

STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT NORTH

CHRISTINA LYNCH,)	
)	Superior Court Case No.
Plaintiff,)	216-2014-CV-00787
)	
vs.)	Manchester, New Hampshire
)	May 25, 2016
STJA CORPORATION, et al.,)	1:54 p.m.
)	
Defendants.)	

TRIAL TO THE JURY (Day 2)
DESIGNATION OF RECORD
BEFORE THE HONORABLE ANDREW R. SCHULMAN
JUDGE OF THE SUPERIOR COURT

APPEARANCES:

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I N D E XWITNESS(ES)DIRECT CROSS REDIRECT RECROSSFOR THE PLAINTIFF:

None

FOR THE DEFENDANTS:

None

MISCELLANEOUSPAGE

Plaintiff's Closing Arguments

3

1 (Designation begins at 1:54 p.m.)

2 MR. SIMONEAU: May I, Your Honor?

3 THE COURT: Yes.

4 PLAINTIFF'S CLOSING ARGUMENTS

5 MR. SIMONEAU: So there's a stop sign on the corner,
6 and I hope I'm going in the right direction. My office is on
7 Central in Chestnut. Literally right across from the
8 courthouse. There's a stop sign there, and I got to tell you,
9 people run through that stop sign all the time. Most of the
10 time they run through that stop sign and they get away with it,
11 and nobody gets hurt. There's a bunch of people here from my
12 office. Every once in a while somebody runs through the stop
13 sign, and we hear a crash, and we go out there. See, just
14 because you get away with something that's dangerous time and
15 time and time again doesn't make it not dangerous. Just
16 because you run the stop sign, and you got away with it this
17 week, doesn't make it not dangerous. Doesn't make it not
18 negligent.

19 You know, you can tell a lot from how a case is
20 defended. You can tell a lot. See, good cases, cases where
21 there's good evidence, pictures that speak for themselves --
22 and there's a reason I'm not showing those pictures right now.
23 Pictures that speak for themselves, you've got to make
24 everybody not look at the pictures. Right? You know what? I
25 hate to say it, we were all henpecked. We were.

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1 I heard that word during voir dire. So I went and
2 looked it up, goes back to 1670. It means to bully someone, to
3 berate them to get them to ignore what they're supposed to do
4 what they want to do to force them to do what you want to do,
5 despite the fact that they want to do is right. Now what do I
6 mean by that? Let's go back to the expert that Mr. Burt was so
7 very upset that we called, and he drew your attention to part
8 -- and again, I'm going to highlight the word part. You saw
9 the trial. You saw how often you were shown part of something,
10 and not the other part. You saw often I had to stand up and
11 say, "Wait, a minute, where's the rest of it?" Well, he only
12 read you part.

13 This is the copy we just got seconds before you
14 walked into the courtroom from the Judge. These are the
15 instructions, verbatim, that the Judge is going to read you.
16 It does not say in here, "An expert is someone who's paid to
17 tell you what to do or tell you how to think." You were told
18 that's what an expert's for. This is what the law says, "An
19 expert is a person who has specialized education."

20 I didn't call Mr. Melchoir in here to point out a
21 crack is a crack. I called him in here because of his
22 specialized education, so he could explain to you how it was
23 that they fixed it in April, but it was already not safe come
24 late June.

25 Do any of us have the expertise to talk about the

1 mortar and the grout and all those other -- no, we don't. I
2 don't. If they said they fixed it in April, and we have no
3 reason to believe they didn't, matter of fact, CJ believed they
4 fixed it in April, how was it messed up again by June 22nd?
5 How was it messed up -- unrefuted by the way, that those
6 pictures were taken July 6? So by then, they were certainly
7 messed up. How did that happen?

8 Well, Mr. Melchoir's job as an expert with his
9 specialized education, trainings, skill or knowledge that the
10 average person does not have, I'm reading verbatim, "When a
11 case involves a matter that the subject of such specialized
12 learning," like what we're talking about here, "expert opinions
13 may be admitted to assist." Not to domineer, not to henpeck
14 you, but to assist you in understanding the evidence. "Thus
15 expert testimony may assist you in reaching a proper
16 conclusion." And there's admittedly more here, and to be fair,
17 what Mr. Burt read is in here.

