Final

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JAMES DOWD, Plaintiff, v. VERMONT MUTUAL INSURANCE COMPANY, Defendant.	)	Case No. 5:18-cv-42

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them.

ROLE OF THE COURT

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law should be, it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

ROLE OF THE JURY

As members of the jury, you are the sole and exclusive judges of the facts. You make decisions based upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence. You are to perform the duty of finding the facts without bias towards any party.

In deciding the facts, no one may invade your function as jurors. In order for you to determine the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in the objections, or in their questions is not evidence. Nor should you consider as evidence anything I may have said—or what I may say in these instructions—about a fact in issue.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views about the parties' positions or the merits of the case.

You should reach your judgment impartially and fairly, without prejudice or sympathy, solely upon the evidence in the case and without regard to the consequences of your decision. If you let sympathy or prejudice interfere with your clear thinking, there is a risk that you will not arrive at a just verdict. All parties to a civil lawsuit are entitled to a fair trial. You must make a fair and impartial decision so that you will arrive at a just verdict.

BURDEN OF PROOF

Plaintiff James Dowd has the burden of proof by a preponderance of the evidence on his claim. This burden of proof applies both to his claim that the auto collision caused him to suffer injury and to the amount of monetary compensation he seeks to recover.

To establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not. A preponderance of the evidence means the greater weight of the evidence. It refers to the quality and the persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proven by a preponderance of the evidence, you may consider the relevant testimony of all the witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence, regardless of who may have produced them.

If you find that the credible evidence on a given issue is evenly divided between the parties then you must decide that issue against the party having the burden of proof. That rule follows from the fact that the party bearing this burden must prove more than simple equality of evidence – he or she must prove the element at issue by a preponderance of the evidence. On the other hand, the party with this burden of proof need prove no more than a preponderance. So long as you find that the scales tip, however slightly, in favor of the party with this burden of proof, then that element will have been proven by a preponderance of the evidence.

JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. 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 the evidence. However, if any juror has specialized knowledge, expertise, or information with

regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

ALL PERSONS EQUAL BEFORE THE LAW

Your verdict must be based solely upon the evidence developed at this trial, or lack of evidence. This case should be considered and decided by you as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. Corporations are considered persons for legal purposes and deserve the same respect we accord to natural individuals. All persons stand equal before the law and are to be treated as equals in a court of justice.

EVIDENCE

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits admitted into evidence, any stipulations submitted by the parties, and judicially noted facts. Testimony that has been stricken or excluded is not evidence and you may not consider it in rendering your verdict. Also, if certain testimony was received for a limited purpose—such as for the purpose of assessing a witness's credibility—you must follow the limiting instructions I have given.

There are two types of evidence that 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 her or his own senses—something she or he has seen, felt, touched or heard. Direct evidence may also be in the form of an exhibit such as a document or photograph.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You may infer on the basis of reason, experience, and common sense from one

established fact, the existence or non-existence of some other fact. For example, if you were to hear a snow plow pass in the night, that would be circumstantial evidence that it had started to snow.

Circumstantial evidence is of no less value than direct evidence; generally, the law makes no distinction between direct evidence and circumstantial evidence but simply requires that your verdict be based on a preponderance of all the evidence presented.

EXPERT WITNESSES

You have heard testimony from witnesses who are known as expert witnesses. An expert witness is a person who has special knowledge, experience, training, or education about a particular subject. Because of this expertise, an expert witness may offer opinions about one or more of the issues in the case.

In considering an expert witness's testimony, you should evaluate his or her credibility and statements just as you would with any other witness, giving the testimony as much weight as you think it deserves. You should also evaluate whether the expert's opinion is supported by the other evidence in the case, whether the reasons given by the expert in support of his or her opinion make sense, and whether the opinion is supported by the expert's knowledge, experience, training or education.

You are not required to give the testimony of an expert any greater weight than you believe it deserves just because the witness has been referred to as an expert.

OBJECTIONS

From time to time the Court has been called upon to determine the admissibility of certain evidence following objections from the attorneys. It is part of the attorneys' duty to make objections, and you should not draw any conclusions or make any judgment from the fact that an

attorney has objected to evidence. In the same fashion, you should not concern yourself with the reason for any rulings on objections by the Court.

