

In The Matter Of:

Perez v.

Live Nation

December 5, 2019

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK - CIVIL TERM - PART 56
 3 -----X
 4 MARK PEREZ,
 5
 6 Plaintiff,
 7
 8 -against- Index No.
 9 LIVE NATION WORLDWIDE, INC. 158373/2013
 10
 11 Defendant.
 12
 13 TRIAL 71 Thomas Street
 14 New York, New York
 15 December 5, 2019
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

B E F O R E:
 HONORABLE JOHN J. KELLEY,
 JUSTICE and a Jury

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

MORELLI LAW FIRM, LLC
 ATTORNEYS FOR THE PLAINTIFF
 777 Third Avenue
 NEW YORK, NEW YORK 10017
 BY: BENEDICT MORELLI, ESQ.
 DAVID T. SIROTKIN, ESQ.
 MICHAEL S. SCHLESINGER, ESQ.
 ALEXANDER P. MORELLI, ESQ.

(Appearances continued on next page.)

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1 THE COURT: First of all, I want to make a record
 2 on the jury charges.
 3 There were a few e-mail exchanges that had gone
 4 back and forth yesterday, the last of which I had gotten
 5 last night was the defendant's proposed charges as, I think,
 6 plaintiff had seen the changes that I had made which agreed
 7 or disagreed with certain aspects of what they were doing
 8 and then I received the defendant's.
 9 Some of the defendant's changes, proposed changes
 10 were typographical and I have made those and appreciate
 11 those. Frankly, some of them I note substantively, though I
 12 either don't understand or want some explanation for.
 13 Why is it necessary to include the stipulated
 14 amount of past medical expenses because I thought we had
 15 agreed in chambers that that was not necessary.
 16 MR. MORELLI: It isn't.
 17 MR. HAWORTH: I thought we agreed.
 18 MR. O'HARA: There was no stipulation. I opened on
 19 it. So, in order to establish my credibility with the
 20 jury --
 21 THE COURT: Nobody told them what the amount of
 22 money was in the opening because nobody knew and what my
 23 charge simply was saying, is saying now that you have agreed
 24 on the amount of medical expenses and that's not going to be
 25 an issue they're going to consider.

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1
 2 APPEARANCES (Continued):
 3
 4 ATTORNEYS FOR THE DEFENDANT
 5
 6 CONNELL FOLEY, LLP
 7 1085 Raymond Boulevard
 8 Newark, New Jersey 07102
 9 BY: JEFFREY L. O'HARA, ESQ.
 10 MATTHEW W. BAUER, ESQ.
 11
 12 - and -
 13
 14 HAWORTH BARBER & GERSTMAN, LLC
 15 505 Main Street
 16 Hackensack, New Jersey 07601
 17 BY: SCOTT HAWORTH, ESQ.
 18 RICHARD BARBER, ESQ.
 19
 20
 21
 22
 23
 24
 25

LISA M. DE CRESCENZO and LISA CASEY
 OFFICIAL COURT REPORTERS

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1 MR. MORELLI: Right.
 2 MR. O'HARA: In my opening, I specifically said
 3 that the medical expenses for past medical expenses were
 4 approximately, slightly in excess of \$300,000. It was part
 5 of my opening statement.
 6 I intend to say something about it in my closing.
 7 THE COURT: You can say something about it in your
 8 closing.
 9 MR. O'HARA: That's fine.
 10 THE COURT: I can still keep the final instruction
 11 which says: The parties have stipulated on it and you don't
 12 need to consider it because the amount is really not
 13 important.
 14 MR. O'HARA: Understood.
 15 MR. MORELLI: Your Honor, I understand the reason
 16 he wants to do it because it's misleading because,
 17 obviously, the cost of real medical care without Medicare
 18 and Medicaid would have been like \$2 million but, trust me,
 19 that's not going to change this case.
 20 THE COURT: Okay. I'll leave it that you can talk
 21 about it if you want to talk about it in the closing, but
 22 I'm going to say the amount has been stipulated to and I
 23 don't think anybody is going to be objecting to what it
 24 is --
 25 MR. O'HARA: Thank you.

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1 THE COURT: -- since you've agreed to it.
2 Income taxes: I thought it should come out. You
3 guys put it back in.
4 MR. HAWORTH: We kept out --
5 THE COURT: You did?
6 MR. HAWORTH: In terms of the jury being told there
7 are no income tax concerns. I mean, that's the charge.
8 THE COURT: Well, there are. If this goes to
9 verdict, there are.
10 MR. MORELLI: Some of it.
11 THE COURT: Some of it is.
12 MR. HAWORTH: Then just take it out so it's not
13 confusing.
14 THE COURT: But it doesn't apply. It only applies
15 to part of it and that's why I said yesterday this is an
16 issue. I raised the issue and I said if there's proposed
17 language -- that I think it should come out, but if there's
18 proposed language to address it, somebody tell me what you
19 think it is.
20 MR. HAWORTH: I agree with you.
21 MR. MORELLI: And I agree with Scott, which then
22 also means I agree with you, I think.
23 THE COURT: We're ordering the transcript, right?
24 On page 18, I'm working off yours.
25 MR. HAWORTH: Give me a minute to get to it, Judge.

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1 THE COURT: Page 18, second line from the top, the
2 next category will be future rehabilitation expenses.
3 MR. HAWORTH: That's not my page 18. What charge
4 are you on, Judge?
5 THE COURT: The one before 2325.
6 MR. SIROTKIN: 2301, Scott. I have the copy that
7 the Judge sent last night.
8 MR. HAWORTH: Yeah, but I know mine.
9 THE COURT: All right.
10 MR. HAWORTH: 2301, Judge.
11 THE COURT: All right.
12 The next category, "future rehabilitation
13 expenses," where that section is.
14 MR. HAWORTH: Yeah.
15 THE COURT: Okay. The "and/or." I don't believe
16 in and/or's. The verdict sheet says if they award none,
17 they can award none but this is just a list of things that
18 they may consider.
19 MR. HAWORTH: I understand. I'll tell you why I
20 said it because Kushner said neuropsychological, Prover
21 said psychological. So, by definition the and/or fits.
22 THE COURT: By definition, if you find that the
23 amount is none, you'd write the word none. It's better.
24 They don't have to award any of it. Well, they have to
25 award some of it, so. They have to award damages in this

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1 case.
2 MR. HAWORTH: Right. My read of the testimony,
3 Judge, is that it's an and/or simply because it can't be
4 both based on the record. You have to award them one or the
5 other because one expert says one, the other expert says the
6 other. Giving them both makes no sense based on the
7 evidence.
8 THE COURT: Then it would be an "or."
9 MR. HAWORTH: Okay. "Or" is fine.
10 THE COURT: Okay, I'll go with "or."
11 MR. MORELLI: I don't know what the question is,
12 so, I'm not exempting.
13 MR. HAWORTH: I guess that's a yes.
14 MR. SIROTKIN: It has to be an "or," why can't it
15 be "and"?
16 MR. MORELLI: Where are we?
17 THE COURT: He's saying it's either one or the
18 other.
19 MR. SIROTKIN: I don't necessarily agree with that.
20 MR. HAWORTH: That's what the testimony was.
21 THE COURT: You know what, for God sakes, I'll do
22 "and/or."
23 Let's move on.
24 MR. SIROTKIN: Agreed.
25 THE COURT: If the jury listens to all of my words

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1 with that degree of care, I will be amazed.
2 MR. MORELLI: Excuse me, this jury might.
3 MR. HAWORTH: Yeah.
4 THE COURT: It's the read back.
5 MR. MORELLI: Maybe yes, maybe no.
6 THE COURT: Now, the next thing I wanted to talk
7 about was why you added things to the mitigation charge that
8 were not argued yesterday or two days ago, whenever that
9 was.
10 Specifically -- and I don't think it's a big deal,
11 but I want to raise it. I personally don't think it's a big
12 deal, but I don't know if Mr. Morelli has had a chance to
13 look at this.
14 MR. HAWORTH: Frankly, I felt I was cleaning it up
15 to conform to the evidence the way it went in and that's why
16 I changed it, because originally it says "craniotomy." It's
17 cranioplasty. It said "psychotherapy," but it wasn't
18 psychotherapy; it was various types of psychological
19 therapies and cognitive therapies, and I felt it was
20 appropriately to accurately reflect the record.
21 THE COURT: You have a problem with that?
22 MR. MORELLI: Judge, I really -- I don't think this
23 level of specificity is going to make a difference in the
24 case.
25 THE COURT: I tend to agree. So, that means you

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1 don't have a problem.
2 MR. MORELLI: It's a very long record, no one is
3 going to remember exactly what word has been used and Scott
4 and I have both been wrong in terms of what was said.
5 MR. HAWORTH: I was wrong the other day.
6 THE COURT: The thing of more significance on this
7 and again slightly more, would have greatly alleviated, you
8 want to put in his symptoms and I think it should be his
9 pain or --
10 MR. HAWORTH: I changed it because pain, it's
11 not -- the case isn't really about physical pain. It's
12 about a variety of symptoms which are cognitive, they're
13 emotional, they're physical and those are symptoms of what
14 happened to him.
15 THE COURT: But what I'm saying, talking about pain
16 or minimizing the effect of the injury.
17 MR. HAWORTH: That's different. Those are two
18 different things.
19 Minimizing the effect of injury is symptoms to me
20 and that is accurate.
21 Pain, I just don't think the word "pain" is
22 accurate.
23 MR. MORELLI: There's testimony in the case about
24 pain and there's testimony from Dr. Ambrose that she doesn't
25 doubt that he has pain.

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1 THE COURT: But, but in fairness, but part of
2 this -- I don't know why I am arguing against you on this
3 because --
4 MR. MORELLI: I don't either.
5 THE COURT: -- but part of this also is suffering.
6 MR. MORELLI: Of course.
7 THE COURT: Right. So it's not just physical pain,
8 it's suffering.
9 MR. MORELLI: It's physical, emotional.
10 THE COURT: I think if I limit it to his injuries,
11 it covers everything.
12 MR. HAWORTH: Okay.
13 THE COURT: So, I'm going to modify that language.
14 MR. HAWORTH: Thank you.
15 THE COURT: Does anyone have anything else they
16 want to put in terms of a record on jury charges that has
17 not already been put in?
18 MR. HAWORTH: Yes, with respect to the special
19 abilities charge, I just want to make sure I have it in
20 front of me. PJI 2:291.
21 It's the defense position, Judge, and we did brief
22 the subject, and I want to mark the brief as a Court Exhibit
23 after we do this so the record is preserved.
24 You know, Judge, that charge is based upon the
25 Grayson case and I read a lot of the Grayson case into the

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1 record at the beginning of the case, and I'm not going to
2 waste the Court's time with it now, but I would like to
3 incorporate that earlier argument into this argument because
4 the Grayson case is clear in the defense view, Judge, that
5 it pertains to topics like athletes, concert violinists,
6 opera singers.
7 I would respectfully submit, Judge, that the
8 Court's ruling on this issue swallows the exception because
9 on the one hand the Court charges PJI 2:290 which is
10 absolutely appropriate for this case, and then, in our
11 opinion, Judge, the Court just undoes it with charging
12 2:291.
13 Here, there's no training to be a web designer.
14 The one course he took was in community college and he
15 failed that course.
16 In the cases that the charge relies upon, Judge,
17 there's a long history of training and then you have
18 testimony from the opera singing teacher and there's not
19 only a history of training, there's a history of performing.
20 This case, what you have is an aspirational career
21 by the testimony of plaintiff's own vocational
22 rehabilitation expert.
23 You have no documentary evidence of a single cent
24 ever being earned doing web design, not to mention web
25 design is not a ball player, it's not an athlete, it's not

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1 an opera singer, it's a regular career. That's what it is.
2 It's like anyone else who might be good at their
3 career and may not be good at their career, but they have
4 the requisite training and here that requisite training just
5 isn't present.
6 There's no documentary proof which is required and
7 I want to note one case which is one additional one that
8 didn't come up earlier, which is the Navaja case, 148 AD2d
9 429, in which the plaintiff sought to recover for a future
10 career as a medical lab technician. She had taken several
11 courses toward that degree and then dropped out.
12 Here, we only have one and that course was failed
13 and I don't want to repeat myself. I'll rely on the balance
14 of my argument that was made early on in the case when we
15 talked about this very same topic.
16 THE COURT: Mr. Morelli.
17 MR. SIROTKIN: Your Honor, we've argued this
18 before, but again, we completely disagree. Mark's special
19 talents and abilities have been evidenced throughout the
20 record.
21 Testimony from his brother spoke about how Mark not
22 only did web design, he taught web design classes and taught
23 web design to some of his clients. He's done web design and
24 web development and server maintenance for a number of large
25 clients.

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1 Mark testified about it himself about the type of
2 web design work that he did. This is not a regular job,
3 with all due respect. Web design, the type of work Mark was
4 doing, is a burgeoning field and his talents were special.
5 So, to keep it brief, we think that the charge
6 should remain.
7 MR. HAWORTH: Briefly, I'd comment, web design is
8 not a burgeoning field. Everyone and everything has a
9 website at this point. There's nothing special or
10 burgeoning about it. If it were 20 years ago, it might be
11 different.
12 THE COURT: Thank you. I made my ruling on the
13 issue.
14 Anything else that needs to be done with regard to
15 charges?
16 MR. HAWORTH: I want to mark the briefs as Court
17 Exhibits and that's it.
18 MR. SIROTKIN: Nothing from plaintiff?
19 THE COURT: Responsive briefs as well should be
20 marked to be part of the record. We can do that later.
21 With regard to the verdict sheet, I have indicated
22 earlier that I submit that I have adhered to both the
23 language in spirit, 2:301, and the sample verdict sheet is
24 in there.
25 I think it needs to be broken down to the three

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1 categories. I have placed in the verdict sheet and what I'm
2 doing also is, as you know, I'm charging with specificity
3 what those categories would encompass in the actual charges
4 themselves, so I think that any concerns is alleviated.
5 I think it would be onerous and confusing on this
6 jury to put the level of detail that was requested by the
7 defense into the verdict sheet and that's the basis for that
8 ruling.
9 You're going to mark your version of the verdict
10 sheet as Court exhibit as well I understand?
11 MR. HAWORTH: Yes, your Honor.
12 Just very, very briefly.
13 The defense position is that given that the Court
14 does not want the level of detail that we'll mark as a Court
15 exhibit and submit for the record.
16 It's the defense position having separate
17 categories for future rehabilitation services, future
18 custodial care is confusing and that simply having one
19 question pertaining to future medical expenses will be
20 clearer. That is the defense position.
21 I understand what the Court is doing. I wanted to
22 preserve the record.
23 THE COURT: Let me be clear how I put this verdict
24 sheet together.
25 I divided, when I was doing the charges in the

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1 verdict sheet, I basically took everything you had in your
2 verdict sheet and I put those things into the charges and I
3 categorized them under the categories that I believe they
4 would fall under in terms of categories of 2:301.
5 So, everything that you wanted is in there. It's
6 just broken down a little differently and it's not turning
7 what should be a relatively easy verdict sheet into what
8 would be something which would be completely onerous and
9 I've asked everybody repeatedly if there is a special reason
10 why any of these categories need to be divided out for some
11 reason that they don't fit together in a particular category
12 or they need to be segregated from something because,
13 remember at the beginning I was talking about just doing
14 medical expenses and having all of this stuff in there.
15 I considered your arguments and I reconsidered my
16 position and I agree it needed to be done with a greater
17 degree of specificity, and that is the reason I did it the
18 way I did it as well as the reason why I incorporated all of
19 the stuff you're asking for in the verdict sheet.
20 But there's no reason to divide those out with any
21 further level of specificity that anybody has ever raised to
22 me.
23 MR. HAWORTH: I understand and I appreciate the
24 amount of time and thought the Court put into this issue.
25 THE COURT: It's my job.

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1 MR. HAWORTH: It's appreciated anyway.
2 My position is what I stated, and we leave it at
3 that.
4 THE COURT: Got it.
5 Finally, are there any outstanding applications to
6 the extent that I hadn't put it on the record.
7 You're anchoring motion is denied. I don't agree
8 with your position on that and I think that if that sort of
9 change to juris prudence in this state were to be made, it
10 needs to be made on a higher level than mine.
11 MR. O'HARA: Thank you. In addition to the
12 anchoring application, there is a number of prophylactic
13 objections to strategy or tactics in the plaintiff's
14 closing.
15 So, we've highlighted those because while Mr.
16 Morelli has free reign to do what he believes is
17 appropriate, in the event certain things happen, we wanted
18 to make sure the Court understands we will be objecting to
19 those particular items.
20 So, the golden rule, any of the personal
21 allegations and a laundry list of things that may not
22 happen; but, to the extent that they do, we wanted to give
23 you the opportunity to give word to caution to both sides to
24 make sure if there's a line nobody tows, let alone jumps
25 over that line.

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1 THE COURT: Okay.
2 MR. MORELLI: Your Honor, it would also be really
3 appreciated if we can make objections during the summations,
4 or not, but no side-bar, okay. Maybe because if we're going
5 -- if we're going to sum up in this case and have 15
6 side-bars, we're never going to get done and I think it is
7 totally inappropriate.
8 If you stand up and make an objection, it's
9 reserved for appeal, that's all you need to do.
10 MR. O'HARA: I have no problem with not going
11 side-bar during either side's closing.
12 MR. MORELLI: You can go after.
13 MR. O'HARA: I also have no problem -- your Honor
14 has a rule that suggested we must timely object during the
15 opening and closing.
16 THE COURT: Correct.
17 MR. O'HARA: There will be a laundry list of things
18 for both sides that may warrant an objection and so to
19 Mr. Morelli's point, I have no objection if he has no
20 objection to simply allowing both sides to close.
21 We will raise objections afterwards being cautious
22 and mindful we have identified some items that are, per se,
23 improper from our perspective.
24 So, if the Court wants us to object during the
25 actual closing, we'll object. I don't have any problem not

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1 asking for a --
2 THE COURT: How do you propose you want to reserve
3 the objections to the end? How do you propose that I'll be
4 able to cure whatever it is with the jury?
5 MR. O'HARA: You already have a list of seven or
6 eight items that are no-brainers from our perspective. If
7 that occurs and we object, it can be sustained right there
8 and a directive can be given to either lawyer without any
9 further record because there is no question those items jump
10 across the line of --
11 THE COURT: I thought you were talking about not
12 objecting during --
13 MR. O'HARA: I'm comfortable with objecting. Mr.
14 Morelli's concern was breaking up the flow.
15 So, I will object, but there are items that are
16 clearly improper, don't constitute fair comment under any
17 circumstances.
18 So, if the Court is directing that we simply say
19 the word "objection" I'm fine with that. I don't need to go
20 side-bar for the basis.
21 THE COURT: Okay. Here's how we'll handle. If I
22 feel I need it, I am going to ask for it.
23 MR. MORELLI: Sure, but that is up to you.
24 THE COURT: If somebody feels the ship is sinking
25 and we need to rectify it, you can ask for it. To the

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1 extent you folks want to temper your requests, because I'm
2 not thinking of the right word, then I'm all for that as
3 well.
4 MR. O'HARA: Understood.
5 THE COURT: It's your case, your trial. It's not
6 mine, okay.
7 MR. O'HARA: Understood.
8 THE COURT: Do what you feel is appropriate under
9 the circumstances.
10 MR. SIROTKIN: One additional thing, your Honor.
11 THE COURT: Yes.
12 MR. SIROTKIN: Plaintiff's Exhibit 40 which is
13 their economist Debra Dwyer's handwritten chart. We had a
14 discussion the other day with the Court and parties in
15 recognition of Mr. Provder's error with neurosurgery care
16 the plaintiff would need. We would amend her chart to
17 reflect a reduction for that cost.
18 THE COURT: Right.
19 MR. SIROTKIN: We've written it out and showed it
20 to defense counsel and want to make that noted for the
21 record.
22 MR. MORELLI: We did it all and it was okay by
23 Scott.
24 MR. O'HARA: We understand.
25 THE COURT: With better handwriting than the

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1 original.
2 MR. MORELLI: We had Danny do it.
3 MR. O'HARA: The only other item will be the
4 deposition reads of Mr. Scolaro and then the plaintiff will
5 rest.
6 THE COURT: Yes.
7 MR. O'HARA: We then need to offer Defendant's U
8 into evidence and then the defense will rest. We understand
9 there is no rebuttal and we'll go right into closing.
10 THE COURT: We've done a lot of conferencing about
11 various issues and applications and everything else.
12 Is there anything else that needs to be resolved on
13 the record because if there's not, I'll consider them
14 withdrawn?
15 Anything that's outstanding?
16 MR. HAWORTH: I don't think so.
17 MR. MORELLI: I don't think so. With reference to
18 the read, is he reading it all?
19 MR. HAWORTH: No.
20 MR. MORELLI: We can do it much faster --
21 MR. HAWORTH: I thought you were reading like two
22 lines or something.
23 MR. SIROTKIN: I asked Rich last night and he said
24 your side couldn't agree to reduce the portion but I tried.
25 THE COURT: You're going to read. You'll close.

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1 MR. O'HARA: We consent to Mr. Sirotkin reading
2 both the plaintiff and defense reads.
3 THE COURT: You're going to read. You're going to
4 rest. You're going to rest. We have introduced the
5 document.
6 Do we need to take a few minutes before the jury
7 comes in before you sum up?
8 MR. O'HARA: I'm fine. You want us to begin with
9 the goal of being done by the lunch break, and I intend to
10 comply with your request.
11 THE COURT: We have to pick the jury after closings
12 or after the charges?
13 MR. MORELLI: After charges.
14 MR. HAWORTH: Do you want me to mark the Court
15 exhibits now or later? You asked if there's anything
16 outstanding.
17 THE COURT: We can do it later.
18 MR. SIROTKIN: Before I read, will the Court inform
19 the jury what deposition, the date and whatever it is from
20 or should I do that?
21 MR. MORELLI: That it's the same as testimony.
22 THE COURT: You can do it.
23 Come to order.
24 (Whereupon, the jury enters the courtroom.)
25 THE COURT: Good morning, everybody.

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Testimony of Scolaro - Read by Mr. Sirotkin Page 1678

1 Counsel.
2 MR. SIROTKIN: Your Honor, I'm going to read the
3 examination before trial testimony, portions of it, the
4 examination before trial of Robert Scolaro from July 29,
5 2015.
6 "Question: Mr. Scolaro, what is your position with
7 Live Nation?
8 "Answer: Regional vice president of sponsorships.
9 "Question: And in June of 2013?
10 "Answer: I was vice president of sponsorships for
11 New York and Philadelphia."
12 Page 10, line 12:
13 "Question: Let me show you this agreement,
14 Plaintiff's Exhibit 25.
15 "Have you ever seen that before?
16 "Answer: Yes. That is a sponsorship agreement
17 between Live Nation and Best Buy.
18 "Question: How do you know?
19 "Answer: I sold the sponsorship to Best Buy and
20 then I was involved in working with our attorneys to
21 generate this agreement and get it executed."
22 Page 12, line 7:
23 "Question: Did you recommend Mr. Perez to Best
24 Buy?
25 "Answer: Yes.

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Testimony of Scolaro - Read by Mr. Sirotkin Page 1679

1 "Question. Why?
2 "Answer: When I did sponsorship agreement with
3 Best Buy, they needed a structure. Part of the agreement --
4 a lot of times sponsors will provide their own activation
5 areas.
6 "In this case we told Best Buy that, you know, we
7 should do some type of, you know, more modified better setup
8 like that, and I knew Mark through another sponsor, Tattoo
9 Lou's, and Mark had put together their activation area.
10 "So Mark was beginning his own company. I believe
11 it was called First Up Media, and I was trying to help Mark
12 by giving him some business.
13 "Question: Okay. And was there a particular skill
14 set that you looked upon Mark that he could fulfill the
15 services with Best Buy?
16 "Answer: It was mostly printing of the vinyl
17 banners that would go on, but he also -- he had
18 physically -- he had knowledge on how to build those
19 structures, so I said he would be a great person for Best
20 Buy. This would be a great person for you to know because
21 he could handle the entire project."
22 Page 14, line 6.
23 "Question: A relationship between Live Nation and
24 Best Buy was important?
25 "Answer: To me?

