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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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MARGARET DALLO,	)	C19-00865-TSZ
	)	
Plaintiff,	)	SEATTLE, WASHINGTON
	)	
v.	)	Trial conducted
	)	remotely via
HOLLAND AMERICA LINE, INC.,	)	ZoomGov.com
a Washington corporation;	)	
HOLLAND AMERICA LINE - USA	)	October 5, 2020
INC., a Delaware	)	
corporation; HOLLAND AMERICA	)	9:00 a.m.
LINE N.V. LLC, a Curacao	)	
corporation; and HAL	)	Trial - Day 5
ANTILLEN N.V., a Curacao	)	
corporation,	)	
	)	
Defendants.	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE THOMAS S. ZILLY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	Ken Friedman Friedman Rubin 1126 Highland Avenue Bremerton, WA 98337
	David P. Roosa Friedman Rubin 1109 1st Avenue Suite 501 Seattle, WA 98101

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For the Defendants: Lisa M. Conner  
Melody Chang  
Flynn Delich & Wise LLP  
One World Trade Center  
Long Beach, CA 90831

1 hear final arguments of the lawyers. The plaintiff's lawyer  
2 will go first. Mr. Friedman will argue. Then Ms. Conner  
3 will go second. And then depending on timing, the plaintiff  
4 will have an opportunity to argue again, in rebuttal, after  
5 Ms. Conner is done. And that's, of course, because the  
6 plaintiff has the burden of proof.

7 All right. Mr. Friedman, you may proceed.

8 MR. FRIEDMAN: Thank you, Your Honor. And good  
9 afternoon, ladies and gentlemen.

10 Mr. Roosa and I have had the honor of representing  
11 Margaret Dallo on this case and presenting her case to you.  
12 It's a little bit of an unusual way to conduct a trial for  
13 all of us, we're usually in the same room, and I can look at  
14 you and talk to you in a more normal fashion. But I think  
15 this has worked okay, and I appreciate all your patience and  
16 attention during the trial.

17 There are two main issues in this case that I want to talk  
18 to you about. One is called liability, and one is called  
19 damages. Liability means, who is responsible for what  
20 happened? And damages means, how much money is needed to  
21 compensate Mrs. Dallo for the harm she has experienced.

22 In some cases, only liability is disputed. In other  
23 cases, it's only the amount of damages that's contested. In  
24 this case, I think as you've seen, everything has been  
25 contested.

1           And I never thought a case where a guest walking down a  
2 hallway, in a normal manner, hit by a door, opened without  
3 warning by a crew member, and knocked to the floor, would  
4 involve a dispute over whose fault it is. But that's where  
5 we are.

6           So let's review some of the facts that are not in dispute.  
7 All right. First, Mrs. Dallo was walking where she had a  
8 right to walk. Nobody disputes that. Second, Mrs. Dallo was  
9 walking where Holland America Line expected people to walk.  
10 Nobody disputes that. There was no warning that the door was  
11 going to open. There was no sign advising guests to stay  
12 clear of this emergency door. Mr. Milic opened the door.  
13 The door made contact with Mrs. Dallo. Mrs. Dallo fell when  
14 the door contacted her. And Mrs. Dallo developed a subdural  
15 hematoma, bilaterally.

16           Those facts are not in dispute. No one said she was  
17 inattentive. No one said she should have reacted faster. No  
18 one said she should have seen it sooner. And the most we've  
19 got on this question is Mr. Colwell, saying in his nonexpert  
20 opinion, she should have given this door a wider berth as she  
21 walked by. Lessons he learned from his mother, I guess.

22           Mr. Colwell also testified, on Friday, there is a video or  
23 captain's message that warns people about doors on the ship.  
24 But they didn't show you a warning video, and they didn't  
25 show you any captain's message. Don't you think, if actually

1 there was some kind of warning to guests about the hallway  
2 emergency doors opening suddenly, you would have seen it?

3 So is there anything else? Holland America Line has taken  
4 the position that Mrs. Dallo is 100 percent at fault for this  
5 accident. Instruction No. 19 that Judge Zilly just read to  
6 you deals with this.

7 First, as we will discuss, this is the one area of the  
8 trial where the defense has the burden of proof. We don't  
9 have to prove she was not at fault. They have the burden to  
10 convince you, by a preponderance of the evidence, that she  
11 was. And if they don't have that level of proof, you cannot  
12 assign her even 1 percent of the fault in this case. And you  
13 should not. They have the burden to prove that Mrs. Dallo  
14 failed to use the care that a reasonably prudent person  
15 would, under similar circumstance.

16 They don't get to allocate fault to her because she wasn't  
17 perfect. They don't get to say she was at fault because she  
18 could have, theoretically, done something different. She  
19 doesn't have to be a ninja, with cat-like reflexes, to deal  
20 with a hazard that she wasn't expecting. They only get to  
21 allocate fault to her if she failed to act as a reasonably  
22 prudent person would under similar circumstances. Would a  
23 reasonably prudent person walk down this hallway? Sure. Why  
24 not. And that is all she was doing, walking down a hallway.

25 I hate to spend time on this, because it seems ridiculous,

1 but Holland America keeps bringing it up, and I don't want  
2 there to be any misunderstanding. Ms. Conner said in her  
3 opening statement, "I'd also like you to ask yourself, was  
4 there anything Ms. Dallo could have done differently? Was  
5 she using reasonable care when she walked down the hallway?  
6 Did the door knock her down? Did she lose her balance?"

7 First, note this isn't the correct standard: Is there  
8 anything she could have done differently? That's not the  
9 standard. The correct standard is: Did she do anything a  
10 reasonably prudent person would not have done?

11 But let's go on. Holland America has not answered these  
12 questions, but I will, since I've been asking myself  
13 questions for over a year now. Is there anything Ms. Dallo  
14 could have or should have done differently? No. And nobody  
15 has really said there was. Was she using reasonable care  
16 when she walked down the hallway? Yes. And you haven't  
17 heard anyone say she wasn't. Did the door knock her down?  
18 Yes. And you haven't heard anyone say it didn't. Did she  
19 lose her balance? Yes, she did, after being hit by the door.

20 Four people, other than Ms. Dallo, saw what happened.  
21 Ms. Michail, who was a few steps behind her; Mr. Milic, who  
22 opened the door; and two crew members who were with  
23 Mr. Milic. Now, we haven't heard from Mr. Milic, and we  
24 haven't had a chance to ask him any questions about his claim  
25 to have opened the door gently. His last known address was

1 in Croatia. And there are two crew members they never talked  
2 to, didn't take statements from, and didn't call as witnesses  
3 in this trial.

4 Remember, it's their burden to prove that Mrs. Dallo did  
5 something wrong. And they didn't call Mr. Milic, and they  
6 didn't call the other two witnesses, and they didn't  
7 interview them in time so we would know what they would have  
8 to say. No one else saw what happened, and they haven't met  
9 their burden of proof.

10 Remember what Mr. Colwell said?

11 (Video clip played as follows:)

12 Q So your testimony as a layperson, I take it, since you're  
13 not an expert, is that she should have reacted more quickly  
14 to the door opening, correct?

15 A I don't know if reacting more quickly was the solution. I  
16 don't know if noticing that it was opening more quickly was  
17 the solution. I don't know precisely what the sequence of  
18 events or the position of her was at the time the door  
19 opened.

20 (Video clip concluded.)

21 MR. FRIEDMAN: That's almost an admission that they  
22 can't meet their burden. They don't know what she could have  
23 done differently, or what her position was at the time the  
24 door opened. Noticing the door, wouldn't have prevented the  
25 door from hitting her. Looking to the right instead of

1 straight ahead, wouldn't have prevented the door from hitting  
2 her. There was no evidence in this trial, by any witness,  
3 who has offered a strategy to ship guests to avoid being hit  
4 by a door that suddenly opens.

5 So it's important for you to answer "no" on the verdict  
6 form on Question 3, regarding Mrs. Dallo's negligence. It's  
7 important for her, obviously. But it's even more important  
8 for Holland America Line to hear it. And I would think it  
9 may be the most important question in this whole case.

10 And an answer by this jury, telling this company that  
11 Mrs. Dallo did nothing wrong, and didn't cause the door to  
12 hit her, is the right verdict, supported by the evidence, and  
13 something Holland America Line needs to hear.

14 The next issue I want to talk to you about is whether or  
15 not Holland America was negligent. We presented the evidence  
16 of Joellen Gill. She inspected the ship. She looked at  
17 photos and videos. And she reviewed the witness statements  
18 and depositions. She has over 40 years' experience in the  
19 field of human factors, safety engineering. Board certified  
20 in both fields.

21 She testified that a pedestrian, walking down this  
22 hallway, would not perceive the risk of the door opening,  
23 especially if they had walked down the same hallway many  
24 times, and never saw the door open. She said it was  
25 foreseeable that the crew member would open the door at a



1 time when a passenger was walking by, and that this was a  
2 preventable hazard.

3 And she told you, when I asked her, "Is it important that  
4 no one had been hit by this door before?" And she said,  
5 "Well, safety has to be proactive as well as reactive. And  
6 the proactive component would say that you would need to  
7 identify, upfront, the potential for a door opening into the  
8 hallway where there's pedestrians present; there needs to be  
9 some mitigation done to avoid that potential collision."

10 So taking that approach, waiting for someone to be hit by  
11 the door, violates that dual nature of safety. And this  
12 isn't an esoteric hazard. This isn't something that is so  
13 unique that you would never expect that anybody would be  
14 injured by this. This is something that is well-documented  
15 in the safety literature.

16 And, really, that's just common sense. Did Holland  
17 America call a witness to this trial to tell you that a door  
18 opening into a hallway where people were walking was not a  
19 hazard? No. They did not.

20 They hired Mr. Ikram, who is an accident reconstructionist  
21 and biomechanical engineer. He didn't say it wasn't a  
22 hazard. He didn't say Mrs. Dallo did nothing wrong, or did  
23 anything wrong. He didn't reconstruct the accident, or  
24 calculate the amount of force that hit her. He did not  
25 conduct a hazard analysis. They hired a marine architect,

1 Mr. Greif. He also didn't say it wasn't a hazard. And he  
2 also didn't say Ms. Dallo did anything wrong. And Holland  
3 America admits, itself, they have done nothing to evaluate  
4 this hazard or reduce the risk to its passengers.

5 So if we look at Instruction No. 15, "The owner or  
6 operator of a ship in navigable waters owes to all who are on  
7 board, the duty of exercising reasonable care under the  
8 circumstances. Reasonable care is the degree of care  
9 reasonably prudent persons would use under like circumstances  
10 to avoid injury to themselves or others."

11 And Ms. Gill told you what reasonable companies do when  
12 there's a hazard, you have to establish safety principles and  
13 acquire a plan to address it. And she told you about the  
14 safety hierarchy.

