

STOCK INSTRUCTION 1
(General Instructions for Charge)

Ladies and Gentlemen of the Jury:

Please pay close attention to these instructions. I will read them only once, but the written instructions will be given to you to take to the jury room.

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendant in arriving at your verdict.

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been admitted, stipulated, or judicially noticed. Nothing else is evidence. The statements and arguments of the lawyers are not evidence. Their questions and objections are not evidence. Thus, if a lawyer asks a question of a witness that contains an assertion of fact, you may not consider the assertion by the lawyer as any evidence of that fact. Only the answers are evidence. However, when the attorneys on both sides have stipulated or agreed as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved. The legal rulings of the Court are not evidence. The comments and questions of the Court are not evidence.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

The mere number of witnesses appearing for or against a particular fact, issue, or proposition does not in and of itself prove or disprove that fact, issue, or proposition. 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.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. However, do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Sources: *NM UJI 13-301, 5th Circuit Pattern Instruction 3.1, 3.3 (modified), 3.4 (modified), 3.7 (modified), O'Malley, Grenig, and Lee, 1A Fed. Jury Prac. & Instr. § 103:30 (6th ed.) (modified).*

STOCK INSTRUCTION 2

(Hard-of-Hearing Juror)

We have at least one hard-of-hearing juror in this case. The law permits all citizens to serve on a jury whether or not they are hard of hearing. You must include this [these] juror(s) in all deliberations and discussions on this case. To help you communicate, the juror(s) will be using the services of the official court interpreter. The following rules govern the conduct of the interpreter and the jury:

1. The interpreter's only function in the jury room is to interpret between speech and sign language.
2. The interpreter is not permitted to answer questions, express opinions, have direct conversations with other jurors or participate in your discussions or deliberations.
3. The interpreter is only permitted to speak directly to a member of the jury to ensure that the interpreter's equipment is functioning properly and to advise the jury foreperson if a specific interpreting problem arises that is not related to the factual or legal issues in the case.
4. No gesture, expression, sound, or movement made by the interpreter in the jury room should influence your opinion or indicate how you should vote.
5. If you can speak both English and read sign language, you must speak only English in the jury room so the rest of the jury is not excluded from any conversation.
6. Leave all interpretations to the official court interpreter. The interpreter is the only person permitted to interpret conversations inside the jury room and testimony in the courtroom.
7. You must immediately report any deviation from these rules by submitting a note identifying the problem to the judge or court personnel.

Source: *NM UJI 13-110A* (modified).

STOCK INSTRUCTION 3
(Corporation as Party)

The [plaintiff, defendant, or other party] in this case is a corporation. 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.

Source: *NM UJI 13-114.*

STOCK INSTRUCTION 4
(Multiple Plaintiffs)

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.]

Source: *NM UJI 13-115.*

STOCK INSTRUCTION 5
(Multiple Defendants)

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 that defendant's own defense. You will decide each defendant's case separately, as if each were a separate lawsuit.

Source: *NM UJI 13-116.*

STOCK INSTRUCTION 6
(Deposition Testimony)

A deposition is testimony taken under oath before trial and has been preserved [in writing] [by video]. This testimony is entitled to the same consideration as any other testimony at this trial.

Source: *NM UJI 13-203.*

The Use Notes for this instruction state that it should be given when a deposition is first admitted into evidence, but may be repeated at the close of the case.

STOCK INSTRUCTION 7
(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 entitled to the same consideration as any other testimony.

Source: *NM UJI 13-204.*

The Use Notes for this instruction state that it should be given when the interrogatories are first admitted into evidence but may be repeated at the close of the case.

STOCK INSTRUCTION 8A
(Expert Testimony)

The Rules of Evidence do not ordinarily permit a witness to testify as to an opinion or conclusion. However, a witness who is qualified as an expert in a subject may be permitted to state an opinion as to that subject. After considering the reasons stated for an opinion, you should give it such weight as it deserves. You may reject an opinion entirely if you conclude that it is unsound.

Source: *NM UJI 13-213.*

The Use Notes for this instruction state that it should be given at the time the expert first testifies.

STOCK INSTRUCTION 8B
(Expert Testimony)

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. There is an exception to this rule for “expert witnesses.” An expert witness is a person who by education and experience has become expert in some art, science, profession, or calling. Expert witnesses give their opinions as to matters in which they profess to be expert and may also state their reasons for their opinions.

You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves. If you should decide the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude the reasons given in support of the opinion are not sound, or if you feel the expert’s is outweighed by other evidence, you may disregard the opinion entirely. As I have told you several times, you—the jury—are the sole judges of the evidence and the facts of this case.

