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Exhibits: None

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

GESSY TOUSSAINT, *

Plaintiff, *

v. *

BRIGHAM AND WOMEN'S HOSPITAL *

and MARY ANN KENYON, *

Defendants. *

* * * * *

BEFORE THE HONORABLE CHRISTINE M. ROACH
DOCKET NUMBER 1484CV02253

CLOSING ARGUMENT BY MS. MACLELLAN

Monday, May 21, 2018

Jessica Galarneau
Court Reporter

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P R O C E E D I N G S

(Closing argument by Ms. MacLellan commences at 10:03 a.m.)

(Jury present)

CLOSING ARGUMENT BY MS. MACLELLAN

MS. MACLELLAN: If you don't stand for something, you'll fall for everything. Gessy Toussaint stood up for what was right in this case and she paid the price.

Gessy Toussaint was a hard worker. She said she became a nurse in 1992. She worked her way up, she worked through many hospitals, VA, and finally, in 2002, she landed at Brigham and Women's Hospital, a prestigious hospital in Boston.

She had arrived. She worked at Brigham from 2002 up to 2015 when she could no longer work there and she had to resign.

As you know, Nurse Toussaint claims that the reason that she brought this lawsuit was because she

1 was discriminated against based on
2 the color of her skin, and also that
3 she was retaliated against when she
4 stood up for Nirva Berthold.

5 And then, when Nirva
6 Berthold filed the charge of
7 discrimination in the Mass
8 Commission Against Discrimination,
9 and then when Gessy Toussaint filed
10 a charge of discrimination in the
11 Mass Commission Against
12 Discrimination, and then when they
13 both filed the lawsuit in this
14 court.

15 Now, she's alleging that
16 what evidence is this retaliation
17 and this discrimination is what she
18 endured while working there.
19 Repeated, constant investigations,
20 increased scrutiny, different
21 treatment than others, harassment,
22 belittling, degradation,
23 humiliation.

24 And she got to the point

1 where she couldn't work there
2 anymore. And you'll hear from the
3 judge, constructive discharge, in
4 order to meet that burden, Gessy
5 Toussaint has to show you, has to
6 have already proved that the
7 conditions of the workplace were so
8 objectively difficult or unpleasant
9 that a reasonable person in her
10 position would've felt compelled to
11 resign.

12 You are the triers of the
13 facts. You have sat here and
14 listened to all of the evidence and
15 you heard the testimony of what
16 Gessy Toussaint went through day in
17 and day out and how it affected her
18 and what she did to get treatment.

19 Now, we've got two
20 defendants here. We've got Mary Ann
21 Kenyon who is the manager of ortho.
22 We all are familiar with her. But
23 then we have her employer, Brigham
24 and Women's Hospital.

1 You'll hear the judge tell
2 you when she charges you that an
3 employer is liable for
4 discrimination or retaliation
5 committed by those on whom it
6 confers authority.

7 Therefore, there's vicarious
8 liability. That's what we call
9 vicarious liability. The hospital
10 is liable for Mary Ann Kenyon's
11 discrimination and retaliation.

12 And I'll submit, as I go
13 through this, we've already shown
14 that Mary Ann Kenyon has committed
15 acts of discrimination and
16 retaliation, but that's not just it,
17 that's not all that's going on here.

18 Because in addition to the
19 hospital being responsible for the
20 discrimination and retaliation of
21 Mary Ann Kenyon, the hospital itself
22 is liable for its own acts in,
23 something throughout this case I
24 have come to termed, corporate

1 abandonment.

2 Gessy Toussaint repeatedly
3 asked for help. She repeatedly and
4 explicitly said, "I am being
5 retaliated against. These
6 allegations are not true. Help me."

7 And we heard from Renee
8 Augustin, human resources of
9 Partners, that she did nothing. She
10 acted as a rubber stamp and, like an
11 ostrich, put her head in the sand.

12 Same thing with Rosemary
13 O'Malley. Fourth down from Betsy
14 Nabel, CEO of Brigham and Women's
15 Hospital, did nothing. When Gessy
16 Toussaint repeatedly requested help,
17 they closed ranks and they protected
18 the managers and they left her out
19 to dry.

20 They let her fend for
21 herself. You heard her testimony.
22 Day in and day out, she loved that
23 job. She stuck it out until she
24 couldn't. She is a cancer survivor.

