

Closing Argument, Grigg vs. Wintergreen Partners, Inc.

On July 16, 2004, an Albemarle County jury returned an \$8.3 million verdict on behalf of Jessica Grigg against Wintergreen Partners Inc., which operates a ski resort in Nelson County, Virginia. Michie Hamlett attorney Bryan Slaughter represented Jessica. He was assisted at trial by the referring attorney, James C. Chalat. The verdict represents the largest verdict ever against a ski area. The previous record of \$6.17 Million was held by Mr. Slaughter's partner and mentor, the late Bruce D. Rasmussen.

Below are the plaintiff closing arguments of the case, as presented by Bryan Slaughter.

We are now ready for final argument. So, Mr. Slaughter, you may begin.

MR. SLAUGHTER: Thank you, your Honor. Good afternoon. It's been a long week. And this part of the case is sometimes the most exciting for the lawyers, but also the most nerve racking, because we have worked this case for a year, or however long we have worked it, and we are about to give up control of it. We are about to give it to you.

And, that kept me up last night. And I was thinking what this case is about. And it is about you. It is about the power of a jury. It is about the ability for us to come in and make someone else take responsibility when they haven't before. When we have heard for the last year and a half nothing, nothing but excuses, no responsibility taken. That is why we have you.

The plaintiff's lawyers get a lot of flack, and the whole system gets a lot of flack, but a lot of people don't know that the Seventh Amendment to the Constitution says you shall have juries in civil trials. And why is that? Why did our Founding Fathers do that? Well, our whole nation was based upon a fight against those that are larger.

And so we have the ability to come in and present our case to you, present the facts. Both sides can work as hard as they can to present their facts and present it to you. And the power of that is truly unimaginable, and no other country has it. You have heard kind of mentions from time to time about the standard of care, or industry standards, or what is that? What does that mean? It means nothing. Because the standard, what is ordinary, reasonable care, it doesn't matter what we think, it doesn't matter what they think, it is what you tell us it is.

You, at the end of this case, will either endorse this practice or you will say, it's wrong, it is wrong, it is common sense, it has to stop.

We're going to all be going to vote in November, and often times I wonder if my vote even means

anything. But, what you do today what you do for Jessica Grigg, and by your decision in setting what is reasonable care will have a tremendous amount of power and a tremendous reach into the future.

That is why the first instruction I start with is the last one of the Court's. Jessica Grigg's life expectancy; 61.8 years. What you do today is going to have to reach out into the future. If you find for us, it is going to have to reach out into the future for 61 years.

Think of all the wonderful things that have happened in our lives. I'm not near 61, so I don't know that. But, think of over the course of a lifetime the wonderful things that happen. But then think of the not so wonderful things. Think of the bumps in the road, because we all have them. Nothing in life goes perfectly. Nothing is the best case scenario. There are always bumps in the road.

How do you reach out that far in the future and fix what can be fixed, help what cannot be fixed, and balance what cannot be fixed or what cannot be helped. That is your job, and I'm going to try to help you do it. Give me one second.

This is kind of a strange case for me because it is the only case that I have ever been in where the defense attorney has made my case for me in the first three sentences of his opening statement. My jaw almost dropped. And then he said it again, and he said it again, and he said it again.

What did he say? To do any number of things that are necessary every day for the comfort, the safety, and the enjoyment of our guests. And you're going to hear about it a lot; comfort, safety, and enjoyment, because those are the three things that everyone at Wintergreen is committed to, and you will hear about that.

We don't drive equipment on the slope unless there is a comfort, safety, or customer enjoyment reason to do so.

Think how long Mr. Spencer worked on his opening statement. It was a wonderful piece of oration. It would take such a long time to craft that. And to put safety second, to put comfort before safety, what does that show you?

It shows you it's not even on their mind. It's a word that they put in. It's a word that they use, but it is not a word that they don't live with their culture. And when you have a sport like skiing, where there are trees, where there are other things you might run into, why on earth would you make it anymore dangerous?

