

1 Jury Charge

2 An interested witness is not necessarily less
3 believable than a disinterested witness. The fact that he
4 or she is interested in the outcome of the case does not
5 mean that he or she has not told the truth. It is for you
6 to decide from the demeanor of the witness on the stand and
7 such other tests as your experience dictates whether or not
8 the testimony has been influenced intentionally or
9 unintentionally by his or her interest.

10 You may, if you consider it proper under all of the
11 circumstances, not believe the testimony of such a witness
12 even though it is not otherwise challenged or contradicted.
13 However, you are not required to reject the testimony of
14 such a witness and may accept all or such part of his or her
15 testimony as you find reliable, and reject such part as you
16 find unworthy of acceptance.

17 Ruben Davydoff is an employee of the City of New
18 York. Mario D'Abruzzo was an employee of Burtis
19 Construction at the time of the accident. Police Officer
20 Joseph Pagano is an employee of the New York City Police
21 Department. The fact that these witnesses were and perhaps
22 still are employed by one of the defendants, and the
23 testimony that you have heard of their relationship with
24 their employer may be considered by you in deciding whether
25 the testimony of any of those witnesses is in any way
26 influenced by the employment relationship with the

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2 For example, let us suppose that a fact in dispute
3 is whether I knocked over a glass of water near the witness
4 chair. If someone testifies that he saw me knock over the
5 glass, that is direct evidence, that I knocked over the
6 glass. Circumstantial evidence is evidence of a fact which
7 does not directly prove a fact in dispute, but which permits
8 a reasonable inference or conclusion that the fact exists.

9 For examples, a witness testifies that he saw a
10 water glass on the bench. The witness states that while he
11 was looking the other way, he heard the breaking of glass,
12 looked up and saw me wiping water from my clothes and from
13 the papers on the bench. This testimony is not direct
14 evidence that I knocked over the glass, it is circumstantial
15 evidence, from which you could reasonably infer that I
16 knocked over the glass. Those facts which form the basis of
17 an inference must be proved. And the inference to be drawn
18 must be one that may be reasonably drawn. In the example,
19 even though the witness did not see me knock over the glass,
20 if you believe his testimony, you could conclude that I did.
21 Therefore, the circumstantial evidence, if accepted by you,
22 allows you to conclude that the fact in dispute has been
23 proved.

24 In reaching your conclusion, you may not guess or
25 speculate. Suppose, for example, the witness testifies that
26 the water glass was located equally distance from the court

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2 defendants.

3 If you find that any witness has willfully
4 testified falsely as to any material fact, that is as to an
5 important matter, the law permits you to disregard
6 completely the entire testimony of that witness upon the
7 principle that one who testifies falsely about one material
8 fact is likely to testify falsely about everything. You are
9 not required, however, to consider such a witness as totally
10 unbelievable. You may accept so much of his or her
11 testimony as you deem true and disregard what you feel is
12 false. By the processes that I have just described to you,
13 you, as the sole judges of the facts, decide which of the
14 witnesses you will believe, what portion of their testimony
15 you accept and what weight you will give to it.

16 Facts must be proved by evidence. Evidence
17 includes the testimony of a witness concerning what the
18 witness saw, heard or did. Evidence also includes writings,
19 photographs or other physical objects which maybe considered
20 proof of a fact. Evidence can be either direct or
21 circumstantial. Facts may be proved either by direct or
22 circumstantial evidence or by a combination of both. You
23 may give circumstantial evidence less weight, more weight or
24 the same weight as direct evidence. Direct evidence is
25 evidence of what a witness, saw, heard or did, which if
26 believed by you, proves a fact.

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2 clerk and me. The witness states that he heard the breaking
3 of glass and looked up to see both the court clerk and me
4 brushing water from our clothes. If you believe that
5 testimony, you still could not decide on that evidence alone
6 who knocked over the water glass. Where these are the only
7 proved facts, it would only be a guess as to who did it.
8 But if the witness also testifies that he heard me saying,
9 "I am so sorry," this additional evidence would allow you to
10 decide who knocked over the water glass.

