

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
ATLANTIC COUNTY, NEW JERSEY
DOCKET NO. ATL-L-1167-15
A.D. #A-00845-17-T3

HILDA T. KENNEDY AND)
JOHN F. KENNEDY,)
)
) Plaintiffs,)
) v.)
))
FREDERIC A. POLLOCK, et al.)
)
) Defendants.)

Transcript
of
Day of Trial

Place: Atlantic County Courthouse
1201 Bacharach Boulevard
Atlantic City, NJ 08401

Date: September 5, 2017

BEFORE:

THE HONORABLE MARY SIRACUSA, J.S.C.

TRANSCRIPT ORDERED BY:

ASHER BROOKS CHANCEY, ESQUIRE
Goldberg Segalla

APPEARANCES:

RANDY LAFFERTY, ESQUIRE (Cooper Levenson)
Attorney for the Plaintiffs

ASHER BROOKS CHANCEY, ESQUIRE (Goldberg Segalla)
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I N D E X

Opening Statements:

By Mr. Lafferty	8
By Mr. Chancey	24

1 **(On the record on September 5, 2017 at 1:07 PM)**

2 THE COURT: Please be seated. This is the
3 matter of Hilda Kennedy and John F. Kennedy v. Frederic
4 Pollack and the Estate of Frederic Pollack, docket
5 number ATL-L-1167-15. Counsel, want to enter your
6 appearances.

7 MR. LAFFERTY: Your Honor, for the record,
8 Randolph Lafferty of Cooper Levenson representing Hilda
9 and John Kennedy.

10 THE COURT: Okay.

11 MR. CHANCEY: Good afternoon, Your Honor.
12 Asher Chancey of Goldberg Segalla representing the
13 defendants Frederic Pollack as well as the Estate of
14 Frederic Pollack.

15 THE COURT: Okay. All right. So I just --
16 we did have some discussion in chambers, so basically
17 we believe that the case can be completed by Thursday
18 afternoon, correct?

19 MR. LAFFERTY: Yes.

20 THE COURT: I'm going to pick 8 jurors and
21 all 8 will deliberate. Note taking is okay, but there
22 won't be any juror questions. And then just with any
23 open ended questions during voir dire, anything in
24 particular that you want me to ask other than the
25 standard voir dire?

1 MR. LAFFERTY: I guess they should be asked
2 -- can I stay seated?

3 THE COURT: Sure.

4 MR. LAFFERTY: I guess they should be asked
5 whether they have recently ridden on a jitney.

6 THE COURT: Okay.

7 MR. LAFFERTY: Or know someone that owns and
8 operates a jitney.

9 THE COURT: So ridden on or know someone or
10 owns or operates one?

11 MR. LAFFERTY: Correct.

12 THE COURT: Okay. Any other ones?

13 MR. LAFFERTY: Not from my --

14 THE COURT: Mr. Chancey?

15 MR. CHANCEY: No, Your Honor.

16 THE COURT: Okay. All right. So I think
17 that they were the only issues that we need to get on
18 the record before we go in to pick.

19 MR. CHANCEY: If I may, Your Honor, I have an
20 addendum to the witness list.

21 THE COURT: Okay.

22 MR. CHANCEY: There is a daughter of the
23 decedent who I've been dealing with, however she is not
24 officially the executor of the estate, the executrix of
25 the estate. I have the identity of that person, which

1 is his other daughter. And I --

2 THE COURT: I had Mary Pollack. That was the
3 only name that I had been --

4 MR. CHANCEY: Right. That's who I, that's
5 who we've been dealing with.

6 THE COURT: Okay.

7 MR. CHANCEY: But Robin Pollack Fine is
8 actually the actual executrix.

9 THE COURT: And are any of them going to be
10 here?

11 MR. CHANCEY: She's not going to be here
12 today and tomorrow. She may be here on Thursday.
13 However, she has no, nothing to contribute.

14 THE COURT: Okay. So I'm just going to
15 mention both of those names, that Mary Pollack and
16 Robin Pollack Fine, they could be --

17 MR. CHANCEY: Sure.

18 THE COURT: -- mentioned throughout the
19 proceedings. Okay. Any other issues?

20 MR. LAFFERTY: Not that I'm aware of, Judge.

21 THE COURT: No? All right. So we can
22 reconvene in Courtroom 1-A. They're bringing the jury
23 in? So the jury will be back in about 5 minutes, but
24 then we'll go into Courtroom 1-A to pick.

25 MR. LAFFERTY: Okay. We'll be told when to

1 go, right?

2 THE COURT: Yeah. I mean if you want to go
3 in there now you could go in.

4 MR. LAFFERTY: We can go in? Okay.

5 THE COURT: Yeah. Get set up. All right.
6 See you in a few.

7 MR. LAFFERTY: Thank you, Your Honor.

8 **(Off the record from 1:10 PM to 3:21 PM; Jury selection**
9 **not transcribed.)**

10 ATTENDANT: All rise.

11 THE COURT: Please be seated. Ready to just
12 bring the jury in?

13 MR. CHANCEY: Briefly, Your Honor, I'm going
14 to reposition myself. Obviously, as Randy, Mr.
15 Lafferty placed the video.

