

TRANSCRIPT OF PROCEEDINGS,
DATED MARCH 26, 2013 [A-673 - A-754]

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 NASSAU COUNTY : TRIAL TERM PART 22
 -----X
 3 HARRIET ROSE, as Administrator of the :
 Estate of BENNETT ROSE and HARRIET ROSE, :
 4 Individually, :
 Plaintiff, :
 5 - against - :
 6 JONATHAN ZINBERG, M.D., SOUTH SHORE :
 GASTROENTEROLOGY, P.C., DAVID ESKREIS, M.D.:
 7 and DIGESTIVE MEDICINE-LONG ISLAND, P.C., :
 8 Defendants. :
 -----X

INDEX NO.:
3595/2009

10 March 26, 2013
11 Mineola, New York

12 B-E-F-O-R-E:

13 THE HONORABLE DANIEL R. PALMIERI,
14 Supreme Court Justice, and a Jury.

15 APPEARANCES:

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19 Attorney for the Plaintiff

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22 BY: GERALD D. DiEDWARDS, ESQ.
23 Attorney for Defendant Jonathan Zinberg, M.D. and
South Shore Gastroenterology, P.C.

Jury Charge

1 THE COURT: Any requests?

2 MR. SCHWARTZ: No, your Honor.

3 MR. DiEDWARDS: No, your Honor.

4 (Whereupon, the jury entered the courtroom
5 and resumed their respective seats at 9:30 a.m.)

6 THE COURT: Good morning. Welcome back.

7 All right, as promised, this is the phase of
8 the case where I'm going to instruct you on the law.
9 Of course, you have heard all the evidence from the
10 parties, you heard the arguments of the attorneys,
11 and now I will tell you what the applicable law is

12 First I'm going to review some of the things
13 I said at the outset. Some of this may sound
14 familiar and you'll hear some of it again as I go on,
15 but it always bears repeating.

16 So I briefly gave you certain principles of
17 law. Namely, you are bound to accept the law as I
18 give it to you, whether you might agree with it or
19 not. You are not to ask anyone else or seek out any
20 information about the law or your role, or anything
21 having to do with your service on the jury. You
22 should not consider or accept any advise from anyone
23 but me. You may not conclude from my rulings I have
24 made that I favor anyone here. You may not draw
25 inferences from unanswered questions. You may not

Jury Charge

1 consider testimony that's been stricken from the
2 record.

3 In deciding how much weight to give to
4 testimony, you should apply the same tests that you
5 use in your everyday dealings when you make decisions
6 about what is told to you by others. You should
7 consider whether a witness is interested or not
8 interested in the outcome of the case, whether the
9 witness is bias for or against a particular side, the
10 age, the appearance, the way the witness gives
11 testimony and the opportunity that the witnesses had
12 to learn the facts about which they are testifying.

13 Now, the burden of proof rests on the
14 plaintiff. That means that it must be established by
15 a fair preponderance of the credible evidence that
16 the claims plaintiff makes is true.

17 Credible evidence means the testimony and
18 the exhibits that you find to be worthy of belief.

19 A preponderance of the evidence means the
20 greater part of the evidence. That doesn't mean the
21 amount of time taken or the number of witnesses used.
22 The phrase refers to the quality of the evidence, how
23 convincing it is and the weight and effect that it
24 has on your mind.

25 Now, the law requires that in order for a

Jury Charge

1 plaintiff to prevail on a claim, the evidence that
2 supports that claim must appeal to you as more nearly
3 representing what took place than the evidence
4 opposed to the claim. If it does not, or it weighs
5 so evenly that you are not able to say that there is
6 a preponderance on either side, then you must decide
7 the question in favor of the defendant. It is only
8 when the evidence favoring the plaintiff's claim
9 outweighs the evidence opposed to it that you find in
10 favor of the plaintiff.

11 Now, if, during your deliberates, your
12 recollection with respect to any of the testimony
13 needs refreshing, or you have questions about my
14 instructions on the law, you have the right to return
15 to the courtroom to have the testimony read to you or
16 the questions or instructions answered. You do that
17 by writing a note. You give the note to the officer,
18 the officer brings it to me, I gather everybody and
19 we read it. If it is for a question with respect to
20 the law, the attorneys will have an opportunity to
21 give me their input. If it is for a readback of
22 testimony, then our court reporter will go through
23 her computer and records and find the readback area.

