

1 MS. ROBINSON: Yes, your Honor.

2 MR. MILLER: Okay. I have no problem. I'll
3 just leave it at that.

4 THE COURT: I don't know why you want to refer
5 to "underinsured".

6 MR. SIMMONS: No, that's not right. That's
7 not proper.

8 THE COURT: It's up to them to determine --
9 the jury is not to be concerned with who is paying.

10 THE COURT: Anything else?

11 MR. SIMMONS: No, your Honor.

12 THE COURT: Ready to go?

13 MR. SIMMONS: Your Honor --

14 THE COURT: Anything else?

15 MR. MILLER: No, no.

16 THE COURT: So you're satisfied with the
17 opening instructions?

18 MR. MILLER: Yes.

19 MS. ROBINSON: Yes, your Honor.

20 MR. SIMMONS: Yes.

21 (Counsel returned to their respective trial
22 tables and the following ensued in open court.)

23 THE COURT: Now here comes the opening
24 arguments. The Plaintiff go first.

25 MR. MILLER: Good morning. My name is Ron

1 Miller. I represent the Plaintiff, [REDACTED].
2 The Court went through and you guys first got
3 to hear it, he gave a quick lay of the land in this
4 case. I know it's hard to follow when somebody is
5 reading things to you. Fortunately for you guys, the
6 issues we have to decide today are pretty simple.
7 We have now established that the Defendant was
8 negligent for the auto accident. That's the issue
9 in this case. And so you're not required to decide
10 who's responsible for the accident. We have already
11 determined and the parties agree that the Defendant
12 is responsible for the accident.
13 The question that you need assistance with
14 today is to simply how much should she receive as
15 compensation for her injuries in the accident.
16 [REDACTED] was driving down [REDACTED] Boulevard
17 in Baltimore County. It's a two-lane road.
18 I'm not drawing this so good.
19 But it's a pretty simple two-lane road, two
20 lanes going each way, a median strip in the middle.
21 She wanted to take a left on the road called
22 [REDACTED] Avenue. And she stopped -- apparently
23 that Ms. [REDACTED] told us, she stopped for two minutes
24 waiting for traffic to clear, two minutes, then she
25 pulled out and hit [REDACTED]

1 The speed limit on [redacted] Boulevard is
 2 forty-five miles an hour. So it's a pretty high-
 3 speed collision. Ms. [redacted] car -- it's a real
 4 accident. Ms. [redacted] car was flipped around.
 5 Ms. [redacted] ends up in a ditch, glass shattered
 6 everywhere.
 7 Ms. [redacted] has children in the car. One of
 8 her children has glass, I believe, in her forehead
 9 from the accident.
 10 Ms. [redacted] is knocked unconscious, probably by
 11 the steering wheel. We don't know by what. She had
 12 a seat belt on and she hit her head. And she woke
 13 up. She is in a little shock like you're in when
 14 this kind of thing happens. And her air bag exploded
 15 in her face and it looked like the air bag exploded
 16 on the other side.
 17 She was driving to pick up her daughter from
 18 school. So her first thought was, Oh, my josh, my
 19 daughter is over there, I got to get to her. Then
 20 she realized that her daughter is not there and she
 21 is going to pick her up at school.
 22 She can't find her glasses. They are broken
 23 off, she never finds them again. She can't find her
 24 cell phone.
 25 The police arrived, paramedics arrived and

1 asked if she or her children wanted to go to the
2 emergency room. Ms. [REDACTED] didn't go to the
3 emergency room initially. She was worried about her
4 daughter. She wanted to get home, call her husband
5 and say pick up [REDACTED] from school.
6 The police officer drives her home. She lives
7 right around the corner. She races back home, called
8 her husband. He left work to get their daughter from
9 school, a seventh grader at [REDACTED].
10 And her husband comes home and they go to the
11 doctors, they went to the ER. Ms. [REDACTED] has a
12 huge bump on her head. A bump that has not entirely
13 left her from the time of the accident.
14 She had been complaining of neck pain and back
15 pain in the emergency room. She went and she got
16 x-rays, they looked her over and said you should be
17 okay, go home, follow up with your doctor.
18 She calls up the doctor two days later. She's
19 in a lot of pain. The pain is more pronounced and
20 growing in her neck. She also has some back pain
21 and she has some headaches from the -- you know,
22 obviously from the impact of her head hitting and the
23 bump on her forehead.
24 So she goes to her doctor and she's prescribed
25 physical therapy for her broken neck and -- for her

