

1 present their final arguments. When they are
2 through, I will have a few final instructions about
3 your deliberations.

4 And members of the jury, you will hear first in
5 closing arguments from attorneys -- the attorney for
6 the plaintiff, and then the attorney for the
7 defense, and then the attorney for the plaintiff has
8 an opportunity to make what is called a rebuttal to
9 the defense.

10 And so with that, members of the jury, if you
11 would pay careful attention, counsel will now
12 address you.

13 MR. AVERA: May it please the court, counsel.

14 It is a pleasure to talk to you again, ladies
15 and gentlemen. Good afternoon.

16 Contrary to what the defendant told you in its
17 opening statement, the nature of the operations of a
18 Domino's Pizza franchise is the making of pizza and
19 the delivery of that pizza. It's not the choosing
20 of an accountant, it's not the choosing of a lawyer
21 or opening a bank account or deciding whether the
22 franchise is going to operate as a corporation or a
23 sole proprietorship or an LLC. No. It's the making
24 of pizza and the delivering of pizza.

25 Now, today, I'll be referencing a few exhibits.

1 There are 63 total, I believe, that are in evidence.
2 And one of them that you'll look at today, I think,
3 will be Exhibit 20, because that's the manager's
4 reference guide. That's where the standards, the
5 rules, and controls are. It's about 600 pages.

6 The standards are in Section 12. It's about 80
7 pages. The product is Section 2. That's where they
8 talk about making the pizza. That is the nature of
9 the business. It is the nature of the agency
10 relationship between Domino's Pizza, LLC, and its
11 franchise.

12 When I spoke with you on Wednesday, I had quite
13 a few bullet points that I wanted to put in front of
14 you to demonstrate the magnitude of Domino's right
15 of control over Mr. Fischler's franchise, his
16 employees, and their franchises in general.

17 I think this afternoon, I want to talk to you a
18 little bit about what we have seen over the last
19 couple of days on the evidence of whether Domino's
20 has a right of control over the franchise. This
21 isn't difficult, and you may not be wrestling with
22 this at all, but I have to address it today and I
23 thought I'd address it in a little bit of detail.
24 And I don't want to replot the ground that I did in
25 opening and with the witnesses Mr. Devereaux,

1 Mr. Fischler, Ms. Klinge.

2 This is a couple of pages into the manager's
3 reference guide, Exhibit 30. And it says
4 franchisees are required to adhere to all standards
5 in operating their stores. That's the second page,
6 three-ring binder.

7 In this case, we have the burden of proving
8 that Domino's is the principal and Fischler
9 Enterprises and its employees are the agents of
10 Domino's in the making and delivering of pizza, not
11 in selecting an accountant, not in selecting a
12 lawyer, not in whether somebody got paid a bonus,
13 not day-to-day operations.

14 The day-to-day operations are the making and
15 delivery of pizza, because how else do you protect
16 the brand, how else do you protect the
17 representation, how else do you protect the
18 trademark other than by controlling how they make
19 the pizza and how they deliver the pizza?

20 Now, I'll talk about the definition of
21 independent contractor in just a moment because we
22 have to prove that Domino's has that right of
23 control and that Fischler and its employees are
24 agents.

25 Let's start with intellectual property.

1 Domino's can tell this gentleman, Mr. Fischler, if
2 you come up with a concept or an idea, you sign that
3 contract -- and you may hear the defense talk about
4 entering into a contract. I submit to you that's
5 part of the right of control. If Mr. Fischler
6 submits to the control in the contract, that's his
7 decision. That doesn't dictate whether there's a
8 right of control or not. He's entered into that
9 contract willingly. Nobody disputes that.
10 Mr. Fischler has said well, I didn't really want to
11 do it, but I did it anyway.

12 You're going to find right of control in the
13 franchise agreement, which is Exhibit 18.

14 So they can take his intellectual property and
15 keep it for themselves, and if they make money off
16 of it, not share any of the profit with him. Not a
17 whole lot of independence there, ladies and
18 gentlemen. None, actually.

19 They can block him from pursuing other business
20 pursuits unless he gets written permission from
21 them. There is not a lot of independence there in
22 not being able to pursue other business interests.
23 Of course that's a right of control. Of course it
24 is. How could it not be?

25 The sale of franchise. Look at Sections 19 and

1 20. Counsel told you that they don't take the
2 business if they terminate it. Well, you will see
3 particulars about what they can do, what they can
4 require. They can prevent him from selling the
5 franchise to somebody that he wants to. It has to
6 be somebody that they approve. Of course, that's
7 right of control.

8 And I don't suggest for a moment that Domino's
9 should not have a right of control over all these
10 things, because they have the platform. Wonderful
11 for them.

12 But our law is that if they are a principal and
13 Mr. Fischler and his employees are agents, then
14 Domino's is responsible for any negligence of those
15 agents. That's our law.

16 Quickly we'll go through all of the things that
17 you will see -- and ladies and gentlemen, I invite
18 you to look at Exhibit 30. It's a three-ring
19 binder, it's black. Section 12 is the standard,
20 Section 2 is the product.

21 There's another section that the franchisees
22 have to cover. I think Mr. Devereaux told you it's
23 image and identity, something like that. We haven't
24 covered all of it. I've given you the high points.
25 You can see for yourself what's in there; no

1 weapons, no firearms, no mace. It doesn't matter if
2 it's a law enforcement officer. No bad drivers. No
3 passengers unless they're a Domino's employee. You
4 can't bring a spouse, can't bring a girlfriend or
5 boyfriend. No radar detectors. No offensive bumper
6 stickers. They control the facial hair of our team
7 members; what tattoos can be visible and where. No
8 motorcycles if you want to deliver pizza. Bicycle
9 equipment, we're going to dictate what equipment has
10 to be on there.

11 Food preparation. We haven't even gone into
12 Section 2, the food preparation, because this
13 tragedy happened not in the making of the food part
14 of the operations, the day-to-day operations, if you
15 will, it happened in the delivery part. But it is
16 right of control, and they're entitled to control
17 it. We understand why.

18 If the defense says, we do these things because
19 of brand and we do these things because of
20 reputation and trademark, it doesn't matter why they
21 have the right of control. You won't see an
22 instruction on the law that says, well, if the right
23 of control is for brand, then they get a pass.
24 You're not going to see that because that's not the
25 law. It doesn't matter if they do it for those

1 things. It just matters whether they have the right
2 of control. Mr. Fischler gives up discretion.

3 And then Mr. Devereaux's admission. The back
4 and forth with Mr. Devereaux, ladies and gentlemen,
5 I would submit was a square dance to try to avoid
6 acknowledging the right of control that I think
7 everybody in the courtroom recognized from the back
8 and forth with Mr. Devereaux.

