

1 risk. Remember that? Well, he also has the burden of
2 proving that by the preponderance of the evidence. Okay?

3 All right. Ms. Zois?

4 MS. ZOIS: Thank you, Your Honor.

5 Does the jury have access to the verdict sheet,
6 Your Honor?

7 THE COURT: I have it here.

8 MS. ZOIS: May I --

9 THE COURT: You want a copy?

10 MS. ZOIS: Yes, please, Your Honor.

11 THE COURT: Give one to . I'm sorry.

12 MS. ZOIS: Your Honor, madam clerk,
13 counsel, in the opening statement this morning, one of the
14 first things that I went through were the facts of this
15 case and how the facts and this tragedy happened. And one
16 of the first decisions that you're going to have to make
17 on the (unintelligible) issue itself is (approximately
18 five unintelligible words) of
19 (approximately five unintelligible words) vehicle was his
20 conduct on the evening of this accident negligent?

21 I'll go through it because I have to, but I
22 think that if his acts weren't negligent on the evening of
23 this accident, I'm not sure what would be. On the evening
24 of this accident on the February 27th, 2005, Mr.
25 (unintelligible) got in his car and was just passing

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1 through into D.C. (Approximately three unintelligible
2 words). He had somewhere in between -- I'm not sure how
3 much he had to drink, okay, quite frankly. I'm not sure
4 you all are either because testimony is all over the map.
5 He could've had three drinks that evening or 300. I don't
6 know. I don't know the answer to that question, and I
7 don't think anybody does because of the different versions
8 that he's provided.

9 But he's admitted to drinking something that
10 evening. He got into the car with his passenger,
11 , after they were leaving the club, and drove
12 home. It was interesting that he (approximately four
13 unintelligible words) said, oh, yes, I was speeding. Yep,
14 I was speeding. He was speeding. We know that he was
15 speeding.

16 Detective (phonetic) came in and said
17 that he was going 47 in (appropriate two unintelligible
18 words) and that he hit the curb, lost control of his car,
19 crossed over double yellow lines, headed into oncoming
20 traffic and struck another vehicle. If this isn't
21 negligence, just based on the speeding alone, I'm not sure
22 what is. Negligence is defined as doing something an
23 ordinary person using reasonable care would not do.
24 Ordinary people, under the circumstances, don't do 47 in a
25 30. Reasonable people under the circumstances don't hit

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1 curbs. Reasonable people under the circumstances don't
2 lose control of their vehicles. Reasonable people under
3 the circumstances don't cross double yellow lines and
4 drive head-on in the opposite direction of traffic.

5 So like I said before, I think that the first
6 question that you all are going to have to decide in this
7 case is an easy one. Was negligent on
8 the evening of this accident? And even by his own
9 testimony, coupled with that of Detective . I think
10 that that is an easy conclusion to come to that his acts
11 on this evening rose to the level of negligence.

12 The second issue that you will have to decide in
13 this case before you get to the issue of damages is the
14 issue of the legal term (approximately ten unintelligible
15 words). And the defense has the burden of proof on that
16 issue. And that's (approximately five unintelligible
17 words). Allstate Insurance Company has denied this claim.
18 They have denied that was negligent.
19 They have hung their hat on the assumption of the
20 (approximately five unintelligible words).

21 and are covered under a policy
22 of insurance with Allstate on the evening of this
23 accident, and the argument is that assumed the risk
24 of his injuries by getting into the car that evening with
25 his driver,

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1 What the defense needs to prove to you is that
2 understood that risk, comprehended that risk. And
3 when I say that risk, I mean getting into a car and
4 understood that risk, appreciated that risk, and
5 voluntarily accepted that risk. Have they done that?
6 Have they proven that to you? Because of all the evidence
7 that's come in on this issue, I'll tell you what they've
8 proved to me. What they've proven to me is that
9 told at the end of this evening before he
10 got into that car I can drive. I can drive. asked
11 him the question, want me to drive? said
12 no, I can drive. I got it. That's been said to him.
13 What that proves to me is that accepted
14 that could drive that night. He asked him, he
15 convinced he could drive that night. Who's in a
16 better position to know whether or not
17 could drive? or ?
18 Clearly, is in a better position to
19 determine whether or not he can drive that vehicle home
20 that night.
21 Not just that, he takes all of this one step
22 further on this issue. He doesn't just tell I got
23 it, I'm driving home, I'm okay to drive, I'm okay to
24 drive. He came in here and told you ladies and gentlemen
25 of the jury that when he got in the car that night, when

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1 he left the Platinum Club that night, when he started up
2 his car in that parking lot, I could make it home. I
3 thought I could drive that car home that night. I didn't
4 feel like I wasn't going to be able to make it that night.
5 I was confident I could drive. That's what he told you.
6 He's confident he can drive home. He's convinced

7 that he could drive home, but Allstate Insurance
8 Company wants you to believe that the risk
9 of these injuries because he should have known better.
10 Don't forget, they have the burden of proof on that issue.

