

1 MR. JEFFREYS: After they are out.

2 MR. ZLOTOW: Right. That's fine.

3 THE COURT: Thank you, Blaise.

4 THE COURT OFFICER: Jury entering.

5 (Jury entering the courtroom)

6 THE COURT: Please be seated.

7 Good afternoon. Members of the
8 jury, we come now to that portion of the
9 trial when you are instructed on the law
10 applicable to the case and after which you
11 will retire for your final deliberations.

12 You have now heard all of the
13 evidence introduced by the parties and
14 through arguments of their attorneys you
15 have learned the conclusions each party
16 believes should be drawn from the evidence
17 presented to you.

18 You will recall at the beginning of
19 the trial I stated for you certain
20 principles so that you can have them in
21 mind as the trial progressed. Briefly,
22 they were that you are bound to accept the
23 law as I give it to you, whether or not you
24 agree with it. You are not to ask anyone
25 else about the law. You should not

1 consider or accept advice about the law
2 from anyone else but me.

3 Furthermore, you must not conclude
4 from my rulings or anything I have said
5 during the trial that I favor any party to
6 this lawsuit.

7 Furthermore, you may not draw any
8 inference from an unanswered question nor
9 consider testimony which has been stricken
10 from the record in reaching your decision.

11 Finally, in deciding how much weight
12 you choose to give to the testimony of any
13 particular witness, there is no magical
14 formula which can be used. The tests used
15 in your everyday affairs to decide the
16 reliability or unreliability of statements
17 made to you by others are the tests you
18 will apply in your deliberations.

19 The items to be taken into
20 consideration in determining the weight you
21 will give to the testimony of a witness
22 include the interest or lack of interest of
23 the witness in the outcome of the case, the
24 bias or prejudice of the witness, if there
25 be any, the age, the appearance, the manner

1 of the witness as the witness testified,
2 the opportunity that the witness had to
3 observe the facts about which he or she
4 testified, the probability or improbability
5 of the witness' testimony when considered
6 in the light of all of the other evidence
7 in the case.

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

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

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

1 testimony you accept and what weight you
2 will give to it.

3 The burden of proof rests on the
4 plaintiff. That means that it must be
5 established by a fair preponderance of the
6 credible evidence that the claim plaintiff
7 makes is true.

8 The credible evidence means the
9 testimony or exhibits that you find to be
10 worthy to be believed.

11 A preponderance of the evidence
12 means the greater part of such evidence.
13 That does not mean the greater number of
14 witnesses or the greater length of time
15 taken by either side. The phrase refers to
16 the quality of evidence, that is its
17 convincing quality, the weight and effect
18 that it has on your minds.

19 The law requires that in order for
20 the plaintiff to prevail on a claim, the
21 evidence that supports his claim must
22 appeal to you as more nearly representing
23 what took place than the evidence opposed
24 to his claim. If it does not, or it weighs
25 so evenly that you are unable to say that

1 there is a preponderance on either side,
2 then you must decide the question in favor
3 of the defendant.

4 It is only if the evidence favoring
5 the plaintiff's claim outweighs the
6 evidence opposed to it that you can find in
7 favor of the plaintiff.

8 If in the course of your
9 deliberations your recollection of any part
10 of the testimony should fail or you have
11 any question about my instructions to you
12 on the law, you have a right to return to
13 the courtroom for the purpose of having
14 such testimony read to you or have such
15 question answered.

16 The mechanism for that is that the
17 court officer is stationed at the door, you
18 reduce your request to a note, give it to
19 the court officer, the court officers gets
20 it to me, I share it with the lawyers and
21 you're brought back.

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

1 courtroom or as there has been read to you
2 testimony given on Examination Before
3 Trial.

4 Under our rule of practice an
5 Examination Before Trial is taken under
6 oath and is entitled to equal consideration
7 by you notwithstanding the fact that it was
8 taken before the trial and outside the
9 courtroom. However, arguments, remarks and
10 summations of attorneys are not evidence,
11 nor is anything that I now say or may have
12 said with regard to the facts evidence.

13 Although as jurors you are
14 encouraged to use all of your life
15 experiences in analyzing testimony in
16 reaching a fair verdict, you may not
17 communicate any personal professional
18 expertise you might have or other facts not
19 in evidence to the other jurors during your
20 deliberations.

21 You must base your discussions and
22 decisions solely on the evidence presented
23 to you during the trial and that evidence
24 alone. You may not consider or speculate
25 on matters not in evidence or matters

1 outside the case.

