

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

MARY C. REPUCCI, individually and :  
as executor of the ESTATE OF :  
FRANCIS E. REPUCCI, :

Plaintiff, :

v. :

Docket No. 2:01-CV-287

LAKE CHAMPAGNE CAMPGROUND, INC. :  
a Vermont corporation, :  
PIERRE LAFRANCE AND ELIZABETH :  
LAFRANCE, individually, jointly :  
and severally, :

Defendant. :

JURY CHARGE

Members of the Jury:

The Plaintiff in this case is Mary C. Repucci, individually and as executor of the estate of Francis Repucci. The Defendants are Lake Champagne Campground, Pierre Lafrance and Elizabeth Lafrance. Now that you have heard the evidence and the arguments, it becomes my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

Plaintiff alleges that she was injured and Mr. Repucci was killed as result of Defendants' failure to properly care for their campground. Defendant denies this allegation.

## ROLE OF THE COURT, THE JURY AND COUNSEL

You have listened carefully to the testimony presented to you. Now you must pass upon and decide the factual issues of this case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them. I shall shortly define the word "evidence" and instruct you on how to assess it, including how to judge the credibility of the witnesses.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything but the evidence in the case.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. That is your function.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should appraise the evidence deliberatively and without the slightest trace of

sympathy, bias or prejudice for or against any party.

### EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits admitted into evidence, and all the facts admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is the exhibit's existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer, on the basis of reason, experience and common sense, from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence for it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but requires that your verdict must be based on all the evidence presented.

### CREDIBILITY OF WITNESSES

You as jurors are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness since you may accept or reject the testimony of any witness in whole or in part.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

### EXPERT WITNESSES

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. 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 or her 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 in the case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

### TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked

by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists only of the sworn testimony of witnesses, the stipulations made by the parties and all exhibits admitted into evidence. When the attorneys for the Plaintiff and the Defendant stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

#### TESTIMONY OF A LAW ENFORCEMENT OFFICER

A law enforcement officer testified in this case. The testimony of a law enforcement officer should be considered by you just as any other witness in the case, and in evaluating his or her credibility you should use the same guidelines which you apply to the testimony of any witness. You should not give either greater or lesser weight to the testimony of a witness merely because he or she is a law enforcement officer.

### BURDEN OF PROOF

This is a civil case and as such the Plaintiff has the burden of proving every element of his claim by a "preponderance of the evidence." The phrase "preponderance of the evidence" means the evidence of greater weight, logic, or persuasive force. It does not mean the greater number of witnesses or documents. It is a matter of quality, not quantity. Preponderance of the evidence is evidence that is more convincing and produces in your minds a belief that what is sought to be proved is more likely true than not. In other words, to establish a claim or a defense by a "preponderance of the evidence" means proof that the claim or defense is more likely so than not so. In determining whether any fact at issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who called them, and all the exhibits received in evidence, regardless of who may have produced them.

### CORPORATION ENTITLED TO TREATMENT AS A PERSON

A defendant in this case, Lake Champagne Campground, is a corporation. The fact that a corporation is involved must not affect your decision in any way. A corporation and all other persons are equal before the law and must be dealt with as equals in a court. You should consider and decide this case as an action between persons.

## NEGLIGENCE

In her complaint, Plaintiff alleges that Defendants' negligence caused her to be injured. To prevail on this claim, Plaintiff must prove by a preponderance of the evidence each of the following three elements:

1. Defendants owed Plaintiff a duty of care;
2. Defendants breached that duty; and
3. that Defendants' breach of duty was a proximate cause of Plaintiff's injuries.

The first element is duty of care. Duty as it is understood in the law, means a legal obligation to do or not do some act, depending on the particular circumstances of the case. I instruct you that Defendants, as business owners, owed Plaintiff a duty of active care to ensure that the campground was in a safe and suitable condition for their customers. This duty required Defendants to use reasonable care to keep the campground in a safe and suitable condition so that their customers would not be unnecessarily or unreasonably exposed to danger.

Under Vermont law, the duty of care increases proportionately with the foreseeable risks of the operations involved. Thus, as the risk of harm increases to Plaintiff, Defendants' duty of care is correspondingly increased.

