

1 or clear and convincing so I just want you to keep that in  
2 mind. And I want to thank you, thank you, thank you for your  
3 time and attention here today. Um, I'm sure jury service  
4 isn't where everybody wants to be today with jobs and  
5 families and other things going on with your lives, so I want  
6 to make sure I take the opportunity to thank you, because  
7 this case, as you can see, is, is an older case it's been  
8 from June 26 of 2009. And, one behalf of myself and my Co-  
9 Counsel, John Bratt, and my client, and our paralegal  
10 Samantha, I want to just thank you and I look forward to  
11 spending the next couple of days with you.

12 MR. GILLCRIST: May it please the Court?

13 THE COURT: Certainly.

14 MR. GILLCRIST: Your Honor, could we --

15 THE COURT: Absolutely.

16 MR. GILLCRIST: -- move this?

17 THE COURT: Mm-hmm.

18 MR. GILLCRIST: (Unclear - two words) the screen  
19 (unclear - two words). (Unclear - four words), Your Honor?

20 THE COURT: Sure.

21 MR. GILLCRIST: I don't want to trip over (unclear -  
22 five words)

23 (Unclear - lots of interference.)

24 MR. GILLCRIST: Ladies and gentlemen of the jury, thank  
25 you. Um, I represent Kirsten Sapp along with, uh, Anne

1 Howard, and, uh, we're going to be involved in this case,  
2 you're gonna' to hear from us over the next two or three  
3 days. Um, and like Counsel, um, for the Plaintiff in this  
4 case, I'd like to thank you for your participation in the  
5 case. It is an important case. Um, it's an important case  
6 to, uh, Ms. Exline-Hassler, it's an important case to Kirsten  
7 Sapp, uh, and you can only look at the medical bills alone  
8 that they are saying that Ms. Sapp caused this nice lady, uh,  
9 you know that it is a very important and significant case if  
10 you find against my client.

11 So, during the course of this trial you'll hear  
12 witnesses, you'll hear, see documents, you'll see  
13 photographs, um, you will hear from expert witnesses  
14 including doctors that, um, Counsel here have paid to give  
15 testimony, uh, in (sic), on behalf of their clients. You'll  
16 hear that testimony. Ultimately, your job will be to sort it  
17 all out, decide what happened, what didn't happen, decide  
18 what's the truth, what's not the truth, and make a decision  
19 based on all the evidence.

20 And, I'm gonna' say it now, and I promise you I  
21 (unclear - one word), I promise you I'll say it at the end of  
22 the trial, if your verdict is against Ms. Sapp we will  
23 respect your verdict, and, uh, move on with our lives. By  
24 the same token, if your verdict is in favor of Ms. Sapp, um,  
25 then of course, um, we will be pleased with that, but your

1 job is not to go with what one of says because of what we're  
2 saying. Your job is to listen very carefully to the evidence  
3 and make a decision based on the evidence, obviously, uh,  
4 that's why you're here.

5 Now, uh, in a case like this ordinarily there are  
6 questions of liability and questions of damages. You got to  
7 hear Counsel, uh, play up on this video screen, a hearing  
8 that took place on a traffic ticket that was issued to  
9 Kirsten Sapp. We don't dispute that she did that when she  
10 went to Court, uh, we don't dispute what she said. Uh, one  
11 of the things that, I think it either trailed off at the end  
12 or they didn't play it was, at the end she said, Ms. Sapp  
13 said to the, the traffic judge, it all happened very quickly,  
14 I don't know what happened. And, and, essentially, that's  
15 what she's gonna' tell you when she takes the witness stand,  
16 it all happened quickly, and I can't tell you 100 percent  
17 what happened. She's being truth, she's being truthful she's  
18 being honest to you. Um, she is a young lady who, uh,  
19 contrary to the suggestion, I think, with all due respect to  
20 Counsel, says, Counsel says she took her mother's keys, well,  
21 she called up her mother and got permission from her mother  
22 to drive her car, that's what happened. Um, and her mother  
23 gave her permission, she was driving her sister and two  
24 friends, they were going to an Outback Steakhouse. Um, Ms.  
25 Sapp was driving the car carefully, um, she was travelling

1 just like, um, the Plaintiff on 70 West, and, uh, there was  
2 an accident. And if you decide that because there was an  
3 accident that's Ms. Sapp's fault then you should find against  
4 her. We hope that you look a little bit deeper into the  
5 evidence, uh, consider a little bit more than what Counsel's  
6 indicated to you, and really judge for yourself whether she  
7 was negligent in the operation of her vehicle.

