

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

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QUEMUEL ARROYO,

Plaintiff,

v.

Case No. 5:10-cv-117

MILTON ACADEMY, MILTON ACADEMY )  
D/B/A THE MOUNTAIN SCHOOL, ALDEN )  
SMITH, and SUSAN RINEHART, )

Defendants. )

**JURY CHARGE**

**General Instructions:**

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

It is your duty as jurors to follow the law, and to apply it to the facts as you find them from the evidence presented in the courtroom. 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 is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence presented during the trial.

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

Our judicial system requires you to carefully and impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

### **Jurors as Finders of Fact/Rulings of the Court**

You and you alone, are the triers of the facts. Each of you, as jurors, must determine the facts for yourselves in reaching a verdict. By the rulings which I made during the course of the trial, I did not intend to indicate to you or to express my own views about this case.

### **Sympathy/Prejudice**

Neither sympathy nor prejudice, for or against the parties, or any other person involved with this case, should influence you in any manner in reaching your verdict. Your deliberations should be well reasoned and impartial.

### **Important Case**

This is an important case to the parties and the court. You should give it serious and fair consideration.

### **Educational Institution as a Party**

As you know, some of the defendants are educational institutions. You should consider this case, however, as an action between persons. An educational institution is entitled to the same treatment as a private individual. All persons, including institutions, stand equal before the law.

### **Evidence in the Case**

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits admitted into evidence, and any stipulated facts, regardless of which party presented the evidence. When the attorneys on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved. You may give the stipulated fact, like any other evidence, the weight that you think it deserves.

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

### **Arguments/Statements/Objections of the Attorneys**

The opening statements and closing arguments of the attorneys, their questions and objections, and all other statements which they made during the course of the trial, are not evidence. The attorneys have a duty to object to evidence which they believe is

not admissible. You may not hold it against either side if any attorney feels it is necessary to make an objection.

### **Evidence – Direct or Circumstantial**

There are two types of evidence from which you may find the facts of this case: direct and circumstantial evidence. Direct evidence is the testimony of someone who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances tending to prove or disprove an issue in the case.

For example, if a witness were to testify that he or she had seen cows in a field, that would be an example of direct evidence that there were cows in a field. On the other hand, if a witness were to testify that he or she had seen fresh cow tracks in the field, that would be an example of circumstantial evidence that there had been cows in the field.

The law does not require a party to prove its claims or defenses by direct evidence alone, that is, by testimony of an eyewitness. One or more of the essential elements, or all of the essential elements, may be established by reasonable inference from other facts which are established by direct testimony. Circumstantial evidence alone may be sufficient proof.

The law makes no distinction between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should consider all the evidence in the case and give it such weight as you think it deserves.

### **Credibility of Witnesses**

You are the sole judges of the credibility of the witnesses, and the weight to give their testimony is up to you. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe; his or her demeanor while testifying; any interest or bias he or she may have; and the reasonableness of his or her testimony, considered in light of all of the evidence in the case. 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 a witness's testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. It is your duty to reconcile conflicting testimony if you can do so.

In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or to 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. You may believe all of the testimony of any witness, you may believe it in part and disbelieve it in part, or you may reject it altogether. You do not have to accept the testimony of any witness, even if it is uncontradicted. It is for you to say what you will believe and what you will disbelieve.

### **Expert Witnesses**

You have heard evidence from witnesses who are known as expert witnesses. An expert witness is a person who has special knowledge, experience, training, or education in his or her profession or area of study. Because of this expertise, an expert witness may offer an opinion about one or more of the issues in the case. In evaluating their testimony, you should evaluate their credibility and statements just as you would with any other witness. You should also evaluate whether the expert witness's opinion is supported by the facts that have been proved, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of an expert witness any greater weight than you believe it deserves just because the witness has been referred to as an expert.

### **Number of Witnesses**

The fact that one side may have called more witnesses than the other side is of no significance. Your task is to evaluate the credibility of the witnesses, and to weigh all of the evidence.