The second element is breach. In considering whether a breach has occurred, you must look at the evidence and determine



if Defendants or their employees or agents adhered to the duty as imposed by the law.

The last element is proximate cause. In order to find Defendants liable for Plaintiff's injuries, Plaintiff must prove by a preponderance of the evidence that Defendants' breach of their duty of care was a proximate cause of those injuries.

A legal or proximate cause of an injury means that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury. An injury is proximately caused by an act or a failure to act when it appears from the evidence in the case that the act or omission played a substantial part in bringing about or actually causing the injury.

The law recognizes that there may be more than one proximate cause of an injury. Multiple factors may operate at the same time, or independently, to cause the injury and each may be a proximate cause. Plaintiff is required to prove by a preponderance of the evidence that Defendants' breach of duty was a proximate cause of her injuries, but is not required to show that it was the only proximate cause.

#### DAMAGES: IN GENERAL

The fact that I am about to instruct you as to the proper measure of damages does not reflect any view of mine as to which party is entitled to your verdict. Instructions as to the measure

of damages are given for your guidance in the event you find in favor of Plaintiff by a preponderance of the evidence in accordance with the other instructions.

In reaching your verdict, carefully consider the evidence presented against the Defendants. You may assess damages against the Defendants only if you find Defendants liable for claims outlined above.

Please keep in mind the following general principles as you make your deliberations. In making any award of damages, it is not necessary that Plaintiff prove the exact amount of the damages with absolute certainty. Nevertheless, any damages you award may not be based on sympathy, speculation, or guesswork because only actual damages are recoverable. Remember that the Plaintiff has the burden of proving damages by a preponderance of the evidence. In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence.

DAMAGES: COMPENSATORY

If you find that Defendants are liable to Plaintiff by a preponderance of the evidence, then you should award Plaintiff compensatory damages. The purpose of compensatory damages is to put Plaintiff in the same position she was in prior to the

injury. Thus, Plaintiff is entitled to recover for all damages proximately caused by her own experiences on the night of the accident. These damages can include past and future pain, suffering and emotional distress arising out of her observations and experiences of the incident that resulted in her husband's death. You must find these damages by a preponderance of the evidence. You are not to consider the consequences of Mr. Repucci's death when calculating damages under this section. I will instruct you on those damages in the next section.

DAMAGES: WRONGFUL DEATH

Plaintiff also seeks damages for the death of Mr. Repucci. Under Vermont law, when the death of a person is caused by a wrongful act or negligence of a person or corporation, that person or corporation is liable to the decedent's spouse or estate for "pecuniary damages" resulting from the death. Pecuniary damages include out-of-pocket expenses, such as funeral bills, as well as loss of expected economic benefits such as money or household services. Pecuniary damages are not limited to economic damages but can also include the loss of intellectual, moral and physical training and the loss of care, nurture and protection. You must find these damages by a preponderance of the evidence.

DAMAGES: LOSS OF CONSORTIUM

Vermont law also permits a spouse to recover damages for

loss of consortium. If you find by a preponderance of the evidence that, as a result of Defendants' conduct, Plaintiff has been deprived of Mr. Repucci's love, companionship, affection, society, comfort, services, or sexual relations, you may award damages for this loss.

UNANIMOUS VERDICT

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree.

It is your duty as jurors to consult with one another, and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- the judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

NOTES

You may have taken notes during the trial for use in your deliberations. These notes may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than your fellow jurors. Your notes should remain in the jury room and will be collected at the end of the case.

CLOSING INSTRUCTIONS

I have selected \_\_\_\_\_ to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A copy of this charge will go with you into the jury room for your use.

A verdict form has been prepared for your convenience. You will take this form to the jury room. Each of the interrogatories or questions on the verdict form requires the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question, and will date and sign the special verdict, when completed.

If it becomes necessary during your deliberations to

communicate with the Court, you may send a note through the Courtroom Security Officer signed by your foreperson. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject related to the merits of the case other than in writing, or orally here in open Court.

You will note that all other persons are also forbidden to communicate in any way or manner with any member of the jury on any subject related to the merits of the case.

Dated at Burlington, Vermont this \_\_\_\_ day of April, 2004.

**DRAFT**

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William K. Sessions III  
United States District Court