IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20160720
Docket: M092862
Registry: Vancouver

Between:

Natalie Ellis, an infant by her mother and litigation guardian, Vivian Ellis, and the said Vivian Ellis

Plaintiff

And

Eric Tieu Duong, Thi Oanh Nguyen, Shawn Philip Beaupre, Linda Carol Humeniuk-Villella, Ronald James Yaroshuk and Douglas Brent Ellis

Defendants

And

Insurance Corporation of British Columbia

Third Party

Before: The Honourable Madam Justice Harris

Oral Reasons for Judgment on Mistrial Application

Counsel for Plaintiff:	D.N. Osborne J.X. Cane
Counsel for Defendant, Thi Nguyen, and Third Party, ICBC:	P.J. Armstrong, Q.C. S.L. Kovacs
Place and Date of Hearing:	Vancouver, B.C. July 19, 2016
Place and Date of Judgment:	Vancouver, B.C. July 20, 2016

[1] **THE COURT:** Counsel, I am prepared to rule on the plaintiff's mistrial application.

[2] Counsel for the plaintiff has applied for a mistrial as a result of comments made by counsel for the defendant Mr. Nguyen and third party (the “defendant”) in closing submissions which he submits are improper and impermissible and either individually, by encouraging the jury to ignore the evidence and the law, or collectively, by their cumulative effect, have prejudiced the plaintiff's right to a fair trial in a manner that cannot be sufficiently and safely corrected by specific direction from the court.

[3] The plaintiff has set out certain of the comments he submits are improper in a written submission which he provided to the court. I have attached his submission as an appendix to these reasons.

[4] The defendant opposes the plaintiff's application on the basis that there was no improper, irrelevant or impermissible comments; and that counsel did not “cross the line” in the closing submission. In the alternative, the defendant submits that any misstatement of the evidence or law could be corrected by direction to the jury. The defendant also suggests that counsel for the plaintiff made inappropriate appeals to the jury's emotions in his closing, although there was no objection taken at the time.

[5] I note this is the second application for a mistrial made by the plaintiff's counsel. Plaintiff's counsel made an earlier application following the opening of the defence. I dismissed that application for a mistrial on the basis that the conduct of counsel for the defendant did not rise to the level of misconduct justifying the declaration of a mistrial. I did, however, provide certain corrective directions to the jury.

[6] Given the short time between the application and delivery of these reasons, I will not be reviewing the facts or the background to the action, but I may do so if reasons are required to be published at a later date. I also reserve the right to edit my reasons. The result will not change.

The Law

[7] I will briefly review the legal principles relevant to an application for a mistrial.

[8] The trial judge hearing a case with a jury has discretion to declare a mistrial as a result of a breach of an evidentiary or procedural rule, where there has been misconduct by a parties' lawyer of such a nature that it would cause a substantial wrong and to permit the trial to continue without discharging the jury would promote a miscarriage of justice: *Vander Maeden v. Condon,* 2013 BCSC 1810 at para 9. The alleged misconduct by counsel need not be intentional or deliberate: *Birkan v. Barnes* (1992), 69 B.C.L.R. (2d) 132 (C.A.).

[9] The declaration of a mistrial, while in the discretion of the trial judge, is one which should only occur in the clearest of cases: *Maras v. Seemore Entertainment Ltd.*, 2014 BCSC 1050 at para 32, citing *R. v. Patterson* (1988), 122 CCC (3d) 254 (B.C.C.A.) at para. 93.

[10] There is a high onus on a party to satisfy the court that the prejudice resulting from the relevant conduct or comments is so great that it is unable to be remedied by the court. In considering an application for a mistrial the trial judge must determine whether it is possible to disabuse the minds of the jury in regard to the matters of concern: *Cleeve v. Gregerson*, 2009 BCCA 2 at paras. 43-44.

[11] I also refer to the comments of Justice Major in *Hamstra v. British Columbia Rugby Union*, [1997] 1 S.C.R. 1092. At para. 20 the learned justice says:

> [20] The decision whether to discharge the jury should be a matter within the discretion of the trial judge. In exercising this discretion, the trial judge should consider whether in the circumstances the reference ... would likely result in real prejudice to the defendant. That is, the trial judge should consider whether the reference has caused a substantial wrong or miscarriage of justice, so that it would be unfair to continue with the present jury. See *Michaud, supra, per* Abbey J. at pp. 61-62.

