JOE JONES v. OCTOPUS OIL, INC., SUE SMITH

CIVIL ACTION NUMBER 00-00000-RGS

JURY INSTRUCTIONS

Members of the jury:

Now that the closing arguments of the lawyers have been presented, the time has come for me to instruct you on the law. My instructions will be in four parts: first, some instructions on the general rules that define and control the duties of a jury in a civil case; second, some instructions that you may find of use in evaluating the evidence that has been presented; third, I will explain the rules of law that you must apply to the facts as you find them, and finally I have some brief guidelines that will govern the conduct of your deliberations.

In defining the duties of the jury, let me first give you a few general rules.

It is your duty to find the facts from all of the evidence in the case. To the facts as you find them you must apply the law as I explain it to you. And you must follow the law as I describe it, whether you personally agree with the wisdom of the law or not. You must do your duty as jurors regardless of any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you and according to the law.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions, or into anything that I may have said or done during the course of the trial, any suggestion from me as to the verdict you should return. Whatever opinion I might have as to what your verdict should be is utterly irrelevant. The verdict is yours alone, as the finders of fact,

to render. While I intend to be as helpful as I can in providing you with the knowledge of the law that you will require to render an intelligent verdict, you will, when I am finished, be surprised – even astonished – at the extent to which the law commits this case to your sole determination as the judges of the facts.

Plaintiff, you will recall, is the name we give to the person who brings a lawsuit. We refer to the person sued as the defendant. As I explained at the outset of the trial, a plaintiff or defendant in a civil suit may be a legal entity, such as a municipality or a partnership, or, as is the case with Octopus Oil, Inc., a corporation formed to market gasoline and other motor vehicle products. Under our law, a legal entity has the same rights and the same obligations as a natural person and is due the same conscientious consideration that is accorded to any party to a lawsuit. As a matter of law, a corporation like Octopus Oil, Inc. can act only through its agents and employees. [Consequently, when an action is taken within the scope of an employee's employment, his state of mind as well as the state of mind of those who supervise him or who make decisions with regard to his actions is imputed to the employer for purposes of liability.]

BURDEN OF PROOF

In a civil trial, a plaintiff bears the burden of proving his case by a preponderance of the evidence. This means that the plaintiff must produce evidence which, when considered in the light of all of the evidence in the case, leads you to believe that his claims are more likely true than not. [In this case, as I will explain, there is an aspect of the case that requires the plaintiff to satisfy a higher burden of proof – clear and convincing evidence – that I will define in a moment.] If the plaintiff fails to meet either of these burdens, your verdict must be for the defendants.

CLEAR AND CONVINCING EVIDENCE STANDARD

The burden of clear and convincing proof is sustained if the evidence induces in your minds a reasonable belief that the facts asserted are highly probably true, and that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist. If you believe upon consideration and comparison of all the evidence in the case that there is a high degree of probability that the facts are true, you must find that the facts have been proven. Clear and convincing evidence is a burden of proof more strict than a preponderance of the evidence but less strict than the standard of proof beyond a reasonable doubt applied in criminal cases.

EVIDENCE AT TRIAL

Let me briefly review with you what is and is not evidence in a civil case.

Evidence is typically presented at a trial in one of three ways.

First, through the sworn testimony of witnesses, both on direct and cross-examination.

Second, through physical objects, like documents and photographs, that are identified by a witness, and admitted as exhibits during the trial.

Third, by stipulation, or agreement between the parties that certain facts are true and need not be independently proven as such at trial. You will recall that the parties have stipulated that [ ].

Certain things are not evidence and should have no influence on your verdict.

1. Arguments and statements by lawyers, as I have cautioned several times, are not evidence. What the lawyers have said over the course of the trial you may find helpful, even persuasive, in reaching a verdict, but the facts are to be determined from your own

evaluation of the testimony of the witnesses, the exhibits, and any reasonable inferences that you choose to draw from the facts as you find them.

2. Questions to the witnesses are not evidence. They can only be considered in the sense that they give context or meaning to a witness's answer.

3. Objections to questions are not evidence. Attorneys, as I explained, have a duty to their clients to object when they believe that a question is improper under the rules of evidence. You should not be influenced by the fact that an objection was made or by the way I ruled on it. If I sustained the objection, you should ignore the lawyer's question, and any assertion of fact that it might have contained. If I overruled the objection, you should treat the witness's answer like any other.

4. Testimony that I excluded, struck, or that I instructed you to disregard is not evidence. You should also, as I have cautioned, ignore editorial comments made by the attorneys during their presentations, particularly those intended to characterize the testimony of witnesses. Whether or not a witness's testimony was believable on any particular point is a determination that only you can make.

5. Occasionally an item was marked in the record for identification. If that item was not later admitted as an exhibit and given an exhibit number in lieu of a letter, that item is not evidence and should play no part in your verdict.

6. If you have kept notes, as most of you have, remember that your notes are not evidence. They are a personal memory aid to be used to refresh your recollection of the evidence during the deliberations.