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

22 In order for the party to prevail on an issue on
23 which he or she has the burden of proof, the evidence that
24 supports his or her claim on that issue must appeal to you
25 as more nearly representing what happened than the evidence
26 opposed to it. If it does not, or if it weighs so evenly

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2 that you are unable to say that there is a preponderance on

3 either side, you must decide the question against the party

4 who has the burden of proof and in favor of the opposing

5 party.

6 So, in this case the plaintiff claims that the

7 defendants caused his injuries. The defendants claim that

8 they did not, but the plaintiffs did. And the defendants

9 say that even if they did, the plaintiff also caused his

10 injuries. The plaintiff has the burden of proving the

11 defendants were negligent and that the defendants' negligent

12 was a substantial factor in causing his injuries.

13 The defendants have the burden of proving the

14 plaintiff was negligent, and that the plaintiff's negligence

15 was a substantial factor in causing his injuries.

16 Now, if in the course of your deliberations your

17 recollection of on any part of the testimony should fail or

18 you have any questions about my instructions to you on the

19 law, you do have the right to return to the courtroom for

20 the purpose of having testimony read to you or have such

21 question answered. Don't ask me to send the depositions in

22 to you. It's only the portions of the depositions that were

23 read that are a part of our record. And it's our record

24 that will be read back to you.

25 In deciding this case, you may consider only the

26 exhibits which have been admitted into evidence. Remember,

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2 sometimes we marked things for identification, but they

3 weren't admitted into evidence. And again, I told you that

4 they are marked for the identification of our written

5 record, but if they didn't get received into evidence they

6 won't be available to you. Anything that was received in

7 evidence will be available to you.

8 So, again, in deciding this case, you may consider

9 only the exhibits which have been admitted into evidence and

10 the testimony of the witnesses as you have heard it in this

11 courtroom or there has been read to you, testimony given on

12 examination before trial. Many times I have told you that

13 under our rules of practice, an examination before trial is

14 taken under oath and is entitled to equal consideration by

15 you, notwithstanding the fact that it was taken before the

16 trial and outside the courtroom.

17 However, arguments, remarks, the summations of the

18 attorneys, these are not evidence, nor is anything that I

19 now say or may have said with regard to the facts evidence.

20 So, this case will be decided on the basis of the answers

21 that you give to certain questions that will be submitted to

22 you. A number of attorneys talked to you about the verdict

23 sheet. That's what we are talking about. Each of the

24 questions asked calls for a yes, a no, a numerical figure, a

25 percentage. Well, it is important that the views of all

26 jurors be considered. Five of the six deliberating jurors

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2 must agree on the answer to any question, but the same five

3 persons need not agree on all of the answers. When five of

4 you have agreed on any answer, the foreperson of the jury

5 will write the answer in the space provided for each answer,

6 and each juror will sign in the appropriate place to

7 indicate his or her agreement or disagreement. No mystery.

8 The verdict sheet, the first question asks a yes or

9 no question. So when five of the six deliberating jurors

10 agree on a yes or no answer, you are ready to write on the

11 verdict sheet. And there is a place after the answer for

12 each juror to sign his or her agreement. Now, it maybe that

13 all six of you agree, in which case there are six lines.

14 But if there is one juror that does not agree, there is a

15 place for that dissenting juror to sign below.

16 After each question, there is a direction to take

17 you to the next question that needs to be answered. When

18 you go to the next question, it's just like in the bowling

19 alley, all the pins come back up, and we start a whole new

20 frame. So the same five people that may have agreed on the

21 previous question don't have to be the same five that agree

22 on the next question. But when five of the six deliberating

23 jurors agree on the next question, you are ready to indicate

24 your answer on the verdict sheet, and so it goes until it

25 tells you, you should return to the courtroom.

