

Proceedings

1 send them all out to lunch because we don't give lunch
2 anymore.

3 COURT OFFICER: Jury entering.

4 (Whereupon, the jury enters the courtroom.)

5 THE COURT: I know previously I kept you a little
6 more than an hour only because I don't like to break
7 between the sides. I know I kept you longer than I usually
8 would, not to have one speak and leave a gap, so we try to
9 do it that way.

10 Like I addressed you in the beginning when I told
11 you if it looks like I'm reading, there is a reason. Same
12 applies now. If it looks like I'm reading there is a
13 reason, because it's important that you are charged on the
14 law on this case and I don't want to miss anything, so I
15 developed myself a script here and I'm going to do my best
16 to make some eye contact, but I'm also reading. If you
17 don't hear me, I understand. I told the witnesses about
18 the room. The same goes when I speak. If you have trouble
19 hearing me, let me know. It's important that you hear
20 everything.

21 Members of the jury, you come now to that portion
22 of the trial where you are instructed on the law applicable
23 to the case and afterwards you will retire for your final
24 deliberations. You have now heard all of the evidence
25 introduced by the parties and through the arguments of the

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1 attorneys you have heard their conclusions each party
2 believes should be drawn from the evidence presented to
3 you.

4 You may remember at the beginning of trial, I
5 stated to you certain principals so you can have them in
6 mind as the trial progressed. Briefly, they were you are
7 bound to accept the law as I give it you, whether or not
8 you agree with it, you are not to ask anyone else about the
9 law. You are not to consider or accept any advice about
10 the law from anyone else except me.

11 Furthermore, you are not to conclude from my
12 ruling or anything I might have said throughout the trial,
13 that I favor any party in the lawsuit. Furthermore, you
14 may not draw any inference from an unanswered question, nor
15 consider testimony which has been stricken from the record
16 in reaching your decision.

17 Finally, in deciding how much weight you choose
18 to give to the testimony of any particular witness, there
19 is no magical formula which can be used. The test used in
20 your everyday affairs to decide the reliability or
21 unreliability of statements made to you by others are the
22 tests you will apply in your deliberations. The items to
23 be taken into consideration in determining the weights you
24 will give to the testimony of a witness include; the
25 interest, or lack of interest of the a witness in the

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1 outcome of the case, the bias or prejudice of the witness,
2 if there is any, the age, the appearance, the manner of the
3 witnesses who testified, the opportunity that the witness
4 had to observe the facts about what they testified to, the
5 probability, or improbability of the witness' testimony
6 when considered in the light of all the other testimony in
7 the case are to be considered by you.

8 Now if you find that any witness has willfully
9 testified falsely as to any material fact, that is, to an
10 important matter, the law allows you to disregard
11 completely the entire testimony of that witness. Now based
12 on that principal that one who testifies falsely about one
13 material fact is likely to testify falsely about
14 everything. You are not required, however, to consider
15 such a witness as totally unbelievable. You may accept so
16 much of his, or her testimony as you deem true, and
17 disregard what you feel is false. By the process which I
18 just described to you, you as a group, as the sole judges
19 of the facts, decide which of the witnesses you will
20 believe, what portion of their testimony you will accept,
21 and the weight you will give that testimony.

22 To say a party has the burden of proof on a
23 particular issue means, that considering all of the
24 evidence in this case, the parties claim on that issue must
25 be established by a fair preponderance of the credible

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1 evidence. The credible evidence means the testimony or
2 exhibits that you find worthy of belief. A preponderance
3 means the greater part of the evidence. That does not mean
4 the greater number of witnesses or the greater length of
5 time taken by either side. The phrase preponderance of the
6 evidence refers to the quality of the evidence. Its weight
7 and effect that it has on your minds. In order for a party
8 to prevail on an issue which he, or she has the burden of
9 proof, the evidence that supports their claim on that issue
10 must appeal to you as more nearly representing what
11 happened than the evidence opposed to it. If it does not,
12 or if it weights so evenly that you are unable to say that
13 there is a preponderance on either side you must decide
14 that question against the party who has the burden of proof
15 and in favor of the apposing party.

16 For example, it is like a scale. If no one says
17 anything, the scale will say the same. If you hear
18 credible testimony, the scale goes back and forth. The
19 party who has the burden of proof must tip the scale in
20 their favor sufficient to make a difference. If they don't
21 do that, they haven't satisfied this burden.

