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Summation - Plaintiff

1 what we know is a slippery slope. We know that they have
2 triggered this through the defendant's negligent, through
3 the defendant's fault, they've triggered an ongoing problem
4 which is getting worse. Dr. Delman put it well, I thought,
5 when he said that Ronald has bad days and worse days with
6 regard to his lower back.

7 And so I suggest to you that if you make an award to
8 him in the future for the next 20 years for what has
9 occurred to him and what will continue to occur to him over
10 the 20 years, taking into account all the different amounts
11 of money defense spent in this case so far for his case,
12 \$1 million for his 20 years. We're talking about in light
13 of what has happened to him and what we know will happen to
14 him going forward.

15 Again, on behalf of the Weathers family and myself,
16 thank you very much for your time and your attention
17 throughout the course of this trial.

18 THE COURT: Thank you, counsel.

19 Ladies and gentlemen, we'll take a break for at least
20 five minutes to use the facilities and then I'll give you
21 the charge on the law. Thank you.

22 (Whereupon jury exits and a recess was taken)

23 (Whereupon jury enters)

24 THE COURT: Members of the jury, we now come to that
25 portion of the trial where you're instructed on the law

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1 applicable to this case and after which you will retire for
2 your final deliberations.

3 You have now heard all of the evidence introduced by
4 the parties including the argument of the attorneys and you
5 learned the conclusions each party believes should be drawn
6 from the evidence presented to you.

7 In this case you will decide only the question of
8 damages. That is, what amount of money, if any, will
9 fairly and justly compensate the plaintiff for all losses
10 resulting from the injuries he sustained. Since the
11 question of liability has already been decided and the
12 evidence concerning how the accident happened was received,
13 only on the question of damages.

14 The burden of proof rests on the plaintiff. That
15 means that it must be established by a fair preponderance
16 of the credible evidence that the claim the plaintiff makes
17 is true. The credible evidence means the testimony or
18 exhibits that you find to be worthy to be believed. A
19 preponderance of the evidence means the greater part of
20 such evidence. That does not mean the greater number of
21 witnesses or the greater length of time taken by either
22 side. The phrase refers to the quality of the evidence.
23 That is, its convincing quality, the weight and effect that
24 it has on your minds.

25 The law requires that in order for the plaintiff to

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1 prevail on a claim, the evidence which supports their claim
2 must appeal to you as more nearly representing what took
3 place than the evidence opposed to his claim. If it does
4 not, or if it weighs so evenly that you're unable to say
5 there's preponderance on either side, then you must decide
6 the question in favor of the defendant.

7 Only if the evidence in favor of the plaintiff's claim
8 outweighs the evidence opposed to it that you can find in
9 favor of the plaintiff.

10 In the course of the trial it's been necessary for me
11 to rule on the admission of evidence and on motions made
12 with respect to the applicable law. You must not conclude
13 from any such ruling I made or any questions I have asked
14 or anything I have said during the course of this trial or
15 from these instructions or in the manner in which they are
16 given that I favor any party to this lawsuit.

17 It's your recollection of the evidence and your
18 decision on the issues of fact which will decide this case.

19 In deciding this case you may consider only the
20 exhibits which were admitted in evidence and the testimony
21 of the witnesses as you heard them in this courtroom or as
22 has been read to you testimony given on examination before
23 trial. Under our rules of practice, an examination before
24 trial taken under oath is entitled to equal consideration
25 by you not withstanding the fact that it was taken before

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1 the trial and outside of this courtroom.

2 However, arguments, remarks and summations of the
3 attorneys are not evidence.

4 Although as jurors you are encouraged to use all of
5 your life experiences in analyzing the testimony in
6 reaching a fair verdict, you may not communicate any
7 personal or professional expertise you might have or other
8 facts not in evidence to the other jurors during your
9 deliberations. You must base your discussions and
10 decisions solely on the evidence presented to you during
11 the trial and that evidence alone. You may not consider or
12 speculate on matters not in evidence or matters outside of
13 this case.

14 As you recall at the beginning of the trial I stated
15 to you certain principles so that you can have them in mind
16 as the trial progressed. Briefly they were that you are
17 bound to accept the law as I give it to you, whether or not
18 you agree with it. You are not to ask anyone else about
19 the law. You should not consider or accept any advice
20 about the law from anyone else but me. Furthermore, you
21 must not conclude from my rulings or from anything I have
22 said during the trial that I favor any party to this
23 lawsuit. Furthermore, you may not draw any inference from
24 an unanswered question or consider testimony which has been
25 stricken from the record in reaching your decision.