26 When you have answered all of the questions that

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2 require answers, you will report to the Court. Do not

3 assume from the questions or from the wording of the

4 questions or from my instructions on the questions what the

5 answers should be.

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 your 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.

12 You should consider only the evidence, the

13 testimony and the exhibits. Find the facts from what you

14 consider to be the believable evidence, and apply the law as

15 I now give it to you. Your verdict will be determined by

16 the conclusion that you reach, no matter whom the verdict

17 helps or hurts.

18 Negligence. Negligence is lack of ordinary care.

19 It is a failure to use that degree of care that a reasonably

20 prudent person would have used under the same circumstances.

21 Negligence may arise from doing an act that a reasonably

22 prudent person would not have done under the same

23 circumstances or, on the other hand, from failing to do an

24 act that a reasonably prudent person would have done under

25 the same circumstances.

26 Reckless disregard is not the same thing as

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2 negligence. Negligence is failing to exercise reasonable

3 care under the circumstances. On the other hand, a person

4 acts with reckless disregard for the safety of others when

5 he intentionally does an act of an unreasonable character in

6 disregard of or a conscious indifference to a known or

7 obvious risk that would make it highly probable that harm

8 would follow. Reckless disregard requires a deliberate

9 decision to ignore the likely harm.

10 Negligence requires both a reasonably foreseeable

11 danger of injury to another and conduct that is unreasonable

12 in proportion to that danger. A person is only responsible

13 for the results of his or her conduct if the risk of injury

14 is reasonably foreseeable. The exact occurrence or exact

15 injury does not have to be foreseeable. But injury as a

16 result of negligent conduct must be not merely possible but

17 probable. There is negligence if a reasonably prudent

18 person could foresee injury as a result of his or her

19 conduct and acted unreasonably in light of what could be

20 foreseen. On the other hand, there is no negligence if a

21 reasonably prudent person could not have foreseen any injury

22 as a result of his or her conduct or acted reasonably in the

23 light of what could have been foreseen.

24 An act or omission is regarded as a cause of an

25 injury if it was a substantial factor in bringing about the

26 injury, that is, if it had such an effect in producing the

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2 injury that reasonable people would regard it as a cause of

3 the injury. There may be more than one cause of an injury,

4 but to be substantial, it cannot be slight or trivial. You

5 may, however, decide that a cause is substantial even if you

6 assign a relatively small percentage to it.

7 There may be more than one cause of an injury.

8 Where the independent and negligent acts or omissions of two

9 or more parties caused injury to another, each of those

10 negligent acts or omissions is regarded as a cause of that

11 injury, provided that it was a substantial factor in

12 bringing about that injury.

13 (Continue on the next page.)

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2 TAKE 7

3 THE COURT: (Continuing) The City and/or Burtis

4 claim that they are not responsible for the plaintiff's

5 injuries, because the injuries were caused by Mr. Da-Silva

6 and/or plaintiff himself.

7 If you find that the City and/or Burtis were

8 negligent, but that the plaintiff's injuries were caused by

9 the act or acts of Mr. Da-Silva and/or James Gregware, you

10 may still find the City and/or Burtis responsible for the

11 plaintiff's injuries if you also find that a reasonably

12 prudent person in the situation of the City and/or Burtis,

13 before the City and/or Burtis allegedly committed an act of

14 negligence, would have foreseen that an act of the kind

15 committed by Mr. Da-Silva, and/or Mr. Gregware, would be a

16 probable result of the City and/or Burtis' negligence.

17 If you find that a reasonably prudent person would

18 not have foreseen an act of the kind committed by Mr.

19 Da-Silva, and/or Mr. Gregware, as a probable consequence of

20 if negligence of the City and/or Burtis, then the City,

21 and/or Burtis, are not responsible for the plaintiff's

22 injuries and the plaintiff may not recover from them.

