

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

David Hennessy and Carol	:	
Hennessy, and State Farm	:	
Fire and Casualty Co.,	:	
Plaintiffs	:	
	:	
v.	:	No. 2:95-CV-55
	:	
Black & Decker (U.S.) Inc.,	:	
Defendant.	:	

JURY CHARGE

The Plaintiffs in this case are David and Carol Hennessy, represented by Eileen Blackwood, and State Farm Fire and Casualty Company, represented by Richard Wadhams. The Defendant is Black & Decker, Incorporated, represented by John Evers and Rendall Barlow.

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. [Giove v. Crafts Inn, 91-CV-38]

As I mentioned at the beginning of the trial, Plaintiffs have brought their claims under the legal theories of strict products liability, breach of implied warranty of merchantability, and negligence. Defendant denies these

claims.

Each is a separate and distinct theory of recovery, requiring proof of different elements. Later I will instruct you on each one of these theories in turn. First, I would like to give you some general instructions.

Role of the Court, the Jury and Counsel

You have listened carefully to the testimony that has been presented to you. [Sand, ¶ 71.01, Instruction 71-1; modified]. Now you must pass upon and decide the fact issues of this case. You are the sole and exclusive judge 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" for you and instruct you on how to assess it, including how to appraise the credibility or, to put it another way, the believability of the witnesses. [Id.]

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 to base a verdict upon any other view of the law than that given in the instructions I am about to give you, just as 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. [Id.; modified]

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. [Id.; modified]

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. [Giove; modified]. 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. [Devitt, § 71.01; modified]

Corporations and Corporate Liability

A corporation is entitled to the same fair trial as is a private individual. All persons, including corporations,

partnerships, unincorporated associations, and other organizations, stand equal before the law and are to be dealt with as equals in a court of justice. [Id. at § 71.04; modified]

When a corporation or partnership is involved, of course, it may act only through natural persons as its agents or employees. In general, agents or employees of a corporation or partnership may bind the corporation or partnership by their acts and declarations made while acting within the scope of the authority delegated to them by the corporation or partnership, or within the scope of their duties as employees of the corporation or partnership. [Id. at § 71.09]

Evidence in the Case

As I have said earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. Statements and arguments of counsel are not evidence in the case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation and regard that fact as proved. [Devitt, §71.08; modified]

The evidence includes any stipulated facts, the sworn testimony of the witnesses and the exhibits admitted in the

record. [Giove; modified]. Any evidence as to which an objection was sustained and any evidence that I ordered stricken from the record must be entirely disregarded. [Devitt, § 71.08; modified]

Certain diagrams have been shown to you in order to help explain the facts which are in evidence in the case. However, such diagrams are not in and of themselves evidence or proof of any facts. If such diagrams do not correctly reflect facts or figures shown by the evidence in the case, you should disregard them. [Devitt, § 72.09; modified]

In other words, such diagrams are used only as a matter of convenience; so if, and to the extent that you find they are not in truth summaries of facts or figures shown by the evidence in the case, you are to disregard them entirely. [Id.]

As I mentioned before, any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What

the lawyers say is not binding upon you. [Giove; modified]

Also, during the course of the trial I occasionally made comments to the lawyers, asked questions of a witness, or admonished a witness concerning the manner in which he or she responded to the questions of counsel. Do not assume from anything I have said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

'[Id.]

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case. [Id.]

Direct and Circumstantial Evidence

The law recognizes two types of evidence -- direct and circumstantial. Direct evidence is provided when, for example, people testify to what they saw or heard themselves; that is,

something which they have knowledge of by virtue of their senses. Circumstantial evidence consists of proof of facts and circumstances from which in terms of common experience, one may reasonably infer the ultimate fact sought to be established.

[Id.]

