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1 take some time. Perhaps 40 minutes or so. Hopefully  
2 less. But that's what I am anticipating.

3 After I charge you, I don't want you to begin  
4 deliberations. I want you to go home. So I will break  
5 you after my charge.

6 And then you will come back Monday morning,  
7 and you will go to the jury room with the verdict form,  
8 and start working through the questions, okay?

9 I don't want you to rush on a Friday afternoon  
10 to try to get through it.

11 I don't think there is any point in beginning.  
12 All right?

13 So everyone is going to come back Monday,  
14 including you. And we will take it from there. All  
15 right.

16 Members of the Jury, we now come to that part  
17 of the trial where I tell you what the law is.

18 You have heard the arguments of the attorneys.  
19 The attorneys have told you what they believe you should  
20 reach as your verdict. And so on, and so forth.

21 Now, I am now going to review with you some of  
22 the principles that I told you about at the beginning of  
23 the trial before I get into the heart of this case.

24 You will recall that at the beginning of the  
25 trial I stated for you certain principles so that you

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1 could have them in mind as the trial progressed.

2 Briefly they were that you are bound to accept  
3 the law as I now give it to you, even though you may  
4 disagree with the law. You should not consider or  
5 accept any advice about the law from anyone but me.

6 If ultimately you have questions about the  
7 law, I will answer all your questions, and I will tell  
8 you all about that at some later point.

9 You must not conclude from any ruling that  
10 I have made during the trial, or from anything I may  
11 have said during the trial that I favor any party to  
12 this lawsuit.

13 You may not draw any inference from an  
14 unanswered question, nor may you consider testimony  
15 which has been stricken from the record in reaching your  
16 decisions.

17 Finally, in deciding how much weight you  
18 choose to give to the testimony of any particular  
19 witness, there is no magical formula that can be used.  
20 As I explained to you, in your everyday affairs you  
21 decide for yourselves the reliability or the  
22 unreliability of things people tell you. The same tests  
23 you use in your everyday affairs are the tests that we  
24 expect you to use when you deliberate.

25 The items to be taken into consideration by

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1       you in determining the weight you choose to give to the  
2       testimony of any particular witness include the interest  
3       or lack of interest of the witness in the outcome of the  
4       case. The bias or prejudice of the witness, if there be  
5       any. The age, the appearance, the manner in which the  
6       witness testified before you. The opportunity that the  
7       witness had to observe the facts about which he or she  
8       testified. And the probability or the improbability of  
9       the witness' testimony when considered in the light of  
10      all the evidence in the case.

11             If you should find that any witness has  
12      willfully testified falsely as to any material fact,  
13      that is as to an important matter, the law permits you  
14      to disregard completely the entire testimony of that  
15      witness upon the principle that one who testifies  
16      falsely about one material fact, is likely to testify  
17      falsely about everything.

18             You are not, however, required to consider  
19      such a witness as totally unbelievable. You may accept  
20      so much of his or her testimony as you deem true, and  
21      disregard what you feel is false.

22             By the processes which I have just described  
23      to you, you the jury, the sole judges of the facts, you  
24      decide which of the witnesses you believe, what portion  
25      of their testimony you accept, and what weight you will

1 give to it.

2 Now, if in your deliberations you have any  
3 question about my instructions to you, as I told you,  
4 I will answer any question for you. How do you get your  
5 question answered? Very simply. When you deliberate  
6 the Court Officer is going to be seated right outside  
7 the jury room. You knock on the door. Let him know  
8 that you want him. And you will tell him, "I have a  
9 question." Fill out the piece of paper he gives you.  
10 He will bring it to you, and I will get ready to answer  
11 your question. And we will bring you back out, and  
12 I will answer your question in the courtroom.

13 Likewise, if in the course of your  
14 deliberations your recollection of any part of the  
15 testimony should fail, you have the right to return to  
16 the courtroom for the purpose of having testimony read  
17 back to you. That's what we call read backs. If you  
18 want a read back, follow the same procedure. Write the  
19 note. Give it to the Court Officer. If you want a read  
20 back, please let us know what witness it is that you  
21 want the read back from, and please be very precise as  
22 to what you want read back to you.

23 In deciding the case, you may consider only  
24 the exhibits which have been admitted in evidence, and  
25 the testimony of the witnesses as you have heard in this

1 courtroom, or as there has been read to you testimony  
2 given at examinations before trial.

3 Under our rules of practice, an examination  
4 before trial is taken under oath, and is entitled to  
5 equal consideration by you, notwithstanding the fact  
6 that it was taken before trial, and outside the  
7 courtroom.

8 However, arguments, remarks, and the  
9 summations of the attorneys are not evidence, nor is  
10 anything that I now say or may have said with regard to  
11 the facts evidence.

12 You may recall some of the attorneys reading  
13 from transcripts. That's what I am talking about when  
14 I am talking about examinations before trial. You may  
15 have heard one of the attorneys refer to one of the  
16 transcripts as a 50-h hearing. The same rules apply.

