

JURY CHARGE

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1 It's my turn to do some work now.

2 Before I begin my final instructions to the
3 jury I would like to commend the attorneys here,
4 Mr. Greenberg and Mr. Demers, their respective staffs as
5 well for the efficient --

6 MR. GREENBERG: Thank you.

7 THE COURT: -- professional manner in which
8 they have both represented their clients in this trial.
9 A lot of lawyers come before me, literally thousands of
10 lawyers come before me in the years I've been a judge,
11 and they're certainly among some of the best attorneys
12 who have ever come before me, and I tell you that because
13 that's important. Notwithstanding the length of this
14 trial, it could have been much longer if I had less
15 quality attorneys trying the case, so I really commend
16 both of the attorneys and their staff for this trial.

17 MR. GREENBERG: Thank you.

18 THE COURT: I'd also like to express my deep
19 appreciation to the members of the jury for your valued
20 participation in this matter. You've been very
21 attentive, patient, tolerant. It's even much longer than
22 you were told it's going to be, we had some weather
23 conditions, we had some personal appointments on both
24 sides of the jury box that had to be taken care of. I
25 appreciate it. You really are a credit to the community

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1 which we all endeavor to serve.

2 So now, members of the jury, we come to that
3 portion of the trial where you are instructed on the law
4 applicable to the case and after which you will retire
5 for your final deliberations.

6 You have now heard all the evidence introduced
7 by the parties, and through arguments of their attorneys
8 you have learned the conclusions which each party
9 believes should be drawn from the evidence presented to
10 you.

11 You will recall that at the beginning of the
12 trial I stated for you certain principles so you could
13 have them in mind as the trial progressed. Briefly, they
14 were that you are bound to accept the law as I give it to
15 you whether or not you agree with it. You are not to ask
16 anyone else about the law. You should not consider or
17 accept any advice about the law from anyone else but me.

18 Furthermore, you must not conclude from my
19 rulings or anything I have said during the trial that I
20 favor any party to this lawsuit.

21 Furthermore, you may not draw any inference
22 from any unanswered question, nor consider testimony
23 which has been stricken from the record in reaching your
24 decision.

25 Finally, in deciding how much weight you choose

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1 to give to the testimony of any particular witness, there
2 is no magical formula which can be used. The tests used
3 in your everyday affairs to decide the reliability or
4 unreliability of statements made to you by others are the
5 tests you will apply in your deliberations. The items to
6 be taken into consideration in determining the weight you
7 will give to the testimony of a witness includes the lack
8 of interest of the witness in the outcome of the case;
9 the bias or prejudice of the witness, if there be any;
10 the age, the appearance, the manner of the witness as the
11 witness testified; the opportunity that the witness had
12 to observe the facts about which he or she testified; the
13 probability or improbability of the witness' testimony
14 when considered in light of all of the evidence in the
15 case.

16 If you find that any witness has willfully
17 testified falsely as to any material fact, that is, as to
18 an important matter, the law permits you to disregard
19 completely the entire testimony of that witness upon the
20 principle that one who testifies falsely about one
21 material fact is likely to testify falsely about
22 everything. You are not required, however, to consider
23 such a witness as totally unbelievable. You may accept
24 so much of his or her testimony as you deem true and
25 disregard what you feel is false. By the processes which

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1 I have just described to you, you, as the sole judges of
2 the facts, decide which of the witnesses you will
3 believe, what portion of their testimony you accept and
4 what weight you will give to it.

5 The burden of proof rests on the Plaintiff.
6 That means that it must be established by a fair
7 preponderance of the credible evidence that the claim
8 Plaintiff makes is true.

9 The credible evidence means the testimony or
10 exhibits that you find to be worthy to be believed.

11 A preponderance of the evidence means the
12 greater part of such evidence. That does not mean the
13 greater number of witnesses or the greater length of time
14 taken by either side. The phrase refers to the quality
15 of evidence; that is, its convincing quality, the weight
16 and effect it has on your minds.

17 The law requires that in order for the
18 Plaintiff to prevail on a claim the evidence that
19 supports his claim must appeal to you as more nearly
20 representing what took place than the evidence opposed to
21 his claim. If it does not, or if it weighs so evenly
22 that you are unable to say that there is a preponderance
23 on either side, then you must decide the question in
24 favor of the Defendant. It is only if the evidence
25 favoring the Plaintiff's claim outweighs the evidence

1 opposed to it that you can find in favor of the
2 Plaintiff.

