

2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF WESTCHESTER

4 MICHAEL SWANSON, an infant under 14
5 years of age, by and through his parents
6 and natural guardians, MARY SWANSON and
7 BRUCE SWANSON, and MARY SWANSON and
8 BRUCE SWANSON, individually,
9 Plaintiffs

10 - against - Index No.

11 16743/07
12 NORTHERN WESTCHESTER HOSPITAL CENTER,
13 WOMEN'S MEDICAL ASSOCIATES, PLLC, and
14 CARLA ENG-ROHN, M.D.
15 Defendants.

16 ----- x
17 111 Dr. Martin Luther King, Jr. Blvd.
18 White Plains, New York 10601
19 December 10, 2009

20 B E F O R E:
21 JON. NICHOLAS COLABELLA,
22 Justice of the Supreme Court.

23 A P P E A R A N C E S:
24 MEAGHER & MEAGHER, ESQS.
25 Attorney for Plaintiff
175 Main Street
White Plains, New York 10601
BY: CHRISTOPHER MEAGHER, ESQ.

CYNTHIA M. HILLS,
Senior Court Reporter.

2
3 A P P E A R A N C E S:

4
5
6 RENDE, RYAN & DOWNS, LLP
7 Attorney for Defendant
8 202 Mamaroneck Avenue
9 White Plains, New York 10601
BY: CHRISTOPHER J. WHITTON, ESQ.

10 FELDMAN, KLEIDMAN & COFFEY, L.L.P.
11 Attorney for Defendant-ENG-COHN
12 895 Main Street, P.O. Box A
13 Fishkill, NY 12524
BY: J. PETER COLLINS, ESQ.

14 GARSON, DECORATO & COHEN LLP
15 Attorney for Defendant-WOMEN'S MEDICAL
16 ASSOCIATES, PLLC
17 110 Wall Street, 10th Floor
18 New York, New York 10005

19 BY: DANIEL G. FEDERICO, ESQ.

1 PROCEEDINGS

2
3 THE COURT: Okay. Bring the jury in.
4 COURT OFFICER: Jury entering.
5 (Jury entering courtroom.)
6 THE COURT: Good morning, jurors.
7 Are you ready to work?
8 Let me repeat again what I said at the end
9 of the day yesterday. You have to pick a
10 foreperson. You pick whomever you want. But
11 you should have a foreperson. If you have a
12 question or a request, you put it in the form
13 of a note addressed to me with the time, write
14 the note out, have the foreperson sign it, give
15 it to the Court Officer, he will give it to me,
16 I'll show it to the lawyers and talk about it,
17 and we will try to give you whatever you need
18 that we can.
19 We can't give you facts, but we can give
20 you read backs on testimony that you might want
21 to hear, we can give you the law again if you
22 need to hear that.
23 Unfortunately at this time the law says
24 that I have got to do something which I find
25 unfortunate, but our Civil Practice Law and

1 PROCEEDINGS

2 Rules provides that at the conclusion of the
3 charge by the Court I must separate the
4 alternates from the main jury. That means
5 Michael, Gregory, Francis, Diane and John are
6 no longer part of the jury process.
7 The reason I had you come back today is
8 because if someone did not show from the first
9 six, at least we had an alternate to
10 substitute. So, with the thanks of the Court
11 and I'm sure of the attorneys and the parties,
12 I want to thank the alternates for their
13 service. You have a choice of staying. If you
14 stay you have to be either in the courtroom or
15 in a separate room and not part of the main
16 jury. Or you can leave. With the thanks of
17 the Court:
18 Again, because of the length of the trial,
19 I believe your exemption is 12 years. So thank
20 you. The Court Officer will now have those
21 fine people separated from the main jury. And
22 the main jury again is Darryl, Katrina, Gary,
23 Thomas, Susan and Elizabeth. I would ask the
24 attorneys to give their permission for the
25 Court Officer, upon their request by the jury,