24 We will respond to you as soon as we are
25 able do so, but I am telling you what the process is

Jury Charge

1 so you don't get antsy while you are waiting for the
2 answer. If it is for a readback or instructions on
3 the law, try to be as specific as possible so we will
4 know where to look and not try to be guessing as to
5 what you're really asking us to do. That means, you
6 know, if it's direct testimony or cross-examination
7 that you have an interest in, try to allow us to zero
8 in on that.

9 Now, in deciding the case, you may only
10 consider the exhibits that have been admitted into
11 evidence and the testimony of witnesses, some of
12 which was given here in the courtroom and some of
13 which has been read to you from examinations before
14 trial. I believe I told you that examinations before
15 trial are under oath and are entitled to equal
16 consideration by you, notwithstanding that it was
17 taken before the trial and not here in the courtroom.
18 Of course, the arguments, the remarks, the
19 summations, the openings, what the attorney say is
20 not evidence, nor is anything that I now say to you
21 or may have said to you to be considered evidence.

22 All the exhibits, that means all that you
23 see here will be sent into the jury room with you.
24 So if you don't have it that means it doesn't exist,
25 or it wasn't offered, or it wasn't relevant and you

Jury Charge

1 can't speculate on anything that you don't have.

2 Now, while you are encouraged to use all of
3 your life experiences when you analyze testimony and
4 reach a verdict, you may not communicate any personal
5 professional expertise that you might have or other
6 facts not in evidence to the other jurors. You must
7 base your discussions and decisions solely on the
8 evidence that came in during the trial and that
9 evidence alone. As I said a moment ago, you must not
10 consider or speculate on matters not in evidence or
11 matters outside of the case

12 Now, the case will be decided on the basis
13 of the answers that you will be giving to written
14 questions that I'm going to submit to you. I believe
15 both the attorneys referred to the questions, and
16 I'll go over that again myself in a few minutes.
17 What I want to impart to you now is that some of the
18 questions call for yes or no answers and some call
19 for amounts to be filled in. While everybody's views
20 are important and everybody's views should be
21 listened to, your answer to a question need not be
22 unanimous. It takes five out of six of you to agree
23 on the answer to the question to have that answer
24 become binding and become part of your verdict. And
25 it doesn't have to be the same five people on every

Jury Charge

1 question.

2 So the process is when five of you have
3 agreed on an answer to the question, fill in that
4 answer and then look below it, it will tell you what
5 to do next.

6 Each of you should sign on your line based
7 on your jury number. And if one of you happens to
8 disagree, don't sign on your jury number line, there
9 is a separate line for a single dissenting juror.

10 Do not assume from a question or the wording
11 of the questions or any instructions on them what the
12 answer should be. When you have answered all the
13 questions that require answering that means you are
14 done and you will report to the court

15 Now, in reaching your verdict, you are not
16 to be affected by sympathy for any of the parties,
17 what anybody's reaction might be, what the public
18 might think, whether it be popular or unpopular. You
19 should not have any considerations outside of the
20 case as it has been presented to you here in this
21 courtroom. Consider only the evidence, find the
22 facts from what you consider to be believable and
23 then apply the law as I give it to you. Your verdict
24 will be determined by the conclusions you reach, no
25 matter whom it might help or hurt

Jury Charge

1 Now, a lawsuit is a civilized method of
2 determining differences among people. It is basic to
3 the administration of our system of justice that the
4 decisions on both the law and the facts be made
5 fairly and honestly. You as the jury and I as the
6 court have responsibility, heavy responsibility to
7 ensure that a just result is reached in deciding the
8 difference among the parties here.

9 As the jurors, your fundamental duty will be
10 to decide from the evidence that you heard, that
11 includes the exhibits, what the facts are. You are
12 the sole, the exclusive judges of the facts. You are
13 supreme in that field and neither I nor anyone else
14 may invade that area. As the sole judges of the
15 facts, you will be deciding which of the witnesses
16 you believe, what part of their testimony you accept
17 and how much weight to give to it. On the other hand
18 and with equal importance you are required to accept
19 the law as it is given to you in this charge and in
20 any other instructions that I have given or may give
21 to you during the course of the trial. That means
22 whether you agree with the law as given to you by me
23 or not you are bound by it. And, as I said a moment
24 ago, you are not to seek out advice or information
25 regarding any part of your service here on this jury.

Jury Charge

1 The process by which you will arrive at a
2 verdict will be to decide from the evidence what the
3 facts are and then apply the law. The conclusion you
4 reach is called your verdict.

