

1 Summations - Mr. Rubinowitz
 2 referring to what Mr. Wang said.
 3 MR. RUBINOWITZ: Sure.
 4 THE COURT OFFICER: All rise. Jury entering.
 5 (Whereupon the jury entered.)
 6 THE COURT: All right. Please sit down. I'll ask
 7 that Mr. Rubinowitz start his summation, I don't anticipate
 8 he'll be finished today. Because tomorrow is my calendar
 9 day I do need the first hour and a half in the morning to
 10 clear out the room. So we're going to meet at 11:00
 11 tomorrow.
 12 You must keep an open mind. We're going to begin
 13 and break somewhere between 4:00 and 4:30, whatever will be
 14 a natural pause in your summation.
 15 MR. RUBINOWITZ: Thank you, your Honor.
 16 May it please the Court, Mr. Wang, Mr. Baxter,
 17 Mr. Miller, Ms. Nester.
 18 I've waited patiently, although I have to tell you
 19 it was a little bit impatiently, to have this opportunity to
 20 sum up to you.
 21 I want to start with a question.
 22 How surprised were you that Mr. Baxter didn't call
 23 one witness?
 24 Surprising, right. Where are all those
 25 construction workers? Where are they? If there were signs
 26 up, if there were tapers, if there were transitions, don't

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 2 credibility. And that's the truth, and you know it and I
 3 know it.
 4 Now, when you hear lawyers speak, when we present
 5 our case to you, we work very hard, one of the things I'm
 6 sure you've seen and I wanted to apologize to you, yes,
 7 sometimes I cross-examine too much. But I do it because I'm
 8 concerned.
 9 When Jim and Eileen Gregware came to me to
 10 represent them, all can I do is give it my all, if
 11 somebody's coming to me, yes, I will do whatever I can,
 12 within the bounds of decency, of honesty, to represent them.
 13 I will not cross that line, it will never happen if I'm
 14 trying the case. But I will work very hard to represent
 15 them.
 16 And when we questioned witnesses under oath at
 17 depositions, yes, we do spend time and we try to find out
 18 what happened so we can present to you both the good and the
 19 bad so you can hear it all and so that you can make a well
 20 and reasoned decision.
 21 But it is wrong when lawyers stand before you and
 22 give you fast and loose synopses of the case. When lawyers
 23 do that, I have to tell you, there's something very, very
 24 wrong with our system.
 25 You heard, for example, that Mr. Valarezo said that
 26 there were five signs up. One of the lawyers said five

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 2 you think we would have heard from one of them, just one?
 3 But there's a reason for that. There's a reason
 4 that they didn't come in. They weren't there. They weren't
 5 there.
 6 Now, did you see what just happened, the last half
 7 hour of Mr. Wang's summation? Did you see what he was
 8 doing?
 9 Don't blame us, if we're at fault, don't blame us,
 10 blame Baxter's client, don't look at us, blame Burtis. You
 11 saw it loud and clear. No matter what, don't blame the City
 12 of New York.
 13 Mr. Baxter, did you see what he did? Wasn't that
 14 interesting? Don't attach me to the City. Don't do that,
 15 because I don't want to be attached to them.
 16 And who did Mr. Wang not refer to once? Wasn't it
 17 surprising? Who were his star witnesses? Police Officer
 18 Pagano. Why didn't he refer to him? Ali Sadegh? Why
 19 didn't he refer to him? Why didn't we hear about them?
 20 Isn't there a reason for that?
 21 I have to tell you I agree with Mr. Baxter, I'd
 22 want to run from them also. I'd want to run far away from
 23 them, I'd want to run as far as I possibly could to get away
 24 from them, because they are simply not believable witnesses.
 25 And if you're going to believe those witnesses, we
 26 have bridges to sell you, because those witnesses have zero

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 2 signs up, and I'm thinking, how did I miss that? I didn't
 3 miss that. I didn't miss that at all.
 4 So I want to read directly from what Mr. Valarezo
 5 said. And this is what he said:
 6 The small sign, not signs, sign, singular, that
 7 you've discussed earlier, do you have a specific
 8 recollection of the exact wording on that sign? And his
 9 answer is, the only things I remember was work. My car was
 10 going, you know. The sign saying highway. But that was the
 11 only thing I saw, and I couldn't tell you I saw something
 12 else.
 13 Then it continued.
 14 So other than that, you don't recall seeing any
 15 other signs saying that the two left lanes were closed?
 16 And his answer was that's right, I don't. That's
 17 right.
 18 Now, a lawyer stood before you and said, he said
 19 five signs. He said five signs. That's what I have a
 20 problem with. When we stand up here, it's our credibility.
 21 You heard Mr. Wang talk about credibility of
 22 witnesses as being important. I agree with him, credibility
 23 of witnesses is important. But the credibility of the
 24 lawyer is equally important. When we stand up here and we
 25 talk to you, and we tell you what we know happened, we have
 26 to do it in a credible way. And in a reasonable way.

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2 I heard questions asked of witnesses, and I'll just
3 go over this very briefly before I get into the summation.
4 Remember the question asked of Dr. Elliott
5 Hershman, the orthopedist? Are you aware that Jim Gregware
6 was squatting all day long? And it was bellowing the way
7 that question was asked. I thought to myself, how could I
8 have missed that, how could I possibly have missed that?
9 Then I went through records, and you know what?
10 There's no answer that says that, it was just a question.
11 When a lawyer asks questions you have to have a
12 good-faith basis to ask it, and that was not right. And
13 then I hear about this.
14 We know that the defense has an opportunity to have
15 examinations by defense experts. It's just a fair system.
16 And we claim that Jim Gregware has been injured, and the
17 defense is entitled to have examinations by their doctors,
18 doctors of their choosing.
19 Three doctors examined Jim Gregware. Two
20 orthopedists and a neurologist, Dr. Straws, Dr. Sternman.
21 We also heard Dr. Bleifer. But it wasn't just once. Two of
22 the doctors did two exams each, so we had a total of five
23 examinations, five examinations.
24 If any one of those doctors would have said
25 something different than what I said, you can bet your
26 bottom dollar that doctor would have been in this courtroom

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2 testifying, not just because we want to speed things along.
3 Is that a reasonable thing to say? Come on. Common sense
4 and good judgment, of course they would have had the doctor
5 in here if they disagreed with anything I said.
6 I was very careful in the opening statement, I laid
7 it out completely. I happen to agree with what Mr. Baxter
8 said when he said make them prove it. That's right, I
9 proved everything I said. And that's why they didn't call
10 one doctor, I'll good into that later, probably tomorrow
11 when I finish my summation.
12 But we hear things that are overstated. Jim
13 Gregware up 24 hours, it's 20 hours if you add it up, but so
14 what if he this took a little liberty with this, it's not
15 fair, it's not right.
16 So when I say credibility, when you evaluate the
17 believability and credibility, that is all that we have as
18 lawyers. When we come into a courtroom such as this, before
19 her Honor and we present proof to you, all we can do is do
20 it honestly, do it fairly and do the right thing.
21 Now, if I said to you how do we go about
22 determining what happened here? Well, there's an exhibit.
23 There's an exhibit. I had asked Rubin Davydoff a question,
24 during the first few questions when I started off with him,
25 the City inspector.
26 And you recall what I asked him, I know you

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2 remembered this very carefully, because I asked him:
3 Did you create any diagrams, did you draw any
4 diagrams? Do you remember this one, you all remember that.
5 Did you draw any diagrams?
6 His answer, no.
7 Did you draw the traffic plan?
8 No.
9 Did you draw it for anyone as it existed at the
10 time?
11 Answer no.
12 Well, we asked the same question to Mario
13 D'Abruzzo. Mr. D'Abruzzo, and I was very clear on this, I
14 actually took that deposition:
15 Did you draw any diagrams of the traffic pattern as
16 it happened?
17 Answer: No.
18 Did you draw any diagram, any sketches?
19 Answer: No.
20 If you take a look at this and you compare the
21 writing on this Exhibit 4, which is what Mr. D'Abruzzo
22 wrote, you can see clearly the writing is one in the same.
23 So I knew what was going on when I studied it hard, and I
24 knew that if I confronted Mr. Davydoff with it, sure enough,
25 he's going to say yes, we both drew it.
26 So when did they draw it? When did they draw this

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2 diagram? Was it two or three days after the accident, or
3 was it four months after the accident? Doesn't really
4 matter, but the thing that matters about it is why was it
5 drawn at all?
6 In other words, why are they drawing this? They
7 both denied drawing it, they both told less than the truth.
8 So when we focus on what Mr. Wang was saying,
9 credibility? Credibility, Mr. Wang? Really? Your own
10 witness lied.
11 And to Mr. Baxter: Your own witness lied. Is
12 that appropriate? They both told less than the truth.
13 But the exchange is really what I want to point
14 out. This is what we asked of Mr. Davydoff right here in
15 this courtroom.
16 "QUESTION: Tell us the reason why you were meeting
17 with Mario D'Abruzzo four months after the accident?
18 To go over what happened?
19 "QUESTION: For what purpose were you doing that?
20 "ANSWER: Just for my -- I don't know what purpose.
21 (Continued on the next page.)
22
23
24
25
26

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 2 MR. RUBINOWITZ: And I asked him: "For what
 3 purpose were you doing that?
 4 And he said: "Just for my -- I don't know what
 5 purpose."
 6 That's what he said. I don't know for what
 7 purpose.
 8 So I asked him, do you remember this just for the
 9 heck of it? Just for the heck of it. Then we got some more
 10 answers, and that is what we got:
 11 "You told this jury that the accident did not
 12 involve the City of New York?
 13 "Yes.
 14 "Then anything that happened concerning the
 15 accident would be Burtis' fault not the City? Again, let's
 16 point the finger at Burtis, away from the City.
 17 His answer was: "Maybe."
 18 "And in fact, sir, four months afterwards, you are
 19 discussing this whole event with Mario D'Abruzzo, right?"
 20 And his answer was: "Yes."
 21 So then I asked him, of course, the natural
 22 question that would flow from that: "So if the City had no
 23 involvement whatsoever, think about this, if the City had no
 24 involvement whatsoever, why in the world would you want to
 25 draw a diagram to note what existed to the happening of this
 26 accident?"

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 2 D'Abruzzo was there at the time. Of course, he was because
 3 the police asked him to move after accident. And he
 4 admitted he was there. So why in the world is this
 5 happening? They are drawing the diagram, trying to show you
 6 there is the attenuator truck here, here, there are all of
 7 these signs. Why didn't any of these people see any of
 8 these signs? Why didn't they see it? Here is the answer,
 9 blame it on Jim Gregware. That's what the City says, blame
 10 Jim Gregware. When does the nonsense stop?
 11 Remember at jury selection when I said to you, can
 12 you cut through the nonsense? And every one of you said I
 13 will do that, cut through the nonsense and see where it is.
 14 Remember that? I was very clear about it. Take a look at
 15 it. This is not the kind of case that I remember doing this
 16 where the truth is somewhere in the middle of two different
 17 stories where you can sort of reconcile it. There is no way
 18 to reconcile this. What they are saying is blame it on Jim
 19 Gregware for what we did not do, for what we did not do.
 20 Now, Mario D'Abruzzo, people referred to him as a
 21 colorful guy, I agree. He is a colorful guy. That's a nice
 22 way of putting it. Mario D'Abruzzo was questioned, the
 23 first deposition I questioned him personally, and I asked
 24 him this question, and you remember this one too, but this
 25 is the one that speaks volumes in this case. This is the
 26 one that is so important to this case, because this one

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 2 And his answer was, think about this one: "Just
 3 for myself, just for myself."
 4 Does that make sense?
 5 So I asked him: "Just for yourself? Just for the
 6 heck of it?"
 7 And his answer was: "Yes, yes, just for myself,
 8 just for the heck of it."
 9 Ladies and gentlemen, who believes that? Who
 10 believes that? When Mr. Wang, and I happen to agree with
 11 him when he talks about credibility of witnesses, who
 12 believes that? I wonder if Mr. Wang even believes that when
 13 his own witness said something like that. Is it believable?
 14 Is it reasonable? Why in the world are they trying to deny
 15 justice to Jim and Eileen Gregware? Why are they trying to
 16 do that so badly? Why is it that they come in here and deny
 17 that they drew these diagrams when they drew diagrams? What
 18 are they doing that?
 19 And if you take a look at this diagram, look at
 20 where he places this, about 80 feet away where the accident
 21 happened. Wrong. The tapering and transition, did they say
 22 oh, it's so far down, it never happened in this area. Look
 23 at what they are doing. These guys don't even know where
 24 they set up the traffic pattern. They had a one-lane
 25 closure, when, in fact, there is supposed to be to lanes.
 26 No, question about it. And there is no question that March

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 2 really answers what is really going on here. And I said to
 3 him: "Mr. D'Abruzzo, from the date, May 20th, and I'm going
 4 to tell you that's the day of the accident." And Mr.
 5 D'Abruzzo cuts me off. He cut me off. Right away he said
 6 this: "Stupid question. Stupid question. Could you
 7 remember what you did that day?" And I said to him: "Well,
 8 if there was a big accident." And he said: "Come on, come
 9 on. Come on. Realistically can you remember? I cannot
 10 remember."
 11 Mario D'Abruzzo told us the first day of testimony
 12 he couldn't remember what happened. And then he remembers
 13 in detail. So when, Mr. Wang puts up my opening statement
 14 for what Mario D'Abruzzo said, not even his own testimony, I
 15 don't blame you for putting up what I said because you can't
 16 follow what he said, so I don't blame Mr. Wang for doing
 17 that. But at the very bottom of what Mr. Wang put was,
 18 except for one thing he testified to, Mr. Wang left that
 19 out, and that was, except for one thing, it never happened.
 20 That Mr. Wang left out.
 21 So, when you ask Mr. D'Abruzzo what happened first
 22 day, stupid question. I have no idea what happened, but
 23 then he seems to remember everything. Why? Isn't the
 24 answer obvious as to why? Because somebody is being peppy,
 25 and that's the problem. Somebody is trying to deny justice
 26 to Jim and Eileen Gregware, and that's not right.

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 2 Now, we are not blaming the police officer for the
 3 way traffic pattern was set up. I want you to know that I'm
 4 not, but there is something that happened in this courtroom,
 5 and that is a very unusual thing that has happened in this
 6 courtroom, in any courtroom, there was a statement made more
 7 than 200 years ago a statesman, a man by the name of Burke,
 8 statesman in Europe, and this is what he said: Of this, it
 9 is difficult to speak, but it is impossible to remain
 10 silent.
 11 Before that police officer took the witness stand,
 12 I read to you his deposition. When I read that police
 13 officer's deposition to you, weren't you glad to finally be
 14 hearing the testimony of a police officer? Didn't you want
 15 to hear what the police officer had to say about what
 16 happened here? Didn't you want to hear that? And in fact,
 17 I read it carefully. Could you believe what you were
 18 hearing? I don't remember. I don't know. I have no idea
 19 to every question that was asked. But here is the thing,
 20 the police officer was represented by counsel, a different
 21 counsel, not Mr. Wang and his gang, but somebody else,
 22 somebody else represented by others with a police report in
 23 front of him the first time he was questioned four years
 24 after the accident, with the police report in front of him
 25 and he still didn't remember what happened.
 26 Five years after, we questioned him again, and you

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 2 times. That's Mr. Wang's firm, five times. He pointed
 3 things out to you, and now all of a sudden, after pointing
 4 things out, your memory is getting better? Yes, it is. Who
 5 do we know was not there at the time of the accident? All
 6 of these lawyers, all of them right there, all the lawyers
 7 from Simpson Thacher, they were not there, but something is
 8 happening and this is terrible. This is something that
 9 should not be accepted by you no matter what, all in an
 10 effort to deny Jim Gregware and Eileen Gregware justice in
 11 this case. Is that appropriate ever? Really? His memory
 12 is getting better.
 13 They showed you things. How about that? Did you
 14 speak, and after speaking, although you didn't remember
 15 anything four and five years after the depositions, you
 16 didn't know, your memory is getting better. Since then, it
 17 has gotten better. Are we really going to believe that?
 18 Are we really going to do that? Isn't that absurd to do
 19 something like that? I don't blame Mr. Wang for not
 20 mentioning Police Officer Pagano in his summation. I would
 21 want to hide also. I would want to hide also. I don't
 22 blame Mr. Baxter at all for saying don't attach me to him.
 23 I don't blame Mr. Baxter for doing that. I wouldn't want to
 24 be attached to him either. Talking about your recollection,
 25 so now that we know after discussing the theory of the case
 26 with these lawyers, all of a sudden your memory improves?

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 2 know we are thorough when we questioned him, this time with
 3 his memo book in hand, and he still could not remember. But
 4 it's not just that he didn't remember, because when asked
 5 where did it take place? And the answer was: Where did the
 6 accident take place, 72nd, 73rd, 74th or higher, and his
 7 answer was not that I don't remember, his answer was: I
 8 have no idea. Now, there distinction between somebody who
 9 doesn't remember something and somebody who has no idea.
 10 Because if you don't remember, maybe something would refresh
 11 your recollection like the police report or your memo book,
 12 but it didn't, but he said I have no idea. Then something
 13 happened, and that is the part of the case that I have a
 14 terrible, terrible problem with. If it's all about
 15 credibility, the way that Mr. Wang said, all about
 16 credibility, Mr. Wang, I don't blame you for being looking
 17 down, all about that, why in the world is a police officer
 18 allowed to take the stand and tell less than truth? Why is
 19 that allowed to happen in this courthouse? Yes, I
 20 questioned him at length. This man is supposed to be part
 21 of New York's finest. I will tell you this, I have a lot of
 22 respect for New York City Police Department and its
 23 officers, and we all should, but that man is not one of New
 24 York City's finest. If anything, he is one of New York
 25 City's worse, and I will tell you why.
 26 How many times did you meet with counsel? Five

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 2 Since that time my memory as improved. What has gotten
 3 better about his memory? What happened? And now all of a
 4 sudden, the specifics are not what's contained in the police
 5 report, because he didn't remember anything in the police
 6 report. He didn't remember where the accident took place.
 7 He didn't remember if there were signs. He didn't remember
 8 anything. He comes into court and remembers a sign,
 9 remember that? So I asked him about a sign: Where was the
 10 sign? He can't tell us that. Probably a hundred feet from
 11 the accident location. Did you walk the hundred feet, you
 12 parked your car, all of this? Why are we spending time on
 13 this when I asked him questions, and I when I said to him,
 14 could you tell us what's overhead? He can't tell you.
 15 Could you tell us if it's to the right, to the left, I can't
 16 tell you. Can you tell us size, is it ten inches, 12
 17 inches? I can't tell you. What kind of nonsense is this?
 18 And shouldn't we really cut through the nonsense. It is
 19 infuriating to me that they would go this far to try and
 20 change the testimony of an officer who stated under oath
 21 hundreds of times that he didn't remember, that he didn't
 22 know.
 23 MR. WANG: Objection.
 24 THE COURT: Overruled. Go ahead.
 25 MR. RUBINOWITZ: Stated hundreds of times that he
 26 didn't know, that he didn't remember over the course of two

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 2 depositions, two days worth of questioning, and now all of a
 3 sudden he remembers? What in the world is going on?
 4 I asked him, from what source did you recall it?
 5 From my memory. Just pulled it out of your brain, right?
 6 And he said to you, correct. Just pulled it out of your
 7 mind.
 8 Ladies and gentlemen, this is a problem. In June
 9 2010, he knew nothing. In 2011, he knew nothing. We read
 10 the deposition to you, and now all of a sudden his memory,
 11 and he said this, is progressively getting better. He used
 12 the word "progressively," and yeah I jumped on that word
 13 when he used it, because I was so infuriated that an
 14 officer, again, who was duty bound to uphold the law would
 15 come into this courthouse, come in here and somehow tell you
 16 that it is okay to speak with lawyers who weren't there and
 17 then have memory. So here is the question:
 18 "Certainly, the lawyers they told you what their
 19 position in the case was?
 20 "ANSWER: Yes, they have.
 21 "As times goes on your memory gets better?
 22 "Yes."
 23 Then I asked this question, and here is one of the
 24 most important ones, and this is the part that I have the
 25 biggest problem with, and this is why I say: Of this, it is
 26 difficult to speak but it is impossible to remain silent.

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 2 here, when an expert comes in to testify, we present the
 3 expert. There is a reason we present an expert, for
 4 example, Dr. Hirschman. We present an expert, because he
 5 has certain knowledge about orthopedics that we don't have.
 6 And he can certainly explain in detail for you exactly what
 7 happened, and the defense had an opportunity to have their
 8 doctors come as well and to explain things to you.
 9 Do you recall Mr. Fitzpatrick, William Fitzpatrick,
 10 yes, he has been the director of the Department of
 11 Transportation for more than 30 years. He knows how traffic
 12 pattern should be set up. I wanted you to hear how it
 13 should be set up and why it makes a difference. And that's
 14 why he was called. But then the City of New York calls
 15 another witness. Did you notice, you didn't hear one word
 16 about the expert witness that the City called, not one word.
 17 Why did Mr. Wang, who is so thorough, he is an excellent
 18 lawyer, why did he leave that out of his summation? Why did
 19 he leave that out of his summation? Ali Sadegh, he did a
 20 full, fair, thorough and complete evaluation, didn't you?
 21 Answer: "Yes."
 22 "To the extent you didn't do that, that would be
 23 improper, wouldn't it Dr. Sadegh?" "Yes."
 24 I couldn't take to call that man a doctor. I find
 25 it offensive. Full, fair, thorough and complete. That's
 26 what he said, right.

