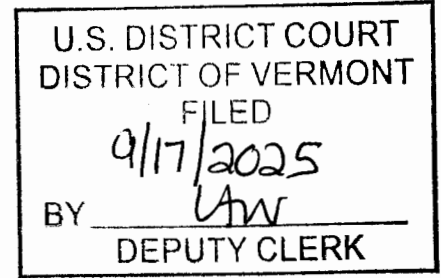


UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT



MICHAEL EMERSON,

Plaintiff,

v.

SHAW'S SUPERMARKETS, INC.,
and FRESH IDEATION FOOD
GROUP, LLC, d/b/a FRESH
CREATIVE CUISINE,

Defendants.

Case No. 2:23-cv-626

JURY INSTRUCTIONS

Members of the Jury:

As you now know, this case stems from an illness suffered by the Plaintiff Michael Emerson. Mr. Emerson claims that his illness was caused, at least in part, by a sandwich made by the Defendant Fresh Ideation Food Group, also known as Fresh Creative Cuisine, and sold by the Defendant Shaw's Supermarkets. Mr. Emerson also claims that the illness resulted in long-term harm including the exacerbation of preexisting medical conditions.

Role of the Court and the Jury

You have listened carefully to the testimony presented to you. Now you must consider and decide the factual issues of this case. It is my duty to instruct you on the law. You are the sole and exclusive judges of the facts. You determine 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. You 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. All parties expect that you will carefully consider all of the evidence, follow the law as it is now being given to you and reach a just verdict regardless of the consequences.

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. One example of 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. For example, a witness may testify that the weather was cold on a particular date.

Circumstantial evidence is evidence which proves or disproves a disputed fact by proof of other facts. You may infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. For example, a witness may testify that it was January and he was wearing a heavy jacket outside, so you may infer the weather was cold. Circumstantial evidence is of no less value than direct evidence, and the law makes no distinction between

direct evidence and circumstantial evidence. The law 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 are not required 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. In weighing the testimony of the witnesses you have heard, you may consider their interest, if any, in the outcome of the case; their manner of testifying; their apparent memory; their candor; their bias, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony, among other reasonable considerations. You may believe as much or as little of the testimony of each witness as you think proper.

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. The fact that one party called more witnesses and

introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most 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. Innocent misrecollection or failure of recollection is not an uncommon experience. 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, certain witnesses have expressed their opinions about matters that are in issue. An "expert" witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience or 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's qualifications, his or her opinions, 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's 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 the witness testified 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 must 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.

During the course of the trial I occasionally asked questions of a witness to bring out information that I believed could be helpful for the jury to determine the facts. Do not

assume that I hold any opinion on matters related to my questions.

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 and the exhibits. 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.

Burden of Proof

This is a civil case and as such the Plaintiff Michael Emerson has the burden of proving every element of his claims 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 means 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 proven by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of which party called them, and all the exhibits received in evidence, regardless of which party may have produced them.

Corporations Entitled to Treatment as Persons

The Defendants in this case are corporations. A corporation can only act through its officers, employees, and agents and is liable for the acts and omissions of an employee who is acting within the scope of his employment. The fact that a corporation is involved must not affect your decision in any way. You should consider and decide this case as an action between persons.

Liability and Damages

I will now instruct you on the theory of liability that the Plaintiff seeks to prove in this case by a preponderance of the evidence. After discussing liability, I will talk about potential damages if you find the Defendants liable.

You will receive a copy of these instructions for your reference in the jury room. You will also receive a "verdict form" that covers liability and damages which the jury foreperson will fill out after you deliberate. You should refer back to these instructions if you have any questions about the terminology or your responsibility as you complete the verdict

form.

Strict Products Liability - Unreasonably Dangerous Food

Mr. Emerson alleges that he ate a defective sandwich manufactured and sold by the Defendants which caused Mr. Emerson harm. For Mr. Emerson to succeed on that claim, Plaintiff must prove by a preponderance of the evidence that:

1. Defendants sold the sandwich to Mr. Emerson;
2. The sandwich was contaminated with listeria at the time of sale;
3. The sandwich was "unreasonably dangerous" at the time of sale;
4. Mr. Emerson consumed the sandwich which was in substantially the same condition as when he purchased it; and
5. The listeria contamination caused harm to Mr. Emerson.

A product is "unreasonably dangerous" to the consumer if it has a tendency to cause physical harm beyond what would be expected by the ordinary consumer who possesses the ordinary and common knowledge of the community as to the product's characteristics.

To find the Defendants liable, you must find that Mr. Emerson has proven all five elements above by a preponderance of the evidence. If you do not find that Mr. Emerson has proven

every individual element, you may not find Defendants liable.

Causation

This form of liability requires the jury to determine "causation." The products liability theory requires you to determine whether the alleged listeria contamination of the sandwich *caused* harm to Mr. Emerson. In this case, to find causation, you must find that a natural and unbroken sequence of events led from one thing to another such that the result would not have happened without the previous action.