9 And you may recall, and you should rely on your
10 own notes or your own memory if it's different, that
11 Mr. Devereaux at one point actually admitted that we
12 had these controls -- his words -- in place because
13 we want to protect our brand and our reputation.
14 That's fine.

15 And I suggested to him that if you don't
16 control all those things, chaos results, and he kind
17 of waffled on that. At the very end, he said our
18 position is we have no right of control. With all
19 of that evidence in front of you, with common sense
20 staring him in the face about whether they have a
21 right of control or not, Mr. Devereaux looked at all
22 of you and said, we have no right of control. Of
23 course they have right of control.

24 Judge Roche just went over the instructions
25 that are important on this issue of whether Fischler

1 Enterprises and its employees are agents of Domino's
2 Pizza, LLC. Remember, Mr. Fischler [sic] brought up
3 about, well, we don't decide whether Mr. Fischler
4 sets it up as a sole proprietorship or LLC, but we
5 learned that he does business as d/b/a Domino's
6 Pizza.

7 And Judge Roche told us about what constitutes
8 an agent. An agent is someone, a principal -- that
9 would be Domino's here -- who is responsible for the
10 negligence of its agent if that occurs while the
11 agent is performing services which it is employed to
12 perform or while the agent is acting at least in
13 part because of a desire to serve the principal and
14 is doing something that is reasonably incidental to
15 the principal/agent relationship or something, the
16 doing of which was reasonably foreseeable and
17 reasonably to be expected of persons similarly
18 situated.

19 Desire to serve a principal? Back to the
20 making and delivery of pizza. That's what Domino's
21 is.

22 Now, that's a round peg that fits in a round
23 hole. That definition of agent, Domino's right of
24 control, and what was happening on the night of
25 January 13, 2011, when Mr. Kidd failed to use

1 reasonable care and violated Mr. Wiederhold's right
2 of way and caused this crash.

3 Domino's would have you believe that
4 Mr. Fischler and his employees are independent
5 contractors. An independent contractor, Judge Roche
6 told you, is a person who is engaged by another to
7 perform specific work according to his own methods
8 and whose methods of performing the work are not
9 controlled by the company engaging him and are not
10 subject to the company's right of control.

11 That's a square peg that won't fit in that
12 round hole. That does not comport with any version
13 of the evidence that you have heard in this
14 courtroom about whether Domino's has a right of
15 control. They absolutely do. We presented it to
16 you, not just by the greater weight of the evidence,
17 which is our burden which we gladly accepted. We
18 presented it to you by clear evidence, convincing
19 evidence from their own documents, from testimony
20 from their director of franchise operations, from
21 the franchise operator himself who testified that
22 they control every aspect of his day-to-day
23 operations with the possible exception of pricing.

24 And Ms. Klinge, who told you, you're the pizza
25 delivery experts; right? Yes.

1 They have a formula for doing it; right? Yes.

2 And they control that; right? Yes.

3 These are from the people involved in it on the
4 front lines, day-to-day, making the pizza and
5 delivering it, and from the corporate representative
6 that appeared here in front of you.

7 They spent two days trying to convince us that
8 right of control is not something they have. And I
9 would submit to you, ladies and gentlemen, that that
10 doesn't fit with anybody's common sense. Your
11 common sense should dictate to you the answer to
12 this question is yes, they have a right of control.

13 I want to go to that night of January 13, 2011.
14 On that dark road, on the way from Edgewater to
15 Orlando, there wasn't much happening in Orlando.

16 And we have the evidence of Mr. Kidd's
17 testimony and you saw his testimony and how he
18 presented it and how he explained things. You as
19 the jury of the facts in this case, decide the
20 credibility of those issues.

21 Pulling up parallel to the travel lanes,
22 looking either over his shoulder through tinted
23 glass or in his rearview mirror through tinted glass
24 or a side view mirror with tinted glass, with
25 traffic oncoming in the right lane, he believes no

1 traffic coming in the left lane, he pulls out.

2 Yvonne Wiederhold says somebody pulled out all
3 of a sudden. I screamed. Rich hit the brakes and
4 swerved left.

5 In the moments after that, Mr. Kidd, who told
6 you he really couldn't tell you whether he pulled
7 out in front of Mr. Wiederhold or not, although he
8 told you he saw Rich Wiederhold go right by him,
9 sliding by on the left-hand side, called 911, and
10 this is what we hear. This is Exhibit 63. Listen
11 carefully.

12 (911 Recording playing.)

13 RECORDED VOICE: Thursday, January 13, 2011.
14 The time, 7:13 p.m.

15 911 OPERATOR: Fire rescue. What is the
16 address of the emergency?

17 MR. KIDD: Okay. I'm in Christmas, Florida.
18 It's about 25000 East Colonial Drive. It's across
19 the street from Circle K and Shell. They're in a
20 pickup truck. The gentleman is hurt who was
21 driving.

22 UNIDENTIFIED VOICE: Pulled out in front of us.

23 911 OPERATOR: Okay. It's in front of the
24 Shell and Circle K?

25 MR. KIDD: Yes, ma'am.

1 911 OPERATOR: What's the phone number you're
2 calling me from?

3 MR. KIDD: (407) 558-0843.

4 911 OPERATOR: All right. I'm getting some
5 help on the way.

6 MR. KIDD: She said we need an ambulance quick.

7 911 OPERATOR: Okay. We're getting some help
8 on the way out there.

9 Now, tell me what happened.

10 MR. KIDD: Somebody pulled out in front of me
11 and they flipped over, the car flipped over. They
12 ran off the road.

13 911 OPERATOR: Is anyone pinned?

14 MR. KIDD: I believe the gentleman -- the
15 gentleman can't breathe. She said they need an
16 ambulance as soon as possible.

17 911 OPERATOR: First of all, I need to know if
18 anybody is pinned. Do we need the Jaws of Life to
19 cut anybody out of the car?

20 MR. KIDD: I'm sorry, sir?

21 911 OPERATOR: Do we need the Jaws of Life to
22 cut anybody out of the car?

23 MR. KIDD: I don't believe so. The door can
24 open fairly well. He's just -- he's a little bit
25 pinned inside.

1 911 OPERATOR: He is a little bit pinned?

2 MR. KIDD: Yes, sir. He's not breathing very
3 well.

4 911 OPERATOR: Are we going to need to get
5 special tools to get him out of the car?

6 MR. KIDD: I don't believe so, sir, no.

7 911 OPERATOR: Okay. All right. What's your
8 name? We already have the highway patrol and the
9 fire rescue on their way over there.