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 2 "Did anyone feed you information about what
 3 happened other than your attorneys? Other than your
 4 attorneys?"
 5 "ANSWER: No."
 6 That's what he testified to under oath. That's a
 7 quote.
 8 Ladies and gentlemen, when a police officer comes
 9 in this courtroom and a police officer comes in here and is
 10 fed information by his attorneys, his attorneys who he knows
 11 for a fact were not there, and they are telling him what
 12 happened and then Mr. Wang stands up and says, oh, he knows
 13 exactly where the accident happened --
 14 MR. WANG: Objection.
 15 THE COURT: This is fair comment on the evidence.
 16 MR. RUBINOWITZ: Mr. Wang tells you, he certainly
 17 knows, he puts up these charts. They are beautifully done.
 18 I admit that, but the problem is this, you have an officer,
 19 an officer who is duty bound to uphold the law is doing
 20 something that is so terribly wrong, and I'm trying to tell
 21 you because it is so wrong for an officer to swear to tell
 22 the truth and tell less than the truth under oath, it's
 23 wrong. It should never, ever be allowed, and that's the
 24 problem.
 25 You know, it's worse than that. And the reason I
 26 say it gets worse than that is this, an expert comes in

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 2 So, the first thing you learned is that this man
 3 learned how to read X-rays I thought in two days, because I
 4 did a lot of homework on this guy, and you know I did,
 5 right? Two days is what he testified to in the past. I
 6 found out something different. I made a mistake. It was a
 7 half a day, from an automotive school. That's where he
 8 learned to read X-rays. He took a course at Columbia, so he
 9 could certainly testify about the medicals, for a few weeks.
 10 The course at Columbia, unlike the medical students who were
 11 there, there is not even a transcript of him anyplace if you
 12 were to ask for it from Columbia. Why? Because Ali Sadegh
 13 did not take any tests in the class. He didn't pay for the
 14 class. He sat in and, that's what he based his expertise
 15 on. So I say to you, did that man deliberately overstate
 16 his credentials to you? A man who comes in here and tells
 17 you he knows how to read X-rays based on one half day study,
 18 and one CAT scans, and he testified to in the past. I feel
 19 bad for the people who he has testified for in the past or
 20 against, I should say. Think about what is going on here.
 21 My mother, may she rest in peace, had a saying for
 22 somebody like this. And the saying that she used was
 23 something that's appropriate as that statement that I was
 24 using from Mr. Burke, and she said, if somebody does
 25 something like, that they are a phoney baloney, and he is a
 26 phoney baloney. That's what that expert is. But it get

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 2 worse, it gets worse. Remember I questioned him about the
 3 prices, his own prices. You saw it. We have it here. He
 4 tells you I have a minimum of four hours, and I pointed out
 5 to him no, no, no, that's not what your price list says,
 6 your price list says eight hours. That's what you are
 7 charging for. And you have a minimum, remember this, the
 8 minimum, what does he want? He want a minimum of \$2,500,
 9 and then he talks about \$3,300 per day. He's got a minimum.
 10 We learned that, right? Was that surprising to you when you
 11 see somebody like this coming into court? You need an
 12 opinion, he will give you an opinion. Pay for it, he will
 13 give you an opinion. Is that fair? Is that reasonable? Is
 14 that right? Is that acceptable to you as jurors.

15 I'm asking you when you go into the jury room to
 16 say this, is it appropriate for the City of New York to
 17 stoop so low to call somebody like Ali Sadegh to deny Jim
 18 Gregware and Eileen Gregware justice. Is that ever, ever
 19 appropriate in a courtroom like this, to do something like
 20 that? The answer is, of course, not, of course not.

21 We learned something about the payments when I
 22 questioned him, who is your biggest client? You all know
 23 the answer to that one, right? Who is your biggest client?
 24 The City of New York is the biggest client. No surprises
 25 there, right? Would you like to keep the cash register
 26 rolling? Sure, who wouldn't.

1 Summation - Mr. Rubinowitz
 2 Well, there are certain vessels that we have, those little
 3 capillaries, those tiny, little capillaries that connect
 4 obviously to the layers of the brain together. And when the
 5 brain shakes within the skull, they separate. And as it
 6 bleeds, there is no place for the blood to go, except to go
 7 out to the skull and then compress back in the brain cells,
 8 and that will cause either subdural, an epidural bleed,
 9 subdural hematoma, something very, very dangerous, so they
 10 had to rule that out, and they did rule it out. And they
 11 realized that they ruled it out by saying "unremarkable."
 12 But Dr. Sadegh didn't bother reading the rest of the report.
 13 All he saw was bleed. In other words, rule out the bleed,
 14 and now he is stuck with it. So he still goes with it. He
 15 still goes with it.

16 Look what he does. He circles an area on the car.
 17 He circles this. Look at how low it is. I just want to
 18 show you this, see where the circle is, close to the
 19 dashboard. Do you see that? It's circled. It's supposed
 20 to have scientific value, right? So I asked him, why did
 21 you circle this? Could you believe the answer? I don't
 22 know. I don't know. I circled that. That has no meaning.

23 All right, ladies and gentlemen, we said to you in
 24 jury selection, and I know you remember this, and I remember
 25 talking to you about this, and you were sort of smiling
 26 while we were talking about it, common sense and good

1 Summation - Mr. Rubinowitz
 2 Now, this got a little bit silly, and I have to
 3 tell you I didn't want to stop, and the reason why I didn't
 4 want to stop is because this man should not be coming into
 5 courts in the State of New York, New Jersey, Philadelphia or
 6 any other state in the country, this man should stop. It is
 7 not right. When you put on a phoney baloney on the witness
 8 stand, it is not right, and that man should not be
 9 testifying at all anymore.

10 Look, at the overstated qualifications. He is a
 11 member of the, whatever it was, American Inventors Society.
 12 That's impressive when you hear about it until you realize
 13 that anyone can joint, no qualifications at all. You pay
 14 and you are in. And how many courses did you go through?
 15 Show me. If you take a look at some of the substance, and
 16 we have the CAT scan report here, you know what the CAT scan
 17 report showed. You the CAT scan report showed that there
 18 was no brain bleed, no brain bleed. Actually this is the
 19 spot, and I will show it to you later. What they are doing
 20 is they are ruling out is bleed, and here is where he made
 21 the mistake and didn't want to live up to it. If there is a
 22 bleed in the substance of the report, it will list where the
 23 bleed is. So, for example, if the head hits the windshield
 24 with sufficient force to fracture that windshield, you are
 25 going to have a contrecoup. Contrecoup is when the brain
 26 actually shakes within the skull, and that's what he did.

1 Summation - Mr. Rubinowitz
 2 judgment, right? You all remember that very carefully. If
 3 your head hits the windshield with sufficient force to cause
 4 it to fracture, to shatter, do you think maybe, just maybe
 5 you would have an injury to your head? And he is saying
 6 that took place in the first accident, fender-bender. So,
 7 of course, Jim Gregware gets out of his car, not knocked out
 8 or anything. Ladies and gentlemen, if you took your hand
 9 and you make a fist and you slammed it down on a windshield,
 10 windshield might not crack, your hand would, but he comes in
 11 here and he tells you, no, not unusual, it's not an unusual
 12 thing to have happened. If somebody's head hit the
 13 windshield with sufficient force to cause it to fracture, to
 14 shatter, it's not an unusual thing for there to be ho head
 15 injury. Are you kidding me? Are you kidding me, Dr.
 16 Sadegh? Dr. Sadegh, are you proving once again that you are
 17 a phoney baloney, because that's what you are, when you are
 18 going to say that to us. And then when I asked him about
 19 it, this is what he said: Why did you circle this? I asked
 20 him, why did you circle it? This is his answer: At the
 21 time I just circled it. I mean -- listen to this answer.
 22 This is an unbelievable one. "At the time I just circled
 23 it. I mean, this is my so-called detention. What does that
 24 mean, this is my so-called detention?"

25 "Did you just tell that jury a moment ago that you
 26 didn't know why you circled this?"

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1 Summation - Mr. Rubinowitz
 2 "ANSWER: I don't remember."
 3 What is going on here? Why is that ever
 4 appropriate? All to deny Jim Gregware and Eileen Gregware
 5 justice. And here is the point I'm making with this.
 6 Ladies and gentlemen, integrity is all we have as
 7 lawyers. That's it. That's all we have. We come before
 8 you. Either you choose to believe us or choose to disregard
 9 what we say, right? That's all we have. You put a witness
 10 on the stand, and then you try to make closing compelling
 11 argument about things, and you have to say, why in the world
 12 should I believe that?
 13 (Continue on the next page.)
 14
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1 Summation - Mr. Rubinowitz
 2 people were injured.
 3 How many people were injured? Number injured:
 4 Eight. Eight people were injured.
 5 So why in the world is this appropriate? And why
 6 in the world should we ever allow something like that to
 7 happen, in this courthouse before you, our jury? This is
 8 wrong to have a man like this come in.
 9 So, did Mr. Albahri hit the windshield?
 10 I don't know.
 11 Did Mr. Valarezo hit the windshield?
 12 I don't know.
 13 What were Mr. Valarezo's injuries?
 14 I don't know.
 15 But he sure knows exactly what Jim Gregware was
 16 doing, even though the hospital record says he was belted in
 17 the first accident.
 18 Let's ignore that, we have to trust Dr. Ali Sadegh?
 19 He didn't even read the depositions and he comes in here to
 20 try and render expert opinion.
 21 Ladies and gentlemen, it is so wrong that it's
 22 offensive, and the reason I'm spending time on it is because
 23 of this. My client, Jim Gregware asked me to try to do the
 24 best I could for him, and that's what I'm trying to do, the
 25 best I can for him, same thing with Eileen.
 26 And when you don't know who the witnesses are and

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1 Summation - Mr. Rubinowitz
 2 TAKE 10
 3 MR. RUBINOWITZ: (Continuing) Okay. A full, a
 4 fair, a thorough, a complete job. He said he did all of
 5 those things, and he said if he didn't do that, it wouldn't
 6 be appropriate.
 7 Did you read the trial testimony, Dr. Sadegh? No.
 8 Did you read the depositions carefully? He started
 9 to tell you he did.
 10 Then I asked him who's Aileen Marquez? He didn't
 11 know. Maybe he didn't have to know who that was, because he
 12 didn't read the trial testimony, but he's coming in to give
 13 expert opinion.
 14 How about this one?
 15 Who is Ruben Davydoff?
 16 I don't know.
 17 Are you kidding? You don't know, and you're coming
 18 in to give testimony?
 19 Mario D'Bruzzo?
 20 I don't know.
 21 Sudhir Jariwala, I don't know who he is.
 22 Really? You really read all these depositions, and
 23 you don't know who these people are? How many people were
 24 injured?
 25 How many people were injured?
 26 The answer: Two. That's what he told you, two

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1 Summation - Mr. Rubinowitz
 2 you don't know what was going on and you offer testimony,
 3 it's inappropriate.
 4 Now, I realized with Mr. Baxter, in summation --
 5 and he gave a beautiful summation. When he said I tried to
 6 put it together, I don't know why it was called, I give him
 7 credit to at least try to put it together. But you can't
 8 put anything together with Dr. Sadegh, because it doesn't
 9 work. When he tells you I read in Jim Gregware's deposition
 10 that he walked to the back of his car, he doesn't even know
 11 the first thing about the facts in the case, and that's
 12 what's so offensive about this and that's why I have so much
 13 trouble with it.
 14 How in the world can you not even know that? But
 15 you expect us to believe you? So, yes, if I was Mr. Baxter,
 16 I would say please, don't link me to him. That's the City's
 17 witness.
 18 And for the City not to tell you one word about Dr.
 19 Ali Sadegh, doesn't that speak volumes to you that they want
 20 to divorce themselves from him as well?
 21 Mr. Wang read to you from my opening statement. I
 22 have no problem with that, he can read from my opening
 23 statement. I'd like to return the favor and read from what
 24 he said to you. And this is what he said he would prove to
 25 you and this is what he said loud and clear when Mr. Wang
 26 spoke. He said this:

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1 Summation - Mr. Rubinowitz
2 Now, for this road work the City did everything
3 that it was supposed to to insure traffic safety. I'll read
4 it again.
5 For this road work the City did everything that it
6 was supposed to to insure traffic safety.
7 Okay. So let's go through it. They did everything
8 they were supposed to.
9 We know the City of New York is supposed to have an
10 engineer in charge. I asked Mr. Davydoff that:
11 Are you supposed to have an engineer in charge?
12 Yes, absolutely. So that they could look, because
13 after all, safety is the most important concern, everybody
14 agrees with that. So that's the first thing, and I ask you
15 to take this into the juryroom with you, engineer in charge.
16 Number 1. Where's the engineer in charge? Where
17 are they? Where is this person? Who is this person? Why
18 wasn't Sudhir Jariwala even called to the stand.
19 Why didn't you call him, Mr. Wang? Why didn't you
20 produce him? Don't you see why? Mr. Jariwala wasn't there
21 that day, he wasn't there that night, he has no idea what's
22 going on.
23 Take a look at Exhibit F. Mr. Baxter read this to
24 you. Mr. Jariwala and it just says, I've complied with all
25 the instructions pertaining to the responsibilities. This
26 is what he says, and basically he's making an affidavit and

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1 Summation - Mr. Rubinowitz
2 he's saying that he's familiar with the specifications and
3 he knows it and they complied with everything, signed by
4 him, sworn to him, they complied with all of the things that
5 they were supposed to do, except he wasn't there.
6 So how do you possibly sign an affidavit indicating
7 that you complied with everything when you weren't even
8 there? How do you do that?
9 How do you do that, Mr. Wang? Why is that
10 appropriate?
11 In other words, why is it okay for them to do
12 something like this? It's not. Let's deny justice to Jim
13 Gregware, let's blame the victim. That's what's going on
14 here.
15 So number 1. We don't have an engineer in charge.
16 If the engineer in charge is really supposed to take care of
17 safety, I ask you this, is that an intentional disregard of
18 a known risk?
19 These are the important questions in this case, not
20 just negligence, these are the important questions.
21 Intentional disregard of a known risk. If you're
22 supposed to have an engineer in charge there, and you don't,
23 intentional disregard of a known risk? Yes, of course.
24 Reckless disregard for the safety of others? Yes,
25 of course.
26 Is it highly probable that harm will follow? If

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1 Summation - Mr. Rubinowitz
2 you're not going to check out the safety plans, reckless
3 disregard is it highly probable that harm will flow to the
4 motorists? Of course.
5 Done with conscious disregard? How could it be
6 anything other than a conscious disregard for the safety of
7 others? That's number 1. That's just number 1.
8 You heard this. Mr. Davydoff admitted to you that
9 was a departure. He's already admitted negligence, that's
10 not an issue anymore. He admitted that.
11 Number 2. Inspector. They are supposed to have an
12 inspector. This is equally important. If you're really
13 supposed to have an inspector to inspect what? To inspect
14 the traffic plan, to make sure it's set up right.
15 Mr. Davydoff, did you ever learn how to read the
16 MUTCD? What did he say in effect? No.
17 Did you study the maintenance protection of traffic
18 plan?
19 No.
20 Did anyone from the City ever teach you?
21 No.
22 Did anyone ever instruct you what to do?
23 No.
24 Did you have a copy of the MPT, the maintenance
25 protection plan with you on the very night of this accident?
26 No.

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1 Summation - Mr. Rubinowitz
2 Ladies and gentlemen, if safety truly is the most
3 important concern, is that intentional disregard of a known
4 risk, not to have an inspector there? An inspector who is
5 charged, and I happen to agree with Mr. Baxter, charged with
6 the ability to shut down the project if in fact it's set up
7 improperly.
8 If that's right, and I agree with Mr. Baxter, if
9 you are charged with the responsibility to shut down the
10 project, don't you think you should know how to properly set
11 up the project? Of course.
12 So that's why I say this, is it a reckless
13 disregard for the safety of others to send out a man who
14 doesn't know the first thing about inspecting the traffic
15 plan?
16 The answer is yes. That's intentional. That's
17 intentional, to send someone out who just doesn't know, and
18 you know you're sending somebody out who doesn't know.
19 Is it highly probable that harm will follow? Of
20 course. It's like having Ali Sadegh read x-rays and making
21 a diagnosis. It's absurd. You can't send out somebody who
22 doesn't know. It's absolutely wrong to do something like
23 that.
24 Done with a conscious indifference to the outcome?
25 Yes, of course. So that's number 2. That's the one I want
26 you to go in there, number 2.

1 Summation - Mr. Rubinowitz
 2 He admitted he's not an inspector, you heard him
 3 say I'm not an inspector, I'm just a checker, let me
 4 distance myself.
 5 Remember when he said that. If you're really just
 6 a checker and the City didn't send out an inspector and he
 7 admitted he's not an inspector, he's already admitted it.
 8 Number 3. The MUTCD. Is he familiar with the
 9 MUTCD? No, of course not.
 10 Did he even have it with him? No, of course not.
 11 Where was it? He said I have access to it.
 12 How do you check, even if you drive by and you
 13 don't have it with you to check what signs should be there,
 14 where they should be, where the transitions and tapers
 15 should be?
 16 If you're really truly concerned about the safety
 17 of motorists, shouldn't you really have that? Of course.
 18 Makes sense, doesn't it? Right. Because if you don't have
 19 it, you know harm's going to happen. Departure number 3.
 20 Departure number 4. The MPT. Their own contract,
 21 Exhibit 3. Here it is. When we first got this we looked at
 22 it. And we looked at it and studied it very carefully and
 23 we wanted clean copies of that, so send us one that we can
 24 read, because you can't read that, and then we found out
 25 that's what was sent to Burtis Construction.
 26 Burtis got exactly what we got. So even if Mario

1 Summation - Mr. Rubinowitz
 2 so important for this case, because what happened here was
 3 really far beyond just negligence.
 4 This was intentional conduct. Intentional on the
 5 part of the City not to have an appropriate traffic plan,
 6 not to have an inspector, not to have an engineer in charge.
 7 And then we get to something else. The contract.
 8 You saw what the contract read about drums. This is what it
 9 says. But before I read this to you, you know one thing.
 10 Mr. Wang even admitted it in his summation, no deviations,
 11 no exceptions. He told you that.
 12 So it says the closure schemes herein utilized for
 13 daily lane closures. For lane closures during hours of
 14 darkness, the contractor shall substitute all cones with
 15 drums.
 16 We know one thing for certain. We know there were
 17 cones there. When we asked Mario D'Abruzzo, Bruce, whether
 18 there were drums, he was talking about cones. If you just
 19 read this paragraph alone, Paragraph 20, we would know that
 20 there were cones not drums.
 21 It's a departure once again, another departure, I'd
 22 ask you to take that into the juryroom with you as well,
 23 because it's another departure from what they should be
 24 doing.
 25 And if you take a look at a photograph, I want you
 26 to see this. There's only one photograph of the night in

1 Summation - Mr. Rubinowitz
 2 D'Abruzzo wanted to read this, which he didn't, he kept it
 3 in his trunk anyway inside a suitcase, but even if he wanted
 4 to, he couldn't have read that.
 5 So look at what's going on. We send you something
 6 like this you can't read. What does this stuff say over
 7 here? What is that? (Indicating.)
 8 That's the way the City says you know what, we're
 9 going to insure traffic safety. We're going to make sure
 10 the roadways are safe for everyone. Nonsense.
 11 I'm asking you again, please, I implore you, cut
 12 through the nonsense here, it has to stop now, it's time to
 13 say to Jim Gregware and Eileen Gregware, of course you've
 14 proven your case and of course the conduct was reckless.
 15 So I ask you not having the MUTCD, Manual For
 16 Uniform Traffic Control Devices and the MPT. Maintenance
 17 Program Plan, also departure, but intentional disregard of a
 18 known risk. Yes.
 19 Disregard for the safety of others, yes.
 20 Highly probable that harm will follow if you don't
 21 make an effort to set it up appropriately. Yes.
 22 Done with a conscious indifference to the outcome.
 23 Yes.
 24 Those questions I've just been pointing out, you
 25 heard Mr. Wang mention the verdict sheet, I'm going to get
 26 to that, probably tomorrow. But I will tell you those are

1 Summation - Mr. Rubinowitz
 2 question that was taken by them the night in question.
 3 Taken by Mr. Davydoff or from one of the crew from Burtis.
 4 First of all you, can't identify where this is any
 5 place. But what's over here? I know it's sort of difficult
 6 to see, but I'll pass it around so you can see it on this.
 7 Look what's there. There's no issue about it, that
 8 is not a drum. And that is not a drum with a light. Just
 9 look what it says also. Every second drum shall be lit with
 10 a type C, low intensity steady burn light.
 11 More departures. How many departures do we have to
 12 have? How many departures do we have to have before you say
 13 this was an intentional disregard for the safety of others.
 14 And that's what it was.
 15 Then you have Mario D'Abruzzo saying, what's the
 16 difference, I do this all the time, I know how to set it up?
 17 So where were the plans, Mr. D'Abruzzo? Where was
 18 the MPT? It's in my suitcase, I carry it with me in my
 19 suitcase.
 20 Did you ever take it out the night of the accident?
 21 No.
 22 Mr. Davydoff, did you ever look at it on the night?
 23 No.
 24 How is that protecting the safety and well-being of
 25 the motorists?
 26 But that's what they tell you, that's what they say

1 Summation - Mr. Rubinowitz
 2 they are doing, they are protecting the safety and
 3 well-being of the motorists.
 4 I'll start this and we'll probably continue my next
 5 position tomorrow, but let me just start right now.
 6 How do we prove to you that there were not an
 7 appropriate amount of signs up, or no signs up at the time?
 8 If you remember what Police Officer Pagano said, we
 9 know that there was an accident at 2:45 in the morning. We
 10 know about that. He was the one who responded at 2:45. And
 11 in fact, when Officer Pagano responded at 2:45 in the
 12 morning, if we go to these portions right here, he
 13 responded, yes, he was in the northbound lanes.
 14 And when we asked him questions, for example, what
 15 did you see, what didn't you see at that time? We know the
 16 road work was going on at 2:45. At the top, 2:45 in the
 17 morning. We know it was going on then, so we asked
 18 specifically:
 19 "QUESTION: There were no signs that read road work
 20 ahead 500 feet. Correct?
 21 "ANSWER: That's correct.
 22 "QUESTION: No merge signs, correct?
 23 "ANSWER: None that I observed.
 24 "QUESTION: You would have written it down if they
 25 were there?
 26 "ANSWER: Yes.

1 Summation - Mr. Rubinowitz
 2 And there were none, correct?
 3 "ANSWER: Correct.
 4 "And there were none, correct?
 5 "ANSWER: Correct."
 6 What's the important part of this? Here's the
 7 important part of this. And I'll conclude this today, but
 8 here's what I want to show you. Here's the important part.
 9 Mr. Fitzpatrick showed us some things. And one of
 10 the things he showed us is where the taping would have been.
 11 It makes no difference if it's 79th, if it's 76th or if it's
 12 72nd. Why is that?
 13 I will show you why. Because with the tapering and
 14 transitions, you know, because we went through this in
 15 detail with Mr. Fitzpatrick, it should have been 3,000 feet
 16 of tapering and transitions. Right? 3,000 feet.
 17 So follow this argument -- and I promise you I'll
 18 break for the day after this, but follow this one very
 19 carefully.
 20 If in fact you have 3,000 feet coming back from
 21 75th, which is what they are trying to say, 75th, right?
 22 And going to number 5, because number 5 is the beginning of
 23 the taper.
 24 Put this one up, please. I'll stand on the other
 25 side.
 26 There it is, the beginning of the taper. Okay, so

1 Summation - Mr. Rubinowitz
 2 "And certainly you would have noted it in your
 3 report, so we can be clear that they were all there?
 4 "Yes."
 5 And then I asked:
 6 And it's not there?
 7 He said that's true, because there were no signs, I
 8 asked Officer Pagano in his report.
 9 Now, understand what's going on. In this report he
 10 didn't speak with Mr. Wang about it. He didn't speak with
 11 Mr. Wang about it. So on this one, certainly there's
 12 nothing to say about signs, so there were no signs there.
 13 Because there were no signs, right?
 14 "ANSWER: Correct.
 15 "Well, if they really set up the traffic pattern
 16 appropriately, and if it really took place at 77th Street,
 17 shouldn't he have seen signs?"
 18 And here's the point.
 19 How about barrels, or drums and drums with lights?
 20 And in fact, sir, the same thing with barrels, I asked
 21 Officer Pagano.
 22 If they were tapering the lanes, you would have
 23 noted it, true?
 24 Yes, that's correct.
 25 So we know for clarity, no cones, no signs, no
 26 barrels of any kind, or you would have noted it, correct?

