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WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY _____ DEPUTY

CV 01-05311 #00000242

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH L JARAMILLO, individually
and as Personal Representative of the Estates
of ANGELA L JARAMILLO and
MCKENNA LEE JARAMILLO, GERALD
R TARUTIS as guardian ad litem for RILEY
R JARAMILLO, a minor, and BRADFORD
J FULTON as guardian ad litem for
SAWYER D JARAMILLO, a minor,

Plaintiffs,

v


FORD MOTOR COMPANY, a Delaware
corporation,

Defendant

CASE NO C01-5311JKA

COURT'S INSTRUCTIONS TO
THE JURY

DATED. 3-6-03


J. KELLEY ARNOLD
United States Magistrate Judge

24/2

Instruction No. 1

Duties of Jury to Find Facts and Follow Law

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return -- that is a matter entirely up to you.

Instruction No. 2

Claims and Defenses

This lawsuit is brought by plaintiffs Ken L. Jaramillo, individually and as personal representative of the estates of Angela L. Jaramillo and McKenna Lee Jaramillo, Gerald R. Tarutis as guardian ad litem for Riley R. Jaramillo, a minor, and Bradford Fulton as guardian ad litem for Sawyer D. Jaramillo, a minor ("plaintiffs") against defendant Ford Motor Company ("Ford") to recover damages arising from an accident on August 5, 2000 near Hill City, Idaho, involving a 1998 Explorer ("the vehicle") manufactured by Ford

Plaintiffs claim that Ford is subject to liability because.

(1) the subject vehicle was not reasonably safe in design with respect to its stability and that this was a proximate cause of their injuries and damages.

(2) the subject vehicle was not reasonably safe because Ford failed to provide adequate warnings or instructions with the subject Ford Explorer at the time of manufacture and that this was a proximate cause of their injuries and damages.

(3) the subject vehicle was not reasonably safe because Ford was negligent in failing to provide adequate warnings or instructions after the subject Ford Explorer was manufactured and that this was a proximate cause of their injuries and damages.

(4) the roof of the subject vehicle was not reasonably safe in design and that this was a proximate cause of Angela Jaramillo's and/or McKenna Jaramillo's death

(5) the rear middle safety belt of the subject vehicle was not reasonably safe in design and that this was a proximate cause of McKenna Jaramillo's death.

Defendant Ford admits it is the manufacturer of plaintiffs' 1998 Ford Explorer, but denies each of the plaintiffs' claims and further denies the nature and extent of the injuries and damages

claimed by the plaintiffs Ford also contends that the contributory negligence of Angela Jaramillo was a proximate cause of the claimed injuries and damages

Plaintiffs deny Ford's claim of contributory negligence Plaintiffs further contend that any contributory negligence on the part of Angela Jaramillo was not a proximate cause of her death or the death of McKenna Jaramillo.

The foregoing is merely a summary of the claims of the parties You are not to take the same as proof of the matters claimed, and you are to consider only those matters that are established by the evidence These claims have been outlined solely to aid you in understanding the issues

Instruction No 3

Action by Personal Representative(s) and Individuals

Plaintiffs bring different claims for damages in this action

First, Ken Jaramillo, as personal representative of the estates of Angela Jaramillo and McKenna Jaramillo, brings two separate actions against Ford. He brings these actions in his legal personal representative capacity for the Estates

- (a) In one of the actions, called a Survival Action, he is representing the two Estates for claims that could have been brought by Angela Jaramillo and McKenna Jaramillo in their lifetimes because of the motor vehicle accident
- (b) In the other action, called a Wrongful Death Action, he is representing the Estate of Angela Jaramillo for the losses suffered by her survivors because of her death

Second, Ken Jaramillo brings an action for the death of McKenna Jaramillo as her surviving parent.

Third, Ken Jaramillo, individually, brings a claim for the physical injuries that he suffered as a result of the motor vehicle accident

Fourth, Gerald R. Tarutis as guardian ad litem for Riley R. Jaramillo, a minor, brings a claim for the physical injuries that Riley Jaramillo suffered as a result of the motor vehicle accident

Fifth, Bradford J. Fulton as guardian ad litem for Sawyer D. Jaramillo, a minor, brings a claim for the physical injuries that Sawyer Jaramillo suffered as a result of the motor vehicle accident

Instruction No. 4

What is Evidence

The evidence from which you are to decide what the facts are consists of.

