

Presiding Juror CAUSE NO. 11-01650-E

*Filed
April 22, 2014
2:40 P.M.*

LISA PARR, Individually and as Next
Friend to her minor daughter, E.D.; and
ROBERT "BOB" PARR,

Plaintiffs,

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IN THE COUNTY COURT

vs.

AT LAW NO. 5

ARUBA PETROLEUM, INC.,

Defendant.

OF DALLAS COUNTY, TEXAS

JURY CHARGE

MEMBERS OF THE JURY:

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 device during your deliberations for any reason.

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.

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 [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

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. Unless otherwise instructed the answers to the questions must be based on the decision of at least five of the six jurors. The same five jurors must agree on every answer. Do not agree to be bound by a vote of anything less than five 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.

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:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;

- e. get the signatures for the verdict certificate; and
- f. 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. Unless otherwise instructed, you may answer the questions on a vote of five jurors. The same five jurors must agree on every answer in the charge. This means you may not have one group of five (5) jurors agree on one answer and a different group of five jurors agree on another answer.

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

If all six 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 six of you agreeing on some answers, while only five of you agree on other answers. But when you sign the verdict, only those five who agree on every answer will sign the verdict.

4. There are some special instructions before question nos. 5 and 6 explaining how to answer those questions. Please follow the instructions. If all six of you answer those questions, you will need to complete a second verdict certificate for those questions.

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


Hon. Mark Greenberg

Definitions

Circumstantial Evidence. A fact may be established by direct evidence or by 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.

Parallel Theories on Damage. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not include interest on any amount of damages you find.

QUESTION 1

Question: Do you find that Aruba Petroleum, Inc. intentionally created a private nuisance?

"Intentionally" means that Aruba Petroleum, Inc. (1) acted for the purpose of causing an invasion, or (2) knew that the invasion was resulting or was substantially certain to result from its conduct.

Aruba Petroleum, Inc. creates a "private nuisance" if its conduct substantially interferes with the plaintiffs' use and enjoyment of their land.

"Substantial interference" means that the conduct must cause unreasonable discomfort or annoyance to a person of ordinary sensibilities attempting to use and enjoy the person's land. It is more than a slight inconvenience or petty annoyance.

You are instructed that a nuisance, if it exists, is not excused by the fact that it arises from the conduct of an operation that is in itself lawful or useful.

Answer "Yes" or "No."

Answer: Yes

QUESTION 2

Question: Do you find Aruba Petroleum, Inc.'s conduct was abnormal and out of place in its surroundings such as to constitute a private nuisance?

Aruba Petroleum, Inc. creates a "private nuisance" if its conduct substantially interferes with the plaintiffs' use and enjoyment of their land.

"Substantial interference" means that the conduct must cause unreasonable discomfort or annoyance to a person of ordinary sensibilities attempting to use and enjoy the person's land. It is more than a slight inconvenience or petty annoyance.

You are instructed that a nuisance, if it exists, is not excused by the fact that it arises from the conduct of an operation that is in itself lawful or useful.

Answer "Yes" or "No."

Answer: No

If you answered "yes" to either question no. 1 or 2, then answer question nos. 3 and 4. Otherwise do not answer any further questions, but instead proceed to the verdict certificate page.

QUESTION 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Lisa Parr, Robert "Bob" Parr, and Emma Duval for the damages, if any, proximately caused by the nuisance?

The nuisance "proximately caused" damages if the condition created by Aruba Petroleum, Inc. was a substantial factor in bringing about the damages, and without which condition such damages 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 damages might reasonably result therefrom. In determining damages resulting from a nuisance, you may consider the proximity, duration, and intensity of the nuisance.

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

(a) Physical pain and suffering sustained in the past.

Bob: \$ 750,000.00
Lisa: \$ 750,000.00
Emma: \$ 500,000.00

(b) Physical pain and suffering that, in reasonable probability, will be sustained in the future.