17 Now, all the evidence that has been admitted  
18 during the trial is yours for the asking. If you want  
19 all of the evidence, or if you want any particular item  
20 of evidence, let the Court Officer know, and he will  
21 bring whatever you want into the jury room.

22 Although as jurors you are encouraged to use  
23 all of your life's experiences in analyzing testimony  
24 and reaching a fair verdict, you may not communicate any  
25 personal, professional expertise you may have, or other

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1 facts not in evidence to the other jurors during  
2 deliberations. You must base your discussions and  
3 decisions solely on the evidence that was presented to  
4 you during the trial, and that evidence alone.

5 You may not consider or speculate on matters  
6 not in evidence, or matters outside the case.

7 In reaching your verdict, you are not to be  
8 affected by sympathy for any of the parties, what the  
9 reaction of the parties or of the public to your verdict  
10 may be, whether it will please or displease anyone, be  
11 popular or unpopular, or indeed any consideration  
12 outside the case as it has been presented to you in this  
13 courtroom.

14 You should consider only the evidence, again,  
15 the testimony and the exhibits, find the facts from what  
16 you believe to be the credible evidence, and apply the  
17 law as I now give it to you. Your verdict will be  
18 determined by the conclusions you reach, no matter whom  
19 they may help or whom they may hurt.

20 You will recall that during the trial we heard  
21 from Dr. Jerry Lubliner. He told you all about his  
22 qualifications. He told you that he was board certified  
23 in the field of orthopedics. And then he proceeded to  
24 render certain opinions about the medical issues in this  
25 case.

1           When a case involves a matter of science, as  
2           this one does, or requires special knowledge or skill  
3           not ordinarily possessed by the average person, an  
4           expert, such as Dr. Lubliner, is permitted to state his  
5           opinion for the information of the Court and jury.

6           The opinions that he gave you were based on  
7           particular facts as he obtained knowledge of those  
8           facts, and testified to them before you. Or as the  
9           attorneys who questioned him asked him to assume.

10          You may reject an expert's opinion if you find  
11          the facts to be different from those which formed the  
12          basis for his opinion. You may also reject an expert's  
13          opinion if, after careful consideration of all the  
14          evidence in the case, expert and other, you disagree  
15          with the opinion.

16          In other words, you are not required to accept  
17          an expert's opinion to the exclusion of the facts and  
18          circumstances disclosed by other testimony. Such an  
19          opinion is subject to the same rules concerning  
20          reliability as the testimony of any other witness.

21          Such opinions are given to you to assist you  
22          in reaching a proper conclusion. The opinion is not  
23          entitled to such weight --

24                 Strike that.

25          The opinion is entitled to such weight as you

1 find the expert's qualifications in the field warrant,  
2 and must be considered by you, but is not controlling  
3 upon your judgment.

4 During the case, during the trial, you heard  
5 testimony from Miss Telsaint, the plaintiff. As you  
6 know, she is a party to this case. As a party, she is  
7 deemed what we call an interested witness. That simply  
8 means that she has an interest in how you decide the  
9 case.

10 Now the fact that she is interested in the  
11 outcome of the case does not mean that she has not told  
12 you the truth. It is for you to decide from the  
13 demeanor of an interested witness, and such other tests  
14 as your experience dictates, whether or not the  
15 testimony of that witness has been influenced either  
16 intentionally or unintentionally by her interest.

17 You may, if you consider it proper under all  
18 the circumstances, not believe the testimony of an  
19 interested witnesses even though the testimony was not  
20 challenged or contradicted.

21 However, you are not required to reject the  
22 testimony of such a witness. And you may accept all or  
23 such part of the testimony as you find reliable, and  
24 reject such part as you find unworthy of acceptance.

25 Now a party is not required to call any



1 particular person as a witness. However, the failure to  
2 call a certain person as a witness may be the basis for  
3 an inference against the party not calling the witness.

4 In this case you heard that the plaintiff was  
5 examined on behalf of the defendant by Dr. Edward Mills.  
6 Dr. Mills was not called to testify. And indeed the  
7 defendant has not offered an explanation for not calling  
8 him. For these reasons, you may, although you are not  
9 required to, conclude that the testimony of Dr. Mills  
10 would not support defendant's position on the question  
11 of injuries, and would not contradict the evidence  
12 offered by the plaintiff on the question of injuries.

13 Although you are not required to, you may draw  
14 the strongest inference against the defendant on the  
15 question of injury that that opposing evidence permits.

16 I am now going to instruct you on the concept  
17 of burden of proof. To say that a party has the burden  
18 of proof on a particular issue, means that considering  
19 all the evidence in the case, that party's claim on that  
20 issue must be established by a fair preponderance of the  
21 credible evidence.

