

SUMMATIONS

1 THE COURT OFFICER: All rise. Jurors entering.

2 (Whereupon, the jury enters the courtroom.)

3 THE COURT: Please be seated. All right,
members

4 of the jury. Now it's plaintiff's turn, and on behalf of
5 plaintiff, Mr. Targum, give your summation.

6 MR. TARGUM: Thank you very much, your Honor.

7 May it please the Court, counsel, Mr. and Mrs. Erosa,
8 ladies and gentlemen of the jury. It is my honor and
9 privilege now to give closing statement on behalf of the
10 Erosas. You know, when listening to counsel here, I left
11 doodling or scratching or looking up at the sky saying,
You
12 know, nobody intentionally went out to hurt Mr. Erosa.
13 Nobody set out to intentionally harm him. But it seems
14 like there's an orchestrated effort here in depriving his
15 day in court. Counsel, on repeated times, has said you
16 can't have it both ways. I wrote that down. Sure you all
17 heard that.

18 But Dr. Coomaswamy wants it both ways. He
19 wants you to have his statement that he doesn't remember
20 what happened, but his usual practice is to do nothing
21 wrong, and then attack an operative report that was typed
22 up contemporaneous from the VA Hospital of what happened
to
23 Mr. Erosa. Makes no sense. He came to court with a
device
24 that clearly wasn't in existence in 2002, and parading it
25 around, this is the device I used. These are the staples
I

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1 used. This is what was done. But then on
2 cross-examination he said maybe you were right. This
3 wasn't in existence in 2002.

4 They came to court with a pathologist who I know
5 counsel in her summation didn't call him one of her
6 experts. She said we called an expert and a pathologist.
7 He's an expert for her. He testified over a thousand
8 times. And in there -- in his testimony he said we made
9 these beautiful pictures and slides -- of the slides, and
10 put them on a CD. Where are the pictures? They're not in
11 evidence. How are you ever going to take that testimony
12 and figure out what slide goes to which picture when
13 counsel didn't put it in evidence. Those pictures with
14 the
15 slides left this courtroom faster than the operative
16 report. They want to throw things on the wall and hope it
17 sticks. They want things to stick out in your mind and
18 hope that they use smoke and mirrors in order to deflect
19 the real situation here, that there was an incomplete
20 appendectomy.

21 And Mr. Erosa underwent a surgical procedure
22 after going to a hospital where you heard testimony they
23 sat there in a room by themselves for six days and
24 underwent a procedure at the VA Hospital for incomplete
25 appendectomy. I'll get to that in a moment. They want to
Now use smoke and mirrors. Make you not see what went on.

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1 what are smoke and mirrors? A lot of us that are younger
2 don't remember the carnivals that would come to town with
3 smoke and mirrors, but I like to give an example. From
4 the
5 Wizard of Oz. Everybody remember the Wizard of Oz?
6 Remember when they go to the Oz? A great and powerful Oz,
7 go into the room there, there's smoke and there's mirror
8 with a big head, and it's deflecting you from seeing that
9 little, scared man behind a curtain, and that's what's
10 going on here.

11 The last thing Mr. Erosa would want to be is in
12 this courtroom after he celebrated his birthday yesterday,
13 but he's here because of these negligent events, because
14 somebody forgot the word "care" in care and treatment. If
15 Dr. Coomaraswamy had it his way, his name wouldn't be in
16 any of the records at Parkway. Remember that? Remember
17 at
18 the beginning of this case I asked him questions about
19 Parkway Hospital? I put his CV into evidence -- I mean,
20 for identification. I showed it to him. CV, his resume.
21 Did you see Parkway in this? No. I asked him if he was
22 aware that my client suffered from some injuries in 2006?
23 His attorney appeared on his behalf. He said no. The
24 fight began at the beginning of this case. And I'm
25 willing
26 to carry the fight to the end.

