

1 occurred:)

2 (Husher turned off.)

3 THE COURT: Thank you.

4 MS. ZOIS: Thank you.

5 MR. BRATT: Thank you, Your Honor.

6 MS. ZOIS: Thank you. Mr. Porcarelli represents another
7 interested party in this matter. Now, the first thing I want
8 to go through is sort of give an anatomy lesson, if you will.
9 And, basically, I don't know how much of this you all may
10 know from maybe your own experiences or not, but this is our
11 back, and essentially there are bones that go up and down our
12 back, and they're, this would be the back of our spine, the
13 part that sticks out, and in between the bones are discs.
14 And the discs are what help give us flexibility in our back
15 and what help sort of support our back. And the discs inside
16 are actually encased in what's sort of a tougher fiber, and
17 it's called the annulus. So, the outside of the disc is this
18 annulus here and the inside of the disc is what's called a
19 nucleus pulposus. And what's inside the disc is more of like
20 a liquid, kind of like the inside of a jelly donut, and
21 what's outside the disc is more tough and it keeps the liquid
22 on the inside.

23 Now, what can happen when a person has a tear in
24 their disc is that the inside part of the jelly donut or the
25 disc can actually run out of the disc. Now, what can happen

1 is that -- which way am I goin' -- is that the material that
2 runs out bothers these nerve endings. So, these nerve
3 endings in our real body they don't really stop here. They
4 stop here on the model, but where they go is down at these
5 levels in your lower back, they go down into your feet and
6 into your legs and into your buttocks and in that area. The
7 levels that we're talking about in this case of Jacqueline
8 Exline-Hassler are at the L4/L5 and L5/S1. So, those are the
9 two levels that she injured in the crash.

10 The injury that she had were two different sized
11 tears, so there's a way that these tears can be measured, and
12 the tear that she had at one level was a grade 5 tear, which
13 is the worse of the annular tears that you can have, which is
14 when the inside of the disc actually pours out of the disc
15 and irritates the nerve roots. It's a caustic material, it's
16 not, it's something the nerves don't like to be touched by,
17 it actually irritates the nerves. And then the grade 4
18 actually goes out to the outside of the annulus itself.

19 Now, she also had a protruding bulging disc, um,
20 that showed up on the MRI 18 days after the crash. So,
21 because of this problem that she developed after this crash,
22 she has had a lot of medical treatment. She's had
23 approximately 146 doctor's visits. She has seen her urgent
24 care facility -- let me back up a second -- when she went, at
25 the scene of the accident I'm okay, it's not that bad, I feel

1 alright, I have this blazing headache, I just wanna' go home.
2 She called her husband, he came and picked her up, tow truck
3 driver had to drive her up an exit so he could get to her.
4 She went home, and that evening she laid down and had pain
5 all up and down her spine, but what scared her was the pain
6 radiating down, and the numbness that was radiating down into
7 her legs.

8 So, she went to the urgent care facility. They
9 said, okay, we'll do what we can for you here, but you really
10 need to follow up with your primary care doctor. So, she
11 went to your primary care doctor a couple, two days later and
12 they said, well, we need to send you out for an MRI. So, she
13 had the MRI after this crash 18 days later, and that's when
14 the tears showed up on the MRI.

15 Following that she tried physical therapy, she
16 tried chiropractic treatment, she went to orthopedic
17 surgeons, she's gone to pain management doctors, she's been
18 to neurosurgeons. She's tried some incredibly uncomfortable
19 procedures to try to get this back pain under control. She's
20 had the nerves in her back burnt called ablation procedures,
21 she's had epidural injections where medication is actually
22 injected into her back to help desensitize the area. She's
23 had a disc decompression, which is where you go in with a
24 rotor rooter or drill, basically, and pull out part of the
25 disc so it shrinks it up so it isn't bothering her as much.

1 She's had what's called a discTRODE procedure, which is a
2 needle that goes in and then a catheter swings into this area
3 here, heats up the disc and then kind of burns the disc
4 itself, and what it's trying to do is seal off the disc from,
5 kind of trying to scar it, and seal it off so that the
6 insides don't leak out on to the nerves and bother her.
7 She's tried it all.

