

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

2 EXLINE-HASSLER

3 Plaintiff

v

Civil Docket
No. 10-C-12-000410

PENN NATIONAL INSURANCE, ET AL.,

Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS

(JURY TRIAL - DAY ONE)

Frederick, Maryland

January 22, 2013

BEFORE:

THE HONORABLE JULIE S. SOLT, JUDGE

APPEARANCES:

For the Plaintiff:

LAURA C. ZOIS, ESQUIRE

JOHN B. BRATT, ESQUIRE

For the Defendant:

WALTER E. GILLCRIST, JR., ESQUIRE

ANNE K. HOWARD, ESQUIRE

For Penn National Insurance, et al.:

GUIDO PORCARELLI, ESQUIRE

TRANSCRIBED BY:

Victoria Eastridge

Official Transcriber

100 W. Patrick Street
Frederick, Maryland 21701

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FREDERICK, MARYLAND 21701

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1 (Whereupon, at 10:16 o'clock, a.m., January 22, 2013
2 before The Honorable Julie S. Solt, Judge, in Circuit
3 Courtroom Number Four, the following commenced:)

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

5 THE CLERK: All rise.

6 THE COURT: And good morning again, everyone. Please be
7 seated. Now calling for the record the case of Exline-
8 Hassler v. Penn National Insurance, et al., it's civil number
9 12-0410. And if Counsel would identify themselves for the
10 record.

11 MS. ZOIS: Good morning, Your Honor, Laura Zois on
12 behalf of the Plaintiff, Jacqueline Exline-Hassler.

13 MR. BRATT: And John Bratt as well, Your Honor, on
14 behalf of the Plaintiff.

15 MR. GILLCRIST: And, Your Honor, Walter Gillcrist for
16 the Defendant, Kirsten Sapp.

17 MS. HOWARD: And good morning, Your Honor, Anne Howard
18 also for Defendant, Kirsten Sapp.

19 MR. PORCARELLI: And good morning, Your Honor, Guido
20 Porcarelli on behalf of Penn National Insurance Company.

21 THE COURT: And good morning, everyone.

22 MS. ZOIS: And, Your Honor, seated to my right is
23 Samantha Harveson (phonetic), a paralegal at our office, and
24 seated to her right is the Plaintiff, Jacqueline Exline-
25 Hassler.

1 THE COURT: Okay.

2 MS. ZOIS: Thank you, Your Honor.

3 THE COURT: And, um, are we ready to proceed or are
4 there any preliminary matters?

5 MR. BRATT: I believe there are some preliminary
6 matters, Your Honor.

7 THE COURT: Okay. And will the preliminary matter
8 affect jury selection?

9 MR. BRATT: One of them will.

10 THE COURT: Okay. Let's take that one up, 'cause the
11 other I can -- let's, we can pick the jury and deal with at
12 an appropriate time.

13 MR. BRATT: Your Honor, here we have two Co-Defendants a
14 tort fee (sic), an alleged tortfeasor and an uninsured
15 motorist carrier. Uh, and it is the Plaintiff's position
16 that they should share a single set of strikes rather than be
17 granted separate strikes. Um, one -- there are several
18 factors for the Court to consider in making that decision.

19 I've gone ahead, Your Honor, and for the Court's
20 benefit, prepared a bench memorandum containing those factors
21 in the law if I may approach?

22 THE COURT: Sure.

23 MR. BRATT: And I just, I'm just getting my copies for
24 --

25 THE COURT: Mm-hmm.

1 MR. BRATT: -- everybody else.
2 MR. GILLCRIST: Your Honor, I don't mean to interrupt,
3 but, um, one preliminary matter that is not in the nature of
4 a motion that would require argument is the parties have
5 agreed to dismiss, there's two parties that are listed in the
6 complaint, um, Joanne Sapp, the mother and her company DeJa
7 Vu.
8 THE COURT: Mm-hmm.
9 MR. GILLCRIST: We just wanna' make sure that that
10 dismissal is reflected on the record.
11 MR. BRATT: They were granted summary judgment.
12 THE COURT: Yes it is they were granted summary
13 judgment.
14 MR. GILLCRIST: Oh, I'm sorry. I apologize. I
15 overlooked it.
16 THE COURT: They're, yeah, they're out of the case.
17 MR. GILLCRIST: Okay. I apologize.
18 THE COURT: So.
19 MR. GILLCRIST: Thank you.
20 MR. BRATT: May I approach, Your Honor?
21 THE COURT: Sure.
22 MR. BRATT: Thank you. Essentially, Your Honor, the
23 factors that the Court looks at in making this kind of
24 determination on whether the Defendants should share strikes
25 or not, um, is first, uh, the two Defendants must be adverse

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1 and hostile, and second, after the Court makes a finding that
2 between the two Defendants there's an adverse or hostile
3 interest, the Court must make a secondary finding that the
4 nature or extent to that adversity or hostile interest
5 justifies the granting of separate peremptory challenges to
6 each Defendant.

7 Um, there, I will point out to the Court initially
8 that there is a cross claim between the two Defendants,
9 however, that cross claim is in the nature of a claim for
10 indemnification or contribution, essentially the UM carrier
11 or UIM carrier is saying that if we're obligated to pay
12 damages to the Plaintiff on that, as a consequence of what
13 the tortfeasor has done, then we'd like to get our money back
14 from the tortfeasor. So, there is a technical adversity
15 between the, between the two Co-Defendants due to the claim
16 filed against each other. However, that kind of a claim with
17 respect to our side of the courtroom and with respect to the
18 Plaintiff they're not adverse. The two Defendants in this
19 case have an identical interest in this matter with respect
20 to the Plaintiff, which is to defend this case on both
21 liability and damages. Their interests as Defendants, Co-
22 Defendants are absolutely aligned, other than to the extent
23 that depending upon the verdict the jury enters it will
24 affect who pays what. But in terms of the conduct of this
25 trial there is no affirmative claim made, made between the

1 Co-Defendants that would have them, uh, that, that would have
2 them doing this any different way, you know, particularly
3 with respect to damages, because the damage claim is the
4 damages claim.

5 Um, and second, the Court would have to find that
6 the nature of that interest justifies the separate strikes,
7 which, in a case like this where the Defendants are equally
8 aligned against the plan in the same position on the same
9 issues, wouldn't rise to that level, because it would give
10 the, the two Co-Defendants an extremely disproportionate
11 amount of control over the, the makeup of our jury panel, as
12 opposed to the Plaintiff, when really their position with
13 respect to Ms. Exline-Hassler is, is more or less identical,
14 Your Honor. Thank you.

15 THE COURT: Thank you.

16 MR. GILLCRIST: Your Honor, uh, on behalf of Ms. Sapp we
17 very much oppose this request. We do have, uh, a cross claim
18 that Penn National has filed against my client, it's a cross
19 claim that would subject to my client, subject my client to
20 personal exposure, uh, above her automobile liability limits.
21 Uh, so, we very much have a situation here where the parties
22 are adverse, uh, the Defendants are adverse.

23 If this verdict comes in below \$100,000 there's no
24 problem. If the verdict comes in above \$100,000, above
25 \$100,000 then there's a huge problem. And Penn Nat --

1 THE COURT: How is that going to change your defense --
2 MR. GILLCRIST: Well, it may not change --
3 THE COURT: -- in this case?
4 MR. GILLCRIST: Whether it, I mean, in terms of my pres
5 (sic) --
6 THE COURT: I mean for practical purposes.
7 MR. GILLCRIST: For practical purposes --
8 THE COURT: You're defending the damages claim --
9 MR. GILLCRIST: Sure.
10 THE COURT: -- against this Plaintiff no matter what.
11 MR. GILLCRIST: We are, but -- and I can't speak to what
12 Penn National's Counsels theories or strategies will be
13 during the course of the trial, but having been in his shoes
14 countless times, my strategy on that side is going to be
15 different than my strategy here, in this, to the extent of
16 the nature of the damages. If I'm Penn National in this case
17 my argument to the jury is, listen, there was a, a, a fairly
18 decent injury here, but, you know, the injury is, is not what
19 it's being portrayed to be, you should give this amount of
20 medical bills and this amount of lost wages and this amount
21 of pain and suffering. Penn National could get up in closing
22 arguments and ask the jury to award a fair verdict of
23 \$75,000. Well, I would never do that in this case. Um, and
24 so the extent of the damages that Penn National focuses on is
25 very much at odds theor (sic), in theory at least, because,

1 again, I can't speak to how they'll present the case then
2 what we will present. So, yes, we are aligned in, in, in
3 many issues in this case, but when it ultimately comes to the
4 nature and extend of the damages we may very much be at odds
5 with each other.

6 I also understand that this may be the subject of a
7 motion in a few minutes, but Counsel is intending to bring
8 up, uh, an insurance representative from Penn National on
9 issues have to do with the, the, uh, investigation of prior
10 claims, uh, and that certainly puts my client in an adverse
11 position to Penn National.

12 So, the mere fact that we are both fighting
13 damages, and we're both fighting liability doesn't remove the
14 fact that we may have different theories about the case, we
15 may ask the jury to do different things in the case. Um, his
16 ideal juror may be the jury that decides to give \$75,000 in
17 this case. Obviously, we can't predict that, but his ideal
18 juror may be very different than my ideal juror, which would
19 be somebody who would be not inclined to give damages. Um,
20 obviously, we, we, we can't know, but, so, I think it is
21 important that the, uh, the parties do have separate strikes.
22 They have chosen to sue both parties. Um, this is not a
23 case, I don't think, maybe Counsel will correct me if I'm
24 wrong, where Penn National intervened. Um, the Plaintiff put
25 Penn National on notice of the UIM claim. That would trigger

1 their coverage. They purposely have sued Penn National and
2 they should be expected to be subjected to separate strikes.
3 Thank you.

4 THE COURT: Thank you.

5 MR. PORCARELLI: Your Honor, if I may be heard briefly?

6 THE COURT: Certainly.

7 MR. PORCARELLI: Um, one of the points that I'd like to
8 bring the Court's attention, uh, requires me to ask that any
9 witnesses in the courtroom, if they could be asked to step
10 outside, if they could do that?

11 THE COURT: If there's anyone in the courtroom right now
12 that is expected to be a witness in this case I'm going to
13 ask you to step outside please.

14 MR. PORCARELLI: With the exception of my client
15 representative here --

16 THE COURT: So.

17 MR. PORCARELLI: -- if he could stay?

18 MS. ZOIS: Your Honor, Plaintiff would join in the, uh,
19 rule on witnesses throughout the course of the trial, would
20 join Mr. Porcarelli in that.

21 THE COURT: Okay. I'll note the rule's been invoked for
22 all purposes now, not just for this argument.

23 MR. PORCARELLI: Thank you, Your Honor.

24 MS. ZOIS: Thank you, Your Honor.

25 MR. PORCARELLI: So, um, we would oppose the motion to

1 have us share strikes, and you obviously know that there's a
2 cross claim and we're, we're very serious about pursuing the
3 cross claim. And Mr. Gillcrist's arguments are right on
4 point and I would adopt them in terms of we may be looking
5 for different jurors, and I may get up at the end of this
6 case and I may ask for an amount of money, because I think
7 that's in my client's better interest where, obviously, it's
8 not necessarily in his client's interest, given the amount of
9 coverage that his client has in this case. Um, and I may
10 need to do that to protect my client's interest, and those
11 are adverse and different interests that we have.

12 But the second thing is, and the reason I asked the
13 witnesses to step outside was, because in the, in the last
14 few weeks as we've been approaching trial there's been some
15 ambiguity and uncertainty regarding one of the liability
16 related issues, and that is whether or whether not someone is
17 actually gonna' take the stand and say that somehow a phantom
18 vehicle was involved in this accident.

19 And as you know, um, if we go to a phantom argument
20 that changes who's in first position on the, uh, on the
21 exposure. So, uh, unless there's a stipulation that everyone
22 agrees that there will be no assertion that a phantom played
23 any role, uh, I can't take that chance and I need to have my
24 separate strikes, and we ask that, uh, we, we get those.

25 THE COURT: Anything else?

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1 MR. BRATT: Yes, Your Honor, um, first, with respect to
2 what Mr. Porcarelli just raised in terms of this phantom
3 vehicle argument, this is an issue that we've been attempting
4 to ferret out whether that argument will be made throughout
5 this litigation, because there have been conflicting
6 responses from the tortfeasor on that issue. Um, at her
7 deposition she said that she wasn't contending that anybody
8 else did anything wrong to contribute to the accident. In
9 her initial set of ins (sic), answers to interrogatories she
10 said that there wasn't anybody she was contending contributed
11 to the accident. Then we later got a second set of
12 interrogatories that said well, not so fast we may be
13 contending that there's a phantom vehicle. We'd like to
14 know, because if there is a, such a contention, well, then I
15 argue the rest of this motion a different way than I do if
16 there isn't. So, whatever I say next depends on whether that
17 contention will be made. I don't know if the Court would
18 assist me in determ (sic), getting them to tell us, um, but,
19 you know, if that contention's going to be made in terms of a
20 family vehicle, you know, first, you know, whether, whether,
21 whether there is, there certain is some degree of adversity
22 there, uh, I grant that, I know. But the question then
23 becomes whether that adversity rises to the level of such
24 that it would justify separate strikes when on, as Mr.
25 Gillcrist indicated, on many of the issues these Defendants

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1 are in identical alignment, and there's a case that I cite in
2 the bench memorandum, Your Honor, it's on page five, it's
3 Garlock v. Gallagher, that was an asbestos case. And this
4 issue arose in the context of two manufacturer Co-Defendants,
5 who had a cross claim against one another, um, and what the
6 Court determined was is that even though there was some
7 adverse or hostile interest there, because of that cross
8 claim. And, moreover, because it was possible for those two
9 asbestos manufacturers to say it wasn't my asbestos product
10 it was theirs, you know, just like analogous to this phantom
11 vehicle argument . . . I didn't do it, I was the phantom
12 vehicle. And, and what the Court determined in that case,
13 and it's, it's quoted on page six was that . . . "Although
14 the Cross-Defendants had different interests, the Court
15 didn't consider those interests specifically adverse or
16 hostile enough to allow the additional strikes." . . . Um,
17 and it was there that, although they distributed, they
18 manufactured and distributed the same type of product, all
19 (sic), although different ones. That wasn't part of the
20 quote, just so you know, Your Honor. You know, and they
21 shared the common purpose of persuading the jury that those
22 products did not admit respirable asbestos fibers. And the,
23 the analogy to this case is even if we assume that this found
24 vehicle will be made and that there's some merit to it,
25 nonetheless, the Defendants still share the common purpose of

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1 defending this case on damages, and defending it on
2 liability, whichever manner they chose, whether it for one to
3 say to well, there was a phantom vehicle there, and, you
4 know, that's (unclear - one word), that is a responsible
5 party for this, for this occurrence. Um, but those few
6 differences between two Defendants certainly don't rise to
7 the level, as in Garlock, where it would justify granting
8 them, well, I can't do math, but they, they, they get 10,
9 they --

10 THE COURT: They get four extra strikes.

11 MR. BRATT: Would it be four --

12 THE COURT: Four.

13 MR. BRATT: -- or would it be four and then plus one for
14 an alternate.

15 THE COURT: Plus one for an alternate.

16 MR. BRATT: Right. So they'd, they'd have, they'd have
17 10 strikes, we'd have five. So, it gives them lots more
18 control over our, the makeup of our potential jury. And does
19 this, these few differences between these two Defendants
20 justify giving them twice as much control over the makeup of
21 the panel as the Plaintiff is no. And, in the alternative,
22 Your Honor, if, if the Court's able to ferret it out whether
23 this phantom vehicle argument will be made at all, if it's
24 not my argument's even easier, because then there is no
25 phantom vehicle that distinguishes Mr. Porcarelli's client

1 from Mr. Gillcrist's client. And then their interests are
2 identically aligned in defending in liability and damages,
3 and there's no possibility that they get separate strikes.

4 THE COURT: What about the argument that they may, um,
5 the insurance company may stand up and say award damages, but
6 up to \$75,000, doesn't that create a conflict between the two
7 Defendants?

8 MR. BRATT: Well, it doesn't really, Your Honor, because

9 --

10 THE COURT: One's conceding damage, one is not.

11 MR. BRATT: Well, they're, they're, they're all
12 conceding some degree of damages, Your Honor, according to
13 the testimony. Um --

14 THE COURT: I don't know I haven't heard it.

15 MR. BRATT: I do.

16 THE COURT: So.

17 MR. BRATT: But that's what I believe to be the case.

18 THE COURT: Mm-hmm.

19 MR. BRATT: But I think the answer, Your Honor, is is
20 that that's nonetheless a damages defense, um, and going to
21 Mr. Gillcrist's point, you know, one of the things that he
22 said was is that if the verdict's over 100,000 it potentially
23 exposes his client to, uh, to personal responsibility. If
24 Mr. Porcarelli were to stand up and argue for 75 certainly
25 Mr. Gillcrist shouldn't have a problem with that, because his

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1 duty to his client is to protect her within limits of the
2 State Farm policy. And if Mr. Porcarelli argues for 75
3 that's under a hundred, and it actually helps Mr. Gillcrist's
4 client, it doesn't hurt her, because then I removes the
5 potentiality of her personal liability. So, it, the answer's
6 the same, Your Honor.

7 THE COURT: Thank you. I'm actually taking a second
8 since this was not raised in a pre-trial conference, which is
9 --

10 MR. BRATT: Well, we had a --

11 THE COURT: So.

12 MR. BRATT: -- question about that --

13 THE COURT: Mm-hmm.

14 MR. BRATT: -- because it's not really a motion in
15 limine.

16 THE COURT: No, but it's something that -- pre-trial
17 conferences are trying to do things so that when you get a
18 trial date and it's 10 o'clock that you can bring the jury up
19 and start the trial, rather than spend two hours arguing
20 motions.

21 MR. BRATT: Understood, Your Honor.

22 THE COURT: Like this.

23 MR. BRATT: Thank you. May I be seated?

24 THE COURT: You certainly may.

25 MR. BRATT: Thank you.

1 || (Brief pause.)

2 THE COURT: Mr. Gillcrist, um, is, are you anticipating
3 that there will be testimony as to a phantom vehicle?

4 MR. GILLCRIST: Your Honor, there will be no testimony,
5 uh, from my client or our witnesses that attempts to shift
6 the blame to a phantom vehicle. That's really a dispute
7 between the Plaintiff and Penn National. My client will
8 acknowledge that she hit the Plaintiff, uh, we don't know of
9 anybody else who hit the Plaintiff. There was evidence that
0 a tractor-trailer driver came by, uh, the accident, pulled
1 off the road, came back, and suggested to the Plaintiff, you
2 know, did I hit you or something along those lines. Um, but
3 that's not our proof. Um, so it's really, now, you know,
4 these, this is a, a case with a, cars going everywhere on I-
5 70, so I can't affirmatively say that it would be in the
6 jury's mind, well, did this person or that person hit the
7 Plaintiff? But we're not making that contention. Our
8 argument is, number one, that our client was not negligent.
9 And number two, she did not proximately cause damages to the
0 Plaintiff. Number three, Plaintiff was contributorily
1 negligent. That's, that's our case (unclear - one word) so.

22 MR. BRATT: Well, Your Honor, I think that probably
23 resolves the issue, because the Plaintiff is not contending
24 that there was a phantom vehicle involved in this, in this
25 current (unclear - one word). We look at this as a straight

1 up UIM on her insured claim. And, based on my discussions
2 with Mr. Porcarelli, I feel confident that he also is not
3 contending that there was a phantom vehicle involved in the
4 occurrence. So, I think that's the answer, Your Honor. Then
5 now what we have are two Defendants that are identically
6 aligned that don't get separate strikes.

7 THE COURT: I, uh, certainly agree that the Defendants
8 are not identically aligned, um, but I don't see a
9 significant enough, uh, difference in what the potential
10 defense would be since we're not talking about the potential
11 of shifting liabilities, so, um, I'm not going to award two
12 sets of strikes to Defense. They, uh, Defendants will share
13 strikes.

14 MR. PORCARELLI: And just so that we're clear, Your
15 Honor, since we have to share based on your ruling may we,
16 uh, consult each other on the (unclear - one word)?

17 THE COURT: Ab (sic), you absolutely may, you absolutely
18 may. And I will tell you up here in civil cases we, um --
19 I'll take a second and tell you how I do jury selection,
20 because that might make all of you a little bit more
21 comfortable with everything that goes on. What I do is we
22 bring everybody up here, because of course you're not
23 supposed to use their name any more. Then I'll ask the
24 questions from up at the bench and have folks stand up and
25 say Juror Number 1, and yes, I might know a witness. They

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1 don't answer anything else from out there. Then I, 15 at a
2 time I put 'em in the jury box I have them come up here, and
3 we will do all follow up up here at the bench. All Counsel
4 will have a chance to get the information from the jurors to
5 ask follow up questions, um, and to do, um, get all that
6 information that they need, and I do that with all -- and I
7 think we're gonna' have about 40 jurors. Um, and, um, after
8 that we can do challenges for cause so you all will know
9 who's available. And then we have you all pick from the
10 list. So, you just send up who of the available jurors and
11 I'll tell you, and I go over everything about five times, um,
12 and, uh, who the available jurors are and pick from the list
13 and then you have plenty of time to confer as to who you want
14 to strike and how you want to do the strike. They all go in
15 the box at the end after we have all the strikes done. So,
16 like I said, so you will have a chance to talk to, and all of
17 the jurors. And, again, I find that that makes it, what I
18 hear from Counsel is it makes it much more helpful in using
19 those, those challenges. So, I was, everybody does it a
20 little differently, and so I like to tell you how I like to
21 do it to let you know that you will get a chance to, um, have
22 some meaningful contact with the potential jurors. So.

23 MS. ZOIS: May I ask a question, Your Honor?

24 THE COURT: You may.

25 MS. ZOIS: How many alternates, uh, does Your Honor

1 seat?

2 THE COURT: Um, I thought we'd seat, um, at least two.

3 MS. ZOIS: Perfect, Your Honor. Thank you.

4 THE COURT: Yeah. And I know, I heard a rumor through
5 the grapevine that you think we might well run through Friday
6 so I'll clear through Friday.

7 MS. ZOIS: Perfect, Your Honor. Thank you.

8 MR. PORCARELLI: Your Honor, may I?

9 THE COURT: Certainly.

10 MR. PORCARELLI: I have not been in front of Your Honor
11 before. Um, do you take from the top of the list or bottom
12 of the list?

13 THE COURT: We go right from the top.

14 MR. PORCARELLI: And the foreperson is selected . . .

15 THE COURT: I usually ask to see if somebody from the
16 first three or four wants to serve as foreperson.

17 MR. PORCARELLI: Okay.

18 THE COURT: And if not then I pick someone.

19 MR. PORCARELLI: Right. Thank you.

20 MR. GILLCRIST: Your Honor, and in terms of any other
21 issues that would be appropriate to discuss before jury
22 selection there, there is one. We did file a motion in
23 limine having to do with, dealing with, uh, Penn National
24 before the jury. Um, our motion requests that Penn National
25 not be identified to the jury, and that the jury not be told

1 anything about the fact that this is an un (sic),
2 underinsured motorist claim. Um, certainly if it was an
3 uninsured phantom vehicle claim then Penn National has to,
4 um, disclosed. It being an underinsured motorist claim, uh,
5 we contend that, uh, any reference to either the existence of
6 Penn National or coverage or, uh, the fact that it's an
7 underinsured motorist came (sic), claim, um, seriously
8 prejudices my client who is an individual person. Your Honor
9 is well familiar with the law and the rule dealing with, uh,
10 issues of insurance should not be injected in a tort case,
11 um, it has a tendency to suggest to the jury that there is a
12 collateral source for the recovery and it could have a
13 significant impact on the recovery, uh, to the Plaintiff.

14 Your Honor is probably aware of the King v. State
15 Farm case, which I know Plaintiff's are going to rely upon,
16 um, which, um, said, uh, that the, in that case the uninsured
17 motorist or underinsured motorist carrier should be
18 disclosed, and what we've done in our motion is we've
19 distinguished the King case, uh, and I can say from personal
20 experience that the issue is now in the Court of Special
21 Appeals . . . this is anecdotal I real (sic), I realize, but
22 I had a trial in Prince George's County, last year where
23 Judge Northrop ruled in our favor, I was representing the
24 under insurance carrier, State Farm, he ruled that they
25 should be, um, disclosed at all to the jury, in any fashion.

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1 Uh, there was a finding of liability against, um, the
2 Plaintiff, the Plaintiff did not prevail in liability. The
3 sole issue in the Court of Special Appeals now, we have an
4 argument in February, is whether under that case, that
5 scenario, um, State Farm should have been disclosed to the
6 jury. Counsel in that case very effectively argued that, uh,
7 King is not distinguishable, we argue that King is
8 distinguishable, and that leads me to this point, which is
9 King is distinguishable, and King, there was no tortfeasor
10 involved in the case it was strictly Plaintiff v. State Farm
11 and, actually, our firm represented State Farm in that
12 matter. Um, and, uh, in that particular case the, uh,
13 insurance carrier, State Farm, had waived subrogation against
14 the underlying tortfeasor, so the tortfeasor was not a party
15 at all. The case had to be presented to the jury in some
16 fashion, and it made sense for it to be presented as
17 Plaintiff v. State Farm.

18 The King case discusses why the carrier should be
19 disclosed in that situation, but our point, Your Honor, is
20 that it's quite a distinguishable situation where you have an
21 individual tortfeasor such as Ms. Sapp who does have personal
22 exposure in this case potentially, um, to be thrust into a
23 trial where there's litigation over, um, or even referenced
24 to matters of insurance. It should not be in this case. If
25 King involved the same scenario that we have here we wouldn't

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1 be arguing it, but King was distinguishable, because it did
2 not involve a tortfeasor who stood to be prejudiced by, um,
3 uh, by all of that reference, those references.

4 What we did in that other case and what I propose
5 that we do here is simply identify Mr. Porcarelli as an
6 additional attorney representing either another int (sic),
7 uh, interest or a defense interest or additional defense
8 counsel. There are innocuous ways that his carrier can be
9 insulated from, uh, consideration, uh, by the jury. So we'd
10 ask that, uh, and, and it does have a bearing, I would
11 subsume on the jury selection. We'd ask that Penn National
12 not be disclosed to the jury, that Mr. Porcalelli (sic) be
13 referred to as either additional defense counsel or
14 additional defense counsel representing another interest, um,
15 and that the case be proceeded as it should, which is a
16 straightforward tort case. Thank you.

17 MR. PORCARELLI: Thank you, Your Honor.

18 THE COURT: Mm-hmm.

19 MR. PORCARELLI: We would join in, uh, Ms. Sapp's motion
20 in that regard. It seems to me that it would be unfairly
21 prejudicial to allow Plaintiffs to get in front of the jury
22 and to give an explanation that is detailed enough to include
23 the word underinsured in any capacity in the course of
24 explaining why I'm here or my client, more specifically. To
25 do so would prejudice the tortfeasor in the eyes of some of

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1 the jurors who may view her as someone who was not
2 responsible enough to purchase either any insurance or
3 anything beyond a minimal policy of insurance. Both of which
4 are neither the facts in this case. And we would be
5 concerned with any prejudice that may be taken out on Ms.
6 Sapp in that regard, if you will, because, as we just got
7 done arguing, and as you just found, we have a lot of similar
8 interests, and now we're somewhat tied at the hip on our
9 strikes, and that would affect my client. Um, and I agree,
10 and I was going to suggest, had Mr. Gillcrist not suggested
11 it, that customarily there are other judges around the state
12 who handle this issue by saying this is Mr. Porcarelli, he
13 represents another interested party, and just leave it at
14 that. Um, and I would suggest that if, uh, if I need to be
15 named by name that my client at least not be named in the
16 courtroom, and that the, uh, that the phraseology is a I
17 just, just mentioned.

18 There's another issue I wish to bring to the
19 Court's attention now. Although we didn't file a specific in
20 limine motion on it, it's somewhat related, um, and that is
21 this, there's been a subpoena issued, uh, to my client for,
22 um, the testimony regarding claims processing. Um, and it's
23 our concern that if we start venturing into that area over,
24 uh, how do you do index searches on personally injury
25 plaintiffs? What did you find in this case? What did you

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1 do, uh, in this litigation to check to see whether there
2 really was in fact a prior car accident? We're gonna' start
3 getting so far afield of insurance issues and processing and
4 claims, which I don't think have a place in this courtroom
5 first of all, but it's gonna' have an adverse impact on the
6 Defense generally, because they're gonna' figure there's
7 insurance, oh, we can give them anything that they want,
8 because the insurance company's gonna' take care of it. But
9 then back to the cross claim, because not necessarily so, and
10 that's gonna' be on Ms. Sapp if the verdict's over the hun
11 (sic), if the verdict's over the hundred.

12 So, we would ask that the motion be granted, that I
13 can be introduced, but not my client. And, second of all, I
14 would ask consideration be given to limiting this attempt to
15 try to get in all these other collateral, uh, pieces of
16 testimony on insurance practices and claims investigation and
17 those types of things.

18 MR. BRATT: Thank you, Your Honor. Initially, Mr.
19 Porcarelli has raised a couple things about the potential
20 witness that isn't really part of the motion we're talking
21 about right now, which is the identification of the UIM
22 carrier. What I'd ask the Court to do is, and I'm prepared
23 to do this is I'll offer the Court argument on the issue of
24 the identification of the Defendant. Ms. Zois will handle
25 the issues ca (sic), pertaining to the witness, because she

1 knows that a little better than I do.

2 Um, with respect to this UIM issue, Mr. Gillcrist
3 was right about a couple things, there are some factual
4 differences between the King case and this case. The
5 tortfeasor wasn't a party in the King case, the tortfeasor is
6 a party in this case. Mr. Gillcrist is correct that this
7 exact issue is pending in the Court of Special Appeals. Um,
8 my information that it's not second hand, I've seen the
9 briefs, I helped review 'em, um, and I think that the
10 Plaintiff is likely to win that on appeal in the Court of
11 Special Appeals having seen the argument. And it's very
12 similar to the argument I'm making to Your Honor, which is
13 this . . . it doesn't get simpler than that, which is I agree
14 there are factual differences. Those factual differences
15 don't matter, not even a little, and the reason is is that
16 those factual differences have absolutely no bearing on the
17 rationale that the King Court relied upon in making its
18 decision.

19 The King Court held that first, Maryland's usual
20 procedure, Maryland's typical procedure is that the parties
21 to a lawsuit are identified, that's in the Maryland rules,
22 that they're identified, that's rule, like 130, I think, it's
23 cited. So, you need to have a real good reason to deviate
24 from that standard procedure.

25 Second, what we have here is an insurance carrier

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1 who is an active party in this case, is actively represented
2 by Counsel, where there is a contractual claim that has been
3 pled by the Plaintiff against that Defendant as permitted by
4 Maryland law, and what the Court held and why in King it
5 didn't rest upon whether there was a tortfeasor there or not
6 at all, it had nothing to do with that. What it basically
7 said was is that because of society's first amendment
8 interest in full fair open trial we're not having anonymous
9 trials, and, and the Court of, the Court of Special Appeals
10 in King cited some out of state cases, um, very favorably,
11 Your Honor, um, describing what Mr. Gillcrist is suggesting
12 and what Mr. Porcarelli is suggesting, um, as a charade at
13 trial. As, uh, the, and, here, this is the quote, "The
14 policy" -- "The Flora (sic), Florida case has clearly
15 established the principal jury should be aware the precise
16 identified been uninsured or underinsured insurance carrier
17 if it's a party at trial. The policy behind such a trial is
18 that full disclosure and identity of the parties protects the
19 integrity of the jury system and prevents charades at trial."
20 And then the Court of Special Appeals cited another
21 case from Kentucky that says essentially the same thing that,
22 you know, it's our opinion that the cons (sic), that the
23 considerations which have prompted the rule against mention
24 of ordinary liability insurance in an automobile negligence
25 case must yield in uninsured motorist cases to the procedural

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1 desirability of letting the jury know who were the parties in
2 the litigation where the uninsured motorist/carrier elects to
3 participate actively in the trial, which we have.

4 Essentially, what the Defendants are proposing
5 here, Your Honor, is that we will have a secret Defendant,
6 Penn National, who was not identified to the jury. Mr.
7 Porcarelli will not be identified as the attorney for that
8 secret defendant, the jury will render a verdict that will be
9 dispositive of the rights of all the parties on a claim
10 against the secret defendant, that's a secret claim that the
11 jury doesn't know about, and then we'll have a jury sitting
12 in the box that's gonna' ask Mr. Porcarelli examine
13 witnesses, some of which are his own witnesses, exp (sic),
14 experts, for example. How do you do a bias cross of an
15 expert testifying on behalf of an insurance company if you
16 can't ask them how much work they do for insurance companies,
17 Your Honor.

18 You know, everything about this Maryland law and
19 the law of the other states that have considered it says is
20 wrong. It's, it's a secret case against a secret defendant
21 that, that's never identified to the jury, and how is the
22 jury tied to, to, to, to, to analyze the arguments and
23 testimonial points made by Mr. Porcarelli when they don't
24 know who he represents, why, what their interest in the case
25 is, and why, in fact, he may be making the arguments that

1 he's making or asking the questions that he's asking.

2 Um, the King Court was very clear that these were
3 the factors that they relied upon, that we don't have these
4 kinds of trials, that it's a charade, it's effectively, it's
5 lying to our jury about who's involved in this case and the
6 claims are, and don't do that. It's not because there was a
7 tortfeasor or wasn't, it had nothing to do with it. You
8 know, the argument basically boils down to insurance company
9 equals deep pocket, and that's inherently prejudicial, and it
10 just isn't so. First, mentions of liability insurance aren't
11 excluded for all purposes. I have rule 5, 5-411 right in
12 front of my. You know, evidence that a person was or was not
13 insured against liability is not admissible upon the issue of
14 whether the person acted negligently or otherwise wrongfully.
15 And then it says the rule doesn't require the exclusion of
16 evidence of insurance against liability when offered for
17 other purposes.

18 Well, first, we're not talking about liability
19 insurance other than the fact that our allegation is that she
20 didn't have enough. But, other than that, that's all where
21 it comes in, and of course that's part of the claim, that's
22 the nature of the UM claim.

23 Um, the other point to be made, Your Honor, is is
24 that the law going back in Maryland is, is that simply where
25 an insurance party is, where an insurance company is a party

1 to the case they're identified, because they're a party to
2 the case, and I, what, what I go through in my, my written
3 response I distinguish these cases. You know, and, and part
4 of thing, one of the things is is that, you know, one of the
5 reasons insurance usually isn't mentioned is because they
6 don't want the insurance carrier to be regarded as the "real
7 defendant". Well, the problem with applying that here is is
8 that, well, the insurance carrier is a real defendant,
9 there's a real claim that was pled against them, that will be
10 decided by the verdict that this jury enters, and if a
11 lawyer's gonna' stand up and make arguments on behalf of that
12 Defendant against the Plaintiff on the claim that the
13 Plaintiff has made then Maryland's ordinary procedure
14 requires identification of that Defendant, and the mere
15 perception that they're a deep pocket is an insufficient
16 reason to violate society's interest in a free and open
17 trial. The analogy I use in the motion papers, Your Honor,
18 is let's say Ms. Sapp was a, a truck driver for Coca-Cola,
19 and Coca-Cola's in this case on an agency claim. And we all
20 agree, we all agree that she was the agent of Coca-Cola, she
21 was what acted within the scope, et cetera, et cetera. Coca-
22 Cola's in on agency. Well, could we not identify Coca-Cola,
23 because they're a deep pocket? No, nobody would seriously
24 entertain such a motion, Your Honor.

25 What we have here is is that because people have

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1 this view about the phrase insurance, based on what I believe
2 is an erroneous reading of Rule 5-411 that it tries to get
3 extrapolated into this, and this motion's generally made by
4 the UM carrier and denied as a matter of course under King.
5 I'll give Mr. Gillcrist the credit, it's creative lawyering
6 to have it made on, made by the torts fees rather than the UM
7 carrier. The thing is is that those factual differences
8 don't change the rationale in King, they just don't. You
9 know, there is not a single factor in King that has anything
10 to do with the identity of the UM carrier itself or whether
11 the tort fees are just part of the case. It's all that, the
12 perception of a deep pocket isn't good enough to have an
13 anonymous trial with a secret defendant represented by a
14 lawyer who you don't know who they represent, because our
15 societies tradition of open fair jury trials doesn't allow us
16 to have a jury render judgment for a secret defendant on a
17 secret claim, and that's it.

18 THE COURT: What is your Plaintiff's claim outside of
19 the possibility of Ms. Sapp not having enough insurance
20 coverage to sue Penn National?

