

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CIVIL TERM : PART 66

3 -----X
 4 ROSEMARY MCNIGHT :
 - against - :IND.#
 :23705/10
 5 NEW YORK CITY TRANSIT AUTHORITY AND JIMMIE :
 COTTON :
 6 Defendant :
 -----X

7
 8 360 Adam Street
 Brooklyn, New York, 11201
 9 June 25, 2014

10 B E F O R E : HONORABLE RICHARD VELASQUEZ,
 Justice

11 A P P E A R A N C E S :

12 FOR THE PLAINTIFF:

13
 14 BLOCK, O'TOOLE & MURPHY, LLP
 One Penn Plaza, suite 5315
 15 New York, NY 10119
 BY: SCOTT OCCHIOGROSSO,ESQ
 16 BY: FREDERICK C. ARANKI, ESQ.

17 FOR THE DEFENDANT:

18 ARMIENTI, DEBELLIS, GUGLIELMO & RHODEN, LLP
 19 39 BROADWAY, SUITE 520
 New York, NY 10006
 20 BY: HORACE O. RHODEN, ESQ.
 By: VANESSA CORCHIA, ESQ.
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22
 23
 24 Nadonna Ferguson, RPR
 Official Court Reporter
 25

1 **THE COURT:** Good morning, counselors. This is
2 matter of McKnight versus New York City Transit Authority.

3 For the record, please note your appearances.

4 **MR. OCCHIOGROSSO:** Scott Occhiogrosso from Block,
5 O'toole & Murphy on behalf of Ms. Rosemary McNight.

6 Good morning, your honor.

7 **MR. ARANKI:** Good morning, your honor. Frederick
8 Aranki from Block, O'Toole & Murphy on behalf of Plaintiff
9 Rosemary McNight as well.

10 **MR. RHODEN:** Good morning, your honor. Horace
11 Rhoden Law Office of Armienti, Debellis, Guglielmo &
12 Rhoden, 39 Broadway New York, New York on behalf of the New
13 York City Transit Authority.

14 **MS. CORCHIA:** Vanessa Corchia also with the firm
15 of Armienti Debellis, Guglielmo & Rhoden for the defendant.

16 Good morning, your honor.

17 **THE COURT:** Good morning. Let's begin. I
18 believe we had a side bar and I explained sort of the
19 procedure. It's a collateral source hearing. This Court
20 has heard much about this particular case. The burden is
21 on the defendant. Let's move. And we have up until
22 1:00 o'clock. Let's begin.

23 **MR. RHODEN:** Thank you, your honor. Before I
24 begin, Your Honor, I would just like to make a brief three
25 minute opening statement, if I may, your Honor.

1 **THE COURT:** I'll allow a brief opening. No
2 closing. We will be done by 1:00 o'clock.

3 **MR. RHODEN:** Thank you, Your Honor. And again,
4 just to refresh the Court. This is a trial which was just
5 heard back in July of 2013 where a verdict was attained.
6 And in the verdict, the jury awarded verdict for past loss
7 wages. Future loss wages. Past medical expenses. And
8 future medical expenses.

9 It's the New York City Transit Authority contentions
10 that these are subject to a collateral source set offs. As
11 just so we remind the Court, this is an accident occurred
12 in June 2010. However, Plaintiff, Ms. McNight was involved
13 in an accident, a work-related accident in 2002 in March of
14 2002. Within that work-related accident, she had injured
15 various parts of her body including but not limited to her
16 back and her shoulders. She had fusion surgery to her
17 lower back. She had surgery to the right shoulder. I
18 believe that was back in 2006. I believe, the fusion
19 surgery to the lower back is 2004. As a result of this,
20 she was noted by Workers Compensation to be permanently
21 disabled. And she received Workers Compensation awards.
22 She received Workers Compensation award in the tune of \$205
23 per week. Also as a result of these injury in 2002, she
24 received social security disability. And as per social
25 security disability, to receive that, the social security

1 disability law indicates that you need to show that you
2 can't work at the current job that you are working. And
3 you cannot work at any other job. And because of that, she
4 received social security disability. And as of 2013, she
5 was receiving social security disability to the tune of
6 \$1080 per month for herself. And also she had two
7 children, minor children that she was also receiving social
8 security disability to the tune of \$478 per month. It's
9 the defendant contention that these are also subject to
10 collateral source set offs as they were all to compensate
11 her for her loss wages. So she was, in essence, receiving
12 wages.

13 And also the evidence have shown is that the social
14 security that she has been receiving are subject to annual
15 increase. It is called COLA increase or cost of living
16 increase. There are annual increase that are subject to.
17 And she has received those from the past. She started
18 getting it. She has received those annual increases.

19 Your honor, in June of 2010 at the time of this
20 accident, she was still receiving her Workers Compensation
21 benefits. She was still receiving Social Security
22 disability benefits. In July 2013 at the time of this
23 trial she was still receiving Workers' Compensation
24 Benefit. She was still receiving Social Security
25 disability benefits. Your honor, currently today, she is

1 still receiving Workers' Compensation Benefits. She is
2 still receiving social security disability benefits. And
3 these are all subject to collateral Source Set off.

4 **THE COURT:** That's your three minutes, counselor.
5 Any openings.

6 **MR. OCCHIOGROSSO:** No, your honor.

7 **THE COURT:** Let's begin, then.

8 **MR. RHODEN:** At this time, Your Honor, the defense
9 calls Ms. McNight to the stand.

10 **THE CLERK:** Please raise your right hand.

11 R O S E M A R Y M C N I G H T, after having first been duly
12 sworn by the Court Clerk, was examined and testified as follows:

13 **THE WITNESS:** I do.

14 **THE CLERK:** State your name and address for the
15 record.

16 **THE WITNESS:** Rosemary McNight, 62A, Hall Street,
17 second floor, Brooklyn, New York, 11233.

18 **THE COURT:** Good morning.

19 **THE WITNESS:** Good morning, Judge.

20 **THE COURT:** Counselor, you may begin.

21 **MR. RHODEN:** Thank you, your honor.

22 **DIRECT EXAMINATION**

23 BY MR. RHODEN::

24 Q Good morning Ms. McNight?

25 A Good morning, Mr. Rhoden.

1 Q Now Mrs. McNight, back in June you were involved in an
2 accident as a result of being on the New York City Transit
3 Authority bus back on June 2, 2010, correct?

4 A Yes, sir.

5 Q And as a result of being involved in that accident, you
6 went to various doctors and you received treatment, correct?

7 A Yes.

8 Q And your doctor that you were treating with they
9 recommended various types of treatment. For example, they
10 recommended that you should have X-rays and MRIs taken, correct?

11 A Yes.

12 Q And your treating doctors recommend that you should
13 have physical therapy done, correct?

14 A Yes.

15 Q Your treating doctors recommended that you should get
16 some certain type of medication; correct?

17 A Yes.

18 Q Your treating doctors recommend that you should have
19 surgery done, correct?

20 A Yes.

21 Q And you had all of these procedures that your treating
22 doctors recommended. You had those procedures done, correct?

23 A Yes.

24 Q Now, Mr. McNight and it is true that as a result you
25 paid no out-of-pocket expenses for these medical procedures that

1 you had done, correct?

2 A Some of the transit coverage cover some of my surgery,
3 which is my knee. My both knees and my therapy. I was to take a
4 loan to do my neck.

5 Q You took out a loan?

6 A Yes, a loan, to do my neck surgery.

7 Q Okay. Who did you take that loan from?

8 **MR. OCCHIOGROSSO:** Objection. Relevance.

9 **THE WITNESS:** I can't remember who.

10 **MR. OCCHIOGROSSO:** Objection. Don't answer the
11 question..

12 **THE COURT:** Sustained.

13 Q Did you say you took a loan. Was it from what private
14 service that you took this alleged loan?

15 **MR. OCCHIOGROSSO:** Objection relevance.

16 **THE COURT:** Sustained. On the basis of relevance.

17 Let's continue.

18 **MS. CORCHIA:** Excuse me, your honor. It maybe
19 relevant to the extent. We have to know what liens there
20 are.

21 **MR. OCCHIOGROSSO:** Your honor, the defense bears
22 the burden of proof. They have to prove to the Court that
23 a collateral source paid for treatment.

24 **THE COURT:** The objection has been sustained.

25 **MR. RHODEN:** Your honor.

1 **THE COURT:** Continue.

2 **MR. RHODEN:** I take exception, Your Honor.

3 **THE COURT:** So noted.

4 Q Now, you said for your neck surgery you took out a
5 loan. How much of the loan that you took out?

6 A It's about 60,000. And then I sign a lien for the rest
7 after.

8 Q And how much -- you said the loan was for \$60,000?

9 A About 60.

10 Q Have you paid that loan back?

11 A No.

12 Q When did you take that loan out?

13 A I think it was in -- I did the surgery in July. I
14 think I took the loan out in June.

15 Q June of what year?

16 A 2011.

17 Q Now, did this \$60,000 cover the cost of the surgery?

18 A No, I had to sign a lien for the rest of the payments.
19 For the hospital, the doctors, the anesthesiologist.

20 Q And you sign the lien for those. How much was the lien
21 that you had to sign for?

22 A I can't remember how much it is. But I know I sign the
23 lien for the balance of what -- I paid them some of the money for
24 the surgery and I sign the lien. That when I get my money they
25 were going to get theirs.

1 Q And the sum you paid was \$60,000?

2 A Around that.

3 Q Isn't that the loan that you said you took out?

4 **MR. OCCHIOGROSSO:** Objection. Asked and answer
5 badgering the witness.

