

1 MS. ZOIS: Oh, can I clean up?

2 THE COURT: Certainly. I was just going to ask, you've
3 been sitting a while, would you all like to take five
4 minutes.

5 MALE VOICE: Sure.

6 MR. GILLCRIST: Thank you, Your Honor.

7 THE COURT: Especially after you've eaten, I know
8 there's the . . .

9 (Jury excused from the courtroom.)

10 THE COURT: Okay, and we'll all take five.

11 THE CLERK: All rise.

12 (Whereupon, from 1:45 o'clock p.m. until 1:57 o'clock
13 p.m., a recess was taken.)

14 (Jury not present.)

15 THE CLERK: All rise.

16 THE COURT: Good afternoon again, everyone. Please be
17 seated. Okay.

18 MS. ZOIS: Good afternoon, Your Honor.

19 THE COURT: You can go ahead and bring 'em in.

20 (Jury entered the courtroom.)

21 THE COURT: And note everyone's present. Mr.
22 Gillcrist.

23 MR. GILLCRIST: Thank you. Um, ladies and gentlemen of
24 the jury, on behalf of Kirsten Sapp I would like to also
25 thank you for your participation in this case.

1 You need only look at how much money, uh, Ms.
2 Exline-Hassler's attorney has asked you to award to her in
3 this case to understand that we're talking about a very
4 important case. And it's not just important to Ms. Exline-
5 Hassler, uh, it's important to Ms. Sapp, obviously. And, so,
6 on her behalf, um, I do appreciate the attention you've given
7 to the case.

8 Uh, Ms. Sapp was involved in an accident, we all
9 know that, it happened a while ago, and I don't think when
10 that accident happened she expected to be here three or four
11 years later trying to defend herself, but when Counsel, uh,
12 for Ms. Exline-Hassler suggest to you they were hiring
13 professional witnesses, and, uh, suggesting to you that we're
14 trying to pull the wool over your eyes by introducing some
15 photographs, but not others, it is nonsense. Um, she, Ms.
16 Sapp, has every right to defend herself. And that's all we
17 are doing. So, my job is to defend Ms. Sapp, and I hope that
18 I have lived up to her expectations, I hope I lived up to
19 your expectations in terms of presenting to you the evidence
20 fairly in this case.

21 Um, if you go back to the jury room, as I said at
22 the beginning of the trial, and you disagree with me, which
23 is your perfect right to do so, then I would expect you to
24 find against Ms. Sapp if that's what you find collectively
25 considering all the evidence. Um, we're not asking you do,

1 to do anything other than base your decision on the evidence
2 that you've heard, as well as the instructions that the Judge
3 has given to you on what the law is as we know. Um, we, uh,
4 put forth to you evidence in this case, both lay evidence and
5 expert evidence. Um, we did so with the hope that it would
6 help guide you in your deliberations and guide you to make
7 the right decision in this case. And, believe me, uh, I feel
8 strongly that the right decision in this case is 100 percent
9 opposite of what, uh, Ms. Zois was saying.

10 Please, please, please do not forget that Ms. Sapp
11 does not have burden of proof in this case. As the judge
12 instructed you, the burden of proof rests with Ms. Exline-
13 Hassler, why? Because she is the one, and I'm not going to
14 turn it over for you, but she's the one that is claiming
15 these exorbitant mounts (sic), amounts, hundreds of thousands
16 of dollars and saying that this lady sitting over here caused
17 her client those damages. Hopefully you know better that
18 that. Hopefully this evidence has persuaded you otherwise
19 already, but that's the burden of proof. Ms. Sapp does not
20 have a burden of proof. And Counsel, believe me, they are
21 very experienced, they're very good lawyers, and they're very
22 aggressive, they have every right to be, uh, to advance their
23 clients' interest. Um, but we on the Defense side also have
24 a right, um, to represent our clients, and that's all that I
25 hope we have done in your eyes, and represented them fairly.

1 Now, in terms of the burden of proof, uh, Counsel I
2 think was kind of a little clever in using this flip the
3 burden of proof approach that I believe she was trying to do
4 and that is to blame us for not bringing in another doctor,
5 as if you needed to hear another doctor after this long
6 trial, by not having a pain specialist come in to you, not
7 doing this, not doing that. Well, that's not how the burden
8 of proof operates, ladies and gentlemen. The burden of proof
9 puts that burden on them, and she can blame us for not having
10 another specialist come in and tell you what you already know
11 or she could look in herself and say, well, wait a minute,
12 why didn't I produce Dr. Radley. Remember? This is a
13 doctor, her treating doctor who she didn't call as a witness.
14 This is the treating doctor who first saw her after this
15 accident and said you know what, those MRI scans showed mild
16 disc dehydration. That's all they show. Dr. Radley is also
17 the doctor, again, Ms. Hassler's doctor who said that the MRI
18 is consistent with the patient's age. That's in his reports.
19 That was Dr. Radley's opinions. Why didn't Ms. Zois or Mr.
20 Bratt call Dr. Radley as a witness? Why didn't Ms. Zois or
21 Mr. Bratt call, uh, Dr. Nisenfeld as a witness, who said that
22 the only thing that she had was degenerative disc disease?
23 Why didn't they call Dr. Huong from Dr. Radley's office, the
24 interventional pain medicine specialist who said the same
25 thing, she's got degenerative disc disease? Why didn't they

1 call Dr. Khanna, another -- all these are treating doctors,
2 they are, they can verily (sic) ea (sic), very easily bring
3 to you Dr. Sloan and Dr. Naff who are making a lot of money
4 being here, just as the other experts, I'm not hiding from
5 that, but they can very easily bring you these doctors that
6 kept coming down the road, but they don't bring in the
7 doctors who see this woman after the accident and treat her
8 after the accident and find that she had really degenerative
9 disc disease and that's all that she had.

