J U D G E ' S C H A R G E

1 THE COURT: All right have a seats. All right
2 we've reached that stage now where you've heard the
3 attorneys give their respective arguments as to what they
4 believe the evidence has shown. All that's left for me to
5 read you what the law is. Remember what I said at the
6 beginning you'll hear me say it again and repeat during the
7 course of my reading whether you agree with the law or
8 whether you don't you're bound by what I tell you, okay. So
9 let's not delay anymore. You've been marvelous today let's
10 see if we can begin, okay.
11 Members of the jury, we come now to that portion
12 of the trial when you are instructed on the law applicable
13 to the case and after which you will retire for your final
14 deliberations. You have heard all the evidence introduced
15 by the parties and through arguments of their attorneys you
16 have learned the conclusions which each party believes
17 should be drawn from the evidence presented to you. You
18 will recall at the beginning of the trial I stated for you
19 certain principals so that you can have it in mind as the
20 trial progressed. Briefly, they were that you are bound to
21 the accept the law as I give it to you whether you agree
22 with it or not. You are not to ask anyone else about the
23 law. You should not consider or accept any advice about the
24 law from anyone else but me.
25 Furthermore, you must not conclude from my rulings

1 or anything that I have said during the course of the trial
2 that I favor any party to this lawsuit.
3 Furthermore, you may not draw any inference from
4 an unanswered question nor consider testimony which has been
5 stricken from the record in reaching your decision.
6 Finally, in deciding how much weight you choose to
7 give to the testimony of any particular witness there is no
8 magical formula by which to evaluate testimony. The tests
9 you use in your every day affairs to decide the reliability
10 or unreliability of statements made to you by others are the
11 tests which you will apply in your deliberations this is
12 common sense. With the items to be taken into consideration
13 in determining the weight you will give to the testimony of
14 a witness include the interest or lack of interest of the
15 witness in the outcome of case. The bias or prejudice of
16 the witness if there be any. The age, the appearance, the
17 manner of the witness as the witness testified. The
18 opportunity that the witness had to observe the facts about
19 which he or she testified. The probability or improbability
20 of the witness's testimony when considered in the light of
21 all of the other evidence in the case. If it appears that
22 there's a conflict in the evidence you will have to consider
23 whether the apparent conflict can be reconciled by fitting
24 the different versions together. If, however, that is not
25 possible then you will have to decide which of the

1 conflicting stories or versions you will accept. If you
2 find that any witness has willfully testified falsely as to
3 any material fact; that is, as to an important matter, the
4 law permits you to disregard completely the entire testimony
5 of that witness upon the principal that one who testifies
6 falsely about one material fact is likely to testify falsely
7 about everything. You are not required, however, to
8 consider such a witness as totally unbelievable. You may
9 accept so much of his or her testimony as you may deem true
10 and disregard what you feel is false. The process by which
11 I just described to you as the sole judges of the facts,
12 will decide which of the witnesses you believe, what portion
13 of the testimony you will accept, and what weight you will
14 choose to give to that testimony.
15 Now the burden of proof rests on the plaintiff;
16 that means, that it must be established by a fair
17 preponderance of the credible evidence that the claim
18 plaintiff makes is true. The credible evidence means that
19 the testimony or exhibits that you find to be worthy to be
20 believed. A preponderance of the evidence means that the
21 greater part of such evidence that does not mean that the
22 greater number of witnesses or the greater length of time
23 taken by either side. The phrase refers to the quality of
24 the evidence; that is, its convincing quality, the weight,
25 and the effect that it has on your minds.

1 The law requires that in order for the plaintiff
2 to prevail on a claim the evidence that supports his or her
3 claim must appeal to you as more nearly representing what
4 happened or what took place than the evidence opposed to his
5 or her claim. If it does not or if it weighs so evenly that
6 you are unable to say that there's a preponderance on either
7 side, then you must decide the question in favor of the
8 defendant. It is only if the evidence favoring the
9 plaintiff's claim outweighs the evidence opposed to it that
10 you can find in favor of the plaintiff.
11 Now the testimony has been introduced that
12 plaintiff has made -- excuse me testimony has been
13 introduced that plaintiff made a statement to the emergency
14 room doctors at Elmhurst Hospital on October 5th, 2010
15 complaining of pain in his -- of his left knee and his lower
16 back from another automobile accident. The plaintiff admits
17 that he made such statement but says the pain existed since
18 the 2006 automobile injury. If you find that the plaintiff
19 made such a statement and that he thereby admitted to a new
20 injury to the left knee and lower back, you may consider
21 that statement in your evaluation of the future pain and
22 suffering award. In deciding whether such a statement was
23 made you will apply the rules I've already given you about
24 the evaluation of testimony. You may accept either party's
25 version of what happened in whole or in part or you may

