

P R O C E E D I N G S

9:35 a.m.

THE DEPUTY CLERK: Civil Action Law 10-03002,

v. , et al.

THE COURT: Please state your names, for the
record.

MS. ZOIS: Laura Zois on behalf of plaintiff

MR. GASTON: Rodney Gaston on behalf of
plaintiff, as well.

MR. : on behalf of defendant.

MR. : on behalf of defendant,

THE COURT: Any preliminary matters?

MR. : Yes, Your Honor. I had marked some
exhibits this morning. I think it's Defendant's Exhibits
5 through 9. And I provided a copy to counsel and would
move for admission of those exhibits into evidence.

THE COURT: They're admitted without objection.

(Defendant's Exhibits 5-9

were received in evidence.)

THE COURT: Bring in the jury, then.

(The jury entered the courtroom.)

THE COURT: Good morning, , members
of the jury. This morning we're going to have closing

1 arguments. I'm going to give you this case to decide
2 right after that.

3 Counsel, go right ahead.

4 MS. ZOIS: Thank you.

5 CLOSING ARGUMENTS BY MS. ZOIS

6 MS. ZOIS: May it please the Court, good
7 morning. Thank you all for being so attentive over the
8 course of the last couple days. This crash took a couple
9 of seconds to happen and it's been four years, three weeks
10 and four days. On behalf of myself and my co-counsel, we
11 thank you for your service.

12 In a little while you're going to go back into
13 the jury deliberation room and do three things. You're
14 going to have to respond to the verdict sheet. There's
15 going to be questions on the verdict sheet you're going to
16 have to answer. You're also going to have to follow the
17 law in the case. The most important thing you're going to
18 have to do is talk amongst yourselves and deliberate and
19 explain to each other why you feel the way you do about
20 certain issues in the case.

21 You got jury instructions yesterday and I want
22 to remind you of a couple of them as we go through the
23 closing here. But the first one I want to remind you of
24 is that the burden of proof in this case is actually more
25 likely than not, more right than wrong, more probable than

1 not. It's 51 percent to 49 percent. The plaintiff has
2 the burden. We don't have the beyond a reasonable doubt,
3 clear and convincing evidence. It's more likely than not
4 the plaintiff's right on this one.

5 We hear on TV and radio and in papers about all
6 these frivolous lawsuits that people file. The McDonald's
7 coffee cup case, the one with the guy and the drycleaners
8 and pants for a million dollars for all the things he
9 didn't do and things like that. But the cases you don't
10 hear about are the frivolous defense cases. They never
11 make the papers. Nobody cares when someone like
12 Mr. gets zeroed out in a case. Frivolous defense
13 cases don't make the papers.

14 Why are we here? I talked about that a little
15 bit in opening.

16 Mr. 's claim was denied. They denied his
17 claim. They denied responsibility for the accident. They
18 denied he was injured. They denied his treatment. They
19 denied the harms and losses that they caused him.

20 Two weeks before having to face you all, they
21 conceded negligence for the first time. Yesterday they
22 conceded the defendant ran the red light for the first
23 time.

24 Now, Mr. was forced to file suit in this
25 case. He didn't want to be a party to a lawsuit. He

1 didn't want this. But through no fault of his own, he was
2 careened into in the middle of an intersection and his
3 world was turned upside down. He didn't want any part of
4 this.

5 When he filed his lawsuit, the defense took the
6 deposition of his family doctor. They knew what he was
7 going to say. Took the deposition of his wife. They knew
8 what she was going to say. Took the deposition of
9 employees, took the depositions of his doctors. They did
10 a lot of investigation. They knew all the answers to the
11 questions that you all have heard for a long time.

12 Now, basically, they said in opening with their
13 parade of doctors and their boxes of body parts, you know
14 why we had a parade of doctors? Because they said prove
15 it, prove it. We don't think he had traumatic brain
16 injury. We don't think the back surgery is related. We
17 don't think the torn rotator cuff or the knee is related.
18 Prove it.

19 So instead of coming in here and saying, all
20 right, we admit we're responsible for this. It's on us.
21 We just dispute some of this value as to what you're
22 asking for here. Let's go ahead and leave it to the
23 members of the community to decide on what the value is.
24 No. Prove it. All of it. Every piece of it. So that's
25 why we have the parade of doctors and the box of body

1 parts.

2 Now, there are two defendants. One of the
3 defendants is Mr. 's own insurance company. He was
4 insured with at the time
5 of the crash. He had insurance for this kind of loss.
6 His insurance company, who he's had all his life, is
7 sitting on that side of the room instead of on this side
8 of the room. And as much as attorney wants to
9 not really participate, she does participate in the cross
10 of this case. She is sitting on the other side of the
11 room. She is defending this claim. Mr. wants to
12 know why. He wants to know why his insurance company that
13 he's had his entire life is sitting over there instead of
14 sitting over here.

