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1 (Whereupon, a recess was taken.)

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon, the jury enters the courtroom.)

4 THE COURT: Thank you, jurors. You may be seated.

5 Members of the jury, we come now to that portion
6 of the trial where you are instructed on the law applicable
7 to the case and then retire for your final deliberations.

8 MS. MOORE: Your Honor --

9 (Whereupon, there is a discussion held off the
10 record.)

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

16 Now, the City of New York and the New York City
17 Transit Authority are named defendants in this action. The
18 Transit Authority is responsible for operating and
19 maintaining the city's subway systems. This means that for
20 the purposes of this trial, you only need to consider any
21 liability concerning the Transit Authority since the City
22 of New York is also responsible. Therefore, the City of
23 New York will not be used in the verdict. You are just
24 going to see defendant or Transit Authority as opposed to
25 defendants or the New York City Transit and the City of New

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1 York, okay? Just to be very clear.

2 Now, jurors, before I continue with these charges,
3 I have to go through a lot of information, and some of it
4 is technical, and some of it is very technical, so I need
5 you to stay with me, all right? I need you to pay
6 attention, and it's going to require a lot of concentration
7 on your part, all right.

8 Impartially, a lawsuit is a civilized method of
9 determining differences between people. It is basic to the
10 administration of any system of justice that the decision
11 on both the law and the facts be made fairly and honestly.
12 You as the jurors and I as the Court have a heavy
13 responsibility to assure that a just result is reached in
14 deciding the differences between the plaintiff and the
15 defendant in this case.

16 As the jurors, your fundamental duty is to decide
17 from all the evidence that you have heard and the exhibits
18 that have been submitted what the facts are. You are the
19 sole, the exclusive judges of the facts. In that field,
20 you are supreme, and neither I nor anyone else may invade
21 your province.

22 As the sole judges of facts, you must decide which
23 of the witnesses you believed, which portion of their
24 testimony you accept, and what weight you give to it. On
25 the other hand, and with equal emphasis, I charge you that

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1 you are required to accept the law as it is given to you in
2 this charge and in any instructions that I have given to
3 you during the course of the trial. Whether you agree with
4 the law as given to you by me or not, you are bound by it.
5 You are not to ask anyone else about the law. You should
6 not consider or accept any advice about the law from anyone
7 else but me. The process by which you arrive at a verdict
8 is first to decide from all of the evidence and the
9 exhibits what the facts are and, second, to apply the law
10 as I give it to you to the facts as you have decided them
11 to be. The conclusion thus reached will be your verdict.

12 In the course of the trial, it has been necessary
13 for me to rule on the admission of evidence and on motions
14 made with respect to the applicable law. You must not
15 conclude from any such rulings I have made or from any
16 questions I may have asked or from anything that I have
17 said during the course of the trial or from these
18 instructions or the manner in which they are given that I
19 favor any party to the lawsuit. It is your recollection of
20 the evidence and your decision on the issues of fact which
21 will decide the case.

22 At times during the trial, I have sustained
23 objections to questions asked without allowing the witness
24 to answer, or where an answer has been made, instructed
25 that it be stricken from the record and that you disregard

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1 and dismiss it from your minds. You may not draw any
2 inference or conclusions from an unanswered question nor
3 may you consider any testimony which has been stricken from
4 the record in reaching your decision. The law requires
5 that your decision be made solely upon the evidence before
6 you. Such items as I have excluded from your consideration
7 were excluded because they weren't legally admissible.

8 The law does not, however, require you to accept
9 all of the evidence I admit in deciding what evidence you
10 will accept. You must make your own evaluation of the
11 testimony given by each of the witnesses and decide how
12 much weight you choose to give to that testimony. The
13 testimony of a witness may not conform to the facts as they
14 occurred because he or she is intentionally lying, because
15 the witness did not accurately see or hear what he or she
16 is testifying about, because the witness' recollection is
17 faulty, or because the witness has not expressed himself or
18 herself clearly in testifying. There is no magical formula
19 by which you evaluate testimony. You bring with you to
20 this courtroom all of the experience and background of your
21 lives. In your everyday affairs, you decide for yourself
22 the reliability or unreliability of things people tell you.
23 The same tests that you use in your everyday dealings are
24 the tests which you apply in your deliberations: The
25 interest or lack of interest of any witness in the outcome

