

1

2

3

4

5

6

7

8

9

10

REBUTTAL ARGUMENTS BY MS. ZOIS

11

12

13

MS. ZOIS: It's easy to pick on a guy with a brain aneurysm. I just want to read you a portion of Dr. ' report.

14

15

16

17

18

19

20

21

22

"Following the head injury, he had confusion, trouble with memory, personality changes and organization. He's had associated headaches and difficulty sleeping, loss of concentration and trouble with names. He was diagnosed with postconcussive syndrome and was told that he would likely get better. However, he continues to have significant problems. They are present all the time. They are severe enough that it is impossible for him to run his business."

23

24

25

It's easy to pick on a guy with a brain injury. Now, what I said to you initially was this is the defense of the case. When you can't argue who is

1 responsible for the accident because you ran the red light
2 and you really can't argue the medicine because the
3 doctors are real doctors. Medical Director of the number
4 one psychiatric clinic in the country who does research on
5 mild traumatic brain injury, he's got her fooled? Really?
6 Number one psychiatric department in the country. She
7 gets money from the government to do research on mild
8 traumatic brain injuries. She speaks around the country
9 and around the world on this. She didn't want to be on
10 that video. She was very reluctant. She's testified in
11 only a handful of cases for people.

12 She went to bat for that man because she knows
13 what he's going through. She knows the people that have
14 had injuries like the one that he has. They have
15 problems. They have issues. They have bad days. And out
16 of those boards, they're a lot thicker when you put them
17 on cardboard. But the medical records he's talking about,
18 let's see how many there are: So he says screw them? So
19 what? In order for you to believe that he's lying, you've
20 got to believe his priest is lying, his mother is lying,
21 his wife is lying, his employee is lying. What about the
22 cop? Is he lying, too, when he came in here and said, "I
23 had my hand on my gun when this guy approached me"? When
24 he first told me about this, I was like, and you lived to
25 tell about this? You pulled over a cop and blasted off

1 and mouthed off to a cop for rolling through a stop sign?
2 The cop was here to tell you he is lucky to have survived
3 that.

4 So, one, two, three, four, five, six, seven,
5 eight, nine, ten. Ten out of 824 records. Really?

6 Now, Dr. . Dr. is sharp. He was
7 one of the first people to figure out that the signs that
8 he was exhibiting weren't matching up with the diagnosis
9 that he had. And if you remember from Dr. '
10 testimony -- and I asked her about Dr. . Dr.
11 was deposed and he said -- Dr. -- But he didn't
12 know at the time that he had a hemorrhagic contusion, but
13 he was saying hypothetically that if he had one, that that
14 could have lasting cognitive problems or behavior problems
15 that might never recover.

16 Dr. says in his report -- and they're in
17 there -- that he can't rule out the fact that he has a
18 brain injury. His diagnosis is a brain injury.

19 Where is Dr. ? Bring him in. I thought
20 they had him under subpoena. I told you all in opening
21 that you were going to hear from Dr. . Where is
22 Dr. , Dr. , Dr. ? Really?

23 So at some point says, you know
24 what, honey? Screw that job. I'm going to go out, drive
25 through some intersections, and I'm going to hope I get

1 hit by somebody, then we're going to pretend, we're going
2 to give up the business, stay in the house, approach
3 police and security guards and go to 266 doctor
4 appointments over the course of four years because this is
5 our pay day. Are you kidding me? That's what you would
6 have to believe. That's insane.

7 College educated, MBA, doing what he loves to
8 do, running a business. He doesn't need that. He does
9 now. He didn't then. Hard worker. Salesman of the year.
10 Really?

11 What doesn't seem right? Which version of that?

12 Thank you for your time.

13 One more thing. As members of the community,
14 you can set standards. People are watching this case.
15 There've been people in and out of this courtroom. People
16 know what's going on in here. Are you going to let the
17 cheat, lying and fraud defense work? Are you going to let
18 the frivolous defense work? Are you going to put
19 everybody at risk that has 824 pages of medical records to
20 pick 10 out of who have maybe some hardware right now,
21 maybe a preexisting problem, maybe a bad back 14 years
22 ago. Are we all going to be at risk?

23 The test that Dr. did was done three
24 months later; and guess what, folks. They tested for
25 malingering. It was tested. Guess what. Those test

1 results were within normal limits. Valid. Bye bye to
2 that theory.

3 Also, Dr. , some of his qualities, some of
4 the qualities she mentioned about him that are helping him
5 get through all this, commitments to family, you know, the
6 mom that's up here, left her husband in Florida to work
7 for free at the family business because he can't go back
8 to work that long? Honesty, religiosity and a positive
9 outlook. He's not a quitter, folks. He's never been, not
10 a day in his life. He's busted his ass in his entire
11 life. He's going to continue to do it. It's going to get
12 better. It's going to happen. He is not lying about
13 this.

14

15

16

17

18

19

20

21

22

23

24

25