

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

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IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND
EXLINE-HASSLER
Plaintiff
v. Civil Docket
No. 10-C-12-000410
PENN NATIONAL INSURANCE, ET AL.,
Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL - DAY FIVE)

Frederick, Maryland
January 28, 2013

BEFORE:

THE HONORABLE JULIE S. SOLT, JUDGE

APPEARANCES:

For the Plaintiff:

LAURA C. ZOIS, ESQUIRE
JOHN B. BRATT, ESQUIRE

For the Defendant:

WALTER E. GILLCRIST, JR., ESQUIRE
ANNE K. HOWARD, ESQUIRE

For Penn National Insurance, et al.:

GUIDO PORCARELLI, ESQUIRE

TRANSCRIBED BY:

Victoria Eastridge
Official Transcriber
100 W. Patrick Street
Frederick, Maryland 21701

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T A B L E O F C O N T E N T S

P A G E

PRELIMINARY MATTERS		3
WITNESSES:	DIRECT: CROSS: REDIRECT: RECROSS:	
For the Defendant:		
Kirsten Sapp	10 14 -- --	
EXHIBITS:	IDENTIFICATION: EVIDENCE:	
For the Plaintiff:		
Exhibit No. 23(k)	PRE-MARKED	8
(MRI)		
Exhibit No. 23	PRE-MARKED	15
(Dr. Sloan's fee schedule)		
Exhibit No. 24	PRE-MARKED	15
(Dr. Naff's fee schedule)		
MOTION FOR JUDGMENT		
By Ms. Zois		28
By Mr. Gillcrist		31
By Mr. Porcarelli		35
Response by Ms. Zois		37
Court's ruling on motion		38
MOTION RE: CLOSING STATEMENTS		
By Mr. Porcarelli		42
By Ms. Zois		44
MOTION FOR JUDGMENT		
By Mr. Porcarelli		64
CLOSING ARGUMENTS		
By Ms. Zois		80
By Mr. Gillcrist		130
By Mr. Porcarelli		165
By Mr. Bratt		182
VERDICT		228

1 (Whereupon, at 9:54 o'clock, a.m., January 28, 2013
2 before The Honorable Julie S. Solt, Judge, in Circuit
3 Courtroom Number Four, the following commenced:)

4 P R O C E E D I N G S

5 (Jury not present.)

6 THE CLERK: All rise. The Circuit Court for Frederick
7 County is now in session. The Honorable Julie Stevenson Solt
8 is presiding.

9 THE COURT: And good morning, everyone. Please be
10 seated.

11 MS. ZOIS: Good morning, Your Honor.

12 MR. GILLCRIST: Good morning, Your Honor.

13 MS. HOWARD: Good morning, Your Honor.

14 MR. PORCARELLI: Good morning, Your Honor.

15 THE COURT: We're back on the record in the matter of
16 Exline-Hassler v. Sapp, number 12-0410. And I note all
17 Counsel are present.

18 MR. BRATT: Yes, Your Honor.

19 THE COURT: And, um, I know that you all have been going
20 through the exhibits again. Have we gotten that resolved?

21 MS. ZOIS: Not all the way, Your Honor, but we've made a
22 lot of headway.

23 THE COURT: Okay. And how do you want to resolve the
24 exhibits issue? I thought -- I mean, I would have, I just
25 need to know for timing, 'cause we have the jury back there

1 and I just wanna' know, 'cause we have to do ver (sic), um,
2 verdict sheets and instructions as well.

3 MS. ZOIS: As I understand it where we are in the
4 process though, um, Your Honor, is Plaintiff has offered in
5 exhibits. There is 2(a), which Your Honor is holding, um, to
6 make a decision it's McGrail's case list, we would like that
7 before the jury. Our position is that it goes to his bias
8 and his credibility, and it wasn't gone, I didn't go over it
9 in exhaustive details. It wouldn't be cumulative, uh,
10 evidence. My understanding from the objection from Defense
11 Counsel is he doesn't like it. So, I'm not, I'm not sure
12 that's what the --