5 Now, in the course of the trial it has been
6 necessary for me to rule on the admission of evidence
7 and upon different applications made by the
8 attorneys. You must not conclude from my ruling I
9 made or from any questions I may have asked or from
10 anything I have said or done during the trial,
11 including these instructions, and even the way I'm
12 giving them to you, that I favor anyone in this case.
13 It is your recollection of the evidence and
14 recollection of the facts that will decide the case.

15 There were times when I may have sustained
16 objections to questions without allowing a witness to
17 answer, or where an answer was made I might have
18 instructed that it be stricken from the record. When
19 that happened, you must also disregard that stricken
20 testimony and dismiss it from your minds. You may
21 not draw inferences or conclusions from unanswered
22 questions. You may not consider testimony that has
23 been stricken from the record. That is because your
24 decision must be made solely on the evidence that
25 came in during the trial. And as I said a moment

Jury Charge

1 ago, if there is something that didn't come in, or
2 was excluded, there could be many, many reasons for
3 that, including that it might not even exist.

4 Now, you're not required to accept all the
5 evidence that I did allow in. In deciding what
6 evidence you will accept, you will be evaluating the
7 testimony of the witnesses and you will decide how
8 much weight to give to it. Testimony may not conform
9 to the facts as they occurred for many reasons. A
10 witness may be intentionally lying, a witness may not
11 have seen or heard what they are testifying about, a
12 witness's memory may not be good, or a witness may
13 not express themselves clearly.

14 As I said a moment ago, you should use the
15 same tests that you use in your everyday affairs when
16 you make decisions about things that are told to you
17 by others. Some of those tests are whether a witness
18 is interested or not in the outcome, whether there is
19 bias or prejudice of a witness for or against a
20 particular side, their age, their appearance, the way
21 they give testimony on the stand, the opportunity
22 they had to learn the facts about which they are
23 testifying, and the probability or improbability of
24 that testimony when you consider it against all the
25 other evidence in the case.

Jury Charge

1 Where there are discrepancies, then you
2 should try to reconcile them. But if you can't do
3 that then it is up to you to decide which of the
4 conflicting versions, story or stories you choose to
5 accept.

6 Now, if you find that a witness has
7 willfully testified falsely as to my material fact,
8 meaning as to an important matter, the law permits
9 you to disregard completely the entire testimony of
10 that witness upon the principle that one who
11 testifies falsely about one material fact is likely
12 to testify falsely about everything. Now, you are
13 not required to consider such a witness as totally
14 unbelievable. You may accept so much of the
15 testimony as you consider to be true and disregard
16 what you believe is false. By the processes which I
17 have just described to you, you as the sole judges of
18 the facts will decide which of the witnesses you will
19 believe, what portion of their testimony you will
20 accept and how much weight to give to it.

21 Now, we had certain witnesses testify as
22 experts. And they would have been Dr. Zinberg and
23 Dr. Eskreis, who are doctors, Dr. McKinley who was
24 called by the defendant, and Dr. Tirgan and Dr.
25 Chait. And they testified concerning their

Jury Charge

1 qualifications as experts in the medical profession
2 and they gave their opinions on issues in the case.
3 We do that because when a case involves a matter of
4 science or art or requires special knowledge or skill
5 not ordinarily possessed by average people, experts
6 are permitted to state their opinions for information
7 of the court and jury. The opinions stated by each
8 of the experts who testified before you were based on
9 particular facts as the expert obtained knowledge of
10 them and testified to them before you or as the
11 attorneys may have asked them to assume, the
12 so-called hypothetical question. You may reject an
13 expert's opinion if you find the facts to be
14 different from those which form the basis of that
15 opinion. You may also reject an opinion if, after
16 careful consideration of all the evidence in the
17 case, be it expert or otherwise, you decide that you
18 disagree with the opinion.

19 In other words, you are not required to
20 accept an expert's opinion to the exclusion of the
21 facts and circumstances disclosed by other testimony.
22 Such opinions are subject to the same rules
23 concerning reliability as the testimony of all other
24 witnesses. They are given to help you in reaching a
25 proper conclusion or decision. They are entitled to

Jury Charge

1 such weight as you find the expert's qualifications
2 in the field warrant. And while they should be
3 considered by you, they are not controlling on your
4 judgment.

