

**TRANSCRIPTS SEPTEMBER 24<sup>TH</sup> 2013 - JACKSON VS AEG - CLOSING  
ARGUMENTS DAY 1 -**

**\*\*\*Brian Panish**



**(The jury entered the courtroom at 10:30 a.m.)**

**The Court.** Katherine Jackson versus AEG live, BC 445597. Good morning, everybody.

**(Several comments of "good morning" were heard.)**

**The court.** Counsel, will you make your appearances?

**Mr. Panish.** Yes. Good morning. Brian Panish for the plaintiffs.

**Mr. Koskoff.** Michael Koskoff for the plaintiffs.

**Mr. Boyle.** Kevin Boyle for the plaintiffs, and here's –

**Ms. Chang.** I'm sorry, your honor. Good morning, your honor. Deborah Chang for the plaintiffs.

**Mr. Putnam.** Good morning, your honor. Marvin Putnam with O'Melveny & Myers on behalf of the defendants, AEG live.

**Ms. Bina.** Good morning. Jessica Stebbins Bina for AEG live.

**Ms. Cahan.** Good morning, your honor. Kathryn Cahan for defendants. Good morning.

**The court.** Good morning. It's time for opening statements (sic). Opening statement on behalf of plaintiffs.

**Mr. Panish.** Yes. Thank you, your honor. Initial closing argument

**Mr. Panish.** Good morning, everyone. We're back to where we started, I guess. Before I begin, I want to thank a few people: Judge Palazuelos; Neli, our court clerk; Veronica, our court attendant; and Luis, our bailiff, because being in trial is a stressful thing for parties, lawyers, everyone, and they made it a lot easier for us. So I want to thank all of you.

And I think defense counsel, who are excellent lawyers, did the best they could representing their client, and they'll have an opportunity to address you. But most of all, I want to thank each and every one of you. You've taken time from your lives, from your families, from your summer vacations, through the baseball season, the basketball season, all of that, to sit here in judgment. And you all have more than 500 years of experience together, and everyone comes from a different part of society. But together, you are the consciousness of the community, and you will be the ones to sit in judgment and decide this case. And Abraham Lincoln said that the greatest act of citizenship is to sit on a jury, and here as you do your civic duty, you really have two jobs: one, to reach a verdict yourself; and, number two, as you explain it to help the other jurors come to their decision-making process in this case. And really, our jury system dates back all the way to the old days in England before the Magna Carta. And, for example, in a recent political election, millions of people voted for the president. And if you voted, you were one of many people who voted. Here your vote will be one of 12, so your vote is important. So back in old England in the days of king john, the king would ride around the different parts of England, and the community would come out, and the king would hear the cases, and the witnesses would be

called, and the king would decide. And they would have it out in the courtyard, and the people said, "Well, that's not fair. We want to be the one to decide this. We should be the consciousness of the community." so after time, changes in the monarchy, the king was out, the jury was in, and the cases were moved from the courtyard, due to the elements and other reasons, to the courtroom where we are here today. And ladies and gentlemen, this -- you guys can't be talking. These camera guys are talking.

**The court.** Please keep it down.

**Mr. Panish.** All right. Where was I?

Final argument. It's not really an argument, because in a regular argument, I would argue, and you would argue back, and we would debate. What this is, is really a reasoning process. And in the book of exodus in the old testament, it talks about, "come, let us reason together." and what I'm going to do today is try to reason with you through the facts, the evidence, and the law, and to help you, as you reason with one another, as you become the consciousness of the community, and you decide this case. And I prayed last night that I would be able to explain to you fully the jury verdict form, the law, and the evidence, to allow you to sit in justice and return a verdict for complete and fair justice for Katherine Jackson, prince Jackson, blanket Jackson and Paris Jackson. So before I get to these slides that we've prepared, as you've seen so many throughout the trial, I want to talk a little bit about what we're here for. Michael Jackson danced, walked, and moonwalked on this earth for nearly 50 years, and we never knew until he was gone that someone like that only comes along every so often.

And we may never see the likes of Michael Jackson again. And he believed that his music was a gift from god; that he wanted to share that gift to heal the world, but that gift came with a huge price. Even though he accomplished more than any other musician before him, he also endured more physical, mental and emotional pain than any of us could ever have imagined. And as part of what he taught us, to dare to walk in another's shoes before you come sit in judgment on that person. He came from humble beginnings. A two-room -- not a two-bedroom, a two-room house on Jackson street in Gary, Indiana. He became the king of pop. He met presidents, he met popes, he met queens, and he met kings, and he went all over the world, but in his heart, he was really a real-life peter pan, and someone who created Neverland ranch to bring joy and happiness to others. And he believed in the good of others, even though people didn't believe in the good of Michael.

And he reached lofty goals, and fame and heights and accomplishments, but he was an easy target. No one in this world had ever been written about more in newspapers, tabloids, internet,

television. No one was ever shot at and attacked more than Michael, but he never gave up. He always came back. He was always -- had a clear vision of who he was and what he wanted to do. And you've seen the evidence about that in this trial. And when Michael died, there's a famous poet who is also called a renaissance woman, actress, a writer, sworn in presidents, Maya Angelou. And she wrote a poem about Michael Jackson, and I want to just share with you a bit about that poem, and it's called. "we had him." in that poem, she said: "now we know that we know nothing, now that our bright and shining star can slip away from our fingertips like a puff of summer wind." and that's part of how she described Michael, and on June 25th, 2009, the whole world stopped when the king of pop died, and everyone grieved. But that task, and that day is over, and everyone wondered how it was, five months after Michael had signed a contract with AEG live for a come-back tour, how was Michael Jackson now dead? And ladies and gentlemen, the task of finding the answer was left to the four people in the world that Michael had unconditional love for: his mother, Katherine Jackson, and his three children who he wanted more than anything.

This is why we've all assembled here for the last 20-some weeks in this trial and heard from witnesses. And no man like Michael has been written more about. But it's different for someone to write something in the newspaper or on the internet or make a charge than to come to court and swear to tell the truth under the penalties of perjury and face cross-examination. Because trials are a search for the truth. Cross-examination has been described as the single greatest engine for the discovery of truth. And that's why lawyers, when they get done asking questions, the other side gets to cross-examine someone. Not in a newspaper article. There's nobody cross-examining who made some claim, some statement or such. So when you speak -- when you reach your verdict, your verdict will be read from the jury foreman. And when you read your verdict, you will speak the truth. And in Latin, "dit" means to speak, "veir" means the truth. So and when your verdict is read, you will speak the truth about the life of Michael Jackson, the loss that his family has suffered, and what that all means to all of us. And for years to come, this case will be looked upon as a case of what happens when there's a conflict of interest between a doctor and a patient, and someone else injects themselves into someone's medical care and treatment for profit. And that's what you're going to decide in this case. And the days of testimony, I think its 58 witnesses, it could have been more -- I'm sure they'll correct me -- 800-plus exhibits, kind of gives you an overview of the trial. But the loss that has been suffered, and the evidence that is shown is only the tip of the iceberg. You can see that we've only put in a little bit.

And although it may seem like a lot, we've compressed 50 years into 20-some-odd weeks before you. What we learned about this case that years from now people will talk about, is there's no dispute Michael Jackson was the greatest entertainer of all times, but Michael Jackson had a well-known problem. He had abused prescription medications during times of pain, anxiety and

stress. I told you that at the beginning of the trial, I'm telling you that here again. Now, we saw a lot of testimony about that, but it's really not that disputed. And it's not disputed that everyone really knew that. But AEG sought, when they brought Dr. Murray in, to assume the responsibility for taking that risk. That's what they did in this case. Now, Mr. Gongaware worked with Elvis Presley on the tour where Elvis Presley died. Everyone knows about these problems with these doctors that go and prescribe medications with a prescription pad and a pen for exorbitant sums of money. And everyone knows what they will do, the risks they will take, and it goes all the way back to the beginning in the entertainment industry. The show must go on. We must push forward. But, ladies and gentlemen, that's not the right thing to do, and that wasn't the right thing to do in this case. Now, we heard about the "dangerous" tour. We heard about Dr. David forecast who was giving prescription medication to Mr. Jackson. Mr. Gongaware was on the tour.

We heard about how he almost strangled Karen Faye when she tried to stop the performance. We heard about Debbie Rowe going to Mexico City, wanting to see Dr. Forecast, and the management of the tour not allowing her, and how she described Michael as a hot mess. And after that it was, with Elizabeth Taylor and others, he traveled from Mexico City; Michael checked into rehabilitation and made his public announcement. But, really, that wasn't the end of it. Mr. Gongaware spoke -- or, excuse me -- Dr. Finkelstein. He said, "Don't be a Dr. Dick." he knew that problems existed; he knew what happens; he knew tours had to be cancelled because of Michael's use of prescription medications, which I'm going to get into in a minute. But they knew all about it, and they chose not to check anything about Dr. Murray's background, anything about Dr. Murray. This is a large company with sophisticated lawyers, people in the concert business. If they want to write a contract that says, "We're not responsible for anything Dr. Murray does," they could have done it. But they chose to run the risk to make a huge profit, and they lost, and they're responsible, and I'm going to tell you about that as we go on in this case.

Now, there's no question that AEG wanted the king of pop in their arena in London. They wanted it so badly that, despite these comments they made about Michael Jackson and the tabloids and everything, they wanted him so badly that they would do whatever it took to get him on stage, and they told that to Dr. Murray. They told Dr. Murray, "We want you to have everything you can have." they knew exactly what he offered: unlimited supply of prescription medications during the time of the pain, stress and anxiety to get Michael Jackson on stage. They knew that. They knew what they were getting. Now they want to come in and deny it, and I'll talk about that. But as of April 2009, as Randy Phillips stated in his e-mails, "too much is at risk to cancel now." remember the press conference just hours before, Michael was found locked in his room.

And, according to Randy, drunk and despondent. Mr. Phillips said it was the scariest thing he had ever seen. Michael was mostly paralyzed, riddled with self-loathing and doubt, and in order to get him out of the room, Mr. Phillips had to scream so loud that the walls in the room shook, he threw Michael in the shower, and he slapped him to get him to the press conference two hours late. And as a result of that press conference, AEG executives said, "We can't back off now. It would be a disaster for the company because we're holding all the risk." no one knew whether Michael could pay back the \$35 million that AEG was out. We know, based on the evidence, that AEG didn't have appropriate insurance to cover the loss. And we also know that AEG executives wrote to Mr. Phillips and said, "Oh, Michael was kind of underwhelming in the press conference." and he did not give AEG executives the feeling that he could get enough together to even do 30 shows. That's what he wrote. But what happened? Tickets went on sale, and, as you'll see, a cultural phenomenon occurred. They sold out so many tickets so fast, they were so excited about how much money was going to be made, and then if Michael couldn't perform, they had to give the money back, and all these production costs, they didn't have appropriate insurance to cover it all, and they were going to be out the money.

And they never lost \$30 million before. Now, remember Randy Phillips? "Odds I could even get Michael to do 50 shows at the 02." this was before anything began in March. Now, when the shows sold out, they still had a huge problem. They didn't have insurance. They had cancellation and accident insurance in the amount of \$17.5 million. They had no sickness insurance until Michael went to London, was examined by a doctor for the insurance company and was cleared. Now, AEG said there's no problem. Well, these insurance company people certainly thought there was an issue, because they wouldn't insure him.

Now, they made the decision to do something that's unheard of in the entertainment industry. They stepped in between the doctor/patient relationship, and they started to draft, and agreed upon an agreement with Dr. Murray, and they drafted a written agreement. And the defendants chose to do much more than agree to pay Dr. Murray \$150,000 a month. They asked Dr. Murray to help them with the insurance; they had numerous meetings with Dr. Murray; they called him on the phone; they called him at Mr. Jackson's home, and they said, "Stay in your lane, Dr. Murray. Stay in your lane." but yet now they want to say, "Well, we couldn't hire Michael Jackson a doctor." "We couldn't fire Michael Jackson's doctor." sure, they could. At any time they could have done that, but they chose not to. They made a conscious decision, when they hired Dr. Murray, to take the responsibility when they retained him and failed to supervise him. Whatever it took, they did. And they wanted Dr. Murray to have everything, including a corporal cp -- or, excuse me, CPR., saline, needles, gurney, and an assistant, all which had to be approved by AEG live. But they turned a blind eye to that.

They continued to manipulate the relationship with Dr. Murray by writing an e-mail and telling other executives, "we need to remind Dr. Murray it's AEG, not MJ that's paying him," and "what is expected of him." what's AEG writing an e-mail like that for? There's been no explanation for that in this case. Despite Michael's obvious deterioration over 60 days, despite the alarms that Kenny Ortega was sounding and Bugz Hougdaahl, and all the e-mails, AEG falsely told Kenny Ortega that they had checked out Dr. Murray; that he was very successful; that he didn't need the money, he was unbiased and ethical, when in fact they never did that. But they did that to call Kenny Ortega off. And they told Kenny, "Don't be an amateur psychiatrist or physician. Dr. Murray will take care of it." Mr. Ortega, he was silenced. And in fact, before the last meeting on June 20th at Michael's home, before the meeting,

Dr. Murray talked to Mr. Phillips. And Mr. Phillips then relayed that information to Dr. Murray about the e-mails, and Dr. Murray went and said Mr. Ortega was accusatory and attacking of him at the meeting and told Kenny, "you stay in your lane, Kenny." but because of Dr. Murray's financially precarious situation, he broke his Hippocratic oath, and the evidence has shown that that's likely to occur when you put a physician in this position. And that's what he did. And AEG's responsible for bringing in Dr. Murray who had an unintentional overdose of Propofol that led to the death of Michael Jackson on June 25th, 2009.

All right. So now I'm going to go through some of the evidence with you. First of all, AEG live, they don't determine whether Dr. Murray was negligently hired, retained or supervised. I don't determine that. Mr. Putnam doesn't determine that. You do, ladies and gentlemen. You're the ones who make these determinations in this case. The case has been about since day one and has always been about negligent hiring, retention, or supervision. That's been the case since the day you walked in here when we selected the jury. First, you had to be time qualified, then we had to select the jury, then the court, months later, gave the jury instructions. That's the case right there. Simple. Real simple.

Why did it take five months to get there? Well, we'll talk about that. First of all, what do the plaintiffs have to prove? Remember, we have the burden of proof in certain areas, and they have the burden of proof, and I'm going to discuss that with you. First, we have to prove one of these three theories: 1. That Dr. Murray was negligently hired. Oh, your honor, do you have those verdict forms?

**The court.** We do. Mr. Panish. In a minute I'm going to ask if veronica can pass those out, or deputy Ruiz.

**Mr. Panish.** And I'm going to give you the verdict form, and this is what you're going to take. This is the form (indicating). Don't fear the form. And these are the questions that you're going to have to answer together. You only need nine people on any question. So let me just go through this, and then I'll ask the deputy to pass those out. Then negligent retention or negligent supervision. Any of those one claims, if we prove that, we win. Now, how do we go about proving that? What is the burden of proof in a case like this? Remember, this is a civil case. In a civil case, claims have to be proved by a greater weight of the evidence or what's called a preponderance. Let me explain it to you. Some people call it 50.1 to 49 percent, approximately. In a criminal case, when somebody is going to go to jail, you have to prove it beyond a reasonable doubt to a moral certainty. But in a civil case, all we have to prove is that something is more likely true than not true. And the way you do that, let's say lady justice is out in front of the court.