15 She said the best thing to do is design changes to prevent  
16 the hazard. The next is to guard against it; that's second  
17 best. And then if you can't do those, try to change people's  
18 behavior. That's the last resort, if the hazard can't be  
19 designed out or guarded against. And regarding this door,  
20 she told you that there's no evidence that Holland America  
21 did any of those things, or even recognized the hazard.

22 So the company failed to act like a reasonably prudent  
23 company would do under like circumstances to avoid injury to  
24 others. We have a dangerous design, and a crew member who  
25 approaches this door. The crew member knows it opens into a

1 hallway, and he opens it fast enough and hard enough to knock  
2 someone over. Obviously not slowly, carefully, or gently.  
3 Ms. Michail told you that. Mrs. Dallo said something hit her  
4 hard. She had a bruise on her arm. No other witness came to  
5 this trial and said that's not true. So whether Holland  
6 America was negligent for not addressing this hazard, or not  
7 training the crew, or whether Mr. Milic was negligent for not  
8 opening the door carefully, Holland America is responsible,  
9 either one or both.

10 There are two ways we can establish negligence in this  
11 case. Negligence by the company for the unsafe condition on  
12 the Eurodam, or negligence by Stefan Milic, who opened the  
13 door.

14 So even if you found there's nothing whatsoever wrong with  
15 this hallway and this doorway, you should still find Holland  
16 America liable for Mr. Milic's conduct, by suddenly opening  
17 the door and knocking over a guest in the hall. A reasonably  
18 prudent person would not open a door when you can't see  
19 what's on the other side, forcefully enough to knock someone  
20 down.

21 But I would submit to you we've proven both prongs of  
22 those theories. But I wanted to make it perfectly clear that  
23 Mr. Milic's negligence, by itself, was sufficient for us to  
24 prevail.

25 In fact, Stipulated Fact No. 2, on Jury Instruction No. 5,

1 makes it clear. If there is any negligence by the Holland  
2 America Line or its agents or employees, including but not  
3 limited to Stefan Milic, the parties agree that Holland  
4 America Line is the company responsible.

5 It's easy to tell, by Mr. Milic's written statement that  
6 you have, after the incident he was sorry for what he did.  
7 He stayed with Mrs. Dallo and he apologized to her. It's  
8 also easy to tell, and you can infer, he was worried about  
9 getting in trouble or losing his job. Remember Mrs. Dallo  
10 was alleged to have said, "Please don't fire him." And that,  
11 I submit that is why he wrote twice, that he opened the door  
12 so gently.

13 But let's look at what Officer Aguirre wrote in his  
14 Exhibit 11. When he's talking about injury severity, the  
15 accident type, he wrote "crushed." "Injury type, contusion."  
16 "Severity, a non-disabling injury." And the activity of  
17 Mrs. Dallo? "Walking." That doesn't sound like a gentle  
18 bump, as Mr. Milic wrote in his report. And, in fact, it's  
19 one reason why cross examination and testimony in open court  
20 is more valuable than what somebody writes in a witness  
21 statement. We never got that chance, because he never came  
22 to court to tell you what happened.

23 Ms. Gill explained to you, at length, the problems with  
24 the door and hallway here. And I won't repeat all those  
25 findings. I know you were paying attention to that.

1           In response, the defendant called two experts. Isaac  
2 Ikram, the biomechanical engineer and accident  
3 reconstructionist. And he really offered only two opinions.  
4 One, the hallway was wide enough that a person could walk  
5 somewhere in the hall and avoid getting hit when the door  
6 opens. And that was never in dispute. The hall was wide  
7 enough. And so that opinion doesn't get us too far.

8           And the second opinion he offered was the door wasn't  
9 hidden. There were visual clues and a person could see it.  
10 But if you remember Ms. Gill's testimony, she never claimed  
11 it was hard to see that there was a door there. Her argument  
12 was that it wasn't an apparent hazard to pedestrians. And  
13 that's really what's called a straw-man argument.

14           They build a weak argument that the door was hard to see,  
15 so they can knock it down as if it was made of straw. But  
16 they don't address the real argument, that the door, while  
17 not being hidden, was a dangerous hazard. They attacked a  
18 straw man and left completely unanswered Ms. Gill's findings  
19 and conclusions.

20           This is what she told you when we asked her about the fact  
21 that the door was not hidden. "I mentioned earlier that I  
22 had reviewed the two defense expert reports. One of those,  
23 Isaac Ikram, is a mechanical engineer, I believe. He offered  
24 opinions about this door. But if you look at it face-on,  
25 it's easy to tell, by the framework and the hinges, that the

1 door will open outward. But someone who is simply traversing  
2 down the hallway, intending to go to the shops, has no idea  
3 that a door would potentially open up, right when they are  
4 right beside the door. We wouldn't normally travel the  
5 hallway looking at doors, to determine the potential  
6 direction that they may open up. So while I don't disagree  
7 with his opinions, they're really not relevant."

8 Mr. Ikram didn't dispute that the door was a hazard. He  
9 wasn't asked: Is this door a hazard or not? His opinion  
10 was, you could tell there was a door there. He didn't  
11 address at all whether or not the door being there created a  
12 hazard.

13 The other expert was Larry Greif, an expert well known to  
14 Holland America lawyers. He offered three opinions. First,  
15 the ship met the requirements to get certified. That doesn't  
16 mean it's safe, however. Saying just being certified is  
17 enough to be safe, is like saying a car that runs a red light  
18 is safe because it was registered and passed an emissions  
19 test. But you have to look at the conduct behind it. Nobody  
20 has argued the ship wasn't certified. But if you look at the  
21 court's instructions to you, there is nothing in there that  
22 says it's a defense that the ship is certified. It says the  
23 ship owner must use reasonable care, certified or not.

24 He also said the door needed to be opened outward. We  
25 didn't contest that. And most importantly, he said you

1 couldn't have a window in this door. Remember Ms. Gill said  
2 one of the things that you could do to make this hazard safer  
3 is put a window in the door, so the person opening it could  
4 see if anybody was walking by. Again, that's pretty much  
5 common sense. So Holland America Line called Mr. Greif to  
6 tell you --

7 THE CLERK: I'm sorry to interrupt. Juror No. 3 has  
8 disappeared from my screen. Thank you. And I'll be making a  
9 courtesy call. Thank you.

10 THE COURT: Why don't we take a stretch while we're  
11 waiting to find the juror.

12 (Pause in proceedings.)

13 THE CLERK: Thank you, Your Honor. Juror 3 will be  
14 calling me back. She can hear us. She can't see us. Her  
15 screen has just went out. So she's trying to disconnect,  
16 Ms. Kim, and said that she'll try to reconnect if possible;  
17 if not, she'll call back my cell phone.

18 THE COURT: Thank you.

19 THE CLERK: Your Honor, this is Gail Glass. At this  
20 time, it appears that Ms. Kim has also lost connection.  
21 Ms. Kim has rejoined the session. We're still waiting for  
22 Juror No. 3.

23 THE LAW CLERK: Your Honor, this is Kathryn. I lost  
24 connection. I am now back. Ms. Glass, what's the nature of  
25 the situation with Juror No. 3?

1 THE CLERK: Ms. Kim, she had the ability to hear us,  
2 but she could no longer see us. So her screen went  
3 completely out. She's trying to reconnect at this time. She  
4 said she would log out and try to redial back in to you.  
5 I'll try calling her again.

6 THE LAW CLERK: I suggest that she close her browser  
7 and restart her browser, then try again.

8 THE CLERK: Thank you. I'll relay those messages.

9 Your Honor, Juror No. 3 is using her brother's computer.  
10 He's there right now trying to help her get reconnected. I  
11 suggested that she close her browser out completely and try  
12 to get reconnected, but she said that she's tried that and  
13 they're still having difficulty. I asked her to please call  
14 me immediately once she has an update.

15 THE COURT: Mr. Friedman, when we return to having a  
16 full complement of jurors, if you would like, the court  
17 reporter can read the last few lines of your argument so you  
18 can take up from there. I'm not entirely sure when we lost  
19 the juror, but it obviously dealt with Mr. Greif and his  
20 testimony and the three opinions. So if you want some -- a  
21 paragraph or two read, I can read it or the court reporter  
22 can read it.

23 MR. FRIEDMAN: That's not necessary, Your Honor. I  
24 know where we left off, where I stopped talking. We don't  
25 know where the juror stopped hearing, though.



1 THE CLERK: Your Honor, this is Gail Glass, your  
2 courtroom deputy. I'm hearing from Juror No. 3, and she says  
3 that she's unable to detect a camera. That's a problem that  
4 she's having with her computer, unable to detect a camera.

5 She will be rejoining the meeting now. One moment,  
6 please.

7 Your Honor, Juror No. 3 has rejoined the session.

8 THE COURT: Thank you, Madame Clerk. And welcome  
9 back, Ms. Thayer.

10 Mr. Friedman, do you want anything read or are you ready  
11 to proceed?

12 MR. FRIEDMAN: I think I can do it, Your Honor.  
13 Thank you.

14 THE COURT: Go ahead.

15 MR. FRIEDMAN: Now you know why I thanked you all for  
16 your patience as we work our way through a new technology.  
17 But happy to have you back.

18 We were talking about Mr. Greif in response to Ms. Gill,  
19 saying you could put a window in this door to mitigate the  
20 hazard. And Holland America called Mr. Greif to tell you  
21 that's not possible. And if we had left it there, you  
22 probably would have believed him. Because when Ms. Conner  
23 questioned him, he was very clear. If we look at what he  
24 said. "An A-60 door is that -- the door must be made of  
25 steel, not steel with a window in it, but steel. It also, in

1 this case, must pass a fire test to be rated A-60. And a  
2 door with a window in it would not -- just cannot meet that  
3 criteria." Period. End of story. Can't be done.

4 But when Mr. Roosa questioned him, first he repeated what  
5 he had put in his report. "All right. And I'm looking at  
6 your report here, and one of the things you say is that U.S.  
7 Coast Guard and SOLAS regulations regarding the materials and  
8 installation of fire doors are actually the same, i.e., they  
9 must be Class A-60. That's your opinion? Answer: Yes." He  
10 said "actually the same." No exceptions, period. End of  
11 story.

12 And then Mr. Roosa showed Mr. Greif a door that was rated  
13 A-60 and had a window in it. And he showed him the Coast  
14 Guard certification for that door. This is Exhibit 97.  
15 You'll have this with you when you deliberate. And right on  
16 page 1 it says, "A-class fire rated marine doors. Double  
17 leaf, hinged fire door with optional window, tested and  
18 approved as Class A-60, in accordance with Annex 1, Part 3 of  
19 the IM02010FTP code. U.S. Department of Homeland Security.  
20 United States Coast Guard certificate of approval."

