1 send a letter and say sign off on it. Certified
2 letter. There's a number of ways. And Mr. Vitone said
3 he absolutely never thought his UM was taken off so he
4 had no reason to reinstate coverage he didn't know was
5 taken from him in the first place. That is the state
6 of the affairs in this unfortunate incident. Thank
7 you.
8 Thank you, your Honor.
9 THE COURT: Thank you, Mr. White. All right.
10 Ladies and gentlemen, I'm going to move directly into
11 my instructions to you so I can get you out into the
12 jury room to deliberate this case. So don't worry
13 about writing all these instructions down. You may
14 take notes, of course, but my practice is to send a
15 written copy of my instructions into the jury room with
16 you so that you can use that as a guide to help you
17 with your deliberations.
18 So what I'm going to do now is instruct you on
19 the law that is applicable to this case. Now, your
20 duty is to find the facts from all of the evidence that
21 you've heard during the course of this trial and to
22 those facts you will apply the law as I give it to you
23 now. You must follow the law as I give it to you
24 whether you agree with that law or not. You must not
25 be influenced in your deliberations by any personal

1 likes or dislikes, any opinions or prejudices or biases
2 or any sympathy of any kind. What that means is you
3 must decide this case solely on the evidence that has
4 been put forward during the course of the trial.
5 Now, you may recall that you took an oath at the
6 beginning of the case promising to do this, and it
7 would be a violation of that oath to base your decision
8 in this case on any version of the law other than what
9 is contained in my instructions to you now.
10 Now, in following my instructions, you must
11 consider them as a whole, and you must follow all of
12 them and not single one instruction over any other.
13 All of the instructions are equally important.
14 Further, you must not read into these
15 instructions or into anything that I have said or done
16 during the course of this trial to indicate to you or
17 to give any suggestion to you as to what I think the
18 facts of this case are or what the verdict in this case
19 ought to be. That is up to you and you alone and that
20 is your job as the jury in this case.
21 Now, as you've heard -- I'm just going to
22 briefly summarize for you what the contentions of the
23 parties are in this case. Ms. Wagenmaker and
24 Mr. Vitone contend that the Amica Mutual Insurance
25 Company essentially breached their contract of

1 insurance to provide them with insurance benefits for
2 injuries that they sustained as a result of the
3 automobile accident that you have heard about with an
4 uninsured motorist.
5 Now, both Ms. Wagenmaker and Mr. Vitone contend
6 that they qualify for insurance benefits under the
7 uninsured motorist provisions of an automobile
8 insurance policy that was issued to Mr. Vitone by
9 Amica.
10 Amica, on the other hand, denies the coverage
11 exists and contends that Mr. Vitone cancelled his
12 uninsured motorist coverage for his 1998 Chevrolet
13 Corvette prior to the accident. Mr. Vitone disputes
14 that he authorized such a change to his policy so it's
15 your job to decide whether the uninsured motorist
16 coverage exists on the 1998 Corvette.
17 Now, I spoke at the beginning of the case a bit
18 about burdens of proof. And I want to take a minute to
19 explain those burdens now in a little further detail.
20 In this case, like most cases, the law places
21 the burden of proof on the plaintiff. What this means
22 is that the law imposes on the plaintiff the obligation
23 or the responsibility of proving his or her claim. The
24 law requires, essentially, what that means in effect is
25 that one who advances a proposition or makes a claim

1 has the burden of sustaining the validity of that
2 claim. So because the Plaintiff is advancing the
3 proposition that the Defendant should be held
4 responsible, it is the Plaintiff who has the
5 responsibility of producing evidence which leads you to
6 believe that what the Plaintiff claims is more likely
7 true than not true.
8 The defendant, on the other hand, generally
9 speaking, has no obligation to produce evidence
10 concerning a plaintiff's claim. The defendant does not
11 have to disprove what the plaintiff claims is true. So
12 the burden is on one who is making a claim to prove the
13 elements of that claim to you.
14 Now, in this case, however, we have not only
15 Ms. Wagenmaker and Mr. Vitone's claim against Amica,
16 but we also have Amica's claim against Ms. Wagenmaker
17 and Mr. Vitone. You remember at the beginning of the
18 trial I explained to you that we had claims going both
19 directions.
20 So as I explained earlier, Amica is claiming
21 that Mr. Vitone cancelled his uninsured motorist
22 coverage and never agreed it, that is, Amica never
23 agreed to extend uninsured motorist coverage on the
24 1998 Chevrolet Corvette. And it, Amica, has asserted
25 those claims against both Wagenmaker and Vitone.

