

6 THE COURT: Thank you very much, Mr. Kelly.
7 Members of the jury, you have now heard all the
8 evidence introduced by the parties and through the arguments
9 of their attorneys you have learned the conclusion which
10 each party believes should be drawn from the evidence
11 presented to you.

12 I will now instruct you on the applicable law to
13 this case after which you will retire for your
14 deliberations.

15 You'll recall that at the beginning of the trial I
16 stated for you certain principles so that you could have
17 them in mind as the trial progressed.

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

20 You are not to ask anyone else about the law. You
21 should not consider or accept any advice about the law from
22 anyone else but me.

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

Jury Charge

1001

1 Furthermore, you may not draw any inference from an
2 unanswered question nor consider testimony which has been
3 stricken from the record in reaching your decision.

4 Finally, in deciding how much weight you choose to
5 give to the testimony of any particular witness, there is no
6 magical formula which can be used. The tests used in your
7 everyday affairs to decide the reliability or unreliability
8 of statements made to you by others are the tests you will
9 apply in your deliberations.

10 The items to be taken into consideration in
11 determining the weight you will give to the testimony of a
12 witness include the interest or lack of interest of the
13 witness in the outcome of the case, the bias or prejudice of
14 the witness, if there be any, the age, the appearance, the
15 manner of the witness as the witness testified, the
16 opportunity that the witness had to observe the facts about
17 which he or she testified, the probability or improbability
18 of the witness' testimony when considered in light of all of
19 the other evidence in the case.

20 If you find that any witness has willfully testified
21 falsely as to any material fact, that is, as to an important
22 matter, the law permits you to disregard completely the
23 entire testimony of that witness upon the principle that one
24 who testifies falsely about one material fact is likely to
25 testify falsely about everything.

