson. I have never been a witness.
6 I have never sued anyone or been sued. And my
7 hobbies are my family and travel.

8 THE COURT: Thank you. I want to
9 ask you some questions. And remember the rules
10:21:56 10 about answering them if they apply to you.

11 Is there anyone on this jury panel that
12 have just stood up and introduced themselves --
13 and thank you for doing that -- who is not a
14 citizen of the United States?

10:22:08 15 (No response.)

16 THE COURT: Is there anyone who is
17 not over the age of 18 years?

18 (No response.)

19 THE COURT: Is there anyone who
10:22:22 20 has not resided for a period of one year within
21 the Northern District of Alabama?

22 (No response.)

23 THE COURT: Is there anyone who
24 has been convicted in state or federal court of a
10:22:32 25 court of record of a crime punishable by

1 imprisonment for more than one year without
2 having your civil rights restored?

3 (No response.)

4 THE COURT: Is there anyone who is
10:22:42 5 not able to read, write, speak, and understand
6 English?

7 (No response.)

8 THE COURT: Is there anyone who by
9 reason of mental or physical infirmity is
10:22:50 10 incapable of rendering efficient jury service?

11 (No response.)

12 THE COURT: Is there anyone who is
13 a member of a fire or police department?

14 PROSPECTIVE JUROR 36: Yes.

10:23:04 15 THE COURT: Is it a volunteer fire
16 department?

17 PROSPECTIVE JUROR 36: Kind of.
18 It is volunteer. But we get paid for the calls
19 we go on.

10:23:12 20 THE COURT: That's Mr. Shields?

21 PROSPECTIVE JUROR 36: Yes, ma'am.

22 THE COURT: Have a seat. Anyone
23 else?

24 (No response.)

10:23:18 25 THE COURT: Is there anyone who is

1 a member in the -- in active service in the armed
2 forces?

3 (No response.)

4 THE COURT: Is there anyone who is
10:23:24 5 related by blood or by marriage to Jamon Brim,
6 the plaintiff in this case?

7 (No response.)

8 THE COURT: Is there anyone who is
9 an officer, director, stockholder, or employee of
10:23:38 10 Midland Credit Management, Inc.?

11 (No response.)

12 THE COURT: Is there anyone who is
13 related by blood or by marriage to Len Bennett,
14 who is the lawyer who will be here tomorrow? He
10:23:50 15 is from Virginia.

16 (No response.)

17 THE COURT: Penny Cauley, who is
18 seated here on my right?

19 (No response.)

10:23:54 20 THE COURT: And Ronald Sykstus?

21 (No response.)

22 THE COURT: Is there anyone who in
23 the past has been or presently is being
24 represented by these attorneys or have been in
10:24:06 25 their office for legal advice or sought legal

1 advice from them?

2 (No response.)

3 THE COURT: Is there anyone who is
4 related by blood or by marriage to Eric Langley
10:24:16 5 or Jason Tompkins or Gabe Edrozo or Chris Yang?

6 (No response.)

7 THE COURT: Is there anyone who
8 has been represented by or is represented by or
9 has sought legal advise from Mr. Langley,
10:24:32 10 Mr. Tompkins, or Mr. Yang?

11 (No response.)

12 THE COURT: Let me just ask the
13 whole panel. Is there anyone who knows these
14 people? Knows these people at all?

10:24:44 15 (No response.)

16 THE COURT: Well, let me just tell
17 you: This is what the case is about -- it is a
18 very, very brief synopsis. Jamon Brim filed this
19 action under the Fair Credit Reporting Act, which
10:24:56 20 is located in 15 U.S. Code, Section 1681 and the
21 following sections, based on defendant, Midland
22 Credit Management's, reporting of a collection
23 account as belonging to Mr. Brim to the national
24 credit reporting agencies and the defendant's
10:25:16 25 alleged failure to conduct a reasonable

1 investigation upon receipt of Mr. Brim's dispute
2 through the credit reporting agencies.

3 Now, with that being said, is there anyone
4 who knows anything about the facts of this case?

10:25:32 5 (No response.)

6 THE COURT: Is there anyone who is
7 going to be a witness in this case?

8 (No response.)

9 THE COURT: Is there anyone who
10:25:38 10 has any financial interest in the outcome of this
11 case?

12 (No response.)

13 THE COURT: And is there anyone
14 who has ever heard of Midland Credit Management,
10:25:48 15 Inc. or its affiliate, Midland Funding, L.L.C.?

16 (No response.)

17 THE COURT: Okay. Is there any of
18 you who -- have you ever disputed anything on
19 your credit report? Is there anyone who has ever
10:26:06 20 done that? All right. Are you okay answering
21 that out loud?

22 PROSPECTIVE JUROR 38: Sure.

23 THE COURT: That's Mr. Smith?

24 PROSPECTIVE JUROR 38: Spiller.

10:26:18 25 THE COURT: I got you. Yeah.

1 You're Mr. Lawrence Spiller.

2 PROSPECTIVE JUROR 38: Yes, I am.
3 What's the question?

4 THE COURT: If you have ever
10:26:28 5 disputed anything on your credit report?

6 PROSPECTIVE JUROR 38: Yeah. They
7 turned something over to a credit collection
8 agency that I -- was not mine.

9 THE COURT: Okay.

10:26:40 10 PROSPECTIVE JUROR 38: I took care
11 of it.

12 THE COURT: Do you know when that
13 was?

14 PROSPECTIVE JUROR 38: Ten-plus
10:26:44 15 years, probably.

16 THE COURT: Do you remember the
17 credit reporting agency's name?

18 PROSPECTIVE JUROR 38: No. I sure
19 don't.

10:26:54 20 THE COURT: That's fine. Thank
21 you.

22 PROSPECTIVE JUROR 38: It seems
23 like it changed names as it kind of went along
24 there for a while.

10:27:00 25 THE COURT: Thank you, sir.

1 Anyone else?

2 PROSPECTIVE JUROR 16: It was a
3 college credit loan. They had credited a check
4 to my husband's account and not mine. It was
10:27:12 5 right after we first got married. That would
6 have been in about the fall of '99. But it was
7 cleared up. They sent us the proper paperwork
8 and adjusted the credit reports.

9 THE COURT: You're Ms. Gregory?

10:27:24 10 PROSPECTIVE JUROR 16: Yes, ma'am.

11 THE COURT: Okay. Now, who was it
12 that had credited it to your husband's account?

13 PROSPECTIVE JUROR 16: It had
14 changed names. We both had an account. Like,
10:27:30 15 somebody had acquired my loans and his. Now it's
16 Sallie Mae. I don't know who it was. Loans
17 First or something like that.

18 THE COURT: So do you mind talking
19 about it?

10:27:40 20 PROSPECTIVE JUROR 16: Oh, no,
21 ma'am.

22 THE COURT: How did it first come
23 to your attention that it was credited to the
24 wrong account?

10:27:46 25 PROSPECTIVE JUROR 16: We had

1 pulled to purchase a vehicle, and I noticed they
2 had -- mine was still showing a balance and his
3 was not. And I had paid mine off. And that's
4 what that check was for. Paid in full. And they
5 credited it to his student loan. So it made his
6 balance go down, and mine was still there.

7 THE COURT: And that was on the
8 credit report?

9 PROSPECTIVE JUROR 16: On the
10 credit report.

11 THE COURT: So what did you do to
12 clear it up?

13 PROSPECTIVE JUROR 16: They sent
14 us the paperwork and got -- I had to send them
15 the checks where I had shown -- it had both our
16 names on it. So they just -- it didn't have my
17 account -- I made the mistake of not putting my
18 account number. I just mailed it with the
19 receipt.

10:28:24 20 THE COURT: Okay. Thank you.
21 Anyone else? Yes. And you are -- Ms. Courtney?

22 PROSPECTIVE JUROR 8: Yes. We had
23 filed bankruptcy years ago, and it had been
24 discharged. And collection company tried to
10:28:36 25 get -- you know, tried to get it. I sent them a

1 letter that, you know, it had been discharged.

2 THE COURT: Okay. And did they
3 straighten it out?

4 PROSPECTIVE JUROR 8: Yeah.

10:28:50 5 Anybody else?

6 (No response.)

7 THE COURT: Was there anyone who
8 has disputed something on their credit report --
9 is there anyone of the three that answered who is
10 of the opinion that the dispute was not resolved
11 to your satisfaction?

12 Okay. Mr. Spiller, you don't think it
13 was?

14 PROSPECTIVE JUROR 38: No.
10:29:12 15 Because it just finally went away.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR 38: After time.

18 THE COURT: Okay. The next
19 question I want to ask you is whether or not
10:29:28 20 anybody ever has had the experience of a business
21 rather than a person seeking to collect a debt
22 from you that you had already paid? You have?

23 PROSPECTIVE JUROR 8: Yeah. It
24 was, for, like a credit card. Phillips 66.

10:29:48 25 THE COURT: And it was paid

1 through the bankruptcy?

2 PROSPECTIVE JUROR 8: It was
3 settled through the bankruptcy.

4 THE COURT: That's Ms. Courtney.
5 Anyone else?

10:29:56

6 (No response.)

7 THE COURT: Okay. Is there anyone
8 who before you came here today asked the jury
9 section in Birmingham to be excused and did not
10 get excused?

10:30:16

11 (No response.)

12 THE COURT: Okay. All right. Do
13 y'all need a break before we proceed?

14 MR. SYKSTUS: Yes.

10:30:26

15 THE COURT: Let's take a
16 midmorning break. While you're out on break,
17 don't discuss the case among yourselves, and
18 don't let anyone discuss it in your presence or
19 in your hearing. And please be back in here in
20 15 minutes.

10:30:36

21 (Short recess.)

22 (In open court. Jury present.)

23 THE COURT: I need to see the
24 lawyers at the bench please.

10:30:46

25 (Bench discussion off the record.)

1 (End of bench discussion.)

2 THE COURT: You ready to ask your
3 questions?

4 MS. CAULEY: Yes, Your Honor.

10:53:40 5 Thank you.

6 As Judge Johnson introduced me, my name is
7 Penny Cauley. I'm one of the attorneys that's
8 representing Mr. Brim in this case today. I do
9 have some follow-up questions and some additional
10:53:54 10 questions. I am also not very good with names.
11 So help me out as best you can.

12 Mr. Aiello. You indicated that you were a
13 plaintiffs attorneys.

14 PROSPECTIVE JUROR 1: Yes.

10:54:06 15 MS. CAULEY: Prior to today, are
16 you familiar at all with the Fair Credit
17 Reporting Act?

18 PROSPECTIVE JUROR 1: I am aware
19 that it exists.

10:54:12 20 MS. CAULEY: Have you ever brought
21 any claims for a client --

22 PROSPECTIVE JUROR 1: I've never
23 drafted a complaint or anything dealing with
24 that.

10:54:20 25 MS. CAULEY: Has anyone else

1 that's here today prior to today coming in and
2 hearing the brief description of this case -- has
3 anyone else ever heard of the Fair Credit
4 Reporting Act and they offer some -- Mr. Miller?

10:54:48

5 PROSPECTIVE JUROR 26: I'm aware
6 it offers protections. As far as credit
7 reporting, what's on there, what's put on there.
8 Just look at it. Stuff like that.

10:54:58

9 MS. CAULEY: Have you ever had to
10 file a dispute?

11 PROSPECTIVE JUROR 26: No, ma'am.

12 PROSPECTIVE JUROR 41: The
13 question you asked, I didn't hear the name.

10:55:18

14 MS. CAULEY: Is anyone familiar
15 with the Fair Credit Reporting Act.

16 PROSPECTIVE JUROR 41: Thank you.

17 MS. CAULEY: And Mr. Hines?

18 PROSPECTIVE JUROR 19: Just heard
19 of it. Basic tenets of it.

10:55:34

20 MS. CAULEY: All right. Anyone
21 else that's at least heard of the Fair Credit
22 Reporting Act?

23 THE COURT: If you will, please
24 stand up and state your name.

10:55:46

25 PROSPECTIVE JUROR 24: Chris

1 Matthews.

2 MS. CAULEY: Do you have any
3 familiarity where you've actually had to file a
4 dispute with the credit bureau?

10:55:56 5 PROSPECTIVE JUROR 24: No, ma'am.
6 Just that it exists.

7 PROSPECTIVE JUROR 33: Robert
8 Neutze. I know it exists and allows you to check
9 your report on a regular basis.

10:56:12 10 PROSPECTIVE JUROR 32: Gwen
11 Naylor.

12 MS. CAULEY: Yes.

13 PROSPECTIVE JUROR 32: I am aware
14 that it exists. And when I worked at TVA, I did
10:56:22 15 background investigations. So credit was part of
16 what is involved in their background
17 investigation. So sometimes there were people
18 who would have issues that might come up that
19 were different than they had expected.

10:56:34 20 MS. CAULEY: It's Ms. Naylor,
21 right?

22 PROSPECTIVE JUROR 32: Yes.

23 MS. CAULEY: Ms. Naylor, when you
24 worked at TVA and you did background checks, were
10:56:44 25 you actually pulling copies of employees' or

1 particular employees' credit reports?

2 PROSPECTIVE JUROR 32: Equifax did
3 it.

4 MS. CAULEY: Did you have any
10:56:54 5 responsibility for reporting any information on
6 the employees to Equifax.

7 PROSPECTIVE JUROR 32: Not back to
8 Equifax. No. We used the information that came
9 from them as part of the elements that were
10:57:04 10 required for background investigation.