1. the sworn testimony of witnesses, on both direct and cross-examination, regardless of who called the witness;
2. the exhibits which have been received into evidence, and
3. any facts to which all the lawyers have agreed or stipulated.

Instruction No. 5

Direct and Circumstantial Evidence.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Instruction No.6

What Is Not Evidence

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. *Certain things are not evidence, and you may not consider them in deciding what the facts are.* I will list them for you

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. (In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.)

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Instruction No. 7

Opinion Evidence

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case

Instruction No. 8

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 may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to,
2. the witness' memory;
3. the witness' manner while testifying,
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony,
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

Instruction No 9

Witness Who Has Been Interviewed

Any party, attorney or representative of a party has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that a witness has talked with any attorney, a party, or party's representative does not, of itself, reflect adversely on the testimony of the witness.

Instruction No. 10

Use of Charts and Summaries

1 Certain charts and summaries have been admitted into evidence for all purposes. You should consider those charts and summaries and give them whatever weight you deem appropriate.

2. Certain charts and summaries have been admitted for illustrative purposes only. They are to illustrate evidence brought out in the trial. These charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves. Illustrative exhibits remain with the clerk and will not be available for your review during deliberation.

Instruction No. 11

Corporations – Fair Treatment

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party

Instruction No 12

Two or More Parties – Different Legal Rights

You should decide the case of each plaintiff separately as if it were a separate lawsuit

Unless a specific instruction states that it applies to a specific plaintiff, the instruction applies to each plaintiff

Instruction No. 13

Burden of Proof

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether introduced by that party or by another party

Instruction No. 14

Elements of Proof - Plaintiffs

Plaintiffs have the burden of proving each of the following propositions.

First, that Ford supplied a vehicle that was not reasonably safe as designed at the time the vehicle left Ford's control; and/or that Ford supplied a vehicle that was not reasonably safe because adequate warnings or instructions were not provided with the vehicle, and/or that Ford was negligent in that the vehicle was not reasonably safe because adequate warnings or instructions were not provided after the vehicle was manufactured;

Second, that plaintiffs were injured, and

Third, that the unsafe condition of the vehicle was a proximate cause of plaintiffs' injuries

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for plaintiffs. On the other hand, if any of these propositions has not been proved, your verdict should be for the defendant, Ford

Instruction No 15

Elements of Proof – Defendant

Ford has the burden of proving each of the following propositions relating to their claim of Plaintiff Angela Jaramillo's contributory negligence:

First, that Angela Jaramillo acted, or failed to act in one of the ways claimed by Ford, and that in so acting or failing to act, Angela Jaramillo was negligent; and

Second, that the negligence of Angela Jaramillo was a proximate cause of plaintiffs' injuries or damages.

Instruction No 16

Negligence

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

Instruction No. 17

Contributory negligence - defined

Contributory negligence is negligence on the part of the plaintiffs claiming injury or damage which is the proximate cause of the damage complained of

If you find contributory negligence on the part of Angela Jaramillo, you must determine the degree of negligence, expressed as a percentage, attributable to her. The court will furnish you a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will reduce the amount of any damages you find to have been sustained by plaintiffs, by the percentage of such contributory negligence

Instruction No. 18

Ordinary care - defined

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances

Instruction No. 19

Proximate cause - defined

The term "proximate cause" means a cause which in a direct sequence unbroken by any new independent cause, produces the event complained of and without which such event would not have happened.

There may be more than one proximate cause of an event.

Instruction No. 20

Speed

A statute provides that no person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions, having regard to the actual and potential hazards then existing.

The statute provides that a driver shall drive at a safe and appropriate speed when special hazards exist with respect to highway conditions. The maximum statutory speed limit at the place here involved was 65 miles per hour

The violation, if any, of a statute is not necessarily negligence, but may be considered by you as evidence in determining negligence

Instruction No 21

Duty of One Confronted by an Emergency

A person who is suddenly confronted by an emergency through no negligence of her own and who is compelled to decide instantly how to avoid injury and who makes such a choice as a reasonably careful person placed in such a position might make, is not negligent even though the choice may not have been the wisest choice

Instruction No. 22

Use of Safety Belt Or Child Passenger Restraint

The law provides that the failure to wear a safety belt or a child passenger restraint does not constitute negligence or contributory negligence, nor can it be used as evidence of negligence or contributory negligence. Evidence regarding the use or non-use of a safety belt or child passenger restraint was admitted only for the purpose of showing whether or not the design of the restraint system was or was not reasonably safe. The evidence regarding the use or non-use of a safety belt or child passenger restraint should not be considered for any other purpose.