8 Now, um, Ms. Zois, at the very end of her opening  
9 statement, uh, said that, you know, keep in mind that the  
10 burden of proof is on her client. Well, it is on her client.  
11 Um, Ms. Sapp does not have a burden of proof to show that she  
12 was not negligent, nor, does she have the burden of proof to  
13 show that she did not cause damages or injuries to Ms. Zois'  
14 client. That burden of proof rests with Ms. Zois during the  
15 entire trial.

16 Now, as a practical matter, we are gonna' put on  
17 evidence, we are gonna' present the case to you, and we are  
18 gonna' show you why we contend that she was not injured or  
19 injured to alleged, to the extent that she says she was  
20 injured. Um, but please do not lose sight during this trial  
21 that the burden of proof rests with the Plaintiff in this  
22 case. She is the one that's suing my client, and you saw the  
23 numbers there, for medical bills, for wage losses or hundreds  
24 of thousands of dollars apparently. So, please keep in mind  
25 if she doesn't proof those damages to your satisfaction by a

1 preponderance of the evidence then those damages should not  
2 be awarded to Ms. Zois' client, Ms., um, Exline-Hassler.

3 Now, in terms of how this accident happened. Um,  
4 you are going to hear from the Plaintiff in this case, uh,  
5 about what happened, and there, there is a lot more than what  
6 you've heard. And please keep an open mind, you're gonna'  
7 hear a string of witnesses, and just because you hear from  
8 Ms. Exline-Hassler first, for example, if that's the case,  
9 doesn't mean that that's the whole story. The whole story  
10 will hopefully be known to you by the time you go back and  
11 give your, and do your deliberations.

12 But, uh, the Plaintiff gave a deposition in this  
13 case, and she explained what happened in the accident, the  
14 Plaintiff did, uh, and we ask you to consider that, and I'm  
15 just gonna' give you a little bit of a, an oversight of what  
16 she said. She, like my client, was travelling in the far  
17 left lane of 70. It was raining, or it had been raining and  
18 the roads were wet, uh, it wasn't ideal driving conditions.

19 The Plaintiff will testify that she was going 6  
20 (sic), 65 to 70 miles per hour with the flow of traffic just  
21 like Ms. Sapp was driving. Ms. Sapp was apparently behind  
22 her, and then all of a sudden, uh, the Plaintiff hit her  
23 brakes, came to an abrupt stop. Again, when you hear the  
24 tape of the traffic hearing you'll understand that my client  
25 doesn't know really what happened. She remembers it being

1 wet, she remembers sort of a foggy, misty thing on the road,  
2 because it was hot, and she remembers applying her brakes and  
3 sliding or hydroplaning in her vehicle. Uh, but what the  
4 Plaintiff said sort of opens up the picture or completes the  
5 picture if you will. And, as the Plaintiff said in her  
6 deposition, she came to an abrupt stop. Why? Because the  
7 car in front of her came to an abrupt stop. There was a  
8 sudden stop. In fact, even Ms. Exline-Hassler later said  
9 that there was an accident up ahead. When she came to this  
10 abrupt stop it wasn't a normal controlled stop, like you  
11 would hope for on 70, and I know, I suspect that all of you  
12 have driven on 70 or 270 or 495 or 95 or different highways  
13 that this happens on occasionally. You hope to avoid it, but  
14 it happened in this case. And what the Plaintiff testified  
15 is that she applied her brakes, and she didn't come to a  
16 controlled stop in front of, in behind the car. Rather, she  
17 had to turn her vehicle. She had to turn her nose of the  
18 vehicle to the side.

19 Now, she says she went to the left, actually she  
20 went to the right, but not that that's a big deal, but she  
21 went to left and she had to turn the nose of her vehicle.  
22 Why? We submit because she had to, she wanted to avoid  
23 striking that vehicle in front of her. That's the only thing  
24 that makes sense. She will testify that she has a tendency  
25 to do that every time she stops behind a vehicle, and I

1 submit to that that just doesn't make sense.