11 MS. CAULEY: And when you would
12 receive those reports, would it also have the
13 credit reports, like, credit accounts that would
14 be on those credit reports?

10:57:14 15 PROSPECTIVE JUROR 32: It did not.

16 MS. CAULEY: Just like employment
17 background?

18 PROSPECTIVE JUROR 32: Only
19 situations where they had maybe issues or if what
10:57:22 20 they reported contradicted what was on the credit
21 report.

22 MS. CAULEY: Okay.

23 PROSPECTIVE JUROR 32: If the
24 questions that they had answered about their own
10:57:32 25 background, if that didn't match what the report

1 said.

2 MS. CAULEY: Did you have any
3 employees that you were working with after the
4 background check came in that claimed that the
10:57:40 5 information on the credit report was inaccurate?

6 PROSPECTIVE JUROR 32:

7 Occasionally.

8 MS. CAULEY: Did you have any
9 responsibility for telling them about their right
10:57:48 10 to dispute the accuracy?

11 PROSPECTIVE JUROR 32: Only that
12 they told the truth. My part was to determine
13 whether or not they were being honest.

14 MS. CAULEY: Did you have that
10:58:00 15 flexibility where you could take what the
16 potential employee was saying or maybe
17 documentation they presented and overrule what
18 the credit report said?

19 PROSPECTIVE JUROR 32: Not just as
10:58:08 20 the credit report but just an overall liability
21 issue.

22 MS. CAULEY: So you did have that
23 ability a little bit to look at the individual
24 and judge their credibility compared to just what
10:58:20 25 was on paper?

1 PROSPECTIVE JUROR 32: Somewhat.

2 MS. CAULEY: Anyone else familiar
3 at all with the Fair Credit Reporting Act?

4 PROSPECTIVE JUROR 2: Phil Bess.

10:58:28 5 Just what you normally hear. TV news, reading
6 about it. I think we have posters on the wall at
7 work in our human resources.

8 MS. CAULEY: Okay. And Mr. Bess,
9 you work as a quality engineering manager?

10:58:46 10 PROSPECTIVE JUROR 2: Right.

11 MS. CAULEY: What do you do?

12 PROSPECTIVE JUROR 2: We build
13 diesel engines for diesel trucks. Navistar
14 Diesel. And we actually have global quality,
10:58:56 15 which is now Brazil, India, all around the world.
16 And where we manufacture parts or have parts
17 manufactured for us. And if there's any quality
18 issues that are of outside the normal, we get
19 involved with them and find out what the root
10:59:10 20 cause is.

21 MS. CAULEY: And do you recall the
22 posters that might be on the wall in human
23 resources about the Fair Credit Reporting Act?
24 Do you know what they might say?

10:59:20 25 PROSPECTIVE JUROR 2: I think what

1 the government policy would be so that we offer
2 counseling and offer credit, you know, at the
3 company. But I mean, I'm just an employee there.
4 I'm not involved with it. I just know it's
5 available to us if we need it.

10:59:32

6 MS. CAULEY: Great. I appreciate
7 that very much. Mr. Spiller?

8 PROSPECTIVE JUROR 38: Yes.

9 MS. CAULEY: You indicated
10 previously to Judge Johnson's questions that you
11 had a credit dispute?

10:59:50

12 PROSPECTIVE JUROR 38: Uh-huh
13 (indicating yes).

14 MS. CAULEY: With a collection
15 agency that had put an account on your credit
16 report that was not yours?

10:59:56

17 PROSPECTIVE JUROR 38: Was not
18 mine.

19 MS. CAULEY: Did you actually do a
20 dispute through the credit reporting agencies?

11:00:04

21 PROSPECTIVE JUROR 38: I wrote
22 them letters. I never got any replies. It
23 dragged on and on. And after about seven or
24 eight years, it kind of disappeared. So I
25 just --

11:00:16

1 MS. CAULEY: Who did you write
2 your letters to? Did you write it to the
3 collection agency or --

4 PROSPECTIVE JUROR 38: Yes. Yes.
11:00:22 5 It was -- that's about -- I can't remember the
6 name of the collection agency.

7 MS. CAULEY: I appreciate that.

8 THE COURT: Mr. Luther, did you
9 have your hand up?

11:00:40 10 PROSPECTIVE JUROR 23: Yes, ma'am.

11 MS. CAULEY: Yes, sir?

12 PROSPECTIVE JUROR 23: I've heard
13 about it.

14 MS. CAULEY: Have you heard any
11:00:50 15 specifics about the Fair Credit Reporting Act
16 or --

17 PROSPECTIVE JUROR 23: You get one
18 year to check your stuff. Just the basics that
19 you have.

11:00:58 20 MS. CAULEY: Some from those
21 commercials that you've seen, the funny
22 commercials about the free credit report? Is
23 there anyone in here that --

24 THE COURT: Is that everybody we
11:01:14 25 got that raised their hand?

1 PROSPECTIVE JUROR 14: I've just
2 heard of it is all.

3 MS. CAULEY: Never had to file a
4 dispute with the credit bureau over something on
11:01:30 5 your credit report?

6 Has anyone in here actually pulled a copy
7 of their credit report either from the internet
8 or through annualcreditreport.com? We have a lot
9 of people. I'm going to start with the box and
11:01:44 10 have Mr. Aiello.

11 PROSPECTIVE JUROR 1: Yes.

12 MS. CAULEY: Within the last year?

13 PROSPECTIVE JUROR 1: Been a few
14 years.

11:01:50 15 MS. CAULEY: Okay. Did you obtain
16 your credit report from a specific agency?

17 PROSPECTIVE JUROR 1: I think they
18 passed a law that says you get one for free. And
19 I went on the internet, and I think I downloaded
11:02:04 20 it. And it was, I think, all three agencies.

21 MS. CAULEY: Okay. And was there
22 anything incorrect on there that you had to
23 dispute?

24 PROSPECTIVE JUROR 1: Not at that
11:02:10 25 time, no.

1 MS. CAULEY: Great. Anyone else
2 in the jury box?

3 PROSPECTIVE JUROR 2: About four
4 years ago, our credit union offered us a service
11:02:20 5 that pulled it for you and showed it to you.
6 Didn't have any dispute or anything.

7 MS. CAULEY: Yes, sir?

8 PROSPECTIVE JUROR 5: Mine was
9 pulled as part of a mortgage application.

11:02:32 10 MS. CAULEY: And when was that, if
11 you remember?

12 PROSPECTIVE JUROR 5: One year
13 ago.

14 MS. CAULEY: A year ago? And did
11:02:38 15 you have any issues with the credit report that
16 you had to take up with the mortgage?

17 PROSPECTIVE JUROR 5: No.

18 MS. CAULEY: Anyone else in the
19 box?

11:02:44 20 PROSPECTIVE JUROR 14: I have. I
21 just pulled up the free one, and there was no
22 discrepancies.

23 MS. CAULEY: On the first row, is
24 there anyone? We've got Ms. Gregory?

11:03:02 25 PROSPECTIVE JUROR 16: Yes, ma'am.

1 MS. CAULEY: When did you pull
2 your credit report?

3 PROSPECTIVE JUROR 16: Probably
4 three years ago. On line. We got all three.
11:03:08 5 And they were all okay for me and my husband
6 both.

7 MS. CAULEY: You actually had the
8 issue where you had made a payment in full and it
9 had been credited to the wrong account?

11:03:18 10 PROSPECTIVE JUROR 16: Yes.

11 MS. CAULEY: What did you have to
12 do in order to get that taken care of?

13 PROSPECTIVE JUROR 16: I spoke
14 with the higher party in that loan company, and
11:03:26 15 he sent me some paperwork. And I still have it
16 to this date to keep in case it ever came back.
17 They adjusted it and got it corrected. My maiden
18 name -- they just saw my husband's name. They
19 didn't have an account with my married name.
11:03:40 20 It's resolved.

21 MS. CAULEY: Fairly easy to take
22 care of?

23 PROSPECTIVE JUROR 16: It was with
24 them. I didn't have to deal with the credit
11:03:48 25 reporting agencies. It's since gone away.

1 MS. CAULEY: Mr. Hines?

2 PROSPECTIVE JUROR 19: The company
3 I was with lost a computer that had all kinds of
4 personal information on it. And as part of
11:04:04 5 guarding against that information being used for
6 identity theft, they signed us up for a periodic
7 credit report. And then they monitored our --
8 the credit activity and sent us periodic reports.

9 MS. CAULEY: And when you received
11:04:26 10 your credit reports, were there any credit
11 accounts that you had to dispute with the
12 furnisher?

13 PROSPECTIVE JUROR 19: No.
14 Evidently the information they had, on me anyway,
11:04:40 15 was not used for identity theft.

16 MS. CAULEY: Second row? Oh. I'm
17 sorry. Ms. Kent?

18 PROSPECTIVE JUROR 20: Yes. We
19 bought a house back in September. So it was
11:04:50 20 pulled from all three for mortgage loan.

21 MS. CAULEY: I'm assuming --

22 PROSPECTIVE JUROR 20: It was all
23 correct.

24 MS. CAULEY: Everything was fine?

11:05:06 25 PROSPECTIVE JUROR 20: Yes, ma'am.

1 MS. CAULEY: Anyone on the second
2 row? Yes. Mr. Miller?

3 PROSPECTIVE JUROR 26: Yeah. I
4 pulled -- as Mr. Aiello said, you can get one
11:05:20 5 free per year. I got mine from the
6 government-provided web site. Pulled it from all
7 three. The only issue I had with it wasn't
8 really an issue. Just something that was on
9 there from an emergency room bill from before my
11:05:32 10 bankruptcy. So it shouldn't have been on there
11 anymore. But I didn't take any action to remove
12 it or anything.

13 MS. CAULEY: So even though there
14 was something on there incorrect, you didn't file
11:05:42 15 a dispute to have them remove it?

16 PROSPECTIVE JUROR 26: It was a
17 legitimate bill. It should have been gone with
18 the bankruptcy. It was a legitimate bill. I
19 didn't fight it or anything.

11:05:56 20 PROSPECTIVE JUROR 24: Chris
21 Matthews. Bank of America -- we refinanced our
22 home probably about six months ago. And it was
23 pulled. And about a year prior to that, Mercedes
24 Benz of Huntsville pulled it. And at that time,
11:06:14 25 it was from three different companies. And they

1 were correct.

2 MS. CAULEY: And they were
3 correct?

4 PROSPECTIVE JUROR 24: Yes, ma'am.

11:06:18 5 MS. CAULEY: So the companies like
6 the Bank of America was actually the entity that
7 was pulling your credit rather than you pulling
8 it?

9 PROSPECTIVE JUROR 24: Correct.

11:06:28 10 MS. CAULEY: But it was for credit
11 you had applied for?

12 PROSPECTIVE JUROR 24: Yes, ma'am.

13 MS. CAULEY: Anyone on the third
14 row? Mr. Neutze?

11:06:36 15 PROSPECTIVE JUROR 33: Yes. Did
16 the on line. Pulled my three reporting agencies,
17 and there was no anomalies. About a year ago.

18 MS. CAULEY: And everything was
19 all right? Anyone else on the third row?

11:06:48 20 (No response.)

21 MS. CAULEY: Fourth row?
22 Ms. Williamson?

23 PROSPECTIVE JUROR 42: I pull my
24 credit report regularly through American Express.
11:06:58 25 They give you a free one. And every time we

1 purchase a house -- and we've purchased houses a
2 lot -- we always ask for the credit report that
3 was done for that financing process since 1973.

4 MS. CAULEY: Have you ever had any
11:07:12 5 issues that you had to file a dispute regarding
6 the furnisher that was putting false stuff on
7 your credit report?

8 PROSPECTIVE JUROR 42: No.

9 PROSPECTIVE JUROR 41: I, too,
11:07:22 10 have pulled it up on the internet. And
11 everything was fine.

12 MS. CAULEY: Mr. Spiller?

13 PROSPECTIVE JUROR 38: Same one
14 that she pulled, I pulled. But to me, always
11:07:34 15 surprises me is that there's a -- there were
16 things on there that I thought had been closed
17 for ten-plus years. And so I just took the
18 action of writing to each of the places and
19 closing the accounts.

11:07:48 20 MS. CAULEY: I think, based on my
21 previous question, we probably know the answer to
22 this, but just so we're clear, has anyone ever,
23 in your judgment, been wrongfully denied a credit
24 card or a mortgage or a car loan based on
11:08:12 25 inaccurate information that was contained on your

1 credit report?

2 (No response.)

3 MS. CAULEY: Do you know anyone in
4 your family or friends who has ever been, in
11:08:26 5 their judgment, wrongfully denied credit based on
6 inaccuracies within their credit report?

7 (No response.)

8 MS. CAULEY: This case, as a
9 little bit Judge Johnson instructed you, is a
11:08:46 10 case Mr. Brim has brought under the Fair Credit
11 Reporting Act. And he's actually seeking damages
12 to his credit reputation, his ability to get
13 credit, and his alleged distress, frustration,
14 and difficulty in obtaining the correction of his
11:09:00 15 good credit.

16 Does anyone that's in here today think
17 that or disagree with the concept that the Fair
18 Credit Reporting Act allows for an individual to
19 recover damages to their credit reputation and
11:09:16 20 standing?