27 Remember he testified that he was paid annually
28 to perform surgeries in Parkway Hospital? This wasn't a

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1 Jiffy Lube. He's a doctor. He performed 25 percent of
his
2 surgeries at Parkway. His testimony as to that on page 29
3 of his testimony. And you're more than welcome to hear it
4 read back. He testified that the purpose of an operative
5 report is to describe your findings intra-operatively, to
6 provide more details about what went on. He talked about
7 the walling off process. That will be contained within
the
8 loops of the bowel. It's something like a sheet of fat
9 called "the omentum," helps the body fight infection.

10 We talked about Mr. Erosa going to Parkway
11 Hospital, and you have these records. And when he first
12 appeared at Parkway Hospital, that first visit, he had
13 eight out of ten pain. He was complaining. It was 10:30
14 at night. We don't dispute that he had appendicitis. We
15 don't dispute that he needed surgery. What we wanted was
16 somebody to do it competently.

17 Now here's where they want to have it both ways.
18 Dr. Coomaraswamy testifies that it's important to know the
19 condition of the appendix as it goes into the cecum. If
it
20 is inflamed or swollen or not viable, it's important to
21 take a cuff of cecum. That's on page 48 of his testimony.
22 Dr. Gleit testified -- remember this testimony about the
23 orange? He testified that you would not take a rim of
24 cecum. Page 271 of his testimony. We don't generally
take
25 a rim of cecum. Then we have Dr. Gleit. When I asked him

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1 about the staples causing a giant cell reaction, which was
2 all Dr. Wetli's testimony, Dr. Wetli, who came in here and
3 testified over a thousand times, talked about that the
4 staples from the original surgery were causing the giant
5 cell reaction. His words were exactly. They're throwing
6 something up on the wall. Seeing if it sticks. Dr. Gleit
7 was asked, their surgeon from the world renowned
8 Presbyterian Hospital, which wasn't said in evidence, but
9 counsel want to comment on it so I guess I get to. On
297,

10 I asked him --

11 "Have you ever come across when you fire a
staple

12 in the appendectomy and the body reacts to the staple?

13 "ANSWER: You mean a foreign body giant cell
14 reaction?

15 "QUESTION: Yes.

16 "Actually, I don't know whether titanium staples
17 are listed as foreign giant cell reaction.

18 "Have you ever come across it?

19 "ANSWER: A giant cell reaction?

20 "ANSWER: Yes --

21 "QUESTION: Yes.

22 "ANSWER: It's not something you could usually
23 see. It's something a pathologist reports do."

24 "QUESTION: Is it usually associated with
25 infection?

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1 "ANSWER: Not necessarily.

2 "QUESTION: So it's usually associated with
3 abscess?

4 "ANSWER: Not necessarily. It can be. It can
5 be.

6 "Can it be associated with an infection or
7 abscess?

8 "ANSWER: Yes.

9 "Can it be associated with an incomplete
10 appendectomy, sir? Can it be?

11 "ANSWER: Sure. It could be.

12 Now we know from the Parkway records that there
13 is no note from Dr. Coomaraswamy except his discharge
14 summary. Now he's trying to run way from discharge
15 summary
16 saying I don't know if I wrote it. Somebody else might
17 have written it. Used my name. I asked him what didn't
18 you write in the records? He talked about this little
19 note
20 here before the surgery. When I asked him about the
21 consult note with his name on it, he testified he didn't
22 write that. Somebody else did. When I asked him if there
23 were any names on the list of people who saw my client,
24 Mr. Erosa, in the hospital, attending physician including
25 consultants. It's there. His testimony about
coordination
of care, continuance of care. My client suffered a postop
infection, postop fever. Was given antibiotics. No

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1 surgeon saw him.

2 And you heard evidence from Dr. Reich, which I
3 read in the deposition, that they wouldn't be called until
4 the following week. There was no call saying, Hey, I
5 operated on your patient, come by and see him. He was in
6 the hospital for four days. Now you heard from Dr. Green
7 about the appendix. You also heard from Dr. Green about
8 diverticulitis. It starts over here on the left side and
9 your appendix comes off the right. Dr. Green showed you
10 how, with a normal surgery, how you would take a cuff of
11 cecum to insure that there is no infection, there's no
12 lumen. And you heard Dr. Green testify if proper practice
13 was properly performed, he would not have needed to go to
14 Parkway for that second admission in January of '03 where
15 he came in with a 10 out of 10 pain, an abdominal pain.

