

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.