1 neck and her back, more x-rays, that kind of thing.
2 Physical therapy goes very well with respect to
3 her back. Her back injury resolved pretty quickly.
4 Her neck injury doesn't. And the physical therapy
5 seems to make it worse, painful and makes it worse.
6 And she feels like she is out of options.
7 They do an MRI. What they find is she has two
8 bulging discs on her neck. That could be -- no one
9 knows -- could be the likely source of that pain.
10 She still doesn't want to get surgery. She
11 gets an epidural injection to try to alleviate some
12 of the pain. That doesn't work.
13 Since then she has gone back to the doctors,
14 and as recently as last week to the doctors -- last
15 month to the doctors, trying to find some resolution
16 for the pain in her neck. She has not. Her neck
17 hurts today. It has hurt every single day since
18 this accident occurred. Her doctors expect that
19 this is a permanent injury.
20 Since there's a trial here, there must be a
21 defense. There is a defense. The defense in this
22 case is that Ms. [REDACTED] already has preexisting
23 injuries.
24 With respect to the headaches, they were
25 largely resolved. She has migraines, is taking

1 migraine medication. She has headaches, migraines,
2 what you expect. What she will tell you, she had
3 headaches for a significant period of time after the
4 accident. These headaches were not migraine
5 headaches. In fact, a whole lot less powerful than
6 what a migraine headache is. It was a different
7 kind of frontal pain, very different in its
8 presentation to her.
9 Secondly, these bulging discs on her neck, her
10 doctor, her own doctor, who will testify -- he's
11 going to testify to you by that television screen
12 because he was wasn't available to come to trial.
13 But we will do that for a whole lot for
14 doctors. That's offered sort of to assist them. And
15 it will be just like it was real trial testimony.
16 It's just video-taped instead of in this courtroom.
17 And he's going to say, I believe, it's more
18 likely than not that these bulging discs were there
19 before the accident. She already had these discs.
20 But what he is going to say is they were
21 asymptomatic. She wasn't having any problems with
22 her neck injury at all.
23 She, like many Americans do, had disc problems.
24 But until a trauma triggers it, it very well may
25 remain dormant forever but for this very violent

1 collision.

2 They are going to argue that these preexisting
3 conditions were then the reason she's having

4 problems.

5 You're not going to hear from Dr. [REDACTED]

6 (phonetic). They did not bring any medical doctor to
7 testify that her injuries were caused by something
8 else other than the accident.

9 Who we have, the sole source here is her

10 treating doctor who says, yes, it's related to the
11 accident, and, yes, it's caused by the accident, and
12 the fact that it existed, a preexisting condition,

13 doesn't mean that it wasn't caused by the accident.

14 Now, if the same accident happened to me or

15 you, though, we would never have had these symptoms.

16 But at the end of this case the judge is going

17 to give you jury instructions. He's going to

18 instruct as to what the law is. So you go back and

19 figure out what the facts are and then you go and

20 apply the law and come to a conclusion.

21 I believe the judge is going give two

22 instructions. This first one is called

23 susceptibility to injury.

24 MS. ROBINSON: Objection.

25 THE COURT: Sustained.

1 MR. MILLER: Okay. I'll bring that back to you
2 later.
3 One more thing I want to point out, and do with
4 it what you will.
5 She got three months into the accident, she
6 first complained for the very first time to her
7 doctor of a problem with her thumb. And she had had
8 prior carpal tunnel syndrome and prior surgery for
9 carpal tunnel syndrome. And she began to experience
10 after the accident some problems with her thumb.
11 She didn't address it initially because she
12 didn't think it was related to the accident at first.
13 She thought it was all related back to her carpal
14 tunnel syndrome.
15 But she reported it to the doctor eventually.
16 And her doctor says, I believe that the carpal tunnel
17 syndrome was exacerbated by the accident. That's
18 what the testimony would be.
19 You're going to have the opportunity to meet
20 Dr. [REDACTED] through this video tape. He's her
21 treating doctor. The only medical advice you're
22 going to hear.
23 You also will have the opportunity to meet Ms.
24 [REDACTED] and find out, first of all, how she feels
25 today and what she's doing.

