

THE MILLION DOLLAR SOFT TISSUE CLOSING ARGUMENT

I have a case - a big case. One of the largest and most important cases that a lawyer can have--You have listened to the defendant: "The accident was small - no real damage. And the plaintiff walked away, she didn't even go to the doctor, nobody could see the damage - not the first time she went to the doctor, not the second time. You couldn't see it, therefore there is no damage, If you can't see it - it's not there."

Therefore I must be a fool - the largest fool there is. And the plaintiff must be - what do you call her'? A "malingerer", a fake, a phony, a fraud,

So Mary - how does it feel to be a fake- a fraud... a malingerer?

In the largest case that a good lawyer who cares about truth and justice can have.

I was in a little town recently, Providence, Rhode Island. Home of the insurance industry, just like Detroit is the center of automobile manufacturing, There were big buildings of glass and steel, made by inspired architects, vast, huge buildings - huge symbols of power and wealth,

I was in awe of the buildings - my heart was beating in awe of all of the glass and steel and concrete. I started thinking - "Which is the bigger case?" A damaged building, a building that has no feeling no pain, no emotions, no family, It rises in its magnificent glory.

Or this case, this fraud, this farce called "Mary" who was hurt, but there was no damage,

But let's think about this building. There was this construction project down the road many large trucks loaded with many kinds of construction material. But one day this truck, this 40 ton truck loaded with material, is parked on the side of the road. But the driver forgets to set the brakes, and this 40 ton truck starts to roll backward down the street. And it rolls and rolls straight for the magnificent building of steel and glass and concrete. And it strikes the building. A big, noisy impact. Everyone comes running, everyone comes to inspect - to see this I building and this truck. "Not much damage," they say - the owners of the truck. The owners of the building came to see the damage - couldn't see any. The attorney for the trucking company - he looked - he couldn't see any damage - therefore there wasn't much of anything wrong he concluded,

But the people inside the building had a very different viewpoint.

The next day - things started going wrong. The fire alarm came on. The air conditioning kept going on and then off, and the lights wouldn't come on. And the people inside couldn't work, couldn't do anything to stop the problems - the stuff that controlled the lights and the alarm and the air conditioning and the electricity were installed inside the walls of concrete -built inside where no one could see what was wrong.

No one could see it - no one could see where the problem was,

Things would go off and on. So many different things would go wrong - so many that the people inside left the building. They left the building - an empty building where no one could see the damage- The trucking company came back out to the building, Their insurance company came out and inspected the building. They couldn't see anything wrong.

But the building owners said "The people have left the building,"

And the trucking company and the insurance company said "It's still a good building."

But the building owners said that there was so much wrong with the building that its useless to us - "We'll have to tear it down and do it all over again." The building owner's insurance company said that it would cost \$200 million to rebuild it from scratch - that's what we want.

How about \$100 million?" the trucking company and the insurance company replied.

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"You can't bargain with us and build a \$200 million building for \$100 million. It's just not possible. We want \$200 million."

"Will you take \$150 million instead?"

"No. After all of the construction is finished, we will have lost \$200 million no matter how you look at it. It's a simple matter of business Computations of justice - of simple right and wrong. We must have \$200 million. You destroyed our building. We do not have to compromise even a single dollar

And the trucking insurance company asked "Will you take \$199,999,999.99 to settle this case?"

"NO! We're not compromising one penny! We want it all back. In addition, we had to rent another building while this one was being constructed., and we had moving expenses from the old building to the rented one -and then back into the new building.. We want those costs, back, too,"

Seems justified, don't you think so? I mean - it wasn't THEIR fault, the building owners.

Mary (plaintiff), Forgive me if I see you as a woman whose life is, worth money. That's the only justice that this court can give. It can't give you your body back. I think your life is worth all the money in the world. I think that I could ask for \$ 10 million. I can't think of any person, including the judge, members of the jury, (the other attorney), who is worth anything less than \$10 million.

If I do, I can imagine them (defense) laughing, "This is a small case. Minor, it only causes your building to go off and on, the lights and alarm to scream." It's just inside your walls.

But you say to me "Those, people you spoke about -they could leave the building, I cannot leave - even for \$10 million. I cannot escape the torture the rest of my life, I cannot escape the pain And the worst of all, they called me - in front of my husband, my children, my friends,

the court - they called me a fake, a fraud. A 'malingerer'- Can't you make them take it back and erase those words? You're strong - powerful. Can't you make them take those dirty words off me? Off my name? But I say "Mary, I have no power. I am powerless. But the jury has all the power and they can take those dirty words and give you the only justice that the law permits."

How does it feel to not be able to escape from a building, a body you cannot leave? Give her the money. Give her justice, Give her \$10 million.

How many believe that the jury would consider giving \$10 million? How many believe that the jury would consider \$1 million in compromise?

Delivered by Gerry Spence, Mini-TLC Seminar Mohican (Ohio) State Park, October 20, 1998.