[12] An immediate and final instruction to the jury may be sufficient to prevent a substantial wrong: *Cleeve* at para. 45 citing *Schram v. Osten*, 2004 BCSC 1789.

[13] In *Cleeve,* the Court provides several examples where mistrials had been granted in relation to comments made by counsel in closing submission:

> (a) Where in the concluding address to the jury, counsel for plaintiff breached an undertaking and prior ruling of the trial judge by giving evidence that the reason the plaintiff did not take the stand was because he had no memory of the collision which caused his injuries (Birkan v. Barnes (1992), 69 B.C.L.R. (2d) 132, 93 D.L.R. (4th) 392 (C.A.))
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> (b) Where defendant's counsel, during closing submissions and cross-examination, made inflammatory remarks throughout the trial and during submissions, including comments on causation, casting unfair aspersions on her use of jury challenges, and broad comments about the plaintiff's credibility that asked the jury to disregard evidence and take counsel's opinion into account (McLachlan v. Hamon, 2001 BCSC 1679).
>
> (c) In addition to various improprieties in the opening statement of the plaintiff, in the closing submissions, plaintiff's counsel inserted his own conduct into the case, made sarcastic comments in regards to the defendant, made an unfounded attack upon the personal integrity of a doctor witness, and put defence counsel on trial (de Araujo v. Read, 2004 BCCA 267, 29 B.C.L.R. (4th) 84).

[14] I also refer to the comments of the Ontario Court of Appeal in *Brochu v. Pond* (2002), 62 O.R. (3d) 722, noting at paras. 15-16:

> [15] Some restrictions apply to both opening and closing addresses. For example, the expression by counsel of personal opinions, beliefs or feelings regarding the merits of a case has no place in either an opening or a closing address to a jury. That restraint is designed to prevent lawyers from putting their own credibility and reputations in issue, and to avoid any indirect invitation to a jury to decide a case based on information or opinion not established in the evidence.
>
> [16] Similarly, comments to a jury which impede the objective consideration of the evidence by the jurors, and which encourage assessment based on emotion or irrelevant considerations, are objectionable at any time. Such comments are "inflammatory", in the sense that they appeal to the emotions of the jurors and invite prohibited reasoning. If left unchecked, inflammatory comments can undermine both the appearance and the reality of trial fairness ... that requesting a jury to act in a representative capacity will result in a mistrial.
>
> [Citations omitted.]

[15] In *Cahoon v. Brideaux*, 2010 BCCA 228, Mr. Justice Smith described the boundaries of a closing argument in a jury trial at para. 18:

> [18] Thus, counsel should ask every question she thinks will help her client's case and make every argument in her client's favour that is

> legitimately open on the evidence. In contrast to an opening statement, which should be purely informational, a closing jury submission is argument (see *Brophy*, para. 41) and the object of argument is persuasion. Thus, counsel should state her client's positions as forcefully as the evidence reasonably permits and without fear of offending the sensibilities of witnesses and other parties. Drama and pathos are permissible, though their use may be risky before modern sophisticated juries who may resent theatrical attempts to divert them from a reasoned analysis. Competent counsel will marshal the evidence in as favourable a light as possible for her client, analyze the evidence, relate the evidence to the law, and suggest inferences while leaving it to the jury to draw the desired inferences. She will not make irrelevant and prejudicial appeals designed to provoke hostility to or prejudice the jury against her opponent: see, generally, "Closing Arguments" in Thomas A. Mauet, Donald G. Casswell, & Gordon P. Macdonald, *Fundamentals of Trial Techniques*, 2nd Canadian ed. (Toronto: Little, Brown & Company (Canada) Limited, 1995) and "Summation Before A Jury" in R. Roy McMurtry, *Days in Court*, (Toronto: The Carswell Company Limited, 1958).

[16] The plaintiff seeks to rely on Rule 12-6(12), which sets out that if there are grounds for a mistrial, instead of ordering a new trial the court may allow for the continuation of the trial without the jury. Rule 12-6(12) provides that:

> (12) If, by reason of the misconduct of a party or the party's lawyer, a trial with a jury would be retried, the court, with the consent of all parties adverse in interest to the party whose conduct, or whose lawyer's conduct, is complained of, may continue the trial without a jury.

[17] Accordingly, in this case, in consideration of the above principles, the issue I must decide is whether the plaintiff has established the comments of defence counsel during the closing address give rise to prejudice that is unable to be remedied by appropriate instructions and to permit the trial to continue with a jury would create a substantial wrong or miscarriage of justice.