21 And after Mr. Roosa showed him that, he then decided to  
22 say the Coast Guard and SOLAS requirements are not actually  
23 the same, but they're almost the same. And you could see him  
24 start backpeddling. He said it was okay -- "This is okay  
25 because the Coast Guard regulations have an exemption that

1 allows up to 100-square-inch windows to be installed on A-60  
2 doors." The SOLAS regulation, he said, does not have that  
3 exemption.

4 The strange part of all of this is the only reason we're  
5 talking about A-60 doors at all in the regulations of the  
6 Coast Guard and the IMO, was because he was claiming you  
7 couldn't put a window in an A-60 door. That was the issue.  
8 So an exception for a window would have been something he  
9 would have mentioned, before he tells you the regulations are  
10 actually the same. And he was clearly aware of this, because  
11 he told you correctly, the window was allowed to be  
12 10-by-10 inches. But he never mentioned that when Ms. Conner  
13 was questioning him. He was adamant that an A-60 fire door  
14 couldn't have a window. He was adamant that Coast Guard and  
15 European standards were the same. No window. No exceptions.  
16 End of story.

17 Anyway, you'll have Exhibit 97 with you during your  
18 deliberations. You will see it's certified and meets the  
19 standards of both the IMO and U.S. Coast Guard. It says  
20 "IMO" right on the top, "A60-pair." It says,  
21 "Certifications, IMO and U.S. Coast Guard."

22 Holland America's insistence that this can't be done, I  
23 would submit to you, is simply not true. An A-60 fire door  
24 can have a window for European and U.S. ships.

25 And maybe if they had kicked this around at a safety

1 committee meeting, they would have figured that out.

2 Remember, on this issue, we showed you an A-60 door with a  
3 window that was tested and certified as A-60 by the U.S.  
4 Coast Guard, meeting the requirements of the International  
5 Maritime Organization?

6 Don't you think if there was a SOLAS IMO or Coast Guard  
7 regulation that said you can't have a window in a door like  
8 this, they would have showed it to you? Aren't these  
9 regulations written down somewhere? Instead, Mr. Greif tells  
10 you you can't have a window, but shows you no proof.

11 And I really don't know what's more offensive here, the  
12 fact that they tried to tell you something that obviously  
13 isn't true, or that they thought we were not competent enough  
14 to point it out to you.

15 My father used to say, "There's no nice way to call a man  
16 a liar," so I'm just referring you to the court's instruction  
17 on credibility of witnesses, Instruction No. 8. Remember  
18 Ms. Conner asking members of Ms. Dallo's family, "You love  
19 your mother, don't you? You want her to win the case?"  
20 Those questions go to their bias. Well, don't you think  
21 Mr. Greif wants Holland America to win this case?

22 Mr. Greif came here to tell you three things, along with  
23 some stories about the Titanic: One, the ship was in  
24 compliance with standards; two, the door had to open outward;  
25 and three, you can't have a window in the door. And that's

1 the one that matters. And to support his opinion, he showed  
2 you nothing, and Holland America has showed you nothing. We  
3 showed you an A-60 fire door with a window in it.

4 So that's enough about the window. We also got no  
5 explanation about why a sign couldn't be put inside the door.  
6 Here's what the inside of that hallway looks like where  
7 Mr. Milic would be coming out. There's a little sign, we  
8 showed you in opening, and you'll see in the exhibits, that  
9 said "Push to open here."

10 But why couldn't it have the kind of signs that we've seen  
11 in Exhibits 103 and 104? Did anyone tell you that couldn't  
12 be done? Wouldn't that be safer? Wouldn't that be more  
13 reasonable? Wouldn't that make it less likely that a crew  
14 member would open the door quickly and forcibly?

15 When you go back and look at Exhibit 212, the way it was,  
16 the other thing we learned from Mr. Greif is that the left  
17 side covers the right, and that you have to open the left  
18 side first, or both of the doors open. So the door is  
19 designed in a way that you have to open the left, and you  
20 can't open it a little bit and look down the hallway, like  
21 you could if you could open the door on the right.

22 And nobody has told you that that had to be the way it  
23 was. There's no reason that feature couldn't be eliminated  
24 so people could actually be using the door on the right, prop  
25 the door open an inch or two, and at least look to the left

1 to see if anyone is coming.

2 We could spend all day talking about this, but you get the  
3 idea. There are many things Holland America could have done  
4 to make this emergency exit safer. They didn't do any of  
5 those things. Nobody has been hurt before, is all they came  
6 up with.

7 But Mr. Colwell admitted on Friday, he has no idea how  
8 often this door is used. There has been no evidence about  
9 that, except that Mrs. Dallo and her daughters said they  
10 never saw it opened once, during their 15 days on the cruise.  
11 If it's rarely used when passengers are in the hallway, then  
12 you would expect it wouldn't hit too many people. If crew  
13 members opened the door more carefully than Mr. Milic did,  
14 then even if somebody was hit, it probably wouldn't be with  
15 the same amount of force that we have here.

16 And as Ms. Gill said, you don't need a body count to  
17 identify a hazard and take reasonable steps to reduce the  
18 risk.

19 Let's look at Instruction No. 17. The notice of prior  
20 accidents only comes into play if the condition constituting  
21 the basis of the plaintiff's claim is not unique to the  
22 maritime context. Well, you heard from the naval architect,  
23 all kinds of unique maritime regulations apply to this door  
24 and this bulkhead. So, Instruction No. 17 does not apply.  
25 And your general negligence instruction, I think it's 15,

1 does apply.

2 Defense in this case reminds me of the old four-dog  
3 defense that they used to talk about in law school. A guy is  
4 confronted with a claim that his dog bit somebody. His  
5 defense. One, first of all, I don't have a dog; two, and if  
6 I had a dog it doesn't bite; three, and if I had a dog, and  
7 it did bite, then it didn't bite you; and four, if I had a  
8 dog, and it did bite, and it did bite you, then you provoked  
9 the dog. Layers upon layers of denial.

10 And what do we have here? Number one, it isn't our fault  
11 she fell; two, if it was our fault, she wasn't hurt too  
12 badly; three, if she was hurt badly, it's because she was  
13 messed up before; four, anyway, she made a complete recovery,  
14 she's fine; five, maybe she's lying; six, and maybe her  
15 family is lying, too. That's what we've seen from Holland  
16 America Line in this case.

17 So we turn to the real issue. How much money is a  
18 reasonable amount to compensate Mrs. Dallo for what she's  
19 gone through and what she's likely to go through in the  
20 future? Well, first, you have to decide whether her current  
21 condition was caused by being knocked down on the ship.  
22 Ms. Conner asked some questions that implied that her  
23 condition had to be solely caused by this incident. That's  
24 not the standard. If you look at Instruction No. 16, the  
25 incident on the ship has to have been a substantial part in

1 bringing about her injuries, and her injuries have to have  
2 been the direct result or a reasonably probable consequence  
3 of the incident.

4 Nobody has to prove that the only reason that she's had  
5 any problems is because of the door, or that all of her  
6 problems is because she was knocked down by the door.

7 What we have here is the testimony of Dr. --

8 THE CLERK: Your Honor, sorry to interrupt. This is  
9 your deputy, Gail Glass. Juror No. 3 just lost the frame  
10 again, so she's not with us.

11 THE COURT: Thank you.

12 THE CLERK: Thank you, Your Honor.

13 MR. FRIEDMAN: Looks like she's back, Your Honor.

14 THE COURT: It does appear that -- Juror No. 3, can  
15 you hear us?

16 THE LAW CLERK: Your Honor, I think the person  
17 missing is Juror No. 2.

18 THE CLERK: I'm sorry, Juror No. 2. I'm sorry, I  
19 said the wrong number. With a correction.

20 And, Ms. Kim, she's trying to log back in to you as we  
21 speak. Juror No. 2 apologizes. They're having technical  
22 problems at their residence, so she's trying to log back in  
23 to Ms. Kim right now.

24 (Pause in proceedings.)

25 THE CLERK: Your Honor, Juror No. 2 is in the waiting



1 room trying to connect with Ms. Kim.

2 THE COURT: Thank you.

3 THE CLERK: Thank you, Your Honor. Juror No. 2 is  
4 now present.

5 THE COURT: All right. Welcome back. Did you have a  
6 nice trip? Can you hear me and see me? All right. Thank  
7 you.

8 Mr. Friedman, you can continue.

9 MR. FRIEDMAN: Thank you.

10 All right. We were talking about whether or not  
11 Mrs. Dallo's current condition was caused, or contributed to,  
12 or aggravated by the fact that she was knocked over on the  
13 ship. Ms. Conner asked some questions about solely caused by  
14 the accident, and that's not the standard. The incident on  
15 the ship has to be a substantial part of bringing about her  
16 injuries.

17 And we have the testimony of Dr. Allos and Dr. Alberstone.  
18 And it's contested, of course, by Mr. Venkat. So you have to  
19 decide which makes more sense. As the court told you in  
20 Instruction No. 3, the burden is preponderance of the  
21 evidence, what is more probably true than not. That's  
22 Instruction No. 3. That's our burden.

23 So you have to ask yourself, if you look at Exhibit 20,  
24 pages 1 and 2, and look at the bleed on her brain, how it's  
25 compressed. Did that compression damage the brain, or did it

1 bounce back and she made a full recovery? If her brain  
2 bounced back with no damage, what accounts for the sudden and  
3 drastic change that everyone has described?

4 Remember, Dr. Alberstone told you we can stop the  
5 progression of the subdural hematoma by evacuating the blood,  
6 but we can't undo the damage, we can't give someone a new  
7 brain. And he told you, "And yet in this instance we have an  
8 MRI that shows her head is filled with blood. Well, it  
9 wasn't filled with blood before the incident. We've had  
10 several scans done prior to the incident, including an MRI  
11 that was done in August of 2018, just three months before the  
12 incident. There is no blood at all. And so I would  
13 attribute the blood to the incident, and I would attribute  
14 her symptoms to the blood, you know, taking into account her  
15 age and whatever disability she had prior to the incident."

16 Now, Dr. Alberstone and Dr. Allos testified for a long  
17 time, but I think you'll remember what they said was, what is  
18 perfectly consistent is the symptoms she described after the  
19 subdural hematoma, the timeframe, and no other explanation  
20 that adequately explains it.

21 And Dr. Venkat reached conclusions that no other doctor  
22 who treated her or looked at this case came to.

23 Now, you'll see Instructions 18A and 18B, and those are  
24 important in this case. 18A talks about particular  
25 susceptibility. And, in essence, in a nutshell, what this

1 means is, Mrs. Dallo's brain atrophy, which you remember was  
2 within normal limits, but did make her more susceptible to a  
3 subdural hematoma if she suffered any head trauma. But this  
4 instruction tells you that even if she had a condition, like  
5 brain atrophy, that makes her more susceptible to have a  
6 worse outcome than someone who didn't have brain atrophy, you  
7 still have to fully compensate her for all injuries and  
8 damages. It's not -- the defendant is responsible even if  
9 she was susceptible, more than someone else would be. That's  
10 what 18A talks about.