16 THE COURT: Okay.

17 MR. CHANCEY: Rather than join the plaintiffs
18 -- well, it's either join the plaintiffs or join the
19 jurors.

20 THE COURT: Yeah. I may walk over, because
21 this is the video from --

22 MR. LAFFERTY: Yes.

23 THE COURT: Yeah. I may walk over there to
24 see too. That's fine.

25 MR. CHANCEY: Would it be all right with Your

1 Honor if I just stepped over there?

2 MR. LAFFERTY: You want to just do it when
3 we're playing the video?

4 MR. CHANCEY: Yes.

5 MR. LAFFERTY: Okay. I'm fine with that.

6 THE COURT: Yeah. Is that going to mess up
7 your flow or --

8 MR. LAFFERTY: No.

9 THE COURT: Okay.

10 MR. LAFFERTY: Nothing could mess up my flow.

11 MR. CHANCEY: I was going to say the exact
12 same thing.

13 THE COURT: All right. We'll bring the jury
14 in.

15 MR. LAFFERTY: That presumes you first have a
16 flow.

17 THE COURT: How long is your opening would
18 you say?

19 MR. LAFFERTY: Probably 30 minutes.

20 THE COURT: Okay. Mr. Chancey, how about
21 you?

22 MR. CHANCEY: Probably not 30 minutes.

23 THE COURT: Okay.

24 MR. CHANCEY: Between 15 and 20 minutes.

25 THE COURT: All right. So 4:30 is still, we

1 should be done by 4:30.

2 MR. LAFFERTY: Yeah.

3 MR. CHANCEY: Oh, sure.

4 THE COURT: Good.

5 **(Jury enters at 3:23 PM)**

6 ATTENDANT: All rise.

7 THE COURT: All right. Please be seated. So
8 ladies and gentlemen, we'll hear the opening remarks
9 from Mr. Lafferty for the plaintiff. Do you need the
10 lights on or off for the --

11 MR. LAFFERTY: No, I don't think it's fine.

12 THE COURT: Okay.

13 MR. LAFFERTY: Thank you, Judge Siracusa and
14 Mr. Chancey. Ladies and gentlemen, first of all, on
15 behalf of Hilda and John I want to thank you today for
16 agreeing to serve on this jury. As you all saw it's a
17 hardship on you. But this is an important function in
18 our society. It's where people who have a grievance
19 against once another come before their peers. And
20 their peers will then hear the evidence and make a fair
21 impartial judgment on the case. We don't go out and
22 beat each other with clubs. If we think we've been
23 wronged the recourse that we have under our
24 Constitution is to come to a court. And the duty that
25 we each all have as citizens is to serve on the jury as

1 a member of a jury of our peers. So on their behalf I
2 want to thank you.

3 A little bit about John and Hilda. They've
4 been married 46 years. They're both retired. They
5 live in the Atlantic City area. You're going to hear
6 how they enjoyed spending their time in their golden
7 years. Hilda's 85. She was 82 at the time of the
8 accident. She was vibrant. You're going to get to
9 know her. And you get a lot of information in a short
10 period of time. And we try not to -- we try to keep it
11 moving for you as much as we can. So we're going to,
12 we're probably going to take some witnesses out of turn
13 just because they're available and we don't want to
14 waste your time. So I apologize if it gets a little
15 disjointed at times, but please understand that we're
16 trying to do that for your convenience and for the
17 convenience of the Court.

18 So John and Hilda just celebrated their 46th
19 wedding anniversary the other day. They're a dedicated
20 couple. Hilda was a dedicated homemaker. She was
21 proud of independent living. She was proud of what she
22 could do for herself and for John and in maintaining
23 their home. And that was her, that was her lifestyle,
24 that was her hobby, that was her job. And she very
25 much took great pride in being able to do that. And

1 until this accident she was an independent and proud
2 woman. But November 17th, 2014 really changed all
3 that. And you're going to hear about it.

4 Now your role is as a judge. You are the
5 judges of the facts. Judge Siracusa is the judge of
6 the law. And she'll charge you at the end of the case
7 on the law. But you're going to be the judge of the
8 facts. And that means you're going to be the
9 individuals who say I believe this, I don't believe
10 this, I think it's this way or this way. It's solely
11 based upon your collective judgment. And it's -- a
12 trial is like a jigsaw puzzle. And you're going to get
13 bits and pieces of information from various sources.
14 And then at the end of the case what happens is you go
15 back to the jury room and you put the puzzle together.
16 And then you come out and tell us what the puzzle looks
17 like. So that's -- as you go through the trial you can
18 get evidence in various ways. You can get it direct
19 evidence such as I saw this, I heard this, this is what
20 happened, or circumstantial evidence, which is you get
21 other facts -- and the classic circumstantial evidence
22 example is you go to bed at night and there's no snow
23 on the ground, you get up in the morning, you look on
24 the ground and there's snow. Well, you didn't see it
25 snow but you know it snowed because there's snow on the

