UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JAMES P. LAPLANTE

v. C.A. No. 07-0062 ML

YORK INSURANCE COMPANY
OF MAINE

JURY INSTRUCTIONS

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1. PROVINCE OF THE COURT AND JURY

Members of the Jury, now that you have heard the evidence and the arguments of counsel, it becomes my duty to give you instructions as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts of the case as you determine those facts to be from the evidence in this case. You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are to adhere to the Court's instructions.

Further, nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather that is yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

2. ALL PERSONS EQUAL BEFORE THE LAW – CORPORATIONS

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons,

including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

3. EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. It is the duty of the Court, during the course of trial, to pass upon the admissibility of proffered evidence, that is, to decide whether or not you should consider proffered evidence. Such evidence as the Court admits is properly before you for your consideration; such evidence as the Court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Papers, documents, and other objects admitted into evidence by the Court are a part of the evidence properly before you and will be available to you in the jury room for consideration during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling of the Court or the statements of counsel concerning the admissibility of such evidence.

Nor should you permit objection by counsel to the admission of evidence, or the rulings of the Court thereon, to create any bias or prejudice in your minds with respect to counsel or the party he represents. It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he freely may make objection to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

4. PREPONDERANCE OF THE EVIDENCE

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence in this case, you should find for the defendant.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds the belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proven by a preponderance of the evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

5. "IF YOU FIND"

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

6. EVIDENCE – DIRECT, INDIRECT, OR CIRCUMSTANTIAL

As I told you at the beginning of the case, there are two types of evidence from which you may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

7. INFERENCES – DEFINED

You are to consider only the evidence in the case. In your consideration of the evidence, however, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in this case. Inferences may not be

based on speculation or conjecture.

8. CREDIBILITY OF WITNESSES – DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, the manner in which the witness testified, the character of the testimony given, or evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case—including statements that he or she may have made on some prior occasion.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional

falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

9. OPINION EVIDENCE – EXPERT WITNESSES

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, an exception exists as to those persons whom we refer to as "expert witnesses." These are witnesses who, by education and experience, have become expert in some art, science, profession, or calling, and thus may state their opinions as to relevant and material matters in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves, whether it was based on personal observations or on hypothetical questions. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

William Howarton testified as expert witness in this case.

10. NATURE OF THE PLAINTIFF'S CLAIMS

The plaintiff in this case is James P. LaPlante; the defendant in this case is York Insurance Company of Maine. This case concerns the plaintiff's contractual claim that he is entitled to receive uninsured motorist benefits from the defendant in accordance with the policy of insurance in effect between the plaintiff and defendant at the time of plaintiff's accident. Plaintiff claims that defendant breached the contract of insurance in effect between the parties at the time of the accident.

11. BREACH OF CONTRACT – ELEMENTS

In order for the plaintiff to prevail on his breach of contract claim, he must prove three elements by a preponderance of the evidence:

First, that a contract existed between the plaintiff and the defendant; (The parties agree that there was in fact a contract between the plaintiff and the defendant);

Second, that the defendant breached that contract; and

Third, that the loss or damages being claimed were caused by the defendant's breach.

12. BREACH OF CONTRACT – DEFINED

A breach of contract is an unjustified failure to comply with a material or important term of a contract. A material term is an important term, or to put it differently, it is a term that if not complied with, will deprive the other party of the benefit that it bargained for under the contract.

13. INSURANCE POLICY – UNINSURED MOTORIST

The insurance policy issued to James Laplante states, in pertinent part, as follows:

"PART C UNINSURED MOTORISTS COVERAGE . . . INSURING AGREEMENT
A. We will pay compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of:
1. "'Bodily injury' sustained by an 'insured' and caused by an accident . . . .
The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the 'uninsured motor vehicle.'"

