

Defendant (by Mr. Hartlein) [482]

Closing Statement - Defendant - Mr. Hartlein 453

1 THE COURT: On the record. Counsel, you have
2 each reviewed the verdict sheet, is that correct,
3 and I see you have initialed same?

4 MR. GREENBERG: Yes, your Honor.

5 MR. HARTLEIN: Yes, your Honor.

6 THE COURT: That's going to be marked as
7 Court's Exhibit Number 9.

8 (Whereupon, the document was marked as Court's
9 Exhibit 9 in evidence by the Reporter.)

10 THE CLERK: Court's Exhibit Number 9 so
11 marked.

12 THE COURT: With that, please bring in the
13 jury.

14 COURT OFFICER: Jury entering.

15 (Whereupon, the jury entered the courtroom.)

16 THE COURT: You may be seated. Good
17 afternoon, members of the jury, welcome back. We
18 will now hear the summations from counsel.
19 Counsel.

20 MR. HARTLEIN: Thank you, Judge.

21 Good afternoon. This is the last part of the
22 trial before your deliberations. Each of the
23 attorneys again get to give you closing remarks.
24 As we talked about earlier, each of us has our job
25 to do, the attorneys have theirs, the Judge has

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1 hers and your job now will be as you did in the
 2 first part of the trial to give responses and
 3 answers to certain questions that will be given to
 4 you.

5 I am not here arguing that Mr. Hammond was not
 6 injured, nor that he does not have a significant
 7 injury as you've heard. But when you hear the
 8 amount of money being asked for by the plaintiff's
 9 attorney you'll understand why you're needed to
 10 resolve this dispute. That will be your decision
 11 after you've considered all the evidence here and I
 12 would ask you to, without sympathy, to take a hard
 13 look at this case and at the injuries and render a
 14 fair and just compensation to the plaintiff and
 15 also a fair and just compensation on behalf of Mike
 16 and Lea Diaz.

17 Now, what this case is about and what you'll
 18 be asked to render a decision on is the pain and
 19 suffering and loss of enjoyment of life for Mr.
 20 Hammond. What isn't an issue here and what will
 21 not be asked for is compensation any amount for
 22 loss of earnings for medical expenses, okay. That
 23 is not part of this case.

24 I'd like to discuss what you consider in your
 25 deliberations which is the nature of his injuries,

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their extent, the limitations involved and what are not involved, okay, that is limitations that he still has or does not have as a result of this case.

Mr. Hammond is a likable intelligent man. It's an unfortunate incident but it happened and we move on from here and you have to consider this case. He has two years of college. He was an optician. When this accident occurred he was taken to the hospital. Apparently, as you've seen from this record here, the hospital record, he had a spinal cord contusion which was diagnosed. You won't have time to go through those records, but it was a cord contusion. They took an MRI of it and later on, a month later they took another MRI which showed improvement in the contusion but with a small residual and you've seen the effects, residual effects in Mr. Hammond's current condition.

He was in the hospital three and a half months. He received extensive physical and occupational therapy which improved his condition to a point but not total. Not total. He then went to a subacute facility William Beneson and received more physical therapy and then was discharged. He

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1 did show, as Dr. Elfiky said, significant
2 improvement from the time he first went in and
3 could not basically he had weakness in his entire
4 body, but he then improved to the point where they
5 got his left side functioning and his right side to
6 a limited degree and his right hand and right foot.
7 He did see a psychologist in the hospital, but
8 apparently that doesn't seem to be a significant
9 problem. He has not seen a psychologist since he
10 left the hospital seven years ago. So from when he
11 was discharged from the hospital he had been shown
12 significant improvement but not total improvement.
13 He did return to using, you know, going to the
14 bathroom by himself which he had not been able to
15 do when he first went to the hospital. He then
16 went to Dr. Elfiky at ProCare Medical.