1 ground. So that's the classic circumstantial evidence
2 example. So you're going to get evidence from various
3 sources. You're going to get it from prior testimony
4 of both Mr. Pollack and perhaps Mrs. Kennedy. And
5 you're going to get it from witnesses on the witness
6 stand, both lay witnesses and expert witnesses. There
7 are a lot of expert witnesses in this case. All of
8 them won't be testifying on behalf of the Kennedys. But
9 there's a lot of them. So we're going to try to move
10 that along for you so that -- three of them are
11 physicians. You heard Dr. Lucasti, Dr. Islinger and
12 Dr. Baliga. And they're practicing physicians. They
13 can't hang around the courthouse, they're taking care
14 of patients. So we did those on video. So I'm going
15 to do my best not to play two videos in a row. And I'm
16 going to do my best not to play them too late in the
17 day. But it's important that you give the same
18 attention to the video testimony as you do to the live
19 testimony that's going to come from that witness stand.
20 So now this is a relatively short case. It's three
21 days. And it will conclude probably on Thursday. So
22 but it -- the fact it's a short case doesn't mean it's
23 any less significant to the parties. This is the only
24 opportunity that these people get to come before a jury
25 and present their cause. You're the final word. And

1 that's a lot of responsibility. And we spend a lot of
2 time trying to get people who we thought would listen
3 and give the case the attention that it deserves. So
4 again, thank you very much for giving of your time.

5 Now we submit the credible evidence is going
6 to show the following. If you could somehow go back in
7 time to the intersection of Pacific and Rhode island in
8 Atlantic City back on November 17th, 2014 at about 3:45
9 PM this is what we think you would have observed. Now
10 just to orient everybody, this is a Google Earth map or
11 bing or somebody. This is the Inlet section of
12 Atlantic City. Here's the inlet, down here would be
13 Revel, Taj. This is the intersection that we're
14 talking about. So Mr. and Mrs. Kennedy were on the
15 jitney headed home on Pacific Avenue. And to give you
16 a little bit closer view, this is the intersection
17 looking the way they would have been exiting the
18 jitney. This is Rhode Island. You're looking down
19 Pacific. And the area we're talking about is right in
20 here. Now I'm sure we've all seen a jitney, but just
21 in case, this is a jitney. This actually is the actual
22 jitney that was involved in this incident. They're 13
23 a passenger vehicle, they're granted a license to
24 operate in Atlantic City, and they're also regulated by
25 the laws of Atlantic City. And we're going to get to

1 that in a minute. So this is, this jitney was
2 positioned by the defendant for the purposes of these
3 pictures. An that's important because if you look at
4 where the jitney's positioned it's positioned right
5 next to the curb. And that's because the law requires
6 jitneys to actually stop as close as possible to the
7 curb. That's what the law requires. And you're going
8 to hear from an expert witness on that, Mr. Costanzo,
9 probably tomorrow and he's going to explain to you why
10 that law exists and what the purpose is. So the
11 weather on that day, that November 17th day, was
12 terrible. When John and Hilda first -- they were going
13 grocery shopping for Thanksgiving. So when they first
14 went out that day the weather wasn't bad. But somehow
15 in the middle of the day it turned. And you're going
16 to see a video and you can see how miserable the
17 weather is. So they went shopping. They bought their
18 food items. The weather turned. Now they have to get
19 back home. They live up on Metropolitan Avenue, which
20 is right around here on our Google Earth map. They
21 live -- this is Rhode island, this is Victoria and
22 here's Metropolitan. They live on Metropolitan Avenue.
23 So they were taking the jitney to get back home. So
24 now what you would have seen, I suggest if you could go
25 back in time what would you have seen? For some reason

1 the defendant, Mr. Pollack, elects to not park the
2 jitney as the law requires but rather elects to park it
3 3 or 4 feet or so away from the curb in the middle of a
4 blinding rainstorm with a gutter rushing with water so
5 that Mrs. Kennedy has to trudge through that, get up --
6 and try to get up on the sidewalk and continue to
7 maintain her balance. So you would have seen John --
8 you're going to see John go down the steps first with
9 their shopping cart, get out of the jitney, put the
10 cart on the sidewalk, go back and then help Hilda down.
11 Hilda gets to the sidewalk -- now you're going to hear
12 some questioning about Hilda's belief that she did not
13 get on the sidewalk. Hilda, her recollection is that
14 she did not make it to the sidewalk, but when you watch
15 the video and she watches the video, she did. So
16 that's not really an issue in the case. The issue in
17 the case is the operation of the jitney from that point
18 forward, not only the improper stopping of the jitney
19 but then how the jitney was operated. So as John is
20 trying to turn around to position, to help Hilda walk
21 down the sidewalk Hilda falls. And she's going to tell
22 you I don't know why I did. And she falls in the
23 gutter alongside the jitney. She falls in the crevice
24 that the jitney created by not parking properly in the
25 first place. And then you're going to see the jitney

1 almost immediately take off, and it runs her over. It
2 runs over her right side of her body.

3 Now Mr. Pollack isn't here to testify, but he
4 has testified. We have one piece of testimony in this
5 case from Mr. Pollack. Now let me explain what this is
6 first. When you prepare a case for trial there are
7 certain things that you do. One thing is you ask
8 parties written questions and they -- and with their
9 attorney they send back written answers. That's what
10 these are. This is called an interrogatory. Another
11 tool is a deposition, which is where you go to the
12 lawyer's office and face to face ask questions and
13 there's a court reporter there who's taking down -- we
14 used to have them in the courtroom -- taking down word
15 for word what's being said. So with the assistance of
16 counsel this is the version that Mr. Pollack gives us.
17 And what he tells us is that,

18 "On November 17th, 2014 answering defendant,"
19 that's Mr. Pollack, "was driving a jitney bus
20 eastbound in the right lane of Pacific Avenue
21 in Atlantic City when he stopped prior to the
22 intersection of Pacific and Rhode island
23 Avenues to drop of passengers including the
24 plaintiffs. All the passengers safely
25 disembarked from the bus and reached the

1 curb. Answering defendant was still stopped
2 when he heard a loud . . ."

