

1 receive 500,000 dollars per year for fourteen years,
2 because that equals pretty much exactly what Mr. Cercone
3 said was the business profit loss of seven million dollars
4 in the future. Before the Jury is discharged, I just want
5 that reassurance that they understand the future award is
6 a lump sum and that it's not received every year for the
7 number of years they say.

8 THE COURT: Which answer are you referring to?
9 The future is number seven?

10 MR. MAXWELL: Number seven, future lost wages
11 and business profits of 500,000 dollars, and the only
12 reason I say that --

13 THE COURT: I think it's obvious because they
14 say total. They say the total is one million 492. I
15 don't see any other interpretation.

16 MR. CHELUS: Agreed.

17 THE COURT: I think that's stretching it to ask
18 them to do you really mean it.

19 MR. MAXWELL: No. I understand that. Okay,
20 Judge.

21 THE COURT: Okay. Now. Let's go to the Dan
22 Mecca. I don't think there's any other testimony here but
23 that he has taken over the raising of the children and the
24 maintenance of the house as opposed to her role prior to
25 her disability which was that she managed things. And to

1 my mind, I gather you could allow a Jury to throw up their
2 hands and say we don't like the concept or we find that
3 there's -- the evidence is his role is incredible, but I
4 don't see any other interpretation of the evidence but
5 that that was the situation, and the Jury has just
6 disregarded it, and I think at this point that their
7 verdict stands as to all the other aspects that they have
8 decided, but that rather than tell them what to do I
9 would, at this point, ask them to retire and reconsider
10 the testimony as it relates to his present role in the
11 management of the affairs of the family as opposed to her
12 role in doing the same prior to her disability.

13 MR. CHELUS: Would it make sense to poll them
14 and determine if they felt -- ask questions such that to
15 determine if they reached their burden with respect to
16 Mr. Mecca to see that they did intend this to be the
17 result and that they did not reach their burden, thus no
18 compensation was awarded with respect to Mr. Mecca? As
19 opposed to just sending them back for further
20 deliberations, can we get clarification first?

21 THE COURT: You want me to find out if they
22 find him credible, is that it?

23 MR. CHELUS: Basically if the plaintiffs met
24 their burden with respect to the derivative cause of
25 action is what I'm asking, yes. That's my proposal. I

1 mean, because my interpretation of this is that they do
2 not feel the plaintiffs met their burden with respect to
3 the derivative cause of action, thus they awarded them
4 nothing. I feel the verdict itself really stands as it is
5 and needs no further probing or deliberation of the Jury.

6 THE COURT: I don't want to probe. A, I don't
7 want to probe.

8 MR. CHELUS: Fair.

9 THE COURT: B, I don't want to tell them what I
10 think.

11 MR. CHELUS: Certainly.

12 THE COURT: And, C, I would like them to
13 reconsider, in light of the testimony as it relates to his
14 present role, and I will read them the charge.

15 MR. CHELUS: Your Honor, I respectfully
16 disagree in that I feel that we need clarification from
17 them as to whether or not the plaintiffs met their burden
18 and then, if so, then it's an inconsistent verdict. At
19 that point if the plaintiffs have met their burden with
20 respect to derivative cause of action, then I agree it
21 could be an inconsistent verdict and further deliberation
22 may be required. But if they feel the plaintiff did not
23 meet their burden, there's no need to send them back there
24 for further deliberation.

25 THE COURT: Hang on. Well, I think if I'm

1 going to do anything along those lines I should recharge
2 them as to loss of services under the derivative action,
3 not just send them in.

4 MR. CHELUS: Right. I just think that would
5 come after whether or not they feel the plaintiff had met
6 their burden, polling them as to whether or not that is
7 the case, and if that is the case then, yes, I agree
8 recharging is appropriate. What do you say?

9 MR. MAXWELL: I'm fine with that, Your Honor.

10 THE COURT: You are fine with what's been
11 suggested?

12 MR. MAXWELL: Correct.

13 THE COURT: And all right. So you want me to
14 ask them if they felt that in regard to the --

15 MR. CHELUS: Derivative.

16 THE COURT: -- decision under questions number
17 nine -- I should give this back to them -- in regard to
18 the loss of his spouse's services and society. Okay. I
19 will do it.