The following anecdote is a simple example of circumstantial evidence. Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella which was dripping wet. Then a few minutes later another person also entered with a wet umbrella. Now, you cannot look outside of the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of facts which I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining. That is all there is to circumstantial evidence. [Sand, et al., ¶ 74.01, Instruction 74-2]

Such evidence, if believed, is of no less value than direct evidence. As a general rule, the law makes no distinction between direct and circumstantial evidence, but

simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial. [Giove]

Burden of Proof

This is a civil case and as such the Plaintiffs have the burden of proving every element of their claims by a "preponderance of the evidence." [Sand, ¶ 73.01, Instruction 73-1; modified] 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. 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. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so. [Von Albrecht v. A.O. Smith Corporation, 90-CV-329; modified]

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the

testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. [Giove].

If after considering all of the testimony you are satisfied that the Plaintiffs have carried their burden of proof on each element of their claim, then you must find for the Plaintiffs on that claim. If, after such consideration you find the testimony of both parties to be in balance or equally probable, then the Plaintiffs have failed to sustain their burden and you must find for the Defendant. [Sand, ¶ 73.01, Instruction 73-1]

Witness Credibility

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, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given. [Id. at § 73.01]

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness

is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; 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. [Id.]

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, 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. [Id.]

After making your own judgment, you should give the testimony of each witness such weight, if any, as you may think

it deserves. [Id.]

You may, in short, accept or reject the testimony of any witness in whole or in part. [Id.]

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary. [Id.]

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witness, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy. [Id. at § 72.13; modified].

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony. [Id. at § 73.04]

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the

testimony of that witness such credibility, if any, as you may think it deserves. [Id.]

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves. [Id.]

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason. [Id.]

Expert Witnesses

You have heard testimony from several experts in this case. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts. [Sand, ¶ 76.01, Instruction 76-9]

In weighing the expert's testimony, you may consider the expert's qualifications, his or her opinions, his or her 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 expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept this witness's testimony merely because he or she is an expert. 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. [Id.]

It sometimes happens that experts disagree. The way you resolve the conflict between experts is the same way that you decide other fact questions and the same way you decide whether to believe ordinary witnesses. In addition, you should consider the soundness of each expert's opinion, reasons for the opinion and his or her motive, if any, for testifying. [Id. at ¶ 76.01, Instruction 76-10; modified]

It is now my duty to give you instructions on the legal theories that apply to this case.

A. Strict Products Liability

The first theory I will discuss with you is called strict products liability. In order to prevail upon their claim of strict liability against Black & Decker, Plaintiffs must prove

by a preponderance of the evidence each of the following elements:

1. that the coffee maker or some component of the coffee maker was in a defective condition when sold by Black & Decker;
2. that the defect, if any, made the coffee maker unreasonably dangerous to users such as the Hennessys;
3. that the coffee maker was in substantially the same condition at the time of the accident as it was when it left the hands of Black & Decker; and
4. that the defect, if any, in the coffee maker was the proximate cause of the injuries suffered by the Plaintiffs.

[Vt. Jury Instructions § 7.24; Restatement (Second) of Torts § 402A (1950); Zaleskie v. Joyce, 133 Vt. 150 (1975)]

Design Defect

On the first element, Plaintiffs must prove by a preponderance of the evidence that there was some defect in the coffee maker when it was sold by Black & Decker. Keep in mind that a product is not defective merely because it is possible

for damage to occur from use of the product. Black & Decker is not required to guarantee that no one will be hurt using the coffee maker. All that Black & Decker is required to do is to manufacture and sell a product that is free from defective and unreasonably dangerous conditions. The simple fact that Plaintiffs were injured while operating the coffee maker is not evidence that the product was defective. [Vt. Jury Instructions § 7.24]

Put another way, strict liability is not the same as absolute liability. Under Vermont's doctrine of strict liability, liability is imposed on a manufacturer or seller only when the product is unreasonably dangerous. [Id.]

