

1 over, it will be too late for me to go into my  
2 charge and then for you to deliberate. So,  
3 because of the late start this morning, we will  
4 have to go over until tomorrow. And, I'll charge  
5 you and you'll deliberate tomorrow. Okay. So,  
6 continue to keep an open mind, don't start  
7 deliberating with each other or within your own  
8 head and I'll see you at 2 o'clock.

9 (Whereupon, the sworn Jury exited the  
10 courtroom)

11 THE COURT: See you at 2 o'clock. I  
12 think we've resolved everything that needs to be  
13 resolved.

14 MR. CERTAIN: I believe so.

15 MR. JANES: Yes.

16 MR. ZILBERG: Yes.

17 (Whereupon, a recess was taken in this  
18 matter, and after the recess, the following took  
19 place in open court, with the Court and all  
20 parties being present)

21 (Whereupon, the sworn Jury entered the  
22 courtroom)

23 THE COURT: Okay, folks. Sit back,  
24 relax, we have summations of the attorneys coming  
25 up. And, for that, we reverse the order that you

1 have been accustomed to in terms of which attorney  
2 goes first, so that Mr. Janes will address you  
3 first.

4 MR. JANES: May it please the Court,  
5 Counsel, ladies and gentlemen of the Jury. We are  
6 coming to the end of the road on this case. This  
7 will be the last time that I will be able to speak  
8 to you on this matter, and I want to take this  
9 opportunity to review the evidence that has just  
10 been presented before you during the course of  
11 this trial. The evidence you have heard and seen  
12 in this case establishes the Plaintiff suffered a  
13 minimal injury for which she deserves modest  
14 compensation. What evidence have we seen and  
15 heard in this case? What I want to do is break  
16 that evidence down regarding both of the injuries  
17 Plaintiff has alleged, but has failed to prove in  
18 this matter.

19 With respect to Plaintiff's lower back,  
20 the evidence has established that the Plaintiff  
21 suffered a prior injury to her lower back in 2003.  
22 She complained of pain after that 2003 accident to  
23 her lower back, and she treated in 2003 for those  
24 lower back problems. On the date of accident,  
25 September 11th, 2005, the Plaintiff made no

1 complaints about pain or injury to her lower back  
2 either to the EMTs who treated her at the scene,  
3 or to the staff at Bronx Lebanon Hospital, who  
4 treated her that day. Bronx Lebanon Hospital  
5 records, which you all saw, which are in evidence,  
6 diagnosed only a right knee sprain. There was no  
7 indication that Plaintiff complained of injury to  
8 her lower back or had pain in her lower back.  
9 Doctor Klein, Plaintiff's treating physician and  
10 an expert called by Plaintiff's Counsel, testified  
11 that he could not say whether the instability of  
12 Plaintiff's lower back was before or after the  
13 accident of September 11th, 2005. There is no  
14 causal connection between the accident of  
15 September 11th, 2005, and Plaintiff's injury to  
16 her lower back. Doctor Klein also indicated that  
17 Plaintiff's lower back complaints were not  
18 radicular in nature, no radiculopathy. This is  
19 consistent with our expert testimony, but it's  
20 inconsistent with Dr. Guy. Plaintiff's own  
21 treating physicians and experts contradict each  
22 other. Doctor Klein also testified that he does  
23 not know whether and if Plaintiff will have a low  
24 back surgery. Dr. Guy, another treating physician  
25 of the Plaintiff and another expert called by

1 Plaintiff's Counsel in this matter, also  
2 contradicts himself. He claims that Plaintiff  
3 does have a lower back radiculopathy. He also  
4 testified that for a patient after an accident, he  
5 would normally have radicular symptoms within four  
6 to six weeks after an accident. When Dr. Guy  
7 treated the Plaintiff approximately five weeks  
8 after this accident, he noted that there was only  
9 localized low back pain which was not radicular.  
10 It was not traveling. Dr. Guy's treatment of the  
11 Plaintiff was also sloppy. During his treatment  
12 of the Plaintiff, he was not aware of the  
13 Plaintiff's prior accident in 2003 or her prior  
14 complaints of back pain and or treatment in 2003.  
15 This is consistent with Dr. Guy's history as was  
16 detailed in his academic record at Queens College.