10 So, let's be fair here. If we're responsible for
11 not having another expert come in and talk to you, look at
12 their burden of proof and why they didn't bring these
13 doctors. And the most glaring admission of this, I would
14 submit to you, is Dr. Stephanie Brown. Where's Dr. Stephanie
15 Brown? Ms. Zois can get up here and tell you that medical
16 report, which is her client's medical report is inaccurate
17 until she's blue in the face. But there's one person in this
18 world who could probably clarify that up if it was
19 inaccurate, and it is not inaccurate, and that's Dr.
20 Stephanie Brown. They elected not to call them as a witness
21 apparently, so let's keep it a level playing field, let's
22 base the decision on the evidence, but when Ms. Zois gets up
23 here and accuses us of not doing more work on this case by
24 bringing in more experts, please keep in mind -- excuse me --
25 please keep in mind that it's Ms. Zois' and Mr. Bratt's

1 burden of proof to show their client's injuries and damages.
2 They had ever opportunity to call these other doctors as
3 experts or as witnesses in the case. Stephanie Brown could
4 have come in here and said, you know, I checked back on my
5 notes, and it was erroneous when we said that motor vehicle
6 accident, that's not the case. So, that's how the burden of
7 proof operates in this case. Don't hold it against us merely
8 because we did not have the extra specialist that Ms. Zois
9 wants us to bring in. But you have every right to hold it
10 against the Plaintiff in this case, because she's the one
11 that's seeking hundreds and hundreds and hundreds, hundreds
12 of thousands of dollars saying that my client caused those
13 damages, yet she didn't bring in those doctors, the ones that
14 are her treating doctors. The ones that probably a simply
15 letter scheduling them to be here would have been adequate to
16 get them here. So, that's a little bit about the burden of
17 proof.

18 Now, I'm gonna' talk to you about the accident, and
19 about the damages issues. And when I talk about the damages
20 issues ultimately, um, and I'm gonna' probably spend more
21 time doing that, and, and by the way, Mr. Porcarelli is, is
22 gonna' handle some of these as well. Um, but when I talk
23 about those damages issues please don't interpret that as
24 meaning that I don't believe in Ms. Sapp or anything like
25 that. I'm just simply, uh, trying to do my job to cover

1 everything in case you don't agree with me, and as I said in
2 the beginning, and as I've just said a few minutes ago, if
3 you don't agree with me that's absolutely your right not to
4 do it but, again, please keep in mind there's a lot of
5 evidence in this case.

6 The credibility of these parties. I want to speak
7 for just a moment on the credibility of the parties. Um, as
8 the judge instructed you it's your job to determine their
9 credibility, your job to assess them as witnesses and decide
10 if they have a motive to not to tell the truth. You may look
11 at Dr. London and say, oh, he's getting paid too much money,
12 we don't believe him. Or you may look at Dr. Naff and say,
13 well, Dr. Naff is getting \$7,000 to be here. Of course he's
14 gonna' say something in favor of Ms. Hassler. That's things
15 that evidence that you can all consider in terms of
16 credibility, but let's not lose sight of one very important
17 credibility issue in this case, and this is the business
18 about her prior prescription medicine. Um, Ms. Hassler, or
19 Exline-Hassler, um, got up here last week, Friday, you waited
20 all week to hear from her. She got up there and tried to
21 tell you that when she purchased related to her low back
22 after her incident in March of 2008 it was only because she
23 wanted to store them up, store that medication up. Now, Ms.
24 Zois spoke for about an hour and a half in giving her closing
25 argument a few minutes, you know, this afternoon. I think

1 she spent a total of about 15 seconds talking about that
2 prior medication. I believe it's very important, not only as
3 to what was going on with her, but also as to the issue of
4 her credibility. And, by the way, that's not to suggest that
5 I'm saying she's a liar or she's just out for money or
6 anything like that. That's to suggest to you that she
7 doesn't have it right, and her testimony shouldn't give, be
8 given that weight. In this case, ladies and gentlemen, this
9 prior low back condition, and bear in mind, we're not the
10 ones that bought this medicine. Ms. Zois a few minutes of
11 (sic), uh, ago stood up before you and said it just kinda'
12 like this, put her hands on this table and said, "Ladies and
13 gentlemen, just because she purchased medicine doesn't mean
14 she, meant she used it." All right? I'm gonna' challenge, I
15 think Mr. Bratt is going to give the rebuttal argument, I'm
16 gonna' challenge him when he gets up here and to talk about
17 this prior medication that she purchased, that Ms. Exline-
18 Hassler purchased before this accident, after they say that
19 she was all better in March or April or May of 2008, after
20 that she purchased this medicine. And I'm gonna' challenge
21 Mr. Bratt to explain to you if this makes sense and if it
22 does make sense to him how it makes sense that she could not
23 be having problems, how it makes sense that she could tell
24 you, look you in the eyes and say to you I was just buying
25 medication to store it up, that's essentially what she was

1 saying, that I didn't have any problems, I didn't need it, I
2 was just storing it up. Well, she got her Percocet in
3 January of 2008, that's the Hydrocodone, not a big deal
4 because that was never renewed down the line, but she got
5 Skelaxin and Tramadol in March 26 of 2 (sic), 2008, remember
6 one, Tramadol is the pain medication, Skelaxin is the muscle
7 relaxant, I've written that down here. That's medication
8 that she got for her back, okay?

9 Now, at no point during the entire trial did Ms.
10 Exline-Hassler ever tell you that she got these medications
11 for any reason other than her back, so we know these
12 medications are for her back. Ms. Exline-Hassler didn't have
13 any other falls after that she says, didn't have any other
14 things going on that might have, didn't buy this drug, these,
15 these drugs for other people, absolutely not. These were
16 drugs that she purchased for herself.

17 So, she gets this medication in March, March 26th of
18 '08, all right, then she goes to Boonsboro Pharmacy on July
19 3rd of 2008 and purchases Tramadol 60 pills. And, and, and by
20 the way you will see these entries, they're a little hard to
21 read, because the print is so small, but this would have been
22 in Defendant's Exhibit Number 5 and Defendant's Exhibit
23 Number 18, which incidentally the Defense introduced into
24 evidence, not the Plaintiff in this case. These show her
25 medications that I've listed here on this board, among other

1 things. Okay?