11 18B talks about something related, but a little bit  
12 different. And this is for -- you'll recall Mrs. Dallo  
13 testified, and other people testified, she had medical  
14 conditions before the subdural hematoma that gave her  
15 symptoms, headaches, dizziness, depression, whatever. But  
16 she testified, and you saw evidence, that some of those --  
17 many of those were worse after the accident.

18 What 18B tells you is Holland America Line is not  
19 responsible, obviously, for the way she was before. But they  
20 are responsible for anything that got worse; and to the  
21 degree it got worse, you should compensate her. Not, of  
22 course, for the natural progression of aging, but if the  
23 aging was accelerated or the symptoms were accelerated  
24 because of the incident, then she deserves to be compensated  
25 for those. So that's what 18A and 18B talk about.

1           You've heard a great deal of evidence, including today,  
2 about how she was in terrible shape before the incident on  
3 the ship. Well, Dr. Anderson testified, while he was  
4 treating her, she was always able to perform the activities  
5 of daily living. She was mobile. She never used a walker.  
6 She never used a cane, and she didn't needed assistance with  
7 cooking, walking, cleaning, things like that. That was in  
8 the testimony this morning.

9           Now, he had not seen her since almost two years before the  
10 accident in 2018. So he didn't have much to say about was  
11 she worse off now than what was she before. But Dr. Allos  
12 did. And he told you she was worse after than she was  
13 before.

14           And we asked him, "How was she before? Did she have  
15 medical conditions that limited her ability to travel, or to  
16 garden, or to enjoy time with her family?" And he said,  
17 "No." And we asked him, "Okay. How did she seem emotionally  
18 prior to 2018?" And he said, "You know, besides the time I  
19 saw her was, you know, I believe two or three times, for, you  
20 know, headaches, which she was complaining of, and some  
21 dizziness from time to time. But, you know, the time I saw  
22 her, she was either in pain, or headaches, or, you know,  
23 certain things. She was fine. Mentally she was fine.  
24 That's the main thing I remember when I saw her in 2017,  
25 that's the reasons. But, you know, overall she looked fine.

1 No apparent distress. No major thing. When you look at her  
2 and you feel she's a healthy, you know, woman, besides  
3 certain complaints for age, and, you know, for other things.  
4 But overall, she was okay."

5 That's her doctor who saw her before and after and what he  
6 remembers about how she was before she went on the cruise.

7 And you've heard plenty of other witnesses talk about the  
8 sudden changes they've observed with Mrs. Dallo at the time  
9 of her subdural hematoma. And I suppose they could all be  
10 lying to you. And if you suspected Mrs. Dallo of lying and  
11 her family of lying, you could order secret surveillance of  
12 her to find out if she and her family were lying when they  
13 say, "She always uses a walker." And since apparently  
14 Holland America was suspicious about that, that's exactly  
15 what they did.

16 And you saw the video, it's Exhibit 25, where they hired  
17 someone to sneak around and capture some video of her on the  
18 day of her deposition. And we showed you that video, because  
19 it shows that even when she doesn't know anyone is watching,  
20 or videotaping her, she acts the same as she did, and her  
21 family described. All they saw, when they videotaped her,  
22 and you can watch the whole tape, it's Exhibit 25. She's  
23 walking with a walker, and with the assistance of her family.

24 So what other explanation could there be? You look before  
25 and after the cruise. In 2018, before the cruise, what do we

1 know about her condition? She went to Lebanon for a month.  
2 She walked up steps. She traveled around. She was gone all  
3 day. She danced at parties. She went to weddings. She  
4 walked without assistance. She gardened. She cooked. She  
5 hosted family every week. She did her own laundry. She went  
6 to church every Sunday, and sometimes during the week. She  
7 played bingo every Tuesday. And she visited nursing homes.

8 And what do we know after the cruise? Well, we know she  
9 had a subdural hematoma. We know she had a craniotomy. We  
10 know she needed physical therapy. We know she always uses a  
11 walker, inside and outside. We know she misses important  
12 events in her life. We know that she sits and cries at home.  
13 We know she doesn't travel anymore. We know she switched to  
14 a smaller church. We know that she needs help at home. We  
15 know she doesn't play bingo, and she doesn't visit a nursing  
16 home.

17 You've heard plenty of evidence describing what her life  
18 was like before and since. You can watch the videos. You  
19 can look at the photos. You can remember the testimony of  
20 those who knew her best. And then discuss with each other  
21 and come up with a figure that balances out what she has gone  
22 through and what she will have to face in the future.

23 Money can't fix what happened to Margaret Dallo, but it's  
24 the only thing the court system, the justice system, a jury  
25 can do, assign a number that represents the value of her

1 loss.

2 And if you look at the court's instruction, you'll see  
3 there's nothing there about whether or not Mrs. Dallo needs  
4 money or doesn't need money. That has nothing to do with it.  
5 Just like you shouldn't award money because you feel sorry  
6 for her, or you don't feel sorry for her. You should never  
7 award more than what's fair if she was poor, but you should  
8 also never award less than what's fair because she's  
9 comfortable. Anything less than a verdict that represents  
10 full justice is injustice, and that's not what we're here for  
11 today.

12 The losses in this case would be substantial, even if the  
13 patient made a lucky and good recovery. She had the  
14 bilateral subdural hematoma, her blood filling up in her  
15 brain -- well, in her skull, the uncertainty of the future,  
16 the fear of the surgery, the pain and the anxiety and fear of  
17 the actual surgery, and the recovery period, including  
18 physical therapy. Even all that, with no more, if she had  
19 made a miraculous recovery, would justify a verdict of  
20 hundreds of thousands of dollars.

21 What she went through was not a sore back or a broken leg.  
22 Her skull was opened up. Blood was evacuated. She had a  
23 seizure. And she had follow-up treatment. They saved her  
24 life, but unfortunately, Margaret Dallo did not make a  
25 complete recovery. She has lost the ability to do any of the

1 things that brought her joy, all the way up until she went on  
2 that cruise. Her garden. Her walks. Her cooking and  
3 hosting meals. Her travel. But most of all, her ability to  
4 spend time with her family.

5 Now, you can say, well, she was old, and she would have  
6 lost all that eventually anyway. But that is exactly the  
7 point; the most important point. She was old and she didn't  
8 have a lifetime ahead of her. There's a song from a while  
9 back, that has nothing to do with this case, but there's a  
10 line from the lyrics of that song that came to me yesterday  
11 when I was thinking about Margaret Dallo, and what I would  
12 say to you today. It says: 'Cause you can't jump the track,  
13 we're like cars on a cable, and life's like an hourglass,  
14 glued to the table.

15 The sands of time, for all of us, slip through that  
16 hourglass. But which grains are the most precious? In  
17 youth, we don't always appreciate the passage of time or the  
18 grim reality of our own mortality. But Mrs. Dallo made it to  
19 84 years, relatively healthy, and blessed with a large,  
20 loving family, and enough financial resources to enjoy  
21 travel, entertaining, civic engagement. She never missed an  
22 event, happy or sad, wedding or funeral.

23 And that's why it was so strange to hear Dr. Venkat say,  
24 "Well, you've got to use it or lose it." Mrs. Dallo was  
25 using it. She was doing it all. She was living life to the



1 fullest, like a person would if they were cherishing their  
2 last five, ten, or fifteen active years.

3 If a grandchild didn't make it to one of her events, she  
4 wanted to know why. She wanted to hold every baby, dance at  
5 every party, play bingo every Tuesday, and relax in spas on  
6 ocean cruises.

7 No one knows how many more years Margaret Dallo could have  
8 walked, taken cruises with her family, or enjoyed baptisms,  
9 communions, and weddings. But look at her a few days before  
10 the cruise. This is Exhibit 89. She still had lots of life  
11 left in her, and she was still able to do all the things she  
12 loved. There's no reason to believe she couldn't keep doing  
13 those things, at least for a while longer. But everything  
14 changed on November 26, 2018, suddenly and drastically. And  
15 I'm sorry to say, but she isn't going to go back to the way  
16 she was. You've heard the testimony.

17 So it's up to the eight of you to consider the  
18 instructions, the exhibits, and the testimony you've heard,  
19 and figure out what amount seems fair to you. Nothing more  
20 than what's fair, but also nothing less. And jurors always  
21 ask for guidance. And there's some guidance in the  
22 instructions.

23 And I will tell you one way to look at it is to look at  
24 different periods of time and figure out what is an  
25 appropriate amount for each period of time that seems fair to

1 you. You don't have to use these figures, you're free to  
2 come up with your own. But if you look at the time on the  
3 ship being knocked down, the bruise, 15 minutes laying on the  
4 ground, the fatigue, the worry, all those events, going to  
5 the infirmary, if that happened, and nothing else, and she  
6 made a perfect recovery, even that would be worth \$5,000 in  
7 compensation for what she went through on the last three days  
8 of that cruise. The pain. Anxiety. The worry.

9 And then you look -- this happened late November. Look  
10 about what happened to her in December, as her brain and her  
11 skull is filling up with blood, and nobody knows why, but her  
12 symptoms are increasing. If that happened, and nothing else,  
13 what she went through, with the aggravated symptoms, that  
14 would be worth \$10,000 for that period of time, until  
15 December 31st. Then you have the MRI. They discover her  
16 brain is bleeding, her skull is bleeding. She knows she  
17 needs surgery in an emergency fashion. She's afraid. She's  
18 apprehensive. She's still having all the symptoms. I would  
19 submit \$10,000 would be fair for going through that.

20 And then, of course, the surgery we talked to, they opened  
21 up her skull, they evacuated the blood. She was in the  
22 hospital. That is a substantial surgery, a life-threatening  
23 event. And I would think going through that, even with a  
24 full recovery, \$300,000 would be a fair compensation for  
25 going through what she did.

1 But the biggest part of this case is not necessarily the  
2 pain of the surgery, it's the loss of the enjoyment of her  
3 life. The pain, the disability. The things that she can't  
4 do anymore, can't enjoy. The loss of enjoyment of life. And  
5 if you take that from the period of December 31, 2018,  
6 through today, I don't think \$750,000 is out of range.  
7 Everything that brought her joy has been taken from her.

8 And then you have to think, what's her future hold?  
9 What's next year going to be like, and the year after that,  
10 and the year after that, for as long as she's blessed to  
11 live. And I would submit to you, if you look at the last  
12 years of someone's life and their inability to enjoy them as  
13 they planned, and the inability to do the things they love to  
14 do and enjoy the family, and the babies, and the travel,  
15 \$2 million seems to be an appropriate figure for having to  
16 live with this for the rest of her life.

17 And I will grant to you, that's a lot of money. But she  
18 has suffered a lot. If you think it's too much, ask  
19 yourself, has she suffered too much? Has she missed too  
20 much? Has she been alone and afraid too much? Has she been  
21 sad too much? And when you think about it, this verdict must  
22 be substantial to balance out everything that she has lost.