18 Now when Mr. Melchoir took the stand, remember he
19 came down here, and I'll be very honest with you, I thought was
20 kind of boring, he was explaining about the mortar, and the
21 thing coming up on the side, and how the thing is formed. And
22 he talked an awful lot about how this was a bad repair. How,
23 if you do this repair over and over and over again? It means
24 it's not a good repair. It's a patch job. Right?

25 And you know it's going to happen again. That's

1 called, by the way, foreseeability. Under the law, if I own a
2 building and I know there is a problem that could arise from
3 some aspect of the building and it's foreseeable, I got to do
4 something about it. Mr. Melchoir gave you a really good
5 example. When you walk in and out of the courthouse, the
6 court's got that grating; it's foreseeable that someone with
7 heels could get stuck in the grating. They put a mat down.

8 I asked Mr. Melchoir, "Well, why no mat here?" And
9 he explained about heights and all these different things. He
10 talked about a lot of stuff, right? And then Mr. Burt came up,
11 and he started again.

12 You can tell a lot by how you defend a case. What
13 did he do? He didn't say, "Now, wait a minute, this was the
14 right kind of mortar, wasn't it, and they should have done this
15 and what about that?" They didn't talk about any of that. He
16 didn't challenge that it wasn't safe. He didn't challenge that
17 at all. He said, "You didn't read, did you? You didn't read
18 our answer?"

19 Wait a minute. I read their answer, remember? I
20 stood here, and I read part of the complaint. And part of the
21 complaint said, "Mad Bob's is at 342 Lincoln Street." Remember
22 that? It was paragraph 3. And remember I read their answer?
23 And their answer was, "We are without sufficient knowledge to
24 answer this question," et cetera, et cetera, et cetera.

25 And then I read paragraph 9, where we laid out why we

1 said it was negligence. We talked about the missing grout, it
2 wasn't properly maintained, and their answer was, "The
3 allegations in paragraph 9 are denied."

4 Now Mr. Burt wants you to ignore what Mr. Melchoir
5 said because Mr. Melchoir didn't read that. What? How would
6 that -- that's not a thorough examination. Henpecking is what
7 that is. He didn't know when the stairs were built. I asked
8 Mr. Melchoir, "Would it make a difference when the stairs were
9 built, if you knew that?" "Nope." But you should discredit
10 his testimony because he didn't? Come on.

11 Think of all those questions. He had all that
12 opportunity to say, "Mr. Melchoir, you're wrong, because of
13 this," or, "You're wrong because of that," or, "Wait a minute,
14 doesn't mortar really do this?" But he didn't do any of that.
15 Didn't challenge a single thing that actually matters. He
16 didn't. He just plain, flat-out didn't. There's a lot of
17 things like that in this particular case.

18 And let's be clear, it's my recollection that
19 Mr. Melchoir did say, "There were code violations." Okay? But
20 your recollection is -- the Judge is going to read that to you.
21 What I say he said, what Mr. Burt says he says, is not the law
22 -- not the facts, rather, of this case. What you remembered he
23 said, those are the facts of this case. Okay?

24 But I do remember asking him, "What were some other
25 ways that this could've been fixed?" And you will see Mat Co

1 (phonetic) spent a hundred -- was charged a \$120, when you get
2 the exhibits, they're going to get back there with you, and
3 that Exhibit O that we were talking about today, that got
4 entered into. That was the bill, a 120 bucks. You heard
5 Mr. Melchoir say there were lots of other solutions. Some of
6 them were expensive, some of them were inexpensive. And he
7 talked about a permanent solution that would cost like three
8 grand. That's costly. They said the bar wasn't doing great.

9 But he said there was another solution that cost a
10 couple hundred bucks, as I recall. Between 2- and 8-, I think
11 he said, but, again, your recollection controls. He said that
12 solution would've lasted five to six years.