2 While it is important that the views
3 of all jurors be considered, a verdict of
4 five of the six members of the jury will be
5 sufficient under the law. Whenever five of
6 your members are in agreement on a verdict,
7 you may report your verdict to the Court.

8 As you will recall, that the
9 witnesses, Dr. Alongi, Sathi, Reiser,
10 Bernhang and PhD McGowan testified
11 concerning their qualifications as experts
12 in the fields of medicine and
13 bioengineering and gave their opinions
14 concerning issues in this case. When a
15 case involves a matter of science or art or
16 requires special knowledge or skill not
17 ordinarily possessed by the average person,
18 an expert is permitted to state his opinion
19 or her opinion for the information of the
20 Court and the jury. The opinions stated by
21 each expert who testified before you were
22 based on particular facts as the expert
23 obtained knowledge -- excuse me, were based
24 on particular facts as the expert obtained
25 knowledge of them and testified to them

1 before you or as the attorneys who
2 questioned the expert asked the expert to
3 assume.

4 You may reject an expert's opinion
5 if you find the facts to be different from
6 those which formed the basis for the
7 opinion.

8 You may also reject the opinion if,
9 after careful consideration of all of the
10 evidence in the case, expert and other, you
11 disagree with the opinion.

12 In other words, you are not required
13 to accept an expert's opinion to the
14 exclusion of the facts and circumstances
15 disclosed by the other testimony.

16 Such an opinion is subject to the
17 same rules concerning reliability as
18 testimony of any other witness. It is
19 given to assist you in reaching a proper
20 conclusion. It is entitled to such weight
21 as you find the expert's qualifications in
22 the field warrant and must be considered by
23 you, but it is not controlling upon your
24 judgment.

25 The plaintiff and one of the

1 defendants both testified before you as
2 parties to the action. Both are interested
3 witnesses.

4 An interested witness is not
5 necessarily less believable than a
6 disinterested witness. The fact that he is
7 interested in the outcome of the case does
8 not mean that he has not told the truth.
9 It is for you to decide from the demeanor
10 of the witness on the stand and such other
11 tests as your experience dictates whether
12 or not the testimony has been influenced
13 intentionally or unintentionally by his
14 interests.

15 You may, if you consider it -- if
16 you consider it proper under all of the
17 circumstances, not believe the testimony of
18 such a witness even though it is not
19 otherwise challenged or contradicted.
20 However, you are not required to reject the
21 testimony of such a witness and may accept
22 all or such part of his testimony as you
23 find reliable and reject such part as you
24 find unworthy of acceptance.

25 Again, you heard the attorney for

1 the defendant read portions of a document
2 referred to as an Examination Before Trial
3 of the plaintiff. At some point before
4 this trial began the plaintiff under oath
5 answered certain questions put to him by
6 the lawyers for the defendants. A
7 stenographer recorded the questions and
8 answers and transcribed them into a
9 document which the plaintiff later signed
10 before a notary public.

11 The portions of the transcript of
12 the Examination Before Trial that you heard
13 are to be considered as if the plaintiff
14 were testifying from the witness stand.

15 This case will be decided on the
16 basis of the answers that you give to
17 certain questions that will be submitted to
18 you. Each of the questions calls for a yes
19 or no answer or some numerical figure.

20 While it is important that the views
21 of all jurors be considered, five of six of
22 you must agree on the answer to any
23 question, but the same five persons need
24 not agree on all of the answers. When five
25 of you have agreed on any answer, the

1 foreperson of the jury will write the
2 answer in the space provided for each
3 answer and each juror will sign in the
4 appropriate place to indicate his or her
5 agreement or disagreement.

6 As you will note from the wording of
7 the questions, you need not consider
8 question two, et cetera, if your answer to
9 question one is no.

10 As you will further note from the
11 wording of the questions, you do not
12 consider questions three, et cetera, if
13 your answer to question two is no.

14 When you have answered all the
15 questions that require answers, report to
16 the Court.

17 Do not assume from my -- excuse me.
18 Do not assume from the questions or from
19 the wording of the questions or from my
20 instructions on them what the answers
21 should be.

22 You must decide whether the
23 plaintiff sustained injuries to the neck,
24 also called the cervical spine, as a result
25 of the subject car accident.

1 It is the plaintiff's contention
2 that the accident caused a herniated disk
3 in the cervical spine which ultimately
4 resulted in surgery to correct and that a
5 second surgery to the cervical spine later
6 resulted to further correct the condition
7 caused by the subject car accident or by
8 the conditions that developed as a result
9 or consequence of the first surgery.