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1 Finally, in deciding how much weight you chose to give
2 to the testimony of any particular witness, there's no
3 magical formula which can be used. The tests used in your
4 everyday affairs to decide the reliability or unreliability
5 of statements made to you by others are the tests you will
6 apply to your deliberations. The items to be taken into
7 consideration in determining the weight you will give to
8 the testimony of a witness include the interest or lack of
9 interest of the witness in the outcome of case; the bias or
10 prejudice of the witness, if there be any; the age,
11 appearance, the manner of the witness as the witness
12 testified; the opportunity that the witness had to observe
13 the facts about which he or she testified; the probability
14 or improbability of the witness' testimony when considered
15 in light of all the other evidence in the case.

16 If you find that any witness has willfully testified
17 falsely as to any material fact, that is, as to an
18 important matter, the law permits you to disregard
19 completely the entire testimony of that witness upon the
20 principle that one who testifies falsely about one material
21 fact is likely to testify falsely about everything. You
22 are not required, however, to consider such a witness as
23 totally believable. You may accept so much of their
24 testimony as you deem true and disregard what you feel is
25 false.

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1 By the process which I've just described to you, you
2 as the sole judges of the facts decide which of the
3 witnesses you will believe, what portion of their testimony
4 you accept, and what weight you will give to it.

5 The plaintiff testified before you. As a party to
6 this action, he is an interested witness. An interested
7 witness is not necessarily less believable than a
8 disinterested witness. The fact that he is interested in
9 the outcome of the case does not mean that he has not told
10 the truth. If you decide from the demeanor of the witness
11 on the stand and such other tests as your experience
12 dictates whether or not the testimony has been influenced
13 intentionally or unintentionally by their mere interest,
14 you may consider it proper, under all the circumstances,
15 not to believe the testimony of such a witness even though
16 it is not otherwise challenged or contradicted.

17 However, you are not required to reject the testimony
18 of such witness, you may accept all or such part of their
19 testimony as find reliable and reject such part as you find
20 unworthy of acceptance.

21 You will recall that the witnesses, Dr. Andrew Davy,
22 an expert in pain management, Dr. David Delman, an
23 emergency medicine physician, Dr. Audrey Eisenstadt, a
24 radiologist, and Dr. Elizabeth Ortof, a neurologist
25 testified about their qualifications as experts in their

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1 respective professions and gave their opinions concerning
2 issues in this case.

3 When a case involves a matter of science or art or
4 requires a special knowledge or skill not ordinarily
5 possessed by the average person, an expert is permitted to
6 state their opinion for information of the Court and the
7 jury.

8 The opinions stated by each of the experts who
9 testified before you were based on particular facts as the
10 expert obtained knowledge of them and testified to them
11 before you, or as the attorney who questioned the questions
12 asked the experts to assume.

13 You may reject an expert's opinion if you find the
14 facts to be different than those which form the basis of
15 the opinion. You may also reject an opinion if after
16 careful consideration of all the evidence in the case,
17 expert or otherwise, you disagree with the opinion. In
18 other words, you are not required to accept an expert's
19 opinion to the exclusion of facts and circumstances
20 disclosed by other testimony. Such an opinion is subject
21 to the same rules concerning reliability as the testimony
22 of any other witness. It is given to assist you in
23 reaching a proper conclusion. It is entitled to such
24 weight as you find the expert's qualification in the field
25 warrant and must be considered by you, but is not

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1 controlling upon your judgment.

2 In reaching your verdict, you're not to be affected by
3 sympathy for any of the parties, what the reaction of the
4 parties or of the public to your verdict may be, whether it
5 please or displease anyone, be popular or unpopular, or
6 indeed, any consideration outside this case as it has been
7 presented to you in this courtroom.

8 You should consider only the evidence, both the
9 testimony and the exhibits, find the facts from what you to
10 consider to be the believable evidence and apply the laws
11 as I give them to you. Your verdict will be determined by
12 the conclusion you reach no matter whom the verdict helps
13 or hurts.

14 In order to recover, the plaintiff must establish that
15 he has suffered a serious injury resulting from the
16 accident. You must answer the following questions in order
17 to determine if the plaintiff has suffered a serious injury
18 as defined by our laws. You must answer the following
19 question: Did the plaintiff sustain a permanent and
20 consequential use of a body organ or member as a result of
21 the accident on June 23, 2008.