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Testimony of Scolaro - Read by Mr. Sirotkin Page 1680

1 Question. Yes.
2 "Answer: Yes.
3 "Question: Okay. And Mark was integral in that
4 relationship?
5 "Answer: I mean, he already had that relationship.
6 The deal was done. I didn't need Mark to get the deal done.
7 We did need a vendor. You know, Best Buy needed a vendor to
8 build out their space. It had nothing do with me at that
9 point."
10 Page 20, line 12:
11 "Question: Tattoo Lou's was there for how many
12 years prior to two-- was it there in 2013; if you recall?
13 "Answer: Yes.
14 "Question: How many years prior to 2013?
15 "Answer: I believe 2012 was the first year.
16 "Question: Okay.
17 "Answer: I think it was our second year.
18 "Question: In 2012, who constructed it; if you
19 recall?
20 "Answer: I don't recall who constructed it and I
21 definitely wasn't there when it was done. I don't know if
22 you want my guess.
23 "Question: Don't guess.
24 "Answer: Okay. Yeah.
25 "Question: Is it your understanding that Mr. Perez

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Testimony of Scolaro - Read by Mr. Sirotkin Page 1681

1 had something do with Tattoo Lou's booth in 2012?
2 "Answer: Something to do as far as design or
3 construction or -- yeah. I mean, he was the marketing
4 director for Tattoo Lou's, so I believe he designed
5 everything, and I believe he was involved in physically
6 putting it together. I don't know if it was just this
7 section or going up vertically. I don't know."
8 Page 22, line 17.
9 "Question: So, it's your understanding Mark Perez
10 had nothing do with the actual construct of Tattoo Lou's in
11 2012?
12 "Answer: Yes.
13 "Question: Which is a year before the accident?
14 "Answer: Yes.
15 "Question: And to what extent was he involved in
16 the construction of Tattoo Lou's?
17 "Answer: I don't know because I wasn't there when
18 it was physically constructed. I believe all the way up to
19 physically working on it himself with our union folks, I
20 believe was the case."
21 Page 24, line 5:
22 "Question: Now, looking at 2012, what is your
23 recollection of who participated in the construction of
24 Tattoo Lou's booth in 2012?
25 Answer: Yeah, I wasn't there.

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1 "Question: All right.
2 "What about 2013, who constructed Tattoo Lou's?
3 Answer: I was never there when they physically did
4 it. That wasn't part of my job. That was my coordinator's
5 job to make sure it was done properly."
6 Page 25, line 7:
7 "Question: In 2013, do you know who constructed
8 Tattoo Lou's booth?
9 "Answer: I don't.
10 "Question: You just don't recall?
11 "Answer: Yeah, I wasn't there."
12 (Continued on next page.)
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Testimony of Scolaro - Read by Mr. Sirotkin Page 1683

1 MR. SIROTKIN: Page 40 line 5:
2 "Answer: I sell sponsorship."
3 Page 48 line 9:
4 "Question: Who was assembled the structure, the
5 first tier of the structure, if you know?
6 "Answer: I don't know. It was probably our union
7 laborers.
8 "Answer: I don't know.
9 "Question: You just don't know?
10 "Answer: I don't know.
11 "Question: Just for clarification, so the first
12 tier is operating for the first several shows, and why
13 wasn't the second tier already installed? Was there a
14 delay, an approval or a design process?
15 "Answer: So, the decisions out of Best Buy
16 marketing were coming out of Minnesota. The folks I was
17 dealing with at Best Buy on Long Island are the ones that
18 did the physical activation, so once they set up the first
19 one or two shows and sent pictures back to Minnesota,
20 Minnesota felt it was lacking in permanent branding, which
21 is when they came to us and said, do you know anybody who
22 can help make this better? And I introduced them to Mark.
23 "So over the course of the three, four weeks, they
24 and Mark were working on displays like that."
25 Answer, on line 25:

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Testimony of Scolaro - Read by Mr. Sirotkin Page 1684

1 "So over the course of the beginning of June that's
2 when they were working together, you know, to hire Mark and
3 design and get approvals. I believe Best Buy was slow to
4 approve certain things and Mark was pushing them, because
5 they wanted the full set up, for as many shows as possible."
6 Page 50, line 24:
7 "Question: You looked upon Mark because he had a
8 certain talent to address Best Buy's needs?
9 "Answer: Yes.
10 "Question: And how would you describe that talent?
11 "Answer: Well, based on his experience with Tattoo
12 Lou's, the structure was sound. It was approved by our
13 general manager, and I knew Mark was a good designer, and he
14 was getting into the business of creating these signs, so I
15 wanted to help him grow his business.
16 "Question: From a marketing point of the view, he
17 had a certain -- for you, you, yourself, have a certain
18 marketing background?
19 "Answer: Yes.
20 "And you considered Mark had a certain talent for
21 that?
22 "Answer: Sure. I think Mark was a really talented
23 guy, or is."
24 Thank you. That's all, your Honor.
25 THE COURT: I know what we're doing. Go ahead.

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Proceedings Page 1685

1 MR. B. MORELLI: At this time, the plaintiff would
 2 rest.
 3 THE COURT: Okay.
 4 MR. O'HARA: Yes, your Honor. The defense moves
 5 into evidence Defendant's U for identification which is the
 6 official certification of the DMV record of Mark Perez that
 7 expires on January 5, 2020.
 8 THE COURT: Okay. That's without objection.
 9 I just need to see you very quickly.
 10 (Whereupon, an off-the-record discussion took place
 11 at the bench between the Court and counsel.)
 12 THE COURT: Ladies and Gentlemen, the proof in the
 13 case is now closed. The next thing that's going to happen
 14 is counsel is going to give you their summations.
 15 Mr. O'Hara informs -- first of all, I told you in
 16 the beginning that the order of these things is
 17 pre-determined. Mr. O'Hara will be giving the summation on
 18 behalf of defense first. He informs me that the summation,
 19 give or take, is going to be in the hour vicinity. My
 20 question to you is, do you want to take a couple of minutes
 21 before we do that? Because I prefer it not be interrupted.
 22 Yes? Okay. Let's take a few minutes.
 23 THE COURT OFFICER: All rise. Jury exiting.
 24 (Whereupon, the jury was excused from the
 25 courtroom.)

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Summation by Defense (O'Hara) Page 1687

1 passion, in the manner in which the case was tried. The
 2 judge also plays a role, a very important role. No matter
 3 what, he tells you what the law is. But in the jury system,
 4 you folks are the most important part. All right? This is
 5 a civil system for which, without you, we can't resolve
 6 disputes like this, and so for that, we thank you for taking
 7 the time to sit with us, to listen to all the evidence.
 8 Now, at the beginning of the case, which was on
 9 November 8th, we were asked to give opening statements, and
 10 I told you that an opening statement is a promise. It's a
 11 pact. It's an agreement between the advocate -- on behalf
 12 of the client -- and the jury, that I'm going to prove, on
 13 behalf of Live Nation, every single thing that I told you.
 14 Did Live Nation keep its promise? I submit to you,
 15 absolutely, unequivocally, we did.
 16 There has not been a dispute, and there never will
 17 be a dispute about Live Nation's responsibility for the
 18 injuries that are fairly and reasonably caused by this
 19 accident. Live Nation is responsible for that. There never
 20 has been a time that Live Nation has or ever will suggest
 21 that the injuries to Mr. Perez's skull; that the injury that
 22 required four surgeries; that the fractures that he
 23 sustained; and that the treatment that we now have heard
 24 about. There's never been a dispute about that.
 25 There has also never been a dispute that the total

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Summation by Defense (O'Hara) Page 1686

1 * * * * *
 2 (Whereupon, a recess was taken.)
 3 * * * * *
 4 THE COURT OFFICER: All rise. Jury entering.
 5 (Whereupon, the jury entered the courtroom.)
 6 THE COURT: Mr. O'Hara.
 7 MR. O'HARA: Thank you, your Honor.
 8 Counsel, the Perez Family, Ladies and Gentlemen of
 9 the Jury:
 10 Are you still here (indicating)? Are you still
 11 exactly where you promised you would be? Have you kept an
 12 open mind the entire time? Because now is the time that you
 13 get the opportunity to do the job that you commit to do.
 14 Not an easy job. You now have the benefit of literally four
 15 weeks of testimony and evidence.
 16 We told you at the beginning of this case, this was
 17 going to be a very difficult case; that we would agree on
 18 some topics, but some significant issues and differences
 19 existed between us, and we needed your help. And for that,
 20 we thank you.
 21 This is the hardest job of all of us. Lawyers, we
 22 play a role. It's an honor and privilege to stand in the
 23 shoes of Live Nation and advocate on their behalf, but this
 24 is not my case. We may be passionate about our positions,
 25 but it's not personal to us. And you saw some of that

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Summation by Defense (O'Hara) Page 1688

1 medical expenses for which -- it's not even before you --
 2 for his care and treatment for the past six and a half
 3 years, is \$315,007.15. Without question, Live Nation is
 4 responsible for that, and Live Nation should be responsible
 5 for that.
 6 So what is the case about? Why are we here? That
 7 was the first question that the plaintiff asked to you in
 8 their opening statement. Any question now?
 9 "I want a lot of money."
 10 You remember it. You remember it from the first
 11 days that we met.
 12 Well, one of the things that the judge will do,
 13 after we are done with our closing arguments, is he will
 14 tell you the law, and when he gets to the question of
 15 damages he is going to tell you -- and you must accept the
 16 law as he tells you -- that you are to render a verdict for
 17 a sum of money that will justly and fairly compensate the
 18 plaintiff. Justly and fairly. You remember, that's exactly
 19 what I said to you, every single time we have spoken. Be
 20 fair, be just, be reasonable. Because the Perez family --
 21 MR. SIROTKIN: Objection.
 22 MR. B. MORELLI: Objection, your Honor.
 23 THE COURT: Overruled.
 24 MR. O'HARA: Because the Perez family deserves
 25 fairness, reasonableness, and justness, and so does Live

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Summation by Defense (O'Hara) Page 1689

1 Nation. Each side. No more and no less.
2 Now, there are certain facts that are clear, based
3 upon the evidence that has been presented, and I'm just
4 going to identify some of them, understanding you have been
5 here for four weeks. And we know. We watch you just like
6 you watch us. We watch your facial expressions, we watch
7 your body language, and we know you have taken the time out
8 of your lives, and you have been attentive for the entire
9 trial. So I'm going to summarize what I think is the important
10 evidence for you to consider, but it's not to minimize
11 things that I don't talk about. The entire trial is
12 something that you need to take into consideration when you
13 decide what you think is fair, what you think is reasonable,
14 and what you think is just.
15 So there's no question, after the happening of this
16 accident, Mr. Perez needed life-saving surgery, and he had a
17 number of procedures that didn't go as well as the
18 physicians had hoped. There was a procedure to remove a
19 section of his skull to save his life, and we have never
20 disputed that. It was inserted in his abdomen to try and
21 protect it, so that after he had gotten through the acute
22 period, or the period in which there was swelling that
23 required medical attention, that it could be put back and
24 that he could then begin the recovery process.
25 But medicine doesn't always work. It's not

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Summation by Defense (O'Hara) Page 1690

1 perfect. This is not television. You don't script this,
2 and he had problems with the skull being placed in during
3 the second procedure, and there were infections, and they
4 had to remove it in a third procedure and place an insert,
5 and he has problems with the insert. And ultimately, at
6 present, he needs another cranioplasty. It's uncontroverted
7 that he needs it, we all know he needs it.
8 And you have heard it from every single medical
9 provider that was asked the question: There is no good
10 medical reason why he hasn't had that, and it's dangerous
11 not to have. It's dangerous not to take those steps to get
12 help, to make yourself better. It's dangerous not to follow
13 the advice of doctors. But for reasons that we don't
14 understand, and we may never understand, the family, and in
15 particular Mr. Perez, has not undergone that procedure.
16 But what has he done, which is without question,
17 over the past six and a half years? Well, we know that
18 during the course of the aftermath 2014, 2015, 2016, he
19 tried to go back to work, and that's admitted by the Perez
20 family. He did attempt to go back to work, and they still
21 give him work-related tasks, both his brother and his
22 father, trying to give him things that can keep him
23 occupied, and candidly, to continue to have him engaged in
24 their family, in their professional lives, and to abstract
25 from him what value he can bring to them.

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Summation by Defense (O'Hara) Page 1691

1 There's no question whatsoever that Mr. Perez went
2 back to driving an automobile. There's none. He literally
3 got behind the wheel of a vehicle and he drove on multiple
4 occasions. He drove as far as New York City, back and
5 forth, stopping at stop lights, navigating traffic, finding
6 a place to park, doing whatever tasks he went to New York
7 City to do, and then leaving and driving all the way back.
8 We all now know that it's 56 miles from where they live, in
9 Islip, to New York City. That is, in average traffic,
10 somewhere in the neighborhood of two hours. In no traffic,
11 it might be shorter. In bad traffic -- which we all know,
12 living in this area, that happens a lot -- that is a very
13 long and a very difficult journey, and he was able to do
14 that. He was able to do that.
15 We also know, and it's not in dispute, that
16 Mr. Perez was able to actually drive a vehicle that was a
17 standard transmission. A stick shift. So he had to be able
18 to put his hand on the steering wheel, shift the vehicle,
19 and use both feet to press the clutch, to press the gas, and
20 to periodically press the brake. Independent foot action
21 and hand action, all of which he had the dexterity and the
22 competence to do.
23 We know without question -- and to his credit, he
24 has continued to be avid as someone that is conscious of his
25 physical well being. He has continued to work out. By the

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Summation by Defense (O'Hara) Page 1692

1 testimony of Dr. Fayer, you know that he worked out almost
2 daily, until it got to point that he worked out three days a
3 week, and that every physician that has seen him has said he
4 has good muscle tone, and he has good strength. When
5 Dr. Gordon talked about the removal of his shirt -- no, I'm
6 sorry. When Dr. Greenwald talked about the removal of his
7 shirt, what did he say? The young man is in shape.
8 We know that it is without question that the
9 ability to go to a gym and to lift weights, to maintain your
10 tone on both sides of your body, requires the ability to do
11 those exercises. Not only weight training, but yoga, and
12 using an elliptical machine. Cardiovascular exercise.
13 Things that are consistent with the attempts to back to the
14 things that he truly loved, because we saw the picture of
15 him, and I'm sure you will see the pre-accident pictures.
16 He was in good shape.
17 But what's the dispute about, then? Why did we all
18 this time out of your lives? Why do we bring all of these
19 experts? We know that there is a significant question as to
20 what his current shortcomings or injuries are; what he needs
21 for the future to provide for him; and what is fair, what is
22 reasonable for you to evaluate, when you are going to decide
23 what the appropriate damages are.
24 So what did Live Nation do? Did we bring
25 litigation experts? People that we pay money to say

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Summation by Defense (O'Hara) Page 1693

1 whatever we want? You've got to be kidding me. You have to
2 be kidding me to suggest that the physicians that we brought
3 before you are anything other than the best physicians in
4 the world. We are talking about Barry Jordan, Penn
5 neurophysiology, Harvard Medical School, board-certified
6 neurologist and the medical director of a hospital. An
7 extensive history. Someone that's credentials are beyond
8 reproach. Not a gentlemen that's going to come in here and
9 say something because some lawyer tells him to say it. A
10 gentleman who is going to come in here and tell you what he
11 really truly thinks. The suggestion that somehow, some way,
12 that he met with us, and he did what we were going to say,
13 is incredible. It's unbelievable. But you know that. You
14 know that. That is not a man whose character, whose
15 integrity, whose honor can be influenced by anything other
16 than fair, reasonable, objective
17 facts.

18 What did Barry Jordan tell you, after having seen
19 Mr. Perez not once, but twice? He had good physical
20 strength. He had good mobility recovery in 2015, and when
21 questioned about how he had recovered after seeing him again
22 in 2019, honestly, he recovered very well. Based upon the
23 wide array of patients that Dr. Jordan has seen during the
24 course of his career, he recovered relatively well, compared
25 to others. Very well, is the phrase that he used.

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Summation by Defense (O'Hara) Page 1694

1 But there was more to Dr. Jordan's testing, and
2 this is -- if you remember nothing -- we are lawyers. We
3 try and tell you all these fancy words we learned in law
4 school, and we want to persuade. At the end of the day, you
5 never once heard anybody give any opinion, other than a
6 medical opinion; a well-founded opinion, based upon their
7 objective evaluation of what they saw in test results and
8 what they saw when they examined Mr. Perez, and not only did
9 they give that you opinion, but in this case, every single
10 doctor that came here was in the same standing.

11 I will work through the list of the plaintiff's
12 experts. They are all hired by the lawyers. There isn't a
13 single treating physician that actually was asked to come in
14 here to testify to you about, Hey, how is he doing over the
15 last year, or the last second year, or the third year. Why?
16 Dr. Jordan told you that there are inconsistencies in the
17 medical records that are consistent with the inconsistencies
18 that he found on examination, that there were multiple
19 neurologic assessments by different doctors over the past
20 six years that suggested that his function was good, and he
21 found a number of items that he called non-physiologic.

22 And how did he describe that to you? The brain
23 doesn't work that way. The brain doesn't work that way.
24 When you have a tuning fork and you touch it on one side of
25 the scalp versus the other side of the scalp, part of the

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Summation by Defense (O'Hara) Page 1695

1 reason for that test is to see whether people are going to
2 be candid and forthright in responding to the questions,
3 because it's one bone, and it's enervated by one nerve, and
4 that nerve, if you touch one side and you touch the other
5 side, the feeling is the same. But there was more than
6 that. There was diagnostic testing that made no sense to
7 Dr. Jordan. He specifically said, findings on physical
8 examination were difficult to medically explain.

9 Now, are we ever going to call this young man a
10 name? No. Why? It's not right. It's not my job so call
11 him names. My job is to give you what we believe to be a
12 fair and reasonable interpretation of the evidence, from
13 experts that we brought before you because we wanted to make
14 sure that when we stood up here and said, We think this is
15 what you should do, you had no question on the law, on the
16 value of the opinions that we were basing it on, and the
17 value of the opinion of Dr. Jordan, and the value of the
18 opinion of Dr. Ambrose, and the value of the opinion of
19 Dr. Doyle, and the value of the opinion of Dr. Barr, is
20 based on, among other things, an extensive history of
21 practice and educational, training and experience background
22 that, frankly, is as good as anywhere in the world.

23 And they all told you the same or similar things:
24 There are inconsistencies that don't make medical sense.
25 There's no way around that. Because that's also what

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Summation by Defense (O'Hara) Page 1696

1 Dr. Greenwald, and that's also what Dr. Gordon, and that's
2 also what Dr. Schwartz admitted, when pressed on those
3 questions, that there are some things that just don't jibe;
4 okay? There are things that just don't match, which is
5 consistent with the findings that existed with his treating
6 physicians in the record, like Dr. Bruno, where doctor
7 Bruno's records, which were referenced by all of the
8 experts, showed normal neurologic assessments throughout the
9 course of the time that he was being treated.

10 What did Dr. Ambrose say? Keeping in mind, who is
11 she? Mount Sinai School of Medicine, Albert Einstein School
12 of Medicine, board certified in psychiatry and rehabilitation
13 medicine and board certified in brain injury medicine. A
14 rare and hard certification to achieve. Not only did
15 Dr. Ambrose tell you, very similarly, that she felt that he
16 had made a good recovery, there were medically inconsistent
17 findings of sensory loss, and his gait. And what did
18 everybody learn about gait? Gait is the way you walk, and
19 it just doesn't make sense, based upon the injury complex
20 that he has.

21 Never once did she call him a name.
22 She also talked about the testing that was done,
23 and in particular, the Rey 15-Item test. Similar to what
24 Dr. Jordan had said: He was embellishing. The findings and
25 conclusions on those tests are inconsistent with what you

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Summation by Defense (O'Hara) Page 1697

1 expect with someone who has this level of brain injury, and
2 I will work through some of those test results, but you
3 heard that one of the test results showed that his answer
4 was so deficient, it was as if he was in end-stage
5 Alzheimer's, that he wouldn't be able to walk outside, that
6 he wouldn't have any ability to engage in any normal
7 activity.
8 That's impossible. That's impossible to have been
9 based on a full and fair effort. That's impossible to not
10 have been what is medically defined in the DSM-5 as
11 malingering. Not a name. We are not trying to brand him
12 with anything. We are respectful, beyond my ability to
13 communicate, of this family. We are respectful of the fact
14 that we have a difference of opinion, but that does not give
15 me, on Live Nation's behalf, an excuse to call him a name.
16 And I never, ever will. Ever. But you have to look at the
17 fair and the objective evidence, and look at, does it make
18 sense? And the answer, according to Dr. Jordan, as well as
19 Dr. Ambrose: It doesn't. It doesn't.
20 There are Rey 15 tests that Rey 15-Item tests,
21 there are embedded validity performance tests, there is the
22 TOMM test, and the findings, we don't get to influence that.
23 That's not where somebody says, Hey, he only moved his arm
24 halfway. These are objective tests. They literally take
25 the answers and look at how they have been scored,

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Summation by Defense (O'Hara) Page 1698

1 historically. They are not making this up. There's no
2 judgment in this. It's a fact, beyond dispute. It is not
3 medically possible, based upon the injuries that were
4 incurred.
5 The other thing that Dr. Ambrose brought to your
6 attention, from her physical examination in August of 2019,
7 was he had no muscle weakness; again, no tone abnormalities;
8 and no lower extremity -- meaning below the waist -- sensory
9 disturbances; okay? All of that is inconsistent with the
10 gait issue. All of that is inconsistent with the findings
11 during the course of the care and treatment, independent of
12 the lawsuit. Not calling him a name, but that's a fact, and
13 Dr. Ambrose outlined for you the fact that it just doesn't
14 make physiologic -- it just doesn't make medical sense.
15 Dr. Doyle. Interesting guy. I'm not sure how to
16 say this, but I have the co-pleasure of being the lawyers
17 who put Dr. Doyle on in a litigated matter for the first
18 time in a case. First time. It's a little strange. Some
19 idiosyncrasies, frankly, that I don't think that you can do
20 anything about, but the man is beyond brilliant. I don't
21 know that there are people in the world that have the
22 credentials that this man has. I don't know that it's
23 intellectually possible to have or exceed Columbia
24 University Medical Center; Roosevelt Hospital; NYU; Yale
25 University, for an epilepsy surgery fellowship. I mean, you

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Summation by Defense (O'Hara) Page 1699

1 can go throughout the world, and nobody will be able to find
2 someone that says, Hey, Doyle doesn't have really good
3 credentials.
4 One of the things about people that are that smart
5 is they are not that great in social interaction. They may
6 not be comfortable, and they most certainly -- listen, I'm
7 not going to make any bones of this, he had a really hard
8 time following the instructions of the judge, and had to be
9 told. But what did he say to you? What did he say to you
10 that was critically important? That, Mr. Perez recovered
11 better than 90 percent of my patients. 90 percent of my
12 patients, with the similar injury complex, number one.
13 And number two, and you heard from Dr. Schwartz,
14 and we'll advance a consistent view, Dr. Schwartz is a
15 well-credentialed physician. He didn't say that Mr. Perez
16 is a candidate for this unique epilepsy-focused surgery. He
17 didn't say that he is someone that is going to have that in
18 the future, which is exactly what I said in opening
19 statement, that he was going -- you needed to pay close
20 attention to what he said, because if he stayed with what
21 was in his report, he wasn't going to allege that the
22 surgery was necessary.
23 Why? There are two critical elements that do not
24 exist today, no matter what anybody comes in here and tells
25 you. Number one, does he have epilepsy? He may, but we

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1 don't know. Number two, does he have intractable epilepsy?
2 Refractory seizure disorder that is to the degree that
3 hasn't been able to be controlled by proper medical --
4 excuse me, by proper medication testing? Absolutely not.
5 And Dr. Schwartz told you the same thing, that in
6 order to even determine whether you are going to proceed
7 with this type of surgery, you have to be precise, and
8 there's a battery of tests. None of them, in six and a half
9 years, has been done. How can you come before you, and
10 expect people such as yourselves to believe that he is going
11 to need this surgery in the future, when he hasn't had one
12 of the preliminary tests necessary to even determine if he
13 is a candidate?
14 And Dr. Doyle was lambasted. I wrote that word
15 down this morning, because it's three syllables. He was
16 lambasted for the idea that he would follow his Hippocratic
17 oath, proceed with his true belief that the reduction of
18 suffering is what he was put here to do, and how dare he
19 consider becoming Mr. Perez's doctor. Keeping in mind,
20 there's not a lot of people in the world that have his
21 credentials, and he was essentially -- there was an attempt
22 to eviscerate him for that.
23 But let me ask you something, Ladies and Gentlemen:
24 How is that consistent with what Dr. Fayer did? Dr. Fayer
25 was hired by the same legal reason as Dr. Doyle, and what

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Summation by Defense (O'Hara) Page 1701

1 did Dr. Fayer tell you, the first two times that he saw
2 Mr. Perez? It was forensic. It was not treatment. So how
3 can you be hyper-critical of Dr. Doyle and not think that
4 that equally applies to Dr. Fayer?
5 I would submit to you that there's absolutely
6 nothing wrong with Dr. Doyle saying, I've got a unique set
7 of credentials. I've got a unique skill set. If I can help
8 this young man, I'm going make myself available. And I
9 would submit to you that the same applies to Dr. Fayer. You
10 are not going to hear me say, How dare he offer to become
11 this young man's physician. No. That's not right. He has
12 a skill set, and if the Perez family believes that he's
13 worthy of caring for him, and he met them through
14 litigation, how is that bad? Why is that bad?
15 (Whereupon, an exhibit was displayed to the jury.)
16 MR. O'HARA: Now, what did you learn from Dr. Barr?
17 He focused on the one topic that was of critical importance,
18 just to highlight the testing, and to show the disparity in
19 the testing over the course of years, that there shouldn't
20 be this variability. You can't go up, you can't come to a
21 level, shoot up through the sky, and then come back down.
22 Yet the testing that was done for Mr. Perez, both the
23 15-Item test, which is the Rey 15-Item test, and the test of
24 memory malingering -- we did didn't make that word up. You
25 can take whatever definition you want. You want to call it

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Summation by Defense (O'Hara) Page 1702

1 embellishing without intent? That's what it is. You want
2 to call that there as something subconsciously in the mind
3 that suggests, Hey, when someone is involved in a lawsuit,
4 and they are asked whether it hurts, tell them it's a little
5 bit more than it actually is? That's human nature. To
6 suggest that there's not a secondary influence, that the
7 idea of being involved in a lawsuit doesn't affect people's
8 thinking, even if it's subconsciously, that's not
9 believable. We know that.
10 Dr. Barr specifically said that Mr. Perez, based
11 upon these test results which are intended to evaluate
12 effort, has not, or was not, giving full effort, which is
13 consistent with what Dr. Jordan and Dr. Ambrose said. And
14 keep in mind, it was consistent with the multiple
15 concessions by Dr. Gordon. Dr. Gordon was asked questions
16 about his findings, which shot through the roof when he did
17 the testing, but it was straddled by others whose test
18 results weren't the same.
19 But Dr. Gordon was here for one reason and one
20 reason only: Litigation. Same as all the other doctors,
21 but he could not and did not give a valid explanation for
22 the variability, which is why he conceded so much on cross
23 examination.
24 Now, with respect to -- and this is important.
25 With respect to the reviews, the reports prepared by the

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Summation by Defense (O'Hara) Page 1703

1 various experts, draft reports, did you hear anything about
2 anybody asking these people to change something of
3 substance? Really? It's a bad idea to identify a
4 typographical error?
5 The plaintiff tried to excoriate the witness
6 because the driver's license was from the state of
7 Connecticut, instead of the state of New York. A mistake.
8 An honest, innocuous mistake. A mistake of no substance.
9 We didn't catch it. We have no idea who that young man was,
10 what he was doing there, because there has been different
11 events throughout the course of this case, and the doctor
12 made a mistake, and as a routine standard operating
13 procedure, they provided us with draft reports. And every
14 single one said, They didn't ask us to, and we didn't make
15 any substantive changes.
16 Do you really think we are that stupid? Do you
17 really think that we'll tell a witness, Take out this really
18 important concession, Don't you dare tell the other side
19 that? Because this lawyer, who is talented, experienced --
20 we have heard, all of us heard in voir dire about how
21 experienced he is -- we really think he is not going pick it
22 up? Really? So we are going to tell this expert, Hey, take
23 this out and write it different? No. It's not believable.
24 It's standard operating procedure.
25 What else were those experts questioned about?