10 It is the -- it is the defendant's
11 contention that the plaintiff suffered from
12 a preexisting condition to the cervical
13 spine and that the accident was not the
14 cause of the need for the surgeries and
15 that those surgeries were not necessitated
16 by the injuries to the neck caused by the
17 accident.

18 In this case testimony has been
19 presented concerning certain medical
20 conditions that it is alleged that the
21 plaintiff had in his neck and right
22 shoulder prior to the date of the accident.

23 Testimony also has been presented
24 that the medical conditions in the
25 plaintiff's neck and right shoulder were

1 dormant; that is, not causing the plaintiff
2 any problem on the date of the motor
3 vehicle accident, January 11th, 2007. You
4 may only award damages to injuries caused
5 by the accident and not for any previous
6 existing conditions.

7 An act or omission is regarded as a
8 cause of an injury if it was a substantial
9 factor in bringing about the injury. That
10 is if it had such an effect in producing
11 the injury that reasonable people would
12 regard it as a cause of the injury.

13 There may be more than one cause of
14 an injury but to be substantial, it cannot
15 be slight or trivial. You may, however,
16 decide that a cause is substantial even if
17 you assign a relatively small percentage to
18 it.

19 In the jury interrogatories you must
20 answer the following question: Did the
21 plaintiff sustain a permanent consequential
22 limitation of use of a body organ or member
23 as a result of the accident on January
24 11th, 2007?

25 A limitation of use of a body organ

1 or member means that the body organ or
2 member does not operate at all or operates
3 only in some limited way.

4 It is not necessary for you to find
5 that there has been a total loss of the use
6 of a body organ or member. The limitation
7 of use must be consequential, which means
8 that it is significant, important or of
9 consequence. A minor, mild or slight
10 limitation of use is not significant,
11 important or of consequence.

12 If you find that Christopher Cicola
13 sustained a permanent limitation of use as
14 a result of the accident on January 11th,
15 2007 and that the limitation is
16 consequential as I have defined it, you
17 must answer the question yes. If you find
18 that there is no permanent limitation as a
19 result of the accident on January 11th,
20 2007 or that the limitation is not
21 consequential, you must answer the question
22 no.

23 The following question also appears
24 on the verdict sheet. You must answer the
25 following question: Did Christopher Cicola

1 sustain a significant limitation of use of
2 a body function or system as a result of
3 the accident on January 11th, 2007?

4 A limitation of use of a body
5 function or system means that the function
6 or system does not operate at all or
7 operates only in some limited way.

8 It is not necessary for you to find
9 that there has been a total loss of the
10 body function or system or that the
11 limitation of use is permanent; however,
12 the limitation of use must be significant,
13 meaning that the loss is important or
14 meaningful. A minor, mild or slight
15 limitation of use is not significant.

16 If you find that Christopher Cicola
17 sustained a limitation of use as a result
18 of the accident on January 11th, 2007 and
19 that the limitation is significant, your
20 answer to the question -- excuse me, and
21 that limitation is significant, you must
22 answer the question yes.

23 If you find that he did not sustain
24 a limitation of use as a result of the
25 accident on January 11th, 2007 or that the

1 limitation is not significant, you must
2 answer the question no.

3 My charge to you on the law of
4 damages must not be taken as a suggestion
5 that you should find for the plaintiff. It
6 is for you to decide on the evidence
7 presented and the rules of law I have given
8 you whether the plaintiff is entitled to
9 recover from the defendant.

10 If you decide that the plaintiff is
11 not entitled to recover from the defendant,
12 you need not consider damages. Only if you
13 decide that the plaintiff is entitled to
14 recover will you consider the measure of
15 damages.

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

22 During his closing remarks counsel
23 for the plaintiff suggested a specific
24 dollar amount he believes to be appropriate
25 compensation for specific elements of

1 plaintiff's damages. An attorney is
2 permitted to make suggestions as to the
3 amount that should be awarded, but those
4 suggestions are argument only and not
5 evidence and should not be considered by
6 you as evidence of plaintiff's damages.
7 The determination of the damages is solely
8 for you, the jury, to decide.

9 In determining the amount, if any,
10 to be awarded the plaintiff for pain and
11 suffering, you may take into consideration
12 the effect the plaintiff's injuries have
13 had on plaintiff's ability to enjoy life.

14 Loss of enjoyment of life involves
15 the loss of the ability to perform daily
16 tasks, to participate in the activities
17 which were a part of the person's life
18 before the injury and to experience the
19 pleasures of life. However, a person
20 suffers the loss of enjoyment of life only
21 if the person is aware at some level of the
22 loss that he had suffered.

