

1 MR. RYAN: Not to waste time, Judge,
2 and maybe I misunderstood Mr. Bell, but is 6081
3 moved into evidence?

4 MR. BELL: Yes.

5 THE COURT: Yes.

6 MR. RYAN: Okay.

7 MR. FAZIO: I don't know it was moved
8 into evidence.

9 THE COURT: He just did it. That's
10 why I wanted to make sure the record is clear.

11 It's coming into evidence. It's a
12 matter of marking. He had previously asked and it
13 comes in.

14 THE COURT OFFICER: Ready, Judge?
15 Step in, please. All rise. Jury entering.

16 (Jury entered.)

17 THE COURT: Please be seated.

18 Jurors, at this time I'd like to thank
19 you for participating in this trial. You have
20 been diligent in your efforts to be here each day.

21 I apologize for getting started a
22 little later than I wanted to. I had some matters
23 I had to deal with and I apologize, but I want to
24 thank you on behalf of the People of the State of
25 New York, and I'm sure all the litigants and the

1 lawyers here, for your attentiveness.

2 Jurors, you've heard all the evidence.
3 You've heard the arguments of counsel, which are
4 not evidence, but crystallize that evidence into a
5 format known as a summation or closing argument,
6 and now it's time for me to instruct you on what
7 the law is and for you to take this verdict sheet
8 that we're going to give you shortly and answer
9 the questions, and by that, come up with a verdict
10 in weighing and evaluating this case.

11 You recall when we started this case I
12 told you that there are a couple of basic
13 principles that you must comport yourselves with.
14 One is you must accept the law as I give it to
15 you. You cannot use any other source or personal
16 knowledge of what you believe the law is.

17 You take it whether you agree with it
18 or not, just as I have to take the law as it is
19 whether I agree with it or not when I do a bench
20 trial, a judge-alone trial. So too you, as
21 jurors, have to accept the law as we give it to
22 you.

23 Please don't conclude anything from
24 any of my rulings that we favor either side in
25 this matter. I stand here as a neutral umpire and

1 the -- deliberating over what law is and what
2 ought go forward.

3 So, as I mentioned in the beginning,
4 you're not here keeping a ball score; you know,
5 who got more objections sustained or -- that's
6 immaterial.

7 Lastly, you should consider all of the
8 testimony that I shall -- that I have admitted,
9 and you are to weigh and evaluate the particular
10 witnesses that came forward in using your common
11 sense and your every day experience in
12 ascertaining whether someone is truthful or not
13 truthful, or less truthful, or just doesn't
14 recollect the facts, or got it wrong, okay.

15 Just as you sit and evaluate people
16 and you speak to them, so too, here, you were
17 called upon to weigh and evaluate the credibility
18 of the witnesses that came forward here, and you
19 are to determine what weight they had, what
20 interest they had in the case or lack of interest,
21 any biases or prejudices they may have had, what
22 their age, appearance, the manner in which they've
23 testified.

24 These are factors you may consider.
25 There's no magic formula, but weighing and

1 evaluating all of those things, you come to a
2 conclusion.

3 Now, if, however, you found that
4 anyone has willfully testified falsely as to one
5 material fact that is an important matter, the law
6 permits you to disregard entirely the testimony of
7 that witness based upon the legal principle that
8 one who testifies falsely as to one material fact
9 is likely to testify falsely as to everything.

10 Now, you're not bound to do that. You
11 may pick and choose so much of their testimony as
12 you find worthy of belief and disregard that
13 portion that you find not worthy of belief.

14 It is clearly up to you to weigh and
15 evaluate each witness as he or she came forward,
16 and the evidence that has been presented here, to
17 ascertain whether it is true or false. That's
18 what you're basically called upon to do here.

19 By this process you are first to
20 decide, as you, the sole judges of the facts, you
21 know, what witnesses you believe, what portion of
22 their testimony you accept, and what weight you
23 will give it.

24 Now, we mentioned this concept called
25 the burden of proof, and the burden of proof that

1 the defendant was negligent and that that
2 negligence of Ford was a substantial factor in
3 causing the injury and death is upon the
4 plaintiffs.

5 The burden of proving that the
6 plaintiff Steven Motelson was negligent, and that
7 his negligence was a substantial factor in causing
8 the injury or death, is upon the defendant Ford.

9 Okay. So, whoever has the burden of
10 proof, whoever makes the allegation as to
11 negligence on the part of the other, has that
12 burden of proof.

13 Okay. So, the party having the burden
14 of proof on a particular issue must establish his
15 or her contention, or the company's contention on
16 that issue, by what we call a fair preponderance
17 of the credible, believable evidence.

18 Credible evidence means the testimony
19 or exhibits that you find to be worthy of belief.
20 A preponderance of the evidence means the greater
21 part of such evidence.

22 It doesn't mean the greater number of
23 witnesses or the greater length of time taken by
24 either side.

25 The phrase refers to the quality of

1 the evidence and the weight and affect that it has
2 upon your minds.

3 The law requires that in order for a
4 party to prevail on an issue on which he or she
5 has the burden of proof, the evidence that
6 supports the claim on that issue must appeal to
7 you as being more nearly representing what
8 happened than that which was opposed to that claim
9 on that particular issue.

10 If it does not, or if it weighs so
11 evenly that you're unable to say that there is a
12 preponderance on either side, you must resolve the
13 question against the party who had the burden of
14 proof in favor of the opposing party.

15 Now, in a death action such as this,
16 with reference to two of the plaintiffs, the
17 decedents' estates are not held to as high a
18 degree of proof as is required of an injured
19 plaintiff who can describe what happened.

20 Thus, you are permitted a greater
21 latitude in inferring the negligence on the part
22 of the defendant from all of the evidence in this
23 case.

24 If, from all the credible evidence in
25 this case, you conclude that it is more probable

1 than not that the defendant Ford was negligent,
2 and that its negligence was a substantial factor
3 in causing the injury or deaths, you will find for
4 the plaintiffs on that issue.

5 However, if that is not your decision,
6 or if you find that the evidence is so evenly
7 balanced that you cannot say that the greater
8 weight of the evidence is on either side of these
9 issues, then you will find for the defendant Ford
10 and that they were not at fault.

11 On the issue of plaintiffs' fault, the
12 burden is on the defendant to prove that the
13 plaintiffs were negligent, and that their
14 negligence was a substantial factor in causing the
15 accident.

16 If, considering all of the evidence,
17 you decide that it is more probable than not that
18 the plaintiffs were negligent, and that their
19 negligence was a substantial factor in causing
20 their injuries and death, you will find for the
21 defendant on that issue.

22 If you cannot decide, or if the
23 evidence is so evenly balanced and you cannot say
24 that the greater weight of the evidence is on
25 either side of the issue for the plaintiffs'

1 negligence, then you will find that the plaintiffs
2 were not at fault.

3 Now, in considering this case, you may
4 consider only the exhibits which have been
5 admitted in evidence and the testimony of the
6 witnesses that you've heard in this courtroom, and
7 also, the evidence that you saw.

8 We had a lot of video depositions
9 here, and that testimony is also provided to you
10 for convenience on video because we couldn't get
11 some live witnesses here. That, too, may be
12 utilized by you in the same manner as if they were
13 here live.

14 Under our rules of practice, an
15 examination before trial, those depositions, are
16 taken under oath and are entitled to the equal
17 consideration by you, notwithstanding the fact
18 that they were taken before the trial and outside
19 this courtroom.