2 And, so, July 3rd, 2008 she goes in to Boonsboro
3 Pharmacy and purchases 60 pills of Tramadol. On September 9,
4 2008 she goes in to Boonsboro Pharmacy and purchases 30 pills
5 of Skelaxin. On September 16th, so just a week later, she
6 goes into Weis Pharmacy and purchases another 60 pills of
7 Tramadol. On January 12th, 2009 she goes into Boonsboro
8 Pharmacy and purchases Skelaxin 30 pills. On February 28th,
9 2009 she goes into Weis Pharmacy and purchases Tramadol,
10 Tramadol again, 60 pills. Okay. Now, ask yourself if it
11 makes sense that Ms. Exline-Hassler is going into these doc
12 (sic), these pharmacies July, twice in September, once in
13 January and then again in February just to store up the
14 medication. Well, if you believe her testimony she hasn't
15 taken medixin (sic), medicine. In fact, remember how she
16 described that after she went to that one physical therapy
17 visit it was in, I think in May or late April of 2008, that
18 she had pills left over and she put them in her medicine
19 cabinet. So, in that time frame she's still got pills left
20 over from March of '08 that she hasn't used. So, those pills
21 are sitting in her medicine cabin (sic), cabinet doing
22 nothing at all.

23 I want to mention her husband's testimony that he
24 ended up throwing away pills, but remember Ms. Exline-Hassler
25 said that occurred last year. So, that's in 2012 so we're

1 not talking about her husband throwing away these pills, and,
2 and that's why she needed to renew them. We're talking about
3 somebody who's going to a pharmacy using her own good (sic)
4 earn, goodly earned money, hard earned money and going to the
5 effort to go to the pharmacy and buy pain medication and
6 muscle relaxants, why? We submit that the evidence is clear
7 because she's still having problems. Again, this was not
8 medication used for any other thing, but her low back. So,
9 she's going in on each of these occasions.

10 Now, you might give her the benefit of the doubt
11 and say, well listen, maybe she's wrong that in April about
12 not having, about having medication left over so just to be
13 safe in July she went and got some Tramadol. I, I don't
14 think that makes sense at all, ladies and gentlemen, I hope
15 you don't either. She went to this pharmacy in July of 2008,
16 why? Because she was having problems. People don't go and
17 get medication that she, they might need six months later or
18 they might need a year later or they might need 10 days later
19 if they're not having symptoms. This is not a life
20 threatening condition that you have to have a surplus of that
21 medication, we're not talking cancer here, where you need to
22 have that supply, you can't go a day without it, so you're
23 gonna' be always careful about having that medication
24 stocked, no. This is a situation where Ms. Exline-Hassler is
25 buying medications for her own use. She does it in July, she

1 does it in September, two different medications. Now, if Ms.
2 Exline-Hassler is storing medication up, well why does she
3 need to go back in September, um, approximately two months
4 later and order new Tramadol, because, ladies and gentlemen,
5 she's already used this up, she's already used this up, she
6 needs another prescription that she will continue to use,
7 okay?

8 So, we look at this again. In January -- now, she
9 may have been doing better in this two to three months
10 between these two dates. She may very well have been feeling
11 great, but then things go back again. In January of 2009 she
12 has a m (sic), she needs a muscle relaxant, and the doctor
13 said you need a muscle relaxant for muscle spasm, and that's
14 what she was having. That's the only explanation as for what
15 she was having. And then again, February 28th, much closer to
16 the date of the accident she goes back for more Tramadol.
17 So, this is not somebody who is storing up pills for future
18 use. This, ladies and gentlemen of the jury, is someone who
19 is using the pills that she is buying, and that's the only
20 thing that makes sense in this case. And if she's using the
21 pills that she's buying for her lumbar pain and for her
22 muscle spasm then she's having problems before this accident.

23 Now, Ms. Zoit (sic), Zois and Mr. Bratt wants you
24 to believe that this was no big deal, that the accident
25 caused everything in the world and that Ms. Sapp caused all

1 of this ladies' life's problems, and it helps their case to
2 show you that, you know, she wasn't going to a doctor in this
3 time frame, she wasn't going to an orthopedist or spine
4 specialist so we don't have the smoking gun of her getting an
5 MRI in this period of time. Well, the evidence that we put
6 forth to you, and I hope it's convincing to you, is that the
7 indeed she is having continuous problems during this
8 timeframe. But consider one other thing, when she went to
9 Robinwood after this accident, and it's also in this exhibit,
10 she got more Tramadol. So, the accident was in June of 2009.
11 If she had been storing up all this medication she would have
12 at least, and let's assume there's nothing left over from her
13 March 2008 prescription, she would have 60 pills that she
14 didn't use from July, she would have another 60 pills that
15 she didn't use from September of '08 and she'd have another
16 60 pills that she didn't use from February. So, she's got
17 180 pills of Tramadol that, if you believe Ms. Exline-
18 Hassler's testimony, that she still has in her medicine
19 cabinet when this accident happened. What happens? She goes
20 to Robinwod and she's prescribed more Tramadol, and I didn't
21 put it down here, but it's in the records, um, so she goes
22 back to, um, Robinwood and gets another prescription of
23 Tramadol. So, you have a situation where plainly, clearly,
24 um, she's got things going bon (sic), um, bad with her low
25 back during this period of time. Now, again, Ms. Exline-

1 Hassler's telling you that it wasn't bothering her, and
2 you'll have to judge for yourself. If you believe that Ms.
3 Exline-Hassler would go back on these five different dates
4 during that critical time period and buy drugs just for the
5 sake of she might having (sic) a problem weeks, days, months,
6 and years later, than I'm talking to a wall, and I know I'm
7 not talking to the wall, okay? These were medications that
8 she purchased to manage her ongoing problems. There is
9 absolutely no other explanation that is credible in, in my
10 view and I hope you agree with me.

