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dirt bike, and basically ruined his life.

Thank you.

THE COURT: All right. Thank you, Ms. Pluchino.

Counsel approach.

(Whereupon, an off-the-record discussion took place at the bench between the Court and counsel.)

THE COURT: All right, ladies and gentlemen, unless you need another break? No? All right. So let's begin my charge to you on the law.

You're all good over there, yes?

THE JURORS: Yes.

THE COURT: You are sure? All right.

Now, ladies and gentlemen, we have come to that part of the trial where, as I explained to you earlier, I will instruct you on the law that applies to this case and thereafter you will retire for your final deliberations. You have now heard all of the evidence that's been introduced by the parties, and just so that you're clear with regard to all of the photographs that have been received in evidence, it's my understanding from the facts of this case that these photographs were not taken at the time of the incident, so with regard to any other vehicles that may be parked at curbside, they do not demonstrate what actually occurred at the time, so it's merely for the purpose of your seeing the permanent structures and the

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permanent roadway as it existed at the time of the accident, irrespective of any vehicles that may be demonstrated in those pictures as being parked at curbside, either at the right curbside or the left curbside of that roadway; all right, ladies and gentlemen?

Through the evidence introduced by the parties and arguments of the attorneys and through their summations, you learned the conclusions which each party believes should be drawn from the evidence presented to you.

You will recall at the beginning of the trial that I stated for you certain principles that you needed to have in mind as the trial progressed, and briefly they were that you are bound to accept the law as I give it to you whether you agree with it or not, and you will recall that extreme example of President Rihanna, president of that blue cheese moon, and that you were not to ask anyone else about the law, and that you should not consider or accept any advice about the law from anyone other than me.

Furthermore, that you must not conclude from any of my rulings or anything that I might have said during the course of the trial that I favor either party to this lawsuit, and most especially that you may not draw any inferences from an unanswered question, nor may you consider testimony which may have been stricken from the

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record in reaching your decision, and finally, in deciding how much weight you choose to give to the testimony of any particular witness, there's no magical formula which by which you evaluate testimony, but the tests which you use in your everyday affairs to decide the reliability or the unreliability of statements made to you by others are the same tests which you will apply in your deliberations.

Again, the items to be taken into consideration in determining the weight, that is the credibility that you will give to the testimony of the witnesses, include the following: The interest or lack of interest of the witness in the outcome of the case; the bias or prejudice of the witness, if there be any; the age; the appearance and the manner in which the witness testified on the stand; the opportunity that the witness had to observe the facts about which he or she testified; the probability or improbability of the witness's testimony when considered in the light of all of the other evidence in the case.

Now, as jurors you are encouraged to use all of your life experiences in analyzing testimony and reaching a fair verdict, however you may not communicate any personal, professional expertise that you might have, or other facts which are not in evidence, to the other jurors during their deliberations, so if any of have you any personal, professional expertise which others amongst you do not

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have, you may not share your own personal, professional expertise with your fellow jurors. That is not in evidence. You must base your discussions and decisions solely on the evidence which has been presented to you during the trial and that evidence alone. You may not be an unsworn expert in the jury room during your deliberations. You may not consider, nor speculate on matters which are not in evidence, or matters outside the case. Does everyone understand that?

THE JURORS: Yes.

THE COURT: All right. In this case, the plaintiff testified before you. The plaintiff, obviously, is a party to the action and therefore is an interested witness. Now, an interested witness is not necessarily less believable than a disinterested witness. The fact that he is interested in the outcome of the case does not mean that he has not told the truth, so it is for you to decide from the demeanor of the witness on the stand and such other tests as your experience dictates whether the testimony has been influenced, either intentionally or unintentionally, by his interest. You may, if you consider it proper under all of the circumstances, not believe the testimony of such a witness, even though it is not otherwise challenged or contradicted, however you are not required to reject the testimony of such a witness and you

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may accept all or such part of his testimony as you find reliable and reject such part as you find unworthy of acceptance.

Now, in this case you also heard testimony from Police Officer Londino and Police Officer Gonzalez, who testified that they are both employees of the party defendant, that is the City of New York, that is the New York City Police Department, and that they are still employed by the New York City Police Department, and you heard the testimony that they gave with regard to their employment. Now, you may consider whether the testimony of those two witnesses is in any way influenced by that employment relationship with the New York City Police Department.