23 If you find that plaintiff as a
24 result of his injuries suffered some loss
25 of the ability to enjoy life and that the

1 plaintiff is aware at some level of the
2 loss, you may take that loss into
3 consideration in determining the amount to
4 be awarded to plaintiff for pain and
5 suffering to date.

6 If your verdict is in favor of
7 plaintiff, plaintiff will not be required
8 to pay income taxes on the award and you
9 must not add or subtract from the award any
10 amount on account of income taxes.

11 With respect to any of plaintiff's
12 injuries or disabilities, the plaintiff's
13 entitled to recover for future pain and
14 suffering and disability and the loss of
15 his ability to enjoy life. In this regard,
16 you should take into consideration the
17 period of time that the injuries or
18 disabilities are expected to continue.

19 If you find that the injuries or
20 disabilities are permanent, you should take
21 into consideration the period of time that
22 the plaintiff can be expected to live. In
23 accordance with statistical life expectancy
24 tables, plaintiff has a life expectancy of
25 35.3 years. Such a table, however,

1 provides nothing more than a statistical
2 average. It neither guarantees that
3 plaintiff will live an additional 35.3
4 years or means that he will not live for a
5 longer period.

6 The life expectancy figure I have
7 given you is not binding upon you, but may
8 be considered by you together with your own
9 experience and the evidence you have heard
10 concerning the condition of plaintiff's
11 health, his habits, employment and
12 activities in deciding what Christopher
13 Cicola's present life expectancy is.

14 A party is not required to call any
15 particular person as a witness; however,
16 the failure to call a certain person as a
17 witness may be the basis for an inference
18 against the party not calling the witness.

19 For example, in this case the
20 plaintiff did not call Dr. Sinha, a
21 treating physician to testify on the
22 question of injury and/or causation. The
23 plaintiff has offered an explanation for
24 not calling Dr. Sinha. In short, the
25 explanation dealt with it being cumulative,

1 but you heard it and you as the finder of
2 fact will make your own determination. If
3 you find that this explanation is
4 reasonable, then you should not consider
5 the failure to call Dr. Sinha in evaluating
6 the evidence.

7 If, however, you find that the
8 explanation is not a reasonable one, you
9 may, although you are not required to,
10 conclude that the testimony of Dr. Sinha
11 would support -- excuse me, would not
12 support, again, would not support the
13 plaintiff's position on the question of
14 injuries and would not contradict the
15 evidence offered by the defendant on this
16 question. And you may, although you are
17 not required to, draw the strongest
18 inference against the plaintiff on that
19 question that opposing evidence permits.

20 Testimony has been introduced that
21 the plaintiff made statements at the
22 accident scene to Deputy Sheriffs Muller
23 and Evans concerning his condition.
24 Plaintiff admits that he made such a
25 statement.

1 If you find that the plaintiff made
2 such a statement and that he thereby
3 admitted to no injuries, you may consider
4 that statement as evidence of his condition
5 immediately post accident. In deciding
6 whether such a statement was made, you will
7 apply the rules I have already given you
8 about the evaluation of testimony.

9 You may accept either party's
10 version of what happened in whole or in
11 part or you may accept a part of the
12 versions given by both.

13 In deciding how much weight you will
14 give to the statement, if any, you can
15 consider the plaintiff's physical
16 examination at the time the statement was
17 made, the words used, the person to whom
18 the statement was made, the time that
19 passed between the making of the statement
20 and the accident, all of the other
21 circumstances and conditions existing at
22 the time and place and the other facts in
23 evidence as well as the reasonableness of
24 the plaintiff's explanation of the
25 statement.

1 the processes by which you weigh the
2 evidence and decide the facts.

3 In a few minutes you will retire to
4 the jury room for your deliberations.
5 Traditionally juror one acts as our
6 foreperson.

7 Congratulations, you're our
8 foreperson.

9 In order that your deliberations may
10 proceed in an orderly fashion, you must
11 have a foreperson, but of course her vote
12 is entitled to no greater weight than that
13 of any other juror.

14 You're function to reach a fair
15 decision from the law and the evidence is
16 an important one. When you are in the jury
17 room listen to each other and discuss the
18 evidence and issues in the case among
19 yourselves.

20 It is the duty of each of you as
21 jurors to consult with one another and to
22 deliberate with a view of reaching
23 agreement on a verdict if you can do so
24 without violating your individual judgment
25 and your conscience.

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

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

21 I'll take the stenographer outside.

22 (Whereupon, the following occurred
23 out of the presence of the jury)

24 THE COURT: Plaintiff, acceptance to
25 the charge?