1
2 to give to the jurors any and all exhibits that
3 they wish to have.
4 MR. MEAGHER: So agreed, Judge.
5 MR. WHITTON: Yes, your Honor.
6 MR. COLLINS: Yes, your Honor.
7 MR. FEDERICO: Yes, Judge.
8 THE COURT: And let me say this before you
9 start deliberating. This has been a very good
10 trial. We have very, very fine lawyers on both
11 sides, experienced, they know what they are
12 talking about, they are prepared, they acted
13 professionally, civilly, they followed all of
14 the rules that I set down. And I wish to thank
15 them very much for that.
16 So now I will give to the Court Reporter
17 the verdict sheet. If you will mark that Court
18 Exhibit A and I'll give the verdict sheet
19 temporarily to Darryl.
20 (Whereupon, Court Exhibit No. A was
21 marked.)
22 THE COURT: Okay, give this to juror
23 number one, Darryl Wilkins. This is yours
24 until you pick a foreperson.
25 Now, I think you have been in a jury room

1 PROCEEDINGS
2 down the hall. There are going to be six of
3 you now. You can go in this jury room if you
4 like or you can go in the bigger one. I leave
5 it up to you, okay, in any event. The ball now
6 shifts to your hands.
7 Good luck, jurors.
8 (Deliberations commence at 9:50.)
9 THE COURT: As far as the attorneys and
10 the Court Reporter, be where we can reach you
11 on five minutes notice.
12 (Jury Deliberations.)
13 THE COURT: Okay. We have a note. I'm
14 going to read the note into the record. It is
15 timed 10:54. Six points in one.
16 "Judge Colabella: We request the
17 following information, please:
18 One: Doctor and nurse's notes, hospital
19 delivery.
20 Two: Mother and newborn records.
21 Three: Doctor Dworkin's notes.
22 Four: CIP from the Brewster School
23 District.
24 Five: Economist charts.
25 Six: Doctor Selman's notes.

1 PROCEEDINGS
2 Seven: Mary Swanson's testimony day of
3 delivery.
4 Eight: Toco strip chart."
5 It looks like we are going to be here a
6 while.
7 Okay, Cindy will look for the testimony.
8 The rest, put it together, give it to the Court
9 Officer, and he will give it to the jury.
10 MR. MEAGHER: Could we see the items,
11 because I did not get all of the items that the
12 Court read off.
13 THE COURT: You should listen better.
14 MR. MEAGHER: I probably should have. I
15 got most of them, I just missed the first two
16 or so.
17 THE COURT: Any disagreement? Gentlemen,
18 agree on what is going to go to Rob to give to
19 the jury. Get together with the attorneys and
20 find out what they want for the read back.
21 (Recess taken.)
22 THE COURT: Did I speak too soon telling
23 the jurors on how nice you were. You have to
24 be kidding. On what don't you agree on,
25 Mr. Meagher?

1 PROCEEDINGS
2 MR. MEAGHER: I'll go in order, Judge.
3 The first question, as I understood it,
4 had asked for the doctor and nurse's notes for
5 the hospital delivery.
6 And then the second one asks for the
7 mother --
8 THE COURT: Let's go to the first one.
9 MR. MEAGHER: Well, I -- it is my
10 contention, and because all of the blowups are
11 evidence.
12 THE COURT: Step back, please.
13 MR. MEAGHER: I was just making reference
14 to them, Judge.
15 THE COURT: Please, step back.
16 MR. MEAGHER: Because all of the blowups
17 were made --
18 THE COURT: I can't hear you.
19 MR. MEAGHER: Because all of the blowups
20 are in evidence that the jury is asking for,
21 the notes that we have been referring to since
22 the beginning of the trial, that they have been
23 reading along with us through the course of the
24 trial.
25 THE COURT: So what are you saying?

