

Summation - Plaintiff

1 THE COURT: You may be seated.

2 Members of the jury, I charge you on the law of
3 damages must not be taken as a suggestion that you should
4 find for the plaintiff or plaintiffs. It is for you to
5 decide on the evidence that has been presented and the rules
6 of law that I will give to you whether the plaintiff or
7 plaintiffs are entitled to recover from the defendant.

8 If you decide that the plaintiff or plaintiffs are
9 not entitled to recover from the defendant, you need not
10 consider damages. Only if you decide that the plaintiff or
11 plaintiffs are entitled to recover will you consider the
12 measure of damages.

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

18 You must now decide from the evidence before you
19 the total amount of damages suffered by the plaintiff or the
20 plaintiffs in dollars in accordance with the rules that I'm
21 about to explain to you.

22 In arriving at your total, you must not consider
23 the percentages of negligence that you found at the
24 liability stage of the trial. You do not consider that.
25 But it must simply -- you must simply report the total

Judge's Charge

1 amount of plaintiffs' damages.

2 You are reminded, as I told you at the liability
3 portion of the trial, you are the sole exclusive judges of
4 the facts and in this field you are supreme.

5 You recall that at the beginning of the trial I
6 stated to you, and at the end of the liability phase,
7 certain principles that you could have them in mind as the
8 trial progressed. Briefly that you are not bound -- you are
9 bound rather, let me briefly, that you are bound to accept
10 the rules of law that I give to you whether you agree with
11 them or not.

12 Further, that you must not conclude from my
13 rulings or anything that I've said during the course of this
14 trial that I favor any party to this lawsuit.

15 Furthermore, that you may not draw any inference
16 from an unanswered question nor consider testimony which has
17 been struck from the record in reaching your decision, and
18 that there is no magical formula which can be used in
19 evaluating the testimony of the witness.

20 The tests used in your every day affairs to decide
21 the reliability or unreliability of statements made to you
22 by others is the test that you are to apply in your
23 deliberations in this case.

24 The law does not require that you have to accept
25 all the evidence that I have admitted during this trial. In

Judge's Charge

1 deciding what evidence you will accept, you must make your
2 own evaluation of testimony given by each of the witnesses
3 and decide how much weight you will give to that witness'
4 testimony.

5 Again, I will remind you about falsus in uno. If
6 you find that any witness has testified falsely as to a
7 material fact, that is, as to an important matter, the law
8 permits you to disregard completely the entire testimony of
9 that witness upon the principle that one who testifies
10 falsely about one material fact is likely to testify falsely
11 about everything.

12 You are not required, however, to consider such a
13 witness as totally unworthy of belief. You may accept so
14 much of his or her testimony that you deem true and
15 disregard what you feel is false.

16 By the process by which I have just described to
17 you, you, as the sole judges of the facts, decide which of
18 the witnesses you will believe, what portion of their
19 testimony you will accept and what weight you will give to
20 that testimony.

21 Burden of proof. The burden of proof rests on the
22 plaintiff or plaintiffs. That means that it must be
23 established by a fair preponderance of the credible
24 evidence, that the claim that plaintiff or plaintiffs make
25 are true. The credible evidence means the testimony or

Judge's Charge

1 exhibits that you find worthy to be believed.

2 A preponderance of the evidence means a greater
3 part of such evidence. That does not mean the greater
4 number of witnesses or the greater length of time taken by
5 either side. The phrase refers to the quality of the
6 evidence; that is, its convincing quality, the weight and
7 effect that it has on your minds.

8 The law requires that, in order for the plaintiff
9 or plaintiffs to prevail on a claim, the evidence that
10 supports his and/or her claim must appeal to you as more
11 nearly representing what took place than the evidence
12 opposed to his and/or her claim.

