

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

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IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND
EXLINE-HASSLER
Plaintiff
v. Civil Docket
No. 10-C-12-000410
PENN NATIONAL INSURANCE, ET AL.,
Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL - DAY FIVE)

Frederick, Maryland
January 28, 2013

BEFORE:

THE HONORABLE JULIE S. SOLT, JUDGE

APPEARANCES:

For the Plaintiff:

LAURA C. ZOIS, ESQUIRE
JOHN B. BRATT, ESQUIRE

For the Defendant:

WALTER E. GILLCRIST, JR., ESQUIRE
ANNE K. HOWARD, ESQUIRE

For Penn National Insurance, et al.:

GUIDO PORCARELLI, ESQUIRE

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(MRI)		
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1 (Whereupon, at 9:54 o'clock, a.m., January 28, 2013
2 before The Honorable Julie S. Solt, Judge, in Circuit
3 Courtroom Number Four, the following commenced:)

4 P R O C E E D I N G S

5 (Jury not present.)

6 THE CLERK: All rise. The Circuit Court for Frederick
7 County is now in session. The Honorable Julie Stevenson Solt
8 is presiding.

9 THE COURT: And good morning, everyone. Please be
10 seated.

11 MS. ZOIS: Good morning, Your Honor.

12 MR. GILLCRIST: Good morning, Your Honor.

13 MS. HOWARD: Good morning, Your Honor.

14 MR. PORCARELLI: Good morning, Your Honor.

15 THE COURT: We're back on the record in the matter of
16 Exline-Hassler v. Sapp, number 12-0410. And I note all
17 Counsel are present.

18 MR. BRATT: Yes, Your Honor.

19 THE COURT: And, um, I know that you all have been going
20 through the exhibits again. Have we gotten that resolved?

21 MS. ZOIS: Not all the way, Your Honor, but we've made a
22 lot of headway.

23 THE COURT: Okay. And how do you want to resolve the
24 exhibits issue? I thought -- I mean, I would have, I just
25 need to know for timing, 'cause we have the jury back there

1 and I just wanna' know, 'cause we have to do ver (sic), um,
2 verdict sheets and instructions as well.

3 MS. ZOIS: As I understand it where we are in the
4 process though, um, Your Honor, is Plaintiff has offered in
5 exhibits. There is 2(a), which Your Honor is holding, um, to
6 make a decision it's McGrail's case list, we would like that
7 before the jury. Our position is that it goes to his bias
8 and his credibility, and it wasn't gone, I didn't go over it
9 in exhaustive details. It wouldn't be cumulative, uh,
10 evidence. My understanding from the objection from Defense
11 Counsel is he doesn't like it. So, I'm not, I'm not sure
12 that's what the --

13 THE COURT: I'll let him argue.

14 MS. ZOIS: Okay.

15 THE COURT: And, and then what other, what other
16 exhibits are we --

17 MS. ZOIS: So, the other exhibits, Your Honor, are
18 Plaintiff's 23. Um, and there, I think there was some
19 miscommunication between us and Counsel last week about this
20 exhibit. Initially when I offered it I think they thought I
21 only wanted to put in one slide from this set of exhibits,
22 but essentially these are the demonstrative exhibits that Dr.
23 Sloan used and relied upon in, in, um, demonstrating his
24 opinion in the case. So, it's 23(a) through 23(k), which
25 are, um, various depictions of the anatomy. And within those

1 it also includes her actual discogram, um, uh, discTRODE
2 procedure rather. So, we would offer these exhibits into
3 evidence, uh, you know, the Doctor used them to help
4 illustrate his opinions in the case, and I think it would be
5 helpful for the jury to have these back there.

6 Um, the other exhibits that are in that same
7 category as to why I want them in, Your Honor, are the --

8 THE COURT: Just, just offer them in and tell me what it
9 is, and I'll hear argument about it, if I need to.

10 MS. ZOIS: Plaintiff's Exhibit 34(a) through 34(f),
11 which are the surgical photographs that Dr. Naff used in
12 explaining to the jury the, um, future surgery in this case.
13 And the Defense has rested as far as --

14 THE COURT: No.

15 MS. ZOIS: -- I'm aware, Your Honor. So there are two
16 other exhibits that I would offer as rebuttal and there was a
17 witness I would call in rebuttal, but we're not at that
18 phase. So, I'm not going to talk about those, unless Your
19 Honor wants me to.

20 THE COURT: No.

21 MS. ZOIS: Okay.

22 THE COURT: I wanna', I wanna' get rollin'. So.

23 MS. HOWARD: Your Honor, I --

24 THE COURT: Ms. Howard.

25 MS. HOWARD: -- def (sic), defer, defer to Mr.

1 Porcarelli on the case list --

2 THE COURT: Mm-hmm.

3 MS. HOWARD: -- so that's, um, Exhibit 2(a), is that
4 right?

5 THE COURT: 2(a), yes.

6 MS. HOWARD: Um, but as to 23 we have no problem with
7 (k), 23(k), which is the last page of 23, which is the actual
8 MRI of the actual Plaintiff, but all the rest are these sort
9 of, uh, animated pictures that were -- if, Your Honor
10 probably saw on the video, I think anyway. They were
11 actually played on a TV screen while Dr. Sloan went through
12 them and explained everything. So, to put the actual
13 pictures back would be in my, in our view, on behalf of the
14 Defense, uh, highlighting a portion of the deposition, video
15 deposition testimony, which would be unfair. No portion of
16 his testimony would go in, no portion of his video testimony
17 would go in so why are we now putting in a portion of his
18 video testimony.

19 And, similarly with Dr. Naff, and Dr. Naff reviewed
20 surgical photographs these were, I mean, these were not the
21 actual surgical, these are just future like if, if she went
22 with this procedure, this is what it would be, I believe.
23 Uh, again, pictures of the actual Plaintiff's spine are
24 coming back in. We don't have an objection to that, but
25 anything that's just demonstrative evidence that was actually

1 already used would, would not go back, 'cause it's
2 demonstrative. And, two, it would o (sic), un-necessarily
3 overly highlight some portion of the expert's testimony.
4 Thank you, Your Honor.

5 MR. PORCARELLI: Your Honor, to be brief we would
6 incorporate by reference those arguments made by Ms. Sapp's
7 Counsel. And, in addition, with regard to the Dr. McGrail
8 case lest it was discussed on the, on the, uh, DVD already
9 and we would think that it would be cumulative, duplicative
10 and is certainly, um, really irrelevant to whatever issues
11 they're gonna' be deciding today. We would ask that, uh, you
12 keep that out of evidence.

13 THE COURT: Okay. 2(a) is out, 20 (sic), Plaintiff's
14 23(k) is in, the rest of those, the rest of the exhibits may
15 be used in closing, but don't go back to the jury. And, uh,
16 24(a) through (f) is out.

17 MS. ZOIS: Thirty-four, Your Honor?

18 THE COURT: Thirty-four, yes.

19 MS. ZOIS: Okay, so --

20 THE COURT: The, the, the future surgery --

21 MS. ZOIS: Future surgery's out, none of Dr. Sloan's
22 anatomy goes back, except for (k).

23 THE COURT: Except for (k).

24 MS. ZOIS: And 2 --

25 THE COURT: 'Cause it's demonstrative.

1 MS. ZOIS: -- 2(a) --

2 THE COURT: And 2(a) is out.

3 MS. ZOIS: Out.

4 THE COURT: Yeah. Now, do we have more evidence to,
5 does Defendant have more evidence to put before the jury?

6 MR. GILLCRIST: Yes, Your Honor.

7 THE COURT: Okay. So, are we ready to resume Defense
8 case before the jury?

9 MR. GILLCRIST: I, I believe so, and just, uh, just as
10 another housekeeping matter, we have all of our Defense
11 exhibits, I understand those have all been worked out.

12 MS. HOWARD: Yes.

13 MR. GILLCRIST: And those are all admitted?

14 MS. HOWARD: Mr. Porcarelli's gonna' admit two more, uh,
15 or I'll move them on his behalf.

16 MR. PORCARELLI: Just to let you know what I have. I
17 have two exhibits I'd like to move, and a couple of very
18 short excerpts to read into the record from answers to
19 interrogatories and from deposition transcripts. And, unless
20 there's some change after that then I would probably be
21 resting.

22 THE COURT: Okay. All right, bring in the ladies and
23 gentlemen.

24 (Jury entered the courtroom.)

25 THE COURT: And good morning again, everyone, and

1 another lovely morning. However, the day's going to improve
2 it's supposed to be just a little bit of nasty rain, but
3 warmer this afternoon. Note for the record all the members
4 of the jury are present.

5 MR. GILLCRIST: Thank you, Your Honor.

6 THE COURT: Mm-hmm, so.

7 MR. GILLCRIST: Um, oh, I'm sorry.

8 THE COURT: So.

9 MR. GILLCRIST: Uh, yes, Your Honor, in the Defense case
10 I'd like to, uh, just read in one answer to interrogatory if
11 I can?

12 THE COURT: You may.

13 MR. GILLCRIST: Um, and for the record, these were the,
14 uh, Ms. Exline-Hassler's answers to interrogatories that
15 were, uh, signed by her and served on June 12, 2012.

16 Interrogatory Number 16, "State which of your
17 injuries, if any, you contain (sic), contend are permanent."
18 Answer Number 16, "Due to the occurrence Plaintiff still
19 suffers from complaints in the upper back, lower back, legs,
20 feet, numbness in her toes and numbness in hands and fingers?
21 Due to increased pain in Plaintiff's right arm and hand she
22 had surgery performed on April 30, 2012."

23 Okay. That would be, Your Honor, related to the
24 carpal tunnel, obviously. Um, and then, Your Honor, I'd like
25 to call Ms. Sapp, please.

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THE COURT: You may.

KIRSTEN SAPP,

a witness, produced on call of the Defense, first having been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GILLCRIST:

Q Ms. Sapp, you understand that you're still under oath, is that correct?

A Yes.

Q I don't believe it was covered earlier, if it was I apologize, but there was a statement, um, that you had taken the car keys from your mother. Um, when the accident happened were you driving the car with your mother's permission?

A Yes.

Q And how did you obtain her permission?

A I called her --

Q And she --

A -- and asked her.

Q Okay. And she gave you the okay?

A Yes.

Q All right. Were you a licensed Maryland driver at the time of the accident?

A Yes.

1 Q There were questions to you in an audio tape that
2 was viewed, was played to the jury about the, um, guilty plea
3 with explanation that you made in traffic court, do you
4 remember that?

5 A Yes.

6 Q Okay. What was the amount of the ticket?

7 MS. ZOIS: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. GILLCRIST: Can we approach the bench, Your Honor?

10 THE COURT: Sure.

11 (Counsel approached the bench and the following
12 occurred:)

13 (Husher turned on.)

14 MR. GILLCRIST: Your Honor, Brigamen v. Albert
15 (phonetic) is the traffic ticket case in Maryland and it says
16 that a guilty plea is admissible, however, the Defendant has
17 an opportunity to explain the circumstances that were
18 (unclear - one word.)

19 THE COURT: All right, you can just ex (sic), have her
20 explain that, just not -- I mean, I --

21 MR. GILLCRIST: Well, the, the explanation is that it
22 was only a small amount of money, and that's why she paid it.

23 THE COURT: So.

24 MR. GILLCRIST: So, I think the amount of the, the
25 ticket was actually (unclear - one word).

1 THE COURT: So.

2 MR. GILLCRIST: Because it goes to her explanation of
3 why she paid it.

4 MS. ZOIS: Your Honor --

5 THE COURT: Well, she didn't just pay the ticket, she
6 went into court and pled guilty. That's a little bit
7 different.

8 MR. GILLCRIST: I know and Brigamen v. Albert gives the
9 Defendant under those circumstances an opportunity to
10 explain.

11 THE COURT: She certainly can. I just, I just don't
12 know that the amount of the ticket --

13 MR. GILLCRIST: Okay.

14 THE COURT: -- per say is relevant.

15 MR. GILLCRIST: All right, thank you.

16 THE COURT: Mm-hmm.

17 MS. ZOIS: Thank you, Your Honor.

18 (Counsel returned to the trial tables and the following
19 occurred:)

20 (Husher turned off.)

21 THE COURT: He'll rephrase that.

22 THE WITNESS: Okay.

23 BY MR. GILLCRIST:

24 Q Um, Ms. Sapp, you, you paid the ticket that was
25 associated with that, correct?

1 A Yes.

2 Q All right. Do you know if any points were
3 associated with that?

4 A Um, I don't know if there was any points when I got
5 the ticket, but I didn't receive any points when I went to
6 court.

7 Q Okay. When you paid, or when you pled guilty with
8 explanation, were you aware at that time, had you received
9 Ms. Exline-Hassler's lawsuit against you?

10 A No.

11 MS. ZOIS: Objection, relevance, Your Honor.

12 THE COURT: Overruled.

13 BY MR. GILLCRIST:

14 Q I'm sorry, what was the answer to that?

15 A No.

16 Q When you pled guilty with explanation in traffic
17 court, were you aware that Ms. Exline-Hassler was contending
18 that you had caused her severe and permanent injuries to her
19 back?

20 A No.

21 Q Were you even aware at that time that Ms. Exline-
22 Hassline (sic) was suing you?

23 A No.

24 MR. GILLCRIST: That's all I have, thank you.

25 THE COURT: Cross examine.

CROSS EXAMINATION

1
2 BY MS. ZOIS:

3 Q Would your testimony when you swore to tell the
4 truth in traffic court have changed had you had this lawsuit
5 pending against you at the time?

6 A I wouldn't have changed what I said, because I just
7 wanted to be honest, but I probably would have talked to
8 someone like my parents and probably gotten a lawyer if I
9 would have known that I was going to be sued.

10 MS. ZOIS: Nothing further, Your Honor.

11 THE COURT: (Unclear - one word) you may step down.

12 THE WITNESS: Okay.

13 MR. GILLCRIST: And, Your Honor, I think we have, we, we
14 dealt with the exhibits, those are all admitted as I
15 understand?

16 MS. HOWARD: Yes, yes, everything's admitted that we
17 wanted to move in we went through that the end of the day
18 Friday.

19 MR. GILLCRIST: And that would be Ms. Sapp's case, Your
20 Honor. Thank you.

21 THE COURT: Mr. Porcarelli.

22 MR. PORCARELLI: Your Honor, if I could for the record,
23 put in, uh, two Defense exhibits? One is identified as
24 Defendant's Exhibit 23, which is Dr. Sloan's fee schedule,
25 and I believe we do not have an objection.

1 MS. ZOIS: No objection, Your Honor.

2 THE COURT: It'll be received.

3 (Item admitted into evidence as
4 Defendant's Exhibit Number 23.)

5 MR. PORCARELLI: And the next one would be Defendant's
6 Exhibit Number 24, which is Dr. Naff's fee schedule. I
7 believe that we don't have an objection to that either.

8 MS. ZOIS: No objection, Your Honor.

9 THE COURT: It'll be received.

10 MR. PORCARELLI: May I approach your clerk?

11 THE COURT: You certainly may.

12 MR. PORCARELLI: Thank you.

13 (Item admitted into evidence as
14 Defendant's Exhibit Number 24.)

15 MR. PORCARELLI: And, Your Honor, if I could read in an
16 answer to interrogatory. Um, this is also from the same set
17 from, uh, Plaintiff, Jacqueline Exline-Hassler to the
18 questions sent to her by Kirsten Sapp, um, that were signed
19 under oath, and in particular, I would like to read in
20 question number 18, which, uh, reads as follows.

21 Question, "If you have ever suffered
22 any injuries in any accident, either prior or
23 subsequent to the incident referred to in the
24 complaint, state the date and place of such
25 injury, a detailed description of all the

1 injuries you received, the names and addresses of
2 any hospitals, physicians, surgeons, osteopaths,
3 chiropractors or other medical practitioners
4 rendering treatment, the nature and extent of
5 recovery, and if any permanent disability was
6 suffered, the nature and extent of the permanent
7 disability, and if you were compensated in any
8 manner for any injury, state the names and
9 addresses of each and every persons or
10 organizations paying such compensation in the
11 amount thereof."

12 The answer --

13 MS. ZOIS: Objection, Your Honor, may we approach?

14 THE COURT: Of course.

15 (Counsel approached the bench and the following
16 occurred:)

17 (Husher turned on.)

18 MS. ZOIS: Um, the answer to that interrogatory, Your
19 Honor, was --

20 THE COURT: (Unclear - one word.)

21 MS. ZOIS: -- Plaintiff objects based on --

22 THE COURT: Let me see.

23 MS. ZOIS: It's basically Plaintiff objects based on
24 relevance. It's unduly burdened someone not likely to lead
25 to discovery, which would be admissible at the trial of this

1 matter. Um, under the Giant/Food Lion case, the Food Lion
2 case, and I have a copy of it for Your Honor --

3 THE COURT: Mm-hmm.

4 MS. ZOIS: -- if you wanna' read it. Uh, Defense couns
5 (sic), it's incumbent upon a Defense attorney or Defense
6 counsel if they think that the questions and answers to
7 interrogatories are inadequate trial is not the time to let
8 us know that. The appropriate thing, what they should have
9 done at the time that they believed that they got an answer
10 to interrogatory that was inadequate was to inform Counsel
11 that that's the case, and to allow Counsel the opportunity to
12 cure that defect.

13 This being read, for one, is in violation of that
14 case, because this is not the time to go over discovery
15 objections or inadequate answers. And, actually, this is
16 what that issue is about in that case. Um, with respect to
17 reading this out of context the, her answers to
18 interrogatories, um, have been consistently supplemented with
19 a lot of paper discovery. She, she's informed them in her
20 deposition in other sets of answers to interrogatories, and I
21 think allowing this answer to stand in front of this jury
22 would be inappropriate, because it's not inclusive. I would
23 have to go back through my correspondence file and find every
24 letter that I sent to them supplementing all the answers to
25 interrogatories with all of her medical records, all of her

1 medical bills, all the doctor's reports, all the lost wages,
2 which we did consistently throughout the case, informally.
3 And nobody ever said you need to go back and formally
4 supplement your answers to interrogatories formally. Every
5 single discovery letter I sent says, "This is being sent to
6 you as informal discovery. If you require a formal
7 supplementation to our discovery responses please let us
8 know." So, this is inappropriate.

9 THE COURT: I'm gonna' sustain the objection.

10 MS. ZOIS: Thank you.

11 THE COURT: You can put a pr (sic), (unclear - one word)
12 put anything else on the record.

13 MR. PORCARELLI: Well, I'd like to respond to that.

14 THE COURT: Mm-hmm.

15 MR. PORCARELLI: I mean, the case cited, and, obviously,
16 it's not here in front of us to actually read to see what it,
17 what in fact is printed on there, but this is not an issue
18 where we're complaining about supplementation. Uh, and not
19 only that, but the Plaintiff has an obligation under the
20 rules to supplement throughout. What the point is is that
21 you're asked a direct question about your prior history and
22 you're, you're not giving it, and you believe it's
23 irrelevant, and yet this, that's the very issue that this
24 case, that, that this jury's going to decide is whether or
25 not you were injured. And it isn't until we have to dig and

1 issue subpoenas and find, you know, where all the nuggets are
2 that we are then able to get people to say, oh, well, you
3 know, there was this one incident before. Oh, well, there
4 was this other incident when I did hurt myself. And I think
5 it's very important for this jury to understand that coming
6 clean in front of the jury during trial is one thing. Coming
7 clean during the trial and also during the discovery process
8 when you're asked this direct question is something very
9 different.

10 THE COURT: So. So then objection's sustained.

11 MR. PORCARELLI: Thank you.

12 MS. ZOIS: Thank you, Your Honor.

13 THE COURT: Mm-hmm.

14 (Counsel returned to the trial tables and the following
15 occurred:)

16 (Husher turned off.)

17 MR. PORCARELLI: So, if I may then read from Plaintiff's
18 Deposition transcript, uh, which was under oath on June 27th,
19 2012. And that would be page 107. I asked, uh, Ms. Exline-
20 Hassler the following question and she provided the following
21 answer under oath. Page 107, line 15 through 20.

22 Question, "Before June 26th of 2009 had
23 you ever been involved in any car accidents?"

24 Answer, "I was involved in one back in '80

25 something, '80, '90." Question, "Were you the

1 driver or passenger?" Answer, "Driver."

2 From page 108, lines three through five.

3 Question, "Were you doing the T-boning or did you
4 get the T-bone?" Answer, "I did get the T-bone."

5 From page 109, lines 10 through 13.

6 "You were seen at the Trauma Center?"

7 Answer, "Yes." Question, "What body parts did
8 you complain about?" Answer, "I had a fracture
9 on my left hip."

10 And I'll continue reading a few more lines to 21.

11 "In addition to the broken left hip,
12 what other body parts did you complain about?"

13 "Nothing else." "Nothing to do with your upper

14 back?" "No." "Nothing to do with your middle

15 back?" "No." "Nothing to do with your lower

16 back?" "No."

17 Your Honor, with those two exhibits in and that
18 deposition testimony, um, I would conclude.

19 THE COURT: Thank you. Rebuttal.

20 MS. ZOIS: We do, Your Honor, but, um, we should
21 probably approach first.

22 THE COURT: Okay.

23 (Counsel approached the bench and the following
24 occurred:)

25 (Husher turned on.)

1 MS. ZOIS: Um, now that the Court's had the opportunity
2 to get the full flavor of this case, initially, we served a
3 subpoena upon the Penn National adjuster to be here to talk
4 about any and all claims that my client made during the
5 course of her, um, period that she was covered with them,
6 which does date back to 2005.

7 THE COURT: Mm-hmm.

8 MS. ZOIS: Um --

9 THE COURT: And you're asking me to reconsider my
10 decision?

11 MS. ZOIS: Not exactly. No, no, no, absolutely not.

12 THE COURT: Okay.

13 MS. ZOIS: Not, I totally understand the Court's
14 decision.

15 THE COURT: Okay. Go ahead.

16 MS. ZOIS: We're not, I don't want to rehash that. I
17 will put a proffer on the record --

18 THE COURT: So.

19 MS. ZOIS: -- outside the presence of the jury as to if
20 the Court doesn't allow me the latitude that I'm asking for
21 now, but the, um, the issue that I want to address on
22 rebuttal is not the issue of insurance that she has now in
23 this case, which I totally understand Your Honor's ruling.
24 However, the Defense of this case is that she was injured in
25 a 2005 car crash for which she has had longstanding chronic

1 back problems. So, even assuming Penn National wasn't in
2 this case at all right now, I would still want to call
3 someone to the stand, a claims representative that she had in
4 2005 to address the issue of whether or not she made a bodily
5 injury claim in 2005, totally separate and aside from what's
6 going on in this case, because if I were to call the adjuster
7 to the stand the adjuster would say we have no evidence of
8 her making a bodily injury claim in 2005, and if she had made
9 a claim in 2005 she did have the kind of coverage that would
10 have afforded her the opportunity to make that case. She did
11 have (unclear - one word) vehicle coverage, she did have PIP
12 coverage so if she was injured we would have honored that
13 claim, and we have no evidence of that claim.

14 Further, they don't have any evidence that she in
15 the index (unclear - two words) no one has any evidence
16 anywhere that she made a bodily injury claim in 2005. So,
17 its (sic) goes directly to the Plaintiff's support of her
18 credibility, because they're calling her a liar. They're
19 saying you were injured in that 2005 case, you did have
20 chronic back pain. So, this is critical evidence to
21 corroborate her testimony, which is she could have filed that
22 claim. She did not file that claim. Nobody has any evidence
23 that she ever made such a claim. So, it's corroborating
24 evidence as to her credibility, which is right on the line.
25 I mean, directly, she's in the cross hairs on that. So,

1 that's it.

2 THE COURT: Once again, the Court does not believe that
3 the absence of evidence of making a claim is an essential
4 element of defending your client's credibility on this issue.
5 One can be injured without making a claim. It's the Court's
6 mind it's just, it's collateral, their, their client has
7 testified as to all those circumstances, she's introduced the
8 medical records from that time, that inference is certainly
9 there. So, um, the Court, once again, does not believe that
10 that is prohibitive evidence as to the issue that this jury
11 is being asked to decide.

12 MR. PORCARELLI: Thank you, Your Honor.

13 MS. ZOIS: Okay. The other, um -- while we're up here -
14 -

15 THE COURT: Yeah, sure.

16 MS. ZOIS: -- so we don't have to waste more time,
17 there's, um, two exhibits, Plaintiff's 47 and 48. One is her
18 claim's history index, which, obviously, is void of any
19 information of her (unclear - one word) claim in 2005, and
20 the other one is the subpoena to the Penn National adjuster,
21 which contains the scope of his testimony or the designee,
22 corporate designee, and I would offer those into evidence --

23 THE COURT: Okay.

24 MS. ZOIS: -- obviously, but I understand the Court's
25 going to object to that. Um, but I will have them marked for

1 identification.

2 THE COURT: Have them marked, and they'll be part of the
3 record, but will --

4 MS. ZOIS: Okay.

5 THE COURT: -- of course will not go to the jury.

6 MS. ZOIS: Okay.

7 MR. PORCARELLI: And --

8 MS. ZOIS: And --

9 MR. PORCARELLI: -- just so our objection's noted for
10 the record. Thank you, Your Honor.

11 THE COURT: Yes. So.

12 MS. ZOIS: Last --

13 MR. GILLCRIST: Ours as well.

14 MS. ZOIS: -- and lastly. Um, Your Honor, we did
15 withdraw the carpal tunnel claim --

16 THE COURT: Yeah.

17 MS. ZOIS: -- before our expert designation. I don't
18 know how the Court wants to handle that. I have a letter
19 that's going, that goes out --

20 THE COURT: So.

21 MS. ZOIS: -- that went out to the Defense Counsel. I
22 don't think they're going to dispute that I did that before -
23 -

24 THE COURT: So.

25 MS. ZOIS: -- the expert designation. So, if the Court

1 could, or allow me the opportunity or the Court could take
2 the opportunity --

3 THE COURT: So.

4 MS. ZOIS: -- to say that claim was formally withdrawn -

5 -

6 THE COURT: So.

7 MS. ZOIS: -- through answers to --

8 THE COURT: You c (sic) --

9 MS. ZOIS: -- interrogatories.

10 THE COURT: -- you, you certainly can concede that or
11 have Counsel concede that in closing that that's not an
12 issue.

13 MS. ZOIS: So, I can argue that in closing?

14 THE COURT: Absolutely, absolutely.

15 MS. ZOIS: Okay. I don't, I just didn't want to not put
16 that into evidence --

17 THE COURT: No, no.

18 MS. ZOIS: -- and be precluded --

19 THE COURT: So.

20 MS. ZOIS: -- from arguing that.

21 THE COURT: It, it, it, it is in evidence --

22 MS. ZOIS: Okay.

23 THE COURT: -- that, that theirs (unclear - two words.)

24 MS. ZOIS: Okay. Fair. Okay.

25 THE COURT: Okay?

1 MS. ZOIS: That's it then. Um --

2 THE COURT: So any other --

3 MS. ZOIS: -- motion for judgment.

4 THE COURT: Okay. Denied.

5 MS. ZOIS: Really?

6 THE COURT: So.

7 MS. ZOIS: Oh, I gotta', I gotta' put that on the record
8 though, Your Honor.

9 THE COURT: You just did.

10 MS. ZOIS: No, I gotta' put the reason, I have to
11 articulate the reasons for putting motion for judgment on the
12 record. I can't just, I can't do that, that wouldn't be a
13 complete record. Maybe we could do that and talk about
14 instructions?

15 THE COURT: You certainly can.

16 MS. ZOIS: And, okay.

17 THE COURT: Mm-hmm.

18 MS. ZOIS: But I need to --

19 THE COURT: Okay.

20 MS. ZOIS: -- put that on the record. I can't --

21 MR. GILLCRIST: We would reserve our motions that have
22 denied as well.

23 THE COURT: I mean, this is silly.

24 MS. ZOIS: That's not the way it works is it?

25 MR. PORCARELLI: If we're going to head into a brief

1 break to handle the motion then I would put one on the record
2 formally as well.

3 THE COURT: Okay. Alrighty.

4 MR. PORCARELLI: Thank you, Your Honor.

5 MS. ZOIS: Thank you, Your Honor.

6 (Counsel returned to the trial tables and the following
7 occurred:)

8 (Husher turned off.)

9 THE COURT: Ladies and gentlemen, the formal evidence
10 portion has concluded. There's some legal stuff that we need
11 to do. So, even though we've only been out here for a few
12 minutes I'm gonna' send you back to the jury.

13 I will tell you, like I said, the formal evidence
14 has been done. We're gonna' do the legal stuff that we need
15 to do when you come back. I will be giving you my
16 instructions, and Counsel will make their closing argument,
17 and you will get this case to begin your deliberations. So,
18 we're at a good place right now, okay? So, I'm going to
19 excuse you to, um, to the jury room. And, uh, like I said,
20 when you come back out we'll be rolling with instructions and
21 argument. Thank you.

22 (Jury excused from the courtroom.)

23 THE COURT: Ms. Zois, you wanted to be heard on motion
24 for judgment.

25 MS. ZOIS: Um, yes, Your Honor.

1 THE COURT: Mm-hmm.

2 MS. ZOIS: And just, um, briefly, I would incorporate my
3 proffer earlier as to the scope of inquiry for the claims
4 representative that I would have called.

5 THE COURT: Certainly. That's all on, that's all on the
6 record, so.

7 MS. ZOIS: I just want to incorporate my previous
8 argument so I don't have to say it all over again.

9 THE COURT: Correct.

10 MS. ZOIS: Um, with respect to the issue of liability in
11 this case the Plaintiff would make a motion for judgment in
12 her favor. Um, all of the evidence before Your Honor is un-
13 contradicted and un-disputed. The Defendant took the stand,
14 held up her hand and said, "I plead guilty. I, the first
15 time I noticed her she was at a complete stop. It all
16 happened so fast." Um, so, clearly, as far as the issue of
17 negligence as to the Defendant herself is overwhelming. I
18 mean, I don't think that there's any evidence before the
19 Court that she didn't fail to control her vehicle in a
20 reasonable manner on the date of this crash. Um, she's, she
21 was driving too fast for the weather conditions, she failed
22 to pay attention to the traffic in front of her. She was
23 following too closely. She, um, failed to avoid coming into
24 contact with another vehicle. So, as far as the record goes
25 with respect to the issue of negligence as to the Defendant

1 herself, I don't see where there's any issue that goes back
2 to the jury for them to decide on that.

3 Um, as far as the issue of contributory negligence,
4 um, the, again, the record is completely devoid of not one
5 scintilla of evidence that anything that Jacqueline Exline-
6 Hassler did on this day caused or contributed to this
7 occurrence. Zero. There's nothing ba (sic), there's nothing
8 for this jury to decide that she was contributorily
9 negligent. There's a lot of conjecture and speculation, but
10 there's not one witness that came in here that said that she
11 suddenly stopped her vehicle. Not a single one. The fact
12 that she stopped her vehicle on, at an angle, that's not
13 negligent. There's no transportation article that says that
14 you can't stop your vehicle at a slight angle. There's, um,
15 not a single person came in. Not a single witness at the
16 scene came in and said that she operated her vehicle or
17 failed to do so in a reasonable manner. She came to a
18 complete stop with all the (unclear - two words) traffic in
19 her lane. She did not hit the vehicle in front of her. She
20 was stopped for, according to her own testimony and other
21 testimony, for several seconds, other vehicles coming up
22 behind her used and utilized the open lane to the right.
23 This accident has nothing to do with anything that Jacqueline
24 Exline-Hassler did on this day.

25 The overwhelming evidence, Your Honor, is that the

1 Defendant was negligent, she wasn't paying attention. The
2 first time she saw my client's vehicle is when she was at a
3 complete stop. She didn't even know that the whole line of
4 cars ahead of Ms. Exline-Hassler was stopped. So, there
5 isn't -- speculation and conjecture is not enough to go back
6 to the jury. There has to be some affirmative demonstration
7 of evidence that something that my client did on the date of
8 this crash caused or contributed to the occurrence. The only
9 evidence before Your Honor from eye witness testimony is that
10 she was at a complete stop, her vehicle was on an angle. And
11 that's it.

12 And the speculation as to oh, it was just these
13 wild cars all flying everywhere, and everything was all out
14 of control and chaotic just isn't enough to go back to the
15 jury as to speculation. And I'll remind Your Honor of what
16 the testimony was, which is my client's at a complete stop in
17 the left lane, as is all the other traffic. Lanes two and
18 lane three were open. The vehicles coming up from behind my
19 client were able to avoid her vehicle. Vehicle one could
20 avoid and go lane two, vehicle two could avoid and go in lane
21 two, vehicle three could avoid and go in lane three. So,
22 those three vehicles chose, instead of to bringing their car
23 to a stop behind the vehicle in front of them, like Ms.
24 Exline-Hassler did without hitting the car in front of her,
25 they chose to use the open lane.

1 The only time anyone talks about vehicles going out
2 of control is after Ms. Sapp hits the back of Jacqueline
3 Exline's car, a tractor trailer that's headed in their
4 direction has to take evasive maneuver. That's when the cars
5 start getting out of control, after the Sapp vehicle has
6 already struck the rear of the Plaintiff's vehicle. So,
7 there isn't one scintilla of factual evidence to support
8 their contention that my client was contributorily negligent.
9 Conjecture and speculation is not enough to let the jury
10 decide that issue. Not one eyewitness has said that she
11 brought her vehicle to a sudden stop or did anything that any
12 -- no one could even say anything about her vehicle, other
13 than she was at a complete stop when Plaintiff, uh, Defendant
14 Sapp first noticed her.

15 MR. GILLCRIST: Thank you, Your Honor. Just, uh, for
16 the record, the starting point in these discussions are
17 always you view the evidence in the light most favorable to
18 the Defendant. Secondly, the jury can, as the instructions
19 say, the juries can reject all or any part of any witness'
20 testimony, and it's also important that they can take
21 inferences from the testimony. Uh, there is ample evidence
22 in this record, uh, to allow the case to go to the jury both
23 with respect to my client's primary negligence or the
24 allegation of it, as well as, uh, the contributory negligence
25 of, of the Plaintiff. And I'd like to, if it's okay, combine

1 my opposition now to their motion with my own motion for
2 judgment on the issue of contributory negligence, um, so that
3 I don't have to repeat myself. And, obviously, that analysis
4 have (sic), the evidence have (sic) to, has to be reviewed in
5 the light most favorable to Plaintiff, of course.

6 Um, with respect to liability, Your Honor, um,
7 Counsel has not mentioned that Ms. Exline-Hassler was going
8 65 to 70 miles per hour when she was only one to two car
9 lengths behind the vehicle in front of her. That is clearly
10 negligence on her part, um, that is following too closely.
11 The fact that she didn't get cited for it is not relevant.
12 Um, the fact that my client received a ticket, um, and pled
13 guilty is evidence of negligence. It's not dispositive of
14 negligence. Uh, Counsel is treating that plea of guilty with
15 explanation as is (sic), as if it is dispositive, and it
16 simply is not.

17 The evidence in this case is that Ms. Exline-
18 Hassler, um, by inference at least, had to have brought her
19 vehicle to a sudden stop, uh, because she was travelling so
20 close, number one, to the car in front of her, and because
21 she said the car's in front of, front of her, uh, stopped
22 suddenly, and because she angled her car to the left. She
23 says it's to the left, the police officer says it's to the
24 right. Whether it's to the left or to the right doesn't
25 matter. She purposely angled her car to the left. The jury

1 can reject her testimony that this was something, as she
2 said, that she does every time she stops her car on 70, uh,
3 in a line of traffic, which, frankly, is absurd, uh, and can
4 be rejected on credibility issues alone. Uh, the jury can
5 infer from that testimony that the reason she angled her car
6 was indeed because she was fearful that she was going to
7 strike the vehicle in front of her, um, and thus had to try
8 and get out of the way of that vehicle or get her own car out
9 of the way.

10 Um, there was evidence that, from her own testimony
11 that the cars around her darted around her. They were making
12 an invasive sudden maneuver, or at least there's an inference
13 of it, um, based on her actions, um, and what was in front of
14 them. We know it was a chaotic scene. My client was farther
15 back. Uh, she was the fourth car if you believe Ms. Exline-
16 Hassler's testimony behind the Plaintiff. It makes perfect
17 sense and the jury could conclude that she had less notice of
18 this impending doom than those three drivers in front of her,
19 because she was farther back. When they darted around Ms.
20 Exline-Hassler they exposed Ms. Exline-Hassler to that
21 hazard, uh, my client to that hazard of Ms., uh, Hassler's
22 stopped or stopping vehicle. There was evidence of
23 hydroplaning, there was evidence of wet roads. These are all
24 elements of, um, that go to the weight, that may be
25 considered by the jury in assessing whether there's primary

1 negligence on the part of, uh, Ms., um, uh, Ms. Sapp.