2 Ms. Exline-Hassler will testify well, yes, I pulled  
3 my vehicle a little bit to the left, not for any reason other  
4 than that's how I always bring my car to a stop behind a  
5 vehicle. She called it tucking the vehicle, and she says she  
6 has a tendency to do that people have gotten mad at her for  
7 doing that on prior occasions.

8 Well, I'd submit to you that that, with all due  
9 respect to her, she's an extremely nice lady, you're gonna'  
10 love her, hopefully you'll love Ms. Sapp as well, as people,  
11 but we'd submit to you that that's a convenient testimony or  
12 compen (sic), convenient version. The reality is, we submit  
13 is that she moved her vehicle to the left because she was  
14 afraid that she might hit the vehicle in front of her. Why?  
15 Because these vehicles were coming to a sudden stop. Was it  
16 due to weather? Was it due to the accident ahead? We really  
17 don't know.

18 But the reality is that Ms. Exline-Hassler then  
19 looked into her rearview mirror, she will testify, and this  
20 is all going to come from her, she will testify that upon  
21 looking in her rearview mirror there was a dark colored car  
22 that darted around her, and we asked in her deposition, well,  
23 was this Ms. Sapp that darted around you, and she said no,  
24 this was a different car.

25 So, the first thing she apparently observed is a

1 car darting around her, a dark color car darting around her.  
2 She also observed a white truck, she also observed an 18-  
3 wheel tractor-trailer that slid by her, was her words. And  
4 then she felt an impact apparently by Ms. Sapp. Now, we  
5 don't dispute that Ms. Sapp's vehicle struck her, that's not,  
6 and we don't want to, to get things sidetracked here, but the  
7 reality is there's a lot more to the picture of this accident  
8 then meets the eye. This accident was the result of cars  
9 coming to a sudden, unexpected stop on I-70, and cars were  
10 going every which way, but loose, and that's in fact what Ms.  
11 Exline-Hassler says in her deposition, there were cars  
12 everywhere. She saw this, again, tractor-trailer sliding by  
13 her. The driver of the tractor-trailer even pulled off to  
14 the side of the road, approached her, wondering whether he  
15 had hit her. So, this was not a simple rear end accident as  
16 you might gather.

17 Now, the truth is that the police officer came to  
18 the scene of the accident, um, Officer Chicarelli I think his  
19 name is. And the officer didn't witness the accident, but  
20 the officers are paid to go out there, and they serve very  
21 important public role, and we, we honor them for that, we  
22 admire them for that, but the reality is is that the officer  
23 did not witness the accident, and he issued my client a  
24 ticket, okay, for failing to control her vehicle to avoid a  
25 collision.



1           Now, Ms. Sapp got this ticket, she got notice of  
2 the hearing, went to Court and she said what you heard, or at  
3 least parts of what you heard, but again, something that said  
4 that was maybe cut off or, or not played for you was that  
5 this all happened so quickly, and she didn't know what  
6 happened. Um, she was with friends at the time, they weren't  
7 doing anything (unclear - one word), she was driving her  
8 vehicle with her mother's permission, they were going out for  
9 a nice, uh, dinner at the Outback Steakhouse. She didn't try  
10 and cause this accident, it was an unfortunate accident.

11           If, when you go back to the jury room, you decide  
12 that what Ms. Sapp did was negligence then you should find  
13 against her, and we're not gonna' hide from that. On the  
14 other hand, if you go back to the jury room and think to  
15 yourself, you know, this is something that really all these  
16 cars going back and forth, cars dodging around Ms. Exline-  
17 Hassler's vehicle to avoid striking her apparently. A  
18 tractor-trailer sliding by her so there's something big going  
19 on here. My client was caught up in that mess. If that's  
20 what your analysis is then we submit that the proper verdict  
21 is that she was not negligent.

22           Now, the fact that she went to court, paid whatever  
23 it was, tried to plead guilty, with explanation, uh, doesn't  
24 mean that she's negligence (sic). If that was the case, you  
25 wouldn't be here and I wouldn't be here. The Court's going

1 to instruct you on the law of negligence. If that was the  
2 case, the Court wouldn't be instructing you on the law of  
3 negligence. That's for your decision.