23 It was the duty of each of the drivers to operate

24 his automobile with reasonable care, taking into account the

25 actual and potential dangers existing from weather, road,

26 traffic and other conditions. Each of them was under a duty

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2 to maintain a reasonably safe rate of speed, to have his

3 automobile under reasonable control, to keep a proper

4 lookout under the circumstances then existing, to see and be

5 aware of what was in his view, and to use reasonable care to

6 avoid an accident.

7 A driver is charged with the duty to see that which

8 under the facts and circumstances that driver should have

9 seen by the proper use of his senses. And if you find that

10 driver did not observe that which was there to be seen, you

11 may find that that driver was negligent in failing to look,

12 or in not looking carefully.

13 The Vehicle and Traffic Law establishes rules of

14 conduct that must be obeyed by motorists and pedestrians

15 alike. Defendants claim that plaintiff failed to comply

16 with the following sections of the Vehicle and Traffic Law:

17 Section 1200(a) of the Vehicle and Traffic Law

18 provide as follows:

19 When stopping is prohibited by this article, or by

20 Local Law, ordinance, order, rule or regulation, no person

21 shall stop, stand or park a vehicle, whether occupied or

22 not, except when necessary to avoid conflict with other

23 traffic, or in compliance with the directions of a police

24 officer, traffic control sign or signal.

25 Section 1201 of the Vehicle and Traffic Law

26 provides as follows:

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2 Section (a). Upon any highway outside of a
3 business or residence district, no person shall stop, park
4 or leave standing any vehicle, whether attended or
5 unattended, upon the paved or main-traveled part of the
6 highway when it is practicable to stop, park or so leave
7 such vehicle off such part of said highway, but in every
8 event an unobstructed width of the highway opposite the
9 standing vehicle shall be left for the free passage of other
10 vehicles and a clear view of such stopped vehicles shall be
11 available from a distance of 200 feet in each direction upon
12 such highway.
13 Section (b). This section shall not apply to the
14 driver of any vehicle which is disabled while on the paved
15 or main-traveled portion of the highway in such manner and
16 to such extent that it is impossible to avoid stopping and
17 temporarily leaving such disabled vehicle in such position.
18 Section 1202(a)(1)(g) provides as follows:
19 Except when necessary to avoid conflict with other
20 traffic, or when in compliance with law or the directions of
21 a police officer or official traffic control device, no
22 person shall stop, stand or park a vehicle upon any bridge
23 or other elevated structure upon a highway or within a
24 highway tunnel, unless otherwise indicated by official
25 signs, markings or parking meters.
26 In considering the evidence in this case, you must

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2 determine whether defendants have proved that Mr. Gregware
3 failed to comply with those statutes.
4 If you find that Mr. Gregware violated those
5 statutes, such violation constitutes negligence. You cannot
6 disregard a violation of the statute to substitute some
7 standard of care other than that set forth in the statute
8 unless, as you've heard, James Gregware claims that any
9 violation by him of Sections 1200, 1201 and 1202 of the
10 Vehicle and Traffic Law relating to stopping a vehicle on a
11 highway, was justified by the need to exchange
12 identification and insurance information.
13 Section 600 of the Vehicle and Traffic Law provides
14 as follows:
15 Any person operating a motor vehicle who, knowing
16 or having cause to know that damage has been caused to
17 personal property shall, before leaving the place where the
18 damage occurred, stop, exhibit his license and insurance
19 identification for such vehicle, and give his name,
20 residence, including street and number, insurance carrier
21 and insurance identification information including, but not
22 limited to, the number and effective dates of said
23 individual's insurance policy and license number of the
24 party sustaining the damage.
25 James Gregware has the burden of proof on this
26 claim.