6 **THE COURT:** I will allow it.

7 A It is around \$60,000. I had to pay down some of the
8 money. I don't have the exact figure on me. There is something
9 in my memory. I don't have the exact figure. But I took out a
10 loan for about that amount of money. It could be 50 something.
11 It could be 60. It is between there around that area that I took
12 a loan for.

13 Q And have you paid that loan back that you took out?

14 A No.

15 Q Have you paid any of that loan back?

16 A No.

17 Q And who did you pay this \$60,000 to?

18 **MR. OCCHIOGROSSO:** Objection. Again relevance.

19 **THE COURT:** Sustained.

20 Q What facility? Was this to a medical facility treating
21 facility?

22 **MR. OCCHIOGROSSO:** Judge.

23 **THE COURT:** I am going to sustain the objection.
24 We know the amount. We know the terms. The rest is
25 irrelevant. I have noted your exception, counsel.

1 **MR. RHODEN:** I take an exception.

2 **THE COURT:** Let's move on counsel, please.

3 Q And now you said there is a lien. Who gave you this
4 lien? What facility or what doctor gave you this lien?

5 **MR. OCCHIOGROSSO:** Judge, it is real simple. They
6 have to prove that collateral source paid for the
7 treatment. Not have her on the stand and ask her about
8 liens all day.

9 **THE COURT:** I understand, counsel. Your objection
10 is sustained.

11 **MR. RHODEN:** I take exception.

12 **THE COURT:** Move forward.

13 Q How much was the total lien for? The amount of the
14 lien?

15 **THE COURT:** I'm going to allow that. And you may
16 answer.

17 A As of right now, I don't know. I don't know how much I
18 owe. It could be 150. Because I owe Dr. Manuel. I owe
19 Dr. Gerland. The owe the anesthesiologist. And I think I owed
20 the hospital, too. So, I still owe all of this money.

21 Q Okay. Did you make a search before coming to this
22 hearing, did you make a search for records that would show how
23 much money you owed regarding these alleged liens?

24 **MR. OCCHIOGROSSO:** Objection.

25 **THE COURT:** Sustained.

1 Q Did you receive a subpoena from my office to come to
2 this hearing?

3 A Yes, I did.

4 Q So you received a subpoena. And as a result of that
5 subpoena, were you instructed that you should bring with you all
6 invoices or bills that you may owe regarding this accident?

7 A I don't have anything for --

8 Q Excuse me?

9 A I see the subpoena. I read through the subpoena but I
10 don't have anything.

11 Q Did you make a search for any?

12 A Yes, I did.

13 Q So you made a search. So this record that you are
14 talking about. You don't have recollection how much you owe to
15 Dr. Manuel, correct?

16 **MR. OCCHIOGROSSO:** Objection. That is not what
17 the subpoena calls for.

18 **THE COURT:** I will allow the question. In fact
19 rephrase that question.

20 Q Is it your testimony that you have no records that
21 shows much money you owe Dr. Manuel?

22 **MR. OCCHIOGROSSO:** Objection. The subpoena
23 doesn't say do you have a record.

24 **THE COURT:** I will allow the question.

25 A No. I don't have any records saying exactly how much I

1 owe him. But I know I owe him. Why I know I owe him let me tell
2 you.

3 Q Just answer my question?

4 Do you have any records of how much money you owe
5 Dr. Gerland.

6 A No.

7 Q Was there anyone else that you owe money to as a result
8 of this incident?

9 A I owe Dr. Gerland. I owe Dr. Manuel. I owe the
10 anesthesiologist. I owe the anesthesiologist. And I think I owe
11 the hospital.

12 Q Which hospital?

13 A The hospital that I had the surgery in. Right now, I
14 can't remember the name of the hospital.

15 Q Was it Lutheran Medical Center?

16 A Yes. Lutheran.

17 Q Do you have any records that shows how much you owe to
18 the anesthesiologist?

19 A No, I don't.

20 Q Do you have any records that shows how much you owe to
21 Lutheran Hospital?

22 A No, I don't.

23 Q Do you know how much you owe to Lutheran Hospital?

24 A No, I don't.

25 Q Do you know how much you owe to the anesthesiologist?

1 A No, I don't.

2 Q Do you know how much you owe to Dr. Gerland?

3 A No, I don't.

4 Q Do you know how much money you owe to Dr. Manuel?

5 A No, I don't.

6 Q So you're claiming today that you paid \$60,000 back in
7 June 2011 for medical expenses, correct?

8 **MR. OCCHIOGROSSO:** Objection. She is not claiming
9 anything.

10 **THE COURT:** Sustained. Sustained.

11 Q Since this trial that you had back in July, this trial
12 of July 2013, have you visited Dr. Manuel?

13 **MR. OCCHIOGROSSO:** Objection. Relevance.

14 **THE COURT:** Sustained.

15 **MR. RHODEN:** Note our exception, Your Honor.

16 Q Have you visited Dr. Gerland?

17 **MR. OCCHIOGROSSO:** Objection to the entire line of
18 questioning, your honor.

19 **THE COURT:** Sustained, counsel.

20 **MR. RHODEN:** Note my exception.

21 Q This anesthesiologist that you claim you owe money to,
22 have you seen the anesthesiologist?

23 **THE COURT:** Sustained.

24 Q Since the trial of 2013?

25 **MR. OCCHIOGROSSO:** Same objection.

1 **THE COURT:** Sustained.

2 Q (By Mr. Rhoden)

3 **MR. RHODEN:** Note my exception.

4 Q Have you visited Lutheran hospital since the trial of
5 2013?

6 **MR. OCCHIOGROSSO:** Same objection.

7 **THE COURT:** Sustained.

8 Q This money that you owe that you allegedly owe, is it
9 true that you owe this before the trial of July 2013?

10 A Before the trial, yes. I had the surgery before. So
11 Yes, I did. Yes, I do.

12 Q And the \$60,000 that you paid, you paid this before the
13 trial of July 2013?

14 A Yes, that was for surgery. So it is around 60. It is
15 within that range. Stop saying 60. Don't hold me to the 60. It
16 is within that range. I took a loan out and it is about that.

17 **THE COURT:** Ma'am, just respond to the question
18 and we will move forward. And your attorney will have that
19 opportunity to ask you questions if he would like.

20 Q I would like to read you from your trial transcript
21 dated July 8th of 2013 where you were ask the following
22 questions and you gave the following answers?

23 **MR. OCCHIOGROSSO:** Objection.

24 **THE COURT:** I'm going to listen to the question
25 and the answer. And you will make your objection. What is

1 it.

2 **"QUESTION:** Now, we are switching a little bit
3 here. After this accident the June 2, 2010 accident, you
4 didn't pay for any medical bills out of your own pocket,
5 did you?

6 **"ANSWER:** No, sir.

7 Q Was that your answer to that question back in
8 July 2013?

9 A Yes, sir. It was my own. I did not pay out of my
10 pocket. I took a loan because I don't have that kind of money to
11 pay for surgery.

12 Q And you didn't mention that in the trial that you took
13 a loan to pay some \$60,000?

14 **MR. OCCHIOGROSSO:** Objection.

15 A You didn't ask.

16 **THE COURT:** I will allow the question and the
17 answer.

18 A You did not ask me how I paid for it.

19 **THE COURT:** Continue.

20 Q Now, you said you owed Dr. Gerland some amount of
21 money. How were you informed that you owed Dr. Gerland money in
22 what manner? Did you get an invoice a letter, something?

23 A When I took the loan out, I know I was owing
24 Dr. Gerland. Because I signed the lien for the balance after
25 surgery. So from the initial beginning of my surgery before I

1 went in to have surgery, I know I was going to owe Dr. Gerland
2 because I sign the lien.

3 Q So you knew you owed Dr. Gerland. You owed sign a lien
4 with Dr. Gerland's office. And how were you informed that you
5 owed the anesthesiologist?

6 A I did not pay him up front so he bill me. I sign a
7 lien for that, too.

8 Q So you also have a lien with the anesthesiologist?

9 A Yes.

10 Q And how were you informed that you owe money to
11 Lutheran Hospital?

12 A I sign a lien through Dr. Gerland for all of that I
13 needed.

14 Q So how many liens? Was it just one lien you sign or
15 did you sign three separate liens?

16 A That I can't tell you. I don't know.

17 Q You don't know. Have you sign one?

18 A I don't know if it is one or individually.

19 Q How were you informed that you owe money to Dr. Manuel?

20 A When I went to him, he told me I had no coverage. So I
21 owe him because I was still owing.

22 Q Did you sign a lien for Dr. Manuel as well?

23 A I would think I did. I am not sure.

24 Q In any event, you did receive no-fault through the New
25 York City Transit Authority, correct?

1 A Repeat.

2 Q You did receive benefits. New York City Transit
3 authority has paid no-fault benefits regarding your June 2, 2010.

4 **MR. OCCHIOGROSSO:** Objection. Best evidence rule.

5 **THE COURT:** I'm going to allow it.

6 A To my knowledge, yes.

7 Q And also Workers Compensation also paid money for your
8 treatment that you received after June 2, 2010?

9 **MR. OCCHIOGROSSO:** Same objection.

10 A No.

11 **MR. OCCHIOGROSSO:** Best evidence rule.

12 **THE COURT:** I am going to allow it. She responded
13 no. Continue.

14 A No.

15 Q Since the trial of July 2013 have you visited any of
16 your visiting treating doctors?

17 **MR. OCCHIOGROSSO:** Objection. Relevance.