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Summation by Defense (O'Hara) Page 1704

1 Compensation for their time. Compensation for their time.
2 The judge will give you a charge about that. Do you think
3 that Dr. Greenwald, Dr. Gordon, Dr. Fayer, Dr. Lubliner,
4 Dr. Lipton, Dr. Schwartz, Mr. Provder and Dr. Dwyer came
5 here of their own free will? They just did it as a
6 courtesy? It's ridiculous. It's not believable. It's not
7 believable. And it's normal. Why? You can't take a
8 doctor, with the credentials of Dr. Doyle, and ask him to
9 review a case, and ask him to come to court and testify, as
10 opposed to be in the hospital, care for the patients that he
11 cares for. You can't ask him to do that without
12 compensating for the time he spends.
13 I've already talked but about the difference
14 between forensic and treating physicians, and you now know
15 every single person in this case was a forensic physician,
16 except Dr. Fayer, it changed. But one of the things about
17 Dr. Fayer, and it's the only time -- listen, you heard this,
18 It's my style; right? It's my style. Well, when Dr. Fayer
19 lashed out at me, do you remember what I was talking to him
20 about? And I literally did this (indicating): Doctor,
21 relax. I can hear you fine. You don't have to yell. What
22 he was he being questioned on when I asked him that
23 question? He was being questioned on his submission of the
24 forensic fees that he would customarily submit to counsel.
25 Because it's involved in litigation, he submitted it to a

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Summation by Defense (O'Hara) Page 1705

1 third party payer. That ain't right. That's why he got so
2 upset.
3 Now, there are essentially three pieces -- and you
4 will have the verdict sheet we worked to create, that will
5 identify the different subject matters that you are going to
6 have to evaluate the damages, and come to a conclusion as to
7 what you believe is a fair and reasonable and just award.
8 And I'm going to work through just a few of them, because
9 there really the most important ones; right? So you have
10 the economic loss, past and future; you have the life care
11 plan, to take care of him into the future; and then you have
12 pain and suffering. The judge will explain to you all the
13 different facets that go into those different components.
14 (Whereupon, an exhibit was displayed to the jury.)
15 MR. O'HARA: With respect to the economic loss,
16 what did the defense present? First, who did we present?
17 Did we bring someone in here that was unqualified? Did we
18 bring someone in here that we intended to be unfair in the
19 manner in which we reviewed and took a position on his
20 economic loss? We brought in a triple-degreed economist
21 from the Wharton Business School at the University of
22 Pennsylvania. We brought in a man that has an extensive
23 work history in actuarials and the valuation of economic
24 issues. Why? Because I told you, we were never going to
25 put somebody before you that wasn't legitimate, that wasn't

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1 credible, because that's unfair and we want to make sure --
2 and that's why I opened the way that I did. We don't
3 dispute everything, but we dispute what is a fair and
4 reasonable and just evaluation of the damages in this case.
5 (Continued on the next page.)
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Summation - Mr. O'Hara Page 1707

1 MR. O'HARA: (Continuing) Why? What did the defense
2 present with respect to the economic loss claim?
3 We presented three different scenarios, but what
4 did we base the economic loss on?
5 What the man was doing for a living, what he had
6 been doing reasonably up to that point and did we take his
7 two year average, his three year average? His five or ten
8 year average to drive that economic number down? Which
9 frankly, we could. We could.
10 Because you can look at one year that's a spike and
11 one year that's a significant drop and say wait a minute,
12 there's not a fair approximation of what the future would
13 likely hold when you're seeing this.
14 But the defense took the position and we'll take
15 the position throughout this case, give that young man the
16 benefit of the doubt. The best year that he had when you
17 add up all of his income was \$33,799, okay.
18 If we look back 2012, he didn't make that much.
19 If you look back to 2011, it starts to drop even
20 less, but we based our analysis on the highest year of wages
21 prior to the accident.
22 There is no question, and I will talk a little bit
23 about this, but there's no question that if you base the
24 2013 loss, the 2014 loss on what he was actually doing, the
25 \$163,000 is fair for six and a half years.

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Summation - Mr. O'Hara Page 1708

1 But what did you hear from Mr. Provder?
2 Listen, Mr. Provder is a nice man, but there's no
3 such thing as PhD eligible. There isn't. You either have
4 completed your PhD or you haven't. That's it. To his
5 credit, he admitted that.
6 What did Mr. Provder do? He picked a
7 classification that, using his word, was aspirational. Hey,
8 listen, that's wonderful. We all hope that in the future we
9 achieve great things beyond even our own wildest dreams, but
10 in this case your job is to determine more likely than not
11 based upon the credible evidence in front of you, what's the
12 likelihood that he was going to be making \$84,910 in 2014?
13 That he was going to be a web designer when he had
14 never done it before?
15 That when you look at his education, training and
16 experience, he had never been engaged in an
17 employment-related setting where he was paid any money by
18 anybody to design web sites and to the extent it's important
19 and I mean this respectfully. It's not an easy thing to
20 talk when you're trying to be respectful of the family and
21 point out shortcomings, but I didn't make this up.
22 I'm not suggesting anything other than the young
23 man went to college for a period of time, withdrew or was
24 unsuccessful in completely approximately half of the classes
25 and the one class Mr. Provder told you, the one class that

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Summation - Mr. O'Hara Page 1709

1 even remotely related to website-related activities, he
2 failed.
3 So, is it credible, is it believable to come before
4 you and say you should base his economic loss for the past
5 six and a half years as well as for the rest of his life on
6 the hope or aspiration that maybe he might pursue that.
7 Keeping in mind one of the things that was brought
8 out about Mr. Perez and his true aspirations. What did he
9 want to do?
10 Talked about going to Puerto Rico and opening a
11 restaurant. Right? We didn't tell -- that's his testimony.
12 When you look at the difference between what he was
13 actually making on the highest year he earned money in his
14 entire life and you compare it to the job classification
15 that was picked by Mr. Provder, it's two and a half times
16 higher.
17 Ladies and Gentlemen, that's incredible. It's
18 unbelievable, and your job is to weigh the credible and
19 believable evidence and come up with what you believe is
20 fair; because, if aspirations and hobbies or desires are
21 what you should base it on, why shouldn't you compensate him
22 for being a commercial airline pilot? Because he did like
23 to fly a plane.
24 Now, I'm going to talk about the future issue with
25 respect to Social Security benefits as well as how it

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Summation - Mr. O'Hara Page 1710

1 relates to the life care plan and it's not an easy thing to
2 talk about, and I have thought a lot about how to do this
3 knowing the Perez family is standing there and it's not easy
4 to do.
5 The life expectancy tables that we all are subject
6 to are simply statistics, and it's not intended to say I
7 guarantee you this is when you're going to die. It's not.
8 But the fact is your job is to weigh the believable
9 and credible evidence and do what you think is right and in
10 this case, the plaintiff presented evidence in their case by
11 Dr. Ambrose that Mr. Perez has a statistically reduced life
12 expectancy -- excuse me, Dr. Greenwald and Dr. Ambrose
13 agreed.
14 So, what did we do economically?
15 We said, look, if he has a full life expectancy,
16 because for whatever reason you decide you don't want to
17 accept the uncontroverted medical testimony of both Dr.
18 Greenwald and Dr. Ambrose, if you don't want to accept that,
19 I don't know that I'm going to say that that's a reasonable
20 thing to do, but that's your prerogative.
21 If you give him a full life expectancy and the
22 total economics including the value of the loss of the
23 Social Security benefits that he would have earned had he
24 worked a full life and lived a full life, the total economic
25 loss, past and future for Mr. Perez is \$1,657,643.

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Summation - Mr. O'Hara Page 1711

1 If you assume a six and a -- excuse me -- 6.7 year
2 reduction which is the uncontroverted testimony of both
3 sides in this case, it's \$1,496,230.
4 What does Live Nation believe is fair? What does
5 Live Nation ask you to do? Do that. That's what the
6 evidence says. I didn't -- it's not an argument. It's what
7 Dr. Greenwald and Dr. Ambrose specifically note is the
8 statistical likelihood which, by definition, is more likely
9 than not.
10 Now, while we presented evidence on a nine year
11 reduction, I'm not going to talk to you about it because at
12 the end of the day, we're willing to accept, if you accept
13 what the two experts said and the fact that it might
14 actually be statistically shorter based upon other
15 information that's available. That's for another day.
16 You don't have to remember these numbers. These
17 boards are in evidence so you can have them when you go into
18 deliberate.
19 Now we come to the life care plan, the future needs
20 for Mr. Perez.
21 Live Nation is responsible to take care of the fair
22 and reasonable and justly determined future medical needs of
23 this young man. It's not disputed, never has been and never
24 will be, but there's a dispute as to what this is, okay.
25 We have presented to you through Kim Kushner what

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Summation - Mr. O'Hara Page 1712

1 we believe to be, based on the review of Dr. Ambrose, a
2 reasonable future life care plan.
3 Dr. Ambrose outlined all the items she believes he
4 needs including a good percentage of things that he's not
5 getting now.
6 So, we're actually presenting to you evidence of
7 better care and treatment of more comprehensive support for
8 him than his own treating physicians have been providing for
9 him for the last six and a half years.
10 Why? We told you and I told you at the beginning I
11 was not going to break my pact with you and I was not going
12 to ask an expert to say, no, no treaters aren't suggesting
13 he needs this level of therapeutic support. We don't have
14 to agree to that because he's not getting it. No. It's
15 fair, reasonable and frankly he should have. He should
16 have.
17 So, where are the differences based upon and
18 keeping in mind, right, Kim Kushner has a bachelor and a
19 master of science in nursing. She's a certified registered
20 nurse practitioner and certified night nurse, life care
21 planner. She can actually not only talk about it, she can
22 do it.
23 The whole purpose was to get somebody in here that
24 had the ability not only to talk about it, but have a
25 foundation that you're comfortable is fair.

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Summation - Mr. O'Hara Page 1713

1 So, what are the dramatic differences? Okay.
2 Where do we see the dramatic dispute?
3 Some of this has changed, which is why when the
4 plaintiff stands up, you're going to see numbers that are
5 different, okay. Plaintiff's numbers have changed. Why?
6 This is really important.
7 So, during the course of this case, you've heard
8 about the different people who write reports at different
9 times and how important is it to be accurate and focused on
10 detail, because you're going to come before a jury one day
11 and talk about it.
12 And Mr. Provder wrote a report in June of 2015 and
13 suggested that this young man needed neurosurgical
14 consultation 48 times a year. Mr. Provder suggested that
15 this young man needed craniofacial plastic surgery consults
16 24 times a year.
17 Then when he wrote the report in 2018, he changed
18 the number of craniofacial surgical consults but he left in
19 this massive amount of neurosurgical consultation but then
20 when we pushed him on it and this is important, right.
21 People make mistakes. It's part of human nature, but here's
22 the thing.
23 Did he say it to you on direct examination? Did he
24 tell you -- did they bring out in this case I made a
25 mistake, it's about 3/4 of a million dollar mistake? Nope.

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Summation - Mr. O'Hara Page 1714

1 Nope. We did. We cross-examined him on it. He admitted
2 that it was wrong. \$725,000 worth of neurosurgical
3 consulting was wrong and now, the numbers have changed.
4 So, where else do we disagree?
5 Well, you heard testimony about Mr. Perez has a
6 shoulder injury and that, according to Dr. Lubliner, needs
7 surgery. That's has been withdrawn as an item for which
8 they're seeking life care support as well.
9 Why? Because what we presented and what we
10 challenged their proofs on resulted in them withdrawing it
11 which is why we now have new numbers.
12 What are the two sticking points that are the
13 most -- and you heard from Kim Kushner. Some things we
14 agree with Mr. Provder, some things we disagree with
15 Mr. Provder. There's some things we have on our list that
16 he doesn't and some things he has that we don't, but at the
17 end of day, the two core points of the dispute are
18 transportation expenses and home health aide support.
19 The difference is astronomical in the costs for his
20 future care. The transportation costs that have been
21 alleged range to almost \$27,000 a year.
22 What did you learn from the defense presentation?
23 He's entitled to free transportation for medical care.
24 Now, does that help with going to the store? No,
25 it doesn't.

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Summation - Mr. O'Hara Page 1715

1 Does that help with going to a friend's house or
2 family or to whatever task he decides to pursue? No.
3 So, there will be transportation needs for a man
4 that has an active driver's license, that has driven, by his
5 own admission, up through 2016 and that still has an active
6 driver's license.
7 Not one thing about his driving privileges has been
8 restricted by the State of New York and not one thing about
9 his care and treatment of all of these people despite the
10 legal obligation to report it, no one has told DMV, hey you
11 can't drive.
12 So, to the extent that Mr. Perez, next year or the
13 year after or the year after, recovers and begins to regain
14 some of the freedoms that he claims to have lost, you need
15 to take that into consideration when you're evaluating.
16 What do you do about transportation? We submit
17 that what we've proposed is reasonable because the only
18 question is whether or not we have been able to prove that
19 he's driving right now. Right now.
20 I'm going to tell you, can't prove it. Can't prove
21 it. Don't know. Why? We don't watch him every day.
22 Right. You have to take Mr. Perez at his word but there's
23 no question that Mr. Perez had independence and has the
24 ability to engage in normal tasks extensively and that
25 changed.

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Summation - Mr. O'Hara Page 1716

1 What does that mean? There's a fair likelihood
2 it's going to change again. There's a fair likelihood as
3 his condition evolves and as he goes through the therapies
4 we have outlined that we believe are in his best interest
5 that are consistent with the treatment and review of
6 multiple doctors and he begins to regain function, he's
7 going to be able to drive. He is.
8 What's the other item that is of significant
9 dispute? Home care to the tune of \$127,000 a year.
10 Now, one of the things about the testimony in the
11 case was about the care and treatment that he's received for
12 the past six and a half years.
13 Did you hear about one medical provider at all
14 involved in his care that said he needs 24-hour a day
15 seven-day a week care? No. No. It hasn't been provided
16 for six and a half years.
17 Does he need help? We agree he needs help.
18 Does he need somebody sitting next to him 24 hours
19 a day, seven days a week? How can that be reasonable when
20 the man lived alone in 2016 and 2017. By his own brother's
21 testimony there are hours, sometimes it's a couple of hours,
22 sometimes a short period of time, sometimes there's less,
23 sometimes not.
24 At the end of day, he's able to function alone and
25 the idea that he needs 12-hour a day, seven-day a week care

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Summation - Mr. O'Hara Page 1717

1 flies in the face of all of the care and treatment he's had
2 up to this point. It's not prescribed by any of his
3 treaters.
4 So, we put forth what we believe to be a fair
5 proposal recognizing he has been living sometimes with his
6 mom and dad, sometimes with his brother and his mother's a
7 registered nurse. That is a fact.
8 We didn't present that in terms of trying to take
9 advantage of it. That's fact. That's a fact. So, her
10 experience and her background allows for the ability to
11 provide some support for him in close proximity where he
12 lives, depending on whether he's living with his parents or
13 whether he's living with his brother.
14 Now, in terms of assessing the believability of
15 whether or not at present he's doing absolutely nothing, you
16 have to weigh the evidence that was presented on a number of
17 topics.
18 We talked a little bit about the Hot Yoga and Dr.
19 Doyle told you he may have hyperventilated. Hot Yoga is Hot
20 Yoga. I'm not a Hot Yoga guy, but the fact is that is an
21 intensive activity for which he had an adverse physical
22 reaction. He needs to temper his activities.
23 He's a workout guy. How do we know that? Not from
24 what Live Nation tells you.
25 You heard from the testimony of Dr. Lubliner that

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Summation - Mr. O'Hara Page 1718

1 on October 20, 2015, he weighed 161 pounds. On
2 November 15th -- strike that.
3 On September 15, 2016, he weighed 171 pounds. He
4 put on ten pounds.
5 Then on January 18, 2018, he weighed 173 pounds.
6 He added another two pounds, and by the time he saw
7 Dr. Lubliner, his workout regime allowed for him to get to
8 195 pounds.
9 Now, you know from his history and you know by the
10 very testimony in the pictures that were put up, he likes to
11 workout. It's laudable. It's a nice thing, but that is
12 consistent with someone that goes into a gym that
13 understands physicality and understands what muscles are and
14 what needs to be done in terms of exercise regimen to keep
15 your body in good fitness and to make a determination on how
16 many sets, how many reps, what machine I'm going to use.
17 Am I go to go use free weights to move from place
18 to place to place to determine what body part you're going
19 to work on. He was doing it every day and as of the time he
20 was seeing Dr. Lubliner he was down to three days a week.
21 Pretty good exercise regimen.
22 Now, you'll hear from the Judge as part of the jury
23 instruction that one of the things that the defense has the
24 burden of proving is the duty to mitigate one's damages,
25 okay.

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Summation - Mr. O'Hara Page 1719

1 What does that mean? What does the duty to
2 mitigate damages mean?
3 You heard when I asked Mr. Perez the question: I
4 asked when he went to the doctor, how you were doing and why
5 you were there. You give truthful information because one
6 of the reasons you're there is you want to get better and
7 the plaintiff can't not proceed with treatment to his
8 detriment and then blame the defense for his inability to
9 get better.
10 It's a tough issue, but in this case it's
11 uncontroverted that there's no medical reason why he hasn't
12 had the cranioplasty. If he has the cranioplasty from the
13 various physicians who have offered to work with his family,
14 whether it be Dr. Schwartz, Dr. Doyle or the preeminent
15 physicians at Johns Hopkins University, if he has the
16 procedure not only is it going to help him physically, it's
17 going to help him emotionally because he told you a really
18 moving story about encountering a young person in the store
19 and the kid saying something about the way he looked and the
20 kid said something about wearing a helmet and it made him
21 feel bad and that is completely reasonable.
22 I don't know if I would be able walk around society
23 wearing a helmet, but in this case all the doctors who
24 treated him, the doctors reviewing his case in this
25 litigation on behalf of plaintiff and the doctors on behalf

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Summation - Mr. O'Hara Page 1720

1 of defense all said the same thing, he needs that surgery.
2 He needs it and in the meantime he needs to take protections
3 to take care of himself; and, along the way, if there are
4 things that he can do to improve his condition, he's
5 supposed to go and do them.
6 What do we know about the psychotherapy that was
7 prescribed by Dr. Fayer.
8 Dr. Fayer came before you and said he needs it once
9 a week. Once a week since the first time he saw him in
10 January of 2018. It's almost January of 2020. We're
11 literally two years and has he been doing what Dr. Fayer,
12 who is now the treating physician responsible for him, told
13 him?
14 Has he been doing it? Nope. What's the reason?
15 255 miles, two hours to drive to New York City. Yet
16 Dr. Fayer had no choice but to concede there are multiple
17 psychotherapist is between Islip and New York City that at a
18 minimum he could consider going to to try and take steps to
19 make himself feel a little bit better. He hasn't done any
20 of that.
21 In evaluating what I think is one of the most
22 sensitive issues in this case, really important, the life
23 expectancy issue and how it affects future life care needs.
24 It's impossible not to feel empathy and compassion
25 for this family. They are a good family. There's no better

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Summation - Mr. O'Hara Page 1721

1 example of that then the way they've rallied around each
2 other to try and stay close to their brother and that's
3 really, really nice; and, as much as we all have that
4 feeling of I want to do something right by him, the Judge is
5 going to tell you, and we've said this at the outset, and
6 you promised you would do this:
7 In reaching your verdict, you are not to be
8 affected by any outside consideration. That includes
9 sympathy.
10 Why? How can you be fair, just and objective if
11 you're heart drives you? How can you do that?
12 This is about weighing the credible evidence and
13 determining what is objectively reasonable based upon all of
14 the evidence that you decide is credible and so from our
15 perspective, from Live Nation's perspective, we'll accept
16 what the plaintiff's expert said about a 6.7 years life
17 expectancy reduction statistically because that's more
18 likely than not.
19 And if you decide that for whatever reason you're
20 not comfortable with that conclusion, even though that's the
21 only evidence you have in front of you, we've also given you
22 what we've outlined as the fair and reasonable and
23 objectively just a life care plan that we believe you should
24 award to Mr. Perez, well beyond what he's doing presently.
25 Well beyond what he's doing presently but he

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Summation - Mr. O'Hara Page 1722

1 deserves it. He deserves it and Live Nation is committed as
2 much now as it was when I first met you. You do the right
3 thing by that young man; and, the fact that he may not have
4 gotten it up to this point, if you believe he's going to do
5 it, fund it by the way that you structure the verdict that
6 you render.
7 So, that brings me to a discussion of how Live
8 Nation believes you should calculate what the economic loss
9 is separate from pain and suffering because you'll hear the
10 verdict form allows for pain and suffering consideration and
11 when you add up the economic loss, and the life care plan
12 for Mr. Perez, assuming a 6.7 year reduction, it comes to
13 \$4,766,000.
14 If you do the same addition, without any change in
15 his life expectancy, based upon the evidence we presented,
16 it comes to \$5.857 million, okay.
17 So, if you decide that it is reasonable, based on
18 the decrease in his life expectancy, to award the plan that
19 takes that into consideration, we would agree with you that
20 that's what the evidence shows, but if you decide to do
21 something different and for purposes of my discussion, I
22 figured it would make it easier.
23 If you take the full numbers between full life
24 expectancy and decreased, the average is \$5,017,000. If you
25 believe that's fair, give it to him. Give it to him.

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Summation - Mr. O'Hara Page 1723

1 Pain and suffering: There's no formula, no magic.
2 What something feels to one person is unique to them. It's
3 the toughest job you have.
4 What's the conscious pain and suffering award,
5 past, present, and future worth?
6 You heard during voir dire there's going to be a
7 number that's coming from the plaintiff. I don't know what
8 it is either. I guarantee you it's going to take your
9 breathe away. I guarantee you.
10 What does Live Nation believe is fair?
11 If you award the life care plan that we've
12 outlined, if you award the full value of the economic loss
13 we've outlined taking into consideration reasonable
14 consumption costs that we all have to incur:
15 You have to wear clothes. You have to put gas in
16 your car. There's things we all have to do. You don't just
17 get a gross amount of money.
18 If you take that into consideration, we've taken
19 care of every life need that is reasonably anticipated for
20 this young man based upon the testimony that was presented
21 by experts beyond reproach.
22 So, what would I suggest that you do for conscious
23 pain and suffering? Well, what if that's not enough?
24 Double it. Match it. Give him \$5 million for the conscious
25 pain and suffering so that to the extent there's anything

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Summation - Mr. O'Hara Page 1724

1 unanticipated in here, there's money available to him to
2 provide for and it is an amount of money that if you had
3 those two together is \$10 million plus.
4 We're responsible for the past medical expenses and
5 I submit to you, Ladies and Gentlemen, I don't say that
6 easily. It's not easy to stand up here and say what do I
7 think this is worth, but, you know, based upon the way voir
8 dire went, you're going to get a number, and I guarantee you
9 it ain't going to be what I just said. Guarantee you, which
10 is why we're here.
11 So, in conclusion, thank you, so much. Thank you
12 for taking the time out of your life. You didn't have to.
13 You saw all the people that came. We went through a
14 painstaking process. You did it. You have things in your
15 life to work around and you did it.
16 It's an honor to be part of a system where there's
17 people like you who understand how important this is, how
18 important what you're about to do is. Be fair, be just and
19 be reasonable. No more and no less and remember what you
20 promised.
21 Stay right here. Stay right here until you get
22 into that room because I'm not going to have a chance to say
23 anything after I sit down.
24 On behalf of Live Nation, it's been a privilege to
25 speak with you.