22 Now in this case the burden is on the plaintiff
23 to prove that the City Buses and Transit Authority were
24 negligent in the operation and control of the bus. That
25 burden of proof is on the plaintiff. The defendant has

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1 also raised issues that the plaintiff may have been
2 negligent in not acting properly on the bus. On that
3 issue, the defendants have the burden to proving the
4 plaintiff was negligent. Often in those claims either
5 party has different burdens.

6 Now, facts must be proved by evidence. Evidence
7 include testimony of witnesses, includes what a witness
8 saw, heard, or did. Evidence also includes providing
9 photos, or other physical objects which may be considered
10 as proof of a fact. Evidence can be either direct or
11 circumstantial. Facts may be proved either by direct, or
12 circumstantial evidence, or by a combination of both. You
13 may give circumstantial evidence less weight, more weight,
14 or the same weight as direct evidence.

15 Direct evidence is evidence of what a witness
16 saw, heard, or did, which if believed by you proves a fact.
17 For example, let us suppose that a fact, or dispute is
18 whether or not I knocked over my water, the pitcher which
19 is near the court reporter. If someone testifies that he
20 saw me knock over that pitcher, that is direct evidence
21 that I knocked it over. Substantial evidence is evidence
22 of a fact, which does not directly prove a fact in dispute
23 but permits a reasonable inference or conclusion that the
24 fact exists. For example, a witness testified that he saw
25 my water pitcher on my bench. Witness states while looking

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1 the other way, he heard something fall, looked up and saw
2 the court reporter wiping the water from her clothes and
3 from her papers. The testimony is not directed evidence
4 that I knocked over the pitcher, it is substantial evidence
5 from where you can reasonable infer that I knocked it over.
6 Those facts from the basis of an inference must be proved
7 and the inference to be drawn must be one that may be
8 reasonably drawn. In the example that I gave you, even
9 those witness did not see me knock over the pitcher if you
10 heard the testimony, and you conclude that I did,
11 therefore, the substantial evidence, if accepted by you,
12 allow you to conclude that a fact, or dispute has been
13 proved.

14 In reaching your conclusion, you may not guess or
15 speculate. Suppose, for example, the witness guess that
16 the water pitcher was located equally between me and my
17 clerk and then he heard the breaking glass and looked up to
18 see both of us brushing water off our clothes. If you
19 believe that testimony, you still cannot decide on that
20 evidence alone who knocked it over. With those the only
21 proof facts would be only a guess as to who did it. If the
22 witness testifies he heard the clerk say, "Oh, I'm sorry,"
23 this is additional evidence to allow you to decide that the
24 clerk was the one who knocked the pitcher over.

25 In this case you heard from the plaintiff, Betty

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1 Luna. She is the plaintiff in this case. As the plaintiff
2 she is what we call an interested party. An interested
3 party, or witness is not necessarily less believable than a
4 disinterested witness. The fact she is interested in the
5 outcome of this case does not mean that she has not told
6 the truth. It is for you to decide from the demeanor of
7 the witness on the stand and such other tests as your
8 experience dictates whether or not the testimony has been
9 influenced, intentionally, or unintentionally by her
10 interest in the outcome. You may, if you consider it
11 proper under all the circumstances, not believe the
12 testimony of a witness even though it's not otherwise
13 challenged, or contradicted. However, you are not required
14 to reject the testimony of such a witness and may accept
15 all or part of her testimony as you find reliable, and
16 reject the part you find unworthy of acceptance.

17 We also heard from Angela Genussa. Now, the fact
18 that she is still employed by the defendant, Transit
19 Authority, and the testimony you have heard of her
20 relationship with her employer may be considered by you in
21 deciding whether the testimony of Ms. Genussa in any way
22 influenced by the employment relationship with the
23 defendant.