20 However, arguments, remarks, and
21 summation of the attorneys are not evidence, nor
22 is anything that I say now or may have said with
23 regard to the facts evidence.

24 You'll recall that certain witnesses
25 were presented here, which the lawyers referred to

1 as experts, and the plaintiff had certain
2 witnesses, experts: William Williams, Stephen
3 Irwin, Jeremy Cummings, David Renfroe, Dr. DiTuri,
4 Dr. Ortiz-Tulla, and Dr. Purow.

5 The defense experts presented were
6 Dr. Geoffrey Germane, Richard Keefer, Ed Paddock,
7 and Catherine Corrigan, who testified concerning
8 their qualifications as experts in their
9 respective fields and gave their opinions
10 concerning issues in this case.

11 When a case involves a matter of
12 science or art that requires a special knowledge
13 or skill not ordinarily possessed by the average
14 person, an expert is permitted to state his or her
15 opinion for the information of the Court and, you,
16 the jury.

17 The opinions stated by the expert who
18 testified before you were based on particular sets
19 of facts or as the expert had obtained -- or as
20 the expert had obtained knowledge of them and
21 testified to them before you.

22 Or, on occasion, the attorneys had
23 used what we call a hypothetical. The attorneys
24 questioned the experts and asked the experts to
25 assume.

1 You may reject an expert's opinion if
2 you find the facts to be different from those
3 which form the basis for the opinion. You may
4 also reject the opinion if, after careful
5 consideration of all the evidence in the case,
6 expert or other, you disagree with the opinion.

7 In other words, you are not required
8 to accept an expert's opinion to the exclusion of
9 the facts and circumstances disclosed by all other
10 testimony.

11 Such an opinion is subject to the same
12 rules concerning reliability as the testimony of
13 any other witness. It is given to you to assist
14 you in reaching a proper conclusion. It is
15 entitled to so much weight as you find the
16 expert's qualifications in the field warrant, and
17 must be considered by you, but it is not
18 controlling upon your judgment.

19 Now, we had other types of witnesses
20 that came forward. The plaintiffs, obviously, who
21 testified were Gary Motelson, Michael Motelson,
22 Elissa Motelson, Gayle Lydell, and Enid Motelson.

23 And the defendant had certain
24 corporate representatives who testified here.

25 Now, you may consider these witnesses

1 interested witnesses. An interested witness is
2 not necessarily less believable than a
3 disinterested witness.

4 The fact that he or she is interested
5 in the outcome of the case does not mean that he
6 or she did not tell the truth. It is for you to
7 decide from their demeanor -- from their demeanor
8 on the stand, and from other tests which your
9 experience dictates, whether or not the testimony
10 has been influenced intentionally or
11 unintentionally by their interest in the case.

12 You may, if you consider it proper
13 under all the circumstances, not believe the
14 testimony of such witness, even though it is not
15 otherwise challenged or contradicted.

16 However, you are not required to
17 reject the testimony of such witness, and may
18 accept all or such part of his or her testimony
19 that you find reliable, and reject those parts
20 that you find not worthy of acceptance.

21 Now, we had some interested witnesses
22 who were -- who were employees of the defendant
23 here. The fact that the following witnesses:
24 Charles Adams, Victor DeClercq, Ed Paddock, Joel
25 Perkins and Casey Mulder were employed by Ford

1 Motor Company, and that the testimony that you
2 had -- had heard related to their employment
3 relationship, may be considered by you in deciding
4 whether the testimony of those witnesses in anyway
5 was influenced by the employment relationship with
6 Ford Motor Company.

7 There are several theories of
8 liability in this case, and one of them is
9 negligence. And negligence is a lack of ordinary
10 care. That is, it's a failure to use that degree
11 of reasonable -- that degree of care that a
12 reasonably prudent person or company would have
13 used under the same circumstances.

14 Negligence may arise from doing an act
15 that a reasonably prudent person or company would
16 not have done under the circumstances, or, on the
17 other hand, from failing to do an act that a
18 reasonably prudent person or company would have
19 done under those same circumstances.

20 We've spoken about this term
21 substantial -- it must be a substantial factor,
22 and that's what we referred to as proximate cause.

23 An act or an omission is regarded as a
24 cause of an injury or an accident if it was a
25 substantial factor in bringing about the injury,

1 that is, it had such an effect in producing the
2 injury that reasonable people would regard it as a
3 cause of the injury.

4 There may be more than one cause of an
5 injury, but to be substantial it cannot be slight
6 or trivial. You may, however, decide that a cause
7 is substantial even if you assign a relatively
8 small percentage to it.

9 One of the other theories that has
10 been presented is what we call strict liability.
11 Now, a manufacturer or a distributor who sells a
12 product in a defective condition is liable for
13 injury which results from that product when the
14 product is used for its intended or reasonably
15 foreseeable purpose.

16 A product is defective if it is not
17 reasonably safe, that is, if the product is so
18 likely to be harmful to people and property that
19 reasonable people who had actual knowledge of its
20 potential for producing injury would conclude that
21 it should not have been marketed in that
22 condition.

23 A product may be defective as a result
24 of a defective design or inadequate warnings or
25 instructions. The burden of proving that the

1 product was defective and that the defect was a
2 substantial factor in causing plaintiffs' injury
3 is upon the plaintiffs.

4 The plaintiffs claim that the 1998
5 Explorer designed by the defendant Ford was
6 defective because, one, the speed control system
7 was designed in such a way to cause a bind on the
8 date of the crash.

9 Two, its rear seat belt system could
10 not (sic) unlatch and/or malfunction during the
11 rollover incident.

12 Or three, its -- and three, its roof
13 structure and front seat belt support system could
14 malfunction during the rollover incident.

15 The defendant Ford denies that the
16 1998 Explorer was defectively designed in that the
17 speed control system was adequate, and that the
18 rear seat belt system was functioning, and that
19 the roof structure and front seat belt support
20 system were not defective and were reasonably
21 safe.

22 A product is defectively designed if a
23 reasonable person, who knew or should have known
24 of the product's potential for causing injury and
25 the feasible or alternative designs, would have

1 concluded that the product should not have been
2 marketed in that condition.

3 Whether the product should have been
4 marketed in that condition depends on the
5 balancing of risks involved in using the product
6 against the product's usefulness and its cost, and
7 two, the risks, usefulness, and costs of the
8 alternative designs as compared to the product the
9 defendant did market.

10 It is not necessary to find that
11 defendant knew of the product's potential for
12 causing injury in order to determine that it was
13 defectively designed.

14 It is sufficient that a reasonable
15 person who did, in fact, know of the product's
16 potential for causing injury, and of the available
17 alternative designs, would have concluded that the
18 product should not have been marketed in that
19 condition.

20 The plaintiffs claim that the 1998
21 Explorer manufactured by defendant Ford was
22 defective because Ford failed to provide safety
23 warnings in that it failed to warn of the
24 potential of a stuck throttle and what a driver
25 should do if faced with a stuck throttle.

1 Ford denies that the 1998 Explorer
2 warnings were needed, and contends that the 1998
3 Explorer was not defective and was not -- and was
4 reasonably safe.