1 It was making her sick and she had
2 to leave.

3 And so, not only is Brigham
4 and Women's Hospital responsible for
5 Mary Ann Kenyon's actions, they're
6 responsible for their corporate
7 abandonment of their employees. And
8 shame on them.

9 Now, we've all heard the
10 defense in this case. The defense
11 is that they had a legitimate
12 business reason to give Gessy
13 Toussaint all of these disciplinary
14 actions because she suddenly became
15 a bad nurse.

16 She went from 16 hours and
17 when she came back from oncology she
18 went to 32 and the wheel just came
19 off.

20 This woman was a nurse since
21 1992. She was good at her job. And
22 the Court has focused us, in this
23 case, at the time frame of 2010 to
24 2015.

1 2010, no disciplinary
2 actions. No patient complaints, no
3 coworker complaints. Timely
4 reviews.

5 2011, same thing. No
6 complaints, no coworker complaints,
7 no disciplinary actions.

8 2012, she went to oncology.
9 2013, she admitted that, it didn't
10 work out.

11 "I couldn't understand it,
12 there was too many preceptors." And
13 notably, Mary Ann Kenyon testified
14 Deborah O'Connor offered, "If you
15 stay, I'll give you less preceptors.
16 We can try it again." And she said,
17 "No, I'm going to go back to ortho."

18 That's not that big of a
19 deal. But they wouldn't have
20 offered to give her less preceptors
21 if they didn't think it was a
22 problem.

23 She comes back to ortho in
24 2013. Now, another of the

1 defendant's defenses in this case is
2 patient safety.

3 And I submit to you --
4 you've heard the evidence in great
5 detail about these eight patient
6 incidents. And I submit to you,
7 after hearing that, the very reason
8 upon which they rely, patient safety
9 is the very reason their defense
10 fails. It doesn't make sense.

11 You are the triers of fact.
12 You listen to the facts. Use your
13 common sense. There was testimony
14 Gessy Toussaint worked three to four
15 shifts a week, treated three to four
16 patients per shift.

17 That's 16 patients a week,
18 times 50 weeks is 3,200 patients a
19 year.

20 Brigham and Women's would
21 not let her continue to treat their
22 patients if she was unsafe. It just
23 wouldn't have happened. It doesn't
24 make sense.

1 Again, you are the judge of
2 credibility. But we heard Mary Ann
3 Kenyon testify she's okay,
4 basically, except if there's an
5 emergency.

6 So, she's all right to give
7 an aspirin, but if someone's dying,
8 they're in trouble. There's no way.

9 Brigham and Women's is a
10 leading hospital, not only in Boston
11 but in the nation. There's no way
12 they would let a nurse treat their
13 patients from 2013, when they say
14 she started struggling, all the way
15 up to her resigning in 2015.

16 They never fired her. She
17 resigned. It doesn't make sense.

18 So, what that means is
19 either -- if their position is to be
20 believed. Either Brigham has
21 allowed an unsafe nurse to continue
22 to treat their patients or they're
23 not telling the truth about her
24 being an unsafe nurse.

1 Now, in my opening I asked
2 you to pay attention to the
3 chronology, to the time line,
4 because it is compact and it is one
5 after another, rapid fire. It was
6 an onslaught.

7 And I know there's a lot of
8 testimony, it's cumbersome, so I've
9 created a time line.

10 Now, we've already gone
11 through up to 2012 in oncology.
12 Now, they say that -- the defense
13 says that when she returns from
14 oncology, she has increased shifts,
15 there's problems, and yet she came
16 back to ortho mid-February 2013.

17 Mid-February to mid-March,
18 she's treating patients on ortho
19 with the increased schedule; the
20 higher schedule, they're saying
21 there's increased patient concerns.

22 And yet, no patient
23 complaints, no colleague complaints,
24 no disciplinary action. She's

1 allowed to work overtime.

2 Same thing, mid-March to
3 mid-April. Mid-April to May 2nd, no
4 problems until Nirva Berthold
5 testified that she told Manager
6 Cathy Rumble on May 2nd, "Gessy
7 Toussaint says that Mary Ann Kenyon
8 misrepresented what she said
9 happened and I got a verbal warning
10 as a result of it and I'm asking you
11 to take action."

12 And Manager Cathy Rumble
13 said whatever Manager Kenyon stands.
14 "I'm not taking the word of a nurse
15 over a manager." Which is
16 consistent with them circling the
17 wagons and protecting themselves.