PROCEED

1
2 MR. MEAGHER: I have suggested that we
3 give them the blowups that relate to that in
4 response to question number one.
5 THE COURT: Who objects to that?
6 MR. COLLINS: I don't think anybody
7 objects to it, Judge. It is just a question of
8 it would be clearer if you just said to them do
9 you want the blowups and the chart and, yes,
10 let them go. I don't have a problem with that.
11 But they did ask for the chart and they
12 asked for the notes. I don't know whether they
13 are referring to the blowups or they are not
14 referring to the blowups.
15 THE COURT: Give them both.
16 MR. MEAGHER: That was my suggestion.
17 THE COURT: All right. That's number one.
18 MR. MEAGHER: Can I continue, your Honor?
19 THE COURT: Yes. Two.
20 MR. MEAGHER: Two is not an issue because
21 we are giving them the charts.
22 Dworkin's notes is an issue. Dworkin's
23 notes, his chart is an exhibit. But Dworkin's
24 individual note I wouldn't, Judge. But it is
25 over there, there that was made reference to

PROCEEDINGS

1
2 timed with references to head compression at
3 different locations, which is an issue in
4 controversy in this case, whether they
5 represent it or not.
6 I have no objection and offer the
7 unredacted, unedited version of it as opposed
8 to one which is edited.
9 THE COURT: Is the one in your hand in
10 evidence?
11 MR. MEAGHER: Everything is in evidence.
12 MR. COLLINS: They are both in evidence.
13 THE COURT: They both go.
14 MR. MEAGHER: That was it. That was all
15 of the issues that I had, your Honor.
16 THE COURT: Anything else?
17 MR. COLLINS: There is just the testimony,
18 Judge.
19 THE COURT: Everybody is happy that the
20 Court Officer is taking the exhibits that I
21 said he should take into the jury?
22 MR. WHITTON: Yes.
23 THE COURT: Okay. What is the issue?
24 Mary Swanson's testimony. Period. Day of
25 delivery.

PROCEEDINGS

1
2 and marked is actually part of the Danbury
3 chart. But it is a Dworkin note and was
4 referred to to the jury.
5 THE COURT: And?
6 MR. MEAGHER: Repeatedly as a Dworkin
7 note.
8 THE COURT: And?
9 MR. MEAGHER: I'm suggesting that when
10 they are asking for Dworkin's notes, it
11 includes that note that they have seen and read
12 repeatedly.
13 THE COURT: Who objects to that?
14 MR. COLLINS: I do.
15 THE COURT: On what basis?
16 MR. COLLINS: I don't know that's what
17 they want. I have no objection to his records
18 going in.
19 THE COURT: Give it to them.
20 MR. MEAGHER: The toco strip chart is the
21 last item on that list. We have made reference
22 to this document, which was 2A1 throughout the
23 course of the trial. There is no dispute that
24 that should go to them.
25 There is this Defendant's Eng B which is

PROCEEDINGS

1
2 MR. COLLINS: Direct and cross, I assume.
3 THE COURT: Well, what is the issue?
4 MR. FEDERICO: I guess, Judge, it is just
5 day of delivery encompasses from the minute she
6 got there that day, or is it testimony only
7 with respect to the delivery? Which would be a
8 lot less. But I don't want to not give them
9 something.
10 THE COURT: What is the issue?
11 MR. FEDERICO: So do we cull just that
12 testimony that deals with the actual delivery,
13 or do we give them all of the testimony, what
14 time did you get to the hospital, what time did
15 you arrive at the hospital that day, et cetera?
16 (Recess taken.)
17 THE COURT: My custom and practice,
18 lawyers, is that you're going to get a read
19 back pursuant to your note. If there comes a
20 point where you have heard what you want to
21 hear, huddle with each other, tell me, and then
22 we will stop.
23 Okay. Bring them in.
24 (Jury entering courtroom.)
25 THE COURT: Okay, jurors, we have your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEED

note. I have discussed the note with the lawyers. We will give you what we think you want and what remains is Mary Swanson's testimony. And in order for me to accomplish what I think you want, I have reviewed the daily copy and I have asked Cindy to start at a particular location in the daily copy. If there comes a point where you have heard what you want to hear, huddle with each other, if you agree, tell me, and we will stop. Otherwise she is going to keep reading.