13 THE COURT: I'll let him argue.

14 MS. ZOIS: Okay.

15 THE COURT: And, and then what other, what other
16 exhibits are we --

17 MS. ZOIS: So, the other exhibits, Your Honor, are
18 Plaintiff's 23. Um, and there, I think there was some
19 miscommunication between us and Counsel last week about this
20 exhibit. Initially when I offered it I think they thought I
21 only wanted to put in one slide from this set of exhibits,
22 but essentially these are the demonstrative exhibits that Dr.
23 Sloan used and relied upon in, in, um, demonstrating his
24 opinion in the case. So, it's 23(a) through 23(k), which
25 are, um, various depictions of the anatomy. And within those

1 it also includes her actual discogram, um, uh, discTRODE
2 procedure rather. So, we would offer these exhibits into
3 evidence, uh, you know, the Doctor used them to help
4 illustrate his opinions in the case, and I think it would be
5 helpful for the jury to have these back there.

6 Um, the other exhibits that are in that same
7 category as to why I want them in, Your Honor, are the --

8 THE COURT: Just, just offer them in and tell me what it
9 is, and I'll hear argument about it, if I need to.

10 MS. ZOIS: Plaintiff's Exhibit 34(a) through 34(f),
11 which are the surgical photographs that Dr. Naff used in
12 explaining to the jury the, um, future surgery in this case.
13 And the Defense has rested as far as --

14 THE COURT: No.

15 MS. ZOIS: -- I'm aware, Your Honor. So there are two
16 other exhibits that I would offer as rebuttal and there was a
17 witness I would call in rebuttal, but we're not at that
18 phase. So, I'm not going to talk about those, unless Your
19 Honor wants me to.

20 THE COURT: No.

21 MS. ZOIS: Okay.

22 THE COURT: I wanna', I wanna' get rollin'. So.

23 MS. HOWARD: Your Honor, I --

24 THE COURT: Ms. Howard.

25 MS. HOWARD: -- def (sic), defer, defer to Mr.

1 Porcarelli on the case list --

2 THE COURT: Mm-hmm.

3 MS. HOWARD: -- so that's, um, Exhibit 2(a), is that
4 right?

5 THE COURT: 2(a), yes.

6 MS. HOWARD: Um, but as to 23 we have no problem with
7 (k), 23(k), which is the last page of 23, which is the actual
8 MRI of the actual Plaintiff, but all the rest are these sort
9 of, uh, animated pictures that were -- if, Your Honor
10 probably saw on the video, I think anyway. They were
11 actually played on a TV screen while Dr. Sloan went through
12 them and explained everything. So, to put the actual
13 pictures back would be in my, in our view, on behalf of the
14 Defense, uh, highlighting a portion of the deposition, video
15 deposition testimony, which would be unfair. No portion of
16 his testimony would go in, no portion of his video testimony
17 would go in so why are we now putting in a portion of his
18 video testimony.

19 And, similarly with Dr. Naff, and Dr. Naff reviewed
20 surgical photographs these were, I mean, these were not the
21 actual surgical, these are just future like if, if she went
22 with this procedure, this is what it would be, I believe.
23 Uh, again, pictures of the actual Plaintiff's spine are
24 coming back in. We don't have an objection to that, but
25 anything that's just demonstrative evidence that was actually

1 already used would, would not go back, 'cause it's
2 demonstrative. And, two, it would o (sic), un-necessarily
3 overly highlight some portion of the expert's testimony.
4 Thank you, Your Honor.

5 MR. PORCARELLI: Your Honor, to be brief we would
6 incorporate by reference those arguments made by Ms. Sapp's
7 Counsel. And, in addition, with regard to the Dr. McGrail
8 case lest it was discussed on the, on the, uh, DVD already
9 and we would think that it would be cumulative, duplicative
10 and is certainly, um, really irrelevant to whatever issues
11 they're gonna' be deciding today. We would ask that, uh, you
12 keep that out of evidence.

13 THE COURT: Okay. 2(a) is out, 20 (sic), Plaintiff's
14 23(k) is in, the rest of those, the rest of the exhibits may
15 be used in closing, but don't go back to the jury. And, uh,
16 24(a) through (f) is out.