### **Personal Knowledge and Experience of Jurors**

In deliberating upon your verdict, you are not expected to put aside your common sense or your own observations or experience of the general affairs of life. However, a juror having special knowledge of a subject may neither state this knowledge to fellow jurors nor act upon it himself or herself in arriving at a verdict. You must not tell your fellow jurors about matters which are based on special knowledge concerning an issue in the case which did not come from the evidence received in the courtroom.

### **Burden of Proof/Preponderance of the Evidence**

The burden is on the party making the claim to prove each essential element of its claims by a preponderance of the evidence. To "establish by a preponderance of the evidence" means to prove that something is more likely than not. In other words, a

preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. In determining whether a fact, claim, or defense has been proven by a preponderance of the evidence, you may consider the testimony of witnesses, regardless of who may have called them, and the exhibits in evidence, regardless of who may have produced or introduced them.

# **I. Mr. Arroyo's Negligent Supervision Claim**

This is a personal injury case wherein the Plaintiff, Quemuel Arroyo, seeks to recover damages he allegedly suffered as a result of the acts or omissions of the Defendants. Mr. Arroyo's claim against Defendants is for negligent supervision. Mr. Arroyo alleges that Defendants were negligent by failing to adequately supervise and protect him. Specifically, he claims that Defendants were negligent in permitting him to leave central campus alone; in failing to ascertain how and where he was going; and/or in allowing him to use a mountain bike without training or assessing his ability to navigate his path to his science site safely. Defendants deny that they were negligent in any way.

If you find that one or more of the Defendants in this case is liable for negligent supervision, you must attribute that negligence to Milton Academy d/b/a The Mountain School.

Mr. Arroyo, as the party claiming Milton Academy d/b/a The Mountain School negligently supervised him, must prove the following elements by a preponderance of the evidence:

1. Milton Academy d/b/a The Mountain School had a duty to adequately supervise and protect Mr. Arroyo;
2. Milton Academy d/b/a The Mountain School breached its duty by failing to adequately supervise and protect Mr. Arroyo; and
3. As a direct and proximate cause of Milton Academy d/b/a The Mountain School's failure to adequately supervise and protect Mr. Arroyo, he suffered injuries that would not have otherwise occurred.

The first element concerns Milton Academy d/b/a The Mountain School's duty to adequately supervise and protect Mr. Arroyo. A school and its employees must exercise ordinary care to prevent students from being exposed to unreasonable risk, from which it is foreseeable that injury is likely to occur. A school is not required to provide immediate supervision of all students at all times and under all circumstances. Nor does a school owe a student an absolute duty of supervision. Whether a risk is unreasonable will depend in large part upon the age and maturity of the student, and the particular situation.



To some extent, the care owed to the student is comparable to how a reasonably prudent parent would act under similar circumstances, taking into account the age and maturity of the student, the situation involved, and the level of supervision necessary to carry out the school's educational mandate.

The second element concerns Milton Academy d/b/a The Mountain School's alleged breach or violation of its duty to adequately supervise and protect Mr. Arroyo. Mr. Arroyo has the burden of proving, by a preponderance of the evidence, that Milton Academy d/b/a The Mountain School knew or should have known of an unreasonable risk of harm to Mr. Arroyo, and that Milton Academy d/b/a The Mountain School breached its duty to adequately supervise and protect Mr. Arroyo from that harm.

An employer such as Milton Academy d/b/a The Mountain School may be held liable for the negligent acts of an employee who was acting within the authority of the employer in furtherance of the employer's business. The parties do not dispute that Gavinn Boyce was acting within the scope of his employment, and thus within the authority of Milton Academy d/b/a The Mountain School, when he interacted with Mr. Arroyo on the day in question. Therefore, if you find that Mr. Boyce breached his duty of care to Mr. Arroyo, then you should also find that Milton Academy d/b/a The Mountain School breached its duty to adequately supervise and protect Mr. Arroyo.