18 Q Regarding the June 2, 2010 accident. We are going into
19 future?

20 **THE COURT:** I'm going to allow it. You may
21 answer.

22 **MR. OCCHIOGROSSO:** Payment is relevant whether she
23 visited or not.

24 A Repeat your question.

25 Q Since the trial of July 2013, have you visited any of

1 your treating doctors as a result of the June 2, 2010 accident?

2 A I visit my treating doctors none of the doctor that
3 treat me for the accident because I have no coverage. So only
4 person I can go to is my private doctors. This is covered by
5 medicare. So I haven't visit them because I have no coverage
6 with none of these doctors.

7 Q Who have you visited?

8 A My private doctors.

9 Q Who are they?

10 A In the HIP Center.

11 Q Excuse me?

12 A In the Health center, the HIP Center. Dr. Jhroo,
13 J-H-R-O-O.

14 Q Any other doctors you've visited since the trial?

15 A I visit my doctor in the city, Dr. Farmer. I visit my
16 gynecologist.

17 Q I am just talking about doctors?

18 A Treating.

19 Q Ms. McNight. I'm only speaking about doctors you've
20 visited since the trial as a result of the accident?

21 A No. I haven't visited anybody from those. I haven't
22 visited any of those doctors because I have no coverage from
23 them. The doctor that I have been visiting is my doctor from the
24 HIP center.

25 Q And when you visit your doctor from the HIP Center you

1 are talking about Dr. Jhroo?

2 A Yes.

3 Q When you visited Dr. Jhroo, was that as a result of the
4 June 2, 2010 accident?

5 A No, that is my regular doctor.

6 Q That's your primary care physician.

7 A Yes.

8 Q So beside Dr. Jhroo, you said you also visited
9 Dr. Farmer. You visited Dr. Farmer after the trial of July 2013?

10 A Yes.

11 Q And when you visited Dr. Farmer, was that as a result
12 of the accident of June 2, 2010?

13 A No.

14 Q So are there any other doctors -- is there any doctors
15 that you visited after the trial as a result of the accident of
16 June 2, 2010?

17 A No. I can't remember visiting anybody after them.
18 After the trial.

19 Q Now, let's shift here a little bit.

20 Before your accident of June 2010, you weren't
21 working, correct?

22 A No.

23 Q The last time you worked was in September of 2005,
24 correct?

25 A Yes.

1 Q And that was at a place call Green Park Center,
2 correct?

3 A Yes.

4 Q And so that five years between Green Park Center and
5 the time of the accident, you had not work, correct?

6 A No.

7 Q And you also -- before the accident of June 2, 2010 you
8 had surgery to your right shoulder, correct in 2004?

9 A Yes.

10 Q And you also had fusion surgery to your lower back in
11 2006?

12 A Yes.

13 Q And that was as a result of you injuring your lower
14 back, your right shoulder and pain and stiffness in your neck
15 from the March 4, 2002 accident?

16 **MR. OCCHIOGROSSO:** Objection to the form of the
17 Yes.

18 **THE COURT:** I will allow it. You may answer it.

19 A Yes.

20 Q As result of that March 2002 accident, you received
21 Workers' Compensation benefits, Correct?

22 A Yes.

23 Q And you're currently -- at the time of the trial, you
24 were receiving Workers' Compensation benefit for that March 2002
25 accident, correct?

1 A Yes.

2 Q And you're currently receiving Worker's Compensation
3 Benefit for that March 2002 accident, correct?

4 A Yes.

5 Q And the benefit that you are receiving is \$205 per
6 week?

7 A Yes.

8 Q Also as a result of the March 2002 accident, you have
9 received social security disability benefit, correct?

10 A Yes.

11 Q And by the way, you were categorized by Workers
12 Compensation that you were permanently disabled?

13 A By who, Workers Compensation?

14 Q Yes, Workers' Compensation?

15 A No.

16 Q You weren't categorized as permanently disabled?

17 A No, sir.

18 **MR. RHODEN:** Your honor, I would like to offer
19 into evidence a copy of the certified record from Workers
20 Compensation.

21 **THE COURT:** Show to counsel, please.

22 (handing)

23 **MR. ARANKI:** Your honor, I don't see any
24 certification. I am not sure that this is certified.

25 **MR. RHODEN:** Do you have the certification page.

1 **MS. CORCHIA:** Yes.

2 **MR. ARANKI:** He is going to pull one piece of
3 paper. I would like to see the whole thing.

4 **MR. RHODEN:** You want to see the whole records?

5 **MR. ARANKI:** I am not taking his word that it is
6 certified.

7 **THE COURT:** Let's see the document.

8 (handling).

9 **MR. OCCHIOGROSSO:** Your honor, is this for our
10 edification? Was this received via subpoena by the
11 subpoena records room?

12 **THE COURT:** Counsel.

13 **MR. RHODEN:** These documents was received to our
14 office, Judge. These were received to our offices.

15 **MR. OCCHIOGROSSO:** We object to the introduction
16 of the document. The standard at this hearing is higher
17 than at a trial. At a trial where it is a preponderance of
18 the evidence as the Court is well aware and was belabor
19 throughout this trial for documents to be admissible, they
20 would have to be received with a certification in the
21 subpoena records room. We have no idea as to the
22 authenticity of this document being proffered at this
23 hearing which has a higher standard of proof than a trial.
24 For that reason, we object.

25 **MR. RHODEN:** Your honor, this hearing -- Your

1 honor, there is no requirement that at a hearing that
2 document has to come through the subpoena records room as a
3 trial that certainly is the case that must come through
4 subpoena records room. I would like to point out, your
5 Honor that documents was admitted into evidence during the
6 trial by the Plaintiff that did not come through the
7 subpoena records room over defendant's objection. But it
8 was nonetheless admitted into evidence.

9 **MR. OCCHIOGROSSO:** Judge, the distinction that
10 counsel seek to draw is illusory. To say no, no subpoena
11 requirements is only for trial. As I have just
12 articulated, the standard of proof is higher here. I don't
13 see why the Court would somehow turn its back on the
14 requirements that document be authenticated when the
15 hearing has a higher standard of proof for the party
16 proffering the document than would a trial.

17 **MR. RHODEN:** And there are --

18 **MR. OCCHIOGROSSO:** That's inconsistent.

19 **MR. RHODEN:** The document are authenticated
20 document the top of the certification page.

21 **MR. OCCHIOGROSSO:** Your honor, we never received a
22 copy of this. We never seen a subpoena for it. And for
23 that reason, we object that the document is not
24 authenticated. Cannot be authenticated for the purposes of
25 being admitted and satisfying the threshold determinations

1 based on the burden of proof at this hearing for this
2 court.

3 **MR. RHODEN:** Your honor, as you may recall, we
4 have conferences regarding this hearing back in March. And
5 in that conference, they admitted that they also provide us
6 copy of those Workers' Compensation Records. So for them
7 to say we don't have copies of the records is a falsehood.
8 In writing to the Court, they admitted they provided the
9 Transit Authority copies of these very records.

10 **THE COURT:** We will mark it for identification
11 purposes. I will make a determination. Let's move on.

12 **MR. RHODEN:** Thank you, your honor.

13 (Whereupon, Defendant's A, was marked for
14 identification)

15 **MR. OCCHIOGROSSO:** Judge, just this last point. I
16 just want to be clear. I don't know what he is saying we
17 said that they received. But these documents, stack of
18 papers, I have no ideas what is in that stack of papers.

19 **THE COURT:** Let's please continue, counselor.

20 **MR. RHODEN:** Thank you, your honor.

21 Q Now, I want to show you.

22 **MR. RHODEN:** I would like to have that mark
23 separately from the stack, Your Honor?

24 **THE COURT:** Is that the same?

25 **MR. RHODEN:** Yes, they have seen it, Judge.

1 **MR. ARANKI:** Same objection, Your Honor.

2 **THE COURT:** I will mark it for identification
3 purposes. Let's move.

4 (Whereupon, Defendant's B, was marked for
5 identification)

6 (handling)

7 Q I want to show you, Ms. McNight, what's been marked for
8 identification as Defendant's B. I want you to take a look at
9 that document.

10 **THE COURT:** Please continue.

11 Q Is it true that that document indicated that you're
12 classified as permanently partially disabled?

13 A Yes, permanent partial. Not total.

14 **MR. OCCHIOGROSSO:** Objection. Number of basis for
15 the objection. First of all, again it's the best evidence
16 rule. Counsel thinks he has an admissible document that in
17 some way proves such a burden here. None of us is here to
18 have him impeach Mrs. McNight about her knowledge of what
19 is says in her Worker's Compensation record. The far more
20 expeditious way to do this and get to a decision that's a
21 year overdue already, not because of anything the Court has
22 done or not have done, would be to just put the document in
23 and ask for a decision from the Court. There is no reason
24 to badger Ms. McNight of what she does or does not know in
25 the Workers Compensation file. Furthermore, your honor,

1 unless and until Mr. Rhoden can show that the determination
2 of Workers Compensation somehow beared on the injury
3 suffered in the subject accident, there is no relevance to
4 the Court's decision here. The standard is very specific.
5 And the reasonable certainty test that the Second
6 Department sets out says that to meet the burden, the
7 defendant has to be able to show that the allege collateral
8 source payment must be shown to specifically correspond to
9 particular items of economic loss awarded by the trier of
10 fact. That means the jury in this case. The jury in this
11 case awards based on an accident in 2010. Nothing in
12 Workers Compensation file speaks to anything that happen in
13 2010. The finding of the disability pertains to an
14 accident years prior. Different injuries. Different
15 accident. Has nothing to do. There is no way they can
16 ever prove that it matches.