17 MS. ZOIS: Thirty-four, Your Honor?

18 THE COURT: Thirty-four, yes.

19 MS. ZOIS: Okay, so --

20 THE COURT: The, the, the future surgery --

21 MS. ZOIS: Future surgery's out, none of Dr. Sloan's
22 anatomy goes back, except for (k).

23 THE COURT: Except for (k).

24 MS. ZOIS: And 2 --

25 THE COURT: 'Cause it's demonstrative.

1 MS. ZOIS: -- 2(a) --

2 THE COURT: And 2(a) is out.

3 MS. ZOIS: Out.

4 THE COURT: Yeah. Now, do we have more evidence to,
5 does Defendant have more evidence to put before the jury?

6 MR. GILLCRIST: Yes, Your Honor.

7 THE COURT: Okay. So, are we ready to resume Defense
8 case before the jury?

9 MR. GILLCRIST: I, I believe so, and just, uh, just as
10 another housekeeping matter, we have all of our Defense
11 exhibits, I understand those have all been worked out.

12 MS. HOWARD: Yes.

13 MR. GILLCRIST: And those are all admitted?

14 MS. HOWARD: Mr. Porcarelli's gonna' admit two more, uh,
15 or I'll move them on his behalf.

16 MR. PORCARELLI: Just to let you know what I have. I
17 have two exhibits I'd like to move, and a couple of very
18 short excerpts to read into the record from answers to
19 interrogatories and from deposition transcripts. And, unless
20 there's some change after that then I would probably be
21 resting.

22 THE COURT: Okay. All right, bring in the ladies and
23 gentlemen.

24 (Jury entered the courtroom.)

25 THE COURT: And good morning again, everyone, and

1 another lovely morning. However, the day's going to improve
2 it's supposed to be just a little bit of nasty rain, but
3 warmer this afternoon. Note for the record all the members
4 of the jury are present.

5 MR. GILLCRIST: Thank you, Your Honor.

6 THE COURT: Mm-hmm, so.

7 MR. GILLCRIST: Um, oh, I'm sorry.

8 THE COURT: So.

9 MR. GILLCRIST: Uh, yes, Your Honor, in the Defense case
10 I'd like to, uh, just read in one answer to interrogatory if
11 I can?

12 THE COURT: You may.

13 MR. GILLCRIST: Um, and for the record, these were the,
14 uh, Ms. Exline-Hassler's answers to interrogatories that
15 were, uh, signed by her and served on June 12, 2012.

16 Interrogatory Number 16, "State which of your
17 injuries, if any, you contain (sic), contend are permanent."
18 Answer Number 16, "Due to the occurrence Plaintiff still
19 suffers from complaints in the upper back, lower back, legs,
20 feet, numbness in her toes and numbness in hands and fingers?
21 Due to increased pain in Plaintiff's right arm and hand she
22 had surgery performed on April 30, 2012."

23 Okay. That would be, Your Honor, related to the
24 carpal tunnel, obviously. Um, and then, Your Honor, I'd like
25 to call Ms. Sapp, please.

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THE COURT: You may.

KIRSTEN SAPP,

a witness, produced on call of the Defense, first having been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GILLCRIST:

Q Ms. Sapp, you understand that you're still under oath, is that correct?

A Yes.

Q I don't believe it was covered earlier, if it was I apologize, but there was a statement, um, that you had taken the car keys from your mother. Um, when the accident happened were you driving the car with your mother's permission?

A Yes.

Q And how did you obtain her permission?

A I called her --

Q And she --

A -- and asked her.

Q Okay. And she gave you the okay?

A Yes.

Q All right. Were you a licensed Maryland driver at the time of the accident?

A Yes.

1 Q There were questions to you in an audio tape that
2 was viewed, was played to the jury about the, um, guilty plea
3 with explanation that you made in traffic court, do you
4 remember that?

5 A Yes.

6 Q Okay. What was the amount of the ticket?

7 MS. ZOIS: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. GILLCRIST: Can we approach the bench, Your Honor?

10 THE COURT: Sure.

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

13 (Husher turned on.)