21 MR. LANGLEY: Your Honor, I guess
22 I need to object to that question.

23 THE COURT: You don't. It's in
24 the record that you have objected to it.

11:09:28 25 (No response.)

1 MS. CAULEY: So is everyone
2 here -- the Court will instruct you on exactly
3 what damages are available under the Fair Credit
4 Reporting Act. But if when the Court instructs
11:09:38 5 you regarding what damages are available and if
6 you think Mr. Brim has proved those damages, is
7 there anyone in here who would have a problem
8 awarding damages for alleged harm to a credit,
9 credit reputation, credit report, denial of
11:09:54 10 credit, anything like that?

11 (No response.)

12 MS. CAULEY: Is there anyone here
13 that feels that damage to one's credit report or
14 their reputation is not sufficiently important to
11:10:06 15 bring a federal lawsuit?

16 (No response.)

17 MS. CAULEY: Fair Credit Reporting
18 Act is a federal law. And so jurisdiction's in
19 federal court.

11:10:16 20 Is there anyone who thinks we shouldn't be
21 in federal court over an issue like this?

22 Ms. Whitt?

23 PROSPECTIVE JUROR 41: Yes, ma'am.

24 MS. CAULEY: Were you just nodding
11:10:34 25 for the question?

1 PROSPECTIVE JUROR 41: I'm just
2 nodding for the question. I'm okay.

3 MS. CAULEY: Is there anyone who
4 would be opposed to awarding damages against a
11:10:46 5 company whose conduct has, in fact, damaged ones
6 credit reputation or their ability to obtain
7 credit?

8 (No response.)

9 MS. CAULEY: In previous cases,
11:11:04 10 you always learn about, you know, people's
11 beliefs. And sometimes someone might have a
12 religious belief or a philosophical belief or
13 just a political belief that lawsuits seeking
14 money for damage to reputation or mental
11:11:22 15 suffering are just wrong.

16 Is there anyone who has a philosophical or
17 religious or political opposition to damages --
18 to lawsuits that seek damages for reputation and
19 credit?

11:11:40 20 (No response.)

21 MS. CAULEY: So everyone would be
22 okay if Mr. Brim presents the evidence that's
23 necessary and the Court instructs you -- everyone
24 would be all right with the fact that this
11:11:50 25 lawsuit is seeking money damages?

1 (No response.)

2 MS. CAULEY: I talked with
3 Ms. Gregory about the fact that Ms. Gregory had
4 made a payment that wasn't properly credited.
11:12:12 5 And then she told us about what she did to get it
6 fixed.

7 Is there anyone in here that had a payment
8 that was misapplied to someone else's account
9 that you had to take steps to try and get
11:12:26 10 corrected?

11 (No response.)

12 MS. CAULEY: That hasn't happened
13 to anyone else? Yes, sir.

14 PROSPECTIVE JUROR 23: Frank
11:12:34 15 Luther.

16 THE COURT: Mr. Luther?

17 PROSPECTIVE JUROR 23: Yes. My
18 wife and I ten years ago, 15 years ago, were
19 applying for a house. We had to clean up our
11:12:48 20 credit with stuff that had been on there from ten
21 years before that. And from my understanding, it
22 should have been either dropped off after seven
23 or cleared up somehow.

24 MS. CAULEY: Mr. Luther, in trying
11:13:04 25 to clear up that credit, did you have to send in

1 disputes to the credit reporting agencies
2 regarding specific accounts?

3 PROSPECTIVE JUROR 23: No. We had
4 to contact the person who was making the claim
11:13:16 5 and ask them to remove it. But they had changed
6 companies. And they had no clue, and they
7 weren't going to do anything with it.

8 MS. CAULEY: So you had to
9 actually contact the company that was furnishing
11:13:28 10 the information? And were you successful in
11 contacting the furnisher and having that removed?

12 PROSPECTIVE JUROR 23: No. Like I
13 said, they changed ownership. It was an
14 apartment complex. They had changed ownership.
11:13:42 15 There was nothing we could do. We were advised
16 since it was such an old debt it wouldn't really
17 affect what we were doing.

18 MS. CAULEY: So you were able to
19 go forward with the house purchase?

11:13:52 20 PROSPECTIVE JUROR 23: Yes.

21 MS. CAULEY: Do you remember how
22 long you might have spent trying to go back to
23 that furnisher and have the item corrected?

24 PROSPECTIVE JUROR 23: Yeah. It
11:14:06 25 was a jump-through-the-hoop, 30 days type of

1 thing before the loan expired. I had to apply
2 again.

3 MS. CAULEY: So you were able to
4 get everything done in that 30 days?

11:14:24 5 PROSPECTIVE JUROR 23: Your
6 question is not clear. We finished the process,
7 but we had no -- there was no resolution to it.

8 MS. CAULEY: Okay.

9 PROSPECTIVE JUROR 23: And we just
11:14:36 10 went ahead with the loan process. The person in
11 charge of the loan process just kind of threw
12 that out.

13 MS. CAULEY: Okay. And so the
14 mortgage company was able to override or overlook
11:14:48 15 that account --

16 PROSPECTIVE JUROR 23: I imagine,
17 yes.

18 MS. CAULEY: Ms. Whitt?

19 PROSPECTIVE JUROR 41: Yes.

11:15:14 20 MS. CAULEY: You stated before you
21 worked at Dynetics, you worked in the banking
22 industry for 13 years?

23 PROSPECTIVE JUROR 41: Yes.

24 MS. CAULEY: Can you tell us what
11:15:22 25 you did in banking?

1 PROSPECTIVE JUROR 41: I began
2 opening accounts for customers. Then I went to
3 the installment loan department. And then after
4 the installment loan department, I was the
11:15:36 5 manager of our processing center.

6 MS. CAULEY: I take it from your
7 response you had no duties with providing account
8 information to credit reporting agencies.

9 PROSPECTIVE JUROR 41: Now, this
11:15:54 10 has been a long, long time ago. Because I did
11 get information from the credit bureau on
12 applications for, you know, they would make an
13 application for a loan, car loan, and I would get
14 in contact with the credit bureau and get credit
11:16:14 15 information at that time. Now, that was local
16 credit bureau. Now, this has been -- this was --
17 I started working there in '69. And worked there
18 for 13 years. I think I moved over to another
19 career in 1983.

11:16:34 20 MS. CAULEY: Is that -- you're
21 currently with Dynetics?

22 PROSPECTIVE JUROR 41: No. That
23 was with Compass Bank.

24 MS. CAULEY: What do you do as the
11:16:44 25 IT supervisor?

1 PROSPECTIVE JUROR 41: The IT
2 security. I'm the training coordinator for our
3 group. I work under the HR department. But I'm
4 in the training division and education division.

11:17:00 5 MS. CAULEY: What type of items
6 are you training individuals on?

7 PROSPECTIVE JUROR 41: Computer
8 software, that type of thing.

9 MS. CAULEY: Has anyone else
11:17:28 10 worked in banking or where they had any
11 responsibility for reporting accounts to a credit
12 bureau?

13 (No response.)

14 MS. CAULEY: Has anyone ever
11:17:40 15 worked in the area of debt collections?

16 (No response.)

17 MS. CAULEY: Anyone besides
18 Ms. Whitt that's worked in an area -- someone
19 else had this responsibility, too, where you were
11:18:04 20 responsible for actually pulling credit reports
21 on individuals and reviewing those credit
22 reports?

23 (No response.)

24 MS. CAULEY: Anyone ever worked in
11:18:24 25 the field of mortgage lending? At all?

1 (No response.)

2 MS. CAULEY: No? Does anyone have
3 strong personal feelings regarding the use of
4 credit in our society?

11:18:38 5 (No response.)

6 MS. CAULEY: Does anyone not have
7 a credit card? That's Mr. Miller?

8 PROSPECTIVE JUROR 26: Yes, ma'am.

9 MS. CAULEY: Anyone else not have
11:19:00 10 a credit card? Yes, ma'am.

11 PROSPECTIVE JUROR 42: Charge
12 card. Not a credit card.

13 PROSPECTIVE JUROR 26: If I can't
14 afford it, I don't need it.

11:19:18 15 MS. CAULEY: This case involves
16 claims, again, arising under the Fair Credit
17 Reporting Act. And that act provides for
18 punitive damages against a person who willfully
19 fails to comply with any requirement under the
11:19:38 20 act.

21 Do any of you believe, for whatever
22 reason, that punitive damages should never be
23 awarded to an individual, regardless of the facts
24 in the case?

11:19:52 25 (No response.)

1 MS. CAULEY: The Court will give
2 you a specific instruction regarding punitive
3 damages and what they are. But for purposes of
4 this venire, does everyone understand that
5 punitive damages are generally meant to punish
6 the wrongdoer and also to deter similar conduct
7 in the future?

8 (No response.)

9 MS. CAULEY: Does anyone think
10 that punitive damages should never be allowed?

11 (No response.)

12 MS. CAULEY: Judge Johnson will
13 decide whether punitive damages are an issue to
14 be decided by the jury. But you know in the last
15 several years there's been a lot of publicity and
16 political discussion regarding punitive damages
17 and tort reform.

18 If Judge Johnson determines that punitive
19 damages are going to be allowed to be decided by
20 the jury, is there anyone who believes that they
21 should not be allowed; that is, punitive damages
22 should just never be allowed?

23 (No response.)

24 MS. CAULEY: Does anyone -- I know
25 Mr. Aiello is an attorney. But does anyone else

1 have friends or family that works in the court
2 system as a judge, lawyer, or they actually work
3 for a lawyer or a courthouse? Yes, sir. Let me
4 start with the front row. Ms. Kezo?

11:21:10 5 PROSPECTIVE JUROR 21: Yes. I
6 have a brother-in-law who is a bailiff in the
7 county court system in Wisconsin.

8 MS. CAULEY: Thank you.

9 PROSPECTIVE JUROR 21: What was
11:21:24 10 the other part of your question?

11 MS. CAULEY: Work for a lawyer,
12 judge, or courthouse.

13 PROSPECTIVE JUROR 21: I used to
14 work for a courthouse. This was, again, in 1986
11:21:36 15 for four years. That was for the county planning
16 and zoning department. I was just an entry-level
17 clerical person.

18 MS. CAULEY: Okay. Thank you.

19 Anyone on the second row? Yes, sir. Mr. Miller?

11:21:46 20 PROSPECTIVE JUROR 26: Can you
21 repeat the question?

22 MS. CAULEY: Yes, sir. The
23 question is: Has anyone in here or any of your
24 family or friends ever -- are they involved at
11:22:02 25 all with the legal system such as a judge, a

1 lawyer, they work for lawyers, or they work for
2 the courthouse? Yes, ma'am.

3 PROSPECTIVE JUROR 24: I have
4 several friends that are attorneys.

11:22:14 5 MS. CAULEY: Ms. Best?

6 PROSPECTIVE JUROR 24: Matthews.

7 MS. CAULEY: Wrong page. I'm
8 sorry. And they work for lawyers?

9 PROSPECTIVE JUROR 24: They are
11:22:26 10 lawyers.

11 MS. CAULEY: What kind of lawyers
12 are they?

13 PROSPECTIVE JUROR 24: I don't
14 really know the difference. I just know they're
11:22:36 15 attorneys. Attorney at law.

16 MS. CAULEY: Do you know -- do
17 they work for their own firm?

18 PROSPECTIVE JUROR 24: They do.
19 Scottsboro, Fort Payne.

11:22:50 20 MS. CAULEY: There's a Mickey
21 Parrish.

22 PROSPECTIVE JUROR 24: (Shakes
23 head, indicating no.)

24 MS. CAULEY: Anyone else who
11:23:00 25 has --

1 THE COURT: Mr. Miller had his
2 hand up.

3 PROSPECTIVE JUROR 26: Judge Mike
4 Jones is related to me through my grandparents.

11:23:16 5 MS. CAULEY: Mr. Robinson?

6 PROSPECTIVE JUROR 35: Yes. My
7 wife is working for Judge William Morgan.

8 MS. CAULEY: What does your wife
9 do for Judge Morgan?

11:23:32 10 PROSPECTIVE JUROR 35: He's the
11 owner of this strip mall. His daddy is the
12 owner. But his daddy -- he take -- him and my
13 wife runs it.

14 MS. CAULEY: She doesn't actually
11:23:44 15 work in the courthouse for him; she's running the
16 strip mall you told us about.

17 PROSPECTIVE JUROR 35: Right.

18 MS. CAULEY: Anyone I missed?
19 I've got one on the back. Ms. Williamson?

11:23:56 20 PROSPECTIVE JUROR 42: I worked
21 for attorneys for three years in Connecticut. I
22 was responsible for the secretarial -- the 42
23 secretaries.

24 MS. CAULEY: I'm sorry. I missed
11:24:06 25 what you did.

1 PROSPECTIVE JUROR 42: I was
2 responsible for the 42 secretaries that supported
3 the 67 attorneys.

4 MS. CAULEY: Wow. Was that a
5 defense firm?
11:24:14

6 PROSPECTIVE JUROR 42: It was a
7 general firm.

8 MS. CAULEY: All right. And over
9 here? Mr. Bibbee?

10 PROSPECTIVE JUROR 5: Personal
11 friends with Christina Thompson, in-house counsel
12 for TNT Fireworks.

13 PROSPECTIVE JUROR 12: Couple of
14 friends that are attorneys.

15 MS. CAULEY: Do you know what kind
16 of attorneys they are?
11:24:54

17 PROSPECTIVE JUROR 12: Clem
18 Cartron. He closed my loan. And Larry Morgan.

19 MS. CAULEY: Does Mr. Morgan close
20 loans also?
11:25:08

21 PROSPECTIVE JUROR 12: No. He is
22 a criminal lawyer.

23 MS. CAULEY: Ms. Dobbins?

24 PROSPECTIVE JUROR 10: Yes. My
25 daughter's ball coach for travel ball softball in
11:25:14

1 summer is an attorney. One of her coaches. And
2 he ran for judge in Lawrence County just
3 recently.