17 Dr. Guy also set forth a supposed  
18 detailed future treatment plan for the Plaintiff,  
19 but admits that before last week, he had not  
20 treated the Plaintiff in over a year. Dr. Guy's  
21 testimony lacks credibility; his allegation as to  
22 Plaintiff's injury lacks credibility, and his  
23 allegation as to Plaintiff's future care lacks  
24 credibility.

25 What did our expert witnesses say? What

1 evidence did we present before you ladies and  
2 gentlemen? Doctor Tantleff told you that the MRI  
3 films of Plaintiff's lumbar spine showed no  
4 bulges, herniations or protrusions; there was no  
5 indication of any radicular injury. He also  
6 testified that Plaintiff's lumbar spine, according  
7 to the MRI, has had degenerative problems which  
8 predated the accident. There was a Tarlov cyst  
9 also present, which is congenital and predated the  
10 accident of September 11th, 2005; that Tarlov cyst  
11 could also cause pain to the lower back which  
12 Plaintiff alleges. Doctor Klein's views are  
13 consistent with Dr. Tantleff about when  
14 Plaintiff's lower back problems originated. Dr.  
15 Bonomo and Dr. Purcell, based upon their clinical  
16 examinations, not treating physicians, one  
17 opportunity to clinically examine the Plaintiff,  
18 and based upon their clinical examination, they  
19 found that Plaintiff had no injury to her lower  
20 back. Her prognosis was good. She had no need  
21 for future care.

22 The clinical evidence, the diagnostic  
23 evidence presented during the course of this trial  
24 establishes that there was no injury to  
25 Plaintiff's lower back which was caused by the

1 accident of September 11th, 2005. Plaintiff's  
2 critique of our witnesses shows the weakness in  
3 their case. On cross-examination of Doctor  
4 Tantleff, Plaintiff spent half an hour reviewing  
5 Dr. Tantleff's advertisements, his corporate  
6 histories, his websites; very little time was  
7 spent attacking Dr. Tantleff on the medicine,  
8 attacking both his reading of both the lumbar  
9 spine and reading of the knee MRI because Dr.  
10 Tantleff's interpretation of those MRIs are  
11 accurate and true.

12 With respect to Dr. Bonomo and Dr.  
13 Purcell, again, attack based on tangential issues.  
14 Their clinical examination of the Plaintiff was  
15 not confronted, the fact both with respect to the  
16 lower back and right knee, they found a basically  
17 normal, they found basically a normal examination,  
18 full function, no need for future treatment. The  
19 testimony in this case establishes simply, ladies  
20 and gentlemen, the Plaintiff suffered no injury to  
21 her lower back, as to the cause of the accident of  
22 the September 11th, 2005.

23 Turning to Plaintiff's right knee, the  
24 evidence establishes that Plaintiff's injury was a  
25 simple knee sprain. The records from Bronx

1 Lebanon Hospital, which you all saw, which are in  
2 evidence and you can see again when you  
3 deliberate, if you so wish, clearly diagnosed the  
4 Plaintiff with a right knee sprain. Those records  
5 from the date of the accident, they are closest in  
6 time to when this accident occurred, and I will  
7 present most of the credible records in this case,  
8 in evidence in this case. The Plaintiff herself  
9 admits that her knee has improved significantly.  
10 She admits that the medication that she took after  
11 this accident, with the exception of the initial  
12 prescription from Bronx Lebanon Hospital was over  
13 the counter medication. Plaintiff has not  
14 suffered any significant life changes since this  
15 accident. In fact, she's had a child since this  
16 accident occurred.

17 Dr. Struhl's testimony, again, the  
18 treating physician and expert from Plaintiff's  
19 side confirms our position. Dr. Struhl, when he  
20 treated the Plaintiff in May of 2007 as he  
21 testified, found the Plaintiff's right knee, right  
22 knee's range of motion was virtually full, her  
23 pain was mild and improving, and Plaintiff was  
24 doing extremely well. That assessment changed  
25 over a year later, without treating the Plaintiff.

