

1 THE COURT: If there's no agreement then I'll have to  
2 excuse the alternate, but that would be done at the  
3 conclusion when they're gettin' ready to go.

4 MR. GILLCRIST: Thank you, Your Honor.

5 THE COURT: Okay?

6 (Jury entered the courtroom.)

7 THE COURT: Note all our jurors are present. We are now  
8 going to proceed with closing argument. Ms. Zois.

9 CLOSING ARGUMENTS

10 MS. ZOIS: Thank you. May it please the Court. Good  
11 afternoon, everybody. Um, day five, right? So, I want to  
12 thank everybody for coming back and making it through the  
13 weekend, and I've gotta' say I can't remember seeing a more  
14 attentive jury. I appreciate that you all are taking notes,  
15 you're paying attention even, you know, two and a half hours  
16 into Dr. McGrail's video where I was annoying myself. So, I  
17 just wanna' say that I really appreciate the attentiveness  
18 that you have given to this case. Uh, you know, you're not  
19 here by accident, you know, it's a little bit of fate, um,  
20 but it's also because you're members of this community. Uh,  
21 the way that the voter registration is and the DMV works is  
22 that the reason that you're on this jury is because you're  
23 from this county. So, the decisions that you make in this  
24 case impact your community, and what happens in this  
25 courthouse, not just in this courtroom, not just with this

1 one case, is really important. Um, this is how our civil  
2 justice system works, uh, you all decide the case, you're the  
3 members of the community that decide how the facts apply to  
4 the Maryland law in this case, and that's a huge  
5 responsibility. So, when you go back into your  
6 deliberations, and I'm not sure if any of you have sat on a  
7 jury before, but basically it's a discussion, it's not, okay,  
8 what do you do here, what do you do there? You're gonna'  
9 have two jobs. One of your jobs is going to be to complete  
10 this verdict sheet. Her Honor will be providing this to you,  
11 and you're gonna' need to answer the questions that are on  
12 this verdict sheet, and they address the issues in this case.

13 The other thing that you're gonna' have to do is  
14 talk amongst yourselves and have an opinion and be able to  
15 explain to one another why it is you feel the way you do  
16 about a particher (sic), particular issue. So, it is a  
17 deliberation, it is a, a collection of, uh, experiences, a  
18 collection of common sense, and everybody brings something  
19 different to the table. So, when you go back to deliberate  
20 you need to be prepared to tell one another why it is you  
21 feel the way you do about certain things. So, my role here  
22 in closing argument is to give you the information as I see  
23 it and how it's played out before you in this courtroom. So,  
24 although, and I don't wanna' spend, I don't wanna' skip over  
25 parts, because I, I don't know what you think is important,

1 what you don't think is important, so, I'm going to go  
2 through everything. Um, so, I don't want you to think I'm  
3 leaving anything out, and I hope I'm not spending too much  
4 time in any one particular area, but I really do have to make  
5 sure that I cover everything.

6 And the first thing that I'm gonna' start with is  
7 the first question that you all are going to have on your  
8 verdict sheet. And the first question that you're gonna'  
9 have is do you find that the Defendant, Kirsten Sapp, was  
10 negligent in the accident of June 26, 2009? And, Ms. Sapp,  
11 following this crash went into court, she went before a  
12 judge, she raised her hand, she swore to tell the dru (sic),  
13 the truth, and she told the judge, "The vehicle in front of  
14 me was completely stopped. I slammed on my brakes, it all  
15 happened so fast. I slid into the back of her." That was  
16 her testimony in District Court. Frankly, it's her testimony  
17 here today as well. I haven't heard her say anything  
18 differently than that. I think she admits that the vehicle  
19 in front of her was completely stopped. I think she admits  
20 that she has hydroplaned and skid into the vehicle in front  
21 of her.

22 Now, you've heard something, uh, you've heard a  
23 couple of, I guess, allegations in, um, opening that, uh, you  
24 were going to hear testimony that Ms. Exline-Hassler abruptly  
25 stopped her vehicle. One of the questions you're not going

1 to have to address in this case is whether or not Jacqueline  
2 Exline-Hassler operated her vehicle in a reasonable manner.  
3 The question that will be before you is whether or not the  
4 Defendant operated her vehicle in a reasonable manner.

5 So, I just wanna' walk through with you some of the  
6 facts that have been presented in the case, and one of the  
7 things I wanna' remind you, I think one of the first things I  
8 said to you in opening was all drivers have a duty to pay  
9 attention to the traffic in front of them. All drivers in  
10 the state of Maryland have to pay attention to the traffic in  
11 front of them. And the testimony that you've heard is that a  
12 half a mile up the road there was some other incident that  
13 occurred, and that there was a backup in the middle of rush  
14 hour on Friday westbound on 70, so, you gotta' pay attention.  
15 And the testimony was that -- and I'm not an artist, but I  
16 try. Um, the testimony essentially was that the left lane  
17 was stopped, the right lane was moving, the left lane was  
18 moving, and Ms. Exline-Hassler brought her vehicle to a stop,  
19 she down-shifted, she saw that the traffic in front of her  
20 was stopped, she down-shifted, she brought her vehicle to a  
21 stop, she brought it to a stop on an angle, she concedes  
22 that, she says yes, I was at an angle, because she wanted to  
23 see the traffic up ahead. And, Counsel, I believe, the  
24 Defense is going to suggest, oh, well, she came to a sudden  
25 stop, that's why it's on the angle, because she had to slam

1 on her brakes, she came to a sudden stop.

2 Well, does that make sense if, first of all, if  
3 that's what she was doing there's a median over here, there's  
4 a, there's an area over here. I mean, wouldn't she have gone  
5 even further, or why in the world wouldn't she have just gone  
6 into the clear lane. She likes the left lane, does she  
7 wanna' stay in the left lane, she stayed in the left lane.  
8 Not only that, she was stopped in the left lane long enough  
9 for another car to make a safe lane change, car number one,  
10 another car, want car number two to make a safe lane change,  
11 car number three, and another car to make a safe lane change.  
12 So, three other cars, she stopped long enough for three other  
13 cars to be able to go into the open lane, which is the right  
14 hand lane before the crash occurred.

15 Now, I also believe the Defense is going to get up  
16 and say it was crazy, there were cars everywhere, everybody  
17 was spinning out of control, there was a big accident,  
18 there's all kinds of stuff going on. Well, not really,  
19 because there's an accident up here, this lane's blocked,  
20 these two lanes are open, three cars were able to get past  
21 her and that lane of traffic just fine without hitting  
22 anybody, there was no other car crashes, and then what  
23 happened? Ms. Sapp is coming along in this lane, she sees  
24 the brake lights and a stopped car, she hits her brakes,  
25 hydroplanes, slams into the rear of her car then what

1 happens? The tractor trailer. That's a big vehicle, takes a  
2 long time to stop one of those. They have less stopping  
3 distance than a regular car will. Thank God that tractor  
4 trailer was paying attention. That tractor trailer had to  
5 avoid her vehicle. She spun, she hit the rear of this  
6 vehicle, spun out into this lane and the tractor trailer,  
7 thank goodness, was paying attention, did what he had to do,  
8 brought his vehicle to a stop, not without a little bit of a  
9 fuss, I mean, I think the, the, he was trying not to  
10 jackknife, according to Jackie, and she saw the trailer slide  
11 by, but he was paying attention enough to be able to pull his  
12 tractor trailer to a safe stop. But Ms. Sapp couldn't. So,  
13 the reason it was chaotic was because of her accident. There  
14 wasn't any other crashes in this area before that that's why  
15 it got chaotic.

16 Now, not only that, the trooper came in and talked  
17 to you and said I put her at fault, I gave her a ticket, I  
18 didn't find the other driver at fault. He came in here and  
19 told you that. Now, he, in his report, put there was lots of  
20 people there at the scene. He said I don't really know, I  
21 can't tell you who told me what, but nothing else was in  
22 that, uh, or from his testimony that it was this crazy, wild  
23 scene that all these cars were spinning out of control and  
24 nobody can control anything. The only person that couldn't  
25 control their vehicle on the date of the crash was the one

1 that wasn't paying attention and didn't even know the left  
2 lane came to a complete stop, and that was Ms. Sapp.