She's blindfolded because she can't see color, race, origin, sexual orientation, anything. That's not important. That's not relevant. But when you take the scales of justice, and you put all of the evidence on one side, and all the evidence on the other, and if the scale tips ever so slightly, then we have made the burden of proof, "more likely true than not true." that's all we have to prove in this case. And we have to prove negligent hiring or supervision or retention, and the defendant has to prove that Michael Jackson contributed to his death by the same burden that we have. And as the scales of justice, if you look at those, and just a feather, just a feather that tips the scale is enough to meet the burden of proof. So when you're in there, you know, some people say, "Well, I don't know. They didn't really prove beyond a reasonable doubt. They didn't prove it clearly." all we have to do is prove that it's more likely true than not true.

So each question that you look at, that's the standard that you must follow. All right. Now, I think this -- if we could -- deputy Ruiz? So I'm going to give you the forms, walk through the form, if you want to take notes or whatever. And I'm going to refer to evidence in this case, documents. I'm going to give you the trial exhibit number and transcripts, and I'm going to give you the page and line where the witness said it; okay? So the way this works is, you go in the jury room, you all sit down, and you decide who's going to be the presiding juror. Used to be called a foreman, but it's called the presiding juror.

And you decide who is the person that you think will best help us to work together and reason together through these questions. So as you come, you look at the verdict form, and the first question on the verdict form is -- this is what we have to prove. These are the five elements: that AEG live hired Dr. Murray; that Dr. Murray was unfit or incompetent to perform the work he was hired for; that AEG knew or should have known that Dr. Murray was unfit or incompetent;

that Dr. Murray was unfit and could harm the plaintiff and that AEG live's negligence was a substantial factor. So let's look at the first question about this, which will be, if you're on question 1: "did AEG live hire Dr. Murray?" an important jury instruction, before we get to that, is "legal relationship." and what you see here is these people, Mr. Trell, who has been here almost every day, Mr. Gongaware, Ms. Hollander, Meglen, Phillips, Jorrie, Woolley, they were agents or employees of AEG live, and anything they did in the course of their employment, AEG is responsible for. So anything that they did, AEG is responsible for, and that's what it means, legal relationship. They're authorized to do that, and I'm going to explain that to you. And here are all the people (indicating). You remember them. They came either live or by videotape that are either agents -- the last two are agents, Woolley and Jorrie, and the top five are employees of AEG live. So let's look now at the first question. AEG live hired Dr. Murray and I think the evidence is overwhelming, but clearly more likely true than not true. And this is an important jury instruction.

When you go in there, the court is going to give you the jury instructions, so, you know, if you have a question and say, "what jury instruction applies to question 1?" well, this is question 1, which you all have, and I believe we proved it. And I want to show you here how we did it. One, by an oral agreement; two, by an implied-in-fact agreement; and, three, by written agreement. Now, these are all legal theories; okay? But I want to explain to you how the evidence proves exactly what I'm saying. Now, we didn't have to spend all this time if they would just admit what was true, but we had to prove each one of these. And remember now the agreement signed on January 28th, 2009? AEG got 5 percent of the gross -- and it's calculated a little different, I'm not -- I'm just being general about that -- for hiring and engaging third party vendors, and they got paid for that, and that was their job. And Michael, they said, "oh, we're getting this money. Michael needs to focus on creativity and getting the show ready to go, and we're going to handle everything else, and that's why we're going to get 15 percent," okay, which could be a lot of money, and it was -- they were hoping would be a lot of money. Now, this is an important instruction. And remember, the court read it in the trial: "in considering the issues, you must determine that AEG live, Michael, or both, hired Conrad Murray." so if Michael had Dr. Murray working for him, and then AEG hired him to work on this with Michael that means they hired him. That's the law. Or they could have hired him alone. Just because Michael was involved, it does not mean they didn't hire him.

And before this case was ever filed, within weeks of this happening, before there were any lawyers, before Michael had even had his memorial service, what happened? The CEO Randy Phillips -- and we all remember Mr. Phillips, "yes, Mr. Panish." and you remember how he answered the question, and what he wanted to say. We all remembers Mr. Phillips; right? It's hard to forget. "Yes, Mr. Panish." and he had to be sent out of the room, and all things happened with Mr. Phillips. But Mr. Phillips, before there were any lawyers involved, before anything, this is

what he said on TV. Let me go back to this formation of the contract. No. 1, they understood -- we claim that there was a contract or agreement; okay? We have to claim that. And that each knew what they were supposed to do: Murray, provide medical care; AEG pay Murray. Murray agreed to give something of value. He gave up his practice in Las Vegas and was going to treat Michael. And that they both agreed to the terms. Now, next, these I'm showing you, these are the jury instructions that you're going to have, so if you want to just note down -- I don't have the numbers, but -- and when you examine the conduct of the parties, AEG live and Dr. Murray, you have to determine whether a reasonable person -- a reasonable person is you -- would agree or conclude from the words and the conduct that there was an agreement. And you can't concern yourself with anyone's hidden intentions like, we're going to stall him, or anything like that. What was evidence? Did they offer to pay Murray a sum? Did they agree -- did they offer to provide medical care? Did he agree? It's that simple. It's like a handshake. You don't even have to meet the person to have an agreement.

**(a video clip of Mr. Phillips was played.)**

**Mr. Panish.** I mean, come on; right? "we hired him"; okay? Okay, you did, Mr. Phillips. Own up to it. Okay, we did. Weeks and weeks. How many questions he wouldn't answer, forget this simple thing that he said on sky broadcast, worldwide, before the case was even filed. Before there was anything going on. So, I mean, it's real simple. He's the CEO Of the company. That's as high as it gets. He admitted it, but then I asked him at the trial: "did you say that in the interview, 'we hired him'?" "Amongst other things, yes. "now, that was before any lawsuits, any issues about Dr. Murray in this case?" answer: "correct." he doesn't say he never said that. He didn't say he didn't mean it. He said -- it's certainly more likely true than not true that he might have been telling the truth before this case was filed. Then we called Ms. Hollander, and I asked her: "and Dr. Murray was retained, his services, by AEG, wasn't he? "the contract is with AEG live productions, yes." Ms. Hollander, she admitted it, and these are -- ///

**(a video clip of Ms. Hollander was played.)**

**Mr. Panish.** No kidding. It was pretty apparent. You're going to remember the only time you ever did. Let's say 50, and 20 times you hired them, and 20 times you didn't, and 30 times -- this is the only time in history. You think you might remember whether you hired someone or not? Ms. Faye. Kenny, Mr. Ortega's told he's one of the top ten doctors in the world. We'll get to that. "was it your understanding it was Conrad Murray?" "I came to learn that." so remember, I said, when someone's being hired, there's three ways that you can hire them: number one, you can have a written or oral contract; number two, you can have a contract that's partially written or

partially oral. Remember, this is all for question no. 1. And number three, oral contracts are just as valid as written contracts. It makes no difference. And we heard all this testimony, "we didn't sign," "Michael didn't sign." well, how the heck is Michael going to sign when they never gave it to him? We'll get to that. Oral contract, whether it's by words or conduct, is just as valid as a written, signed contract. That's the law for question no. 1 in this case. Now, let's talk about the oral agreement. We have Mr. Gongaware here -- interesting. Mr. Gongaware relies a lot upon Michael Jackson and Frank Dileo.

He makes a lot of statements on what they say. Interesting enough, both of them are dead and cannot respond. But the only one that said they did it at the behest of Michael were Mr. Woolley -- and Dr. Murray, he's not here, either -- and Mr. Gongaware; okay? So Mr. Gongaware has several conversations with Dr. Murray, says, "Done at 150." he says, "per MJ," doesn't matter. They can both hire. "But he needs 10 days to wind down his practice, then he will be full time." and he's writing that e-mail to Michael Amir Williams, who is an assistant for Michael Jackson. There's a written -- but doesn't need to be written, remember, it can be oral. Mr. Woolley then follows up two days later with Mr. -- excuse me -- with Dr. Murray, and they go through all these terms. Who is the contracting entity? Where is the contract? How are you going to travel? How are you going to get insurance? AEG would cover no more than a month in lieu of curtailment or cessation -- that means stopping the tour. So that was known right away within two days. And loss of profits and 150 payable mid-month.

Dr. Murray then writes back on the 15th, which is about 10 days later when he's going to have his whole practice shut down, to Woolley, exhibit 191, that says: "thank you for writing me. I'm basically in agreement. To reiterate, your memo is correct pursuant to our conversation. As for good faith of my client" -- I believe he's referring to AEG, he goes on to say, "I'm sure that you're aware my services are already engaged fully with Mr. Jackson." 10 days, just like they said. 150,000 a month, just like they said. That's the terms; he was there. Now -- then I asked Mr. Gongaware: "was there anything that said, 'no, we're not going to hire Dr. Murray'?" "no, I don't think so. "was there anything preventing you from telling Mr. Jackson, 'hey, we'll give you the money, you go hire Dr. Murray and have your own deal with him'?" "Nothing prevented me from that, no." because they didn't want that. They wanted control. Why else would they draft a written contract? Why else would they do that? They should -- you know what they should have said, "hey, we're not doctors. We don't monitor doctors. You want to hire this doctor, we'll give you money, and you go pay him." but they didn't do that, and they assumed the responsibility when they brought Dr. Murray into the fold. Who cares if it's Michael's doctor? They want to make him his long-time doctor. We'll get to that. But who cares?

They didn't have to do this. Nobody said, "okay, you have to hire Dr. Murray." they could have said no. And we know they contacted Dr. Finkelstein and others. Now, this is the next way about entering into a contract. AEG says they didn't have any contract with Murray because he didn't sign a final written agreement. Okay. Now, he did sign an agreement, but that's their defense to the contract. Now, they don't have a defense to the implied-in-fact contract or oral. They have no written -- requires Michael -- spent all kinds of time on that. "Michael didn't sign," "says, 'approved by the artist.'" you've heard it all. All we have to show is that Murray and AEG live understood and agreed to terms and that they agreed to be bound before a written agreement was completed and signed. That's all we need to show. Unformalized agreement, just like a written agreement. Makes sense. That's the law in this state. Now, again, in the unformalized agreement, 150, full time in 10 days. They go back, they go through all the terms. No questions. They have an unformalized agreement. Doesn't need to be in writing. Hiring Murray to do it, and Murray starts working. No question. Doesn't matter if Michael said, "hire him" or not.

Now, we haven't heard that from Michael or anyone but Gongaware and Woolley, but Woolley never talked to Michael. Jorrie never talked to Michael. The only one that says he talked to Michael about this is Mr. Gongaware, and I'm going to get to him. And then Mr. Trell, the lawyer for the company who has been here nearly every day, I asked him: "Mr. Gongaware agreed with Murray to these terms, 150 a month, he'll be full time in 10 days; right?" "Okay. "Do you agree with that?" "Yes. "And he was authorized to do that, wasn't he?" "yes." so remember that instruction on legal relationship? If you're authorized to do something, and you do it, it binds the company? That's what he did. He was authorized to do it. Trell knew it. Now, and we have these e-mails. He agrees, basically, in agreement -- he doesn't have to agree to every single thing, like where is he going to stay, or anything like that. And then he sends him the routing number to get his money so he can get paid. Dr. Murray sent him the routing instructions; I want my 150,000 a month. And this is in -- May 22nd, after the 10 days when he is going to be full time; okay? That's the evidence.

Now, then we have these e-mails. Brigitte Siegel, who is one of Mr. Gongaware's assistants, and Mr. Woolley say, "He's pingging us for payment." I assume that means he is bugging them, like, "where is my money?" "Pingging," I'm not familiar with that. But this is Woolley. "Would like to stall him with something for him to look at and mull over." why are they talking to him? First of all, hidden intentions, Dr. Murray didn't know anything about this. "Hey, Dr. Murray, we're stalling you, Dr. Murray. We're stalling you." because they don't want to pay -- because that's a lot of money they have to pay out. Remember, they're the ones paying the money. And then Dr. Murray says on the 28th, two days later: "my contract is taking a little more time to develop. In the meanwhile, I have performed and continue to fulfill my services to the client in good faith. I am asking you to deposit my fee for May in reciprocity of good faith on your part of this agreement." Mr. Woolley: "I'm sorry it's taking so long, but hope that, with your input and

comments, we can dispose of the agreement quickly and arrange for payment in May and June." that's this. They already have an oral agreement. They're already working. They already agreed to a sum and payment and other terms of the agreement. That's all we need. But later you heard AEG say, "We can never pay anyone until there's a written agreement." but that doesn't mean they can't work. And in fact, Ms. Jorrie sent this written memo over, the final agreement, says on there, "final Michael Jackson" sent to Murray. Clean pdf.

If you approve, sign. Murray signed and sent them back June 24th; okay? Now, this is what the agreement says, that this agreement: "this written independent contractor agreement supersedes and replaces any agreement, whether oral or written." so in the entertainment industry, people are making deals all the time. You heard Mr. Phillips say, "I'm in it for the deal." they make an agreement, people start working, and later the lawyers get involved here. Dr. Murray didn't have any, according to the evidence. There's no lawyer we heard of, even though he said he'd like to have him see it. We didn't see any evidence. Then they -- eventually, they get the agreement. Mr. Ortega was months working before he had an agreement. And here they anticipated that they knew there was a written agreement or -- excuse me -- they knew there was an oral agreement, and they were then going to get it formalized, and it happens all the time. And in fact, the artist's agreement was only required for the written agreement. There was no requirement that Michael give oral approval, even though they said they would hire him because of him, so that certainly would be approval, but that's what happened. And the terms, the conduct, the terms of this agreement are as of May 1st, because we knew Dr. Murray's working as of May 1st, and they're going to pay him.

Do you think AEG -- in light of all the evidence that you've seen in this case, you think AEG pays people for work they don't do? What do you think? "We're going to voluntarily pay Dr. Murray because he wasn't working for us in May." I doubt it. So he's working before the draft is circulated. Remember when I talked about the next way is an implied-in-fact contract? "An implied-in-fact contract means that you should consider the conduct and relationship of the parties, as well as all the circumstances. "Contracts can be created by the conduct of parties without spoken or written words." you do not have to say anything to have a contract based on conduct. Implied-in-fact means based on conduct. And it says they can be created by words, if the conduct of both parties is intentional, each knows or has reason to know that the other party will interpret the conduct as an agreement. Certainly, Murray sending his bank information to get paid, and Murray providing services, and then agreeing to pay him, certainly those -- they have an agreement. Remember, this is only on the hiring question. They're throwing up every legal hurdle they can, but they know. Remember, at the very beginning, Mr. Phillips admitted it. But we have to go through all this. And Mr. Trell, he's a lawyer, went to Georgetown law school with Mr. Putnam -- we heard that when he cross-examined Eric George -- and it says you got to consider all the circumstances, conduct of the parties, and contracts can be created without a

written or -- without spoken or written words. Exactly -- Mr. Trell knows that. He's a lawyer. So the chief legal officer of AEG live knew this, and everybody knew. That's the law.

