

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

Plaintiff,

v.

CV 0- GBW/

Defendant.

**STOCK JURY INSTRUCTIONS
FOR CIVIL TRIALS**

Effective November 23, 2009

STOCK INSTRUCTION 1
(Use of Notes)

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 Circuit Pattern Instruction 2.21*

STOCK INSTRUCTION 2
(Non-English Speaking Juror)

Ladies and gentlemen, we have at least one [non-English-speaking] [hearing-impaired] juror who is participating in this case. The law permits all citizens to serve on a jury whether or not [English is their first language] [they are hearing-impaired]. 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 [English and [the non-English-speaking juror(s)' native language]] [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 [the language of the non-English speaker] [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 110A*

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 Directions for Use of 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 Directions for Use of 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 8
(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 Directions for Use of this instruction state that it should be given at the time the expert first testifies.

STOCK INSTRUCTION 9
(General Instructions for Charge)

MEMBERS OF THE JURY:

You have heard the evidence in this case. I will now instruct you on the law that you must apply. 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 your duty to follow the law as I give it to you. On the other hand, you the jurors are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

Sources: *First two paragraphs of 5th Circuit Pattern Instruction 3.1*
Portion of NM UJI 13-301 (last two sentences of first paragraph)

STOCK INSTRUCTION 10
(Statement of Theories for Recovery)

In this case the plaintiff(s) _____ seek(s) compensation from the defendant(s)
_____ for damages that plaintiff(s) say(s) were caused by _____.

[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) [and the defendant(s) say(s) that _____].

[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 Directions for Use 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 306 can also be given.

STOCK INSTRUCTION 14
(Consideration 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 evidence consists of the testimony of the witnesses and the exhibits admitted into evidence by the court [and any facts admitted or agreed to by counsel] [and any facts which the court instructs you to accept as true].

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.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence.

Sources: *First paragraph—First paragraph of NM UJI 13-307, with first sentence added*
Second and third paragraphs—First and Second paragraphs of 5th Circuit Pattern Instruction 2.18
Fourth paragraph—9th Circuit Pattern Instruction 3.5, with last sentence omitted

STOCK INSTRUCTION 15
(Official English Interpretation Controls)

Spanish [or other language] has been used during this trial. The evidence you are to consider is only that provided through the official court interpreter(s). Although some of you may know Spanish [or other language], it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must disregard any different meaning.

Source: *9th Circuit Pattern Instruction 3.4*

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 here, but included in Stock Instruction 14)*

STOCK INSTRUCTION 17
(Charts and Summaries Not Received in Evidence)

Certain charts and summaries have been shown to you to help explain the evidence. 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.

Source: *9th Circuit Pattern Instruction 3.9, with modifications*

STOCK INSTRUCTION 18
(Charts and Summaries Received in Evidence)

Certain charts and summaries have been received into evidence to illustrate information brought out in the trial. 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 Pattern Instruction 3.10*

STOCK INSTRUCTION 19
(Limiting Instruction)

You will recall that during the course of this trial I instructed you that I admitted certain testimony [and certain exhibits] for a limited purpose and I instructed you that you may consider some testimony [and documents] as evidence against one party but not against another. You may consider such evidence only for the specific limited purposes for which it was admitted. [Specific limiting instructions may be repeated as appropriate.]

Source: *5th Circuit Pattern Instruction 2.15*

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*

STOCK INSTRUCTION 21
(Liability 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 find that the defendant is liable to the plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the Plaintiff whole—that is, to compensate the plaintiff for the damage that the plaintiff has suffered. [Compensatory damages are not limited to expenses that the plaintiff may have incurred because of his or her injury. If the plaintiff wins, he or she is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that he or she has suffered because of the defendant's conduct.]

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

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. Further, sympathy or prejudice for or against a party should not affect your verdict and is not a proper basis for determining damages.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence: [insert elements of damages]

Sources: *5th Circuit Pattern Instruction 15.2, omitting the third paragraph and the word "proximately" from first sentence in the second paragraph*
 Last sentence of 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—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 he or she 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 the 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 damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce 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 a 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 15.15, modified to be gender-neutral*

STOCK INSTRUCTION 24
(Prohibition on Double Recoveries)

You must not award compensatory damages more than once for the same injury. The plaintiff is only entitled to be made whole once, and may not recover more than the plaintiff has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all injuries.

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

Source: *First two paragraphs of 5th Circuit Pattern Instruction 15.14, omitting second sentence of first paragraph*

STOCK INSTRUCTION 25A
(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 25B
(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 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 party) in some [other] way [authorized,] [participated in] [or] [ratified] the conduct of _____ (name of agent or employee).

Source: *NM UJI 13-1827*

This instruction should be substituted for the second paragraph of Stock Instruction 25A or incorporated immediately after that paragraph depending on whether vicarious liability or both direct and vicarious liability are at issue.

STOCK INSTRUCTION 26
(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] [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] [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, with additional optional language in brackets*

STOCK INSTRUCTION 27
(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 28
(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, with additions*

STOCK INSTRUCTION 29
(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.

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, with “up to you” substituted for “your exclusive province”*

STOCK INSTRUCTION 30
(All Jurors to Participate)

The jury acts as a body. Therefore, on every question which the jury must answer it is necessary that all jurors participate. 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
(Duty to Deliberate)

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way you are the judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Source: *5th Circuit Pattern Instruction 2.11*

STOCK INSTRUCTION 32
(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.

DATED this ____ day of _____, 2____.

Gregory B. Wormuth
United States Magistrate Judge

Sources: *First two paragraphs—derived from first two paragraphs of NM UJI 13-2009*

Remaining paragraphs—derived from 9th Circuit Pattern Instruction 4.3 and stock instructions of other judges of this Court