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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK: TRIAL TERM PART 47

JASON KOWALSKY,

Plaintiff,

-against-

INDEX NO.
41227/2009

SUFFOLK COUNTY, SUFFOLK COUNTY
DEPARTMENT OF PARKS, RECREATION &
CONSERVATION and RAYMOND M. RANCOURT,

JURY TRIAL

Defendants.

August 15, 2014
Riverhead, New York

BEFORE:

HON. JERRY GARGUILO,
SUPREME COURT JUSTICE

And a Jury

APPEARANCES:

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BY: ANNA M. LOPINTO
OFFICIAL COURT REPORTER

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(Alternate juror number one entered the courtroom)

MR. RICIGLIANO: Good morning, Judge.

THE CLERK: Come to order, please. State Supreme Court Part 47 held in and for the County of Suffolk is now in session. The Honorable Jerry Garguilo, justice, presiding. Good morning, Your Honor.

THE COURT: Good morning, everybody.

THE CLERK: All parties are present, as well as alternate juror, Mr. Silvestri.

THE COURT: This morning I'm going to release the alternate with our thanks. I've explained to Mr. Silvestri in the hallway that given the fact that the panel adjourned last night, you never know, God forbid, something could happen. But, Mr. Silvestri, on behalf of the Unified Court System, myself and counsel, we appreciate your being here. Those words aren't enough, because the trial was long, it was complicated, and I could see everything from up here. You paid very

1 careful attention, and we do appreciate it.
2 I'm sure both attorneys feel the same way.

3 You're free to discuss the case now
4 with anyone in the world except the six
5 people that are deliberating. What we're
6 going to do is take your phone number.
7 We're going to call you with the verdict.
8 I'm going to invite you into chambers.
9 I'll give you a more personal thank you,

10 and you and I will talk about the case,
11 okay? Mr. Silvestri, once again, thank
12 you.

13 MR. RICIGLIANO: Thank you, Mr.
14 Silvestri.

15 MR. JEFFREYS: Thank you, sir.

16 (Alternate juror exited the
17 courtroom).

18 (Court session in recess during
19 deliberations).

20 (Court session resumed)

21 THE CLERK: Remain seated and come
22 to order. Part 47 is now back in session.
23 Case on trial continues. All parties are
24 present, absent the jury.

25 The Court has received a note marked

1 as Court Exhibit Number 8.

2 THE COURT: Has the note been
3 circulated?

4 MR. RICIGLIANO: Yes.

5 MR. JEFFREYS: Yes.

6 THE COURT: The note reads:, "Make
7 clear as to meaning of question six. Both
8 questions."

9 Can I have the verdict sheet,
10 please? I suspect -- Even though I went
11 off script during the instructions, I
12 suspect they're trying to avoid the most
13 common mistake juries make.

14 MR. JEFFREYS: Yes.

15 THE COURT: That's with the amount
16 and the years. Oftentimes they divide the
17 amount.

18 MR. JEFFREYS: That's what I think
19 is happening.

20 THE COURT: So I'm going to call
21 them in and articulate it, and I'll call
22 you at sidebar after I do it.

23 MR. JEFFREYS: I was thinking,
24 Judge, not knowing what it is, maybe reread
25 the definition of conscious pain and

1 suffering. And somewhere in the definition
2 it did say -- I don't remember which charge
3 it was, but it did say, number of years,
4 don't divide.

5 THE COURT: It doesn't specifically
6 say don't divide. I wish it did.

7 MR. JEFFREYS: One of the ones you
8 read actually said that. That's the first
9 time I'd seen it.

10 THE COURT: I said it.

11 MR. RICIGLIANO: I remember you
12 saying it, Judge, and they obviously
13 listened to you. So I think to emphasize
14 that again I think is important.

15 THE COURT: Let me find it again.

16 MR. JEFFREYS: I also highlighted
17 it, because when you did the charge on
18 number six, you didn't talk about the
19 number of years over which it's awarded,
20 but you did on all the other ones. Maybe
21 they listened carefully and they said he
22 didn't tell us the number of years over
23 which this is awarded on this one.