1 And Dr. Struhl testified that the Plaintiff will  
2 require future surgery, future care, and that her  
3 future condition didn't look so good. Which one  
4 is accurate. The evidence establishes that Doctor  
5 Struhl's assessment in May of 2007 is accurate.  
6 The Bronx Lebanon Hospital records support the May  
7 of 2007 assessment of Dr. Struhl that Plaintiff  
8 suffered a mild right knee sprain. Again,  
9 concerning the right knee, the evidence we  
10 presented to you, Doctor Tantleff testified  
11 regarding Plaintiff's right MRI knee studies. He  
12 testified that they showed degenerative changes  
13 unrelated to the accident, to the accident of  
14 September 11th, 2005. That the chondral lesion  
15 Dr. Struhl testified about was caused by long  
16 standing use, not one traumatic event, which is  
17 the accident of September 11th, 2005.

18 More importantly, ladies and gentlemen,  
19 he testified from an MRI from September 11th,  
20 2005. Plaintiff's right knee did not show the  
21 level of amount, level of edema, swelling, which  
22 would be consistent with her claim, the traumatic  
23 injury was caused by the accident three months  
24 before.

25 The testimony of Dr. Bonomo and Dr.

1 Purcell, again established that the Plaintiff had  
2 a normal exam of her right knee. Her prognosis  
3 was good, she would not require future treatment  
4 regarding her right knee. The diagnostic  
5 evidence, the clinical evidence, Doctor Struhl's  
6 own assessment of Plaintiff in May of 2007,  
7 Plaintiff's own admission at issue when she was on  
8 the stand all established that her real injury  
9 from September 11th, 2005, was a right knee  
10 sprain.

11 Plaintiff will require no further  
12 treatment, her prognosis is good.

13 Ladies and gentlemen, I'm not saying the  
14 Plaintiff deserves no compensation. She was  
15 injured because of an accident. What I'm saying,  
16 ladies and gentlemen, what the evidence actually  
17 is establishing, ladies and gentlemen, and has  
18 established during the course of this case, is  
19 that Plaintiff suffered a modest injury. She  
20 suffered a right knee sprain and that Plaintiff's  
21 back problems and allegations are not related to  
22 the accident of September 11th, 2005. A mild  
23 right knee sprain is a modest injury and deserves  
24 modest compensation.

25 Ladies and gentlemen, I'm not going to

1 tell you a number to put on this case. I trust  
2 your judgment and common sense. I trust you come  
3 to the right conclusion based upon the evidence.  
4 I don't know if Plaintiff will ask you for a  
5 number, but if he does, I'm going to tell you it's  
6 going to be highly outrageous and excessive. And  
7 the reason I say that is because Plaintiff's  
8 allegations in this case have been excessive and  
9 outrageous. She didn't come to court seeking  
10 compensation for her injury. She didn't come to  
11 court and say I suffered a right knee strain,  
12 sprain, I deserve to be compensated for that. She  
13 came to court looking for a pay day. She is  
14 seeking compensation for injuries that she did not  
15 suffer from the accident of September 11th, 2005.

16 Ladies and gentlemen, it's been a  
17 privilege and honor to try this case before you.  
18 I'd like to thank you for your attention and time  
19 during this entire trial including now. The one  
20 last thing that would I say, is that when you make  
21 your decision, when you deliberate, look at the  
22 evidence, if you follow the evidence, you will  
23 come to the just conclusion in this case and you  
24 will provide justice both for the Plaintiff and  
25 for my client. Thank you.

1 THE COURT: Mr. Certain.

2 MR. CERTAIN: Thank you, your Honor.  
3 Members of the Jury, on behalf of Certain and  
4 Zilberg, myself and Michael Zilberg, and our  
5 client Mrs. DeCastro, we would like to thank you  
6 for your time and attention. We know it's a  
7 tremendous strain on you to have to come, and we  
8 appreciate that. This case, as I told you in jury  
9 selection, is important. This is my client's only  
10 opportunity to seek compensation for what happened  
11 to her. It's already been resolved. This is one  
12 hundred percent the defendant's fault. They  
13 caused this to happen. We're here because of what  
14 they did. Everything that my client suffers is  
15 because of what they did. And this case has been,  
16 and the way they've presented it is an attempt to  
17 try to avoid their responsibility, their one  
18 hundred percent responsibility for what occurred;  
19 her injuries.