The third element concerns causation. Mr. Arroyo must prove that but for Milton Academy d/b/a The Mountain School's failure to adequately supervise and protect him, his injuries would not have occurred. Stated differently, Milton Academy d/b/a The Mountain School's failure to adequately supervise and protect Mr. Arroyo must have actually caused the accident which lead to his injuries. If Mr. Arroyo's injuries were not caused by Milton Academy d/b/a The Mountain School's failure to adequately supervise him, or if his injuries would have occurred regardless of Milton Academy d/b/a The Mountain School's failure to adequately supervise him, then Mr. Arroyo has failed to prove causation. That is, if Mr. Arroyo probably would have been injured regardless of the way in which Milton Academy d/b/a The Mountain School supervised and protected him, then the acts or omissions of Milton Academy d/b/a The Mountain School are not the cause of his injuries.

In a negligence case, the law also requires a claimant to prove that negligence was a "proximate cause" of an injury in order to prove one of the necessary elements of liability. Proximate cause is a cause which results in an injury in a natural and continuous sequence, unbroken by any other intervening cause. It is a cause without which the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts 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 and in such a case, each may be a proximate cause.

If you find that Mr. Arroyo has proved by a preponderance of the evidence each of the elements of a negligent supervision claim, you must return a verdict for Mr. Arroyo on this claim. You must then consider the issue of affirmative defenses and then damages. If you find that Mr. Arroyo has not established each of the elements of a negligent supervision claim, you must return a verdict for Milton Academy d/b/a The Mountain School on this claim. In such event, you must not consider the issue of affirmative defenses or damages with regard to this claim.

## **II. Milton Academy d/b/a The Mountain School's Affirmative Defenses**

Milton Academy d/b/a The Mountain School has asserted two affirmative defenses in this case. An affirmative defense is a claim that, if true, will defeat all or part of a plaintiff's claim. Milton Academy d/b/a The Mountain School has the burden of proving its affirmative defenses by a preponderance of the evidence. You must consider Milton Academy d/b/a The Mountain School's affirmative defenses only if you find in Mr. Arroyo's favor on his negligent supervision claim. If you find in favor of Milton Academy d/b/a The Mountain School on Mr. Arroyo's negligent supervision claim, the issue of affirmative defenses need not be addressed.

### **A. Comparative Negligence**

In this case, Milton Academy d/b/a The Mountain School first asserts the affirmative defense of comparative negligence. Pursuant to this affirmative defense, Milton Academy d/b/a The Mountain School asserts that Mr. Arroyo was negligent in his actions on the day of his injury. The law requires that Mr. Arroyo act with reasonable care for his own safety and well-being.

Thus, if you conclude that Milton Academy d/b/a The Mountain School was negligent and that the School's negligence contributed to Mr. Arroyo's injury, you must next decide whether Milton Academy d/b/a The Mountain School has met its burden of proving by a preponderance of the evidence the following elements of its comparative negligence defense:

1. Mr. Arroyo himself was negligent by failing to act with reasonable care for his own safety and well-being at the time and place in question; and that
2. Mr. Arroyo's negligence was a direct and proximate cause of his accident.

As to the first element, Mr. Arroyo had a duty to act with reasonable care for his own safety. Reasonable care is not the greatest possible care, such as might be employed by an unusually cautious person. Rather, it is ordinary care, given all the circumstances existing at the time and place of the accident. Here, Mr. Arroyo's conduct must be measured against that of a reasonable eighteen year-old student.

The second element concerns causation. Milton Academy d/b/a The Mountain School must prove that but for Mr. Arroyo's failure to act with reasonable care for his own safety and well-being at the time and place in question, his injuries would not have occurred. Stated differently, Milton Academy d/b/a The Mountain School must prove that Mr. Arroyo probably would have been injured regardless of the way in which Milton Academy d/b/a The Mountain School supervised and protected him.

In a negligence case, the law also requires a claimant to prove that negligence was a "proximate cause" of an injury in order to prove one of the necessary elements of liability. Proximate cause is a cause which results in an injury in a natural and continuous sequence, unbroken by any other intervening cause. It is a cause without which the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts 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 and in such a case, each may be a proximate cause.