17 **THE COURT:** Counselor.

18 **MR. RHODEN:** Thank you. Your honor, the proof is
19 in the pudding. My next question to her. The document
20 she's looking at is signed by her. It is her signature on
21 the document. So for them --

22 **MR. OCCHIOGROSSO:** That is fine.

23 **THE COURT:** Let's continue, counsel. Off the
24 record.

25 (At which time, there was an off-the-record

1 **discussion held)**

2 Q Ms. McNight, is that your signature on that document.

3 A Yes, it is.

4 Q So you signed that document and that document was
5 signed back in 2009, correct?

6 A Yes.

7 Q November 2009. And the document that you signed it is
8 classified -- you are classified there as permanently partial
9 disabled, correct. The document that you signed, that's what it
10 says?

11 A Yes.

12 Q And you are classified as permanently partial disable
13 before the accident of June 2, 2010, correct?

14 **MR. OCCHIOGROSSO:** Your honor, we will stipulate
15 to that. We will stipulate to that.

16 A Yes.

17 **MR. OCCHIOGROSSO:** She was found permanently
18 partially disabled the year before?

19 **THE COURT:** That particular point has been
20 stipulated. Let's move forward.

21 **MR. RHODEN:** Thank you, your honor.

22 Q Also after the accident of March 2002 you also received
23 social security disability benefit, correct?

24 A Yes.

25 Q And as of March 2008, you were receiving social

1 security disability for yourself in the tune of \$1080 a month,
2 correct?

3 A I cannot tell you the amount. But I said Yes I
4 received social security benefit. I cannot tell you the amount.

5 Q I will read it from your trial transcript Ms. McNight
6 in 2013. Were you ask the following question and did you give
7 the following answer to the trial?

8 **"QUESTION:** And you of were receiving
9 approximately \$1,080 a month for social security disability
10 benefit.

11 **"ANSWER:** Yes, for me. Yes.

12 Q Did you give that answer back in the time of the trial?

13 A That is what I am saying. Even though if I said Yes
14 back then, I don't --

15 **MR. OCCHIOGROSSO:** The same point. He could have
16 read the transcript. We would have walked in. He could
17 have read the transcript. It is from the trial. There is
18 no reason to -- just want another crack of cross-examining
19 the plaintiff.

20 **THE COURT:** Can we stipulate that the amount is
21 \$1080.

22 **MR. OCCHIOGROSSO:** We can stipulate that that's
23 what the trial transcript says.

24 **THE COURT:** That is what we will stipulate to.

25 **MR. OCCHIOGROSSO:** That's all.

1 **THE COURT:** We are not retrying this particular
2 case.

3 **MR. OCCHIOGROSSO:** Judge, we are stipulating he
4 has read accurately from the trial transcript. That's it.

5 **MR. RHODEN:** Certainly that is sufficient, Your
6 Honor.

7 **MR. OCCHIOGROSSO:** Well, that's your burden.

8 **THE COURT:** I am giving you every opportunity.

9 Q And also, Ms. McNight, you also received social
10 security benefit on behalf of your two children?

11 **MR. OCCHIOGROSSO:** Objection. Relevance. There
12 is no award on the verdict sheet that has anything to do
13 with children.

14 **MR. RHODEN:** It is very relevant. The law says
15 the benefits that she received on behalf of her children is
16 also subject to collateral source hearing.

17 **THE COURT:** I am going to allow it. You may
18 answer the question.

19 A Yes.

20 Q And you received \$470 a month for both of your
21 children, correct?

22 A When you say both of them, you putting all the money
23 together, you are saying they said 400 per person.

24 Q Together?

25 A Yes.

1 Q And what is the date of birth of your two children?

2 A 7/7/96.

3 Q And these are twins?

4 A Yes.

5 Q And are they in school?

6 A Yes.

7 Q What grade are they in?

8 A They are graduating today.

9 Q Today?

10 A Yes.

11 Q Are they graduating from high school today?

12 A Yes.

13 Q Are they planning on going to college.

14 A Yes.

15 Q What college do they plan on going?

16 **MR. OCCHIOGROSSO:** Objection, relevance.

17 **THE COURT:** Sustained.

18 **MR. RHODEN:** Subject to connection, Your Honor,
19 regarding benefits, Judge?

20 **THE COURT:** I'm reversing myself. You may
21 answer..

22 A One going City Tech and one is going to Medgar Evers.

23 Q And these are all City Universities of New York?

24 A Yes.

25 Q Four year institution, correct?

1 A Yes.

2 Q Now, you're still currently receiving social
3 security -- at the time of the trial, you were receiving social
4 security benefits, correct?

5 A Yes.

6 Q And from the time you start receiving social security
7 disability until today you get an increase, a yearly increase in
8 that benefit, correct?

9 A Yes. I think it's on a 3 percent increase per year. I
10 think every January. I am not sure.

11 Q And same thing for your children. There is an increase
12 in the benefit as well, correct?

13 A I don't know if they get an increase. I know I do.
14 But it is not something that I know to say I know I can say yes
15 to.

16 Q Well, Ms. McNight, when the check for your children
17 comes, it comes to you; isn't that true?

18 A It go directly to the bank, so I cannot tell you. They
19 have increase on there. You hardly even see an increase. It is
20 hard to explain the increase because I know nothing about it.
21 But I can't answer that question on a direct yes or no. If that
22 is how or how it works, that is how it is.

23 Q Now, you understand that when you start to receive the
24 social security disability benefit you know that if you were
25 working at the time, you would not be receiving those benefits,

1 correct?

2 **MR. OCCHIOGROSSO:** Objection.

3 **THE COURT:** Sustained. Sustained.

4 **MR. RHODEN:** Your honor, it goes --

5 **MR. OCCHIOGROSSO:** It can go to whatever it has to
6 go.

7 **THE COURT:** Counselors. Objection is sustained.
8 If someone doesn't agree, make an exception.

9 **MR. RHODEN:** We take an exception.

10 **THE COURT:** Counselor, you have five minutes.

11 Q How much are you currently receiving from disability.

12 A 1000 -- I can't remember the exact figure. But it is
13 1000 something.

14 Q It is more than what you were receiving back in
15 July 2013?

16 A It is less.

17 Q At the time of the trial.

18 A It's less than. I think it is 109 or -- let's see 159
19 as of right now. It is less than.

20 Q Now, did you bring --

21 **THE COURT:** I'm sorry. What is the number.

22 A 159.

23 Q When you say 159, what do you mean?

24 A \$1059.

25 Q Did you bring a statement with you from the disability

1 benefit?

2 **MR. OCCHIOGROSSO:** Objection. Best evidence rule.

3 He's had a year to get her social security records.

4 **THE COURT:** I will allow it. You may answer.

5 A No, I did not.

6 Q Now, the subpoena -- you received a subpoena and the
7 subpoena call that you bring with you any statement regarding the
8 benefits you receive; isn't that true?

9 A But I have to call social security to get that.

10 Q Aren't you sent on a monthly basis statement from
11 social security disability?

12 A No, sir.

13 Q How often were you sent statements from social security
14 disability?

15 A I don't get statement from social security.

16 Q You get no statement from them whatsoever?

17 A Once in a while. I don't know when they send out a
18 statement. But I don't get statement from social security. My
19 money go direct deposit to my bank account. So if I want a
20 letter from social security, I have to go into social security
21 and request a letter.

22 Q You said you get statements from them once in a while.
23 How often is it; monthly, is it twice a year?

24 A I don't know.

25 Q Four times a year?

1 A No, I don't know. If I want something from social
2 security, I have to request it.

3 Q But you do get statements from social security?

4 **MR. OCCHIOGROSSO:** Objection. Asked and answered
5 three or four times.

6 **THE COURT:** Sustained.

7 Q Did you make a search before you come to court today
8 for the statement that you received from social security?

9 A My answer will be no.

10 Q Now, you received a subpoena --

11 **MR. RHODEN:** Your honor, I put into evidence the
12 subpoena that was sent to her. Your honor, I would like to
13 mark that into evidence.

14 **MR. OCCHIOGROSSO:** If she can authenticate it.

15 **MR. RHODEN:** It's a subpoena, Your Honor. It was
16 sent to their office. I would like to mark Your Honor.

17 **THE COURT:** Mark it for identification purposes
18 Defendant's C.

19 (Whereupon, Defendant's C, was marked for
20 identification)

21 **THE COURT:** You've got one question.

22 Q And did you make a search for any statements? Did you
23 receive any statement from Worker's Compensation? Did you
24 receive statement from Workers Compensation?

25 A No, sir.

1 Q You have never received any type of statement regarding
2 your benefit from Workers Compensation?

3 A No, sir.

4 **THE COURT:** Very will. Counselor?

5 **MR. OCCHIOGROSSO:** No question.

6 **THE COURT:** That's it. I have been watching the
7 time. I gave you fair amount of time. I have to get
8 Plaintiff amount of time. Counselor, any questions.

9 **MR. OCCHIOGROSSO:** No questions for Mrs. McNight.
10 We reserve the right to comment at the closing of the
11 record.

12 **THE COURT:** Ms. McNight, you may step down.

13 **THE WITNESS:** Thank you.

14 **THE COURT:** Since we have some more time, I will
15 allow the party to wrap up by statement.

16 **MR. RHODEN:** Your honor, we have other evidence.

17 **THE COURT:** Well, then continue.

18 **MR. RHODEN:** Your honor, I would like to put into
19 evidence from Workers Compensation Board certified record
20 document dated May 23, 2013 that show even as of that day
21 she continued to have permanent partial disability. That
22 is marked.

