

HONORABLE MARTHA VÁZQUEZ

Civil Stock Instruction Index

Case: _____

Instruction	Parties Accept	Do Not Accept	Parties Prefer Alternatives (State Source)	Parties Cannot Agree (State Positions)
1. Introduction				
2. Preponderance of Evidence				
3. Parties of Equal Standing				
4. Multiple Defendants				
5. Evidence Defined				
6. What is Not Evidence				
7. Use of Notes				
8. Consideration of Evidence				
9. Credibility				
10. Impeachment				
11. Depositions				
12. Medical Witness				
13. Expert Witness				
14. Liability Before Damages				
15. Compensatory Damages				
16. Future Damages				
17. Duty to Mitigate				
18. Punitive Damages				
19. Multiple Claims				
20. Closing- Foreperson				
21. Communicating w/ Court				

22. Not Conveying Opinion				
23. Special Verdict Form				

Instruction No. 1

Members of the jury, now that you have heard all of the evidence, it is my duty to instruct you as to the law of the case.

Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

SOURCE: 9th Cir. Pattern Jury Instructions (Civil) § 1.1C (2007)

Instruction No. 2

In this case, Plaintiff must prove every essential part of his claim by a preponderance of the evidence.

A preponderance of the evidence simply means evidence that persuades you that Plaintiff'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 by a preponderance of the evidence, you should find for Defendant as to that claim.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil), § 2.20 (2009)

Instruction No. 3

Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 2.13 (2009)

Instruction No. 4

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: U.J.I. 13-116 NMRA (2013)

Instruction No. 5

The evidence from which you are to decide what the facts are consists of (1) the sworn testimony of any witnesses; (2) the exhibits that have been received into evidence; and (3) any facts to which the lawyers have agreed.

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: 1st paragraph: 9th Cir. Pattern Jury Instructions (Civil) § 1.6 (2007)
2nd paragraph: U.J.I. 13-307 NMRA (2013)

Instruction No. 6

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. **[In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.]**

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

SOURCE: 9th Cir. Pattern Jury Instructions (Civil) § 1.7 (2007)

Instruction No. 7

Any notes that you have taken during this trial are only aids to your 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 have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 2.21 (2009)

Instruction No. 8

You must consider only the evidence in this case. However, you may draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. You may make deductions and reach conclusions that reason and common sense lead you to make from the testimony and evidence.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

There are two types of evidence you may consider. One is direct evidence – such as testimony of an eyewitness. The other is indirect or circumstantial evidence – the proof of circumstances that tend to prove or disprove the existence or nonexistence of certain other facts. The law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all of the evidence, both direct and circumstantial.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 2.18 (2009)

Instruction No. 9

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness' memory;
- (3) the witness' manner while testifying;
- (4) the witness' interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness' testimony;
- (6) the reasonableness of the witness' testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

SOURCE: 9th Cir. Pattern Jury Instructions (Civil) § 1.11 (2007)

Instruction No. 10

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 witnesses], [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 your exclusive province to give the testimony of that witness only such credit as you may think it deserves.

SOURCE: U.J.I. 13-2004 NMRA (2013)

Instruction No. 11

Certain testimony will now be presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness' testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers will be read **[shown]** to you today. This deposition testimony is entitled to the same consideration **[and is to be judged by you as to credibility] [and weighed and otherwise considered by you insofar as possible in the same way]** as if the witness had been present and had testified from the witness stand in court.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 2.23 (2009)

Instruction No. 12

A medical witness may testify about statements concerning a person's medical history and condition that were made for purposes of diagnosis or treatment. **[Such statements are not evidence of their own truth, but they may be considered to show the information upon which the witness's diagnosis or medical opinion was based.]** To whatever extent the opinion of the witness is based upon such statements, you may consider the trustworthiness of the statements in determining the weight to be given to the witness's opinion.

SOURCE: U.J.I. 13-205 NMRA (2013)

Instruction No. 13

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – called an expert witness – is permitted to state an opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

[In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from evidence that the expert has been or will be paid for reviewing the case and testifying, or from evidence that he or she testifies regularly as an expert witness and his or her income from such testimony represents a significant portion of his or her income.]