20 Now, I told you in jury selection that  
21 there would be a big difference in between the  
22 doctors that we put on and the doctors that they  
23 put on to testify. Our doctors were treating  
24 physicians, their number one goal is to treat  
25 these people who come to them to get them better,

1 like Ms. DeCastro. That was their goal. When  
2 they wrote their reports, when they made their  
3 opinions, when they gathered their information,  
4 when they conducted their testing, it was for the  
5 purpose of treating her, so, she could get better.  
6 It wasn't to come into Court. And they discussed  
7 it with each other, they referred cases to each  
8 other, they exchanged information and they used  
9 that information collectively. Even the defense  
10 doctors, the paid experts came in and talked about  
11 how you have to get this whole picture.

12 Well, what the defense has done, in  
13 order to manufacture their defense is only to give  
14 the doctors pieces of the puzzle, so that they  
15 could come in and testify and give you pieces of  
16 the puzzle. The doctors who have all the pieces  
17 together, the doctors who testified on behalf of  
18 the Plaintiff, those treating physicians, they got  
19 all the pieces. You have to ask yourself, three  
20 doctors for defense took the stand and each one  
21 said that they have experience and they regularly  
22 and routinely read MRIs. They also said that they  
23 disagree sometimes with the findings of  
24 neurologists.

25 Now, they didn't send a neurology

1 report, they didn't send those records to the  
2 other two doctors. They didn't want the other two  
3 doctors to see something on those records that  
4 Doctor Klein told you he saw. Because, they had  
5 Doctor Tantleff to explain what he saw on them.  
6 Doctor degeneration. The Doctor who comes in here  
7 and says, it's degeneration, it's degeneration,  
8 it's degeneration. He even says the knee was  
9 degeneration, because that's what he does. That's  
10 what he gets paid for. And, he even said there  
11 was degeneration in the knee where Dr. Purcell  
12 said he didn't notice any degeneration. And, when  
13 Dr. Struhl not only testified about how good the  
14 condition of her knee was, other than this injury,  
15 he actually even showed you, he showed you what it  
16 looked like on the scope, and he showed you how  
17 smooth and white, and but for that localized  
18 impact, the knee was otherwise fine. That  
19 wouldn't stop Doctor Tantleff from telling you  
20 that that knee was suffering from degeneration.  
21 Just like, it didn't stop him from saying there  
22 was degeneration in the back.

23 Now, listen, there is no doubt my client  
24 had an auto accident in 2003. And, for two  
25 months, she had complaints of pain and she

1 treated. That was in the April of 2003 accident.  
2 Two months later, she said she was fine, she  
3 stopped treating, end of story. They want to say  
4 somehow she's not a credible person. But  
5 remember, she had a case in 2003. Did she say,  
6 let me continue treating, let me fake, which is  
7 what they are subtly suggesting, let me fake this  
8 injury. She didn't do it in 2003, and she's not  
9 doing it now. In fact, when she went for  
10 treatment with Dr. Guy, and Dr. Guy told you, she  
11 was in his office for treatment eight days after  
12 for back and knee. But, when she went for  
13 treatment, she complained about it. She probably  
14 thought, hopefully this is like the last time.  
15 Two months, I'll be treated, I'll be okay, but it  
16 didn't go that way.

17 You see, there is something very  
18 different, fundamentally different about what  
19 happened in 2003, and what happened in 2005. Her  
20 pain in 2005 didn't go away. And, they want to  
21 suggest that she's making up some complaints.  
22 Well, let's talk about making up. When she went  
23 to see doctors, two doctors on behalf of the  
24 defendants, who saw her for about a half an hour,  
25 one of them examined two body parts, who took a

1 history in that half hour, they examined two body  
2 parts, they also said he might have been reviewing  
3 documents at the same time. At best, reviewing  
4 documents, fifteen minutes a body part. He spent  
5 fifteen minutes and this woman is going to deal  
6 with what happened for the rest of her life.  
7 That's the kind of case they are putting on.