11 Um, now, in talking about the accident Ms. Exline-
12 Hassler also, you got an opportunity to listen to her and see
13 how she answered questions, no one's accusing her of being a
14 professional witness, she didn't have to answer questions
15 perfectly. We all, six, eight of us here have been doing
16 this for a while and, and maybe we do know how to ask
17 questions, maybe we don't, but I'm not saying Ms. Exline-
18 Hassler should have been artful in answering the questions,
19 but I hope you did get an opportunity to listen to her
20 testimony carefully and judge for yourselves whether she gave
21 credible information to you about both liability and about
22 damages. And, and just speaking about liability for one
23 moment, remember there's that whole thing about angling her
24 car where she called it tucking her car to the left. Um, Ms.
25 Exline-Hassler testified that she always does that when she

1 comes to a stop in traffic on a highway. In this case the
2 accident was on I-70. Does that make sense? That every time
3 she comes to a stop in traffic on I-70 that she pulls her car
4 at an angle, and in this instance she first said she pulled
5 her car at an angle so that she could see what was ahead of
6 her, which was apparently this other accident, but in her
7 testimony she said, "I pulled my car at an angle to the left
8 in every instance that I stop in (sic) I-70." Well, if you
9 believe that testimony than you wouldn't have to decide that
10 she pulled her car to the left because she was worried about
11 striking that car in front of her because she came to a
12 sudden stop, or that she was worried about being hit from
13 behind because she came to a sudden stop.

14 So, what I would submit to you Ms. Zois and Mr.
15 Bratt what you to believe is that this all makes sense, but
16 look deeply into that testimony, ask yourself if Ms. Exline-
17 Hassler was giving credible testimony and telling you that
18 every time she's on a highway, when there's traffic stopped
19 in front of her, she brings her car to a stop at an angle
20 like that, it doesn't make any sense at all. And those are
21 just two examples, but I'm gonna' move on from there, I'm
22 gonna' talk about, um, uh, liability and then I'm gonna' talk
23 about, uh, damages.

24 Now, you heard my client's, uh, plea of guilty with
25 an explanation. And hopefully you heard at the end of that

1 thing that my client said yes, Your Honor, I'm guilty with
2 explanation, um, I don't know how the accident happened, it
3 all happened so fast. Okay, my client went in there and did
4 what she thought she should do, what was best, what was the
5 truth. And as she answered Ms., uh, Zois' questions even
6 today, um, yeah, I'd say the same thing, I don't know what
7 happened, it all happened so quickly. But what was
8 important, I'd submit to you, is that my client did not know
9 then when she's appearing in traffic court for what a \$100
10 ticket or whatever it might have been, uh --

11 MR. BRATT: Objection.

12 THE COURT: Overruled.

13 MR. GILLCRIST: -- that she did not know then that these
14 two very fine lawyers are going to be in a courtroom jamming
15 that thing down her throat three years later. Would my
16 client had done the same thing, had gone into court and said
17 yes, Your Honor, I'm, I'm guilty with an explanation. If, if
18 she knew then that these lawyers would be jamming it down her
19 throat three years later and saying ah-hah, this accident was
20 all your fault, you're negligent, you're liable? Now,
21 knowing my client, because she is an honest person, maybe she
22 would have done the same thing, but I assure you she would
23 have talked to her parents, and I assure you that her parents
24 would have said, you know, let's take a step back here.
25 Maybe, maybe we shouldn't go in there. Maybe at least we

1 should talk to a lawyer before we, before we give a formal
2 plea to a ticket, uh, we don't want, we, you know, we, we've
3 been now sued for hundreds of thousands of dollars, and, uh,
4 you know, maybe we ought to just decide if that's the right
5 thing to say when we go to court. Okay?

6 As Ms. Sapp told you this morning when she went
7 into court and pled guilty without (sic) a, with explanation
8 she didn't get served, she had not been served with, um, Ms.
9 Exline-Hassler's law suit. She was not aware that she was
10 going to be sued for hundreds of thousands of dollars years
11 later, she did what was convenient, easy and in her mind was
12 appropriate. You may find that that's all it takes. You may
13 find well, this trooper did an excellent job, and please
14 understand I am not denigrating the trooper in one respect
15 whatsoever. He did a fine job going out there, he did what
16 he was trained to do. He gave her a ticket for not leaving
17 enough room in front of the car in front of her. And if that
18 ticket and her plea of guilty with explanation is sufficient
19 for you, it's sufficient for us, and we will accept your
20 verdict. We will ask though that instead you really consider
21 what was motivating, what was behind that, what the
22 consequences of that were at the time compared to what they
23 are now, I mean, Ms. Sapp didn't even know what Ms. Exline's
24 version of the accident was back then. Um, so she did what
25 she thought was right and was appropriate. Again, if that's

1 sufficient for you it's going to sufficient for Ms. Sapp and
2 she'll respect your verdict. But what we do ask that you do
3 is please thing about the circumstances of her doing that,
4 and please consider all the evidence in this case.

5 Now, Counsel is pretty much saying well because she
6 did it that's it, it's over, case over, she's liable. It
7 doesn't work that way. You've been given jury instructions,
8 you are deciding this very issue, because it's on the table
9 for you to decide. As the judge has given you instructions
10 in this case the violation of a statute or a r (sic), whether
11 it's a rule of the road fall (sic), failing to, to drive too
12 close to somebody that's evidence of negligence, but it
13 doesn't mean you have to find against my client.

14 Now, you may say to yourself, as I said, well, she
15 rear ended the lady, and it's automatically her fault, okay?
16 But please just consider all the circumstances of this
17 accident, and then if you reach that decision then my client
18 can certainly understand she got a very fair consideration
19 from you of that decision. And by that I mean please
20 consider the fact that they want you to find her negligent
21 for filing (sic), falling (sic), excuse me, for driving too
22 close to their client's car and not stopping before hitting
23 their client's car.