5 The manufacturer of a product which is
6 reasonably certain to be harmful if used by the
7 way the manufacturer reasonably foresees is under
8 a duty to use reasonable care to give adequate
9 warnings of any danger known to it or that in the
10 use of reasonable care it should have known and
11 which the user of the product ordinarily would not
12 discover.

13 Reasonable care means that degree of
14 care which a reasonably prudent person would use
15 under the circumstances.

16 If you find that the vehicle was
17 marketed and it was not defectively designed, or
18 no warnings regarding safety hazards were
19 necessary, or that safety warnings accompanying
20 the product were adequate, then you will state
21 that the product was not defective, and you need
22 not proceed further on your deliberations on that
23 particular issue.

24 If, however, you find that at the time
25 the vehicle was marketed, the product was

1 defective in any of the ways that I've discussed,
2 then you will proceed to consider whether the
3 defect was a substantial factor in causing
4 plaintiffs' injuries and/or death; that is,
5 whether a reasonable person would regard it as a
6 cause of the injury or death.

7 If you find that the defect was not a
8 substantial factor in causing plaintiffs'
9 injuries, you need proceed no further in your
10 deliberations on that particular issue.

11 Now, weighing all the circumstances
12 and facts, you must consider the total
13 responsibility, that is, the responsibility of
14 both the plaintiffs and the defendant Ford which
15 contributed to causing the accident, and determine
16 what percentage is chargeable to each.

17 In your verdict you will state
18 percentages you find. The total of that must
19 equal 100 percent.

20 The manufacturer of a product which is
21 reasonably certain to be dangerous if used in a
22 way that a manufacturer should reasonably foresee
23 it would be used, is under a duty to use
24 reasonable care to give adequate warnings of any
25 dangers known to it which could have -- which in

1 the use of reasonable care it should have known
2 and which the user of the product ordinarily would
3 not discover.

4 Reasonable care means that degree of
5 care which a reasonably prudent person or company
6 would use under those same circumstances.

7 Now, there's another claim here for
8 what we call limited -- strike that -- for
9 liability because of a breach of an implied
10 warranty.

11 The law implies a warranty by a
12 manufacturer that places a product on the market
13 that is reasonably fit for the ordinary purposes
14 for which the product is used.

15 If the product is not reasonably fit
16 to be used for its ordinary purposes, that
17 warranty is breached.

18 Plaintiff claims that defendant Ford's
19 1998 Explorer was not fit for its ordinary
20 purposes because, one, the speed control cable
21 system was designed in such a way as to cause a
22 bind on the date of the crash. Two, that its seat
23 belt system could unlatch and/or release during a
24 rollover incident, and, three, its roof structure
25 support system could malfunction during a rollover

1 incident.

2 Now, if you find that the product was
3 fit for its ordinary purposes, you will find that
4 there was no breach of warranty and you will find
5 for Ford on that particular issue.

6 If you find that the 1998 Explorer was
7 not fit for its ordinary purposes, you will find
8 that Ford breached that implied warranty.

9 Now, Ford's compliance with the
10 federal motor vehicle safety standard does not
11 exempt Ford from liability, but you may consider
12 compliance in evaluating that vehicle.

13 The defendant claims that some or all
14 of Brian and Evan Motelson's claimed injuries were
15 caused by their failure to use the available seat
16 belts and that the plaintiff could -- and that the
17 plaintiffs cannot recover for their injuries as a
18 result thereof.

19 The defendant has the burden of
20 proving that some or all of Brian and Evan
21 Motelson's injuries, and/or Brian's death, was
22 caused by the failure to use the available seat
23 belts.

24 If you find that either Brian or Evan
25 failed to use the available seat belt, and that

1 some of their injuries and/or death in the case of
2 Brian, you may -- you may not make an award for
3 those injuries which you find that Brian or Evan
4 sustained because of such failure to use their
5 seat belts.

6 You'll be given a verdict sheet
7 containing several questions. First question is
8 dealing with damages.

9 You're asked whether -- to insert
10 total damages sustained by the plaintiffs; that
11 is, the total damages both past and future, which
12 you will itemize if you find damages.

13 The second question asks whether the
14 defendant has proved some or all of plaintiffs'
15 injuries and were they caused by the failure to
16 use the available seat belt.

17 If you've answered yes to that second
18 question, you will answer the next question which
19 asks you to compute the amount of money which
20 plaintiffs should be reduced because of
21 plaintiffs' failure to use the available seat
22 belt. In that instance you will put that in a
23 percentage, what percentage should be diminished
24 by failure to use a seat belt, if you should so
25 find.

1 We have specific questions on the
2 verdict sheet which ask -- first questions were
3 each of the boys wearing their seat belts, and
4 you'll answer those questions yes or no, and from
5 there it follows.

6 Now, a person who is faced with an
7 emergency and who acts without the opportunity to
8 consider the alternatives is not negligent if he
9 acts in a reasonably -- as a reasonably prudent
10 person would act in that same emergency, even if
11 it later appears that he did not make the safest
12 choice or exercise the best judgment.

13 A mistake in judgment or wrong choice
14 of action is not negligent if the person is
15 required to act quickly because of danger.

16 This rule applies where a person is
17 faced with a sudden condition which could not have
18 been reasonably anticipated, provided that the
19 person did not cause or contribute to the
20 emergency by his own negligence.

21 If you find that Steven Motelson, who
22 was the driver of the vehicle, was faced with an
23 emergency, and that his response to the emergency
24 was that of a reasonably prudent person, then you
25 will consider -- then you will conclude that

1 Steven Motelson was not negligent.

2 If, however, you find the situation
3 facing Steven Motelson was not sudden, or should
4 reasonably have been foreseen, or was created or
5 contributed to by his own negligence, or that his
6 conduct in response to the emergency was that --
7 was not that of a reasonably prudent person, then
8 you may find that Steven Motelson was negligent.

9 If you find that Ford Motor Company
10 was negligent, and that Ford's negligence
11 contributed to causing the automobile accident in
12 question, you must next consider whether the
13 driver of -- Steven Motelson was also negligent,
14 and whether Steven Motelson's conduct contributed
15 to causing the automobile accident.

16 Here, the burden is on the defendant
17 to prove that Steven Motelson was negligent and
18 that his negligence contributed to causing the
19 accident.

20 If you find that Steven Motelson was
21 not negligent, or if negligent, that his
22 negligence did not contribute to causing the
23 accident, you must find -- find for the
24 plaintiff -- you must find that the plaintiff was
25 not at fault, and you must go no further on your

1 consideration -- you must then go to consider
2 damages, if any, submitted by plaintiff.

3 If, however, you find that Steven
4 Motelson was negligent, and that his negligence
5 contributed to causing the accident, you must then
6 apportion the fault between Steven Motelson and
7 Ford Motor Company.

8 Weighing all the facts and
9 circumstances, you must consider their total
10 fault; that is, the fault of both Steven Motelson
11 and Ford Motor Company, and determine what
12 percentage of fault is chargeable to each.

13 In your verdict you state percentages
14 that you find, and those percentages must equal
15 100 percent.

16 I'm going to instruct you on damages
17 at this time, and you must not take from my -- my
18 charge that I'm suggesting what you are to find or
19 that you should find for the plaintiff.

20 It is for you to decide on the
21 evidence presented and the rules of law that I've
22 given to you whether the plaintiff is entitled to
23 recover from the defendant.