Plaintiffs claim that the coffee maker was defective in its design. A manufacturer has no duty to design an absolutely perfect product. The fact that there are alternative designs that, had they been adopted, would have prevented the accident is insufficient to establish liability; this is only one factor to be considered in determining if the product was unreasonably dangerous. It is not enough for Plaintiffs to show that Black & Decker might have designed a safer product; if the coffee maker as designed was safe for ordinary use, then the coffee maker was not defectively designed.

A product is in a defective condition unreasonably dangerous to the user if it has a propensity for causing physical harm beyond that which would be contemplated by the ordinary user or consumer, with ordinary knowledge common to the foreseeable class of users as to its characteristics.

[Devitt, § 82.03].

In evaluating the adequacy of the design in guarding against unreasonable risks, you should consider the gravity of the danger posed by the product's design, the likelihood that such danger would occur, the mechanical feasibility of a safer alternative design, and the adverse consequences to the product and to the consumer that would result from an alternative design. You may also consider standard industry practice at the time of the product's design and manufacture. Evidence that all product designers in the industry balance the competing factors in a particular way is clearly relevant to the determination of the product's design. Another relevant factor in determining whether an alternative design was feasible at the time of manufacture is the manufacturer's ability to eliminate the allegedly unsafe character of the product without impairing its usefulness.

Only if you find that the Plaintiffs have proven that

Black & Decker's coffee maker had an unreasonably dangerous defect, and that the defect was the proximate cause of Plaintiffs' injuries, should you go on to determine the amount of their damages.

B. Implied Warranty of Merchantability

Plaintiffs claim that Defendant Black & Decker has breached the implied warranty of merchantability, and that as a result of that breach, the Plaintiffs suffered economic losses. Under Vermont law, certain warranties are implied by law when goods, or services incidental to them, are sold. One of these is the warranty of merchantability, which provides that unless the parties have agreed on some other standard, all goods shall be fit for the ordinary purposes for which they are intended. That is to say, the goods must be free of defects and reasonably safe for the normal use for which the goods are made and sold. [Dinse, § 7.05; modified]

In order to prevail on this claim, Plaintiffs must prove that there was a breach of implied warranty and that the injuries complained of were proximately caused by that breach. In order to prevail on this claim, the Plaintiffs must prove each of the following elements by a preponderance of the

evidence:

1. that the coffee maker sold by Black & Decker was not fit for the ordinary purposes for which it was intended;
2. that the coffee maker was unfit for its ordinary purposes when it left Black & Decker's control; and
3. that the defect was the proximate cause of Plaintiffs' damages. [9A V.S.A. § 2-314]

Proximate cause in the case of breach of an implied warranty means a cause which, unbroken by any intervening cause, produces the damage, and without which the damage would not have occurred.

Only if you find that the Plaintiffs have proven that Black & Decker breached an implied warranty of merchantability and that such breach was a proximate cause of Plaintiffs' damage, should you go on to determine the amount of the damages.

C. Negligence

The Plaintiffs claim that Defendant Black & Decker was negligent in the manner in which it designed the coffee maker they owned and used, and that such negligence was the legal or

proximate cause of their damages.

In order to prove that Black & Decker was negligent, the Plaintiffs must prove each of the following elements by a preponderance of the evidence:

1. that Black & Decker owed Plaintiffs a duty;
2. that Black & Decker breached that duty;
3. that the Plaintiffs suffered damages; and
4. that Black & Decker's breach of its duty was a proximate cause of the Plaintiffs' damages. [Dinse, § 7.17]

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. You first must determine whether the Plaintiffs have shown that Black & Decker owed them a duty.

Negligence is the breach or omission of a legal duty through neglect or carelessness. In this case, if you find that Black & Decker owed the Plaintiffs a duty to use reasonable care in the design and manufacture of the coffee maker, then you must decide whether Black & Decker in fact exercised such reasonable care. "Reasonable care" is the degree of care that a reasonably, careful person would exercise in the same or

similar circumstances. Negligence may occur when a defendant does something a reasonable person would not do, or when a defendant does not do something a reasonable person would do.