14 MR. GILLCRIST: Your Honor, Brigamen v. Albert
15 (phonetic) is the traffic ticket case in Maryland and it says
16 that a guilty plea is admissible, however, the Defendant has
17 an opportunity to explain the circumstances that were
18 (unclear - one word.)

19 THE COURT: All right, you can just ex (sic), have her
20 explain that, just not -- I mean, I --

21 MR. GILLCRIST: Well, the, the explanation is that it
22 was only a small amount of money, and that's why she paid it.

23 THE COURT: So.

24 MR. GILLCRIST: So, I think the amount of the, the
25 ticket was actually (unclear - one word).

1 THE COURT: So.

2 MR. GILLCRIST: Because it goes to her explanation of
3 why she paid it.

4 MS. ZOIS: Your Honor --

5 THE COURT: Well, she didn't just pay the ticket, she
6 went into court and pled guilty. That's a little bit
7 different.

8 MR. GILLCRIST: I know and Brigamen v. Albert gives the
9 Defendant under those circumstances an opportunity to
10 explain.

11 THE COURT: She certainly can. I just, I just don't
12 know that the amount of the ticket --

13 MR. GILLCRIST: Okay.

14 THE COURT: -- per say is relevant.

15 MR. GILLCRIST: All right, thank you.

16 THE COURT: Mm-hmm.

17 MS. ZOIS: Thank you, Your Honor.

18 (Counsel returned to the trial tables and the following
19 occurred:)

20 (Husher turned off.)

21 THE COURT: He'll rephrase that.

22 THE WITNESS: Okay.

23 BY MR. GILLCRIST:

24 Q Um, Ms. Sapp, you, you paid the ticket that was
25 associated with that, correct?

1 A Yes.

2 Q All right. Do you know if any points were
3 associated with that?

4 A Um, I don't know if there was any points when I got
5 the ticket, but I didn't receive any points when I went to
6 court.

7 Q Okay. When you paid, or when you pled guilty with
8 explanation, were you aware at that time, had you received
9 Ms. Exline-Hassler's lawsuit against you?

10 A No.

11 MS. ZOIS: Objection, relevance, Your Honor.

12 THE COURT: Overruled.

13 BY MR. GILLCRIST:

14 Q I'm sorry, what was the answer to that?

15 A No.

16 Q When you pled guilty with explanation in traffic
17 court, were you aware that Ms. Exline-Hassler was contending
18 that you had caused her severe and permanent injuries to her
19 back?

20 A No.

21 Q Were you even aware at that time that Ms. Exline-
22 Hassline (sic) was suing you?

23 A No.

24 MR. GILLCRIST: That's all I have, thank you.

25 THE COURT: Cross examine.

1 CROSS EXAMINATION

2 BY MS. ZOIS:

3 Q Would your testimony when you swore to tell the
4 truth in traffic court have changed had you had this lawsuit
5 pending against you at the time?

6 A I wouldn't have changed what I said, because I just
7 wanted to be honest, but I probably would have talked to
8 someone like my parents and probably gotten a lawyer if I
9 would have known that I was going to be sued.

10 MS. ZOIS: Nothing further, Your Honor.

11 THE COURT: (Unclear - one word) you may step down.

12 THE WITNESS: Okay.

13 MR. GILLCRIST: And, Your Honor, I think we have, we, we
14 dealt with the exhibits, those are all admitted as I
15 understand?

16 MS. HOWARD: Yes, yes, everything's admitted that we
17 wanted to move in we went through that the end of the day
18 Friday.

19 MR. GILLCRIST: And that would be Ms. Sapp's case, Your
20 Honor. Thank you.

21 THE COURT: Mr. Porcarelli.

22 MR. PORCARELLI: Your Honor, if I could for the record,
23 put in, uh, two Defense exhibits? One is identified as
24 Defendant's Exhibit 23, which is Dr. Sloan's fee schedule,
25 and I believe we do not have an objection.

1 MS. ZOIS: No objection, Your Honor.

2 THE COURT: It'll be received.

3 (Item admitted into evidence as
4 Defendant's Exhibit Number 23.)