4 MS. CAULEY: What's his name?

11:25:32 5 PROSPECTIVE JUROR 10: Chris
6 Malcolm. He does have his own firm. Yes.

7 MS. CAULEY: Mr. Luther?

8 PROSPECTIVE JUROR 23: I'm sorry.
9 This was a long time ago. Yeah. My high school
11:25:42 10 friend was a municipal judge in El Paso, Texas.

11 PROSPECTIVE JUROR 29: Judge Gill
12 Self works for fund raisers where I work.

13 THE COURT: Who's talking?

14 PROSPECTIVE JUROR 29: Deborah
11:25:58 15 Moody.

16 THE COURT: Okay. I just couldn't
17 see her.

18 MS. CAULEY: Anyone else that I've
19 missed? Did any of y'all know each other prior
11:26:12 20 to today? Did you know each other? Mr. Spiller?
21 Okay.

22 THE COURT: Who knew who?

23 MS. CAULEY: Mr. Spiller and
24 Mr. Drzycimski knew each other before today.
11:26:28 25 Friends, acquaintances?

1 PROSPECTIVE JUROR 12: We're
2 members of the same golf course.

3 MS. CAULEY: Do any of you have
4 web sites or blogs that you post to regularly?
11:26:44 5 Yes, ma'am.

6 PROSPECTIVE JUROR 21: It's not
7 a -- not one that I created myself. It's part of
8 the Multiply blog system. Multiply web sites.
9 As opposed to Facebook, it's called Multiply.
11:27:04 10 Just a different web-posting site.

11 MS. CAULEY: Do you actually post,
12 like, personal information on there, or you post
13 your writings on there?

14 PROSPECTIVE JUROR 21: A little of
11:27:16 15 both.

16 MS. CAULEY: Is it similar to
17 Facebook in that it connects people who are
18 friends?

19 PROSPECTIVE JUROR 21: Yes.

11:27:22 20 MS. CAULEY: Anyone else post
21 regularly to a web site or a blog? Yes.
22 Mr. Aiello?

23 PROSPECTIVE JUROR 1: I'm past
24 president of the Rocket City Democrats. And we
11:27:32 25 have a web site. And I don't know if your

1 question is asking this. I also have a Facebook
2 and a Twitter account. I don't know if that was
3 part of your question.

4 PROSPECTIVE JUROR 5: Facebook.

11:27:46 5 MS. CAULEY: Facebook probably has
6 lots of people. Everyone have Facebook? I
7 Facebook. But I'm not only looking for Facebook.
8 I'm looking more for blogs about various maybe
9 political campaigns or that kind of thing. We'll
11:28:04 10 exclude Facebook. How about that? Mr. Luther?

11 PROSPECTIVE JUROR 23: I regularly
12 read. I haven't posted to them in six months or
13 so because of work restriction.

14 MS. CAULEY: What blog is that?

11:28:18 15 PROSPECTIVE JUROR 23: Knowledge
16 Is Power.

17 MS. CAULEY: Knowledge Is Power?
18 Anyone have a personalized car tag or bumper
19 sticker on their car? Yes. Ms. Dobbins?

11:28:42 20 PROSPECTIVE JUROR 10: My car tag
21 just says love my five. Choose life tag. I
22 don't know if that's what you're asking. A
23 little sticker on the window. Just a saying.

24 MS. CAULEY: Exactly. Anyone
11:28:58 25 else? Ms. Matthews?

1 PROSPECTIVE JUROR 24: It says I
2 go AU.

3 MS. CAULEY: Is that for Auburn?

4 PROSPECTIVE JUROR 24: Yes.

11:29:10 5 MS. CAULEY: Mr. Robinson?

6 PROSPECTIVE JUROR 35: Second to
7 none. Military.

8 MS. CAULEY: Okay. Second to
9 none. And Mr. Shields?

11:29:20 10 PROSPECTIVE JUROR 36: I have a
11 fire fighter tag and Masonic sticker on the
12 truck.

13 MS. CAULEY: I'm sorry?

14 PROSPECTIVE JUROR 36: I have a
11:29:28 15 fire fighter tag and Masons sticker on the
16 struck.

17 MS. CAULEY: Ms. Williamson?

18 PROSPECTIVE JUROR 42: I have a
19 personalized tag. Lex and sun. It's a Lexus and
11:29:42 20 a convertible.

21 MS. CAULEY: Got it. Anyone else?

22 PROSPECTIVE JUROR 32: Mine was
23 just for a child.

24 MS. CAULEY: Ms. Naylor? I'm
11:29:46 25 sorry. Can you speak louder?

1 PROSPECTIVE JUROR 32: Mine was
2 just for one of my children.

3 MS. CAULEY: Your tag?

4 PROSPECTIVE JUROR 32: Yes. It's
5 on my daughter's car.

6 MS. CAULEY: Okay. What does it
7 say?

8 PROSPECTIVE JUROR 32: It's in
9 reference to her initials and Auburn.

10 MS. CAULEY: Okay.

11 PROSPECTIVE JUROR 25: My wife has
12 a personalized tag called Ruffian, her favorite
13 racehorse.

14 MS. CAULEY: Anyone else?

15 PROSPECTIVE JUROR 2: I have some
16 hunting decals on my truck.

17 MS. CAULEY: Is there anyone in
18 here for whatever reason you just do not want to
19 sit on this jury this week? Okay. Got
20 Mr. Luther. Ms. Naylor. Mr. Shields.

21 PROSPECTIVE JUROR 36: Yes, ma'am.

22 MS. CAULEY: Anyone else?

23 (No response.)

24 MS. CAULEY: Appreciate that very
25 much.

1 Is there anyone that's here who has
2 heard -- you know, you just heard tiny, tiny bits
3 with my questions and just the brief synopsis
4 from the judge. But anyone here who thinks that
5 they cannot be impartial in this case? Anything
6 at all that you've heard so far that makes you
7 unsure or worries you that you couldn't decide
8 the case fairly? Mr. Shields? Okay.

9 That's all the questions I have. Thank
10 you very much.

11 THE COURT: Are you ready?

12 MR. LANGLEY: Yes, I am.

13 Good morning. Just barely. Judge Johnson
14 introduced me earlier. I'm Eric Langley. I'm
15 one of the lawyers for the defendant in this
16 case, Midland Credit Management. My co-counsel
17 is Jason Tompkins.

18 And the judge asked you some questions
19 about whether you were related by blood or
20 marriage to a few people. I want to take it a
21 step further.

22 Does anyone know the plaintiff in this
23 case, Mr. Brim, socially or otherwise?

24 (No response.)

25 MR. LANGLEY: Does anyone know

1 either Ms. Cauley or someone who works at her
2 firm, the Hays Cauley firm in Florence, South
3 Carolina?

4 (No response.)

11:32:24 5 MR. LANGLEY: Does anyone either
6 know Mr. Sykstus or know someone who works at his
7 firm, who is the Bonds & Botes firm based in
8 Huntsville?

9 (No response.)

11:32:34 10 MR. LANGLEY: Is there anyone here
11 who has heard of the Bonds & Botes firm in
12 Huntsville?

13 PROSPECTIVE JUROR 2: Commercial.

14 PROSPECTIVE JUROR 20: Commercial.

11:32:44 15 MR. LANGLEY: You've seen
16 commercials on either radio or television?

17 Is there anyone who knows anyone that
18 works at the firm called Consumer Litigation
19 Associates in Virginia?

11:32:58 20 (No response.)

21 MR. LANGLEY: All of this started,
22 as the evidence will show, when Mr. Brim
23 purchased a computer from Dell Financial. Is
24 there anyone here -- excuse me. From Dell
11:33:20 25 Computers.

1 Is there anyone here who has purchased a
2 Dell computer product before? Keep your hands
3 up. And I'll just go through. It's Mr. Aiello?

4 PROSPECTIVE JUROR 1: Yes.

11:33:32 5 MR. LANGLEY: What kind of --

6 PROSPECTIVE JUROR 1: I buy a lot
7 of computers for our law office.

8 MR. LANGLEY: Did you finance any
9 of them through Dell Financial?

11:33:46 10 PROSPECTIVE JUROR 1: No.

11 MR. LANGLEY: What I'll do just to
12 whittle the question down: Of those of you who
13 have their hands up, did anyone finance their
14 computer purchase through Dell Financial
15 services?

16 (No response.)

17 MR. LANGLEY: Who was it over here
18 that worked in IT? Someone remind me who that
19 was.

11:34:30 20 PROSPECTIVE JUROR 41: Are you
21 talking about I worked for Dynetics IT Services.
22 They're a contractor for NASA.

23 MR. LANGLEY: You're Ms. Whitt,
24 correct?

11:34:40 25 PROSPECTIVE JUROR 41: That's

1 correct.

2 MR. LANGLEY: What kind of work is
3 that?

4 PROSPECTIVE JUROR 41: We have
11:34:44 5 about 450 employees. It's computer-type work for
6 NASA. I guess that's basically the way I can
7 explain it.

8 MR. LANGLEY: Are y'all the IT
9 contractor for the mainframe or for processing?
11:35:04 10 Does that ring a bell?

11 PROSPECTIVE JUROR 41: I don't
12 know. I don't know how to answer that.

13 MR. LANGLEY: Is NASA the sole
14 client of your company?

11:35:18 15 PROSPECTIVE JUROR 41: Contract,
16 yes. For our contract, yes.

17 MR. LANGLEY: Okay. Is there
18 anyone else here that works with computer systems
19 that process large amounts of data as part of
11:35:32 20 their profession? Is it Mr. Neutze?

21 PROSPECTIVE JUROR 33: Yes, sir.

22 MR. LANGLEY: Tell me about that.

23 PROSPECTIVE JUROR 33: I'm in
24 charge of the ground computer systems for the
11:35:50 25 International Space Station. We handle all the

1 communications to and from space station and
2 store all the data that's generated off the
3 station.

4 MR. LANGLEY: Anyone else?

11:36:00 5 Mr. Luther?

6 PROSPECTIVE JUROR 23: Not as much
7 as -- big as his, but it is processing orders to
8 the --

9 MR. LANGLEY: What kind of orders?

11:36:16 10 PROSPECTIVE JUROR 23: Metal doors
11 and frames.

12 MR. LANGLEY: How does that work?

13 PROSPECTIVE JUROR 23: The orders
14 are brought in. Customer service will enter
11:36:26 15 them. I have a database that I pull the
16 information up that puts it out to our production
17 floor to produce.

18 MR. LANGLEY: Are you in charge of
19 the computer processing?

11:36:34 20 PROSPECTIVE JUROR 23: Of that
21 aspect of it, yes.

22 MR. LANGLEY: Is there anyone that
23 thinks that --

24 THE COURT: Well, there was one
11:36:44 25 other person who had their hand up.

1 PROSPECTIVE JUROR 19: In the
2 past, I have used large mainframes for technical
3 complications.

4 MR. LANGLEY: Mr. Hines?

11:36:56 5 PROSPECTIVE JUROR 19: Yeah.

6 MR. LANGLEY: When you say
7 technical complications, what do you mean by
8 that?

9 PROSPECTIVE JUROR 19: Electrical
11:37:06 10 magnetic analysis.

11 MR. LANGLEY: Remind me what you
12 do for a living.

13 PROSPECTIVE JUROR 19: I was
14 electronic engineer and
11:37:16 15 electromagnetic capabilities --

16 MR. LANGLEY: And you're working
17 on your doctorate, right?

18 PROSPECTIVE JUROR 19: No. I have
19 all but thesis toward doctorate. I'm retired
11:37:24 20 now.

21 MR. LANGLEY: What was your
22 doctorate on?

23 PROSPECTIVE JUROR 19: I was
24 electrical engineering.

11:37:30 25 MR. LANGLEY: Was there anyone

1 else that had their hand up that I missed?

2 PROSPECTIVE JUROR 20: I'm not
3 sure if this counts or not. I have worked with
4 technical manuals that get posted to the web.

11:37:42 5 MR. LANGLEY: It's Ms. Kent?

6 PROSPECTIVE JUROR 20: Yes.

7 MR. LANGLEY: What kind of
8 technical manuals?

9 PROSPECTIVE JUROR 20: We build
11:37:44 10 products like single-board computers, processors.
11 You know, the green boards that go into other
12 computers that control different things. It also
13 goes into, like, military equipment. We do
14 software for reflective memory.

11:38:02 15 MR. LANGLEY: Thank you. Anyone
16 else?

17 (No response.)

18 MR. LANGLEY: I'm going to ask a
19 general question. And a lot of times you get no
11:38:12 20 response at all to these. But if you have a
21 feeling about this, I urge you to share it.

22 Is there anyone that thinks there's
23 something fundamentally wrong with a business
24 using a computer system to process large amounts
11:38:24 25 of data?

1 (No response.)