10 MR. KIDD: I see them right now.

11 911 OPERATOR: Can you give me a description of
12 the vehicle?

13 MR. KIDD: I'm in a Domino's vehicle, and a
14 white sign on my car is lit up. It's a maroon
15 colored pickup truck, a maroon colored pickup truck.

16 911 OPERATOR: It's on its roof or on its side
17 right now?

18 UNIDENTIFIED VOICE: Are they coming?

19 MR. KIDD: The ambulance is coming right now.
20 It's coming. It's coming.

21 911 OPERATOR: Is it on its roof or on its
22 side?

23 MR. KIDD: It's on its -- as it normally would
24 be. It's not on the roof. It did roll one time.
25 The ambulance is here.

1 911 OPERATOR: All right. You can go.

2 MR. KIDD: I'm sorry, sir?

3 911 OPERATOR: They're going to help you. You
4 can hang up now.

5 MR. KIDD: All right. Thank you.

6 RECORDED VOICE: Thursday...

7 (911 Recording concluded.)

8 MR. AVERA: Mrs. Wiederhold testifies that she
9 hears a voice, her voice on that tape. You can
10 decide for yourself, but I would submit to you that
11 there are three voices that we hear on this 911
12 recording; that of the 911 operator, that of
13 Mr. Kidd, he acknowledges that's him, and the third
14 voice, the person screaming in the background.

15 Let me let you listen very carefully to a
16 shorter clip from what you just heard.

17 (911 Recording playing.)

18 MR. KIDD: Okay. I'm in Christmas, Florida.
19 It's about 25000 East Colonial Drive. It's across
20 the street from Circle K and Shell. They're in a
21 pickup truck. The gentleman is hurt who was driving.

22 UNIDENTIFIED VOICE: Pulled out in front of us.

23 (911 Recording concluded.)

24 MR. AVERA: Shorter version, Mr. Steinberg, one
25 last time.

1 (911 Recording playing.)

2 UNIDENTIFIED VOICE: Pulled out in front of us.

3 (911 Recording concluded.)

4 "He pulled out in front of us," I submit to you
5 is what Mrs. Wiederhold said. You can listen to it
6 for yourselves.

7 You heard Mr. Fournier say here on the stand,
8 and I submit to you, ladies and gentlemen, I think
9 we demonstrated that the time/distance is about
10 moving vehicles around. If you move Mr. Kidd
11 further back from the travel lanes, it takes him
12 longer to get in the lane and the further back
13 Mr. Wiederhold is.

14 The evidence is consistent from what
15 Mrs. Wiederhold said, that all of a sudden he pulls
16 out. Mr. Wiederhold is presented with an emergency
17 and he reacts to it by stopping, swerving left. He
18 can't go right to avoid hitting Mr. Kidd.

19 Mr. Fournier agreed with that, agreed with what
20 Mrs. Wiederhold describes if in his analysis he just
21 moves Mr. Kidd up closer to the travel lanes and
22 Mr. Kidd is accelerating a little bit faster.

23 Richard Wiederhold had the right-of-way here.
24 He was a trained, dedicated emergency services
25 worker who had been in that field of work for over

1 30 years as a fireman, as a paramedic, as a district
2 fire chief.

3 To argue about evidence that he just drove,
4 seeing somebody pull out in front of him and keep
5 going and then pass on the left, defies common
6 sense. And when you are asked that question whether
7 Mr. Kidd was negligent, you should answer that
8 question yes, because our common sense tells us when
9 things like this happen, never intentionally -- when
10 people turn left in front of people and pull out in
11 front of people, they don't do it because they saw
12 him coming. They say they came out of nowhere.

13 "I don't know where he came from." You can
14 draw inference that it might just have been
15 difficult for Mr. Kidd to see Mr. Wiederhold for
16 whatever reason, because of those tinted windows and
17 his angle to the road; and that he should have just
18 paused a little bit longer, because doubt means
19 don't, and if in doubt, don't pull out.

20 While we're talking about the crash, I want to
21 make sure that we are perfectly clear that there was
22 an autopsy performed on Rich Wiederhold. That
23 autopsy was performed and those findings were
24 available to complete the cause of death form, the
25 death certificate, which is Exhibit 15.

1 The medical examiner found that Rich died from
2 bilateral pulmonary thromboemboli, blood clots, as a
3 complication of quadriplegia caused by a neck
4 fracture from a vehicular accident. Just so we're
5 clear about what he died from.

6 This should be the verdict form that you will
7 take back with you, and I think everybody will have
8 a copy of the instructions, but I think Judge Roche
9 will give you one copy of the verdict form for the
10 foreperson, for all of you to deliberate.

11 And that first question that you'll have to
12 answer, we've already talked about, is the one on
13 whether Fischler Enterprises of CF, Inc., and
14 Jeffrey Kidd were agents of Domino's Pizza, LLC, at
15 the time of that motor vehicle crash; operations,
16 their day-to-day, typical, normal, making pizza and
17 delivering it. And the answer to that question is
18 yes, not just by the greater weight; by clear,
19 convincing evidence.

20 The second question: Was there negligence on
21 the part of Jeffrey Kidd that was a legal cause of
22 Richard Wiederhold's injury and death? That answer
23 is yes. Mr. Wiederhold had the right-of-way and the
24 evidence is pretty clear from Mr. Fournier that
25 Mrs. Wiederhold's description of what happened fits

1 if he moves Mr. Kidd's vehicle and increases his
2 rate of acceleration somewhat.

3 Was there negligence on the part of Richard
4 Wiederhold that was a legal cause of injury and
5 death? The answer to that, by the greater weight of
6 the evidence, has to be no.

7 Now, you have heard it a couple of times during
8 this case, and I want to remind everybody here, on
9 this question, it is not our burden to disprove that
10 Rich Wiederhold was not negligent. It is the
11 defendant's burden in this civil case, because they
12 allege he was negligent, to prove that Rich
13 Wiederhold was negligent. And they have failed in
14 their proof, because their proof was Mr. Wiederhold
15 and Mr. Fournier and his time/distance analysis.
16 And he conceded for our side that Mrs. Wiederhold's
17 version of events fits if he moves Mr. Kidd's
18 vehicle. That's all it took, was to do that.

19 He admitted to you the variables that went into
20 his calculation. He admitted that he made some
21 assumptions. No testimony about where Mr. Kidd was
22 in the median. Mr. Kidd did not know.

23 They failed in their proof and the answer to
24 this question should be no.

25 I am adverse to addressing it, because if the

1 defense comes up and they're going to argue to you
2 today that Mr. Wiederhold was negligent, and if you
3 answer yes to that question, number three, then
4 you're going to allocate negligence between Mr. Kidd
5 and Mr. Wiederhold with the total being 100 percent.

