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Summation - Defense

1 Plaintiff said he's going to be 45 minutes.

2 MR. GORKIN: Lot of pressure, Judge.

3 THE COURT: Do you want me to set the timer on my
4 phone? Go ahead, counsel.

5 MR. GORKIN: May it please the Court, counsel. Good
6 afternoon, ladies and gentlemen.

7 First of all, before I even start talking about what's
8 transpired in the courtroom, on behalf of myself, my
9 client, Mr. Avanzino and his client, and I'm sure Justice
10 Solomon as well, we all want to thank you for your
11 attendance here and taking the time.

12 We all know we all e responsibilities. We all have
13 jobs. We all have things we rather be doing than sitting
14 and listening to someone else's problems and having to
15 decide those problems. Unfortunately, that's the case
16 here. And I've been watching you. I've been watching and
17 you've been paying attention to everything that's been
18 said, all the testimony, all the exhibits. And I'm sure
19 you're going to consider everything in the case when you go
20 in and deliberate. But I just want to again thank you on
21 behalf of everyone for your cooperation and consideration.

22 Now, if I may, there's obviously a difference of
23 opinion in this case. That's pretty obvious. And you're
24 going to have to be answering certain questions on the
25 verdict sheet that the judge is going to give you. And

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Summation - Defense

1 I'll talk to you about that in a minute.

2 But the major question in the case is, whether
3 Mr. Weathers' back problems and his neck problems, were
4 they caused by the accident of June 23, 2008 or did they
5 pre-exist the accident and have nothing to do with the
6 accident.

7 Did the accident -- keep in mind that the claims in
8 this case are that the accident caused all the problems.
9 Not that the accident exacerbated or made his condition
10 worse. The testimony in the case that you heard from the
11 plaintiff's side is that the accident caused the
12 herniations, caused the bulges, caused all the problems.

13 Now, let's start at the beginning. Mr. Weathers
14 testified, and you heard about his past, and he's had it
15 rough. Let's face it, he hasn't had it easy. He's been a
16 mechanic for a lot of years and, unfortunately, he lost his
17 job, through no fault of his own, prior to this accident,
18 and not as a result of any medical condition that he had,
19 but simply because the employer simply went out business as
20 a result of the downturn in the economy that we all have to
21 deal with.

22 And in addition to losing his job, he developed
23 prostate cancer which, obviously is not a bed of roses.
24 He's getting treatment for this. You also heard he has
25 rheumatoid arthritis; not a bed of roses. He's also

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Summation - Defense

1 treated for that. He hasn't had it easy. And to be
2 perfectly honest, this hasn't helped, the accident. He's
3 had problems. I'm not saying to you for a that minute he
4 hasn't had problems, but the problems we claim are not as a
5 result of the accident.

6 Now, let's talk about Mr. Weathers. He is here and he
7 is, as the judge will tell you, he is an interested
8 witness. He has an interest in the outcome of the case.
9 Mr. Avanzino is going to, when I finish, stand up and is
10 going to ask you for a lot of money. Keep in mind,
11 Mr. Weathers has a very strong interest in the outcome of
12 this case. Now, that's not to say you shouldn't believe
13 him, but he's interested and perhaps he has reasons to
14 testify the way he did. And some of those reasons are as
15 follows:

16 Now, the accident itself, you heard he's driving his
17 car. It's a Dodge Neon. He calls it a moderate impact.
18 As a result of that moderate impact, he claims he was
19 thrown forward and backward, but no part of his body, as he
20 told you, strikes any part of the inside of the car. It
21 wasn't a strong enough impact to propel him into the
22 steering wheel, his head hit in the windshield. Not strong
23 enough of an impact to do any of that damage. All that he
24 testified to was that his knee scraped the bottom of the
25 dashboard as a result of the impact.

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Summation - Defense

1 And you heard obviously that after the immediate
2 impact he made no request for an ambulance to take him to
3 the hospital. That wasn't part of it. He went home and he
4 told you that, well, it's the adrenaline comes on as a
5 result of the, I don't know, the problem with the accident,
6 the impact and that masks all the symptoms.

7 So the next day he goes to the hospital and he tells
8 you that he made complaints about radiating pain from his
9 back into his legs at the hospital.

10 The hospital records are in evidence. No complaint
11 listed with respect to any radiating pain. The only pain
12 is low back pain and neck pain and knee pain.

13 He tells you that the next day after he's discharged
14 from the hospital on the 25th of June, that's two days
15 after the accident, he goes to see Dr. Delman. And he told
16 you that he got Dr. Delman's name from the receptionist at
17 his personal medical doctor's office. That's what he told
18 you on the witness stand that that's where he got the name
19 from.

20 According to Dr. Delman's records, Mr. Weathers went
21 to see an attorney and it was that attorney who gave him --

22 MR. AVANZINO: Objection.

23 THE COURT: Sustained.

24 MR. GORKIN: It was not a doctor or anyone connected
25 with the doctor's office.

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Summation - Defense

1 Dr. Delman indicated that he gave him the name of the
2 attorney and his phone number and it's in his records.

3 He then tells, supposedly, Dr. Delman, I have this
4 pain radiating from my leg. Not in Dr. Delman's records.
5 Dr. Delman's records had back pain, neck pain, no radiating
6 pain. He even tells you that he told Dr. Davy when he sees
7 him in August of 2008, he tells you that he told Dr. Davy
8 he had radiating pain going through his legs.

9 Dr. Davy specifically asked him, and his records
10 indicate, he said no, no radiating pain going through his
11 legs, down in through his legs.

12 Now, he also filled out that no-fault form where he
13 indicated under penalty of perjury, just like he was under
14 penalty of perjury when he takes the witness stand, he told
15 you that he filled out that form and he filled out on this
16 form that his last day work was June 23, 2008. We all know
17 that's not true. He tells you that he told Dr. Delman that
18 his place of business went out of business and that's why
19 he stopped working. Dr. Delman's record says due to
20 medical disability. It has nothing to do with the place
21 going out of business.

22 Why is Mr. Weathers telling you these things? Why is
23 he changing the story? Why? Because he's interested. He
24 wants to convince you that he had all these pains all long.
25 Unfortunately, it's not confirmed by any of the records in

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Summation - Defense

1 the case.

2 Now, he sees Dr. Delman over a period of time and then
3 he starts with Dr. Davy. And Dr. Davy you heard testified
4 about what he's done for Mr. Weathers. He told you about
5 the injections. He told you about everything else. Keep
6 in mind that Dr. Davy is a specialist in pain management.
7 He's not a radiologist. He's a specialist in pain
8 management. That's his area of expertise. And he's
9 telling you that really, basically, his concern is pain
10 management. Any doctor's concern in pain management is
11 alleviating the pain, not necessarily determining the cause
12 of the pain, but alleviating the pain. And that's what his
13 treatment was meant to do. And he was -- whether or not he
14 was right to operate or not right to operate, Mr. Weathers
15 had some success with the surgery.

