

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

,

Plaintiff,

v.

Civil No. xx-xxxx BB/xxx

,

Defendant.

COURT'S INSTRUCTIONS TO THE JURY

INSTRUCTION NO. _____

OPENING - PROVINCE OF THE COURT

MEMBERS OF THE JURY:

You have now heard all of the evidence in the case.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is relevant under the law for your consideration. It is also my duty at the end of the trial to instruct you on the law applicable to the case.

INSTRUCTION NO. _____

JUDGES OF THE FACTS

You, as jurors, are the judges of the facts. But in determining what actually happened in this case -- that is, in reaching your decision as to the facts -- it is your sworn duty to follow the law I am now in the process of defining for you.

And you must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own idea or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

By the same token it is also your duty to base your verdict solely upon the evidence in the case, without prejudice or sympathy.

INSTRUCTION NO. _____

EQUAL STANDING

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

INSTRUCTION NO. _____

PREPONDERANCE OF THE EVIDENCE

The plaintiff must prove every essential part of its claim(s) by a preponderance of the evidence.

The defendant must prove every essential part of its affirmative defense(s) by a preponderance of the evidence.

A preponderance of the evidence simply means evidence that persuades you that a party's claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, 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.

If the proof fails to establish any essential part of plaintiff's claim(s) by a preponderance of the evidence, you should find for the defendant.

If the proof fails to establish any essential part of defendant's affirmative defense(s) by a preponderance of the evidence, plaintiff is not precluded from recovery.

INSTRUCTION NO. _____

MULTIPLE PARTIES

Although there is more than one plaintiff in this action, it does not follow from that fact alone that if one is entitled to recover, another is entitled to recover. The rights of the various plaintiffs in this lawsuit are separate and distinct, and you should decide the issues as if each plaintiff had brought a separate lawsuit.

In this connection, you will note that some of the instructions apply to one plaintiff, while other instructions apply to all plaintiffs.

Although there is more than one defendant in this action, it does not follow from that fact alone that if one is liable another is liable. Each defendant is entitled to a fair consideration of his own defense. You will decide each defendant's case separately, as if each were a separate lawsuit.

INSTRUCTION NO. _____

CORPORATION AS A PARTY

A corporation can act only through its officers and employees. Any act or omission of an officer or an employee of a corporation, within the scope or course of his or her employment, is the act or omission of the corporation.

INSTRUCTION NO. _____

CORPORATE IMPARTIALITY

Some of the parties in this case are corporations. A corporation is entitled to the same fair and unprejudiced treatment as an individual, and you should decide the case with the same impartiality as you would use in deciding a case between individuals.

INSTRUCTION NO. _____

DEFINITION OF EVIDENCE

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

INSTRUCTION NO. _____

CIRCUMSTANTIAL v. DIRECT EVIDENCE

You may consider either direct or circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" consists of proof of facts or circumstances which give rise to a reasonable inference of the truth of the fact sought to be proved. The law makes no distinction between the weight to be given to either direct or circumstantial evidence.

INSTRUCTION NO. _____

CREDIBILITY OF WITNESSES

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness' testimony. In weighing the testimony of a witness you should consider the witness' relationship to the plaintiff or to the defendant; the witness' interest, if any, in the outcome of the case; manner of testifying; opportunity to observe or acquire knowledge concerning the facts about which the witness testified; candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence or previous statements inconsistent with the witness' present testimony. 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 as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

INSTRUCTION NO. _____

IMPEACHMENT

A witness may be discredited or impeached by contradictory evidence or inconsistent conduct, or by evidence that at other times the witness has made material statements, under oath or otherwise, which are inconsistent with the present testimony of the witness, or by evidence that the general reputation of the witness for truth, honesty or integrity is bad.

[or by evidence that the witness has been convicted of a crime]

[or by specific acts of wrongdoing of the witness]

If you believe that any witness has been impeached or discredited, it is your exclusive province to give the testimony of that witness only such credit as you may think it deserves.

INSTRUCTION NO. _____

SCIENTIFIC/TECHNICAL EVIDENCE

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist you in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state an expert opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. 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 that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

INSTRUCTION NO. _____

EXPERT OPINION

An expert witness is permitted to state an opinion based upon a question which, for the purposes of trial, assumes as true certain facts which may or may not be true.

It will be for you in your deliberations, however, to determine from all of the evidence whether or not the facts assumed have been proved to be true.

INSTRUCTION NO. _____

DEMONSTRATIVE EXHIBITS

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. Such charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

INSTRUCTION NO. _____

LIMITED PURPOSE

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

INSTRUCTION NO. _____

DEPOSITION TESTIMONY

Deposition testimony is testimony that was taken under oath before trial and has been preserved in writing. This testimony is entitled to the same consideration that you give any other testimony at this trial.

INSTRUCTION NO. _____

INTERROGATORIES

Interrogatories are written questions asked by one party to another before trial and answered under oath. The questions and answers may be read at trial as evidence. The answers read to you are testimony under oath and are entitled to the same consideration that you give any other testimony.