17 Now, Dr. Elfiky is a neurologist. Dr. Elfiky,
18 I found it hard to believe that he never even
19 bothered to get the hospital record. When someone
20 walks into his office and says I have a spinal cord
21 contusion it would be helpful to get the hospital
22 record if your his patient so he would understand
23 the entire nature and significance of the injury.
24 We never did get from Dr. Elfiky a specific point
25 by point as to how a spinal cord contusion

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1 eventually ends up causing weakness in someone's
2 foot or in their hand, but he was not my witness
3 and he didn't bother to get into the specifics of
4 the nature of that injury. But his conclusion is
5 what Dr. Toriello's conclusion is, he had a spinal
6 cord contusion and it affected his right foot and
7 his right hand.

8 Dr. Elfiky saw him four times. The third time
9 -- fourth time was for preparation for trial, but
10 he did see him three times in the next six months
11 or so and he was treated for a frozen shoulder on
12 the right side which means he can't have much use
13 of it, but according to Dr. Toriello and Dr.
14 Elfiky, he got a lot of use of that eventually. So
15 that improved at that point.

16 He does limp and that's been noted by both
17 doctors and his hand he cannot contract it to its
18 full extent. He has weakness in that side of his
19 body, but it's not a total weakness or total
20 incapacity for doing things.

21 Dr. Toriello is an orthopedist. We heard
22 testimony why an orthopedist had to testify.
23 Because although it is a neurological injury, in
24 it's inception in the spinal cord the symptoms
25 result in orthopedic deficits, okay. There was

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1 another doctor who examined him on our behalf, Dr.
2 Golzad a neurologist, but there is no need to bring
3 someone in to say the exact same things if that's
4 what was said by the neurologist. Dr. Toriello is
5 an orthopedist, he was able to give you some
6 information on the orthopedic nature of the
7 symptoms as they played out in Mr. Hammond's body.
8 And what did he find that the result of the
9 contusion showed itself up in the weakness or
10 atrophy of the muscles in the right forearm and
11 down here in the right calf. Although the muscles
12 in his hand are normal and fine, it's the muscles
13 here which would help him to contract his hand and
14 he cannot do that and also it's the muscles in his
15 lower leg here that affect his right foot which
16 also had normal muscle and normal functioning
17 except he cannot, he doesn't have the power to move
18 that foot on his own. He has normal range of
19 motion in those parts of his body. He doesn't seem
20 to have reflex problems in that part of his body.
21 Dr. Toriello felt at least the left side was fine,
22 the right shoulder had improved. So it was normal
23 range of motion, but he had these two limitations
24 in his right hand and right foot.

25 Let's come down to before talking about what

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1 he has, what after all of this he doesn't have. He
2 had lung surgery but he appears to be breathing
3 okay now. There was no doctor presented at least
4 by the plaintiff to indicate that he has any
5 problems breathing at this point. There was no
6 testimony to that record. He doesn't appear for
7 any psychological problems as a result of this
8 accident. He is 46 years old now, married with one
9 child. He's not homebound. He's able to work
10 again. Perhaps he would go back to college if he
11 wanted or he can even consider, he'd like to go
12 back to work full-time and considering real estate.
13 But again, loss of earnings is not an issue here
14 nor is medical expenses, it's purely pain and
15 suffering and loss of enjoyment of life.

16 What can he do? He can go to work still. He
17 can take his child to the bus as he did before. He
18 does chores around the house. Feeds himself. He
19 does have a problem tying his shoe. His apartment
20 is on the second floor, he's able to walk up the
21 flights of stairs and all these things of this
22 nature. He has indicated he can somewhat write
23 with his right hand and do some work as an
24 optician. I think the place where he now works he
25 cannot -- he does not have full grip there. It's a

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1 limitation without a doubt. He cannot use that
2 right foot as he did, it drags because he doesn't
3 have that strength and he has to swing it around.
4 Dr. Toriello did say though that and Mr. Hammond
5 does in the past use a foot splint which can help
6 with that and reduce the amount of swing in the
7 leg. Mr. Hammond chose not to wear that. That's
8 his right, but you have to decide whether that
9 would help him to actually walk better in the
10 future.