14. UNINSURED MOTORIST COVERAGE

This case concerns the plaintiff's contractual claim that he is entitled to receive uninsured motorist benefits from the defendant in accordance with the policy of automobile insurance in effect between the plaintiff and the defendant at the time of the accident. Uninsured motorist benefits are those benefits that the defendant is obligated to pay to the plaintiff when the plaintiff sustains damages as a result of an accident caused by an uninsured motorist. Therefore, in order for the plaintiff to prevail under the terms of his policy and recover from the defendant, he must prove that he is entitled to recover damages from the owner or driver of an uninsured motor vehicle.

The plaintiff must meet his burden of proof on this issue by proving that the owner or operator of the uninsured motor vehicle was negligent and that this negligence was a proximate cause of the accident.

15. SUBSTANTIAL NEXUS

The question of whether an injury arose out of the ownership, maintenance, or use of an uninsured vehicle turns on whether there was a "substantial nexus" between the injury and the

uninsured vehicle, not whether the vehicle itself was the "instrumentality" of the injury.

16. MERE HAPPENING OF AN ACCIDENT

The mere fact an accident occurs does not necessarily mean that someone has been negligent or that such negligence proximately caused the injuries to the plaintiff. Sometimes accidents will happen even where no one has breached a duty of care to another person. Sometimes injuries or events occur which are not the proximate result of any negligent act or failure to act.

17. NEGLIGENCE

Generally, negligence is the failure of one person, acting in a given set of circumstances, to exercise that degree of care for the safety or interest of another person that a reasonably prudent person would ordinarily exercise in the same or similar circumstances.

Negligence may result from not doing something that a reasonably prudent person would do or it may result from doing something that a reasonably prudent person would not do under the same or similar circumstances.

In other words, when a person either by acting or not acting in a given set of circumstances, fails to exercise the degree of care for the safety of another person that a reasonably prudent person would have used under the same or similar circumstances, you have negligence. When we say that a person was acting with due and reasonable care, we mean that this person was not negligent.

18. PROXIMATE CAUSE

Negligence and the legal term "proximate cause" work together. We refer to "proximate

cause" as a necessary element of negligence. The concept is that even if a person has been negligent that person will not be held responsible or liable unless that negligent conduct caused actual harm to someone else. If a person is negligent but that negligence is not a substantial or moving cause of some harm, then the person should not be held responsible for his negligence. Only where a person's negligence causes harm do we hold the person responsible for that harm. There must be a link or connection between the negligence and the harm in order to hold a person responsible.

The question is to what extent did the negligent conduct cause the harm? The law requires that the connection or link between the negligent conduct and the resulting harm be legally sufficient, that is, something more than insubstantial or insignificant.

Proximate cause means a cause that in a natural, continuous and unbroken sequence produces an event or injury and without which the event or injury would not have occurred. The proximate cause of an event or injury is a substantial, primary or moving cause without which the event or injury would not have happened. Causes that are merely incidental are not proximate causes. Unless the uninsured motorist's negligence is a proximate cause of some harm caused to the plaintiff then the defendant cannot be held liable to plaintiff.

A cause that is a proximate cause may be the sole or only cause of an event or injury. Or, it may be one of two or more or even several causes of an event or injury some of which are a proximate cause and some of which are not. A cause is a proximate cause even if it comes together with or unites with some other cause and produces the event or injury. The test is whether the particular cause at issue is a substantial cause or whether it is merely incidental.

If you find that the uninsured motorist was negligent you must then consider whether the negligence was a proximate cause of the plaintiff's injuries.

19. COMPARATIVE NEGLIGENCE

I would like to talk to you for a few moments about a concept known as comparative negligence. In this case, the defendant contends that the plaintiff was negligent and that the plaintiff's negligence was a cause of the accident. Therefore, this case also requires that you determine whether or not plaintiff was also negligent. You must determine whether the plaintiff exercised that degree of care for his own safety that a reasonably prudent person would exercise under the same or similar circumstances and whether the plaintiff's negligence was a proximate cause of the accident.

In determining whether or not the plaintiff was negligent, you must keep in mind that all of my instructions concerning the elements of negligence and burden and standard of proof apply to the question of plaintiff's negligence as well as to the question of the uninsured motorist's negligence. In other words, the defendant bears the burden of proving each of the elements of plaintiff's alleged negligence by a preponderance of the evidence.