23 **THE COURT:** Show it to counsel.

24 (handing).

25 **MR. RHODEN:** May I just continue, your honor.

1 **THE COURT:** Continue, please.

2 **MR. OCCHIOGROSSO:** There is no certification on
3 the document.

4 **MR. RHODEN:** It's a part of the record. That is
5 already been marked.

6 **MR. OCCHIOGROSSO:** Same objection.

7 **MR. RHODEN:** As A --

8 **THE COURT:** We will mark it as defendant's D for
9 identification.

10 **MR. OCCHIOGROSSO:** It hasn't been marked into
11 evidence nothing has been marked into evidence.

12 **THE COURT:** I am going to mark it Defendant's D
13 for identification purposes.

14 (Whereupon, Defendant's Exhibit D, was marked for
15 identification)

16 **MR. OCCHIOGROSSO:** Yes.

17 **THE COURT:** Please continue.

18 **MR. RHODEN:** Also I would like to mark into
19 evidence as Defendant's Exhibit E. Still again a part of
20 the Workers Compensation records of certified Workers
21 Compensation shows she's receiving \$205 a month for
22 permanent partial disability.

23 **MR. OCCHIOGROSSO:** Same objection.

24 **THE COURT:** Marked Defendant's E.

25 (Whereupon, Defendant's E, was marked for

1 identification)

2 **MR. RHODEN:** Your honor, also at this time, I
3 would like to put into evidence table, your honor. And
4 counsel have received a copy of this table yesterday. And
5 it's a table that shows her Workers Comp Benefit. That was
6 \$205 per week. Her social security disability benefit for
7 \$1085 per month for herself and \$470 a month for her
8 children. Which would give you from the time of the
9 accident to the time of the trial a total of \$91,540. I
10 can put that into evidence as well.

11 **MR. OCCHIOGROSSO:** Just that there is absolutely
12 no evidentiary value at all. This is a piece of paper
13 created by the attorney. I will object to it. It is
14 completely hearsay and I object to it vehemently on that
15 basis.

16 **THE COURT:** We will mark it for identification.
17 (Whereupon, Defendant's F, was marked for
18 identification)

19 **THE COURT:** Counsel, step up. We are off the
20 record.

21 (At which time, there was an off-the-record
22 discussion held)

23 **THE COURT:** We just had a side bar. I said in the
24 interest of moving this case forward, the Defendant will
25 provide an interest exhibit. The exhibit will be marked

1 for identification purposes only. And the Court will make
2 a determination of whether any and all will be admitted
3 into evidence. They will be --

4 **MR. OCCHIOGROSSO:** I just ask respectfully with
5 the understanding that there is a standing objection to the
6 admission of all of these documents.

7 **THE COURT:** Let the record reflect such. Please
8 continue.

9 **MR. RHODEN:** Yes, your honor.

10 Your honor, I want to put into evidence three
11 documents. One from -- it is from the website from the
12 social security disability website where it indicates that
13 it gives an annual cost of increase, the COLA increase and
14 the percentage of these COLA increase. I will put into
15 evidence as Defendant's Exhibit G.

16 **MR. OCCHIOGROSSO:** I want to just additionally
17 preserve a hearsay objection to the document.

18 (Whereupon, Defendant's G, was marked for
19 identification)

20 **MR. RHODEN:** Also Judge, and by the way as
21 Defendant's Exhibit G the COLA increases are based on the
22 CPI, the customer price index. And I would also like to
23 put into evidence a different Exhibit H. It is from the
24 office of the Congressional Congress of the United States
25 Budget Office. It is from that website of the CDO, which

1 projects the CPI from now and into the future what the CPI
2 will be. The increase in CPI. And it has an average
3 increase of 2.3 percent.

4 **MR. OCCHIOGROSSO:** Standing objection on the basis
5 of incompetent hearsay that anything that Mr. Rhoden
6 downloaded from the internet.

7 **THE COURT:** Continue.

8 (Whereupon, Defendant's H, was marked for
9 identification)

10 **MR. RHODEN:** Also, Your Honor, I would like to put
11 into evidence again from this website, The Social Security
12 Disability Benefits a document which indicates in order to
13 receive social security disability, one must demonstrate
14 that they cannot work in the job that they were working nor
15 can they work in any other job. I can put this into
16 evidence as Defendant's I.

17 **MR. OCCHIOGROSSO:** Same objections.

18 **THE COURT:** Continue.

19 (Whereupon, Defendant's was marked for
20 identification).

21 **MR. RHODEN:** Also I want to put into evidence as
22 Defendant's Exhibit J a certified copy of the Workers
23 Compensation payment records that was paid to Ms. McNight

24 **THE COURT:** It's Defendant's J, I believe, for
25 identification purposes. Continue. Objections are noted

1 as ongoing. Continue.

2 (Whereupon, Defendant's J, was marked for
3 identification).

4 **MR. RHODEN:** I would like to also put into
5 evidence Defendant's Exhibit K is a certified copy of the
6 no-fault payment records made to Ms. McNight.

7 **MR. ARANKI:** Your honor, can we see it.
8 (handing)

9 **THE COURT:** With respect to Defendant's K, counsel
10 for Plaintiff any objection.

11 **MR. OCCHIOGROSSO:** Yes, your honor. On the face
12 of the certification, we object to it as its impossible to
13 authenticate it. Because it is factually inaccurate
14 somebody by the name of Joan, J-O-A-N, Jones, fills out and
15 signs a certification saying that she is not a party to the
16 case. And at the same time list as her employer New York
17 City Transit.

18 **THE COURT:** Very well continue.

19 (Whereupon, Defendant's K was marked for
20 identification)

21 **MR. RHODEN:** Also put into evidence is a chart
22 based upon for future loss wages for Ms. McNight based upon
23 her receiving \$1085 from starting back in 2013 with the
24 standard COLA increases that is indicated up until 2024.
25 That is 11 years in the future. That is what the jury

1 awarded future loss wages for 11 years. So both 11 years
2 into the future with the COLA increases. She has a total
3 projected future income of \$160,145.05. And this was given
4 to the Court yesterday and to counsel yesterday.

5 **MR. OCCHIOGROSSO:** Your honor, objection. This is
6 economics an calculations according to Horace Rhoden.
7 There is nothing competent about the document. It is
8 inconsistent with Rosemary McNight's sworn testimony about
9 what she is currently receiving.

10 **THE COURT:** Mark it. Continue.

11 (Whereupon, Defendant's K, was marked for
12 identification).

13 **THE COURT:** I would have to allow the Plaintiff to
14 put something on the record.

15 **MR. RHODEN:** It's a few more, Judge.

16 **THE COURT:** Wrap them altogether and let's mark
17 them and move it on.

18 **MR. RHODEN:** Also putting into evidence, Your
19 Honor, again it's for future loss wages regarding the
20 children's benefit who have received \$470 as of 2013, \$470
21 with the standard COLA increases out to the next four
22 years. She testified that they are in college and they
23 will be going to college on a four-year institution. That
24 goes out to the four years of this benefit that they are
25 expected to receive. Comes to a total of 45,606.97.

1 **MR. OCCHIOGROSSO:** Largely the same objection.
2 The fact that they are going to continue to receive the
3 benefit of the four years of college is absolutely
4 speculative argumentative. There is no competent proof or
5 expert testimony put before the Court to that affect.

6 **THE COURT:** Three minutes, counselor.

7 **MR. RHODEN:** Also, I want to put into evidence,
8 Your Honor, we were given an authorization for the Social
9 Security Disability benefit from Plaintiff. We tried to
10 process the authorization. That authorization was rejected
11 from the Department of Social Security Benefits because it
12 was altered. They said they were altered. We sent the
13 letter back to the Plaintiff telling us we need new
14 authorization because the old one you gave us was altered.
15 And to date, Your Honor, they have not given us new
16 authorization for social security disability. Which is now
17 we are force to depend on her testimony rather than actual
18 records. We also put this document into evidence as well.

19 **THE COURT:** Very well. Continue.

20 (Whereupon, Defendant's Exhibit N, was marked for
21 identification).

22 **MR. RHODEN:** Judge, I know I am going to have five
23 minutes to sum all of this up. Judge, I will just put the
24 bulk of this into evidence and based on my five minutes to
25 sum up.

1 **THE COURT:** I am going to allow counsel for
2 Plaintiff to go. In fact, why don't you finish.

3 **MR. RHODEN:** I will be able to sum up at the end,
4 Judge.

5 **THE COURT:** Yes.

6 **MR. RHODEN:** I would like to put into evidence
7 records from Lutheran Medical Center that came from the
8 subpoena records room, Your Honor. That was entered into
9 evidence during the time of trial. And it was based on the
10 Plaintiff's subpoena.

11 **MR. OCCHIOGROSSO:** We don't know what it is, Your
12 Honor. You said this was subpoenaed and this was at trial.
13 Was it?

14 **THE COURT:** Anything further.

15 **MR. RHODEN:** I am just waiting for that to be
16 marked, your honor. They still have it.

17 (Whereupon, Defendant's M, was marked for
18 identification)

19 **MR. RHODEN:** Also, I would like to mark into
20 evidence from the Queens Orthoscopic and Sports Medicine it
21 is subpoena records room that was subpoenaed by the
22 Plaintiff during the trial.

23 **MR. OCCHIOGROSSO:** Judge, I only ask was it
24 certified. Is it a trial exhibit. It was subpoenaed by
25 the Plaintiff for trial. Is it a certified exhibit? What

1 exhibit was it at trial? Is there an answer to any of
2 this?