1 accept a portion of the versions given by both.
2 In deciding how much weight you'll give to that
3 testimony, if any, you can consider plaintiff's physical
4 condition at the time the statement was made, the words
5 used, the person to whom the statement was made, the time
6 that passed between the making of the statement and the
7 occurrence or accident. Or all of the circumstances and
8 conditions existing at the time and place and the other
9 facts in evidence as well the reasonableness of the
10 plaintiff's complaints of the statement. You may consider
11 the statement to be conclusive and binding on plaintiff or
12 you may ignore it altogether or you may give it a weight
13 between those two extremes as you find proper under all of
14 circumstances.
15 You will recall that the witnesses Dr. Durden,
16 Dr. Harrison, Dr. Pitman and Dr. Green testified concerning
17 their qualifications as an expert in the field of health
18 care and share their opinion concerning issues in this case.
19 When a case involves a matter of science or art or requires
20 special knowledge or skill not ordinarily possessed by the
21 average person an expert is allowed to state his or her
22 opinion or the explanation of the Court and jury. The
23 opinions stated by each expert who testified before you was
24 based on particular facts as the expert obtained knowledge
25 to them and to testified before you. Or as the attorney who

1 questioned the expert or asked the expert to assume. You
2 may reject an expert's opinion if you find facts to be
3 different from those which form the basis for the opinion.
4 You may also reject the opinion if after careful
5 consideration of all of the evidence in the case, and
6 otherwise, including the cross-examination of an expert you
7 decide that the opinion is not convincing. In other words,
8 you are not required to accept an experts's opinion to the
9 exclusion of the facts and circumstances disclosed by the
10 other evidence. Expert opinion is subject to the same rules
11 concerning reliability as a testimony of any other witness.
12 It is given to assist you in reaching a proper conclusion.
13 It is entitled to such weight as you find the expert's
14 qualifications in the field warrant and must be considered
15 by you but is not controlling upon your judgment. The
16 plaintiff and the defendant both testified before you. As
17 parties to the action both are interested witnesses. An
18 interested witness is not necessarily less believable than a
19 disinterested witness. The fact that he or she is
20 interested in the outcome of the case does not mean that he
21 or she has not told the truth. It is for you to decide from
22 the testimony of the witness on the stand and some other
23 whether or not the testimony has been influenced
24 intentionally or unintentionally by his or her interest.
25 You may, if you consider it proper under all of

1 circumstances, not to believe the testimony of such a
2 witness. However you are not to reject testimony such -
3 testimony as you find reliable and reject you part as you
4 find unworthy of acceptance.
5 You must render a verdict in a sum of money that
6 will justly and fairly compensate the plaintiff for all
7 losses resulting from the injuries and disability that he
8 sustained. The sum of money which will justly and fairly
9 compensate for any injury, disability and conscious pain and
10 suffering to date caused by the defendant. In determining
11 the amount to be awarded the plaintiff for pain and
12 suffering you may take into consideration the effect that
13 plaintiff's injuries have on the plaintiff's ability to
14 enjoy life, loss of enjoyment of life and the loss of
15 ability to perform daily tasks. The activities which were
16 apart of the person's life before the injury and to
17 experience the pleasures of life. However, a person suffers
18 the loss of enjoyment of life only if the person is aware,
19 at some level, of the loss that he or she has suffered. If
20 you find that plaintiff has as a result of his injuries
21 suffered some losses of the ability to enjoy life, and that
22 plaintiff was aware at some level of a loss, you may take
23 that loss into consideration in determining the amount to be
24 awarded to the plaintiff for pain and suffering. Plaintiff
25 will not be required to pay income tax on the award, any

1 amount on account of income taxes.

2 Now with respect to any of the plaintiff's
3 injuries or disabilities the plaintiff is entitled to
4 recover for future pain, suffering, and disability, and the
5 loss of his ability to enjoy life. In this regard you
6 should take into consideration the period of time that the
7 injuries or disabilities he can expect to continue. If you
8 find that the injures or disabilities are permanent you
9 should take into conversation the period of time that the
10 plaintiff can be expected to live. In accordance with the
11 state's life expectancy Mr. Ahumada has a life expectancy of
12 19.4 years. Such a table, however, provides more than a
13 statistical average it neither guarantees that Mr. Ahumada
14 will have an additional 19.4 years. Or mean he will not
15 live for a longer period. But life expectancy figures I've
16 given is not binding upon you but maybe considered together
17 with other evidence you've heard. Mr. Ahumada his health
18 habits, present life expectancy.