1 Ms. [REDACTED], before this accident, she was a
2 college -- that she's a college graduate, a
3 registered nurse. She eventually left the medical
4 profession. She is on a pension and has a daughter
5 now in eleventh grade -- twelfth grade. And she was
6 dedicating her life to her daughter.
7 Like a lot of us, Ms. [REDACTED] wasn't running
8 triathlons, she wasn't, you know, running the
9 Baltimore Marathon a few weeks ago, but she was
10 leading a active life and vacationing with her
11 husband and her daughter in [REDACTED], [REDACTED]
12 [REDACTED] every year. She would go to the mall with
13 her daughter or walk with her husband. She would do
14 the kinds of things like go on field trips with her
15 daughter, which was one of her goals of staying home,
16 to spend more time with her daughter. So out of
17 diligence, she would go.
18 Today she is a very different person. She
19 doesn't go on a field trip today. She wouldn't now
20 because she's here anyway. But she would not be able
21 to do these kinds of things without pain. She can't
22 go on long, you know, voluntary walks at the mall
23 without discomfort and pain.
24 Does she do it? Yeah, she does it. If
25 she is not sitting here saying, I'm an invalid

1 and I'm in nonstop pain and I can't function. She
2 can function. But she makes choices every day of
3 her life based on the neck pain that she has as to
4 what she does and what she doesn't do.
5 And you'll hear from Dr. [REDACTED] and you'll
6 hear from Ms. [REDACTED].
7 And I'll have an opportunity to come up and
8 talk to you again. I'm going to ask you to
9 adequately compensate Ms. [REDACTED] for her injuries.
10 Now, I normally tell jurors to give them an
11 idea of what it is we're looking for in opening
12 statement. But it's not like I'm asking for ten
13 million dollars. I can tell you what I have in mind.
14 We are asking you to pay her medical bills, all
15 the doctor bills, all the treatment she sought
16 related to this accident, something to compensate for
17 being in the accident and the pain she suffered after
18 the accident. I'll be asking you to compensate her
19 for the rest of her life.
20 Because I'm going to forget this case one day.
21 I'm a lawyer. I have other cases going on. You
22 won't be remembering -- you all have lives. You may
23 not remember here, but that you were on a jury, and
24 it was before a judge, like, it was a trial ten years
25 ago.

1 Ms. [REDACTED] has to live with this injury for
 2 the rest of her life.
 3 I'm going to ask you to give her seventy-five
 4 cents an hour for the rest of her life for the pain
 5 she experiences every day, and that's twenty-four
 6 hours.
 7 One thing I forgot to mention, too, Ms.
 8 [REDACTED] condition is that she has difficulty
 9 sleeping, just difficulty living the normal everyday
 10 life that she would have but for this, this choice to
 11 pull out in traffic that day.
 12 Thank you for your time. I will spend more
 13 time with you later.
 14 THE COURT: Thank you.
 15 Mr. Simmons.
 16 MR. SIMMONS: Thank you, your Honor.
 17 THE COURT: Sir, did I pronounce your name --
 18 Si-mons, or Sim-mons?
 19 MR. SIMMONS: Yes. I'm sorry. Sim-mons, your
 20 Honor.
 21 THE COURT: I apologize.
 22 MR. SIMMONS: May it please the Court, madam
 23 forelady, ladies and gentlemen of the jury.
 24 My name is Bob Simmons. I'm the attorney
 25 representing Ms. [REDACTED] at the trial table sitting