Now, the law is that the plaintiff's negligence does not necessarily operate to bar or to stop him from recovering damages against the defendant. Plaintiff's negligence, however, will operate to reduce his damages by the percentage that his own negligence contributed as a proximate cause to his own injury. In this way we compare the negligence of plaintiff and the uninsured motorist and allocate responsibility for the accident between them.

In considering the comparative negligence of the plaintiff and the uninsured motorist, you must consider not only whether each was negligent, but also the extent to which the negligence of each contributed as a proximate cause of the accident. If you find that the plaintiff was not negligent

or that the plaintiff's negligence was not a proximate cause of the accident, then your verdict must be for the plaintiff. On the other hand, if you find that the plaintiff was negligent and that plaintiff's negligence was a proximate cause of the accident, then the plaintiff's and the uninsured motorist's negligence must be compared against each other.

In this way you will allocate comparative fault or comparative responsibility for plaintiff's injuries. I will explain the mechanics of that in a few minutes when I speak to you about damages.

20. HIT AND RUN VEHICLE

A hit-and-run motor vehicle is a motor vehicle operated by a motorist who had caused, or contributed by his negligence to cause, an accident and flees the scene of the accident without being identified.

Under the terms of the insurance policy in effect between the plaintiff and defendant at the time of the accident, an uninsured motor vehicle includes a motor vehicle which is a hit-and-run vehicle whose operator or owner cannot be identified. Physical contact between the vehicles is not required to fall within the definition of "hit-and-run."

21. VIOLATION OF MOTOR VEHICLE LAWS AS EVIDENCE OF NEGLIGENCE

Rhode Island has a number of laws governing how drivers should operate their motor vehicles. We call theses laws the "rules of the road." In a moment I will review with you the laws that are relevant to this case. In a motor vehicle case, the jury is permitted to consider violations of traffic and motor vehicle laws as evidence of negligence. If you find that either driver violated one of these rules of the road, you may consider the fact of the violation as evidence of that driver's

negligence.

Violation of a traffic or motor vehicle law is not negligence in and of itself but it is evidence of negligence. If you find that either driver violated one of the rules of the road you may consider that fact along with all of the other facts and circumstances which you find were proved at trial in determining whether either driver was negligent.

22. DUTY OF DRIVER OF AUTOMOBILE INTENDING TO CROSS INTERSECTION

The driver of an automobile intending to cross an intersection should not only observe the so-called laws of the road, which include traffic regulations established by statute or ordinances, but, before crossing, he should look when looking is efficient and take into consideration the circumstances attending at the time, such as the physical conditions at the intersection, the weather, road and light conditions, the relative importance of the streets or highways forming the intersection, the intensity and course of traffic, and the distance and speed of other vehicles that may be approaching that same intersection. The rule in our cases that one must look before entering and crossing an intersecting street requires that one look at the time and place when looking will seasonably apprise a reasonably careful person of the conditions confronting him at the intersection, so that he may control his actions accordingly. The duty is not merely one of looking but is one of observing the traffic and general situation at or in the vicinity of the intersection. He must look in the careful and efficient manner in which a man of ordinary prudence in like circumstances would look in order to ascertain the existing conditions for his guidance.

23. REASONABLE AND PRUDENT SPEED

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having due regard to the actual and potential hazards existing at the time. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and each driver has a duty to use due care in the operation of a vehicle.

24. CONDITIONS REQUIRING REDUCED SPEED

The driver of every vehicle shall drive at an appropriate reduced speed when approaching and crossing an intersection, when approaching and going around a curve, when traveling upon any narrow or winding roadway and when special hazards exist with respect to other traffic, weather conditions or highway conditions.

25. RULES OF THE ROAD

A driver has the right to assume that other motorists will observe the rules of the road.