16 And you heard Miguel and his wife testify that
17 they just sat there not getting answers for six days in a
18 hospital. And the one thing that counsel glosses over is
19 in these records there are requests for the old chart.
20 Somebody wants to know what went on in that prior surgery
21 in that old chart. We all know how important it is to
fill

22 out forms, to keep records, how important it is, to make
23 sure you document your job and what you do. But two days
24 in a row they're requesting the old chart; 1/24/03, old
25 chart. Path requested. Then on 25th, again, somebody's

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1 looking. Somebody want to know what's going on here, but
2 they're not telling the Erosas. So they went. They left.
3 And they went to the VA Hospital.

4 And in the VA Hospital -- it's funny how counsel
5 wants to say incomplete appendectomy is not the correct
6 diagnosis, but they want to have their cake and eat it
too.

7 They want to say everybody is wrong but the VA. On page
8 129, I believe, it says 41-year-old status post X,
9 laparotomy. That means the open procedure for acute
10 abdomen secondary to incomplete appendectomy with
11 inter-luminal abscess. Luminal. Counsel is saying there
12 has to be a lumen to have an abscess. Somebody's saying
it
13 in the VA records. Not just once, but also on page 115.
14 Pages are numbered in the VA records.

15 Page 115. The assistant surgeon, Dr.
Blitzstein,

16 who wrote the brief operative note, talked about
incomplete

17 appendectomy. He was there. He saw it. Wrote 41-year-
old

18 status post X laparotomy for acute abdominal -- abdomen
19 secondary to incomplete appendectomy with inter-luminal
20 abscess. Doing well. Case in plan of care discussed with
21 the chief resident. Case and plan of care discussed with
22 the attending physician. So now you have three physicians
23 discussing this. They're wrong. Come on. You heard me
24 ask the defendant's experts about the references in this
25 record at least 15 to 18 times. There are notes of

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1 incomplete appendectomy, stump appendicitis, retained
2 appendiceal stump.

3 Even after Mr. Erosa was discharged from the
4 hospital and went for followup care with
gastroenterologist

5 at the VA, they never treated him for diverticulitis.
They

6 never wrote down diverticulitis. They wrote down
7 incomplete appendectomy. That was the

8 March 6th gastroenterologist note that I had Dr. Gleit
9 testify to. On page, I believe, 80, gastroenterology
note,

10 March 6th, co-signed by two doctors. Status post
11 appendectomy, recently admitted for acute abdomen SP X lap
12 for incomplete appendectomy. Was referred to GI. Since
13 his discharge has been asymptomatic, no complaints. There
14 is no record here that they were treating him or following
15 him for diverticulitis or Crohn's disease. Gleit can
throw

16 it up on the wall. Doesn't stick.

17 Ladies and gentlemen, both Dr. Gleit testified
18 that consistent -- that if you staple into infected
tissue,

19 it likely will not hold. Page 296, line 14. He says it
20 might be more likely not to hold. Dr. Green testified
very

21 specifically on page 169, line 19.

22 "QUESTION: Doctor, what happens if the surgeon
23 staples into bad tissue?

24 "ANSWER: It will fall off, leak, necrose,
25 perforate.

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1 "QUESTION: Become inflamed?

2 "ANSWER: Yes."

3 I also further went on to ask the doctor about
4 autolysis because counsel said, Oh, the minute the tissue
5 is removed from the body is it still autolyzing? That's
6 not what the testimony is. Guy was suffering. For two,
7 three months after a surgery with internal infection.
8 Notice they asked Dr. Wetli what autolyze is, but they
9 didn't ask the next question -- whether there was evidence
10 of autolysis on the path slides. They didn't ask that.
11 Dr. Green testified, How long does it take for tissue to
12 become autolytic, I guess, for lack of a better word? And
13 the answer is on page 170. It can start as soon as
14 there's inflammation or abscess. Pretty immediately.

