

1 IN THE COURT OF COMMON PLEAS  
2 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
3 CIVIL TRIAL DIVISION  
4 - - -  
5 ELLA EBAUGH, et al. : JULY TERM, 2013  
6 :  
7 Plaintiffs, :  
8 vs. :  
9 ETHICON, INC., et al. : No. 0866  
10 - - -  
11 Courtroom 633, City Hall  
12 Philadelphia, Pennsylvania  
13 - - -  
14  
15 September 5, 2017  
16 Jury Trial - Morning Session  
17 - - -  
18  
19  
20 B E F O R E: THE HONORABLE MICHAEL E. ERDOS, J.  
21 And a Jury  
22  
23  
24  
25

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2  
3 CLOSING ARGUMENTS: PAGE:  
4 BY MS. BALDWIN: 16, 115  
5 BY MS. GALLAGHER: 74  
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1 THE COURT: All right. There was about  
2 six jurors there seven minutes ago, so we're getting  
3 closer. Besides the punitive damage warnings issue,  
4 what else do we have to discuss this morning?  
5 Anything?  
6 MS. GALLAGHER: We just need the final  
7 verdict form and instructions so we can use them in  
8 our closing.  
9 THE COURT: Final verdict form and  
10 instructions you said?  
11 MS. GALLAGHER: Yes.  
12 THE COURT: One or two -- the  
13 instructions I had handed to the defense -- and  
14 there's only a couple that are being changed.  
15 Erica is not here yet, so I don't know if we're  
16 going to have the luxury of having them ready to go,  
17 or the verdict sheet by the time we're ready to  
18 start. I am sort of flying solo.  
19 MS. BALDWIN: I think the verdict sheet  
20 is virtually the same as the one --  
21 THE COURT: It is. It's mostly just  
22 grammatical things. So this is more or less done.  
23 The only ones that weren't totally clear  
24 were one of them because of my handwriting, but we  
25 walked through it. And I am happy to do that again.

1 omissions, so we'll put in the "was."  
 2 COURT OFFICER: All rise as the jury  
 3 enters the courtroom.  
 4 - - -  
 5 (Whereupon, the jury enters the courtroom  
 6 at 9:38 a.m.)  
 7 - - -  
 8 THE COURT: Everyone may be seated.  
 9 Thank you.  
 10 Good morning, members of the jury.  
 11 THE JURY: Good morning.  
 12 THE COURT: Now that you have heard all  
 13 the evidence which is to be presented in this case,  
 14 the next step is for the attorneys to give closing  
 15 arguments to you.  
 16 Even though these arguments do not  
 17 constitute evidence, you should consider them very  
 18 carefully. In their arguments, they will most  
 19 likely draw your attention to the evidence which  
 20 they consider material and will ask you to draw  
 21 certain inferences from that evidence.  
 22 Please keep in mind, however, that you're  
 23 not bound by their recollection of the evidence. It  
 24 is your recollection of the evidence, and yours  
 25 alone, which must guide your deliberations.

13

1 If there's a discrepancy between  
 2 counsel's recollection and your recollection, you  
 3 are bound by your own recollection. Nor are you  
 4 limited in your consideration of the evidence to  
 5 that which is mentioned by the attorneys. You must  
 6 consider all the evidence which you consider  
 7 material to the issues involved.  
 8 They may also call your attention to  
 9 certain principles of law in their arguments.  
 10 That's fine. Please remember, however, that you're  
 11 not bound by any principles of law mentioned by the  
 12 attorneys. You must apply the law in which you're  
 13 instructed by me, and only that law, to the facts as  
 14 you will find them.  
 15 Under the rules of civil procedure, the  
 16 Supreme Court of Pennsylvania, the attorney for the  
 17 plaintiff is entitled to make her closing argument  
 18 first, followed by closing argument by the  
 19 defendant. And then the plaintiffs' attorney is  
 20 entitled to brief final argument. I will then  
 21 instruct you in the law which you will apply to the  
 22 facts as you find them.  
 23 A couple additional notes. I've asked  
 24 the attorneys if at all possible not to actually  
 25 make their objections out loud during the closings

14

1 so as not to interrupt the other attorney's flow.  
 2 But if there are objections, we'll discuss those  
 3 while you're at break. And I may give you some  
 4 further instructions based on those objections.  
 5 Secondly, you don't have your notebooks  
 6 as you're not permitted to make notes during the  
 7 closing arguments, but you will have your notebooks  
 8 returned to you for your deliberations.  
 9 Third, just to tell you the time frame,  
 10 I've given each attorney an hour and 15 minutes for  
 11 their closings, and then counsel for the plaintiff  
 12 ten minutes for any final argument.  
 13 So to the extent that unless you need a  
 14 break, we're going to go straight through with the  
 15 plaintiffs' closing argument, take a short break,  
 16 then have the defense closing argument, take a short  
 17 break, then have the final rebuttal argument. And  
 18 then I'll give you my final instructions, which will  
 19 take about 20, 25 minutes. And that should take us  
 20 to the lunch break, if everything goes smoothly.  
 21 With that, Ms. Baldwin, you may address  
 22 the jury.  
 23 MS. BALDWIN: Thank you.  
 24 Good morning.  
 25 THE JURY: Good morning.

15

1 MS. BALDWIN: I am going to shut that  
 2 blind right behind you because, otherwise, I am  
 3 going to be blind because the sun is coming right at  
 4 me.  
 5 So give me a minute.  
 6 (Pause)  
 7 MS. BALDWIN: Much better. Sorry about  
 8 that.  
 9 Good morning again.  
 10 THE JURY: Good morning.  
 11 MS. BALDWIN: We, the people, of the  
 12 United States, in order to form a more perfect  
 13 union, established justice. That isn't a saying I  
 14 had to go look up. I had to memorize it in 2nd  
 15 grade in my elementary school for some play we were  
 16 doing about the United States Constitution. That's  
 17 the preamble, the opening words. It's housed in  
 18 Independence Hall just a mile and a half from here.  
 19 Justice is a fundamentally important  
 20 concept in our nation from the time it was founded,  
 21 and it has a rich history right here in  
 22 Philadelphia.  
 23 Injustice anywhere is a threat to justice  
 24 everywhere. One of the greatest civil rights  
 25 leaders the world has ever seen said that. Not

16

1 something I had to go look up. I drive into work on  
2 Lincoln Drive every morning. It's posted on a sign  
3 there in Mount Airy.

4 Justice is so important that as you walk  
5 into City Hall, if you come south up Broad Street  
6 the way I do and you walk through the center arches,  
7 look up. The word "justice" is engraved over your  
8 head as you walk into the building. I mention all  
9 of this to you now because you as a jury of 12 have  
10 a really, really important job to do.

11 It's your job to deliver justice here, to  
12 right a wrong that's been done in your own  
13 community, to put your voices together and deliver a  
14 verdict against Johnson & Johnson and against  
15 Ethicon and to deter them from ever doing this  
16 again. You, and you alone, have that power.

17 Now, I know you've been here a really  
18 long time. It's been hot, it's been -- I hate to  
19 say it -- boring. Tiresome. You're away from your  
20 jobs, I am sure that's a burden. Away from your  
21 family, your friends, you normal life. I am sure  
22 you all got sick of it. Doughnuts, pretzels and  
23 other snacks don't really help, but we're going five  
24 weeks.

25 But I commend you because you stuck it

17

1 out. And this is what you stuck it out for now,  
2 your chance to make a difference and your chance to  
3 deliver a message to the defendants.

4 Ella Ebaugh, my client, did not deserve  
5 to be irreparably harmed by them. She does not  
6 deserve to live the rest of her life like this,  
7 chained to a bathroom, in constant pain, humiliated  
8 by her condition on a daily basis, basically just  
9 sitting and waiting for the next urinary tract  
10 infection that's going to come -- probably any day  
11 now because she just had one.

12 So with your verdict you need to  
13 compensate her for everything she's been through,  
14 everything you heard about, and what she's going to  
15 go through every day for the rest of her life.

16 You also need to make an award to deter  
17 them from ever hurting a woman like this again. You  
18 have the power to tell Johnson & Johnson that every  
19 human life matters. Right now they just don't get  
20 it. They don't care what they did to Ella, they  
21 don't care what they're doing to women on a daily  
22 basis who are still getting these implanted in their  
23 body.

24 You heard it in the defense opening  
25 statement. Mr. Webb got up here. He conceded their

18

1 products harmed her and he said, we're sorry, but  
2 don't worry. We'll get better. They don't care  
3 what they did to her. They don't care she's going  
4 to suffer for the rest of her life.

5 They only care about one thing. Money.  
6 You've seen it repeatedly in this trial. So you  
7 need to tell them through your verdict that lives  
8 are more important than money and stop doing this to  
9 women. They won't stop otherwise.

10 Now, there's no doubt that the TVT-S,  
11 TVT-Secur, and the TVT Retropubic, also known as the  
12 TVT, are defective. After their lawyers are done  
13 talking, the Judge is going to give you the law and  
14 he'll tell you what the legal definition of  
15 defective is. Under the law, a product is defective  
16 and a defendant is liable for all harm caused by  
17 their product if that product lacked any element  
18 necessary to make it reasonably safe or it had any  
19 condition that made it unreasonably safe.

20 Ethicon and Johnson & Johnson have known  
21 about the serious, life-altering risks of these  
22 products since before they were on the market. They  
23 learned more about them once they were being  
24 permanently implanted in women. And they brushed  
25 all that information off and stayed focused on one

19

1 thing and one thing only. Money.

2 I am going to put a lot of slides up.  
3 You can keep looking at me. They're there just as  
4 a reminder of what we saw. It's more like  
5 background. The stress urinary incontinence market  
6 was a cash cow for them and they wanted to milk it  
7 for as long as they could.

8 For the TVT-S, they knew before it was  
9 marked that it had a 60 percent complication rate at  
10 five weeks after implant, yet they decided to keep  
11 selling it for six years. They're still selling the  
12 TVT. You saw the implant -- the e-mail from 1999,  
13 before they put it on the market, where the prolene  
14 material that's in the mesh was seen as a very weak  
15 point of the TVT. They knew there was a problem  
16 from the get-go, yet they put it on the market  
17 and admittedly never changed it.

18 Now, let's briefly go through all the  
19 defects just to remind you. First, prolene mesh has  
20 pores that are too small. Ethicon has known it for  
21 a long time. You heard from Joerg Holste. I think  
22 I am saying it right. He's the German guy. He told  
23 you the construction of the mesh has never changed  
24 over time and that it's a small pore, heavy weight  
25 mesh.

20

1 Dr. Rosenzweig went over literature with  
2 you. I know it was on video. I know it was a long  
3 time ago. That showed the pores collapse even more  
4 under the tensioning that's necessary to implant  
5 these devices. All of this leads to scar plating  
6 called bridging fibrosis. Because the tissue  
7 doesn't then go through the pores, it grows over  
8 them and encapsulates the mesh.

9 There's 30 to 40 feet of polypropylene,  
10 plastic, in the TVT-S. Even more in the TVT. I  
11 know Dr. Sepulveda disputed that number, but he gave  
12 you no basis for disputing it and he didn't tell you  
13 how much prolene he thought was in it. Regardless  
14 of how much is in it, we know polypropylene is one  
15 thing. It's not inert and it's going to continue to  
16 react with the body forever. It's not like a knee  
17 implant that you might get.

18 It's going to start what's called a  
19 chronic inflammatory response. Marty Weisberg told  
20 you about that response. You heard from Ming Chen,  
21 the woman whose job it was to field complaints from  
22 doctors and patients. She was concerned that the  
23 warnings on the TVT were inadequate. Why? Forget  
24 the warnings. Patient experiences are not  
25 transitory. She knew it was a chronic problem

21

1 complication affecting 0 to 20 percent of patients.  
2 Sepulveda told you that 20 percent means it's  
3 common. Johnson & Johnson and Ethicon knew all  
4 about these risks.

5 The TVT-S is even more dangerous. Its  
6 laser cut making it three times more rigid, more  
7 likely to erode. And its fleece tips don't hold.  
8 This is their own PowerPoint admitting its fleece  
9 tips don't hold, it's going to move out of place.  
10 Finally, the TVT-S and the TVT are permanent. They  
11 can never be removed in their entirety. It's not  
12 like Ella's bad hip that was recalled that she could  
13 get it taken out and get a new one. She's stuck  
14 with it.

15 Our experts, Dr. Rosenzweig and  
16 Dr. Margolis, told you this. Dr. Tomezsko conceded  
17 it. Sepulveda conceded it as to the TVT. He  
18 alleges you can get all the TVT-S out, which we know  
19 isn't true based on what we saw with Ella Ebaugh.

20 Regardless, when complications happen,  
21 women are left with pain, pain with sex, chronic  
22 urinary tract infections, urgency, urge  
23 incontinence, nocturia, urinary retention, bladder  
24 spasms, frequency, hematuria, voiding dysfunction  
25 and intrinsic sphincter deficiency. They can't

23

1 because of the mesh.

2 With the inflammatory response and  
3 scarring, the mesh contracts up to 30 percent, gets  
4 rigid, gets hard. Pelvic organs, the tissue in the  
5 pelvis, needs to be elastic. Women need to be able  
6 to bear children. They have sex. Rigid tissue and  
7 mesh are not elastic and they cause pain. We know  
8 it happens.

9 Dr. Tomezsko, their expert, told you  
10 vaginal scarring can cause pain. She also told you  
11 vaginal scarring can cause pelvic floor dysfunction,  
12 urinary problems. Shocking. Exactly what my client  
13 is complaining about.

14 Ethicon knew its mesh would get stiff,  
15 rigid and hard as early as 2000 when they were  
16 contemplating a technique to remove mesh with an  
17 electric knife. They knew back then they were going  
18 to need electric knives to get this stuff out.

19 Fourth defect, the mesh can migrate. It  
20 can move into tissues where it doesn't belong. It  
21 erodes or pushes its way through the pelvic organs  
22 like the urethra. We know this happens. So does  
23 Johnson & Johnson.

24 Pennsylvania consulting group report.  
25 Mesh erosion and pelvic floor repair is a

22

1 control their urethra at all for the rest of their  
2 lives because of the defects and these problems.  
3 Ella Ebaugh, this woman, is living proof of every  
4 single one of these things. Yes, she had mixed  
5 urinary incontinence before her implants, but it  
6 wasn't severe. It wasn't life-altering.

7 She called it burdensome. She had to  
8 wear a panty liner. And now she's left like this, a  
9 shell of her former self, all because Johnson &  
10 Johnson and Ethicon wanted to make money.

11 You saw all the defects in the TVT and  
12 the TVT-S play themselves out in her medical  
13 records, but I'll just give you a brief primer.  
14 This is the pathology report in 2016. Fibrous  
15 tissue with foreign body giant cell reaction.  
16 Foreign body response. That's what a giant cell  
17 foreign body reaction is. Their experts had nothing  
18 to say about this. They can't touch it because it's  
19 true.

20 Fibrotic tissue. That's scarring.  
21 Again, their experts had nothing to say about it.  
22 With Ella's first erosion, oh, my gosh, it's like a  
23 dream come true for Ethicon. Electric knife had to  
24 be used to get it out of her urethra, just like they  
25 contemplated very early on when they had this device

24

1 on the market. Their expert had nothing to say  
 2 about it.

3 The fleece tips didn't hold that TVT-S in  
 4 place. And we know the TVT erodes as well because  
 5 she had three erosions. And I say that very  
 6 confidently for you because we know she had three  
 7 erosions in three different places. Mid urethra.  
 8 Mid distal urethra. That's Dr. Chai. That's the  
 9 2012. Here we go. Right aspect of the proximal  
 10 urethra. Three different erosions, three different  
 11 places. The mesh moves. It does not stay in place.

12 And if you really want to get technical,  
 13 she had four. She had mesh in her bladder, too.  
 14 Nobody disputes this. Tomezsko got up here and said  
 15 I guess I am just guessing now, I am really just  
 16 guessing. That's mesh. There's nothing blue in  
 17 your bladder.