11 You will be asked to give an evaluation of
12 damages for his pain and suffering from the time of
13 the accident and it's been well documented until
14 today, the time of your verdict, and then another
15 evaluation, monetary evaluation, a fair and just
16 compensation from the date of your verdict on into
17 the future. You'll be told what his life
18 expectancy is, but you can determine how many years
19 you wish to give him money for. The Judge will
20 explain these things in her charge.

21 It's generally not my procedure to offer any
22 indication of what I would hope you would find, I
23 leave that to the jury. That's your part in the
24 case. You will be hearing I believe a rather large
25 request from the plaintiff's attorney, but again

Plaintiff (by Mr. Greenberg) [490]

Closing Statement - Plaintiff - Mr. Greenberg 461

1 we're attorneys, you're the jury and I would ask
2 that the number be fair and just to both sides in
3 this dispute. That you consider all the elements
4 of this case in coming to a decision. That
5 although it's a real injury to Mr. Hammond, it's
6 not a complete total loss of ability to function or
7 to walk or to do the things of normal life. He can
8 do most of the things he did before, he just can't
9 do them to the same extent that he did prior to
10 this accident. Thank you for your time.

11 THE COURT: You may proceed.

12 MR. GREENBERG: Thank you, your Honor.

13 Counsel, ladies and gentlemen of the jury, at
14 first I'd like to thank you very much, it's been a
15 very lengthy trial with some breaks in it and I
16 appreciate all your time and effort you've put into
17 it so far. We are finally coming to the conclusion
18 and as was the case in the first half of the case,
19 as far as the evidence has shown, this is a trial
20 without a controversy.

21 The controversy on the medical turned out to
22 be no controversy at all. Dr. Toriello totally
23 agreed with the injuries and damages my client has
24 sustained and he's the defense witness. So it
25 looked like there was going to be controversy, it

Closing Statement - Plaintiff - Mr. Greenberg

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1 looked like there was going to be a fight. We
2 heard the cross-examination of Dr. Elfiky and what
3 it comes down to their own doctor, the orthopedist
4 agrees with the same injuries.

5 The big factor here, the difference between my
6 summation and defense counsel's summation is how
7 serious this is to Raymond Hammond's life and his
8 wife and that I disagree with. This is not a minor
9 injury. This is not a minor accident. We all know
10 situations where people who get hurt get better,
11 who don't go through what Mr. Hammond went through
12 in the hospital, after the hospital and the rest of
13 his life.

14 Not only is this case without a controversy,
15 but defendants in this case had an opportunity and
16 availed themselves the opportunity to have a
17 neurologist examine Raymond Hammond and it was very
18 shortly after Dr. Toriello did. In fact, it was
19 January 2007. Dr. Toriello saw the plaintiff on
20 December 11, 2006 and less than a month later he
21 saw the defendant's neurologist Dr. Golzad almost
22 in the same neighborhood. Absent from the
23 testimony here which I think is a big deal, is Dr.
24 Golzad not showing up at all. No testimony at all
25 from the main neurologist from the defense. We can

Closing Statement - Plaintiff - Mr. Greenberg 463

1 only imagine you will hear the Judge's instruction
2 on this why he didn't come. I don't know why he
3 didn't come, I can only speculate. However, it's
4 very doubtful that he would say the injuries are
5 any less than have been stated here. If that were
6 true, I am sure he would be here.