18 Now, May 2, 2013 is when
19 Nirva Berthold says that she tells
20 them that Mary Ann Kenyon didn't
21 tell the truth. And the very next
22 day, May 3, 2013, is when we kick
23 off this onslaught of patient events
24 and problems.

1 May 3, 2013 was the patient
2 fainting. May 6, 2013 -- May 3rd
3 was a Friday, 2013. That Monday,
4 "You're unsafe. You cannot pick up
5 any more overtime in the float
6 pool."

7 And Manager Rumble said, "I
8 had Mary Ann Kenyon in my office.
9 You're unsafe."

10 Now, this is the first time
11 this word starts being bandied
12 about. "You are unsafe."

13 And I'm going to take a
14 second to pause here on that word.
15 Unsafe. If your doctor -- if you
16 needed medical treatment and your
17 doctor or your nurse was known to be
18 unsafe, would you want to be treated
19 by them?

20 They again and again drive
21 home patient safety is the concern.
22 And if that's true, there is no way
23 they would let an unsafe nurse --
24 they're saying as of May 6, 2013,

1 they know she's unsafe. And she
2 treats patients for two more years?

3 June 6th, while they were
4 waiting to schedule an investigatory
5 meeting, June 6th, another alleged
6 patient care event, the pain pump,
7 which we went through with the
8 experts and everybody else.

9 But what I'd like you to
10 focus with this time line, I don't
11 want to regurgitate all of this
12 information. I want you to focus on
13 the rapid succession.

14 May 6th, June 6th, June 17th
15 is when she goes out on leave. June
16 19th, Nirva Berthold files the
17 charge at the Mass Commission
18 Against Discrimination.

19 June 26th, the blood
20 transfusion, which Gessy Toussaint
21 admitted. The blood was up too
22 long. She wrote an incident report,
23 she did what she was supposed to do,
24 and yet it's still an issue.

1 Because that's not what the
2 issue is. The issue is that Nirva -
3 - she stood up for Nirva Berthold.

4 June 27th, 4 p.m., Manager
5 Kenyon, "I'm going to meet with the
6 lawyers on a serious issue." 4 p.m.

7 5:44 p.m. e-mail, "I want to
8 meet with you about three different
9 issues." And the last bullet point,
10 these meetings must be separate and
11 must be completed.

12 The only reason to have
13 three separate meetings and
14 explicitly say so is so that you can
15 paper them up to fire them. Initial
16 counseling, written warning, final
17 written warning, termination. It's
18 clear.

19 June 27, 2013, it's already
20 in motion.

21 Gessy hurt herself at work,
22 went on leave of absence, and then
23 there was a question of -- it was
24 clear Mary Ann Kenyon, she

1 acknowledged receipt of the leave of
2 absence paperwork and yet it didn't
3 get to where it needed to go.

4 She tried to fill her job
5 and ultimately had to take her back.

6 Right on the heels of that,
7 October 7, 2013, the cheeseburger
8 event. October 15th, investigatory
9 meeting. October 16th,
10 investigatory meeting held.

11 And in this meeting, Nurse
12 Manager Kenyon attempted to discuss
13 events from May, June -- two from
14 June and one from October.

15 Union Rep Michael Robinson,
16 who you heard testify, said, "We're
17 not going to discuss those. They're
18 old."

19 So, she has to keep trying.
20 Kenyon has to go back to the drawing
21 board and dig some more information
22 up.

23 Now, as I'm saying
24 throughout this, Gessy Toussaint has

1 repeatedly explicitly said, "Is this
2 retaliation? I have been named as a
3 witness against you."

4 She uses the word
5 "retaliation." They know what is
6 going on.

7 Now, on the stand, HR Renee
8 Augustin and Rosemary O'Malley tried
9 to say they didn't know. HR knew,
10 Partners knew. She's not hiding it.
11 Retaliation. "You are doing this
12 because I stood up for somebody."

13 And she says, "I'm
14 qualified. I don't care what you do
15 to me anymore." Unsafe practices,
16 retaliation.

17 And then, November 6, 2013,
18 Gessy Toussaint filed a charge of
19 discrimination against Brigham and
20 Women's Hospital and Mary Ann
21 Kenyon.

22 Now, November 18, 2013,
23 disciplinary action is issued
24 regarding October 6, 2013, and the

1 remediation plan that we've heard so
2 much about.

