

**STOCK
CIVIL JURY INSTRUCTIONS

FOR
JUDGE JOHNSON**

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

Plaintiff

v.

Civil No.

Defendant.

[JUDGE WILLIAM P. JOHNSON'S STOCK CIVIL]
JURY INSTRUCTIONS

INSTRUCTION NO. ____

MEMBERS OF THE JURY:

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury 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.

General Instructions for Charge

5th Cir. Pattern Instructions - ¶ 3.1 (portion)

INSTRUCTION NO. ____

It is a general rule in civil cases that 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 greater weight of the evidence. To prove by a preponderance of the evidence means to establish that something is more likely true than not true.

In determining whether any fact has been proved by a preponderance of the evidence in the case, 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.

NM UJI 13-304 (1st paragraph) and

Fifth Cir. Pattern Civ. Jury Instr. 1.06 (1990) (portion & modified)

INSTRUCTION NO. ____

The evidence which you are to consider in this case 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].

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, or what would or would not have been the answers to the questions which I ruled could not be answered.

Admissibility of Evidence

NM UJI 13-307 (modified)

INSTRUCTION NO. ____

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.

Multiple Plaintiffs

UJI 13-1901 & 13-1902

INSTRUCTION NO. ____

Although there is more than one Defendant in this action, it does not follow from that fact alone that if one is liable, any other is liable. Each Defendant is entitled to fair consideration of his own defense.

You will decide each Defendant's case separately, as if each were a separate lawsuit.

Multiple Defendants

UJI 13-1901 & 13-1902

INSTRUCTION NO. ____

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.

Corporation as a Party

UJI 13-409

INSTRUCTION NO. ____

The [name of 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.

Corporation Impartiality

UJI 13-206

INSTRUCTION NO. ____

A proximate cause of an injury is that which in a natural and continuous sequence 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.

Proximate Cause (A) (without independent & intervening cause)

NJ UJI 13-305

INSTRUCTION NO. ____

A proximate cause of an injury is that which in a natural and continuous sequence , unbroken by an independent and 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.

[An “independent intervening cause” interrupts and turns aside a course of events and produces that which was not foreseeable as a result of an earlier act or omission.]

[An “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.]

Proximate Cause (B) (with “independent & intervening cause”)

NM UJI 13- 305 + 306

INSTRUCTION NO. ____

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 the evidence, both direct and circumstantial.

INSTRUCTION NO. ____

Certain charts or summaries have been received into evidence to illustrate facts brought out in the testimony of some witnesses. 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.

Demonstrative Exhibits (General)

INSTRUCTION NO. _____

Exhibit **[insert number]** is an illustration. It is a party's [description or picture or model] to describe something involved in this trial. If your recollection of the evidence differs from the exhibit, rely on your recollection.

INSTRUCTION NO. ____

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.

Limiting Instruction - Fifth Circuit Pattern Instructions - § 2.15

INSTRUCTION NO. __

You have heard testimony by way of deposition. 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.

Deposition Testimony

Fifth Circuit Pattern Instructions (can substitute “by video” for “in writing” where necessary)

INSTRUCTION NO. ____

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.

Interrogatories Instruction

NM UJI 13-204

INSTRUCTION NO. ____

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 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' ability and opportunity to observe, the witness' memory, the witness' 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.

Credibility of Witnesses

NM UJI 13-2003

INSTRUCTION NO. ____

A witness may be discredited or impeached by contradictory evidence or inconsistent conduct, or by evidence that at other times the witness has made statements 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 think he or she deserves.

Impeachment of Witness

NM UJI 13-2004 (modified)

INSTRUCTION NO. ____

The Rules of Evidence do not ordinarily permit a witness to testify as to an opinion or conclusion. An expert witness is an exception to this rule. A witness who, by knowledge, skill, experience, training or education, has become expert in any subject may be permitted to state an opinion as to that subject. You should consider each expert opinion and the reasons stated for the opinion, giving them such weight as you think they deserve. You may reject an opinion entirely if you conclude that it is unsound.

Expert Testimony / Opinion

NM UJI 13-213

INSTRUCTION NO. ____

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.

Liability Must be Determined Before Damages
NM UJI 13-1801

INSTRUCTION NO. ____

If you find that Plaintiff is entitled to a verdict in accordance with these instructions, but do not find that the Plaintiff has sustained substantial actual damages, then you may return a verdict for the Plaintiff in some nominal sum such as one dollar.

If you find in favor of the Plaintiff, but you find that the Plaintiff's damages have no monetary value, then you must return a verdict for the Plaintiff in the nominal amount of one dollar (\$1.00).

[The award of a nominal sum on account of 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.]