15 The really scary part of this case is that what
16 happened to Mr. can happen to anyone. What's
17 happening to him now can happen to anyone. It's the lie,
18 cheat and fraud defense. And let me tell you how this
19 works.

20 For half of my career I used to sit over there
21 at that table. I defended Allstate, State Farm, Bankers,
22 MAIF, Nationwide, Home Depot, Rite Aid. And the easiest
23 way to defend a case like this is the lie, cheat and
24 fraud, because you know what? You don't have to put on
25 any evidence, really. All you have to do is, in 824 pages

1 of medical records, you need to find some mistakes. You
2 need to find some things in here that you can sink your
3 teeth into and get the jury talking about, well, how come
4 this report says this and how come this report says that,
5 instead of having you thinking about all the harms and the
6 losses in this case. You're thinking, gosh, was he
7 horseback riding? He might have been. Does anybody think
8 he was horseback riding? A couple of weeks after having
9 knee surgery, being diagnosed with a herniated disk, on
10 his way to having rotator cuff surgery? He hasn't been on
11 a horse since the late 1980's.

12 Does anybody really think after all the
13 testimony yesterday about the -- first of all, I
14 don't know why anybody decided on him being on a boat. He
15 can be on a boat. He's not dead. He's still allowed to
16 go out and try and enjoy what he has left. But to suggest
17 that that somehow makes him a liar when the poor man
18 brought his passport here yesterday.

19 Ms. Zois, I want to make sure it really is this
20 year, it was not 2000 -- don't worry about it. I don't
21 think it's a big deal. Counsel saw my passport. You're
22 going on a trip? Where you going? Taking a trip? So 824
23 opportunities to find something in here that just doesn't
24 sound right.

25 One of the things I asked you to do when you

1 came in at opening was use your common sense. Use your
2 everyday life experiences and look at the whole picture.
3 Not a record here, a record there. Look at the whole
4 picture. All the witnesses that have testified, all of
5 his own treating doctors. They don't have a dog in this
6 fight. They don't care how the outcome of this litigation
7 goes. In fact, they don't really like to talk to me that
8 much, frankly. You can probably tell some of them were
9 not all that excited to have to participate in this. But
10 this is what you have to do when the defendant is deny,
11 deny, deny, deny.

12 The mistakes in the medical records, there are
13 lots of them. You haven't seen the whole chart yet. But
14 I want you to think about when you go to your doctor's
15 office and you have, let's say, something wrong with your
16 wrist. You go in, sit in the waiting room. You might
17 fill out a questionnaire. You go in the doctor's office.
18 The PA comes in. They take your temperature, they ask you
19 why you're here. The doctor whizzes in and says, what are
20 you here for? Well, I slipped and broke my wrist or hurt
21 my wrist. Well, we're going to send you out for X-ray,
22 read the results, give you a call, maybe send you out for
23 physical therapy. All right. See you. Have a nice day.

24 So there isn't this three-hour long deposition
25 about, okay, now this wrist, when you were in high school

1 and you were playing basketball and when you fell, did you
2 hurt your wrist? How long did you hurt your wrist for 14
3 years ago? What kind of therapy did you get? What did
4 the X-ray results say?

5 This isn't how these conversations go with our
6 doctors everytime. You don't do a thorough three hour
7 intensive what's the history here?

8 And Dr. told you in his deposition, none
9 of that matters to me. When somebody comes in, what are
10 you here for? What's going on? It doesn't matter until
11 you come to a setting like this when you have to go back
12 and look at the prior records. Dr. did that. He
13 was okay with the prior records.

14 But to suggest that Mr. isn't being
15 forthright or truthful with his doctors, well, he's not
16 going to corral doctors and say I need 20 minutes of your
17 time because I need to thoroughly explain every bump,
18 bruise and problem I've ever had because this might go to
19 court some day.

20 Now, I'm going to probably go through this for
21 the next couple of minutes; but if you want to indulge me,
22 I'm going to point out some of the mistakes that I don't
23 think are disputable in the records. If you want to write
24 down the page number so when you go back yourself you can
25 look and see the mistakes that are in there.

1 All right. Page 11. Small reddened area to the
2 left forehead. It wasn't on the left. It was the right.

3 Page 15, calcified meningioma. Dr. told
4 us how that turned out.

5 Page 20, epidermal hematoma. The ER guys got it
6 wrong when they admitted it at Hospital. That
7 was the first mistake of many.

8 Page 77, nonspecific small lesion in the white
9 matter of the right parietal lobe. It was the frontal
10 lobe. Lots of people relied on that report for a long
11 time, too.

12 Now this one. Page 468. Subdural hematoma.
13 That wasn't it. Left frontal region. That wasn't it.
14 Page 524. Left frontal intercranial bleed. That wasn't
15 it.

