

1 MR. SIMMONS: No, Your Honor.

2 MS. ROBINSON: No, Your Honor.

3 THE COURT: Thank you. All right, you'll
4 now hear closing arguments. Mr. Miller goes first.

5 MR. MILLER: Thank you, Your Honor.

6 I'm going to approach and grab the board, if I
7 may, Your Honor?

8 THE COURT: Go ahead.

9 MR. MILLER: In a short time you folks
10 are going to go back in the jury room, and you're going
11 to have two jobs in there.

12 First is to come to an opinion as to the value
13 of the case.

14 The second is to convince your colleagues as to
15 why that value is correct.

16 I'm going to give you some guidance as to how
17 the Plaintiff sees those issues.

18 Normally what I do in a case is I'll get up on
19 the board like this. I'll draw a line between
20 Plaintiff and Defendant. I'll prepare the evidence:
21 What did Plaintiff's evidence show? What did
22 Defendant's evidence show? Draw into comparative as to
23 how we see the case.

24 Here the line goes straight down to Plaintiff,
25 all of the evidence in the Plaintiff. You heard the

1 opening statements, and it set apart, you know, in
2 terms of what appeared to be the differences in the
3 parties. You're going to hear all these things about
4 all this, you know, why Plaintiffs everything they're
5 saying is absolutely incorrect. And then what did you
6 really hear?

7 You heard from Dr. [REDACTED], and Mr. Simmons
8 said, listen to Dr. [REDACTED], listen to what he has to
9 say. What did Dr. [REDACTED] say?

10 Dr. [REDACTED] said this woman was very badly hurt
11 in the accident. He said she has a permanent neck
12 injury. He said carpal tunnel -- get back to that in a
13 second -- is related to this accident.

14 We heard from Ms. [REDACTED], and we heard that
15 this injury has changed her life. We heard Dr. [REDACTED]
16 say that the injury is permanent, and she's not going
17 to get any better and expects to get worse.

18 The Defendant has not offered any testimony.
19 They didn't bring a doctor here to say Dr. [REDACTED] is
20 full of it. Show you surveillance video of Ms. [REDACTED]
21 running the hundred yard dash. They brought you
22 absolutely nothing.

23 What did they bring you? They brought you a lot
24 of, well, who was your primary care doctor? The
25 printed form at [REDACTED] [REDACTED] Hospital says was your

1 old primary care doctor instead of your new primary
2 care doctor. They said they were going to make a big
3 issue about her concussion, prove she didn't have a
4 concussion in the accident. Did the Defendant's show
5 that? Not a stitch in evidence.

6 They also separately wanted, and they wanted to
7 pick apart of the details of the record. Did you say
8 this little thing one time, later say it differently
9 this way? Did you say not often versus sometimes or
10 the little pickings to the record? This didn't show up
11 in the record, as if a doctor writes down every single
12 thing you say, as if things aren't said at doctors.

13 I want to show you the jury instructions that
14 the Court read, two of them, because they read them so
15 fast it's hard to follow, which is susceptibility of
16 injury. The effect that an injury might have upon a
17 particular person depends upon the susceptibility to
18 injury of the Plaintiff. In other words, the fact that
19 the injury would have been less serious if inflicted
20 upon another person should not affect the amount of
21 damages to which the Plaintiff may be entitled.

22 There's no evidence -- they brought you a lot of
23 talk about prior medical records. What did somebody
24 say about, this woman had a neck injury before the
25 accident, that she complained to a single doctor and

1 said my neck hurts. Where was that evidence? Where
2 was the evidence she told somebody that? All we have
3 is them basically saying this woman is not being
4 truthful about that. There's absolutely no evidence at
5 all.

6 And what this instruction says is that you don't
7 change the amount of damages because someone was
8 susceptible to injury. You're right, the gun was
9 loaded, if it was you or I this injury may not have
10 happened. Clearly it was a serious wreck, but maybe
11 you or I would have come out better. Some more serious
12 accidents some people do well. Some less serious
13 accidents people don't do so well.