3 **THE COURT:** Take a look at this and --

4 **MR. RHODEN:** Yes, your honor. That hasn't been
5 marked. I don't want to --

6 **THE COURT:** The question is and you have heard the
7 question. Respond.

8 **MR. RHODEN:** Excuse me.

9 **MR. OCCHIOGROSSO:** Was it a trial exhibit? If so,
10 what number was it admitted into evidence at the trial?

11 **MR. RHODEN:** Judge, this is offered. This was
12 from -- it is certified records from the subpoena that was
13 in the subpoena record room that was subpoenaed by
14 Plaintiff.

15 **THE COURT:** Mark it for identification purposes.

16 (Whereupon, Defendant's Exhibit P, was marked for
17 identification)

18 **MR. RHODEN:** More stuff that needs to be in, Your
19 Honor. I'm moving in as Q, records from the Hospital for
20 Special Surgery that came from the subpoena records room
21 that was subpoenaed by Plaintiff's counsel.

22 **MR. OCCHIOGROSSO:** Are these medical records,
23 billing. There is n description at all.

24 **MR. RHODEN:** It's right here. (indicating)
25 (handing)

1 (Whereupon, Defendant's Exhibit Q, was marked for
2 identification)

3 **MR. RHODEN:** Next, your honor, is R. Plaintiff's
4 Exhibit R into evidence. I would like to submit
5 Defendant's Exhibit R, your honor. Acupuncture Health Care
6 Plaza Records. Again, that was subpoenaed in the subpoena
7 records room by the Plaintiff's office.

8 (Whereupon, Defendant's R, was marked for
9 identification)

10 **THE COURT:** We are ready to move forward.
11 Anything further, counselor?

12 **MR. RHODEN:** This is in.

13 **THE COURT:** Are we ready to hear from Plaintiffs.
14 Very well. Counsel, for the plaintiff.

15 **MR. OCCHIOGROSSO:** Your Honor, I apologize. It's
16 bad form. Ms. McNight was already on the stand. There are
17 a few documents that I would like to authenticate through
18 her testimony. If I can just have her retake the stand for
19 thirty seconds.

20 **THE COURT:** Ms. McNight.

21 **MR. OCCHIOGROSSO:** I apologize. It is my fault.

22 (Whereupon, the witness resumes the witness stand.)

23 **MR. OCCHIOGROSSO:** Three separate documents for
24 the record.

25 **THE COURT:** One, two and three.

1 **MS. CORCHIA:** Can you show them to the defense
2 first.

3 (handling).

4 (Whereupon, Plaintiff's 1,2 & 3, was marked for
5 identification)

6 **THE COURT:** Before it will it before it is shown
7 to the witness, it would be shown to you..

8 **MR. OCCHIOGROSSO:** I can lay the foundation record
9 questions.

10 **THE COURT:** Go right ahead.

11 CROSS-EXAMINATION

12 BY MR. OCCHIOGROSSO:

13 Q Mrs. McNight, you testified earlier today about that
14 certain of the treaters that you treated with for the injuries
15 you suffered in the subject accident, the June 2010 accident that
16 you have liens. Your understanding is that you owe money. You
17 still have to pay them back; is that right?

18 A Yes.

19 Q In other words, it is correct your understanding is
20 that the treatment for them was not paid for by Worker's
21 compensation?

22 A Yes.

23 Q And in fact did there come a point and time when you
24 received -- I know you don't have copies now. Was there a point
25 and time when you received lien notices from some of the treaters

1 that you were required to sign?

2 A Yes.

3 Q Additionally, you were ask some questions earlier today
4 and certainly without in any way conceding there is relevance in
5 social security disability as it pertains to today's hearing,
6 have you received word from Social Security with respect to when
7 benefits you received for your twin boys will stop?

8 A Yes.

9 Q And what is your understanding from what you have
10 received from social security as to when benefits would be cut
11 off for the boys?

12 A When they turn 18.

13 Q And for the record, when did they turn 18th .

14 A On the 7th of July.

15 Q Of this year?

16 A Yes.

17 **MR. RHODEN:** I am looking at the document,
18 counselor.

19 **MR. OCCHIOGROSSO:** You --

20 **MR. RHODEN:** I am looking at the document,
21 counselor.

22 **MR. OCCHIOGROSSO:** How many copies did you give
23 them.

24 **MR. RHODEN:** I am looking at the document. Your
25 honor, I am looking at the document. He took it away I'm

1 looking at it.

2 **MR. OCCHIOGROSSO:** You are looking at -- these are
3 the two you are looking at right here. This is the same
4 document.

5 **THE COURT:** Let's move forward. If another
6 outburst, I will stop the hearing.

7 Counsel for the plaintiff, please continue.

8 **MR. RHODEN:** May I continue to look at the
9 documents.

10 **THE COURT:** Why don't we use -- counselor, do you
11 have copies.

12 **MR. OCCHIOGROSSO:** For the record, a copy has been
13 handed to defense.

14 **THE COURT:** Let the record reflect that counsel
15 for the defense is looking at the document. We are going
16 to continue.

17 **MR. RHODEN:** I am not looking at any document,
18 Your Honor. I don't have any document.

19 **MR. OCCHIOGROSSO:** The same document is right in
20 front of them.

21 **MR. RHODEN:** Let me verify that it's the same
22 document, Judge. For the record, Judge, there is two
23 documents here. And there is three here. That is a
24 problem already. You can't have --

25 **MR. OCCHIOGROSSO:** Can I have the other two so we

1 can move along. May I approach, Your Honor?

2 **THE COURT:** Yes. Approach.

3 Q I am asking you to look at Plaintiff's Exhibit 1 and 2
4 for identification. And I ask, as you look at that -- first
5 looking at Plaintiff's 1. Does your signature appear on
6 Plaintiff's 1?

7 A Yes.

8 **MR. RHODEN:** Objection.

9 **THE COURT:** I will allow it.

10 A Yes.

11 Q And as to Plaintiff's 2 for identification, does your
12 signature appear on that document as well?

13 **MR. RHODEN:** Objection.

14 A Yes.

15 **THE COURT:** I'll allow it.

16 Q Do those document appears to be lien notices that you
17 executed with the operating surgeons Dr. Manuel and Dr. Gerland
18 who perform surgery on you in connection with the injuries you
19 suffered in the June 2010 accident?

20 A Yes.

21 **MR. OCCHIOGROSSO:** I would ask that they be moved
22 into evidence as Plaintiff's 1 and 2.

23 **MR. RHODEN:** Objection?

24 **THE COURT:** I will mark it for the purposes of
25 this hearing as for identification purposes. Please

1 continue.

2 (handing).

3 **MR. OCCHIOGROSSO:** May I approach, your honor.

4 **THE COURT:** Yes approach.

5 Q Mrs. McNight, I asked you a few questions moment ago
6 about if you were aware based on communications you received from
7 social security as to when the benefit would cease from your soon
8 to be 18 year old twin sons. You are holding Plaintiff's 3 pour
9 identification in your hand. Do you recognize that document?

10 A Yes.

11 Q What do you recognize that to two-page document to be?
12 What do you recognize that as.

13 A As paper from social security for Justin and Tyrone.

14 Q Are those the names of your sons?

15 A Justin Frazier and Tyrone Frazier.

16 Q And does that document inform you that this benefit
17 would be cut off at the age of 18 unless at the time that they
18 were enrolled in a school at the level of high school or lower?

19 A Yes.

20 **MR. OCCHIOGROSSO:** I ask that that be moved into
21 evidence as Plaintiff's Exhibit 3.

22 (Whereupon, Plaintiff's 3, was moved into
23 evidence)

24 REDIRECT EXAMINATION

25

1 BY MR. RHODEN:

2 Q Mrs. McNight, you were given subpoena and you were
3 called to testify on behalf of the defendant in this hearing;
4 isn't that true?

5 A A subpoena was sent to you via your attorney. And one
6 of the things in the subpoena that you were suppose to come to
7 this court to testify on behalf of the defendant; is that true.

8 **MR. OCCHIOGROSSO:** Your honor, the subpoena was as
9 Mr. Rhoden has said, the subpoena was served on the
10 attorney.

11 **MR. RHODEN:** She admit that she gotten the
12 subpoena, your honor.

13 Q Isn't it a provision of the subpoena that you were also
14 required to bring with you and produce at the time and place
15 aforesaid all notices of decisions or determination as to the
16 continue receipt of these benefits and all reports of physical
17 examination conducted on behalf of Workers' Compensation Carrier,
18 Social Security Administration which you underwent for the
19 purposes of assessing your physical condition and/or assessment
20 and continuation of benefits?

21 **MR. OCCHIOGROSSO:** This is voir dire to the
22 authenticity or admissibility to the document?

23 **MR. RHODEN:** Your honor, this is not my question.

24 Q You told us during my examination under the defendant's
25 portion of the trial that you did not have any of these records.

1 Isn't that what you just said?

2 A Yes.

3 Q You come up now after the defendant pretty much rested
4 the judge made the defendant rested in this case. Now you bring
5 documents showing that you had lien documents; isn't that true?

6 A I told you I have the lien.

7 Q And now --

8 **THE COURT:** The point has been established.

9 Counsel, I have to wrap it up.

10 **MR. RHODEN:** Also not for just the lien document.
11 Also for the determination that social security has made
12 the determination which she did not bring under defendant's
13 portion.

14 **THE COURT:** Counsel, very quick..