21 MR. BRATT: I'm not sure I understand the question, Your
22 Honor.

23 THE COURT: Well, is there an ind (sic) --

24 MR. BRATT: It's a straight up underinsured claim.

25 THE COURT: It's, so there's, there's not -- like I say,

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1 your claim depends on what, if any, verdict this jury comes
2 back with.

3 MR. BRATT: Well, and a variety of factors that we've,
4 that --

5 THE COURT: So.

6 MR. BRATT: -- that are subject to stipulations, Your
7 Honor, but, um, that's essentially accurate.

8 THE COURT: Okay. Okay. Thank you. Mm-hmm.

9 MS. ZOIS: Your Honor, did you want to hear my response
10 --

11 THE COURT: Sure.

12 MS. ZOIS: -- to Mr. Porcarelli's?

13 THE COURT: Yeah, that's --

14 MS. ZOIS: O, okay.

15 THE COURT: -- we're --

16 MS. ZOIS: Or did you wanna' hear from --

17 THE COURT: No, I'll hear that and then I'll let him --

18 MS. ZOIS: Okay.

19 THE COURT: -- respond to both if necessary.

20 MR. GILLCRIST: They just -- so it's gonna', they, they
21 represent the same --

22 THE COURT: I, I know that.

23 MR. GILLCRIST: -- parties, Your Honor.

24 THE COURT: Yeah.

25 MR. GILLCRIST: Okay.

1 MS. ZOIS: Um, one of the defenses in this case, Your
2 Honor, and for illustrative purposes I'm gonna' use -- I'm a
3 visual person -- um, one of the defenses in this case is that
4 in June of 2005 Jacqueline Exline-Hassler was involved in a
5 car crash. In June of 2005 she was insured by Penn National
6 Insurance Company, and the claim that they're making is that
7 she was so severely injured in that 2005 car crash that it
8 has caused her chronic and debilitating back pain ever since
9 then. So, if you could look at the calendar here for a
10 second, Your Honor. They're saying that back in June of 2005
11 she's insured with Penn, she made, um, she has serious and
12 severe back pain. From June of 2005 all the way up until the
13 date of our accident, which is way down here 33 months later.
14 So, I have subpoenaed a Penn National representative to
15 discuss the claims process in determining what, if any,
16 information they have that she made a bodily injury claim in
17 2005.

18 What I essentially have to do with this 2005 car
19 crash, I have to prove a negative. There's one medical
20 record from March 26th of 2008 that says, "Plaintiff
21 complains of chronic back pain from a car crash in 2005." We
22 will take the position that that is a mistaken medical
23 record. However, the Defendants, both of them, have embraced
24 this medical record, they have based their defenses on it,
25 and I need to call Penn National to the stand to ferret out

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1 the creditability legitimacy of this defense. So, I would
2 ask the Penn National claims representative did she make a
3 claim in 2005 for any bodily injury claims. How are bodily
4 injury claims reported? What databases do all the insurance
5 companies contribute to with this information? There's a
6 national database, it's called the ISO search. Did you go
7 back and look for that? Did you see whether or not she made
8 a 2005 claim?

9 The other issue, Your Honor, is I have -- she's
10 been insured with Penn National for years. I've asked them
11 to bring all her other claim files. They've produced four
12 claim files. The eldest of which dates back to 2004. So
13 they have a 2004 claim filed, but they're unable to produce
14 the 2005 claim file. So, because the defense of this case is
15 chronic back pain dating back to 2005, I'm entitled to cross
16 examine the Penn National representative as to what the
17 credibility of the evidence is that they have to support
18 that.

19 MR. BRATT: And I might add, Your Honor, that --

20 THE COURT: What, no, y, y --

21 MR. BRATT: I, I, I knew you were going to do that, I'm
22 sorry, Your Honor.

23 THE COURT: -- what, what exactly? No, no tag team --

24 MS. ZOIS: You might see me do this --

25 THE COURT: -- as to issue.

1 MS. ZOIS: -- during the trial (laugh). Thank you, Your
2 Honor.

3 THE COURT: So.

4 MR. GILLCRIST: I don't know if you need to hear from me
5 again, Your Honor, but, I'm, I'm sorry.

6 MS. ZOIS: Yeah, and just in addition to that, Your
7 Honor, how can the jury possibly evaluate the credibility of
8 that testimony if they don't know Penn's a party? Penn's
9 here defending that claim, yet Penn can't bring anything to
10 indicate that she made a bodily injury claim in 2005 that
11 they're so heavily relying on as to their medical defense in
12 this case?

13 THE COURT: Mr. Gillcrist.

14 MR. GILLCRIST: Your Honor, first I'm struck by the
15 irony of, uh, Mr. Bratt. First, attempting to give us one
16 set of strikes and then coming back and saying, on a
17 different issue, well, we should be able to disclose Penn
18 National to the jury and argue underinsured motorist and all
19 that. King is the case, and the question is is King
20 distinguishable by the facts of this case? We submit that it
21 is, we submit that the Court of Special Appeals in King or
22 Court of Appeals, I forget which, would not have decided that
23 case if it was an issue involving a tortfeasor, like I have
24 Ms. Sapp here. As Mr. Porcarelli argued, Ms. Sapp is the one
25 to be prejudiced here, it's my argument that this will

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1 prejudice her. The sole dispositive factor in whether they
2 get to Penn National's money in this case is Ms. Sapp's
3 liability. Did, was she liable and did the damages exceed
4 100? There is no other way that Penn National's exposed, and
5 that's exactly how Penn National will be exposed to
6 liability. It's -- Penn National's liability is dis (sic),
7 is perfectly dispositive of the amount of damages that are
8 awarded to Ms. Sapp.

9 Um, as far as, um, Counsel's argument about, um,
10 this prior claims, uh, person, we don't have any evidence
11 that she made a claim. Certainly the fact that she had a
12 prior injury to her li (sic), low back is relevant. Ms., um,
13 uh, Plaintiff in this case testified she didn't make a claim,
14 uh, no one is asserting she made a claim, as far as I know.
15 This business of bringing in a claims examiner on collateral
16 issues, uh, to prove something that nobody is contending is
17 ridiculous, and it doesn't add to the tort case, it actually
18 takes away from the tort case, and it causes the jury to be
19 confused, what we're dealing with here is a tort case, we
20 don't have to get in -- I'd submit to you that it would be
21 improper for Plaintiff to be calling a liability character
22 witness to get into claims process and claims handling, which
23 have nothing to do with this case, um, and is in no way
24 relevant, and to the extent that there's any remote relevance
25 would be seriously outweighed by the prejudice to my client.

1 Thank you.

2 THE COURT: Um, this case is different than King, um,
3 and, and, again, that was my question is there, was there any
4 claim independent of whatever the damages claim was going to
5 be in this case to bring in Penn National and the answer to
6 that is no. Because of that reason, um, uh, I do not think
7 it's appropriate to identify Penn National by name it will
8 just be an additional defendant. Um, and, uh, at least right
9 now I don't see the relevance of, of a claim, claim rep, but
10 we'll get to that when we need to, when we need to. So.

11 MS. ZOIS: There --

12 MR. BRATT: Your Honor, in light of the Court's ruling,
13 um, I'd ask that Mr. Porcarelli be barred from participating
14 in the trial.

15 THE COURT: Denied.

16 MR. BRATT: So, okay, and I'm not --

17 THE COURT: So he'll be introduced as, as, as, as c
18 (sic), another can (sic), another representative of the
19 Defendant.

20 MR. BRATT: Okay, and I'm not, I'm not arguing the
21 Court's ruling --

22 THE COURT: So.

23 MR. BRATT: -- I want to make sure I understand it --

24 THE COURT: Mm-hmm.

25 MR. BRATT: -- so that we can act accordingly.

1 THE COURT: Right.

2 MR. BRATT: So, Mr. Porcarelli will be identified as the
3 attorney for a defendant with an interest --

4 THE COURT: For --

5 MR. BRATT: -- in the case?

6 THE COURT: -- for another -- exactly.

7 MR. PORCARELLI: I'm sorry, I didn't catch that.

8 THE COURT: As an additional, um, as a defense counsel
9 for a party with an additional interest. So. Yes?

10 MS. ZOIS: As far as voir dire goes, Your Honor, um,
11 because the Court hasn't ruled on my ability to call the Penn
12 National representative to the stand we probably still need
13 to ask about Penn National --

14 THE COURT: I just said I, I indicated that I find it
15 very unlikely that I would allow the claims representative to
16 testify based on the proffer here before me. I'm gonna'
17 identify all names that are listed, the jury's gonna' or do
18 you know a person named Sherry Smith, is what I'm gonna' say,
19 yes or no they may or may not be called as a witness. So,
20 anybody that's listed I plan on going ahead and identifying
21 whether they're called or not, because I make that clear to
22 the jury.

23 MS. ZOIS: Right. And the other issue, too, was, um,
24 the Penn National representative would have been our first
25 witness, so if Your Honor wants to hear more argument about

1 why it's critical to the Plaintiff's case I'm essentially
2 prove, I have to prove a negative in this case.

3 THE COURT: Counsel, what I'm hearing right now in
4 limine is that the evidence that there was an accident in
5 2005 or 2005, whatever it was, came from a medical record.
6 That nobody is claiming that, apparently, from what everybody
7 said before, which is all I know about this case is that
8 neither Defendant is claiming that, that she had made a
9 claim, that the Plaintiff is not saying that she made a
10 claim, so I don't see what possible relevance calling a
11 claims representative to say we don't have any record of a
12 claim is to whether or not this lady was injured and how
13 badly she was injured in the accident, which is the issue
14 that this jury needs to decide.

15 MS. ZOIS: It's absolutely relevant because of the lack
16 of credibility of the weight that's being placed into that
17 medical record based on a claim's --

18 THE COURT: But if nobody's contending that it happened
19 why is it relevant to put somebody on to say it didn't
20 happen?

21 MR. BRATT: Because the only -- I apologize, Your Honor.

22 THE COURT: One at a time.

23 MR. BRATT: I will remain, I'll remain silent, Your
24 Honor.

25 THE COURT: I figured out -- exactly.

1 MR. BRATT: I --

2 MS. ZOIS: Your Honor, I --

3 MR. BRATT: -- I apologize, Your Honor.

4 MS. ZOIS: -- I think that once Your Honor sees the
5 defense of this case and how strongly they've grabbed a hold
6 of this chronic problem existing back to 2005, we're put in a
7 position of proving a negative. So, to the extent that the
8 Plaintiff is able to put on evidence that within the entire,
9 she was insured at the time, she was hit by a hit and run
10 driver. They're claiming that she's had miserable, horrible
11 chronic back pain since that date. And for the Plaintiff to
12 be hogtied into not being able to ed (sic), uh, educate the
13 jury on how claims are processed when a person does make a
14 bodily injury claim it, it goes to the credibility and the
15 weight of the credibility of that report.

16 THE COURT: I just don't see how a claims representative
17 is the best evidence for that kind of thing. It's your
18 Plaintiff and her --

19 MR. BRATT: (Unclear - two words) proffer and preserve
20 it.

21 THE COURT: -- physician. I'll let you put, at the
22 appropriate time I'll let you put a proffer on the record.

23 MR. BRATT: What, what we'd actually ask, Your Honor,
24 is, is because this, Ms. Zois and I view this as a central
25 part of our case. This is a very important issue. And what

1 I would ask the Court to do, if the Court will indulge us for
2 a few moments before the Court finally rules is, allow us to
3 in camera outside the presence of the jury, put the rep on
4 the stand and let Ms. Zois ask him a couple of questions.

5 THE COURT: My problem is, my problem is --

6 MR. BRATT: So Your Honor can see what we're talking
7 about.

8 THE COURT: If I may. My problem is this, I accept what
9 you're telling me. I just don't see how it's relevant as to
10 the issue in this case, which is has this lady been injured
11 in an accident, was there an accident before or not? The
12 claims representative is going to talk about making a claim,
13 that's one that's not the same thing as one there an
14 accident. And, two, making a claim is not the same thing as
15 reporting, um, that you're having back problems. That could
16 be done through medical records, through other medical
17 records and not through the claims representative. I don't
18 see how the claims representative is important to that issue,
19 especially when nobody's saying that she made a claim.

20 MS. ZOIS: Your Honor, it goes to the credibility --

21 THE COURT: Of who?

22 MS. ZOIS: -- of the report that they're relying on.
23 She did --

24 THE COURT: But the report is that -- whose report is
25 it?

1 MS. ZOIS: It's a doctor's report --
2 THE COURT: Whose doctor?
3 MS. ZOIS: -- it's a medical record. It's her doctor.
4 THE COURT: So, how is their claims representative
5 affecting a medical report from her doctor?
6 MS. ZOIS: I'm gettin' there.
7 THE COURT: All right. Keep talkin'.
8 MS. ZOIS: She was insured with Penn --
9 THE COURT: Okay.
10 MS. ZOIS: -- in 2005. She did make a claim --
11 THE COURT: Okay.
12 MS. ZOIS: -- in 2005. She made a property damage only
13 claim.
14 THE COURT: Okay.
15 MS. ZOIS: She did not make a bodily injury claim.
16 THE COURT: Okay.
17 MS. ZOIS: It was a hit and run case. She had less than
18 \$500 paid for a bumper tap from that claim.
19 THE COURT: And she can tell the jury that.
20 MS. ZOIS: True. But the defense of this is her
21 credibility as well.
22 THE COURT: But you're --
23 MS. ZOIS: They're attacking her credibility.
24 THE COURT: If, if I may.
25 MS. ZOIS: Yes.

1 THE COURT: If I may. The medical record that you're
2 telling me that they're making defense on is of her doctor --
3

MS. ZOIS: Correct.

4 THE COURT: -- not a doctor that was, she was sent to by
5 Penn National.

6 MS. ZOIS: Their doctors are heavily relying upon that
7 (unclear - two words).

8 THE COURT: I, I don't care about that, but the report
9 is something that is in her doctor's records --

10 MS. ZOIS: Correct.

11 THE COURT: -- correct?

12 MS. ZOIS: Correct.

13 THE COURT: Okay. What connection to the claims
14 representative does that document have?

15 MS. ZOIS: Well, there's also another doc --

16 THE COURT: No, no, no, no, no answer my question.

17 What, what does that reference in that document have to do
18 with making, with making whether she made a claim or not?

19 MS. ZOIS: The ability --

20 THE COURT: That's what I don't understand.

21 MS. ZOIS: Okay. The ability for a claims
22 representative to take the stand and confirm the veracity of
23 her testimony and confirm her credibility, which is being
24 wildly attacked in this case, that she did not make a bodily
25 injury claim in 2005, and a claim was made, but there's

1 absolutely no evidence that Penn National has that there was
2 any bodily injury claim made whatsoever in the 2005 claim.

3 THE COURT: Let me put it, let me put it to you this
4 way. Right now, as this case stands, I am not going to allow
5 the Plaintiff's rep to testify. At the close of your case
6 you can approach, as to approach and ask me to reconsider.
7 And if, at the close of Plaintiff's case, I think somehow
8 some limited version of that would, could be relevant I'll
9 give you the opportunity to do that and I'll also give
10 Counsel an opportunity to argue that further. But right now
11 I don't, I, it's just, it's so collateral, it is so outside,
12 um, I'm just, I just don't see the relevance right now. And
13 perhaps as the evidence plays out I might, but right now I
14 certainly don't.

15 MS. ZOIS: There was one document I did request that the
16 claims were, lots of documents that I requested the claims
17 representative bring with them, and one of them was whether
18 or not they ran a bodily injury indexing on her for that
19 claim.

20 THE COURT: And, again, right now I don't - I don't see
21 the, the possible relevance of that, but again, that's
22 something that you can, we can revisit after we've heard more
23 evidence.

24 MS. ZOIS: Okay.

25 MR. BRATT: Can I have one housekeeping issue, Your

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1 Honor?

2 THE COURT: Sure.

3 MR. BRATT: Um, which is is that, um, because the nature
4 of the Court's ruling on the identification of UM carrier is
5 a motion in limine, that doesn't preserve it for appellate
6 review. So, before we begin opening I'm gonna' need to
7 approach --

8 THE COURT: Certainly.

9 MR. BRATT: -- the bench and preserve that for the
10 record.

11 THE COURT: Any time that you all need to do that that
12 is certainly understood.

13 MR. BRATT: I just wanted to make sure Your Honor knew
14 what I was doing --

15 THE COURT: Ab (sic), it, trust me.

16 MR. BRATT: -- when I came over.

17 MS. HOWARD: So, so, Your Honor, having listed all this
18 would it be cur (sic), your choi (sic), uh, what you
19 instruction would be then we would add the name of the
20 witness, uh, who, uh, was here to your voir dire, to our voir
21 dire?

22 THE COURT: I had, I had a list, um, and quite frankly,
23 um, I have the Plaintiff's list has one, two, three, four,
24 five, six, seven, eight names on it. And I'm just checking,
25 because quite honestly, I was not supposed to have this trial

1 today. I --

2 MR. BRATT: We know.

3 THE COURT: -- got your file about quarter of --

4 MR. BRATT: Judge Nicklas has laryngitis.

5 THE COURT: Yes. What I usually do is everybody that
6 you all have identified I just read as potential witnesses.

7 MR. GILLCRIST: And, Your Honor, out of respect for your
8 ruling and, and for opposing Counsel, uh, I don't want to
9 have to go back over this case on some appeal with a name
10 that came up after the fact once we did voir dire, so, if you
11 could add another name of Heather Arnold, just in case we get
12 to that point in the trial where you want to revisit that
13 issue, and for some, if for some reason you change your mind
14 and I need to have that supervisor come down to cover some
15 issues that Mr. Hagen can't cover, we could at least identify
16 her to any perspective juror and that won't be an issue.
17 Would that be okay?

18 THE COURT: That's fine. And, quite honestly, I'm
19 gonna' sit here and list all the names and make sure I don't
20 forget anybody of the folks that should be named.

21 MR. GILLCRIST: Okay.

22 THE COURT: I have Steve Hassler, Sharon Hamilton,
23 Margaret Esposito, Barb Selner, Carla Bussard, Lisa Cholz
24 (sic), Cholewczynski, Laura Cron, Kelsey Sapp, um, I haven't
25 coordinated the, there was a Kristen Sapp, Brittany Renne,

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1 Megan Davis, um, Jacqueline Exline-Hassler, um, Gary London,
2 Kevin McGrail, Neil Naff, Stephen Sloan, add Heather Arnold
3 and, and Jeffrey Hagan. Is that everybody?

4 MS. HOWARD: Your Honor, Your Honor, um, the officer,
5 um, which maybe I didn't list . . .

6 THE COURT: Trooper Chicarelli.

7 MS. HOWARD: You got it.

8 THE COURT: Okay. I knew I'd forgotten somebody. Okay.
9 And, Counsel, when I go through that last to the jury when I
10 am done I will ask you, Counsel, did I neglect to name,
11 mention anybody. So, if I forget somebody when I'm going
12 down my list you all can jump up and say yes, Your Honor,
13 there's so and so, and so and so, just so that we, um, make
14 sure that we have everybody listed.

15 MR. BRATT: And, just, does Your Honor have a preference
16 or standing rule about moving about the courtroom during this
17 event, examination?

18 THE COURT: No. Other than, obviously, you know, if you
19 get too close to the witness you --

20 MR. BRATT: I won't.

21 THE COURT: -- ask, you know, for permission to approach
22 the witness, but if you wanna' questions, um, however you
23 wanna' question --

24 MR. BRATT: I like to stand next to the jury box --

25 THE COURT: -- seated or standing is, is --

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1 MR. BRATT: -- is that okay?

2 THE COURT: -- that's fine.

3 MR. BRATT: Great.

4 THE COURT: That's fine. So, okay. Well, let me take a
5 second to make notes of what we just ruled on to make another
6 list of the witnesses. We'll get, uh, let 'em know we're
7 working on -- oh, 'cause there's an --

8 THE CLERK: Finding out what's goin' on.

9 THE COURT: -- finding out, 'cause there's another jury,
10 and they're dividing up the potential jurors. So, we'll
11 take, um, I'm not gonna' say five minutes, let's say, uh, 20
12 after we'll come back, okay?

13 MR. GILLCRIST: Thank you, Your Honor.

14 MS. HOWARD: Thank you, Your Honor.

15 MR. BRATT: Well, that's like eight minutes (unclear -
16 one word).

17 THE CLERK: All rise.

18 (Whereupon, from 11:11 o'clock, a.m. until 11:24
19 o'clock, a.m., a recess was taken.)

20 THE CLERK: All rise.

21 THE COURT: And good morning again, everyone. Please be
22 seated.

23 MR. BRATT: Thank you, Your Honor.

24 THE COURT: Can we go ahead and let them know? And
25 we'll be bringing up the ladies and gentlemen in, in a

1 moment.

2 MS. HOWARD: Your Honor, one of the witnesses who's
3 under the rule on witnesses, um, Megan, or Brittany Renne or
4 Megan Davis is just going to bring in a set of keys for my
5 client.

6 THE COURT: Okay.

7 MS. HOWARD: Bring it up here and then walk out. Would
8 that be okay?

9 THE COURT: That's absolutely fine.

10 MS. HOWARD: Thank you, Your Honor.

11 (Conversations being held simultaneously while waiting
12 for prospective jury panel.)

13 MR. GILLCRIST: Your Honor. With regard to the
14 questions that you'll be started with is there a particular
15 set you're working with just so I can follow you on the
16 questions? (Unclear - two words) have your own.

17 THE COURT: Usually what I do is I take your proposed
18 one and I cor (sic), I kinda' put 'em together. Um, I will
19 have you approach several times, um, before we're done with
20 all the questioning to make sure we've covered everything.

21 MR. GILLCRIST: Okay. Great. Thank you.

22 (Conversations being held simultaneously while waiting
23 for prospective jury panel.)

24 (Prospective jury panel entered the courtroom.)

25 THE COURT: And good morning, ladies and gentlemen, come

1 on in and please have a seat.

2 (Long pause.)

3 THE COURT: And good morning, ladies and gentlemen.
4 We've finally brought you up here, we've been doing all kinds
5 of other stuff while you've been down there waiting. Um, I,
6 you've been called as potential jurors in a civil case that
7 we expect will last at least through Thursday, but may run
8 into Friday. Um, this is, is a civil case. Um, in a moment
9 I'm going to introduce everybody that's involved in this
10 case, um, and, uh, but I'd also like to take a second to go
11 through how things are going to go from this point forward
12 this morning.

13 I know that you've been downstairs and you've seen
14 a video on the jury selection process and how it all goes,
15 but I will tell you every judge does it a little bit
16 differently, so I like to tell you how I conduct, um, my jury
17 selections so that, uh, the next hour or so that, uh, you all
18 will kinda' have an idea what's going on.

19 First of all, my name is Judge Solt, S-O-L-T, and
20 I've been assigned the trial of this case, um, again that we
21 expect at least to last through Thursday, but may run through
22 Friday. And, like I said, this is a civil case.

23 In a moment I'm going to begin the actual jury
24 selection process. The first thing that's going to happen is
25 the clerk will call the roll to see that we have everyone

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1 here that was assigned to this case. As you know, there were
2 more to you downstairs then came up for this case, as some
3 folks were assigned to this case, some folks were not. And,
4 also as you know, you should have been given a number from
5 one to 40. We don't call anybody by name anymore, respecting
6 our jurors' privacy. So, we're just gonna' call the number
7 one. If you are Juror Number 1, we're gonna' ask you to
8 stand up and indicate out loud here, present, and then go
9 ahead and have a seat. So, alrighty, just, all right, we're
10 gonna' go through the whole list, make sure that I have
11 everybody here that's supposed to be here.

12 After we make sure that we have all 40 of you here,
13 the clerk will ask you all to stand, raise your right hand
14 and to take an oath to tell us the truth during the jury
15 selection process, then everybody will have a seat again.

16 Then I will start asking you a number of questions,
17 as if do you know any of these folks? Do you know anything
18 about the facts of this case? Um, you know, what's your
19 background with respect to some of the issues that could be
20 relevant in this case? If you believe that that question
21 pertains to you, yes, I know this witness, yes, I might know
22 something about this, I'm gonna' ask you to stand. I'm
23 gonna' then call on everybody that's standing to give me just
24 one thing at that point, and that's your number. So, in
25 other words, when you're out there as a big group I don't

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1 wanna', you don't have to tell me who you know or what your
2 issue is. After we're done asking all the questions, and I'm
3 gonna' have everybody that responded come up here and sit in
4 the jury box, and you're gonna' come up here and we're gonna'
5 have an individual private time for you to tell me who you
6 know, what your issue is. Okay? So, no specific
7 information, other than your number, is what you give when
8 you're out there as a group. Okay? After that the lawyers
9 will make some, we'll do some legal stuff, and then we'll
10 actually have the jury seated in this case. And that's how
11 it's gonna' go. Okay? Madam Clerk, if you would call the
12 roll. And, again, just stand up, say yes I'm Juror Number 1
13 and have a seat.

14 (Roll call taken.)

15 THE CLERK: Ladies and gentlemen, please stand and raise
16 your right hands.

17 (Prospective jury panel sworn.)

18 THE CLERK: You may be seated.

19 VOIR DIRE

20 THE COURT: Thank you, ladies and gentlemen. As you
21 know when I spoke to you just a moment ago, you've been
22 called as a potential juror in a civil case, um, which
23 involves a motor vehicle accident that occurred on Route 70
24 here in Frederick County near the exit ramp of Quinn Road,
25 and it happened on or about June 26, 2009. Is there any

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1 member of the panel that has read or heard or has any
2 familiarity with that incident on that date? If so, please
3 stand. And I see no responses to that question.

4 In this case the Plaintiff is being rep (sic), is
5 Ms. Jacqueline Exline-Hassler, and she's being represented by
6 Ms. Laura Zois and Mr. John Bratt. Counsel, if you'd stand
7 and face the ladies and gentlemen of the panel.

8 MS. ZOIS: Thank you, Your Honor.

9 MR. BRATT: Good morning, ladies and gentlemen, I'm John
10 Bratt.

11 MS. ZOIS: Good morning, I'm Laura Zois.

12 MS. EXLINE-HASSLER: Hi, I'm Jacqueline Exline-Hassler.

13 THE COURT: Is there any member of the panel that
14 believes they're acquainted in any way with the Plaintiff or
15 Counsel? If so, please stand. Thank you, folks, you can
16 have a seat and I saw no responses to that questions as well.

17 This case the Defendant is Ms. Kirsten Sapp, and,
18 uh, Defense Counsel are Ms. (sic), um, Walter Gillcrist, Anne
19 Howard and Mr. Guido Porcarelli.

20 MR. PORCARELLI: Good morning.

21 THE COURT: Is there any member of the panel that
22 believes they're acquainted in any way with either Defendant
23 or any Counsel? If so, please stand. Thank you, you all may
24 have a seat, and I see no responses from that question
25 either.

1 Ladies and gentlemen, there are a number of
2 potential witnesses that may testify at trial, that may not
3 testify at trial, but I'm gonna' read you a series of names,
4 and the question is the same whether you believe that you're
5 acquainted in any way with these individuals. There are a
6 number of names so I'm gonna' read them in groups of, um,
7 four or five, and then pause to let folks stand if they know
8 anyone. I also, because there's a long list, I'm also gonna'
9 ask Counsel to make sure that I didn't neglect to identify
10 anyone who is a potential witness in this case. And here it
11 goes, um, Maryland State Police officer Scott Chicarelli,
12 Steve Hassler, Sharon Hamilton, and Margaret Esposito. Is
13 there any member of the panel that believes they're
14 acquainted with any of these individuals? And I see no
15 responses.

16 Barb Selner, Carla Bussard, Lisa Cholewczsynki, and
17 I'm gonna' spell that last name, C-H-O-L-E-W-C-Z-S-Y-N-S-K-I
18 or a Laura Cron, C-R-O-N. Anyone believes they're acquainted
19 with any of these individuals? If so, please stand. And,
20 again, I see no responses to that.

21 A Kelsey Sapp, Brittany Renne, Megan Davis, or
22 Jeffrey Hagen. Is there any member of the panel that
23 believes they're acquainted with any of these individuals?
24 If so, please stand. And, again, I see no responses to that.

25 A Dr. Neil Neff (sic), N-E-F-F (sic), Dr. Kevin

1 McGrail, M-C-G-R-A-I-L, a Dr. Stephen Sloan or a Dr. Gary
2 London. Is there any member of the panel that believes
3 they're acquainted with any of these individuals? If so,
4 please stand. And I see no responses to that.

5 Counsel, did I neglect to identify any potential
6 witnesses?

7 MS. ZOIS: I don't believe so, Your Honor.

8 MR. PORCARELLI: I don't believe so.

9 MR. GILLCRIST: Just one, Your Honor, Heather Arnold.

10 THE COURT: Heather Arnold. Thank you.

11 MR. GILLCRIST: You're welcome.

12 THE COURT: A Heather Arnold. And, again, no one
13 indicated familiarity. I said I always forget one, so
14 that's why I always ask.

15 Now, ladies and gentlemen, this next question has a
16 couple parts to it, so I'll repeat it at least twice. Is
17 there any member of the panel, or any member of your
18 immediate family, parent, spouse or child, that has ever made
19 any kind of claim for a personal injury, (unclear - one word)
20 for a car accident or a worker's compensation? Any kind of
21 claim like that, or had that kind of claim made against you?
22 You or any member of your family that's ever made any kind of
23 claim for personal injury or worker's compensation or someone
24 has made a personal injury claim or worker's compensation
25 claim against you? If so, please stand. And, again, all I

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1 want to know is names and numbers at this point. Okay. And,
2 I'm gonna' start over there, 'cause there are only three over
3 there in that corner. And, sir, if you'd start and then
4 we'll go across.

5 JUROR NUMBER 7: Name?

6 THE COURT: Just your number.

7 JUROR NUMBER 7: Seven.

8 THE COURT: Seven? Thank you, sir.

9 JUROR NUMBER 26: Twenty-six.

10 THE COURT: Twenty-six, thank you, ma'am.

11 JUROR NUMBER 36: Thirty-six.

12 THE COURT: Thirty-six, thank you. And we're gonna'
13 start up here, ma'am, with you in the black and then go
14 across.

15 JUROR NUMBER 30: Thirty.

16 THE COURT: Thirty? Thank you.

17 JUROR NUMBER 21: Twenty-one.

18 THE COURT: Twenty-one, thank you.

19 JUROR NUMBER 33: Thirty-three.

20 THE COURT: I'm sorry, I couldn't hear you.

21 JUROR NUMBER 33: Thirty-three, thank you.

22 JUROR NUMBER 9: Nine.

23 THE COURT: Nine, thank you.

24 JUROR NUMBER 11: Eleven.

25 THE COURT: Eleven.

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1 JUROR NUMBER 34: Thirty-four.
2 THE COURT: Thank you.
3 JUROR NUMBER 25: Twenty-five.
4 THE COURT: Twenty-five, thank you.
5 JUROR NUMBER 37: Thirty-seven.
6 THE COURT: Thirty-seven, thank you.
7 JUROR NUMBER 39: Thirty-nine.
8 THE COURT: I'm sorry?
9 JUROR NUMBER 39: Thirty-nine.
10 THE COURT: Thirty-nine, thank you. Yeah, the acoustics
11 in this courtroom aren't very good from back to front anyway.
12 Now, is there any member of the panel or any member, again,
13 of your immediate family, parent, spouse or child, that has
14 received legal training, lawyer, paralegal, legal secretary,
15 legal assistant? Anything like that. If so, please stand.
16 Okay. And yes, ma'am.
17 JUROR NUMBER 36: Thirty-six.
18 THE COURT: Thank you.
19 JUROR NUMBER 11: Eleven.
20 THE COURT: Eleven, thank you, sir.
21 JUROR NUMBER 21: Twenty-one.
22 THE COURT: Twenty-one, thank you, ma'am. Same
23 question, different area, you or any member of your immediate
24 family that is received medical training doctor, nurse,
25 medical assistant, EMT, anything like that? If so, please

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1 stand. Yes, ma'am.
2 JUROR NUMBER 36: Thirty-six.
3 THE COURT: Thank you.
4 JUROR NUMBER 3: Three.
5 THE COURT: Three?
6 JUROR NUMBER 3: Three.
7 THE COURT: Thank you. Eleven?
8 JUROR NUMBER 11: Eleven.
9 THE COURT: Okay.
10 JUROR NUMBER 19: Nineteen.
11 THE COURT: Thank you, ma'am.
12 JUROR NUMBER 33: Thirty-three.
13 THE COURT: Thirty-three.
14 JUROR NUMBER 24: Twenty-four.
15 THE COURT: Twenty-four.
16 JUROR NUMBER 34: Thirty-four.
17 THE COURT: Thirty-four.
18 JUROR NUMBER 35: Thirty-five.
19 THE COURT: Thirty-five.
20 JUROR NUMBER 13: Thirteen.
21 THE COURT: Thirteen.
22 JUROR NUMBER 31: Thirty-one.
23 THE COURT: Thirty-one.
24 JUROR NUMBER 40: Forty.
25 THE COURT: Forty.

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1 JUROR NUMBER 16: Sixteen.

2 THE COURT: Sixteen. Now, in this case the Plaintiff
3 has brought suit against the Defendant claiming personal
4 injuries as a result of this automobile accident that
5 occurred, um, on or about June 26th on Route 70. Is there
6 anything about the nature of the claim being made by the
7 Plaintiff that, uh, would cause you to, uh, believe that you
8 could not be a fair or impartial jurors in this case?
9 Anything about the nature of the claim, a claim for personal
10 injury as a result of an automobile accident you believe you
11 could not be fair and impartial? If so, please stand. And
12 your number, ma'am?

13 JUROR NUMBER 30: Thirty.

14 THE COURT: Thank you. And --

15 JUROR NUMBER 34: Thirty-four.

16 THE COURT: Thirty-four? Now, as I said, we are hoping
17 this case will conclude on Thursday, but it may run through
18 Friday. Is there any member of the panel who is selected
19 would be unable to serve through Friday if necessary? If so,
20 please stand. Yes, sir.

21 JUROR NUMBER 1: Juror one.

22 THE COURT: Number one? Okay, thank you. Yes, ma'am.
23 Right --

24 JUROR NUMBER 9: Jury nine.

25 THE COURT: Thank you.

1 JUROR NUMBER 8: Eight.
2 THE COURT: Okay.
3 JUROR NUMBER 25: Twenty-five.
4 THE COURT: Twenty-five.
5 JUROR NUMBER 18: Eighteen.
6 THE COURT: Eighteen.
7 JUROR NUMBER 38: Thirty-eight.
8 THE COURT: Thirty-eight.
9 JUROR NUMBER 23: Twenty three.
10 THE COURT: Twenty-three. (Cough) Excuse me. Is there
11 any member of the panel that has any physical concerns, any
12 medical conditions that you believe could prevent you from
13 serving as a fair and impartial juror in this case? If so,
14 please stand. I see no responses from that. And, Counsel,
15 would you approach for a minute?
16 (Counsel approached the bench and the following
17 occurred:)
18 (Husher turned on.)
19 THE COURT: Make sure we have everybody up here. Um,
20 I'm, of course, I'm going to conclude with any reason you
21 couldn't be fair and impartial, and I'm also going to ask a
22 question if anybody belongs to any advocacy groups for
23 involving allegations of tort reform or anything like that.
24 Um, sp (sic), other specific requests, I'll ask Plaintiff
25 first and then we'll go to Defense.

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1 MS. ZOIS: Oh, um --
2 THE COURT: Mh.
3 MS. ZOIS: -- yes, Your Honor, there's a couple.
4 THE COURT: Mm-hmm.
5 MS. ZOIS: Um, I don't believe that the Court asked
6 about, um, have you or any member of your immediate family or
7 close personal friend ever had back problems, treatment for
8 back problems?
9 THE COURT: Okay.
10 MS. ZOIS: Permanent injury, back surgery, um, pain
11 management injections?
12 MR. BRATT: These are our requests nine through 19, Your
13 Honor.
14 THE COURT: So, mm-hmm.
15 MS. ZOIS: Correct. Um, have you (unclear - two words),
16 have you ever served on a jury before? Um, I think that
17 your, one of your questions addressed 22 pretty broadly, pre-
18 conceived notions, because I wasn't sure that was it. Um,
19 does anyone have any experience in the claims adjusting
20 process without using the word insurance, um --
21 THE COURT: I was going to use Defense Counsel --
22 MR. BRATT: I was just checking --
23 THE COURT: -- because I have a way to ask that, and I
24 just wanted to --
25 MS. ZOIS: Okay, sure.

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1 THE COURT: -- get their approval before I (unclear -
2 one word) that out.