22 The credible evidence means the testimony or  
23 exhibits that you find worthy of belief.

24 A preponderance means the greater part of the  
25 evidence. It does not mean the greater number of

1 witnesses, or the greater length of time taken by either  
2 side. The phrase preponderance of the evidence refers  
3 to the quality of the evidence. That is, its weight,  
4 and the effect that it has on your minds.

5 In order for a party to prevail on an issue on  
6 which he or she or it has the burden of proof, the  
7 evidence that supports his, her, its claim on that  
8 particular issue must appeal to you as more nearly  
9 representing what happened than the evidence opposed to  
10 it.

11 If it does not, or if it weighs so evenly that  
12 you are unable to say there is a preponderance on either  
13 side, you must decide the question against the party who  
14 has the burden of proof, and in favor of the opposing  
15 party.

16 Now I will go over the verdict form with you  
17 in some detail. There are many questions on the verdict  
18 form. At least 20. Not that complicated. Hopefully  
19 you will work through them, well, at your leisure.

20 But on all the questions except two of them,  
21 the plaintiff has the burden of proof.

22 The only questions where the defendant has the  
23 burden of proof are on Questions 14 and 15.

24 And those questions are as follows: Was the,  
25 was Miss Telsaint negligent?

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1                   And Question 15 is: Was her negligence a  
2                   substantial factor in causing the accident?

3                   So, the defendant must prove to you by a  
4                   preponderance of the credible evidence that she was  
5                   negligent. And that her negligence was a substantial  
6                   factor in causing the accident or her injuries.

7                   The plaintiff has the burden of proof on all  
8                   the other questions on the verdict form.

9                   Now let's go over the verdict form. This is  
10                  the verdict form. As I told you already, the verdict  
11                  form has 20 questions. You may not have to answer all  
12                  20 questions.

13                  Please go over the verdict form in order.  
14                  Start with Question 1. And work forward.

15                  And before you proceed to the next question,  
16                  make sure you read the instructions on the bottom of the  
17                  page that follow each question. Those instructions will  
18                  tell you what you have to do, dependent on how you  
19                  answered any particular question.

20                  For an example, Question 1, "Did the  
21                  plaintiff, Lidy Telsaint, slip and fall on ice on the  
22                  public sidewalk in front of 550 Dekalb Avenue, Brooklyn,  
23                  New York, on March 21, 2007?"

24                  The instructions that follow read as follows:  
25                  "If your answer to Question Number 1 is no, proceed no

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1 further, and report to the Court.

2 "If your answer to question one is yes,  
3 proceed to Question 2."

4 So you get an idea of how it works.

5 So again, and I emphasize this, please read  
6 the instructions. Please read them very carefully. And  
7 only answer the questions that you have to answer.

8 How do you answer the question? You discuss  
9 the evidence among yourselves. And you decide how you  
10 are going to answer the questions. All right?  
11 Everybody expresses their opinion. You deliberate. And  
12 you come up with the answer.

13 However, all six jurors don't have to agree on  
14 the answer. If five members of the jury agree, the  
15 question is answered.

16 Let's assume five members agree on one  
17 question. They proceed to the next question. And again  
18 only five members agree, but it is not the same five.  
19 That's perfectly okay. So as long as you have five  
20 members in agreement on the answer to any one question,  
21 that question is answered.

22 When you have answered all the questions you  
23 have to answer on the verdict form, let the Court  
24 Officer know. We will bring you out here, and we will  
25 take your verdict in open court.

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1           Now you are going to see on the verdict form,  
2           there are lines. All the jurors that agree to the  
3           answer to the question have to sign on the lines. And  
4           if there is a dissenting juror, the dissenting juror has  
5           to sign his or her name on the line on the very bottom  
6           of the page. Okay.

7           So that's the general stuff that I have to go  
8           over with you.

9           Now I am going to go over, it is all  
10          important, but very important stuff. I am going to go  
11          over with you now the principles of law that apply to  
12          the liability and damages issues. I will try to go  
13          through these as slowly as I can. I ask that you pay as  
14          much attention as you can.

15          As you know, the plaintiff, Lidy Telsaint, has  
16          sued the defendant, the City of New York, claiming that  
17          the City of New York was negligent, in failing to  
18          properly maintain the sidewalk in front of the building  
19          located at 550 Dekalb Avenue, Brooklyn, New York.

20          Now I charge you now as a matter of law that  
21          the City of New York is in fact the owner of that  
22          building.

23          Pursuant to Section 7-210 of the  
24          Administrative Code of the City of New York -- you don't  
25          have the to remember these numbers -- but as the owner

1 of the building, the City of New York had the duty to  
2 maintain the sidewalk in front of the building in a  
3 reasonably safe condition.

4 Pursuant to this section, if you conclude that  
5 the City of New York was negligent in failing to  
6 maintain the sidewalk in a reasonably safe condition,  
7 the City is liable to Miss Telsaint for any injury that  
8 she sustained that was proximately caused by the City's  
9 negligence.