13 Now is it negligence to choose the quick patch versus
14 the better solution, when the better solution lasts five to six
15 times as long and only costs about twice as much? That's the
16 decision that you get to make.

17 But, you know, Mr. Melchoir did get paid to be here.
18 And talking about henpecking and Mr. Melchoir, just to finish
19 up on this point. You see this idea of browbeating him and
20 talking about things that weren't part of the case, I just --
21 it bugs me. Right? Because you've got the idea of, "Well,
22 Mr. Melchoir, what about the Wentworth case?" Who's Wentworth?
23 He talked about Chris Grant, a friend of mine, who's a lawyer
24 who hired him before. Did Chris Grant come to this courtroom
25 and make any statements? No. Now you shouldn't listen to him,

1 because he worked for Chris Grant?

2 It's -- and then we brought Madeline Shields up.
3 We sued Madeline Shields. We did. Guilty. I'm a lawyer. I
4 have a client who broke her leg; Madeline Shields ran the place
5 where she broke her leg. We sued her. We did. She's not part
6 of this case, she's not part of the decision-making process.
7 As far as guilt -- fault and guilt is not the right word at
8 all. Fault or not fault. Guilt is a whole other matter.

9 But what difference does that make? See, that's the
10 thing that bugs me. That's the thing that bugs me. Okay?
11 Whether I sued Ms. Shields or not doesn't make this not
12 dangerous or dangerous. It has absolutely nothing to do with
13 it. But we're going to take up your time and we're going to
14 talk about it.

15 Now here's what we know. We know that CJ Lynch broke
16 her leg. We know she broke her leg on that. We know that
17 Madeline Shields, the eyes and ears for STJA, says, "This is
18 fine." Even after somebody broke their leg, "This is fine. It
19 doesn't have to be as the law says, absolutely safe." And I
20 don't really care about whether or not Mr. Burt's wedding goes
21 off without a hitch for his daughter, because this case, again,
22 isn't about his daughter's wedding. He talked at one point,
23 during some of the questioning, about how the ground doesn't
24 have to be perfectly safe. And Mr. Melchoir was up there, "And
25 if I had a wedding at the house, and somebody fell, what" --

1 I'm sorry. Is this piece of slate and this missing piece of
2 grout, is this in Mr. Burt's backyard? No. This is at 342
3 Lincoln Street. By the way, despite denials to the contrary,
4 that's where Mad Bob's is located, the property that STJA owns.

5 Now, this case boils down to one thing and one thing
6 only. Would an ordinary and prudent person fix this? I think
7 the answer's yes, and I'm probably going to go on longer than
8 this group prefers, but I'm trying to do this case with these
9 facts. And it's going to take me a little bit to get through
10 them all.

11 There was a suggestion made that I didn't ask the
12 question about, "Well, did you ask -- did you tell Mr. George,
13 Sr.?" Right? I didn't ask that question. Well, you know
14 what? Neither did Mr. Burt. So if the answer was important --
15 was so important, why did they wait until now to tell you? He
16 got up and asked lots of additional questions of lots of
17 people. He could've gotten up there and said, "Well, wait a
18 minute, you didn't hear about it until a year later or so."
19 And remember, he didn't want to tell me at first what he heard?

20 Because his eyes and his ears, the person that's
21 supposed to keep him apprised of what's going on, didn't think
22 it important -- if she didn't think it was important enough to
23 tell them that somebody broke their leg on their property.
24 "Oh." And I'm going to jump all over the place now, because
25 I'm just a little wound up and I apologize. "But you never

1 told Madeline about this." So in other words, ladies and
2 gentleman of the jury, "If you think my client's -- if you
3 think Mr. George is in any way responsible for this, that's not
4 dangerous. Now, if I can convince you that CJ is in any way
5 responsible for this, then it is dangerous." Right? He's
6 trying to have it both ways. Right?

7 "You never complained about this not-dangerous
8 condition." That's their whole argument. Madeline says it's
9 not dangerous, Mr. George says it's not dangerous. But he
10 complains to her, to CJ, that she doesn't tell anyone that it's
11 dangerous. Well, which is it?