Source: *O’Malley, Grenig, and Lee, 1A Fed. Jury Prac. & Instr. § 104:40 (6th ed.)*
 (modified).

STOCK INSTRUCTION 9
(Use of Notes)

You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

Source: *5th Circuit Pattern Instruction 3.7 (excerpt).*

STOCK INSTRUCTION 10
(Statement of Theories for Recovery)

In this case the plaintiff(s) [name of each plaintiff] seek(s) compensation from the defendant(s) [name of each defendant] for damages that plaintiff(s) say(s) were caused by [negligence, [and] A Defective Product, [and] Breach of Warranty, [and] Breach of Contract, [and] Fraudulent Misrepresentation, [and] Etc.].

[Plaintiff's summary of theories for recovery must be individually tailored for each case.]

Source: *NM UJI 13-302A.*

STOCK INSTRUCTION 11
(Statement of Denials and Affirmative Defenses)

The defendant(s) deny(ies) what the plaintiff(s) [say(s) about [theory of recovery(ies) by name]] and defendant(s) say(s) that: [violation of the ordinance was excused or justified, [and] the plaintiff(s) [was] [were] negligent, [and] another party was negligent, [and] a non-party was negligent, [and] Etc.].

[Defendant's summary of denials and affirmative defenses must be individually tailored for each case.]

Source: *NM UJI 13-302C.*

STOCK INSTRUCTION 12
(Burden of Proof)

A party seeking a recovery (or a party relying upon a defense) has the burden of proving every essential element of the claim (or defense) by the preponderance of the evidence.

To prove by the preponderance of the evidence means to establish that something is more likely true than not true. When I say, in these instructions, that the party has the burden of proof on [theory(ies) of recovery by name], I mean that you must be persuaded that what is sought to be proved is more probably true than not true. Evenly balanced evidence is not sufficient.

Source: *NM UJI 13-304 (substituting “preponderance” for “greater weight” and omitting clear and convincing standard).*

STOCK INSTRUCTION 13
(Causation)

An [act] [or] [omission,] [or] [_____(condition)] is a “cause” of [injury] [harm] [_____(other)] if [, unbroken by an independent intervening cause,] it contributes to bringing about the [injury] [harm] [_____(other)] [, and if injury would not have occurred without it]. It need not be the only explanation for the [injury] [harm] [_____(other)], nor the reason that is nearest in time or place. It is sufficient if it occurs in combination with some other cause to produce the result. To be a “cause,” the [act] [or] [omission] [or] [_____(condition)], nonetheless, must be reasonably connected as a significant link to the [injury] [harm].

Source: *NM UJI 13-305.*

Refer to the Use Notes and Committee Commentary for explanations of how and when to use the bracketed material. If the evidence presents an issue with regard to an independent intervening cause, NM UJI 13-306 can also be given.

STOCK INSTRUCTION 14
(Consideration of Evidence)

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

Source: *5th Circuit Pattern Instruction 3.3.*

STOCK INSTRUCTION 15
(Foreign Language Testimony)

You [are about to hear] [have heard] testimony of a witness who [will be testifying] [testified] in the [specify the foreign language] language. Witnesses who do not speak English or are more proficient in another language testify through an official court interpreter. Although some of you may know the [specify foreign language] language, it is important that all jurors consider the same evidence. Therefore, you must accept the interpreter's translation of the witness's testimony. You must disregard any different meaning.

You must not make any assumptions about a witness or a party based solely on the use of an interpreter to assist that witness or party.

Source: *9th Circuit Model Civil Jury Instruction 2.8.*

STOCK INSTRUCTION 16
(Rules of Evidence)

The production of evidence in court is governed by rules of law. From time to time it has been my duty, as judge, to rule on the evidence. You must not concern yourselves with the reasons for these rulings. You should not consider what would or would not have been the answers to the questions which the court ruled could not be answered.

Source: *NM UJI 13-307 (first paragraph omitted, but similar language is included in Stock Instruction 14).*

STOCK INSTRUCTION 17
(Charts and Summaries Received in Evidence)

Certain charts and summaries [may be] [have been] admitted into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the testimony or other admitted evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Source: *9th Circuit Model Civil Jury Instruction 2.15.*

STOCK INSTRUCTION 18

(Charts and Summaries Not Received in Evidence)

Certain charts and summaries not admitted into evidence [may be] [have been] shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Source: *9th Circuit Model Civil Jury Instruction 2.14.*

STOCK INSTRUCTION 19
(Limiting Instruction)

When testimony or an exhibit is admitted for a limited purpose, you may consider that testimony or exhibit only for the specific limited purpose for which it was admitted.