5 Now, the plaintiff, Mrs. Rose, on behalf of
6 the plaintiff testified, as did both defendants when
7 both of them were still in the case. Now, as a party
8 to the action they can be considered to be interested
9 witnesses. Now, an interested witness is not
10 necessarily not believable or less believable than a
11 disinterested witness. The fact that a person is
12 interested in the outcome of the case does not mean
13 that person is not telling the truth. But it is for
14 you to decide from all the tests I have given you,
15 and as your own experience dictates and from the
16 demeanor of the witnesses on the stand if such
17 testimony may have been influenced, whether
18 intentionally or unintentionally, by the witness's
19 interest in the outcome of the case. You may, if you
20 consider it proper, under all the circumstances,
21 choose not to believe the testimony of an interest
22 witness, even though it is not otherwise challenged
23 or contradicted. However, you are not required to
24 reject the testimony of such a witness and you may
25 accept all or such part of the testimony as you find

Jury Charge

1 reliable and reject what you believe to be unworthy
2 of acceptance.

3 Now, at the outset of the trial, I gave you
4 a little instruction about note taking. And just a
5 reminder, the thing to remember about note taking is
6 that notes are for your personal use, they are a
7 memory aid. They may not be accurate or complete, so
8 they may not be given any greater weight than your
9 independent recollection, or the independent
10 recollection of another juror who may or may not have
11 taken notes. So whether you have taken notes or not,
12 you should also rely on your independent memory of
13 the evidence and not be influenced by a set of notes,
14 even if they are your own.

15 The bottom line is if there is a difference
16 between what is in a juror's recollection, what is in
17 a juror's notes, it should always be resolved by
18 having the court reporter read back the transcript.
19 Or if it has to do with instructions on the law, then
20 have me go over it again with you. And that is
21 because it is our reporter who is the repository of
22 the official record of the case and that is what your
23 decision must be based on.

24 Now, I think I told you earlier that for
25 reasons that do not concern your duties here, Dr.

Jury Charge

1 Eskreis is no longer a defendant in the case. Do not
2 speculate why or draw any conclusions from the fact
3 that he is no longer a defendant and do not draw any
4 inferences or conclusions for or against any party by
5 reason of the fact that he is no longer involved.

6 Now, what I gave you so far are the general
7 rules that apply pretty much to every case. I am now
8 going to explain what we mean by negligence and
9 negligence of a doctor, and then I'm going to go into
10 damages.

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

20 Negligence requires both the reasonably
21 foreseeable danger of injury to another and conduct
22 that is unreasonable in proportion to that danger. A
23 person is only responsible for the results of his or
24 her conduct if the risk of injury is reasonably
25 foreseeable. The exact occurrence or exact injury

Jury Charge

1 does not have to be foreseeable. But injury as a
2 result of negligent conduct must be not merely
3 possible but probable. So there is negligence if a
4 reasonably prudent person could foresee injury as a
5 result of their conduct and acted unreasonably in
6 light of what could be foreseen. On the other hand,
7 there is no negligence if a reasonably prudent person
8 could not have foreseen any injury as a result of his
9 or her conduct, or acted reasonably in the light of
10 what could have been foreseen

11 Now, there are two questions on the verdict
12 sheet having to do with causation. And this applies
13 to those questions:

14 An act or omission is regarded as a cause of
15 an injury if it was a substantial factor in bringing
16 about the injury. That is, if it had such an effect
17 in producing the injury that reasonable people, that
18 is, you, would regard it as a cause of the injury

19 What do we mean by malpractice when dealing
20 with an doctor?

21 Malpractice is professional negligence.
22 Medical malpractice is the negligence of a doctor. I
23 said it a moment ago and I'm going to repeat it.
24 Negligence is the failure to use reasonable care
25 under the circumstances. Doing something that a

Jury Charge

1 reasonably prudent doctor would not do under the
2 circumstances or failing to do something that a
3 reasonably pursuant doctor would do under the
4 circumstances. It is a deviation or departure from
5 accepted practice. A doctor who renders medical
6 service to a patient is obligated to have that
7 reasonable degree of knowledge and skill that is
8 expected of an average doctor or specialist who
9 performs or provides that type of service or
10 procedure in the medical community in which the
11 doctor practices. A doctor must also comply with
12 minimum statewide national standards of care.

13 Now, the law recognizes that there are
14 differences in the abilities of doctors, just as
15 there are differences in the abilities of people who
16 are engaged in other activities. To practice
17 medicine a doctor is not required to have the
18 extraordinary knowledge and ability that might belong
19 to a few doctors of exceptional talent. However,
20 every doctor is required to keep reasonably informed
21 of new developments in their field and to practice
22 medicine in accordance with approved methods and
23 means of treatment in general use. A doctor must
24 also use their best judgment in whatever superior
25 knowledge and skill he or she possesses, even if the

Jury Charge

1 knowledge and skill exceeds that possessed by an
2 average doctor or an average specialist in the
3 medical community where that doctor practices.