If you find that Milton Academy d/b/a The Mountain School has satisfied its burden on these issues, then you must next compare any negligence attributed to Mr. Arroyo with any negligence you have attributed to Milton Academy d/b/a The Mountain School. To do so, you must assign a percentage to the causal negligence of Mr. Arroyo on one hand, and Milton Academy d/b/a The Mountain School on the other. The percentages you assign must add up to 100 percent. Let me suggest two hypothetical examples:

	Example 1	Example 2
Mr. Arroyo	15%	60%
Milton Academy d/b/a The Mountain School	85%	40%
Total negligence	100%	100%

Of course, these examples are for illustrative purposes only. They do not indicate in any way how you should decide the case.

If you determine that Mr. Arroyo's share of the negligence is greater than 50%, then you should return a verdict for Milton Academy d/b/a The Mountain School, and you should not go on to consider damages. If Mr. Arroyo's share of the negligence is 50% or less when compared to the negligence of Milton Academy d/b/a The Mountain School, then the total damages award, if any, must be reduced by the percentage of Mr. Arroyo's negligence. I will provide you with a worksheet that will help you work through these questions during your deliberations.



### **B. Sports Injury Statute**

As a second affirmative defense, Milton Academy d/b/a The Mountain School contends that under a Vermont law known as the “sports injury statute,” Mr. Arroyo assumed the risk of riding a bicycle down the pasture road. The sports injury statute says that a person who participates in a sport accepts all of the obvious and necessary dangers of that particular sport. Here, Milton Academy d/b/a The Mountain School alleges that the danger of going too fast, the possibility of encountering uneven surfaces on unpaved roads, and the risk of falling off the bicycle are obvious and necessary dangers of the sport of bicycle riding.

You therefore must decide whether Milton Academy d/b/a The Mountain School has met its burden of proving by a preponderance of the evidence the following elements of its sports injury statute defense:

1. Mr. Arroyo was participating in a sport at the time he was riding the bicycle; and
2. The dangers involved in riding a bicycle on the pasture road were both obvious and necessary.

It is not necessary for you to find that Mr. Arroyo understood the specific risk of his particular injury, paralysis, but only that he understood the danger of falling and suffering an injury. If you find that Mr. Arroyo was not participating in a sport, or that the dangers involved were not obvious and necessary parts of bicycle riding, then the sports injury statute does not apply.

### **III. DAMAGES**

#### **General Instructions on Awarding Damages**

The fact that I have instructed you on the issue of damages should not be considered as the court’s opinion that any party has established any of its claims or defenses. That is solely for you to decide.

Mr. Arroyo is seeking a damages award in the total amount of \$25 million.

A party claiming damages must prove by a preponderance of the evidence that it actually sustained damages, and that its damages were proximately caused by the defendant’s conduct. This means that its damages were a direct result of a reasonably probable consequence of the defendant’s conduct.

### **Compensatory Damages**

Damages mean the amount of money that you decide a person is entitled to as compensation for what has happened to him or her. The point of awarding damages is to put the injured party in the position he or she would have been if the wrong had not occurred. You must be guided by the amount of loss which was or will actually be incurred by Mr. Arroyo, and not by any feelings of sympathy, sorrow, or a desire to help him. It is never the purpose of compensatory damages to punish a defendant or to reward a plaintiff.

### **Speculative Damages Not Permitted**

Because some of Mr. Arroyo's claims for damages are economic, Mr. Arroyo must prove them to your satisfaction in dollars and cents. However, where there is no specific dollar amount, such as with pain and suffering, then Mr. Arroyo does not have to prove the exact dollar amount of his injury.

You may not award damages that are speculative or merely possible in nature.

### **Income Taxes**

If you find for Mr. Arroyo, you must not consider any effect of federal or state income tax in deciding the amount of the damages award.

### **Duplication of Damages Must Be Avoided**

You should be careful not to award damages for one item which duplicates an award for another item. In other words, a party is only entitled to one recovery for its actual damages.

Your award in all respects must be fair and reasonable in light of all the evidence that you find worthy of belief and all the reasonable inferences to be drawn from such evidence.