20 MR. CHELUS: Thank you, Your Honor.

21 THE COURT: Want to give this to them, to the
22 juror, Mrs. White?

23 MR. MAXWELL: I just want to make it clear,
24 Judge, and I think it was, but it's on the record that I
25 am requesting that the Jury be asked specifically

1 regarding lost wages and business profits and that their
2 understanding is that that is the total dollar amount and
3 not a dollar amount to be paid over fourteen years, which
4 would equal exactly what Mr. Cercone said was the lost
5 business profits, especially in light of the fact that
6 they awarded a larger sum for the past three years for
7 lost wages and business profits.

8 THE COURT: I would agree if they hadn't
9 totalled it, and they totalled it, and that seems to
10 indicate --

11 MR. CHELUS: I would go back to what Your Honor
12 previously stated, that the verdict itself should stand,
13 that no direct polling of that issue needs to be made. As
14 it stands, it says there's a total there. The question is
15 posed clearly and concisely in the verdict sheet, and I
16 think there's no need to revisit it with the Jury at all.

17 THE COURT: That was my comment. Okay. Jury
18 in, please.

19 (3:20 p.m. - Jury in.)

20 THE CLERK: All jurors and counsel are present.

21 THE COURT: Back again. Please be seated.

22 First of all, I would like to thank you for your verdict,
23 whatever the verdict has been. There's been a question
24 raised as to Daniel Mecca's claim for the loss of his --
25 Paige's services and society, and the question is are you

1 rejecting and have you rejected in reaching your decision
2 what's been -- what is -- you do have that verdict sheet.
3 Look at nine and ten. The question is have you rejected
4 that claim?

5 JUROR NUMBER ONE: Well, I guess we --

6 THE COURT: By the way, you can go off and talk
7 about this among yourselves if need be.

8 JUROR NUMBER FOUR: I think we decided but --

9 JUROR NUMBER ONE: I guess we didn't -- we
10 decided that we didn't have to do separate amounts for
11 Paige and Daniel. We didn't realize.

12 THE COURT: You do.

13 JUROR NUMBER ONE: I guess.

14 THE COURT: You have to separately decide that,
15 and, if need be, I can instruct you now again.

16 JUROR NUMBER ONE: Sure.

17 THE COURT: Is that what you are requesting,
18 that I instruct you?

19 JUROR NUMBER THREE: Fine.

20 THE COURT: Go back and -- here, I certainly
21 don't want to tell you what to do, number one. Number
22 two, I want to make sure it's your decision, and we want
23 to make sure that you looked at everything. Okay?

24 JUROR NUMBER ONE: Yes.

25 THE COURT: Here, let me read to you what the

1 charge was as to that. And I might be scrambling the
2 names here. I think you get the sense, though.

3 If you find that the injured plaintiffs's
4 husband is entitled to recover, you will reward the
5 husband damages for the monetary value -- you will award
6 the husband damages for the monetary value of lost
7 services and society which you find the plaintiff husband
8 sustained by the loss of his spouse's services and
9 society.

10 In deciding the amount of the damages, you may
11 take into consideration the nature and extent of the
12 husband's -- I'm sorry -- the wife's services and society
13 before the injury, including her disposition, her
14 temperament, character, and attainments, the interest she
15 showed in her home, the social life of her family, and
16 consider the comfort, happiness, education, and general
17 welfare the members of the family. Also consider the
18 services she rendered in superintending the household,
19 training the children, assisting her spouse in the
20 management of the business or affairs in which the spouse
21 was engaged, if any, her acts of affection, love, and
22 sexual intercourse, and the extent to which the injuries
23 she sustained prevented her from performing such services
24 and providing such society.

25 You will award the plaintiff husband such an

1 amount based upon the evidence and upon your own
2 observation, experience, and knowledge conscientiously
3 applied to the facts and circumstances as in your judgment
4 will compensate him for the monetary value of the lost
5 services and society you find he has sustained and is
6 reasonably certain to sustain in the future by reason of
7 his spouse's inability to perform such services and
8 provide such society as a result of her injuries.