16 Now, the hospital record that Mr. Weathers had in the
17 Brooklyn Hospital is in evidence. And I don't care if you
18 believe Dr. Davy. I don't care if you believe Dr. Delman.
19 I don't care if you believe Dr. Eisenstadt. I don't care
20 if you believe Dr. Ortof. One doctor who has nothing at
21 all to do with this case, isn't interested in any way,
22 manner, shape or form in this case is the pathologist at
23 the hospital where the surgery was done, the doctor who
24 examined the tissue that Dr. Davy took out of Mr. Weathers'
25 back.

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Summation - Defense

1 And you're going to see in the hospital record, as we
2 pointed out, he received two specimens, L3-L4 disk
3 material, L4-L5 disk material. And he describes in some
4 detail the gross manner, the gross way it looked. And then
5 he puts that tissue under a microscope and he looks at it.
6 And what is his diagnosis? Fibrocartilaginous tissue
7 showing degenerative changes at L3-L4, and
8 fibrocartilaginous tissue at L4-L5 also showing
9 degenerative changes.

10 Now, I didn't write that report. Dr. Eisenstadt
11 didn't write that report. Dr. Ortof didn't write that
12 report. That report was written by a doctor in a hospital
13 who looked at the tissue under a microscope and found
14 degenerative tissue. If you want to believe, as it's your
15 right to do, if you want to believe that that degenerative
16 tissue first came about after the accident, that somehow
17 the accident caused the degenerative condition of
18 Mr. Weathers' spine; if you want to believe that, it's all
19 well and good. You're entitled to do that. But, what else
20 do we know?

21 We know that the MRIs that were taken three days after
22 the accident, three days, and were interpreted by Dr.
23 Eisenstadt, she told you what she found. She found
24 degenerative disk condition. She found the osteophytes
25 caused by arthritis. And basically Mr. Weathers' spine

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Summation - Defense

1 three days after the accident was a mess.

2 And if you believe that the accident caused the
3 osteophytes, if you believe the accident caused the
4 herniated disks and bulging disks, if you believe that all
5 of those situations came about directly caused by the
6 accident, and that the accident didn't make it worse, but
7 it caused the degeneration to occur, you can believe that.
8 That's up to you. I'm not telling you that you should or
9 shouldn't. I'm just telling you what I think the evidence
10 shows and where it points.

11 Now, keep in mind that you heard Dr. Davy tell you
12 that he wrote that last report in 2011, in December. So
13 that's what, five months ago now? And even at that time,
14 even at that time there was no radiating leg pain from
15 Mr. Weathers. No complaint of radiating leg pain.

16 This is the verdict sheet that you're going to be
17 filling out to come to a verdict in this case. And I'm
18 going to talk to you a little bit about it because it's
19 important, obviously, to deciding the case.

20 The first question has to do with, has the plaintiff,
21 as a result of the accident, as a result of the accident
22 involved in this case, I can't stress that enough,
23 sustained a serious injury which resulted in the permanent
24 consequential limitation of use of a body organ or member?
25 I'm not going to try and define that term for you. The

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Summation - Defense

1 judge will do that when he gives you his instructions at
2 the end of the case.

3 However, you have to find, in order to answer yes to
4 that question, that the accident caused a permanent
5 consequential limitation of use of a body organ or member.
6 Not exacerbation, but the accident caused that to occur.

7 And the next question you're going to be asked, again,
8 has the plaintiff as a result of the accident involved in
9 this case, as a result of the accident involved in this
10 case, sustained a serious injury which resulted in a
11 significant limitation of use of a body function or system.

12 Now, you may find that to be true, but not as a result
13 of the accident. I can't stress it enough.

14 Question Number 3 has to do with damages. Now, you're
15 going to have to answer the questions as to whether or not
16 Mr. Weathers is entitled to be compensated for the injuries
17 that you say, if you find that way, came as a result of the
18 accident. As far as I'm concerned, the injuries that came
19 as a result of the accident are his neck and back sprain or
20 strain. Those are the injuries that can be directly
21 attributed to the accident. Neither one of which would
22 qualify Mr. Weathers to be compensated under our law.
23 That's our position.

24 Again, you're the ones who are going to make that
25 determination. All I'm saying to you is, when you go into

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Summation - Defense

1 that jury room and you decide the questions, we're not
2 playing Lotto. We're not playing slot machines down at the
3 racetrack.

4 MR. AVANZINO: Objection, Judge.

5 THE COURT: Overruled.

6 MR. GORKIN: It's for you to determine what is fair
7 and reasonable compensation, if you make that
8 determination.

9 I'm suggesting to you that, unfortunately, and, again,
10 Mr. Weathers has had a difficult time, but unfortunately
11 sympathy that any of us may have for Mr. Weathers, believe
12 me, I'm sympathetic towards him as well. But sympathy, as
13 the judge is going to tell you, can't play a part in your
14 coming to a decision in this case. You can feel all the
15 sympathy you want for Mr. Weathers, but you can't use that
16 as a basis to make an award of damages to him. It has to
17 be based on the evidence and the law and not on any
18 sympathy that you may or any of us might have for him.

19 By the way, he's not hear asking for your sympathy.
20 He's here asking you for money. So you may be sympathetic
21 towards him, but that's not going to do him good. He wants
22 to compensated and he wants to be compensated for a lot of
23 money for the claims he's making in this case.

24 You are going to have to make that determination as to
25 whether or not those claims are valid. If you find that

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Summation - Defense

1 the injuries that he sustained, the herniated disks, the
2 bulging disks, all the rest of it, if you find that those
3 injuries were caused by the accident, I'm the first one to
4 tell you he's entitled to compensation.

5 On the other hand, if you find that he's not, I'm the
6 first one to tell you he can't be compensated because his
7 other injuries don't meet the standard, the threshold that
8 the judge is going to talk to you about.

9 It's for you to make that determination, you to make
10 that decision. All I'm asking you to do is weigh the
11 evidence. Whatever makes more sense to you, that's what
12 you should base your verdict on with respect to what the
13 judge is going to talk to you about. Because the one thing
14 you can't do in the case, you can find either way, but you
15 can't ignore, you can't change the law. You can't make the
16 law what you want it to be.

17 Our law is our law and if you don't meet the standards
18 that the law imposes, the simple fact is you can't be
19 compensated for any damages that don't meet that standard.

20 Those standards, in this case there's two different
21 standards. You have to find that the damages resulted as a
22 result of the accident. Whether he meets either one of the
23 standards or both, that's for you to decide.

24 All I ask you to do is when you go back there, I'm
25 going to sit down and Mr. Avanzino is going to stand up and

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Summation - Defense

1 he's going to talk to you. He's going to give you his view
2 of what the evidence shows. Keep in mind, I don't get a
3 chance to come back a second time. This is my only chance.
4 If there's something that I omitted that you feel is
5 important, by all means consider it. I just tried to hit
6 on the obvious claims that we're making in the case that I
7 feel are backed up by the medical evidence, the competent
8 medical evidence in this case.