Jury Charge	1002	Jury Charge	1004
<p>1 You are not required, however, to consider such a</p> <p>2 witness as totally unbelievable. You may accept so much of</p> <p>3 his or her testimony as you deem true and disregard what you</p> <p>4 feel is false.</p> <p>By this processes which I have just described to</p> <p>6 you, you as the sole judges of the facts, decide which of</p> <p>7 the witnesses you'll believe, what portion of their</p> <p>8 testimony you will accept and what weight you will give to</p> <p>9 it.</p> <p>10 The burden of proof rests on the plaintiff. That</p> <p>11 means it must be established by a fair preponderance of the</p> <p>12 credible evidence that the claim plaintiff makes is true.</p> <p>13 The credible evidence means the testimony or</p> <p>14 exhibits that you find to be worthy to be believed.</p> <p>15 A preponderance of the evidence means the greater</p> <p>16 part of such evidence. That doesn't mean the greater number</p> <p>17 of witnesses or the greater length of time taken by either</p> <p>18 side. The phrase refers to the quality of the evidence,</p> <p>19 that is, the convincing quality, the weight and the effect</p> <p>20 that it has upon your minds.</p> <p>21 The law requires that in order for the plaintiff to</p> <p>22 prevail on a claim, the evidence that supports his claim</p> <p>23 must appeal to you as more nearly representing what took</p> <p>24 place than the evidence opposed to its claim.</p> <p>25 If it does not or if it weighs so evenly that you</p>		<p>1 you reach, no matter whom the verdict helps or whom it</p> <p>2 hurts.</p> <p>3 A lawsuit is a civilized method of determining</p> <p>4 differences between people. It is basic to the</p> <p>5 administration of any system of justice that the decision on</p> <p>6 both the law and the facts be made fairly and honestly.</p> <p>7 You as the jurors and I as the judge have a heavy</p> <p>8 responsibility, to assure that a just result is reached in</p> <p>9 deciding the differences between the plaintiffs and the</p> <p>10 defendant in this case.</p> <p>11 As the jurors, your fundamental duty is to decide</p> <p>12 from all of the evidence that you have heard and the</p> <p>13 exhibits that have been submitted what the facts are.</p> <p>14 You are the sole, the exclusive judges of the</p> <p>15 facts. In that field you are supreme and neither I nor</p> <p>16 anyone else may invade your province.</p> <p>17 As the sole judges of the facts you must decide</p> <p>18 which of the witnesses you believe, what portion of their</p> <p>19 testimony you accept, and what weight you give to it.</p> <p>20 On the other hand, and with equal emphasis, I</p> <p>21 charge you that you are required to accept the law as I give</p> <p>22 it to you in this charge and in any instructions that I have</p> <p>23 given to you during the course of the trial; whether you</p> <p>24 agree with the law as given to you by me or not.</p> <p>25 Whether you agree with the law as I give it to you</p>	
<p>Jury Charge</p> <p>1003</p> <p>1 are unable to say that there is a preponderance on either</p> <p>2 side, then you must decide the question in favor of the</p> <p>3 defendant.</p> <p>4 It is only if the evidence favoring the plaintiff's</p> <p>5 claim outweighs the evidence opposed to it that you can find</p> <p>6 in favor of the plaintiff.</p> <p>7 In deciding this case, you may consider only the</p> <p>8 exhibits which have been admitted in evidence and the</p> <p>9 testimony of the witnesses as you have heard it in this</p> <p>10 courtroom or has been read to you as testimony given on</p> <p>11 examinations before trial.</p> <p>12 However, arguments, remarks and summation of the</p> <p>13 attorneys are not evidence nor is anything I now say or may</p> <p>14 have said with regard to the facts evidence.</p> <p>15 In reaching your verdict, you are not to be</p> <p>16 affected by sympathy for any of the parties, what the</p> <p>17 reaction of the parties or the public to your verdict may</p> <p>18 be, whether it will please or displease anyone, be popular</p> <p>19 or unpopular, or indeed any consideration outside of the</p> <p>20 case as it has been presented to you in this courtroom.</p> <p>21 You should consider only the evidence, both the</p> <p>22 testimony and the exhibits, find the facts from what you</p> <p>23 consider to be the believable evidence and apply the law as</p> <p>24 I will give it to you.</p> <p>25 Your verdict will be determined by the conclusions</p>		<p>Jury Charge</p> <p>1005</p> <p>1 or not, you are bound by it. You are not to ask anyone else</p> <p>2 about the law. You should not consider or accept any advice</p> <p>3 about the law from anyone else but me.</p> <p>4 The process by which you arrive at a verdict is</p> <p>5 first to decide from all the evidence and the exhibits what</p> <p>6 the facts are, and, second, to apply the law as I give to</p> <p>7 you as to the facts as you decide them to be.</p> <p>8 The conclusion thus reached will be your verdict.</p> <p>9 Your verdict will be in the form of answers to</p> <p>10 written questions which I will submit to you.</p> <p>11 In the course of the trial it has been necessary</p> <p>12 for me to rule on admissions of evidence and on motions made</p> <p>13 with respect to applicable law.</p> <p>14 You must not conclude from any such ruling I have</p> <p>15 made or from any questions I may have asked or from anything</p> <p>16 that I have said during the course of the trial nor these</p> <p>17 instructions or the manner in which they are given that I</p> <p>18 favor any party to this lawsuit.</p> <p>19 It is your recollection of the evidence and your</p> <p>20 decision on the issues of fact which will decide this case.</p> <p>21 At times during the trial I have sustained</p> <p>22 objections to questions asked without allowing the witness</p> <p>23 to answer or where an answer was made, instructed that it be</p> <p>24 stricken from the record and that you disregard it and</p> <p>25 dismiss it from your mind.</p>	