Whether offered evidence is admissible is purely a question of law for the Court and outside the province or concerns of the jury. In admitting evidence to which objections have been made, the Court does not determine what weight should be given to such evidence, nor does it assess the credibility of the evidence. Of course, you will dismiss from your mind completely and entirely any offered evidence which has been ruled out of the case by the Court, and you should not speculate about the nature of any exchange between the Court and counsel held out of your hearing.

CREDIBILITY OF WITNESSES

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

You are being called upon to resolve various factual issues raised by the parties in the face of very different pictures painted by both sides. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you decide the truth and importance of each witness's testimony.

How do you determine the credibility of the witnesses? You watched each witness testify. Everything each witness said or did on the witness stand counts in your determination. How did the witness impress you? Did he or she appear to be candid or evasive? How did the witness appear; what was his or her demeanor—that is, his or her carriage, behavior, bearing, manner and appearance while testifying?

You should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should consider any bias or hostility the witness may have shown for or against any party as well as any interest the witness has in the outcome of the case. You should consider the opportunity the witness had to see, hear, and know the things about which he or she testified, the accuracy of his or her memory, his or her candor or lack of candor, his or her intelligence, the reasonableness and probability of his or her testimony and its consistency or lack of consistency, and its corroboration or lack of corroboration with other credible testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given and all of the other evidence in the case. Always remember that you should use your common sense, your good judgment and your own life experience.

IMPEACHMENT OF A WITNESS

A witness, including an expert witness, may be discredited or "impeached" by contradictory evidence, by a showing that the witness testified falsely concerning a matter, or by evidence that at some other time the witness said or did something inconsistent with the witness's present testimony. It is your exclusive province to give the testimony of each witness such credibility or weight that you think it deserves.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; and whether the witness had an explanation for the inconsistency, and whether that explanation made sense to you.

INFERENCES

In their arguments, the parties may have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact. An inference is not a suspicion, guess, speculation or conjecture. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact that has been shown to exist.

There are times when different inferences may be drawn from facts, whether those facts are proven by direct or circumstantial evidence. One party asks you to draw one set of inferences, while the other asks you to draw another. It is a deduction or conclusion which you, the jury, are permitted to draw, but are not required to draw, from the facts which have been established by either direct or circumstantial evidence. It is for you, and you alone to decide what inferences you will draw. In drawing inferences, you should exercise your common sense.

INSTRUCTIONS ON THE SPECIFIC CLAIMS OF THE PARTIES

I turn now to the instructions which govern the specific claim in this case. In this case, plaintiff James Dowd seeks compensation for personal, injury damages he sustained in a motor vehicle collision that occurred in North Miami Beach, Florida on February 29, 2016. (I will refer to this event as the collision.)

The parties agree on the following aspects of the case:

a. The collision involved two cars: one driven by Mr. Dowd and the other by Yaakov Dov. The collision resulted from negligence on the part of Mr. Dov alone. Mr. Dowd was not responsible for the collision.

b. Vermont Mutual Insurance Co. was Mr. Dowd's auto insurer at the time of the collision. For reasons related to insurance coverage, Mr. Dowd is permitted by law to make a claim for personal injury damages he sustained as a result of the collision.

c. The only question you will be asked to determine as the jury in this case is the amount of money that will fairly compensate Mr. Dowd for his injuries.

As you have heard during the trial, the parties disagree about the extent of any injuries and other damages sustained by Mr. Dowd as a result of the collision.

CAUSATION

In this case, the plaintiff James Dowd has the burden of providing that the auto collision caused him to suffer damages. This issue has two aspects:

First, plaintiff has the burden of proving that *but for* the collision, the harm and injury described by plaintiff would not have occurred. A harm that would have happened anyway, even in the absence of the collision, would not be caused by the collision. For example, if I chose yesterday to skip work and work in my garden and I later learned that my car was broken and I could not get to work anyway, the car problem would not be a "but for" cause of my absence from work because I had already decided to stay home. The same principle applies in an injury case. Defendant Vermont Mutual is obligated to compensate Mr. Dowd for those injuries and items of damage that occurred as a result of the collision and not for injuries and damages that he would have sustained in the absence of the collision.