9 Thank you for your time. Thank you for your
10 consideration.

11 THE COURT: Counsel.

12 MR. AVANZINO: Thank you, your Honor.

13 May it please the Court, counselor. Good afternoon
14 everybody.

15 I am so grateful that we have had this opportunity to
16 present this case to you in court before Justice Solomon
17 because what we've had here from the very inception, since
18 this automobile accident took place back in June 2008,
19 Ronald Weathers has not been able to get any sort of fair
20 evaluation of what took place from the people responsible
21 for this accident.

22 You, ultimately, in deciding a case on damages, must
23 make that evaluation about before and after. Remember we
24 talked during jury selection and then during opening about
25 how June 23, 2008, that's our date in time, you need to

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Summation - Plaintiff

1 know what Ronald Weathers' life was like before that date
2 so you can then evaluate what happened to him as a result
3 of the accident. And you can make that evaluation and help
4 determine, along with your fellow jurors, help determine
5 what would be the right thing to do in this instance.

6 What you need to do, of course, as with every jury, is
7 to evaluate the credibility of the two sides. In this case
8 you have the plaintiff's side, Ronald Weathers. You have
9 the defendant's side. You have to evaluate the
10 credibility.

11 And you will remember in jury selection when we spoke,
12 I mentioned to you that the mere fact that a claim has been
13 made, the mere fact that a lawsuit has been brought for
14 Ronald doesn't automatically mean that he's entitled to
15 recover money damages. Please wait till the evidence, as I
16 said, wait till you hear what takes place in the courtroom
17 before you make any such determination.

18 But I said there's a flip-side to that coin. The mere
19 fact that the defendant has representation here in the form
20 of his attorney, that they've represented him throughout
21 the course of this case, that they will continue to
22 represent him during the trial should not imply that
23 there's any validity to the defense.

24 And I cautioned you, please don't make any assumptions
25 of that type. Wait. Let's hear what the defense is. We

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Summation - Plaintiff

1 had learned earlier in the case when they fought the issue
2 of who's responsible for the accident, they lost that. It
3 was determined by the Court that, in fact, the accident was
4 a hundred percent the fault of the defendant in this case.

5 On to the issue of damages, we find that same
6 recurring theme. They will not take responsibility for
7 what happened to Ronald Weathers. We'll go into in a
8 moment the quality of the defense that we have just seen.
9 But allow me for just a few moments to discuss Ronald
10 Weathers pre-June 23rd, 2008, the date of that car
11 accident.

12 What we've come to learn is that at the time of the
13 accident Ronald Weathers was 56 years of age; that he had
14 been born down south in South Carolina; that he met a young
15 woman down there. She left to come to New York and Ronald
16 followed. Ronald ultimately married that young woman.
17 That's his wife Carola who you've seen seated with him most
18 days and she also testified here. They were married over
19 35 years ago. They have a son and daughter and they now
20 have a couple of grandchildren as well. That Ronald lives
21 with his wife Carola, his daughter and her two children,
22 his two grandchildren on 86th Street here in Brooklyn.

23 We've come to learn that for just about his entire
24 adult life Ronald had worked. He had worked as an
25 automobile mechanic. And he had done so in good times and

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Summation - Plaintiff

1 in bad to provide for his family. And we have come to
2 learn something about his medical history. We've come to
3 learn that at the time of this accident that Ronald had
4 suffered from diabetes. A mild form of diabetes, but
5 diabetes nonetheless. That additionally he had suffered
6 from arthritis, rheumatoid arthritis which is, we learned
7 from the doctors who testified, primarily affect the hands,
8 the wrist, sometimes the knees. And that despite those
9 medical conditions, he continued to work. That not the
10 diabetes, not the arthritis, that didn't stop him from
11 working. In addition, we learned that he had lost, had a
12 finger partially amputated years before in a work-related
13 accident. That didn't stop him from working. We also came
14 to learn that Ronald Weathers lost his left eye some 30
15 years before.

16 And while there may be many people that would be
17 thrown by that, many people that would be stopped by that,
18 Ronald Weathers kept working. And he worked and he worked
19 and worked as an auto mechanic which so happened to be
20 something that he loved. Because, as he explained and his
21 wife explained, it also happened to be his passion. And he
22 was a very fortunate person to be able to work in an area
23 that was his passion. He loved working on cars. And so
24 that's all part of the evaluation. That's all part of who
25 he was prior to the date of the accident.

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Summation - Plaintiff

1 And we come to learn that in addition to those other
2 conditions, he also had the misfortune of being diagnosed
3 with prostate cancer in November 2007. That didn't stop
4 him from working.

5 The only thing that stopped Ronald Weathers from
6 working was when his place of employment shut down. When
7 his place of employment closed in December '07 after having
8 worked there for some seven or eight years at Boss Car
9 dealership, Boss Jeep in Queens. And we come to learn that
10 following that, as the cancer treatment became more
11 aggressive, surgery was performed in April of 2008. That
12 following the surgery he was to undergo radiation
13 treatment. That that radiation treatment was to be done
14 five times a week for five weeks. And that when the
15 accident happened, June 23, 2008, he was still undergoing
16 the radiation treatment.

17 But as he told you, and as I believe his work history
18 will bear out, once the radiation treatments were done, he
19 had intended to go back to work. He had intended to go
20 back doing the thing he loved, the thing that he knew, the
21 thing he had done his whole life, the thing he did to help
22 provide for himself and his family.

23 But as we've come to learn, there was an event that
24 occurred that prevented that from happening. And that
25 event was the automobile accident of June 23, 2008. As we

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Summation - Plaintiff

1 discussed, that accident occurred through no fault of his,
2 through no fault of Ronald's, but that as a result of the
3 accident, he started experiencing pain in his neck and
4 back. And we've had testimony from Dr. David Delman, who
5 is an emergency medical doctor, trained thirteen years,
6 worked in emergency rooms in and around the city of New
7 York, special training, certification in that in addition
8 to internal medicine, in addition to receiving training in
9 physical medicine and rehabilitation.

10 And as Dr. Delman explained and it would be hard to
11 find an expert more qualified to discuss emergency medicine
12 than someone who has board certification in that and had
13 been in emergency rooms working with people being brought
14 there on an emergency basis for thirteen years. Dr. Delman
15 explained that when somebody's involved in an accident,
16 there is a rush of adrenaline and there are endorphins that
17 are released, chemicals released by the body. And that at
18 the time, though he felt discomfort in his neck and back,
19 he never had a problem before. And that's a recurring
20 theme, folks.

21 Again, our demarcation date is June 23, 2008. Prior
22 to that he had worked steadily without any complaint, any
23 treatment, any issue with his neck and his back. And I can
24 assure you that if there was anything in that history of
25 Ronald Weathers to, in any way, even slightly contradict

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Summation - Plaintiff

1 that, the defendant would have brought that to your
2 attention. But there was nothing in his history because
3 nothing had caused him any problems referable to his neck
4 or his back.