3 MS. ZOIS: Um, the tort reform question that --

4 THE COURT: Yeah, I'm gonna' cover it.

5 MS. ZOIS: -- um, do I, does anyone have any difficulty
6 following the instructions of the Court of the law?

7 THE COURT: That's, that's my last one --

8 MS. ZOIS: Okay, good.

9 THE COURT: -- that I give is --

10 MS. ZOIS: So, you'll ask that.

11 THE COURT: -- Courts (unclear - two words) give you any
12 instructions on law that applies to this case or any juror
13 that believes that they could not follow the Court's
14 instructions. That's kinda' my last one.

15 MS. ZOIS: Do you know any other member of the panel.

16 THE COURT: Okay.

17 MS. ZOIS: Is that it?

18 MR. BRATT: That is what I was going to ask you, and
19 that's why I was (unclear - two words).

20 MR. GILLCRIST: Just a couple comments on theirs. Um,
21 in terms of the, his claims adjuster I would ask that you ask
22 the jury is any member of the jury --

23 THE COURT: I always.

24 MR. GILLCRIST: -- or has any member of the jury been
25 involved in the investigation --

1 THE COURT: Investigation of --
2 MR. GILLCRIST: -- or evaluation of, um --
3 THE COURT: Evaluating claims or investigating --
4 MR. GILLCRIST: I think that'll be fine, yeah.
5 THE COURT: Issues is, is how I usually do it.
6 MR. GILLCRIST: That'll be fine.
7 THE COURT: But before I did that I, I knew I was going
8 to have you up here so I thought I'd go ahead and just do it
9 that way before I asked them.
10 MS. ZOIS: That works for (unclear - one word).
11 THE COURT: So.
12 MR. GILLCRIST: And then in terms of the injury claims
13 or the injury questions, um, I think we should just qualify
14 it by saying if you've had substantial problems --
15 THE COURT: Mm-hmm.
16 MR. GILLCRIST: -- so that we don't get up the person
17 who --
18 THE COURT: Substantial.
19 MR. GILLCRIST: -- woke up yesterday with a stiff neck
20 or something.
21 THE COURT: So.
22 MR. GILLCRIST: Um, just --
23 MS. ZOIS: I like my questions.
24 THE COURT: So.
25 MR. GILLCRIST: -- keep it (unclear - one word)

1 something more substantial so that, you know . . .

2 THE COURT: What I will probably do is say, um, this
3 issue, this case involves allegations of injuries sustained
4 allegedly to a, to the back. Is there any member of the
5 panel this is sustained significant injury to the back, and
6 then if they answer yes they can come up here and you can do
7 the follow up as to what they know and when. There's
8 something --

9 MR. PORCARELLI: Or a significant medical problem --

10 THE COURT: So.

11 MR. PORCARELLI: -- (unclear).

12 THE COURT: But, something like, (unclear - two words)
13 like, 'cause again, folks that answer are going to come up
14 here and we can do the follow up, and you, so you know then
15 whether I had a stiff neck yesterday verses, you know, I've
16 had three back fusions, so.

17 MR. GILLCRIST: Uh, two others, Your Honor, if we might
18 ask whether anybody's a member of union, a member of a union,
19 because I think the Plaintiff may be a member of a union. I
20 think that she's employed by a union. Just wanted to see if,
21 uh, she's --

22 MS. ZOIS: I don't know if she's a employee, she's a
23 (unclear - two words).

24 MR. BRATT: (Unclear -- two words) she's employed by.

25 MS. ZOIS: She works for, she employed by.

1 MR. GILLCRIST: She's employed by a union. And so, uh,
2 we wanted to see if anybody else was a member of a union.

3 MR. PORCARELLI: We would join in that.

4 MS. ZOIS: I would object to that. I don't know how
5 that would give edification of the Court to strike for cause.

6 MS. HOWARD: Just for purpose (unclear - one word).

7 MR. GILLCRIST: Well, it could be for preemptory too, if
8 we believe that perhaps there's some af, affinity between
9 members of, uh, union organizations.

10 MR. BRATT: (Unclear.)

11 MS. ZOIS: (Unclear - one word). That's not the purpose
12 of voir dire.

13 MR. BRATT: I, I'd, I'd like to point out that the
14 purpose of voir dire is to ferret out bias, it's not to be
15 used for detailing peremptories, which I'm sure you know by
16 the way you looked at me (laugh).

17 THE COURT: I've been doin' this job a while. Um, I'm,
18 I'm not convinced that asking whether they're a member of a
19 union. I'm gonna' ask that, you know, if you belong to any
20 organizations --

21 MR. GILLCRIST: Okay.

22 THE COURT: -- that could affect your --

23 MR. GILLCRIST: That's fair.

24 THE COURT: -- ability to be fair and impartial, rather
25 that specifically target union this or that or that or the

1 other.

2 MR. GILLCRIST: Okay. The only other thing I had, and I
3 don't know if Your Honor has a way of handling this, uh, or
4 whether you think it's even appropriate, but, um, there is
5 going to be a lot of documentation I suspect coming in, I
6 just don't know how you handle whether folks can read and
7 write the English language on medical records that may be put
8 in front of them or anything like that.

9 THE COURT: How about I do this that qualifications to
10 serve as a Maryland juror indicate that you must be a citizen
11 of the United States, a resident of Frederick County and, um,
12 be able to read and write the English language with
13 sufficient understanding. Is there any --

14 MS. HOWARD: (Unclear.)

15 THE COURT: because then it, it's a broad spectrum that
16 --

17 MR. GILLCRIST: Yep.

18 THE COURT: -- so I'd kind of handle it that way.

19 MR. GILLCRIST: That's fine.

20 THE COURT: 'Cause that's also, like sometimes you get a
21 request to ask if anybody's a citizen. And, that again, I
22 kind of just do it --

23 MS. HOWARD: Very nice, Your Honor.

24 THE COURT: -- that's a nice gentle way to --

25 MR. GILLCRIST: No, that works.

1 THE COURT: Okay. Okay, now, what I'll do is I'll go
2 ahead and ask those follow up questions then, um, before
3 we're done I'll bring you up here one more time just to make
4 sure that we, 'cause, we have everything covered.

5 MS. HOWARD: Wonderful.

6 MR. GILLCRIST: Thank you.

7 MR. BRATT: All right, thank you, Your Honor.

8 MR. GILLCRIST: Thank you.

9 MS. ZOIS: Thank you, Your Honor.

10 (Counsel returned to the trial tables and the following
11 occurred:)

12 THE COURT: Okay. Just a couveck (sic), couple more
13 questions, we're moving right along. Is there any member of
14 the panel, or any member of your immediate family that has
15 ever em, um, employed, um, in any kind of occupation where
16 you evaluated or investigated claims? If so, please stand.
17 Yes, numbers, please.

18 JUROR NUMBER 10: Ten.

19 THE COURT: Ten.

20 JUROR NUMBER 19: Nineteen.

21 THE COURT: Ten and 19, thank you.

22 JUROR NUMBER 12: Twelve.

23 THE COURT: And what's your number, sir?

24 JUROR NUMBER 12: Twelve.

25 THE COURT: Twelve? Thank you. Now, ladies and

1 gentlemen, in this case the injuries asserted, um, allegedly
2 occurred to the Plaintiff's, um, back, and, uh, the
3 allegations will include information about, um, injuries to a
4 back and, uh, treatment as a result thereof. Is there any
5 member of the panel, um, that has suffered any, what I'm
6 gonna' call significant back injury? If so, please stand.
7 Okay.

8 (No response.)

9 THE COURT: Is there any member of the panel who belongs
10 to any organization, um, that, uh, has any beliefs in the
11 civil justice system that you believe could affect your
12 ability to be fair or impartial in this case? If so, please
13 stand.

14 (No response.)

15 THE COURT: To qualify as a juror in the state of
16 Maryland one must be a United States citizen, a resident of
17 Frederick County, and, uh, must be able to read and write
18 sufficiently well to understand the proceedings in court. Is
19 there any member of the panel who believes that they could
20 not, they might not possibly meet those basic qualifications?
21 If so, please stand. And I see no responses to that, either.
22 I'm gonna' check my notes.

23 Is there any member of the panel that has ever
24 served as a juror before? Okay, and we're gonna' start over
25 here again and we'll go over . . .

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1 JUROR NUMBER 26: Twenty-six.
2 THE COURT: Twenty-six, thank you.
3 JUROR NUMBER 21: Twenty-one.
4 JUROR NUMBER 27: Twenty-seven.
5 THE COURT: Twenty-seven.
6 JUROR NUMBER 6: Six.
7 THE COURT: Six.
8 JUROR NUMBER 19: Nineteen.
9 THE COURT: Nineteen.
10 JUROR NUMBER 8: Eight.
11 THE COURT: Eight.
12 JUROR NUMBER 14: Fourteen.
13 THE COURT: Fourteen.
14 JUROR NUMBER 5: Five, five.
15 THE COURT: Five, thank you. And is there any member of
16 the panel that knows another panel member? Do you have any
17 friends on the panel that are up here with you? Okay, if you
18 could give me your numbers.
19 JUROR NUMBER 18: Eighteen.
20 THE COURT: Eighteen.
21 JUROR NUMBER 23: Twenty-three.
22 THE COURT: And 23, thank you. Now, ladies and
23 gentlemen, when the trial has concluded, um, it's my job, as
24 the judge, to give you instructions on the law to apply in
25 this case. Is there any member of the panel who believes

1 that they could not follow the Court's instructions as to the
2 law for any reason? If so, please stand. And I see no
3 responses to that. And, Counsel, approach one last time and
4 then I'm gonna' have at least one more question for you.

5 (Counsel approached the bench and the following
6 occurred:)

7 (Husher turned on.)

8 THE COURT: I was just gonna' get everybody over here.
9 I always ask my last wrap up question for . . .

10 MS. ZOIS: Um, can you give me the verbiage that you
11 used for the back question again, Your Honor?

12 THE COURT: Is there any member of the panel, I said, I
13 said, this case involves allegations of a back injury and
14 treatment to the back.

15 MS. ZOIS: Mm-hmm.

16 THE COURT: Is there any member of the panel that has
17 sustained a significant back injury?

18 MS. ZOIS: Okay.

19 THE COURT: If so, please stand.

20 MS. ZOIS: And that's what I thought the Court said, and
21 I, I guess I would just ask it to be broader to include your
22 close, immediate personal family member or close friends, and
23 that sort of thing.

24 THE COURT: Okay.

25 MS. ZOIS: And then, and maybe if we could water down

1 significant, I can't imagine that out of a panel of 40 people
2 that not a single person stood up. Um --

3 MR. BRATT: I've never heard of that.

4 MS. ZOIS: -- I think maybe that, I've never ever, ever
5 --

6 THE COURT: So.

7 MS. ZOIS: -- had that happen. So, I think that maybe
8 it was too broadly read, um . . .

9 THE COURT: I'll make that a little narrower.

10 MS. ZOIS: Okay.

11 THE COURT: (Unclear - two words.)

12 MR. BRATT: No problem.

13 MS. ZOIS: A little broader I guess --

14 THE COURT: So.

15 MS. ZOIS: -- is the --

16 THE COURT: Exactly.

17 MS. ZOIS: Okay.

18 MR. BRATT: Thank you, Your Honor.

19 THE COURT: Sure.

20 MS. ZOIS: Thank you. Okay.

21 (Husher turned off.)

22 (Counsel returned to the trial tables and the following
23 occurred:)

24 THE COURT: I'm gonna' slightly rephrase one of my
25 questions and, and make it a little bit broader. Um, with

1 respect to the question regarding injury to the back, any
2 member of the panel or any member of your, um, significant
3 immediate family that has suffered a back injury, more
4 significant than I have a stiff neck this morning, um, but
5 again some back, back injury issues, if so, please stand.
6 Okay, and we'll go th (sic).

7 JUROR NUMBER 21: Twenty-one.

8 THE COURT: Twenty-one.

9 JUROR NUMBER 33: Thirty-three.

10 THE COURT: Thirty-three.

11 JUROR NUMBER 19: Nineteen.

12 THE COURT: Nine teen.

13 JUROR NUMBER 13: Thirteen.

14 THE COURT: Thirteen.

15 JUROR NUMBER 32: Thirty-two.

16 THE COURT: Thirty-two, thank you.

17 JUROR NUMBER 25: Twenty-five.

18 THE COURT: Twenty-five.

19 JUROR NUMBER 27: Twenty-seven.

20 THE COURT: Twenty-seven.

21 JUROR NUMBER 14: Fourteen.

22 THE COURT: Fourteen. Any other reason, ladies and
23 gentlemen, that you believe you couldn't, that we haven't
24 already talked about in my questions, that you believe that
25 you could not be a fair and impartial juror in this case if

1 so, please stand. Okay, and I see no responses to that.

2 Now, ladies and gentlemen, part two of the jury
3 selection is we're gonna' do the follow up here. That means
4 if you stood and you indicated that you had information in
5 response to any of the questions I'm gonna' ask you to, um,
6 and by groups, I'm gonna' start with one through 15 to come
7 up and have a seat in the jury box, and then I will call on
8 the folks in the jury box to come up, come up here and we're
9 cluster at the bench like you saw me do with Counsel and I'll
10 have that husher on, and we'll do all the follow up here, who
11 you know, who's involved with what, and all that stuff, okay?
12 This is the part that gets really boring for you, but it's
13 really important for the lawyers to know what's going on.
14 So, I'm just gonna' ask you if you're out in the audience if
15 you could try to keep your voices down just because even
16 though we're gonna' have the husher on sometimes the, um, it
17 can get a little noisy in the courtroom. We'll try to move
18 through this as quickly and, hopefully, as painlessly as
19 possible.

20 If you're out there sitting and you say, you know,
21 I didn't stand in answer, response to question number three
22 and I should have. If you think that you should have
23 answered and you didn't, please come on up and have a seat
24 and just tell us that at the beginning, hey, I didn't stand
25 when you asked that question, but I wanna' give you this

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1 information. Okay?

2 So, Jurors one through 15, if you either stood and
3 answered a question or you're thinking now, you know, I
4 should have stood and I didn't, if you'd come on up and have
5 a seat in the jury box and then we're gonna' do the follow up
6 up here. And, Counsel, if you all wanna' come on up, and...

7 (Prospective juror's approached the bench, and the
8 following occurred:)

9 THE COURT: At least this is better than jury, courtroom
10 number one, it's really tight up by the bench, so.

11 MALE VOICE: Your Honor, is it okay if I (unclear - two
12 words)?

13 THE COURT: Absolutely. You can put your --

14 MALE VOICE: (Unclear.)

15 THE COURT: -- please feel free, just don't cover that,
16 that's the microphone.

17 FEMALE VOICE: (Unclear.)

18 THE COURT: Sure, yeah.

19 (Husher turned on.)

20 THE COURT: Okay, ma'am, you're right here on the end
21 you, you win, why don't you come on up.

22 FEMALE VOICE: Hi there.

23 JUROR NUMBER 15: I didn't actually stand up to any of
24 the questions, because I'm not sure why my concerns fall.

25 THE COURT: Okay, now, first of all --

1 JUROR NUMBER 15: Whisper?

2 THE COURT: -- you need to tell us what your number is.

3 JUROR NUMBER 15: Fifteen. Um, I really don't have any
4 (unclear - one word) I could not be here or be fair. I do
5 have a concern, I have a son who's 17, he's on probation, who
6 over the last two weeks has been to the hospital a few times
7 --

8 THE COURT: Okay.

9 JUROR NUMBER 15: -- saying he's gonna' kill himself,
10 and so I'm a little worried about being out until Friday
11 without eyes on him.

12 THE COURT: Mm-hmm.

13 JUROR NUMBER 15: 'Cause he's home today, tomorrow.

14 THE COURT: Okay.

15 JUROR NUMBER 15: And he has mental health appointments
16 quite frequently. So, that really didn't fall into anything.

17 THE COURT: Counsel.

18 MS. ZOIS: Do you think that maybe if you were here
19 you'd be distracted worrying about your son at home?

20 JUROR NUMBER 15: I'm worried about him, 'cause he's
21 just --

22 MS. ZOIS: Do you think you'd be distracted to the point
23 that you wouldn't be able to pay attention to the evidence,
24 'cause you're worried about him?

25 JUROR NUMBER 15: (Unclear - four words) done quickly.

1 MS. ZOIS: Right.

2 JUROR NUMBER 15: So.

3 THE COURT: Counsel?

4 MR. GILLCRIST: No questions.

5 THE COURT: No questions? Okay, thank you, go ahead and
6 have a seat.

7 JUROR NUMBER 15: Okay.

8 THE COURT: Okay. Hi there, and give me your number
9 again.

10 JUROR NUMBER 4: Number four.

11 THE COURT: Number four.

12 JUROR NUMBER 4: Yes.

13 THE COURT: Okay.

14 JUROR NUMBER 4: There was a question about workmen's
15 comp I didn't quite understand what you were saying.

16 THE COURT: Okay. That means whether if you or any
17 member of your family, like your spouse or your child, ever
18 had to file any kind of workers' compensation claim or
19 somebody filed a claim against you, that was the question.

20 JUROR NUMBER 4: Um, well, I had gotten workman's comp.

21 THE COURT: Okay. And --

22 JUROR NUMBER 4: Through work.

23 THE COURT: -- when was that?

24 JUROR NUMBER 4: About 10 years ago.

25 THE COURT: Okay. And, um, what was the injury?

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1 JUROR NUMBER 4: Uh, I broke my foot.
2 THE COURT: Not fun, I broke mine --
3 JUROR NUMBER 4: No.
4 THE COURT: -- a couple months ago. Um, has everything
5 resolved with that?
6 JUROR NUMBER 4: Uh, it's fine.
7 THE COURT: Okay. Now, the question is do you think
8 that experience could in any way affect your ability to be
9 fair and impartial in this case?
10 JUROR NUMBER 4: No.
11 THE COURT: Okay. Counsel, any questions?
12 MS. HOWARD: No follow up, Your Honor.
13 MS. ZOIS: No, thank you.
14 MR. BRATT: No questions.
15 MR. GILLCRIST: No, Your Honor.
16 THE COURT: Okay, thank you, you can go ahead and have a
17 seat out there.
18 MR. BRATT: I'm sorry, Your Honor, the previous juror
19 was that --
20 THE COURT: Uh, 15.
21 MS. ZOIS: Fifteen.
22 MR. BRATT: Was she excused?
23 THE COURT: I'm going to excuse her, I just . . .
24 FEMALE VOICE: Yeah.
25 THE COURT: Yeah, I just -- we're, I think we're gonna'

1 have plenty, so.

2 MR. BRATT: Okay.

3 THE COURT: Okay. Then you're, you're next.

4 JUROR NUMBER 3: Number three.

5 THE COURT: Number three. Okay. And what would you
6 like to tell us?

7 JUROR NUMBER 3: Uh, I'm a nurse.

8 THE COURT: Okay. And is that it?

9 JUROR NUMBER 3: Um, I do recall my, there was a claim
10 made against my husband for an automobile accident.

11 THE COURT: Okay.

12 JUROR NUMBER 3: The woman was claiming injury and loss
13 of consortium. I think that was also named on the claim
14 secondary, but it was settled by the insurance company.

15 THE COURT: Okay. And about when was that?

16 JUROR NUMBER 3: Um, last year.

17 THE COURT: Okay. Now, what Counsel wants to know is do
18 you think any of that would affect your ability to be fair
19 and impartial in this case?

20 JUROR NUMBER 3: Not that I'm aware.

21 THE COURT: Counsel?

22 MS. HOWARD: Um, just one more question, Your Honor, I
23 noticed that she's also an RN, so you, did you respond to the
24 medical question also.

25 THE COURT: Yeah. She said she was a nurse.

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1 MS. HOWARD: Okay. Are we taking each one of their
2 responses at the bench at the same time or do they come up
3 (unclear - two words)?
4 THE COURT: No, no, no, we, they come up once.
5 MS. HOWARD: Okay. Um, what kind of nurse are you?
6 JUROR NUMBER 3: Um, I work at Children's National
7 Medical Center, and my specialty was pediatric oncology --
8 MS. HOWARD: Okay.
9 JUROR NUMBER 3: -- (unclear - three words.)
10 MS. HOWARD: Okay.
11 MR. BRATT: No questions, Your Honor.
12 MR. PORCARELLI: No questions.
13 THE COURT: Okay. Thank you.
14 JUROR NUMBER 3: That's it?
15 THE COURT: Go ahead and have a seat. Yeah, we do
16 everything (unclear - three words.)
17 MS. HOWARD: Okay, okay. Thank you, Your Honor.
18 THE COURT: Okay. And whoever's next. There you go.
19 Hi there.
20 JUROR NUMBER 13: Hello.
21 THE COURT: And, just, yeah, give me your number again.
22 Number --
23 JUROR NUMBER 13: Thirteen.
24 THE COURT: -- thirteen, okay.
25 MR. GILLCRIST: What number?

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1 MS. ZOIS: Thirteen.
2 THE COURT: Thirteen.
3 JUROR NUMBER 13: Thirteen.
4 MR. BRATT: Thank you.
5 JUROR NUMBER 13: Mm-hmm.
6 THE COURT: And what would you like to tell us?
7 JUROR NUMBER 13: I've never done this before, I don't
8 know if I have anything to tell.
9 THE COURT: Okay.
10 JUROR NUMBER 13: I have no idea what's goin' on.
11 THE COURT: Did, um, did you stand up in response to any
12 of the questions?
13 JUROR NUMBER 13: Yeah, with a back injury.
14 THE COURT: Okay. Well, who has the back injury?
15 JUROR NUMBER 13: My dad.
16 THE COURT: Okay. And what kind of injury is it?
17 JUROR NUMBER 13: Uh, he's broken his back four times.
18 THE COURT: Okay. And has he had a lot of surgery as a
19 result of that?
20 JUROR NUMBER 13: Yes.
21 THE COURT: Okay. And, um, when's the last time that he
22 had that kind of injury?
23 JUROR NUMBER 13: Uh, it was eight plus years ago, he
24 died about --
25 THE COURT: Oh, I'm sorry.

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1 JUROR NUMBER 13: Fine, it's --
2 THE COURT: I'm sorry.
3 JUROR NUMBER 13: -- he, he died in '06 --
4 THE COURT: Mm-hmm.
5 JUROR NUMBER 13: -- so it's, it's been a while ago.
6 THE COURT: Okay.
7 JUROR NUMBER 13: But when he was around there was a
8 lot of motorcycle accidents.
9 THE COURT: Mm-hmm.
10 JUROR NUMBER 13: So, a lot of back surgeries nonstop
11 with that.
12 THE COURT: Okay. And is that how he kept, he hurt
13 himself was on a motorcycle?
14 JUROR NUMBER 13: Yes, ma'am.
15 THE COURT: Okay. Now, why we ask all these questions
16 is the lawyers want to select jurors who will listen to this
17 evidence impartially, like you hope an umpire will during a
18 baseball game.
19 JUROR NUMBER 13: (Chuckles.)
20 THE COURT: Call it as you see it, okay? So, what
21 Counsel wants to do is do you think any of those experiences
22 could affect your ability to be fair --
23 JUROR NUMBER 13: Nope.
24 THE COURT: -- and impartial in this case?
25 JUROR NUMBER 13: I don't think it'd have anything to do

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1 with that.

2 THE COURT: Okay.

3 JUROR NUMBER 13: I think I'm perfectly capable of
4 answering any kind of questions that I would need being any
5 kind of help. I don't, I don't see any problems.

6 THE COURT: Okay. Counsel.

7 MS. ZOIS: That's all, no --

8 THE COURT: Any questions?

9 MS. ZOIS: -- no, thank you.

10 JUROR NUMBER 13: That's it?

11 MR. BRATT: Sir --

12 THE COURT: Hold on.

13 MR. BRATT: -- I'm sorry.

14 JUROR NUMBER 13: Yes, sir.

15 MR. BRATT: You mentioned the, uh, motorcycle accidents
16 was that your dad?

17 JUROR NUMBER 13: Yes, sir.

18 MR. BRATT: Do you ride?

19 JUROR NUMBER 13: Uh, no.

20 MR. BRATT: You don't, you don't ride.

21 JUROR NUMBER 13: No.

22 MR. BRATT: Okay, that's all.

23 THE COURT: Okay. Hi there.

24 JUROR NUMBER 6: Hi. Juror Number 6.

25 THE COURT: Juror Number 6.

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1 JUROR NUMBER 6: I served in Washington County, um, as a
2 juror for, I think it was a civil --

3 THE COURT: Civil case.

4 JUROR NUMBER 6: -- I can't remember, if it was a bar
5 fight or something.

6 THE COURT: (Snicker.)

7 JUROR NUMBER 6: (Laugh.)

8 MS. HOWARD: I'm sorry, I missed that.

9 THE COURT: She served as a juror in Washington County -

10 -
11 MS. HOWARD: Oh, okay. All I heard was bar fight.

12 THE COURT: -- in a bar fight.

13 MS. HOWARD: I was like, (unclear - two words.)

14 JUROR NUMBER 6: I think it was a bar fight. Um, and
15 then I, I didn't answer the one with the back injury.

16 THE COURT: Right.

17 JUROR NUMBER 6: My father in law had a severe back
18 injury and had that back surgery.

19 THE COURT: Okay. And when, about when was that?

20 JUROR NUMBER 6: Um, six years ago, round about.

21 THE COURT: Okay.

22 JUROR NUMBER 6: And then I don't know if this pertained
23 to any of your questions or not, but I just had a sister that
24 got beat up by her boyfriend and it was in court.

25 THE COURT: Mm, I'm sorry.

1 JUROR NUMBER 6: And that was in November.

2 THE COURT: I'm sorry.

3 JUROR NUMBER 6: So, I wasn't sure if that pertained to
4 anything or not, but...

5 THE COURT: Well, why we get to all of this is do you
6 think any of that would affect your ability to be fair and
7 impartial in this case?

8 JUROR NUMBER 6: No.

9 MS. ZOIS: Um, follow, Your Honor?

10 THE COURT: Mm-hmm.

11 MS. ZOIS: She mentioned, um, where did your father in
12 law hurt his back?

13 JUROR NUMBER 6: Um, it was work related. He fell off a
14 ladder (unclear - one word).

15 MS. ZOIS: Okay. Was his surgery a success?

16 JUROR NUMBER 6: Um, I don't think (unclear - one word)
17 about half. He couldn't go back to work afterwards.

18 MS. ZOIS: But it did?

19 JUROR NUMBER 6: It helped a little bit, and then he
20 had, ended up having open heart surgery and then passed away
21 --

22 THE COURT: Oh, I'm sorry.

23 JUROR NUMBER 6: -- two weeks after the surgery.

24 MS. ZOIS: Oh, gosh. Do you know, um, specifically what
25 kind of back surgery he had (unclear - one word) --

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1 JUROR NUMBER 6: No I don't.
2 MS. ZOIS: -- know if he had instrumentation or hardware
3 or anything?
4 JUROR NUMBER 6: I was there when he had it done, but I
5 don't know what it was --
6 MS. ZOIS: Okay, (unclear - one word).
7 JUROR NUMBER 6: -- exactly.
8 MS. ZOIS: Okay. Thank you.
9 THE COURT: Hold on a second.
10 JUROR NUMBER 6: Oh.
11 THE COURT: We've got all these lawyers up here, some of
12 them, somebody else --
13 JUROR NUMBER 6: Sorry.
14 THE COURT: -- might have a question. (Chuckles.)
15 MR. GILLCRIST: I have no questions.
16 THE COURT: Any questions? Okay.
17 JUROR NUMBER 6: Okay.
18 THE COURT: Thanks.
19 JUROR NUMBER 6: Thanks.
20 THE COURT: See, all that for nothing.
21 (Laughter.)
22 JUROR NUMBER 9: Hi there.
23 THE COURT: Hi there, juror number nine. Okay. Of
24 course, I'm gonna' have to turn to the right page.
25 JUROR NUMBER 9: Sure.

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1 THE COURT: Okay.

2 JUROR NUMBER 9: You had asked about workmen's comp. My
3 husband is a driver for UPS for the last 22 years. He's had
4 a few injuries.

5 THE COURT: So.

6 JUROR NUMBER 9: So, that's been one. And, actually,
7 one I didn't stand for, he did have a back injury when I was
8 thinking about it, but it was a while ago.

9 THE COURT: Okay.

10 JUROR NUMBER 9: So, um, and then the other question was
11 about Friday. Um, just, it's, it's all job related. We're
12 going through an accreditation process at work so this has
13 been kind of crunch week.

14 THE COURT: If we really needed you.

15 JUROR NUMBER 9: Yeah, I mean, I would figure something
16 out.

17 THE COURT: Okay. Now, with respect to, um, your
18 husband's --

19 JUROR NUMBER 9: Mm-hmm.

20 THE COURT: -- issues, do you think that would in any
21 way affect your ability to be fair and impartial in this
22 case?

23 JUROR NUMBER 9: No, mm-mm.

24 MS. ZOIS: May I proceed, Your Honor?

25 THE COURT: Mm-hmm, mm-hmm.

1 MS. ZOIS: Do you know specifically what his back injury
2 was?

3 JUROR NUMBER 9: He has a, um, well, I mean, you know,
4 he's lifting packages, but it is, uh, he had slipped on some
5 ice getting out of a truck, and, um, slipped on ice.

6 THE COURT: Slipped on ice.

7 JUROR NUMBER 9: Pulled his back.

8 MS. HOWARD: So, um, (unclear - two words) related, not
9 disc, um --

10 JUROR NUMBER 9: Right.

11 MS. HOWARD: Okay. He did it (unclear - two words) --

12 THE COURT: Muscular not disc.

13 MS. HOWARD: -- and all that?

14 JUROR NUMBER 9: Uh, yeah, he had to (unclear -
15 approximately 10 words), but yeah.

16 MS. HOWARD: Okay. (Unclear - three words.)

17 THE COURT: Counsel, any questions?

18 MR. GILLCRIST: Sorry.

19 MR. PORCARELLI: Is he still having problems, I didn't
20 hear that.

21 JUROR NUMBER 9: No, no.

22 MR. PORCARELLI: Thank you.

23 THE COURT: Okay?

24 JUROR NUMBER 9: Okay.

25 FEMALE VOICE: (Unclear - four words.)

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1 THE COURT: I think that's everybody in the front row.
2 Up, no, one more. Hi there.

3 JUROR NUMBER 8: Yes. I provide daycare for my
4 granddaughter on Mondays and Fridays.

5 THE COURT: Okay.

6 JUROR NUMBER 8: That was my only concern.

7 MR. GILLCRIST: What number?

8 THE COURT: Number eight.

9 MR. BRATT: Number eight.

10 THE COURT: Now, if we really needed you could you make
11 other arrangements for Fri (sic) --

12 JUROR NUMBER 8: I, probably.

13 THE COURT: -- for this Friday?

14 JUROR NUMBER 8: But it, it's, I'm free, you know.

15 THE COURT: It, it, it, that's --

16 JUROR NUMBER 8: They're not.

17 THE COURT: -- exactly right. So. Counsel, any
18 questions?

19 MS. ZOIS: (Unclear.)

20 MR. BRATT: No questions, Your Honor.

21 MR. GILLCRIST: No questions.

22 THE COURT: Okay. Okay, thank you. Sir.

23 MALE VOICE: (Unclear.)

24 THE COURT: Juror Number 11. Okay, and what would you
25 like to tell us, sir? You answered a couple questions.

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1 JUROR NUMBER 11: Yeah, I, I know the, well, one was
2 about a lawyer.

3 THE COURT: Okay, somebody in the family's a lawyer?

4 JUROR NUMBER 11: Yeah, my, uh, daughter's in law school

5 --

6 THE COURT: Okay.

7 JUROR NUMBER 11: -- currently. And my wife is a legal
8 secretary.

9 THE COURT: Okay.

10 JUROR NUMBER 11: Or a legal assistant, I guess is the
11 proper terminology now.

12 THE COURT: Okay. And I think you also answered a
13 question that somebody had made some kind of claim or had a
14 claim made against them for personal injury or something like
15 that?

16 JUROR NUMBER 11: Yes.

17 THE COURT: Okay, why don't you tell us about that?

18 JUROR NUMBER 11: Uh, I was, I had a (sic) injury, and,
19 on the job, workman's compensation claim.

20 THE COURT: Okay. And when was that?

21 JUROR NUMBER 11: It was about, I think it's two years
22 now, almost.

23 THE COURT: Okay.

24 JUROR NUMBER 11: About two years.

25 THE COURT: And, um, what got hurt?

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1 JUROR NUMBER 11: I strained a, pulled a muscle in my
2 back.

3 THE COURT: In your back, okay. And, um, have, uh, has
4 the treatment, has it resolved or are you still having
5 issues?

6 JUROR NUMBER 11: Yes.

7 THE COURT: Okay, it's resolved?

8 JUROR NUMBER 11: Yes.

9 THE COURT: Okay. Let me just check my notes and make
10 sure. I think those were the only ones.

11 JUROR NUMBER 11: Yeah, there was one that you asked,
12 uh, I'd ask you to ask again, about the back injuries.

13 THE COURT: Mm-hmm.

14 JUROR NUMBER 11: What was that question again?

15 THE COURT: It was just --

16 JUROR NUMBER 11: Is it any family members that may have
17 --

18 THE COURT: Yeah, (unclear - one word) --

19 JUROR NUMBER 11: Yeah, 'cause I, after I, the question
20 was over, I remember my brother hurt his back --

21 THE COURT: Okay.

22 JUROR NUMBER 11: -- in a motor cycle injuries five to
23 12 years ago or so.

24 THE COURT: Okay. And, um, what happened with that? I
25 mean, how did he, is he gotten better or?

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1 JUROR NUMBER 11: Oh, yeah, he's, he's better.
2 THE COURT: He's fine?
3 JUROR NUMBER 11: Yeah.
4 THE COURT: Now, what Counsel wants to know, why we ask
5 all these nosy questions is do you believe any of that would
6 affect your ability to be fair and impartial in this case?
7 JUROR NUMBER 11: No.
8 THE COURT: Counsel?
9 MS. ZOIS: Thank you, Your Honor. Um, where does your
10 wife work?
11 JUROR NUMBER 11: In Rockville.
12 MS. ZOIS: Who's she work for?
13 JUROR NUMBER 11: (Unclear - two words.)
14 MS. ZOIS: Oh, okay. All right. And your daughter,
15 she, she's in law school?
16 JUROR NUMBER 11: Yes.
17 MS. ZOIS: Does she know what she wants to do with her
18 law degree?
19 JUROR NUMBER 11: Uh, you know --
20 THE COURT: Get a job (chuckles).
21 MS. ZOIS: What kind of practice she wants to (unclear -
22 one word) to?
23 MS. HOWARD: Right, get a job, right, exactly.
24 MR. BRATT: Pay, pay back the loans.
25 JUROR NUMBER 11: She's kind of, uh, kind of on the

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1 fence --

2 MS. ZOIS: Okay.

3 JUROR NUMBER 11: -- as far as I know. She's got her
4 life on hold right now. She just had a little baby.

5 MS. ZOIS: Oh, congratulations.

6 JUROR NUMBER 11: So, she took a little break from law
7 school.

8 MS. ZOIS: Okay, fair enough.

9 JUROR NUMBER 11: She's gotta' (unclear - three words).

10 MR. GILLCRIST: Any break from law school is good.

11 MS. ZOIS: Right, thank you. (Unclear - two words.)

12 JUROR NUMBER 11: Is that it?

13 MR. BRATT: No questions.

14 THE COURT: No questions? All right. Thank you, sir.
15 Hi there.

16 JUROR NUMBER 12: Juror Number 12.

17 THE COURT: Juror Number 12. Okay, let me see. I know
18 you answered (unclear - three words). Um, somebody's worked
19 as a claims evaluator, investigator?

20 JUROR NUMBER 12: No. What I wanted to mention. The
21 reason I wanted to come up -- (clearing throat) -- excuse me,
22 was I was a police officer.

23 THE COURT: Okay.

24 JUROR NUMBER 12: And I didn't know if that was . . .

25 THE COURT: You probably investigated a few things as a

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1 policy officer.

2 JUROR NUMBER 12: Yes.

3 THE COURT: Okay. And --

4 JUROR NUMBER 12: So, I (unclear - two words), when you
5 said legal that made me want stand up, but I had to have some
6 legal training.

7 THE COURT: You definitely have had some legal training.
8 Um, let me just check my notes. I think those were it,
9 right? Were those the only ones that you stood for?