People who talk about skiing sometimes talk about risks. But, any risk that someone takes should be a risk that they can think about, decide about, calculate, and then say this is what I want to do. And you should be able to be on the slope at Wintergreen, where they tell you to be, and not have a bulldozer coming up the other way.

This case has been a search for the truth. You have heard any number of things, but I have always found that it's usually your first instinct to something, your first reaction to something that is the right one.

And what is your first reaction to a company bringing a snow groomer up an open slope, intermediate slope, with skiers coming down the other way, with a snowmobile only 60 feet ahead, without telling the people at the top of the slope or the people coming in from the side that it's there.

It goes against everyone we know. We see it on the highway. If there's a truck stopped in the road or a construction worker behind a bend, is the flagman right there? No, he's on the other side of the bend. A warning is useless unless you have time to react.

And, you also have to balance the cost of the warning to Wintergreen to the harm, potential harm, which is huge.

I hear Wintergreen talking about all of the different reasons why they can't do things, and I want to scream people's lives are at stake. People could die. But for Brett Henyon, she would have. It doesn't make sense, it is so unnecessary.

So, this has been the search for the truth. And usually when you're looking for the truth, it's not necessarily what they are telling you, you kind of have to look around the edges, because that's where it kind of crumbles.

First, are the explanations. Now, John Kirchner said we can reasonably close the slope in 10 minutes. But, I will grant you that to stay in

operation, it might be too much for them to do to close it down. I think that might be something you all can validly talk about, validly argue about.

I would argue that people's lives are always the most important things, so even if it inconveniences guests, or even if it takes too much time, you close the slope. But, you heard everybody to whom I asked that question.

Why not warn? Jay Roberts didn't have an answer, John Kirchner didn't have an answer. Robin Smith had some type of answer after Mr. Spencer told him we have a problem with the warning part, you have to say something. And he said, do you remember what he said? He said, well, we are not we can't warn the people at the top of the slope because that won't be fair to the people in the condominiums who might be coming out. We wouldn't have warned them.

Come on. It's a 90 second ride. How many people come out of the condominiums at 6:00 at night, at dinner time, after people have gone in from a long day of skiing? How many people will come out on the slopes?

Common sense. What they are telling you defies common sense. And, as you will see I want to use this, but I'm just going to hold it up that is what you are entitled to use. You are entitled to use your common sense in judging any testimony. It's instruction number one.

This practice is like pulling the trigger on a revolver that has one bullet in it. It is not a matter of if it's going to happen, it's a matter of when it's going to happen.

And I thought the most telling evidence was Jay Roberts telling us how many times they have done it. And he said 25 to 30 times. Well, if that accident tells you that if only in 25 to 30 times it happens, that tells you something right there. It didn't take very long, it was just a matter of time. I am not, and I want to be clear about this, indicting the entire practice of having groomers on slopes. I am saying there should always be a warning, because I think there's always a way to warn.

But, what I am especially arguing is that on this slope, with the particular conditions of this slope, it was just a matter of time. And that is a big bend, where you cannot see coming down. Again, all the other slopes, or most of the other slopes, are a straight shot down. And it's coming uphill against traffic, into a blind spot.

And they can yell and scream and do whatever they want to try to make you think it's not there,

but it is, and we know it is. And I will show you how.

I wrote down the dates there yesterday. Mr. Wylie took photos on the 10th, Mr. Rea was there on the 18th, well, Mr. Isham was there on the 20th, 2004, just two days later. So and they represented to you that Mr. Wylie's photos looked exactly the same as the night of the incident. And then I asked Dr. Rea, did it look to you, when you saw it on the 18th, the same as it did the night of the incident. And he said yes.

So, if Mr. Spencer stands up and says we don't know what these how these were taken, where, we don't know, you know, if the snow was piled up. It was taken at the same time they say accurately represents the accident scene.

And, folks, you heard it, you know what I'm about to say. This snow fan, which is and Mr. Hensley pointed it to us, right at the cross trail, right at the skier's left edge, is 10 to 20 feet tall.