5 The first time he had an issue was after this car
6 accident and for that he was hopeful it would go away, that
7 the pain would pass. When it didn't, the next day he did,
8 in fact, go to the emergency room. You heard me bring out
9 through various witnesses that when you go to the emergency
10 room you, of course, give your complaints. The doctors do
11 an examination. But as we heard just a few hours ago,
12 oftentimes that doesn't lead to the doctor suggesting or
13 recommending, ordering x-rays of the spine, of the neck and
14 the back. Why do they order x-rays? If there is concern,
15 as we've come to learn now, the medical term is "rule out"
16 if they have a concern of a possible fracture. And in this
17 case they took the x-rays and we come to learn the x-ray
18 shows just that, fractures. And there was no fracture.
19 That is more the norm because for there to be a fracture in
20 the spine, there's got to be usually an extremely heavy,
21 blunt-type impact directly on that spine.

22 So we found out there was no fracture. But
23 significant enough were his complaints and exam results
24 that they ordered x-rays. They gave him pain medication
25 and advised him to see his physician, which he did. He

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Summation - Plaintiff

1 went to his PCP, his primary care physician, who came to
2 tell us or Ronald came to tell us, I should say, that the
3 doctor said I don't deal with that, but we have some names
4 of people at the front desk who do. He got the names and
5 numbers of different doctors.

6 The first person who could see him is Dr. David Delman
7 who he went to see the next day. When he went to see Dr.
8 Delman with his complaints, Dr. Delman had him fill out a
9 form and on that form they have a spot for attorney. Not
10 the attorney representing him in this case, not the an
11 attorney who ever represented him in this case --

12 MR. GORKIN: Objection.

13 THE COURT: I skipped that. I sustained your
14 objection the last time.

15 MR. AVANZINO: And you heard Ronald talk about how
16 when he went there that he had been. By Dr. Delman that
17 is, asked about his history, that he had no problem before
18 and that he had been in an automobile accident, a car
19 accident, one that we've come to learn was significant
20 enough for Ronald, who was seat-belted at the time, to be
21 thrust forward, as one would expect. The seat belt stopped
22 him at that point and snapped him back. And in so doing,
23 at 6'2, 215 pounds or so, from the impact being thrust
24 forward, stopped by the seat belt and thrust back, the seat
25 belt itself actually snapped. Which gives us an idea of

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Summation - Plaintiff

1 the severity of that flexion and extension injury to his
2 spine that we've come to learn when the spine gets thrust
3 forward and then backwards.

4 Dr. Delman determined that Ronald needed to go for
5 MRIs. He sent him for MRIs because, again, as disingenuous
6 as any part of the defense has been, it's to continue to
7 try to harp on this initial assessment by Dr. Delman of
8 cervical, which is the neck, strain and sprain, lumbar,
9 lower back, strain and sprain. What was continually left
10 out and I continually had to bring out was to finish the
11 line. Cervical strain and sprain, rule out herniated disk;
12 lumbar sprain and strain, rule out herniated disks.

13 So as one of the defense doctors herself told you
14 today, when they say rule out herniated disk means, I think
15 he has a herniated disk, but I'm not sure. We need to see.
16 I need to see him, evaluate him, see what the results come
17 back from the MRIs.

18 So he went for MRIs and the MRIs did, in fact, confirm
19 that there were herniated disks in the neck and bulging
20 disks in the neck and the back. And that would be very
21 consistent since trauma can cause herniation and bulging
22 disks, very consistent with what happened to Ronald from
23 the car accident.

24 The fact that he was snapped forward and back
25 sufficient to snap the seat belt, that's quite some force

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Summation - Plaintiff

1 being brought about on his spine. And he never suffered
2 from problems with those areas before. It was only after
3 the accident that he had these symptoms.

4 They were confirmed. Dr. Delman's suspicions were
5 confirmed by the MRI results. And that he then continued
6 to treat Ronald, treat him with the most conservative means
7 possible, physical therapy. All the doctors would agree
8 that that is the protocol. That is the first thing you do.
9 You go for physical therapy. You see if that will work.
10 Because why would anybody want to go through the graduated
11 steps up the pain management ladder if the physical therapy
12 would work.

13 Now, this man who had been working his whole entire
14 live, this man who wanted to get back to the work that he
15 had done, also the love that he had for working on cars,
16 that's what he did in his spare time as well as in his work
17 time. He tried the physical therapy. It wasn't working.

18 Dr. Delman told us that he then referred him for pain
19 management. It's not something that goes on with the
20 majority of his patients, but something he felt important
21 for Ronald Weathers. Why? Because of the extensive nature
22 of the findings from his physical examinations about the
23 range of motion loss, the straight leg raising, all these
24 things that we learned, the spasms that we learned.
25 Defense doctor today talked about spasm, talking about the

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Summation - Plaintiff

1 importance if you find spasms, about the straight leg
2 raise, about the range of motion testing, all things which
3 point back to there being an injury to his neck and his
4 back, a serious injury, a significant injury to his neck
5 and back.

6 And so Dr. Davy did a consultation in August,
7 August 20th, 2008. And at that time Dr. Davy made certain
8 recommendations. Seeing the extent of his own finding plus
9 the MRI which he read himself. Remember Dr. Davy talking
10 about as the surgeon, of course he wants to rule out
11 potential. That's what he does. He's the surgeon. You
12 always want to read the MRI films to know what you're
13 dealing with. And when you're going to administer
14 something like epidural steroid injections, you want to
15 know what the MRI films show, in addition to physical exams
16 because it all helps in formulating the picture for what
17 you have with this particular patient.

18 And so he determined that Mr. Weathers would benefit
19 from a series of three ESIs, epidural steroid injections.
20 You saw the needle that goes in. You heard about the
21 discomfort that goes with this type of procedure. On three
22 separate occasions this was done. That's the protocol.
23 And it did not help. Unfortunately, it did not stop his
24 pain.

25 There's been a lot brought up on defense in the style

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Summation - Plaintiff

1 that he's trying to nitpick, nitpick at certain things that
2 were -- this no-fault report you heard about where certain
3 things were discussed in the no-fault report, which we then
4 pointed out, in fact, looked back and saw the no-fault
5 report that was sent in a week later detailing all the
6 correct information about where his place of business has
7 gone out of the business. It's all part of the
8 disingenuous nature of the defense. They don't want to
9 focus on what happened to this man. They don't even want
10 to focus on what their own doctors testify to. You heard
11 virtually no mention of their doctors, starting with the
12 doctor who testified today, the only examining doctor they
13 had. There's a reason for that. We'll get to that.

14 First let's continue with the pain management that he
15 had to undergo. The ESIs didn't work. Next, he went for
16 the facet block injections in October '08. Also very
17 unpleasant, very painful but done because he was hoping,
18 grasping for some form of relief. Again, no success with
19 the facet block injections.

