1 JURY CHARGE

2 Thank you all very much.

3 THE COURT: Members of the jury, we now come to
4 that portion of the trial when I instruct you on the
5 law applicable to the case, after which you will retire
6 for final deliberations.

7 Again, I am going to be reading this to you.

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

13 You will recall that at the beginning of the
14 trial, I informed you of certain principles so that you
15 would have them in mind as the trial progressed.

16 Briefly, they were that you were bound to accept
17 the law as I give it to you, whether or not you agree
18 with it.

19 (PLEASE CONTINUE ON FOLLOWING PAGE.)

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21
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26

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2 THE COURT: You are not to ask anyone else about
3 the law. You may not consider or accept any advice about
4 the law from anyone but me. You may not conclude from my
5 rulings or anything that I have said during this trial that
6 I favor any party to this lawsuit and you may draw no
7 inference from any unanswered question, nor consider
8 testimony that has been stricken from the record in reaching
9 your decision.

10 In deciding this case you may consider only the
11 exhibits that have been admitted into evidence and testimony
12 of the witnesses while on the stand as you heard it in this
13 courtroom or the testimony that was given at an examination
14 before trial or at deposition.

15 Under our rules of practice an examination before
16 trial taken under oath and is entitled by equal
17 consideration by you, even though it's taken before trial
18 and outside of this courtroom. However, arguments, remarks
19 and summations by the lawyers are not evidence, nor is
20 anything that I now say or may have said with regard to the
21 facts.

22 Although, as jurors, you are encouraged to use your
23 life experience in analyzing testimony in reaching a fair
24 verdict. You may not communicate to the other jurors during
25 your deliberations any professional experience or expertise
26 you may have had or the facts that are not in evidence. You

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2 must base your discussions and decisions solely on the
3 evidence presented during the trial and that evidence alone.
4 You may not consider or speculate on matters not in evidence
5 or matters outside of the case. The law does not require
6 you to accept all of the evidence that was admitted.
7 In deciding what evidence you accept you must
8 evaluate the testimony given by each of the witnesses and
9 decide how much weight to give it. The testimony of a
10 witness may not conform to the facts as they occurred
11 because he or she is intentionally lying; because the
12 witness did not accurately see or hear what he or she
13 testified about; because the witness' recollection may be
14 faulty; or because the witness did not express himself or
15 herself clearly when testifying.
16 There is no magical formula by which you evaluate
17 testimony. You bring with you all of your experience. In
18 your every day affairs you decide for yourselves the
19 reliability or unreliability of things people tell you. The
20 same tests that you use every day are the tests you apply in
21 your deliberations; the interest or lack of interest of any
22 witness in the outcome of the case; the bias or prejudice of
23 a witness, if any; the appearance; the manner in which the
24 witness gives testimony on the stand; the opportunity the
25 witness had to observe the facts about which he or she
26 testified; the probability or improbability of the witness'

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2 testimony when considered in light of all the other
3 testimony or evidence in the case, are all to be considered
4 by you in deciding how much weight, if any, you will give a
5 witness' testimony.
6 If it appears that there is a discrepancy in the
7 evidence you must consider whether it can be reconciled by
8 fitting the two versions together. If that's not possible
9 you have to decide which of the conflicting stories or
10 versions you accept.
11 If you find that any witness has willfully
12 testified falsely as to any material fact, that is, as to an
13 important matter, the law permits you to completely
14 disregard the witness' testimony on the principle that one
15 who testifies falsely about one material fact is likely to
16 testify falsely about everything.
17 You are not, however, to consider such a witness is
18 totally unbelievable. You may accept so much of his or her
19 testimony as you deem true and disregard what you believe is
20 false.
21 By the processes which I have described to you, you
22 as the sole judges of the facts decide which of the
23 witnesses you believe, what portion of their testimony you
24 accept and what weight you give it.
25 In reaching a verdict you may not be affected by
26 sympathy for any of the parties, or what the reaction of the

parties of the public may be to your verdict, whether it will please or displease anyone, be popular or unpopular, or give any consideration outside of the case that has been presented to you here. You should consider only the evidence, testimony, and exhibits, find the facts from what you consider to be the believable evidence and apply the law as I now give it to you. Your verdict will be determined by the conclusion you reach, no matter whom the verdict helps or hurts.

You will remember that during the trial the attorneys entered into a stipulation by which they agreed to certain facts. This means that there's no dispute as to those facts and that these facts were established for the purposes of this case. You must consider the agreed upon facts along with the other evidence presented and give the agreed facts such weight as you find appropriate.