15 The process of autolysis is well known in what
16 we call "interval appendectomy," when a patient comes in and
17 they've had appendicitis for longer than they realize and
18 find an abscess already. The treatment can and will be to
19 treat the abscess, get rid of the infection, and bring the
20 patient back for their appendix to be removed anywhere
21 from
22 six weeks to three months later, and not uncommon when you
23 bring them back to find no appendix. It's been autolyzed.
24 Is that what happened here?

25 Now the surgical report clearly shows in the VA
records that attention was turned to the cecum and large

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1 bowel. The ascending transverse and descending sigmoid
2 colon were free of any obvious tumor. Turning to anatomy.
3 Sigmoid colon. He's looking. He's looking for any
4 problems. Like the small bowel, those little loops.
5 Remember the garden hose we talked about? They inspect
6 it.

7 They pulled it out 20 feet. Washed it out and put it
8 back.

9 All right. The small bowel was examined. Dr. Green
10 testified the serosal tear was repaired because they were
11 cutting all this scar tissue away to find out what
12 Mr. Erosa's problems were, that caused a little tear and
13 they fixed it because they were doing an open procedure.

14 There was no obvious area of serosal tear or
15 perforations after looking at the small bowel. They
16 checked out the ascending transverse descending sigmoid
17 colon were free of any obvious tumor. Cecum was examined.
18 And at the base of the cecum, there were multiple clips
19 and
20 surrounding inflammation. Okay. Remember defendant's
21 expert got up and said the mesenteric remnant was removed?
22 Oh. That's the mesoappendix, but they didn't take the
23 first three words of that operative report. These clips
24 and mesenteric remnant is one sentence. From the previous
25 appendectomy site were dissected and taken as a specimen.
26 Also an omentum biopsy was performed.

27 Now you heard what the omentum does. It's a
28 sheet of fat. I submit to you it makes sense. Stapled

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1 into bad tissue. It's leaking. He didn't remove enough
2 appendix. It's leaking. It's causing an infection
process
3 into his small intestines which are on top of this. The
4 omentum covers it. It's walling off, and it's taking time
5 for it to become a raging infection where he has to go
back
6 to the hospital. He goes back to the Parkway Hospital
with
7 an infection and they gave him antibiotics for the
8 infection. They're trying to treat it, but the body can't
9 fight the infection as well as it could have because it's
10 still going on. He leaves. He comes back and he goes to
11 the VA Hospital. He's not the doctor.

12 So you heard about Dr. Wetli. You heard about
--
13 he showed you some slides, no photos. Says that there's
--
14 he's talking about the fat being dissolved away. Remember
15 that in the slide show? What's making the fat go away?
16 Autolysis. Talks about a book. He wrote this book. I
17 asked him about major pathology. DiMiao. I specifically
18 asked him, Did you look at it? No. Did you ever use it?
19 No. Did you ever refer to it? No. Did you ever make of
20 copy of it? No. It's in page 3 of his book. DiMiao.
21 He's going to say and do what he wants to get his client
22 out of responsibility. Didn't we talk about this in jury
23 selection? I asked him about what an abscess is. Pus
24 formation. But then I asked him about the definition. Is
25 it also involving tissue destruction? And he finally

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1 agreed.

2 Talked about his testimony in various cases.

3 Talked about his work in the state of Nevada. And he also
4 testified on his review of the pathology slides. There
was

5 no mesoappendix seen either. There goes Dr.
Coomaraswamy's

6 testimony if the mesoappendix was removed. There's no --
7 his own expert disagrees with him. Dr. Gleit brought his
8 records on CD. He knew I couldn't see them. What am I
9 going to do? Spin it on my finger? I don't have a laptop
10 with me. I also have a right to cross-examine on what he
11 reviewed. Didn't give me any opportunity to review it.
12 New York Hospital Queens where Dr. Coomaraswamy works is
an
13 affiliate with New York Hospital. He agreed there was no
14 record of a transcript care of my patients with another
15 physician. On 292 of his testimony. He agreed that my
16 client suffered an incisional hernia after the surgery at
17 the VA Hospital. He agreed that the nurses -- Visiting
18 Nurse Service treated his open wound afterwards.