20 So the next step was to have him undergo a discogram.
21 And you heard all described. Ronald told you how painful
22 that was. Dr. Davy told you how painful that is. The
23 doctor on behalf of the defendant, Dr. Ortof, told you how
24 painful that is. When dye is injected directly into the
25 disk, dye is injected directly in the disk to then find out

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Summation - Plaintiff

1 what level of pain you have. And you heard about how he
2 screamed in pain. But that's what he was willing to go
3 through in hopes that it would better help identify for Dr.
4 Davy where the source of his pain was coming from.

5 They weren't willing to rely just on all the
6 examinations that both Dr. Delman and Dr. Davy had done.
7 They weren't willing to rely on just the MRI tests. They
8 weren't willing to rely on just the ESI injections or facet
9 blocks. But he wanted to go through the discogram and he
10 explained the benefits of undergoing the discogram as
11 painful as that might be. And Ronald agreed. Agreed
12 because he wanted to get better. Agreed because the level
13 of pain he was having in his back, including the pain that
14 was radiating down into his leg, that was sufficient to
15 make his life unbearable.

16 And so he agreed to this, had the discogram performed
17 by Dr. Davy. Dr. Davy explained to us that when he was
18 performing the discogram, and Dr. Ortof amplified this
19 today during my cross-examination, in that disk, when the
20 pictures are taken, not only can the doctors see it, but
21 actually have pictures to show where there are tears in the
22 annulus fibrosus.

23 Remember with Dr. Ortof today we went through the
24 picture of the outer layer of the disk. And if there are,
25 if there's leakage from that dye, that's where you've got

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Summation - Plaintiff

1 the tears in this annulus fibrosus, the tears in the disks,
2 further confirming all the findings from the physical
3 examinations. Further confirming all the findings from the
4 MRI from the neuroradiologist, Dr. Mayfield, that you heard
5 Dr. Delman relied upon. And Dr. Davy did his own review of
6 the MRI, but also looked at Dr. Mayfield's review, the
7 neuroradiologist, the specialist in radiology for matters
8 of the spine. And then based on all those results and
9 because of the extent of pain, Ronald agreed that surgery
10 was the best option when it was presented to him.

11 And then surgery was performed at two different levels
12 of his disk, at the L3-4 and the L4-5 level. At the L3-4
13 level and L4-5 level within his spine, that his part of his
14 disks were cut out at those levels. And you heard that
15 following this surgery he did finally get some relief from
16 the radiating pain.

17 And Ronald Weathers couldn't be more genuine in
18 everything that he talked about throughout the course since
19 this took place back in June 2008. He said that initially
20 his knee hurt him, but the knee got better. That his neck
21 gave him trouble, but it was intermittent. That the neck
22 pain was helped by physical therapy. He still has good and
23 bad days from the neck injury, but that it has improved.

24 With regard to his lower back, that the surgery did,
25 in fact, help the radiating pain down his leg. But it

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Summation - Plaintiff

1 didn't help the pain in his lower back. That damage had
2 been done. That Dr. Davy couldn't correct with the
3 surgery, but he was at least able to help with the pain
4 that was running down his leg.

5 And you heard that Dr. Davy then examined him
6 regularly after that, that Dr. Davy had the opportunity to
7 examine him, to follow him, to prescribe medication for
8 him. Do you remember when we had the discussion earlier
9 today with the defense witness, Dr. Ortof, about the
10 medication Opana and what a strong narcotic that is. And
11 he was prescribed that.

12 And, again, part of how disingenuous the defense has
13 been throughout this case, when questioned on direct
14 examination about the medications that Ronald was taking,
15 they glossed over that. I had to bring it up on cross
16 examination. Wait a minute, you talk about thyroid
17 medicines he was taking. You talked about medicines for
18 the arthritis. They never mentioned anything about Opana.
19 That's a serious pain medication somebody gets when they've
20 got a significant injury like the one to his neck and his
21 back.

22 So you heard that he was prescribed the Opana and Dr.
23 Davy continued to see him. And Dr. Davy saw him into 2011,
24 made certain recommendations which we'll talk about in a
25 few minutes. And that Dr. Delman also had the benefit of

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Summation - Plaintiff

1 seeing him in 2011 and arriving at different conclusions,
2 similar conclusions, I should say, to Dr. Davy, in that
3 there was still all the signs of a permanent significant
4 injury to his back as well as to his neck, that spasm was
5 found.

6 We went through this exam just today and I'm not going
7 to belabor that because I know it's fresh in everyone's
8 mind where spasm, the doctor is actually able to feel
9 spasm. Dr. Ortof told you it's important to include it in
10 the report. We don't know if he had it or didn't have it
11 on the day of her exam which we'll get into in a moment.
12 But this is something that was found both by Dr. Delman and
13 Dr. Davy, which is noted in their reports.

14 In addition, he had range of motion deficits. In
15 other words, he doesn't have normal range of motion.
16 Another reflection on the extent of the injury. He also
17 has positive straight leg raising which indicates the
18 problem that he has with his lower back because the nerves
19 are effected when you have herniating disks and bulging
20 disks.

21 So what we suggest that you do in any of these types
22 of matters is we use that symbol, lady justice. Remember
23 during jury selection we talked about lady justice and lady
24 is blindfolded holding the scales of justice. And that
25 once you hear the testimony and receive the evidence in the

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Summation - Plaintiff

1 case, you have a chance to start putting the evidence,
2 piling the evidence on one side or the other. And to do
3 that you also have to assess the credibility of the
4 witnesses.

5 Now, let's look at the defendant's witnesses for a
6 moment.

7 The first witness who testified for the defense was
8 Dr. Audrey Eisenstadt. I did a little bit of research on
9 Audrey Eisenstadt, as you know, and came up with a variety
10 of transcripts and other decisions from cases she had been
11 involved in, a whole slew of cases she's involved in and
12 probably read from 20 to 25 different cases that she was
13 involved in. And lo and behold, always with the same
14 result, that the plaintiff in those cases had degenerative
15 disk disease. Just what, by mere coincidence, she claims
16 Ronald Weathers had from looking at his MRI.

17 Now, as we brought out, radiologists, they don't
18 decide causality, what caused it. They just tell you what
19 they see. That's what she should do, just give an
20 impression as to what they see. That's a herniated disk,
21 arthritis, degenerative disk disease or osteophytes. They
22 don't talk about the causality. Why? They don't take a
23 history of the person. They don't know whether he's been
24 in three accidents or had ongoing treatment for his neck
25 and back or whether Ronald Weathers never had a problem

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Summation - Plaintiff

1 with his neck or back. How are they going to make a
2 determination on causality?

