

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
ATLANTIC COUNTY, NEW JERSEY
DOCKET NO. ATL-L-1167-15
A.D. #A-000845-17-T3

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

Transcript
of
Day of Trial

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

Date: September 7, 2017

BEFORE:

THE HONORABLE MARY SIRACUSA, J.S.C.

TRANSCRIPT ORDERED BY:

ASHER BROOKS CHANCEY, ESQUIRE
Goldberg Segalla

APPEARANCES:

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

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I N D E X

WITNESSES:

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Hilda Kennedy	4	54	43	
Arvind Baliga	59 (Via Video - Not Transcribed)			

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1 **(On the record on September 7, 2017 at 9:11 AM)**

2 THE COURT: Please be seated.

3 MR. LAFFERTY: Thank you, Judge.

4 MR. CHANCEY: Thank you.

5 THE COURT: Are we ready to bring the jury
6 in?

7 MR. LAFFERTY: We are.

8 THE COURT: All right.

9 **(Jury enters at 9:14 AM)**

10 THE COURT: All right. Please be seated.

11 Good morning, ladies and gentlemen of the Jury. All
12 right. So this morning you're going to hear from Mrs.
13 Kennedy and that doctor --

14 MR. LAFFERTY: Baliga.

15 THE COURT: -- Baliga. All right. Mr.
16 Lafferty.

17 MR. LAFFERTY: Judge, we call to the stand
18 Hilda Kennedy, please.

19 **(pause)**

20 THE COURT: Forrest is going to swear you in,
21 Mrs. Kennedy.

22 **HILDA KENNEDY, PLAINTIFF, SWORN**

23 ATTENDANT: State your full name.

24 THE WITNESS: Hilda Tobias Kennedy.

25 ATTENDANT: Can you spell your last name for

1 the record, please.

2 THE WITNESS: K-E-N-N-E-D-Y.

3 ATTENDANT: Thank you.

4 THE WITNESS: Thank you.

5 **DIRECT EXAMINATION BY MR. LAFFERTY:**

6 Q. Good morning, Hilda.

7 A. Good morning.

8 Q. I know you're soft spoken so -- but these
9 folks need to hear you.

10 A. Okay.

11 Q. Can you keep your voice up? Okay. Hilda,
12 you were born on March 31, 1932, correct?

13 A. Yes.

14 Q. So you're 85 years old now?

15 A. Yes.

16 Q. When this accident happened you were 82?

17 A. Yes.

18 Q. Now tell the ladies and gentlemen of the jury
19 a little bit about yourself. Where were you born?

20 A. I was born in Guatemala.

21 Q. All right.

22 A. Central America.

23 Q. Where did you grow up?

24 A. I grow up in the -- after -- I went to study in
25 the city. We moved to Guatemala city, all my family.

1 And I studied in Guatemala.

2 Q. Did there come a time when you came to the
3 United States?

4 A. I went to San Francisco with a student visa and I
5 study English in San Francisco and I study a little bit
6 about the United States more than I was doing in
7 Guatemala.

8 Q. And did you make a decision you wanted to
9 live in the United States?

10 A. Well, in that time, no. My intention was come to
11 learn English and go back and have a school.

12 Q. Okay. What did you do?

13 A. But I didn't. I went back but I came back to the
14 United States and I make my green card. And after my
15 green card I went back to Guatemala. I moved to New
16 York. I work in the United Nations.

17 Q. Now when you say green card I'm pretty sure
18 we all know that's a permanent residence status?

19 A. Yes.

20 Q. So you went to work in the United Nations.
21 How old were you then?

22 A. I don't remember. I never paid attention to my --
23 when I was 25 years old I decide don't have birthday
24 anymore. And I never took my birthdays anymore, but
25 the last one was 25.

1 Q. That was your last birthday?

2 A. That was my last birthday.

3 Q. So what kind of work did you do after the
4 United Nations work?

5 A. After the United Nations I went to, I went back to
6 Guatemala and my mother and I we went to -- we were
7 going to San Francisco and we stay in Los Angeles for a
8 little bit.

9 Q. Is that when you got to know John?

10 A. Yes.

11 Q. And was John accurate, he was closer to your
12 mother at first than you?

13 A. Yes. Yes. He was in love with her before me.

14 Q. Okay. So you eventually married John,
15 correct?

16 A. Yes.

17 Q. Did you just celebrate a wedding anniversary?

18 A. Yes. Sunday.

19 Q. Sunday?

20 A. Yes. This Sunday.

21 Q. Do you know how many years it is?

22 A. 46. But we made a, just the two of us, you know,
23 in that time. And after we went to Las Vegas to get
24 married.

25 Q. You got married in Las Vegas?

1 A. Yes. He took me to Las Vegas to get married.

2 Q. And it lasted 46 years?

3 A. Yes.

4 Q. Is it a good marriage?

5 A. Beautiful. I never believe it but it's beautiful.

6 Q. Now let's fast forward a little bit. Do you
7 remember the day when this accident happened?

8 A. Yes.

9 Q. Do you know the date?

10 A. Yes.

11 Q. What is it?

12 A. It's November -- I don't like to remember, but
13 November the 17th.

14 Q. Do you know what year?

15 A. 2014.

16 Q. Do you remember about what time the accident
17 happened?

18 A. Yes. The time, no. Close to the time, yes.

19 Q. Close.

20 A. Yeah.

21 Q. Can you tell us close?

22 A. Well, we went to the market to buy Thanksgiving
23 dinner because we like to cook --

24 Q. How did you get to the market?

25 A. Walking. I walk to the market from the house to

1 the market.

2 Q. And did you have any problems back then
3 walking?

4 A. No.

5 Q. Did you have any problems with your right arm
6 back then?

7 A. No. I was perfect.

8 Q. Any problems with your ribs?

9 A. No.

10 Q. Or your shoulder?

11 A. No. I was perfect, I was normal.

12 Q. Did you enjoy walking?

13 A. Yes, a lot.

14 Q. Would you walk on the Boardwalk?

15 A. Yes. From, from the house we live in -- what's
16 it --

17 Q. Was it Metropolitan Plaza?

18 A. Metropolitan Plaza. I used to walk to the
19 Atlantic Club. Of course not like that. I would sit
20 down in the middle, enjoy the ocean because I was in
21 love with the ocean and the Boardwalk.

22 Q. Now Metropolitan Plaza back then, was that
23 mostly senior citizens?

24 A. No.

25 Q. Okay.

1 A. It was like -- when they evict us was 72 families
2 they are evicting one time.

3 Q. All ages?

4 A. All together.

5 Q. Were they of all ages then?

6 A. Huh?

7 Q. Were there people of all ages in Metropolitan
8 Plaza?

9 A. Yes. Young and old. It's really big. Yes.

10 Q. So you were retired in 2014, right?

11 A. Yes.

12 Q. So what would you do -- what did you enjoy
13 doing with your time?

14 A. Write. I promised my great grandmother I would
15 take care of her life. And my mother, I make three
16 manuscripts from my mother, from my grandmother.

17 Q. Did you use a computer?

18 A. No. No, typewriter. Because my son was in
19 college and he was teaching me how to use the computer
20 but, but he was going to have -- in Hunter College he
21 was going to have a examination and he work all night
22 long and I forgot and I destroy all his work for the,
23 for the test.

24 Q. On the computer?

25 A. In the computer. And I get scared and worried

1 because he cry. He says, Mother, you see what you did
2 to me.

3 Q. So you enjoyed writing.

4 A. Yes.

5 Q. Did you write any music?

6 A. Yes, I did.

7 Q. What kind --

8 A. Music, no. Lyrics.

9 Q. Lyrics.

10 A. Yes.

11 Q. And you studied English when you were in
12 school?

13 A. Yes.

14 Q. And you studied writing, is that what you
15 told us?

16 A. Yes.

17 Q. So what other hobbies did you enjoy doing?

18 A. Well, I worked in Los Angeles --

19 Q. Was this -- no, I'm talking about just around
20 the time of the accident.

21 A. Oh, about the accident?

22 Q. No, no. What activities did you enjoy before
23 the accident. You enjoyed writing, walking.

24 A. Writing. And I used to help people you know,
25 people who speak Spanish who needs help.

1 Q. In your building or in the community?

2 A. In the community.

3 Q. So you volunteered?

4 A. Yes.

5 Q. What else did you do?

6 A. And I enjoy seeing, hearing classic music and the
7 channel for Catholics because they say beautiful things
8 sometimes.

9 Q. So did you enjoy traveling at all?

10 A. Oh, yes. One time I travel in one year 33 times
11 by myself all over. Go to the airport. I never took a
12 wheelchair like other people in the airport. I walked.

13 Q. And --

14 A. In Miami.

15 Q. -- when you were travel -- that's when your
16 son William was a --

17 A. He was a --

18 Q. -- an airline steward?

19 A. Yes. And he has, they have privilege --

20 Q. Where --

21 A. -- with the parents, they don't have to pay the
22 full amount of money when they need, the plane's empty
23 they need people and they even give us first class.

24 Q. Where would you travel to?

25 A. I went many times to Guatemala, to -- from New

1 York to Dallas, to Miami, Puerto Rico, the Caribbean.

2 Q. And do you still have family in Guatemala?

3 A. Yes.

4 Q. And who's there?

5 A. My sister, my brother and nephews.

6 Q. So you enjoy travel.

7 A. Yes.

8 Q. Listening to music. You enjoyed writing.

9 A. Yes.

10 Q. You enjoyed walking, you enjoyed volunteering
11 in the community. Anything else that I've missed?

12 A. Well, when 9/11 I was working the ports. I work
13 in New York in the ports. I was -- I don't know how
14 you call them. And I work in the ports in New York.
15 Every time they call me I have -- the three of us, not
16 just myself. And for 9/11 we were there. I saw
17 everything. And we cry. I went home and I start, I
18 start writing for New York and I went to the mayor and
19 give him my work, how I feel for 9/11. And I make
20 lyrics. And he answered me.

21 Q. Okay. So how was your health in 2014, 2013?

22 A. My health. I am going to tell you something. I
23 never was in the hospital in my, all the time I didn't
24 know in San Francisco doctors or New York or Los
25 Angeles. I never, never was sick. I was in good

1 health.

2 Q. You were in good health?

3 A. Yes.

4 Q. Now we have some pictures we're marked as
5 Exhibit P-6. These are pictures of you, correct?

6 A. Yes.

7 Q. Do you remember when those pictures were
8 taken?

9 A. Yes.

10 Q. How about the one all the way up on the left?

11 A. This one?

12 Q. Yes.

13 A. This was, I'd have to see closer. This was --
14 what this? Bonaventure, one of the best hotels in
15 California.

16 Q. The Bonaventure Hotel?

17 A. Yes. But because my son have discount.

18 Q. Okay. And do you know when the middle one
19 was taken?

20 A. Yes.

21 Q. Where is that?

22 A. We was coming from court to help the people in the
23 outlet --

24 Q. So what city --

25 A. Because we were coming from this court.

1 Q. So it was Atlantic City?

2 A. It was Atlantic City.

3 Q. How about this picture?

4 A. That I think is Puerto Rico.

5 Q. And those were taken a year before the
6 accident or the year of?

7 A. Yes. A year before the accident.

8 Q. Now let's talk about the accident. You told
9 us that you walked, you -- and John was with you,
10 right?

11 A. Yes.

12 Q. Anybody else?

13 A. No.

14 Q. You walked from Metropolitan Avenue to the
15 market.

16 A. Yes.

17 Q. And do you about how many blocks that was?

18 A. What?

19 Q. How far, how many blocks.

20 A. No.

21 Q. Okay. Remember how long it took you to walk
22 it?

23 A. No.

24 Q. But you got to the market.

25 A. Yes.

1 Q. What did you do at the market?

2 A. We buy Thanksgiving dinner. And he told me we
3 have to pass by the, by the pharmacy because I need
4 something. And I see the pharmacy so we're here.

5 Q. The one right at Pennsylvania and Atlantic?

6 A. Yes. The one that's after your office.

7 Q. The RiteAid.

8 A. Yes.

9 Q. Okay. So you went to the RiteAid pharmacy.

10 A. Yes. And when we was inside he was looking for
11 what he need and I was in the front standing up waiting
12 for him, and when it starts raining but it's raining
13 hard.

14 Q. So the weather changed.

15 A. Weather changed when we was inside the pharmacy.

16 Q. So did you decide to take some form of
17 transportation?

18 A. My husband was talking in the phone and he said we
19 have to take a taxi. And I didn't know my son was
20 calling him to take a taxi. I say the same, because I
21 am not afraid of the water, the rain, but I am afraid
22 of the wind.

23 Q. So you couldn't get a taxi --

24 A. No.

25 Q. -- and you ended up on a jitney, correct?

1 A. Yes.

2 Q. Do you remember the jitney letting you off?

3 A. I remember everything.

4 Q. Okay. Can you tell us, do you remember the
5 jitney ride?

6 A. Yes. We went inside the jitney. And the -- we
7 always ring the bell in Bella, in that building.

8 Q. At the Bella.

9 A. Yes. And we always, alone or with my family, the
10 jitney driver always leave us in Massachusetts. And if
11 he make a mistake he says, I'm sorry. What do you
12 want? Metropolitan. Can I leave you there? And we
13 used to say yes, and they apologize. They was really--

14 Q. So what happened on this day?

15 A. This day was different. My husband ring the bell
16 in the same place to get off on Massachusetts. The
17 driver ignored.

18 Q. The driver ignored.

19 A. Ignored and passed Massachusetts.

20 Q. Did you notice the driver either talking on
21 his phone or talking --

22 A. I don't know.

23 Q. Okay.

24 A. That I don't know. So we pass -- but I thought he
25 was going to leave us in Metropolitan. But I didn't

1 have bad feelings in that moment. But when he passed
2 Metropolitan I start shaking. My heart was bad because
3 he know that. And why he was -- I have bad feelings.

4 Q. Okay.

5 A. And I start shaking. And I say where he is going
6 to leave us? But in one moment my husband told him --

7 MR. CHANCEY: Objection.

8 **BY THE WITNESS:**

9 A. -- where do you want to stop?

10 THE COURT: Okay. Well, you can't testify
11 about what your husband said. You can only testify
12 about what you saw or observed.

13 **BY MR. LAFFERTY:**

14 Q. So at a point after your husband made a
15 comment did the jitney stop? Did the jitney stop?

16 A. It stop in the middle of the street in -- I don't
17 know, it was not in the stop of Rhode Island but in the
18 middle of the street.

19 Q. And what was the weather like?

20 A. Was raining and windy.

21 Q. So what happened next?

22 A. Well, I want to stay in the jitney and I was going
23 to tell him why we don't go -- because it's raining and
24 it's windy. And I have bad feelings. And in that
25 moment he says, where you are going to stop. And the

1 man stop not on the sidewalk but in the middle of the
2 street.

3 Q. When you were in jitneys before where do they
4 normally stop?

5 A. In Massachusetts.

6 Q. I know. But in relationship to the curb did
7 the -- do you see this picture here, P-2? Did the
8 jitneys normally stop close to the curb?

9 A. Always. Because --

10 Q. Or further away?

11 A. Never. No in Los Angeles, no in Guatemala, no in
12 New York.

13 Q. No, we're talking about Atlantic City.

14 A. In Atlantic City, never.

15 Q. So who got off the jitney first, you or your
16 husband?

17 A. Well, my husband took the shopping cart and he
18 told me wait for me. Don't come out until I come back
19 for you. But that waiting I was shaking, I was bad. I
20 was nervous. I was feeling something.

21 Q. So did you start to get off the jitney?

22 A. So when he came he took me because I will not
23 reach the, the middle of the street with my legs
24 because my legs are too short. I will fall down if I
25 will do it.

1 Q. So the jitney was too high?

2 A. Too high.

3 Q. So did John help you off?

4 A. Yes.

5 Q. Now --

6 A. He almost carry me to put me down.

7 Q. In your memory did you make it to the
8 sidewalk?

9 A. No.

10 Q. But you've seen the video, haven't you?

11 A. Yes.

12 Q. Does the video show you at least touching
13 sidewalk?

14 A. No. I don't know. That is something in my mind
15 because when I see I was going to go to the sidewalk in
16 my mind.

17 Q. Well --

18 A. I feel something took me like this and put me in
19 the water.

20 Q. Somehow you fell, correct?

21 A. I don't know.

22 Q. And --

23 A. I don't think so I fell, I think so the jitney
24 took me.

25 Q. Did you end up --

1 A. In my back.

2 Q. Did you end up in the gutter?

3 A. Yes.

4 Q. Were you on your back?

5 A. Yes.

6 Q. Which way was your head facing?

7 A. The skies.

8 Q. You were looking at the sky.

9 A. Yeah.

10 Q. Was the top of your head pointing towards the
11 front of the jitney?

12 A. In front, no.

13 Q. No, was your head pointed --

14 A. Ah, yes.

15 Q. So do you know what caused you to fall? Not
16 what you think, do you know what caused you to fall?

17 A. To tell you the truth, I think the jitney.

18 Q. But you ended up on the ground.

19 A. Yes.

20 Q. Was there water in the gutter?

21 A. Yes. I was wet on my back. The stone scratched
22 my back.

23 Q. Did John come to help you?

24 A. Yes. And he went on above me.

25 Q. To pick you up?

1 A. Yes.

2 Q. He didn't lay on top of you. He put his
3 arms --

4 A. I don't know, but I see him close to my face
5 trying to help me.

6 Q. Then what happened next?

7 A. Well, I ended up in the tire of the jitney,
8 looking at the tire of the jitney.

9 Q. Did --

10 A. So he's trying to take me like this and when he's
11 trying to pick me up in one moment he went up and look
12 at the driver and say, "Please don't move, please don't
13 move." And I hear it and I say it too with my voice
14 not high like him. I was, I still have hopes he will
15 not do nothing to me. But in the moment he finish
16 telling him please don't move the driver move and was
17 -- he was saying to him things. When I hear my
18 shoulder broke I hear the bones broke. And after my
19 shoulder was breaking I was not crying. It started my
20 ribs one by one. I hear it.

21 Q. You hear your ribs breaking?

22 A. Yes. So he went down and he's, he tried to, to
23 take me from there, from the tire. And I told him
24 please don't touch me, my bones are breaking. But I
25 was not crying. I was, I have faith in God. And I

1 didn't want for him to get ... (unintelligible) ... or
2 I was afraid of the jitney to move again and destroy my
3 face and my head and kill me. And after he, he
4 listened to me. He didn't try to held me because it
5 start the other side. 14 ribs was -- (crying) -- was
6 breaking one by one. I didn't know if I going to die
7 because who was taking care of me? I have only him and
8 my son alone, no friends, no family, no nothing.
9 Because we was leaving Atlantic City.

10 Q. How did John appear to you? Do you remember?

11 A. Crying. He cry and he cry and he cry. When I see
12 him crying I look up at the skies, I say please don't
13 take me. Because the way he cry in that moment my son
14 appeared. He didn't have to do this. He really didn't
15 have to do this. I say -- he's dead he says, but he
16 will not be dead if he did this.