3 Now, of the five tasks,
4 Gessy Toussaint completed three of
5 them. She met with Hallie
6 Greenberg.

7 Nurse Toussaint testified,
8 at the point that they asked her to
9 take the basic nursing assessment
10 tool, she had over 20 years
11 experience. She testified that that
12 was for new nurses coming into the
13 hospital and that it was humiliating
14 and degrading and everybody knew she
15 had to take it.

16 And what did she do? She
17 took it. Now, they say she's
18 failed, she's stubborn and proud and
19 she won't do this remediation plan.

20 I submit to you she did.
21 She met with Hallie Greenberg twice.
22 She swallowed her pride and took
23 that BKAT test and she got 100 on
24 it. But she testified the damage is

1 already done. No one on the floor
2 was asking questions anymore. They
3 think that -- they lost respect for
4 her.

5 And with Mary Ann Kenyon
6 constantly, constantly on her, every
7 -- she testified every shift that
8 she worked, she had to be -- she was
9 afraid of what they were going to
10 drum up.

11 So, she complied with as
12 much as she could take and then she
13 said look it, "I'm not doing it
14 anymore." But notably, she didn't
15 get fired for that. HR didn't call
16 her in for that. It got dropped.

17 Perhaps human resources and
18 Partners and the management of
19 Brigham knew what Kenyon was doing.

20 That was on November 18,
21 2013. Less than a month later,
22 12/17/13, coworker complaint from
23 Christina Foley, again about dumping
24 patients on me. No disciplinary

1 action was taken by Kenyon for that.
2 That was 12/17.

3 This is 12/24. Jake Lawlor,
4 "I hate to bother you, but she's
5 incompetent and she irritates me and
6 she's our charge nurse."

7 So, again, Mary Ann Kenyon,
8 12/24/13, schedules her to be a
9 charge nurse. It doesn't make
10 sense.

11 12/26, Hallie Greenberg.
12 You heard her testify the day after
13 Christmas was trying to set up
14 another meeting.

15 And the defense claims these
16 are just meetings, well she's
17 supposed to do it. It's more than
18 that. It's degradation, it's
19 humiliation.

20 You heard they tried to
21 schedule her investigatory meetings
22 in the lunch room. That's meant to
23 put her on display and to bring her
24 low.

1 Now, we heard Hallie
2 Greenberg testify, this is January
3 18, 2014, that she witnessed an
4 event when she was on the change of
5 shift with the lack of collegiality.
6 Again, not picking up patients and
7 that she didn't -- and that patients
8 overheard it and yet she didn't tell
9 the departments -- the Brigham and
10 Women's department that handles
11 patient complaints, the liaison
12 department.

13 She didn't tell them. She
14 sent it to Mary Ann Kenyon. She
15 said that she observed that at shift
16 change between 2:45 and 3:30.

17 A few hours later, Jill
18 Clark comes on the floor at her
19 change, when she came onto the
20 shift, and that's when she noted the
21 patient's concerns that we heard so
22 much about.

23 Within an hour. I mean,
24 most of these are rapid succession

1 within days. This is two in one
2 day, within hours of each other, and
3 yet she continues to treat patients.

4 Now, we went through Jill
5 Clark's e-mail. You are the
6 assessors of credibility. I submit
7 to you it couldn't have happened
8 that way.

9 Jill Clark's testimony was
10 that the patient, from the distance
11 here out to the elevators, was
12 yelling, "Help me, Gessy." And
13 then, none of the nurses or PCAs
14 came.

15 I submit to you, use your
16 common sense. If you could even
17 imagine that happening at a
18 prestigious hospital like Brigham
19 and Women's Hospital.

20 And if it didn't happen, if
21 you find that it's not plausible,
22 why? Why is she saying that?

23 The investigatory meeting,
24 January 20, 2014. And Gessy

1 Toussaint, again, complaining
2 January 27, 2014.

3 Nurse Kenyon holds an
4 investigatory meeting, 2/6/14 and
5 July 15, 2014 they file in Superior
6 Court.

7 July 2014, this was the
8 meeting that we heard about from
9 Rosemary O'Malley and from Renee
10 Augustin. That despite them both
11 being high-level management of
12 Brigham and Partners, they have a
13 meeting with one individual nurse
14 but they testified they can't really
15 recall why.

16 It didn't seem odd that out
17 of Renee Augustin having 1,700
18 employees, she has to meet with one
19 nurse and she doesn't remember why.