12 And here's the thing. You saw Madeline. She sat up
13 there, she told us she's rooting for Stevie. You (sic) told us
14 she doesn't like CJ. So would she have fixed it if CJ
15 complained about it? So what difference does that make? It's
16 more henpecking.

17 Because here's the thing. CJ did tell people about
18 an issue, and he did fix it when it was bad enough. But it
19 wouldn't have made a difference if she told Madeline. And just
20 another sort of look over here, don't look at the picture kind
21 of a thing. Because we sat here, and we said, "You see this
22 picture, you know somebody broke their leg." "No, I'm not
23 going to fix it, that's fine." Even after somebody broke their
24 leg they think this is fine. That's a fantastic job. So
25 that's the gist, I think, of that.

1 And then CJ came on the stand. Let's talk a little
2 bit about CJ. I have heard twice in the 20 minutes or so that
3 Mr. Burt was talking to you that she had five beers while she
4 was there. And I heard a lot while she on the stand. But
5 again, it's another one of these, "Let's tell you part of it,
6 and hope you don't remember the whole story." She did not have
7 five beers in the same way that the phrase was -- "Remember,
8 she had five beers." She stopped by after work at about 5:00
9 or 5:30, she had a couple of beers, she went home. She doesn't
10 remember for sure that she ate. Now for some reason, that's
11 now, quote, "Hard evidence." Again, "Don't look at the facts,
12 don't look at the picture; don't look at the fact that that's
13 dangerous. You should assume she was drunk and didn't eat."

14 We talked about that on the first day. Last Monday
15 we talked about that. We talked about my sneakers, right? We
16 talked about why am I wearing these things? "Oh, a little
17 flamboyant." True. Maybe I have a -- a young man said maybe I
18 have an injury. True. Don't assume. That's what he's asking
19 you to do. All of the sudden, you need hard evidence. She
20 doesn't remember what she ate last night. But here's the
21 thing, it's the idea of, "Let me point you over here, and don't
22 look at the picture."

23 She had two beers over a couple of hours, she went
24 home. She seems to remember eating. She usually ate when she
25 at Mad Bob's at dinnertime. No reason to think she wouldn't

1 have eaten this time. She goes home for a couple of hours,
2 takes her shower, gets cleaned up. She goes back and then has
3 two or three more beers, from about 9:00 to about midnight.
4 That's a beer an hour, even if she had three.

5 And she tells us -- she tells us repeatedly that she
6 was watching where she was going because she was wearing heels,
7 she had some knowledge that the steps weren't in the best of
8 shape, and then she gets to the top step. She gets to the top
9 step. And what does she do when she gets to the top step?
10 She's got a couple of glasses in her left hand -- because she
11 actually turned down that third drink, that's what she told us.
12 But you shouldn't remember that part, because it's not
13 convenient to the narrative of not looking at the picture.

14 So he -- she reaches the top step, she's got two
15 glasses here, and she's watching where she's going until she
16 gets to the top step. She'd already told them that -- she
17 warned them about this other step on the bottom. They fixed
18 it, she was already past that step now, and now she's at the
19 top, and she thinks she's home free. But even if she doesn't
20 think she's home free, even if she's vaguely aware that there
21 might be a problem, how is she supposed to watch where she's
22 putting her foot, and watch to grab the door at the same time?
23 How? Oh, and it's dim. So how is she supposed to see the
24 hazard?

25 You know, it occurs to me no one challenged the idea

1 that it was dim. That's another thing that would've been of
2 interest, that would've been an important point to establish,
3 right? If you wanted to know whether or not that was a safe
4 stoop at night, you'd talk about whether or not it was
5 well-lit. Not whether or not somebody had five drinks over
6 six-and-a-half hours, wouldn't you?

7 I don't know. I mean, you can tell an awful lot
8 about a case by the way it's defended. And by that, I don't
9 mean to suggest at all that you should hold against either of
10 us our sort of personalities, and how we comport ourselves. I
11 mean, literally, the things that we draw your attention to and
12 whether or not they are fair and full and adequate.