8 Her pain management doctor is Dr. Sloan. You'll be
9 hearing from him, unfortunately, by video. Please try and
10 stay awake. We apologize for having to bring some of these
11 doctors in on video, um, but they have biz (sic), busy
12 schedules and coming to court really isn't what they really
13 do or like to do. Um, Dr. Sloan is one of her treating
14 doctors. He ran out of options and essentially said go see a
15 neurosurgeon and see what they have to say. The neurosurgeon
16 that she saw was a Dr. Neal Naff, who also will be actually
17 coming into court to talk to you, and he'll explain to you,
18 um, her injury and, unfortunately, uh, his recommendation for
19 her to have surgery.

20 The surgery that he would recommend for her to have
21 is actually a, what's called a discectomy and a fusion. So,
22 what he would do is he would take out the two effected discs,
23 put something else in here, whether it be a cadaver done
24 (sic), uh, bone or a synthetic disc and then fuse those two
25 levels of the vertebrae together with plates and screws

1 essentially to try and help her. Now, Jackie's 44, 40 (sic)

2 --

3 MS. EXLINE-HASSLER: Forty-six.

4 MS. ZOIS: How old?

5 MS. EXLINE-HASSLER: Forty-six this week.

6 MS. ZOIS: My math is terrible, she's 46 this week, and
7 her doctor has said you're too young to have this surgery,
8 because once you have the surgery the upper levels are going
9 to get worse, because once you have the fusion it actually
10 deteriorates the levels above it. So, you should wait as
11 long as you possibly can to have the surgery. Jackie's
12 terrified to have the surgery, she doesn't want to have the
13 surgery, her doctor's telling her she's pretty young to be
14 having a surgery so she's gonna' put it off. But in the
15 meantime, she has chronic back pain, and her pain management
16 doctor has done what he can to help her, and where she is
17 right now is she has chronic pain that she has to manage with
18 medication. She has to take the medication so she can
19 continue to live her life, to continue to go to her job that
20 she's had for 18 years, and to continue to try to be
21 productive member of society and, and, and get enjoyment out
22 of life. So, she's doing what she can with what she has.

23 Now, we, and the Defense, actually agree on some
24 things, and the things that we agree on is I think the
25 Defense doctors will get up and tell you that they do think

1 that she injured her back in this crash. They believe that
2 the way Jackie is now and her chronic pain is the way she was
3 before this crash, and I'll come back to that in a second.
4 But what they'll come in and tell you is she did injure her
5 back, the injury to her back went away within six to eight
6 weeks or six to 12 weeks after this crash and then she went
7 back to the way that she was before the crash.

8 The other things that the Defense doctors, the
9 professional witnesses that they've hired to come in and talk
10 to you will tell you is that they do agree that she had the
11 annular tears on the MRI, they do agree with that. Um, they
12 agree that this was a significant impact, that it was not a
13 bumper tap, this isn't a, you know, low speed accident, it
14 was a significant crash.

15 Um, one of the things that we agree with that you
16 might hear a lot about is we don't disagree that Jackie is
17 what's called neurologically intact. Neurologically intact
18 means we're not claiming that she has permanent nerve damage
19 to her nerves. That's not the claim, so we agree she is
20 neurologically intact. So, when you hear neurologically
21 intact we agree with that, we're not disputing it. The pain
22 that she has is coming from the two discs that were torn in
23 the crash and is coming from the caustic material that's
24 coming out and irritating the nerves and causing the pain
25 down her legs.

1 Now, the other thing that we agree on is that most
2 people in their 40's walk around with what's called
3 degenerative changes in their back. As we get older our
4 bodies begin to deteriorate and degenerate, and we agree that
5 in your 40's you begin to vel (sic), to develop what's called
6 degenerative changes, and we also agree that mild
7 degenerative changes don't typically cause problems, they're
8 usually asymptomatic, they don't usually bother you. And
9 you'll hear from their professional witness that he actually
10 agrees with that. Now, here's what we don't agree about. We
11 do not agree that Jackie's condition today and how she is now
12 and her chronic pain problems were how she was before this
13 crash. We do not agree with that at all.