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Summation - Mr. Morelli Page 1725

1 Thank you.
2 THE COURT: I'll give you a break before we start
3 Mr. Morelli's summation.
4 (Whereupon, the jury leaves the courtroom.)
5 THE COURT: Okay. Send in the jury.
6 (Whereupon, the jury enters the courtroom.)
7 THE COURT: Mr. Morelli.
8 MR. MORELLI: Good morning, all. Still morning.
9 Obviously, I have a lot to talk to you about and so
10 much of it is more detailed and some of it is a little
11 easier and more straightforward.
12 I don't usually thank jurors for their jury duty
13 because it's a duty, but one thing I have to comment on is
14 that your attention has been incredible and you're always on
15 time. You're as good as us, if not better.
16 So, thank you for that.
17 What seems to be interesting to me from the outset
18 is how in 2019, there's still some people who believe that
19 the best way to go is to blame the victim.
20 I think that you all know that much of what you
21 heard is not being magnanimous, you know. Live Nation
22 Worldwide is here for a discount, okay. I mean, that's what
23 it's about.
24 So, I know it's been very, very difficult for the
25 witnesses that were brought in by the defense lawyers for

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1 Live Nation Worldwide to say it straight. It was like
2 pulling teeth to get some of these witnesses to admit
3 things. I know you know that.
4 I know you watched me be pretty exorcised about
5 some of it. That's what I have to do. I think you know
6 that.
7 We talked about it in jury selection and I think
8 that I don't have to tell you what you saw. I don't have to
9 tell you what you heard.
10 I'm going to tell you what I saw and heard and how
11 I view it. At the end of the day, you're going to remember
12 a lot of the testimony because I'm actually going to be
13 talking about specific testimony.
14 I'm not going to be talking about only things that
15 I remember, but I have the whole record, and I've read the
16 whole record, and I know exactly what the testimony is in
17 this case, and I'm going to bring some of it to you. I
18 can't bring it all to you or I'll be giving a closing
19 argument for a month. So, I can't do that.
20 (Continued on next page.)
21
22
23
24
25

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Summation by Plaintiff (B. Morelli) Page 1727

1 MR. B. MORELLI: But let me say to you that at the
2 beginning of this trial, we heard certain comments about
3 subjective and objective, and I don't know where that went.
4 You know, it sort of got lost somewhere. I thought that
5 that's what the defense was talking about, subjective,
6 objective.
7 I guess we learned during the trial that subjective
8 complaints are very important. All the objective evidence
9 in this case comes from the plaintiffs. Nobody wants to
10 talk about, from Worldwide Live Nation, Live Nation
11 Worldwide, about really what happened to this young man. To
12 me, he is a boy. But this young man. And I'm going to show
13 you what happened to him, and I'm going to have you recall
14 the testimony in this case, and how absolutely devastated
15 this young man was, and how it's an absolute miracle that he
16 is walking and talking. I think that one of the most
17 powerful things that you will recall is what he told you,
18 and I'm going to bring some of that to you, also, and I
19 appreciate the patience while I do that.
20 I think you know that Mark Perez is not easily
21 deterred, or he would be dead. I'm not easily deterred,
22 either. I think you know that. So let's talk about this
23 case.
24 (Whereupon, an image was displayed to the jury.)
25 MR. B. MORELLI: There was a big argument in the

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Summation by Plaintiff (B. Morelli) Page 1728

1 office about who was going to get billing, whether we were
2 going to do it in alphabetical order or not, so don't think
3 that one person is more important than the other. But
4 that's my legal team.
5 (Whereupon, an image was displayed to the jury.)
6 MR. B. MORELLI: Now, this is before. This is
7 before, and that's what Mark Perez looked like before the
8 accident. That's him after. Now, I know that, you know, it
9 has actually been beaten to death, people say a picture is
10 worth a thousand words, and this is very telling, because
11 that doesn't look like the person he was, because it's not.
12 It's just not.
13 When I talk about before, I talk about a bright
14 young man. And this is testimony in the case, not from
15 Morelli. Fearless, adventurous. Because we know what he
16 was doing. He was trying to get his pilot's license. He
17 was flying a small plane. I wouldn't be in that plane, but
18 that's what he likes. He was ambitious. He was a leader.
19 You heard his brother. Talented. An entrepreneur. He had
20 started his own business. And understand that all of this
21 that he was doing, he was still -- just turned 30 years old.
22 He was about six months into his 30th year when this
23 accident happened, in June of 2013. He was, more
24 importantly, independent. He had a total zest for life.
25 That's who he was.

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Summation by Plaintiff (B. Morelli) Page 1729

1 Now, I couldn't tell you that. His brother Justin
2 told you that. You judge the credibility of the witnesses.
3 You judge. Witnesses are not judged by how many degrees
4 they have. Somebody can be a laborer and be credible, and
5 someone could have five degrees from Harvard and be
6 incredible. That's up to you. That's not up to the
7 degrees. So I say to Justin Perez, everybody would love to
8 have a brother like that. Told you straight.
9 And what about after? Shattered. Now, you heard
10 that from a number of people, and we are going to get into
11 it. Trapped in a mind that has been altered. That's what
12 the case is about. That's one of the things that this case
13 is about. Trapped in a mind that has been altered.
14 Diminished. No longer optimistic, but instead, defeated.
15 And I'm going to bring you the words, specifically, of his
16 brother who talks about that and tells you what he thinks
17 about it. Anxious. Fearful. Worried, depressed.
18 What is he worried about? What is he worried
19 about? He is worried about everything. He worried about,
20 can I ever get at least somewhat better? Can I ever get
21 somewhat better? He is worried about the future. Will I
22 meet somebody? And will they be able to stay with me? Will
23 they stay with me, in my diminished state? He is depressed.
24 He is depressed, but more importantly, he is dependent. He
25 is now dependent, and that drives him crazy. It's so

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Summation by Plaintiff (B. Morelli) Page 1730

1 upsetting to him.
2 (Whereupon, an image was displayed to the jury.)
3 MR. B. MORELLI: So, I made this slide, The look of
4 no, and I got that term from his brother, Justin, who
5 described to you in his testimony when and what he saw with
6 reference to his brother. That's Justin Perez.
7 "After the first seizure, Mark had a look of loss
8 and defeat on his face."
9 That's his testimony. That's the exact testimony
10 in the case, and he said:
11 "It is a look of loss and defeat, and the one thing
12 about my brother that I always loved was that he was not
13 someone that would ever give up. He was just a tremendously
14 liked individual, and just, you know, wouldn't take no in
15 anything in his life. And that day, that was the look of
16 no."
17 Very telling. Very hard to even describe that,
18 other than giving you the exact words.
19 So let's talk a little bit about the defense of
20 Live Nation Worldwide and what their lawyers were
21 promulgating in this case, and I know that, you know, it's
22 easy, after you hear all of the testimony in the case, and
23 you are watch all the witnesses, and you're judging the
24 witnesses, are they telling you straight, because it's very
25 important for you to look at the witnesses, see how they're

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Summation by Plaintiff (B. Morelli) Page 1731

1 testifying. It's not only what you say, its how you say it.
2 We look at people all the time in our everyday life and we
3 say, I didn't believe him. I didn't believe him. Why do we
4 say that? It's not only because maybe what they said was
5 not credible, but the way they say it has to be also
6 something that we judge, and we do it every day. That's
7 what we call our God-given common sense. That's our
8 instinct.
9 (Whereupon, an image was displayed to the jury.)
10 MR. B. MORELLI: I say to you that there's no
11 defense to this case. It's a non defense from Live Nation
12 Worldwide, who we have now heard is being magnanimous. Give
13 him more. Treat him even better. That's a nice family.
14 You know? I'm not going to call him names. Really?
15 You could call a duck a dog, but it doesn't make it
16 a dog. So you could use whatever words you want, but you
17 are still saying what you are saying. And I'm going talk
18 about that.
19 Sowing the seeds of doubt. The defendants have no
20 evidence that Mark Perez is not severely injured or severely
21 impaired. No evidence. And there has been no evidence in
22 this case. It has all been throwing things out there, and
23 seeing if you hold onto them, whether or not it came from
24 the testimony. Doesn't matter. And I'll show you
25 specifically what I mean. This isn't just about me. It's

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Summation by Plaintiff (B. Morelli) Page 1732

1 about the testimony in the case. The defendants are only
2 here to sow the seeds of doubt. That's what this is all
3 about. If we put some doubt in your mind, this is what the
4 lawyers are thinking, the lawyers for Live Nation Worldwide.
5 This is what they are thinking: We are going to sow the
6 seeds of doubt. Now, why would you do that? Why would you
7 do that? If you say to a jury, I'm not going to call this
8 young man names, this is a nice family, then what's the
9 reason for all of this? What's the reason for all of it?
10 It's to sow the seeds the doubt.
11 It's actually to, what I say, distract, distort and
12 confuse, and that's their job in this case. That's what
13 they figured out. They said, Hey, all of this evidence is
14 against us; okay? Mark Perez is really injured. Luckily,
15 he is walking and talking. Luckily. God said that was
16 okay. Not the lawyers for the Live Nation Worldwide --
17 MR. HAWORTH: Objection.
18 THE COURT: Sustained.
19 MR. B. MORELLI: -- that's for sure.
20 THE COURT: Sustained.
21 MR. B. MORELLI: So, yes. It's very magnanimous of
22 you.
23 (Whereupon, an image was displayed to the jury.)
24 MR. B. MORELLI: And what kind of talk is this?
25 You know, we have a situation -- I'm going talk about Mark

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Summation by Plaintiff (B. Morelli) Page 1733

1 before and after the accident, but what about -- what did
2 Justin Perez say? He was just physically and mentally super
3 capable, and that's a photo of him when he was a DJ, when he
4 was a very young man. And look, you know, you don't have to
5 be a college graduate to be someone who is magnetic.
6 Someone who people like to be around. Someone who makes
7 people feel good. There are a number of people who have
8 dropped out of college, who make a lot of money and have
9 been unbelievably successful in their life. But what the
10 defense wants to do here is pigeon hole this young man at
11 33,000 a year for the rest of his life. Keep that in your
12 mind while I talk to you about the real evidence in this
13 case.

14 On almost every avenue, in work, social life,
15 growing up, he was essentially like my older brother. And
16 actually, he is the younger brother. But because of the way
17 he was, and because of the way people liked him, and because
18 he was such a leader, and because he had this personality,
19 he was very, very social. Excellent at connecting with
20 people. He had a magnetism, and you can't teach that. You
21 can't learn that. But what they want you to believe is not
22 any of this. They did want you to believe he's a drop out.

23 He was physically built for athletic purposes. He
24 was a gymnast, a break dancer, a wrestler, ice hockey
25 player. That's who he was. Did you hear any testimony in

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Summation by Plaintiff (B. Morelli) Page 1734

1 this case that he does all these thing now? That he can do
2 them? We are not making this case anything it isn't. It
3 was Mark Perez who said, I go to the gym. They didn't bring
4 it out. If he was faking, people, he didn't have to tell
5 him that. It was Mark Perez who said, I tried driving.
6 They did didn't figure that out. He told these people, who
7 came in and want you to believe that he is trying to fool
8 them. Why would you do that? It's inconsistent. It makes
9 no sense.

10 (Whereupon, an image was displayed to the jury.)
11 MR. B. MORELLI: What were Mark's goals in life?
12 And we have to turn to Justin again for that, because he is
13 the one who knows him. He grew up with him. They were
14 tight when they were younger, and they are even tighter now,
15 because he needs his brother to take care of him.

16 Now, does Live Nation Worldwide want to pay for
17 taking care of this young man 24-7? No. Let his family do
18 it. They are doing good. They are doing good at it. Let
19 them keep doing it, so we get a discount. We don't have to
20 pay for it, if the family is so good at it. But
21 unfortunately, the mother and the father are both 70 years
22 old. Now, that doesn't mean that they are going to die
23 soon. Hopefully, you know, but it ain't forever, so yeah,
24 they'll be getting a discount. For six and a half years
25 while we are waiting for this case. Yeah.

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Summation by Plaintiff (B. Morelli) Page 1735

1 And luckily for them, the mother is an RN, and you
2 heard that when he had this raging infection, she had to put
3 a PICC line in his arm for 12 weeks to give him antibiotics
4 three, four times a day.

5 So maybe his brother, to save some money for Live
6 Nation Worldwide, because they want to take responsibility
7 for it -- you know, we are going to take responsibility for
8 it. But only certain things.

9 So let's go to what this case is really about from
10 the, what I call the get go.

11 (Whereupon, an image was displayed to the jury.)
12 MR. B. MORELLI: This is from the scene of the
13 accident. This is what Mark Perez remembers from the scene
14 of the accident. I was knocked off of the truss and I fell
15 down. After being forced off, I hit the ground head first,
16 and I remember blood and things coming out of my mouth and
17 ears, and I tried to put the -- my hands in it, and put it
18 back in my head, and I knew this was how I was going to die.
19 That's what I thought.

20 Well, you didn't hear a whole lot about that in the
21 case from anybody but Mark, because there's nobody who
22 witnessed that happening. But when we talk about conscious
23 pain and suffering in this case -- and I'm going to be
24 talking about conscious pain and suffering in this case,
25 because there is no formula for that, there's nobody with

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Summation by Plaintiff (B. Morelli) Page 1736

1 credentials, you know, coming in so that they can give you a
2 nice neat package of how much money this boy deserves as a
3 verdict in this case. That's up to you. 100 percent up to
4 you. Not up to any economists, any life care planners. All
5 of that, the life care plan and the economic loss and loss
6 of wages, the smallest part of this case. The conscious
7 pain and suffering and loss of enjoyment of life, listen to
8 what the judge tells you about what the law is in this case.
9 This isn't Morelli's law. This is the Court. Just like the
10 Court decided whether, after this accident, that Live Nation
11 Worldwide was responsible to this boy.

12 MR. HAWORTH: Objection.
13 THE COURT: Sustained.
14 MR. B. MORELLI: That has already been determined,
15 so all you're talking about here is the injuries, the extent
16 of the injuries, how it affected this boy, what the past
17 conscious pain and suffering is, and what the future
18 conscious pain and suffering is. That's that this case is
19 about, and we are not going to gloss over it.

20 But that's what he thought. I knew this was how I
21 was going to die. That's the terror that he felt at the
22 time.

23 (Whereupon, an image was displayed to the jury.)
24 MR. B. MORELLI: What happened to him? He was
25 admitted to Nassau University Medical Center, and you know

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Summation by Plaintiff (B. Morelli) Page 1737

1 the date of the accident: June 26th. So let's talk about
2 what happened there. Admitted to the surgical intensive
3 care unit. Had a traumatic brain injury. A fractured
4 skull. Multiple facial fractures. This is from the
5 hospital records. Subdural hematoma, which is a brain
6 bleed. Multiple hemorrhages. Seven fractured ribs. Spinal
7 fractures. Punctured, collapsed lung.

8 They had to then, as a result of all of this, they
9 had to put Mark in medically-induced coma, and they did that
10 to save his life. That's what had to be done. Then they
11 had to do an emergency craniectomy, and they had to cut his
12 head open, and they had to take off a piece of his skull, as
13 you have heard, and we'll get into it in more detail. They
14 then had to have life support, so they had to put him on a
15 ventilator so that he could keep breathing and live.

16 And there he is in the hospital. With a feeding
17 tube. A chest tube. A trach tube. You don't hear much
18 about that. We hear a heck of a lot about malingering,
19 which I'm going to talk about. See him lying there? That's
20 your malingerer, right there.

21 (Whereupon, an image was displayed to the jury.)

22 MR. B. MORELLI: So Mark in the hospital, Justin
23 hears Mark say, Dad, I think I'm dying. Justin says, one of
24 the main neurosurgeons there, he said, I will be straight
25 with you. He has about a ten percent chance of pulling

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Summation by Plaintiff (B. Morelli) Page 1738

1 through the night.

2 That was the extent of the injuries that only the
3 person with these incredible credentials, Dr. Barr, the only
4 person in the whole case who said it was a mild traumatic
5 brain injury, just from reading records. And in a little
6 while I'll show you, on my cross examination, what he said.
7 The open one. And this, you should believe, and make a
8 verdict on.

9 What did Mark Perez say about being in the
10 hospital? I was in a lot of pain, and I think if it wasn't
11 for my family being there, I wouldn't be here, and I thank
12 God for them, because I couldn't speak and tell people how I
13 felt at all, and that's because he had a breathing tube in
14 his throat.

15 (Whereupon, an image was displayed to the jury.)

16 MR. B. MORELLI: Dr. Schwartz came in, and what I
17 did for all of you, because it's been a long trial, I
18 brought you photographs of all of the expert witnesses in
19 the case so that you would have an opportunity to remember
20 who they were when they testified. So that was
21 Dr. Schwartz, and he came in and he explained about the
22 first surgery and he said, when they did this craniectomy,
23 it had to be done, because what had developed was a very
24 large collection of blood on the right side of the brain
25 call a subdural hematoma, and he said that basically, if

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Summation by Plaintiff (B. Morelli) Page 1739

1 this had not been done, Mark would have died. So his
2 life-saving surgery, involving opening up the side of his
3 head with a big skin incision and removing a large piece of
4 bone, and they did that because the pressure had built up in
5 his head at such a great degree that if it kept going, he
6 would die, so they had to alleviate the pressure by cutting
7 his head open, taking off that piece of skull, so that the
8 brain had more room.

9 So the best thing to do, he says, is actually take
10 the bone off, and this operation, they stored it in his
11 abdomen, because it's sterile there, and at some point they
12 put it back, or they would attempt to put it back. That
13 didn't work out so good.

14 Now, you are dealing with surgeons. You, know
15 brain surgeons especially, which Dr. Schwartz is, they speak
16 in a certain way, because they see things we don't see.
17 They see it. They see things that we don't want to see,
18 probably. And so when he says in this operation they stored
19 it in his abdomen, it's not like he was like carrying around
20 a pouch. It's not like, Where do you store away these
21 winter clothes? All right, well, let's put them in the
22 second closet; you know? This wasn't any storing going on.
23 They cut open his abdomen. Another surgery. They put the
24 skull in there. They sewed him up, and then when they
25 needed to attempt to put the skull back where it belonged,

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Summation by Plaintiff (B. Morelli) Page 1740

1 they had to open him up again and do another surgery.

2 And these surgeries are done under general
3 anesthesia. This isn't like, Oh yeah, let's have another
4 surgery; you know? And brain surgeries, nonetheless, we are
5 talking about.

6 (Whereupon, an image was displayed to the jury.)

7 MR. B. MORELLI: It's not -- you know, I was
8 thinking about, that it sounds, like, so easy. You know,
9 there's no reason why Mark shouldn't go have a fifth
10 surgery. There's no reason. It's like -- it's like, you
11 know, if you were -- It's easy. It's like going to the
12 deli; you know? You give me a pastrami on rye. You give me
13 a pastrami, the worst thing that's going to happen to you,
14 you get a little mustard on you, or maybe you get a little
15 indigestion. This is brain surgery, and you are talking
16 about it like, Oh, yeah. He refused to go to the store.

17 And he has a family that went all the way to
18 Maryland to Johns Hopkins to find out about this surgery,
19 and they told him we might have to do it in two or three
20 different surgeries. They did that before they came to
21 court. Months before. And that's how he wound up at
22 Dr. Schwartz. Yeah, I wanted Dr. Schwartz to testify in
23 this case. Yeah, I thought he was qualified. Yes, we
24 referred the family to Dr. Schwartz, for two reasons: A
25 second opinion as to that surgery, and to tell you about his

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Summation by Plaintiff (B. Morelli) Page 1741

1 condition, because you need to know.
 2 (Whereupon, an image was displayed to the jury.)
 3 MR. B. MORELLI: And so Southside Hospital, and
 4 this is, as you remember from my opening statement, that's
 5 Mark. That's what he looked like when he is wearing the
 6 helmet, and that's him trying to get better. Admitted to
 7 the brain injury unit, comprehensive rehab. And by the way,
 8 doing physical therapy, doing occupational therapy, speech
 9 therapy, recreational therapy, neuropsychology.
 10 And all of this, by the way, is part of the
 11 conscious pain and suffering for the past. This all
 12 happened already. This isn't fun and games, this is hard.
 13 (Whereupon, an image was displayed to the jury.)
 14 MR. B. MORELLI: Physical therapy for traumatic
 15 brain injury. He wasn't finished. He then went to
 16 St. Charles rehab for balance, coordination, neuromuscular
 17 re-education. He had to learn how to do things. His brain
 18 was damaged; okay? The circuitry wasn't working right. And
 19 improving his hand strength and dexterity for activities of
 20 daily living. That's the reason that he's able to get
 21 dressed by himself. Speech therapy. To control his
 22 breathing. Finding words. Rate of speech.
 23 I think it's a good time, Judge.
 24 THE COURT: Okay.
 25 Mr. Morelli is he not going to finish in one

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1 interpret it the way that you did, Mr. O'Hara. I really
 2 didn't, and because he did not -- I didn't interpret that as
 3 any sort of blame for the defendants. There was nothing
 4 that was accompanying that, that the defendant's were using
 5 dilatory tactics, or anything else.
 6 But, in any event, I think that the issue has now
 7 passed.
 8 MR. HAWORTH: Thank you.
 9 THE COURT: Okay.
 10 (Whereupon, a recess was taken.)
 11 * * * * *
 12 (Continued on the next page.)

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Summation by Plaintiff (B. Morelli) Page 1742

1 sitting, so we are going to take a break at this time. I
 2 told him to let me know when it was a good time for a break.
 3 THE COURT OFFICER: All rise. Jury exiting.
 4 (Whereupon, the prospective jurors was excused from
 5 the courtroom.)
 6 MR. HAWORTH: There was no objection, but it is an
 7 absolutely improper comment that, We have been waiting 6.6,
 8 six and a half years for this case. Mr. Morelli knows it's
 9 not appropriate to suggest that somehow some way, Live
 10 Nation is responsible for that. The time that a case takes
 11 to get from incident to trial cannot be considered against
 12 anyone, and that is not appropriate to say. I did not
 13 object because I had just previously objected, but I would
 14 ask that the Court remind Mr. Morelli, that's not
 15 permissible.
 16 MR. B. MORELLI: First of all, I don't think he is
 17 right. Second of all, you should understand, what you do
 18 not know, is that during jury selection I told every one of
 19 these jurors that they cannot even consider how long this
 20 case has taken, because it's no one's fault; okay? I told
 21 every one single juror that, so I don't know what he's
 22 talking about, and it wasn't intended for that purpose to
 23 begin with.
 24 THE COURT: Well -- let me back up. A, there was
 25 no objection; B, it was already out there; C, I didn't

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Summation - Mr. Morelli Page 1744

1 (Whereupon, the jury enters the courtroom.)
 2 MR. MORELLI: (Continuing) Just to highlight, this
 3 is a replica of Mark's real skull and his face. They can do
 4 these things now. These are all -- this is all of the
 5 places that there were fractures of the eye socket and
 6 around his skull. That's the way his face was fractured
 7 when it fell to the ground.
 8 So, he had the surgery to remove the skull from his
 9 abdomen and they describe it there.
 10 The patient is a 30-year-old male previously with a
 11 decompressive craniectomy at Nassau University, by myself,
 12 which means it's the same surgeon.
 13 Now, for explantation of bone of the calvaria.
 14 Explantation, taking it out of the abdomen.
 15 Explanting it and then putting it on his head and
 16 they talk about the repair and the placement of the
 17 cranioplasty of the bone flap back onto his head.
 18 So, it was a surgery to remove the skull from the
 19 abdomen and a surgery to replace the bone flap back onto the
 20 skull.
 21 And it talks about in that that a total of 27
 22 screws were placed in his skull. This is a replica of that
 23 surgery, post surgery.
 24 So, not only were there 27 screws placed, but these
 25 pieces exactly like this were placed to keep it in place and

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Summation - Mr. Morelli Page 1745

1 so this is really what happened, and when you see the lines
2 here, you're seeing that it was segmented. It wasn't all in
3 one piece. It wasn't so a piece that they took out of the
4 abdomen with the surgery and then they just put it back on.
5 It was complicated and that's the reason that he had -- one
6 of the reasons why he had a problem with this being the last
7 surgery that he needed to keep it in place.
8 So, he had brain surgery number three and that was
9 a cranioplasty revision surgery with titanium mesh due to
10 deterioration. I think that's self-explanatory.
11 Plastic surgeon had to be called in because there
12 was a problem. So, they called in a plastic surgeon
13 emergently needed for wound closure. Emergently.
14 So, this wasn't simple, you know, take it out, put
15 it on, it's all good. He needed a revision surgery and with
16 titanium mesh.
17 So, it was no longer using his own skull being
18 replaced. It was using a foreign object, titanium mesh
19 which is used in these cases for wound closure and that was
20 brain surgery number three.
21 You'll see that he needed not only two surgeries,
22 he had two different surgeons doing surgery number three,
23 but because that didn't work out so well, and it talks here
24 about all that had to be done, the whole procedure is right
25 here, and I'm not going to bore you with it but, certainly,

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Summation - Mr. Morelli Page 1746

1 it was a serious day again for Mark Perez.
2 So, brain surgery number four. Brain surgery
3 number three was January 2015. Brain surgery number four
4 was May 2015, another cranioplasty revision surgery due to
5 infection.
6 Now, you've heard that he's had numerous
7 infections. These are complications of the surgery.
8 Obviously, everyone always hopes when they go in for surgery
9 that there's no complications and often there isn't, but
10 when there is, it's more serious than what it normally would
11 have been, more serious.
12 So, a plastic surgeon had to be brought in to close
13 the wound. Two surgeons, again, doing this surgery.
14 What we often don't see and this is right from the
15 hospital records of the operation itself, and you see two
16 operative reports there, two surgeons involved. It says
17 exactly what the problem was.
18 Now, if you talk about a picture telling the story.
19 There's your malingering. It's really interesting because
20 this is what Mark Perez says in reference to knowing that he
21 needs a fifth surgery and he needs a fifth surgery because
22 this is exactly how he is now.
23 This doesn't have to be interpreted. This is it.
24 Don't need to ask a question about it. That's the way he is
25 right now. He knows he has to do something about this.