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1 of this case, the bias or the prejudice of a witness, if
2 there be any, the age, the appearance, the manner in which
3 the witness gives testimony on the stand, the opportunity
4 that the witness had to observe the facts about which he or
5 she testifies, the probability or improbability of the
6 witness' testimony when considered in the light of all of
7 the other evidence of the case. These are all items to be
8 considered by you in deciding how much weight, if any, you
9 will give to that witness' testimony. Now, if it appears
10 that there is a discrepancy in the case, you will have to
11 consider whether the apparent discrepancy can be reconciled
12 by fitting the two stories together. If, however, that is
13 not possible, you will then have to decide which of the
14 conflicting stories you accept.

15 To say that a party has the burden of proof on a
16 particular issue means that considering all the evidence in
17 the case, the party's claim on that issue must be
18 established by a fair preponderance of the credible
19 evidence. The credible evidence means that the testimony
20 or exhibits that you find worthy of belief. A
21 preponderance means the greater part of the evidence. That
22 does not mean the greater number of witnesses or the
23 greater length of time taken by either side. The phrase
24 "preponderance of the evidence" refers to the quality of
25 the evidence, its weight and the effect that it has on your

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1 minds. In order for a party to prevail on an issue on
2 which he or she has the burden of proof, the evidence that
3 supports his or her claim on that issue must appeal to you
4 as more nearly representing what happened than the evidence
5 opposed to it. If it does not or if it weighs so evenly
6 that you are unable to say that there is a preponderance on
7 either side, you must decide the question against the party
8 who has the burden of proof and in favor of the opposing
9 party.

10 We have a charge here that doesn't apply to this
11 case, that's PJI 1:63.

12 MS. MOORE: Okay.

13 THE COURT: It doesn't belong in here.

14 Jurors, facts must be proved by evidence.

15 Evidence includes the testimony of a witness concerning
16 what the witness saw, heard or did. Evidence also includes
17 writings, photographs or other physical objects which may
18 be considered as proof of a fact. Evidence can be direct
19 or it can be circumstantial. Facts may be proved either by
20 direct or circumstantial evidence or by a combination of
21 both. You may give circumstantial evidence less weight,
22 more weight, or the same weight as direct evidence. It's
23 up to you. Direct evidence is evidence of what a witness
24 saw, heard or did which, if believed by you, proves a fact.
25 For example, let's suppose that a fact is in dispute as to

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1 whether I knocked over my water bottle near the witness
2 chair. If someone testifies that he saw me knock over the
3 water bottle, that is direct evidence that I knocked over
4 the water bottle, right, because they saw it.

5 Circumstantial evidence is evidence of a fact which does
6 not directly prove a fact in dispute, but which permits a
7 reasonable inference or conclusion that the fact exists.
8 For example, a witness testifies that he saw this water
9 bottle on the bench. The witness states that while he was
10 looking the other way, he heard the breaking of my water
11 bottle, looked up and saw me wiping water from my clothes
12 and from the papers on the bench. This testimony is not
13 direct evidence that I knocked over the water bottle; it is
14 circumstantial evidence from which you could reasonably
15 infer from that I knocked over my water bottle. Those
16 facts that prove the basis of an inference must be proved,
17 and the inference to be drawn must be one that may be
18 reasonably drawn. For example, even though the witness
19 that we are talking about did not see me knock over my
20 water bottle, if you believe his testimony, you could
21 conclude that I did. Therefore, the circumstantial
22 evidence, if accepted by you, allows you to conclude that
23 the fact in dispute has been proved.

24 In reaching your conclusion, you may not guess or
25 speculate. Suppose, for example, the witness testifies

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1 that the water bottle was located equally distant between
2 the court clerk and me. The witness states that he heard
3 the breaking of my water bottle and looked up to see both
4 the court clerk and me brushing water from our clothes. If
5 you believe that testimony, you still couldn't decide based
6 on that evidence alone who knocked over my water bottle.
7 Where these are the only proved facts, it would be a guess
8 as to who did it, but if the witness also testifies that he
9 heard the court clerk say "I'm so sorry," this additional
10 evidence would allow you to decide who knocked over my
11 water bottle.