Analysis

[18] In my view, there were a number of comments made by defence counsel during closing submissions to the jury which suggested that the jury take into account matters which were irrelevant, inconsistent with the evidence, and unfairly prejudicial and which diverted the jury away from the proper considerations in this case. Given the number of these comments and the significance to the case for the

plaintiff, I am of the view that they are unable to be corrected by instructions and I must exercise my discretion to declare a mistrial for the reasons that follow.

[19] I will now address the matters of concern that arise from defence counsel's closing submissions, and which reflect my own concerns with the defence closing. As I note later, there are a number of further issues with this submission which I do not enumerate in detail. What follows, in my view, are the areas of greatest concern.

The comparison between the plaintiff and her father

[20] In the final comment to the jury counsel for the defence asked the jury to consider the circumstances of the plaintiff's father, Mr. Ellis, who was in the same accident, as “comparable” with those of Ms. Ellis. Counsel described the plaintiff's father as very badly injured following the accident and explained that he was either in an induced coma or unconscious for five days. It was also stated that he had “a disturbing tremor”.

[21] Counsel also made a number of comments on the recovery of Mr. Ellis from the accident, stating that he had not only rehabilitated himself physically, but had “picked himself up” to return to work and later retrain for a new career. Counsel also described that he got back into his car and overcame his fears, noting that Mr. Ellis took counselling for approximately one year.

[22] It was further stated that Mr. Ellis had gone through this horrible accident and that “*he* was the one who was trapped” in the accident. Counsel emphasized that he has had to deal not only with the accident, but with a change of career and a divorce. Mr. Ellis was portrayed as kind, considerate, thoughtful, optimistic and proactive. The final comment of counsel was that “Brent Ellis clearly knows bad things happen in life. But he knows how to cope with it. And I’m going to suggest to you that his daughter will too. I certainly hope so”.

[23] This is a flawed and highly prejudicial analogy. In my view the proposed comparison between Ms. Ellis and her father encourages the jury to consider a

matter that is irrelevant to a consideration of the plaintiff's injuries and the medical and other evidence as to how these injuries affected her, and will continue to affect her, which is the issue the jury must decide. How an adult male was able to deal with his injuries and rehabilitation simply cannot be compared to a young person who was 16 years old at the time of the accident. The comparison is irrelevant and distracting. The evidence of Dr. Schmidt and Dr. O'Shaughnessy referred to the particular impact of traumatic events, such as motor vehicle accidents, on adolescents. Beyond the inappropriateness of the comparison, the court also does not have evidence that his injuries were in any way comparable to hers. This was not a trial about the injuries of Mr. Ellis, but rather one to assess what all the parties agreed are the serious injuries suffered by his daughter, Ms. Ellis.

[24] Furthermore, the clear implication of this comparison is to suggest that the plaintiff should have experienced a more robust recovery. The plaintiff's father was described, as I have noted, as kind, considerate, thoughtful, optimistic and proactive. The inference suggested by the comments of counsel is that if the father can rehabilitate himself and overcome his fears, then the plaintiff should be able to as well. Read in context, the jury is implicitly being asked to compare his fortitude in rehabilitating himself with what the defence contends is the plaintiff's failure to properly attend to her injuries and comply with her duty to mitigate. This mistaken comparison appeals to the emotions of the jury and diverts the jury's attention away from an assessment of the evidence in this case.

[25] The suggestion that Mr. Ellis was overcoming his fears of driving is particularly prejudicial, in my view, as the plaintiff's ongoing anxiety with driving and traffic is a significant aspect of her claim for damages.

[26] This portion of the closing argument also asks the jury to accept facts not in evidence by suggesting that Mr. Ellis's tremors were the result of the accident. There is no evidence as to how Mr. Ellis's tremors were caused. This is another irrelevant distraction. Counsel also misstated the evidence by suggesting that "he" was the one who was trapped. Ms. Ellis was also trapped in the vehicle that evening.

[27] I note that the counsel's comparison of the father's rehabilitation was the final point in the closing address of the defendant. The jury was, therefore, left with the impression that this flawed comparison of the plaintiff and Mr. Ellis is of significance to the issues that they must decide, when it is not.