17 Q. So do you remember the ambulance --

18 A. Yes.

19 Q. -- and the EMTs coming?

20 A. Yes.

21 Q. What did they do for you?

22 A. So the paramedics went close to me. I was close
23 to the tire like this. And I was afraid. I was -- I
24 didn't want to lose my temper or lose my -- I want to
25 see if I die or if I live.

1 Q. Do you remember --

2 A. And I ask God to give me strength.

3 Q. Do you --

4 A. And he did.

5 Q. Do you remember how the wheel rolled over
6 you?

7 A. Yes.

8 Q. Can you tell us?

9 A. Yes. I was that close to the wheel. And when he
10 move he took my jacket and close, and so I put my face
11 like this (crying) by the tire. He was going to kill
12 me without no reason (crying).

13 Q. Are you okay? Do you need a break?

14 A. No.

15 Q. So the EMTs took you to the hospital?

16 A. No. So the paramedics come and try to touch me
17 and one doctor told them don't touch her. All her
18 bones are broken . . . (unintelligible; crying)

19 MR. LAFFERTY: Judge, maybe we should take a
20 break.

21 **BY MR. LAFFERTY:**

22 Q. We're going to take a break.

23 A. He didn't have to do this stupid --

24 **(Jury exits)**

25 THE WITNESS: I'm sorry.

1 THE COURT: That's okay. That's all right.

2 So --

3 MR. LAFFERTY: Thank you, Judge.

4 THE COURT: -- just like 5 minutes? Okay.

5 **(off the record from 9:43 AM to 9:55 AM)**

6 THE COURT: Please be seated. Are we ready
7 for the jury?

8 MR. LAFFERTY: We're ready.

9 THE COURT: Okay.

10 **(Jury enters at 9:58 AM)**

11 THE COURT: You may be seated. All right.
12 Mr. Lafferty.

13 MR. LAFFERTY: Thank you, Judge.

14 **BY MR. LAFFERTY:**

15 Q. So Hilda, you were ultimately transported the
16 emergency room of the trauma center, correct?

17 A. Yes.

18 Q. Do you remember being in the emergency room
19 of the trauma center?

20 A. Yes.

21 Q. Do you remember what was going on there?

22 A. No.

23 Q. Do you remember if they cut your clothes off?

24 A. Yes.

25 Q. And what do you remember?

1 A. The doctor who took me from the tire of the jitney
2 cut my clothes off.

3 Q. Okay. That happened at the scene?

4 A. Yes. Was not another way to --

5 Q. Were you feeling any pain?

6 A. In that moment? Or what?

7 Q. After the accident did you feel pain?

8 A. Of course. I was not the same.

9 Q. When you got to the emergency room do you
10 remember them putting you to sleep?

11 A. I remember talking to my husband, don't be
12 worried, I will live. But --

13 Q. How was John --

14 A. -- that's it.

15 Q. How was John then?

16 A. In pieces.

17 Q. So you were pretty brave?

18 A. Yes. I'm no -- I am not. God give me the
19 strength.

20 Q. So do you remember Dr. Islinger?

21 A. No. I just remember when my husband told me he's
22 the best doctor in the United States. He's going to
23 help us. And you are going to be all right because
24 everybody told me this is his last day but he is going
25 to take care of you. That's it.

1 Q. So did they then put you to sleep?

2 A. Yes.

3 Q. Do you know how long you were asleep?

4 A. No.

5 Q. Do you remember waking up in the trauma unit?

6 A. Yes.

7 Q. How long were you in AtlantiCare?

8 A. Like from -- I think 9 days or 8 days. I don't
9 know.

10 Q. When you woke up tell us what your condition
11 was?

12 A. Grave. I couldn't move. My head was hurting me a
13 lot. My arm was gone. My shoulder was gone. And my
14 ribs still with the pain. But in that day the pain was
15 more. And --

16 Q. When you say shribs you mean ribs, right?

17 A. Yes.

18 Q. Do you have a little problem with R's?

19 A. Yes. Yes.

20 Q. R is not your friend, I know.

21 A. R is not my friend.

22 Q. Okay. So your ribs were painful, your
23 shoulder was painful.

24 A. Everything.

25 Q. Were you on any tubes?

1 A. I don't know.

2 Q. So what did they do for you in the hospital?

3 A. Everybody was really nice to me. Eight doctors
4 went to see me and told me don't worry, you are going
5 to survive. You are a brave person.

6 Q. Did you -- do you remember having surgery in
7 the hospital?

8 A. No. No.

9 Q. So there came a time -- strike that -- when
10 you were awake in the hospital was John there?

11 A. He sleep the 9 days close to me. And every time
12 they went they wake him up for them to take care of me
13 but he didn't move from my side. He sleep with me in
14 there in the hospital, in the -- what you say?

15 Q. The trauma unit.

16 A. Yes. All the days.

17 Q. So there came a time when you were
18 transferred to Betty Bacharach.

19 A. Yes.

20 Q. You remember that?

21 A. Yes, I do.

22 Q. All right. Now do you remember how long you
23 were in Betty Bacharach?

24 A. Yes.

25 Q. How long?

1 A. 17 days.

2 Q. And what did they do for you in Betty
3 Bacharach?

4 A. Oh. Everything they could.

5 Q. Did you have therapy?

6 A. Yes. I started, but that was painful. That
7 therapy took my life.

8 Q. What kind of therapy did you have?

9 A. My -- when they operate me they leave my one sling
10 and they tied it over here to take my ribs and my arm
11 like this for a month. I couldn't move anything
12 because the -- just when they give me a shower was when
13 they take the sling, but the sling was too tight and
14 painful because I have to have it 24 hour. And the
15 ribs was really killing me a lot. And they give me
16 something to do like this because they have to take
17 care of my lungs and my ribs and I need air. And when
18 my son came and help me and my husband was helping me
19 to breathe with that -- I don't know what was it.

20 Q. Thing you blow into?

21 A. Yes.

22 Q. So how -- you stayed in Betty Bacharach for
23 17 days you said?

24 A. Yes. Yes.

25 Q. Then where did you get transferred to?

1 A. They transferred me to Egg Harbor.

2 Q. Egg Harbor Care Center?

3 A. Yes.

4 Q. Do you remember how many days you were in
5 there?

6 A. About, I don't know, 74, I don't know.

7 Q. What did they do for you?

8 A. Huh?

9 Q. What did they do for you?

10 A. Well, they started trying to fix my arm. And
11 after I get there I start with the infection. And they
12 used to tell me the infection is worse than the
13 accident. And both of them are going to take you.

14 Q. Is that when you ended up with Dr. Lucasti?

15 A. Yes. I have pain and that was growing up,
16 growing. I was scared. And my -- they used to put me
17 over here, three shots every day. One in my ribs and
18 in my shoulder. And that helped me a lot. But that
19 was every day. And they give me like 20 pills a day
20 plus the pain pills every 2 hours, okay.

21 Q. Since this accident happened has there ever
22 been a day that you haven't had pain?

23 A. No. It's every day pain.

24 Q. Where?

25 A. Everything, my ribs and my arm.

1 Q. Before this accident did you ever have your
2 arm in a sling?

3 A. No. I was fine.

4 Q. Do you remember Dr. Islinger doing an
5 operation in late January on your infection?

6 A. Yes. Because it's going badly and we have to be
7 in the hospital to do the operation. So my son -- my
8 husband and my son went to pick me up to take me to
9 another hospital in New Jersey, I don't know where.

10 Q. So you had the surgery. Dr. Islinger did it?

11 A. Yes. I think he did. Yes.

12 Q. We have photographs marked P-7. Are they
13 pictures of you?

14 A. Yes.

15 Q. Do you remember where they were taken?

16 A. I think doctor --

17 Q. Do you know where?

18 A. In Bacharach. No, in Egg Harbor.

19 Q. And the bruises that we see in these
20 pictures, were they caused by this accident?

21 A. Yes.

22 Q. Now after you got discharged from the Egg
23 harbor care center did you come, did there come a time
24 when you saw Dr. Baliga?

25 A. Yes.

1 Q. And is his specialty rehabilitation medicine?

2 A. I don't know. But they call me January the
3 second, my husband, my son and social worker and told
4 me --

5 MR. CHANCEY: Objection.

6 **BY MR. LAFFERTY:**

7 Q. Do you remember --

8 MR. LAFFERTY: I'll withdraw. I'll go on.

9 **BY MR. LAFFERTY:**

10 Q. Do you remember where you spent Thanksgiving
11 in 2014?

12 A. Yes.

13 Q. Where?

14 A. In Bacharach.

15 Q. How about Christmas?

16 A. In -- Christmas was the worst. In Egg Harbor
17 because I was doing therapy and I start bleeding and
18 bleeding and bleeding and bleeding and bleeding. But
19 bleeding. I was scared. From 9, maybe from 10 o'clock
20 to 7 o'clock without stopping. Bleeding.

21 Q. So you had some complications along the way.

22 A. Yes.

23 Q. But you eventually got discharged, I think it
24 was February --

25 A. The 27th.

1 Q. February 27th?

2 A. Yes. But I was discharged because they told me
3 Medicaid pay only 20 days in Bacharach, I mean Egg
4 Harbor. So I will not have Medicaid anymore to pay
5 for my stay in Egg Harbor.

6 Q. So there came a point where you stopped
7 seeing Dr. Islinger, right?

8 A. Yes.

9 Q. Was it your understanding whether he could do
10 anything more for you?

11 A. Yes, he told me.

12 Q. He told you what?

13 MR. CHANCEY: Objection.

14 MR. LAFFERTY: I'm asking what her
15 understanding was.

16 THE COURT: I'll allow that.

17 MR. CHANCEY: I'll withdraw -

18 THE COURT: Overruled.

19 MR. CHANCEY: -- the objection, Your Honor.

20 THE COURT: Thank you.

21 **BY MR. LAFFERTY:**

22 Q. What was your understanding of what he told
23 you?

24 A. He told me, he says, I wish to have you more time
25 because you are really nice but we are going to give

1 you another doctor.

2 Q. Is that when he sent you to Dr. Baliga?

3 A. No. No. That was, that was not --

4 Q. How --

5 A. Because they have to do the -- they did the
6 operation for the infection. But --

7 Q. Has your arm improved at all since you were
8 discharged from the hospitals? Has it gotten any
9 better?

10 A. No.

11 Q. Do you do therapy at home?

12 A. Yes.

13 Q. How many times a week do you do it?

14 A. Any time I have not too much pain.

15 Q. So you do it when you're not in pain?

16 A. Yes.

17 Q. Or not too much pain?

18 A. Not too much pain.

19 Q. How often, how many times a week do you do
20 it? Can you average it for us?

21 A. Sometimes I try to do it every day.

22 Q. And what kind of therapy do you do?

23 A. Well, I clean the table, I go to try to move my
24 arm. My husband and my son have that things and they
25 want for me to do it but it's too painful.

1 Q. Is that the pulley?

2 A. Yes.

3 Q. Where is that in the house?

4 A. In the bathroom. In the door of the bathroom.

5 Q. So you try to do the pulley?

6 A. Yes. But now, what we learned with the doctor
7 it's not, it's really not helpful because I can destroy
8 another --

9 Q. So you found out that your arm can't be
10 raised?

11 A. Yes. Yes.

12 Q. But you understand it's important to keep it
13 limber?

14 A. Yes. Yes. That's why I want to go to Guatemala,
15 because my husband is suffering this at the moment.
16 And he's really a victim of this because --

17 Q. Okay. Okay, Hilda. Let's stay with the
18 questions.

19 A. Okay.

20 Q. So you do the home therapy. Are you able to
21 dress yourself?

22 A. Not without help.

23 Q. Who helps you?

24 A. John. And my son.

25 Q. How about other daily -- do you still walk?

1 A. I am trying, yes.

2 Q. Do you still take those walks on the
3 Boardwalk?

4 A. Yes. I --

5 Q. How far do you go?

6 A. Sometimes 3 blocks, sometimes 4 blocks, depends.

7 Q. Do you walk from one end of the Boardwalk
8 down to the Atlantic Club and back?

9 A. Before, yes.

10 Q. No, after.

11 A. No. Impossible.

12 Q. Are you right -- you're right handed,
13 correct?

14 A. Yes.

15 Q. Do you write with your left hand at all?

16 A. No.

17 Q. So how about other daily needs. How about
18 showering?

19 A. Shower is -- I can't wash my hair and I can't dry
20 my feet.

21 Q. You can't wash your hair and you can't dry
22 your feet?

23 A. Yes. I cannot.

24 Q. Who dries your hair?

25 A. My husband.

1 Q. And who washes your feet, or dries your feet?

2 A. My husband.

3 Q. Were you -- did he ever -- did he do that
4 before the accident? Did he have to --

5 A. I always did it myself.

6 Q. Were you independent before the accident?

7 A. Yes.

8 Q. Are you independent now?

9 A. No.

10 Q. How about sleeping?

11 A. Sleeping is hell because when I am really tired
12 and I want to sleep I forget that I have this shoulder
13 and my arm. And when I wake up I wake up with tears in
14 my eyes.

15 Q. Do you sleep through the night?

16 A. No. Sometimes I am awake all night crying. And I
17 go to the bathroom at 2 or 3 o'clock in the morning and
18 stay 1 or 2 hours when's sleeping, when he can't see
19 me.

20 Q. Where do you live?

21 A. In Atlantic City.

22 Q. In Brighton Towers?

23 A. Yes.

24 Q. Are you in pain now?

25 A. Yes.

1 Q. Do you take pain medication?

2 A. Yes.

3 Q. You take it every day?

4 A. They don't like to give it to me. And I take
5 other pills too. And the doctor give me every month.

6 Q. So you try to limit your pain medication?

7 A. Yes. But in Egg Harbor was like 8 or 10 a day.

8 Q. How about the strength in your arm. Is your
9 arm strong like it was before?

10 A. No. I don't have no shoulder.

11 Q. So as far as your activity level how would
12 you compare Hilda before the accident to Hilda after
13 the accident?

14 A. That -- before the accident I was happy. I was
15 good health. I cook, I clean. I buy clothes to sell
16 in Guatemala. I pay the taxes over here, the taxes
17 over there, and I give it to my sister. I didn't sell
18 it, the clothes in Guatemala, she did. But I used to
19 go to the stores.

20 Q. Okay. But let's talk about your lifestyle,
21 about how Hilda was before the accident and now.

22 A. Happy. With too much hopes.

23 Q. How about after the accident?

24 A. Sad. Crying all the time. Seeing my husband the
25 way he work for me. I want for him to have, I want for

1 me to have somebody instead of him. He has to do his
2 life. My son too. I need a person to take care of me.

3 Q. Who takes care of your house?

4 A. Him.

5 Q. Who cooks?

6 A. He, he cooks.

7 Q. Who does the laundry?

8 A. He does the laundry. He clean the house, the
9 bathroom, he give me food. All of that I used to do it
10 myself.

11 Q. You can't do it anymore?

12 A. No. I can't go to the store. I am afraid seeing
13 jitneys, I scream, I shake, I cry.

14 Q. Do you have problems taking care of your
15 personal needs in the bathroom?

16 A. Yes.

17 Q. Who helps you there?

18 A. I try to do it myself because I only have two men.
19 I don't have a sister, I don't have one person.

20 Q. Does John help you sometimes?

21 A. Yes.

22 Q. Hilda, we heard Dr. Islinger talk about the
23 appearance and condition of your shoulder. You heard
24 that, right?

25 A. Yes.

1 Q. Are you able to show the ladies and gentlemen
2 of the jury your shoulder?

3 A. Yes.

4 MR. LAFFERTY: John, can you help her?
5 Judge, I'm going to ask her to take her jacket and
6 sling off.

7 THE WITNESS: No, I just --

8 (pause)

9 MR. LAFFERTY: John, can you help Hilda over
10 here, please. Hilda, first -- John, can you turn her
11 so they can see her left shoulder.

12 **BY MR. LAFFERTY:**

13 Q. Now is that as you -- God gave you that
14 shoulder, right?

15 A. Yeah.

16 Q. Okay. Can you turn the other way. Can you
17 show -- now is this a scar from the surgery?

18 A. Yeah.

19 Q. And where's the scar from the --

20 A. Over here.

21 Q. That's the scar from the infection?

22 A. Yes.

23 Q. And you also have a collar bone --

24 A. Yes. These bones they couldn't fix it.

25 Q. Okay. All right. Thank you.

1 (pause)

2 MR. LAFFERTY: We'll put the jacket on later.

3 I want Hilda --

4 **BY MR. LAFFERTY:**

5 Q. Hilda, can you stand up, please?

6 A. Huh?

7 Q. Can you stand up?

8 A. Yeah.

9 Q. Can you show the ladies and gentlemen of the
10 jury how far you can raise your arm, your right arm?

11 Not with the other hand, by itself. And how about --

12 Okay. Don't hurt yourself. And how about your moving
13 it out like this to your side? Can you move it?

14 A. Mmm, no.

15 Q. How about back? That's as far as you can go?

16 A. Yes. With this I can go like this.

17 Q. Is that as far as you can go with the help?

18 A. Yes.

19 Q. But without help --

20 A. Without help, no.

21 Q. All right. Thank you. Is this what John
22 does for you every day?

23 A. Yes.

24 (pause)

25 MR. LAFFERTY: Want to put her sling back on?

1 MR. KENNEDY: What?

2 MR. LAFFERTY: Want to put her sling back on?

3 (pause)

4 THE WITNESS: Thank you.

5 **BY MR. LAFFERTY:**

6 Q. So Hilda, what are your thoughts about the
7 future?

8 A. I still have hopes to do what I want to do. But I
9 am handicap.

10 Q. Does that bother you?

11 A. Yes. A lot.

12 Q. Is this how you envisioned spending your
13 retirement years?

14 A. No. I was trying to make money and since I was
15 little I want to go to Vienna.

16 Q. What do you want to do in Vienna?

17 A. See a concert.

18 Q. The Vienna Opera House?

19 A. Yes. And I was going to go.

20 Q. Have you traveled since this accident at all?

21 A. Since this accident, no. I can't go to see my
22 family. And I used to go for Christmas.

23 Q. Have you been on a plane once in 3 years?

24 A. No. I wish I was. I was wishing to be.

25 Q. And what parts of your body cause you pain?

1 A. My ribs --

2 Q. Your ribs.

3 A. -- bother me too much. Yes. Especial these ones
4 because I still hearing when they was breaking when I
5 was at the tire of the jitney. Sometimes I dream that.

6 Q. You have nightmares?

7 A. Yeah. And I hear when, and I just get up, go to
8 the bathroom, cry by myself, because I don't have
9 friends, I don't have family. Just my husband and my
10 son. But I can't bother them 24 hours a day. They are
11 suffering a lot. They need to have their own life.
12 And help me to see with a wheelchair --

13 Q. Do you feel like you're a burden on your
14 family?

15 A. Yes. With a wheelchair it's not easy to see my
16 son and my husband in the street pushing me. That
17 hurts. And the wheelchair hurt too. But my son buy
18 that one for \$1,500. I told him I'm going to be easy,
19 but the street is not even. I hurt a lot.