18 Their experts also don't dispute the fact  
 19 about all the problems she had related to the  
 20 erosions. They don't dispute the pain. They don't  
 21 dispute the urinary problems from 2011 when she had  
 22 an erosion until 2016 when she got the mesh out.  
 23 They conceded it was our mesh. They just claim now  
 24 it's not the mesh, and we'll get to that.

25 This is a description in 2011 of the mesh

25

1 not a life-threatening illness. And they had no  
 2 business introducing products that were so dangerous  
 3 with such life-altering risks to treat something so  
 4 minor. They didn't improve the lives of anyone, and  
 5 they certainly didn't improve the life of Ella  
 6 Ebaugh.

7 What they did, in truth, was prey on  
 8 women who didn't need a surgery and doctors who  
 9 wanted to make money. These people bought it, and  
 10 Ethicon and Johnson & Johnson's profits rose. The  
 11 world didn't need these products. None of it was  
 12 necessary.

13 For decades surgeons had other surgical  
 14 options if a woman has severe stress urinary  
 15 incontinence. Ella didn't have that, though. But  
 16 if a woman needed that, they had the Burch, they had  
 17 the MMK, they had autologous slings. Those  
 18 surgeries, technically more skilled. The surgeon  
 19 has got to have a little more skill, more invasive,  
 20 but they don't require cutting into the vagina which  
 21 leaves scarring. And if something goes wrong with  
 22 the Burch, using sutures you just remove them. No  
 23 problems.

24 You don't have to take my word for it.  
 25 This is Dr. Mirsky. He did the first mesh removal.

27

1 in Ella's urethra acting like a gate obstructing it.  
 2 This is the 2012 erosion. That's mesh. This is her  
 3 third erosion. It mutilated her urethra.

4 Dr. Margolis did a cystoscopy and told you all the  
 5 damage that's left from the erosions and the three  
 6 surgeries. He's the only one who's looked in her  
 7 urethra since that third mesh removal surgery. He  
 8 told you it's tortuous, mangled and serpentine, and  
 9 all the problems that go along with that.

10 After two days of arguing up there back  
 11 and forth, Dr. Tomezsko finally admitted she really  
 12 can't dispute that because she has not looked inside  
 13 Ella Ebaugh's urethra.

14 During this trial you saw a lot of  
 15 Johnson & Johnson and Ethicon's documents. Here's  
 16 the one that Johnson & Johnson created a cardinal  
 17 sin. That's at the very top. But I don't want to  
 18 focus on cardinal sin right now.

19 Let's focus on the language at the  
 20 bottom. I blew it up. Improving the lives by  
 21 advancing the standard of care in tissue repair.  
 22 That's the biggest falsehood in this entire case.  
 23 With its TVT and TVT-S, Johnson & Johnson and  
 24 Ethicon did nothing but introduce unreasonable risks  
 25 to women who had stress urinary incontinence. It's

26

1 And have you treated erosions caused by  
 2 sutures?

3 They don't really require treatment.  
 4 There are no long-term complications with these  
 5 other procedures.

6 Dr. Margolis told you they don't even  
 7 have billing codes for Burch complications, they're  
 8 so exceedingly rare.

9 It's been said that greed is the bedrock  
 10 of injustice. You saw that play out in this  
 11 courtroom as well. Ethicon and J&J didn't care if  
 12 the TVT and the TVT-S were unreasonably dangerous or  
 13 that there were safer options out there. They  
 14 wanted to make money. They were circulating.

15 This marketing presentation around the  
 16 world the same time that problems were being  
 17 reported worldwide in Germany and other places with  
 18 the TVT-S. Aaron Maree, the medical director, was  
 19 considering pulling the TVT-S from the market.

20 I've never worked for a medical device  
 21 manufacturer, I don't know, but I have a crazy idea.  
 22 How about following up on those  
 23 complaints? How about letting doctors know we've  
 24 seen problems worldwide with our TVT-S, instead of  
 25 spending time and money making PowerPoint

28

1 presentations with cool graphics about money. Work  
2 on improving your products. Test out the Ultrapro  
3 some more.

4 Look at what they did with Ming Chen's  
5 concerns about the risks being reported to her. She  
6 repetitively saw complaints about erosions and pain  
7 and dyspareunia. Two meetings were held. No  
8 changes to the warnings that we saw. No follow-up  
9 reviews that we saw. They could have presented that  
10 evidence. We didn't see it. No examination of the  
11 data to see if a real trend existed about these  
12 types of complaints. Nothing.

13 Renee Selman, the president of Ethicon  
14 women's health had no idea about anything that was  
15 ever done to address the problems reported  
16 worldwide. Like the Australian concerns over the  
17 TVT-S. Her answer was, well, the different  
18 divisions report to me but I don't know what was  
19 going on. If the president of the company has no  
20 idea what was done in response to real life-altering  
21 concerns, isn't that troubling? Isn't that  
22 irresponsible? Isn't that a lack of due care?

23 For a medical device manufacturer, safety  
24 must be paramount. They needed to do the proper  
25 testing and studies before putting anything on the

1 it's okay to do for products meant to be implanted  
2 for life: Laura Angelini, blonde haired woman of  
3 Italian descent. I know it was boring. We went  
4 through a bunch of contracts with you.

5 What they did is paid Professor Ulmsten  
6 24 million dollars for his TVT-S, which ultimately  
7 became the TVT. And then what they did is they  
8 conditioned the other payments to him, above and  
9 beyond the 24 million that his company got for the  
10 product, based on the results of a study he had  
11 agreed to do. They conditioned payment on the  
12 results. He wouldn't get paid that extra money if  
13 there were any unexpected adverse outcomes.

14 He wrote up his report, his results.  
15 And, shockingly, no adverse outcomes. He got paid.  
16 That's not a good study. That's a bias study. If  
17 they wanted to rely on it, though, you know what, I  
18 would give it to him. I would say, okay, prove to  
19 me that what you got is actual raw data and verify  
20 what he reported to you.

21 To this day, they still have not taken a  
22 look at that raw data. Why? Then they might have  
23 to face the reality that this thing is dangerous,  
24 and then they couldn't market it and then they would  
25 lose money. They knew that was a real possibility

1 market, especially true when the products can't be  
2 taken out. They need to rigorously watch reported  
3 complications, take steps to let doctors know what  
4 is going on. And they needed to stop selling the  
5 devices when they learned just how frequent, just  
6 how severe and just how permanent the risks were.  
7 They did none of that. Instead, they're doing brand  
8 equity studies in 2010.

9 In his opening statement, defense counsel  
10 said, look, we can't win with these studies. If we  
11 don't test a product, we tell you you should have  
12 tested it. If they pay doctors to do the testing  
13 because nobody does anything for free, we say the  
14 studies are bias.

15 Nice try. How about this: Spend money  
16 on research, not marketing. Hire independent  
17 research. Hire independent doctors, not  
18 Ethicon-made millionaires, to do the studies.  
19 They'll do it. Don't hire a key opinion leader  
20 who's been flown all over the world by you to do the  
21 study. And, for goodness sake, don't falsify the  
22 results. No jazzing. No spinning. No probing.  
23 Report the truth. That's what your verdict needs to  
24 tell them.

25 Here is what Johnson & Johnson thinks

1 when they bought the TVT. Prolene mesh seen as a  
2 very weak point. Improvements shall be started  
3 after the Medscan deal has been completed. That's  
4 Ulmsten's company. They knew it was a problem then  
5 when they bought it. They just rubber stamped it,  
6 though, and kept going so they could put it on the  
7 market.

8 Then they went a step forward. They let  
9 Ulmsten's colleague, Professor Nilsson, another  
10 highly paid key opinion leader, follow these  
11 patients for 17 years. The coveted 17-year data.  
12 Study started with 90 women, ended up with 58. 36  
13 percentage of women lost to follow-up. Who knows  
14 what happened to them. They might be like Ella. I  
15 don't know. Ethicon didn't keep track of them. 58  
16 of the women they have information on, only 46 of  
17 those women were actually physically given a vaginal  
18 exam.

19 So they have full information on 51  
20 percent of their participants. But the study didn't  
21 involve women like Ella who has mixed incontinence.  
22 Tomezsko told you that's actually a pretty common  
23 condition. They kept women like that out of the  
24 study. So they have 17 years of data, that's  
25 completely meaningless to a woman like Ella Ebaugh,

1 on very few women.  
 2 Even the 2015 Cochrane review. That's  
 3 that meta-analysis. That's the highest level of the  
 4 pyramid that Dr. Sepulveda talked about. Says there  
 5 isn't enough long-term data. I am not going to go  
 6 through all of these, but here's good one. A  
 7 salient point illustrated throughout this review is  
 8 the need for reporting of longer term outcome data  
 9 from the numerous existing trials.  
 10 They criticized the trial that did look  
 11 at safety because they didn't do it in a uniformed  
 12 manner. They said we need more information.  
 13 There's a paucity of studies out there.  
 14 With the TVT-S, Professor Nilsson and  
 15 Artibani wanted them to do a randomized control  
 16 trial, an RCTA(Sic). TVT-S is profoundly different  
 17 from the TVT. It's shorter in length and has an  
 18 arrowhead introducer. It has those fleece tips  
 19 which have never been used before in a product.  
 20 Yes, Ethicon had to test it on animals and cadavers,  
 21 which they did. But they needed to do an RCT  
 22 because it was so different. They needed to test it  
 23 in women.  
 24 These are their internal documents  
 25 telling them that they needed better models.

1 Cadavers and animals aren't okay. But Ethicon and  
 2 Johnson & Johnson, combined worth over 73 million  
 3 dollars, couldn't do an RCT because of budget  
 4 constraints. This was their cardinal sin. You saw  
 5 this before. The defendants knew it way back then  
 6 when they made this slide.  
 7 But now when faced with justice here in  
 8 Courtroom 633 of City Hall, their lawyers want you  
 9 to believe it was okay to just test this product in  
 10 sheep and women for a permanent implant that never  
 11 can be removed. Even Dr. Sepulveda said that's not  
 12 okay. Just before the launch they got real limited  
 13 information. 31 women, five weeks. 30 percent  
 14 failure rate and 60 percent complication rate at  
 15 five weeks.  
 16 What happened? No delay in launch, no  
 17 RCT, no warnings. Five week data was never even  
 18 published. Of course it wasn't. For years they've  
 19 been manipulating what shows up in the literature.  
 20 Let's take a look. In '01, Gynecare was  
 21 financing a publication about the TVT. It was an  
 22 Ethicon-paid-for publication and they put heavy  
 23 pressure on Ulmsten to publish. Forget about  
 24 accuracy or what the peer reviewers want to see.  
 25 Let's get it published.

1 In '06, the defendants got data from the  
 2 first human use study of the TVT-S. Allison London  
 3 Brown in marketing asked how they could, quote, jazz  
 4 it up a bit.  
 5 Keep going. 2008, preliminary data from  
 6 the TVT world. That registry where they studied all  
 7 their TVT products. They had concerns about the  
 8 clinical investigator's closeness to marketing and  
 9 his constant wish to spin data. Judy Gauld was  
 10 concerned about the fact that the lines between  
 11 commercial and research needed to appear cut in the  
 12 company and was continually amazed and surprised at  
 13 the need to push back.  
 14 2009, Piet Hinoul, medical director, was  
 15 discussing this TVT world about all the TVT products  
 16 with Judy Gauld. He said the results were pretty  
 17 awful. He supports spinning the data.  
 18 His words: I would not ask investigators  
 19 if they would change. Tell them you will change,  
 20 unless they object.  
 21 Dr. Lucente was the key opinion leader  
 22 who participated in the first human use study. He  
 23 reported to Ethicon 38.5 percent success rate. He  
 24 said it's because of their hard line definition of  
 25 success, whatever that means.

1 Scott Ciarrocca of the company said, I  
 2 think we need to probe this data with him. They  
 3 probe it. One-year study is published. Different  
 4 number of patients. Now they've got a 69 percent  
 5 success rate. Makes no sense. Even Dr. Sepulveda  
 6 couldn't explain it. They didn't bring anybody in  
 7 to explain it.  
 8 And then when we played Dr. Lucente's  
 9 deposition -- you remember him. He's another  
 10 Ethicon-made millionaire. He's confronted with the  
 11 raw data and gives a third number from his one-year  
 12 results. He gives us a 44 percent dry rate. And he  
 13 has no explanation for what's going on.  
 14 Up to you to decide. Spinning, jazzing,  
 15 probing, I don't know what they did, but there's  
 16 three different numbers reported for his one-year  
 17 data. And he's the guy who's been paid over 2  
 18 million dollars by Ethicon.  
 19 You might not have caught this, but when  
 20 he testified, he testified he was paid 1.7 million  
 21 dollars. And then Ms. Robertson and Ms. Palmer got  
 22 up here and read that testimony in one day of a  
 23 corporate designee who produced the documents  
 24 showing he's been paid 2.2 million dollars.  
 25 He's also the guy who mentored and maybe

1 influenced Janet Tomezsko, and he's the guy who  
2 trained Ella's implant, Dr. Douglass. It all  
3 comes full circle. Sure, Tomezsko and Douglass love  
4 these products. They were trained to by an  
5 Ethicon-made millionaire.

6 Let's talk about the defense that the TVT  
7 is the gold standard. Who calls it that? AUGS.  
8 Guess what? Their position statement, not  
9 peer-reviewed literature. Not authoritative.  
10 Dr. Margolis told you that when they tried to  
11 confront him with it.

12 And you remember this guy Charles Nager.  
13 President of AUGS when the opinion case was written  
14 and the head of the task force. He's paid by  
15 Ethicon, too. He took the trip to Hawaii on  
16 Ethicon, which he wouldn't admit to until the e-mail  
17 went up. A couple of other trips, got reimbursed  
18 himself personally, which he wouldn't admit to until  
19 the emails came up.

20 Other authors of that opinion piece were  
21 also paid. Dr. Margolis told you. Denis Miller was  
22 paid over 3 million by another device manufacturer.  
23 Dr. Rovner has been paid too. Margolis told you  
24 about it.

25 You remember the meeting minutes. Why  
37

1 did they write this statement: We want our members  
2 to use this statement at legal proceedings. Not  
3 only is Ethicon a corporate member, but 70 percent  
4 of their budget comes from its corporate members.  
5 The corporate members sponsor the meetings of the  
6 organization.

7 Then Mr. Nager got up here and tried to  
8 claim that the corporate members had no input on  
9 this statement whatsoever. And then the e-mails  
10 came up where he's writing to people, we're trying  
11 to help you guys. I think that's where he writes to  
12 Boston Scientific or Ethicon. I can't remember  
13 which. He had phone calls with Piet Hinoul and  
14 Aaron Kirkemo of Ethicon before it went out.

15 This is where AMS, another device  
16 manufacturer, thanked him for moving the ball  
17 forward with the statement. And then he personally  
18 let Johnson & Johnson know when the statement was  
19 coming out.

20 Setting all that aside, the statement is  
21 false on its face. It's not true. They said that  
22 greater than 99 percent of AUGS members used this  
23 stuff. Dr. Margolis got up there and pulled their  
24 source. They sent out surveys to 962 members. Only  
25 507 responded. That's not 99 percent.

1 And by the way, you might not have caught  
2 this. You would have to read between the lines.  
3 Nager told you when he testified, AUGS had 1,700  
4 members. So there's 700-plus members they didn't  
5 even send surveys to. Dr. Margolis is a member of  
6 AUGS and an outspoken mesh critic. He didn't get a  
7 survey. Wonder why?

8 The defense lawyers also got up here and  
9 proudly touted all the folks who still use and like  
10 mesh. They don't want to talk about all the doctors  
11 that won't use mesh because it hurts women.

12 Like Dr. Rosenzweig. He's a University  
13 of Michigan educated gynecologist from Rush  
14 University Medical Center in Downtown Chicago.  
15 We're not talking from somebody in the middle of  
16 nowhere. He was trained on the TVT products by  
17 Ethicon, and he won't use them because of the  
18 problems he's seen with his patients.