Instruction No. 23

Manufacturer's Duty -- Design

A manufacturer has a duty to design products that are reasonably safe. A manufacturer is subject to liability if the product was not reasonably safe as designed at the time that it left the manufacturer's control, and this was a proximate cause of plaintiffs' injuries and damages.

A product is not reasonably safe as designed, if

- at the time of manufacture, the likelihood that the product would cause injury or damage similar to that claimed by the plaintiffs, and the seriousness of such injury or damage, outweighed the burden on the manufacturer to design a product that would have prevented the injury or damage, and outweighed the adverse effect that an alternative design that was practical and feasible would have on the usefulness of the product; or
- the product is unsafe to an extent beyond that which would be contemplated by an ordinary user. In determining what an ordinary user would reasonably expect, you should consider the seriousness of the potential harm from the claimed defect, the cost and feasibility of eliminating or minimizing the risk and such other factors as the nature of the product and the claimed defect indicate are appropriate.

Instruction No 24

Manufacturer's duty to provide warnings or instructions with product

A manufacturer has a duty to supply products that are reasonably safe. A product manufacturer is subject to liability if the product was not reasonably safe because adequate warnings or instructions were not provided with the product and this was a proximate cause of plaintiffs' injuries and damages.

A product is not reasonably safe because adequate warnings or instructions were not provided with the product, if

- at the time of manufacture, the likelihood that the product would cause injury or damage similar to that claimed by plaintiffs, and the seriousness of such injury or damage, rendered the warnings or instructions of the manufacturer inadequate and the manufacturer could have provided adequate warnings or instructions; or

- the product is unsafe to an extent beyond that which would be contemplated by the ordinary user. In determining what an ordinary user would reasonably expect, you should consider the relative cost of the product, the seriousness of the potential harm from the claimed defect, the cost and feasibility of eliminating or minimizing the risk and such other factors as the nature of the product and the claimed defect indicate are appropriate

Instruction No. 25

Manufacturer's duty to provide warnings or instructions after the product was manufactured

A manufacturer has a duty to supply products that are reasonably safe. A manufacturer is subject to liability if the product was not reasonably safe because the manufacturer was negligent in not providing adequate warnings or instructions after the product was manufactured and this was a proximate cause of plaintiffs' injuries and damages

A product is not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured if a manufacturer learned, or if a reasonably prudent manufacturer should have learned, about a danger connected with the product after it was manufactured. In such a case, the manufacturer is under a duty to act with regard to issuing warnings or instructions concerning the danger in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances. This duty is satisfied if the manufacturer exercises reasonable care to inform product users

In determining whether a product was not reasonably safe, you shall consider whether the product was unsafe to an extent beyond that which would be contemplated by the ordinary user. In this regard, you should consider the relative cost of the product, the seriousness of the potential harm from the claimed defect, the cost and feasibility of eliminating or minimizing the risk, and such other factors as the nature of the product and the claimed defect indicate are appropriate.

Instruction No 26

No Duty to Warn of Obvious or Known Dangers

There is no duty to warn of obvious or known dangers.

Instruction No. 27

Manufacturer's Duty – Enhanced Injuries

With regard to plaintiffs' claims relating to the design of the roof and the rear middle safety belt of the subject vehicle, a manufacturer of a motor vehicle has a duty to design a vehicle to be reasonably safe in foreseeable accidents. In that regard, design of the roof and safety belt need not have been the cause of the accident itself but rather the cause of the injuries.

If you find that the roof and/or the rear middle safety belt of the subject vehicle was not reasonably safe in design and that either or both of these was a proximate cause of the deaths of Angela Jaramillo and/or McKenna Jaramillo, it is not a defense to these claims that the negligence of Angela Jaramillo, if any, may have been a proximate cause of the accident

Instruction No 28

Industry Standards, Customs, and Governmental Motor Vehicle Safety Standards

In determining whether the vehicle was or was not reasonably safe, you may consider, among other things, evidence of the custom in the motor vehicle industry, Federal Motor Vehicle Safety Standards, and technological feasibility in the 1998 time period

Instruction No. 29

Measure of Damages

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered

If your verdict is for plaintiffs, then you must determine the amount of money that will reasonably and fairly compensate plaintiffs in each claim made by them.