8 Now, that Doctor, he also said things  
9 that were inconsistent. He's examining her a few  
10 months, and this Dr. Purcell is examining her a  
11 few months after she was examined by Dr. Bonomo.  
12 And they are not consistent. Dr. Bonomo noted  
13 that there wasn't any swelling. But the  
14 orthopedist who testified for them, says there was  
15 swelling. They are inconsistent.

16 Now, they say knee sprain. They said  
17 this is a right knee sprain. That's what the  
18 medical records said in the emergency room. The  
19 emergency room is a busy place, they are trying to  
20 stabilize people. Their primary concern is  
21 emergency care, they took an MRI, excuse me, they  
22 took an X-ray and they didn't see anything. Is  
23 that the end of the story, no, because we know  
24 what was there. We saw what was there. They  
25 didn't see it in the emergency room, but you also

1 saw it. You saw what Dr. Struhl described as a  
2 lesion, a traumatic lesion that was caused by the  
3 impact when she fell on her right knee. And he  
4 also showed you how he operated on it and you all  
5 saw that.

6 (Whereupon, Mr. Certain displayed the  
7 photographic exhibits)

8 MR. CERTAIN(cont'g): And he generated a  
9 report, and he took intra-operative photos and  
10 defendants have a doctor who has a similar  
11 specialty, he's an orthopedic surgeon as well, and  
12 they didn't send him the operative report and they  
13 didn't send him the intra-operative photos. Why,  
14 because the defendants want to put together the  
15 pieces the way they like. They want to avoid  
16 their full responsibility for the case. They want  
17 a discount. They are not entitled to a discount.

18 Now, let's talk a little bit about  
19 Doctor Tantleff. Doctor Tantleff could not even  
20 be straight and honest with you about the small  
21 things, his advertising. It's a small point, but  
22 he couldn't be honest about that. He couldn't be  
23 honest about how many times he testifies. It's a  
24 question as to how much he actually charges on his  
25 fee schedule. The Judge is going to give you an

1 instruction when he charges you, and that  
2 instruction is going to tell you that you are  
3 entitled to disregard the complete testimony of  
4 someone who you find was willfully untruthful to  
5 you. And I'm going to suggest to you that you  
6 should disregard all of Dr. Tantleff's testimony.  
7 All of it. That's my suggestion. It's your  
8 decision.

9 Now, you heard from Doctor Klein.  
10 Doctor Klein told you that he felt spasm when he  
11 palpated her back. We heard the same thing from  
12 Dr. Guy, and we know that they saw her on more  
13 than one occasion. And they weren't being paid to  
14 do that evaluation by any law firm. They were  
15 acting as doctors. They were trying to treat her.  
16 They were trying to make her get better.

17 There is a difference. And, again, this  
18 is, the doctors who testified that said that this  
19 is objective as opposed to subjective. That  
20 means, she can't fake it. It's something that  
21 they felt and was there.

22 Now, you also heard doctors talk about  
23 straight leg tests, and the importance of that is,  
24 that is a subjective test, and she also had a  
25 McMurray test which was a subjective test. And,

1 when all these doctors testified about how she  
2 responded during the test, you'll notice that none  
3 of them were able to say that she faked pain or  
4 she faked range of motion, because she is an  
5 honest woman who just was performing the way the  
6 doctors asked her to. This isn't someone that  
7 said, ow, that hurts, don't move that any more.  
8 This is not, this is not the kind of case where  
9 the Plaintiff is trying to put one over on  
10 anybody.

11 Now, the emergency room record clearly  
12 says that she was diagnosed with a knee sprain.  
13 We know that's not true because we seen all the  
14 records. The defendant heard the testimony,  
15 they've seen the photos, and instead of explaining  
16 them to you or showing them to you or explaining  
17 to you why it is that he's still saying knee  
18 sprain, he just goes forward as if he didn't see  
19 it. That should trouble you. And when you  
20 consider that and when you consider how Doctor  
21 Tantleff testified about the knee, the only Doctor  
22 other than, the only doctors who saw that MRI  
23 other than Doctor Tantleff, who I don't think you  
24 should believe for a second, would be Doctor  
25 Klein, who told you what he saw. He said there

1 was a herniation and there was a bulge. But, he  
2 also said what concerned him more, what was  
3 important, more important, is that he saw  
4 instability in the lower back.

