

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14 - two words) were withdrawn.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

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

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

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