2 As far as the Plaintiff's contributory negligence
3 goes, again, I would argue that, um, you're travelling at one
4 to two car lengths behind the vehicle in front of you in
5 heavy I-70 traffic that's negligence as a matter of law and
6 contributed to, um, uh, this accident.

7 So, Your Honor, on behalf of Ms. Sapp we would
8 oppose the Plaintiff's motion for judgment and make our own
9 motion for judgment on that issue. Thank you.

10 THE COURT: Thank you.

11 MS. ZOIS: Your Honor, I just have a -- oh.

12 THE COURT: Let me --

13 MR. GILLCRIST: Oh, I'm sorry --

14 THE COURT: -- Mr. Porcarelli.

15 MR. GILLCRIST: -- I did, I did forget, and I'm, I, I
16 didn't even talk about damages, Your Honor. I think it's
17 important for me, and I would just do it very briefly. Um,
18 and that is, uh, uh, say that we would also move for judgment
19 on the issue of damages. Um, the Plaintiff had, uh, clear
20 pre-existing problems to her low back that her own doctors
21 have ignored. She did not give a medical history of prior
22 low back pain to Dr. Naff and Dr. Sloan, the doctors who
23 testified on behalf that she had this injury. Their history
24 was incorrect. They relied on her history. They predicated
25 their opinions on the accuracy of Ms. Hassler's medical

1 history, which was blatantly false. We know from the medical
2 records that she had low back problems, and from the
3 prescription drug records that these were ongoing in nature.
4 These were not in any way temporary. Um, she went to five
5 different, uh, on five different occasions between that, um,
6 March of '08 visit to the hosp (sic), visit to the doctor in
7 the subject accident she went to refill prescriptions for her
8 low back. I think it's beyond credibility, uh, or credulity
9 to say, uh, that she did have, uh, low back issues leading up
10 to this accident. So, on that basis we'd also make that
11 motion. Thank you, Your Honor.

12 THE COURT: Thank you. Mr. Porcarelli.

13 MR. PORCARELLI: Thank you, Your Honor. Briefly. Um,
14 with regard to objecting to Plaintiff's motion for judgment,
15 we would do that formally on the record and adopt by
16 reference, uh, Mr. Gillcrist's argument in opposition.

17 Um, and we would similarly adopt Mr. Gillcrist's
18 motion for judgment with regard to contributory negligence on
19 the part of the Plaintiff and all arguments incorporated into
20 our case.

21 And the third issue, if Your Honor would like to
22 hear it now very briefly, is our motion for Penn National,
23 uh, regarding the breach of contract claim, because the
24 Plaintiff has now rested their case and so has, uh, Ms. Sapp,
25 uh, Defendant.

1 And Your Honor has in evidence, uh, but not to go
2 back to the jury, uh, the Penn National policy, um, which at
3 page 104 reads in pertinent part as follows with regard to
4 underinsured, I'm sorry, uninsured motorist coverage. Second
5 paragraph down it says, "With respect to coverage under
6 paragraph three of the definition of uninsured motor vehicle,
7 we will pay under this coverage only if one or two below
8 applies." Number one says, "The limits of liability under
9 any bodily injury, liability bonds or policies, applicable to
10 the uninsured motor vehicle have been exhausted by payment of
11 judgments or settlements, or two, a tentative settlement has
12 been made between an insured and the insurer of an uninsured
13 motor vehicle."

14 Well, the second one doesn't apply because there is
15 no tentative or, or actual settlement, so we're looking at
16 paragraph number one, which says that we don't have any legal
17 liability until there's been a, uh, an exhaustion of the
18 policy by way of settlement or verdict. Um, thus there
19 cannot, by definition, be any breach that we have committed.
20 Um, and so we would ask for judgment at this time.

21 THE COURT: Counsel.

22 MS. ZOIS: Your Honor, yeah, if I may be heard on that
23 just briefly.

24 THE COURT: Mm-hmm.

25 MS. ZOIS: Your Honor, I would ask that Your Honor hold

1 the ruling on that until after the verdict comes back in,
2 because it's obviously premature for, um, the verdict to come
3 in in excess of any of the underlying policies, we just don't
4 know the answer to that and that's up in the air at this
5 point.

6 Um, with respect to the contributory negligence,
7 um, the affirmative motion and the defense of our motion, I
8 would just point out to the Court that even though Jacqueline
9 Exline-Hassler could have been travelling at 100 miles an
10 hour and could have been following four inches behind the car
11 in front of her, that her negligence has to be a proximate
12 cause of the crash. By the time this crash had occurred she
13 had been stopped for several seconds, enough time for three
14 cars to, to safely traverse from her lane to the other lane.
15 So, regardless of what she was doing before the time she was
16 at a complete stop it doesn't matter, because that negligence
17 wouldn't be the proximate cause of the crash. Uh, so the
18 negligence that has to be attributable to the Plaintiff must
19 be a cause of the crash. So, anything that she did leading
20 up to the point where she was a complete stop half of a car
21 length away behind the vehicle in front of her for several
22 seconds, enough time to allow three vehicles to traverse,
23 that's the period in time in which the Court should be
24 focused on, not the time period leading up to that, because
25 her position at the time of the crash was she was at a

1 complete stop at an angle and had been for several seconds.
2 So, anything that occurred up and before that time couldn't
3 possibly be a proximate cause of the crash. Thank you, Your
4 Honor.

5 Oh, it, sorry, one more. And as for the medical
6 testimony, um, both Dr. Naff and both Dr. Sloan, before
7 giving their opinion testimony before the Court, did, uh, and
8 the jury, did review all of the priors and they were
9 underwhelmed, if you will, with any of the priors. So, it's
10 Counsel's argument that she didn't tell 'em about the prior
11 and that their testimony was based on their, her history
12 provided to them is just simply inaccurate. They had all of
13 her prior medical records before providing the testimony,
14 they had her deposition testimony before providing their
15 testimony so on that basis, Your Honor, I would, I would
16 obviously object to Defense Counsel's motion on the medicals.

17 THE COURT: First of all as to Defendant Penn National's
18 motion for judgment, I'm gonna' reserve on that, obviously,
19 um, we need to see what happens with that.

20 Um, with respect to Plaintiff's motion for judgment
21 against the Defendant on primary negligence I'm gonna' deny
22 that. Violation of the statute is evidence of negligence.
23 It's not per say negligence. Um, although there's been some
24 recent case law, um, that has been hinting that they're going
25 that way, there is the Court of Special, the Court of Appeals

1 have not yet said that there's a, that it's per say negligent
2 when there's a rear end collision accident. So, that is for
3 the jury to decide as to the issue of primary negligence.

4 As to the issue of contributory negligence, um,
5 it's not just that the Plaintiff may perhaps have been
6 negligent, but that it's not the cause of the in (sic), of
7 the incident, but a cause of the injuries. And there's no
8 evidence here that anything that the Plaintiff did or may
9 have done that could have been negligent, including speeding
10 or whatever, uh, was the cause of the injury, because there's
11 no question that the Plaintiff was injured in this case
12 because of being struck from the rear by the Defendant. Um,
13 and, uh, that there was nothing that the Plaintiff did that
14 led, that the Court finds, that has been articulated or
15 presented that indicates there's any meaningful contrib. that
16 could possibly have been a proximate cause of her injury
17 there. So, there may be some other causes or whatever, but
18 not anything that the Plaintiff did on that case. So, I'm
19 not gonna' send the issue of contrib. back to the jury so I'm
20 denying the Defendant's motion, um, or granting the
21 Plaintiff's motion to exclude contrib., and will not be
22 including it on the verdict sheet to go back to the jury.
23 And there's conflicting medical testimony and evidence as to
24 the nature and the extent of the Plaintiff's injuries and
25 that's the issue that the jury is going to have to decide.

1 MR. GILLCRIST: Thank you, Your Honor.

2 THE COURT: Okay?

3 MR. PORCARELLI: Your Honor, one final thing just
4 logistically. I don't know what your intention is with
5 regard to, uh, charging and then going straight to closings,
6 and then, uh, or, or, uh, charging and then breaking and then
7 doing closings.

8 THE COURT: How, I'm gonna' ask, how long are you all
9 anticipating your closings are gonna' take? 'Cause I, I tell
10 you one thing we can do is I've asked the clerk to send up a
11 menu for the jury to send back for lunch. Um, I was going to
12 try to go up, get all the logistical stuff done and get the
13 jury, um, get the instructions given, give them a menu, let
14 'em order, let you do your closings, let 'em order lunch and,
15 and kinda' go from there, but I don't know how long you all
16 are anticipating going. So, it may very well be that, um, if
17 you're anticipating very long argument to charge the jury to
18 do one opening, to take a break, to do another and then do
19 rebuttal. I don't know. I have a feeling they would kind of
20 like to get this thing rolling, but, uh, that's, I've not
21 talked to them, that's just my feeling.

22 MS. ZOIS: I usually go 30, 45 minutes, Your Honor. I'm
23 not sure. This case has a lot of detail that needs to be,
24 um, covered. So, I would, I would say at the outside limit,
25 um, total argument between both -- I'm gonna' do the initial

1 closing --

2 THE COURT: Mm-hmm.

3 MS. ZOIS: -- and my co-counsel's going to do rebuttal.
4 I would probably geusstimate and say an hour and 15, 45, half
5 an hour?

6 MR. BRATT: Tops, yeah.

7 MS. ZOIS: Tops?

8 MR. BRATT: I'll be no longer than a half hour.

9 MS. ZOIS: Okay. So, I would, that's my best
10 geusstimate for the Court.

11 THE COURT: Is, would be a total of an hour?

12 MS. ZOIS: Yes.

13 THE COURT: Okay.

14 MS. ZOIS: No, total of an hour and 15, Your Honor.

15 THE COURT: So, okay.

16 MR. GILLCRIST: Um, Your Honor, I, I would estimate
17 approximately 40 minutes all together.

18 MR. PORCARELLI: And I would probably, I'd like to shoot
19 for under 30, but 30 I think is reasonable. And the reason I
20 raise that with Your Honor was because there, I wanted to see
21 if I could make a couple of motions before people got in
22 front of the jury and starting delivering closing statements,
23 'cause I have, uh, 'cause those motions deal with some things
24 that may or may not be raised in front of the jury, and I, I
25 was wondering if we could get a ruling in advance.

1 THE COURT: Okay. Go ahead.

2 MR. PORCARELLI: So, um, you know, one of the things is
3 sometimes Plaintiff's attorneys get up and, and in their, in
4 one or, uh, in their ope (sic), in their closing or their
5 rebuttal closing they say that, uh, they may have been
6 defense attorneys here at one time or they used to work for
7 the other side, or they know the playbook, we know how this
8 works, we know the playbook, and I think that's all
9 inappropriate. Um, because it suggests that they have some
10 inside line, some inside knowledge, which is not evidence in
11 the case, um, and it, and it's unf (sic), and it's unfair to
12 suggest that they understand how my particular client works
13 and what our particular defense is, and to s, to susset
14 (sic), to suggest to the jury that they are privy to some
15 sort of playbook. This has occurred between our firms, uh,
16 in the past. Uh, I'm raising it now, and it would be my
17 request that no such reference be made to, uh, Counsel,
18 either having been a defense attorney before or knowing the
19 playbook or knowing how they work or, or any suggestion in
20 that regard.

21 The second point in, um, in this regard is, uh, an
22 issue when we get to the billing and the payment of bills.
23 Um, we respectfully submit that it is inappropriate, um, to
24 suggest directly or indirectly that the doctors should be
25 paid. To say any phrase that says, um, the doctors' bills,

1 come on we have to pay the doctors' bills. Or the doctors
2 deserve to be paid or the doctors should be paid. Or, come
3 on, we have to pay the doctors, or however you wanna' package
4 it, because all those things improperly suggest that they
5 have not been paid, which is factually inaccurate. All or
6 most of them have received most or all of their bill because
7 of the collateral source issue. And my point in making this
8 request is if you open, if you allow them to, to do and say
9 that in front of the jury we would respectfully argue that
10 they've opened the door to allow us to get in front of the
11 jury and say hold it, who says they have to be paid, who says
12 they haven't been paid? And there's a curative instruction
13 on the collateral source, and I think it would be cleaner if
14 we simply did not get into we have to pay the doctors, and we
15 should pay the doctors, the doctors deserve to be paid, or
16 however they phrase it, because we're gonna' get into the
17 collateral source. And I think that's inappropriate and
18 unfair for us to have to allow this jury to consider those
19 types of statements, but not be able to respond and say
20 that's not the truth. That's our argument.

21 MS. ZOIS: I kind of forgot about making that argument,
22 but I wasn't planning on it --

23 THE COURT: So.

24 MS. ZOIS: -- the defense attorney argument.

25 THE COURT: So.

1 MS. ZOIS: I was a former defense attorney for as many
2 years as I've been a plaintiff's lawyer, actually. I wasn't
3 planning on doing that in this case, so I forgot about that.
4 Um, but as for the medical bills, um, I'm well aware of the
5 collateral source rule and for why it exists. Uh, we'll be
6 saying that these are her past medical expenses, we're asking
7 you to reimburse here for her past medical expenses. Um, and
8 what I wouldn't say is, oh, by the way, she also has liens
9 that she has to pay back in this case. I mean, that, that
10 argument is no more appropriate than what Counsel's
11 suggesting so, um, it's my habit to address the medical
12 expenses as these are her medical expenses incurred in this
13 matter and leave it at that, so.

14 THE COURT: As an element of damages.

15 MS. ZOIS: Right, which I have to be able to say.

16 THE COURT: Mm-hmm, so.

17 MS. ZOIS: Um, and with respect --

18 THE COURT: I would just hope that everyone understands
19 what's relevant and what's not, and what's evidence and what
20 is not and what's appropriate argument and what's not and
21 we'll kinda' go from there, so.

22 MS. ZOIS: And I want to make sure that I don't, I don't
23 run afoul with the Court's rulings in this case on two
24 issues. One is, um, during closing am I at liberty to refer
25 to my client as Jackie, Jacqueline Exline-Hassler is a (sic)

1 enormous mouthful, and I think that during closing it's
2 obviously on a more personal level, and, it's, uh, um, it,
3 it's not, you know, formally addressing a person in court.
4 So, I would allow the Court's permission, um, primarily
5 because it's such a long name, uh, but also of the closeness
6 I feel to her, frankly, it would be a little bit difficult
7 and, um, not natural for me in closing to refer to her as
8 that. So, I would appreciate the Court's leeway in allowing
9 me to address her as Jackie.

10 Um, the other issue is in light of the Court's
11 ruling on the issue of contributory negligence, um, what I
12 was inclined to do, which I'm now not going to do is,
13 obviously, um, argue that in closing, but I would also ask,
14 now that the Court has made the ruling on that issue that the
15 Defense Counsel be precluded from oh, she was travelling 65
16 or 70, and draw, and drawing undue inference to that and
17 trying to buttress it and couple it with --

18 THE COURT: I'm going to have to hear -- I mean,
19 everybody's raising all these possibilities. I'm going to
20 have to hear what Counsel said contrib. is, like I've
21 indicated, I don't think contrib. is for the jury. Counsel
22 could very well make an argument based on the evidence
23 before the Court and that is evidence before the Court that
24 that could be linked to considering whether, and I, Ms.
25 Sapp's actions were negligent when compared to the

1 Plaintiff's, but the jury's not going to be instructed on
2 contrib., and Counsel certainly can argue the facts that is a
3 fact in this case that may very well be relevant. I ruled as
4 a matter of law, I don't believe that that fact is sufficient
5 to constitute contributory negligence, but it certainly could
6 be argued, and I'll have to see how Counsel argues it, but it
7 could be relevant for another purpose. So, I, it --

8 MS. ZOIS: That was my concern, Your Honor.

9 THE COURT: So.

10 MS. ZOIS: The, uh, is the Court going to inform the
11 jury that the issue of Ms. Exline-Hassler's negligence is not
12 before them?

13 THE COURT: When they go over --

14 MS. ZOIS: Or may I say that?

15 THE COURT: -- when they go over the, when I give them
16 the instructions I'm not going to instruct on contrib. When
17 I give them the verdict sheet it's not gonna' be on the
18 verdict sheet. So, they're not gonna' be asked to consider
19 that. So.

20 MS. ZOIS: Will I run afoul of the Court's ruling if I
21 tell them that that issue is not before them?

22 THE COURT: No, 'cause that's --

23 MS. ZOIS: Okay. Just wanted to make sure.

24 MR. GILLCRIST: And as long, as long as there's no
25 indication as to why it's not before them, so.

1 THE COURT: And exactly right.

2 MS. ZOIS: Okay.

3 THE COURT: Exactly right.

4 MS. ZOIS: Okay. I just don't, I don't wanna' --

5 THE COURT: So.

6 MS. ZOIS: -- get interrupted during closings.

7 THE COURT: So.

8 MS. ZOIS: So, I'm glad we're having this --

9 THE COURT: I'm --

10 MS. ZOIS: -- discussion.

11 THE COURT: So.

12 MR. PORCARELLI: Briefly, just out of abundance of
13 caution we had your rulings early in the case but then we
14 went to opening statements. You, you've revisited against,
15 regarding Penn National one more time we're going to
16 closings. I would just ask that we don't have to get in a
17 situation where I have to spring out of the chair to object
18 about these two guys and, and they represent two different
19 parties or any suggestion or hint implicit express --

20 THE COURT: They're defendants.

21 MR. PORCARELLI: -- whatever the Defense period.

22 MS. HOWARD: Defendants.

23 THE COURT: Correct.

24 MS. ZOIS: Defendants. Defendants!

25 THE COURT: Defendants.

1 MR. GILLCRIST: Well --

2 THE COURT: Defense, Defendants --

3 MS. ZOIS: That's what she just said that's why I'm
4 asking.

5 MR. GILLCRIST: Your Honor, this is the, the trouble we
6 got in earlier, and I don't want to revisit everything it's
7 just that any suggest (sic), he's, what the jury knows what
8 his role his they don't need to be reminded to imply that
9 there was an additional pocket that's gonna' pay the
10 judgment.

11 THE COURT: So.

12 MR. GILLCRIST: Any reference to Mr. Porcarelli should
13 be to Defense Counsel.

14 THE COURT: Defense, it --

15 MR. GILLCRIST: It should not be to representing another
16 interest or anything that might suggest to them that there's
17 another party who might pay the judgment. That's my concern.

18 MR. PORCARELLI: And that --

19 THE COURT: To the Defense.

20 MR. GILLCRIST: Thank you.

21 MR. PORCARELLI: And that's my point, thank you, Your
22 Honor.

23 MS. ZOIS: I am not allowed to say Defendants, I am
24 allowed to say the Defense.

25 THE COURT: Def (sic), Defense.

1 MS. ZOIS: Not Defendants plural, right?

2 THE COURT: In closing right, because --

3 MS. ZOIS: Got it. Just wanna' make --

4 THE COURT: Exactly.

5 MS. ZOIS: -- I'm crystal clear.

6 THE COURT: Let's just make it easy.

7 MS. ZOIS: Okay. And I -- that's what I was planning on
8 doing, so I can train my brain.

9 THE COURT: Okay. Now, I have prepared draft verdict
10 sheets. Let's go ahead and get that done, which I think will
11 come as no surprise since I said I was not gonna', gonna'
12 take out the, um -- (long pause) --

13 MS. ZOIS: Are we going over the verdict sheet first,
14 Your Honor?

15 THE COURT: Yeah, mm-hmm. Just take a look at it and
16 I'll, um . . .

17 (Long pause while Counsel looks over verdict sheet.)

18 MS. ZOIS: I'm ready when anybody else is, Your Honor.

19 (Brief pause.)

20 MS. HOWARD: We're ready, yeah.

21 MR. GILLCRIST: Yes, Your Honor, I'm sorry.

22 THE COURT: Okay. Plaintiffs.

23 MS. ZOIS: Thank you, Your Honor. Um, in question
24 number two it should read do you find that the negligence of
25 Kirsten Sapp was a cause of injury suffered by the Plaintiff,

1 Jacqueline Exline-Hassler, not the cause.

2 THE COURT: Okay.

3 MS. ZOIS: I would also take out the word proximate, um,
4 only because I think it confuses the jury. I think a, the,
5 um, I mean, it doesn't, I understand if the Court wants to
6 leave it in, but proximate I think is just a very confusing
7 term to the jury and I think cause covers it. Um, so I
8 would, Plaintiff would ask that it read do you find that the
9 negligence of Kirsten Sapp was a cause of injury suffered by
10 the Plaintiff, Jacqueline Exline-Hassler?

11 Um, as to number three, in what amount, if any, do
12 you award Plaintiff for damages caused by the -- I would take
13 out the work accident, I don't like that word. I would use
14 the word collision, because it wasn't an accident.

15 MR. GILLCRIST: Or (unclear - one word) occurrence.

16 MS. ZOIS: Or occurrence or something other than
17 accident. I don't like the word accident. Uh, as for past
18 medical bills is fine, past lost wages is fine. As for
19 future medical expenses, um, I would ask that that be
20 itemized, and the reason I ask for that is I would ask,
21 'cause there's two different future medical expense claims.
22 One is the prescriptions into the future and the other one's
23 the surgery into the future. Um, if you clump it all
24 together and the jury brings back a number that neither one
25 of us understand that we might want to appeal for whatever

1 reason it's cleaner if we know why the jury awarded the
2 amount that they did with respect to each one of the easily
3 identifiable future claims. So, for example, if we ask for
4 \$100,000 in the surgery and \$44,000 in prescription and they
5 came back and gave her \$500,000 in futures we wouldn't know
6 how or why or what or what they did or conversely. I mean,
7 the Defense would have a problem with that. Or conversely if
8 they came back and gave her, um, an amount that just didn't
9 make sense to either party and we needed to do, file post
10 trial motions later I think it would just be cleaner if we
11 knew what they did and why and what amount they attributed to
12 each one of those claims for purposes of post trial motions.

13 And for the same reason, Your Honor, um, non-
14 economic damages, non-economic damages suffered in the past,
15 non-economic damages reasonably anticipated to be in the
16 future. So, I'd just break those down into past non-economic
17 damages, which is the past 44 months. And future non-
18 economic damages just for the same reasons so if we do have
19 to file post trial motions for any reason we know what the
20 jury was thinking when they did it.

21 Um, and as for my able co-counsel also pointed out
22 to me that the word accident appears in question number one.
23 So, I don't care what the word is just as long as it's not
24 accident, collision, occurrence, event, anything other than
25 accident. That's it, Your Honor.

1 THE COURT: Mr. Gillcrist.

2 MR. GILLCRIST: Uh, yes, Your Honor, I, I think the word
3 accident is fine. Um, the Court is submitting the liability
4 issue to the jury. There's nothing suggestive about the
5 word. Counsel has throughout this trial made it very clear
6 that she prefers the word crash over accident, uh, presumably
7 for tactical reasons. But, um, the word accident is used
8 routinely. I don't think there's anything inappropriate
9 about it.

10 Um, the, uh, question on, uh, number two, I, I see
11 where they're coming from with respect to the word the.

12 THE COURT: It should be a.

13 MR. GILLCRIST: It should be a. Uh, but proximate cause
14 is the ordinary language --

15 THE COURT: Correct.

16 MR. GILLCRIST: -- and it's the law. Um, as to breaking
17 down, um, the, uh, award (c), in Section (c) and (d) there's
18 no support for breaking it down any further. In fact, I
19 think the, uh, um, actual, uh, jury instruction does say
20 future medical expenses and then non-economic damages. Uh,
21 so I don't think they should be broken down in any way, shape
22 or form. Uh, if there's an award of future medical expenses
23 that is somehow challenged or, by them or by us, then it will
24 be challenged. It won't matter whether they get, uh, uh, 100
25 or 150. Uh, it will be challenges for reasons of substantive

1 evidence. So, I don't think there's any reason to break it
2 down. Thank you, Your Honor.

3 THE COURT: Mr. Porcarelli.

4 MR. PORCARELLI: I agree with Mr. Gillcrist on
5 everything, and I'd just like to emphasize the point that if,
6 if we would object to breaking out the future meds and the
7 non-economic damages that would encourage the jury to feel
8 compelled that they actually have to fill that out and not
9 come to some reason compromise or, or their decision on both
10 of those issues and ask that, uh, 3(c) and (d) remain as
11 listed.

12 MR. GILLCRIST: Your Honor, and I'm sorry again for
13 forgetting something, but I do want to put on the record
14 that, uh, we believe firmly that the issue of contributory
15 negligence should be on the verdict form. If I may just,
16 I'll be arguing that after jury instructions as to the
17 relevance of that jury instruction.

18 THE COURT: Certainly.

19 MR. PORCARELLI: And we would adopt that.

20 THE COURT: Okay.

21 MR. PORCARELLI: Thank you.

22 MS. ZOIS: Just in response to that, Your Honor, I'm
23 going to read the causation instruction that I believe the
24 Court will be giving the jury, which is, for the Plaintiff to
25 recover damages the Defendant's negligence must be a cause of

1 the Plaintiff's --

2 THE COURT: Okay.

3 MS. ZOIS: -- injury. So, just as to the word
4 proximate. Um, and also for, with respect to the futures,
5 um, this is above my pay grade, but as it stands right now
6 there is no requirement for Plaintiff's and personal injury
7 cases to have Medicare set asides, as it stands. That law is
8 in flux. And I would also ask that the Court consider
9 breaking it down, um, for that purpose. So, if some day when
10 Medicare or Medicaid comes back and decides that in Plaintiff
11 personal injury cases there does need to be a, a medical set
12 aside that we know exactly what the lien is or would be with
13 respect to her future and futures. Um, so for that reason,
14 and I don't think it's hard for the -- I mean, if the jury's
15 going to write zero in futures I don't think it's any harder
16 for them to write two zeros instead of one, but, um, so for
17 that reason I think that it would just be more, it would be,
18 uh, a more clean way to present to the jury, um, a more
19 easily identifiable way to ascertain for post-trial motion
20 purposes and future medical care for my client, but that's
21 it, Your Honor.

22 THE COURT: I'm gonna' change question number two to
23 take out the the, which is, quite frankly, a typo and put in
24 a proximate cause. Um, and, uh, the rest of the verdict
25 sheet will go back as it is.

1 Now, with respect to instructions, what I'm, like
2 to do is I'm gonna', I'd like to tell you what I plan on
3 giving then I'm gonna' take a short break and we're gonna'
4 change the verdict sheet. Um, I'm gonna' tell you what I
5 plan on giving, tell you what I'm not planning on giving
6 that's been submitted and I'll take a break, come back, then
7 I'll hear, um, what objections or oppositions to this, but
8 I'll let you write it down, have a chance to think about it.

9 MR. GILLCRIST: Thank you, Your Honor.

10 THE COURT: Um, because I know, like I said, especially
11 at this stage of the game after being in trial for all these
12 days, even though we had a lovely weekend, taking a second to
13 think about everything. Okay.

14 Now, first, I'm just go to the patterns, um, that I
15 have. Of course 1.1, which is the introduction instructions
16 at the end of trial. 1.2 Questions of Law during the trial.
17 1.3 Witness Testimony Consideration. 1.4 Expert Opinion
18 Testimony. 1.5 Impartiality and Consideration. 1.6
19 Inferences from Statements of the Court. 1.7(a) The
20 Preponderance of the Evidence Standard. Um, I have printed
21 out 1.8 Direct and Circumstantial Evidence, um, I find it
22 usually is helpful to go ahead and give the jury that
23 instruction. Um, 1.13 Case Submission on Issues. And 1.14
24 Unanimous Verdict.

25 Then into 10.1 Introductory Statement on Damages.

1 10.2 Compensatory Damages for Bodily Injury, which is
2 modified by excluding, um, future lost wages. Um, and again
3 just to indicate that there's no, the, the other paragraph
4 three, which also indicates loss of earnings in the future,
5 that's eliminated, so it just, just would be, um, past
6 medical expenses, any reasonable probable medical expenses in
7 the future, past lost earnings and the non-economic damages
8 straight out of the pattern. Taking out -- there was a
9 reference in that also to, um, loss of consortium, and there
10 is no loss of consortium claim.

11 MS. HOWARD: What about, Your Honor, respectfully, the
12 disfigurement humiliation?

13 THE COURT: Oh, yeah, nope, I'm sorry, that part out as
14 well.

15 MS. HOWARD: Okay.

16 THE COURT: Because there's no evidence of any
17 disfigurement or humiliation or anything like that. Thank
18 you, Counsel, I had, I have the sanitized version so it
19 doesn't show where I'd stricken everything before thank you.

20 MS. HOWARD: Oh, okay, thanks.

21 THE COURT: Okay. Um, 10.3 Susceptibility to Injury.
22 10.4 Aggravation and Previous Condition. Um, I have in
23 there, 10.6 Mitigation of Damages. 10.8 Collateral Damages.
24 10.12 the Damage Award for Physical Injury Case Not Subject
25 to Federal, State Income Tax. 10.27 as modified the, um,

1 Life Expectancy Table. The life expectancy 45-years-of age
2 is 37 years is how I would have that done. Um, 18.1 Standard
3 of Care. 18.4 Violation of a Statute. 19.1 Negligence.
4 19.3 Foreseeable Circumstances. 19.10 is the causation.

5 Um, then, uh, Transportation Article 21.3(10)
6 Following too closely. You are instructed as a law of the
7 State that the driver of the motor vehicle may not follow
8 another vehicle more closely than is reasonable and prudent,
9 um, depending on the other traffic and condition a highway to
10 be the statute.

11 Those were the instructions I was planning on
12 giving. I was not planning on giving the proposed rear
13 striking vehicles, which was Plaintiff's Number 4, um, was
14 not planning on giving acts in emergency, which is 18.3. I
15 was not going to give 18.11 Uninsured or Underinsured
16 Motorist because we have not allowed evidence of that issue
17 before the jury. Um, and, uh, someone had requested
18 assumption of risk 19.13 and I certainly don't think that
19 that's appropriate, considering my ruling on the contributory
20 negligence. So.

21 Let's take 10. I'm gonna' correct the verdict
22 sheet. When we come back I'll hear any discussion on the,
23 um, jury instructions and request for additional
24 instructions.

25 MR. GILLCRIST: Thank you, Your Honor.

1 MR. PORCARELLI: Thank you.

2 THE COURT: Okay.

3 THE CLERK: All rise.

4 (Whereupon, from 11:01 o'clock, a.m. until 11:15
5 o'clock, a.m., a recess was taken.)

6 THE CLERK: All rise.

7 THE COURT: And good morning again, everybody.

8 MR. PORCARELLI: Good morning, Your Honor.

9 MS. ZOIS: Good morning, Your Honor.

10 THE COURT: I was just think talking with my clerk what
11 we may want to do we'll be a little bit of time doing, I'm
12 sure going over the proposed instructions, what we may want
13 to do is go ahead and send 'em to lunch now, have 'em come
14 back at 12:15 and then we do the charge, we do closing, we do
15 everything.

16 MR. GILLCRIST: Whatever your preference --

17 THE COURT: I'll be glad. I'd be --

18 MR. GILLCRIST: -- Your Honor.

19 THE COURT: -- I'm, I'm just trying to think rather than
20 charge then take a break then close. Or order lunch in the
21 middle or, I'm just trying to figure out what I think is the
22 most efficient way.

23 MR. GILLCRIST: My only thing would be that it sounds
24 like closing arguments are going to be fairly long.

25 THE COURT: Yeah.

1 MR. GILLCRIST: Um, and if we tag the jury instructions
2 on top of that will they be wanting a break in between
3 anyway?

4 THE COURT: Well, how about then we, we do this, let's
5 do that then I'll come out I will -- they're going to have a
6 written copy of whatever instructions I give. We'll go ahead
7 and instruct then send them to lunch and then we'll do
8 closing.

9 MR. GILLCRIST: Whatever your preference, Your Honor.

10 THE COURT: So.

11 MS. ZOIS: I'm in love with that idea, Your Honor,
12 because last time I checked she was one centimeter dilated,
13 and as soon as Jackie hears the baby cry she's gonna' fly
14 over here with her hair on fire, so that would be my
15 preference, Your Honor.

16 THE COURT: Okay. Well, we'll, that's our plan then,
17 'cause it won't take me -- the instruction phase won't be
18 terribly long, but at least that part will be done.

19 MS. ZOIS: And, Your Honor, do I have permission in
20 closing to let the jury know that she's actually at the
21 hospital right now waiting for the delivery of --

22 MR. GILLCRIST: Uh, no.

23 MS. ZOIS: -- her grandchild.

24 THE COURT: So.

25 MR. GILLCRIST: Your Honor, and I should have mentioned

1 this earlier. Everyone's going to see that she's not here.
2 She testified that she was expecting a grandchild. I don't
3 think there should be any reference whatsoever to why she's
4 not here.

5 THE COURT: So.

6 MR. GILLCRIST: The jury can take her testimony, but why
7 she's not here is not evidence in the case.

8 MR. PORCARELLI: And, and I would agree we don't need to
9 beat that dead horse.

10 MS. ZOIS: It would be one sentence, Your Honor. I
11 mean, she, I don't want this jury to think she doesn't really
12 care about the outcome of this case, and her lack of presence
13 here is like a white elephant in the room, so it literally --

14 THE COURT: Let me put it this way. We're gonna'
15 instruct and I will --

16 MS. ZOIS: Take it up.

17 THE COURT: -- think about it, and maybe actually by the
18 time you get to closing she might be here and it might be a
19 moot point, so --

20 MS. ZOIS: Perfect.

21 THE COURT: -- we'll go from there. 'Cause this is one
22 of the things that is up to the Court's discretion, I'm
23 gonna' think of the pros and cons.

24 MR. GILLCRIST: Right.

25 THE COURT: Um, like --

1 MR. GILLCRIST: And we're not, for what it's worth,
2 we're not going to argue that she's not here, she doesn't
3 care about the case --

4 MR. PORCARELLI: I --

5 MR. GILLCRIST: -- that's ridiculous.

6 MR. PORCARELLI: -- agreed.

7 MR. GILLCRIST: Yeah.

8 MR. PORCARELLI: I wouldn't say any such suggestion.

9 THE COURT: Okay. Additional requests for instructions?

10 MS. ZOIS: Um, I did, the only additional requests for
11 instructions, Your Honor, would be the multiple parties in
12 the, uh, under, uninsured, under insured motorists, but in
13 light of the Court's ruling I totally understand why they're
14 not going back. Um, with respect to Andre we would ask that
15 the Andre case go back. Um, I understand the Court is not
16 giving the special instruction regarding the presumption of
17 negligence on a rear striking vehicle.

18 Um, with respect to the special instructions of
19 negligent driving, driver to control speed, um, those two
20 specific transportation articles we would just take exception
21 to those two. Um, I understand the Court's not giving those,
22 so just for the record would put on the record that they've
23 been offered and I understand the Court's ruling.

24 THE COURT: Okay.

25 MS. ZOIS: Thank you, Your Honor.

1 MR. GILLCRIST: Thank --

2 THE COURT: Mr. Gillcrist.

3 MR. GILLCRIST: -- um, may I? Thank you, Your Honor,
4 just on those two issues I think we targeted, um,
5 contributory negligence we would ask that the verdict form
6 include that question, um, and without going into all the
7 detail that I did previously I could like, like to adopt
8 those arguments on the motion and simply say that there is,
9 uh, evidence that the jury could weigh and consider as the to
10 the Plaintiff's contributory negligence. She was driving,
11 uh, 65 to 70 miles per hour travelling only one to two car
12 lengths behind the vehicle in front of her. There's ample
13 evidence for the jury to infer that she made a sudden
14 unexplained stop without adequate reason. And Your Honor had
15 a issue, well, it's cause of accident versus cause of injury,
16 that's correct, but the accident and injury are synonymous in
17 this case. Um, they're inextricably linked and, therefore,
18 we feel there's ample evidence and for all those previous
19 reasons to have that issue go to the jury.