10 JUROR NUMBER 12: Yeah.

11 THE COURT: Okay. Do you think any of that could affect
12 your ability to be a fair and impartial juror in this case?

13 JUROR NUMBER 12: I think I can do it.

14 THE COURT: Counsel.

15 MS. ZOIS: Thank you. Where were you (unclear - two
16 words)?

17 JUROR NUMBER 12: Uh, NOVA Junior Community College in
18 Loudon County, Sterling, Virginia.

19 MS. ZOIS: Okay.

20 JUROR NUMBER 12: Twenty-two and a half years.

21 MS. ZOIS: Wow. Okay, thank you.

22 THE COURT: Counsel?

23 MR. BRATT: No questions.

24 MR. GILLCRIST: No questions.

25 THE COURT: Okay. Thank you, sir.

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1 MS. HOWARD: Thank you, sir.
2 THE COURT: Juror Number 7, okay.
3 JUROR NUMBER 7: That's it?
4 THE COURT: What was your -- (chuckles) -- darn, what
5 are they doin' up there?
6 JUROR NUMBER 7: Um, yeah, right, right, right. You
7 mentioned about back injuries, but wanted to extend it.
8 THE COURT: Right.
9 JUROR NUMBER 7: I've been hit by a vehicle that led to
10 some pretty serious injuries before.
11 THE COURT: Okay.
12 JUROR NUMBER 7: As a pedestrian.
13 THE COURT: Okay. And back injuries or just . . .
14 JUROR NUMBER 7: Nothing life-long --
15 THE COURT: Mm-hmm.
16 JUROR NUMBER 7: -- but I, I've broken legs, broken
17 arms, metal plates, stuff like that.
18 THE COURT: Mm-hmm, okay.
19 JUROR NUMBER 7: Good stuff, yeah.
20 THE COURT: Okay. Okay. Now, I think that that's, is
21 that the only thing that you?
22 JUROR NUMBER 7: Yes, ma'am.
23 THE COURT: Okay. Now, this case, of course, involves
24 allegations of injuries as a result of an automobile
25 accident.

1 JUROR NUMBER 7: Mm-hmm.

2 THE COURT: Do you believe that your experiences could
3 in any way affect your ability --

4 JUROR NUMBER 7: No, ma'am.

5 THE COURT: -- to be fair in this case?

6 JUROR NUMBER 7: No, ma'am.

7 THE COURT: You got it out before I finished my
8 question. Follow up.

9 MS. ZOIS: Yes, please, thank you. Just as a follow up,
10 um, you're a pedestrian, you were struck by a vehicle. Did
11 you have (unclear - two words)?

12 JUROR NUMBER 7: Yes.

13 MS. ZOIS: Okay. Were you happy with the end result?

14 JUROR NUMBER 7: No.

15 MS. ZOIS: What didn't you like about it?

16 JUROR NUMBER 7: Uh, basically, for as a long I was in
17 the hospital and what I have to deal with metal and stuff I
18 just thought it should have been a little bit more, but . . .

19 MS. ZOIS: Do you still have the hardware in?

20 JUROR NUMBER 7: Oh, yeah.

21 MS. ZOIS: Where is it?

22 JUROR NUMBER 7: Legs.

23 MS. ZOIS: (Unclear - one word) and pins?

24 JUROR NUMBER 7: Mm-hmm, yeah.

25 MS. ZOIS: And you did injure your back in that

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1 incident?

2 JUROR NUMBER 7: But it (unclear - three words).

3 MS. ZOIS: But that wasn't the big, significant injury?

4 JUROR NUMBER 7: No.

5 MS. ZOIS: That got better?

6 JUROR NUMBER 7: Sure.

7 MS. ZOIS: All right. Thank you.

8 JUROR NUMBER 7: Mm-hmm.

9 THE COURT: Okay. Any questions, Counsel?

10 MALE VOICE: (Unclear.)

11 THE COURT: Hi there. Juror Number 14.

12 JUROR NUMBER 14: Yes, ma'am.

13 THE COURT: Okay. Let me just check my -- that, um, you
14 served on a jury before.

15 JUROR NUMBER 14: Yes, I have.

16 THE COURT: Okay. And why don't you tell us a little
17 bit.

18 JUROR NUMBER 14: Uh, it was a domestic violence case I
19 served on previously.

20 THE COURT: Okay. So, it was a criminal case?

21 JUROR NUMBER 14: Yeah, it was in Frederick County a few
22 years ago.

23 THE COURT: Okay.

24 JUROR NUMBER 14: I also stood up when it came for the
25 back injury, because I had been rear ended a few years ago in

1 an auto accident, and still, still suffer from that --

2 THE COURT: Okay.

3 JUROR NUMBER 14: -- as well.

4 THE COURT: Now, do you think that either of those
5 experiences could in any way affect your ability to be a fair
6 and impartial juror in this case?

7 JUROR NUMBER 14: As far as the auto accident, yes,
8 ma'am, I do. I believe, I believe it'd be partial,
9 considering every day I wake up and still in pain, so.

10 THE COURT: Okay. So, is it fair to say you'd be more
11 comfortable sitting as a juror in another kind of case?

12 JUROR NUMBER 14: I think it would be more fair to the,
13 to the folks here, yes, ma'am.

14 THE COURT: Counsel, any questions?

15 MS. HOWARD: No.

16 MR. BRATT: No, Your Honor.

17 MR. GILLCRIST: No, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. GILLCRIST: Can we move him for cause (unclear - one
20 word)?

21 THE COURT: So, last, but not least.

22 JUROR NUMBER 10: Uh, Juror Number 10.

23 THE COURT: Number 10. Okay. I've got stuff sprawled
24 all over the place.

25 JUROR NUMBER 10: So, my answer was, um, for the

1 investigation of claims.

2 THE COURT: Right.

3 JUROR NUMBER 10: Um, I work for an insurance broker and
4 I investigate claims more from the standpoint of how the
5 employer could have prevented the injury from a worker's
6 compensation standpoint.

7 THE COURT: Okay.

8 JUROR NUMBER 10: So, I wasn't sure if that applied, but
9 I still wanted to further explain.

10 THE COURT: Still wanted to -- but, now, say what
11 Counsel wants to ask, do you think that could in any way
12 affect your ability to be fair and impartial in this case?

13 JUROR NUMBER 10: No.

14 THE COURT: Counsel?

15 MS. ZOIS: So, your (unclear - two words) the risk
16 management perspective of it --

17 JUROR NUMBER 10: Yes.

18 MS. ZOIS: -- and say, okay, we're gonna' go back and
19 look at see what they did wrong, and how this -- can you
20 (unclear - two words) --

21 JUROR NUMBER 10: Exactly, yes, mm-hmm.

22 MS. ZOIS: -- Got it.

23 MR. BRATT: Thank you, no questions.

24 MR. GILLCRIST: No questions.

25 THE COURT: Thank you. Um, before we call the next

1 group up, um, I, uh, Number 14, Juror Number 14 had indicated
2 that --

3 MS. HOWARD: Yeah.

4 THE COURT: -- he could not be impartial, definitely,
5 um, strike him for cause, as well as, uh -- does anybody
6 object to me striking Number 15 --

7 MS. ZOIS: Not at all, Your Honor.

8 THE COURT: -- the lady who believes her son is in --

9 MS. ZOIS: Not at all, Your Honor.

10 MR. GILLCRIST: We know people (unclear - one word) pay
11 attention.

12 THE COURT: Exactly, those seem very clear to me, and
13 we'll, we'll deal with all the rest later, but I'll (unclear
14 - one word) those. Okay, I'm gonna' call up the next group
15 of 15.

16 MS. HOWARD: Thank you, Your Honor,

17 MS. ZOIS: Thank you, Your Honor.

18 THE COURT: Okay?

19 (Husher turned off.)

20 THE COURT: Okay, now, if we could have, um, numbers 16
21 through 30. If you answered a question, or if you're
22 thinking well, I didn't stand up, but maybe I should have.
23 You folks in the box.

24 (Husher turned on.)

25 MS. HOWARD: May I step away from the bench for one

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1 moment?

2 THE COURT: Sure, mm-hmm.

3 MS. HOWARD: Thank you, Your Honor.

4 MR. BRATT: Is, is it okay if the Plaintiff steps out to
5 the ladies room, Your Honor?

6 THE COURT: Sure, that's fine. And, certainly, your
7 client may, if she wants to go out to the ladies room.

8 MR. GILLCRIST: Okay, thank you.

9 MS. HOWARD: What do you think about going at the same
10 time? Do you recommend them (unclear - one word)?

11 THE COURT: All right, leave that up to you, but she
12 certainly --

13 (Laughs.)

14 MR. GILLCRIST: Your Honor, uh, just a quick question.
15 From the last group, I didn't see Juror Number 1 come up, and
16 I think he did say that he had a problem that he couldn't
17 serve for (unclear - one word)?

18 THE COURT: If, what we'll do is we'll, I'll call him up
19 --

20 MR. GILLCRIST: Okay.

21 THE COURT: -- when we get to the end, because that'll
22 happen sometimes, but, and, and it might happen with this
23 group as well, so I was waiting and have them come up.

24 MR. GILLCRIST: Great, thank you.

25 THE COURT: So you get to eyeball everybody.

1 MS. ZOIS: Polling the jury again? Is that what you're
2 doing?

3 THE COURT: Juror Number 1 didn't come up, but he stood
4 for a question.

5 MS. ZOIS: Oh.

6 THE COURT: So, I'm -- there might be somebody else that
7 does the same thing --

8 MS. ZOIS: Oh.

9 THE COURT: -- so, I will, I always wait until the end.
10 That's in the -- it doesn't follow the instructions category,
11 but they're all, they all get so nervous when I come up here
12 and do this. Okay, yep, you're our winner, you looked up
13 first.

14 JUROR NUMBER 30: Hi.

15 MS. HOWARD: Hello.

16 MR. GILLCRIST: Hi.

17 THE COURT: Hi there. Number 30.

18 MR. GILLCRIST: Thirty.

19 THE COURT: Okay. (Unclear - two words.) Now, I know
20 that you answered the one that, um, you had concerns about
21 the nature of the claim that you thought that it could affect
22 your ability to be a fair and impartial juror.

23 JUROR NUMBER 30: I've been rear ended twice since I've
24 moved to Maryland. One of them was, I mean, both times at a
25 red light.

1 THE COURT: Mm-hmm.

2 JUROR NUMBER 30: And, um, I, uh, the most recent one
3 was two months ago, and I had a bad time collecting from the
4 other person's insurance those, it was a pretty serious one,
5 and it was just a rear end, but it was \$4,000 worth of damage
6 to my car. And I did have to go to the doctor's.

7 THE COURT: Mm-hmm.

8 JUROR NUMBER 30: So, I'm still kind of -- (chuckles) --
9 angry about it.

10 THE COURT: Mm-hmm.

11 JUROR NUMBER 30: I'm actually unemployed so I wouldn't
12 mind being a juror right now, but I thought it was only fair
13 to let you guys know.

14 THE COURT: Now, this case, of course, is an automobile
15 accident, and I believe will in, um, involve a, a rear end
16 type of collision. Do you think that you would be able to,
17 based on your experiences, to be able to put your experiences
18 out of your mind and be fair to everyone in this case?

19 JUROR NUMBER 30: Yeah, I think I probably could.

20 THE COURT: 'Cause that, that's the big question.

21 JUROR NUMBER 30: Yeah.

22 THE COURT: Again, your job would be to, like I said,
23 call it as you see it.

24 JUROR NUMBER 30: Okay.

25 THE COURT: Okay? Let me just see -- and, uh, so that

1 has, is that with the claims, 'cause you stood for the --
2 JUROR NUMBER 30: Yeah.

3 THE COURT: -- so, that's all related to . . .

4 JUROR NUMBER 30: Yeah. I think those are the only two.

5 THE COURT: I think, yeah, I think those are the only
6 two. Counsel?

7 MS. ZOIS: No follow up, Your Honor.

8 MR. GILLCRIST: Ma'am, could I just ask you?

9 JUROR NUMBER 30: Mm-hmm.

10 MR. GILLCRIST: Um, you had been rear ended on two
11 occasions, is that right?

12 JUROR NUMBER 30: Yeah.

13 MR. GILLCRIST: And in each of those you were injured?

14 JUROR NUMBER 30: No.

15 MR. GILLCRIST: In one of them you were injured?

16 JUROR NUMBER 30: Right.

17 MR. GILLCRIST: And did, what kind of injury did you
18 have?

19 JUROR NUMBER 30: I just had a lot of soreness --

20 MR. GILLCRIST: Soreness.

21 JUROR NUMBER 30: -- and all, and I, I went to the
22 doctor's one time. It wasn't like a major.

23 MR. GILLCRIST: Okay. But you mentioned, uh, having
24 trouble with the insurance company?

25 JUROR NUMBER 30: This last one I had a lot of

1 difficulty with, um, getting the car correctly repaired.

2 MR. GILLCRIST: Okay. Um, initially you had indicated
3 when you stood up that that might, that you might not be able
4 to be fair. If this case --

5 JUROR NUMBER 30: Just that I'm still pretty angry about
6 it.

7 MR. GILLCRIST: Okay. You're angry about --

8 JUROR NUMBER 30: 'Cause it was so -- well, it was only,
9 uh, it was right before Christmas.

10 MR. GILLCRIST: Okay. And you're angry about having to
11 go through that process with, uh, with this (unclear - one
12 word)?

13 JUROR NUMBER 30: Yeah.

14 MR. GILLCRIST: Okay. And if you find out in this case
15 that the evidence is is that the Defendant rear ended the
16 Plaintiff in the case, um, do you feel like you'd have a
17 tendency to maybe more favor the Plaintiff as, as you went
18 through deliberations or your (unclear - one word)?

19 JUROR NUMBER 30: I think it really depends on all the
20 rest of the information.

21 MR. GILLCRIST: Okay. Do you think though through your
22 own experience of what you went through recently you'd be
23 more inclined or less inclined to favor one side or the
24 other?

25 JUROR NUMBER 30: I couldn't tell you without hearing,

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1 you know, what the, what her conditions were --

2 MR. GILLCRIST: Okay.

3 JUROR NUMBER 30: -- what happened --

4 MR. GILLCRIST: Okay.

5 JUROR NUMBER 30: -- what . . .

6 MR. GILLCRIST: Fair enough, thank you.

7 JUROR NUMBER 30: Okay. Is that it?

8 THE COURT: What -- hold on.

9 MS. ZOIS: Thank you.

10 THE COURT: Okay. Okay. Hi there, and your number?

11 JUROR NUMBER 27: Twenty-seven.

12 THE COURT: Twenty-seven. Okay, 27. Somebody has back
13 problems?

14 JUROR NUMBER 27: Yes, my mother did.

15 THE COURT: Okay.

16 JUROR NUMBER 27: She had chronic back problems, and had
17 three major surgeries.

18 THE COURT: Okay. And, um, I'm just checking to see, I
19 don't think you stood for anything else is that --

20 JUROR NUMBER 27: Yeah, I was in a --

21 THE COURT: -- oh, you did.

22 JUROR NUMBER 27: -- you asked if we'd been in, on a
23 jury --

24 THE COURT: Okay.

25 JUROR NUMBER 27: -- before. I had. It was four or

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1 five years ago here in Frederick County. It was a civil
2 trial.

3 THE COURT: Okay.

4 JUROR NUMBER 27: I'm not sure . . . I'm gonna' say four
5 or five years --

6 THE COURT: (Unclear - one word.)

7 JUROR NUMBER 27: -- it may be have been six years.

8 THE COURT: Okay.

9 JUROR NUMBER 27: It's been a while.

10 THE COURT: Okay. Now, what Counsel wants to know is do
11 you think any of that could affect your ability to be fair
12 and impartial in this case?

13 JUROR NUMBER 27: No, I don't think any of it would
14 affect me.

15 THE COURT: Counsel?

16 MS. ZOIS: Thank you, Your Honor. Um, your mom's back
17 problem, (unclear - four words)?

18 JUROR NUMBER 27: Yes, she had a fall.

19 MS. ZOIS: Okay. And you said that she had three major
20 surgeries --

21 JUROR NUMBER 27: Yes.

22 MS. ZOIS: -- (unclear - three words)? What kind, do
23 you know what kind of surgeries they were?

24 JUROR NUMBER 27: (Unclear - one word) --

25 MS. ZOIS: Did they have hardware?

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1 JUROR NUMBER 27: Um, it was, um, a disc, she had a
2 shattered disc --

3 MS. ZOIS: Mm-hmm.

4 JUROR NUMBER 27: -- (unclear - one word) replaced.

5 MS. ZOIS: Mm-hmm.

6 JUROR NUMBER 27: And then she had two where they, um,
7 fused the discs.

8 MS. ZOIS: Mm-hmm, (unclear - three words)?

9 JUROR NUMBER 27: Over probably 15 years.

10 MS. ZOIS: Okay. Did the surgeries help? After she had
11 surgery was she (unclear - one word)?

12 JUROR NUMBER 27: A little bit, but it was something
13 that she had till she died.

14 MS. ZOIS: Okay. Thank you.

15 JUROR NUMBER 27: (Unclear - three words.)

16 MS. ZOIS: I'm sorry I have to ask that.

17 THE COURT: Counsel?

18 MR. BRATT: Your Honor, may I ask a question about
19 employment?

20 JUROR NUMBER 27: Mm-hmm.

21 MR. BRATT: Um, the list indicates that you were
22 employed by the United States Postal Service?

23 JUROR NUMBER 27: Twenty years.

24 MR. BRATT: Oh, and how long, um, what do you do for
25 them?

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1 JUROR NUMBER 27: I'm a supervisor.
2 MR. BRATT: Supervisor. Okay. Um, if there is evidence
3 in this case that one of the parties is associated with the
4 postal service do you think you'd be able to set that aside
5 and base your decision solely on the evidence?
6 JUROR NUMBER 27: Yeah, I believe I can.
7 MR. BRATT: Okay. All right, thank you.
8 THE COURT: Any more questions?
9 (No response.)
10 THE COURT: Okay, thank you.
11 JUROR NUMBER 16: Hi.
12 THE COURT: Hi there.
13 JUROR NUMBER 16: Sixteen.
14 THE COURT: Sixteen.
15 JUROR NUMBER 16: Yeah.
16 THE COURT: Okay, let me just check here.
17 MR. GILLCRIST: Sixty or 16, Your Honor?
18 THE COURT: Sixteen.
19 JUROR NUMBER 16: It's the questions about the --
20 THE COURT: It's about, uh --
21 JUROR NUMBER 16: Yeah.
22 THE COURT: -- medical --
23 JUROR NUMBER 16: Yeah.
24 THE COURT: -- somebody has medical training.
25 JUROR NUMBER 16: What's that, I'm sorry?

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1 THE COURT: Somebody has some --
2 JUROR NUMBER 16: Uh, yeah, my sister just graduated
3 nursing school.
4 THE COURT: Ah, a sister. Okay. Now, I think that's --
5 JUROR NUMBER 16: That was it.
6 THE COURT: That was it?
7 JUROR NUMBER 16: That was it, yeah.
8 THE COURT: Now, do you think any of that, that could in
9 any way affect your ability to be fair and impartial in this
10 case?
11 JUROR NUMBER 16: No, I don't think so.
12 MS. ZOIS: Can you tell me about the (unclear - one
13 word) Foundation?
14 JUROR NUMBER 16: Yes, we raise money for seniors who
15 outlive their resources.
16 MS. ZOIS: Oh, okay, good. Thank you.
17 JUROR NUMBER 16: Okay.
18 THE COURT: Counsel?
19 MR. BRATT: No questions, Your Honor.
20 MR. GILLCRIST: No questions.
21 THE COURT: Mm-hmm, all right, thank you, sir. (Unclear
22 - two words) back row. Okay, ma'am, (unclear - one word).
23 JUROR NUMBER 21: Twenty-one.
24 THE COURT: Twenty-one. Okay, somebody has back
25 problems.

1 JUROR NUMBER 21: I'm sorry?
2 THE COURT: Back problems?
3 JUROR NUMBER 21: Uh-huh.
4 THE COURT: Who, um, what do you want to tell us about
5 somebody --
6 JUROR NUMBER 21: Probably --
7 THE COURT: -- having a back injury.
8 JUROR NUMBER 21: -- myself.
9 THE COURT: Okay.
10 JUROR NUMBER 21: Two car accidents.
11 THE COURT: Okay.
12 JUROR NUMBER 21: One in my teens, one two years ago.
13 THE COURT: Okay. Um, and, um, are you still receiving
14 treatment right now for your back?
15 JUROR NUMBER 21: Not right now, no.
16 THE COURT: Okay. And --
17 JUROR NUMBER 21: (Cough) -- excuse me.
18 THE COURT: -- um, you also, you stood up where somebody
19 had made a claim for, for some kind of damage or been sued
20 for some kind of damage?
21 JUROR NUMBER 21: Or that I had made --
22 THE COURT: Made claim --
23 JUROR NUMBER 21: -- a claim against someone.
24 THE COURT: -- yeah, right. Yeah.
25 JUROR NUMBER 21: I think there's a car accident one

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1 from back in my 20's.

2 THE COURT: Okay.

3 JUROR NUMBER 21: Thirty years ago.

4 THE COURT: Okay. Now, this case involves allegations
5 of a car accident --

6 JUROR NUMBER 21: Mm-hmm.

7 THE COURT: -- resulting in, um, in back injuries. Do
8 you think your experiences could in any way affect your
9 ability to be --

10 JUROR NUMBER 21: No.

11 THE COURT: -- fair in this case? No. Counsel?

12 MS. ZOIS: Um, just a (unclear - one word). So, you've
13 had two car accidents, is that correct? One in your teens
14 and one two years ago?

15 JUROR NUMBER 21: Oh, gosh, probably more than that.

16 MS. ZOIS: Okay. Just two where you were injured?

17 JUROR NUMBER 21: One a month, uh, one a month after I
18 started driving --

19 MS. ZOIS: Oh, dear.

20 JUROR NUMBER 21: -- um --

21 MS. ZOIS: Let me ask you the question differently.

22 JUROR NUMBER 21: I'm like, I'm old.

23 MS. ZOIS: I'm sorry (chuckles).

24 THE COURT: (Chuckles.)

25 JUROR NUMBER 21: You know, I mean, every seven years I

1 think is the national average.

2 MS. ZOIS: No, no, no, you, you can't say that, you
3 can't say that. Um, can you tell me if you were ever injured
4 in a car accident?

5 JUROR NUMBER 21: Yes.

6 MS. ZOIS: The two that you discussed?

7 JUROR NUMBER 21: Uh-huh.

8 MS. ZOIS: Okay. And you said that you weren't
9 currently in treatment now --

10 JUROR NUMBER 21: Mm-hmm.

11 MS. ZOIS: -- do you, you still have back problems from
12 --

13 JUROR NUMBER 21: Mm-hmm.

14 MS. ZOIS: -- car accident? Okay, you're just not
15 engaged in your regular treatment?

16 JUROR NUMBER 21: Mm-hmm.

17 MS. ZOIS: Okay, do you know what your diagnosis was for
18 your injury? What the actual injury (unclear - two words)?

19 JUROR NUMBER 21: No, I really don't know (unclear - two
20 words).

21 MS. ZOIS: Okay. Did you, did you have any surgeries or
22 --

23 JUROR NUMBER 21: God, no. No, I would have stood up
24 for that --

25 MS. ZOIS: -- physical therapy.

1 JUROR NUMBER 21: -- (unclear - three words).

2 MS. ZOIS: Okay. Got it. Okay.

3 JUROR NUMBER 21: Okay. And then what about the other
4 questions --

5 MALE VOICE: Legal questions.

6 JUROR NUMBER 21: -- I stood up for --

7 THE COURT: I was just gonna' say --

8 JUROR NUMBER 21: -- do they not matter?

9 THE COURT: -- no, we were gonna', 'cause I just, goin'
10 through my notes, but you have served on a jury before?

11 JUROR NUMBER 21: Yes.

12 THE COURT: Okay. And where was that?

13 JUROR NUMBER 21: In D.C.

14 THE COURT: Okay. And do you remember was it a civil or
15 a criminal?

16 JUROR NUMBER 21: It's criminal.

17 THE COURT: Okay. And, just a second, I'm just
18 checking. And somebody's a lawyer, legal training?

19 JUROR NUMBER 21: My deceased, my now deceased father
20 was an attorney for the Interstate Commerce Commission --

21 THE COURT: Okay.

22 JUROR NUMBER 21: -- so transportation law.

23 THE COURT: Okay.

24 MR. GILLCRIST: And, I'm sorry, the, the claims that you
25 made were related to the injuries from the car accidents

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1 (unclear - three words) claim? Do you, do you remember?

2 JUROR NUMBER 21: I'm thinking there might have been a
3 claim back in my early 20's.

4 MR. GILLCRIST: Okay.

5 JUROR NUMBER 21: Late teens or early 20's.

6 MR. GILLCRIST: Oh, I gotcha'. Okay, thank you.

7 JUROR NUMBER 21: Mm-hmm.

8 THE COURT: Okay. Thank you.

9 MS. ZOIS: Thank you.

10 JUROR NUMBER 21: Mm-hmm.

11 (Brief conversations being held off the record.)

12 THE COURT: Hi there, Number 24. Okay, (unclear - four
13 words). Somebody has had some medical training.

14 JUROR NUMBER 24: Yes, my mother was a nurse at Walter
15 Reed for 30 years.

16 THE COURT: Okay.

17 JUROR NUMBER 24: And also my wife is a biologist at
18 Fort Detrick.

19 THE COURT: Okay.

20 MR. BRATT: At where? Fort Detrick.

21 THE COURT: Fort Detrick.

22 JUROR NUMBER 24: Fort Detrick, mm-hmm.

23 THE COURT: Let me just check, and I think that's the
24 only one you stood for?

25 JUROR NUMBER 24: Mm-hmm, yep.

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1 THE COURT: Do you think any of that would affect your
2 ability to be fair and impartial in this case?
3 JUROR NUMBER 24: I don't think so, no.
4 THE COURT: Counsel?
5 MS. ZOIS: None at this time, thank you.
6 JUROR NUMBER 24: Oh, okay.
7 THE COURT: Mm-hmm.
8 MR. GILLCRIST: No questions, sir.
9 JUROR NUMBER 24: Okay.
10 THE COURT: Thank you. Hi there.
11 JUROR NUMBER 23: Hi.
12 THE COURT: And your number?
13 JUROR NUMBER 23: Twenty-three.
14 THE COURT: Twenty-three.
15 JUROR NUMBER 23: I think that's right. Yeah.
16 THE COURT: Okay. So, my very scientific way I have of
17 --
18 FEMALE VOICE: (Chuckles.)
19 THE COURT: -- keeping track.
20 JUROR NUMBER 23: It was I knew someone else, and --
21 THE COURT: You knew, you know --
22 JUROR NUMBER 23: -- I knew somebody else --
23 THE COURT: -- you know somebody on the jury.
24 JUROR NUMBER 23: -- and, um, I forgot the other one.
25 Ah, God, I'm sorry, I forgot the first question. Oh, it was

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1 something along the lines of if I could be here Thursday and
2 Friday.

3 THE COURT: Okay.

4 JUROR NUMBER 23: And I have family issues to attend to,
5 um, on Friday. Um, so, other than that, but, yeah.

6 THE COURT: Okay. And you do know Juror Number 18?

7 JUROR NUMBER 23: Yes.

8 THE COURT: Okay. And how?

9 JUROR NUMBER 23: I mean, we're not like best friends, I
10 work with her husband, um, at an old restaurant that I used
11 to work at.

12 THE COURT: Okay. So, you're just kind of acquainted
13 with each other. (Unclear - four words.) Now, um, what
14 (unclear - one word), my (unclear - one word) is this, if we
15 really needed you as a juror --

16 JUROR NUMBER 23: All right.

17 THE COURT: -- could you make arrangements to be
18 available on Friday?

19 JUROR NUMBER 23: Um, the only thing is I'm the closest
20 family member to my, um, my grandmother within a 50/60 mile
21 radius, and, um, she usually has people looking after her,
22 because we can't really afford, um --

23 THE COURT: Mm-hmm.

24 JUROR NUMBER 23: -- but, um, Friday's usually the day,
25 day that I go --

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1 THE COURT: Okay.

2 JUROR NUMBER 23: -- help her out. Um, I don't really
3 think there's any way around it.

4 THE COURT: Counsel?

5 MS. ZOIS: If we did go through Friday --

6 JUROR NUMBER 23: Mm-hmm.

7 MS. ZOIS: -- um, do you think maybe you could get
8 someone to help her? Or would you be here, and she'd be
9 there, and you'd be worried?

10 JUROR NUMBER 23: Um, it's just that if my uncle and his
11 family weren't out of town as of right now it wouldn't be an
12 issue --

13 MS. ZOIS: Right.

14 JUROR NUMBER 23: -- um, other than that, I mean, my
15 dad's not really in the picture as far as family goes, so --

16 MS. ZOIS: Okay.

17 JUROR NUMBER 23: I don't know if I'd be able to do it.

18 MS. ZOIS: Okay.

19 JUROR NUMBER 23: Thursday wouldn't be an issue, but
20 Friday I can't.

21 MS. ZOIS: You can't miss Friday.

22 JUROR NUMBER 23: Yeah.

23 MS. ZOIS: Okay. Nothing else based on that (unclear -
24 one word).

25 THE COURT: Okay.

1 JUROR NUMBER 23: No, I just, sorry, guys.
2 MR. BRATT: Thank you.
3 THE COURT: Thank you.
4 MR. BRATT: Your Honor, in light of the fact that we
5 seem to have plenty of jurors could we just move him?
6 THE COURT: What I'm gonna' do is we'll go through it,
7 but the ones that are indicating that they can't get out,
8 I'll probably, we'll probably go ahead and let out. I just
9 like to get through the whole process. I was just counting,
10 I think we're gonna' be fine.
11 MR. BRATT: Okay.
12 THE COURT: But, uh --
13 MS. HOWARD: (Unclear - two words.)
14 THE COURT: -- so.
15 JUROR NUMBER 18: Number 18.
16 THE COURT: Number 18. And you know Juror Number 23.
17 JUROR NUMBER 18: Yes, he worked with my husband.
18 THE COURT: Okay. Um, and I'm just gonna' check back in
19 my . . . um, and you can sit through Friday?
20 JUROR NUMBER 18: Um, I could pull enough daycare to get
21 through Thursday. I don't have anybody to watch my kids
22 Friday afternoon.
23 THE COURT: Okay. And I think those were the only ones
24 that you answered? Counsel?
25 MS. ZOIS: Um, do you think if you had enough (unclear -

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1 one word) you could get coverage for Friday (unclear - many
2 words?)

3 JUROR NUMBER 18: I probably could, I'd have to --

4 MS. ZOIS: You'd have to scramble?

5 JUROR NUMBER 18: -- I'd have to scramble, but maybe.

6 MS. ZOIS: (Unclear.)

7 JUROR NUMBER 18: Trying (chuckles) (unclear - three
8 words), but probably be able to pull something somewhere.

9 MS. ZOIS: Okay. All right. (Unclear - three words.)

10 THE COURT: Okay.

11 MR. GILLCRIST: Nothing.

12 THE COURT: No questions. You can go ahead and have a
13 seat. And whoever's next.

14 JUROR NUMBER 25: Hi there.

15 THE COURT: Hi there, you're Number 25.

16 JUROR NUMBER 25: Uh-huh.

17 THE COURT: And you stood up that you can't sit through
18 Friday?

19 JUROR NUMBER 25: Uh, I have a chiropractor appointment
20 for my back.

21 THE COURT: Okay. And when's that?

22 JUROR NUMBER 25: It's on Friday.

23 THE COURT: It's on Friday, what time?

24 JUROR NUMBER 25: Um, I believe it's at 11:00.

25 THE COURT: Is that the only thing?

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1 JUROR NUMBER 25: Hmm.
2 THE COURT: Is that the only --
3 JUROR NUMBER 25: Yeah.
4 THE COURT: -- reason you couldn't sit through Friday?
5 So, if we needed you and could work around your appointment
6 you could sit?
7 JUROR NUMBER 25: Yeah.
8 THE COURT: Um, and what's going on with your back?
9 JUROR NUMBER 25: Uh, I was in a car accident like a
10 month and a half ago, and like the curvature of my neck is
11 messed up, and the vertebrae is, like, uh, unaligned.
12 THE COURT: Mm-hmm.
13 JUROR NUMBER 25: And curved, yeah.
14 THE COURT: Now, of course, this case involves an
15 allegation of a back injury from a car accident.
16 JUROR NUMBER 25: Mm-hmm.
17 THE COURT: Do you think you could put your experiences
18 out of your mind and be a fair and impartial juror in this
19 case?
20 JUROR NUMBER 25: I think so.
21 THE COURT: Okay. I'm gonna' let Counsel follow up.
22 MS. HOWARD: Is it working for ya'?
23 JUROR NUMBER 25: The chiropractor?
24 MS. HOWARD: Yes.
25 JUROR NUMBER 25: Yeah.

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1 MS. HOWARD: Okay, it's getting better.
2 JUROR NUMBER 25: Mm-hmm.
3 MS. HOWARD: Where you going?
4 JUROR NUMBER 25: Um, it's in Waynesboro.
5 MS. HOWARD: Okay.
6 JUROR NUMBER 25: Pennsylvania.
7 MS. HOWARD: Um, okay.
8 JUROR NUMBER 25: Mm-hmm.
9 MS. HOWARD: And, um, as a result of the car accident do
10 you know if any personal injury (unclear - two words) from
11 the person that hit you?
12 JUROR NUMBER 25: Nuh-uh.
13 MS. HOWARD: You're not?
14 JUROR NUMBER 25: Nuh-uh.
15 MS. HOWARD: Okay. Gotcha'.
16 JUROR NUMBER 25: Mm-hmm.
17 MS. HOWARD: Uh, any other injuries on your back?
18 JUROR NUMBER 25: (Unclear.)
19 MS. HOWARD: How would you describe how the accident
20 happened?
21 JUROR NUMBER 25: Um, I was driving on the highway, and
22 like the car in front of me hit the car in front of them.
23 MS. HOWARD: Mm.
24 JUROR NUMBER 25: And then I hit them.
25 MS. HOWARD: Mm.

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1 JUROR NUMBER 25: So, that's what happened.

2 MS. HOWARD: I gotcha'. Okay.

3 JUROR NUMBER 25: Yeah.

4 MS. HOWARD: (Unclear - two words). Sounds great, thank
5 you. Nothing further based on that, Your Honor.

6 THE COURT: Counsel?

7 MR. GILLCRIST: Um, do you think it would be more likely
8 that you might favor one side in the case because of having
9 gone through what you have or you're just not sure, or, or do
10 you think you can be completely fair despite what you've gone
11 through?

12 JUROR NUMBER 25: I mean, I think I read, like,
13 circumstances different. So, like, it doesn't really relate
14 to me.

15 MR. GILLCRIST: Okay.

16 JUROR NUMBER 25: Yeah.

17 MR. GILLCRIST: So, you think you can be fair then?

18 JUROR NUMBER 25: Yeah.

19 MR. GILLCRIST: Okay. All right.

20 JUROR NUMBER 25: Pretty sure.

21 MR. GILLCRIST: Thank you.

22 JUROR NUMBER 25: Okay.

23 THE COURT: And what was your number again?

24 JUROR NUMBER 25: Uh, 25.

25 THE COURT: Twenty-five? Thanks.

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1 JUROR NUMBER 25: Mm-hmm.
2 JUROR NUMBER 26: Twenty-six.
3 THE COURT: Number 26. Okay. You've been a juror
4 before.
5 JUROR NUMBER 26: I have.
6 THE COURT: Okay. And, uh, where, where was it?
7 JUROR NUMBER 26: It was right here in Frederick County.
8 THE COURT: Okay. And tell me what kind of case it was.
9 JUROR NUMBER 26: It was a civil case --
10 THE COURT: Civil case.
11 JUROR NUMBER 26: -- personal injury automobile.
12 THE COURT: And when was it, do you remember?
13 JUROR NUMBER 26: Oh, my, it was late 1990's I would
14 think.
15 THE COURT: Okay.
16 JUROR NUMBER 26: (Unclear - one word) determine what
17 job I was working then, yeah.
18 THE COURT: And, uh, someone has made some kind of claim
19 for damages or had a claim in?
20 JUROR NUMBER 26: No, no, no.
21 THE COURT: No?
22 JUROR NUMBER 26: I filed a workmen's comp.
23 THE COURT: Okay.
24 JUROR NUMBER 26: Yes, uh, back 15 years ago.
25 THE COURT: Okay. And did that matter all get resolved?

1 JUROR NUMBER 26: Oh, yeah, it was a very minor filing.

2 THE COURT: Now, the question is do you think any of
3 those experiences could affect your ability to be a fair and
4 impartial juror in this case?