5 MR. PORCARELLI: And the next one would be Defendant's
6 Exhibit Number 24, which is Dr. Naff's fee schedule. I
7 believe that we don't have an objection to that either.

8 MS. ZOIS: No objection, Your Honor.

9 THE COURT: It'll be received.

10 MR. PORCARELLI: May I approach your clerk?

11 THE COURT: You certainly may.

12 MR. PORCARELLI: Thank you.

13 (Item admitted into evidence as
14 Defendant's Exhibit Number 24.)

15 MR. PORCARELLI: And, Your Honor, if I could read in an
16 answer to interrogatory. Um, this is also from the same set
17 from, uh, Plaintiff, Jacqueline Exline-Hassler to the
18 questions sent to her by Kirsten Sapp, um, that were signed
19 under oath, and in particular, I would like to read in
20 question number 18, which, uh, reads as follows.

21 Question, "If you have ever suffered
22 any injuries in any accident, either prior or
23 subsequent to the incident referred to in the
24 complaint, state the date and place of such
25 injury, a detailed description of all the

1 injuries you received, the names and addresses of
2 any hospitals, physicians, surgeons, osteopaths,
3 chiropractors or other medical practitioners
4 rendering treatment, the nature and extent of
5 recovery, and if any permanent disability was
6 suffered, the nature and extent of the permanent
7 disability, and if you were compensated in any
8 manner for any injury, state the names and
9 addresses of each and every persons or
10 organizations paying such compensation in the
11 amount thereof."

12 The answer --

13 MS. ZOIS: Objection, Your Honor, may we approach?

14 THE COURT: Of course.

15 (Counsel approached the bench and the following
16 occurred:)

17 (Husher turned on.)

18 MS. ZOIS: Um, the answer to that interrogatory, Your
19 Honor, was --

20 THE COURT: (Unclear - one word.)

21 MS. ZOIS: -- Plaintiff objects based on --

22 THE COURT: Let me see.

23 MS. ZOIS: It's basically Plaintiff objects based on
24 relevance. It's unduly burdened someone not likely to lead
25 to discovery, which would be admissible at the trial of this

1 matter. Um, under the Giant/Food Lion case, the Food Lion
2 case, and I have a copy of it for Your Honor --

3 THE COURT: Mm-hmm.

4 MS. ZOIS: -- if you wanna' read it. Uh, Defense couns
5 (sic), it's incumbent upon a Defense attorney or Defense
6 counsel if they think that the questions and answers to
7 interrogatories are inadequate trial is not the time to let
8 us know that. The appropriate thing, what they should have
9 done at the time that they believed that they got an answer
10 to interrogatory that was inadequate was to inform Counsel
11 that that's the case, and to allow Counsel the opportunity to
12 cure that defect.

13 This being read, for one, is in violation of that
14 case, because this is not the time to go over discovery
15 objections or inadequate answers. And, actually, this is
16 what that issue is about in that case. Um, with respect to
17 reading this out of context the, her answers to
18 interrogatories, um, have been consistently supplemented with
19 a lot of paper discovery. She, she's informed them in her
20 deposition in other sets of answers to interrogatories, and I
21 think allowing this answer to stand in front of this jury
22 would be inappropriate, because it's not inclusive. I would
23 have to go back through my correspondence file and find every
24 letter that I sent to them supplementing all the answers to
25 interrogatories with all of her medical records, all of her

1 medical bills, all the doctor's reports, all the lost wages,
2 which we did consistently throughout the case, informally.
3 And nobody ever said you need to go back and formally
4 supplement your answers to interrogatories formally. Every
5 single discovery letter I sent says, "This is being sent to
6 you as informal discovery. If you require a formal
7 supplementation to our discovery responses please let us
8 know." So, this is inappropriate.