24 I'm sure you recall during the trial that we
25 heard witnesses testify concerning their qualification as

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1 experts in the medical field. Each of them gave their
2 opinion concerning issues this case. You heard from Dr.
3 Hershon, Dr. Kahn, Dr. Westerland. Now, when a case
4 involves a matter of science, or art, or requires special
5 knowledge or skill not ordinarily possessed by the ordinary
6 person, an expert is permitted to state their opinion for
7 the Court and jury. Opinions stated by the expert who
8 testifies before you was based on particular facts as the
9 expert obtained knowledge of them and testified to them
10 before you, or, as the attorneys who questioned the expert
11 asked the expert to assume. Now, you may reject an
12 expert's opinion if you find the facts to be different from
13 those which formed the basis for the opinion. You may also
14 reject the opinion if, after careful consideration of all
15 the evidence in case, expert or otherwise, you disagree
16 with the opinion. In other words, you are not required to
17 except an expert's opinion to the exclusion of the facts
18 and circumstances disclosed by other testimony. Such an
19 opinion is subject to the same rules concerning reliability
20 as the testimony of any other witness. It is given to
21 assist you in reaching a proper conclusion. It is entitled
22 to such weight as you find the expert's qualifications in
23 the field warrant and must be considered by you, but is not
24 controlling upon your judgment.

25 We have heard the negligence discussed.

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1 Negligence is the lack of ordinary care. It is the failure
2 to use that degree of care that a reasonably prudent person
3 would have used under the same circumstances. Negligence
4 may arise from doing an act that a reasonably prudent
5 person, or company would not have done under the same
6 circumstances, or, on the other hand, from failing to do an
7 act that a reasonably prudent person, or company, would
8 have done under the same circumstances.

9 An employer is responsible for the act of its
10 employee if the act is in furtherance of the employer's
11 business and within the scope of the employer's authority.
12 An act within the employers authority, if it is performed
13 while the employee is engaged generally in the performance
14 of her assigned duties, or if the act is reasonably
15 necessary or incidental to the employment. The employer
16 need not authorize a specific act in question, but the
17 employee need to be acting under that authority.

18 Now if you find that the defendant was negligent,
19 and that the defendant's negligence contributed to causing
20 injury to the plaintiff, you must next consider whether the
21 plaintiff was also negligent and whether her conduct
22 contributed to causing her injury. Like I said before, the
23 burden -- excuse me. The burden is on the defendant to
24 prove that the plaintiff was negligent and that her
25 negligence contributed to causing the accident and injury.

Judges Charge

1 If you find that the plaintiff was not negligent, or if
2 they were negligent, then that negligence did not
3 contribute to causing her injuries, you must find that the
4 plaintiff is not at fault and you must then -- you must go
5 on to consider the rest of the verdict sheet, which I will
6 show you in a few minutes.

7 Weighing all the facts and circumstances, if you
8 find that both are at fault, and both parties negligence
9 contributed to causing the injury, you then must determine
10 the apportionment of fault assigned to each party and
11 determine which percentage of fault is chargeable to each.
12 In your verdict sheet there is a question that allow for
13 that. You state the percentage you find each party is
14 responsible for and the total of those percentages must
15 equal a hundred percent. For example, if you find that
16 defendant and plaintiff were equally at fault, you write
17 each of them 50 percent responsible. If you find one party
18 more at fault, you assign a higher percent to that party
19 and lower percentage to the other party, but the total must
20 always equal one hundred percent.

21 A bus company owes it's passengers to use
22 reasonable care in operating it's bus for the passengers
23 safety. Reasonable care means that degree of care which a
24 reasonably prudent bus company would use under the same
25 circumstances, keeping danger and risk known of the bus

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1 company, or which it should have reasonably foreseen. A
2 bus carrier owes a duty to use reasonable care for the
3 safety of its passengers, however, before starting, slowing
4 or stopping -- excuse me, however because starting, slowing
5 or stopping may not always be done smoothly, and
6 occasionally there may be some jolting, a carrier is not
7 responsible for injuries to a passenger when that happens.
8 A passenger must also use reasonable care for her own
9 protection, but in the absence of an emergency, the bus
10 carrier must avoid sudden, unusual and violent jerks,
11 lurches or stops. Now, if you find that the movement and
12 stop of the bus was unnecessarily sudden, unusual or
13 violent, or if necessary, it resulted from an emergency
14 created, or contributed by the carrier's own conduct, then
15 you will find that the bus company was negligent.

16 If however you find that the stop movement was
17 not sudden, unusual or violent, or that such a stop
18 movement was made necessary because of an emergency and
19 such an emergency was not created by or contributed to by
20 the bus company, your finding must be that the carrier was
21 not negligent.