20 Same thing with Rosemary
21 O'Malley, 570 nurses are under her
22 supervision. She meets with one
23 nurse but doesn't really know why.

24 They knew why. They're

1 circling their wagons.

2 Now, Rosemary O'Malley,
3 August 12, 2014, attempts to shadow
4 Nurse Toussaint on the floor and was
5 told by the president of the Mass
6 Nursing Association, "That's
7 embarrassing, it's humiliating, and
8 we're not doing it" and she backed
9 down.

10 Another patient complaint on
11 August 31, 2014, 10/26/2014. No
12 disciplinary action is issued for
13 that, but the complaints keep
14 coming.

15 The alleged patient
16 complaint letter that we heard a lot
17 about, 11/13/14. A few weeks later,
18 12/11/14, Kenyon e-mails to set up
19 an investigatory meeting.

20 Patient commode 1/22/15.
21 Schedules an investigatory meeting
22 the very next day.

23 Nurse Toussaint continues to
24 complain that this is because of

1 retaliation. And then we have a
2 corrective action, 12/21/15, for
3 medication administration, blood
4 drawing, and the commode. So,
5 several incidents in one.

6 Notably here, February 24,
7 2015, an annual review was given.
8 And before 2013, Ms. Toussaint
9 received one every year, but she
10 didn't receive one in 2013, she
11 didn't receive one in 2014.

12 And on the front of this,
13 it's in the exhibit book, Nurse
14 Toussaint writes, "I do not agree
15 with this two-year ten-month review"
16 which contain negative comments.

17 The magnesium event. Maria
18 Alfama, more nursing complaints. So
19 on and so forth.

20 Now, April 14, 2015, Renee
21 Augustin and Mary Ann Kenyon
22 testified that her upper management
23 of Partners Healthcare and Brigham,
24 they directed Mary Ann Kenyon to

1 bring witnesses with her, to not
2 attend a meeting alone.

3 And notably, in that -- when
4 Gessy Toussaint was notified about
5 that meeting she said, "If you're
6 going to have a manager, I want to
7 have a union rep." And they said
8 no, it's a follow-up meeting.

9 What's notable about this in
10 April 14, 2015, is that just
11 November 2014, Mike Robinson, the
12 union rep, had sent an e-mail to
13 Brigham's Leo Buckley, upper
14 management, saying this very same
15 tactic is suspicious of bullying and
16 intimidation.

17 And yet they do it again,
18 April 2015. And that had the
19 sanction of Partners HR as well as
20 upper management of Brigham.

21 They circled their wagons
22 and they closed their ranks and they
23 are targeting her to get her out
24 because they are being sued.

1 Now, how do we know what is
2 in the mind -- I mean, the
3 retaliation has been clearly proven,
4 but regarding the discrimination,
5 how do we know what's in the mind of
6 Mary Ann Kenyon?

7 With the monkey incident,
8 now she -- we don't contend that she
9 said it, but she is a manager and
10 what a manager does about a
11 situation like that, conveys to
12 everybody how seriously you take it.

13 So, what she said was she
14 knew that somebody on the floor was
15 calling black people monkeys. That
16 she knew it was a conversation
17 between a black PCA and a white
18 nurse.

19 That she had an
20 investigatory meeting with the black
21 PCA, but talked to the white nurse
22 somewhere and that the only
23 documentation that was created
24 regarding the entire incident went

1 into the file of the black PCA.

2 She testified she told Renee
3 Augustin of HR and that Renee
4 Augustin said, "Oh, it's hearsay.
5 Don't worry about it." And that
6 nine months later they conducted a
7 general civility training.

8 Nadine Bartley testified no
9 one ever came. Renee Augustin
10 testified she can't recall.

11 If somebody makes an
12 allegation, if somebody makes a
13 comment like that, that is an
14 incendiary term, if that happens and
15 it's serious to you, you take
16 action.

17 And by Mary Ann Kenyon's
18 inactions, it shows where her head
19 is at. Moreover, in her deposition
20 testimony, when I asked her, "Well,
21 what exactly did they say?"

22 Her response was, "I'm
23 black. Blah, blah, blah."

24 It shows she doesn't care.

1 It shows what's in her mind. It's
2 not just retaliation, it's
3 discrimination. And Brigham is
4 response for her actions and her
5 inactions.

6 You know, there are three
7 black nurses that testified and they
8 all say that Mary Ann Kenyon is
9 great, so how can that be that she
10 is discriminatory.