20 The second argument I would make, Your Honor, is
21 the emergency doctrine. Um, again, that's a, the, the
22 instruction that says that someone faced with a (sic)
23 emergency, uh, doesn't have to comport to the highest
24 standard of care, but to what others in that same emergency
25 would do, essentially. And I think this is a classic example

1 of an emergency of, that, that my client was faced with. Um,
2 these cars in front of her apparently had to dart around the
3 Plaintiff exposing the Plaintiff's car, whether it was
4 stopped or moving at that time we don't really know, but
5 clearly it was an angle. Um, there was chaos there. There
6 was a prior accident there. Um, the roads were wet. Uh, I
7 believe there's sufficient evidence of an emergency
8 situation, um, not of her own making that would, uh, support
9 that instruction. Thank you.

10 MR. PORCARELLI: Your Honor, just for the record, on
11 behalf of Penn National, we would adopt Mr. Gillcrist's, uh,
12 arguments now and then the adoption of the adoption on
13 contributory negligence issue, as well as the emergency
14 doctrine.

15 And with regard to the contrib I would through one
16 more fact in from evidence that was testified to in this
17 case, and that was Ms. Exline-Hassler's own testimony that,
18 uh, she promptly or immediately, or whatever the word was,
19 uh, looked in the rear view mirror when she came to a stop
20 when, and because that's what she does when she makes those
21 stops, and we would add that as one more piece of evidence
22 that that's not really the typical thing that one does unless
23 one's a little concerned with how abrupt you stopped and you
24 wanna' see is somebody coming and are they going to hit me.

25 Um, has the Plaintiff, uh, rested their rebuttal

1 case?

2 MS. ZOIS: I believe we have, Your Honor.

3 THE COURT: Yeah, I believe they did.

4 MR. PORCARELLI: Okay. So then, um, and just since
5 they've done the rebuttal rest I would, uh, make my motion
6 for judgment again incorporating everything I said before
7 just so that my record reflects that I've made it at both
8 junctures.

9 THE COURT: The record will so reflect --

10 MR. PORCARELLI: Thank you.

11 THE COURT: -- that they, they have been appropriate
12 made and preserved. And, again, my ruling on that is the
13 same. I will, um, reserve.

14 MR. PORCARELLI: Thank you, Your Honor.

15 THE COURT: Okay? And I will tell Counsel that unless,
16 um, after I give the instructions I'll have you come up. You
17 don't need to repeat your requests, it's just -- and also
18 please just to let me know if for some reason I neglected to
19 read something or I read it inappropriately or I missed a
20 word or a sentence or something like that, so, um --

21 MR. GILLCRIST: Okay. Thank you, Your Honor.

22 THE COURT: -- I'll have you come on up, and, uh, we'll
23 go from there. You can bring in the ladies --

24 MS. ZOIS: Your Honor, I'm just gonna' move the board, I
25 don't wanna' --

1 THE COURT: Yeah, yeah.

2 MS. ZOIS: -- (unclear - one word.)

3 THE COURT: And I'll, I'll tell them that this is what,
4 yeah, this is the plan.

5 MS. ZOIS: I'm just gonna' flip it around so --

6 THE COURT: Absolutely.

7 MS. ZOIS: -- it's not in their face.

8 THE COURT: That's fine.

9 (Unclear - Counsel speaking simultaneously off the
10 record.)

11 (Jury entered the courtroom.)

12 THE COURT: And good morning again, ladies and
13 gentlemen. The time has come for me to give my instructions
14 on the law which applies in this case. I will tell you what
15 we're going to do is I'm going to give my instructions and
16 then we are, because I'm anticipating that their ar (sic),
17 arguments going take a little time, we're gonna' go ahead and
18 give you a break, a lunch break so you're not sitting through
19 and trying to do that then come back closing arguments to go
20 from there so that you kinda' know where we are.

21 I will tell you you will get a copy of these
22 instructions to take back with you in, in writing so these
23 will go back.

24 The time has come for me to give you my
25 instructions with respect to the law, which is applicable in

1 this case. You must apply the law as I explain it to you.
2 However, any comments that I might make about the facts are
3 only to help you understand these instructions. And you are
4 not required to agree with anything I say about the facts.
5 It is your function and responsibility to decide the facts.
6 You must base your findings only upon the testimony, the
7 exhibits that have been received, any stipulations or
8 agreements of the parties, and the conclusions that you may
9 fairly draw from that evidence. The opening statements and
10 arguments of the lawyers are not evidence in this case. If
11 your memory of the evidence is different from any statement
12 that I might make during the course of these instructions or
13 that Counsel might make in argument you must rely on your own
14 memory.

15 During the course of this trial it has been my duty
16 to rule on a number of questions of law, such as objections
17 to the admissibility of evidence, the form of questions and
18 other legal points. You should not draw any conclusions from
19 these rulings either as to the merits of this case or as to
20 my views regarding any witness, party or the case itself. It
21 is the duty of the lawyer to make objections, which that
22 lawyer believes are proper. You should not be influenced by
23 the fact that these objections were made no matter how I may
24 have ruled on them. You must disregard any evidence which I
25 have ordered stricken.

1 You are the sole judges of whether testimony should
2 be believed. In making this decision apply your own common
3 sense and everyday experiences. In determining whether a
4 witness should be believed you should carefully judge all of
5 the testimony and the evidence in the circumstances under
6 which each witness has testified. Among the factors you
7 should consider are the following. The witness' behavior on
8 the stand and way of testifying, the witness' opportunity to
9 see or hear the things about which testimony was given, the
10 accuracy of the witness' memory, did the witness have a
11 motive not to tell the truth? Does the witness have an
12 interest in the outcome of the case? Was the witness'
13 testimony consistent? Was the witness' testimony supported
14 or contradicted by other evidence, and whether, and the
15 extent to which, the witness' testimony in Court differed
16 from statements made by the witness on any previous occasion.
17 You need not believe any witness even though the testimony is
18 un-contradicted. You may believe all, part or none of the
19 testimony of any witness.

20 An expert is a witness who has special training or
21 experience in a given field. You should give expert
22 testimony the weight and value you believe it should have.
23 You are not required to accept any expert's opinion. You
24 should consider an expert's opinion together with all of the
25 other evidence.

1 You must consider and decide this case fairly and
2 impartially. All persons stand equal before the law and are
3 entitled to the same treatment under the law. You should not
4 be prejudiced for or against a person because of that's
5 person race, color, religion, political or social views,
6 wealth or poverty, you should not even consider such matters.
7 The same is true as to prejudice for or against in sympathy
8 for any party.

9 You should not conclude from any conduct or words
10 from mine that I favor one party or another or that I believe
11 or disbelieve the testimony of any witness. You, not I, are
12 the sole judges of the believability of witnesses and the
13 weight of the evidence. You must not be influenced in any
14 way by my conduct during the course of the trial.

15 A party who asserts a claim has the burden of
16 proving it by what we call a preponderance of the evidence,
17 and in this case the Plaintiff has made the claim against
18 Defendant. In order to prove something by a preponderance of
19 the evidence a party must prove that it is more likely so
20 than not so. In other words, a preponderance of the evidence
21 means such evidence, which, when considered and compared with
22 the evidence opposed to it has a more convincing force and
23 produces in your minds a belief that it is more likely true
24 than not true. In determining whether a party has met the
25 burden of proof you should consider the quality of all of the

1 evidence, regardless of who called the witness or produced
2 the exhibit, and regardless of the number of witnesses, which
3 one party or another may have produced. If you believe the
4 evidence is evenly balanced on an issue then your finding on
5 that issue must be against the party who has the burden of
6 proving it.

7 There are two types of evidence, direct and
8 circumstantial. Direct evidence is, for example, testimony
9 of a person reporting firsthand knowledge of a matter, such
10 as the testimony of an eyewitness to an occurrence.
11 Circumstantial evidence is indirect and is proof of a chain
12 and facts and circumstances that point to the existence of a
13 certain fact. For example, if a witness testifies that he
14 saw a deer in the field that is direct evidence that there
15 was a deer in the field. If a witness testifies that he saw
16 deer prints in the snow in the field that is direct evidence
17 that there were deer prints in the snow and circumstantial
18 evidence that there was at least one deer in the st (sic), in
19 the field. The law makes no distinction between the weight
20 to be given to either type of evidence. No greater degree of
21 certainty is required of circumstantial evidence than of
22 direct evidence. In reaching a verdict you should weigh all
23 of the evidence presented, whether direct or circumstantial.

24 In this case it will be your duty to return your
25 verdict in the form of written answers to written questions,

1 which the Court will submit to you. And I have those
2 prepared. We'll go over those at, at a later time. Each
3 answer is to be written in the space provided after each
4 question. Before making each answer all of you must agree
5 upon it. It is your duty to answer these questions in
6 accordance with the evidence in this case. And in order to
7 reach a verdict in this case all of you, each of you must
8 agree upon it, your verdict must be unanimous.

9 Now, in the event that you find for the Plaintiff
10 on the issue of liability, and we'll go over the liability
11 instructions later, than you will go on, must go on and
12 consider the question of damages. It will be your duty to
13 determine what, if any, award will fairly compensate the
14 Plaintiff for the losses. The burden is on the Plaintiff to
15 prove by the preponderance of the evidence each item of
16 damage claimed to be caused by the Defendant. In considering
17 the items of damage you must keep in mind that your reward
18 must adequately and fairly compensate the Plaintiff, but an
19 award should not be based on guess work.

20 In an action for damages in a personal injury case
21 you shall consider the following. The personal injuries
22 sustained and their extent and duration. The effect such
23 injuries have on the overall physical and mental health and
24 wellbeing of the Plaintiff. The physical pain and mental
25 anguish suffered in the past, and with which reasonable

1 probability may be expected to be experienced in the future.
2 The medical and other expenses reasonably and necessarily
3 incurred in the past, and with which reasonable probability
4 may be expected in the future. The loss of earnings in the
5 past.

6 In awarding damages in this case you must itemize
7 your verdict or reward to show the amount intended for past
8 medical expenses, the medical expenses reasonably probable to
9 be incurred in the future, the lost (sic) of earnings
10 incurred in the past and the non-economic damages sustained
11 in the past, and reasonably probable to be sustained in the
12 future. All damages which you may find for pain, suffering,
13 inconvenience, physical impairment or other non-(unclear -
14 one word) injury are non-economic damages. And I will tell
15 you the verdict sheet is broken out in those categories.

16 The effect that an injury might have upon a
17 particular person depends upon the susceptibility of the
18 Plaintiff. In other words, the fact that an injury would
19 have been less serious if inflicted upon another person
20 should not affect the amount of damages to which the
21 Plaintiff may be entitled.

22 A person who had a particular condition before the
23 accident may be awarded damages for the aggravation or
24 worsening of that condition. A plaintiff has a duty to use
25 reasonable efforts to reduce the damages, but is not required

1 to accept the risk of additional loss or injury in these
2 efforts.

3 In arriving at the amount of damages to be awarded
4 for past, um, medical expenses and past loss of earnings you
5 may not reduce the amount of your reward because you believe
6 or infer that the Plaintiff has received or will received
7 reimburse for or payment of proven medical expenses or lost
8 earnings from persons or entities other than the Defendant.
9 Such as, for example, sick leave paid for by the Plaintiff's
10 employer or medical expenses paid by the Plaintiff's health
11 insurer.

12 Any compensatory damages awarded to the Plaintiff
13 are not income within the meaning of Federal and Maryland
14 income tax laws, and the Plaintiff will not owe or have to
15 pay any income tax on the amount awarded as damages.
16 Therefore, you should not add an amount to any award to
17 compensate for anticipated taxes.

18 According to life expectancy tables, the life
19 expectancy of a person 45-years-of age is 37 years. This
20 figure is to assist you in determining the probable life
21 expectancy of the Plaintiff as it bears on future losses and
22 damages. It is not conclusive proof of life expectancy and
23 you are not bound by it. It is only an estimate based on
24 average experiences.

25 The driver of a motor vehicle must use reasonable

1 care. Reasonable care is that degree of caution and
2 attention what's (sic) a, which a person of ordinary skill and
3 judgment would use under similar circumstances. What
4 constitutes reasonable care depends upon the circumstances of
5 a particular case.

6 Negligence is doing something that a person using
7 reasonable care would not do or not doing something that a
8 person using reasonable care would do. Reasonable care means
9 that caution, attention or skill a reasonable person would
10 use under similar circumstances. A reasonable person changes
11 conduct according to the circumstances and the danger that is
12 known or would be appreciated by a reasonable person.
13 Therefore, if the foreseeable danger increases a reasonable
14 person acts more carefully.

15 The violation of a statute, which is a cause of the
16 Plaintiff's injuries or damages is evidence of negligence.
17 It is the law of this state that the driver of a motor
18 vehicle may not follow another vehicle more closely than is
19 reasonable and prudent having due regard for the speed of the
20 other vehicle and the traffic on and the condition of the
21 highway. And for a plaintiff to recover damages the
22 defendant's negligence must be a cause of the plaintiff's
23 injury. Each person whose negligent act is a cause of an
24 injury is responsible. And, Counsel, if you'd approach?

25 (Counsel approached the bench and the following

1 occurred:)

2 (Husher turned on.)

3 THE COURT: Other than what was previously noted prior
4 to the jury coming in any additional request from the
5 Plaintiff?

6 MS. ZOIS: No, Your Honor.

7 THE COURT: Defense?

8 MR. GILLCRIST: No, Your Honor.

9 MR. PORCARELLI: No, Your Honor.

10 THE COURT: Okay. Um, what I'd like to do is go over
11 the verdict sheet after closing if that's okay? Um, just
12 because I don't --

13 MR. GILLCRIST: Mm-hmm.

14 THE COURT: -- necessarily want them to have them and
15 have it back there before they go back to begin their
16 deliberation if that's okay with Counsel.

17 MR. PORCARELLI: That's fine.

18 THE COURT: Okay? Then we'll send them to lunch, we'll
19 ask them to be back like 20 after and we'll roll right into
20 it.

21 MR. BRATT: Okay, thank you, Your Honor.

22 MR. GILLCRIST: Thank you, Your Honor.

23 MS. ZOIS: Okay.

24 (Counsel returned to the trial tables and the following
25 occurred:)

1 (Husher turned off.)

2 THE COURT: Okay, ladies and gentlemen, um, we're gonna'
3 go ahead and take, take your lunch now so you get a chance to
4 get out of her rather than be stuck in here for a little
5 while. I'm gonna' ask you to be back downstairs by 20 after.
6 When you come back it's closing argument, and, uh, so we'll
7 see you about 20 after. Thank you.

8 (Jury excused from the courtroom.)

9 THE COURT: And, of course, you can leave everything
10 here. Okay? And I --

11 THE CLERK: (Unclear.)

12 THE COURT: Okay? All right.

13 MR. GILLCRIST: Thank you, Your Honor.

14 THE COURT: See you all in about 40 minutes.

15 MS. ZOIS: Thank you, Your Honor.

16 THE CLERK: All rise.

17 (Whereupon, from 11:39 o'clock, a.m. until 12:26
18 o'clock, p.m., a luncheon recess was taken.)

19 (Jury not present.)

20 THE CLERK: All rise.

21 THE COURT: And good afternoon, everyone, please be
22 seated.

23 MS. HOWARD: Afternoon, Your Honor.

24 MR. PORCARELLI: Good afternoon, Your Honor.

25 MR. GILLCRIST: Good afternoon, Your Honor.

1 THE COURT: I saw a note and I thought it was for today,
2 and it wasn't, it was from Friday. So, it made me a little
3 nervous. Um, the only issue that, uh, I understand before we
4 bring the ladies and gentlemen in is, um, either to allow
5 the, um, Plaintiff's Counsel to make mention of the fact
6 that, um, Ms. Exline-Hassler is not here because of the
7 impending birth of the grandchild. Um, I think, um, I don't
8 think, um, it's appropriate to present it in argument. Um, I
9 certainly think the jury heard that both from Ms. Exline-
10 Hassler as well as from her husband. And, hopefully, by the
11 time before, um, there's also weather issues for today, there
12 could be a number of reasons there. Um, so I don't think
13 it's appropriate to go ahead and mention it. So.

14 MS. ZOIS: It, could the Court be willing to just say as
15 you may notice Ms. Exline-Hassler's not here today. You may
16 recall that she was expecting her sixth grandchild, if she
17 can be with us she, or just something other than she's just
18 completely absent. Because I think that that's a glaring
19 issue that I don't necessarily need to address, I'm more than
20 happy to allow the Court to address it, but for a party not
21 to be here during closing could have, I mean, they could
22 speculate wildly if they don't recall that testimony as why
23 they have to be here, they had to come back, weather wasn't
24 an issue for them. So, I would, and however innocuously the
25 Court wanted to address it I'd be fine with, but the fact

1 that a party who they've had to sit through five days of
2 testimony on isn't present in the courtroom I think is
3 extremely prejudicial without some curative instruction from
4 the Court. As benign and as blandly the Court would like to
5 do it I'm totally fine with that. And I think when we talked
6 on Friday we brought this issue up, and it was my
7 understanding that somehow, some way that was going to be
8 addressed, so I would just ask for the Court to remind them
9 that that's where she is today. That, that's it.

10 THE COURT: I, what I, what I would propose to say is
11 that, um, some individuals who've been here in, including a
12 possible party may not be here today, because as you know
13 we're running over and there were other things scheduled, and
14 that's not to be held against anyone.

15 MR. GILLCRIST: Thank you.

16 THE COURT: And just make it that --

17 MS. ZOIS: I would just nix it then --

18 THE COURT: -- innocuous.

19 MS. ZOIS: -- Your Honor --

20 MR. BRATT: Yeah, I'd rather (unclear - two words.)

21 MS. ZOIS: -- if that --

22 THE COURT: So.

23 MS. ZOIS: -- I would rather not have that at all.

24 THE COURT: So.

25 MS. ZOIS: If that's what Your Honor's tempted to do.

1 THE COURT: So.

2 MS. ZOIS: I would just let it alone and hope they
3 remember.

4 THE COURT: So. Well, again, there was, again, it's,
5 it's kind of --

6 MR. GILLCRIST: We're not going to make mention.

7 THE COURT: -- go, go either way, so. If you change
8 your mind let me know.

9 MS. ZOIS: Okay. Well, I wish I --

10 THE COURT: So.

11 MS. ZOIS: Okay, all right.

12 THE COURT: All right.

13 MS. ZOIS: I think that's Jackie's understanding of what
14 was going to happen today. So, that's part of why I'm so
15 upset about this is because --

16 THE COURT: I don't believe I was asked to rule on that,
17 because we didn't --

18 MS. ZOIS: You weren't, Your Honor.

19 THE COURT: -- know what was, what was going on. So,
20 we'll, we'll just --

21 MS. ZOIS: You were not asked to rule on that.

22 THE COURT: -- we'll just, we'll go from there. And,
23 like I said, if, if you want me to do that at some point
24 during close I will be delighted to do so. Okay? Bring 'em
25 on in. Oh, and the proposed verdict sheets I had a whole

1 stack of them I just wanna' know.

2 MS. ZOIS: I have it, Your Honor, mine's up there.

3 THE COURT: Okay, but I don't know where the rest of
4 them went.

5 MS. ZOIS: I think they were distributed.

6 MR. BRATT: Yeah, I have one.

7 MR. GILLCRIST: Oh, I'm sorry, Your Honor.

8 MR. PORCARELLI: I'm sorry.

9 MR. GILLCRIST: Yeah, we did get a whole bunch of 'em I

10 --

11 THE COURT: Yeah, yeah, exact, I just --

12 MR. GILLCRIST: You need all of 'em back?

13 THE COURT: Um, everybody keep on. I just want to count
14 and make sure that I have enough to give 'em at the right
15 time so I --

16 MR. BRATT: But I may need that more later if she
17 doesn't need it back.

18 THE COURT: No, you can keep it -- exactly, I just --

19 MR. PORCARELLI: I'm sorry, I wrote on my copy.

20 THE COURT: No, no, no, that's fine, two, three, four,
21 five, six, seven, eight we're good, because we have one for
22 all the, one for each juror and one for the clerk, so we're
23 good. Um, I'm assuming that do, does, do you all want the
24 alternate to sit or not?

25 MR. BRATT: Not.

1 THE COURT: If there's no agreement then I'll have to
2 excuse the alternate, but that would be done at the
3 conclusion when they're gettin' ready to go.

4 MR. GILLCRIST: Thank you, Your Honor.

5 THE COURT: Okay?

6 (Jury entered the courtroom.)

7 THE COURT: Note all our jurors are present. We are now
8 going to proceed with closing argument. Ms. Zois.

9 CLOSING ARGUMENTS

10 MS. ZOIS: Thank you. May it please the Court. Good
11 afternoon, everybody. Um, day five, right? So, I want to
12 thank everybody for coming back and making it through the
13 weekend, and I've gotta' say I can't remember seeing a more
14 attentive jury. I appreciate that you all are taking notes,
15 you're paying attention even, you know, two and a half hours
16 into Dr. McGrail's video where I was annoying myself. So, I
17 just wanna' say that I really appreciate the attentiveness
18 that you have given to this case. Uh, you know, you're not
19 here by accident, you know, it's a little bit of fate, um,
20 but it's also because you're members of this community. Uh,
21 the way that the voter registration is and the DMV works is
22 that the reason that you're on this jury is because you're
23 from this county. So, the decisions that you make in this
24 case impact your community, and what happens in this
25 courthouse, not just in this courtroom, not just with this

1 one case, is really important. Um, this is how our civil
2 justice system works, uh, you all decide the case, you're the
3 members of the community that decide how the facts apply to
4 the Maryland law in this case, and that's a huge
5 responsibility. So, when you go back into your
6 deliberations, and I'm not sure if any of you have sat on a
7 jury before, but basically it's a discussion, it's not, okay,
8 what do you do here, what do you do there? You're gonna'
9 have two jobs. One of your jobs is going to be to complete
10 this verdict sheet. Her Honor will be providing this to you,
11 and you're gonna' need to answer the questions that are on
12 this verdict sheet, and they address the issues in this case.

13 The other thing that you're gonna' have to do is
14 talk amongst yourselves and have an opinion and be able to
15 explain to one another why it is you feel the way you do
16 about a particher (sic), particular issue. So, it is a
17 deliberation, it is a, a collection of, uh, experiences, a
18 collection of common sense, and everybody brings something
19 different to the table. So, when you go back to deliberate
20 you need to be prepared to tell one another why it is you
21 feel the way you do about certain things. So, my role here
22 in closing argument is to give you the information as I see
23 it and how it's played out before you in this courtroom. So,
24 although, and I don't wanna' spend, I don't wanna' skip over
25 parts, because I, I don't know what you think is important,

1 what you don't think is important, so, I'm going to go
2 through everything. Um, so, I don't want you to think I'm
3 leaving anything out, and I hope I'm not spending too much
4 time in any one particular area, but I really do have to make
5 sure that I cover everything.

6 And the first thing that I'm gonna' start with is
7 the first question that you all are going to have on your
8 verdict sheet. And the first question that you're gonna'
9 have is do you find that the Defendant, Kirsten Sapp, was
10 negligent in the accident of June 26, 2009? And, Ms. Sapp,
11 following this crash went into court, she went before a
12 judge, she raised her hand, she swore to tell the dru (sic),
13 the truth, and she told the judge, "The vehicle in front of
14 me was completely stopped. I slammed on my brakes, it all
15 happened so fast. I slid into the back of her." That was
16 her testimony in District Court. Frankly, it's her testimony
17 here today as well. I haven't heard her say anything
18 differently than that. I think she admits that the vehicle
19 in front of her was completely stopped. I think she admits
20 that she has hydroplaned and skid into the vehicle in front
21 of her.

22 Now, you've heard something, uh, you've heard a
23 couple of, I guess, allegations in, um, opening that, uh, you
24 were going to hear testimony that Ms. Exline-Hassler abruptly
25 stopped her vehicle. One of the questions you're not going

1 to have to address in this case is whether or not Jacqueline
2 Exline-Hassler operated her vehicle in a reasonable manner.
3 The question that will be before you is whether or not the
4 Defendant operated her vehicle in a reasonable manner.

5 So, I just wanna' walk through with you some of the
6 facts that have been presented in the case, and one of the
7 things I wanna' remind you, I think one of the first things I
8 said to you in opening was all drivers have a duty to pay
9 attention to the traffic in front of them. All drivers in
10 the state of Maryland have to pay attention to the traffic in
11 front of them. And the testimony that you've heard is that a
12 half a mile up the road there was some other incident that
13 occurred, and that there was a backup in the middle of rush
14 hour on Friday westbound on 70, so, you gotta' pay attention.
15 And the testimony was that -- and I'm not an artist, but I
16 try. Um, the testimony essentially was that the left lane
17 was stopped, the right lane was moving, the left lane was
18 moving, and Ms. Exline-Hassler brought her vehicle to a stop,
19 she down-shifted, she saw that the traffic in front of her
20 was stopped, she down-shifted, she brought her vehicle to a
21 stop, she brought it to a stop on an angle, she concedes
22 that, she says yes, I was at an angle, because she wanted to
23 see the traffic up ahead. And, Counsel, I believe, the
24 Defense is going to suggest, oh, well, she came to a sudden
25 stop, that's why it's on the angle, because she had to slam

1 on her brakes, she came to a sudden stop.

2 Well, does that make sense if, first of all, if
3 that's what she was doing there's a median over here, there's
4 a, there's an area over here. I mean, wouldn't she have gone
5 even further, or why in the world wouldn't she have just gone
6 into the clear lane. She likes the left lane, does she
7 wanna' stay in the left lane, she stayed in the left lane.
8 Not only that, she was stopped in the left lane long enough
9 for another car to make a safe lane change, car number one,
10 another car, want car number two to make a safe lane change,
11 car number three, and another car to make a safe lane change.
12 So, three other cars, she stopped long enough for three other
13 cars to be able to go into the open lane, which is the right
14 hand lane before the crash occurred.

15 Now, I also believe the Defense is going to get up
16 and say it was crazy, there were cars everywhere, everybody
17 was spinning out of control, there was a big accident,
18 there's all kinds of stuff going on. Well, not really,
19 because there's an accident up here, this lane's blocked,
20 these two lanes are open, three cars were able to get past
21 her and that lane of traffic just fine without hitting
22 anybody, there was no other car crashes, and then what
23 happened? Ms. Sapp is coming along in this lane, she sees
24 the brake lights and a stopped car, she hits her brakes,
25 hydroplanes, slams into the rear of her car then what

1 happens? The tractor trailer. That's a big vehicle, takes a
2 long time to stop one of those. They have less stopping
3 distance than a regular car will. Thank God that tractor
4 trailer was paying attention. That tractor trailer had to
5 avoid her vehicle. She spun, she hit the rear of this
6 vehicle, spun out into this lane and the tractor trailer,
7 thank goodness, was paying attention, did what he had to do,
8 brought his vehicle to a stop, not without a little bit of a
9 fuss, I mean, I think the, the, he was trying not to
10 jackknife, according to Jackie, and she saw the trailer slide
11 by, but he was paying attention enough to be able to pull his
12 tractor trailer to a safe stop. But Ms. Sapp couldn't. So,
13 the reason it was chaotic was because of her accident. There
14 wasn't any other crashes in this area before that that's why
15 it got chaotic.

16 Now, not only that, the trooper came in and talked
17 to you and said I put her at fault, I gave her a ticket, I
18 didn't find the other driver at fault. He came in here and
19 told you that. Now, he, in his report, put there was lots of
20 people there at the scene. He said I don't really know, I
21 can't tell you who told me what, but nothing else was in
22 that, uh, or from his testimony that it was this crazy, wild
23 scene that all these cars were spinning out of control and
24 nobody can control anything. The only person that couldn't
25 control their vehicle on the date of the crash was the one

1 that wasn't paying attention and didn't even know the left
2 lane came to a complete stop, and that was Ms. Sapp.

3 Now, with respect to the burden of proof on that
4 issue, we have to -- and the judge gave, went over some of
5 the instructions -- we have to convince you that we're more
6 right than wrong on that. We're more right than wrong. It's
7 more likely than not that the crash happened because she
8 wasn't paying full time and attention to the vehicles in
9 front of her. She didn't know that all these cars were at a
10 stop, she didn't realize traffic was coming to a stop. She
11 didn't see all the other brake lights in that lane. She
12 didn't see that half a mile down the road there was a crash.
13 So, on that issue we would ask that you come back and find
14 that, yes, she was negligent on that day.

15 Now, let me be clear, she's a nice girl, I don't
16 think anybody, Jackie thinks she's a nice girl, she's a nice
17 young lady. I don't think that we're taking the position
18 here at all that she did anything on purpose. If she had to
19 do it all over again I'm sure this would never happen, but
20 the fact remains that she caused a crash and she's admitted
21 that she pled guilty and that the other driver was completely
22 stopped, but that doesn't make her a bad person. We're not
23 saying she's a bad person, we're saying that she caused the
24 crash.

25 Now, with respect to before June 26th, 2009. I'm

1 moving on from liability, and I'm moving on to talking about
2 Ms. Jacqueline Exline-Hassler's treatment before the date of
3 this crash. And I feel like we spent four days last week
4 talking about four dates of treatment and spent so much time
5 on that I'm gonna', not gonna' spend a lot of time on each
6 day, um, I'd like to get to the facts of this case and how
7 this case has impacted Jackie, but I do have to go over
8 these. So, what I've done is (To law clerk) Ms. Samantha, if
9 you could take me to the first Urgent Care at Robinhood
10 (sic).

11 MALE VOICE: Robinwood.

12 MS. ZOIS: Robinwood, what did I say Robinhood?

13 MALE VOICE: Yeah.

14 MS. ZOIS: Robinwood not Robinhood. Um, thank you.

15 Okay, so, what I've done, when you look at one of these I've
16 given you a number at the bottom and that number's for you.
17 So, if you wanna' write the date down and that number that
18 corresponds with this packet so you're gonna' have this back
19 there to look at. You're gonna' have all these reports that
20 we've been going over for the last five days at your leisure
21 and your pleasure. So, if you wanna' take a note of what
22 pages --

23 MR. GILLCRIST: Objection, Your Honor, to requesting
24 that the jury do a specific thing, note taking specifically.

25 MS. ZOIS: If they want to.

1 THE COURT: O (sic), they can, overruled.

2 MR. GILLCRIST: Thank you, Your Honor.

3 MS. ZOIS: If you want to you can, but that's what that
4 number is there for. So, on page 73, and you're gonna' say
5 well, gosh, we didn't even talk about 2003, why are you
6 bringing 2003 up? There's a reason. So, she goes into
7 Urgent Care at Robinwood, not Robinhood, on November 19th of
8 2003 and she's got a cough, and she tells, they know she's
9 allergic to penicillin, and a pretty uneventful visit. But
10 she's using the Urgent Care as her PCP. She's using the
11 Urgent Care as her primary care physician essentially,
12 because she doesn't have one. So, when she has an issue back
13 in the day that's where she would go, and that's part of the
14 reason why I'm showing you this, but she was also -- all
15 right, so, way back here, so back in 2003 she's at Urgent
16 Care for a cough. All right. She goes back in. The next
17 time she goes in is in February of 2007. Here's why I'm
18 pointing this out. (Tap) Woop, hello. The date February
19 13th, 2007. Previous admit date 11/19/2003. Here's why this
20 is important. We know that from way back in 2003 up until
21 this date here she's getting no medical treatment. She's not
22 in there for chronic low back pain, she's not in there for
23 any reason at all. So, when the judge is giving you the
24 instructions on the circumstantial evidence and the
25 footprints in the snow and the deer and you can prove things

1 by the absence of things that's what this is. So, from 2003
2 until 2007 all during 2005, all during 2006, all the way up
3 through this date is 2007 there's no visits, there's no
4 coughs, there's no lower back pain, there's nothing. She's
5 not getting any treatment anywhere, but yet the Defense will
6 have you believe that she was so horribly and chronically
7 injured in this 2005 car crash, because that's their defense,
8 let's be clear. Their claim, the defense of this case, is
9 that since June of 2005 she has had chronic and unrelenting
10 back pain. All right.

11 So, now, 2007, this is 20 months after June of
12 2005. Now, with also -- and this is page 78 -- what's also
13 interesting about this date is that nothing but a car crash
14 here, not taking any medication, no Advil, no nothing. She
15 states that she feels fine otherwise from the itching. Oh,
16 this is for a rash. So, her date of service in 2007 is for a
17 rash. The other reason I'm pointing these two out to you is
18 is not like she was one of those people that doesn't want to
19 go to the doctor. I mean, she goes for a cough, she goes for
20 a rash, you think she's not going if she's got chronic low
21 back pain? So, that's on page 79 if you want to take a look
22 at that.

23 Page 80, um, she was re (sic), she is being told
24 basically you need to find a primary care doctor. So, go get
25 yourself a primary care doctor, so that's back in 2007. So,

1 we know she does not have a primary care doctor in 2007.
2 She's using the, um, Robinwood Urgent Care.

3 All right, so this date Feb (sic), uh, January 8th,
4 2008. This is the first day where she has the fall and she
5 goes into Urgent Care. It's not the ER, she goes into the
6 Urgent Care Robinwood. And these are pages 85 to 95. Now,
7 she's not telling you she didn't hurt her back, she's saying
8 I went in, I hurt my back, I went to the Urgent Care, she
9 also had just vomiting and fever, but we're, regardless. So,
10 she's in there for back pain, and the reason I point this out
11 to you again, and this is on page 85 is that there's a gap
12 from February 13th, 2007, that's the rash that we just talked
13 about, and through January 8th, 2008, so through here, so
14 through all the time there's no complaint of any low back
15 pain, she's not going into the doctor for low back pain. So,
16 there's nothing going on here until there.

17 So, in January of 2008 she has the back pain, she
18 goes in, and this is --

19 THE COURT: (Sneeze.)

20 MS. ZOIS: -- (To the court) God bless you, Your Honor.
21 (To the jury) All right, I'm gonna', I'm not even sure where
22 to start with this report, but I'm gonna' start at the top.
23 The doctor lost the dictation. That happens. Um, they don't
24 do it right after they see someone. Um, Dr. McGrail didn't
25 do his dictation until a month later. Just to back up for a

1 second, Dr. McGrail sees her on November 1st. He does his
2 dictation on December the 2nd. So, it doesn't always happen
3 immediately. Doctors don't always take notes. But in this
4 case the Doctor lost the dictation, he's like, oh, jeez,
5 it's, you know, I gotta' do this to the best of my ability
6 and memory. So, this is him going back saying here's how I
7 remember this happening. Um, she fell down a flight of
8 stairs, she can't move well, um, past medical history,
9 nothing about, gee, I, by the way I also have had chronic
10 back pain since back in 2005. This is funny to me, not funny
11 that she had it, but funny how this was described.

12 So, she has trace to one plus tenderness across her
13 lumbar spine. Dr. McGrail told you, oh, this is really
14 serious, this is, this is, this is big deal, I mean, if she's
15 got spasm, that's a, that's, that's when your body, you know,
16 is, it tries to protect itself and it wrenches your back, and
17 it tries to keep you spine immobilized, and it's a really big
18 deal, and Dr. London came in and went trace (unclear - one
19 word) that's a, I, a simple teeny, tiny, it's a, just a
20 little spasm, and I'm like sitting there going I (unclear -
21 one word) agree with his testimony, okay. So, that's why I
22 put that in there. But, so, she has, she injured her back,
23 she's not running from that, she had some tenderness, she had
24 a little bit of spasm. She went in and she got some
25 treatment, and she got a prescription.

1 If you do the math on this you'll see that this
2 prescription is about five days, if you drag it out, and
3 about two or three days if you take it as directed. So,
4 we're not talking about any like long, ongoing, medical,
5 narcotic situation. We're talking about she got a couple of
6 days of pain meds for a problem with her back.

7 So, now, after this visit, the doctors say okay,
8 well, you know what, you need to, she still needs to have her
9 primary care doctor, and they say to follow up if she's still
10 having issues, she is. She also needs a primary care doctor
11 so she calls Robinwood and makes an appointment, and next
12 thing you know we can't see you that day, you gotta' come in
13 a different day, that's in the records. So, she says okay,
14 I'll reschedule the appointment. She's not like I gotta' get
15 in somewhere, this is just driving me, I have to get in, it's
16 an urgent situation. It's not. She is following up with
17 what they recommended, she's getting in to see her primary
18 care doctor in a timely way. And she goes in to see this
19 primary care doctor on March 26th, 2008. Now, I like their
20 exhibit on this better than mine so I'm gonna' use it. But
21 back in March of 2008 she goes in to see Stephanie Brown for
22 the very first time and the only time. She's never seen
23 Stephanie Brown, saw her on this one visit and since then
24 she's seen Heather Hall, which is the Publish America that's
25 there, the physician's assistant.