20 Q. Even bumping in a wheelchair.

21 A. Yes.

22 Q. Riding in a wheelchair hurts.

23 A. Yes. I never thought to see them young and doing
24 that, people look at them, what the hell you doing?

25 That is my impression when they look at them help me.

1 I want for them to have their own life.

2 Q. Okay.

3 A. Not --

4 MR. LAFFERTY: Thank you, Hilda.

5 THE WITNESS: Okay.

6 THE COURT: No --

7 THE WITNESS: Excuse me.

8 MR. LAFFERTY: You have to stay.

9 THE WITNESS: Thank you.

10 THE COURT: Just stay there, Hilda. Mr.
11 Chancey's going to ask you some questions.

12 THE WITNESS: Oh, okay.

13 **CROSS-EXAMINATION BY MR. CHANCEY:**

14 Q. Hi, Mrs. Kennedy.

15 A. Yes?

16 Q. We've met before.

17 A. Yes.

18 Q. As you recall.

19 A. Yes, I do.

20 Q. I do want to take you back to the date of the
21 accident just briefly. You have confirmed that you
22 were on my client's jitney before the accident
23 occurred, is that correct?

24 A. What?

25 Q. You were on my client's vehicle before the

1 accident occurred?

2 A. I don't get it.

3 Q. Okay. On the date of the accident --

4 A. Oh, yes.

5 Q. -- you had been riding on my client's jitney.

6 A. Yes.

7 Q. Is that correct?

8 A. Yes. It's true.

9 Q. Okay. And you indicated that the vehicle
10 came to a stop in the middle of the street, is that
11 correct?

12 A. We ring the bell for our street in Massachusetts
13 where they always leave us.

14 Q. I understand. My question is when the
15 vehicle came to a stop you said it was in the middle of
16 the street?

17 A. Yes.

18 Q. Now do you mean it was in the middle of the
19 block or it was --

20 A. I don't know. I just know it was not in the
21 sidewalk.

22 Q. Okay. So you mean it was up, it was away
23 from the sidewalk.

24 A. Yes.

25 Q. Okay. When you, you said the vehicle was in

1 the middle of the street. Did that prevent you from
2 being able to exit the vehicle?

3 A. Yes.

4 Q. Okay. And you were not able to exit the
5 vehicle as a result of where it stopped?

6 A. Yes.

7 Q. Okay. Did you instruct the driver that you
8 couldn't get out of the vehicle?

9 A. Yes.

10 Q. You did tell him that?

11 A. Yes.

12 Q. And did -- were you standing next to him when
13 you told him --

14 A. I was at the door.

15 Q. You were at the door when you told him?

16 A. Yeah.

17 Q. Did you turn around to face him when you told
18 him that he was too far from the sidewalk?

19 A. He knew, yes.

20 Q. But I'm talking about when you told him that
21 he was too far from the sidewalk.

22 A. I told him my legs are too short.

23 Q. Okay.

24 A. And there's too much water. I can't, I can't do
25 it.

1 Q. Okay. And at that moment you were standing
2 -- were you in the stairwell or were you up from --

3 A. In the stairwell.

4 Q. Okay. So at the moment that you were
5 standing in the stairwell you told my client that he
6 was too far from the sidewalk, is that correct?

7 A. Yes.

8 Q. Okay. Did you -- were you facing him when
9 you said it or were you facing the doorway?

10 A. That I don't recall. I think I did like this but
11 I don't know if he was looking at me, I don't know.

12 Q. Okay. When you told him that he was too far
13 from the sidewalk did you stop in the stairwell and
14 tell him that?

15 A. I was shaking. I was nervous. I have bad
16 feelings.

17 Q. Okay. But did you stop in the stairwell and
18 say you're too far from the sidewalk?

19 A. Yes.

20 Q. Did you ask him to adjust the vehicle?

21 A. I was going to do it but I was afraid he was -- I
22 was at the door and if he move he will throw me from
23 the door.

24 Q. Okay. So you did stop, you did ask him to
25 move closer, but he --

1 A. I was afraid.

2 Q. Okay. He did not move it closer to the
3 sidewalk, is that correct?

4 A. No.

5 Q. Okay. Were you able to step out of the
6 jitney?

7 A. With my -- the help of my husband, yes.

8 Q. With your husband's help.

9 A. Yes.

10 Q. You stepped into the roadway, correct?

11 A. Yes.

12 Q. And were you able to get both feet on the
13 roadway?

14 A. Yes.

15 Q. Okay. Once you got both feet on the roadway
16 you indicated with Mr. Lafferty, with your attorney you
17 indicated that something took you. I wrote it down.
18 Something took you and put you in the water. Do you
19 remember saying that?

20 A. Yes.

21 Q. Do you know what took you and put you in the
22 water?

23 A. The jitney.

24 Q. The jitney took you and put you in the water?

25 A. It was not another way.

1 Q. Okay. My question for you -- I understand
2 that there may not be another way but my question for
3 you is do you have a specific memory of the jitney
4 taking you and putting you in the water?

5 A. Yes.

6 Q. Okay. Were you able to step up onto the
7 sidewalk before the jitney took you and put you in the
8 water?

9 A. For me I was going to do it but in that moment I
10 went, something took me and I went like this, and my
11 husband tried to help me.

12 Q. I understand.

13 A. And he went on top of me.

14 Q. I understand that, ma'am. I understand that
15 completely. My question really pertains to when you
16 stepped out of the jitney and into the roadway before
17 the jitney moved and took you into the street were you
18 able to get up on the sidewalk?

19 A. You asked me that before. But in my mind I didn't
20 put my foot. But when I saw it in the, in the video I
21 seen my feet. I don't know both or one, I don't know.

22 Q. Okay. I understand completely, ma'am. And I
23 don't want to make this tedious for you and I don't
24 want to make this any harder than it has to be. And
25 all I'm, all I want to ask about is your memory of the

1 day of the accident. And the video is the video. I'm
2 just --

3 MR. LAFFERTY: Judge, Judge --

4 **(sidebar conference not recorded)**

5 **BY MR. CHANCEY:**

6 Q. Ma'am, the video aside, do you have a
7 specific memory on that day of being able to get to the
8 sidewalk before the jitney moved?

9 A. Before the jitney moved? When I was laying down
10 in the tire, close to the tire?

11 Q. My question really pertains to stepping out
12 of the jitney and into the roadway and whether you were
13 able to then move from the roadway up onto the
14 sidewalk.

15 A. Of course, I was fine.

16 Q. I -- you were fine?

17 A. I was fine when I took the jitney.

18 Q. I understand that, ma'am. I understand you
19 were fine. I'm really asking about exiting the jitney.
20 You stepped into the stairwell. Then you were able to
21 step into the roadway with your husband's help.

22 A. Yes.

23 Q. Were you then able to step up onto the
24 sidewalk with your husband's help?

25 A. Yes.

1 Q. Okay. So you were, you did get up onto the
2 sidewalk.

3 A. I don't know.

4 Q. You don't know if you got up onto the
5 sidewalk or not. And I understand that completely.
6 You said that the jitney took you. Did the jitney
7 cause you to fall?

8 A. Yes.

9 Q. Okay. Where were you at the moment that the
10 jitney caused you to fall?

11 A. I was going to -- I was safe.

12 Q. Okay. But were you in the street, were you
13 on the sidewalk?

14 A. I was close to the sidewalk.

15 Q. Were you on the sidewalk?

16 A. I don't know.

17 Q. Okay. Were you on the curb?

18 A. Um, no.

19 Q. Okay.

20 A. No.

21 Q. So you hadn't made it up onto the curb or the
22 sidewalk at the moment that the jitney caused you to
23 fall?

24 A. That is the way I remember.

25 Q. Okay. It seems to me that you've told us

1 both that you did not get up onto the sidewalk and that
2 you did get up onto the sidewalk.

3 A. I don't --

4 Q. Is it possible that you just don't remember?

5 A. That is what I meant. I was too worried and too
6 confused because the water, when I went to the water
7 was cold and my shoes was full of the water. And that
8 don't supposed to do if he will leave us in
9 Massachusetts.

10 Q. Okay.

11 A. This, this accident he did it himself.

12 Q. How do you mean he did it himself?

13 A. Because if we will be off in Massachusetts or the
14 street they always leave us, Metropolitan this will not
15 happen.

16 Q. Okay. Do you -- I'm just -- do you know what
17 caused you to fall, ma'am?

18 A. I feel something in the back of my head, in the
19 back and that's why I went like this. And the water
20 was there and the jitney put me in the tire and rip
21 over my back.

22 Q. Okay. You agree with me that you did fall at
23 some point. You were standing up and then you fell.

24 A. I didn't fell.

25 Q. You didn't fall?

1 A. No.

2 Q. Okay.

3 A. I think that is what happened.

4 Q. Okay. Do you know how you ended up on the
5 ground if you didn't fall?

6 A. Fine. I will go home. Maybe she's wet.

7 Q. I'm sorry. I think you misunderstood my
8 question. I apologize for that. You told us that you
9 don't' think you fell. Do you know how you ended up on
10 the ground if you didn't? If you didn't fall how did
11 you end up on the ground?

12 A. Something moved me to fall.

13 Q. Okay. And do you know what that was?

14 A. The jitney.

15 Q. Okay. Do you know where you were standing at
16 the moment that the jitney moved you to fall?

17 A. Yes.

18 Q. Where were you standing?

19 A. Very close to the sidewalk.

20 Q. Were you on the sidewalk?

21 A. No. For me, no.

22 Q. Were you on the curb?

23 A. I don't, I don't like curb. Because I -- curb is
24 sidewalk?

25 Q. Okay. So the curb and the sidewalk, you were

1 on neither the curb nor the sidewalk?

2 A. Yes.

3 Q. Is that correct? So were you still in the
4 roadway when the jitney caused you to fall?

5 A. Yes.

6 Q. Okay. So were you still in the roadway when
7 the jitney began to move?

8 A. I was in the middle of the street.

9 Q. Okay.

10 A. But anyway, the jitney did this to me.

11 Q. I understand, ma'am. My question is you're
12 telling us that the jitney caused you to fall.

13 A. Yes.

14 Q. And you're telling us that you were in the
15 roadway at the moment that the jitney caused you to
16 fall. And so my question for you is were you unable to
17 get from the jitney into the roadway and up onto the
18 curb and sidewalk safely at the moment that the jitney
19 stopped to let you off?

20 A. Yes. If he will not take me again to the front,
21 yes, I would be -- I was saying thank God we are going
22 to be fine. Just the water on the clothes, but that
23 don't mean nothing to me.

24 Q. I understand, ma'am. Again, my question may
25 have been a little confusing, but I really --

1 A. I -- you are confusing me because you are asking
2 the same thing and the same thing and --

3 Q. I --

4 A. -- my head is not that great. Now.

5 Q. My question simply is when you exited the
6 jitney were you able to step into the roadway and then
7 up onto the sidewalk before the jitney moved?

8 A. Yes.

9 Q. Okay. And so ma'am, I -- at this point I
10 think it's unclear whether you were standing on the
11 sidewalk or in the roadway when the jitney caused you
12 to fall as you said it did.

13 MR. LAFFERTY: Objection.

14 **BY MR. CHANCEY:**

15 Q. And so just to --

16 THE COURT: Yeah, Mr. Chancey.

17 MR. CHANCEY: Okay.

18 **(sidebar conference not recorded)**

19 **BY MR. CHANCEY:**

20 Q. Ma'am, do you know how far, can you estimate
21 in your mind how far from the sidewalk the jitney was
22 when it stopped?

23 A. Like, in the middle.

24 Q. In the middle of the street?

25 A. When he stopped the first time?

1 Q. Yes. When he stopped to let you off can you
2 estimate how far from the sidewalk, from the curb he
3 was?

4 A. Was far.

5 Q. I'm sorry?

6 A. Was far.

7 Q. Okay. Can you estimate in your head how far
8 it was in terms of feet?

9 A. Maybe 3. I don't know about feet but --

10 Q. I understand. Let me ask you this. How many
11 steps did you have to take to get from the jitney to
12 the sidewalk?

13 A. Steps. I think they have two.

14 Q. I mean from where the jitney stopped in the
15 street --

16 A. Oh.

17 Q. -- how many steps did you have to take to
18 walk to the sidewalk?

19 A. When -- if he will stop in the sidewalk --

20 Q. How many --

21 A. -- we don't have this accident.

22 Q. From where he stopped in the street how many
23 steps did you have to take to get to the sidewalk?

24 A. I think 4 or 5. I don't know.

25 Q. You had to take 4 or 5 steps to get to the

1 sidewalk?

2 A. I really don't, don't know. I never had that
3 problem before.

4 Q. But I'm asking for your recollection on that
5 day. Do you recall that it was 4 or 5 steps to get to
6 the sidewalk?

7 A. Yes.

8 Q. Okay. Did you take the 4 or 5 steps to get
9 to the sidewalk and step up onto the sidewalk?

10 A. I don't know. That was too -- what I know is the
11 jitney did this to me no matter what.

12 Q. I understand, ma'am. I understand
13 completely. My question is whether you took the 4 or 5
14 steps to get to the sidewalk and then stepped up to the
15 sidewalk?

16 A. I don't know.

17 Q. You don't know if you did or not?

18 MR. LAFFERTY: Judge, Judge --

19 THE COURT: Okay.

20 MR. LAFFERTY: -- it's been asked and
21 answered.

22 THE COURT: She answered the question. She
23 doesn't know.

24 MR. CHANCEY: I understand.

25 THE COURT: So let's move on. Thank you.

1 MR. CHANCEY: Okay, ma'am.

2 **BY MR. CHANCEY:**

3 Q. You've seen the video of the accident,
4 correct? We showed it yesterday and you've seen it
5 before?

6 A. Yeah.

7 Q. Okay.

8 A. No, before I didn't. No, I think I did.

9 Q. But you have seen the video, is that correct?

10 A. Yeah.

11 Q. Okay. The video does -- I'll withdraw that
12 question, Your Honor. You told us before that John
13 looked at the driver and said, "Please don't move --

14 A. Yes.

15 Q. -- please don't move."

16 A. Yes.

17 Q. And then the driver moved.

18 A. Yes.

19 Q. Okay. Was that before or after the jitney
20 moved and caused you to fall?

21 A. After.

22 Q. Okay. So the jitney moved causing you to
23 fall, and then John said, "Please don't move, please
24 don't move," and then the jitney moved again?

25 A. Yes. The jitney move again.

1 Q. And when the jitney moved again that's when
2 the tire struck you?

3 A. Yes.

4 Q. Okay. So the first time the jitney moved it
5 caused you to fall. After John said, "Please don't
6 move, please don't move," the second time the jitney
7 moved, that's when the tire struck you.

8 A. Yes.

9 MR. CHANCEY: Okay. (pause) Your Honor,
10 that's all I have.

11 THE COURT: Any redirect?

12 MR. LAFFERTY: No redirect, Your Honor.

13 THE COURT: All right. Mrs. Kennedy, you can
14 step down. But your husband -- so I think this is
15 probably a good time to take the morning break.

16 MR. LAFFERTY: That's fine, Judge.

17 THE COURT: All right. And then -- so after
18 the break, we'll take 15. An then there's a video of a
19 doctor, about a half hour did you say?

20 MR. LAFFERTY: 45 minutes.

21 THE COURT: Okay. And then you'll have a
22 lunch break. Then we'll have closing arguments and
23 I'll charge you. Okay?

24 **(Jury exits)**

25 THE COURT: All right. We'll see you back

1 here in 15.

2 **(off the record from 10:45 AM to 11:04 AM)**

3 THE COURT: All right. Please be seated.
4 Are we ready for the --

5 MR. LAFFERTY: We are.

6 THE COURT: All right. Bring them in.

7 **(Jury enters at 11:05 AM)**

8 THE COURT: All right. Okay. Please be
9 seated. So this is the last witness, correct?

10 MR. LAFFERTY: This is the last witness,
11 Judge.

12 THE COURT: Okay.

13 MR. LAFFERTY: It's Dr. Baliga.

14 THE COURT: All right. Ready to go.

15 **(Video Testimony of DR. ARVIND BALIGA played in open**
16 **court from 11:07 AM to 11:49 AM. Not transcribed)**

17 THE COURT: Okay. So we will let you have
18 your lunch break now. It's about 12. So we have to go
19 over the jury charge. So we'll start back at 1:15.
20 And then you'll hear closing arguments this afternoon
21 and then I'll charge you with the law and then you'll
22 deliberate. Okay. Enjoy your lunch.

23 **(Jury exits)**

24 THE COURT: Are you guys using the TV for
25 closing?

1 MR. LAFFERTY: Yeah, we will.

2 THE COURT: Okay. Then I'm going to need you
3 to hook me up for me to do the PowerPoint.

4 CLERK: PowerPoint now, right?

5 THE COURT: No, I'll do the PowerPoint after
6 they close. So my --

7 MR. LAFFERTY: How long will it take you to
8 switch over to her?

9 CLERK: Oh, I just have to --

10 **(off the record from 11:50 AM to 11:52 AM)**

11 **(On the record with colloquy missing)**

12 THE COURT: I was just doing it during his
13 testimony too. So do you want to --

14 MR. LAFFERTY: Well, I was fine with the
15 charge with the exception that I wanted -- first of
16 all, I need to move some evidence.

17 THE COURT: Yeah, let's do that before we
18 forget. So what are you moving in?

19 MR. LAFFERTY: I had marked P-1 through 19.
20 I'm moving P-1 through 19. Or 15.

21 THE COURT: P-1 through 13, I think?

22 MR. LAFFERTY: No, 15.

23 THE COURT: Well, one thing I know got in.

24 MR. LAFFERTY: Yeah, 14 got in.

25 CLERK: It's not listed.

1 MR. LAFFERTY: It was introduced.

2 CLERK: No, I didn't say it wasn't
3 introduced. It's not listed.

4 MR. LAFFERTY: Oh, oh.

5 THE COURT: Was it P-13, outline of Hilda's
6 medical bills?

7 MR. LAFFERTY: No, it was P-14. P-14 is the
8 summary.

9 CLERK: All right.

10 THE COURT: Okay. Yeah, Trinia, she
11 definitely -- I know it got in. P-14 is in evidence,
12 okay?

13 CLERK: Okay.

14 THE COURT: Okay. So that's in. All right.
15 So any objection to moving P-1 through P-14 in, Mr.
16 Chancey?

17 MR. CHANCEY: Can we briefly just review what
18 they are? Aerial view.

19 MR. LAFFERTY: I think we've gone through
20 everything.

21 MR. CHANCEY: Photograph of the jitney,
22 photograph of the intersection, jitney --

23 THE COURT: Wait minute. Can we put this,
24 can we do that -- Randy, can you start again and do it
25 on the record just so there's a record of what each and

1 every thing is?