Jury Charge 1006	Jury Charge 1008
<p>1 You may not draw any inference or conclusion from 2 an unanswered question nor may you consider testimony which 3 has been stricken from the record in reaching your decision. 4 The law requires that your decision be made solely 5 upon the evidence before you. Such items as I have excluded 6 from your consideration were excluded because they were not 7 legally admissible. 8 The law does not, however, require you to accept 9 all of the evidence I admit. 10 In deciding what evidence you will accept, you must 11 make your own evaluation of the testimony given by each of 12 the witnesses and decide how much weight you choose to give 13 to that testimony. 14 The testimony of a witness may not conform to the 15 facts as they occurred because he or she is intentionally 16 lying, because the witness did not accurately see or hear 17 what he or she is testifying about, because the witness' 18 recollection is faulty, or because the witness has not 19 expressed himself or herself clearly in testifying. 20 There is no magical formula by which you evaluate 21 testimony. You bring with you to this courtroom all of the 22 experiences and backgrounds of your lives. 23 In your everyday affairs you decide for yourselves 24 the reliability or unreliability of things people tell you. 25 The same tests that you use in your everyday dealings are</p>	<p>1 witnesses in the outcome of the case does not mean that they 2 have not told the truth. 3 It is for you to decide from the demeanor of the 4 witness on the stand and such other tests as your experience 5 dictates whether or not their testimony has been influenced 6 intentionally or unintentionally by their interest. 7 You may, if you consider it proper, under all the 8 circumstances, not believe the testimony of such a witness 9 even though it is not otherwise challenged or 10 contraindicated. 11 However, you are not required to reject the 12 testimony of such a witness and may accept all or such part 13 of their testimony as you find reliable and reject such part 14 as you find unworthy of acceptance. 15 The fact that several witnesses are employed by 16 defendant and the testimony you have heard of their 17 respective relationship with their employer may be 18 considered by you in deciding whether the testimony of these 19 witnesses are in any way influenced by their employment 20 relationship with the defendant. 21 You have heard the lawyers read portions of 22 documents referred to as an examination before trial and 23 trial transcript. You have also heard the lawyers refer to 24 these documents as an EBT, deposition or trial transcript. 25 At some point before this trial began, the</p>
<p>Jury Charge 1007</p> <p>1 the tests that you will apply in your deliberations: the 2 interest or lack of interest of a witness in the outcome of 3 the case, the bias or prejudice of a witness, if there be 4 any, the age, the appearance, the manner in which the 5 witness gives testimony on the stand, the opportunity that 6 the witness had to observe the facts about which he or she 7 testifies and the probability or improbability of the 8 witness' testimony when considered in light of all of the 9 other evidence in this case, are all items to be considered 10 by you in deciding how much weight, if any, you will give to 11 that witness' testimony. 12 If it appears that there is a discrepancy in the 13 evidence you will have to consider whether the apparent 14 discrepancy can be reconciled by fitting the two stories 15 together. If, however, that is not possible, you will then 16 have to decide which of the conflicting stories you will 17 accept. 18 Theodore Granata, Junior in his capacity as 19 executor, John L. Carriero, Jonathan Russo and Michael Russo 20 each testified before you. 21 As the plaintiffs in this case, they are interested 22 witnesses. 23 An interested witness is not necessarily less 24 believable than a disinterested witness. The fact that an 25 interested witness -- the fact that they are interested</p>	<p>Jury Charge 1009</p> <p>1 witnesses testified under oath, answered certain questions 2 put to them. A stenographer recorded the questions and 3 answers and transcribed them into a document. The portions 4 of the transcript and the videotaped testimony that you have 5 heard are to be considered as if the witness testified from 6 the witness stand. 7 You have heard testimony about an agreement between 8 the developer of The Galleria Mall and the City of White 9 Plains concerning security in the Lexington Grove garage. 10 You should not consider that testimony in determining 11 whether or not the City met the minimum standards of care 12 required under common law. You will be instructed on that 13 standard separately. 14 Negligence is lack of ordinary care. It is failure 15 to use that degree of care, that a reasonably prudent person 16 would have used under the same circumstances. 17 Negligence may arise from doing an act that a 18 reasonably prudent person would not have done under the same 19 circumstances or on the other hand, from failing to do an 20 act that a reasonably prudent person would have done under 21 the same circumstances. 22 Negligence requires both a reasonably foreseeable 23 danger of injury to another and conduct that is unreasonable 24 in proportion to that danger. 25 A person is only responsible for the results of his</p>

Jury Charge 1010

1 or her conduct if the risk of injury is reasonably
 2 foreseeable.