[Gale v. Dahon California, Inc., No. 94-CV-51]

If you find that Black & Decker breached a duty of reasonable care, you must then go on to consider whether Plaintiffs suffered damages, and if so, whether those damages were proximately caused by Black & Decker's breach.

Proximate Cause

" A breach is of no legal significance unless it is the proximate cause of damage. A proximate cause of damage is defined as a cause which, unbroken by any intervening cause, produces the damage, and without which the damage would not have occurred. [Von Albrecht]

This does not mean that the law recognizes only one proximate cause of injury or damage, consisting of only one factor or theory, or the conduct of only one person. 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; in such a case, each may be a proximate cause. If any one of them played a substantial part in bringing about or causing the injury and was

attributable to Black & Decker, then you should find Black & Decker liable and calculate the amount of damages. [Id.]

Emotional Distress

As part of their claim, Plaintiffs allege that David Hennessy suffered emotional distress due to the fire. In order to prevail on this claim, David Hennessy must establish each of the following elements by a preponderance of the evidence:

1. that Black & Decker owed David Hennessy a duty of care;
2. that Black & Decker's conduct breached that duty of care;
3. that David Hennessy suffered fright from fear of immediate injury to himself or to his daughter, resulting in substantial bodily injury or sickness; and
4. that Black & Decker's conduct was a proximate cause of David Hennessy's fright.

In order to assist you with your deliberations, I will now define some of these terms for you. Any terms which I do not define for you carry their usual and ordinary meaning.

Keep in mind that in an action such as this for alleged

negligent infliction of emotional distress, Plaintiffs must prove by a preponderance of the evidence that David Hennessy feared for his own personal safety or for the safety of a loved one who was also present. Put another way, Plaintiffs must show that David Hennessy was within the zone of danger created by Black & Decker's conduct. If you find that David Hennessy was not within the zone of danger, then you should enter a verdict for Black & Decker on this claim, regardless of the emotional distress experienced by David Hennessy. [Vermont Jury Instructions § 7.12]

Damages

As explained above, the Plaintiffs have made claims against the Defendant for strict products liability, breach of implied warranty, and negligence. If you decide for the Defendant on the question of liability, you will have no occasion to 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 intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you find in favor of the

Plaintiffs by a preponderance of the evidence in the case in accordance with the other instructions. [Devitt, § 74.02]

In reaching your verdict in this case, you must carefully consider the evidence presented against the Defendant. You may assess damages against the Defendant only if you find the Defendant liable under at least one of the theories I have 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 the Plaintiffs prove the exact amount of their damages with absolute certainty. Nevertheless, the damages you award, if you do so, may not be based on speculation or guesswork because it is only actual damages which are recoverable. Remember that the Plaintiffs have the burden of proving damages by a preponderance of the evidence.

If you should find that Plaintiffs are entitled to a verdict, you may award only such damages as will reasonably compensate them for such financial losses as you find, from a preponderance of the evidence in this case, were sustained as a proximate result of the Defendant's wrongful acts. In other words, you are not permitted to award speculative damages.

1. Property Damages

The basic principle of damages is that a person who is entitled to recover at all is entitled to recover full, just, and adequate compensation for his or her injuries and losses. In a case such as this involving damages to real or personal property which can be repaired or replaced, Plaintiffs are entitled to recover the costs of repairs necessary to restore their property to the condition in which it existed prior to the fire damaging their house. Plaintiffs are not entitled to have their property restored to a condition better than it existed immediately prior to the fire. However, if, because of the nature of the repairs required, Plaintiffs' property receives some incidental benefit which improves its condition beyond that which existed at the time of damage, Plaintiffs are entitled to such benefits without any deduction therefor by virtue of the fact that their property may have been incidentally improved.