1 And what's, the problem with this report is not so
2 much what's in it, it's what isn't in it. And what isn't in
3 it is the fall. Where's the mention of the fall? That's why
4 she's there. She's there for the lower back pain from the
5 fall. I know we bored you to tears with this, and I'm gonna'
6 do it one more time. They got her date of birth wrong. They
7 don't take a prior medical history from her at all. They
8 don't put down that she has an allergy to penicillin, and
9 that's not just a penic (sic), okay, that's something that is
10 life threatening. If you get a call from the emergency room
11 and they say, look, uh, yeah, we have your patient here she's
12 unconscious and we don't know what to do with her, and they
13 say do you have, does she have any allergies? Well, no, she
14 doesn't, but if they give her penicillin she's gonna' go in
15 to anaphylactic shock and possibly die. So, one of the
16 things that they didn't get right in this is they didn't get
17 the penicillin.

18 So, moving on from that coup (sic), couple more
19 things. I mean, there are so many problems with this report,
20 um, but the biggest one -- you (unclear - one word) back?
21 The biggest one is what primary care doctor worth their
22 weight and salt is gonna' have a new patient come in and says
23 I've been taking Advil for the last three years and I've had
24 chronic back pain for three years and that doctor's not
25 gonna' order an x-ray, they're not gonna' order an MRI,

1 they're not gonna' give an ortho referral, they're not gonna'
2 give a neuro referral, they're gonna' say, you know what, you
3 should probably go to one PT visit and see if you can't get
4 this sorted out. That's not what a primary care doctor's
5 gonna' say with someone coming in saying I've had three years
6 of back pain that has gone untreated for three years. It's
7 just not gonna' happen. They didn't examine her back.
8 You're there for a back problem, no exam of the back. And
9 I'm not sure about this, but who took her chief complaint
10 from her anyway? Was it the nursing staff? Was it the
11 receptionist at the front desk, was it, who's ancillary
12 personnel? I don't know.

13 Um, deeper in here, return for a general physical
14 exam. She didn't go, she didn't go back for the general
15 physical exam, she didn't need to. Um, they ordered labs,
16 there's no labs. So, I'm gonna' move off of that, but the
17 biggest problem with that report is that it lacks
18 credibility, it lacks validity, and you have to look at the
19 report on it's whole, not just what it has in it, but the
20 glaring things in it that are missing.

21 All right, April 28th, 2008. This is her first PT
22 visit. It bothers her when she's sitting, it goes away when
23 she gets up. April 2008, you know, right before over here
24 off of this horrible 2005 car crash she's riding her
25 motorcycle, she's enjoying her gardening. She is there

1 because she fell down the stairs. What was your back like
2 before this incident? Well, I was independent without any
3 lower back pain interference, she was getting along just
4 fine.

5 So, on to the next slide, what are you gonna', what
6 are you gonna' do about it? We're gonna' teach you how to
7 sit right, because when you have problems sitting in a chair
8 we're gonna' teach you about how to have proper postural
9 alignment so that you don't have pain when you're sitting in
10 a chair. So that's what they ordered, and that's what they
11 did on May the 6th of 2008. May the 6th of 2008, I'm gonna'
12 blow this part up for you in a second, because on May 6th,
13 2008 pain zero out of 10. May 6th, 2008. Pain, zero. Has
14 had a couple of flair ups, but they have all been related to
15 sitting crooked in chairs. Patient advised of proper
16 alignment during sitting.

17 Next line, please. Zero (unclear - one word) pain.
18 Zero out of 10. So, this chronic back pain the Defense is
19 arguing is so chronic that on May the 6th of 2008 it was at a
20 zero. And it was so chronic that she never went back to
21 physical therapy. She actually learned how to sit, and that
22 was it, and she was discharged, and she was discharged on
23 paper. On April the 28th of 2008 there's a note that you'll
24 see that says minimal discomfort, patient never returned. So
25 she never went back. So, what we have to look at, because I

1 believe the defense of this case is again that she's had
2 these problems before the acc (sic), uh, crash, she's having
3 'em after, she's the same, is that time period. So, the time
4 period from the zero out of 10 pain and the date of that
5 crash. Now, the total medical expenses for those four visits
6 that, that she had for the fall, \$609. That's how much those
7 four visits cost for that fall, just to put things in
8 perspective.

9 So, in the beginning of the trial I said you have
10 to look at everything you can't, you can't take one piece of
11 paper and say this is all I want you to look at, I don't want
12 you to look at anything else, there's only, just focus on
13 here, (unclear - there words) MVA three years ago that's it,
14 just it, that's it. You can't do that. I mean, you have to
15 look at all the evidence on the totality of the
16 circumstances, you have to look at everything and what you've
17 seen from 2008 through 2009 is that she's had zero doctors'
18 visits for pain related to her back. She's had no MRI's, no
19 x-ray's, no neurological testing, no neurosurgeon visits, no
20 pain management, no injections in her back, no physical
21 therapy, no chiropractic treatment. She wasn't squirming in
22 her seat at work, she was riding her motorcycle, she was
23 picking her pumpkins, she was doing her work on her farm,
24 she's riding her tractors, she's taking her grandkids out on
25 the ATV's and she's doing everything that she loves to do and

1 did do before this crash.

2 Um, there's -- her supervisor came in and told you
3 she was a superstar before this crash. She came in and told
4 you that in 2008 she said, you know what, it's really hard to
5 get fours. I mean fours are just not something that you come
6 by easily. You really have to bust your butt and do above
7 and beyond the call of duty to get the fours. Jackie got the
8 fours. She busted her butt at work. This is in 2008 and I
9 think one of the Defense counsel's brought it up that this is
10 a hard year for everybody. This was a, a not a good year
11 economically and Jackie's in there goin' to town, gettin' the
12 fours, making it happen. And Jackie is very reliable and
13 dependable, requiring minimal follow up. Her position
14 requires that she be flexible and resourceful. It's a rare
15 week that Jackie doesn't work from home to ensure that
16 projects remain on schedule. She regularly takes the
17 initiative to complete research, verify processes and report
18 back to the benefits of the health plan. She uses the
19 internet and other resources to verify information. So she's
20 kicking butt in 2008 during this time that they're saying
21 that she has the horrible chronic back pain. Oh, no time off
22 in 2008, none, with this horrible chronic back problem that
23 they're saying that she has now that she had before this
24 crash.

25 So, during this time period we also know that she's

1 continuing to doing (sic) her gardening. She's continuing in
2 April of 2008 to motorcycle, she's continuing to do all the
3 things that she did before. (To Ms. Harveson) And we can
4 skip the next one, Ms. Sam, I think I already talked about
5 that, yeah, motorcycle, gardening we talked about that.

6 Now, I wasn't quite sure where to bring a stop in
7 my closing, so if it seems a little out of order it is,
8 'cause I just couldn't find a good place to put it, but after
9 this crash on July the 7th of 2009 her PA that she been seeing
10 at Robinwood was requested to fill out a form, and part of
11 the form that was requested that she fill out was tell us
12 about this crash. Tell us about what happened, what her
13 injuries are, whether or not she had anything like this
14 before. So, this is a form filled out from her primary care
15 facility about this crash. And what it says is back that
16 page from car crash, here's the date, "Has patient ever had
17 same or similar conditions?" Answer, "No." "Is condition
18 solely as a result of this accident?" Answer, "Yes." So,
19 whoever filled out this form and it's signed by Ms. Hall,
20 who's the person that Jackie told you she saw after the one
21 time seeing Stephanie Brown, filled this out and indicated
22 she hasn't had the same or similar condition. It has never
23 been like this before, and this is related to this crash.
24 Her primary care doctor facility has provided that
25 information.

1 Now, that is a piece of the evidence in the case,
2 and just like that report that said she was in chronic pain
3 for three years following a car crash, that's also a piece of
4 evidence that the doctors that have been hired by the Defense
5 should have considered.

6 So, additionally, I would just put these both up
7 here at the same time, so you can't pick, I can't pick this
8 one and say only look at this one, don't look at that one,
9 only look at this one, which is what they're asking you to
10 do, 'cause they're not taking all of the evidence in as a
11 whole, they're relying on this one sentence in this one
12 medical report that has zero other evidence surrounding it to
13 support it when Jackie herself has told you and has told them
14 I was not injured in that car crash. I was not injured in
15 that car crash. I didn't get any medical treatment, my back
16 didn't hurt, I went on with my life, it was a blip on the
17 screen, but because of that mistake in that report the
18 Defense is grabbing a hold of it like a dog with a bone,
19 they're not letting go, but you have to look at all the
20 evidence not just that one sentence.

21 Now, if you compare the 2008 evaluation to the 2009
22 evaluation after the crash, because she doesn't get evaluated
23 until the rest of beginning of 2010. So, all of 2009 goes by
24 no forms for Jackie, that's not happening anymore. And they
25 even -- this, this car crash made it into her evaluation at

1 work, and it says, "Jackie was seriously injured this
2 evaluation period and has had to take significant leave for
3 medical care. (Unclear - three words), but even though
4 through feeling bad she has continued to take on
5 responsibilities and somehow see them through. On more than
6 one occasion she has been told to take care of herself
7 first." So, you didn't see anything like that back when she
8 had this horrible chronic pain that they want you to think
9 she had back in 2008, she was kicking butt in 2008, and no
10 this car crash has caused her no fours, and it makes its way
11 into her evaluation, because her ability to get her job done
12 has been impacted and affected so much, and Sharon Hamilton,
13 I'm not going to rehash all of her testimony, but I think it
14 was clear, she's known the woman for years. They've worked
15 together for at least 15 years. Jackie's had this job for 18
16 years. Sharon hired her and put her in her position to take
17 over. She promoted her into her old spot. And this is a
18 lady that knew this lady and knew what she was like before,
19 and it made all the difference in the world that this got
20 into this evaluation and it's not in that evaluation.

21 So, again, when you're looking at all the evidence
22 you have to look at it, is it more likely than not with the
23 motorcycle riding, the gardening, Sharon Hamilton coming in
24 here and telling you what a superstar she was, is it more
25 likely than not that following this incident she was all

1 better, she wasn't having any back pain. She was doing
2 really well. And the evidence that the Defense is going to
3 show you is we've got these two pieces of papers that show
4 you that she filled these prescriptions, she filled 'em, she
5 filled 'em all. Guess what? Fillin' 'em doesn't mean you're
6 takin' 'em. And fillin' 'em doesn't mean your back hurts.
7 And she looked you square in the eye and she told you I did
8 not take 'em, I kept 'em, I did not have back pain. Based on
9 all the other evidence in this case and everything else you
10 know she was doing during that time period she's right.

11 Now, I'll jump to after June 26th of 2009. So, in
12 the beginning I stood up in opening and I said here's all the
13 things that we agree on, or at least here are the things that
14 I thought we agreed on, um, before Defense Counsel stood up
15 and one of the things I told you was I believe we all agree
16 that she was injured in the case. And one of the Defense
17 attorneys stood up and said no, no, no, no, no, no, no, we
18 don't agree to that, we never said that, no, no, no, no, no,
19 we didn't say that. Well, Dr. McGrail sure did when he
20 testified in front of you all. Dr. McGrail actually says,
21 and this is Mr. Porcarelli asking this question, "And correct
22 me if I'm wrong, but you're saying to a reasonable degree of
23 medical probability that she sustained some (sic), she
24 sustained some type of injury in this accident to her low
25 back?" Answer, "In, yes, in June, in June of 2009." He's

1 not saying she wasn't injured. Dr. London isn't saying she's
2 not injured. They're just saying she's not injured as bad as
3 she thinks she is, we, we know, we know better. She's
4 injured this much not this much. So, they're not disputing
5 that she's injured, they are agreeing she's injured.

6 And then I said another thing. I said, you know,
7 the crash was a significant crash we're not talking about a
8 bumper tap here. No, no, no, we're not agreeing that it's
9 significant this is, this isn't significant, and then, and
10 then what they did was they've, um, in one of the pictures
11 they want you to look at is this, why would they show you
12 this? This is the other side of the car. They want you to
13 look at this when you're considering whether or not this is a
14 significant crash. Well, that doesn't really tell you a
15 whole story does it? That doesn't tell you that there was
16 under carriage damage. That doesn't tell you that arms or
17 axels were broken. That doesn't tell you that the other tire
18 on the other side got ripped off. So, it is a significant
19 crash.

20 (To Ms. Harveson) Next slide please, Ms. Harveson.
21 (To the jury) Now, that doesn't -- if, from, I, I don't know
22 a lot about cars, I just don't, frankly. Um, that doesn't
23 look that bad, I mean, I don't know, I don't know what that's
24 gonna' cost to fix, but when you put it up on a jack and you
25 look at what happened underneath it the people that know that

1 doesn't exactly match with -- this is the severity of the
2 impact, because this is the nice looking side of the car,
3 it's not the underneath of it. So, this is what they want
4 you to look at, not the under carriage damage.

5 So -- I'm gonna' keep this up here, because I may
6 want to use it again. We all agree, and I'm pretty sure that
7 they haven't disputed this, she had annular tears 18 days
8 after this crash. So, this is what happened. She has the
9 annulus that surrounds the stuff in the middle, they were
10 torn, and the stuff's coming out. I don't think that's
11 disputed. I think everybody agrees that she has annular
12 tears and Dr. McGrail told you that in his, um, video that he
13 agrees that they're, and he agrees they showed up 18 days
14 after the crash, um, again I, you know, we take different
15 opinions of when they appeared.

16 But he also agrees, Dr. McGrail that is, that she's
17 in chronic pain. He agrees and concedes that point. Um, in
18 his deposition, and I, I'm gonna' spare you replaying any
19 part of that deposition, instead I'm gonna' read from the
20 transcript.

21 Question, "Now, we agree that she has chronic low
22 back pain, correct?" This is Dr. McGrail. Answer, "Yes."
23 "And you agree. . ." -- question -- ". . . in my
24 understanding is that you agree that the appropriate course
25 for her right now is to keep her following pain management,

1 is that correct?" Answer, "That's correct." Question, Dr.
2 McGrail again, "And if she was your patient you would
3 recommend that course, correct?" His answer, "I would."

4 So, we agree she's in chronic pain. We agree the
5 appropriate treatment for her to have right now is pain
6 management. Now, the bad news for all of us in our forties
7 is this, and Dr. McGrail agrees with this, most people in
8 their forties, unfortunately, have mild degenerative changes
9 in their back. Most people have that condition in their
10 back, as we sit here right now, but that doesn't mean it's
11 causing us problems. And, again, instead of playing a clip
12 from the video I'm gonna' read it to you.

13 "All right, now, as far as the degenerative changes
14 that I believe are the basis of your opinion of what you've
15 explained is what her ongoing problem is and what her problem
16 was in the first place, is that right?" "Yes." So,
17 basically, Dr. McGrail's saying her problem's the
18 degenerative changes.

19 "Now, most people in their forties have mild
20 degenerative changes in their spine, right?" "That's
21 correct." "And it wouldn't be unusual for you to see mild
22 degenerative changes in someone's spine who's in their
23 forties, is that correct?" "That would not be unusual."
24 "And most people have degenerative disc disease as they age,
25 is that right?" "They do." "And all of us in our forties

1 can have it now and have no symptoms at all, right?" "That's
2 correct, that's possible." "And would you agree that most
3 people aren't bothered by mild degenerative changes in their
4 spine, is that correct?" Answer, "Most people with mild
5 degenerative changes do just fine." Last question, "And on
6 7/18/2009 that's what was showing up on her MRI was mild
7 degenerative changes, correct?" "Correct." So, of the
8 changes that they're talking about that they're blaming all
9 of this chronic pain on was showing up on the MRI as mild
10 degenerative changes, excluding the annular tears that was
11 another finding.

12 "So, Doctor. . ." -- question --

13 MR. PORCARELLI: Page?

14 MS. ZOIS: -- ". . . your prominent . . ." --

15 MR. PORCARELLI: Page?

16 MS. ZOIS: 79. "Your prominent findings are her mild
17 degenerative changes, is that your testimony?" Answer,
18 "Yes." Question, "And in your report of prominent findings
19 you didn't even mention the tears, is that correct?" Answer,
20 "I don't think I did mention that."

21 Okay, so, the last thing I'm going to talk about
22 what we agree on is we agree she does not have permanent
23 nerve damage. She's neurologically normal. I don't know how
24 many times we go through this, but she is normal
25 neurologically. Normal. We're not claiming any permanent

1 nerve damage here, not, not in this case, that's not her
2 problem. Her problem isn't permanent nerve damage. Her
3 problem is permanent annular tears and a disc problem. So,
4 here's what I want you to think about, every time they get up
5 here in their closing and the Defense says folks, she's
6 normal neurologically, she had all these normal tests,
7 normal, normal, normal, normal, normal, normal, I want you
8 think about this case, okay? Because this side of this car
9 is normal, okay? So, she's normal like this car's normal.
10 This isn't what we're claiming, this isn't the part of her
11 body that we're claiming an injury to. She's not out of
12 pain. And you can have a normal neurological finding and
13 still be in chronic pain, and Dr. McGrail agrees with that,
14 too. So, every time they come up here and they're trying to
15 sell you that she's normal neurologically, we totally agree
16 with you, we totally agree with you, but that's not her
17 problem. Her problem is the permanent damage in her discs
18 with the annular tear.

19 Now, the other thing I want to point out, high
20 intensity zones. I went around, and round, and round with
21 Dr. McGrail towards the end of his deposition about high
22 intensity zones. The reason I do that is because that's how
23 they're re (sic), that's how annular tears are identified in
24 MRI's, they're identified as high intensity zones, okay,
25 consistent with annular tears. There's an annular tear,

1 there's an annular tear. So, when you hear high intensity
2 zone it's the same thing in saying that the tear's there even
3 though Dr. McGrail really didn't want to go there with me we
4 ended up getting to that point, um, when we looked at Dr.
5 Khanna's, uh, report together.

6 So, she also had a test done called a, um,
7 discogram or discography, and this, this is going back to
8 you. This will be on page 272. Um, this is a test where the
9 doctor actually puts needles in the areas of your back where
10 you're having a problem and they try to recreate the pain.
11 They try to say, well, is what she's telling us consistent
12 with what we can see happening? They go in, they stick a
13 needle in your back, they shoot dye into it, and they watch
14 where the dye goes, and they ask ya' how does that feel? So,
15 what happened when they did that test is that she had
16 concordant pain, which means it matches the area where she
17 has problems. Her pain was nine out of 10. And the other
18 thing that this test showed was that it wasn't just any old
19 annular tear, it was a grade five tear and a grade four tear.
20 And I want to remind you of some of Dr. McGrail's, too, when
21 I was asking him about annular tears, and he had to agree
22 with me because it is what it is. "If you tear an annulus it
23 can hurt, correct?" "Yes, ma'am."

24 MR. PORCARELLI: Page, please.

25 MS. ZOIS: Seventy-five. "Any tear of the annulus can

1 hurt, correct?" "Yes, it can." "And it doesn't even need to
2 be a big tear, any tear can hurt, is that right?" "Yes,
3 that's correct." So, even Dr. McGrail has to agree that torn
4 annul (sic), a torn, an annular tear has to hurt, even the
5 little ones, not, not even the grade fives and the grade
6 fours, I mean, those are awful, they're the worse ones you
7 can have, but even the little ones hurt. But that wasn't a
8 finding that made his (sic) way, made its way in his report
9 at all. He's talking about mild degenerative changes, which
10 is what all of us in our forties have.

11 Now, with respect to Dr. Khanna's report, I'm just
12 gonna' show you those for a minute, you're gonna' see it
13 again, but I think this really, uh, hopefully puts the nail
14 in the coffin on this issue, but on physical examination she
15 is neurologically intact, so just like the pretty side of the
16 car. However, this is the same day that Dr. Khanna says
17 she's failing non-operative management, and he's talking
18 about we discussed her procedure in detail it's the L4/L5,
19 L5/S1 fusion that we've talked about. So, if this doesn't
20 demonstrate how a person can be neurologically intact, yet
21 need a very severe and significant surgery, I'm not sure what
22 else to show you. But he also saw her and concedes it at the
23 referral of Stephen Sloan, which was her pain doctor, because
24 he was running out of options, and it was following her car
25 crash that she had.

1 All right, now let's talk about what we disagree
2 on. The defense of this case essentially is this, mm --
3 (brief pause) -- all these problems that she's having now,
4 all this that she went to following this crash, it's all
5 stuff that she had going on before. That's what they're,
6 that's what they're selling, that's what they're givin' ya'.
7 That's their defense in this case. They're saying that the
8 mild degenerative changes that she had back in July of 2009,
9 the one all of us in our forties have and walk around with no
10 problem, are what's causing all of the problems that she has
11 now, and it's causing her to need to stay in chronic pain
12 management with Dr. Sloan. And causing her to need to go
13 back to the doctor every 30 days to get refills on her pain
14 medication. That's what they're telling you. So, they're
15 saying this is exactly the same as this, 'cause the problems
16 that she had now go all the way back to back here in 2005,
17 and that's where it all started, that's where all of this
18 started. So, here's the problem with that, folks. The judge
19 read you a couple of instructions -- and I'm going wildly out
20 of order on you, sorry. The instructions that the judge read
21 to you, and I think Your Honor's going to be sending them
22 back to the, uh, jury is if a person has a pre-existing
23 condition that's made worse, that's compensable. Meaning, if
24 a person has something going on in their body that's made
25 worse by a crash those are damages that should be awarded to

1 the Plaintiff. Also, susceptibility. If a person has
2 something going on in their body that makes them more
3 susceptible to an injury and a crash causes those damages,
4 guess what? That's added, too. So, those two things right
5 there cut the Defense out at the knees. Because if they're
6 trying to say that she had all these pre-existing conditions
7 and these pre-existing conditions were aggravated in this
8 crash, well, gosh, when did that aggravation stop? When did
9 the aggravation end? It didn't.

10 And Dr. McGrail and Dr. London, although I think
11 one said eight weeks, one said 16 weeks, they can't come in
12 here and say, oh, well, you know, I think if we go, and I
13 think John had it when you were hearing his cross examining
14 during the morning, that's not right, but they, they, where
15 does it stop? Where does the aggravation end and her going
16 back to where she was before begin? It never happened. So,
17 read those two questions over, uh, instructions closely when
18 you get back there.

19 Now, you're heard from a lot of doctors, you've
20 heard from two professional witnesses and two treating
21 doctors. I'm going to talk about the professional witnesses
22 for a minute. Um, but I'm not going to talk long about Dr.
23 London, because, first of all, Dr. London's a neurologist,
24 we're not claiming any nerve damage in this case, no nerve
25 damage. He's a neurologist. And, worse than that, I think

1 it was John's last (unclear - one word), Mr. Bratt's last
2 question yester (sic), uh, when he was on the stand is, "So,
3 out of the 2,000 patients that you treat and that you see and
4 that you provide medical care for, how many of those have
5 annular tears?" His answer, "One or two. One or two." This
6 is the expert that they're bringing you in this case. They
7 brought a guy who's a neurologist when there's no
8 neurological claim that's being made who has one or two
9 patients out of 2,000 patient practice. This is the guy that
10 they're bringing to you to talk about annular tears, really?
11 So, I'm not going to spend a lot of time on what Dr. London
12 said.

13 Now, as far as Dr. McGrail goes, he's a
14 neurosurgeon, he's, uh, got a subspecialty in brain surgery,
15 he's a smart, smart, smart guy, um, brain surgeon, literally.
16 Um, very well accredited guy, he's a brain surgeon, he's a
17 spinal surgeon. Um, I'm sure he's a wonderful treating
18 doctor. Um, but he's not a treating doctor in this case.
19 He's a professional witness in this case. And because he's a
20 professional witness in this case you have to take his
21 testimony into consideration in looking at that. So, what
22 he's telling you, his ultimate opinion in this case is that
23 her mild degenerative changes, all of us in our forties have,
24 are what's causing all of the problems after the crash. And
25 this annular tear is, you know, not a big deal, not a big

1 deal. There's such a non-issue they never even made it into
2 his report on this case. Not at issue, as far as his
3 ultimate opinions go. He's ignoring the annular tears in
4 their entirety. It's a non-event for him, it's not a big
5 deal.

6 Um, you know what I'm wondering, where's the guy
7 that knows about annular tears for the defense? Where's that
8 guy? Where's their pain management doctor? Where's the pain
9 management doctor that's gonna' come in and say annular tears
10 aren't that big of a deal, you know, that's not, not, not a
11 terrible thing, I mean, they're just, you know, something
12 that happens. Where's the pain management doctor that's
13 gonna' come in and talk to you about how to do a discogram,
14 because that happened. Where's the pain management doctor
15 that's gonna' come in and tell you how to do a disc
16 decompression or a nerve burning procedure, or a (sic)
17 epidural, or a discTRODE procedure, or a disc -- where's that
18 guy? Where's, where's that professional witness? They
19 didn't bring you one, they didn't bring you that guy or girl,
20 they didn't bring you the person that could come in here and
21 tell you about annular tears. They brought you a
22 neurologist, which really doesn't apply in this case. And
23 the neurosurgeon who, he could do the spinal surgery, I mean,
24 he could do that. He told us what it would cost at his
25 hospital, \$125,000 if he did it. But where's the pain

1 management guy?

2 Well, you've heard from our witnesses in this case,
3 and our witnesses in this case are not professional
4 witnesses, they are treating doctors. They are Jackie's
5 treating doctors. And what they have told you is this -- and
6 if you can pull out the Dallas scale. Dr. McGrail doesn't
7 even know what this is, he's never heard of a Dallas scale
8 before. We know more than he does now. So, the Dallas scale
9 is how you grade annular tears, and it's what the pain
10 management guys look at and gals. And what Jackie had was
11 she had a grade four annular tear and a grade five annular
12 tear, and these are the worse two types of tears that you can
13 have. And I just want to take a second and remind you, um,
14 of what Dr. Sloan said about annular tears themselves, and
15 I'm, I'll start off by saying when you have a tear like that
16 it only gets worse from there. A tear can actually add extra
17 nerves, it gets extra sensitive, and it actually gets worse,
18 not better. So, I'm gonna' let Dr. Sloan tell you again --
19 or not. Do we have a volume problem? Technology's wonderful
20 when it works, right?

21 (Videotape playing.)

22 A (Audio begins mid-sentence) . . .

23 (unclear - one word) to the disc, and connect --

24 MS. ZOIS: (To Ms. Haverson) Can you hook it
25 up for me, Sam?

1 A -- you have, you have nerve fibers that
2 go into the disc and convey sensations in the
3 disc, and so it's been shown that in patients who
4 have, um, discogenic pain there can be an upgrade
5 in these, in these receptors.

6 Q They become more sensitive?

7 A They become more sensitized, and
8 there's also an upgrade in the number of them in
9 the annulus (unclear - one word.)

10 Q So, you actually develop more?

11 A You can, you can, you can develop
12 increased back pain from this, from these
13 receptors increasing.

14 (Videotape stopped playing.)

15 MS. ZOIS: And some other information on an annular tear
16 that I just wanna' rind (sic), remind you of.

17 (Videotape being played.)

18 Q Annular tissue that has been torn and
19 allows for liquid to escape has a poorer capacity
20 of healing, do you agree with that?

21 A If a tear's large enough then yes.

22 Q Scar tissue may heal, but the leaks
23 leave the disc highly susceptible to re-tearing,
24 do you agree with that?

25 A Yes.

1 Q Herniated discs have the capacity to
2 resolve with time, but annular tears continue to
3 produce symptoms indefinitely, do you agree with
4 that?

5 A In large tears that, that is the case,
6 yes.

7 Q And the largest tears are the fives and
8 the fours?

9 A That's correct.

10 Q Annular tears are usually produced by
11 an injury or trauma?

12 A Most likely yes.

13 (Videotape stopped playing.)

14 MS. ZOIS: Okay, that's the guy on annular tears. They
15 don't have that guy (unclear - one word) up here. Now, with
16 respect to Dr. Naff, he is a neurosurgeon, he is a teacher at
17 Johns Hopkins, his credentials are glowing wonderfully, he's
18 the top one percent of all doctors, according to U.S. News
19 and World Report, and one of the things I want to point out
20 to you is if you look at the way Dr. Naff testified, and you
21 look at it against the way Dr. McGrail testified, and you
22 take into consideration Her Honor's, um, instructions on how
23 did they react, did they appear to have a motive, how did
24 they appear on the stand, and all of those things, Dr. Naff
25 was very yes, no, yes, okay, right. Dr. McGrail and I it was

1 like we were at each other, I mean, we were just tearing each
2 other apart. I mean, it, I had to listen to it for two and a
3 half hours and I actually started to annoy myself because of
4 the way the questioning was going. And you can see how
5 defensive Dr. McGrail was, I mean, he was, you know, upset,
6 and I was upset, and we were going at it, and but with Dr.
7 Naff he's like I'm here, I'm here as her treating doctor,
8 this is what I have to say, she needs the surgery, nerves
9 aren't her problem, the disc is her problem. And he does do
10 testimony like Dr. McGrail does, he does do that, he does
11 that kind of work. And, guess what, when he does, he's
12 testifying for the defense. So, if a defense professional
13 witness comes in there and tells you this surgery's related,
14 and it's one of his (sic) treating doctors, her treating
15 doctors, I want you to think about that.

16 He also came down and showed you the MRI films.
17 Now, that to most of us is like a big blob, it looks like a
18 picture that doesn't make much sense, but to a trained
19 neurosurgeon they can see the annular tears. They can see
20 the high intensity zones, and frankly -- I want to, I also
21 want to remind you of Dr. McGrail's testimony. Let me
22 backtrack for a second. Dr. McGrail said that the tears had
23 healed, and in his deposition I said well, when's the last
24 time you looked at the films? Are you sure? When, when's
25 the last time you saw those? And he was like well, I think

1 back when I did my report. It's okay. Well, Dr. Khanna says
2 that he saw high intensity zones, did you see that report?
3 He's like, finally after, like, 18 questions, yeah, I saw
4 that. And you would agree that what he's saying is that a
5 high intensity zone taken May 26th, 2011 would show that an
6 annular tear is still there, right? Yeah, I think that, that
7 is what he's saying. So, they want you to think the annular
8 tears have healed, but they, they haven't, and they hadn't as
9 of May 26th, 2011. And I'll get back to that in a second,
10 this is the Dr. Khanna report where he's reading it, and he's
11 reading the radiographic findings and he's saying L5, L4/L5,
12 L5/S1, degenerative disc disease with high intensity zones
13 seeing her (unclear - two words) annular tear. So, we know
14 they're still there. Dr. Naff, who's a, who's a trained
15 neurosurgeon, top one percent of the country came down and
16 actually did this demonstration and said see this -- we, we
17 showed you two different slides. You'll have those slides
18 back with you in the jury room, and this is grainier than
19 what you're gonna' have, but you can still see it. So, this
20 is the S1, L5/L4 and on this one you can see the white high
21 intensity zone, and that's what he came down here and pointed
22 out to you. He stood right in front of you and said it's
23 right there. I mean, you know, to us, to lay people that are
24 not medical doctors I, I can't even do that. So, they
25 haven't healed, they are still present.

1 A couple other things that the judge is going to
2 tell you in instructions or has already told you, and one of
3 them is for the Plaintiff to recover damages the Defendant's
4 negligence needs to be a cause of the Plaintiff's injuries,
5 not the only cause, a cause. And I'll remind you of the
6 aggravation of the pre-existing condition and the
7 susceptibility argument. Because if what they're saying is
8 oh, she went, she had all these problems before if they
9 aggravated it and what she had made her more susceptible then
10 they still have to pay for it, and a cause.

11 Now, with respect to damages in the case, um, Her
12 Honor told you about what damages you can, uh, find for the
13 Plaintiff in this case, and there's two different kinds of
14 damages. The first one that she referred to are what's
15 called economic damages, and economic damages are the kind
16 that, um, are easily ascertainable, you can see it. And what
17 you're gonna' see, and it's gonna' go back with you is the
18 Plaintiff's medical expenses in this case are gonna' be here
19 in Exhibit 9, and it's a summary of all the places that she's
20 been and the visits that she's had in treatment and the
21 expenses associated with it, and the medical expenses in the
22 case are, um, \$83,017.88, um, so that's the one, part of the
23 economic damages in the case.

24 Another part of the economic damages in the case is
25 her lost wages, and the lost wages in the case, the economic

1 lost wages in the case are \$28,648, and that's the lost
2 wages. So, those are numbers that don't require a lot.

3 Okay. Now, as far as the future for -- I'm gonna'
4 write those two up real quick, hold on, because otherwise
5 they'll be incomplete and it'll drive me crazy. All right,
6 so, the lost wages 28,648. And then the expenses, medical
7 expenses are 83,017 -- I'm gonna' make it eight, I'm rounding
8 -- to give it some (unclear - one word). All right. So, as
9 a far as the future prescriptions you heard Dr. Sloan tell
10 you that she's gonna' need to be on pain medication
11 indefinitely for the rest of her years because of her back
12 problem. And what he talked about in his deposition was
13 Plaintiff's Exhibit Number 20, and this is basically a snap
14 shot of how much her medications cost for one, a one year
15 time period. And the one year time period for her future
16 prescription, I'm gonna' show it over here, is \$4,415.64 and
17 that's per year. Now, he also said that as she stays on
18 these medications that she's going to build up a tolerance to
19 them, so she's probably going to need to have more in the
20 future. But as her baseline is right now that's what she's
21 gonna' need per year.

22 Um, with respect to her life, she's expected to
23 live another 37 years, which thinking about that is pretty
24 creepy, but her life expectancy is 37 years from today based
25 on people her age. And if you take that number and you

1 multiply that and extrapolate that out for what she would
2 need for her future prescriptions you get to a number and
3 it's not a small one, it's a big number. Now, if you give
4 her this for 10 years, because Dr. Naff says well, I don't
5 see her lasting 10 years. I think that maybe she might get
6 10 years before she's gonna' need this surgery. Let's assume
7 all that works out. So, if you say all right, well, we're
8 gonna' give her her future prescriptions -- that's not
9 supposed to go there -- for 10 years. That's \$44,415.64 to
10 get her from now up until the time of the surgery, and that's
11 one of the economic damages, um, that Her Honor was
12 discussing as far as economic damages go. So, if she gets
13 the surgery, and it's a success and she doesn't need ongoing
14 medication for 37 years that would be the number.

15 Now, with respect to the future surgery you've
16 heard, um, a couple of different numbers. You've heard Dr.
17 Naff saying that it would be somewhere between \$100,000 and
18 \$150,000, depending on what they needed to do and what
19 surgery they performed at the time. You also heard, uh, Dr.
20 McGrail doing the same surgery at his hospital. The cost of
21 it would be \$125,000. So, as far as the future surgery goes
22 we would ask that you consider the surgery of \$100,000.

23 Um, this is where I get uncomfortable. Um, I was
24 raised not to talk about money, it was sort of a taboo
25 subject in my house. You don't ask people how much they

1 make. You don't tell people how much you make. You don't
2 ask people what their car payment is. You don't tell people
3 what your car payment is. You don't ask people about their
4 debts. You don't tell people about yours. So, in this
5 situation what you have to decide is what the value of
6 someone's pain is, as far as the non-economic damages. You
7 have to figure out how much someone's pain and suffering is
8 worth, and that's not an easy thing to do. And to consider
9 all of the things that Ms. Exline-Hassler has been through up
10 until this point. So, she's got two claims, one is her past
11 pain and suffering, and one is the pain that she's gonna'
12 continue into the future.

13 With respect to her past pain and suffering, um,
14 her job has gone down the toilet. Her ability to enjoy her
15 family on the weekends has been heavily impacted. She's had
16 a lot of really uncomfortable and painful procedures to try
17 and get herself back to feeling better. She had a roto-
18 rooter put in her, put in her back for her disc
19 decompression, she's had her nerves burnt, she's had a
20 discTRODE procedure where they go in and they heat up the
21 annular tear. She's done a lot of things to try to get back
22 on track and to get better. So she's availed herself of
23 painful procedures to try to get rid of this back pain, and
24 you know, some of it worked. That one procedure that Dr.
25 Sloan did at the end, the one, the discTRODE procedure with

1 the disc decompression that did help the shooting and
2 radiating pain in her back. So, some of it did work, but she
3 doesn't like taking pills, she told you she doesn't like
4 taking pills, but that's her life. If she wants to get out
5 of bed and go earn her paycheck and go to her job and
6 perform, she's gotta' do things, she's gotta', if she want to
7 go be able to go to the grocery store, if she wants to help a
8 grandkid with a bottle, if she wants to be able to, you know,
9 fold some laundry, these are the things that she has to do to
10 be able to get through life. And the one thing about her,
11 she's not a complainer. She doesn't complain. She doesn't
12 complain at her job when she's in pain. You gotta' ask her,
13 you gotta' look at her. She doesn't complain to her husband
14 when she's in pain. She's a tough cookie, you know? I mean,
15 she's just not one of those people that likes to openly talk
16 about all this stuff either. You saw kind of how
17 uncomfortable she is on the stand with it. And she didn't
18 complain to you. She's doing what she's gotta' do to get by
19 and she's dealing with the cards that she's dealt the best
20 way she knows how and that's, let's move on, I'm dealing with
21 it, I'm gonna' deal with it and let's move on.