13 If it does not or if it weighs so evenly that you
14 are unable to say that there is a preponderance, a
15 preponderance on either side, then you must decide the
16 question in favor of the defendant. It is only if the
17 evidence favoring the plaintiff's claim outweighs the
18 evidence opposed to it that you can find in favor of the
19 plaintiff or plaintiffs.

20 In deciding this case, you may consider only the
21 exhibits which have been admitted into evidence and the
22 testimony of the witnesses as you have heard them in this
23 courtroom or as it has been read to you, testimony given to
24 you at an Examination Before Trial.

25 Under our rules of practice, an Examination Before

Judge's Charge

1 Trial is taken under oath and is entitled to equal
2 consideration by you notwithstanding the fact it was taken
3 before the trial and outside the courtroom; however,
4 arguments, remarks and summations of the attorneys are not
5 evidence nor is anything that I say to you now or may have
6 said to you in regard to the facts is evidence.

7 Expert witnesses. You will recall that certain
8 witnesses testified concerning their qualifications as an
9 expert in their respective fields and they gave opinions
10 concerning issues in that is case. There was Dr. Itzhak
11 Haimovic, M.D. medical doctor, neurologist and a
12 neurophysiologist. He was called by the plaintiff.

13 Then you had Dr. Michael Weintraub, an M.D.,
14 neurologist and pain management doctor called by the
15 defendant.

16 When a case involves a matter of science or art or
17 it requires special knowledge or skills not ordinarily
18 possessed by the average person, an expert is permitted to
19 testify or state his or her opinion for the information of
20 the Court and the jury.

21 The opinion stated by the experts who testified
22 before you are based on particular facts as the experts
23 obtain knowledge of them and testify to you before you or as
24 the attorneys who questioned the experts ask the experts to
25 assume. You may reject the experts' opinion if you find the

Judge's Charge

1 facts to be different from those which form the basis for
2 that opinion.

3 You may also reject the opinion if, after careful
4 consideration of all the evidence in the case, expert or
5 otherwise, you disagree with that opinion. In other words,
6 you are not required to accept an expert's opinion to the
7 exclusion of the facts and circumstances disclosed by other
8 testimony. Such an opinion is subject to the same rules
9 concerning reliability as the testimony of any other
10 witness. It is given to assist you in reaching a proper
11 conclusion and it is entitled to such weight as you find the
12 expert's qualification in the field warrant and must be
13 considered by you but is not controlling upon your judgment.

14 Interested witness. You recall the plaintiffs
15 both testified before you at this stage of the trial as
16 parties to the action, they are considered interested
17 witnesses. What does this mean? An interested witness is
18 not necessarily less believable than a disinterested
19 witness. The fact that he and/or she is interested in the
20 outcome of the case does not mean that he or she does not
21 tell the truth. It is for you to decide from the demeanor
22 of the witness on the witness stand and such other test as
23 your experience dictates whether or not the testimony has
24 been influenced intentionally or unintentionally by his
25 and/or her interest.

Judge's Charge

1 You may, if you consider proper under all the
2 circumstances not believe the testimony of such a witness
3 even though it is not otherwise challenged or contradicted.
4 However, you are not required to reject the testimony of
5 such a witness and you may accept all or such part of his
6 and/or her testimony as you find reliable and reject such
7 part as you find unworthy of acceptance.

8 I will now read to you the contentions of the
9 parties, again, keeping in mind that these are their
10 contentions.

11 I will read the plaintiffs' contentions first and
12 then I will read the defendants' connections.

13 Plaintiffs' connections with respect to damages:
14 The plaintiff, Antonia Mary Corapi, contends that as a
15 result of her fall on April 14, 2007, she sustained a
16 compression fracture of her first lumbar vertebral body.

17 Plaintiff further contends, as a result of the
18 fracture, she underwent a surgical procedure known as
19 kyphoplasty at the North Shore University Hospital in
20 Plainview.