The burden of proving damages rests upon plaintiffs. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess or conjecture

If you find for plaintiffs, you should assess the damages of each of the plaintiffs separately.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions

Instruction No 30

Claim of Angela Jaramillo Estate

If your verdict is for plaintiffs, then you must determine the amount of money that will reasonably and fairly compensate Angela Jaramillo's estate for such damages as you find were proximately caused by the defendant. Your verdict shall include \$4,102.60 for Angela Jaramillo's medical, funeral and burial expenses. In addition you should consider the following items:

1. Economic damages The net accumulations lost to Angela Jaramillo's estate. In determining the net accumulations, you should take into account Angela Jaramillo's age, health, life expectancy, occupation, and habits of industry, responsibility, and thrift. You should also take into account Angela Jaramillo's earning capacity, including her actual earnings prior to death and the earnings that she would have been reasonably expected to earn in the future, including any pension benefits. Further, you should take into account the amount you find that Angela Jaramillo reasonably would have consumed as personal expenses during her lifetime and deduct this from her expected future earnings to determine the net accumulations.

2. Non-economic damages

(a) The loss of enjoyment of life consciously experienced by Angela Jaramillo due to her shortened life expectancy.

(b) The pain, suffering, anxiety, emotional distress, humiliation, and fear consciously experienced by Angela Jaramillo prior to her death.

Instruction No 31

Claim of McKenna Jaramillo's Estate

If your verdict is for plaintiffs, then you must determine the amount of money that will reasonably and fairly compensate McKenna Jaramillo's estate for such damages as you find were proximately caused by the defendant. Your verdict shall include \$12,504.80 for McKenna Jaramillo's medical, funeral and burial expenses. In addition you should consider the following items:

If you find for the plaintiffs, your verdict should consider the net accumulations lost to McKenna Jaramillo's estate. In determining the net accumulations, you should take into account ~~the~~ McKenna Jaramillo's age, health, life expectancy, occupation and habits of industry, responsibility and thrift. You should also take into account McKenna Jaramillo's earning capacity, including the earnings that reasonably would have been expected to be earned by her in the future, including any pension benefits. Further, you should take into account the amount you find that McKenna Jaramillo reasonably would have consumed as personal expenses and deduct this from her expected future earnings to determine the net accumulations.

Wrongful Death Action- Ken Jaramillo

If your verdict is for plaintiffs, then you must determine the amount of money that will reasonably and fairly compensate Ken Jaramillo for such damages as you find were proximately caused by the death of Angela Jaramillo. You should consider the following items:

1 Economic Damages

(a) As past economic damages, you should consider any benefit of value, including money, goods, and services that Ken Jaramillo would have received from Angela Jaramillo up to the present time if she had lived.

(b) As future economic damages, you should consider what benefits of value, including money, goods, and services Angela Jaramillo would have contributed to Ken Jaramillo in the future had she lived.

2 Non-economic Damages

As non-economic damages, you should consider what Angela Jaramillo reasonably would have been expected to contribute to Ken Jaramillo in the way of marital consortium. "Marital consortium" means the fellowship of husband and wife and the right of one spouse to the company, cooperation, and aid of the other in the matrimonial relationship. It includes emotional support, love, affection, care, services, companionship, including sexual companionship, as well as assistance from one spouse to the other.

In making your determinations, you should take into account the decedent's age, health, life expectancy, occupation and habits of industry, responsibility and thrift. You should also take into account Angela Jaramillo's earning capacity, including Angela Jaramillo's actual earnings prior to death and the earnings that reasonably would have been expected to be earned by Angela Jaramillo in the future. In determining the amount that Angela Jaramillo reasonably would have been expected to contribute in the future to Kenneth Jaramillo you should also take into account the amount you find Angela Jaramillo customarily contributed to them.

Instruction No 33

Wrongful Death Action – Riley and Sawyer Jaramillo

If your verdict is for plaintiffs, then you must determine the amount of money that will reasonably and fairly compensate Riley Jaramillo and Sawyer Jaramillo for such damages as you find were proximately caused by the death of Angela Jaramillo

You should consider as noneconomic damages what Angela Jaramillo reasonably would have been expected to contribute to Riley Jaramillo and Sawyer Jaramillo in the way of emotional support, love, affection, care, companionship, and guidance.