22 But moving in the future, as far as her future pain
23 and suffering the things to consider, she's got a garage full
24 of bikes, she's got ATV's, she got dirt bikes, she's got
25 motorcycles, she's got a tractor, she's got things that she

1 talks about that I have no idea what she's talking about on
2 that farm, and you know what, she was raised that way. She
3 was raised on a farm, her grandparents had a farm, she's a
4 gardener, she loves that. She, I mean, she actually enjoys
5 riding the tractor, she enjoys picking pumpkins and planting
6 pumpkins and building retaining walls, and building pools.
7 That's who he (sic), she is, that's how she was born and
8 raised, that's what she's done her whole life, and she was
9 born and brought up riding motorcycles. You couldn't get me
10 on the back of a motorcycle (unclear - two words) not gonna'
11 happen, they terrify me. But that's how she was raised. Her
12 parents rode motorcycles, she rode motorcycles, her brother
13 rode motorcycles, her kids ride motorcycles and her grandkids
14 ride motorcycles. And with what happens with her is they all
15 come over and they take all the bikes out and she hears the
16 engines revving, and guess what, her bike's still sitting
17 there. She can't go, and she's not gonna' go, because she
18 can't, she can't afford the pain, and she's afraid. She's
19 afraid to go. She's afraid that her body's not going to
20 cooperate with her and she doesn't feel safe so it's not
21 gonna' happen.

22 So, when you're evaluating that aspect of the case,
23 you know, how do you, how do you think about that, how do
24 you, how do you come up with what's fair and adequate
25 compensation for a person's pain? That's what you're being

1 asked to do, and again, I'm uncomfortable doing it, but
2 that's how our civil justice works. That's all we can ask
3 you to do. We can't ask you to waive a magic wand and make
4 her back better. We can't ask you to put us all on a time
5 machine and take us back to that day of that crash and, and
6 make this not happen. We can't ask you to do that. And the
7 only thing that we can do with our civil justice system is to
8 ask you to fairly and adequately allow a verdict in this case
9 that will compensate Jackie for what she's been through and
10 what she's going to go through.

11 Also, before you consider that, you're not to have
12 sympathy that, that's not part of what has to go into what
13 we're talking about. Um, the, Your Honor read an instruction
14 it's called impartiality, basically. You can't feel sorry
15 for her, you can't give her money because you feel sorry for
16 her. You can't give her, um, money based on her wealth or
17 poverty, just like you can't feel sorry for the Defendant
18 based on her wealth or poverty or if you feel sorry for her
19 when you're awarding fair and adequate compensation. Those
20 are things that if you're talking amongst yourselves that
21 come up outside, out of bounds, if the law says that you
22 can't consider those things you have to consider simply
23 what's fair and adequate compensation so, gosh, how do you do
24 that, right?

25 Well, the only thing I could come up with is I've

1 had a job since I was 13, and if you're looking at a want ad,
2 and you're looking at what maybe Jackie's job might be, and
3 you're opening the classified ads if you still actually use a
4 newspaper or if you're looking at, uh, a Craig's List ad, if
5 you're looking on the internet or Monster.com or whatever it
6 is that you're looking at, I mean, what would that
7 advertisement look like and how much would that job pay, you
8 know? How would it read, what would it say, hmm, give up
9 everything you love in life, give up the hobby that you enjoy
10 the most, give up what you were born, bred and raised to do.
11 Watch your family pull out of the driveway and while you sit
12 home and look at your bike collecting dust in your garage.
13 Look at your garden go to crap. Uh, oh, and you have to be
14 chronic pain all the time, and you have to take pain
15 medication to get to your job every day to help put food on
16 your family's table so you can stay with your job. And you
17 don't get any holidays, you don't get any time off, you don't
18 get any vacation, it's a 24/7 365 a year job. Oh, and you're
19 going to have to have these really painful procedures, and
20 you're gonna' have to take long stretches of time off from
21 your job, and you're gonna' have to have a surgery where
22 they're gonna' go in and they're gonna' put some stuff in
23 your back that's gonna' stay there forever.

24 So, what's that job worth? How much do you pay
25 that person for that job? Who takes that job? But we would

1 suggest to you in a way to figure it out a figure of \$6 an
2 hour for that job. So, if you take, that's lower than
3 minimum wage. If you take \$6 an hour for this job that
4 you're gonna' have for the rest of your life and she's
5 sleeping some of the time, let's say \$8 or eight hours a day
6 so we're not asking for all 24, let's say we're only gonna'
7 ask for eight hours. That will take you to \$48 a day, which
8 translates into 336 days, or \$336 a week, which is \$1,456 a
9 month. And, so, for the last 45 months that she's had her \$6
10 an hour job with the pain and the injections and her changing
11 lifestyle, for the past pain and suffering we would ask you
12 for an amount of \$65,520, which is basically an annual amount
13 of \$17,400.72.

14 So, it doesn't stop there though, because this is a
15 condition that she's gonna' have for the rest of her life. I
16 think Dr. Sloan's words were indefinite, and I think Naff's
17 words for the rest of her years. This is something that
18 she's going to have forever. And today is her day, this is
19 it. She doesn't get to come back in 10 years, or in five
20 years if she gets dramatically worse, she doesn't get to come
21 back in 10 and say you know that surgery they were talking
22 about gosh, I, you know, it's gotten a lot worse and now I
23 need this other surgery. This is her day for the next 37
24 years of her life. This is the time to consider her next 37
25 years. It's a long time. Thirty-seven years is a long time.

1 She doesn't get a do-over, she doesn't get to come back
2 again. This is her only, one and only opportunity and chance
3 to talk about this. And if you take \$6 an hour at eight
4 hours a day, not 24, for the rest of her life and you do the
5 math the future pain and suffering in this case that we're
6 asking for 646,464. That's a lot of money. That's a lot of
7 money. It's a lot of money. Thirty-seven years and what
8 she's been through is a long time.

9 Now, the last thing I want to remind you all of
10 before I sit down and the Defense gets up and talks about
11 their defenses in this case is this you're members of this
12 community, you've seen how this case has been defended.
13 You've seen the defenses in this case, which are, she
14 suddenly stopped it's all her fault, it's not our fault she
15 suddenly stopped. We've seen she's a smoker, we've seen she
16 wears high heels, we've seen she had this car crash way back
17 in 2005 where all this chronic pain started. We've seen she
18 had this fall down the stairs and she had chronic pain ever
19 since then. That's what this is all about. This isn't about
20 this case. We're here about this case and this case. This
21 case has nothing to do with it.

22 We've seen their expert take the position that what
23 everybody in their forties has and is walking around with
24 that usually doesn't have any problem is what caused all of
25 this. Their paid professional witness is saying that thing

1 that all of us in our forties have, the mild degenerative
2 changes, is what's causing all this, forget those lumbar
3 tears they don't mean anything.

4 Their paid professional witness who has -- oh,
5 gosh, I'm sorry to have bored you with all that, but we went
6 through, like, a dozen mistakes in his report. He hasn't
7 gone back and corrected his report, but yet somehow Jackie's
8 supposed to be going back and correcting her medical records.
9 Really?

10 So, what I wanted to, uh, leave with you is that
11 this is your community. The decisions that you make today
12 will impact your community. And for the other ladies that
13 are 40 years old and have had some blip on the screen back
14 there what happens in your courthouse, in your courtroom will
15 have a ripple effect on this community. And --

16 MR. GILLCRIST: Objection, Your Honor.

17 THE COURT: Sustained.

18 MS. ZOIS: -- and if the --

19 THE COURT: Sustained.

20 MR. GILLCRIST: Move to strike, Your Honor.

21 THE COURT: Granted.

22 MS. ZOIS: If the defense of this case is everybody on
23 the road was acting crazy that day so don't blame our client,
24 is that what you want.

25 MR. GILLCRIST: Your Honor, may I take a --

1 MS. ZOIS: Oh, can I clean up?

2 THE COURT: Certainly. I was just going to ask, you've
3 been sitting a while, would you all like to take five
4 minutes.

5 MALE VOICE: Sure.

6 MR. GILLCRIST: Thank you, Your Honor.

7 THE COURT: Especially after you've eaten, I know
8 there's the . . .

9 (Jury excused from the courtroom.)

10 THE COURT: Okay, and we'll all take five.

11 THE CLERK: All rise.

12 (Whereupon, from 1:45 o'clock p.m. until 1:57 o'clock
13 p.m., a recess was taken.)

14 (Jury not present.)

15 THE CLERK: All rise.

16 THE COURT: Good afternoon again, everyone. Please be
17 seated. Okay.

18 MS. ZOIS: Good afternoon, Your Honor.

19 THE COURT: You can go ahead and bring 'em in.

20 (Jury entered the courtroom.)

21 THE COURT: And note everyone's present. Mr.
22 Gillcrist.

23 MR. GILLCRIST: Thank you. Um, ladies and gentlemen of
24 the jury, on behalf of Kirsten Sapp I would like to also
25 thank you for your participation in this case.

1 You need only look at how much money, uh, Ms.
2 Exline-Hassler's attorney has asked you to award to her in
3 this case to understand that we're talking about a very
4 important case. And it's not just important to Ms. Exline-
5 Hassler, uh, it's important to Ms. Sapp, obviously. And, so,
6 on her behalf, um, I do appreciate the attention you've given
7 to the case.

8 Uh, Ms. Sapp was involved in an accident, we all
9 know that, it happened a while ago, and I don't think when
10 that accident happened she expected to be here three or four
11 years later trying to defend herself, but when Counsel, uh,
12 for Ms. Exline-Hassler suggest to you they were hiring
13 professional witnesses, and, uh, suggesting to you that we're
14 trying to pull the wool over your eyes by introducing some
15 photographs, but not others, it is nonsense. Um, she, Ms.
16 Sapp, has every right to defend herself. And that's all we
17 are doing. So, my job is to defend Ms. Sapp, and I hope that
18 I have lived up to her expectations, I hope I lived up to
19 your expectations in terms of presenting to you the evidence
20 fairly in this case.

21 Um, if you go back to the jury room, as I said at
22 the beginning of the trial, and you disagree with me, which
23 is your perfect right to do so, then I would expect you to
24 find against Ms. Sapp if that's what you find collectively
25 considering all the evidence. Um, we're not asking you do,

1 to do anything other than base your decision on the evidence
2 that you've heard, as well as the instructions that the Judge
3 has given to you on what the law is as we know. Um, we, uh,
4 put forth to you evidence in this case, both lay evidence and
5 expert evidence. Um, we did so with the hope that it would
6 help guide you in your deliberations and guide you to make
7 the right decision in this case. And, believe me, uh, I feel
8 strongly that the right decision in this case is 100 percent
9 opposite of what, uh, Ms. Zois was saying.

10 Please, please, please do not forget that Ms. Sapp
11 does not have burden of proof in this case. As the judge
12 instructed you, the burden of proof rests with Ms. Exline-
13 Hassler, why? Because she is the one, and I'm not going to
14 turn it over for you, but she's the one that is claiming
15 these exorbitant mounts (sic), amounts, hundreds of thousands
16 of dollars and saying that this lady sitting over here caused
17 her client those damages. Hopefully you know better that
18 that. Hopefully this evidence has persuaded you otherwise
19 already, but that's the burden of proof. Ms. Sapp does not
20 have a burden of proof. And Counsel, believe me, they are
21 very experienced, they're very good lawyers, and they're very
22 aggressive, they have every right to be, uh, to advance their
23 clients' interest. Um, but we on the Defense side also have
24 a right, um, to represent our clients, and that's all that I
25 hope we have done in your eyes, and represented them fairly.

1 Now, in terms of the burden of proof, uh, Counsel I
2 think was kind of a little clever in using this flip the
3 burden of proof approach that I believe she was trying to do
4 and that is to blame us for not bringing in another doctor,
5 as if you needed to hear another doctor after this long
6 trial, by not having a pain specialist come in to you, not
7 doing this, not doing that. Well, that's not how the burden
8 of proof operates, ladies and gentlemen. The burden of proof
9 puts that burden on them, and she can blame us for not having
10 another specialist come in and tell you what you already know
11 or she could look in herself and say, well, wait a minute,
12 why didn't I produce Dr. Radley. Remember? This is a
13 doctor, her treating doctor who she didn't call as a witness.
14 This is the treating doctor who first saw her after this
15 accident and said you know what, those MRI scans showed mild
16 disc dehydration. That's all they show. Dr. Radley is also
17 the doctor, again, Ms. Hassler's doctor who said that the MRI
18 is consistent with the patient's age. That's in his reports.
19 That was Dr. Radley's opinions. Why didn't Ms. Zois or Mr.
20 Bratt call Dr. Radley as a witness? Why didn't Ms. Zois or
21 Mr. Bratt call, uh, Dr. Nisenfeld as a witness, who said that
22 the only thing that she had was degenerative disc disease?
23 Why didn't they call Dr. Huong from Dr. Radley's office, the
24 interventional pain medicine specialist who said the same
25 thing, she's got degenerative disc disease? Why didn't they

1 call Dr. Khanna, another -- all these are treating doctors,
2 they are, they can verily (sic) ea (sic), very easily bring
3 to you Dr. Sloan and Dr. Naff who are making a lot of money
4 being here, just as the other experts, I'm not hiding from
5 that, but they can very easily bring you these doctors that
6 kept coming down the road, but they don't bring in the
7 doctors who see this woman after the accident and treat her
8 after the accident and find that she had really degenerative
9 disc disease and that's all that she had.

10 So, let's be fair here. If we're responsible for
11 not having another expert come in and talk to you, look at
12 their burden of proof and why they didn't bring these
13 doctors. And the most glaring admission of this, I would
14 submit to you, is Dr. Stephanie Brown. Where's Dr. Stephanie
15 Brown? Ms. Zois can get up here and tell you that medical
16 report, which is her client's medical report is inaccurate
17 until she's blue in the face. But there's one person in this
18 world who could probably clarify that up if it was
19 inaccurate, and it is not inaccurate, and that's Dr.
20 Stephanie Brown. They elected not to call them as a witness
21 apparently, so let's keep it a level playing field, let's
22 base the decision on the evidence, but when Ms. Zois gets up
23 here and accuses us of not doing more work on this case by
24 bringing in more experts, please keep in mind -- excuse me --
25 please keep in mind that it's Ms. Zois' and Mr. Bratt's

1 burden of proof to show their client's injuries and damages.
2 They had ever opportunity to call these other doctors as
3 experts or as witnesses in the case. Stephanie Brown could
4 have come in here and said, you know, I checked back on my
5 notes, and it was erroneous when we said that motor vehicle
6 accident, that's not the case. So, that's how the burden of
7 proof operates in this case. Don't hold it against us merely
8 because we did not have the extra specialist that Ms. Zois
9 wants us to bring in. But you have every right to hold it
10 against the Plaintiff in this case, because she's the one
11 that's seeking hundreds and hundreds and hundreds, hundreds
12 of thousands of dollars saying that my client caused those
13 damages, yet she didn't bring in those doctors, the ones that
14 are her treating doctors. The ones that probably a simply
15 letter scheduling them to be here would have been adequate to
16 get them here. So, that's a little bit about the burden of
17 proof.

18 Now, I'm gonna' talk to you about the accident, and
19 about the damages issues. And when I talk about the damages
20 issues ultimately, um, and I'm gonna' probably spend more
21 time doing that, and, and by the way, Mr. Porcarelli is, is
22 gonna' handle some of these as well. Um, but when I talk
23 about those damages issues please don't interpret that as
24 meaning that I don't believe in Ms. Sapp or anything like
25 that. I'm just simply, uh, trying to do my job to cover

1 everything in case you don't agree with me, and as I said in
2 the beginning, and as I've just said a few minutes ago, if
3 you don't agree with me that's absolutely your right not to
4 do it but, again, please keep in mind there's a lot of
5 evidence in this case.

6 The credibility of these parties. I want to speak
7 for just a moment on the credibility of the parties. Um, as
8 the judge instructed you it's your job to determine their
9 credibility, your job to assess them as witnesses and decide
10 if they have a motive to not to tell the truth. You may look
11 at Dr. London and say, oh, he's getting paid too much money,
12 we don't believe him. Or you may look at Dr. Naff and say,
13 well, Dr. Naff is getting \$7,000 to be here. Of course he's
14 gonna' say something in favor of Ms. Hassler. That's things
15 that evidence that you can all consider in terms of
16 credibility, but let's not lose sight of one very important
17 credibility issue in this case, and this is the business
18 about her prior prescription medicine. Um, Ms. Hassler, or
19 Exline-Hassler, um, got up here last week, Friday, you waited
20 all week to hear from her. She got up there and tried to
21 tell you that when she purchased related to her low back
22 after her incident in March of 2008 it was only because she
23 wanted to store them up, store that medication up. Now, Ms.
24 Zois spoke for about an hour and a half in giving her closing
25 argument a few minutes, you know, this afternoon. I think

1 she spent a total of about 15 seconds talking about that
2 prior medication. I believe it's very important, not only as
3 to what was going on with her, but also as to the issue of
4 her credibility. And, by the way, that's not to suggest that
5 I'm saying she's a liar or she's just out for money or
6 anything like that. That's to suggest to you that she
7 doesn't have it right, and her testimony shouldn't give, be
8 given that weight. In this case, ladies and gentlemen, this
9 prior low back condition, and bear in mind, we're not the
10 ones that bought this medicine. Ms. Zois a few minutes of
11 (sic), uh, ago stood up before you and said it just kinda'
12 like this, put her hands on this table and said, "Ladies and
13 gentlemen, just because she purchased medicine doesn't mean
14 she, meant she used it." All right? I'm gonna' challenge, I
15 think Mr. Bratt is going to give the rebuttal argument, I'm
16 gonna' challenge him when he gets up here and to talk about
17 this prior medication that she purchased, that Ms. Exline-
18 Hassler purchased before this accident, after they say that
19 she was all better in March or April or May of 2008, after
20 that she purchased this medicine. And I'm gonna' challenge
21 Mr. Bratt to explain to you if this makes sense and if it
22 does make sense to him how it makes sense that she could not
23 be having problems, how it makes sense that she could tell
24 you, look you in the eyes and say to you I was just buying
25 medication to store it up, that's essentially what she was

1 saying, that I didn't have any problems, I didn't need it, I
2 was just storing it up. Well, she got her Percocet in
3 January of 2008, that's the Hydrocodone, not a big deal
4 because that was never renewed down the line, but she got
5 Skelaxin and Tramadol in March 26 of 2 (sic), 2008, remember
6 one, Tramadol is the pain medication, Skelaxin is the muscle
7 relaxant, I've written that down here. That's medication
8 that she got for her back, okay?

9 Now, at no point during the entire trial did Ms.
10 Exline-Hassler ever tell you that she got these medications
11 for any reason other than her back, so we know these
12 medications are for her back. Ms. Exline-Hassler didn't have
13 any other falls after that she says, didn't have any other
14 things going on that might have, didn't buy this drug, these,
15 these drugs for other people, absolutely not. These were
16 drugs that she purchased for herself.

17 So, she gets this medication in March, March 26th of
18 '08, all right, then she goes to Boonsboro Pharmacy on July
19 3rd of 2008 and purchases Tramadol 60 pills. And, and, and by
20 the way you will see these entries, they're a little hard to
21 read, because the print is so small, but this would have been
22 in Defendant's Exhibit Number 5 and Defendant's Exhibit
23 Number 18, which incidentally the Defense introduced into
24 evidence, not the Plaintiff in this case. These show her
25 medications that I've listed here on this board, among other

1 things. Okay?

2 And, so, July 3rd, 2008 she goes in to Boonsboro
3 Pharmacy and purchases 60 pills of Tramadol. On September 9,
4 2008 she goes in to Boonsboro Pharmacy and purchases 30 pills
5 of Skelaxin. On September 16th, so just a week later, she
6 goes into Weis Pharmacy and purchases another 60 pills of
7 Tramadol. On January 12th, 2009 she goes into Boonsboro
8 Pharmacy and purchases Skelaxin 30 pills. On February 28th,
9 2009 she goes into Weis Pharmacy and purchases Tramadol,
10 Tramadol again, 60 pills. Okay. Now, ask yourself if it
11 makes sense that Ms. Exline-Hassler is going into these doc
12 (sic), these pharmacies July, twice in September, once in
13 January and then again in February just to store up the
14 medication. Well, if you believe her testimony she hasn't
15 taken medixin (sic), medicine. In fact, remember how she
16 described that after she went to that one physical therapy
17 visit it was in, I think in May or late April of 2008, that
18 she had pills left over and she put them in her medicine
19 cabinet. So, in that time frame she's still got pills left
20 over from March of '08 that she hasn't used. So, those pills
21 are sitting in her medicine cabin (sic), cabinet doing
22 nothing at all.

23 I want to mention her husband's testimony that he
24 ended up throwing away pills, but remember Ms. Exline-Hassler
25 said that occurred last year. So, that's in 2012 so we're

1 not talking about her husband throwing away these pills, and,
2 and that's why she needed to renew them. We're talking about
3 somebody who's going to a pharmacy using her own good (sic)
4 earn, goodly earned money, hard earned money and going to the
5 effort to go to the pharmacy and buy pain medication and
6 muscle relaxants, why? We submit that the evidence is clear
7 because she's still having problems. Again, this was not
8 medication used for any other thing, but her low back. So,
9 she's going in on each of these occasions.

10 Now, you might give her the benefit of the doubt
11 and say, well listen, maybe she's wrong that in April about
12 not having, about having medication left over so just to be
13 safe in July she went and got some Tramadol. I, I don't
14 think that makes sense at all, ladies and gentlemen, I hope
15 you don't either. She went to this pharmacy in July of 2008,
16 why? Because she was having problems. People don't go and
17 get medication that she, they might need six months later or
18 they might need a year later or they might need 10 days later
19 if they're not having symptoms. This is not a life
20 threatening condition that you have to have a surplus of that
21 medication, we're not talking cancer here, where you need to
22 have that supply, you can't go a day without it, so you're
23 gonna' be always careful about having that medication
24 stocked, no. This is a situation where Ms. Exline-Hassler is
25 buying medications for her own use. She does it in July, she

1 does it in September, two different medications. Now, if Ms.
2 Exline-Hassler is storing medication up, well why does she
3 need to go back in September, um, approximately two months
4 later and order new Tramadol, because, ladies and gentlemen,
5 she's already used this up, she's already used this up, she
6 needs another prescription that she will continue to use,
7 okay?

8 So, we look at this again. In January -- now, she
9 may have been doing better in this two to three months
10 between these two dates. She may very well have been feeling
11 great, but then things go back again. In January of 2009 she
12 has a m (sic), she needs a muscle relaxant, and the doctor
13 said you need a muscle relaxant for muscle spasm, and that's
14 what she was having. That's the only explanation as for what
15 she was having. And then again, February 28th, much closer to
16 the date of the accident she goes back for more Tramadol.
17 So, this is not somebody who is storing up pills for future
18 use. This, ladies and gentlemen of the jury, is someone who
19 is using the pills that she is buying, and that's the only
20 thing that makes sense in this case. And if she's using the
21 pills that she's buying for her lumbar pain and for her
22 muscle spasm then she's having problems before this accident.

23 Now, Ms. Zoit (sic), Zois and Mr. Bratt wants you
24 to believe that this was no big deal, that the accident
25 caused everything in the world and that Ms. Sapp caused all

1 of this ladies' life's problems, and it helps their case to
2 show you that, you know, she wasn't going to a doctor in this
3 time frame, she wasn't going to an orthopedist or spine
4 specialist so we don't have the smoking gun of her getting an
5 MRI in this period of time. Well, the evidence that we put
6 forth to you, and I hope it's convincing to you, is that the
7 indeed she is having continuous problems during this
8 timeframe. But consider one other thing, when she went to
9 Robinwood after this accident, and it's also in this exhibit,
10 she got more Tramadol. So, the accident was in June of 2009.
11 If she had been storing up all this medication she would have
12 at least, and let's assume there's nothing left over from her
13 March 2008 prescription, she would have 60 pills that she
14 didn't use from July, she would have another 60 pills that
15 she didn't use from September of '08 and she'd have another
16 60 pills that she didn't use from February. So, she's got
17 180 pills of Tramadol that, if you believe Ms. Exline-
18 Hassler's testimony, that she still has in her medicine
19 cabinet when this accident happened. What happens? She goes
20 to Robinwod and she's prescribed more Tramadol, and I didn't
21 put it down here, but it's in the records, um, so she goes
22 back to, um, Robinwood and gets another prescription of
23 Tramadol. So, you have a situation where plainly, clearly,
24 um, she's got things going bon (sic), um, bad with her low
25 back during this period of time. Now, again, Ms. Exline-

1 Hassler's telling you that it wasn't bothering her, and
2 you'll have to judge for yourself. If you believe that Ms.
3 Exline-Hassler would go back on these five different dates
4 during that critical time period and buy drugs just for the
5 sake of she might having (sic) a problem weeks, days, months,
6 and years later, than I'm talking to a wall, and I know I'm
7 not talking to the wall, okay? These were medications that
8 she purchased to manage her ongoing problems. There is
9 absolutely no other explanation that is credible in, in my
10 view and I hope you agree with me.

11 Um, now, in talking about the accident Ms. Exline-
12 Hassler also, you got an opportunity to listen to her and see
13 how she answered questions, no one's accusing her of being a
14 professional witness, she didn't have to answer questions
15 perfectly. We all, six, eight of us here have been doing
16 this for a while and, and maybe we do know how to ask
17 questions, maybe we don't, but I'm not saying Ms. Exline-
18 Hassler should have been artful in answering the questions,
19 but I hope you did get an opportunity to listen to her
20 testimony carefully and judge for yourselves whether she gave
21 credible information to you about both liability and about
22 damages. And, and just speaking about liability for one
23 moment, remember there's that whole thing about angling her
24 car where she called it tucking her car to the left. Um, Ms.
25 Exline-Hassler testified that she always does that when she

1 comes to a stop in traffic on a highway. In this case the
2 accident was on I-70. Does that make sense? That every time
3 she comes to a stop in traffic on I-70 that she pulls her car
4 at an angle, and in this instance she first said she pulled
5 her car at an angle so that she could see what was ahead of
6 her, which was apparently this other accident, but in her
7 testimony she said, "I pulled my car at an angle to the left
8 in every instance that I stop in (sic) I-70." Well, if you
9 believe that testimony than you wouldn't have to decide that
10 she pulled her car to the left because she was worried about
11 striking that car in front of her because she came to a
12 sudden stop, or that she was worried about being hit from
13 behind because she came to a sudden stop.

14 So, what I would submit to you Ms. Zois and Mr.
15 Bratt what you to believe is that this all makes sense, but
16 look deeply into that testimony, ask yourself if Ms. Exline-
17 Hassler was giving credible testimony and telling you that
18 every time she's on a highway, when there's traffic stopped
19 in front of her, she brings her car to a stop at an angle
20 like that, it doesn't make any sense at all. And those are
21 just two examples, but I'm gonna' move on from there, I'm
22 gonna' talk about, um, uh, liability and then I'm gonna' talk
23 about, uh, damages.

24 Now, you heard my client's, uh, plea of guilty with
25 an explanation. And hopefully you heard at the end of that

1 thing that my client said yes, Your Honor, I'm guilty with
2 explanation, um, I don't know how the accident happened, it
3 all happened so fast. Okay, my client went in there and did
4 what she thought she should do, what was best, what was the
5 truth. And as she answered Ms., uh, Zois' questions even
6 today, um, yeah, I'd say the same thing, I don't know what
7 happened, it all happened so quickly. But what was
8 important, I'd submit to you, is that my client did not know
9 then when she's appearing in traffic court for what a \$100
10 ticket or whatever it might have been, uh --

11 MR. BRATT: Objection.

12 THE COURT: Overruled.

13 MR. GILLCRIST: -- that she did not know then that these
14 two very fine lawyers are going to be in a courtroom jamming
15 that thing down her throat three years later. Would my
16 client had done the same thing, had gone into court and said
17 yes, Your Honor, I'm, I'm guilty with an explanation. If, if
18 she knew then that these lawyers would be jamming it down her
19 throat three years later and saying ah-hah, this accident was
20 all your fault, you're negligent, you're liable? Now,
21 knowing my client, because she is an honest person, maybe she
22 would have done the same thing, but I assure you she would
23 have talked to her parents, and I assure you that her parents
24 would have said, you know, let's take a step back here.
25 Maybe, maybe we shouldn't go in there. Maybe at least we

1 should talk to a lawyer before we, before we give a formal
2 plea to a ticket, uh, we don't want, we, you know, we, we've
3 been now sued for hundreds of thousands of dollars, and, uh,
4 you know, maybe we ought to just decide if that's the right
5 thing to say when we go to court. Okay?

6 As Ms. Sapp told you this morning when she went
7 into court and pled guilty without (sic) a, with explanation
8 she didn't get served, she had not been served with, um, Ms.
9 Exline-Hassler's law suit. She was not aware that she was
10 going to be sued for hundreds of thousands of dollars years
11 later, she did what was convenient, easy and in her mind was
12 appropriate. You may find that that's all it takes. You may
13 find well, this trooper did an excellent job, and please
14 understand I am not denigrating the trooper in one respect
15 whatsoever. He did a fine job going out there, he did what
16 he was trained to do. He gave her a ticket for not leaving
17 enough room in front of the car in front of her. And if that
18 ticket and her plea of guilty with explanation is sufficient
19 for you, it's sufficient for us, and we will accept your
20 verdict. We will ask though that instead you really consider
21 what was motivating, what was behind that, what the
22 consequences of that were at the time compared to what they
23 are now, I mean, Ms. Sapp didn't even know what Ms. Exline's
24 version of the accident was back then. Um, so she did what
25 she thought was right and was appropriate. Again, if that's

1 sufficient for you it's going to sufficient for Ms. Sapp and
2 she'll respect your verdict. But what we do ask that you do
3 is please thing about the circumstances of her doing that,
4 and please consider all the evidence in this case.

5 Now, Counsel is pretty much saying well because she
6 did it that's it, it's over, case over, she's liable. It
7 doesn't work that way. You've been given jury instructions,
8 you are deciding this very issue, because it's on the table
9 for you to decide. As the judge has given you instructions
10 in this case the violation of a statute or a r (sic), whether
11 it's a rule of the road fall (sic), failing to, to drive too
12 close to somebody that's evidence of negligence, but it
13 doesn't mean you have to find against my client.

14 Now, you may say to yourself, as I said, well, she
15 rear ended the lady, and it's automatically her fault, okay?
16 But please just consider all the circumstances of this
17 accident, and then if you reach that decision then my client
18 can certainly understand she got a very fair consideration
19 from you of that decision. And by that I mean please
20 consider the fact that they want you to find her negligent
21 for filing (sic), falling (sic), excuse me, for driving too
22 close to their client's car and not stopping before hitting
23 their client's car.

24 Well, I think you heard testimony, if I'm not
25 mistaken, from Ms. Exline-Hassler who said that she was going

1 60 (sic), 65 to 70 miles per hour, just as my client was
2 going. They were in the flow of traffic. The difference in
3 the testimony is that Ms. Exline-Hassler testified to you
4 yesterday, excuse me, on Friday that she was travelling one
5 to two car lengths in front, in behind the vehicle in front
6 of her at 65 to 70 miles per hour. That's not what we were
7 taught in driver education school, that's not safe, that's
8 not reasonable. My client, on the other hand, was travelling
9 I think she said four, five, five, six car lengths behind
10 the, the vehicle that was in front of her. So, if you have
11 to look for something that might have precipitated this
12 sudden stop that Ms. Exline-Hassler had, and she certainly
13 did, then driving so close to the car in front of her would
14 have precipitated this sudden stop that Ms. Exline-Hassler
15 had. And if you have to find something else, look at the
16 fact that Ms. Exline-Hassler actually pulled her car at an
17 angle to the left.

18 Now, I think it's fair to say that everybody in
19 this courtroom who drives has been in one of these situations
20 on I-70 or 495 or 270 or 95 where traffic has come to a
21 sudden stop in front of 'em. We've all done that one time or
22 another. We're in the left lane, you stop suddenly and you
23 go over because you're, you're just not sure what's gonna'
24 happen. Doesn't mean you're gonna' hit that car, and
25 fortunately you don't hit that car, but you go over, okay?

1 And that's because she stopped suddenly.

2 Ms. Sapp wasn't, apparently, if you believe Ms.
3 Exline-Hassler, wasn't the car right behind her. She said
4 there were three other cars behind her. And Ms. Exline-
5 Hassler described how these cars darted around her. First,
6 Ms. Exline-Hassler says that she did this angled move and to
7 look ahead to see what was going on. But then there was a
8 question, did you look in your rearview mirror first or did
9 that maneuver first, and then she said I looked in my
10 rearview mirror and then I saw this little black car dart
11 around me, and then there were two other vehicles that darted
12 around me. And I think you can all picture this accident
13 happening as it's happening based on that testimony. And
14 it's always the last car that does the damage, it's always
15 the car that has the least notice of this happening. Um,
16 these cars darted around. There's no evidence that they
17 jammed on their brakes, they darted around and low and behold
18 Ms. Exline-Hassler's was stopped or stopping in that left
19 lane when these other cars had moved out and there she comes
20 upon them. She applied her brakes, she skidded on the ret
21 (sic), wet road surface. There's a question about which way
22 Ms. Exline-Hassler's car was turned, uh, it may have been
23 turned to the left, it may have been turned to the right, I
24 don't know, she remembers it being turned to the left, the
25 officer remembers it being turned to the right, and certainly

1 the photographs would suggest that it was turned to the
2 right. Maybe Ms. Exline-Hassler herself was trying to get
3 into that second lane by turning to the right. But certainly
4 where the property damage is is reflected of her turning to
5 the right. In other words, if she was turned, if you'll
6 forgive me for a second just using my hands, if she's turned
7 to the left she's gonna' hit her smack in that right rear
8 bumper at the very least. If she's turned to the right it's
9 where the point of impact would be that is reflected in these
10 photographs.

11 Um, it was a chaotic scene, and I thought it was
12 kind of interesting in Ms. Zois' closing argument where the
13 one time, and I think it's the only time in this entire trial
14 that you heard the word accident come out of her mouth was
15 when she was talking about what happened down the road,
16 everything else has been crash, crash this, crash that, crash
17 that, okay? Because accidents happen, and if you, if she's
18 talking to you about accidents she'll recognize that, you
19 know, maybe this was just a simple accident as we contended
20 it was, okay? She's referring to crash this, crash that, but
21 when she's talking about what's happening down the road it's
22 an accident all of a sudden. Okay. This was, make no
23 mistake, an accident. Cars were flying everywhere, there was
24 a tractor trailer that jackknifed right next to them, and Ms.
25 Zois can argue all she wants that my cl (sic), client

1 precipitated that traffic truck, tr (sic), excuse me, tractor
2 trailer jackknifing, but I'd submit to you that there's
3 gotta' be a lot more going on than this minor fender bender
4 happening in the left lane for that tractor trailer to be
5 jackknifed. And remember there was testimony that the
6 tractor trailer driver actually came back to Ms. Exline-
7 Hassler and said I was worried that I hit you, or did I hit
8 you, words of that effect. The tractor trailer didn't go to
9 Ms. Sapp and say why did you do that, he was in his mind
10 thinking that hey, maybe I hit her. So, there are things
11 going on, as the police officer testified there was an
12 accident up the road, maybe there was more accidents, but it
13 was a chaotic scene, and your job will be to piece all that
14 together, I hope, and decide for yourself if my client was
15 negligent, if she's liable and the judge has given you the
16 instructions on that. Is she responsible legally for the
17 hundreds of thousands dollars that Ms. Zois and Mr. Bratt
18 want you to award to their client because of this fender
19 bender on I-70? Okay? Uh, and I'd submit to you the answer
20 is well, up to you, that's all I'm gonna' say. Um, if you
21 find that her plea of guilty with explanation is sufficient
22 to find her responsible then you should find against my
23 client. On the other hand, if you look into this and say to
24 yourself you know, this really was just an accident, and it
25 could have happened to anybody. And Ms. Sapp was

1 unfortunately back behind these other vehicles that darted
2 out, the traffic came to a sudden stop, it was unavoidable or
3 it was something that anybody would have been stuck in and
4 caught in that situation.