There's no getting around it. And clearly, they're acting as if the contract was in existence, because, look, Murray shut down his practice, moved to LA., treats MJ, May to June. Tells AEG he's performing in good faith. Talks and meets with Ortega, Phillips, Gongaware. Works with Phillips and Ortega on the rehearsal attendance schedule and asks to be paid. Those are all the facts of the conduct of Murray. What about AEG live? Randy Phillips, Gongaware, Ortega call and meet with Dr. Murray. They write an e-mail, "we want to remind him that it's AEG, not MJ who is paying his salary." why would you want to do that if you hadn't hired someone? Did they go around telling that "we didn't hire you, but you better remember who is paying you." Murray put -- was in the budgets even after the death. They got housing for Dr. Murray. They made Dr. Murray responsible for MJ's rehearsal schedule and attendance. Along with Mr. Phillips, the CEO Why would you do that for somebody you didn't hire? They asked Murray to provide assistance for insurance, and then they asked Frank Dileo and Tohme to approve the 35 million they were out, after MJ died, and lo and behold, guess who is on there? Dr. Murray. So they think it's good for them, they can do that to get the 35 million. When they want to be held to hiring, it's not good enough. And Randy Phillips said he hired him, but we have to spend a lot of time on this.

**(a video clip of Mr. Hom was played.)**

**Mr. Panish.** This is Mr. Hom who is defendants' expert who we played the videotape. He wasn't called to testify. Mr. Hom, who they retained. Now, there's the e-mail that talks about -- this is Mr. Taylor: "Kenny Ortega and Woolley has responsibility for the show content and consultation. Phillips and Murray, responsible for MJ's rehearsal and attendance schedule." why would a doctor that you haven't hired be responsible for someone that's working for you to go to practice or rehearsals? Why? Because you hired him. That's why. And Randy -- excuse me -- Kenny Ortega, we asked him: "you understood that about, after concerns that you had raised, that Randy Phillips and Dr. Murray were going to be responsible for MJ's rehearsal and attendance schedule?" "yes. "okay. And have you ever seen a situation where a CEO Of a promoter and producer were responsible for an artist's rehearsal schedule and attendance?" "no." you know why? Because when Mr. Trell said that "we don't check out independent contractors," that's in a normal situation. Here you have Michael Jackson, the king of pop, coming to work, you want to get this going, you hire a doctor, and you make the doctor be in charge of the schedule, and then you come into court and say, "we didn't hire him." it's about the search for the truth, ladies and gentlemen. How can someone say, "We hired him" and then come into court for five months and deny it, and deny it under oath, and I'll get to that. And then we asked Mr. Ortega: "did you have

his cell phone programmed into your phone? "Yes. "Was he creating the schedule for rehearsals? "yes." so why would the director of the show have the doctor's number programmed in and call him all the time for the rehearsal schedule if he wasn't hired by AEG? Why? And here's a list of the calls that would be going on, and the dates, the 18th and 19th (indicating). We went over all that.

Okay. And then Mr. Gongaware, he approved the housing for Dr. Murray. The conduct. Housing. Okay. We'll get Murray's housing, we have his bank information, we're meeting with Dr. Murray, he's setting up the rehearsal schedule, he's meeting with us, we're calling him on the phone, but we never hired him. We never hired him; okay? These exhibits, he's going to pay for Murray, Mr. Gongaware approves 641 right here (indicating), and he approved it; okay? So we approve housing for someone that we're thinking about hiring; right? Well, we knew that bush and Faye, they were already working on this deal. We spent a lot of time on these budgets; okay? And then they want to say one budget has a footnote that says, "based on a written contract." but why would you put somebody's fees as they're listed here April 30th, may 8th, may 16th in if they weren't going to be working? Why would you do that? I never heard an explanation. I didn't hear Mr. Webking come in here, their CFO. Come and tell us that. I didn't hear Ms. Hollander give us an explanation. In fact -- here it is again (indicating). Eventually they have a footnote here. Remember Ms. Hollander? I had to read her her deposition, because she wouldn't admit to this. And then I asked her --

**(a video clip of Ms. Hollander was played.)**

**Mr. Panish.** And she said very clearly, "independent contractors, employees, can start work for AEG without a fully-executed agreement by everyone." and they said, "you can't get paid until there's a written contract." sounds like a good policy, but doesn't sound like he wasn't hired or working. Nobody said that. Kenny Ortega was working, Travis Payne was working. They didn't have a written contract. You can work for someone. If you want to get paid, according to them, you have to have a written agreement. Sounds reasonable, but doesn't mean you didn't hire them. And then she said they can retain independent contractors, they can begin working before they have a fully-executed contract, and she admitted that, and that's obvious. And there's no policy that says you can't at the company. If they had a policy that said no one can start working or be hired until they signed a written contract, you think we would have seen it? They don't have one, and she admitted they don't have one. In fact, doesn't matter when the versions were circulated, because they already had an oral agreement, and both performed pursuant to an oral agreement and implied-in-fact, and we are -- we only need one of those to prove hiring in question 1. Any one of those. And, also, the written contract, which, as I mentioned before, we knew Dr. Murray, signed, we know that Ms. Hollander testified that she would sign after for vendors who did work,

and we also know that they had Tohme and Dileo sign so they could get paid their money. Remember that? Well, Murray was on there. Why wasn't that approval for Murray? If MJ didn't have to sign when he was dead, then why couldn't those guys sign for him like they did? So they wanted it both ways. He wasn't hired because we didn't have a written contract, but we didn't have a written contract approving expenses, but they signed after his death. Circular. And Mr. Gongaware, I asked him: "did Michael ever ask you to enter into a written contract?" "No. "Was it said in conversation that you were to get a written contract with Murray?" "No. "So it was AEG who decided to have a written agreement with Dr. Murray, wasn't it, sir?" "I suspect so, yeah." no kidding. They wanted it because they wanted control. And when they got that, they had -- they assumed responsibility with Murray. They didn't have to do that, but they chose to do it. Michael never asked for it. He didn't want a written agreement. So they went and hired Murray, and now they want to say they didn't hire Murray, and it's all Michael. And then we asked again Mr. Hom, "Have you ever seen a contract like this with these three people?"

**(a video clip of Mr. Hom was played.)**

**Mr. Panish.** Because it doesn't happen except for here when they wanted control. And then Dr. Matheson, the sports medicine deposition from Stanford said: "does it make any difference whether it's signed for your opinion?" "no. "why?" "because in effect the contract was negotiated, discussions took place, and in fact I think Murray exchanged his bank information, there were phone calls, he operated under the supervision, the contract was in force. And in one e-mail, he believes he said he was fully engaged." I mean, any reasonable person looking at this would believe that Murray was hired. I mean, it's not a big deal, yet we spent so much time going over it because they fought every way. And how about whether Michael signed? No, doesn't matter. Why? Because it was put in place, and the doctor was engaged, whether Michael signed or not. No question he was working. No question Michael died while he was treating him. No issue. And then again –

**(a video clip of Mr. Phillips was played.)**

**Mr. Panish.** I mean, I don't know what else we can say other than that they've admitted it, we've proved it three ways. So you have to answer question 1 "yes." it's imperative that you do that based on the evidence, because anything else would be contrary to the evidence in this case. And I know you're going to base your decision on the evidence in this case. So the second question now on the verdict form was: was Conrad Murray unfit or incompetent to perform the work for which he was hired? Okay. First you have to find the hiring, then you have to address this issue. And I believe the answer to that is "yes," and I'm going to tell you why right now. On question 2,

you can just write it down. No. 1. He was unfit, unstable, unsuitable, unacceptable, unethical and unmoral. And the conflict made Dr. Murray unfit by putting this three-pronged relationship incompetent. He didn't have the skills to treat sleep disorders, treat addiction or administer anesthesia. He had no training or skills in any of that, Dr. Murray. And obviously he was incompetent and unfit. He caused the death of Michael Jackson. There's no dispute. So, remember, they hired the doctor that caused the death. They're responsible, if you find that they were negligent, and they didn't act as a reasonable person should have, and I'm going to tell you about that right now. First of all, it's not was Dr. Murray unfit, it's at any time during his treatment. Was he unfit the first day? Yes. Was he unfit all the way up to the 25th when he administers the anesthesia? So it's -- under no. 2, it's at any time was he unfit? Doesn't have to be all the time, you know, was he unfit. And, obviously, he was unfit. He caused the death. A fit doctor wouldn't do that, and here's what the evidence shows: here under no. 2, here are the four points I think are most important: no. 1, was Murray unfit or incompetent? Doesn't have to prove both, either one or the other.

Was he unfit or incompetent? No. 1, huge conflict of interest. I mean, come on. No. 2, desperate financial straits. No. 3, he was not the right type of doctor; and no. 4, he said, yes, he would give Propofol when no one else would do it. That's pretty strong evidence. Now, let's take a look at that. Now, we have Michael, we have AEG, and we have Dr. Murray, the cardiologist from Las Vegas. And we have the three-part contract that creates the conflict of interest and renders Dr. Murray unfit and incompetent. Now, let's talk a little bit about that. First of all, Michael's the patient. They're going to tell you, "oh, Dr. Murray had this oath, and all doctors take this Hippocratic Oath with the snake and serpent, and they're supposed to do no harm to the patient." and that's true. But that doesn't always happen, and everybody knows that. And why does that happen? I mean, why does a physician violate his oath? What causes someone to do things, you know, desperate people do desperate things. And when you put a desperate person in a situation, they're going to do something desperately, more likely than not. We're going to go back to that. Remember, Dr. Murray is an interventional cardiologist. An interventional cardiologist, they do procedures on the heart. Michael was healthy and fit, they say.

He had no heart problems. He had insomnia and a history with pain meds and four doctors; okay? We're not disputing that. But why would you bring a cardiologist? Oh, "it's Michael's doctor, he wanted him." well, yeah, doesn't that raise a question that an interventional cardiologist for a guy who has no heart problems from Las Vegas? Okay. This is the law and what you have to use in determining whether somebody acted improperly. Okay. "a person hiring, supervising or retaining another person has a duty" -- that means a legal obligation -- "to use reasonable care in doing so. A person may be negligent by acting or failing to act." it's either the act of doing something or not doing something. "and a person is negligent if he or she does something that a reasonably careful person" -- you hear all about these reasonable people, but

what is reasonable? We're not asking for you to do anything -- reasonable. What was reasonably careful? Reasonably careful, not reasonably reckless. "reasonably careful person would not do in the same situation or fails to do something that a reasonable person would do." so what would a reasonable promoter or producer in the concert business do under the same or similar situations with Michael Jackson?

That's the test. And interestingly, it says, "reasonably careful." why does it say that? Because the law, in its infinite wisdom, imposes duties on people. If you're going to hire somebody, you have to do it safely, and you have to do it reasonably, carefully, and that's what the law requires. So why does the law require that? For everyone's protection. For everyone's protection. The law makes sense. The law seeks to protect everyone. And the law requires a person that's undertaking such an act, to do it reasonably and carefully, not beyond what anyone -- but in this case, no one ever did it. No one. They've never done it. No one did it. So they're going to be really careful if they're going to do that. A reasonably careful person would never hire a doctor with a third-party contract, and nobody has ever seen it. And you know why they've never seen it? Because a reasonably careful person would never do it. They would never do it. That's why you don't see it because it's not the reasonably careful thing to do. "a person is not negligent just because he or she fails to act affirmatively to assist someone or fails to protect another person from harm at the hands of a third party." car goes off the road, someone is injured. The law doesn't impose a duty to jump into a burning car to protect them.

The law is reasonable. But in this case, you have to evaluate whether AEG acted negligently only in connection with the claims of hiring, retention and supervision. As I told you at the beginning, that's the case. Those three issues. Any one of those three. If they acted unreasonably or unreasonable in any of those three, we win; okay? That's all you have to do. Mr. Berman, remember Mr. Berman? They didn't have any expert to counter him. And he says, "without artists, you don't have a concert to promote for, so we do a lot for our artists." they do things for celebrity artists. The bigger the artist, the more leeway. But there are certain things we don't do, certain things that are not appropriate. Okay. If you want to have a chef and a masseuse, and you want to have a -- all these things that they do; okay? Makeup artists, and hair, and suites at hotels, and private airplane travel, all those things are common. Not for a reasonable person, but for these artists, because that's what you're looking at. An artist is in the same situation. But when asked whether a reasonable promoter and producer in the music industry would hire a physician to provide personal services for an artist at the behest of the artist, he testified it would be highly inappropriate, highly unusual.

Never seen it done. "I've never done it. Never heard of it being done, and my understanding, up to this time, AEG never did it. The fundamental problem is it creates an inherent conflict of

interest on the part of the physician. You have a situation where the physician has a dual obligation to the patient and the entity that engaged him." did they call anyone from the entertainment industry that said it was reasonable to do this? I didn't see anyone to say that. They never did it before. Doesn't that prove unreasonable? Gongaware, remember he told about every concert he's been on, Meglen, Phillips, bragging about concerts all over the world, saw the stones, and this one and that one. But they never did this before. It's not reasonable. That's why they don't do it. Dr. Matheson said a conflict of interest is a set of circumstances that creates a risk -- remember the particular risk I talked about -- professional decisions made on behalf of the primary interests, the patient's health gives way, or may be unduly influenced by the secondary interest, financial gain. Primary interest, to take care of the patient.

Secondary interest, money, don't cancel the contract, my house is being foreclosed, I needed the dough. Well, we'll just do this little bit. It will be okay. If we didn't get him to do this, he doesn't perform, I don't get paid. So there's an inherent conflict of interest. He went on, Mr. Berman, to say: "the problem is the inherent conflict of interest. We have a situation where a physician has dual obligations. One to the person that they're engaging him and paying him, and the other one, the patient. It's a more egregious conflict, given the facts and circumstances of the case." they say, "oh, Mr. Jackson, we were just advancing the money." but then they say he doesn't have any money. They were giving the money to Dr. Murray. They're the ones saying, "we're paying him, he better know what is expected of him." why? Because they hired him, they were controlling Dr. Murray, and they put him in the conflict of interest. They didn't need a written contract. Michael didn't ask for a written contract. They wanted a written contract, because they wanted to have the power to control Dr. Murray. And when they did that, they assumed responsibility. And they have all these sophisticated lawyers if they say -- they could have written it in the contract, "We assume no responsibility for Dr. Murray. Dr. Murray -- we're not telling Dr. Murray what to do." but instead, it says, as the promoter, we do this, you do that, we can terminate.

All that. They didn't do that. They got the best lawyers they could get. The research and medical literature indicates when someone stands to gain, it may -- affects their decision-making. It biases them in a way where they lose objectivity and makes a decision they may not normally make. That makes sense. Think about it. In our society, do people do things they shouldn't? Yes. Do people do things they shouldn't for money? Yes. Why do they do that? Because they're put in a position, should I go for the money? Should I do this, if I don't get that? And they do it every day. Wall Street people are doing it every day. They're not supposed to do this insider trading, or that they have the clients, the money. People make decisions based on money all the time. And when you put somebody in that position with the contract where they're already in a desperate financial situation, the odds are very high that they're going to do exactly what Dr. Murray did.

Now, Dr. Matheson again: "it can produce a bias thinking where the doctor wants to preserve that income at all costs and keep the person paying that income happy, as opposed to paying full attention to medical needs. That's how it could play out." just think, if Kenny Ortega comes on the 20th, and they're at the meeting, Mr. Phillips is there, and Michael, and Kenny says, "you know, I don't think you can do it." and Dr. Murray says, "okay, Kenny. Why do you think that?" and he says, "all the things that happened." and then Dr. Murray says, "okay. You know, Randy, he brought up some good points." you think Randy Phillips would say, "Way to go, doc. You're doing a great job." or you think Randy Phillips would have been upset with Dr. Murray if Dr. Murray did that?