5 Now, we don't know when that instability  
6 occurred. It could have been 2003, it could have  
7 been before, but what we do know is that from  
8 2003, April of 2003 is the injury. Two months  
9 later she stopped treating, she has no complaints,  
10 she doesn't go to any Doctor, she doesn't  
11 complain, there is no medical records, there is no  
12 testimony that she was experiencing any pain since  
13 two months after, June of 2003, until the fall  
14 when she fell on September 11th of 2005. In that  
15 time, no complaints of pain. Whatever was going  
16 on in her back, and it may be that she had the  
17 herniations then, might be that this accident  
18 caused the herniations. But whatever it is, she  
19 was what they call asymptomatic. Nothing hurt.  
20 No complaints, no problems. And you are going to  
21 get an instruction about this. The Judge is going  
22 to instruct you on an aggravation of a condition.  
23 If she had it before, and it didn't hurt, the  
24 defendants and their actions caused it to hurt.  
25 They caused the pain and they caused what she

1 experienced. If she didn't have it before, the  
2 defendants caused it. Their claim of 2003, it's  
3 just a game. But this is somebody's life, who  
4 after we leave this courtroom, and after we're  
5 finished with this case, she is going to live with  
6 these consequences. This is not any kind of game  
7 for Mrs. DeCastro.

8 Now, we don't know how long someone is  
9 going to live. Hopefully, Ms. DeCastro will for a  
10 very, very long time. But, the courts have a  
11 table that allows us to project, and we discussed  
12 this in jury selection, to project how long she is  
13 going to live, and how long this is going to  
14 affect her. And according to this table, she is  
15 going to live for approximately another  
16 thirty-seven years. This case has to cover  
17 everything that she'll experience over the course  
18 of time. This is it. She can't come back, she  
19 can't say, you owe me, I need this surgery. But,  
20 the surgery that you provide for, the future  
21 medical care that you provide for, and the pain  
22 and suffering, the loss of enjoyment you provide  
23 for her, has to be based upon the evidence and has  
24 to be what you believe is the right thing.

25 I'm allowed to give you a suggestion,

1 and a little later I will. But, first, let's talk  
2 about what the Doctor suggested. Doctor Klein  
3 indicated that he believed it was likely that she  
4 would need future surgery. He could not  
5 articulate what that future surgery was. Can't  
6 ask you for anything for that. He didn't say what  
7 it was, he didn't say what it cost. But the other  
8 doctors did and we'll go through it. He did say  
9 that her condition will likely need surgery. This  
10 is not something that is completely resolved.  
11 This is not someone who has a minor injury and  
12 this is not someone who, as Mr. Janes said in his  
13 opening statement, and again, Defense Counsel has  
14 no obligation to make an opening statement, but he  
15 made one, and this is what he said. He said:  
16 "What the evidence is going to show is that the  
17 Plaintiff because of her accident on September  
18 11th, 2005, suffered a mild right knee sprain  
19 which resolved. That is all she suffered from the  
20 accident that is what the evidence is going to  
21 establish."

22 It's just not true. Let's talk a little  
23 bit more about Dr. Purcell. Dr. Purcell conducted  
24 an examination on October 31 of 2007, and he told  
25 you that he didn't see significant degeneration

1 and he said there was no crepitus. That's when  
2 you hear the sound of the grinding of your knee.  
3 What he didn't know when he testified is what we  
4 all know. Earlier in the year, nine months  
5 before, she had a surgery that smoothed that  
6 section, that removed what was causing the  
7 problem, that removed the trauma. They didn't  
8 give him the records, they didn't want him to  
9 know. He also testified that he didn't see any  
10 problems in the synovium, that sac that covers the  
11 knee. What they didn't tell him and what he  
12 didn't see in the operative report is that Dr.  
13 Struhl removed that in his surgery, nine months  
14 earlier. But he's telling you, that's how you  
15 know there wasn't a traumatic injury, the stuff  
16 that was removed earlier by Dr. Struhl. The  
17 doctors didn't have the information, but the  
18 defendants did.