2 MR. LAFFERTY: Oh, sure, sure.

3 THE COURT: So P-1.

4 MR. LAFFERTY: P-1 is the aerial view.

5 THE COURT: Okay.

6 MR. LAFFERTY: P-2 is a photo of the jitney,
7 P-3 is a photo of the intersection, P-4 --

8 CLERK: These are all going in?

9 THE COURT: These are all going in.

10 MR. LAFFERTY: P-4 is the jitney video which
11 I have on a flash drive from Mr. Chancey.

12 THE COURT: Okay. Wait, so P-4, how am I
13 giving that to the -- I mean it's in evidence but they
14 -- there's no way for them to --

15 MR. LAFFERTY: I don't know. I mean it's got
16 to be in evidence I would think.

17 THE COURT: Yeah. But I don't know how I
18 give that to the jury.

19 MR. LAFFERTY: Give them a flash drive.

20 THE COURT: So they can just -- here it is.

21 MR. CHANCEY: There's no computer in the jury
22 room I don't think.

23 ATTENDANT: No, they would have to come back
24 out here.

25 MR. LAFFERTY: They would have to come out

1 here.

2 THE COURT: Come out here for P-4. Okay.
3 But it's in, all right.

4 MR. CHANCEY: If they requested to see it
5 while they're reviewing the evidence we could make that
6 happen.

7 THE COURT: Yeah. Well, they'll come back
8 down here and we'll put it on for them.

9 MR. CHANCEY: Right.

10 MR. LAFFERTY: P --

11 THE COURT: 5.

12 MR. LAFFERTY: P-5 is the edited jitney
13 video.

14 THE COURT: Okay.

15 MR. LAFFERTY: P-6 are the pre-accident
16 photos, photographs of the plaintiff.

17 THE COURT: Okay.

18 MR. LAFFERTY: P-7 are the post-accident
19 photographs of the plaintiff.

20 THE COURT: Okay.

21 MR. LAFFERTY: P-8, 9, 10, 11 and 12 were the
22 anatomical exhibits.

23 THE COURT: Okay.

24 MR. LAFFERTY: P-13 were the medical bills.

25 THE COURT: Okay.

1 MR. LAFFERTY: P-14 is already in.

2 THE COURT: And P-14 is the summary, right?

3 MR. LAFFERTY: Correct. And P-15 is the
4 plaintiff's -- defendant's answers to interrogatory 2.

5 THE COURT: Okay. P-15. Okay. any
6 objection to --

7 MR. CHANCEY: No objection, Your Honor.

8 THE COURT: -- P-1 through P-15 in evidence?
9 Okay. So 1 through 15 is in evidence.

10 **PLAINTIFF'S EXHIBIT #P-1 THROUGH #P-13 AND #P-15**

11 **RECEIVED IN EVIDENCE**

12 MR. LAFFERTY: Judge, in lieu of reading
13 interrogatories, et cetera, et cetera, I think we can
14 stipulate that Mr. Pollack was the operator of the
15 jitney on November 17, 2014 involved in this incident
16 and that -- basically that's it.

17 THE COURT: Okay.

18 MR. CHANCEY: Those are the stipulations. I
19 mean, you know, he was the operator of the jitney. I'm
20 not going to put you to your proofs on that. In the
21 absence of a living breather operator of the jitney,
22 yeah, we can stipulate that at this point.

23 MR. LAFFERTY: We have no further evidence,
24 Judge. And we would rest.

25 THE COURT: Okay.

1 MR. CHANCEY: Your Honor, we have premarked
2 exhibits for evidence. We are not going to submit
3 them.

4 THE COURT: Okay.

5 MR. CHANCEY: So defense rests.

6 THE COURT: So defense rests. Okay.

7 MR. CHANCEY: Yes.

8 THE COURT: All right.

9 MR. LAFFERTY: And I have a couple of
10 applications.

11 THE COURT: Okay.

12 MR. LAFFERTY: My first application, Judge,
13 is to strike the affirmative defense of comparative
14 negligence.

15 MR. CHANCEY: Let me --

16 THE COURT: Let's hear his argument and then
17 I'll hear from you.

18 MR. CHANCEY: I was actually going to
19 stipulate. We're not actually even arguing that she
20 was negligent. I don't think that's our case.

21 THE COURT: Okay.

22 MR. LAFFERTY: I didn't think it was either.

23 THE COURT: Okay.

24 MR. CHANCEY: And I'm not going to stand in
25 front of the jury and argue that this woman injured

1 herself by her own, by her own fault. So --

2 THE COURT: Okay. So I've got to -- so all
3 that has to come out, right? Okay. So Mr. Frederic
4 Pollack asserts that he was not negligent in causing
5 the incident. Right?

6 MR. CHANCEY: Correct.

7 THE COURT: That's all we're saying. I'm
8 just -- even in my contention of the parties basically,
9 Mrs. Kennedy alleges Mr. Pollack was negligent in the
10 operation of his jitney and his negligence caused her
11 physical injuries. Frederic Pollack asserts that he
12 was not negligent in causing the incident.

13 MR. CHANCEY: I mean obviously inconsistent
14 contentions are anticipated. He was not negligent in
15 the operation of the jitney and any negligence on his
16 part was not the proximate cause of the accident, of
17 the incident.

18 MR. LAFFERTY: I agree that's the crux of the
19 defense.

20 THE COURT: All right. So that -- all right.

21 MR. LAFFERTY: And -- I'm sorry, are you
22 done, Judge?

23 THE COURT: Okay. Then that's good. So then
24 the burden of proof is on Mr. and Mrs. Kennedy to
25 establish each claim they are asserting by a

1 preponderance of the evidence. So in this action Mr.
2 and Mrs. Kennedy have the burden of establishing by a
3 preponderance of the evidence all the facts necessary
4 to prove the negligence of Mr. Pollack and all the
5 damages they suffered.

6 MR. CHANCEY: So I have an issue here. The
7 second issue is all the damages they suffered were a
8 proximate result of the incident. I think their
9 obligation, there's a logical leap there. They have to
10 establish the negligence of Mr. Pollack and that Mr.
11 Pollack's negligence was the proximate cause of either
12 the accident or the harm, either is fine, but they're
13 not just proving that he was negligent and that their
14 injuries resulted from the accident.

15 THE COURT: Yeah, I'm going to get into the
16 burden of proof. So their burden of proof is to prove
17 the negligence of Mr. Pollack and that --

18 MR. CHANCEY: And causation. That his
19 negligence was the proximate cause of, again, either
20 the accident or their injuries. I mean I --

21 MR. LAFFERTY: I don't --

22 MR. CHANCEY: It's not logically contended
23 that the accident didn't cause the injuries. What's
24 contended is that his negligence was not the proximate
25 cause of the accident. Well, A, that he wasn't

1 negligent, and B, that his conduct was not the
2 proximate cause of their injuries.

3 THE COURT: All right. But the burden of
4 proof is on the Kennedys to prove that Mr. Pollack was
5 negligent and that his negligence was a proximate cause
6 of their injuries.

7 MR. LAFFERTY: Correct. Not the, a.

8 THE COURT: Yeah. Of their injuries. And
9 then preponderance of the evidence. Direct and
10 circumstantial. Credibility is okay. Expert
11 testimony. General duty of care. Good with that? The
12 violation of the administrative statute which is
13 pulling up to the curb, general duty of common carriers
14 to passengers? Page 7.

15 MR. CHANCEY: Um, to me the way we've titled
16 it here, violation of the administrative statute almost
17 -- uh --

18 THE COURT: I'm not going to say that.

19 MR. CHANCEY: -- it baits the hook a little
20 bit.

21 THE COURT: Okay. I don't read the heading
22 to them.

23 MR. CHANCEY: Got it.

24 THE COURT: Okay?

25 MR. CHANCEY: But applicability would be, was

1 what I was going to suggest. Applicability of the
2 administrative regulation statute to Mr. Pollack and
3 the operation of his vehicle.

4 THE COURT: Okay. But this is --

5 MR. CHANCEY: Again --

6 THE COURT: -- what it's titled in the model
7 jury charges so --

8 MR. CHANCEY: That's fine.

9 THE COURT: -- that's why it says that. So
10 the general duty of common passengers. Emotional
11 distress from witnessing the serious injury to an
12 intimate family member. Okay. So comparative
13 negligence is coming out. All of that. Then proximate
14 cause.

15 MR. CHANCEY: I have an issue with the
16 proximate cause instructions. It's not consistent with
17 what the model jury charge.

18 THE COURT: It is the model jury charge.

19 MR. CHANCEY: No, it's not. It says the duty
20 of the plaintiff to establish by a preponderance of the
21 evidence that the accident was a proximate cause of the
22 plaintiff's injury. The model jury charge says it's
23 the duty of the plaintiff to establish by a
24 preponderance of the evidence that the negligence was a
25 proximate cause of the accident, incident, event and of

1 the injury, loss, harm alleged to have resulted
2 therefrom.

3 MR. LAFFERTY: Whatever Your Honor determines
4 to be the model jury charge I'm fine with.

5 THE COURT: So proximate cause --

6 MR. CHANCEY: Proximate cause general. I got
7 6.10.

8 THE COURT: Okay. Proximate cause general to
9 be given in all cases. All right. So you want that
10 6.10, that charge?

11 MR. CHANCEY: Yeah.

12 MR. LAFFERTY: I'm fine with that, Judge.

13 THE COURT: 6.10.

14 MR. LAFFERTY: I've given up on the model
15 jury charges a long time ago.

16 MR. CHANCEY: Well, that's --

17 THE COURT: All right. So 6.10, so I'm going
18 to change proximate cause. That's the one I'm going to
19 do. Fine. Okay. Damages, pain and suffering,
20 disability. You're good with all that. That's the
21 newest model charge. Medical -- what -- okay. I did
22 have a question about the medical expenses. Is it --
23 the 99,781.14?

24 MR. LAFFERTY: No.

25 THE COURT: Okay. What?

1 MR. LAFFERTY: 430,000.

2 THE COURT: Based on what the -- okay.

3 MR. LAFFERTY: Based on --

4 THE COURT: So I'm not talking anything about
5 a medical lien.

6 MR. LAFFERTY: No.

7 MR. CHANCEY: I thought they were supposed to
8 be instructed that's the amount that's been billed but
9 they are instructed that's been paid and that there's a
10 lien against recovery.

11 MR. LAFFERTY: Judge, that's not the way the
12 collateral source rule is. I would instruct Your Honor
13 to look at -- the way it works, and I just did this
14 with Judge Marczyk two months ago --

15 THE COURT: Okay.

16 MR. LAFFERTY: -- or three months ago. The
17 way the model jury charge works -- and if I missed that
18 on the, on what you sent last night I apologize.

19 THE COURT: Okay. This probably came from
20 another case where it was stipulated that there was a
21 Medicare lien. So, medical expenses.

22 MR. LAFFERTY: Was that my case?

23 THE COURT: No. You know, just in another
24 case that I had that I probably took this jury charge
25 from. So let me see.

1 MR. LAFFERTY: If the Court were to look at
2 2A:15-97, 2A:15-97, that's the collateral source rule.

3 THE COURT: Okay.

4 MR. LAFFERTY: And the way it's handled, the
5 way Judge Marczyk handled it was that the jury makes a
6 determination on the causal relationship of the medical
7 expenses in the gross amount to the injury. The
8 statute itself specifically says that after, after the
9 jury's decision it's incumbent on the Court to then
10 hold a hearing and mold that verdict based upon the
11 amounts owed whether by lien or outstanding. There is
12 both outstanding here and there's a lien.

13 THE COURT: But -- okay. So 430 was
14 testified to by all the doctors.

15 MR. LAFFERTY: And by Ms. Parisi.

16 THE COURT: That that was the customary usual
17 amount.

18 MR. LAFFERTY: Correct.

19 THE COURT: And if they come up with that
20 much then is the amount the 99,718 plus --

21 MR. LAFFERTY: No, it's more than that.

22 THE COURT: -- the 50,351?

23 MR. CHANCEY: It's 103 something isn't it?

24 MR. LAFFERTY: And there's also 10,000 or
25 15,000 outstanding to Egg Harbor Care Center.

1 THE COURT: All right. So whatever.

2 MR. LAFFERTY: So you have a hearing. We'll
3 sort through that afterwards.

4 MR. CHANCEY: Judge, it appears that he New
5 Jersey Collateral Source Rule requires that the
6 benefits paid be disclosed to the Court and that an
7 accounting be made against the award of damages, not be
8 disclosed to the jury. So I apologize, Your Honor. It
9 appears that Mr. Lafferty is correct.

10 THE COURT: Okay. So I'm going to change
11 that to what the -- everything that the --

12 MR. LAFFERTY: Exhibit P-14.

13 THE COURT: It's 8.11, so whatever. So
14 that's the charge, 8.11 So I'll change that one. All
15 right. Life expectancy. She's 6.5 years?

16 MR. LAFFERTY: Yes.

17 THE COURT: Loss of consortium, that's in the
18 model charge. Any problem with that?

19 MR. LAFFERTY: No, ma'am.

20 MR. CHANCEY: No.

21 THE COURT: Tax consequences. Okay. Juror
22 note taking. Let's talk about the verdict sheet. You
23 guys --

24 MR. CHANCEY: Sounds like you're going to be
25 taking the two of them off of the verdict sheet.

1 MR. LAFFERTY: I think the only modification
2 is to remove comparative negligence, proximate cause on
3 comparative and the allocation.

4 THE COURT: Yeah. So that comes out. Okay.
5 So I got some work to do.

6 MR. CHANCEY: Three, four --

7 MR. LAFFERTY: We all have some work to do.

8 THE COURT: Yeah. Yeah, 3, 4, 5.

9 MR. LAFFERTY: I'm glad you gave us the 15
10 minutes.

11 THE COURT: Yeah. 3,4,5 comes out.

12 MR. CHANCEY: Yeah.

13 THE COURT: And then the medical expenses
14 which is not to exceed the -- what's the total amount?

15 MR. LAFFERTY: Not to -- can I approach,
16 Judge?

17 THE COURT: Yeah.

18 MR. LAFFERTY: Not to exceed this number.

19 THE COURT: 439,0176. All right.

20 MR. LAFFERTY: And Judge, I only had one
21 other application. And I didn't interrupt Mr. Chancey
22 in his opening but he kept referring to experts as
23 hired guns. And I believe that's inappropriate. I
24 would direct the Court's attention to Brady v. Pulgar,
25 P-U-L-G-A-R. It's an unreported 2009 Appellate

1 Division decision. And basically what the Court said
2 there, looked at several of those cases, and there's a
3 lot of cases on this issue, believe it or not.

4 MR. CHANCEY: All of which were called to my
5 attention before now.

6 MR. LAFFERTY: But my argument, Judge, is if
7 you look at that decision what it says is there has to
8 be, first of all, some evidence that they're a hired
9 gun. We have no evidence -- in some of those cases, in
10 Brady it said it's inappropriate comment but it's not
11 plain error.

12 THE COURT: Okay.

13 MR. LAFFERTY: And the other cases that
14 looked at the issue --

15 MR. CHANCEY: Do you want me to not say
16 they're hired guns?

17 MR. LAFFERTY: That's all.

18 THE COURT: Do you want me to make any --

19 MR. LAFFERTY: No.

20 THE COURT: -- give them any instruction with
21 regard to his opening?

22 MR. LAFFERTY: No.

23 THE COURT: But you just --

24 MR. LAFFERTY: No.

25 THE COURT: Okay.

1 MR. LAFFERTY: And I would have never have
2 interrupted him on it either, to be honest with you,
3 because I think that's --

4 MR. CHANCEY: Because he didn't know at that
5 point.

6 MR. LAFFERTY: No, I think it's
7 inappropriate. I just don't interrupt attorneys.

8 MR. CHANCEY: Um --

9 MR. LAFFERTY: That's the only thing I'm
10 asking.

11 MR. CHANCEY: Let's be clear about what we're
12 talking about here. I won't call them hired guns and
13 make a big deal out of it. But I anticipate that
14 you're going to point out that I did not retain an
15 expert and so I would think that I would have the right
16 to say Mr. Lafferty retained an expert for the purpose
17 of attempting to show that my client was in some way
18 negligent. Are you saying I can't refer at all --

19 MR. LAFFERTY: Oh, no.

20 MR. CHANCEY: -- to having hired the expert
21 or calling them hired guns?

22 MR. LAFFERTY: Hired guns.

23 MR. CHANCEY: Okay. I will not use the words
24 hired, and I can't think of any reason to use the word
25 gun in a closing.

1 MR. LAFFERTY: He's certainly entitled to say
2 they were experts hired by the plaintiff. I have no
3 objection to that.

4 THE COURT: Right. Just not referring to
5 them as hired guns.

6 MR. CHANCEY: Yeah. Or in any way
7 pejoratively.

8 THE COURT: Okay. All right. So it's
9 stipulated that Mr. Pollack was operating the jitney on
10 November 17th, 2014.

11 MR. LAFFERTY: Correct.

12 THE COURT: That's what I'm --

13 MR. LAFFERTY: And his answer is, his answers
14 to interrogatory says that.

15 THE COURT: Okay.

16 MR. LAFFERTY: Answering defendant was
17 driving a jitney eastbound. So it's not an issue. I
18 just -- who knows.

19 THE COURT: I'll put it again with the
20 contention of the parties that it's stipulated that --
21 all right.

22 MR. CHANCEY: She opened the door to me
23 bringing up the prior accident.

24 MR. LAFFERTY: Oh, did she?

25 MR. CHANCEY: Umhmm. I didn't do it.

1 MR. LAFFERTY: What purpose would it have
2 served?

3 THE COURT: Anything else?

4 MR. LAFFERTY: No. I'm sorry, Judge.

5 THE COURT: That's okay. So we're good?

6 MR. LAFFERTY: Yes, we are.

7 MR. CHANCEY: Yes.

8 THE COURT: I'll get copies. Any -- do you
9 -- because I don't care. Do you want me to give them a
10 copy of the jury charges to take back with them or
11 would you --

12 MR. LAFFERTY: I'm fine with that too.

13 MR. CHANCEY: Not with the word violation
14 attached to --

15 MR. LAFFERTY: Yeah, I mean without the
16 headings.

17 MR. CHANCEY: Yeah.

18 MR. LAFFERTY: And I agree that the heading
19 is not part of the charge.

20 THE COURT: Okay.

21 MR. LAFFERTY: So if you want to delete that
22 heading?

23 THE COURT: Just that heading? I mean like,
24 prove preponderance of the evidence? That's kind of --

25 MR. LAFFERTY: All the headings.

1 MR. CHANCEY: I have no problems with any of
2 the headings.

3 THE COURT: So just that heading about --

4 MR. CHANCEY: I just don't want the heading
5 to say violation.

6 THE COURT: Okay.

7 MR. CHANCEY: Applicability of, that's what
8 we're talking about. There's a set of ordinances that
9 are applicable here.