3 If in the course of your deliberations your
4 recollection of any part of the testimony shall fail, or
5 you have any questions about my instructions to you on
6 the law, you have the right to return to this courtroom
7 for the purpose of having such testimony read to you or
8 having such questions answered.

9 In deciding this case you may consider only the
10 exhibits which have been admitted in evidence and the
11 testimony of the witnesses as you have heard in this
12 courtroom, or as there have been read to you in testimony
13 given on Examinations Before Trial. Under our rules of
14 practice an Examination Before Trial is taken under oath
15 and is entitled to equal consideration by you
16 notwithstanding the fact it was taken before the trial
17 and outside of the courtroom. However, arguments,
18 remarks and summations by the attorneys are not evidence,
19 nor is anything that I now say or may have said with
20 regard to the facts evidence.

21 Although as jurors you are encouraged to use
22 all of your life experiences in analyzing testimony and
23 reaching a fair verdict, you may not communicate any
24 personal, professional expertise you may have or other
25 facts not in evidence to the other jurors during

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1 deliberations. You must base your discussions and
2 decisions solely on the evidence presented to you during
3 the trial and that evidence alone. You may not consider
4 or speculate on matters not in evidence or outside the
5 case.

6 While it is important that the views of all
7 jurors be considered, a verdict of five of the six
8 members of the jury will be sufficient under the law.
9 Whenever five of your members are in agreement on a
10 verdict you may report your verdict to the Court.

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

23 You will recall that there were many expert
24 witnesses who testified concerning their qualifications
25 as experts in their respective fields and gave their

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1 opinions concerning issues in this case. When a case
2 involves a matter of science or art or requires special
3 knowledge or skill not ordinarily possessed by the
4 average person, an expert is permitted to state their
5 opinion for the information of the Court and jury. The
6 opinions stated by each of the experts whom testified
7 before you were based upon particular facts as the expert
8 obtained knowledge of them and testified to them before
9 you or as the attorneys who questioned the expert asked
10 the experts to assume. You may reject any expert's
11 opinion if you find the facts to be different from those
12 which form the basis for the opinion. You may also
13 reject the opinion if, after consideration of all the
14 evidence in the case, expert and other, you disagree with
15 the opinion; in other words, you are not required to
16 accept an expert's opinion to the exclusion of the facts
17 and circumstances disclosed by other testimony. Such an
18 opinion is subject to the same rules concerning
19 reliability as the testimony of any other witness. It is
20 given to assist you in reaching a proper conclusion. It
21 is entitled to such weight as you find the expert's
22 qualifications in the field warrant and must be
23 considered by you, but it is not controlling upon your
24 judgment.

25 This case will be decided on the basis of the

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1 answers that you give to certain questions that will be
2 submitted to you. Each of these questions asked calls
3 for some numerical figure.

4 While it is important that all the views of all
5 jurors be considered, five of six of you must agree on
6 the answer to any one question, but the same five persons
7 need not agree on all of the answers. While five of you
8 have agreed on any answer -- when five of you have agreed
9 on any answer the Foreperson of the jury will write the
10 answer in the space provided for each answer, and each
11 juror will sign in the appropriate place to indicate his
12 or her agreement or disagreement. When you have answered
13 all the questions that require answers you'll report back
14 to the Court.

15 Do not assume from the questions or from the
16 wording of the questions or from my instructions on them
17 what the answer should be.

18 The Plaintiff testified before you. As a party
19 to an action he is considered an interested witness. An
20 interested witness is not necessarily less believable
21 than a disinterested witness. The fact that he is -- the
22 fact that he is interested in the outcome of the case
23 does not mean that he has not told the truth. It is for
24 you to decide from the demeanor of the witness on the
25 stand and such other tests as your experience dictates

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

10 During his closing remarks Mr. Greenberg,
11 counsel for the Plaintiff, suggested specific dollar
12 amounts he believes to be appropriate compensation for
13 specific elements of Plaintiff's damages. An attorney is
14 permitted to make suggestions to you as to the amount
15 that should be awarded, but those suggestions are
16 argument only and not evidence and should not be
17 considered by you as evidence of Plaintiff's damages.
18 The determination of damages is solely for you, the jury,
19 to decide.

20 Since liability has already been established
21 Plaintiff is entitled to recover a sum of money which
22 will justly and fairly compensate him for any injury and
23 conscious pain and suffering to date caused by Defendant.

24 Conscious pain and suffering means pain and
25 suffering of which there was some level of awareness by

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1 the Plaintiff. In determining the amount, if any, to be
2 awarded Plaintiff for pain and suffering, you may take
3 into consideration the effect that Plaintiff's injuries
4 have had on Plaintiff's ability to enjoy life.