7 Raymond is a very intelligent nice man and I
8 think we'll all agree about that and also agree
9 that Ray has told you the truth all along from the
10 beginning of the case to the end. All along with
11 his wife. You have not heard from what I can
12 recollect at all, one misstatement from him, one
13 exaggeration at all including his wife. In fact, I
14 think she undermined it compared to what was going
15 on. I think that's just her nature. I think she
16 didn't want to embarrass her husband on what he's
17 gone through and her family. I don't minimize what
18 happened. Ray was 42 years old when this happened.
19 A young man married with a daughter. Besides being
20 violently struck by a vehicle and being totally
21 paralyzed at the scene and in the hospital for
22 months not knowing whether he is going to live or
23 die, move what part of his body. That had to be
24 unbelievable pain and suffering for him and his
25 wife and family.

Closing Statement - Plaintiff - Mr. Greenberg 464

1 Now, it's true over a long period of time he
2 did make some recovery and we'll go over that too.
3 Three and a half months in the hospital, emergency
4 lung surgery, they had to take out part of his
5 lung. Not knowing whether he was going to make
6 that. Scars on his face, head, broken teeth,
7 frozen right shoulder, I think these are very
8 serious injuries.

9 Now is there some improvement? Yes. Now
10 after many, many months, three and a half months in
11 the hospital, we all know today three and a half
12 months, nobody stays in the hospital for more than
13 two, three days unless it's serious. Three and a
14 half months in the hospital. We all know the kind
15 of pressure it is to get out of hospitals these
16 days. Still not sent home. Another three and a
17 half weeks in another subacute facility for
18 rehabilitation just so he can start to function
19 when he gets home. And by functioning we've heard
20 he wasn't able to move a muscle in his body,
21 nothing. He was totally paralyzed. Through his
22 tremendous effort and work of very good doctors, he
23 started to regain the use of his left side of his
24 body. However, he never fully regained the right
25 side and we're talking about a lot of work. We're

Closing Statement - Plaintiff - Mr. Greenberg

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1 talking about this accident was Ray's life for a
2 good part of his life already. It's been almost
3 four years since the time of the accident. Even
4 Dr. Toriello only saw Ray two years and eight
5 months and eleven days after the accident. His
6 testimony was very strong as to what he saw Ray
7 suffered and that he will suffer for the rest of
8 his life. Actually, I would have called him as my
9 witness too. Excellent physician. He stated, of
10 course, he didn't see Ray for the first two years
11 eight months eleven days so he can't really testify
12 except for hospital records that he went through.

13 The pain and suffering, it must have been
14 horrendous. I can't imagine the pain he went
15 through. He could not go to the bathroom in the
16 hospital. Not knowing whether he would be able to
17 regain this. His wife likewise going through all
18 this and being very supportive the entire time.
19 This is bad enough we're talking about from there
20 he had to learn how to do everything all over
21 again. He is out of work two years. His doctor
22 said he should be disabled not to do work for the
23 rest of his life. He's working part-time trying.
24 Lord knows how he is doing this. The main injury
25 to the dominant side of his body. He is right hand

Closing Statement - Plaintiff - Mr. Greenberg 466

1 dominant. Even Dr. Toriello says he has bare
2 minimum use, if at all, of his right hand and right
3 arm. He is right handed. This man has learned how
4 to use his left hand to do work with eyeglasses and
5 luckily he has a friend in the business who is
6 letting him do this and do whatever he can do, but
7 you can only imagine how this effects the rest of
8 his life.

9 What we're dealing with is the four years that
10 he went through up until today and we're seeing Ray
11 at his best. This is by far his best. It's also,
12 by all the testimony, never going to get any
13 better. Even by Dr. Toriello's testimony, this is
14 the best he will ever be. We didn't see him in the
15 hospital. We didn't see him what he looked like
16 then. We didn't see what it was like when he
17 couldn't move any part of his body we know from the
18 testimony and hospital record. We're talking about
19 four years. Almost a complete year of grueling
20 physical therapy. Almost two years where he is
21 barely functioning at all. He is starting to come
22 back.