3 And he didn't finish that sentence. But you're going
4 to hear John Kennedy tell you that when his wife fell
5 he went down in the gutter to try to pick his wife up
6 and banged on the side of the jitney and said, "Don't
7 move, don't move." But Mr. Pollack elects to move the
8 jitney, knocks the Kennedys to the ground and runs over
9 Hilda. Well, he says he's still stopped at the red
10 light and he heard a loud, period. He got up and
11 looked out the passenger door to find the plaintiff
12 lying on the ground. Now you're going -- we're going
13 to talk about this question and answer again. And what
14 we're going to do is we're going to look at is there
15 ever a red light. The jitney has -- the jitney
16 cameras, there's 4 of them on a jitney. There's one
17 that shoots out the front, there's one that shoots out
18 the back, there's one that photographs inside the
19 jitney, and there's one photographing down the steps.
20 So you're going to see 4 frames. And when we bring it
21 up in a minute I'll point out to you which camera is
22 which just so you're oriented. But you can look out
23 the front window and you'll never see a red light. And
24 the other thing you're going to see is you're going to
25 see the jitney moving as Hilda screams. So we'll keep

1 Mr. Pollack's testimony in mind. So maybe, can we
2 bring up the, the original video? Thanks, Bill. I
3 need you to stop it at that point.

4 THE COURT: Mr. Lafferty, do you want the
5 light on or off?

6 MR. LAFFERTY: It might be easier for the
7 jury if we could turn some of them off.

8 COURT: Well, that's off.

9 MR. LAFFERTY: I'm okay. Is everybody okay?

10 (pause)

11 (video, Exhibit #P-5, begins playing in open court)

12 MR. LAFFERTY: Okay. Now I told you there
13 were 4 frames. We start up here. It's obviously
14 shooting inside the jitney. To the right is shooting
15 out the front. The lower one on the right is out the
16 rear. And this is the stairway. Okay.

17 (video playing in open court:)

18 *SPEAKER 1: Better than snow.*

19 *MR. KENNEDY: Can you let us off here?*

20 *SPEAKER 2: Guess what I just did.*

21 *SPEAKER 1: What did you just do?*

22 *MR. KENNEDY: Did you hear me? Let us off*
23 *here.*

24 MR. LAFFERTY: That's Mr. Kennedy. Can you
25 pause that, Bill?

1 (video stops playing)

2 MR. LAFFERTY: First of all, contrary to what
3 Mr. Pollack said, there were no other passengers that
4 got off at this stop. All right. Go ahead, Bill.

5 (video continues playing:)

6 MR. LAFFERTY: Can you pause it, Bill. Bill,
7 pause it. There's the light up here. That light's
8 green. Okay.

9 (Video continues playing:)

10 (shuffling - low voices - scream)

11 *SPEAKER 1: What did she do, fall?*

12 *SPEAKER 2: I don't know.*

13 *MR. KENNEDY: Call the police, call the*
14 *police. You just ran over her. Gosh damn it you*
15 *fuckin' guy. Call 911.*

16 (inaudible)

17 *SPEAKER 2: Is this the police department.*
18 *Atlantic City. I have just -- yeah, yeah. Put -- get*
19 *her out of there.*

20 (video stops)

21 MR. LAFFERTY: A little bit more.

22 (video continues playing:)

23 *SPEAKER 2: Rhode island and Pacific.*

24 MR. LAFFERTY: All right. So what we did was
25 to try to enhance this we had an edited version made of

1 just this, this camera. And Bill, can you bring that
2 up, please.

3 **(video playing:)**

4 *MR. KENNEDY: Can you let us off here.*

5 *SPEAKER 1: Guess what I just did.*

6 *SPEAKER 2: What did you just do?*

7 *MR. KENNEDY: Can you hear me? I told you to*
8 *let us off here.*

9 **(video stops)**

10 *MR. LAFFERTY: What happened, Bill?*

11 **(video continues:)**

12 *MR. KENNEDY: Let us off here.*

13 *SPEAKER 1: Guess what I just did.*

14 *SPEAKER 2: What did you just do?*

15 *MR. KENNEDY: Can you hear me. I told you to*
16 *let us off here.*

17 *MR. LAFFERTY: There's the gap.*

18 **(video continues:)**

19 *(screaming)*

20 *MR. LAFFERTY: Thanks. And you clearly saw*
21 *the jitney moving. Thank you, Judge. So tomorrow*
22 *you're going to hear from Frank Costanzo, who is an*
23 *accident reconstructionist. And he's going to go over*
24 *some of the dynamics here, and not the least of which*
25 *is the jitney is equipped with massive side mirrors.*

1 And he's going to explain to you why, why that
2 separation that the jitney driver created created a
3 public hazard. So it's the plaintiff's position
4 obviously Mr. Pollack was in the wrong. The door isn't
5 even shut and he's driving away. And the light was
6 never red at any time relevant to this matter. He was
7 trying to get through that green light. That's the
8 argument that we're presenting to you, that had he
9 exercised that degree of care that the law requires him
10 to exercise he would have seen two human beings
11 alongside his jitney. Whether they were two children,
12 two elderly people, it doesn't matter. He would have
13 seen two human beings and he would not have run one of
14 them over.

