

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2024 FEB 16 PM 7: 28

CLERK

BY LAW
DEPUTY CLERK

RICHARD GRAJEDA,

Plaintiff,

v.

VAIL RESORTS INC., VAIL RESORTS
MANAGEMENT COMPANY, and OKEMO
LIMITED LIABILITY COMPANY d/b/a/
OKEMO MOUNTAIN RESORT,

Defendants.

Case No. 2:20-cv-00165

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 apply them to the facts as you determine them.

ROLE OF THE COURT, THE JURY, AND COUNSEL

Your first duty is to consider and decide the factual issues of this case. You are the sole and exclusive judges of the facts. 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. You weigh the evidence, you determine the credibility or believability of the witnesses, you resolve any conflicts there may be in the evidence, and you draw any reasonable inferences or conclusions that you believe are justified by the facts as you find them. In a moment, I will define the word "evidence" and instruct you on how to assess it, including how to judge whether the witnesses have been honest and should be believed.

Your second duty is to apply the law that I give you to the facts. Do not single out one instruction alone, but consider the instructions as a whole. You should not be concerned with whether you agree with any instruction given by the court. You may have

a different opinion as to what the law ought to be, but it would be a violation of your sworn duty as jurors to base your verdict on any version of the law other than what is contained in the instructions given by the court.

The lawyers may have referred to some of the governing rules of law in their argument. However, if you find any differences between the law as stated by the lawyers and the law as stated by me in these instructions, you must follow my instructions. It is the lawyers' job to point out the things that are most significant or most helpful to their side of the case. But remember that their statements regarding the law are not evidence in this case.

In addition, nothing I say in these instructions should 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; rather, that job is yours alone. You must perform your duty as jurors with complete fairness and impartiality. You should consider the evidence carefully and without sympathy, bias, or prejudice for or against any party. All parties expect that you will diligently examine all of the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

CORPORATION, ENTITY, OR INSTITUTION AS A PARTY

As you know, Defendants in this case, Vail Resorts Inc., Vail Resorts Management Company, and Okemo Limited Liability Company, d/b/a Okemo Mountain Resort, are corporations. This should not affect how you view the case, however. You should consider the case to be an action between persons. A corporation is entitled to the same fair treatment and consideration that you would give a private individual. All persons, including corporations, are equal before the law.

IMPORTANT CASE

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

ARGUMENTS/STATEMENTS/OBJECTIONS OF THE ATTORNEYS

The opening statements and closing arguments of the attorneys, their questions and objections, and all other statements that they made during the course of the trial are

not evidence unless the statements are made under oath. The attorneys have a duty to object to evidence that they believe is not admissible. You may not hold it against either side if they feel it is necessary to make an objection.

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.

EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses and the exhibits admitted into evidence, regardless of which party presented the evidence. Any evidence to which an objection was sustained or stricken by the court must be disregarded. Similarly, I caution you that you should entirely disregard any testimony or exhibit that has been excluded or stricken from the record.

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, or the exhibits in the trial. 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 that are established by direct testimony. Circumstantial evidence may alone be sufficient to prove a claim or defense.

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.

SPOILIATION OF EVIDENCE

Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation. This means that, once a party reasonably anticipates litigation, it must ensure the preservation of relevant evidence.

Plaintiff, Richard Grajeda, contends that there were spacers inside the Gilman snowmaking pads and that Defendants failed to preserve them. Defendants contend that there were never any spacers inside any Gilman snowmaking pads and that therefore there was nothing for them to remove. Spoliation may be considered only with regard to this issue.

It is for you to determine the credibility of the witnesses and the weight of the evidence. If you find that Defendants failed to preserve and produce the spacers, if any, you may draw an adverse inference that if that evidence existed and was available, it would be unfavorable to Defendants' case.