1 Now, Ms. Wagenmaker and Mr. Vitone are claiming
2 that Mr. Vitone never agreed to the cancellation of his
3 uninsured motorist coverage and that his policy does
4 provide coverage, and they've asserted those claims
5 against Amica.
6 So for purposes of determining the outcome of
7 these claims, the burden of proof is on the party
8 advancing the claim. Since the law places the burden
9 of proving the validity of a claim upon one who is
10 making the claim, then it's logical that the burden of
11 proof must be on anyone making a claim whether it is
12 the original claim in the case or whether it's a
13 counter-claim or whether it's against a third party.
14 The burden is always on the party that is bringing the
15 claim to prove the elements of its claim.
16 Now, in addition to imposing the burden of proof
17 on one making the claim, the law also requires that the
18 proof and the support of any given claim reach a
19 certain level or a standard. In this case, the level
20 of proof required is proof by a preponderance of the
21 evidence. In proving a claim, the party asserting the
22 claim must prove each and every element of that claim
23 by a preponderance of the evidence. Preponderance of
24 the evidence, in essence, means the greater weight of
25 the evidence. To put it another way, the evidence must

1 leave you satisfied that the evidence shows that what
2 the party is claiming is more probably true than not
3 true.
4 Now, do not confuse this with the burden of
5 proof in a criminal case of proving something beyond a
6 reasonable doubt. Proof beyond a reasonable doubt does
7 not apply in civil cases. It is a special standard
8 that applies in the criminal law, and you should put
9 that standard of proof out of your thoughts.
10 You might recall at the beginning of the case I
11 gave you the example of an old-fashioned scale. You
12 essentially put the evidence of what each party is
13 claiming on the scale, and the party who is making the
14 claim has the burden of making that scale tip at least
15 somewhat in favor of what they are claiming.
16 All right. Now, this case involves a dispute
17 concerning uninsured motorist coverage under an
18 automobile insurance policy. Now, it's important to
19 keep in mind that, in Rhode Island, uninsured motorist
20 coverage is not personal protection. It follows a
21 specific vehicle and not the individual who is insured.
22 In other words, if an insured owns multiple vehicles,
23 just because he properly insures one vehicle with
24 uninsured motorist coverage does not mean that all
25 other vehicles he may own are also covered.

1 Now, essentially, what we're dealing with here
2 is an insurance contract. So I'm going to give you
3 some instructions on the law of contracts that will
4 help guide you. Now, a contract is a legally
5 enforceable promise or agreement that is made between
6 two or more parties. It's a promise or agreement that
7 creates an obligation to do or to not do certain
8 things. It is a consensual endeavor, that is, it's
9 based on mutual, informed and voluntary consent between
10 the contracting parties. And in order to form a valid
11 contract, each party to the contract must have an
12 intent to promise that which he or she or it has
13 promised. Each party must also intend to be bound by
14 that promise or agreement.
15 In every contract in Rhode Island, both parties
16 are obliged to act in good faith and to deal fairly
17 with the other side. Here the parties agree that until
18 October 12, 2005, Amica provided Mr. Vitone uninsured
19 motorist coverage for his 1998 Chevrolet Corvette.
20 Amica contends that on October 12, 2005, Mr. Vitone
21 modified his insurance contract and cancelled the
22 uninsured motorist coverage for the 1998 Corvette and,
23 moreover, that it never agreed to extend Mr. Vitone
24 uninsured motorist coverage beyond the policy term.
25 Mr. Vitone claims that he never requested or