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 2.19 (2009)

Instruction No. 14

If Plaintiff has proven one or more of his claims against a Defendant by the preponderance of the evidence, you must determine the damages to which Plaintiff is entitled.

You should not interpret the fact that I have given instructions about Plaintiff's damages as an indication in any way that I believe that Plaintiff should, or should not, win this case. It is your task first to decide whether a Defendant is liable. I am instructing you on damages only so that you will have guidance in the event you decide that a Defendant is liable and that Plaintiff is entitled to recover money from a Defendant.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) §15.1 (2009)

Instruction No. 15

If you find that a Defendant is liable to Plaintiff, then you must determine an amount that is fair compensation for all of Plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make Plaintiff whole – that is to compensate Plaintiff for the damage that Plaintiff has suffered. Compensatory damages are not limited to expenses that Plaintiff may have incurred because of his injury. If Plaintiff wins, he is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that he has suffered because of a defendant's conduct.

You may award compensatory damages only for injuries that Plaintiff proves were proximately caused by a Defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of Plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize a defendant. You should not award compensatory damages for speculative injuries, but only for those injuries which Plaintiff has actually suffered or that Plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that Plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You may award compensatory damages for any of the following elements, to the extent you find them proved, by a preponderance of the evidence, to have resulted from a Defendant's wrongful conduct:

(1) Any bodily injury that Plaintiff sustained and any pain and suffering, emotional distress, personal humiliation, disability, disfigurement, mental anguish, and/or loss of capacity for enjoyment of life that Plaintiff experienced in the past or is reasonably likely to experience in the future. No evidence of the value of intangible things, such as mental or physical pain and suffering, has been or need be introduced. You are not trying to determine value, but an amount that will fairly compensate Plaintiff for the damages he has suffered. There is no exact standard for fixing the compensation to be awarded for these elements of damage. Any award that you make should be fair in light of the evidence;

(2) The nature, extent and duration of the injury;

(3) Aggravation of a preexisting ailment, disease or physical defect, or activation of any such latent condition. If you find that there was such an aggravation, you should determine what portion of Plaintiff's condition resulted from the aggravation, and make allowance in your verdict only for the aggravation;

(4) The value of lost earnings [and the present cash value of earning capacity reasonably certain to be lost in the future];

(5) The reasonable expense of necessary medical care, treatment, and services received [including prosthetic devices and cosmetic aids] [and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future].

(6) The reasonable value of necessary non-medical expenses that have been required as a result of the injury [and the present cash value of such non-medical expenses reasonably certain to be required in the future].

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) §§ 15.2, 15.4, 15.5 (2009); U.J.I. 13-1802 through 1805 NMRA (2013)

Instruction No. 16

A. Damages Accrued

If you find for Plaintiff, he is entitled to recover an amount that will fairly compensate him for any damages he has suffered to date.

B. Calculation of Future Damages

If you find that Plaintiff is reasonably certain to suffer damages in the future from his injuries, then you should award him the amount you believe would fairly compensate him for such future damages. In calculating future damages, you should consider the standard table of mortality as compiled in the New Mexico statutes. The Court instructs you that, according to that table, the life expectancy of persons aged [_____] is ____ 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 Plaintiff, including evidence of his occupation, health, habits and other activities, bearing in mind that some persons live longer and some live shorter than the average.

C. Reduction of Future Damages to Present Value

An award of future damages necessarily requires that payment be made now for a loss that plaintiff will not actually suffer until some future date. If you should find that Plaintiff is entitled to future damages, including future earnings, then you must determine the present worth in dollars of such future damages.

If you award damages for loss of future earnings, you must consider two particular factors:

(1) You should reduce any award by the amount of the expenses that Plaintiff would have incurred in making those earnings.

(2) If you make an award for future loss of earnings, you must reduce it to present value by considering the interest that Plaintiff could earn on the amount of the award if he made a relatively risk-free investment. The reason why you must make this reduction is because an award of an amount representing future loss of earnings is more valuable to Plaintiff if he receives it today than if received it in the future, when he would otherwise have earned it. It is more valuable because Plaintiff can earn interest on it for the period of time between the date of the award and the date he would have earned the money. Thus you should adjust the amount of any award for future loss of earnings by the amount of interest that Plaintiff can earn on that amount in the future.