Do you think Dr. Murray really was making an unbiased decision, or was Dr. Murray swayed by the conflict of the money versus the patient? And I think it's more likely than not, more probably true than not, and I think it's overwhelming, that's exactly why he did that. And as he said, it created a conflict something bad could happen, and it did. I mean, that's the thing about it. Some people say, if you do that, it could happen. If you do that, this could happen. It did happen. It did happen. It's not a hypothetical. No matter how much pressure he's under, he still has an obligation to follow his Hippocratic Oath to treat his patients ethically. Well, the evidence can show you can't withstand an unlimited amount of pressure. It's very difficult. Dr. Murray was in a severe pressurized situation. And, yeah, he swore not to do harm, but he did. And why did he do it?

For the money. And as Dr. Matheson said, the conflict was likely to lead to poor medical decisions, and it did. I mean, there's no question that a doctor is not supposed to do it, but why is it that Dr. Murray did it? Of all the doctors in the world, why is it that the doctor that has serious financial problems, his board certification has lapsed; he makes these misrepresentations, why did he do it, of all the people? Because he's the one with AEG that had a contract that if anything stopped or was cancelled, he wasn't getting paid. And let's talk about that. Dr. Murray, Mr. Ortega wrote this e-mail on June 14th. Why -- first of all, he's writing to Mr. Gongaware, the CEO Of concerts west, co-CEO, he wrote: "were you aware MJ's doctor didn't permit him to attend rehearsals?" what's wrong with that? The guy wasn't feeling good, so he didn't go to rehearsals. Why are you reporting that? Then he says: "are Randy and frank aware of this? Please have them stay on top of this. Might be a good idea to talk with the doctor, make sure everything MJ requires is in place. The demands are physically and mentally extraordinary." so Kenny Ortega is talking to them about the doctor, and I believe he had good intentions, and he was sounding the alarm, hey, what's going on here? But what happened?

Did Dr. Murray say, "you know, he needs rest, we're not going to do anything"? What happened? Mr. Gongaware writes back and says: "frank and I discussed this. Requested a face-to-face

meeting, hopefully Monday. And we want to remind him it's AEG, not MJ that's paying his salary." now, if there's no written agreement or no oral agreement between AEG and Dr. Murray, does this e-mail get sent? No. If AEG gives the money to Michael and says, "you pay the doctor," does this e-mail get sent? No. But that wasn't the end of it. And I'm not going to play a lot of videos, but, I mean, this one right here is unbelievable; okay? Here's a guy that's going to come in here and claim he's done all these concerts, how much work he's done, life is in the music business, here's the case, the king of pop, greatest entertainer of the world, dies on his watch, and this is what he's going to say under oath about that e-mail that he just read; okay?

**(a video clip of Mr. Gongaware was played.)**

**Mr. Panish.** Okay. You know, I mean, it would be funny, but for someone who lost their life, and we've all seen it before and heard it in the trial, I don't think that it's funny that somebody would come into a court of law and take these positions after somebody has died. And that is just disrespectful to the system, and it's not honest, and it's not truthful. And this is the person that was involved with hiring Dr. Murray. And, I mean, it really is incredible that somebody could do that. And in a case like this, where, you know -- anyway, I'm not going to dwell on that. Mr. Gongaware, you saw him testify as a witness, so... But what we do know, when Mr. Berman was asked how the conflict could be avoided, he said that AEG could not hire a doctor, they could have Michael hire his own physician without AEG being involved. It's real simple. "Michael, we hire people, but this is not our deal. We don't hire doctors. We don't know what we write in the contract. They have to do certain standards. We don't know what they are or are not. That's not what we do, man. We promote and produce concerts. So if you want this doctor so badly, here's the money, you go do that." but instead, without Michael asking, they drafted the contract, and they never showed it to him or any of his representatives. Why do you think they would do that? They wanted control. Now, even their own Dr. Green said that he, in his many years of practice, has never seen anything like this three-way relationship between a physician, patient and third party.

Now -- and he went on to agree that Dr. Murray had a significant financial interest at risk here. No question. And we all know in our life, as I said, that people do things for money that they normally shouldn't do, or somebody that doesn't have a financial problem wouldn't do. We know that. It's common sense. And as a juror, you don't leave your common sense behind. You all, as I said, have 500-plus years of real-life experiences, you've all seen things, you know how people are, and you need to bring that with you to the deliberations. Okay. So was Dr. Murray unfit because financial pressures made him susceptible? First of all, he asked Mr. Gongaware, remember, and he's unclear on the time, two, three weeks, whatever, before march 6, "what do you want?" when you're hiring someone, normally if you're going to do it in a reasonable way,

you just don't say "what do you want?" if you're negotiating a contract, you want to sign Tom Brady, "what do you want?" there's a negotiation back and forth, and you work on what's fair and reasonable; okay? So here you've got a guy that comes out and says, "5 million bucks, I want." I mean, come on. Don't you think, wow, this doctor wants \$5 million. He must be pretty good. You're either going to check him out or say, this guy is trying to hold us up here for 5 million bucks. This is ridiculous. We're never hiring this doctor. Clearly a red flag, and it was outrageous, and we don't have to go any further than the expert that AEG hired in this case, Mr. Hom. Anyone that asks for 5 million is unfit, incompetent and outrageous.

**(a video clip of Mr. Hom was played.)**

**Mr. Panish.** Anyone would say that. But they just said, "well, MJ told me to offer him 150." "well, we're not dealing with this guy. He wants 5 million. You deal with him." did they? No. And remember the second -- I think it was the second witness, doctor -- detective Orlando Martinez. Here's a guy in the special robbery/homicide division of LAPD doesn't know anyone in this case. Doesn't know anything about Michael Jackson. He gets called as part of his job. He goes out to the scene. And he's on the scene, and he's thinking, as a detective is trained, let's figure out why did this happen? He's a trained Los Angeles police department detective. He's out there trying to figure out what happened. So he goes out there, and he gets a search warrant. He doesn't just break into Murray's car. He follows the protocol. Remember, it's a death investigation at that time. Goes into Murray's car and finds two things. Just two things in Murray's car: the contract and Mr. Phillips's card. It didn't take him long to put it together and say, "Hey, I'm focused on this motive of the financial aspect of Dr. Murray's willingness to disregard his Hippocratic Oath for financial gain." within days, the LAPD was on it immediately.

I mean, he's not on one side or the other. He's not trying to help us or help AEG live. He's independently working for all of us to protect us in the city of Los Angeles. He called out -- he's, like, on it immediately. But he wasn't the only one. He says -- I asked him: "how did you determine that just by looking at the contract? "Well, the contract stated he was going to get 150,000 a month. That's a lot of money for anyone. "and in this case, did you think there would have potentially been a motive as to why Dr. Murray did what he did that you wanted to investigate? "Yes. For his own financial gain." and then he goes on to say, when I asked him: "how would you classify Dr. Murray's financial condition? "Severely distressed. His home was about to be taken away, his office was being closed. Total was like 500 grand. Bet there was way more. Notice up for foreclosure, liens, leading me to opine that he may -- for this easy money, 150,000 a month, he may break the rules, bend the rules, do whatever he needed to do to get paid and might solve his money problems." you don't need to be Dick Tracy to figure that out. He finds two things, and he's right on it immediately. And ladies and gentlemen, AEG, with the

sophisticated lawyers and all their people, they didn't know that? Come on. And then detective smith said: "he was losing his house, had a lien against his pool, arrears in child support, multiple children, he financially was a mess." come on, that's easily determined. And then I asked him if he had serious concerns that the contract in Murray's interest -- financial situation, would he violate his oath? "Yes, sir." and it was your determination that that's why he did it? "Yes, sir." so here we have the LAPD.

Determining why Murray did what he did because of the conflict of interest. That's not an expert hired by us, it's not an expert hired by them. It's an independent Los Angeles department police detective with 20 -- I forgot -- 28 years on the force. He's in this elite robbery/homicide division. Makes that determination that Dr. Murray, for financial gain, based on the contract, violated his oath. And I think that's clearly what happened here. There's no other reason to explain why he would do this. Oh, was he enamored with Michael Jackson? Sure. But all these other doctors never did it. In fact, Mr. Green -- when we asked about the AMA medical --

**The court.** Counsel, its five minutes to noon.

**Mr. Panish.** Like a voice coming from the sky. Okay. Thank you, your honor. Dr. Green talked about: "the medical opinion, AMA, that's the American Medical Association, that says that when you're looking at large incentives that create a conflict of interest, that can affect clinical judgment?" "that's correct." "and 150 a month, would you consider that a large sum?" "in general, yes." of course you would. I mean, come on. So remember, Dr. Murray is a cardiologist. They're going to say internist. His boards had lapsed and was really practicing cardiology. Michael had no cardiology problem. Dr. Wohgelernter, he came in earlier in the case, he's an interventional cardiologist, and he testified that an interventional cardiologist trained in internal medicine, cardiology, and interventional cardiology is not trained in substance abuse, addiction to medication or sleep, would not be an appropriate candidate to be a physician for Michael Jackson on the "this is it" tour. And that makes sense. I mean, it's not anything big. And he also said, since Michael had no history of heart disease, no problem with high cholesterol, blood pressure, cardiologist's experience and skills wouldn't be appropriate. It's a mismatch. Not what he needed. He didn't need a cardiologist.

And he also said that Murray was not fit and competent, and as far as he administered medications he's not trained or credentialed to administer, provided those medications in an unsatisfactory environment, and he was convicted for it. Everybody knows that. That's not a stretch that he was unfit and incompetent. Come on. All right. So what did they find in Michael's system? All these prescription meds: Propofol, Lidocaine, Lorazepam, diazepam, midazolam, everything Dr. Murray gave him. And on June 25th, when he gave the fatal dose at 5:45 in the morning, he's e-mailing Mr. Taylor. Remember, that's the gentleman, insurance broker, in

England on behalf of AEG live. Gives the Propofol, then he's e-mailing back again with Robert Taylor in England at 11:17. And at 12:22 the fire department is called, and Michael's unable to be resuscitated, dies, and Dr. Murray is talking on the phone and doing everything else that day instead of providing fit and competent treatment to Michael. And I want to finish on this.

Mr. Seneff, the first witness in the case, the paramedic -- again, independent, not on either side: "did you feel Murray was competent and fit to perform even CPR.?" he didn't think he was. He was on the bed. On the floor. He couldn't even perform CPR Come on. And all of these other doctors, Dr. Quinn, remember they wanted to make a big deal, all these doctors, Michael said, "I need some kind of sleep medicine," none of them ever gave Propofol like this. But Dr. Murray, the one that's contracted with AEG live, 150,000 a month, he did it. He's the only one. He did it. And why do you think? Because nobody else is getting paid that type of money. So I think in answer to this question, you need to put "yes." this is question no. 2. And I think -- your honor, would this be an okay time to stop?

**The court.** This would be a good time. Let's break for lunch. Come back at 1:30.

**(The jury exited the courtroom at 11:59 a.m.)**

**(At 11:59 a.m. The lunch break was taken until 1:30 p.m. Of the same day.)**

**(The following proceedings were held in open court, in the presence of the jurors:)**

**The court.** Katherine Jackson versus AEG live, bc445597. Good afternoon, everybody. Counsel, you may continue with your closing argument.

**Mr. Panish.** Good afternoon, everyone. I want to pick up where we left off. So we're on the next question on the verdict form, AEG knew or should have known that Dr. Murray was unfit or incompetent. And that's question number 3, which I believe the evidence shows that should be answered yes. I'm going to show you why. First of all, did AEG know or should it have known that Dr. Murray was unfit at any time? It doesn't have to be at the time that they hired him. In fact, they don't even have to be negligent when they hired Dr. Murray. But from the time that Dr. Murray was hired until June 25th, 2009, the death of Michael Jackson, there were numerous occasions when AEG knew that Dr. Murray was not competent and he was unfit. And it wasn't even necessary for them to know anything about Propofol. They're going to keep telling you, "we don't know about Propofol, we didn't know about Propofol." it doesn't matter. The issue is whether or not Dr. Murray was competent and fit, and whether or not the unfitness or

incompetence resulted in any risk -- any risk -- for medical treatment. It doesn't have to be a specific risk, it's a particular risk. So, for example, Dr. Murray, they should have known he was unfit. And here's really the summary; and I would write this down. These are our reasons why I believe that -- that question number 5 -- it's question number 3, actually.

Let me just get my verdict form. Okay. Question number 3. Number 1, that everyone knows that there's a risk of doctors and prescription drugs in the industry. Number 2, that no promoter or producer had ever hired a physician for an artist. Number 3, that Michael Jackson needed treatment for insomnia. Number 4, that there was an obvious deterioration of Michael Jackson. And that was really said in all the e-mails. I think Dr. Czeisler, the sleep expert from Harvard, said it best, was it was documented better than people that had been doing studies, it was documented so well. Number 5, the danger in the conflict; and number 6, that AEG, if they decided not to check Dr. Murray's background, then they ran that risk, and they're responsible. And that's what they chose to do, and they can't now come here and try to shirk their responsibility. So let's talk about the evidence. First, the evidence comes in in two forms. One, witnesses; two, documents. And in this case, there's been a lot of witnesses, nearly 60; and as the judge read you yesterday, this is an important instruction. You have to decide whether any witness is believable. You may believe all, part or none of the witness's testimony. And here's what you need to look at.

Did the witness remember and describe what happened? Did the witness act, look or speak -- how did they look, act or speak while testifying? Number 3, did they have any reason to say something that was not true? Did they have a bias or prejudice, are they on one side or the other? And finally, what was the witness's attitude. What kind of demeanor, how did they come across with their testimony? And I think that -- let me go back. I'm going to show you now some of the testimony. There were three AEG people involved here, and I want to ask everyone that's watching please don't laugh. I mean, I don't think it's funny. It may appear to be funny. But you're going to see these witnesses, the nature of their testimony, the character of their testimony, their demeanor when testifying, and you have to determine whether these witnesses are worthy of belief. If we can run that.

**(A video recording was played.)**

**Mr. Panish.** Ladies and gentlemen, these are just some of -- the chief executive officer of AEG, AEG live, and Mr. Gongaware and Mr. Phillips. And, you know, my parents are from New York, and I didn't mean -- you thought I was making fun of Mr. Phillips, but Mr. Phillips was very combative. He didn't want to answer the questions, and I read -- played his deposition so many

times where he was severely impeached and had no recollection. They made a legal strategy in this case to remember nothing when they testified under oath, and the court has instructed you that a deposition is the same as testimony here, yet when they come here after all these meetings, they have a new version of the facts. So let's take a look at Mr. Gongaware, Mr. Phillips.

**(A video recording was played.)**

**Mr. Panish.** Ladies and gentlemen, it took a hard time to try to get answers out of these witnesses, and you can see why, because they decided that they're not going to remember anything, and then try to have a new story. And you can't do that under oath. They're not credible, and they're not worthy of belief. But that's just Mr. Gongaware. Let's go on. Randy Phillips, CEO

**(A video recording was played.)**

**Mr. Panish.** Ladies and gentlemen, you heard all this -- there was thousands of e-mails. These are e-mails they wrote. Okay? They wrote the e-mail with the king of pop, the biggest thing they had going, and they don't remember anything because they've taken the A.B.C. Defense, anyone but the company. And that's what they're doing here. Now let's go look at Mr. Leiweke, the big boss.