24 If you decide that the plaintiffs are
25 not entitled to recover from the defendant, you

1 need not consider damages. Only if you decide
2 that the plaintiffs, or any of them, is entitled
3 to recover, will you then consider the measure of
4 damages.

5 If you find that the plaintiffs are
6 entitled to recover from the defendant, you must
7 render a verdict in a sum of money that will
8 justly and fairly compensate the plaintiffs for
9 all of their losses resulting from the injuries
10 they sustained.

11 If you decide that Ford is liable,
12 Gary Motelson and/or Steven Motelson and/or Evan
13 Motelson and/or Brian Motelson are entitled to
14 recover a sum of money which will justly and
15 fairly compensate each of them for any of the
16 injuries of conscious pain and suffering to date
17 caused by them.

18 And, of course, as to Brian, conscious
19 pain and suffering would be from the time of the
20 crash until the following day when he died.

21 In determining that amount, if any, to
22 be awarded, Gary and/or Evan and/or Brian, and/or
23 Steven, up until Brian and Steven's death, for
24 pain and suffering, you must take into
25 consideration the effects that the plaintiffs'

1 injuries have had on the plaintiffs' ability to
2 enjoy life.

3 Loss of enjoyment of life involves the
4 loss of the ability to perform daily tasks, to
5 participate in the activities which were part of
6 the person's life before the injury, and to
7 experience the pleasures of life.

8 However, a person suffers the loss of
9 enjoyment of life only if that person is aware at
10 some level of the loss that he has sustained.

11 If you find that Gary and/or Evan,
12 and/or Brian, and/or Steven up until their deaths,
13 as a result of their injuries, suffered some loss
14 of the ability to enjoy life, and that Gary or
15 Evan or Brian and Steven were aware of it at some
16 level of loss, you may take that into
17 consideration in determining the amount to be
18 awarded to the plaintiffs for pain and suffering
19 up until the present.

20 A parent has a right to the services
21 of a child. If you find that the plaintiffs'
22 mother, Elissa Motelson, and the father, Gary
23 Motelson, are entitled to recover, you will award
24 them damages for the pecuniary loss of which you
25 find was sustained by the loss of Evan Motelson's

1 services.

2 Take into consideration the services
3 performed by a child before the occurrence. In
4 considering those services performed by a child
5 before the occurrence, you must evaluate what they
6 did before, their age, their health, their skill,
7 their training, their industry, the experience of
8 the child, and the extent to which the injuries he
9 sustained disabled him from performing those
10 services and, with reasonable certainty, will
11 disable him from performing services in the future
12 until the child becomes 18 years of age.

13 Based upon these factors, you will
14 award the reasonable value of the child's services
15 which the parents have been and will be deprived
16 of as a result of those injuries.

17 Plaintiff Michael Motelson is the
18 administrator of the estate of Steven Motelson.
19 Plaintiff makes two claims here. One, the first
20 claim, seeks damages resulting from the death of
21 Steven Motelson, and second, the claim seeks
22 damages for the injuries and losses which were
23 sustained by Steven Motelson before he died.

24 You must separately consider each of
25 those claims. As to the first claim, the damages

1 are the amount that you will find to be fair and
2 just compensation for the pecuniary injuries, that
3 is, the economic loss resulting from Steven
4 Motelson's death to each of the persons for whom
5 the claim is brought.

6 Those persons are his wife, Enid
7 Motelson; his sons, Gary and Michael Motelson, and
8 their daughter, Gayle Lydell.

9 The law limits damages resulting from
10 Steven Motelson's death to pecuniary issues;
11 monetary injuries, monetary loss.

12 You may not consider or make any award
13 for sorrow, mental anguish, injury to feelings or
14 for loss of companionship.

15 You must determine the economic value
16 of Steven Motelson to his wife, Enid Motelson; to
17 the sons, Gary and Michael; and to his daughter,
18 Gayle Lydell, on July 1st, 2000 when Steven
19 Motelson died.

20 In determining that economic value,
21 you should consider the character, the habits, the
22 ability of Steven Motelson, the circumstances and
23 condition of Enid Motelson, Gary Motelson, and
24 Michael Motelson and Gayle Lydell, the services
25 that Steven would have performed for them, the

1 portion of his earnings that Steven would have
2 spent for the future for the care and support of
3 Enid, Gary, Michael and Gayle, the age and life
4 expectancy of Steven, and the age and life
5 expectancies of Enid, Gary, Michael and Gayle.

6 You should also consider the amount,
7 if any, by which Steven Motelson, if he had lived,
8 would have been inherited from him provided that
9 you find at least one of Enid, Gary, Michael or
10 Gayle would have been alive to inherit from him
11 had Steven not died on July 1st, 2000.

12 Now, Steven Motelson at the time of
13 his death was 60 years of age, and, according to
14 life expectancy tables, had a life expectancy of
15 19.4 years additional time.

16 Now, life expectancy tables are simply
17 statistical averages. A person might live longer
18 or die sooner than the time indicated by those
19 tables.

20 The figures I've just mentioned to you
21 are not controlling upon you, but may be
22 considered by you together with all the other
23 evidence you've heard concerning Steven's habits
24 and health and his employment activities prior to
25 his death in determining what his prospective life

1 expectancy was and what they were at the time of
2 Steven Motelson's death.

3 You must decide what portion of his
4 earnings Steven Motelson would have spent for the
5 care and support of Enid, Michael, Gary and Gayle
6 in making your decision.

7 In that regard, you must consider the
8 amount Steven Motelson earned per week or per
9 month or per year prior to his death. The part of
10 those earnings that Steven would have contributed
11 to the care and support of Enid, Gary, Michael and
12 Gayle, and the pattern of those contributions, the
13 position that Steven had with the company at the
14 time he died, his prospects for advancement and
15 the probabilities with respect to his future
16 earnings, the risks of his occupation, the
17 condition of his health, the length of time that
18 it would have reasonably been expected that he
19 would have reasonably been expected to continue
20 working.

21 As to that last factor, the work
22 expectancy of Steven Motelson was, according to
23 work expectancy tables, to be another 5.7 years
24 from the date of his death.

25 However, again, that figure, like the

1 life expectancy figure that I mentioned earlier,
2 is only a statistical average and is furnished
3 simply as a guide.

4 In determining what portion of his
5 available earnings Steven Motelson would have
6 applied in the future to the care and support of
7 his children, you should consider that Steven
8 Motelson was not legally obligated to contribute
9 to the support of any child who had become 21
10 years of age or older.

11 However, Steven Motelson could have
12 stopped supporting the child under age 21 -- he
13 could have decided to support them to an older age
14 beyond age 21.

15 Okay. If on the evidence you deem it
16 reasonably probable that Steven Motelson would
17 have contributed to the support of his children
18 who were beyond age 21, you may use the date of
19 termination of support of that child as a date
20 which was earlier or later than 21.

21 Now, obviously, they're all over age
22 21, and the instruction that we're giving here
23 speaks to someone who is less.

24 Obviously, he doesn't have an
25 obligation beyond 21, but his -- but by his habits

1 and by the testimony, you can conclude whether he
2 would have contributed to them beyond that time.

3 As I've stated, the economic value of
4 Steven Motelson to his wife and children and
5 grandchildren is something to be decided by you.
6 That value is incapable of exact proof.

7 Taking into account all of the factors
8 that I've discussed, you must use your own common
9 sense and sound judgment based on the evidence in
10 determining the amount of the economic loss
11 suffered by Enid, Gary, Michael, Gayle, and
12 Steven's four grandchildren.