10 THE COURT: Okay. So applicability of --

11 MR. LAFFERTY: Of ordinance. Whatever's
12 neutral I'm fine with.

13 THE COURT: Okay.

14 MR. LAFFERTY: But if you want to say
15 violation of ordinance that caused the whole thing.

16 **(laughter)**

17 THE COURT: You're fine with that.

18 MR. CHANCEY: Actually, could you just put
19 big fat red herring?

20 THE COURT: All right. I will see you guys
21 about 1:15.

22 MR. LAFFERTY: Thank you.

23 THE COURT: Thanks. Wait, one last thing. I
24 asked Joyce for a heads up. Potentially by the time
25 you guys close and I charge that if they want to keep

1 deliberating and stay a little bit late. And Sharon
2 immediately said I would stay here until --

3 MS. HUNT: Unfortunately I'm not the recorder
4 this afternoon. But I usually stay. I have no problem
5 with staying.

6 THE COURT: So I'm leaving that option open
7 in case they go over 4:30?

8 MR. LAFFERTY: I'm fine.

9 THE COURT: All right. I'll let you know.

10 **(Luncheon recess from 12:11 PM to 1:18 PM)**

11 THE COURT: I did update the jury charges and
12 verdict sheet. Did you guys get a chance?

13 MR. LAFFERTY: Yes.

14 THE COURT: All right. Are we ready for the
15 jury? Okay. Bring them in. You guys can be seated if
16 you want to. You don't have to.

17 **(Jury enters at 1:20 PM)**

18 THE COURT: Okay. Please be seated. Welcome
19 back, ladies and gentlemen. So now you're going to
20 hear the closing arguments from counsel. Again,
21 plaintiff has the burden of proof so they get to talk
22 to you last. So you'll hear from Chancey first and
23 then you'll hear from Mr. Lafferty. And then I will
24 charge you and then you can start deliberating. All
25 right? All right, Mr. Chancey.

1 MR. CHANCEY: Thank you, Your Honor. Mr.
2 Lafferty. Ladies and gentlemen of the Jury, good
3 afternoon. Feels like a short two days ago we were
4 just talking. Actually, it was two days ago. This
5 trial could have taken a lot longer than it did. But
6 here we are Thursday afternoon and we're closing. And
7 why are we closing? We're closing at this point
8 because, as I told you at the very beginning of the
9 case, this isn't one of those cases where someone's
10 claiming to be injured and isn't. If it were one of
11 those cases we would have had a whole lot of experts on
12 both sides arguing about whether chronic degenerative
13 conditions were actually acute and traumatic and
14 related to this accident. We didn't have any of that,
15 because as we all saw, Mrs. Kennedy was sincerely
16 authentically injured as a result of this traumatic
17 accident. Again, we are not disputing that. the last
18 thing you heard, the last piece of evidence you heard
19 in this case was me on video saying I have no
20 questions. What is this case about? By now I think
21 you all know what this case is about. This case is
22 about the accident and the responsibility therefore.

23 As the judge just told you, the plaintiffs
24 have the burden of proof in this case. In a few
25 minutes the judge is going to read to you instructions

1 on New Jersey law and how it applies in this case. And
2 one of the things she's going to tell you about is the
3 burden of proof. In this case the plaintiff has the
4 burden of proof of proving that my client acted
5 negligently and that that negligence caused the
6 accident which led to the plaintiff's injuries. In
7 this case it's not reasonably disputed that the
8 accident led to the injuries. I think we all agree
9 that the accident did lead to the injuries. The
10 question becomes did my client's conduct which the
11 plaintiffs are accusing him of cause those injuries.
12 Now let's take a look at that. Plaintiff has the
13 burden of proof of showing that my client's negligent
14 conduct caused the injuries. Okay. Well, what are the
15 plaintiffs accusing my client of? The plaintiffs are
16 accusing my client of violating his duty that he owed
17 to Mrs. Kennedy and to Mr. Kennedy as a common carrier
18 of passengers. Now what is that duty? What is the
19 duty that he owes to them? He owes them the utmost
20 care to operate his vehicle as safely as possible. In
21 fact, I'm just going to read to you from the charge so
22 that I make sure I don't get it wrong. The common
23 carrier must exercise a high degree of care to protect
24 his passengers from dangers that are known or
25 reasonably foreseeable. Carriers must use the utmost

1 caution to protect their passengers, the kind of
2 caution that is characteristic of a very careful and
3 prudent person. Carrier must act with the highest
4 possible care consistent with the nature of the
5 undertaking involved. Now as to discharging passengers
6 the instruction tells us that this includes the duty to
7 select a reasonably safe place for the passenger to get
8 off the vehicle and leave. It continues, if you find
9 that a carrier in selecting the place to unload the
10 plaintiff failed to exercise the high degree of care
11 and as a result that brought about his or her injuries
12 you should find for the plaintiff. It comes with a
13 caveat. But understand that a common carrier does not
14 have a duty to anticipate every uneven surface or
15 defect in the road or on the side of the road and then
16 stop the vehicle to avoid the remote possibility of a
17 passenger stepping on some uneven surface or in a
18 depression which even though the carrier exercised
19 reasonable watchfulness did not appear to be dangerous.
20 Let's talk about that for a minute. Mr. and Mrs.
21 Kennedy are accusing my client of engaging in certain
22 acts which they claim were negligent and which caused
23 the accident. What are those acts that Mr. and Mrs.
24 Kennedy are accusing my client of? In this case first
25 you heard from Mr. Kennedy. And what did Mr. Kennedy

1 tell you? Mr. Kennedy told you that my client missed
2 their stop and ultimately he stopped ahead of where
3 their stop was, almost to Rhode Island Avenue. We all
4 agree with that. Mr. Kennedy told you that he exited
5 the vehicle with their cart and carried it up onto the
6 sidewalk. I think we all agree that that's reasonably
7 established. He then told you that he went back and
8 took his wife's hand, Mrs. Kennedy's hand, helped her
9 down the stairs, helped her into the street, and then
10 helped her onto the sidewalk. At that point Mr.
11 Kennedy tells us that they stopped to adjust themselves
12 to prepare to walk away. And something, he wasn't
13 completely sure what, but he recalls it was the wind,
14 knocked them down and knocked them into the roadway
15 next to the jitney. At that point Mr. Kennedy told you
16 that he banged on the sides of the jitney and said,
17 "Don't move, don't move." And he began to help Mrs.
18 Kennedy up and he almost had her up and then the jitney
19 began to move despite him yelling don't move, don't
20 move. Now ladies and gentlemen, this is Mr. Kennedy's
21 claim. This is what Mr. Kennedy claims happened. Now
22 we have a video of the incident. And you've seen the
23 video several times. And we'll watch the video again
24 in just a moment. Has Mr. Kennedy satisfied his burden
25 or proof of establishing that that's what happened,

1 that they fell into the roadway and then he banged on
2 the jitney and yelled, "Don't move, don't move," as
3 loud as he could and that the jitney moved nonetheless?
4 Let's take a look at the video again and see if he is
5 able to establish that that's what happened on the day
6 of this accident. (pause) Some cases come down to a
7 battle of experts. This case has come down to a battle
8 of the tech engineers.

9 UNIDENTIFIED SPEAKER: I'm just trying to
10 make sure the audio comes through the TV speakers.

11 MR. CHANCEY: Sure.

12 **(video, Exhibit #P-5, playing in open court:)**

13 MR. KENNEDY: *Can you let us ff here.*

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

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

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

18 *(shuffling - low voices - scream)*

19 *(yelling away from microphone)*

20 SPEAKER 1: *Oh, shit.*

21 MR. KENNEDY: *Oh, goddam it.*

22 SPEAKER 2: *What she do, faint?*

23 SPEAKER 1: *I don't know. I'm not sure --*

24 MR. KENNEDY: *Oh, geez, you just run over*
25 *her. Gosh damn it, you --*

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(video stops)

THE COURT: Just one question.

MR. CHANCEY: Yes?

THE COURT: There's nothing you can do about the glare, correct, on that?

MR. CHANCEY: Are we getting a glare from over there?

THE COURT: No, the video itself.

UNIDENTIFIED SPEAKER: No, the video is what it is.

THE COURT: The video --

MR. LAFFERTY: If you can change the focus so the outside light is not as bright you might be able to see it a little better, what's going on outside.

UNIDENTIFIED SPEAKER: You can't change --

MR. CHANCEY: Can we tweak that? What do you think?

ATTENDANT: We can change the brightness on the TV but I don't know if it'll change the actual video.

UNIDENTIFIED SPEAKER: No, it'll turn everything down. That's just, it's the security camera from inside the bus.

MR. CHANCEY: So, all right. Ladies and gentlemen, I'm going to keep this right here. You

1 heard the audio and you saw the video. And you saw Mr.
2 And Mrs. Kennedy step out of the vehicle and you saw
3 the vehicle begin moving. Did you hear Mr. Kennedy
4 saying, "Don't move, don't move?" Did enough time pass
5 for them to stop, adjust themselves, her to fall into
6 the roadway, him to go in to help, begin to help her
7 up, bang on the vehicle and yell, "Don't move, don't
8 move?" We have neither enough time for those events to
9 have transpired nor do you hear it in the audio. Now
10 mind you, we hear Mrs. Kenned scream. But in the audio
11 we don't hear Mr. Kennedy, "Don't move, don't move."
12 We don't hear any of that. What we see is the Kennedys
13 step onto the sidewalk and the jitney begin moving.
14 Now I would put forward to you that Mr. Kennedy is not
15 able to satisfy his burden of proof here to establish
16 his version of the accident is accurate. He's telling
17 you something that the video directly refutes. There's
18 no time for him to go down and try to help her up,
19 there's no time for him to bang on the jitney. You
20 don't hear him say "Don't move, don't move." So this
21 sequence of events where Mr. Kennedy is attempting to
22 establish that he yelled to our driver, to my client
23 that don't move, don't move because Mrs. Kennedy is in
24 the roadway and my client nevertheless took off in
25 disregard of that is not established. The facts don't

1 establish that point. So if we could bring up the
2 lights, and we can minimize the video if you'd like.
3 So Mr. Kennedy's version of events is not reasonably
4 supported by the facts at this point.

5 You next heard from the plaintiff's expert
6 witness. Now in a case like this when you're presented
7 with facts or presented with a video and you're trying
8 to establish the facts that may not line up with the
9 video, you're trying to establish these facts, a
10 liability expert is going to be very useful to you. So
11 the plaintiffs presented Mr. Costanzo who provided
12 testimony to you that included several points, several
13 conclusions that he reached. The first conclusion he
14 reached, one of the conclusions he reached was that the
15 vehicle was stopped too far from the sidewalk, that my
16 client's vehicle was stopped too far from the sidewalk.
17 And he pointed out that jitney regulations, jitney --
18 there's regulations in Atlantic City governing
19 operations of jitanes. Jitney regulations require the
20 jitney to pull up as close to the sidewalk as possible.
21 He pointed out that it doesn't appear as though my
22 client stopped his jitney as close to the sidewalk as
23 possible. Fair enough. But let me ask you this
24 question. Think about it in your minds. Did him
25 failing to stop his jitney as close to the sidewalk as

1 possible prevent Mr. and Mrs. Kennedy from safely
2 exiting the vehicle? You've seen the video. They come
3 down -- Mr. Kennedy comes down the stairs, he steps
4 into the roadway, he steps up onto the sidewalk. He
5 goes back for Mrs. Kennedy. She comes down the stairs.
6 She steps into the roadway. She steps up onto the
7 sidewalk. Does the distance that the jitney is from
8 the sidewalk prevent them from safely exiting the
9 vehicle? No, it doesn't. We see them safely on top of
10 the sidewalk. And Mr. Kennedy, for his claims
11 regarding what happened after they got onto the
12 sidewalk, acknowledges that he and his wife were safely
13 on the sidewalk. That's something Mr. Kennedy doesn't
14 even dispute. Mr. Costanzo also told you that my
15 client failed to make observations through his mirrors.
16 That was an interesting point. And on cross-
17 examination, basically Mr. Costanzo, my client's dead,
18 how do you know what he did or did not do? Mr.
19 Costanzo said if he had checked his mirrors he would
20 have seen Mrs. Kennedy in the roadway. Recall when I
21 was questioning Mr. Costanzo I said, well, do you know
22 where Mrs. Kennedy was at the moment the vehicle began
23 to move? He admitted that he does not. He did not
24 know where Mrs. Kennedy was at the vehicle, before the
25 vehicle began to move. And indeed he conceded that it

1 would be speculation because of the way the video plays
2 to say where the plaintiff was located at the moment
3 that the vehicle began to move. Now immediately prior
4 to the vehicle moving, indeed when the vehicle begins
5 moving in the video you can see the plaintiffs on the
6 sidewalk. So Mr. Costanzo was offering you the opinion
7 that clearly my client didn't check his mirrors before
8 pulling away after dropping off the Kennedys because if
9 he had he would have seen Mrs. Kennedy in the roadway.
10 Ladies and gentlemen, on the video we see the Kennedys
11 on the sidewalk before my client's vehicle starts
12 moving. Clearly it's speculation to ask whether or not
13 my client looked in his mirrors. But we can tell from
14 the video that looking in your mirrors would have
15 revealed that the Kennedys were on the sidewalk at the
16 moment the vehicle began to move. So Mr. Costanzo's
17 opinion on that point is not terribly useful. Mr.
18 Costanzo also provided the opinion, and this was an
19 interesting opinion and as an attorney I have various
20 opinions about why he said this, he said that Mrs.
21 Kennedy, that the jitney not being as close to the
22 sidewalk as possible was negligent because if he had
23 been as close to the sidewalk when Mrs. Kennedy fell
24 she would not have been able to fall into the roadway
25 and been run over by the tires. Well, ladies and

1 gentlemen, you've seen the jitney. This is from
2 plaintiff's Exhibit P-2. When whatever happened to the
3 plaintiff, whether it was a gust of wind or something
4 else, the only concrete indication we ever got from Mr.
5 Kennedy was that a gust of wind blew, putting aside
6 whether a gust of wind can blow over a hundred-
7 something pound woman, when the gust of wind blew --
8 you see this jitney is right up against the curb, then
9 a gust of wind is going to blow her under the jitney.
10 It's going to blow her under the jitney even if the
11 jitney's next to the curb. In fact, at the moment that
12 Mrs. Kennedy fell off the curb you actually want that
13 jitney as far from the sidewalk as possible because if
14 the jitney were in fact in the middle of the road or,
15 you know, in the left lane and she fell off the
16 sidewalk into the street, as she did, she doesn't get
17 hit by the jitney. At the moment that she falls off
18 the sidewalk you want that jitney as far away from the
19 sidewalk as possible. Being next to the curb isn't
20 going to stop her from impacting the wheel well if she
21 falls into the street at that moment. But the notion
22 that somehow she was only injured because my client's
23 jitney was a few feet from the curb is not supported.

24 Now let's talk about Mrs. Kennedy's version
25 of events. Let's talk about what Mrs. Kennedy is

1 claiming. Because again, the burden of proof is on the
2 plaintiffs. The burden of proof is on the plaintiffs
3 to establish that my client did the bad thing, failed
4 to comply with his duty as a common carrier of
5 passengers. What conduct does Mrs. Kennedy accuse my
6 client of that violated his obligations to her as a
7 common carrier passenger? You heard Mrs. Kennedy
8 today, this morning. You heard what she told you. She
9 told you a variety of things. Mrs. Kennedy told you
10 that the jitney caused her to fall. Mrs. Kennedy told
11 you that the jitney moved and that caused her to fall
12 and then once she was in the roadway and her husband
13 yelled, "Don't move, don't move," the jitney moved
14 again anyway. Mrs. jitney -- Mrs. Kennedy told you the
15 jitney moved twice, once to cause her to fall and then
16 once again after her husband said don't move, don't
17 move. Well, we're going to watch the video one more
18 time. I want you to tell me -- before we put the video
19 up one more time I want you also to recall that Mrs.
20 Kennedy told you that she saw -- this is what she's
21 telling you, this is what she has the burden of
22 establishing -- that she saw that the jitney was too
23 far from the curb and she stopped in the stairs as she
24 was going down and told the driver you're too far from
25 the curb before proceeding out into the street, before

1 the jitney moved and caused her to fall. So we're
2 going to play the video again. I want you to see. Do
3 you see her stop and tell the driver that the jitney's
4 too far away? Do you see the jitney move, causing her
5 to fall, stop, and then move again? Because that's
6 what she's claiming. That's what she has the burden of
7 establishing in this case. And let's go ahead and do
8 the lights if we could.

9 **(video replayed in open court)**

10 MR. CHANCEY: So again, the burden of proof
11 is on the plaintiffs to establish their claims against
12 my client. Did you see the jitney move twice? Did the
13 jitney move, causing her to fall? Did Mr. Kennedy say
14 don't move, don't move? Did the jitney then move again
15 and run over her? No, the jitney moved once. Did you
16 see her stop on the stairs and turn to my client and
17 say, hey, you're too far away from the curb? No. Has
18 Mrs. Kennedy carried her burden? Has she established
19 her claims against my client? No. Mr. and Mrs.
20 Kennedy, I told you at the beginning of this case -- I
21 was going to put this away then it occurs to me that
22 the plaintiffs may want it -- I told you at the
23 beginning of this case the Kennedys are nice people.
24 And I told you at the beginning of this case this
25 accident involves significant injuries. No one is

1 denying that. Now Mrs. Kennedy, everyone in this room
2 saw Mrs. Kennedy testify. I think we can all agree
3 she's very nice. I think we can all agree she's been
4 through a trauma. And I think we can all agree that
5 her memory of the situation, of the accident is not as
6 good as -- and try as I did to not confuse the
7 situation, I perhaps did ask some confusing questions.
8 Nevertheless, what Mrs. Kennedy is claiming is what
9 Mrs. Kennedy is claiming. And it's directly refuted by
10 the video. And I would offer to you that Mrs. Kennedy
11 has not carried her burden of proof in this case. She
12 has not carried the burden of proving that what she's
13 claiming happened, that the jitney caused her to fall,
14 that her husband yelled, "Don't move, don't move," and
15 that the jitney ran over her even though he knew she
16 was in the roadway and her husband was saying, don't
17 move, don't move, she has not established that. It's
18 directly refuted by the video. I would offer to you
19 that Mr. Costanzo's claims that my client failed to
20 check his mirrors, that the distance between the jitney
21 and the sidewalk was the cause of the accident and that
22 if my client had looked he would have seen Mrs. Kennedy
23 lying in the roadway, I would offer to you that that's
24 not established by the facts in this case. And I would
25 offer to you that Mr. Kennedy's claims aren't either.