**(A video recording was played.)**

**Mr. Panish.** That's what we've been dealing with here, ladies and gentlemen. And it's taken a while, and we've been frustrated, and I apologize if I get frustrated with the witnesses. But it's supposed to be a court of law where people are called to the witness stand to answer questions, and they don't want to answer the questions, and they want to put up every legal hurdle, and they want to blame everyone, and they don't want to accept any responsibility whatsoever. They're going to say, "oh, it's all Michael Jackson. He was a 50-year-old man. It was his doctor." they don't want to accept no responsibility whatsoever, and that's what they'll tell you tomorrow. So let's see -- when I ask Mr. Phillips, he says "do you want the truth or what I testified to?" now, ladies and gentlemen, I mean, that -- that is just totally inappropriate. Is he now admitting that he's testified falsely and now he's going to tell the truth? What is it? All right. Overuse of prescription drugs by eager doctors is known. Elvis Presley, we know about him. Dr. Nick, we heard about him. Mr. Gongaware, and he knew -- "so AEG knew the history of MJ's tours?" "Yes, I believe so." "AEG knew the problems, didn't they, sir?" "Yes." "The problems, we know

the problems include prior use of pain meds and opiate addiction, correct, sir?" "I don't know how to classify opiates, but he did admit he had a problem with painkillers." there's no dispute in this case. Mr. Gongaware, he wouldn't even admit that one of his best friends, Dr. Finkelstein, who he tried to offer the job for 40,000 -- called him on the phone and told him during the prior tour. He wouldn't admit that, and his best friend had to come say that he had. Dr. Metzger, they talked about the plan on the "dangerous" tour, and he talked about the plan was not a good plan and what happened was they're mixing the pain meds, the sleep meds in a vicious cycle, and the tour was canceled in Mexico city and Michael went into rehabilitation and made a public announcement. It wasn't working. Here's Dr. Finkelstein, a very good friend of Mr. Gongaware's.

**(A video recording was played.)**

**Mr. Panish.** He answered the questions. He didn't say, "I don't remember, I can't recall." he answered.

**(A video recording was played.)**

**Mr. Panish.** Mr. Gongaware knew that long before Michael Jackson was contracted.

**(A video recording was played.)**

**Mr. Panish.** Dr. Finkelstein is an addiction specialist. Mr. Gongaware called him to go on the tour, he asked him, "what do you charge?" he said 40,000, and he never heard back after five calls. Debbie Rowe talked about Dr. Forecast, how she wanted to confront Dr. Forecast, and the management people from the tour wouldn't let her. And we asked Mr. Gongaware if Michael has a doctor that's giving him medications and doing things that could jeopardize his health, that's bad, isn't it? It's bad if anyone is giving him drugs. So he knew or should have known about this potential problem. Mr. Trell, he agreed that AEG would not want to hire a doctor whose role it is to supply drugs without regard to medical standards. It's obvious, of course Mr. Trell would say that. No reasonable concert promoter or producer would hire a personal physician for a -- they're not in that position. No one does it. That's not a reasonably careful producer or promoter. They just don't do that. And even Dr. Earley, who -- we went around and around on Dr. Earley and conflicts of interest and failure to disclose and his prior criminal history and the doctor that he -- the former doctor with him who had his license suspended on the study that was funded by AEG remember all that?

**(A video recording was played.)**

**Mr. Panish.** Dr. Earley admitted it. I mean, it's obvious. Don't leave your common sense behind. It's obvious it's a serious problem. Of course, Mr. Berman said he's never heard of anyone doing this, whether an artist says it or not, hire the doctor. Nobody does it. Mr. Trell, he's never -- as a producer at AEG live has never agreed to retain a doctor for an artist, never. Ms. Hollander, never. Mr. Gongaware.

**(A video recording was played.)**

**Mr. Panish.** That's not being reasonably careful. And Mr. Phillips, the same thing, he's never been involved in a situation like this. And they knew or should have known that Michael needed treatment for insomnia. Not for a cardiac -- and, in fact, Dr. Metzger talked about how he had spoken to Mr. Gongaware in the first leg of the prior tour and discussed the sleep problems with him, but that's not the only one. In fact, Mr. -- Dr. Metzger prepared a sleep protocol, so to speak, for Mr. Jackson. Everybody knew that he had problems sleeping, he needed sleep. In fact, he -- he said there were many problems with "dangerous" that he was concerned about. And then Travis Payne. Remember Travis Payne, the dancer that they called out of order because he was going to be out of country? And he came up, and he had the MJ -- what do you call it? -- ePaulet on his -- on his sleeve. And he said that he knew Michael had a problem sleeping for many years. And Mr. Ortega, he thought, knew that, too. And he -- it's his understanding that Murray was there to treat him for sleep, and he didn't know what kind of medicine he would be giving -- he's just the choreographer, but he was involved -- remember he said he went to MJ's house at times to work with him. He knew what was going on.

And Mr. Phillips told us -- I asked him, "you told us when you testified under oath that Mr. Ortega was concerned and raised it with you and Dr. Murray that Michael wasn't getting enough sleep. Was that truthful testimony?" "yes." so Mr. Phillips knew that and Mr. Payne knew that and Mr. Ortega knew that. It's not some big surprise. And Dr. Czeisler, the sleep medicine -- or sleep specialist, said, by the way, "even if you clean somebody up and you have them, you know, put on makeup, do everything else, the average person can recognize if somebody has been sleep deprived or not just with a -- in two or three seconds by a photograph of them, even if they've taken a shower and cleaned up, because we can just tell from the appearance." you don't need a doctor to tell you this. Michael deteriorated for 60 days, everyone saw it, it was documented, and it's obvious. In their own videos, it shows how he has an obvious deterioration. Remember, he was the greatest -- and I'm not one to judge that, but the testimony is he was the greatest of all

time, and even him in a bad state would look good. But they knew that he was having problems. They knew it. In fact, Mr. Trell --

**(A video recording was played.)**

**Mr. Panish.** I think what Mr. Trell is trying to say is that somebody is supposed to be watching out how they're doing. And that person, who was it? Well, according to Mr. Gongaware, it was Kenny Ortega. He said Kenny Ortega was there to monitor Michael's health, everything. He was the director; he was supposed to monitor everything, including Michael's health. Okay? So as Mr. Trell said, somebody was there to do it. So what did Mr. Ortega do when he saw the problem? He was there every day, he was in a good position to assess Michael, he was closest to the man. "That's right." that's what Mr. Ortega was, according to Mr. Gongaware. And then -- so what does Mr. Ortega do? He says stay on top of the health situation, talk with the doctor, make sure MJ is getting everything he needs. And then we get to the 6/15. Michael didn't come, had a bad day on Friday, didn't come on Sunday, he needs attention and management. He's sounding the alarms. He mentioned that he believes he needs nourishment and guidance -- this is Kenny saying this -- for his fatigued muscles, his shape, he's hurting, "we need a healthy, rested MJ" the pressure is building up.

Mr. Ortega told them the pressure is building up, they're leaving for London in three or four weeks, the pressure is on. There had been discussions -- the pressure was on Michael, it was on Mr. Ortega, and they, AEG live, put it on Dr. Murray. And how did they do that? Well, first of all, Mr. Hougahl, who works now for Shania Twain in Las Vegas -- I believe it's an AEG production. I'm not positive. But Mr. Hougahl, he didn't come to testify. Mr. Hougahl wrote this e-mail saying MJ was sent home without stepping foot onstage. He was a basket case. That was explained by the doctor, what a basket case is. And Kenny was concerned he would embarrass himself. And everybody was rehearsing, but doubt was pervasive. Everybody knew that there was a problem. And Randy Phillips sends that e-mail directly to Mr. Leiweke, the CEO of AEG parent company, the man who couldn't remember anything. And he writes "we have a real problem here." it's not Michael might have a fever, "we have a real problem." "we." not Michael. Not -- "we," AEG, has a real problem. And, of course, then Mr. Leiweke wrote back and wanted to know if they wanted to go to some ball that night. Mr. Gongaware says that Mr. Hougahl was there viewing Michael every day, trustworthy and honest, and he wasn't a drama queen.

So here's a man who's there every day, reports to Mr. Gongaware and Phillips that there's a problem. Were they reasonably careful in the supervision and retention of Dr. Murray at this

time? No. A reasonable -- they didn't do anything reasonable at that time. Then Kenny says -- this is on the 19th -- Michael's shaking, couldn't hold his knife and fork, Kenny cut his food before he could eat, he had to use his fingers. This was sent to Randy Phillips and Paul Gongaware, the two top people on this project. It's not sent to some lower person that's not getting the word out. And then Randy Phillips writes back and says "Tim and I," that's Mr. Leiweke, "are going to see him tomorrow. However, I'm not sure what the problem is, chemical or physiological." and do you remember Mr. Phillips said, when we asked him, "what did you mean by chemical?" "I don't know. I don't remember"? It's pretty obvious, ladies and gentlemen, what he meant, because Mr. Gongaware wrote back "take the doctor with you. Why wasn't he there?" the doctor that they never hired, that they never supervised, they say, they never retained, he says "take him there. Why wasn't he there?" that's Mr. Gongaware's writing. It's interesting, what is the topic of these e-mails? "Trouble at the front." now, is that knowing or should have known, "trouble at the front"? Is that putting you on notice that there's a problem? It doesn't say questions about rehearsal, questions about costumes, it says "trouble at the front." now, you would think if you were running a big project like that, and you receive an e-mail that says "trouble at the front," that you might read it. That would be -- a reasonably careful person would do that, "trouble at the front." and then they go on, and Mr. Phillips says "he's not a psychiatrist so I'm not sure how effective he can be.

Obviously, this is not the issue, it's much deeper." so Mr. Phillips here is questioning whether Dr. Murray is fit and competent for this specific risk and incident. He knows. He's not known or should have known, he knows. He's stating it. And then what happens? Mr. Ortega -- and I believe Mr. Ortega was trying to help his friend Michael Jackson. Mr. Ortega didn't want anything bad to happen to Michael. I believe that. And he says "now that we've brought the doctor into the fold --" remember, Dr. Metzger talked about sheep coming into the fold "-- played the tough love card, now or never, is that the artist may be unable to rise to the occasion due to real emotional stuff. "He appeared quite weak and fatigued, terrible case of chills, trembling, rambling, obsessing. Everything says he should be psychologically evaluated." Mr. Branca sent another e-mail. I'm not going to show it, but he -- you know, "I know a substance abuse counselor who treated Michael Tyson," and on and on. So there's communication. What happens? Well, Mr. Ortega writes further "the choreographer that -- during the artist's costume fitting noticed that Michael has lost more weight.

There's no one taking responsibility, caring for him on a daily basis, feeding him, wrapping him in blankets to warm his chills --" this is what he had to do "-- massage his feet and calling his doctor. He's terribly frightened it will all go away." was somebody being reasonably careful in supervising and retaining with all this information? I don't think so. In fact, what does Mr. Phillips -- he gets another e-mail. By the way, Alif Sankey, she told Mr. Phillips -- excuse me. Alif Sankey told Mr. Ortega she thought Michael was going to die. She was right. And Karen

Faye said he was going to die. She was right. And Kenny said, "I don't know if he's going to make it. I don't think he's ready." he was right. But what happened? Kenny says, "I don't think he's ready, reminiscent of the problem with -- get him to the psychiatrist, we need professional guidance." so when Mr. Phillips receives that e-mail for the king of pop, someone that they've put out all this money, all these shows, they've sold out in record time, what does he do? Well, Mr. Trell said this would be something that you should delve into for sure.

That's reasonable. That's what a reasonably careful person would do; and if Mr. Trell had been there, he - might have done that. But he wasn't. He wasn't involved in this. But the people in charge, they didn't delve into it. What did they do? Well, this is the symptoms that we knew. Travis Payne, Michael was too thin, not eating enough, concerned about weight change; concerned he was fatigued, lethargic during rehearsals. Alif Sankey, choreographer, she was concerned at the end of May, she cried because Michael didn't look good and said god was talking to him. "Michael is dying, he's dying. He needs to be put in the hospital." Kenny said he'll look into it, he'll handle it. Karen Faye believed that there was a risk of MJ Dying, she was extremely concerned with his psychological well-being and being paranoid. And Michael bush said that when Michael was in the back, he said, "oh, my god, I could see his heart beating through his chest, he was so thin." and Mr. Bugzee Hougdahl watched Michael deteriorate for eight weeks in front of his very eyes, and Mr. Bearden said he wasn't prepared to sing and dance everything at the same time, later time. And what happens?

Kenny sees him cold, emaciated, afraid, all these complaints, and what happens? Kenny Ortega had a concern about Dr. Murray. Kenny said, "I really didn't know what Dr. Murray did, but Michael was showing up in this condition. I had a concern." "And you had a real concern about Dr. Murray at this time and his work as a professional for Michael?" "yes." he -- remember, now, that legal relationship. He's the agent of AEG if he knows, they know. He knew -- he had a concern, and he's not a doctor, but here's this guy that's allegedly treating Michael, and he's looking like this. It's not working. Okay? That's not being reasonably careful. It's not working. So what happens? Kenny says he didn't think that Dr. Murray was providing good care to Michael. And, in fact, he thought Dr. Murray -- that a different doctor should have been brought in to check it out. That's what he believed, the person in charge of the day-to-day operations. And he relayed that to the CEO of AEG live.

And then Mr. Phillips gets involved again. And what does Mr. Phillips do? He writes back to all these people and says, "oh, we had a very productive solid meeting with Kenny, Murray, MJ, myself. The doctor was fantastic. I think Kenny's hysteria will be in check. While MJ Was alert and attentive, we all agreed on a schedule that works for KO And MJ I promised Kenny -- I will be in the office next week at staples. Let's pray that Kenny engages and starts to work out and

eat," MJ "things aren't as bleak as what Kenny says." so Kenny writes these e-mails, these other -- Hougdaahl and everybody is weighing in, and Mr. Phillips gets involved, and what does he do? He pours water on everything. "Oh, it's not as bleak as Kenny says. The doctor is fantastic." really? How do you know that? Well, let's look at it. That's what Michael looked like in their own video. Look at his Adam's apple here. That's what Michael looked like. So then the moment of the trial. Mr. Phillips is up there, I show him this picture, exhibit 8, dash, 54; and I said, "June 20th, Michael looked great, he was fine.

Well, then, here he is on June 19th getting a fitting. How do you explain that, Mr. Phillips?" and he stammered around and said, "well, he had his hair and makeup, he looked -- he didn't look like that on the 20th." "What changed in 12 hours?" "I don't know. I didn't see him on the 19th. I have no idea." and then I said, "oh, so did you give him the protein shakes?" "I was just as confused as anybody because the Michael I expected to see based on this e-mail would have been this Michael Jackson." that's who it was, but he didn't want to see anything else but get the show going forward. I said, "how do you explain that someone looks like this, and 12 hours later, you tell everyone they look great? How do you explain that? When you go behind the scenes, that's the evidence. Do you dispute that?" "no." there was a problem on June 19th; but 12 hours later, everything is fine.

Less than 12 hours later. Remember Mr. Seneff. He came to the house five days later, said that Michael was very, very underweight, you could see his ribs, he was ill, he looked like he was at the end stage of a disease process. And then he asked is there a DNR., which means when people are dying, they issue these do not resuscitate orders, and the paramedics come in and they -- they want to do what the patient wants, so they ask, you know -- there's some -- there's steps they can take to try to revive a person. And some people say, "no, I don't want that." so Mr. Seneff asked that, and Mr. Seneff thinks that he looks like a hospice patient. Okay?