19 Dr. Margolis is a well-respected  
20 urogynecologist from San Francisco. He's a former  
21 Stanford professor. He won't put mesh in his  
22 patients because of the problems.

23 Well, why would a doctor not want to use  
24 the TVT line of products? It's the gold standard.  
25 Because permanent risks like this are just not worth  
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1 it for a woman who's leaking a couple drops of urine  
2 when she exercises. That's ridiculous.

3 The scary, scary truth is that Johnson &  
4 Johnson knew all along how dangerous its TVT  
5 products were, but they manipulated the world to  
6 keep making money. You saw the complaints they were  
7 getting. Erosion coming into the vaginal wall. Her  
8 partner complains sex is like screwing a wire brush.

9 What was Ethicon's reaction? I've never  
10 tried the wire brush thing, so I won't comment. He  
11 makes a joke.

12 Ming Chen told them patient experiences  
13 are not transitory at all. Their reaction? Leave  
14 transient in the warnings, keep the products out  
15 there. I saw no evidence from the defendants of any  
16 follow-up they ever did after Ming Chen wrote this  
17 detailed memo about all the problems she was worried  
18 about.

19 It gets worse. One of their key opinion  
20 leaders, talking about the TVT-S, has some defects  
21 that needs to be -- that have to be attended to.  
22 Their reaction? Leave it on the market for six  
23 years before pulling it.

24 TVT-S hammock approach. There's two ways  
25 to put it in. Hammock is what Ella Ebaugh got.



1 Minisling will never work. They left it on the  
2 market for four more years after Carl Nilsson, key  
3 opinion leader, told them that.

4 TVT-S removed from the market in  
5 Australia due to concerns. Don't let doctors in the  
6 U.S. know about that.

7 Employees referring to the TVT-S as dead  
8 and weak. Their reaction? Keep on selling.  
9 E-mails like this. More procedures. More problems.  
10 This is in '06. Keep on selling. Validation  
11 studies. Big steaming pile here. Keep selling.

12 Hundred patient learning curve for  
13 Dr. Nilsson, the guy they trusted, their key opinion  
14 leader, couldn't implant one of these correctly  
15 until he had implanted them in a hundred women.  
16 Keep selling. And I guess what they figured is it's  
17 okay, chalk these hundred women up to losses.

18 They just get the proverbial short end of  
19 the stick. How is that right? How is that fair?  
20 The hundred women who get critically injured because  
21 the doctors don't even know that there's this  
22 hundred-patient learning curve.

23 Ella Ebaugh and women on this planet are  
24 not guinea pigs. Ella is a human being. She's a  
25 life. She has a husband. She had pleasures. She

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1 guinea pigs until defendants get it right. That's  
2 not right. That's wrong. You, as a jury, have to  
3 tell them that's wrong and make them stop it.

4 You can do that with your verdict. Money  
5 is the one thing that we have seen throughout this  
6 trial that Johnson & Johnson and Ethicon care about.  
7 You saw some of the numbers thrown around. By 2004,  
8 the TVT line of products was worth 100 million with  
9 a profitability of 91 percent. That's 91 million  
10 dollars profit before they ever launched the TVT-S.

11 This is another one of their slides.  
12 That year the TVT-Secur alone was 18.5 million in  
13 the U.S. alone. One year, one product, one country.

14 Remember this diagram? TVT market was  
15 big and they wanted to keep their share of it. They  
16 estimated having about 60 percent of the market.  
17 They were playing in the big leagues with their  
18 products and they knew it. They didn't want to lose  
19 market share, and so you saw they came up with that  
20 TVT-O. That didn't really work out for them. So  
21 then they got the brilliant idea to let Dan Smith,  
22 who is an engineer, not a doctor, design the TVT-S.  
23 They knew the TVT-S was problematic, but they  
24 ignored it.

25 We already talked about them not doing an

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1 has kids. She had activities. She didn't consent  
2 to be some sort of science experiment for them to  
3 put over 60 feet of plastic into to see not if, but  
4 when the problems would happen. They should have  
5 pulled the TVT from the market before it got  
6 anywhere near her when they were making jokes about  
7 wire brushes. And they never should have launched  
8 the TVT-S.

9 They can't now say sorry, we'll get it  
10 right next time. That's not good enough. What  
11 about the women you've heard? What about Ella  
12 Ebaugh? What about the women who might get one of  
13 these tomorrow?

14 If you find in favor of Johnson & Johnson  
15 and Ethicon, then what you, the jury, are saying is  
16 that it's okay for a medical device manufacturer to  
17 go ahead and launch products without testing them in  
18 humans; to keep products on the market when you know  
19 they're critically injuring people; that those  
20 injuries can't be resolved, they're permanent; and  
21 that it's okay to manipulate the literature so that  
22 people don't know what's going on; it's okay that  
23 you hurt patients in the learning curve of doctors.  
24 Those women don't matter. They had problems to  
25 begin with anyway, so that's okay. They're the

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1 RCT because of budget constraints. The prelaunch  
2 marketing budget was 800 million dollars. I say  
3 million confidently. I have been on this earth a  
4 few decades. More than I look. I have somewhat of  
5 a baby face. But I have never in my entire  
6 existence seen anyone use a Roman numeral when  
7 talking about numbers. When I see a capital "M," it  
8 means millions.

9 So maybe you believe Dr. Sepulveda that  
10 it's a Roman numeral and they only spent \$800,000.  
11 Okay. But in that case, couldn't they take some  
12 money from their 73 million dollar net worth and put  
13 it towards an RCT? And if it is 800 million, if I  
14 am right that that's a million, then it is  
15 outrageous and Dr. Sepulveda agrees with me. Either  
16 way, they have plenty of cash to do the study.

17 But they didn't do it not because of the  
18 money, they did it because, in their words, it would  
19 be priceless to get on the market first. All they  
20 cared about was owning the market, not about the  
21 women they hurt, not about the long-term  
22 complications for women.

23 All this hustling was done by them  
24 knowing the life-long risks with its TVT line of  
25 products. Marty Weisberg testified to you the

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1 company knew all along about the life-long risks of  
2 inflammation, scarring, pain, dyspareunia, and that  
3 they didn't warn about any of it. He said it was  
4 because it's common knowledge among doctors that any  
5 pelvic surgery can have these results. Huh?

6 Dr. Douglass didn't know anything about  
7 the severity, frequency, or permanency of any of  
8 these risks. No sane woman would consent to have  
9 these things implanted into her body for stress  
10 urinary incontinence, a few drops when she played  
11 softball or a leak when she slid into home base, if  
12 she knew about the severity, permanency and  
13 frequency of these risks.

14 Now, in this courtroom Johnson & Johnson  
15 and Ethicon's lawyers say the risks are rare. You  
16 know that's wrong. The company knows they're  
17 common. The company has always known they're  
18 common. These are the rates Ming Chen put in her  
19 document when she had concerns. Dyspareunia, 6.3  
20 percent; sexual dysfunction; mesh erosion, 8.2  
21 percent; obstructive voiding complications, 11 to 18  
22 percent. She told you how concerned she was and  
23 wanted to have meetings about it.

24 Dr. Margolis and Dr. Rosenzweig in their  
25 own practices outside of the courtroom have each

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1 trust this. Well, take a look. They looked at  
2 Johnson & Johnson's literature search, Johnson &  
3 Johnson's clinical evaluation report on mesh  
4 erosions. Johnson & Johnson has to do clinical  
5 evaluations to prove the safety and efficacy of its  
6 products. This is the literature that they pulled.  
7 This is the literature that the PA Consulting Group  
8 relied on to come up with that 20 percent risk.

9 Besides that, you also saw the Tomicelli  
10 study. 15 percent erosion rate. You saw the Tseng  
11 study -- T-S-E-N-G. I might be saying it wrong. 19  
12 percent erosion rate. And if an erosion is so  
13 serious, it leads to permanent injury to the  
14 urethra, intrinsic sphincter deficiency, the need  
15 for multiple surgeries and permanent, constant  
16 life-long pain that cannot be relieved. It's a risk  
17 that has to be taken very seriously.

18 More importantly, just because a risk is  
19 rare doesn't mean the TVT and the TVT-S are not  
20 defective. Rare doesn't mean Ethicon and Johnson &  
21 Johnson acted responsibly.

22 So think about it this way. Step out of  
23 the medical device, TVT world. If a car  
24 manufacturer sold a car and it was known that that  
25 car would maybe rarely explode, injuring anyone

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1 removed hundreds of transvaginal mesh implants.  
2 Aside from their practices, they've been experts in  
3 hundreds of other cases where women have alleged  
4 they've been injured from these products.

5 Dr. Goldman, one of the authors of the  
6 AUGS statements, has also testified under oath that  
7 he has removed hundreds of pelvic mesh products.  
8 That doesn't make the risks rare. That makes them  
9 common.

10 You heard literature with Dr. Rosenzweig  
11 a long, long time ago, probably four or five weeks  
12 ago now. This is the Hota study. It put the  
13 erosion rate at 19 percent. 19 isn't rare by any  
14 definition.

15 Ethicon hired the Pennsylvania Consulting  
16 Group to look at the risk of erosion in all of its  
17 pelvic mesh products. They put the erosion rate at  
18 0 to 20 percent. Now, Dr. Sepulveda says this has  
19 nothing to do with this case. Look at the title.  
20 Investigating mesh erosion in pelvic floor repair.  
21 Pelvic floor repair is prolapse surgery and it's  
22 stress urinary incontinence surgery. That's what  
23 this report is about.

24 And then he said, I don't know what  
25 literature they rely on. I don't know if I can

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1 inside of it, would it be okay for them to sell that  
2 car if it only happened once in a while? You know,  
3 it's pretty rare. It might not be you. You would  
4 be okay. No. You don't want to be in a car when it  
5 explodes.

6 Even though rare, the severity of the  
7 risks makes it defective. Same exact thing with the  
8 TVT and the TVT-S.

9 Now, Dr. Rosenzweig went through all the  
10 company documents with you. What happened after he  
11 went through them all with you? They didn't show  
12 him any good documents. They didn't show their  
13 witnesses any good company documents. Why? There  
14 aren't any. The good company documents don't exist.  
15 The good data doesn't exist. The best they've got  
16 is that AUGS opinion statement, bias studies and bad  
17 data. Really, really bad data. Very concerning  
18 data. Steaming pile of data. Data they had to jazz  
19 up. We know this one, constant wish to spin the  
20 data. Oh, and then there's data they had to probe.  
21 And this might be my favorite, data they had to stop  
22 from being published because they didn't want to get  
23 it out.

24 And then they have their experts. Jaime  
25 Sepulveda. Self-admitted Ethicon-made millionaire.

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1 He got up here and he emphasized the importance of  
2 studies and them being unbiased without ever  
3 addressing all those things I just showed you. He  
4 also told you the importance of putting these things  
5 in and being an experienced surgeon and having a  
6 mentor and about training and practice. He authored  
7 the TVT tips and tricks. But he did nothing to  
8 address what happens to one of these women who gets  
9 implanted when she's part of a doctor's learning  
10 curve. Again, short end of the stick and he doesn't  
11 care about that. Ethicon doesn't care. Neither  
12 does Sepulveda. They're both making money.

13 Research doesn't even matter to him. In  
14 his words -- and I am quoting him now -- he's not  
15 into all these studies. Why would he be? That  
16 would mean he would make less money implanting the  
17 TVT if he started doing research. And despite all  
18 of that, even he admitted on the stand more than  
19 once that he would have delayed the launch of the  
20 TVT-S. Not a shock. Not a shock.

21 He was a key opinion leader. He's their  
22 expert. But Ethicon actually withheld bad  
23 information from him. You remember this slide.  
24 Please do not forward with Dr. Sepulveda -- or I am  
25 not happy for you to forward this to Dr. Sepulveda.

1 dysfunction, all the pain and all the problems from  
2 2011 to 2016 are all from the mesh erosions.

3 THE COURT: Half an hour remaining.

4 MS. BALDWIN: Thank you.

5 She says now in 2017 that the pain and  
6 the scarring and the dysfunction are not anything to  
7 do with urethra, but from vaginal atrophy and from  
8 her hip.

9 Let's talk about vaginal atrophy.

10 Dr. Tomezsko admitted her atrophy is normal for her  
11 age. She's an aging woman. Women who go through  
12 menopause get some atrophy. But Dr. Wright, the  
13 last treater to look at the mesh and the last person  
14 to look at Mrs. Ebaugh's vagina, other than these  
15 experts, made no mention of atrophy whatsoever.  
16 Dr. Margolis didn't see it.

17 Dr. Tomezsko admits scarring can cause  
18 pain in urinary dysfunction. She kind of wants to  
19 ignore the elephant in the room and not address any  
20 of that. That's 2015. Dr. Tomezsko says none of  
21 that is causing her problems, that the levator  
22 spasms contribute to her pain, and that those  
23 levator spasms could be caused by the hip. Even  
24 though the first time she had a levator spasm it was  
25 five years after her hip replacement surgery.

1 That's Piet Hinoul, their medical director. Now, he  
2 tried to get around it. Sepulveda said, oh, maybe  
3 he didn't want to share his PowerPoint with me.  
4 Come on.

5 What about this one? Please do not  
6 forward this. Actually delete it, please. That was  
7 a commercial recommendation about the Scion and its  
8 value, that absorbable mesh.

9 How about this one? Do not distribute.  
10 The internal documents are terrible. They're hiding  
11 information from their own people.

12 Let's talk about Janet Tomezsko, the  
13 urogynecologist who examined Ella, didn't bother to  
14 do a cystoscopy or any urodynamic testing, knowing  
15 Ella has had three erosions of mesh into her  
16 urethra. She's never seen what scarring is left  
17 inside the urethra. And she admits she has nothing  
18 to rebut the urodynamically proven intrinsic  
19 sphincter deficiency that Dr. Margolis found. The  
20 reason that she has no control over the muscles of  
21 her urethra, the reason she has about ten seconds to  
22 get to the bathroom when she goes. And because she  
23 has not looked inside, she has nothing to rebut the  
24 scarring that Dr. Margolis saw.

25 She admits all of the urinary

1 Now, Dr. Tomezsko -- and I hate to be  
2 this bold, but I have to. She lied to you. She  
3 told you when Ella first had levator spasms in 2015,  
4 that when Ella saw Dr. Drolet that Ella wasn't  
5 complaining of pain. These are the records from  
6 2015 with Dr. Drolet where Ella hand wrote in that  
7 she had pelvic pain. And this is the doctor's  
8 assessment of her of having pain with sex.

9 Dr. Drolet(Sic) also lied to you when she  
10 said that Ella's urinary incontinence was severe and  
11 that it limited her ability to play sports, to care  
12 for her children and to work. I gave her a homework  
13 assignment over lunch. I laid out all the medical  
14 records. I invited her to use mine, even though  
15 they had my notes in it. She came back and said  
16 there's no evidence of any of that until after she  
17 had her mesh implants. Dr. Tomezsko lied.

18 The Court will instruct you that if you  
19 decide a witness intentionally lied about a  
20 significant fact that may affect the outcome of the  
21 case, you can choose to disbelieve the rest of their  
22 testimony. Think hard about that before you believe  
23 anything Dr. Tomezsko told you.

24 She wouldn't admit to knowing David  
25 Robinson until I put up this e-mail where she had

1 dinner with him and had a great time after an AUGS  
2 meeting, of all places. She wouldn't admit to you  
3 she was a speaker for Ethicon until I showed you  
4 the e-mail. She said Vince Lucente was just her  
5 instructor until we put up the e-mails about him  
6 influencing her and her wanting to be invited to  
7 Ethicon events and dinners with him.

8 Unconditionally loyal to the TVT-S.  
9 Ethicon sent her to Belgium. All the money they've  
10 invested in her. And, admittedly, despite all of  
11 that, she still doesn't know half of what you've  
12 seen and what you know after sitting through this  
13 trial. She didn't read all the company depositions,  
14 she didn't read all the documents you've been shown.  
15 She asked her lawyers to get Dr. Margolis's data off  
16 of his computer. He told you they never requested  
17 it.