10 The failure to maintain a sidewalk in a  
11 reasonably safe condition includes the negligent failure  
12 to remove snow and ice.

13 Now that's the general principles.

14 Whether the City of New York was negligent in  
15 failing to maintain the sidewalk in a reasonably safe  
16 condition will be determined by the answers you give to  
17 the questions on the verdict form.

18 So I am telling you what the general  
19 principles are. But your answers to the questions on  
20 the verdict form will determine liability.

21 To find that the City of New York was  
22 negligent, the plaintiff must first prove that on  
23 March 21, 2007, she slipped and fell on ice, on the  
24 sidewalk, in front of 550 Dekalb Avenue, Brooklyn,  
25 New York. And that the sidewalk where she fell was not

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1 in a reasonably safe condition because of the ice.

2 So that's Questions 1 and 2. And let me read  
3 them to you.

4 Question 1: "Did the plaintiff Lidy Telsaint  
5 slip and fall on the public sidewalk on ice in front of  
6 550 Dekalb Avenue, Brooklyn, New York, on  
7 March 21, 2007?"

8 You have heard the arguments of the attorneys,  
9 and their suggestions as to how you should answer this  
10 question. Consider their suggestions, deliberate  
11 amongst yourselves, but you decide.

12 If your answer to this question is no, you  
13 will proceed no further. And you will report your  
14 verdict to the Court.

15 If your answer to this question is yes, you  
16 will proceed to Question 2.

17 Question 2: "Was the sidewalk where  
18 Miss Telsaint fell in an unreasonably unsafe condition  
19 because there was ice on the sidewalk?"

20 Again, you have heard from the attorneys. You  
21 know how they want you to answer this question.

22 But again, you decide how to answer this  
23 question.

24 If you answer the question, "No," you will  
25 proceed no further and report to the Court.

1           If you answer this question, "Yes," in order  
2           for the plaintiff to recover in this case, plaintiff  
3           must next prove by a preponderance of the credible  
4           evidence the merits of one of her three claims as to why  
5           the City of New York was negligent.

6           Plaintiff's first claim is that Mr. Beriguette  
7           was negligent in that he caused and created the ice  
8           condition on the sidewalk. And that his negligence in  
9           this regard was a substantial factor in causing her  
10          injuries.

11          Plaintiff's second claim is that  
12          Mr. Beriguette knew that there was ice on the sidewalk  
13          where Miss Telsaint fell, a sufficient amount of time  
14          before the accident, so that he or other agents or  
15          employees of the City of New York could have removed the  
16          ice, or taken other precautions, such as posting a  
17          warning, before the accident occurred.

18          Plaintiff claims that neither Mr. Beriguette  
19          nor the City removed the ice, nor took any other  
20          precaution from the time Mr. Beriguette acquired  
21          knowledge of the ice, to the time of the accident. And  
22          that such was a substantial factor in causing the  
23          injuries.

24          The third claim, plaintiff claims that the ice  
25          on the sidewalk where plaintiff fell was present on the



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1 sidewalk for a sufficient period of time prior to the  
2 accident so that a reasonably prudent building owner in  
3 the exercise of reasonable care should have known of its  
4 existence, and either removed the ice, or taken some  
5 other suitable precautions, such as posting a warning  
6 before the accident.

7 Plaintiff claims that the City neither removed  
8 the ice nor took any other precautions from the time it  
9 should have acquired knowledge of the ice to the time of  
10 the accident. And that such failure was a substantial  
11 factor in causing the injuries.

12 I know I am throwing out a lot to you. But  
13 I am going to assure you that when you read the verdict  
14 form, the questions are in order, and I am sure it will  
15 make much more sense to you as you go through the  
16 verdict form.

17 So to prevail on the first claim you must  
18 answer Questions 3, 4, and 5, "Yes."

19 To prevail on the second claim, you must  
20 answer Questions 6, 7, 8, and 9, "Yes."

21 And to prevail on the third claim, you must  
22 answer, "Yes," to Questions 10, 11, 12, and 13. Okay?

23 Now again, I am throwing out a lot at you. It  
24 will make sense, or more sense when you get the verdict  
25 form.

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1           Plaintiff is entitled to recover damages,  
2           which we will talk about, if she prevails in proving to  
3           you either of those claims.

4           So if she proves claim one, two, or three, she  
5           is entitled to damages, which I will get to and go over.

6           So let's go over the questions in order, we  
7           are up to Question 3.

8           By the way, if you answered Questions 1 and 2,  
9           "No," or if you answered either Question 1 or 2, "No,"  
10          you would not get up to Question 3. So it is important  
11          you read the instructions.

12          Question 3: "Did Mr. Beriguette cause the  
13          unreasonably unsafe condition?"

14          Now, the attorneys didn't really address their  
15          arguments in this regard. But my understanding of the  
16          argument as to how he caused this condition is as  
17          follows.