11 We heard testimony from
12 Nadine Bartley that she was afraid
13 that if she testified against Mary
14 Ann Kenyon she would lose her job.

15 We've heard a number of
16 people testify about this informant
17 system that Mary Ann Kenyon has
18 cultivated. So, I would submit that
19 it's pretty clear why they
20 testified.

21 Now, we are here, Gessy
22 Toussaint has sued Brigham and
23 Women's and Mary Ann Kenyon. And
24 this is a civil lawsuit and she is

1 seeking damages. A civil lawsuit,
2 that is the remedy. It is civil
3 damages.

4 And she is asking for you to
5 award her money on three different
6 categories. And the first is
7 compensatory damages for lost wages.

8 Now, you will have, in
9 evidence, the tax returns for Ms.
10 Toussaint, her wages pre to mid-
11 2015, average 135,455.11. Post
12 2015, the average of 2016 and '17,
13 78,123.06.

14 So, for the year of 2015,
15 the difference, the amount that she
16 lost, 55,973.37. 2016, she lost
17 48,769.11. And for 2017, 65,894.98.
18 So, total her lost wages,
19 170,637.46.

20 She's also seeking front
21 pay. Front pay means the amount of
22 money that she will lose in the
23 future. She's 70 years old, she
24 testified she would work until 75.

1 Taking the average of 2016
2 and 2017 times the next five years
3 until she's 75, equals 286,660.25.

4 Her total request for
5 backpay and front pay, which is just
6 the sum of the numbers I just gave
7 you, 457,297.71.

8 The next category of damages
9 that Nurse Toussaint is requesting
10 is emotional distress. And
11 emotional distress is a little
12 different, it's not as cut and dry
13 as lost wages.

14 It is up to you, as the
15 jury, to figure out what to award
16 her. Now, you heard her testify,
17 this happened to her when she was 67
18 years old and she hung in there as
19 long as she could.

20 She testified to repeated,
21 constant stress and anxiety. She
22 testified to depression. She
23 testified that it was so bad that it
24 started having physical

1 manifestations; heart palpitations,
2 sleeplessness, loss of appetite,
3 nightmares. She had nightmares
4 about Mary Ann Kenyon.

5 She testified that she
6 started seeing a therapist and a
7 psychiatrist, that she was resistant
8 to taking medication, but she agreed
9 originally to take anxiety
10 medication to sleep. And then that
11 wasn't enough.

12 And she broke down and she
13 got on depression medication because
14 she needed it to get through.

15 She testified she had never
16 been on any psychotropic medications
17 before this started happening at
18 Brigham and she testified once she
19 left Brigham, she didn't need them
20 anymore.

21 Now, for that level of
22 stress -- put yourself in her shoes
23 and think about that level of stress
24 that causes you to have nightmares

1 about somebody, that you are
2 starting to physical manifestations,
3 heart palpitations. What must that
4 have been like for her?

5 You are the jury. You're
6 the trier of fact and you are the
7 assessors of damages. It's my
8 practice to make a suggestion to
9 you, but it's ultimately your
10 decision.

11 You can determine that the
12 amount that I suggest is adequate,
13 or maybe it's too low and you want
14 to give more, or maybe it's too much
15 and you want to give less. It's
16 your decision.

17 But as a guide, I suggest
18 that this level of constant stress
19 so that's physically making her
20 sick, she be awarded 5 million
21 dollars.

22 The next category of
23 damages, punitive damages. Punitive
24 damages means punishment. It is

1 different than compensating somebody
2 for lost wages or compensating them
3 for the emotional distress.

4 Punitive damages means
5 punishment. It means what you have
6 done is unacceptable and it is -- we
7 are giving you this punishment to
8 get your attention, to let you know
9 that your practices will not be
10 tolerated.

11 Now, the judge is going to
12 instruct you on punitive damages,
13 that this is for conduct that is
14 outrageous or egregious. And I
15 submit to you it was both; it was
16 outrageous and it was egregious.

17 This nurse did nothing
18 wrong. She was a fine nurse for
19 over 20 years and all she did was
20 stand up for what was right. And,
21 as a result, there was an onslaught,
22 they targeted her, and they drove
23 her out, and they made her sick.

24 And not only did defendant

1 Mary Ann Kenyon do that, and not
2 only is Brigham responsible for
3 their manager's actions, but Brigham
4 and Partners also did it.