OTHER INCIDENTS

You have heard evidence of other incidents involving other guests at Okemo Mountain Resort on days other than the day of Plaintiff's incident. This evidence has only been admitted for the limited purpose of assessing whether Okemo Mountain Resort knew or should have known about any unreasonably dangerous condition.

INSURANCE

You must not consider whether any of the parties in this case has insurance. The presence or absence of insurance is totally irrelevant.

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe

and which testimony not to believe. 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; the witness's memory; his or her demeanor while testifying; the reasonableness of his or her testimony, considered in light of all of the evidence in the case; and any other factors that bear on reliability. 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.

BIAS OF WITNESSES

In deciding whether to believe a witness, you should specifically note any evidence of hostility or affection that the witness may have towards one of the parties. Likewise, you should consider evidence of any other interest or motive that the witness may have in cooperating with a particular party. You should take into account any evidence that a witness may benefit in some way from the outcome of the case.

It is your duty to consider whether the witness has permitted any such bias or interest to color his or her testimony. In short, if you find that a witness is biased, you

should view his or her testimony with caution, weigh it with care, and subject it to close and searching scrutiny.

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.

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 this 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.

INTEREST IN THE OUTCOME

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care.

This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

PRIOR INCONSISTENT STATEMENTS

You have heard the testimony of certain witnesses. You have also heard that before this trial they may have made statements that may be different from their testimony in this trial. It is up to you to determine whether these statements were made and whether they were different from the witness's testimony in this trial. If you decide that, before the trial, a witness made a statement that is inconsistent with his or her testimony here in court, you may consider the earlier statement only in deciding whether his or her testimony here in court was true and what weight, if any, to give his or her testimony here in court. If a prior inconsistent statement was made under oath, you can consider it as evidence in this case as well.

PRIOR TESTIMONY UNDER OATH

You heard evidence in this case which consists of testimony under oath in a prior proceeding or deposition. You may consider this as evidence in this case on the same basis as you would consider testimony from a person called as a witness in court.

WITNESS TESTIMONY READ THROUGH A DEPOSITION

A deposition is the sworn testimony of a witness taken before a trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.

Insofar as possible, you should consider deposition testimony, presented to you in court in lieu of live testimony, in the same way as if the witness had been present to testify.

Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

SPECIALIZED KNOWLEDGE AND PERSONAL 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 that did not come from the evidence received in the courtroom.

CORPORATION ACTS THROUGH ITS AGENTS AND EMPLOYEES

Defendants are corporations. A corporation may act only through natural persons who are its agents or employees. Therefore, the act of any Defendant employee that occurred while he or she was on duty and acting within the scope of his or her employment shall be considered the act of Defendants.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

BURDEN OF PROOF — PREPONDERANCE OF EVIDENCE

In this civil case, Plaintiff has the burden of proving each essential element of his claim by a preponderance of the evidence. The party who has the burden must present the more convincing 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 that, when considered and compared with that opposed to it, has more persuasive 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. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. 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. You may also consider any stipulations the parties may have entered into. No proof of absolute certainty is required.

The fact that Plaintiff sustained injury while skiing at Okemo Mountain Resort raises no presumption or inference of any kind. Nor does the bringing of this lawsuit raise any such presumption or inference.

SUMMARY OF THE CLAIMS AND ISSUES IN THIS CASE

Plaintiff, Richard Grajeda, alleges that he was injured while skiing at Defendants' resort on December 19, 2019 as a result of Defendants' negligence in placing an improperly padded and immovable snowmaking gun on a beginner trail. Plaintiff alleges that his injuries were caused by Defendants' negligence.

Defendants deny Plaintiff's allegations and assert that his incident and injuries arose out of one or more inherent risks of the sport of skiing and, therefore, his claims are barred by Vermont's Sports Injury Statute. Alternatively, Defendants assert that Plaintiff's own negligence caused his injuries.