5 Loss of enjoyment of life involves the loss of
6 the ability to perform daily tasks, to participate in
7 activities which were a part of the person's life before
8 the injury and to experience the pleasures of life.
9 However, a person suffers the loss of enjoyment of life
10 only if the person is aware at some level of the loss
11 that he has suffered. If you find that Plaintiff as a
12 result of his injuries suffered some loss of the ability
13 to enjoy life and that Plaintiff was aware at some level
14 of a loss, you may take that loss into consideration in
15 determining the amount to be awarded to Plaintiff for
16 pain and suffering to date.

17 With respect to any of Plaintiff's injuries or
18 disabilities, the Plaintiff is entitled to recover for
19 future pain, suffering and disability and loss of his
20 ability to enjoy life. In this regard you should take
21 into consideration the period of time that the injuries
22 or disabilities are expected to continue. If you find
23 that the injuries or disabilities are permanent, you
24 should take into consideration the period of time that
25 Plaintiff can be expected to live. According to

1 statistical life expectancy tables, Plaintiff has a life
2 expectancy of thirty years. Such a table, however,
3 provides nothing more than a statistical average. It
4 neither guarantees that the Plaintiff will live an
5 additional thirty years or means that he will not live
6 for a longer period.

7 The life expectancy figure I have given to you
8 is not binding upon you but may be considered by you,
9 together with your own experience and the evidence you
10 have heard concerning the condition of Plaintiff's
11 health, his habits, employment and activities in deciding
12 what Plaintiff's present life expectancy is.

13 If you find that the Plaintiff is entitled to
14 recover from the Defendants, you must also include in
15 your verdict damages for any mental suffering, emotional
16 and psychological injuries and any physical consequences
17 resulting from the emotional distress caused by the
18 wrongful act of the Defendants.

19 Since liability has already been established
20 Plaintiff will be entitled to recover the amount of
21 reasonable expenditures for medical services and
22 medicines including physicians' charges, nursing charges,
23 hospital expenses, diagnostic expenses and x-ray charges.
24 Thus, you will include in your verdict the amount that
25 you find from the evidence to be fair and reasonable

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1 amount of any medical expenses necessarily incurred as a
2 result of Plaintiff's injuries.

3 If you find that Plaintiff will need medical,
4 hospital or nursing expenses in the future, you will
5 include in your verdict an amount for those anticipated
6 medical, hospital and nursing expenses which are
7 reasonably certain to be incurred in the future and that
8 were necessitated by Plaintiff's injuries.

9 If you find that Plaintiff is entitled to an
10 award for medical expenses to be incurred in the future,
11 you will fix the dollar amount of expenses over the
12 entire period that you find Plaintiff will incur such
13 expenses and include that amount in your verdict. In
14 your verdict you will state separately the amount awarded
15 for medical expenses to date, if any, and if you make an
16 award for future medical expenses you will state in your
17 verdict the amount awarded and the period of years over
18 which such award is intended to provide compensation. Do
19 not state the amount per year but only the total amount
20 for the entire period.

21 Plaintiff is entitled to be reimbursed for any
22 earnings lost as a result of his injuries caused by
23 Defendants' negligence from the time of the accident to
24 today. Moreover, if you find that as a result of those
25 injuries Plaintiff has suffered a reduction in his

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1 capacity to earn money in the future, then Plaintiff is
2 also entitled to be reimbursed for loss of future
3 earnings. Any award you make for earnings lost to date
4 must not be the result of speculation. Any award must be
5 calculated from the number of days that you find
6 Plaintiff was disabled from working by the injuries and
7 the amount you find Plaintiff would have earned had he
8 not been disabled. An award you make for reduction of
9 Plaintiff's earning capacity in the future should be
10 determined on the basis of Plaintiff's earnings before
11 the accident, the condition of Plaintiff's health, his
12 prospects for advancement and the probabilities with
13 respect to future earnings before the accident, the
14 extent to which you find that those prospects or
15 probabilities have been reduced by the injuries, the
16 length of time you find Plaintiff would reasonably be
17 expected to work had he not been injured, the nature and
18 hazards of Plaintiff's employment and any other
19 circumstances which would have an effect on Plaintiff's
20 earning capacity.

21 Plaintiff is now 47 years of age and has a life
22 expectancy, according to the mortality tables, of thirty
23 years, and he also has a work life expectancy, according
24 to the work life expectancy tables, of twenty-two more
25 years. Such tables are of course nothing more than

1 statistical averages. They neither assure that the
2 Plaintiff will have the span of working life that I've
3 given to you, nor assure that Plaintiff's span will not
4 be greater. The figures I have given to you are not
5 binding upon you but may be considered by you together
6 with your own experience and the evidence you have heard
7 in determining what Plaintiff's work life experience is.