13 See, there's this thought that my job is to only show
14 you things that help her, and try to hide from you things that
15 hurt her. And that he should only show you things that help
16 him, and hide things that help me and help CJ. But we're
17 officers of the court. Our job is to give you as much
18 information as we possibly can. You saw me have to get up on
19 occasion to object, but you also saw lots of times I didn't.
20 And I think you're smart enough to know that I probably could.
21 But why? Because it's important for you to know everything.

22 As you go back to deliberate, ask yourself -- when
23 you're considering who was believable when they were on the
24 stand, ask yourself the questions the Judge is going to talk to
25 you about. The Judge is going explain to you how to judge the

1 creditability of a witness. And this is going to be on page 4
2 of the instructions he's going to read to you. Now I'm going
3 to be honest, he'll be very fair to what I was saying about
4 Mr. Burt, I'm going henpeck things right out of here. I'm just
5 going to pick certain things. I'm not going to -- handpick,
6 rather, certain things out of here, not every single thing, but
7 the Judge is going to read this to you. And then the reason
8 I'm going to do that is to make a point. The witness'
9 appearance, attitude and behavior on the stand, that's
10 something the Judge is going to tell you to consider. Okay?

11 Now, Mr. Burt made an awful lot about the emergency
12 room note, right? I'm going to ask you as you're deliberating
13 to consider the emergency person's appearance. I'm going to
14 ask you to consider their demeanor. I'm going to ask you to
15 consider their behavior on the stand. But you can't because
16 Mr. Burt, who thought that piece of information was so
17 important to keep bringing up, didn't bring them in.

18 And I made a note while Mr. Burt was speaking. He
19 said that CJ told the people in the ER that she, quote -- and
20 these are his exact words that he said to you not 20 minutes
21 ago, "She mis-stepped and fell." These are her complete and
22 total medical records from Elliot in this case. This is an
23 exhibit that goes back to you. I challenge a single one of you
24 to find the words, "She mis-stepped and fell."

25 Here's the thing. Words matter. The way we say

1 things matter. If somebody tells someone in the ER that they
2 went up some stairs and they fell down the stairs, and they
3 tell you in the courtroom that their shoe actually stayed
4 there, and they hit the ground, and you read the narrative that
5 Mr. Burt has read to you so many times, those two things make
6 perfect sense. They align, but they're not a mis-step and a
7 fall. She didn't say that either.

8 He made a big deal about the shoe. He made a big
9 deal about the shoe. "It's not broken, the tack's not off."
10 Did anyone say the shoe broke? Did anyone say the tack came
11 off? No. What you heard was the shoe -- the shoe got stuck
12 and CJ fell out of it. That's what she told you, right?
13 That's what it says in that note, that she fell out of her
14 heels. It's the same thing. Just because they don't use the
15 magic words that Mr. Burt would prefer doesn't make it not
16 true. But consider that witness' testimony, consider it. All
17 the other things the Judge is going to tell you to consider
18 about it.

19 Now -- so we also heard that Mr. George didn't even
20 hear about the accident for, sounds like, a year later, so.
21 We also heard Mr. George say that he didn't think there's
22 anything's wrong with that. We heard him say that after he
23 learned somebody broke their leg. Think about that. Is that
24 -- that's not even -- Mr. Burt keeps telling you to use your
25 God-given common sense. Let's do that for a second.

1 Let's own a bar, shall we? We own a bar. We went in
2 and we bought Mad Bob's, and somebody just broke their leg at
3 Mad Bob's, and they tell us that their foot got caught in
4 there. Our God-given common sense is going to tell us to fix
5 it. They sat here and said, to this day, they wouldn't fix
6 that.

7 But anyway, we went through all of that, and I think
8 the evidence is clear, that CJ did everything she could. She
9 was -- she complained about a problem, they fixed it. They fix
10 it again every April, they used the wrong kind of repairs, the
11 wrong kind of repairs caused it to be breaking down come June.
12 She was watching where she was going, it was dimly lit, she had
13 to lift her eyes to grab the door handle. And by the way, did
14 all of you when you walked through that door, or that door, or
15 the door that you came into, were you looking at the handle or
16 were you looking at your feet? No, she did what all of us do.
17 We look at the handle. And her foot got stuck, she turned, she
18 hears somebody call her name, her foot's stuck, she comes out
19 of her heel, which is very consistent with what she told the
20 folks at the ER, and down she went.