18          My understanding is that he caused this  
19          condition by failing to completely remove all the snow  
20          from the sidewalk, and that he only shoveled a path,  
21          which he didn't make sure was salted.

22          And the plaintiff appears to be claiming that  
23          because of the fact that the weather sometimes is above  
24          freezing, sometimes is below freezing, when it is below  
25          freezing, the snow will melt into the path and freeze.

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1           That's my understanding of what the plaintiff  
2           is claiming.

3           Now, you consider all the evidence in the  
4           case, and you decide if the plaintiff proved that  
5           Mr. Beriguette caused or created the unsafe condition.  
6           Okay?

7           So next question, "Was Mr. Beriguette's  
8           negligence --"

9           Strike that.

10          "Was Mr. Beriguette negligent in causing or  
11          creating the unreasonably unsafe condition?"

12          Now when you answer this question, you are  
13          going to consider the following.

14          Negligence is lack of ordinary care. It is a  
15          failure to use that degree of care that a reasonably  
16          prudent person would have used under the same  
17          circumstances.

18          Negligence may arise from doing an act that a  
19          reasonably prudent person would not have done under the  
20          same circumstances, or, on the other hand, from failing  
21          to do an act that a reasonably prudent person would have  
22          done under the same circumstances.

23          Negligence requires both a reasonably  
24          foreseeable danger of injury to another, and conduct  
25          that is unreasonable in proportion to that danger.

1           A person is responsible for the results of his  
2 or her or its negligence, if the risk -- of his or her  
3 conduct -- if the risk of injury is reasonably  
4 foreseeable. The exact occurrence or the exact injury  
5 does not have to be foreseeable, but injury as a result  
6 of negligent conduct must be not merely possible, but  
7 probable.

8           So there is negligence if a reasonably prudent  
9 person could foresee injury as a result of his conduct,  
10 and acted unreasonably in the light of what could be  
11 foreseen.

12           On the other hand, there is no negligence if a  
13 reasonably prudent person could not have foreseen any  
14 injury as a result of his or her conduct, or acted  
15 reasonably in the light of what could have been  
16 foreseen.

17           So if you get to Question 4, and your answer  
18 is, "No," you will proceed directly to Question 6.

19           If your answer to Question 4 is, "Yes," you  
20 will proceed to Question 5.

21           These instructions again are at the bottom of  
22 Question 4.

23           Let's go over Question 5: "Was  
24 Mr. Beriguette's negligence in causing or creating the  
25 unreasonably unsafe condition a substantial factor in

1 causing Miss Telsaint's injuries?"

2 An act or a failure to act is a substantial  
3 factor in causing injury if a reasonable person would  
4 regard the act or failure to act as a cause of the  
5 injury.

6 After you answer Question 5, you will proceed  
7 to Question 6.

8 Now Question 6 is the first question  
9 concerning plaintiff's second claim. So we already went  
10 over all the questions concerning the first claim.

11 So Question 6 reads as follows: "Did  
12 Mr. Beriguette know that there was ice on the sidewalk  
13 where Miss Telsaint fell before the accident?"

14 Again, given the arguments of the attorneys,  
15 you have heard the arguments of the attorneys. They  
16 told you how they want you to answer this question.

17 But again, you decide how to answer the  
18 question.

19 If your answer to Question 6 is, "No," you  
20 will proceed to Question 10. That's the first question  
21 with regard to the third claim.

22 If your answer to Question 6 is, "Yes," you  
23 are going to proceed to Question 7.

24 Question 7: "Did the City of New York have a  
25 sufficient amount of time from when Mr. Beriguette

1 became aware of the ice to the time of the accident, to  
2 remove the ice, or to take other suitable precautions,  
3 such as posting a warning?"

4 With respect to whether the City should have  
5 posted a warning, please be advised that the City did  
6 not have a duty to warn of unsafe conditions that are  
7 open and obvious.

8 A condition is open and obvious if, under all  
9 the circumstances, it should have been seen by any  
10 person in Miss Telsaint's condition who was reasonably  
11 using her senses under all of the circumstances.

12 If you decide that the ice condition that  
13 caused her to fall was open and obvious to a person in  
14 Miss Telsaint's position under all of the circumstances,  
15 you cannot find that the City should have posted a  
16 warning.

17 If you decide that the ice condition was not  
18 open and obvious to a person in Miss Telsaint's position  
19 under all of the circumstances, you can find that the  
20 City should have posted a warning.

21 Now, again, you know how the attorneys want  
22 you to answer this question. But again, you decide how  
23 to answer the question.

24 If your answer to this question is, "No," you  
25 will go to Question 10.

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1           If your answer is, "Yes," you will proceed to  
2           Question 8.

3           Question 8: "Did the City of New York fail to  
4           remove the ice or take other suitable precautions to  
5           prevent the accident from the time Mr. Beriguette became  
6           aware of the ice, up to the time of the accident?"