24 THE COURT: I got it. It's charge
25 2:281. You can bring them in. Thank you.

1 MR. JEFFREYS: That's the life
2 expectancy charge. That's not it, Judge.
3 It has to be the 280-- 280, which is
4 conscious pain and suffering, and 280.1,
5 loss of enjoyment of life. That's the only
6 three things in that question.

7 THE COURT: Yes, I see it. 280.1 is
8 to date.

9 MR. RICIGLIANO: You charged them
10 with that already.

11 THE COURT: Yes.

12 THE COURT OFFICER: Jury entering.

13 (The jury entered the courtroom)

14 THE CLERK: All deliberating jurors
15 are present. Counsel waiving roll call?

16 MR. RICIGLIANO: Yes.

17 MR. JEFFREYS: Yes.

18 THE CLERK: Thank you. Please be
19 seated.

20 THE COURT: Good morning again.
21 Welcome back. We have a note from the
22 jury, which I've circulated among the
23 attorneys. "Make clear to us the meaning
24 of question six, both questions."

25 Question six on the sheet reads as

1 follows: State separately the amount
2 awarded, if any, in favor of the plaintiff,
3 Jason Kowalsky, for the following item of
4 damage from the date of your verdict into
5 the future. And the first line reads,
6 conscious pain and suffering, including
7 loss of enjoyment of life by plaintiff. A
8 blank line with a dollar sign.

9 And the second aspect of the
10 question says: Number of years for which
11 this amount is awarded.

12 Now, I read you during the closing
13 instructions the following, and I'm going
14 to read it again, and then I'll make a
15 comment.

16 With respect to any of the
17 plaintiff's injuries or disabilities, the
18 plaintiff is entitled to recover for future
19 pain, suffering and disability, and the
20 loss of his ability to enjoy life. In this
21 regard, you should take into consideration
22 the period of time that the injuries or
23 disabilities are expected to continue. If
24 you find that the injuries or disabilities
25 are permanent, you should take into

1 consideration the period of time that the
2 plaintiff can be expected to live.

3 In accordance with statistical life
4 expectancy tables, Mr. Kowalsky has a life
5 expectancy of 79 years. Such a table,
6 however, provides nothing more than a
7 statistical average. It neither guarantees
8 that Mr. Kowalsky will live an additional
9 41 years or means that he will not live for
10 a longer period. The life expectancy
11 figure I have given you is not binding upon
12 you, but may be considered by you, together
13 with your own experience and the evidence
14 you have heard concerning the condition of
15 Mr. Kowalsky's health, his habits,
16 employment, and activities in declaring
17 what Mr. Kowalsky's present life expectancy
18 is.

19 Now, when I gave the instruction, I
20 pointed out a common-- I'm not even going
21 to call it a mistake -- some common
22 confusion that we often see.

23 Line six-- excuse me -- The first
24 part of question six, conscious pain and
25 suffering, including loss of enjoyment of

1 life by plaintiff, calls for a gross
2 number, all right? A gross number into the
3 future. The second line, the number of
4 years for which this amount is awarded. I
5 gave you strictly a statistical average
6 that a person of Mr. Kowalsky's age,
7 according to statistics, will live to be
8 79. All right? Which is an additional 41
9 years.

10 You can adopt that as a life
11 expectancy if, in fact, as the charge
12 suggests, you find it's permanent, all
13 right?

14 If that doesn't answer your
15 question, tell me. Again, because we're
16 trying to read minds here, and often times,
17 what happens is, the jury puts a number
18 after the dollar sign, and the amount of
19 years it's meant to provide compensation.
20 But using logic, what they actually do is
21 when they put the number in after the
22 dollar sign, the amount, they divide it by
23 the number of years. If it doesn't answer
24 your question, please tell me.

25 Is everybody satisfied? You got a

1 look on your face.