1 Now what's clear in this case? It's clear
2 that the Kennedys were on my client's jitney. It's
3 clear that Mr. Kennedy said, can you stop up here?
4 It's clear my client apparently didn't hear him. You
5 can hear conversation in the video. Mr. Kennedy said,
6 can you stop right here. Let us off here. It's clear
7 that Mr. Kennedy got off the vehicle. Mr. Kennedy
8 stepped into the roadway with his cart, and Mr. Kennedy
9 got up onto the sidewalk. And then it's clear that
10 Mrs. Kennedy came into the stairwell, Mr. Kennedy took
11 her by the hand, helped her out of the jitney into the
12 roadway, helped her up onto the sidewalk and then they
13 began to walk away. What happened from there according
14 to the plaintiffs, there's not enough time. You do not
15 hear their claimed warnings to the driver. And the
16 things that they're telling you went on are directly
17 refuted by the video. In fact, on direct examination
18 by their attorney they both admitted, even though it's
19 not in the video, what I remember is this. You know
20 what, your memory years after an incident that's fair.
21 That's absolutely fair. Memories fade. Memories
22 change over time. My family and I went to see the
23 solar eclipse in South Carolina last month. And it was
24 amazing, it was mind blowing. And I read an article
25 about it afterwards that I felt like captured the

1 experience perfectly. The description was, you know,
2 everyone runs to the zone of totality. Everyone puts
3 on their glasses and waits. And then for 2 minutes you
4 have this eclipse. And then it's over. And the fog of
5 memory begins to creep in immediately. And that's
6 correct. The magic of that moment, I remember that it
7 was magical but it's already beginning to fade, and
8 that was last month. No one's going to criticize
9 anyone for not having exact perfect memory of the day
10 of this accident. But a burden of proof is a burden
11 nonetheless. And in this case Mr. and Mrs. Kennedy,
12 for whatever their residual memories of that horrible
13 traumatic day, have the burden to prove their claims
14 against my client. You heard what they're claiming,
15 you've heard their version of events. You've seen the
16 video. So ask yourselves, have they sustained their
17 burden of proof of showing that what they claim my
18 client did wrong actually occurred?

19 Now let's talk about some ancillary issues
20 real quick. During his opening Mr. Lafferty brought up
21 my client's answers to Interrogatory Number 2. Somehow
22 if I had this on the television or attached to a
23 computer it would be perfect and I can't even get a
24 tripod to work right. This is what my client said
25 before he died about how the accident occurred.

1 Describe the accident or occurrence in detail setting
2 forth the date, location, time and weather. Now you'll
3 have this, this is part of the evidence in this case
4 and you'll have it with you. I want to take you to
5 this sentence right here: "All the passengers safely
6 disembark from the bus and reach the curb. Answering
7 defendant," my client, "was still stopped at a red
8 light when he heard a loud," period. Presumably, I
9 think that we all agree that he was saying something
10 along the lines of noise or thud or whatever. This
11 isn't what happened. Look at the video. He says he
12 was still stopped at the red light when he heard a loud
13 thud, heard a loud something. Obviously we all agree,
14 he wasn't still stopped. We all agree that the
15 Kennedys got off the vehicle, got up on the sidewalk,
16 started to walk away, then my client began moving when
17 we all heard Mrs. Kennedy's loud scream. What does
18 this mean? Well, first of all, it means my client's
19 wrong. My client doesn't have a burden of proof in
20 this case. My client is being defended in this case.
21 This is his version of the accident that he gave before
22 he died. Had he been deposed in this case he probably
23 would have been confronted with this by Mr. Lafferty
24 and he would have been asked to justify the difference
25 between his version of events and the video. He

1 probably would have said -- well, I don't want to
2 speculate to what he would have said. Suffice it to
3 say there would have been an opportunity for him to say
4 he was wrong. And Mr. Pollack, you were wrong, that's
5 not how the accident occurred. Again, my client
6 doesn't have a burden of proof in this case. My client
7 is not accusing the Kennedys of anything. If my client
8 was accusing the Kennedys of something he would have
9 the burden of proof to establish that his version of
10 events was correct. He doesn't have that burden. Mr.
11 Kennedy's version of events is incorrect. I expect
12 plaintiff's counsel to bring that up in this closing.
13 And the fact that Mr. Kennedy's version -- Mr.
14 Pollack's version. I apologize. Mr. Pollack's version
15 of the events in his interrogatory is incorrect. I
16 expect plaintiff's counsel to bring that up in his
17 closing. and plaintiff's counsel is exactly right, it
18 is incorrect. At the end of the day it's a red herring
19 because we're not standing here claiming that that's
20 how the accident happened. We're acknowledging that
21 it's not. And we're not standing here with the burden
22 of proof. The plaintiffs are. We're not trying to
23 prove that's what happened, we're acknowledging that
24 it's incorrect.

25 I want to talk a little bit about the jitney

1 regulations requiring -- jitney regulations and the CDL
2 regulations that Mr. Costanzo talked to you about. Mr.
3 Costanzo told you that my client according to his CDL
4 has an obligation to see everything around his vehicle
5 as he is operating it safely. When you watch the
6 video, we'll watch it one more time, when you watch the
7 video the moment that the vehicle begins moving you can
8 see the Kennedys on the sidewalk. Mr. Costanzo is
9 putting forth to you that my client wasn't aware of
10 what was going on around his vehicle before he began to
11 move. But I'm putting forth to you that the video
12 shows that the moment before my client began to move
13 the Kennedys were on the sidewalk. They had been
14 delivered to the sidewalk.

15 **(video playing in open court:)**

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

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

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

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

21 *(shuffling - low voices)*

22 *MR. CHANCEY: Watch when the jitney begins to*
23 *move. Watch where the Kennedys are. She steps up on*
24 *the sidewalk there. The jitney begins to move.*

25 **(video stops)**

1 MR. CHANCEY: So Mr. Costanzo is accusing my
2 client of not looking all around his vehicle before
3 pulling out. But one looking all around this vehicle
4 before pulling out is going to see that the Kennedys
5 have gotten up onto the sidewalk. They have carefully
6 exited the jitney. They have carefully stepped into
7 the roadway. Stepped up onto the sidewalk and began
8 walking away. What Mr. Costanzo's accusing my client
9 of is not being aware that they were on the sidewalk
10 already. Well, pulling the jitney away while they were
11 on the sidewalk is not inappropriate. Mr. Costanzo
12 also makes the point that -- I want to talk just
13 briefly about the distance from the curb again. It is
14 not proffered by anyone in this case that the distance
15 that the jitney was from the curb caused Mrs. Kennedy
16 to fall over. No one has made that case. No one has
17 made that case to you. The rules of the road, the
18 regulations that pertain to the operation of vehicles
19 are there for safety. The regulations that pertain to
20 the jitney are there for the passengers on the jitney's
21 safety. And obviously they want passengers to be
22 spending as little time in the roadways and as much
23 time on sidewalks as possible. And so they tell the
24 jitney operators to get as close to the sidewalk as
25 possible. In this case he's a number of feet from the

1 sidewalk. Could he have gotten closer to the sidewalk?
2 Yes. Was the distance that he was from the sidewalk at
3 the moment he stopped the jitney the reason she fell?
4 No one's even claiming that. No one's even made that
5 representation to you.

6 At the end of the day considering the burden
7 that's placed on the plaintiff's in this case to
8 establish by a preponderance of the evidence that my
9 client's conduct violated his duties to them under New
10 Jersey law in consideration of that standard think
11 about everything the Kennedys and Mr. Costanzo have
12 claimed that my client did wrong and ask yourself
13 whether he violated his obligations to them, but also
14 whether what they're claiming my client did he actually
15 did. Did my client pull the vehicle away after hearing
16 someone banging on his vehicle and saying, don't move,
17 don't move? No. Did the movement of my jitney cause
18 Mrs. Kennedy to fall over? No. Did my client begin
19 moving before the Kennedys were out of the roadway?
20 No. He began moving once they were upon the sidewalk.
21 At the end of the day, yes, Mrs. Kennedy was severely
22 injured in this accident. But that doesn't mean that
23 she still doesn't have the obligation to establish her
24 claims against my client which plainly the claims fall
25 apart. Okay? So I want to watch the video one more

1 time, then I'm going to let Mr. Lafferty have the
2 floor. And I will thank you for your time.

3 **(video playing:)**

4 *MR. KENNEDY: 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 *(shuffling - low voices - scream)*

10 *MR. CHANCEY: Ladies and gentlemen, the video*
11 *is what it is. It shows what it shows. And at the end*
12 *of the day you're going to be asked whether my client*
13 *operated the vehicle in a way that was, that was unsafe*
14 *in view of dangers that were reasonably foreseeable to*
15 *him. And I have to ask you, with the Kennedys safely*
16 *up onto the sidewalk and walking away was it reasonably*
17 *foreseeable to him that a gust of wind would knock Mrs.*
18 *Kennedy over or that she would end up in the roadway*
19 *after watching her safely walking away with her*
20 *husband. Now the Kennedys aren't telling you that she*
21 *began walking away and fell over. They're claiming*
22 *something entirely different. But the video shows what*
23 *it shows. And I thank you very much for your time.*

24 *THE COURT: Mr. lafferty?*

25 *MR. LAFFERTY: Judge, can we just have 3 or 4*

1 minutes to set up?

2 THE COURT: Sure. Do you want the jury to
3 have a break for 5 minutes?

4 MR. LAFFERTY: Yeah. Thank you.

5 **(Jury exits)**

6 THE COURT: I'll be back. You can go off the
7 record.

8 **(off the record from 1:55 PM to 2:04 PM)**

9 THE COURT: Are we ready for the jury?

10 MR. LAFFERTY: We are.

11 THE COURT: So for the computer, my computer
12 to work with the TV is it very quick? They're not
13 going to have the --

14 UNIDENTIFIED SPEAKER: I would guess. Let me
15 just check real quick.

16 THE COURT: It has to be PC, right?

17 UNIDENTIFIED SPEAKER: PC?

18 THE COURT: Yeah.

19 UNIDENTIFIED SPEAKER: It's up.

20 THE COURT: It's there. Good.

21 MR. LAFFERTY: So you just want us to move it
22 back?

23 THE COURT: Yeah, just a little tiny bit.

24 **(Jury enters)**

25 THE COURT: All right. Please be seated.

1 Welcome back, ladies and gentlemen. So now you'll have
2 the closing arguments from Mr. Lafferty.

3 MR. LAFFERTY: Thank you, Judge Siracusa.
4 Mr. Chancey. Ladies and gentlemen of the Jury. Again,
5 I'd like to thank each and every one of you for the
6 giving of your time in listening to this case and in
7 agreeing to sit in judgment on this case. I told you
8 that a trial is like a jigsaw puzzle and throughout the
9 course of these proceedings you would get various
10 pieces of the puzzle. And we've given you as many
11 pieces of the puzzle as possible so that you can then
12 go back and deliberate and reach a decision in this
13 matter. It's a curious process where we pick 8 people,
14 we still have 8 people, and we inundate them with
15 information over a very short period of time, and we
16 ask them to assimilate the information and then to put
17 the pieces together. But it's a process that we have.
18 It's not, as I said in the beginning, in my opening,
19 it's not where we do trial by combat. This is how we
20 adjudicate and address our disputes. So as Judge
21 Siracusa will tell you shortly, in order to put all of
22 these pieces of the puzzle together and to determine a
23 fair and just result it requires a high order of human
24 judgment. And you might say why was I selected for
25 this? What tools do I have? And the tools that you

1 have are your common sense, your life experience, and
2 your good judgment. So what I'd like to do is review
3 the evidence with you, not the speculation as we just
4 heard.

5 And let's start with the fact that the only
6 evidence brought before you was the evidence that we
7 presented to you. There wasn't one piece of evidence
8 brought forth before you from the defense, not one lay
9 witness, not one expert witness. All of the testimony
10 came from the plaintiffs. Now let's talk about
11 liability. It's not disputed that this happened on
12 November 17th, 2014 in the afternoon. It's not
13 disputed that the Kennedys had just gone shopping for
14 their Thanksgiving meal, that the weather was miserable
15 that day. And we also know that the jitney driver was
16 distracted. And we know that because he didn't stop
17 when he was asked to stop initially and he had to be
18 told two more times to stop. We can hear him talking
19 in the video. And when he does stop he doesn't stop at
20 a jitney stop. He stops where he chooses to stop,
21 which happens to be the intersection of Rhode Island
22 and Pacific Avenue. And even though it's not a
23 designated jitney stop there's absolutely nothing
24 preventing him, as you can see in the exhibit, from
25 stopping the jitney properly. But he stops improperly

1 in violation of the law and then he creates a condition
2 by stopping too far away from the curb. He creates a
3 crevice, a crevice where any pedestrian, an elderly
4 person, a child, any pedestrian could become entrapped.
5 And it's a 3 or 4 foot separation between his jitney,
6 his commercial vehicle and the curb. So he then
7 observes John and Hilda slowly exit the jitney. He
8 watches Hilda trudge through the water in the gutter.
9 And he knows the weather conditions are bad. Let's run
10 the video, we'll play it so that we can see -- and this
11 is the four screen video.

12 **(video, Exhibit #P-4 playing in open court:)**

13 *SPEAKER: Better than snow.*

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

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

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

17 *MR. KENNEDY: Did you hear me? I told you to*
18 *let us off here.*

19 *(shuffling - low voices)*

20 *MR. LAFFERTY: Notice the color of the light.*

21 *(scream)*

22 *(yelling away from microphone)*

23 *SPEAKER 1: Oh, shit.*

24 *MR. KENNEDY: Oh, goddam it.*

25 *SPEAKER 2: What she do, faint?*

1 SPEAKER 1: I don't know. I'm not sure --

2 MR. KENNEDY: Call he police, call the
3 police, you just run over her. Gosh damn it, you
4 fuckin' guy. Call the police.

5 SPEAKER 1: Call 9-1-1.

6 (low voiced conversation)

7 SPEAKER 1: Yeah, is this the police
8 department? Atlantic City. I have - yeah, yeah. Rhode
9 Island and Pacific.

10 **(video stops)**

11 MR. LAFFERTY: So -- and by the way, this is,
12 this video tape is the defendant's video tape. This
13 isn't something that we have access to. It's the
14 defendant's video tape. So he watches elderly
15 pedestrians get off in terrible weather trudging
16 through the water. And then for some unknown reason he
17 rushes -- with the doors not even closed he rushes off
18 on a green light. Now we don't know, was he trying to
19 beat the light, was he trying to get to the next fare
20 before the jitney behind him? We have no idea. We
21 don't know why. But we do know that he doesn't even
22 take a moment to check his mirrors. And you heard Mr.
23 Costanzo describe these multifaceted mirrors that are
24 on this vehicle on the very front edge of the, of the
25 right fender of the vehicle. And it's not only a

1 mirror. It has three, three components to it that
2 gives you a full view of everything in the vicinity
3 along the side of the jitney. And we know that he
4 doesn't look in the mirrors because had he looked in
5 the mirror he would have seen two senior citizens in
6 the gutter struggling to get up. So let's talk about
7 what the defendant does say. He crafted an answer to a
8 question either in his home or his attorney's office or
9 somewhere. He has access to the video. He's not being
10 peppered on a witness stand by an attorney. He has all
11 the time in the world to draft an explanation of what
12 happened. Describe the accident or occurrence in
13 detail setting forth the date, time, location and
14 weather. So he can say whatever he thinks is
15 important, whatever he wants to say. So what does he
16 say? He says he was driving the jitney and he said he
17 stopped at the intersection prior, prior to the
18 intersection of Pacific and Rhode Island Avenues. He
19 then says all the passengers safely disembarked from
20 the bus and reached the curb. Answering defendant was
21 still stopped at the red light when he heard a loud
22 something. Well, we know that the only noise that we
23 heard about here today that would have been made when
24 he was stopped was Mr. Kennedy banging on the side of
25 the jitney because we know he's moving from the video

1 when Mrs. Kennedy is screaming. So he says he hears a
2 loud sound. Now he wasn't stopped at the red light.
3 He fabricates this story. Now sometimes people say
4 things by not saying them, by omitting them. Does he
5 anywhere in this long description say I looked in my
6 mirrors, saw it was clear? Does he mention looking
7 around the vehicle at all? And the answer is no, he
8 does not. And he had all the time in the world to
9 prepare that answer. Now we heard in opening arguments
10 that an explanation for this is that, well, maybe he
11 didn't read it or maybe it was prepared by an attorney,
12 or now we heard maybe his recollection is not that
13 good. That's not, that's not an excuse for fabricating
14 the story. It just isn't. People fabricate a story
15 for a reason. They usually do it because they've got
16 something they want to hide or they want to cover a
17 mistake. Pure and simple. Mr. Pollack, I submit to
18 you that the reason why Mr. Pollack fabricated this
19 story was because he knew he violated the law, he knew
20 he was supposed to park, stop that jitney close to the
21 curb just as we see he did when the inspection was
22 done. And he knew that by doing that, and by the way
23 he's subject to a fine and imprisonment if he violates
24 those ordinance regulations, he knew that he created a
25 dangerous condition by the separation between the

1 jitney and the curb, especially when you're dealing
2 with elderly people. He knew that he never looked in
3 the side view mirror and that he was rushing off to his
4 next fare. And he knew that he failed to fulfill his
5 legal duty as a common carrier and as a basic operator
6 of a motor vehicle to make sure to look in the mirrors
7 to make sure that there are no pedestrians in harms
8 way. And he knew that he was negligent in the
9 operation of that vehicle, that commercial vehicle
10 almost crushing Hilda Kennedy to death.

11 The defense can argue the speculation all
12 they want. But the facts that we've presented to you
13 are supported by expert testimony as well as factual
14 testimony. You heard from Mr. Costanzo. And isn't it
15 interesting that defense did not bring before you any
16 expert witness to rebut that testimony. They knew what
17 Mr. Costanzo was going to say. They didn't bring, they
18 didn't bring an expert in here. Defense wants you to
19 accept their position, they want you to accept that
20 even though the defendant violated the law, even though
21 he negligently positioned that jitney and created the
22 exact situation that the law is intended to prevent,
23 the law is intended to prevent that crevice or that
24 separation so that any pedestrian, man, woman or child,
25 cannot get trapped in that. They want you to -- that

1 even though he obviously did not make any observations
2 because if he would have nobody's saying that Mr.
3 Pollack would have intentionally run over anybody. And
4 even though he was obviously careless in the operation
5 of the jitney and even though under oath he fabricated
6 a story and even though he was the only person that
7 could have avoided this accident if he would have just
8 looked. It's bad enough that he created the situation,
9 but to not have looked and to have run over a woman, he
10 knew. And the defense wants you to accept that too.
11 And they want you to say even though it's our fault we
12 don't want you to find for the plaintiff.

13 Now the judge is going to charge you that
14 every person has an obligation and a duty to one
15 another to be careful and that when you're granted
16 special privileges that obligation becomes greater.
17 And the defendant was granted a privilege to operate a
18 commercial vehicle by virtue of his CDL license and he
19 was also granted a special privilege as a common
20 carrier to operate a jitney passenger bus in an area
21 that you know is populated by pedestrians, Atlantic
22 City. So ladies and gentlemen, the obligation of the
23 jitney driver of the common carrier does not end when
24 you leave a passenger in the gutter. The obligation
25 extends to making sure that it is safe before you move.

1 We submit, ladies and gentlemen, that the only
2 conclusion that you can reach from the credible
3 evidence in this case is that Mr. Pollack was negligent
4 and that his negligence was a cause of this accident.
5 Not the cause, but a cause of this accident.