5 That's all I'm gonna' say about liability, I leave
6 it in your hands, um, and I know that, uh, you will, uh,
7 reach a fair result for Ms. Sapp or for Ms. Exline-Hassler,
8 depending on how you view the evidence.

9 Now, let me talk about damages for a second, and I
10 wanna' do reiterate to you that this lady sitting over here
11 is the measurer, she's the one that you should be thinking
12 about, and I hope that you are thinking about when you go
13 back and deliberate on damages, and that is because Ms.
14 Exline-Hassler has the burden of proof to show not just that
15 she had medical problems, not just that she had injuries, not
16 just that she lost time from work, not just that she, uh, had
17 medical bills that she incurred, not just that some doctor is
18 going to say she might need surgery 10 years down the road,
19 that's, that doesn't carry her burden of proof. What they
20 have to do is they have to connect a very important dot, and
21 that is between this table and that table, but that, that's
22 treating it improperly between that person, Ms. Exline-
23 Hassler and this person sitting over here, and your job, we
24 submit, is to decide what Ms. Sapp did to this lady, and if
25 you find that Ms. Sapp did not injure here or did not injure

1 her to the extent that she's claiming in any respect, than
2 your verdict should be for Ms. Sapp on that or on all of the
3 issues.

4 And please again remember, the burden of proof
5 does, just does not limited to the issue of liability, it's
6 damages as well. So, if you go back and you say to yourself
7 well, you know, I, I, I do agree with Dr. McGrail and Dr.
8 London, based on the records, that Ms. Sapp (sic), excuse me,
9 Exline-Hassler had low back and neck strains and the
10 treatment for six to eight weeks or six to 12 or six to 16
11 weeks would have been appropriate if that's your finding and
12 you feel that they've carried their burden of proof than that
13 would be an appropriate measure of compensation for her. By
14 the same token if you go back and say they haven't proven
15 certain things or they haven't proven that she was injured at
16 all, or they haven't proven that surgery was something that
17 she was going to have then that's not carrying your burden of
18 proof. But please keep in mind that Ms. Sapp is your measure
19 in this case. And, again, if your verdict is against her we
20 will certainly honor and respect it.

21 Now, you've heard a lot about the accident. You'll
22 get to see -- and the damages -- you'll get to see these
23 photographs, um, photographs of my client's car are the
24 darker colored car. You do see the damage here in that real
25 well. You'll be able to look at that. You'll be able to

1 look at the damage to, um, uh, Ms., uh, uh, Exline-Hassler's
2 vehicle and judge for yourself how bad an impact this was. I
3 believe, um, Ms. Zois told you in opening statements that
4 they were going to introduce, um, uh, damage estimates or
5 things like that --

6 MS. ZOIS: Objection, Your Honor.

7 THE COURT: I will sustain.

8 MR. GILLCRIST: Thank you, Your Honor. Um, your job
9 will be to decide is that more than a fender bender? Is that
10 something that could cause injury, and I, I suppose it could
11 cause injury, I mean people get injured in different
12 accidents, but it doesn't seem to be the type of catastrophic
13 injury that would cause Ms. Exline-Hassler to basically, uh,
14 incur what she's claiming in this case, hundreds of thousands
15 of dollars of treatment. That photograph, I'd submit to you,
16 uh, helps put the things in perspective and this is the
17 Plaintiff's Exhibit Number 13. Um, there was an impact to,
18 um, the rear passenger side of her vehicle, but it didn't
19 apparently cause too much exterior damage anyway.

20 Um, in any event, I spoke about the prior medical
21 records, um, and I know, I believe Mr. Porcarelli is gonna'
22 speak a little bit in more detail about this, but, um, it is
23 important for me just to remind you of a few things. Um,
24 their defense to our defense I'll call it is that her own
25 medical records are faulty. Her own medical records are

1 faulty. The records that her own treating doctor could have
2 come here and clarified for you if indeed they were faulty.
3 And they're not faulty. But she wants you to, Ms. Zois wants
4 you to believe that they're faulty, because then you can
5 overlook them. These are not our medical records. I'm not
6 producing to you anything that we made up. What I'm
7 producing to you is Defense Exhibit Number 3 where she goes
8 in in March of 2008 and what does she complain about?
9 "Patient has low back pain since being in MVA three years
10 ago. It has gotten worse this past year and worse in the
11 a.m., takes six Advil daily. No numbness, tingling,
12 occasional into buttocks, no weakness, had an ulcer."
13 Everything about this exhibit in March of '08 is right except
14 for a couple things that they're seizing on. Number one, Ms.
15 Zois keep (sic) it, keeps telling you that the date of birth
16 is wrong, it's not wrong. The date of birth is right here,
17 and as Ms. Exline-Hassler testified it's accurate. What is
18 wrong is that there's a typographic, typographical error as
19 to how old she is. Instead of putting 45 there they should
20 have put 41 or 42, I forget what it -- okay, that's the
21 number one thing that's wrong. What else is wrong is that --
22 sorry. Uh, what else is wrong is that the allergy medication
23 section is blank, okay? The doctors didn't have that in the
24 first visit. Well, they did on June 29 Exhibit Number 14.
25 Same group she goes into and then it's in there and Ms.

1 Exline-Hassler told her after this first visit there was no
2 further discussion of her allergies, so they had to have
3 known it, they just didn't type it in. For whatever reason
4 it didn't get in there. That doesn't mean the record is
5 false. It doesn't mean that it's flawed. Ms. Zois tells you
6 well, what competent doctor wouldn't have ordered her for an
7 MRI? They did a physical examination MS, musculoskeletal,
8 full range of motion times four, gait within normal lil
9 (sic), limits. Neuro, CN's two to 12 intact. Okay? There
10 is a physical examination that the doctor conducted of Ms.
11 Exline-Hassler on that date related to her musculoskeletal
12 complaints. Her musculoskeletal complaints were those of her
13 low back.

14 Now, Ms. Exline-Hassler says wait a minute, no,
15 when I went into this facility it was, again, to establish a
16 primary care doctor. And when I went in there, uh, they took
17 a history and they asked you, they asked me have you had any
18 other accidents? That's not what they asked her. They asked
19 her have you been injured before? Or have you had accidents
20 that's resulted in injury? They didn't simply ask her have
21 you had other accidents.

22 Remember this 2005 accident, well, 2005 is exactly
23 three years, or approximately three years before March of
24 2008. So, that part of the history makes sense, and indeed
25 she did have a motor vehicle accident in 2005. So, there is

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1 a consistency there with that record. And how would Ms.
2 Exline-Hassler have gone into this doctor and mentioned a
3 motor vehicle accident that by her testimony in 2005 was so
4 inconsequential that there was no injury and she went to her
5 son's ball game that night, the property damage was paid and
6 that was it. Ms. Exline-Hassler would not have remembered
7 that accident or would not have mentioned it. Ms., uh, Hall,
8 I think it is who did the history and then subsequently
9 reviewed by Dr. Brown, would not have put in this history a
10 reference to a motor vehicle accident that was three years
11 ago that did not result in any injury. It makes no sense
12 whatsoever. The history was given exactly as it is in here,
13 I'd submit to you, and that this history does establish that
14 she was having problems. And then if there's any doubt about
15 that we know she was having problems, because five or six
16 times after that she continued to go back for pain medication
17 and muscle relaxants through 2009, before this accident ever
18 occurred.

19 So, please don't be misled by that and, again, um,
20 to the extent there's any need for clarification, don't hold
21 Ms. Sapp please to a burden of proof she does not have to
22 produce Dr. Brown or Ms. Hall to explain to you that this
23 document is incorrect, okay, that's not our burden of proof,
24 and it isn't incorrect I would respectfully submit to you.

25 There'll be other evidence of her prior condition

1 that will be before you. Um, there is Exhibit Number 11,
2 which is the physical therapy evaluation, and are there some
3 minor differences in these records in terms of history?
4 Sure. But this is the record you remember where she refers,
5 again, April 28th, 2008 reports, um, that she had back pain
6 after, around Christmas in 2007 when she was moving something
7 and injured her back. Then shortly after that she fell down
8 stairs, okay. Um, Ms. Exline-Hassler on Friday told you no,
9 it was all one big incident, but this record seems to be
10 clear that it wasn't two (sic), one incident it was two
11 incidents. And, again, she's disputing her own medical
12 records. Ms. Zois, please bring in a doctor and tell us,
13 from Total Rehab, and tell us why this, this record is
14 inaccurate if, if you contend that it is inaccurate. It's
15 not inaccurate. Is the history that doesn't mention the
16 motor vehicle accident for some reason, maybe Ms. Exline-
17 Hassler didn't tell her about that, but she clearly told her
18 primary care doctor about that when she went in January of
19 2008 she clearly told her doctors about having low back pain
20 and, uh, I would submit to you that she can argue as long as
21 she wants that this back pain had ceased to exist in April or
22 May of 2008, but when you look at these (sic) history of the
23 medication she got after that before the car accident that
24 argument should not, and I hope will not carry any weight
25 with you whatsoever.

1 Now, we do not, as Ms. Zois portrayed to you, rest
2 our entire case on these prior records. Okay? We've already
3 told you a little bit about what her own doctors has (sic)
4 said, have said. And those doctors have included Dr. Naff.
5 Dr. Radley, one of the doctors not called as a witness when,
6 and remember we asked Dr. Naff this when I was cross
7 examining him, I think it was on Tuesday or maybe Wednesday,
8 we asked him about the other doctors that she had seen before
9 she came under his care, and these other doctors include the
10 very first specialist that she saw Dr. Radley, remember, Ms.
11 Exline-Hassler talked about how this was the Parkway
12 Neuroscience Group that after eight or nine months she's
13 still going there, but they've not helped her a lick. Um,
14 she goes to Dr. Radley a very, a very trained and experienced
15 doctor, and he says, according to Ms. Exline-Hassler, you
16 know, there's these annular tears on your films, but
17 everybody has these. That's what Ms. Exline-Hassler said on
18 Friday. We were talking about Dr. Radley, and she was upset
19 because Dr. Radley told her that everyone has these, and that
20 in fact in her age with those findings on the films is what
21 he was trying to convey to her. He doesn't say anything
22 about those being accident related. And if this, this is not
23 a contest, ladies and gentlemen, between, uh, the two experts
24 on one side verse the two experts on the other side. It's
25 not a contest, and your decision shouldn't be made with that

1 in mind. If you need to do that exercise, and I hope you
2 don't then it's really not two against two, it's Dr. Radley,
3 it's Dr. Huang, it's Dr. Nisenfeld, it's Dr. Khanna, all of
4 those doctors have said the same thing that Dr. McGrail and
5 Dr. London have said. And Dr. London might not be your cup
6 of tea in terms of someone you'd wanna' go and have a beer
7 with, but at least he's a doctor that looked you in the eyes
8 when he gave his opinion. At least he's a doctor that was
9 firm in his convictions. Dr. Naff is over there, he's
10 looking at the exit sign or up at the ceiling more than he's
11 looking you in your eyes. All right? And that's not how you
12 build trust with someone, that's not how you build
13 credibility with someone.

14 Um, Dr. Naff, um, is going to say what he's gonna'
15 say, but even Dr. Naff recognized that these MRI scans showed
16 a lot more than annular tears. And remember we asked Dr.
17 Naff well isn't it a fact that annular tears come about be
18 tears come about because of dehydration or disc desiccation?
19 Um, yes, in fact they do. Uh, when you buy an electronic
20 piece of equipment from Best Buy or wherever you'll find a
21 little thing inside of it, it's called a desiccant, those
22 little, little things that we always wonder what they are,
23 they're called desiccants, why? Because they help keep the
24 moisture out of the equipment. And desiccation is just that,
25 when she has desiccation of her disc it's the drying out

1 process that unfortunately comes with age, it comes with wear
2 and tear. And as Dr. Naff told you these, um, were, these
3 could just as easily have been, um, disc degeneration annular
4 tears. Dr. Radley wasn't convinced he said they were in his
5 report, they were consistent with her age, and that's all he
6 said. So, please don't be misled by that. But then I would
7 submit to you it is important to point out as Dr. Naff did
8 when we were asking the questions, well, what else did you
9 find on the MRI at those two levels L4/5 and L5/S1? Dr.
10 Naff, we went down the list with him there was circum (sic),
11 circumferential disc bulges at those levels, circumferential
12 disc bulges, meaning all the way around the disc. That's not
13 a traumatic injury. A disc is not gonna' be bulged
14 completely around, it could be barl (sic), bulged in small
15 point if you have a traumatic injury, but it's not going to
16 be bulging circumferentially like that. She had facet
17 arthropathy, arthritis of the facet joints, which is those
18 straws that the nerves come out of from her spine that go to
19 her arms and legs. She had retrolisthesis, according to the
20 latest MRI, I think it was in 2011. That's where one of the
21 vertebral body is actually displaced on the other. She had
22 ligament inflatum hypertrophy, and I said she's already had
23 disc bulges. And I think all together we came up with five
24 pathological diagnoses that, that were reflected in those
25 MRI's, just for L4/5 and L5/S1. And we asked Dr. Naff, well,

1 so what you're saying, Dr. Naff, is one -- I'm sorry it was
2 six all together, one of them being an annular tear. Six of
3 those findings, of those six one is one that you say is
4 related to the accident, the other five you cannot say so,
5 and he said yes, that is correct.

6 So, when Ms. Zois and Mr. Bratt ask you to reward
7 compensation for their client of the hundreds of thousands of
8 dollars that they're asking you to award, have they given you
9 any consideration for the fact that five out of the six
10 things, even if you accept their expert's testimony that five
11 out of the six things wrong with her spine had nothing to do
12 with Ms. Sapp. And I'd submit to you that actually the sixth
13 had nothing to do with Ms. Sapp as well. She had
14 degenerative disc disease in her low back. It wasn't
15 accelerated the imp (sic), by the impact, no doctor has said
16 that this injury caused her to have a herniated disc, so Ms.
17 Zois can talk all she wants about there being a disc problem,
18 a disc problem, well, if you have a herniated disc from
19 trauma then certainly someone will get traum (sic),
20 compensated for that. There was never a herniated disc
21 whatsoever.

22 Ms., um, Exline-Hassler had EMG studies, nerve
23 conduction studies, never showed the problem. Uh, and I'm
24 sorry, but I do think it's important that she doesn't have a
25 neurological injury. Um, she's been seeing neurologist after

1 neurologist, she brings in her neurosurgeon to talk about
2 surgery that is never gonna' happen, but yet she wants Ms.
3 Sapp to pay her for that surgery, \$150,000 or whatever the
4 number was that Ms. Zois asked you to award. I'm sorry, I
5 think it is important that all of her exams over the course
6 of three years have never showed a finding of a neurological
7 injury. A neurological surgery is what neurosurgeons operate
8 on, and you may believe Dr. Naff, you may not, but I submit
9 to you that whatever is in her back this lady over here did
10 not cause it. And that's what it really all comes down to.
11 Whatever's in her back this lady did not cause.

12 You heard from Dr. McGrail, I think Mr.
13 Porcarelli's gonna' speak a little bit about that as well,
14 uh, as the chief neurosurgery at Georgetown Hospital I'd
15 submit to you he was an excellent witness. He certainly
16 would look you in the eyes and he certainly was opinionated
17 about what his findings were. He wasn't like Dr. Naff who
18 looked like he didn't even want to be here. Did Dr. Naff
19 impress you as somebody who really believed what he was
20 telling you? Now, he is an advocate for his patient, there's
21 no doubt about that. Just as Dr. Sloan was addi (sic),
22 advocate for his patient, um, they want to see their patients
23 do well in this case. They want to see their patients be
24 compensated, but that doesn't mean you have to buy their
25 testimony. And ultimately what is their testimony based on?

1 Ladies and gentlemen, their testimony is based on the history
2 that Ms. Exline-Hassler gave to them about having no prior
3 back pain whatsoever. So, they're taking this as a clean
4 slate. They're saying this was a perfectly normal person who
5 gets in an accident, goes to the doctor and suddenly has
6 these annular tears on her discs. They're not looking at
7 what she had before. Ms. Exline-Hassler told them in the
8 history, and it's, it's ironic in some ways that Ms. Exline-
9 Hassler can say to you or Ms. Zois and Mr. Bratt can say to
10 you that that history that she gave in March of 2008 about a
11 prior motor vehicle accident is wrong, but then we go to Dr.
12 Naff and Ms. Exline-Hassler doesn't mention a history of any
13 prior back problems. We can go to Dr. Sloan, she doesn't
14 mention a history of any back problems to Dr. Sloan either.
15 And these doctors, as they testify, these are important parts
16 of the whole medical picture, yet Ms. Exline-Hassler's there
17 and not telling them about this at all. We had to get that
18 out through, um, uh, the evidence in this case. In fact, I
19 think it was Dr. Sloan who, when presented questions about
20 the prior drugs that she had been refilling on these multiple
21 occasions didn't really even know how to put them in context.
22 He, he couldn't speak to them, because he didn't know why she
23 was getting them, why she was taking those. The reality is,
24 I respectfully submit to you, is she's getting those drugs
25 for a reason. She is not, like Ms. Zois wants you to

1 believe, she's not going to buy medication for future use or
2 to store it up.

3 And, again, I want, and I'm challenging Mr. Bratt
4 to tell you if that is, makes sense and, if so, how it makes
5 sense, and you'll judge what he has to say. Maybe he won't
6 touch it all, it's his prerogative.

7 Um, ladies and gentlemen, I've already spoken
8 enough and I, I just wanna' wrap up by saying again thank you
9 for listening to me, I know I've spoken longer already now
10 that I had planned to do. I hope what I presented to you
11 puts some of this in context. Um, hopefully, you'll go back
12 to the jury room, and I believe you will, uh, give Ms. Sapp a
13 fair shake and decide both the questions of liability and
14 damages fairly. Um, and I'd submit to you that if you find
15 that she was responsible for the accident, as you may, uh,
16 that you weigh very carefully and make a fair verdict or
17 arrest to what she caused.

18 I did forget to say one thing, I'm sorry, we're
19 lawyers we have to go back sometimes, but, um, they said it's
20 un-controverted that she had an injury in this accident.
21 That's for you to decide. Dr., her doctor is Dr. Sloan, and
22 Dr., um, Naff, um, said that she was injured in this
23 accident. Dr. McGrail and Dr. London gave you the opinion
24 that there was an injury, why? Based on the medical records
25 and with the assumption of the history that she provided to

1 her treating doctors were accurate. Um, you will have all
2 the evidence before you, you even listened to Brittany Renne
3 today, um, I'm sorry, on Friday, uh, she was one of the
4 passengers in my client's car who spoke about seeing, um, her
5 on the scene, she didn't request medical care, she didn't
6 appear, uh, to be injured, she described having severe
7 headaches on the scene, but apparently didn't tell anybody
8 about them. And then you can look at the damage to the car
9 and ask yourself if she was injured. If you find that there
10 was an injury then and she certainly is entitled to
11 compensation, um, that also we leave in your very capable
12 hands. Thank you very much.

13 THE COURT: Mr. Porcarelli.

14 MR. PORCARELLI: Thank you, Your Honor. May it please
15 the Court, Counsel, (unclear - two words) jurors. Bear with
16 me just one second. I'd like to get a couple things
17 together.

18 (Long pause.)

19 MR. PORCARELLI: Ladies and gentlemen, I know that
20 you've been here for a long time today, five days, you've
21 heard a lot of things, you've heard from me. I've tried to
22 be as to the point as I could be, and respectful of your
23 time. And I want to thank you again for listening to me when
24 I get up to ask the questions that I ask of the witnesses. I
25 would ask that you bear with me for just a little while

1 longer, um, I know what it's like to sit in, in, in the
2 chair, because I've actually been over there sitting for a
3 bit of time and I get antsy myself. If you want to move
4 around, I won't be offended, please feel free to do it. But
5 there are a couple things that I'd like to emphasize for you
6 on behalf of the Defense.

7 Let's talk a little bit about the experts. Uh,
8 let's talk about Dr. Sloan, okay? Um, Dr. Sloan came in and
9 he said, uh, on videotape I charge about \$41,000. My bills
10 are fair and reasonable. So, when you hear Her Honor tell
11 you that you can accept some or all or none of the testimony
12 that a, that a, from an expert witness, that's part of what
13 you can do. You don't have to listen to Dr. Sloan talk about
14 his own opinion about how his own bills are fair and
15 reasonable. Because I would submit to you that's akin to
16 letting a wolf tell you that the hens are all safe in the hen
17 house, I got it covered. I'm not criticizing him for the
18 amount of money that he charged in this case, please
19 understand that. What I'm criticizing him for is the amount
20 of money that has been submitted by the Plaintiffs in
21 connection with his treatment. You may recall, and you'll
22 probably see several billing summaries, and they'll go back,
23 and there'll be one from him, and you may recall from his
24 videotape that I asked him some questions about you had her
25 for about 44 visits, and up until the, uh, July of 2012 you

1 had about 39 of the 44 total visits, when he's charging away.
2 And I think it's important to know why was he really doing
3 that, and what was going on in his career? Because in July
4 of 2012 is when his partners decided hey, he's making enough
5 money, let's make him an equity partner. Ask yourself
6 whether there was a financial incentive or interest in terms
7 of what he was doing and what he was billing at and what
8 frequency before July of 2012, and whether the fact that he
9 gets a bonus every three months after that point, plus his
10 regular salary played any role in what he was doing before
11 that.

12 Dr. Sloan indicated that the Plaintiff self
13 reported that she only experienced about 50 percent
14 improvement. I would suggest to you, well, if it's only 50
15 percent approval cut his bill and cut all, everybody else's
16 bill if they only helped her 50 percent.

17 Let's talk about what he billed. Again, please
18 understand the distinction. I have a problem with the fact
19 that he was charging for his time. He doesn't wanna' do
20 this, and a lot of the doctors don't wanna' do this, and one
21 of the reasons you can understand that is when you look at
22 what they charge. They almost charge in order to I really
23 don't wanna' get involved, but if you're going to this is
24 what, this is what it's going to cost.

25 So, let's look exactly at what they're charging.

1 So, you're gonna' have some exhibits that go back with you.
2 Dr. Sloan, Defense Exhibit Number 23, telephone depositions,
3 depositions 250 an hour, video deposition 250 an hour for
4 worker's compensation cases, but for non-compensation cases
5 worker's comp, like this one, this is not a worker's
6 compensation case, \$800 an hour for a videotape deposition,
7 \$600 an hour to talk to him in deposition, phone conferences
8 \$600 an hour, expert appearance billed at 800 an hour and
9 reports of 400 an hour. Compare that to Dr. McGrail, and
10 you'll have his exhibit back there. Phone records review 500
11 an hour, phone conference or meeting it's the same 500 an
12 hour, video depo 2500 -- I'm sorry, this is Naff, 500 an
13 hour, 500 an hour and 500 an hour.

14 And when Dr. Naff came into deposition he charged
15 everybody \$1500, and Dr. McGrail he charged \$1500, too.
16 Here's the difference. Dr. McGrail said you've got me for
17 that price for three hours, and Dr. Naff said you got me that
18 price for one hour. And, again, they're entitled to charge
19 for their time, but it'd be my hope that we would understand
20 that they're all charging, basically within the ballpark.
21 So, it really doesn't come down to who's charging and who's
22 making what on the case so much as it is what are their
23 opinions and what are they based on.

24 Before I move off this you'll remember this 12
25 hours from Dr. Naff at about 500 an hour that's roughly about

1 \$6,000 bucks. He came to trial another seven, and, uh, the
2 discover depo 15 for the first hour, we went another hour
3 that was 500, 2,000. There was some testimony on Dr.
4 McGrail's videotape about what he charged to date, and it was
5 somewhere, uh, Ms. Zois totaled it up, somewhere in the
6 neighborhood about \$12,000. And is really six and seven, 13,
7 is really, are they really that far off? And what's the
8 point? The point is when people get up here they keep saying
9 professional witness, professional witness, professional
10 witness, they're charging for the time that they're away from
11 their professional duties. And it's frankly, I think,
12 disingenuous to say that, because they're charging for their
13 time, that they're automatically to be discounted. But I'll
14 leave that up to you to decide.

15 There may come a time in this case, because this is
16 my final chance to talk to you, I can't get up again, when
17 Mr. Bratt may get up here and he may (unclear - one word)
18 some numbers with you, I don't know. But I do know if I
19 don't address it now when he does it I'm gonna' sit over
20 there and I'm gonna' kick myself all the way home, too. And
21 that is this, he may do some math with you with Dr. McGrail.
22 I don't know how he's gonna' do his math, but I wouldn't be
23 surprised that if he chooses to he's gonna' try to say, if
24 you look at how many cases he does per year, and if you look
25 at how much money he charges for a case that you can

1 extrapolate and guess from those figures how much he makes
2 per year just doing case reviews. And I wouldn't be
3 surprised if he tries to pull a number out of the sky as high
4 as \$100,000. Don't know. But I'd like to address it now,
5 because, again, I can't get up and do it later.

6 So, if he goes down that road I would ask you to
7 consider this, Dr. Naff does two to three times a month
8 working with Plaintiffs' attorneys, because of his patients,
9 and he's been doing that for 15 years, and he put about 12
10 hours into this case. So, cut that in half, six hours.
11 Let's, let's even drop it down for five hours. Five hours
12 for each of those, and let's not take the three per month,
13 let's take two. Two a month, 24 a year, five hours each,
14 that's a good chunk of change, that's \$60,000. Then he does
15 Defense work for MedMal, six to eight a year, okay? A little
16 bigger case, maybe they do 10 hours instead of 12 like in
17 this case. Sixty hours a year, 500 an hour, that's another
18 \$30,000. Nice chunk of change. That doesn't even include
19 the time testifying either in depositions or in videotape
20 depositions or in videos for trial or coming to trial. So,
21 what's the point? The point is that sometimes we use these
22 numbers to criticize experts, but in this case they're all
23 within the same ballpark on numbers.

24 Again, the phrase professional witness that rubs me
25 the wrong way personally, because their own witness, Dr.

1 Naff, got up here and he said when he does 85% reviews for
2 the Defense on MedMal cases he doesn't consider himself a
3 professional witness, and I wouldn't ever suggest that,
4 that's just the way that number happens to work out for him.
5 And yet he also went on to say that he doesn't consider Dr.
6 McGrail a professional witness. You would think that the
7 Plaintiff's attorneys wouldn't keep jumping up and down on
8 that when their own expert, Dr. Naff, clearly says I don't
9 think Dr. McGrail's a professional witness. And as far as
10 this business about treating people, let me remind you of a
11 little thing that you probably have to deal with every time
12 you go to the pharmacy, sign off on a document you've got
13 your HIPAA rights, everything else to get your prescription
14 in, we've got HIPAA coming everywhere. Could you imagine
15 what would happen if we went over and said we want to talk to
16 you because you're treating John Smith?

17 MR. BRATT: Objection.

18 THE COURT: Sustained.

19 MS. ZOIS: Your Honor, may we approach on that?

20 THE COURT: No, I sustained the objection. Go ahead,
21 Counsel.

22 MR. PORCARELLI: So, again, Dr. McGrail's not a
23 professional witness. He is, as Dr. Naff said, a very
24 respected neurosurgeon. He is the head of a department that
25 Dr. Naff said is a preeminent department in this area.

1 Let me talk to you just a bit about Dr. McGrail's
2 credentials, and the reason is this. I didn't go into a lot
3 of time in the deposition on it. I wanted to try to move
4 that along, because let's be blunt, videos are different than
5 people coming in to testify live. Um, and I saved that,
6 because I wanted to put his resume into evidence. And, and
7 it's in evidence, and I would hope you just take a look at
8 it. And I'd like to pull a couple highlights out of here to
9 give you some background as to why we think that his opinion
10 should count a little bit more than some of the other folks
11 who have testified. It'll tell you where he went to college,
12 it'll tell you where he went to medical school, it'll give
13 you his dates of his certifications, but here are a couple
14 things to remember about Dr. McGrail. This gentleman was,
15 was selected as a research fellow in neurosurgery at
16 Massachusetts General Hospital, and then the resident
17 neurology at the same hospital, and then the following year
18 he was selected as the chief resident at Mass General. And
19 from there he then went to the Mayo Clinic out in Rochester,
20 Minnesota. And I think everybody or most folks have heard
21 about the Mayo Clinic, that is a, that in and of itself is
22 also a preeminent institution. He was not only a clinical
23 fellow in neurosurgery there, but then he was selected as the
24 chief resident in neurosurgery at Mayo Clinic. He's had
25 academic appointments at Harvard, at Mayo Clinic, and also,

1 obviously, several at Georgetown University, and he's the
2 chairman of that department. Again, Dr. Naff said preeminent
3 neurosurgical department, and Dr. McGrail runs it.

4 There was also a quick thing on his video you may
5 have caught when Ms. Zois was cross examining him on some
6 questions about remember that, the Dallas scale, and he, he
7 doesn't own a Dallas scale. You may have caught the fact
8 that he said I don't teach that to my students, and I don't
9 test on it when I am doing the test for the board
10 examination. This guy, McGrail, he is the, he's the guy who
11 examines doctors who want to come in and get their board
12 certification. He's on the board. He's the one who asks the
13 questions and makes the decision as to whether you get board
14 certified or not. It's in his resume right here. American
15 Board of Neurological surgery guest examiner, guest examiner,
16 guest examiner, 2002, 2006, 2009. I would submit to you that
17 his credentials and his demeanor and his opinions speak for
18 themselves, and they speak genuinely of his opinions and not
19 his opinions that have been bought and paid for by the
20 Defense, as suggested by the Plaintiff's attorneys.

21 I found it interesting -- excuse me -- that they've
22 gone after Dr. McGrail on several issues several times, and
23 yet, frequently in their closing argument they said listen to
24 what Dr. McGrail's opinion on this was. Listen to what his
25 opinion was on this. Some of his opinions are actually

1 opinions that they like. If he was bought and paid for do
2 you think he would have, he, wouldn't he have gotten up here
3 and said she's not injured at all, she needs no medical
4 treatment at all. She didn't need any medical treatment at
5 all. She doesn't need any treatment now. Nothing is related
6 to the car accident. Do you think if he was bought and paid
7 for that he wouldn't at least earn his keep, and he'd say
8 that stuff?

9 Dr. McGrail's a neurosurgeon, and I wanna' touch on
10 a point that they raised earlier today. This is not a
11 neurosurgical case, this is not a neurosurgical case, it's
12 not a neurosurgical case. Okay, ask yourself this, why did
13 Dr. Naff come in here? He's a neurosurgeon, right? Where's
14 Radley? Where's Nisenfeld, he's the ortho. Where's Dr.
15 Dabbah from Towson Orthopedic, he's the ortho. The ortho's
16 are the guys who do this surgery with the neurosurgeons, and
17 sometimes without the neurosurgeons if there's no
18 neurological problem. Where are they? Again, as Mr.
19 Gillcrist said we don't have the burden of proof, they do.
20 Ask yourselves why they didn't bring them in.

21 Dr. McGrail's opinions I think were pretty straight
22 forward, she sustained an injury? She did. She entitled to
23 some treatment? She was. Should she have resolved after
24 that point given the nature of, uh, the injury that he
25 diagnosed? Yes. Anything that continues after that,

1 however, not related.

2 Now, on cross examination Ms., Ms. Zois she did the
3 best job that she really could dealing with his credentials,
4 his level of expertise. I'll, I'll give her her due. But
5 ask yourself what did she accomplish with Dr. McGrail? Dr.
6 McGrail, some of the records that you listed, that you
7 reviewed, that you named in your report were duplicative.
8 Dr. McGrail, you can't recall the name of a Plaintiff's
9 lawyer who you worked with in the last few years. Dr.
10 McGrail, you have a typo in your report on the date of loss.
11 Even though McGrail said I wrote it four times, and on one of
12 the times I wrote the date in the, uh, the day wrong, but he
13 said if you look a couple lines down I wrote it again four
14 times, I missed it once. But the substantive thing is what
15 we should be focusing on. This is a gentleman who operates
16 on peoples' brains, he operates on peoples' spines, if they
17 want to spend their energy, time and money criticizing him
18 because of his typing skills so be it. We would ask you to
19 look again at the substance of the opinions.

20 Oh, and finally, the emails. They pulled some
21 emails out, they should have put 'em all in. Let 'em see
22 what we're talking about. There are some that are in
23 evidence. If the emails are an issue for you I invite you,
24 please, go read what I'm writing in emails. Go ahead. Ask
25 yourself is this really that critical? Is it really that

1 important to the substance? Is Porcarelli really saying, Dr.
2 McGrail, you may be board neur (sic), uh, board certified
3 neurosurgery, neurosurgeon running a department you need to
4 listen to me, here's what your opinion has to be. Really?
5 Do you think Dr. McGrail even has that personality that he
6 would tolerate something like that? Again, that's just on
7 the emails.

8 We've had a lot of presentations here. A beautiful
9 television, and I appreciate Counsel sharing it with me so
10 that I could play Dr. McGrail's videotape, and I certainly
11 don't mean to criticize them for that, laptops, computers,
12 beautiful videotapes and anatomical diagrams and hardware,
13 paper and photos and all sorts of, all sorts of stuff. And
14 it's probably human nature of some point or another to
15 perhaps get swept up and caught up in all that. We can kind
16 of lose perspective, if momentarily. And, so, let me just
17 say this as politely and delicately as I can. I'm not
18 belittling anything about Ms. Exline-Hassler or what she's
19 complained about, I'm not criticizing Counsel for doing their
20 job to represent, but what I am saying is when you kinda'
21 look through all that stuff no one died, no one's in a
22 wheelchair, no one lost a limb, and yet the numbers that they
23 wrote up here when you total it that's a whole different ball
24 game.

25 Sometimes when you have all these things swirling

1 around and you kinda' wanna' cut through the fog of it, at
2 least when I do, I look for some of the simple things. It
3 helps me get my arms around the issue. And I thought I'd
4 share a couple of those with you to see if maybe when you're
5 back there you'll really (unclear - one word). She got up
6 here and testified under oath she never felt the impact like
7 the one she had in this case ever before. But we know that
8 she had this other car accident, and I read this part of her
9 transcript in this morning where she fractured her hip after
10 being T-boned. She's taken to a trauma center with a break
11 in this bone, not a finger, not a hand, not an arm this bone,
12 and yet it was this accident with Ms. Sapp, which was the one
13 that she characterized as the strongest one that she'd ever
14 felt in her life. She talked about I fell down the stairs at
15 Christmas, and if I recall the testimony and if you recall
16 differently that's fine, I respect it. I thought it was fell
17 down a step. You look at the records, which you'll have back
18 there to comb through, there's a handwritten note on the left
19 side from Urgent Care one flight. Again, want you factor
20 that in, if you could, when you consider her credibility and
21 what she's telling you on all issues.

22 Mr. Gillcrist spent some time, and I won't belabor
23 the point, on two other issues, but they're really, they're
24 important for me. So, I apologize in advance for hitting 'em
25 again. Dr. Brown's report, where is she? You can find 'em

1 (unclear - three words.) Dr. Brown, is this, is this
2 correct? Is this report accurate? This is a medical report,
3 it's in a chart. There are certain federal protections,
4 state protections. Is this right or is this wrong? Simple
5 question. Coulda' had the answer. We don't. So, what we're
6 left with is the record, which has been challenged only by
7 the patient and her lawyers.

8 Everyday we go through a routine. Our routines
9 differ based on personal habits and traits, gender. We go
10 into the bathroom, open the medicine cabinet, toothbrush and
11 toothpaste, floss, mouthwash, antiperspirant, whatever, close
12 up the cabinet, maybe open it again, take something else out.
13 When you're in there you see your meds. Hydrocodone,
14 Skelaxin, Tramadol, do your routine every morning, do your
15 routine in the night, see the same bottles in there. For
16 some reason you go back in July and get another bottle.
17 You're not taking it, but I'm going to get another bottle.
18 September, I keep looking at my medicine cabinet, I'm going
19 to go get another one, but I'm not going to take it. Seven
20 days later, I'm getting another bottle, but I'm not going to
21 take it. Two more. I'm not going to take it. It's just in
22 case. Is it really hard not to see that? She's asking you
23 to believe she just kept the medicine just in case, and the
24 years are important. '08, '09, what was going on in '08,
25 '09? Market crashed. We hit the hardest skid that our

1 country has ever had since the great depression and someone
2 is going to a pharmacy on these dates and pulling out their
3 cash and they're paying money for these meds, which they're
4 not taking, which they already have at home just in case. If
5 you look at this one in particular that puts us within four
6 months of the accident, and that's if she doesn't take it
7 when she brings it home on that day. Because if you find
8 that she took it, that's gonna' put you right up to the
9 accident. These are important and significant medications.
10 There are other things that we stock pile in our house, but I
11 would suggest that those are not your typical ones.