2 MR. LANGLEY: Is there anyone who
3 doesn't think that it's just part of modern
4 business?

11:38:34 5 (No response.)

6 MR. LANGLEY: Ms. Cauley asked you
7 some questions relating to the damages that her
8 client, Mr. Brim, is claiming in this case. And
9 I have some follow-up questions for you.

11:38:48 10 Is there anyone who thinks that someone is
11 entitled to a money damages award simply because
12 they bring a lawsuit?

13 (No response.)

14 MR. LANGLEY: If the judge
11:39:02 15 instructs you in this case that any award of
16 damages must be caused by the defendant in this
17 case, would you be willing to follow that
18 instruction?

19 PROSPECTIVE JUROR 36: Can you
11:39:18 20 repeat that, please?

21 MR. LANGLEY: If the judge
22 instructs you that the only damages you can award
23 in the case are those caused by the defendant,
24 would you be willing to follow that instruction?

11:39:30 25 (No response.)

1 MR. LANGLEY: Is that true even if
2 you think that Midland Credit Management did
3 something wrong? In other words, is there anyone
4 in here who thinks that just because -- suppose
11:39:46 5 that you find that Midland Credit Management did
6 something wrong. Is there anyone who thinks that
7 that alone entitled the plaintiff to an award of
8 damages?

9 (No response.)

11:40:00 10 MR. LANGLEY: Ms. Gregory?

11 PROSPECTIVE JUROR 16: Yes, sir.

12 MR. LANGLEY: Do you mind if I ask
13 you some additional questions about your credit
14 dispute issue?

11:40:08 15 PROSPECTIVE JUROR 16: Sure.

16 That's fine.

17 MR. LANGLEY: You had mentioned
18 that you had to contact the original creditor.
19 Was it a college loan?

11:40:16 20 PROSPECTIVE JUROR 16: Yes, it
21 was.

22 MR. LANGLEY: What type of
23 documents did you have to provide to that
24 creditor?

11:40:20 25 PROSPECTIVE JUROR 16: We just had

1 to -- the cancelled check. They just needed it
2 because it had information for them as to what
3 account they put it to. We knew which account
4 they put it to. Obviously it was my husband's.
11:40:34 5 But we just had to show them that documentation.
6 And they cleared it up.

7 MR. LANGLEY: That documentation,
8 once you provided it to them, they were able to
9 use to clear up?

11:40:44 10 PROSPECTIVE JUROR 16: Yes.

11 MR. LANGLEY: Did you think that
12 was unreasonable for you to have to do that?

13 PROSPECTIVE JUROR 16: No.

14 MR. LANGLEY: Does anyone in here
11:40:58 15 have any experience, either personally or
16 professionally, with something called factoring?

17 (No response.)

18 MR. LANGLEY: Let me ask a
19 different question. Does anyone know what
11:41:10 20 factoring is? Anyone heard that term?

21 PROSPECTIVE JUROR 19: From the
22 mathematics perspective.

23 MR. LANGLEY: I'm glad you raised
24 that. I should have known better with all the
11:41:22 25 engineers in here. The sense in which I'm using

1 the term, "factoring," is a business arrangement
2 where one company will buy the receivables of
3 another company to allow the first company the
4 opportunity for continued cash for business
11:41:38 5 operations while transferring over the interest
6 in those receivables.

7 Is anyone familiar with that either
8 personally or professionally?

9 (No response.)

11:41:48 10 MR. LANGLEY: The evidence in this
11 case is going to show that that's what Midland
12 Credit Management does. Buys accounts from other
13 businesses. Does anyone have a problem with that
14 concept?

11:42:02 15 (No response.)

16 MR. LANGLEY: Who here has heard
17 of Dave Ramsey?

18 (Show of hands.)

19 MR. LANGLEY: So just about
11:42:20 20 everyone. Who regularly -- well, let me back up.
21 Who listens to Dave Ramsey more than once a
22 month? Ms. Naylor?

23 PROSPECTIVE JUROR 32: Yes.

24 MR. LANGLEY: How often do you
11:42:38 25 listen to Dave Ramsey?

1 PROSPECTIVE JUROR 32: Probably
2 every couple of weeks or so.

3 MR. LANGLEY: On the radio?

4 PROSPECTIVE JUROR 32: Yes. There
11:42:48 5 was someone over here. Was it Mr. Bess?

6 PROSPECTIVE JUROR 2: No.

7 MR. LANGLEY: Ms. Edwards, how
8 often do you listen to Dave Ramsey?

9 PROSPECTIVE JUROR 14: I used to
11:43:00 10 listen to him a lot. But now it's about once a
11 month maybe.

12 MR. LANGLEY: I'm sorry.

13 PROSPECTIVE JUROR 14: I used to
14 listen to him a lot. Now it's about once a
11:43:12 15 month. He gets on my nerves.

16 MR. LANGLEY: Have I touched on
17 everyone that listens to Dave Ramsey at least
18 once a month? Did I miss anyone?

19 (No response.)

11:43:28 20 PROSPECTIVE JUROR 24: Going back
21 to the factoring, is that like when you have a
22 mortgage and then it gets sold to another
23 mortgage company and they sell it to another
24 mortgage company?

11:43:38 25 MR. LANGLEY: That's actually a

1 little different. The factoring we're talking
2 about here is when one company has a commercial
3 receivable and it sells that receivable to
4 another entity. Does that make it more familiar
5 to you?

11:43:50

6 PROSPECTIVE JUROR 24: Not really.

7 MR. LANGLEY: Okay. Ms. Dobbins?
8 I have it right, don't I?

9 PROSPECTIVE JUROR 10: Yes.

11:44:02

10 MR. LANGLEY: You said that you
11 had been on a jury involving a family dispute of
12 some sort.

13 PROSPECTIVE JUROR 10: Yes.

11:44:10

14 MR. LANGLEY: Did I understand
15 correctly that your jury returned a verdict in
16 favor of the plaintiff?

17 PROSPECTIVE JUROR 10: Well, it's
18 hard to remember. It's been a long time ago.
19 But all I really remember about it is the
20 daughter and the son. The daughter took the son
21 to court over her -- their father's money because
22 she had said he had spent all this money, you
23 know, and took advantage of their dad. And we
24 found that he did spend a small amount unfairly.
25 But all that she was claiming, no. So --

11:44:48

1 MR. LANGLEY: So y'all did award
2 some money damages?

3 PROSPECTIVE JUROR 10: Yes. He
4 did have to pay some back.

11:44:58 5 MR. LANGLEY: Do you remember how
6 much?

7 PROSPECTIVE JUROR 10: It was very
8 little.

9 MR. LANGLEY: Like four figures?

11:45:06 10 PROSPECTIVE JUROR 10: Maybe. It
11 was very small. It was a small family dispute,
12 really. That's why I barely remember. It wasn't
13 a real big deal.

14 MR. LANGLEY: How long ago was
11:45:14 15 that?

16 PROSPECTIVE JUROR 10: Oh,
17 probably 12 -- 11, 12 years ago.

18 MR. LANGLEY: I think Ms. Cauley
19 covered this earlier. But I'm going to make sure
11:45:40 20 and ask a more specific question.

21 Is there anyone here who posts on blogs
22 relating to consumer credit issues?

23 (No response.)

24 MR. LANGLEY: Ms. Cauley mentioned
11:46:18 25 that there's been a good bit of political and

1 other discussion about punitive damages. I have
2 a question for you that relates to something else
3 that's a hot button issue, and that's financial
4 institutions.

11:46:32 5 Is there anyone who has such a strong bias
6 against financial institutions that they don't
7 think they could be fair to Midland Credit
8 Management?

9 (No response.)

11:46:44 10 MR. LANGLEY: Anyone who just
11 hates banks?

12 (No response.)

13 MR. LANGLEY: Well, maybe I need
14 to add on to that question. Anyone that hates
11:46:56 15 banks so bad that they can't be fair to another
16 financial institution?

17 (No response.)

18 MR. LANGLEY: Anyone who hates
19 credit companies so much that they don't think
11:47:06 20 they can be fair to a financial institution?

21 (No response.)

22 MR. LANGLEY: Is there anyone who
23 thinks that just because the defendant is a large
24 company that the plaintiff is entitled to
11:47:16 25 damages?

1 (No response.)

2 (Discussion off the record.)

3 MR. LANGLEY: I believe that's all
4 I have. Thank you.

11:47:28 5 THE COURT: Anything else?

6 MS. CAULEY: No, Your Honor.
7 Thank you.

8 THE COURT: Can I see you at the
9 bench, please?

11:47:38 10 (Bench discussion off the record.)

11 THE COURT: Can I see the court
12 reporter and the lawyers while I wait for Tammi
13 to come back in? Over here.

14 (Bench discussion:)

11:49:10 15 THE COURT: Are there any
16 challenges for cause?

17 MS. CAULEY: I'm concerned about
18 the three that don't want to be here for any
19 reason. But other than those three, no.

11:49:22 20 MR. LANGLEY: I'm concerned --

21 THE COURT: I mean, you have to
22 either tell me -- nobody has followed up. They
23 haven't told me why they don't want to be here.
24 People don't want to be here for jury duty many
11:49:36 25 times for many reasons. Unless you ask the

1 question. And you haven't said you're striking
2 them for cause. So let's make the record clear.

3 MS. CAULEY: There's Luther and --
4 I didn't bring my notes.

11:49:50 5 THE COURT: I have the notes here.
6 They are Mr. --

7 MR. LANGLEY: Naylor, Luther, and
8 Shields.

9 MS. CAULEY: Plaintiff moves to
11:50:00 10 strike those three jurors for cause because they
11 all indicated they did not want to serve, be on
12 this jury panel.

13 THE COURT: Overruled.

14 MR. LANGLEY: May I get you my
11:50:12 15 notes so I can give you one name?

16 THE COURT: Yes.

17 MR. LANGLEY: Defendant moves to
18 strike for cause Mr. Spiller.

19 THE COURT: For what reason?

11:50:32 20 MR. LANGLEY: He was the one who
21 is one of the people who had a credit dispute who
22 said it was never solved to his satisfaction. It
23 just stayed on there. He seemed to express
24 disdain for --

11:50:46 25 THE COURT: You didn't ask him

1 whether that prevented him from being fair
2 and impartial. I'm going to overrule the strike.
3 Anything else?

4 MR. LANGLEY: No, Your Honor.

11:50:58 5 THE COURT: Okay. All right.

6 (End of bench discussion.)

7 (In open court. Jury present.)

8 THE COURT: We're fixing to take a
9 lunch break. While you're out to lunch, do not
11:52:12 10 discuss the case with anyone. Don't let anyone
11 discuss it in your presence or in your hearing.
12 Don't discuss it among yourselves. Don't post
13 anything to any blogs or your Facebook pages. Do
14 not use any kind of electronic equipment, whether
11:52:26 15 they be Twitter or Facebook or any other blog or
16 any other communication. You're not allowed to
17 do that while you're seated on this case about
18 this case.

19 And you're not allowed to talk to the
11:52:42 20 parties about this case or the lawyers. And
21 really what it means is don't talk to them about
22 anything. Because I can't monitor the
23 conversation. And if you start talking to them,
24 their natural inclination is to talk back to
11:52:56 25 y'all because that's polite. But I've told them

1 they can't talk to you either except in open
2 court on the record. So please don't talk to the
3 lawyers or the parties in this case.

4 I'm trying to get a little detail about
11:53:08 5 the lunch worked out. I don't seem to be able to
6 get anybody in Birmingham. But if you will be
7 patient, Tammi will know in just one minute. And
8 then y'all need to be back at 1:15. Okay? Let
9 me go find out from her.

11:53:42 10 (Short recess.)

11 (Luncheon recess.)

12 (Bench discussion. In chambers:)

13 THE COURT: The defendants strikes
14 are Aiello, Courtney, Edwards, Kezo, Luther.
13:13:52 15 Let's see where Mr. Luther is. Oh. Here.
16 Miller, Robinson, and Spiller.

17 The plaintiff's strikes are Davis. I
18 think that was wise. Does it say Guess?

19 COURTROOM DEPUTY: Yes, ma'am.

13:14:38 20 THE COURT: Yeah. Luther.
21 Naylor. Did she say she was fired by TVA?

22 MS. CAULEY: Retired.

23 THE COURT: Oh. I couldn't
24 understand what she was saying. Shields, Kent,
13:15:26 25 and Neutze. And what does that say?

1 COURTROOM DEPUTY: Reyer.

2 R-E-Y-E-R.

3 MS. CAULEY: Right next to him.

4 COURTROOM DEPUTY: Yeah. They're
13:15:36 5 side by side.

6 THE COURT: Who was the last one?
7 Okay.

8 MS. CAULEY: We both did Luther,
9 so there was --

10 THE COURT: That would leave
11 Mr. Bess, Mr. Bibbee, Melissa Dobbins,
12 Mr. Drzycimski, Monica Gregory, Charles Hines.
13 He is hopeless to understand, y'all. Okay.
14 Chris Matthews, Carl McGrady, Donna Missildine.
13:16:30 15 That's nine. Deborah Moody, Stacey Moseley, and
16 Jane Wylie. Is that who y'all got?

17 MR. LANGLEY: Yes.

18 THE COURT: You got them, too?

19 MS. CAULEY: Yes.

13:16:46 20 THE COURT: Are there any *Batson*
21 challenges or anything?