21 They want you to believe no one else ever got hurt
22 there, so it can't possibly be dangerous. Well, let's all go
23 run through that stop sign later together.

24 Now, we do have to talk about money. Because I think
25 that given the fact that the Defense in this case was this,

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1 "Nothing to see over here. Nothing happened." Given that
2 that's the Defense in this case, I don't see how you're going
3 to find any other way but they failed to take care of this.
4 They choose a cheap, over-and-over-and-over-again patch,
5 instead of a slightly, slightly, more expensive solution that
6 would've lasted years. Or they could've just gotten rid of the
7 slate altogether and just had the concrete steps. That
8 would've been permanent as a solution, but they, "Don't look."

9 So I don't see how you're finding in other way.
10 That's what a prudent person does. Prudent people, when they
11 hear somebody breaks their legs, they look at a picture like
12 that, and they go, "Well, maybe it's something wrong here."
13 But here there's absolutely, "Nothing wrong here."

14 So then you're going to have to decide, how much
15 money? Mr. Burt used the word compensation when he was
16 explaining during his opening. Compensation is pay. Now, what
17 you're going to hear when the Judge explains the instructions
18 to you is, he's going to explain that damages -- that's what
19 we're talking about here, the money involved are made of up
20 different aspects, different components.

21 He's going to tell you, for sure, one of the things
22 that you're allowed to consider are the medical bills. And
23 here they are. He's going to tell that you're allowed to
24 consider the lost wages, the pay that she didn't get because
25 she was recuperating, and was ordered to work half-days, and

1 had to miss a few weeks.

2 Here -- oh, and by the way, when you're looking at
3 these exhibits, I challenge you also to find in here anywhere
4 anyone told her she couldn't ride on the back of a motorcycle.
5 They didn't tell her that; again, henpeck. "Let's talk about
6 something for just a minute, don't look at her leg." But
7 you're allowed to consider those. They amount \$67,000 or so.
8 Those are the bills she had pay to for the break that she
9 suffered. Those are the wages that she wasn't able to earn.

10 And speaking about hard-working, remember she told
11 us, when she was in the emergency room with the broken leg she
12 asked the doctor, "Could you put me in a cast so I can go to
13 work the next day," to volunteer at her job? You heard about
14 the things that she can't do anymore, you're allowed to
15 consider that. You heard about -- you saw the scars on her
16 leg, you're allowed to consider that.

17 But here's the thing. I've been trying to figure out
18 how to explain to you this idea of compensation. Because the
19 loss is full, fair and adequate. It's says you can't be
20 miserly, you can't be this, you can't be that. And I'm like
21 but compensation is the key word. It's an exchange, right? So
22 we know, for example, to fix the stairs 200 bucks to 800. We
23 know if that car that was in the accident at the stop sign got
24 smashed up, it would cost whatever it would cost to fix. It's
25 what you would take in exchange for something.

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1 If you sell -- if I sell this suit after today on
2 eBay, if I am willing to sell it for \$200, or better still,
3 let's make it \$400 so Mr. Melchoir can work an hour and pay for
4 it. If we put it on eBay, and we sell it, that's the exchange.

5 This woman had her leg snapped and twisted. Her bone
6 was broken. No one offered to call her an ambulance. She
7 didn't cry, she swore. They dragged her to the emergency room,
8 her friend scooped her up, she cried there when they finally
9 had to move her around. What would a reasonable person, what
10 would that imaginary reasonable person take in exchange for
11 letting me break your leg like that? Would you take \$400,000
12 to let me break your leg? 5-? A million dollars? What would
13 you take to let me break your leg?

14 At our office across the street I watched a friend of
15 mine, who passed away last November, named Dave Nixon --

16 MR. BURT: Objection, Your Honor, if we can approach?

17 THE COURT: Yes.

18 (Sidebar begins at 2:24 p.m.)