2 JUROR: So whatever the number is
3 and the amount of years that's put below
4 it, one number is divided by the other?

5 THE COURT: No, no. See that's the
6 mistake people make.

7 JUROR: It's confusing.

8 THE COURT: Let's assume it was ten
9 dollars, and you expected a ten-year life

10 expectancy. I'm just throwing something
11 completely preposterous out there as a
12 hypothetical. If I used your logic, the
13 amount after the dollar sign would be one
14 dollar, because you would have divided ten
15 by ten years.

16 JUROR: Yes, I know.

17 THE COURT: It's a gross figure,
18 it's a gross figure. You follow me?

19 JUROR: Okay.

20 THE COURT: Meaning everything. The
21 second line is just-- is just what you
22 believe the amount of years that a party, a
23 person, would suffer conscious pain and
24 suffering, including the loss of enjoyment
25 of life. We only give you the statistical

1 average in the charge for purposes of
2 guidance. You're not bound by it. All
3 right? And the charge reads, again-- You
4 want to hear the charge again, the
5 instruction again? I'll read it to you
6 again.

7 JUROR: Okay. But the dollar
8 amount, whatever is put in there, that's
9 what he gets one time?

10 THE COURT: That's not-- That's
11 not-- That's not for you to consider, all
12 right? The dollar amount you put in there
13 is meant to be fair, adequate and just
14 compensation for future pain and suffering
15 for the balance of a person's life.

16 JUROR: And then somebody else would
17 decide how he gets it?

18 THE COURT: Again, that's not--
19 Gentlemen, do you agree with me?

20 MR. RICIGLIANO: Yes.

21 MR. JEFFREYS: Yes.

22 THE COURT: That's not your concern,
23 all right? Your concern is, the charge
24 calls, if you find the injury, there's a
25 permanency, because that's what's in the

1 charge, then you consider the amount of
2 years you expect the plaintiff to, in fact,
3 suffer conscious pain and suffering and
4 loss of enjoyment of life.

5 JUROR: I think I understand now.

6 THE COURT: Okay. I hope-- If you
7 don't--

8 JUROR: I think I do. The reason we
9 asked is, because it appears on a number of
10 pages, the same two questions.

11 THE COURT: I know, yes.

12 JUROR: And if you're confused from
13 number one, you're going to be confused all
14 the way through.

15 THE COURT: I'm glad you brought us
16 together again. If you want the exhibits,
17 they're over here. Do you want them?

18 JURY FOREPERSON: Not yet.

19 THE COURT: If you do, just let us
20 know, and they'll be brought in.

21 JURY FOREPERSON: Thank you, Judge.

22 (The jury exited the courtroom to
23 continue deliberations)

24 THE COURT: Any exceptions?

25 MR. JEFFREYS: No.

1 MR. RICIGLIANO: No.

2 (Whereupon, court session was in
3 recess during deliberations)

4 THE CLERK: Part 47 is back in
5 session. Case on trial continues. All
6 parties are present, absent the jury.

7 Your Honor, the Court is in receipt
8 of a jury note, marked as Court Exhibit 10.

9 THE COURT: Court Exhibit 10, dated
10 today, August 15th, 2014, 12:55 p.m.: "We,
11 the jury, have reached a verdict." Signed
12 by the foreperson.

13 THE COURT OFFICER: Jury entering.

14 (The jury re-entered the courtroom)

15 THE CLERK: All deliberating jurors
16 are present. Counsel waiving roll call?

17 MR. RICIGLIANO: Yes.

18 MR. JEFFREYS: Yes.

19 THE CLERK: Thank you. Please be
20 seated.

21 Will the foreperson please rise? In
22 the case of Jason Kowalsky, plaintiff,
23 against the County of Suffolk, the Suffolk
24 County Department of Parks, Recreation and
25 Conservation and Raymond M. Rancourt,

1 defendants, you the juror say you have
2 reached a verdict.