SPORTS INJURY STATUTE

As a threshold issue, you must first decide whether a Vermont law known as the "Sports Injury Statute" applies in this case. Under the Sports Injury Statute, a person who takes part in any sport, including alpine skiing, accepts as a matter of law the dangers that are inherent in that sport if the dangers are obvious and necessary. Plaintiff bears the burden of proving that this law does not apply.

You must determine whether the incident that occurred in this case was caused by a danger that was obvious and necessary as an inherent part of skiing. In other words, a person who takes part in the sport of skiing accepts dangers that are inherent in the sport so long as those dangers are (1) obvious and (2) necessary. The operator of a facility has no duty to eliminate or lessen the risk of obvious and necessary dangers or to warn a skier of those dangers, since they are by definition accepted by the skier when he or she participates in the sport.

First, the term "obvious" does not mean something easily observed by a skier who looked but rather means a risk inherent in the nature of the sport. You may find a risk to be obvious, in this context, even though Plaintiff did not personally know of, appreciate, and consent to the particular hazard.

Second, "necessary" means those dangers that exist or are required as part of the sport, even when reasonable care is exercised.

Necessary risks are risks that are impossible or unreasonably difficult or expensive to eliminate. Skiers should be deemed to assume only those skiing risks that the skiing industry is not reasonably required to prevent.

When deciding what is obvious and necessary, you may consider the state of technology present at the time of the incident and whether the ski resort could have reduced or eliminated the danger by using the technology.

Plaintiff is deemed to consent to all hazards that are inherent in the sport and which reasonable care and maintenance may not eliminate. Conversely, Plaintiff is not, however, deemed to consent to all risks, only those that are inherent in the sport and which the skiing industry is not reasonably required to prevent.

A ski area's own negligence, however, is neither an inherent risk, nor an obvious and necessary one in the sport of skiing. Thus, a skier's assumption of the inherent risks of skiing does not eliminate the ski area's duty to warn of or correct dangers which in the exercise of reasonable prudence could have been foreseen and corrected.

It is not necessary for you to find that Plaintiff understood the specific risk of his particular injury, but only that the danger encountered was both an obvious and necessary danger inherent in the sport of skiing.

In evaluating these principles, you should consider that alpine skiing requires an ability on the part of the skier to handle various circumstances of grade, boundary, trail obstructions, and varied conditions of the snow. Additionally, alpine skiing requires good judgment on the part of the skier and recognition of the existing circumstances and conditions. Only the skier knows his own ability to cope with those circumstances and conditions.

It is Plaintiff's burden to establish a duty of care under the Sports Injury Statute. If you find that the injuries to Plaintiff resulted from an obvious and necessary danger that exists as an inherent part of the sport of skiing, as defined by the Vermont Sports Injury Statute, then you must return a verdict for Defendants, and your deliberations are completed. Please have the jury foreperson sign and date the verdict form. But if you find that the dangers involved in this case were not obvious and necessary, then the Sports

Injury Statute does not prevent you from finding a duty of care and you should proceed to consider Plaintiff's negligence claim.

RES IPSA LOQUITUR

Res ipsa loquitur is a theory of negligence. In order for it to apply, Plaintiff must establish by a preponderance of evidence that:

1. Defendants had a legal duty to exercise a certain degree of care in connection with a particular instrumentality, here the snowmaking padding, to prevent the very occurrence that has happened;
2. The snowmaking padding was under Defendants' control and management in such a way that there can be no serious question concerning Defendants' responsibility for improper padding, if any;
3. The installation of the snowmaking padding caused Plaintiff's injury; and
4. The event which brought about Plaintiff's injury would not have ordinarily occurred except for the lack of requisite care on the part of Defendants.

If you find that Plaintiff has proven each of these elements by a preponderance of the evidence, you may, but need not, infer from this circumstantial evidence that Defendants were negligent with respect to the installation of the snowmaking padding.