As I stated to you preliminarily, there is nothing unlawful or underhanded about a witness preparing himself or herself in advance for testimony at trial by reviewing written documents which pertain to this case in order to refresh their recollection, or by reviewing their prospective testimony in preparation of their testimony here at trial.

Now, you recall that in this particular case you received testimony from the following witnesses: That was Dr. Jeffrey Shapiro and Dr. Ramesh Gidumal, who both testified with regard to their qualifications in the field

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of orthopedic surgery, and they testified with regard to their opinions concerning the various issues in this case. Please understand that when a case involves a matter of science or art, or requires special knowledge or skill not ordinarily possessed by the average person, a witness such as these two doctors is permitted to state his opinion for the information of both the Court and the jury. The opinions stated by each of these doctors who testified before you were based on either particular facts as they obtained knowledge of them and testified to before you, or as the attorneys who questioned these witnesses asked them to assume.

You may reject the opinion of these doctors if you find the facts to be different from those which form the bases of their opinions. You may also reject the opinion if, after careful consideration of all the evidence in this case, expert or otherwise, you disagree with those doctors's opinions. In other words, you are not required to accept the opinions of these doctors to the exclusion of the facts and circumstances disclosed by other testimony. Such opinion is subject to the same rules concerning reliability as the testimony of any other witness. It is given to assist you in reaching a proper conclusion, so that it is entitled to such weight as you find the qualifications of these witnesses in their fields warrant

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and must be considered by you, but is not controlling upon your judgment.

Give me a minute, ladies and gentlemen.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Now you see why interns are very important to the judge. I forgot a charge, and I'm having her run upstairs to retrieve it for me. My bad, but such is life. All right. Let me go on to other matters until she gets back; all right, ladies and gentlemen?

Now, if you find that any witness has willfully testified falsely as to any material fact, that is as to an important matter, the law permits you to disregard the entire testimony of that witness upon the principle that one who testifies falsely about one material fact is likely to testify falsely about everything. You are not required, however, to consider such a witness as totally unbelievable and you may accept so much of his or her testimony as you deem true and disregard what you feel is false, so by the processes by which I just described to you, you, as the sole judges of the facts, decide which of the witnesses you will believe, what portion of their testimony you accept and what weight you will give to it.

Now, to say that a party has a burden of proof on a particular issue means that, considering all of the

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evidence in the case, the party's claim on that issue must be established by a fair preponderance of the credible evidence. The credible evidence means the testimony or exhibits that you find worthy of belief. A preponderance of the evidence means the greater part of the evidence. It does not mean the greater number of witnesses, nor the greater length of time taken by either side. The phrase preponderance of the evidence refers to the quality of the evidence, its weight and the effect that it has on your mind. In order for a party to prevail on an issue on which he or she has the burden of proof, the evidence that supports his or her claim on that issue must appeal to you as more nearly representing what happened than the evidence opposed to it. If it does not, or if it weighs so evenly that you are unable to say that there is a preponderance on either side, you must decide the question against the party who has the burden of proof and in favor of the opposing party.

In this case, the plaintiff claimed that the defendant caused the accident. The defendant claims that he did not cause the accident, but that the plaintiff did and the defendant says that even if he did, the plaintiff also caused the accident. The plaintiff has the burden of proving that the defendant was negligent, and that the defendant's negligence was a substantial factor in causing

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the accident. The defendant has the burden of proving that the plaintiff was negligent and that the plaintiff's negligence was a substantial factor in causing the accident.

Negligence is lack of ordinary care. It is a failure to use that degree of care that a reasonably prudent person would have used under the same circumstances. Negligence may arise from doing an act that a reasonably prudent person would not have done under the same circumstances or, on the other hand, from failing to do an act that a reasonably prudent person would have done under the same circumstances.

An act or omission is regarded as a cause of an injury if it was a substantial factor in bringing about the injury; that is if it has such an affect in producing the injury that reasonable people would regard it as the cause of the injury. There may be more than one cause of an injury, but to be substantial, it cannot be slight or trivial. You may, however, decide that a cause is substantial even if you assigned a relatively small percentage to it. Substantial conduct is conduct which has such an effect in producing the harm as to lead reasonable people to regard it as a cause.