So then we have two descriptions by Mr. Ortega. First on the 20th, Mr. Ortega writes, at 1:48 in the afternoon, "trouble at the front" again -- he writes to Kenny Ortega. Remember, this is after all Kenny's e-mails. And he says "Kenny, it is critical that neither you nor anyone become amateur psychiatrists or physicians. I had a lengthy conversation with Dr. Murray, who I am gaining immense respect for. I'm going to deal with him more. "He said Michael is not only physically equipped to perform, to discourage him would hasten his decline instead of stopping it." so he, again, knows that Michael is on a decline. Remember I asked him that? He goes, "I didn't really mean that, hasten doesn't mean that," blah, blah, blah. And then he says "this doctor is extremely successful," parentheses, "we check everyone out, and he doesn't need --" he forgot "he" "-- this gig. He's totally unbiased and ethical." wow. Where did he get that? After saying

three times he doesn't remember writing it, we show him other evidence. And we know that they can cancel or postpone the tour at any time.

We've got Mr. Ortega sounding all these alarms, the big meeting called up at Carolwood, Phillips, the doctor, Kenny is summoned up there, you know, "get up here." and what happens? Murray is going to keep the show going on. And so what does Mr. Phillips write -- actually, I skipped one here. This is the same e-mail. Let me go back. So he writes then, at 13 minutes later -- he writes to Gongaware and Hougahl and Leiweke, and Gongaware, the CEO Of AEG -- he writes to them and says "he's not a psychiatrist so I'm not sure how effective he can be. Obviously, getting him there is not the issue. It's much deeper." so he tells Mr. Ortega that he's checked him out, everything is fine, and 13 minutes later, he tells the CEO of the people, "I'm not sure how effective he can be." now, what is it, Mr. Phillips? Is it you're not sure how effective he can be, what you're telling the people you work with, or is it he's fantastic, doesn't need the gig, totally unbiased and ethical, like you're telling the person that's trying to be reasonably careful? What is it? Well, what it is a conflict. They wanted the show to keep going. And, of course, he says this amateur physician -- he has immense respect. You've probably seen that so many times. What does their expert say about it, Mr. Hom?

**(A video recording was played.)**

**Mr. Panish.** Because a reasonably careful person would never do that. It's a flat-out lie, misrepresentation, cover-up. That's what it is. Why did he do that? Because he didn't care. Then, before the meeting, there's a call between Mr. Phillips and Dr. Murray. And remember in his deposition he said it was very short, two minutes. Then we break out the records and we determine that it was 20 some minutes, and he was talking about what information for the rehearsals the night before, so he's prepping up Dr. Murray for the meeting with Ortega. And then he writes to Ortega the e-mail saying everything is fine after he talks to him, and then they have the meeting. And what happens at the meeting? This is the meeting where, you know, Dr. Murray is going to say, "look, we're this --" no. What happened at the meeting was that Kenny was told that everything was fine.

And then I said, "How did you react to that?" "I was flabbergasted. I didn't believe it was possible." that's a reasonably careful person. But then Mr. Phillips said, "Oh, he's --" or Dr. Murray was accusing him of being an amateur psychiatrist, and it was everything that was in the e-mail after he spoke to Dr. Murray. And interestingly enough, they knew or should have known the financial condition. Ms. Seawright talked about when you're giving medical care in the home you have access to confidential information, it's a higher-risk position. When you elevate the

risk, you should do more about it. And they knew -- they knew, but they never did anything until Michael was dead, and then he still -- they hired him and then all of a sudden everything started with the lawyers. Now, she also talked about financial stress can impact ethical judgments and decision making. So what is it, Mr. Trell, "we don't do background checks on independent contractors," or Mr. Phillips, "we check everyone out?" which one is it?

**(A video recording was played.)**

**Mr. Panish.** All they had to do was have him sign the authorization, which they had. Mr. Gongaware.

**(A video recording was played.)**

**Mr. Panish.** No. At any time up until the day before, no one did anything over this eight-month -- excuse me -- eight-week decline. They did nothing. They chose to gamble and they lost. Now, the answer to that question number 3 should be yes. Number 4, did Dr. Murray's unfitness harm Michael Jackson? I mean, come on. Obviously, but -- the answer to that is clearly yes. Clearly the death was not due to natural cause or disease, as Dr. Rogers said. The amount of Propofol was excessive, benzodiazepines.

All that Dr. Murray had given was the cause of Michael Jackson's death. It should never have been done that way. He clearly caused Michael Jackson's death acting incompetently. And, in fact, that's what Dr. Lakshmanan said, and Dr. Wohlgelemlerter said, that the departures from the standard of care of Dr. Murray were a substantial factor in causing Michael Jackson's death, and there's been no evidence in this case to the contrary. No one has said it differently because it's obvious that it did. I don't need to spend a lot of time on that. It's easy, number 4. Number 5 is, was AEG's negligence in hiring or supervising or retaining Conrad Murray a substantial factor in causing Michael Jackson and the plaintiffs harm? The answer to that is yes. Why? First look at the instruction.

Again, we're back to that reasonable person, it's harm that a reasonable person would consider to have contributed. It doesn't have to be the only harm. It's not the sole harm, it's not the exclusive harm, it's not the one and only. If you think Michael Jackson contributed, that could be part of it. Dr. Murray, that's part of it. Dr. Murray, if you find he was hired and they were negligent; his fault is attributed to them, AEG live. Michael's fault, if any, you have to assess separately. Just because one person is at fault doesn't mean others cannot be. I hope I said that right. Here's the

instruction that says it. A person's negligence may combine with another factor to cause harm. If you find AEG's negligent supervising, hiring and retaining Murray was a substantial factor, then AEG is responsible. AEG live cannot avoid responsibility just because some other person, condition or event was a substantial factor, like Michael Jackson using pain medications, like Dr. Murray violating the standard of care. That's not a defense for AEG live in this case. That's the law.

Now, we know that Dr. Murray treated Michael Jackson seven times in three years, although they continue to call him his long-time personal physician. Okay? Seven times over the years, and his kids a few times for urinary -- or upper respiratory infection, URL., cough, fungal, insomnia twice. But he gave him no Propofol at any time. Then we know this whole situation here. Michael, during his whole life, all the way up to "thriller," he's burned, the "history" tour, all the way down here in 2000, he gets -- has lupus, we heard all about that in '93, burn injuries, vitiligo, "dangerous" tour, "history" tour, he gets Demerol and Percocet for scalp injuries, Dr. Sasaki, back injury -- remember the thing collapsed in -- Munich, I think it was. Okay? He gets Propofol 31 times for all surgeries, procedures, plastic surgeries, except the two times in Munich with the two doctors that were set up there by Metzger and Debbie Rowe, no problem. Never a single issue until AEG wants to give Murray money, and they get Murray -- and it's 60 days. He's lived 50 years, no problem; in 60 days, he has a rapid decline, he's dead. And what is the one thing that changed?

It is AEG and Murray and the concert. Never happened before. You know, they want to say he was abusing Propofol. Well, there's no expert testimony that says he was addicted to Propofol. They want to say that, and they showed all these videos that he had for this procedure and that procedure. He did. Okay? He didn't like pain, you know. Dr. Metzger says he's like a baby; but you take them as you find them, everybody has different pain thresholds, and they want to get up here and criticize him for that. Let them walk in his shoes. Then we get into this whole chart that they put up, exhibiting 1129, Propofol in Germany, no problem, asks Quinn, Van Valin, he doesn't ask Adams. He asked him to help him sleep. And Murray, he asks Metzger and Quinn. Guess what. None of them gave him any Propofol. Then we get may 6th, "done at \$150,000 a month," Murray starts the 60-day Propofol regime, and he dies, boom. It's directly related. No question.

Everything changed after May 6th. As Czeisler said, 60-day Propofol administration, 60-day deterioration. He was fit and fine on the 18th and 19th, according to Ms. Lee -- Dr. Lee and Dr. Metzger, the house was clean, oxygen tanks -- no tanks or I.V. Use, none. Contract, boom, everything changes. And then there's the meeting where Ms. Chase talked about Dr. Murray shouting after getting into these disputes, "I can't take this shit," and running out of the house,

and he was being pressured. Nobody disputed that. And Prince Jackson came in and talked about they were speaking in hushed whispers, that Mr. Phillips looked aggressive, he was grabbing him by the elbow, getting really close, making hand motions. And Mr. Putnam, he tried to cross-examine Prince Jackson, and Prince Jackson, different from these CEO's, he answered every question. 16 years old, lost his father, answered every question, "yes, sir. No, sir." answered every question that Mr. Putnam put to him. Being cross-examined by a very skilled lawyer, Mr. Putnam is. 16 years old.

Phillips, Gongaware, et cetera, prince, who is bringing you the truth? Without AEG live, there's no promise to pay this money, Murray wouldn't have shut down his practice. They want to say Michael had no money, he couldn't pay for anything. How was he going to pay Murray? No Murray, no AEG, no Propofol, Michael is still here. The pressure. The show was about to leave, Kenny was expressing doubt. Michael was a deteriorating insomniac who couldn't rehearse. They had no coverage to cover the 30 million, the threat of pulling the plug, and the signed contract said that he could terminate if postponed. Clearly, the answer to that question is yes. So now those are what are called the five liability questions. You need to answer all of those yes for the plaintiff to win and for you to address the issue of damages in this case. Now, the issues of damages -- they told me I wasn't talking fast enough at lunch. I'm trying to pick it up. All right. In our society every day, debts are created and debts are owed. People -- you know, you buy something on a credit card, you buy something -- you owe the money, you pay. Okay? It's no different here.

You know, this system comes from the bible. In the Old Testament, it says an eye for an eye and a tooth for a tooth, and a man has an oxen and he gores another, that that oxen shall be stoned, and the meat not eaten unless the man can pay a sum in ransom. And in this case, it would be inhumane and improper, an eye for an eye, that somebody from AEG would have to be -- Gongaware -- that's not how we do things in our society. Unfortunately, nothing can bring Michael Jackson back. And we'd like nothing more than for him to walk through that door and be here. But we can't do that. But in our society, there's a tremendous value placed on human life.

Pilots working for the air force in the military flying \$300 million jets, if there's a problem, they're instructed to bail out of the jet, save yourself, crash the jet. If there's a building burning, a Picasso, 300 million, firefighter goes in, there's a young child, are they going to save the Picasso or are they going to save the young child? Of course they're going to save the child because our society puts the greatest value in human life. And that's what it's all about, and we all work hard, and we do all we can. We work hard and go to work to do what? To be able to enjoy our life, to do what we want to do. Do you want to go watch football games? Do you want to go to the park? What do you like to do? That's why you work, so you can do that, and that's what our society is

all about. And in this case, there's a mother that's lost a son. And, you know, if you are a husband and you lose your wife, there's a name for that. You're called a widower. And if a wife loses a husband, they're called a widow.

And if children lose their parents, they're called orphans. But you know what the word is to describe a parent that loses a child? There is none because it's an indescribable loss that no parent should ever experience, to go -- lose a child before they -- anyone that's ever experienced that knows that, and it's hard to really appreciate that, but it's true. And no parents ever for any reason should have to do that, and it's -- it's not what our society is all about. And Mrs. Jackson lost a son, and the children lost a father. And in our society, you only get one father. We don't get to go get another one.

And, you know, sometimes if you went to the doctor and the doctor said, you know, you have so many months to live, then you take care of your affairs, you meet with your spiritual advisors, you say your goodbyes, you do the things that you need to do. But when somebody unexpectedly dies, you never get to do that. They say that people never recover from that. Death keeps no calendar. Death is something that everybody doesn't want to talk about because it's not a pleasant subject. And in this case, we're dealing with the wrongful death of Michael Jackson. Yes, he was the king of pop; yes, he was a great entertainer; but besides all that, he was a great son and a tremendous father. And even AEG live, who is defending this case vigorously -- they won't dispute that.

Mr. Putnam will dispute a lot of things I say, but I guarantee you or I certainly believe that he will not come here and say that Michael was not a tremendous father, and that Michael was not a tremendous son. So that's one thing that we can kind of agree about. So what I want to do now is talk to you a little bit about how it is as a jury -- remember when we were selecting the jury, you were all saying, well, how do we do this? I mean, I've never done this. Is there a formula? Is there if you're 50 years old, and you have three children and a mother, this is how much you award? No, there is no formula. You're given some instructions, and it's based on your common sense to what is just and fair. And in this case, it's your job to give full and complete justice. Not partial. Martin Luther king said the moral arm of the law is long, but it always bends to the side of justice, and injustice somewhere -- or less than justice anywhere is injustice everywhere.

Because in this case -- people are looking at this case and all that, but this is the test as to what it is that you believe, the message that you're going to send in our society as to what is a relationship worth. What is the value of being a parent, of society, of comfort, of convenience, of the relationship with your mother and your children? And what you're going to do in your verdict

when you speak the truth is you're going to assess what is the loss that these people have suffered in this case? So I want to talk to you a little bit about that, a few more things. It's really hot up here, but I'm going to try to get through it. All right. Now, there's four plaintiffs in this case. Each one deserves separate consideration. You may want to give the same, you might want to give different. That's up to you. But each one is entitled to separate consideration. Number 2, there's the law.

There's two types of damages. The first one is an economic loss. That's the financial support, loss of gifts, benefits that people would have expected to receive, and the reasonable value of Michael's services. The second one is what's called non-economic damages. And on your form for each person there's going to be a line for the past and the future economic and non-economic. And you're going to have to go through that. But I want to talk to you a little bit about the law and what you assess, love, companionship, assistance, comfort, care, attention, society, moral guidance, support. I know I said that fast. Let's first talk about the economic damages. And there was a lot of testimony from Mr. Erk, from Dr. Formuzis, from Mr. Briggs and from Mr. Ackerman. Speaking about answering questions, Mr. Briggs, I couldn't get him to answer any questions. But eventually, he said there's no loss. Michael Jackson, zero. He was going to die in a week. Based on what? Nothing. No loss.

But then Mr. Ackerman, he came and he said, well, the loss of the support would only be -- and I made him -- I had those sheets for him to add up, and he never got to it because we were running -- but they're in evidence, 59 million. So it's only 59 million, that's it. Let's talk about that. Remember, they're entitled to support and benefits, and what Michael would have earned more likely than not is a test that you assess in determining how much money he would have given them to support them, his benefits, gifts, everything. That's what you consider. So before I get to the total, what I'm going to say is this. I think that when you get to your total amount that you should divide it up 30/30/30/10. Katherine, 10 percent for the economic, and the kids all the same. Okay? Because you're going to see that Katherine has a lesser life expectancy and such, and I think that's fair and just. But the first thing is what is the figure that Michael would have earned to use to support and benefit the children. And, man, there were a lot of disputes about that in this case.

Zero, 59 million, and on. So let's take a look at it. First of all, Katherine. You're given these life expectancy instructions, and when you're looking at the past, it's 51 months, June 25th, 2009, to whatever day it is today. No idea. It's Wednesday. No, Tuesday. Monday night football. It's Tuesday. Okay. I lost track of days, the months, we've been here forever. But in the future, the table says that she will live approximately 7.8. So when you assess the past, it's for what's

happened for 51 months, and the future, 7.8 years. Okay? Then the children -- first let's look at this.

