

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

DAVID RYAN :
 : Civil No. 1:05CV173
 v. :
 :
 BOBLIN HOSPITALITY CORPORATION, :
 d/b/a THE INN AT WESTON :

CHARGE TO THE JURY

Now that you have heard the evidence and arguments, it becomes my duty to instruct you as to the applicable law.

It is your duty as jurors to follow the law, and not question it, and to apply that law to the facts as you find them from the evidence in the case.

The lawyers may have referred to some of the rules of law in their arguments. If, however, any difference appears between the law as stated by the lawyers and the law stated by the Court in these instructions, you are to follow the Court's instructions.

Nothing I say in these instructions is an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather yours.

You must perform your duties as jurors without bias or prejudice as to any party. You are not to be governed by sympathy, prejudice or public opinion.

All parties expect that you will carefully and

impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

Evidence in the Case

Statements and arguments of counsel are not evidence in the case. However, when the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

The evidence in the case consists of the sworn testimony of the witnesses, admitted exhibits, and any stipulated facts.

Any evidence to which an objection was sustained or stricken by the Court must be disregarded.

Evidence--Direct, Indirect, or Circumstantial

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence--such as the testimony of an eyewitness. The other is indirect or circumstantial evidence --the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

There is no distinction between direct or circumstantial evidence. You may find the facts by a preponderance of all the evidence in the case, both direct and circumstantial.

Credibility of Witnesses -- Discrepancies in Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, the manner in which the witness testifies, by the character of the testimony given, or by contrary evidence.

You should carefully scrutinize all the testimony, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is believable. Consider each witness' intelligence, motive and state of mind, and demeanor or manner. Consider the witness' ability to observe the matters to which the witness testifies, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, any bias or prejudice, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit their testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, which is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

You may give the testimony of each witness such weight, if any, you think it deserves, and accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying. You may find that the testimony of a small number of witnesses is more credible than the testimony of a larger number of witnesses to the contrary.

Expert Witnesses

You have heard an expert witness express his opinions. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness' qualifications, his opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence. You should not, however, accept opinion testimony merely because the witness was allowed to testify concerning his judgment, nor should you substitute it for your own reason, judgment and common sense. The determination of the facts rests solely with you.

Verdict -- Unanimous -- Duty to Deliberate

The verdict must represent the considered judgment of each juror. All of you must agree with the verdict. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, without violence to individual judgment. You must 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 views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts.

INSTRUCTIONS OF LAW

Now I will give you instructions concerning the law that applies to this case. You must follow the law as stated in these instructions. You must then apply these rules of law to the facts you find from the evidence.

You determine the facts in this case. By these instructions, I am not indicating how you should decide any question of fact.

Burden of Proof and Preponderance of the Evidence

The burden is on the plaintiff in a civil action to prove every essential element of his claim by a preponderance of the evidence. In this case, it is the plaintiff's burden of proof to prove every essential element of his negligence claim by a preponderance of the evidence.

In addition, the defendant has raised a defense of comparative negligence. It is the defendant's burden of proof to prove every essential element of its comparative negligence defense by a preponderance of the evidence.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

A preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence. In determining whether a fact, claim or defense has been proven by a preponderance of the evidence, you may consider the relevant testimony of witnesses,

regardless of who may have called them, and relevant exhibits
in evidence, regardless of who may have produced them.

Negligence

The plaintiff has alleged he was injured as a result of the defendant's negligence. The elements of negligence are:

First, the existence of a legally cognizable duty owed by the defendant to the plaintiff.

Second, a breach of that duty.

Third, that such breach of that duty was a proximate cause of the plaintiff's injury.

Fourth, that the plaintiff suffered actual damages as a result of the injury.

The plaintiff must prove each of these elements by a preponderance of the evidence. If he fails to prove any one of these elements, then his negligence claim must fail.

In this case, plaintiff claims that defendant negligently maintained the hallway in the Inn, causing him to fall and injure himself. It is undisputed that the defendant had a duty to use reasonable care to keep the hallway in a condition that did not unnecessarily or unreasonably expose the public to danger of injury. Therefore, the defendant is responsible for injuries that are caused by unreasonably dangerous conditions that the defendant actually knew existed, or should have known existed.

This duty, however, is not absolute. The defendant is not the insurer of the plaintiff's safety. The defendant is

not liable to the plaintiff if he was injured by something dangerous on the defendant's premises that the plaintiff knew about or that would have been obvious to a reasonable person in plaintiff's situation.

Proximate Cause

A breach of one's duty is of no legal significance unless it is the proximate cause of damage. A "proximate cause" is a cause which, unbroken by any intervening cause, produces the damage, and without which the damage would not have occurred.

This does not mean the law only recognizes one proximate cause of injury or damage. On the contrary, many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage. All that is necessary is that the defendant's conduct was a substantial contributing cause of the plaintiff's injury.

Comparative Negligence

As part of its defense, the defendant has raised the defense of comparative negligence. The defendant claims the plaintiff was himself negligent and that his own negligence, if any, was the cause of his injuries.