15 **MR. OCCHIOGROSSO:** Very quick. I just want to
16 wrap up by saying, obviously the defendant bears the burden
17 at today's proceedings. And the Second Circuit and the
18 Court of Appeals have made clear that the burden that the
19 defendant bears in showing that there is a collateral
20 source setoff. So any award is that, it is more than a
21 preponderance of the evidence but less than proof beyond a
22 reasonable doubt. It is held to be clear and convincing
23 evidence that the result is highly probable. And the cases
24 were submitted to the Court, so I am not going to read
25 cites into the record. I would just note that in the

1 Second Circuit Decision, they specifically say that there
2 is two tiered evaluation to determine if the defendants are
3 entitled to the collateral source. And the second step of
4 that specifically says -- and I must read this cite. It's
5 the case of K-I-H-L v P-F-E-F-F-E-R Pheffer. And it is
6 Appellate Division Second Department Case 47AD Third 154,
7 deciding in November of 2007. And the second tier of that
8 evaluation is it has to be -- the defendant's proof must be
9 reasonable certain -- under the reasonable certainty
10 standard must show that "the entitlement to a collateral
11 source reduction payments which have been or will be
12 received by the Plaintiff must be shown to specifically
13 corresponds to particular items of economic loss awarded by
14 the trier of fact. And I just want to quote one other
15 thing from this Second Department Decision, which is the
16 following language. "Absent the reasonable certainty of
17 collateral source reductions, the statute to the extent it
18 departs from common law prefers double recoveries in favor
19 of Plaintiffs over the polar alternative of depriving
20 Plaintiffs of a compensatory award for economic loses to
21 which the trier of fact found them entitled.

22 Very briefly, Your Honor, the factual distinction that
23 the defendants cannot overcome and why they will never meet
24 the burden here is that social security disability and
25 Workers' Compensation never visited the issues of the

1 June 2010 accident which was the sole basis upon which the
2 trier of fact in this courtroom awarded the awards to
3 Rosemary McNight. Completely separate factual nexxus as
4 between social security and Workers' Compensation
5 determination was resulting from a 2002 work accident. And
6 the trier of fact in this courtroom determination is based
7 on the injuries Ms. McNight suffered from the June 2010
8 accident. Unless the defendant could have here shown the
9 Court by that clear and convincing standard that Workers
10 compensation benefit, Social Security Disability Benefits
11 somehow match up to the award which is impossible when you
12 are talking about different injuries. You are talking
13 about different disability findings made under different
14 standards by different adjudicative bodies. There is no
15 way they can ever prove that. And absent that proof and
16 absent meeting that standard with competent proof, which
17 none of the documents proffered support competent proof.
18 Absent meeting that standard, the law does favor what could
19 be determined a double recovery. In this case, it is not a
20 double recovery because Mrs. McNight was unfortunate enough
21 to suffer an accident and injuries for a time eliminated
22 her from the work force in 2002. What the jury at this
23 trial saw was that she had worked her way back to a point
24 where she was capable of reentering the work force. And
25 the jury believe that to the extent that they awarded her

1 past loss wages and future loss wages. Because they knew
2 and believed that Rosemary McNight was going to reenter the
3 work force. But the thing is that she never got a chance
4 to do that. So these two completely different issues can
5 never be just oppose together. 2002 accident and injuries.
6 2010. No one ever visited them concurrently. Not this
7 jury. Not Workers Compensation. Not Social Security
8 Disability. Not only has it ever happen, but the defense
9 will never prove that to this Court. That's why they
10 haven't demonstrated an entitlement to any collateral
11 source off set, Your Honor.

12 **THE COURT:** Counsel.

13 **MR. RHODEN:** Thank you, your honor. The evidence
14 is clear.

15 **THE COURT:** I'm sorry, one moment. Yes, you may
16 sit down.

17 **MR. OCCHIOGROSSO:** Yes, I'm sorry.

18 (Whereupon, the witness was excused)

19 **MR. RHODEN:** The evidence is clear, your Honor,
20 that the Plaintiff has been receiving economic benefits at
21 the time of the June 2010 accident with the Transit
22 Authority. She was receiving economic benefits. No she
23 not working, but she was receiving economic benefit. And
24 she continue to receive those economic benefits up until
25 today. For years since 2002 to the present, she has been

1 receiving economic benefit. The jury was instructed not to
2 consider any benefits she received 2002 only from the
3 June 2010, which was appropriate. And then as you know any
4 collateral source off set would have happen at this
5 hearing. So because they didn't consider that, they gave
6 her, they awarded her approximately \$80,000 for past wages.
7 \$80,000 for past wages. And \$400,000 for future wages.
8 Now, it's this time that the fact that she was receiving an
9 income. It's the time to set off the income that she has
10 been receiving. And this is the hearing that we are to do
11 now. She has testified and it is clear and reasonable
12 certainty -- and the standard is not clear and convincing.
13 The standard by the record is reasonable certainty
14 standard. And it is reasonable certainty that she has been
15 receiving \$205 a month for Workers Compensation. She
16 testified at the trial she doesn't know what she was
17 receiving at the trial. She said she was receiving \$1080 a
18 month for social security disability. And her children was
19 receiving \$470 a month for socia security disability
20 benefits. So over for the past that's a total of, I would
21 put it on my chart that's marked for identification. So
22 that is total of 163 weeks from the time of the accident to
23 the time of the verdict, she has been receiving these
24 awards. And that's a total of \$91,500 of economic benefits
25 that she has been receiving. Which is more of the award

1 that the jury has awarded. So the entire award should be
2 discounted by this Court because she has received that.

3 Also, your honor, from the time of -- the next one
4 regarding future wages. The question is, is it reasonable
5 certainty that she will continue to receive these future
6 benefits into the future. Specifically to the next eleven
7 years into the future. Because that is what the jury
8 awarded her for eleven years. Judge, she has been
9 receiving these benefits since the accident of 2002 up
10 until this very date. Your honor, I submit to you that in
11 and of itself is indication that it is reasonable certain
12 that she will continue to receive these awards. She was
13 shown by the Workers Compensation board to be permanently
14 partially disabled. And you don't remember -- if you are
15 permanently disabled, you don't recover. So she's
16 personally disabled back in 2002, in 2009 and the time of
17 accident, she will be -- it is reasonable certainty that
18 she will be permanently disabled eleven years into the
19 future. So that also should -- and the fact that she's
20 permanently disable and in order for her to receive social
21 security benefits, the social security benefits indicate
22 that not only can she not work at the job that cause the
23 injury, but she cannot work at any other job. And that's
24 document is put into evidence from the social security
25 disability. So if she can't work at any other job, Your

1 Honor, then she can't get any future wages of any job that
2 she allegedly could have worked at. So that \$400,000
3 should be wiped out in total. Because the social security
4 and Workers Comp. has found her to be permanently disabled.
5 Now, if Judge is not going to wipe it out as it should be,
6 we can show that she will be getting into the future
7 approximately \$160,000. Now, if you don't want to accept
8 my calculation that I gave you in the chart, Your Honor,
9 all the judge has to do is to rule that she has been
10 getting benefit of \$1085 a month from 2013 is what she
11 testified to at the trial. \$1080 a month. And that there
12 is an increase. There is a COLA increase and it is
13 indicated from this Social Security Disability that they do
14 get increases. So post-judgment, we can have the experts
15 put the numbers in. I just did that for the Court with
16 those numbers. You don't have to accept my numbers. The
17 expert, when we do our proposed judgment can go ahead and
18 put the numbers in. But I submit to you that numbers is
19 \$160,145.05. But again, Your Honor don't have to take my
20 word. When we do the propose judgment the economic expert
21 can put that in during the proposed judgment.

22 Furthermore, when it comes to loss past medical
23 expenses, what they put into evidence as Plaintiff's
24 Exhibit A B and C for identification as Plaintiff's exhibit
25 AB and C, it doesn't indicate what these amounts are. They

1 are saying that she owes alleging owes some lien. It
2 doesn't say in those exhibits what these liens are and how
3 much the liens are. And, your honor, it is not for
4 Ms. McNight -- if there is some writing from some doctor,
5 it is for the doctor to come in to testify as to those
6 writing. Not from --

7 **MR. OCCHIOGROSSO:** Objection, Your Honor. The
8 burden is with the defendant. This is absurd.

9 **MR. RHODEN:** That's his case, Judge

10 **MR. OCCHIOGROSSO:** That is his case, Judge. My
11 case was done a year ago.

12 **THE COURT:** I will allow you an opportunity to
13 wrap up.

14 **MR. RHODEN:** If there is a lien from the doctors,
15 you know, those exhibits should have come from the doctors
16 not from Ms. McNight. If you use that as a business
17 record, it is not Ms. McNight's business record. It is the
18 doctor's business record. And if you want to say there is
19 a lien that she still has to pay for pass medical, we
20 should at least know what the amount is. Judge, you don't
21 know what the judgment is. We do know that collateral
22 source did pay. She admitted to that. And, your honor,
23 from the evidence we will show that it is \$50,000 that was
24 paid by no-fault and Workers' Compensation. So at a very
25 minimum \$50,000 of the past medical expenses should have

1 come off the top. She was asked during the time of trial
2 whether she paid any money out-of-pocket. She said no.
3 She didn't mention nothing about a loan that she had taken
4 \$60,000 loan. This is the first time in this entire
5 litigation we are hearing anything that she took out a loan
6 to cover her expenses.