16 Page 216. November , . That wasn't it.

17 Page 800, 11- - . That wasn't the date of
18 the accident.

19 And then what his prior history was down below,
20 past surgical history, traumatic brain injury. Fusion,
21 7- - . That wasn't it.

22 Left knee arthroscopy. That wasn't the date of
23 the left knee arthroscopic surgery. Page 46. This is a
24 good one. He ran into a train, not a tree. Ran into a
25 train.

1 Next one. This mistake repeatedly repeats in
2 the medical record. Page 54, follow-up, and last seen two
3 years ago. Has not had labs in two years. This one
4 continues. It gets cut and paste. That happens all the
5 time in medical records. The same paragraph will
6 reappear. Page 57. Knee operation. Doing well. Rotator
7 cuff scheduled. This is after the rotator cuff surgery,
8 which was on March . The date of this report has
9 11- - . Page 60, same thing. Rotator cuff scheduled.
10 It was done a year ago. Page 363, past medical history.
11 That's all they got. Nothing else. No surgeries in
12 there.

13 Page 110. This one is my favorite. 2- - .
14 Weeks after the knee surgery. Waiting for a full rotator
15 cuff tear repair. Herniated disk in back. Narcotic pain
16 medication. And he's on a horse? Really?

17 Defense counsel knew the answers to all these
18 questions and he's cross-examining every doctor. You know
19 Mr. rides horses after this accident? That's my
20 favorite.

21 They also made a mistake. They had to cross out
22 and change but not terribly significant. 4- . This is a
23 boat trip. Caught Mercer on a boat. Yes. In 2005. What
24 does it matter if he's on a boat, anyway? Who cares? He
25 was allowed.

1 5/97 her surgery. She never -- I think it's
2 pretty clear Mr. 's gender.

3 Next page. 361. This doctor actually
4 two-and-a-half years later went back and had to write a
5 whole different addendum to his report because he got it
6 wrong two-and-a-half years later.

7 So picking and choosing medical records based on
8 mistakes isn't the whole picture, folks. And it's easy to
9 do. There's 824 opportunities in here to find some stuff
10 that might not be right to get you focused on to distract
11 you from the harms and losses of the case.

12 Now, the other interesting thing they can do is,
13 gosh forbid, that you're middle age and have some
14 arthritis somewhere. Gosh forbid that you've had some
15 prior injury because, guess what, that's fantastic because
16 they can pin everything from this crash on your prior
17 condition, your condition before.

18 Well, this crash didn't cause the surgery. He
19 had a back problem 14 years ago. That's what it was. Or
20 he had a little arthritis in his shoulder and in his knee.
21 He was to have that surgery, anyway. This is all
22 preexisting stuff, not from this crash. But you know
23 what? They knew what Dr. 's opinion was on that
24 because they took Dr. 's deposition. And they
25 knew what Dr. said about that October ,

1 visit when he was there for profuse sweating, not for any
2 other problem. They knew Dr. was going to say,
3 let me see, prior to this, the month prior he had some
4 shoulder and left knee pain, no specific injury. It was
5 off and on. Wasn't severe. Wasn't keeping him from doing
6 things, but I suggest getting him some testing.

7 That wasn't even why he was there that day.

8 Ironically, the back never came up on October , .
9 It wasn't even addressed. So to come in here and suggest
10 this is all preexisting and that he was having problems
11 with these areas leading to and right up to the date of
12 the accident just doesn't make sense when you look at the
13 whole picture.

14 So the scary part about this is that this can
15 happen to anyone. It can happen to anyone who has 824
16 pages of options or opportunities. It can happen to
17 anyone who has a preexisting problem. Some arthritis in
18 any part of your body. It can happen to anyone who has
19 hardware in their body or had a prior surgery or has a
20 condition that was worsened. That's how this defense
21 works.

22 Now, with respect to -- after opening, I was
23 thinking to myself what's coming? I know this file
24 inside, outside, backwards, forwards, front, back. I know
25 what everybody is going to say. What could they possibly

1 be talking about? And I'm thinking, okay. Well,
2 had a fraud division. Every insurance company
3 does. They have PI's in there. They can run searches,
4 have surveillance cameras sitting outside somebody's shop.
5 I'm waiting to see the horseback riding picture of
6 Mr. with golf clubs over his shoulder or to see
7 some PI come in and say I went to and
8 Mr. was there and I said I insiste to be serviced
9 by Mr. . A neighbor of mine said he was fantastic.
10 I won't accept anybody else, and Mr. was there. I
11 placed an order. He took it and did the math right in
12 front of me.