And Mr. Isham was standing right where the groomer was, he used Wintergreen's measurements and was standing right where the groomer was, and granted he's short, but he looked uphill and just took two pictures, and by the grace of God, sheer luck, the snow fan, the very top of the snow fan happened to be there, by sheer luck. And, you know, you go up just a little bit further and it disappears. And it's not just the snow fan, there are condominiums behind here. There are condominiums, there are trees that are cut off.

And what else do these photographs tell you? Well, that there is a blind spot on skier's left, but there is not a blind spot on skier's right, because you can look up on this side. There is a blind spot. And why? Because the cross trail levels out and people ski into the cross trail, and so it's level there, and then it goes back down to a 20 degree pitch.

And if you don't believe our expert, believe their expert. Because when he was there on the 18th, thank God, he, for whatever reason, turned around and took a picture. And look what it shows. Right at the cross trail you can see people kind of cut off, but look at the trees that mark the left edge of the slope. They are almost over half way cut off. It is completely blind. That groomer was in a hole. That groomer was in a hole.

What is this is not our most powerful evidence of this. Read this instruction. Any fact that may be proved by direct evidence may be proved by circumstantial evidence. That is, you may draw

all reasonable and legitimate inferences and deductions from the evidence.

Folks, the resources that Wintergreen has put into defending this case have been nothing short of amazing. And these pictures are gorgeous. If I saw these pictures in a magazine, I would be impressed. And he trots out four of them. And he wants you to believe that that is the full visibility of Eagle's Swoop.

What does common sense tell you? If he could, if he could take a picture from where the groomer was uphill, he wouldn't be in here showing it, he would ask Judge Peatross for permission to take you outside the courtroom and look at the billboard he had it on. If he had a direct line of site from where the groomer was to skier's left edge of the trail, common sense, of course he would do that. Of course he would do that.

That is our strongest evidence, because that would be, by far, their best defense. All he had to do, Mr. Wylie, you're about 100 feet away from the groomer, would you mind walking down, turning around, and taking a picture.

We know the blind spot is there. It's there. And they bring the groomer straight up, with the snowmobile in front. And you saw the demonstration, the procedure of how they do it. I'll show you that this all happened on about a 100 yard field. It happened in 100 yards, about like a field.

What did that demonstration look like to you? It looked like a running back going for the goal line. You put the blockers in front, form the wedge, take it up the field. They are protecting the groomer, they're not protecting the skiers.

If you have a blind spot like that, you at least put one snowmobile to start at the top of the cross trail, with a radio, looking up to see if anyone is coming down, see that it's clear. Go out so you can wave people to the left in front of the blind spot, and then say to the snow groomer driver, okay, it's clear, bring it up. We know that can be done. If only it was on their mind, but it's not.

I'm going to start speaking faster. All of these pictures show what they show. A clear line of sight down Eagle's Swoop, but we know from the testimony of Mr. Knick, from the testimony of Mr. Ward, they are taking the fastest route down, that's skier's right. And look how close you are to the elbow there. They are coming right down skier's right.

There is a picture taken from up higher that is a snowmaking gun. And you know snowmaking guns mark the middle of the trail. Look at it on the

aerial photo. And they are taking it from the right of the snowmaking gun. Of course there's visibility there. We see it from my pictures. There's visibility on the right side of the slope, not the left.

And how do we know they were on skier's left? Well, we have the kids, Brittany and Josh, both said that. And then we have the testimony of Jeffrey Eimutus. So, they made a turn right before they entered the cross trail. They made a turn. On the far left hand side? Yes. Skier's left. And then he points almost right at where the fan is.

Let me show you something else about Mr. Eimutus' testimony, which might give us a little more insight into what happened.

"Isn't it true that you only saw them at 100 yards away, not 200?"

Answer, "No, 200 yards."

Question, "Not 100 yards?"

"One hundred yards is when they had my undivided attention."