24 Well, I think you heard testimony, if I'm not
25 mistaken, from Ms. Exline-Hassler who said that she was going

1 60 (sic), 65 to 70 miles per hour, just as my client was
2 going. They were in the flow of traffic. The difference in
3 the testimony is that Ms. Exline-Hassler testified to you
4 yesterday, excuse me, on Friday that she was travelling one
5 to two car lengths in front, in behind the vehicle in front
6 of her at 65 to 70 miles per hour. That's not what we were
7 taught in driver education school, that's not safe, that's
8 not reasonable. My client, on the other hand, was travelling
9 I think she said four, five, five, six car lengths behind
10 the, the vehicle that was in front of her. So, if you have
11 to look for something that might have precipitated this
12 sudden stop that Ms. Exline-Hassler had, and she certainly
13 did, then driving so close to the car in front of her would
14 have precipitated this sudden stop that Ms. Exline-Hassler
15 had. And if you have to find something else, look at the
16 fact that Ms. Exline-Hassler actually pulled her car at an
17 angle to the left.

18 Now, I think it's fair to say that everybody in
19 this courtroom who drives has been in one of these situations
20 on I-70 or 495 or 270 or 95 where traffic has come to a
21 sudden stop in front of 'em. We've all done that one time or
22 another. We're in the left lane, you stop suddenly and you
23 go over because you're, you're just not sure what's gonna'
24 happen. Doesn't mean you're gonna' hit that car, and
25 fortunately you don't hit that car, but you go over, okay?

1 And that's because she stopped suddenly.

2 Ms. Sapp wasn't, apparently, if you believe Ms.
3 Exline-Hassler, wasn't the car right behind her. She said
4 there were three other cars behind her. And Ms. Exline-
5 Hassler described how these cars darted around her. First,
6 Ms. Exline-Hassler says that she did this angled move and to
7 look ahead to see what was going on. But then there was a
8 question, did you look in your rearview mirror first or did
9 that maneuver first, and then she said I looked in my
10 rearview mirror and then I saw this little black car dart
11 around me, and then there were two other vehicles that darted
12 around me. And I think you can all picture this accident
13 happening as it's happening based on that testimony. And
14 it's always the last car that does the damage, it's always
15 the car that has the least notice of this happening. Um,
16 these cars darted around. There's no evidence that they
17 jammed on their brakes, they darted around and low and behold
18 Ms. Exline-Hassler's was stopped or stopping in that left
19 lane when these other cars had moved out and there she comes
20 upon them. She applied her brakes, she skidded on the ret
21 (sic), wet road surface. There's a question about which way
22 Ms. Exline-Hassler's car was turned, uh, it may have been
23 turned to the left, it may have been turned to the right, I
24 don't know, she remembers it being turned to the left, the
25 officer remembers it being turned to the right, and certainly

1 the photographs would suggest that it was turned to the
2 right. Maybe Ms. Exline-Hassler herself was trying to get
3 into that second lane by turning to the right. But certainly
4 where the property damage is is reflected of her turning to
5 the right. In other words, if she was turned, if you'll
6 forgive me for a second just using my hands, if she's turned
7 to the left she's gonna' hit her smack in that right rear
8 bumper at the very least. If she's turned to the right it's
9 where the point of impact would be that is reflected in these
10 photographs.

11 Um, it was a chaotic scene, and I thought it was
12 kind of interesting in Ms. Zois' closing argument where the
13 one time, and I think it's the only time in this entire trial
14 that you heard the word accident come out of her mouth was
15 when she was talking about what happened down the road,
16 everything else has been crash, crash this, crash that, crash
17 that, okay? Because accidents happen, and if you, if she's
18 talking to you about accidents she'll recognize that, you
19 know, maybe this was just a simple accident as we contended
20 it was, okay? She's referring to crash this, crash that, but
21 when she's talking about what's happening down the road it's
22 an accident all of a sudden. Okay. This was, make no
23 mistake, an accident. Cars were flying everywhere, there was
24 a tractor trailer that jackknifed right next to them, and Ms.
25 Zois can argue all she wants that my cl (sic), client

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1 precipitated that traffic truck, tr (sic), excuse me, tractor
2 trailer jackknifing, but I'd submit to you that there's
3 gotta' be a lot more going on than this minor fender bender
4 happening in the left lane for that tractor trailer to be
5 jackknifed. And remember there was testimony that the
6 tractor trailer driver actually came back to Ms. Exline-
7 Hassler and said I was worried that I hit you, or did I hit
8 you, words of that effect. The tractor trailer didn't go to
9 Ms. Sapp and say why did you do that, he was in his mind
10 thinking that hey, maybe I hit her. So, there are things
11 going on, as the police officer testified there was an
12 accident up the road, maybe there was more accidents, but it
13 was a chaotic scene, and your job will be to piece all that
14 together, I hope, and decide for yourself if my client was
15 negligent, if she's liable and the judge has given you the
16 instructions on that. Is she responsible legally for the
17 hundreds of thousands dollars that Ms. Zois and Mr. Bratt
18 want you to award to their client because of this fender
19 bender on I-70? Okay? Uh, and I'd submit to you the answer
20 is well, up to you, that's all I'm gonna' say. Um, if you
21 find that her plea of guilty with explanation is sufficient
22 to find her responsible then you should find against my
23 client. On the other hand, if you look into this and say to
24 yourself you know, this really was just an accident, and it
25 could have happened to anybody. And Ms. Sapp was

1 unfortunately back behind these other vehicles that darted
2 out, the traffic came to a sudden stop, it was unavoidable or
3 it was something that anybody would have been stuck in and
4 caught in that situation.

5 That's all I'm gonna' say about liability, I leave
6 it in your hands, um, and I know that, uh, you will, uh,
7 reach a fair result for Ms. Sapp or for Ms. Exline-Hassler,
8 depending on how you view the evidence.