If you find that the defendant was negligent and that the defendant's negligence contributed to causing the

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accident, you must next consider whether the plaintiff was also negligent and whether the plaintiff's conduct contributed to causing the accident. The burden is on the defendant to prove that the plaintiff was negligent, and that his negligence contributed to causing the accident.

If you find that the plaintiff was not negligent, or if negligent, that his negligence did not contribute to causing the accident, you will so state on your verdict sheet. If, however, you find that the plaintiff was negligent and that his negligence contributed to causing the accident, you must then apportion the fault between the plaintiff and the defendant, so weighing all the facts and circumstances, you must consider the total negligence; that is the negligence of both the plaintiff and the defendant which contributed to causing the accident, and you must then determine what percentage of fault is chargeable to each, so in your verdict you will state the percentages you find and, of course, the total of those percentages must equal one hundred percent.

Now, negligence requires both a reasonably foreseeable danger of injury to another, and conduct that is unreasonable in proportion to that danger. A person is only responsible for the results of his or her conduct if the risk of injury is reasonably foreseeable. The exact occurrence or the exact injury does not have to be

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foreseeable, but injury as a result of negligent conduct must be not merely possible, because again, anything is possible, but it must be probable.

There is negligence if a reasonably prudent person could foresee injury as a result of his or her conduct and acted unreasonably in light of what could have been foreseen. On the other hand, there is no negligence if a reasonably prudent person could not have foreseen any injury as a result of his or her conduct, or acted reasonably in the light of what could have been foreseen.

In this case the plaintiff claims that the defendant City of New York, through its witness Officer Londino, failed to produce, in court, a police accident report, and this document is one which the plaintiff claims you should consider in connection with their claims with regard to the facts relevant before you. In this case the defendant claims that that document is not relevant for your consideration of the facts before you and has suggested that that document has gone missing. If you believe that the police accident report exists, and/or existed, and if you also believe that the reason offered is not a reasonable explanation for the failure to produce it, you must decide what weight it would have in your deliberations, if any.

If you decide, if you find that the police

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accident report would have been important or significant in your deliberations you may, but you are not required to, conclude that if it had been produced it would not have supported the defendant's position on the issues with regard to the facts in this case and would not contradict the evidence offered by the City on that particular question. Additionally you may, but are not required to, draw the strongest inference against the defendant on that question that the opposing evidence permits.

It was the duty of each of the drivers of their respective vehicles to operate their vehicles with reasonable care, taking into account the actual and potential dangers existing from weather, road traffic and any other conditions which may have existed at the time. Each of them was under a duty to maintain a reasonably safe rate of speed, to have his vehicle under reasonable control, to keep that proper lookout under the circumstances then existing, to see and be aware of what was in his view, and to use reasonable care to avoid any accident.

A driver is charged with the duty to see that which, under the facts and circumstances, he should have seen by the proper use of his senses, and if you find that the plaintiff and/or the defendant did not observe that which was there to be seen, you may find that he was

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negligent in failing to look, or in not looking carefully.

Now, let me just explain that pursuant to vehicle and traffic laws of the State of New York, every vehicle operated or driven upon a public highway -- in this case a street. A city street is considered a public highway -- which is propelled by any power other than muscular power, except, A, electrically driven mobility assistance devices operated or driven by a person with a disability and electric personal assistance mobility devices operated outside the City --

Strike that.

B, vehicles which run only upon rails or tracks; C, snowmobiles as defined in Article 47 of this chapter; and D, all terrain vehicles as defined in Article 48B.

For the purpose of title four in this chapter, the term motor vehicle shall exclude fire and police vehicles, other than ambulances. For the purposes of title four and five of this chapter, the term motor vehicles shall exclude farm-type tractors and all terrain-type vehicles used exclusively for agricultural purposes, or for snow blowing, other than for hire, farm equipment including self-propelled machines used exclusively for growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on contract site.

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So, for our purposes, a dirt bike is considered a motorcycle.