7           That question is self-explanatory.

8           If your answer is, "No," you go to 10.

9           If your answer is, "Yes," you proceed to  
10          Question 9.

11          Question 9 reads as follows: "Was such  
12          failure a substantial factor in causing Miss Telsaint's  
13          injuries?"

14          Again, an act or failure to act is a  
15          substantial factor in causing an injury if a reasonable  
16          person would regard the act or failure to act as a cause  
17          of the injury.

18          Okay. So that takes care of the first two  
19          claims.

20          Now let's go to the third claim. And the  
21          first question with respect to the third claim is  
22          Question Number 10, which reads as follows: "Was the  
23          ice on the sidewalk where Miss Telsaint fell in  
24          existence for a sufficient period of time prior to the  
25          accident so that a reasonably prudent building owner, in

1 the exercise of reasonable care, should have known of  
2 its existence?"

3 Now, again, I know I am throwing out an awful  
4 lot at you. I see you are trying to pay attention.  
5 I appreciate it.

6 Just know all these questions are on the  
7 verdict form. When you are in the jury room you can  
8 read them as carefully as you care to.

9 So you deliberate. You answer that question.  
10 You know how the attorneys want you to answer the  
11 question.

12 If your answer to Question 10 is, "No," and  
13 you have answered either Question 5 or 9, "Yes," proceed  
14 to Question 14.

15 I won't even read you the instructions because  
16 they are a little complicated. But it will make sense  
17 when you are in the jury room. But please read the  
18 instructions very carefully.

19 The next question, "Did the City of New York  
20 have a sufficient period of time to remove the ice or to  
21 take other suitable precautions, such as posting a  
22 warning, from when it should have become aware of the  
23 ice to the time of the accident?"

24 I already gave you some rules concerning the  
25 duty to warn. Those same rules apply to this question.



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1 I won't read you the instructions. I will let  
2 you read them when you are in the jury room.

3 Question Number 12: "Did the City of New York  
4 fail to remove the ice or take other suitable  
5 precautions from the time it should have become aware of  
6 the ice to the time of the accident?"

7 Next question: "Was such failure a  
8 substantial factor in causing Miss Telsaint's injuries?"

9 Again, an act or failure to act is a  
10 substantial factor in causing an injury if a reasonably  
11 prudent person would regard the act or failure to act as  
12 a cause of the injury.

13 I have now addressed with you all of the  
14 liability questions concerning Mr. Beriguet and the  
15 City of New York. All right?

16 If plaintiff prevailed on any one of those  
17 claims, you now proceed to Questions 14 and 15. The  
18 instructions will tell you what you have to do.

19 Again, you don't have to remember word for  
20 word what I am telling you.

21 If plaintiff prevailed on any one of her  
22 claims, which will become apparent to you as you proceed  
23 through the verdict form, you will address Questions 14  
24 and 15.

25 Question 14 reads as follows: "Was

1 Miss Telsaint negligent?"

2 Now I already defined for you the definition  
3 of negligent. The same definition applies to  
4 Miss Telsaint. And you will apply that definition when  
5 you answer the question.

6 When you answer this question, you will also  
7 consider the following. Miss Telsaint had the duty to  
8 use that degree of care that a reasonably prudent person  
9 would have used under the same circumstances. She had  
10 the duty to look with care to avoid placing herself in a  
11 position of danger. And to see what there was to be  
12 seen..

13 If you find that she breached any of these  
14 duties, you will find that she was negligent.

15 I remind you the defendant has the burden of  
16 proof on this issue. It is the --

17 I am getting punchy.

18 It is the defendant's burden to prove that  
19 Miss Telsaint was negligent.

20 Question 15: "Was Miss Telsaint's negligence  
21 a substantial factor in causing the injuries?"

22 Once again, an act or failure to act is a  
23 substantial factor in causing an injury if a reasonable  
24 person would regard the act or failure to act as a cause  
25 of the injury.

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1           Okay. So that brings us to Question 16.  
2           Sixteen requires you to apportion liability among those  
3           parties who you concluded were negligent, and whose  
4           negligence was a substantial factor in causing  
5           Miss Telsaint's injuries.

6           Very importantly, you will only apportion  
7           fault against the parties who you found to be negligent,  
8           and whose negligence you found to be a substantial  
9           factor in causing Miss Telsaint's injuries.

10          Now there is instructions on the verdict form  
11          which will guide you. I won't read them to you. But  
12          read them carefully when you are in the jury room.

13          So how do you answer this question? Weighing  
14          all the facts and circumstances, you must consider the  
15          total fault, that is the fault of those parties whose  
16          negligence you have found was a substantial factor in  
17          causing Miss Telsaint's injuries, and determine what  
18          percentage of fault is chargeable to each.

19          In your verdict you will state the percentages  
20          you find. The total of these percentages must equal  
21          100 percent. Okay? So I think that is sort of  
22          self-explanatory. Whatever numbers you put in in the  
23          lines in response to Question 16, those numbers must add  
24          up to 100.