7. Finally, anything you may have seen or heard outside the courtroom during the course of the trial is not evidence. You must decide the case based solely on the evidence offered and received during the trial.

Regardless of the way in which evidence is presented, it comes in one of two forms, as either direct or circumstantial evidence. Direct evidence is direct proof of a fact, usually presented through the testimony of a person who claims to have been an eyewitness to an event or a participant in a conversation. When you evaluate direct testimony your decision is fairly straightforward. Do you believe that what the witness has told you is accurate?

Circumstantial evidence, on the other hand, is the proof of a chain of circumstances, or a set of facts, from which you could infer or conclude that another fact is true, even though you have no direct evidence of that fact.

For instance, if you were to awake in the morning and, even though the day was bright and clear, see puddles of water on the street, you might draw the inference that it had rained during the night even though your sleep had been uninterrupted. In other words, the fact of rain is an inference that could be drawn from the presence of water on the street. An inference may be drawn, however, only if it is reasonable and logical, and not if it is speculative or based on conjecture. If for example, you observed puddles of water on your street, but not on any other street in your neighborhood, other facts, like a broken water main, or if you live in the suburbs, a neighbor's malfunctioning sprinkler system, might explain the presence of water. In deciding whether to draw an inference, you must look at and consider all of the facts in the case in the light of reason, common sense, and your own life experience.

Neither type of evidence, direct or circumstantial, is considered superior or inferior to the other. Either or both types of evidence may be considered in reaching your verdict and may be given whatever weight you as the finders of fact deem the evidence to be worth.

WITNESS CREDIBILITY

Most evidence received at trial is offered through the testimony of witnesses. As the jury, you are the sole judges of the credibility of these witnesses. If there are inconsistencies in the testimony, it is your function to resolve any conflicts, and decide where the truth lies.

You may choose to believe everything that a witness said, or only part of it, or none of it. If you do not believe a witness's testimony that something happened, that of course is not evidence that it did not happen. It simply means that you must put aside that testimony and look elsewhere for credible evidence before deciding where the truth lies.

Often it may not be so much what a witness says, but how he or she says it that might give you a clue whether or not to accept his version of an event as believable. You may consider a witness's character, his or her appearance and demeanor on the witness stand, his or her frankness or lack of frankness in testifying, whether the witness was contradicted by anything that he or she said before the trial, and whether his or her testimony is reasonable or unreasonable, probable or improbable in light of all the other evidence in the case. You may take into account how good an opportunity the witness had to observe the facts about which he or she testifies, the degree of intelligence the witness shows, and whether his or her memory seems accurate. You may also consider the witness's motive for testifying, whether he or she displays any bias in doing so, and

whether he or she has any interest in the outcome of the case. Now simply because a witness has an interest in the outcome of the case does not mean that the witness is not trying to tell you the truth as he or she recalls it or believes it to have been. But a witness's interest in the case is a factor that you may consider along with everything else. You may also consider the fact that a witness may be perfectly sincere in his or her account of an event and simply be mistaken as to the truth.

EXPERT WITNESSES

As a rule a witness is not permitted to offer an opinion about the facts to which he or she testifies, unless it concerns a matter falling within our common experience. An exception is made for those who are asked to testify as experts, as was the case with Ms. E, the forensic economist. These are witnesses, who by education and experience, have acquired specialized knowledge about which they are permitted to give opinions, as well as the reasons for their opinions. This type of testimony is allowed in the belief that the knowledge of certain experts is so specialized that the facts which they have mastered are beyond the collective knowledge of the court and the jury.

The credibility of the testimony of an expert witness is judged like that of any other witness. Simply because the law allows a witness to give an opinion does not mean that you must accept that opinion. If you decide that the opinion of an expert witness is not based on sufficient education or experience, or if you conclude that the reasons given for the opinion are not convincing or are outweighed by other evidence in the case, you may disregard the opinion entirely.

The weight of the evidence does not depend on the number of witnesses testifying for one side or the other. You must determine the credibility of each witness who testified, and then reach a verdict based on all of the believable evidence in the case.

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things, or get confused, or remember an event differently. Memory is not always reliable, and when someone recounts a story twice, it will seldom be identical in every aspect, unless it is a memorized lie or the witness is possessed of extraordinary perception and recall. It is for you to decide whether any contradictions in a witness's testimony are innocent lapses of memory or intentional falsehoods. That may depend on whether important facts or small details are at issue, and how important the facts might have appeared to the witness at the time they were perceived.

THE LEGAL CLAIMS

Let me turn now to the legal standards that you will apply to the facts as you find them. I will first instruct you on the law governing Mr. Jones's claims against Octopus Oil, Inc. and Sue Smith. I will then discuss the issue of damages.

[SUBSTANTIVE CLAIMS TO BE INSERTED HERE]

INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

In this case, Mr. Jones claims that Octopus Oil, Inc. intentionally or recklessly caused him to suffer emotional distress by [ ]. To recover on this claim, Mr. Jones must prove four elements by a fair preponderance of the evidence.