22 Now, the question of whether the bus was wet, or
23 contained puddles, or moisture on the bus is not to be
24 considered by you in determining whether the defendant was
25 negligent in the operation and control of the bus. An act

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1 or omission is regarded as a cause of an injury if it was a
2 substantial factor in bringing about the injury, that is,
3 if it had such an effect to producing the injury that
4 reasonable people regard it as a cause of the injury.

5 Now there may be more than one cause of injury,
6 but to be substantial it cannot be slight, or trivial. You
7 may however consider it causal even if you assign
8 relatively substantial to it.

9 You have to answer certain questions regarding
10 what we call serious injury. The first one you're going to
11 have to decide is whether or not Ms. Luna sustained a
12 permanent consequential limited use of a body organ or
13 member as a result of this incident. A limited use of a
14 body organ or member means the body organ or member does
15 not operated at all, or operates in some limited way. It
16 is not necessary for you to find there has been a total
17 loss of the use of the body organ or member. The
18 limitation of use must be consequential, that means
19 significant of importance or of consequence. A minor, mild
20 or slight limitation of use is not significant or of
21 importance or consequence.

22 If you find Ms. Luna sustained a limitation, you
23 must answer yes. If you don't, answer no. You must
24 answer, if Ms. Luna sustained a limitation of use of a body
25 function as a result of the event of October 25, 2008, of

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1 body function or system which means the function or system
2 does not operate at all or operates only in some limited
3 way. It is not necessary for you to find there has been a
4 total loss of a body function or system, or limitation of
5 use is permanent. However, the limitation of use must be
6 significant meaning important, or meaning if you find
7 limitation of use is not significant, if you find that as a
8 result of this incident she did sustain that, you answer
9 yes. If you find she did not, you will answer that no.

10 You must answer the question, did Ms. Luna
11 sustain a medically determined injury of a non-permanent
12 nature as a result of the incident that prevented her from
13 performing substantially all of the material acts that
14 constituted her usual and customary daily activities for
15 not less than 90 days during the first 180 days immediately
16 following the accident. That's a little -- you have the
17 day of accident, you go back 180 days the accident haven't
18 prevented her from doing her usual customary activities at
19 least 90 of those 180 days, and medically supported by
20 testimony of a doctor.

21 If you find as a result of recent medically
22 determined injury, or impairment of a non-permanent nature
23 that prevented Ms. Luna from performing all of the acts
24 that constituted usual and customary activities for not
25 less than 90 days of the 180 days of the accident, you must

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1 answer that question yes, and reversely, if you find it did
2 not, you must answer that question no.

3 My charge to you on the law of damages must not
4 be taken by you as a suggestion you should find for the
5 plaintiff. It is for you to decide on the evidence
6 presented and the rules of law that I have given to you
7 whether the plaintiff is entitled to recovered from the
8 defendant, or not. If you find the plaintiff is not
9 entitled to recover from the defendant, you will not
10 consider damages. Only if you decide the plaintiff is
11 entitled to recover will you consider the measure of
12 damages.

13 Now if you find that Ms. Luna's entitled to
14 recover from the defendant, you must rendered a verdict in
15 the sum of money that justly and fairly compensate the
16 plaintiff for the loss that resulted from the injury she
17 sustained.

18 Now if you find that the defendant is liable,
19 plaintiff is entitled to recover a sum of money that justly
20 and fairly compensate her for any injury and conscious pain
21 and suffering that she has sustained from the date of the
22 accident until today.

23 Conscious pain and suffering means pain and
24 suffering which there is some level of awareness by
25 Ms. Luna. In determining the amount, if any to be awarded

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1 to plaintiff for pain and suffering, you may take into
2 consideration the effect that plaintiff's injury had on her
3 ability to enjoy life. Loss of enjoyment of life, means
4 loss of ability to perform daily tasks, to participate in
5 activities that were a part of the person's life before the
6 injury and experience the pleasure of life.

7 However, a person suffers the loss of enjoyment
8 of life only if the person is aware at some level of the
9 loss she has suffered.

10 Now if you find Ms. Luna as a result of her
11 injuries of this event suffers loss of the ability to enjoy
12 her life and was aware of that loss, take that loss into
13 consideration in determining the amount to be awarded to
14 plaintiff for pain and suffering to date.

15 If your verdict is in favor of the plaintiff,
16 Ms. Luna will not be required to pay income tax on the
17 award and you must not add or subtract from the award any
18 amount you think an income tax might play on this. It's
19 irrelevant for our purposes.