The evidence of Dr. O'Shaughnessy

[28] Another issue arises with respect to defence counsel's characterization of the evidence of Dr. O'Shaughnessy. Counsel for the defendant referred to the evidence of Dr. O'Shaughnessy and stated that after he saw the plaintiff in 2016 his prognosis was "still positive" and that was "good". Counsel also stated that Dr. O'Shaughnessy was "optimistic" that it was his view that with proper treatment she was going to get better.

[29] These statements oversimplify and mischaracterize his evidence. In his 2016 report he stated that her "prognosis is difficult to predict", that if she continues to avoid treatment she will have chronic symptoms for her foreseeable future, and that with treatment she will experience some benefit in a decrease in anxiety symptoms and hopefully some improvement in her sense of foreshortened future. He also said that he expects that she will continue to experience significant difficulties with anxiety in vehicles even with therapy. He goes on to state that, hopefully, with sufficient treatment and possibly medication she will be successful — if not she will have a partial disability which will affect her socially and vocationally.

[30] In my view, Dr. O'Shaughnessy's evidence at trial concerning her psychological condition in 2016, taken as a whole, cannot be fairly summarized as "positive" or "optimistic". In his evidence he described the difficulties and the complexity of successfully treating patients, like the plaintiff, who have PTSD and anxiety. He also gave evidence with respect to the plaintiff's resistance to treatment and the reasons which, in his opinion, account for this.

[31] The mischaracterization of Dr. O'Shaughnessy's evidence is, significantly, followed by comments by defence counsel that Dr. O'Shaughnessy's positive prognosis was going to have "some effects on the way [the plaintiff] approaches a

number of things in her life", including her physical rehabilitation and enjoyment of life, and finally commenting, "so that's all positive". The jury was, in essence, invited to conclude that because Dr. O'Shaughnessy was optimistic that with proper treatment she is "going to get better", she will improve her physical functioning. However, as noted, the prognosis of Dr. O'Shaughnessy for the plaintiff in 2016 cannot fairly be described as "optimistic" or "positive".

Non-pecuniary damages

[32] Counsel for the defence also suggested that with respect to non-pecuniary damage, the jury "might want" to take into account the "excellent" orthopedic care she received and the fact that she had "very good care in the hospital and has been able to do as much as she could because of the skill of the doctors that cared for her".

[33] In my view, asking the jury to consider the quality of care she received in the hospital, shifts the focus away from the proper issue to be considered in determining the plaintiff's entitlement to non-pecuniary damages, that is, the pain and suffering and loss of enjoyment she experienced as a result of the accident.

[34] In response to the mistrial application, the defence contended that the quality of care she received is relevant to show the plaintiff recovered from her injuries. However, that does not fully reflect what the jury was invited to consider by counsel. When considered in the context of other remarks in the closing, such as we don't have reports from the treating physicians, but only people "hired" to give medical/legal reports, the suggestion to the jury was that the plaintiff should be thankful she was very well cared for and should not be pursuing a damage award with the assistance of hired experts.

[35] I consider this aspect of the closing to be an improper appeal to the jury's emotions.

The evidence of Dr. Powers

[36] Counsel for the defence made comments to the jury about the vocational testing carried out by Dr. Powers in the context of whether the plaintiff had a head injury. It was stated that he “kept testing for math” even though she was never good at math and never wanted to be a mathematician, and that that was not her goal. Counsel went on to state that the fact that some of the experts only know how to test her math and do not know how to test her creativity should no be held against either party.

[37] This is a misstatement of the evidence. The reports of Dr. Powers and his evidence at trial shows that a series of standardized tests were administered to the plaintiff which tested for her aptitudes, achievements and cognitive abilities in a number of areas, not just math. I consider the effect of counsel's comment unfairly discredits the evidence of Dr. Powers as it suggests to the jury that she was only tested for math, which was not the evidence.

Evidence of intellectual functioning

[38] In the same portion of the closing argument, counsel also stated that “the evidence before you is that her intellectual functioning was not reduced or changed at all”. Counsel then stated that there was a possibility that the plaintiff had a head injury and some think it might have been a head injury and some people not. Counsel then goes on to say that whether it has had long-lasting effects is in dispute, but even if she did suffer from a head injury she recovered from it.

[39] The evidence of the only expert report put into evidence by the defence was that the plaintiff probably had a mild traumatic brain injury. The preponderance of the evidence from the experts who gave evidence at trial was that she had a mild traumatic brain injury and that it had an impact on her cognitive function for a period of time after the accident (e.g. in respect of her memory and concentration). Accordingly, the statement that the evidence is that her intellectual functioning was not reduced or changed at all mischaracterizes the evidence at trial.