3 But this is what she does. She comes out to say
4 degenerative disk disease without any background or basis
5 for saying it. Never performs an examination, of course,
6 of Ronald. Wouldn't know who Ronald was. This is the same
7 woman who told you she reads hundreds in one day. This is
8 the same woman who told us she gets \$150 per body part.
9 She put it in this case. She read about the cervical and
10 lumbar MRI for Ronald. She got \$300 to spend, I don't
11 know, five minutes looking at these films. Because if
12 she's looking at hundreds per day, how much more time can
13 she actually spend on this? This is some industry for this
14 woman. But she's very clear it's going to be degenerative
15 disk disease. You know what you get. She does all her
16 work for the defendants and, again, you start to see this
17 running theme we have here about lack of genuineness of the
18 defense in this case.

19 How unfair it is to the victim of this accident how
20 they've attempted to try and put the victim, cast the
21 victim in a negative way. Hard to do when you've got a guy
22 who's been nothing but a strong family man, who's worked
23 his whole life, who's never had anything stop him, not the
24 loss of an eye, not cancer, not rheumatoid arthritis, not
25 diabetes, nothing has stopped him until this accident.

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Summation - Plaintiff

1 And further to add to the lack of sincerity, the lack
2 ever genuineness. Ronald Weathers is now 60 years old. On
3 March 30th when we were picking a jury, some of us here, it
4 was actually his birthday. And at the time of the accident
5 he was 56 years of age. Well, as we've discussed, folks,
6 we all, as we age, start to show degenerative findings in
7 our disks in our spine. What they're in effect saying is
8 he had degeneration in his spine. Let's blame it on that.
9 Can you imagine that every time there's a defense in this
10 case, as well as Dr. Eisenstadt's defense in all cases,
11 everybody starts showing degeneration in the spine? Let's
12 say it was degeneration in the spine and that's the root
13 cause of everything.

14 Again, how disingenuous because as we've learned, if
15 you're asymptomatic, if you have no complaints, as most of
16 us fortunately do not have, the fact that there may be
17 certain signs of degeneration in the spine mean absolutely
18 nothing. There's a term in law called a red herring. You
19 throw in a red herring. It has nothing to do with the
20 case, but you throw it in. They hope to throw enough stuff
21 at the wall to get something to stick, little silliness
22 from initial like reports that are filled out, which, as it
23 turns out, don't even have any bearing on this case,
24 inconsequential things, ignoring what their own doctors
25 testified to because it can't be supported medically.

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Summation - Plaintiff

1 No real attempt to discredit Dr. Delman or Dr. Davy.
2 You know what? Unlike Dr. Eisenstadt or Dr. Ortof, these
3 are actually practicing, treating doctors. Dr. Davy
4 educated at Columbia, under grad, Columbia Medical School,
5 trained at Columbia Physicians and Surgeons, impeccable
6 credentials. A man who told you, I, myself saw the
7 herniated disk. He had no history of a herniation before
8 he had a car accident severe enough to snap the seat belt.
9 You think it's a stretch that his disk was injured and
10 herniated from this accident and all that treatment he got
11 wasn't related to the accident?

12 Even the doctor today, Dr. Ortof, if you recall had to
13 acknowledge that. Had to acknowledge that all that
14 treatment was related to the injuries from the accident.
15 He never had a problem before. Even she couldn't deny
16 that.

17 And so we've got Dr. Eisenstadt who we know every time
18 she's called upon, when they call her -- I was thinking
19 like in baseball when you call up someone from the bullpen
20 to come in the game, they know what they're going to get.
21 Each and every time when she's brought up to the bench,
22 they're going to get a finding of degenerative disk disease
23 for which she'll get paid \$300 for reading the films which
24 she reads hundreds in a day. We heard she charges \$4500 to
25 this defendant's firm to come in.

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Summation - Plaintiff

1 Do you remember when I said to her, because I had the
2 official transcripts and done my homework on her, I said,
3 Doctor, you charged more in the past, haven't you? Do you
4 remember what she said? If there's anything that I would
5 put up on the wall, you want to know about the quality of
6 this, the sincerity of the defense, how about this: Dr.
7 Eisenstadt, from this witness stand, under oath, told us,
8 well, I have an arrangement with them. And because of my
9 longstanding arrangement, in a sense, I give them a break.
10 I only charge them \$4500 to come in because no doubt the
11 vast amount of work that she's done for this defense firm
12 over the years. Well, there's one defense firm she's made
13 \$500,000 from over the last five years.

14 Now, at the end we are going to talk about the verdict
15 sheet and we are going to talk about what will be fair and
16 just. Keep in mind some of these figures. She does
17 hundreds of these reviews per day at \$150 a pop, that she
18 gets \$4500 to come to court to testify because it's a
19 break. Because she wants, no doubt, to keep this
20 relationship with them because she wants them to know \$4500
21 will give a discount on the rate and you can count on my
22 testimony. \$500,000 over the last five years from just one
23 of these defense firms. You know, she's found quite an
24 industry for herself. She does this all out of her house.

25 And then we've got Dr. Ortof, Dr. Ortof who struggled

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Summation - Plaintiff

1 to answer most of my questions. Why? Because Dr. Ortof,
2 as we have come to learn, really shouldn't be testifying in
3 a case having to do with somebody who has been
4 significantly, severely injured from a car accident with
5 neck and back injuries. What she should be testifying
6 about had to do with Botox injections. Because when I
7 looked her up and I talked about it with her, Dr. Ortof has
8 spent the last couple of years administering Botox
9 injections, that her practice has been, except for doing
10 these defense exams, she's been doing Botox injections,
11 that she's an image consultant. That's what my research
12 indicated. And she said yeah, but I'm not doing that
13 anymore. That didn't work out so well.

14 And I found out that she had gotten this degree, if
15 you will, from this AEI, the American Esthetics Institute,
16 nine hours worth of course time and they give her some type
17 of degree. And then she goes about giving people
18 injections for Botox, that she was the go-to person for
19 Botox on the upper west side of Manhattan. That's what we
20 learned. She's the person, the only person that they
21 retained or hired to examine Ronald Weathers. That's the
22 person that they relied upon to come in here and defend
23 their position. And we talked about with Dr. Ortof when we
24 had her on the stand. I said, Doctor, he never had any
25 history of any problem before, that's significant, isn't

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Summation - Plaintiff

1 it? Yes. All the treatments he got to try to help his
2 back pain didn't work. The physical therapy, the
3 injections didn't work. He had to undergo a discogram and
4 then the surgery. All that was related to the accident,
5 wasn't it? And she finally answered yes when I said to
6 her, one word and we'll be done. And she said, as she was
7 shaking her head back and forth and she then said yes,
8 that's what it was.