Now, the vehicle and traffic law establishes rules of conduct that must be observed by motorists and pedestrians alike. The defendant and the plaintiff both claim that -- in the one instance, the plaintiff claimed that the defendant failed to comply with Vehicle and Traffic Law Section 1214. That is opening and closing vehicle doors, which reads as follows:

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

The defendant contends that the plaintiff failed to comply with the following Vehicle and Traffic Law sections: Section 1123, which reads as follows:

Section 1, A, the driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

Subsection 3: Upon a one-way street or upon any roadway on which traffic is restricted to one direction of movement where the roadway is free from obstructions and of

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sufficient width for two or more lines of moving vehicles; B, the driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety.

Section 1225(a), driving on sidewalks:

Subdivision 1: No person shall drive a motor vehicle on or across a sidewalk except that a vehicle may be driven at a reasonable speed, but not more than five miles per hour, on or across a sidewalk in such manner as not to interfere with the safety and passage of pedestrians thereon, who shall have the right of way, when it is reasonable and necessary.

Subdivision A, to gain access to a public highway, private way or lands or buildings adjacent to such way highway or way; subsection B, in the conduct of work upon a highway or upon a private way or lands or buildings adjacent to such highway or right of way; or Subsection C, to plow snow or perform any other public service, for hire or otherwise, which could not be otherwise be reasonably and properly performed.

In considering the evidence in this case, you must determine whether the defendant and/or the plaintiff has proved that the defendant and/or the plaintiff failed to comply with those statutes. If you find that the defendant and/or the plaintiff violated those statutes,

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such a violation constitutes negligence.

You cannot disregard a violation of the statute and substitute some standard of care other than that set forth in the statute.

Now, my charge to you on the law of damages must not be taken as a suggestion that you should find for the plaintiff. It is for you to decide, on the evidence presented and the rules of law that I've given to you, whether the plaintiff is entitled to recover from the defendant. If you decide that the plaintiff is not entitled to recover from the defendant, you need not consider the question of damages. Only if you decide that the plaintiff is entitled to recover will you consider the measure of damages. If you find that the plaintiff is entitled to recover from the defendant, you must render a verdict in a sum of money which will justly and fairly compensate the plaintiff for all losses resulting from the injuries he sustained.

Now, one additional matter on damages. You have heard counsel suggest particular amounts that you should award to compensate the plaintiff. I charge you that there is nothing in the law which fixes the amount that an attorney may suggest to you as the amount you should award. I remind you that nothing the attorneys say is evidence, including amounts suggested to you in summations. Do not

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assume that such is the amount awarded by other juries in similar cases, and do not assume that such amounts are those that attorneys not connected to this case would suggest to you if they were evaluating this case. Again, the amount of damages to be awarded is for you to decide, based on upon the evidence you have heard at the trial and the principles of law I have given to you.

If you decide that the defendant is liable, the plaintiff is entitled to recover a sum of money which will fairly and justly compensate him for any injury and conscious pain and suffering to date that was caused by the defendant.

Stay with me, ladies and gentlemen. We're almost there.

In determining the amount to be awarded plaintiff for pain and suffering, you may take into consideration the effect that plaintiff's injuries have had on his ability to enjoy life. The loss of the enjoyment of life involves the loss of the ability to perform daily tasks, to participate in the activities which were a part of the person's life before the injury, and to experience the pleasures of life. If you find that plaintiff, as a result of his injuries, suffered some loss of the ability to enjoy life you may take that loss into consideration in determining the amount to be awarded to plaintiff for pain and suffering to date.

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If your verdict is in favor of the plaintiff, plaintiff will not be required to pay income taxes on the award. Therefore, you must not add to nor subtract from the award any amount on account of income taxes.

Now, with respect to the plaintiff's injuries or disabilities that you may find to be permanent, the plaintiff is entitled to recover for future pain and suffering and disability and the loss of his ability to enjoy life, so in this regard you take into consideration the period of time that the plaintiff can be expected to live. In accordance with the statistical life expectancy table the plaintiff, Miguel Bonano, is currently 28 years old, and has a life expectancy of an additional 47.3 years. However, such table provides nothing more than a statistical average, so it neither guarantees that the plaintiff will live that additional 47.3 years, or that he will not live for a longer period of time. So the life expectancy figure I've given to you is not binding upon you, but may be considered by you, together with your own experience and the evidence you have heard concerning the condition of the plaintiff, his health, his habits, his employment and activities in deciding what his present life expectancy is.