They did see them coming off the pitch right down, but then they disappeared. So he saw them, lost site of them, and then when she came over that hill, he started paying full attention. But, by then it was too late. The circumstances, the stars had aligned, and what we all know by common sense was going to happen, did happen. It was all so unnecessary, because it was all so easily fixed.

That Mr. Eimutus testified to 100 feet I mean 100 yards. 100 yards from where he's exiting The Plunge up to the cross trail. 100 yards, that's his testimony. About the size of a football field. He said we had gone 50 to 60 feet when we stopped. I think actually it's probably more than that. If you look for the double tree in the picture, which is right there, that's the groomer, that's the cross trail, that's the double tree, it's right in the middle. So, I think it is even less than 50 to 60. But, 100 yards, 300 feet, minus 60, gives you 240.

And we know she slid anywhere it was a little bit, there was a conflict in testimony, but let's say 90 feet, even if it's 70. How much does that give her? That gives her 100 and 60 feet to understand what she is seeing. And the testimony is she had no idea.

And what is it she would have seen? Five flood lights well, two flood lights and three headlights when she came over that hill. It could have been

a spaceship for all she knew. And then she had to react. And what was the testimony of Josh Wilson? She turned to the left, and she tried to turn to the right and fell down. Doing exactly what she was supposed to be, making turns down the mountain, as Brittany and Josh said, and Mr. Henyon said she was making she was in control at the top, they were all in control at the top.

And so what they want you to believe is the one time they bring a groomer up is the one time that a girl has skied in control all day long, who is a safe skier, decides to point her skis downhill and just go as fast as she possibly can. That's a coincidence. Common sense tells you that is likely not true. What time?

MR. CHALAT: You've got about 20 minutes left.

MR. SLAUGHTER: Thank you. The testimony makes sense of Mr. Henyon and Mr. Eimutus, the way they saw her when she came over the hill and rose up and was back on her skis, because isn't that the natural reaction of someone who suddenly sees something and is startled, and is trying to figure out what's going on? And then once you're back, you don't have control. You see the sudden emergency instruction, there is no evidence that there is any negligence before she got to that point. And once she gets to that point, everything she did after that is what anyone else would do, trying to get away from this machine.

And they talk about how great the conditions were. What does Mr. Spencer tell us in his opening and the evidence, and on this particular day, as most days, the temperature was reasonably warm that day, and then it plummeted, went down. And when the temperature goes down, what happens, ladies and gentlemen? It starts to freeze.

Well, Wintergreen doesn't have special snow, it melts and freezes like any other snow. And so what happened at the tube park also happened on the slope. Not a sheet of ice, but east coast skiing gets icy at night. And so they are making her do this maneuver surprised, on an icy slope.

Real briefly, I would like to talk about Erin Kalan's testimony. "Brittany Cansler was crying, upset." And question, they answer, "They were disheveled, frantic, upset."

"Were they crying?"

"Brittany was crying."

"Do you remember that?"

"Yes.

"What was her condition? Describe how she was behaving in particular."

"She was panicking, she was upset, she was crying, frantic."

"Did she say anything in describing what had happened?"

"Yes."

"What did she say?"

"She said something to the effect that Jessica was going really fast."

Erin Kalan did not tell you she said that, she always prefaced it, something to the effect. And we have no idea, first off, if it was said, and where the reference point was, because it could, and it probably reasonably was, talking about the impact.

And that certainly was a devastating impact. She had just seen her friend go into an immovable metal blade. All right. Mr. Spencer will talk to you about contributory negligence, that if there is any negligence on the part of Miss Grigg and he will probably take off a little piece of paper, as small as he can, if there's this much, and that she was at fault, then you have to find completely for us. Again, running away from the responsibility.

But, all of the and that is his burden to prove. He has to prove that she was negligent. She was where she was supposed to be, she was making turns, she came over a blind spot, saw five flood lights, dodged the snowmobile, tried to get back, and fell. And, by the way, she was wearing nylon clothing. If he stands up and says why was she injured as badly as she was after sliding 90 feet, we hear about injuries sliding on the road, this is like snowtubing. She's in a nylon suit going down a 20 degree pitch. She certainly is not going to lose much speed, if she gains any meaning, she might even gain some. All they had to do was say we're bringing a groomer up the left side, be careful. And Mr. Kirchner told you there's no reason why we couldn't do it, and that would be more safe.