NEGLIGENCE

I will now provide you with instructions governing Plaintiff's claim that Defendants were negligent. Negligence is the breach of a legal duty owed by Defendants to Plaintiff that caused his injuries. In order to prove this claim, Plaintiff must prove by a preponderance of the evidence each of the following essential elements:

1. Defendants owed Plaintiff a duty to exercise reasonable care;
2. Defendants breached that duty;
3. Plaintiff suffered injuries; and
4. Defendants' negligence directly and proximately caused Plaintiff's injuries.

DUTY OF CARE AND BREACH

In Vermont, a business owner has a duty of active care to make sure that its premises are in a safe and suitable condition for its customers. This duty of care exists

where the defendant's routine business practice creates a foreseeable hazard for its customers. A customer has a right to assume that the premises, aside from obvious dangers, are reasonably safe for the purpose for which he or she is upon them, and that proper precaution has been taken to make them so. A ski area owes its customers the same duty as any other business to keep its premises reasonably safe.

Reasonable care means the care that reasonably prudent persons use in conducting their own affairs to avoid injury to themselves, their property, or the persons or property of others. Reasonable care is not the greatest possible care, such as might be employed by an unusually cautious person. Rather, a person must exercise the same care a reasonable person would have exercised, given all the circumstances existing at the time and place of the incident.

Because the amount of care exercised by a reasonably prudent person varies in proportion to the danger known to be involved, the amount of caution will vary with the nature of what is being done and the surrounding circumstances. You must therefore determine whether Defendants created an unreasonable risk of harm to others, including Plaintiff, by a failure to exercise that degree of care that a reasonably prudent person would have exercised under like circumstances. Correspondingly, Defendants have a right to expect that all skiers will conduct themselves as reasonably prudent persons. You must consider all of the circumstances in making this determination.

In deciding whether Defendants exercised reasonable care, you should consider whether Defendants knew or should have known of a particular risk or danger. You may consider the following:

1. Any evidence presented concerning the actual knowledge of Defendants, including their supervisors, employees, or agents; and
2. Whether a reasonably prudent person would have performed inspections that would have brought the dangerous condition to Defendants' attention or otherwise would have known of the condition.

In determining whether Defendants were negligent, you may consider the evidence concerning industry customs or safety practices. However, you may find that an

industry custom or a safety practice does not reflect the level of care of a reasonably prudent person and that Defendants were negligent even though Defendants followed the custom or safety practice. Moreover, even if you find Defendants failed to comply with a safety practice or did not take customary precautions, such a failure does not require a finding of negligence.

A person is required to take reasonable precautions for his or her own protection, including protecting themselves from open and obvious dangers. For this claim, an “open and obvious danger” is one that Plaintiff actually understood or a reasonable person in Plaintiff’s circumstances would have understood.

Whether Defendants should have expected skiers would not protect themselves from the danger that was open and obvious is a question for you to decide. Reasonable care on the part of the possessor of the property does not ordinarily require precautions or warnings against dangers which are known to the visitor or so obvious that he or she may be expected to discover them.

If you find that Defendants did not owe a duty of care to Plaintiff or that Defendants did not breach that duty of care, then you must enter a verdict for Defendants. If, however, you find that Plaintiff has proven these first two essential elements by a preponderance of the evidence, you must next consider whether Plaintiff has proven that the breach caused his injuries.

CAUSATION

You must decide whether Plaintiff’s injuries were directly and proximately caused by Defendants.

A defendant’s failure to exercise reasonable care is the “direct cause” of an injury if the injury would not have occurred without the defendant’s failure to exercise reasonable care. In other words, Plaintiff must prove that but for Defendants’ failure to exercise reasonable care, he would not have been injured.

Plaintiff must also prove that Defendants’ negligence was a “proximate cause” of his injury. Proximate cause is a cause which results in an injury in a natural and

continuous sequence, unbroken by any other intervening cause, and it is a cause without which the result would not have occurred.