14 Now, you're gonna' be hearing a lot about Jackie's
15 prior medical history, and I wanna' kinda' walk you through
16 that for a second, because you're gonna' hear a lot about it.
17 You're probably gonna' have some of these dates committed to
18 memory and you might end up walking out knowing Jackie's
19 history better than, than she does at some point, but
20 essentially -- and let me start by saying, Jackie's lived in
21 the same area her entire life. She, before this crash,
22 basically used her local hospital and urgent care facility as
23 her primary care doctor. She didn't have a primary care
24 doctor until March of 2008. The Defense has subpoenaed over
25 35 sets of subpoenaed --

1 MR. GILLCRIST: Objection, Your Honor.

2 THE COURT: Sustained.

3 MS. ZOIS: Um, okay. There are voluminous, voluminous
4 medical records in this case that date back to the 1980's up
5 until the current time. Within those records, up until,
6 let's start with '08, so before '08, in the medical records,
7 you'll see that Jackie would go to the urgent care facility
8 for a rash, a cough, um, a throat culture, things like that.

9 In January of 2008, in the holiday season, Jackie
10 was home, she was carrying Christmas stuff, she slipped and
11 she fell and she hurt her butt, and she injured her back, and
12 she'll tell you that. That was at the end of December 2007,
13 beginning of January 2008 she went to her urgent care
14 facility on this date, January the 8th, 2008. They gave her
15 some pain meds, they sent her home.

16 So, during this time period she's getting better
17 from the fall, but she's still having a little bit of
18 something going on in her back. She doesn't have a primary
19 care doctor at this point, and she's like, you know, I should
20 probably get established with a primary care doctor. She
21 calls, she makes an appointment with a primary care facility
22 that cancelled the first appointment, she goes in again, and
23 she sees her primary care doctor on March 26th, 2008. This is
24 the first time she's been to this practice. She meets with a
25 doctor, Dr. Stephanie Brown. Dr. Stephanie Brown takes a

1 history from her, and Jackie will tell you I went in, I told
2 her I fell three months ago, I told her I've been taking some
3 Advil and she also asked me about all my other medical
4 history and I told her about it. Generated from that visit
5 is a report that says, "Plaintiff begins of chronic back pain
6 for three years following MBA in 2005." Okay?

7 2005, which would be back here. Jackie was in an
8 accident in 2005, she wasn't hurt in that accident. She told
9 her doctor that in that visit. She said I was on the road,
10 it was a hit and run, it was a bumper tap, I had a new car,
11 it was less than \$500 in damage, I wasn't really worried
12 about it, I went to my son's baseball game that night, and I
13 didn't have any back pain at all after that accident, but
14 this medical record says she did. So, the Defense's claim is
15 that she's had chronic back pain dating back to June of 2005
16 up until this time period and continuing now.

17 This medical record is wrong. That information is
18 incorrect. As the trial goes on you'll see other mistakes
19 that are in that medical record, but out of all of the
20 volumes of medical records that are here that you're gonna'
21 hear about, this is the only one that says that she was
22 injured and has had chronic back pain for three years. What
23 the record doesn't say is that she fell three months ago and
24 has had, been having back pain for three months.

25 Following the visit with her primary care doctor on

1 March 26th, 2008 her primary care doctor gave her some, uh,
2 prescriptions to fill, she gave her Ultram, also known as
3 Tramadol, Skelaxin and Percocet. Jackie didn't fill the
4 Percocet. She also said you should probably go for a
5 physical therapy evaluation to see what, if anything, they
6 can do to help you with your situation. So, she did. So,
7 she went to one physical therapy evaluation on April the 28th,
8 and on April the 28th they said go learn how to sit better,
9 because the problem that Jackie was having was she was hav
10 (sic), sitting crooked in her chair. They said that she
11 needed to go -- by the way, at that evaluation, she was
12 having minimal discomfort -- but they said you need to go
13 learn how to have better posture alignment so that your back
14 doesn't bother you when you're sitting.