Bob: \$ 100,000.00
Lisa: \$ 100,000.00
Emma: \$ 50,000.00

(c) Mental anguish sustained in the past.

Bob: \$ 150,000.00
Lisa: \$ 150,000.00
Emma: \$ 100,000.00

(d) Mental anguish that, in reasonable probability, will be sustained in the future.

Bob: \$ 0.00
Lisa: \$ 0.00
Emma: \$ 0.00

QUESTION 4

What sum of money, if paid now in cash, would fairly and reasonably compensate Robert "Bob" Parr for loss of market value damages, if any, proximately caused by the nuisance?

The nuisance "proximately caused" damages if the condition created by Aruba Petroleum, Inc. was a substantial factor in bringing about the damages, and without which condition such damages 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 damages might reasonably result therefrom.

For "loss of market value damages", consider the difference in value of Robert "Bob" Parr's property immediately before and after the nuisance, if any. "Market value" means the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.

Answer, in dollars and cents, for damages, if any.

1. Damages for property damage for loss of market value.

Answer: 275,000.00

Answer the following question only if you unanimously answered "yes" to question 1 or question 2. Otherwise, do not answer the following question, but instead proceed to the verdict certificate page. To answer "yes" to this question, your answer must be unanimous. You may answer "no" to this question only upon a vote of five or more jurors. Otherwise, you must not answer the question.

QUESTION 5

Do you find by clear and convincing evidence that the harm to Lisa Parr, Robert "Bob" Parr, and Emma Duval resulted from malice on the part of Aruba Petroleum, Inc.?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by Aruba Petroleum, Inc. to cause substantial injury to Lisa Parr, Robert "Bob" Parr, and Emma Duval.

Answer "Yes" or "No."

Answer: _____

Answer the following question only if you unanimously answered "yes" to question 5 regarding Aruba Petroleum, Inc. Otherwise, do not answer the following question but instead proceed to the certificate page.

QUESTION 6

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

Question: What sum of money, if any, should be assessed against Aruba Petroleum, Inc. and awarded to Lisa Parr, Robert "Bob" Parr, and Emma Duval as exemplary damages for the conduct found in response to Question 5?

"Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages include punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of Aruba Petroleum, Inc.

Answer in dollars and cents, if any.

Answer: _____

Verdict Certificate

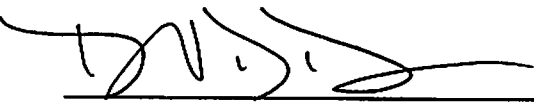
Check one:

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


Signature of Presiding Juror

Printed Name of Presiding Juror

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

1. 


Signature of Juror




Printed Name of Juror

2. 

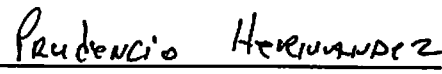
Signature of Juror



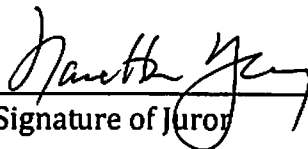
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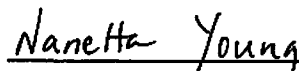
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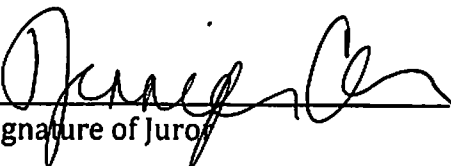
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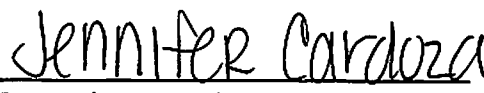
Signature of Juror



Printed Name of Juror

5. 

Signature of Juror



Printed Name of Juror

If you have answered Question 5 and Question 6, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering Question 5 and Question 6. All six of us have agreed to each of the answers. The presiding juror has signed the certificate for all six of us.

Signature of Presiding Juror

Printed Name of Presiding Juror