In other words, if you find that Mr. Emerson would not have suffered the alleged harm if he had not eaten the sandwich, you may conclude that the sandwich caused the harm. Conversely, if you find that he would have suffered the alleged harm even if he did not eat the sandwich, the sandwich did not cause his harm.

Importantly, however, consuming the sandwich need not be the *only* cause of his harm for you to find liability. There may be multiple causes, including the sandwich, which combined together to produce the alleged harm. As long as you determine by a preponderance of the evidence that consuming the sandwich is one of the causes of the harm Mr. Emerson suffered, it would satisfy the element of causation.

Damages

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 the Plaintiff by a preponderance of the evidence in accordance with the other instructions.

If you determine that the Defendants are liable to the Plaintiff, you must determine the amount of damages that Mr. Emerson sustained as a result of the Defendants' action or inaction. The word "damages" is a legal term referring to the amount of monetary payment to which the Plaintiff is entitled in order to compensate him for injuries that resulted from the incident.

This type of damages is called "compensatory damages." Compensatory damages seek to make an injured person whole – that is, to compensate him for any harm that he may have suffered. The Plaintiff has the burden of proving by a preponderance of the evidence the extent and nature of any injuries, that the injuries he sustained were caused by the Defendants' liable conduct, and the amount of money to be awarded. You may only award such damages as are supported by the evidence.

In determining the amount of damages to allow the Plaintiff, you may draw such inferences from the evidence of the nature of the injuries and the results thereof as are justified

by your common experiences and observations. You may also consider whether it is more probable than not that the damages will continue into the future as a direct, natural, and probable consequence of the Defendants' conduct, and, if so, award the Plaintiff full, fair, and adequate compensation for those future damages.

You should not award damages for speculative injuries, but only for those injuries that Plaintiff has actually suffered or which he is reasonably likely to suffer in the future. The reason behind awarding damages to a plaintiff is not to punish a defendant for any wrongdoing but to compensate the plaintiff for injuries incurred as a result of the defendant's conduct.

In awarding compensatory damages, should you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. However, the law does not require the Plaintiff to prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. It is also important to note that the Plaintiff will not be able to return to court in the future to seek additional damages from the Defendants for his alleged harm, so any damages you choose to award should account for that.

Items to be Considered in Calculating Damages

You may consider the following in order to determine compensatory damages:

1. The cost of medical expenses incurred by the Plaintiff, and the reasonable present value of similar expenses that will likely be incurred in the future.
2. Any pain, suffering, and mental distress that the Plaintiff suffered as a result of the incident, experienced from the date of the incident to the present. This includes compensation for physical pain, discomfort, fears, anxiety, and mental and emotional distress.
3. Any pain, suffering and mental distress as you may find he is likely to endure in the future as a result of the incident.
4. If you find that the Plaintiff has established permanent injuries, such compensation as would fairly and fully compensate him for any loss of enjoyment of life which he has sustained as a result of the Defendants' conduct—that is, the inability, if any, to carry on and enjoy a life in the same manner as if the incident had not occurred.

It may be difficult to place a dollar value on some of these elements of damages, because they cannot be exactly determined according to a formula. You must use your own

reasonable judgment to determine what amount will fully, fairly, and reasonably compensate the Plaintiff for the categories of damages I have described to you.

Aggravation of Pre-Existing Condition

In calculating the Plaintiff's damages, keep in mind that the Plaintiff cannot recover specifically for a physical ailment or disability that existed before the incident. However, the Plaintiff may recover for damage due to enhancement or aggravation of a preexisting condition, if you determine it was caused by the Defendants' liable conduct. In essence, the Plaintiff should only be compensated to the extent you find that he was injured or further injured by the Defendants.

Mitigation of Damages

A person who is injured by the acts of another is bound to exercise reasonable care and diligence to avoid loss or to minimize or lessen the resulting damages. If you find that the Plaintiff could reasonably have avoided some of his damages claimed by taking any reasonable action but that he did not do so, you must reduce your award of damages by an amount equal to the damages that the Plaintiff could have avoided. The Defendants have the burden of proving that the Plaintiff could have avoided those damages by a preponderance of the evidence.

Verdict Based Upon Evidence

Your verdict in this case must be based solely upon the

evidence presented at the trial of this case, whether testimonial or documentary, and legitimate inferences to be drawn therefrom. Your verdict may not be based upon sympathy for a party, prejudice, passion, speculation, or conjecture.

Unanimous Verdict

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

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 these instructions 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 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 form when it is 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. 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.

Bear in mind also that you are never to reveal to any person--not even to the court--how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Dated at Burlington, Vermont this 17th day of September 2025.

A handwritten signature in black ink, appearing to read 'W. K. Sessions III', is written over a horizontal line.

William K. Sessions III
United States District Court