The plaintiff testified before you at this trial as a party to the action. She is a interested witness. A interested witness is not necessarily less believable than a disinterested witness. The fact that a witness is interested in the outcome of the case does not mean that he or she has not told the truth. It's for you to decide from the witness' demeanor on the stand and such other tests as your experience dictates, whether or not the testimony has been influenced intentionally or unintentionally by the

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2 witness' interest. You may if you consider it proper under
3 all the circumstances not believe the testimony of such a
4 witness, even though it's not otherwise challenged or
5 contradicted. However, you are not required to reject the
6 testimony of such a witness and may accept all or such part
7 of the witness' testimony as you find reliable and reject
8 such part as you find unworthy of acceptance.
9 You will recall that Dr. Robert Rozbruch testified
10 concerning his qualifications in the field of orthopedic
11 surgery, and that Dr. Judith Axelrod testified concerning
12 her qualifications in her field of infectious disease, and
13 that each of them gave their opinions concerning certain
14 issues in this case.
15 When a case involves a matter of science or
16 requires special knowledge or skill not ordinarily possessed
17 by the average person, an expert is permitted to state his
18 or her opinion for your information. The opinions stated by
19 these experts were based on particular facts as they obtain
20 knowledge of them and testified to them as supported or as
21 the attorneys' questioned them asked them to assume. You
22 may reject the opinions of these experts if you find the
23 facts to be different from those which form the basis for
24 the opinion. You may also reject the opinion after careful
25 consideration of all the evidence in the case you disagree
26 with the opinion. In other words, you're not required to

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2 accept an expert's opinion to the exclusion of the facts and
3 circumstances disclosed by other evidence. Such an opinion
4 is subject to the same rules concerning reliability as the
5 testimony of any other witness. It is given to assist you
6 in reaching a proper conclusion. It is entitled to such
7 weight as you find as warranted by the experts'
8 qualifications and must be considered by you but is not
9 controlling on your judgment.

10 The plaintiff bears the burden of proof on her
11 claim for damages related to her personal injuries. That
12 means that plaintiff must establish her claim for damages
13 against defendants by a fair preponderance of the credible
14 evidence. The credible evidence means the testimony or
15 exhibits that you find worthy of belief. A preponderance of
16 the evidence means the greater part of such evidence. It
17 does not mean the greater number of witnesses or the greater
18 length of time taken by either side. The preponderance of
19 the evidence refers to the quality of the evidence. That
20 is, its convincing quality, the weight and the effect it has
21 on your mind.

22 The law requires that in order for a plaintiff to
23 prevail on her claim, the evidence that supports it must
24 appeal to you as more nearly representing what took place
25 then the evidence opposed to her claim. If it does not or
26 if it weighs so evenly that you are unable to say that there

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2 was a preponderance on either side, then you must decide the
3 question in favor of the defendants on plaintiff's claim.
4 It is only if the evidence favoring plaintiff's claim
5 outweighs the evidence opposed to it that you can find
6 according to plaintiff.
7 You will determine whether plaintiff is entitled to
8 damages for the injuries she sustained. If you find that
9 the plaintiff is entitled to damages you must render a
10 verdict in a sum of money that will justly and fairly
11 compensate her for all losses resulting from the injuries
12 she sustained.
13 During closing remarks the lawyers suggested
14 specific dollar amounts they believe to be appropriate
15 compensation for plaintiff's damages. An attorney is
16 permitted to make suggestions to the amounts that should be
17 awarded, but those suggestions are arguments only and are
18 not evidence and should not be considered by you as evidence
19 as plaintiff's damages. The determination of damages is
20 solely for you the jury to decide. Plaintiff is entitled to
21 a sum of money which will justly and fairly compensate her
22 for any injury and conscious pain and suffering to date.
23 In determining the amount to be awarded to
24 plaintiff for pain and suffering, you may consider the
25 affect her injuries had on her ability to enjoy life. Loss
26 of enjoyment of life involves the loss of the ability to

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

The plaintiff is not required to pay income taxes on the award and you may not add or subtract from the award any amount on account of income tax.

With respect to the any of the plaintiff's injuries or disabilities that you find to be permanent, the plaintiff is entitled to recover for future pain, suffering and disability, and the loss of her ability to enjoy life. In that regard, you take into consideration a period of time that plaintiff can be expected to live.