Second, plaintiff has the burden of proving that the auto collision was a "proximate cause" of the harm. A proximate cause is an event which in direct, unbroken sequence, causes or contributes to the cause of an injury. In this case, this burden requires Mr. Dowd to prove to you by a preponderance of the evidence that the automobile collision of February 29, 2016 led directly to his claimed injuries. The automobile collision need not be the sole cause of the plaintiff's damages. In order to establish proximate cause, plaintiff must prove that the defendant's conduct was a substantial factor in bringing about the harm he claims.

PERSONAL INJURY DAMAGES

Damages for plaintiff's claim of personal injury fall into two categories: economic damages and non-economic damages. Economic damages include such items as lost income and medical expenses. Non-economic damages include such items as loss of enjoyment of life, mental anguish, and pain and suffering. These damages may include compensation for past harm and future harm, depending on the evidence. If you determine that the auto collision was the proximate cause of damages corresponding to any of these categories, you must determine the total amount of damages in each category that you determine applies in this case and enter these amounts on the verdict form.

There is no precise standard for calculating these damages. Your damages determination must be just and reasonable in light of the evidence. In determining the damages that plaintiff has suffered as a result of his injuries, you should consider the follow items:

Plaintiff is entitled to recover damages for earnings lost in the past and any loss of earrnings in the future, caused by the auto collision. Plaintiff is also entitled to any loss of benefits, including retirement benefits, that you find were caused by the auto collision. When considering plaintiff's future loss of earnings or his loss of benefits in the future, you should consider Plaintiff's expected working lifetime and, in the case of benefits such as retirement, you should consider his life expectancy.

The parties have agreed that plaintiff has a remaining life expectancy of 34.2 years.

The parties agree that the plaintiff shall recover the sum of $2,110 in medical expenses caused by the auto collision.

Plaintiff is also entitled to damages for any loss of enjoyment of life, mental anguish, and pain and suffering caused by the auto collision. These damages may include any physical pain,

mental discomfort, fears, anxiety, humiliation, loss of enjoyment of life's activities, and any other mental or emotional distress suffered by him in the past or likely to be suffered in the future as a result of the auto collision.

PRE-EXISTING CONDITIONS

You have heard evidence in this case that plaintiff suffered from health problems before the auto collision. The law does not require Vermont Mutual to pay compensation for any condition that he had before the auto collision. However, if plaintiff had a physical or emotional condition that was made worse by the collision, he is entitled to damages for any worsening of that condition. The plaintiff has the burden of proving that his preexisting condition was aggravated by the collision and the extent of any worsening in his condition.

MORE SUSCEPTIBLE TO INJURY

Plaintiff also asserts that his pre-existing psychological conditions left him more susceptible to psychological injury than a person in good health. If you find that the plaintiff has proven this, you should award damages in an amount that would reasonably and fairly compensate plaintiff for all damages he suffered in the auto collision, even if you believe that someone else might not have experienced the same degree of injury.

INCOME TAXES

After you have decided the amount of damages, if any, you must not adjust that amount to account for any federal or state income taxes.

FINAL INSTRUCTIONS

This completes my instructions to the jury. You will retire now to the jury room to deliberate in privacy about the issues in the case. I will provide a verdict form to guide you in your deliberations. You will also receive the exhibits which were admitted into evidence. I will also provide eight copies of these instructions.

I appoint [redacted] as your foreperson. She shall be responsible for making sure that the deliberations occur in an orderly fashion and that every juror has an opportunity to participate.

Any verdict which you return must be unanimous. This means that you cannot answer a question on the verdict form unless and until all jurors agree on the answer.

If you need to communicate with the Court, please do so in writing. I will confer with the lawyers about your written question and send back a written response. Please advise the court officer after you reach a verdict but do not tell him or her or anyone else what the verdict is until you return to the courtroom at which time I will receive the verdict form from your foreperson.

Dated at Burlington, in the District of Vermont, this 22nd day of November, 2021.

Geoffrey W. Crawford, Chief Judge
United States District Court