25          I won't read you that. I will let you read

1       that in the jury room. All right.

2               I am now going to talk to you about damages  
3       and the rules of law that apply to damages.

4               I will give you five minutes.

5               (Whereupon, the jury left the courtroom.)

6               (Whereupon, a recess was taken.)

7       COURT OFFICER: Jury entering.

8               (Whereupon, the jury entered the courtroom.)

9       THE COURT: I hope your heads are nice and  
10      clear. It is not that bad.

11              (Laughter from the jury.)

12      THE COURT: Okay. Ladies and Gentlemen of the  
13      Jury, I am now going to instruct you on the law of  
14      damages.

15              My charge to you on the law of damages must  
16      not be taken as a suggestion that you should find for  
17      the plaintiff. As I have told you, it is for you to  
18      decide on the evidence presented and the rules of law  
19      that I have given you whether the plaintiff is entitled  
20      to recover.

21              If you decide that she is not entitled to  
22      recover, you need not consider damages. The  
23      instructions will make all that clear.

24              Only if you decide that the plaintiff is  
25      entitled to recover, will you consider the measure of

1 damages.

2 If you find that the plaintiff is entitled to  
3 recover, you must render a verdict in a sum of money  
4 that will justly and fairly compensate her for all  
5 losses resulting from the injuries that she sustained.

6 So that brings us to the first question on the  
7 verdict form with respect to damages. Which is: "State  
8 the amount awarded to Miss Telsaint for pain and  
9 suffering up to the date of your verdict."

10 That will be obviously Monday or any time  
11 thereafter.

12 If you find in favor of Miss Telsaint, she is  
13 entitled to recover a sum which will justly and fairly  
14 compensate her for any injury, and conscious pain and  
15 suffering to date, caused by the accident.

16 In determining the amount to be awarded to  
17 Miss Telsaint for pain and suffering, you may take into  
18 consideration the effect that her injuries have had on  
19 her ability to enjoy life.

20 Loss of enjoyment of life involves the loss of  
21 the ability to perform daily tasks; to participate in  
22 the activities which were part of the person's life  
23 before the injury; and to experience the pleasures of  
24 life.

25 However, a person suffers the loss of

1       enjoyment of life only if the person is aware at some  
2       level of the loss that she has suffered.

3               If you find that the plaintiff as a result of  
4       her injuries suffered some loss of the ability to enjoy  
5       life, and that she was aware at some level of the loss,  
6       you may take that into consideration in determining the  
7       amount to be awarded to the plaintiff for pain and  
8       suffering to date.

9               That's the first damages question.

10              Next damages question: "State the amount  
11       awarded to Miss Telsaint, if any, for pain and  
12       suffering, including the permanent effect of her  
13       injuries, from the time of your verdict to the time that  
14       she can be expected to live. If you decide not to make  
15       an award, you will insert the word 'none.'"

16              When you answer this question, you will  
17       consider the following. With respect to any of  
18       Miss Telsaint's injuries or disabilities, she is  
19       entitled to recover for future pain, suffering, and  
20       disability, and the loss of her ability to enjoy life.

21              In this regard you should take into  
22       consideration the period of time that the injuries or  
23       disabilities are expected to continue.

24              If you find that the injuries or disabilities  
25       are permanent, you should consider the period of time

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1       that the plaintiff can be expected to live.

2               Now, as plaintiff's counsel advised you, in  
3       accordance with the statistical life expectancy tables  
4       that we rely on for these purposes, Miss Telsaint has a  
5       present life expectancy of 53.4 years. This table is  
6       just what it is. It is a statistical average. It  
7       neither guarantees that she will live that many years,  
8       nor does it guarantee that she will not live for a  
9       longer period of time.

10              The figure, the life expectancy figure that  
11       I have given you is not binding upon you, but may be  
12       considered by you, together with your own experience,  
13       and the evidence you have heard concerning the condition  
14       of plaintiff's health, her habits, her employment, her  
15       activities, in deciding what her life expectancy is.

16              Now when you answer Questions 1 and 2, you  
17       must disregard the fact that you apportion some of the  
18       blame for the happening of the accident on the  
19       plaintiff, if you do apportion some of the blame on the  
20       plaintiff.

21              So, in other words, do not reduce the amount  
22       of any award based on the fact that you found that the  
23       plaintiff was partially at fault.

24              That takes care of Questions 17 and 18.

25              Question 19 -- we are almost done -- Question

1 19: "If you have made an award in response to Question  
2 18," the last question we just addressed, "state the  
3 period of years over which the award is intended to  
4 provide compensation."

5 Very simply, you simply state in your response  
6 to this question the period of years over which any  
7 award for future pain and suffering that you may award  
8 is intended to provide Miss Telsaint with compensation.

9 If it is for her life span, you tell us what  
10 her life span is.

11 If it is a shorter period of time that you  
12 believe she should be compensated for pain and  
13 suffering, you put in that period of time.