4 And, please, when you go back to the jury,  
5 regardless of what decision you make, when you go back to the  
6 jury make up your own minds about how this accident happened.  
7 Don't make up your mind simply because the police officer had  
8 an opinion on what happened, don't make up your mind simply  
9 because the traffic judge had an opinion about what happened,  
10 make up your minds on what happened in this accident, and  
11 that's all we can ask for. And, again, if your verdict is  
12 against Ms. Sapp, so be it. That's the negligence theory  
13 that, that they are espousing that they are going to try  
14 prove to you.

15 Um, I'm gonna' speak a moment now about damages.  
16 And, again, please keep in mind that Ms. Exline-Hassla (sic),  
17 has the, has the burden of proof to show that she damaged in  
18 this accident, she was injured in this accident, and to what  
19 injuries she had. If you go back to the jury and you decide  
20 that 10,000 of her \$80,000 in medical bills were caused by  
21 Ms. Sapp then that's what your verdict should be. If she  
22 doesn't carry her burden of proof on any particular issue,  
23 whether it's wages, whether it's medical expenses, whether  
24 it's pain and suffering or other things, and even, as Ms.  
25 Zois indicated, gardening or riding motorcycles, if that's

1 what your verdict is, if she, if you feel that they have  
2 carried their burden of proof and to you, to your  
3 satisfaction then it would be appropriate for you to award  
4 damages.

5 But the most important thing I can say about  
6 damages is only those damages that this young lady sitting  
7 over here caused are damages that you should award in this  
8 case. This lady sitting over here is the Defendant in this  
9 case, she's getting sued for a lot of money by the lady  
10 sitting over here. They're both very nice people. One of  
11 them is mistaken. We submit to you that Ms. Exline-Hassler  
12 is mistaken about the injuries that she is claiming in this  
13 case. But, please, through all this evidence, and you're  
14 going to hear hours of doctors' testimony, and I apologize,  
15 lawyers like me, you know, we ask too many questions we know  
16 that it's one our flaws, because we're always worried that  
17 we're not doing our client's best interest if we don't ask  
18 that next question. So, you're going to be nauseated by the  
19 time this trial is over with, with, in all likelihood with  
20 some of the things that we do. Please bear with us, we're  
21 both, and I speak for all of us, in saying that we're trying  
22 to do what in our client's best interest. But you're going  
23 hear hours of testimony from doctors and other witnesses in  
24 the case. What it all really comes down to is what did this  
25 lady over here cause the Plaintiff in this case? And if she

1 caused her damages she is entitled to compensation for it, we  
2 don't hide from that.

3 Let me talk for a moment more specifically about  
4 the damages again. Ms. Exline-Hassler contends that she  
5 sustained a very serious back injury from this case. And Ms.  
6 Zois talked to you about these prior records, these prior  
7 back problems, and, obviously, my client did not cause her,  
8 her prior back problems that existed before this accident.

9 Um, Ms. Exline-Hasson (sic) had a history of low  
10 back problems, it's in the medical records. They are going  
11 to try to tell you that those medical records are wrong, but  
12 they are not wrong. Um, in 2005 she had a car accident and  
13 she injured her low back in that accident, and as a result of  
14 that low back she (sic) continued to bother her, as the  
15 medical records will show, she had a three year history of  
16 low back problems when she went into her doctor in March of  
17 2008. Now, this accident was the next year, granted, but in  
18 March of 2008 she goes in to the doctor, you'll see the  
19 record, and it says, "Motor vehicle accident three years ago,  
20 continuous low back problems since then." We didn't make up  
21 that record, Ms. Sapp didn't make up this record somewhere  
22 and present it to you. This is Ms. Exline-Hasson's (sic) own  
23 medical record. She had gone in in January with low back  
24 problems. She had a couple more visits then she goes to this  
25 doctor, the doctors prescribe medicine, they give her

1 physical therapy. She has a chronic low back condition for  
2 three years, at least.

3 Now, they say that there's a mistake in the record,  
4 that she didn't injure her low back for that long from this  
5 2005 accident. Well, ask yourself why then is there a  
6 reference in this medical record to a motor vehicle three  
7 years ago? In fact, she did have an accident three years ago  
8 in 2005. So, the medical record is consistent, not  
9 inconsistent, but consistent with the facts of this case.  
10 Three years ago she did have a car accident and three years  
11 ago she did injure her low back. This is not something that  
12 we're making up, you'll see the medical record.