9 And so we have a situation where she testified on
10 direct examination when defense counsel was asking her
11 questions about the extent of the injuries, when you
12 examined Ronald, do you know what she said? Diagnosis was
13 strain/sprain resolved. I said resolved? There were about
14 eight different positive findings in your report. He had
15 an antalgic gait. He was only able to extend his back, he
16 was only able to extend backwards about 10 degrees. That's
17 about 33 percent of the normal. That's a significant
18 finding. Well, yes. And there was on palpation
19 tenderness, right? Yes. There was loss of range of motion
20 on a variety of tests that were done by her. In addition,
21 he didn't have the proper reflexes in his ankles, which
22 could be the cause as she acknowledge and admitted
23 grudgingly, of his back pain. And what's the source of
24 that back pain? She's trying to say degenerative changes
25 which we know is nonsense because he had no problem before

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Summation - Plaintiff

1 except, as Dr. Delman and Dr. Davy stated, degeneration can
2 be triggered by trauma and starts to show after six weeks.
3 So the big point about when you study the Brooklyn Hospital
4 record, when they take the specimen from the disks that
5 were removed and they find degeneration of the disk, well,
6 what would you expect? It has nothing to do with the disk
7 being herniated. It's material they're taking out. Of
8 course, if they were to take the disk material out of any
9 of us, that's what the pathologist is going to find, that
10 there's going to be degeneration of the disks. It has
11 nothing to do with disk being torn or herniated. That,
12 under these circumstances, should be a given from all the
13 testimony we had from Dr. Davy who actually saw the
14 herniation when he did the surgery. He saw the herniation
15 from the discogram, from the MRI. Dr. Mayfield, the
16 neuroradiologist who saw the herniation. Dr. Delman, Dr.
17 Davy whose physical exams confirmed the herniation.

18 So this is what they're talking about when, again,
19 more of the slight of hand, more of their disingenuous
20 nature of the defense.

21 The surgery was in February. That's some seven months
22 after the accident. We learned that after six weeks you
23 start to see signs of degeneration after there is trauma.
24 On top of what was there was asymptomatic. This is another
25 one of those red herrings. It has nothing do with this,

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Summation - Plaintiff

1 but they would like to get your attention, through the
2 slight of hand, away from the bouncing ball as it goes.
3 Try to divert your attention elsewhere.

4 So we know from Dr. Ortof who finally acknowledges
5 that yes, there are permanent affects of this injury. He
6 does have permanent consequences from this back injury that
7 he has. And I said to her, okay, Dr. Ortof, with regard to
8 the back injury, now that we've established the surgery and
9 all the treatment before it, that treatment was necessary,
10 the post-operative changes, wouldn't that be a source of
11 the problems that he has with his back? Yes.

12 Let's just make the connection. And it doesn't take
13 the Verrazano Bridge here to make the connection. If he
14 had the accident in June, all the treatment that follows is
15 related to the injury to the back and neck from that
16 accident. Surgery is done in February of 2009, all related
17 to the injuries from the accident. And then there are
18 quite natural post-operative changes, by the defense's own
19 acknowledgment. Well then they've got to be related to the
20 accident because all the injuries were, the surgery was,
21 the post-op changes are. And it's not just limited to just
22 post-op changes. That's what I guess Dr. Ortof was
23 suggesting. It also has to do with the injury itself
24 sustained that Dr. Davy wasn't able to correct. He wasn't
25 able to correct the radicular pain. He wasn't able to

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Summation - Plaintiff

1 correct because there had been so much damage there. There
2 had been damage that he wasn't able to stop the pain that
3 we've come to learn about.

4 And so post-accident, we did before accident, but
5 after, we know about all the treatment he's had. We've
6 gone over that. Now, we know about how he has been forced
7 to substantially change and alter his life. And the judge
8 will give you the law about pain and suffering and about
9 loss of enjoyment of life. And we've come to learn and,
10 believe me, it is very hard in the limited time to try to
11 give you as much of a window into a man's life who's 60
12 years old, but we do the best we can. And what I believe
13 came across is that he no longer is able to do what he once
14 loved doing and that's work on cars. He didn't get paid
15 for it, but he can't do it in his spare time because of the
16 extent of the lifting involved, because of the permanent
17 nature of these injuries. And keep in mind that because of
18 his misfortune, he wasn't working at the time of the
19 accident. His place of business closed in December. He
20 was undergoing radiation. And although he intended to go
21 back work, and I think the evidence will show, based on his
22 work history and the kind of person he was, that he
23 intended to do so. But we're not making a claim for his
24 lost earnings. The claims in this case has to do with his
25 pain and suffering and loss of enjoyment of life as well as

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Summation - Plaintiff

1 his future medical costs.

2 And so you do have certain questions that you're going
3 to be asked about on the verdict sheet. I'm going to go
4 over that in just a moment. But suffice it to say, in
5 terms of Ronald's life being changed, we talked about the
6 work that he enjoyed, the hobby that he loved from working
7 on cars that he can no longer do. We also questioned
8 Ronald and his wife Carola were able to bring out the kind
9 of things they liked to do together. How one of the things
10 they enjoyed doing as a couple was going for long walks.
11 And that's not something which he's able to do now. Just
12 as he would talk about enjoying cooking and talking to him
13 about recipes and how before the accident how he could
14 stand sometimes for hours in the kitchen when he wasn't
15 working on a Saturday or Sunday making a big family-type
16 meals. And that's something that's been taken away from
17 him. In addition, his grandchildren. You heard about him
18 having a seven year old and nearly two year old
19 grandchildren and he's not be able to do the things with
20 them that he'd like to.

21 Now, I know it may appear from what's taken place that
22 Ronald is at an advanced stage in his life. Please keep in
23 mind, he's 60 years old. The judge will tell you how many
24 years he has, according to the government tables on life
25 expectancy, that there are over 20 years he can expect to

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Summation - Plaintiff

1 live. That Ronald, at 56 years of age when this accident
2 happened, once the radiation was finished and as we know,
3 thank the lord, there has not been a recurrence of the
4 prostate cancer. This was a man who is fit, healthy, who
5 had been working as an automobile mechanic. And so take
6 that all into account please when trying to appreciate the
7 effect that this accident has had on Ronald's life, the
8 before and the after.

9 When you do so, please take into account the
10 credibility of the plaintiff's case, Ronald's case and the
11 credibility of the defense in this case having to do with
12 the witnesses, having to do with the point of view of those
13 witnesses.

14 And so the first question you're going to be asked to
15 answer, has the plaintiff as a result of the accident
16 involved in this case, meaning the car accident of June 23,
17 2008, sustained a serious injury, that's in quotes, serious
18 injury, which resulted in the permanent and consequential
19 limitations of use of a body organ or member.

20 A long way of saying, we'd suggest, did he suffer a
21 permanent injury that limits his use of his back and his
22 neck. Well, yes. The answer to that, based on all the
23 evidence is yes, that he does have an ongoing permanent
24 condition. And there really has been no dispute. Dr.
25 Delman and Dr. Davy, the two doctors who we called to

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Summation - Plaintiff

1 testify both have told you that there were permanent
2 effects to Ronald's injuries.

3 Dr. Ortof admitted that there was, that there were
4 permanent effects. She may not have admitted it readily,
5 but after questioning certainly admitted and left no doubt
6 that there was permanency to his injury.

7 And so Question Number 1 I submit to you should be
8 answered yes. And please don't be thrown by the language
9 about the body organ or member. It's his back. This case
10 is about his back and neck.