18 I put those binders up here. I asked  
19 her, did you read all these medical records that  
20 Dr. Margolis read and that I went through with this  
21 jury? She answered very carefully. She said, I  
22 read what was sent to me. Ethicon wants its experts  
23 that way, in the dark touting the company lines.

24 And Dr. Tomezsko -- you remember this.  
25 She cut and paste 15 pages of her report from

1 urogynecologists to hairdressers because they move  
2 around so much. He referred to Dr. Toby Chai -- and  
3 that is sensitive -- a very established  
4 urogynecologist who's now at Yale University as,  
5 quote, the Chinese doctor. He's the guy who said  
6 his colleague, Dr. Robinson, was the quote, guinea  
7 pig for new surgeries to test them out on patients  
8 to see if they work. And he's also the guy who said  
9 rather proudly that scarring in the vagina is a good  
10 thing, that it makes it tighter and, thus, makes sex  
11 more pleasurable.

12 He's their guy. He's the guy who likes  
13 to do TVTs in an outpatient center because the  
14 turnover is, in his own words, amazing. They clean  
15 rooms so fast. He can do four in a day, as opposed  
16 to two in a day in a hospital. Yet he doesn't make  
17 money directly from Ethicon, but he sure makes money  
18 because of Ethicon.

19 He had to refer patients out who needed a  
20 surgery before because he doesn't know how to do  
21 autologous slings, he doesn't know how to do a  
22 laparoscopic Burch. Now, he also was untruthful  
23 with you. He told you he waits a year before trying  
24 a new product in women always. He lets his partner  
25 be the guinea pig on surgeries. Not true. He put

1 another case. Yes, the portions summarizing the  
2 depositions were different. And defense counsel  
3 held them up. Good job. I am glad she at least  
4 appears to have read some of the depositions. But  
5 all the conclusion sections are verbatim.

6 Now, I put a big, red "X" through one. I  
7 cut and paste to make a PowerPoint slide. I made an  
8 error. To error is human. I made one. I took it  
9 out of the count. So there's only 15 pages that she  
10 cut and paste verbatim. She wouldn't even tell you  
11 that. At one point when there was a typo in the  
12 conclusions paragraph, she said to you all, that's  
13 how I talk so I would have typed it the same way,  
14 verbatim, twice. Come on.

15 Who else does Ethicon rely on? Now that  
16 we've got their AUGS, their manipulated data, their  
17 experts. Dr. Douglass. He's not an expert. He  
18 can't be. He has no special training in  
19 urogynecology. He's not board certified in it. He  
20 never did a fellowship in it. Nothing. He retired  
21 in 2011. He no longer has an active license to  
22 practice medicine.

23 So who is he? You'll remember this.  
24 He's the guy who said kegel exercises only work for  
25 obsessive compulsive women. He compared academic

1 the TVT-S in Ella Ebaugh when it was a new product,  
2 when it was just out on the market, a few months  
3 after it was released.

4 He said he was familiar with literature  
5 on the TVT-S when he implanted Ella. Not true. She  
6 got implanted May 31st 2007. TVT-S was just out on  
7 the market. They didn't publish their six-week  
8 data -- their five-week data or their six-month  
9 data. There were no studies at that time.

10 Now, Douglass also told you he trained  
11 with Dr. Lucente. And they want you to believe that  
12 Douglass had accurate knowledge of the risks from  
13 his training with Lucente, from the AUGS information  
14 he had, from the colleagues he talked to at the AUGS  
15 meetings and the literature that was publicly  
16 available. Come on. Those things are all bias.

17 Ethicon spent its 73 billion dollar  
18 budget to make sure the bad information isn't  
19 getting out in those sources.

20 Douglass had no idea of the severity,  
21 frequency or permanency of any of the risks. And I  
22 am not going to go through all of these verbatim,  
23 but I am putting them up quick for you.

24 It's a serious risk but infrequent. I  
25 never heard of them. I didn't have any knowledge of

1 that. That it could minimally. If it does happen,  
2 it can be treated. He thought it was something that  
3 was rare, that was easily treatable. He had no idea  
4 the severity, the frequency or the permanency of the  
5 risks, so he couldn't and didn't tell any of that to  
6 Ella Ebaugh. At least he was truthful about that.

7 The truth here is that Dr. Douglass is  
8 the poster child for people Ethicon wants using its  
9 products. He's not a sophisticated doctor, he  
10 couldn't do the laparoscopic Burch or autologous  
11 slings. He's the low-hanging OB user they wanted.  
12 Basic Ob/Gyn who dabbled in urogyn, self-taught, and  
13 sought the TVT and the TVT-S as a means to make  
14 money. He would have to refer patients out  
15 otherwise. And this is exactly why they wanted him.

16 They wanted to attract doctors like  
17 Douglass to make money. They trained doctors not  
18 because they're worried about surgical skill,  
19 because they wanted a return on their investment.  
20 They trained doctors to make the competition  
21 irrelevant, increase demand and make money. That's  
22 the purpose of professional education. Dr. Douglass  
23 also wasn't sophisticated enough to figure out that  
24 his own patient was hurt so badly by the products he  
25 implanted in her. He had no idea what happened to

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1 Ella Ebaugh.

2 She's not the only one. He also had no  
3 idea how many of his own patients he followed up  
4 with for five years. He had no idea of the  
5 long-term risks on these.

6 So he has no idea what the real risks of  
7 the products are, neither did Ella when she agreed  
8 to have them implanted.

9 This is the list of pre-existing  
10 conditions I made -- I handwrote it with  
11 Dr. Margolis when I went through all of the records.  
12 I didn't cherry pick records to show you. It took a  
13 long time. Dr. Margolis walked them through you.  
14 That's where his percentages come from.

15 She's seen a 550 percent increase in  
16 urinary tract infections; 225 percent increase in  
17 urinary frequency; 700 percent increase in urgency  
18 complaints; 300 percent increase in urinary  
19 retention; 800 percent increase in nocturia; 325  
20 percent increase in stress urinary incontinence; and  
21 a 465 percent increase in pain complaints. Yeah.  
22 Ella had some problems.

23 If any person had their medical history  
24 dissected and sliced and diced into binders like she  
25 did, I am sure you could find one or two obscure

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1 things that you don't even remember happened 10, 20  
2 years ago. That's what they're relying on. That's  
3 what they want you to think, that she had all these  
4 problems.

5 It's red zone defense. If you watch  
6 football, when the offense gets the football right  
7 into the 20-yard line, about to score a touchdown,  
8 it's the defense's job to hold them to a field goal.  
9 Keep it at three points. That's what they're doing  
10 here. They're trying to make it out like she was  
11 worse off than she is.

12 They know they're wrong and they want to  
13 minimize damages. They want you to focus on that  
14 one painful UTI she had in 2005. Her knee pain, her  
15 thyroid, her hip. It's all nonsense.

16 Yes, she had a bad hip implant. Yes, it  
17 got recalled. Yes, it was replaced. At the time it  
18 was unbearably painful. She testified it ruined her  
19 life. She and Marvin got over it. They made  
20 adjustments. Ella clearly described how her pain  
21 now is very different from that hip pain, and she  
22 also told you how minimal her urinary problems were  
23 before. Both she and Dr. Douglass admitted her main  
24 problem was her SUI.

25 She even told you that if she was given a

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1 choice of just an open Burch, she would have just  
2 lived with it. She didn't need a surgical fix.  
3 They sold her a fix for a problem that didn't need  
4 fixing.

5 Her SUI wasn't life threatening. She  
6 wasn't depressed. She wore a panty liner. She  
7 scheduled the TVT-O surgery in '05 and put it off  
8 because of her daughter's competition. In 2007,  
9 Dr. Douglass told her there was a new product.

10 Now, Marvin says no warnings were given.  
11 Ella can't remember. Up to you to decide. But if  
12 you believe he gave these warnings, he still never  
13 went over the severity, the frequency or the  
14 permanency. He thought the complications were easy  
15 to treat. And on the authorization that Ella  
16 actually signed, there were no risks of mesh on it  
17 whatsoever. That's why she agreed to two implants.  
18 She didn't understand that these were real, severe,  
19 frequent risks. She would be insane otherwise.

20 Even if you believe she was warned,  
21 though, that has nothing to do with the questions  
22 you're going to get on the verdict slip. Warnings  
23 are not a defense to design defect or to negligence  
24 under the law. It's irrelevant.

25 Ella's story -- and I'll give it to you

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1 real quickly -- implanted with the TVT-S on May 31st  
2 2007. Within two weeks it wasn't working.  
3 Dr. Douglass recommended and she got the TVT July  
4 12th. Ethicon does not take issue with putting in  
5 two slings. They like it. Bad sling needs a second  
6 implant and double the sales. After a TVT, Ella had  
7 a few UTI's but nothing severe.

8 In 2011, the pain became excruciating.  
9 Mirsky saw the mesh had eroded through her urethra  
10 and looked like a gate obstructing it. There were  
11 calcium deposits on it. Her first mesh removal  
12 surgery was June 14th 2011. Mesh had perforated the  
13 urethra in two places. He cut out the mesh, and a  
14 mucosa on the inside of the urethra healed over the  
15 stumps.

16 Ella got better. Six months, problems  
17 came back. Dr. Mirsky did another cystoscopy, saw a  
18 large, almost false passage. Dr. Mirsky sent her to  
19 see Dr. Chai at the University of Maryland. He saw  
20 more mesh in the urethra, more stones, mesh in the  
21 top of the bladder. Not just stumps, a whole new  
22 erosion in a new place. Now it's in the distal  
23 urethra. He told Ella and Marvin that Ella was a  
24 train wreck down there.

25 Dr. Chai performed her second mesh

1 her as best she could be.

2 But this is what she's left with. For  
3 the sake of time, I am not going to read them all  
4 out, but you know what they were. There were four  
5 pages, I believe, of all the things that she's had  
6 to go through since they implanted this mesh in her  
7 body. A normal person probably wouldn't want one of  
8 these. I started this, and I didn't really think  
9 that I was going to have to fill up four whole pages  
10 as I went along of all the things she's had to  
11 endure.

12 You saw all of these things in her  
13 medical records. No cherry picking. I didn't have  
14 a little, one-inch binder like Dr. Tomezsko came up  
15 there with. We went through every page of the  
16 records. All of these conditions are directly  
17 attributable to the TVT-S and the TVT.

18 Was Ella a rare-out(Sic) liar? Do you  
19 honestly believe she's unlucky enough to get hit by  
20 lightning three times? Come on. That doesn't make  
21 sense.

22 Ethicon's documents prove they knew all  
23 of the problems years before she was ever implanted.  
24 They knew about the scarring, the rigid mesh, its  
25 propensity to erode. They knew how hard it was to

1 removal surgery March 14th 2012. Abdominal incision  
2 to dissect the bladder out of the body to look for  
3 the mesh that was there, and also did a vaginal  
4 dissection to get the mesh away from the urethra.  
5 He had to get it out of the urethra. And then you  
6 saw the op note where he had to scrape it away from  
7 the urethra.

8 A few months later some more problems  
9 came back, and he saw she had some more fibers in  
10 her urethra. Now, he didn't want to do another  
11 surgery because it was way too dangerous at this  
12 point. He told her she would probably be fine with  
13 just a little bit of mesh in it.

14 Over the next few years she learned to  
15 live with it. And then in 2015, the pain got  
16 excruciating. Problems worse than ever before.  
17 Dr. Drolet found this. Mesh. Stones. Polyp.  
18 Diverticulum. Scarred open urethra. Patulous.  
19 Dr. Drolet told Ella it was so painful it must be  
20 like having little razor blades down there.

21 Ella had, for the first time ever when  
22 she presented with this, levator muscle spasms. She  
23 had such problems, urine shot three feet across the  
24 room when she laid down. She was sent to Dr. Wright  
25 at Johns Hopkins and it was removed. He repaired

1 get out.

2 Dr. Tomezsko won't use polypropylene  
3 sutures in vaginal surgeries because it gets stiff  
4 like fishing wire. What did they think was going to  
5 happen when they put over 60 feet of polypropylene  
6 in a woman's vagina and leave it there for ten  
7 years?

8 Ella is also not a chronically depressed  
9 or handicapped woman like I am certain defense  
10 counsel are going to come up here and try to make  
11 her out to be. She had a good life. She was  
12 playing softball competitively in a professional  
13 league up until the day her hip was replaced, which  
14 was after her implants.

15 Do you know what Ella Ebaugh is? She's  
16 brave. She's brave for sitting here every day and  
17 standing up there and testifying and facing them,  
18 letting them pick apart her life, her health, her  
19 marriage, her divorce and her children. They will  
20 go after anything they can to blame her problems  
21 on.

22 Why talk about her thyroid, her knees,  
23 her weight, her kids' health, her divorce and her  
24 remarriage? Did those things mangle her urethra?  
25 Did they make her shoot urine three feet across the

1 room? They're, obviously, not what she's talking  
2 with her therapist about.

3 Ella is here standing up to them because  
4 she doesn't want to see anyone else hurt. And I  
5 commend her, as well as Marvin. He's the rock. He  
6 supports her any way he can. And he told you, she's  
7 not the same person anymore. But they really do  
8 hope to find a new normal.

9 Defendants are going to get up here and  
10 say we're sorry. When I was little, one of my  
11 teachers said to me sorry means you're not going to  
12 do it again. They are. They will.

13 They sold the TVT-S for six years in the  
14 face of it being a big steaming pile. They still  
15 sell the TVT, despite e-mails about the data of the  
16 TVT world being very concerning. Despite knowing  
17 it's going to erode and be like a wire brush in a  
18 woman's vagina.

19 Now, they're going to say the TVT is not  
20 defective because it's within the standard of care.  
21 And the TVT-S was within the standard of care when  
22 it was implanted too.

23 One, not true. TVT-S is off the market.  
24 It's not the standard. Two, standard of care has  
25 nothing to do with defect or negligence. Listen to

1 Did plaintiff prove by a preponderance of  
2 the evidence that the defendants negligently  
3 designed the product? Negligence question, the  
4 answer is yes. It's an "or". TVT or TVT-Secur.  
5 You only have to find one to check yes. The answer  
6 is yes to both.

7 The Judge will tell you a device  
8 manufacturer has to act in a reasonably careful  
9 manner to avoid injuring others. They have to use  
10 due care. They didn't do that. I've been talking  
11 at it for almost an hour now with you.

12 They were unreasonable. They didn't  
13 test. They didn't appreciate the risks. They  
14 didn't take the necessary and appropriate measures  
15 when they learned of the severity, frequency and  
16 permanency of the risks. They didn't even try the  
17 other options. Ultrapro. Vikepro(PH). Project  
18 Scion, those absorbable ones.

19 Sepulveda -- we showed you the internal  
20 document. Product Scion was his, quote, ideal mesh.  
21 They ignored him and kept selling the TVT products.  
22 They even started using Ultrapro in their prolapse  
23 products but didn't move forward with the TVT.  
24 That's unreasonable.

25 Second question is just causation. Did

1 the Court's instructions. They'll tell you the same  
2 thing.

3 Three, there's lots of medical products  
4 out there that when they get put on the market  
5 they're the standard and later turn out to be  
6 problematic. Weeks and weeks ago with  
7 Dr. Rosenzweig you saw the e-mail about Johnson &  
8 Johnson's DePuy hip implant. It was put on the  
9 market, it was within the standard of care, and then  
10 they had to recall that. That's not a defense to  
11 this action.

12 In a few minutes you're going to see the  
13 verdict form, so I just want to go through the  
14 questions. First, I know some of you have been  
15 jurors before. I don't remember how many, but I  
16 think it's a good number. This is not a criminal  
17 case. The standard here is something called  
18 preponderance of the evidence. Judges like to use a  
19 balance scale. Whoever the scale tips ever so  
20 slightly in favor of, wins.

21 I like to break it down real basic. More  
22 points wins. That's it. We both start even.

23 Keeping that in mind, here are your  
24 questions. I am moving quick because I think I only  
25 have about ten minutes left.