19 If in the course of your deliberations your
20 recollection of any part of the testimony should fail or you
21 have any questions about my instructions to you on the law
22 you have the right to return to the courtroom for the
23 purposes of having such testimony read to you or have such
24 question answer. In other words, if you're sitting there
25 and can't agree as to the evidence or testimony you can

1 always write a little note, Judge, we want to hear this be
2 that be specific.
3 In deciding this case you may consider only the
4 exhibits which have been admitted into evidence and the
5 testimony of the witnesses as you have heard it in this room
6 or has been recommended to you by way of testimony given on
7 EBT. Under our rules of practice an examination before
8 trial, an EBT, is taken under oath and entitled to equal
9 consideration by you notwithstanding the fact that it was
10 taken before the trial and outside the courtroom. However,
11 arguments, remarks, and summations of the attorneys are not
12 evidence. Nor is anything that I now say or may have said
13 with regards to the facts evidence.
14 Now while it is important that the views of all
15 jurors be considered, a verdict of five of the six members
16 of the jury will be sufficient under the law. Whenever five
17 of your members are in agreement on a verdict you may report
18 your verdict to the Court. In reaching your verdict you are
19 together to be affected by simply authorize any of the
20 parties what the reaction of the parties are. Whether it
21 will please or displease anybody, be popular or unpopular or
22 indeed any consideration outside the case as it has been
23 presented to you in this courtroom. You should only
24 consider the evidence both the testimony and the exhibits if
25 find the facts from what you consider to be the believable

1 evidence and the law as I now give it to you. Your verdict
2 will be determined by the conclusion you reach no matter
3 whom the verdict helps or hurts. I have now outlined for
4 you the rules of law that apply to the case and process by
5 which you weight the evidence an/ the fact. In a few
6 minutes you will retire to the jury room for your
7 deliberation.
8 Traditionally number one is the foreperson. Your
9 first order of business will be to a elect a foreperson.
10 Mr. Hochsis he would normally be the foreperson let's say he
11 doesn't want to be you can decide among the six who wants to
12 be the foreperson, okay.
13 Now in order that your deliberations may proceed
14 in an ordinary fashion you must ask a foreperson but, of
15 course, his or her vote is entitled to no greater weight
16 than that of in other juror. Your function is to reach a
17 fair decision from the law and the evidence. Remember, your
18 decision in this case is very important to both sides, okay.
19 When you are in the jury room listen to each other and
20 discuss the evidence and issues in the case among
21 yourselves. It is the duties of each of you as jurors to
22 consult with one another and deliberate with a view of
23 reaching an agreement on a verdict. If you can do so
24 without violating your individual judgment -- your
25 consciousness what you should be striving for. While you

1 should not surrender conscious conviction of what the truth
2 is and of the weight and affect of the evidence, and while
3 each of you must decide the case for yourself and not merely
4 consent to the decision of your fellow jurors, you should
5 examine the issues and the evidence before you with candor
6 and frankness and with proper respect and regard for the
7 opinions of each other.
8 Remember, in your deliberations that the dispute
9 between the parties for them is a very important matter.
10 They and the Court rely upon you to give full and conscious
11 deliberation and consideration to the issues and evidence
12 before you. By so doing you carry out to the fullest your
13 oath as jurors who actually tried the issue of this case to
14 a true and just verdict.
15 That concludes my instructions to you on the law.
16 Counsels come over to the side please.
17 THE COURT: Any objection?
18 MR. RALDIRIS: No.
19 THE COURT: Okay next.
20 MR. JONES: No.
21 THE COURT: Okay fine. All right okay, folks, you
22 have the verdict sheets. It's pretty clear cut verdict
23 sheet. You're going to be asked questions. The question
24 pretty much self-explanatory. Let's begin with question
25 number one; date, amount, award to the enjoyment of life

1 from the date of the accident August 16th, 2006. I put the
2 date. You will put whatever figure you believe is
3 sufficient and reasonable and fair under the circumstances
4 given and all the evidence you heard, okay.
5 And then, okay, whatever your answer is it says
6 proceed to question two. State the amount awarded to the
7 plaintiff for future pain and suffering and loss of
8 enjoyment of life from today's date to the time the
9 plaintiff could be expected to live 19.4 years. Once again
10 you will state what amount you believe is fair and just
11 given the evidence that you've heard.
12 And, of course, he question number three state;
13 the number of years in the future that the amount awarded is
14 intended to compensate the plaintiff. Once again put down
15 the number of years whatever award you believe is just and
16 fair and any number of years.
17 Once you've reached a verdict remember five of the
18 six doesn't have to be unanimous, not talking about criminal
19 court five out of six reach a verdict, all right.
20 That being the case, all right, I'm going to now
21 send you out to the jury room and beginning the
22 deliberations as soon as you get upstairs.
23 COURT OFFICER: All rise jurors exiting.
24 (Whereupon, sworn jurors exiting and commencing
25 deliberations.)

(Whereupon, Court is recessed and the case adjourned to April 23rd, 2015.)