Comments which minimize the evidence

[40] The defence acknowledged in closing that the plaintiff is entitled to compensation for reasonable future care needs. In this context, counsel for the defence stated that the plaintiff is “probably going to age a little bit faster than she would have otherwise”, especially if she needs further surgery with a knee replacement.

[41] I note the unchallenged evidence is the plaintiff will likely need knee replacement surgery in her early 50s and possibly further replacement surgeries. The suggestion that she is probably going to age “a little bit faster”, coupled with the earlier comment that her young age at the time of of the accident “makes things a little more serious", minimizes and mischaracterizes the evidence regarding the impact of the plaintiff's physical as well as psychological injuries and what the future is likely to hold for her.

The plaintiff's attendance at the Mood Disorder Clinic

[42] With respect to her attendance at the Mood Disorder Clinic, which had been made available through the efforts of Dr. O’Shaughnessy, counsel stated that the plaintiff did not go “on a long-term basis”, and “that she had one or two treatments and then stopped”. Counsel also stated that the plaintiff “chose not to continue”. Counsel then indicated during examination for discovery of the plaintiff in May of 2016, she asked the plaintiff whether if she got funding would she attend the clinic, to which the plaintiff responded “yes”. Counsel stated that she was able to obtain $1,000 of funding for the plaintiff, which was “unusual so close to trial”. Counsel then stated that the plaintiff went to the clinic again in June of 2016 once funding was facilitated. Counsel further stated that the counselling was for the plaintiff to deal with “the issues of the trial” and “not for the PTSD”.

[43] The evidence of the plaintiff was that the counselling that she received at the Mood Disorder Clinic was calming techniques to reduce anxiety and that as the trial was approaching she was feeling anxious. The plaintiff's evidence was that it was the counsellor at the clinic who directed the discussion during counselling.

[44] In my view, it was unfair to suggest to the jury that the plaintiff was “not” dealing with her PTSD when she attended the Mood Disorder Clinic. The evidence of Dr. O’Shaughnessy is that it is necessary for a psychiatrist to reduce a patient's anxiety before it is possible to deal with distortions in thinking associated with PTSD. It was also unfair to say that the plaintiff did not go “on a long-term basis”, given the timing of the initial referral to the clinic and the evidence of her recent attendances at the clinic.

[45] Counsel's comment that it was “unusual so close to trial” to obtain funding for the treatment was not in evidence and this type of comment was the subject of an earlier direction to the jury as a result of defence counsel’s comments in the opening.

Evidence of Dr. McKenzie

[46] Counsel for the defendant in the closing referred to the injury to the plaintiff's knee: that she is left with permanent injuries and that particularly her left knee is going to deteriorate over time; that she will have arthritis which will progress; and that she will probably require knee replacement surgery in the future, in 20 or 30 years. Counsel then goes on to say that the only thing we can hope is that advances in medical science will come to her aid by then, by the time she needs her new knee. She then goes on to say “You've heard a little bit about Dr. McKenzie talking about the new methods of creating joints for people who require them.” Counsel suggested to the jury in this part of the closing that Dr. McKenzie agreed there will likely be new methods of creating joints for people, implying that the plaintiff may well not experience the pain, discomfort and risk associated with knee surgery because by the time she needs surgery there will be these medical advancements.

[47] However, counsel put this proposition to Dr. McKenzie in cross-examination in the video deposition heard at trial and Dr. McKenzie did not agree with her. His evidence was that there has been very little by way of true improvement from a technical point of view or in terms of technology in terms of knee replacement surgery.

[48] Counsel's suggestion to the jury mischaracterizes the evidence of Dr. McKenzie, and I note pages 62, 63 and 71 of the deposition transcript.

Additional concerns with the defence closing

[49] In addition to the above concerns, as noted above, plaintiff's counsel has set out in his written argument 21 statements from the defence closing to which he objects. He also identifies a number of issues arising from the defence's characterization of the evidence in oral argument. Some of these issues I have addressed above. As noted, counsel for the defendant disagrees that they are improper and any misstatements of the evidence could be dealt with through instruction.

[50] I agree that the objections to the defendants' closing encouraged the jury to disregard certain evidence; shifted the focus away from proper legal considerations; included reference to irrelevant considerations, made comments which minimized the plaintiff's injuries in a manner which was inconsistent with the evidence, and included a statement which offered the defendants' personal view of the plaintiff's actions, as set out in the plaintiff's argument.