Okay.
(Requested testimony repeated.)
THE COURT: Okay, stop.
You may resume your deliberations.
(Jury excused.)
MR. FEDERICO: Judge, I know they said they heard enough. But obviously they have not heard any cross.
THE COURT: In 30 years experience, Mr. Federico, how to handle these matters, and I have used this same approach, which Judge Ingrassia taught me a lot of years ago, and on appeal that has been raised several times and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

it has been affirmed each and every time. The jury has told us when they have heard enough.
MR. FEDERICO: I appreciate that, Judge.
THE COURT: Yes, it does not get the cross-examination. It does not get the redirect. But they say they have heard what they want to hear.
MR. FEDERICO: Very well. Thanks, Judge.
THE COURT: But I'll give you an exception.
MR. FEDERICO: Thank you.
THE COURT: Mr. Collins.
MR. COLLINS: I'll take one too.
But this is what we are going to do. Go to lunch at 12:45 and come back at five minutes to two. But stay here until then.
(Jury Deliberations continue.)
THE COURT: Okay, we have note Number two timed 1:32 which I will read into the record.
"If the jury finds the hospital is not liable for physical injuries to Michael but should pay some restitution for sloppy recordkeeping and/or falsification of documents, (in other words, yes to 1A and no to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

1B,) Can we still award damages?"
I'll show this to the attorneys.
Look at it all together, gentlemen, so we can move on.
Okay, we will go with the Plaintiff first.
What do you think, Mr. Meagher?
MR. MEAGHER: I'm sure, Judge, they should be able to award damages. I'm not sure that there is a provision for that, however, your Honor.
THE COURT: Defense?
MR. WHITTON: Your Honor --
THE COURT: How do I answer the question? That's all I'm interested in. How do I answer the question?
MR. MEAGHER: I think the Plaintiff's suggestion would be -- well, there is an ambiguity here, Judge. I don't mean to be difficult.
THE COURT: You just are.
MR. MEAGHER: By nature perhaps, your Honor.
Can I speak sitting down, if that's okay with the Court?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

THE COURT: Sure.
MR. MEAGHER: As to 1A and 1B, I am assuming the answer will be no. You're not permitted to award damages pursuant to those questions. The question then becomes 2A and 2B.
THE COURT: They did not ask about 2A and 2B.
MR. MEAGHER: I understand. But the way that the question is phrased, can they award damages. And that's where the subtlety, I believe, lies. If the answer to 1B is no, then the answer to their question really would be yes, if you find liability as to Doctor Eng and causation.
THE COURT: They are talking about one.
MR. MEAGHER: But that's not the way that the last question reads, Judge.
Can we still award damages?
THE COURT: Yes. They are talking about 1A and 1B.
MR. WHITTON: Right.
MR. MEAGHER: As to the hospital the answer would be no. I would believe that would

PROCEE

1
2 be the way that the Court probably should
3 advise them. But as to the hospital, no. If
4 the Court does not want to instruct as to
5 Doctor Eng, I think it has to narrowly answer
6 the question as to the hospital. And there is
7 some ambiguity in the way that the note is
8 written in that regard.
9 THE COURT: They are lay people.
10 MR. MEAGHER: But I would encourage them
11 to award damages anyway. But I'm not sure if
12 the Court would find in my favor anyway in that
13 regard.
14 THE COURT: Let me hear the other side.
15 MR. COLLINS: No, the -- I think that's
16 what you have to tell them. The answer is no.
17 If they have found that the hospital is not
18 responsible for physical injuries, the answer
19 is no.
20 MR. FEDERICO: Or if the answer to either
21 of those questions is no, is that a substantial
22 factor, no. And certainly, respectfully, there
23 should be no comment as to the other questions
24 on the verdict sheet.
25 MR. WHITTON: I agree to all of that,

PROCEEDINGS

1
2 MR. MEAGHER: Because if the answer is
3 specifically as to the hospital, there is an
4 ambiguity in the way that that last part of the
5 question is phrased. And if there is no
6 ambiguity then there should be no problem with
7 the Court saying as to the hospital, if you
8 find no causation, you cannot award damages as
9 to the hospital. Making it clear. If there is
10 ambiguity, that's even more reason to make it
11 clear.
12 THE COURT: Okay. Bring them in.
13 COURT OFFICER: Jury entering.
14 (Jury entering.)
15 THE COURT: Jurors, I have your note. I
16 have discussed it with the attorneys. I'm
17 going to read it again.
18 "If the jury finds that the hospital is
19 not liable for physical injuries to Michael,
20 but should pay some restitution for sloppy
21 recordkeeping and/or falsification of
22 documents, (In other words, "yes," to number 1A
23 and no to 1B,") Can we still award damages?"
24 No.
25 You can go back.