6 The defense has failed in carrying their burden
7 on this question, but if you do find that they have,
8 a gentleman with his training, reacting to an
9 emergency, at night, unexpected, sudden, you should
10 not give him more than a point or two or three out
11 of the total of 100 of negligence with 97, 98,
12 99 percent going to Mr. Kidd and 1, 2, or 3 percent
13 going to Mr. Wiederhold if you think or come up with
14 some small thing that he should have thought of,
15 could have done, that he didn't do.

16 You can see it in their eyes. Just a few weeks
17 before this crash happened, I would submit to you
18 that the lady that we see in that Christmas card is
19 very different from the lady we saw yesterday. You
20 can see it in their eyes. You can see it in their
21 smile. All of us need more love in our lives. And
22 Rich Wiederhold, what luck to have her there when he
23 most needed it.

24 Most people growing up, when they're young, ask
25 their parents, how do I know when I'll be in love?

1 I remember asking that question when I was a teen,
2 and my mom said something along the lines, and I
3 remember, well, you'll know it when you're in love.
4 But how will I know?

5 And she told me, I'll tell you, because I'll
6 see it in your eyes.

7 And that came back to me decades later when I
8 was holding my first child, my first newborn,
9 looking at her. And my dad just happened to pop
10 around the corner and kind of surprised me and says,
11 I see it in your eyes. And I didn't know -- it
12 didn't come back to me at the moment, and I looked
13 at him and I said, What do you mean?

14 He goes, I can see it in your eyes how much you
15 love her.

16 Consider the circumstances, their marriage.
17 Phil Mangel says she asked to take wedding
18 photographs of them. Yvonne Wiederhold, in a
19 difficult situation in the hospital, asked by
20 Mr. Wiederhold's son with whom Mr. Wiederhold has
21 not had a great relationship, and that's nobody's
22 fault, we don't cast aspersions either way or the
23 other. But one could see Mrs. Wiederhold in those
24 circumstances being asked that question, Are you
25 married? Are you engaged?

1 And she's dealing with the enormity of the
2 circumstances, saying no to the marriage question,
3 because that was true when he was in the hospital.
4 And as to the second question, thinking in that
5 moment, shouldn't this come from Rich? Shouldn't
6 this come from his dad?

7 Consider the nature of their marriage, the
8 level of devotion, dedication, and love,
9 understanding as the weeks went by, the enormity of
10 what was coming, of staying by his side night and
11 day, of traveling to Atlanta to make sure he gets
12 the best care at the Shepherd Center, being gone
13 from home for six months, learning all of the skills
14 necessary to take care of him, to shift his body
15 weight, to give him medication, to clean his feeding
16 tube, to clean his colostomy bag, his urinary
17 catheter, scratching his nose if it itches,
18 responding to his demands because he's grumpy, and
19 gosh he had it. That level of devotion, dedication,
20 and love.

21 She was the angel that he needed most. When he
22 needed somebody, she looked at the promise that she
23 had made and she kept it. I don't know about many,
24 I don't know about some, but we all know there are
25 people that would walk away from that, and she did

1 not.

2 Exhibits 47 through 61 are other photographs.
3 I challenge you, ladies and gentlemen, to look in
4 their eyes in those other photographs, look at their
5 smiles, consider what she did over those nine months
6 when she brought him home in June of 2003 -- sorry,
7 13 -- June, 2011, and for those nine months, the
8 daily routine. The good days, as she described
9 them; a good day for her is what she described on
10 the stand and what Dr. Snyder observed.

11 She told you she has memories. She is so, so
12 very thankful of the great times they had and the
13 good memories that she has. But, oh, how her soul
14 has been scarred by the nightmare of what happened,
15 taking care of him at home, making sure that he was
16 taken care of, refusing home healthcare because it
17 did not live up to her standards. With the
18 exception of friends that would help out when she
19 needed it, it was just her.

20 Total amount of medical and funeral expenses is
21 863,056.55.

22 Total amount of renovation expenses are
23 \$114,732, and I don't believe those numbers are
24 disputed at all.

25 What will be disputed is number seven, and that

1 is the total amount of damages sustained by
2 Mrs. Wiederhold for the loss of her husband's
3 companionship and protection, for her pain and
4 suffering as a result of Mr. Wiederhold's injury and
5 death from the past, June of 2011, and into the
6 future.

7 Here's where you bring your life experiences,
8 your common sense, what is just and what is fair.
9 Common sense drives a just and true verdict, and
10 that's where your common sense comes in to play.
11 And I'm going to suggest to you that an amount that
12 would be fair in the past would be, for the last
13 eight years, \$1 million a year, for the sum of
14 \$8 million, and for the remainder of her days, the
15 sum of \$4 million.

16 Dr. Damis said that he has hope that she will
17 continue to improve, but here we are eight years
18 later, and all I can do is point out to you what you
19 saw on the stand yesterday. A fragile woman,
20 scarred by losing her husband, still wanting to be
21 with him, remembering the memories of the good times
22 and the nightmare of the bad.

23 I'm going to have an opportunity to chat with
24 you briefly after the defense is done, but I want to
25 thank you, and as we all do, for your sacrifice,

1 your service, and your willingness to be here to
2 resolve this dispute, and to enter a truly just and
3 fair verdict.

4 Thank you.

5 MR. WOMBLE: Ready?

6 THE COURT: Yes, sir.

7 MR. WOMBLE: Good afternoon. I have a few
8 things to start out with that may seem a little bit
9 random because they concern matters I was thinking
10 about over lunch, and then I'll get back to, excuse
11 me, the presentation.

12 Ladies and gentlemen, using the evidence that
13 you have and drawing a reasonable inference on the
14 evidence, it appears that you may have concluded
15 there's two scenarios in how this accident occurred.
16 According to Mrs. Wiederhold, they were in the left
17 lane of westbound 50 for a long time and there were
18 cars to her right, and the accident occurred very
19 sudden.

20 But what is clear under that scenario is that
21 Mr. Wiederhold drove his vehicle in a careless
22 manner, and there are four different ways. There is
23 no doubt he was speeding, which is a violation of
24 Florida law, because -- maybe it's five ways.

25 Because of the speed at which he was traveling,

1 it made it more difficult for him to avoid this
2 accident. He failed to brake when he had a
3 reasonable opportunity to do so, and then once he
4 swerved into the grassy median, instead of allowing
5 the vehicle to come safely to a rest, he decided to
6 steer back onto the roadway, and that's what caused
7 the loss of control of his Tacoma.