11 So when you get to the assumption of risk
12 question, please remember that all we know about what went
13 through head that evening is that his buddy, who
14 drove him there, told him he could get him home. He told
15 him he could get him home. And, also, what we know today
16 here is that the Defendant himself, , who
17 got behind the wheel of this car, to this day also
18 believes that he could make it home that evening.

19 Now, keep in mind that the reason this accident
20 happened is because he's doing 47 in a 30. He's speeding.
21 You could throw out the issue of alcohol in its entirety
22 and you still get there. He's still negligent because
23 he's speeding. And as far as the assumption of risk, he
24 told us in the end -- asked him were you
25 speeding home? Oh, yeah, I was speeding home. I was

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1 speeding home. They said it takes 20 to 25 -- I wrote
2 this down. It takes 20 to 25 minutes to get from his
3 house to the Platinum Club. They left the Platinum Club
4 at 2:30. The accident was -- he conceded at least after
5 three o'clock. That's a half an hour. He had no problems
6 navigating his way out of D.C. He had no problems on 295,
7 had no problems on 495. It's after he gets into his
8 comfort zone of being a couple miles away from his house
9 and he's taking the residential roads that he drives
10 everyday, and he goes 47 in a 30 (approximately three
11 unintelligible words).

12 Now, the issue of damages in this case is --
13 this is one of the hardest closing arguments I have ever
14 had to do.

15 : Objection.

16 MS. ZOIS: On the issue of --

17 THE COURT: Go ahead.

18 MS. ZOIS: Okay. On the issue of damages, this
19 is a case that involves one of the most unnatural
20 experiences that a parent could ever have to endure and go
21 through. It involves having to bury someone that you gave
22 birth to. It involves having to think about how this
23 accident happened (unintelligible). It has to do with
24 having to relive in your own mind what happened in the
25 last couple seconds of their lives and they were taken

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1 from you as a result of somebody else's negligence. That
2 is one of the most horrific tragedies I think that any
3 person (approximately three unintelligible words).

4 There's two different issues regarding the
5 damages in this case. The first issue is what damages
6 should be awarded to the estate of . And
7 the damages that should be awarded to the estate of

8 include up to \$5,000 in reasonable expenses for
9 burial and funeral expenses. The parties have stipulated
10 as to what the funeral expenses were, which were over
11 \$9,000, but the appropriate award for funeral expenses in
12 this case are \$5,000 because that's what the Maryland law
13 allows funeral expenses to be.

14 The other portion of the damages to be
15 considered for the estate of are the last
16 seconds of his life, what's called pre-impact fright.
17 It's what he went through from the time this accident went
18 into motion, up until the time of his death. And we know
19 that knew the accident was coming.

20 testified that he -- they hit the curb and before
21 the accident happened yelled out. I mean he was
22 awake. He was alert. He knew something was not going
23 well, and he yelled out in the car. From the time
24 hits that curb, up until the time of
25 death, that time period is compensable under

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1 the law for damages.

2 I'm not sure how to even begin to (approximately
3 three unintelligible words) calculate the appropriate
4 amount to give to -- award for that portion of
5 (unintelligible). I can't even begin to understand what
6 might go through someone's mind in the last couple seconds
7 of their lives, traveling at the opposite direction in
8 oncoming traffic and seeing a tour bus headed towards your
9 side of the window, knowing that impact is going to take
10 place. What do you think about in those last couple of
11 seconds? What -- how is that the most afraid anyone could
12 possibly ever be in in anyone's lifetime? What do you
13 really think about? Family. You have to. Mom, sister,
14 pregnant sister, the nephew you might not ever see. Maybe
15 you want to make a phone call to apologize to somebody.
16 Maybe there was a girl he had a crush on in high school he
17 wanted to call and say, hey, did I ever tell you I'm in
18 love with you? The people that -- what goes through your
19 head in those last couple of seconds? I don't know. What
20 are those last couple of seconds worth? I don't know. I
21 don't know.

22 As far as conscious pain and suffering goes, as
23 far as the accident happening, what next? According to
24 the driver, he asked are you okay, according to the
25 statement and according to what he testified to today, are

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1 you okay? According to his written statement that he gave
2 a couple hours after the accident, in that statement it
3 says said I'm fine. So there's evidence that
4 didn't die. There was -- nobody knows exactly how
5 long, but there is some measure of time between the time
6 this accident happened and the time that he left, and I
7 really, really hope that that's true because the thought
8 of ... running and leaving the scene of this
9 accident, leaving dead, dying friend who doesn't confirm
10 that he's fine, that's just something that I'm not sure of
11 (approximately three unintelligible words). Thinking that
12 somebody would leave their dead, dying friend after this
13 car accident without getting a verbal confirmation that
14 I'm fine is something I -- that's the version that --
15 that's the way it happened in this case.