15 So you heard basically what the evidence the
16 plaintiff intends to present on liability is. And
17 let's talk for a moment about, let's talk damages. And
18 we've all heard the story of "A tale of Two Cities."
19 This is going to be the tale of the woman who's had two
20 lives, one before this accident and one after this
21 accident. And they're dramatically different. We'll
22 look at Exhibit P-6. These are just a few pictures of
23 Hilda a year or so before the accident. She was
24 vibrant, she was active. That's in California, this is
25 in Las Vegas, this is in Atlantic City. She enjoyed

1 her life. You're going to hear that her son William
2 was an airline steward and that Hilda would regularly
3 fly to where he lived, whether it was in Texas or
4 Puerto Rico. She regularly flew on the plane going to
5 visit her son. She doesn't fly anymore, hasn't flown
6 since this accident. You're going to see that in the
7 days and weeks following the accident this is what
8 Hilda had to deal with. You can see the significant
9 bruising, you can see the surgery on her shoulder we're
10 going talk about in a minute. You're going to see and
11 she's going to explain to you the tubes and everything
12 else. Hilda spent 102 days in the hospital. She
13 started in the trauma center of AtlantiCare and then
14 she ended up in Betty Bacharach Rehabilitation and then
15 she ended up in a subacute care facility, Egg Harbor
16 Care Center in Egg Harbor City. She -- her injuries --
17 and you're going to hear from her physicians, Dr.
18 Islinger, Dr. Lucasti, Dr. Baliga. Her injuries were
19 extensive. She had a fracture of the right humerus,
20 the top of the bone of the arm. She had a comminuted
21 fracture of the right scapula. That means shattered.
22 That's what Dr. Islinger and Dr. Baliga will tell you.
23 She had various hematomas. She had a fracture of 14
24 ribs between both sides. She had a collapsed lung.
25 You're going to hear about the surgery that was done on

1 Hilda's right shoulder and how they used a plate and 6
2 screws. You can see it here in this X-ray. Can you
3 see that? The plate and 6 screws. This is an artist's
4 rendering which shows you they had to actually take the
5 bone and twist it to get it back into alignment. And
6 then two days later they took her to the operating
7 room, after they dealt with the collapsed lung, then
8 they operated and put the plate and 6 screws in.
9 There's really nothing you can do for broken ribs, you
10 just have to live with them. This exhibit actually
11 shows you how they performed the surgery on Hilda's
12 shoulder. This is an actual picture of the scar. The
13 shoulder's opened up and then the plate and screws are
14 inserted as the retractors are in place. And there's a
15 really -- as if this wasn't bad enough, there is -- her
16 recovery was not without complication. You're going to
17 hear about the infection that had to be operated on in
18 late January 2015. Whoops. This is state equipment.

19 As if those orthopedic injuries aren't bad
20 enough, what really is problematic is that Hilda
21 suffered an injury in what's called the axillary nerve.
22 It's part of the brachial plexus nerve distribution.
23 It runs behind your shoulder and it -- this is like,
24 and the doctors explain it like a fiber optic cable.
25 And then when it gets to the shoulder it branches out.

1 This nerve runs your shoulder. This nerve sends
2 connectors to all the muscles that enable you to move
3 your shoulder in all the ways that we do. And Dr.
4 Baliga will testify that that nerve was virtually
5 destroyed. And you're going to see the limitations
6 that Hilda has in the use of her right arm, which is
7 her dominant arm. And you're going to see how she is
8 so limited that it's virtually useless. So the
9 injuries in this case are very, very severe. This case
10 isn't about strains and sprains. These are very
11 serious injuries. And as we age these injuries become
12 more severe because you're not young and you're not
13 able to deal with them as well as a younger person can.
14 So we're going to go through all of the treatment,
15 we're going to go through these devastating injuries,
16 and we're going to try to give you as complete a
17 picture as we can of Hilda before the accident and
18 Hilda after the accident. And then we're going to put
19 the matter into your hands.

20 So that's basically what we believe the
21 evidence is going to show. We believe that this
22 accident was the responsibility of Mr. Pollack and the
23 operation of his jitney and we believe that the
24 injuries suffered by Hilda -- there won't be any
25 defense doctors, by the way. There's no doctor to come

1 in here and say, oh, yeah, these injuries are fake.
2 And there's not going to be any defense accident
3 reconstruction expert to come in here and say, oh,
4 their accident reconstruction expert is full of
5 baloney. There's not one defense witness. So at the
6 end of the case after we have given you all of the
7 information that we have to give you we're going to ask
8 you to render a verdict in favor of Hilda and in favor
9 of John. John has two claims. New Jersey law provides
10 that if, if a husband or a spouse observes or witnesses
11 physical harm to their spouse and suffers distress
12 they're entitled to be compensated for that. And also
13 you're going to hear how John has become essentially
14 Hilda's caretaker. And that has a compensable value
15 too. So at the end of the case we're going to come
16 back and talk to you about what we think the evidence
17 has shown. So I want to thank you very much for
18 listening to me and for giving your time and attention
19 to this case. Thank you.