This does not mean that the act or failure to act 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. Plaintiff therefore is required to show by a preponderance of the evidence that Defendants' negligence was a proximate cause of his injuries, but he is not required to show that it was the only proximate cause.

If Plaintiff's injuries were not caused by Defendants, or if the injuries would have occurred regardless of whether Defendants breached a duty of care, Plaintiff has failed to prove causation. If you find that Plaintiff has not established causation by a preponderance of the evidence, you must enter a verdict for Defendants, and you must not consider Defendants' affirmative defense or Plaintiff's damages. If you find that Plaintiff has established causation, and all of the other essential elements of his negligence claim by a preponderance of the evidence, then you must consider the affirmative defense of comparative negligence raised by Defendants before you consider the issues of damages. The verdict form reflects the order in which you must consider these issues.

DEFENDANTS' AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE

Defendants have asserted an affirmative defense called "comparative negligence." An affirmative defense is a claim that, if true, will defeat all or part of a plaintiff's claim. Defendants have the burden of proving their affirmative defense by a preponderance of the evidence. You must consider the affirmative defense only if you find in Plaintiff's favor on his negligence claim. If you find in favor of Defendants on Plaintiff's negligence claim, the issue of an affirmative defense must not be addressed.

Defendants allege that Plaintiff was comparatively negligent in failing to exercise caution and due care while skiing at Okemo Mountain Resort and that this was the cause of his injuries.

If you have found that Defendants were negligent, you must then decide whether Plaintiff was himself negligent in his actions on the day of the incident. In order to establish comparative negligence, you must decide whether Defendants have met their burden of proving by a preponderance of the evidence the following elements of their comparative negligence affirmative defense:

1. Plaintiff 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
2. Plaintiff's negligence was a direct and proximate cause of his injuries.

The same principles I outlined previously for Plaintiff's claim likewise apply to Defendants' comparative negligence affirmative defense. I will briefly review the elements again.

First, Plaintiff had a duty to act with reasonable care for his own safety and well-being. Reasonable care means the care that reasonably prudent persons use in conducting their own affairs to avoid injury to themselves, their property, or the persons or property of others.

Any skier is under a duty to exercise reasonable care for his or her own safety while participating in the sport of skiing, which includes a duty to ski in a reasonable and prudent manner in light of the conditions and circumstances that exist while skiing. Reasonable care is not the greatest possible care, such as might be employed by an unusually cautious person. Rather, a person must exercise the same care a reasonable person would have exercised, given all the circumstances existing at the time and place of the accident. Here, Plaintiff's conduct must be measured against that of a reasonable skier skiing under the conditions as they existed on the day of the incident.

Again, in determining whether Plaintiff was negligent, you may consider the evidence concerning skiing customs and safety practices. If you find there were such customs or practices, they may indicate recognition of a hazard and the means to avoid it, which may inform what may be reasonable in a given situation. However, you may find that a skier custom or safety practice does not reflect the level of care of a reasonably prudent person and that Plaintiff was negligent even though Plaintiff followed the custom

or safety practice. Conversely, even if you find Plaintiff failed to follow a skier custom or safety practice, such failure does not require a finding of negligence. You must consider all of the evidence in making this determination.

Second, Defendants must prove that but for Plaintiff's failure to act with reasonable care for his own safety and well-being, his injuries would not have occurred. Defendants must also prove that Plaintiff's negligence was a "proximate cause" of his injury.

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 failure to act 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 Defendants have proven that Plaintiff was negligent himself, then you must attribute to each party their relative negligence. This means that you must compare any negligence attributed to Plaintiff with any negligence you have attributed to Defendants. To do so, you must assign a percentage of negligence to Plaintiff on one hand and to Defendants on the other. The percentages you assign must add up to 100 percent.

Let me suggest two hypothetical examples:

	Example 1	Example 2
Plaintiff Richard Grajeda	40%	60%
Defendants	60%	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 or any indication of either party's liability.