5 JUROR NUMBER 26: No, I do not think that they affect
6 it.

7 THE COURT: Counsel.

8 MS. ZOIS: Did you like sitting on a jury --

9 JUROR NUMBER 26: Absolutely.

10 MS. ZOIS: -- for your civil case?

11 JUROR NUMBER 26: Yes.

12 MS. ZOIS: Were you happy with, uh, the jury
13 deliberations and how the case came out eventually?

14 JUROR NUMBER 26: Yes, I was.

15 MR. BRATT: And, and I'm sorry, I didn't hear the
16 beginning part of that. It was a civil case --

17 JUROR NUMBER 26: Mm-hmm.

18 MR. BRATT: -- that you sat on --

19 JUROR NUMBER 26: Mm-hmm.

20 MR. BRATT: -- for automobile tort? Automobile
21 accident?

22 JUROR NUMBER 26: Mm-hmm, yes, mm-hmm.

23 MR. BRATT: And then you mentioned that you had a
24 reverse compensation injury, but it --

25 JUROR NUMBER 26: Uh --

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1 MR. BRATT: -- was years and years ago?

2 JUROR NUMBER 26: -- yes, it wasn't really an injury, it

3 was a case of poison ivy.

4 MR. BRATT: Oh, okay.

5 THE COURT: (Chuckles.)

6 JUROR NUMBER 26: Caused me to miss some work

7 (chuckles).

8 MR. BRATT: I assume that resolved without problems --

9 JUROR NUMBER 26: Yes, absolutely (chuckles).

10 MR. BRATT: -- I take it?

11 THE COURT: (Chuckles.)

12 MR. BRATT: Great, thank you.

13 THE COURT: Okay, thanks.

14 JUROR NUMBER 26: Thank you.

15 JUROR NUMBER 19: Number 19.

16 THE COURT: Okay. Somebody has some medical training?

17 JUROR NUMBER 19: I was a certified EMT, but I've worked

18 in the medical field probably 16 years.

19 THE COURT: Okay.

20 FEMALE VOICE: Medical (unclear - three words.)

21 THE COURT: Oh, see, right there, occupation, medical

22 billing specialist.

23 JUROR NUMBER 19: Mm-hmm.

24 THE COURT: Okay. Um, I'm just checking to see my

25 (unclear - three words.) And you've served on a jury before?

1 JUROR NUMBER 19: Actually, I stood up faster than that,
2 I've got to this point (chuckles.)

3 THE COURT: (Chuckles.)

4 JUROR NUMBER 19: At another, in Montgomery County.

5 THE COURT: Okay.

6 JUROR NUMBER 19: Mm-hmm.

7 THE COURT: And what kind of case was that, do you
8 remember?

9 JUROR NUMBER 19: Uh, it had something to do with drugs.

10 THE COURT: Okay so --

11 JUROR NUMBER 19: So a drug case.

12 THE COURT: Okay, it's a criminal case.

13 JUROR NUMBER 19: Yes.

14 THE COURT: Okay. Now, do you think any of that could
15 affect your ability to be a fair and impartial juror?

16 JUROR NUMBER 19: Well, without knowing --

17 THE COURT: Okay.

18 JUROR NUMBER 19: -- I mean, I file worker's comp and
19 personal injury claims now.

20 THE COURT: Mm-hmm.

21 JUROR NUMBER 19: Reviewing medical records and access
22 to the hospital systems so, you know, I just have to soak it
23 all in, but I don't think so.

24 THE COURT: 'Cause your job, if you were selected as a
25 juror would be to evaluate the evidence --

1 JUROR NUMBER 19: Mm-hmm.

2 THE COURT: -- and partially not favor one side or the
3 other side.

4 JUROR NUMBER 19: Absolutely, mm-hmm.

5 THE COURT: Counsel.

6 MS. HOWARD: Um, so, you were an EMT?

7 JUROR NUMBER 19: I was, yes.

8 MS. HOWARD: Okay, um, (unclear - two words) events
9 showing up car crashes?

10 JUROR NUMBER 19: I was more, I worked in a, in, in a
11 doctor's office for years, and you had to do, you know, uh,
12 triage on the sight, and then I did a, a week or t (sic), two
13 weeks (unclear - three words.)

14 MS. HOWARD: Okay, all right. And, um, as far as the
15 medi (sic), the medical billing --

16 JUROR NUMBER 19: Mm-hmm.

17 MS. HOWARD: -- I think you said you processed loans?

18 JUROR NUMBER 19: Yeah, I actually work for a billing
19 office now that process anesthesia claims.

20 MS. HOWARD: Mm-hmm.

21 JUROR NUMBER 19: So, it's, we have to determine, based
22 on the medical record, (unclear - three words) and things
23 like that (unclear - approximately 10 words.)

24 MS. HOWARD: Okay. Do you so go so far into the
25 detailed medical reports to say (unclear - two words) this

1 has to be a lot better than this? This isn't a job with
2 (unclear - two words) procedure rules or do you --

3 JUROR NUMBER 19: Dissect it? Well we're more on that,
4 more of the cut (sic), coding end.

5 MS. HOWARD: Okay.

6 JUROR NUMBER 19: Um, but we do have to (unclear - four
7 words) based on the operative report. So, (unclear - three
8 words.)

9 MS. HOWARD: So, you're familiar with the (unclear - one
10 word) medical records and (unclear - five words?)

11 JUROR NUMBER 19: Yes.

12 MS. HOWARD: I see (unclear - one word) codes and I see
13 the two codes and that's (unclear - six words) works out?

14 JUROR NUMBER 19: Correct.

15 MS. HOWARD: Got it.

16 JUROR NUMBER 19: Okay.

17 MS. HOWARD: Great, thanks.

18 MR. GILLCRIST: I think it sounds like you also, uh, as
19 part of that you do regularly try and decide whether, for
20 example an anesthesiology charge or an objection charge --

21 JUROR NUMBER 19: Mm-hmm.

22 MR. GILLCRIST: -- or something along those lines would
23 be related to the (unclear - two words) verses maybe (unclear
24 - two words?)

25 JUROR NUMBER 19: An underlying diagnosis.

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1 MR. GILLCRIST: Or if the (unclear - one word) you see
2 something along those lines?

3 JUROR NUMBER 19: Correct.

4 MR. GILLCRIST: When you worked at their doctor's office
5 what, what, what (unclear - three words)?

6 JUROR NUMBER 19: Uh, it was an internal medicine
7 general practice group. So, kind of a little bit of
8 everything.

9 MR. GILLCRIST: Okay. Thank you very much.

10 MS. HOWARD: Thank you.

11 THE COURT: Thank you.

12 JUROR NUMBER 19: Okay.

13 (Husher turned off.)

14 THE COURT: Okay, folks, the balance 31 through 40, and
15 also, Juror Number 1, we need to talk to for a second. So,
16 if you all would come up and sit in the box, we're almost
17 done, folks.

18 (Husher turned on.)

19 THE COURT: They're being really good and quiet.
20 Sometimes they get laughing back there so loud you can't hear
21 anything, but . . .

22 (Juror Number 1 approached the bench and the following
23 occurred:)

24 THE COURT: You just forgot to come up and tell us why
25 you couldn't sit through the whole week?

1 JUROR NUMBER 1: Oh, cause I have, we have, me and my
2 dad have to work. We had plans all week. I'm startin'
3 school on Monday and we're openin' up an ice cream shop, so I
4 gotta' finish everything there before school starts, 'cause I
5 won't have any time.

6 THE COURT: Okay. Counsel?

7 MS. ZOIS: Um, do you think if (unclear - five words)
8 sit through Friday you could (unclear - three words)?

9 JUROR NUMBER 1: How long, 'cause it's already been a
10 while today?

11 MS. ZOIS: Mm-hmm, this would be every day from now
12 until Friday afternoon maybe (unclear - three words).

13 JUROR NUMBER 1: For this long it's been since --

14 MS. ZOIS: It would be all day.

15 THE COURT: It'd be day.

16 JUROR NUMBER 1: I don't think so, no way, no way.

17 THE COURT: You couldn't do that?

18 JUROR NUMBER 1: Nuh-uh. I'm sorry.

19 THE COURT: Counsel, any questions?

20 MR. GILLCRIST: No questions.

21 MR. BRATT: No questions.

22 MS. ZOIS: (Unclear.)

23 JUROR NUMBER 1: Thank you.

24 THE COURT: Mm-hmm.

25 MR. BRATT: We have, uh, we've gone through 30. Do we

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1 have enough to --
2 MS. ZOIS: Thirty-nine?
3 JUROR NUMBER 39: Yes.
4 THE COURT: We probably do, but we'll --
5 MS. ZOIS: Thank you.
6 THE COURT: -- we'll just wait (unclear - one word).
7 JUROR NUMBER 39: Thank you. Thirty-nine.
8 THE COURT: Thirty-one.
9 JUROR NUMBER 39: Good afternoon, 39.
10 THE COURT: Thirty-nine?
11 JUROR NUMBER 39: Thirty-nine.
12 THE COURT: Okay, I -- let me see, which -- I had very
13 clearly marked where everybody was from, and now I can't find
14 -- somebody's made some kind of claim?
15 JUROR NUMBER 39: My six (sic) --
16 THE COURT: Personal injury?
17 JUROR NUMBER 39: -- my son was in an automobile
18 accident the 12th of January this year.
19 THE COURT: Ooh.
20 JUROR NUMBER 39: And, uh, it's an open claim with the
21 gentlemen's insurance company.
22 THE COURT: Okay. Now how, how old is your son?
23 JUROR NUMBER 39: Sixteen.
24 THE COURT: So, even though it's claims in his name it's
25 really you and your --

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1 JUROR NUMBER 39: I'm responsible for all of the --

2 THE COURT: For all of that.

3 JUROR NUMBER 39: Yeah.

4 THE COURT: Okay. Counsel, any questions?

5 MS. ZOIS: Um, is he is okay?

6 JUROR NUMBER 39: He is.

7 MS. ZOIS: Okay.

8 JUROR NUMBER 39: Thankfully.

9 MS. ZOIS: Yeah. How did (unclear - two words)?

10 JUROR NUMBER 39: Uh, my son's friend his uncle was
11 driving the vehicle, he's 37-years-old, he was driving at a
12 high rate of speed, 100 miles per hour, rolled the vehicle,
13 no one else was involved except the boys in the vehicle, no
14 other outside party.

15 MS. ZOIS: Mm-hmm. Well, he's lucky he (unclear - one
16 word), he's okay?

17 JUROR NUMBER 39: My son's fine, he walked away. They
18 were lucky to walk away, except for the (unclear - one word).

19 MS. ZOIS: (Unclear - two words), and it was the driver
20 of your son and other children (unclear - four words)?

21 JUROR NUMBER 39: One other, there was two minors, my
22 son and (unclear - one word) and an 18-year-old in the
23 vehicle.

24 MS. ZOIS: Okay. Thank you.

25 JUROR NUMBER 39: Mm-hmm.

1 MR. GILLCRIST: No questions.
2 THE COURT: Thank you, sir. Hi, you're Juror Number 34.
3 JUROR NUMBER 34: Yes.
4 THE COURT: Um, someone made some kind of a claim for
5 personal injury?
6 JUROR NUMBER 34: Yes.
7 THE COURT: And who was that?
8 JUROR NUMBER 34: That was me.
9 THE COURT: Okay.
10 JUROR NUMBER 34: I was about in, around 2004 I was
11 involved in an auto accident where somebody rear ended me.
12 THE COURT: Okay.
13 JUROR NUMBER 34: So, I filed a claim with my insurance
14 company and his insurance company, and I wound up having
15 legal counsel and we decided, I decided not to go through the
16 hassle of a court claim, and so we settled out of court with
17 whatever the insurance company gave me. It resulted in, not
18 back injury, but neck and shoulder injury.
19 THE COURT: Mm-hmm.
20 JUROR NUMBER 34: Which I still have today, and sitting
21 in the chair when you said could anybody be fair and
22 impartial, I want to be fair and impartial, but I can relate
23 to somebody who's maybe still having some discomfort because
24 of an auto accident.
25 THE COURT: Because, and if you were selected as a

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1 juror, you job would be to put all of that --

2 JUROR NUMBER 34: I know.

3 THE COURT: -- aside. Then to --

4 JUROR NUMBER 34: I know.

5 THE COURT: Do you think you could do that?

6 JUROR NUMBER 34: I want to, I want to --

7 THE COURT: But you have some concerns?

8 JUROR NUMBER 34: Yes, I do.

9 THE COURT: Would it be fair to say you'd be more
10 comfortable sitting as a juror in another kind of case?

11 JUROR NUMBER 34: Uh, yes, I would.

12 THE COURT: Counsel?

13 MS. ZOIS: Just briefly.

14 THE COURT: Mm-hmm.

15 MS. ZOIS: Do you think that you could listen to all the
16 evidence presented by the Plaintiff and from the Defense and
17 weigh this case on (unclear - three words) experiences and
18 keep an open mind?

19 JUROR NUMBER 34: Yes, I could. Yes.

20 MS. ZOIS: Yes?

21 JUROR NUMBER 34: Okay.

22 THE COURT: Counsel?

23 MR. GILLCRIST: Just in response to Judge's questions it
24 sounds like you want to keep an open mind, and you'll do your
25 best to, but your experience that you went through my have an

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1 influence? Or --

2 JUROR NUMBER 34: I, well, I, I can keep an open mind,
3 but I also think I'll be influenced by still having pain and
4 being unhappy --

5 MR. GILLCRIST: Okay.

6 JUROR NUMBER 34: -- with the settlement that I got.

7 MR. GILLCRIST: Okay. Great, thank you.

8 THE COURT: Thank you.

9 JUROR NUMBER 33: Juror 33.

10 THE COURT: Number 33. Okay. And, uh, I know you, uh,
11 stood on the question about someone either having a claim or
12 making a claim, or having --

13 JUROR NUMBER 33: I had a workmen's comp claim.

14 THE COURT: A comp claim?

15 JUROR NUMBER 33: Mm-hmm.

16 THE COURT: Okay. And, um, what was that about?

17 JUROR NUMBER 33: It was an injury at work. I fell on
18 water and had impacted on my knees, but there was like a
19 whiplash effect on my neck.

20 THE COURT: Yeah, mm-mm, okay. And, um, has that all
21 been resolved?

22 JUROR NUMBER 33: It was, it resolved years ago.

23 THE COURT: Okay. Okay. Um, and back injury, back
24 issues.

25 JUROR NUMBER 33: Um, first, I didn't stand. I had an

1 injury at work one time with my back. I had a, um, bulging
2 herniated disc, but it, that's resolved, and it's been fine,
3 but the biggest impact is my husband has had significant back
4 injuries, um, it was has significantly impacted my life
5 emotionally and financially.

6 THE COURT: Mm-hmm. Now, um, and also you answered the
7 question, uh, about having familiarity with, uh, somebody
8 who's in the medical field?

9 JUROR NUMBER 33: I'm a registered nurse.

10 THE COURT: Okay. Now, this case involves allegations
11 arising (unclear - four words) alleged back injuries.

12 JUROR NUMBER 33: Mm-hmm.

13 THE COURT: Do you believe that you could yours and your
14 husband's experience out of your mind and be a fair and
15 impartial juror in this case?

16 JUROR NUMBER 33: Um, I think of myself as an honest,
17 fair person, but his injuries have been, his back injuries
18 have led to addiction problems, which have had a significant
19 impact on my life.

20 THE COURT: Mm-hmm.

21 JUROR NUMBER 33: I mean, including a foreclosure, and a
22 lot of, I mean, like 20 years of working with --

23 THE COURT: Mm-hmm.

24 JUROR NUMBER 33: -- someone with back problems. Um, I
25 would try my best to be fair and impartial, but I, I also

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1 work with a lot of patients at work both, both who have, I
2 mean, pain is, is perceived, there is not right or wrong, you
3 cannot say if it's real or not, but I, I have had life
4 experiences where I've had a lot of pain issues that I have
5 to deal with at work and at home, so I would be as impartial
6 as I possibly could, humanly could.

7 THE COURT: Counsel.

8 MS. ZOIS: Thank you, Your Honor. Um, one of the
9 instructions in the case is that you, you, you draw on your
10 common sense and your everyday life experiences --

11 THE COURT: Mm-hmm.

12 MS. ZOIS: -- so that would certainly be appropriate,
13 'cause that's the instruction you get at the end of the case,
14 but do you think you could be fair to both the Plaintiff and
15 the Defendant in this case in looking at all the evidence as
16 a whole?

17 JUROR NUMBER 33: I think where I would have problems is
18 knowing how real the pain is. That's where I would have a
19 problem.

20 MS. ZOIS: Okay. And that would be up to you to
21 determine what you thought (unclear - two words) was.

22 JUROR NUMBER 33: And I would have to listen to what the
23 medical records were and what the findings were.

24 MS. ZOIS: Right.

25 JUROR NUMBER 33: And how she conducted her life and

1 what physical activities she can --
2 MS. ZOIS: Right.
3 JUROR NUMBER 33: -- and cannot do.
4 MS. ZOIS: Right. And you would be open to receiving
5 all of that evidence in considering all of the evidence in
6 total and then making decisions based --
7 JUROR NUMBER 33: I would, I would be, like I said, I
8 would do it to the best of my humanly possible abilities.
9 MS. ZOIS: Okay.
10 JUROR NUMBER 33: But it has impacted my life
11 tremendously --
12 MS. ZOIS: Right.
13 JUROR NUMBER 33: -- and my, my experiences.
14 MS. ZOIS: (Unclear - two words.)
15 JUROR NUMBER 33: Mm-hmm.
16 MS. ZOIS: Okay.
17 JUROR NUMBER 33: I mean, if I had to pick anything I
18 would say the back in, the back problems, not injuries, but
19 back issues has affected my life on a, a great (unclear - one
20 word).
21 MS. ZOIS: Okay. Thank you.
22 JUROR NUMBER 33: Mm-hmm.
23 MR. GILLCRIST: Could, could I just ask you?
24 JUROR NUMBER 33: Sure.
25 MR. GILLCRIST: There's an allegation in this case that

1 the Plaintiff has significant back problems due to this car
2 accident.

3 JUROR NUMBER 33: Mm-hmm.

4 MR. GILLCRIST: And there will testimony from doctors
5 and witnesses on that issue, um, do you feel that if she has
6 ongoing pain in her back that you'll be sympathetic to what
7 she's going through based on your own life's experience with
8 your husband and seeing what you see at work, or do you think
9 (unclear - two words)?

10 JUROR NUMBER 33: No, I'm, I'm worried I would be not as
11 sympathetic, that's what my concern would be.

12 MR. GILLCRIST: Oh, okay.

13 JUROR NUMBER 33: I mean, I'm sympathetic to (unclear -
14 one word) patients, I have, I work with mostly cancer
15 patients with own metastasis, I'm very compassionate to
16 people with pain.

17 MR. GILLCRIST: Okay.

18 JUROR NUMBER 33: I think because I've had such a
19 negative impact on my life with my husband's back issues I
20 would have to make myself be completely honest and non-
21 judgmental that her injuries, I'd have to feel like are they
22 real, is she trying to get money, are they --

23 MR. GILLCRIST: Okay. I see what you're saying.

24 JUROR NUMBER 33: I would be as open as I could --

25 MR. GILLCRIST: Okay.

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1 JUROR NUMBER 33: -- possibly be --
2 MR. GILLCRIST: All right, thank you.
3 JUROR NUMBER 33: -- honestly.
4 MR. GILLCRIST: I appreciate it.
5 MS. ZOIS: Can I ask a follow up to that?
6 THE COURT: Mm-hmm, sure.
7 MS. ZOIS: Um, you've been able to observe the Plaintiff
8 for a while --
9 JUROR NUMBER 33: Mm-hmm.
10 MS. ZOIS: -- and for, um, have you formed any questions
11 yet?
12 JUROR NUMBER 33: And I all, and I notice I do that
13 already.
14 MS. ZOIS: Mm-hmm.
15 JUROR NUMBER 33: I notice that (unclear - one word) in
16 her back.
17 MS. ZOIS: Mm-hmm.
18 JUROR NUMBER 33: I know she's sitting down, she's
19 standing up.
20 MS. ZOIS: Mm-hmm.
21 JUROR NUMBER 33: You know, it makes me wonder why don't
22 you lean against the wall. That puts more pressure on your
23 back, it relieves the pain --
24 MS. ZOIS: Mm-hmm.
25 JUROR NUMBER 33: -- are you trying to get (unclear -

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1 three words) you're holding it back.

2 MS. ZOIS: Mm-hmm.

3 JUROR NUMBER 33: But I'm trying not to do that, but I
4 know that this is a problem that I'm gonna' have. Yet, I do
5 know peep (sic), I had a real, a real injury myself, and I
6 know what it's like to have your back or your neck hurt. So,
7 I know there is significant pain you do experience from
8 injuries.

9 MS. ZOIS: Mm-hmm.

10 JUROR NUMBER 33: So, I, I know that that's a
11 possibility, too.

12 MS. ZOIS: Okay.

13 JUROR NUMBER 33: I would have more problem, too, if
14 there's an addiction if there's chronic medication involved,
15 which there probably is, 'cause that's a typical route of
16 treatment, so.

17 MS. ZOIS: Mm-hmm. So, if the evidence would have shown
18 that she was, um, right now at a point where she's in chronic
19 pain management and that's all they're doing for her right
20 now --

21 JUROR NUMBER 33: Mm-hmm.

22 MS. ZOIS: -- is treating her medically with --

23 JUROR NUMBER 33: Mm-hmm.

24 MS. ZOIS: -- chronic pain medications. Would you be
25 able to (unclear - three words).

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1 JUROR NUMBER 33: I mean, I would be forward, I'm not
2 going to judge what the doctors think her treatment should
3 be. Like I said, I'm gonna' try to be as open as I can, but
4 I do notice, like you said, I do, I, I (unclear - two words)
5 watching her.

6 MS. ZOIS: Right, I figured.

7 JUROR NUMBER 33: Mm-hmm.

8 MS. ZOIS: That's what you're trained to do.

9 JUROR NUMBER 33: Well, I'm standing in front of her,
10 I'm sitting right behind her, so.

11 MS. ZOIS: (Unclear - one word) okay. As you sit her
12 have you formed a, or leaning one way or the other?

13 JUROR NUMBER 33: Not really.

14 MS. ZOIS: Okay.

15 JUROR NUMBER 33: 'Cause I know I haven't heard any
16 facts --

17 MS. ZOIS: Right.

18 JUROR NUMBER 33: -- and I know people are injured, and
19 I know people do have . . . I, I real (sic), I don't know the
20 case.

21 MS. ZOIS: Okay. (Unclear - two words.)

22 THE COURT: Okay.

23 JUROR NUMBER 33: That's --

24 MS. ZOIS: Thank you.

25 JUROR NUMBER 33: Mm-hmm.

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1 MS. HOWARD: Thank you.

2 THE COURT: Mm-hmm.

3 JUROR NUMBER 35:

4 THE COURT: Number 35. Okay. (Unclear - two words.)

5 Um, somebody has a background in medicine.

6 JUROR NUMBER 35: Um, my son in law is with the, uh,
7 fire department.

8 THE COURT: Okay. And, um, I'm just looking. And did
9 you answer any other questions today?

10 JUROR NUMBER 35: Um, you named a Sharon Hamilton as a
11 witness, and I know a Sharon Hamilton, I don't know if it's
12 the same woman.

13 THE COURT: Okay. Where does your Sharon Hamilton live,
14 if you know?

15 JUROR NUMBER 35: Uh, I think she lives in Johnsville.
16 She's the leader of our 4-H, and I went to school with her.

17 THE COURT: In Johnsville, Pennsylvania?

18 JUROR NUMBER 35: No, in Johns (sic) --

19 THE COURT: In Johnsville, Maryland.

20 JUROR NUMBER 35: Maryland, yeah.

21 THE COURT: Okay. So.

22 MS. ZOIS: I don't think it's the same person, but I'll
23 ask one follow up. Can you describe what she looks like?

24 JUROR NUMBER 35: Um, she's a little bit taller than me,
25 she's probably in her late 40's, short hair.

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1 MS. ZOIS: Okay. Okay.
2 JUROR NUMBER 35: Okay, that's it.
3 THE COURT: Okay. Any questions?
4 MS. ZOIS: (Unclear - one word.)
5 THE COURT: So.
6 JUROR NUMBER 36: Hi.
7 THE COURT: Hi there. Juror Number 36. Okay. And
8 somebody has made some kind of claim, a worker's compensation
9 claim right? Okay.
10 JUROR NUMBER 36: It was, I, I did for workman's comp.
11 I ripped my Achilles training to be a self defense
12 instructor.
13 THE COURT: Ooh.
14 JUROR NUMBER 36: Yes.
15 THE COURT: Ooh, ooh, ooh.
16 JUROR NUMBER 36: As a police officer (chuckles).
17 THE COURT: (Chuckles.)
18 JUROR NUMBER 36: Yes.
19 THE COURT: Oh.
20 JUROR NUMBER 36: Yeah, it hurt, bad.
21 THE COURT: Exactly. And I'm just looking.
22 JUROR NUMBER 36: I'm also trained to be a paralegal,
23 but never studied as a paralegal.
24 THE COURT: Okay.
25 JUROR NUMBER 36: Uh, the other one was I'm a first

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1 responder --

2 THE COURT: Mm-hmm.

3 JUROR NUMBER 36: -- training as a police officer.

4 THE COURT: Mm-hmm.

5 JUROR NUMBER 36: Um, so, that was, those ones.

6 THE COURT: (Unclear.)

7 JUROR NUMBER 36: Is that all the questions?

8 THE COURT: (Chuckles.) Any of that, do you think, would
9 any of that affect your ability to be fair and impartial?

10 JUROR NUMBER 36: No, Your Honor.

11 THE COURT: Counsel.

12 MS. HOWARD: Um, I see that you work (unclear - three
13 words) pharmaceutical sales rep.

14 JUROR NUMBER 36: Pharmaceutical sales rep.

15 MS. HOWARD: There is going to be a lot of (unclear -
16 two words) and communications (unclear - one word) schedules
17 what's on it, what's not on it.

18 JUROR NUMBER 36: Mm-hmm.

19 MS. HOWARD: What's the (unclear - two words) if you
20 need meds, what's the (unclear - two words) of meds?

21 JUROR NUMBER 36: Right.

22 MS. HOWARD: Um, do you think that with your experience
23 in that you, you, have you, have any concern about (unclear -
24 two words) your own personal experience that (unclear - three
25 words) communications?

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1 JUROR NUMBER 36: No, I'm trained as a respiratory sales
2 rep, so I (unclear - three words) --
3 MS. HOWARD: Okay, so not even --
4 JUROR NUMBER 36: -- (unclear - two words) so that is
5 not (unclear - one word) to me --
6 MS. HOWARD: Okay.
7 JUROR NUMBER 36: -- to me.
8 MS. HOWARD: Okay.
9 THE COURT: Okay.
10 MR. GILLCRIST: Thank you.
11 JUROR NUMBER 36: Okay.
12 THE COURT: Okay.
13 FEMALE VOICE: (Unclear - four words.)
14 THE COURT: This is number 32.
15 JUROR NUMBER 32: Yeah.
16 THE COURT: Okay. And in, is familiar or has --
17 JUROR NUMBER 32: Back, me.
18 THE COURT: -- back injuries, mm-hmm.
19 JUROR NUMBER 32: Yeah.
20 THE COURT: Okay. And kind, what kind of problems are
21 --
22 JUROR NUMBER 32: Um, when I was in sixth grade I
23 collided with girl that was like three times my size
24 (chuckles).
25 THE COURT: Mm-hmm.

1 JUROR NUMBER 32: And I had severe whip, whiplash --
2 THE COURT: Mm-hmm.
3 JUROR NUMBER 32: -- and my back was messed up. I
4 still, like that was '88, I still, like every day I have back
5 pain. So, it's not debilitating --
6 THE COURT: Mm-hmm.
7 JUROR NUMBER 32: -- (unclear - one word), but I know
8 what it's like to live with back pain.
9 THE COURT: Okay.
10 JUROR NUMBER 32: So.
11 THE COURT: And I think that's the only one.
12 JUROR NUMBER 32: That's the only one I stood up for.
13 THE COURT: Now, do you believe . . . this case involves
14 allegations of back injuries --
15 JUROR NUMBER 32: Right.
16 THE COURT: -- as a result of an automobile accident. Do
17 you think that you could put your experiences out of your
18 mind and be fair and impartial to everybody --
19 JUROR NUMBER 32: I think I --
20 THE COURT: -- in this case?
21 JUROR NUMBER 32: -- could. Like I'd, but (unclear -
22 one word) with everybody think I could.
23 THE COURT: Counsel.
24 MS. ZOIS: Thank you. Do you know what your diagnosis
25 is?

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1 JUROR NUMBER 32: Um, no.

2 MS. ZOIS: Okay. You (unclear - four words)?

3 JUROR NUMBER 32: (Unclear - two words) I know there's
4 stuff messed, like out of place.

5 MS. ZOIS: Okay, (unclear - two words).

6 JUROR NUMBER 32: But I work at a small Christian
7 school, and don't make a lot of money, so I can't afford to
8 go to a chiropractor all the time.

9 MS. ZOIS: Okay.

10 JUROR NUMBER 32: And once you start you pretty go
11 forever, so.

12 MS. ZOIS: Okay. So, you're --

13 JUROR NUMBER 32: Yeah.

14 MS. ZOIS: -- resisting the temptation to start?

15 JUROR NUMBER 32: Exactly. 'Cause I don't really know
16 what it feels like to not be in pain --

17 MS. ZOIS: Ah.

18 JUROR NUMBER 32: -- and then not be able to keep it up,
19 so.

20 MS. ZOIS: Yeah. Okay, thank you.

21 JUROR NUMBER 32: Yep, thank you.

22 THE COURT: Hi there. And, I'm sorry.

23 JUROR NUMBER 37: Thirty-seven.

24 THE COURT: Thirty-seven.

25 MALE VOICE: Thirty-seven?

1 THE COURT: Thirty-seven. Um, somebody's made some kind
2 of claim or worker's comp?

3 JUROR NUMBER 37: I, I did.

4 THE COURT: Okay.

5 JUROR NUMBER 37: Um, I was in a car accident and, and I
6 had to make a claim for my shoulder and neck injury.

7 THE COURT: Okay. And when, when was that?

8 JUROR NUMBER 37: May of 2011.

9 THE COURT: Okay. Now, has the claim been resolved?

10 JUROR NUMBER 37: Yes.

11 THE COURT: Excuse me. And are still receiving any
12 treatment?

13 JUROR NUMBER 37: No, ma'am.

14 THE COURT: Okay. Now, I'm just gonna' check to see
15 whether you . . . do you remember, did you stand for any
16 other questions?

17 JUROR NUMBER 37: I didn't stand for any other, and, um,
18 my only concern is that it's pretty obvious, I seem to be a
19 little bit sick, so I just want that on --

20 THE COURT: (Chuckles.)

21 JUROR NUMBER 37: -- the record.

22 THE COURT: That's --

23 JUROR NUMBER 37: I don't know how that works.

24 THE COURT: So.

25 JUROR NUMBER 37: So.

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1 THE COURT: Okay. Right now, you're feeling okay, but
2 just not great?

3 JUROR NUMBER 37: Um, I'm getting, feeling a little,
4 it's, it's very hot in here, so it's making me feel a little
5 bit worse, but I was okay this morning.

6 THE COURT: Counsel, any questions?

7 MS. ZOIS: Just a quick follow up. The pains in your
8 neck and shoulder, did it go away?

9 JUROR NUMBER 37: Mm-hmm.

10 MS. ZOIS: Okay. And your (unclear - one word) claim
11 got completely resolved --

12 JUROR NUMBER 37: Yeah.

13 MS. ZOIS: -- to your satisfaction?

14 JUROR NUMBER 37: Mm-hmm.

15 MS. ZOIS: You're happy with how it worked out?

16 JUROR NUMBER 37: Mm-hmm, mm-hmm.

17 MS. ZOIS: Okay. All right. Great, thanks.

18 MR. GILLCRIST: No questions.

19 THE COURT: Okay. Thank you.

20 MR. PORCARELLI: No questions.

21 THE COURT: Hi there, you're number 38. Okay, and how
22 are you feeling?

23 JUROR NUMBER 38: Good (chuckles.)

24 THE COURT: (Chuckles.) Let me just -- and you don't
25 think you can sit through Friday?

1 JUROR NUMBER 38: No.
2 THE COURT: Okay.
3 JUROR NUMBER 38: (Chuckles.)
4 THE COURT: (Chuckles) Any questions?
5 MS. ZOIS: No.
6 MS. HOWARD: That's something you could get off of jury
7 duty for right?
8 MR. BRATT: You may have an extra juror.
9 THE COURT: Exactly (chuckles.)
10 MS. ZOIS: Plus one.
11 THE COURT: Hi there.
12 JUROR NUMBER 40: Number 40.
13 THE COURT: Juror Number 40. Gettin' near the end.
14 Okay, let me just check and see (unclear.) Do you remember
15 which one you --
16 MS. HOWARD: Medical.
17 THE COURT: Medical? Ah, medical training.
18 JUROR NUMBER 40: Yes. Uh, half way through med school
19 and I currently work at a medical practice.
20 THE COURT: Okay. And what kind of medical practice?
21 JUROR NUMBER 40: A podiatry practice.
22 THE COURT: Okay. Now, this, of course, this case
23 involves injuries (unclear - one word) to the back, 'cause it
24 was an automobile accident. Do you think your experiences
25 could in any way affect your ability to be fair and impartial

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1 in this case?

2 JUROR NUMBER 40: Um, I don't, I don't think so.

3 THE COURT: Okay. Counsel.

4 MS. ZOIS: No follow up.

5 THE COURT: Questions?

6 MR. PORCARELLI: No follow up.

7 MR. GILLCRIST: No questions.

8 THE COURT: Okay. Thank you.

9 JUROR NUMBER 31: Thirty-one.

10 THE COURT: Thirty-one. (Unclear - three words.)

11 Somebody has some medical training?

12 JUROR NUMBER 31: Yeah, I've been a GNA for 39 years.

13 THE COURT: Okay. For a little while?

14 JUROR NUMBER 31: Yeah, for a little while.

15 THE COURT: Okay. And --

16 JUROR NUMBER 31: That was it.

17 THE COURT: GNA -- that was it? Do you think that fact
18 could in any way affect your ability to be a fair or
19 impartial juror in this case?

20 JUROR NUMBER 31: I don't see how, but . . .

21 THE COURT: Any questions?

22 MS. ZOIS: No, Your Honor. Thank you.

23 MR. GILLCRIST: (Unclear - two words) my hearing's bad,
24 but what have, what have you been doing for 39 years?

25 JUROR NUMBER 31: I'm a GNA.

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1 MR. GILLCRIST: (Unclear - one word.)
2 JUROR NUMBER 31: I work in a nursing home.
3 MR. GILLCRIST: All right, a nursing home, okay. Thank
4 you.
5 JUROR NUMBER 31: Uh-huh.
6 THE COURT: Okay. Now, um, I'd like to propose since we
7 have plenty of jurors that the jurors that indicated that
8 they would have concerns sitting through Friday that we go
9 ahead and grant those challenges for cause. Are there any
10 objections from anybody?
11 MR. GILLCRIST: No, Your Honor.
12 MS. ZOIS: No, Your Honor.
13 THE COURT: Okay. And then we'll go through and make
14 sure that we all have the same ones --
15 MR. GILLCRIST: Okay (unclear - one word.)
16 THE COURT: -- listed. Juror Number 1 indicated that he
17 would difficulty. Juror Number 8, daycare issues on Friday.
18 MR. BRATT: I'm sorry, that was eight?
19 MS. ZOIS: Yes.
20 THE COURT: Eight. Juror Number 9 has job related,
21 could sit if we really needed to. (Unclear - two words), um,
22 Juror Number 18, daycare issues on Friday. Juror Number 23,
23 helps his grandmother on Fridays. Okay. And the Court also
24 indicated from the first batch that Juror Number 14 would be
25 stricken for cause.

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1 MS. ZOIS: Your Honor, I'm sorry, could you go back to
2 the time constraint on Friday. Um, I think that Juror Number
3 38 stood up for that, and I believe she was the --
4 THE COURT: I, I just didn't --
5 MS. ZOIS: -- pregnant lady.
6 THE COURT: -- call her, because we're not gonna' get to
7 thir (sic) --
8 MS. ZOIS: We're gonna' --
9 THE COURT: -- we're, yeah, we're not gonna' get to 38.
10 MS. ZOIS: So, I'm crossing her off, correct, Your
11 Honor.
12 THE COURT: Yeah, go ahead and cross her off, yeah.
13 MS. ZOIS: Okay. Thank you. I just wanted for
14 completeness, accuracy.
15 THE COURT: Yeah.
16 MALE VOICE: (Unclear.)
17 THE COURT: We're not --
18 MS. ZOIS: (Unclear -- two words.)
19 THE COURT: -- we're not gonna' get there, which is
20 kinda' why --
21 MALE VOICE: (Unclear - two words.)
22 THE COURT: -- yeah.
23 MR. GILLCRIST: So, 14 is out?
24 THE COURT: Fourteen is out.
25 MS. HOWARD: And 15 is (unclear - one word)?