21 Plaintiff contends further that the kyphoplasty
22 procedure was unsuccessful, that her pain continued, and
23 that a further surgical procedure at Winthrop University
24 Hospital was required involving bone grafting at T11-T12
25 decompression procedure, and a T11 L3 spinal fusion with

Judge's Charge

1 instrumentation together with complications from the surgery
2 including pulmonary collapse, acute respiratory failure,
3 acute renal failure, and congestive heart failure.

4 Plaintiff contends that she has a 16 centimeter
5 scar at her surgical site.

6 Plaintiff further contends that her recovery from
7 the surgical procedures were painful and that she continues
8 to suffer pain to date together with the interruption of her
9 usual and customary pre-accident life's activities.

10 And those are the contentions of the plaintiff.

11 And defendants' contentions, keeping in mind that
12 these are defendants' contentions.

13 The defendant contends that plaintiff suffered
14 from a long-standing, significant progressive degenerative
15 spine and inflammatory bone disease that long predated this
16 incident, that the incident of April 14, 2007 was incidental
17 in nature in the setting of plaintiff's prior medical issues
18 including severe osteoporosis, previous falls, marked
19 elevation of sedimentation rate, atrial fibrillation, disk
20 herniations, prior anxiety disorder and depression and a
21 vitamin B12 deficiency; that the incident produced a soft
22 tissue injury to the buttocks and back; that the surgery
23 that was performed was unrelated to the incident and a
24 reflection of this significant progressive degenerative
25 spine and inflammatory bone disease as confirmed by

Judge's Charge

1 objective neurological examination and review of all
2 relevant medical records.

3 The defendant further contends that the
4 plaintiff's claim for past and future pain and suffering are
5 not causally related to the incident in question.

6 And those are the contentions of the defendant.

7 Therefore, this accident, plaintiffs' contend that
8 this accident of April 14, 2007 was a proximate cause that
9 is a substantial factor of plaintiff's injuries and/or
10 aggravated her injuries.

11 The defendant claims that the accident of
12 April 14, 2007 was not a proximate cause, a substantial
13 factor in causing plaintiff's injuries.

14 Proximate cause. Again, I will define it for you:
15 An act or omission is regarded as a cause of injury if it
16 was a substantial factor in bringing about the injury or
17 injuries; that is, such an effect in producing the injury
18 that reasonable people would regard it as a cause of the
19 injury.

20 There may be more than one cause of an injury. To
21 be substantial, it cannot be slight or trivial.

22 If you decide that the defendant is liable for
23 damages, plaintiff is entitled to recover a sum of money
24 which will justly and fairly compensate her for any injuries
25 and conscious pain and suffering up to the date of your

Judge's Charge

1 verdict that was caused by the defendant.

2 Conscious pain and suffering means pain and
3 suffering of which there was some level of awareness by the
4 plaintiff.

5 Loss of enjoyment of life. In determining the
6 amount, if any, to be awarded to the plaintiff for pain and
7 suffering, you will take into consideration the effect that
8 plaintiff's injuries may have on plaintiff's ability to
9 enjoy life.

10 Loss of the enjoyment of life involves the loss of
11 ability to perform daily tasks, to participate in the
12 activities that are a part of a person's life before the
13 injury and to experience the pleasures of life; however, a
14 person suffers a loss of enjoyment of life only if the
15 person is aware at some level of the loss that she has
16 suffered.

17 If you find that plaintiff, as a result of her
18 injuries, suffered some loss of the ability to enjoy life
19 and that plaintiff was aware of that loss, you may take that
20 loss into consideration in determining the amount to be
21 awarded to the plaintiff for pain and suffering up to today.

22 With respect to any of plaintiff's injury or
23 disabilities, plaintiff is entitled to recover for future
24 pain and suffering and disability and loss of her ability to
25 enjoy life. In this regard, you are to take into

Judge's Charge

1 consideration the period of time that the injuries are
2 expected to continue or rather injuries or disabilities are
3 expected to continue.