1 Summation - Mr. Rubinowitz
 2 if number 5 is the beginning of the taper, where it should
 3 be.
 4 Let's go to the other one, and we come to number 5.
 5 Look where this is. If you take a look at this, West 61st
 6 Street. Number 5. That means the tapering and the
 7 transitions would have started at 61st Street.
 8 Now, why is everybody having such a tough time with
 9 is it 72nd, 79th? Because the West Side Highway doesn't
 10 have numbers on it, so everybody's trying to estimate where.
 11 But I'm telling you it doesn't matter, because even if you
 12 believe their testimony, you're back at, look at this, 61st
 13 Street, if you believe what they said. If it's a little
 14 bit higher, it's still 61st is it or 65th street. A little
 15 bit lower, you're back in the 50s.
 16 But the point I'm making is it would have been
 17 taper and transitions, and taper and transition, if it's
 18 done appropriately. If it's done appropriately.
 19 Now, the point is this, if you really do this
 20 appropriately, and you give the motorists sufficient time to
 21 actually see where it is that you're going, in other words,
 22 you let them know before you even get to the tapering, you
 23 have signs up on both sides of the road.
 24 Now, you have to believe that every one of these
 25 drivers was either blind or lying that they didn't see these
 26 signs up. And I'm saying even without the signs it doesn't

1 Summation - Mr. Rubinowitz
 2 matter because look where the tapering would start and it
 3 would continue.
 4 And that would mean these motorists would be
 5 driving through these barrels, if they were really up there
 6 the way they should have been, mowing down the barrels from
 7 61st Street onward.
 8 That's why I say it doesn't matter. But there's
 9 more than that. Because we know that the signs would have
 10 been even before that. So either way, it doesn't matter.
 11 Now, if you really look at this, what I'm saying is
 12 it doesn't matter if it's 79th, or 75th or 72nd. Okay, I'll
 13 explain this briefly.
 14 On the Notice of Claim, yes, we do have to submit a
 15 claim to the City within 90 days. We don't know exactly
 16 what happened in that time.
 17 So what do we do? We see a police report that says
 18 72nd Street. Jim Gregware doesn't know specifically what it
 19 is that his lawyer's submitting, he signs it. And we're
 20 basing it on the police report.
 21 And then we see their records have changed. 72nd
 22 to 79th. And that's exactly where it is, don't get brought
 23 away from this by a red herring. It's not important.
 24 Because if in fact they had cones and barrels, in this case
 25 only barrels and every second barrel with a light to alert
 26 the motorists, because it's nighttime, look at how far back

1 Summation - Mr. Rubinowitz
 2 (Whereupon, the jury exited.)
 3 (Whereupon the trial was adjourned till Tuesday,
 4 April 9, 2013, at 11:00 a.m.)
 5 * * *
 6 The foregoing is certified to be a true
 7 and accurate transcript of the proceedings in the
 8 above-entitled action.

11
 12 Alvin A. Nerlino, CSR, RPR
 13 Aldorine Walker, RPR
 14 Senior Court Reporter

1 Summation - Mr. Rubinowitz
 2 it would have been. And that's before you even get to the
 3 signs.
 4 I told you in my opening statement that this was a
 5 case about two things, a short-term contract, and I referred
 6 to it as shortcuts.
 7 Ladies and gentlemen, there is no question that the
 8 City of New York took shortcuts by not having an engineer in
 9 charge, by not having an inspector, by not reading the MPT,
 10 by not reading the MUTCD.
 11 There's no question about it, they were taking
 12 shortcuts and there's no question about it that there was a
 13 very serious accident. But the City is saying don't look at
 14 us, look at the victim.
 15 Now, I'm going to stop right here because I have a
 16 lot more to go, and I do thank you for your attention and
 17 I'll ask you to bear with me a little bit more tomorrow.
 18 Okay?
 19 THE COURT: All right. Once again, keep an open
 20 mind. You have not finished hearing the summations of the
 21 attorneys, you have not heard my charge on the law, you have
 22 not begun your deliberations.
 23 Don't do any independent investigation, or reading
 24 of any kind.
 25 See you tomorrow morning promptly at 11:00.
 26 THE COURT OFFICER: All rise.

In The Matter Of:

*Gregware v.
City of New York*

April 9, 2013

New York County Supreme Court

Original File 040913 Gregware.txt

Min-U-Script® with Word Index

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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK - CIVIL TERM - PART: 15
4 -----X
5 JAMES GREGWARE and EILEEN GREGWARE,
6
7 PLAINTIFFS,
8
9 -against-
10 THE CITY OF NEW YORK, BURTIS CONSTRUCTION
11 CO. INC. and ABELARDO DA-SILVA
12
13 DEFENDANTS.
14 -----X
15
16 Index No. 108013/07 80 Centre Street
17 New York, New York
18 April 9, 2013
19
20 B E F O R E:
21 HONORABLE EILEEN ANN RAKOWER,
22 Justice, and a jury
23
24 A P P E A R A N C E S:
25
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(Appearances continued...)

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1 Proceedings
2 (Whereupon the trial resumes.)
3 THE COURT: Do you want to make your motion now?
4 MR. WANG: Yes. I can state it more fully later.
5 THE COURT: Go ahead.
6 MR. WANG: The more succinct version for now?
7 THE COURT: Do whatever you need to do, Mr. Wang.
8 I anticipate what you're going to say, and I'm not going to
9 rule on it now.
10 MR. WANG: The City is moving for a mistrial based
11 on the improper comments made by Mr. Rubinowitz thus far in
12 summation.
13 I believe he's less than halfway through his
14 summation, but his summation has been filled with comments
15 and physical conduct calculated to influence the jury by
16 considerations not legitimately before them. This was a
17 deliberate effort to divert the jury's attention.
18 THE COURT: You're going to need to be more
19 specific, Mr. Wang. As far as I saw, he always stayed in
20 the well, he always stayed in the area that was in front of
21 the jury box.
22 So, did he do something I didn't see?
23 MR. WANG: Yes. I'll be more specific on that in a
24 moment.
25 The conduct I'm referring to was his standing by
26 the table over there and leaning over. His physical conduct

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2 also included --
3 THE COURT: Standing where? You're on the record
4 now.
5 MR. WANG: Standing by counsel table approximately
6 three feet from me, leaning over, making accusations
7 verbally, pointing with his finger at me.
8 THE COURT: You're talking about when he told you
9 to hang your head in shame?
10 MR. RUBINOWITZ: Did I say that?
11 MR. WANG: Saying, if I were Mr. Wang, I would be
12 looking down as well. He pointed at me and my colleagues,
13 Miss Nester, and Miss Mosirt (ph). He made comments
14 recognizing them, he made comments with racial overtones,
15 including comments of --
16 THE COURT: What kind of overtones?
17 MR. WANG: Racial overtones. Mr. Wang and his
18 gang, that comment; the Wang gang. He engaged in attacks on
19 opposing counsel. His attacks included, telling witnesses
20 what to say, and to commit perjury, and under the case law,
21 Rodriguez v. New York City Housing Authority, 209 A.D.2d
22 260 -- the attacks on counsel were repeated, they were
23 highlighted by physical conduct, some of which I have
24 outlined thus far.
25 His impropriety included vouching for his own
26 credibility with remarks about the importance of integrity,

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1 Proceedings

2 highlighting the importance of integrity among counsel and

3 openly suggesting that he had integrity and other counsel at

4 trial did not.

5 This conduct and these accusations filled most of

6 his 50 minutes of summation thus far. These were not

7 conduct in isolation, these were not conduct made in jest,

8 these were not comments made in a light tone.

9 His conduct and words were designed to implore the

10 jury to focus on counsel's credibility, counsel's conduct

11 and not the issues properly before them.

12 His summation has thus far had a continuing theme

13 of a personal attack on counsel for the City, charges of

14 subordination of perjury, suggestions of penal knowledge and

15 opinions on witnesses.

16 And again, we're not dealing with one or two

17 remarks but a continuous effort to divert the jury's

18 attention from the issues they are to determine.

19 For that reason, the City moves for a mistrial.

20 THE COURT: All right.

21 Let's bring in the jury, please.

22 THE COURT OFFICER: All rise. Jury entering.

23 (Whereupon the jury entered.)

24 THE COURT: Good morning, everyone. Please sit

25 down.

26 Mr. Rubinowitz, please continue your summation.

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1 Summation - Mr. Rubinowitz

2 MR. RUBINOWITZ: Thank you, your Honor.

3 May it please the Court, Judge Rakower, counsel.

4 Ladies and Gentlemen of the jury, good morning, and

5 thank you again for coming, for being our jurors.

6 What I'd like to do right now is I would just like

7 to recap some of what I said yesterday, so that I can make

8 it a nice transition as to what I plan on saying today.

9 When the lawyers speak, obviously there are times

10 when we speak there are times when we are heated and we get

11 angry, but please, understand there is no disrespect meant

12 for any of the attorneys, but we do have considered

13 positions in this case and those positions are very firm

14 ones, so that when we look at this and we see what is said

15 from the witness stand, that's where it really matters.

16 So if you remember Mr. Baxter had said in his

17 opening statement, make sure they prove it from the witness

18 stand.

19 Well, when Mr. Valarezo was asked about how many

20 signs he saw, the answer was one. One sign.

21 But when Mr. Baxter summed up, he said he said five

22 signs. Nowhere in the transcript, if you were to ask for a

23 readback, does it ever say five signs.

24 So, I just want you to know it's these kinds of

25 things that I'm focused on, because this is what is so

26 important in evaluating what truly did happen.

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1 Summation - Mr. Rubinowitz

2 When, for example, Mr. Baxter says 40 miles per

3 hour translates to 80 feet per second and he says it in a

4 very loud voice, that is not what was said. 40 miles per

5 second is 58 feet per second. 58.

6 What's happening, though, it doesn't mean its true.

7 But what I want to focus on is you've heard the proof from

8 the witness stand, you know what happened.

9 And one of the things I want to talk about, at the

10 very end of Mr. Wang's summation and the very end of Mr.

11 Baxter's summation, something very unusual took place. Mr.

12 Wang, if you recall was saying this, he was saying don't

13 look the City of New York.

14 Do you know how much time he spent on that? Look

15 at the contract, look at the specifics of the contract, and

16 if you look at the specifics of the contract, strict

17 compliance requires that you find Burtis at fault, and he

18 was pointing the finger at Burtis for the conduct that took

19 place here.

20 Now, if you really take a look at it, what happened

21 with Mr. Baxter? Mr. Baxter was saying wait a second, look

22 at the City, they didn't have an inspector, they didn't have

23 an engineer in charge. We agree with those things. They

24 didn't have a Project Manager. Yes, we agree with those

25 things, but they are pointing their fingers back and forth.

26 Mr. Wang said, you recall what Mario D'Abruzzo

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1 Summation - Mr. Rubinowitz

2 said, me, myself, and I, I'm responsible. And that's what's

3 going on.

4 So the point I'm making is the City is pointing at

5 Mr. Baxter, Mr. Baxter's pointing back at the City, and you

6 have something like this going on.

7 But why is that taking place and why is that

8 happening here?

9 Mr. Wang said the fault of this accident is the cab

10 driver, that's what caused the accident. But the cab

11 driver, and I will tell you this, there's already been a

12 judicial determination that the cab driver is not at fault

13 for the happening of this accident. No question about that.

14 Not even on the verdict sheet.

15 MR. WANG: Objection.

16 THE COURT: State your ground.

17 MR. WANG: There's been no finding that the cab

18 driver was not negligent. The finding was that there was no

19 proximate cause between any negligence he may or may not

20 have had and any injury suffered by the plaintiff.

21 THE COURT: That's not exactly what it was.

22 When counsel said he was going to say that, you

23 said you had no objection.

24 MR. WANG: Counsel said he was going to say there

25 was no injuries attributed to the accident.

26 THE COURT: Take the jury out, please.

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1 Proceedings
2 (Whereupon the jury exited.)
3 THE COURT: Mr. Rubinowitz was very careful
4 yesterday and he said to you, Mr. Wang, that because you had
5 said something about this issue, that he wanted to respond.
6 And he told you exactly what he was going to say, and I
7 said, do you have an objection to that? Because I wasn't
8 sure I would let him say it, and you said I have no
9 objection to that. And that is what led Mr. Rubinowitz down
10 this path.
11 This seems to be a habit you have of saying you
12 don't have an objection and then all of a sudden, you have
13 an objection.
14 What is it? Do you have an objection or don't you?
15 You said something yesterday about the taxi cab being the
16 start of this.
17 MR. WANG: Yes, I did.
18 THE COURT: And you were not supposed to say that.
19 Mr. Rubinowitz objected, and then he said well, if he said
20 that, then I'm going to want to say something in response.
21 And you said I have no problem with that.
22 MR. WANG: I have no problem with him arguing that
23 the taxi driver was not negligent. That I have no problem
24 with. His statement now was that --
25 THE COURT: But that's not what you said yesterday.
26 MR. WANG: I said the --

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1 Proceedings
2 THE COURT: What you said was different. What you
3 said was the taxi was the cause of this accident.
4 MR. WANG: Correct. Correct. And I have no --
5 THE COURT: You said accident.
6 MR. WANG: No. What I have no --
7 THE COURT: You said cause.
8 MR. WANG: I have no problem with Mr. Rubinowitz
9 arguing that the taxi driver was negligent.
10 THE COURT: There's no grounds for him to say that
11 the taxi driver was negligent. You said something and he
12 wanted to respond to it. You said cause, you said accident.
13 You said those two words. He wanted to respond to it.
14 Now you want him to respond to it by using
15 different words from the words you yourself used and he
16 objected to.
17 MR. WANG: There was --
18 THE COURT: And when he said he wanted to respond
19 to what you said, you said I have no problem with that.
20 MR. WANG: I have no problem with him arguing that
21 the taxi driver didn't cause the accident, didn't cause
22 whatever he wants to argue.
23 THE COURT: Isn't that what you just said?
24 MR. WANG: No, he's saying that my objection is to
25 the specific argument he's making which is that the judicial
26 determination was that the taxi driver didn't cause the

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1 Proceedings
2 accident.
3 THE COURT: He said yesterday what he wanted to say
4 and you said I have no problem. Mr. Baxter had a problem,
5 but you said you had no problem. And since it was in
6 response to what you had said, I was gonna let him do it.
7 That's what I told you yesterday.
8 MR. WANG: He didn't say that he would be arguing
9 that there was a judicial determination.
10 MR. RUBINOWITZ: That's exactly what I said.
11 THE COURT: That's exactly what he said.
12 MR. WANG: Do you have it before you?
13 THE COURT: I don't know if that conversation was
14 on the record.
15 MR. RUBINOWITZ: Judge, that is exactly what I
16 said, and I'm representing that as an officer of the court.
17 That is exactly what I said, Mr. Wang, and you heard it.
18 MR. WANG: I'm also stating as an officer of the
19 court that I did not hear it.
20 THE COURT: You said you heard Wang and his gang,
21 and I can't find that in the transcript.
22 MR. WANG: That will be in the transcript or it
23 won't be. That is a comment each of my colleagues heard.
24 THE COURT: That's the foot we started out on
25 today, Mr. Wang.
26 MR. WANG: And the two or three people from the

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1 Proceedings
2 City, specifically.
3 MR. RUBINOWITZ: Mr. Wang, I want you to know I
4 would never say anything as far as racial discrimination, if
5 Wang and his group came out or Wang and the attorneys came
6 on it, please understand I would never say anything toward
7 racial discrimination, I don't do things like that, I would
8 never do something like that. It's not something I would
9 ever do. Please understand that.
10 MR. BAXTER: I do recall it being said, but I know
11 you would never say that. Something was said. But I agree,
12 I know you.
13 THE COURT: When he talked the Simpson Thacher
14 team, that I found.
15 MR. MILLER: I think I mentioned Mr. Wang's crew.
16 MR. RUBINOWITZ: He said crew. If I said gang,
17 please understand, whatever it is, it's not a racial
18 discrimination. I would never do anything like that, I
19 don't do things like that, whether it's your crew, whether
20 it's your group, your team, the bottom line is you all spoke
21 with the police officer.
22 THE COURT: Here it is at page 2576 in the minutes.
23 Counsel for the City and also for Burtis
24 specifically blamed the taxi driver for the happening of
25 this accident. And they laid it out, this is Mr. Rubinowitz
26 talking. And they laid it out, if anyone was at fault, the

1 Summation - Mr. Rubinowitz
 2 taxi driver was at fault. There has been a judicial
 3 determination, by both the Supreme Court and the Appellate
 4 Division that the taxi driver bore no fault for the
 5 happening of this accident, and I want to be able to say
 6 that now, that counsel has raised that point, I think I out
 7 to be able to comment about that in my summation.
 8 And Mr. Wang said I don't object to that.
 9 MR. WANG: I withdraw my objection, then.
 10 THE COURT: Thank you.
 11 MR. BAXTER: Your Honor, just so we're clear, I did
 12 object to it.
 13 THE COURT: You did.
 14 MR. BAXTER: And, and, I never said one word about
 15 the taxi driver causing this accident or being negligent.
 16 THE COURT: Agreed.
 17 MR. RUBINOWITZ: I'll make my points clear with
 18 respect to Mr. Baxter as well.
 19 THE COURT OFFICER: Jury entering.
 20 (Whereupon the jury entered.)
 21 THE COURT: Please sit down.
 22 Please continue.
 23 MR. RUBINOWITZ: Before we broke, ladies and
 24 gentlemen, I was making a point concerning the cab driver.
 25 Let me be very clear about this.
 26 Mr. Wang, not Mr. Baxter, not Mr. Miller, Mr. Wang

1 Summation - Mr. Rubinowitz
 2 reasonable way so we can all reason together and see what
 3 happened.
 4 I wanted you to know Mr. Wang is a fine attorney,
 5 an excellent lawyer, Mr. Baxter, Mr. Miller the same, they
 6 all make their arguments as well, as good as they possibly
 7 can to you and they are trying to make their arguments. But
 8 I want to go through the proof as it exists.
 9 So let's take a look at some of the exhibits that
 10 we have.
 11 I'm going to go to Exhibit 2, first paragraph now.
 12 Exhibited 2. This is the inspector's daily report. And
 13 this was actually filled out, right to the bottom. Rubin
 14 Davydoff is at the bottom. At the very top, it reads
 15 Inspector's Daily Report.
 16 Now, isn't it interesting that the City of New York
 17 actually has a sheet reading Inspector's Daily Report, when
 18 we, when we know they didn't have an inspector there.
 19 Doesn't that tell us something?
 20 And then when you continue down and you just take a
 21 look at this for a moment, it says right here, Resident
 22 Engineer/Project Manager. The printed name is Sudhir
 23 Jariwala, and it's not signed.
 24 Well, we know for a fact that Sudhir Jariwala, who
 25 never testified in this case, and he should have, but he
 26 never testified in this case, what's the significance of

1 Summation - Mr. Rubinowitz
 2 said the cab driver was the cause of the accident. And I'm
 3 telling you there has already been a judicial determination
 4 that the cab driver is not at fault for the happening of the
 5 accident.
 6 But why did the accident happen? The accident
 7 happened because of what the City did not do and what Burtis
 8 did not do. In other words, they had obligations,
 9 obligations for safety. When you say safety, it's not just
 10 words you toss into the air, safety means something, it's
 11 significant.
 12 So if you're actually going to have a contract and
 13 safety is paramount, paramount, I'm putting that in quotes,
 14 you have to do things. Because if you don't properly set up
 15 the traffic plan, an accident will be inevitable. We heard
 16 that, it's foreseeable. If you don't, we heard that from
 17 Mr. Fitzpatrick. Of course if you don't have the signs up
 18 the motorists won't know what's there.
 19 So there was an accident and there was another
 20 accident and there was another accident. And why? Because
 21 the traffic pattern was not set up properly.
 22 Now to show you this, one of the things I started
 23 to show you yesterday was I started to go through proof.
 24 But what I'd like to do is go through it methodically.
 25 And let's -- please understand I want to do this
 26 with cool heads, I want to do this reasonable, in a

1 Summation - Mr. Rubinowitz
 2 this? The significance is they didn't have a Project
 3 Manager, they didn't have an engineer in charge. There was
 4 no one to sign off on this. And the significance of that is
 5 if you're not going to sign off on project that you have,
 6 where you know at the beginning that you're not even going
 7 to show up, how is that anything less than reckless
 8 endangerment of people that are going to be on the highway.
 9 In other words, you know you're supposed to have an
 10 inspector there. And if you look at this, where's the area?
 11 Henry Hudson Parkway viaduct, 72nd to West 79th Street.
 12 So what do we write in our Bill of Particulars,
 13 based on their own records? Where did it take place, 72nd
 14 to 79th Street. Now, the police report read 72nd Street.
 15 But they say 72nd to 79th if you take a look at this.
 16 Where was the rubber joint? 75th to West 79th Street.
 17 They are not pinpointing the location specifically,
 18 no one is pinpointing the location specifically. But the
 19 point that I made before was this, if you look at the bridge
 20 identification number, 2-22828-9. It should be something
 21 easily recognizable, that they should be able to come up
 22 with it and say here it is.
 23 Not one person came into this court and said this
 24 is exactly where that joint is. Mario D'Abruzzo, said it
 25 could be within 500 feet of that. But we don't know where
 26 it is. The problem is, the problem is it doesn't tell us

1 Summation - Mr. Rubinowitz
 2 where it is.
 3 When you read the substance of what this is, and we
 4 know that Mr. Davydoff copied from Mr. D'Abruzzo word for
 5 word, remember that, no independent thought went into this,
 6 but if you take a look, this doesn't even mention the fact
 7 that they closed down the right lane first, nothing in there
 8 about it.
 9 So when you go through these documents carefully,
 10 which is what I want to do now and reason together, if we
 11 take a look at it, there's really nothing here that tells
 12 specifically where it was, how it was going on, how the
 13 traffic pattern was set up.
 14 And if we take a look at this down below, it
 15 doesn't even list any signs or barrels. But we know for a
 16 fact that the barrels were not out with a light on every
 17 other barrel, no matter what, because everybody's admitted
 18 to that.
 19 So they've admitted to a departure no matter what.
 20 And that's a departure on the part of the City, no one was
 21 checking. Burtis didn't check it. And we know that's what
 22 they should have pursuant to their own contract. Every
 23 second barrel, with a low intensity light that should have
 24 been there.
 25 Why? For two reasons. The two ingredients I said
 26 to you during the opening: Warning and notice. Warning and

1 Summation - Mr. Rubinowitz
 2 We've said they never set up a maintenance
 3 protection and traffic plan. Take a look at the document,
 4 let's zoom in. MPT. Maintenance and protection of traffic
 5 plan. And there's an area circled yes or no if they did it.
 6 It's blank. They never filled it out.
 7 So their own documents tell you this isn't even
 8 filled out, they didn't do it at that time.
 9 Now, take a look at this. I said in my opening
 10 statement, short-term does not mean shortcuts. But that's
 11 what's going on here. Look what they're doing. If you come
 12 down here, come down to the bottom, all the way to the
 13 bottom: Lane closed: 12:01. I'm not sure if you can
 14 read this.
 15 Can you make it clearer, Peter?
 16 12:01 a.m. to 6:00 a.m. We know something about
 17 that, don't we? This accident happened around 3:00 to 3:30,
 18 somewhere around there, the police told them to leave, they
 19 all left. When did they leave? They're all gone by 4:00.
 20 Right?
 21 Then you heard something that Mr. Baxter mentioned.
 22 And I focused only this, he's an excellent lawyer. He said
 23 are they gonna get paid. They are getting paid for 12:01 to
 24 6:00 a.m. They are getting paid, you can be sure when they
 25 submit this they are getting paid.
 26 The problem is that doesn't really reflect reality.