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1 THE COURT: Fourteen and 15 will both be excused.
2 (Conversations being held off the record.)
3 THE COURT: Now, let's also . . .
4 (Long pause.)
5 THE COURT: I don't think we're gonna' go past Juror
6 Number 25.
7 MS. HOWARD: Yeah, same six, two alternates, five
8 strikes each.
9 THE COURT: Right. So, so between Jurors Number 1 and
10 25, right now hear any additional challenges for cause from
11 Plaintiff then I'll ask for Defense and we'll go from there.
12 (Long pause.)
13 MS. ZOIS: You okay? (Unclear - two words?)
14 MR. BRATT: (Unclear - three words.)
15 MR. GILLCRIST: No, Your Honor, but --
16 MS. ZOIS: Wait, we're not done yet.
17 MR. GILLCRIST: Oh, right.
18 MS. ZOIS: Right?
19 MR. BRATT: Right.
20 MS. ZOIS: No strikes for cause, Your Honor.
21 MR. GILLCRIST: I apologize to do this, Your Honor, but
22 can I just go over who's being stricken again I just wanna'
23 make sure I have it right?
24 THE COURT: Absolutely.
25 MR. GILLCRIST: Number 1, Number 8, Number 9, Number 14,

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1 15, 18 and 23?

2 THE COURT: Yes.

3 MS. ZOIS: Yes.

4 MR. GILLCRIST: All right. Thank you. And (unclear -
5 three words) cause (unclear - two words.)

6 THE COURT: All right. Okay. We, um, you wanna' just
7 pick five each?

8 MR. GILLCRIST: Mm-hmm, sure.

9 THE COURT: And bring 'em up. They'll go in order.
10 When you bring the list up and (unclear - two words), I'll
11 call you up and I'll tell you who the eight are, the first
12 six, and who the two alternates are. Usually, when I put 'em
13 in the box I just put 'em all in as jurors, I don't designate
14 who's an alternate and who is a main juror. Okay?

15 MR. BRATT: And there you want to know who we want to
16 strike, not who we want to keep, right?

17 THE COURT: Who you want to strike.

18 MR. BRATT: Okay.

19 FEMALE VOICE: Unless you want (unclear - three words.)

20 THE COURT: I know everybody, everybody does it
21 differently. I, uh --

22 MR. BRATT: You'd like us to write the juror number, not
23 the badge number?

24 THE COURT: Uh, yeah, the juror number, the, the 1, 2, 3
25 the short number.

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1 MS. ZOIS: (Unclear - three words), and just as a matter
2 of housekeeping, Your Honor, because we have some audio
3 visual things we need to set up for opening are we, we going
4 to seat the jury and then take a lunch break?

5 THE COURT: Seat, seat the jury and I'll give them about
6 two instructions and then go to lunch and then we'll go from
7 there.

8 MR. BRATT: All right. Thank you, Your Honor.

9 MS. HOWARD: Thank Your Honor,

10 MS. ZOIS: Thank you, Your Honor.

11 (Husher turned off.)

12 THE COURT: Ladies and gentlemen, we're almost done. In
13 a moment we'll be actually putting the jurors in the box.
14 So, just a few more minutes that you have to listen to that
15 nasty husher, and then, um, some of you will sitting and some
16 of you will be getting excused. So, just hang with us for a
17 few more minutes. And, Counsel, I'm gonna' turn the husher
18 on so that you can confer.

19 (Husher turned on.)

20 (Long pause while Counsel confer off the record.)

21 MR. GILLCRIST: Sorry about taking so long.

22 THE COURT: That's all right.

23 (Long pause while Counsel confer off the record.)

24 FEMALE VOICE: Okay, Your Honor, thanks.

25 (Long pause while Counsel confer off the record.)

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1 THE COURT: Counsel, if you'd approach one last time.

2 (Counsel approached the bench and the following
3 occurred:)

4 THE COURT: Almost done folks, promise. The jury is
5 Number 2, Number 4, Number 7, Number 10, Number 12, Number
6 16. Our alternates are 24 and 25.

7 MS. ZOIS: Twenty-four and 25?

8 THE COURT: Yes.

9 MR. BRATT: Thank you, Your Honor.

10 MR. GILLCRIST: Thank you, Your Honor.

11 MR. PORCARELLI: Thank you.

12 MS. ZOIS: Thank you, Your Honor.

13 THE COURT: Mm-hmm.

14 (Husher turned off.)

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

17 THE CLERK: Ladies and gentlemen, when I call your
18 number please come forward and take a seat in the jury box.
19 Juror Number 2, Juror Number 4, Juror Number 7, Juror Number
20 10, Juror Number 12, Juror Number 16, Juror Number 24 and
21 Juror Number 25.

22 THE COURT: And are the Plaintiffs satisfied?

23 MS. ZOIS: Yes, Your Honor.

24 THE COURT: Defendants?

25 MR. GILLCRIST: Yes, Your Honor, thank you.

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1 MR. PORCARELLI: Yes, Your Honor.

2 THE COURT: Swear the ladies and gentlemen of the jury.

3 THE CLERK: Ladies and gentlemen, please stand and raise
4 your right hands.

5 (Jury sworn.)

6 THE COURT: Thank you, please be seated. First of all,
7 the balance of the panel, I want to excuse you from here with
8 our thanks. I know it's been a long morning for everyone.
9 Um, and I'm pretty sure that, that, uh, you're excused, but
10 you might just want to check with Gloria downstairs, um, and
11 I can't give you any promises for the rest of the week, but I
12 want to thank you for your time and attention today, and
13 you're at least excused from here.

14 And, folks, I'm just gonna' talk to you a very
15 brief period of time then give you a break, 'cause I know
16 it's been a long morning for you as well and then get lunch,
17 a lunch break. We'll let them all clear out, because these
18 courtrooms are not the most acoustically sophisticated, shall
19 we say.

20 (Prospective jury panel excused from the courtroom.)

21 THE COURT: I also, I always like to say
22 congratulations, ladies and gentlemen, I know if you've not
23 sat on a jury before you're going to find that it is a very
24 worthwhile and rewarding experience. And if you have sat on
25 a jury before you know, um, how important your role is. I'm

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1 not going to talk to you very long, because it's been a long
2 morning.

3 In a moment we're gonna' take a break, let you go
4 out for lunch. Um, my law clerk, this is, um -- (cough) --
5 excuse me, poor Dan, Dan Salem, as I say his name as I choke.
6 That's nothing on you Dan I promise.

7 (Laughter.)

8 THE COURT: Um, but he'll show you into the jury room,
9 and he will, either he or my deputy will take you from the
10 jury room out to the main body of the courthouse, because
11 back here it's a little bit of a maze, so folks get lost, and
12 rather than dropping breadcrumbs we have, um, somebody take
13 you out and bring you back.

14 Um, and when I ask you to come back, which will be
15 in about an hour, um, to have you meet down in the jury
16 assembly room where you were this morning, and then somebody
17 will bring you back up so you don't have to find your way
18 back up here.

19 I'm going to give you a whole lot of instructions
20 before we do opening statements after we get back from lunch,
21 but the most important things are, one, now that you're
22 members of the jury you're not to talk to anybody about
23 anything involving this case, um, right now you don't know
24 anything about, and I'll give you more instructions on what
25 that includes, um, until you've actually had the case

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1 concluded for all the evidence you're given instructions and,
2 and all that.

3 Um, and, um, just couple other housekeeping things.
4 We'll (sic) will, we will give you notepads, we will have
5 water for you, if you want to take notepads, and I will need
6 someone to serve as a foreperson. I like to ask for a
7 volunteer first, um, if somebody really wants to do it it's a
8 lot easier to ask for a volunteer, but if not, when we get
9 back for lunch and nobody wants to volunteer I will pick
10 somebody. It's usually an eenie, meenie, miney, mo kind of
11 thing. I'd like for it to be, um, one of the first four
12 jurors to, you know, and if somebody else really wants to
13 jump, we'll go there, but ask for a volunteer.

14 Um, when we get back we'll begin with my
15 instructions on how the case will proceed from this point
16 forward. Counsel will make their opening statements, and,
17 uh, we'll get rolling.

18 If you're wondering how late we go, usually we'll
19 probably start between 9:30 and 10 o'clock, and we'll try to
20 conclude between 4:30 and 5:00. If for some reason I know
21 we're gonna' run way early or way late I will let you know so
22 you can plan accordingly. And I obviously will tell you at
23 the end of every session when you need to be back, um, for
24 the next time, try to make things as easy as possible. But,
25 once again, I say congratulations. I know you've been

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1 sittin' a long time so I'm gonna' go ahead and, and break for
2 lunch now. And, so, Mr. Salem will show you into the jury
3 room. I will tell you the jury room has two bathrooms, it
4 has a sink, it has a refrigerator, um, and you can get comfy
5 in there, and then go ahead and take you out to lunch.
6 Downstairs, back downstairs at 2:30. Okay? Thank you.

7 (Jury excused from the courtroom.)

8 THE COURT: Okay. And everybody have a nice lunch
9 break, we'll, uh, get back on at 2:30.

10 MR. BRATT: Thank you, Your Honor.

11 MS. HOWARD: Thank you, Your Honor.

12 THE COURT: Okay. And you can leave everything in here.

13 MS. ZOIS: Can we --

14 MR. BRATT: Will this room be locked.

15 MS. ZOIS: -- leave ourselves in, can we stay in the
16 courtroom?

17 THE COURT: Um, it's fine with me.

18 MR. BRATT: Is there a place to get a coke around here?

19 MS. ZOIS: There's a canteen downstairs on the first
20 floor.

21 THE COURT: Down the canteen, there's down in the
22 basement, so.

23 MR. BRATT: Great. Thank you, Your Honor.

24 THE COURT: Okay?

25 MR. GILLCRIST: Your Honor?

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1 THE COURT: Yes.

2 MR. GILLCRIST: One other real quick thing, if I could.
3 Um, we're going to be here for several days. We're (unclear
4 - two words) seeing the folks in the elevators and hallways.
5 Um, if it's okay with Your Honor, just let them know if we're
6 not engaging them in any way not to read into it. We just
7 wanna' respect the process, and . . .

8 THE COURT: I'm, I'm gonna' go through --

9 MR. GILLCRIST: Okay.

10 THE COURT: -- all of that, they all kinda' looked a
11 little --

12 (Chuckles.)

13 THE COURT: It's been a long, long morning for them,
14 that's why I was like . . .

15 MR. GILLCRIST: That's no problem.

16 THE COURT: Yeah, but no, I, I go through, you know, you
17 can say hello or not, and just don't take, read anything into
18 it. And I also have the new improved, um, don't Google
19 anything instruction, they --

20 MR. GILLCRIST: Oh, good.

21 THE COURT: -- they, um, have a new pattern on the
22 criminal, but it looks appropriate, and I'm obviously gonna'
23 give that, so . . .

24 MR. GILLCRIST: Thank you.

25 THE COURT: Everybody have a good lunch.

1 MR. BRATT: Thank you.
2 THE COURT: We'll see you in an hour.
3 MS. ZOIS: Thank you, Your Honor.
4 MS. HOWARD: Thanks, Your Honor.
5 THE CLERK: All rise.
6 (Whereupon, from 1:32 o'clock, p.m. until 2:38 o'clock,
7 p.m., a luncheon recess was taken.)
8 THE COURT: And good afternoon, everyone. Please be
9 seated. We're back on the record in the matter of Exline-
10 Hassler v. Sapp, this is civil number 12-0410. And, uh, are
11 we, uh, ready to bring in the ladies and gentlemen?
12 MR. GILLCRIST: Your Honor, I'm sorry, just one
13 preliminary matter. I think it will be very brief, um, I
14 checked with counsel as far as their opening statements go.
15 They indicated that they were going to argue that, uh, or
16 state that my client pled guilty to a traffic offense, um, as
17 a result of this accident. I wanted to just quickly move in
18 limine to bar, uh, that, or at the very least, prevent them
19 from doing it in opening statements until you have more of a
20 record what's before you. I, I will say that, uh, she
21 apparently pled guilty with an explanation to a traffic
22 offense, but she received a probation before, before
23 judgment, so she was not convicted or found guilty ultimately
24 of that offense.
25 Um, moreover, uh, this is a classic area where the

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1 prohibitive value has to be weighed against the prejudicial
2 impact, and I would submit to you that it's unduly
3 prejudicial. She was not represented by Counsel, um, and,
4 uh, we all know that people go into traffic court and, uh,
5 try and get their fine reduced by saying what's appropriate
6 to say, so --

7 MS. ZOIS: (Snickering.)

8 MR. GILLCRIST: -- just by the mere fact that, uh . . .

9 THE COURT: Counsel, just --

10 MR. BRATT: Me? (Unclear - two words) --

11 MS. ZOIS: She's talking to me.

12 MR. BRATT: Oh, oh.

13 THE COURT: Yeah.

14 MR. BRATT: I was wondering what I did, I'm sorry.

15 THE COURT: No, you didn't do anything.

16 MS. ZOIS: It was me, Your Honor.

17 THE COURT: It --

18 MS. ZOIS: I know, I apologize.

19 THE COURT: Please. I expect everybody to be
20 professional this whole trial.

21 MR. BRATT: I can't take her anywhere.

22 MR. GILLCRIST: Thank you, Your Honor.

23 THE COURT: I'm sorry?

24 MR. BRATT: I said I can't take her anywhere, Your
25 Honor, I apologize.

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1 THE COURT: Okay. Just . . .

2 MR. GILLCRIST: I'm sorry, Your Honor, so --

3 THE COURT: Go ahead.

4 MR. GILLCRIST: -- uh, this is a very important issue,
5 uh, they will certainly say that it's an admission against
6 interest. We submit to you that it has no relevance or any
7 relevance is outweighed by prob (sic), uh, prejudicial
8 impact. And I think it is important that she was given a
9 probation before judgment sentence which effectively
10 vitiated, um, uh, the conviction or, or erased the, um, the
11 collateral that she would have had to pay for it. So, uh,
12 we, we just submit that this is one of those classic
13 situations. We have an auto accident where liability is
14 disputed obviously. Um, but the fact that she was given by a
15 tick (sic), given a ticket by an officer who did not witness
16 the accident, um, and who gave her a ticket based on, maybe
17 the positioning of the cars, we don't know, is not something
18 that this jury should hear, at the very least in opening
19 statements when there's a bigger record, um, after witnesses
20 testify, it's part of the testimony that may be more clear,
21 but we, we would argue that they not mention that, Your
22 Honor.

23 MR. BRATT: A few things --

24 THE COURT: Mr. Bratt.

25 MR. BRATT: -- Your Honor. First, um, our motion in

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1 limini (sic), in limine deadline was quite some time ago, and
2 there is a body of law that applies to this issue, it's not a
3 terribly complicated body of law. I don't have it with me,
4 because I did not anticipate this issue being raised. Had it
5 been raised ahead I would have that body of law. I am able
6 to summarize it for the Court, but I can't give the, Your
7 Honor citations, because I'm not prepared to do so, because I
8 didn't know it would be raised, is that first thing.

9 Second, Mr. Gillcrist's impression. It is an
10 admission of a party. She went to court, she raised her
11 hand, the judge said . . .

12 JUDGE: "But the other witnesses are, okay,
13 what is your name and plea, Ms. Sapp, Ms. Sapp?"

14 MS. SAPP: "Kirsten, Kierston (sic) Sapp,
15 and I plead guilty with an explanation."

16 JUDGE: "All right, well, you ladies will
17 not have to testify, because she has pleaded
18 guilty so you can have a seat. Thank you. All
19 right, what would you like to tell me?"

20 MS. SAPP: "Um, it had just started raining
21 on the highway, and by the time I realized the
22 person in front of me was completely stopped, and
23 I slammed on my brakes I, like . . . "

24 JUDGE: "Did you slide into them?"

25 MS. SAPP: "Yeah, my car just, I don't even

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1 know what happened, because it happened so fast."

2 MR. BRATT: Now, the law that applies to this issue,
3 Your Honor, and I know I have the law right -- I wish -- I
4 apologize for my inability to give Your Honor a case cite,
5 but the way this works is as follows: If you pay the ticket
6 it's not admissible, because peep (sic), and what the Court
7 of Appeals has said is people pay tickets for lots of
8 reasons, don't want to go to Court, only \$40, whatever. So,
9 that's clearly (unclear - one word) she's paying the ticket.

10 The fact of the conviction itself, if she had a
11 conviction, was also inadmissible, because the basis for the
12 admissibility of her statements in traffic court and her
13 guilty plea is that those are admissions by a party. She
14 went to court on the record and made those statements that
15 are relevant to these proceedings. So, if she'd been
16 convicted, that conviction doesn't commit. If she had just
17 paid a traffic offense, that payment of the traffic offense
18 doesn't come in, but when she goes to court, contests the
19 ticket or goes and pleads guilty, the fact of her guilty plea
20 and any statements she made to the court on the record come
21 into evidence, provided they're relevant to these proceedings
22 because they're simply an admission of a party. It doesn't
23 even really have to be against her interest. It's a party
24 opponent, it's a statement of a party opponent under the
25 rule, it's admissible all day long, Your Honor. It's just

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1 like if she had told somebody else --

2 THE COURT: Well, what, what, what --

3 MR. BRATT: -- the same thing.

4 THE COURT: -- hold on a second. What you're asking me
5 today, what Defense Counsel is asking me today to do is to
6 instruct the jury that, or to instruct you not to mention in
7 opening statement. Opening statement isn't evidence, I'm
8 going to instruct the jury of that. Right now, I'm going to
9 deny the motion in limine. It wasn't timely filed. And as
10 to, as to the admissibility issue, well that's --

11 MR. BRATT: Well --

12 THE COURT: -- that, that's for another day, another
13 time. But certainly will let you mention those proceedings
14 with the (unclear - one word), with the, the proffer you've
15 made in opening statement.

16 MR. BRATT: Thank you, Your Honor.

17 MS. ZOIS: Your Honor --

18 MR. GILLCRIST: Thank you, Your Honor.

19 MS. ZOIS: -- in, in, uh, full disclosure to the Court,
20 um, can you play it for me? I have the District here, I have
21 the District Court hearing.

22 THE COURT: I don't want to make that ruling right now,
23 I want to get this trial stated.

24 MS. ZOIS: But it's in my opening, Your Honor. My, it's
25 her District Court testimony, her voice --

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1 THE COURT: Okay.

2 MS. ZOIS: -- so I want to be candid with the Court.

3 THE COURT: Opening statements are not evidence.

4 MS. ZOIS: Okay. Just wanted to let you know.

5 THE COURT: There was not a motion in limine filed

6 before right now. Right now I'm going to let you do your

7 opening. The opening statement isn't evidence, whether you

8 get to play it again as evidence, the jury's going to be told

9 that five times --

10 MS. ZOIS: I just want to be candid with the Court, Your

11 Honor.

12 THE COURT: -- so I don't wanna' -- let's, let's get --

13 MR. BRATT: We just didn't want, you understand, Your

14 Honor.

15 THE COURT: I under, I understand, I understand.

16 Anything else before we bring them in?

17 MR. GILLCRIST: No thank you, Your Honor.

18 MS. HOWARD: Thank you, Your Honor.

19 THE COURT: Okay. Thank you. Mr. Salem, if you go

20 bring in the ladies and gentlemen.

21 MR. BRATT: I'm gonna' get ready, Your Honor.

22 THE COURT: And if I may ask (unclear - one word), who's

23 going to be opening?

24 MS. ZOIS: I am, Your Honor.

25 THE COURT: Mr. Bratt? Oh, I'm sorry.

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1 MR. BRATT: Ms. Zois, Your Honor.
2 THE COURT: Okay.
3 (Jury entered the courtroom.)
4 THE COURT: Please have a seat. They're all standing up
5 for you. And note for the record, we have all members of the
6 jury present.
7 Um, first of all, ladies and gentlemen, do I have a
8 volunteer to be our foreperson? Okay, and you're Juror
9 Number?
10 JUROR NUMBER 2: Two.
11 THE COURT: Two, I thought so. Okay, thank you. First
12 thing, these are not assigned seats. You can sit anywhere
13 you like in the jury box. Please move around as you need to
14 to see the evidence and to see the witnesses, because you're
15 the ones that need to see and hear everything that's going
16 on.
17 Down in front on that table right now what we have
18 are notepads and pencils. Those are provided for you to take
19 notes if you want to. If you don't want to you don't have
20 to, but if you'd like to, we give you the means to do that.
21 We're also going to get you a pitcher of water and
22 some cups so in case you want to take a drink of water any
23 time during the trial you can do so. I just ask if you're
24 going to pour a drink of water, first of all, the lid sticks
25 on the, um, on the water beaker, so make sure you have it up

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1 before you pour anything or water goes everywhere. And try
2 not to pour it anywhere near that thing that looks like the
3 computer mouse, because that's the microphone, and that
4 shorts out the sound system. So, which is not a good thing,
5 the County, I'm having a hard enough time gettin' them to fix
6 my lights in here, much less if I short out the sound system.
7 So, um, just some practical tips on how things go.

8 As you know, members of the jury, in this case the
9 Plaintiffs sued the Defendants claiming damages as the result
10 of an automobile hac (sic), accidents, happened on Route 70
11 in June of 2009. Trial, which is going to proceed, gonna'
12 begin very shortly, we'll begin in the fol (sic), proceed in
13 the following way. The first thing that you are going to
14 hear are the opening statements by lawyers. Each party has
15 the right to make an opening statement for the purpose of
16 outlying to you what they expect to prove during this trial.

17 The Plaintiff will make the first opening
18 statement, then the Defendant's lawyers may chose whether to
19 make an opening statement at that time or they may elect to
20 make an opening statement later on. It's however Counsel
21 wishes to proceed.

22 After opening statements the presentation of
23 evidence will begin, and the Plaintiff will begin first.
24 After the Plaintiff's case has been presented through
25 witnesses and exhibits, the Defendants will have an

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1 opportunity to present evidence. Each witness is examined
2 first, by the party that called that witness to the witness
3 stand. Then opposing parties are permitted to cross examine
4 or question the witness.

5 During the trial the lawyers may make objections to
6 the introduction of evidence or motions concerning the law.
7 Any arguments that Counsel may make in connection with those
8 motions or objections are usually made out of your presence,
9 either up here at the bench, like we did during the jury
10 selection process or, if we anticipate it's going to be a
11 lengthy discussion, we would excuse you to the jury room or
12 send you out to lunch, um, so that, uh, because that is my,
13 because my rulings on these motions and objections are
14 matters of law for me to the Judge, for the Judge to decide,
15 and do not concern you, ladies and gentlemen of the jury,
16 which are to determine the facts in this case.

17 It is the duty of a lawyer to make motions or
18 objections which that lawyer believes are proper under the
19 law, and you should not be influenced at all by the fact that
20 a lawyer has made an objection, how many objections that
21 lawyer makes or how I rule on any of those objections or
22 motions. Draw no conclusions, whatsoever, from my rulings
23 either as to the merits of this case or as to my views
24 regarding any witness or the case itself.

25 After all of the evidence is concluded I will

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1 instruct you on the law which applies in this case. You must
2 follow and apply the law as I explain it to you. After these
3 instructions the lawyers will make their closing arguments.
4 In their arguments they will point out to you what they
5 believe the evidence has shown and the conclusions that they
6 would like you to draw from that evidence.

7 The Plaintiff's lawyer will make the first closing
8 argument then the Defendant's lawyers will make a closing
9 argument. After Defendant's arguments the Plaintiff will
10 have an opportunity to make an argument in rebuttal to the
11 Defendant's argument. What the lawyers say in their opening
12 statements, in their closing arguments and in make objections
13 and/or motions is not evidence. The reason that the
14 Plaintiff goes first in each instance is because the
15 Plaintiff has the burden of proof.

16 After closing argument you will retire to the jury
17 room and begin your deliberations. It is your function and
18 responsibility to decide the facts. You must base your
19 findings only upon the testimony, any exhibits that are
20 received and the stipulations of the parties, and any
21 conclusions that may be fairly drawn from that evidence.

22 You must not conduct any investigation or research
23 about the case of the in, individual involved in it. You
24 must not consult any dictionaries or reference materials or
25 search the internet, websites, blogs or other sources of

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1 information about the case or the persons involved in the
2 case. You must not visit any place that is described or
3 related to in the case. You must also not seek any
4 information about the place or location on the internet or
5 through websites such as MapQuest or Google Maps.

6 Until you retire to deliberate and decide this case
7 do not discuss this case with anyone, even your fellow
8 jurors. You should not express any opinion about the case or
9 discuss the case with anyone, including courtroom personnel,
10 spectators or anyone participating in the trial.

11 Many of you use cell phone, smart phones or other
12 electronic devices to communicate with family and friends and
13 other people, coworkers. During trial you must not
14 communicate any information or opinion about this case or the
15 individual involved in it by any method to anyone, including
16 sending electronic messages. Believe it or not, there have
17 been issues with that.

18 Um, if you are involved in social media, such as
19 Facebook, Myspace, Linkedin, Youtube or any Twitter, um, you
20 may be used to communicating on these sights. During trial
21 don't communicate anything or receive any information about
22 this case using your social media as well.

23 During the trial, it's going to run a couple of
24 days, as we run around the courthouse and go to lunch we're
25 gonna' see people that are involved in the trial. They may

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1 nod and say hello, they may not say anything at all, erring
2 on the side of caution. Um, please don't talk with any of
3 the folks closely involved with this case other than to say
4 hello or good morning if you choose to do so. Um, that will
5 make it more comfortable for each other, for you and for
6 other Counsel, for Counsel as well.

7 If anyone attempts to communicate with you about
8 this case please let me know, let your foreperson know, send
9 me a note and, um, we'll take it up at that time.

10 As you know, this case is going to run over until,
11 we're hoping Thursday, probably Friday. Um, during recesses
12 and adjournments of Court that's where you need to follow
13 these rules about not talking with anyone and not doing any
14 research or anyone (sic) like that.

15 One of the reasons we ask you not to discuss or do
16 any independent in, investigation on your own is because we
17 want you to make your verdict and reach your verdict only
18 after you've heard all of the evidence here together as a
19 jury in this courtroom, that Counsel is aware that you've
20 heard, and that the parties are aware that you've heard, my
21 instructions on the law, which applies in this case, and the
22 closing arguments of Counsel. In fairness to all the parties
23 of this you must keep an open mind throughout the trial. You
24 should reach your final conclusions during your deliberations
25 after you've heard all the evidence, my instructions and

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1 Counsels' closing argument.

2 I'm just gonna' give you a few other preliminary
3 instructions to help you evaluate the evidence as you go
4 forward. I'll tell you, ladies and gentlemen, you are the
5 sole judges of whether the testimony of a witness should be
6 believed. In making this decision apply your own common
7 sense and everyday experiences. Carefully judge all of the
8 testimony and the evidence and the circumstances under which
9 each witness has testified. Among the fact, among the
10 factors you should consider are the following: The witness'
11 behavior on the stand and way of testifying; the witness'
12 opportunity to see or hear the things about which testimony
13 was given; accuracy of the witness' memory; does the witness
14 have a motive not to tell the truth; does the witness have an
15 interest in the outcome of the case; was the witness'
16 testimony consistent; was the witness' testimony supported or
17 contradicted by other evidence; and whether, and the extent
18 to which, the testimony that the witness testifies to in
19 court differs from statements made by the witness on any
20 previous occasion. You need not believe the testimony of any
21 witness, even if that testimony is uncontradicted. You may
22 believe all, part or none of the testimony of any witness.

23 Several witnesses that may be called to testify may
24 be identified as an expert witness. An expert is a witness
25 who has special training or experience in a given field. You

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1 should give expert testimony the weight and the value you
2 believe it should have. You are not required to accept any
3 experts' opinion. You should consider an expert's opinion
4 together with all of the other evidence in this case.

5 You should not conclude from any conduct or words
6 of mine that I favor one party or another or that I believe
7 or disbelieve the testimony of any witness. You, not I, are
8 the sole judges of the believability of witnesses and the
9 weight of the evidence. You must not be influenced in any
10 way by my conduct during the course of this trial.

11 And, uh, finally, ladies and gentlemen, you must
12 consider and decide this case fairly and impartially. All
13 persons stand equal before the law and are entitled to the
14 same treatment under the law. You should not be prejudice
15 for or against any person because of that person's race,
16 color, religion, political or social beliefs, wealth or
17 poverty. You should not even consider such matters. The
18 same is true as to prejudice for or against, and sympathy for
19 any party.

20 Now, in a moment I'm going to turn it over to
21 Counsel to begin opening statements. And, Mr. Salem, if I
22 can just ask you to hand out the notebooks to the jurors so
23 that you have them if you want, and, uh, like I said, feel
24 free to move around and get comfortable as you need. And,
25 Counsel, when, when you're ready. (Cough) -- excuse me.

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1 MR. PORCARELLI: Your Honor, with the Court's permission
2 -- pardon me for interrupting -- would it be okay if at some
3 point I could move around in front to see --

4 THE COURT: Counsel, you may absolutely move around to
5 wherever you need to --

6 MR. PORCARELLI: Thank you very much.

7 THE COURT: -- to see.

8 MS. ZOIS: We do need to approach.

9 MR. BRATT: We do need to approach briefly and make a
10 record, Your Honor, at the bench outside (unclear - two
11 words.)

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

14 (Husher turned on.)

15 MR. BRATT: Everybody?

16 THE COURT: I got it right here.

17 MR. BRATT: Your Honor, um, this is in reference to the,
18 uh, the motion in limine on the issue of Mr. Porcarelli's
19 client. For the record, I'd indicate that we object, I'd
20 like to make a proffer that we would have identified his
21 clients, explained who they were, why they were in this case,
22 what the claim is and the elements, basically, of that claim,
23 everything other than the coverage and the segregation
24 process, which we believe the law allows us to do. I
25 understand the Court's ruling, I want to preserve that

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1 objection for the record. Thank you, Your Honor.

2 THE COURT: So noted, and thank you, Counsel.

3 MS. HOWARD: The witness?

4 THE COURT: Hmm?

5 MR. BRATT: Hmm?

6 MS. HOWARD: The calling of the witness.

7 MR. BRATT: Uh, we could do that now or we can do it
8 before you call the witness. Either way you're gonna' make a
9 proffer.

10 MS. HOWARD: Okay, we won't do it now. Okay, we'll
11 wait, okay.

12 (Counsel returned to the trial tables and the following
13 occurred:)

14 (Husher turned off.)

15 MS. ZOIS: May it please the Court?

16 THE COURT: You may proceed, please.

17 MS. ZOIS: Good afternoon. It's been a long morning,
18 congratulations. Um, all drivers have a duty to pay
19 attention to the traffic in front of them. We have these
20 safety rules to help keep our community safe. And when a
21 driver fails to pay attention to the traffic in front of them
22 they're responsible for the harms and losses that they've
23 caused to someone that they've injured.

24 Back on June 26th of 2009 Kelsey Sapp was home with
25 her younger sister and two of their friends. They decided

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1 they wanted to go to the Outback Steakhouse that night for
2 dinner. She took her mom's keys, got into her car and headed
3 towards Frederick. She was in the left hand lane heading
4 westbound towards the Outback. It started to rain, it
5 started to get foggy. She didn't realize that traffic was at
6 a complete stop up ahead of her. Suddenly she saw the brake
7 lights of a blue Honda directly in front of her. She slammed
8 on her brakes, hydroplaned and crashed into the back of the
9 blue Honda. Jacqueline Exline-Hassler was in the blue Honda.
10 She was shook in the car, slammed up against the left hand
11 door of the car, and she'll tell you that the impact was so
12 severe that it felt like her teeth shook. The axel, that
13 doesn't look at that bad, the axel of her car was broken
14 because of the impact. Her car wasn't drivable from the
15 scene and it had to be towed.

16 The Defendant's car also broke an axel, and her
17 front dri (sic), that's the front driver's side wheel nearly
18 came off the car. Both of the vehicles had to be towed from
19 the scene. There was significant property damage to both of
20 the vehicles. The Defendant's vehicle was \$7500 and change
21 to be repaired. The Plaintiff's vehicle was over \$5000 to be
22 repaired.

23 During the crash Jackie's back was wrenched. And
24 what ended up happening, and I'll come back to this in a
25 second, but what ended up happening was the discs between her

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1 vertebrae were sheared, because of the force. And she ended
2 up develing (sic) what are, developing what are called
3 annular tears in the discs in her back from the force, and
4 I'll come back to that in a second. But first, let me tell
5 you who we're suing and why. Jacqueline Exline-Hassler is
6 suing Kirsten Sapp for not paying attention to the roadway,
7 failing to operate her vehicle at a speed under the weather
8 conditions as appropriate, and not paying attention to the
9 traffic in front of her.

10 Kirsten Sapp has pled guilty in court, and this is
11 her transcript from her District Court hearing.

12 (Audio recording being played.)

13 FEMALE VOICE: So, um, what is your, what is
14 your name and plea (unclear - two words)?

15 MS. SAPP: Kirsten Sapp, I plead guilty to
16 (unclear).

17 FEMALE VOICE: Um, you ladies are not going
18 to testify. You (unclear - three words) you can
19 just (unclear - one word). Thank you. All
20 right, what is your (unclear - one word)?

21 MS. SAPP: Um, it had just started raining
22 on the highway, and by the time I realized the
23 person in front of me was (unclear - four words)
24 I hit 'em.

25 FEMALE VOICE: You slide into them?

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1 MS. SAPP: Yeah, my car just, I didn't even
2 know if I hit the car (unclear - two words).

3 (End of audio recording.)

4 MS. ZOIS: Could you hear that? Okay. After pleading
5 guilty in court she also answered a set of interrogatories
6 initially back in June of 2012. And we asked her in that set
7 of interrogatories . . . are you claiming that the Plaintiff
8 did anything wrong in this case? Are you claiming that
9 Jacqueline Exline-Hassler did anything to cause or contribute
10 to this occurrence, and her answer back in June of 2012 was,
11 "I make no such," I believe that was probably misspelled, but
12 "contention."

13 In December of 2012, however, Kirsten Sapp, under
14 new representation has said, "The Plaintiff was
15 contributorily negligent for suddenly and unexpectedly
16 stopping in the roadway." I don't believe that would be the
17 testimony in this case, but I've been surprised before.

18 We are also suing Guido Porcarelli's client who is
19 a different defendant in this case.

20 MR. GILLCRIST: Objection, Your Honor.

21 THE COURT: Approach.

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

24 (Husher turned on.)

25 THE COURT: What independent, I mean what --

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1 MS. ZOIS: Just that they're two different defendants
2 that's all.

3 THE COURT: Just say there's a, there's another
4 defendant and he represents another interest.

5 MS. ZOIS: Right, that's --

6 MR. BRATT: That's (unclear - one word).

7 THE COURT: Uh, just --

8 MS. ZOIS: -- where I was headed.

9 MR. BRATT: Right.

10 THE COURT: So.

11 MR. GILLCRIST: Well --

12 MS. ZOIS: That's it.

13 THE COURT: I, I understand.

14 MR. PORCARELLI: Can I make a record when you're done,
15 Your Honor?

16 THE COURT: Pardon?

17 MR. PORCARELLI: I'm sorry, I didn't mean to interrupt.

18 THE COURT: No, go ahead.

19 MR. PORCARELLI: I'd like to bring an objection on the
20 record. I thought the ruling was really clear that there'd
21 be no reference to --

22 THE COURT: Reference to any --

23 MR. PORCARELLI: -- any other party now or to another
24 party --

25 MS. ZOIS: No.

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1 THE COURT: Wait!

2 MS. ZOIS: Understood, Your Honor.

3 THE COURT: I'm going to give you all any time that you
4 want to talk, but you don't interrupt Counsel.

5 MS. ZOIS: Understood.

6 THE COURT: All right.

7 MS. ZOIS: Understood.

8 MR. PORCARELLI: Understanding of your ruling was that I
9 would be introduced, but there'd be no other reference to --

10 THE COURT: Not to another.

11 MR. PORCARELLI: -- to any other, any other --

12 THE COURT: Another interest.

13 MR. PORCARELLI: -- any other party, be another
14 interest. Now that bell has been rung --

15 THE COURT: Mm-hmm.

16 MR. PORCARELLI: -- and, you know, I would make a --
17 we've spent a long time getting to this jury. I'm gonna' ask
18 for a mistrial. I feel that I have to, I just, this is a
19 hard thing to un, undo.

20 THE COURT: Um, so.

21 MR. PORCARELLI: You know what they're gonna' speculate
22 about when they go back in that jury room.

23 THE COURT: So. I'm gonna' deny the motion for a
24 mistrial, because one, I think that, uh, what has been said
25 is fairly innocuous at some point. My point when we were

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1 arguing this before -- this is the Plaintiff's Counsel -- is
2 the only liability that Counsel's client has is if this jury
3 awards more than X number of dollars in damages, there is no
4 other claim there. That's why, that's why I ruled as I did
5 not to name this, this Defendant.