14 The before picture was a woman who was not in
15 pain and a woman who has been in pain ever since.

16 The second instruction the Court read is
17 aggravation of preexisting condition. A person who has
18 had a particular condition before the accident may be
19 awarded damages for the aggravation or worsening of
20 that condition. And that takes us back to her carpal
21 tunnel syndrome. The Defendant made a good point. We
22 don't see medical records for three months. It's got
23 to resinate a little bit, because we have the earlier
24 -- she had complaints earlier than that, but three
25 months is a long time, and you may very well find that

1 that carpal tunnel syndrome was totally unrelated to
2 the accident. You may find that. Dr. [REDACTED] didn't
3 say that. No medical doctor said that. But you may
4 find that that was the focus of their cross. It wasn't
5 the focus of Dr. [REDACTED] and Ms. [REDACTED], carpal tunnel
6 this, carpal tunnel that. They didn't really focus on
7 it. Why we're here was this woman's permanent neck
8 injury.

9 These instructions -- I'll give you another way
10 to look at it too. I hope I'm not beating this horse
11 down. If you're rear-ended in a car, and you have a
12 carton of eggs in the back of your car -- the Defendant
13 cannot deny responsibility by saying they could have
14 been golf balls when they were eggs.

15 Ms. Robinson got up here today and said this
16 case is about money. The case is about money, there's
17 no question about it. The only justice you have to
18 award in this system is financial compensation. The
19 question is, how much?

20 As a lawyer I try to think of different ways to
21 sort of communicate this idea to the jury. The judge's
22 instructions were relatively vague, they don't give you
23 a formula. You have to find out what the injuries are
24 worth. What I'm going to do is give you Plaintiff's
25 view, some kind of a lens and road map of Plaintiff's

1 here you can use.

2 MR. MILLER: Super.

3 Pain and suffering over the last three and a
4 half years. This accident occurred on February 9th,
5 2005. What has she been through since that crash? The
6 ER, pain, tests, all these things she's been through;
7 what's that worth? Call it three years -- it's been
8 three and a half years -- I'm saying \$3,000 a year,
9 \$9,000.

10 Okay, now we have this, what this case is about
11 -- oh, before I get to that, the carpal tunnel
12 syndrome. Clearly she had a preexisting carpal tunnel
13 problem and clearly unambiguously Dr. [REDACTED] is saying
14 I'm telling you that carpal tunnel syndrome is related
15 to the accident. For the last three years and next
16 32.4 -- which is how long she expects to live -- what's
17 that worth? I'm going to assume, because I want to be
18 conservative, that most of this carpal tunnel problem
19 she's going to continue to have problems with this
20 preexisting problem, the accident kind of set it off a
21 little bit, but largely we're still dealing with mostly
22 the preexisting problem. I'll put that down as carpal
23 tunnel, and I'll call it \$10,000 for the last three
24 years and next 30 some years.

25 But this case is not about these three numbers

1 there. This case, like I said before, can't beat this
2 point down enough. You guys are going to forget Ms.
3 [REDACTED]. This is going to be all a memory to us and to
4 me too, and it's a memory to us. This is her one
5 chance, her only chance, just from you folks to
6 adequately compensate her. And what's that worth?
7 That's a tough call. That's why they paid you guys a
8 lot of money to be here today.

9 The number I came up with is this, 75 cents an
10 hour for the rest of her life. Told you that in
11 opening, 75 cents an hour. What does that mean? 75
12 cents times 24 hours in a day, 18 dollars a day, over
13 365 days, over 32.4 years. That math, you can check me
14 on it if you guys brought calculators, is \$212,868,
15 that totals up, I believe, to like 241, \$241.868.

16 The one complaint you might have with that is 24
17 hours a day. Her testimony was she's not able to sleep
18 very well. She struggles sleeping. You might want to
19 cut that back, you know, what she sleeps. I'm not
20 giving credit for sleep time. You might want to say
21 it's too high, I want to cut it in half. You also
22 might want to say Mr. Miller is being too conservative.
23 I don't want to suggest a limitation one way or the
24 other. I'm trying to give you something to go on to
25 try to figure out how to deal with the rest of that

1 woman's life and what that compensation ought to be.
2 And I think because we've got a trial here, Defense is
3 going to disagree with that number. What I'm hoping
4 they're going to do is give you a number and
5 explanation as to why it should be what it is, I'd be
6 curious to hear that. That's what I have.

7 I have the advantage over the Defendant here. I
8 have the opportunity to speak to you one more time.
9 I'm going to give them the opportunity to answer what I
10 just said here, then I have one more chance to give you
11 my final thoughts.