PROCEEDINGS

1
2 Judge.
3 THE COURT: It is your client.
4 MR. WHITTON: Absolutely. I should be
5 heard. The answer should be no. If the answer
6 is no to question 1A or 1B, the jury cannot
7 award any damages as to the hospital.
8 THE COURT: That's the way that I see it,
9 Mr. Meagher.
10 MR. MEAGHER: I can't disagree, Judge, and
11 the phrasing that Mr. Whitton used is probably
12 the appropriate phrasing, which is the way that
13 the instructions on the verdict sheet read.
14 THE COURT: The answer is no.
15 MR. MEAGHER: The answer is no, you cannot
16 award damages as to the hospital. Which is
17 what Mr. Whitton had suggested.
18 THE COURT: If the jury -- I mean, the
19 short answer is no.
20 MR. WHITTON: That's it.
21 MR. FEDERICO: That's it.
22 MR. COLLINS: That's it.
23 MR. MEAGHER: That is the misleading
24 answer, your Honor, and that's why.
25 THE COURT: How is it misleading?

PROCEEDINGS

1
2 (Jury excused.)
3 (Jury Deliberations continue.)
4 MR. MEAGHER: Your Honor, would the Court
5 note my exception to that answer, and I think
6 it is as I had initially, or as Mr. Whitton had
7 initially suggested, was the proper answer.
8 THE COURT: So noted.
9 MR. MEAGHER: Thank you, Judge.
10 (Recess taken.)
11 (Time noted: 3:40)
12 THE COURT: Okay, anything that we should
13 discuss?
14 Okay, bring them in.
15 COURT OFFICER: Jury entering.
16 (Jury entering courtroom.)
17 THE COURT: Okay, jurors, we have your
18 note that you reached a verdict. Have you
19 reached a verdict?
20 JURY FORMAN: Yes, your Honor.
21 THE COURT: I want to ask the foreperson
22 to fold the verdict sheet, he will give it to
23 me. I'm going to ask you each question and
24 each answer, and ask you each individually if
25 that is your verdict, okay.

1 PROCES

2 "Question 1A: Did Northern Westchester

3 Hospital Center on October 10th, 2003, through

4 its nursing staff, depart from accepted nursing

5 practice in the delivery of Michael Swanson?

6 Answer: Yes.

7 Question 1B: Was that departure by

8 Northern Westchester Hospital a substantial

9 factor in causing injury to Michael Swanson?

10 Yes.

11 2A: Did Carla Eng-Kohn depart from

12 accepted medical practice on October 10th,

13 2003, in her care and treatment of Mary Swanson

14 and her delivery of Michael Swanson?

15 Answer: Yes.

16 2B: Was that departure by Carla Eng-Kohn

17 a substantial factor in causing injury to

18 Michael Swanson?

19 Answer: Yes.

20 Three: Please state the percentage of

21 liability as to each party. The total must

22 equal 100 percent:

23 Northern Westchester Hospital:

24 25 percent.

25 Carla Eng-Kohn: 75 percent.

1 PROCEEDINGS

2 4: State the amount of damages awarded

3 for the following items of damages, if any,

4 incurred by Michael Swanson up to the date of

5 your verdict.

6 A: Pain and suffering, \$2 million.

7 Question five: State the amount awarded,

8 if any, for future pain and suffering.

9 \$20 million.

10 A: State the number of years the future

11 pain and suffering will continue. 69 years.

