

## Defendants' Summation

1 THE COURT OFFICER: All rise.

2 Jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Good morning, jurors. You may be  
5 seated. Everyone may be seated.

6 At this time, I call upon Mr. Wynne to give the  
7 first summation.

8 MR. WYNNE: Thank you, your Honor.

9 Good morning, everyone.

10 Well, you've heard a lot of testimony, all of it  
11 medical, all about plaintiff, her complaints, her  
12 surgeries, and despite the number of witnesses, the issues  
13 are pretty limited in this case. They really are. And  
14 what is plaintiff entitled to in terms of money? You are  
15 going to get a verdict sheet which I'll go over in a  
16 minute. There is a bunch of questions that you have to ask  
17 [sic].

18 Let me start with probably the thing Mr. Gershon  
19 will make the biggest deal about and that is the three  
20 doctors from the Transit Authority. Well, not from -- were  
21 hired by the Transit Authority.

22 Ms. Halsey sued the Transit Authority, got an  
23 attorney, claimed a bunch of injuries, and all the Transit  
24 Authority knows is that she's claiming these injuries and  
25 this surgery, so they say, "Well, how is she doing now?"

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1 Send her to our doctors. Let them take a look at her. Let  
2 us see how she's doing." They weren't hired, the doctors,  
3 to pour over the whole records and critique the work of the  
4 doctors who performed the surgery. They just wanted to see  
5 how she's doing now, and so they performed range of motion  
6 tests and the testimony was that she had full or close to  
7 full range of motion. That was the purpose of Dr. Merchant  
8 and the orthopedic surgeon who we produced also and the  
9 radiologist, Dr. Tuvia, who testified on Friday, wanted to  
10 take a look at medical films, the MRIs, and see what do  
11 they show? You know, we don't have to take her attorney's  
12 word for what her injuries are. Let me see the films. And  
13 he diagnosed her with bulging disk, and then Dr. Merchant  
14 indicated that in his opinion, a bulging disk is not  
15 something you can treat with a lumbar fusion, especially  
16 when the plaintiff appears to be making progress, so you've  
17 got her two doctors who come in, and especially with regard  
18 to Dr. Rafiy, the doctor who performed the spinal  
19 surgeries, his own report one month before he performed the  
20 surgery, and I read parts of it into the record. This is  
21 from August 24th, 2009, a month before the surgery. He  
22 says, "In addition, patient continues to complain of  
23 ongoing low back pain radiating into the right lower  
24 extremity and calf. She is a candidate for a series of  
25 lumbar epidural steroid injections, traction, and aerobic

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1 conditioning with back strengthening exercises."

2 And he admitted that he had looked at  
3 Dr. Etienne's records. That's the doctor who treated  
4 plaintiff right after the accident. We didn't hear from  
5 her, but she was the real treating physician, and  
6 Dr. Etienne's records as early as April 2009 gave a full  
7 range of motion and cervical spine -- and lumbar spine, so  
8 was that surgery necessary? Questionable. But the real  
9 issue here is how's the plaintiff doing? What happened and  
10 how is she doing? And I submit to you -- well, let me put  
11 it this way. When you bring a lawsuit, working at the time  
12 of the accident, you can ask for a lot of things. You can  
13 ask for pain and suffering from the day of the accident up  
14 to the verdict, which will be today, future pain and  
15 suffering for the rest of your foreseeable life, you can  
16 ask for past incurred medical expenses, future incurred  
17 medical expenses. Ms. Halsey's asking for both of those.  
18 You can also ask for past lost earnings and future lost  
19 earnings, and she's not doing that. That tells you, I  
20 think, more than anything about the severity of her  
21 injuries and where she is now.

22 We know she was working. We know that a week  
23 after the accident, she actually went back to her employer  
24 to try and go back to work. That's the last attempt she  
25 ever made to find a job other than filling out some online

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1 applications.

2 Two doctors come in, her doctors. Neither of them  
3 say she can't work. Neither of them say "I never told her  
4 she can't work." That tells you a tremendous amount about  
5 where Ms. Halsey is, and so you've got Ms. Halsey who sat  
6 here as long as you have throughout this whole thing  
7 without -- she's in a wheelchair. She doesn't use a cane,  
8 a walker, nothing like that, and nobody said she can't  
9 work, and we're supposed to give, what, a million dollars  
10 for that?

11 The verdict sheet has a series of questions. The  
12 first three might seem a little odd. I'd like to go over  
13 them with you.

14 The first one is, "As a result of the accident,  
15 has plaintiff sustained a significant limitation of use of  
16 a body system or function?"

17 A significant limitation, I submit to you that  
18 none of the medical testimony that you've heard establishes  
19 that. She complains that she has pain and she complains  
20 that she has, excuse me, some difficulty in bending, but  
21 again, that telltale indication is work, a significant  
22 indication -- excuse me -- she wouldn't be able to work.

23 Second question: "As a result of the accident,  
24 has plaintiff sustained a permanent consequential  
25 limitation of use of a body organ or member?" Again, it's

1 the same situation, so the answer to that has to be no.

2 The third one is a little more complicated. It  
3 says, "As a result of the accident, did plaintiff suffer a  
4 medically determined injury or impairment of a nonpermanent  
5 nature which prevented her from performing substantially  
6 all of the material acts which constituted her usual and  
7 customary daily activities for not less than 90 days out of  
8 a period of 180 days immediately after the accident?" Is  
9 it medically determined? Did a doctor say that she was  
10 substantially prevented from performing all of the material  
11 acts of her daily life for 90 days out of six months after  
12 the accident? That's what that means. And again, the  
13 answer's no. She went back to work a week after the  
14 accident. She showed up. No doctor said she couldn't. So  
15 the answer to that has to be no, it has not been medically  
16 determined.

17 Now, the next question, that's the big question,  
18 and that is: "State the amount of damages sustained by the  
19 plaintiff for pain and suffering from June 25th, 2008 to  
20 the date of the verdict." I submit to you the case has  
21 value. Nobody's denying it. The Transit Authority has  
22 been reasonable in not making her try liability and they're  
23 reasonable now. I submit to you that \$100,000 is fair and  
24 adequate compensation for what the plaintiff has sustained.

25 The next question: "Pain and suffering including

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1 the permanent effects of the injuries from the time of the  
2 verdict to the time that plaintiff could be expected to  
3 live." Well, again, she's not working, but she's not using  
4 a cane, she's not using a walker, she's not wearing a back  
5 brace, and all we have is her subjective complaints that  
6 she's in pain. Nothing concrete. I submit that \$50,000 is  
7 fair and adequate compensation for her future pain and  
8 suffering.

9 Medical expenses. Dr. Rafiy ran through a litany  
10 of things that he indicated plaintiff may expect to incur;  
11 medication, certain tests, but I submit to you, those were  
12 all worst case scenarios. That's what he would predict for  
13 somebody who really was in bad shape, and the plaintiff is  
14 not, so I submit to you \$20,000 is fair and adequate  
15 compensation for future medical expenses.

16 Thank you.

17 THE COURT: Thank you, Mr. Wynne.

18 Mr. Gershon.

19 MR. GERSHON: Your Honor, Mr. Wynne, members of  
20 the jury, be with you in a second as soon as I get this  
21 button in. My thumb doesn't work.

22 First of all, good morning.

23 THE JURY: Good morning.

24 MR. GERSHON: Second of all, thank you. Thank you  
25 on behalf of myself and on behalf of Tiffany. Okay? You