22 MS. CAULEY: Your Honor, we have a
23 *Batson* challenge with respect to Maurice
24 Robinson. He was the only African-American on
13:17:12 25 the jury.

1 THE COURT: Speak up.

2 MS. CAULEY: We have a *Batson*
3 challenge as to Maurice Robinson. He was the
4 only African-American on the jury, and the
13:17:14 5 defendant struck Mr. Robinson.

6 MR. LANGLEY: We actually had
7 trouble understanding what he was saying. Very
8 soft-spoken during voir dire. His wife works for
9 a judge, which is a little too close to the law
13:17:28 10 than we want. And when it really came down to
11 it, we were favoring people that had more
12 education. He was one that had only a high
13 school degree.

14 THE COURT: Okay. I'm going to
13:17:42 15 have to get my -- see if you struck anybody else
16 with those criteria.

17 Okay. Ms. Kezo had a lawyer -- a
18 brother-in-law who was a bailiff. Ms. Matthews
19 was not struck. Mr. Matthews? Was he struck?

13:18:38 20 MR. LANGLEY: She is a female.

21 THE COURT: Ms. Matthews. Yeah.
22 Her. Mike Jones is related. I thought that was
23 a gentleman who said that.

24 MS. CAULEY: That was Casey
13:18:52 25 Miller.

1 MR. LANGLEY: We have that under
2 Casey Miller.

3 THE COURT: Miller. Okay. It
4 should be Miller. Okay. And let me just see
13:18:56 5 here. Robinson. That's who we're talking about.
6 Williamson -- Williamson.

7 MR. LANGLEY: She's at the end.
8 And we just didn't think we would get to her. So
9 we took a chance.

13:19:16 10 THE COURT: Okay. Bibbee. He was
11 not struck. Personal friends with Christy
12 Thompson. She is a lawyer. Drzycimski. Two
13 lawyers. One was Larry Morgan and one was
14 somebody else. Friends of his. Dobbins -- her
13:19:46 15 daughter's softball coach was Chris Malcolm.
16 Luther had high school friends, but he's struck.
17 Moody. Gill Self. Moody. Moody. Where is
18 Moody?

19 MS. CAULEY: Last row, last page,
13:20:18 20 far right. Deborah Moody.

21 THE COURT: Oh, yeah. And
22 Spiller. Oh, no. That's it. Moody was the last
23 one. So you didn't strike Bibbee. You didn't
24 strike Drzycimski. And you didn't strike
13:20:36 25 Dobbins.

1 MR. LANGLEY: Those all had
2 connections to lawyers. Not judges. There were
3 three people who had connections to judges
4 through family. And they were, as we understood,
13:20:46 5 Casey Miller, Mr. Robinson, and then one other
6 whose connection was not through a family member.
7 She said that she -- I can't remember who it was
8 off the top of my head.

9 MR. TOMPKINS: I think it was
13:20:58 10 Moody, and she said judge attended a fundraiser.

11 THE COURT: I'll overrule the
12 objection -- the motion. And leave it like it
13 is. So what else do you plan to do today?

14 MS. CAULEY: That's it, Your
13:21:14 15 Honor.

16 THE COURT: Okay. Y'all going to
17 start at 9:00 in the morning? Okay. That will
18 be good. Get the jurors. I'll go in, and tell
19 them who's on the jury.

13:21:30 20 (End of bench discussion.)

21 (In open court. Jury present.)

22 THE COURT: Let the record show
23 we're back in open court on CV10-369, Jamon Brim
24 versus Midland Credit Management Inc. And
13:22:12 25 everybody is here who is supposed to be here.

1 And the jury has been selected while y'all were
2 at lunch.

3 Well, not everybody was here.

4 And I'm going to call -- well, Tammi is
13:22:22 5 going to call the names of the jurors that have
6 been selected to serve in this case.

7 If you're seated in the jury box and your
8 name is called, remain seated. If you're seated
9 behind the rail and your name is called, come
13:22:36 10 forward and have a seat in the jury box. If
11 you're seated in the jury box and your name is
12 not called, you need to get out of the jury box
13 and have a seat behind the rail.

14 And please don't anybody move until all
13:22:48 15 the names have been called, because it's going to
16 be mass confusion of musical chairs if you move
17 before all names have been called. Okay?

18 COURTROOM DEPUTY: The following
19 people will be the jurors: Phillip Bess, Jeffrey
13:23:02 20 Bibbee, Melissa Dobbins, Stephen Drzycimski,
21 Monica Gregory, Charles Hines, Chris Matthews,
22 Carl McGrady, Donna Missildine, Deborah Moody,
23 Stacey Moseley, and Jane Wylie. These are the
24 jurors.

13:23:38 25 THE COURT: Okay. Everybody whose

1 name was not called, please have a seat behind
2 the rail. Everybody whose name was called,
3 please have a seat in the jury box.

4 (Jurors comply.)

13:24:22 5 Okay. We're going to call the names out
6 one more time to make sure we have the 12 jurors
7 in the box. Please say "here" to indicate you're
8 present and seated.

9 COURTROOM DEPUTY: Phillip Bess.

13:24:32 10 JUROR 2: Here.

11 COURTROOM DEPUTY: Jeffrey Bibbee.

12 JUROR 5: Here.

13 COURTROOM DEPUTY: Melissa

14 Dobbins.

13:24:38 15 JUROR 10: Here.

16 COURTROOM DEPUTY: Stephen

17 Drzycimski.

18 JUROR 12: Here.

19 COURTROOM DEPUTY: Monica Gregory.

13:24:42 20 JUROR 16: Here.

21 COURTROOM DEPUTY: Charles Hines.

22 JUROR 19: Here.

23 COURTROOM DEPUTY: Chris Matthews.

24 JUROR 24: Here.

13:24:48 25 COURTROOM DEPUTY: Carl McGrady.

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdrpr@aol.com

1 JUROR 25: Here.

2 COURTROOM DEPUTY: Donna

3 Missildine.

4 JUROR 27: Here.

13:24:54 5 COURTROOM DEPUTY: Deborah Moody.

6 JUROR 29: Here.

7 COURTROOM DEPUTY: Stacey Moseley.

8 JUROR 31: Here.

9 COURTROOM DEPUTY: And Jane Wylie.

13:25:02 10 JUROR 40: Here.

11 THE COURT: Everybody else is
12 excused. Thank you so much for coming. And be
13 safe driving back to wherever you are coming
14 from. And you don't need -- you're not going to
15 be called back for another case that I know of.
16 Are they?

17 COURTROOM DEPUTY: No, ma'am.

18 THE COURT: In this term. So
19 thank you so much. We appreciate it.

13:25:26 20 (Prospective jurors excused.)

21 THE COURT: Please be seated. And
22 would you all please stand and raise your right
23 hand and take the oath of a trial jury?

24 (Jurors sworn.)

13:26:14 25 THE COURT: Okay. Actually this

1 is going to be a pretty short day, because we're
2 not going to do opening statements until
3 tomorrow. But I would like to explain to you the
4 procedure we'll be following when we try this
13:26:28 5 case. And I would like to do that before you
6 recess for the afternoon.

7 The first thing you will hear tomorrow
8 morning are the attorneys' opening statements.
9 And that is simply a statement by, first, the
13:26:40 10 attorney for the plaintiff and, next, the
11 attorney for the defendant where they outline for
12 you what they expect the evidence to be. And
13 that's sort of a statement that familiarizes you
14 and the Court with the contentions and the
13:26:54 15 theories of each party from the very beginning.

16 What the lawyers say, not just during
17 opening statement but also during closing
18 argument, which I'll come back and explain in a
19 minute, and at other times during the trial is
13:27:08 20 not evidence.

21 After you have heard their opening
22 statements, which lawyers have a duty to give
23 you -- and it just is an outline of what they
24 expect the evidence to show -- you will actually
13:27:20 25 have the evidence presented to you. The evidence

1 that will be presented to you can be and will be
2 testimony from witnesses while a witness is under
3 oath, sitting right over there on the witness
4 stand and testifying in front of you. It can
13:27:34 5 also be depositions that may be read by the
6 parties of a witness. And a deposition is simply
7 testimony taken from a witness prior to the trial
8 while the witness is under oath before a judicial
9 officer. And if that is read to you, then one of
13:27:54 10 the lawyers will read the questions and another
11 one will read the answers that the witness gave
12 during his or her deposition. You should
13 consider that as evidence, as well, as if the
14 witness were here in person, testifying under
13:28:04 15 oath in front of you.

16 There more than likely be documents
17 offered into evidence. And that's called
18 exhibits. And if they are admitted by the Court,
19 that is called just evidence through exhibits.
13:28:22 20 Admitted exhibits. And that will also be
21 evidence. Now, exhibits that are offered but not
22 admitted by the Court are not evidence. The
23 admitted exhibits you will have with you in the
24 jury room when you go to deliberate at the end of
13:28:38 25 the trial.

1 After all the evidence has been presented
2 to you, live testimony from the witnesses or
3 deposition testimony or admitted exhibits, you
4 will -- I will charge you with respect to what
13:28:52 5 the law is that you are to apply. And it's your
6 duty to apply the law, regardless of what your
7 own opinion about what the law should be or
8 should not be. Then after I get through doing
9 that -- and I will read you that law and you will
13:29:08 10 actually have a copy with you in the jury room
11 when you go to deliberate for yourself -- the
12 lawyers will again talk to you. And that's
13 called closing argument.

14 After you have heard the closing argument
13:29:20 15 by the attorneys, I will explain to you the
16 verdict forms that you will use. And then you
17 will get the case. And you will begin your
18 deliberations at that time.

19 Now, the first thing I want to tell you is
13:29:36 20 do not talk about this case among yourselves or
21 with anyone else until I tell you at the end of
22 the case that you can go to the jury room and
23 deliberate. At that point, you can talk about it
24 among yourselves. Do not talk to anybody else,
13:29:56 25 whether they be parties, witnesses, lawyers,

1 court personnel except for Tammi with respect to
2 practical -- you can talk to her about practical
3 issues such as your lunch being paid for which is
4 what I was trying to do for lunch today -- about
13:30:14 5 this case.

6 I know that there might be somebody at
7 home when you come home during recess who is
8 going to say, well, what case did you get on?
9 What are the names; what's it about? Don't
13:30:28 10 discuss it. Just tell whoever might be there --
11 just say, I'm under the Court's instruction not
12 to discuss it until we've reached a verdict in
13 this case. And I'm sorry, but I can't discuss
14 it. And that includes any other type of
13:30:42 15 communication, whether it be by Twitter,
16 Facebook. What was the other thing Ms. Kezo
17 talked about? Blogs. Any kind of internet or
18 electronic communication. Can't text. Can't
19 cell phone. Can't talk to anybody through any
13:31:02 20 media or spoken word or written word while you're
21 seated on this case.

22 I've always thought -- and I've never been
23 a juror. I've always thought that it might be
24 difficult to be a juror because there you are,
13:31:16 25 the 12 of you. And the one thing you have in

1 common is this case. And by golly, you can't
2 talk about it. But you will get a chance to talk
3 about it after the case has been presented to you
4 and I have instructed you with respect to the
5 law.

6 We usually take a midmorning break. We
7 usually also take a midafternoon break and an
8 hour and 15 minutes for lunch. We usually start
9 at 9:00 and we usually quit at 5:00. If you need
10 breaks at any other time, all you have to do is
11 tell me you need a break. By the way, that goes
12 for parties and lawyers, as well. Regardless of
13 when we had the last break. And I'll give you
14 one.

15 I also want to tell you that I don't
16 exactly stop at 12:00 sometimes if I have a
17 witness on the stand and the witness is about to
18 finish up and I think if we have ten more
19 minutes, we could finish up the witness. And if
20 that happens and you're too hungry to pay
21 attention, you need to stop me. Okay? You can
22 just say, I got to eat. Really what I'm trying
23 to say is if any of you have a condition where
24 you need to eat at a certain time, just make sure
25 you tell me because I can't have people become

1 sick just because I want a witness to finish up
2 before lunch. So I'll be mindful of that. But
3 let me know if you have a situation such as that.

4 Sometimes we have matters that we need to
13:32:42 5 take up outside your presence and outside your
6 hearing. And it's required by law to be taken up
7 outside your hearing and presence. Usually we do
8 this in the courtroom. And -- because we're on
9 the record in here. And our court reporter takes
13:32:58 10 down everything that's being said. It's just
11 easier for us to stay in here. I usually give
12 you a break when we do that. And so if that
13 happens, please just make sure that the
14 instruction I've given you about not discussing
13:33:14 15 the case applies during all breaks. Make sure
16 you understand that.

17 And more importantly, sometimes I can't
18 always gauge how long time it will take to take a
19 matter up like this. Just remember that when you
13:33:30 20 go to the jury room to deliberate in your case --
21 in this case, your deliberations are yours and
22 yours only. And we're not parties to that. And
23 we can't tell you how long you'll take. Okay?
24 That's up to y'all completely. Sometimes I can't
13:33:44 25 tell how long it will take for us to take a

1 matter up. And usually what I do is I gauge and
2 I give you whatever number of minutes I think is
3 appropriate or 30 minutes or whatever I think is
4 appropriate. If I go over, please don't get mad
13:34:02 5 at them. Just get mad at me. I'm the one that
6 gauges it. If I gauge wrong, I'll take the
7 blame. That's perfectly all right. It's
8 happened before, and it's going to happen again.
9 That's just part of it.