20 THE COURT: Thank you, Mr. Lafferty. Mr.
21 Chancey.

22 MR. CHANCEY: Thank you, Judge. Because of
23 the inefficiencies of requiring a doctor to appear for
24 trial in the middle of his otherwise busy schedule
25 we've taken the testimony of the doctors via video.

1 Some of the doctors. There might be a doctor who's
2 coming in live. But we've already video taped the
3 testimony of the doctors. And at the conclusion of one
4 of the doctor's video taped testimonies Mr. Lafferty --
5 we're colleagues, he calls me Asher, I call him Randy
6 -- Randy said Mr. Chancey may have some questions for
7 you. And I said, Doctor, I have no questions. So this
8 is a very rare move for a defense attorney, because a
9 defense attorney scores his points on cross-
10 examination, cross-examination of the doctor. Did you
11 consider this? Were you aware of this? Isn't it true
12 that this? That's not the case here. Mr. Lafferty had
13 just taken testimony from a very reputable doctor who
14 treated valid considerable injuries of the plaintiff,
15 Hilda Kennedy. And my job in this case is not to
16 somehow convince you that she's not hurt, because she
17 was hurt. That's not disputed. That's kind of a
18 strange position for me to be in because as a defense
19 attorney I am quite often put in the position of
20 telling a jury much like yourselves that the plaintiff
21 is claiming to have been injured in a very small, very
22 inconsequential automobile accident which may or may
23 not have had actual damage to the vehicles and you
24 should not believe what the plaintiff is saying about
25 the injuries. And there is an industry of doctors out

1 there who make plenty of money trying to convince
2 attorneys and juries that someone who is not injured
3 actually is. That's all out the door in this case.

4 Let me thank you for your service here today
5 and over the next couple of days. I always kind of
6 forget, being an attorney is kind of a narcissistic
7 operation because you spend weeks and weeks and months
8 focused on your case, focuses on what it means to you.
9 If I win this will happen, if I lose this will happen.
10 And then you go through the jury selection process and
11 we forget it's not just about me and my client and Mr.
12 Lafferty and his client. You're the ones who are
13 actually taking time out of your lives and being,
14 potentially having impositions put on you and your
15 loved ones and taking time to serve, to fulfill your
16 civic duty. And I just want to say thank you. I
17 always forget what a big deal that is, to take time out
18 of your life. I know when I get a jury summons the
19 first thing I do is how can I get out of it? I
20 actually, I had the best jury hardship disqualification
21 in the history of juries. I was on a jury panel, I was
22 juror number 2 and I thought I recognized the name of
23 the case. And I came in the courtroom and I looked at
24 the plaintiff and it was a case I had worked on, I had
25 actually represented the defendant in the case.

1 Doesn't get any more disqualifying than that. So when
2 it came time to answer questions I told the judge this
3 is what's going on and one of the defendants who was
4 still in the case said, yes, but can you be objective?
5 And I said I don't think I can. And they let me go.

6 What's this case about? This case is about
7 the video you just watched. And I'd like to call your
8 attention to the fact that Mr. Lafferty did a fair
9 amount of describing for you what was in the video
10 before he showed the video to you. Mr. Lafferty told
11 you that the video was going to show Hilda Kennedy
12 falling into the gutter and John Kennedy going into the
13 gutter after her and banging on the jitney and saying,
14 "Don't move, don't move," and the jitney nevertheless
15 moving, beginning to move. Well, that's not what you
16 saw. What you saw, and I have a feeling you haven't
17 seen that video for the last time, what you saw was Mr.
18 Kennedy stepping out of the jitney, Mrs. Kennedy
19 stepping out of the jitney, Mrs. Kennedy stepping into
20 the roadway holding Mr. Kennedy's hand and then
21 stepping up onto the sidewalk. And you saw her begin
22 to walk away. And at that moment as she began to walk
23 away on the sidewalk the jitney begins to proceed down
24 the road. What Mr. Lafferty is telling you, that she
25 fell into the roadway and then Mr. Kennedy went into

1 the roadway and banged on the jitney and said, "Don't
2 move, don't move," and then the jitney began to move,
3 I'm going to put it to you based on what you saw that
4 there was just not enough time for that to have
5 occurred. As I said, you haven't seen that video for
6 the last time. But when you re-watch that video you're
7 going to see that as Mr. and Mrs. Kennedy are on the
8 sidewalk and begin to walk the jitney begins to move.
9 They're actually still in view of the video as the
10 jitney begins to move. They're in view of the video on
11 the sidewalk as the jitney begins to move. So let's
12 talk about that. The jitney is a common carrier. And
13 New Jersey observes specific duties on the common
14 carrier which at the end of this case the judge is
15 going to instruct you on. The jitney and the jitney
16 driver, my client, delivered Mr. and Mrs. Kennedy to
17 the stop at or near Rhode Island and Pacific Avenue.
18 Now Mr. Kennedy and his hired expert make a pretty big
19 deal about the enormous 3 or 4 foot gap between the
20 jitney and the curb. You saw it on the video. Well,
21 what else did you see in the video? You saw Mrs.
22 Kennedy step into that gap and into the roadway. Then
23 you saw her step up onto the sidewalk and begin to walk
24 away. Notwithstanding the 3 or 4 foot gap in the
25 roadway Mrs. Kennedy with the help of Mr. Kennedy