22 A limitation of a use of a body organ or member means
23 that the body organ or member does not operate at all or
24 operates in some limited way. It is not necessary for you
25 to find that there has been a total loss of use of the body

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1 organ or member. The limitation of use must be
2 consequential, which means it's significant, important or
3 of consequence. A minor, mild or slight limitation of use
4 is not significant, important or of consequence.

5 If you find that the plaintiff sustained a permanent
6 limitation of use as a result of the accident on June 23,
7 2008, and that the limitation is consequential as I've
8 defined it, you must answer the question yes.

9 If you find that there is no permanent limitation as a
10 result of the accident on June 23, 2008, or that the
11 limitation is not consequential, you must answer the
12 question no.

13 You must also answer the following question, did the
14 plaintiff sustain a significant limitation of use of a body
15 function or system as a result of the accident. A
16 limitation of use of a body function or system means that
17 the function or system does not operate at all or operates
18 only in some limited way.

19 It is not necessary for you to find that there's been
20 a total loss of a body function or system or that the
21 limitation of use is permanent. However, the limitation of
22 use must be significant, meaning that the loss is important
23 or meaningful. A minor, mild or slight limitation of use
24 is not significant.

25 If you find that the plaintiff sustained a limitation

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1 of use as a result of the accident on June 23, 2008 and the
2 limitation is significant, you must answer the question
3 yes. If you find the plaintiff did not sustain a
4 limitation of use as a result of the accident on June 23,
5 2008 or that the limitation is not significant, you must
6 answer the question no.

7 My charge to you on the law of damages must not be
8 taken by you as a suggestion that you should find for the
9 plaintiff. It is for you to decide on the evidence
10 presented and the rules of law that I've given to you
11 whether the plaintiff is entitled to recover from the
12 defendant.

13 If you find that the plaintiff is entitled to recover
14 from the defendant, you must render a verdict in a sum of
15 money that will justly and fairly compensate the plaintiff
16 for all losses resulting from the injuries he sustained.

17 The plaintiff is entitled to recover a sum of money
18 which will fairly and justly compensate him for any injury
19 and conscious pain and suffering to date caused by the
20 defendant. Conscious pain and suffering means pain and
21 suffering which there was some level of awareness by the
22 plaintiff.

23 In determining the amount, if any, to be awarded to
24 the plaintiff for pain and suffering, you may take into
25 consideration the effect of the plaintiff's injuries had on

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1 the plaintiff's ability to enjoy life. Loss of enjoyment
2 of life involves a loss of ability to perform daily tasks,
3 participate in activities which were part of the person's
4 life before the injury and to experience the pleasures of
5 life. However, a person suffers loss of enjoyment of life
6 only if that person is aware at some level of the loss he
7 has suffered.

8 If you find that the plaintiff, as a result of his
9 injuries, suffered some loss of the ability to enjoy life
10 and the plaintiff was aware at some level of the loss, you
11 may take that loss into consideration in determining the
12 amount to be awarded to the plaintiff for pain and
13 suffering to date.

14 With respect to any of the plaintiff's injuries or
15 disabilities, the plaintiff is entitled recover for future
16 pain and suffering and disability and the loss of his
17 ability to enjoy life. In this regard you should take into
18 consideration the period of time that the injuries or
19 disabilities are expected to continue. If you find that
20 the injuries or disabilities are permanent, you should take
21 into consideration the period time that the plaintiff can
22 be expected to live. In accordance with statistical life
23 expectancy tables, the plaintiff has a life expectancy of
24 20.2 years. Such a table, however, provides nothing more
25 than a statistical average. It neither guarantees that the

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1 plaintiff will live an additional 20.2 years or that he
2 will not live for a longer period. The life expectancy
3 figure I have given is not binding upon you, but may be
4 considered by you together with your own experience and the
5 evidence you have heard concerning the condition of the
6 plaintiff's health, habits, employment and activities in
7 deciding what the plaintiff's present life expectancy is.

8 If you find that the plaintiff will need medical,
9 hospital or nursing expenses in the future, you will
10 include in your verdict an amount for those anticipated
11 medical, hospital, nursing expenses which are reasonably
12 certain to be incurred in the future and necessitated by
13 the plaintiff's injuries. If you find that the plaintiff
14 is entitled to an award for medical expenses incurred in
15 the future, you will fix the dollar amount of the expenses
16 over the entire period that you find the plaintiff will
17 incur such expenses and include that amount in your
18 verdict.

19 In your verdict you will state separately the amount
20 awarded for future medical expenses and you will state in
21 your verdict the amount awarded and the period of years
22 over which such an award is intended to provide
23 compensation. Do not state an amount per year, but only a
24 total for the entire period.