12 The plaintiff claims that the defendant has failed
13 to produce in court the station agent report, the cleaner's
14 report, and the second daily activity log completed by Ms.
15 Gilliam. We know that the first daily activity log was
16 provided, but the activity log for her inspection after the
17 incident was not provided. The defendant maintains that
18 these documents don't exist. The plaintiff claims that the
19 defendant hasn't offered a reasonable explanation for not
20 producing these three documents. If you believe that any
21 of these three documents existed, the station agent report,
22 the cleaner's report or the second supervisor's daily
23 activity log, and if you also believe that the defendant
24 has not offered a reasonable explanation for not producing
25 any of these documents, you must decide what weight it

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1 would have had in your deliberations, if any. If any of
2 these three documents would have been important or
3 significant in your deliberations, you may, but you are not
4 required to, conclude that if it had been produced, it
5 wouldn't have supported the defendant's position on the
6 issue of whether the broken floor tiles caused the
7 plaintiff's injury and would not contradict the evidence
8 offered -- just leave it at that.

9 Additionally, you may, but are not required to,
10 draw the strongest inference against the defendant on that
11 question that the opposing evidence permits under these
12 circumstances.

13 You will recall that we had various expert
14 witnesses and that they gave their opinions concerning
15 issues in this case. The plaintiff had Dr. Khakhar, who is
16 a physical medical and rehabilitation specialist.
17 Plaintiff also had Dr. Yager, a podiatric surgeon, and Mr.
18 Scott Silberman, a professional engineer. The defendant
19 had Dr. Glassman, an orthopedic surgeon, and Dr. Feit, a
20 radiologist. When a case involves a matter of science or
21 art or requires special knowledge or skill not normally
22 possessed by the average person, an expert is permitted to
23 state his or her opinion for the information of the Court
24 and jury.

25 The opinions stated by each of these experts who

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1 testified before you was based on particular facts as the
2 expert obtained knowledge of them and testified to them
3 before you or as the attorneys who questioned the expert
4 asked the expert to assume. You may reject an expert's
5 opinion if you find the facts to be different from those
6 which form the basis for the opinion. You may also reject
7 the opinion if, after careful consideration of all the
8 evidence in the case, expert and other, you disagree with
9 the opinion. In other words, you are not required to
10 accept an expert's opinion to the exclusion of the facts
11 and circumstances disclosed by other testimony. Such an
12 opinion is subject to the same rules concerning reliability
13 as to the testimony of any other witnesses. It is given to
14 assist you in reaching a proper conclusion. It is entitled
15 to such weight as you find the expert's qualifications in
16 the field warrant and must be considered by you, but it is
17 not controlling in your judgment.

18 Now, the plaintiff -- excuse me one second.

19 Counselors, step up one minute.

20 Jurors, you may stand up and stretch.

21 THE JURY: (Complying.)

22 (Whereupon, there is a discussion held off the
23 record, at the sidebar, among the Court and counsel.)

24 THE COURT: Counselors, I am going to skip PJ1
25 1:91. Do you have any objection?

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1 MS. MOORE: Objection, your Honor.

2 THE COURT: Do you have any objection?

3 MR. FRANKEL: No, your Honor.

4 THE COURT: Thank you very much. Step up.

5 (Whereupon, there is a discussion held off the
6 record, at the sidebar, among the Court and counsel.)

7 THE COURT: The fact that Ms. Gilliam was employed
8 by the defendant Transit Authority and the testimony you
9 have heard of her relationship with her employer may be
10 considered by you in deciding whether Ms. Gilliam's
11 testimony is in any way influenced by her former employment
12 relationship with the defendant.