8 If you find that Plaintiff is entitled to an
9 award for reduction in earning capacity in the future,
10 you will fix a dollar amount of such reduction over the
11 entire period that you find Plaintiff will suffer such
12 reduction and include that amount in your verdict. In
13 your verdict you will state separately the amount awarded
14 for loss of earnings to date, if any, and if you make an
15 award for loss of future earnings you will state in your
16 verdict the amount awarded and the period of years over
17 which such award is intended to provide compensation. Do
18 not state an amount per year but only a total amount for
19 the entire period.

20 Since liability has already been established
21 you must include in your verdict an award for past and
22 future pain and suffering. That amount must include the
23 amount for the injuries suffered and the future effect of
24 the injury, if any. Based upon the evidence you may also
25 include an award for each of the following items

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1 separately divided into amounts intended to compensate
2 the Plaintiff for damages incurred before your verdict
3 and the amounts intended to compensate the Plaintiff for
4 damages to be incurred in the future, such as medical
5 expenses, loss of earnings and pain and suffering. If
6 you make an award for any items of damages to be incurred
7 in the future, for each such item you must state the
8 period of years over which the amount awarded is intended
9 to provide compensation, and the amount you fix must
10 represent the full amount awarded to Plaintiff for that
11 item of damage for the future period without reduction to
12 the present value.

13 Your verdict will include answers to the
14 following questions which will be submitted to you in
15 writing. Number 1: State separately the amount awarded
16 for the following item of damages, if any, from the time
17 of the occurrence up to the date of your verdict:
18 Medical expenses, loss of earnings, pain and suffering up
19 to the date of your verdict.

20 If you decide not to make an award as to any
21 item you will insert the word "none" in that item.

22 Number 2: State separately the amount awarded
23 for the following item of damages, if any, to be incurred
24 in the future: Medical expenses, loss of earnings, pain
25 and suffering including the permanent effect of the

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1 injury from the time of the verdict until the time the
2 Plaintiff could be expected to live.

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

5 Number 3: If you decide to award any amount
6 intended to compensate the Plaintiff for damages to be
7 incurred in the future, then for each item for which the
8 award is made state the period of years over which such
9 amounts are intended to provide compensation, or any item
10 for which the award is not made you will insert the word
11 "none" as to that item.

12 At this point I'm going to excuse our alternate
13 juror. As I told you before, your services were required
14 as a safeguard against the possibility that one of the
15 regular jurors might be unable to complete his or her
16 service. Fortunately, this has not occurred. I commend
17 the alternate juror for the faithful attendance and
18 attention in this matter, and on behalf of the Court and
19 the parties I thank you for your service.

20 You're not permitted to deliberate with the
21 other jurors, but you're allowed to stay if you want to
22 find out what happens. You don't have to go home. If
23 you want to go home, you can, but if you want to stay,
24 you can stay.

25 I have now outlined for you the rules of law

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1 that apply to this case and the process by which you
2 weigh the evidence and decide the facts. In a few
3 minutes you will retire to the jury room for your
4 deliberations. Traditionally, Juror Number 1 acts as the
5 foreperson. Your first order of business when you're in
6 the jury room will be the election of a foreperson. In
7 order that your deliberations may proceed in an orderly
8 fashion you must have a foreperson, but of course his or
9 her vote is entitled to no greater weight than any of the
10 other jurors.

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

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1 Remember in your deliberations that the dispute between
2 the parties is for them a very important matter. They
3 and the Court rely upon you to give full and
4 conscientious deliberation and consideration to the
5 issues and the evidence before you. By doing so you
6 carry out to the fullest your oaths as jurors to truly
7 try the issues of this case and render a true verdict.

8 I'm going to ask the court officer just to
9 escort you out in the hallway for a second before I send
10 you in to the jury deliberating room. Okay?

11 (Whereupon, the jury panel exited the
12 courtroom.)

13 THE COURT: Are there any exceptions to my
14 charges?

15 MR. GREENBERG: Oh.

16 MR. DEMERS: No exceptions, no further requests
17 to charge.

18 MR. GREENBERG: No exceptions except for the
19 items that weren't on our jury sheet that we excepted,
20 Judge.

21 THE COURT: Okay. That's the verdict sheet
22 (handing). You can send the jury in to the jury room.

23 THE COURT OFFICER: Okay.

24 (Whereupon, the jury will now begin
25 deliberations.