Now, in reaching your verdict, you are not to be affected by sympathy for any of the parties, what the

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reaction of the parties or of the public to your verdict might be, whether it will please or displease anyone, be popular or unpopular, or indeed any consideration outside the case as it has been presented to you in this courtroom. You should consider only the evidence, both the testimonial evidence and the exhibits which have been received in evidence, and find the facts from what you consider to be the believable evidence and apply the law as I now give it to you.

Your verdict will be determined by the conclusions you reach, no matter whom the verdict helps or hurts. Now, the case will be decided on the basis of the answers that you will be giving to certain questions that I will be submitting for your consideration.

Now, each of the questions asked calls for either a yes or no answer, a numerical figure, or a percentage. Now, while it is important that the views of all jurors be considered, when five of the six of you agree on the answer to any question -- let me state that again. While it is important that the views of all of the jurors be considered, five of the six of you must agree on the answer to any question, but the same five persons need not agree on all of the answers. I'll explain it to you in a few minutes. When five of you have agreed on any answer, the foreperson of the jury -- and as we stated, generally

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speaking the foreperson of the jury is juror number one, and again that would be Ms. Spigner, you're Juror Number 1 and you don't strike me as the shy, retiring type. You are far from it. That said, if when you first retire to the jury room to your deliberations, you decide that you are not up to the responsibility of chairing the deliberations and serving as the foreperson, then the first order of business will be to decide who among you will be the foreperson; all right? So, that's the first order of business.

The foreperson will get a pen. Each one of you will have a verdict sheet, but only the bearer of that pen will be filling in the verdict sheet; all right, everyone? Each one of you will receive a copy of the verdict sheet in order to facilitate the deliberative process, so everyone knows which question is the subject of the particular discussion, but only the foreperson fills in the verdict sheet. So the foreperson will write the answer in the space provided for each answer. Thereafter, each of you will sign in your appropriate signature line. When you have answered all of the questions that require answers, you will report the verdict.

Let me say again, do not assume from the questions or from the wording of the questions or from any of my instructions what the answers should be.

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Now, if in the course of your deliberations, your recollection may fail you with regard to any part of the testimony, or you have any questions about my instructions to you on the law, or you may have any requests for any of the items that were received in evidence, you have the right to return to the courtroom for the purpose of having such testimony read back to you, or having such questions answered, or for having evidence sent back to you to the jury room. You will receive a number of blank jury notes, such as the one that I'm showing you right now. They are blank. The moment you have a question, that becomes jury note number one, so I anticipate that you have good handwriting. Yes, you do. Obviously you didn't have Penmanship for Doctors 101 at your school, so I can read your handwriting, which is very important. That is because if we do not understand your question we cannot help you, so as legibly as possible and in as much detail as you can give us. If you have a question with regard to read back of testimony, the most important thing is that you be as precise as possible. Give us the name of the particular witness that you need read back of testimony, the area of testimony you require read back in as much detail as possible.

Let me just explain that. The more detail we have, the easier it will be for our court reporter to

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search the record and retrieve the items that you have requested in order for us to read back that testimony, so you will include the item requested, if it's evidence that you are requesting, and the names of the witnesses and the details that you require, or the law that I may have given you that you may need read back to you. Thereafter, you will fill out the time, your signature and the date on the jury note. That said, if you should request, in a note, a request for read back of testimony or the law and you have included a request for evidence, you will immediately receive the evidence that you have requested for your consideration, however any items that you require in terms of read back of testimony, I will tell you right now, it will take much longer than the New York minute it took you to write the question. It will take us much longer than that to search the record, so please be patient and do not presume that we are ignoring you. Counsel and the Court will be zealously working to retrieve that item and read it back to you as soon as we possibly can.

If you request items to be read back to you, testimony, or the law to be read back to you, and during the time that we search the record to reach that evidence to read back to you, you have reached a verdict, the note that you sent out must include the information that you no longer require the items that you have previously requested

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as read back because you have reached a verdict. If you do not so inform the Court of that information, I will have to ask you to retire to the jury room one more time to so inform us. We cannot take a verdict unless you tell us that previously requested items that had not been read back to you are no longer required; all right, everyone?