12 Question six: For each item of economic

13 damages, if any, you find will be incurred in

14 the future, state the following:

15 Medical expenses? \$2,442,591.

16 That was "i."

17 2(a)(ii) The number of years over which

18 such expenses will be incurred: 76 years.

19 (iii): The growth rate blank.

20 (iv): Is this item of damage permanent

21 for the life of the infant Plaintiff?

22 Answer: Yes.

23 6(b)(i): Rehabilitation Services: The

24 annual amount in current dollars, \$1,073,143.

25 (b)(ii): The number of years during which

1 PROCEEDINGS

2 such service will required, 21 years.

3 (b)(iii): Growth rate. Left blank.

4 C. This is 6(c): The date of

5 commencement of the impairment of earning

6 ability/2023.

7 (ii): The annual amount in current

8 dollars: \$4,633,000.

9 MR. COLLINS: Please repeat.

10 THE COURT: Annual amount in current

11 dollars: \$4,633.00

12 (iii): The growth rate applicable for the

13 period of years. Again, blank.

14 (iv): The number of years the impairment

15 will continue: 38 years.

16 (v): The inflation or growth rate during

17 those years. Blank.

18 (vi): Is this item of damage permanent

19 for the life of the infant Plaintiff? Answer,

20 yes.

21 D. Custodial Care:

22 D(i): The date of commencement of

23 custodial care: 2009:

24 (ii): The annual amount in current

25 dollars: \$25,686,413.

1 PROCEEDINGS

2 (iii): Growth rate. Blank.

3 (iv): The number of years the care will

4 continue: 69 years.

5 (v): The inflation or growth rate.

6 Blank.

7 (vi): Is this item of damage permanent

8 for life of the infant-Plaintiff? Answer, yes.

9 Question seven: State the amount of

10 damages awarded for the following items of

11 damages, if any, you find will be incurred in

12 the future by Bruce Swanson due to Michael

13 Swanson's injuries.

14 A. \$5 million.

15 Daryl Wilkins, is that your verdict?

16 JUROR: Yes.

17 THE COURT: Katrina Groover?

18 JUROR: Yes.

19 THE COURT: Gary Grace?

20 JUROR: Yes.

21 THE COURT: Thomas Night?

22 JUROR: Yes.

23 THE COURT: And Susan Hines?

24 JUROR: Yes.

25 THE COURT: Elizabeth Culhan?

1 PROCEE
 2 JUROR: Yes.
 3 THE COURT: Will you please go into this
 4 jury room. I want to come in and talk to you.
 5 (Jury excused.)
 6 THE COURT: We have unfilled blanks for
 7 the growth rate. I'll listen to you on that.
 8 MR. MEAGHER: The only testimony offered
 9 on the growth rate was from Mr. Soudry. I'm
 10 not sure that it was in the exhibits
 11 themselves. I will stipulate, if counsel can
 12 agree to that growth rate, that that is the
 13 growth rate to be applied. There was no
 14 evidence offered to the contrary.
 15 MR. COLLINS: I can't stipulate to that.
 16 THE COURT: I don't think you can.
 17 MR. COLLINS: Pass.
 18 THE COURT: Well, what I can do is leave
 19 it, or have them -- send them back and have
 20 them work on it.
 21 MR. MEAGHER: Could we perhaps have a
 22 stipulation that we will have the Court make
 23 that determination based on any presentation?
 24 I will accept anything that they present
 25 contrary to the testimony that is before the

1 PROCEEDINGS
 2 jury.
 3 THE COURT: Well, there has been nothing
 4 to the contrary.
 5 MR. COLLINS: I can't stipulate to that.
 6 THE COURT: I would not imagine the
 7 Defense would stipulate to anything at this
 8 juncture.
 9 So, Mr. Meagher, it is really up to you as
 10 to what you think I should do.
 11 I don't think not having a growth rate is
 12 going to impact on the verdict. But I could
 13 send them back and tell them they have to fill
 14 this out.
 15 MR. MEAGHER: I would be concerned that it
 16 might. And I would ask that the Court, if they
 17 are going to be asked to complete those blanks,
 18 that there was testimony as to the growth rate,
 19 and would they like that testimony. Or is
 20 there a reason why they did not fill it in?
 21 There is one other issue, Judge, before
 22 they come back, and that is the question that
 23 Mr. Collins asked them, asked the Court to
 24 repeat, item 6C, small Roman numeral ii.
 25 The annual amount in current dollars of