6 MS. ZOIS: Understood.

7 THE COURT: So, you just say, just say that the only
8 claim, because if this jury finds that your client was not
9 injured as a result of this accident or finds that your
10 client was injured, but only to X number of dollars, what
11 they had to do is totally out, they are totally out of this
12 case. There is not an independent clause of action against
13 his client absent that. That's why it isn't relevant to talk
14 about anything other than Counsel is representing another
15 interest and just leave it at that.

16 MS. ZOIS: Exactly. That's where I was headed, Your
17 Honor.

18 THE COURT: So.

19 MR. PORCARELLI: But, could I --

20 MS. ZOIS: That's what I --

21 THE COURT: But you said they were making a claim
22 against another party.

23 MR. PORCARELLI: Exactly. She specified, she targeted
24 another, another party.

25 MS. ZOIS: (Unclear - two words.)

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1 THE COURT: Another party.

2 MR. PORCARELLI: And I thought it was, it was (unclear -
3 two words).

4 THE COURT: So.

5 MS. ZOIS: Well, just in (unclear - one word), Your
6 Honor, my understanding was you said that they're (unclear -
7 one word) identified as the Defendant, but no further than
8 that. So, a separate defendant, and I thought --

9 THE COURT: So, no, is, is, is a Counsel for a --

10 MS. ZOIS: It's a different defendant.

11 THE COURT: -- for another --

12 MR. PORCARELLI: The Defense.

13 THE COURT: -- interested --

14 MS. ZOIS: Correct.

15 MR. PORCARELLI: And, and --

16 THE COURT: -- party.

17 MS. ZOIS: Correct, and that's all I was gonna' say,
18 Your Honor.

19 THE COURT: Counsel for --

20 MS. ZOIS: I didn't get that --

21 THE COURT: -- defense for another --

22 MS. ZOIS: Yes, that's --

23 THE COURT: -- interested party.

24 MS. ZOIS: -- totally understood.

25 MR. PORCARELLI: And, and --

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1 THE COURT: Just say it just like that.
2 MALE VOICE: (Unclear - one word) --
3 MR. BRATT: We'll go no farther than the Court's ruling,
4 Your Honor.
5 MS. ZOIS: Totally understood, and that's where I was
6 headed.
7 MR. BRATT: Since it's already, the cat's out of the bag
8 can we just drop the --
9 MS. ZOIS: But that's --
10 MR. BRATT: -- subject entirely and just move on?
11 MS. ZOIS: That's -- please go.
12 MR. BRATT: Okay. Thank you.
13 MR. GILLCRIST: Thank you, Your Honor.
14 MS. ZOIS: Just so -- Counsel for a different defendant
15 --
16 THE COURT: No.
17 MR. BRATT: No.
18 MS. ZOIS: Okay.
19 THE COURT: Counsel for --
20 MR. BRATT: Another interested --
21 THE COURT: -- another interested party.
22 MS. ZOIS: Okay, got it.
23 MR. BRATT: Got it?
24 MS. ZOIS: Yeah.
25 (Counsel returned to the trial tables and the following

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1 occurred:)

2 (Husher turned off.)

3 THE COURT: Thank you.

4 MS. ZOIS: Thank you.

5 MR. BRATT: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

2 --

3 MS. EXLINE-HASSLER: Forty-six.

4 MS. ZOIS: How old?

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

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

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

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

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

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

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

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

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1 MR. GILLCRIST: Objection, Your Honor.

2 THE COURT: Sustained.

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

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

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

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

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

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

25 Following the visit with her primary care doctor on

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

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

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

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

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

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

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

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

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

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

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

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

17 MS. EXLINE-HASSLER: Yes.

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

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

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

3 Now, the other thing that you're gonna' be hearing
4 about is Jackie's employment. Jackie's supervisor, Sharon
5 Hamilton, is going to come in and talk to you about her work
6 ethic, and her ability to work, and how her performance was
7 in 2008. She's gonna' come in and tell you about that.

8 Four, by the way is exceeds expectations. Jackie was a hard
9 worker, she's worked the same job 18 years, and she actually
10 took the job over the supervisor you're going to hear from.
11 The supervisor hired her and put her in her job.

12 Unfortunately, Jackie's performance at work you're gonna',
13 I'm gonna' let Sharon Hamilton tell you that. It's gone
14 downhill. She's had to take a lot of time off from work,
15 because of the doctor's appointments. Trying to concentrate
16 and focus on very detail oriented jobs is difficult when
17 you're in pay. It's not easy. And her work performance has
18 suffered from it. She still tries, she tries to give 100
19 percent, but her 100 percent now is nothing like what her 100
20 percent was before the day of this crash, and Sharon Hamilton
21 will talk to you about that.

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

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

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

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

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

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

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

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

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1 or clear and convincing so I just want you to keep that in
2 mind. And I want to thank you, thank you, thank you for your
3 time and attention here today. Um, I'm sure jury service
4 isn't where everybody wants to be today with jobs and
5 families and other things going on with your lives, so I want
6 to make sure I take the opportunity to thank you, because
7 this case, as you can see, is, is an older case it's been
8 from June 26 of 2009. And, one behalf of myself and my Co-
9 Counsel, John Bratt, and my client, and our paralegal
10 Samantha, I want to just thank you and I look forward to
11 spending the next couple of days with you.

12 MR. GILLCRIST: May it please the Court?

13 THE COURT: Certainly.

14 MR. GILLCRIST: Your Honor, could we --

15 THE COURT: Absolutely.

16 MR. GILLCRIST: -- move this?

17 THE COURT: Mm-hmm.

18 MR. GILLCRIST: (Unclear - two words) the screen
19 (unclear - two words). (Unclear - four words), Your Honor?

20 THE COURT: Sure.

21 MR. GILLCRIST: I don't want to trip over (unclear -
22 five words)

23 (Unclear - lots of interference.)

24 MR. GILLCRIST: Ladies and gentlemen of the jury, thank
25 you. Um, I represent Kirsten Sapp along with, uh, Anne

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1 Howard, and, uh, we're going to be involved in this case,
2 you're gonna' to hear from us over the next two or three
3 days. Um, and like Counsel, um, for the Plaintiff in this
4 case, I'd like to thank you for your participation in the
5 case. It is an important case. Um, it's an important case
6 to, uh, Ms. Exline-Hassler, it's an important case to Kirsten
7 Sapp, uh, and you can only look at the medical bills alone
8 that they are saying that Ms. Sapp caused this nice lady, uh,
9 you know that it is a very important and significant case if
10 you find against my client.

11 So, during the course of this trial you'll hear
12 witnesses, you'll hear, see documents, you'll see
13 photographs, um, you will hear from expert witnesses
14 including doctors that, um, Counsel here have paid to give
15 testimony, uh, in (sic), on behalf of their clients. You'll
16 hear that testimony. Ultimately, your job will be to sort it
17 all out, decide what happened, what didn't happen, decide
18 what's the truth, what's not the truth, and make a decision
19 based on all the evidence.

20 And, I'm gonna' say it now, and I promise you I
21 (unclear - one word), I promise you I'll say it at the end of
22 the trial, if your verdict is against Ms. Sapp we will
23 respect your verdict, and, uh, move on with our lives. By
24 the same token, if your verdict is in favor of Ms. Sapp, um,
25 then of course, um, we will be pleased with that, but your

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1 job is not to go with what one of says because of what we're
2 saying. Your job is to listen very carefully to the evidence
3 and make a decision based on the evidence, obviously, uh,
4 that's why you're here.

5 Now, uh, in a case like this ordinarily there are
6 questions of liability and questions of damages. You got to
7 hear Counsel, uh, play up on this video screen, a hearing
8 that took place on a traffic ticket that was issued to
9 Kirsten Sapp. We don't dispute that she did that when she
10 went to Court, uh, we don't dispute what she said. Uh, one
11 of the things that, I think it either trailed off at the end
12 or they didn't play it was, at the end she said, Ms. Sapp
13 said to the, the traffic judge, it all happened very quickly,
14 I don't know what happened. And, and, essentially, that's
15 what she's gonna' tell you when she takes the witness stand,
16 it all happened quickly, and I can't tell you 100 percent
17 what happened. She's being truth, she's being truthful she's
18 being honest to you. Um, she is a young lady who, uh,
19 contrary to the suggestion, I think, with all due respect to
20 Counsel, says, Counsel says she took her mother's keys, well,
21 she called up her mother and got permission from her mother
22 to drive her car, that's what happened. Um, and her mother
23 gave her permission, she was driving her sister and two
24 friends, they were going to an Outback Steakhouse. Um, Ms.
25 Sapp was driving the car carefully, um, she was travelling

1 just like, um, the Plaintiff on 70 West, and, uh, there was
2 an accident. And if you decide that because there was an
3 accident that's Ms. Sapp's fault then you should find against
4 her. We hope that you look a little bit deeper into the
5 evidence, uh, consider a little bit more than what Counsel's
6 indicated to you, and really judge for yourself whether she
7 was negligent in the operation of her vehicle.

8 Now, um, Ms. Zois, at the very end of her opening
9 statement, uh, said that, you know, keep in mind that the
10 burden of proof is on her client. Well, it is on her client.
11 Um, Ms. Sapp does not have a burden of proof to show that she
12 was not negligent, nor, does she have the burden of proof to
13 show that she did not cause damages or injuries to Ms. Zois'
14 client. That burden of proof rests with Ms. Zois during the
15 entire trial.

16 Now, as a practical matter, we are gonna' put on
17 evidence, we are gonna' present the case to you, and we are
18 gonna' show you why we contend that she was not injured or
19 injured to alleged, to the extent that she says she was
20 injured. Um, but please do not lose sight during this trial
21 that the burden of proof rests with the Plaintiff in this
22 case. She is the one that's suing my client, and you saw the
23 numbers there, for medical bills, for wage losses or hundreds
24 of thousands of dollars apparently. So, please keep in mind
25 if she doesn't proof those damages to your satisfaction by a

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1 preponderance of the evidence then those damages should not
2 be awarded to Ms. Zois' client, Ms., um, Exline-Hassler.

3 Now, in terms of how this accident happened. Um,
4 you are going to hear from the Plaintiff in this case, uh,
5 about what happened, and there, there is a lot more than what
6 you've heard. And please keep an open mind, you're gonna'
7 hear a string of witnesses, and just because you hear from
8 Ms. Exline-Hassler first, for example, if that's the case,
9 doesn't mean that that's the whole story. The whole story
10 will hopefully be known to you by the time you go back and
11 give your, and do your deliberations.

12 But, uh, the Plaintiff gave a deposition in this
13 case, and she explained what happened in the accident, the
14 Plaintiff did, uh, and we ask you to consider that, and I'm
15 just gonna' give you a little bit of a, an oversight of what
16 she said. She, like my client, was travelling in the far
17 left lane of 70. It was raining, or it had been raining and
18 the roads were wet, uh, it wasn't ideal driving conditions.

19 The Plaintiff will testify that she was going 6
20 (sic), 65 to 70 miles per hour with the flow of traffic just
21 like Ms. Sapp was driving. Ms. Sapp was apparently behind
22 her, and then all of a sudden, uh, the Plaintiff hit her
23 brakes, came to an abrupt stop. Again, when you hear the
24 tape of the traffic hearing you'll understand that my client
25 doesn't know really what happened. She remembers it being

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1 wet, she remembers sort of a foggy, misty thing on the road,
2 because it was hot, and she remembers applying her brakes and
3 sliding or hydroplaning in her vehicle. Uh, but what the
4 Plaintiff said sort of opens up the picture or completes the
5 picture if you will. And, as the Plaintiff said in her
6 deposition, she came to an abrupt stop. Why? Because the
7 car in front of her came to an abrupt stop. There was a
8 sudden stop. In fact, even Ms. Exline-Hassler later said
9 that there was an accident up ahead. When she came to this
10 abrupt stop it wasn't a normal controlled stop, like you
11 would hope for on 70, and I know, I suspect that all of you
12 have driven on 70 or 270 or 495 or 95 or different highways
13 that this happens on occasionally. You hope to avoid it, but
14 it happened in this case. And what the Plaintiff testified
15 is that she applied her brakes, and she didn't come to a
16 controlled stop in front of, in behind the car. Rather, she
17 had to turn her vehicle. She had to turn her nose of the
18 vehicle to the side.

19 Now, she says she went to the left, actually she
20 went to the right, but not that that's a big deal, but she
21 went to left and she had to turn the nose of her vehicle.
22 Why? We submit because she had to, she wanted to avoid
23 striking that vehicle in front of her. That's the only thing
24 that makes sense. She will testify that she has a tendency
25 to do that every time she stops behind a vehicle, and I

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1 submit to that that just doesn't make sense.

2 Ms. Exline-Hassler will testify well, yes, I pulled
3 my vehicle a little bit to the left, not for any reason other
4 than that's how I always bring my car to a stop behind a
5 vehicle. She called it tucking the vehicle, and she says she
6 has a tendency to do that people have gotten mad at her for
7 doing that on prior occasions.

8 Well, I'd submit to you that that, with all due
9 respect to her, she's an extremely nice lady, you're gonna'
10 love her, hopefully you'll love Ms. Sapp as well, as people,
11 but we'd submit to you that that's a convenient testimony or
12 compen (sic), convenient version. The reality is, we submit
13 is that she moved her vehicle to the left because she was
14 afraid that she might hit the vehicle in front of her. Why?
15 Because these vehicles were coming to a sudden stop. Was it
16 due to weather? Was it due to the accident ahead? We really
17 don't know.

18 But the reality is that Ms. Exline-Hassler then
19 looked into her rearview mirror, she will testify, and this
20 is all going to come from her, she will testify that upon
21 looking in her rearview mirror there was a dark colored car
22 that darted around her, and we asked in her deposition, well,
23 was this Ms. Sapp that darted around you, and she said no,
24 this was a different car.

25 So, the first thing she apparently observed is a

1 car darting around her, a dark color car darting around her.
2 She also observed a white truck, she also observed an 18-
3 wheel tractor-trailer that slid by her, was her words. And
4 then she felt an impact apparently by Ms. Sapp. Now, we
5 don't dispute that Ms. Sapp's vehicle struck her, that's not,
6 and we don't want to, to get things sidetracked here, but the
7 reality is there's a lot more to the picture of this accident
8 then meets the eye. This accident was the result of cars
9 coming to a sudden, unexpected stop on I-70, and cars were
10 going every which way, but loose, and that's in fact what Ms.
11 Exline-Hassler says in her deposition, there were cars
12 everywhere. She saw this, again, tractor-trailer sliding by
13 her. The driver of the tractor-trailer even pulled off to
14 the side of the road, approached her, wondering whether he
15 had hit her. So, this was not a simple rear end accident as
16 you might gather.

17 Now, the truth is that the police officer came to
18 the scene of the accident, um, Officer Chicarelli I think his
19 name is. And the officer didn't witness the accident, but
20 the officers are paid to go out there, and they serve very
21 important public role, and we, we honor them for that, we
22 admire them for that, but the reality is is that the officer
23 did not witness the accident, and he issued my client a
24 ticket, okay, for failing to control her vehicle to avoid a
25 collision.

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1 Now, Ms. Sapp got this ticket, she got notice of
2 the hearing, went to Court and she said what you heard, or at
3 least parts of what you heard, but again, something that said
4 that was maybe cut off or, or not played for you was that
5 this all happened so quickly, and she didn't know what
6 happened. Um, she was with friends at the time, they weren't
7 doing anything (unclear - one word), she was driving her
8 vehicle with her mother's permission, they were going out for
9 a nice, uh, dinner at the Outback Steakhouse. She didn't try
10 and cause this accident, it was an unfortunate accident.

11 If, when you go back to the jury room, you decide
12 that what Ms. Sapp did was negligence then you should find
13 against her, and we're not gonna' hide from that. On the
14 other hand, if you go back to the jury room and think to
15 yourself, you know, this is something that really all these
16 cars going back and forth, cars dodging around Ms. Exline-
17 Hassler's vehicle to avoid striking her apparently. A
18 tractor-trailer sliding by her so there's something big going
19 on here. My client was caught up in that mess. If that's
20 what your analysis is then we submit that the proper verdict
21 is that she was not negligent.

22 Now, the fact that she went to court, paid whatever
23 it was, tried to plead guilty, with explanation, uh, doesn't
24 mean that she's negligence (sic). If that was the case, you
25 wouldn't be here and I wouldn't be here. The Court's going

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1 to instruct you on the law of negligence. If that was the
2 case, the Court wouldn't be instructing you on the law of
3 negligence. That's for your decision.

4 And, please, when you go back to the jury,
5 regardless of what decision you make, when you go back to the
6 jury make up your own minds about how this accident happened.
7 Don't make up your mind simply because the police officer had
8 an opinion on what happened, don't make up your mind simply
9 because the traffic judge had an opinion about what happened,
10 make up your minds on what happened in this accident, and
11 that's all we can ask for. And, again, if your verdict is
12 against Ms. Sapp, so be it. That's the negligence theory
13 that, that they are espousing that they are going to try
14 prove to you.

15 Um, I'm gonna' speak a moment now about damages.
16 And, again, please keep in mind that Ms. Exline-Hassla (sic),
17 has the, has the burden of proof to show that she damaged in
18 this accident, she was injured in this accident, and to what
19 injuries she had. If you go back to the jury and you decide
20 that 10,000 of her \$80,000 in medical bills were caused by
21 Ms. Sapp then that's what your verdict should be. If she
22 doesn't carry her burden of proof on any particular issue,
23 whether it's wages, whether it's medical expenses, whether
24 it's pain and suffering or other things, and even, as Ms.
25 Zois indicated, gardening or riding motorcycles, if that's

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1 what your verdict is, if she, if you feel that they have
2 carried their burden of proof and to you, to your
3 satisfaction then it would be appropriate for you to award
4 damages.

5 But the most important thing I can say about
6 damages is only those damages that this young lady sitting
7 over here caused are damages that you should award in this
8 case. This lady sitting over here is the Defendant in this
9 case, she's getting sued for a lot of money by the lady
10 sitting over here. They're both very nice people. One of
11 them is mistaken. We submit to you that Ms. Exline-Hassler
12 is mistaken about the injuries that she is claiming in this
13 case. But, please, through all this evidence, and you're
14 going to hear hours of doctors' testimony, and I apologize,
15 lawyers like me, you know, we ask too many questions we know
16 that it's one our flaws, because we're always worried that
17 we're not doing our client's best interest if we don't ask
18 that next question. So, you're going to be nauseated by the
19 time this trial is over with, with, in all likelihood with
20 some of the things that we do. Please bear with us, we're
21 both, and I speak for all of us, in saying that we're trying
22 to do what in our client's best interest. But you're going
23 hear hours of testimony from doctors and other witnesses in
24 the case. What it all really comes down to is what did this
25 lady over here cause the Plaintiff in this case? And if she

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1 caused her damages she is entitled to compensation for it, we
2 don't hide from that.

3 Let me talk for a moment more specifically about
4 the damages again. Ms. Exline-Hassler contends that she
5 sustained a very serious back injury from this case. And Ms.
6 Zois talked to you about these prior records, these prior
7 back problems, and, obviously, my client did not cause her,
8 her prior back problems that existed before this accident.

9 Um, Ms. Exline-Hasson (sic) had a history of low
10 back problems, it's in the medical records. They are going
11 to try to tell you that those medical records are wrong, but
12 they are not wrong. Um, in 2005 she had a car accident and
13 she injured her low back in that accident, and as a result of
14 that low back she (sic) continued to bother her, as the
15 medical records will show, she had a three year history of
16 low back problems when she went into her doctor in March of
17 2008. Now, this accident was the next year, granted, but in
18 March of 2008 she goes in to the doctor, you'll see the
19 record, and it says, "Motor vehicle accident three years ago,
20 continuous low back problems since then." We didn't make up
21 that record, Ms. Sapp didn't make up this record somewhere
22 and present it to you. This is Ms. Exline-Hasson's (sic) own
23 medical record. She had gone in in January with low back
24 problems. She had a couple more visits then she goes to this
25 doctor, the doctors prescribe medicine, they give her

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1 physical therapy. She has a chronic low back condition for
2 three years, at least.

3 Now, they say that there's a mistake in the record,
4 that she didn't injure her low back for that long from this
5 2005 accident. Well, ask yourself why then is there a
6 reference in this medical record to a motor vehicle three
7 years ago? In fact, she did have an accident three years ago
8 in 2005. So, the medical record is consistent, not
9 inconsistent, but consistent with the facts of this case.
10 Three years ago she did have a car accident and three years
11 ago she did injure her low back. This is not something that
12 we're making up, you'll see the medical record.

13 So, when Counsel tries to tell you that this
14 history is wrong, please don't buy that for a second if you
15 are convinced that it is not wrong, and we submit to you that
16 you will be convinced that it is not wrong. The medical
17 record references an accident three years ago, and indeed she
18 had an accident three years ago that resulted in low back
19 injury.

20 Now, if you have any doubt about that, we submit,
21 then we're gonna' ask you to look at the pharmacy records.
22 And the pharmacy records show this was not a low back
23 condition that magically resolved within a couple weeks, and
24 then never bothered her again until the subject accident a
25 year later. We know that, because the pharmacy records show

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1 that in July of 2008, remember this was a March 2008
2 reference to her three years of chronic low back pain. In
3 July, specifically July 3rd, 2008 she gets a prescription
4 filled for Tramadol, which is a pain medication. She was
5 only taking it because of the low back issue, the problem she
6 went in for the doctor for. Then, in September, she get
7 Skelaxin, which is a muscle relaxer. Again, these were
8 medications prescribed to her in March or around March of
9 2008 because of her low back.

10 And then in January, January 12th of '09,
11 specifically, she refills her prescriptions with, and she had
12 two more refills after that that she was allowed to use,
13 refills her prescription for Skelaxin, again, a muscle
14 relaxer. And the Plaintiff, I think, will hear these records
15 and hopefully honestly tell you that yes, I filled that
16 muscle relaxant in January of 2009. Now, here we're only a
17 few months before the accident. And her prescriptions would
18 have extended to her about the time of the accident, and she
19 refilled those medications, why? Because she still needed
20 the muscle relaxers. She didn't go and refill these
21 medications because she wanted to run up a medical bill or do
22 anything like that, or she wanted to go to a CVS store, she
23 went to refill these medications because she needed it and
24 she needed a muscle relaxer. Why? In January of '08,
25 January of '09, excuse me, again, just months before

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1 accident, because she needed it, she was having ongoing low
2 back pain. So, yes, we don't have her having a neurosurgeon
3 tell her that she needs surgery in 2008, we don't have an
4 orthopedic spine specialist telling her that she's got a
5 herniated disc or anything like that. What we have though
6 are records from her own providers that show that she did, in
7 fact, have ongoing problems with her low back, uh, before
8 this accident, it's borne out by the medical reports, and
9 they are gonna' try and prove to you otherwise. We submit to
10 you that the proof is in the pudding, namely, the records
11 that you'll be able to see here about during the course of
12 this trial.

13 Now, this was a relatively minor accident. You'll
14 get to see photographs of her car, and there didn't appear
15 from these photographs to be much evidence, you'll be the
16 judge of how significant an impact this was to Ms. Exline-
17 Hassline's (sic) vehicle.

18 Um, fortunately, no one got really seriously
19 injured in this accident. In fact, Ms. Exline-Hassline (sic)
20 was given the opportunity to go in an ambulance afterwards.
21 There was even suggestion that the ambulance was actually on
22 the scene, because it was going to the next accident right up
23 the road. Uh, she was given an opportunity to go in the
24 ambulance, didn't go to an am (sic), didn't go in an
25 ambulance. She, uh, uh, went to, uh, her, an urgent care

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1 center, uh, I think it was the next day, didn't mention
2 anything about her low back, there was no treatment to her
3 low back, there was no suggestion that she was having spasm
4 in her low back, she was having some wish (sic), whiplash
5 symptoms, um, and she had a headache as well. Um, but she
6 wasn't having low back symptoms the day after the accident
7 whenever she went to this urgent care center. But then she
8 subsequently went to her primary care doctor and started
9 getting treatment for her low back.

10 You've heard Ms. Zois explain to you or show you
11 models of the spine. You'll hear all the medical evidence in
12 this case, an important thing will be the lumbar MRI scans
13 that were done for Ms. Exline-Hassler. The lumbar MRI scans
14 were done, I think there were two after the accident, and
15 what these MRI scans showed were Degenerative Disc Disease.
16 Counsel says they show annular tears, that's how it was
17 described by the radiologist that saw, uh, these films, but
18 what's important is what her own treating doctors refer to
19 them as, these are doctors that are treating not the MRI, but
20 treating the clinical patient. They correlate the patient's
21 findings examination with the study, and what do they come to
22 the conclusion about? They came to the conclusion this was
23 Degenerative Disc Disease. Dr. Michael Radley saw these
24 films from Parkway Neuroscience, a neurosurgery center. He
25 referred them to as mild dehydration changes. And the

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1 doctor, even the doctor who's gonna' testify for, for Ms.
2 Exline-Hasline (sic) is going to acknowledge that over time,
3 as we get older, your body looses water (unclear - two
4 words), and that's why people wrinkle, that's why people, uh,
5 get arthritis, and one of the things that impacts is your
6 disc, and as you discs get old guess what, they dry out.
7 Some of the times it happens sooner in life than other times
8 for people. It just depends on your make up. In this case
9 what those MRI exchanges showed, as Dr. Radley said, were
10 mild dehydration, dehydrate, loosing water content, changes.
11 That's what was going on in her spine. But it wasn't just
12 Dr. Radley, a pain specialist, Dr. Huong, also looked at
13 those films, and he referred it to as Degenerative Disc
14 Disease. It wasn't just Dr. Huong. Dr. Nisenfeld, a spine
15 specialist she had been referred to, saw those films, looked
16 at her condition and said that she had Degenerative Disc
17 Disease. These doctors didn't refeer (sic), refer to any
18 acute changes on the MRI, rather, the picture in this case,
19 as the doctors will all acknowledge, we submit to you, is
20 that she had a degenerative process in her spine. And that's
21 what's reflected in those films, in those studies.

22 She had an EEMG, nerve conduction study. Why was
23 that done? Because of these complaints that she had in her
24 legs and had in her arms, and I'll get to that in a second.
25 The EMG study was completely normal, it didn't explain what

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1 was going on with her. And, in fact, throughout the course
2 of her medical treatment, as Counsel, acknowledged, she never
3 had a neurologically adverse finding, neurologically intact.
4 And that just doesn't mean you don't have a significant spine
5 injury, that means that these doctors did neurological
6 examinations of her every time they see her, and these
7 neurologic examinations were normal. There wasn't anything
8 there to explain what she was complaining about.

9 She was also complaining about pain in her hands
10 and wrist, and at one point in this case, now, we're here
11 now, but this case has been going on for quite a long time, a
12 year longer. We get the process we have something called
13 discovery in the case, and during the discovery phase of this
14 case the parties are allowed to ask the other side what
15 they're claiming was caused by their client. So, we
16 propounded discovery on, on Ms. Exline-Hasson (sic) on behalf
17 of Ms. Sapp to say what are you saying that I did to you?
18 How did you, how do you contend I injured you? And, in fact,
19 in discovery, which was signed by her and her attorneys, she
20 said that she had developed carpal tunnel syndrome due to
21 this accident. Now, she didn't phrase it exactly as carpal
22 tunnel syndrome, because that's what her doctors called it,
23 but she was complaining about problems in her hands and wrist
24 that she says was related to the accident. She had surgery
25 for carpal tunnel or ulnar neuropathy surgery, and contended

1 that that was related to what Ms. Sapp had caused. Now,
2 they've now withdrawn, it's no longer something they're able
3 to prove, but at one point in this case it was, they were
4 attempting to prove that, that Ms. Sapp caused that as well.
5 That's by the wayside now, it's not going to be for your
6 consideration, but under oath the Plaintiff in this case did
7 make such a contention.

8 MS. ZOIS: Objection, Your Honor. May we approach?

9 THE COURT: Sure

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

12 (Husher turned on.)

13 MS. ZOIS: I let the carpal tunnel thing go until he
14 said under oath. Here's how the deposition went, and I can
15 pull up the transcript, and I'm pretty sure the other two
16 attorneys that were actually at the deposition will back me
17 up on this.

18 MR. GILLCRIST: I'm referring to the answers to
19 interrogatories they were in.

20 MS. ZOIS: Well, you just said deposition.

21 MR. GILLCRIST: No, I said under oath.

22 THE COURT: No, he said under oath.

23 MS. ZOIS: Okay, either way, in her deposition what we
24 said at the time, which was after the answers to
25 interrogatories were executed it was before expert

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1 designation, and I said, Counsel, you probably want to ask
2 her about the carpal tunnel issue, because I don't know,
3 because my expert designation isn't until August 25th, 2012,
4 you probably want to get into this area with her, because I
5 don't know, as I, as we sit here. So, I think it's unfair
6 now for Counsel to get up and suggest that we're making the
7 claim, withdrawing the claim when at the time of her
8 discovery deposition I allowed them the opportunity to
9 explore that area before my expert designation, and then I
10 sent a letter to Counsel saying by the way you don't have to
11 worry about any of that, because we're not making that claim.
12 So, that's my objection, Your Honor, I think it's
13 inappropriate.

14 THE COURT: So, let's just, let me just, I will remind
15 the jury again that opening statements are not evidence, and
16 we'll go ahead and move on.

17 MR. BRATT: Thank you.

18 THE COURT: And whatever is proven is proven.

19 MS. ZOIS: Thank you, y (sic).

20 MR. GILLCRIST: Thank you, Your Honor.

21 MR. BRATT: Thank you, Your Honor.

22 (Counsel returned to the trial tables and the following
23 occurred:)

24 (Husher turned off.)

25 THE COURT: Just want to remind you, ladies and

1 gentlemen, like I said earlier opening statements are an
2 outline of what Counsel expects to prove. It's not evidence.
3 What's proven to your satisfaction will be what's proven
4 later.

5 MR. GILLCRIST: So --

6 THE COURT: Thank you.

7 MR. GILLCRIST: -- ladies, and -- thank you, Your Honor.
8 So, ladies and gentlemen, in fact, during the discovery phase
9 there were answers to interrogatories signed by both Ms.
10 Exline-Hasline (sic) and her attorney saying that she had
11 (unclear - one word) complaints to were caused by Ms. Sapp.
12 We, as the lawyers, we try and do our jobs right, when and
13 investigate these things, and low and behold, those (unclear
14 - two words) were withdrawn. But we submit to you that it
15 gives you a (sic) overall, it helps complete the picture in
16 this case, um, in terms of what my client has said to have
17 cost, and, and ultimately again, what she actually costs is
18 what issue, is what it (sic), at issue in this case, excuse
19 me.

20 So, she had these EMG studies, she had nerve
21 conduction studies, she missed time from work in her work
22 loss statement that she gave to use in discovery. Some of
23 the time that that contended was missed because of this
24 accident it was related to her Carpal Tunnel Syndron (sic),
25 Syndrome, related to the problems that had nothing to do with

1 this, this accident whatsoever. Be that as it may, we're
2 here now to talk about and for you to hear what was caused by
3 this accident, and again, ultimately you'll have to make that
4 decision.

5 You'll hear testimony from, uh, doctors, you'll
6 hear testimony from Dr. McGrail that is associated with
7 Georgetown University. He's a neurosurgeon, a very competent
8 neurosurgeon who did what's called an independent medical
9 examination. That is, when someone's been sued, like Ms.
10 Sapp, they have a right to help learn about the claims that
11 are being made and they can do that, they can arrange or
12 attorneys can arrange to have someone else independent of her
13 treating doctors examine her and weigh in in terms of what
14 was caused by the accident, that's all that Dr. McGrail did.
15 And he will talk to through a videotape deposition and tell
16 you what his opinions are, and submit to you his opinions are
17 very sound. Um, these problems that she's having with her
18 low back are simply not related to this accident.

19 You'll hear from a Dr. Gary London who's a
20 neurologist, and Dr. London did what's called a peer review.
21 So, he did something slight different than what Dr. McGrail
22 did. He didn't examine the patient, he wasn't obligated to
23 or required to, but he did very carefully go through the
24 Plaintiff's medical records and he's gonna' weigh in for you
25 as to what was caused by accident and these ongoing problems

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1 that Ms. Exline-Hasslin (sic) is claiming were simply not
2 caused by this accident.

3 You'll hear from the Plaintiff's own treating
4 doctors. You ask that you consider that testimony as well.
5 Dr. Naff, I think, or Neff (sic), um, is going to testify to
6 you, I think tomorrow for Ms. Exline-Hassler, and he's an
7 impressive doctor, he's going to make an impressive opinion
8 on you, I'm sure, when he testifies on direct examination,
9 but please listen to his whole testimony. We hope that we
10 will be able to show that, uh, the information that he had
11 that he relied upon was no accurate to begin with. Um, and
12 we'll ask him about things like the MRI scans and such.
13 Ultimately, you're gonna' have this mass of evidence before
14 you, and, and we apologize for that. We wish you, we wish
15 we, I think we all wish we could just give you a, a two page
16 outline and let you decide the case, but of course it doesn't
17 work that way. So, we have to present the evidence to you,
18 we are going to present the evidence to you. In the end
19 we're going to ask you to return a verdict for our client.

20 Now, Ms. Zois said that we all agree, we all agree
21 she had a low back injury from this accident. That's not
22 accurate, um, it's your job to decide what injuries she had
23 from this accident if a (sic), if any at all. When she goes
24 into her doctor's and gives them a history of having injured
25 her low back in the accident, so be it. The doctors that

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1 you'll hear from have relied on that history. So, if Ms.
2 Exline-Hassline (sic) had a worsening of her low back because
3 of this accident, and reported that, and if that's true then
4 the doctor's are going to be true when they give you
5 assessments or their diagnosis. So, when Ms. Zois says that
6 even the Defense doctors agree . . . well, the Defense
7 doctors give the opinion that she had strains, muscular
8 strains to the neck and the low back, why, because that's
9 what she reported. They're assuming the accuracy of what she
10 reported to her doctors. Your job will be to really test
11 whether that history that she gave to her doctors was
12 accurate. We submit to you that it was not accurate, because
13 she's gonna' say that she did not have any low back pain
14 leading up to this accident. We contend that the evidence
15 shows that she did. In fact, we (unclear - one word) that
16 the evidence quite clearly shows that she did. She's not
17 only complaining of low back for years, she's prescript
18 (sic), getting filled, uh, her prescriptions because of
19 problems that she's continuing to have.

20 So, um, ladies and gentlemen, I have already spoken
21 enough, and I would just close by saying thank you again, uh,
22 for listening to me now. I will have an opportunity at the
23 end of the evidence to speak to you again directly, and argue
24 to you what the evidence has shown in the case, but you're
25 going to be the ones deciding this case, you're going to be

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1 the ones that goes back to the jury room and makes a decision
2 based on all the evidence, and sitting here I know Ms. Sapp
3 and Howard are confident that you will make, um, the fair
4 (unclear - one word) correct decision in this case. Thank
5 you very much.

6 MR. PORCARELLI: Your Honor, in light of all the points
7 made by Mr. Gillcrist, and out of respect for the jury and
8 their time, if it's okay with Your Honor may I reserve my
9 opening remarks for the beginning of the Defense case?

10 THE COURT: You certainly may. Counsel, why don't you
11 just approach real brief, I wanna' do some logistics, because
12 it's a little bit after 4:00 and we're gonna' do some timing
13 things.

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

16 (Husher turned on.)

17 MR. BRATT: Good afternoon again, Your Honor.

18 MS. ZOIS: Um --

19 THE COURT: Hi did. I didn't know what you wanted to
20 do.

21 MS. ZOIS: I just want to object to the request to take
22 opening out of order, but . . .

23 THE COURT: Certainly, why doesn't, wouldn't Counsel
24 have the opportunity to do that?

25 MS. ZOIS: Well, it's not he wouldn't have the

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1 opportunity to do it, but I think in light of the Court's
2 ruling as to, um, that they have a joint interest and it's a
3 joint defense I think that it unfairly prejudices the
4 Plaintiff. We have the burden of proof in the case, and I
5 think that because the jury doesn't know who he is, who he
6 represents, what this mystic (sic), mystery defendant is or
7 why, I think that taking him out of turn is unfair to us, and
8 we don't get another opening. So, I think that because of
9 the Court's ruling and the way that this is proceeding, I
10 think it's unfair to allow Mr. Porcarelli another opportunity
11 to open before the Defense's case.

12 THE COURT: Your objection's noted for the record.

13 MS. ZOIS: Understood.

14 THE COURT: Mm-hmm.

15 MS. ZOIS: I'll probably do that a lot.

16 THE COURT: That's okay.

17 MR. BRATT: Your Honor --

18 THE COURT: What do you want --

19 MR. BRATT: -- had some concerns regarding logistics?

20 THE COURT: Well, I just wondered, do you have somebody
21 that you can get on and off really, really quickly or do you
22 want to just wait and go until the morning?