6 Now let's talk about damages for a few
7 moments. Oh, and by the way, you heard Mr. Costanzo --
8 back up for a moment -- indicate that had the jitney
9 been properly positioned and had Mrs. Kennedy fallen as
10 she had, and she fell, and we're not claiming the
11 jitney caused her to fall -- Mrs. Kennedy is 85 years
12 old. She was almost crushed to death in this incident.
13 And I'll concede that some of her recollection of the
14 events may not be completely what they were. And
15 that's understandable. But Mr. Costanzo told you that
16 had the jitney been properly positioned this accident
17 would have never happened for a couple of reasons. One
18 is you wouldn't have had the crevice, you would not
19 have had that condition. And secondly, Mrs. Kennedy
20 would have fallen into the side of the jitney. She --
21 defense counsel argued that she somehow would have dove
22 under the jitney and rolled. That's not logical. She
23 would have fallen into the side of the jitney and that
24 would have been the end of it.

25 Now we tried to give you a picture of Hilda

1 before and after the accident. Excuse me. You heard
2 how Hilda was a vibrant, a vibrant, independent proud
3 woman. She was a community volunteer. She took great
4 pride in her homemaking. She took great pride in her
5 independence. She would walk from the north end of the
6 Boardwalk to the Hilton -- or Atlantic Club, used to be
7 the Hilton years ago. And the one thing that we all
8 agree upon is that these injuries are catastrophic.
9 And I said in my opening and I'll say it again. As we
10 age severe injuries become that much more severe. It's
11 just life. And these injuries are severe in and of
12 themselves. There's not one shred of evidence that was
13 presented to you by the defense that disputed the
14 severity of these injuries. And Mr. Chancey concedes
15 it. Hilda, you've seen the pictures before. These are
16 the pictures within a month after the accident. You
17 can see where Hilda has had the surgery, the first
18 surgery. And you can see Hilda today with the residual
19 scarring. You heard Hilda describe how as she was
20 lying there and the jitney is rolling she heard her
21 bones breaking. First her shoulder then her ribs. You
22 can only imagine the pain that a human being
23 experiences in that scenario, 14 ribs, as a matter of
24 fact. You heard that both she and John thought she was
25 going to die. She was having difficulty breathing.

1 And you know, with the amount of opportunity that the
2 defendant had to avoid this the tragedy is almost
3 unimaginable. So you heard how the ambulance
4 transported her to the trauma center, how she spent all
5 the time in the trauma center. You heard -- and I'm
6 not going to repeat all the medical evidence. You've
7 had a lot of medical evidence, you've heard from a lot
8 of doctors. But what we do know is that Hilda
9 suffered a severe injury to the fractured arm where it
10 actually rotated. The comminuted fracture to the
11 scapula never has healed. You heard about the 14
12 fractured ribs, fractured left collar bone, you heard
13 about the collapsed right lung. And you heard about
14 the axillary nerve injury which obviously is a very,
15 very serious injury. These are plates and screws.
16 They can't do anything for the ribs and they can't do
17 anything for the axillary nerve which is almost totally
18 destroyed. So you heard about the multiple surgeries,
19 the 102 days that she spent in a hospital of one sort
20 or another, the efforts that she made day in and day
21 out to try to rehabilitate herself and going from one
22 rehabilitation facility to another. You heard from
23 three board certified physicians, Dr. Islinger, Dr.
24 Lucasti and Dr. Baliga, about the permanent conditions
25 that she suffers from, her significant permanent

1 residuals, her constant pain and suffering. This isn't
2 fake stuff. This isn't my neck hurts. This is, these
3 are serious and painful injuries. The permanent
4 restrictions that she has to accommodate for the
5 remainder of her life, that her dominant right arm is
6 virtually useless. And every day from the day of this
7 accident til the end Hilda will suffer the pain and
8 suffering that she experiences. There's no question
9 that this created a significant impact on Hilda. She
10 was a vibrant, she went from a vibrant independent
11 woman to a severely and totally disabled dependent
12 woman all in one fell swoop. And you know, my
13 grandmother once told me that if you don't have your
14 health not much else matters anyway. So this is where
15 Hilda finds herself today. Every day is a struggle.
16 It's a struggle to get up, it's a struggle to take a
17 simple shower, it's a struggle to get dressed, it's a
18 struggle to take your meals, it's a struggle to even
19 toilet. And you can't even get a decent night's sleep
20 for the rest of your life. You go from enjoying your
21 retirement years, from helping others as a volunteer,
22 to being the one who needs the help.

23 You heard from John Kennedy. And John talked
24 to you about his own mental anguish, his own concern.
25 They were both within inches of this jitney when it

1 started to roll. He watched his wife get crushed by
2 this 15,000 pound jitney. You heard about the damages
3 on their partnership, how they went from a partnership
4 to him being the caretaker. The economic losses in
5 this case really are not in dispute. It is not
6 disputed that Hilda had medical care -- and you're
7 going to have this chart, this summary -- the medical
8 care that Hilda sustained or received as a result of
9 these injuries, fair value of \$430,901.76. You heard
10 from Val Parisi, the registered rehabilitative nurse
11 and certified life planner who explained to you that
12 she reviewed all those bills and all of those bills
13 were reasonable.

14 So you may be asking yourself how do we put a
15 value on this? How are we supposed to value this?
16 Well, the economic losses, the medical bills are easy.
17 They are what they are. But the pain, suffering and
18 disability, that's not so easy. We're not allowed to
19 suggest to you any type of mechanism to value that.
20 What we can suggest to you are the factors that you
21 need to keep into mind, keep in your mind. You've
22 heard what Hilda's gone through over the past 3 years.
23 And that's the short haul because she's going to go
24 through this for the rest of her life. Her life is not
25 changing. At the end of this case Judge Siracusa will

1 go on to her next case, Mr. Chancey will go to his next
2 case, you folks will have fulfilled your jury service,
3 and Hilda is going to live with this, Hilda and John
4 are going to live with this every day of their lives.
5 So -- and you know it's always an interesting fact of
6 life that when things are going well time seems to fly,
7 when things aren't going well time seems to drag. And
8 that's what John and Hilda are confronted with. So
9 there can be no question, no legitimate question that
10 this has had a dramatic impact on their lives. And if
11 you had the power Hilda would ask you for her health
12 back. But you don't have that power. And as Judge
13 Siracusa is going to instruct you the only means by
14 which you can make them whole is through compensation,
15 compensation that you determine to be fair and just.
16 And they are not asking for anything more nor anything
17 less. Thank you very much for your time. Thank you,
18 Judge.

19 THE COURT: Thank you. So I'm going to
20 charge you, but I'm going to have a PowerPoint that
21 you'll -- you know, you can actually leave it there
22 because I'll see it enough on the computer.

23 I'm going to read you jury charges, and I do
24 have to read it because I have to make sure that I give
25 you the correct charges. And I'm going to give you a

1 copy to take back to the deliberating room so you can
2 refer to it. All right?

3 All right. So now I'm going to tell you
4 about the principles of law governing this case. You
5 are required to accept my instructions as the law. You
6 should consider these instructions as a whole. Do not
7 pick out any particular instruction and place undue
8 emphasis on it. Any ideas of what the law is or what
9 the law should be or any statements by the attorneys as
10 to what the law must be, may be must be disregarded by
11 you if they are in conflict with my charge. I'm the
12 judge of the law. As part of this responsibility I
13 made various rulings and statements throughout this
14 trial. Do not view these rulings or statements as
15 clues about how I think this case should be decided,
16 they are not. They are based solely on my
17 understanding of the law and the Rules of Evidence and
18 they do not reflect any opinions of mine about the
19 merits of this case. Even if they did you should
20 disregard them because it is your role to decide the
21 case, not mine. The lawyers are here as advocates for
22 their clients. In their opening statements and in
23 their summations they have given you their views of the
24 evidence and their arguments in favor of their clients'
25 position. While you may consider their comments,

1 nothing that the attorneys say is evidence and their
2 comments are not binding upon you. You are to render a
3 verdict based upon the evidence produced during the
4 trial and not based on the performance of the
5 attorneys.

6 You sit here as judges of the facts. You
7 alone have the responsibility of deciding the factual
8 issues in this case. It is your recollection and
9 evaluation of the evidence that controls. If the
10 attorneys or I say anything about the facts in this
11 case that disagrees with your recollection of the
12 evidence it is your recollection that you should rely
13 on. Your decision in this case must be based solely on
14 the evidence presented and any instructions on the law.
15 So the evidence in this case consists of the testimony
16 that you heard from the witnesses, the exhibits that
17 have been moved into evidence, which includes the
18 photographs, the photographs of the area from Google
19 Earth, the photographs of the jitney, the video from
20 the jitney and the interrogatory readings. Any
21 testimony that I have stricken from the record is not
22 evidence and should not be considered by you in your
23 deliberations. This means that even though you may
24 remember the testimony you are not to use it in your
25 discussions or deliberations. And any matters that are

1 not on the record, don't speculate as to why they are
2 not on the record. All right.

3 So again, we know this matter arises out of
4 the incident that occurred on November 17, 2014. On
5 that date the Kennedys were passengers on a jitney that
6 was owned and operated by Frederic Pollack. That's
7 stipulated. It was traveling eastbound on Pacific
8 Avenue in Atlantic City. Mr. Pollack was discharging
9 passengers, including Mr. and Mrs. Kennedy, near the
10 intersection of Rhode Island Avenue. After Mrs.
11 Kennedy exited from the jitney the jitney made contact
12 with her causing personal injuries. You know Mr.
13 Pollack passed away from unrelated causes so this
14 matter is proceeding against his estate. Mrs. Kennedy
15 alleges that Mr. Pollack was negligent in the operation
16 of his jitney and his negligence caused her physical
17 injuries. Mr. Kennedy alleges that as a result of the
18 injuries sustained by his wife he has also been caused
19 to suffer damages. Frederic Pollack asserts that he
20 was not negligent in causing the incident and that his
21 conduct was not a proximate cause of any injury
22 suffered by Mrs. Kennedy, and he is not responsible for
23 any of her damages.

24 The burden of proof is on Mrs. Kennedy and
25 Mr. Kennedy to establish each claim they are asserting

1 by a preponderance of the credible evidence. In other
2 words, if a person makes an allegation that person must
3 then prove the allegation. In this action Mrs. Kennedy
4 and Mr. Kennedy have the burden of establishing by a
5 preponderance of the evidence all of the facts
6 necessary to prove the following issues: The
7 negligence of Mr. Pollack, that the negligence of Mr.
8 Pollack was a proximate cause of the November 17, 2014
9 incident and all the damages they suffered as a
10 proximate result of the incident. The term
11 preponderance of the evidence means that amount of
12 evidence that causes you to conclude that the
13 allegation is probably true. To prove an allegation by
14 the preponderance of the evidence a party must convince
15 you that the allegation is more likely true than not
16 true. If the evidence on a particular issue is equally
17 balanced that issue has not been proven by a
18 preponderance of the evidence, therefore the party
19 having the burden of proving that issue has failed with
20 respect to that particular issue.

21 Evidence may be direct or circumstantial.
22 Direct evidence is direct proof of a fact, such as
23 testimony of an eye witness. Circumstantial evidence
24 consists of a chain of circumstances pointing to the
25 existence of certain facts. Circumstantial evidence is

1 based upon deductions or legal, logical conclusions
2 that you reach from the direct evidence. So the
3 example you heard earlier in the trial. If a witness
4 testified that he or she observed snow falling last
5 night that would be an example of direct evidence. On
6 the other hand, if the witness testified that when they
7 went to bed the night before there was no snow on the
8 ground, then when they woke up in the morning there was
9 snow on the ground they could infer from the facts that
10 it snowed during the night. So that is an example of
11 circumstantial evidence. You may consider both direct
12 and circumstantial evidence in deciding this case. The
13 law permits you to give equal weight to both, but it is
14 for you to decide how much weight to give to any
15 evidence. When deciding this case you are permitted to
16 draw inferences from the evidence. Inferences are
17 deductions or logical conclusions drawn from the
18 evidence. Use logic, your collective common knowledge
19 and your common sense when determining what inferences
20 can be made from the evidence.

21 In deciding the facts of this case you will
22 have to decide which witnesses to believe and which
23 witnesses not to believe. You may believe everything a
24 witness says or only part of it or none of it. In
25 deciding what to believe here are some factors you

1 might want to consider. Does the witness have an
2 interest in the outcome of the case? How good and
3 accurate is the witness' recollection? What was the
4 witness' ability to know what he or she was talking
5 about? Were there any contradictions or changes in the
6 witness' testimony? Did the witness say one thing at
7 one time and something different at another time? if
8 so, you may consider whether or not the discrepancy
9 involves a matter of importance or whether it results
10 from an innocent mistake or a willful lie. You may
11 consider any explanation that the witness gave
12 explaining the inconsistency. You may consider the
13 demeanor of the witness. By that I mean the way the
14 witness acted, the way the witness talked or the way
15 the witness reacted to certain questions. Use your
16 common sense when evaluating the testimony of a
17 witness. If a witness told you something that did not
18 make sense you have a right to reject that testimony.
19 On the other hand, if what the witness said seemed
20 reasonable and logical you have the right to accept
21 that testimony. Is the witness' testimony reasonable
22 when considered in light of other, of other evidence
23 that you believe?

24 Now you've listened to the testimony of a
25 number of expert witnesses. Generally witnesses can

1 testify only about the facts and are not permitted to
2 give opinions. However an exception to this rule
3 exists in the case of an expert witness. An expert
4 witness may give an opinion on a matter in which the
5 witness has some special knowledge, education, skill,
6 experience or training. An expert witness may be able
7 to assist you in understanding the evidence in this
8 case or in performing your duties as a fact finder. I
9 want to emphasize to you that the determination of the
10 facts in this case rests solely with you as the jurors.
11 In this case Dr. Richard Islinger, Dr. Christopher
12 Lucasti, Dr. Arvind Baliga, Frank Costanzo and Valerie
13 Parisi were called as experts and testified about
14 certain opinions. In examining the expert's opinion
15 you may consider the person's reasons for testifying,
16 if any. You may also consider the qualifications of
17 the individuals and the believability of the expert,
18 including all the considerations that generally apply
19 when you are deciding whether or not to believe a
20 witness' testimony. The weight of the expert's opinion
21 depends on the facts on which the expert bases his or
22 her opinion. You as jurors must also decide whether
23 the facts relied upon by the expert actually exist.
24 Finally, you're not bound by the testimony of an
25 expert. You may give it whatever weight you deem is

1 appropriate. You may accept or reject all or part of
2 an expert's opinions. It is for you the jury to
3 resolve any conflicts in the testimony of the experts
4 using the same guidelines in determining credibility
5 that I mentioned earlier.

6 Negligence is the failure to use that degree
7 of care, precaution and vigilance which a reasonably
8 prudent person would use under the same or similar
9 circumstances. It includes both affirmative acts which
10 a reasonably prudent person would not have done and the
11 omission of acts or precautions which a reasonably
12 prudent person would have done or taken in the
13 circumstances. By a reasonably prudent person it is
14 not meant the most cautious person nor one who is
15 unusually bold, but rather one of reasonable vigilance,
16 caution and prudence. In order to establish negligence
17 it is not necessary that it be shown that the defendant
18 had an evil heart or intent to do harm. To summarize,
19 every person is required to exercise the foresight,
20 prudence and caution which a reasonably prudent person
21 would exercise under the same or similar circumstances.
22 Negligence then is a departure from that standard of
23 care.

24 In this case the plaintiffs in support of the
25 claims of negligence made assert that defendant

1 violated a provision of the Atlantic City Municipal
2 Code. The provision referred to in Chapter 233-41 of
3 the Atlantic City Municipal Code which sets forth the
4 general rules governing jitneys reads as follows:

5 "It shall be unlawful for any jitney to stop
6 for the purpose of receiving or discharging
7 passengers within 10 feet from the
8 intersection of streets unless in the process
9 of legally passing another jitney. And in
10 all cases such embarking and disembarking
11 passengers shall be at a point as near the
12 curb as may be practicable."

13 The ordinance has set up a standard of conduct. If you
14 find that the defendant has violated that standard of
15 conduct such violation is evidence to be considered by
16 you in determining whether negligence as I have defined
17 that term to you has been established. You may find
18 that such violation constituted negligence on the part
19 of the defendant or you may find that it did not
20 constitute such negligence. Your findings on this
21 issue may be based on such violation alone, but in the
22 event that there is other or additional evidence
23 bearing on the issue you will consider such violation
24 together with all such additional evidence in arriving
25 at your ultimate decision as to the defendant's

1 negligence.

2 In this case the defendant is what is known
3 in the law as a common carrier. A common carrier
4 undertakes for pay to carry all persons who apply for
5 passage so long as there is room and there is no legal
6 excuse for refusing. Typical common carriers are
7 railroads, streetcars, subways, elevated railroads,
8 buses, steam ships, airplanes, taxi cabs and others
9 similarly engaged in public transportation. A common
10 carrier must exercise a high degree of care to protect
11 its passengers from dangers that are known or are
12 reasonably foreseeable. Carriers must use the utmost
13 caution to protect their passengers, the kind of
14 caution that is characteristic of a very careful and
15 prudent person. A carrier must act with the highest
16 possible care consistent with the nature of the
17 undertaking involved. This includes the duty to select
18 a reasonably safe place for the passenger to get off
19 the vehicle and leave. If you find that the carrier in
20 selecting a place to unload plaintiff failed to
21 exercise its high degree of care and as a result that
22 brought about his or her injuries you should find for
23 the plaintiff. But understand that a common carrier
24 does not have a duty to anticipate every uneven surface
25 or defect in the road or alongside of the road and then

1 stop the vehicle to avoid the remote possibility of a
2 passenger stepping on some uneven surface or in a
3 depression which, even though the carrier exercised
4 reasonable watchfulness, did not appear to be
5 dangerous.

6 In this case plaintiff John Kennedy seeks to
7 recover against the defendant on his own behalf
8 contending that the defendant's negligence caused him,
9 Mr. Kennedy, severe emotional and mental distress as a
10 result of observing the injury to his wife Hilda for
11 which injury plaintiff contends the defendant's
12 negligence was responsible. You the jury must
13 determine whether an injury to Hilda Kennedy was caused
14 by the defendant John Pollack -- or not -- Mr. Pollack.
15 If you find that the injury was not a result of the
16 defendant's negligence then the plaintiff who witnessed
17 the injury cannot recover damage from the defendant for
18 emotional distress. These are the criteria by which
19 you are to determine whether the defendant was
20 negligent for causing injury to Hilda Kennedy. If
21 you've determined that Hilda Kennedy's injury was
22 caused by the negligence of the defendant, Mr. Pollack,
23 then you must consider whether Mr. Kennedy has proven
24 the following elements by a preponderance of the
25 evidence: One, that the defendant's negligence caused

1 serious bodily injury to Hilda Kennedy; two, that the
2 plaintiff in fact witnessed the accident or event which
3 caused serious bodily injury to Hilda Kennedy; and
4 three, that plaintiff experienced severe emotional
5 distress as a result of the observation of the accident
6 or event. If plaintiff has proven each of these
7 elements by a preponderance of the evidence then the
8 defendant is liable to the plaintiff for money damages
9 resulting from the infliction of emotional distress.
10 You must then set an amount of money which will
11 compensate plaintiff for the mental and emotional
12 anguish, distress and harm suffered by the plaintiff.