23 Now, we're dealing with four years of that
24 that led up to and the accident and this is
25 completely changed his life and will change his

Closing Statement - Plaintiff - Mr. Greenberg

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1 life for the rest of his life. There are many
2 injuries we hear about, many things people go
3 through. It happened, they broke a leg, arm, a
4 couple of months later they are back to doing
5 almost everything they used to do with some aches
6 and pains.

7 Now we're talking about also the future from
8 now to the rest of his life. No one has taken the
9 stand, no physician saying he will ever get any
10 better including Dr. Toriello. This is the best.
11 Ray will also always have from the testimony back
12 spasms, pain in his back. There will be times he
13 will be in pain besides the severe pain he was in
14 for the first few months and years. He will have
15 pain and spasm in his back and that will go on for
16 the rest of his life.

17 Dr. Elfiky whether you like him or don't like
18 him, I think he got offensive, doesn't make a
19 difference, I agree with defense counsel, number
20 one, his personality has nothing to do with it and
21 who wanted to start with a fight is irrelevant in
22 the case. The injuries is what they are. Dr.
23 Elfiky stated what they are. Dr. Toriello agreed
24 what they are. A three and a half month hospital
25 admission agrees with what they are. For the rest

Closing Statement - Plaintiff - Mr. Greenberg 468

1 of his life Ray will have those pains and spasms
2 for the rest of his life coming and going. We can
3 say he will never walk right. He will always drag
4 his right foot. Always have a terrible limp. He
5 will always have terrible use of -- no use of his
6 right dominant hand for the rest of his life.

7 Every single thing we take for granted from
8 getting up in the morning to brushing our teeth,
9 washing ourselves, to trying to hold a handrail
10 going up and down the stairs. Whatever we use with
11 our dominant hand to write, shaking someone's hand,
12 he will never have that for the rest of his life.
13 By the testimony we have from Dr. Elfiky, the
14 reason for the continued physical therapy and
15 exercises is to slow down the natural
16 deterioration. It will get worse. He will have
17 less and less mobility as he gets older. He is
18 doing the exercises to slow it down. Not only it
19 will never get better, it will get worse. He is
20 doing the best he can and he could have walked in
21 here with a cane but he didn't. He didn't bring it
22 in. His right shoulder was frozen he could not
23 move it at all they anticipated surgery. He worked
24 like crazy in physical therapy and got better. He
25 testified it's much, much better now. The doctors

Closing Statement - Plaintiff - Mr. Greenberg 469

1 fully agree with Ray's testimony. Dr. Elfikey
2 offered on the stand to have any neurologist you
3 want to examine Ray, he will find the same results.

4 MR. HARTLEIN: Objection to what some other
5 doctor that hasn't testified would find.

6 THE COURT: Overruled.

7 MR. GREENBERG: Okay. For instance, Dr.
8 Golzad defense counsel's own neurologist who didn't
9 testify, I would have liked to see what he would
10 have to say.

11 Ray will always have these problems no matter
12 what. They will only get progressively worse. He
13 is fighting like crazy against it. Again, he could
14 have walked in here saying I could have never gone
15 back to work. He is right hand dominant, he's gone
16 back. Whatever he can do he's doing. If anything,
17 he is minimizing what the effects are in his life.

18 Now, Ray will never run for the rest of his
19 life. He will never climb stairs. Never go a long
20 distance, never walk a long distance. He will
21 never play with his daughter except in very minimal
22 ways. He certainly couldn't do what he used to.
23 No type of physical activities that require
24 running, jogging, fast movement. He is limited
25 wherever he goes. A simple thing we take for

Closing Statement - Plaintiff - Mr. Greenberg 470

1 granted, shopping, she likes to go to the mall.
2 Even he couldn't go or accompanies her and walks
3 very little distance and ends up on a bench. She's
4 decided that he will never be with her on these
5 excursions. Anything we take for granted. We go
6 to the beach, take long walks, go to the park,
7 window shopping, whatever you do he is limited. He
8 can go a number of blocks then he has to stop and
9 you can imagine him walking with that foot,
10 dragging it with the limited use he has, that will
11 cause more pain in his back. The further he goes
12 the worse problem he is going to have later.
13 That's not something that's going to go away,
14 that's forever.