13 That didn't happen. There's no evidence of
14 that. And has the resources to do that.
15 They subpoenaed his medical records, talked to his
16 doctors, subpoenaed his tax returns. Guess what. The
17 ones they couldn't subpoena, Mr. wrote
18 authorizations for. He's got nothing to hide. He's
19 opened his life up like a book to them to comb through.
20 And what they're bringing to you and what they're having
21 you rely on are mistakes in the record.

22 Now, things that people can't fake. If someone
23 back in the jury room says, well, I'm not really sure
24 about his back. People can't fake tears on an MRI. That
25 can't be faked. That's objective. Dr. told you

1 there's a difference between the 1987 MRI and the 2007
2 MRI. I can see a soft tissue difference. He did a
3 demonstration where you have a torquing that can tear a
4 disk. And he pointed out the soft tissue damage there.

5 You can't fake an MRI and CT scans. You can't fake a
6 bleed on the brain, an MRI that shows a full rotator cuff,
7 a medial meniscus tear on your knee. We don't have to
8 rely on a single word of Mr. . These are all
9 objective tests you can see.

10 You can't fake a discogram. They set it up so
11 you can't fake it. What they do is actually try to elicit
12 pain in different areas. They don't tell you what they
13 are. And Mr. 's pain was in the areas where he had
14 the disk problems. Guess what. They shot up his L3 disk.
15 Guess what. No pain, because that's a normal disk he has.

16 Now, if someone goes back into the jury room and
17 says, you know, this lost wage, here is that record that
18 says 35 hours. I have a problem with that. There's the
19 one record we keep hearing about. You were working 35
20 hours. You were working 35 hours. You told you were
21 working 35 hours. You haven't seen all these yet. Okay.
22 Let's go through all the ones where he's not working.

23 You can start by going to the very back of this
24 document. There's eight disability slips in here, eight
25 of them. Eight disability slips that say from the time of

1 this accident up until today, he should not be working.

2 Dr. , Dr. , Dr. , Dr. , Dr. .

3 Let me figure this out. All of his doctors are saying
4 don't work because you can't. You don't want to reinjure
5 yourself. You're not actually fit to work right now
6 according to Dr. . But they're banging away at him
7 trying to get him at work.

8 So you can start at the back. There's eight
9 disability slips back there that say you can't work, isn't
10 working, don't work. If you want to write the page down,
11 I will try to help you out.

12 Page 282. Functional work activities are
13 severely limited. On that date, January , page
14 256, Dr. . He is a self-employed owner of an
15 upholstery shop and very hands on. He does most of the
16 work himself. He has really been unable to do that
17 because of his inability to do any overhead work as well
18 as having pain along the medial side of the knee with any
19 twisting or lateral movements.

20 Page 113, March , . Tolerance to work
21 activities. Unable to perform. Tolerance to recreational
22 activities. Unable to perform. Page 132, April .
23 Tolerance to work activities, unable to perform. Page
24 363, 8- - . How much has pain interfered with your
25 normal work? Extremely.

1 1- He is unable to manage his work and
2 he's worried that his business is failing.

3 Page 408. Date: 5- . He continues to have
4 significant problems. They are present all the time.
5 They are severe enough that it's impossible for him to run
6 his business.

7 4/14, 6/ . He reports his cognitive
8 impairments are so severe that he really cannot manage his
9 company anymore.

10 This is a good one. Page 422. By the way, in
11 his paragraph below that, he's working 35 hours a week.
12 He reported difficulty running his business and has to
13 hire people to do job functions that he was previously
14 able to complete independently.

15 Page 446, Dr. , 9- . He no longer
16 knows much about the daily details of the business because
17 his wife has had to take over much running it. Page 455,
18 11- . He's not running the day-to-day operation
19 because of his injury.

20 Page 2012, date February , . Patient was
21 not working prior to initial visit in our office of
22 January . Page 467, 3- . He reported that he
23 has been unable to manage the business since his MVA in
24 November of and has turned over much of the
25 responsibility to his wife.

1 182, 7- - . He has not been able to work
2 due to these problems.

3 474. October , . He is currently not
4 working. He was self-employed and ran upholstery business
5 until the MVA of .

6 Support system down at the bottom, financial
7 support. He has not drawn a salary from his business.
8 He's supported from his wife's income and their savings.

9 This is a good one. Even in light of all this,
10 his strengths are commitments to family, honesty,
11 religiousity and a positive outlook.

12 Again, 10- - . Number 5, anxiety. Page
13 476 -- anxiety, irritability and impatience. Mr.
14 states he quickly loses patience. He has stopped
15 communicating with his employees for fear of losing his
16 temper with them. He also gets anxious easily.

17 Page 478. Problems are clearly interfering with
18 his performance with day-to-day activities. He can no
19 longer run a business that he was successful at for years.