19 Now, Dr. Purcell also said he noticed in  
20 forward motion, he noticed a ten percent loss of  
21 range of motion. Now, Dr. Bonomo did the same  
22 range of motion test and he noted no decrease in  
23 range of motion. And, Dr. Bonomo again said that  
24 he disagrees from time to time and sometimes he  
25 brings in the team of orthopedists and the

1 radiologist and they consult and they agree. But,  
2 the defendants didn't want that information all  
3 together. And that's why they have an incomplete  
4 puzzle.

5 And, again, as I said, the defendants  
6 are the ones who chose their doctors. Plaintiff's  
7 Counsel didn't get to pick the doctors, that is,  
8 whoever was treating. They got to pick their  
9 doctors, they are the ones who chose a doctor who  
10 describes himself as a hand specialist orthopedist  
11 to evaluate a knee. They went to Sleepy Hollow to  
12 get him. This is the New York area. They could  
13 have gotten a knee specialist. But they didn't.  
14 They got someone who testified before, someone who  
15 they are comfortable with and probably someone who  
16 they felt comfortable was going to go their way.  
17 That was the same situation with all their  
18 doctors, except Doctor Tantleff doesn't know  
19 whether he testified for the firm before. But the  
20 other two doctors, they testified for this firm  
21 before, and I'm sure they can expect future  
22 business.

23 Now, back on the first day of testimony,  
24 Ms. DeCastro testified. And when she testified on  
25 cross-examination, she was asked a few questions

1 about pain scales, what was she experiencing at  
2 the time. Now, on two dates, May 3rd, 2007, and  
3 July 26th, 2007, they took depositions and they  
4 asked her tons of questions. And the only thing  
5 they pick on to show that she's somehow  
6 inconsistent is pain scales, and what do they ask.  
7 They ask, what was she experiencing in the  
8 hospital? 8. When she was leaving the hospital,  
9 the discharge notice, she was asked again, what  
10 are you experiencing. 3. It's a different time,  
11 and they gave her Motrin and they gave her a  
12 muscle relaxer. It's in the same report that they  
13 showed you. Obviously, she's not going to be  
14 experiencing the same pain, but that's what they  
15 want to point out as an inconsistency in her  
16 testimony. That's not inconsistency. They asked  
17 later on, what kind of pain were you experiencing.  
18 They asked her at her deposition, about a year and  
19 a half later, what kind of pain were you  
20 experiencing after you went home later on. She  
21 said 5 or 6. Actually, she said 4 or 5. He tried  
22 to cross, when she testified that it was a 5 or 6.  
23 Now, three years and nine months later, that's  
24 what they call inconsistent. Out of all their  
25 questioning on two dates, that's their

1 inconsistencies. That's why they want to tell you  
2 that she shouldn't be believed. She did nothing  
3 wrong, she didn't cause this accident. She's only  
4 here for a full compensation. They want you to  
5 give less. They want a discount. They are not  
6 entitled to one, so please, don't give them one.

7 Now, unfortunately, a Jury does not have  
8 the power to give someone back their health. They  
9 can't take away pain they've experienced in the  
10 past, and obviously, you can't take away pain in  
11 the future, can't give her bike rides with her  
12 kids in the park that she can't do any more, or  
13 long walks. You can't have her dancing, wearing  
14 high heel shoes, all the things that she can't do  
15 because of these injuries. You can't do that. We  
16 talked about this in jury selection. The only  
17 thing we can do is award money.

18 Now, as I said, the Court permits me to  
19 give you a recommendation, and I'm going to.  
20 We'll first start out with future medical costs.  
21 I kind of made a chart so I don't get the math  
22 wrong. First, Doctor Klein, likely needs back  
23 surgery because of the back instability, but, he  
24 couldn't articulate how much. So, you have to  
25 give her nothing for that. Dr. Guy said physical

1 therapy, thirty sessions, 150 a session over  
2 thirty-seven years, that's one hundred and  
3 sixty-six thousand, five hundred dollars.  
4 Psychiatrist care, over her life for thirty-seven  
5 years, sixty-six thousand, six hundred dollars.  
6 MRIs, every three years, over her lifetime,  
7 twenty-four thousand dollars.