**(A video recording was played.)**

**Mr. Panish.** So Mr. Briggs wants to tell you that Michael Jackson would never earn another dime. And they want to tell you that he never would have gone on a world tour. Now, we have testimony from Paris, Prince, we have Mr. Putnam and Ms. Jorrie telling the police before there's any lawsuit that they were planning -- that the world tour was just coming after England. We have these men saying this on the "this is it" video, and now they're taking the position that Michael Jackson would never earn another dime. Wow. Okay.

**(A video recording was played.)**

**Mr. Panish.** Okay. That's Kenny Ortega. That's evidence. No world tour, they say. This is kind of a busy slide; but basically, defendants paid 1.65 million to hire two experts to say no loss or 59 million support only, that Michael was broke, had no money, would never earn anything. And then Mr. Erk had it between 1.2 and 1.6 billion using the AEG data, and when reduced by Dr. Formuzis, who they didn't even question, hardly, it was between 910 million and 1.2 billion. And I can stand up here forever and say it would have been this and that, but that's up to you. But there's no question.

Okay. And the world tour endorsements and merchandising, royalties, the Las Vegas show, movies and new music. Now, Mr. Phillips, there's an exhibit in here, 695, that they had a four-year plan to include Australia, that there was going to be a multi-city tour. That's what Mr. Gongaware said, that they promised him a film deal. You saw Michael, he wanted to do film. Prince said he wanted to do film, Kenny Ortega said he wanted to get into the film business, how creative he was. He had intentions to do movies inspired by some of the songs like "thriller," they talked about that. And Mr. Briggs said a few million to many millions for losses. 12 to 14 songs for the new album, the first album, Mr. Phillips said. Michael was working all the time on music. But you determine that.

All right? Mr. Erk gave these convoluted charts. I've got to tell you, it's complicated; but the bottom line is -- I remember those exhibits on the tours, he could sell this and do this, but if you look at Michael's tours and take it to the value of what they charge for tickets now, this is what he would have earned; and if you just use AEG's own numbers that they had proposed to all these

people, it's a large, staggering amount. Staggering. And we know that Michael was doing this for his kids and his family, we know he wanted to do this for them, and we certainly know that, you know, he got into debt. He wasn't, certainly, the -- the best person on watching money because he could earn a lot of money. And who can get in that kind of debt unless you've got incredible earning potential? Who's going to lend you that money unless you can go out and earn money right away?

And AEG certainly believed that Michael could earn a lot of money. They wouldn't have gave 35 million up front for -- but now they say he can't earn anything, so what is it? This is Dr. Formuzis. This is 1030. You'll have it. Take a look at this. This kind of breaks it down. This is all you need to look at. He breaks it down.

You decide what amounts for merchandising, endorsements, Vegas, et cetera. And then he takes off 215 million. Way over consumption. He's not going to spend that much, but if he does spend, it's 215 million off, so you get the value between 993 and 1.23 billion reduced to present value. You decide. But first you come to the figure that you think he would have reasonably earned, and then you divide it up between 30/30/30/10. Okay? This is what we said. And, you know, the test of how great Michael could be, even in the state that he was in, Mr. Ortega said on -- excuse me -- Mr. Phillips said that the three of them, Ken Ehrlich, Leiweke and him, three hardened executives, were like babies with goose bumps when they saw Michael. Even at his reduced level, these hardened executives knew.

They knew what they had, because we'd never seen anything like it before or since then. All right. Now, what I've done -- so many videos -- Ms. Chang, I should say, is she's taken the -- just some clips of the various videos and put it together for you. And I think I'm going to show this and then take a break. But it's going to show you that Michael was the greatest dancer, singer, writer, composer, artist that one could ever see. Throughout this trial we had a variety of witnesses like Karen Faye, like Kenny Ortega, Allan Metzger, Debbie Rowe, Michael Laperruque, TJ Jackson, Taj Jackson. This was a privileged few that got to see Michael perform live. And we tried to share those, and we had stories that went along with the videos. And you'll remember the stories as you see them.

So what we've taken is some of the clips from Bucharest, Sidney, Munich, and shared with you a couple of the short films in the "this is it" video. And this really is the best evidence of what Michael Jackson would have done in the future, and what you should assess in terms of his future earning capacity. Not what Mr. Briggs said, not what Mr. Ackerman said, not what Randy Phillips said. Not what Mr. Meglen said, that Celine Dion was bigger than Michael Jackson.

Well, I'll show you later where he said that. What you really believe -- and I think this evidence in this trial is overwhelming that Michael Jackson could have earned as much as he wanted in the future, and the world wanted Michael Jackson, despite their claim that he went through a criminal trial. They keep bringing that up. Or the fact that he used -- in 1993, he asked for another shot of Demerol, or that Dr. Sasaki didn't want to give him a prescription. All that stuff that we heard all about, Mr. Briggs said because of that he would never earn a dime. Okay? So I'm going to sit down for a minute. I'm going to play this, your honor. It's going to take a while. Can we take a break when this is over?

**The court.** Sure.

**Mr. Panish.** Okay. So I'm going to go back over there.

**(A video recording was played.)**

**Mr. Panish.** That, I think, is the best evidence of whether Michael Jackson could have sold tickets and been a performer, not what Mr. Briggs wants to tell you, or Mr. Ackerman. I think that's the best evidence. Your honor, would this be a good time to take a break?

**The court.** Let's take a 15-minute break. (22-minute recess taken.)

**The court.** Katherine Jackson versus AEG live, bc445597. You may continue.

**Mr. Panish.** Thank you, your honor. I think that video really shows you why AEG so badly wanted to have Michael perform for them, go on a world tour and promote their company. I mean, it speaks for itself. That's the reason why they were willing to take all these risks that they say they took and lay out all this money that they didn't know they were going to get back, and give Dr. Murray a written contract that they wanted and assume responsibility. And some people take their money and invest it in real estate, some people take their money and invest it in stocks and bonds, some people invest in other things. Michael Jackson, he invested his life in his children and his mother, and that was what was important to him. So on the issue of the economic damages, the supports, the benefits, as I said, you come up to the figure, and you divide it up the way I've suggested.

And, by the way, anything I say is just a suggestion. You're the ones that decide. You may think it should be divided up a different way. That's up to you. I'm just trying to, as I said; reason with you when you reason with one another. So, you know, the economic damages is really important. But we don't really need jurors. We could bring a jury of CPA.'s and accountants and put on the evidence and they could calculate it out and figure it out. But what is really important here is the loss of the person and the relationships, and that was what we really heard, what was the tremendous loss that's been suffered. So these are all the verdict form for the economic and all that. Let's talk about -- I don't like to use the word "non-economic," I like to use the word "personal damages." and it says here that the loss of Michael Jackson's love, companionship, comfort, care, assistance, protection, society, moral support, training and guidance.

Those are just words. So last night, watching the broncos kill the raiders, I was researching these words. One thing I came across is the hunger for love is more difficult to remove than a hunger for bread. And that's Mother Theresa that said that. But I looked up love. What does love mean, at least in the dictionary, dictionary.com? It says a profoundly tender, passionate affection for another person. A feeling of warm personal attachment or deep affection, as for a parent, child or friend. As a verb, to have love and affection for your children, to have a profoundly tender, passionate affection for another, a mother.

Love of. Synonyms for the word love, tenderness, fondness, warmth, passion, admiration, love, affection, devotion, all of these demonstrated by Michael to his mother and his children. Comfort. What does the word comfort mean? To soothe, to console, to reassure, to bring cheer to. Person or thing that gives consolation, "she/he is a great comfort to him." and you heard about Paris Jackson and what a rough time she's had, and how she's done some things that were not good for her health. We didn't bring a lot of evidence in of that. Debbie Rowe said how she attempted to take her life, but this isn't about sympathy. The family's had plenty of sympathy and plenty of -- we're not looking for any sympathy.

**Ms. Bina.** Your honor, I have to object to this line of -- it's totally irrelevant to -- I ask that it be disregarded.

**Mr. Panish.** It's absolutely not. It's totally proper about sympathy.

**The court.** Overruled. You may.

**Mr. Panish.** Sympathy is not part of this case. That's exactly what I'm trying to tell you. You're not to award anything for sympathy, grief. That's not part of this case. You are to award for the loss of this relationship, and you've seen by the evidence how deeply this has affected all the children, Mrs. Jackson, and more than anyone, Paris Jackson. You've heard what Debbie Rowe said about that. But we didn't come bringing all that in because we're not looking for sympathy, we're looking for justice here, full and complete. Not partial, not half-ways, full and complete, to square that debt of full-coverage justice. That's what we're looking for here. Now, the word "comfort," I talked about that. Pacify, calm, solace, gladden. The word "care," serious attention, protection, charges. You heard prince say how when they were worried that their father was going to die, Prince says -- Paris says, "daddy's not going anywhere.

God needs angels on this earth," trying to comfort his sister, but she really -- as she cried about her dad going away, and how much comfort he brought to her, how she felt just hugging her father, just being around her father. Blanket, he was always at his father's side. How important that is, that comfort. They love their grandmother Katherine, but it's not the same. It's never going to be the same. And, you know, death lasts forever. You don't get over it, it doesn't come back, you don't get a replacement. This is fatal and final; and unfortunately, it's never going to be replaced, ever. Now let's talk about the word -- I had to look them all up -- "assistance." the act of assisting, aid or help. Help with movie projects, help with finding snails, help with making dinner.

All those kind of things are what you have to assess. Moral support, emotional or psychological backing as opposed to material help. Society, a body of individuals living as members of a community. Association, company, being with someone, all the time they spent together. So let's go through this, and I'm going to try to reason with you just a little bit, a snapshot -- remember, this is just the tip of the iceberg of the love, affection, loss, comfort, society, training and guidance. As I told you, there's no fixed standard, but you must use your judgment based on the evidence and the law. That's all you use, no sympathy. If anyone brings up sympathy, you tell them, "that's not our job. We're not to assess that in this case." if anyone says, "that's a lot of money. How are they going to pay --" you say, "that's not our job. Our job here is to decide what's fair and just based on the evidence only, nothing else, no outside influences." let's talk about Katherine Jackson.

This is something that Michael wrote. (reading:) to take a picture is to capture a moment, to stop time, preserve the way we were, the way we are. They say a picture speaks a thousand words, so with these photographs I will recreate some wonderful magical moments in our lives. Hopefully this journey into the past in picturesque form will be a stimulant to create a brighter successful tomorrow. Michael Jackson. Do you remember the testimony that Michael lived with his mom

for a long time up at Hayvenhurst, and there was a room over the garage where Michael himself went up there and decorated the room with pictures and everything for his mother, just for his mother, and did all the artwork and everything, and he made that for his mom, and he wrote this for his mom to show his special love, affection of his mother? How many people do that? That's what Michael did for his mom. Here's Michael and his mother and his mother's father. This is -- I think his name was Roy Kramer.

**(A video recording was played.)**

**Mr. Panish.** This is Katherine's birthday, Michael had a birthday party, and a country western singer, her favorite, Mr. Kramer, and sings a song for his mom. What expression of love is that?

**(The video recording continued to play.)**

**Mr. Panish.** He looks like a country western singer. This is Taj Jackson, "my grandma was my uncle's compass," meaning Michael. "he was constantly trying to make her proud of him, just like to this day I try to make my mom proud of me." we heard about Taj's loss of his mom. Travis Payne, called by AEG, "no secret Michael loved his mother very much and that, you know, they were extremely close." and when you assess the relationship, you have to judge that. This is the last family gathering in May of 2009.

And this is their home in Gary, Indiana. Two bedrooms, a living room, kitchen, utility room, freezer and washing machine. Remember Katherine testified about this. And it wasn't easy for her to come up here and testify, but she did the best she could. And she got angry with Mr. Putnam at times, but she tried to do the best she could, and Mr. Putnam tried to be respectful and ask the questions the best he could. But Katherine talked about sleeping in the room -- remember triple bunks, three in one bunk bed, triple bunks, harmonizing and singing, the family? And when Michael was born, he was always dancing around, and she would say when he was in Katherine's arms, he was dancing to the music.

Remember the washing machine? They had a rickety washing machine that was rusty and old and made that noise, squeak, squeak -- I can't do that, Katherine -- and he would dance sucking on his bottle squeaking to the wash with his mom, Katherine, holding him, and it made him feel good. And then back in Gary they'd push all the furniture back on the walls and they'd dance and rehearse and do everything in their house. And remember Katherine, she sewed all of the costumes herself for Michael and the boys because that was part of her family, that's what they

did. And remember Michael wore this jacket? And this was at his performance, and everyone said, "where did you get that jacket?" it was Katherine's dinner jacket that Michael had borrowed it to wear.

**(A video recording was played.)**

**Mr. Panish.** You remember this, she talked about all the pictures, what was Michael doing with the wallpaper. This is the room that Michael created for his mother, the story of the history of the family and his mother at Hayvenhurst. What kind of work and effort did it take, and how is that such a great expression of his love for his mother? It wasn't giving her money, it was making this room for his mother. What a greater expression of love that one could have for another. Even had Katherine's driver's license and all the children, made the wallpaper right to the thing, the windowsill.

He brought his mom up and said, "Here you go, mom. Surprise." she was embarrassed by her driver's license. Michael and her were very close. He was the type of son -- a mother couldn't want a better son than Michael. And Kai Chase, the chef, talking about the beet juice and the vegetarian -- they looked good, but no. "so she missed her son's spirit, Katherine, the love he gave her, the jokes they shared together, conversations. It was just something of human nature." and remember this?

This is a poem that Michael wrote: *Mother dear, you gave me life. Because of you no struggle or strife. You gave me joy and position, cared for me without condition, and if ever I change this world, it's from the emotions you've unfurled. Your compassion is so sweet and dear, your finest feelings I can hear. I can sense your faintest motion, the wondrous magic of your love potion. And now I have come so far, met with every king and czar, encountered every color and creed, every passion, every greed. I go back to that starry night with not a fear for muscle or might. You taught me how to stand and fight for every single wrong and right. Every day without a hold, I will treasure what you've mold. I remember every kiss, your sweet words I'll never miss. No matter where I go from here, you're in my heart, my mother dear.*

And that's what Michael wrote about his mom. He wasn't only an artist, musician, composer, many things -- and he wrote that for his mom. You remember that. He wrote about mother, "**my guardian angel**" (reading): *The reflection of a mother's heart is in the glimmer of her children's eyes. Every emotion and feeling is somewhere in her child's character. Noble men are what their mothers made. Why does my mother cry? Are those happy tears or tears of sorrow? Oh, please, god, let them be happy tears. All my success has been based on the fact that I wanted to make mother proud, to win her smile of approval.*

And that is the relationship between Michael and Katherine Jackson. And yes, Katherine has other children. Yes, she loves them all. But this case is about the relationship between her and Michael and the loss she suffered. And when she hung that up -- they found it after Michael had died -- "and it made me cry, for one thing, and I felt sorry" -- she knew he loved her. By the way, let me backtrack for a second. Mr. Boyle, who is always watching out for me, said that I said that Mr. Ortega was an agent of AEG or something on some jury instruction. Mr. Ortega reported everything to AEG, so they knew. Whether he was an agent or not, I probably misspoke, I don't know. I'm trying to let you know that. And this is the "thriller" album that he dedicated to his mother, largest selling album in history. When a mother loses a child, you know -- this is Katherine. "no one knows until it happens to them. It's the worst thing that can happen to a person, losing a child. I lost my mother, my father, my sister. I'm the only one left. But when I lost Michael, I lost everything." I talked about that earlier.