15 So, she went to that visit on May the 6th, 2008, and
16 I think we have a slide for that somewhere, and during that
17 evaluation they said you need to not sit crooked in chairs,
18 and she said it only bothers me when I'm sitting crooked,
19 I've had a couple of flair ups, and they said here's how
20 you're gonna' sit. So, from May the 6th of 2008 through the
21 date of this crash, which is down here for 13 months Jackie
22 didn't go to a doctor, she didn't get any physical therapy,
23 she didn't go see anyone. Before this crash Jackie had one
24 urgent care visit, one primary care doctor visit, one
25 physical therapy evaluation and one physical therapy session.

1 One of the other things that I'm confident that the
2 Defense is going to point out is that at that visit Jackie
3 had three refills for her prescriptions for Tramadol and
4 Skelaxin. Jackie will tell you, she will look you straight
5 in the eye, and she will tell you I filled those
6 prescriptions, I didn't take those prescriptions for back
7 pain, I didn't have any back pain from this day up until the
8 date of this crash.

9 Now, this is the back treatment that Jackie had
10 after this crash. These are all the dates of service that
11 she saw doctors following this crash, all of the painful
12 injections, the MRI's, the x-rays, the neurosurgeons, the
13 orthopedic surgeons and the recommendations for surgery
14 didn't exist before this crash.

15 One of the things -- this is what is her future,
16 and the Defense does agree she's in chronic pain, they agree
17 with this, they agree that the course of treatment that she
18 should be taking and needs to take is chronic pain management
19 with her doctor, they agree with that. The Defense's
20 position though is that somewhere around here she went back
21 to how she was doing before the crash, that's the Defense's
22 position.

23 The things that I would like to draw your attention
24 to is that in 2008, which is right before this crash, or, or
25 late 2 (sic), or early 2009, so for the 13 months between

1 here and the date of the crash you're gonna' hear evidence
2 about Jackie's lifestyle, how she was doin' at work, what her
3 hobbies were, what she enjoyed doing, and we'll start with,
4 um, Jackie is a motorcycle enthusiast. She loves
5 motorcycles. She was actually -- uh, her parents rode
6 motorcycles, they sat her on the seat of the bike when she
7 was little, they introduced her to her love of motorcycles,
8 she rode dirt bikes as a teenager, she bought her first
9 motorcycle when she could afford it. She still has it
10 sitting in her garage collecting dust. Her husband rides
11 motorcycles, her children ride motorcycles. It's something
12 that she and her family have done all her life. It's her
13 hobby, it's something that she escapes the everyday, you
14 know, things that bring everybody down and hard jobs, it's
15 what she did on the weekends to enjoy her family and her life
16 before the crash. Jackie was riding motorcycles for those 13
17 months between here and the time of the crash.

18 Jackie also has a love of farming and gardening.
19 Her grandparents had a working dairy farm, she had some
20 livestock there that she cared for, she went to the farm all
21 the time. She learned how to -- that's actually Jackie's
22 house -- but she learned how to plant, when to plant, how to
23 plant and ride a tractor, um, use the equipment, till the
24 land, water the land, carry the fertilizer, carry the mulch,
25 she could do all of this. She was -- it's hard labor, it's

1 manual labor, it's not easy work, but this was her peace,
2 this is what she did, this is what she enjoyed, this is what
3 she liked to do on weekends to unwind from her stressful job.
4 She can't do all that anymore. She hasn't given up. She has
5 planted a couple things in the garden. She's tried -- her
6 husband's put pots out on the deck that are waste high so she
7 doesn't have to lean over a lot anymore, but she's not riding
8 the tractor, she's not riding the other farm equipment, she's
9 not hoeing the fields anymore, she's not carrying the bags of
10 fertilizer, she's not carrying the bags of mulch, she's not
11 doing any of that anymore. But she was doing it during the
12 time period just leading up to this accident.

13 Now, she has six grandkids under the age of --

14 MS. EXLINE-HASSLER: Five and one --

15 MS. ZOIS: Five, one on the way, the sixth one's due
16 Monday.

17 MS. EXLINE-HASSLER: Yes.

18 MS. ZOIS: Yeah, okay. So, five and one on the way,
19 six, and they're all under six, and she doesn't pick them up
20 like she used to, she could before, she can't feed the babies
21 the bottles like she did before, she can't do it, she wants
22 to, she tries, she does what she can, but it bothers her.

