

Proceeding

1 the stand Ms. and Mr. Turturro, Anthony's mom and dad.
2 Judge, would it be okay to swear both of them
3 in?

4 THE COURT: Yes. That's fine.

5 (Edmund and Elida Turturro being duly sworn
6 by the court clerk was interrogated and answered
7 as follows.)

8 COURT CLERK: Please be seated.

9 In a loud and clear voice, state your full
10 name, and spell it for the record.

11 MR. TURTURRO: My first name is Edmund --
12 E-D-M-U-N-D. Middle name is Anthony. Last name is
13 Turturro -- T-U-R-T-U-R-R-O.

14 MS. TURTURRO: Elida -- E-L-I-D-A. Middle
15 initial T. Last name Turturro -- T-U-R-T-U-R-R-O.

16 COURT CLERK: Home address?

17 MR. TURTURRO: 55 Eaton Court. That's
18 Brooklyn, New York 11229.

19 COURT CLERK: Thank you.

20 MR. WALKER: Good morning

21 Mr. and Ms. Turturro. Just a couple of things
22 we want to put on the record so that it's clear
23 that we did discuss the offer that was made. That's
24 the purpose of this; okay?

25 I just need to ask you a few questions. Did

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1 we speak over the weekend several times?

2 MR. TURTURRO: Yes.

3 MR. WALKER: Did I tell you that the City has
4 made an offer of settlement for Anthony's case that
5 totals \$3.5 million dollars?

6 MR. TURTURRO: Yes.

7 MS. TURTURRO: Yes.

8 MR. WALKER: Did we discuss that in terms of
9 from that would have to be deducted attorney's fees,
10 cost of litigation and expenses, and there is a lien
11 that would have to be negotiated, and then the balance
12 would be payable to Anthony either as cash up front or
13 in an annuity or some combination thereof? Did I
14 advise you of that?

15 MR. TURTURRO: Yes.

16 MR. WALKER: Okay, did I indicate to you that
17 we have three options? We can accept that settlement.
18 That would be one option.

19 MR. TURTURRO: Yes.

20 MS. TURTURRO: Yes.

21 MR. WALKER: I told you that another option
22 would be to let the case go forward and have the jury
23 decide the case. That was the second option.

24 MR. TURTURRO: Yes.

25 MS. TURTURRO: Yes.

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1 MR. WALKER: And I told you that one of the
2 third options would be to make a counter-demand if you
3 will; correct?

4 MR. TURTURRO: Yes.

5 MS. TURTURRO: Yes.

6 MR. WALKER: All right, did we have a chance
7 to discuss this at length over the weekend?

8 MR. TURTURRO: Yes.

9 MS. TURTURRO: Yes.

10 MR. WALKER: Did you ask me questions to
11 whatever degree you wanted to so that I could explain
12 to you?

13 MR. TURTURRO: Yes.

14 MR. WALKER: Did I tell you that if the case
15 goes forward there is a chance Anthony could lose the
16 case and he would get nothing?

17 MR. TURTURRO: Yes.

18 MS. TURTURRO: Yes.

19 MR. WALKER: All right, I told you there is a
20 possibility that he could win the case but be held for
21 a percentage of comparative fault that might --
22 depending on the percentage -- significantly reduce
23 what he is actually able to recover.

24 And I told you, you of course could possibly
25 win the case, but there is no guarantees. There's no

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1 way to know what the jury will do. Did I explain all
2 that to you?

3 MR. TURTURRO: Yes, you did.

4 MS. TURTURRO: Yes.

5 MR. WALKER: Do you have any other questions
6 for me?

7 MS. TURTURRO: I don't think so.

8 MR. WALKER: Okay; and it's my
9 understanding -- and I don't want to put words in your
10 mouth, but just to summarize; you have talked this over
11 among yourselves, between yourselves extensively, and
12 at this point you're going to decline the offer that's
13 been made.

14 MR. TURTURRO: Yes, we are.

15 MS. TURTURRO: Yes.

16 MR. WALKER: Okay.

17 THE COURT: You understand that the jury
18 doesn't have to find liability against the City. Do
19 you understand that?

20 MS. TURTURRO: Yes.

21 MR. TURTURRO: Yes, we do.

22 THE COURT: And do you understand that the
23 way I heard the case there will be a finding of some;
24 some portion of contributory negligence against your
25 son? Do you understand that?