3 Now, with respect to the burden of proof on that  
4 issue, we have to -- and the judge gave, went over some of  
5 the instructions -- we have to convince you that we're more  
6 right than wrong on that. We're more right than wrong. It's  
7 more likely than not that the crash happened because she  
8 wasn't paying full time and attention to the vehicles in  
9 front of her. She didn't know that all these cars were at a  
10 stop, she didn't realize traffic was coming to a stop. She  
11 didn't see all the other brake lights in that lane. She  
12 didn't see that half a mile down the road there was a crash.  
13 So, on that issue we would ask that you come back and find  
14 that, yes, she was negligent on that day.

15 Now, let me be clear, she's a nice girl, I don't  
16 think anybody, Jackie thinks she's a nice girl, she's a nice  
17 young lady. I don't think that we're taking the position  
18 here at all that she did anything on purpose. If she had to  
19 do it all over again I'm sure this would never happen, but  
20 the fact remains that she caused a crash and she's admitted  
21 that she pled guilty and that the other driver was completely  
22 stopped, but that doesn't make her a bad person. We're not  
23 saying she's a bad person, we're saying that she caused the  
24 crash.

25 Now, with respect to before June 26<sup>th</sup>, 2009. I'm

1 moving on from liability, and I'm moving on to talking about  
2 Ms. Jacqueline Exline-Hassler's treatment before the date of  
3 this crash. And I feel like we spent four days last week  
4 talking about four dates of treatment and spent so much time  
5 on that I'm gonna', not gonna' spend a lot of time on each  
6 day, um, I'd like to get to the facts of this case and how  
7 this case has impacted Jackie, but I do have to go over  
8 these. So, what I've done is (To law clerk) Ms. Samantha, if  
9 you could take me to the first Urgent Care at Robinhood  
10 (sic).

11 MALE VOICE: Robinwood.

12 MS. ZOIS: Robinwood, what did I say Robinhood?

13 MALE VOICE: Yeah.

14 MS. ZOIS: Robinwood not Robinhood. Um, thank you.

15 Okay, so, what I've done, when you look at one of these I've  
16 given you a number at the bottom and that number's for you.  
17 So, if you wanna' write the date down and that number that  
18 corresponds with this packet so you're gonna' have this back  
19 there to look at. You're gonna' have all these reports that  
20 we've been going over for the last five days at your leisure  
21 and your pleasure. So, if you wanna' take a note of what  
22 pages --

23 MR. GILLCRIST: Objection, Your Honor, to requesting  
24 that the jury do a specific thing, note taking specifically.

25 MS. ZOIS: If they want to.



1 THE COURT: O (sic), they can, overruled.

2 MR. GILLCRIST: Thank you, Your Honor.

3 MS. ZOIS: If you want to you can, but that's what that  
4 number is there for. So, on page 73, and you're gonna' say  
5 well, gosh, we didn't even talk about 2003, why are you  
6 bringing 2003 up? There's a reason. So, she goes into  
7 Urgent Care at Robinwood, not Robinhood, on November 19<sup>th</sup> of  
8 2003 and she's got a cough, and she tells, they know she's  
9 allergic to penicillin, and a pretty uneventful visit. But  
10 she's using the Urgent Care as her PCP. She's using the  
11 Urgent Care as her primary care physician essentially,  
12 because she doesn't have one. So, when she has an issue back  
13 in the day that's where she would go, and that's part of the  
14 reason why I'm showing you this, but she was also -- all  
15 right, so, way back here, so back in 2003 she's at Urgent  
16 Care for a cough. All right. She goes back in. The next  
17 time she goes in is in February of 2007. Here's why I'm  
18 pointing this out. (Tap) Woop, hello. The date February  
19 13<sup>th</sup>, 2007. Previous admit date 11/19/2003. Here's why this  
20 is important. We know that from way back in 2003 up until  
21 this date here she's getting no medical treatment. She's not  
22 in there for chronic low back pain, she's not in there for  
23 any reason at all. So, when the judge is giving you the  
24 instructions on the circumstantial evidence and the  
25 footprints in the snow and the deer and you can prove things

1 by the absence of things that's what this is. So, from 2003  
2 until 2007 all during 2005, all during 2006, all the way up  
3 through this date is 2007 there's no visits, there's no  
4 coughs, there's no lower back pain, there's nothing. She's  
5 not getting any treatment anywhere, but yet the Defense will  
6 have you believe that she was so horribly and chronically  
7 injured in this 2005 car crash, because that's their defense,  
8 let's be clear. Their claim, the defense of this case, is  
9 that since June of 2005 she has had chronic and unrelenting  
10 back pain. All right.

11 So, now, 2007, this is 20 months after June of  
12 2005. Now, with also -- and this is page 78 -- what's also  
13 interesting about this date is that nothing but a car crash  
14 here, not taking any medication, no Advil, no nothing. She  
15 states that she feels fine otherwise from the itching. Oh,  
16 this is for a rash. So, her date of service in 2007 is for a  
17 rash. The other reason I'm pointing these two out to you is  
18 is not like she was one of those people that doesn't want to  
19 go to the doctor. I mean, she goes for a cough, she goes for  
20 a rash, you think she's not going if she's got chronic low  
21 back pain? So, that's on page 79 if you want to take a look  
22 at that.

23 Page 80, um, she was re (sic), she is being told  
24 basically you need to find a primary care doctor. So, go get  
25 yourself a primary care doctor, so that's back in 2007. So,

1 we know she does not have a primary care doctor in 2007.  
2 She's using the, um, Robinwood Urgent Care.

3 All right, so this date Feb (sic), uh, January 8<sup>th</sup>,  
4 2008. This is the first day where she has the fall and she  
5 goes into Urgent Care. It's not the ER, she goes into the  
6 Urgent Care Robinwood. And these are pages 85 to 95. Now,  
7 she's not telling you she didn't hurt her back, she's saying  
8 I went in, I hurt my back, I went to the Urgent Care, she  
9 also had just vomiting and fever, but we're, regardless. So,  
10 she's in there for back pain, and the reason I point this out  
11 to you again, and this is on page 85 is that there's a gap  
12 from February 13<sup>th</sup>, 2007, that's the rash that we just talked  
13 about, and through January 8<sup>th</sup>, 2008, so through here, so  
14 through all the time there's no complaint of any low back  
15 pain, she's not going into the doctor for low back pain. So,  
16 there's nothing going on here until there.

17 So, in January of 2008 she has the back pain, she  
18 goes in, and this is --

19 THE COURT: (Sneeze.)

20 MS. ZOIS: -- (To the court) God bless you, Your Honor.  
21 (To the jury) All right, I'm gonna', I'm not even sure where  
22 to start with this report, but I'm gonna' start at the top.  
23 The doctor lost the dictation. That happens. Um, they don't  
24 do it right after they see someone. Um, Dr. McGrail didn't  
25 do his dictation until a month later. Just to back up for a

1 second, Dr. McGrail sees her on November 1<sup>st</sup>. He does his  
2 dictation on December the 2<sup>nd</sup>. So, it doesn't always happen  
3 immediately. Doctors don't always take notes. But in this  
4 case the Doctor lost the dictation, he's like, oh, jeez,  
5 it's, you know, I gotta' do this to the best of my ability  
6 and memory. So, this is him going back saying here's how I  
7 remember this happening. Um, she fell down a flight of  
8 stairs, she can't move well, um, past medical history,  
9 nothing about, gee, I, by the way I also have had chronic  
10 back pain since back in 2005. This is funny to me, not funny  
11 that she had it, but funny how this was described.

12 So, she has trace to one plus tenderness across her  
13 lumbar spine. Dr. McGrail told you, oh, this is really  
14 serious, this is, this is, this is big deal, I mean, if she's  
15 got spasm, that's a, that's, that's when your body, you know,  
16 is, it tries to protect itself and it wrenches your back, and  
17 it tries to keep you spine immobilized, and it's a really big  
18 deal, and Dr. London came in and went trace (unclear - one  
19 word) that's a, I, a simple teeny, tiny, it's a, just a  
20 little spasm, and I'm like sitting there going I (unclear -  
21 one word) agree with his testimony, okay. So, that's why I  
22 put that in there. But, so, she has, she injured her back,  
23 she's not running from that, she had some tenderness, she had  
24 a little bit of spasm. She went in and she got some  
25 treatment, and she got a prescription.