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2 Although there are laws that govern actions of
3 people using the streets and highways, people are also
4 expected to use common sense and reasonable care under the
5 particular circumstances and conditions.
6 Under certain circumstances and conditions it might
7 create less risk to James Gregware or others if James
8 Gregware disobeyed, rather than obeyed, Section 1201 and
9 1202 of the Vehicle and Traffic Law.
10 If you find that James Gregware violated Section
11 1201 and 1202 of the Vehicle and Traffic Law, but that under
12 the circumstances obeying that law would have placed James
13 Gregware in greater danger than he would have been in if he
14 had not violated the law, then you will find that James
15 Gregware was not negligent because of his violation.
16 Burtis and the City claim that Mr. Da-Silva failed
17 to comply with Sections 1180(a) and 1180(e). And they read
18 as follows:
19 Section 1180(a) provides: No person shall drive a
20 vehicle at a speed greater than is reasonable and prudent
21 under the conditions and having regard to the actual and
22 potential hazards then existing.
23 Section 1180(e) provides: The's driver of every
24 vehicle shall, consistent with the requirements of
25 subdivision (a) of this section, drive in an appropriate
26 reduced speed when approaching and going around a curve,

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2 when approaching a hill, crest or other traffic by reason of
3 weather or highway conditions, including, but not limited to
4 a highway construction or maintenance work area.
5 The City and Burtis claim that Mr. Gregware's
6 vehicle was struck in the rear by Mr. Da-Silva. Since Mr.
7 Gregware's vehicle was struck in the rear, you must find
8 that Mr. Da-Silva was negligent, unless Mr. Da-Silva has
9 provided an adequate explanation that does not involve any
10 negligence on his part.
11 There is a duty of explanation imposed on the
12 operator of a moving vehicle that has hit a stopped vehicle,
13 because that operator is in the best position to explain
14 whether the accident was due to a reasonable, non negligent
15 cause.
16 If you find that Mr. Da-Silva failed to use
17 reasonable care, then you must find that he was negligent.
18 If you accept Mr. Da-Silva's explanation and you further
19 find that Mr. Da-Silva did use reasonable care under the
20 circumstances, then you will find that Mr. Da-Silva was not
21 negligent.
22 The fact that Mr. Da-Silva's motor vehicle skidded,
23 if you find that to be the fact, should be taken into
24 consideration in determining whether Mr. Da-Silva exercised
25 reasonable care in his operation, but does not require,
26 standing alone, that you find the defendant negligent. If,

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2 taking into consideration all of the facts and circumstances
3 which existed at the time, including the condition of the
4 road and of the tires of Mr. Da-Silva's car, the condition
5 of the weather and the speed at which Mr. Da-Silva was
6 operating his vehicle, if you decide Mr. Da-Silva's car
7 skidded because of his failure to use reasonable care, you
8 will find that he was negligent.
9 If, however, you decide that the skidding of
10 defendant's car was not caused by his failure to exercise
11 reasonable care, the fact that the car skidded cannot be the
12 basis of a finding that he was negligent.
13 As you've heard, the plaintiffs bring the action
14 against the defendant the City of New York based on a claim
15 that they negligently maintained the roadway in the area of
16 the accident.
17 The law requires the City of New York to maintain
18 its streets and highways in a reasonably safe condition for
19 people who use them.
20 Plaintiffs must prove that the City of New York was
21 negligent in not maintaining this area of the roadway in a
22 reasonably safe condition.
23 In order to recover, the plaintiff must establish
24 that the roadway was not reasonably safe, that the
25 defendants, the City of New York, were negligent in failing
26 to take suitable precautions or to give adequate warning,

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2 and that the City of New York's negligence in failing to
3 take suitable precautions or to give adequate warning was a
4 substantial factor in causing plaintiff's injury.
5 You must first consider whether the roadway was
6 reasonably safe. Plaintiff claims that the roadway was not
7 in a reasonably safe condition, because the City of New York
8 failed to provide adequate and proper warnings of the
9 impending lane closures.
10 The City of New York claims that the roadway was in
11 a reasonably safe condition because they did provide
12 appropriate signs and warnings of the impending lane
13 closures.
14 If you decide that the roadway was reasonably safe,
15 you will find for the City of New York. If you decide that
16 the roadway was not reasonably safe, you will proceed to
17 consider whether the City of New York was negligent in
18 causing or permitting the unsafe condition to exist.
19 Negligence is the failure to use reasonable care.
20 Reasonable care means that degree of care that a reasonably
21 prudent owner or possessor of a roadway would use under the
22 same circumstances, taking into account foreseeable risk of
23 injury.
24 Negligence includes both a foreseeable danger of
25 injury to another that is unreasonable in proportion to the
26 danger.