26. CONSIDER DAMAGES ONLY IF LIABILITY IS PROVEN

I now turn to the question of damages. In doing so, this Court does not intend to indicate that it is of the opinion that the defendant is liable. You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award, if any, in the event that you find that the defendant is liable. If you determine that plaintiff's accident was not cause by an uninsured motorist vehicle, then you must return a verdict for defendant. If,

however, you determine that the plaintiff's accident was caused by an uninsured motor vehicle, then you must determine the amount of damages that the plaintiff is entitled to recover from the uninsured motor vehicle.

You need consider the question of damages only if you find that the plaintiff has proven his claim; for if you do not find the defendant liable, no award of damages can be made.

Damages must be proved. The burden of proof as to the existence and extent of damages is on the plaintiff. In other words, you may make an award for damages only to the extent that you find damages have been proven by a preponderance of the evidence. You may not base an award of damages or the amount of any such award on speculation or conjecture. You must base an award of damages on the evidence presented and on what you consider to be fair and adequate compensation for such damages as you find have been proved. In making an award of damages, it is required that you determine the precise amount to be awarded.

I will now instruct you on the law of damages for the specific claim involved in this case.

27. MEDICAL EXPENSES

Plaintiff is entitled to recover the reasonable expenses of his medical care, treatment and attendance as an element of damages. In awarding damages for medical care, treatment and attendance you must consider whether the plaintiff has proved two things. First, whether the medical costs claimed by plaintiff were medically reasonable. Second, whether those costs were necessarily incurred in providing care, treatment and medical attendance. In assessing damages, you should consider evidence that establishes that plaintiff's medical treatment was necessary as

a result of the accident, and you may consider evidence that establishes the reasonable charge for that treatment.

28. PAIN AND SUFFERING

The plaintiff is entitled to be compensated for the conscious pain and suffering that he endured as a result of the accident.

I will define pain and suffering for you. Pain means physical pain, the kind resulting from a physical impact or injury. It includes what we ordinarily think of as physical pain as well as discomfort, stiffness, and restriction of bodily motion that is caused by the pain or discomfort brought about by moving. Pain must be conscious pain, that is, something that the plaintiff was aware of. The law does not allow a jury to award damages for pain to a person while that person is unconscious.

Suffering, on the other hand, can be equated with what we sometimes call the mental anguish that arises from physical pain or injury to the body. Suffering means recognizing the pain, the danger resulting from the pain, the knowledge that the pain and treatment for it will continue. If you find that the plaintiff has proven that in addition to physical pain, he has also experienced fright, anguish, nervousness, grief, anxiety, worry, humiliation, embarrassment, shock or terror, the plaintiff is entitled to recover for this mental suffering.

In awarding any damages to the plaintiff for pain and suffering, you must be fair and reasonable. And, it must be grounded in the evidence and not based upon speculation or conjecture. Nor may you arbitrarily pick some amount. Your award for pain and suffering should

be based on the evidence that has been presented to show just how much pain and suffering the plaintiff has endured as a result of his injuries.

29. CONSIDERATIONS IN AWARDING DAMAGES FOR PAIN AND SUFFERING

The plaintiff is entitled to be compensated for the pain and suffering he endured as a result of the accident. There is no particular formula by which to compute damages for a plaintiff's pain and suffering. There are no objective guidelines by which you can measure the money equivalent of this element of injury; the only real measuring stick, if it can be so described, is your collective and enlightened conscience. You should consider all the evidence bearing on the nature of the injuries.

In determining what amount to award the plaintiff for pain and suffering, you should consider all of the facts and circumstances proved at trial including:

the type of injuries the plaintiff sustained;

the extent and severity of plaintiff's injuries;

the length of time the plaintiff sought and received medical treatment;

whether the plaintiff underwent any surgical operation as a result of his injury;

whether the plaintiff's injury was temporary or permanent;

whether the plaintiff was hospitalized and for how long;

whether the plaintiff was prescribed and took any medication to relieve any pain.

You may also consider the testimony of the plaintiff in describing the nature of his pain, the intensity of the pain and how the pain affected the plaintiff's ability to do everyday activities. You may also

consider any other evidence showing any objective manifestations of pain such as the medical records, other exhibits and testimony of the witnesses.