3 JURY FOREPERSON: Yes.

4 THE CLERK: As to question number
5 one: Was the accident of June 12th, 2009 a
6 substantial factor in causing plaintiff's
7 injury? Jury has answered--

8 JURY FOREPERSON: Yes.

9 THE CLERK: Juror number one, the
10 jury has answered yes. What is your
11 individual answer?

12 JUROR NUMBER ONE: Yes.

13 THE CLERK: Juror number two, what
14 is your individual answer?

15 JUROR NUMBER TWO: Yes.

16 THE CLERK: Juror number three?

17 JUROR NUMBER THREE: Yes.

18 THE CLERK: Juror number four?

19 JUROR NUMBER FOUR: Yes.

20 THE CLERK: Juror number five?

21 JUROR NUMBER FIVE: Yes.

22 THE CLERK: Juror number six?

23 JUROR NUMBER SIX: Yes.

24 THE CLERK: Proceeding to question
25 two: Did plaintiff sustain a permanent

1 consequential limitation of use of a body
2 organ or member as a result of the accident
3 on June 12th, 2009? The jury has
4 answered --

5 JURY FOREPERSON: No.

6 THE CLERK: Juror number one, the
7 jury has answered no. What is your
8 individual answer?

9 JUROR NUMBER ONE: No.

10 THE CLERK: Juror number two?

11 JUROR NUMBER TWO: No.

12 THE CLERK: Juror number three?

13 JUROR NUMBER THREE: No.

14 THE CLERK: Juror number four?

15 JUROR NUMBER FOUR: No.

16 THE CLERK: Juror number five?

17 JUROR NUMBER FIVE: No.

18 THE CLERK: Juror number six?

19 JUROR NUMBER SIX: No.

20 THE CLERK: Proceeding to question
21 three: Did plaintiff sustain a significant
22 limitation of use of a body function or
23 system as a result of the accident on June
24 12, 2009? The jury has answered --

25 JURY FOREPERSON: Yes.

1 THE CLERK: Juror number one, the
2 jury has answered yes. What is your
3 individual answer?

4 JUROR NUMBER ONE: Yes.

5 THE CLERK: Juror number two?

6 JUROR NUMBER TWO: Yes.

7 THE CLERK: Juror number three?

8 JUROR NUMBER THREE: Yes.

9 THE CLERK: Juror number four?

10 JUROR NUMBER FOUR: Yes.

11 THE CLERK: Juror number five?

12 JUROR NUMBER FIVE: Yes.

13 THE CLERK: Juror number six?

14 JUROR NUMBER SIX: Yes.

15 THE CLERK: Proceeding to question
16 five: State separately the amount awarded,
17 if any, in favor of the plaintiff, Jason
18 Kowalsky, for the following item of damage
19 from the time of the occurrence up to the
20 date of your verdict: For conscious pain
21 and suffering, including loss of enjoyment
22 of life by plaintiff, the jury has
23 entered --

24 JURY FOREPERSON: 200,000.

25 THE CLERK: Juror number one, the

1 jury has entered \$200,000 for conscious
2 pain and suffering, including the loss of
3 enjoyment of life, by plaintiff. Do you
4 agree or disagree?

5 JUROR NUMBER ONE: Agree.

6 THE CLERK: Juror number two, do you
7 agree or disagree?

8 JUROR NUMBER TWO: Agree.

9 THE CLERK: Juror number three?

10 JUROR NUMBER THREE: Agree.

11 THE CLERK: Juror number four?

12 JUROR NUMBER FOUR: Agree.

13 THE CLERK: Juror number five?

14 JUROR NUMBER FIVE: Agree.

15 THE CLERK: Juror number six?

16 JUROR NUMBER SIX: Agree.

17 THE CLERK: Proceeding to question
18 six: State separately the amount awarded,
19 if any, in favor of the plaintiff, Jason
20 Kowalsky, for the following item of damage
21 from the date of your verdict into the
22 future: For conscious pain and suffering,
23 including loss of enjoyment of life, by
24 plaintiff, the jury has entered an amount
25 of--

1 JUROR FOREPERSON: \$850,000.

2 THE CLERK: And the number of years
3 for which this amount is awarded?

4 JUROR FOREPERSON: 41.

5 THE CLERK: Juror number one, the
6 jury has entered \$850,000 for conscious
7 pain and suffering, including loss of
8 enjoyment of life, by the plaintiff, to
9 cover a period 41 years. Do you agree or

10 disagree?