9 THE COURT: I'm gonna' sustain the objection.

10 MS. ZOIS: Thank you.

11 THE COURT: You can put a pr (sic), (unclear - one word)
12 put anything else on the record.

13 MR. PORCARELLI: Well, I'd like to respond to that.

14 THE COURT: Mm-hmm.

15 MR. PORCARELLI: I mean, the case cited, and, obviously,
16 it's not here in front of us to actually read to see what it,
17 what in fact is printed on there, but this is not an issue
18 where we're complaining about supplementation. Uh, and not
19 only that, but the Plaintiff has an obligation under the
20 rules to supplement throughout. What the point is is that
21 you're asked a direct question about your prior history and
22 you're, you're not giving it, and you believe it's
23 irrelevant, and yet this, that's the very issue that this
24 case, that, that this jury's going to decide is whether or
25 not you were injured. And it isn't until we have to dig and

1 issue subpoenas and find, you know, where all the nuggets are
2 that we are then able to get people to say, oh, well, you
3 know, there was this one incident before. Oh, well, there
4 was this other incident when I did hurt myself. And I think
5 it's very important for this jury to understand that coming
6 clean in front of the jury during trial is one thing. Coming
7 clean during the trial and also during the discovery process
8 when you're asked this direct question is something very
9 different.

10 THE COURT: So. So then objection's sustained.

11 MR. PORCARELLI: Thank you.

12 MS. ZOIS: Thank you, Your Honor.

13 THE COURT: Mm-hmm.

14 (Counsel returned to the trial tables and the following
15 occurred:)

16 (Husher turned off.)

17 MR. PORCARELLI: So, if I may then read from Plaintiff's
18 Deposition transcript, uh, which was under oath on June 27th,
19 2012. And that would be page 107. I asked, uh, Ms. Exline-
20 Hassler the following question and she provided the following
21 answer under oath. Page 107, line 15 through 20.

22 Question, "Before June 26th of 2009 had
23 you ever been involved in any car accidents?"

24 Answer, "I was involved in one back in '80

25 something, '80, '90." Question, "Were you the

1 driver or passenger?" Answer, "Driver."

2 From page 108, lines three through five.

3 Question, "Were you doing the T-boning or did you
4 get the T-bone?" Answer, "I did get the T-bone."

5 From page 109, lines 10 through 13.

6 "You were seen at the Trauma Center?"
7 Answer, "Yes." Question, "What body parts did
8 you complain about?" Answer, "I had a fracture
9 on my left hip."

10 And I'll continue reading a few more lines to 21.

11 "In addition to the broken left hip,
12 what other body parts did you complain about?"
13 "Nothing else." "Nothing to do with your upper
14 back?" "No." "Nothing to do with your middle
15 back?" "No." "Nothing to do with your lower
16 back?" "No."

17 Your Honor, with those two exhibits in and that
18 deposition testimony, um, I would conclude.

19 THE COURT: Thank you. Rebuttal.

20 MS. ZOIS: We do, Your Honor, but, um, we should
21 probably approach first.

22 THE COURT: Okay.

23 (Counsel approached the bench and the following
24 occurred:)

25 (Husher turned on.)

1 MS. ZOIS: Um, now that the Court's had the opportunity
2 to get the full flavor of this case, initially, we served a
3 subpoena upon the Penn National adjuster to be here to talk
4 about any and all claims that my client made during the
5 course of her, um, period that she was covered with them,
6 which does date back to 2005.

7 THE COURT: Mm-hmm.

8 MS. ZOIS: Um --

9 THE COURT: And you're asking me to reconsider my
10 decision?

11 MS. ZOIS: Not exactly. No, no, no, absolutely not.

12 THE COURT: Okay.

13 MS. ZOIS: Not, I totally understand the Court's
14 decision.

15 THE COURT: Okay. Go ahead.

16 MS. ZOIS: We're not, I don't want to rehash that. I
17 will put a proffer on the record --

18 THE COURT: So.

19 MS. ZOIS: -- outside the presence of the jury as to if
20 the Court doesn't allow me the latitude that I'm asking for
21 now, but the, um, the issue that I want to address on
22 rebuttal is not the issue of insurance that she has now in
23 this case, which I totally understand Your Honor's ruling.
24 However, the Defense of this case is that she was injured in
25 a 2005 car crash for which she has had longstanding chronic

1 back problems. So, even assuming Penn National wasn't in
2 this case at all right now, I would still want to call
3 someone to the stand, a claims representative that she had in
4 2005 to address the issue of whether or not she made a bodily
5 injury claim in 2005, totally separate and aside from what's
6 going on in this case, because if I were to call the adjuster
7 to the stand the adjuster would say we have no evidence of
8 her making a bodily injury claim in 2005, and if she had made
9 a claim in 2005 she did have the kind of coverage that would
10 have afforded her the opportunity to make that case. She did
11 have (unclear - one word) vehicle coverage, she did have PIP
12 coverage so if she was injured we would have honored that
13 claim, and we have no evidence of that claim.