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2 In order to find that the City of New York was
3 negligent, you must find that the City of New York knew of
4 the unsafe condition of the roadway long enough before the
5 plaintiff's injury to have permitted the City of New York in
6 the use of reasonable care to have corrected it or taken
7 other suitable precautions, or to give adequate warnings,
8 and did not do so; or the City of New York did not know of
9 the condition but in the use of reasonable care should have
10 known of it in time to have corrected it or taken other
11 suitable precautions, or give adequate warning.
12 If you find that the City of New York did not know
13 of the condition and that by the use of reasonable care
14 would not have been able to discover and correct it, or if
15 you find that the City of New York knew of the unsafe
16 condition but took suitable precautions or gave adequate
17 warning, you will find that the City of New York was not
18 negligent.
19 If you find that the City of New York was
20 negligent, you must next consider whether that negligence
21 was a substantial factor in causing plaintiff's injuries.
22 An act or failure to act is a substantial factor in
23 bringing about an injury if a reasonable person would regard
24 it as a cause of the injury.
25 If you find that any of the defendants were
26 negligent, and that the defendant's negligence contributed

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2 to causing plaintiff's injuries, you will next consider
3 whether the plaintiff was also negligent and whether the
4 plaintiff's conduct contributed to causing his injuries.
5 The burden is on the defendants to prove that the
6 plaintiff was negligent and that his negligence contributed
7 to causing his injuries.
8 If you find that the plaintiff was not negligent,
9 or if negligent, that his negligence did not contribute to
10 causing his injuries, you must find the plaintiff was not at
11 fault and go on to consider damages.
12 If, however, you find that the plaintiff was
13 negligent, and that his negligence contributed to causing
14 his injuries, you'll then apportion fault between any
15 negligent defendants and the plaintiff, and weighing all the
16 facts and circumstances, you'll consider the total fault,
17 that is the fault of any negligent defendant and plaintiff,
18 to determine what percentage of fault is chargeable to each.
19 If you find more than one defendant is at fault,
20 you'll have to decide what part of the total fault each
21 negligent defendant bears. In making that decision you'll
22 weigh the degree of fault of each defendant.
23 Once you've a considered all the facts and
24 circumstances you'll decide what is a fair division of the
25 responsibility of each negligent party, and in your verdict
26 you'll state the percentage of fault attributable to each.

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2 The total of all the percentages must add up to a hundred
3 percent.
4 You'll next go on to decide from the evidence
5 before you the total amount of damages suffered by the
6 plaintiff in dollars in accordance with the rules that I'm
7 about to explain to you.
8 In arriving at the total, you must not consider the
9 percentages of fault but must simply report the total amount
10 of plaintiff's damages.
11 Now my charge to you on the law of damages must not
12 be taken as a suggestion that you should find for the
13 plaintiff. It is for you to decide on the evidence
14 presented and the rules of law that I've given you whether
15 the plaintiff is entitled to recover from the defendant.
16 If you decide that the plaintiff is not entitled to
17 recover from the defendant, you need not consider damages.
18 Only if you decide that the plaintiff is entitled to recover
19 will you consider the measure of damages.
20 If you find that the plaintiff is entitled to
21 recover from the defendants, you must render a verdict in a
22 sum of money that will justly and fairly compensate the
23 plaintiff for all losses resulting from the injuries he
24 sustained.
25 Now, during summations counsel did suggest a
26 specific dollar amount that he believes to be appropriate