23 This is one of the notes from the physical therapy
24 that she's still enjoying the gardening and the motorcycle
25 riding. She hadn't ridden her bike since the date of this

1 crash. She's tried to get on the back of her husband's bike
2 a couple times, they've taken some trips, it didn't go well.

3 Now, the other thing that you're gonna' be hearing
4 about is Jackie's employment. Jackie's supervisor, Sharon
5 Hamilton, is going to come in and talk to you about her work
6 ethic, and her ability to work, and how her performance was
7 in 2008. She's gonna' come in and tell you about that.
8 Four, by the way is exceeds expectations. Jackie was a hard
9 worker, she's worked the same job 18 years, and she actually
10 took the job over the supervisor you're going to hear from.
11 The supervisor hired her and put her in her job.
12 Unfortunately, Jackie's performance at work you're gonna',
13 I'm gonna' let Sharon Hamilton tell you that. It's gone
14 downhill. She's had to take a lot of time off from work,
15 because of the doctor's appointments. Trying to concentrate
16 and focus on very detail oriented jobs is difficult when
17 you're in pay. It's not easy. And her work performance has
18 suffered from it. She still tries, she tries to give 100
19 percent, but her 100 percent now is nothing like what her 100
20 percent was before the day of this crash, and Sharon Hamilton
21 will talk to you about that.

22 Now, it's a civil trial, unfortunately, we c (sic),
23 as a jury the only thing that we can ask you to do is allow
24 for a verdict in this case. We don't have a time machine; we
25 can't go back to June 25th, 2009; we can't waive a red flag in

1 front of the other driver and say traffic stopped ahead of
2 you; we can't wave a magic wand and fix the tears that are in
3 Jackie's back. So, what we ask of you is to evaluate the
4 losses in this case, evaluate the harms in this case, and we
5 ask you to compensate Jackie for the harms and losses.

6 Now, as a result of all of the medical treatment
7 she's had following this crash her medical expenses are
8 \$83,018. Her lost wages for lost time from work are \$28,648.
9 Her doctor has told her that you need to stay on pain
10 medication so you can continue to be a protuc (sic),
11 productive member of society and go to your job and try to
12 enjoy your life, and every year she's gonna' need
13 approximately 400 (sic), \$4,415.64 to maintain the
14 medications that she's on until she can have the surgery.
15 Dr. Naff will tell you that the proposed surgery that he's
16 recommending is a \$100,000 surgery.

17 These are the numbers that are ascertainable,
18 they're hard, you're gonna', you're gonna' see them. They're
19 numbers that don't require a lot of speculation. The ones
20 that are harder to come up with are what the harms and losses
21 are that Jackie has suffered from because of this crash.
22 What she's gone through in the past because of this; what's
23 she's lost in terms of enjoyment of life with her family;
24 riding her bikes with her family; doing well at work; tending
25 to her garden; doing the things that she once loved to do and

1 found relaxing and enjoyable are now things that she can
2 either no longer do or hurt her, like picking up the
3 grandkids.

4 So, at the end of the case we're gonna' be asking
5 you to do an evaluation of what those harms and losses are.
6 I'm not gonna' give a number to you now, because you haven't
7 heard all the evidence, but we're gonna' have to do that at
8 the end of this case, and I think that you'll find at the
9 conclusion of all the evidence that you'll be able to be fair
10 in coming up with that analysis.

11 And the last thing I'm gonna' leave you with is the
12 Judge read a very important instruction at the beginning of
13 this case, and what she said was use your common sense and
14 your everyday life experiences. And I couldn't agree more.
15 Because I think when you look at this case and you look at
16 the totality of it, you look and you carefully analyze the
17 before and analyze the after and see what the picture is, the
18 whole picture, I think that, and I'm confident that you're
19 gonna' find that the Jackie before this crash is an entirely
20 different Jackie than the Jackie after this crash.

21 And the last thing I'm gonna' leave you with is
22 this is a civil case, so the burden of proof is what's called
23 preponderance of the evidence. It's kind of a fancy way to
24 say are we more right than wrong? Is Jackie's version more
25 right than wrong? It's not the beyond the reasonable doubt

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