5 When she repeatedly said, "I
6 need help. Can you come to this
7 meeting with me? I need help, I'm
8 being retaliated against" they
9 closed ranks. They protected the
10 managers.

11 They let the manager have
12 another witness at the meeting and
13 refused to let her have her union
14 rep. They hung her out to dry and
15 it's not right.

16 Now, the question here
17 regarding punitives, is the conduct
18 so outrageous or egregious because
19 of defendant's evil motive or
20 reckless indifference to the rights
21 of others.

22 Now, evil motive. It sounds
23 a little bit like a horror movie. I
24 looked up in Webster's Dictionary

1 the definition of evil and this is
2 what it said.

3 "Morally reprehensible.
4 Arising from actual or imputed bad
5 character or conduct."

6 Was their conduct morally
7 reprehensible? Yes, it was. But it
8 was Partner -- I'm sorry, Brigham
9 and Women's management, reckless
10 indifference to the rights of
11 others.

12 When someone is crying out
13 for help and you ignore them and
14 close ranks and protect your own, is
15 that not reckless indifference to
16 the rights of Gessy Toussaint?

17 I submit that it's both. It
18 is morally reprehensible and it's
19 recklessly indifferent. And I
20 submit that the evidence has shown
21 that Nurse Toussaint qualifies for
22 punitive damages.

23 Punitive damages should be
24 assessed against Brigham and Women's

1 Hospital and defendant Mary Ann
2 Kenyon to say it's unacceptable and
3 I'm going to get your attention with
4 this.

5 Now, the judge is going to
6 charge you that factors to be
7 considered when you're considering
8 punitive damages, the amount of
9 punitive damages, is the wealth of
10 the defendant and also the
11 egregiousness of their conduct.

12 When we're talking about the
13 wealth of the defendant as a
14 consideration of how much you should
15 award, if you've got a large,
16 wealthy institution, if you fine
17 them 50 dollars, they'll pay the
18 fine and move along, cost of doing
19 business.

20 The point of punitive
21 damages -- and it's only available
22 in a select few cases. The point of
23 punitive damages is to get their
24 attention. And you get their

1 attention by hitting them in the
2 pocketbook. That's how it works.

3 I submit that their
4 treatment of her was so outrageous
5 and so egregious, and they are a
6 large, wealthy institution. I'm
7 asking you to send them a message
8 and I'm asking for an award of
9 punitive damages against Brigham and
10 Women's Hospital for 25 million
11 dollars.

12 And I know that's a lot, and
13 you are the tries of the fact and
14 you can determine that. But I ask
15 you to think about how much would it
16 take to get their attention?

17 They are a huge institution
18 and they wouldn't have acted this
19 way if they didn't think they could
20 get away with it. Their attention
21 needs to be gotten and you need to
22 send the message.

23 Nowadays, it's not uncommon
24 to hear people say, "I don't want to

1 get involved." You get it, you
2 don't want to -- they don't want to
3 lose or be at risk because they're
4 standing up for what's right, but
5 that has to change.

6 People say, "I don't want to
7 get involved" because they fear if
8 they do the right thing they get
9 retaliated against.

10 Now, is the time to send the
11 message and to reverse that. We
12 should all be doing the right thing
13 and we shouldn't be afraid to do the
14 right thing.

15 Gessy Toussaint stood up and
16 she did the right thing. She stood
17 up for Nirva Berthold, someone she
18 didn't even know, and she put her
19 whole career that she had worked for
20 21 years to get, she put that on the
21 line for somebody else and she paid
22 the price.

23 And if we don't say now,
24 this practice must end here, then

1 they just -- they get bolder and
2 stronger and nobody, eventually,
3 nobody will stand up.

4 I'm asking you, don't make
5 Gessy Toussaint's standing up for
6 what is right in this case in vain.
7 Thank you.

8 (Closing argument by Ms. MacLellan
9 concludes at 10:39 a.m.)

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C E R T I F I C A T I O N

I, JESSICA GALARNEAU, A PER DIEM COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING IS AN EXPEDITED TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

I, JESSICA GALARNEAU, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THE HEARING WAS TAKEN AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

JESSICA GALARNEAU, PER DIEM COURT REPORTER PROCEEDINGS RECORDED BY STENOMASK.

TRANSCRIPTS PRODUCED FROM COMPUTER.

JESSICA GALARNEAU

DATE

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