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2 compensation for specific elements of plaintiff's damages.
3 An attorney is permitted to make a suggestion as to
4 the amount to be awarded, but those suggestions are argument
5 only and not evidence, and should not be considered by you
6 as evidence of plaintiff's damages. The determination of
7 damages is solely for you, the jury, to decide.
8 If you decide that any defendant is liable,
9 plaintiff is entitled to recover a sum of money which will
10 justly and fairly compensate him for any injury and
11 conscious pain and suffering to date caused by any
12 defendant.
13 If -- sorry -- conscious pain and suffering means
14 pain and suffering of which there is some level of awareness
15 by the plaintiff.
16 In determining the amount, if any, to be awarded
17 plaintiff for pain and suffering, you may take into
18 consideration the effect the plaintiff's injuries have had
19 on his ability to enjoy life.
20 Loss of enjoyment of life involves the loss of the
21 ability to perform tasks, to participate in the activities
22 which were a part of that person's life before the injury,
23 and to experience the pleasures of life.
24 However, a person suffers a loss of enjoyment of
25 life only if that person is aware at some level of the loss
26 he has suffered.

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2 If you find that the plaintiff, as a result of his
3 injuries, suffered some loss of his ability to enjoy life,
4 and the plaintiff was aware at some level of the loss, you
5 may take that loss into consideration in determining the
6 amount to be awarded to the plaintiff for pain and suffering
7 to date.
8 If your verdict is in favor of plaintiff, plaintiff
9 will not be required to pay income taxes on the award and
10 you must not add to or subtract from the award any amount on
11 account of income taxes.
12 With respect to any of plaintiff's injuries or
13 disabilities, the plaintiff is entitled to recover for
14 future pain, suffering and disability and the loss of his
15 ability to enjoy life. In this regard you are to take into
16 consideration the period of time the injuries or
17 disabilities are expected to continue.
18 If you find that the injuries or disabilities are
19 permanent, you should take into consideration the period of
20 time that the plaintiff can be expected to live.
21 In accordance with statistical life expectancy
22 tables, James Gregware has a life expectancy of 29.2 years.
23 Such a table, however, provides nothing more than a
24 statistical average, it neither guaranties the plaintiff
25 will live and add all 29.2 years or mean that he will not
26 live for a longer period.

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2 The life expectancy figure I've given you is not
3 binding on you, but may be considered by you, together with
4 your own experience and the experience you've heard
5 concerning the condition of James Gregware's health, his
6 habits, employment and activities, in deciding what his
7 present life expectancy is.
8 If you find that Eileen Gregware is entitled to
9 recover -- I'm sorry, I always get this mixed up.
10 If you find that James Gregware's wife is entitled
11 to recover, you will award her damages for the pecuniary
12 loss which you find Eileen Gregware sustained by the loss of
13 her husband's services and society.
14 In deciding the amount of such damages, you may
15 take into consideration the nature and extent of James
16 Gregware's services and society before the injury, including
17 his disposition and temperament, his character, the interest
18 he showed for his home, his social life, his family and the
19 comfort, happiness, education and general welfare for the
20 members of the family, the services he rendered in
21 superintending the household, training the children,
22 assisting his spouse in the management of the business or
23 affairs of which he was engaged, his acts of affection,
24 love, and sexual intercourse and to the extent to which the
25 injuries he sustained prevented him from performing such
26 services and providing such society, you will award Eileen