If you make any award for future medical expenses, you should adjust or discount the award to present value in the same manner as with loss of future earnings.

However, you must not make any adjustment to present value for any damages you may award for future pain and suffering or future mental anguish.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) §15.3 (2009); U.J.I. 13-1831 NMRA (2013)

Instruction No. 17

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

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

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

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 15.15 (2009)

Instruction No. 18

In this case, Plaintiff seeks to recover punitive damages from Defendant[s] on Plaintiff's [____] claims against him/her/them. You may consider awarding punitive damages against Defendant[s] if you find for Plaintiff on one or more of Plaintiff's [____] claims against him/her/them, and further find that Plaintiff should recover either compensatory damages [or nominal damages] on one or more of those claims.

The purpose of punitive damages is not to compensate Plaintiff, but rather to punish Defendant and to deter Defendant and others from committing similar acts in the future. Accordingly, in deciding whether to award punitive damages, your focus should be on whether Defendant's actions call for deterrence and punishment over and above that provided by any award of compensatory damages.

Plaintiff has the burden of proving that punitive damages should be awarded, and the amount, by a preponderance of the evidence. You may award punitive damages only if you find that Defendant's conduct was malicious, willful or with callous or reckless indifference to the safety or rights of others. Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring another. Conduct is willful or with callous or reckless indifference to the safety or rights of others if, under the circumstances, it reflects complete disregard to another's safety or rights, or if Defendant acts in the face of a perceived risk that its actions will violate another's rights under federal law.

If you find that punitive damages are appropriate, you must use reason in setting the

amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purpose but should not reflect bias, prejudice or sympathy toward any party. In considering punitive damages, you may consider the degree of reprehensibility of Defendant's conduct, the relationship of any award of punitive damages to any actual injury inflicted on Plaintiff, and the financial resources of Defendant.

SOURCE: *Joliet v. Deland*, 966 F.3d 573 (10th Cir. 1992); 9th Cir. Pattern Jury Instructions (Civil) § 5.5 (2007); 5th Cir. Pattern Jury Instructions (Civil) §15.13 (2009)

Instruction No. 19

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

With respect to punitive damages, you may make separate awards on each [____] claim that Plaintiff has established.

SOURCE: 5th Cir. Pattern Jury Instructions (Civil) § 15.14 (2009)
(First two paragraphs only of instruction).

Instruction No. 20

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

The attitude and conduct of jurors at the beginning of their deliberations are very important. It is rarely helpful for a juror, on entering the jury room, to express an emphatic opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and one may hesitate to change a position even if shown that it is wrong. Remember that you are not partisans or advocates in this matter. You must be impartial judges of the facts.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

SOURCE: 9th Cir. Pattern Jury Instructions (Civil) § 3.1 (2007), except fourth paragraph, which is California Jury Instructions- Civil, Book of Approved Jury Instructions, 15.31 (9th ed.)

Instruction No. 21

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security officer, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

SOURCE: 9th Cir. Pattern Jury Instructions (Civil) § 3.2 (2007)

Instruction No. 22

Nothing said in these instructions and nothing in any form of verdict, which has been prepared for your convenience, is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

SOURCE: O'Malley, Grenig & Lee, Federal Jury Practice and Instructions § 20.01 (5th ed. 2000) (excerpted from longer instruction)

Instruction No. 23

A form of special verdict has been prepared for your convenience. You will take this form into the jury room.

You will note that each of the three interrogatories or questions calls for a “Yes” or “No” answer. The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided below each question. As you will note from the wording of the questions, it will not be necessary to consider or answer question (2) if your answer to question (1) is “No.” Nor will it be necessary for you to consider or answer question (3), unless your answer to both questions (1) and (2) is “Yes.”

Accordingly, if your answer to either questions (1) or (2) is “No,” the foreperson will date and sign the special verdict, without answering question (3). On the other hand, if your answer to both questions (1) or (2) is “Yes,” then you will answer question (3). The foreperson will then date and sign the special verdict as so completed; and you will then return with it to the courtroom.

SOURCE: O’Malley, Grenig & Lee, Federal Jury Practice and Instructions § 106.05 (5th ed. 2000) (updated by the 2001 pocket part)

COURT MODIFICATIONS: Portion deleted; to be modified to conform to case.