3 The exact occurrence or exact injury does not have
 4 to be foreseeable. But injury as a result of negligent
 5 conduct must be not nearly possible, but be probable.

6 There is negligence if a reasonably prudent person
 7 could foresee injury as a result of his or her conduct and
 8 acted unreasonably in light of what could be foreseen.

9 On the other hand, there is no negligence if a
 10 reasonably prudent person could not have foreseen an injury
 11 as a result of his or her conduct or acted reasonably in
 12 light of what could have been foreseen.

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

18 The defendant claims that it is not responsible for
 19 Concetta Russo Carriero's death as her death was caused by a
 20 third person.

21 If you find that the defendant was negligent but
 22 that Concetta Russo Carriero's death was caused by the act
 23 of a third person, you may still find the defendant
 24 responsible for the plaintiff's injury if you also find that
 25 a reasonably prudent person in the defendant's situation

Jury Charge 1011

1 before the defendant allegedly committed its act of
 2 negligence, would have foreseen that an act of the kind
 3 committed by a third person would be a probable result of
 4 the defendant's negligence.

5 If you find that a reasonably prudent person would
 6 not have foreseen an act of the kind committed by a third
 7 person, a probable consequence of the defendant's
 8 negligence, then the defendant is not responsible for the
 9 death of Concetta Russo Carriero and plaintiffs may not
 10 recover.

11 As you have heard, the plaintiffs, Estate of
 12 Concetta Russo Carriero, John L. Carriero, Jonathan Russo
 13 and Michael Russo bring this action against the defendant
 14 City of White Plains based upon the claim that the City of
 15 White Plains failed to provide reasonable security under the
 16 circumstances at the Lexington Grove garage.

17 The owner of land has a duty to use reasonable care
 18 to keep the premises in a reasonably safe condition for the
 19 protection of all persons whose presence is reasonably
 20 foreseeable.

21 In order to recover, the plaintiff must prove:

22 One, that the premises was not reasonably safe.

23 Two, that the City of White Plains was negligent in
 24 not keeping the premises in a reasonably safe condition;

25 And three, that the City's negligence in allowing

Jury Charge 1012

1 the unsafe condition to exist was a substantial factor in
 2 causing Concetta Russo Carriero's death.

3 You must first consider whether the premises were
 4 reasonably safe.

5 Plaintiffs claim that the premises were not in a
 6 reasonably safe condition because the City of White Plains
 7 failed to provide reasonable security in the Lexington Grove
 8 garage.

9 The City contends that it provided reasonable
 10 security in the Lexington Grove garage.

11 If you decide that the premises were not reasonably
 12 safe, you will proceed to consider whether the City of White
 13 Plains was negligent in permitting the unsafe condition to
 14 exist.

15 I will read that again.

16 If you decide that the premises were not reasonably
 17 safe, you will proceed to consider whether the City of White
 18 Plains was negligent in permitting the unsafe condition to
 19 exist.

20 Negligence is the failure to use reasonable care.
 21 Reasonable care means that degree of care that a
 22 reasonably prudent owner of a garage would use under the
 23 same circumstances, taking into account the foreseeable risk
 24 of injury.

25 To fulfill the duty of reasonable care, the owner

Jury Charge 1013

1 or possessor must take minimal precautionary measures to
 2 secure the premises if it has notice of a likelihood of
 3 criminal intrusion which poses a threat to safety and may be
 4 held liable to an individual who is injured in a reasonably
 5 foreseeable criminal encounter that was proximately caused
 6 by the absence of adequate security.

7 However, there can be no recovery for injuries
 8 resulting from a criminal attack unless the attack was
 9 foreseeable or preventable in a normal course of events.

10 A landowner is not the insurer of the safety of its
 11 tenant.

12 The criminal conduct that caused the harm must have
 13 been reasonably predictable based on prior occurrences of
 14 the same or similar criminal activity at a location
 15 sufficiently proximate to the subject location.

16 If you find that the City of White Plains was
 17 negligent, you must next consider whether that negligence
 18 was a substantial factor in causing Concetta Russo
 19 Carriero's death.

20 An act or failure to act is a substantial factor in
 21 bringing about a death if a reasonable person would regard
 22 it as the cause of her death.