THE JURORS: Yes.

THE COURT: All right. Let's pass the verdict sheet out to the jury.

(Whereupon, there was a pause in the proceedings.)

THE COURT: All right, ladies and gentlemen. You now each have a copy of the verdict sheet, which reads as follows. I don't want to see anyone turning any pages until I tell you to turn pages; all right? Question number one, "Was the defendant the City of New York -- and obviously it's through the acts of the officers -- negligent on May 25th, 2003?" Again, at least five jurors must agree on the answer to this question. The foreperson, Ms. Spigner, will check off the answer, either yes or no, and you will record the vote. Since we are in Yankee season, it's either six-zip or five to one. Each one of you will sign on your allotted signature line.

Now, see that each line has a space that represents your position in the jury box, so obviously

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number one would be Ms. Spigner, number two Ms. Thomas, number three, Ms. Nti and so on down the line. You will each sign on your allotted signature line throughout the verdict sheet. If your answer is yes, proceed to question number two. If your answer is no, stop, proceed no further, sign the verdict sheet and report your verdict to the Court.

Number two. Not page two, question number two. No one should have turned the page. Question number two: Was the negligence of defendant, the City of New York, a substantial factor in causing the accident on May 25th, 2003. Again, at least five jurors must agree on the answer to this question. The foreperson will check off the answer, record the vote, and you each sign on your assigned signature line.

Again, ladies and gentlemen, you must follow the instructions on the verdict sheet following each question. No one is to skip around with the verdict sheet and skip to different pages. You must answer the questions in order. If your answer is yes, proceed to question number three. If your answer is no, stop. Proceed no further. Sign the verdict sheet and report your verdict to the Court.

Number three, was plaintiff, Miguel A. Bonano, negligent on May 25th, 2003. At least five jurors must agree on the answer to this question. The foreperson will

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record the answer, the vote. Each will sign on your signature line. If your answer is yes, proceed to question number four. If your answer is no, proceed to question number six.

Number four, was the negligence of plaintiff, Miguel Bonano, a substantial factor in causing -- that should be the incident of May 25th, 2003. At least five jurors must agree on the answer to this question. The foreperson will record the answer and the vote and you will sign on your signature line. If your answer is yes to question number two and question number four, you must assess the percentages of fault of the parties and you proceed to question number five. If your answer is no, proceed to question number six.

Number five. Only answer question number five if you answered yes to question number two and question number four. Number five, what was the percentage of fault of defendant and what was the percentage of fault of the plaintiff. Again, at least five jurors must agree on the answer. The foreperson will record the answer and the vote, again, must total one hundred percent. You will sign on your signature line.

Question number six, what is the amount of damages which will fairly and justly compensate plaintiff, Miguel Bonano, for the following items from May 25th, 2003

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up to the date of your verdict, whether it's today or tomorrow. Again, at least five jurors must agree on the answer. The foreperson will record the answer with regard to pain and suffering.

Now, if you get to question number six, remember, as per the attorney's stipulation, the amount of the medical expenses is $33,125, so if you get to question number six that will be the amount that you will enter on that line, and again, you will record the note and sign the signature line.

Question number seven, what is the amount of damages, if any, which will fairly and justly compensate plaintiff, Miguel Bonano, for the following items, from today's date or the date of your verdict into the future. Again, at least five jurors must agree on an answer, and the amount there represents pain and suffering, and you will record the vote. If you decide not to make an award for future pain and suffering, you will insert the word, "None," and you will sign on the signature line. If you did not make an award for this item stop, proceed no further, sign the verdict sheet and report your verdict to the Court. If you made an award for this item, proceed to question number -- that should read question number eight. Just disregard the eleven, because when you put me at a computer anything can happen, so that should be question

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number eight; all right, ladies and gentlemen? And we'll make that correction on your verdict sheet so you don't forget.

Number eight, if you made an award for an amount intended to compensate plaintiff, Miguel A. Bonano, for pain and suffering to be incurred in the future, then for that award state the period of years over which the amount is intended to provide compensation. Again, five jurors must agree. Pain and suffering, the answer will be with regard to number of years, and the vote, and you sign on the verdict sheet on the last page; all right?