12 Thank you very much.

13 THE COURT: Thank you, Mr. Miller.

14 Mr. Simmons.

15 MR. SIMMONS: Thank you, Your Honor.

16 May it please the Court, madam forelady, ladies
17 and gentlemen of the jury. If you don't mind I'll turn
18 this, Your Honor.

19 THE COURT: Fine.

20 MR. SIMMONS: I'll be very short and very
21 brief with you. You've heard enough. You've listened
22 to the evidence, but let me just go over some of the
23 evidence with you so that we'll know exactly what we're
24 saying, because I have a copy of what the doctor told
25 you when you saw the video deposition.

1 But before we start, I'll comment about the
2 figures that they've put on the board. I don't ever
3 try and tell jurors how to decide the case and decide
4 what figures. That's why we have you. That's why
5 we're in this courtroom. You now know today why we're
6 here. Only question is, how much, if any. And please
7 note that I say, if any, because the Court -- and if
8 I'm wrong, the judge will, Judge Cavanaugh, you'll hear
9 him right now -- you do not have to award any money in
10 this case if you do not believe that Plaintiff was
11 injured because your award can be zero. You are the
12 ones to decide what amount, if any, you're to put on
13 that verdict sheet. So use your common sense, your
14 reasonableness.

15 You heard the evidence and there's a few
16 comments I'd like to make regarding the evidence that
17 may help you in making your decision. We know there
18 was an automobile accident. We know there was a fairly
19 severe accident. Because you have a severe accident
20 doesn't mean you're hurt any more than when you have a
21 minor accident that you're not hurt.

22 We have air bags that went off. Now what's the
23 purpose of air bags? You all know. I don't quite
24 understand how you could strike anything directly in
25 front of you with an air bag blowing up, but we have

1 the testimony that it happened.

2 We do know that there was previous condition
3 this lady had. She had migraine headaches and had them
4 for years. We know she had carpal tunnel syndrome, we
5 found that out. We had it in both hands, and she had
6 surgery on one of them in 2002. We do know that she
7 had, from the tests, bulging disc in her neck before
8 this accident, and after the accident they were the
9 same. You heard the doctor say, we looked at the MRI's
10 and they're identical. Now obviously to me that means
11 that they haven't been aggravated or injured.

12 The one thing we don't know, why did she have an
13 MRI in 2002 of her neck if she wasn't having trouble?
14 People have had MRI's. You all probably know what they
15 are, putting them in a machine. Not really a pleasant
16 thing you want to go through. They tell you they're
17 going to play music. I could never hear the music. I
18 heard thump, thump, thump. Sat there and said how soon
19 can I get out of here? But this was one done in 2002.
20 Why? Does that mean she had complaints? That's for
21 you to decide. That's why we have you people.

22 Now, we do know this, that after the accident
23 she went to [REDACTED] [REDACTED]. They didn't even take an
24 X-ray. Now, if you had a head injury, did they miss
25 it? Did they miss this bump, that hospital, you know,

1 I don't understand. Wouldn't the ambulance driver have
2 picked up on it? He was there at the scene, wouldn't
3 he have said something? Instead she didn't get in the
4 ambulance, she went later on.

5 We then have the family doctor. She doesn't go
6 to those, she looks in the phone book and gets
7 [REDACTED] and goes to them. Why wouldn't you
8 call your family doctor or somebody who has treated
9 you? Doesn't that make sense to do that first?
10 Instead she goes there and gets seven physical therapy
11 treatments, that's all. She gets some injections and
12 you heard her testify, that's all the treatment that I
13 got.

14 She had other tests done, and you also heard the
15 other tests say they were normal -- not, now not that
16 the bulging discs were normal, the EKG's and all of the
17 rest of them, all normal. Now, that's what we have in
18 this case basically, completely in the whole matter.

19 Now, the Judge has told you further that -- and
20 I'll read you a couple things that the doctor said that
21 may help refresh your memory -- the Judge said you
22 people are to decide this case on the evidence
23 presented in this case, as well as your own
24 experiences.

25 So let me try -- and I won't go over all of

1 these, because you probably remember them better than I
2 do -- this is Dr. [REDACTED]. And he was asked, were you
3 ever provided any records for the carpal tunnel? He
4 said, no, I just noted, you know, that she had carpal
5 tunnel release. It really didn't work very well. And
6 I looked to the neurostudies which were ordered, and I
7 also looked at her medications, some of which can
8 contribute to ongoing carpal tunnel problems like
9 hyperthyroidism is the documented cause.