19 Now let's talk about Miguel and his wife.
Miguel

20 is a veteran. Served our country. Is a worker, works for
21 the U.S. Postal Service. Came here requesting and
thanking

22 you to perform your duties as a juror. He testified that
23 from his military experience he fought the feeling of
pain.

24 After the first surgery he took two to three weeks off,
had

25 modified duty, but he went back to Parkway Hospital
because

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1 of that pain. He's never been treated by a
2 gastroenterologist for diverticulitis or Crohn's disease.
3 But the testimony was that he went to the hospital because
4 after the surgery at the VA, something hit his stomach
real
5 hard. That's how he felt. He didn't go back to work for
6 several months.

7 He testified about some of the things he like to
8 do. He's shy now. Doesn't want to show you -- you saw
his
9 scar. You have a picture in evidence. You heard that
he's
10 ashamed of it, showing it. His wife testified to that.
11 He's ashamed of himself. It's going to be there forever.
12 As a father with his son, his son was frightened of it.
He
13 couldn't pick up his son. His relationship with his wife
14 is not the same.

15 Ladies and gentlemen, you're going to be asked
16 some questions, and the first thing is the evidence. Did
17 Dr. Coomaraswamy depart from good and accepted practice in
18 performance of the surgery on November 9, 2002? I submit
19 to you yes. Dr. Green stated it succinctly. There was a
20 departure in failing to completely remove the appendix.
21 Was that a substantial factor in causing harm? You know,
22 it's hard enough to prove a case. Now we have to disprove
23 everything in sight that they tried to throw at us, but
the
24 answer is yes. We showed that it was a cause of his
25 necessity in going back to the hospital, suffering pain,

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1 suffering pain until he got that second surgery. And then
2 future pain, the adhesions, the scarring, the mental
3 anguish, the failure to enjoy his life as he's testified.
4 I ask you to say yes to that.

5 Once you get to that question, we're going to
ask
6 for a sum of money. And as I said in jury selection,
7 there's no Humpty Dumpty here. Judge is going to give you
8 some very important instructions. And as long as you stay
9 within the bounds of his Honor's very important
10 instructions, you have as much power as any elected
11 official. What is fair and reasonable? This happened a
12 long time ago. And you're going to be asked to give a
13 verdict from the time it happened until your verdict. And
14 then the judge is going to give you instructions of what
15 they call "life expectancy." And judge is considered a
16 high honor. This is not a Godly thing of when we expect
17 Mr. Erosa to live for or die for. These are tables that's
18 submitted by the U.S. Government's statistics and that's
19 what Mr. Erosa is projected to have live according to the
20 U.S. Department of Labor's statistics. And you have a
21 right to reject that or accept it.

22 So you're going to be asked questions of
23 compensation and you're also going to be asked questions
of
24 compensation as to Mrs. Erosa for what you will be
25 instructed as to her loss of services as a spouse, and

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1 that's also from the date of malpractice that we claim
2 until the date of the verdict. And, you know, from the
3 date of malpractice to today, is 875,000 too much or too
4 little? As to the future, I believe the statistics are
5 going to give him 20-something years. I'm not clear what
6 the table is: Is another 675,000 too much or too little?
7 And for Mrs. Erosa, for past pain and suffering, being in
8 the hospital, seeing her husband go through this, her
going
9 through the loss of -- you heard her say it's just not
10 meaning with her son. She couldn't rely on her husband to
11 do these things. Is 300,00 past too much or too little
for
12 the future? Is 225,000 too much or too little?

13 The Erosas trust you. I ask you to please
14 deliberate, review any evidence you feel is necessary,
come
15 to a fair and just verdict for all sides. I thank you
very
16 much.

17 THE COURT: Thank you, Mr. Targum. All right,
18 members of the jury. You now heard both summations, and
19 the only remaining thing for you is to hear my
instructions

20 to you. I will just take a three-to-five-minute break
21 again and then we'll do the instructions.

22 THE COURT OFFICER: Jurors, step this way.
23 (Whereupon, jury exits the courtroom.)

24 (Whereupon, a brief recess was taken.)

25 THE COURT OFFICER: All rise. Jurors entering.

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