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Summation - Mr. Morelli Page 1747

1 That's why the whole family went to Maryland. They went to
2 Johns Hopkins, months ago, months, to see maybe they had an
3 answer. He's had four brain surgeries. He wants the next
4 one to be the last one, if possible.
5 The last one, not the next to the last one or the
6 next to the next to last one or the next to the next to the
7 next last one.
8 So, he's being careful and what do the lawyers tell
9 you about this? This Live Nation Worldwide, these generous
10 people. Give him more. They tell you that they want a
11 discount because he hasn't had the surgery and it would make
12 him better.
13 I don't know where that testimony is. Where's the
14 testimony that it's going to make him better? Where? I
15 searched for it. I can't find it. Nobody knows the answer.
16 He's had infections. He's had all these problems.
17 So, what does he think about this fifth surgery?
18 Let's hear what Mark Perez thinks about it: "I think about
19 this next surgery a lot, and to be completely honest, I
20 don't know how many more brain surgeries I'm going to live
21 through."
22 Now, you think he's nuts to think that? Really?
23 Is that what an unreasonable person would think or a
24 reasonable person? Because if I heard reasonable one more
25 time from the defense lawyer in this case, reasonable.

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Summation - Mr. Morelli Page 1748

1 Reasonable. Reasonable.
2 Well, is that a reasonable thing to think? Hmm? I
3 leave that to you. Malingering. That's the real picture of
4 this case, not Dr. Barr. Dr. Ambrose. Insulting to me and
5 I think insulting to you. Insulting.
6 So, what are they doing here? Sowing the seeds of
7 doubt. Let's talk about Dr. Ambrose.
8 There she is so you can remember what she looks
9 like and I want you to remember what she looked like when I
10 was cross-examining her. Said to her:
11 "Question: Do you doubt that he has seizures? Yes
12 or no?"
13 This is that person with all those credentials, you
14 know, brain injury expert and everything.
15 "Yes or no? Do you doubt it?"
16 "I'm not sure."
17 Well, obviously, you're not testifying as to
18 whether he has seizures or not because you're not sure,
19 right? So, I had to ask her:
20 "Do you doubt that he has headaches?" Because
21 that's what he told her.
22 "No."
23 "Do you doubt that he has pain in his right eye?"
24 "No."
25 "Do you doubt that he has cognitive complaints?"

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Summation - Mr. Morelli Page 1749

1 "No.
2 "He has a problem with his memory. Do you doubt
3 that?
4 "No.
5 "He reports difficulty with concentration or trying
6 to plan. Do you doubt that?
7 "No."
8 But I want you to know that this guy who
9 unfortunately has a problem, difficulty with concentration
10 or trying to plan and Dr. Ambrose doesn't disagree with
11 that, he's been planning since 2013, 2014, 2015, while he's
12 having brain surgery, he's planning to malingering. That's
13 what he's doing. That's what they're telling you. He's
14 planning it.
15 Why else would they tell you this? Oh, we're not
16 going to call him any names. We only use a nice word this
17 time. Embellish. If you look up that word, it has
18 absolutely nothing to do with any of this because they don't
19 want to tell you what they really mean. They mean that this
20 boy is a faker. That's what they think.
21 How many times do you think I asked that question?
22 How many times did I ask those experts? Wasn't afraid to
23 ask that.
24 Is he a faker? Well, I can't say -- I can't really
25 say that. I don't want to say that. I can't assume that.

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Summation - Mr. Morelli Page 1750

1 I don't know. I rather use embellishing.
2 You could use whatever you want. I want to know
3 what you're testifying to.
4 Well, we can't figure out his cognitive problems.
5 Okay. Then why are you in Court? Why are you
6 getting paid to testify if you can't figure out his
7 cognitive problems?
8 That's what they said. Every one of them said the
9 same thing: We can't figure out the cognitive deficits of
10 Mark Perez. Okay.
11 Dr. Greenwald figured it out.
12 Dr. Gordon figured it out.
13 Dr. Fayer figured it out.
14 Dr. Schwartz figured it out.
15 But they can't figure it out and whose fault is it
16 that they can't figure it out? (Pointing.) Right.
17 Isn't that the implication? That it's Mark's
18 fault. They can't figure it out because he's a malingeringer.
19 So, what do they want you to do with it? What did
20 do they want you to do with it?
21 What do you do with that? I don't know what to do
22 what with that.
23 Okay. Let me see, he's had four brain surgeries,
24 the poor kid almost died and he can't plan. He can't
25 concentrate well, but they want to sell you that he has been

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Summation - Mr. Morelli Page 1751

1 planning to malingering since the beginning. It's ridiculous.
2 It's not only absurd, just remember the word I called it.
3 Insulting.
4 "He can use a computer but often forgets passwords
5 and needs help with navigating the Internet.
6 "Do you doubt that, Dr. Ambrose?
7 "No.
8 "He feels depressed and cries occasionally. Do you
9 doubt that?
10 "No.
11 "He worries about the future. Do you doubt that?
12 "No."
13 Then what are you saying? What the heck are you
14 saying? Say it already.
15 I know what you're saying. You're sowing the seeds
16 of doubt. That's what you're doing. One witness after
17 another.
18 Dr. Jordan. You remember him. There he is. I
19 said to him: "Are you saying that when you made that
20 statement, you didn't make the statement understanding
21 whether malingering requires intent?" Intent.
22 Here's what he said: "I don't know what his intent
23 was."
24 What? What? Am I on the moon? If you're saying
25 he's a malingeringer, it has to be intentional. That's what it

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Summation - Mr. Morelli Page 1752

1 means. I don't know what his intent was. Okay.
2 You know why? Because he doesn't want to call him
3 a name because he doesn't want to upset anybody in the
4 Court. Wonder who that would be, okay, but they want a
5 discount. So, take some mud, throw it on the wall. See if
6 it sticks.
7 But they haven't told you what to do. They haven't
8 told you what to do because they don't have a defense.
9 "You don't know if this poor effort on your testing
10 was intentional. Is that a correct statement?"
11 "It's hard for me to answer that. I mean, I -- I
12 don't think it was physiological."
13 I don't know what the heck that means.
14 So I ask him: "I didn't ask you that. I asked you
15 whether it was intentional." I kept going. "It's hard for
16 me to make that assumption. I don't want to make that
17 assumption."
18 I'm sure you don't.
19 "I can't testify about his intention, but there was
20 embellishment of the performance. I can't testify as to his
21 intention. "
22 Well, you know, jurors, you have to, because if
23 you're saying he's malingering, that's what it means. But
24 they're not going to. So, now I say:
25 Okay. Now you have a new word in the game.

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Summation - Mr. Morelli Page 1753

1 "So you think, just so I understand, you think that
2 embellishment doesn't require intent?"
3 His answer: "Doesn't have to. No, sometimes
4 people may embellish things that they don't realize they're
5 embellishing. "
6 Okay. So what the heck are you saying, Dr. Jordan?
7 Are you saying that he wasn't malingering under the real
8 definition of it? Because if you're using "embellishing"
9 and that isn't intentional, then what are you talking about?
10 Why are you here talking to this injury? Why?
11 So, I still wasn't finished.
12 "You're not making a statement that Mark Perez
13 during your exam or your testing was intentionally trying to
14 fool you?"
15 I tried to use another term. What did he say? "I
16 can't say he was trying to fool me."
17 So, I guess if that's true, he had nothing to say
18 that was going to help you make a determination in this
19 case.
20 So, let's talk about this malingering because one
21 of the lawyers in the case for Live Nation Worldwide asked
22 Dr. Gordon about malingering and there's Dr. Gordon. He's
23 looked better. The cross-examination:
24 "Will you agree with me, Doctor, that the DSM
25 defines malingering, in part, as the intentional production

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Summation - Mr. Morelli Page 1754

1 of false or exaggerated symptoms?"
2 Dr. Gordon says: "Yes."
3 So, now, I asked Dr. Jordan about it:
4 "Do you agree with me," I said, "that the
5 definition of malingering in your field actually requires
6 intent?" I want to know.
7 You have the right to know what they're saying.
8 You have the right to know. Don't just throw stuff out
9 there. Don't just try to muddy up a case that has no mud.
10 Don't do that. Say what you're saying and say what is the
11 reason. Say it was intentional if that's what you think. I
12 can deal with the straight talk once in a while.
13 Here's his answer: "Hard for me to answer that
14 because it almost sounds like a legal definition as opposed
15 to a medical. I don't know."
16 What the heck does that mean? Really? What does
17 that mean? Is this the person who you want to rely on to
18 give this boy less than he deserves? Are you kidding me?
19 So I say-- I'm not done. "Are you saying that
20 when you made that statement you didn't make that statement
21 understanding requires intent?"
22 "I don't know what his intent was."
23 I guess he doesn't know. I guess he doesn't know
24 what malingering means and I guess he doesn't mean it in
25 that way.

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Summation - Mr. Morelli Page 1755

1 So, I don't know what his testimony could possibly
2 mean to you.
3 Here's what Dr. Gordon says about malingering and
4 this is very important for me to talk to you about with
5 reference to what this really is because you've heard so
6 much about it and I know that it's important that we don't
7 confuse the issues in this case because the issues are quite
8 clear and if there's confusion that does enure to Mark's
9 benefit.
10 So, when I saw that his scores were essentially the
11 same over this three year period.
12 Now, remember that Dr. Gordon tested mark 22 tests,
13 2015, 2018. "I felt that the change in the TOMM score was a
14 replication of his overall distress because you can view
15 malingering as either a state or a trait." Okay.
16 So, now this is very important because if it's one,
17 it could vary and it's understandable, but if it's a trait,
18 if it's something you're doing all the time it wouldn't.
19 So, if it's a state, it means it's something that
20 fluctuates from time to time like many things do,
21 characteristics of the person. If it's a trait and it's an
22 enduring characteristic of the person, okay.
23 So, basically, clearly it wasn't a trait because
24 basically there were differences in his performance on the
25 TOMM and to me there were fluctuations that basically

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Summation - Mr. Morelli Page 1756

1 indicated that he was distressed.
2 I'm going to talk about that even more because
3 you're going to see that's the explanation from somebody who
4 actually has tested him, spent hours with him on two
5 different occasions three years apart and is giving you his
6 testimony.
7 It's not somebody who read records, never met him
8 and made a decision to come in here and affect this case.
9 So, let's now deal with the next doctor in the
10 case. I say that they're all sowing the seeds of doubt and
11 that's Dr. Doyle.
12 Now, it was probably very telling to you, as it was
13 telling to me, that counsel spent time trying to clear up
14 Dr. Doyle, make him look better, explain to you why it
15 looked so bad, but I think you remember his testimony and
16 how he acted and how he looked and the last thing he said to
17 me was "Oh, sorry, wasn't paying attention to you."
18 That's the last thing he said to me. That's after
19 he was inappropriate with the Judge, and what's the answer
20 to that? That he's a rookie? That ain't an answer.
21 So, let's talk about what he really did.
22 He started deceiving in August of 2019 when he met
23 with Mark, his brother and my associate, David. They were
24 all at this meeting and he was telling Mark he was acting as
25 his doctor.

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Summation - Mr. Morelli Page 1757

1 Now, when I was listening to the closing of
 2 counsel, I was listening to this explanation that he was
 3 being this great guy, this good doctor, Hippocratic oath. I
 4 even heard about when he was having this meeting that he was
 5 getting paid money to work Live Nation Worldwide. That's
 6 who he was working for, the lawyers of Live Nation
 7 Worldwide, and I'm going to refer you to something that I
 8 think might be very telling for you.

9 In this case, the lawyers for the defense have
 10 relied heavily on Dr. Ambrose. So, let's find out what
 11 Dr. Ambrose thinks about the Hippocratic oath that Dr. Doyle
 12 was telling these gentlemen, you know, I'm like a real
 13 doctor.

14 He admitted he was selling how great NYU was and
 15 how he is the best in the world and he's done 25,000
 16 surgeries and if he ever wanted, if Mark ever wanted to come
 17 to him as a doctor, oh, that would be great and he could
 18 probably help him.

19 I don't know what he was going to help him with if
 20 he then said he didn't have epilepsy. I don't know what
 21 he's going to help him with because that is what he does.

22 So, he's ingratiating himself to Mark and the other
 23 two young men and not telling him straight.

24 So, what did Dr. Ambrose say about this?

25 Well, Dr. Ambrose said because when I was

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1 not cool, was unethical. He was trying to deceive.
 2 So, he says -- and now I'm questioning him and I
 3 don't know, I thought I was asking straightforward
 4 questions. He says to me: We're like the same. We're the
 5 same. Like you and me, we're the same, he says to me.
 6 We're both trying to help our clients.

7 Well, Doctor, you don't have a client.
 8 Oh, I know what you mean. Your client, the
 9 lawyers, and I'm trying to help my client, the injured but
 10 we're the same. We're the same, but he said what he really
 11 meant because he's working for his client.

12 You're not trying to be a doctor. You're not a
 13 doctor when you come in and testify that now you don't think
 14 he has epilepsy or you're not sure.
 15 (Continued on next page.)

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Summation - Mr. Morelli Page 1758

1 cross-examining her on her report I said oh, so you told
 2 them that you were doing a medical examination for the
 3 defendants. Did you tell them that?

4 I did.
 5 You told them for a reason?
 6 She said: Yeah, because it's ethical to do that.
 7 She said that. Ethical.

8 And I asked her point blank: Is it unethical if
 9 you weren't doing that, if you were to make the person who
 10 is the injured person, the victim, the plaintiff in this
 11 case, to think that you were there to help him, that would
 12 be unethical.

13 She said, and that's just what this guy did, just
 14 what he did. And says: Did it help Mark? Well, he's
 15 getting paid \$20,000 to diminish Mark to you, and the
 16 interesting thing is that I thought I was in dentistry
 17 trying to get out of him that he was actually getting paid
 18 and the reason that I asked him that question, you should
 19 understand, is because of what -- it was talked about in the
 20 meeting that he said certain things about getting paid, so I
 21 questioned him about it.

22 That's the reason why I wanted to know. I could
 23 care less if he's getting 5,000, 10, 20, 30, 50. Doesn't
 24 matter to me.

25 My point was that what he was doing that day was

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Summation by Plaintiff (B. Morelli) Page 1760

1 (Whereupon, an image was displayed to the jury.)
 2 MR. B. MORELLI: There's Dr. Barr, and he is an
 3 interesting guy. He is the only witness to conclude that
 4 Mark Perez has a mild traumatic brain injury, the only one
 5 in the whole case, and I said to him, When you said that you
 6 reach all of your conclusions based on a review of the
 7 records, you didn't meet Mark; you didn't have an interview
 8 with him; you never tested him, so all you can rely on were
 9 the records, so I want to know, who was it that you read?
 10 What was it? What record was it? What doctor was it that
 11 you read, that he had a mild traumatic brain injury? And
 12 what did he say to me?

13 I saw no other examiner in this case who came to
 14 that conclusion.

15 Really? So now you just say that, and that's okay?
 16 You came to that conclusion why? To look good to the
 17 lawyers?

18 But then he said what he really meant. Look what
 19 he said:
 20 I'm asked to form a legal opinion about the
 21 relationship of an accident and an outcome, and I need to
 22 know, what are the attorneys interested in.

23 By the way, I didn't tell him to say that. That
 24 wasn't in my question. That's what he says. Because you
 25 know what he was doing. He is trying to help the lawyers

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Summation by Plaintiff (B. Morelli) Page 1761

1 for Live Nation Worldwide. Live Nation Worldwide, they want
2 a discount. They want a discount, so they are hiring all
3 these people with these credentials; okay? And they think
4 that credentials alone are going to sway your judgment. I
5 disagree with that.
6 And then he admitted, I didn't meet with Mark to
7 get the complete picture, but I'm going to tell you this,
8 that what he said is most of the time, he does, when he is
9 working in his field. Because it's important to get the
10 complete picture.
11 (Whereupon, an image was displayed to the jury.)
12 MR. B. MORELLI: So what I say to you is, this
13 whole term that we have been listening to, world-renowned
14 experts, world-renowned experts. When you have a lawsuit,
15 it isn't about world-renown experts. It's about evidence.
16 Evidence. Where is the beef? Where is the evidence in the
17 case; okay? It's great, and I'm sure it's terrific that you
18 are so absolutely enamored with the credentials of these
19 people, okay, but when you look at their testimony, it
20 doesn't look so good. You can't conflate the two. You
21 can't make credibility and credentials the same thing. They
22 both start with a C, there's no question about that, but
23 they are not the same.
24 You think because somebody went to a certain
25 college or university, or has a certain degree, that that

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Summation by Plaintiff (B. Morelli) Page 1762

1 person is more credible than you or me? No. That's
2 ridiculous. That's ridiculous.
3 Swearing to tell the truth. Listen to the judge
4 when the judge tells you the charge of falsus in uno,
5 because you are allowed -- you are the judges of the facts.
6 We spoke about that in jury selection. You are the judges
7 of the facts. Not us. Not the judge. He can't invade your
8 province on that. You are the judges of the facts. Nobody
9 gets involved with that but you. Only you. And when you do
10 that, if you think that somebody didn't tell you something
11 truthfully, you don't have to take it into consideration.
12 You can take part of it into consideration or none of it
13 into consideration. That's up to you. Not me. I know what
14 I think.
15 Defendant Live Nation Worldwide's witnesses are
16 talking out of two sides of their mouths. You can't say, I
17 don't want to say something bad, and then try to say to you,
18 in a very nice way, that he's trying to fool you. Because
19 that's what this case is. There's no defense to this case,
20 there's no defense to this case. None, zero. There's no
21 evidence. This kid is planning and plotting since
22 2013-1415? He is having brain surgeries? It's craziness.
23 (Whereupon, an image was displayed to the jury.)
24 MR. B. MORELLI: So let's judge the demeanor, and
25 swearing to tell the truth. Let's not just listen to what

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Summation by Plaintiff (B. Morelli) Page 1763

1 someone says, but how they say it and how they look when
2 they say it. I would say to you, remember Dr. Ambrose.
3 Remember Dr. Doyle. Remember, okay, exactly how they looked
4 on my questions. Dr. Ambrose wouldn't say for sure, Mark
5 has traumatic epilepsy. She changed her opinion about
6 unemployability.
7 Now, I know that you know, it's easy to, you know,
8 stand up in front of you and try to clear up all the
9 problems in the case, but to say that the only changes in
10 the draft reports are typing errors or spelling errors is
11 just not accurate, and not true.
12 She changed her opinion about employability.
13 Dr. Jordan doesn't know the extent of Mark's cognitive
14 deficits. He does only two tests, and he says that Mark
15 lacks effort. Dr. Doyle changed his opinion in court about
16 Mark having epilepsy. You know what he said in his report?
17 He said he believed Mark had epilepsy, and that's when he
18 was talking to the boys. You know, I'm the world's expert
19 in this? I could be your doctor? I could make you better?
20 If he wasn't talking about epilepsy, and he didn't think
21 Mark had epilepsy, why is he telling Mark these things?
22 That's all he does. He might be a genius, but he ain't
23 telling you straight. So now, in his report he says that --
24 he comes into court, changed his opinion. I don't know.
25 That's not a typo.

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Summation by Plaintiff (B. Morelli) Page 1764

1 (Whereupon, an image was displayed to the jury.)
2 MR. B. MORELLI: Now, I was very careful to listen
3 closely to these stray comments that have been made by the
4 defense lawyers in this case representing Live Nation
5 Worldwide. They don't have proof. They just have a lot of
6 talk. Talk a lot, prove a little.
7 Subjective and objective. That was, like, the main
8 topic of the beginning. Subjective, objective. Then they
9 realize all the objective proof is with us. Then maybe they
10 stopped talking about it.
11 Maybe he is not taking his meds. Remember that?
12 Some person in this case, with absolutely no proof, said,
13 Maybe he's not taking his meds. Just throw it out there.
14 Maybe you will grab onto it. Oh, okay. Maybe the reason
15 that that's happening is he is not taking his meds. Okay.
16 No proof.
17 Maybe he doesn't have epilepsy. Really? Okay.
18 And by the way, that's still their position. Maybe he has
19 got it, may be he doesn't. They don't care, but they don't
20 want to pay for it. They don't want to pay for it. No
21 objective prove. Proof of seizures.
22 He could be a doorman. I love that. I love that.
23 I love it to death. I wake up in the middle of the night
24 thinking about Dr. Ambrose saying, maybe he could be a
25 doorman. Okay. And then, after she says this, this person

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Summation by Plaintiff (B. Morelli) Page 1765

1 that they are relying on -- because if you don't buy
2 Dr. Ambrose, you can't buy Kushner and Friefelder. You
3 know, with all these credentials and PhDs. You take it and
4 you throw it right in the trash, because they are relying on
5 Dr. Ambrose.

6 And they are saying to you, Give him the money.
7 Give him the money. You know, all these charts were here.
8 Give him the money. Give him that. Give it to him. They
9 are generous. Live Nation Worldwide is generous. Give it
10 to him. Give him some crumbs. There he is. Give it to
11 him. This college drop out. This malingerer. Give him
12 some crumbs. Go ahead. Dismiss him. Get him out of here,
13 already. Live Nation Worldwide. Throw him some crumbs.
14 \$10 million. Imagine what they think it's really worth, if
15 they are telling you that? It's unbelievably insulting.

16 And I've seen -- that is a stray comment that Dr.
17 Ambrose said. Dr. Ambrose said, assume that he had the neck
18 surgery, and assume that's successful; and assume that he
19 doesn't have epilepsy, but if he does it gets better and he
20 doesn't have seizures any more; and assuming that he does
21 all of this psychotherapy; and assuming; and assuming; and
22 assuming; and assuming, maybe he could be a doorman. Now,
23 this is the same person, this Dr. Ambrose, who threw that
24 out there? Nobody else had said anything about this; okay?
25 Somebody other than me would say, Oh, well. They are saying

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Summation by Plaintiff (B. Morelli) Page 1766

1 that he's unemployable, so leave it alone. Uh, uh, uh. No,
2 no, no. I want to you think about it, because this is the
3 person who says he needs seven-day care, seven days a week.
4 He needs supervision seven days a week, but only four hours
5 a day. Four hours. I don't know how she came up with it.
6 Four hours.

7 Now, what he does for the other 20 hours, I haven't
8 the foggiest idea, but within these four hours, they have to
9 prepare all his meals, make sure he takes his meds. Are
10 they coming one hour in the morning, one in the afternoon,
11 one a little later, and one late at night? Are the four
12 hours at the end of the day? Are the four hours at the
13 beginning of the day? Maybe the four hours are while he is
14 being a doorman. That's even better. I love that.

15 Oh, excuse me. This is my -- oh, what's your name
16 again? That's my -- my caregiver.

17 Insulting. You got to really dissect this to
18 realize what they are trying to do here. You have got to
19 rip it to shreds. Doorman.

20 Dr. Doyle has seen worse brain damage,
21 anatomically. I don't know what the hell that means, but I
22 know he is working for his clients. Then he had the
23 audacity to say to me that he came to court to help Mark, as
24 a doctor. Really.

25 (Whereupon, an image was displayed to the jury.)

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Summation by Plaintiff (B. Morelli) Page 1767

1 MR. B. MORELLI: So now I'll talk about a couple of
2 these people that you have heard about in the records, but
3 you never saw them in court. So that is a very difficult
4 name, and I'm not going to pronounce it, so I'm going say
5 Dr. Joelle, okay, agrees with Dr. Gordon. Those are the
6 questions I asked Dr. Gordon, and this is what
7 Dr. Efthimou -- maybe that's right -- says, Mark has limited
8 insight awareness.