13 Do you recall that the lawyers read portions of
14 the deposition testimony to you?

15 THE JURY: Yes.

16 THE COURT: Do you recall that?

17 THE JURY: Yes.

18 THE COURT: Let me explain a little more about
19 deposition testimony. At some point before this trial
20 began, the plaintiff and different witnesses who you have
21 heard testified under oath and answered certain questions
22 that were put to him or her by the lawyers for the parties.
23 A stenographer recorded the questions and answers and
24 transcribed them into a document which that particular
25 person signed before a notary public. The portions of the

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1 transcript of the Examination Before Trial that you heard
2 are to be considered the same as if that person was
3 testifying from the witness stand.

4 This case will be decided on the basis of the
5 answers that you give to certain questions that will be
6 submitted to you, and they are going to be listed in what
7 we call the verdict sheet. Each of the questions calls for
8 a yes or a no answer or a number. You will see the
9 questions when they are given to you. While it is
10 important that the views of all jurors be considered, five
11 of the six of you must agree on the answer to any
12 questions, but the same five persons need not agree on all
13 of the answers. When five of you have agreed on any
14 answer, the foreperson of the jury will write the answer in
15 the space provided for each answer, and each juror will
16 sign in the appropriate place underneath to indicate his or
17 her agreement or disagreement.

18 So you will see, for example, in some questions
19 that it will say you don't need to consider Question 2 if
20 your answer to Question 1 is whatever. So read the
21 instructions carefully. Or if you answer yes to this
22 question, then go to, let's say, Question X. If you answer
23 no to this question, go to Question Y. Next.

24 You have to read the instructions on the verdict
25 sheet carefully. Do not assume from the questions or from

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1 the wording of the questions or from my instructions on
2 them what the answers should be.

3 Now, I am going to discuss the law a little
4 further. Negligence is lack of ordinary care. It is a
5 failure to use that degree of care that a reasonably
6 prudent person would have used under the same
7 circumstances. Negligence may arise from doing an act that
8 a reasonably prudent person would not have done under the
9 same circumstances or, on the other hand, from failing to
10 do an act that a reasonable prudent person would have done
11 under the same circumstances. Negligence requires both a
12 reasonably foreseeable danger of injury to another and
13 conduct that's unreasonable in proportion to that danger.
14 A person is only responsible for the result of his or her
15 conduct if the risk of injury is reasonably foreseeable.
16 The exact occurrence or exact injury does not have to be
17 foreseeable, but injury as a result of the negligent
18 conduct must be not merely possible, but probable. There
19 is negligence if a reasonably prudent person could foresee
20 injury as a result of his or her conduct and acted
21 unreasonably in light of what could be foreseen. On the
22 other hand, there is no negligence if a reasonably prudent
23 person could not have foreseen any injury as a result of
24 his or her conduct or acted reasonably in the light of what
25 could have been foreseen.

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1 If you find that the defendant was negligent and
2 that the defendant's negligence contributed to causing the
3 plaintiff to trip and fall on broken subway floor tiles,
4 you must next consider whether the plaintiff was also
5 negligent and whether the plaintiff's conduct contributed
6 to causing her trip and fall. The burden is on the
7 defendant to prove that the plaintiff was negligent and
8 that her negligence contributed to causing her to trip and
9 fall. If you find that the plaintiff was not negligent, or
10 if negligent, that her negligence did not contribute to
11 causing the trip and fall, you must find that the plaintiff
12 was not at fault. If, however, you find that the plaintiff
13 was negligent and that her negligence contributed to
14 causing her trip and fall on the broken tiles, floor tiles,
15 you must then apportion the fault between the plaintiff and
16 the defendant.

17 Apportion. Weighing all of the facts and
18 circumstances, you must consider the total fault, that is,
19 the fault of both the plaintiff and the defendant and
20 determine what percentage of fault is chargeable to each.
21 In your verdict, you will state the percentages you find.
22 The total of those percentages must equal 100 percent.
23 So for example, if you should find that the defendant and
24 the plaintiff were equally at fault, you would report that
25 each was 50 percent responsible. If you should find that

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1 one party was more at fault, you would assign a higher
2 percentage to that party and a lower percentage to the
3 other, with the total of the percentages equalling 100
4 percent.