1 agreed to deletion of his uninsured motorist coverage
2 on his 1998 Chevrolet Corvette and that Amica removed
3 this coverage without his permission or consent. It is
4 for you, the jury, to determine whether Mr. Vitone did,
5 in fact, request or agree to deletion of his uninsured
6 motorist coverage and/or whether Amica agreed to extend
7 such coverage.
8 Now, a contract can be changed if both parties
9 agree to the changes. Just as the original contract
10 becomes binding when the parties reach an agreement,
11 any changes become binding and a part of the contract
12 when the parties agree to them. To establish there was
13 modification or a modification of the contract, it must
14 be proven that there was an offer and an acceptance of
15 the contract changes; that there was mutual assent to
16 the contract changes; that there was consideration for
17 the contract changes; and that the parties intended to
18 be bound by the modification.
19 In situations of modifications to contracts,
20 consideration means that some benefit, whether in money
21 or otherwise, was given to the party that allowed the
22 change which benefited the other. The party seeking to
23 prove the existence of an agreement to change the terms
24 of a contract must do so by a preponderance of the
25 evidence.

1 An agreement to modify or change a contract may
2 be made by oral agreement even when the original
3 contract was a written one. If you find that the
4 parties act in a way consistent with the changes
5 claimed, as opposed to the letter of the contract, this
6 would support a claim that the contract was changed or
7 modified by the parties. If one party continues to
8 perform according to the original terms, this may
9 support a claim that no meeting of the minds has
10 occurred and that the contract has not been modified.
11 Now, consent is a necessary element of modifying
12 an existing insurance policy. Both the insurer and the
13 policyholder must agree to the change, and the insurer
14 must notify the policyholder of the change. Where the
15 modification includes a reduction or a cancellation of
16 coverage, the insurer can notify the insured by mailing
17 written notice to the insured at the address shown in
18 policy. That notice should clearly and unequivocally
19 state the specific reason or reasons that the insurer
20 relied upon in taking its action. Once a policy is
21 issued, the insurer has no legal right to unilaterally
22 change the terms of the policy, meaning an insurer has
23 no right to alter a policy without the agreement of the
24 policyholder.
25 In determining whether consent was given, you

1 may use the surrounding circumstances to aid you. In
2 other words, consent may be inferred based on other
3 evidence.
4 For example, you may rely on the parties'
5 dealings with each other, the documents that have been
6 received into evidence, and other evidence such as how
7 the parties have dealt with each other in the past.
8 Whether consent was given must be considered in light
9 of all of the facts and circumstances surrounding the
10 parties' dealings.
11 Written notification of an agreed-to change to
12 an insurance policy provided by the insurer to the
13 policyholder is effected only where that written
14 notification evidences the prior agreement between the
15 parties to modify the policy terms.
16 In other words, where the parties have
17 previously agreed to change the terms of the policy and
18 the insurer provides the policyholder with written
19 notification of that prior agreement, the parties have
20 effectively modified the terms of the insurance policy.
21 It matters not whether the policyholder reads or
22 reviews the written notification. On the other hand,
23 written notification of a change that the policyholder
24 has not agreed to is not effective just because it's
25 mailed to the policyholder.

1 Furthermore, the fact that a policyholder
2 remains silent and does not contact his insurance
3 company after having received a written notice of an
4 unauthorized change to his policy does not necessarily
5 mean he has consented to the change. You are free to
6 draw whatever inferences you wish from this evidence or
7 none at all.
8 So now that you know what it is that the parties
9 must each prove to prevail in this case and the
10 standard of proof to be applied, the next question is
11 how do you go about determining whether a party has met
12 that burden.
13 Obviously, you must make your determinations
14 solely from the evidence that is properly before you
15 and from any reasonable and legitimate inferences to be
16 drawn from that evidence.
17 The evidence that is properly before you
18 includes the testimony of witnesses, the exhibits that
19 I have admitted into evidence and any stipulations
20 between the attorneys in which they have agreed to what
21 a particular fact is.
22 Now, from that evidence you may draw whatever
23 conclusions are reasonable under the circumstances.
24 The evidence that is properly before you does not
25 include the following: Comments or statements by