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1 MR. TURTURRO: Yes.

2 THE COURT: And that will diminish any
3 verdict even if the City is responsible. Do you
4 understand that?

5 MS. TURTURRO: Yes.

6 THE COURT: You look like you don't.

7 Let's assume that the City is held in and
8 there is some percentage of fault against your son
9 which I think is more than likely but nobody can
10 predict. Nobody is smarter than jurors. Nobody.

11 I've been doing this for a long, long time,
12 and it is likely in my opinion, and I think that it is
13 shared by everybody here, that there will be some
14 percentage of fault found against your son, and that
15 will be deducted from the total verdict, whatever that
16 number is. Do you all understand that?

17 MR. TURTURRO: Yes.

18 MS. TURTURRO: Yes.

19 THE COURT: Do you understand that whatever
20 offer has been made by the various parties, they have
21 taken that into consideration in determining the amount
22 of the offer? Do you understand that?

23 MR. TURTURRO: Yes.

24 MR. WALKER: Judge, could I just follow up?
25 I'm sorry.

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1 THE COURT: Please do. I just want to make
2 sure.

3 Look. I had a case where there was a
4 substantial offer made -- five months ago, a different
5 kind of case -- and the jury came back with no
6 liability. Look. Sometimes they come back with
7 liability that has generated more litigation than the
8 original trial, and I'm suggesting to you, you have a
9 serious situation here, and nobody is denying it; least
10 of all me.

11 MR. WALKER: Thank you, Judge.

12 I just want to make sure you understand that,
13 the issue of comparative negligence that the Judge is
14 mentioning. We discussed this, but you looked a little
15 puzzled. I want to make sure you understand it.

16 The jury is entitled to consider whether
17 Anthony's conduct contributed to the happening of the
18 accident, and that's called comparative negligence.
19 The jury can assess a percentage of liability. It
20 could be one percent. It could be a hundred percent.
21 You know, it could be 99. It could be 50, whatever.

22 Whatever percentage they assess against
23 Anthony is a percentage reduction of any recovery that
24 he gets. So I'm just going to make up numbers here.

25 Just for example if a verdict came back for

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1 a million dollars for instance and Anthony was held
2 50 percent responsible for comparative negligence, even
3 though there is a million dollar verdict, he can only
4 recover 500,000.

5 If there was a finding that Anthony was
6 90 percent negligent and a million dollar verdict, even
7 though there is a million dollar verdict, he would only
8 be able to recover ten percent or a hundred thousand
9 for comparative negligence. So do you understand that?
10 I thought I explained that to you.

11 MR. TURTURRO: I understand. I remember you
12 telling me.

13 MR. WALKER: Okay, thank you, Judge. Thank
14 you folks.

15 THE COURT: Okay, thank you.

16 MS. COYNE: Judge, may we approach for a
17 moment?

18 THE COURT: By the way, folks, nobody is
19 suggesting this is an easy decision. Nobody is, but in
20 all fairness to everybody here, I had to put you on the
21 record to make sure you understand it and that you're
22 making a decision using your best judgment.

23 (Off-the-record bench conference.)

24 And I think you should continue to talk among
25 yourselves. I think you should do it. with all due

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1 respect to you, this is not an easy one. No one is
2 suggesting it is, but juries are strange creatures.
3 They usually do the right thing, but sometimes they
4 don't, and while I have some supervisory control over
5 it, folks, if they came back with zero negligence
6 against your son, I would based on what I heard so far
7 without a guarantee probably do something about it.

8 (Off-the-record bench conference.)

9 MR. WALKER: Dr. Leiken, would you mind just
10 stepping out for a second?

11 (Witness exits courtroom.)

12 THE COURT: Let the record indicate that
13 there is no firm offer in the amount stated previously
14 on the record. However, it's my inclination that it
15 will be made if there is an agreement.

16 MS. COYNE: That's correct.

17 THE COURT: Leave that alone, and I think
18 that's all we need to say.

19 MS. COYNE: Judge, at this time, the City has
20 an application believe it or not for a mistrial.

21 During the course of my examination of
22 Dr. Schuster as well as during the course of the entire
23 trial, there has been communication about the trial
24 among the jury when they're in the box.

25 I was actually cross-examining Dr. Schuster