(Whereupon, there was a pause in the proceedings.)

THE COURT: All right. Ladies and gentlemen, just give us one quick moment for the Court and counsel to confer, and then what we'll do is we'll break for our luncheon recess. Now, as you by now will know, you will be free to go out and have lunch. Lunch will be one hour. You will then return, and assuming that all of my six jurors are not incapacitated by an unusual lunch, which I do not anticipate, my alternate jurors, I'm going to ask you to return and stay in and around this courtroom, all right, so that as soon as my six sworn jurors are reconvened, you may begin your deliberations; all right everyone?

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(Whereupon, the following took place in the robing room in the presence of the Court and all counsel, out of the presence of the jury.)

THE COURT: All right, counsel. Only with regard to the charge as given. We are not rehashing the charge conference, but other than that, with regard to the charge as given, were there any errors in the Court's charge?

MS. PLUCHINO: There's two things, your Honor. The first one also relates to the verdict sheet. Maybe you added something to the one that we didn't get, but one of them I asked for 2:285 which has to do with expenses and -- not future, but even past.

THE COURT: I included medical expenses.

MS. PLUCHINO: When you read the verdict sheet to the jury and when you just went over it, basically it sounded like you were saying that their answer to question six for pain and suffering would be the $33,000.

THE COURT: No, no.

MS. PLUCHINO: It's not on the one you gave us.

THE COURT: I didn't give it to you, but yeah. That's because I said medical expenses. It's on there.

MS. PLUCHINO: Okay. I know, but I didn't really -- I wanted to make sure, because you did not charge the medical, the one on medical expenses. I think it's 2:285, because I --

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THE COURT: It's because you stipulated to that.

MS. PLUCHINO: All right. Well, I thought they were not stipulating to it. That's why they said they were not --

MR. SMITH: The amount of the bill was stipulated to.

THE COURT: What's the charge?

MS. PLUCHINO: 2:285, which is expenses incurred.

THE COURT: Hang on a second.

MS. PLUCHINO: If you recall, in the charge conference you asked me, because I had asked for the future, but then my doctor failed to give me the amount of money it would cost for the future surgery, but we did have the past, so I think 2:285 has to do with past expenses.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Okay. Yes, I did forget to give that, so I'll give that charge.

MS. PLUCHINO: Okay. The other thing, I know that my adversaries are going to chomp at the bit about, and I was sort of expecting them to say something, you did give the missing document charge but you said police accident report instead of memo book. You may want to read that again with the right words.

MR. SMITH: Judge, it's a very serious issue.

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THE COURT: Oh, my Lord.

MR. SMITH: Judge, it's --

MS. PLUCHINO: Just read it again.

MR. SMITH: It's a huge concern for us.

MS. PLUCHINO: Read it again and say you meant memo book.

MS. BENEDETTO: If we can have a curative instruction as to that --

MS. PLUCHINO: I would object to any type of curative instruction, Judge. They forget to put in a piece of evidence. They don't get a keyhole because they forget. What you can say is, "What I meant to say was."

THE COURT: I think I know what I can say.

MS. PLUCHINO: All right. Whatever. I absolutely agree with that, but I'm saying that --

THE COURT: All right. So I forgot. I can't believe I did that.

MS. BENEDETTO: I don't think anyone wanted to interrupt you, your Honor, so --

THE COURT: No, you should have, because it was --

MS. PLUCHINO: I was going to.

THE COURT: Because it was --

MS. PLUCHINO: I'm surprised you didn't.

THE COURT: I don't know why I said that, but all

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right. Anything else?

MS. BENEDETTO: No.

(Whereupon, the following took place in open court, in the presence of the Court, all counsel, and the jury.)

THE COURT: All right, ladies and gentlemen. Clearly I did not have enough caffeine this morning either. I'm only had one of these, so let me just say, I completely forgot to give you one charge, and I messed up with a second one. Again, now you realize that just because I put on this robe in the morning, this does not give me superhuman strength and abilities above those of mortal men.