23 So let's look at the verdict form now. Sometimes jurors  
24 tell me, after trial, they wanted to come to a particular  
25 verdict, but they were confused by the form. The form in

1 this case is much simpler than some, but I've made it my  
2 practice to always go over the form with every jury, so there  
3 is no misunderstanding.

4 If you want to enter a verdict as I've outlined today,  
5 this is how you do it. On Question 1, "Do you find for the  
6 plaintiff on her claim of negligence?" The answer is, "Yes,"  
7 either because the ship had a hazard that a reasonable ship  
8 owner would have mitigated, or because Mr. Milic was  
9 negligent in his behavior that day. But you need to answer  
10 "yes" if you want to find in favor of Mrs. Dallo.

11 Question 2 is the amount of damages. You're the sole  
12 judges of that. It can be any amount, as long as you follow  
13 the guidance of Instruction 18 and the other instructions the  
14 court gave you. You've heard plenty of evidence of this.  
15 The amount can be less than I suggested, or more. It's  
16 completely up to you.

17 Question No. 3. "Was the plaintiff negligent?" As I  
18 said, this might be the most important, in my mind. The  
19 answer is, "No." The answer is "no" for all the reasons  
20 we've talked about. She was walking down a hall when a door  
21 suddenly opened and knocked her down. Nothing she did was  
22 negligent. And the answer is, "No."

23 If you answer "no" there, you don't go to Question 4. You  
24 sign and date the form.

25 So on behalf of Mr. Roosa and myself, thank you for your

1 careful attention and patience while we learned a new way to  
2 conduct a jury trial. It's been our privilege and honor to  
3 present Margaret Dallo's case to you, and I look forward to  
4 speaking to you again after Ms. Conner speaks.

5 Thank you.

6 THE COURT: I think what we'll do is take about a  
7 ten-minute recess, ladies and gentlemen. We've been going  
8 for almost an hour and a half, and we want to -- we've got  
9 another half hour or hour of additional argument. So let's  
10 take our break now. Let's take a 10-minute recess. Please  
11 be back by 2:30, 2:31. We'll then hear from defense counsel.

12 We're in recess. Thank you.

13 (Recess.)

14 THE LAW CLERK: The jury appears to be ready now.

15 THE COURT: All right. Let's bring them in.

16 (The following occurred in the presence of the jury.)

17 THE CLERK: Your Honor, we're ready to proceed. All  
18 of the jurors are now in the frame.

19 THE COURT: Thank you. Ms. Conner, you may proceed.

20 MS. CONNER: Thank you, Your Honor.

21 Good afternoon, ladies and gentlemen. As I stated in my  
22 opening to you last week, this will be the last time that  
23 I'll get to address this case with you before you begin your  
24 deliberations. This is my chance to summarize for you the  
25 witness testimony and the evidence presented at this trial.

1 This is my last chance to remind you where the accident  
2 occurred, and the fact that no other passengers have ever  
3 been injured by this door. This is my chance to help you put  
4 the pieces of the puzzle together.

5 As Americans, we have certain civic duties. We can give  
6 back to our communities. We can vote. And we can serve as  
7 jurors. As jurors, you will now have the opportunity to  
8 deliberate about this case. You will get to meet with your  
9 fellow jurors and review the evidence in this case. You will  
10 get to consider the law, as Judge Zilly has instructed you,  
11 and apply the law to the facts and the evidence. Based on  
12 the evidence presented, you will get to decide whether  
13 Ms. Dallo has met her burden of proof.

14 Judge Zilly has instructed you that you are to consider  
15 only the testimony and exhibits received into evidence.  
16 Arguments of counsel, arguments of Mr. Friedman; that is not  
17 evidence. Ms. Dallo is the plaintiff. She bears the burden  
18 of proof in this case. It's her burden to prove that my  
19 client was negligent, and that her injuries were caused by my  
20 client's negligence. She must prove that my client was  
21 negligent, by a preponderance of the evidence, that it's more  
22 probably true than not true. She must prove to you, by a  
23 preponderance of the evidence, that my client breached a duty  
24 of care owed to her, and that the breach caused injuries to  
25 her, and that she has sustained damages as a result of those

1 injuries. If you agree that Ms. Dallo has failed to  
2 establish any of those points, your verdict must be for my  
3 client.

4 As a cruise-ship operator, my client owes to its  
5 passengers, such as Ms. Dallo, a duty to use reasonable care  
6 under the circumstances. Safety is important to my client.  
7 As Security Officer Aguirre testified, crew members receive  
8 safety training, to include training on how to open doors, to  
9 open them carefully. Passengers are reminded of safety when  
10 they board the ship, with safety videos and brochures,  
11 reminding them to be careful of their surroundings, to be  
12 mindful of doors.

13 Ms. Gill described a safety hierarchy. Keep in mind, when  
14 she testified, she confirmed she never reviewed any documents  
15 concerning my client's safety program. She never read my  
16 client's safety manuals. She did not speak to any employees  
17 of my client regarding their safety or risk-management  
18 program. She did no research on the training crew members  
19 received. She did not watch the safety video that would have  
20 been playing in the Eurodam when Ms. Dallo boarded the  
21 cruise, or review the captain's book concerning safety.  
22 There's no evidence that Ms. Gill researched the process  
23 Holland America used with its safety team concerning the  
24 design of the ship, the corridor, or the subject door, taking  
25 into account the need for a fire-resistant door at this

1 specific location on the ship.

2 Judge Zilly has instructed you, my client cannot be found  
3 negligent unless my client knew or should have known about  
4 the risk-creating condition. Keep in mind, the evidence in  
5 this case, that no other passenger before or after Ms. Dallo  
6 has been injured by this door.

7 Now, doors are not unique to maritime travel or the  
8 maritime industry. We encounter doors on a daily basis, in a  
9 number of different environments. As Judge Zilly has  
10 instructed you in Instruction No. 15, "If the condition  
11 constituting" -- Instruction No. 15. I'll just go ahead and  
12 read it, that's okay.

13 "If the condition constituting the basis of a plaintiff's  
14 claim is not unique to the maritime context, then a ship  
15 owner can be found negligent, only if it knew or should have  
16 known about the risk-creating condition."

17 Ladies and gentlemen, Mr. Colwell testified that he has  
18 managed passenger injury claims for Holland America for over  
19 20 years. He testified that no passenger, other than  
20 Ms. Dallo, has been injured by this door.

21 Mr. Colwell searched Holland America's database, Risk  
22 Consult, for any prior similar accidents, to determine  
23 whether Holland America had any notice whether this door was  
24 dangerous, or caused an injury to passengers. Mr. Colwell  
25 testified that no prior accidents have occurred. No



1 accidents have occurred involving this door since Ms. Dallo's  
2 accident either. Thousands and thousands of passengers have  
3 used this hallway, and walked by this door, without injury.

4 Now, at the beginning of this trial, I represented to you  
5 that the evidence would show that thousands of Eurodam  
6 passengers walked down this hallway and passed the door  
7 without injury. Ms. Dallo has not offered any evidence that  
8 any other passenger was ever injured by this door. She  
9 offered no evidence that my client had notice that this door  
10 was a dangerous condition.

11 I also represented to you, during my opening statement,  
12 that the evidence would show Holland America met the safety  
13 regulations that apply to passenger cruise ships, and the  
14 safety regulations concerning this fire-safe door.

15 Mr. Greif is a naval architect, marine engineer, and U.S.  
16 Coast Guard ship inspector. He described the regulations  
17 that applied to the Eurodam and the safety standards the  
18 Eurodam has to meet to sail with passengers.

19 He explained to you that the Eurodam, as a passenger  
20 cruise ship built to sail in international waters, must  
21 comply with the International Convention for the Safety of  
22 Life at Sea, or SOLAS. He explained that the area where this  
23 door is located, as a fire-safe zone, must be protected with  
24 a certain type of fire-safe door. He testified that the  
25 subject double doors have to swing outward, to allow

1 individuals to exit out to the deck and to the lifeboats in  
2 case of an emergency.

3 Ms. Dallo's counsel offered no expert opinion to rebut  
4 Mr. Greif's testimony. She did not hire a naval architect or  
5 a marine engineer to rebut his testimony. In fact, their  
6 human factors expert, Ms. Gill, deferred to Mr. Greif on the  
7 issue. She testified that she did not dispute his opinion  
8 concerning the way the door was built, or that it met  
9 applicable safety standards.

10 Now, counsel showed you a document that they argue is  
11 evidence of a U.S. Coast Guard-approved A-60 door. So?  
12 Mr. Greif inspected and built hundreds of ships, including  
13 passenger cruise ships. And he testified that he has never  
14 seen that type of a door on a passenger cruise ship. He  
15 explained that the type of door counsel showed you might be  
16 fine on a U.S. Coast Guard approved vessel, such as the ferry  
17 boat you might take between Seattle and Bainbridge.

18 But counsel offered no evidence that this door had ever  
19 existed on a passenger cruise ship. They offered no evidence  
20 that the door would meet the stringent SOLAS regulations that  
21 control foreign-flagged passenger cruise ships such as the  
22 Eurodam. They offered no evidence that the door even existed  
23 when the Eurodam was built.

24 Keep in mind, Mr. Greif's testimony, that the Eurodam must  
25 meet SOLAS standards. Counsel offered no expert testimony

1 that the door they proposed would meet SOLAS standards. And  
2 counsel's arguments to the contrary, are not evidence.

3 Counsel offered no evidence that the Eurodam was different  
4 from any other cruise ship, no evidence that this fire-safe  
5 door that struck Ms. Dallo was different from other cruise  
6 ship fire-safe doors. Counsel offered no evidence from  
7 anyone in the shipbuilding industry that the Eurodam was  
8 unsafe, or that it did not meet SOLAS requirements, or that a  
9 different door could have, in fact, been installed where this  
10 accident occurred.

11 Plaintiff bears the burden of proving that my clients  
12 breached a duty of care owed to her. It's her burden to  
13 prove the ship was not safe, that the ship did not meet  
14 safety rules and regulations. She offered no such evidence.  
15 And without such evidence, she cannot meet her burden of  
16 proof.

17 Now, ladies and gentlemen, you heard Mr. Ikram testify  
18 about visual cues, and visual cues concerning this door.  
19 Ms. Gill does not agree with the existence of these visual  
20 cues, such as the silver door frame, and handles, the hinges,  
21 the exit sign. Mr. Ikram also testified that the hallway is  
22 an adequate width to allow passengers to travel without  
23 passing through the door's swing path. And Ms. Gill does not  
24 agree with that point, either. In fact, she explained that  
25 when the door is fully opened, it takes up less than half of

1 the entire width of the hallway.

2 Ms. Gill wants you to believe those facts aren't relevant.  
3 But this door is not a hidden door leading to some secret  
4 passage on the ship.