INSTRUCTION NO. _____

ATTORNEY INTERVIEW OF WITNESSES

An attorney has the right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not reflect adversely on the truth of such testimony.

INSTRUCTION NO. _____

PROXIMATE CAUSE, GENERAL

A proximate cause of damages is that which in a natural and continuous sequence produces the damages, and without which the damages would not have occurred. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it occurs with some other cause acting at the same time, which in combination with it, causes the damages.

INSTRUCTION NO. _____

PROXIMATE CAUSE, GENERAL + INDEPENDENT INTERVENING CAUSE

The proximate cause of an injury is that which, in a natural and continuous sequence unbroken by any independent intervening cause, produces the injury and without which the injury would not have occurred. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it occurs with some other cause, acting at the same time, which, in combination with it, causes the injury.

"Independent intervening cause" is that which interrupts the natural sequence of events which could reasonably be expected to result from the condition in which a product was sold or from a foreseeable manner of use. An independent intervening cause unforeseeably turns aside the course of events and produces a result which could not reasonably have been expected.

INSTRUCTION NO. _____

DETERMINE LIABILITY BEFORE DAMAGES

You are not to engage in any discussion of damages unless you have first determined that there is liability, as elsewhere covered in these instructions.

The fact that you are given instructions on damages is not to be taken as an indication as to whether the court thinks damages should or should not be awarded.

INSTRUCTION NO. _____

DAMAGES MUST BE REASONABLE

Damages must be reasonable. If you should find that the plaintiff is entitled to a verdict, you may award only such damages as will reasonably compensate the plaintiff for such injury and damage as you find, from a preponderance of the evidence in the case, that the plaintiff has sustained as a proximate result of the accident.

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

INSTRUCTION NO. _____

DOUBLE RECOVERY

You must not award compensatory damages more than once for the same injury. For example, if the plaintiff prevails on both its claims and establishes a dollar amount for its injuries, you must not award the plaintiff any additional compensatory damages on each claim. The plaintiff is only entitled to be made whole once, and may not recover more than it has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all of its injuries.

INSTRUCTION NO. _____

FUTURE DAMAGES

If you have found that plaintiff is entitled to damages arising in the future, you must determine the amount of such damages.

If these damages are of a continuing nature, you may consider how long they will continue.

As to loss of future earning ability, you may consider that some persons work all their lives and others do not and that a person's earnings may remain the same or may increase or decrease in the future.

INSTRUCTION NO. _____

FUTURE INTEREST

In fixing the amount you may award for damages arising in the future, you must reduce the total of such damages by making allowance for the fact that any award you might make would, if properly invested, earn interest. You should, therefore, allow a reasonable discount for the earning power of such money and arrive at the present cash value of the total future damages, if any.

Damages for any future pain and suffering are not to be so reduced.

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Damages for any future pain and suffering are not to be so reduced.

INSTRUCTION NO. _____

MITIGATION

In fixing the amount of money which will reasonably and fairly compensate the plaintiff, you are to consider that one who is damaged must exercise ordinary care to minimize existing damages and to prevent further damages. A plaintiff may not recover for losses which could have been prevented by reasonable efforts on its part.

INSTRUCTION NO. _____

LIFE EXPECTANCY

According to a table of mortality, the life expectancy of [name] is [number] additional years. This figure is not conclusive. It is the average life expectancy of persons who have reached that age. This figure may be considered by you in connection with other evidence relating to the probable life expectancy of [name], including evidence of her occupation, health, habits and other activities, bearing in mind that some persons live longer and some shorter than the average.

INSTRUCTION NO. _____

PUNITIVE DAMAGES

In the event you find that plaintiffs should recover either actual or nominal damages, and if you further find that the acts of defendant were with a wanton disregard of plaintiffs' rights, or reckless, or oppressive, or fraudulent or maliciously intentional, then you may award exemplary or punitive damages.

If you find that plaintiff should recover compensation for damages, and if you further find that the conduct of _____ was [malicious], [willful], [reckless], [wanton], [grossly negligent], [fraudulent], [or] [in bad faith], then you may award punitive damages.

Such additional damages are awarded for the limited purposes of punishment and to deter others from the commission of like offenses.

The amount of punitive damages must be based on reason and justice taking into account all the circumstances, including the nature of the wrong and such aggravating and mitigating circumstances as may be shown. The amount awarded, if any, must be reasonably related to the actual damages and injury and not disproportionate to the circumstances.

INSTRUCTION NO. _____

FAITHFUL PERFORMANCE

Faithful performance by you of your duties is vital to the administration of justice.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another, and to deliberate in an effort to reach an agreement if you can do so without giving up your individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. _____

FOREPERSON

Upon retiring to the jury room you should first elect a foreperson who will preside over your deliberations and will be your spokesperson here in court.

A verdict form has been prepared for your convenience. You will take this verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign it, and then notify the court security officer that you have reached a verdict.

(Read the verdict form)

If, during your deliberations, you should desire to communicate with me, please put your message or question in writing signed by the foreperson, and pass the note to the court security officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom. I caution you, however, with regard to any message or question you might send, that you should never state your numerical division.

United States District Judge