13 The amount you decide as to the amount
14 of economic loss sustained by Enid, Gary, Michael
15 and Gayle must represent the full amount of such
16 loss without reduction to present value. You must
17 also decide the period of years for which that
18 amount is intended to provide.

19 As to the claims for damages sustained
20 by Steven Motelson before he died, which is the
21 second claim I mentioned here earlier, plaintiff
22 is entitled to recover a sum as you find will
23 fairly and justly compensate for the pain and
24 suffering actually endured by Steven Motelson
25 during such time as he was conscious from the

1 moment of the incident until the moment of death.

2 In addition, the plaintiff is entitled
3 to recover those reasonable expenses which were
4 paid or incurred by Steven Motelson's estate for
5 his treatment and care. I don't believe we have a
6 claim for that here, so you disregard that.
7 There's no question as to that. So -- all right.
8 I'll cover that in the verdict sheet.

9 Plaintiff Gary Motelson is the
10 administrator of the estate of Brian Motelson.
11 Here, plaintiff makes two claims. The first claim
12 seeks damages resulting from the death of Brian
13 Motelson, and the second claim seeks damages for
14 the injuries and losses which were sustained by
15 Brian Motelson before he died.

16 You must separately consider each of
17 these claims. As to the first claim, damages are
18 the amount that you find to be fair and just
19 compensation for the pecuniary injuries, that is,
20 the economic loss resulting from Brian Motelson's
21 death to each of the persons for whom the claim is
22 brought. Those persons are his father, Gary, and
23 his mother, Elissa.

24 The law limits damages resulting from
25 Brian Motelson's death to pecuniary injuries.

1 That means economic loss. You may not consider or
2 make any award for sorrow, mental anguish,
3 injuries to feelings or loss of companionship.

4 You must determine the economic value
5 of Brian Motelson to his parents prior to July 1,
6 2000 -- well, it's July 2, 2000 when Brian died.

7 In determining that economic value,
8 you should consider the character, habits, ability
9 of Brian, the circumstances and conditions of his
10 parents, the services that Brian would have
11 performed for them, the age and life expectancy of
12 Brian, and the age and life expectancies of his
13 parents.

14 As I've stated before, this is
15 economic value as to Brian to his parents that you
16 must decide. The value obviously is incapable of
17 exact proof.

18 Taking into account all the factors
19 that I've previously discussed, you must use your
20 own common sense and sound judgment based on the
21 evidence in determining the amount of economic
22 loss suffered by his parents.

23 The amount you decide must be the full
24 economic loss sustained by them without reduction
25 to present value, and you must also decide the

1 period of years for which that amount is intended
2 to provide compensation.

3 As I've stated, the claims for damages
4 sustained by Brian Motelson before he died, that
5 is, those -- that is the second claim that I
6 mentioned.

7 There the plaintiff is entitled to
8 recover such sum as you find will fairly and
9 justly compensate for the pain and suffering
10 endured by Brian Motelson during such time as he
11 was conscious from the moment this incident
12 started until the moment of his death.

13 With respect to any of the plaintiffs'
14 injuries or disabilities that you find to be
15 permanent, the plaintiff is entitled to recover
16 for the future pain and suffering and disability
17 and loss of enjoyment of life.

18 In this regard here you consider the
19 period of time that the plaintiff can be expected
20 to live. In accordance, again, with these life
21 expectancy tables, Evan Motelson had a life
22 expectancy of 61.4 years and Gary Motelson has a
23 life expectancy of 32.7 years. That's additional
24 years from this date.

25 Such a table, however, provides

1 nothing more than a statistical average. It
2 neither guarantees that the plaintiffs will live
3 an additional 61 or 32 years respectively, or
4 means that they will live longer or less.

5 Okay. Life expectancy figures, as
6 I've mentioned before, are statistical averages,
7 and they are things that you may consider.
8 However, you also may consider other factors from
9 your own experience and from the evidence that
10 you've heard concerning each of their respective
11 health, their habits, their employment, their
12 activities in deciding what those plaintiffs'
13 present life expectancies are.

14 You may find that the plaintiffs and
15 the decedents are entitled to recover from the
16 defendant. You must also include in your verdict
17 damages for any mental suffering; emotional,
18 psychological injuries. These are subsumed in
19 emotional distress into the pain and suffering
20 questions. That's correct.

21 MR. ROTHENBERG: That's correct, your
22 Honor.

23 THE COURT: There's not a separate
24 question for that. Now, let me take a pause here.

25 Is there any question as to the

1 verdict sheet?

2 MR. ROTHENBERG: Yes, your Honor.

3 MR. CECALA: I think we have just a
4 couple.

5 THE COURT: Give us -- sit tight,
6 jurors. Why don't we step outside and see if
7 there is a technical correction that we need to
8 make.

9 (Whereupon, a discussion was held off
10 the record in chambers. Following said
11 discussion, the Court and all attorneys returned
12 to the courtroom.)

13 THE COURT: Jurors, take ten minutes.
14 We have some technical questions, and we have to
15 redo the sheets, okay, and then we'll give you
16 further instruction.

17 THE COURT OFFICER: Step out, please.

18 (Jury exited.)

19 (Whereupon, a recess was taken.)

20 THE COURT OFFICER: Remain seated.

21 THE COURT: Bring them in.

22 THE COURT OFFICER: Step in, please.

23 Jury entering.

24 (Jury entered.)

25 THE COURT: Please be seated. Ladies

1 and Gentlemen of the Jury, I had misspoke earlier
2 when I said that in considering any damages to the
3 what contributions, if any, Steven Motelson may
4 have given to his family, I included the
5 grandchildren. You should not consider the
6 grandchildren however. Only the children would be
7 considered. Okay?

8 Let's give a verdict sheet to juror
9 number one. Traditionally, the first person in
10 the first seat acts as a foreperson, but it's up
11 to you to elect your own foreperson.

12 The foreperson has no greater duties
13 than anyone else, but you've got to fill out the
14 form, check off the boxes. Okay. It's not a hard
15 thing.

16 If you open to the first page, I'm
17 going to go through a few things with you, and
18 these are the questions that you're going to be
19 receiving shortly, okay?

20 Now, in filling out this special
21 verdict sheet, there are stop and start points.
22 Read the instructions carefully. Follow the
23 instructions exactly, okay, because it is
24 important that we don't have an inconsistent
25 verdict because you didn't follow the

1 instructions. So follow them carefully.

2 Don't be afraid by it. It's --
3 hopefully we've worked long enough on this that
4 we've got it down pat at this point, but the
5 questions are -- are specific.

6 Now, you, as jurors, the first six of
7 you are going to deliberate on this case, and
8 under New York law all we need is five out of six.

9 In other words, one of you could be a
10 dissenter from the other five and still have a
11 verdict as to a particular question. Answering it
12 yes or no, and these are a series of questions,
13 yeses or nos. We give you a pen. You check off
14 the box yes or no in the space provided. So there
15 are a whole series of questions, and we'll talk
16 about how you ought do that. Okay.

17 The alternates, we're going to
18 separate you. We're still going to give you
19 lunch, and we are going to ask that you not
20 deliberate because if somebody gets sick, we may
21 have to throw you into the mix this afternoon.
22 Okay. So that's why you're still here.