1 Summation - Mr. Rubinowitz
 2 notice to motorists, and they didn't have that.
 3 So let's go to Exhibit 4 for just a minute.
 4 Now, this is Mario D'Abruzzo's report, and it was
 5 actually signed off by Rubin Davydoff.
 6 If we take a look at this, when we go to the BIN
 7 number, it's a different bridge identification number. And
 8 the one thing you know is that has never been explained to
 9 you during the course of this trial, not once.
 10 So what's the importance of that, if there's a
 11 different bridge identification number? I want you to know
 12 this. If there's a different bridge identification number
 13 and we now have two documents are supposed to be talking
 14 about the very same job, with two different numbers, yet
 15 they are trying to tell us where it is, why in the world
 16 should we rely on these documents as believable?
 17 The point is you can't rely on this. The problem
 18 is it doesn't tell us anything. As far as the location,
 19 come back to, the location here, it's the same thing and it
 20 says, see this? 75th Street to 79th Street.
 21 So he's giving a range. And that's what we've been
 22 saying all along, a range. And the range is important, and
 23 I'll get to it in a little while, but it is what's
 24 important.
 25 One of the more significant things, though, and one
 26 of the things I want you to take a hard look at is this:

1 Summation - Mr. Rubinowitz
 2 Because they weren't at the site, by their own testimony
 3 they weren't at the site for that amount of time. And
 4 that's why I'm focusing on this.
 5 You have a different bridge identification number,
 6 if you'd zoom out. Supposed to be for the very same thing,
 7 and it's different. All right?
 8 Let's go now to Exhibit 6. I just wanted to show
 9 you this. If you remember, Mr. Davydoff testified that he
 10 had worked for the painting department first. Remember
 11 that? That's what's on the back of this, wet paint.
 12 So he took a piece of paper from the painting
 13 department or where ever he happened to have it, but it is
 14 from the City, and he drew a diagram. He drew a diagram
 15 along with Mario D'Abruzzo.
 16 Now, this is important because -- can you come down
 17 a little bit, Peter?
 18 I pointed this out while I was questioning Mr.
 19 Davydoff. And I said to him: First of all, did you draw
 20 any diagrams and he said no, he didn't draw any diagrams.
 21 And then when we confronted him with this, well,
 22 unfortunately, he was caught in something that was less than
 23 truthful.
 24 Mr. D'Abruzzo also told the very same lie. He was
 25 caught in something that was less than truthful when he said
 26 he did not, he did not make any diagrams. But we know that

1 Summation - Mr. Rubinowitz
 2 they both made this diagram together.
 3 I said yesterday, why in the world are they trying
 4 to depend justice so badly to Jim Gregware and to Eileen
 5 Gregware, why in this world would they do that? And I'm
 6 going to point this out to you, that it really doesn't
 7 matter.
 8 I ask you, if we can zoom in here, I pointed out,
 9 look what they did. You tell me, was that changed? Was it
 10 changed?
 11 (Continued on the next page.)

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1 Summation - Mr. Rubinowitz
 2 Mario D'Abruzzo meeting about this? They had no involvement
 3 in this at all. Why are they trying to talk together? I
 4 would submit to you that the answer is to get their story
 5 straight. And I'm suggesting to you that's exactly what
 6 they are trying to do, to get their stories straight, but it
 7 gets worse, and I will show you why it gets worse, because
 8 the same time that Exhibit 6 was made, Exhibit 6A was also
 9 made. And these are notes. Now, there are notes for this.
 10 And the testimony is really striking: Accident happened
 11 between 3:30 and 4 a.m. on 5/20/06, northbound 75th to 79th
 12 Street. And then somebody wrote another thing on here:
 13 "Accident happened before." So I was asking Mr. Davydoff
 14 about it, and I know it's seemed like a long time between
 15 now, but it really wasn't that long when I asked him.
 16 And I said to him: So we could agree, referring to
 17 this, that this is not accurate? And his answer was: "Yes,
 18 it's a hundred percent inaccurate." This is what he is
 19 saying. So it's not accurate. Hundred percent inaccurate,
 20 correct? And if you keep going, look at what number 3 says:
 21 Left lane closed 1,500 feet. You go down to the streets,
 22 55th, 58th, 60th, 69th before I even put up the testimony.
 23 Do you think he is trying to suggest this is what would be
 24 appropriate? But he really doesn't know, because he doesn't
 25 know the minimum standards of the Maintenance Protection
 26 Plan. He doesn't know the minimum standards for the Manual

1 Summation - Mr. Rubinowitz
 2 Now, the point that I'm making is, it's really not
 3 going to matter at all what they were changing, because it
 4 doesn't matter if it's 72nd or 79th, but I'm going to
 5 explain that in just a little while, but the point that I'm
 6 making is even if you zoom out and you take a look at this,
 7 this is, simply put, not what you the appropriate lane
 8 closure should have been, but that's what they are trying to
 9 draw. When did they created this? The answer was, and we
 10 had two different answers for the same question. The answer
 11 was: Either two or three days after the accident or about
 12 four months later. Why in the world are they saying things
 13 like this? Does that make sense? And if you make a look at
 14 it, what does it say? Left lane closed, left lane closed,
 15 and it keeps going over here right at the bottom left, lane
 16 closed, but it's supposed to be left two lanes closed. Look
 17 at what they are drawing here. This is their own document,
 18 something that they created, and they still can't get it
 19 right.
 20 If you take a look at this, Ruben Davydoff said the
 21 accident happened about 80 feet from the -- what he wrote
 22 was cones and barrels over here. 80 feet. It's still
 23 within the zone of traffic pattern, but they only have the
 24 one lane closure.
 25 Ladies and gentlemen, this is something that is
 26 created afterwards. Why in the world are Ruben Davydoff and

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1 Summation - Mr. Rubinowitz
 2 for Uniform Traffic Control Devices. So look at what he
 3 says. This is the testimony, in court before you.
 4 Number 3 reads: "Left lane closed. Is that 60th
 5 street?"
 6 "Yes.
 7 "And that's completely inaccurate too?
 8 "ANSWER: Yes."
 9 Look at what's going on. They are drawing
 10 diagrams, either three days or four months afterwards, and
 11 they are completely inaccurate. In other words, they are
 12 deliberately writing things down on documents that are
 13 completely inaccurate, yet we are supposed to believe that?
 14 The point that I am making is, why is it that they are
 15 fighting so hard to deny Jim Gregware and Eileen Gregware
 16 justice? Why is that appropriate? But it continues.
 17 "So we know that either two days or four months
 18 after the accident when he is trying to write down notes
 19 about what happened it's completely inaccurate at that time,
 20 right.
 21 "ANSWER: Yes.
 22 "I'm just asking you, sir it's completely
 23 inaccurate at that time?
 24 "ANSWER: Yes."
 25 So why is it that he could come into this
 26 courthouse and tell you that he is writing notes supposedly

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1 Summation - Mr. Rubinowitz
2 to describe this very accident, but it's completely
3 inaccurate? How does that help anyone? And why is that
4 right, and why should someone from the City be allowed to do
5 something like that? I don't blame Mr. Baxter when he says
6 don't lump us together, don't attach me to that witness, Mr.
7 Davydoff.
8 Now, it continues, it continue over to the next
9 Page. Number 1 is inaccurate. Those are the notes.
10 "Number 2 is inaccurate?
11 "Yes.
12 "We can't rely on that, right?
13 Number 3 is inaccurate, true?
14 "Yes.
15 We can't rely on that either?
16 "Okay."
17 And number 4 he couldn't read, right? If you can't
18 read, it can't be accurate. And I asked him that: "And
19 that's inaccurate, right?" And then the merge sign is drawn
20 here. If we accept that as a merge sign that was up on the
21 night of the accident, that would be the completely wrong
22 merge sign. Couldn't even draw the merge sign facing the
23 right way, and he says: "True."
24 The point that I am making is this, when we go
25 through these documents, we take a look at it, he is writing
26 this out, and he is actually writing it out for us to

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1 Summation - Mr. Rubinowitz
2 actually see what did take place, as if we are going to rely
3 on it. Why are you creating these documents if they are not
4 even accurate?
5 I want to show you something about this. This
6 document actually has a front and a back, 5 and 6 on the
7 back; 1, 2, 3 and 4 are on the front. But we questioned him
8 about something, because there was some writing on the back
9 of this very small, very hard to see in the top corner where
10 my fingers are right now. And I will show you all that he
11 says. And I will put it on the big screen so you can see
12 it, but if you take a look at this, right over here, that
13 preprinted page would be Wednesday, October 11, 2006. So
14 that was already written October 11, 2006. The date of this
15 accident is May 20, 2006, yet he was testifying he wrote it
16 either two or three days after the accident. How do you
17 write on a form that has October 2006, when it's in May of
18 2006, and claim it was written in May of 2006? It just
19 doesn't make sense. You see what is going on here is, once
20 again, we are dealing with nonsense, and once again it's a
21 problem, because we have to try and cut through the nonsense
22 to be able to reach justice in this case. And the problem
23 that I have is, you have all of these documents. When you
24 go through them, and try and go through them carefully, take
25 a good, hard look at what they say, you just can't rely on
26 them, and that's really the problem.

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1 Summation - Mr. Rubinowitz
2 There is an another document, Exhibit 6B. Ruben
3 Davydoff drew this diagram, Exhibit 6B, just before his
4 first deposition, just before his first deposition three
5 years after the accident, and he admitted that. The problem
6 is, if you can, please take a look at this, he has drawn a
7 single lane closure, single lane closure, when it should
8 haven about a double lane closure. And this provides no
9 specifics as to what was there. Now you see a 35 miles an
10 hour sign, but when we asked him about it: Is this was it
11 accurate? No. Is it a hundred percent inaccurate? This is
12 also a hundred percent inaccurate.
13 So where are the people, and I meant this when I
14 started off my summation yesterday, I said to you, weren't
15 you surprised that there are no witnesses from Burtis, with
16 all of those workers or from the City to come in and say,
17 here are the signs that were up. There are nobody --
18 withdrawn. There is no one who could say that, because they
19 weren't up. That's the problem.
20 Mr. Hassan was asked questions about whether or not
21 there were signs up or anything providing him with advanced
22 notice. I read this to you: "On the date of the accident
23 between approximately 50th Street in the area where the
24 accident happened, prior to the location of the accident,
25 did you see anything?"
26 Let me just repeat that. "Anything providing you

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1 Summation - Mr. Rubinowitz
2 with advanced warning of traffic merging to the right?"
3 "ANSWER: No, no."
4 Now, this is a man who is driving. He doesn't see
5 anything. So the question is, all right, let's follow it a
6 little bit further, and I did. In fact, one of the things
7 that we know when we read in to you: "On the date of the
8 accident between approximately 50th Street where the
9 accident happened, did you see anything providing you with
10 warning?"
11 "No."
12 And then Mr. Hassan was actually asked about what
13 did you say to the police officer? What did you say to the
14 police officer? Police Officer Pagano. Mr. Hassan was
15 angry. "I told the police this car came, hit me from the
16 back. I was going slow. And you see there is a line, the
17 lanes were being merged, and I told him look, there is no
18 arrow sign."
19 He is upset because of the way that these lanes
20 were closed. "And I know that when there is construction
21 going on, everywhere there is construction going on there is
22 a sign up there. And I also told them that there is a small
23 cone from far away, you can't see it."
24 Now, I recognize his English is broken, but forget
25 the fact that the English is broken, he is making his point:
26 In other words, I the officer. And it goes on, he knows

1 Summation - Mr. Rubinowitz
 2 that when there is construction there is supposed to be
 3 signs up, and there aren't signs up. And I see that all the
 4 time during construction work, there were signs. But he
 5 makes the point. I told him there were no signs up.
 6 So now let's look at the police report together,
 7 the police report that was filled out by Police Officer
 8 Pagano, and really, I want to focus on the evidence here,
 9 and I really want to do it methodically, because one of the
 10 things that you were told yesterday, Mr. Baxter said: In
 11 the police report, Mr. Hassan stopped short because of the
 12 cones in the road. That's what he said to you in his
 13 summation. This is a quote: "He stopped short because of
 14 the cones in the road." Nothing about construction is what
 15 he told you. He didn't read this. Okay. Because if you
 16 take a look at it, driver one, which is Mr. Hassan -- let's
 17 go back. "Driver one states he was not able to slow down
 18 fast enough when he saw cones set out for construction
 19 causing him to stop." Problem is, you set out a few cones,
 20 it's not going to do the trick. You are not going to notify
 21 people in advance. But there it is. So when Mr. Baxter
 22 said nothing about construction, Mr. Baxter didn't read this
 23 text to you. Mr. Wang didn't read this text to you. I am
 24 reading this text to you right now. And that's the problem.
 25 When you take a look at it, and you go through the evidence
 26 methodically, which is what I'm trying to do now, you will

1 Summation - Mr. Rubinowitz
 2 pointed out to exactly where the accident happened, and she
 3 showed you where the accident happened. And she was telling
 4 you where it was taking place. And she is the one who wrote
 5 hump -- actually, behind the hump. She is the one who wrote
 6 this. You all know that's what it says.
 7 I want to be specific as far as what Eileen Marquez
 8 said. There is no question about it. I'm going through
 9 there methodically. She said she is very alert when she is
 10 in a car.
 11 "What, if any, signs did you see that were there?"
 12 "There weren't any. There weren't any signs."
 13 "What, if any, merge type signs?"
 14 "I did not see any of those either."
 15 "Did you see any sign like this?" And I was
 16 showing her VMS board. I showed her the picture of the VMS
 17 board.
 18 "No, none at all. "
 19 And she actually said this: "That's pretty hard to
 20 miss."
 21 Now, why is it that none of these people saw these
 22 signs? Isn't the answer obvious? They weren't up. And if
 23 they are not up, is it going to cause an accident? Of
 24 course, it is going to cause an accident. So when we
 25 continue to question her, and I asked her "where?" She
 26 said: "Well, it happened after the hump, which is like at

1 Summation - Mr. Rubinowitz
 2 see exactly what was going on. None of the drivers were
 3 afforded the appropriate, proper warning and notice, the two
 4 essential elements, the two essential ingredients, and they
 5 should have been provided with that.
 6 Now, I told you yesterday you focus on what Officer
 7 Pagano said, when Officer Pagano investigated the earlier
 8 accident, he didn't notice anything about signs, about
 9 tapering, about anything. And he said he would have put
 10 that in his police report. There is nothing in his police
 11 report there. And that was at 2:45 in the morning.
 12 So, let's continue with the others, as far as what
 13 was said and this becomes important. Eileen Marquez
 14 testified. Eileen Marquez is a woman who comes into this
 15 courthouse, she has no axe to grind one way or another. She
 16 is completely independent. She is not a driver, she is just
 17 telling you what she saw. She told me, she told Mr. Wang,
 18 she told all of Mr. Wang's crew exactly what she saw,
 19 everything.
 20 By the way, I might have said Mr. Wang's gang, I
 21 apologize for that. I wasn't saying anything in a
 22 derogatory fashion. Please understand that, but Mr. Wang
 23 and his lawyers spoke with her. I spoke with her as well.
 24 She told us the same thing. She told us both the same
 25 thing. And in fact, Mr. Wang showed the video, okay. She
 26 told him this is where the accident happened, and she

1 Summation - Mr. Rubinowitz
 2 79th, around 79th."
 3 The problem is, you can't tell exactly where it is
 4 because there are no cross streets on the West Side Highway,
 5 but that's what she is saying. Jim Gregware is saying the
 6 same thing.
 7 Now, she actually explained where. She relate it
 8 to as far as where Trump buildings are. And she made it
 9 very clear.
 10 "As you proceeded towards the hump, what, if any,
 11 signs did you see?"
 12 And her answer is: There were no signs." There
 13 were no signs.
 14 Eileen Marquez is somebody who has no axe to grind,
 15 one way or another. And she is telling you what she saw.
 16 She told the City the exact same thing. We both know that's
 17 exactly what she said, so we put her on the stand, and
 18 that's what happened.
 19 She told us what the firemen did, how the firemen
 20 were putting this powder on the gas. It's exactly what did
 21 happen. In fact, that's what was going on at the time.
 22 Now, the other things that happened also is, we
 23 showed her, and you learned this during the
 24 cross-examination, we showed her smaller photos in a photo
 25 album. You pick out the photos showing us where it is.
 26 That's what we did. And she explained to you that's what

1 Summation - Mr. Rubinowitz
2 happened. She pointed these out, and we bring in the
3 blowups, and we showed you the enlarged photos. And that's
4 what took place. And she said yeah, they showed me a whole
5 bunch of photos. You picked these out? Yeah. That's
6 exactly what he did. We showed her them. We are not trying
7 to tell her. We show, and then she picks it out and she
8 shows you. That what's she says. So why is it wrong for
9 her to come into court and say this is where it happened?
10 Why does the City's documents say 79th Street? Why are they
11 saying 75th to 79th Street? But I'm still going to tell
12 you, it doesn't make a difference, no matter what. That's
13 the wrong issue to get caught up in, and I will show you why
14 in just a little while.
15 "Now, did you see cones," this is what she was
16 asked, "something like that?"
17 "No."
18 "Prior to coming to the crest of the hill, did you
19 see anything similar to what's depicted in this photo of a
20 barrel?"
21 "No."
22 "Did you see any indications that there was
23 construction going to be ahead of you?"
24 "No."
25 "Any signs, speed limit signs, 35 miles an hour?"
26 "No."

1 Summation - Mr. Rubinowitz
2 make sense? Of course it does. If you don't warn the
3 motorists, there is going to be an accident, and that's the
4 cause of the accident in failing to notify them what was
5 going on.
6 Now, Mr. Albahri said that there was a small sign,
7 couldn't describe it, but he said that there was a small
8 sign. And Officer Pagano said there was a, one sign.
9 Now, with Officer Pagano, you know I have a problem
10 with what that officer said. I make no bones about that.
11 What that man did was wrong, okay. What that man did was
12 wrong. I am not suggesting that any of the lawyers told him
13 to say that deliberately, but what I am saying is, what he
14 did was wrong. No question about that. But if you believe
15 him, and you believe that there was one sign, even though he
16 can't tell you where it was, whether it was to the right,
17 whether it was to the left, whether it was overhead, when I
18 showed him all those photographs that the City put in, can
19 you show us where it was in any one of these photos? No, I
20 can't do that.
21 But let's assume for the sake of argument he is
22 telling the truth, there was one sign. I asked Mr.
23 Fitzpatrick about that. Assume there was one sign, and he
24 said my opinion is, it's a serious departure from any
25 accepted traffic practice. And he told you about the
26 minimum standards of the Manual for Uniform Traffic Control

1 Summation - Mr. Rubinowitz
2 So what we did was this, I took the testimony from
3 each one of the witnesses, and you have to take it
4 altogether. We don't control the testimony of the
5 witnesses. We ask them questions, and they tell us. And
6 all we can do is rely on that. And that's what we are
7 doing. So we asked the witnesses what happened. Now, if
8 you think about it, there are certain witnesses who gave
9 answers. I then give those answers that were given to Mr.
10 Fitzpatrick. Mr. Fitzpatrick, the man who has been in the
11 DOT for over years, 35 years, the director of the Department
12 of Transportation, somebody who certainly knows how to
13 layout roadways, the man who actually writes, he is very
14 proud to say that he writes and helps to write this living
15 document, the Manual for Uniform Traffic Control Devices,
16 and that is what we know. Mr. Da-Silva said no signs.
17 Eileen Marquez, no signs. Mr. Hassan, no signs. Mr.
18 Albahri, no signs. Now, Jim Gregware, no signs. When I
19 asked him about this, and I said assuming that to be true,
20 is it that a departure? You heard what he said. He
21 explained to you that this would be a gross departure from
22 any traffic safety plan, a gross departure. Of course.
23 Now, he said this: "If you only have a warning --
24 this is in quotes: "If you only have a warning that is
25 insufficient or too quick to react, there will be an
26 accident. It will happen every time." And doesn't that

1 Summation - Mr. Rubinowitz
2 Devices. And here is the thing, if the minimum standards
3 say you are supposed to have 1.7 miles of warning, the
4 minimum standards, 1.7 miles of warning, 9,000 feet of
5 warning to motorists, we know we didn't have that here.
6 There is no issue about it. We didn't have that, and that's
7 why the accident happened. So he said, look, if you have
8 that in place on the roadway, it's insufficient. Its not
9 going to work. And he actually said this should have been
10 shut down. So if you had any inspector there who knew what
11 they were doing, it should have been shut down.
12 So Mr. Baxter when he was saying to you, when he
13 said, look at it this way, when he was pointing the finger
14 back at the City, they had the overall ability to shut it
15 down, to shut down this project. They should have, but they
16 didn't have an inspector there. No one was there to do it.
17 But who set it up? Mario D'Abruzzo, Mario D'Abruzzo set it
18 up.
19 Now, no engineer in charge. We know that. We know
20 that's a departure, but I want to just get to one of the
21 areas at that becomes very important, and this is why I say
22 it really doesn't matter at all for tapering and
23 transitions. One of the exhibits that you are going to see,
24 Exhibit 59 in evidence, Exhibit 59 is evidence lays out the
25 minimum standards that must be up to notify motorists of
26 what should be there. And 59 is very important, because it