20 Page 481. Not working now.

21 Page 178. He states he's still not working. He
22 is working on getting his memory better.

23 Page 511. The patient is self-employed, and is
24 not working at the present time.

25 Page 524 -- am I making my point? I'm just

1 going to give you page numbers.

2 524. Can't manage his company.

3 526. Self-employed. Can't manage company. Not
4 working.

5 534. Wants to go back to work. Discussed
6 expectations to get back to work.

7 He's not sitting around enjoying this eating bon
8 bons on a couch. He wants to get back to the company he
9 loves and misses.

10 Page 542. Wants to get back to gainful
11 employment. Not working.

12 Page 544. Chronic pain, impulsivity, reduced
13 frustration, tolerance and difficulty with organizations
14 scales are various to return to work.

15 Page 600. Not working. Hasn't worked since
16 November . So what do we do with that information?
17 You look at that and compare it to the priest that came in
18 and said after this crash, I wanted to go check on him.

19 is three blocks from my parish. He was
20 never there. He was never there. I see his mother,
21 , everyday at mass. She has told me he's not working
22 anymore. , his mother, married, retired, living a
23 dream, traveling the world, is at that business 35 hours a
24 week because he can't be there. Is she going to be at
25 that business 35 hours a week away from her husband not

1 getting paid if Mr. is working?

2 hasn't been able to work since
3 November . The employee, , who started right
4 before this crash, she knows for sure he wasn't there in
5 , wasn't there in , wasn't there in , wasn't
6 there part of . She's not real sure. What she does
7 know is that when came in, he was not there.
8 never left after Thanksgiving. Her testimony was she
9 never went back. She stepped in to help replace him.

10 So you can't look at one medical record. You
11 have to look at the whole picture. Are all these people
12 lying? Are all these people coming in here, including the
13 priest, and telling you that he's not working? No. That
14 medical record is wrong. Somebody got it wrong.

15 Now, if someone said back in the jury room, you
16 know, I'm not real sure if I understand exactly what his
17 aches and pains were with the knee and shoulder and back.

18 Well, you know what Dr. is going to
19 say, and that's his family doctor. It wasn't keeping him
20 from doing anything that wasn't severe.

21 You know, Mr. in that month were
22 installing drapes at the , going back and
23 down ladders, carrying heavy drapery. You also know
24 that's not in there, when he went to see Dr. on
25 October , , there's no mention of the back at all.

1 So they go back 14 years, 14 years, 1997, 1998. That's
2 it. That's the smoking gun in this case, a 14-year-old
3 history.

4 Oh, no, wait. Maybe it's the pulled muscle
5 where he went to a chiropractic treatment, the
6 chiropractor a couple blocks away from his office. He
7 went three times one week, three times the next week,
8 three times the following week. Then he went twice a
9 month, then once a month for a pulled muscle. He didn't
10 go to Dr. . He didn't get an MRI or EMG or
11 nerves or facet block or cortisone shot. He didn't get
12 discogram. No one is talking about surgery. It was a
13 pulled muscle. It didn't require any of the things it
14 required after the crash.

15 So I really have no idea how the defense is
16 going to even begin to try and suggest that he doesn't
17 have a brain injury. I can't wait to hear it. I can't
18 wait to hear how Mr. has successfully faked his way
19 through the entire hot pin system. This will be good.
20 He's under the care of Dr. (sic.). She's the
21 medical director of the

22 which is the number one psychiatry department
23 in the country at the number one hospital in the country.
24 She gets research grants to do research on traumatic brain
25 injuries and he has her fooled? And he has Dr.

1 fooled and the other 17 doctors that he's seeing for this
2 all fooled? And he's willing to fake it and throw his
3 life away and inconvenience -- which is a mild word to
4 use -- his mother and burden his mother and burden his
5 wife just to fake a brain injury? Really? And you know
6 what else? He's got to put himself in harm's way for
7 this. He's got to approach people with guns. Who does
8 that? People with right frontal lobe injuries. That's
9 who does this. He's going to put himself in harm's way
10 with a bunch of college students out at night. He's going
11 to put himself in harm's way with a security guard at the
12 mall or with a delivery truck driver.

13 He's not the same man. You heard the testimony
14 from the people that have known him. And this is all for
15 what? He's given up his life. What has he gotten out of
16 all this faking? Really, how did he fake the CT scan?
17 Because that's got to be a good one. Can't wait to hear
18 that.

19 Now 824 pages of records. Not a single doctor
20 questions whether or not he has a brain injury. Takes
21 them a while to get right. Takes it a while to get to
22 Dr. to finally figure out what's going on. She
23 tells you once you look at everything -- again, the big
24 picture. Once you look at the CT scan from the hospital
25 and compare it to MRI's, there is no calcified meningioma.