All right. Let me just say, with regard to item number six, question number six, with regard to medical expenses I forgot to give you this particular charge. If you decide for the plaintiff on the question of liability, he will be entitled to recover the amount of reasonable expenses for medical services and medicines, including physicians charges, nursing charges, hospital expenses, diagnostic expenses and x-ray charges. Thus, you will include, in your verdict, the amount that you find from the evidence, and this is where the stipulation is that the parties entered into.

The parties have stipulated that the amount of

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those medical expenses are $33,125, so thus you will include, in your verdict, that amount that you find, from the evidence, to be the fair and reasonable amount of the medical expenses necessarily incurred as a result of the plaintiff's injuries. So, in your verdict you will state separately the amount awarded for those medical expenses up to the date of your verdict. That's past medical expenses.

Now, again, I misstated the document when I read the charge to you with regard to a missing document. The missing document was the memo book of Police Officer Londino, so again, if you find that the City has failed to produce in Court that document which the plaintiff claims you should consider in connection with his claims, and that the explanation offered by the City is not reasonable for the failure to produce that memo book entry, you may consider the failure to produce, and if you believe that such a document does exist or existed, and if you also believe, as I said, that the explanation offered is not reasonable, you must decide what weight you will choose, if you would have had that particular document, that is the memo book entry, it would have had in your deliberations, if any.

Again, if you find that the memo book would have been important or significant in your deliberations you may, but you are not required to, conclude that if it had

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been produced it would not have supported the City's position on the issues relative to any facts which may have been contained in that memo book entry, and would not contradict the evidence offered by the defendant on that issue.

Additionally you may, but are not required, to draw the strongest inference against the City on that question that the opposing evidence permits.

All right. Now, as I said, after lunch you will retire for your deliberations, so I've now outlined the rules, the laws that apply in this case and the processes by which you weigh the evidence and decide the facts, so your first order of business when you return for your deliberations, after the alternate jurors have been excluded from the jury room, is to have a foreperson, and that is because in order that your deliberations proceed in an orderly fashion you must have a foreperson, but of course his or her vote is entitled to no greater weight than that of any of the other jurors.

Your function to reach a fair decision from the law and the evidence is an important one. When you are in the jury room, I know that you will listen to each other and discuss the evidence and issues in the case among yourselves. It is the duty of each of you, as jurors, to consult with one another and to deliberate with the view

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towards reaching agreement on a verdict, if you can do so without violating individual judgment and your conscience.

While you should not surrender conscientious convictions of what the truth is and of the weight and effect of the evidence, and while each you have to decide the case for yourselves and not merely consent to the decision of your fellow jurors, you should examine the issues and the evidence before you with candor and frankness and with the proper respect and regard for the opinions of each other. Remember in your deliberations that the dispute between the parties is, for them, a very important one. They and the Court rely upon you to give full and conscientious deliberation and consideration to the issues and the evidence before you, and by so doing you carry out to the fullest your oaths as jurors, to truly try the issues of this case and render a true verdict.

Now, again, you will be retiring for your deliberations after your luncheon recess, however you may not use the time during your luncheon recess to deliberate this case; all right, ladies and gentlemen? That is an hour which you will have for lunch, and you will come back promptly in an hour. By my clock, my watch, that hour will be 2:24 p.m.; all right, ladies and gentlemen? An hour, and you will be back in order to begin your deliberations; all right, everyone?

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Do not discuss the case among yourselves in the interim. Do not speak with any of the parties, attorneys or witnesses. No searching on your favorite search engines. No Google mapping of any of the areas of issue. You are all back here after you have revived yourself with caffeine as well; all right, every one? Finish up your doughnuts, and you will continue your deliberations; all right? Have a good lunch, be safe, and everybody back here at what?

A JUROR: 2:24.

THE COURT: Very good.

THE COURT OFFICER: All rise.

(Whereupon, the jury was excused from the courtroom.)

THE COURT: All right, Counsel. Let me just say that I'm going to ask you all to be back here in an hour, only because more often than not jurors will have a question immediately; all right? Let's just reconvene back here in an hour, and after the luncheon recess you can make motions; all right?

MS. BENEDETTO: Yes.

MS. PLUCHINO: Judge, absolutely.

THE COURT: We'll see you all back here promptly at 2:24.

MS. BENEDETTO: Just one quick thing, in terms of