5 You must now decide from the evidence before you
6 the total amount of damages suffered by the plaintiff, in
7 dollars, in accordance with the rules that I am about to
8 explain to you. In arriving at the total, you must not
9 consider the percentages of fault, but simply report the
10 total amount of the plaintiff's damages.

11 An act or omission is regarded as a cause of
12 injury if it was a substantial factor in bringing about the
13 injury, that is, if it had such an effect in producing the
14 injury that reasonable people would regard it as a cause of
15 the injury. There may be more than one cause of an injury,
16 but to be substantial, it cannot be slight or trivial. You
17 may, however, decide that it was substantial even if you
18 apply a relatively small percentage to it.

19 As you have heard, the plaintiff brings this
20 action against the defendant based upon the claim that the
21 Transit Authority negligently maintained the property
22 located at 149th Street and Third Avenue, the train
23 station. The Transit Authority, as the operator and
24 maintainer of the subway station, has a duty to use
25 reasonable care to keep the premises in a reasonably safe

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1 condition for the protection of all persons whose presence
2 is reasonably foreseeable.

3 In order to recover, the plaintiff must prove 1)
4 that the premises were not reasonably safe, 2) that the
5 defendant was negligent in not keeping the premises in a
6 reasonably safe condition, and 3) that the defendant's
7 negligence in allowing an unsafe condition to exist was a
8 substantial factor in causing the plaintiff's injury.

9 You must first consider whether the premises were
10 reasonably safe. Ms. Grace claims that the premises were
11 not in a reasonably safe condition because the floor tiles
12 by the southbound token booth were broken, forming a deep
13 depression and hole. If you decide that the premises were
14 reasonably safe, then you will find for the Transit
15 Authority and go no further. If you decide that the
16 premises were not reasonably safe, you will then proceed to
17 consider whether the defendant was negligent in permitting
18 the unsafe condition to exist.

19 Negligence is the failure to use reasonable care.
20 Reasonable care, in this case, means that degree of care
21 that a reasonably prudent operator and maintainer of a
22 subway station would use under the same circumstances
23 taking into account the foreseeable risk of injury.

24 In deciding whether the defendant was negligent,
25 you must decide whether the Transit Authority created the

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1 broken floor tiles or either knew or, in the use of
2 reasonable care, should have known that the broken floor
3 tiles existed. If the Transit Authority did not create the
4 broken floor tiles but knew or should have known about the
5 broken floor tiles, you must decide whether the Transit
6 Authority had sufficient time before the accident to
7 correct the broken floor tiles, provide reasonable
8 safeguards or provide reasonable warning.

9 Counselors, step up for one minute.

10 (Whereupon, there is a discussion held off the
11 record, at the sidebar, among the Court and counsel.)

12 THE COURT: Counselors, I am going to omit a
13 portion of PJI 2:90; do you agree?

14 MS. MOORE: Yes, your Honor.

15 THE COURT: 2:90, it's on Part 3 of 7.

16 MR. FRANKEL: Yes.

17 THE COURT: On the question of the failure to
18 warn, there is no duty to warn of unsafe conditions that
19 are open and obvious. A condition is open and obvious if
20 it could have been readily observed by any person
21 reasonably using his or her senses. If you decide that the
22 broken floor tiles were open and obvious, you will find for
23 the Transit Authority on plaintiff's claim that there was a
24 failure to provide a warning, and you will proceed to
25 consider Ms. Grace's other claims that the broken floor

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1 tiles created an unreasonably safe condition on the
2 mezzanine area near the token booth. If you decide that
3 the broken floor tiles were not open and obvious, you will
4 proceed to consider whether the Transit Authority should
5 have provided a warning. If you decide that the Transit
6 Authority was negligent, you must next consider whether
7 that negligence was a substantial factor in causing Ms.
8 Grace's injury.

9 An act or failure to act is a substantial factor
10 in bringing about an injury if a reasonable person would
11 regard it as a cause for the injury. If you find that the
12 defendant's negligence was not a substantial factor in
13 causing the injury, then the plaintiff may not recover. If
14 you find that the Transit Authority's negligence was a
15 substantial factor in causing Ms. Grace's injury, you will
16 then proceed to consider whether there was any comparative
17 fault by Ms. Grace in causing her injuries.