9 Your award, if any, for loss of spousal
10 services and society will be in separate amounts for past
11 and future damages. In addition, you will state the
12 number of years over which your award for future damages
13 is meant to cover. So having heard that this wasn't
14 really addressed, do you mind going back -- don't
15 change -- I'm accepting your verdict in all other ways,
16 but just look -- address this and just come back with your
17 decision. Thank you.

18 (3:26 p.m. - Jury out.)

19 THE COURT: There we are. I did what was
20 suggested, and they didn't consider it, so now they are
21 considering it. Okay. There we are.

22 The following was marked for identification:
23 COURT EXH. 9 - Jury Note 3:46 p.m.

24

25 THE COURT: All right. The next and probably

1 the last note is this Court Exhibit 9, we have reached the
2 corrected verdict. Jury in.

3 (3:48 p.m. - Jury in.)

4 THE CLERK: All jurors and counsel present.

5 THE COURT: Please be seated. Mrs. White,
6 looking at the, as you say, corrected, we are only dealing
7 with questions nine and ten. As to nine, what is the
8 decision of the Jury?

9 JUROR NUMBER ONE: 300,000 dollars.

10 THE COURT: I see. And as to ten, what is the
11 decision of the Jury?

12 JUROR NUMBER ONE: 650,000 dollars over --

13 THE COURT: Go on.

14 JUROR NUMBER ONE: -- over ten years.

15 THE COURT: Okay. And those decisions are the
16 decisions of five of the six of the jurors?

17 JUROR NUMBER ONE: Correct.

18 THE COURT: Just out of curiosity -- I won't
19 even ask that. Can I see the --

20 THE CLERK: What was number ten?

21 THE COURT: 650.

22 THE CLERK: Over how many years?

23 THE COURT: It is over ten years. And ladies
24 and gentlemen of the Jury, we have gone through this. Is
25 this the decision of five of the six of you?

1 JUROR NUMBER ONE: Yes.

2 JUROR NUMBER TWO: Yes.

3 JUROR NUMBER THREE: Yes.

4 JUROR NUMBER FOUR: Yes.

5 JUROR NUMBER FIVE: Yes.

6 JUROR NUMBER SIX: Yes.

7 THE COURT: Everybody indicating yes?

8 THE JURY: Yes.

9 THE COURT: All right. So noted. Do any of
10 you want to examine anything further?

11 MR. MAXWELL: Your Honor, I have to revisit my
12 request given the substantial award for the loss of
13 consortium.

14 MR. CHELUS: I think we do this outside the
15 presence of the Jury, Your Honor.

16 THE COURT: We are still going to go at this.
17 Look it, lawyers will argue. All right? I'm here to
18 listen. You are here to act as the Jury. Do you mind
19 excusing us for a short time? You will be out of here by
20 the close of the day.

21 (3:50 p.m. - Jury out.)

22 THE COURT: Here is Court's 2, which is the
23 jurors' -- the actual jurors' decision, verdict sheet. If
24 you want to examine it, go ahead.

25 MR. MAXWELL: If I may, Your Honor? Again,

1 especially in light of what they just awarded Mr. Mecca --

2 THE COURT: I have to be -- what do -- go on.
3 Make your argument.

4 MR. MAXWELL: Okay. Your Honor, they awarded
5 pain and suffering for the last three years of
6 250,000 dollars to Mrs. Mecca. They awarded pain --