9 Now, let me talk about damages for a second, and I
10 wanna' do reiterate to you that this lady sitting over here
11 is the measurer, she's the one that you should be thinking
12 about, and I hope that you are thinking about when you go
13 back and deliberate on damages, and that is because Ms.
14 Exline-Hassler has the burden of proof to show not just that
15 she had medical problems, not just that she had injuries, not
16 just that she lost time from work, not just that she, uh, had
17 medical bills that she incurred, not just that some doctor is
18 going to say she might need surgery 10 years down the road,
19 that's, that doesn't carry her burden of proof. What they
20 have to do is they have to connect a very important dot, and
21 that is between this table and that table, but that, that's
22 treating it improperly between that person, Ms. Exline-
23 Hassler and this person sitting over here, and your job, we
24 submit, is to decide what Ms. Sapp did to this lady, and if
25 you find that Ms. Sapp did not injure here or did not injure

1 her to the extent that she's claiming in any respect, than
2 your verdict should be for Ms. Sapp on that or on all of the
3 issues.

4 And please again remember, the burden of proof
5 does, just does not limited to the issue of liability, it's
6 damages as well. So, if you go back and you say to yourself
7 well, you know, I, I, I do agree with Dr. McGrail and Dr.
8 London, based on the records, that Ms. Sapp (sic), excuse me,
9 Exline-Hassler had low back and neck strains and the
10 treatment for six to eight weeks or six to 12 or six to 16
11 weeks would have been appropriate if that's your finding and
12 you feel that they've carried their burden of proof than that
13 would be an appropriate measure of compensation for her. By
14 the same token if you go back and say they haven't proven
15 certain things or they haven't proven that she was injured at
16 all, or they haven't proven that surgery was something that
17 she was going to have then that's not carrying your burden of
18 proof. But please keep in mind that Ms. Sapp is your measure
19 in this case. And, again, if your verdict is against her we
20 will certainly honor and respect it.

21 Now, you've heard a lot about the accident. You'll
22 get to see -- and the damages -- you'll get to see these
23 photographs, um, photographs of my client's car are the
24 darker colored car. You do see the damage here in that real
25 well. You'll be able to look at that. You'll be able to

1 look at the damage to, um, uh, Ms., uh, uh, Exline-Hassler's
2 vehicle and judge for yourself how bad an impact this was. I
3 believe, um, Ms. Zois told you in opening statements that
4 they were going to introduce, um, uh, damage estimates or
5 things like that --

6 MS. ZOIS: Objection, Your Honor.

7 THE COURT: I will sustain.

8 MR. GILLCRIST: Thank you, Your Honor. Um, your job
9 will be to decide is that more than a fender bender? Is that
10 something that could cause injury, and I, I suppose it could
11 cause injury, I mean people get injured in different
12 accidents, but it doesn't seem to be the type of catastrophic
13 injury that would cause Ms. Exline-Hassler to basically, uh,
14 incur what she's claiming in this case, hundreds of thousands
15 of dollars of treatment. That photograph, I'd submit to you,
16 uh, helps put the things in perspective and this is the
17 Plaintiff's Exhibit Number 13. Um, there was an impact to,
18 um, the rear passenger side of her vehicle, but it didn't
19 apparently cause too much exterior damage anyway.

20 Um, in any event, I spoke about the prior medical
21 records, um, and I know, I believe Mr. Porcarelli is gonna'
22 speak a little bit in more detail about this, but, um, it is
23 important for me just to remind you of a few things. Um,
24 their defense to our defense I'll call it is that her own
25 medical records are faulty. Her own medical records are

1 faulty. The records that her own treating doctor could have
2 come here and clarified for you if indeed they were faulty.
3 And they're not faulty. But she wants you to, Ms. Zois wants
4 you to believe that they're faulty, because then you can
5 overlook them. These are not our medical records. I'm not
6 producing to you anything that we made up. What I'm
7 producing to you is Defense Exhibit Number 3 where she goes
8 in in March of 2008 and what does she complain about?
9 "Patient has low back pain since being in MVA three years
10 ago. It has gotten worse this past year and worse in the
11 a.m., takes six Advil daily. No numbness, tingling,
12 occasional into buttocks, no weakness, had an ulcer."
13 Everything about this exhibit in March of '08 is right except
14 for a couple things that they're seizing on. Number one, Ms.
15 Zois keep (sic) it, keeps telling you that the date of birth
16 is wrong, it's not wrong. The date of birth is right here,
17 and as Ms. Exline-Hassler testified it's accurate. What is
18 wrong is that there's a typographic, typographical error as
19 to how old she is. Instead of putting 45 there they should
20 have put 41 or 42, I forget what it -- okay, that's the
21 number one thing that's wrong. What else is wrong is that --
22 sorry. Uh, what else is wrong is that the allergy medication
23 section is blank, okay? The doctors didn't have that in the
24 first visit. Well, they did on June 29 Exhibit Number 14.
25 Same group she goes into and then it's in there and Ms.

1 Exline-Hassler told her after this first visit there was no
2 further discussion of her allergies, so they had to have
3 known it, they just didn't type it in. For whatever reason
4 it didn't get in there. That doesn't mean the record is
5 false. It doesn't mean that it's flawed. Ms. Zois tells you
6 well, what competent doctor wouldn't have ordered her for an
7 MRI? They did a physical examination MS, musculoskeletal,
8 full range of motion times four, gait within normal lil
9 (sic), limits. Neuro, CN's two to 12 intact. Okay? There
10 is a physical examination that the doctor conducted of Ms.
11 Exline-Hassler on that date related to her musculoskeletal
12 complaints. Her musculoskeletal complaints were those of her
13 low back.

14 Now, Ms. Exline-Hassler says wait a minute, no,
15 when I went into this facility it was, again, to establish a
16 primary care doctor. And when I went in there, uh, they took
17 a history and they asked you, they asked me have you had any
18 other accidents? That's not what they asked her. They asked
19 her have you been injured before? Or have you had accidents
20 that's resulted in injury? They didn't simply ask her have
21 you had other accidents.