4 Now, by undertaking to perform a medical
5 service, a doctor does not guarantee a good result.
6 The fact that there was a bad result to a patient by
7 itself does not make the doctor liable. A doctor is
8 liable only if he or she was neglected. And whether
9 the doctor was negligent is to be decided on the
10 basis of the facts and conditions existing at the
11 time of the claimed negligence. If the doctor is
12 negligent, that is, lacks the skill or knowledge
13 required of him or her in providing a medical
14 service, or fails to use reasonable care in providing
15 the service, or fails to exercise his or her best
16 judgment, and such failure is a substantial factor in
17 causing harm to the patient, then the doctor is
18 responsible for the injury or harm caused.

19 We turn now to damages.

20 Now, my charge to you on the law of damages
21 must not be taken as a suggestion that you should
22 find in favor of the plaintiff. It is for you to
23 decide on the evidence presented and the rules of law
24 that I have given to you whether the plaintiff is
25 entitled to recover from the defendant. If you

Jury Charge

1 decide that the plaintiff is not entitled to recover
2 from the defendant, then you need not answer the
3 questions concerning the damages. It is only if you
4 decide that the plaintiff is entitled to recover that
5 you will consider the measure of damages. And, if
6 that is so, then the plaintiff is entitled to recover
7 from the defendant and you must render a verdict in a
8 sum of money that will justly and fairly compensate
9 him for all losses resulting from the injuries he
10 sustained.

11 And I am saying "he" here, because when I am
12 referring to damages, I am talking about Mr. Rose.
13 This is his cause of action.

14 Now, during closing remarks the attorneys
15 may have suggested specific dollar amounts to you
16 they believed to be appropriate as compensation for
17 damages here. An attorney is permitted to make
18 suggestions as to the amount that should be awarded,
19 but those suggestions are arguments only and not
20 evidence and should not be considered by you as
21 evidence of plaintiff's damages. The determination
22 of damages is solely for you the jury to decide.

23 Now, if you decide that the defendant is
24 liable, the plaintiff, as I said, is entitled to
25 recover a sum of money which will justly and fairly

Jury Charge

1 compensated him for any injury and conscious pain and
2 suffering from the date of the departure to the date
3 of his death. Conscious pain and suffering means
4 pain and suffering of which there was some level of
5 awareness by Mr. Rose here.

6 In determining the amount, if any, to be
7 awarded for pain and suffering, you may take into
8 consideration the affect that plaintiff's injuries
9 had on his ability to enjoy life up to the time of
10 death. Loss of enjoyment of life involves the loss
11 of the ability to perform daily tasks, to participate
12 in the activities which were a part of the person's
13 life before the injury, and to experience the
14 pleasures of life. A person suffers the loss of
15 enjoyment of life if that person is aware at some
16 level of the loss that he or she has suffered.

17 So if you find that Mr. Rose, as a result of
18 his injuries, suffered some loss of the ability to
19 enjoy life, and was aware at some level of that loss,
20 you may take that loss into consideration in
21 determining the amount to be awarded to him for pain
22 and suffering to date -- not to date, up to the date
23 of his death.

24 And other than Mrs. Rose's claim, this is
25 the only claim that is being made here in the case by

mbj

Jury Charge

1 plaintiff. And that is pain and suffering, including
2 loss of enjoyment of life from the date of any
3 departure up to the date of death. There is no award
4 for dying in this case.

5 Now, if your verdict is in favor of
6 plaintiff, plaintiff will not be required to pay any
7 income taxes on the award and you must not add to or
8 subtract to the award any amount on account of income
9 taxes. So if you decide for the plaintiff on the
10 question of fault, then the verdict sheet addresses
11 an award for pain and suffering and loss of enjoyment
12 of life, that is all one number, from the date of the
13 departure that might have caused injury up to the
14 date of Mr. Rose's death on July 13, 2009. And as I
15 said a moment ago, no award may be made for
16 Mr. Rose's death or loss of life.