1           If you do the math on this you'll see that this  
2 prescription is about five days, if you drag it out, and  
3 about two or three days if you take it as directed. So,  
4 we're not talking about any like long, ongoing, medical,  
5 narcotic situation. We're talking about she got a couple of  
6 days of pain meds for a problem with her back.

7           So, now, after this visit, the doctors say okay,  
8 well, you know what, you need to, she still needs to have her  
9 primary care doctor, and they say to follow up if she's still  
10 having issues, she is. She also needs a primary care doctor  
11 so she calls Robinwood and makes an appointment, and next  
12 thing you know we can't see you that day, you gotta' come in  
13 a different day, that's in the records. So, she says okay,  
14 I'll reschedule the appointment. She's not like I gotta' get  
15 in somewhere, this is just driving me, I have to get in, it's  
16 an urgent situation. It's not. She is following up with  
17 what they recommended, she's getting in to see her primary  
18 care doctor in a timely way. And she goes in to see this  
19 primary care doctor on March 26<sup>th</sup>, 2008. Now, I like their  
20 exhibit on this better than mine so I'm gonna' use it. But  
21 back in March of 2008 she goes in to see Stephanie Brown for  
22 the very first time and the only time. She's never seen  
23 Stephanie Brown, saw her on this one visit and since then  
24 she's seen Heather Hall, which is the Publish America that's  
25 there, the physician's assistant.

1           And what's, the problem with this report is not so  
2 much what's in it, it's what isn't in it. And what isn't in  
3 it is the fall. Where's the mention of the fall? That's why  
4 she's there. She's there for the lower back pain from the  
5 fall. I know we bored you to tears with this, and I'm gonna'  
6 do it one more time. They got her date of birth wrong. They  
7 don't take a prior medical history from her at all. They  
8 don't put down that she has an allergy to penicillin, and  
9 that's not just a penic (sic), okay, that's something that is  
10 life threatening. If you get a call from the emergency room  
11 and they say, look, uh, yeah, we have your patient here she's  
12 unconscious and we don't know what to do with her, and they  
13 say do you have, does she have any allergies? Well, no, she  
14 doesn't, but if they give her penicillin she's gonna' go in  
15 to anaphylactic shock and possibly die. So, one of the  
16 things that they didn't get right in this is they didn't get  
17 the penicillin.

18           So, moving on from that coup (sic), couple more  
19 things. I mean, there are so many problems with this report,  
20 um, but the biggest one -- you (unclear - one word) back?  
21 The biggest one is what primary care doctor worth their  
22 weight and salt is gonna' have a new patient come in and says  
23 I've been taking Advil for the last three years and I've had  
24 chronic back pain for three years and that doctor's not  
25 gonna' order an x-ray, they're not gonna' order an MRI,

1 they're not gonna' give an ortho referral, they're not gonna'  
2 give a neuro referral, they're gonna' say, you know what, you  
3 should probably go to one PT visit and see if you can't get  
4 this sorted out. That's not what a primary care doctor's  
5 gonna' say with someone coming in saying I've had three years  
6 of back pain that has gone untreated for three years. It's  
7 just not gonna' happen. They didn't examine her back.  
8 You're there for a back problem, no exam of the back. And  
9 I'm not sure about this, but who took her chief complaint  
10 from her anyway? Was it the nursing staff? Was it the  
11 receptionist at the front desk, was it, who's ancillary  
12 personnel? I don't know.

13 Um, deeper in here, return for a general physical  
14 exam. She didn't go, she didn't go back for the general  
15 physical exam, she didn't need to. Um, they ordered labs,  
16 there's no labs. So, I'm gonna' move off of that, but the  
17 biggest problem with that report is that it lacks  
18 credibility, it lacks validity, and you have to look at the  
19 report on it's whole, not just what it has in it, but the  
20 glaring things in it that are missing.

21 All right, April 28<sup>th</sup>, 2008. This is her first PT  
22 visit. It bothers her when she's sitting, it goes away when  
23 she gets up. April 2008, you know, right before over here  
24 off of this horrible 2005 car crash she's riding her  
25 motorcycle, she's enjoying her gardening. She is there

1 because she fell down the stairs. What was your back like  
2 before this incident? Well, I was independent without any  
3 lower back pain interference, she was getting along just  
4 fine.

5 So, on to the next slide, what are you gonna', what  
6 are you gonna' do about it? We're gonna' teach you how to  
7 sit right, because when you have problems sitting in a chair  
8 we're gonna' teach you about how to have proper postural  
9 alignment so that you don't have pain when you're sitting in  
10 a chair. So that's what they ordered, and that's what they  
11 did on May the 6<sup>th</sup> of 2008. May the 6<sup>th</sup> of 2008, I'm gonna'  
12 blow this part up for you in a second, because on May 6<sup>th</sup>,  
13 2008 pain zero out of 10. May 6<sup>th</sup>, 2008. Pain, zero. Has  
14 had a couple of flair ups, but they have all been related to  
15 sitting crooked in chairs. Patient advised of proper  
16 alignment during sitting.

17 Next line, please. Zero (unclear - one word) pain.  
18 Zero out of 10. So, this chronic back pain the Defense is  
19 arguing is so chronic that on May the 6<sup>th</sup> of 2008 it was at a  
20 zero. And it was so chronic that she never went back to  
21 physical therapy. She actually learned how to sit, and that  
22 was it, and she was discharged, and she was discharged on  
23 paper. On April the 28<sup>th</sup> of 2008 there's a note that you'll  
24 see that says minimal discomfort, patient never returned. So  
25 she never went back. So, what we have to look at, because I



1 believe the defense of this case is again that she's had  
2 these problems before the acc (sic), uh, crash, she's having  
3 'em after, she's the same, is that time period. So, the time  
4 period from the zero out of 10 pain and the date of that  
5 crash. Now, the total medical expenses for those four visits  
6 that, that she had for the fall, \$609. That's how much those  
7 four visits cost for that fall, just to put things in  
8 perspective.

9           So, in the beginning of the trial I said you have  
10 to look at everything you can't, you can't take one piece of  
11 paper and say this is all I want you to look at, I don't want  
12 you to look at anything else, there's only, just focus on  
13 here, (unclear - there words) MVA three years ago that's it,  
14 just it, that's it. You can't do that. I mean, you have to  
15 look at all the evidence on the totality of the  
16 circumstances, you have to look at everything and what you've  
17 seen from 2008 through 2009 is that she's had zero doctors'  
18 visits for pain related to her back. She's had no MRI's, no  
19 x-ray's, no neurological testing, no neurosurgeon visits, no  
20 pain management, no injections in her back, no physical  
21 therapy, no chiropractic treatment. She wasn't squirming in  
22 her seat at work, she was riding her motorcycle, she was  
23 picking her pumpkins, she was doing her work on her farm,  
24 she's riding her tractors, she's taking her grandkids out on  
25 the ATV's and she's doing everything that she loves to do and

1 did do before this crash.

2 Um, there's -- her supervisor came in and told you  
3 she was a superstar before this crash. She came in and told  
4 you that in 2008 she said, you know what, it's really hard to  
5 get fours. I mean fours are just not something that you come  
6 by easily. You really have to bust your butt and do above  
7 and beyond the call of duty to get the fours. Jackie got the  
8 fours. She busted her butt at work. This is in 2008 and I  
9 think one of the Defense counsel's brought it up that this is  
10 a hard year for everybody. This was a, a not a good year  
11 economically and Jackie's in there goin' to town, gettin' the  
12 fours, making it happen. And Jackie is very reliable and  
13 dependable, requiring minimal follow up. Her position  
14 requires that she be flexible and resourceful. It's a rare  
15 week that Jackie doesn't work from home to ensure that  
16 projects remain on schedule. She regularly takes the  
17 initiative to complete research, verify processes and report  
18 back to the benefits of the health plan. She uses the  
19 internet and other resources to verify information. So she's  
20 kicking butt in 2008 during this time that they're saying  
21 that she has the horrible chronic back pain. Oh, no time off  
22 in 2008, none, with this horrible chronic back problem that  
23 they're saying that she has now that she had before this  
24 crash.