12 There's been some talk about she's gonna' need, uh,
13 pain management for a long period of time. She's gonna' need
14 the surgery. I got the sense almost as though they were
15 speculating and looking into the future as though she'll, she
16 should have that, she should undergo the surgery, she'll
17 never get better. I think that's guesswork. You've got
18 folks who have had these surgeries, and they do get better.
19 Some of them even play professional sports. So, when you
20 look at that aspect of the numbers don't automatically walk
21 down the road with them and guess along with them about where
22 she's going to be. You need to judge the case for today's
23 purposes where we are today.

24 Now, this is the part of the case -- well, you know
25 when you're sittin' on a plane and the plane stops right

1 before the gate, flight 10 it says, whoa, whoa, not yet,
2 we're almost there, just a couple more feet, I promise you
3 that's where we are with, with my part, okay? Just a couple
4 more feet. And what I wanna' tell you now is this, this is
5 the part of the trial I can't stand, I can't get up again.
6 And Mr. Bratt's gonna' get up here. I guarantee ya', he's
7 gonna' do the level best to represent his client. He's
8 gonna' say stuff that is gonna' to just want me to jump out
9 of the chair and respond. With papers or excerpts or photos
10 or something I guarantee you, and I can't do it. Please
11 understand that I can't do it, it's not that I don't want to,
12 I can't. I would ask you as you listen to him to please do
13 us a favor, we've been watching you just as you've been
14 watching us. We read your body language and your eyes, and
15 you've been engaged, and you've been thinking critically, you
16 can see that in the eyes. So, as you listen to Mr. Bratt I
17 would ask that you sit there and you apply the same critical
18 thinking that we've been seeing you do for the last five
19 days, even though it's the home stretch. Ask yourself this,
20 Porcarelli can't get up again, what would he say in response
21 to Mr. Bratt bringing out that point or that issue or that
22 allegation? Because I can't do it. Somebody please do it,
23 I'd ask you each to do it.

24 And, finally, and most importantly, you spent five
25 days of your valuable time with us, and we fully recognize,

1 and I think I speak for everyone in this courtroom, how
2 valuable your professional and your personal time is. And on
3 a personal note I want to thank you all, not only for that,
4 but for the sacrifices that your family has done outside with
5 perhaps helping with anything that needs to be done so that
6 you can be with us here to help us resolve our differences.
7 It truly is valuable service. And it's made even more
8 valuable, because you've paid attention each and every day.
9 I sincerely thank you for the opportunity to stand before you
10 and, and speak with you about several issues in this case for
11 your service, for your time and the sacrifice that your
12 family's have made. Thank you.

13 MR. BRATT: Your Honor, I didn't know if you wanted to
14 give the jury about 30 seconds, it'll take me a second to set
15 up.

16 THE COURT: Um, I don't know if you all wanna' stretch
17 for a minute or whether you just want, do you all wanna' stay
18 there, that's fine, if you wanna' stretch --

19 MR. BRATT: I can do if fast if everybody wants to wait.

20 THE COURT: -- or go to the -- so. I --

21 MALE VOICE: Okay.

22 THE COURT: (Chuckles.)

23 (Brief pause while Counsel sets up.)

24 THE COURT: So, we'll all stretch for five.

25 THE CLERK: All rise.

1 (Whereupon, from 3:21 o'clock, p.m. until 3:27 o'clock,
2 p.m., a recess was taken.)

3 (Jury not present.)

4 THE CLERK: All rise.

5 THE COURT: And good afternoon, everyone. Please be
6 seated.

7 (Jury entered the courtroom.)

8 THE COURT: Note everyone's present. Mr. Bratt.

9 MR. BRATT: Good afternoon, ladies and gentlemen. I
10 find myself in kind of an unusual situation this afternoon
11 before you, because this is the first time I've ever had a
12 set of Defense attorneys talk that much about me. Mr.
13 Gillcrist is challenging me to do things. Mr. Porcarelli's
14 is predicting what I'm gonna' get up and say here to you.
15 And, you know, it's funny, because lawyers pay attention to
16 things that you guys may not, and I was watching my co-
17 counsel, Ms. Zois while these other opening statements were
18 going on. And do you realize that Mr. Gillcrist mentioned
19 Ms. Zois 18 times in his closing statement. I think I only
20 got 10. I guess I'm getting second billing this afternoon.
21 Why you think that is? Hmm? What? You saw Ms. Exline-
22 Hassler testify, you saw her husband, Steve. These Defense
23 attorneys, in their zeal to represent their clients, they
24 don't want to go after nice people like that, so what do they
25 do, they go after the easy target, if there's an easier

1 target in the world than personal injury lawyer I don't know
2 what it is, and so that's the path that they chose. This is
3 all a put up job by me and Ms. Zois, okay? That's what they
4 want you to believe. They want you to believe that we're
5 cherry picking showing only what we want you to see. And I'm
6 gonna' show you why it's not really so.

7 Now, we might as well start at the beginning,
8 okay, on this issue of the liability of the Defendant, Ms.
9 Sapp. Nobody's trying to say she's a bad person. I heard
10 all that, I'm not gonna' dwell on it. Even my client said
11 she was a nice kid, and I think what we've all seen here
12 during her (unclear - two words) she, she seems nice. Uh,
13 but the thing about nice people and the thing about bad
14 people equally they mess up. Good people mess up. Bad
15 people mess up. I've made mistakes, Ms. Zois has made
16 mistakes, I'd venture that some of the Defense lawyers have
17 even made mistakes, you know, with all respect I bet Her
18 Honor's even made a mistake once or twice, and everybody
19 makes mistakes. But one thing that's not a mistake and can't
20 be a mistake is when you go to court and you raise your hand
21 and you see it did, and I was doing my best to be nice to Ms.
22 Sapp when I called her as a witness, because I'm a big, loud
23 guy I don't want to appear like I'm trying to intimidate her
24 into an answer. I asked her a couple of really important
25 things. And one of those things was is that -- (unclear -

1 three words) is it -- she knows that when it's bad weather
2 you gotta' be more careful, and that she knows when it's low
3 visibility you gotta' be more careful. And she went into
4 District Court in this building in front of a judge who wore
5 a robe just like that, and when asked what her plea was on
6 her traffic citation she said she was guilty. And she
7 explained why she was guilty, because she didn't seen in time
8 that the car in front of her was stopped, and when she hit
9 her brakes she slid into it.

10 Now, you heard Her Honor read the law to you, which
11 is is you gotta' leave a safe distance. We all know these
12 things. This is not news. And that brings me along to the
13 phrase accident. Yeah, there are such a thing as accidents.
14 How do accidents happen? When people don't do the things
15 that they know they're supposed to do that are for safety.
16 Like having an adequate stopping distance between you and the
17 car in front of you, keeping an adequate look out for the car
18 in front of you, and the testimony in this case was is that
19 one, Ms. Sapp hit my client at a complete stop, she was not
20 moving, she was stopped. Two, my client did not hit the car
21 in front of her. So, all these assertions that you're
22 hearing from the various Defense attorneys about how Ms. Sapp
23 was in this mess of a traffic jam, all these things were
24 going on. Well, were all these things not happening when Ms.
25 Exline-Hassler was in the same place, and what'd she do she,

1 you know, stopped without hitting the car in front of her,
2 and she remained at the stop until she was struck. And she
3 was at a stop long enough for one, two, three cars to go
4 around her into the different lane without hitting her. So,
5 that means between when my client sees the stopped cars she
6 stops without hitting those cars, there's enough time for
7 three separate vehicles to get out of the way safely without
8 hitting anything before Ms. Sapp comes along and boom, okay?
9 And you saw the pictures here, broken axels, wheels torn off,
10 not a minor collision, okay, not at all.

11 And, this really struck me, okay, it did, and Ms.
12 Gillcrist got up here and he said that that young lady went
13 to District Court and raised her hand and said she did it,
14 and that she did that 'cause she didn't know she was, was
15 getting sued. She didn't know somebody was going to be
16 asking her to take responsibility for the damages that were
17 caused. And that had she known that she might have done
18 something different. She might have hired a lawyer to go and
19 try and get out of it. She might have made a different plea.
20 Let me ask you something, I, one of the last things I asked
21 Ms. Sapp, was you know what not guilty means, right? It means
22 you didn't do it. And you know what guilty means, and it
23 means you did. And to suggest that the fact that there might
24 later be a lawsuit to hold you accountable for what you did
25 would make ya' come to court and give a different answer,

1 well I, I don't think that's credible, because if, if her
2 testimony in District Court's the truth and her guilty plea's
3 the truth, and my client stopped when she hit her is the
4 truth and she didn't react fast enough and slid into her is
5 the truth, if all those things are the truth, then what Mr.
6 Gillcrist is suggesting she could have done would have been
7 something else wouldn't it?

8 And you had the officer come in. The officer heard
9 what happened at the scene, he wrote a ticket. The person he
10 wrote a ticket for pled guilty to the ticket. The person he
11 didn't write a ticket for wasn't involved. What she did is
12 not at issue in this trial, only what the Defendant did. And
13 I think you can see from those sets of facts that when you're
14 driving in the fog and the rain on 70, when you're -- I
15 forget how exactly she, old she was, she was college age with
16 three of your friends in the car, you listen to the radio,
17 you're talking and you're going out to dinner with your
18 buddies 'cause you've been spending the day packing 'cause
19 the next week you're going back to college in Towson and
20 you're moving back, I think what happened, and I think what
21 the evidence suggests to you, ladies and gentlemen, happened
22 is that Ms. Sapp wasn't paying attention. If she had been
23 paying attention she'd have seen all the cars stopped in
24 front, she'd have seen my clients stopped. She would have
25 seen the three cars that went around my client and didn't hit

1 her, and she would have been able to stop without hitting
2 her, but she didn't and she went to traffic court and said
3 so. And that should be the end of the story on liability.
4 She pled guilty because she did it, and that's the end of the
5 story. And to suggest that some other result would have
6 happened if she (unclear - one word) all this, well, that
7 kind of calls a lot of things into question through my
8 perspective. You know, well, I might not have gone to, to
9 court and told the truth and said I did if I'd have known I
10 would get in other trouble later. You tell the truth, you
11 tell the truth. The truth cuts both ways. The truth is not
12 subjective depending on where you are and what you're
13 concerned about when you tell it.

14 Second, you've heard a bunch of Defense attorneys
15 talk about some doctors that you haven't seen and you haven't
16 heard of who perhaps may have said other things and
17 suggesting that Ms. Zois and I are cherry pickin' witnesses,
18 well, I have a couple of things to say about that. One, you
19 did hear Mr. Porcarelli talk all about how these witnesses
20 get paid their doctors, because, and, well, get this, doctors
21 make a lot of money being doctors. And when they're not
22 being doctors they get paid for what their time would take to
23 come be not a doctor when they have to come to court and
24 testify. And that's true for all the doctors that testified
25 in this case. It's true for, it's true for Dr. Sloan, it's

1 true for Dr. Naff, it's true for Dr. McGrail, it's true for
2 Dr. London. That's -- it is what it is, okay? When, when
3 they can't be in the office billing what neurosurgeons bill
4 they bill us, and part of that they're right it's 'cause
5 they, this is really rather what they'd not be doing. They'd
6 rather be doing doctor things. Um, unfortunately, when we
7 have a trial the only people who know what they want to be
8 doing is probably the lawyers. Um, but those doctors get
9 paid, of course they do, and that's not what I'm here to talk
10 about, and I'm not gonna' do what Mr. Porcarelli said I was
11 gonna' do, because well, for one thing, my math ain't that
12 good. I can't go back and figure that out, because I'd have
13 to do it off the top of my head and I would get it wrong and
14 I'd be embarrassed. And, two, all these doctors get paid.
15 So, let's, let's give her that. Let's not say that they're
16 paid experts, okay.

17 What I want to talk about is this. How'd you get
18 'em, how'd you find those experts, why are the experts in
19 your case? Well, you know why the doctors that are here, the
20 doctors that, that we got in the case, 'cause Dr. Sloan was
21 her pain management doctor and Dr. Naff was a neurosurgeon.
22 We didn't go out and pick a doctor uninvolved with Ms.
23 Exline-Hassler's medical treatment to come to court as an
24 expert. We used the doctors we use, because they're the
25 doctors that treated her for the things we're talking about.

1 Well, and, and, and I'll grant the Defense this they don't
2 have the luxury of using those treating doctors as their own
3 retained experts because, well, because our client was the
4 lady having medical treatment, not theirs. So, they have to
5 pick a doctor.

6 But here's the thing, and particularly Dr. McGrail,
7 and I think this is kind of important is he's a professor at,
8 uh, what was it, Georgetown, Georgetown Medical School and
9 one of things you learned is is that the money he makes being
10 an expert witness isn't, it doesn't get paid to the med
11 school it gets paid to the doctor. So, what Dr. McGrail's
12 got essentially is a very well paid part time job being an
13 expert witness. Okay?

14 Now, one thing everybody knows is whose name is on
15 their paycheck, okay? And I'm not meaning to suggest to you
16 that Dr. McGrail would say that these people are paying me so
17 that's who I'm backing, okay. I, I want to be very, very
18 clear about that, that is not what I'm saying. What I am
19 saying is is that, whether he intends to do it or not, I know
20 I try to do a good job at my job, because that's what I get
21 paid for. And everybody else that's got a job to do tries to
22 do a good job. And when Defendant's attorneys and Defense
23 lawyers and Defense law firms have to pick experts they
24 obviously can't pick those treating facts unless they want to
25 call them as fact witness they have to get, get experts.

1 And, well, those doctors would like to probably get hired
2 again by Defense attorneys, if not these same Defense
3 attorneys, then by other ones. So, their interest in
4 continuing to get higher to do that work at that part time
5 job, and again, I'm not trying to suggest they'd do this on
6 purpose, I don't think it's true, but there's two kinds of
7 bias. There's conscious bias where you say hey, look, I
8 wanna' checks flowin' so I'm giving this opinion. And then
9 there's subconscious bias where whether you mean or not,
10 whether it's on purpose or not, you know what you're hired to
11 do and it affects you somehow and that's the kind of bias I'm
12 talking about with these docs that are expert witnesses for
13 people that they weren't treating, because they would like to
14 keep doing that kind of work. And it's just like at
15 McDonald's. if I go to Mickey D's and my food's no good well
16 I'm, I'm probably headin' across the street to Burger King
17 next time, and that why they have a subconscious incentive to
18 shade their opinions. I, I'm not calling them a liar, I
19 don't think that's true, but what I am saying is is he knows
20 what he's hired to do and he knows what he's working for, and
21 at some level that effects what he says.

22 Now, two, and I kinda' knew this was coming,
23 because we do come to court with some technological dudads
24 and things like that, okay, and the reason we do it is
25 exactly the reason that you were told, we have a client to

1 represent and we're doing our level best to represent her.
2 But, at the same time, don't be swayed by that. We all live
3 in 2013, okay? You know, if you're presenting, if your,
4 you're doing a presentation to try and get a grant odds are
5 you show up with something beyond paper, right? You've
6 probably got a PowerPoint and you're using it show why you
7 should get what you're asking for. If you're presenting a
8 white paper you probably have copies and slides so you can
9 talk to your audience and point out your important points,
10 okay. Even now police cars have laptops in 'em, okay?
11 Technology changes the way we do things in the modern world.
12 So, a suggestion that because we're using that technology to
13 give you folks a professional, clean persuasive presentation
14 for our client. I think it's kinda' silly. We're using the
15 tools that we, and every modern person in business in 2013
16 uses to do their job, and don't get me wrong, we do try to
17 use those tools our best to present our case, because that's
18 what we're here for.

19 Now, let's talk about these other doctors that you
20 never saw and never heard from. You heard a bunch of Defense
21 attorneys mention, Mr. Gillcrist talked a lot about 'em, Mr.
22 Porcarelli talked a lot about 'em, that we didn't bring you
23 those doctors. Well, you saw what Naff and Sloan cost,
24 right? If you folks would have liked to have sat here
25 through five more doctors than we probably could have brought

1 them, but at some point that evidence gets cumulative. But
2 there is another thing I'd like to point out, if you remember
3 us talking during the evidence the Defendants in this case
4 used something called a subpoena, and they subpoenaed medical
5 records --

6 MR. GILLCRIST: Objection, Your Honor.

7 MR. BRATT: -- on Ms. Exline-Hassler --

8 THE COURT: Overruled.

9 MR. BRATT: -- going all the way back to 1980, okay?

10 MR. GILLCRIST: Objection.

11 MR. BRATT: 1980.

12 THE COURT: The --

13 MR. BRATT: And you'll have the record --

14 THE COURT: -- I'll --

15 MR. BRATT: -- you could look at them --

16 THE COURT: -- sustain as to the date, so.

17 THE COURT: Well, you take 'em back, okay? It's Exhibit
18 8 and you flip through 'em and you look at the dates, all
19 right, folks? Like for example, some of them are a little
20 hard to read, but, uh, here's one, look at page seven of, uh,
21 Exhibit 8. You know, date of, date of service August 20th,
22 1981 so they went back that far and you'll have the records.
23 And funny thing about a subpoena is you can use a subpoena to
24 take depositions, you heard about this concept of a
25 deposition. The doctors that testified in this case were

1 served with depositions so lawyers could put 'em under oath
2 and see what they had to say, and all these other docs that
3 they're talking about, well, they're subject to subpoenas,
4 too. You wanna' know what they're gonna' say, you can ask,
5 but you haven't heard it, because nobody did it. Okay?

6 And so the thing that the Defense is telling you,
7 the thing they're taking shots at us for not bringing isn't
8 something they couldn't have brought themselves, okay,
9 everybody? Just so you know that's clear. They had the
10 option to do that, and they didn't. Now, that's true, they
11 have no burden of proof, they can do what they're doing, they
12 can sit here, they can pick apart our evidence, they can tot
13 (sic), take shots at what we got, but they shouldn't suggest
14 to you that they didn't have the opportunity to bring you
15 what these docs would say, because they did.

16 Now, there are really three things the Defense is
17 defending this case on really, because I've thrown out this
18 liability issue, she did it, she went to court and admitted
19 she did it. So, let's talk about damages. The Defense on
20 damages in this case is three things. One, it's this 2005
21 car accident where the testimony that you heard was that it
22 was a \$485 bumper tap with a hit and run, Ms. Exline-Hassler
23 went to a ball game that night and sat on bleachers, and that
24 she had no medical treatment after that. That's the
25 testimony that you have.

1 Well, what I want to do is something that's a
2 little bit different, maybe a little unusual, but I want you
3 to pretend. I want you to pretend that I am not here talking
4 about an accident on June 26th, 2009. I want you to pretend
5 that my job here today is to take all this medical treatment
6 that you've seen and heard about, all these high numbers that
7 you've heard dissected, you know, for past and future medical
8 treatment, and I want you to pretend I'm proving two
9 different cases. I want you to pretend that the first case I
10 can approve is this one. Jacqueline Exline-Hassler v. Hit
11 and Run Driver, 2005, okay? Would I be able to convince you
12 by a preponderance of the evidence that the damages that are
13 being claimed in this case are from that? I think I
14 wouldn't, and this is why. It's 2005, we just use June 15th,
15 let's say that this accident was at that, June 15th, 2005,
16 fender bender, \$485 bucks, goes to ball game. All right,
17 well. And as Ms. Zois has shown you, these calendars are
18 marked with the dates of medical treatment, so how many dates
19 of medical treatment in 2005 did Ms. Exline-Hassler have
20 after her car accident on June 15th? Well, that looks like
21 none.

22 Now, go to 2006 how much medical treatment did she
23 have in 2006 after a 2005 med (sic), uh, automobile
24 collision, \$485, none. Go to 2007 she's got a doctor visit
25 in 2007, she had a sore throat, she went to her, I guess the

1 Robinwood Urgent Care. Okay? So, now, in 2005 no medical
2 treatment, in 2006 no medical treatment, in 2007 no medical
3 treatment, and that's for the first thing the Defense is
4 trying to tell you that all this is related to. So, let's,
5 let's go, let's go back down to 2008, okay?

6 Then the first incidence of her receiving back pain
7 treatment is January 8th, 2008, okay? That's almost three
8 years after the car accident. But they wanna' tell you that
9 that was the beginning of the medical treatment for the
10 chronic pain that she had for an accident that was three
11 years earlier that didn't result in medical treatment any of
12 those three years. Okay? And, furthermore, they want to
13 rely on a record. They want to rely on this record.

14 And I want to talk about one part that I think is
15 pretty important. "Patient has low back pain since being in
16 a motor vehicle accident three years ago." Now, I'm not
17 gonna' take you through all this who struck John about every
18 other single thing that's wrong in this, 'cause I don't have
19 that long and you've heard it five times already, but what I
20 am going to talk about is this. This record is from March
21 26th, 2008, okay? And it says, "She's had low back pain since
22 being in a motor vehicle three years ago." Well, here's the
23 thing that isn't the first visit she had for back pain in
24 2008. The first visit she had was this from January 1st, 2008
25 she went to the Urgent Care. She told them that she fell

1 down a flight of stairs last Wednesday, that would be the
2 preceding week, that would be the week after Christmas, that
3 would be the week that the holiday is when you've heard Ms.
4 Exline-Hassler testify that she fell moving some holiday
5 stuff. And, so, give/take that's about what, December 27th?
6 Okay, December 27th, right? She has this incident where she
7 falls down the stairs.

8 So, let's go back. We're back to March 26th, 2008.
9 So, shall we go backwards in time? Go back a m (sic), go
10 back a month in time from March 30 (sic), March 26th, '08.
11 That's February 26th, '08, okay? So, that's one month. Go
12 back another month, January 26th, '08, well, that's two
13 months. Go back another month. That's December 26th, 2008,
14 okay? Now, in light of all the myriad errors, including one
15 that could kill her with no penicillin on, allergy on there,
16 doesn't this kinda' suggest to you that somebody made a
17 mistake, and instead of saying she fell down some steps three
18 months ago, they wrote that she fell, was in a car accident
19 three years ago, give, particularly given that no medical
20 treatment in 2005, none in 2006, none in 2007 to you finally
21 get to that one visit here when she finally mentions,
22 according to the record, this car accident after having gone
23 to Urgent Care and told them that a week earlier she fell
24 down some steps at Christmas. I think it's abundantly clear,
25 abundantly and should be to you, ladies and gentlemen, that

1 this record is wrong and the reason it's wrong is somebody
2 wasn't paying attention, and they wrote down MVA three years
3 ago instead of fall three months ago. It's an easy mistake
4 to make, just like some of the other mistakes in it are easy
5 mistakes to make.

6 And then here's the other thing how you know that
7 she's telling the truth when she does this. She goes to a PT
8 evaluation. This is April, "Around Christmas moving
9 something injured her back and shortly fair (sic), fell down
10 the stairs." Okay? Now, we can quibble all we want, whether
11 she's moving something and then fell down the stairs or
12 whether she fell down the stairs moving something. I submit
13 it doesn't really matter. The point is is that this record
14 says she fell down the stairs. The Urgent Care, the Urgent
15 Care record from when she first went says she fell down the
16 stairs. So, doesn't, particularly since they're from the
17 same entity they're all from Robinwood in one form or
18 another, doesn't, isn't that consistent with what Ms. Exline-
19 Hassler said? Because remember, ladies and gentlemen, Her
20 Honor, when she gave you your instructions it's instruction
21 1.3 witness testimony consideration. Is what the witness
22 said consistent with the other evidence? And the only thing
23 that Ms. Exline-Hassler said about anything connected with
24 this 2005 accident that's consistent with any evidence is
25 that it's inconsistent with this one thing, which I think is

1 an obvious clear error, particularly in context.

2 Now, let's go to the second case, let's go to the
3 other case that I don't have to prove today, but let's
4 pretend I had to prove it and I could. So, I think I pretty
5 well established to you, ladies and gentlemen, that if I had
6 to go prove that these damages that Ms. Zois showed you were
7 related to that 2005 car wreck it couldn't possibly be true.
8 Nobody would think it was more likely than not that those
9 damages were related to that 2005 car wreck.

10 Now, let's go to the second case, Jackie Exline-
11 Hassler vs. the fall on the steps, okay? This is the other
12 thing that they want to lay this at the feet of. The defense
13 wants you to think that because she fell down the steps and
14 had an Urgent Care visit on the 8th and then had one visit
15 with a primary on the 26th -- oh, and keep in mind, okay, this
16 visit, and it was discussed in some of the testimony, this is
17 a rescheduled visit. Ms. Exline-Hassler was originally
18 supposed to be seen there on the 20th and it was cancelled,
19 because the doctor wasn't available. So, she waits till the
20 26th, and goes to her appointment, because after all, and you
21 saw it on the record, part of the reason for the appointment
22 is that she's a new patient. She didn't have a primary care
23 doctor before so she comes in. Then on April 28th Dr. Brown
24 had represented, had recommended a physical therapy
25 evaluation, she goes and gets that. After her physical

1 therapy evaluation she has exactly one physical therapy
2 appointment, which is on May 6th, 2008. A couple of flair
3 ups, pain, but they've all been related to sitting crooked in
4 chairs. Patient advised of proper alignment during sitting.

5 And let's go back one earlier. Here's another
6 thing why I couldn't prove that case if I had to -- I did hit
7 the button -- on 4/28 when she went for her physical therapy
8 evaluation she was still riding her motorcycle and gardening,
9 even though she's supposed to have these chronic,
10 debilitating back problems that we've proven to you that the
11 Defense says is because of either this fall or this accident
12 of some combination of the two things, and that have been
13 present since late 2007, which is when she says it was
14 present.

15 Now, ultimately, with respect to this fall incident
16 on the stairs, she's discharged on paper, and what that means
17 is is that she was discharged because she never came back.
18 Dr. Roberts signed it on July 7th, 2008, so that we know
19 between May 6th when she had her last physical therapy visit
20 and July 27th, '08 she didn't come back, they never saw her
21 again. And at that time she noticed minimal discomfort.

22 And with respect to medical treatment for that 2008
23 accident that's what they got, that's the best they got,
24 okay? The best they got is that one record that we all, I
25 think, should agree is clearly mistaken, at least about that

1 one thing, said she was in a car accident and hurt herself
2 even though in the preceding three years they're in zero
3 medical, and in fact you heard her boss come in and say in
4 2008 she had zero sick days, zero sick days.

5 Now, so the last treatment that she had after this
6 fall, the end of December in 2007, was May 6th, 2008, she was
7 discharged in a paper discharge two months after that, 'cause
8 she never went back they discharged her, and noted she had at
9 that time minimal discomfort. Okay? And I wanna' warn you,
10 I see you all looking at me. I'm not gonna' leave out what
11 Mr. Gillcrist challenged me to come up here and talk about,
12 okay? I'm gonna' talk about these prescriptions, because I
13 have to. I'm not trying to hide them from you. In fact,
14 you're gonna' watch me prove my case with 'em.

15 Now, she gets them filled originally in March of
16 '08, okay? Then in July '08 there's a fill, and actually I
17 should have left these off, because they're from 2008. This
18 one's from January of 2009, that's the last fill at Boonsboro
19 when she was filled Skelaxin, which I wish it said on here
20 how many it was, but it seems to not. But if you go to the
21 other record from Weis Pharmacy it's a little more accurate.
22 And I want to point this day out to you. This is February
23 28th, 2009, okay? I think we've been pretty clear that Ms.
24 Exline-Hassler filled those prescriptions. There's no doubt
25 about that, she filled 'em. Date of record show it, her

1 testimony shows it. Well, I need you to do a little match
2 for me. She filled a prescription for Tramadol on February
3 28th, 2009, quantity, 60. Okay, 60. On February 28th, 2009.

4 Now, if you go back to where she was, and that was
5 a prescription for Tramadol, and you heard the doctor's
6 testimony that Tramadol and Ultram were basically the same
7 thing, it's a generic, this is how it was prescribed. This
8 is important. She was told to take one to two tabs every
9 four to six hours as needed. They dispensed her 60.

10 Now, assume for a moment that she took the maximum
11 dose that she was prescribed, okay, and that she filled it on
12 the date the record shows, February 28th, 2009. Maximum dose
13 would have been two every four hours. Two every four hours
14 is about what three hours, three times a day if she takes 'em
15 while she's awake. So, if she filled it on February 28th, '09
16 that would have been 25 days of meds at the lowest possible
17 (unclear - one word). See, I messed my math up I shouldn't
18 even do this. If she took one tab every four to six hours
19 for pain that would be a maximum of 25 days worth of
20 medicine. I invite you to go back and redo my math, because
21 it isn't my bag, but taking it at the lowest dose at most
22 that's 25 days of meds that she filled on the 28th, on, on
23 February 28th, '09.

24 If you take the maximum dose, if you take the two
25 pill dose four hours that's 12 pills a day, and you know how

1 long that last? That lasts five days, okay. So, what
2 they're telling you is that the reason that you know that
3 this lady was in chronic debilitating back pain is 'cause on
4 this day she filled this prescription for 60 pills when, even
5 if she took them at the maximum recommended dose they'd have
6 lasted her five days. Or, at the minimum recommended dose,
7 they'd have lasted her what, I don't even remember what I
8 said now, 25, 20 days something like that? Well, how long is
9 20 days from March 28th, 2009? I mean, I'm sorry, from
10 whatever the date is, from February 28th, 2009? That's
11 February 28th, 2009. I can't -- February 28th, 2009. Okay?

12 Now, if we go 25 days, one, two, three, four, five,
13 six, seven, eight, nine, 10, 11, 12, 13, 14, 15, 16, 17, 18,
14 19, 20, 21, 22, 23, 24, 25. At the lowest recommended dose
15 that prescription from February of '09 would have lasted her
16 at most to March 25th. Or at the maximum dose it would have
17 lasted her five days after she filled it to then. Okay? So,
18 take a look at the 25th of March 2009, okay, and if I'm trying
19 to prove that this fall down the steps at the end of the year
20 in 2007 caused all these problems that we've talked about
21 from this accident how can the Defense account for this?
22 Between this date, when the meds would have had to have run
23 out even at the lowest dose, there's no doctor's visit in
24 March looking for medicine. I mean, there's no doctor visit
25 in May looking for medicine. There's no doctor visitin'

1 (sic) -- what am I doin' here? There's no, no doctor visit
2 in April looking for medicine. There's no doctor visit in
3 May looking for medicine. There's no pharmacy prescriptions
4 for those refills in those two months. So, if they're right,
5 and which I don't think they are, and I don't think this is
6 as big of a point as they're trying to make it is, but since
7 they think it is I'm gonna' address it for them, since they
8 were kind enough to invite me to do that. If she's got
9 chronic debilitating back problems that have been bothering
10 her since 2005, and even if she took all the meds that she
11 says she didn't take then the last time they could have
12 lasted to is here, what's she doin' for this chronic back
13 pain for two whole, almost three months before she gets in
14 this car accident? Nothin'. And that's why if I hadda' go
15 back and I was tryin' this case I loose, because her
16 treatment stops, her meds stop, and between the day that
17 those meds stop and June 26th, 2009 there is absolutely not
18 one little tiny shred of evidence to suggest that she went to
19 a doctor or filled a script for a back problem for two,
20 nearly three months. And if what they're tryin' to pin on
21 those two things is legit, she'da' hadda' do somethin'. If
22 it's as bad as they say it was she woulda' had to go to a
23 doctor, she woulda' had to get something filled, and she
24 didn't. The evidence shows that she didn't.

25 Now, here's another thing that's interesting.

1 Lawyers say interesting things sometimes, usually not, but
2 every once in a while, and one of the things that one of the
3 Defense lawyers said, and I don't remember which one, it
4 doesn't really matter, was that they were not calling my
5 client a liar, but they, they were here to talk about her
6 credibility.

7 Now, I went to Catholic school. One of the things
8 we learned about is called synonyms, words that are different
9 words that means the same thing. Credibility and are you
10 telling the truth or not are the same, okay? So, when you're
11 being asked to assess a witness' credibility you're being
12 asked should I believe this person? Are they telling me the
13 truth? Is what they said true or is it a lie? That's what
14 credibility means. So, when they tell you to assess Ms.
15 Exline-Hassler's credibility they want you to figure out
16 whether she's a liar or not, okay? They just use a word that
17 doesn't sound like that, because they don't want to sound
18 like they're attacking that nice lady. They wanna' pin it on
19 me and Ms. Zois for orchestrating all this.

20 Credibility's different than are you a liar, but
21 here's the thing you, you heard the instructions Her Honor
22 gave about these things -- I didn't want to do that. I hope
23 you're all very interested in that I shop at Amazon.

24 (Brief pause.)

25 One of the instructions that the judge gave is

1 instruction 1.3, and I know that we've all worked out
2 (unclear - one word) the judge who's sending a copy of the
3 instructions back to you, and instruction 1.3 is called
4 witness testimony consideration, and I'm pointing this out to
5 you, because I don't want you to think this is something that
6 I'm making up, that I'm trying to lawyer into this case.
7 This is the instruction that was given to you all by the
8 judge on how you evaluate west (sic), how you evaluate
9 witness testimony. One, their behavior on the stand and way
10 of testifying.

11 Now, I sat here all through Ms. Exline-Hassler
12 being up on the stand. She was up there a while, and she was
13 subject to some vigorous, professional, but vigorous cross
14 examination, particularly from Mr. Gillcrist, and she was
15 asked about every prior statement she could possibly have
16 ever made in any way, shape or form in connection with her
17 injuries in this litigation all the way back to these things
18 we've been talking about already. What happened? She was
19 crossed examined with her deposition testimony. Did she look
20 like a liar? Did she look like she wasn't answering a
21 question square? And in fact when I look, and it looked like
22 a couple times she caught Mr. Gillcrist trying to tell her
23 she said something she didn't. I think I remember
24 apologizing once, okay? That wasn't a lady lying. And you
25 saw her husband, Mr. Hassler, did he look like a liar to you?

1 Did he seem like a liar? Did anything he told you seem
2 inconsistent with anything he told anybody else? Was it
3 inconsistent with his deposition testimony? No. And you
4 know what he said, he said that Jackie keeps these things,
5 she keeps meds, and he said that she keeps 'em in a basket up
6 on a shelf, not in her medicine cabinet like Mr. Porcarelli
7 was trying to show you with all these little pill bottles.
8 And, just to clue you in, okay, on how lawyers do things,
9 what do you think was in those? Anybody close enough to see?
10 Anybody? I think I called, call, thought I saw a couple M's
11 on those inside. I think they're a bot (sic), bunch of
12 bottles of M&M's. So, they bring in a bottle of a bunch of
13 M&M's to illustrate that anybody with all these bottles of
14 M&M's sittin' right in front of 'em in their medicine cabinet
15 you couldn't help but notice them that they had to be there.
16 Well, here's the thing, it ignores that a) that's not where
17 they were, they were in a basket on a shelf; and it ignores
18 b) Mr. Hassler's testimony that he was looking for cold
19 medicine, knocked the basket over, got made and started
20 chucking stuff out. And anybody who's ever been in any kind
21 of relationship with any other person knows that when you
22 remember something like it's 'cause something I'm mad at you,
23 and he threw it out. And, if you think he's a liar, you
24 think Ms. Exline-Hassler's a liar, you have a great way as
25 jurors to handle that, okay?

1 If they're liars this is what I want you to do. I
2 want you, if you think they sat here, raised their hands and
3 told the truth and lied to you in this Court, I want you to
4 go back in that jury room and I want you to write a big fat
5 zero on that damages ruling, okay? 'Cause she's either a
6 liar or she's not. And she's not. I know it, you know it,
7 and everybody else in this courtroom knows it, because what
8 she said is consistent with the other evidence, what she said
9 was consistent with her demeanor and way of testifying on the
10 stand. What she said was consistent with her prior
11 statements at her deposition.

12 Now, obviously, she's a party, she's got an
13 interest in the case, all parties got an interest in the
14 case, but was her memory accurate? Yeah, it was, the things
15 that she told that, when she was asked questions about what
16 she said in her deposition she got those questions right,
17 'cause remember it was accurate.