18 The burden is on the Transit Authority to prove
19 that Ms. Grace was at fault and that her conduct
20 contributed to causing her injuries. If you find that the
21 plaintiff was not at fault, or if at fault, that her
22 conduct did not contribute to causing her injuries, you
23 must find that the plaintiff was not at fault, and then you
24 must go on to consider her damages, if any. If, however,
25 you find that Ms. Grace was at fault and her conduct

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1 contributed to causing her injuries, you must then
2 apportion the fault between the plaintiff and the
3 defendant.

4 Weighing all the facts and circumstances, you must
5 consider the total fault, that is, the fault of both Ms.
6 Grace and the Transit Authority, and determine what
7 percentage of fault is chargeable to each. In your
8 verdict, you will state the percentages you find. The
9 total of those percentages in this instance would equal 100
10 percent.

11 Counselors, step up.

12 (Whereupon, there is a discussion held off the
13 record, at the sidebar, among the Court and counsel.)

14 THE COURT: Counselors, do you agree to the
15 omission of PJI 2:91?

16 MS. MOORE: Yes.

17 THE COURT: Counsel?

18 MR. FRANKEL: Yes, Judge.

19 THE COURT: Thank you.

20 Now, an employer is responsible for the act of
21 his, her or its employee if the act is in furtherance of
22 the employee's business and is within the scope of the
23 employee's authority. An act is within the scope of any
24 employee's authority if it was performed while the employee
25 is engaged, generally, in the performance of his or her

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1 assigned duties or the act is reasonably necessary or
2 incidental to the employment. The employer need not have
3 authorized the specific act in question.

4 My charge to you on the law of damages must not be
5 taken as a suggestion that you should find for the
6 plaintiff. It is for you to decide on the evidence
7 presented and the rules of law I have given you whether the
8 plaintiff is entitled to recover from the defendant. If
9 you decide that the plaintiff is not entitled to recover
10 from the defendant, you need not consider damages. Only if
11 you decide that the plaintiff is entitled to recover will
12 you consider the measure of damages.

13 If you find that the plaintiff is entitled to
14 recover from the defendant, you must render a verdict in a
15 sum of money that will justly and fairly compensate the
16 plaintiff for all losses resulting from the injuries she
17 sustained. If you decide that the defendant is liable,
18 plaintiff is entitled to recover a sum of money which will
19 justly and fairly compensate her for any injury and
20 conscious pain and suffering to date caused by defendant.

21 In determining the amount, if any, to be awarded
22 to plaintiff for pain and suffering, you may take into
23 consideration the effect that the plaintiff's injuries have
24 had on her ability to enjoy life. Loss of enjoyment of
25 life involves the loss of the ability to perform daily

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1 tasks, to participate in the activities which were a part
2 of the person's life before the injury, and to experience
3 the pleasures of life. If you find that the plaintiff, as
4 a result of her injuries, suffered some loss of the ability
5 to enjoy life, and that plaintiff was aware at some level
6 of the loss, you may take that loss into consideration in
7 determining the amount to be awarded to plaintiff for pain
8 and suffering to date. If your verdict is in favor of
9 plaintiff, the plaintiff will not be required to pay income
10 taxes on the award, and you must not add or subtract from
11 the award any amount on account of income taxes.

12 With respect to any of the plaintiff's injuries or
13 disabilities, the plaintiff is entitled to recover for
14 future pain, suffering and disability and the loss of her
15 ability to enjoy life. In this regard, you should take
16 into consideration a period of time that the injuries or
17 disabilities are expected to continue. If you find that
18 the injuries or disabilities are permanent, you should take
19 into consideration the period of time that the plaintiff
20 can be expected to live. In accordance with statistical
21 life expectancy tables, Ms. Grace has a life expectancy of
22 30.8 years. Such a table, however, provides nothing more
23 than a statistical average. It neither guarantees that the
24 plaintiff will live an additional 30.8 years or means that
25 she will not live for a longer period. The life expectancy

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1 figure I have given you is not binding upon you; but may be
2 considered by you together with your own experience and the
3 evidence you have heard concerning the condition of her
4 health, her habits, employment and activities in deciding
5 what Ms. Grace's present life expectancy is.