1 attorneys. Remember that attorneys are not witnesses.
2 What they have said in their opening statements and
3 just now in their closing arguments and at other times
4 during the course of the trial is intended to help you
5 interpret the evidence but it is not evidence.
6 So if the facts as you remember them differ from
7 the way the lawyers have stated them, then it is your
8 memory that controls.
9 Second, answers given by witnesses which I
10 ordered stricken or instructed you to disregard is not
11 evidence.
12 Third, any documents, photographs, flip chart
13 drawings, other items that have been referred to or
14 used or drawn but have not been admitted into evidence
15 are not evidence. And there may have been a few of
16 those during the course of this trial. And to the
17 extent that there have been and they haven't been
18 introduced into evidence, then you may not consider
19 them except to the extent for the purposes that they
20 may have been read or shown to you during the course of
21 the trial.
22 Anything that you may have heard or seen outside
23 of this courtroom regarding the events in question or
24 the participants in this case is not evidence. So none
25 of these things may be considered by you as evidence.

1 Now, as to the testimony of witnesses, your
2 principal task as jurors is to determine the
3 credibility of the witnesses and the weight you will
4 give to the testimony of each. Whether a party has
5 sustained its burden of proof does not depend on the
6 number of witnesses it has called or the number
7 exhibits it has offered but instead upon the nature and
8 quality of the evidence presented. You do not have to
9 accept the testimony of a witness if you find the
10 witness is not credible. You must decide which
11 witnesses to believe and which facts are true. To do
12 this, you must look at all the evidence, drawing upon
13 your common sense and your personal experience.
14 In making that determination, there are several
15 factors that you may consider. One is the opportunity
16 or lack of opportunity that the witness had to acquire
17 the knowledge of the facts about which the witness has
18 testified. In other words, was the witness in a
19 position to have accurately perceived the facts that
20 the witness has related to you.
21 Second, the reliability or unreliability of the
22 witness's memory. In other words, did the witness have
23 a clear recollection of what happened or was the
24 witness's memory uncertain or unclear.
25 Third, the witness's appearance on the stand.

1 Did the witness appear to be a person who was telling
2 the complete and unadulterated truth, or did it appear
3 that the witness was slanting things one way or
4 another, either consciously or unconsciously.
5 Fourth, the probability or improbability of the
6 witness's testimony. Did what the witness have to say
7 sound reasonable or plausible, or did it appear to be
8 highly unlikely or improbable.
9 Fifth, whether the witness had anything to gain
10 or lose from the outcome of this case. In other words,
11 was the witness totally impartial or did the witness
12 have some stake in the outcome or some reason to favor
13 one side or the another.
14 So in assessing credibility, you may also
15 consider whether on some prior occasion the witness
16 made statements that contradict the testimony that he
17 or she gave during the course of this trial. If you
18 conclude that the witness did at some time make
19 statements that were materially different from what the
20 witness said during the trial, you may take that into
21 account in assessing that witness's credibility or
22 determining the weight that you will give to that
23 testimony.
24 Now, in evaluating the evidence, remember you're
25 not required to believe something to be a fact just

1 because a witness has stated it to be a fact and no one
2 has contradicted what that witness has said.
3 If in light of all of the evidence you believe
4 the witness is mistaken or has testified falsely or
5 that he or she is proposing something that is
6 inherently impossible or unworthy of belief, then you
7 may disregard that witness's testimony, even in the
8 absence of any contradictory evidence.
9 You should also bear in mind that it's not the
10 number of witnesses testifying on either side of an
11 issue that determines where the weight of evidence
12 lies. Weight of evidence is also not determined by how
13 many witnesses testified -- well, that doesn't apply.
14 Never mind. The bottom line is it is the quality of
15 each witness's testimony that counts.
16 So just because one witness testifies on one
17 side of an issue and one witness testifies on the other
18 side doesn't necessarily mean that the evidence is
19 evenly balanced. If you feel that one of the witnesses
20 is more credible than the other for whatever reason,
21 then you may find that the weight of the evidence lies
22 on the side of that witness. Similarly, just because
23 there may be more witnesses testifying on one side of
24 an issue than on another does not mean that the weight
25 of evidence lies in favor of the greater number of