[51] Various of the specific concerns outlined by plaintiff's counsel in the application I have not addressed in these reasons. However, I observe that a number of these additional issues which were identified would have had to be addressed in my charge to the jury.

Conclusion

[52] In many jury trials a single or even several improper comments can be remedied by a corrective instruction. However, the breadth and nature of the errors and the impropriety that I have identified cannot be corrected at this stage. The comments of defence counsel in closing have a cumulative effect that cannot be remedied by any instruction to the jury and such instruction would also likely be ineffective, overwhelming and confusing.

[53] In addition, I note that where there are a number of errors, repeating them to a jury can have the opposite effect of what is intended by re-emphasizing them. This point was made by Mr. Justice Brown in *R.K. v. B.R.*, 2010 BCSC 840:

> While instructions to the jury may suffice, they can also further prejudice a party, especially when the jury has heard several improper statements during a short submission. As noted in *Aberdeen v. Langley (Township)*, 2006 BCSC 2062 at paras. 44 and 45, further instructions saying that the jury should ignore certain statements can, through repetition of them, magnify the statements and enhance their prejudicial effect.

[54] I am cognizant of the seriousness of declaring a mistrial after two weeks of evidence and the high standard which applies to the exercise of the court's discretion as outlined in the authorities referred to above. In that regard I have considered whether directions to the jury before the plaintiff requires argument and/or directions in the charge would be sufficient to remedy the issues I have identified. While I have confidence in the ability of juries to deal with evidential issues and to receive direction, in this case, I conclude that given the nature and number of comments made in closing, which pertain to central issues in this case, considered cumulatively, are so prejudicial they cannot be remedied through instructions to the jury.

[55] I consider that to permit the trial to continue in these circumstances would lead to a miscarriage of justice to both parties. If I were to give the number of directions which I consider I would need to make to the jury, it may undermine the case for the defence, and in my view the instructions would provide no assurance that the plaintiff would receive a fair trial.

[56] Accordingly, I exercise my discretion under Rule 12-6(2) to continue the trial without a jury. In making this decision I note that the plaintiff has consented to this course of action as is required by the *Rules.*

"Madam Justice W.J. Harris"

Appendix

PLAINTIFF'S LIST OF IMPROPER COMMENTS MADE IN CLOSING BY THE COUNSEL FOR THE THIRD PARTY AND THE DEFENDANT NGUYEN

The Plaintiff submits that the following references made by Ms. Armstrong in her closing submissions are improper and impermissible and either individually, by encouraging the jury to ignore the evidence and the law, or collectively by their cumulative effect, have prejudiced the Plaintiff's right to a fair trial in a manner that cannot be sufficiently or safely corrected by specific directions from the presiding trial judge.

The references are, under various categories:

Encouraging the jury to ignore the evidence and to ignore applying the law

1. Her father Brent Ellis understands that "bad things happen in life."
2. (There were many examples of Ms. Armstrong misstating the evidence that will be dealt with in my reply.)

Currying favour with the jury

3. Thanking jury for their attention and for their "patience and time." (first remarks)
4. Expressing being "sorry that your lives and plans have been disrupted."
5. "We absolutely need your help to bring this case to a conclusion."
6. "...there is no other way to bring this case to an end."
7. "What we need is your help for the narrow issues in dispute."
8. "We all want to give her the benefit of the doubt." (about her future care needs)
9. "Sorry we have kept you so late today, I wasn't given very much time."

Irrelevancies

10. "It's fortunate no one was killed."
11. "The fact that no one was killed we can all be grateful for."
12. "Her boyfriend Jet is in a similar category (to her)...he's got a steady job."
13. "We don't have reports from treaters but from *people hired* to give medico-legal reports."
14. "All of Ms. Ellis' *litigation experts...*"
15. Ms. Ellis talked about her trauma at 3 discoveries and with all the experts, and she has come to trial to testify
16. "She's had excellent hospital treatment."
17. "...because of the skill of the doctors that cared for her."

Offering her personal view

18. "It's been *a bit disappointing* up to this point that she's not done what's recommended."

Minimizing plaintiff's injuries contrary to the actual evidence

19. "The fact that plaintiff was very young makes this *a little more* serious."
20. "She *may* age *a little* bit faster than other people."
21. "She *may need* help *a little earlier* than other people would."