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1 Summation - Mr. Rubinowitz
2 lays out what signs should be there. And if you take a
3 look, the signs runs both sides. And he was very clear on
4 what the word "shall" means, that it must be there. No
5 issues about it. And he showed you where the tapering and
6 the transition starts, the double lane closure. And the
7 taper and transition, taper and transition. But here is the
8 important part, and this is why I keep telling you it does
9 not matter.
10 If we take a look at this one, take a look at the
11 key, I mentioned yesterday Number 5 would be around 61st
12 Street. That's where the tapering should have started. But
13 look at it this way, I asked Ruben Davydoff: "Where was the
14 tapering and transitions." In his deposition he gave a
15 different answer. Let's assume what he said was true in his
16 deposition. He said 75th to 79, 75th to 79th. I had Mr.
17 Fitzpatrick measure that. What's the distance from 75th to
18 79? Do you recall what he said? 1,075 feet. When he
19 testified at this trial before you, he said no, that's not
20 the location. He changed his answer. And he said 72nd to
21 75th. You recall that, 72nd to 75th. So I asked Mr.
22 Fitzpatrick, what's the distance between 72nd to 75th? And
23 he said 800 feet.
24 Now, I asked him, assuming both of those to be
25 true, let's assume it's 1,075 feet tapering, transitioning,
26 tapering and transitioning, would that be appropriate or

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1 Summation - Mr. Rubinowitz
2 would that be a departure from accepted standards? And he
3 told you that is a gross departure. Why? Insufficient
4 warning and notice for the drivers to be able to react.
5 Perception time, reaction time, and he was explaining this.
6 And I did the same thing with 72nd and 75th. Here it is.
7 The distance from 72nd to 75th as testified to by Mr.
8 Fitzpatrick, 800 feet. The distance from 75th to 79th, 1075
9 feet. No one has testified that it went from 72nd to 79th
10 where the tapering and transitions were. But let's assume
11 that to be true. If that's true, and you add these two
12 together you get 1,875 feet. It's still too short, because
13 the distance that you need for the minimum standards for
14 tapering and transitions, if you follow the Manual for
15 Uniform Traffic Control Devices, 3,630 feet. That's why
16 when Mr. Baxter said, don't let him talk out of both sides
17 of his mouth, I'm not speaking out of both sides of my
18 mouth. I won't do that. But what I will tell you is, let's
19 follow what the witnesses said. If you choose to believe
20 what Mario D'Abruzzo said the first time he testified, 75th
21 to 79th. If you choose to believe what Ruben Davydoff said,
22 75th to 79th, and then changed to 72nd to 79th. I'm saying,
23 even if you add it altogether, you are still not going to be
24 compliant with the Manual for Uniform Traffic Control
25 Devices. It is still a gross departure. But you had done
26 it properly, and you go back to this, going back to Number

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2 5, 61st Street, either 61st Street or if we go to 79th
3 Street, move it up four blocks, 65th Street, either way this
4 is why I say it doesn't matter if it's 79th Street, 75th or
5 72nd, either way, motorists would have been plowing through
6 barrels and every second barrel with a light from the 60's
7 onward, whether it's 61st or the mid-60's. So you see, we
8 have proven to you there were no proper transitions. There
9 were no proper tapers, couldn't have been, because the
10 motorists would have been going through them, all of them
11 would have been going through them. The left lane would
12 have been shut, the center lane would have been shut, and
13 they weren't.
14 Now, Mario D'Abruzzo, work activity at Pier 43.
15 "Where is it, between 75 and 79th?"
16 "ANSWER: Correct.
17 "Is that the location where of where the joint was
18 between 75th and 79th?
19 He said: Yes -- actually what he said was "yeah,
20 yes," but that's what he said.
21 So my point to you is, it really doesn't matter
22 whether it's 75th, 79th or 72nd, because either way they
23 didn't lay out the appropriate tapering and transitioning,
24 not to mention the signs. And that's why it is such a
25 reckless disregard for the safety of others, because he
26 didn't have all of this up there.

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1 Summation - Mr. Rubinowitz
2 Now, as you know, one of the other things that we
3 pointed out to you is the tow report. The tow report
4 showed, for example, 79th Street. The police officer signed
5 it himself. There was a car towed from 79th. Just to show
6 you that in fact these were documents, they admit that this
7 was a disabled vehicle towed from 79th. My point to you is,
8 it doesn't matter. It really doesn't matter, because either
9 way, the tapering and transitions are wrong. They don't
10 have 3,600 feet of tapering and transitions. And that's the
11 problem. Police Officer Pagano, when asked him was it,
12 72nd, 73rd, 74th or higher, he didn't know. The truth is he
13 really did not know. And my point to you is, it doesn't
14 matter 79th either.
15 Now, one of the things that you have to do, as
16 jurors, is you have to evaluate the proof. And when you
17 evaluate the proof, you evaluate the testimony. You have
18 Davydoff, you have D'Abruzzo, you have Sadegh, you have
19 Police Officer Pagano. To illustrate the point that I am
20 making, I just want to tell you a story, because it
21 illustrates the point beautifully.
22 There was a couple who was going for their
23 anniversary dinner, an older couple, and they were going to
24 a fancy restaurant. They had never been to this restaurant
25 before, and they decided they will go to this restaurant
26 because it had the specialty the house, and the specialty of

1 Summation - Mr. Rubinowitz
 2 the house is beef stew. They had never been there. They
 3 heard about, they wanted to go. And finally they got to go
 4 for their anniversary, one of their major anniversaries, the
 5 50th anniversary, and they went there. They both ordered
 6 the beef stew. They couldn't wait. The waiter brings them
 7 the beef stew, and the husband tries it. He doesn't like
 8 the way the meat tastes. And then the wife tries it, and
 9 she doesn't like the way the meat taste, and she said that
 10 beef is rancid. And they called over the waiter, and they
 11 say to the waiter, the beef is rancid. And the waiter says
 12 to them, that's all right. Pick around it. The potatoes
 13 are pretty good, and the beans are pretty good and the
 14 celery is pretty good, eat that. And the couple stood up
 15 and walked out of the restaurant. You know what? You could
 16 take D'Abruzzo's testimony when he tells you less than the
 17 truth about this diagram and all of the other things, you
 18 can take Davydoff's testimony when he says to you his memory
 19 is getting better and he is giving you two different
 20 answers, Police Officer Pagano's testimony, when he has
 21 given you so many different answers to the same question,
 22 and Ali Sadegh, you can toss their testimony out, because
 23 Your Honor will with instruct you during the course of the
 24 instructions that when somebody testifies falsely about one
 25 thing, you can disregard their testimony altogether. And I
 26 am telling you right now, they are not to be believed in

1 Summation - Mr. Rubinowitz
 2 "Come on, come on. Realistically, can you remember? I
 3 cannot remember." I believe that answer. That's a
 4 believable answer. He couldn't remember. He has admitted
 5 it. So the point that I'm making is, all of a sudden after
 6 this, his two more depositions, now we have all of his
 7 testimony with what he believes happened. He has admitted
 8 already he can't remember.
 9 D'Abruzzo never looked at the Maintenance
 10 Protection Plan. He kept in his suitcase. Never looked at
 11 the Manual for Uniform Traffic Control Devices, and he
 12 didn't even know what the manual was when we first asked
 13 about it. Never took it out of his suitcase. Davydoff
 14 never looked at it either, didn't have it with him when he
 15 was supposed to be inspecting. How is that anything other
 16 than a reckless disregard and intentional disregard for the
 17 safety of others?
 18 Mario D'Abruzzo, even if you believe his testimony
 19 when he talks about: Those are the cones you were using for
 20 the taper? And he says, yes. If you believe Mario
 21 D'Abruzzo, which I'm suggesting you shouldn't, but if you
 22 do, he is admitting that he departed from their own
 23 contract. Why? Because the contract calls for drums. And
 24 every second drum should have a light on it, and he is
 25 talking about cones, something that was specifically
 26 prohibited, as Mr. Wang says, with strict compliance to the

1 Summation - Mr. Rubinowitz
 2 this case. You can't do that. You can't come into a court
 3 of law like this, in our court system just to deny Jim
 4 Gregware and Eileen Gregware justice. That's not right, and
 5 that's not fair.
 6 When I asked Mr. D'Abruzzo, even if you were to
 7 credit him with testimony, how long was the transition? And
 8 he gave many different answers, but he said two to 300, 300
 9 and a 400-foot transition. Those are his answers. If you
 10 go through the testimony carefully and you go through it
 11 methodically, the transition should have been 1,500 feet
 12 each. So no matter what, and this is what I'm saying, even
 13 if you were to credit his testimony, which we are never
 14 going to agree with, we don't think it should be believed at
 15 all. But even if you were to credit it, and if we work on
 16 this logically, which is what I'm trying to do right now
 17 methodically, they are still departing from their own
 18 standards as set out my the minimum standards for the Manual
 19 for Uniform Traffic Control Devices. Either way it's wrong.
 20 Now, that's why when I focused on the very first
 21 thing that I asked Mario D'Abruzzo at the very first
 22 deposition, and I asked him about the May 20, 2006 accident,
 23 and he cut me off, and he says: "Stupid question, stupid
 24 question," as if I was being stupid, I might have been.
 25 "Could you remember what you did that day?" My question to
 26 him was: "If there was a big accident." And he said:

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 2 contract.
 3 Now, he admitted also, this is Mario D'Abruzzo, the
 4 cones were there. The barrels, only two of them had lights.
 5 He is admitting another departure, even if you choose to
 6 believe to his testimony.
 7 With Mr. Hassan's testimony, I will say this, there
 8 are portions of it that were difficult to understand, and I
 9 recognize we are going through an interpreter, but one of
 10 the answers I will just read to you, I tried very hard to
 11 make sense of this, but I will read it to you. I read it to
 12 you originally, I think every other lawyer read it to you as
 13 well.
 14 "QUESTION: When you testified that you saw cones
 15 where were they?"
 16 And he said, this is his answer, try to follow
 17 this: "From 72nd and 79th is like one block. One block is
 18 like one 100 to 150 feet, it's like 1,000 feet. It is 5
 19 feet and 3 feet, and the cone, how can I say it, I told you
 20 before."
 21 Now I have tried to go through that. That makes no
 22 sense no matter how much times you try to put it together,
 23 because you can't say it's like 100 to 150, 5 feet, 3 feet,
 24 it's jumbled. But the point that I'm making about Mr.
 25 Hassan is, he was very clear when he said: I saw no
 26 warnings. And that's why he was angry, and that's what he

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 2 told the police officers, and that, in fact, should have
 3 been written down had Officer Pagano done his job properly.
 4 I want to spend a little bit of time on another
 5 issue that came up, which is the City of New York told you
 6 in their opening statement that there is one person who is
 7 responsible for this accident. Mr. Wang told you, as you
 8 recall, he said that the City did everything they could do
 9 to comply with safety. We know that's not true. But they
 10 said one person was at fault, and he pointed squarely at Jim
 11 Gregware. So let's take a look at Jim Gregware's actions.
 12 Jim Gregware testified that all three lanes were
 13 blocked. Mr. Hassan, he said that the right lane, the red
 14 car was in the right lane. He said that the left lane was
 15 blocked, and he said that the left lane was blocked, and he
 16 said that the left lane was blocked, right, left, center
 17 lane blocked. All three lanes are blocked and no warning.
 18 And if you take a look at it, that's what happened.
 19 Mr. Valarezo, I was blocking the front of the right
 20 lane. I was in the middle but also in the right lane. We
 21 know Mr. Albahri was in the left lane. So now you have a
 22 portion of the right lane blocked, the middle and the left.
 23 Jim Gregware tells you all three lanes were blocked. Jim
 24 Gregware says all three lanes are blocked. It is one thing,
 25 ladies and gentlemen, to think about this accident in this
 26 nice sterile environment that we have here. This is a nice

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1 Summation - Mr. Rubinowitz
 2 barriers on both sides. I saw three blocked lanes and
 3 people in the right hand, people in the center, and people
 4 in the right. I was not of the mindset to back up and drive
 5 through the people to get off the highway.
 6 Is there anything wrong with what Jim Gregware did?
 7 Of course not. There are no shoulders on the West Side
 8 Highway at this area.
 9 (Continue on the next page.)
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1 Summation - Mr. Rubinowitz
 2 place, really think about it, but we are not on West Side
 3 Highway at 3:00 in the morning on May 20, 2006. Think about
 4 what is going on there. Jim Gregware is driving along, he
 5 is given no warning, no advanced warning. He comes over a
 6 crest, and he sees people out on the roadway. He puts one
 7 his brakes, and he stops and he has a fender-bender. What
 8 is he supposed to do? Well, there is a law that you are
 9 supposed to exchange information if you have been involved
 10 if an accident with somebody. This is what he was asked by
 11 Mr. Wang. This is a question and an answer by Mr. Wang, and
 12 I want to show you why we say this is improper.
 13 Question by Mr. Wang to Jim Gregware when he was on
 14 the stand: "You could have backed your car up on the
 15 highway a little, move around the car in front of you and
 16 move your car to a safer location?"
 17 Mr. Wang was suggesting that Jim Gregware should
 18 have backed up on West Side Highway in the middle of the
 19 night, backing up to move his car to a safe location. I can
 20 assure of this, if Jim Gregware backed up on West Side
 21 Highway and there was an accident, I can assure you that
 22 counsel would have faulted him immediately for backing up
 23 the wrong way on West Side Highway, something you are not
 24 allowed to do. That's what he was suggesting. What was Jim
 25 Gregware's answer? Well, he could have backed up. That's
 26 what Mr. Wang was asking. Well, again, there was Jersey

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1 Summation - Mr. Rubinowitz
 2 TAKE 3
 3 MR. RUBINOWITZ: (Continuing) There's no
 4 shoulders, there's no place to back up. Are you really
 5 going to back up on the West Side Highway? Is that
 6 reasonable?
 7 When you take a look at this, when you take a look
 8 at her Honor, when she charges you on the law, listen very
 9 carefully to what she says. Because we never want to put
 10 somebody in danger, and that would be crazy to do that.
 11 If you recall, I asked Police Officer Pagano about
 12 this, leaving the scene of an accident:
 13 "You're not allowed to leave without providing
 14 information, is that true?"
 15 "ANSWER: That's correct. Even egress you're
 16 supposed to provide insurance information, obviously
 17 registration, all of the information you're supposed to
 18 give, driver's license," and that's exactly what Jim
 19 Gregware was trying to do at this point in time.
 20 Officer Pagano, after being asked about gasoline on
 21 the roadway and he said yes.
 22 "You would agree with me that gasoline on the
 23 roadway poses a very significant danger to anyone out on the
 24 roadway?
 25 "ANSWER: I would agree.
 26 "QUESTION: So that one of the things you would

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1 Summation - Mr. Rubinowitz
2 want to do is to make sure that people don't stay in their
3 cars?"
4 And he says: "Yes."
5 Mr. Wang had said that Jim Gregware should have
6 stayed in his car, if you recall, and he's faulted him for
7 that.
8 "QUESTION: You want to make sure they were out of
9 their cars. In any event, there was gasoline on the
10 roadway, right?
11 "ANSWER: Yes.
12 "QUESTION: Nowhere near their cars, for fear of
13 explosion?
14 And he said that was a concern. Not that is a
15 concern. That was a concern at that time.
16 I said, when I heard that, I said you, said that
17 was a concern, right?
18 He said right.
19 So you certainly wouldn't expect people to wait in
20 their cars. In any event, there was gasoline on the
21 roadway, true?
22 Generally, no, I wouldn't.
23 Because that would be a ridiculously dangerous
24 thing to do?
25 And his answer was, sure.
26 So the point I'm making is they are trying to fault

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1 Summation - Mr. Rubinowitz
2 Jim Gregware for doing something that was reasonable at that
3 time. We can't look at this in a vacuum right now, in the
4 sterile environment that we have in this courtroom right
5 now.
6 So take a look at it. Was it reasonable what he
7 did, he got out of his car, everybody else got out of their
8 cars, that's what was going on.
9 Aileen Marquez.
10 What happened next?
11 This is what she said.
12 I told everyone to leave the car, to go onto the
13 divider, before, you know, anything worse happens. And we
14 all went to the Jersey divider.
15 Now, that question and answer, we all went to the
16 Jersey divider has been changed to her now standing own top
17 of the Jersey divider, looking all around. She never said
18 that. We all went to the Jersey divider. That's what she
19 said.
20 Now, the point that I'm making is it's a lot safer
21 to be out of the car than actually in the car at that time.
22 And that's why I'm concerned about it. Because it was safer
23 to be outside. And I actually asked Aileen Marquez that.
24 Yes, she felt it was safer after getting out. Twice, it's a
25 lot safer.
26 The fault is why are we faulting Jim Gregware for

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1 Summation - Mr. Rubinowitz
2 doing what every other driver did. Every other driver got
3 out of their car, everyone. But they are blaming him. And
4 the City of New York said he is the one who was solely
5 responsible for this accident. And I submit to you that
6 that's not right, that's not fair.
7 As far as the MV-104 that was filled out. Look at
8 the dated on this. May 27th. Jim Gregware's in the
9 hospital.
10 So I asked Eileen Gregware, I asked her
11 specifically: There were forms coming every day, it was so
12 overwhelming, just the paperwork to be filled out. I want
13 to deal with this right now.
14 There was mention you heard of an MV-104, Defense
15 Exhibit J. I will show it to you. Okay, an accident
16 report.
17 Did you hand this to your husband?
18 Yes.
19 Tell us what happened regarding that.
20 Oh, I had paperwork. Just, it was overwhelming the
21 amount a of paperwork, so I had my father help me. That was
22 just one of the things he could do for me, to help me fill
23 out these forms. So he helped me fill out these forms. I
24 would bring things to the hospital for Jim to sign, I mean
25 there was just so much paperwork involved.
26 To your knowledge, did your father speak with

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1 Summation - Mr. Rubinowitz
2 anyone who witnessed the accident.
3 No. I mean I don't know.
4 Do you know where your father got that information
5 from?
6 Answer: I'm assuming the police report.
7 With respect to the information contained there, it
8 reads 72nd Street. It says it there, 72nd Street.
9 Do you know where your father got that information
10 from?
11 I'm assuming the police report.
12 Do you know where that officer got the information
13 from?
14 Answer: No.
15 Do you know how the officer conducted his
16 investigation?
17 And the answer was, by Eileen Gregware, I have no
18 idea.
19 And you know who else has no idea how he conducted
20 the investigation? The police officer. He told you that.
21 So here's the problem. She wrote this down. Jim
22 Gregware's on morphine at this time. Heavy dose of pain
23 medication, and you know what? It was copied from the
24 police report. We didn't have specific data at that time.
25 That's what's going on, so it was sent in because it's a
26 violation not to send it in , so he did that.

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1 Summation - Mr. Rubinowitz
 2 So Mr. Wang said it's a case about choices. I
 3 agree it's a case about choices. Choice number 1. Should
 4 we believe Officer Pagano? I submit to you the answer is
 5 no.
 6 Choice number 2. Should we believe Dr. Ali Sadegh?
 7 I submit to you the answer is no.
 8 Choice number 3, should we believe Ruben Davydoff?
 9 How can you believe Rubin Davydoff with all the different
 10 answers he's given?
 11 And choice number 4, should we believe Mario
 12 D'Abruzzo?
 13 I will give you one other metaphor, if I may, just
 14 before I break, to illustrate this point.
 15 Imagine, if you will, a bridge over a large canyon,
 16 a canyon that's a thousand feet deep. And the bridge is
 17 supported by four deep pillars, pillars based on the
 18 testimony of certain witnesses.
 19 Officer Pagano, if he's telling the truth, that's a
 20 very strong pillar. If he's not telling truth it will
 21 collapse.
 22 Pillar number 2, Dr. Ali Sadegh, if he was telling
 23 you the truth and he really had done a full, fair, thorough
 24 and complete evaluation, that's a very strong pillar. But
 25 if he did not, no good.
 26 Pillar number 3, Rubin Davydoff. If he's telling

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1 Summation - Mr. Rubinowitz
 2 the truth, it's a very strong pillar. If he's not, no.
 3 And pillar number 4, Mario D'Abruzzo.
 4 Let's assume you're all crossing guards and there's
 5 a bus coming towards that bridge. If that's a strong bridge
 6 based on their testimony and the truthfulness of their
 7 testimony, let it cross. But if you put your hand up and
 8 say stop, you know why you're saying it. It's not
 9 reasonable, because you can't trust the information you were
 10 provided with.
 11 And that's the point that I'm making. We can't
 12 trust the information that we got from these witnesses, all
 13 in an attempt to deny justice to Jim and Eileen Gregware.
 14 All right. I told you I'm going to take a break
 15 right now. I thank you for bearing with me, and I'll finish
 16 up in a little while.
 17 THE COURT: Take five minutes.
 18 THE COURT OFFICER: All rise.
 19 (Jury exited.)
 20 THE COURT: All right.
 21 For record, I have had an opportunity to go through
 22 testimony, the summations yesterday, and I found the
 23 following message. I'm going to read the whole thing so I
 24 can put it into context.
 25 During Mr. Rubinowitz's summation, at page 2589:
 26 Before that police officer took the witness stand,

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1 Summation - Mr. Rubinowitz
 2 I read to you his deposition.
 3 When I read that police officer's deposition to
 4 you, weren't you glad to finally be hearing the testimony of
 5 a police officer? Didn't you want to hear what the police
 6 officer had to say about what happened here? Didn't you
 7 want to hear that? And in fact, I read it carefully.
 8 Could you believe what you were hearing? I don't
 9 remember, I don't know, I have no idea to every question
 10 that was asked. But here's the thing. The police officer
 11 was represented by counsel. A different counsel, not Mr.
 12 Wang and his gang, but somebody else, somebody else
 13 represented by others with a police report in front of him
 14 the first time he was questioned four years after the
 15 accident with the police report in front of him, and he
 16 still didn't remember what happened.
 17 Five years after we questioned him again. And you
 18 know, we are thorough when we questioned him, this time with
 19 his memo book in hand, and he still could not remember.
 20 But it's not just that he didn't remember, because
 21 when we asked where did it take place and the answer was
 22 where did the accident takes place? 72nd, 73rd, 74th or
 23 higher and his answer was not that I don't remember, his
 24 answer was I have no idea.
 25 Now, there's distinction between somebody who
 26 doesn't remember something and somebody who has no idea.