23 If you find that the City's negligence was not a
 24 substantial factor in causing her death, the plaintiff may
 25 not recover.

Jury Charge	1014	Jury Charge	1016
<p>1 If you find that the City's negligence was a</p> <p>2 substantial factor in causing her death, you will proceed to</p> <p>3 consider the apportionment of fault between the City and</p> <p>Phillip Grant.</p> <p>Phillip Grant is not a defendant in this case.</p> <p>6 Nevertheless, you must still consider whether Phillip Grant</p> <p>7 was at fault as well as whether the defendant City of White</p> <p>8 Plains was at fault.</p> <p>9 If you find that both Phillip Grant and the City of</p> <p>10 White Plains were at fault in causing Concetta Russo</p> <p>11 Carriero's death, you must decide the percentage of fault</p> <p>12 each bear, if any.</p> <p>13 In your verdict, you will state the percentage of</p> <p>14 fault of the City and Phillip Grant, the total of these</p> <p>15 percentages must add up to 100 percent.</p> <p>16 My charge to you on the law of damages must not be</p> <p>17 taken as a suggestion that you should find for the</p> <p>18 plaintiff. It is for you to decide on the evidence</p> <p>19 presented and the rules of law I have given you whether the</p> <p>20 plaintiff is entitled to recover from the defendant.</p> <p>21 If you decide that the plaintiff is not entitled to</p> <p>22 recover from the defendant, you need not consider damages.</p> <p>23 Only if you decide that the plaintiff is entitled to recover</p> <p>24 will you consider the measure of damages.</p> <p>25 If you find that the plaintiff is entitled to</p>		<p>1 The law limits damages resulting from Concetta</p> <p>2 Russo Carriero's death to monetary losses. You may not</p> <p>3 consider or make any award for sorrow, mental anguish,</p> <p>4 injury to feelings, or for loss of companionship. You must</p> <p>5 decide the monetary losses to John L. Carriero, Jonathan</p> <p>6 Russo and Michael Russo caused by Concetta Russo Carriero's</p> <p>7 death on June 29, 2005.</p> <p>8 In deciding the amount of monetary losses, you</p> <p>9 should consider the character, habits and ability of</p> <p>10 Concetta Russo Carriero, the circumstances and conditions of</p> <p>11 John L. Carriero, Jonathan Russo and Michael Russo, the</p> <p>12 services that Concetta Russo Carriero would have performed</p> <p>13 for them, the age, and life expectancy of Concetta Russo</p> <p>14 Carriero, the age and life expectancy of John L. Carriero,</p> <p>15 Jonathan Russo and Michael Russo and the value of the</p> <p>16 intellectual, moral and physical training, guidance and</p> <p>17 assistance that Concetta Russo Carriero would have given the</p> <p>18 children had she lived.</p> <p>19 Concetta Russo Carriero was at the time of her</p> <p>20 death 56 years old. And according to life expectancy</p> <p>21 tables, had a life expectancy of 26 years.</p> <p>22 Her spouse was then 58 and had a life expectancy of</p> <p>23 25.6 years.</p> <p>24 Life expectancy tables are simply statistical</p> <p>25 averages. A person might live longer or die sooner than the</p>	