17 Now, there is also a cause of action, or a
18 claim made by Mrs. Rose, and that is what we call the
19 spousal action, the loss of services. Of course,
20 Mrs. Rose can only recover if Mr. rose were to
21 recover. So if you find in favor of plaintiff
22 Bennett Rose, Mr. Rose then, his wife, is entitled to
23 recover damages for the pecuniary loss which you find
24 she sustained by the loss of her spouse's services
25 and society for the period from the date of the

Jury Charge

1 departure that caused injury and up to the date of
2 his death on July 13, 2009.

3 In deciding the amount of such damages, you
4 may take into consideration the nature and extent of
5 Mr. Rose's services and society before the injury,
6 including his disposition, temperament, character and
7 attainments, the interest he showed in his home, the
8 social life of his family, and in the comfort,
9 happiness, education and general welfare of the
10 members of the family; the services he rendered in
11 superintending the household, working, training with
12 the children, assisting his spouse in the management
13 of the business or affairs in which his spouse was
14 engaged; his act of affectionate, love and sexual
15 intercourse and the extent to which the injuries he
16 sustained prevented him from performing such services
17 and providing such society.

18 You will award Mrs. Rose such an amount
19 based upon the evidence and upon your own
20 observation, experience and knowledge conscientiously
21 applied to the facts and circumstances as in your
22 judgment will compensate her for the pecuniary loss
23 that you find she sustained by reason of her spouse's
24 inability to perform such services and provide such
25 society as a result of his injuries, again, from the

Jury Charge

1 date of any departure until the date of his death.

2 I am going to go over the verdict sheet now,
3 I know the attorneys did it too, and then we are
4 done.

5 The first question has to do with did the
6 defendant, Dr. Jonathan Zinberg, departure from
7 accepted medical practice by failing to observe a
8 tumor in the cecum area during the colonoscopy of
9 December 14, 2006. The choices are yes or no. It
10 takes five out of six to become binding. When you
11 have reached an agreement, one way or the other,
12 everybody signs under their juror number. If
13 somebody disagrees then you sign as an dissenting
14 juror.

15 If you answered yes then you go on to the
16 second question, the causation. Remember I read that
17 causation, substantial factor. And that simply is
18 was the departure on the part of the defendant,
19 Dr. Jonathan Zinberg, a substantial factor in causing
20 injury to Bennett Rose. Once again the choice is are
21 yes or no. Five out of six. If somebody disagrees,
22 there is a separate line to sign on. You proceed to
23 question three.

24 If the answer is no on the first question
25 you go directly to question three. There are two

Jury Charge

1 departures. If you answer is two yeses, that is on
2 departure and caution, that means you found in favor
3 of the plaintiff on that question. So if you answer
4 four yeses you found responsibility on both
5 departures. If you answer yes, yes on either
6 combination, then you still are finding him
7 responsible. But if you find there was no departure
8 as to either question, or no substantial factor, then
9 you have found in favor of the defendant. And the
10 instructions tell you what to do.

11 So the question three is did the defendant,
12 Dr. Jonathan Zinberg, departure from accepted medical
13 practice by failing to observe a tumor in the cecum
14 area during the colonoscopy of October 11, 2007.
15 Once again it's yes or no, five out of six. Sign
16 where appropriate. If the answer is no and you also
17 answered no to either one or two, then you don't go
18 on to damages and you report your verdict. If the
19 answer is yes, then you go on to whether or not the
20 departure was a substantial factor in causing injury
21 to Bennett Rose.

22 So if you answered yes to any one or more of
23 questions one and/or two and/or three and/or four,
24 then you found the defendant liable. If you found
25 the defendant liable you go on to question five which

Jury Charge

1 has to do with damages. And if you find him not
2 liable you stop and report your verdict, you don't
3 put anything down for damages.

4 Question five, state the amount, if any,
5 awarded for conscious pain and suffering, including
6 the loss of enjoyment of life incurred by Bennett
7 Rose from the date of the departure that caused
8 injury up to the time of his death. Takes five out
9 of the six, sign where appropriate

10 Next the question is has the plaintiff
11 spouse, Harriet Rose, sustained the loss of her
12 spouse's services. Choices are yes or no. And the
13 second part of that question, the B part is to fill
14 in the amount. And of course every question calls
15 for five out of six to be in favor.

16 Now, that concludes for you the rules of law
17 that apply to the case and the processes by which you
18 will be weighing the evidence and deciding the facts.
19 Traditionally the first juror chosen acts as the
20 foreperson. That would be Miss Lenora Ellis.

21 Where you are you Miss Ellis, raise your
22 hand?

23 (Whereupon, the juror Lenora Ellis complies
24 with the Court's instructions.)

25 THE COURT: The foreperson gets one vote