1 right there. My office is right here in [REDACTED].
2 I think you're going to hear a little bit
3 different story when the testimony comes out. All
4 of the lawyers know what's going on in the case.
5 You're only going to hear one witness, that is going
6 to be the Plaintiff.
7 My client -- the judge has already told you she
8 is at fault in causing the accident. I could put her
9 on the stand and you can listen to her if you want,
10 but she's going to tell you that she was at fault.
11 Let me tell you how the accident happened.
12 It's not quite the way it was told you before.
13 My client came up [REDACTED] Boulevard. I'm sure
14 everybody knows the area. It's [REDACTED] Avenue.
15 There's a district court out there just before you
16 come over the pass.
17 She's coming down there and wants to make a
18 left-hand turn. There's a truck coming up the other
19 way and made a left-hand turn and stopped in the
20 median, each side by side, one going -- wanting to go
21 this way and one wanting to go that way. She
22 couldn't have seen past this pickup driver. She
23 moves out a little bit into the road and, boom, the
24 accident happens.
25 So it's not that she came down just made a

1 left-hand turn and whipped out, but she moved forward
2 a little bit to see out. And she said that she went
3 a couple feet and, unfortunately, this accident
4 occurred.
5 Now, depositions have been taken.
6 Let me tell you, a deposition is where the
7 other parties come in to the attorney's office, a
8 court reporter is there, and questions are asked
9 under oath and you swear to tell the truth and we ask
10 all kinds of questions, Describe how the accident
11 happened, et cetera.
12 I think what you're going to find is that after
13 the accident there was an ambulance at the scene but
14 the plaintiff didn't take the ambulance. You heard
15 she said she went home, picked up her daughter, went
16 to [REDACTED] Hospital. She was treated as an
17 outpatient.
18 The hospital records are -- I assume they will
19 be put into evidence. I don't know. There's nothing
20 in there saying about her being unconscious.
21 Of course, the ambulance is there, and if
22 you're unconscious I imagine that they would give you
23 some treatment.
24 So after getting discharged from the
25 hospital -- and she complained in there about her

1 neck, she goes to [REDACTED] and received
2 treatment. You heard that she got some physical
3 therapy treatment. There were seven physical
4 therapy treatments. The bill is about \$1,200 for
5 those.
6 You'll hear and see the gaps in those physical
7 therapy treatments. There's like four or five, then
8 there's a month's gap and then she goes in and gets a
9 couple more and that's it.
10 There is no other treatment. If she's going to
11 a doctor, we don't have the medical records and we've
12 never seen them.
13 You'll see the medical records I have. And
14 they have sent them to me. You'll see a number of
15 records in there and these bills that were charged
16 for different things that -- like examinations, CAT
17 scans. Not treatment, examinations. Because she's
18 making complaints, a number of complaints.
19 The first time the thumb is told to the doctor,
20 three months after the accident. Not told, never
21 mentioned. Then two months later she tells him, I
22 had surgery on my arm. He was never told this until
23 maybe five months after this accident.
24 And you'll hear from the surgery that she had
25 originally for carpal tunnel syndrome did not work

1 successfully and she had tingling and pain and
2 trouble with it from when this surgery -- which was
3 in about 2002 -- up till the accident happening in
4 2005. There was still problems going on with it.
5 It just didn't take.
6 That's what you are going to hear for
7 testimony.
8 As to the bulging in the neck, yep, the doctors
9 found the MRI's and -- they found an MRI that she had
10 taken before this accident happened and then she had
11 one taken after the accident happened. So we got an
12 MRI in 2004 and an MRI later on in 2005.
13 But what the radiologist found is that they are
14 both identical. There's no difference.
15 The doctor will tell you she has arthritis and
16 she's had these problems before this accident
17 occurred.
18 They say, yeah, she may have some pain and
19 suffering. Normally doctors call it soft tissue
20 injury. You may have heard that expression. That's
21 what they said she had.
22 That's what this case is all about, ladies and
23 gentlemen.
24 So you'll have a chance to see and you'll
25 hear the Plaintiff. You will see a video of Dr.