8 Now, Mr. Kidd testified that he looked for
9 oncoming traffic. One vehicle went by. There were
10 two other vehicles, and the left lane was clear.
11 You may choose to draw an inference from that, that
12 that's because Mr. Wiederhold's Tacoma was not in
13 the left lane. And that as Mr. Kidd pulls out into
14 the roadway, he does change lanes, and there's
15 Mr. Kidd. So he decides to swerve into the median.

16 There is no evidence in this case that Mr. Kidd
17 failed to stop in the median, none.

18 When you brake -- this concerns Mr. Fournier.
19 You don't speed up. What Mr. Fournier was
20 attempting to explain was that he has to make
21 certain assumptions as to the amount of braking, and
22 based upon those assumptions, it's going to affect
23 whether he was going faster earlier in the accident.

24 Mr. Fischler, on the issue of control, he gave
25 a deposition and said there was control. In this

1 courtroom, when asked specific questions about how
2 the franchise works, he said, well, they don't
3 control many things. He even said, I am older now
4 and I understand better.

5 In regard to the manager's reference guide,
6 counsel has referred to that. It is clear from the
7 evidence that the three sections which comprise the
8 standards are what has to be complied with.
9 However, that would leave 18 sections which are
10 informative only and do not have to be followed.

11 You heard from Mr. Wehbe. Mr. Wehbe was not
12 really chatty. You know, he just answered his
13 questions succinctly. But he far exceeded the
14 standards and grew a very successful franchise
15 business.

16 Mr. Devereaux was employed by Domino's.
17 Mr. Fischler has a Domino's franchise. Mr. Wehbe
18 does not have a franchise anymore. He has no dog in
19 this fight, no interest in the outcome at all. And
20 he says he's an independent businessman.

21 Lastly, before I turn to my prepared remarks,
22 we all understand this was a terrible thing and that
23 Mrs. Wiederhold lost her husband and it's very
24 emotional. And we don't mind if you feel emotion
25 and sympathy for her. In fact, I think everybody

1 does.

2 But as the court will tell you and in the jury
3 instructions that you have, the court is going to
4 tell you that in discharging your duties as a juror,
5 you cannot let sympathy affect your decision.
6 Obviously, if you do, it would be very unlikely that
7 my client could obtain a verdict in its favor. If
8 you base your decision solely on how you feel for
9 Ms. Wiederhold in a terribly unfortunate situation,
10 it's not discharging your duties as a juror if you
11 do that.

12 Now, the last thing before I go to this. An
13 agent is a person or entity who acts for another and
14 whose actions are controlled by the principal or are
15 subject to the principal's right of control.

16 A couple of comments. In assessing whether
17 there is control, it doesn't say control part of the
18 actions. It doesn't say control the minimum
19 requirements and then you're free to be an
20 independent business and make your own decisions.
21 It says actions. It's not modified; it's all
22 actions.

23 An independent contractor is a person who is
24 engaged by another to perform specific work
25 according to his own methods. What did Mr. Wehbe

1 tell you? He performs his work or did perform his
2 work as a franchise, and used his own methods.

3 So ladies and gentlemen, you know this, but I'm
4 going to remind you. Was Fischler and Kidd -- were
5 they agents of Domino's? The defense contends the
6 answer to that is no. Plaintiff has not carried its
7 burden of proof.

8 Was Mr. Kidd negligent? We will address this,
9 but the evidence does not show that he was
10 negligent. And as I mentioned to you in four or
11 five different ways, Mr. Wiederhold carelessly drove
12 his vehicle.

13 You know this, ladies and gentlemen, from your
14 jury instructions, so I'm going to move on. The
15 burden of proof is defined in what you have in your
16 hands. If the plaintiff doesn't carry the greater
17 weight of the evidence, the verdict should be for
18 Domino's.

19 This is the greater weight of the evidence
20 instruction. You're now familiar with it. What's
21 more persuasive, what's more convincing? On agency,
22 the plaintiff does have the burden of proof on that,
23 that Domino's had the right to control. And you can
24 consider whether this is the control of the minimum
25 standards in order to protect your brand and

1 trademark or whether Domino's had the right to
2 control the day-to-day operations of Fischler and
3 Kidd.

4 You know this from what you've heard in the
5 courtroom. You have to have this consistency if
6 you're going to have a successful franchise
7 situation.

8 Domino's creates a framework which allows these
9 individual franchises to run a successful business.
10 Yes, there are standards. The success of the system
11 depends on maintaining the reputation and the brand.

12 So there is certain control, limited control in
13 order to protect the brand and the trademark.
14 That's different than controlling all the day-to-day
15 operations.

16 Excuse me.

17 MR. McCLURE: I didn't do it.

18 MR. WOMBLE: Did I do it?

19 Just one second, everybody. For the record,
20 I'm not going to accuse Mr. Avera of doing it.

21 MR. AVERA: I think it was me. I apologize.

22 MR. WOMBLE: No problem at all.

23 You have learned all about the franchise
24 system, so I'm going to move on.

25 You know, though, that on day-to-day

1 operations, let me remind you, they advertise, they
2 hire, they set schedules, they determine how much
3 they pay their employees, they supervise their
4 employees, and discipline them. That's day-to-day
5 operations, and Domino's has no right to control
6 these matters.

7 You select your managers, your human resource
8 policies, bonus, vacation, and owner draw. Yes, and
9 that is important. You've got to comply with
10 building codes, health department, comply with laws
11 -- Domino's Pizza has no right to control the way
12 they do that.

13 Tax, yes, C.P.A. Bookkeeping, budgeting,
14 sales, cash flow, separate bank accounts. They get
15 to keep the profits; Domino's does not. And if they
16 have losses, Domino's doesn't share in the losses.

17 They have management who can do all of these
18 things.

19 The contract. This is in evidence, and I want
20 to highlight a few things, some of which you have
21 seen. The franchisee must directly supervise the
22 store, solely responsible for recruiting, hiring,
23 scheduling, supervising and paying the person. This
24 was the intent of the parties.

25 Independent contractor. When these parties

1 executed this contract, it was their intent that
2 Mr. Fischler's company would be an independent
3 contractor.

4 Operating assistance. You assume and
5 understand -- you acknowledge and understand that it
6 is your responsibility to operate the store. We
7 can't direct your employees in the operation of the
8 store. That's directly on point with the issue we
9 have in the case.

10 The manager's reference guide, counsel showed
11 you the first sentence, franchisees are required to
12 adhere to all standards, but didn't mention the next
13 sentence: Information contained in the other
14 sections of the MRG are for informational purposes
15 only and they are not required by Domino's to adopt
16 or use any of those policies.