11 JUROR NUMBER ONE: Agree.

12 THE CLERK: Juror number two?

13 JUROR NUMBER TWO: Agree.

14 THE CLERK: Juror number three?

15 JUROR NUMBER THREE: Agree.

16 THE CLERK: Juror number four?

17 JUROR NUMBER FOUR: Agree.

18 THE CLERK: Juror number five?

19 JUROR NUMBER FIVE: Agree.

20 THE CLERK: Juror number six?

21 JUROR NUMBER SIX: Agree.

22 THE CLERK: Proceeding to question
23 seven: State separately the amount to be
24 awarded, if any, to plaintiff Jason
25 Kowalsky for the following items of damages

1 from the time of the occurrence, June 12th,
2 2009, through the date of your verdict.

3 JURY FOREPERSON: \$375,000.

4 THE CLERK: Juror number one, for
5 Jason Kowalsky's loss of earnings from June
6 12, 2009, through the date of your verdict,
7 the jury that entered \$375,000. Do you
8 agree or disagree?

9 JUROR NUMBER ONE: Agree.

10 THE CLERK: Juror number two?

11 JUROR NUMBER TWO: Agree.

12 THE CLERK: Juror number three?

13 JUROR NUMBER THREE: Agree.

14 THE CLERK: Juror number four?

15 JUROR NUMBER FOUR: Agree.

16 THE CLERK: Juror number five?

17 JUROR NUMBER FIVE: Agree.

18 THE CLERK: Juror number six?

19 JUROR NUMBER SIX: Agree.

20 THE CLERK: Proceeding to question
21 eight: State separately the amount to be
22 awarded, if any, to plaintiff Jason
23 Kowalsky for the following items of future
24 damages from date of your verdict to be
25 incurred in the future.

1 JURY FOREPERSON: \$2,250,000.

2 THE CLERK: The number of years for
3 which this amount is awarded?

4 JURY FOREPERSON: 24.

5 THE CLERK: Juror number one, for
6 Jason Kowalsky's loss of earnings from the
7 date of your verdict to be incurred in the
8 future, the jury has entered \$2,250,000 to
9 cover a period of 24 years. Do you agree

10 or disagree?

11 JUROR NUMBER ONE: Agree.

12 THE CLERK: Juror number two?

13 JUROR NUMBER TWO: Agree.

14 THE CLERK: Juror number three?

15 JUROR NUMBER THREE: Agree.

16 THE CLERK: Juror number four?

17 JUROR NUMBER FOUR: Agree.

18 THE CLERK: Juror number five?

19 JUROR NUMBER FIVE: Agree.

20 THE CLERK: Juror number six?

21 JUROR NUMBER SIX: Agree.

22 THE CLERK: Proceeding to question
23 nine: State separately the amount to be
24 awarded, if any, to plaintiff Jason
25 Kowalsky for the following items of damages

1 from the date of your verdict to be
2 incurred in the future.

3 JURY FOREPERSON: \$250,000.

4 THE CLERK: The number of years for
5 which this amount is awarded?

6 JURY FOREPERSON: 41.

7 THE CLERK: Juror number one, for
8 Jason Kowalsky's medical and health
9 insurance benefits from the date of your

10 verdict to be incurred in the future, the
11 jury has entered \$250,000 to cover a period
12 of 41 years. Do you agree or disagree?