23 Let's go through this. Open to the
24 first page -- and you'll have an opportunity to
25 look at this as we go along. Do we have extras

1 here?

2 THE CLERK: Yes.

3 THE COURT: How many extras do we
4 have?

5 THE CLERK: I have three for right
6 now.

7 MR. BELL: Judge, I can share. We
8 have a couple back here.

9 THE COURT: Give every other juror a
10 verdict sheet, and then we'll collect these back
11 from you. Give each one if you have enough.
12 We'll make more copies.

13 Okay. Just follow along. It's rather
14 lengthy. We don't typically do that, but it's
15 rather lengthy.

16 Go to the first -- flip over to the
17 first page. Okay. It will read page number two.
18 These are the questions that we want you to ask --
19 answer in sequence. A -- okay. Now, there's an
20 "A" question and a "B" question, and then we're
21 going to get into numbers.

22 Okay. Was Brian Motelson wearing a
23 seat belt at the time of the accident? Yes or no.

24 We need a minimum of five out of six
25 of you or six out of six. You check off the box

1 all six jurors agree or five out of six if you
2 have five out of six. You then write in the name
3 of the person that disagrees with the others.

4 Okay. We don't take any penalty
5 against you. It's just we need this for our
6 records. Okay.

7 Then you go onto Question B. Was Evan
8 Motelson wearing a seat belt at the time of the
9 accident. Again, yes or no. All six agree, five
10 out of six, name of the dissenter. Okay.

11 Now, if you've answered yes to either
12 or both "A" and/or "B," proceed to the next
13 question, which is question one, two, and three.
14 However, if you've answered no to both of those
15 questions, A and B, then you go to question four.
16 You skip over the next one. Okay.

17 But assuming you've answered that yes,
18 they were wearing their seat belts, let's go to
19 question one. Okay. And I don't mean that as any
20 suggestion, but I want to go through each
21 question.

22 Question One: Was the rear seat belt
23 system defectively designed? Yes or no.

24 Okay. And, again, your instructions.
25 If you said yes, proceed to "B." Okay.

1 Was that a substantial factor in
2 causing the injury to Evan Motelson, yes or no.
3 Okay. If you had said "no," you just jump over to
4 the number two question, which is on the following
5 page.

6 In this instance here we have a "C"
7 question. One-C reads: Was that a substantial
8 factor in causing the death of Brian Motelson.
9 Okay.

10 Now, in each question that we're going
11 to be going through, you're going to have the same
12 verbiage: Was that a substantial factor.

13 In order to find liability, it's a
14 two-prong test. You have to find either
15 negligence or a defect of some sort, and that
16 defect or negligence caused a substantial factor.
17 So you're going to have these "A" and "B"
18 questions as we go along, okay, and they would
19 both have to be yes in order to find liability.

20 If you find there is a defect but it
21 didn't cause the injury or the death, and you said
22 no, that means there's no liability as against the
23 defendant.

24 If you said "no, no" obviously there's
25 no liability as against the defendant.

1 Okay. So, you are going to see that
2 substantial factor issue coming up in every
3 question that we go through in the future. Okay.

4 Proceed to Question Two. Okay.
5 Follow the instructions.

6 Question Two has an "A" portion: Was
7 Ford's 1998 Explorer's rear seat belt system not
8 reasonably fit for the ordinary purposes for which
9 they were used. Yes or no.

10 And, again, we need the vote tally as
11 to each. If yes, you go to "B." Was that a
12 substantial factor in causing the plaintiffs'
13 injuries and/or death.

14 Again, all those "B" questions are
15 going to be substantial factor, substantial
16 factor, substantial factor. Okay?

17 Go onto the next page. Was Ford Motor
18 Company negligent in failing to use reasonable
19 care in designing, inspecting, and testing the
20 rear seat belt system in the 1998 Ford Explorer.
21 Yes or no.

22 Okay. Again, if you said yes, you go
23 to "B." If you said no, you bump over to the next
24 question. Okay.

25 Was that a substantial factor in

1 causing plaintiffs' injuries and/or death.

2 4-A, Was the front seat belt system
3 defectively designed. All right. We had the
4 rear, now we're talking about the front. Yes or
5 no.

6 Again, if you said yes to "A," you go
7 to "B." If you said no, you bump over to page
8 five. B, of course, was that a substantial factor
9 in causing Steven Motelson's death.

10 5-A, Was Ford's 1998 Explorer's front
11 seat belt system not reasonably fit for the
12 ordinary purposes for which it was used. Yes or
13 no. And the vote.

14 And if you said yes, you go to the "B"
15 section. Was that a substantial factor in causing
16 Steven Motelson's injuries and death. Yes or no.
17 Bump over if you had said no.

18 And if you went through "B" to
19 question six on the next page, which reads -- 6-A,
20 Was Ford Motor Company negligent in failing to use
21 reasonable care in designing, inspecting, and
22 testing the front seat belt system in the 1998
23 Ford Explorer. Yes or no. The vote.

24 If you said yes, the "B "section. Was
25 that negligence a substantial factor in causing

1 Steven Motelson's injury and death. Yes or no.

2 Bumping over to the next page,
3 Question 7-A, Was the roof support system
4 defectively designed. Yes or no. The vote. "B,"
5 you would go to substantial factor. If you said
6 no, you'd bump over to the following page. Okay.

7 Question eight, Was Ford's 1998
8 Explorer's roof support system not reasonably fit
9 for the ordinary purposes for which such system is
10 used? Yes or no. The vote. The section -- if
11 you said yes -- was that a substantial factor in
12 causing Steven Motelson's injuries and death.

13 And if you said no, you would bump
14 over to question nine. 9-A reads: Was Ford Motor
15 Company negligent in failing to use reasonable
16 care in designing and inspecting and testing the
17 roof support system of the 1998 Ford Explorer.
18 Yes or no. Your vote. "B" section, Was that a
19 substantial factor in causing Steven Motelson's
20 injuries or death. You said no, you would bump
21 over to the tenth question.

22 10-A, Was the 1998 Ford Explorer's
23 speed control cable system defectively designed.
24 Yes or no. The vote. The "B" section, Was that a
25 substantial factor in causing the plaintiffs'

1 injuries and/or death. And if you said no, you
2 would have bumped over to question 11-A.

3 Was the speed control cable system not
4 reasonably fit for the ordinary purposes for which
5 such product is used. Yes or no. The "B" section
6 if you said yes, Was that a substantial factor in
7 causing plaintiffs' injuries and/or death. Okay.
8 If you said no, you would bump over to question
9 12.

10 12-A, Was Ford Motor Company negligent
11 in failing to use reasonable care in designing,
12 inspecting, and testing the speed control cable
13 system of the 1998 Ford Explorer. Yes or no. The
14 "B" section, Was this negligence a substantial
15 factor in causing plaintiffs' injuries and/or
16 death. If you said no, you would go over to 13-A.

17 Was Ford Motor Company negligent in
18 failing to give adequate warnings of any dangers
19 known to it of the design of the speed control
20 cable system of the 1998 Explorer vehicle or which
21 it -- for which in the use of reasonable care it
22 should have known. We will carat that in.

23 And the "B" section, Was that a
24 substantial factor in causing plaintiffs' injuries
25 and/or death.

1 If you had said no, you would bump
2 over to the instruction sheet. Okay. Okay. I
3 have to make a tailor on this here. You don't
4 proceed to Question 14. You do, but you have to
5 read the instruction sheet first.