20 Now, with respect to any of the future injuries
21 or disabilities, the plaintiff is entitled to recover for
22 her future pain and suffering and disability and the loss
23 of her ability to enjoy life from the date of today and
24 into the future. In this regard, you should take into
25 consideration the period of time that the injuries, or

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1 disabilities are expected to continue.

2 Now if you find that the injuries or disabilities
3 are permanent, you should take into consideration the
4 period of time that Ms. Luna could be expected to live.
5 You heard from Mr. Gunzburg, the numbers are accurate and
6 in accordance with the statistical life expectancy tables.
7 Ms. Luna has a life expectancy of 34 and a half years from
8 today. Such statistical average doesn't guarantee Ms. Luna
9 will live that amount of time, less, or more. The life
10 expectancy figures that I have given you is not binding
11 upon you, but may be considered by you with your own
12 experience, and the evidence you have heard concerning the
13 condition of Ms. Luna's health, habits, employment and
14 activities, and that you use to decide what her life
15 expectancy is.

16 Now if you decide for Ms. Luna on the question of
17 liability, she will be entitled to recover an amount of
18 reasonable expenditures for medical services, medicines,
19 including doctor charges, nurse charges, hospital expenses,
20 diagnostic tests, costs of those and experts and alike,
21 thus you include in your verdict from the evidence what you
22 believe to be a fair and reasonable amount of medical
23 expenses incurred as a result of Ms. Luna's injury. If you
24 find Ms. Luna will need medical, hospital, or nursing
25 expenses in the future, you will include that in your

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1 verdict an amount of those anticipated costs that she could
2 be expected to incur in the future and that were
3 necessitated by plaintiff's injury.

4 Now if you find Ms. Luna's award for medical
5 expense to be incurred in the future, you will fix the
6 dollar amount of the entire period you find Ms. Luna will
7 incur such expense and include that amount in your verdict.
8 In your verdict you will indicate separately the amount for
9 medical expenses that she has incurred since the date of
10 the accident until today. If you find she incurred future
11 medical expenses, that's a separate category on the verdict
12 sheet. Do not state the amount per year. Only the total
13 amount for the entire period.

14 Now Ms. Luna is entitled to be reimburse for any
15 earnings she lost as a result of the injury caused by the
16 defendant's negligence from the time of the accident until
17 today. Any award you make for earnings loss to date may
18 not be speculation. Any award must be calculated from the
19 number of days you find she was out of work and by -- as a
20 result of injuries and the amount you find Ms. Luna would
21 have earned had she not been disabled.

22 I am now going to give you a copy of the verdict
23 sheet. There is one for everybody here. You heard mention
24 made of this verdict sheet during both of the closing
25 arguments as well as up to this part of my charge to you.

Judges Charge

1 This case should be decided on the basis of the answers
2 that you give to certain questions that are going to be
3 submitted to you, and when you go to deliberation, there
4 will be one of those collected, there will be one of these
5 you will have to fill out. Each of the questions asks for
6 a yes or no answer, or a number.

7 Now while it's important all the views of all
8 jurors be considered, five of the six of you must agree on
9 the answer before anything is written down. But of course,
10 the same five need not agree on every question, so if the
11 first question you have a five to one vote, whatever way
12 you do, you write down yes, or no, and the amount of the
13 vote. If it is five to one, yes or no, five to one. The
14 person who's on the minority on that question, that doesn't
15 mean they are excluded from all the other questions. They
16 come back and they still participate in the deliberation.

17 My question to you, during your deliberations,
18 you can not answer any questions yes or no until at least
19 five of you agree on that answer. It's also important
20 during deliberation on the verdict sheet you follow the
21 question. The answer to certain questions may not require
22 you to answer other questions, so before you answer yes,
23 please make sure you're suppose to answer the question.
24 For example, if you answer question 1, yes or no, you are
25 directed to go to number 2. So the question, the answer

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1 to -- the answer to question 1 is irrelevant whether you
2 answer, but if you -- if you notice after question 3, there
3 is language there that will decide what question you're
4 answer, whether you go on, or whether you don't.

5 Going on to page 2, you'll see what happens if
6 your answer is yes. What happens if your answer is no. If
7 you get to question 6, and you answer yes, it tells you
8 what to do if you answer no. It tells you what to do, so
9 on and so on. So make sure you read the directions
10 carefully because we don't want to have an issue where
11 questions that shouldn't have been answered are answered.