No parent should have to go to bury their child. It's just not the way things are meant to be, and that's why it's such a tragic and tremendous loss, and that's why there's no word to describe it. So what's a fair and just award for past and future medical -- past and future loss that Katherine suffered for all these elements? And one way is to assign an amount to each element. What I think is the best way in this case -- some lawyers tell you that, you know, this money, they only want to get half, or they want to get 45 percent. I'm going to tell you straight up that I think the amount of money that AEG spent on this, \$35 million, is what you should award Katherine for past, and I think the next time in the future, you should award a sum close to that. But I leave it to you. You may think more, you may think less.

You may think that's a lot of money. That's a lot of money, \$35 million or more, for the past. But look at the relationship. Base it on the evidence. Base it on what AEG was willing to put out, \$35 million, not knowing they're ever going to get it back, because of this man, Michael Jackson. So I leave that to you for the past and the future, but I want to give you what I believe is fair and reasonable in this case. And I invite Mr. Putnam, and I'm sure he'll give you a figure that he thinks based on the evidence. And, of course, he'll tell you that they're not responsible for anything; but if you do get to that issue, I suggest that he'll come reason with you what's a fair and just amount to compensate Katherine for the loss of the last 58 months, 51 months, and the loss of the future. I leave that to you. Paris, Prince and Blanket. You know, we only get one father. And, you know, those pictures -- all those pictures we saw of the family we've been showing? Those aren't like posed. It's not like they know that they're going to be here making -- bringing this case. Those are genuine. Those are genuine.

So Debbie Rowe said that she believes certain people were meant to be parents, and she always thought Michael was one. Remember this? She comes on the motorcycle from ghost, Michael goes out in this costume, rides on the motorcycle, tells them that he's going to be a dad, he's screaming on the tarmac at Van Nuys airport. That she had a headset over her stomach so the baby could hear Michael's voice, she would play Michael singing lullabies and reading books for the babies, did she do that for Paris. Michael would buy all these books. He loved to read, loved to educate himself. Despite the fact that he had a lot going on as a child, he was very educated and read a lot. He really wanted to do everything he could; he threw himself into his children. And there's Prince and Paris. And this is Mr. Ortega. "The arrival of the children in his life definitely gave him something he didn't have before. He seemed happy, happy to be their dad, happy to be in their life.

He seemed exhilarated. He seemed like he was excited and like the Michael I had remembered at the beginning of the new journey." and Taj talked about they always knew Michael, their uncle, would be the perfect parent. It just lit him up to be around these children, and he lived with his children and grandma. And this is Randy Phillips. He felt Michael was a phenomenal father. Phenomenal. And Debbie Rowe again said Michael was an amazing father, he was so caring, talked about the watermelon, sharing it with prince, the pictures that were taken. There's prince, Blanket and Paris running around. Remember when I talk about the tabloids and newspaper -- it's not easy to be Michael Jackson as a parent, but he did the right thing. He tried to give his children normalcy, to show them at home not to have TV, not to eat junk food all the time.

Sometimes. But he tried to instill in them social awareness. And we're going to get to that. And he -- remember this whole Neverland -- this is the story -- I love this story where the nanny -- they were in home school and they go to the chuck e. Cheese and the lady's there, and Paris says -- they go, "oh, we have a dog. What do you have, Paris?" "oh, we've got a giraffe, we've got elephants, we've got all this." and the lady turns to grace and says, "boy, she has a great imagination." and they just let it go. Neverland, Michael wanted to make a great place for them, and he did. Let's talk about prince a little. Okay. The way it works on the future years, it's the shorter of the children or the adult. And in Katherine's case, because she's older -- I shouldn't say -- since she was older than Michael, she, obviously, according to statistics, won't live as long. But Paris and prince and blanket, they're going to outlive Michael based on statistics, so it's -- their life expectancy, it's Michael's, which is shorter for how long -- when you assess the damages, you have to assess 29 years in the future, not one year, not two years, not three years. 29 years to come to a fair and just verdict.

And the name prince -- before I was involved in this, I thought prince was some kind of royalty kind of name. It wasn't. It isn't. Ms. Jackson told us that her grandfather, great grandfather, and

great great grandfather who was a slave, they all had the name prince, and Michael wanted to keep that in the family, that name. Of course, he wanted everyone to also be named Michael. But prince was a family name, and nobody probably knew that until they came to this case. But that's how he believed about his mother and his family. And prince was always kind of the man of the family, as Kai talked about; and now, at 16, he's kind of the man there. Katherine is there, but he's the one looking out for his little sister and his brother. Remember Michael and prince talked about -- prince talked about how when he watched movies with his dad -- I never heard of this -- the first thing they did was watch the movie with no sound. They'd see the shots and how it was set up. I've never done that, but I've had to turn the sound down on games when my wife tells me that, but -- what a creativity -- juices flowing between the son and the father to watch a whole movie with no sound. Which I love the story from Karen -- I think it was Debbie Rowe -- that they were watching "to kill a mockingbird," and some word came up I can't remember, they didn't really understand what it was. And Michael said, "oh, watch it on the phone." never heard of that, either. But they're watching the movie on the phone talking back and forth. And then Debbie says -- what is that -- what was that word?

**Ms. Chang.** Chifforobe.

**Mr. Panish.** Still don't know it. Michael says, "I don't know. Let's call up Gregory Peck." so Michael calls up Gregory Peck, the star of the movie, who explains it to them. And that's just the kind of person he was, the kind of relationships that he had, and the creativity and the juices that he loved. Now, you know, when you lose someone, you -- every time historical or monumental events occur, it kind of brings back the memory, like the first day of school, like graduation, like weddings, like birthdays, like trips, like the first girlfriend, like the first child. You want to share that with your father.

Remember, Michael was the father and the mother for these children, and he's not there to share this, like prince being in the national honor society or being in the robotics team. To him, that's a big deal. Some of us may never be on the robotics team, including me; but each his own, and that's something prince liked, and he would like to share that with his father, and his father is not there to share that with him. And this is T.J. Talking about "prince was always like his uncle's little assistant. He would prepare him. I think my uncle knew eventually prince would have to be very sharp and strong. He talked about the business deals. He was mature beyond his age." and I think you saw that when he came and was cross-examined by the skilled lawyer, Mr. Putnam, he answered every question. 16 years old, in a courtroom setting, never been there before, by a skilled lawyer like Mr. Putnam, he answered every question.

That ought tell you something. And you know what they always say, you know about the parents when you meet the children. Okay? Now, blanket wasn't here because of his age, and we didn't want to put him through that; and Paris for the reasons we discussed. But prince kind of showed you what kind of parent Michael was. When you see the poise of that gentleman, and the maturity and the kindness and the politeness, that kind of shows you what kind of parent he had and what kind of relationship they had. Prince talked about how he can't sleep at night, and he's emotionally distant from a lot of people. Now, prince still goes to school, he still does everything he can. He's not at home feeling sorry for himself because his dad wouldn't want him to be like that. Now, what's a fair sum for prince? I'm going to go through all of them because I think you should award the same amount in past and future for each kid. I don't think just because one -- it should be any different. I think it should be the same, I think that's fair. I don't think that it would be right, even though Paris may have been through more -- I don't think that's the right thing to do. I don't think you'd be sending the right message to them that one loved their father more or one had a greater loss. So I think the award should be the same for all three, and I'm going to go through this -- the rest of the losses. Paris, she's got 29.1. It doesn't really matter, because I think she should have the same award. Okay.

This is -- Debbie said that -- Debbie Rowe, that Michael would be whipped, he's going to find Paris around his finger, and he thought he was going to rule the world with his son, but it's going to happen unless Paris says so. I love this story. So Kai chase is there late, and Paris has to do a project for snails. Okay? And probably all of us have had to do science projects when we have children. They're not like loving this, to do this. So Kai is out there helping, they're out in the back yard with flashlights, they're looking around for snails. She talks about she finds one snail, so they had a daddy snail, they needed a mommy and a baby. And they're out there, and all of a sudden, they see Michael -- Michael there, and he says something. And Kai is a little nervous, probably. And Michael says, "What are you doing? Let's see what you have there." and he made a home for them in the kitchen, and he made it like a regular family setting. Michael Jackson having snails for a science project in his kitchen, just like all of us. No different. Even though he's the king of pop or a great entertainer, he gave his children that great love and that great comfort to know that they're just like other kids.

Now, of course, they did have Cirque Du Soleil in the back yard for a birthday party, so maybe a little different from every child; but he tried to make it as best that he could. Talked about they don't celebrate birthdays because of that great celebration they had with their father. Now, Paris -- remember Alif Sankey talked about Paris came -- Paris always had candy, which Michael wasn't fond of, and little pictures of her father that she would show, and she would start sharing the pictures and showing their relationship. And we talked about how challenging it's been for Paris. And prince told us how hard it's been for Paris. But Paris was screaming when her father was being taken downstairs by the paramedics at Carolwood, "daddy, daddy, daddy," she was

being pulled down the stairs by her ankles screaming, "daddy, daddy." it was emotional and sad for the girl to go through such an experience of seeing her father like that. And she wrote -- we have a few of the things she wrote.

Remember they had to run around, Ms. Jackson told us, and she wanted a heart that was broken that said "daughter" and "dad" and they went to all these stores trying to find one because she cared so much. And she finally found one, and they went back to the morgue, and she put it in -- it's not really a casket, but how they carry the body. And she put it in there with her dad, and she still wears the other half around her neck. And Katherine talked about how Paris didn't want her father to go and was having difficulty. We talked about that. Let's talk about blanket. Okay. We talked about "blanket" meaning "blessing."

I always thought it was blanket because he always had a blanket. But no. Michael said he was a blessing; so when he was born, they called him a blessing and called him -- "this is the words of blanket. What's your favorite letters, daddy? Mine is g for god and d for daddy." he's still growing up and doing the best he can. There he is. And love that long hair. And remember this is TJ. Talking about how blanket was always wrapped around his father's leg, right behind his leg. Shy, but always there with him, and his uncle was everything to him. And Michael liked his hair long, and he never wants to cut his hair. And he loves to wear this Michael Jackson "immortal" shirt almost every single day. And that was the kind of relationship -- here they are at the memorial service for Michael, and how they are.

**(A video recording was played.)**

**Mr. Panish.** This is a song Michael wrote about his -- for his children. And he bought them a puppy, just like everybody else.

**(the video recording continued to play.)**

**Mr. Panish.** Now, I think you should award some -- staying with 35 million for the past, 50 million for the future for each kid. And that's a lot of money, no question about it. But that's what -- if you think it's too much, give less. If you think it's not enough, give more. It's up to you, but I'm telling you what I believe in cases like this, this is what you should award. Now, I have a lot more slides, but it's getting towards the end of the day, and I -- I've never in all the trials that I've been in, a few trials, I can tell you that, seen jurors that have been more attentive through some boring lawyer antics and lawyer disagreements and sidebars and -- you guys have really been

incredible. And I don't want to go on and on, so I will say this. There's a couple of other questions.

One is was Michael at fault. You know, I told you in the beginning of the case that, you know, it's about shared responsibility, and that Michael has, probably, some fault, but I leave that up to you. And when you assess that, think about how he was in the beginning versus how he was on the day he died and what was his ability to decide. And when you get the verdict form, you have to divide up the percent, and if you think Michael should have some piece of that pie, that's up to you to do that, and you make that decision. But you have to make that decision. And I'm not going to deny that Michael had used prescription drugs, that people had told him that it's risky to use Propofol. I'm not denying that, and will never deny that. And we know that, and that's what the people said, and there's no reason to deny it.

But he never had a problem, ever, until Conrad Murray was working, until Conrad Murray had negotiated a contract with AEG live. So what's going to happen now is I'm going to finish early, before 4:00 o'clock. And I have a lot more time, but you've been so attentive, I want to finish. Tomorrow, Mr. Putnam will be like me today and speak for the day. And I invite you please listen as you have. I don't need to tell you that, I know you will. And when Mr. Putnam finishes tomorrow, then on Thursday, not nearly as long, but I will come back and respond to some of what Mr. Putnam says. Not everything. So there's still other things that I can say later, but I think I've really told you in a nutshell five months, whatever it is, of testimony, and 60 some witnesses, and 800 plus exhibits -- I tried to boil it down as best I can.

I'm sure there's a lot of things that I didn't bring up. But I know that you were all paying attention and you were attentive, so I want to close with this. I pray that your verdict will be sanctioned by your conscience and ratified by your sense of reason and right and wrong in reasoning, and borne of your desire to see that no injustice is done. And I know you will do the right thing, and I appreciate all your time and effort today, and I invite you to -- I'm getting tired -- invite you to please listen to Mr. Putnam, as I know you will, and I'll be back to see you on Thursday for the final word. We're getting to the fourth quarter now. I think we're, you know, starting in the fourth quarter, and then we'll be into the final two minutes on Thursday. The judge will read just a couple more instructions, and then you will have a chance to reason together. So thank you very much.

**The court.** Okay. Thank you. We're going to adjourn for today, but I want the jurors to return tomorrow in department 28 at 9:45 tomorrow. 9:45 in the morning. Everybody else can return here. Okay? All right. Thank you. Have a good evening everybody.

**(the following proceedings were held in open court, outside the presence of the jurors:)**

**The court.** Okay. Mr. Putnam, you wanted to direct the court? Oh, Ms. Bina.

**Ms. Bina.** I'll keep it brief, your honor. I objected once during closing. I just wanted to put a little more on that.

**Mr. Panish.** I can't hear you.

**Ms. Bina.** I'll try to speak up. My voice is quiet. The issue, your honor, obviously, grief and suffering, mental anguish is not recoverable in California, and it's not proper to argue that a plaintiffs' emotional pain -- and, obviously, a person who suffers a loss suffers great emotional pain; but it's not proper to argue that to the jury in closing argument under the case of *Hiser v. Bell*, 111 cal.app.4th 640, and *Nelson -- Nelson v. County of L.A.* 113 cal.app.4th 73. I just wanted to note that for the record because after I made my initial objection, Mr. Panish referred to -- another three or four times to Ms. Jackson's issues and her suicide attempt, and even put up a slide on it. And, you know, that's just -- it's not part of what the jury is supposed to be considering in this case, your honor, and I wanted to put that on the record.

**The court.** Mr. Panish, do you have any response?

**Mr. Boyle.** Your honor, I'll respond. I think Mr. Panish was very clear in his closing argument and to the jury that they should not give any money for grief and sorrow. In fact, he said that repeatedly, and I think he was discussing things in the context of the overall loss and was expressly not asking for any sympathy or any money for grief and sorrow

**Ms. Chang.** Your honor, I thought --

**The court.** That's what I thought I heard, as well.

**Ms. Chang.** I wanted to say for the record that those same cases she cited also state that even though they're not to award for the grief and sorrow, that sometimes the evidence of such grief

and sorrow reflects the closeness of the relationship, and that's the only reason for it. Not to be awarded for it, but it reflects the closeness of the love and –

**The court.** Yes. I think Debbie Rowe testified about that; and I think what Mr. Panish said, he referenced it, and then said, "but we are not asking that you give any sympathy -- or award anything for sympathy," so I think he was pretty clear about making sure the jury understands that.

**Ms. Bina.** I understand that, your honor.

**The court.** That's why it was overruled.

**Ms. Bina.** Then it was another three times, so I just wanted to make our position clear.

**The court.** Thank you. Anything else?

**Ms. Chang.** Thank you, your honor.

**(proceedings adjourned to Wednesday, September 25, 2013, at 9:45 a.m.)**