7 THE COURT: Go slow so I can follow what you
8 are doing.

9 MR. MAXWELL: They awarded 250,000 dollars for
10 the last three years for Mrs. Mecca in pain and suffering.

11 THE COURT: This is to date, yes.

12 MR. MAXWELL: To date. The future thirty-six
13 years they awarded 375,000 dollars --

14 THE COURT: They did do that.

15 MR. MAXWELL: -- less than half of what they
16 awarded Mr. Mecca for future loss of consortium.

17 THE COURT: Let me look at future. That's
18 right, 650, yes.

19 MR. MAXWELL: They also awarded over half a
20 million dollars in past lost personal income and business
21 income.

22 THE COURT: Lost wages and business profits
23 under six.

24 MR. MAXWELL: For over the last less than three
25 years.

1 THE COURT: 582, yes.

2 MR. MAXWELL: But they awarded 500,000 dollars
3 over fourteen years for future pain and suffering, which
4 is exactly seven million dollars if you multiplied 500,000
5 times fourteen years. Your Honor, I -- and I will be
6 honest with you, I expected a very low award for Mr. Mecca
7 based on the interpretation of it, but the mere fact that
8 they totalled it, I think this is ripe with confusion. My
9 concern is after the fact the Jury is discharged I am
10 obligated to speak to them and ask them, and if in fact
11 they say, oh, no, we thought it was 500,000 dollars a year
12 for fourteen years, we are coming back here. I don't
13 think it's too much to clarify with the Jury that they
14 understand that, particularly with future lost wages and
15 business profits, that that 500,000 dollars is a total and
16 not per year and then also the 375,000 dollars in pain and
17 suffering is a total and not per year.

18 THE COURT: Mr. Mecca --

19 MR. CHELUS: I will go back to Your Honor's
20 original point on this, which is on the record. The
21 questions are asked in a succinct manner. They are asked
22 to provide a total, which they did. I think it's error to
23 go back and ask them did you mean what you said as
24 Your Honor succinctly stated earlier. They have answered
25 the question that was posed to them. No further

1 interpretation is needed. They put the dollar amount, and
2 it's there. That's the award.

3 MR. MAXWELL: The concern is, Your Honor, they
4 went from none for past and future loss of consortium to
5 close to a million dollars. Clearly --

6 THE COURT: Because they didn't understand that
7 they were supposed to deal with that -- those two
8 questions separately. Is that your point?

9 MR. MAXWELL: It is, and but it's also
10 inconsistent with the future award to Mrs. Mecca.

11 MR. CHELUS: It's also possible to think
12 Mrs. Mecca would return to work in some capacity.

13 THE COURT: I know.

14 MR. CHELUS: It's possible that they feel that
15 she's getting better physically.

16 THE COURT: Do you see, as in what I just did,
17 in asking them through their foreperson just what we
18 agreed to, did you actually consider this, did you
19 actually deject this element of cause of action, this
20 cause of action, those two elements of damages, and they
21 said, well, we didn't even consider it. Okay.

22 MR. MAXWELL: Your Honor --

23 THE COURT: It's a long and complicated trial.
24 I don't see the harm in asking them is the 500,000 -- is
25 that a one-time or is that some other payment in some

1 other fashion.

2 MR. CHELUS: I disagree. I would respectfully
3 disagree and take exception to that in that the verdict
4 sheet states what it is. It's not as if they awarded her
5 nothing, Your Honor. There's plenty of evidence. They
6 could feel she's getting better. They don't feel she
7 needs that kind of money for future compensation. I don't
8 think it's error. The Jury spoke on those issues, and
9 they should not be asked any further.

10 MR. MAXWELL: Your Honor, there's no prejudice
11 whatsoever. And, again, they just awarded Mr. Mecca
12 approximately half of what, if we interpret what I believe
13 was a confused verdict sheet, which is approximately
14 2.3 million dollars over thirty-six years to Mrs. Mecca
15 and they awarded close to half of that amount just now to
16 Mr. Mecca. I think there's clear confusion, and there's
17 no harm and there's no prejudice if in fact the Jury comes
18 back and says, no, we understand that the most, what she's
19 going to get over fourteen years total is 500,000 dollars
20 in future lost income.

21 MR. CHELUS: I'm concerned that the Jury takes
22 this as some suggestion that they did it wrong, Judge, and
23 they have to revisit it and add money to it. I think it's
24 error, and it should not be done.

25 THE COURT: No, I'm not.

1 MR. CHELUS: By revisiting it at all, that's my
2 position.

3 MR. MAXWELL: And I wouldn't be saying this,
4 Your Honor, if the 500,000 dollars times fourteen is
5 almost to the dollar what Mr. Cercone said is the future
6 lost profits.

7 MR. CHELUS: They're not obligated to award
8 what Mr. Cercone said, Your Honor. They can take it and
9 do with what they will with the number. They can take it.
10 They can discount it. They can do whatever. It's in the
11 Jury's province completely. It's completely error to ask
12 them to revisit this issue.