10 Now, the doctor knew when he checked her records
11 that the previous carpal tunnel didn't work and that
12 she had existing problems with it. Then he asked, who
13 sent her for the MRI in 2002? And doctor said, do you
14 know who sent her for the MRI? No. Do you have any
15 idea why the MRI was done? No. Based upon the report,
16 please correct me if I'm wrong, there was no
17 significant changes from the preaccident MRI and the
18 accident, correct? Right.

19 Now, we know that there were no changes made.
20 We know that there is preexisting arthritis and
21 preexisting disc disease. Some of you may have
22 arthritis, you know, it continues on. It never goes
23 away and never gets better, and there isn't much you
24 can do for it except hot moisture and try to work it
25 out. Once it's there, it's there, it's not going to

1 improve.

2 She also has a degenerative disc disease. Same
3 thing is going to happen with that. We know that's
4 going to progressively get worse as you get older and
5 move forward. But what the interesting thing, I don't
6 remember seeing this in the report, and that's why I
7 asked the doctor before, and I'm no spring chicken,
8 I've seen a lot of these medical reports, and I said, I
9 see, Doctor, you made a comment in your report of
10 August 5th, 2005 -- actually it was February 9th, 2005,
11 the accident was, in your impression you said, in my
12 opinion her subjective complaints exceed her clinical
13 and objective findings. I said, what does that mean?
14 He says, that means even though she has had a lot of
15 complaints, her physical examination, neurological
16 examination, other than for some limitation of the neck
17 was not that remarkable. And the MRI of the neck
18 itself wouldn't account for the complaints that she
19 manifests. It didn't mean she didn't hurt, but I just
20 couldn't really balance the severity of what she was
21 complaining against what I would have expected to see.
22 That was her doctor's opinion.

23 Now, ladies and gentlemen, when you go back in
24 the jury room and you look at your jury sheets, you
25 have one question to answer, there are no medical

1 expenses, don't even consider those. Don't guess,
2 because you're not allowed to. The Judge told you
3 about guesswork. I know that really puts a problem for
4 you, gee, how do I know what figure to put on here, if
5 any? That's your decision. That's what your
6 experience comes from in this world. And look at it,
7 decide from the facts in the case what amount, if any,
8 you should put in that figure for her. It's spelled
9 out for you. I think you have it for pain and
10 suffering, et cetera.

11 Thank you all very much. I appreciate your
12 attention.

13 THE COURT: Thank you, Mr. Simmons.

14 Ms. Robinson.

15 MS. ROBINSON: I'm actually going to be
16 even briefer, ladies and gentlemen, Your Honor, because
17 what I was about to say was just covered with some
18 minor points and that is, counsel just said before that
19 we made a big deal about the carpal tunnel. Well, we
20 did make a big deal about the carpal tunnel, because we
21 knew she had suffered from it before. Her own doctor
22 admitted when you listened to his testimony, he never
23 actually got the records from her prior surgery. He
24 didn't know what, if any, pain she was experiencing
25 before this accident occurred. And when we asked her

1 and she was on the stand, she originally said it was
2 fine, she wasn't having any problems. But actually
3 when we asked her at her deposition last year was she
4 having problems, she actually admitted at the
5 deposition before she was here on this trial under oath
6 she did have trouble with her carpal tunnel before the
7 accident ever happened.

8 So your job, as you've been told several times
9 now, is to judge the credibility of the witnesses. You
10 can choose to believe any of them or none of them, put
11 any weight that you want on anything. That's your job.
12 That's part of what you use to assess what, if any,
13 damages to give.

14 In addition to what was just argued by Mr.
15 Simmons about that she did have a prior MRI with no
16 explanation as to why, and that the doctor who you
17 heard testify did review it in conjunction with what he
18 sent her for and found no changes along with the fact
19 that he didn't have any records about whether or not
20 she had been having carpal tunnel problems before this
21 accident, just her testimony, I asked him about
22 history, what goes into a history? Yeah, you actually
23 have to examine the patient and also rely on what the
24 patient tells you. If they don't tell you whether or
25 not they're having problems or they're not a good

1 historian or they don't tell you about any other
2 treatment or accidents like the one she had in 2004,
3 whatever you're basing your opinion on doesn't have all
4 of the information. Keep that in mind when you assess
5 what weight to give the doctor in his opinion about
6 whether or not there's any permanent injury in this
7 case from this accident, not whether or not she has
8 permanent injury or a condition that existed
9 preexisted, exists to this date, but what comes from
10 this accident.