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1 Summation - Mr. Rubinowitz
 2 Because if you don't remember, maybe something would refresh
 3 your recollection, like a police report or your memo book.
 4 But it didn't. But he said I have no idea.
 5 Then something happened. And that is the part of
 6 the case that I have a terrible, terrible problem with. If
 7 it's all about credibility, the way that Mr. Wang says, all
 8 about credibility, Mr. Wang, I don't blame you for being
 9 looking down all about that.
 10 Why in the world is a police officer allowed to
 11 take the stand and tell less than the truth? Why is that
 12 allowed to happen in this courthouse?
 13 Yes, I questioned him at length. This man is
 14 supposed to be part of New York City's finest. I will tell
 15 you this, I have a lot of respect for the New York City
 16 Police Department and its officers, and we all should, but
 17 that man is not one of New York City's finest. If anything,
 18 he is one of New York City's worst.
 19 And I will tell you why. How many times did you
 20 meet with counsel? Five times. That's Mr. Wang's firm,
 21 five times. He pointed things out to you and now all of a
 22 sudden, after pointing things out your memory is getting
 23 better? Yes, it is.
 24 Who do we know was not there at the time of the
 25 accident? All of these lawyers, all of them right there.
 26 All the lawyers from Simpson Thacher, they were not there.

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1 Summation - Mr. Rubinowitz
 2 But something is happening, and this is terrible.
 3 This is something that should not be accepted by you, no
 4 matter what, all in an effort to deny Jim Gregware and
 5 Eileen Gregware justice in this case.
 6 Is that appropriate ever? Really? His memory is
 7 getting better.
 8 They show you things. How about that? Did you
 9 speak, and after speaking, and although you didn't remember
 10 anything four and five years after the deposition, you
 11 didn't know, your memory is getting better. Since then it
 12 has gotten better.
 13 Are we really going to believe that? Are we really
 14 going to do that? Isn't that absurd to do something like
 15 that be?
 16 I don't blame Mr. Wang for not mentioning Police
 17 Officer Pagano in his summation. I would want to hide also,
 18 I would want to hide also.
 19 And that's the full context of the statement that
 20 you mentioned earlier.
 21 I should also mention for the record, only because
 22 you consider this a racial slur, that the four other
 23 attorneys that you have with you are three white women and
 24 one white man. No other Asians, there are no blacks, there
 25 are no Hispanics.
 26 And so to have considered this a racial slur in the

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1 Summation - Mr. Rubinowitz
 2 context that I just read, is really an error.
 3 And your motion for a mistrial is denied.
 4 (Whereupon a recess was taken.)
 5 (Proceedings resume.)
 6 THE COURT OFFICER: All rise. Jury entering.
 7 (Whereupon the jury entered.)
 8 THE COURT: All right. Please sit down.
 9 You might have noticed that we have someone new at
 10 counsel table. Mr. Gaztambide, is a colleague of
 11 Mr. Miller, and he's going to be with us for the rest of the
 12 trial as well.
 13 MR. GAZTAMBIDE: Thank you.
 14 THE COURT: Please continue.
 15 MR. RUBINOWITZ: Welcome, Mr. Gaztambide.
 16 MR. GAZTAMBIDE: Thank you.
 17 MR. RUBINOWITZ: Before I move on to the damages, I
 18 just want to deal with two other issues that I had mentioned
 19 briefly yesterday. I had mentioned to you that there was a
 20 CAT scan performed and I didn't have it -- a CAT scan report
 21 and I didn't have it at my fingertips. The procedure of CAT
 22 scan without contrast of the head.
 23 And obviously the thing I was pointing out about
 24 this is although they put this up here, procedure, reason.
 25 Bleed. There is no bleed. They were trying to determine
 26 whether there was a subdural, subarachnoid or epidural

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1 Summation - Mr. Rubinowitz
 2 bleed, because that could be something very significant.
 3 Because if you read it and took a look at it, all
 4 you have to do is read through findings, which is where you
 5 want to look to see what was going on. Obviously, Dr.
 6 Sadegh did not do that, but if you even just read the
 7 impression, sinus disease, otherwise unremarkable
 8 examination. He would have known your head can't hit a
 9 windshield and smash the windshield, fracture the windshield
 10 and have nothing happen to the head, not even a headache.
 11 It's, simply put, just not believable. That's why
 12 I say if you look at Dr. Sadegh as one of the pillars of the
 13 foundation of that bridge I was talking about, it can't
 14 stand, it doesn't make sense.
 15 The other thing I will point out is you had heard
 16 Mr. Baxter say many times, the first time we ever heard Jim
 17 Gregware say anything about 79th Street or being over a hill
 18 was at this trial? No, no. He testified to that at his
 19 deposition back in 2009.
 20 I had asked the question and specifically read it
 21 back to Dr. Sadegh, and he said this:
 22 Traveling northbound in the left-hand lane I
 23 approached a slow, gradual hill in the vicinity of 79th
 24 Street. As I came up to the top of the hill, just over the
 25 crest of the hill, I immediately realized there were three
 26 lanes of the West Side Highway that were blocked.

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1 Summation - Mr. Rubinowitz
 2 And he went on and he described exactly what
 3 happened, how he -- this is what he said: I immediately
 4 applied my brakes, I slid, made a light bump into the car in
 5 front of him.
 6 But the point I'm making is this, yes, Jim Gregware
 7 has been consistent throughout, it's not something new he's
 8 inventing right now for purposes of this trial. He was
 9 consistent always, and that's what the bottom line is.
 10 All right.
 11 Let me move on to the second part of this summation
 12 and I will try to move through this more quickly, but it is
 13 the damages aspect of the case. And that's the reason that
 14 I had called Dr. Elliot Hershman to the witness stand to
 15 allow you the opportunity to hear from a board certified
 16 orthopedist, somebody who understands, and has treated Jim
 17 Gregware and really can speak to the nature of the injuries
 18 that he suffered and has treated him.
 19 I want to go back to what I said in the beginning
 20 of my summation yesterday. Our system of justice is a fair
 21 one. Counsel all had the opportunity to have examinations
 22 by doctors of their own choosing, to examine Jim Gregware to
 23 make sure that the claims that we have are confirmed, if
 24 they choose to.
 25 Well, they did. Three separate doctors,
 26 Dr. Sternnan, Dr. Strauss, Dr. Bleifer. Two of those

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1 Summation - Mr. Rubinowitz
 2 doctors took two exams a piece, you'll recall the testimony
 3 of Jim Gregware, years apart. Just to examine him. If
 4 there was anything that I had said, anything that
 5 Dr. Hershman had said that was not said -- that was not
 6 true, of course those doctors would be here.
 7 Mr. Baxter is not going to not call a doctor just
 8 for the convenience of the Court. You see how he represents
 9 his client, he's a thorough lawyer. The problem is this,
 10 those doctors would have agreed with everything we've said,
 11 no question about it. There is no contradictory proof when
 12 it comes to the medical proof in had this case. There is
 13 nothing that contradicts what it is that we've said. And
 14 that's why I say to you it's such a significant event.
 15 So let's see happened.
 16 Mr. Wang said the plaintiff's injuries were tragic,
 17 no one's denying that, no one's disputing it. Mr. Wang kept
 18 his word. No one is disputing it, he has not disputed it at
 19 all.
 20 And in fact, what's taken place is, all of the
 21 injuries that we've said we would prove, if you recall
 22 Mr. Baxter said make them prove it, we did. We proved
 23 everything that we would say.
 24 So why aren't those doctors here? Why haven't we
 25 heard from Dr. Sternman, Dr. Strauss, Dr. Bleifer? Only one
 26 reason. They had nothing to add, everything that Dr. Elliot

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1 Summation - Mr. Rubinowitz
 2 Hershman said was truthful, and it was, and that's what
 3 happened.
 4 Now, I'll just start off this way for just a
 5 moment.
 6 Pete, if you'd just put this up?
 7 Mr. Baxter showed you some x-rays. He started to
 8 tell you that there's no arthritis. Wait a second, please.
 9 This is an AP x-ray, an anterior/posterior x-ray with the
 10 patient laying down. It doesn't show the knee in flexion or
 11 extension. It doesn't show the knee in varus or valgus
 12 formation. You can't see exactly what this is to have
 13 Mr. Baxter reading the x-rays. That's not appropriate.
 14 If there was a doctor who would say that he doesn't
 15 have arthritis, bring him in. But any time you have some
 16 sort of damage to the articular surface -- you remember in
 17 my opening I said the end of a bone, that shiny area? If
 18 you have damage to this area, as the doctor explained,
 19 damage to the femoral condyles where I'm pointing right now,
 20 or to the tibial plateau, this one at the bottom, the shin
 21 bone, the tibia. This is the femur, running from the knee
 22 to the hip.
 23 If there's damage here, or damage here, of course
 24 it's going to result in arthritis, because it no longer has
 25 the smooth, clean surface as Dr. Hershman explained.
 26 So what happened to Jim Gregware? Jim Gregware was

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1 Summation - Mr. Rubinowitz
 2 thrown by a car. There's no question about it, he was
 3 injured. He was severely injured. He was on the roadway.
 4 When he's on the roadway, just try and imagine what's going
 5 on.
 6 Jim Gregware's on the roadway, his leg is mangled.
 7 This leg was in a position that was unnatural, to have it
 8 come up. You heard the way Dr. Hershman explained it. The
 9 leg came back up so that his ankle was at his hip. And at
 10 the other side, forward rotation coming up the other way.
 11 His legs are demolished at this point. He is in
 12 severe pain. This is not a minor event that has happened to
 13 him. What's taken place is something incredibly severe.
 14 And he's also laying in a pool of gasoline at this point in
 15 time, the road rash that is burning him.
 16 Why? Because when his skin is rubbed off from the
 17 concrete surface, the gasoline is burning him. And he's
 18 fearful. You heard his testimony loud and clear, he was
 19 praying to God, please, don't let me die here. Because if
 20 there's a spark, that's the end of it. That's the end of
 21 it.
 22 We know for a fact a gas tank is ruptured. A gas
 23 tank is ruptured, and Dr. Sadegh even told you indeed in Jim
 24 Gregware's gas tank there was a rupture. If there's a
 25 spark, it's all over. You can't possibly remain inside your
 26 car if there's gas around. That would be ludicrous, if I

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1 Summation - Mr. Rubinowitz
 2 could borrow one of Mr. Wang's words. That would be
 3 ludicrous.
 4 So what does he do? He was there on the ground, he
 5 can't move, he can't get up, but he knows he's covered in
 6 gas, and now he knows he has to go to the hospital and he
 7 knows he's seriously injured, very, very seriously injured.
 8 Ladies and gentlemen, there are certain injuries
 9 that he suffered from, I pointed this out to you because we
 10 know that his pelvis, the superior pubic ramus, this is the
 11 area of the superior pubic ramus, was fractured.
 12 There are various types of fractures. I know it
 13 wasn't clear in the opening statement, but I can actually
 14 now use an exhibit to show you. But if in fact there's a
 15 mildly displaced fractured or a non displaced fracture, the
 16 bones aren't going to move. As they become more and more
 17 displaced they give them different names.
 18 When there's a comminuted fracture or a shattering
 19 of the bones, that's the worst type of fracture you could
 20 have. And that's what happened.
 21 As Dr. Hershman described it to you, it's an area
 22 that's rich in vascular supply, also rich in nerve supply,
 23 so it's going to be incredibly painful. Painful to someone
 24 like Jim Gregware, who now is unable to move to even try to
 25 position himself into a good position, he's got fractured
 26 ribs, a torn labrum on the right side of his shoulder, all

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1 Summation - Mr. Rubinowitz
 2 uncontroverted. No one said anything else.
 3 So he's brought to St. Vincent's Hospital and there
 4 they start evaluating him. And the one thing they were
 5 checking for when they started to evaluate him was what is
 6 the vascular supply? That was the most important thing, to
 7 make sure that the blood supply was appropriate, because
 8 otherwise it could result in something far worse than what
 9 he had. You want to make sure you have sufficient blood
 10 supply before you ever do surgery. That's why they waited
 11 from the 20th of May, to May 31st.
 12 So what we did was we actually worked with a
 13 medical illustrator and Dr. Hershman to show you just what
 14 was going on, based on the MRI scans.
 15 When you see what happened, it's not just a simple
 16 injury to the knees, and I know you know this, but complete
 17 disruption of the medial collateral ligament, complete
 18 disruption of the patellar retinaculum, complete disruption
 19 of the vastus medialis. It's completely disrupted.
 20 The quadriceps muscle was completely ripped off.
 21 And not only was it ripped off, but the bone actually comes
 22 with it, so that when you tear it, they call it an avulsion
 23 fracture, it pulled apart as the bone came back, and that's
 24 what happened as it came back. This was a very traumatic
 25 event that took place.
 26 Look at what happened. You can see the way that

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1 Summation - Mr. Rubinowitz
 2 the anterior cruciate, posterior cruciate, the medial
 3 collateral, the lateral collateral. I just want to show you
 4 this so it's easier to see. They provide stability as Dr.
 5 Hershman told you going forward and back, and the medial
 6 collateral, the lateral collateral prevent it from going
 7 back this way.
 8 The problem is the ligaments are shot, not just the
 9 bone. But you can't repair the ligaments until you have
 10 strong bone, because there's nothing to put the ligaments
 11 into if the bone is shattered. And he obviously had
 12 fractures here.
 13 So the fibular head right here, comminuted,
 14 shattered. You actually had the tibial spine right in the
 15 center, shattered. That's where the articular surface was
 16 and there's why it was so significant and that's why it
 17 caused pain and is continuing to cause pain.
 18 So we took a look at, for example, the other leg,
 19 the left knee MRI. He suffered an avulsion fracture of the
 20 lateral tibial plateau. Avulsion fracture of the lateral
 21 tibial spine. An avulsion means it actually rips off bone,
 22 actually ripping the bone away. And that's something so
 23 significant to him.
 24 This is why the doctor was explaining to you when I
 25 had him explain what about bone, does it bleed, yes, of
 26 course bone bleeds. This is what's happening here. We see

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1 Summation - Mr. Rubinowitz
 2 the avulsed lateral collateral ligament. It's gone.
 3 There's nothing to support the knee at this point in time.
 4 So we -- they know he has to have major surgeries
 5 and he has his first surgery on May 31st. I wanted to spend
 6 enough time, even though I'm going quickly, I thank you for
 7 listening to this, I do want to make sure I cover it.
 8 If I show you what happened with respect to the
 9 right knee, the quadriceps tendon is gone, the medial
 10 collateral ligament is gone, as I mentioned the tibular
 11 head, part of the joint itself, is gone, it's shattered.
 12 But they tried to reattach the medial collateral
 13 ligament with a screw here, and they also put other screws
 14 right into the bones to actually try to reattach it. The
 15 problem is if they do the surgery now they can't do anything
 16 for the ligaments at this point, there's no way to repair
 17 those ligaments at this point, they just try to give some
 18 stability to the knee, and that's what they are trying to do
 19 here.
 20 The second surgery that takes place May 31st. Once
 21 again, a very major events. And here they are dealing with
 22 the tibial plateau fracture, left knee.
 23 And you can see what they do is obviously they
 24 drill through with smaller dies first, drilling through the
 25 tibia, coming right through, trying to repair the tibial
 26 plateau fracture itself.

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1 Summation - Mr. Rubinowitz
 2 So if they come in over here, they try and repair
 3 the tibial plateau fractures on the model I'm pointing to
 4 right now.
 5 The problem is, once you have a fracture to the
 6 tibial plateau, it's disruption of the articular surface,
 7 you'll no longer have that smooth, even gliding surface,
 8 it's going to result in arthritic changes, no question about
 9 it.
 10 But they are doing the best they can to repair the
 11 bony structures, that's what they are working on at this
 12 time, repairing the bony structures, and they are trying to
 13 find a way to repair that, and that's what they did.
 14 And Jim Gregware comes out, and at this point when
 15 he comes out there's no question he's in a substantial
 16 amount of pain, and you heard about it.
 17 So you know, I put in those photographs just so you
 18 could see it, he's in those long leg casts, the casts that
 19 weigh 40 pounds. It goes all the way to his crotch, he has
 20 a Foley catheter, he hasn't defecated at all since the date
 21 of the accident and he won't for 19 days.
 22 Why don't you put that up.
 23 Thank you.
 24 The point that I'm making is obviously these casts
 25 are so long at this point, there's no way that he can move,
 26 he can't get comfortable because of the fractures involving

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1 Summation - Mr. Rubinowitz
 2 the pelvis as well.
 3 So when he was describing it as crushed glass,
 4 that's what it felt like to him, and this is what he was
 5 explaining. He can't put pressure on this. So to Jim
 6 Gregware it's a very significant event to him at this point
 7 in time.
 8 What I'd like to do is break for lunch now and
 9 continue when you come back.
 10 Thank you all.
 11 THE COURT: It's beautiful out. See you at
 12 2 o'clock.
 13 Don't talk about the case. Careful as you go.
 14 THE COURT OFFICER: All rise.
 15 (Jury exited.)
 16 (Whereupon the luncheon recess was taken.)
 17 (Continued on the next page.)
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1 Summation - Mr. Rubinowitz
 2 THE COURT: So just for the record, I gave
 3 everybody a copy of the 13-page verdict sheet that we worked
 4 out.
 5 Are there any changes to it?
 6 MR. RUBINOWITZ: No.
 7 MR. WANG: No.
 8 MR. BAXTER: No, Your Honor.
 9 THE COURT: All right, so then it's safe to print,
 10 correct?
 11 MR. RUBINOWITZ: Correct.
 12 MR. BAXTER: Other than our objections are
 13 preserved, right, Your Honor?
 14 THE COURT: I had no objection to the verdict sheet
 15 on Friday when we left.
 16 MR. BAXTER: Yes.
 17 THE COURT: Let's go over them now.
 18 MR. BAXTER: I objected to the --
 19 THE COURT: To the reckless.
 20 MR. BAXTER: To the reckless for the single
 21 significant factor question, which you asked me if there was
 22 a difference; I felt there was. That was my objection. I
 23 just continue that objection.
 24 MR. WANG: You wanted the proximate cause question
 25 repeated twice.
 26 THE COURT: Yes. All right.

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1 Summation - Mr. Rubinowitz
 2 MR. WANG: I had three things, the reckless
 3 question I thought should not be included.
 4 MR. BAXTER: I also join in that.
 5 MR. WANG: The four special duty question I thought
 6 should be included, and then the allocation question, number
 7 11, I said that there should be further clarification that
 8 the City's responsibility should be based on its own conduct
 9 and that Burtis' conduct and any liability, it had an
 10 nondelegable duty, should not be factored in this question.
 11 Do you want me to further explain?
 12 THE COURT: Yes.
 13 MR. WANG: This relates to the concerns, again,
 14 that we have a 2-225 instruction said that the City has a
 15 nondelegable duty to maintain safety on roadways. So the
 16 jury may think the City has these nondelegable duty. So
 17 even if Burtis was fully responsible for setting it up,
 18 Burtis didn't do it, Burtis was fully negligent, they would
 19 still put the whole liability on the City because of the
 20 nondelegable duty. This coupled with the jury instructions
 21 that relates to this does not sufficiently clarify how they
 22 go about assigning responsibility. And responsibility for
 23 the City should, at least on this question should be based
 24 on its own conduct and not any negligence attributable to
 25 the City because of what Burtis did or did not do.
 26 THE COURT: How would you clarify it?

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1 Summation - Mr. Rubinowitz
 2 MR. WANG: It should be clarified in both the
 3 question and the instruction, a clear statement that the
 4 percentage of liability -- the answer to the question of
 5 what the City's percentage liability is in this question
 6 should be based only on its own conduct and any -- whether
 7 it's vicarious liability or any liability of the City based
 8 solely on nondelegable duty but be based on Burtis' conduct
 9 should not be reflected and that Burtis be inserted here.
 10 THE COURT: I understand why it is important,
 11 because you have an indemnification issue with Burtis. I'm
 12 not sure how to clarify it.
 13 MR. WANG: But do you see my concern? I tried to
 14 articulate it.
 15 THE COURT: I understand that your special duty
 16 goes to the police officer, and that's different.
 17 MR. WANG: It goes to all government entity. I
 18 understand the Court has ruled against us on that. I
 19 understand that.
 20 THE COURT: So make me understand this. I do
 21 appreciate that while you may be vicariously liable, you may
 22 not be negligent in your view and, therefore, you are hoping
 23 that Burtis will indemnify you.
 24 MR. WANG: Correct.
 25 THE COURT: But I am not sure how to get that for
 26 you on the verdict sheet about what you are suggesting.

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1 Summation - Mr. Rubinowitz
 2 MR. WANG: I think the solution to this is to make
 3 a clear statement that, or maybe a separate question, but
 4 one of two solutions, one is to directly ask whether or not
 5 the City bears any negligence beyond and separate from
 6 whatever Burtis did or did not do that night.
 7 THE COURT: So in the City's question where it
 8 says: "Is the City negligent," you want me to say is the
 9 City negligent as distinct from Burtis? Anybody else want
 10 to chime in here.
 11 MR. RUBINOWITZ: I think if I understand what Mr.
 12 Wang is saying, I think he would like: Was the City
 13 negligent separate and apart from Burtis.
 14 MR. BAXTER: There is a question.
 15 MR. RUBINOWITZ: But he has that question anyway,
 16 but is that the language that a you want?
 17 THE COURT: So you want me to add that to the
 18 City's negligent question?
 19 MR. RUBINOWITZ: I don't know. I'm trying to
 20 figure out what he is saying. When you ask the question:
 21 Was the City of New York negligent, it focuses on the City.
 22 MR. WANG: You have an Instruction 2-225, which
 23 says we have a nondelegable duty. So the City could be held
 24 liable in negligence for something the contractor does or
 25 does not do. That's the whole point of the nondelegable
 26 duty.