It is up to you, as jurors, to determine the damages, if any, to which Plaintiffs are entitled to recover, as you find from the evidence they sustained. The measure of recovery for damage to personal property that has been damaged is the difference between the fair market value of the property

immediately before the damage, and the fair market value immediately thereafter. Fair market value can be defined as the amount a willing seller would accept from a ready, willing, and able buyer to purchase the property on the day in question.

Bear in mind that you should be concerned only with the losses proximately caused by Black & Decker's activities, as the object of compensation is to place injured parties in the position they occupied immediately prior to damage. [Vermont Jury Instructions § 7.41]

2. Emotional Distress

Plaintiffs in this case allege that David Hennessy suffered mental distress as a result of Black & Decker's conduct. If Plaintiffs have proved such injury by a preponderance of the evidence, then I instruct you that you may make an award of damages to compensate Plaintiff David Hennessy for this element.

You have heard testimony regarding the claim for emotional distress suffered by David Hennessy. The measure of damages awarded to David Hennessy for emotional distress should be equivalent to reasonable compensation for any pain, discomfort, fears, anxiety, and other mental and emotional distress suffered by him which was proximately caused by Black & Decker.

No definite standard is prescribed by law by which to fix reasonable compensation for emotional distress. Nonetheless, in making an award for emotional distress you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence. [Vermont Jury Instructions § 7.44]

Your determination of whether David Hennessy suffered emotional distress relates only to the damages, if any, that you award David Hennessy. Whether he suffered emotional distress should be absolutely irrelevant to your consideration of Plaintiff State Farm Fire and Casualty Company's subrogation claim. You may award damages to David Hennessy on the basis of any emotional distress you find him to have suffered, but under no circumstances may you award damages to State Farm Fire and Casualty Company on that basis.

3. Inconvenience

You have heard testimony in this case regarding the inconvenience David and Carol Hennessy claim they suffered as a result of the fire. If Plaintiffs have proved this claim by a preponderance of the evidence, you may award damages that are just and reasonable in light of the evidence.

4. Taxation of Judgment

If you should conclude that any plaintiff is entitled to an award of damages, you shall not consider the possible tax consequences of your verdict.

Plaintiffs' Separate Claims

As you are aware, State Farm insured the Hennessys at the time of the fire and has already paid the Hennessys for damage to their insured real and personal property.

Since State Farm has paid the Hennessys, it is permitted to bring what is called a subrogation claim against whomever it believes is responsible for the Hennessys' damages. This means State Farm stands in the shoes of the Hennessys and has the same burden of proof as though the Hennessys themselves were making the claim. State Farm may recover the same remedies or damages with respect to the Hennessys' insured property losses as the Hennessys would have had they not been insured. As I stated above, the measure of those damages is the difference between the fair market value of the Hennessys' insured property immediately before the damage and its fair market value immediately thereafter.

In regard to State Farm's subrogation claim you should bear in mind that the amount of money State Farm paid the

Henessys does not necessarily represent the fair market value of the Hennessys' damages or the amount State Farm may recover. It is exclusively up to you, the jurors, to determine the fair market value of the insured costs of repair of the real property and the loss in fair market value of the personal property.

The Hennessys have also brought claims for their uninsured personal property lost in the fire. If you find they are entitled to recover for this uninsured property, the same measure of damages applies to them as well. That is, the Hennessys may recover the difference between the fair market value of their uninsured property immediately before the damage and its fair market value immediately thereafter.

If you decide to award damages, you must not award them in duplicate. Damages, if any, in this case may be paid either to State Farm or to the Hennessys, but each cannot recover for the damage to or loss of the same item of property. However, if you find the Hennessys are entitled to recover damages caused by a defect in Defendant's product, you must also find for Plaintiff State Farm.

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. 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, if you can do so without violence to 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. [Devitt, § 74.01]

Notes

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They 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 juror. 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 form of special verdict has been prepared for your convenience. You will take this form to the jury room.

Each of the interrogatories or questions on the special 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.

Communications with the Court

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 touching the merits of the case otherwise 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 touching 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.