First, that Octopus Oil, Inc. either intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of its conduct;

Second, that the conduct in question was extreme and outrageous, that is, beyond all possible bounds of decency, and was utterly intolerable in a civilized community;

Third, that the actions of Octopus Oil, Inc. were the cause of Mr. Jones's distress; and

Fourth, that the distress was severe and of such a nature that no reasonable person could be expected to have endured it.

Extreme and outrageous conduct is more than just mere insult, or hurt feelings from bad manners, annoyances, or petty oppressions. "Outrageousness" means a high order of recklessness, ruthlessness, or deliberate malevolence.

In the alternative, Mr. Jones claims that Octopus Oil, Inc. negligently caused him to suffer emotional distress. A plaintiff may recover on a claim of negligent infliction of emotional distress by showing: (1) negligence on a defendant's part; (2) that he suffered emotional distress as a result of that negligence; (3) that his emotional distress caused physical harm manifested by objective symptomatology; and (4) that a reasonable person would have suffered emotional distress under the same circumstances.

Negligence is doing something that a reasonably prudent person would not do, or failing to do something that a reasonably prudent person would do, in similar circumstances. Here the negligence alleged is [ ]. In the context of this case, negligence would consist of the failure to exercise the degree of care and diligence that an ordinarily prudent [ ] would have used in a similar situation.

A medical expert's testimony is not necessary to establish a claim of emotional distress. The plaintiff must, however, provide sufficient evidence to support his claim of

physical harm, such as symptoms of depression, anger, anxiety, loss of concentration, crying spells, stomach pains, and nightmares.

DAMAGES

Let me now discuss damages. As a caution, let me remind you that when I discuss the law of damages, I am not attempting to suggest what your verdict should be on this or any other contested issue. It is simply easier that I instruct you now on the law of damages, rather than interrupt your deliberations later with additional instructions should they become necessary.

If you return a verdict for Mr. Jones on his [ ] claim, you should award him a sum of money that you believe will fairly and justly compensate him for any injuries that he may have sustained as a result of the [defendants' actions]. You must remember, in calculating these damages, that Mr. Jones is entitled to be compensated only for the injuries he actually suffered. Thus, if a defendant were to violate more than one of a plaintiff's rights, but the resulting injury were to be no greater than it would have been had the defendant violated but one of those rights, you should award an amount of compensatory damages no greater than you would award if you were to find that the defendant violated only one such right. If, on the other hand, a defendant were to violate more than one of a plaintiff's rights and you can identify separate injuries resulting from the separate violations, you should award an amount of compensatory damages equal to the total of the damages that you believe will fairly and justly compensate the plaintiff for the separate injuries he has suffered.

Compensatory damages are intended to compensate an injured party for the losses that he or she suffers because of another's wrongs. The object of the law, as best as

money can accomplish it, is to restore the injured person to the position she would have been in had the wrong not occurred. Compensatory damages may include actual out-of-pocket expenses, pain and suffering, and the loss of the ordinary enjoyments of life.

There is no special formula for assessing these kinds of damages. You must use your wisdom and common sense in translating into dollars an amount that will fairly and reasonably compensate Mr. Jones for his injuries. Bear in mind that the party asking for damages has the burden of proving her loss by a fair preponderance of the evidence.

[You should also know that any compensatory award you make is free of any state or federal taxes. Consequently you should not attempt to factor tax consequences into your verdict. Interest, too, is a factor calculated by the court.]

DELIBERATIONS

Finally, let me say a few words about your deliberations.

Each of you must decide the case for yourself, but you should do so only after considering all of the evidence, after discussing it fully with the other jurors, and after listening to the views of your fellow jurors. Do not be afraid to change your opinion if, after hearing the opinions of your fellow jurors, you are convinced that your initial conclusion was wrong. But do not come to a decision simply because other jurors insist that it is right, nor surrender an honest belief about the weight and effect of the evidence simply for the expediency of reaching a verdict.

Although the trial has been relatively short, as you will appreciate, this case has taken a great deal of time and effort on the part of the attorneys involved. There is no reason to think that the case could have been better tried or that another jury would be better qualified to decide it. It is important therefore that you reach a verdict if you can do

so conscientiously. Your verdict must be unanimous as to each of the special questions I am going to ask you to answer. Your answers will be recorded on the verdict slip by the juror I appoint as your foreperson.

[APPOINT FOREPERSON]. As foreperson, you will have the same voice and the same vote as the other deliberating jurors. You will act as the moderator of the discussion and will serve as the jury's spokesperson. Your most important obligation is to insure that any juror who wishes to be heard on any material issue has a full and fair opportunity to be heard by his or her fellow jurors. When the jury has reached a verdict, you will fill in the appropriate answers, sign and date the verdict slip, and inform the court officer that the jury is ready to return to the courtroom.

If it becomes necessary during your deliberations to communicate with me, you may do so by sending a note through the court clerk signed by your foreperson. No member of the jury should ever attempt to communicate with me except by such a signed writing.