

SUMMATION – LEARNING THE ART OF MAKING POINTS AND AVOIDING THE TRAP OF SIMPLY REHASHING EVERY ITEM OF EVIDENCE

Presented by:

Dino S. Colombo

Morgantown, WV

dinoc@colombolaw.com

Colombo
LAW

WHAT ARE YOU TRYING TO ACCOMPLISH IN YOUR CLOSING ARGUMENT?

- Remind Jurors of Important Evidence
 - Liability Issues
 - Damage Issues
 - Credibility Issues

- Rehabilitate your case from bad things that happened during trial.
- Make sure jurors understand the magnitude of your client's damages.

TAKE CLOSING NOTES

- Take closing notes in voir dire, during opening, and throughout trial.
- At the end of each trial day, discuss your closing notes with your trial team and keep a comprehensive list of the important events that occur on each trial day.
- These trial notes will ultimately be the basis of your closing outline.

DISCUSS YOUR CLOSING WITH YOUR TRIAL TEAM

- Listen to your trial team about what issues they believe were important to the jury during the presentation of evidence.
- What issues or topics do you want to avoid in your closing?
- What issues or topics do you want to reserve for your rebuttal?

ARGUE YOUR CASE WHILE CLINGING TO THE BENCH

- Find The Important Jury Instructions on Liability and Damages and Make Them a Demonstrative Aid
- Go Over The Verdict Form With the Jury and make the verdict form a demonstrative aid.

The Plaintiffs have the burden of proof to prove their claims against the defendants, by a preponderance of the evidence. A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

You are instructed that the Plaintiffs may be entitled to recovery, and you should consider, the following elements which you believe to have been proven by a preponderance of the evidence:

1. The reasonable and necessary doctor, hospital and medical expenses: incurred to the present time.

2. Any physical pain and suffering and mental anguish suffered to the present time.

3. Any physical pain and suffering and mental anguish which you believe Robin Rush and Mariah Rush, with reasonable certainty, will suffer in the future.

4. Any permanent injury, which you believe with reasonable certainty, has been suffered by Robin Rush and Mariah Rush.

5. Any loss of enjoyment of life, such as the inability to indulge in and perform normal everyday activities and hobbies pursued prior to the accident, incurred up to the present time and which you find, to a reasonable certainty, will continue into the future.

6. Any loss of property which you believe Robin Rush and Mariah Rush suffered as a result of this accident.

DEMONSTRATIVES TO ILLUSTRATE YOUR POINTS

- Trial director vs. Boards (There is a place for both)
- Medical Illustrations
- Photographs
- Video
- Trial transcript
- Video deposition clips

MORE ON DEMONSTRATIVES

- Where are you going to position the video screen/boards?
- How many demonstratives are too many?
- Who is going to hand you the boards/illustrations and in what order?
- Is the video cued up and is the volume loud enough to be heard?

WE'RE TALKING ABOUT PRACTICE



- Practice in front of your team and take to heart their critique.
- Practice in front of a mirror to see what you look like and what you sound like. Or, videotape yourself.
- Work with your assistant on coordinating the demonstrative presentation of your closing.

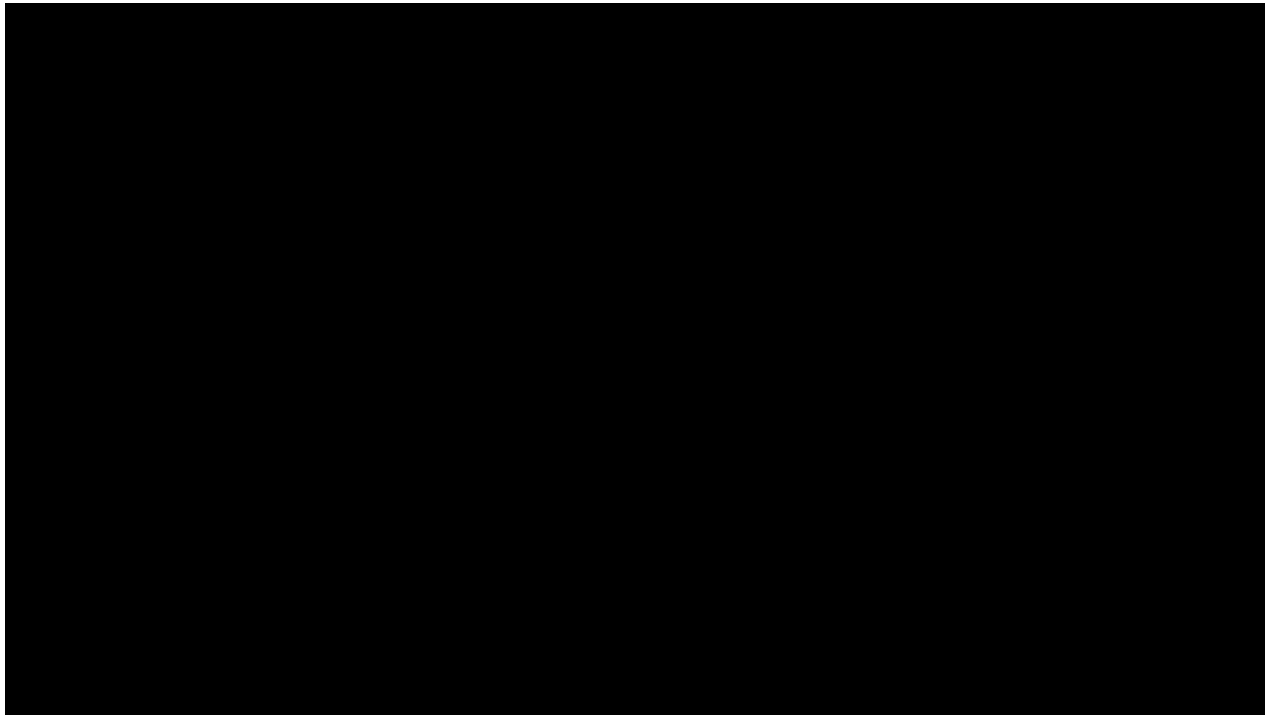
GIVING THE CLOSING ARGUMENT

- **SINCERITY IS EVERYTHING!**
- Eye contact with every juror (cocktail party).
- A command of the facts is mandatory. Dates and details are extremely important. Consider a demonstrative aid that has a detailed chronology to assist the jury in understanding a timeline of the important facts.

- Pause and change the tone of your voice depending on the importance of the topic that you are discussing.
- Move slowly and deliberately. Don't pace or swing your arms (this is where practicing and videoing your practice helps tremendously).

- Be passionate
- Make an outline, but do not read from it
- Know exactly what the first thing you want to say is, and the last thing
- After 30-45 minutes, the jury is asleep/bored.

REPETITION IS THE KEY TO ALL LEARNING



341 Chaplin Road, 2nd Floor
Morgantown, WV 26501
P: (304) 599-4229
F: (304) 599-3861