Source: *5th Circuit Pattern Instruction 2.6.*

STOCK INSTRUCTION 20
(Corporation Acts Through Employees)

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 that officer's or employee's employment, is the act or omission of the corporation.

Source: *NM UJI 13-409 (modified to be gender neutral).*

STOCK INSTRUCTION 21
(Liability Must Be Determined 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.

Source: *NM UJI 13-1801.*

STOCK INSTRUCTION 22
(Compensatory Damages)

If you should decide in favor of the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate [him or her] for any of the following elements of damages proved by the plaintiff to have resulted from the negligence [wrongful conduct] as claimed:

(NOTE: Here insert the proper elements of damages and, in a personal injury case, the instructions which immediately follow may be applicable but, in other types of litigation, the trial lawyers will need to insert here the proper elements applicable under the proven facts and the particular law governing the specific circumstances.)

Whether any of these elements of damages have been proved by the evidence is for you to determine. [If you find that, before any injury in this case, plaintiff was already impaired by a physical or emotional condition, plaintiff is entitled to compensation for the aggravation or worsening of the condition, but not for elements of damages to the extent they were already being suffered.] [However, damages are to be measured without regard to the fact plaintiff may have been unusually susceptible to injury or likely to be harmed. The defendant is said to “take the plaintiff as he finds [him] [her],” meaning that the defendant, if liable, is responsible for all elements of damages caused by the defendant’s conduct even if some of the plaintiff’s injury arose because the plaintiff was unusually susceptible to being injured.]

Your verdict must be based upon proof and not upon speculation, guess, or conjecture. Further, sympathy or prejudice for or against a party should not affect your verdict and is not a proper basis for determining damages.

Source: *NM UJI 13-1802.*

STOCK INSTRUCTION 23
(Mitigation of Damages)

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate his or her damages, that is, to avoid or minimize those damages.

If you find the defendant is liable and the plaintiff has suffered damages, the plaintiff may not recover for any item of damage which plaintiff could have avoided through reasonable effort. If you find by a preponderance of the evidence the plaintiff unreasonably failed to take advantage of an opportunity to lessen his or her damages, you should deny a recovery for those damages which the plaintiff would have avoided had he or she taken advantage of the opportunity.

You are the sole judge of whether the plaintiff acted reasonably in avoiding or minimizing his or her damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce his or her damages. However, the plaintiff is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The defendant has the burden of proving the damages which the plaintiff could have mitigated. In deciding whether to reduce the plaintiff's damages because of his or her failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the defendant has satisfied the burden of proving that the plaintiff's conduct was not reasonable.

Source: *5th Circuit Pattern Instruction 15.5 (modified to be gender neutral).*

STOCK INSTRUCTION 24A
(Punitive Damages—Direct Liability)

You may consider punitive damages only if you find that the plaintiff should recover compensatory [or nominal] damages.

If you find that the conduct of the defendant was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], then you may award punitive damages against [him] [her] [it].

[Malicious conduct is the intentional doing of a wrongful act with knowledge that the act was wrongful.]

[Willful conduct is the intentional doing of an act with knowledge that harm may result.]
[Reckless conduct is the intentional doing of an act with utter indifference to the consequences. When there is a high risk of danger, conduct that breaches the duty of care is more likely to demonstrate recklessness.]

[Wanton conduct is the doing of an act with utter indifference to or conscious disregard for a person's [rights] [safety].]

Punitive 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 and enormity of the wrong and such aggravating and mitigating circumstances as may be shown. The property or wealth of the defendant is a legitimate factor for your consideration. The amount awarded, if any, must be reasonably related to the injury and to any damages given as compensation and not disproportionate to the circumstances.

Source: *NM UJI 13-1827 (omitting first sentence and provisions related to vicarious liability).*

STOCK INSTRUCTION 24B
(Punitive Damages—Vicarious Liability)

If you find that the conduct of [name of agent or employee of party on whose conduct vicarious claim for punitive damages is based] was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], you may award punitive damages against [name of party against whom vicarious liability for punitive damages is asserted] if:

(a) [name of agent or employee] was acting in the scope of [his] [her] employment by [name of principal or employer party] and had sufficient discretionary or policy-making authority to speak and act for [him] [her] [it] with regard to the conduct at issue, independently of higher authority; [or if]

(b) [name of principal or employer party] in some [other] way [authorized,] [participated in] [or] [ratified] the conduct of [name of agent or employee].

Source: NM UJI 13-1827 (*addressing vicarious liability*).