<p>Jury Charge</p> <p>1015</p> <p>1 recover from the defendant, you must render a verdict in a</p> <p>2 sum of money that would justly and fairly compensate the</p> <p>3 plaintiff for all losses resulting from the defendant's</p> <p>4 negligence.</p> <p>5 As you have heard, plaintiff Theodore Granata,</p> <p>6 Junior is the representative of the Estate of Concetta Russo</p> <p>7 Carriero.</p> <p>8 Theodore Granata Jr. makes two claims: The first</p> <p>9 claim seeks damages on behalf of John L. Carriero, Jonathan</p> <p>10 Russo and Michael Russo resulting from the death of Concetta</p> <p>11 Russo Carriero.</p> <p>12 And the second claim seeks damages for the injuries</p> <p>13 suffered and losses sustained by Concetta Russo Carriero</p> <p>14 before she died.</p> <p>15 You must separately consider each of these claims.</p> <p>16 As to the first claim, damages are the amount that</p> <p>17 you find to be fair and just compensation for the monetary</p> <p>18 losses resulting from Concetta Russo Carriero's death to</p> <p>19 each of the persons for whom this claim is brought. Those</p> <p>20 persons are John L. Carriero, surviving spouse, Jonathan</p> <p>Russo, son, and Michael Russo, son.</p> <p>22 Theodore Granata, Jr., claims that these</p> <p>23 individuals have sustained monetary losses as a result of</p> <p>24 Concetta Russo Carriero's death in that they suffered a loss</p> <p>25 of services and loss of parental support and guidance.</p>		<p>Jury Charge</p> <p>1017</p> <p>1 time indicated by those tables.</p> <p>2 The figures I just mentioned are not controlling</p> <p>3 but may be considered by you together with the evidence</p> <p>4 you've heard concerning the health, habits, employment and</p> <p>5 activities of Concetta Russo Carriero prior to her death and</p> <p>6 those of Jonathan Russo and Michael Russo in determining</p> <p>7 what their respective life expectancies were at the time</p> <p>8 Concetta Russo Carriero died.</p> <p>9 As I stated before, it is the monetary value of</p> <p>10 Concetta Russo Carriero to each of the distributees that you</p> <p>11 must decide.</p> <p>12 That value is incapable of exact proof. Taking</p> <p>13 into account all of the factors I have discussed, you must</p> <p>14 use your own common sense and sound judgment based on the</p> <p>15 evidence in deciding the amount of monetary loss suffered by</p> <p>16 each of the distributees.</p> <p>17 The amount you award for monetary losses sustained</p> <p>18 by each of the distributees must represent the full amount</p> <p>19 of such losses without reduction to present value.</p> <p>20 You must also decide the period of years for which</p> <p>21 the amount is intended to provide compensation.</p> <p>22 You will make a separate award for those reasonable</p> <p>23 expenses for Concetta Russo Carriero's funeral and burial</p> <p>24 lot.</p> <p>25 As to the claim for damages sustained by Concetta</p>	