4 If you find that the injuries or disabilities are
5 permanent, you should take into consideration the period of
6 time that plaintiff can be expected to live.

7 In accordance with statistical life expectancy
8 tables, plaintiff has a life expectancy of 85 and a half
9 years. Such table will provide nothing more than a
10 statistical average. It neither guarantees that the
11 plaintiff will live an additional 11.5 years or means that
12 she will not live for a longer period.

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

19 Aggravation of a pre-existing injury. If you find
20 that before the accident of April 14, 2007, the plaintiff
21 had degenerative disk disease, osteoporosis, arthritis and
22 other medical conditions, and further find that because of
23 the accident, these conditions were aggravated so as to
24 cause increased suffering and disability, then the plaintiff
25 is entitled to recover for any increased disability or pain

Judge's Charge

1 resulting from such aggravation.

2 She is not, however, entitled to recover for any
3 physical ailment or disability which existed prior to the
4 accident of April 14, 2007 and from any injuries from which
5 she may now be suffering which were not caused or
6 contributed to by the accident of April 14, 2007.

7 Plaintiff can recover only for damage caused by
8 aggravation of a pre-existing condition, not for the
9 condition itself.

10 The plaintiff should be compensated only to the
11 extent that you find her condition was made worse by the
12 defendant's negligence.

13 If you decide for the plaintiff on the question of
14 damages, plaintiff will be entitled to recover the amount of
15 reasonable expenditures for medical services and medicines
16 including physician charges, hospital expenses, and x-ray
17 charges. Thus, you will include in your verdict the amount
18 that you find of the evidence to be a fair and reasonable
19 amount of the medical expenses incurred as a result of
20 plaintiff's injuries.

21 If you decide for the plaintiff on the question of
22 damages, you must include in your verdict an award for past
23 and future pain and suffering. That amount must include the
24 amount for the injuries suffered and for the permanent
25 effect of the injury.

Judge's Charge

1 Based upon the evidence, you may include an award
2 for past pain and suffering intended to compensate the
3 plaintiff for pain and suffering incurred before your
4 verdict and amounts included to compensate the plaintiff for
5 pain and suffering to be incurred in the future.

6 To make an award for an item of pain and suffering
7 to include in the future, you must state the period of years
8 of which the amount is awarded to intend to provide
9 compensation and the amount you fix must represent the full
10 amount awarded to the plaintiff for that item of damage for
11 that future period without reduction to present value.

12 Your verdict, you will include answers to the
13 following questions and, again, I will read you the verdict
14 sheet at the end of the charge.

15 State separately the amount awarded to the item of
16 damages incurred up to the date of your verdict. You have
17 medical expenses and then you have pain and suffering up to
18 the date of your verdict.

19 With respect to damages to be awarded in the
20 future with respect to pain and suffering, include permanent
21 effect of the injury from the time of the verdict to the
22 time that plaintiff could be expected to live.

23 If you decide to award an amount to compensate
24 plaintiff for the pain and suffering to be incurred in the
25 future, you must state the period of years over which such

Judge's Charge

1 amounts are intended to provide compensation.

2 If your verdict is in favor of the plaintiff,
3 plaintiff will not be required to pay income taxes on the
4 award and you must not add to or subtract from the award any
5 amount on account of income taxes.

6 Loss of services with respect to Peter Corapi. If
7 you find the injured plaintiff's husband is entitled to
8 recover, you will award him damages for the pecuniary loss
9 which you find he sustained by the loss of his spouses
10 services in society.

11 In deciding the amount of such damages, you may
12 take into consideration the nature and extent of the wife's
13 services in society before the injury including her
14 disposition, temperament, character and attainments, the
15 interest that she showed in her home, the social life of her
16 family, and the comfort, happiness, education and general
17 welfare of the members of the family. The services she
18 rendered in superintending the household, assisting her
19 spouse in the management of their affairs in which the
20 spouse was engaged, her acts of affection and love and the
21 extent to which her injuries she sustained prevented her
22 from performing such services and providing such society.