25 If your verdict is in favor of the plaintiff, the

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1 plaintiff will not be required to pay income taxes on the
2 award and you must not add to or subtract from the award
3 any amount on account of income taxes.

4 During the closing remarks counsel for the plaintiff
5 suggested specific dollar amounts that he believes to be
6 appropriate compensation for specific elements of the
7 plaintiff's damages. An attorney is permitted to make
8 suggestion as the amount that should be awarded. But those
9 suggestions are argument only and not evidence and should
10 not be considered by you as evidence of plaintiff's
11 damages. The determination of damages is solely for you
12 the jury to decide.

13 I have now outlined for you the rules of law that
14 apply to this case and the process by which you weigh the
15 evidence and decide the facts.

16 In a few minutes you will retire to the jury room for
17 your deliberations. Now, traditionally Juror Number 1 acts
18 as our foreperson. The first order of business when you're
19 in the jury room would be the election of a foreperson. In
20 order that your deliberations may proceed in an orderly
21 fashion, you must have a foreperson. But, of course, his
22 or her vote is not entitled to greater weight than that of
23 any other juror. As jurors, your function to reach a fair
24 decision on the law and evidence is important. When you're
25 in the jury room, listen to each other and discuss the

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1 evidence and the issues in the case among yourselves.

2 It is the duty of each of you as jurors to consult
3 with one another and deliberate with a view towards
4 reaching a verdict, if you can do so without violating your
5 own individual judgment and conscience. While you should
6 not surrender your conscientious convictions of what the
7 truth and the weight and effect of the evidence, while each
8 of you must decide this case for yourselves and not merely
9 consent to the decision of your fellow jurors, you should
10 exam the issues and evidence before you in candor and
11 frankness and with proper respect and regard for the
12 opinions each other.

13 Remember in your deliberations the dispute between the
14 parties for them is a very important matter. They and the
15 Court rely upon you to give full and conscientious
16 deliberation and consideration to the issues and evidence
17 before you. In so doing, you carry out to the fullest your
18 oath as jurors to truly try the issues in this case and
19 render a true verdict.

20 While it is important that all the views of the jurors
21 be considered, a verdict of five of the six members of the
22 jury will be sufficient under the law. Whenever five of
23 your members are in agreement on a verdict, you may report
24 your verdict to the Court.

25 This case will be decided on the basis of answers that

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1 you give to certain questions that will be submitted to
2 you. Each of the questions asks for or calls for a yes or
3 no answer or some numerical figure. While it is important
4 that the views of all the jurors be considered, five out of
5 six of you must agree on answers to any question. But the
6 same five persons need not agree on all the answers. When
7 five of you agreed on any answer, the foreperson of the
8 jury will write the answer in the space provided for each
9 answer and each juror will sign in the appropriate place to
10 indicate his or her agreement or dissent. When you've
11 answered all questions that require answering, report to
12 the Court.

13 Do not assume from the questions or by the wording of
14 the questions or from my instructions to you on what the
15 answer should be.

16 Ladies and gentlemen of the jury, this is very
17 important. After you answer the first question, each
18 question, look at the bottom in the bold print. That tells
19 you what you should do next. Okay? So don't just flip the
20 page and turn it over. Look at what's at the bottom of the
21 verdict sheet.

22 Now, if in the course of your deliberations your
23 recollection of any part of the testimony should fail or
24 you wish to see any of the evidence introduced in the case
25 or if you have any question of my instructions to you on

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1 the law, you have the right to return to the courtroom for
2 the purpose of having such testimony or instructions read
3 to you or the evidence given to you.

4 Please, you will be given what is called a jury
5 questionnaire. Only put one request on each page. That's
6 for our recordkeeping purposes.

7 We're now going to give you the verdict sheet which
8 you will complete and assist you in your deliberations.

9 Any exceptions to the charge with the exceptions as
10 previously noted?

11 MR. AVANZINO: No, your Honor.

12 MR. GORKIN: No exceptions.

13 (Whereupon the jury exits to begin deliberations)

14 THE COURT: Do you want to release the alternate
15 juror?

16 MR. AVANZINO: I rather not.

17 THE COURT: I'll hold off and wait till tomorrow.
18 They'll only be deliberating for a half hour. Agreed?

19 MR. GORKIN: No problem.

20 * * * * *

21 THE COURT: At 4:15 we received a note. "We will like
22 to know the amount for future expenses for surgery and
23 upkeep. How much does it cost and the battery involved."

24 Now, we actually have testimony on that.

25 MR. AVANZINO: Yes, Dr. Davy.