14 Further, they don't have any evidence that she in
15 the index (unclear - two words) no one has any evidence
16 anywhere that she made a bodily injury claim in 2005. So,
17 its (sic) goes directly to the Plaintiff's support of her
18 credibility, because they're calling her a liar. They're
19 saying you were injured in that 2005 case, you did have
20 chronic back pain. So, this is critical evidence to
21 corroborate her testimony, which is she could have filed that
22 claim. She did not file that claim. Nobody has any evidence
23 that she ever made such a claim. So, it's corroborating
24 evidence as to her credibility, which is right on the line.
25 I mean, directly, she's in the cross hairs on that. So,

1 that's it.

2 THE COURT: Once again, the Court does not believe that
3 the absence of evidence of making a claim is an essential
4 element of defending your client's credibility on this issue.
5 One can be injured without making a claim. It's the Court's
6 mind it's just, it's collateral, their, their client has
7 testified as to all those circumstances, she's introduced the
8 medical records from that time, that inference is certainly
9 there. So, um, the Court, once again, does not believe that
10 that is prohibitive evidence as to the issue that this jury
11 is being asked to decide.

12 MR. PORCARELLI: Thank you, Your Honor.

13 MS. ZOIS: Okay. The other, um -- while we're up here -
14 -

15 THE COURT: Yeah, sure.

16 MS. ZOIS: -- so we don't have to waste more time,
17 there's, um, two exhibits, Plaintiff's 47 and 48. One is her
18 claim's history index, which, obviously, is void of any
19 information of her (unclear - one word) claim in 2005, and
20 the other one is the subpoena to the Penn National adjuster,
21 which contains the scope of his testimony or the designee,
22 corporate designee, and I would offer those into evidence --

23 THE COURT: Okay.

24 MS. ZOIS: -- obviously, but I understand the Court's
25 going to object to that. Um, but I will have them marked for

1 identification.

2 THE COURT: Have them marked, and they'll be part of the
3 record, but will --

4 MS. ZOIS: Okay.

5 THE COURT: -- of course will not go to the jury.

6 MS. ZOIS: Okay.

7 MR. PORCARELLI: And --

8 MS. ZOIS: And --

9 MR. PORCARELLI: -- just so our objection's noted for
10 the record. Thank you, Your Honor.

11 THE COURT: Yes. So.

12 MS. ZOIS: Last --

13 MR. GILLCRIST: Ours as well.

14 MS. ZOIS: -- and lastly. Um, Your Honor, we did
15 withdraw the carpal tunnel claim --

16 THE COURT: Yeah.

17 MS. ZOIS: -- before our expert designation. I don't
18 know how the Court wants to handle that. I have a letter
19 that's going, that goes out --

20 THE COURT: So.

21 MS. ZOIS: -- that went out to the Defense Counsel. I
22 don't think they're going to dispute that I did that before -
23 -

24 THE COURT: So.

25 MS. ZOIS: -- the expert designation. So, if the Court

1 could, or allow me the opportunity or the Court could take
2 the opportunity --

3 THE COURT: So.

4 MS. ZOIS: -- to say that claim was formally withdrawn -

5 -

6 THE COURT: So.

7 MS. ZOIS: -- through answers to --

8 THE COURT: You c (sic) --

9 MS. ZOIS: -- interrogatories.

10 THE COURT: -- you, you certainly can concede that or
11 have Counsel concede that in closing that that's not an
12 issue.