23 You will award the plaintiff's husband such an
24 amount based upon the evidence and upon your own
25 observation, experience, knowledge, consciously applied to

Judge's Charge

1 be, whether it will please or displease anyone, be popular
2 or unpopular or indeed any consideration outside the case as
3 it has been presented to you in this courtroom.

4 You should consider only the evidence, both the
5 testimony and the exhibits, find the facts from what you
6 considered to be the believable evidence, and apply the law
7 as I have given it to you to the facts as you determine them
8 to be.

9 Your verdict will be determined by the conclusion
10 that you reach no matter who the verdict helps or who the
11 verdict hurts.

12 While it is important that all the jurors be
13 considered, all of the views of all the jurors be
14 considered, a verdict of five of six members of the jury
15 will be sufficient.

16 Under the law, wherever five of your members are
17 in agreement on a verdict, you may report your verdict to
18 the Court.

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

22 In a few minutes, you will retire to the jury room
23 for your deliberations.

24 Traditionally, juror number one acts as a
25 foreperson. The first order of business when you are in the

Judge's Charge

1 jury room will be the election of a foreperson.

2 In order that your deliberations may proceed in an
3 orderly fashion, you must have a foreperson but, of course,
4 that person's vote is entitled to no greater weight than
5 that of any other juror.

6 Your function to reach a fair decision from the
7 evidence is a very important one. When you are in the jury
8 room, listen to each other and discuss the evidence and
9 issues in the case amongst yourselves.

10 It is the duty of each of you as jurors to consult
11 with one another and to deliberate with a view towards
12 reaching an agreement on a verdict if you can do so without
13 violating your individual judgment and your consciences.

14 While you should not surrender consciences
15 convictions of what the truth is and the weight and effect
16 of the evidence and while each of you must decide this case
17 for yourself and not merely consent to the decision of your
18 fellow jurors, you should examine the issues and the
19 evidence before you with candor and frankness and with
20 proper respect for the opinions of each other.

21 Remember in your deliberations that this dispute
22 between the parties is for them a very important matter.
23 They and the Court rely upon you to give full deliberations
24 to the issue and evidence before you. By so doing, you
25 carry out to the fullest your oaths that you took in this

Judge's Charge

1 courtroom at the beginning of the trial as jurors to truly
2 try the issues in this case and to render a true verdict.

3 If you have a question for the Court during your
4 deliberations, write it down and give the note to the court
5 officer who will be sitting outside your door and who will
6 deliver the note to me without discussing it first with
7 anyone else.

8 Further, do not use your cellphones for any reason
9 why you are deliberating. This will prevent the necessity
10 of me collecting your cellphones during deliberations.

11 This case will be decided on the basis of answers
12 that you give to certain questions that will be submitted to
13 you.

14 Each of the questions asked for a yes or no answer
15 or some numerical figure. While it is important that the
16 views of all the jurors be considered, five of the six of
17 you must agree on the answer to any question but the same
18 five persons need not agree on all of the answers.

19 When five of you have agreed on an answer, the
20 foreperson of the jury will write the answer in the space
21 provided for each answer and then each juror will sign the
22 appropriate place to indicate his or her agreement.

23 When you have answered all questions that require
24 answers, you report to the Court. Do not assume from the
25 questions or from the wording of the questions or from my

Judge's Charge

1 instructions on them what the answers should be.

2 In order to aid you in reaching a verdict, I have
3 prepared what is known as a verdict sheet. This sheet will
4 be taken into the jury room with you and used during your
5 deliberations.

6 I'm going to ask that the court reporter mark this
7 as a Court exhibit, please.

8 (Whereupon, the verdict sheet was received and
9 marked Court Exhibit 4 in evidence.)