17 Independent business, able to make their own
18 decisions? Yes.

19 Mr. Devereaux you heard from recently, so I'm
20 going to go fast here. He's a director.
21 Significantly, these standards that counsel will say
22 Domino's Pizza imposes on the franchises were
23 created by a joint group, a group of both Domino's
24 Pizza and a group of franchisees. So these
25 standards that counsel talks about, well, this

1 establishes a right to control, they helped draft
2 those standards.

3 Trademark, brand, we talked about that.

4 They're responsible for how they implement the
5 standards. They can use their own training
6 materials. They go way above Domino's minimum
7 standards. I've already mentioned this.

8 So really, if you look at it and do the math,
9 really, out of that Manager's Reference Guide,
10 really only 14 percent are what is required.

11 You know, maybe this was so self-apparent that
12 I didn't need to ask it. Domino's Pizza did not
13 have the right to control how Mr. Kidd drove his
14 vehicle that day.

15 Mr. Wehbe, I mentioned, the kiosks, considered
16 himself a local business owner, created his own
17 guides, training higher than Domino's standards.
18 That's day-to-day operations in excess of the
19 standards. And he feels that Domino's did not have
20 the right to control his day-to-day activities.

21 Mr. Fischler, let's talk about a different kind
22 of control. He controlled Mr. Kidd, hired him,
23 trained him, supervised him, scheduled him, directed
24 deliveries, salary. And significantly, when the
25 accident occurred, who did Mr. Fischler [sic] call?

1 Did he call Domino's Pizza, LLC? No, he reported it
2 -- he didn't report it. He didn't report it to
3 Domino's Pizza, LLC. Mr. Kidd told Mr. Fischler,
4 his employer.

5 So on the first issue on what we're discussing
6 today, the agency, which is the first question on
7 the verdict, the answer to that question the defense
8 contends is no. Domino's did not have the right to
9 control the day-to-day operations of Fischler
10 Enterprises.

11 Now, when we talk about negligence -- because
12 we did this to let you know that it is our view that
13 Mr. Kidd was not negligent. We ask you to so find.

14 And was Mr. Wiederhold negligent? I mentioned
15 the four ways in which we think he was careless. We
16 contend that Mr. Wiederhold bears responsibility.
17 And that's a tough thing to say. He's not here with
18 us, can't talk about what happened, and of course
19 he's not with us anymore, but that fact should not
20 affect your decision in how you address
21 responsibility.

22 Mrs. Wiederhold, she said they were driving 55,
23 56 miles an hour, a car to the right, wasn't sure
24 where it was, no problem. And she said Mr. Kidd
25 came out of nowhere.

1 Well, Mr. Kidd said Mr. Wiederhold came out of
2 nowhere.

3 Is that consistent with a move by
4 Mr. Wiederhold in his Tacoma from the right lane to
5 the left lane, and boom, they both realized they're
6 in a situation?

7 She says Mr. Wiederhold braked. Mr. Fournier
8 this morning said there was some evidence of
9 braking, but no physical evidence of braking before
10 Mr. Wiederhold enters the grassy median; maybe some
11 after that.

12 Mr. Fournier, you heard from him this morning
13 so this will be fresh in your mind. This is the
14 animation which you saw, if you can play it, sir.

15 (Animation playing.)

16 MR. WOMBLE: This is at 60 miles an hour. This
17 would be the ability of Mr. Wiederhold to avoid the
18 accident if he had braked. This is at 60 miles an
19 hour.

20 This is at 70; you can play that.

21 Okay. Mr. Fournier calculates the initial
22 speed of Mr. Wiederhold at 70 miles an hour:
23 Speeding.

24 Mr. Wiederhold's car, according to
25 Mr. Fournier, was 550 feet from Mr. Kidd's car when

1 Mr. Kidd began to enter the travel lanes.

2 So ladies and gentlemen, using your common
3 sense and your knowledge of football, he's almost
4 two football fields away when he begins to pull out.

5 Now, using your common sense and experience as
6 a driver, is it possible that Mr. Kidd looked, and
7 two football fields away is a vehicle? Would a
8 reasonable person decide to go ahead and make the
9 turn if the vehicle that's coming is two football
10 fields away? Use your common experience in driving.

11 When Mr. Kidd -- okay. So when he pulls out,
12 there's two football fields, but before that when he
13 looks, it's even further away, two and a half
14 football fields. Would a reasonable person be able
15 to see and appreciate an approaching vehicle that's
16 two and a half football fields away and think that
17 was a danger and refrain from pulling out? No.

18 Before entering the grassy median, I mentioned
19 this, no evidence of braking on the road. He
20 reacted by steering left, as you all know.

21 Let's talk about time now, not just distance;
22 time.

23 When Mr. Kidd starts moving, there's a total of
24 five seconds before -- between Mr. Wiederhold and
25 Mr. Kidd. And ladies and gentlemen, I don't really

1 have time to do this, but you know how long five
2 seconds is.

3 From when Mr. Kidd last looked, which was
4 earlier, there was a total of seven seconds
5 involved.

6 Mr. Wiederhold could have braked, could have
7 avoided the accident, there was no need to swerve
8 into the median. No doubt he was in violation of
9 the speed limit. The judge gave you the jury
10 instruction on that.

11 If he was traveling 60, he could have avoided
12 the accident. If you brake very hard at 70, and you
13 don't turn left, the accident is preventable.

14 Now, this is an issue that we're not going to
15 really comment on this. There's just an
16 inconsistency on whether Mr. and Mrs. Wiederhold
17 intended to be married or were engaged to be married
18 at the time of the incident. And if you find
19 significance to that, fine, we leave that up to you.

20 Before I talk about sympathy, I want to talk a
21 little bit about pain and anguish. Mr. Avera, as he
22 is entitled to do, has requested a jury verdict for
23 mental pain and anguish which is extraordinary.

24 We ask that if you get to that issue on the
25 jury verdict, on the verdict, and we of course

1 contend you shouldn't, that you use common sense and
2 return some reasonable value for that. I'm going to
3 suggest something, you can accept it, reject it, do
4 what you will with it, but we would suggest
5 something between \$500,000 and \$750,000. But that
6 decision, as Mr. Avera and I agree, is totally up to
7 you.

8 Now, at the start of the case when we were
9 doing jury selection, I spoke about F. Scott
10 Fitzgerald, and he said, as you know, that a sign of
11 an intelligent mind is the ability to keep two
12 seemingly inconsistent things in your brain at the
13 same time and not go crazy.

