

CONFIRMED FILE DATE: 2/12/2014

ORIGINAL

P.9

CAUSE NO. 2011-12681

CATHY BAILEY and
APRIL ROEBUCK

Plaintiffs,

VS.

FEDERAL EXPRESS CORPORATION
AND MICHAEL GLEN MAXWELL

Defendants.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

AMENDED CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given to you.

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic devices during your deliberations for any reason. The bailiff will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

FILED
Chris Daniel
District Clerk
FEB 12 2014
Harris County, Texas
Deputy

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions, unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.
7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average.
10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. The answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

A fact may be established by direct evidence or circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

The rules of evidence provide that where testimony and opinions on certain issues might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify and state his or her opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

When you have answered all the questions you are required to answer under the instructions of the judge, and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

JURY QUESTION NO. 1

What sum of money, if paid now in cash, would provide fair and reasonable compensation for April Roebuck's injuries, if any, that were proximately caused from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Do not include any amount for any condition not resulting from the occurrence in question.

Answer separately, in dollars and cents, for damages, if any for:

- a. Medical care expenses incurred in the past by April Roebuck.

Answer: \$ 44,000.00

- b. Medical care expenses that, in reasonable probability, April Roebuck will sustain in the Future.

Answer: \$ 150,000.00

- c. Physical pain sustained in the past.

Answer: \$ 15,000.00

- d. Physical pain that, in reasonable probability, April Roebuck will sustain in the future.

Answer: \$ 0.00

- e. Mental anguish sustained in the past.

Answer: \$ 15,000.00

f. Mental anguish that, in reasonable probability, April Roebuck will sustain in the future.

Answer: \$ 0.00

g. Physical impairment sustained in the past.

Answer: \$ 0.00

h. Physical impairment that, in reasonable probability, April Roebuck will sustain in the future.

Answer: \$ 0.00

Unofficial Copy Office of Marilyn Burgess District Clerk

JURY QUESTION NO. 2

What sum of money, if paid now in cash, would provide fair and reasonable compensation for Cathy Bailey's injuries, if any, that were proximately caused from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Do not include any amount for any condition not resulting from the occurrence in question.

Answer separately, in dollars and cents, for damages, if any for:

a. Medical care expenses incurred in the past by Cathy Bailey.

Answer: \$16,000.00

b. Medical care expenses that, in reasonable probability, Cathy Bailey will sustain in the future.

Answer: \$0.00

c. Physical pain sustained in the past.

Answer: \$7500.00

d. Physical pain that, in reasonable probability, Cathy Bailey will sustain in the future.

Answer: \$0.00

e. Mental anguish sustained in the past.

Answer: \$2500.00

f. Mental anguish that, in reasonable probability, Cathy Bailey will sustain in the future.

Answer: \$ 0.00

g. Physical impairment sustained in the past.

Answer: \$ 0.00

h. Physical impairment that, in reasonable probability, Cathy Bailey will sustain in the future.

Answer: \$ 0.00

Unofficial Copy Office of Marilyn Burgess District Clerk

Presiding Juror

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 1. have the complete charge read aloud if it will be helpful to your deliberations;
 2. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 3. give written questions or comments to the bailiff who will give them to the judge;
 4. write down the answers you agree on;
 5. get the signatures for the verdict certificate; and
 6. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

1. You may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.

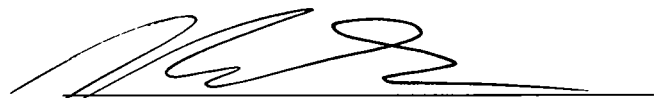
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.



R.K. Sandill
Judge, 127th District Court

Verdict Certificate

Check one:

Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

Charles Reid
Signature of Presiding Juror

Charles Reid
Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____