25 So, during this time period we also know that she's

1 continuing to doing (sic) her gardening. She's continuing in  
2 April of 2008 to motorcycle, she's continuing to do all the  
3 things that she did before. (To Ms. Harveson) And we can  
4 skip the next one, Ms. Sam, I think I already talked about  
5 that, yeah, motorcycle, gardening we talked about that.

6 Now, I wasn't quite sure where to bring a stop in  
7 my closing, so if it seems a little out of order it is,  
8 'cause I just couldn't find a good place to put it, but after  
9 this crash on July the 7<sup>th</sup> of 2009 her PA that she been seeing  
10 at Robinwood was requested to fill out a form, and part of  
11 the form that was requested that she fill out was tell us  
12 about this crash. Tell us about what happened, what her  
13 injuries are, whether or not she had anything like this  
14 before. So, this is a form filled out from her primary care  
15 facility about this crash. And what it says is back that  
16 page from car crash, here's the date, "Has patient ever had  
17 same or similar conditions?" Answer, "No." "Is condition  
18 solely as a result of this accident?" Answer, "Yes." So,  
19 whoever filled out this form and it's signed by Ms. Hall,  
20 who's the person that Jackie told you she saw after the one  
21 time seeing Stephanie Brown, filled this out and indicated  
22 she hasn't had the same or similar condition. It has never  
23 been like this before, and this is related to this crash.  
24 Her primary care doctor facility has provided that  
25 information.

1           Now, that is a piece of the evidence in the case,  
2 and just like that report that said she was in chronic pain  
3 for three years following a car crash, that's also a piece of  
4 evidence that the doctors that have been hired by the Defense  
5 should have considered.

6           So, additionally, I would just put these both up  
7 here at the same time, so you can't pick, I can't pick this  
8 one and say only look at this one, don't look at that one,  
9 only look at this one, which is what they're asking you to  
10 do, 'cause they're not taking all of the evidence in as a  
11 whole, they're relying on this one sentence in this one  
12 medical report that has zero other evidence surrounding it to  
13 support it when Jackie herself has told you and has told them  
14 I was not injured in that car crash. I was not injured in  
15 that car crash. I didn't get any medical treatment, my back  
16 didn't hurt, I went on with my life, it was a blip on the  
17 screen, but because of that mistake in that report the  
18 Defense is grabbing a hold of it like a dog with a bone,  
19 they're not letting go, but you have to look at all the  
20 evidence not just that one sentence.

21           Now, if you compare the 2008 evaluation to the 2009  
22 evaluation after the crash, because she doesn't get evaluated  
23 until the rest of beginning of 2010. So, all of 2009 goes by  
24 no forms for Jackie, that's not happening anymore. And they  
25 even -- this, this car crash made it into her evaluation at

1 work, and it says, "Jackie was seriously injured this  
2 evaluation period and has had to take significant leave for  
3 medical care. (Unclear - three words), but even though  
4 through feeling bad she has continued to take on  
5 responsibilities and somehow see them through. On more than  
6 one occasion she has been told to take care of herself  
7 first." So, you didn't see anything like that back when she  
8 had this horrible chronic pain that they want you to think  
9 she had back in 2008, she was kicking butt in 2008, and no  
10 this car crash has caused her no fours, and it makes its way  
11 into her evaluation, because her ability to get her job done  
12 has been impacted and affected so much, and Sharon Hamilton,  
13 I'm not going to rehash all of her testimony, but I think it  
14 was clear, she's known the woman for years. They've worked  
15 together for at least 15 years. Jackie's had this job for 18  
16 years. Sharon hired her and put her in her position to take  
17 over. She promoted her into her old spot. And this is a  
18 lady that knew this lady and knew what she was like before,  
19 and it made all the difference in the world that this got  
20 into this evaluation and it's not in that evaluation.

21 So, again, when you're looking at all the evidence  
22 you have to look at it, is it more likely than not with the  
23 motorcycle riding, the gardening, Sharon Hamilton coming in  
24 here and telling you what a superstar she was, is it more  
25 likely than not that following this incident she was all

1 better, she wasn't having any back pain. She was doing  
2 really well. And the evidence that the Defense is going to  
3 show you is we've got these two pieces of papers that show  
4 you that she filled these prescriptions, she filled 'em, she  
5 filled 'em all. Guess what? Fillin' 'em doesn't mean you're  
6 takin' 'em. And fillin' 'em doesn't mean your back hurts.  
7 And she looked you square in the eye and she told you I did  
8 not take 'em, I kept 'em, I did not have back pain. Based on  
9 all the other evidence in this case and everything else you  
10 know she was doing during that time period she's right.

11 Now, I'll jump to after June 26<sup>th</sup> of 2009. So, in  
12 the beginning I stood up in opening and I said here's all the  
13 things that we agree on, or at least here are the things that  
14 I thought we agreed on, um, before Defense Counsel stood up  
15 and one of the things I told you was I believe we all agree  
16 that she was injured in the case. And one of the Defense  
17 attorneys stood up and said no, no, no, no, no, no, no, we  
18 don't agree to that, we never said that, no, no, no, no, no,  
19 we didn't say that. Well, Dr. McGrail sure did when he  
20 testified in front of you all. Dr. McGrail actually says,  
21 and this is Mr. Porcarelli asking this question, "And correct  
22 me if I'm wrong, but you're saying to a reasonable degree of  
23 medical probability that she sustained some (sic), she  
24 sustained some type of injury in this accident to her low  
25 back?" Answer, "In, yes, in June, in June of 2009." He's

1 not saying she wasn't injured. Dr. London isn't saying she's  
2 not injured. They're just saying she's not injured as bad as  
3 she thinks she is, we, we know, we know better. She's  
4 injured this much not this much. So, they're not disputing  
5 that she's injured, they are agreeing she's injured.

6 And then I said another thing. I said, you know,  
7 the crash was a significant crash we're not talking about a  
8 bumper tap here. No, no, no, we're not agreeing that it's  
9 significant this is, this isn't significant, and then, and  
10 then what they did was they've, um, in one of the pictures  
11 they want you to look at is this, why would they show you  
12 this? This is the other side of the car. They want you to  
13 look at this when you're considering whether or not this is a  
14 significant crash. Well, that doesn't really tell you a  
15 whole story does it? That doesn't tell you that there was  
16 under carriage damage. That doesn't tell you that arms or  
17 axels were broken. That doesn't tell you that the other tire  
18 on the other side got ripped off. So, it is a significant  
19 crash.

20 (To Ms. Harveson) Next slide please, Ms. Harveson.  
21 (To the jury) Now, that doesn't -- if, from, I, I don't know  
22 a lot about cars, I just don't, frankly. Um, that doesn't  
23 look that bad, I mean, I don't know, I don't know what that's  
24 gonna' cost to fix, but when you put it up on a jack and you  
25 look at what happened underneath it the people that know that

1 doesn't exactly match with -- this is the severity of the  
2 impact, because this is the nice looking side of the car,  
3 it's not the underneath of it. So, this is what they want  
4 you to look at, not the under carriage damage.

5 So -- I'm gonna' keep this up here, because I may  
6 want to use it again. We all agree, and I'm pretty sure that  
7 they haven't disputed this, she had annular tears 18 days  
8 after this crash. So, this is what happened. She has the  
9 annulus that surrounds the stuff in the middle, they were  
10 torn, and the stuff's coming out. I don't think that's  
11 disputed. I think everybody agrees that she has annular  
12 tears and Dr. McGrail told you that in his, um, video that he  
13 agrees that they're, and he agrees they showed up 18 days  
14 after the crash, um, again I, you know, we take different  
15 opinions of when they appeared.

16 But he also agrees, Dr. McGrail that is, that she's  
17 in chronic pain. He agrees and concedes that point. Um, in  
18 his deposition, and I, I'm gonna' spare you replaying any  
19 part of that deposition, instead I'm gonna' read from the  
20 transcript.

21 Question, "Now, we agree that she has chronic low  
22 back pain, correct?" This is Dr. McGrail. Answer, "Yes."  
23 "And you agree. . ." -- question -- ". . . in my  
24 understanding is that you agree that the appropriate course  
25 for her right now is to keep her following pain management,



1 is that correct?" Answer, "That's correct." Question, Dr.  
2 McGrail again, "And if she was your patient you would  
3 recommend that course, correct?" His answer, "I would."