I have tried to bring you a credible case, done everything I can. I have given you an expert witness who normally testifies for the defense industry I mean for the defendants. I have not brought up witness after witness who are crying and talking about what happened to Jessica. I brought you one emotional witness, who I had to have, because her mother knows her better than anyone. But, other than that, I brought you

objective people with no axe to grind. I brought you her supervisor, I brought you her teachers, and they all confirmed that Jessica was having the exact problems that Dr. Patrick and Dr. O'Shanick said she would. Objective witnesses.

And when Mr. Spencer is talking to you, think about how objective his witnesses are, whether or not they have some bias. This is a good family, a hard working family, that tries to educate their kids and want their kids to go further than they did, and they brought their little girl up that way. These were kids that worked, these were kids that were responsible, these were the kind of kids whose parents talked to the driver before they went on their trip and said you have to be home by X.

She left that morning, and the little girl that came back will be forever different. We know this from the testimony, we also know it from common sense. When that much of your brain is gone, you're going to have to have long term deficits.

And it's not the type of injury that I thought a brain injury was. I thought it would affect your grades when I first went into this case. But now Dr. O'Shanick, and Dr. Patrick, and Dr. Buchsbaum have done a wonderful job telling us what the frontal lobe does. And it's the conductor, it's the CEO, it's the general of the Army. Without it, the other parts of your brain can't come together.

I also presented you a credible case by showing you the best case scenario. I had Mr. Melberg talk about the best case scenario in terms of jobs. I had Miss Reavis give you the most conservative life care plan. But, there are bumps in the road. Things pop up unexpectedly. And Mr. and Mrs. Grigg are not always going to be there. We need to protect Jessica for 61.8 years.

We heard about the plasticity of the brain when you are young. But, the flip of that is you don't have it when you get older. And that hole in her brain is always going to be there. 61.8 years.

I'm not going to go through every part of what the frontal lobe does, you all have that by now. But what it generally does do, it allows us to cope with life. Life is not doing an examination with a doctor. Life is not sitting giving a deposition for six hours. We know she does well in a structured environment. Life is school, life is a job, life is friends. And what did those people tell you about her? What did those people tell you about how she was doing? The only thing they have to counter that is a very young, very optimistic, very nice neuropsychologist.

But, you heard her say it, Dr. Patrick is one of the preeminent neuropsychologists for adolescents in the country, and I agreed with his opinion. And, I did take offense to Miss Quig talking about the bright future, how happy she is for her, how counseling is going to do her so much good, and not even mention, well, this is on her medications, that she is on antipsychotic medications. What are the chances of Jessica not having the long term side effects over 61.8 years?

We know the chances. The chance is almost zero. Certainly not if she wants to have children. And where is she going to be if she goes off the meds? Right where she was in the fall; anger outbursts, talking incessantly, out of control. Everything Dr. Quig said was on medications. Time?

MR. CHALAT: 10 minutes, 15 minutes at the most.

MR. SLAUGHTER: Okay. Folks, as common life experience, we all know when we meet somebody who's just a little bit off, we can't put our finger on it, but something is not quite right. Are we nice to that person? Of course we are. Do we socialize with that person? To a certain degree, sometimes. How many of us form long term, lasting friendships and relationships with people who we meet who are like that?

This little girl is on an island and she needs our help. This is her only day in court. What you do is going to affect her entire lifetime. There is no perfect justice in this world. I wish there were. I wish it were not this system that we have, because don't you think Milton or Jessica would take her brain back than any you could give a billion dollars and she would take her brain back.

This is for fixing what can be fixed, helping what can be helped, and balancing what can't be fixed or helped. And what I mean by that is this is the only system we have got. The scales of justice. What harm have they caused, how do you balance it out?

