

Jury Instructions

FV Erin Renee, LLC and Sea Harvest, Inc. v. Promet Marine Services Corporation
(09-cv-340)

General Instructions

Now that you have heard the evidence and the argument, it is my job to charge you with the law applicable to the case that is now about to be submitted to you.

I am about to instruct you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.

It is your duty as jurors to follow the law as I shall state it to you. It is your duty to apply that law to the facts of the case as you determine those facts to be from the evidence in this case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me. Further, nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather it is your function to do so.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties -- and the law -- expect that you will carefully and

impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. Evidence that the court admits is properly before you for your consideration; evidence that this court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Documents admitted into evidence by the court are a part of the evidence properly before you and will be available to you in the jury room for consideration during your deliberations.

That this court admits evidence over objection should not be permitted to influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling of this court or the statements of counsel concerning the admissibility of such evidence. Nor should you permit objection by counsel to the admission of evidence, or the rulings of the court to create any bias or prejudice in your

minds with respect to counsel or the party he represents. It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he freely may make objections to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, the manner in which the witness testified, the character of the testimony given, or by evidence to the contrary of the testimony given. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case—including statements that he may have made on some prior occasion.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Case-Specific Instructions

This is a civil case. There are two plaintiffs in this case, F/V Erin Renee, LLC and Sea Harvest, Inc. There is one defendant in this case, Promet Marine Services Corporation.

The Plaintiffs seek money damages from the Defendant in this case to make up for the loss they suffered when the fishing vessel Erin Renee sunk in July of 2008 while it was in Defendant's custody. The Defendant admits responsibility for that loss so the issue of liability is not before you.

Plaintiffs have the burden of proving each and every element of their claim for damages by a preponderance of the evidence, which is another way of saying that the Plaintiff must prove them by the greater weight of the evidence. To put it another way, you must be satisfied that the evidence shows that what the party making a claim is claiming is more probably true than not.

The issue for you to determine is what amount of damages should be awarded to Plaintiffs. The purpose of that damage award is to put the Plaintiffs in as good a position monetarily as they were in before the damage occurred. Damages are not awarded to punish the Defendant or reward the Plaintiffs.

Damages Instructions

When a boat is damaged in a marine casualty, the amount of damages awarded depends on whether the boat is considered a total loss or whether its partial damage can be repaired. A total loss occurs when the cost of repairing the ship is greater than its fair market value immediately before the casualty.

In instances of total loss, the proper measure of damages is the fair market value of the vessel at the time of the damage, plus interest, less any salvage value. If you find that the Erin Renee was a total loss, then you should find that Plaintiffs are entitled to the vessel's fair market value, plus interest, less any salvage value immediately before the casualty.

Fair market value of a damaged or lost vessel is defined as "the sum which, considering all the circumstances, probably could have been obtained for her on the date of the loss; that is, the sum that in all probability would result from fair negotiations between an owner willing to sell and a purchaser desiring to buy." Therefore, in considering what the fair market value of the Erin Renee was before it sunk, you should first consider sales of the same or similar vessels on the open market at the time of the loss. If there are no sales of similar vessels, in order to determine what the fair market value is, you can consider, among other things, what the boat would have sold for on the date she sunk,

new replacement costs less depreciation, opinions from marine surveyors, brokers or owners, and the insured value of the boat.

In calculating the fair market value of a vessel at the time of the loss, you do not include the value of fishing permits because they are transferable to other vessels.

If you find that the vessel was a total loss -- meaning that the cost of repairing the ship is greater than its fair market value immediately before the casualty -- then the owner of the vessel is not entitled to recover loss of use or loss of profits.

If you find that the vessel was not a total loss -- meaning that the cost of repairing the ship is less than its fair market value immediately before the casualty -- then the proper measure of damages is the reasonable cost of repair.

In this scenario, Plaintiffs are entitled under the law to lost profits for the time the boat was out of commission. Profits are the amount of earnings that would have been derived from the fishing activity of the vessels in question, less the operating costs that have been saved because the vessels were not in operation. Lost profits include certain fixed costs that continued to be paid despite the fact that a vessel was not engaged in gainful activity.

Even in those cases in which the vessel will be repaired, there is a “new for old” rule that requires that you determine whether the repair adds new value or extends the useful life of the property. If so, an appropriate reduction in the amount of damages must be made.

You have the discretion to decide whether to award what is called prejudgment interest to the Plaintiff in this case. That is interest on the money damages you will award today from the time of the sinking in July of 2008 until the day of your verdict. There will be a place on the verdict form for you to indicate what you deem to be an appropriate percentage of interest, if any.

Final Procedural Instructions

Ladies and Gentleman, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, it goes without saying that prejudice, sympathy or compassion should not be permitted to influence you in the course of your deliberations. From what I have said I do not and did not mean to imply that you should approach your consideration of this case in an intellectual vacuum. You are not required to put aside or to disregard your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in the light of such experience and observations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict of any amount unless and until you all eight of you are in unanimous agreement as to what that amount shall be.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your conviction simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open to conviction with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your conviction. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held conviction simply because a majority holds to the contrary.

I am designating juror _____ as the Foreperson of this jury. _____, it will be your responsibility to serve organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the court security officer.

If in the course of your deliberations you should deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such requests or questions to writing. The Foreperson may then hand

such written requests or questions to the officer in whose charge you will now be placed. The officer will then bring such written request to me and I, in consultation with the attorney, will determine an appropriate response. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Security Officer Kennett, will you please come forward to be sworn in?