1 It has to be a bleed in the right frontal lobe.

2 For a long time he was freaking out, why are you
3 having this problem? It's in the right parietal lobe. We
4 don't know, but we'll continue to treat you, try to get
5 you better. Most people that have a mild concussion get
6 better. This is kind of unusual.

7 Dr. , the neurologist, he nailed it. He
8 was saying, you know, I'm not a radiologist or a medical
9 doctor, but what this guy is telling me sounds like a
10 right frontal lobe injury. It just doesn't make sense.
11 I'm not ruling out brain injury. I'm just saying what
12 he's complaining about is a right frontal lobe injury. We
13 now know that's what he has.

14 Now, I'm sure we're going to hear Mr.
15 failed that validity test with Mr. . Mr. was
16 having a really bad day that day. He's allowed to have a
17 bad day when he has a brain injury through no fault of his
18 own and he's sitting in a metal chair after two series of
19 having his nerves burned in the naughty chair in the
20 hallway under the sign that says brain injury clinic and
21 the person testing him is late. Every second that ticks
22 by, his anger is going up.

23 The record revealed and showed he was very
24 anxious, exhibiting signs of anxiety. That was not the
25 best day for him to put forth his best efforts to sit down

1 to take an SAT test or LSAT or MCAT or anything like that.
2 That was not a good day for him. But what was a good day
3 for him was three months later when he got back into the
4 system. On March , , he took the same test.
5 Guess what. Valid test results.

6 Now, there was some language used in some of the
7 deposition about malingering. Not a single doctor has
8 come in and said malingering, but defense counsel asked
9 about it. Malingering is a word that I think maybe faker,
10 exaggerator, trying to do something for some other
11 secondary gain type reason.

12 Let me ask you this. Does a malingerer at the
13 scene of an accident say you know what? I got family at
14 my house. This isn't what I want to do today. I'm going
15 to sign the waiver that I'm not hurt so I can leave and
16 get home. Does a malingerer bust their butt in therapy
17 and start walking a mile a day a couple weeks after
18 surgery to get better? No. The malingerer might not even
19 go to therapy. Does the malingerer go and get 11 painful
20 injections in their back? Does a malingerer not give up?
21 Malingerers quit. Mr. is not a quitter. He has
22 not given up. He's moving forward.

23 Does a malingerer say, you know what? Shoulder
24 is good. You know what? Knee? Good. Back? Getting
25 better. Glad I did it. You know what? Cognitive

1 abilities, getting better. Still struggling with the
2 emotional outbursts, anger management, impulsivity,
3 emotional responses. You know what? I'm working really
4 hard on that. I go to four visits a week, I go to two
5 groups. I go to anger management group where I'm the only
6 person not in the military with a brain injury. He's
7 busting his butt to get back to the office to get back to
8 running the company his family started in 1971 that he
9 loves dearly and misses dearly. He can't go back right
10 now. He's a liability to his company and he knows that,
11 and it breaks his heart that the company that he owns,
12 the company his mother started, he can't go in and be a
13 part of now.

14 If someone in the back starts to talk about, oh,
15 gosh, I feel pretty bad about that lady. I don't know.
16 She's a nice, nice lady. Well, there's a jury instruction
17 on that. And the jury instruction basically says that
18 there's no room for sympathy there. What you need to
19 decide is what's fair and adequate compensation for the
20 harms and losses that were caused. She might be a nice,
21 nice lady. She might be a mean, mean lady, but it doesn't
22 matter. Nice, nice or mean, mean, it's all the same. If
23 someone starts talking about that back in the jury room,
24 it's not appropriate. The appropriate things to talk
25 about is the value of the harms and losses.

1 From the smallest thing to the biggest thing, I was the
2 guy and loved every minute of it. It's my family business
3 and I loved being a part of it.

4 You also heard he would give you the shirt off
5 his back. He wasn't a troublemaker. He was a diffuser.
6 He was the guy that the priest put on the Finance
7 Committee, the most important committee at the whole
8 church, because he was the guy that asked the tough
9 questions. He was the guy that spotted the issues. He
10 was the guy with the analytical mind that would say you
11 know what? This came up in the minutes and I'm concerned
12 about that. Can we talk about this? Father put
13 him on that committee for that reason. It's because of
14 the sharp mind he had and his ability to bring people
15 together and get this discussion going.

16 Now, the other thing I was surprised to hear
17 yesterday was what he was thinking about when the crash
18 happened. Okay, I'm going to die. Oh, crap, there's
19 people at my house. How am I going to drive home? He was
20 worried about the kids in the store. And but for the
21 grace of God, the tree saved them. It was a sidewalk. It
22 was not big. Had that tree not been there, he would have
23 gone in the storefront. That's what he was thinking
24 about.