13 JUROR NUMBER ONE: Agree.

14 THE CLERK: Juror number two?

15 JUROR NUMBER TWO: Agree.

16 THE CLERK: Juror number three?

17 JUROR NUMBER THREE: Agree.

18 THE CLERK: Juror number four?

19 JUROR NUMBER FOUR: Agree.

20 THE CLERK: Juror number five?

21 JUROR NUMBER FIVE: Agree.

22 THE CLERK: Juror number six?

23 JUROR NUMBER SIX: Agree.

24 THE CLERK: Question 9-B: State
25 separately the amount to be awarded, if

1 any, to plaintiff Jason Kowalsky for the
2 following items of damages from the date of
3 your verdict to be incurred in the future:
4 For the cost of future ACL reconstruction,
5 the jury has entered --

6 JURY FOREPERSON: None.

7 THE CLERK: For the cost of future
8 total knee replacement, the jury has
9 entered --

10 JURY FOREPERSON: None.

11 THE CLERK: For the cost of future
12 lumbar fusion, the jury has entered--

13 JURY FOREPERSON: None.

14 THE CLERK: For the cost of future
15 medications, the jury has entered --

16 JURY FOREPERSON: None.

17 THE CLERK: Juror number one, the
18 jury has entered no amount for cost of
19 future ACL reconstruction, cost of future
20 total knee replacement, cost of future
21 lumbar fusion, and cost of future
22 medications. Do you agree or disagree?

23 JUROR NUMBER ONE: Agree.

24 THE CLERK: Juror number two, do you
25 agree or disagree?

1 JUROR NUMBER TWO: Agree.
2 THE CLERK: Juror number three?
3 JUROR NUMBER THREE: Agree.
4 THE CLERK: Juror number four?
5 JUROR NUMBER FOUR: Agree.
6 THE CLERK: Juror number five?
7 JUROR NUMBER FIVE: Agree.
8 THE CLERK: Juror number six?
9 JUROR NUMBER SIX: Agree.

10 THE CLERK: Proceeding to question
11 ten: State separately the amount to be
12 awarded to plaintiff Jason Kowalsky, if
13 any, for the following items of damages
14 from the time of the occurrence, June 12th,
15 2009, to the date of your verdict.
16 JURY FOREPERSON: \$17,000.
17 THE CLERK: Juror number one, for
18 Jason Kowalsky's savings plan benefits from
19 June 12th, 2009 through the date of your
20 verdict, the jury has entered \$17,000. Do
21 you agree or disagree?
22 JUROR NUMBER ONE: Agree.
23 THE CLERK: Juror number two?
24 JUROR NUMBER TWO: Agree.
25 THE CLERK: Juror number three?

1 JUROR NUMBER THREE: Agree.

2 THE CLERK: Juror number four?

3 JUROR NUMBER FOUR: Agree.

4 THE CLERK: Juror number five?

5 JUROR NUMBER FIVE: Agree.

6 THE CLERK: Juror number six?

7 JUROR NUMBER SIX: Agree.

8 THE CLERK: Proceeding to question

9 number 12: -- I'm sorry -- number 11:

10 State separately the amount to be awarded
11 to plaintiff Jason Kowalsky, if any, for
12 the following items of future damages from
13 the date of your verdict to be incurred in
14 the future.

15 JURY FOREPERSON: \$116,000.

16 THE CLERK: And the number of years
17 for which this amount is awarded?

18 JURY FOREPERSON: 24.

19 THE CLERK: Juror number one, for
20 Jason Kowalsky's savings plan benefits from
21 the date of your verdict to be incurred in
22 the future, the jury has entered \$116,000
23 to cover a period of 24 years. Do you
24 agree or disagree?

25 JUROR NUMBER ONE: Agree.

1 THE CLERK: Juror number two?
2 JUROR NUMBER TWO: Agree.
3 THE CLERK: Juror number three?
4 JUROR NUMBER THREE: Agree.
5 THE CLERK: Juror number four?
6 JUROR NUMBER FOUR: Agree.
7 THE CLERK: Juror number five?
8 JUROR NUMBER FIVE: Agree.
9 THE CLERK: Juror number six?
10 JUROR NUMBER SIX: Agree.
11 THE CLERK: Proceeding to question
12 12: State separately the amount to be
13 awarded to plaintiff Jason Kowalsky, if
14 any, for the following items of future
15 damages from the date of your verdict to be
16 incurred in the future.
17 JURY FOREPERSON: \$980,000.
18 THE CLERK: Number of years for
19 which this amount is awarded?
20 JURY FOREPERSON: 24.
21 THE CLERK: Juror number one, for
22 Jason Kowalsky's pension benefits from the
23 date of your verdict to be incurred in the
24 future, the jury has entered \$980,000 to
25 cover a period of 24 years. Do you agree

1 or disagree?