1 we prove that by a preponderance of the evidence  
2 that their negligence was a factual cause? The  
3 answer is yes. Negligence caused her harm,  
4 obviously. It's not her atrophy that only  
5 Dr. Tomezsko sees. It's not her knee bone connected  
6 to her hipbone connected to her back connected to  
7 her neck, or whatever else they want to talk about.  
8 That's nonsensical. It's not her thyroid or  
9 anything else. It's not her ex-husband, her kids,  
10 any of that.

11 It's this. It's her tortured, mangled,  
12 serpentine urethra and all the damage done, all the  
13 cuts into the vagina, all the cuts into the urethra,  
14 all the cuts to get the muscle away from the bone to  
15 get the bladder out and everything else.

16 Did the plaintiff prove by a  
17 preponderance of the evidence that it was defective?  
18 The answer is yes. A product is defective if it  
19 lacks any element necessary to make it safe for its  
20 intended use or has any condition that makes it  
21 unreasonably unsafe. Risks clearly outweigh the  
22 utility any way you look at it. No one, no one  
23 should face the kind of risks that these offer for  
24 just stress urinary incontinence. Causation  
25 question again. The answer is yes.

1 I'll stop there and just repeat that Ella  
2 had pre-existing conditions and they got worse from  
3 these products, but that doesn't mean she can't  
4 recover. For something to be a factual cause, it  
5 doesn't have to be the only factual cause. The  
6 defendants' negligence combined with other factors  
7 like her pre-existing condition does not relieve the  
8 defendants from liability here.

9 Amount of compensatory damages, fairly  
10 and reasonably compensates Ella. There are four  
11 categories you have to consider here. Come up with  
12 a figure for each four, add them together, put the  
13 number on the line.

14 First is physical pain, mental anguish,  
15 discomfort, inconvenience and distress. Think of  
16 Ella's testimony and how she was here in the court,  
17 excruciating pain, unbearable pain. The diaper bag.  
18 I am sure she's depressed about it all. Undisputed  
19 pain she had from 2011 to 2016. All those  
20 procedures she had to endure.

21 Second is embarrassment and humiliation.  
22 I guess I could put that back up. She's embarrassed  
23 every Sunday at her mom's house with the washable  
24 pad. She was embarrassed here when she wet her  
25 pants the day she testified and I made her pull the

1 number. This is the number where you make them  
2 stop. This is the number where you say this can't  
3 happen again.

4 Willful and wanton conduct is when a  
5 defendant acted or failed to act in some way knowing  
6 they would likely hurt someone. You saw the rates  
7 that I put up with you. You saw the internal  
8 documents. They knew they had a big, steaming pile.  
9 They knew they were going to hurt people and they  
10 ignored it and kept on selling.

11 Show me the money. You think about that  
12 and what they should have been doing when they  
13 circulated "show me the money."

14 Focus is deterrence. Real quick -- I  
15 have like two minutes left. Kid's toys. I brought  
16 cars. You take one away, the kid doesn't care.  
17 He's going to hit his sister again. I take three  
18 again, the kid is going to hit his sister again. I  
19 got to take enough of these cars away so that kid is  
20 looking at a partially empty box and that kid said,  
21 boy, I better not hit my sister again. Right?

22 That's a child mentality. They're no  
23 better. You have to think of them as a child  
24 because that's really the level of what we're seeing  
25 here, the level of the conduct.

1 bag out. Pees her pants at her son's baseball games  
2 and will only sit near a few close friends because  
3 of it. It's not going to go away. It's just a new  
4 humiliation, a different situation.

5 Third is loss of the ability to enjoy  
6 life's pleasures. She and Marvin have almost none.  
7 Chained to a toilet, sitting around waiting for her  
8 next urinary tract infection. Joy has been sucked  
9 from her life. Shell of her former self. Struggle  
10 to get out of bed.

11 She can't even make love to her husband.  
12 The one simple joy that no matter who you are, old  
13 or young, rich or poor, you enjoy. She'll never  
14 have that again.

15 Fourth is disfigurement. She has an  
16 abdominal scar. I don't think she cares about that.  
17 Don't worry about that.

18 That's the disfigurement I am talking  
19 about, the urethra that's been so disfigured that it  
20 will never work again.

21 These are the punitive damages questions.  
22 We have to prove by clear and convincing evidence  
23 she was harmed by them, that they acted in willful  
24 and wanton disregard of her well-being, and then you  
25 have to put a number. This is the deterrence

1 They didn't even bring a witness in here  
2 to stand up for themselves to say we did right  
3 because it wouldn't end well. It would end the same  
4 way everything else did.

5 Net worth of Johnson & Johnson,  
6 \$70,418,000,000. Net worth of Ethicon,  
7 \$2,762,046,000. \$73,180,046,000, and they couldn't  
8 do an RCT on the TVT-S. They couldn't put a hold on  
9 the TVT while they explored partially absorbable  
10 materials. They couldn't use due care. They  
11 couldn't address Ming Chen's concerns. And now  
12 they've left Ella like this.

13 I am just going to close real quick  
14 because I really do think about it, what does it  
15 mean to be in constant pain, pain for the rest of  
16 your life, pain where you can't get up to take your  
17 teenage son and say, goodbye, you have a good day at  
18 school, son?

19 The words used to describe pain are  
20 countless. Words such as tormenting, burning,  
21 excruciating, agonizing, severe, cruel, harsh and  
22 horrendous all have been used to characterize it.  
23 But to one afflicted by it, no words are adequate.  
24 Though beyond verbal description, pain's boundaries  
25 are easily defined. It's encapsulated within the



1 flesh, in muscles, in nerves, in tissues and in  
2 organs.  
3 Physical pain is an ageless enemy. It's  
4 allies are fear, despair and agony. From the dawn  
5 of time, we fought to avoid it, paid great sums to  
6 elude it, and died to escape from its tyranny. It's  
7 a cruel master choosing as its victims the helpless  
8 and the sick who are least able to bear its  
9 oppression.

10 Pain has pillaged life-long friendships,  
11 destroyed marriages and authored family ruin.  
12 Physical pain can be the greatest form of agony and  
13 torment. It is a perfect form of misery and the  
14 worst of all evils.

15 This is how Johnson & Johnson and Ethicon  
16 left Ella Ebaugh. This is how they will leave other  
17 women unless you do your job. 73 billion dollars.

18 You have to pick a foreperson when you go  
19 in the back. There's no law on that. I suggest you  
20 pick someone with a loud, powerful voice so when the  
21 number is read that you award for punitive damages,  
22 these walls shake with the sound of justice and one  
23 of them is sitting there crying like she is now  
24 because they have to call Johnson & Johnson and say  
25 we've got a problem here. This better stop. And

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1 you are the only ones right now today who have the  
2 power to stop it.

3 Thank you.  
4 THE COURT: All right. Members of the  
5 jury, we'll take a, hopefully, short recess.

6 COURT OFFICER: All rise as the jury  
7 exits the courtroom.

8 - - -  
9 (Whereupon, the jury exits the courtroom  
10 at 10:55 a.m.)

11 - - -  
12 (Whereupon, a brief recess was taken.)

13 - - -  
14 (Whereupon, the jury enters the courtroom  
15 at 11:12 a.m.)

16 - - -  
17 THE COURT: Everyone may have a seat.  
18 Ms. Gallagher, you may address the jury.

19 MS. GALLAGHER: Thank you, Your Honor.  
20 Good morning, ladies and gentlemen.

21 THE JURY: Good morning.

22 MS. GALLAGHER: I want to start my  
23 closing argument to you with where I started with  
24 Dr. Margolis when I started his cross-examination,  
25 and that was things that we could agree on.

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1 And there are certain things in this case  
2 that are not in dispute. One of those is that  
3 Mrs. Ebaugh had TVT and TVT-Secur implanted and she  
4 suffered a urethral erosion, a complication from  
5 those. It's not in dispute. Everybody agrees that  
6 she had to seek treatment for those, that she had to  
7 have surgeries for those, and that it caused her a  
8 lot of symptoms when she was having them. None of  
9 that is in dispute.

10 And so you may ask yourself, well, if  
11 none of that is in dispute, what I am here for? Am  
12 I just here to put a number down and say, well, I  
13 feel sorry for Mrs. Ebaugh and what she's gone  
14 through and so all I have to do is figure out how  
15 much to award her? Well, that's not what you're  
16 here to do.

17 Because every surgical procedure that any  
18 doctor does carries the risks of potential  
19 complications. Every implant that a doctor puts in  
20 carries with it a risk of a complication. And the  
21 TVT and the TVT-S are no different. They carry with  
22 them the risk of a complication.

23 But that's not enough. Because a  
24 complication does not equal a defect. They're two  
25 different things. And what the plaintiff has to

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1 prove to you is that it was a defect in the mesh  
2 that caused Mrs. Ebaugh's problems, not a  
3 complication. Those are two different things.

4 And Dr. Tomezsko told you that after  
5 reviewing all of the depositions of the doctors who  
6 have treated Mrs. Ebaugh, that none of those  
7 treating doctors thought that it was a defect in the  
8 mesh that has caused Mrs. Ebaugh's problems. None  
9 of them said it was a defect.

10 And even Dr. Margolis, who did his very  
11 best to try not to agree with anything I asked him,  
12 he agreed that a complication doesn't equal a  
13 defect. In fact, I asked him specifically: And you  
14 would also agree that just because a patient has  
15 complications after a surgical device has been  
16 implanted, it does not necessarily mean there's  
17 something wrong with the device?

18 And he said, that is true.

19 Just because a patient has a bad outcome,  
20 has complications, it does not mean that the surgeon  
21 did something wrong. It does not mean that an  
22 implant that was used was defective.

23 And if you think that there should be no  
24 products put out onto the market, no implants put  
25 out into the market unless they're complication

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1 free, then what you're saying is there can never be  
2 an implant and nobody could ever have surgery  
3 because there is no such thing as a risk-free  
4 surgery.

5 So what do you have to determine in this  
6 case about these devices? And you're going to get a  
7 lot of instructions from Judge Erdos -- and I am  
8 going to refer to a couple of them here today. But  
9 he's going to tell you that you have to make your  
10 decision based on the evidence that you've heard in  
11 this courtroom.

12 And the thing that he's going to tell you  
13 about is the risk utility test. You'll see it in  
14 your instructions. And that means that in  
15 determining defect in this case, you have to  
16 consider the risks of the TVT and TVT-S, but you  
17 also have to consider the benefits. And you can't  
18 judge the risks and benefits on the outcome that  
19 Mrs. Ebaugh had.

20 We don't determine risks and benefits of  
21 a product by looking at a specific outcome in a  
22 specific person. You don't look at the  
23 complications somebody had and say, okay, that's how  
24 we're going to decide it. It's kind of like Monday  
25 morning quarterbacking. Now that we're in football

1 the patient can develop a complication. And in this  
2 case, as everybody is clear about, Mrs. Ebaugh had  
3 an urethral erosion. Whether you call it one or you  
4 call it three, she had urethral erosions where the  
5 sling was placed.

6 And you've heard a number of different  
7 figures for how often erosions happen. But what you  
8 heard is that consistently, what the medical  
9 literature consistently shows is a risk of erosion  
10 in about one to two percent. And you heard through  
11 Dr. Tomezsko and Dr. Sepulveda that that's  
12 consistent with what Mrs. Ebaugh's doctors  
13 experienced. They had risks of erosion of one to  
14 two percent. You've heard that. But that one to  
15 two percent risk of erosion is mostly vaginal  
16 erosions where the tape comes through into the  
17 vagina, not into the urethra.

18 Urethral erosions are very rare. In  
19 fact, you heard Dr. Sepulveda tell you that if you  
20 look at the medical literature, it's less than one  
21 in a hundred. And if you look at specific numbers  
22 where doctors are reporting urethral erosions in  
23 patients who have TVT and TVT-S, it's 0.006. That's  
24 less than one in a thousand. That is six in 10,000.  
25 And, unfortunately, Mrs. Ebaugh was one of those

1 season here. You don't go back and look at  
2 decisions that were made based on what you know is  
3 going to happen. There is no crystal ball in  
4 football and there's no crystal ball in medicine  
5 either.

6 If a doctor knew which patient was going  
7 to suffer a complication, then they just wouldn't do  
8 that surgery or wouldn't implant the device in that  
9 person. But, unfortunately, for those of us who  
10 need medical care and need surgeries, that's not the  
11 way it works. And so when you were looking and  
12 examining the risks and benefits of these products,  
13 you have to look at it overall, not in the context  
14 of what happened with Mrs. Ebaugh.

15 One of the things the Judge is going to  
16 tell you -- and I know you sat here and you listened  
17 to Mrs. Ebaugh, and I know you feel sympathy for  
18 her, but what Judge Erdos is going to tell you is  
19 that you can't make your decision in this case based  
20 on sympathy. You have to weigh the evidence that  
21 you've heard and judge this case based on the  
22 evidence.

23 So let's talk about the risks and  
24 benefits of TVT and TVT-S. Everyone knows that if  
25 you implant a foreign material in a person's body,

1 people.

2 And when you're thinking about the risks  
3 of TVT and TVT-S, think about did doctors know about  
4 it? This wasn't something hidden by Ethicon.  
5 Doctors knew about the risk of urethral erosions and  
6 they knew about them before 2007 when Dr. Douglass  
7 implanted the TVT-S and the TVT in Mrs. Ebaugh.

8 And you know this from the testimony of  
9 Dr. Rosenzweig, the long testimony of  
10 Dr. Rosenzweig. And we know it was hard for you to  
11 listen to all that. But we had to go through and  
12 ask all those questions of Dr. Rosenzweig about the  
13 medical literature, about the risks and benefits of  
14 these products.

15 And one of the things that Dr. Rosenzweig  
16 was asked a lot about was the literature on urethral  
17 erosions using slings. And by slings, I am talking  
18 about slings like the midurethral synthetic slings  
19 like TVT and TVT-S, but also the pubovaginal slings  
20 that you've heard about. I mean, it's a patient's  
21 own tissue. And you went through and you saw all of  
22 the different articles.

23 Dr. Rosenzweig was asked about every  
24 single one of these articles during his  
25 cross-examination. And they go back to the early

1 1960's.  
 2 Now, obviously, the TVT meshes weren't  
 3 out back then. They were doing the pubovaginal  
 4 slings. And as far back as the 1960's when they  
 5 first started doing these procedures, they'll  
 6 reporting the risk of the urethral erosion. This  
 7 was not something that was not known. And  
 8 Dr. Douglass knew about it. It's been published for  
 9 decades. And it can happen with any kind of sling,  
 10 not just the TVT or TVT-S.

11 So what are the benefits of the TVT and  
 12 the TVT-S? Before the TVT, you heard about the  
 13 Burch procedure where the woman was cut from hip to  
 14 hip, doctors had to go through the organs, cut  
 15 muscle, move things around, get to the bladder and  
 16 then take sutures and hold up the bladder neck.

17 A Burch procedure, by the way,  
 18 Dr. Sepulveda told you if you do today, the doctor  
 19 will get paid more than if you do a TVT. So how  
 20 Ms. Baldwin says they make more money off TVTs, I  
 21 don't know. Because if a doctor were to choose a  
 22 procedure based on what he is going to get paid, he  
 23 would choose the Burch, not the TVT.

24 But the Burch requires a big, abdominal  
 25 incision. It requires a long hospital stay. It

1 And you know from sitting in this  
 2 courtroom that the study showed that the TVT's  
 3 products have a 90 percent efficacy rate, meaning  
 4 they work 90 percent of the time, much higher than  
 5 the Burch procedures.

6 Now, because TVT has been the gold  
 7 standard -- y'all have heard that term. It's been  
 8 the gold standard for over 15 years. It has been  
 9 studied more than any incontinence surgery ever.  
 10 There are over 2,000 studies that have looked at the  
 11 safety, the rate of complications, and efficacy,  
 12 does it work, of these products. And you've heard  
 13 criticism from Ms. Baldwin that some of these were  
 14 funded by Ethicon or other industry manufacturers.