5 Ms. Dallo did not see this door, because she was not  
6 paying attention. Ms. Dallo testified she was looking  
7 straight ahead. She wasn't looking to her right. She wasn't  
8 looking to her left. She wasn't looking to see what was  
9 around her as she was walking down this hallway. She was not  
10 being mindful of her surroundings. The family testified that  
11 for the first 15 days of this cruise, they didn't even notice  
12 the door was there, despite its visual cues.

13 Now, Ms. Gill wants more visual cues. Let's add bells,  
14 let's add whistles, flashing lights, stickers. Ladies and  
15 gentlemen, this accident did not happen in the crosswalk of a  
16 busy intersection. It did not happen even in a parking  
17 garage entrance. This happened on a luxury ocean liner.

18 Plaintiff offered no evidence that the items suggested by  
19 Ms. Gill are even feasible, or that they would have made a  
20 difference. She offered no evidence that any passenger  
21 cruise ship has the bells, whistles, flashing lights or  
22 stickers that she was suggesting. She offered no evidence  
23 that adding these items would comply with SOLAS. There's no  
24 evidence that Ms. Gill performed any tests or surveys to  
25 support her idea that such items would have made a

1 difference. Ms. Gill offered no evidence that she tested her  
2 theories.

3 Mr. Greif testified that adding alarms, bells, and  
4 whistles, would create complete chaos on a passenger cruise  
5 ship. Doing so might confuse passengers in thinking an  
6 emergency is taking place on board the ship, and that they  
7 should immediately get to their lifeboats.

8 And what about a sign on the door? What about a sign  
9 reminding Mr. Milic to open the door gently or carefully?  
10 Well, you saw Mr. Milic's statement. You've seen it several  
11 times this past week. The evidence is, he opened the door  
12 gently. There's no evidence that a sign telling him to open  
13 the door with caution would have made any difference in this  
14 case. There's no evidence he did not use caution.

15 Plaintiff has the burden of proving, by a preponderance of  
16 evidence, that my client did not act reasonably and that the  
17 door was a dangerous condition. The plaintiff has offered no  
18 evidence that the Eurodam was different from any other cruise  
19 ships, no evidence that this fire-safe door was different  
20 from any other cruise ship's fire-safe door, and no evidence  
21 that this door was in violation of SOLAS safety regulations.

22 If you cannot agree whether my clients acted reasonably or  
23 you cannot agree that the door was a dangerous condition,  
24 then Ms. Dallo has not met her burden of proof, and you must  
25 return a verdict in my client's favor.

1 Ladies and gentlemen, was there anything Ms. Dallo could  
2 have done differently? Yes. She could have paid attention.  
3 She could have used reasonable care while she walked down  
4 this hallway. She could have paid attention to her  
5 surroundings, and avoided the door altogether. The experts  
6 agree, the hallway had plenty of room to pass around the  
7 door's pathway. Had she been paying attention, she could  
8 have seen this door and avoided it, like the thousands of  
9 passengers who have walked past this door, before her  
10 accident and after her accident, without injury.

11 I ask you, ladies and gentlemen, in listening to the  
12 testimony in this case, did the door knock Ms. Dallo to the  
13 ground, or did she simply lose her balance and stumble  
14 backwards? Ms. Michail testified she was walking behind her  
15 mother, she was looking ahead, and not looking at her  
16 mother's feet the moment the door opened. However, Ms. Konja  
17 testified she saw the fall, and her mother stumble.

18 You saw Ms. Konja testify, her transcript reads as  
19 follows:

20 "Question. Now, did you actually see your mother fall?

21 "Answer: I saw her falling.

22 "Question: In the act of falling?

23 "Answer: Yes.

24 "Question: Was she falling forwards, backwards, to the  
25 side?

1 "Answer: I'm not a hundred percent. But I think like  
2 sideways, and then her body twisted, and then she hit her  
3 head back.

4 "Question: Sideways?

5 "Answer: Like I saw her force -- her head was forced  
6 because she -- she took a while till she fell. She -- she  
7 stumbled back and then she fell. It wasn't, like, just a  
8 bang, fall. I saw her stumble.

9 "Question: So she stumbled backwards and then she fell?

10 "Answer: Yeah."

11 And, again, ladies and gentlemen, the issue about the  
12 manner in which this door was opened, you have seen the  
13 accident investigation report and the photos taken the day of  
14 this accident. You have seen the guest statement from  
15 Ms. Dallo that the door opened outward, and the witness  
16 statement from Mr. Milic that he opened the door gently.  
17 These statements were both completed within minutes of the  
18 accident occurring. There's no mention in either of these  
19 statements that the door was opened suddenly, forcibly, hard  
20 or fast. Counsel's arguments are not evidence.

21 Now, counsel questions why Security Officer Aguirre did  
22 not interview anyone else about this accident. And Officer  
23 Aguirre testified he did not need to. The statements of  
24 Ms. Dallo and her family were entirely consistent with  
25 Mr. Milic's statements. Mr. Milic opened the door that

1 struck plaintiff. He opened the door outward. He opened it  
2 gently. The door he opened made contact with Ms. Dallo.  
3 Ms. Dallo stumbled backwards, she lost her balance, and she  
4 fell.

5 Now, the accident on the Eurodam is not the first time  
6 Ms. Dallo has stumbled and fallen. In fact, the evidence  
7 shows Ms. Dallo has a long history of stumbling, she has a  
8 long history of dizziness, mobility, loss of gait and balance  
9 issues.

10 Dr. Anderson testified this morning that Ms. Dallo had an  
11 unsteady gait. He referred her to physical therapists to  
12 treat her unsteady gait. He was concerned about prescribing  
13 sleeping pills for her, partly because she was such a fall  
14 risk. Dr. Allos testified he started Ms. Dallo on medication  
15 because of her dizziness. She had a number of prior falls,  
16 including a fall at home while gardening, where she stumbled  
17 and struck the back of her head on the concrete.

18 Just a couple of months before this cruise, Ms. Michail  
19 completed a form that her mother was, in fact, having  
20 difficulties with simple activities of daily living. She was  
21 having difficulties taking a shower or performing her  
22 household chores. Just weeks before this cruise, Ms. Dallo  
23 complained she was having double vision for the past two  
24 months.

25 The doctors have testified that the injuries and symptoms



1 Ms. Dallo claims were caused by this accident, had been  
2 plaguing her for years. Chronic headaches. Chronic  
3 depression. Chronic dizziness. Anxiety. Ringing and  
4 buzzing in her ears. Chronic fatigue. Mobility and  
5 loss-of-balance issues.

6 Neither Ms. Dallo nor any of her family members gave  
7 notice to Holland America of these conditions prior to the  
8 cruise, despite the ticket contract asking that they do so.

9 Ms. Dallo had a number of declining and cognitive issues  
10 before she boarded the cruise ship. As I showed you in my  
11 opening statement, she had chronic joint pain, knee  
12 replacement surgeries, neck pain, back pain, itching, high  
13 blood pressure, thyroid issues, shortness of breath, chest  
14 pains, sleep apnea, double vision, peripheral neuropathy,  
15 diastolic lung failure, and lung cancer. Neither Ms. Dallo,  
16 or any of her family members, gave Holland America notice of  
17 these conditions prior to her cruise, despite the ticket  
18 contract asking that she did so.

19 Ms. Dallo had one thing going on that she may not have  
20 been aware of. She had brain atrophy. Her brain was  
21 shrinking with age. The CT scans and MRI scans show  
22 objective evidence that her brain was shrinking. Dr. Venkat  
23 testified this atrophy or shrinking was present on all sides  
24 of Ms. Dallo's brain. There was shrinking of her brain at  
25 the temporal lobes, affecting her memory; shrinking of the

1 frontal lobes, affecting her cognitive functions, such as her  
2 personality, her mood, her ability to process information.  
3 She also had shrinking at the cerebellum, the very back of  
4 her brain, that controls her balance.

5 Dr. Venkat testified that this shrinking is the natural  
6 progression for Ms. Dallo. This is how her brain is aging.  
7 It has nothing to do with the accident aboard the Eurodam.

8 The shrinking and atrophy is a consequence of Ms. Dallo's  
9 hypertension, her vessel disease. Ms. Dallo's brain will  
10 continue to age and to shrink, regardless of this accident.

11 Dr. Venkat described for you the observations she made  
12 while watching videos of Ms. Dallo and her family, that were  
13 taken prior to this accident. She observed Ms. Dallo's  
14 wide-based stance, which she described to be typical of  
15 someone with cerebellum degeneration or atrophy. She  
16 described that plaintiff walked with a waddling gait;  
17 evidence that she was trying to find her sense of gravity or  
18 balance herself.

19 If you watch the video, you'll notice Ms. Dallo doesn't  
20 move her feet while she's dancing. She appears to tire  
21 easily. Her family has to get her a chair to sit on. She  
22 shows limited range of motion. And her expression on her  
23 face, it's like a mask. She smiles to take a photo, but  
24 otherwise, stoic. Keep the testimony of Dr. Venkat in mind  
25 concerning the videos, if you choose to review them for

1 yourself.

2 Now, you've heard from two neurologists in this matter,  
3 and you'll need to decide between them, whose expert opinion  
4 should be given greater weight. You must consider each of  
5 the experts' education and their experience.

6 Dr. Alberstone is, no doubt, a fine surgeon. But  
7 Dr. Venkat is the Professor of Neurology and Neurological  
8 Sciences at Stanford. She's been trained in internal  
9 medicine and neurology, and cerebral vascular medicine, a  
10 study of neurology pertaining to all kinds of diseases of the  
11 blood vessels in the brain. She's trained in neurocritical  
12 cases, and did her fellowship and research in neurotrauma.  
13 Conditions involving head trauma. Her clinical trials have  
14 focused on brain bleeds and traumatic brain injuries.  
15 Dr. Venkat treats head-injury patients. She follows her  
16 patients for months, and years, to see how they progress.

17 Now, there are a number of items that Dr. Venkat and  
18 Dr. Alberstone agree on. They agree it would be reasonable  
19 to have Ms. Dallo wean off the Keppra, because it has a  
20 number of adverse side effects. They agree it's not clear  
21 whether Ms. Dallo had a seizure during the surgery to remove  
22 her subdural hematomas. They agree the surgery Ms. Dallo had  
23 was not done on an emergency basis. The doctor did the  
24 surgery when the operating room was available.

25 They agree Ms. Dallo had an excellent recovery from

1 surgery. She only needed one surgery to evacuate the  
2 subdural hematomas. They agree subdural hematomas can occur  
3 spontaneously. They can be caused by trivial trauma,  
4 something so trivial that the patient doesn't even recall it  
5 occurred. They agree that during the surgery to evacuate  
6 Ms. Dallo's subdural hematomas, there was evidence of old and  
7 new blood.

