

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS H. KRAKAUER,	*	Case No. 1:14CV333
	*	
Plaintiff,	*	
	*	
vs.	*	Greensboro, North Carolina
	*	January 13, 2017
DISH NETWORK, L.L.C.,	*	9:30 a.m.
	*	
Defendant.	*	

DAILY TRANSCRIPT OF TRIAL TESTIMONY
BEFORE THE HONORABLE CATHERINE C. EAGLES,
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

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Proceedings recorded by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

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23
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25**I N D E X**

Plaintiff Witnesses:	Page
ANYA VERKHOVSKAYA	
Direct Examination by Mr. Barrett	8
Cross-Examination by Ms. Echtman	19
Redirect Examination by Mr. Barrett	135
Recross-Examination by Ms. Echtman	142
Defense Witnesses:	Page
JAMES DEFRANCO	
Direct Examination by Mr. Bicks	150
Cross-Examination by Mr. Glasser	192
Redirect Examination by Mr. Bicks	202
Recross-Examination by Mr. Glasser	204

DEFENSE EXHIBITS

NO.:	DESCRIPTION:	IDENT	ADMIT
DX3			171
DX16			64

P R O C E E D I N G S

1
2 **THE COURT:** Good morning. I think we might still be
3 waiting on a juror or two.

4 **THE CLERK:** Yes.

5 **THE COURT:** But I forgot to mention yesterday -- I
6 know we all heard the juror, Ms. Burgess, as she was leaving
7 the courtroom, speak to the witness. I have never had that
8 happen before, even though the jurors walk, you know, right by
9 the witness stand. So, I think I'll do two things.

10 One, I'll have the witness step down before the jury steps
11 out going forward through the trial just to prevent that from
12 happening again. It will add 30 seconds, but that's okay. And
13 then, I'll just remind the jurors not to talk about the case or
14 speak to any of the witnesses. So just on that one. Then
15 that's what I intend to do about that.

16 I went back and looked at my order on the motion in limine,
17 and I, you know, still -- I guess I'm still having a little
18 trouble understanding exactly what DISH is saying about this.
19 That motion and my order were very specific. It just says:
20 DISH cannot use Exhibits 31A to 31S or testimony related to
21 Dr. Aron's supplemental report. That's all it says. So it
22 doesn't prevent DISH from asking the witness questions or
23 showing the witness other documents that were disclosed in
24 discovery and identified as exhibits.

25 So, you know, there's two questions. One is, you know, how

1 many numbers in each of these buckets? You all have resolved
2 all of that, so that's one. And then the other is whether
3 these buckets -- where there's liability for these buckets,
4 and, you know, the Defendant can ask questions about that.

5 So, I don't understand -- I guess I'm having a lot of
6 trouble understanding exactly what the Defendant wants me to
7 do. It doesn't -- I don't know. The argument did not seem to
8 actually be consistent with what my order said.

9 So, if I'm misunderstanding something, we can address that
10 at the appropriate time. But, I did go back and just confirm
11 my memory of that order, and, you know, that's what it says,
12 and I'm not going to change that. So -- but that is a fairly
13 limited order. So, certainly, the Defendant can cross-examine
14 the witness otherwise.

15 And I understand they are going to raise all of these
16 issues in the -- that we've been talking about that are in the
17 draft verdict sheet, and, you know, that's entirely
18 appropriate. And for that reason, I'm going to let the
19 Plaintiff ask some questions about it.

20 It's not new opinions. That's just the opinions the
21 witness has. So is there anything else we need to take up
22 before the clerk goes to check on the jurors for the Plaintiff?

23 **MR. BARRETT:** No, Your Honor. I just wanted to make
24 clear that the types of questions we would ask the witness
25 about the categories, were, number 1, just to explain what that