13:34:14 10 I also want to tell you if at any time
11 while you're seated on this case you cannot hear
12 or see what the witness is saying -- for that
13 matter, what the lawyers say, speak up.
14 Sometimes jurors have gone to the jury room to
13:34:26 15 deliberate and they've come back out and they've
16 said, Judge Johnson, will you have your court
17 reporter read back -- and she is good -- I'll
18 tell you that -- certain part of a witness'
19 testimony or Witness X's testimony because we're
13:34:40 20 not sure we heard it all. Jurors have told me
21 after they have been in a situation like that
22 it's because they disagreed on what they heard so
23 they wanted to go back in and have it reread to
24 them. I generally do not allow that because it
13:34:58 25 takes the testimony out of the context in which

1 it was given. And it puts undue emphasis on a
2 particular witness' testimony.

3 So what I'm telling you indirectly is you
4 will not hear the testimony but one time, and
13:35:10 5 that's when it's read to you or when it comes
6 from the witness stand in form of live testimony.
7 So if you can't hear what's being said or can't
8 see what's being shown, speak up.

9 The evidence usually is shown on the Elmo.
13:35:26 10 And you will see it on the two big screens. And
11 we'll turn them on. The way it works is I'll
12 look at it first with the lawyers on their
13 computers and then if I admit it, you'll get to
14 look on the big screens. I suggest that -- well,
13:35:42 15 I'm not sure. If you have issues with that
16 because you have to crane your neck to see it,
17 let me know. With that screen over there.
18 Usually jurors don't have any trouble with that
19 screen.

13:35:52 20 We're going to do some work to the
21 courtroom. And when it gets redesigned, we're
22 going to have them put different places. And the
23 witness box is going to be over here so you don't
24 have to turn your neck 180 degrees or 90 degrees
13:36:08 25 or whatever it may be to see what's being said.

1 But if you can't see it, let me know.

2 I will also tell you you'll have some
3 pencils and paper during this trial. And you can
4 take notes. I just want you to remember that
13:36:22 5 notes are supposed to be an aide to your memory
6 if you think you need it. And not authoritative
7 records to show the other jurors. So just
8 remember that when you take your notes. They are
9 to aide your memory in what you hear here in this
13:36:38 10 courtroom.

11 You will be permitted to ask questions.
12 That is something I do. Not everybody does that.
13 But I do. And the way it works is since you
14 can't discuss the case among yourselves, you
13:36:52 15 can't sit there and talk about what questions you
16 want to ask among yourselves. When a witness has
17 been called to testify and has been examined and
18 cross-examined and the witness is through and the
19 lawyers have said they are finished, I will give
13:37:10 20 you a short amount of time to write down any
21 questions you have of that witness while the
22 witness is in front of you under oath.

23 Obviously, you can't do that with
24 testimony read by deposition, but you can do that
13:37:24 25 with live witnesses. If you have any questions,

1 you can write them down on your notepad and give
2 them to Tammi. And she will give them to me.
3 And I will go through them with the attorneys.
4 And if I think they are appropriate questions to
13:37:38 5 ask the witness, then I will ask the witness
6 those questions. All right? Just remember that.
7 That you have that right.

8 And I'm trying to think if there's
9 anything else. We're not going to have opening
13:37:52 10 statements until tomorrow. I excused plaintiff's
11 co-counsel, Len Bennett, until tomorrow morning
12 because he had to be in court somewhere else.
13 And I told him that was okay; that we would
14 strike a jury today. And I'm sure you would not
13:38:06 15 be very terribly upset if we recess at 1:45
16 instead of 5:00.

17 So please be back -- unless there's
18 anything else we need to take up with the jury,
19 please be back at 9:00 o'clock in the morning.
13:38:22 20 And just come straight into the courtroom.

21 COURTROOM DEPUTY: No, ma'am. The
22 jury room upstairs on the third floor. And the
23 guards will show you.

24 THE COURT: Okay.

13:38:34 25 COURTROOM DEPUTY: That will be

1 better in case they're talking.

2 THE COURT: Just come on and do
3 what the boss lady says. I guess I'm not the
4 boss lady. Go up to the jury room at 9:00
13:38:42 5 o'clock in the morning, and we'll come get you
6 shortly thereafter. You're recessed for the
7 night. Just remember the instruction I've given
8 y'all.

9 (Jury excused.)

13:39:32 10 (In open court. Jury not
11 present.)

12 THE COURT: Anything we need to
13 take up?

14 MS. CAULEY: Your Honor, the
13:39:50 15 plaintiff did file a supplemental motion in
16 limine. I believe it was yesterday. Just on
17 some facts that we would like to be able to use
18 in opening that have been admitted either through
19 the testimony already taken or through the
13:40:06 20 declaration of Kathy Rogan that was filed in
21 response to the summary judgment. Do you have
22 that?

23 THE COURT: No. I sure don't. I
24 thought I had printed everything. Do you have
13:40:16 25 it? We didn't have -- let's go get it. We'll be

1 right back. Did you file it yesterday?

2 MS. CAULEY: It was filed on
3 Friday.

4 (Short recess.)

13:43:16 5 THE COURT: Be seated. Let me see
6 what it says. Okay. I'm not sure -- I've not
7 seen a motion in limine like that before. Are
8 you saying that you want Facts 1 through 14
9 stipulated to? Is that what you're saying?

13:45:16 10 MS. CAULEY: Yes, Your Honor. For
11 it to be --

12 THE COURT: You want it as a
13 stipulation by the parties?

14 MS. CAULEY: I don't know if the
13:45:22 15 defendant intends to object to them. But it's
16 facts --

17 THE COURT: I'm fixing to ask
18 them.

19 MS. CAULEY: Yes. We would like
13:45:28 20 for these to be read as part of the stipulated
21 facts so that -- there's no dispute regarding
22 these facts. And it's something we would like to
23 be able to use in opening statement.

24 MR. TOMPKINS: Your Honor, there
13:45:46 25 is a dispute as to some of these facts. I think

1 during the opening statement the plaintiff's
2 counsel can certainly say what they expect the
3 evidence to show.

4 THE COURT: Well, why don't you
13:45:54 5 tell me which ones you dispute?

6 MR. TOMPKINS: I know that Number
7 1 -- I'm not sure that Midland Funding is
8 considered a wholly-owned subsidiary of Midland
9 Credit Management. It is an affiliate.

10 THE COURT: I think you all argued
11 it was a wholly-owned subsidiary during summary
12 judgment.

13 MR. LANGLEY: Your Honor, if we
14 did, then that was very unorthodox because I've
13:46:24 15 represented Midland in a number of these cases,
16 and we've always described it as an affiliate.

17 THE COURT: Okay. I'll go look it
18 up and see what you said. You're stuck with what
19 you said. Can I just ask you something about --
13:46:36 20 what else do you dispute?

21 MR. TOMPKINS: I know another one
22 that jumped off the page was Number 11.

23 THE COURT: Why don't you just
24 tell me -- go through without jumping.

13:46:48 25 MR. TOMPKINS: Okay.

1 THE COURT: I mean, let's just
2 shorten this to the extent possible. It's not a
3 complicated lawsuit. Anything to --

4 MR. LANGLEY: Your Honor --

13:47:08

5 THE COURT: No. I'm asking you to
6 go through these. We're on Number 2 right now.

7 MR. TOMPKINS: Number 2 is
8 probably undisputed.

9 THE COURT: Is what?

13:47:18

10 MR. TOMPKINS: Is undisputed.

11 THE COURT: Okay.

12 MR. TOMPKINS: Number 3, I am not
13 sure about, Your Honor. I don't have that
14 contract in front of me, but I believe that
15 that's a statement of the law anyway, right? I
16 would have to look at the contract, Your Honor,
17 for that one.

13:47:30

18 THE COURT: Okay.

19 MR. TOMPKINS: The same for Number
20 4. I don't have that deposition testimony in
21 front of me.

13:47:46

22 THE COURT: Okay.

23 MR. TOMPKINS: We would not
24 dispute Number 5.

13:48:08

25 THE COURT: Number 6 is not

1 disputed either. It couldn't be.

2 MR. TOMPKINS: Correct. Number 7
3 is not disputed.

4 For Number 8, I don't have the credit
13:48:50 5 report in front of me. I don't know if it was
6 reported in the manner described, as an unpaid
7 collection account, but it was --

8 THE COURT: I'll give you a chance
9 to look at your -- you can check it out during
13:48:58 10 the break.

11 MR. TOMPKINS: Okay. Number 9 is
12 not disputed, Your Honor.

13 Number 10 I would want to check the number
14 of ACDVs. It says multiple. And just to be
13:49:34 15 clear on the record, that fact is not reflected
16 in the declaration of Kathy Rogan.

17 THE COURT: Okay.

18 MR. TOMPKINS: Number 11, we would
19 dispute the 99-percent figure for the number of
13:49:52 20 ACDVs that are processed completely by the batch
21 interface system. The deposition of Angelique
22 Ross does say 99 in one place. But it says 95 in
23 at least two others. We're not sure if that was
24 a typo or if it was just misstated. But we would
13:50:14 25 dispute the 99-percent figure.

1 THE COURT: Okay.

2 MR. TOMPKINS: Number 12 would be
3 undisputed. We would not agree with the way
4 Number 13 is phrased in that it states no human
13:50:46 5 being investigates the ACDV dispute. We would
6 agree that when it's processed by the automated
7 batch interface system, no human employee reviews
8 any information. But I believe "investigates"
9 here has a legal meaning. And we would not
13:51:02 10 concede that sentence.

11 THE COURT: No human being --

12 MR. TOMPKINS: No human employee.

13 THE COURT: Do they have robot
14 employees? No employee of Midland -- what did
13:51:18 15 you say?

16 MR. TOMPKINS: Reviews the
17 dispute.

18 THE COURT: Okay. Reviews ACDV
19 dispute. Okay. Is the rest of it okay?

13:51:32 20 MR. TOMPKINS: I'm sorry, Your
21 Honor. Give me just one minute. We do dispute
22 that, the second sentence in Number 13.
23 There's -- it is a very complicated system. And
24 there will be testimony about the different codes
13:51:54 25 that can be placed on the account and what would

1 happen if certain codes --

2 THE COURT: We'll scratch that.

3 14?

4 MR. TOMPKINS: That is correct.

13:52:10

5 THE COURT: Okay. That's not
6 correct English. Okay? In investigating to the
7 Mr. Brim -- in investigating Mr. Brim's ACDV
8 disputes?

9 MS. CAULEY: Yes, Your Honor.

13:52:24

10 THE COURT: Can I take out to the?

11 MS. CAULEY: Yes. Please.

12 THE COURT: All right.

13 MR. TOMPKINS: And I guess I would
14 ask for the same clarification for the use of the
15 word, "investigating," there and review in
16 processing Mr. Brim's disputes.

13:52:32

17 THE COURT: I'm sorry. What are
18 you talking about, Jason?

19 MR. TOMPKINS: On the previous

13:52:42

20 number --

21 THE COURT: 13?

22 MR. TOMPKINS: Right. And I
23 expressed some concern about the use of the word,
24 "investigate," given the legal meaning that it
13:52:52 25 may have in this case. And I would have the same

1 concern with Number 14.

2 THE COURT: Oh. In reviewing.

3 No. I'm going to leave "investigation" there

4 because that's a duty you have under the statute.

13:53:04 5 Okay. But I haven't decided what I'm going to do

6 with it yet. You go check -- you check your

7 things and I'll check mine, and I'll be right

8 back. Do you have any --

9 MS. CAULEY: On Number 13, we

13:53:16 10 would be willing to take out the second sentence

11 which he disputed and leave in when Midland uses

12 its automated batch interface system to process

13 consumer disputes received in ACDVs, no employees

14 of Midland Credit Management reviews the dispute.

13:53:32 15 THE COURT: Okay.

16 MS. CAULEY: We would be fine with

17 that.

18 THE COURT: Okay. That's fine.

19 Anything else? Is there some places -- I can't

13:53:40 20 remember off the top of my head -- when Angelique

21 testified that it said 95 percent?

22 MS. CAULEY: I was trying to look

23 that up. On the page we cited, on Page 22 of her

24 deposition, she does say 95 percent. I need to

13:53:52 25 look to see if it was -- in another place, she

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdrpr@aol.com

1 says 99. I can look at that.

2 THE COURT: Well, could we put 95
3 to 99 percent? Would that be agreeable?

4 MS. CAULEY: That's fine.

13:54:06 5 MR. LANGLEY: Your Honor, it would
6 not. And here's why: I think the only
7 reasonable inference is that the court reporter
8 heard 99 wrong because, earlier in the
9 deposition, Angelique testified --

13:54:12 10 THE COURT: Okay. I'm sorry,
11 Mr. Langley. I cannot change what the court
12 reporter heard. I have deposition testimony,
13 which is sworn testimony. She's not going to be
14 here in person, is she?

13:54:22 15 MR. LANGLEY: She's not. But the
16 point that I was going to make is shortly after
17 that 99 appears in the transcript, Ms. Cauley
18 asked another question that included 95. So that
19 five percent that's handled manually --

13:54:36 20 THE COURT: I know you want me to
21 say it is only 95. I cannot change sworn to
22 testimony in a deposition. If it says 99 percent
23 one place and 95 in another place, I'm stuck with
24 what it says. As much as you might want to say
13:54:48 25 it is a misunderstanding. I can't do that.