1 PROCEEDINGS
 2 4,633,000
 3 THE COURT: Six?
 4 MR. MEAGHER: C, Roman numeral (ii).
 5 Small. It says the annual amount in current
 6 dollars.
 7 THE COURT: Yes. What about it?
 8 MR. MEAGHER: Judge, I'm -- it has been a
 9 long day. I'm not sure if that was supposed to
 10 be a year, one year of earnings, or the
 11 cumulative annual amount. I had a hand in the
 12 preparation of this, and as I'm reading it
 13 along with the Court I don't even know what it
 14 meant in that regard. I just wanted
 15 clarification.
 16 If there is any objection by the
 17 Defendants to that number now, as to the way
 18 that it is recorded, I would like to hear it so
 19 that if there is any discrepancy it can be
 20 addressed. I accept it as what it is, Judge.
 21 THE COURT: I don't understand what you
 22 are saying.
 23 They put this number down. Whether the
 24 number makes sense or not, I don't know. This
 25 was your verdict sheet that you all agreed to.

1 PROCEEDINGS
 2 It is the 2003 modifications. Those
 3 modifications never made any sense to me. I
 4 think they confuse the jury. I'm surprised
 5 that they can even fill it out. If they find
 6 liability I'm just going to deduct as to what
 7 they are going to do on damages.
 8 MR. MEAGHER: Obviously the number is as
 9 recorded. If there is argument it will be
 10 addressed, if there is any argument raised. I
 11 think they should be asked to fill in the
 12 growth rate.
 13 THE COURT: Anybody object to that?
 14 MR. COLLINS: I do.
 15 MR. WHITTON: Yes.
 16 THE COURT: Do you think it should be left
 17 alone?
 18 MR. COLLINS: I think it should. The
 19 verdict is their verdict.
 20 THE COURT: So your objection is to me
 21 bringing the jury back and having them address
 22 the growth rate?
 23 MR. COLLINS: Yes.
 24 THE COURT: I should not do that?
 25 MR. COLLINS: That's my objection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

THE COURT: Defense agrees?
MR. FEDERICO: I agree.
MR. WHITTON: Yes, your Honor.
THE COURT: That's what I'm going to do then.
Okay, let me talk to the jury and I will come out and talk to you folks, okay.
Well, my congratulations to the Plaintiffs, and my condolences to the Defense. We have winners and losers when you try a case. I did my best to try to resolve it. It did not work. We will go from here.
So what I would like to do, gentlemen, unless you tell me otherwise, which I probably won't listen to anyway, let's put this over to another day before we do anything, okay.
MR. MEAGHER: Certainly, Judge.
MR. FEDERICO: By that you mean you will entertain motions?
THE COURT: We are going to defer doing anything.
How about a week from today? So the clock does not start running, okay?
MR. FEDERICO: Thank you, Judge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

MR. WHITTON: Thank you, your Honor.
THE COURT: Again, thank you for your cooperation, thank you for your professionalism, thank you for your civility. Please take your exhibits. I'll give you until 5:00 o'clock tomorrow to take your exhibits out of here.
Thank you.
MR. MEAGHER: If I could note for the record, I thank the Court for its patience over the last couple weeks, and the Court personnel.
THE COURT: Two weeks.
MR. MEAGHER: What did I say, several weeks.

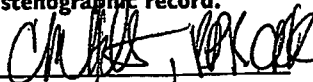
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

THE COURT: Two weeks. Three weeks. You know I'm going to argue right till the end.
So a week from today be here at 9:30 and we will start talking.

* * * *

I, Cynthia M. Hills, do hereby certify that the within proceedings are a true and accurate transcript of the original stenographic record.


Cynthia M. Hills, RPR, CRR