6 The plaintiff is entitled to recover the amount of
7 reasonable expenditures for medical services and medicines,
8 including physician's charges, nursing charges, hospital
9 expenses, diagnostic expenses and x-ray charges. If you
10 decide for Ms. Grace on the question of liability, you will
11 include in your verdict the amount that you find from the
12 evidence to be the fair and reasonable amount of the
13 medical expenses necessarily incurred as a result of her
14 injuries. If you find that the plaintiff will need
15 medical, hospital or nursing expenses in the future, you
16 will include in your verdict an amount for those
17 anticipated medical, hospital and nursing expenses which
18 are reasonably certain to be incurred in the future and
19 that were necessitated by the plaintiff's injuries. If you
20 find that Ms. Grace is entitled to an award for medical
21 expenses to be incurred in the future, you will fix the
22 dollar amount of expenses over the entire period that you
23 find the plaintiff will incur such expenses, and include
24 that amount in your verdict. In your verdict, you will
25 state separately the amount awarded for medical expenses to

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1 date, if any. And if you make an award for future medical
2 expenses, you will state in your verdict the amount awarded
3 and the period of years over which such award is intended
4 to provide compensation. Do not state an amount per year,
5 but only a total amount for the entire period.

6 Step up, counselors.

7 (Whereupon, there is a discussion held off the
8 record, at the sidebar, among the Court and counsel.)

9 THE COURT: First page of verdict sheet, caption.
10 In accordance with the instructions and law that the Court
11 has given to you and the facts as you find them, you are to
12 answer the following questions which will constitute your
13 verdict in this case. At least five jurors must agree on
14 the answers to the following questions, but they need not
15 be the same five jurors for each question. When you have
16 reached a verdict and are ready to report to the Court, be
17 sure that all of you have signed the last page.

18 The plaintiff is entitled to be reimbursed for any
19 earnings lost as a result of her injuries caused by the
20 Transit Authority's negligence from the time of the
21 accident to today. Moreover, if you find that as a result
22 of those injuries, the plaintiff has suffered a reduction
23 in her capacity to earn money in the future, then the
24 plaintiff is also entitled to be reimbursed for loss of
25 future earnings. Any award you make for earnings lost to

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1 date must not be the result of speculation. Any award must
2 be calculated from the number of days that you find that
3 she was disabled from working by the injuries and the
4 amount that you find Ms. Grace would have earned had she
5 not been disabled. Any award you make for reduction of the
6 plaintiff's earning capacity in the future should be
7 determined on the basis of her earnings before the
8 incident, the condition of her health, prospects for
9 advancement, and the probabilities with respect to future
10 earnings before the incident, the extent to which you find
11 those prospects or probabilities have been reduced by the
12 injuries, the length of time that you find Ms. Grace would
13 reasonably be expected to work had she not been injured,
14 the nature and hazards of her employment, and any other
15 circumstances which would have had an effect on her earning
16 capacity.

17 If you decide for the plaintiff on the question of
18 liability, you must include in your verdict an award for
19 past and future pain and suffering. That amount must
20 include an amount for the injuries suffered and for the
21 future, if any, based upon the evidence. You must also
22 include an award for each of the separate items intended to
23 compensate the plaintiff for damages incurred before your
24 verdict, an amount intended to compensate the plaintiff for
25 damages to be incurred in the future, medical expenses,

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1 loss of earnings, impairment, earning ability, custodial
2 care, rehabilitation services. If you make an award for
3 any item of damages to be incurred in the future, then for
4 each item, you must state the period of years over which
5 the amount awarded is intended to provide compensation.

6 In reaching your verdict, you are not to be
7 affected by sympathy for any of the parties, what the
8 reaction of the parties or of the public to the verdict may
9 be, whether it will please or displease anyone, be popular
10 or unpopular or, indeed, any consideration outside the case
11 as it has been presented to you in this courtroom. You
12 should consider only the evidence, both the testimony and
13 the exhibits, find the facts from what you consider to be
14 the believable evidence, and apply the law as I now give it
15 to you. Your verdict will be determined by the conclusion
16 you reach no matter whom the verdict helps or hurts.