Nominal Damages

Long v. Shillinger, 927 F.2d 525 (10th Cir. 1991); NM UJI 13-1832

INSTRUCTION NO. __

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.

You may award compensatory damages only for injuries that the plaintiff proves were proximately 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. 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. 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.

INSTRUCTION NO. ____

You must not award compensatory damages more than once for the same injury. For example, if the Plaintiff prevails on all claims and establishes a dollar amount for the 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 what was 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 Plaintiffs have proven.]

Double Recovery Instruction

Fifth Cir. Pattern Civil Jury Instr. 15.14 (modified)

See Hale v. Basin Motor Co., 110 N.M. 314 (1990) (conduct would be improper under the rule against duplication or double recovery).

INSTRUCTION NO. ____

If you have found that Plaintiff is entitled to damages arising in the future, you must determine the amount of such damages you believe would fairly compensate Plaintiff for such future 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 a person's earnings may remain the same or may increase or decrease in the future.]

Future Damages Instruction

NM UJI 13-1821 [bracketed] and Fifth Circuit Pattern Instructions § 15.3 (modified)

INSTRUCTION NO. ____

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.

Future Damages - Discount to Present Cash Value

NM UJI 13-1822

INSTRUCTION NO. ____

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 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 damages, you should deny him recovery for those damages which he would have avoided had he taken advantage of the opportunity.

You are the sole judge of whether the 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. 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 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 his burden of proving that the plaintiff's conduct was not reasonable.

INSTRUCTION NO. ____

You may consider punitive damages only if you find that Plaintiff should recover compensatory or nominal damages. You may award punitive damages if the plaintiff has proved that the defendant[s] acted with malice or willfulness, or with reckless indifference to the safety or rights of others. Malicious conduct is the intentional doing of an 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.

Punitive damages are awarded for the limited purpose of punishment and to deter others from the commission of like offenses. The law does not require you to award punitive damages, however, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. 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 of an award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. The amount awarded, if any, must be reasonable and not disproportionate to the circumstances.

INSTRUCTION NO. __

The employer [principal] is liable for punitive or exemplary damages only when the employer [principal] has in some way authorized, participated in or ratified the acts of the employee [agent].

[ALTERNATIVES for Vicarious Liability]

Additionally, 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).

Vicarious Liability & Punitive Damages

NM UJI 13-1827; Albuq. Concrete Coring co, Inc., 118 NM 140 (1994)

INSTRUCTION NO. __

If you find that only one defendant is responsible for a particular injury, then you must award damages for that injury only against that defendant. If you find that the Plaintiff is entitled to recover damages against more than one Defendant, you must return a verdict for compensatory damages in one single sum jointly against the Defendants whom you find to be liable.

[If you find that punitive damages are recoverable, they are to be assessed individually against any Defendant or Defendants you find liable therefor.]

Damages - Multiple Defendants (where fault is not apportioned)

NM UJI 13-1824; Fifth Circuit Pattern Instructions § 15.14 (modified)
Gallegos v. Citizens Ins. Agency, et al., 108 N.M. 722, 727 (1989)

INSTRUCTION NO. __

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.

Duty to Deliberate
Fifth Circuit Pattern Instructions, § 2.11

INSTRUCTION NO. __

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

Faithful Performance

NM UJI 13-2001

INSTRUCTION NO. __

The jury acts as a body. Therefore, on every question which you must answer, it is necessary that all of you participate regardless of the vote on another question. Before a question can be answered, all of you must agree upon the answer.

Jury Acts as a Body

NM UJI 13-2006

INSTRUCTION NO. __

Upon retiring to the jury room, you will select one of your number to act as foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

A special verdict form has been prepared for you. You will be given the Court's instructions and a special verdict form. In this case it will be necessary for you to answer the preliminary questions presented to you on the verdict form. You will begin deliberating only when I have instructed you to do so. If you recess during your deliberations, follow all of the instructions that the Court has given you about/on your conduct during the trial.

After you have reached your unanimous verdict, your Foreperson is to fill in on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any question.

If it becomes necessary during your deliberations to communicate with me, you may send a note by the marshal. Never attempt to communicate with me except by a written note signed by your foreperson. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can address you orally. 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. They should not be thrown away, even at the conclusion of your deliberations.

Bear in mind always you are not to reveal to me or to any person how you stand, numerically or otherwise, until you have reached a unanimous verdict.

Foreperson Instruction

NM UJI 13-2009; and Fifth Circuit Pattern Instructions

Bledsoe v. Garcia, 742 F.2d 1237, 1244 (10th Cir. 1984) (unanimous jury verdict have been used in fed courts for over 200 years)

DATED _____, 2000

WILLIAM P. JOHNSON
United States District Judge