4 So, we agree she's in chronic pain. We agree the  
5 appropriate treatment for her to have right now is pain  
6 management. Now, the bad news for all of us in our forties  
7 is this, and Dr. McGrail agrees with this, most people in  
8 their forties, unfortunately, have mild degenerative changes  
9 in their back. Most people have that condition in their  
10 back, as we sit here right now, but that doesn't mean it's  
11 causing us problems. And, again, instead of playing a clip  
12 from the video I'm gonna' read it to you.

13 "All right, now, as far as the degenerative changes  
14 that I believe are the basis of your opinion of what you've  
15 explained is what her ongoing problem is and what her problem  
16 was in the first place, is that right?" "Yes." So,  
17 basically, Dr. McGrail's saying her problem's the  
18 degenerative changes.

19 "Now, most people in their forties have mild  
20 degenerative changes in their spine, right?" "That's  
21 correct." "And it wouldn't be unusual for you to see mild  
22 degenerative changes in someone's spine who's in their  
23 forties, is that correct?" "That would not be unusual."  
24 "And most people have degenerative disc disease as they age,  
25 is that right?" "They do." "And all of us in our forties

1 can have it now and have no symptoms at all, right?" "That's  
2 correct, that's possible." "And would you agree that most  
3 people aren't bothered by mild degenerative changes in their  
4 spine, is that correct?" Answer, "Most people with mild  
5 degenerative changes do just fine." Last question, "And on  
6 7/18/2009 that's what was showing up on her MRI was mild  
7 degenerative changes, correct?" "Correct." So, of the  
8 changes that they're talking about that they're blaming all  
9 of this chronic pain on was showing up on the MRI as mild  
10 degenerative changes, excluding the annular tears that was  
11 another finding.

12 "So, Doctor. . ." -- question --

13 MR. PORCARELLI: Page?

14 MS. ZOIS: -- ". . . your prominent . . ." --

15 MR. PORCARELLI: Page?

16 MS. ZOIS: 79. "Your prominent findings are her mild  
17 degenerative changes, is that your testimony?" Answer,  
18 "Yes." Question, "And in your report of prominent findings  
19 you didn't even mention the tears, is that correct?" Answer,  
20 "I don't think I did mention that."

21 Okay, so, the last thing I'm going to talk about  
22 what we agree on is we agree she does not have permanent  
23 nerve damage. She's neurologically normal. I don't know how  
24 many times we go through this, but she is normal  
25 neurologically. Normal. We're not claiming any permanent

1 nerve damage here, not, not in this case, that's not her  
2 problem. Her problem isn't permanent nerve damage. Her  
3 problem is permanent annular tears and a disc problem. So,  
4 here's what I want you to think about, every time they get up  
5 here in their closing and the Defense says folks, she's  
6 normal neurologically, she had all these normal tests,  
7 normal, normal, normal, normal, normal, normal, I want you  
8 think about this case, okay? Because this side of this car  
9 is normal, okay? So, she's normal like this car's normal.  
10 This isn't what we're claiming, this isn't the part of her  
11 body that we're claiming an injury to. She's not out of  
12 pain. And you can have a normal neurological finding and  
13 still be in chronic pain, and Dr. McGrail agrees with that,  
14 too. So, every time they come up here and they're trying to  
15 sell you that she's normal neurologically, we totally agree  
16 with you, we totally agree with you, but that's not her  
17 problem. Her problem is the permanent damage in her discs  
18 with the annular tear.

19 Now, the other thing I want to point out, high  
20 intensity zones. I went around, and round, and round with  
21 Dr. McGrail towards the end of his deposition about high  
22 intensity zones. The reason I do that is because that's how  
23 they're re (sic), that's how annular tears are identified in  
24 MRI's, they're identified as high intensity zones, okay,  
25 consistent with annular tears. There's an annular tear,

1 there's an annular tear. So, when you hear high intensity  
2 zone it's the same thing in saying that the tear's there even  
3 though Dr. McGrail really didn't want to go there with me we  
4 ended up getting to that point, um, when we looked at Dr.  
5 Khanna's, uh, report together.

6 So, she also had a test done called a, um,  
7 discogram or discography, and this, this is going back to  
8 you. This will be on page 272. Um, this is a test where the  
9 doctor actually puts needles in the areas of your back where  
10 you're having a problem and they try to recreate the pain.  
11 They try to say, well, is what she's telling us consistent  
12 with what we can see happening? They go in, they stick a  
13 needle in your back, they shoot dye into it, and they watch  
14 where the dye goes, and they ask ya' how does that feel? So,  
15 what happened when they did that test is that she had  
16 concordant pain, which means it matches the area where she  
17 has problems. Her pain was nine out of 10. And the other  
18 thing that this test showed was that it wasn't just any old  
19 annular tear, it was a grade five tear and a grade four tear.  
20 And I want to remind you of some of Dr. McGrail's, too, when  
21 I was asking him about annular tears, and he had to agree  
22 with me because it is what it is. "If you tear an annulus it  
23 can hurt, correct?" "Yes, ma'am."

24 MR. PORCARELLI: Page, please.

25 MS. ZOIS: Seventy-five. "Any tear of the annulus can

1 hurt, correct?" "Yes, it can." "And it doesn't even need to  
2 be a big tear, any tear can hurt, is that right?" "Yes,  
3 that's correct." So, even Dr. McGrail has to agree that torn  
4 annul (sic), a torn, an annular tear has to hurt, even the  
5 little ones, not, not even the grade fives and the grade  
6 fours, I mean, those are awful, they're the worse ones you  
7 can have, but even the little ones hurt. But that wasn't a  
8 finding that made his (sic) way, made its way in his report  
9 at all. He's talking about mild degenerative changes, which  
10 is what all of us in our forties have.

11 Now, with respect to Dr. Khanna's report, I'm just  
12 gonna' show you those for a minute, you're gonna' see it  
13 again, but I think this really, uh, hopefully puts the nail  
14 in the coffin on this issue, but on physical examination she  
15 is neurologically intact, so just like the pretty side of the  
16 car. However, this is the same day that Dr. Khanna says  
17 she's failing non-operative management, and he's talking  
18 about we discussed her procedure in detail it's the L4/L5,  
19 L5/S1 fusion that we've talked about. So, if this doesn't  
20 demonstrate how a person can be neurologically intact, yet  
21 need a very severe and significant surgery, I'm not sure what  
22 else to show you. But he also saw her and concedes it at the  
23 referral of Stephen Sloan, which was her pain doctor, because  
24 he was running out of options, and it was following her car  
25 crash that she had.

1 All right, now let's talk about what we disagree  
2 on. The defense of this case essentially is this, mm --  
3 (brief pause) -- all these problems that she's having now,  
4 all this that she went to following this crash, it's all  
5 stuff that she had going on before. That's what they're,  
6 that's what they're selling, that's what they're givin' ya'.  
7 That's their defense in this case. They're saying that the  
8 mild degenerative changes that she had back in July of 2009,  
9 the one all of us in our forties have and walk around with no  
10 problem, are what's causing all of the problems that she has  
11 now, and it's causing her to need to stay in chronic pain  
12 management with Dr. Sloan. And causing her to need to go  
13 back to the doctor every 30 days to get refills on her pain  
14 medication. That's what they're telling you. So, they're  
15 saying this is exactly the same as this, 'cause the problems  
16 that she had now go all the way back to back here in 2005,  
17 and that's where it all started, that's where all of this  
18 started. So, here's the problem with that, folks. The judge  
19 read you a couple of instructions -- and I'm going wildly out  
20 of order on you, sorry. The instructions that the judge read  
21 to you, and I think Your Honor's going to be sending them  
22 back to the, uh, jury is if a person has a pre-existing  
23 condition that's made worse, that's compensable. Meaning, if  
24 a person has something going on in their body that's made  
25 worse by a crash those are damages that should be awarded to

1 the Plaintiff. Also, susceptibility. If a person has  
2 something going on in their body that makes them more  
3 susceptible to an injury and a crash causes those damages,  
4 guess what? That's added, too. So, those two things right  
5 there cut the Defense out at the knees. Because if they're  
6 trying to say that she had all these pre-existing conditions  
7 and these pre-existing conditions were aggravated in this  
8 crash, well, gosh, when did that aggravation stop? When did  
9 the aggravation end? It didn't.