I'm asking you for \$8.5 million to protect Jessica over the course of her lifetime. Mr. Spencer will stand up and talk about how unreasonable that is. That little girl is on an island and she needs our help.

Mr. Spencer will speak. Thank you.

REBUTTAL

THE COURT: Rebuttal, Mr. Slaughter. You have 15 minutes, according to my calculation.

MR. SLAUGHTER: Thank you, Judge. As Mr. Spencer was talking, each point he brought up that I wanted to rebut, I was trying to figure out where I'm going to start this. Thankfully, like he did in opening, he gave me my closing. And he gave it to me in closing, and it sums it up better than anything I could possibly, possibly have thought of myself. It's truly amazing. And it is so emblematic of what they have done here, tried to pull the wool over your eyes, it's like an octopus squirting ink, trying to get away.

By sheer luck, I also got the quote that he just read, but he didn't read to you the last line. And the last line was about her AP classes. And let me give it to you, ladies and gentlemen.

"I said but I want my chance. And until you see me fail, don't tell me that I can't do it. So they put me in and I failed."

He knew that, he was just counting that I wouldn't have it. Thank God I did. I could not have summed that up better if I tried.

All right. But I do have do rebut some things. He said at the beginning speaking of the snow groomer, 100 square feet of pure... what did you think was the next word? I thought death or danger. Pure visibility. The fact that this thing is dangerous means that we don't have to tell people at the top of the slope that it's going to be there. I'm in never never land I think. I don't get it. It's unreasonable to put someone at the top and say there's a groomer coming up the slope? You all know that.

Miss Cansler, about the snow. You will see the pictures. There's not one, there are actually three. You will have the evidence. It's not his breath, it is not smoke, it's snow. And when you're skiing, it doesn't take a blizzard to make you not see, especially when it's the stuff they make, because if it hits you in the eye, you can't see. Josh Wilson saw it because he had goggles. So, it didn't take a lot of snow.

And what struck me most about their video was how far over the snow was going. It was windy that night and it was blowing downhill. We know that because there are pictures, and there are two other pictures that show it, too. Anyway...I think the cornerstone of their apparent argument that there is no blind spot is Mr. Eimutus. And he said Mr. Spencer said that proves it. But, do you remember what the testimony was I read to you. He took his eyes off

for 200 yards then turned his attention back 100 yards. That's the top of the blind spot. That's coming over the ridge. He thankfully did have time to drop his groomer blade. But, that's exactly where I told you. And I didn't say there's 300 feet of visibility, because the groomer is coming one way, and Jessica is coming the other way. So, she has about anywhere between 150, 200 feet to react. She tried to do, you heard she tried to make a turn, she was in control, tried to go the other way, and slid.

Wintergreen markets itself come on, come have fun, ski downhill. Markets to kids, little kids, teenagers, everybody, come have fun. And that's what Jessica Grigg was doing. She was doing what they asked her, to come up, and what she paid money to do, and was where she should have been. She was not the least bit at fault.

Mr. Spencer has to prove that she was negligent. Conduct is not negligent. Even if there were if this were another case, and the kid said she was flying. Well, the evidence was that she was making turns. And you don't see anything on the responsibility code about speed limits. There's no speed limits on a ski slope.

Folks, if she were flying, she would be dead. To say that the injuries show speed, she wasn't the Michelin man. She was a 120 pound girl sliding down the slope, after skiing, and hit a bulldozer, and lived. Thank God.

She was where she was supposed to be, doing what she was supposed to be doing. And how do we know that? I point you to there's an instruction that says you judge Jessica as you would someone else her age and her experience. Where do we find that? Where do we find two people of her age and experience?

Right beside her. And Brittany Cansler sat right here and said Jessica was over there to that wall. That's why she didn't see it, that's why Brittany did, and Josh did, because they were in the middle. Jessica was on the left. It was just a matter of time that this would happen. And what Brittany's and Josh's testimony show you is he has used their testimony in his case is that they are being honest. They don't we didn't give you six people who all basically said exactly the same thing. They were being honest. If they weren't, they would have said I couldn't see it. But, they didn't.