1 MR. LANGLEY: I guess I was hoping
2 Penny would concede the point, given --

3 THE COURT: That's different.

4 MR. LANGLEY: Penny, would you be
13:55:02 5 willing to stipulate since we're talking about
6 stipulations?

7 MS. CAULEY: I'm looking at Page
8 57. And there, the question is specifically:
9 You told me 99 percent of ACDVs are handled
13:55:14 10 electronically through the batch is -- the
11 question was: You told me 99 percent of ACDVs
12 are handled electronically through the batch; is
13 that right? And her answer was: Yes.

14 THE COURT: Okay.

13:55:26 15 MS. CAULEY: Is there another
16 place that you can cite me to that says 95?

17 MR. LANGLEY: Well, there's the
18 portion that you pointed out earlier. And then
19 on Page 60, you asked the question: How many
13:55:40 20 disputes does Midland normally get, say, per week
21 for ACDV? Answer: I would say maybe about
22 8,000. Question: Would that be the same pretty
23 much every week? Answer: Yeah. Question: And
24 then if my math is right, five percent of that
13:56:04 25 would be about 400 are actually handled by an

1 individual in the consumer relations department
2 per week? Answer: Yeah. I guess that is about
3 right.

4 THE COURT: Well, 99 percent is
13:56:24 5 obviously not correct. Because she also says --
6 other places, she says 95. So you all have the
7 choice if you want me to do this as a
8 stipulation -- you have the choice of either
9 stipulating to something different than 99
13:56:38 10 percent, or I don't read it.

11 MS. CAULEY: We would have no
12 problem with the 95 to 99.

13 MR. LANGLEY: We do have a problem
14 with that. But I guess they're entitled to read
13:56:52 15 in --

16 THE COURT: Well, no. This is
17 stipulation. I mean, it's going to amount to
18 what they want me to do is grant the motion in
19 limine, which I've never seen in that form
13:57:02 20 before, and read it to the jury and say the
21 parties have -- you know, whatever. I've never
22 seen a motion quite like this before. I don't
23 mind doing it as a stipulation. But it's not
24 something I can take judicial notice of. And
13:57:16 25 that's really sort of what you're asking me to

1 do.

2 And I can't -- I can take judicial notice
3 of the fact she said 95 percent at some place in
4 her deposition and 99 in others. And I can read
13:57:32 5 to the jury: When Midland received the ACDVs
6 from Mr. Brim from Equifax, Transunion, and
7 Experian, it used its automated batch interface
8 system to respond.

9 MS. CAULEY: That's fine, Your
13:57:46 10 Honor. We can bring the rest up on deposition.

11 MR. LANGLEY: Your Honor, if
12 there's going to be a stipulation read to the
13 jury, we would like an opportunity to --

14 THE COURT: Absolutely. I'm just
13:57:54 15 trying to see if you can get some of this ironed
16 out before 9:00 o'clock in the morning. Unless
17 you want to try to do it now and come back.

18 MR. LANGLEY: Actually, what we
19 would prefer is for both sides to be able to say
13:58:02 20 what they expect the evidence to show.

21 THE COURT: I know. I know that's
22 what you prefer. Now, that's not what I have in
23 front of me right now, Mr. Langley.

24 MR. LANGLEY: Understood.

13:58:10 25 THE COURT: I have a motion, and

1 I'm trying to facilitate ruling on that motion.
2 I can either grant part of it, deny all of it, or
3 turn it into a stipulation. And if I have a
4 stipulation, I can read it to the jury and tell
13:58:24 5 them stipulation facts mean there's no additional
6 evidence necessary to prove that.

7 You all have your pick. Do you want me
8 just to rule on the motion? Or do you want to
9 try to stipulate?

13:58:36 10 MR. TOMPKINS: We would prefer
11 that you just deny the motion.

12 THE COURT: I know that. I'm not
13 going to deny it completely, Mr. Tompkins. You
14 can't have your cake and eat it too. Okay? Some
13:58:46 15 of these facts are absolutely totally undisputed.
16 And there's no reason for anybody to have to drag
17 witnesses or read extra deposition testimony in
18 front of the jury this week to prove that when
19 it's undisputed. And that's where I'm coming
13:59:02 20 from. And that's what that motion is all about.

21 MR. TOMPKINS: They've designated
22 these same portions.

23 THE COURT: I'm going to go check.
24 You go check on your things. That will be the
13:59:12 25 simplest thing.

1 MR. TOMPKINS: I will, Your Honor.
2 (Short recess.)

3 THE COURT: Okay. With respect to
4 Number 1, I actually found it on Page 1 of my
14:16:00 5 opinion that it's a wholly-owned subsidiary. I'm
6 not going to change my opinion. So I'm going to
7 let Number 1 stand.

8 Number 2, defendants said was undisputed.

9 Number 3, I've looked through the
14:16:16 10 contract. And Paragraph 7 is the only one that I
11 can find that deals with Midland's duties under
12 the federal consumer protection laws. And
13 Paragraph 7 does not say the same thing as
14 Plaintiff's Number 3.

14:16:32 15 Do you have anything different,
16 Mr. Tompkins?

17 MR. TOMPKINS: No, Your Honor.
18 That's the only paragraph I found. And it
19 actually specifically references the FDCPA. Not
14:16:44 20 the FCRA.

21 THE COURT: It doesn't say what
22 you say.

23 MS. CAULEY: Your Honor, it
24 doesn't say FDCPA either. I mean, mine just says
14:16:50 25 that they would comply with all requirements --

1 THE COURT: Well, if you want to
2 put in -- I'm telling you what you have put in
3 Number 3 is not what the contract says. So if
4 you want to put a Number 3 in there that quotes
14:17:04 5 Paragraph 7 of the contract, then I'm sure that
6 would be okay. But there's a different meaning
7 to Paragraph 7 than there is to what you say
8 here.

9 MS. CAULEY: Okay.

14:17:12 10 THE COURT: You can just think
11 about it.

12 MS. CAULEY: Okay.

13 THE COURT: Midland agrees that
14 it's responsible for the accuracy of the
14:17:22 15 information it reports to the credit bureau is
16 Number 4. That is correct. That is what it says
17 in the deposition. So that would be okay.

18 Five is undisputed.

19 Six is undisputed.

14:17:34 20 Seven is undisputed.

21 Number 8 -- did you check, Jason?

22 MR. TOMPKINS: Yes, Your Honor. I
23 did check. Well, I checked a couple of the
24 credit reports. There's several. One that I
14:17:50 25 looked at quickly was Transunion prior to 2008

1 did not list anything as an unpaid collection
2 account. There are different ways that these
3 things could be --

4 THE COURT: That's not -- that's
14:18:00 5 not what it says. I'll tell you it ties in with
6 Number 10. And I don't know really how you want
7 to do it if you want to do it.

8 Number 10 is where it's been proposed that
9 the stipulation reads in August, 2008, and March
14:18:16 10 of 2009, Midland received multiple ACDVs from the
11 credit recording agencies communicating that
12 Mr. Brim had disputed the accuracy of the debt.

13 Okay. First of all, that is not what
14 Kathy Rogan says in her declaration. So that's
14:18:32 15 not correct. But she does say in her deposition
16 that in August of 2008, she received information
17 from the credit reporting agencies, communicating
18 that Mr. Brim had disputed the accuracy of the
19 debt.

14:18:46 20 So if Midland received that on August the
21 6th, 2008, which is what she says in her
22 deposition, they must have had his account prior
23 to August the 6th, 2008.

24 MR. TOMPKINS: They did have his
14:19:16 25 account prior to August 6, 2008. And Midland did

1 report information about his account to the
2 consumer reporting agencies prior to August of
3 2008. My concern is it states it was reported as
4 an unpaid collection account which may not be
14:19:32 5 true for any of the reports. But it may be true
6 for some. It's not true for the one that I was
7 able to quickly locate. It did not list it in
8 that manner, as an unpaid collection account.

9 MS. CAULEY: Your Honor, we can
14:19:46 10 simply just offer all the credit reports. I
11 mean, they all show that it's being reported with
12 outstanding balance as -- and as a collection
13 account.

14 THE COURT: Can I just see them?
14:20:08 15 I mean, the account was in 2004. He purchased it
16 in 2004. I doubt there was ever any credit
17 reporting agency that had it as a correct account
18 as paid.

19 MR. TOMPKINS: Well, that may be
14:20:22 20 true. But --

21 THE COURT: You know, I mean --
22 okay. Let me just look at them.

23 MS. CAULEY: This is the first one
24 from Equifax. It's the last page.

14:20:40 25 THE COURT: I'll give them right

1 back to you. I won't mess them up. Okay. Okay.
2 That one does say it. And that is Equifax.

3 MS. CAULEY: Here's Transunion.

4 MR. LANGLEY: What's the exhibit
14:21:26 5 number on that page?

6 MS. CAULEY: 43.

7 MR. LANGLEY: There is a 49.

8 MS. CAULEY: There is.

9 THE COURT: That one is 7, 2008.
14:22:00 10 Okay. That one says it. That 7, 2008 would be
11 prior to August, 2008 last I checked.

12 MR. TOMPKINS: I'm sorry, Your
13 Honor. Which one?

14 MS. CAULEY: That's July 29th,
14:22:14 15 2008 report from Jamon Brim. The next one is
16 just a duplicate. Here's one. Experian July,
17 2008.

18 THE COURT: Yeah. That's the last
19 one.

14:23:06 20 MS. CAULEY: And it's on Page 2.

21 THE COURT: Oh. This one is
22 reported as past due since December of 2007.
23 Okay.

24 So Number 8 would be okay.

14:23:38 25 But Number 10 is not okay. That's not in

1 her declaration.

2 MS. CAULEY: Okay. We just
3 withdraw that one.

4 THE COURT: And Number 11 should
14:23:48 5 just read: When Midland received ACDVs for
6 Mr. Brim from Equifax, Transunion, Experian, it
7 used it automatic batch interface system to
8 respond.

9 MS. CAULEY: That will be fine.

14:23:58 10 THE COURT: Number 12 is
11 undisputed.

12 Number 13 would read: When Midland uses
13 its automated batch interface system to process
14 consumer disputes received in ACDVs, no employees
14:24:14 15 of Midland Credit Management, Inc. reviews the
16 ACDVs disputed.

17 And Number 14 is undisputed with the
18 corrected English.

19 So that means I will -- whichever y'all
14:24:28 20 want to. If you don't want to stipulate, I'm
21 just going to grant the motion and read it.
22 Whatever y'all want me to do. It doesn't make
23 any difference to me.

24 MR. LANGLEY: Your Honor, on Item
14:24:36 25 13, where it says, when Midland uses its

1 automatic batch interface system, no employee
2 reviews it, that is only true in 95 percent of
3 the times. So would it be acceptable to limit
4 that to the situations where the batch
14:24:56 5 interface system handles the dispute in its
6 entirety?

7 THE COURT: No. I mean, no human
8 person does it when you use just the automated
9 batch. There is a human person that does in it
14:25:04 10 95 to 99 percent of the time. That's the
11 difference between the automated and the human
12 review.

13 MR. TOMPKINS: Well, everything
14 goes through the automated system first.

14:25:10 15 THE COURT: Right.

16 MR. TOMPKINS: And five percent of
17 them come out of the automated system.

18 THE COURT: And then it is
19 reviewed by a human being.

14:25:18 20 MR. TOMPKINS: Right.

21 THE COURT: But not until then.
22 They go all through -- when Midland uses its
23 automated batch interface system to process
24 consumer disputes received in ACDVs, no employee
14:25:32 25 of Midland reviews the ACDV dispute until it's

1 been through the batch system one time.

2 MR. LANGLEY: I think that's fine.

3 THE COURT: Okay. Is that all
4 right with plaintiff?

14:25:48 5 MS. CAULEY: That will be fine,
6 Your Honor.

7 THE COURT: I'm just not going to
8 venture into 95 and -- I'm just going to leave
9 that out. The 95 and --

14:26:16 10 MS. CAULEY: We'll withdraw that
11 since there's confusion.

12 THE COURT: Am I to take this as a
13 stipulation or not?

14 MR. LANGLEY: No, Your Honor.

14:26:22 15 THE COURT: Okay. Thank you.

16 We'll see y'all at 9:00 o'clock in the
17 morning. If you have any issues we need to take
18 up before 9:00 o'clock, be here at 8:30.

19 MS. CAULEY: Thank you, Your
14:26:32 20 Honor.

21 MR. LANGLEY: Thank you.

22 THE COURT: Put on the record that
23 I am going to grant the plaintiff's motion in
24 limine as set out in this conference that has now
14:26:48 25 taken an hour.

1 (The Proceedings were recessed at
2 approximately 2:26 p.m. on February 22, 2011.)
3
4

5
6 C E R T I F I C A T E
7

8
9 I, the undersigned, hereby certify that
10 the foregoing pages contain a true and correct
11 transcript of the aforementioned proceedings as
12 is hereinabove set out, as the same was taken
13 down by me in stenotype and later transcribed
14 utilizing computer-aided transcription.

15 This is the 11th day of March of 2011.
16

17
18 

19 _____
20 Cheryl Renae King Powell, CCR, RPR, FCRR
21 Federal Certified Realtime Reporter
22
23
24
25

CHERYL K. POWELL, CCR, RPR, FCRR
Federal Official Court Reporter
1729 Fifth Avenue, North
Birmingham, AL 35203
256-508-4050/wrd4wrdrpr@aol.com