11 When you do that, in light of what the jury
12 sheet says, you can award whatever your common sense
13 says, and that includes nothing.

14 Thank you for your time and patience.

15 THE COURT: Thank you.

16 Mr. Miller.

17 MR. MILLER: I didn't want to -- I don't
18 want you to award \$241,000 in this case, I want you to
19 award ten-million dollars, but the problem is I've got
20 to be reasonable, and I can't offend your sensibilities
21 by giving a number that's completely outlandish.

22 They, both Ms. [REDACTED] counsel and [REDACTED]
23 counsel, said if any, the uncontroverted, unquestioned
24 evidence besides inuendo in opening statements, the
25 woman suffered a concussion in the accident. An air

1 bag exploded in her face, and they spent a good bit of
2 time saying, if any. That's their position, this woman
3 should get nothing. So, I guess, we actually did get
4 the number, we got the nothing, what they expect you to
5 award.

6 If you think she's a big liar, I wouldn't give
7 her anything either. This witness is not lying to you
8 today.

9 As these closings, I was getting mad about
10 certain points -- I've kind of lost some of my steam --
11 I want to go over some of the things. EKG was normal,
12 so she didn't have a heart condition. That showed us a
13 great deal. Nobody ever complained of heart condition.

14 She didn't go to her family doctor. That was a
15 big issue.

16 The carpal tunnel syndrome that you heard mostly
17 about, again, when I warned you about that was their
18 case. He said we never had their prior records. Ms.
19 Robinson is a good lawyer. Would you have had the
20 prior records? He said, I don't care what the prior
21 records would say, I know she had surgery, I know she
22 had problems from it, and I'm telling you this
23 exacerbated the injury.

24 Again, I have been up front with you guys. I
25 appreciate that none of that matters. What should

1 really concern you guys is three months before, even in
2 the medical records, but to make thing up, Dr. [REDACTED]
3 said, I don't need to see any prior records.

4 One thing they did reference an MRI in 2002.
5 Why did she have an MRI before? They know she had an
6 MRI in 2002. It could have been a neck injury, yet
7 you've got into evidence at all from anybody that she's
8 had any prior neck injury? A little innuendo. Maybe
9 it could be. You've been given no evidence at all.
10 There wasn't these great changes in the MRI. Dr.
11 [REDACTED] looked you straight in the eye as he could
12 through a video camera, said, look this woman had
13 preexisting problems that were not symptomatic. You
14 saw the jury instructions, that's what matters. What
15 her before and after conditions, is she in pain today?
16 What do you think? She's still in pain right now. Was
17 she in pain after that accident?

18 The air bags deployed and, therefore, there
19 couldn't be an injury in the case or a bruise on her
20 face? Dr. [REDACTED] noted that, a bump on her head. He
21 said there was no X-ray in the hospital. That's just
22 simply not true.

23 That's it. I mean, in the end this is this
24 witness, Ms. [REDACTED], one chance for compensation in
25 this accident. I've given you a number that I believe

1 is reasonable compensation for these injuries, and the
2 Plaintiff requests that you award her that amount or
3 some other amount that you believe is reasonable.

4 I do appreciate you coming here today. We need
5 you guys to make the system work. I'm very grateful
6 for it.

7 THE COURT: That concludes the case.

8 Ms. [REDACTED], now you're in charge. Remember when
9 you go back there, folks, Ms. [REDACTED] is to have the only
10 copy of the verdict sheet. The rest of you may take
11 the notebooks and pencils with you at this time.

12 Mr. [REDACTED], alternate juror in Maryland is only
13 allowed to serve until the jury begins deliberations.
14 So your job is finished now, you're free to go.
15 Okay. All right, thank you.

16 Go ahead back with [REDACTED] and start your
17 deliberations.

18 (Whereupon, the jury left at 4:20 p.m.)

19 THE COURT: Okay, thank you. We'll let
20 you know when we get a verdict.

21 Counsel, also the jury sheets are being
22 collected at the end of each trial now. I think it
23 started as a result of lot of this witness intimidation
24 coming out of the City starting in the County too so
25 we're collecting all of the sheets, including mine.

1 (Whereupon, the jury deliberated, and there was
2 a change in Court Reporters.)
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