

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

BRENT HARNISH, JULIE HARNISH,)
STEVEN HECKAMAN, and)
JANIS KENGIS,)
Plaintiffs,)

v.)

Case No. 3:10-cv-511-PPS

LIBERTY FARM EQUINE)
REPRODUCTION CENTER, LLC,)
DEGRAFF STABLES KENTUCKY, LLC,)
DEGRAFF STABLES, INC., and)
ROBIN DEGRAFF,)
Defendants.)

JURY INSTRUCTIONS

Date: August 29, 2013

s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

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

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the 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.

Perform these duties fairly and impartially. Do not allow sympathy, 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.

INSTRUCTION NO. 2

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

INSTRUCTION NO. 3

In this case some of the defendants are corporations.

All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

INSTRUCTION NO. 4

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

INSTRUCTION NO. 5

During the trial, certain testimony was presented to you by the reading of a deposition and by video. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

INSTRUCTION NO. 6

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits 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, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

INSTRUCTION NO. 9

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

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

INSTRUCTION NO. 10

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION NO. 11

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

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- 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 witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION NO. 12

You may consider statements given by parties under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

INSTRUCTION NO. 13

It is proper for a lawyer to meet with any witness in preparation for trial.

INSTRUCTION NO. 14

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.

INSTRUCTION NO. 15

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION NO. 16

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 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.

INSTRUCTION NO. 17

Certain summaries of yearly date books are in evidence. The original materials used to prepare those summaries also are in evidence. It is up to you to decide if the summaries are accurate.

INSTRUCTION NO. 18

Certain charts have been shown to you. Those charts are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

INSTRUCTION NO. 19

You must give separate consideration to each claim and each party in this case.

Although there are two defendants, Liberty Farm Reproduction Center and Robin L. DeGraff, it does not follow that if one is liable, the other is also liable. And although there are four plaintiffs, Brent and Julie Harnish, Steven Heckaman, and Janis Kengis, it does not follow that if one is successful, the others are, too.

INSTRUCTION NO. 20

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

INSTRUCTION NO. 21

The Plaintiffs have presented two claims in this case.

First, the Plaintiffs have alleged a negligence claim against Defendants Robin DeGraff and Liberty Farm Reproduction Center, LLC.

Second, the Plaintiffs have alleged a bailment claim against Defendant Robin DeGraff.

INSTRUCTION NO. 22

A bailment occurs when one person, called a bailor, delivers possession of some personal property to another person, called the bailee, with the understanding that the property will be returned to the bailor when the purpose of the bailment is accomplished. Where the relationship between the bailor and bailee is to benefit both parties, the bailee must exercise ordinary care and diligence in safeguarding the property and is liable for injury to, or loss of, the property resulting from his failure to do so. However, the bailee is not liable for the injury or loss of the property not resulting from negligence on his part.

In this case, the parties have agreed that:

- (1) a bailment agreement existed between the Plaintiffs as bailors and Robin DeGraff as the bailee;
- (2) the property was delivered to the bailee; and
- (3) the bailee failed to return the property in an undamaged condition.

Accordingly, the only issue you will need to decide on the bailment claim is whether Defendant Robin DeGraff was negligent.

INSTRUCTION NO. 23

A party is negligent when there is a duty on the defendant's part, a breach of that duty, and consequent injury to the plaintiff.

The law imposes a duty on every person to exercise ordinary care in his activities to prevent foreseeable injury.

"Ordinary care" as applied to the Defendants means such care as you would expect an ordinarily prudent person engaged in the horse breeding business to exercise under similar circumstances.

Foreseeability is to be determined by viewing the facts as they reasonably appeared to the party charged with negligence, not as they appear based on hindsight. You should look to the general foreseeability of harm, not to whether the particular, precise form of injury could be foreseen.

INSTRUCTION NO. 24

It was the duty of Robin DeGraff and Liberty Farm Equine Reproduction Center, LLC to exercise ordinary care to protect the Plaintiffs' horses from damage or destruction while they were in their custody. If you are satisfied from the evidence that they failed to comply with that duty and that such failure was a substantial factor in causing the horses to be damaged by infection with CEM, you will find for the Plaintiffs. Otherwise, you will find for Robin DeGraff and Liberty Farm.

INSTRUCTION NO. 25

The owner of a horse shall be liable for damages to or loss of a horse while in the custody of a boarder except for that damage or loss due to the negligence of the boarder, his agent or employees.

INSTRUCTION NO. 26

If you decide for the Defendants on the question of liability, then you should not consider the question of damages.

INSTRUCTION NO. 27

If you find for the Plaintiffs, you will determine a sum of money that will fairly and reasonably compensate them for the difference between the fair market value of their horses and frozen semen immediately before and their fair market value immediately after they were damaged. “Fair market value” is the price that a person who is willing but not compelled to buy would pay and a seller who is willing but not forced to sell would accept for the property in question.

You may also consider evidence as to the cost of repairs when assessing the difference in value. Where there is evidence that the difference in value exceeds the cost of repairs, the recovery is not limited to the cost of repairs.

However, if you decide from the evidence that the Plaintiffs failed to exercise ordinary care for the protection of their horses after learning of the danger to which they were exposed, and that by reason of such failure on the Plaintiffs’ part the damage was greater than it would otherwise have been, you will exclude from the amount of your award so much of the Plaintiffs’ damages as you believe from the evidence would have been avoided by the exercise of such care.

INSTRUCTION NO. 28

A person cannot be liable for more than his or her own fault. If you find that more than one person or entity is at fault, you are required to apportion that fault among those persons or entities you believe to share fault.

INSTRUCTION NO. 29

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

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

INSTRUCTION NO. 30

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

INSTRUCTION NO. 31

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, 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 opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine 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 other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.