### **Mitigation of Damages**

Under the law, a party seeking an award of damages must make reasonable attempts to minimize or eliminate those damages. If you find that Mr. Arroyo has failed to mitigate his damages, you must subtract the monetary amount of any such failure from your award. In other words, a party is not entitled to recover damages to the extent he or she could have avoided or reduced those damages.

### **Personal Injury Damages**

Mr. Arroyo may be awarded compensation for any bodily injury and any pain and suffering, disability, disfigurement, mental anguish, and loss of enjoyment of life he has experienced. Award these damages for any harm you find caused by Milton Academy d/b/a The Mountain School's negligent supervision as they relate to the injury in question.

Because this is Mr. Arroyo's only opportunity to recover an award from the jury for his injuries, you may also award damages for any future damages you find have been established by the evidence.

You may also award damages for any actual financial costs Mr. Arroyo incurred as a result of Milton Academy d/b/a The Mountain School's negligent supervision.

You should make sure that any amount awarded to Mr. Arroyo is fair to the parties in this case in light of the evidence you heard.

### **Present Value of Future Loss**

If you award Mr. Arroyo future medical expenses, then you must determine the "present value" of those awards, because they represent payment now for a loss that will not occur until some future date. Basically, Mr. Arroyo will be reimbursed in advance. In order to adjust this award to a present value, you must discount or reduce future medical expenses awarded by taking (1) the interest rate or return that Mr. Arroyo could reasonably be expected to receive on an investment of the lump-sum payment, together with (2) the period of time over which the future loss is expected to occur. Your verdict must be for this reduced amount, which represents the present value of your award.

### **Life Expectancy**

In determining the amount of damages to award, you need to consider how long Mr. Arroyo would have lived during a normal life. I instruct you that the normal life expectancy for Mr. Arroyo is 58 years, until he reaches the age of 70.

### **Court Costs and Attorney's Fees**

If you find Mr. Arroyo is entitled to any damages, you must not include in your award any sum for costs or attorney's fees. These are matters for the court.

### **Jury Deliberations/Unanimous Verdict**

The verdict must represent the considered judgment of each juror. In order to return a verdict, you must all agree. Your verdict must be unanimous.

You must consult with one another. You must try to reach an agreement if you can do so without sacrificing your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your views and change your opinions if you are convinced they are wrong. But do not surrender your honest opinion as to the weight or effect of evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

If you need to communicate with me, you should send a note through the Court Officer, signed by your foreperson. You must not discuss with the court or with any other person what is said in deliberations, and any note you send to the court must not include this information. In other words, you may ask the court questions but, in doing so, you must not reveal what the jurors are thinking or saying. You must not tell anyone how the jury stands numerically or otherwise until after you have reached a unanimous verdict and you have been discharged. Even then you need not speak to anyone about this case unless you want to.

When you have reached a verdict, tell the Court Officer that you have reached a verdict, but do not tell the Officer what the verdict is. You will then be brought into the courtroom where I shall ask you if you have reached a verdict, and, if you have, what it is.

### **CONCLUDING INSTRUCTIONS**

#### **Juror Note Taking**

During the trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes. I will now describe the process for a read back.

**Read Back of Evidence**

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or part of these instructions, you may do the following:

1. write out your question, and have the foreperson sign it;
2. knock on the door of the jury room; and
3. deliver your note to the Court Officer, to give to me.

After the attorneys have been consulted, and the record has been reviewed, I shall decide what action to take. I will tell you my ruling.


**Election of a Foreperson**

I select \_\_\_\_\_ to act as your foreperson. The foreperson acts as a chairperson or moderator. It is your duty to see that discussions are carried out in a sensible and orderly manner and to see that the issues submitted for the jury's decision are fully and fairly discussed, and that every juror has a chance to say what he or she thinks upon every question.

When ballots should be taken, you will see that it is done. You will act as the jury's spokesperson in the courtroom. In all other respects, the foreperson is the same as every other juror. His or her vote or opinions do not count more or less than those of his or her fellow jurors.

Ladies and gentlemen of the jury, you may now take the case and retire to begin your deliberations.

Dated at Rutland, in the District of Vermont, this 1st day of February, 2012.

  
Christina Reiss, Chief Judge  
United States District Court