15 Also, this has affected Selina's life. She's
16 not only stuck with him and he's testified through
17 all of this her life significantly changed. All
18 the things the first year from the testimony and
19 everything we heard Ray not being able to
20 participate in any sexual relations for a year and
21 a half. Also, he could not help her with the
22 household chores, with taking care of their
23 daughter. It all falls on her. Ray didn't mean
24 for that to happen. She's doing whatever she can.
25 It was 100 percent her. Even if we say 80 percent

Closing Statement - Plaintiff - Mr. Greenberg

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1 her or 90 or whatever number you can come up with
2 for the rest of her life she will make up the
3 difference for what Ray can't do from grabbing
4 bundles in a shopping cart, from taking a long walk
5 with her, walking in the park, going shopping.
6 It's going to be her without him or minimally. She
7 is the one who has to carry all the heavy packages.
8 Do it all. Ray's helping out a minor amount.

9 Now, we heard that Ray has not continued to
10 see a psychologist or psychiatrist after he got
11 out. That doesn't mean he doesn't have emotional
12 pain and problems. Some people seek the help,
13 others handle it in a different way or with their
14 own family and friends. I am sure we've agreed
15 someone who has gone through this has emotional
16 difficulties. The normal difficulties you can
17 imagine all of us are going to have if we had to go
18 through what Ray has gone through in his life from
19 anger to sadness to bad moods to frustration, all
20 those feelings are normal emotions they're both
21 going to feel and it's going to have an effect on
22 his wife. It's possible to have a relationship
23 where one person and the other person doesn't feel
24 anything. It's going to affect how they live their
25 life, the enjoyment of that life.

Closing Statement - Plaintiff - Mr. Greenberg 472

1 What do we all wait for every single day and
2 week? We do our job, you look forward to going
3 out, playing, having a good time, being able to do
4 what you want to do. When you can't do that for
5 the rest of your life I say that's a lot of
6 enjoyment, that's a lot.

7 How do you put a figure on this very difficult
8 situation? My view of this is that this is very
9 significant, the injuries are very severe. Again,
10 we've seen Ray at his best. This is his best.
11 This is four years later. This is the height of
12 where his physical therapy has taken him. The best
13 he's got. We have to think backwards what he went
14 through for almost four years. What his wife went
15 through. And for the next, life expectancy you
16 will hear from the Judge to be taken into
17 consideration. These are permanent serious
18 injuries. He will have to live with them for the
19 rest of his life.

20 I am requesting that the jury comes in with a
21 verdict for past pain and suffering in the amount
22 of \$2,000,000 and for the future pain and suffering
23 \$3,000,000 and I'm requesting that you come in with
24 a verdict for Selina Hammond of \$250,000 for past
25 pain and suffering and \$500,000 for future pain and

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Jury Charge [502]

Jury Charge

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1 suffering. Considering their ages, what they have
2 gone through, I think that's a fair and reasonable
3 verdict. However, what's fair and just and
4 reasonable is up to you. I am sure you're going to
5 take into consideration everything that you've
6 heard and what's been presented and I thank you
7 very much for your time.

8 THE COURT: Members of the jury, we come now
9 to that portion of the trial when you are
10 instructed on the law applicable to the case and
11 after which you will retire for your final
12 deliberations.

13 You have now heard all the evidence introduced
14 by the parties and through arguments of their
15 attorneys, you have learned the conclusions which
16 each party believes should be drawn from the
17 evidence presented to you.

18 Now, several of these initial charges may ring
19 a bell because they were the same charges I gave
20 you after the conclusion of the liability phase of
21 the trial, but since it's been about two weeks
22 since I gave you those charges, I'm going to review
23 those again.

24 You will recall that at the beginning of the
25 trial I stated for you certain principles so that