But, what did they say? What did Josh say and Brittany say? I saw the snowmobile, saw her make that maneuver, and then I looked up and there was a groomer. And that's the problem, because I don't want you to get confused with the groomer and the snowmobile.

Because she sees snowmobiles all the time, they are all over that slope. This was the only time and she had been down there eight times. What kind of warning is a snowmobile to tell you there's a groomer behind me, in a hole, when you see a snowmobile all the time, and there's no groomer down there. So, she focuses on the snowmobile, gets away from that. Too late.

Anyway, this is just math. I think you all she had a very short period of time to react. She reacted reasonably for an intermediate skier for what she had to do under very difficult circumstances. And we are happy, we are thankful, thank God she's alive.

But, Mr. Spencer keeps referring to it as a bump on the head, or hit her head, and about the bright outlook that they have for her. And that why doesn't she get counseling, a shrink will fix this. Come on.

There will be a time for counseling and she will go and they will do everything she can to get better. But, to say that we are focusing on a life of doom and gloom, it's not right, it's not fair, and it is not just. Because she's going to keep trying, she's going to work as hard as she can, but she needs help. She needs your help.

MR. SPENCER: Object to the argument.

THE COURT: Yes, sustained. You can't personalize it with the jury. You've got to argue the evidence.

MR. SLAUGHTER: I'm sorry, your Honor. They say you have to look at her past and whether she is working hard enough, whether she's doing what she should be doing, whether she should be going to counseling.

Ladies and gentlemen, if you give a dime less than what we have asked for, you will be giving weight to that argument. Because this is a written record, this will be these words will be around for Jessica's kids, if she can ever have them, and for anyone to see, to come back and read this transcript.

MR. SPENCER: Your Honor, I'm sorry, objection.

THE COURT: Yeah, sustained. That's not evidence that we have before the jury about transcripts in the future.

MR. SLAUGHTER: This is going down on a permanent record that she was not trying hard enough. That's unfair, it's unjust, and it's not right.

Real briefly, I think the instructions, and you will see the verdict form, you do not have to find against these gentlemen, you can just hold Wintergreen accountable. You do not have to find against these two if you find that they were doing their job.

I think they were too far out on the slope, but if you find that they were doing their jobs, following regulations, you do not have to find against them.

That's Bob Ashton in the corner. He's the president of Wintergreen. Have we heard from him? Have we heard this is the first time I have ever heard a defendant give a closing argument and –

MR. SPENCER: Objection, your Honor.

THE COURT: Sustained. Your opinion and what you think is not proper argument.

MR. SLAUGHTER: You're right, your Honor. We did not hear the words personal responsibility come out of Mr. Spencer's mouth, because we know he couldn't say it with a straight face. And Mr. Ashton did not get up here and take any responsibility for their actions. He put up Jay Roberts.

That reminds me, by the way, the comment about Jeffrey Ore is just another octopus tentacle. Mr. Spencer has the same rights that we do, the same subpoena power to have him come in here. And he deposed him.

MR. SPENCER: No evidence of that, your Honor.

THE COURT: Sustained. Don't mention what happened that's not in evidence.

MR. SLAUGHTER: If Mr. Ore saw something, he would have been right here telling you. I just gave you witnesses that you needed to have. I didn't call Dr. Chhabra because this is about a brain injury, this is about her future. Her bones have healed.

Every witness I gave you had a story, had a piece of the puzzle. And for him to now suggest that he knows something, he could have got him here.

THE COURT: You've got one minute.

MR. SLAUGHTER: When we walk out of here, I'm going to go home and I'm going to hug my kids. Mr. Spencer is going to go home and do the same. You all are going to go back to your lives. But, for Jessica this is a life sentence, and she's going to keep trying, and we know that. We see that from her. She is going to keep trying. You set the standard of care in the community. You can do it with a whisper or you can do it with a shout.

We ask you to do the right thing. And I thank you very much for your attention this entire week. Thank you.