18 And was her testimony supported or contradicted by
19 the other evidence? Well, it was. It was supported by the
20 other evidence, because her husband said that he remembered
21 that car accident and she went and sat on metal bleachers
22 that night. Somebody with a bad back can't do that. He said
23 that there was \$485 worth of damage to the bumper that she
24 wasn't injured and didn't get medical treatment. Well, what
25 she said was consistent with that. And the medical records

1 were consistent with that that you saw from back in 2005,
2 because there are none. So, that all adds up, okay? And
3 when you look at them as witness testimony consideration
4 factors that Her Honor showed you, you think about 1.3 when
5 you evaluate Mr. and Mrs. Hassler, because they're telling
6 you the truth and the factors that you're supposed to
7 consider say that they're telling the truth.

8 Now, one other thing. We talked about this Dr.
9 McGrail. I'm not gonna' get into a whole bunch of who struck
10 John about whether Naff or McGrail is a superior
11 neurosurgeon, because, let's face it, I think they're both
12 qualified docs, you know, I, I, I, do you know, God forbid I
13 had to cut me, I hadda' get cut open, I'd let one of those
14 guys do it. I think they're qualified. I'm not trying to
15 say they aren't, but one of the things Dr. McGrail did say
16 is, okay feel free to be -- and this is a question, page 29.
17 "Feel free to go through as we go through your exam, Dr.
18 McGrail. Tell us, to a reasonable degree of medical
19 probability what the opinions that you hold in this case, and
20 then we'll explore in more detail the basis for those
21 opinions." "I'd be happy to do that. I think Ms. Exline-
22 Hassler clearly has a history of some degenerative disease in
23 her lumbar spine. She was involved in a medical -- and she
24 was involved in a car accident, which is the basis of this
25 litigation. The motor vehicle, which is the basis of

1 litigation occurred on June 26th, 2009. Based on the history
2 that I obtained on her as well as my review of the records
3 and the images, I think it's likely that the motor vehicle
4 accident did aggravate her underlying chronic condition,
5 which does involve degenerative disease of the spine and a
6 history of pain and discomfort in the lumbar spine."

7 Now, to be fair to him, he says that he think (sic)
8 that aggra (sic), he thinks that aggravation was nothing more
9 than a, a muscle strain sprain, and he thinks that these
10 annular tears weren't part of that aggravation. Although,
11 the evidence was that annular tears can be aggravated by
12 these things. Dr. Naff told you that trauma's one of the
13 primary causes of annular tears. There's no dispute that
14 she's got annular tears. We all agree about that.

15 And then later on the doctor was, uh, asked again,
16 "And so the car accident aggravated those pre-existing
17 conditions?" And this is Dr. McGrail, this is the Defense
18 doctor, "I think the car accident did aggravate it. I think
19 it was responsible for some pain and cons (sic) and
20 discomfort that experienced (unclear - two words.)" And to
21 be clear, he's not talking about these annular tears that's
22 where he says no, no, no, no, no.

23 And you saw Dr. London testify, and well, Dr.
24 London's a different sort of cat, okay? But I remember one
25 of the questions I asked, and I thought it was pretty

1 important, which was, "Doc, when I took your deposition you
2 didn't even know this case involved annular tears," and then
3 I read him one of the questions I asked him about annular
4 tears, and his answer was a question, which said, something
5 to the effect of, wait, is there an allegation that there was
6 an annular tear involved in this case? He's one of their
7 experts on these annular tears and he asked me in his
8 deposition if the case involved an annular tear. This is the
9 same dude who has 2,000 patients and is treating one or two
10 for annular tears, one/one-thousandth of what he does. Are
11 you really that much of an expert at one/one-thousandth of
12 what you do? And a neurologist. I'm not going to take shots
13 at any of his qualifications as a neurologist. He's a
14 qualified neurologist, and he might have even been a decent
15 witness if we were alleging that Ms. Exline-Hassler had a
16 neurological problem, but she does not. Um, what she has is
17 an annular tear which causes fluid to leak that can irritate
18 nerves. There's no allegation in this case that she has
19 nerve damage.

20 And this is another thing I want to point out about
21 the presentation you got from the Defense attorneys,
22 particularly I think Mr. Gillcrist said this, but he went
23 through this whole list of stuff, you know, she's got mild
24 degenerative changes, she's got this, she's got that, all
25 these big medical words. And he pointed out just about

1 everything other than ovaries that she's got that couldn't
2 possibly have been related to this accident, okay? Didn't
3 explain why any of things were normal, any of things existed,
4 any thing (sic) of those things had anything to do with this,
5 you know why? Because there isn't anybody claiming those
6 things are related to the accident. What's being claimed to
7 be related to the accident are these annular tears, and there
8 is evidence of that.

9 Bear with me a second. This is one of the first
10 times I've used this, so I'm not entirely comfortable with it
11 in front of folks. But -- and that's where we are, okay? We
12 have all this evidence, and I just showed you two cases that
13 I couldn't prove. I couldn't prove that these problems that
14 she experienced on to the future and into now and that are
15 going to be permanently related to that 2005 car accident.
16 And I, I couldn't prove it would be related to this fall on
17 the steps, you know why? 'Cause after 2005 there's three
18 years of no medical treatment, and the first time it pops up
19 is in a medical record in 2008 that's sandwiched in between
20 two other records that say she fell down the steps from this
21 same practice. And I can't win the case about the fall on
22 the steps either if I'm trying to relate all this stuff to
23 that, you know why? Because, one, she got four (unclear -
24 one word) visits, an Urgent Care, a family doctor, a PT
25 evaluation and one physical therapy visit, after which she

1 was disc, discharged with minimal discomfort. So, I've just
2 taken the two things that the Defense says these damages are
3 related to and I've knocked them out, because if I had to
4 come up here and present those two cases to you I would lose
5 and I should, because I wouldn't be able to prove, more
6 likely than not likely that everything that happened after
7 that was related to either one of those things.

8 And I'm gonna' go back one more time, just for the
9 heck of it, to the one thing that they think is their silver
10 bullet, which is these stupid prescriptions. And, even if
11 she did what they say she did, even if she was having chronic
12 back pain and she took every single one of those
13 prescriptions the way she was supposed to, how is it that
14 after they would have had to have run out there's nothing for
15 nearly three months until after she's in a car accident on
16 June 26th, 2009 and then the very next day, or a couple days
17 later is at the urgent care saying I hurt my back in a car
18 accident a couple days ago.

19 So, when we go to 2009 car accident. Medical
20 treatment, medical treatment, boom, boom, boom, boom, boom,
21 September '09, October '09, November '09, December '09.
22 January '10, February '10, March '10, April '10, May '10,
23 June '10, July '10, August '10, September '10, October '10,
24 November '10, December '10. January '11, February '11, March
25 '11, April '11, May '11, June '11, July '11, August '11,

1 September '11, October '11, November '11. And then even in
2 to 2012, and they've projected that she's gonna' need more
3 treatment into 2013 and beyond.

4 Now, all that stuff that starts popping up after
5 this date, is that a cosmic coincidence? Is that a big 'ole
6 just, just a weird thing that happened for no reason? Or is
7 it 'cause she got hurt in a car accident this day, and not a
8 car accident this day or a fall a week before that where all
9 the treatment ended and she was discharged with minimal
10 discomfort. The two cases that they were, are telling you
11 that caused this are cases I'd lose, and I'd lose them no
12 matter whether these prescriptions are there or not, because
13 there's two big of a time gap in between the last time that
14 any of that could have happened and this June, and this June
15 car accident, that's why.

16 The chronology when -- because you're asked as
17 jurors to look at the entirety of the evidence, not just the
18 little chunks that people tell you, and the entirety of the
19 evidence strongly suggests that one thing here, and I wanna'
20 bring your burden of proof back, strongly suggests that one
21 of these things is more likely than the others. What's more
22 likely that everything that happened after this day happened
23 because of the thing that happened on this day? Or that
24 happened because of something in December of '07? Or in June
25 of '05? It's more likely, I know it's more likely, you know

1 it's more likely.

2 Now, that takes me to another concept -- just bear
3 with me, folks. This is the last time I get to talk so I
4 want to make sure I don't forget anything. (Unclear - two
5 words.) Oh, yeah. Damages. Now that I have talked to you
6 about why the excuses the Defense has come up with as to why
7 Ms. Exline-Hassler's damages aren't related to the one thing
8 that it's abundantly clear they're related to is the question
9 of damages. And, like Ms. Zois said, we're here asking for
10 money, because you can only give us one thing. I mean, we
11 have to do this, I feel just as weird about it as Laura,
12 probably a little stranger, because look I know these are big
13 numbers, okay? And the reason they're big numbers is because
14 a big bad thing happened. This lady got hurt bad, and she
15 has serious damages. Her past medical expenses were \$83,000.
16 Her past wages \$28,648. Now, let's talk about that for a
17 second, okay? I think we've established that her boss came
18 in here and explained when, um, when she started having
19 problems at work, and it wasn't in 2005, it wasn't in 2006,
20 it wasn't it 2007, and it wasn't in 2008. Okay? In fact,
21 she said that my client had zero sick days in 2008. She
22 didn't miss a day in 2008, sick. And Ms. Hamilton testified
23 that, what do you know, another strange coincidence after
24 June of 2009 she was okay and then she started gettin' worse
25 and worse, and it was reflected in her performance

1 evaluations. Even though her own boss put in there that we
2 know she'd had a serious injury around this time, and we know
3 she's doing her best and we told her to take care of herself
4 first, but her boss is evaluating for, her for a job that is
5 Ms. Hamilton's old job. Who would be better qualified to
6 evaluate her performance at her job than the person who had
7 the job immediately before her and promoted her and hired her
8 to fill it? Ms. Hamilton's intimately familiar with the
9 requirements of that job. And I'm not gonna' go back over
10 the ground Ms. Zois covered, but you saw the performance
11 evaluations. You saw when it started going bad, and it
12 wasn't after any car accident in 2005 and it wasn't after any
13 fall on the steps in 2008. It was after a car accident in
14 June of 2009.

15 Now, you've heard about the past medical bills and
16 you got a big song and dance about how, well, Dr. Sloan said
17 his own bills were reasonable and that that explanation for
18 that, and this actually kinda' cracked me up to tell you the
19 truth, is that the explanation of why Dr. Sloan is wrong and
20 why he has an interest in a bias is he got promoted to
21 partner in his medical practice. Well, here's the thing if
22 you're not good at your job are they gonna' make you partner?
23 Like, if you suck at being a doctor are they gonna' make you
24 a partner in the practice? You know, if they think you'd do
25 something ethical, unethical like pad bills to get more

1 revenue are they gonna' make you partner? No, these guys
2 have reputations to consider, they have board certifications
3 to consider. If anything, the fact that Dr. Sloan was
4 subsequently made a partner ought to add more force to his
5 opinion, because it shows he's a good doctor that was
6 elevated by his peers.

7 And the same thing with all these other doctors,
8 'cause Dr. Sloan wasn't the only doctor that said his bills
9 were fair and reasonable, so did Dr. Naff, and, unless I
10 missed somethin' I didn't hear, and I know Her Honor
11 instructed you, you don't have to believe testimony just
12 'cause it's unopposed, but you didn't hear any testimony
13 opposing that, did ya'? I didn't. And something tells me
14 that if there was testimony opposing that somebody would have
15 presented it to you, but you didn't hear any. And the reason
16 you didn't hear any is because this testimony is accurate,
17 you have reason to disbelief it. In fact, what Dr. Sloan
18 actually even said was is that he even did research to make
19 sure he gave you the right answer. He went to the billing
20 manager for the practice, asked them to compare their bills,
21 other similar practices in the mid-Atlantic region, they did
22 and they told him the answer and that's why he said what he
23 said, because he had to actually go find out, and he went and
24 found the person there that knows and that's the answer he
25 gave you.

1 Now, future surgery, all the witnesses agree that's
2 gonna' cost what it costs. Dr. Naff said I think between 100
3 and 150, Dr. McGrail gave you a number in that range, maybe
4 125. We all know what the surgery's gonna' cost, somewhere
5 in that range. We all know that she needs the surgery or
6 that she will at some point have to have the surgery. The
7 doctors agreed on that, that the surgery is indicated, that
8 the reason she has not yet had it is because of her age. Dr.
9 Naff testified that based on his years in practice as a Johns
10 Hopkins trained in neurosurgeon, one of the top one percent
11 in neuros (sic), neurosurgeons in the United States that he
12 thinks within 10 years she is likely to have no choice, but
13 to have this surgery. And what that means is is that in his
14 opinion as a doctor based on his knowledge, training and
15 experience, because this is all, we use magic words when
16 presenting medical witnesses or reasonable degree of medical
17 probability. What it means is that based on your knowledge,
18 training and experience as a doctor is one thing more likely
19 than the other thing? We're back to the same burden of
20 proof. And Dr. Naff said that it's more likely that she will
21 need this surgery within 10 years in that she won't. And
22 that she will continue to need the pain management treatment,
23 at least until she has the surgery. And then after the
24 surgery the surgery may make her better, it may not, she may
25 still need the pain management, she may not. And in a

1 perfect world as a lawyer I would love to have evidence
2 that's perfect, that is just perfect where I can just put it
3 all in my little boxes and show it to you, but life isn't
4 perfect. We aren't always aren't able to predict the future,
5 so we don't know exactly how her recovery will be, but I
6 think the Doctor did say that she would be expected to some
7 degree of discomfort after that surgery and that it would go
8 on indefinitely, because the surgery was not a magic bullet,
9 although it could make it better.

10 So, we talked about all these damages, and all the
11 medical testimony, at least from the Plaintiff's expert
12 witnesses, is that they're fair, reasonable, necessary and
13 causally related to this June car accident. And none of the
14 Defense witnesses said anything different.

15 And now we go to the part that's hard, okay? And
16 as Ms. Zois struggles with this, I struggle with it a little
17 bit myself, because it's hard to explain. It's hard to take
18 something like a non-economic damage and particularly a
19 (unclear - one word) claim, and put it into a context that
20 really illustrates exactly what it is that you ladies and
21 gentlemen are being asked to measure. The government's best
22 estimate is that she's gonna' like another 37 years. Thirty-
23 seven years sounds like a number. I think it's hard to put
24 37 years in the future into context. Now, you've heard the
25 kind of difficulty she's had and that are going to continue

1 during that time period. She can't ride her motorcycle, one
2 of her lifelong pursuits. She can't do it anymore. You
3 heard how she feels and (unclear - two words) and she's
4 stuck. You heard about the gardening, you heard about the
5 difficulties around the house. Yeah, we're not trying to
6 tell you that she's in a wheelchair and a paraplegic. She
7 can do stuff, but she pays for it afterwards. Steve helps
8 her out, like he said. But her life is a lot different than
9 it was before this accident. And you heard all the ways that
10 is. And that's what lawyers and your jury instructions call
11 non-economic damages.

12 And, so, what I go to do, and you can see these
13 numbers, Ms. Zois did her math and she explained that even if
14 you're making less than minimum wage she now has a miserable
15 job that she can't quit, she can't go home from and she can't
16 get a vacation from. And we're asking you to find a way to
17 quantify that, to take that and put that into a number that
18 fairly and adequately compensations her for that loss and
19 that harm.

20 And you can choose to accept the number Ms. Zois
21 gave ya', you can choose to evaluate any way you choose,
22 because on the evidence that's been before you, okay? You
23 know, you're not wedded to this. You could award her more
24 than this. You could award her triple or five times this.
25 You could cut it in half. You're the jury. You're the judge

1 of the facts and the law in the damages in this case. This
2 is one of our ways of suggesting to you though numbers that
3 we believe are appropriate, but what we're doing is an
4 inherently difficult task, taking something unquantifiable
5 and trying to put a number on it, and that's what we're
6 asking you to do and it's a difficult job.

7 But, what I want to do is is give you a couple
8 things to try and put this in context for you. How long 37
9 years is, how long 37 years of losing your hobbies is, how
10 long 37 years of pain is. How long, however much longer she
11 works and being bad at your job is, and know that you didn't
12 used to be bad --

13 MR. GILLCRIST: Objection.

14 MR. BRATT: -- now you are.

15 THE COURT: Sustained.

16 MR. BRATT: And it --

17 MR. GILLCRIST: This is not rebuttal.

18 MR. BRATT: Sure it is, damages was covered.

19 THE COURT: I, I, please.

20 MR. BRATT: Okay.

21 THE COURT: It's been --

22 MR. BRATT: So, I'll tell you what --

23 THE COURT: -- 55 minutes.

24 MR. BRATT: -- I'm gonna' give you a little context.

25 I'm not going 37 years in the future for Ms. Exline-Hassler,

1 I'm going 37 years back, because every day those past 37
2 years ago to today is a day that you're being asked to
3 compensate her for going forward.

4 MR. GILLCRIST: Objection.

5 MR. BRATT: Thirty-seven years ago --

6 THE COURT: Uh, but --

7 MR. BRATT: -- in 1975 --

8 THE COURT: -- hold on. When you talk about day by day
9 that's an argument known as a per diem and that's just
10 another argument in the way Counsel's suggesting for you to
11 determine damages.

12 MR. GILLCRIST: Thank you.

13 MR. BRATT: I'm not suggesting you gotta' do it that
14 way, okay? All I'm trying to do is put how long that is in
15 context. Thirty-seven years ago was '75, that's the farthest
16 I got, that was a long time ago. Thirty-seven years ago
17 these two guys founded a business in a garage called
18 Microsoft. They made \$16,000 bucks their first year. Last
19 year they made \$73 billion dollars --

20 MR. PORCARELLI: Objection, Your Honor.

21 MR. BRATT: -- in revenues.

22 MR. PORCARELLI: This is not evidence.

23 THE COURT: Sustained.

24 MR. BRATT: This is what we wore in 1975. And for the
25 ladies I wouldn't leave you out, we've got some tweed.

1 Gerald Ford was president in 1975. And for all the time
2 that's past between then and now we went through Carter, we
3 went through Reagan, we went through Bush, we went through
4 Clinton, we went through Bush again, we went through Obama,
5 and four of those are two term presidents. So, we've had six
6 presidents with two of them two term presidents since 1975.
7 That's a long 37 years. If you bought a new Camaro in '75 it
8 looked like that, not like this. You wanted to make a phone
9 call in '75 you didn't it on one of those not on one of
10 these. You wanted to type a letter you did it on that, not
11 on this. You wanted to buy gas, it was 57.9 cents a gallon,
12 not this.

13 And, so, I provide this as an illustration, because
14 if you look back that 37 years, keeping in mind that 37 years
15 ago I was two, is a very long time, it is a very long time,
16 and that's how long these problems that Ms. Exline-Hassler
17 have been es (sic), has been estimated to last, and we need
18 you to consider that in your deliberations.

19 And this lady is a real person. She's not an
20 abstract concept, and she has one chance to come to court and
21 prove this case to you. She has one chance to come here and
22 with our assistance to try and prove her damages. This is
23 the only shot she has. She, they were correct when they told
24 you she can't come back later. She can't come back and ask
25 for another chance. She can't come back and say, you know,

1 well, wait it's worse. This is her chance to prove these
2 damages.

3 And, similarly, I get one chance to present this
4 case to you, and the way this applies to each of you is all
5 of your jurors I hope we, all of the lawyers in this case,
6 the folks sitting at that table, the folks sitting at this
7 table, I hope that the one thing that we've all succeeded in
8 pressing upon you is is that this is very important. It's
9 important for Ms. Sapp, it's certainly important for Ms.
10 Exline-Hassler and it's important for you. And the reason
11 it's important for you is because, as jurors, you get once
12 chance to decide this case. You get one chance to come up
13 with a verdict. You don't get a do-over if you change your
14 mind later. You need to go back in that jury room and do
15 your level best to come up with a verdict that compensates
16 her for all the harms and losses, because this is the only
17 chance you have to do the right thing, and we know you're
18 gonna' go back there and do that right thing. Thank you,
19 ladies and gentlemen.

20 THE COURT: Just, just a few technical things, and I
21 promise that I will be brief. First of all, as I told you we
22 have, um, copies of the verdict sheet. If you'd hand it to
23 them. (Brief pause.) Remember I told you that your verdict
24 is written answers to written questions, you know, they are
25 (unclear - one word) self explanatory. We let you take all

1 those copies back with you, only one is the official verdict
2 sheet that Juror Number 2 you'll, (unclear - two words) sign
3 and that will go with the Court file. I've always let you
4 all have copies for you to, um, do as you wish.

5 You will have exhibits that have been admitted into
6 evidence. There are some, uh, exhibits and documents that
7 you saw or heard that you won't get back there, but the
8 records and the medical flow charts you'll have all that, the
9 clerk will give you those to you after you go back and begin
10 your deliberations. Included in that is a written copy of
11 the jury instructions that I gave you in this case.

12 Um, there are seven of you left, we lost one juror
13 on Friday. Um, good news, bad news is only six go back. We
14 always have an alternate, because as you know there's been a
15 lot of time and effort put into this case, and if we lose a
16 juror or somebody gets sick we like to still have enough
17 jurors to resolve the case. Um, and, uh, Juror Number 24 is
18 our alternate, which means in a minute when they go back to
19 deliberate you will not get a chance to go back and
20 deliberate. I don't know whether that's good news or bad
21 news it all depends on, it's kind of -- I always feel they're
22 like the bridesmaid, you know, you do, don't really get the
23 chance to make the final decision. Did you leave anything in
24 the jury room? If you would go get that and come on back out
25 and have a seat right there, um, when you bring that out.

1 And, um, when you have reached a verdict knock on
2 the door, we're gonna' have 'em, I'm gonna' swear the bailiff
3 in a minute and he's gonna' be waiting listening for, um,
4 your verdict. Then we'll have reassembled everybody.
5 Sometimes that takes a few minutes depending on somebody's
6 down gettin' a soda at the canteen or where they're waiting
7 for the jury verdict.

8 When you come back out I'm gonna' ask you a couple
9 of questions. I'll say ladies and gentlemen of the jury,
10 have you agreed upon your verdict. Hopefully, you will say
11 yes, Your Honor, we have. And then I will ask you, in very
12 old-fashioned language, and who shall say for you, and you
13 will say our foreperson. And then, Juror Number 2, we would
14 have you stand and, uh, actually read the verdict off of the
15 verdict sheet, and then we'll hand it back in.

16 Very frequently, we'll do what we call polling the
17 jury. That is to just ask, you know, Juror Number 4, is that
18 your verdict, Number 7, just go to make sure that we all have
19 it right, that's, just again, one of the formalities that we
20 do as part of taking the verdict. Okay? And, Madam Clerk,
21 if you would swear the bailiff.

22 (Bailiff sworn.)

23 THE COURT: Okay. With that, ladies and gentlemen, with
24 the exception of Juror Number 24, I'm gonna' excuse you to
25 the jury room to begin your deliberations. As I said, the

1 exhibits and the instructions will be back in just a minute,
2 okay? And we will await further word.

3 (Jury excused for deliberations.)

4 THE COURT: And the door is closed. Jury deliberations
5 have begun. Juror Number 24, I say thank you so much. The
6 good news is this is jury service. You're off the hook, at
7 least in Frederick County, don't move anyplace, and I can't
8 help you in Federal Court, but you're off the hook in
9 Frederick County for at least the next couple of years. You
10 are perfectly free to go on about your business to, uh, enjoy
11 life, perfectly free to hang around a little while to see
12 what happens. It is entirely up to you. Um, if you have any
13 questions that you'd like for the Court, in a minute when I
14 finish all this legal stuff I need to do I'd be glad to
15 answer any questions that you have, but I know the Court,
16 parties and Counsel thank you so much for your service. Um,
17 and if you want to head on out you can head on, follow that
18 big red exit sign --

19 JUROR NUMBER 24: If I have any questions can I just
20 wait in back?

21 THE COURT: You sure can.

22 JUROR NUMBER 24: Okay. Thank you.

23 THE COURT: And, Counsel, we'll wait for the
24 deliberations, um, further information from the jury, just
25 make sure the clerk knows where to find you. Um, it is

1 usually my practice to take my lead from the jury about how
2 long they would like to deliberate. Usually, about 6
3 o'clock, if we haven't heard anything I will let you know
4 about whether I want to send them, what I call the dinner
5 question, um, and that'll, sometimes give us an idea about
6 what's going on.

7 You will know if I get anything from the jury
8 before I address anything to the jury you will know, um, when
9 we get a note. Um, and I, just one thing that sometimes
10 happens, if they start talking about damages, and just think
11 about the answer to this, is sometimes they will ask me for a
12 calculator. Um, and I usually figure at that point it helps
13 do the math, but, um, I will just let you think about if I
14 get that question, um, whether I have one up here that is an
15 old fashioned one. So, um, with that, um, we will recess
16 until we hear further from the jury.

17 And, uh, and, Dan, you can just ask Juror Number 24
18 can you just bring, bring him back and I can ask, answer any
19 questions that he may have since he's excused. Thank you
20 all.

21 MR. GILLCRIST: Thank you.

22 MR. BRATT: Can we move about to start bringing stuff
23 down, Your Honor?

24 THE COURT: Um, it, I would go ahead, and you probably
25 will, 'cause it -- you know.

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MR. BRATT: I just want to have everything moved.

THE COURT: Exactly. I don't know what I have for tomorrow or not. Yeah, and just make, yeah, make sure the exhibits. Okay? Absolutely.

THE CLERK: All rise.

(Whereupon, from 4:34 o'clock, p.m. until 6:45 o'clock, p.m., jury is in deliberations.)

(Jury not present.)

THE CLERK: All rise.

THE COURT: Good evening, ladies and gentlemen.

MR. GILLCRIST: Good evening, Your Honor.

MS. ZOIS: Good evening, Your Honor.

MR. PORCARELLI: Good evening, Your Honor.

THE COURT: I understand we've heard for the verdict. You may please have a seat as you --

MS. ZOIS: Thank you, Your Honor.

THE COURT: -- (unclear - two words.)

(Jury entered the courtroom.)

THE COURT: Good evening, ladies and gentlemen. And note for the record all the jurors are present. Ladies and gentlemen of the jury, have you agreed upon your verdict?

FEMALE VOICE: Yes.

THE COURT: And who shall say for you?

MALE VOICE: Our foreperson.

THE COURT: Juror Number two, if you would please stand.

1 Madam Clerk, if you would take the verdict. No, no, you just
2 --

3 THE CLERK: Stay right where you are.

4 THE COURT: Stay right where you are. That's okay. I
5 know everybody sees it on TV, but in real life it's not like
6 that on TV. She's gonna' ask you the questions, you just
7 read the answers.

8 THE CLERK: Do you find the Defendant, Kirsten Sapp, was
9 negligent in the accident of June 26th, 2009?

10 JUROR NUMBER 2: Yes.

11 THE CLERK: Do you find that the negligence of Kirsten
12 Sapp was a proximate cause of injuries suffered by the
13 Plaintiff, Jacqueline Exline-Hassler, yes or no?

14 JUROR NUMBER 2: Yes.

15 THE CLERK: In what amount, if any, do you award
16 Plaintiff for damages proximately caused by the accident June
17 26th, 2009? Past medical bills?

18 JUROR NUMBER 2: Forty-five grand.

19 THE CLERK: Lost wages/

20 JUROR NUMBER 2: Twenty-eight, six, four, eight.

21 THE CLERK: I'm sorry?

22 JUROR NUMBER 2: 28,648.

23 THE CLERK: Future medical?

24 JUROR NUMBER 2: 80,000.

25 THE CLERK: And non-economic damages?

1 JUROR NUMBER 2: 138,000.

2 THE CLERK: And you have your total?

3 JUROR NUMBER 2: 291,648.

4 THE COURT: Okay, you can have a seat, Juror Number 2.

5 JUROR NUMBER 2: Thank you.

6 THE COURT: And, Madam Clerk, if you'll go ahead and
7 poll the jury.

8 THE CLERK: Ladies and gentlemen of the jury, your
9 foreperson states yes you do find the Defendant, Kirsten
10 Sapp, was negligent in the accident of June 26th, 2009. I
11 guess I should be doing it just one, two, three, four
12 (unclear - three words?)

13 THE COURT: That's probably (unclear - one word.) Now
14 with the numbers, we didn't use to do it by the numbers. It
15 makes everything a little more confusing.

16 THE CLERK: Juror Number 4, is that verdict your
17 verdict?

18 JUROR NUMBER 4: Yes.

19 THE CLERK: Juror Number 7, is that verdict your
20 verdict?

21 JUROR NUMBER 7: Yes.

22 THE CLERK: Juror Number 10, is that verdict your
23 verdict?

24 JUROR NUMBER 10: Yes.

25 THE CLERK: Juror Number 12, is that verdict your

1 verdict?

2 JUROR NUMBER 12: Yes.

3 THE CLERK: And, Juror Number 16, is that verdict your
4 verdict?

5 JUROR NUMBER 16: It is.

6 THE CLERK: Okay. Now we'll do that again.

7 THE COURT: Mm-hmm.

8 THE CLERK: Okay. Ladies and gentlemen of the jury,
9 your foreperson states that yes you do find the Defendant,
10 Kirsten Sapp, was negligent in the accident on June 26th, 2009
11 yes, you do find the negligence of Kirsten Sapp was the
12 proximate cause of injuries suffered by the Plaintiff,
13 Jacqueline Exline-Hassler in, in the amount of past medical
14 bills of 4500 (sic), past --

15 THE COURT: 45,000.

16 THE CLERK: 45,000, I'm sorry.

17 THE COURT: I believe that's correct.

18 THE CLERK: 45,000. Lost, uh, past lost wages, 28,648.
19 Future medical expenses 80,000. And non-economic damages of
20 138,000 for a total of 291,648, and so say you all?

21 THE JURY: We do.

22 THE COURT: Ladies and gentlemen, I know it's been a
23 long haul to get to this point, but I know as Counsel has all
24 said in, in their argument, and the Court echoes that, I want
25 to thank you for your service. I'm gonna' excuse you to the

1 jury room for one last minute. I promise I'll be back there
2 to release you in about two minutes, there's just one last
3 tiny bit of legal stuff I need to do here and you can be on
4 your way. Okay? But thank you, and I know we all appreciate
5 it. You need to get your phones back. I don't know, I
6 sometimes think that's a positive thing.

7 (Jury excused from the courtroom.)

8 THE COURT: Like I say, in light of the jury's finding I
9 deny Penn National's motion for judgment based on the
10 uninsured claim. Um, and I don't know whether there's some
11 other things you all are gonna' wanna' need to do or discuss
12 before actually entering judgments.

13 MR. GILLCRIST: Your Honor, how do you deal with
14 returning exhibits? Do you want us to take exhibits back
15 with us now or do you keep them?

16 THE COURT: I --

17 THE CLERK: Normally we keep them for 30 days.

18 THE COURT: We usually keep them for 30 days in light --

19 THE CLERK: And then we usually send out a --

20 THE COURT: And then we usually send a letter saying --

21 THE CLERK: -- note.

22 THE COURT: -- please come get them before we --

23 THE CLERK: Right. Right.

24 THE COURT: -- set a, set a bonfire --

25 MR. GILLCRIST: All right. Thank you.

1 THE CLERK: Exactly.

2 THE COURT: -- to do that.

3 MR. GILLCRIST: Thank you, Your Honor.

4 THE COURT: So.

5 MR. PORCARELLI: I did have motion.

6 THE COURT: Okay.

7 MR. PORCARELLI: Um, I would ask that in light of the
8 jury's verdict and your ruling on, uh, Penn's motion for
9 judgment that judgment be entered in Penn's favor on his
10 cross claim against, uh, uh, co-Defendant Sapp.

11 MR. GILLCRIST: Uh, Your Honor, we would object to that.
12 There was no proof of the cross claim. Um, we didn't
13 stipulate to any of the things that would be predicate for
14 that cross claim. Um, and it's their obligation to litigate
15 and prove their cross claim. It was never done in this case.

16 THE COURT: I'm gonna' be honest with you, I have no
17 looked at the merits of the cross claim. I, um, I'll take a
18 look at that and make a ruling on that, but like I said, I
19 had not looked at the cross claim, I was just looking at the
20 primary claim.

21 MR. GILLCRIST: Okay. Thank you, Your Honor.

22 MR. PORCARELLI: Well --

23 THE COURT: So, I'm reserving, I'm reserving on that
24 right now.

25 MR. PORCARELLI: Okay. Our cross claim is on file as

1 filed with Counsel.

2 THE COURT: I understand that, but as you all very well
3 know I did not have a chance to look at this file before we
4 started trying this case.

5 MR. PORCARELLI: Sure.

6 THE COURT: And we have been going non-stop for five
7 days. So, it's certainly, you certainly agree that whatever
8 ruling I make on it would be based on what I've heard in the
9 evidence, and if I need to hear additional argument I can
10 have Counsel come in and, and argue on that.

11 MR. GILLCRIST: All right. Thank you, Your Honor.
12 Appreciate that.

13 THE COURT: Okay?

14 MR. PORCARELLI: Thank you.

15 THE COURT: So, I just want to look at it, so.

16 MS. ZOIS: Understood, Your Honor.

17 THE COURT: Mm-hmm.

18 MS. ZOIS: Um, however, the, we would request that
19 judgment be entered in Plaintiff's favor as to Defendant's
20 Sapp in the amount of \$291,648 regardless of what the Court
21 does with --

22 THE COURT: That's what the jury's verdict is.

23 MS. ZOIS: Correct, so judgment --

24 THE COURT: So, it, it --

25 MS. ZOIS: -- entered in favor of Plaintiff against

1 Defendant Sapp in that amount.

2 MR. BRATT: (Unclear - two words) against Penn National.

3 MS. ZOIS: Well, she's reserving on that, so (unclear -
4 three words) --

5 THE COURT: On, exactly as to the, as to the cross
6 claim.

7 MR. BRATT: No, she's reserving on the cross claim, not
8 our claim against Penn National. We still get the buck
9 fifty.

10 MS. ZOIS: Not necessarily, but --

11 THE COURT: So.

12 MS. ZOIS: -- uh --

13 MR. BRATT: That's not the way I understood it.

14 THE COURT: So.

15 MR. PORCARELLI: Not necessarily.

16 MS. ZOIS: Well.

17 THE COURT: The jury's verdict is 291,648.

18 MS. ZOIS: Correct.

19 THE COURT: I know that there are claims as to what the
20 policies are and what the amounts of those policies are,
21 except I'm not -- due to the lateness of the hour and the
22 length of this trial the mechanics of that, I'm not gonna' do
23 -- those issues are still left. There's also the cross
24 claim, I'm gonna' take a look at that. What we do have we're
25 working off from now is we know what the jury's verdict is so

1 those other matters can be dealt with appropriately.
2 MS. ZOIS: Perfect, Your Honor.
3 MR. GILLCRIST: Great, thank you, Your Honor.
4 THE COURT: Okay?
5 MR. BRATT: How will we find out?
6 MS. ZOIS: How will we find out?
7 THE COURT: Oh, I'll, I will, we'll let you know what's
8 going --
9 MR. BRATT: I was just curious.
10 THE COURT: -- I, I, abs (sic) -- I'm just --
11 MR. BRATT: That's a serious question.
12 THE COURT: -- like I said, I have not had, I mean, like
13 I said, as you all very well know I got this case about 10,
14 15, maybe 20 minutes before we started picking --
15 MR. BRATT: No, we understand.
16 THE COURT: -- the jury on it. So, and a lot of what we
17 needed to decide depended on what the jury's verdict was
18 going to be. We now know what that is. So.
19 MR. GILLCRIST: Okay.
20 MR. BRATT: Thank you, Your Honor.
21 MS. HOWARD: Thank you, Your Honor.
22 THE COURT: Okay? Thank you all. Be safe going home.
23 MS. ZOIS: Thank you, Your Honor.
24 MR. BRATT: Thank you, Your Honor.
25 THE CLERK: All rise.

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(Whereupon, at 6:53 o'clock, p.m.,
proceedings concluded.)

CERTIFICATION

I HEREBY CERTIFY that the proceedings in the matter
of Exline-Hassler v. Penn National Insurance, et al., heard
in the Circuit Court for Frederick County, January 28, 2013,
were recorded by means of digital recording.

I further certify that, to the best of my knowledge
and belief, page number 1 through 237, constitute a complete
and accurate transcript of the proceedings as transcribed by
me.

I further certify that I am neither a relative to,
nor an employee of any attorney or party herein, and that I
have no interest in the outcome of this case.


Victoria Eastridge
Official Transcriber