8 Now, the neurologists do not agree on when the subdural  
9 hematomas occurred, or what caused them. Dr. Venkat felt it  
10 was extremely important that the neurosurgeon who met with  
11 Ms. Dallo concerning whether to perform surgery to evacuate  
12 the subdural hematomas, documented that Ms. Dallo had several  
13 falls in the months leading up to the January 2019 scan that  
14 had the evidence of the hematomas.

15 Dr. Venkat reviewed the medical records from Ms. Dallo's  
16 radiation oncologist in January of 2019, documenting that  
17 Ms. Dallo had a fall in December, weeks prior to this scan  
18 showing the subdural hematoma.

19 Dr. Venkat testified that the evidence of the old and new  
20 blood on surgery, helps date the subdural hematomas. Per  
21 Dr. Venkat, the blood makeup is objective evidence that the  
22 subdural hematomas developed two to three weeks prior to the  
23 January 2019 scan, and not during the November 2018 incident  
24 aboard the Eurodam.

25 The neurologists do not agree on whether Ms. Dallo's

1 current complaints are related solely to the subdural  
2 hematomas. Dr. Venkat testified they're not related at all.  
3 The medical reports and doctor depositions are evidence that  
4 Ms. Dallo had the same complaints for years. They're  
5 progressing, regardless of this accident. There's objective  
6 evidence on the imaging scans that Ms. Dallo had progression,  
7 shrinkage of her cerebellum, her frontal lobes, and the  
8 temporal lobes, as a process of aging. She had accumulated  
9 silent strokes, contributing to her imbalance issues. She  
10 had been exposed to a number of medications that affect her  
11 mood, her cognition, her gait stability.

12 It's Dr. Venkat's opinion that the combination of each of  
13 these factors are responsible for Ms. Dallo's symptoms and  
14 complaints and it has nothing to do with the subdural  
15 hematomas.

16 Keep in mind, the subdural hematoma was outside  
17 Ms. Dallo's brain. Once removed, her brain sprung back to  
18 its pre-subdural position, without structural damage to the  
19 brain, as seen on the imaging studies dated June 1, 2019.

20 Now, we know immediately following this accident,  
21 Ms. Dallo was taken to the ship's medical center and examined  
22 by the medical staff. And you heard me describe in my  
23 opening statement, and as you can read in the shipboard  
24 medical notes, Ms. Dallo did not have any bleeding, her vital  
25 signs were normal, she denied losing consciousness or being

1 confused, she was able to describe to the doctors the  
2 accident and what happened to her. Her eyesight was fine.  
3 She wasn't nauseous. She was told to call or return to the  
4 medical center if her symptoms changed or became worse. She  
5 never called the ship's doctor or returned to the infirmary.  
6 She finished her cruise and returned home.

7 Dr. Venkat testified that blood on someone's dura would be  
8 very painful. Ms. Dallo would have developed symptoms almost  
9 immediately, not weeks or months after her cruise.

10 Now, Dr. Alberstone essentially testified that he believes  
11 the subdural hematomas were caused by the accident aboard the  
12 Eurodam, because the timing or the chronology makes sense to  
13 him.

14 Ladies and gentlemen, there are no imaging scans in  
15 November of 2018 showing that this accident caused the  
16 subdural hematomas to develop. There are no imaging scans in  
17 November of 2018 showing that the subdural hematoma had  
18 developed. There's no scan until January 19, 2019. The  
19 medical records provide evidence that Ms. Dallo had multiple  
20 falls in the weeks and months prior to the January 2019 scan.

21 Upon returning home from the cruise, Ms. Dallo did not  
22 seek urgent medical care or treatment. She did not complain  
23 about her headaches until weeks later, in December of 2018.

24 Ms. Dallo has the burden of proving, by a preponderance of  
25 the evidence, that she sustained injuries because of this

1 accident, and what those injuries are, specifically. She has  
2 no objective evidence until January of 2019, that the  
3 subdural hematomas even existed. If you cannot agree on  
4 whether the accident on the Eurodam more likely than not  
5 caused those subdural hematomas, then Ms. Dallo has not met  
6 her burden of proof.

7 Judge Zilly instructed you with regard to causation, Jury  
8 Instruction No. 16. "An injury or damage is caused by an act  
9 or failure to act, whenever it appears, from the evidence,  
10 that the act or failure to act played a substantial part in  
11 bringing about or actually causing the injury or damage, and  
12 that the injury or damage was either a direct result or a  
13 reasonably probable consequence of the act or omission."

14 Dr. Venkat testified that the accident aboard the Eurodam  
15 did not cause Ms. Dallo's subdural hematomas, or her current  
16 complaints, or her current disabilities. Her current  
17 condition is the natural progress of her preexisting  
18 condition. Her claims of increased issues are subjective.  
19 They cannot be measured with objective evidence.

20 If you find my client is negligent, and you find Ms. Dallo  
21 sustained injuries because of my client's negligence, you  
22 must also determine whether the injuries and complaints she's  
23 complaining of are more likely than not caused by the  
24 accident on the Eurodam, or did they result from the natural  
25 progress of her preexisting conditions.

1 As Judge Zilly has instructed you, Ms. Dallo may not  
2 recover for injuries or disabilities that are the result of  
3 the natural progression of her preexisting conditions.

4 Now, it may be difficult to be impartial in this case  
5 because we are dealing with an elderly woman. Ms. Dallo is  
6 clearly loved by her family. Ms. Dallo may remind you of  
7 your mother, or your grandmother, or a kind neighbor. But  
8 you did agree to be impartial. You took an oath to not be  
9 influenced by personal likes, or dislikes, opinions,  
10 prejudice or sympathy.

11 Judge Zilly has instructed you that all the parties are  
12 equal before the law. And my client is entitled to the same  
13 fair and conscientious consideration by you, as Ms. Dallo.  
14 Sympathy cannot control how you view this case. Your final  
15 decision must be based on the facts, the evidence, and the  
16 law.

17 So what are Ms. Dallo's damages? Well, you just heard  
18 counsel ask for over \$3 million. If you find my client to be  
19 liable, you'll need to agree with Ms. Dallo, whether she's  
20 entitled to any monetary damages, and what the amount is.

21 Your job is not to punish either of the parties, but to  
22 rely on the evidence. You were instructed, "The plaintiff  
23 bears the burden of proving damages by a preponderance of the  
24 evidence. It is for you to determine, based upon the  
25 evidence, what damages, if any, have been proved. Your award



1 of damages must be based upon evidence and not upon  
2 speculation, guess or conjecture."

3 Ms. Dallo continues to enjoy life. Her family still gets  
4 together at her home for their Sunday feast. She continues  
5 to attend mass. Her experts agree her subdural hematomas  
6 were successfully removed. She does not need any more  
7 surgery. Her brain has sprung back and filled in the area  
8 where the subdural hematomas existed.

9 Dr. Alberstone testified the surgery was successful in  
10 evacuating the hematomas and preventing further neurological  
11 and functional deterioration. The experts agree it's  
12 reasonable to wean Ms. Dallo off her Keppra, to stop its  
13 awful side effects. None of Ms. Dallo's doctors have told  
14 her to stay home or to be isolated from her friends and  
15 family. In fact, the experts and treating doctors all agree  
16 she should be active, she should be out there doing  
17 something. She should use it, not lose it.

18 Now, often counsel will hire an economist to calculate and  
19 testify about damages, to help the jurors put a dollar value  
20 on a case.

21 Counsel did not do that here. They have offered us no  
22 evidence of what would be a reasonable basis for Ms. Dallo's  
23 damages. They've provided only their opinion, their  
24 arguments. Counsel's arguments and counsel's opinions are  
25 not evidence of Ms. Dallo's damages. Your common sense will

1 tell you that the number they are asking for, simply bears no  
2 relationship to this case.

3 Family members testified they want justice for their  
4 mother. They want to be compensated, because they were  
5 treated poorly by my client. But they offered no evidence  
6 that my client treated them poorly. Counsel offered no  
7 letters, no e-mails, no phone logs, showing that Ms. Dallo or  
8 her daughters were treated poorly, or that they ever  
9 complained to Holland America that they were treated poorly.

10 Mr. Milic apologized at the scene of the accident.  
11 Members of the cruise sent the family chocolate-covered  
12 strawberries. Her medical charges were refunded.  
13 Mr. Colwell heard nothing from the family about this incident  
14 until he received the notice of representation letter from  
15 the plaintiff's attorneys in February 2019. And at that  
16 point in time, he could have no contact with Ms. Dallo.

17 Ladies and gentlemen, you must be fair. In a case like  
18 this where there is no evidence that the door failed to meet  
19 SOLAS safety standards, no evidence that any other passenger  
20 has ever been injured by this door, no evidence that my  
21 client had notice that the door was a danger to its  
22 passengers, what is a fair and just outcome?

23 As counsel showed you, you will be given a verdict form to  
24 complete after your review and consideration of this case.  
25 You must all agree on the outcome.

1 With regard to Question No. 1, "Do you find for plaintiff  
2 on her claim of negligence?" I will ask that you check the  
3 box "No." I will ask that you find plaintiff has not met her  
4 burden of proof.

5 Now, ladies and gentlemen, if you find that Ms. Dallo has  
6 met her burden of proving my client was negligent, then you  
7 must ask yourself, do you agree with my client that Ms. Dallo  
8 herself was negligent, that she was not using reasonable  
9 care, that she was not being mindful of her surroundings,  
10 that she contributed in some way to causing her injuries?

11 Question No. 3 on the verdict form asks, "Do you find that  
12 plaintiff was negligent and that plaintiff's negligence was  
13 the cause of her injury?" I ask that you check, "yes," that  
14 plaintiff was negligent and that plaintiff's negligence was a  
15 cause of her injury.

16 Next, ladies and gentlemen, if you answer Question No. 3  
17 "yes," you'll have to decide to what extent was Ms. Dallo's  
18 injury caused by her own negligence. That's for you to  
19 decide, ladies and gentlemen. 95 percent? 99 percent? It's  
20 up to you, based on the evidence, the facts, and the law.

21 If you decide to award Ms. Dallo damages for this  
22 unfortunate accident, you will need to determine the amount  
23 of damages you will award her. What's a fair number?  
24 5 percent of what counsel is asking for? 1 percent of what  
25 counsel is asking for?

1           Again, ladies and gentlemen, ask yourself, what are her  
2 injuries? What are her preexisting conditions? Are her  
3 preexisting conditions simply progressing with age? No  
4 doctor has testified that Ms. Dallo's preexisting conditions  
5 were aggravated by this accident. Counsel's arguments to the  
6 contrary are not medical evidence that an aggravation has  
7 occurred.