2 JUROR NUMBER ONE: Agree.

3 THE CLERK: Juror number two?

4 JUROR NUMBER TWO: Agree.

5 THE CLERK: Juror number three?

6 JUROR NUMBER THREE: Agree.

7 THE CLERK: Juror number four?

8 JUROR NUMBER FOUR: Agree.

9 THE CLERK: Juror number five?

10 JUROR NUMBER FIVE: Agree.

11 THE CLERK: Juror number six?

12 JUROR NUMBER SIX: Agree.

13 THE CLERK: Proceeding to question

14 13: State separately the amount to be
15 awarded to plaintiff Jason Kowalsky, if
16 any, for the following items of future
17 damages from the date of your verdict to be
18 incurred in the future.

19 JURY FOREPERSON: \$50,000.

20 THE COURT: Five-0?

21 JURY FOREPERSON: Five-0.

22 THE CLERK: And the number of years
23 for which this amount is to be awarded?

24 JURY FOREPERSON: 24.

25 THE CLERK: Juror number one, for

1 Jason Kowalsky's social security retirement
2 benefits from the date of your verdict to
3 be incurred in the future, the jury has
4 entered \$50,000 to cover a period of 24
5 years. Do you agree or disagree?

6 JUROR NUMBER ONE: Agree.

7 THE CLERK: Juror number two?

8 JUROR NUMBER TWO: Agree.

9 THE CLERK: Juror number three?

10 JUROR NUMBER THREE: Agree.

11 THE CLERK: Juror number four?

12 JUROR NUMBER FOUR: Agree.

13 THE CLERK: Juror number five?

14 JUROR NUMBER FIVE: Agree.

15 THE CLERK: Juror number six?

16 JUROR NUMBER SIX: Agree.

17 THE CLERK: Will the foreperson
18 please be sure you signed the verdict
19 sheet?

20 JURY FOREPERSON: Yes.

21 THE CLERK: Thank you.

22 THE COURT: May I see it, please?

23 (Verdict sheet was handed to the
24 Court).

25 THE COURT: Okay. The Court has

1 inspected the verdict sheet, and it
2 complies and comports in all respects with
3 the verdict as enunciated by our
4 foreperson, Ms. Conlon (phonetic). The
5 same will be marked as a court exhibit, and
6 will be available for inspection by
7 counsel.

8 Ladies and gentlemen, right now I'm
9 going to give you the official sanction
10 thank you, and then I'll see you shortly in
11 the jury room to chat with you about-- to
12 chat with you and to thank you personally
13 for your service.

14 Members of the jury, your verdict
15 completes your service in this case. On
16 behalf of the judicial system of this
17 state, I thank you for that service.
18 Before you leave the courtroom, however, I
19 want to inform you that you do not have to
20 answer questions by anyone other than me.
21 The public interest requires that jurors
22 have the utmost freedom of debate in the
23 jury room, and that each of you be free to
24 express your views without fear of what
25 others may think.

1 Although you are not required to
2 maintain secrecy about what occurred in the
3 jury room, you should keep in mind your own
4 best interest as jurors before discussing
5 the case with anyone or answering any
6 questions about it. In sum, you are free
7 to discuss the case with anyone, and you're
8 also free to decline to discuss the case.