In making your determinations, you should take into account ~~the~~ Angela Jaramillo's age, health, life expectancy, occupation and habits of industry, responsibility and thrift

Instruction No 34

Ken Jaramillo – Parent Child Relationship Claim

If your verdict is for plaintiffs, then in reference to Ken Jaramillo's action for the death of McKenna Jaramillo, you must determine the amount of money that will reasonably and fairly compensate Ken Jaramillo for the following non-economic damages.

(a) The loss of love and the destruction of the parent-child relationship between McKenna Jaramillo and Ken Jaramillo, including the grief, mental anguish, and suffering of Ken Jaramillo as a result of McKenna's death

(b) The loss of companionship, including mutual society and protection, of McKenna Jaramillo to Ken Jaramillo.

Personal Injury Claim - Ken Jaramillo

If your verdict is for plaintiffs, then in regard to Ken Jaramillo's personal physical injury claim, your verdict shall include the following undisputed items

\$4,753.75 for Ken Jaramillo's past medical care, treatment and services

In addition, you should consider the following noneconomic damages elements based on the nature and extent of Ken Jaramillo's physical injuries

The pain and suffering, both mental and physical, experienced by Ken Jaramillo, and with reasonable probability to be experienced in the future

Instruction No. 36

Ken Jaramillo's Claim For Emotional distress

The law provides that a person may recover for emotional distress resulting from having witnessed the death of a relative. In order to recover emotional distress damages, a person must manifest objective symptoms and the person's reactions must be those of a normally constituted person

In this case, you should consider as a separate element of damage, the emotional distress suffered by Ken Jaramillo as he witnessed the death of his spouse, Angela Jaramillo

Instruction No. 37

Personal Injury Claim – Riley Jaramillo

If your verdict is for plaintiffs, then in regard to Riley Jaramillo's personal physical injury claim, your verdict shall include the following undisputed items:

\$ 11,957.18 for Riley Jaramillo's past medical care, treatment and services.

In addition, you should consider the following noneconomic damages elements based on the nature and extent of Riley Jaramillo's physical injuries.

The pain and suffering, both mental and physical, experienced by Riley Jaramillo.

Instruction No. 38

Personal Injury Claim – Sawyer Jaramillo

If your verdict is for plaintiffs, then in regard to Sawyer Jaramillo's personal physical injury claim, your verdict shall include the following undisputed items:

\$11,432.80 for Sawyer Jaramillo's past medical care, treatment and services.

In addition, you should consider the following noneconomic damages elements based on the nature and extent of Sawyer Jaramillo's physical injuries:

The pain and suffering, both mental and physical, experienced by Sawyer Jaramillo.

Instruction No. 39

Future Economic Damages/Present Value

Any award for future economic damages must be for the present cash value of those damages.

Noneconomic damages are not reduced to present cash value

"Present cash value" means the sum of money needed now, when invested at a reasonable rate of return, to pay future damages at the times and in the amounts that you find such damages will be incurred

The rate of interest to be applied in determining present cash value should be that rate which in your judgment is reasonable under all the circumstances. In this regard, you should take into consideration the prevailing rates of interest in the area that can reasonably be expected from safe investments that a person of ordinary prudence, but without particular financial experience or skill, can make in this locality

In determining present cash value, you may also consider decreases in value of money which may be caused by future inflation.

Instruction No. 40

Mortality Table

According to mortality tables, average expectancy of life of a woman, 35 years of age, has a life expectancy of 45.33 years. A girl, five years of age, has a life expectancy of 74.54 years.

This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits, and activity of the person whose life expectancy is in question

Instruction No 41

Use of Notes

You may have taken notes during trial to assist your memory. Notes, however, should not be substituted for your memory, and you should not be overly influenced by the notes.

Instruction No. 42

Communicate with Judge through Judicial Assistant

If it becomes necessary during your deliberations to communicate with me, you may send a note through the judicial assistant, signed by the presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

Instruction No 43

Deliberation

When you retire, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully and with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Instruction No. 44

Final Decision

After you have reached unanimous agreement on a verdict, the presiding juror shall fill in, date, and sign the verdict form and advise the court that you have reached a verdict.