25 Ironically, it's unbelievable to me, but after

1 this crash, he's waking up having panic attacks everyday.
2 He's got a torn rotator cuff. He needs knee surgery and
3 shoulder surgery. He doesn't know it right now, but he
4 has to have back surgery. He has a brain injury. There
5 was an installation at the insurance agent's house. He
6 didn't participate in it, but it was something he wanted
7 to make sure got done right, and he went on that
8 installation. He wanted to keep up his end of the
9 bargain. That guy, you're not going to meet. You were
10 introduced to him through other people. I couldn't show
11 you the video of -- you heard about him from people on the
12 stand. He's not in this courtroom. He's not here.
13 Mr. , who you saw yesterday, was here.

14 Now, at the end of the case you're going to have
15 to fill out the verdict sheet. And the verdict sheet is
16 going to ask for specific money damages. Now, a lot of
17 this you haven't seen yet, but it's sitting right here.
18 But I'm going to tell you what the numbers are. Past
19 medical expenses in this case, \$. Two hundred
20 nineteen, through no fault of his own. Keep in mind this
21 is money to pay the doctors. This isn't money to
22 compensate Mr. . This is money that goes to the
23 doctors.

24 Future medical expenses. This scary spot he's
25 in right now, nobody has a crystal ball. Nobody can say

1 exactly what his future holds. But what we do know for
2 certainty is that Dr. says he needs to follow him
3 for two years. The future medical expenses for Dr.
4 are \$3,500. What we know about Dr. 's group, the group
5 he's in at where he's bustin' his butt to get
6 better, we know her average charges for a month for all
7 her services is \$854.99. If you add those two numbers
8 together, the future that we know exists in the near
9 future are \$13,759.88.

10 Lost wages in the past, the testimony was he was
11 making \$ in . The testimony was he hasn't drawn
12 a salary since the day of his crash. It's been four years
13 he has not taken a salary. The lost wages in the past,
14 \$. Lost wages into the future. is going
15 to get better. The therapy is going to work. He's going
16 to get better. He's going to make his way back to
17 . It's going to happen. It's just a matter of
18 when.

19 What we do know is he cannot lift. He will not
20 be able to lift draperies and go up a ladder. He will not
21 be able to flip a sofa. He will not be able to do
22 anything that requires putting something up on a saw
23 horse. He's going to have to pay somebody else to do
24 that. So instead of the \$ a year in salary, he's
25 going to have to give maybe half that to an upholsterer.

1 He said he wanted to work until he was 70. We'll let him
2 retire at 65. We'll take it through 65. So that's
3 \$35,000 a year for the next 15 years. So lost wages in
4 the future we'll put at \$525,000.

5 Pain and suffering. There is a jury instruction
6 that's going to go back --

7 Your Honor, are the instructions going back with
8 the jurors?

9 THE COURT: They are.

10 MS. ZOIS: And it discusses what you're to look
11 for in compensation for pain and suffering. What are the
12 things you should consider. And the things you should
13 consider are the following: The personal injury
14 sustained, their extent and duration, the effect such
15 injuries have had on the overall physical and mental
16 health and well being of the plaintiff, the physical pain
17 and mental anguish suffered in the past and with
18 reasonable probability may be expected to be experienced
19 in the future. That's a lot to go over. That's a lot to
20 break out. I'm going to try and do it in some sort of
21 methodical way.

22 The knee, I will start with that. Up and down
23 ladders the day before this crash, working 60-hour weeks,
24 knee is fine.

25 Tears his medial meniscus. Dr. tells you

1 there wasn't anything going on in the knee. He had a
2 little bit of something showing up, but there wasn't a
3 whole lot of arthritis going on in the knee. Teenagers
4 can have that.

5 Had the surgery, had physical therapy, did well.
6 Busted his butt. Was walking a mile a day. Got back.
7 Says it's fine. You're good. So for the knee, we would
8 recommend \$35,000.

9 Now let's talk about the shoulder. The
10 shoulder, a little bit more challenging, a little bit more
11 painful. Can't tie his shoes. His wife has to cut his
12 meat. He can't do any movement with his shoulder for
13 quite a while. The shoulder therapy takes a lot longer
14 than the knee therapy takes. So keep in mind with all
15 these surgeries, they all come with risks, general
16 anesthesia, risk of infection, risk of death always
17 associated with any kind of surgery. There's no surgery
18 that's a minor surgery. There are risks associated with
19 all surgeries, especially this one. We're not there yet.
20 So for the shoulder, we would recommend a figure of
21 \$100,000.

22 And when you go back to the jury room, these are
23 numbers to talk about. If you all say, you know what?
24 This one is high but this one is low, have a discussion
25 about it. These are recommendations. If you think they

1 should be higher, make them higher. If you think they
2 should be lower, make them lower.