Jury Charge	1018	Jury Charge	1020
<p>1 Russo Carriero before she died, which is the second claim I</p> <p>2 mentioned to you, plaintiff is entitled to recover such sum</p> <p>3 as you find will fairly and justly compensate for Concetta</p> <p>4 Russo Carriero's pain and suffering during such time as she</p> <p>5 was conscious from the moment of injury to the moment of</p> <p>6 death.</p> <p>7 Conscious pain and suffering means pain and</p> <p>8 suffering of which there is some level of awareness by</p> <p>9 Concetta Russo Carriero.</p> <p>10 Plaintiff is also entitled to recover the amount</p> <p>11 you find will fairly and justly compensate for the emotional</p> <p>12 pain and suffering actually endured by Concetta Russo</p> <p>13 Carriero between the moment Concetta Russo Carriero realized</p> <p>14 that she was going to be gravely injured or die and the</p> <p>15 moment that Concetta Russo Carriero sustained a physical</p> <p>16 injury.</p> <p>17 In order to find that plaintiff is entitled to</p> <p>18 recover for these damages, you must find that A, Concetta</p> <p>19 Russo Carriero was aware of the danger that caused her grave</p> <p>20 injury or death, B, Concetta Russo Carriero was aware of the</p> <p>21 likelihood of grave injury or death, and C, Concetta Russo</p> <p>22 Carriero suffered emotional distress as a result of her</p> <p>23 awareness of her impending grave injury or death.</p> <p>24 Your verdict will include answers to the following</p> <p>25 questions which will be submitted to you in writing:</p>		<p>1 Insert the word "none" as to that item.</p> <p>2 If your verdict is in favor of the plaintiff,</p> <p>3 plaintiff will not be required to pay income tax on the</p> <p>4 award and you must not add to the award nor subtract from</p> <p>5 the award on account of income taxes.</p> <p>6 If, in the course of your deliberations your</p> <p>7 recollection of any part of the testimony should fall, or</p> <p>8 you have any questions about my instructions to you on the</p> <p>9 law, you have the right to return to the courtroom for the</p> <p>10 purpose of having such testimony read to you or have such</p> <p>11 questions answered.</p> <p>12 While it is important that the views of all jurors</p> <p>13 be considered, a verdict of five out of six members of the</p> <p>14 jury will be sufficient on the law.</p> <p>15 Whenever five of your members are in agreement on a</p> <p>16 verdict, you are to report your verdict to the court.</p> <p>17 I have now outlined for you the rules of law that</p> <p>18 apply to this case and the processes by which you weigh the</p> <p>19 evidence and decide the facts.</p> <p>20 In a few minutes you will retire to the jury room</p> <p>21 for your deliberations.</p> <p>22 Traditionally, Juror Number One, which I think is</p> <p>23 Mr. Robinson, acts as your foreperson. However, your first</p> <p>24 order of business when you are in the jury room will be to</p> <p>25 elect a foreperson in order that your deliberations may</p>	
<p>Jury Charge</p> <p>1 State the total amount of monetary loss, if any, to</p> <p>2 John L. Carriero, Jonathan Russo and Michael Russo resulting</p> <p>3 from Concetta Russo Carriero's death.</p> <p>4 State the total amount of monetary losses, if any,</p> <p>5 for Jonathan Russo and Michael Russo, resulting from</p> <p>6 Concetta Russo Carriero's death without specifying the</p> <p>7 amount of monetary losses for each individual.</p> <p>8 Then, state the total amount of monetary loss, if</p> <p>9 any, to John L. Carriero, resulting from Concetta Russo</p> <p>10 Carriero's death.</p> <p>11 Two. State the amount awarded, if any, for the</p> <p>12 following items of damages incurred or paid by Concetta</p> <p>13 Russo Carriero's estate:</p> <p>14 A, funeral expenses including any burial lot.</p> <p>15 Three, state the amount awarded for the following</p> <p>16 items of damages sustained before Concetta Russo Carriero's</p> <p>17 death, if any:</p> <p>18 A, emotional pain and suffering Concetta Russo</p> <p>19 Carriero endured between the moment Concetta Russo Carriero</p> <p>20 realized that she was going to be gravely injured or die and</p> <p>21 the moment that Concetta Russo Carriero sustained a physical</p> <p>22 injury.</p> <p>23 B, pain and suffering of Concetta Russo Carriero</p> <p>24 from the moment of physical injury to the moment of death;</p> <p>25 If you decide not to make an award as to any item, you will</p>	1019	<p>Jury Charge</p> <p>1 proceed in an orderly fashion. You must have a foreperson,</p> <p>2 but, of course, his or her vote is entitled to no greater</p> <p>3 weight than that of any other juror.</p> <p>4 Your function, to reach a fair decision from the</p> <p>5 law and the evidence, is an important one. When you are in</p> <p>6 the jury room, listen to each other and discuss the evidence</p> <p>7 and issues in the case among yourselves.</p> <p>8 It is the duty of each of you as jurors to consult</p> <p>9 with one another and to deliberate with a view of reaching</p> <p>10 an agreement on a verdict, if you can do so without</p> <p>11 violating your individual judgment and your conscience.</p> <p>12 While you should not surrender conscientious</p> <p>13 convictions of what the truth is and the weight and effect</p> <p>14 of the evidence and while each of you must decide this case</p> <p>15 for yourself and not merely consent to the decisions of your</p> <p>16 fellow jurors, you should examine the issues and evidence</p> <p>17 before you with candor and frankness and with proper respect</p> <p>18 and regard to the opinion of others.</p> <p>19 Remember in your deliberation that the dispute</p> <p>20 between the parties is for them a very important matter.</p> <p>21 They and the court rely upon you to give full and</p> <p>22 conscientious deliberation and consideration to the issues</p> <p>23 and the evidence before you and by doing so, you carry out</p> <p>24 to the fullest your oath as jurors, to truly try the issues</p> <p>25 of this case and render a true verdict.</p>	1021