1 successfully navigated that gap and was up on the
2 sidewalk. It's not like Mrs. Kennedy stepped into the
3 gap and fell right there. She actually had no problem
4 at all stepping into the gap in the roadway, the 3 or 4
5 feet between the jitney and the sidewalk. She had no
6 problem at all stepping out of that gap and up onto the
7 sidewalk. And she and Mr. Kennedy hand in hand had no
8 problem walking away from the jitney, or at least
9 beginning to walk away. You'll also notice from the
10 video that we don't then see what happens, how Mrs.
11 Kennedy and Mr. Kennedy ended up in the roadway. I'll
12 stop short of calling it a mystery. It's not a
13 mystery. I think we can infer that she fell. But it's
14 not captured in the video. Mr. and Mrs. Kennedy the
15 last time we see them are up on the sidewalk walking
16 away. And my client, Mr. Pollack, was driving away.

17 Society is governed by obligations to each
18 other, by duties to each other. When you enter into a
19 relationship with somebody you have an established set
20 of duties. But when you are existing in just two
21 people on earth or three people on earth you have an
22 obligation to exercise due care to each other so as to
23 not injure each other. If Mr. and Mrs. Kennedy had
24 been pedestrians on the sidewalk and my client had been
25 driving down the road and they fell into the pathway of

1 the vehicle I don't think any of us would doubt that my
2 client did nothing wrong. He's a vehicle on the
3 roadway and they fell into the path of the vehicle due
4 to no fault of his own. Due to no fault of my client.
5 This particular set of circumstances does involve a
6 relationship between my client and Mr. and Mrs. Kennedy
7 because they were passengers on his jitney. And which,
8 as we said, under New Jersey law is a common carrier
9 and it comes with a certain set of duties owed to them.
10 Those duties, however, pertain to their role as
11 passengers on the vehicle. Were they passengers on the
12 vehicle at the time of the incident? They had exited
13 the vehicle, they had stepped into the roadway, they
14 had stepped up onto the sidewalk and they had begun to
15 walk away. At the time of the incident as they were
16 walking away and my client was beginning to drive away
17 the transaction was completed. This isn't a situation
18 where Mrs. Kennedy was on the steps about to step into
19 the roadway and my client started driving. Clearly my
20 client would have been at fault for that. This isn't a
21 situation where Mrs. Kennedy fell into the roadway out
22 of the jitney and my client ran over her. Clearly my
23 client would have been at fault for that. The last
24 time we see Mr. and Mrs. Kennedy on the video they're
25 on the sidewalk, they're walking away and my client is

1 beginning to drive. Now again, Mr. Lafferty
2 represented that Mrs. Kennedy and Mr. Kennedy went into
3 the roadway, Mr. Kennedy banged on the vehicle and
4 said, "Don't move, don't move." Did you hear any of
5 that in the video? You didn't. The video plays
6 several minutes after the incident. You didn't hear
7 any banging on the vehicle or "Don't move, don't move."
8 Mr. Lafferty, I wrote it down, Mr. Lafferty also said
9 Hilda falls into the gutter alongside the jitney. At
10 the moment she fell the jitney then pulled away. Well,
11 you hear Hilda screaming, that's undeniable. But the
12 jitney has already been moving at that moment. At the
13 moment the jitney begins moving Hilda's on the
14 sidewalk. There simply isn't a simple time line
15 relationship between Hilda falling into the side, into
16 the roadway and then the jitney beginning to move. So
17 as Mr. Lafferty and Mr. Lafferty's hired gun experts
18 tell you about why my client was in the wrong pay
19 attention to that. Pay attention to whether what
20 they're telling you is consistent with the video. And
21 as I said, we're going to see that video several more
22 times. You have not seen the last of that video. I
23 promise you you will not be here a day without seeing
24 that video. Pay attention to that. Is Mr. Lafferty
25 accurately describing what you see in the video or is

1 Mr. Lafferty telling you something that isn't
2 consistent with the video?

3 My client isn't here today. My client is no
4 longer with us. My client has passed away. He had a
5 host of health issues including end stage renal disease
6 and diabetes. My client succumbed to these conditions
7 within the last 12 months. If he were here Mr.
8 Lafferty could say, hey, Mr. Pollack, you gave an
9 answer, a description of the accident that makes no
10 sense. You weren't stopped at a red light. You didn't
11 hop out and see the woman in the roadway. Look at the
12 video. You're clearly wrong. What would Mr. Pollack
13 say in response to that? The legal minds in the room
14 would note that any proffered explanation I could
15 provide you would be speculation. He could say I must
16 have been mistaken, he could say it all happened so
17 fast, he could say it's a blur, it was a traumatic
18 moment. He could say someone else wrote that and I
19 signed it. I don't think that's what happened. The
20 person who is here and has given a description of the
21 accident that we can compare on the video is Mrs.
22 Kennedy. And much like my client, Mrs. Kennedy has
23 also provided a description of the accident that does
24 not comport with what we see in the video. As will
25 come to light in the coming days, Mrs. Kennedy was

