

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation is entitled to the same fair consideration as a private individual. All persons and corporations stand equal before the law and are to be dealt with as equals in a court of justice.

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, and the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You are required to accept these facts as proved.

During the trial, certain testimony was presented to you by the reading of a deposition. Deposition testimony is entitled to the same consideration as testimony that was given in Court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.

Certain things are not evidence. I will list them for you.

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you have heard the phrases “direct” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts that point to the existence or non existence of another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law, we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about, the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for an attorney to interview any witness for the purpose of learning what testimony the witness will give.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

The plaintiff claims that he was injured and sustained damage, and that the defendant was negligent in the following respect:

The defendant deviated from the standard of care that other manufacturers in the industry followed at the time the product was designed by not placing a guard at the point of operation.

The plaintiff further claims that the foregoing was a proximate cause of his injuries.

The defendant denies that it did the things claimed by the plaintiff, denies that it was negligent in doing any of the things claimed by the plaintiff and denies that any claimed act or omission on the part of the defendant was a proximate cause of the plaintiff's claimed injuries.

The defendant claims that the plaintiff was contributorily negligent in the following respects:

- (a) Placed his left hand in contact with or very close to the feed rolls of the splitting machine.
- (b) Pushed a rubber strip into the feed rolls of the splitting machine with his left hand when he knew the upper guard bar was too high.
- (c) Failed to shut down the splitting machine when a rubber strip became stuck.
- (d) Failed to summon a supervisor when a rubber strip became stuck.
- (d) Failed to follow safety training he had been given.

The defendant further claims that one or more of the foregoing was a proximate cause of the plaintiff's injuries.

The plaintiff denies that he did the things claimed by defendant, denies that he was negligent in doing the things claimed by defendant, to the extent claimed by defendant, and denies that any claimed act or omission on his part was a proximate cause of his claimed injuries.

The defendant further denies that the plaintiff was injured or sustained damages to the extent claimed.

When I use the word "negligence" in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

When I use the words “ordinary care,” I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

When I use the expression “contributory negligence,” I mean negligence on the part of the plaintiff that proximately contributed to cause the injury.

When I use the expression “proximate cause,” I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent;

Second, that the plaintiff was injured;

Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the defendant's claim that the plaintiff was contributorily negligent.

As to that claim, the defendant has the burden of proving both of the following propositions:

A: That the plaintiff acted or failed to act in one of the ways claimed by the defendant as stated to you in these instructions and that in so acting, or failing to act, the plaintiff was negligent;

B: That the plaintiff's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has not proved both of the propositions required of the defendant, then your verdict should be for the plaintiff and you will not reduce plaintiff's damages.

If you find from your consideration of all the evidence that the defendant has proved both of the propositions required of the defendant, and if you find that the plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the defendant.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has proved both of the propositions required of the defendant, and if you find that the plaintiff's contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then your verdict

should be for the plaintiff and you will reduce the plaintiff's damages in the manner stated to you in these instructions.

When I say that a party has the burden of proof on any proposition, or use the expression “if you find” or “if you decide,” I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

It was the duty of the plaintiff, before and at the time of the occurrence, to use ordinary care for his own safety. A plaintiff is contributorily negligent if (1) he fails to use ordinary care for his own safety and (2) his failure to use such ordinary care is a proximate cause of the injury.

The plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury or damage for which recovery is sought, does not bar his recovery. However, the total amount of damages to which he would otherwise be entitled is reduced in proportion to the amount of his negligence. This is known as comparative negligence.

If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury or damage for which recovery is sought, the defendant shall be found not liable.

It was the duty of Turner Tanning Machinery Company, the predecessor of the defendant, Emhart Industries Inc., before and at the time Turner 149 was manufactured, to use ordinary care for the safety of the plaintiff. That means it was the duty of the Turner to be free from negligence.

If you decide that the Turner Tanning Machinery Company, predecessor of the defendant, Emhart Industries, Inc. was negligent and that its negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else may have been a cause of the injury.

However, if you decide that the sole proximate cause of injury to the plaintiff was something other than the conduct of the Turner, then your verdict should be for the defendant.

If you decide for the plaintiffs on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendant, taking into consideration the nature, extent and duration of the injury.

The disfigurement resulting from the injury;

The disability experienced and reasonably certain to be experienced in the future;

The pain and suffering experienced and reasonably certain to be experienced in the future as a result of the injuries;

The reasonable expense of necessary medical care, treatment, and services received;

The value of earnings lost and the present cash value of the earnings reasonably certain to be lost in the future.

Where any of these elements of damages has been proved by the evidence is for you to determine.

In computing the damages arising in the future because of loss of future earnings, you must determine their present cash value. "Present cash value" means the sum of money needed now, which, when added to what that sum may reasonably be expected to earn in the future, will equal the amount of the earnings at the time in the future when the earnings would have been received.

Damages for pain, suffering, disability and disfigurement are not reduced to present cash value.

According to a table of mortality in evidence, the life expectancy of a person aged 53 years is 25.8 years. This figure is not conclusive. It is the average life expectancy of persons who have reached the age of 53. It may be considered by you in connection with other evidence relating to the probable life expectancy of the plaintiff in this case, including evidence of his occupation, health, habits, and other activities, bearing in mind that some persons live longer and some persons less than the average.

If you decide for the defendant on the question of liability, you will have no occasion to consider the question of damages.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representatives here in Court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

You are free to deliberate in any way you decide or select whomever you like as a foreperson. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be foreperson, you may want to consider the role that the foreperson usually plays. The foreperson serving as the chairperson during the deliberations should ensure a complete discussion by all jurors who desire to speak before any vote. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The foreperson should help facilitate the discussion and make sure everyone has a chance to say what they want to say.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

In order to help you determine the facts, you may want to consider discussing one issue at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that separate tasks (such as any note taking, time keeping, and recording votes), be assigned to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to different conclusions on facts from any of your fellow jurors. Thinking about the other juror's point of view may help you understand their position better or give you a better way to explain why you think your position is correct.

You may, if you find it necessary during your deliberation, submit written questions to me about the case, but you should understand that you, as the jury, must decide the facts. You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. I will either answer your question, or explain why I cannot answer your question.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

defendant whom you have found liable, and any other person or entity identified on this verdict form whose negligence proximately caused Isidro Alcala's injury, we find the percentage of such

negligence attributable to each as follows:

- | | | |
|-----|---------------------------|---------|
| (a) | Isidro Alcala | _____ % |
| (b) | Emhart Industries, Inc. | _____ % |
| (c) | Lakin General Corporation | _____ % |
| | TOTAL | 100 % |

(Instructions to Jury: If you find Emhart Industries Inc. not liable to the plaintiff, or that any non-party was not negligent in a way that proximately caused plaintiff's injury, or if you find that the plaintiff was not contributorily negligent, then you should enter a zero (0) as to that party or person.

Third, after reducing the plaintiff's total damages from paragraph First by the percentage of negligence, if any of Isidro Alcala, we award Isidro Alcala recoverable damages in the amount of \$ _____

FOREPERSON