10 THE COURT: Question number one: "Was the
11 accident of April 14, 2007 a proximate cause, that is, a
12 substantial factor in bringing about the injury or injuries
13 to plaintiff, Antonia Mary Corapi?"

14 At least five of you must agree on the answer to
15 this question and, if you answer yes, proceed to question
16 two.

17 If your answer is no, proceed no further and
18 report to the Court.

19 Question two: "State the amount awarded for the
20 following items of damages, if any, up to the date of your
21 verdict: Pain and suffering. You have a line and dollar
22 sign; medical expenses, a line and dollar sign.

23 "If you decide not to make an award as to an item
24 above, you will insert the word 'none' next to that item."

25 At least five jurors must agree on the answer to

Judge's Charge

1 this question. And signatures of the jurors.

2 Proceed to question three. Question three:

3 "State the total amount awarded for the following item of
4 damage, if any, from the date of your verdict to be incurred
5 in the future:

6 "Pain and suffering, include the permanent effect
7 of the injury, from the time of your verdict to the time
8 that plaintiff, Antonia Mary Corapi, could be expected to
9 live."

10 You have a line and a dollar sign.

11 "If you decide not to make an award as to the item
12 above, you insert the word 'none' next to that item." At
13 least five jurors must agree on the answer.

14 Proceed to question number four: "If you have
15 made an award for an amount intended to compensate plaintiff
16 for damages to be incurred in the future, state the period
17 of years over which such a amount is intended to provide
18 compensation."

19 Then as pain and suffering, include permanent
20 effect of the injury and as blank years. At least five
21 jurors must agree on the answer to this question and
22 signatures of the jurors.

23 Proceed to question five: "As to plaintiff Peter
24 Corapi: State the amount awarded for the following item of
25 damage, if any, resulting from Plaintiff Peter Corapi's

Judge's Charge

1 damage up to the date of your verdict: Loss of services and
2 consortium." And there's a line and a dollar sign.

3 "If you decide not to make an award as to an item
4 above, you will insert the word 'none' next to that item."

5 At least five jurors must agree on the answer to
6 the question and have signatures of the jurors.

7 Proceed to question six: "State the total amount
8 awarded for the following item of damage, if any, resulting
9 from Plaintiff, Peter Corapi's, damage to be incurred in the
10 future."

11 Then it has loss of services and consortium. You
12 have a line and a dollar sign.

13 "If you decide not to make an award as to the
14 above item, you will insert the word 'none' next to the
15 item." At least five jurors must agree on the answer to the
16 question.

17 Proceed to question seven. Question seven: "If
18 you have made any award for an amount intended to compensate
19 plaintiff for damage to be incurred in the future, state the
20 period of years over which such amount is intended to
21 provide compensation. Loss of services and consortium, line
22 and years. At least five jurors must agree on the answer to
23 this question and you have signature of the jurors.

24 The foreperson shall place his or her signature
25 below and shall report their verdict of the jury in the

Judge's Charge

1 action to the Court.

2 The two alternates are to be kept separate and I
3 will let you know what is going to happen with the two
4 alternates.

5 I'm going to ask you to go into the jury room. Do
6 not start to deliberate yet. Wait in the jury room a
7 moment, please.

8 Jurors, step out.

9 (Whereupon, the jury exits the courtroom.)

10 THE COURT: Any exceptions?

11 MR. NASH: No, Judge. No.

12 THE COURT: No requests?

13 MR. NASH: No.

14 THE COURT: Any exceptions?

15 MR. WASSERMAN: No.

16 THE COURT: Any requests?

17 MR. WASSERMAN: No, sir.

18 THE COURT: Do you want to hold on to the
19 alternates while deliberating or let the two go? You can
20 keep them here if you want just in case.

21 MR. NASH: I think we will keep them.

22 THE COURT: Keep them separate but have them wait.
23 They can start. Get the exhibits together so we can send
24 them in, please, the ones in evidence.

25 (Whereupon, the jury retires to commence