9 That's what Dr. Joelle says, and now I ask
10 Dr. Gordon about it and Dr. Gordon says, Limited awareness
11 is a hallmark of traumatic brain injury. Due to the injury,
12 individuals with a TBI are often not aware of the changes in
13 their cognitive function, nor day-to-day function.

14 My question: "So what would you expect somebody to
15 be able to report, if they have a limited insight?"
16 "Answer: Well, I would expect that they would
17 think that they could do things that were beyond them."
18 That's what Dr. Gordon says.

19 So, we then heard about Dr. Kristen Dams-O'Connor,
20 and that was January 2016.

21 "I'm going to ask you to read to the jury just the
22 portions that I highlighted," and what is next is him
23 reading to you from Dams-O'Connor's report.

24 "Speech rate was slightly slowed. Mr. Perez would
25 often provide verbose answers to questions. That suggested

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Summation by Plaintiff (B. Morelli) Page 1768

1 difficulty organizing and summarizing his thoughts.
2 Mr. Perez is currently experienced cognitive psychological
3 and social challenges that impact his daily life.

4 "Question: And does that comport with what you
5 found?"
6 "Answer: Yes. I agree with her, and it confirms
7 my findings."
8 (Whereupon, an image was displayed to the jury.)
9 MR. B. MORELLI: Dr. Kusnetz, now.
10 "Dr. Gordon, you were also asked many questions
11 about Saphir-Kusnetz. Do you remember that?"
12 "Answer: Yes, do I."
13 "I'm going to ask you to look at her summary and
14 recommendations."
15 "Answer: Evidence of slowed processing speed, and
16 an impulsive response style were apparent throughout the
17 testing sessions."
18 It's funny how some words just mean a lot.
19 Dr. Kusnetz was making a decision about what was going on,
20 and remember we heard from Dr. Barr that all of this stuff
21 is just arithmetic. It's arithmetic. He could read all of
22 these findings, and he could tell you exactly what's going
23 on, but actually, you need to be there, because if it's
24 apparent, it means you are looking at the person, and she
25 found evidence of slow processing and impulsive response

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Summation by Plaintiff (B. Morelli) Page 1769

1 style because she could she Mark Perez. Not reading records
 2 years and years later, so you can get a discount for your
 3 client.
 4 Impulsive response style, would that be an example
 5 of somebody who would begin performing a task that they were
 6 asked to do before the instructions had been completed?
 7 That's what Dr. Gordon said. Consistent or inconsistent
 8 with what you found? Totally consistent. Dr. Kusnetz says
 9 his performance was also -- listen carefully -- most likely
 10 confounded by increasing levels of pain. Dr. Kusnetz said
 11 that. Well, she was unable to differentiate whether his
 12 performance was due to the brain injury or his chronic pain.
 13 And what have they been selling you all of this time? The
 14 opposite of that. Pain can't affect it. Depression can't
 15 affect it. Yeah, Dr. Barr. Let's sum it all up. You
 16 didn't change your opinion about anything? Oh, no. I
 17 didn't change my opinion.
 18 I think it's the right time, Judge.
 19 THE COURT: Very good.
 20 Ladies and Gentlemen, we are going to take a break
 21 for lunch. Just one thing I want to remind you, that the
 22 case hasn't been submitted to you yet for deliberations,
 23 which means you still can't do any of the research, any
 24 talking about the case amongst yourselves, any asking
 25 anybody any questions or anything else. So we are going to

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1 where I thought that we were this morning, when at least
 2 somebody needed to make an objection when something was
 3 happening, and I heard none.
 4 MR. O'HARA: Fair. We knew it was coming, Judge.
 5 We gave you a brief. We specifically said --
 6 THE COURT: And what you specifically said was
 7 if -- I know you gave me a brief. I read your brief. I
 8 agree with some of it, not entirely all of it, but where we
 9 ended the discussion, I think even on the record, and before
 10 we started the summation was, we are not going to -- I left
 11 it to your discretion as to sidebars and things of that
 12 nature; I would ask for one if I felt that I needed one; but
 13 I think what was very clear was objections still need to be
 14 made.
 15 MR. O'HARA: Understood. Thank you, your Honor.
 16 (Whereupon, a recess was taken.)
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Summation by Plaintiff (B. Morelli) Page 1770

1 pick back up. I'm going to have you report back downstairs
 2 at 2:00 and we can begin at 2:15, to finish up with
 3 Mr. Morelli, and I'll give you my instructions; all right?
 4 THE COURT OFFICER: All rise. Jury exiting.
 5 (Whereupon, the jury was excused from the
 6 courtroom.)
 7 THE COURT: Anything?
 8 MR. O'HARA: Yes, your Honor.
 9 So once again, we made the application beforehand.
 10 It is inappropriate for Mr. Morelli to suggest something is
 11 insulting to him. That is not a fair comment on the
 12 evidence. He has said that on multiple occasions. We made
 13 an application in anticipation of him doing that. We would
 14 ask that you admonish him to stop it.
 15 Specifically, he said, "I know what I think,"
 16 again, taking off on the comments that he said on multiple
 17 occasions about being personally insulted. That's
 18 inappropriate. He is not permitted to do that.
 19 MR. B. MORELLI: Where is the law on it? Let me
 20 see the law on it.
 21 MR. O'HARA: We gave you our brief, and we filed it
 22 with the Court before this was even raised, or before --
 23 MR. B. MORELLI: I think everything has been fair
 24 comment.
 25 THE COURT: First of all, maybe I misunderstood

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Summation - Mr. Morelli Page 1772

1 (Whereupon, the jury enters the courtroom.)
 2 MR. MORELLI: (Continuing) So, I want to come back
 3 to Dr. Ambrose who stated that she wanted to err on the side
 4 of overtreating Mark. She says she wants to err on the side
 5 of overtreating Mark, but she only wants to give him help
 6 and supervision four hours a day, seven days a week not 24/7
 7 and not by somebody with medical training.
 8 I submit to you that doesn't make any sense. It
 9 would make more sense if she said he needed nothing, than
 10 four hours a day because once you say that he needs
 11 something seven days a week, he needs to be able to take his
 12 medications. He has to remember. He has to be able to do
 13 the thing that he has to do.
 14 So, I submit to you it makes no sense. They say
 15 they want to give him the benefit of the doubt.
 16 Well, I haven't heard anything during this case
 17 where they're trying to give Mark the benefit of the doubt.
 18 I think they just want a discount which is what I've been
 19 telling you and I want you to keep your eye on the ball with
 20 reference to that.
 21 Let's talk about the neuropsych testing of
 22 Dr. Jordan.
 23 I spoke with Dr. Jordan after he talked about the
 24 test I gave MoCA and Rey and I said: "Doctor, now the tests
 25 such as MoCA and Rey and you have heard of the TOMM test

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Summation - Mr. Morelli Page 1773

1 too, have you not?"
2 He says: "Yes."
3 I said, "there's been a lot of studies about the
4 TOMM test, have there not?"
5 He said "some, perhaps, not all of them. It is not
6 in my area of expertise," and he said, "I have never
7 administered the TOMM test nor do I know how to."
8 Now, why is that an important slide, important
9 testimony in the case? Because there's been testimony by
10 Dr. Barr that the TOMM test and all of these tests they're
11 just like adding up numbers. They're very simple. Anybody
12 can do it. You know, you add this up. You add that up and
13 he says also and it was just the other day, he says Well,
14 you know, a neurologist gives the test. Brain injury
15 doctors give the test because it's very simple to do.
16 Here's Dr. Jordan from Harvard Medical School who
17 happens to be a neurologist with those good credentials and
18 he doesn't know how to administer the TOMM test.
19 So, it's very important to weave the testimony
20 together. So, you have a tapestry of exactly what the
21 plaintiffs have put forth here and what the defendants are
22 trying to put forth here. It's very, very important.
23 I'm not afraid of the evidence and I just want to
24 be able to bring it to you so that you see exactly what the
25 real evidence is in this case.

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Summation - Mr. Morelli Page 1774

1 So, what's the defense? And I spent a lot of time
2 thinking about what this defense is.
3 Well, the first defense that we have is to deny.
4 One of the things that they're denying in this case is that
5 he has traumatic epilepsy because they right now, I'm not so
6 sure, you know, if they feel definitively one way about it,
7 but I'm telling you that the sense is that they're denying
8 traumatic epilepsy and it doesn't matter that there's
9 evidence of it.
10 They want to deceive the effects of cognitive
11 problems. That's very, very important to think about and
12 it's one of the things that I harped on, you know, before
13 the lunch break that they've all said the same thing.
14 We can't figure out the extent of the cognitive
15 problems that Mark is suffering from and I basically was
16 cross-examining and I say Well, who's fault is this? What
17 do you mean you can't figure it out? I think, without
18 saying it outright, they blamed Mark, okay.
19 So, that's the deceiving part. We got the denial.
20 We got the deceiving and we've got the defaming.
21 So, they went now, from C's to D's. Credentials
22 and credibility to the D category. What are they doing?
23 They're claiming malingering and if I understand what
24 they're putting forth in the case and I think I do, they're
25 saying he's not making a full effort.

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Summation - Mr. Morelli Page 1775

1 You can say that in a lot of ways. I mean, you
2 can -- "embellishing" is not a term that can be used but,
3 you know, whether you say he's faking or something like
4 that, that's what they're doing. They're defaming this
5 young man and saying that he's not trying to give you the
6 full picture of who he is now and I don't agree with that.
7 So, here's the changing stories because we have
8 some changing stories in this case and they're not typos and
9 they're not spelling errors.
10 Dr. Ambrose. Her draft report said specifically
11 that Mark Perez was unemployable.
12 Now, we've heard from all the other witnesses that
13 the defense has brought forward and I think they are now
14 saying he's unemployable. So, they've sort of, you know,
15 evolved their defenses, evolved, but she said in her draft
16 report unemployable and it just happened that she brought
17 the draft report with her or we wouldn't have known because
18 she was reading off the draft report, and I was reading off
19 the only report that I had and that's how we found out that
20 the final report said can't return to his prior employment.
21 I submit to you that's not the same thing. Okay.
22 That's not a typo and that's not clarification. That's a
23 big time change.
24 Now, Dr. Jordan. His first report said Mark Perez
25 is faking. That's his first report.

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Summation - Mr. Morelli Page 1776

1 I want you to know that you just heard earlier
2 today from the defense for Live Nation Worldwide that none
3 of the changes were substantive. They were just changes
4 that had to be made, you know, spelling, typing.
5 So, the first report said Mark Perez is faking.
6 Dr. Jordan's next report, that term disappears. He doesn't
7 want to commit to malingering, but wants to use
8 embellishing. He can't determine Mark's intent. Which I
9 showed you earlier, so we don't have to beat it to death.
10 But that's not the same.
11 First you're saying he's faking and then you're
12 backing off it and he also said in his entire career he's
13 never used that term and he's like 30-plus years he is a
14 doctor. He's never used the term before. He reserved that
15 term "faking" for this young man right there.
16 Then he pulled it because he probably had a
17 conversation with somebody about it and they said you ain't
18 putting that in there.
19 What about Dr. Doyle? His report. Quote. Quote:
20 "I do believe Mark Perez has epilepsy." That's from his
21 report. That's a quote. This isn't like I'm trying to
22 figure out what the testimony is. This is the testimony.
23 In Court. You were there. You heard him. He might have
24 epilepsy.
25 So, now, I do believe Mark Perez has epilepsy. In

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Summation - Mr. Morelli Page 1777

1 court: He might have epilepsy. It's not the same thing.
2 It's not the same thing.
3 So, this is this whole deceiving thing that has
4 been going on and I know you remember that he says that he
5 has a medical and a legal opinion. You can't make this
6 stuff up.
7 Okay, because this wasn't me saying: Do you have a
8 medical opinion and legal opinion. He says he has a medical
9 and legal opinion. Dr. Doyle has two opinions. I leave
10 that to you as to what that means exactly.
11 So, let's talk about Mark because Mark, he can't do
12 anything that the defendant's lawyers, for Live Nation
13 Worldwide, will say is okay. Because he's damned if he does
14 and he's damned if he doesn't.
15 Let's investigate that.
16 Defendant says Mark lacks effort, but he actually
17 keeps trying. He actually keeps trying. Tried Yoga. He
18 failed. He had a seizure. Well, it might not have been an
19 epileptic seizure because it was Hot Yoga. They're not
20 giving into that.
21 Tried the bike at the gym. He had a seizure.
22 Failed again.
23 Tried to live alone in his own apartment. Failed
24 again. Had to go back home.
25 He didn't have to tell anybody this. He wants to

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Summation - Mr. Morelli Page 1778

1 be okay. He wants to be independent. He wants to be a 35,
2 36 year old grown man. That's what he wants to be. He
3 doesn't want to be here with you.
4 Don't mean it like that, but he wants to be in his
5 life. Wants to have a good life. So, he keeps trying and
6 they want to get credit for that.
7 They want to bring him down. Tried to do his own
8 laundry. He failed. He blew up the washing machine.
9 Tried to do work that he used to do. He failed.
10 He can't do it and it's frustrating and it's difficult.
11 Defendant wants to penalize him rather than
12 crediting him for his efforts.
13 So, here's the interesting thing and you know when
14 you do something, when you do something it speaks volumes.
15 What did they put into evidence today and I want
16 you to take a good look at it. They put into evidence that
17 Mark Perez who told you that he tried driving has a valid
18 driver's license. That's what they put into evidence
19 because this is going to change your mind about something,
20 that he has a valid driver's license.
21 The doctor has now told him that he can't drive.
22 So, he hasn't for a couple of years but that's not good
23 enough. Put in a valid driver's license.
24 Maybe the jury will think something about that
25 when, in fact, he never hid it. He never hid it.

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Summation - Mr. Morelli Page 1779

1 So, let's really look at what this case is really
2 about, because images don't lie.
3 That's his brain. (Indicating.) That's a CAT scan
4 of Mark's brain and on this side over here is all the
5 fractures of his skull and the bleeding outside the brain
6 because that's the brain there.
7 And this is when it first happened, okay.
8 So, the brain hadn't changed that much at that time
9 except for the blood, okay, and the fractures and you can
10 see here that it's displaced.
11 You could see it displaced here, separated, the
12 bone and that's not, you know -- let's go back there.
13 That's not subjective. That's objective.
14 This is the CAT scan from the beginning.
15 So, now, let's see about if you remember Dr. Lipton
16 who came in. He's a neuroradiologist and he testified. He
17 read the films in this case. He's the only person who
18 testified about reading the films and showing you the actual
19 films, the CAT scans.
20 He took an MRI in the case. We'll talk about that
21 in a minute and he told us about it, what we see on the CAT
22 scans. Skull on the right side. Multiple fractures. Some
23 of which are displaced, which I just showed you.
24 Facial fractures around the orbit or eye socket and
25 I showed you that right on the model.

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Summation - Mr. Morelli Page 1780

1 Large hematoma, bleeding outside the brain on the
2 right side.
3 Now, when I was showing you the image and it was on
4 the left, as he told you, that's the right side because it's
5 turned around. So, when I was showing you that white, that
6 bleeding outside the brain on the right side, that's what
7 he's talking about.
8 Diffuse swelling. What does that mean? It's all
9 over. It's all over. Midline shift because the brain is so
10 soft and when this bleeding occurs inside the skull, it
11 squashes the brain and pushes it over to the other side.
12 So, the midline shift is if you were looking at the
13 brain, the brain, the midline of it, the way you would if
14 you cut it in half because, don't forget, you're looking
15 down on it. It's a slice on the brain. So, you're looking
16 down on it.
17 So, if you were looking down on it and you would
18 say this is around the mid point, that mid point would be
19 over here because that's called a midline shift and it
20 actually means that it's been a severe trauma because that
21 wouldn't happen otherwise because it pushes it over to the
22 side.
23 Mass effect. Potential for herniation. Enough
24 pressure inside the head to cause the brain to deform and be
25 moved around. Could ultimately be fatal and the mass effect

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Summation - Mr. Morelli Page 1781

1 just shows how much of the brain in this particular case was
2 affected.
3 It was, as the word says, massively affected.
4 "After decompressive hemicraniectomy," that's the
5 surgery that relieved the pressure, image shows end of the
6 skull, open and opening in membrane where the brain has sort
7 of squired out of that hole in order to relieve the
8 pressure.
9 "Answer: My opinion based on the imaging findings
10 is that this is a severe traumatic brain injury simply
11 because of the amount of swelling and midline shift or
12 herniation in the brain is something that we would only see
13 in someone with a severe traumatic brain injury."
14 So, this is photo evidence of how severe this
15 injury was. This isn't somebody making up that it's only
16 mild. Okay. This is the real deal and there it is.
17 This over here, no skull and you could see over
18 here how the brain has moved this way so that there's more
19 on this side because it's squirting out where there's no
20 skull and this isn't, you know, subjective. This is the
21 real film from that day and, obviously, it's a film of after
22 the surgery because they've already removed the skull and
23 had they not done this, had they not done this, (indicating)
24 he would have died.
25 So, that's the serious consequence of not doing

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Summation - Mr. Morelli Page 1782

1 this surgery.
2 So, what does Dr. Lipton say? He talked about
3 focal injury and diffuse injury. He said in this case we
4 find both. The focal injury is important because,
5 especially as is seen on the subsequent imaging studies he
6 has done, that there is permanent damage and loss of brain
7 tissue. Areas that are permanently affected.
8 So, there's going to be loss of brain function now.
9 The diffuse injury is actually probably even more
10 important for his actual functioning because it limits the
11 brain to do what it really does best, which is process
12 information.
13 So, his whole network is messed up and this is
14 somebody -- this is what Dr. Lipton does. He does these
15 films. He reports to the doctors who are doing surgery
16 about what they have to do. This is his specialty,
17 neuroradiology.
18 So, now, Dr. Lipton did his own MRI and we're going
19 to see that in a minute and he did that because, understand,
20 we were just looking at CAT scans that were from way, way
21 before this.
22 This is 2017 already, right.
23 So, what does he say? He did an MRI which is
24 different from a CAT scan. We're going to look at it in a
25 minute.

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Summation - Mr. Morelli Page 1783

1 He did MRI and says: "Defects in the surface of
2 the brain which is called encephalomalacia because when you
3 bruise the brain, it dies and it doesn't grow back."
4 Encephalomalacia is actually dead brain tissue.
5 Dead brain tissue. As he says: The brain doesn't
6 regenerate. It doesn't grow back.
7 So, you'll see when I show you the image that
8 there's holes in Mark's brain; and, you're left with these
9 sort of divots or empty spaces in the brain filled with
10 fluid where the dead tissue gets reabsorbed over a period of
11 months by the body.
12 So, the fluid is in there first. Then the body
13 absorbs the fluid and it leaves holes and you'll see in this
14 film that there's a loss of brain tissue in one portion is
15 very, very obvious and that's the one he references as the
16 size of a grape and there's also bleeding in the brain.
17 So, this was the situation that not only was there
18 bleeding outside when he got hurt, there was bleeding inside
19 the skull outside the brain.
20 There was also bleeding inside the brain and if
21 this doesn't sound so good for somebody to have, it's
22 because it isn't so good for somebody to have.
23 So, he has atrophy. The brain has a shriveled or
24 shrunken appearance. So, everybody knows what atrophy is, I
25 believe and that is if you don't use your limb -- let's

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Summation - Mr. Morelli Page 1784

1 assume you didn't use your leg for a long time, you would
2 lose the muscle tone of it and it would get smaller, it
3 would shrink, and that's atrophy.
4 Well, in Mark's case, that happened to his brain
5 and so, this atrophy we will see on the MRI image of
6 4/24/2017 there it is right there.
7 So, let's take a look at it.
8 This is where the skull is missing and this dark
9 spot right here, that's encephalomalacia. That is an
10 encephalomalacia. That's the loss of brain tissue.
11 (Continued on next page.)
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Summations by Plaintiff (B. Morelli) Page 1785

1 MR. B. MORELLI: But if you look, if you look here
2 and you notice what's going on around here, the brain is not
3 filling the entire skull, because it has shrunk. So this is
4 the atrophy, and there's all these little black spots, which
5 are encephalalgia. So we have dead brain tissue, 2017. Not
6 2013 or '14 or '15 or '16. 2017, we have all this dead
7 brain tissue, and at the same time we have a brain that is
8 shrunk, and it ain't coming back; okay? It's not. So for
9 anybody to say, Well, you know he is really functioning
10 really well, and he can do all of these things, there's a
11 lot of reasons why he can't, and this is evidence, MRI
12 evidence, that he has got, unfortunately, a major problem.
13 (Whereupon, an image was displayed to the jury.)
14 MR. B. MORELLI: So what does Dr. Lipton say?
15 In the vast majority of traumatic brain injuries,
16 you can't see anything when you look at the images.
17 Wow. That's really important, and most people
18 don't know that, and that is that if you can visualize the
19 damage on an image, on a film, that shows right away, just
20 from that image how absolutely damaged the brain is, and how
21 severe it is, because even in people who have a fairly
22 severe injury, 75 to 85 percent of the time, you can't see
23 it on an image. So Dr. Lipton says, it's probably in the
24 range of 75 percent, three quarters, if not more, of the
25 times that you can't visualize the damage on a scan. If you

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Summations by Plaintiff (B. Morelli) Page 1786

1 can, you know how severe it is.
2 (Whereupon, an image was displayed to the jury.)
3 MR. B. MORELLI: So just to summarize what
4 Dr. Lipton says, there are injuries that are outside the
5 brain, fractures to the skull. Two layers of membranes
6 that protect the brain. Bleeding, in this case, was both
7 outside of those, between those, and underneath those. So
8 we have multiple layers of bleeding. Something that happens
9 as a result of trauma.
10 In addition to that, as we move from the outside,
11 there's also multiple areas where there is injury to the
12 surface of the brain. The brain impacts inside the skull.
13 It compresses, and twists, and it tears.
14 (Whereupon, an item was displayed to the jury.)
15 MR. B. MORELLI: And you know, I know that he
16 showed you this, but what is important to know, because I
17 was watching closely when he showed you, that this brain is
18 hard. A real brain, any of us, is soft, like jelly, and
19 here there was tearing of the tissues of the brain. The
20 brain was compressed and twisted out of shape, and what he
21 is talking about here, that it now has a problem, because
22 inside the skull is hard, and it's not smooth, so that when
23 the brain has this problem, it impacts this skull and it
24 tears it, and damages it. So this was the extent of what
25 was going on with Mark Perez. The real world, the real case

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Summations by Plaintiff (B. Morelli) Page 1787

1 of what happened to Mark Perez. This is what happened. One
2 of the things that happened.
3 You will see as we go through, there's no dispute
4 as to any of this, because how could there be?
5 (Whereupon, an image was displayed to the jury.)
6 MR. B. MORELLI: This is Dr. Greenwald, and you
7 remember he told you that the brain is everything we are.
8 The brain is everything, so it's our personality, it's our
9 mood, our movement, our vision, our hearing, all wrapped up
10 in that crazy-looking thing. And the frontal lobes is the
11 largest of the lobes, and that's where the big problem was
12 for Mark Perez, the frontal lobes.
13 Now, what do the frontal lobes do? Well, this is
14 some of the things they do. Very important for emotions,
15 for behavior, for memory, and for what we call higher-level
16 thinking. So when -- and the biggest damage that Mark had
17 was to the frontal lobes, the biggest damage. And so he
18 has -- all of these are problems with emotions and behavior,
19 and you heard about behavioral dysregulation, meaning that
20 you can't always know what he's going to do next. He can't
21 know; right? So insight, judgment, all of this executive
22 functioning, which means all these things that we have to do
23 when we are planning and trying to figure out our lives,
24 even on a daily basis, he can't do that like a normal
25 person. He can't, because he is too damaged.

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1 And it's our personality. So it's not only all of
2 that, and he also talks, now, is the temporal lobe, which is
3 near the ear. It's also very important for movement,
4 sensation and memory. Now, we know that he has, you know
5 memory problems.
6 (Whereupon, an image was displayed to the jury.)
7 MR. B. MORELLI: So Dr. Lipton tells us:
8 "So the areas that are commonly affected would be
9 the types of things that I just described, things related to
10 what we generally refer to as higher cognitive and emotional
11 functioning."
12 So the things I mentioned, such as the ability to
13 pay attention, to regulate your sleep, to plan, to control
14 your mood, personality, language function.
15 And I submit to you that when someone is trying to
16 sell you a bill of goods -- and there has been some
17 salesmanship going on here, and they're trying to tell you
18 that this young man has been doing all of this planning; you
19 know? They don't want to say it straight up, but that's
20 what they mean. It doesn't make any sense, because it's not
21 the medicine in the case, and it's certainly not what's
22 going on with Mark's brain.
23 (Whereupon, an image was displayed to the jury.)
24 MR. B. MORELLI: What are his deficits? Some of
25 his deficits. I made it a very straightforward slide. Poor

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Summations by Plaintiff (B. Morelli) Page 1789

1 judgment. Memory loss, which includes a lot of different
 2 kinds of memory. Behavior dysregulation, which is what I
 3 just spoke about. Failure to plan. Attention. Processing
 4 speed. Visual perception. Intellectual function.
 5 Executive functions. Anxiety. Depression. These are all
 6 of the problems that Mark has.
 7 (Whereupon, an image was displayed to the jury.)
 8 MR. B. MORELLI: Now, he has -- Dr. Greenwald
 9 spoke to this, and said, he talked about it involving the
 10 two frontal lobes, the two temporal lobes, which are
 11 critical for who we are, for our cognition, memory,
 12 thinking, attention, concentration, personality, emotions.
 13 And he said a diffuse severe traumatic brain injury makes it
 14 that much likely that he will recover; okay? A severe brain
 15 injury is very difficult to come back from. A diffuse
 16 severe traumatic brain injury makes it that much more likely
 17 that he won't, and that's what he has to live with, and
 18 that's what he has to think about.
 19 (Whereupon, an image was displayed to the jury.)
 20 MR. B. MORELLI: Dr. Greenwald tells us that the
 21 frontal lobes, that are critical structures that make us who
 22 we are, devastated, he called it. Both of these temporal
 23 lobes, devastated. And we'll see more about that.
 24 Significant scarring and death of tissue in these critical
 25 lobes. He is the brain injury specialist.