13 MS. ZOIS: So, I can argue that in closing?

14 THE COURT: Absolutely, absolutely.

15 MS. ZOIS: Okay. I don't, I just didn't want to not put
16 that into evidence --

17 THE COURT: No, no.

18 MS. ZOIS: -- and be precluded --

19 THE COURT: So.

20 MS. ZOIS: -- from arguing that.

21 THE COURT: It, it, it, it is in evidence --

22 MS. ZOIS: Okay.

23 THE COURT: -- that, that theirs (unclear - two words.)

24 MS. ZOIS: Okay. Fair. Okay.

25 THE COURT: Okay?

1 MS. ZOIS: That's it then. Um --

2 THE COURT: So any other --

3 MS. ZOIS: -- motion for judgment.

4 THE COURT: Okay. Denied.

5 MS. ZOIS: Really?

6 THE COURT: So.

7 MS. ZOIS: Oh, I gotta', I gotta' put that on the record
8 though, Your Honor.

9 THE COURT: You just did.

10 MS. ZOIS: No, I gotta' put the reason, I have to
11 articulate the reasons for putting motion for judgment on the
12 record. I can't just, I can't do that, that wouldn't be a
13 complete record. Maybe we could do that and talk about
14 instructions?

15 THE COURT: You certainly can.

16 MS. ZOIS: And, okay.

17 THE COURT: Mm-hmm.

18 MS. ZOIS: But I need to --

19 THE COURT: Okay.

20 MS. ZOIS: -- put that on the record. I can't --

21 MR. GILLCRIST: We would reserve our motions that have
22 denied as well.

23 THE COURT: I mean, this is silly.

24 MS. ZOIS: That's not the way it works is it?

25 MR. PORCARELLI: If we're going to head into a brief

1 break to handle the motion then I would put one on the record
2 formally as well.

3 THE COURT: Okay. Alrighty.

4 MR. PORCARELLI: Thank you, Your Honor.

5 MS. ZOIS: Thank you, Your Honor.

6 (Counsel returned to the trial tables and the following
7 occurred:)

8 (Husher turned off.)

9 THE COURT: Ladies and gentlemen, the formal evidence
10 portion has concluded. There's some legal stuff that we need
11 to do. So, even though we've only been out here for a few
12 minutes I'm gonna' send you back to the jury.

13 I will tell you, like I said, the formal evidence
14 has been done. We're gonna' do the legal stuff that we need
15 to do when you come back. I will be giving you my
16 instructions, and Counsel will make their closing argument,
17 and you will get this case to begin your deliberations. So,
18 we're at a good place right now, okay? So, I'm going to
19 excuse you to, um, to the jury room. And, uh, like I said,
20 when you come back out we'll be rolling with instructions and
21 argument. Thank you.

22 (Jury excused from the courtroom.)

23 THE COURT: Ms. Zois, you wanted to be heard on motion
24 for judgment.

25 MS. ZOIS: Um, yes, Your Honor.

1 THE COURT: Mm-hmm.

2 MS. ZOIS: And just, um, briefly, I would incorporate my
3 proffer earlier as to the scope of inquiry for the claims
4 representative that I would have called.

5 THE COURT: Certainly. That's all on, that's all on the
6 record, so.

7 MS. ZOIS: I just want to incorporate my previous
8 argument so I don't have to say it all over again.

9 THE COURT: Correct.

10 MS. ZOIS: Um, with respect to the issue of liability in
11 this case the Plaintiff would make a motion for judgment in
12 her favor. Um, all of the evidence before Your Honor is un-
13 contradicted and un-disputed. The Defendant took the stand,
14 held up her hand and said, "I plead guilty. I, the first
15 time I noticed her she was at a complete stop. It all
16 happened so fast." Um, so, clearly, as far as the issue of
17 negligence as to the Defendant herself is overwhelming. I
18 mean, I don't think that there's any evidence before the
19 Court that she didn't fail to control her vehicle in a
20 reasonable manner on the date of this crash. Um, she's, she
21 was driving too fast for the weather conditions, she failed
22 to pay attention to the traffic in front of her. She was
23 following too closely. She, um, failed to avoid coming into
24 contact with another vehicle. So, as far as the record goes
25 with respect to the issue of negligence as to the Defendant