7 Also regarding any liens. Judge, in evidence we have
8 records from these doctors and bills from the doctors and
9 there is nothing in this records that we put in that shows
10 a lien, Judge. Nothing in the records that shows that
11 there is a lien. We would submit, Judge, that she has not
12 paid. And she admitted that at trial any out-of-pocket
13 expenses. She has not provide any proof that she owes
14 anything. The proof is just simple. She me an invoice
15 from your doctor. Show me you owe me X amount. That is
16 all she had to do. Nothing like that. She gave some
17 what's Plaintiff's Exhibit A B and C. Some document that
18 doesn't say what the liens are or what the amount is.
19 Nothing's in there. So for that reason, your honor, it is
20 reasonably certain she did not pay anything out-of-pocket
21 and this actually happened in June of 2010 and June -- it
22 is now almost four and a half years since the accident
23 happened and she hasn't paid anything out-of-pocket yet.
24 It is reasonably certain, Judge, that she will not pay
25 anything out-of-pocket as far as the past medical expenses

1 And the past medical expenses of \$490,000 should be taken
2 into total are a minimum of \$50,000 from no-fault that New
3 York City Transit Authority should be taken out. As far as
4 the --

5 **THE COURT:** Counsel --

6 **MR. RHODEN:** One more thing. I have to go future
7 medical expenses, Judge, because that also should be taken
8 out in total. What we do know, Your Honor, it is been a
9 year since the trial. And what she has admitted to from
10 the time of the trial until now, she has not seen any
11 doctors regarding any treatment as a result of the June 2,
12 2010 accident. That was her testimony. Judge, she has
13 seen her primary care physician but not as a result of
14 June 2, 2010 accident. It is reasonable certainty she has
15 disability. She has social security disability. She
16 hasn't from the time of accident until now hasn't paid any
17 money out-of-pocket regarding these expenses. I think it
18 is reasonable certain that from now through the next eleven
19 years out she will not pay any money out-of-pocket for the
20 future medical expenses. And those also should be reduced.
21 It should be zero. And again like I said a year later, she
22 still has not seen a doctor.

23 **THE COURT:** Very well. I am going to turn it over
24 to Plaintiff now.

25 **MR. OCCHIOGROSSO:** A lot of the argument, most

1 respectfully, is an artful effort to burden shift.
2 Ms. McNight has already also proved what she needed to
3 prove about past medical expenses by virtue of the jury
4 awarding her \$190,000 after the trial. That's all she ever
5 had to prove. The defendant had to come in here and prove
6 to the Court that some portion of that was paid by
7 no-fault. Some portion was due and owing, etc, etc. She
8 didn't have to come in here and prove anything.

9 And as far as future payments whether or not she's
10 going to see a doctor since the trial, is absolutely
11 irrelevant to a collateral source analysis. It has nothing
12 to do with the collateral source analysis. The jury
13 awarded her \$700,000 for future medical care related to the
14 injuries in this case. What the defendant needed to do was
15 show the Court by clear and convincing evidence that some
16 collateral source is going to pay for that. Some portion
17 of that 700,000 is going to come from another source, the
18 medical treatment. They haven't done that. They haven't
19 shown the Court in any way that there is any comparative
20 analysis ever done between Worker's Comp and Social
21 Security finding that preceded this accident by eight
22 years. And what happened with the trier of fact in this
23 jury and the decisions they made in this case. I think
24 there is one more thing. I don't know if I will get there.
25 Thank you, your honor.

1 **THE COURT:** Well said.

2 **MS. CORCHIA:** Your honor, can I speak. I am talk
3 really fast. With regards to the social security
4 disability, we presented or about to present the Court with
5 case law saying Social Security disability is a collateral
6 source and surviving benefit for the children are a
7 collateral source. There is Court of Appeals Authority and
8 Second Department Authority. If the Court, I can read you
9 the citations, but we have them in memorandum.

10 **MR. RHODEN:** And we have a defendant's list of
11 cases that we ask --

12 **MR. OCCHIOGROSSO:** I will just ask if there is a
13 case that says Social Security Disability Finding other
14 than from the subject accident.

15 **THE COURT:** Is that what that case is from?

16 **MS. CORCHIA:** They don't restrict it.

17 **MR. OCCHIOGROSSO:** Well --

18 **MS. CORCHIA:** Nor has Plaintiff submitted a case
19 saying it has to be from the same accident. The
20 proposition is that Social Security Disability replicates
21 earning you would have made. And the case law says you
22 only have to look at the category. The category is the
23 same. Loss earning. It is in our memo and it is in the
24 cases that we cited.

25 **THE COURT:** Was that memo given to --

1 **MS. CORCHIA:** We have it here and we have copies.

2 **THE COURT:** Anything further?

3 **MS. CORCHIA:** Yes, your honor. I also wanted to
4 know that Workers Compensation likewise replicates earnings
5 that the Plaintiff would have made, that's Workers
6 Compensation Law talks about that. And because this
7 lawsuit was a car accident, this lawsuit was not a
8 work-related accident, there is no lien and therefore, the
9 Workers Compensation Benefit she received from the
10 March 2002 accident are collateral Sources. All you have
11 to correlate is that it replicates loss earning. And the
12 answer -- it could be no argument. The answer is yes, they
13 replicate loss earning. And as Mr. Rhoden said, basically
14 that washes away the 80,000 because she received more than
15 80,000 in the past earning. And I don't want to belabor
16 the Court with the math on the future.

17 The other thing I wanted to point out is we put a
18 number of records that had been from the subpoena records
19 room. I just want to mention why so that when you
20 deliberate, you will understand. There was a past loss
21 medical benefit award, a past medical expense award of
22 \$190,000. We submitted into evidence a Lutheran Medical
23 paid bill. It is paid in full. It's a certified bill
24 subpoenaed by the Plaintiffs that \$31,374.95 was paid in
25 full. There is a zero balance to Lutheran. And that comes

1 through records the Plaintiff subpoenaed. And they are
2 certified. The certification is on the record.

3 **MR. OCCHIOGROSSO:** Just respectfully ask if they
4 list the source of payment.

5 **MR. RHODEN:** Your honor --

6 **MR. OCCHIOGROSSO:** Does it say who paid it.

7 **THE COURT:** Let's wrap it up.

8 **MS. CORCHIA:** Secondly another item is there are
9 documents apart of that \$190,000 was a cost of acupuncture
10 Health Care Plaza \$9023.61. There is certified records
11 before the Court from acupuncture. And then you will see
12 in the No-fault record payment records from Transit that
13 the bills from Acupuncture Health Care Plaza are paid in
14 full with the exception -- what they did is because Transit
15 is providing no-fault benefits, they have to follow the
16 no-fault fee schedule. So the only reduction was if the
17 bill was more than the fee schedule. But by law, a
18 provider that charges more than the no-fault fee schedule
19 is not allowed to recover any differential from anyone.
20 And that is insurance law -- I think it is 5108. I am not
21 sure. But it is the law.

22 **THE COURT:** We are going to stop now.

23 **MS. CORCHIA:** Can I just also -- I just want to
24 say. Hospital for Special Surgery. We put the certified
25 billing records in to show they were paid. I'm sorry.

1 That amount was \$8637. And that was part of the 190 past
2 damages. That should be deducted. Also we put in part of
3 190 a bill from Quality Psychological Services in the
4 amount of \$1221.04. You will see in the no-fault bills
5 that this was paid in full. You will also -- the same is
6 true of Queens Orthoscopy and Sports Medicine. Part of the
7 past damages was a bill for \$378.21. You will see in the
8 certified records from the no-fault that was paid in full.

9 **THE COURT:** All right. Counsel, I will stop you
10 there.

11 **MS. CORCHIA:** I just wanted to give the Court
12 frame of reference.

13 **MR. RHODEN:** Your honor, if this is closing
14 argument, you go back and forth. It is not go back and
15 forth.

16 **THE COURT:** I am giving one minute to close and we
17 are leaving.

18 **MR. RHODEN:** I thought this was closing.

19 **THE COURT:** We are on the record. In fairness,
20 I've allowed both sides to close. I've allowed you to
21 open. And I've allowed you to take all the time in the
22 world. In fact, I counted Plaintiff probably took 15 to 17
23 minutes. You can close counsel.

24 **MR. OCCHIOGROSSO:** I don't need a minute, Judge.
25 I remember what I was going to say before. A couple quick

1 points. I just want to remind the Court again the document
2 that they put forward today that they say is certified
3 no-fault record on the face of the purported certification
4 a person says and swears to it the fact that they are not a
5 party and at the same time were employed by New York City
6 Transit is essentially exposing themselves to perjury.

7 Secondly, Mr. Rhoden stood up and said, you don't have
8 to take my word, Judge, these are just my calculations
9 today. Sometime in the future when we put in proposed
10 judgment, then we will have an expert for you. They had a
11 burden today. And not only do you not have to take his
12 word for it, you can't take his word for it. The time to
13 have an expert and have experts testimony about
14 calculations was here today when you have the burden, a
15 hearing that is a year after the trial. Sometime in the
16 future isn't good enough.

17 **THE COURT:** I am going to stop you there.

18 **MR. RHODEN:** Your honor, he went twice. Just let
19 me go twice.

20 **THE COURT:** This hearing is hereby over. All the
21 documentation and all oral argument will be reviewed and
22 the Court will render an investigation decision on this
23 particular matter. Thank you.

24 * * * * *

25 **IT IS HEREBY CERTIFIED THAT THE FOREGOING IS A TRUE**

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AND ACCURATE CERTIFIED TO BE A TRUE AND ACCURATE
TRANSCRIPT OF THE PROCEEDINGS.

NADONNA V. FERGUSON
Official Court Reporter

(not certified without original signature)