11 Question 2, has the plaintiff as a result of the
12 accident involved in this case sustained a serious injury
13 which resulted in a significant limitation of use of a body
14 function or system. Almost the same language just without
15 the permanency word used. And, of course, the answer to
16 that, based on all the evidence that you've heard in this
17 case, all the medical documentation, is yes, he absolutely
18 suffered a significant limitation of use of his back and
19 neck.

20 Dr. Delman I thought most accurately tried to put
21 things in perspective for us. When I asked him, Doctor,
22 you treat people, physical medicine and rehabilitation,
23 what you do, you treat people with back and neck injuries
24 all the time. Contrast that with Dr. Ortof performing
25 Botox treatments brought in by the defense. But he's doing

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Summation - Plaintiff

1 this every day in his offices. The others are people who
2 had sports injuries, who had work-related injuries, who had
3 car accidents, who had construction accidents, elevator
4 accidents or any one of a number of different types of
5 injuries that he treats these kinds of people. I said to
6 him, Doctor, how many of those patients go for spine
7 surgery like Ronald Weathers? Do you remember he said less
8 than one percent. Less than one percent of the people that
9 he treats go for back surgery like Ronald Weathers was
10 forced to undergo. That should give you just a little
11 barometer.

12 Remember I was struggling with Dr. Ortof because one
13 of the many things she left out of her report, she didn't
14 put any of the norms for range of motion.

15 THE COURT: Counsel, can you wrap it up?

16 MR. AVANZINO: Yes, Judge.

17 I said to her, we need a baseline. Hopefully, Dr.
18 Delman is telling you less than one percent of the patients
19 he treats who have back and neck injuries of varying
20 degrees for surgery.

21 Next, Question 3, what is the full dollar amount of
22 damages, if any, sustained by plaintiff for pain and
23 suffering up to the date of your verdict. That means up to
24 the date you give today or tomorrow, from the date of the
25 accident on June 23, 2008 until the date of your verdict,

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Summation - Plaintiff

1 what is fair and reasonable to award.

2 Now, defendant made some reference that I would be
3 mentioning to you what I think the evidence has shown. You
4 will note that they stayed away from that. And I have been
5 told that I am conservative in the figures I present, but
6 the emphasis is your determination, what you think is fair
7 for what this man has gone through, taking into account all
8 the other matters that we've spoken about with regard to
9 Dr. Eisenstadt, that she gets \$300 for this -- \$450,000 for
10 the four years that he has sustained these injuries, that
11 he had to live with these injuries, that he has to live
12 with the loss of enjoyment of life, pain and suffering,
13 loss enjoyment of life.

14 As to the next question you will be asked to answer
15 state separately the amount awarded for the following items
16 of damages, if any, from the date of your verdict to be
17 incurred in the future. Also, if you make an award to
18 compensate plaintiff for damages to be incurred in the
19 future, then you must state the period of years over which
20 such amount is intended to provide compensation.

21 Physical therapy expenses, Dr. Delman suggested that
22 Mr. Weathers would benefit from physical therapy for the
23 rest of his life. I said how much does the physical
24 therapy cost per session? \$75. Even if conservatively we
25 would say to try to assist him dealing with pain, the

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501

Summation - Plaintiff

1 problems that he has, \$75, even if it was one time per
2 week, that's \$150 every two weeks, or what Dr. Eisenstadt
3 gets for one review or \$300 per month, or what she got to
4 review these films for a minute. \$300 per month. And if
5 you took that out over a year, that will be \$3600 per year.
6 And we haven't attempted to take into account the inflation
7 figures going forward. But if you just did it over 20
8 years, the \$3600 over 20 years, that comes to \$72,000 for
9 physical therapy just to help him maintain and deal with
10 the problems he has so he can try to lead as positive a
11 life as he can going forward with what we know are
12 permanent injuries caused by this accident.

13 And then surgical expenses. Remember Dr. Davy said,
14 my recommendation is a pain stimulator. And the way the
15 pain stimulator works, first you do a trial basis and then
16 you do, if that's achieved, a certain degree of success,
17 then you do it on a permanent basis. And I know the judge
18 wants me to wrap this up, so I'm not going to go into
19 detail about the stimulator except that you heard testimony
20 from Dr. Davy about that. And Dr. Davy basically said, and
21 while I won't go through all the different numbers with you
22 in the interest of just brevity here, but for the temporary
23 stimulator it's somewhere around 25,000. And then if the
24 stimulator is going to be put in permanently, the cost of
25 the leads are 7,000 per, the cost of the facility, the

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502

Summation - Plaintiff

1 generator, the cost of the doctor to do the type of
2 surgery, as well as the future upkeep of it, the batteries
3 have to be changed. This is a surgical procedure, mind
4 you, that he may undergo in the future to permanently
5 implant in his back where he can give himself a shot of
6 pain relief there. 75,000 for permanent installation plus
7 25,000 for upkeep. They will be \$125,000 for the temporary
8 as well as the permanent and the upkeep, in addition to the
9 72,000 for the physical therapy. That's \$197,000 and it's
10 your call.

11 You're the ones who make the decision as to what you
12 think is fair and reasonable. And I suggest that one
13 physical therapy session at \$75 a week, it's your decision
14 on that. Pain and suffering including permanent effects of
15 the injury from the date of your verdict and into the
16 future.

17 So if you render a verdict tomorrow let's say, you
18 would then have two separate pain and suffering time
19 frames, from the day of the accident up to the day of your
20 verdict, that's Question 3. And I suggest \$450,000.

21 Then you have Question 4, the expenses, the medical
22 expenses, we just talked about that. Conservatively you
23 can put that at \$197,000. And that's not taking in account
24 for inflation over his 20 year life expectancy.

25 And then there's an award for pain and suffering for

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503

Summation - Plaintiff

1 what we know is a slippery slope. We know that they have
2 triggered this through the defendant's negligent, through
3 the defendant's fault, they've triggered an ongoing problem
4 which is getting worse. Dr. Delman put it well, I thought,
5 when he said that Ronald has bad days and worse days with
6 regard to his lower back.

7 And so I suggest to you that if you make an award to
8 him in the future for the next 20 years for what has
9 occurred to him and what will continue to occur to him over
10 the 20 years, taking into account all the different amounts
11 of money defense spent in this case so far for his case,
12 \$1 million for his 20 years. We're talking about in light
13 of what has happened to him and what we know will happen to
14 him going forward.

15 Again, on behalf of the Weathers family and myself,
16 thank you very much for your time and your attention
17 throughout the course of this trial.

18 THE COURT: Thank you, counsel.

19 Ladies and gentlemen, we'll take a break for at least
20 five minutes to use the facilities and then I'll give you
21 the charge on the law. Thank you.

22 (Whereupon jury exits and a recess was taken)

23 (Whereupon jury enters)

24 THE COURT: Members of the jury, we now come to that
25 portion of the trial where you're instructed on the law

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503

Summation - Plaintiff

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