8 Now, Dr. Struhl gave variables. He  
9 said, he gave it, it could be between this number  
10 and this number. I'm going to ask you to go with  
11 the higher number, but I'll show you what the  
12 lower number is as well. Future surgery, he said  
13 five thousand to ten thousand. Five thousand for  
14 physical therapy, that is either ten or fifteen  
15 thousand. That's for the revision. For re-  
16 surfacing, which she'll need once in her lifetime  
17 over the next thirty-seven years, ten thousand to  
18 twenty thousand with physical therapy of five  
19 thousand to ten thousand. That comes out to  
20 either fifteen thousand as the low or thirty  
21 thousand as the high.

22 Now, if you go with the low totally for  
23 future medical cost is two hundred and eighty-two  
24 thousand, one hundred dollars; which if you go  
25 with the high, I'm suggesting it's three hundred

1 and -- excuse me, three hundred and two thousand,  
2 one hundred dollars.

3 Now, there is also past pain and  
4 suffering and loss of enjoyment of life. For the  
5 past three years and nine months, including all of  
6 her pain and suffering, including the pain of the  
7 physical therapy and the prodding with needles  
8 that was done and the pain that she experienced  
9 which she described prior to the surgery as a  
10 stabbing pain, which after the surgery, she  
11 described as mild pain in her knee, all those  
12 things for the past three years and nine months,  
13 two hundred and fifty thousand, and for future  
14 pain and suffering, over the thirty-seven years,  
15 three hundred and seventy thousand dollars.

16 Now, the total comes out to nine hundred  
17 twenty-two thousand, one hundred dollars.

18 Now, as I said, thirty-seven years is a  
19 long time and we won't be there. But, twenty  
20 years from now, fifteen years from now, Ms.  
21 DeCastro is going to have needs and this is the  
22 only opportunity to provide them.

23 Now, a reasonable Jury can disagree with  
24 me. You can say, my number is wrong. You can say  
25 Mr. Certain, you are wrong, your number is too

1 low, and you can say, Mr. Certain, your number is  
2 too high. But remember, this is her only  
3 opportunity, and for the next thirty-seven years,  
4 she has future needs, future surgery and will  
5 suffer future pain. I thank you for your time and  
6 attention.

7 THE COURT: Okay, thank you. We're  
8 going to break for the day, I don't want to have  
9 to charge you and have you start deliberating so  
10 late in the day. You either rush to get done  
11 today and you have to come back tomorrow anyway.  
12 We'll see you tomorrow morning at 10:00. Please  
13 do not start your deliberations yet. You have to  
14 hear me. I've been sitting here quiet for a week.  
15 It's my turn, you are going to have to listen to  
16 me, like it or not. I'll warn you in advance, my  
17 stuff is not going to be as interesting as theirs,  
18 it's very dry and boring stuff. So, get a good  
19 night's sleep, because I do want you to stay awake  
20 during it anyway.

21 THE JUROR: There is a basketball game.

22 THE COURT: Go home, take a nap, take a  
23 nap between 5 and 9. Those of you who have TV,  
24 you'll know what happened. I doubt even if I  
25 tried I'll be able to stay up. At least that's

1 something to do rather than think about the case  
2 and try to figure it out, which you shouldn't do,  
3 definitely. I can't tell you not to watch it and  
4 even if I did, you wouldn't do what I said anyway.  
5 So, enjoy yourselves, enjoy the game. You know,  
6 but tomorrow, you know, that the Mets are in town  
7 right across the street and they're playing the  
8 Yankees here at the Stadium tomorrow. So, we do  
9 want to get you going and get you out in time to  
10 make that game. Okay. Have a good night, see you  
11 tomorrow, 10:00.

12 (Whereupon, this case was in recess,  
13 and was adjourned until June 12, 2009)  
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