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Summations by Plaintiff (B. Morelli) Page 1790

1 (Whereupon, an image was displayed to the jury.)
 2 MR. B. MORELLI: Now, this post traumatic epilepsy,
 3 let's talk about that, because that's a topic that has been
 4 talked about, and let's clear it up.
 5 Dr. Greenwald agrees that he has post-traumatic
 6 epilepsy; Dr. Schwartz agrees that he has post-traumatic
 7 epilepsy; Dr. Fayer agrees that he has post-traumatic
 8 epilepsy; and Dr. Jordan agrees that he has post-traumatic
 9 epilepsy. And the medical records, there was an EEG that
 10 showed it, there was a hospital record, and he had a seizure
 11 at yoga. And if you remember, each one of these doctors
 12 agree on post-traumatic epilepsy. Each one, and these are
 13 all of the proof. And you remember, and I'm not going to
 14 show you the video again, of him having the seizure.
 15 (Whereupon, an image was displayed to the jury.)
 16 MR. B. MORELLI: Now, this is the first seizure
 17 that Justin Perez viewed his brother having, and this is
 18 important, to note exactly what happened. The first seizure
 19 happened, actually, while he was being operated on. This is
 20 2015, now, when he had an operation in 2015. He had one
 21 while he was being operated on, and that was operation
 22 number four. When he came out of the surgery, the
 23 neurosurgeon said he had one during the operation. Then
 24 Justin was there with him when he woke up. He was eating
 25 dinner, Mark was, and suddenly he seized up.

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Summations by Plaintiff (B. Morelli) Page 1791

1 The one thing that I remember the most about it was
 2 the noise. It sounded like The Exorcist. This odd,
 3 high-pitched screeching, wailing, uncontrolled noise came
 4 out of his throat. I thought he was choking at first on his
 5 dinner, and he was spitting up food, and it looked like his
 6 head was locked off to the left, and I noticed one of his
 7 left hands was curling up. After five minutes or so he came
 8 out of it, and he was really shaken up. The neurosurgeon
 9 came in and explained he had one during the operation, and
 10 one after. You know, that was a new level to this whole
 11 thing, with the way he was.
 12 That's what his brother saw at the time.
 13 (Whereupon, an image was displayed to the jury.)
 14 MR. B. MORELLI: So let's hear about what
 15 Dr. Greenwald has to say about this increased risk of
 16 seizures in the future, because he says, in Mark Perez's
 17 case, we have all the objective -- meaning nobody can deny
 18 it -- evidence of all this trauma, and we know that the
 19 number one cause of seizures in the United States is
 20 actually traumatic brain injury, like we see in Mark's case.
 21 25 percent lifetime risk. So his whole life, even if he had
 22 not had a seizure up until today, he would continue to have
 23 that risk, over his lifetime.
 24 We know that the risk of seizures is not just
 25 short-term, after such a traumatic brain injury. Like I

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1 said, it lasts over his whole life; okay? So -- and when
 2 you have this brain surgery; another surgery related to his
 3 brain injury; the taking out of the bone; putting the bone
 4 back in; the infections that he had, so certainly something
 5 that is more traumatizing to the body like surgery, when you
 6 need to be under anesthesia, where your body experiences
 7 pain, these lower the seizure threshold, and bring that
 8 seizure out. It is not that it wasn't sitting there
 9 already, but it sort of makes it clear that this gentlemen,
 10 meaning Mark, is going to have a seizure, and a seizure
 11 disorder. And that's what this case is really about.
 12 Can we take a short break, Judge?
 13 THE COURT: Sure.
 14 THE COURT OFFICER: All rise. Jury exiting.
 15 (Whereupon, the jury was excused from the
 16 courtroom.)
 17 (Whereupon, a recess was taken.)
 18 * * * * *
 19 THE COURT OFFICER: All rise. Jury entering.
 20 (Whereupon, the jury entered the courtroom.)
 21 (Whereupon, an image was displayed to the jury.)
 22 MR. B. MORELLI: So getting back to Dr. Schwartz,
 23 and I'll just highlight a couple of things here, he
 24 considered that Mark's traumatic epilepsy is intractable at
 25 this point, and he says that you can diagnose epilepsy based

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1 on subjective complaints, as well as EEG. And you have to
2 also understand, if somebody has an EEG, unless they have a
3 seizure right while you are doing an EEG, it's not going to
4 come up.
5 So Dr. Schwartz has told us that he has this
6 intractable epilepsy. Now, what is important to know is
7 that he also says that he will continue to have -- he will
8 continue to have seizures, and he says, although he agrees
9 that testing has to be done before he would ever operate on
10 Mark, the difference is that he says he has traumatic
11 epilepsy, and it is intractable, and he believes that there
12 is, in the future, that possibility that if, in fact, these
13 seizures continue, which he thinks he will, that he's going
14 to need surgery. So he says Mark will continue to have
15 seizures.
16 (Whereupon, an image was displayed to the jury.)
17 MR. B. MORELLI: Now, this slide here by Justin
18 Perez is talking about Mark being on medication for
19 seizures, and he has taken him to fill the prescriptions
20 from the doctors that have prescribed, it and he says to his
21 knowledge, Mark has been on at least six different
22 medications for seizures, and here is the problem that Mark
23 has: He hates the seizure medications, because they make
24 him feel less able to do what he already feels he has
25 limitations with, and he is more off kilter than usual. His

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Summations by Plaintiff (B. Morelli) Page 1794

1 sense of balance and direction is terrible. He doesn't talk
2 much. He has trouble with his speech. So that's what the
3 medication does to him. But he has to take the medication,
4 and he needs his brother to make sure that he takes it.
5 (Whereupon, an image was displayed to the jury.)
6 MR. B. MORELLI: This is Dr. Lubliner. There's no
7 dispute as to the orthopedic injuries in this case, but I
8 thought somewhat of Dr. Lubliner said is important.
9 Skull on the right side above the ear, the temporal
10 lobe, that was broken all the way down to the roof of the
11 orbit. That's here, above the eye, which is the eyeball.
12 Fracture of the right cheek bone that went all around to the
13 bottom of the eye. Then he says, he had a big force that
14 his body had to absorb, and still had so much force that it
15 made ten fractures and separations. So when he fell on his
16 head on the concrete, okay, it fractured here. It wasn't
17 all around. It fractured his shoulder, it then went around,
18 fractured seven ribs, went around to his back, fractured two
19 bones in his back (indicating).
20 That's the force of this. There's no dispute as to
21 this. If somebody only had the orthopedic injuries that
22 Mark has in had case, they would say, That's a big case.
23 That's very serious. And that's the least of his problems.
24 The separated shoulder, six broken ribs. And the
25 ribs were broken in more than one place. And then, what

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Summations by Plaintiff (B. Morelli) Page 1795

1 happened with one of the ribs that broke, it punctured his
2 lung, so that he had a hemothorax, and that is -- he had a
3 pneumothorax. Pneumo means air. Hemo means blood. The
4 ribs made a hole in the lung. Air and blood got in, for
5 which he had to have a chest tube, and that's why, when he
6 went to the hospital, he had a chest tube placed in him.
7 (Whereupon, an image was displayed to the jury.)
8 MR. B. MORELLI: Now, let's talk about Mark. The
9 medicine is tough enough to listen to, but let's talk about
10 Mark. Let's hear what Dr. Fayer has to say. He has been
11 seeing him for almost a couple of years now, and he is --
12 not only is he a psychiatrist, and but he gets along with
13 Mark, and Mark likes him, and they talk, and he, I believe,
14 is being helpful to Mark. Here is what Dr. Fayer thinks,
15 and Dr. Fayer spends time with him and speaks to him over a
16 period of time. He said, So pre-accident, on a scale of one
17 to ten, I would say that he was a ten. As a person, his
18 personality, that's who he was. He said, I could say after
19 the accident, his self esteem is like a one. He is
20 shattered. He is shattered.
21 This, I submit to you, is the conscious pain and
22 suffering in this case. The past conscious pain and
23 suffering, which is the biggest part of this case, is the
24 conscious pain and suffering. And I know that it's not
25 something that you could fit right in and say, Oh, this is

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Summations by Plaintiff (B. Morelli) Page 1796

1 how I figure it out. It's up to you. I submit to you that
2 this young man has had so many problems, and Mark Perez
3 speaks to how he feels, and let's see what he says.
4 I don't have a problem with trying or applying
5 myself, but I often get confused and frustrated with myself
6 because I can't stick with something long enough to finish
7 it. So I get up and I walk away, I come back, and I keep on
8 trying, refusing to figure give up. But I know that it's
9 not -- it's not as good as it used to be, and it makes me
10 hate myself, because I know I can do better, but I can't.
11 My brain has been damaged.
12 That's what Mark says, and I submit to you that the
13 way he feels is very important for you to assess his
14 conscious pain and suffering.
15 Dr. Fayer says that he has gotten used to the fact
16 that he is now a very dependent person. He is disabled. He
17 can't work. Social fears. Very self-conscious about his
18 appearance. This is somebody who really cared about how he
19 looked.
20 Mark talks about when he put that helmet on and he
21 felt -- It make me feel worse about myself, and he went to
22 the store and, I knew I was wearing the helmet because my
23 skull was damaged. It made me feel very disabled. I wanted
24 the kid to look up to me. Because the kid asked him what
25 team he played for, and he looked at the kid and he said,

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1 I'm sorry, but I'm disabled, buddy. And that hurt him.
2 (Whereupon, an image was displayed to the jury.)
3 MR. B. MORELLI: He has gotten used to the fact
4 that he is now dependent, so you know what kind of self
5 esteem problem you would have with that, but what about his
6 relationship with his girlfriend? His girlfriend Kristy.
7 They were together since he was 22 years old, for eight
8 years. They did everything together. Planned to get
9 engaged. But look what Mark says about it. You could read
10 it for yourself. You don't need me.
11 (Whereupon, there was a pause in the proceedings.)
12 (Whereupon, an image was displayed to the jury.)
13 MR. B. MORELLI: That's them together.
14 (Whereupon, an image was displayed to the jury.)
15 MR. B. MORELLI: And this is what Mark says:
16 "She broke up with me after I returned from the
17 hospital, after this accident."
18 I said: "Did you discuss, with any member of your
19 family, about how you felt?"
20 He said: "I tried to change the subject when they
21 had asked me, because it hurt so much to talk about. I felt
22 like a failure, and I know I shouldn't have felt that way."
23 (Whereupon, an image was displayed to the jury.)
24 MR. B. MORELLI: Then he talked about how he went
25 to the yoga class, because this young woman who he was

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Summations by Plaintiff (B. Morelli) Page 1798

1 interested in recommended it to him, and he said:
2 "This poor group of women had helped me get on the
3 ambulance covered with sweat and everything, and I went to
4 the bathroom on myself.
5 "So, did that affect you dating this person? Did
6 it?
7 "I think it scared her away from me.
8 "What did you feel about the incident happening
9 where it happened?
10 "I was embarrassed, and it scared me."
11 This is what Mark has lived through, and now Mark
12 is trapped in his own body.
13 (Whereupon, an image was displayed to the jury.)
14 MR. B. MORELLI: And this is what he says:
15 "It's really hard for me. Sometimes I can't
16 express how I feel, and it's very frustrating. My family
17 tries so hard to make sure I'm safe, and make good choices,
18 and a lot of time I don't see it that way, and they just
19 want me to be safe, but I still feel trapped, and I know
20 I've lost my independence, and I'm still trying to accept
21 this, because I feel like I want to be normal, and I don't
22 think I can."
23 Now, I want you to understand that there's a very
24 big difference between me telling you something that I
25 believe you should do in this case, and me telling you that

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Summations by Plaintiff (B. Morelli) Page 1799

1 I suggest; you decide. That's all I do, I suggest. It's
2 your decision to make. Only yours. It's not mine; okay?
3 Now, there's past pain and suffering and loss of
4 enjoyment of life, and there's future pain and suffering and
5 loss of enjoyment of life, and I'm going to tell you, with
6 reference to his lost earnings, and the fact that he needs
7 full-time care, here is the problem: Let's assume that you
8 accept -- and you don't have to -- that he is going to live
9 6.7 years less. And it's a statistic. He could die
10 tomorrow, and he could live ten years longer than his life
11 expectancy. Nobody knows that. But one of the thing on his
12 mind, and one of the things that he is worried about is that
13 he could die sooner, and that's mental and emotional
14 conscious pain and suffering. But if you say, Well, I'm
15 only going to award money based on the fact that he's going
16 to live 6.7 years less time, and he outlives it, and
17 outlives his life expectancy, you have short-changed him,
18 and we can't come back. We can't come back. There's no
19 other day. There's only this day.
20 And I submit to you for the conscious pain and
21 suffering, for the past, I think \$35 million is the correct
22 number. I suggest. You decide. You know that if the
23 lawyers for Live Nation Worldwide, the way they tried this
24 case, told you 10 million, you can only imagine. And his
25 life expectancy, for a full life, is 42 more years. But

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Summations by Plaintiff (B. Morelli) Page 1800

1 that's the future. I'm only talking about the past.
2 Mark had professional goals. Let's talk about
3 that.
4 (Whereupon, an image was displayed to the jury.)
5 MR. B. MORELLI: He had professional goals. His
6 plans, into the future, were to have his own ink company,
7 and that's ink for tattoos, because you know he was working
8 with this fellow, Tattoo Lou, who happened to have owned a
9 lot of companies. "To partner out into business
10 developments with my father and myself. To keep us all, you
11 know, under the protective umbrella, to have this media
12 conglomeration." He was a very ambitious young man.
13 Some people aren't cut out for school. They are
14 cut out for the world.
15 (Whereupon, an image was displayed to the jury.)
16 MR. B. MORELLI: He was doing advanced programming,
17 web design, negotiated deals, taught web design and
18 programming, ran service for these companies. He was the
19 director of the marketing, graphic design and installations.
20 And these are some of the companies that he worked for:
21 Macy's, Bed, Bath and Beyond, J.C. Penney, Victoria
22 Classics, and a lot of bedding companies. That's what he
23 was doing.
24 Now, this is a very different picture from the
25 picture that pigeon holed him at 33,000 a year. The

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1 interesting thing is that if all of us were pigeon holed at
 2 what we accomplished by the time we were 29, a lot of us
 3 would be really limited. He had his whole life ahead of
 4 him, and he was just starting to break out.
 5 And let's talk about the fact that Mark is
 6 unemployable. I think you know that. He is permanently
 7 disabled, and he is not employable for the rest of his life,
 8 because he can't do the things that he has to do, and
 9 Dr. Fayer worked for the Social Security Department. He was
 10 dealing in this employability issue all of the time, and he
 11 has a problem, because he can't -- he can't persist in what
 12 he is doing, he has -- what would happen, to put that person
 13 in the work place, and if they have a psychiatric
 14 difficulty, what would happen? Under pressure, they
 15 decompensate or deteriorate, and that's the problem with
 16 Mark.
 17 (Continued on the next page.)
 18
 19
 20
 21
 22
 23
 24
 25

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1 MR. MORELLI: (Continued) So, we know that he can't
 2 live on his own. This is his brother talking to you. Just
 3 because he makes decisions that are dangerous sometimes,
 4 that's why he can't live on his own. Little things that
 5 could potentially be disastrous. He blew up the washing
 6 machine. Leaves the stove own. Might not take the right
 7 medications.
 8 Now, you can't expect that this family is going to
 9 spend the rest of their days, including his brother who's
 10 very dedicated to him, taking care of this boy. He doesn't
 11 have to do that. They're responsible for it. Live Nation
 12 Worldwide is responsible for it.
 13 So, they don't get a discount because he's got a
 14 loving family. If, God forbid, something happens to them,
 15 he's out of luck. This is what his mom says: He's not safe
 16 by himself, so if I'm walking with him, I have to hold his
 17 arm rather than having him hold my arm. I'll hold his arm
 18 so that he can cross the street safely because he would just
 19 walk right out in front of a car. He's not -- he doesn't
 20 seem to have safety awareness.
 21 I submit to you that the people who testified in
 22 this case on behalf of the plaintiff were very, very
 23 credible and this is the problem that Mark has.
 24 Now, you can't say well, hey, look, so far he
 25 hasn't killed himself and take credit for it. So, he was

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1 lucky. A lot of us are lucky that, you know, he was lucky
 2 he didn't die in 2013. But he has to be taken care of.
 3 He'll need future care, custodial care 24/7.
 4 Transportation costs. Extensive medical care and
 5 expenses. Rehabilitation care. And he's unemployable.
 6 There's no dispute about that.
 7 Now, please understand that the defense put into
 8 evidence that he could get free transportation if he's going
 9 like to a hospital or something like that with
 10 Access-A-Ride, but if he wants to go out to the store or he
 11 wants to go to a friend, he has to be kept to not spending
 12 more money. It's got to be free and there's no reason for
 13 it.
 14 They caused it, they have to pay for it. That's
 15 just the way it is. There's no discounts here. This isn't
 16 Target. There's no discounts.
 17 So, let's talk about what I think is the smallest
 18 part of this case. This is the past lost earnings \$487,986.
 19 That's for his full life. That's for his full life.
 20 Next to it we put up the reduced life and it's the
 21 same because it wouldn't reduce the past, right.
 22 The future, it does reduce, the future is
 23 \$5,201,902 for his full life expectancy which is 42 years
 24 and the reduced is \$4,666,052.
 25 You can have these numbers any time you want them.

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1 You don't have to memorize anything.
 2 For the total lost earnings, past and future,
 3 \$5,689,888.
 4 Now, you're not wedded to these numbers, you're not
 5 wedded to it. You're the jury, you decide. You're not
 6 wedded.
 7 Now, we said he will make around \$84,000. They
 8 say, oh, my God, \$84,000. \$33,000 and he's lucky we're
 9 giving him that.
 10 MR. O'HARA: Objection.
 11 THE COURT: Sustained.
 12 MR. MORELLI: We're probably overstating it. We're
 13 probably overstating it.
 14 The defendant's expert, Dr. Friefelder.
 15 Mark's future lost earnings projection \$33,799.
 16 That's forever. Solely based on his tax returns, could be
 17 an overstatement. I'm not exaggerating. Could be an
 18 overstatement. That's what he said.
 19 So, now, let's look at the life care.
 20 Full life expectancy future medical: \$2,752,072.
 21 Future rehabilitation: \$307,707.
 22 Future custodial care: \$10,083,694 for a total of
 23 \$13,143,473.
 24 Now, you see how that changes if you reduce his
 25 life expectancy. They're looking for a discount in three

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Summation - Mr. Morelli Page 1805

1 different ways:
2 One, he's not going to live. Discount.
3 Two -- and the first word was future medical.
4 Two, he should only get \$33,000, that's an
5 overstatement. Discount.
6 And he doesn't need 24/7 care. Four hours a day.
7 Discount.
8 That's what they're telling you.
9 So, when they say, hey, look, we're giving him
10 more, we're giving him another visit to the doctor. We're
11 giving another this. No, you're not, because you're saying
12 throw him a bone. Let's give him another visit to the
13 doctor, but let's take 20 hours a day away.
14 Let's reduce his life expectancy and it was really
15 generous that they didn't use nine years, they only used
16 6.7. Here's a bone, Mark. Another bone for you. Only
17 bones.
18 Mark is worried about his future and he is allowed
19 your consideration and to be awarded for his mental and
20 emotional distress, which is huge in this case, huge. He's
21 worried now about dying early, especially after this trial.
22 MR. O'HARA: Objection.
23 THE COURT: Sustained.
24 MR. MORELLI: Parkinson's disease. He has a two to
25 three times increased risk of getting Parkinson's disease

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Summation - Mr. Morelli Page 1806

1 and getting it earlier.
2 Two to three times risk of getting Alzheimer's and
3 getting it earlier. Seizures that he has to worry about for
4 the rest of his life.
5 And by the way, if he needs this surgery, it's not
6 one surgery because he gets the cranioplasty number five.
7 If it doesn't work and he gets those infections again, there
8 will be a number six. There could be a number seven, but we
9 can't tell you that because I'm not God. I don't know.
10 But I can't come back. I can't come back to you
11 and say Hey, look, look, at what really happened. Look what
12 happened to Mark.
13 Future surgeries. Constant pain. Who will care
14 for him in the future? This is what he's worried about.
15 These are all of the things that he's worried about and I
16 submit to you and I'm going to show you this.
17 You are going to get a verdict sheet and this is
18 it. Okay. And this and while you're going through this
19 verdict sheet, and you're getting to past pain and suffering
20 and loss of enjoyment of life, you not only have to fill in
21 the number for that, but you also have to fill in, you have
22 to figure out how long, what his past lost earnings are.
23 Okay. And then when you go to the future for the
24 future conscious pain and suffering. You have to fill in
25 the number of years that you're awarding it for. If it's 42

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Summation - Mr. Morelli Page 1807

1 because you believe that he'll live, his life expectancy is
2 42. It's whatever you say it is.
3 And I submit to you that what we prove to you for
4 the economic loss in this case, he's entitled to it for his
5 full life expectancy because if he lives it, he can't come
6 back and I tell you for the future pain and suffering and
7 loss of enjoyment of life, I think he's entitled to
8 \$50 million. That's my opinion.
9 I suggest you decide. All of the others, future
10 lost earnings. You know the numbers.
11 Future medical expenses. You know the numbers.
12 Future custodial care. Rehabilitation expenses.
13 You know the numbers. That's my suggestion. That's what I
14 think this is all about. That's what I think it's worth.
15 You're smarter than me.
16 Thanks.
17 THE COURT: Thank you.
18 Ladies and Gentlemen, I need a couple of minutes,
19 so take a break, please.
20 (Whereupon, the jury leaves the courtroom.)
21 THE COURT: Anybody have any thoughts on charging
22 today or Monday?
23 MR. MORELLI: I think you should charge them today
24 and bring them back to deliberate.
25 MR. O'HARA: Yes, they can start deliberating.

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1 THE COURT: I'm just throwing it out there.
2 MR. O'HARA: We don't clear the courtroom until
3 4:45.
4 MR. MORELLI: I agree.
5 THE COURT: Okay. Do we want to do our jury
6 lottery in front of the jury or do it now?
7 MR. MORELLI: After you charge them we'll --
8 THE COURT: We don't have to tell them now.
9 MR. HAWORTH: Why don't we do it and be done with
10 it while they take a break.
11 THE COURT: We'll pick the first two out of the
12 hopper who will be alternates.
13 The first two to come out will be alternates.
14 First alternate is?
15 COURT CLERK: Seven.
16 THE COURT: Our second?
17 COURT CLERK: Five.
18 THE COURT: Seven and five are our alternates and
19 I'll let them know after I do my charges.
20 Anything else before we take a break?
21 MR. O'HARA: No, your Honor.
22 MR. SIROTKIN: No, your Honor.
23 (Whereupon, the jury enters the courtroom.)
24 THE COURT: Okay, Ladies and Gentlemen, we've now
25 come to that portion of trial where I'm going to instruct

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1 you as to the law that applies to this case.
2 After I'm finished, you're going to retire for your
3 final deliberations.
4 You've now heard all the evidence; and, through the
5 argument of the attorneys you've learned the conclusions
6 that each party believes you should draw from the evidence.
7 You recall at the beginning of the trial I told you
8 some things to keep in mind during the trial and briefly,
9 that you are bound to apply the law as I give it to you even
10 if you disagree with it.
11 You're not to ask anyone else about the law.
12 You may not accept any advice about the law from
13 anyone other than me.
14 You must not conclude from any of my rulings or,
15 for that matter, from anything I have said during this trial
16 that I favor any party to this lawsuit and furthermore, in
17 reaching your decision, you may not draw any inference from
18 an unanswered question nor may you consider testimony that
19 has been stricken from the record.
20 Finally, in deciding how much weight you choose to
21 give to the testimony of a particular witness, remember that
22 there is no magical formula. The same tests you use in your
23 every day dealings are the tests you should apply in your
24 deliberations:
25 The interest or lack of interest in the witness in

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1 the outcome of the case.
2 The bias or prejudice, if there be any.
3 The age, the appearance, the manner in which the
4 witness gives testimony on the stand.
5 The opportunity that the witness has to observe the
6 facts about which he or she testifies.
7 The probability or improbability of the witness'
8 testimony when considered in light of all the other evidence
9 in the case. These are all things you can consider in
10 deciding how much weight, if any, you give to a particular
11 witness' testimony.
12 Again, if it appears that there is a conflict in
13 the evidence, you're going to have to consider whether that
14 conflict can be reconciled by fitting the different versions
15 together.
16 If, however, that is not possible, you are going to
17 have to decide which of the conflicting versions that you
18 accept.
19 A matter is a material fact -- excuse me -- a
20 material fact is something that you decide is important.
21 If you find that any witness has willfully
22 testified falsely about a material fact, the law permits you
23 to completely disregard that witness' entire testimony upon
24 the principle that one who testifies falsely about one
25 material fact is likely to testify falsely about everything.