13 So, when Counsel tries to tell you that this  
14 history is wrong, please don't buy that for a second if you  
15 are convinced that it is not wrong, and we submit to you that  
16 you will be convinced that it is not wrong. The medical  
17 record references an accident three years ago, and indeed she  
18 had an accident three years ago that resulted in low back  
19 injury.

20 Now, if you have any doubt about that, we submit,  
21 then we're gonna' ask you to look at the pharmacy records.  
22 And the pharmacy records show this was not a low back  
23 condition that magically resolved within a couple weeks, and  
24 then never bothered her again until the subject accident a  
25 year later. We know that, because the pharmacy records show

1 that in July of 2008, remember this was a March 2008  
2 reference to her three years of chronic low back pain. In  
3 July, specifically July 3<sup>rd</sup>, 2008 she gets a prescription  
4 filled for Tramadol, which is a pain medication. She was  
5 only taking it because of the low back issue, the problem she  
6 went in for the doctor for. Then, in September, she get  
7 Skelaxin, which is a muscle relaxer. Again, these were  
8 medications prescribed to her in March or around March of  
9 2008 because of her low back.

10 And then in January, January 12<sup>th</sup> of '09,  
11 specifically, she refills her prescriptions with, and she had  
12 two more refills after that that she was allowed to use,  
13 refills her prescription for Skelaxin, again, a muscle  
14 relaxer. And the Plaintiff, I think, will hear these records  
15 and hopefully honestly tell you that yes, I filled that  
16 muscle relaxant in January of 2009. Now, here we're only a  
17 few months before the accident. And her prescriptions would  
18 have extended to her about the time of the accident, and she  
19 refilled those medications, why? Because she still needed  
20 the muscle relaxers. She didn't go and refill these  
21 medications because she wanted to run up a medical bill or do  
22 anything like that, or she wanted to go to a CVS store, she  
23 went to refill these medications because she needed it and  
24 she needed a muscle relaxer. Why? In January of '08,  
25 January of '09, excuse me, again, just months before

1 accident, because she needed it, she was having ongoing low  
2 back pain. So, yes, we don't have her having a neurosurgeon  
3 tell her that she needs surgery in 2008, we don't have an  
4 orthopedic spine specialist telling her that she's got a  
5 herniated disc or anything like that. What we have though  
6 are records from her own providers that show that she did, in  
7 fact, have ongoing problems with her low back, uh, before  
8 this accident, it's borne out by the medical reports, and  
9 they are gonna' try and prove to you otherwise. We submit to  
10 you that the proof is in the pudding, namely, the records  
11 that you'll be able to see here about during the course of  
12 this trial.

13 Now, this was a relatively minor accident. You'll  
14 get to see photographs of her car, and there didn't appear  
15 from these photographs to be much evidence, you'll be the  
16 judge of how significant an impact this was to Ms. Exline-  
17 Hassline's (sic) vehicle.

18 Um, fortunately, no one got really seriously  
19 injured in this accident. In fact, Ms. Exline-Hassline (sic)  
20 was given the opportunity to go in an ambulance afterwards.  
21 There was even suggestion that the ambulance was actually on  
22 the scene, because it was going to the next accident right up  
23 the road. Uh, she was given an opportunity to go in the  
24 ambulance, didn't go to an am (sic), didn't go in an  
25 ambulance. She, uh, uh, went to, uh, her, an urgent care

1 center, uh, I think it was the next day, didn't mention  
2 anything about her low back, there was no treatment to her  
3 low back, there was no suggestion that she was having spasm  
4 in her low back, she was having some wish (sic), whiplash  
5 symptoms, um, and she had a headache as well. Um, but she  
6 wasn't having low back symptoms the day after the accident  
7 whenever she went to this urgent care center. But then she  
8 subsequently went to her primary care doctor and started  
9 getting treatment for her low back.