16 Again, what's that worth? How do you -- what is
17 -- your last minutes, your last seconds in your life when
18 you're alone, you're in a car, you're pinned in, you can't
19 get out, your friend just left? I don't know.

20 As far as the claim for (unintelligible), the
21 claim from -- there are two different areas on the verdict
22 sheet. The first one is the estate of ,
23 which includes the area for funeral expenses, the area for
24 pre-impact fright, and the area for conscious pain and
25 suffering after the accident.

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1 The second portion of the damages' award is for
2 and the loss of her only child -- or only
3 son. And, you know, the -- this is probably the first
4 closing argument I've ever stood in front of anyone --

5 : Objection --

6 MS. ZOIS: -- not given a number.

7 THE COURT: Stick to the --

8 MS. ZOIS: It's -- she's going to go through the
9 next 26 years of her life, would've lived much
10 longer, (approximately ten unintelligible words), without
11 seeing his children, without seeing him in a tuxedo
12 walking down an aisle marrying the girl of his dreams.
13 She's going to go through 26 anniversaries of the day of
14 his death. She's going to go through 26 February 28th's,
15 2005s. She's going to go through 26 birthdays for
16 every year in July. She's going to go through 26
17 Christmases. She's going to go through 26 Thanksgivings,
18 and she's going to go through 26 Mothers Day's without her
19 only son there.

20 She's, I think, an amazing mother. She's an
21 amazing woman who -- I mean as you know (approximately
22 four unintelligible words) what she's testified to, she
23 dedicates her life to serving other people. She teaches
24 GED classes at to help kids graduate
25 from high school. She is devoted to the arts, which helps

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1 disabled residents of (approximately three unintelligible
2 words). She is a minister of her church. She's a very
3 spiritual woman. She is a forgiving woman. She has
4 forgiven for taking her older child. She
5 forgave him to the extent that she went to his
6 (unintelligible) and asked that the judge show mercy on
7 him and she has forgiven.

8 She has dealt through death in such --
9 in the -- such a way that she inspires --

10 : Objection.

11 MS. ZOIS: -- by the way that she's dealt with
12 his death.

13 THE COURT: Just a second. I already told the
14 jury -- well, you know what they say in their close --
15 when I told you the attorneys and what they're telling you
16 in their closing arguments and their opening is not
17 evidence. The only evidence you consider, testimony from
18 the witness stand and the exhibits.

19 : Your Honor, that wasn't the
20 (unintelligible) of my objection. May we approach?

21 THE COURT: Sure.

22 (Bench conference is inaudible and therefore
23 unable to be transcribed.)

24 MS. ZOIS: The way has coped with
25 the loss of her son is an inspiration. She, I think, is

1 an extremely strong woman, who, like she said, she
2 understands he's deceased. She understands he's gone and
3 he has -- feels like a part of her has been ripped out and
4 it has, but she has not let go of the connection
5 (approximately three unintelligible words), even though
6 he's deceased, she -- he's still a part of her and she
7 still goes on because she has to for her only daughter and
8 her only nephew. And she has done things that have helped
9 her recover from this loss by setting up a scholarship
10 fund at the in his name. She -- the
11 way she has dealt with that is inspirational and it's
12 (unintelligible).

13 As far as her damages, her loss, and as far as
14 what is an appropriate amount to award for damages for the
15 pain and the suffering that she has gone through, the pain
16 and suffering that she will continue to go through from
17 the minute that police officer came to her door and said
18 (approximately five unintelligible words), I need you to
19 come down and identify his body. From that moment
20 forward, what are the damages worth to suffer through
21 that? And it's a number that you would all have to
22 collectively come up with because there's nothing for --
23 there's no guidelines for this. A death of a sister isn't
24 like this, and a death of a child isn't like that, and any
25 traumatic suffering isn't like this. I mean there's no

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1 law or timetable or calculation that I can provide to you
2 to assist you in coming up with this daunting task of
3 adequately and fairly compensating a mother for the loss
4 of her son. Is it five million or ten? Is it one? I
5 don't know. But your job as jurors are to talk about what
6 adequate compensation is for her for the loss that she
7 suffered.

8 I'll have another opportunity to talk to you
9 again after defense counsel gives his closing argument,
10 but this is a difficult case. (Approximately fifteen
11 unintelligible words).