6 Okay. On page 16 we have
7 instructions: Now, if you've answered yes to one
8 or more of the following questions, and those are
9 all of them, 1 through 13-B.

10 Now, if you had said no to an "A"
11 section, you wouldn't have a "B" section, okay.
12 If you got to the "B" section and said yes/yes,
13 that's when you move on, and the next section
14 would cover comparative negligence.

15 Okay. So, if you have yes/yes as to
16 any one of those 13 questions, then you move on,
17 okay. If you said no to all of them, okay, from
18 the "B" section, then you don't proceed. Okay.
19 But any one of them moves you over. Okay.

20 So, and at that point you would stop.
21 You tell the court officer you have a verdict. So
22 if you have yes/yes as to any of those liability
23 questions as against Ford, you then ask the
24 question if that -- meaning you have found Ford
25 liable.

1 Now, we ask, Was Steven Motelson
2 negligent in operating the 1998 Ford Explorer.
3 Yes or no. And the "B" section, Was that
4 negligence a substantial factor in causing
5 plaintiffs' injuries and/or deaths. Yes or no.

6 And in this instance we have a "C"
7 section, okay. It says, What percentage of
8 responsibility is chargeable to Ford Motor Company
9 and what percentage chargeable to Steven Motelson,
10 and those two numbers have to equal 100 percent.
11 Okay.

12 So, you know, let's assume you got
13 here. Any two numbers, you know, 60/40, 70/30,
14 50/50 -- I'm not suggesting anything -- but those
15 two numbers have to equal 100 percent.

16 All right. Okay. Let's go down. So
17 if you've gotten through that, that means you have
18 found liability as against Ford and possibly
19 against Motelson. If you said no as to him, then
20 we move onto damages anyway, because now we're
21 going to evaluate damages.

22 And in this instance your answers are
23 going to be in dollar amounts or none if you
24 decide not to make an award.

25 Okay. State the amount of damages

1 awarded to Evan Motelson for pain and suffering up
2 until the date of your verdict.

3 Now, when we say, "up until the date
4 of your verdict," we're talking about from the
5 date of this accident up until today. We consider
6 that the past because there's another question
7 which deals with the future, and that starts today
8 and it pushes out.

9 And that was what we were talking
10 about with these life expectancy tables, of what
11 you estimate they may live or not live, and that's
12 how you utilize that information that we gave you
13 earlier.

14 So, again, we need a vote; all six of
15 you or five out of six. And any dissenting vote
16 we need the name.

17 And, State the amount of future
18 damages, if any, awarded to Evan Motelson for the
19 permanent effect of his injuries, and further pain
20 and suffering, from the time of your verdict,
21 okay, to the time of Evan Motelson could be
22 expected to live. And then state the period of
23 years and such amount which is intended to provide
24 compensation.

25 Now, don't do math. Okay. What do I

1 mean by that? Don't multiply. Don't divide. We
2 need gross numbers. We don't need you doing
3 algebraic formulas. We don't need you saying,
4 Gee, he'll live another 50 years times "X" number
5 of years. "X" times 50 equals -- you know. You
6 could do that as a means of calculating, but you
7 don't put that here.

8 So when we say number of years, we're
9 talking about how long you -- if you answer this
10 question -- how long you anticipate he's going to
11 live using, as a guide, the statistical tables
12 that we gave you earlier. Okay.

13 Everybody understand that? Okay. So
14 it's a gross amount. It's not "X" number of
15 dollars per year or per month or whatever. It's a
16 gross amount, okay, over a period of time, if you
17 decide.

18 And, of course, if you decide not to
19 make an award, you put in the word "none" as to
20 any of these questions where it says "amount." If
21 you decide not to make an award, you write in the
22 word "none," N-O-N-E.

23 Okay. The "B" question, 16-B, State
24 the amount of damages, if any, awarded to Evan
25 Motelson for the costs of future medical

1 treatment, care, and medication from the time of
2 your verdict until that time that Evan Motelson
3 could be expected to live, and then state the
4 period of years over which that amount is intended
5 to provide compensation.

6 Again, a gross amount if you decide to
7 make an award, or "none" if you decide not to make
8 an award. And if you decide to make an award,
9 over what period of years do you anticipate that
10 money to be utilized that you award. Okay.

11 Now, special instruction before the
12 next question. If you found in Question B --
13 remember going back -- that Evan Motelson was
14 wearing a seat belt, do not answer 16-C. Then
15 proceed to Question 17.

16 However, if you found -- 16-C, If you
17 found in Question B that Evan Motelson was not
18 wearing a seat belt, what percentage of his
19 injuries were a result of that failure to use the
20 seat belt.

21 Okay. In this instance you will
22 determine that had he been wearing a seat belt, he
23 might have been, you know, protected. Or, if he
24 wasn't wearing it, it caused further injuries than
25 had he been wearing the seat belt, okay, and that

1 is something that you have to determine; what
2 percentage if he was not wearing a seat belt, if
3 you made that determination that he is not, would
4 reduce the amount of injuries that he would have
5 had. Okay.

6 And then, consequently, that gets
7 applied to the dollar amounts, if any, that you
8 award. We take care of that. We just need the
9 percentage if you decide he was not wearing a seat
10 belt.

11 If you said he was wearing a seat
12 belt, then skip over this and then go to 17, okay?

13 And 17-A basically speaks to the same
14 issue, but to, you know, Brian is -- is deceased,
15 so we speak of the Estate of Brian Motelson for
16 the conscious pain and suffering, if any,
17 experienced by Brian Motelson prior to his death.

18 Okay. He died the following day, so
19 it's that window that we're talking about. And if
20 you decide to put in the word "none," put in that
21 word "none." And, again, we need a five out of
22 six of you to make those votes.

23 Now, on the next instruction, it's the
24 same as the previous one. If you found in
25 Question A that Brian Motelson was wearing a seat

1 belt, don't answer 17-B and proceed to the
2 following instructions which are at the bottom of
3 the page.

4 But if you found in Question A that
5 Brian Motelson was not wearing a seat belt, what
6 percentage of his injuries were a result of the
7 failure to wear that seat belt.

8 Same concept that applies to Brian as
9 it did to Evan. If he was not wearing his seat
10 belt, what additional injuries do you ascertain he
11 might have -- he sustained as opposed to had he
12 been wearing it.

13 Instructions, If you have answered yes
14 to any of the following questions -- and that goes
15 through all these liability issues, 4 through
16 14-B -- then proceed to questions 18 and 26.
17 Okay. That's the next -- through the end
18 basically.

19 So, now we talk about Gary Motelson.
20 State the amount of damages awarded to Gary
21 Motelson for pain and suffering up until the date
22 of your verdict. If you decide not to make an
23 award, you put in the word "none" there. Okay.
24 And, again, we need five out of six of you to
25 reach that verdict. Hopefully, all people will --

1 you know, verdicts will be unanimous if you can.

2 Question 19, State the amount of
3 future damages, if any, awarded to Gary Motelson
4 for the permanent effect of his injuries and pain
5 and suffering from the time of your verdict to the
6 time that Gary Motelson could be expected to live,
7 and then state the period of years over which such
8 amount is intended to provide compensation.