23 MS. ZOIS: The Defendant.

24 MR. BRATT: What does the Court consider really quickly?

25 THE COURT: Well, I'd like to finish, I told them try to

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1 finish by 5:00.

2 MS. ZOIS: Yes, we can do that.

3 MR. BRATT: Yeah, we can do that.

4 THE COURT: I mean, you're, you all aren't the only
5 thing that, aren't the only show in town, so . . .

6 MR. BRATT: No problem.

7 THE COURT: It's, uh, (unclear - one word), so, okay?

8 MR. BRATT: Yep.

9 THE COURT: So, we'll have, have one witness and --

10 MR. BRATT: We're ready.

11 THE COURT: -- (unclear - two words) okay.

12 MR. PORCARELLI: Thank you.

13 MR. BRATT: Thanks, Your Honor.

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

16 (Husher turned off.)

17 THE COURT: We have, uh, we think we can get some
18 evidence on and still conclude by 5:00. So, we're going to
19 go ahead and proceed that way. Mr. Bratt.

20 MR. BRATT: Thank you, Your Honor. Again, my name's
21 John Bratt, and I would call the Defendant, Kirsten Sapp to
22 the stand, please.

23 (Brief pause while Counsel confer off the record.)

24 THE COURT: Come on around and walk up the ramp and
25 stand by the chair, and the clerk will swear you in. You can

1 go in that way if you want, either way it doesn't matter

2 KIRSTEN SAPP,

3 a witness, produced on call of the Plaintiff,

4 first having been duly sworn according to law,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BRATT:

8 Q Good afternoon, Ms. Sapp. My name's John Bratt,
9 I'm one of the attorneys representing the Plaintiff in this
10 case. I don't think we've met before. How you doin' this
11 afternoon?

12 A Good, how are you.

13 Q I'm good. A little nervous?

14 A Yeah.

15 Q Okay. I'm gonna' try to make this not as bad as
16 possible, okay? Just a few questions for you.

17 MR. BRATT: Uh, Your Honor, may I have permission to
18 lead this witness under, uh, Rule 5-611, she's an adverse
19 party?

20 THE COURT: Any objection, Counsel?

21 MR. GILLCRIST: No, Your Honor.

22 THE COURT: And I just, I just wouldn't -- and if you
23 could just make sure that you speak up a little bit, because
24 all those folks need to hear you and you're very soft spoken.

25 MS. SAPP: Okay.

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1 THE COURT: Okay?

2 MR. BRATT: Does this mic amplify, Your Honor?

3 THE COURT: It can if you're close enough, so don't --

4 MS. SAPP: I, I --

5 THE COURT: -- just have her s (sic) --

6 MS. SAPP: -- can talk loud.

7 THE COURT: There we go, that's bet (sic), much better.

8 MS. SAPP: Is that good? Okay.

9 BY MR. BRATT:

10 Q Now, Ms. Sapp, you were involved in a car crash

11 with Ms. Exline-Hassler on June 26, 2009, right?

12 A Yes.

13 Q Do you admit responsibility for causing that car

14 crash?

15 MR. GILLCRIST: Objection, Your Honor. Can we approach

16 the bench?

17 THE COURT: Okay.

18 (Counsel approached the bench and the following

19 occurred:)

20 (Husher turned on.)

21 MR. GILLCRIST: Your Honor, he's asking for a legal

22 conclusion. I have no problem with him asking factual

23 questions, but he's asking for a legal conclusion to say

24 admit responsibility, that's a legal conclusion.

25 MR. PORCARELLI: The same objection.

1 THE COURT: Well, why don't you rephrase the question as
2 to . . . I understand, but you -- we're gonna' spend all this
3 time up here, we're gonna' spend five days at the bench and
4 it doesn't need to be. You can rephrase your question to
5 get, to get the answer I think you want without taking the,
6 admitting responsibility, because this is not a case where
7 there's been concealed liability. So, rephrase your question
8 and move on from there.

9 MR. BRATT: I'll do my best, Your Honor, thank you.

10 THE COURT: Certainly you can.

11 (Counsel returned to the trial tables and the following
12 occurred:)

13 (Husher turned off.)

14 BY MR. BRATT:

15 Q Ms. Sapp, is it your contention in this case that
16 you're not responsible for causing the car crash?

17 MR. GILLCRIST: Objection again, Your Honor.

18 FEMALE VOICE: (Unclear.)

19 THE COURT: Rephrase it, please. Sustained.

20 BY MR. BRATT:

21 Q Ms. Sapp, who caused the car crash?

22 MR. GILLCRIST: Same objection, Your Honor.

23 THE COURT: Approach again.

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

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1 (Husher turned on.)

2 THE COURT: Why don't you ask her if she agrees that
3 she's the one that struck the other car, and then go on from
4 there?

5 MR. BRATT: Because, Your Honor, that's not what I want
6 to know. Know, what I want to know is, and I think this is
7 fair, I think contention interrogatories are fair, contention
8 questions are fair. All parties in a Court case are subject
9 to cross and what their contentions are, and if this young
10 lady's contention is is I didn't do it in a liability
11 dispute, I think the jury's entitled to know that, and then
12 I'm entitled to say you say you didn't do it, how come? All
13 I wanna' know is is, is it your position in thish (sic), in
14 this case that you're not responsible.

15 THE COURT: One of the problems that I'm having from
16 this, and I don't wanna' get, I don't want to be fighting
17 with you this whole case. It's all I know about this case is
18 what I've heard from opening statements. We're, what is not
19 at issue is whether this Defendant struck your client's car.

20 MR. BRATT: Correct.

21 THE COURT: That is clearly not at issue.

22 MR. BRATT: Mm-hmm.

23 THE COURT: But that Counsel is not conceding that she
24 is responsible in a legal sense, that's why I'm sustaining
25 the objection to the question, that there's a difference

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1 between the two things. You can -- I don't know what the
2 evidence is going to show, 'cause the only witness that I,
3 the only thing I know about this case is the opening
4 statement. Why don't you just -- like I said, you elected to
5 call her first. I haven't heard your clients, I haven't
6 heard anything else described about what happened to the
7 accident. But I'm hearing that the Defense is not, they're
8 not saying it's not that we deny that we struck her car,
9 we're just not conceding that I'm liable or responsible for
10 this accident. And you're asking the question in the sense
11 of are you saying that you're liable, and Counsel's objecting
12 because they're not saying that she's liable. If you change
13 your question as to whether she's agreeing that she is the
14 one that struck your client's car that is a perfectly
15 acceptable issue question without getting to the issue of
16 reliability or responsibility. That's the reason I'm
17 sustaining the objection.

18 MR. BRATT: Thank you, Your Honor

19 MR. GILLCRIST: Thank you, Your Honor.

20 THE COURT: Mm-hmm.

21 (Counsel returned to the trial tables and the following
22 occurred:)

23 (Husher turned off.)

24 BY MR. BRATT:

25 Q Okay, so, Ms. Sapp, you're involved in a car crash

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1 with Ms. Exline-Hassler on June 26th, 2009, right?

2 A Yes.

3 Q And you're not claiming that Ms. Exline-Hassler did
4 anything to cause or contribute to that crash, are you?

5 A No.

6 Q Now, how long had you been driving on June 26,
7 2009?

8 A How long have I had my license --

9 Q Mm-hmm.

10 A -- for? I guess four years.

11 Q And --

12 A Three or --

13 Q -- when you got your license --

14 A -- three or four years.

15 Q -- did you go through the usual driver's ed
16 process?

17 A Yes.

18 Q And you, you took the Maryland Driver's license
19 test?

20 A Yes.

21 Q And in the driver's license test in driver's ed you
22 learned that you have to keep a look out for traffic in front
23 of you, right?

24 A Yes.

25 Q And you learned that you have to keep a safe

1 distance, didn't you?

2 A Yes.

3 Q And you would agree with me, wouldn't you, that,
4 that's a safety rule, right?

5 A Yes.

6 Q And, because if you don't leave a safe distance and
7 don't look ahead there could be a collision, right?

8 A Yes.

9 Q And if there's a collision somebody could get hurt,
10 couldn't they?

11 A Yes.

12 Q And you knew on June 26th, 2009 that if you have bad
13 weather or bad visibility you need to be even more careful,
14 right?

15 A Mm, yes.

16 Q And you knew all those things before June 26th,
17 2009, didn't ya'?

18 A Yeah.

19 Q Now on that day, what you were doing that afternoon
20 is you were, you were packing because you were moving to
21 Towson next week?

22 A Yes.

23 Q And that was to attend school at Towson University?

24 A Mm-hmm.

25 Q You still go to school there?

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1 A No.
2 Q Graduate?
3 A Yes.
4 Q (Unclear - one word), congratulations.
5 A Thank you.
6 Q And what you did that day is you spent the
7 afternoon packing, right?
8 A Yes.
9 Q And then you were going to head out to dinner with
10 your sisty (sic) Kelsey, sister Kelsey and two of your
11 friends, Brittany and Megan?
12 A Yes.
13 Q And you were driving, right?
14 A Yes.
15 Q And you were driving your mom's Honda Civic.
16 A Yes.
17 Q You had permission to drive your mom's car, right?
18 A Yes.
19 Q And the collision it happened on Interstate 70
20 westbound?
21 A Yes.
22 Q And it happened between 5:30 and 6:00 pm.?
23 A Approximately between there.
24 Q And at the time you and your sister and your
25 friends, you were on your way to the Outback Steakhouse in

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1 Frederick?

2 A Yes.

3 Q And the way you were seated in the car . . . you
4 were in the driver's seat, right?

5 A Yes.

6 Q And Brittany was in the front passenger seat,
7 right?

8 A Um, I don't remember exactly, but I'm pretty sure
9 she was in the front seat.

10 Q And the, the other two girls were in the back seat,
11 weren't they?

12 A Yes.

13 Q And while you were driving the four of you were
14 having a conversation in the car, correct?

15 A Yes.

16 Q And you had a radio on, didn't ya'?

17 A Um, yes, but it wasn't turned on, like turned up
18 very loud.

19 Q And before the accident you were driving down 70
20 between 65 and 70 miles an hour, right?

21 A Yes.

22 Q And then it started to rain.

23 A Yes.

24 Q And it was raining enough that you turned your
25 windshield wipers on, right?

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1 A Yes.

2 Q And when it started raining -- well, let me ask
3 another question, you don't know if you had your headlights
4 on or not, correct?

5 A I don't know.

6 Q And when it started raining you didn't slow down,
7 you continued along at the same speed, correct?

8 A Yes.

9 Q And at some point you saw Ms. Exline-Hassler's
10 vehicle, correct?

11 A Yes.

12 Q And when you first saw her vehicle it was
13 completely stopped, wasn't it?

14 A I only saw her brake lights so I'm not positive
15 whether she was completely stopped or just really slowed
16 down, but by the time I saw her car it, like I knew I, I
17 don't know she was completely stopped or if she was just
18 slowly moving along.

19 MR. BRATT: Court's indulgence, Your Honor.

20 THE COURT: Certainly.

21 (Brief pause while Counsel confer off the record.)

22 MR. BRATT: Um, Madam Clerk, I understand that we've
23 given you a pre li (sic), a pre-marked --

24 THE CLERK: Yes.

25 MR. BRATT: -- list of exhibits. This is going to go to

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1 the end. I've pre-marked this as Plaintiff's, for
2 identification, Plaintiff's Exhibit 49.

3 (To Defendant's Counsel) Counsel, it's a copy of Ms.
4 Sapp's deposition transcript.

5 THE CLERK: (Unclear - one word) transcript.

6 MR. BRATT: Of Ms. Sapp, correct. Thank you.

7 THE CLERK: Mm-hmm.

8 BY MR. BRATT:

9 Q Ms. Sapp, do you remember having your deposition
10 taken on July thir (sic), July 31st, 2012?

11 A Yes.

12 Q And that's a process where you raise your hand and
13 take the oath to tell the truth, right?

14 A Yes.

15 Q And then the lawyers involved in the case can ask
16 you some questions about your testimony, remember that?

17 A Yes.

18 Q Okay. And you remember being at your deposition,
19 don't you?

20 A Yes.

21 Q And, Ms. Sapp, I'm going to -- (To the Court) May I
22 approach, Your Honor?

23 THE COURT: You may.

24 MR. BRATT: Thank you

25 BY MR. SINTON:

1 Q Ms. Sapp, I'm going to show you your deposition
2 transcript, and I'd ask you to take a look at page 56, line
3 17 through 19, okay.

4 MS. HOWARD: What page, Counsel? Sorry.

5 MR. BRATT: Page 56, line 7-3 (sic), 17 through 19.

6 MS. HOWARD: Thank you.

7 MS. SAPP: Okay.

8 BY MR. BRATT:

9 Q And could you, could you, Ms. Sapp, could you read
10 aloud for the jury what it says on line 17 through 19?

11 A Sure. It says, "And is it your recollection that
12 she was completely stopped when you first noticed her?" And
13 I said, "Yes". "And when you noticed she was completely
14 stopped you slammed on your brakes, is that right?"

15 Q And that was your testimony that day, correct?

16 A Yes.

17 Q And after reading that does refresh your
18 recollection as to whether Ms. Exline-Hassler was completely
19 stopped when you first saw her?

20 A I'm not saying that she wasn't completely stopped.
21 When I saw her car, her brake lights, it looked like she was
22 completely stopped, but I'm just saying that I'm not sure if
23 maybe she was moving very slowly inching forward and she was
24 stopped. I don't know, 'cause I, by the time I noticed her
25 brake lights it looked like she was completely stopped.

1 Q So, at your deposition it was your testimony she
2 was completely stopped, correct?

3 A Yes.

4 Q Today it's your testimony that you don't know?

5 A I'm, I don't, I don't know if she was or not, but
6 it looked like she was. I guess only she would know if she
7 was completely stopped in her car.

8 Q And you were going about 65 miles an hour when you
9 hit the brakes?

10 A Yes.

11 Q And when you did that your car hydroplaned and
12 crashed into the car in front of you?

13 A Yes.

14 Q And the reason your car hydroplaned is because you
15 were too close to the car in front of you, you didn't hit the
16 brakes in time to stop, right?

17 MS. HOWARD: Objection.

18 THE COURT: Overruled. She can answer. You can answer.

19 MS. SAPP: Um, yes.

20 BY MR. BRATT:

21 Q And the traffic that was in front of the car you
22 hit, you don't remember anything about the traffic that was
23 in front of Ms. Exline-Hassler's car, do you?

24 A No.

25 Q And between when you hit the brakes and when you

1 impacted Ms. Exline-Hassler's vehicle, you can't tell us how
2 long that took, right? Other than it was very fast.

3 A Yeah, I can't tell you that.

4 Q And the car that you hit, you hit it hard enough
5 that the airbags in your car went off, right?

6 A Yes.

7 Q And the impact from the accident, the collision,
8 was bad enough that your car couldn't be driven from the
9 scene, correct?

10 A Yes.

11 Q Uh, and that was because the, uh, driver's front
12 wheel was basically snapped off your car, wasn't it?

13 A Yes.

14 Q And after the crash you're upset --

15 A Yes.

16 Q -- correct?

17 A Yes.

18 Q Crying?

19 A Yes.

20 Q And you, you talked to the lady in the car in front
21 of you, right?

22 A Yes.

23 Q And that was, that was my client, Ms. Exline-
24 Hassler?

25 A Yes.

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1 Q And at the scene she was nice to you, right?
2 A Yes.
3 Q And to use the phrase (unclear - two words) she was
4 kind of like a motherly comfort to your situation, because
5 she could tell you were really upset --
6 A Yes.
7 Q -- would that be accurate?
8 A Yes.
9 Q And you apologized to her and told her you didn't
10 see her brake lights because of the fog?
11 A Yes.
12 Q And a state trooper responded to the scene,
13 correct?
14 A Yes.
15 Q And the trooper asked you what happened?
16 A Yes.
17 Q And --
18 MS. HOWARD: Objection.
19 BY MR. BRATT:
20 Q -- the trooper gave you a ticket --
21 THE COURT: Overruled.
22 BY MR. BRATT:
23 Q -- after you talked to him, right?
24 A Yes.
25 MS. HOWARD: Objection.

1 THE COURT: Overruled.

2 BY MR. BRATT:

3 Q And about a month after the crash you went to
4 District Court for your ticket, didn't ya'?

5 A Yes.

6 Q And that was in this, this same very building,
7 wasn't it?

8 A Yes.

9 Q And when you went in court you went in front of the
10 Judge and you pled guilty, didn't you?

11 A Yes.

12 Q And you told the judge that it had just started
13 raining and by the time you realized the person in front of
14 you was completely stopped and slammed on your brakes you
15 slid into them, didn't you?

16 A Yes.

17 Q Now, you're not claiming that any other vehicle
18 that was at the scene did something to contribute to this
19 crash happening, are you?

20 A No.

21 Q And you're not claiming that any impact between
22 your car and the Plaintiff's car was caused by some other
23 vehicle are you?

24 MR. BRATT: Thank you, Your Honor, no further, uh,
25 questions.

1 MS. HOWARD: Thank you, Your Honor.

2 THE COURT: Mm-hmm.

3 CROSS EXAMINATION

4 BY MS. HOWARD:

5 Q Just wanted to get a little background, so where do
6 you live?

7 A Mount Airy.

8 Q And you live with your mom and your dad, correct?

9 A Yes.

10 Q And, uh, when did you graduate from Towson -- thank
11 you.

12 A This past August.

13 Q And this past August, August 2012, any other
14 significant events happen with you?

15 A I had a baby.

16 Q So, your baby lives with you and your mom as well,
17 correct?

18 A Yes.

19 Q All right. Now, let's take you back to, um, June
20 of 2000 (sic), uh, June of 2009, Counsel mentioned that you
21 were home that day packing to go up to college for that
22 summer, correct?

23 A Yes.

24 Q All right, and you had a couple of, uh, your sister
25 helped, and that's Kelsey, right?

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1 A Yes.

2 THE COURT: (Cough) Excuse me.

3 BY MS. HOWARD:

4 Q Where's Kelsey today?

5 A She is in, uh, college in South Carolina.

6 Q Okay. And, uh, then you, Kelsey had a friend and
7 you had a friend with, with you at the house that day,
8 correct?

9 A Yes.

10 Q All right. And your friend is here local and
11 they're gonna' be here in court later this week, correct?

12 A Yes.

13 Q All right. Now, um, uh, you guys had the decision
14 that you wanted to go out to dinner at Outback, correct?

15 A Yes.

16 Q All right. So, um, take it from there, you called
17 your mom and asked permission to use the car, is that right?

18 A Yes.

19 Q Okay. Now, do you guys have any particular time,
20 we have to be at Outback by a particular time or anything
21 like that?

22 A No.

23 Q All right. And when you talked to your mom, uh,
24 did she say it was okay to go?

25 A Yes.

1 Q And tell us what car were you driving.
2 A A Honda Civic.
3 Q And had you driven it before that date?
4 A Yes.
5 Q And the route from Mount Airy, where you live with
6 your parents to the Outback in Frederick, had you driven that
7 way before?
8 A Yes.
9 Q So you were familiar with coming out of Mount Airy
10 getting on to 70 West I guess to Frederick, correct?
11 A Yes.
12 Q All right. Now, as you're driving down the road,
13 um, what was the weather like then?
14 A Um, it was clear at first.
15 Q Then what happened?
16 A And then it started to rain, but it was still, like
17 sunny kind of.
18 Q All right. Was there anything else that you
19 (unclear - one word), you know, anything else going on with
20 the weather, other than rain and sun at the same time, was
21 anything else going on?
22 A It was kind of like steamy, I guess, 'cause it was
23 hot and the water hitting the road.
24 Q Was there steam coming off the road?
25 A Like a foggy steamy.

1 Q All right. And, um, your windshield wipers on,
2 you've told us that, correct?

3 A Yes.

4 Q All right. So, then, uh, uh, a, tell us what
5 happened.

6 A Okay. Well, I was on 70 and everything was, I was
7 going about 65 miles an hour, and everything was going,
8 traffic was moving steadily. Um, I didn't really notice her
9 car, I was probably like five or six car lengths behind her
10 when I was travelling --

11 Q Mm-hmm.

12 A -- on the highway, and I didn't notice her brake
13 lights, um, like, I guess . . .

14 Q So, you were five or six car lengths behind the car
15 in front of you --

16 A Yes.

17 Q -- correct? Do you know for sure whether that was
18 Ms. Exline-Hassler or some other car that you were travelling
19 behind before anything happened?

20 A No.

21 Q All right. So, it was just a, you were behind the
22 car about five or six car lengths before --

23 A Yes.

24 Q -- anything out of the ordinary happened.

25 A Yes.

1 Q Correct?

2 A Yes.

3 Q All right. And then you noticed brake lights, I
4 take it?

5 A Yes.

6 Q All right. And, so as soon as you notice brake
7 lights what did you do?

8 A I responded by hitting my brakes.

9 Q Did you hit 'em as hard as you could?

10 A Yes.

11 Q Did your brakes respond the way you expected them?

12 A Um, no.

13 Q You slid?

14 A Yeah.

15 Q All right, and your, your, uh, what part of your
16 car make (sic), what part of your car was involved in the
17 impact?

18 A The front --

19 Q All right.

20 A -- of my car.

21 Q And what part of your, um, Ms. Exline-Hassler's car
22 did you hit?

23 A The back of her car.

24 Q The back of her car, all right. So, if I were to
25 show you what I've had marked as Defendant's Exhibits, uh, 1

1 and 2, uh, would you be able to identify, uh, what's shown in
2 these pictures?

3 A Yes.

4 Q Okay. And what's shown in, uh, let's start with 1
5 just 'cause it's Number 1, not 2 (chuckles). What's shown in
6 Number 1?

7 A Um . . .

8 Q Is that your Honda?

9 A Yes.

10 Q All right, and is that the passenger side of your
11 Honda?

12 A Yes.

13 Q So, that wasn't involved with the contact with Ms.
14 Exline-Hassler?

15 A No.

16 Q I, um, is that the way it looked, the front and the
17 passenger side of your car in the back of the accident?

18 A Yes.

19 Q So, no damage to the front of the, uh, dr (sic)
20 passenger side, correct?

21 A No.

22 Q All right. Let's take a look at Exhibit 2,
23 probably more relevant, but what's shown there?

24 A Um, my, the front of my car on my side.

25 Q The driver's side and, uh, the driver's side front

1 of your car.

2 A Yes.

3 Q All right. Does that show the damage that was
4 caused in this accident?

5 A Yes.

6 Q Is that the way the car looked like af (sic),
7 looked after the accident?

8 A Yes.

9 Q All right.

10 MS. HOWARD: Your Honor, at this time I'd move
11 Defendant's 1 and 2 into evidence.

12 THE COURT: Any objection?

13 MS. ZOIS: No objection.

14 MR. BRATT: No, Your Honor.

15 THE COURT: Be received.

16 MS. HOWARD: Thank you very much.

17 (Items admitted into evidence as
18 Defendant's Exhibit Numbers 1 and 2.)

19 BY MS. HOWARD:

20 Q All right, now after the, um, impact, uh, you did
21 speak with Ms. Exline-Hassler, correct?

22 A Yes.

23 Q All right. And you did say she was kind of
24 reassuring you, correct?

25 A Yes.

1 Q Did you make any observations about how she was
2 moving around?

3 A She was fine.

4 Q Did she ever indicate to you that her teeth were,
5 she got hit so hard her teeth were shattered?

6 A No.

7 Q Did she ever indicate to you that she had slammed
8 her body up against anything in the car?

9 A No.

10 Q What did she tell you about how she was feeling?

11 A I asked her if she was okay, and she said she was
12 fine, and that don't worry about anything, and that she
13 wouldn't come to court when I had my court date for my
14 ticket, and she didn't come.

15 Q Okay. Well, before we get to traffic court in a
16 second, did a (sic) ambulance come by?

17 A Yes.

18 Q Did Ms. Exline-Hassler take the, uh, uh, go in the
19 ambulance?

20 A No.

21 Q All right. Um, now just a last little question
22 here about traffic court, uh, you said you did go to traffic
23 court, correct?

24 A Yes.

25 Q And you heard the tape in opening statement, is it

1 correct you, you pled guilty with an explanation?

2 A Yes.

3 Q All right, and that's 'cause you wanted to tell the
4 Judge what had happened that day, right?

5 A Yes.

6 Q All right, and you wanted to tell her what had, you
7 know, that, explain to her, because of the rain and, and it
8 had all happened fast.

9 A Yes.

10 Q And, uh, after listening to all that she gave you a
11 PBJ correct?

12 A Yes.

13 Q All right. Now, um, is it correct, what we heard
14 at the very end of the statement, that it did all happen, uh,
15 the traffic court statement, it did all happen very fast?

16 A Yes.

17 Q Is that what you said at traffic court?

18 A Yes.

19 Q Is that what you maintain today?

20 A Yes.

21 Q It all happened very fast?

22 A Yes.

23 Q All right. Now, um, you mentioned that, um, Ms.
24 Exline-Hassler wasn't in court, is that correct?

25 A Yes.

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1 Q The officer was there.
2 A Yes.
3 Q Your friends were there.
4 A Yes.
5 Q But she didn't show up.
6 A Yes.
7 Q And you remember the officer said that there had
8 been five or six accidents in the same --
9 MR. BRATT: Objection.
10 THE COURT: Sustained.
11 THE WITNESS: Yes.
12 THE COURT: Sustained.
13 BY MS. HOWARD:
14 Q Did you, do you know of any other accidents that
15 had happened that same day, same time?
16 A Um, only from the --
17 MR. BRATT: Objection.
18 THE WITNESS: -- officer.
19 THE COURT: That was if she, if she knows.
20 BY MS. HOWARD:
21 Q Yeah, I asked if you knew, if you knew.
22 MR. BRATT: Objection, Your Honor.
23 MS. HOWARD: I'm asking if she knew.
24 THE COURT: If she knew of any.
25 MR. BRATT: I understand that, but I nonetheless object.

1 THE COURT: and, I'm, I'm overruling that objection
2 whether --

3 THE WITNESS: Yes --

4 THE COURT: -- she knew.

5 THE WITNESS: -- I did, I do know.

6 BY MS. HOWARD:

7 Q You do know personally? Yeah, what --

8 A Well, I don't know the people, but I knew there was
9 other accidents because, um, the officer had told me.

10 MS. ZOIS: Objection.

11 MS. BRUTON: Objection.

12 THE COURT: Uh, sustained.

13 MS. HOWARD: All right. Now, now --

14 MR. BRATT: Your Honor, may I --

15 THE COURT: And that's stricken from the record.

16 MR. BRATT: Thank you.

17 BY MS. HOWARD:

18 Q Not from what the officer told you, but from a,
19 something you had seen. Did you see other accidents of a
20 (unclear - one word) --

21 MR. BRATT: Objection, leading.

22 MS. HOWARD: I'll rephrase, Your Honor.

23 THE COURT: Have, uh --

24 MR. BRATT: Which, Your Honor --

25 THE COURT: -- I'm gonna', well, let me do it this way,

1 I'm gonna' sustain the objection. I think there will be
2 another way if that's evidence that can be admissible that
3 can come in in another way, so I'll sustain.

4 BY MS. HOWARD:

5 Q All right. You were heading westbound into
6 Frederick, correct?

7 A Yes.

8 Q All right. And, uh, based on your personal
9 observations, did you see, uh, other accidents up ahead?

10 A Yes.

11 Q All right. Thank you.

12 MS. HOWARD: Court's indulgence (unclear - one word).

13 THE COURT: Mm-hmm.

14 (Brief pause.)

15 MS. HOWARD: Thank you, Your Honor, nothing further.

16 THE COURT: And, Mr. Porcarelli, any questions?

17 MR. PORCARELLI: No, but thank you for that.

18 THE COURT: Okay.

19 MR. BRATT: Yes, Your Honor.

20 THE COURT: Redirect? Mm-hmm.

21 REDIRECT EXAMINATION

22 BY MR. BRATT:

23 Q Ms. Sapp, the, uh, the damage to your vehicle from
24 this accident it's about \$7500, right?

25 MS. HOWARD: Objec (sic), objection.

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1 THE COURT: I'm gonna' overrule --

2 MS. HOWARD: Okay.

3 THE COURT: -- since she's already here, let's go ahead
4 and deal with it.

5 THE WITNESS: Yes.

6 BY MR. BRATT:

7 Q I'm sorry, did you say yes?

8 A Yes.

9 Q Okay, thank you. And it was foggy that day you
10 said?

11 A It was like foggy, just the road was sort of steamy
12 from the rain, and --

13 Q And --

14 A -- the heat from the ground.

15 Q -- it's harder to see in fog, isn't it?

16 A Yes.

17 Q And you would know to slow down when it's hard to
18 see, right?

19 A Yes.

20 Q But on that day you didn't slow down for the fog
21 did you?

22 A I mean, I maintained the speed limit on the
23 highway.

24 Q Is that a no?

25 A Yes.

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1 Q And, you know, this wasn't the first time you'd
2 driven a car with rain, was it?

3 A No.

4 Q So, you know that it's, it's harder to stop a car
5 when it's wet, right?

6 A Yes.

7 Q Takes longer?

8 A Yes.

9 Q Gotta' hit the brakes earlier?

10 A Yeah.

11 Q And you know the difference between guilty and not
12 guilty, don't you?

13 A Yes.

14 Q Not guilty means you didn't do it, right?

15 A Yes.

16 Q Guilty means you did, right?

17 MR. GILLCRIST: Objection.

18 THE WITNESS: Yes.

19 THE COURT: Overruled.

20 MR. BRATT: Thank you.

21 THE COURT: And, thank you. You may step down.

22 MS. SAPP: I'm done?

23 THE COURT: You're done. And we'll go ahead and break
24 for the day. Um, I'm going to ask you, ladies and gentlemen,
25 to be downstairs in the jury room at 9:30. I have a couple

1 other quick matters that I have to take up that are set at
2 9:00. Hopefully those will go very expeditiously and we'll
3 be ready to start again at 9:30.

4 I just want to caution you again about don't do any
5 research, don't do any ready, don't do anything like that,
6 because the verdict must be based only upon what you all hear
7 together in this courtroom as a group.

8 Um, you can either leave your, um, pads and pencils
9 here, we'll make sure all pencils are sharpened or go ahead
10 and leave them in the jury room, we'll keep them all in a
11 safe place. And, uh, Mr. Salem will show you to the jury
12 room, and, uh, you're excused for the evening. Thank you.

13 (Jury excused from the courtroom.)

14 MR. BRATT: May I approach the clerk, Your Honor?

15 THE COURT: You sure may.

16 MR. BRATT: Thank you. Sorry about that, I
17 inadvertently (unclear - one word) we marked (unclear - one
18 word) Exhibit 49.

19 THE COURT: That, I was just gonna' ask you what that
20 number was, 'cause I --

21 MR. BRATT: It's, thank you, Your Honor.

22 THE COURT: Forty-nine.

23 MR. BRATT: Well, we have a, I don't know if anybody
24 explained this to Your Honor, but . . .

25 THE COURT: Pre-marked stuff?

1 MR. BRATT: Right.

2 THE COURT: Yeah, that's --

3 MR. BRATT: We pull this and the clerk has it.

4 THE COURT: That, that's great.

5 MR. BRATT: Thank you, Your Honor.

6 THE COURT: I just knew that you said that was at the
7 end and I just didn't catch the number, so I always like to
8 leave it --

9 MR. BRATT: Thank you, Your Honor.

10 THE COURT: -- (unclear - one word) I keep track of all
11 that. Okay. Um, and Counsel you can move things around as I
12 have two very, what should be very brief, criminal matters in
13 the morning. They shouldn't take up a lot of space. Feel
14 free to use whatever side tables or anything that you need
15 to, uh, store stuff in the meantime. And I'll let you know
16 the evening before if I think you need to . . . there's
17 gonna' be somebody that, something that's gonna' take a
18 little, a little more time. I don't think there's going to
19 be anything this week, I think that's why got elected to, uh
20 --

21 (Chuckles.)

22 THE COURT: -- get this from Judge Nicklas.

23 MS. ZOIS: Um, Your Honor --

24 THE COURT: Yes.

25 MS. ZOIS: -- as a housekeeping matter --

1 THE COURT: Yeah.

2 MS. ZOIS: -- we were trying to work out a stipulation
3 between the parties as to the existence of the UIM insurance
4 and the policy limits available --

5 THE COURT: Mm-hmm.

6 MS. ZOIS: -- et cetera, outside the presence of the
7 jury, my understanding is we've agreed to Mr. Porcarelli's
8 proposed stipulation, but there a sentence in the stipulation
9 that, um, Ms. Sapp's attorneys are not agreeing to. Um, I
10 could use this opportunity now to read into the record,
11 answers to interrogatories to help, we have the burden of
12 proof, we have the elements that we have to claim. Would the
13 Court like to entertain that at this time or just wait until
14 some other time?

15 THE COURT: Let's --

16 MS. ZOIS: I just don't know if you want to fill time
17 or, or get off the bench.

18 THE COURT: So, let me just --

19 MR. BRATT: Or if you have to get to daycare.

20 MS. ZOIS: What?

21 MR. GILLCRIST: There, what it's worth, Your Honor,
22 there, there is no dispute as to the relationship of the
23 underinsured motorist case, uh, contract and so forth to
24 this, and we can all spell it out. I just had a problem with
25 one small clause in the draft stipulation, but I'm sure we

1 can work it out. And there's not gonna' be any need for
2 anybody to be putting in, uh, answers to interrogatories or
3 proof of that.

4 MS. ZOIS: Well, there is, actually, 'cause it's
5 evidence that I have to --

6 THE COURT: Well, I, I understand.

7 MS. ZOIS: -- that I have put on in my case.

8 THE COURT: But what I'm hearing from counsel is maybe
9 with a little bit more work you can work this out. If not, I
10 will be glad to hear it whenever the --

11 MS. ZOIS: At some other time.

12 THE COURT: Absolutely.

13 MS. ZOIS: Okay. I just didn't know if you wanted to --

14 THE COURT: So.

15 MS. ZOIS: -- fill some time or get off the bench,
16 that's all.

17 THE COURT: I'll be honest with you, I have a huge, I
18 was away --

19 MS. ZOIS: Say it.

20 THE COURT: -- last week.

21 MS. ZOIS: (Laugh.)

22 THE COURT: No, I was away last week, so I was --

23 MR. BRATT: And they gave you this?

24 THE COURT: -- a -- well, I wasn't supposed to have
25 this, so I have a whole week's worth of stuff back there that

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1 I've been trying to go through as we would go through,
2 through this. I'm doing okay, but that's why I, quite
3 frankly, the Court could use a few minutes right now to go
4 try to get that done so I could get out of here before 7
5 o'clock, but . . .

6 MS. ZOIS: Understood, Your Honor. And what time would
7 you like us back in the morning?

8 THE COURT: Um, be here at 9:30. Um, like I said, my
9 criminal cases should not, the two criminal matters should
10 not take much time, but, you know, they're all dependent on
11 did the Defendant get here, did they bring him over from the
12 -- but 9:30, 'cause we'll be shootin' to, to roll right about
13 then.

14 MR. PORCARELLI: Your Honor, is it okay if we leave some
15 boxes here in the courtroom?

16 THE COURT: Absolutely.

17 MR. PORCARELLI: Okay. Thank you.

18 THE COURT: Absolutely. Like I said, I, the, the stuff
19 that I'm having tomorrow is not gonna' be extensive so I, I,
20 I think you should feel safe leaving whatever you, you need
21 here.

22 MR. PORCARELLI: Thank you.

23 THE COURT: Okay?

24 MR. GILLCRIST: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MS. ZOIS: Thank you, Your Honor.

2 MR. BRATT: Thank you, Your Honor.

3 THE COURT: Okay.

4 THE CLERK: All rise.

5 (Whereupon, at 4:37 o'clock, p.m.,
6 Court is adjourned for the day and
7 will reconvene on January 23, 2013
8 at 9:47 o'clock, a.m.)

9
10 CERTIFICATION

11 I HEREBY CERTIFY that the proceedings in the matter
12 of Exline-Hassler v. Penn National Insurance, et al., heard
13 in the Circuit Court for Frederick County, January 22, 2013,
14 were recorded by means of digital recording.

15 I further certify that, to the best of my knowledge
16 and belief, page number 1 through 267, constitute a complete
17 and accurate transcript of the proceedings as transcribed by
18 me.

19
20 I further certify that I am neither a relative to,
21 nor an employee of any attorney or party herein, and that I
22 have no interest in the outcome of this case.

23
24
25 
Victoria Eastridge
Official Transcriber