If you determine that Plaintiff's share of the negligence is greater than 50%, then you should return a verdict for Defendants, and you must not consider the issue of damages. If Plaintiff's share of the negligence is 50% or less when compared to the

negligence of Defendants, then you must consider damages. If damages are awarded, the court, and not the jury, will determine the impact of comparative negligence, if any, on the damages award.

A verdict form will be provided that will help you work through these questions during your deliberations.

COMPENSATORY DAMAGES

The fact that I am instructing 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.

Plaintiff must prove by a preponderance of the evidence that he actually sustained damages and that the damages were directly and proximately caused by Defendants' conduct.

Plaintiff is seeking a damages award. He is seeking damages as of the date of trial relating to:

1. Reimbursement of past medical bills. The parties have agreed that the past medical bills total \$664,918.38;
2. Present value of future medical costs, accommodations, and modifications;
3. Present value of future loss of income;
4. Past and future physical and emotional pain and suffering, including loss of enjoyment of life.

You should make sure that any amount awarded to Plaintiff is fair to the parties in this case in light of the evidence you have heard, and you should award Plaintiff a sum in damages that you believe will fairly, adequately, and reasonably compensate him for the injuries he has suffered based upon the facts and circumstances proven by the evidence.

Compensatory 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 basic principle of damages is that an injured person may recover full, just, and adequate compensation for all injuries and losses caused by a defendant. The purpose 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 Plaintiff, and not by any feelings of sympathy, passion, prejudice, or a desire to help him. It is never the purpose of compensatory damages to punish a defendant or to reward a plaintiff.

PERSONAL INJURY DAMAGES

Plaintiff is entitled to recover compensation for any bodily injury and any physical or emotional pain and suffering, disability, and loss of enjoyment of life he has experienced in the past and future as a result of this incident. Any such award should fairly compensate Plaintiff for the damages he has suffered and will continue to suffer.

PROVING SPECIFIC AMOUNTS FOR DAMAGES

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

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

NO DUPLICATE RECOVERY

You should be careful not to award damages for one item that duplicates an award for another item. In other words, a party is only entitled to one recovery for his or her 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.

DUTY TO MITIGATE

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

not compensate Plaintiff for his failure to mitigate his damages, and you must subtract the monetary amount of any such failure from your award.

INCOME TAXES AND INTEREST

If you find for Plaintiff and award damages, you must not consider any effect of federal or state income tax in deciding the amount of the damages award. If you find for Plaintiff and award damages, you must not calculate interest as part of the damages award.

PRESENT VALUE OF FUTURE LOSS

If you award Plaintiff future medical and related expenses, then you must determine the “present value” of those expenses, because they represent payment now for a loss that will not occur until some future date. And this is the same ruling with regard to future earnings. Basically, Plaintiff will be reimbursed in advance. In order to adjust an award to a present value, you must discount or reduce future medical expenses and/or related expenses and future earnings awarded by taking (1) the interest rate or return that Plaintiff 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 economic award. You must not reduce to present value any damages for pain and suffering.

LIFE EXPECTANCY

Life expectancy is merely an estimate of the probable average remaining length of life of persons in the United States of a given age and sex. The inference which may reasonably be drawn from life expectancy applies only to one who has the average health and exposure to danger of people of that age and sex. In determining the reasonably certain life expectancy of Plaintiff, you should also consider all other facts and circumstances in evidence in the case bearing upon the life expectancy of Plaintiff, including his occupation, habits, past health record, and present state of health.

COURT COSTS AND ATTORNEY'S FEES

If you find Plaintiff 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.

CONCLUDING INSTRUCTIONS

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 Court 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.

JUROR NOTE-TAKING

During the trial, you have been provided with pen 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.

SELECTION AND DUTIES 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 Burlington, in the District of Vermont, this 16th day of February, 2024.

A handwritten signature in black ink, appearing to read 'Christina Reiss', written over a horizontal line.

Christina Reiss, District Judge
United States District Court