10 And Dr. McGrail and Dr. London, although I think  
11 one said eight weeks, one said 16 weeks, they can't come in  
12 here and say, oh, well, you know, I think if we go, and I  
13 think John had it when you were hearing his cross examining  
14 during the morning, that's not right, but they, they, where  
15 does it stop? Where does the aggravation end and her going  
16 back to where she was before begin? It never happened. So,  
17 read those two questions over, uh, instructions closely when  
18 you get back there.

19 Now, you're heard from a lot of doctors, you've  
20 heard from two professional witnesses and two treating  
21 doctors. I'm going to talk about the professional witnesses  
22 for a minute. Um, but I'm not going to talk long about Dr.  
23 London, because, first of all, Dr. London's a neurologist,  
24 we're not claiming any nerve damage in this case, no nerve  
25 damage. He's a neurologist. And, worse than that, I think

1 it was John's last (unclear - one word), Mr. Bratt's last  
2 question yester (sic), uh, when he was on the stand is, "So,  
3 out of the 2,000 patients that you treat and that you see and  
4 that you provide medical care for, how many of those have  
5 annular tears?" His answer, "One or two. One or two." This  
6 is the expert that they're bringing you in this case. They  
7 brought a guy who's a neurologist when there's no  
8 neurological claim that's being made who has one or two  
9 patients out of 2,000 patient practice. This is the guy that  
10 they're bringing to you to talk about annular tears, really?  
11 So, I'm not going to spend a lot of time on what Dr. London  
12 said.

13 Now, as far as Dr. McGrail goes, he's a  
14 neurosurgeon, he's, uh, got a subspecialty in brain surgery,  
15 he's a smart, smart, smart guy, um, brain surgeon, literally.  
16 Um, very well accredited guy, he's a brain surgeon, he's a  
17 spinal surgeon. Um, I'm sure he's a wonderful treating  
18 doctor. Um, but he's not a treating doctor in this case.  
19 He's a professional witness in this case. And because he's a  
20 professional witness in this case you have to take his  
21 testimony into consideration in looking at that. So, what  
22 he's telling you, his ultimate opinion in this case is that  
23 her mild degenerative changes, all of us in our forties have,  
24 are what's causing all of the problems after the crash. And  
25 this annular tear is, you know, not a big deal, not a big



1 deal. There's such a non-issue they never even made it into  
2 his report on this case. Not at issue, as far as his  
3 ultimate opinions go. He's ignoring the annular tears in  
4 their entirety. It's a non-event for him, it's not a big  
5 deal.

6 Um, you know what I'm wondering, where's the guy  
7 that knows about annular tears for the defense? Where's that  
8 guy? Where's their pain management doctor? Where's the pain  
9 management doctor that's gonna' come in and say annular tears  
10 aren't that big of a deal, you know, that's not, not, not a  
11 terrible thing, I mean, they're just, you know, something  
12 that happens. Where's the pain management doctor that's  
13 gonna' come in and talk to you about how to do a discogram,  
14 because that happened. Where's the pain management doctor  
15 that's gonna' come in and tell you how to do a disc  
16 decompression or a nerve burning procedure, or a (sic)  
17 epidural, or a discTRODE procedure, or a disc -- where's that  
18 guy? Where's, where's that professional witness? They  
19 didn't bring you one, they didn't bring you that guy or girl,  
20 they didn't bring you the person that could come in here and  
21 tell you about annular tears. They brought you a  
22 neurologist, which really doesn't apply in this case. And  
23 the neurosurgeon who, he could do the spinal surgery, I mean,  
24 he could do that. He told us what it would cost at his  
25 hospital, \$125,000 if he did it. But where's the pain

1 management guy?

2 Well, you've heard from our witnesses in this case,  
3 and our witnesses in this case are not professional  
4 witnesses, they are treating doctors. They are Jackie's  
5 treating doctors. And what they have told you is this -- and  
6 if you can pull out the Dallas scale. Dr. McGrail doesn't  
7 even know what this is, he's never heard of a Dallas scale  
8 before. We know more than he does now. So, the Dallas scale  
9 is how you grade annular tears, and it's what the pain  
10 management guys look at and gals. And what Jackie had was  
11 she had a grade four annular tear and a grade five annular  
12 tear, and these are the worse two types of tears that you can  
13 have. And I just want to take a second and remind you, um,  
14 of what Dr. Sloan said about annular tears themselves, and  
15 I'm, I'll start off by saying when you have a tear like that  
16 it only gets worse from there. A tear can actually add extra  
17 nerves, it gets extra sensitive, and it actually gets worse,  
18 not better. So, I'm gonna' let Dr. Sloan tell you again --  
19 or not. Do we have a volume problem? Technology's wonderful  
20 when it works, right?

21 (Videotape playing.)

22 A (Audio begins mid-sentence) . . .

23 (unclear - one word) to the disc, and connect --

24 MS. ZOIS: (To Ms. Haverson) Can you hook it  
25 up for me, Sam?

1           A     -- you have, you have nerve fibers that  
2 go into the disc and convey sensations in the  
3 disc, and so it's been shown that in patients who  
4 have, um, discogenic pain there can be an upgrade  
5 in these, in these receptors.

6           Q     They become more sensitive?

7           A     They become more sensitized, and  
8 there's also an upgrade in the number of them in  
9 the annulus (unclear - one word.)

10          Q     So, you actually develop more?

11          A     You can, you can, you can develop  
12 increased back pain from this, from these  
13 receptors increasing.

14               (Videotape stopped playing.)

15          MS. ZOIS: And some other information on an annular tear  
16 that I just wanna' rind (sic), remind you of.

17               (Videotape being played.)

18          Q     Annular tissue that has been torn and  
19 allows for liquid to escape has a poorer capacity  
20 of healing, do you agree with that?

21          A     If a tear's large enough then yes.

22          Q     Scar tissue may heal, but the leaks  
23 leave the disc highly susceptible to re-tearing,  
24 do you agree with that?

25          A     Yes.

1           Q     Herniated discs have the capacity to  
2           resolve with time, but annular tears continue to  
3           produce symptoms indefinitely, do you agree with  
4           that?

5           A     In large tears that, that is the case,  
6           yes.

7           Q     And the largest tears are the fives and  
8           the fours?

9           A     That's correct.

10          Q     Annular tears are usually produced by  
11          an injury or trauma?

12          A     Most likely yes.

13                   (Videotape stopped playing.)

14          MS. ZOIS: Okay, that's the guy on annular tears. They  
15          don't have that guy (unclear - one word) up here. Now, with  
16          respect to Dr. Naff, he is a neurosurgeon, he is a teacher at  
17          Johns Hopkins, his credentials are glowing wonderfully, he's  
18          the top one percent of all doctors, according to U.S. News  
19          and World Report, and one of the things I want to point out  
20          to you is if you look at the way Dr. Naff testified, and you  
21          look at it against the way Dr. McGrail testified, and you  
22          take into consideration Her Honor's, um, instructions on how  
23          did they react, did they appear to have a motive, how did  
24          they appear on the stand, and all of those things, Dr. Naff  
25          was very yes, no, yes, okay, right. Dr. McGrail and I it was

1 like we were at each other, I mean, we were just tearing each  
2 other apart. I mean, it, I had to listen to it for two and a  
3 half hours and I actually started to annoy myself because of  
4 the way the questioning was going. And you can see how  
5 defensive Dr. McGrail was, I mean, he was, you know, upset,  
6 and I was upset, and we were going at it, and but with Dr.  
7 Naff he's like I'm here, I'm here as her treating doctor,  
8 this is what I have to say, she needs the surgery, nerves  
9 aren't her problem, the disc is her problem. And he does do  
10 testimony like Dr. McGrail does, he does do that, he does  
11 that kind of work. And, guess what, when he does, he's  
12 testifying for the defense. So, if a defense professional  
13 witness comes in there and tells you this surgery's related,  
14 and it's one of his (sic) treating doctors, her treating  
15 doctors, I want you to think about that.