13 THE COURT: I'm not asking them to revisit it.
14 I just want to be sure what their decision was.

15 MR. CHELUS: And in my estimation, Your Honor,
16 that's revisiting the issue respectfully.

17 THE COURT: I don't think so. It's just
18 ensuring that they understood what the issue was and that
19 this decision is a one-time decision over so many years.

20 MR. CHELUS: I respectfully disagree.

21 THE COURT: Okay.

22 MR. MAXWELL: And again, Your Honor, when they
23 said we thought it was -- you know, we thought we would
24 just include it, that implies that they felt they made a
25 substantial award. When they broke it out, it's nearly a

1 million dollars, which is -- and, again, all I'm asking is
2 that there is some fleshing out of they understand that in
3 particular the future lost wages and --

4 THE COURT: I'm not going to suggest, by the
5 way, that they do anything else. What the verdict reads
6 is 500,000 dollars -- 500,000 dollars over fourteen years
7 and 375,000 dollars over thirty-six years, is that what
8 you intended or was there some other -- did you intend
9 something else.

10 MR. CHELUS: I think by saying did you intend
11 something else you're suggesting they should change the
12 verdict, Your Honor. I think that's improper.

13 THE COURT: No, I'm not.

14 MR. MAXWELL: I think the question is, Your
15 Honor, is that five -- do you understand that that
16 500,000 dollars is not per year for fourteen years but is
17 a total that she will receive over fourteen years. I
18 think it's a very easy question that they can be asked.

19 MR. CHELUS: I think the Jury was asked the
20 question on the verdict sheet, and they answered it.

21 THE COURT: I'm not suggesting a change.

22 MR. CHELUS: My position, Judge, is they were
23 asked the question on the verdict sheet, and they answered
24 it. It doesn't need to be revisited in any shape or
25 fashion.

1 THE COURT: Look it, I'm not going to suggest a
2 change. All I want to do is ask them as I did just as to
3 the derivative if -- is this what you -- is this what you
4 meant in your verdict.

5 MR. CHELUS: I understand, Your Honor, and my
6 position is that by doing that you're suggesting that they
7 change the verdict. That's my position.

8 THE COURT: I'm not. I'm not suggesting. I'm
9 not going to go on with the suggestion of Mr. Maxwell that
10 the sum means five hundred each year. I'm not going to do
11 that.

12 MR. CHELUS: Okay.

13 THE COURT: Jury in. Would you give them the
14 verdict sheet, whoever has it?

15 MR. MAXWELL: You want it, Judge?

16 THE COURT: No. I want them to have it. I
17 want Juror Number One to have it.

18 (3:58 p.m. - Jury in.)

19 THE CLERK: All jurors and counsel are present.

20 THE COURT: All right. Please be seated. We
21 have here Court Exhibit 2, which is the verdict sheet
22 again. I just want to revisit one area to make sure that
23 the verdict sheet is accurate. And on question seven,
24 okay --

25 JUROR NUMBER ONE: Um-hum.

1 THE COURT: -- B, lost wages and business
2 profits is 500,000, and the next page it says that's over
3 fourteen years.

4 JUROR NUMBER ONE: Um-hum.

5 THE COURT: Is that what you meant, or did you
6 mean something else?

7 JUROR NUMBER ONE: That is what we meant based
8 on our discussion.

9 THE COURT: That's all I wanted to know. As to
10 C, 375, pain and suffering over thirty-six years, same
11 question.

12 JUROR NUMBER ONE: Based on our discussion,
13 yes.

14 THE COURT: So those are the totals over those
15 number of years?

16 JUROR NUMBER ONE: Yes.

17 JUROR NUMBER THREE: Yes, Your Honor.

18 THE COURT: Is that it?

19 JUROR NUMBER FOUR: Yes.

20 THE COURT: All right. Anything else,
21 gentlemen?

22 MR. CHELUS: Nothing, Your Honor. Thank you.

23 MR. MAXWELL: No, Your Honor.

24 THE COURT: All right. Look it, we're done.
25 You are done. No more lawyers asking you. Thank you very