You should consider the same negligence elements I have already outlined. The defendant has the burden of proving the plaintiff's comparative negligence by a preponderance of the evidence.

Should you conclude that both the defendant and plaintiff are negligent, and that the negligence of both contributed to the injuries suffered by the plaintiff, then it will be your job to determine a percentage of responsibility to each of the parties. That is, you must determine what percentage of the accident is a result of the defendant's negligence, and what percentage is the result of plaintiff's. Those percentages, obviously, must add up to 100 percent.

Compensatory Damages

If you decide for the plaintiff on the question of liability, you will next consider the question of damages.

The fact that I am about to instruct you as to the proper measure of damages should not be considered as my opinion as to liability. Instructions as to the measure of damages are given for your guidance in the event you find in favor of the plaintiff by a preponderance of the evidence in accordance with other instructions.

Damages which the plaintiff may recover are those that will fairly and justly compensate him for injuries sustained as a direct result of the defendant's negligence. You may award compensatory damages only for those injuries which you find the plaintiff has proven by a preponderance of the evidence.

You may not simply award damages for any injury suffered by the plaintiff -- you must award damages only for those injuries that are a direct result of actions by the defendant and that are a direct result of defendant's negligence.

The plaintiff is entitled to be compensated for past and future damages proximately caused by the defendant's conduct.

The plaintiff in this case seeks compensation for: past expenses for medical care, damages for mental anguish and pain and suffering, and damages for lost enjoyment of life.

However, damages must not be based on speculation or sympathy. They must be based only on the evidence presented at trial.

Finally, the plaintiff has only one day in court to recover damages for his injuries. He cannot institute another action at a later date against the defendant to recover for the damages that might accrue at some future time. Therefore, it follows that whatever he is entitled to recover in the future on account of his injuries must be included in the amount he recovers now.

Collateral Source Rule

You are not to concern yourself with any benefits or payments which you think the plaintiff has received as a result of his injuries. It is not of any consequence or relevance to the case before you whether his medical bills have been paid or by whom. You may not consider whether any damages you may award will go to the plaintiff or to reimburse others.

Pre-Existing Condition

In this action, the plaintiff is entitled to recover full compensation for all damage proximately resulting from the defendant's negligence, even though his injuries may have been aggravated by reason of his pre-existing physical condition, or have become more serious than they would have, had the plaintiff been in robust health. The defendant cannot invoke the previous condition of the plaintiff for the purpose of escaping the consequences of its own negligence or reducing the damages for which it is liable. When one violates the duty, imposed by the law, of exercising due care not to injure others, they may be compelled to respond in damages for all the injuries inflicted by reason of the violation of such duty, even if a particular injury may have been aggravated by or might not have happened at all except for the peculiar physical condition of the person injured. The right of a person suffering from a condition, who is injured by reason of the negligence of another, to recover for all damages proximately resulting from the negligent act, includes the right to recover for any aggravation of an existing condition.

So, if you find that any underlying condition of the plaintiff was made worse, the plaintiff is entitled to receive such sums as will adequately and fully compensate him for the enhancement and aggravation of the pre-existing condition.

The defendant is not responsible for those injuries which would have happened purely from the original condition. However, the defendant must pay in damages for such part of the condition as its negligence caused, and if there can be no apportionment, or if cannot be said with certainty that the condition would have existed apart from the injury, then the defendant is responsible for all the damages sustained.

Life Expectancy Table

According to the Statistical Abstract of the United States, a standard table of mortality compiled by the United States Bureau of Census of which the Court has taken judicial notice and has received into evidence in this case, the life expectancy in this country of male Caucasian person 70 years of age is 13 years.

You may consider this fact in calculating the amount of damages, if any, to be awarded in the event you conclude the plaintiff is entitled to a verdict.

Keep in mind, however, that life expectancy, as shown by a mortality table, is merely an estimate of the probable average remaining length of life of all persons in the United States of a given race, age, and sex, and that such estimates are based on a limited record of experience. To the extent that any inference may reasonably be drawn from the life expectancy set forth in the table, such inference applies only to one who has the average health and exposure to danger of people of that race, age and sex.

Thus, in determining the reasonably certain life expectancy of the plaintiff, you should consider, in addition to what is shown by the table of mortality, all other facts and circumstances bearing upon the life expectancy of the plaintiff, including his occupation, habits, past health

record, and present state of health.

Election of a Foreperson

I will select _____ to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

A verdict form has been prepared for your convenience. You will take this form to the jury room. I direct your attention to the verdict form.

Your foreperson will indicate the unanimous answer of the jury in the space provided for each question and, when completed, will date and sign it.

Conclusion

To return a verdict, all jurors must agree to the verdict. In other words, your verdict must be unanimous.

Upon retiring to the jury room your foreperson will preside over your deliberations and be your spokesperson here in court.

When you have reached a unanimous verdict, your foreperson should sign and date the verdict form.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing, signed by the foreperson, and pass the note to the court security officer. He will then bring the message to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I may address your question orally. I caution you, with regard to any message or question you might send, that you should never specify where you are in your deliberations or your numerical division, if any, at the time.