This instruction should be substituted for the second paragraph of Stock Instruction 24A or incorporated immediately after that paragraph depending on whether vicarious liability or both direct and vicarious liability are at issue.

STOCK INSTRUCTION 25
(Nominal Damages)

If you find that plaintiff has established a right to recover from defendant but that plaintiff has suffered [no harm], [insignificant harm], [or] [damages that cannot be ascertained], you may award [him, her, or it] nominal damages. Nominal damages are a trivial sum of money, usually one cent or one dollar, awarded to a party who has established a right to recover but has not established that [he, she, or it] is entitled to compensatory damages.

[The award of a nominal sum for actual damages would not prevent you from awarding punitive damages in such amount as you deem appropriate, if you find that the award of punitive damages is justified under these circumstances.]

Source: *NM UJI 13-1832.*

STOCK INTSTRUCTION 26
(Duty to Follow Instructions)

The law of this case is contained in these instructions and it is your duty to follow them.
You must consider these instructions as a whole, not picking out one instruction, or parts thereof,
and disregarding others.

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

Source: *NM UJI 13-2001 & 13-2002.*

STOCK INSTRUCTION 27
(Credibility of Witnesses)

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 alone are the judges of the credibility or “believability” of the witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given to the testimony of any witness, you may take into account the witness’s ability and opportunity to observe, the witness’s memory, the witness’s manner while testifying, any interest, bias or prejudice that the witness may have and the reasonableness of the testimony, considered in light of all the evidence in the case. You may, in short, accept or reject the testimony of any witness in whole or in part.

Source: *NM UJI 12-2003 (modified with additions).*

STOCK INSTRUCTION 28
(Impeachment of Witness)

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 witness has been convicted of a crime.]

[or by evidence that the general reputation of the witness for truth, honesty or integrity is bad.]

[or by specific acts of wrongdoing of the witness.]

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

Source: *NM UJI 13-2004 (modified, “up to you” substituted for “your exclusive province”).*

STOCK INSTRUCTION 29
(Jury Sole Judges of the Facts)

You are the sole judges of all disputed questions of fact in this case. It is your duty to determine the true facts from the evidence produced here in open court. Your verdict should not be based on speculation, guess, or conjecture.

You are to apply the law, as stated in these instructions, to the facts as you find them and, in this way, decide the case. Neither sympathy nor prejudice should influence your verdict.

Source: *NM UJI 13-2005.*

The Use Notes indicates that this instruction be given in all cases and is intended to preclude other similar instructions.

STOCK INSTRUCTION 30
(All Jurors to Participate)

The jury acts as a body. Therefore, on every question on the jury form which the jury must answer it is necessary that all jurors participate regardless of the vote on another question. Before a question can be answered, all of you must agree upon each answer. In other words, your verdict must be unanimous.

Source: *NM UJI 13-2006 (modified to meet unanimity requirement and with added last sentence).*

STOCK INSTRUCTION 31
(Concluding Instruction)

Upon retiring to the jury room, and before commencing your deliberations, you will first elect a foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

You will be given the Court's instructions and [a special] verdict form[s]. [In this case it will be necessary for you to answer the preliminary questions presented to you on the verdict form.]

If you recess during your deliberations, follow all of the instructions that I have given you about your conduct during the trial. If, during your deliberations, you should desire to communicate with me, please put your message or question in writing on one of the forms that my court staff will provide to you. Your note should be signed by the foreperson and then passed to the court security officer who will bring it to my attention.

Never attempt to communicate with me except by a written note signed by your foreperson. I will respond as promptly as possible, either in writing or by having you returned to the courtroom. I will always first disclose to the attorneys your question and my response before I answer your question. If I reply to you in writing, please leave both the message and the reply in the jury room. These documents should not be thrown away, even at the conclusion of your deliberations. Bear in mind always that you are not to reveal to me or to any person how you stand, numerically or otherwise, until you have reached a unanimous verdict. Do not disclose any vote count in any communications with the Court.

After you have reached your unanimous verdict, your foreperson is to fill in the answers to the questions on the verdict form and date and sign the form. The completed, signed verdict form should then be placed in the envelope that will be provided to you. After completing the verdict form, please also send a note to the court security officer indicating that you have reached

a verdict and are ready to return to the courtroom. Again, any notes you pass to the court security officer should not state what your verdict is or how you have voted.

Sources: *First two paragraphs—derived from first two paragraphs of NM UJI 13-2009.*
 Remaining paragraphs—derived from 9th Circuit Model Civil Jury
 Instruction 3.3 and stock instructions of other judges of this Court.