3 Now with the back, Mr. had 11 injections
4 in his back, and the injections were not a fun process.
5 He would only get the injections when he couldn't stand it
6 anymore, and he had to get them in order to function.
7 Sometimes they lasted for a while. They're supposed to.
8 Cortisone injection; facet block injections. They're
9 supposed to last. He was always on pain medication from
10 the time of this accident. But it got to the point where
11 it wasn't working, so now he decided -- by the way, he did
12 not undertake the surgery lightly. It meant he wasn't
13 going to be able to lift. He went to several different
14 surgeons. You can read all about it. They all said
15 there's no other option. We need to cut you up. There
16 wasn't the diskectomy option or the minor invasive.

17 These are just two of the screws that are in his
18 back (showing). There is a rod. This one is three
19 levels. There is two on each side of his back.

20 Dr. described the surgery that he had.
21 I'm not going to go over this in detail with you. You
22 heard the testimony. I'm not going to go over it and
23 relive it.

24 That's the surgery he had. This is how bad it
25 got. This is what he had to do to get better. Nobody

1 ever said anything about a surgery before November of
2 . This was never discussed. This was never the
3 option. This wasn't happening before November of .
4 He was working 60 hours a week. He was going up and down
5 ladders.

6 So for back surgery for what he had to endure
7 for that, we would recommend the figure of \$200,000.

8 All right. The brain injury.

9 Imagine Mr. 's horror when he's waking up
10 in the morning and going, who am I? Where am I? What's
11 going on? Imagine starting and you're a 45-year-old man
12 having panic attacks, imagine having anxiety attacks,
13 imagine not being able to go to a ballgame. He can't go
14 to his ballgame with his buddy, . He has
15 trouble at the mall, at grocery stores. He doesn't trust
16 himself anymore. He doesn't know himself anymore. His
17 wife, he's not the man she married. He's horrified by
18 that.

19 He has a daughter. In the medical records, it
20 talks about her in some places and says, I don't want my
21 daughter growing up with an angry father. Yesterday he
22 told you she's the love of his life, and she is. And she,
23 for four years, has known a different daddy. Before this
24 crash, he was a good dad, he was a good father, he was a
25 good provider, he was a good friend. He was good at

1 church. He's not the same guy and it's because of this
2 brain injury. He's a liability to himself and it's all
3 because of somebody blowing through a red light, through
4 no fault of his own. All of it.

5 He can't go back to running his company because
6 of it. He knows better than to try. He can't turn off
7 customers. He can't afford to go in and not have a
8 customer buy a couch because he gives them the wrong price
9 or blast off at them or ticks off a vendor who he needs to
10 get supplies from. He's lost the confidence. He's lost
11 his pride. He's lost his honor. His character is being
12 assassinated in this case. And he's doing all of this for
13 what?

14 So for that, I don't know if he's going to agree
15 with this, but for the last four years, give him that for
16 what he's gone through and what he'll continue to go
17 through and how he'll continue to not know himself, not
18 trust himself, not like himself. (Writes dollar figure on
19 easel). He's 50 years old. He's in the prime of his life
20 and he can't go anywhere. He stays home. He can't enjoy
21 going places with his family. He's isolated.

22 So sorry, Mr. , if that number offends
23 you.

24 Future. Again, he's going to get back to work.
25 Dr. says it's going to happen. He's going to bust his

1 butt. It might not be in the same capacity but it's going
2 to happen.

3 In the future, though -- the instruction will
4 show his life expectancy is another 30 years. It's a
5 morbid thing to think about, but it's 30 years. What he's
6 going to have for 30 years is the back with stuff in it.
7 He's not going to be able to lift. He's always going to
8 have back pain. He's always going to have the lifting
9 restrictions for 30 years. That's a long time for
10 something that wasn't his fault. This didn't happen
11 because of anything he did.

12 So how do you come up with that number? Well,
13 think of it as a job. I think minimum wage now is \$7.25
14 an hour. Let's say the ad reads something like this.
15 Well, you have to agree for the next 30 years that you
16 can't lift anything more than 25 pounds. You have to do
17 this in pain, on occasion, some days better than others
18 with possible worsening of your condition with the level
19 above, with a level below. And it's going to be there
20 24/7, 24 hours a day, 7 days a week, 365 days a year, no
21 holidays off, no vacations. So if you look at it that way
22 and you say \$7.25 for 8 hours a day. Let's say there's
23 hours he's asleep and he's not noticing and you do the
24 math and extrapolate it out all the way. Pain and
25 suffering in the future, \$635,000. So the line item on

1 the verdict sheet for total pain and suffering would read
2 \$1,970,100.

3 So if you add all this together, I told you in
4 the beginning of this case that this is the kind of case
5 that's worth that kind of number (pointing). I asked
6 Mr. , would you take that or would you rather have
7 on November , , made it through that intersection
8 without any of that ever happening? It wouldn't take him
9 half a second to say no way.

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