In accordance with typical life's expectancy tables, the plaintiff has a life expectancy of 10.3 years. Such a table provides nothing more than a statistical average. It neither guarantees that plaintiff will live an additional 10.3 years, nor does it mean she will not live for a longer period. The life expectancy figure I give you is not binding on you, but it may be considered by you together with your own experience and the evidence you've heard concerning the condition of the plaintiff's health,

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2 habits, employment, and activities in deciding what
3 plaintiff's present life expectancy is.
4 Plaintiff is entitled to be reimbursed for any
5 earnings lost as a result of her injuries from the time of
6 the accident onward. Any award you make from lost earnings
7 may not be the result of the speculation. Any award must be
8 calculated for the period of time that you find plaintiff
9 was disabled from working by the injuries and the amount you
10 find plaintiff would have earned had she not been disabled.
11 As plaintiff is now 78 years old her work life
12 expectancy according to statistical averages ended when she
13 was 74 years old. This figure is, of course, nothing more
14 than a statistical average. It neither assures the
15 plaintiff had a span of working life I've given you nor
16 assured that plaintiff's span would not had been greater.
17 The figure I've given you is not binding on you, but may be
18 considered by you, together with your own experience and the
19 evidence you've heard in determining what plaintiff's work
20 life expectancy is.
21 This case will be decided on a basis of the answers
22 you give to certain questions that will be submitted to you.
23 Each of the questions calls for either a yes or no answer or
24 a number or a percentage. Actually they're all numbers.
25 While it's important that the views of all jurors
26 be considered, five of the six of you must agree on the

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2 answer to any question, but the same five need not agree on
3 all the answers. When five of you have agreed on any answer
4 the foreperson of the jury will write the answer in the
5 space provided for each answer and each juror will sign in
6 an appropriate place to indicate his or her agreement or
7 disagreement.

8 As you will note from the wording of some of the
9 questions well -- Well, you'll see that the verdict sheet it
10 self-explanatory.

11 When you have answered all the questions that
12 require answers report it to the court. Don't assume from
13 the questions or from the wording of the questions or from
14 my instructions what the answers should be. Only the
15 foreperson's verdict sheet will constitute the official
16 verdict sheet. You all are going to get copies of the
17 verdict sheet, but only the foreperson's verdict sheet will
18 be used for the answers for your verdict.

19 It's important that of all the views of the juror
20 be considered, a verdict of five of the six members of the
21 jury will be sufficient under the law. Whenever five of you
22 of are in agreement on the verdict you may record it to the
23 court.

24 If during the course of your deliberations your
25 recollection of any part of the testimony should fail or if
26 you have a question about my instructions to you, you have

the right to return to the courtroom to have the testimony read back to you or to have a question answered. Officer Hanlo will give you forms for the transmittal of your communications to me.

I am designating Mr. Wolf as your foreperson. All communications with me will be conducted through Mr. Wolf. The fact that he is the foreperson, however, does not afford him his views any greater weight than those of the other jurors. Mr. Wolf's role is strictly administrative.

I have now outlined for you the rules of law that apply to this case and the processes by which you must weigh the evidence and decide the facts.

In a few minutes you will retire to the jury room for your deliberations. Your function to reach a fair decision from the law on the evidence is an important one. When you are in the jury room listen to one another, discuss the evidence and issues in the case among yourselves. It is your duty to consult with one another and to deliberate with a view of reaching an agreement on a verdict if you can do so without violating your individual judgment and conscious.

While you should not surrender your conscious convictions of what the truth is and what the affect the weight of the evidence. And while each of you must decide the case for yourself and not merely consent to the decision of your fellow jurors, you should examine issues and

1 evidence before you with candor and with frankness and with
2 proper respect and regard for one another's opinion.
3 Remember, in your deliberations that the dispute
4 between the parties is for them a very important matter.
5 They and the court rely on you to give full and
6 conscientious deliberation to the issues and evidence before
7 you. By so doing, you carry out to the fullest your oaths
8 as jurors to truly try the issue of the case and render a
9 true verdict.
10 Will the lawyers please come up.
11 (Whereupon, discussions were held off the record,
12 outside the hearing of the jury, between the court and all
13 parties.)
14 THE COURT: Now is the time to deliberate you've
15 been waiting for.
16 THE CLERK: All rise.
17 (Whereupon, the jury exited the courtroom.)
18 MR. MARTINE: Your Honor, I just had one minor
19 objection to the charge.
20 When reading the charge on damages you said "if you
21 find plaintiff's entitled to damages," I argue it should be
22 changed to "you must find plaintiff's entitled to damages
23 based on the evidence and the defendants' position in the
24 case."
25 MS. COYNE: I would just like to note any previous
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