16 He also came down and showed you the MRI films.  
17 Now, that to most of us is like a big blob, it looks like a  
18 picture that doesn't make much sense, but to a trained  
19 neurosurgeon they can see the annular tears. They can see  
20 the high intensity zones, and frankly -- I want to, I also  
21 want to remind you of Dr. McGrail's testimony. Let me  
22 backtrack for a second. Dr. McGrail said that the tears had  
23 healed, and in his deposition I said well, when's the last  
24 time you looked at the films? Are you sure? When, when's  
25 the last time you saw those? And he was like well, I think

1 back when I did my report. It's okay. Well, Dr. Khanna says  
2 that he saw high intensity zones, did you see that report?  
3 He's like, finally after, like, 18 questions, yeah, I saw  
4 that. And you would agree that what he's saying is that a  
5 high intensity zone taken May 26<sup>th</sup>, 2011 would show that an  
6 annular tear is still there, right? Yeah, I think that, that  
7 is what he's saying. So, they want you to think the annular  
8 tears have healed, but they, they haven't, and they hadn't as  
9 of May 26<sup>th</sup>, 2011. And I'll get back to that in a second,  
10 this is the Dr. Khanna report where he's reading it, and he's  
11 reading the radiographic findings and he's saying L5, L4/L5,  
12 L5/S1, degenerative disc disease with high intensity zones  
13 seeing her (unclear - two words) annular tear. So, we know  
14 they're still there. Dr. Naff, who's a, who's a trained  
15 neurosurgeon, top one percent of the country came down and  
16 actually did this demonstration and said see this -- we, we  
17 showed you two different slides. You'll have those slides  
18 back with you in the jury room, and this is grainier than  
19 what you're gonna' have, but you can still see it. So, this  
20 is the S1, L5/L4 and on this one you can see the white high  
21 intensity zone, and that's what he came down here and pointed  
22 out to you. He stood right in front of you and said it's  
23 right there. I mean, you know, to us, to lay people that are  
24 not medical doctors I, I can't even do that. So, they  
25 haven't healed, they are still present.

1           A couple other things that the judge is going to  
2 tell you in instructions or has already told you, and one of  
3 them is for the Plaintiff to recover damages the Defendant's  
4 negligence needs to be a cause of the Plaintiff's injuries,  
5 not the only cause, a cause. And I'll remind you of the  
6 aggravation of the pre-existing condition and the  
7 susceptibility argument. Because if what they're saying is  
8 oh, she went, she had all these problems before if they  
9 aggravated it and what she had made her more susceptible then  
10 they still have to pay for it, and a cause.

11           Now, with respect to damages in the case, um, Her  
12 Honor told you about what damages you can, uh, find for the  
13 Plaintiff in this case, and there's two different kinds of  
14 damages. The first one that she referred to are what's  
15 called economic damages, and economic damages are the kind  
16 that, um, are easily ascertainable, you can see it. And what  
17 you're gonna' see, and it's gonna' go back with you is the  
18 Plaintiff's medical expenses in this case are gonna' be here  
19 in Exhibit 9, and it's a summary of all the places that she's  
20 been and the visits that she's had in treatment and the  
21 expenses associated with it, and the medical expenses in the  
22 case are, um, \$83,017.88, um, so that's the one, part of the  
23 economic damages in the case.

24           Another part of the economic damages in the case is  
25 her lost wages, and the lost wages in the case, the economic

1 lost wages in the case are \$28,648, and that's the lost  
2 wages. So, those are numbers that don't require a lot.

3 Okay. Now, as far as the future for -- I'm gonna'  
4 write those two up real quick, hold on, because otherwise  
5 they'll be incomplete and it'll drive me crazy. All right,  
6 so, the lost wages 28,648. And then the expenses, medical  
7 expenses are 83,017 -- I'm gonna' make it eight, I'm rounding  
8 -- to give it some (unclear - one word). All right. So, as  
9 a far as the future prescriptions you heard Dr. Sloan tell  
10 you that she's gonna' need to be on pain medication  
11 indefinitely for the rest of her years because of her back  
12 problem. And what he talked about in his deposition was  
13 Plaintiff's Exhibit Number 20, and this is basically a snap  
14 shot of how much her medications cost for one, a one year  
15 time period. And the one year time period for her future  
16 prescription, I'm gonna' show it over here, is \$4,415.64 and  
17 that's per year. Now, he also said that as she stays on  
18 these medications that she's going to build up a tolerance to  
19 them, so she's probably going to need to have more in the  
20 future. But as her baseline is right now that's what she's  
21 gonna' need per year.

22 Um, with respect to her life, she's expected to  
23 live another 37 years, which thinking about that is pretty  
24 creepy, but her life expectancy is 37 years from today based  
25 on people her age. And if you take that number and you



1 multiply that and extrapolate that out for what she would  
2 need for her future prescriptions you get to a number and  
3 it's not a small one, it's a big number. Now, if you give  
4 her this for 10 years, because Dr. Naff says well, I don't  
5 see her lasting 10 years. I think that maybe she might get  
6 10 years before she's gonna' need this surgery. Let's assume  
7 all that works out. So, if you say all right, well, we're  
8 gonna' give her her future prescriptions -- that's not  
9 supposed to go there -- for 10 years. That's \$44,415.64 to  
10 get her from now up until the time of the surgery, and that's  
11 one of the economic damages, um, that Her Honor was  
12 discussing as far as economic damages go. So, if she gets  
13 the surgery, and it's a success and she doesn't need ongoing  
14 medication for 37 years that would be the number.

15 Now, with respect to the future surgery you've  
16 heard, um, a couple of different numbers. You've heard Dr.  
17 Naff saying that it would be somewhere between \$100,000 and  
18 \$150,000, depending on what they needed to do and what  
19 surgery they performed at the time. You also heard, uh, Dr.  
20 McGrail doing the same surgery at his hospital. The cost of  
21 it would be \$125,000. So, as far as the future surgery goes  
22 we would ask that you consider the surgery of \$100,000.

23 Um, this is where I get uncomfortable. Um, I was  
24 raised not to talk about money, it was sort of a taboo  
25 subject in my house. You don't ask people how much they

1 make. You don't tell people how much you make. You don't  
2 ask people what their car payment is. You don't tell people  
3 what your car payment is. You don't ask people about their  
4 debts. You don't tell people about yours. So, in this  
5 situation what you have to decide is what the value of  
6 someone's pain is, as far as the non-economic damages. You  
7 have to figure out how much someone's pain and suffering is  
8 worth, and that's not an easy thing to do. And to consider  
9 all of the things that Ms. Exline-Hassler has been through up  
10 until this point. So, she's got two claims, one is her past  
11 pain and suffering, and one is the pain that she's gonna'  
12 continue into the future.

13 With respect to her past pain and suffering, um,  
14 her job has gone down the toilet. Her ability to enjoy her  
15 family on the weekends has been heavily impacted. She's had  
16 a lot of really uncomfortable and painful procedures to try  
17 and get herself back to feeling better. She had a roto-  
18 rooter put in her, put in her back for her disc  
19 decompression, she's had her nerves burnt, she's had a  
20 discTRODE procedure where they go in and they heat up the  
21 annular tear. She's done a lot of things to try to get back  
22 on track and to get better. So she's availed herself of  
23 painful procedures to try to get rid of this back pain, and  
24 you know, some of it worked. That one procedure that Dr.  
25 Sloan did at the end, the one, the discTRODE procedure with

1 the disc decompression that did help the shooting and  
2 radiating pain in her back. So, some of it did work, but she  
3 doesn't like taking pills, she told you she doesn't like  
4 taking pills, but that's her life. If she wants to get out  
5 of bed and go earn her paycheck and go to her job and  
6 perform, she's gotta' do things, she's gotta', if she want to  
7 go be able to go to the grocery store, if she wants to help a  
8 grandkid with a bottle, if she wants to be able to, you know,  
9 fold some laundry, these are the things that she has to do to  
10 be able to get through life. And the one thing about her,  
11 she's not a complainer. She doesn't complain. She doesn't  
12 complain at her job when she's in pain. You gotta' ask her,  
13 you gotta' look at her. She doesn't complain to her husband  
14 when she's in pain. She's a tough cookie, you know? I mean,  
15 she's just not one of those people that likes to openly talk  
16 about all this stuff either. You saw kind of how  
17 uncomfortable she is on the stand with it. And she didn't  
18 complain to you. She's doing what she's gotta' do to get by  
19 and she's dealing with the cards that she's dealt the best  
20 way she knows how and that's, let's move on, I'm dealing with  
21 it, I'm gonna' deal with it and let's move on.