13 If you find that Mr. Pollack was negligent
14 you must find that Mr. Pollack's negligence was a
15 proximate cause of the incident before you can find
16 that Mr. Pollack was responsible for Mrs. and Mr.
17 Kennedy's claimed injuries. It is the duty of Mrs. and
18 Mr. Kennedy to establish by the preponderance of the
19 evidence that the negligence of Mr. Pollack was a
20 proximate cause of the incident and of the injuries
21 allegedly to have resulted from Mr. Pollack's
22 negligence. The basic question for you to resolve is
23 whether Mrs. and Mr. Kennedy's injuries are so
24 connected with the negligent actions or inactions of
25 Mr. Pollack that you decide it is reasonable in

1 accordance with the instructions I will now give you
2 that Mr. Pollack should be held wholly or partially
3 responsible for the injuries. By proximate cause I
4 refer to a cause that in a natural and continuous
5 sequence produces the incident and resulting injury and
6 without which the resulting accident or injury would
7 not have occurred. A person who is negligent is held
8 responsible for any accident or injury that results in
9 the ordinary course of events from its negligence.
10 This means that you must first find that the resulting
11 accident or injury to Mrs. Kennedy would not have
12 occurred but for the negligence of Mr. Pollack.
13 Second, you must find that the accident was a
14 substantial factor in bringing about the resulting
15 injury. By substantial I mean that the cause is not
16 remote, trivial or inconsequential. If you find that
17 the accident was a substantial factor in bringing about
18 the injury then you should find that Mr. Pollack's
19 conduct was a proximate cause of Mrs. Kennedy's
20 injuries.

21 I shall now instruct you on the law governing
22 damages in the event you decide that the plaintiff has
23 established that she suffered an injury as a proximate
24 result of the accident. The fact that I instruct you
25 on damages should not be considered as suggesting any

1 view of mine about which party is entitled to prevail
2 in this case. Instructions on damages are given for
3 your guidance in the event that you find that Mrs.
4 Kennedy is entitled to a verdict. I am required to
5 provide instructions on damages in all cases where the
6 trial includes a claim for damages. The plaintiff,
7 Mrs. Kennedy, has the burden of establishing by a
8 preponderance of the evidence each item of damages that
9 she claims. Mrs. Kennedy must also prove that the
10 damages were the natural and probable consequences of
11 the accident. Damages may not be based on conjecture
12 or speculation. So there is no dispute that Mrs.
13 Kennedy suffered injuries as a proximate result of the
14 fall on November 17th, 2014. In this case the
15 plaintiff, Mrs. Kennedy, is seeking the following type
16 of damages: Pain, suffering, disability, impairment
17 and loss of enjoyment of life and medical expenses. If
18 you find for plaintiff then she is -- Mrs. Kennedy --
19 then she is entitled to recover fair and reasonable
20 compensation for the full extent of the harm and losses
21 caused, no more and no less. Fair and reasonable
22 compensation means to make plaintiff whole for any
23 permanent or temporary injury and the consequences of
24 that injury or injuries caused by the defendant's
25 negligence. The law on compensation recognizes that a

1 plaintiff may recover for any disability or impairment
2 that he or she suffers as a result of his or her
3 injuries. Disability or impairment means worsening,
4 weakening or loss of faculties, health or ability to
5 participate in activities. The law also permits a
6 plaintiff to recover for the loss of enjoyment of life
7 which means the inability to pursue one's normal
8 pleasure and enjoyment. You must determine how the
9 injury has deprived plaintiff of her customary
10 activities as a whole person. This measure of
11 compensation is what a reasonable person would consider
12 to be adequate and just under all the circumstances of
13 the case to make plaintiff whole for her injuries and
14 her consequent disability, impairment and loss of
15 enjoyment of life. The law also recognizes as proper
16 items for recovery the pain and physical and mental
17 suffering, discomfort and distress that a person may
18 endure as a natural consequence of the injury. Again,
19 this item of recovery is what a reasonable person would
20 consider to be adequate and just under all the
21 circumstances to compensate the plaintiff.

22 Here are some factors you might want to take
23 into account when fixing the amount of the verdict for
24 disability, impairment, loss of enjoyment of life, pain
25 and suffering. You can consider the plaintiff's age,

1 usual activities, occupation, family responsibilities
2 and similar relevant facts in evaluating the probable
3 consequences of any injuries you find she has suffered.
4 You are to consider the nature, character and
5 seriousness of any injury or discomfort. You must also
6 consider their duration as any award you make must
7 cover the damages suffered by plaintiff since the
8 accident to the present time and even into the future
9 if you find the plaintiff's injury and its consequence
10 have continued to the present time or could reasonably
11 be expected to continue into the future. The law does
12 not provide you with any table, schedule or formula by
13 which a person's pain and suffering, disability,
14 impairment, disfigurement or loss of enjoyment of life
15 may be measured in terms of money. the amount is left
16 to your sound discretion. You are to use your
17 discretion to attempt to make the plaintiff whole so
18 far as money can do so based upon reason and sound
19 judgment without any passion, prejudice, bias or
20 sympathy. You each know from your common experience
21 the nature of pain and suffering, disability,
22 impairment and loss of enjoyment of life and you also
23 know the nature and function of money. The task of
24 equating the two so as to arrive at a fair and
25 reasonable award of damages requires a high order of

1 human judgment. For this reason the law can provide no
2 better yardstick for your guidance than your own
3 impartial judgment and experience. You are to exercise
4 sound judgment as to what is fair, just and reasonable
5 under all the circumstances. You should of course
6 consider the testimony of plaintiff on the subject of
7 her discomforts, you should scrutinize all the other
8 evidence presented by the plaintiff on this subject,
9 including of course the records of the doctors who
10 appeared. After considering the evidence you shall
11 award a lump some of money that will fairly and
12 reasonably compensate plaintiff for her pain,
13 suffering, disability, impairment, disfigurement and
14 loss of enjoyment of life proximately caused by
15 defendant's negligence.

16 Okay. A plaintiff who is awarded a verdict
17 is entitled to payment for medical expenses which were
18 reasonably required for the examination, treatment and
19 care of injuries proximately caused by the defendant's
20 negligence. Medical expenses are the costs of doctor's
21 services, hospital services, medicines, medical
22 supplies and medical tests and any other charges for
23 medical services. The amount of payment is the fair
24 and reasonable value of such medical expenses. You
25 have heard testimony on whether these medical expenses

1 were fair and reasonable in amount and whether they
2 were reasonably necessary for the examination, care and
3 treatment of plaintiff. If you determine that any of
4 these bills were not fair and reasonable to any extent
5 or that any of the services were not reasonably
6 necessary to any extent you need not award the full
7 amount claimed. In this case plaintiff is seeking
8 \$430,901.76 in medical expenses. As a result the upper
9 limit of the award which you may make for medical
10 expenses is \$430,901.76 since you may not award more
11 than the plaintiff is seeking. If you make an award
12 for future pain and suffering, disability and
13 impairment, loss of enjoyment of life or disfigurement
14 you may consider the plaintiff's life expectancy. Mrs.
15 Kennedy's life expectancy today is 6.5 years. That is
16 an estimation of her probable length of life based upon
17 statistical data. Since it is a general estimate you
18 should use it with caution in an individual case. The
19 plaintiff may live a longer or shorter period than the
20 estimated figure. You should exercise your sound
21 judgment in applying the life expectancy figure without
22 treating it as a necessary and fixed rule. A husband
23 is entitled to the services of his spouse in attending
24 to the household duties, to companionship and comfort
25 and consortium, that is marital relations. A plaintiff

1 who is awarded a verdict is entitled to fair and
2 reasonable compensation for any loss of impairment of
3 his or her spouse's services, society or consortium
4 because of injuries sustained by him or her as a
5 proximate result of the defendant's negligence.
6 Damages may be awarded not only for total loss of
7 services but for worsening of their quality. A
8 personal injury damage award for pain and suffering is
9 not subject to federal or state income tax, therefore
10 if you decide to award the plaintiff damages for her
11 pain and suffering you should not add or subtract any
12 tax in fixing the amount of the award.

13 You are to resolve the factual disputes in
14 this case based upon the exhibits which you will have
15 in the jury room with you and your recollection of the
16 testimony of witnesses as bearing on those issues. You
17 have been permitted to make notes during the course of
18 this trial, but as I told you before we started those
19 notes are not evidence. You may use the notes during
20 your deliberations to help you to recall what the
21 testimony was. However, do not overemphasize the
22 significance of a written note made by yourself or by a
23 fellow juror. If a note does help to refresh your
24 recollection it has then been useful. But it is your
25 recollection, not the note, which is important. If

1 your memory differs you have an absolute right to rely
2 on your own recollection.

3 All right. We're going to go over the
4 verdict sheet. Oh, actually --

5 ATTENDANT: Do we have more?

6 THE COURT: You need more?

7 ATTENDANT: I don't have any for the lawyers.

8 THE COURT: No, they have them. I gave them
9 to them. They had them all along.

10 ATTENDANT: Okay.

11 THE COURT: All right. So you'll see there's
12 5 questions. So the first question is has the
13 plaintiff, Hilda Kennedy, established by a
14 preponderance of the evidence that the defendant,
15 Frederic Pollack was negligent? So you have to
16 deliberate on that. If -- it doesn't have to be
17 unanimous, I'll go over that in more detail, so
18 whenever 7 of you, if you agree on a question, if your
19 answer is yes, then you go to question 2. If everybody
20 says no then cease your deliberations and return your
21 verdict sheet. So if you do say yes then you go on to
22 question number 2. Second question is has the
23 plaintiff, Hilda Kennedy, established by a
24 preponderance of the evidence that the negligence of
25 the defendant, Frederic Pollack, was a proximate cause

1 of the incident on November 17th, 2014? So -- excuse
2 me. Same thing. You need to deliberate. If 7 of you
3 agree and say yes you move on to 3.

4 MR. LAFFERTY: We have 8.

5 THE COURT: No, but if 7 of them agree then
6 it's a legal verdict.

7 MR. LAFFERTY: Oh.

8 THE COURT: Yeah. So if you say no, again
9 stop your deliberations, you're done. And then return
10 your verdict. But if you say yes now you go to
11 question 3, which I don't have on there, but if you do
12 say yes -- if the answer is yes proceed to 3. So 3
13 asks you what amount of money, if any, would fairly and
14 reasonably compensate the plaintiff, Hilda Kennedy, for
15 her disability, impairment, loss of enjoyment of life,
16 pain and suffering and medical expenses proven to be
17 proximately caused by the incident of November 17th,
18 2014? So that's where, that's your own judgment,
19 that's the high order of what you need to figure out if
20 you are awarding a verdict. And then the past medical
21 expenses, again the -- you can't award any more than
22 \$430,901.76. So after you do that then you go on to
23 question number 5. Or 4, I'm sorry. And this deals
24 with plaintiff John Kennedy. What sum of money would
25 reasonably and fairly compensate plaintiff John Kennedy

1 for the injury that he sustained as a result of
2 witnessing the incident involving the jitney and Hilda
3 Kennedy on November 17th, 2014? And then you go to
4 question 5. What sum of money would reasonably and
5 fairly and reasonably compensate plaintiff John Kennedy
6 for the injuries that he sustained as a result of the
7 loss of the care, companionship and support of Hilda
8 Kennedy proximately caused by the incident of November
9 17th, 2014? Okay. So that's the verdict sheet.

10 Okay. So you are not advocates for either
11 party, you are the judges of the facts. Your sole
12 interest is to determine the truth for the evidence of
13 the case. It is your duty as jurors to consult with
14 one another and to deliberate with a view to reaching
15 an agreement if you can do so without compromising your
16 individual judgment. Each of you must decide the case
17 for yourself, but do so only after an impartial
18 consideration of the verdict with the other jurors.
19 Since this is a civil case any verdict of 8-0 or 7-1 is
20 a legal verdict. Therefore it is not necessary that
21 all 8 jurors agree on each question. An agreement of
22 any 7 jurors is sufficient. All 8 jurors must
23 deliberate fully and fairly on each and every question
24 and all 8 jurors must determine and vote upon each
25 question. It is not necessary that the same 7 jurors

1 agree upon the answers to all the questions. Whenever
2 at least 7 jurors have agreed to any answer that
3 question has been decided and you may move on to
4 consider the remaining questions in the case if it is
5 appropriate to do so. All 8 jurors must participate
6 fully in deliberating on the remaining questions. A
7 juror who has been outvoted on any question shall
8 continue to deliberate with the other jurors fairly and
9 impartially, honestly and conscientiously to decide the
10 remaining questions.

11 CLERK: Your Honor.

12 THE COURT: Yes?

13 CLERK: I can't hear. Can you stop for one
14 second while I turn it off and on.

15 THE COURT: Sure. They're happy that I stop.
16 I'm almost done. I have two more paragraphs.

17 **(pause)**

18 THE COURT: the blue light's on. Are you sure
19 it's not recording?

20 CLERK: I'm going to have to bring it down.
21 My whole desktop just went down. I think I'm going to
22 need about 5 minutes.

23 THE COURT: You know what? I will reread
24 this into the record. There is so little left that I'm
25 just going to read it even though we don't have a

1 record.

2 So again, when at least 7 of you have agreed
3 upon a verdict indicate to the attendant you have
4 reached a verdict but say nothing more. The attendant
5 will escort you back to the jury box so that the Court
6 may receive your verdict. If during your deliberations
7 you wish to communicate with the Court or you would
8 like me to repeat any part of the jury instructions
9 please write your request or question and give the note
10 to Forrest. I'll respond as quickly as I can by having
11 you in the courtroom on the record. You may ask that
12 we reconvene to listen to testimony again or you may
13 have questions about my instructions. Please be sure
14 to write the questions on a piece of paper so it can be
15 delivered to me and I can go over the questions with
16 the lawyers before you come back to the courtroom for
17 an answer to the question. However, at no point until
18 you have reached your final verdict should you indicate
19 to the attendant or anyone else what your vote has been
20 on any question before you. That is a matter that only
21 members of the jury should know until you have reached
22 a verdict. You should not communicate with any of the
23 parties, the witnesses, or anyone else about your
24 deliberations until you reach a verdict and the verdict
25 is announced in court. Please take as much time as you

1 need to reach a verdict. Your oath as jurors requires
2 you to decide the case fairly and impartially, without
3 sympathy, passion, bias or prejudice. You are to
4 decide this case based solely upon the evidence that
5 you find believable and in accordance with the rules of
6 law that I have given you. Sympathy is an emotion
7 which is normal for human beings. Sympathy must play
8 no part in your thinking and in the decision you reach
9 in the jury room. Similarly, your decision must not be
10 based upon bias or prejudice which you might have
11 developed during the trial for or against any party.
12 Your duty is to decide the case impartially and a
13 decision based on sympathy, passion, bias or prejudice
14 would violate that duty. Again, remember you're the
15 judges of the facts. So missus or Ms. Barnett, you're
16 the foreman of the jury by virtue of being in seat
17 number one. So the foreperson insures that each juror
18 deliberates, writes any questions the jury may have for
19 the court and marks the verdict and vote on the jury
20 verdict sheet. The foreperson also signs and submits
21 the verdict sheet. When the jury returns to the
22 courtroom the foreperson must report the verdict to the
23 court by giving an answer to each of the questions on
24 the jury verdict sheet. Okay. So Ms. Barnett is the
25 foreperson. So that's it. Oh, I gotta swear Forrest.

1 **JURY ATTENDANT SWORN**

2 THE COURT: All right. So thank you so much.
3 If you decide that you're close and you might --
4 because normally court is over at 4:30, but if you're
5 close and you think that you can reach a verdict I'm
6 trying to make arrangements to see if I can have people
7 stay longer so that you can potentially finish the case
8 today. If not, just come back tomorrow morning. All
9 right? Than you. Happy deliberating. And you know,
10 what, I'm going to give them the jury charge.

11 **(Jury exits)**

12 THE COURT: Did it come back on?

13 CLERK: I'm going to check --

14 THE COURT: Do you want me to just read --

15 CLERK: -- if it was on so --

16 THE COURT: Oh, so it might be on there so I
17 might not have to read it. Okay.

18 MR. LAFFERTY: Well, regardless, Judge, I
19 agree with what you did.

20 THE COURT: It was so little left to have
21 them sit there.

22 MR. LAFFERTY: I agree.

23 THE COURT: We'll see what Judge Mendez says.

24 **(off the record from 3:06 PM to 4:36 PM)**

25 THE COURT: We ready? Okay.

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(Jury enters at 4:38 PM)

THE COURT: All right. Please be seated. Welcome back. Ms. Barnett, if you could please stand. Ms. Barnett, could you please stand. All right. So we have the verdict sheet. So has the -- I'm going to go over the questions with you. Has the plaintiff, Hilda T. Kennedy, established by a preponderance of the evidence that the defendant, Frederic A. Pollack was negligent?

FOREPERSON: No.

THE COURT: No. So that's it. Okay. So that's it. So it is signed and dated. It is? Okay. All right. Thank you all so much for your service. Thank you for staying overtime to do it. I appreciate it very much. See you in three years.

MR. KENNEDY: Thank you, ladies and gentlemen.

THE COURT: Oh, wait. I'm sorry. Do you -- it says 7-1. Do you want me to poll the jury? I'm very sorry.

MR. LAFFERTY: Yes, I would, Judge.

(The Court polls the jury; the vote is 7-1)

THE COURT: Okay. Thank you very much.

(Jury exits)

MR. LAFFERTY: I'm sorry, John. I'm sorry,

1 Hilda.

2 MR. KENNEDY: That's all right. It is what
3 it is. Thank you, Your Honor.

4 THE COURT: I'm sorry.

5 MRS. KENNEDY: Thank you. Let me just do
6 this. So in light of the jury's verdict then I'll
7 enter judgment as no cause.

8 MR. LAFFERTY: That's fine.

9 THE COURT: Okay. And then Mr. Asher, you
10 can prepare an order.

11 MR. CHANCEY: Yes, Your Honor. I'll prepare
12 that tomorrow.

13 THE COURT: All right. Thank you all very
14 much. Sorry.

15 MR. LAFFERTY: Thank you, Judge.

16 THE COURT: Okay. Thank you.

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CERTIFICATION

1
2 I, **BONITA K. BRUMBACH**, the assigned
3 transcriber, do hereby certify that the foregoing
4 transcript of proceedings heard on September 7, 2017
5 and digitally recorded from 9:11:38 AM to 9:43:44 AM,
6 from 9:55:23 AM to 10:45:41 AM, from 11:04:26 AM to
7 11:51:29 AM, from 11:52:12 AM to 12:11:07 PM, from
8 1:18:12 PM to 3:07:46 PM and from 4:37:42 PM to 4:40:38
9 PM, is prepared in full compliance with the current
10 Transcript Format for Judicial Proceedings and is a
11 true and accurate non-compressed transcript of the
12 proceedings as recorded.
13

/s/ Bonita K. Brumbach September 24, 2018
BONITA K. BRUMBACH, AOC #263 Date
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