14 We have two -- two things here, two matters.
15 You can have all the sympathy as you should for Mrs.
16 Wiederhold, but if you find for the defense and she
17 receives no compensation, it may be natural for you
18 to think, I'm really kind of being mean to her. I
19 just -- the case hasn't been proven to me, but I
20 feel bad.

21 But as I told you in opening, you have to
22 really think about this because, really, they're not
23 inconsistent thoughts. You can find for the defense
24 and you can still have sympathy for Mrs. Wiederhold.
25 You're not saying, Mrs. Wiederhold, we think you're

1 a bad person or you're invalid or whatever. It's,
2 legally -- didn't prove the case.

3 The court will tell you and you have it in your
4 packet, in reaching your verdict, don't let sympathy
5 -- by the way, there is no public opinion in this
6 case -- but no sympathy affect your decision.

7 This is the verdict. Ladies and gentlemen, the
8 first question is on the agency issue, and we submit
9 to you that it would be an understandable result
10 that you should return a verdict that there were --
11 they were not agents.

12 You will see, the attorneys and court called
13 these instructional paragraphs. If your answer is
14 no, your verdict is for the defendant, and you flip
15 to the back of the verdict and you sign it and date
16 it and knock on the door and the deputy will tell us
17 we've got a verdict.

18 If you get to number two: Was there negligence
19 on the part of Jeffrey Kidd? We suggest your answer
20 to that would be no for the reasons we've discussed.

21 Now, if your answer to question two is no, your
22 verdict is also for the defendant and you don't
23 proceed further except to date and sign the verdict,
24 and then let the deputy know that you have a
25 verdict.

1 By the way, unlike on some legal shows on T.V.,
2 the way this will work is the deputy -- you'll come
3 back in the room. The deputy will hand the verdict
4 to the judge who will review it and make sure it's
5 filled out appropriately, and then the clerk will
6 read that to the courtroom. So whoever is the
7 foreperson, don't worry that you have to read this
8 out in the courtroom. The clerk does that or the
9 judge.

10 Three: Was there negligence on the part of
11 Richard Wiederhold? You know our contention is that
12 the answer is yes. If you answer number three --
13 excuse me.

14 If you answered number three no, you go to the
15 damage issues. If your answer is yes, you answer
16 this question, and you allocate percentages of
17 negligence between Mr. Kidd and Mr. Wiederhold.

18 Ladies and gentlemen, we submit that if you get
19 to this part of the verdict, and we don't suggest
20 that you will, the vast majority of the
21 responsibility here has to be with Mr. Wiederhold.

22 Blank screen means to stop talking.

23 So I'm going to finish up. As is appropriate
24 under our rules, Mr. Avera gets to do a rebuttal.
25 I'm sure it surprises no one that he, as is his job,

1 he is going to dispute and disagree with some of our
2 arguments, maybe all of our arguments.

3 What we ask is that you listen to his
4 arguments, keep what we've put out to you in mind
5 and go deliberate and come back with a verdict.

6 Ladies and gentlemen, you can deliberate
7 whatever time you think is appropriate according to
8 Judge Roche, according to her schedule.

9 Ladies and gentlemen, thank you very much, and
10 we ask that you return a verdict in favor of
11 defendant.

12 THE COURT: All right. Folks, as I told you,
13 plaintiff now has an opportunity to argue in
14 rebuttal to the defense.

15 Is everybody -- it will be 15 minutes. Is
16 everybody comfortable or would you like a brief
17 comfort break? Brief break?

18 Okay. Brief comfort break.

19 (The jury exited the courtroom after which the
20 following proceedings were had:)

21 THE COURT: Yes, sir.

22 MR. STEINBERG: Yes, Your Honor. Counsel
23 brought to our attention the verdict form that made
24 it onto your USB drive had an error on it, and so we
25 are printing the correct one to give to Your Honor

1 to give to the jury.

2 THE COURT: All right.

3 MS. STEIN: Your Honor, please stop me if this
4 is the wrong time. It's housekeeping, but I don't
5 want to break the flow after closing.

6 I'm not sure what the process has been as far
7 as exhibits, because these are just exhibits from
8 the last trial. We've identified some items on
9 there that just didn't -- weren't discussed by any
10 witness, so I'm not sure of the process as far as
11 objecting.

12 THE COURT: The evidence is closed. Whatever
13 has been admitted into evidence is going back to the
14 jury.

15 MS. STEIN: Then may we object to -- I'm going
16 to identify -- we had some, and I understand what
17 Your Honor is saying. I won't -- I won't go into
18 it, but there is a report that Dr. Snyder, the
19 physiatrist who visited with Mr. Wiederhold while he
20 was alive, prepared while Mr. Wiederhold was alive
21 for the injury case which --

22 THE COURT: You're arguing relevancy to me, and
23 what I am telling you is the evidence is closed.
24 That should have been brought to the court's
25 attention long before now, and what is in evidence

1 goes back to the jury.

2 MS. STEIN: Okay. We leave our objection
3 standing.

4 THE COURT: Okay. Well, your objection is
5 overruled.

6 Whenever you think they may be ready, we're
7 ready for them.

8 COURT DEPUTY: Yes, Your Honor.

9 (The jury entered the courtroom after which the
10 following proceedings were had:)

11 THE COURT: You may be seated. The court
12 recognizes the presence of the jury and counsel.

13 MR. AVERA: May it please the court?

14 THE COURT: Yes, sir.

15 MR. AVERA: I'm going to address some of
16 counsel's comments to you in the closing argument,
17 and some of these will come as no surprise to you
18 because...

19 Counsel told you there's no evidence that
20 Mr. Kidd didn't stop. The only evidence about what
21 Mr. Kidd did is what Mr. Kidd says, because
22 Mrs. Wiederhold didn't see him before he pulled out
23 and we don't have witnesses. That's nobody's fault.
24 That's all you have.

25 But you, as the trier of fact who judges the

1 credibility of testimony, you get to do that, not
2 the court. And in judging the credibility of
3 witnesses, you can reject or not believe them.

4 Now -- if now the theory is that maybe we've
5 reached a point where Mr. Kidd says, well, it had to
6 have happened that way, but if Mrs. Wiederhold says
7 that she was in the lane for as long as she says she
8 is, the left lane, then it couldn't have happened
9 that way, the theory is now, that the second car in
10 the right lane, maybe that was Mr. Wiederhold and he
11 changed lanes and found himself in that predicament.

12 Well then, I want to point you to your
13 instructions, because when you get to page 9 of the
14 instructions and you look at one of these statutes
15 that Judge Roche read to you -- it's page 9, and
16 it's Florida Statute 316.121, because we know that
17 traffic is oncoming on State Road 50. East Colonial
18 is a state road, State Road 50.