8           Dr. Venkat testified that Ms. Dallo's condition is due to  
9 the natural progression of her preexisting conditions.  
10 Consider the evidence concerning the health issues and  
11 complaints Ms. Dallo had prior to this cruise, for years, so  
12 that you can best evaluate whether this accident has affected  
13 her and injured her. Consider the evidence concerning her  
14 balance issues before this cruise, the falls she sustained  
15 before this cruise, her state of health before this cruise.

16           Consider Dr. Anderson's testimony that you heard this  
17 morning. Consider Ms. Dallo's credibility and the  
18 credibility of her family members. Do you believe  
19 Ms. Dallo's family members were not aware of her headaches,  
20 her depression, her dizziness, her mobility issues, before  
21 this cruise? Do you believe that they were not aware she  
22 needed help with activities of daily living, such as  
23 showering, or that she was experiencing double vision, or the  
24 loud noises had been bothering her for years before this  
25 cruise?

1           Is Ms. Dallo downplaying her preexisting conditions? Has  
2 she been honest with her doctors and herself? Has she been  
3 honest in her deposition? Are Ms. Dallo and her family  
4 members exaggerating her current complaints and symptoms?

5           Ladies and gentlemen, accidents do happen. How often do  
6 you bump your knee on your desk? How often do you forget  
7 your kitchen cupboard is open and bump your head, or forget a  
8 drink is nearby and knock it over onto your keyboard? A  
9 momentary lapse of judgment, forgetfulness, inattentiveness;  
10 these things lead to accidents.

11           At the beginning of this trial, I represented to you that  
12 the evidence would show that this was simply an unfortunate  
13 accident. It is just that, an accident. And just because  
14 this accident happened, does not mean it's my client's fault.

15           I would like to thank each and every one of you for your  
16 time and your patience as we worked through this very unique  
17 remote trial. Ladies and gentlemen, this is actually a  
18 historic moment in time, it's a historic moment in  
19 litigation, in history, and I thank you all for being a part  
20 of it.

21           Thank you.

22           THE COURT: Thank you, counsel.

23           Mr. Friedman, where did you go? There you are. Do you  
24 want to go ahead and give a rebuttal.

25           MR. FRIEDMAN: Yes, Your Honor. Thank you.

1 Ladies and gentlemen, the corner of your desk doesn't jump  
2 out and hit your knee. A glass on your desk doesn't tip  
3 itself over. But this door did come out and hit Ms. Dallo.  
4 It wasn't just an accident, it was the conduct of a crew  
5 member, and the conduct of a ship that didn't prevent those  
6 types of accidents from happening.

7 I think you've heard enough, and probably don't need much  
8 more lawyers' time spent talking to you. The case will now  
9 be in your hands, and your voice will be the only one that  
10 matters. Your verdict can give a voice to Ms. Dallo's  
11 suffering, or it can ratify Holland America's conduct, and  
12 Stefan Milic's conduct. If you think they all acted  
13 reasonably, they did nothing to contribute to this incident,  
14 that they didn't know, and could not have known, should not  
15 have known of this hazard, then your verdict should be for  
16 the defense.

17 But did they create this situation? Did they cause it? I  
18 think the evidence is clear, they did. If Mr. Milic opened  
19 the door negligently, they're liable. If there's a hazard on  
20 the ship they should have known about and corrected, they're  
21 liable. Either way.

22 One thing we agree on is that the arguments of lawyers are  
23 not evidence in this case. And when I present the evidence  
24 to you, it's the evidence that's been admitted, and  
25 inferences that you can draw from that evidence. If you

1 don't think those are fair inferences, then, of course, you  
2 don't have to accept them.

3 But Ms. Conner's arguments are not evidence, either.  
4 Ms. Conner said there's a safety video and a captain's  
5 message on this boat. But they never showed you a safety  
6 video or captain's brochure. They've never shown you what  
7 the video from that camera in the hallway would show you.  
8 They mention safety manuals. They've showed you no safety  
9 manuals. She mentioned training. They've showed you no  
10 training documents. They've mentioned regulations from SOLAS  
11 and the Coast Guard and the International Maritime  
12 Organization. They've showed you no regulations from the  
13 Coast Guard, or SOLAS, or the International Maritime  
14 Organization.

15 And they've said several times there is nothing about this  
16 ship or this door that was different than any other cruise  
17 ship or any other door. Well, you can look through those  
18 instructions Judge Zilly gave you, and you won't see anything  
19 that says that's a relevant consideration. It doesn't matter  
20 if it's the only ship like this, or that every ship is like  
21 this. The question is whether or not they took reasonable  
22 steps to avoid the hazard. It doesn't matter if every ship  
23 has the same defect.

24 Ms. Conner said something to suggest that the door hitting  
25 Ms. Dallo was not the reason she fell. But if you look at

1 the stipulated facts in Instruction No. 5, Mr. Milic  
2 contacted plaintiff with the door when he opened it.  
3 Ms. Dallo fell when the door contacted her. It certainly  
4 implies, and you can infer, that being hit by the door is  
5 what knocked her over. And it is certainly what Ms. Michail  
6 testified to.

7 Ms. Conner glossed over one, I think, very important fact.  
8 She said Mr. Colwell has been in this position for 20 years,  
9 or something, and did a search, and there's been no prior  
10 accidents with this door ever before. What he actually  
11 testified to, and I think you'll remember this, is he did a  
12 search for three years, and there have been no prior  
13 accidents of this particular door, during those three years.  
14 Not 20 years. Three years.

15 And as I told you before, we don't know how often this  
16 door was opened. We don't know how many passengers went by  
17 this door. So I don't think you can infer, and nobody has  
18 certainly testified that every one of the thousands of  
19 passengers on the boat walked by this door on Deck 3. We  
20 just don't know.

21 You heard argument today about what Dr. Anderson said.  
22 Nothing he said today, or in the deposition you were played  
23 today, changes anything. They marched through records from  
24 2010 forward, and established Margaret Dallo was living  
25 independently, could take care of herself, could work and



1 move, could cook, that nothing was interfering with her  
2 activities of daily living. We know what she could do  
3 before. And we know she had medical issues before.

4 But we also know what she can't do now, or isn't doing  
5 now, assuming she's telling you the truth and her family is  
6 telling you the truth. But then, I guess, you'd have to ask  
7 yourself, what would the possible motivation be to opening up  
8 your life, 20 years of your medical records to questioning by  
9 Holland America Line, and laying them out in front of a jury,  
10 if this is not the reality as she understands it.

11 It's been mentioned several times about the cruise  
12 contract, and that she should have told Holland America Line  
13 that she used to have cancer, and that she was treated for  
14 cancer, and that she had, I don't know, any of the other  
15 medical conditions, high blood pressure, high cholesterol.

16 Well, if you actually look at Exhibit 4, page 7,  
17 Section 8 -- if we can put that up, Cam -- this is the cruise  
18 contract. "Due to the risks inherent to travel by sea as  
19 described in Section 3 of this cruise contract, if you have  
20 any special medical, physical, or other requirements, you" --  
21 blah, blah, blah -- "is requested to inform the carrier in  
22 writing at the time of booking, of any special need or other  
23 condition for which you, or any person in your care, may  
24 require medical attention or accommodation during the  
25 cruise."

1 Well, you heard, before November 26, 2018, Mrs. Dallo did  
2 not have any special medical, physical, or other requirements  
3 that needed any medical attention or accommodation during the  
4 cruise. She did not violate the cruise contract. She had  
5 absolutely no obligation. It never occurred to her, I'm  
6 sure, to tell them about her prior medical history, because  
7 she did not have any medical, physical, or other requirements  
8 they needed to address.

9 I'll take a second to talk about Kepra. If she needs it,  
10 she's entitled to be compensated for having to endure the  
11 side effects. Dr. Allos said she needs it. Dr. Alberstone  
12 said she needs it. Dr. Venkat said if she was her patient,  
13 she would try to wean her off of it. But even she admitted  
14 that the doctors who are treating Ms. Dallo were in the best  
15 position to know what the appropriate medication is.  
16 Dr. Venkat never met her. There's no patient/physician  
17 relationship with her. She's a doctor who was hired by the  
18 defense, who never met her.

19 So if you think that some of Ms. Dallo's issues are  
20 because she's on medication to prevent seizures, after her  
21 brain surgery, she's entitled to be compensated for that as  
22 well.

23 You're going to have to rely on your memory, or maybe your  
24 notes, but Ms. Conner said the mixed blood that was found  
25 when they evacuated her subdural hematoma, was two to three

1 weeks old when they did the surgery. What Dr. Venkat said,  
2 consistent with what Dr. Alberstone said, was it was at least  
3 two to three weeks old, could be older, there's no way of  
4 knowing. Not exactly two to three weeks. Certainly could be  
5 four weeks, five weeks, six weeks. All we know is there's a  
6 mixture of old and new blood. New blood, less than two  
7 weeks. Old blood, older than two weeks.

8 And Dr. Alberstone testified that the timeline of the  
9 subdural hematoma following the trauma on the ship was  
10 perfectly consistent. That was his phrase, "perfectly  
11 consistent."

12 So what does explain the difference between Margaret Dallo  
13 before and after this cruise? There's an old razor, which is  
14 a philosophy term, which means how to peel away the layers  
15 and get to the bottom of something. And this is Occam's  
16 razor. And we're going to put it on the screen any minute  
17 now. "All things being equal, the simplest solution tends to  
18 be the best one."

19 What is the simplest solution for understanding why  
20 somebody who never had a subdural hematoma before, whose  
21 brain scan in August of 2018 had no bleeding, develops a  
22 subdural hematoma after a fall on the ship? The simplest  
23 explanation is that because of her atrophy of her brain, when  
24 she fell on that ship, the blood started to pool up, those  
25 bridge veins ruptured, and over time her symptoms developed.

1           And you would not expect, according to Dr. Alberstone,  
2 symptoms immediately. He said you could have no symptoms at  
3 all; because of the brain atrophy, you've got room in the  
4 brain between the brain and the dura, the blood can fill up  
5 without putting any pressure on the brain, until it gets so  
6 large that it starts compressing the brain. And she started  
7 having symptoms a few weeks after November 26th. And by  
8 December 31st, she was having enough symptoms that she needed  
9 to go and get it checked out.

10           So, I really would encourage you to spend some time  
11 looking at the exhibits, looking at the videos of her before,  
12 and remembering the testimony of what she's gone through.  
13 And when you do that, I think you'll see the most logical  
14 explanation for her current condition is the massive buildup  
15 of blood bilaterally in her skull that is perfectly  
16 consistent with her fall on November 26th.

17           We'd ask you to return a verdict on behalf of Mrs. Dallo.  
18 If you think she's not telling you the truth, if you think  
19 her family is lying to you, then, of course, you shouldn't.  
20 But if the most logical explanation is this is exactly what  
21 happened, it's perfectly consistent, and she has suffered a  
22 great deal, then a verdict like I described to you a few  
23 minutes ago is perfectly appropriate.

24           Thank you.

25           THE COURT: Ladies and gentlemen of the jury, you've