15 And yet then we're also criticized if we  
 16 don't fund doctors to go do research -- because  
 17 doctors aren't going to do it for free. You have to  
 18 have an extra nurse in your office to do this, you  
 19 have to have facilities, you have to track your  
 20 patients. It is not something the average doctor  
 21 can do.

22 So it's kind of like being between the  
 23 proverbial rock and a hard place. Industry is going  
 24 to get criticized if they fund studies and they're  
 25 going to get criticized if they don't.

1 requires a woman to be off work or not doing regular  
 2 activities for six weeks. And then you have the  
 3 pubovaginal slings that requires the same abdominal  
 4 surgery, the same risk of complications, the same  
 5 risk of infection. And you have the additional  
 6 surgery of having to take the fascia out to create  
 7 the sling. There has to be a better way.

8 And that's where Dr. Ulmsten came in and  
 9 invented the TVT. And then we had the TVT-O and  
 10 then we had the TVT-S. And what you had was a much  
 11 simpler process, a process that was minimally  
 12 invasive, a process that didn't have a lot of the  
 13 complications that these open abdominal incisions  
 14 had.

15 Do you think if Mrs. Ebaugh had a Burch  
 16 procedure, do you think she would be up playing  
 17 softball like she was after she had her TVTs? It's  
 18 a much less invasive surgery and much easier to  
 19 recover from.

20 And what's the other benefit? The  
 21 problem with the Burch procedure is that it didn't  
 22 keep women dry for long. It had a much higher rate  
 23 of failure. It would work at the beginning. But  
 24 then as time went by, the Burch procedure would fail  
 25 and so you would have to go do another surgery.

1 But what you know is that there are over  
 2 2,000 articles out there about these procedures.  
 3 Some of them were funded by industry, but the vast  
 4 majority were not.

5 Now, you've heard about the 2014 AUGS and  
 6 SUFU statement where it described the TVT as the  
 7 gold standard. This was in 2014. And you've seen  
 8 these. Polypropylene material -- the stuff that TVT  
 9 and TVT-S is made of -- is safe and effective as a  
 10 surgical implant. This is 2014. Polypropylene mesh  
 11 midurethral slings -- this is what TVT and  
 12 TVT-S -- is the most extensively studied  
 13 anti-incontinence procedure in history.  
 14 Polypropylene mesh midurethral slings are a standard  
 15 of care for the surgical treatment of SUI, of stress  
 16 urinary incontinence. It is safe and effective  
 17 relative to other treatment options and remains a  
 18 leading treatment option and current gold standard  
 19 for stress urinary incontinence.

20 Now, you heard Dr. Margolis talk about  
 21 AUGS, and he says he thinks they're bias because  
 22 some of their board members have ties to industry.  
 23 He even wrote a letter and complained about it.  
 24 Well, in 2016, last year, AUGS and SUFU put out the  
 25 same position statement saying all these things

1 except this time they were joined by additional five  
2 groups.

3 The American Association of Gynecological  
4 Laparoscopists, 76 members in 102 countries; The  
5 Society for Gynecologic Surgeons, a non-profit  
6 that's been around since 1974; The National  
7 Association for Continence, a group that wants to  
8 work on continence; Women's Health Foundation,  
9 another non-profit. All of these endorsed these  
10 statements made by AUGS and SUFU, the two biggest  
11 groups for urogynecologists in the United States.

12 And ACOG, the American College of  
13 Obstetricians and Gynecologists, which Dr. Margolis  
14 is a member, with 57,000 members in that group,  
15 endorsed this position statement saying that  
16 midurethral slings like TVT are the gold standard  
17 and are safe and effective.

18 And of these non-profits and ACOG, you  
19 have not heard a work, not a shred of evidence about  
20 any money or any ties to industry with those groups.

21 You've heard from or you know there were  
22 four doctors in this case who treated Mrs. Ebaugh.  
23 Dr. Douglass, Dr. Mirsky, Dr. Wright and Dr. Chai.  
24 And they all chose to use TVT. Dr. Douglass did  
25 until he retired. And the other three, Mirsky,

1 the vast, vast majority of the urogynecologists in  
2 this country use midurethral slings like TVT to  
3 treat SUI today.

4 Dr. Rosenzweig and Dr. Margolis are in  
5 that less than one percent of urogynecologists in  
6 this country who do not use midurethral slings to  
7 treat SUI.

8 So you may say, well, if these are great,  
9 then how do we explain what happened to Mrs. Ebaugh?  
10 She, obviously, did not have a good outcome. She  
11 had a complication, a serious complication, but a  
12 complication and not a defect. It is not the same  
13 thing as a defect.

14 You heard Dr. Sepulveda and  
15 Dr. Rosenzweig talk about the Cochrane review. And  
16 this was that systematic review that looked at 81  
17 clinical trials that evaluated over 12,000 women.  
18 And they were looking at midurethral slings, TVT,  
19 TVT-S. And this Cochrane review, this review of 81  
20 clinical trials, which was not funded by Ethicon,  
21 determined that slings like TVT and TVT-S were safe  
22 and effective; that it had positive impact on  
23 improving the quality of life with SUI; the most  
24 extensively researched; the overall reported rates  
25 of tape-related complications are low; good safety

1 Wright and Chai, are still implanting TVT's today.  
2 They think it's the gold standard. They think the  
3 benefits to those procedures outweigh the risks.  
4 And none of those four doctors was paid to come  
5 testify, none of those four doctors has any ties to  
6 industry.

7 These are four doctors that Mrs. Ebaugh  
8 sought out to treat her problems, and they all agree  
9 that polypropylene midurethral slings are the gold  
10 standard to date.

11 So you may say, well, why does  
12 Dr. Rosenzweig and Margolis, why don't they like it?  
13 You know, you've heard them come in and be critical  
14 of these slings. Well, Dr. Rosenzweig has made over  
15 1.2 million dollars testifying against Ethicon.  
16 Dr. Margolis has made over 300,000 dollars  
17 testifying against Ethicon. But that's not all the  
18 manufacturers they testify against.

19 They testify against any other  
20 manufacturer who makes a similar product. That's  
21 what they come in and do. You've heard the AUGS  
22 statement of the 99 -- more than 99 percent of our  
23 members use slings, midurethral slings to treat SUI.  
24 Whether it's 99 percent of AUGS members or 99  
25 percent of -- 50 percent of AUGS members, it's still

1 profile; it was highly effective; and it found that  
2 overall reports of tape-related complications are  
3 low.

4 And you know from the testimony that  
5 you've heard in this case that the specific risks of  
6 a urethral erosion is very low. And even though it  
7 was very low, Ethicon warned about it in the IFU,  
8 the instructions for use, and all the information  
9 they gave to doctors in their professional education  
10 meetings.

11 Now, whether a warnings -- we talked  
12 about warnings with Mrs. Ebaugh. We have a conflict  
13 in the testimony.

14 Matt, you can take that down.

15 You saw Dr. Douglass's medical records  
16 and you heard his testimony. And you heard him talk  
17 about three separate discussions he had with  
18 Mrs. Ebaugh about potential risks and complications  
19 of the TVT-O that she was thinking about in 2005,  
20 the TVT-S that was implanted at the end of May of  
21 2007 -- which was not a couple months, as  
22 Ms. Baldwin said, but nine months after the TVT-S  
23 came out on the market. Remember it was released at  
24 the beginning of September of 2006, and Mrs. Ebaugh  
25 had her surgery with the TVT on May 31st of 2007.

1 And then Dr. Douglass had another  
2 conversation with Mrs. Ebaugh before she had her TVT  
3 surgery. Now, the conflict is with Mr. Ebaugh  
4 because Mr. Ebaugh came in and said, nope, that  
5 never happened. We never talked to him about that.  
6 Well, the problem with Mr. Ebaugh is he wasn't there  
7 in 2005, and he was only there for one of the  
8 appointments in 2007 when risks were discussed.

9 But think about what Mrs. Ebaugh told you  
10 about those conversations. Mrs. Ebaugh told you she  
11 just couldn't remember the specifics. Remember I  
12 was asking her and I was talking to her about what  
13 she said in her deposition?

14 I said, Did Dr. Douglass talk with you  
15 about any of the risks that were associated with the  
16 use of the mesh?

17 And her answer at that time was: I am  
18 sure he did. With all my surgeries they discussed  
19 things, but I don't recall what was said.

20 Right?

21 And she said, yeah, that's what she had  
22 testified to in her deposition.

23 And then I asked her: And that's true  
24 for all of the surgeries that you had back 2005 or  
25 2007, you just don't recall the specifics of what

1 Now, Ms. Baldwin showed you some of the  
2 questions that you're going to be asked to decide,  
3 and you see from there that the plaintiff has to  
4 prove that the mesh was defective -- those are the  
5 first and third question -- and that is that the  
6 risks outweighed the benefits.

7 But she also has to prove that a specific  
8 defect caused Mrs. Ebaugh's problems. And that's  
9 the second question, the factual cause. You'll see  
10 when Judge Erdos reads to you the instructions that  
11 you'll be given definitions for defect, you'll be  
12 given definitions of factual cause, because they're  
13 two different things. There's defect and then it's  
14 whether that specific defect caused a problem with  
15 Mrs. Ebaugh.

16 And let me give you an example. You  
17 heard days of testimony from Dr. Rosenzweig. And  
18 remember Dr. Rosenzweig spent a lot of time on the  
19 learning curve, that it took some doctors longer to  
20 figure out how to implant the TVT-S than others.

21 And he said he didn't think the TVT-S was  
22 safe because it took doctors too long to learn how  
23 to implant it correctly. But that's not enough in  
24 this case. Even if you decide, yeah, the learning  
25 curve was a problem, that's not a factual cause of

1 was discussed?

2 And she said, Yes.

3 And that makes sense. Ten years passed  
4 from the time of those conversations. Do you want  
5 to rely on Mr. Ebaugh's testimony that he recalls  
6 these conversations or a conversation from ten  
7 years ago, or medical records that were done at the  
8 time?

9 Dr. Douglass would write in his medical  
10 records back in 2007, back in 2005, what they had  
11 discussed. Those were made at the time. Not trying  
12 to recall a conversation ten years later in the  
13 middle of your lawsuit.

14 And let me just comment on the decision  
15 to have surgery, because Ms. Baldwin has downplayed  
16 Mrs. Ebaugh's symptoms. I think she called them  
17 spritzes of urine, that she leaked a little bit when  
18 she was doing sports. But it doesn't really matter  
19 how you characterize the severity of Mrs. Ebaugh's  
20 symptoms at the time she decided to have surgery,  
21 but you know that she sought help for that from her  
22 doctor three times. Three times she went in  
23 specifically to talk about surgical help for her  
24 stress urinary incontinence. And she made the  
25 decision to have that surgery not once, but twice.

1 any harm to Mrs. Ebaugh. Because nobody is saying  
2 that Dr. Douglass's surgery was affected by this  
3 learning curve that some other surgeons have.  
4 Dr. Margolis told you he was not critical of the  
5 surgery that Dr. Douglass did with the TVT or the  
6 TVT-S. He said that he had implanted it  
7 appropriately.

8 Dr. Margolis told you that Dr. Douglass  
9 tensioned the mesh appropriately. In fact, he told  
10 you he did the surgery exactly as he should have.  
11 No one is critical of Dr. Douglass's surgery. No  
12 one has said that Dr. Douglass didn't know how to do  
13 this, that Dr. Douglass was in the learning curve.  
14 And so that is an example of something that cannot  
15 be the factual cause of Mrs. Ebaugh's injury.

16 So let's talk about TVT and TVT-S. And  
17 the questions that you're asked on the verdict form  
18 say the TVT or the TVT-S, do you find them  
19 defective? But really in this case with the  
20 evidence that you have in front of you, you really  
21 have to find both defective. You can't say the  
22 Secur is defective and TVT is not or vice versa,  
23 and that's because of the evidence that you've been  
24 given in the case, and that is Dr. Margolis says  
25 that his problem, his issue is with the mesh. Not

1 with each individual product or something specific  
 2 to the product, but with the mesh.  
 3 And I asked him that specific question  
 4 during his testimony. I said, Your problem is with  
 5 the mesh, right? Whether it's a TVT-S or a TVT,  
 6 your issue is with the mesh?  
 7 And he said, Yes. They are the same  
 8 mesh. And he said, With the exception of the dosage  
 9 of the mesh -- meaning how much. One is, obviously,  
 10 longer than the other -- they're exactly the same.  
 11 So Dr. Margolis, the person who is bringing you the  
 12 evidence from the plaintiff about Mrs.  
 13 Ebaugh -- remember Rosenzweig got up and talked  
 14 about TVT and TVT-S in general. But Dr. Margolis  
 15 was the one who was talking about Mrs. Ebaugh, and  
 16 he's the one who told you my issues with the mesh.  
 17 It's not with the TVT or with the TVT-S, it's about  
 18 the mesh. It's not about the trocars. It's not  
 19 about the inserters. It's about the mesh.  
 20 So Dr. Rosenzweig, he talked a lot about  
 21 TVT-S. He didn't talk much about the TVT, but he  
 22 talked about the TVT-S. And he was critical of  
 23 several things. Dr. Rosenzweig told you that he was  
 24 critical of the TVT-S because it had a higher  
 25 failure rate. That's the learning curve.

1 this courtroom that doesn't have anything to do with  
 2 Mrs. Ebaugh, it did not cause her any injury.  
 3 Dr. Rosenzweig testified for days after  
 4 Dr. Margolis told you on day one that none of that  
 5 mattered, none of that applied to Mrs. Ebaugh.  
 6 And then there's times when the two of  
 7 them just flat contradict each other.  
 8 Dr. Rosenzweig says TVT and TVT-S are not minimally  
 9 invasive, and yet Dr. Margolis tells you, yeah,  
 10 those are minimally invasive procedures.  
 11 Dr. Rosenzweig told you that you would  
 12 get a bigger foreign body reaction to the Secur, the  
 13 smaller one, because it's stiffer. But Dr. Margolis  
 14 told you you would get a bigger foreign body  
 15 reaction to the TVT because it's got more mesh. The  
 16 two experts can't even agree.  
 17 We brought you Dr. Sepulveda. And  
 18 Dr. Sepulveda was here to talk about why these  
 19 meshes aren't defective, why doctors still use them  
 20 all the time today. And Dr. Sepulveda told you that  
 21 doctors make decisions about health care for their  
 22 patients based on evidence-based medicine and based  
 23 on the literature. And he distinguished that from  
 24 company documents.  
 25 Ms. Palmer asked him, You also received

1 Dr. Margolis told you Dr. Douglass was aware of  
 2 that. He had seen that.  
 3 Dr. Rosenzweig told you the learning  
 4 curve. We've already talked about. Dr. Margolis  
 5 said that doesn't have anything to do with  
 6 Dr. Douglass.  
 7 Dr. Rosenzweig talked about the failures  
 8 in Australia and Germany. That's not this case.  
 9 Those are doctors in different countries who were  
 10 having different problems. The quality boards,  
 11 going over things. Dr. Margolis told you not this  
 12 case.  
 13 Dr. Rosenzweig talked about he didn't  
 14 like the inserters on the TVT-S. Dr. Margolis told  
 15 you the inserters caused no injury to Mrs. Ebaugh in  
 16 this case.  
 17 Dr. Rosenzweig doesn't like fleece tips.  
 18 And, once again, Dr. Margolis told you that did not  
 19 cause Mrs. Ebaugh any injury.  
 20 Dr. Rosenzweig was critical of  
 21 tensioning. Dr. Margolis told you that in Mrs.  
 22 Ebaugh's case, Dr. Douglass tensioned the mesh  
 23 appropriately.  
 24 And Dr. Rosenzweig was critical of the  
 25 IFU procedural steps, and Dr. Margolis told you in

1 and reviewed a lot of TVT-Secur company documents  
 2 about the problems that doctors were having?  
 3 And Dr. Sepulveda said, Right. The  
 4 company documents are not scientific. They're just  
 5 e-mails. And that is not what doctors rely on.  
 6 They rely on literature. No doctor has ever made a  
 7 decision about treating a patient based on an e-mail  
 8 from inside the company.  
 9 Ms. Palmer really didn't ask  
 10 Dr. Sepulveda about the medical literature. She  
 11 spent most of an entire day putting up one company  
 12 document after another.  
 13 Why did she do that? Because she didn't  
 14 want you to focus on the 2,000 articles about TVT,  
 15 TVT-S and midurethral slings, all of the stuff that  
 16 you saw Dr. Rosenzweig cross-examined about forever.  
 17 It felt like forever, I am sure, to you.  
 18 He wasn't asked about the medical  
 19 literature. He wasn't asked about the things that  
 20 doctors use to make their decisions about real  
 21 treatment on real patients. He wasn't asked about  
 22 that. He was asked about company documents.  
 23 You're going to get an instruction from  
 24 Judge Erdos that says you get to use your common  
 25 sense. You get a lot of restrictions on what you

1 can consider and what you can't consider in your  
2 instructions, but he tells you you can use your  
3 common sense. Use your common sense. And you are  
4 the judges of credibility. You decide whether  
5 things make sense.