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2 Gregware such an amount based upon the evidence and upon
3 your own observation, experience and knowledge,
4 conscientiously applied to the facts and circumstances as in
5 your judgment will compensate her for the pecuniary loss
6 that you find she has sustained and is reasonably certain to
7 sustain in the future by reason of James Gregware's
8 inability to perform such services and provide such society
9 as a result of his injuries.
10 So, I've now outlined for you to rules of law that
11 apply to this particular case and the processes by which you
12 weigh the evidence and decide the facts.
13 In a few minutes you're going to retire to the
14 juryroom for your deliberations.
15 Traditionally, Juror Number One, wake up, wake up.
16 Juror Number One, acts as the foreperson. In order that
17 your deliberations proceed in an orderly fashion you do have
18 to have a foreperson, but of course, her vote is entitled to
19 no greater weight than that of any other juror.
20 Your function to reach a fair decision in the law
21 and the evidence is an important one. When you are in the
22 juryroom, listen to each other, discuss the evidence and the
23 issues in the case among yourselves.
24 It's the duty of each of you as jurors to consult
25 with one another and to deliberate with a view of reaching
26 agreement on a verdict, if you can do that without violating

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2 your individual judgment and your conscience.
3 While you should not surrender conscientious
4 conviction of what the truth is and of the weight and effect
5 of the evidence, and while each of you must decide the case
6 for yourself and not merely consent to the decision of your
7 fellow jurors, you should examine the issues and the
8 evidence before you with candor, with frankness and of
9 course, with proper respect and regard for the opinions of
10 each other.
11 Remember in your deliberations that the dispute
12 between these parties is a very important matter. They and
13 I rely upon you to give full and conscientious deliberation
14 and consideration to the issues and evidence before you. By
15 so doing you carry out to the fullest your oaths as jurors
16 to truly try the issues of this case and render a true
17 verdict.
18 Gentlemen, come up, please.
19 (Bench discussion held off the record.)
20 THE COURT: Exceptions or objections to the charge?
21 MR. RUBINOWITZ: No objection, no exceptions.
22 MR. GAZTAMBIDE: No objection, other than anything
23 that was raised by my colleague.
24 MR. WANG: None except for what we put on the
25 record before.
26 THE COURT: Any objection?

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2 MR. BAXTER: No objection, other than what I've
3 already indicated.
4 (End bench discussion.)
5 THE COURT: I do have to segregate the alternate
6 jurors, so I ask you to go with the officer and get your
7 belongings from the juryroom, and we'll give you a separate
8 room to be in.
9 I wanted to remind you we're all still using the
10 same elevators, the same hallways, the same bathrooms.
11 Please do not discuss the case with the
12 deliberating jury.
13 THE COURT OFFICER: Alternates come with me.
14 (Whereupon the alternate jurors exited the
15 courtroom.
16 THE COURT: All right.
17 When I send you in to begin your deliberations, I'm
18 going to send you in with a verdict sheet, we're going to
19 mark it as a court exhibit.
20 Again, it's the foreperson's job to write on the
21 verdict sheet. It's also your job when you communicate with
22 me to put all of your communications in a note. We don't
23 have a court reporter going in with you during your
24 deliberations, so in order to have a proper record of all of
25 your communications, everything you want, you have to give
26 us a note with the date, the time and signed by the

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2 foreperson, and Officer Collins will give you paper so you
3 can do that. She'll also be outside your door so you can
4 hand it off to her.
5 If you want any of the evidence, you don't have to
6 know its number or letter, just give us an idea of what you
7 want, we'll get it and bring it in for you.
8 If there's testimony that you want read back to
9 you, obviously you can say okay, we want all of X testimony
10 and we'll read all of that testimony back to you. But if
11 it's really just a dispute as to a particular point in the
12 testimony and you can narrow that down for us, we'll find
13 that portion of the testimony and read that portion back for
14 you.
15 So, as soon as Officer Collins comes back we're
16 going to send you in for your deliberations.
17 At about 20 after 4 I'm going to bring you back in
18 here and we'll resume again tomorrow. But at least we can
19 get started.
20 Will you mark this, please.
21 (Whereupon the verdict sheet was marked Court
22 Exhibit II.)
23 THE COURT: All right. You can begin your
24 deliberations.
25 (Whereupon the jury exited to commence
26 deliberations.)