10 You've had Ms. Zois explain to you or show you  
11 models of the spine. You'll hear all the medical evidence in  
12 this case, an important thing will be the lumbar MRI scans  
13 that were done for Ms. Exline-Hassler. The lumbar MRI scans  
14 were done, I think there were two after the accident, and  
15 what these MRI scans showed were Degenerative Disc Disease.  
16 Counsel says they show annular tears, that's how it was  
17 described by the radiologist that saw, uh, these films, but  
18 what's important is what her own treating doctors refer to  
19 them as, these are doctors that are treating not the MRI, but  
20 treating the clinical patient. They correlate the patient's  
21 findings examination with the study, and what do they come to  
22 the conclusion about? They came to the conclusion this was  
23 Degenerative Disc Disease. Dr. Michael Radley saw these  
24 films from Parkway Neuroscience, a neurosurgery center. He  
25 referred them to as mild dehydration changes. And the



1 doctor, even the doctor who's gonna' testify for, for Ms.  
2 Exline-Hasline (sic) is going to acknowledge that over time,  
3 as we get older, your body looses water (unclear - two  
4 words), and that's why people wrinkle, that's why people, uh,  
5 get arthritis, and one of the things that impacts is your  
6 disc, and as you discs get old guess what, they dry out.  
7 Some of the times it happens sooner in life that other times  
8 for people. It just depends on your make up. In this case  
9 what those MRI exchanges showed, as Dr. Radley said, were  
10 mild dehydration, dehydrate, loosing water content, changes.  
11 That's what was going on in her spine. But it wasn't just  
12 Dr. Radley, a pain specialist, Dr. Huong, also looked at  
13 those films, and he referred it to as Degenerative Disc  
14 Disease. It wasn't just Dr. Huong. Dr. Nisenfeld, a spine  
15 specialist she had been referred to, saw those films, looked  
16 at her condition and said that she had Degenerative Disc  
17 Disease. These doctors didn't refer (sic), refer to any  
18 acute changes on the MRI, rather, the picture in this case,  
19 as the doctors will all acknowledge, we submit to you, is  
20 that she had a degenerative process in her spine. And that's  
21 what's reflected in those films, in those studies.

22 She had an EEMG, nerve conduction study. Why was  
23 that done? Because of these complaints that she had in her  
24 legs and had in her arms, and I'll get to that in a second.  
25 The EMG study was completely normal, it didn't explain what

1 was going on with her. And, in fact, throughout the course  
2 of her medical treatment, as Counsel, acknowledged, she never  
3 had a neurologically adverse finding, neurologically intact.  
4 And that just doesn't mean you don't have a significant spine  
5 injury, that means that these doctors did neurological  
6 examinations of her every time they see her, and these  
7 neurologic examinations were normal. There wasn't anything  
8 there to explain what she was complaining about.

9 She was also complaining about pain in her hands  
10 and wrist, and at one point in this case, now, we're here  
11 now, but this case has been going on for quite a long time, a  
12 year longer. We get the process we have something called  
13 discovery in the case, and during the discovery phase of this  
14 case the parties are allowed to ask the other side what  
15 they're claiming was caused by their client. So, we  
16 propounded discovery on, on Ms. Exline-Hasson (sic) on behalf  
17 of Ms. Sapp to say what are you saying that I did to you?  
18 How did you, how do you contend I injured you? And, in fact,  
19 in discovery, which was signed by her and her attorneys, she  
20 said that she had developed carpal tunnel syndrome due to  
21 this accident. Now, she didn't phrase it exactly as carpal  
22 tunnel syndrome, because that's what her doctors called it,  
23 but she was complaining about problems in her hands and wrist  
24 that she says was related to the accident. She had surgery  
25 for carpal tunnel or ulnar neuropathy surgery, and contended

1 that that was related to what Ms. Sapp had caused. Now,  
2 they've now withdrawn, it's no longer something they're able  
3 to prove, but at one point in this case it was, they were  
4 attempting to prove that, that Ms. Sapp caused that as well.  
5 That's by the wayside now, it's not going to be for your  
6 consideration, but under oath the Plaintiff in this case did  
7 make such a contention.

8 MS. ZOIS: Objection, Your Honor. May we approach?

9 THE COURT: Sure

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

12 (Husher turned on.)

13 MS. ZOIS: I let the carpal tunnel thing go until he  
14 said under oath. Here's how the deposition went, and I can  
15 pull up the transcript, and I'm pretty sure the other two  
16 attorneys that were actually at the deposition will back me  
17 up on this.

18 MR. GILLCRIST: I'm referring to the answers to  
19 interrogatories they were in.

20 MS. ZOIS: Well, you just said deposition.

21 MR. GILLCRIST: No, I said under oath.

22 THE COURT: No, he said under oath.

23 MS. ZOIS: Okay, either way, in her deposition what we  
24 said at the time, which was after the answers to  
25 interrogatories were executed it was before expert