1 witnesses. Once again, it's the credibility or the
2 quality of the testimony that determines where the
3 weight of the evidence lies.
4 Now, in addition to assessing the credibility of
5 the witnesses and the weight to be given their
6 testimony, you should evaluate the exhibits, which you
7 will have with you in the jury room. Examine them and
8 consider them carefully.
9 Bear in mind that merely because an exhibit has
10 been admitted into evidence does not mean that you're
11 required to accept it at face value. Like the
12 testimony of a witness, the significance of an exhibit
13 or the weight you attach to it will depend on your
14 evaluation of that exhibit in light of all the facts
15 and circumstances of the case.
16 Now, as I mentioned at the beginning of the
17 trial, evidence may be either direct or circumstantial.
18 As I told you, direct evidence is the direct proof of a
19 fact from the testimony such as an eyewitness, and
20 circumstantial evidence is the proof of one or more
21 facts from which you can infer the existence of another
22 fact.
23 You should consider both kinds of evidence and,
24 as a general rule, the law makes no distinction between
25 the weight to be given to either direct evidence or

1 circumstantial evidence. Again, it is for you to
2 decide how much weight to give to any evidence.
3 So direct evidence may prove a fact by itself.
4 It does not require other evidence. It does not
5 require you to draw any inferences. A witness's
6 testimony is direct evidence when the witness testifies
7 as to what he or she saw or heard or felt.
8 In other words, when a witness testifies about
9 what is known from his or her own knowledge, by virtue
10 of his or her own senses or what he or she sees,
11 touches, hears, that is what direct evidence is. The
12 only question is whether you believe the witness's
13 testimony. A document or physical object may also be
14 evidence when it can prove a material fact by itself
15 without any other evidence or inference. You may, of
16 course, have to determine the genuineness of the
17 document or the object.
18 Circumstantial evidence is different from direct
19 evidence. It cannot prove a material fact by itself.
20 Rather, it is evidence that tends to prove a material
21 fact when considered together with other evidence or by
22 drawing certain inferences.
23 Now, the strength of inferences arising from
24 circumstantial evidence is for you to decide, and it's
25 for you to decide how much weight to give any evidence

1 that has been presented. Inferences from
2 circumstantial evidence may be drawn on the basis of
3 reason, experience and common sense. Inferences may
4 not, however, be drawn from guesswork or speculation or
5 conjecture. The law does not require a party to
6 introduce direct evidence. A party may prove a fact
7 entirely by circumstantial evidence or by a combination
8 of direct and circumstantial evidence.
9 Circumstantial evidence is no less valuable than
10 direct evidence. So as I've said, you're to consider
11 all the evidence in this case, both direct and
12 circumstantial, and determine what the facts of the
13 case are in arriving at your verdict.
14 Now, as I have said many times, it's for you to
15 decide what the facts of this case are, and you should
16 not interpret anything I have said or done during the
17 course of this trial as to indicate any opinion on my
18 part as to what the facts of the case may be. I have
19 not intended to express any such opinion to you and you
20 should not be concerned about what my opinion is about
21 the facts of this case. That is entirely up to you to
22 decide the facts.
23 Also, during the course of the trial, you've
24 heard some occasions when the attorneys have objected
25 to a question that has been asked of a witness. You