1 deposed under oath, which as Mr. Lafferty described to
2 you is an opportunity for Mrs. Kennedy to answer
3 questions face to face and to kind of explore her
4 answers a little better than a single written answer
5 does. At that time under oath Mrs. Kennedy told us
6 that after stepping into the street she was never able
7 to get up onto the sidewalk before the jitney began to
8 move. We know that's not true. We've seen the video.
9 She told us that the jitney ran over her before she had
10 the opportunity to get out of the street. Not true.
11 We've seen the video. She told us that the jitney
12 moved too fast and she didn't have an opportunity to
13 get all the way to the sidewalk after getting out of
14 the jitney. It's not true, we've seen the video. Now
15 one thing that we can all stipulate to -- trials are
16 made easy by stipulations, date, time, time of day,
17 time of year -- one thing we can all stipulate to is
18 that Mrs. Kennedy is a very nice woman. I had the
19 pleasure of deposing her for 5 and a half hours. She's
20 very sweet. The Kennedys are lovely people. The fact
21 of the matter is the incident was a blur for her and
22 she doesn't remember it accurately. Do not
23 underestimate the extent to which the incident was also
24 a blur for my client and the extent to which he did not
25 remember it accurately. The good news is the

1 astroscientist, astrophysicist Neil DeGrasse Tyson says
2 that eye witness testimony is actually the least
3 reliable evidence in science, and yet somehow the
4 entire legal system revolves around it. The good news
5 is we don't have to rely on eye witness testimony, we
6 don't have to rely on Ms. Kennedy's inconsistent memory
7 of events which is contradicted by the video tape. We
8 don't have to rely on my client's inconsistent memory
9 of events which is contradicted by the video tape. We
10 have the video tape.

11 At the end of this case you're going to be
12 asked to take in all the evidence, circumstantial or
13 otherwise, listen to all the arguments, and the judge
14 will instruct you on the rules of law. But at the end
15 of the day what you're going to be asked to do is look
16 at that video tape and decide whether the injuries
17 sustained by Hilda Kennedy were a result of the
18 improper operation of a vehicle by my client, Frederic
19 Pollack. And what you will have to decide in so doing
20 is whether a jitney operator who stops his vehicle,
21 opens his doors, allows his passengers to get out of
22 the vehicle, allows his passengers to step into the
23 roadway and allows his passengers to step onto the
24 sidewalk and begin walking away before he starts
25 driving down the road has violated his obligation to

1 those passengers. It's going to be out position that
2 that is not a violation of his duty. And not only
3 that, but it was not reasonably foreseeable to him
4 after having seen Hilda Kennedy get up on the sidewalk
5 that a few feet later she would end up under or next to
6 the rear wheels of his vehicle. At the moment that the
7 vehicle begins moving you can still see Hilda and John
8 Kennedy on the sidewalk beginning to walk away. Mr.
9 Lafferty has proposed that looking in the mirrors would
10 have shown the Kennedys in the roadway on the ground at
11 the time that he began moving the vehicle. Simply not
12 supported by the video tape. At the moment when he
13 began moving the jitney you can see them on the
14 sidewalk. And it would be unreasonable to expect my
15 client to have anticipated at that moment that the
16 Kennedys, Mrs. Kennedy was somehow going to end up in
17 the roadway next to the vehicle.

18 As I've already said to you, the injuries are
19 not disputed. We didn't hire hired gun doctors to say,
20 naw, that shoulder's not injured, that leg wasn't
21 broken, that hip wasn't fractured. They were. But at
22 the end of the day you require something more than just
23 injuries in order to hold my client responsible, God
24 rest his soul, for what happened. You require a
25 finding that he violated his duty to the Kennedys and

1 you require a finding that what happened, Mrs. Kennedy
2 falling in the pathway of the jitney, was foreseeable
3 to him and he failed to actively prevent it from
4 happening. And once you've heard all the evidence in
5 this case you're going to come to the conclusion that
6 my client operated his vehicle as any other jitney
7 operator would consistent with his obligations under
8 the law and that this accident, while horrific, was not
9 the result of negligence on the part of my client.
10 Thank you very much for your time. We'll see you
11 tomorrow.

12 THE COURT: All right, Mr. Chancey. Thank
13 you. All right, ladies and gentlemen, so that will be
14 it for today. So I want to start right at 9 tomorrow
15 so if you can get here by quarter to 9. Then we'll get
16 everything started. Remember, don't talk about the
17 case among yourselves or to anybody else until it's all
18 over. So have a great evening. See you tomorrow.

19 JUROR: Will we be here?

20 THE COURT: Yeah. Jury management and then
21 Forrest will get you down here. Okay.

22 **(Jury exits)**

23 THE COURT: All right. Anything else you
24 want to address or --

25 MR. LAFFERTY: No, Your Honor.

1 THE COURT: All right.

2 MR. CHANCEY: Thank you, Your Honor.

3 THE COURT: Then I'll let you go. Thank you
4 all very much.

5 * * * * *

6 **CERTIFICATION**

7 I, **BONITA K. BRUMBACH**, the assigned
8 transcriber, do hereby certify that the foregoing
9 transcript of proceedings heard on September 5, 2017
10 and digitally recorded from 1:07:00 PM to 1:34:10 PM
11 and from 3:21:01 PM to 4:13:15 PM, is prepared in full
12 compliance with the current Transcript Format for
13 Judicial Proceedings and is a true and accurate non-
14 compressed transcript of the proceedings as recorded.

15

/s/ Bonita K. Brumbach September 24, 2018
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