6 And I bring that up because there's  
7 something both Dr. Margolis and Dr. Rosenzweig are  
8 saying that just makes no sense. It makes no common  
9 sense. And that is, both of them testified to you  
10 that using TVT or TVT-S was within the standard of  
11 care, right? Remember that?

12 The standard of care. And standard of  
13 care is the appropriate treatment that doctors use  
14 to make decisions about their patients and to treat  
15 their patients.

16 Now, ask yourself, how can it be  
17 appropriate, how can Dr. Rosenzweig and Dr. Margolis  
18 say it's appropriate to put what they call a  
19 defective product in somebody? How is that the  
20 standard of care? That just doesn't make any sense.

21 If slings were really defective, would it  
22 be okay to put them in women, in millions of women  
23 across the world? Would thousands and thousands of  
24 doctors have implanted these devices in millions of  
25 women worldwide if they thought they were defective?

1 prolene sutures were first being used in the 1960's.  
2 They've been used in hernia mesh in the 1970's.  
3 This is all the same material. And then the TVT was  
4 from 1998 on. We have the TVT-O from 2003. And the  
5 TVT-Secur in 2006. This is the same mesh material  
6 as the prolene sutures back from the 1960's. That's  
7 not negligence. It is not negligence to have a  
8 product out there that doctors are still using today  
9 that they call the gold standard.

10 And then question three is a little bit  
11 different in that it asks about defect. And  
12 everything that I've been talking about for the last  
13 45 minutes tells you why the answer to that question  
14 is no.

15 And then two and four are the factual  
16 cause questions that I've already talked to you  
17 about. And remember when you're looking at factual  
18 cause, it has to be a specific defect. A specific  
19 defect that is tied to the problem, not a  
20 complication.

21 So then you get to the question of  
22 damages. And this is where I think the evidence  
23 that you have is probably the most confusing because  
24 you've heard a lot about numerous health issues that  
25 Mrs. Ebaugh has had over the years. And you might

1 Now, one of the instructions that the  
2 Judge is going to give you -- you can take that  
3 down, Matt.

4 One of the instructions when determining  
5 whether a product is defective is an instruction the  
6 Judge is going to give you that says a medical  
7 device company that supplies a medical device  
8 violates its duty of care -- this is the negligence  
9 question -- if it knew or reasonably should have  
10 known that the device was not safe for any patient  
11 in light of the device's risk.

12 That really tells you what you really  
13 need to know because you know that this device has  
14 been implanted in millions of women and been  
15 successful in 90 percent of them in keeping them  
16 dry.

17 Ms. Baldwin walked through some of the  
18 questions with you, and I am not going to take the  
19 time to do that again. But the first question asked  
20 about negligence. And remember when you're thinking  
21 about these questions, it's the negligence of the  
22 mesh because that is what Dr. Margolis is telling  
23 you is the issue in this case with Mrs. Ebaugh, it's  
24 issues with the mesh.

25 And you saw from earlier on where the

1 be asking why we brought all that up, all these  
2 other things that were going on in her life. And  
3 that is to correct the misimpression that  
4 Dr. Margolis was trying to give you, that everything  
5 that Mrs. Ebaugh has now is related to her slings.

6 And I believe Dr. Tomesko was very  
7 clear, and I said it at the beginning, that it is  
8 clear that Mrs. Ebaugh had erosions and she had  
9 problems with them. She had UTI's, she had pain  
10 when she had those erosions, and that was caused by  
11 this complication of a urethral erosion. But that  
12 doesn't mean that everything that she has had is  
13 related.

14 Think about her stress urinary  
15 incontinence. Mrs. Ebaugh told you that from 2007  
16 until 2012, she had no stress urinary incontinence.  
17 She told you it came back in 2012 after Dr. Chai  
18 removed big portions of her sling. And that makes  
19 sense. Dr. Margolis told you he would expect that.  
20 Because you no longer have the sling support there  
21 to hold up the urethra, so you would think that her  
22 SUI would return.

23 And if she had never had the slings, she  
24 would have had SUI -- and you've heard testimony  
25 that SUI continues to get worse with age.

1 Mrs. Ebaugh also has urge incontinence.  
2 Dr. Margolis completely ignored her history of urge  
3 incontinence that she had before, that she had long  
4 before her slings were ever put in.

5 You've heard that any pelvic surgery can  
6 increase a woman's symptoms of SUI or urge  
7 incontinence, you know that, but you've also heard  
8 that because of her young age when she developed  
9 both of these, that she was more likely to get worse  
10 whether or not she ever had the slings put in.

11 Mrs. Ebaugh has had UTI's or UTI  
12 symptoms. Dr. Margolis again downplayed that,  
13 downplayed her history of significant UTI's. She  
14 said she use to get one a year. And then he told  
15 you that there was this 550 percent, or whatever the  
16 number was that he made up, increase in her UTI's.  
17 Well, remember he said I don't believe you,  
18 Ms. Gallagher, that she had no problems, no  
19 significant problems with incontinence until 2011.  
20 That would be important to me, but I don't agree  
21 with you. Let's go through the records one by one.

22 Well, you know, he had been here three  
23 days. Remember he told me I should be thankful that  
24 he canceled his surgeries to stay here? And so I  
25 went through it with Dr. Tomezsko. And you saw that

1 not trying to convince you that she doesn't have  
2 depression from her pain. That's not what we're  
3 doing. What we're trying to do is give you the full  
4 picture of what is happening with Mrs. Ebaugh and  
5 her pain. That has got to be the most confusing  
6 evidence you have before you in this case.

7 Mrs. Ebaugh has told you that her pain is  
8 excruciating, but then she's also told you that the  
9 only thing she treats it with is over-the-counter  
10 medications. She said she got nauseous with pain  
11 medication, but she's never taken nausea medicine to  
12 try to counteract that. She's never tried any of  
13 the new pain medications. She's never been to a  
14 pain doctor where they treat pain in different ways  
15 now.

16 She says that her pain is so bad she  
17 can't sleep, that she doesn't have the energy to do  
18 anything. And yet then she also tells you that she  
19 has her big family, her seven brothers and sisters  
20 over all the time, that she's going to her mom's  
21 every Sunday, she went to Florida four times in six  
22 months, she goes to all of her kid's games.

23 Mrs. Ebaugh told you about her hip pain.  
24 Hip pain that in 2013 she described as debilitating.  
25 In 2013, she said that the pain that she was

1 in 2008, Mrs. Ebaugh had a recurrent UTI. You saw  
2 that she had two in 2009 and then in 2011.

3 But now she has UTI's and UTI symptoms  
4 all the time and, unfortunately, her doctors have  
5 really not done cultures to see if she's actually  
6 having UTI's or if it's UTI symptoms. And one of  
7 the things that I think is most telling is that even  
8 when Mrs. Ebaugh is on prophylaxis antibiotics,  
9 taking antibiotics every day, she is still having  
10 these UTI symptoms.

11 So, ladies and gentlemen, you have to  
12 decide are these really UTI's or is it UTI symptoms  
13 for something else like her overactive bladder.

14 Depression and anxiety, you've heard  
15 about that. And Ms. Baldwin is faulting us for  
16 bringing it up. Well, again, if we didn't bring it  
17 up, then you would think that the only thing that  
18 has been going on in Mrs. Ebaugh's life is her  
19 slings. We had to bring you that evidence to give  
20 you the complete picture. You saw in 2006 she was  
21 seeing a therapist for a number of different  
22 reasons. And the same thing happened in 2016.  
23 There were a number of different things going on in  
24 her life.

25 And I am not trying to tell you -- we are

1 suffering at that time had destroyed her life. She  
2 couldn't do anything with her kids. And then even  
3 though she had no treatment for her hip pain after  
4 2013, she says it's just gone away and been  
5 completely replaced so that all of her pain now is  
6 due to her slings.

7 Well, you heard from Dr. Tomezsko on  
8 that. You've heard Mrs. Ebaugh stand up and say she  
9 can't cook because she has pain here. Back pain.  
10 This is where she pointed.

11 This is, do you remember, from  
12 Dr. Tomezsko, the iliopsoas muscle. That goes down,  
13 it can cause kidney pain, cause back pain, cause hip  
14 pain. She was having issues in her iliopsoas muscle  
15 that's causing pain. She's also having trouble with  
16 her levator muscles.

17 And you remember Dr. Tomezsko getting  
18 down from the stand and explaining what she was  
19 doing here during her independent medical exam. And  
20 she said that when she was palpating in the vagina,  
21 touching, to see if you caused pain, what the  
22 patient's reaction is. When she was doing that with  
23 Mrs. Ebaugh, when she was palpating in this area  
24 where the mesh use to be, when she was palpating in  
25 this area where the mesh use to be, Mrs. Ebaugh



1 palpating out here near the levator ani muscles,  
2 that's when Mrs. Ebaugh said that's the pelvic pain  
3 I have, that's the pain I have with sex. That's the  
4 levator muscles.

5 And Dr. Tomezsko told you that  
6 Mrs. Ebaugh would improve with physical therapy in  
7 all likelihood. It is clear, ladies and gentlemen,  
8 that Mrs. Ebaugh is in pain. What's not so clear  
9 and what is very confusing is what is the source of  
10 all of that different pain, and that's something you  
11 have to decide if you get this far.

12 And let me explain that. When you get  
13 your verdict form, you're going to see where it says  
14 if you answer this question no then you're finished.  
15 And I've already told you why I think you answer  
16 those defect questions no and so you don't get this  
17 far, but my job as a lawyer is to address all of  
18 these questions, and that's why I am. But you're  
19 going to have to figure that out if you get this  
20 far.

21 Now, Dr. Margolis is the only one who  
22 told you that every single problem, those four  
23 charts of, four pages of stuff, is related to  
24 Mrs. Ebaugh's mesh. None of her treating doctors,  
25 none of hers have told her that her urge

1 very exceptional cases. And punitive damages also  
2 require a higher burden of proof.

3 Up until now, the plaintiffs' burden of  
4 proof is a preponderance of the evidence, more  
5 likely than not. But when you get to the punitive  
6 damage questions, it's clear and convincing. That's  
7 a whole lot more.

8 And punitive damages have to have a  
9 connection to this case. They have to have a  
10 connection to Mrs. Ebaugh.

11 In other words, you can't award punitive  
12 damages just because you're mad at Ethicon or  
13 Johnson & Johnson. You can't award punitive damages  
14 because you think some other woman has been hurt.  
15 There has to be a connection to Mrs. Ebaugh.

16 And what he's going to tell you is that  
17 to support an award for punitive damages, you must  
18 find that the plaintiff has proved by clear and  
19 convincing evidence that the injury, loss or harm  
20 suffered by plaintiff, suffered by Mrs. Ebaugh, was  
21 the result of defendants' acts or omissions. That's  
22 the first part.

23 But then there's a second part. And you  
24 have to find the defendants' conduct was malicious,  
25 which Judge Erdos will tell you is intentional

1 incontinence, her dyspareunia, her pelvic pain, none  
2 of them have said that's related to the mesh, that  
3 it's caused by the mesh. That's Dr. Margolis.

4 And you heard Dr. Margolis get up here  
5 and make all sorts of different diagnoses about  
6 different things that he says are wrong with  
7 Mrs. Ebaugh. And you remember at the end of my  
8 cross-examination I went through and said, doctor,  
9 you diagnosed Mrs. Ebaugh with this. Have any of  
10 her treating doctors said she had this? And he said  
11 no. He's made all sorts of diagnoses in the two  
12 hours that he saw her that the doctors who have seen  
13 her for close to 30 years have never diagnosed.  
14 They've never diagnosed all of those different  
15 things that Dr. Margolis says, never written them  
16 down. It's not in the medical records.

17 THE COURT: Half hour left, counsel.

18 MS. GALLAGHER: Thank you.

19 You're going to be glad to know I am not  
20 going to be up here for another half an hour.

21 The last question I need to address with  
22 you are the punitive damage questions. And you're  
23 going to get some instructions from Judge Erdos on  
24 punitive damages because they're not for the normal  
25 case. You do not award punitive damages except in

1 wrongdoing or an evil-minded act, or that it was in  
2 willful and wanton disregard of plaintiffs' rights.  
3 And that is a deliberate act or omission with  
4 knowledge of a high degree of probability of harm or  
5 reckless indifference to Mrs. Ebaugh. That's what  
6 they have to prove.

7 So in this case, in this particular case,  
8 Mrs. Ebaugh's case, let's get back to what the  
9 plaintiff is asking you to punish Ethicon for. And  
10 it's the mesh. Because Dr. Margolis told you his  
11 problem is with the mesh. It's not with the  
12 inserters, it's not with the learning curve, it's  
13 not with any of that other stuff. It's with the  
14 mesh.

15 And so what they're asking you to do is  
16 to punish Ethicon and Johnson & Johnson for selling  
17 the mesh that comprises the TVT that is still out on  
18 the market, that is the standard of care, the gold  
19 standard, the most studied anti-incontinence  
20 procedure around, and a procedure that is used to  
21 cure a life-altering condition for many, many, many  
22 women.

23 Ethicon makes a product, markets a  
24 product that allows women to decide I want to treat  
25 my SUI surgically, a decision that has been made by

1 and helped millions and millions of women. That's  
2 what they want you to punish Ethicon for, is for  
3 making that mesh that has solved the stress urge  
4 incontinence that millions and millions of women  
5 have suffered from.

6 And they focused a lot on TVT-S. And,  
7 again, the TVT-S, the product itself, is not what  
8 Dr. Margolis says is the issue. It's the mesh. But  
9 look at what Ethicon did after the TVT-S. When  
10 Ethicon realized there were some doctors who were  
11 having difficulty, who weren't following the IFU,  
12 who weren't putting it in correctly, and the problem  
13 was that it wasn't working. You remember you heard  
14 from Dr. Sepulveda and Dr. Rosenzweig that at the  
15 end when they look at the safety rates of TVT and  
16 TVT-S, they were the same. It was the efficacy that  
17 was an issue.

18 After Ethicon realizes what's going on,  
19 they spent thousands of hours and professional  
20 education in trying to help doctors get over that  
21 learning curve. But that learning curve, again, has  
22 nothing to do with Mrs. Ebaugh.

23 You've heard a lot of evidence in this  
24 case that has nothing to do with Mrs. Ebaugh.  
25 You've heard a lot about the IFU, about adverse

1 And why are they putting this stuff up?  
2 Does it have anything to do with the issues you're  
3 supposed to be deciding? They're trying to make you  
4 mad, that's why they're putting this stuff up. You  
5 saw all sorts of stuff in Dr. Sepulveda's  
6 cross-examination about the Pa Consulting Group.  
7 You saw it again today, all the stuff in the Pa  
8 Consulting Group. What you didn't hear from the  
9 plaintiffs until Mr. Webb stood up was that was  
10 dealing with prolapse products, to teach different  
11 products that address prolapse, which is when women  
12 have organs like their vagina or their rectum come  
13 down through their vagina and actually hang out. A  
14 different product to treat something else. It was  
15 not talking about incontinence and TVTs.