22 Remember this 2005 accident, well, 2005 is exactly
23 three years, or approximately three years before March of
24 2008. So, that part of the history makes sense, and indeed
25 she did have a motor vehicle accident in 2005. So, there is

1 a consistency there with that record. And how would Ms.
2 Exline-Hassler have gone into this doctor and mentioned a
3 motor vehicle accident that by her testimony in 2005 was so
4 inconsequential that there was no injury and she went to her
5 son's ball game that night, the property damage was paid and
6 that was it. Ms. Exline-Hassler would not have remembered
7 that accident or would not have mentioned it. Ms., uh, Hall,
8 I think it is who did the history and then subsequently
9 reviewed by Dr. Brown, would not have put in this history a
10 reference to a motor vehicle accident that was three years
11 ago that did not result in any injury. It makes no sense
12 whatsoever. The history was given exactly as it is in here,
13 I'd submit to you, and that this history does establish that
14 she was having problems. And then if there's any doubt about
15 that we know she was having problems, because five or six
16 times after that she continued to go back for pain medication
17 and muscle relaxants through 2009, before this accident ever
18 occurred.

19 So, please don't be misled by that and, again, um,
20 to the extent there's any need for clarification, don't hold
21 Ms. Sapp please to a burden of proof she does not have to
22 produce Dr. Brown or Ms. Hall to explain to you that this
23 document is incorrect, okay, that's not our burden of proof,
24 and it isn't incorrect I would respectfully submit to you.

25 There'll be other evidence of her prior condition

1 that will be before you. Um, there is Exhibit Number 11,
2 which is the physical therapy evaluation, and are there some
3 minor differences in these records in terms of history?
4 Sure. But this is the record you remember where she refers,
5 again, April 28th, 2008 reports, um, that she had back pain
6 after, around Christmas in 2007 when she was moving something
7 and injured her back. Then shortly after that she fell down
8 stairs, okay. Um, Ms. Exline-Hassler on Friday told you no,
9 it was all one big incident, but this record seems to be
10 clear that it wasn't two (sic), one incident it was two
11 incidents. And, again, she's disputing her own medical
12 records. Ms. Zois, please bring in a doctor and tell us,
13 from Total Rehab, and tell us why this, this record is
14 inaccurate if, if you contend that it is inaccurate. It's
15 not inaccurate. Is the history that doesn't mention the
16 motor vehicle accident for some reason, maybe Ms. Exline-
17 Hassler didn't tell her about that, but she clearly told her
18 primary care doctor about that when she went in January of
19 2008 she clearly told her doctors about having low back pain
20 and, uh, I would submit to you that she can argue as long as
21 she wants that this back pain had ceased to exist in April or
22 May of 2008, but when you look at these (sic) history of the
23 medication she got after that before the car accident that
24 argument should not, and I hope will not carry any weight
25 with you whatsoever.

1 Now, we do not, as Ms. Zois portrayed to you, rest
2 our entire case on these prior records. Okay? We've already
3 told you a little bit about what her own doctors has (sic)
4 said, have said. And those doctors have included Dr. Naff.
5 Dr. Radley, one of the doctors not called as a witness when,
6 and remember we asked Dr. Naff this when I was cross
7 examining him, I think it was on Tuesday or maybe Wednesday,
8 we asked him about the other doctors that she had seen before
9 she came under his care, and these other doctors include the
10 very first specialist that she saw Dr. Radley, remember, Ms.
11 Exline-Hassler talked about how this was the Parkway
12 Neuroscience Group that after eight or nine months she's
13 still going there, but they've not helped her a lick. Um,
14 she goes to Dr. Radley a very, a very trained and experienced
15 doctor, and he says, according to Ms. Exline-Hassler, you
16 know, there's these annular tears on your films, but
17 everybody has these. That's what Ms. Exline-Hassler said on
18 Friday. We were talking about Dr. Radley, and she was upset
19 because Dr. Radley told her that everyone has these, and that
20 in fact in her age with those findings on the films is what
21 he was trying to convey to her. He doesn't say anything
22 about those being accident related. And if this, this is not
23 a contest, ladies and gentlemen, between, uh, the two experts
24 on one side verse the two experts on the other side. It's
25 not a contest, and your decision shouldn't be made with that

1 in mind. If you need to do that exercise, and I hope you
2 don't then it's really not two against two, it's Dr. Radley,
3 it's Dr. Huang, it's Dr. Nisenfeld, it's Dr. Khanna, all of
4 those doctors have said the same thing that Dr. McGrail and
5 Dr. London have said. And Dr. London might not be your cup
6 of tea in terms of someone you'd wanna' go and have a beer
7 with, but at least he's a doctor that looked you in the eyes
8 when he gave his opinion. At least he's a doctor that was
9 firm in his convictions. Dr. Naff is over there, he's
10 looking at the exit sign or up at the ceiling more than he's
11 looking you in your eyes. All right? And that's not how you
12 build trust with someone, that's not how you build
13 credibility with someone.

14 Um, Dr. Naff, um, is going to say what he's gonna'
15 say, but even Dr. Naff recognized that these MRI scans showed
16 a lot more than annular tears. And remember we asked Dr.
17 Naff well isn't it a fact that annular tears come about be
18 tears come about because of dehydration or disc desiccation?
19 Um, yes, in fact they do. Uh, when you buy an electronic
20 piece of equipment from Best Buy or wherever you'll find a
21 little thing inside of it, it's called a desiccant, those
22 little, little things that we always wonder what they are,
23 they're called desiccants, why? Because they help keep the
24 moisture out of the equipment. And desiccation is just that,
25 when she has desiccation of her disc it's the drying out

1 process that unfortunately comes with age, it comes with wear
2 and tear. And as Dr. Naff told you these, um, were, these
3 could just as easily have been, um, disc degeneration annular
4 tears. Dr. Radley wasn't convinced he said they were in his
5 report, they were consistent with her age, and that's all he
6 said. So, please don't be misled by that. But then I would
7 submit to you it is important to point out as Dr. Naff did
8 when we were asking the questions, well, what else did you
9 find on the MRI at those two levels L4/5 and L5/S1? Dr.
10 Naff, we went down the list with him there was circum (sic),
11 circumferential disc bulges at those levels, circumferential
12 disc bulges, meaning all the way around the disc. That's not
13 a traumatic injury. A disc is not gonna' be bulged
14 completely around, it could be barl (sic), bulged in small
15 point if you have a traumatic injury, but it's not going to
16 be bulging circumferentially like that. She had facet
17 arthropathy, arthritis of the facet joints, which is those
18 straws that the nerves come out of from her spine that go to
19 her arms and legs. She had retrolisthesis, according to the
20 latest MRI, I think it was in 2011. That's where one of the
21 vertebral body is actually displaced on the other. She had
22 ligament inflatum hypertrophy, and I said she's already had
23 disc bulges. And I think all together we came up with five
24 pathological diagnoses that, that were reflected in those
25 MRI's, just for L4/5 and L5/S1. And we asked Dr. Naff, well,

1 so what you're saying, Dr. Naff, is one -- I'm sorry it was
2 six all together, one of them being an annular tear. Six of
3 those findings, of those six one is one that you say is
4 related to the accident, the other five you cannot say so,
5 and he said yes, that is correct.