1 the treating doctor, and listen to him.
 2 And you'll hear some comment in there that says, I
 3 don't understand the complaints that she has because
 4 they do not and are not compatible with my findings.
 5 That's not exactly the words, but you'll hear him say
 6 they don't gibe.
 7 That's -- so you'll have a chance to hear all
 8 that and then make your decision.
 9 Thank you all very much.
 10 THE COURT: Thank you. Ms. Robinson.
 11 MS. ROBINSON: I'll be very brief. I know you
 12 all want to have lunch.
 13 My name is Lydia Robinson. I represent [REDACTED]
 14 in this case.
 15 I'll just say -- you already heard from both
 16 counsel. And I want to end with this note:
 17 Please pay attention to all of the evidence.
 18 Listen to it all.
 19 Because you jurors heard two very different
 20 stories, not about who's at fault for the accident --
 21 we all agree that's not the issue for you -- but
 22 whether anyone was injured and, if so, to what
 23 extent. That is the real question.
 24 And the story that you heard in the beginning
 25 was the story from Plaintiff's attorney. And the

1 story you just heard now from Defense was Bob
2 Simmons' story. As the Judge points out, they are
3 argument, not evidence. And the argument you're
4 going to hear now and the argument at the end, it's
5 argument.
6 Again, please look at all of the evidence, not
7 just the Plaintiff's testimony, not just the doctor's
8 testimony, but the documents that were just referred
9 to and also what you hear again about the
10 depositions. Because they don't agree. The two
11 stories are not the same. And the evidence there is
12 going to show that some of the things that are claimed
13 are not connected to this accident.
14 Please look at it very carefully.
15 The biggest one I will point out as just an
16 example is counsel for Ms. [REDACTED] just said she had
17 loss of consciousness. Look at the hospital records
18 which will be in evidence, that Dr. [REDACTED] is not
19 in the record. The discrepancies in what's reported
20 at different times and as to what is actually
21 connected to this accident is part of what you'll
22 hear about today.
23 But the real thing you'll hear about today is
24 money.
25 So please pay attention to all of the evidence

1 before you make up your mind.
2 I appreciate your time and effort in paying
3 attention to everything.
4 Thank you.
5 THE COURT: Thank you.
6 All right, ladies and gentlemen, I will send
7 you out to lunch now.
8 If you will go out with Mr. Dellinger, he'll
9 show you where the juryroom is and how to get back in
10 when you come back from lunch.
11 I have about 12:05 now. Allowing for the lines
12 at the cafeteria and other eateries around here,
13 we'll give you an hour and a half for lunch. So
14 we'll try to start back around 1:30.
15 I want to ask you, please don't get in your
16 cars and go anywhere to have lunch. We had a few
17 months ago one of the jurors didn't come back for
18 almost two hours. We almost had a mistrial.
19 Take your coats and purses with you, folks.
20 If you want to leave them in the juryroom, we can
21 lock that up for you.
22 (The jury leaves the courtroom.)
23 THE COURT: On the requested jury instructions
24 that have been submitted, we have the definition of
25 "negligence" and "contributory negligence", "degree

1 of care".

2 MR. SIMMONS: No. Disregard that, your Honor,

3 anything regarding the happening of the accident.

4 MS. ROBINSON: Your Honor, I believe they were

5 put in there before that was resolved.

6 THE COURT: I can understand. I just want to

7 make sure on the record they're being withdrawn at

8 this point.

9 I'll take out "standard of care", definition of

10 "negligence", "contributory negligence", "degree of

11 care in automobile".

12 How about "proximate cause"?

13 From what I heard, you may want to let that in.

14 MS. ROBINSON: I'd like to leave "proximate

15 cause" in, your Honor.

16 THE COURT: Anything else on jury

17 instructions?

18 Have you all agreed on a verdict sheet?

19 MR. MILLER: I believe we have, your Honor.

20 The one we submitted to the court.

21 THE COURT: If you have, submit it to the clerk

22 when we come back after lunch.

23 The reason I am asking for that now is when I

24 go into closing instructions I like to give them the

25 verdict sheet. There's only one that goes back to

1 the juryroom. But I like for them all to have one to
2 look at and then we take them back at the close.

3 Anything else before we adjourn?

4 MS. ROBINSON: No, your Honor.

5 MR. MILLER: No.

6 THE COURT: Thank you. I'll see you all at
7 1:30.

8 (A lunch recess was taken, whereupon there was
9 a change in reporters.)

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