12 (WHEREUPON, further proceedings were held, but
13 not herein transcribed per request of ordering party.)

14 MS. ZOIS: I'm sorry . wasn't in the
15 courtroom during that closing argument because that's the
16 first time I've ever heard Allstate Insurance take the
17 position that is negligent.

18 : Objection, move to strike.

19 THE COURT: Sustained. Disregard that last
20 remark.

21 MS. ZOIS: The assumption of the risk, counsel
22 was excitable and discussing what knew
23 (approximately two unintelligible words) this accident and
24 one of the problems you all have as jurors and as fact
25 finders in this case is that the only version of what

1 knew on the evening of their accident has come
2 through the testimony of , who at every
3 turn in this case (approximately two unintelligible words)
4 street, doing whatever was necessary to try and save his
5 butt. From the time he ran from the car at the scene of
6 the accident, from the times filling out the statement in
7 the police station saying how much he did or didn't drink,
8 from the time that he's using the affidavit to show mercy
9 upon him in his criminal sentencing proceeding and
10 throwing himself on his I have a drinking problem, I
11 thought I could drive that night, that's why I did so in
12 front of a criminal judge in his sentencing proceeding,
13 and then coming up with the other version. And Your Honor
14 gave instructions on credibility of witnesses in this
15 case, and he said, you can believe all, part, or none of
16 what any witness has testified to in the case. And how
17 you, you know, sift through the lies and what's true and
18 what isn't true, he's admitted to swearing out statements
19 that weren't true. So he's an admitted liar. He's lied
20 throughout the course of this case and he's lied
21 appropriately when it was done in an effort to behoove him
22 in some manner, one way or another.

23 So if you take his testimony, crumble it up in a
24 little ball and throw it out the window, here's what you
25 have left. You have Detective testimony on the

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1 stand that he was doing 47 around that 30 curve. You have
2 the actions of on the evening of this
3 accident and his ability to drive. He drove this road in
4 his car at this speed (approximately four unintelligible
5 words), and if you've ever driven into D.C. before, it's
6 not the easiest place in the world to navigate, he got
7 into D.C. successfully, he got out of D.C. successfully.
8 He was able to navigate through (approximately two
9 unintelligible words) red lights, the stop signs, the one-
10 way streets. He got out of D.C., got onto a highway, got
11 onto another highway, and he was on his way home when the
12 accident happened.

13 He was also functioning to an ability and a
14 level that enabled him to get out of his car, run to his
15 friend's house in the snow in the dark, the woods. I
16 don't think anybody that's inebriated is going to be able
17 to do that. Not only did he do that, he did it without
18 falling. There's no testimony at all that this gentleman
19 on the evening of the accident was showing any outward
20 signs of drunkenness, any outward, nobody said he was
21 slurring. He didn't say he was slurring. Nobody said he
22 fell down in the club. Nobody said he dropped the keys.
23 Nobody said he fell on the dance floor, and nobody said he
24 dropped his beer. Nobody said his eyes were red. Nobody
25 said his face was flushed. Nobody said anything that

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1 would give an outside observer the ability to see whether
2 or not he was intoxicated.

3 And remember, keep in mind, that functioning
4 alcoholics, and he admitted to this. Functioning
5 alcoholics, people that drink to this level on a regular
6 basis, people that consume alcohol in heavy quantities on
7 a regular basis, actually --

8 : Objection, Judge. May we approach?

9 THE COURT: Yes.

10 (Bench conference is inaudible and therefore
11 unable to be transcribed.)

12 MS. ZOIS: Based on whether or not
13 on this particular evening, what you find is
14 true, whether it was three beers or 3,000 beers, the -- I
15 don't know. I have no idea. But based on whatever it
16 was, if it was three, if it was one, it was two, 3,000, in
17 his body, in his head, in his mind, and under his
18 commissions, he said I can function, I can drive
19 (approximately two unintelligible words), and he told
20 that.

21 And don't forget that the defense has the burden
22 of proof on this (approximately five unintelligible word).
23 They have to prove that knew (approximately three
24 unintelligible words), appreciated (unintelligible) and
25 voluntarily exposed himself to these risks when just

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1 before he got in that car, his driver told him, I got it.
2 I can drive. Not only told him that, he came in here and
3 told you all that. I got it. I can drive. I can
4 function. (Approximately ten unintelligible words).

5 I'm not going to rehash the issue of damages
6 again. I'm not going to bring up the issue again. I
7 think the (approximately ten unintelligible words), but
8 what I am going to do is thank you one more time for your
9 time and attention on behalf of myself, for my client, and
10 his family.

11 (WHEREUPON, further proceedings were held, but
12 not herein transcribed per request of ordering party.)

13 (Off the record - 3:26 p.m.)
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20