19 MR. BURT: Where we going now? There's absolutely no
20 evidence to this case with Dave Nixon, et cetera.

21 MR. SIMONEAU: Just going to give them an example
22 that Dave used to give.

23 MR. BURT: No, it's totally improper.

24 THE COURT: What's your example?

25 MR. SIMONEAU: That he would sit and tell folks that

1 they would take \$10 million in exchange for their injury, no
2 matter what the injury was.

3 MR. BURT: Improper.

4 THE COURT: Yeah. I think it's still proper. I'm
5 happy to pass on (indiscernible).

6 MR. BURT: Well, they can reinstruct the jury that
7 they should disregard all of that?

8 MR. SIMONEAU: Okay.

9 MR. BURT: I think you to need to as they -- some of
10 us may --

11 THE COURT: Oh.

12 MR. BURT: -- know Dave, I don't know. We all were
13 sorry to see him pass.

14 THE COURT: But he didn't get it -- didn't -- they
15 didn't follow up with anything. He just somebody --

16 MR. BURT: I don't care, why else could have I got
17 off?

18 THE COURT: Look -- okay, but it's --

19 MR. BURT: I just --

20 THE COURT: It's a fragment.

21 MR. BURT: All right. So objection --

22 THE COURT: You --

23 MR. BURT: -- sustained at the very least?

24 THE COURT: Sustained, yeah.

25 MS. HEPP: What?

1 MR. BURT: You have to tell the jury, then.

2 THE COURT: Sustained.

3 (Sidebar ends at 2:25 p.m.)

4 MR. SIMONEAU: So here's the thing. If you came into
5 my office, and you had your leg broken like that, what would
6 you take? What would you take? Not a penny. Not a penny.
7 You'd ask for a time machine to go back and not have your leg
8 broken. You'd ask for a time machine to go back and not have
9 the scars. You wouldn't do that. There's not a single dollar
10 amount. But we've got to put a dollar amount on it, and I
11 suggested to you during voir dire that the number was \$400,000.

12 I got to be honest with you, I was wrong. I didn't
13 give you the right number. But I didn't know that this case
14 was going to be all about, "Don't look here. And when we do
15 look here, this is safe." I didn't know this case was going to
16 be all about not talking about the actual case, but talking
17 about the Wentworth case. So I was wrong, there is no defense,
18 I'm going to ask you for half a million dollars, \$500,000. Now
19 I can't give you a chart, I'm not allowed to tell you what
20 other cases do, but I'm asking you.

21 And the last thing I want to talk about is the burden
22 of proof. And the Judge, in the very beginning, said the
23 scales of justice, and he invoked this image that we're all
24 familiar with, with the scales of justice. And he said that if
25 the scales ever so slightly tip in one side's favor or the

1 other, that's how you decide the preponderance of the evidence.
2 More likely than not. Here's the thing. That's the lowest
3 standard we have in the courthouse. The lowest.

4 And what does it mean? It means if we take that
5 scale, and we go to the beach, and we come back and we got a
6 big bucket of sand, and we take all the evidence and we lay it
7 out on the scale, and it's perfectly even, and I take one
8 teeny, tiny, bitsy, bitsy grain of sand out of my bucket, and I
9 drop it on my side, I win. That's ever so slightly.

10 I didn't thank you at the beginning. And I'm sorry I
11 didn't. I didn't thank you when I started this closing, and
12 I'm sorry I didn't. I just -- I don't like the whole idea of,
13 "Look over there; pay no attention to the man behind the
14 mirror." That bothers me. So I thank you now for your time
15 and for your attention. You've got 15 pages or so of
16 instructions from the Judge, and you get to go back there and
17 you get to be the grain of sand on our side of the scale.

18 Thank you.

19 (Designation concluded at 2:28 p.m.)
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CERTIFICATE

I, Tami S. Mayes, CET-547, a court approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

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Tami S. Mayes, CET-547
Proofreader

June 21, 2016

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