9 Now, a word: When a person finishes
10 college, they go to law school, which is a
11 miserable experience, and then just when
12 you think it can't get worse, you study for
13 a thing called a bar exam and it does get
14 worse. And after you're done with the bar
15 exam, you're brought before a group of
16 people, the character and fitness
17 committee. And initially, you come to one
18 of the happiest days of your life, the day
19 you're sworn in to be a lawyer. Part and
20 parcel of that ceremony is you take an oath
21 to zealously advocate the interest of your
22 clients, whether it's prosecuting a claim
23 or defending a claim, to the best of your
24 abilities within the bounds of the law.

25 Mr. Ricigliano and Mr. Jeffreys have

1 appeared before you in this case. The
2 Court is pleased to say that these
3 gentlemen have demonstrated lawyering in as
4 good a fashion as this Court has ever seen.
5 And I appreciate both of you for your
6 efforts.

7 MR. RICIGLIANO: Thank you, Judge.

8 MR. JEFFREYS: Thank you, Your
9 Honor.

10 THE COURT: I will see you shortly
11 in the back to answer any questions. I
12 won't keep you long, I promise. It's a
13 beautiful day. But I want to thank you
14 personally. Okay?

15 JUROR: Is this part of that BLT
16 luncheon?

17 THE COURT: Let me tell something.
18 We're not allowed to do that anymore. They
19 cut that out of the budget too. Oh, that's
20 Judge Pitts. He loves to have parties.
21 He's having a BLT luncheon, I just found
22 out. I'll see you in a few minutes.

23 JUROR: Good luck, Jason.

24 (The jury exited the courtroom)

25 THE COURT: Okay, please be seated.

1 Mr. Jeffreys, I anticipate an application.
2 But before I hear the application, I'm
3 going to make a suggestion. Of course, by
4 statute, you have ten days, unless agreed
5 otherwise. If you were to ask permission
6 to submit a written application, I would
7 grant it. I would also suggest that we set
8 the time 30 days in between now and 30
9 days. If your principals are interested,
10 the Court will make itself available for
11 any communications or suggestions or
12 conferences you wish, only if your
13 principals are on board.

14 Mr. Ricigliano?

15 MR. RICIGLIANO: You said 30 days?

16 THE COURT: Yes.

17 MR. RICIGLIANO: I think that would
18 be fine.

19 THE COURT: The statute says ten
20 unless we extend it. 30 days.

21 MR. RICIGLIANO: Makes a lot of
22 sense.

23 THE COURT: Again, I would
24 appreciate the opportunity to participate
25 in whatever conversations we must have.

1 MR. RICIGLIANO: I think it's a good
2 idea.

3 THE COURT: All right.

4 MR. JEFFREYS: Your Honor, I'll make
5 the application on behalf of the defense to
6 enlarge the time to 30 days.

7 THE COURT: You consent, correct?

8 MR. RICIGLIANO: Yes, I consent.

9 THE COURT: You know, Mr. Kowalsky,
10 you have-- thank your lawyer. He did a
11 fabulous job for you.

12 MR. KOWALSKY: I thanked him last
13 night.

14 THE COURT: Also, thank Mr.
15 Jeffreys. Mr. Jeffreys put up a vigorous
16 defense on a case he came in essentially at
17 the tenth act of a nine act play to get it
18 up to date. That's why it works, okay?
19 That's why it works. I appreciate your
20 attendance, Mr. Jeffreys, Mr. Ricigliano.
21 You're welcome to try cases before this
22 Court any time.

23 MR. RICIGLIANO: Thank you, Judge.

24 THE COURT: I do appreciate it.
25 I'll instruct the jury they're free to talk

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to you.

MR. RICIGLIANO: Can you ask them if we can talk to them?

THE COURT: Yes.

MR. RICIGLIANO: Thank you, Judge.

(Whereupon, court session adjourned for the day)

* * * * *

I N D E X

Verdict - Page 13

* * * * *

C E R T I F I C A T I O N

I, Anna M. Lopinto, an Official Court Reporter, do hereby certify that the foregoing is a true and accurate transcription of the stenographic notes taken herein.

Anna M. Lopinto
Official Court Reporter

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