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1 Summation - Mr. Rubinowitz
 2 So reading all these instructions together with the
 3 question, the answer could be well, gee, the City did
 4 everything it was supposed to, in terms of inspections and
 5 approvals, but Burtis didn't. By definition under 2-225 --
 6 MR. RUBINOWITZ: The City is liable for its own
 7 acts, for its own omissions, is that any different than
 8 saying is the City negligent?
 9 MR. WANG: I think yes, it is because --
 10 MR. RUBINOWITZ: So I think your question would be:
 11 Is the City negligent for its own acts and/or omissions.
 12 MR. WANG: But then you have to tie it into
 13 negligence. Are you adding that as a separate question?
 14 MR. RUBINOWITZ: Was the City negligent for its own
 15 acts and omissions.
 16 MR. WANG: That would clarify it.
 17 THE COURT: Se we are going back to question one,
 18 and you are proposing: Was the City of New York
 19 negligent --
 20 MR. RUBINOWITZ: For its own acts or omissions.
 21 MR. WANG: So that helps on one. And then on 11,
 22 just needs to be a short statement allocating percentages,
 23 the City's percentage should be based on its own -- what
 24 was the language?
 25 MR. RUBINOWITZ: For its own acts or omissions.
 26 The City of New York for its own acts and omissions, on

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1 Summation - Mr. Rubinowitz
 2 number 11.
 3 MR. BAXTER: I object to any of that, a special
 4 instruction in the percentage section.
 5 THE COURT: I am not giving a separate instruction.
 6 MR. RUBINOWITZ: You have asked the question,
 7 question number one, if you add this language: Was the City
 8 negligent for its own acts or omissions, and then you go to
 9 the percentages, it's the same. I don't understand why you
 10 have to change the language on Page 11 at all.
 11 THE COURT: Well, is there any problem with me
 12 adding the City of New York in, parentheses for its own acts
 13 or omissions, close parentheses?
 14 MR. RUBINOWITZ: I have no problem with it.
 15 MR. WANG: I have no problem.
 16 MR. BAXTER: Why should it be any different than
 17 mine? I have a problem with it.
 18 MR. WANG: I don't have a problem adding Burtis for
 19 its own acts or omissions, so it's parallel.
 20 MR. RUBINOWITZ: I have no problem with it.
 21 THE COURT: Then on the percentage page, I will add
 22 Burtis Construction Company, Inc. for its own acts or
 23 omissions.
 24 MR. GAZTAMBIDE: If you do that for one defendant,
 25 wouldn't you have to do that for all of the defendants?
 26 THE COURT: Are you asking for it?

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1 Summation - Mr. Rubinowitz
 2 MR. BAXTER: Judge, I'm not asking for it. I don't
 3 want any additional language in the verdict sheet, other
 4 negligence.
 5 THE COURT: Great. So I won't put it in for you,
 6 Mr. Baxter.
 7 So at this point, I have: The City of New York for
 8 its own acts or omissions on the percentage page, is that
 9 where you want.
 10 MR. WANG: On both one and the percentage page.
 11 THE COURT: Anybody else?
 12 MR. RUBINOWITZ: I just want a copy of it before I
 13 start my summation.
 14 THE COURT: All right. See, this is why I didn't
 15 print before I spoke to all of you.
 16 MR. BAXTER: I object.
 17 THE COURT: So noted.
 18 Anything else.
 19 MR. WANG: We also requested specific intervening
 20 cause question, which you denied.
 21 THE COURT: I don't know that we made a record on
 22 it. What was the intervening cause questions you were
 23 requesting?
 24 MR. WANG: There was a question from Mr. Gregware
 25 and one from Mr. Da-Silva: Could a reasonably prudent
 26 person have foreseen that an act of the kind committed by,

1 Summation - Mr. Rubinowitz
2 in one instance James Gregware, would be a probable result
3 of the City of New York's own negligence. It's the City's
4 position that it is both Mr. Gregware's own negligence as
5 well as Mr. Da-Silva's negligence that constitutes the
6 superseding intervening causes.

7 THE COURT: And you had an opportunity to sum up on
8 it, because I did tell you I would charge intervening cause.

9 MR. WANG: I understand you ruled against us.

10 THE COURT: But I don't see it as a separate
11 question. All right. Anything else?

12 MR. RUBINOWITZ: No.

13 THE COURT: Very good, then I am going to print.
14 (Pause in the proceedings.)

15 THE COURT OFFICER: Jury entering.
16 (Whereupon, the jury enters the courtroom.)

17 THE COURT: Please, sit down. Please continue.

18 MR. RUBINOWITZ: Thank you, Your Honor.
19 Good afternoon everyone. Before we broke for lunch
20 I was talking to you about the nature of the surgeries. And
21 the reason that I am doing this, go through this is because
22 the claim we have, based on damages, is for the pain and the
23 suffering of Jim Gregware, that is his conscious pain and
24 suffering. But in addition to the conscious pain and
25 suffering claim, within that claim is another element of the
26 damages, something known as the loss of the enjoyment of

1 Summation - Mr. Rubinowitz
2 hours at night. And you can just imagine the stresses that
3 are placed on Jim Gregware right now as this is continuing.
4 And his wife, Eileen, has her own claims called a derivative
5 claim, a fancy legal term. But what it means is, the claim
6 that she has for the loss of her husband's services in
7 society during this period of time. So look at what is
8 going on.

9 Eileen Gregware, this is just before the accident
10 happened, she got a little baby in her hand, and now she has
11 got to take care of all of this, but there is something else
12 that's going on that she has to take care of, Jim Gregware
13 is in the hospital, and Jim Gregware is in the hospital
14 suffering terribly. You heard what he was going through at
15 this point in time. You know that there comes a point in
16 time when Eileen decides to try and cheer Jim up, to show
17 him the children. You could only bring two of them. She
18 brings the two oldest, Ryan and Matthew to the hospital, and
19 the two boys come to the hospital, and it was disastrous,
20 because the oldest child Ryan starts crying, he starts
21 crying, Matthew starts crying. They want to jump on their
22 father, their father can't take that. The one thing they
23 don't want to see, although he is very happy to see the
24 children, you can just imagine what is going on as far as
25 the loss of enjoyment of life at this point, and Jim
26 Gregware knows he is in severe pain at this point in time.

1 Summation - Mr. Rubinowitz
2 life. So it is the loss of enjoyment of life that he has
3 experienced as a result of having had these injuries, which
4 we are saying occurred through no-fault of his own.

5 So when you take a look at what happened, we know
6 at this time Jim Gregware has had very significant surgery
7 already to both the right knee, to the left knee. At this
8 point in time while he is in the hospital, still as of May
9 31, 2006, his pelvis is shattered, his ribs are fractured
10 and his shoulder, his right shoulder has a torn labrum. But
11 there is something else that is going on at this time,
12 because during this time, Jim Gregware's wife was home, and
13 they had a young family.

14 Now, I put up a photo, and the only photo I have
15 shown is the family, and I showed you this just to give you
16 an idea of what the family was like at the time, because you
17 need to know to appreciate it, what is the family
18 undergoing, what is happening to the family. So you take a
19 look at this, and I will just show you. Ryan, the
20 four-year-old, Matthew the two-year-old, and there is the
21 six-week-old baby, Samantha.

22 Now, think about what is going on at this point in
23 time. If there is one point in time when Jim Gregware
24 needed to be around for his family to help out, this is the
25 time he certainly needed to be out to help Eileen, who is
26 now breast-feeding. She is up you, as you know, every two

1 Summation - Mr. Rubinowitz
2 If you look at the hospital record, you will see throughout
3 the record he is on very severe pain medications to try and
4 quell the pain that he is going through.

5 What happens is this, we know he is going to be
6 discharged from the hospital, the date, June 5th. And the
7 hospital had certain terms when they said, got to get you
8 out of the hospital. And they are actually saying to him,
9 all right, time to go home. Jim Gregware has a panic
10 attack, a man who has never had a panic attack in his life.
11 What am I going to do? I've got a catheter in my penis, I
12 can't defecate, I can't move, I can't get around, and now
13 they have to find a place for him. Luckily, through
14 Eileen's effort, they were able to come up with the Wartburg
15 Rehabilitation Center. It's actually a nursing home, where
16 they could take Jim Gregware there. But you saw that he's
17 got these two huge casts on legs, unable to get around,
18 unable to bend. You heard how he is in bed, where the bed
19 is short by two feet. So you can imagine the discomfort he
20 is undergoing. Because really what we are talking about is
21 his pain and suffering, his loss of enjoyment of life. As
22 things going on, what happened to Eileen, you heard her say
23 this, she is trying to put a good face on for her husband
24 Jim, trying to do that, but she actually told you what was
25 really going on. And she told you how, although she was
26 someone who ran seven New York City marathons with boundless

1 Summation - Mr. Rubinowitz
2 energy, she is falling apart. And she said she didn't want
3 her husband to see that she was falling apart.

4 Jim Gregware when he was in Wartburg, think about
5 what happened. He can't defecate, can't go to the bathroom,
6 19 days think about without being able to defecate. People
7 sometimes have constipation for three or four days, and they
8 are in excruciating pain or pain. Yes, the medications that
9 Dr. Hershman explained, the medications are going to have
10 effects on the body, but he can't press because of the
11 fracture to the pelvis. And the problem is, you can't put
12 pressure because the fracture to the pelvis, you are not
13 going to be able to defecate. And he explained when it
14 finally happened. Why do we bring that up? Because it's
15 the reality. This is what happened. It's reality as far as
16 what was taking place with Jim Gregware. He is trying, he
17 is trying very hard as someone who wants to get back to his
18 family. He is working very hard. You saw that. And I
19 think you saw that there was no nonsense when it came to Jim
20 Gregware with this.

21 Now, Eileen Gregware, when I asked her what was
22 going on, she just said I didn't want him to see that I was
23 falling apart. This is her testimony. When Jim Gregware is
24 finally discharged from the Wartburg Rehabilitation Center
25 or the Wartburg Nursing Home, Eileen Gregware is going
26 through a very difficult time. She has had virtually no

1 Summation - Mr. Rubinowitz
2 whether he is turned to the side or anything else. His
3 pelvis had been fractured. The problem is, as you heard,
4 the sexual relations virtually nonexistent. I brought it
5 out. It's not something that we want to bring out. I'm not
6 going to dwell on this right now, but we know how this
7 affected the family, and that's why I tell you about it,
8 because it is a very, very significant event for the
9 Gregwares, and something that occurred to them once again
10 through no-fault of his own.

11 When I asked Eileen Gregware how often are his
12 knees swollen now? She is the one who cares for him all the
13 time. Do you still assist with the icing? Yes. Does Jim
14 still wear a brace? Yes, on both of his legs. You saw the
15 bledsoe braces. We had them here. I don't have to take
16 them out. You saw how he had to have these strapped on.
17 Eileen was acting basically as a nurse for him in the house.

18 You heard about the CPM machine. You heard what
19 was going on. Well, as time goes by yes, there was more
20 surgery. As January comes around, another very major
21 surgery. Here is what happens. One of the things that they
22 had tried to do was they tried to -- there are a number of
23 screws in the legs. They put in smaller screws to connect
24 the lateral collateral ligament, trying to give some
25 stability to the leg, and that's what these are over here.
26 In fact, if you actually look, you could go back to the 5/31

1 Summation - Mr. Rubinowitz
2 sleep. She has not had the help of her husband. She is
3 taking care of the family alone. And you heard something
4 else. Her breast milk had actually dried up from the
5 stress. That's what was going on. So there is no wonder
6 that the family is suffering like this, but this is the
7 reality of what is taking place. She is afraid to have him
8 come home. He comes home, and in fact when he comes home,
9 she now has another child to take care of, except it's a
10 much bigger child. And you heard what is happening. The
11 baby in a bassinet right next to the bed. He comes home and
12 now has a commode set up in the house, where he has to
13 shuffle over on a plank of wood with his two legs almost
14 unable to bend at this point in time just to go to the
15 bathroom. And she explained how were times when she
16 couldn't even take care of him. This is her own husband and
17 she couldn't even take care of him. And she is trying her
18 best to make ends meet. And she said, of course, she was so
19 nervous with this.

20 I asked about sexual relations, and the reason I
21 asked about that is because that's part of Eileen's claim.
22 I'm not just asking these things for the heck of it, I asked
23 for a specific, deliberate reason. When a couple like this
24 can't engage in sexual relations, it's something that is
25 part of Eileen Gregware's claims, the Judge will instruct.
26 The problem is Jim Gregware couldn't move on his knees,

1 Summation - Mr. Rubinowitz
2 surgery, you could actually see the lateral collateral
3 ligament that was off. That's what they were doing here.
4 So I just show you quickly. When they put these smaller
5 screws in, they are actually trying to give some sort of
6 stability to the leg. They know that's not going to work.
7 And, indeed, it did not work. But what happens is, as time
8 goes by, one of these screws starts backing out as the bone,
9 as the osteo structures, the boney structures, as Dr.
10 Hershman explained, start to heal. Yes, he is working very
11 hard trying to get back, but it backs out, and he needs more
12 surgery because it's actually protruding through.

(Continue on the next page.)

1 Summation - Mr. Rubinowitz

2 TAKE 5

3 MR. RUBINOWITZ: (Continuing) But you could still
4 see the amount of damage to the tibial plateau, to the
5 anterior cruciate ligament, to the posterior cruciate
6 ligament. They are destroyed, they are gone. This is a
7 very significant injury that he has suffered.

8 So once again he comes out of his surgery and now
9 he's back in therapy.

10 I heard Mr. Baxter tell you that he didn't miss a
11 day of work. I don't have a claim for lost earnings. We're
12 not doing that. It's a claim for pain and suffering. But
13 to suggest, to suggest that Jim Gregware didn't miss a day
14 of work? Come on. Come on, that's just silly.

15 He's in the hospital for over 80 days. At this
16 time Jim Gregware is working very hard, he speaks with
17 Dr. Hershman, knows he's going to have to have
18 reconstructive surgery. And the reconstructive surgery that
19 he has is a very, very major surgery.

20 Now, I had mentioned this to you the right knee
21 surgery that takes place, February 5th, 2009. We know that
22 the anterior cruciate ligament had a complete tear. There's
23 only one thing you can do. You can try to repair these, but
24 look at what they have to do. They actually have to drill,
25 they drill through the tibia, right through middle of the
26 tibia plateau, coming up into the femur.

1 Summation - Mr. Rubinowitz

2 some stability of the knee, and he's still got to wear knee
3 braces. And he goes through a very long period of
4 recuperation, there's no question that this is a competent
5 producing cause of pain.

6 This is a fourth surgery.

7 Now we're up to the fifth surgery. Once again, you
8 can see the destroyed posterior, right, and anterior
9 cruciate ligaments. These were destroyed.

10 Remember, when the knee comes back, whether it's
11 angulation, upward the wrong way, it's not just taking the
12 ligaments out, it's actually taking bone and the ligament
13 out. It's bent in a way it cannot go. This is a
14 dislocation fracture also with all of the soft tissue.

15 So for example, when you look at these x-rays, I
16 will show them to you real quickly, you can't see any of the
17 soft tissue, you can't see any of the tendons, you can't see
18 any of the allograft, it's just a plain AP x-ray.

19 So once again they drill through, coming through
20 tibia, bottom bone, coming up into the femur. And once
21 again the doctor tries to connect. Patella tendon
22 allograft.

23 You can see the menisci, the shock absorbers,
24 unfortunately don't have the same type of blood supply as
25 the rest of the body, as Dr. Hershman described it, it was
26 avascular, meaning it doesn't have the same vascular supply.

1 Summation - Mr. Rubinowitz

2 I will show you the bottom bone, tibia, coming into
3 the femur, up top. Because they have to find a way to
4 attach it. Now whether it's a cadaver or a dead body part
5 or a transferred ligament, however you choose to call it, it
6 doesn't matter, it's all one in the same. Because it's no
7 nonsense, they are trying to find a way to thread this threw
8 to try to create some stability.

9 Although the doctors knew, and even Dr. Hershman
10 knew it will never be the kind of knee that God gave us, it
11 can't be. But what they are doing is they are actually
12 putting it in in such a way that they feed a patellar tendon
13 allograft.

14 The patellar tendon allograft, this is the knee
15 tendon. Right here. A, obviously a dead body is coming in,
16 they actually have a portion of the bone, and that's what
17 they are going to connect it to here, it's held together
18 with the screws. The problem is that will never be as good
19 as an anterior cruciate ligament. Can't be. But they did
20 attach it and this is what happens.

21 Also the achilles tendon allograft. It just means
22 from, allograft means from a foreign body, a cadaver.
23 Autograft is from your own body. He elected to do the MCL,
24 the medial collateral leg ligament. The area I'm pointing
25 to.

26 And this is what he's trying to do, to give Jim

1 Summation - Mr. Rubinowitz

2 One of the problems you have with people who have torn
3 menisci is it does not heal, it gets worse. And this is
4 going to result in operative changes.

5 Now, as far as his -- and we'll go back to this.

6 Yes, he did have surgery back in 1999, and he was
7 healed within six weeks. Jim Gregware testified to it, he
8 walked out of that surgery the same day, not even a brace.
9 But look what happened here. Look at the traumatic nature
10 of the events that took place.

11 Is it any wonder that Jim Gregware is going to need
12 bilateral knee replacements, and two of them? And that's
13 exactly what was testified to by Dr. Hershman. No issue
14 about it.

15 So, I'll just review this with you. When I spoke
16 about Jim Gregware, one of the things that we know is Jim
17 Gregware said this at the time. This is his testimony from
18 the accident. Oh, I was scared. I was so scared, the pain
19 was unbelievable. I was thinking they are going to ignite
20 the gas and I'm just praying God, please don't let me die
21 here. I want to see my family. I just kept saying it over
22 again. Please don't let me die here, I want to see my
23 family again. I thought I was going to burst it into
24 flames.

25 The ride to the hospital, he described it as
26 brutal. I don't have to repeat it to you, you heard it, you

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1 Summation - Mr. Rubinowitz
2 know exactly what was going on. He described the surgeries,
3 he described what happened, he described how he couldn't go
4 to the bathroom. He was very clear as to exactly what
5 happened.
6 I called Dr. Hershman to the stand. And the reason
7 I did that was to allow you to understand from his own
8 surgeon what took place. And once again I tell you,
9 everything that I said concerning the injuries, everything
10 that I've said is uncontroverted. There's no issue about
11 it. It hasn't been challenged at all, not a stitch.
12 So, when we asked as far as the 1999 surgery, I
13 asked Dr. Hershman, how long was it before he healed?
14 "ANSWER: About six weeks.
15 "QUESTION: After the six weeks how was he doing?
16 "ANSWER: Doing very well, back to sports, back to
17 the activities of daily living. "
18 He did talk about. Why didn't I call Dr. Feldman?
19 I know Mr. Baxter referred to him as Dr. Friedman but
20 Dr. Feldman was the surgeon, I think he made a mistake on
21 the name. Not important.
22 But what is important, is I'm not allowed to call
23 one doctor on top of another just to have cumulative
24 testimony in the courtroom.
25 MR. BAXTER: Objection.
26 THE COURT: Sustained.

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1 Summation - Mr. Rubinowitz
2 MR. RUBINOWITZ: The point that I'm making is it's
3 exactly what happened in that surgery. The surgery was
4 described in detail. Dr. Hershman had the records from
5 Dr. Feldman. And that's what I'm talking about. We
6 actually brought them in to you, you have them here, we
7 showed you exactly what these were.
8 The point is no, I'm not gonna just call doctor
9 after doctor. We've done exactly what we should have done,
10 presented to you a good understanding, an unchallenged
11 understanding of the medicals.
12 If I said anything that was wrong, you know these
13 lawyers, they are silent. They would have brought in a
14 doctor to say I was wrong. Everything's that I've said I've
15 proven.
16 In the hospital you're going to see he was
17 suffering from breakthrough pain. Dr. Hershman explained
18 what that is, the pain was so bad, even with the narcotic
19 medications, even with the morphine, with the Percocet, the
20 pain gets bad. It causes significant pain.
21 And I asked him about the total knee replacements
22 that he'll need, and he's going to need four, two on each
23 leg. And this is what he said. People that have knee
24 replacements, they are gonna have significant pain. And he
25 said this, it will take Jim Gregware a year to recover from
26 the total knee replacements. It's not just one year,

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1 Summation - Mr. Rubinowitz
2 because he's not gonna do them all at once.
3 So you think about what is going on, and this is
4 the future claim for his pain and suffering. He hasn't had
5 a day without pain, but for his wife also, she's going to
6 take care of him. During this time he's not going to have
7 the ability to be with his family the way he would.
8 So it all comes back, the claims are intertwined.
9 That's why I say you have to take a look at this globally.
10 As far as the problems with the knee replacements,
11 we went through this. As you get older, and the life
12 expectancy being 10 to 12 or 10 to 15 years, never as good
13 as what God gave us, but the problem is, as we get older
14 into our 60s, the bones become, you heard Dr. Hershman,
15 osteoporotic, they become porous, brittle. And it creates
16 problems when they do the knee replacement in the future
17 because they can't seal it into the bone itself, the osseus
18 formations don't work as well.
19 He also had a labral tear, the shoulder.
20 Uncontroverted. Uncontroverted. And I asked him this:
21 As far as pain, do you have an opinion to a
22 reasonable degree of medical certainty as to whether Jim
23 Gregware will have pain to his knees as a result of the
24 accident of May 20th, 2006?
25 And his answer was, he will.
26 Why? He will have pain for the rest of his life.

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1 Summation - Mr. Rubinowitz
2 For the rest of his life. That's what Dr. Hershman said.
3 That too is uncontroverted.
4 So there's no issue about it. He will have pain,
5 he will have suffering. He will unquestionably have loss of
6 enjoyment of life.
7 As far as Jim Gregware, he told you that his knees
8 are getting worse, the pain is getting worse, the stability
9 is becoming worse. When will you have the surgeries? He
10 said: We've discussed them in the past and in the next two
11 or three years, that's when I'm going to end up with these.
12 So the pain is getting to the point where he can't
13 take it anymore. The allografts only work so much, they
14 only do so much for him. So he's going to have these
15 surgeries.
16 And we were able to prove to you that he's going to
17 need four surgeries. This is no minor event. He does take
18 nonsteroidal anti-inflammatories now, he does take Percocet
19 now, we proved that to you as well. Why? Because of the
20 pain that he's undergoing.
21 Ladies and gentlemen, I tried to cover the pain and
22 suffering with you to explain to you what has happened to
23 Jim Gregware. I've tried to do it in a fair way, in a
24 respectable way and an appropriate way, just dealing with
25 what happened to him. It's difficult for me to stand up
26 here in an afternoon and try to describe what Jim Gregware

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1 Summation - Mr. Rubinowitz
 2 has been through for seven years of his life, but I'm trying
 3 as best I can to make you understand just how severe this
 4 has been for him and for his wife Eileen and family.
 5 But I want to go back to one thing that happened
 6 with respect to liability, because this is something that
 7 does not fit well with me at all.
 8 When the City of New York stands up here and tells
 9 you, in his opening statement Mr. Wang said for this road
 10 work the City did -- and I'm quoting -- everything that it
 11 was supposed to insure traffic safety. That is not true.
 12 That is just not true.
 13 And when they present a witness like that police
 14 officer, I'll say this to you. I have certain words to
 15 describe that police officer. And I'm gonna use these words
 16 specifically, because it is something that angers me
 17 terribly, and it should anger you.
 18 What that police officer did in this courtroom was
 19 disgusting, it was reprehensible. To have a man who's bound
 20 to uphold the law, come into this courtroom and tell less
 21 than the truth. It is unacceptable.
 22 And to have a man like Dr. Ali Sadegh come into
 23 this courtroom and tell you that he has done a full, fair,
 24 thorough and complete review and evaluation, that is also
 25 disgusting and it is terrible, it is reprehensible, and it
 26 should not be allowed in a courtroom like this.