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1 However, you are not required to consider such a
2 witness to be totally unacceptable. You may accept so much
3 of the person's testimony as you deem to be true and
4 disregard what you feel is false.
5 As the sole judges of the facts, you decide which
6 of the witnesses you believe, what portion of their
7 testimony that you accept and how much weight you give to
8 it.
9 To say that a party has the burden of proof on an
10 issue means that considering all of the evidence in the
11 case, the party's claim on that issue must be established by
12 a fair preponderance of the credible evidence.
13 Now, the credible evidence means the testimony or
14 exhibits that you find worthy of belief.
15 A preponderance means the greater part of the
16 evidence. It does not mean the greater number of witnesses
17 or the greater length of time taken by either side.
18 The phrase "preponderance of the evidence" refers
19 to the quality of the evidence, its weight and the effect
20 that it has on your mind.
21 In order for a party to prevail on an issue which
22 it has the burden of proof, the evidence that supports its
23 claim on that issue must appeal to you as more nearly
24 representing what happened than the evidence that is opposed
25 to it.

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1 If it does not, or if it weighs so evenly that you
2 are unable to say that there's a preponderance on either
3 side, than you must decide the question against the party
4 who has the burden of proof and in favor of the opposing
5 party.
6 In this case, the plaintiff claims that the
7 accident on June 26, 2013, caused him to sustain severe
8 personal emotional and financial damages.
9 The plaintiff has the burden of proving that these
10 damages were caused by the accident.
11 The defendant acknowledges that the accident caused
12 injuries to the plaintiff, however, it claims that Mr. Perez
13 did not do everything that he could do to mitigate his
14 damages.
15 The term "mitigate damages" means a person's
16 failure to lessen the effects of his injuries.
17 The defendant has the burden of proving that the
18 plaintiff did not mitigate his damages.
19 In deciding this case, you may consider only the
20 exhibits that have been admitted into evidence and the
21 testimony of the witnesses, both in this courtroom and given
22 at an examination before trial and also any facts that may
23 have been stipulated by the parties as being true.
24 I remind you that the arguments, remarks and
25 summation of the attorneys were not evidence nor is anything

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1 that I have said.
2 Although you were encouraged to use all your life's
3 experiences in analyzing the testimony and reaching a fair
4 verdict, you may not communicate any personal, professional
5 expertise that you may have or any other facts that are not
6 in evidence to the other jurors during your deliberations.
7 You must base your decisions and discussions solely
8 upon the evidence presented to you during the trial and that
9 evidence alone.
10 You may not consider or speculate on matters that
11 are not in evidence or any matters that are outside of this
12 case.
13 In reaching your verdict, you are not to be
14 affected by any outside considerations. That includes
15 sympathy for any of the parties or the potential reaction of
16 anyone to your verdict. You only should consider the
17 testimony and exhibits to decide what you believe and then
18 apply the law as I now give it to you.
19 Now, you'll recall that medical doctors: Brian
20 Greenwald, Steven Fayer, Gerry Lubliner, Michael Lipton,
21 Theodore Schwartz, Ann Ambrose, Barry Jordan and Werner
22 Doyle and neuropsychologist, Wayne Gordon and William Barr
23 life care planners, Edmond Provder and Kimberly Kushner and
24 economist Debra Dwyer and Leonard Freifelder testified
25 concerning their qualifications in respective fields of

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1 expertise and they gave their opinions concerning issues in
2 this case.
3 When a case involves matters of science or art, or
4 requires special knowledge or skill that most people don't
5 have, qualified witnesses are permitted to state their
6 opinions for the information of the Court and the jury.
7 The opinions of these witnesses -- excuse me -- the
8 opinions that these witnesses stated were based upon
9 particular facts as they obtained knowledge of them and
10 testified about them or as the attorney who questioned them
11 asked them to assume.
12 You may reject any opinion if you find the facts to
13 be different from the facts that form the basis of the
14 opinion.
15 You also may reject an opinion if, after careful
16 consideration of the evidence, including the expert's
17 cross-examination or I should say the cross-examination of
18 the expert, you decide that the opinion is not convincing.
19 In other words, you are not required to accept any
20 opinion to the exclusion of the facts and circumstances that
21 were disclosed by the other evidence.
22 Opinion testimony should be evaluated in the same
23 way as the testimony of other witnesses. It is given to
24 assist you in reaching a proper conclusion. It is entitled
25 to such weight as you find the witness' qualification in the

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1 field warrant. It must be considered by you but it is not
2 controlling upon your judgment.
3 Mark Perez testified before you and is a party to
4 this action. Mr. Perez is considered an interested witness.
5 An interested witness is not necessarily less
6 believable than a disinterested witness. The fact that a
7 person is interested in the outcome of the case does not
8 mean that he or she has not told the truth.
9 It is for you to decide from the demeanor of the
10 witness on the stand and from such other tests and as your
11 experience dictates whether the testimony has been
12 intentionally or unintentionally influenced by his or her
13 interest.
14 You can decide that you don't believe the testimony
15 of an interested witness even though the testimony is not
16 otherwise challenged or contradicted.
17 However, you are not required to reject an
18 interested witness' testimony. You may accept all or any
19 part of the testimony that you find is reliable and you may
20 reject any part that you find is unreliable.
21 You've heard the lawyers read portions of a
22 document referred to as an examination before trial. And
23 you may have also heard it referred to as a deposition or an
24 EBT. These terms all basically mean the same thing.
25 I want to remind you that before this trial began,

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1 some of the witnesses answered questions under oath, a
2 stenographer recorded the questions and answers and
3 transcribed them into a document that the witnesses later
4 signed before a notary public.
5 The portions of the transcript of the examination
6 before a trial that you heard are to be considered as if the
7 witness was testifying live on the witness stand.
8 I now want to talk to you about the issue that
9 you're going to be deciding which is the plaintiff's
10 damages.
11 I'm instructing you that there is no issue of
12 liability in this case.
13 Under the law, Live Nation is solely responsible
14 for the plaintiff's damages.
15 In making their closing remarks, both counsel
16 suggested specific dollar amounts that they believed to be
17 appropriate compensation for specific element of Mr. Perez's
18 damages.
19 In fact, an attorney is permitted to suggest the
20 amount that should be awarded, but those suggestions are
21 argument only, not evidence and should not be considered by
22 you as evidence of the plaintiff's damages.
23 The determination of damages is solely for you, the
24 jury, to decide.
25 The plaintiff is entitled to recover a sum of money

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1 that will justly and fairly compensate him for any injury,
2 disability and conscious pain and suffering to date that was
3 caused by the defendant.
4 Loss of enjoyment of life -- give me one second,
5 please.
6 MR. MORELLI: Your Honor, can we approach for a
7 second?
8 THE COURT: Yes.
9 (Side-bar discussion held off the record.)
10 THE COURT: Loss of enjoyment of life involves the
11 loss of ability to perform daily tasks, to participate in
12 the activities part of the person's life before the injury
13 and to experience the pleasures of life.
14 If you find that as a result of his injuries
15 Mr. Perez suffered some loss of ability to enjoy life, then
16 you may take that loss into consideration in determining the
17 amount to be awarded to Mr. Perez for pain and suffering.
18 With respect to any of his injuries or
19 disabilities, Mr. Perez also is entitled to recover for
20 future pain and suffering, future pain, suffering,
21 disability and the loss of his ability to enjoy life.
22 In making this determination, you should take into
23 consideration the period of time that the injuries or
24 disabilities are expected to continue.
25 If you find that the injuries or disabilities are

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1 future, your verdict also should include an amount for those
2 anticipated expenses that are reasonably certain to be
3 endured in the future and that were necessitated by the
4 plaintiff's injuries.
5 For any future medical expenses that you award,
6 your verdict will set forth a dollar amount that covers the
7 entire period that you find that he will incur them.
8 After you decide the amount for that total period,
9 we'll ask you to state the number of years over which that
10 award is intended to provide compensation.
11 In other words, when you're making an award, do not
12 state an amount per year, state the total amount for however
13 many years that your award covers and then tell us how many
14 years that that award would include.
15 The plaintiff is also entitled to be reimbursed for
16 any earnings that he lost as a result of his injuries that
17 were caused by the accident from the time of the accident
18 until today.
19 Furthermore, if you find that those injuries caused
20 the plaintiff to suffer reduction in his capacity to earn
21 money in the future, then he's also entitled to be
22 reimbursed for future loss earnings.
23 You may not speculate on the amount to award for
24 lost earnings up until today. Any award must be calculated
25 from the number of days that you find that the plaintiff was

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1 permanent, than you should take that period of time that the
2 plaintiff can be expected to live into consideration.
3 In accordance with statistical life expectancy
4 table, Mr. Perez has a life expectancy of 78.4 years. Such
5 a table, however, provides nothing more than a statistical
6 average. It does not guarantee that he'll live an
7 additional 39.9 years nor does it mean he'll not live
8 longer.
9 You are not bound by the life expectancy figure I
10 just gave you, but in deciding Mr. Perez's life expectancy,
11 you should consider it together with your own experience and
12 with the evidence that you've heard concerning the condition
13 of Mr. Perez's health, habits, employments and activities.
14 Your verdict also must include damages for any
15 mental suffering, any emotion or psychologic injuries and
16 any physical consequences that Mr. Perez suffered in
17 connection with this incident.
18 Mr. Perez is entitled to recover the amount of
19 reasonable expenditures for medical services and medicines.
20 The parties have agreed to the amount of medical
21 expenses that Mr. Perez has incurred from the date of the
22 accident to today, so that's not something that you're going
23 to have to make a determination on.
24 If you find that Mr. Perez will need medical,
25 hospital, nursing or other healthcare expenses in the

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1 disabled from working by his injuries and the amount that
2 you find that he would have earned had he not been disabled.
3 Any award that you make for reduction of
4 Mr. Perez's future earning capacity should be determined on
5 the basis of his earnings before the accident, the condition
6 of his health, his prospects for advancement, the
7 probabilities with respect to future earnings before the
8 accident, the extent to which you find that those prospects
9 or probabilities have been reduced by the injuries, the
10 length of time you find he would have reasonably been
11 expected to work had he not been injured, the nature and
12 hazard business and any other circumstances which you feel
13 would have an effect on his earning capacity.
14 (Continued on next page.)
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1 THE COURT: Mr. Perez is now 36 years old, an
 2 according to the same tables I referred to earlier, his work
 3 life expectancy is another 24 more years. Again, these
 4 tables are nothing more than statistical averages. The
 5 first thing that I just gave you is not binding upon you,
 6 but in determine Mr. Perez's work-life expectancy, you may
 7 consider it, together with your own experience and the
 8 evidence that you have heard. And just like before, for any
 9 award that you make for reduction in Mr. Perez's future
 10 earning capacity, your verdict will set forth a dollar
 11 amount that covers the entire period that you find the
 12 plaintiff will suffer that reduction.

13 After you decide the amount of reduction for lost
 14 earnings for the entire period, then you will state the
 15 number of years over which that award is intended to provide
 16 compensation and again, and I want to stress this: You are
 17 not making an award per year. You are making an award for a
 18 total number of years, and then you are telling us how many
 19 years that that award is intended to cover.

20 Mr. Perez has offered evidence that at the time of
 21 the injury, he was beginning a career as a web designer. If
 22 the injuries that Mr. Perez sustained are reasonably certain
 23 to have interfered with his career, you may award an amount
 24 of damages that you find he sustained because the injuries
 25 prevented him from attaining the earning capacity of that

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1 neuropsychologist; hematologist; and ophthalmologist.
 2 The next category is going to be future
 3 rehabilitation expenses. That category would include
 4 neuropsychological and psychological services; cognitive
 5 rehabilitation therapy; physical therapy;
 6 neuro-ophthalmology services; rehabilitation services; case
 7 management and counseling.

8 The final category is going to be custodial care,
 9 which may include expenses for a home attendant, nursing
 10 care, assisted living, and nursing home care.

11 The same instructions that I gave you pertaining to
 12 future pain and suffering and future lost wages apply here.
 13 Again, you are going to set forth the total amount of
 14 damages that you find for the entire period, and then tell
 15 us over how many years that was intended to cover. With
 16 regard to any item of damages, if you decide to make an
 17 award -- not make an award as to any amount of damages for
 18 something, you are simply going to insert the word "none"
 19 into the space that's provided.

20 A person who has been injured is not permitted to
 21 recover for damages that could have been avoided by using
 22 means which a reasonably prudent person would have used to
 23 minimize the effects of their injury. The defendant claims
 24 that if the plaintiff submitted to a cranioplasty and
 25 psychotherapy --

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1 occupation. In deciding this issue, you may consider
 2 Mr. Perez's talent, the training he received, the
 3 opportunity and recognition that he already had, and the
 4 future opportunity that he was likely to have, as well as
 5 the likelihood, risks and contingencies involved in
 6 achieving success in that occupation.

7 As I said before, the parties have agreed on the
 8 cost of Mr. Perez's medical expenses to date. You will not
 9 have to decide that issue. However, we are still asking you
 10 to make an award that is intended to compensate Mr. Perez
 11 for future medical expenses. Your verdict for future
 12 medical expenses is going to be divided into a few
 13 categories.

14 Now, you have heard references to the document
 15 that's called a verdict sheet, and you are going to see,
 16 starting with question two -- there's two questions, so the
 17 second question -- talks about future losses, and you are
 18 going to see there where it comes to expenses that it's
 19 divided into three categories, and I want to give you a
 20 little explanation as to what they mean.

21 First of all, the category that's called future
 22 medical expenses would be intended to include such things as
 23 hospital expenses; cost of surgeries; medication costs and
 24 physicians expenses such as those services rendered by a
 25 psychiatrist; neurologist; neurosurgeon; plastic surgeon;

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Jury Charge Page 1824

1 Craniotomy; right?
 2 MR. B. MORELLI: Cranioplasty.
 3 THE COURT: Cranioplasty. I didn't know if this
 4 was correct, versus --
 5 MR. B. MORELLI: It's cranioplasty.
 6 THE COURT: The defendant claims that if the
 7 plaintiff submitted to a cranioplasty and to psychotherapy
 8 for his injuries, his injuries and pain would be greatly
 9 alleviated, and that the operation and treatment is not
 10 dangerous. The plaintiff claims that he made an effort to
 11 mitigate by meeting doctors from Johns Hopkins University
 12 Hospital and with Dr. Theodore Schwartz of Weill Cornell
 13 Medicine to discuss having a cranioplasty.

14 He further asserts that he acted and continues to
 15 act as reasonably prudent person would have acted, in light
 16 of the risks of further surgery an complications from the
 17 four brain surgeries that he already has incurred.

18 The defendant has the burden of proving that the
 19 plaintiff failed to avail himself of a reasonably safe
 20 procedure that would have greatly alleviated his injury.

21 If you find that the plaintiff is entitled to
 22 recover in this action, then in deciding the nature and
 23 permanence of his injuries and what damages he may recover
 24 for that injury, you must decide whether or not -- excuse
 25 me. You must decide whether, in not yet undergoing the

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1 cranioplasty or psychotherapy services, he acted as a
2 reasonably prudent person would have acted under the
3 circumstance.
4 In deciding that question, you will take into
5 consideration the evidence concerning the nature of the
6 treatments, the extent to which the operation or treatments
7 involve danger to the plaintiff, and the results that were
8 expected to be obtained from them.
9 If you find that in deciding not to have the
10 operation or psychotherapy, the plaintiff acted as a
11 reasonably prudent person would have acted, then the
12 plaintiff is entitled to recover for his injuries as you
13 find them to be. If, however, you find that a reasonably
14 prudent person would have submitted to the operations or
15 treatment, and that the operations or treatment would have
16 alleviated the injury, then you will take that fact into
17 consideration in deciding the amount of damages that you
18 award.
19 Now, during your deliberations, if your
20 recollection of any part of the testimony should fail or if
21 you have any questions concerning my instructions on the
22 law, you have a right to return to the courtroom to have any
23 question about my instruction answered, or to have any
24 testimony read back.
25 This case is going to be decided on the basis of

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1 answers that you give to certain written questions, which we
2 talked about, it's the document that's call the verdict
3 sheet. Each question is going to call for either a yes or a
4 no answer, a dollar amount, or a number of years. In
5 answering the questions, if you decide not to make an award
6 for any damages, then you should insert the word "none" or
7 "not applicable" in your answer.
8 While it is important that the views of all jurors
9 be considered, five of our six jurors who are going to --
10 I'll talk to you about that in a second -- five of the six
11 deliberating jurors must agree on the answers to any
12 question, but the same five persons need not agree on all of
13 the answers. When five of you have agreed on any answer,
14 the foreperson of the jury will write the answer in the
15 space provided for each answer, and each of you will sign in
16 the appropriate place to indicate your agreement or your
17 disagreement. Each question will be followed by an
18 instruction as to how to proceed based on your answer to
19 that question.
20 Now, if you disagree with an answer that five of
21 the other jurors have agreed upon, you should not stop
22 deliberating. When you get to the next question, it starts
23 all over again. The same five people do not need to agree
24 on the answers to any of these questions. We just need to
25 have five people agreeing on every question that is

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1 answered.
2 If any of you have a question, please write it down
3 on the form that the court officer will give you, and the
4 court officer will deliver the question to me. For legal
5 reasons, I must decide whether and how the question may be
6 asked, and what procedure to follow. So that you are aware,
7 you may have testimony read back to you, but you may not ask
8 additional questions to get more facts.
9 I've now outline for you the rules that apply to
10 this case and the processes by which you are going to weigh
11 the evidence and decide the facts. Before I go any further,
12 under the law, we have -- I told you about this in the
13 beginning. Six regular jurors, that are going to deliberate
14 on the case. Two of you are going to be alternates. While
15 you were out of the room last time, my court clerk, Lewis,
16 put your numbers the hopper and drew out two people to serve
17 as alternates. It's going to be Juror 7 and Juror 5. You
18 are going to be our alternates.
19 Did we want to change the seat assignments?
20 MR. O'HARA: Excuse me?
21 THE COURT: Change the seat assignments? I know I
22 have this in my instructions.
23 MR. HAWORTH: Doesn't matter.
24 MR. B. MORELLI: In terms of --
25 THE COURT: I think so, because of the verdict

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1 sheet.
2 So what's going to happen, let me just simply
3 explain this, because on the verdict sheet you are going to
4 be signing next to your numbers; okay? So the seating now
5 is going to change for the six regular jurors. You are
6 still One, Two, Three and Four. Juror Number Six is now
7 Juror Number Five, so you are going to be moving over this
8 way one seat; and Juror Number Eight is Juror Number Six.
9 You are going to be moving over two seats. And then our two
10 alternates are going to be in the back corner. You can stay
11 right where you are, and you can go over there. That's just
12 to simplify things, simply because where you're going to be
13 signing on the verdict sheet are going to correspond to your
14 juror numbers.
15 In few minutes you are going to be retiring to the
16 jury room for your final deliberations, and in order that
17 your deliberations can proceed in an orderly fashion, you
18 are going to have to have a foreperson. The foreperson's
19 vote is not entitled to any greater weight than that any of
20 the other jurors. Traditionally, Juror Number One acts as
21 the foreperson, however that is not required. The first
22 thing that you should be doing, for the six deliberating
23 jurors, when you go back to the jury room is going to be to
24 select who the foreperson is going to be.
25 Now, when you are in the jury room, please listen

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1 to each other, and discuss the evidence in the case among
2 yourselves. Your function, which is to reach a fair
3 decision from the law and evidence, is an important one, and
4 it's the duty of each of you as jurors to consult with one
5 another, to deliberate with a view towards reaching an
6 agreement on a verdict, if you can do so without violating
7 your individual judgment and your conscience.

8 While you should not surrender conscientious
9 convictions about what the truth is, and the weight and the
10 effect of the evidence on your minds, and while each of you
11 must decide the case for yourselves and not merely consent
12 to the decision of your fellow jurors, you should examine
13 the issues and the evidence before you with candor,
14 frankness, and with proper respect and regard for the
15 opinions of each other. Please remember in your
16 deliberations that this dispute between these parties is
17 very important to them. They and the Court rely on you to
18 give full and conscientious deliberation and consideration
19 to all of the evidence that was presented to you.

20 So, here is how this is going to work at this point
21 in time. Our two alternates, you are not excused from jury
22 duty. I'm anticipating that you may still be needed, but
23 the way this works is you are not back in the same jury
24 room. We are putting you someplace else, and the same rules
25 that I have given you throughout the trial about the use of

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1 electronic devices, about talking about the case, you still
2 can't talk about the case among yourselves. All of those
3 rules still apply to you; okay? You will be able to use
4 your electronic devices while you are sequestered in a
5 different room, but you have to follow the rules that I gave
6 you.

7 The rest of the jurors, as I told you in the
8 beginning of the case, my officer is going to be collecting
9 any electronic devices that you brought. We don't want to
10 have any distractions or improprieties going on in the jury
11 room. I'm sorry to have to do that, but believe it or not,
12 I have had a problem where I had to declare a mistrial
13 during a jury deliberation for that very reason. Obviously
14 we don't want something stupid like that happening. So the
15 officer is going to be taking these devices.

16 I also want to tell you one other thing, before I
17 forget. Jury deliberations can only occur in that room;
18 okay? You can't call up each other at night and try to get
19 a jump start on the next day's deliberations. You can't go
20 out to lunch together and get a table and decide the case,
21 or whatever. Any time that you have anything to discuss
22 about this case, can only be done while you are in the jury
23 room, and at no other place whatsoever.

24 Can I see counsel, just very quickly.
25 (Whereupon, an off-the-record discussion took place

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1 at the bench between the Court and counsel.)
2 (Whereupon Court's Exhibit II, was marked and
3 received.)
4 THE COURT: The reason why I just wanted to have
5 that discussion right here is because, as I was starting to
6 give you the instructions, or halfway through the
7 instructions my computer up and died, which is where I had
8 the latest version of the instructions, and counsel was kind
9 enough to give me a copy to read from, but I think I misread
10 a couple of things. What I want to do is I want to talk to
11 the attorneys very quickly and make sure that any
12 instructions that I may have misspoken on get fixed, so just
13 bear with me for just a couple of seconds.

14 THE COURT OFFICER: All rise. Jury exiting.
15 (Whereupon, the jury was excused from the
16 courtroom.)
17 (Whereupon, there was a pause in the proceedings.)
18 THE COURT: On the record, please.
19 So as I understand it, after conferring with
20 counsel, the charges will stand as -- the charges will stand
21 as read. Obviously the objections to the substance that we
22 had talked about before the charges, you know, those apply,
23 but I think we all agree that the language that was read is
24 the correct language.

25 MR. B. MORELLI: Okay.

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1 MR. O'HARA: That's fine.
2 THE COURT: So now what I'm going to do is I'm
3 going to bring them out and send the six jurors back for
4 deliberations, and the two alternates for sequestration. I
5 can actually send the two alternates home, at this point.

6 MR. B. MORELLI: Might as well. They have until
7 five o'clock, or no?
8 THE COURT: I can give them until quarter of.
9 MR. B. MORELLI: All right.
10 MR. O'HARA: Let them get started.
11 (Whereupon, there was a pause in the proceedings.)
12 THE COURT OFFICER: All rise. Jury entering.
13 (Whereupon, the jury entered the courtroom.)
14 THE COURT: Okay. So what's going to happen from
15 here, now, is Jurors 1 through 6, you are going to go back,
16 and we are going to get started on this. We are going to be
17 going until about a quarter to 4:00 today --
18 MR. B. MORELLI: 5:00.
19 THE COURT: Yes. Thank you.
20 Quarter to 5:00 today, and then we are going to be
21 coming back, everybody coming back, at 9:15 on Monday
22 morning. As soon as everybody is here, our six main jurors
23 are here, you can get going on your way on the
24 deliberations.

25 Remember if there are any exhibits that you want,

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1 any testimony you want read back, you have access to
2 anything that is in evidence.

3 Jurors, now, Number 7 and 8, there's no reason that
4 you need to stick around for the rest of the day doing
5 nothing, so we'll just see you back on Monday morning; okay?

6 All right. Thank you, everyone.

7 THE COURT OFFICER: All rise. Jury exiting.

8 (Whereupon, the jury was excused from the
9 courtroom.)

10 (Whereupon, a recess was taken.)

11 * * * * *

12 THE COURT: Okay, Ladies and Gentlemen. I'm going
13 to be letting the jury go. I'm going to ask that you just
14 hang out until they clear out, and we'll see you back Monday
15 morning.

16 (Whereupon, the proceedings were adjourned to
17 Monday, December 9, 2019 at 9:15 a.m.)

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