22 But moving in the future, as far as her future pain  
23 and suffering the things to consider, she's got a garage full  
24 of bikes, she's got ATV's, she got dirt bikes, she's got  
25 motorcycles, she's got a tractor, she's got things that she

1 talks about that I have no idea what she's talking about on  
2 that farm, and you know what, she was raised that way. She  
3 was raised on a farm, her grandparents had a farm, she's a  
4 gardener, she loves that. She, I mean, she actually enjoys  
5 riding the tractor, she enjoys picking pumpkins and planting  
6 pumpkins and building retaining walls, and building pools.  
7 That's who he (sic), she is, that's how she was born and  
8 raised, that's what she's done her whole life, and she was  
9 born and brought up riding motorcycles. You couldn't get me  
10 on the back of a motorcycle (unclear - two words) not gonna'  
11 happen, they terrify me. But that's how she was raised. Her  
12 parents rode motorcycles, she rode motorcycles, her brother  
13 rode motorcycles, her kids ride motorcycles and her grandkids  
14 ride motorcycles. And with what happens with her is they all  
15 come over and they take all the bikes out and she hears the  
16 engines revving, and guess what, her bike's still sitting  
17 there. She can't go, and she's not gonna' go, because she  
18 can't, she can't afford the pain, and she's afraid. She's  
19 afraid to go. She's afraid that her body's not going to  
20 cooperate with her and she doesn't feel safe so it's not  
21 gonna' happen.

22           So, when you're evaluating that aspect of the case,  
23 you know, how do you, how do you think about that, how do  
24 you, how do you come up with what's fair and adequate  
25 compensation for a person's pain? That's what you're being

1 asked to do, and again, I'm uncomfortable doing it, but  
2 that's how our civil justice works. That's all we can ask  
3 you to do. We can't ask you to waive a magic wand and make  
4 her back better. We can't ask you to put us all on a time  
5 machine and take us back to that day of that crash and, and  
6 make this not happen. We can't ask you to do that. And the  
7 only thing that we can do with our civil justice system is to  
8 ask you to fairly and adequately allow a verdict in this case  
9 that will compensate Jackie for what she's been through and  
10 what she's going to go through.

11 Also, before you consider that, you're not to have  
12 sympathy that, that's not part of what has to go into what  
13 we're talking about. Um, the, Your Honor read an instruction  
14 it's called impartiality, basically. You can't feel sorry  
15 for her, you can't give her money because you feel sorry for  
16 her. You can't give her, um, money based on her wealth or  
17 poverty, just like you can't feel sorry for the Defendant  
18 based on her wealth or poverty or if you feel sorry for her  
19 when you're awarding fair and adequate compensation. Those  
20 are things that if you're talking amongst yourselves that  
21 come up outside, out of bounds, if the law says that you  
22 can't consider those things you have to consider simply  
23 what's fair and adequate compensation so, gosh, how do you do  
24 that, right?

25 Well, the only thing I could come up with is I've

1 had a job since I was 13, and if you're looking at a want ad,  
2 and you're looking at what maybe Jackie's job might be, and  
3 you're opening the classified ads if you still actually use a  
4 newspaper or if you're looking at, uh, a Craig's List ad, if  
5 you're looking on the internet or Monster.com or whatever it  
6 is that you're looking at, I mean, what would that  
7 advertisement look like and how much would that job pay, you  
8 know? How would it read, what would it say, hmm, give up  
9 everything you love in life, give up the hobby that you enjoy  
10 the most, give up what you were born, bred and raised to do.  
11 Watch your family pull out of the driveway and while you sit  
12 home and look at your bike collecting dust in your garage.  
13 Look at your garden go to crap. Uh, oh, and you have to be  
14 chronic pain all the time, and you have to take pain  
15 medication to get to your job every day to help put food on  
16 your family's table so you can stay with your job. And you  
17 don't get any holidays, you don't get any time off, you don't  
18 get any vacation, it's a 24/7 365 a year job. Oh, and you're  
19 going to have to have these really painful procedures, and  
20 you're gonna' have to take long stretches of time off from  
21 your job, and you're gonna' have to have a surgery where  
22 they're gonna' go in and they're gonna' put some stuff in  
23 your back that's gonna' stay there forever.

24 So, what's that job worth? How much do you pay  
25 that person for that job? Who takes that job? But we would

1 suggest to you in a way to figure it out a figure of \$6 an  
2 hour for that job. So, if you take, that's lower than  
3 minimum wage. If you take \$6 an hour for this job that  
4 you're gonna' have for the rest of your life and she's  
5 sleeping some of the time, let's say \$8 or eight hours a day  
6 so we're not asking for all 24, let's say we're only gonna'  
7 ask for eight hours. That will take you to \$48 a day, which  
8 translates into 336 days, or \$336 a week, which is \$1,456 a  
9 month. And, so, for the last 45 months that she's had her \$6  
10 an hour job with the pain and the injections and her changing  
11 lifestyle, for the past pain and suffering we would ask you  
12 for an amount of \$65,520, which is basically an annual amount  
13 of \$17,400.72.

14 So, it doesn't stop there though, because this is a  
15 condition that she's gonna' have for the rest of her life. I  
16 think Dr. Sloan's words were indefinite, and I think Naff's  
17 words for the rest of her years. This is something that  
18 she's going to have forever. And today is her day, this is  
19 it. She doesn't get to come back in 10 years, or in five  
20 years if she gets dramatically worse, she doesn't get to come  
21 back in 10 and say you know that surgery they were talking  
22 about gosh, I, you know, it's gotten a lot worse and now I  
23 need this other surgery. This is her day for the next 37  
24 years of her life. This is the time to consider her next 37  
25 years. It's a long time. Thirty-seven years is a long time.

1 She doesn't get a do-over, she doesn't get to come back  
2 again. This is her only, one and only opportunity and chance  
3 to talk about this. And if you take \$6 an hour at eight  
4 hours a day, not 24, for the rest of her life and you do the  
5 math the future pain and suffering in this case that we're  
6 asking for 646,464. That's a lot of money. That's a lot of  
7 money. It's a lot of money. Thirty-seven years and what  
8 she's been through is a long time.

9 Now, the last thing I want to remind you all of  
10 before I sit down and the Defense gets up and talks about  
11 their defenses in this case is this you're members of this  
12 community, you've seen how this case has been defended.  
13 You've seen the defenses in this case, which are, she  
14 suddenly stopped it's all her fault, it's not our fault she  
15 suddenly stopped. We've seen she's a smoker, we've seen she  
16 wears high heels, we've seen she had this car crash way back  
17 in 2005 where all this chronic pain started. We've seen she  
18 had this fall down the stairs and she had chronic pain ever  
19 since then. That's what this is all about. This isn't about  
20 this case. We're here about this case and this case. This  
21 case has nothing to do with it.

22 We've seen their expert take the position that what  
23 everybody in their forties has and is walking around with  
24 that usually doesn't have any problem is what caused all of  
25 this. Their paid professional witness is saying that thing



1 that all of us in our forties have, the mild degenerative  
2 changes, is what's causing all this, forget those lumbar  
3 tears they don't mean anything.

4 Their paid professional witness who has -- oh,  
5 gosh, I'm sorry to have bored you with all that, but we went  
6 through, like, a dozen mistakes in his report. He hasn't  
7 gone back and corrected his report, but yet somehow Jackie's  
8 supposed to be going back and correcting her medical records.  
9 Really?

10 So, what I wanted to, uh, leave with you is that  
11 this is your community. The decisions that you make today  
12 will impact your community. And for the other ladies that  
13 are 40 years old and have had some blip on the screen back  
14 there what happens in your courthouse, in your courtroom will  
15 have a ripple effect on this community. And --

16 MR. GILLCRIST: Objection, Your Honor.

17 THE COURT: Sustained.

18 MS. ZOIS: -- and if the --

19 THE COURT: Sustained.

20 MR. GILLCRIST: Move to strike, Your Honor.

21 THE COURT: Granted.

22 MS. ZOIS: If the defense of this case is everybody on  
23 the road was acting crazy that day so don't blame our client,  
24 is that what you want.

25 MR. GILLCRIST: Your Honor, may I take a --