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1 Summation - Mr. Rubinowitz
 2 And those were two major witnesses put on by
 3 Mr. Wang and his lawyers.
 4 And I'll tell you right now, it's wrong to have a
 5 police officer, it's wrong for him to testify untruthfully.
 6 And we know that's exactly what happened.
 7 Mr. Davydoff? He admitted to you that he was
 8 giving different answers to the same question.
 9 Mr. D'Abruzzo, he's admitted he told less than the
 10 truth with respect to the diagram and other things.
 11 So what I'd like to do now is I'd like to review
 12 the verdict sheet with you.
 13 You're going to be asked a number of questions,
 14 and, in fact, these are the questions that you're going to
 15 be asked.
 16 The first one is:
 17 Was the City of New York negligent for its own acts
 18 or omissions? Five of you have to agree than that. And I
 19 will say this right now. Yes is the proper answer.
 20 Why do we say that? The City admitted many, many
 21 departures. Not just what they did, but what they didn't
 22 do. In other words, obviously they didn't have certain
 23 things that they should have done there. I'm going to
 24 explain this in a little while in a little more detail, but
 25 we know that they didn't do certain things that they should
 26 have.

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1 Summation - Mr. Rubinowitz
 2 If we go to Question Number 2, and this is one I
 3 want to spend a little time on, because this is one of the
 4 most important questions you're going to be asked.
 5 There's no issue about negligence for the City of
 6 New York, they admitted to departures.
 7 Did the defendant, City of New York, act with
 8 reckless disregard for the safety of others by intentionally
 9 doing an act of unreasonable character in disregard of a
 10 known or obvious risk that was so great as to make it highly
 11 probable that harm would follow and has done so with
 12 conscious indifference to the outcome?
 13 I'll say it this way? Conscious indifference to
 14 human life.
 15 You're supposed to have an engineer in charge.
 16 Where's the engineer in charge? Why don't we have one?
 17 Someone made a decision, Mr. Wang said in his
 18 summation it's about choices. The City of New York made a
 19 decision not to have an engineer in charge. That's a
 20 deliberate decision. That's intentional. That's specific.
 21 They intentionally disregarded a known risk by not having an
 22 engineer in charge.
 23 What about a project manager? Where's that? They
 24 never even signed off. I showed you Exhibit 2, the
 25 inspector's daily report. It's not there. If you're not
 26 gonna have an engineer in charge or project manager, what

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1 Summation - Mr. Rubinowitz
 2 are you asking for? You're asking for trouble. You're not
 3 protecting the roadway, you're not protecting the citizens,
 4 you're not doing what you should do.
 5 And there's no question, as Mr. Fitzpatrick said,
 6 harm will come. An accident is going to happen, it's not
 7 just that it may, it's going to happen.
 8 How about this? An inspector? How can you
 9 possibly send someone out who doesn't know how to inspect?
 10 How can you do that? It's an intentional disregard of a
 11 known knowledge not to send an inspector there when you're
 12 charged to send an inspector there.
 13 Mr. Baxter made the point as well. They are
 14 supposed to send someone there who could shut down the
 15 project if it's not done properly. But if you're not
 16 familiar with the Manual for Uniform Traffic Control
 17 Devices, or the MPT, the Maintenance for Protection of
 18 Traffic Plan, but they made an intentional decision not to
 19 send someone there. That's why this question is so
 20 important. The answer should absolutely be yes. Yes, they
 21 knew it was a conscious disregard to the outcome.
 22 Manual for Uniform Traffic Control Devices? Where
 23 was it? He didn't bring it with him, Mr. Davydoff. The
 24 MPT, he didn't bring it with him. Their own contract calls
 25 for the substitution of cones for drums. Where were they?
 26 Why weren't they up there that day? Why weren't they there?

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1 Summation - Mr. Rubinowitz
2 Is that a conscious disregard of their own
3 contract? And of human life? Of course it is. The answer
4 is yes. Yes. This isn't just simple negligence, it's far
5 greater than that.
6 The contract reads no deviations. Mr. Wang even
7 said that, no deviations. And I say to Mr. Wang, yes, no
8 deviation at all from your part as well. No, you can't just
9 put the blame on Burtis like that, no deviations from you.
10 So they didn't even follow their own contract.
11 I said this in the opening statement, ladies and
12 gentlemen, I said short-term does not mean shortcuts. No
13 engineer in charge, short cut. No Project Manager, short
14 cut. No inspector. Short cut. No Manual For Uniform
15 Traffic Control Devices on-site, short cut. No MPT.
16 Shortcut. No readable MPT. Short cut. No drums with every
17 second drum having a light.
18 How is that not a conscious disregard of human
19 life, when you don't even do what you've laid out that
20 you're supposed to do in your own contract? It's wrong, it
21 should never ever have happened, but it happened.
22 And then, if we turn that over, Question Number 3:
23 Was the City of New York City's negligence or
24 recklessness a substantial factor in causing plaintiff's
25 injuries?
26 The answer has to be yes to that. Look at it this

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1 Summation - Mr. Rubinowitz
2 set this up properly. The Burtis foreman, Mario D'Abruzzo
3 talked about using cones. He didn't even read the contract
4 that he should have had. Carelessness? Of course.
5 The motorists who talked to you through their
6 depositions and through the testimony, the reason they
7 didn't see signs is because it wasn't set up properly.
8 Shortcuts taken by Burtis? Yes, of course. Mario
9 D'Bruzzo didn't set up this roadway appropriately. No
10 question about that. It would have gone back to 61st Street
11 or 65th Street, just for the transitions, there's no issue
12 about that.
13 Was Burtis negligent? Yes. Yes.
14 Then we go to the same question for Burtis:
15 Did the defendant, Burtis Construction Co., act
16 with reckless disregard for the safety of others, by
17 intentionally doing an act of unreasonable character in
18 disregard of a known or obvious risk that was so great as to
19 make it highly probable that harm would follow, and has done
20 so with conscious indifference to the outcome?
21 Why didn't you, Mr. D'Abruzzo, put up the drums
22 with lights on it? There's a reason for that, warning and
23 notice. Why didn't you do that? Why didn't you bother to
24 read the contract, Mr. D'Abruzzo? Why didn't you bother to
25 have the MPT or the Manual For Uniform Traffic Control
26 Devices with you, not in a suitcase in your car, if you

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1 Summation - Mr. Rubinowitz
2 way. Why would they have these rules out there? Why would
3 they have an MPT, to prevent this very type of accident from
4 occurring?
5 But the City, what do they say? Don't blame us,
6 blame Jim Gregware. Don't look to us, blame Jim Gregware.
7 He is a hundred percent responsible. Don't look at the fact
8 that we didn't have an inspector, that we didn't have a
9 Project Manager or an engineer in charge. Don't look at
10 that. Don't look at any of that.
11 That's what Mr. Wang is saying. Blame him. And
12 that's not right, that's not appropriate.
13 So yes, for the first three questions the answer is
14 absolutely yes. Yes. And for Number 3, yes. Number 2, the
15 reckless disregard is so important. But Number 3, the
16 answer has to be yes, otherwise Jim Gregware will never
17 receive justice.
18 Let's go on to Question Number 4:
19 Was the defendant, Burtis Construction Co.,
20 negligent? Burtis Construction had a foreman on the job,
21 Mario D'Abruzzo. I recognize that the City was the last
22 line of defense for the motorists. I recognized that. The
23 City could have shut the job down. They have a duty to
24 maintain their roadways in a reasonably safe condition.
25 Nondelegable duty.
26 But Burtis has a job also. Burtis is supposed to

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1 Summation - Mr. Rubinowitz
2 believe that.
3 You make choices, I agree with Mr. Wang, you make
4 choices, and if the choices are made not to do what you're
5 required to do, and then you turn around and say don't blame
6 us, blame the City, which is what Mr. Baxter is saying, or
7 blame the drivers, blame Da-Silva, blame Mr. Gregware, no.
8 Look first to yourself. It's not good enough to just turn
9 the blame that way.
10 Who put up the signs? Where is the construction
11 worker that we heard from who said I'm the one, I put up the
12 signs?
13 How surprised were you that we didn't hear from any
14 construction worker who said that? Weren't you? Weren't
15 you?
16 Where is the construction worker who said I'm the
17 one who programmed the VMS board? We didn't hear that
18 either.
19 Where's the construction worker who said I set up
20 3,600 feet of transition and tapers? Why didn't we hear
21 from that?
22 You know why we didn't hear from that person?
23 Because there was no person. That's why. It's the common
24 sense good judgment answer to what's going on here.
25 Short-term, shortcuts, that's what's going on in this case.
26 So when we go to Question 6, obviously the answer

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1 Summation - Mr. Rubinowitz
 2 to Question 5 is yes:
 3 Was Burtis Construction's negligence or
 4 recklessness a substantial factor? Yes. They are
 5 intertwined, the City and Burtis. Yes, of course. If you
 6 don't put these things out there, accidents are going to
 7 occur. And if these aren't answered yes, there's no justice
 8 for Jim Gregware.
 9 And of course there can be more than one
 10 substantial factor. When the Judge charges you, you'll hear
 11 that.
 12 Then we go to Question Number 7.
 13 So of course number 6 is yes.
 14 Question Number 7:
 15 Was the defendant Abelardo Da-Silva negative? No.
 16 Here's my position on that.
 17 Abelardo Da-Silva was driving over the speed limit.
 18 You heard him. The speed limit is 50. He's driving 55.
 19 Negligent? Yes. Yes. And the reason I say that is because
 20 when the Judge charges you on the law, if you're over the
 21 speed limit, you're negligent.
 22 But ask yourselves, supposing he had been driving
 23 at 49 miles an hour. Not negligent? Might be the law. Not
 24 negligent at 49. Negligent at 51, yes. Negligent at 51.
 25 Was Da-Silva's negligence a substantial factor? So
 26 to this one, yes.

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1 Summation - Mr. Rubinowitz
 2 But when we go to the next question, and here's
 3 where you have to really think about this for a minute.
 4 Was Abelardo Da-Silva's negligence a substantial
 5 factor? No. And the reason I say no is this. Yeah, he
 6 might have been negligent because you're going over 50 miles
 7 an hour. But is it a substantial factor? If you can't see
 8 signs telling you that there's road work ahead, if you don't
 9 have the appropriate transitions and tapers set up and the
 10 appropriate warning, why in the world should you blame
 11 Abelardo Da-Silva for this? Why? He didn't have notice
 12 either.
 13 And that's the problem, whether it's one sign or no
 14 signs, there were not sufficient signs up to give the
 15 motorists proper warning and notice. And that's why I say
 16 that's the appropriate way to answer these questions.
 17 Now, the next one we'll focus on, Question Number
 18 9:
 19 Was Jim Gregware negligent?
 20 I ask you a question. Did Jim Gregware act
 21 reasonably? He's involved in a fender bender, there's no
 22 shoulder to pull off. He complies with the law, he gets out
 23 to find out if anybody's been injured. That's exactly what
 24 we want people to do.
 25 He had never been involved in an auto accident
 26 before, he does exactly what he was supposed to do. The

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1 Summation - Mr. Rubinowitz
 2 officer told you yes, he's supposed to get out of his
 3 vehicle and exchange information.
 4 Her Honor will charge you on Article 600 of the
 5 Vehicle and Traffic Law. But backing down a roadway? No,
 6 that's not appropriate. That's not reasonable. So when
 7 you listen to the charge, listen carefully. The Vehicle and
 8 Traffic Law states specific things, not only if you're going
 9 to put yourself in harm's way.
 10 So what did Jim Gregware do? All he did was what
 11 every other driver did, got out of his car. Everyone else
 12 did this. Why should he be found negligent at all? The
 13 answer is no, he was not negligent.
 14 And if you look at it, if we go to the next
 15 question:
 16 Was his negligence a substantial factor in causing
 17 this accident? He's not charged with a duty to put the
 18 signs up. He didn't have to put the tapers and transitions
 19 up. He didn't see any, and the reason he didn't see any is
 20 because as you're driving along the roadway that late at
 21 night, you need notice and you need warning and if the City
 22 of New York and Burtis had done it properly, they would have
 23 had warning and they would have had notice, and they didn't.
 24 And the reason they didn't is because of failures,
 25 because of recklessness and negligence on the part of the
 26 City of New York and on the part of Burtis.

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1 Summation - Mr. Rubinowitz
 2 And now we go to Question Number 11.
 3 You're going to be asked to attribute fault to each
 4 one of the potential people that might be at fault.
 5 The City of New York, ladies and gentlemen, was the
 6 end of the road here. They were the ones, if you look at it
 7 this way, the buck stops here. The buck stops with them.
 8 They had the ability to shut this project down, to shut it
 9 down. But no one checked.
 10 You heard what Mr. Fitzpatrick said, this project
 11 should have been shut down, no question about that.
 12 Well, it's very easy to say let's just split it
 13 equally between Burtis and the City. That wouldn't be
 14 right. That wouldn't be right here. Because the City of
 15 New York didn't have the engineer in charge, they didn't
 16 have the inspector, they didn't have the project manager,
 17 they didn't train anyone to go out, they sent someone out
 18 who was not trained, who didn't have knowledge.
 19 So when I ask you to evaluate this, the City of New
 20 York, for its own acts or omissions, all those things they
 21 didn't do? 60 percent of the fault on the part of the City.
 22 And 40 percent on the part of Burtis.
 23 Burtis was counting on the City to let them know if
 24 it was set up properly. But Mario D'Abruzzo took some real
 25 shortcuts here, and we know that. So that's the way that I
 26 see it.

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1 Summation - Mr. Rubinowitz
 2 As far as Abelardo Da-Silva, no, it's not a fault,
 3 not a substantial factor. And Jim Gregware, certainly not a
 4 substantial factor in causing this accident.
 5 Now we turn it over and we get to the pain and
 6 suffering. And here you're asked to evaluate something
 7 you've never had to evaluate before. Somebody's pain and
 8 suffering, their loss of enjoyment of life.
 9 From the time of the accident 'til today, and if
 10 you think about it, we're talking about seven years, seven
 11 years of Jim Gregware's life. I'm going to suggest a number
 12 that we believe to be fair and reasonable as a minimum
 13 number for Jim Gregware.
 14 For his pain and suffering, for everything that
 15 he's been through for those five surgeries, for being away
 16 from his family, for the pain that he's had, we're asking
 17 for three and a half million dollars. Three and a half
 18 million dollars for those seven years.
 19 Now, we know that he's going to suffer in the
 20 future. We know that. There's no question about it, we
 21 have proven that medically. We know he's going to have
 22 additional surgeries, he's had five surgeries in the past,
 23 four in the future.
 24 Ladies and gentlemen, at least that amount, because
 25 the future is 29.2 years, if you follow the actuarial
 26 tables, which are nothing more than estimates of life

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1 Summation - Mr. Rubinowitz
 2 expectancy. But here, 29.2, shouldn't Jim Gregware be given
 3 at least what the normal life expectancy is? It might be
 4 more, it might be less, but shouldn't he be given at least
 5 that?
 6 And that's what we say, at least that amount. And
 7 I say to you for (b), 12(b) for the future pain and
 8 suffering, it should be more than that.
 9 (Continued on the next page.)
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1 Summation - Mr. Rubinowitz
 2 And I say to you, for B, 12B, for the future pain
 3 and suffering should be worth more than that, because it is
 4 covering 29 years of pain and suffering.
 5 The last question deals with Eileen Gregware for
 6 the loss of services for her husband's society and services
 7 from the date of accident to today, seven years. What does
 8 that mean? Trying to take care of that family, doing
 9 everything she could on her own, trying to do the best that
 10 she can, those seven years, at least \$500,000.
 11 And for the future, what she is going to have to do
 12 for her husband, at least an equal amount, at least a
 13 commensurate amount.
 14 Ladies and gentlemen, I tried very hard to present
 15 this case fairly to you and present a straightforward case
 16 to allow you to fully and fairly evaluate the evidence, and
 17 I know that you have.
 18 I know that you have taken the time to really
 19 listen to all of the evidence in the case on behalf of Jim
 20 and Eileen Gregware. You have taken the time out of your
 21 lives from the snowiest day you could imagine to one of the
 22 nicest day you can imagine to come here to listen to a
 23 problem that was not yours. And you will have an
 24 opportunity to evaluate this case, and it to evaluate what
 25 the fair compensation to be to Jim Gregware. You will have
 26 an opportunity to do justice.

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1 Summation - Mr. Rubinowitz
 2 I will ask you to do this, we know that costs keep
 3 going up. A cup of coffee five years ago might had been
 4 fifty cents, now you go to Starbucks and you add another
 5 zero. What I will ask you is to think now as you would
 6 think then, if you happen to be on a park bench right around
 7 this area 15 years from now and you think about this case,
 8 ask yourselves: Have we done the right thing? Because
 9 today is the only day that Jim Gregware and Eileen get to
 10 come into court. This is the only time that they do.
 11 I can't thank you enough on behalf of Jim and
 12 Eileen Gregware for being jurors in our case. You have all
 13 taken a tremendous responsibility and accepted it, and I
 14 know, I have watched you very carefully, you really paid
 15 incredible attention, and for that we want to thank you.
 16 I will leave you with this. I asked Jim Gregware,
 17 what would you want for the future? And his answer was
 18 this: It's very simple. He says what I really want is the
 19 life Eileen and I planned about and our family. That's not
 20 going to happen. So the simplest things, I want a day
 21 without pain. That's what he said. I want to sleep through
 22 the night without pain.
 23 Ladies and gentlemen, at the end of my opening
 24 statement I asked you to do one thing, and I'm going to ask
 25 you for that one thing, I'm going to ask you to award Jim
 26 and Eileen Gregware one thing that you can and no one else

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1 Summation - Mr. Rubinowitz
2 can, and that is 100 percent justice.
3 Thank you.
4 THE COURT: We are going to take five minutes.
5 THE COURT OFFICER: All rise.
6 (Whereupon, the jury exits the courtroom.)
7 MR. GAZTAMBIDE: Your Honor, I would like to make
8 an application before the jury comes in.
9 THE COURT: Go ahead.
10 MR. GAZTAMBIDE: Thank you, Your Honor.
11 On behalf of our client, Abelardo Da-Silva, I would
12 like to make a motion to dismiss the claims against him.
13 Certainly, during the plaintiff's summation, he made it very
14 clear that in his mind there was no basis to find any
15 proximate cause against our client for the happening of the
16 accident, and specifically for the injuries that Mr.
17 Gregware sustained as a result of this accident.
18 And on that basis, I believe that the claims
19 against our client should be dismissed.
20 THE COURT: And Mr. Wang and Baxter, I believe,
21 correct me if I am wrong, are there cross-claims?
22 MR. BAXTER: Yes.
23 MR. WANG: Yes.
24 THE COURT: So the motion is denied. Thank you.
25 THE COURT OFFICER: Jury entering.
26 (Whereupon, the jury enters the courtroom.)

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1 Jury Charge
2 the testimony of any particular witness, there is no magical
3 formula which can be used. The tests used in your everyday
4 affairs to decide the reliability or unreliability of
5 statements made to you by others are the tests you will
6 apply in your deliberations. Items to be taken into
7 consideration in determining the weight you will give to the
8 testimony of a witness include the interest or lack of
9 interest of the witness in the outcome of the case, the bias
10 or prejudice of the witness, if there be any, the age, the
11 appearance, the manner of the witness as the witness
12 testified, the opportunity that the witness had to observe
13 the facts about which he or she testified, the probability
14 or improbability of the witness' testimony when considered
15 in the light of all of the other evidence in the case.
16 Now, you will recall that certain witnesses
17 testified concerning their qualifications as experts in a
18 particular field, and gave opinions concerning issues in
19 this case. Elliot Hershman, a board certified orthopedic
20 surgeon; William Fitzpatrick, a professional engineer; Ali
21 Sadegh, a professional engineer. When a case involves a
22 matter of science or art or require special knowledge or
23 skill not ordinarily possessed by the average person, an
24 expert is permitted to state his opinion for the information
25 of the court and jury. The opinions stated by each expert
26 who testified before you were based on particular facts as

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1 Jury Charge
2 THE COURT: Sit down. Something new and different,
3 I am going to read.
4 So, we have come to that portion of the trial when
5 you are going to hear the law that's applicable to this
6 particular case, and after which you will retire for your
7 final deliberations. You have now heard all of the evidence
8 introduced by the parties. And through the arguments, and I
9 say that with emphasis, through the arguments of the
10 attorneys, you have learned the conclusions which each party
11 believes should be drawn from the evidence presented to you.
12 Now, you will recall that at the beginning of the
13 trial I stated for you certain principles so that you could
14 have them in mind as the trial progressed. Briefly, they
15 were that you are bound to accept the law as I give it to
16 you whether or not you agree with it. You are not to ask
17 anyone else about the law, including anyone among you who
18 may be an attorney. I didn't even ask if any of you were
19 are an attorney, but you are not to ask anyone else about
20 the law except me.
21 Furthermore, you must not conclude from my rulings
22 or anything I have said during the trial that I favor any
23 party to this lawsuit. You may not draw any inference from
24 an unanswered question nor consider testimony which has been
25 stricken from the record in reaching your decision.
26 Finally, in deciding how much weight you choose to give to

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1 Jury Charge
2 the expert obtained knowledge of them and testified to them
3 before you, or as the attorney who questioned the expert
4 asked the expert to assume. You may reject an expert's
5 opinion if you find the facts to be different from those
6 which formed the basis for the opinion. You may also reject
7 the opinion, if, after careful consideration of all of the
8 evidence in the case, expert and other, you disagree with
9 the opinion. In other words, you are not required to accept
10 an expert's opinion to the exclusion of the facts and
11 circumstances disclosed by other testimony. Such an opinion
12 is subject to the same rules concerning reliability, as the
13 testimony of any other witness. It's given to assist you in
14 reaching a proper conclusion. It is entitled to such weight
15 as you find the expert's qualifications in the field warrant
16 and must be considered by you, but is not controlling upon
17 your judgment.
18 Now, in this case, the plaintiffs, James Gregware
19 and Eileen Gregware, and the defendant Abelardo Da-Silva
20 testified before you. As parties to the action, they are
21 interested witnesses. An interested witness also is any
22 person who has a motive to shield himself from blame, even
23 though he's not a party. That would include the deposition
24 of Mohammad Kamrul Hassan, taken through an interpreter, the
25 deposition of Romulo Romero-Valarezo, also taken through an
26 interpreter, and the deposition of Omar Albahri.