9 Again, if you decide none, you put in
10 that word. If you decide an amount, you put in
11 the gross amount. Again, don't do math. You're
12 looking at the total number of years that he could
13 be expected to live and what compensation are you
14 going to award for that, if any.

15 Question 20, State the amount of
16 damages, if any, awarded to Gary Motelson for the
17 costs of future medical treatment, care, and
18 medication from the time of your verdict to the
19 time that Gary Motelson could be expected to live,
20 and then state the period of years over which such
21 amount is intended to provide compensation.

22 If you decide to make an award, you
23 will insert the -- not to make an award, you will
24 insert the word "none."

25 "Question 21, State the amount of

1 damages, if any, awarded to Elissa Motelson for
2 her loss of services, society, and affection as a
3 result of her husband Gary Motelson's injuries.
4 If you decide to make no award, put in the word
5 "none." If you decide to make an award, dollar
6 amount, number of years, okay.

7 Moving onto 22: State the amount of
8 damages, if any, awarded to Elissa Motelson and
9 Gary Motelson for the loss of services as a result
10 of injuries to their son, Evan Motelson.

11 If you decide to put in the word
12 "none" for no damages, put that in. And, again,
13 we're talking about over a period of time, so what
14 number of years are you going to make that award
15 for, if at all.

16 Twenty-three, State the total amount
17 of economic loss, if any, to Gary Motelson and
18 Elissa Motelson resulting from Brian Motelson's
19 death.

20 And if you decide not to make an
21 award, put in the word "none" or a gross dollar
22 amount.

23 Okay. Number 24, State the amount of
24 damages awarded to the Estate of Steven Motelson
25 for the conscious pain and suffering, if any,

1 experienced by Steven Motelson prior to his death.
2 A dollar amount. If you decide to put in none,
3 put in the word "none."

4 State the total amount of economic
5 loss, if any, to each of Enid, Gary -- Enid
6 Motelson, Gary Motelson, Michael Motelson, and
7 Gayle Lydell resulting from Steven Motelson's
8 death, and there we have, if you decide to put in
9 none, you put in the word "none" as to each of
10 them, and they're each individually broken down:
11 Enid Motelson, an amount; Gary Motelson, Michael
12 Motelson, and Gayle Lydell.

13 Again, we need these check -- on each
14 question you have to do a vote tally; either all
15 six, or five out of six, and the name of the
16 dissenting voter, if there is one.

17 Twenty-six, last question, State the
18 amount awarded for the following items of damages,
19 if any, incurred by the Estate of Steven Motelson
20 as a result of his death, and that is loss of
21 earnings.

22 Again, all six of you must agree, or
23 five out of six, what -- what losses were
24 sustained as a result of any loss earnings -- lost
25 earnings.

1 That is the full questionnaire. Any
2 requests or exceptions to charge?

3 MR. RYAN: May I approach?

4 THE COURT: And as to --

5 MR. BELL: I have one suggestion.

6 THE COURT: Why don't we step outside,
7 please.

8 (Whereupon, a discussion was held off
9 the record in chambers.)

10 THE COURT: Be seated. Jurors, I've
11 been instructing you on the manner in which voting
12 takes place, and I said that five out of six would
13 be sufficient.

14 Now, bear in mind that as to each and
15 every question it doesn't -- if you have five out
16 of six, it doesn't have to be the same five, okay.

17 So, if, you know, five of you agree to
18 one question, and then the next question five of
19 you, but it's a different five, you know, a
20 different dissenter, that's fine. It's any five.
21 So it doesn't have to be consistent throughout.

22 Now, if, in the course of your
23 deliberations, you should come upon something that
24 you don't recollect what took place, or you need a
25 read back of testimony, or a further instruction

1 based upon what I have given you here, you may,
2 after deliberating with the six of you, you know,
3 if you can't agree as to what a particular fact
4 was that's important to you to answer a question,
5 then you could ask for that read back.

6 And we're going to give you a paper
7 and pen, and you can write out a question. Please
8 be specific when you write out questions.

9 You know, saying, Gee, we need all of
10 his testimony, well, guess what? You know, that's
11 going to be a two-hour read or something. You
12 know, we're prepared to do it. We have reporters
13 who have been taking daily copy. We have, you
14 know, a book for each day, a transcript of
15 testimony. We can read back something to you.

16 If you have a particular issue about a
17 particular thing that was said, and maybe a couple
18 of people address that, please be specific because
19 we have to dig out that information that you're
20 requesting and then agree on the language that is
21 to be read back that answers the question and not
22 more or less than is necessary.

23 Okay. Lastly, if my instructions are
24 unclear, if you don't understand something on the
25 verdict sheet, then we will -- we will then make

1 another read to you or a correction for your
2 edification.

3 Now, in reaching your verdict, you're
4 not to be affected by sympathy for any of the
5 parties, or what the reaction of the parties would
6 be, or the public, to your verdict; whether it
7 will please someone, displease someone, is
8 popular, unpopular or, indeed, any other
9 consideration outside this courtroom.

10 You should consider both the evidence
11 and the exhibits that have been admitted and the
12 facts that you consider to be believable. Apply
13 the law as I've given it to you, and your verdict
14 will be determined by the conclusions you reach,
15 no matter whom they help nor whom they hurt.

16 I mentioned that we have lunch ordered
17 for you, and we are going to have you move out at
18 this point to start deliberation.

19 Now, during the deliberation process,
20 the six of you must be together. What I mean by
21 that, if someone has to use the bathroom break or
22 a smoke break, you have to stop deliberating.
23 Okay.

24 You can be looking for something in a
25 pile of paper, but you can't deliberate. You have

1 to be the six minds of you together when you
2 deliberate and answer these questions. Okay. So,
3 stay together when you are deliberating.

4 You could take a break for lunch or
5 you could deliberate during lunch. You're going
6 to be there, but it's those other breaks that we
7 talk about where you must be together.

8 As to the alternates, we're going to
9 set you up in a different room. You cannot
10 deliberate. In other words, don't evaluate
11 because we may have to throw you into the mix if
12 this thing protracts and somebody gets sick or
13 something.

14 So, please don't deliberate on these
15 issues. We want -- we have to give you further
16 instruction and start anew if we had to do that.
17 Hopefully not.

18 You can, you know, take breaks, more
19 extended, obviously, since you don't have to be
20 together to deliberate. So, I hope you brought
21 something good to read.

22 Jurors, I'm going to turn you loose at
23 this point.

24 Any requests or exceptions to charge?

25 MR. BELL: No, your Honor.

1 THE COURT: Defense?

2 MR. CECALA: Not anything that we've
3 already mentioned.

4 THE COURT: Very fine. Jurors, I'm
5 going to take this package from you right now. I
6 have to change that page. We had a typo on one of
7 them. Just give me that. I will make that
8 correction right now.

9 We had the word "or" when it should
10 have been "for" and grammatically it was
11 incorrect. It's a typographical error. We're
12 making that change.

13 We're going to give you an envelope to
14 keep this in. In the event you have to take a --
15 a protracted break, do not, obviously, discuss
16 what you're doing in the deliberation process
17 outside the six of you.

18 We'll take the verdict sheet and we
19 would seal it, and no one would be able to look at
20 it if you only have part of it filled out.

21 It's quarter of one. Your lunch
22 should be here shortly, within a half hour or so,
23 and we'll see you later. Okay.

24 THE COURT OFFICER: Okay. Step out,
25 please.