16 You've heard a lot of evidence that had  
17 nothing to do with Mrs. Ebaugh over the last month.  
18 A lot of our days have been filled with information  
19 that had nothing to do with Mrs. Ebaugh. And why  
20 are they doing this? Because they want to take you  
21 away from the instruction that Judge Erdos is going  
22 to give you, that you have to make your decision on  
23 this case based on the evidence and not based on  
24 emotion. They want you to be mad and they want you  
25 to feel sympathy for Mrs. Ebaugh and make your

1 reactions, you've heard all of Dr. Chen's testimony  
2 and Dr. Weisberg's testimony. That was almost all  
3 about warnings.

4 But you won't see any questions about  
5 warnings on your verdict form. If the plaintiff  
6 wanted to pursue a cause of action and say the  
7 warnings were inadequate, she could have. But you  
8 won't see that question on your verdict form.  
9 You've heard about laser-cut mesh and mechanical-cut  
10 mesh. The TVT has mechanical-cut mesh, the  
11 TVT-Secur has laser-cut mesh. That's not an issue  
12 because Dr. Margolis and Rosenzweig have told you  
13 it's the mesh that's the problem. So that can't be  
14 the issue because that's where they're different.

15 And you've heard evidence that this  
16 e-mail with the wire brush where the doctor calls in  
17 and gives that very crude talking about his patients  
18 vagina feels like a wire brush. You saw  
19 Dr. Weisberg asked about that, because he's the one  
20 who wrote the callus and stupid response, and he  
21 acknowledged in his deposition that that was  
22 inappropriate. But then you heard it again Friday  
23 with Dr. Sepulveda. What does that have to do with  
24 any of Dr. Sepulveda's opinions? Nothing. And you  
25 heard it again today.

1 decision based on that.

2 In fact, Judge Erdos is going to give you  
3 an instruction that says neither sympathy, nor  
4 prejudice, may influence your deliberations. You  
5 should not be influenced by anything other than the  
6 law and the evidence in this case. You can't make  
7 your decision because you're mad and you can't make  
8 your decision because you feel bad for Mrs. Ebaugh.  
9 That's not the way we work in a court of law.

10 Everyone wishes that Mrs. Ebaugh would  
11 have had a better outcome. Everyone wishes that  
12 Mrs. Ebaugh would not have had the complications  
13 that she has suffered from. Everyone here -- I am  
14 including all of you, I am sure, feels sympathy for  
15 Mrs. Ebaugh, but you can't make your decision on  
16 that. You have to base it on the evidence. That's  
17 your job. That's the oath you took back at the  
18 beginning of August, last month, when you were here,  
19 when you were sworn in as jurors, was that you would  
20 decide this case based on the evidence. And I've  
21 gone through all that evidence with you for most of  
22 the last hour now.

23 And I want to finish with Dr. Nager. You  
24 saw Dr. Nager early in this trial and in his  
25 deposition. And he was head of AUGS. And he told

1 you what the mission of AUGS was. And the mission  
2 of AUGS is to provide the science and to help our  
3 members take care of women with pelvic floor  
4 disorders, to improve the betterment of women who  
5 suffer with incontinence and prolapse. And he told  
6 you that the way they're supposed to do that is on  
7 evidence-based medicine.

8 He told you evidence-based medicine is  
9 when medicine is practiced according to scientific  
10 studies, the literature that Dr. Sepulveda was  
11 talking about. Typically clinical trials that  
12 evaluate the efficacy and safety of different  
13 procedures or drugs or treatments, as opposed to  
14 medicine practice just by the opinion of experts.

15 And that's what we have here, the paid  
16 opinions of two experts, Dr. Margolis and  
17 Dr. Rosenzweig, versus the evidence-based medicine,  
18 the 2,000 studies out there talking about the safety  
19 and efficacy of TVT slings, the experience of  
20 doctors across the world, the experience of  
21 Mrs. Ebaugh's own doctors.

22 The plaintiff is asking you to ignore  
23 that vast consensus in the medical community, to  
24 ignore the evidence-based medicine and make your  
25 decision on the opinion of two paid experts.

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1 You saw all the groups. I put them up.  
2 The non-profit groups and the groups that are  
3 dedicated to treating women's health who joined the  
4 2016 AUGS and SUFU statement. And you have to  
5 decide, are all those doctors, those thousands of  
6 doctors implanting these slings today in millions  
7 and millions of women, are they failing to do what  
8 is right for their patients, or are they implanting  
9 these slings making the decision to put TVTs and  
10 other midurethral slings in their patients because  
11 of the evidence-based medicine? Because it is the  
12 gold standard. It is the worldwide standard of  
13 care. The most important advancement in the last 50  
14 years. A great advance. The most extensively  
15 researched. The treatment of choice. Has helped  
16 millions of women with SUI regain control of their  
17 lives. Improved the quality of life for millions of  
18 women.

19 You decide why tens of thousands of  
20 doctors across the world are implanting these today.

21 Ladies and gentlemen, on behalf of  
22 Mr. Webb and myself and, more importantly, on behalf  
23 of the men and women of Ethicon and Johnson &  
24 Johnson, thank you for your time and thank you for  
25 your service.

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1 We appreciate it.

2 THE COURT: All right. Thank you,  
3 counsel.

4 Since we didn't go the full hour and 15  
5 minutes there, if it's all right with the jury,  
6 we'll go right into the ten minutes or less for  
7 rebuttal, and then we'll have all of our arguments  
8 done.

9 Are you okay doing that now, Ms. Baldwin?

10 MS. BALDWIN: Yes. That would be great  
11 with me.

12 Is the jury okay with that?

13 All right. My biggest weakness. Just  
14 give me a moment.

15 Ladies and gentlemen, I would like to  
16 start -- I only have ten minutes, so I am going to  
17 talk fast and I am going to do it on the move, while  
18 I move this. I think we're at about 12:12, so I  
19 have until about 12:22, if my math is right.

20 I am going to start where defense counsel  
21 ended. Why do tens of thousands of doctors still  
22 implant these today if it's not defective?

23 The tentacles of Johnson & Johnson are  
24 long. They are huge. They are 73 billion dollar  
25 tentacles. And they use their money to spread those

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1 tentacles everywhere. They polluted the literature.  
2 You saw it. They jazzed. They spun. They probed.  
3 They stopped stuff from being published. They put  
4 pressure on people to publish a study that they  
5 wanted out there.

6 Am I even on? Yeah, I am.

7 They polluted the professional societies.  
8 If the best evidence you've got is to end on Charles  
9 Nager at AUGS, you ain't got much. Because you saw  
10 Charles Nager. He tried to lie to you. He tried to  
11 lie on that screen and say he wasn't paid by  
12 Ethicon, and then you saw the checks. He tried to  
13 lie and say he didn't go to Hawaii. He tried to lie  
14 and say industry had absolutely no influence on that  
15 AUGS statement.

16 The statement is a lie. It says they  
17 surveyed 99 percent of their members. They didn't.  
18 They didn't survey all of their members and they  
19 only gotten responses from less than half. It's a  
20 lie. They polluted it with their money. They've  
21 polluted the doctors into believing all of this.  
22 They fooled everyone into thinking we've got a good  
23 product.

24 The greatest trick the devil ever played  
25 was convincing people he didn't exist. That's

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1 what's going on here. And you know what, she went  
2 up here and started with a complication is not a  
3 defect, a complication is not a defect. Okay.  
4 Don't believe me. Don't believe Dr. Margolis. Do  
5 not believe Dr. Rosenzweig.

6 Cue it up, please, Dan.

7 Believe them. This is called an  
8 admission of a party opponent. They admitted it.  
9 It's their document. Their internal e-mail where  
10 they recognize there's defects -- that's their  
11 word -- in the TVT. Defect.

12 I am only going to put one up here  
13 because I went through about 15 of them when I  
14 closed. They've admitted it's defective.

15 Yes, all products have risks, but a  
16 product is defective when it hits the level of those  
17 risks being so severe, so bad, so frequent that  
18 they're not safe for anybody. Nobody wants to  
19 accept the risk on one of these. It's unreasonable.

20 Then she said, well, stress urinary  
21 incontinence can be life altering -- and she kind of  
22 muttered it -- for some women. It wasn't life  
23 altering for Ella Ebaugh. Ella Ebaugh, back in  
24 2007, didn't have to walk around with two bags like  
25 this. She could leave the diaper bag at home. All

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1 Pa Consulting report. Sepulveda said that doesn't  
2 relate to the TVT. I didn't see one page where it  
3 said it didn't relate to the TVT. I don't see that.  
4 That didn't go up. What I saw as a title is that it  
5 related to their pelvic mesh surgeries.

6 But here in court their lawyers are  
7 saying no, no, no, that's not true. The risk is  
8 rare. Give me a break.

9 There's also this underreporting  
10 phenomenon, which I'll just mention real briefly.

11 Rebuttal 1. So I think that's 111 now.

12 Marty Weisberg told you there's a real  
13 problem with underreporting of adverse events.  
14 Women get an adverse re-event, they might not go  
15 back to the same doctor. The results that are  
16 reported could be too low anyway. Dr. Tomezsko  
17 talked about the same thing.

18 That's the next one. 112, I think.

19 A responsible manufacturer should have  
20 worried that there were studies out there, even if  
21 it was just a few, showing 19, 20 percent, that  
22 their literature rate showed 20 percent, and that  
23 there's underreporting, meaning the rates could have  
24 been higher.

25 And instead of acting responsibly, which

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1 she had to do was put a couple panty liners in her  
2 purse.

3 Ella Ebaugh didn't need those risks.  
4 Ella didn't need any of it. Neither does any woman  
5 on this planet. That's what makes it defective.  
6 Come on. These are severe, life-altering risks.  
7 Her urethra is so scarred, it's like a garden hose  
8 opened. It's never going to work again. There's no  
9 fixing that.

10 You think physical therapy, honestly, is  
11 going to make that better? That's a joke. That's  
12 laughable.

13 You know, the definition of insanity is  
14 repeating, doing the same thing over and over again  
15 expecting the same results. And I think, based on  
16 what we've heard in this courtroom, it's arguable  
17 that repeating the same nonsensical things over and  
18 over again and expecting them to make sense, that  
19 also fits the definition of insanity.

20 The risk of erosion with the TVT and  
21 TVT-S is not rare. It's common. 19 percent with  
22 Hota, 15 with Tomicelli, 19 percent with Tseng. I  
23 don't know why Dr. Sepulveda ignores those, but he  
24 told you rates like that would be considered high.

25 Ethicon knew all about this. It did the

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1 is the definition of negligence, which is what they  
2 have to do -- the mesh isn't negligent. Johnson &  
3 Johnson is. They turned a blind eye and ignored it  
4 all.

5 And now in court their lawyers want to  
6 cherry pick studies, argue the risk is rare and  
7 ignore their own literature analysis and ignore  
8 their own e-mails that say this stuff is defective.

9 The Cochrane review, the 2015 Cochrane  
10 review, the thing that's at the top of Sepulveda's  
11 pyramid. Give me a break. I went through it with  
12 Janet Tomezsko. It says there isn't enough  
13 long-term information about the safety. It says the  
14 safety studies are not good. They don't uniformly  
15 check with women and there's not enough out there.  
16 You can't rely on 2,000 studies that don't have  
17 safety as your primary end point. That's  
18 ridiculous. Okay.

19 So this sling, once it gets inside, it  
20 gets so stiff and so hard your stress urinary  
21 incontinence will never come back. That's great.  
22 Your burdensome problem is fixed. At what cost? At  
23 the cost of never having control of your bladder  
24 again in your life? At the cost of having your  
25 urethra scarred wide open? At the cost of being a

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1 train wreck in your internal organs? That's a  
 2 defect.  
 3 They keep ignoring these facts and saying  
 4 millions implanted. And I told you why, because  
 5 they jazz it up and convince people. It's more  
 6 nonsensical, they say, that Ella was warned from  
 7 Dr. Douglass. That Dr. Douglass knew all this.  
 8 Come on. He didn't know the frequency, severity of  
 9 any of these rates. He didn't know the permanency.  
 10 He didn't because they use their money to make it  
 11 that way.

12 And in the realm of absolute complete  
 13 absurdity, complete absurdity -- they're insulting  
 14 your intelligence -- they want you to believe that  
 15 she underwent a cystoscopic removal of mesh from her  
 16 urethra with an electric knife, the thing you carve  
 17 your Thanksgiving day turkey with. An open  
 18 abdominal dissection where they pulled her bladder  
 19 out of her body to go around it. A vaginal  
 20 dissection with open flaps to take as much mesh as  
 21 they could get out. And then a second vaginal  
 22 dissection to do the same thing to get more mesh  
 23 out. That none of this has to do with her urinary  
 24 dysfunction or her pain. That's a joke.

25 Surgeries leave scarring. Surgeries like

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1 was defective.  
 2 Bring 46 back up, the first one.  
 3 They have it in their documents. They  
 4 knew what they were doing from before the time they  
 5 put the TVT -- that's not it -- on the market.  
 6 Don't worry about it.

7 They knew the prolene mesh was a problem.  
 8 They knew it was going to erode. They've come in  
 9 here, and she just tried to spin the data and spin  
 10 the facts you heard in this court, and you can't let  
 11 them do it. You listen to what they did, you look  
 12 at those documents, and then you listen to what  
 13 defense counsel tried to do and insult you here.

14 Don't award punitive damages because  
 15 defense counsel just tried to lie to you. Don't do  
 16 that. Don't award damages for sympathy. Don't  
 17 award damages because you're mad. Award damages to  
 18 compensate this woman for everything she's had to  
 19 endure and for every day of her life that she's  
 20 going to have to endure it. It's not right what  
 21 they did to her.

22 And then you award punitive damages to  
 23 make sure they don't do this again. Punitive  
 24 damages have two purposes. Punish and deter. Focus  
 25 on deterrence. Cut it out, Johnson & Johnson. Cut

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1 that leave a huge amount of scarring. And it causes  
 2 pain and it causes urinary dysfunction. Tomezsko  
 3 said it.

4 She never had levator spasms, which are a  
 5 cause of her pain, until 2015. That really gruesome  
 6 photo that I don't have the number written down or I  
 7 would bring it up here again for you. That's the  
 8 first time she ever had one. Levator spasms are  
 9 brought on by injury to the pelvis. Injuries like  
 10 those horrible surgeries she's had to undergo.

11 Levator spasms are brought on by pain in  
 12 the pelvis generally. That's all a biproduct of  
 13 these defective things. They keep bringing up all  
 14 this other stuff and everything that was wrong  
 15 before. And then they wanted to tell you that  
 16 Dr. Margolis ignored it. That Dr. Margolis somehow  
 17 was trying to pull the wool over your eyes.

18 THE COURT: A minute and a half, counsel.

19 MS. BALDWIN: Huh? There's the list. He  
 20 showed it all to you.

21 This isn't a normal case. It certainly  
 22 is not. And she said that when she talked about  
 23 punitive damages. She said that they're only  
 24 awarded in exceptional cases. This is an  
 25 exceptional case. This is that case. They knew it

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1 it out.

2 Thank you.  
 3 THE COURT: All right. Members of the  
 4 jury, we'll give you a brief recess. And then we'll  
 5 come back, I'll give you the instructions of law,  
 6 and then your lunch will be here.

7 COURT OFFICER: All rise as the jury  
 8 exits the courtroom.

9 - - -  
 10 (Whereupon, the jury exits the courtroom  
 11 at 12:20 p.m.)

12 - - -

13 THE COURT: So just so everyone can plan  
 14 ahead, when we give the closing instructions, we  
 15 generally lock the door and don't let anyone in.  
 16 We'll make provisions for Mrs. Ebaugh, obviously.  
 17 But, otherwise, the door will be locked. The  
 18 instructions will take somewhere between 20 and 30  
 19 minutes.

20 You're welcome to stay, but I don't  
 21 want anyone going in and out. So you can factor  
 22 that into your decision for the people in the  
 23 back.

24 MR. HIGGINBOTHAM: And, Your Honor, we  
 25 just have a few objections to talk about.

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