17 Jurors, I have now outlined for you the rules of
18 law that apply to this case and the processes by which you
19 weigh the evidence and decide the facts. In a few minutes,
20 you will retire to the jury room for your deliberations.

21 Now, traditionally, Juror Number 1 acts as the
22 foreperson. Your first order of business when you are in
23 the jury room will be the selection of a jury person, and
24 that choice is up to you. In order that your deliberations
25 may proceed in an orderly fashion, you must have a

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1 foreperson, but, of course, his or her vote is entitled to
2 no greater weight than that of any other juror.

3 Your function to reach a fair decision from the
4 law and the evidence is an important one. When you are in
5 the jury room, listen to each other and discuss the
6 evidence and issues in the case among yourselves. It is
7 the duty of each of you as jurors to consult with one
8 another and to deliberate with a view of reaching
9 agreements on a verdict if you can do so without violating
10 your individual judgment and your consciences. While you
11 should not surrender to conscientious convictions of what
12 the truth is and what the weight and effect of the evidence
13 is, and while each of you must decide the case for yourself
14 and not merely consent to the decision of your fellow
15 jurors, you should examine the issues and the evidence
16 before you with candor and frankness and with proper
17 respect and regard for the opinions of each other.

18 Remember in your deliberations that the dispute
19 between the parties is a very important matter. They and
20 the Court rely upon you to give full and conscientious
21 consideration to the issues and the evidence before you.
22 By so doing, you carry out, to the fullest, your oath as
23 jurors to truly try the issues of this case and render a
24 true verdict.

25 Now, at this point, I am going to excuse our

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1 alternate jurors. "As I told you before, your services were
2 required as a safeguard against the possibility that one of
3 the regular jurors might be unable to complete his or her
4 service. Fortunately, this has not occurred. I commend
5 the alternate jurors for their faithful attendance and
6 attention on behalf of the Court and the parties. I thank
7 you for your service.

8 (Whereupon, the alternate jurors exit the
9 courtroom.)

10 THE COURT: So without further ado, the jury may
11 now retire to deliberate. We will give you the verdict
12 sheet. And, remember, the first order of business is for
13 you to elect a foreperson.

14 COURT OFFICER: All rise. Jury exiting.

15 (Whereupon, the jury exits the courtroom.)

16 COURT OFFICER: All rise. Jury entering.

17 (Whereupon, the jury enters the courtroom.)

18 THE COURT: Thank you, jurors. Please be seated.
19 I left out one charge. It's a short one, but it's
20 important. If, in the course of your deliberations, your
21 recollection of any part of the testimony should fail or if
22 you have any questions about my instructions to you on the
23 law, you have the right to return to the courtroom for the
24 purpose of having such testimony read to you or have some
25 questions answered, okay? Thank you.

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1 COURT OFFICER: All rise. Jury exiting.

2 (Whereupon, the jury exits the courtroom.)

3 MR. FRANKEL: Judge, can we approach for one
4 second?

5 (Whereupon, there is a discussion held off the
6 record, at the sidebar, among the Court and counsel.)

7 THE COURT: Come back one second, Officer.

8 (Whereupon, the jury enters the courtroom.)

9 THE COURT: One more charge. In deciding this
10 case, you may consider only the exhibits which have been
11 admitted in evidence and the testimony of the witnesses as
12 you have heard it in this courtroom or as there has been
13 read to you, deposition testimony. Under our rules of
14 practice -- I've already said this. Let me say it in my
15 own words. Under our rules of practice, if you need to see
16 deposition testimony or an exhibit or to have a read-back,
17 it's not a problem; just tell the Court officer. If you
18 have a question, he'll instruct you on what to do. Thank
19 you very much.

20 COURT OFFICER: All rise. Jury exiting.

21 (Whereupon, the jury exits the courtroom.)

22 THE COURT: The jury has asked for the medical
23 bills, the deposition, and the W-2 forms. I need to know
24 which deposition. It would be a read-back. So let's get
25 the medical bills out and the W-2 forms out, and then I