30. LOST EARNINGS/WAGES

Plaintiff is entitled to be compensated for the amount of earnings/wages plaintiff was reasonably certain to have earned if he had not been injured in the accident.

31. COMPARATIVE NEGLIGENCE–DAMAGES

If you find that both the plaintiff and the uninsured motorist were negligent, this case will require that you assess and compare the relative amount of negligence of both of them. We compare the parties' responsibility for negligence in order to determine their relative liability or responsibility for the plaintiff's injuries.

In this way we can allocate responsibility for plaintiff's injuries among the negligent parties. We also compare the parties' negligence so we can reduce plaintiff's money damages by whatever dollar amount is equivalent to the plaintiff's percentage share of responsibility for his own injuries. Remember, as I told you earlier in these instructions, plaintiff's negligence does not prevent him from recovering damages against the defendant. It does, however, operate to reduce his damages by the percentage that his negligence contributed as a proximate cause to his injury.

If you reach the point where you have found that the uninsured motorist was negligent and that the uninsured motorist's negligence was a proximate cause of the plaintiff's injuries and you have determined the amount of the plaintiff's damages, you must then consider the question of plaintiff's own negligence. If you have found that the plaintiff's injuries were not in any respect

proximately caused by the plaintiff's own negligence then you must render a verdict for the plaintiff for the total amount of damages which the plaintiff has sustained.

But, if you find that the plaintiff was negligent and that plaintiff's own negligence was a proximate cause of his injuries, then you must proceed to reduce the award of total damages to the plaintiff in an amount proportionate to the contribution plaintiff's negligence made to plaintiff's own injuries.

In order to do this, you must first determine the total dollar amount of plaintiff's damages. After you determine the total dollar amount of damages, you must determine what proportion, figured in a percentage, plaintiff's own negligence and the uninsured motorist's negligence was a proximate cause of those damages. You will be provided with a verdict form that will aid you in performing this exercise.

32. MITIGATION

Under Rhode Island law, a person who is claiming damages for personal injuries is required to use reasonable diligence to curtail his or her damages. While that person is under no affirmative duty to reduce the harm caused by the uninsured motorist and does not incur liability for failing to do so, he or she must make reasonable efforts to follow his or her doctor's treatment recommendations. The law does not permit a plaintiff to maximize the harm caused by the uninsured motorist nor does the law permit a plaintiff to act carelessly in curtailing that harm. The law requires that a plaintiff use reasonable efforts and ordinary care under the circumstances, that is, the efforts that a reasonably prudent person would take under the same or similar circumstances.

A plaintiff may not recover damages for those of his losses occasioned by an unreasonable failure to follow his or her doctor's recommendation.

I will caution you, however, that you must not speculate about the medical effect of any failure on the part of plaintiff to follow his doctor's orders. One's failure to follow doctor's orders will not necessarily result in a material worsening of the medical condition or in hindering recovery. That such a result was proximately caused by the plaintiff's conduct must be proved by competent medical evidence.

33. DELIBERATIONS – GENERAL CONSIDERATIONS

Ladies and Gentlemen, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, it goes without saying that prejudice, sympathy, or compassion should not be permitted to influence you in the course of your deliberations. From what I have said I do not and did not mean to imply that you should approach your consideration of this case in an intellectual vacuum. You are not required to put aside or to disregard your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; it is your right and duty to consider the evidence in the light of such experience and observations.

34. VERDICT – UNANIMITY & DUTY TO DELIBERATE

In order for you to return a verdict, your decision must be a unanimous decision, that is, all seven of you must concur in the decision. You cannot return a verdict, either for the plaintiff or for the defendant, unless and until you are in unanimous agreement as to what your verdict shall be.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide this for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

35. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. The foreperson may then hand such written requests or questions to the officer in whose charge you will now be placed. The officer will then bring such written requests to me and I will

attempt to fulfill your request or answer the question as the case may be. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Finally, you are never to reveal to any person – not even to the Court – how you stand, numerically or otherwise, on the questions before you, until you have reached a unanimous verdict.