19 And Statute 316.121 says the driver of a
20 vehicle about to enter or cross a state maintained
21 road or highway from a paved or unpaved road and not
22 subject to control by an official traffic control
23 device -- stop sign, stoplight -- shall yield the
24 right-of-way to all vehicles -- all vehicles
25 approaching on the state-maintained road or highway;

1 not vehicles in the left lane, not vehicles just in
2 the right lane, all vehicles.

3 And Mr. Kidd pulls out, and that's the theory.
4 And if some of you believe that that's a reasonable
5 inference from the evidence, well, guess what? Once
6 again, Mr. Kidd has violated the right-of-way of
7 oncoming traffic and Rich Wiederhold is not
8 responsible for how this crash happened.

9 At each juncture, I would submit to you there
10 has been a reach on the defense from how the crash
11 happened and a lack of recognition that
12 Mr. Fournier, someone who has been retained about 40
13 times in the last six years and who will likely
14 testify for the defense again in the future, agrees
15 with Mrs. Wiederhold's description of the accident
16 if you move Mr. Kidd's vehicle.

17 The witness who admits that there are variables
18 in all his calculations, and he is the one inputting
19 those variables, telling the animation to show you
20 what he wants you to show.

21 Rich Wiederhold didn't cause this crash. He
22 had the right-of-way. He acted prudently, the best
23 he could when faced with an emergency, and you
24 should find such on your verdict form.

25 Mr. Fischler's deposition, counsel points out,

1 and the lack of control that he came and kind of
2 testified about, but then we spent a lot of time
3 going back over his sworn testimony to point out how
4 he had testified differently in the past. And you
5 can determine in weighing the credibility of that
6 testimony, you can consider the motivation, what
7 changes in that testimony.

8 Counsel points out the sections that they admit
9 in the Manager's Reference Guide that have to be
10 complied with. There isn't a definition of a right
11 of control. There is the definition of the law that
12 her honor, Judge Roche, gives you, and that's the
13 agency on page five.

14 And on that whole page, let me point out the
15 one sentence that defines an agent, and it's the
16 fourth line down, and it says: An agent is a person
17 or entity who acts for another and whose actions are
18 controlled by the principal or are subject to the
19 principal's right of control.

20 Once again, the defense here is a reach. They
21 would have you believe that they have no right of
22 control under that legal definition of what an agent
23 is, and the legal definition of what constitutes an
24 independent contractor, something that Fischler
25 Enterprises and its employees is not.

1 The operations that common sense tells us are
2 in play here is the making and delivery of pizza,
3 and on those operations they have full right of
4 control.

5 The discussion regarding Mr. Wehbe, I confess
6 that at times I was having difficulty following why
7 Mr. Wehbe was here, because what he was saying in
8 some respect was making sense. If you exceed the
9 standards, you can be successful. If you exceed the
10 standards, there is no right to come in and issue a
11 default letter. There's no reason to come in and
12 try to terminate you. If you exceed the standards,
13 that's a good thing. I didn't understand what that
14 has to do with right of control.

15 Mr. Wehbe acknowledged to Mr. Steinberg that
16 when you don't comply with the standards, that's
17 when you get the default letter. And in that
18 manner, his testimony was consistent with
19 Mr. Fischler's videotaped testimony.

20 Mr. Wehbe, counsel told you, uses his own
21 methods in some things. Well, in exceeding, sure.
22 He can do things above and beyond. But the methods
23 of making the pizza, huh-uh. You can read that
24 manual. Methods of delivering the pizza, huh-uh.
25 Look at the manual. There is no discretion there.

1 He doesn't have the right there to deviate from
2 that. He doesn't have any right of control -- not
3 well put -- Domino's has the right of control and
4 Mr. Wehbe does not have the discretion to change
5 that.

6 Who Mr. Kidd calls doesn't matter on the right
7 of control issue. That is a spurious argument. It
8 should have nothing to do with your consideration of
9 the facts. It tells you the legal definition here
10 of what constitutes an agent and what constitutes an
11 independent contractor.

12 Labeling each other as independent contractors
13 in a contract also does not matter. Putting
14 Fischler Enterprises and its employees as
15 independent contractors in a contract has no import
16 or strength here, because if that were true, if they
17 got a pass because they put that in the contract, we
18 wouldn't be here.

19 The law says you consider the actions to
20 determine right of control, and we prove that from
21 the documents that you saw from Domino's own
22 documents and we prove that from the testimony with
23 clear and convincing evidence, far above the burden
24 that you should hold us to.

25 I don't know what it means to "leave it to you

1 to consider the circumstances of their marriage,"
2 and the explanation from Mrs. Wiederhold as to why
3 in a moment if she were asked whether she was
4 engaged, she would leave that to Rich Wiederhold
5 when he was able to answer that question with a son
6 with whom he's had a difficult relationship.

7 And to characterize those damages as
8 extraordinary. They're extraordinary, in a sense,
9 extraordinary because she's an extraordinary woman
10 and was the angel that Rich Wiederhold needed in his
11 life when she brought him home in June of 2011.
12 Extraordinary because she didn't walk away from that
13 challenge, an extraordinary level of devotion, of
14 dedication, and love for the man she had fallen in
15 love with and had told that she would marry and be
16 with him the rest of their lives.

17 You are right. It is extraordinary. And you
18 should reflect it in your verdict form, because in
19 your verdict form you can speak to the positions of
20 the parties, both for the plaintiff and the defense,
21 but you should do this. You should render that true
22 and just verdict that common sense requires in the
23 verdict, recognizing the enormity of her loss,
24 reflecting upon the frailty and fragility of that
25 woman when she testified, not based on sympathy.

1 She gets plenty of that, friends. But based on
2 empathy and an understanding of the enormity of the
3 loss.

4 Our work is done. Thank you again for your
5 attention. Please return and come back with that
6 just and true verdict. Thank you.

7 THE COURT: Members of the jury, you have now
8 heard all the evidence, my instructions on the law
9 that you must apply in reaching your verdict and the
10 closing arguments of the attorneys.

11 MR. AVERA: Your Honor? I am sorry for
12 interrupting. May we approach, please?

13 THE COURT: Yes.

14 (The following proceedings were had before the
15 court and out of the presence of the jury.)

16 MR. STEINBERG: I didn't want you to read
17 anything in but that version that has that correct
18 language.

19 THE COURT: Very good. Thank you.

20 (The following proceedings were had before the
21 court and jury.)

22 THE COURT: You will shortly retire to the jury
23 room to decide this case. Before you do, I have a
24 few last instructions for you.

25 You will have in the jury room all of the