14 It is entirely up to you.

15 Question 20: "State the amount awarded to  
16 Miss Telsaint, if any, for the future medical costs she  
17 will incur in connection with having the hardware from  
18 her left ankle removed."

19 If you decide that Miss Telsaint will need to  
20 have the hardware from her left ankle removed in the  
21 future, you will include in your verdict an amount for  
22 those anticipated medical, hospital, and nursing  
23 expenses, which are reasonably certainly to be incurred  
24 in the future for this procedure.

25 Now again, we are only going to get to the



1 damages questions if you found in favor of the  
2 plaintiff.

3 Now during closing arguments, counsel for the  
4 plaintiff suggested certain dollar amounts that he  
5 believes may be appropriate, that may be appropriate  
6 compensation for specific elements of plaintiff's  
7 damages. And the attorney for the defendant also  
8 mentioned some figures to you.

9 Now, an attorney is permitted to make  
10 suggestions as to the amount that should be awarded.  
11 But those suggestions are argument only, and not  
12 evidence, and should not be considered by you as  
13 evidence of plaintiff's damages.

14 The determination of damages is solely for you  
15 the jury to decide.

16 If your verdict is in favor of the plaintiff,  
17 plaintiff will not be required to pay income taxes on  
18 the award, and you must not add to or subtract from the  
19 award any amount on account of income taxes.

20 I have gone through all the questions with  
21 you. I have now outlined all the rules of law that  
22 apply to this case, and the processes by which you weigh  
23 the evidence and decide the facts.

24 Now, Monday, you are going to go into the jury  
25 room with the verdict form, and you are going to answer

1 the questions.

2 As you know, your answers to the questions  
3 will determine how this case is decided.

4 When you go into the jury room, your first  
5 order of business will be to decide who the foreperson  
6 is going to be.

7 Traditionally Juror Number 1, that would be  
8 you, is the foreperson.

9 What is the job of the foreperson? Very  
10 simply, the foreperson is there to make sure the verdict  
11 form is properly filled out. To make sure your  
12 deliberation proceeds in an orderly manner. And that's  
13 about it.

14 The foreperson is not the boss. The  
15 foreperson's opinion counts no more than anyone else's  
16 opinion. And the foreperson is only there to play an  
17 administrative role.

18 Your function to reach a fair decision from  
19 the law and the evidence is, needless to say, a very  
20 important one. When you are in the jury room, please  
21 listen to each other, and discuss the evidence and the  
22 issues in the case among yourselves.

23 It is the duty of each of you as jurors to  
24 consult with one another, and to deliberate with a view  
25 of reaching agreement on a verdict, if you can do so

1 without violating your individual judgment and your  
2 conscience.

3 While you should not surrender conscientious  
4 convictions of what the truth is, and of the weight and  
5 effect of the evidence, and while each of you must  
6 decide the case for yourself, and not merely consent to  
7 the decision of your fellow jurors, you should examine  
8 the issues and the evidence before you with candor and  
9 frankness and, most importantly, with proper respect and  
10 regard for the opinions of each other.

11 Please remember in your deliberations that the  
12 dispute between the parties or among the parties is for  
13 them a very important matter. They and the Court rely  
14 upon you to give full and conscientious deliberation and  
15 consideration to the issues and evidence before you. By  
16 so doing, you carry out to the fullest your oaths as  
17 jurors to truly try the issues of this case, and to  
18 render a fair and just verdict.

19 That concludes my instructions to you, ladies  
20 and gentlemen. The case is now in your hands.

21 When you come back on Monday, you are going to  
22 go right to the jury room. You will begin your  
23 deliberations.

24 Please do not begin until everyone is there.

25 I am not going to bring you back out into the

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1 courtroom. The case is now in your hands.

2 The last item I have to tell you is that when  
3 you begin to deliberate, the alternate juror has to just  
4 be separated. Alternates are not allowed to participate  
5 in the deliberation, okay? I am keeping you around for  
6 insurance purposes.

7 So why don't you come back at about 10:30, and  
8 begin your deliberations on Monday. Just to give you a  
9 little time to, so 10:30 Monday.

10 Have a great weekend. See you then.

11 (Whereupon, the jury left the courtroom at  
12 4:15 p.m.)

13 THE COURT: Before we adjourn, does anyone have  
14 anything for the record?

15 MR. ROSENBERG: I do.

16 MR. GREY: I do also.

17 THE COURT: We will begin with you.

18 MR. ROSENBERG: Judge, I want to reiterate my  
19 objections to the Court not charging PJI 2:29 straight  
20 out as it is read from the Pattern Jury Instructions.  
21 Specifically, to include 7-210, read in conjunction with  
22 the PJI.

23 I also object to Your Honor in charging  
24 Article 16, and in so doing, that being reflected on the  
25 verdict sheet, again for all those arguments I stated