1 should not penalize an attorney or, more importantly,
2 his client for objecting. It's the attorney's right
3 and duty to protect the client's interest by objecting
4 to a question that they believe is not in conformance
5 with or satisfies the Rules of Evidence. So if I
6 sustained the objection, then it's important that you
7 not speculate as to what the answer to the objected to
8 question may have been. By sustaining the objection,
9 I've held that the evidence should not be considered.
10 Now, no bias in favor of any person or cause or
11 corporation, nor prejudice against any person or cause
12 or corporation, nor sympathy of any kind whatsoever
13 should be permitted to influence you during the course
14 of your deliberations. All that any party here is
15 entitled to, or for that matter expects from you, is a
16 verdict that is based on your scrupulous and
17 conscientious examination of the evidence that is
18 before you and the application of the law as I have
19 just explained it to you.
20 Now, in order to return a verdict in this case ,
21 all ten of you must agree -- eight I should say, eight
22 of you must agree. If there were ten, we'd have a
23 problem -- must agree as to what the verdict will be.
24 So there are two things that I want you to keep in mind
25 during the course of your deliberations.

1 On one hand, you should listen carefully as to
2 what your fellow jurors have to say and be open-minded
3 enough to change your opinion if you become convinced
4 that your opinion was incorrect.
5 On the other hand, you must recognize that each
6 of you have an individual responsibility to vote for
7 the verdict that you believe is the correct one based
8 on the evidence that has been presented and the law as
9 I explained it.
10 Accordingly, you should have the courage to
11 stick to you opinion even though some or all of the
12 other jurors disagree as long as you have listened to
13 their views with an open mind.
14 Now, when you begin your deliberations, I want
15 you to elect one member of your group of the jury to be
16 your foreperson. The foreperson will preside over your
17 deliberations and will speak for you here in court.
18 You will then discuss the case with your fellow jurors
19 and reach an agreement, if you can do so. Your verdict
20 must be unanimous, as I've stated. Each of you must
21 decide the case for yourself, but you should do so only
22 after you've considered all the evidence, discussed it
23 fully with your fellow jurors and listened to the
24 views of your fellow jurors. Do not be afraid to
25 change your opinion if during the course of the

1 deliberations the discussion persuades you that you
2 should do so. Do not come to a decision simply because
3 other jurors think it is right.
4 Now, if for any reason it becomes necessary
5 during the course of your deliberations to communicate
6 with me, you may send a note through the marshall
7 signed by the foreperson. No member of the jury should
8 ever attempt to contact me except by a signed writing,
9 and I will communicate with any member of the jury on
10 anything concerning this case only in writing or here
11 in open court.
12 Now, this has been a short trial, and I want you
13 to keep in mind that if any reference by counsel to any
14 matters of evidence does not coincide with your
15 recollection, it's your recollection that controls
16 during deliberations. Now, occasionally, jurors will
17 want to rehear testimony, but in a very short trial
18 like this your collective recollections should be
19 sufficient for you to deliberate effectively. If for
20 some reason you do want to rehear testimony, just
21 understand that can be a cumbersome process and you
22 need to consider your request very carefully.
23 Now, a verdict form has been prepared for you.
24 And that verdict includes a single question, which is:
25 Did uninsured motorist coverage exist for Vito Vitone's

1 1998 Chevrolet Corvette at the time of the July 3, 2006
2 accident?
3 When you reach a verdict, the verdict form
4 should be filled out and signed by the foreperson,
5 dated, and then you should advise the marshal that
6 you're ready to return to the courtroom.
7 And as I said at the very beginning, a copy of
8 my instructions will be sent into the jury room in a
9 little bit to help guide you during your deliberations
10 but keep in mind my jury instructions are as I have
11 given them to you from the bench and what is sent into
12 the jury room is simply a guide for you.
13 So ladies and gentlemen, that completes my
14 instructions to you. We'll now swear the marshal.
15 (Marshal sworn.)
16 MR. OLIVEIRA: Your Honor, before the jury
17 retires, I need to be heard.
18 THE COURT: Come up.
19 (Side-bar conference on the record.)
20 MR. OLIVEIRA: I understand that when the Court
21 ruled on summary judgment motions, it preserved the
22 limited issue for trial. I've attempted to preserve
23 Ms. Wagenmaker's position. However, your Honor, the
24 Court made two statements during its charge that we do
25 take issue with. One was the Court said that both