12 Now, in the course of deliberations, if your
13 recollection of any part of the testimony should fail, or
14 if you have any questions about my instruction to you on
15 the law, you have the right to return to the courtroom for
16 having such testimony read back to you by the court
17 reporter. Throughout the trial, the court reporter have
18 been taken down the testimony. And you've heard sometimes
19 somebody say, "Oh, I think the witness said this, the
20 witness said that." If you are at a disagreement with what
21 the witnesses have said, you're welcome to have it read
22 back to you. What you will do is, you will notify us in
23 writing, Judge, we would like the testimony of so and so
24 read back to you. Once you start deliberations, any
25 communications with the Court has to be in writing, and

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1 understand that when it's submitted to us, everybody sees
2 it. Sometimes I have statements, "Judge, for your eyes
3 only." No, everybody sees everything, so if you want
4 something, please. But like I said, if you have a specific
5 request that you want, you might want to say Judge, we want
6 to hear the testimony of Ms. Luna. That's fine, but it
7 helps us out a lot if you narrow it down because as long it
8 takes -- long it takes read back the testimony is as long
9 as it takes giving the testimony, so we don't want to have
10 to go on and on. If you want everything, you can hear
11 everything, that's up to you. But if you want to be
12 specific, please try and do so. She can look up exactly
13 what we are looking for.

14 Now in deciding this case, you may consider only
15 the exhibits the which have been admitted in evidence and
16 the testimony of the witnesses you have heard in this
17 courtroom, or as there has been read to you through
18 examinations before trial. Like I've said during the
19 trial, under our rules of practice, an Examination Before
20 Trial is taken under oath and is entitle to equal
21 consideration by you, notwithstanding the fact it was taken
22 prior to trial outside the courtroom. Opening statement
23 arguments, remarks and summations are not evidence. Nor is
24 anything I say, or have said during the trial evidence: In
25 reaching your verdict you are not to be affected by

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1 sympathy for any of the parties, what the reactions of the
2 parties or of the public of your verdict may be, whether it
3 will please or displease anyone, be popular or unpopular,
4 or, indeed, any consideration outside this case as it has
5 been presented to you inside the court. You should
6 consider only the evidence, both the testimony and exhibits
7 and find the facts which you believe to be believable
8 evidence and apply the laws as I now give to you. Your
9 decision ultimately will be determined by the conclusion
10 you reach no matter whom your verdict helps or hurts.

11 I have now outlined to you the rules of law to
12 apply to the case and the process which you weigh the
13 evidence to decide the facts. When you retire to the jury
14 room for your deliberations, traditionally, juror number
15 one acts as foreperson. The first order of business when
16 you go to the jury room will be to select a foreperson. We
17 do that so deliberations may proceed in an orderly fashion.
18 That's the foreperson. The foreperson's vote is not
19 entitled to any greater weight than any other juror. Your
20 function to reach a fair decision is an important one.
21 When you are in the jury room, listen to one another and
22 discuss the evidence in the case with one another among
23 yourselves. It is the duty of each of you as jurors to
24 consult with one another and deliberate with a view of
25 reaching an agreement on a verdict, if you can do so

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1 without violating your individual judgment and your
2 conscience. While you should not surrender conscientious
3 convictions of what the truth is and of the weight and
4 effectiveness of evidence, each one of you must decide the
5 case among yourself and not acquiesce in the conclusions of
6 your fellow jurors. You should examine the issues and
7 evidence before you with candor and frankness and with
8 proper respect and regard for the opinions of one another.
9 Remember in your deliberations that the dispute between the
10 parties, for them very important. They, and the Court rely
11 upon you to give them full and conscientious consideration
12 for the issues of the evidence before you. By doing so,
13 you carry out fully your oaths as jurors to truly try the
14 issues of this case and render a true verdict.

15 Counsels, step up for one second.

16 (Whereupon, there is a discussion held off the
17 record at the bench among the Court, defense counsel and
18 plaintiff attorney.)

19 THE COURT: Counsel, any objection to the charge?

20 MR. REYNOSO: No, Your Honor.

21 MR. GUNZBURG: No, your Honor.

22 THE COURT: Okay. Ladies and gentlemen of the
23 jury, due to the time of the day, we are going to break for
24 lunch. You are not to discuss the case among yourselves.
25 You are not to deliberate. We are going to do like we do