6 So, when Ms. Zois and Mr. Bratt ask you to reward
7 compensation for their client of the hundreds of thousands of
8 dollars that they're asking you to award, have they given you
9 any consideration for the fact that five out of the six
10 things, even if you accept their expert's testimony that five
11 out of the six things wrong with her spine had nothing to do
12 with Ms. Sapp. And I'd submit to you that actually the sixth
13 had nothing to do with Ms. Sapp as well. She had
14 degenerative disc disease in her low back. It wasn't
15 accelerated the imp (sic), by the impact, no doctor has said
16 that this injury caused her to have a herniated disc, so Ms.
17 Zois can talk all she wants about there being a disc problem,
18 a disc problem, well, if you have a herniated disc from
19 trauma then certainly someone will get traum (sic),
20 compensated for that. There was never a herniated disc
21 whatsoever.

22 Ms., um, Exline-Hassler had EMG studies, nerve
23 conduction studies, never showed the problem. Uh, and I'm
24 sorry, but I do think it's important that she doesn't have a
25 neurological injury. Um, she's been seeing neurologist after

1 neurologist, she brings in her neurosurgeon to talk about
2 surgery that is never gonna' happen, but yet she wants Ms.
3 Sapp to pay her for that surgery, \$150,000 or whatever the
4 number was that Ms. Zois asked you to award. I'm sorry, I
5 think it is important that all of her exams over the course
6 of three years have never showed a finding of a neurological
7 injury. A neurological surgery is what neurosurgeons operate
8 on, and you may believe Dr. Naff, you may not, but I submit
9 to you that whatever is in her back this lady over here did
10 not cause it. And that's what it really all comes down to.
11 Whatever's in her back this lady did not cause.

12 You heard from Dr. McGrail, I think Mr.
13 Porcarelli's gonna' speak a little bit about that as well,
14 uh, as the chief neurosurgery at Georgetown Hospital I'd
15 submit to you he was an excellent witness. He certainly
16 would look you in the eyes and he certainly was opinionated
17 about what his findings were. He wasn't like Dr. Naff who
18 looked like he didn't even want to be here. Did Dr. Naff
19 impress you as somebody who really believed what he was
20 telling you? Now, he is an advocate for his patient, there's
21 no doubt about that. Just as Dr. Sloan was addi (sic),
22 advocate for his patient, um, they want to see their patients
23 do well in this case. They want to see their patients be
24 compensated, but that doesn't mean you have to buy their
25 testimony. And ultimately what is their testimony based on?

1 Ladies and gentlemen, their testimony is based on the history
2 that Ms. Exline-Hassler gave to them about having no prior
3 back pain whatsoever. So, they're taking this as a clean
4 slate. They're saying this was a perfectly normal person who
5 gets in an accident, goes to the doctor and suddenly has
6 these annular tears on her discs. They're not looking at
7 what she had before. Ms. Exline-Hassler told them in the
8 history, and it's, it's ironic in some ways that Ms. Exline-
9 Hassler can say to you or Ms. Zois and Mr. Bratt can say to
10 you that that history that she gave in March of 2008 about a
11 prior motor vehicle accident is wrong, but then we go to Dr.
12 Naff and Ms. Exline-Hassler doesn't mention a history of any
13 prior back problems. We can go to Dr. Sloan, she doesn't
14 mention a history of any back problems to Dr. Sloan either.
15 And these doctors, as they testify, these are important parts
16 of the whole medical picture, yet Ms. Exline-Hassler's there
17 and not telling them about this at all. We had to get that
18 out through, um, uh, the evidence in this case. In fact, I
19 think it was Dr. Sloan who, when presented questions about
20 the prior drugs that she had been refilling on these multiple
21 occasions didn't really even know how to put them in context.
22 He, he couldn't speak to them, because he didn't know why she
23 was getting them, why she was taking those. The reality is,
24 I respectfully submit to you, is she's getting those drugs
25 for a reason. She is not, like Ms. Zois wants you to

1 believe, she's not going to buy medication for future use or
2 to store it up.

3 And, again, I want, and I'm challenging Mr. Bratt
4 to tell you if that is, makes sense and, if so, how it makes
5 sense, and you'll judge what he has to say. Maybe he won't
6 touch it all, it's his prerogative.

7 Um, ladies and gentlemen, I've already spoken
8 enough and I, I just wanna' wrap up by saying again thank you
9 for listening to me, I know I've spoken longer already now
10 that I had planned to do. I hope what I presented to you
11 puts some of this in context. Um, hopefully, you'll go back
12 to the jury room, and I believe you will, uh, give Ms. Sapp a
13 fair shake and decide both the questions of liability and
14 damages fairly. Um, and I'd submit to you that if you find
15 that she was responsible for the accident, as you may, uh,
16 that you weigh very carefully and make a fair verdict or
17 arrest to what she caused.

18 I did forget to say one thing, I'm sorry, we're
19 lawyers we have to go back sometimes, but, um, they said it's
20 un-controverted that she had an injury in this accident.
21 That's for you to decide. Dr., her doctor is Dr. Sloan, and
22 Dr., um, Naff, um, said that she was injured in this
23 accident. Dr. McGrail and Dr. London gave you the opinion
24 that there was an injury, why? Based on the medical records
25 and with the assumption of the history that she provided to

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