

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

HENRY MU,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 15-187PAS
	:	
OMNI HOTELS MANAGEMENT	:	
CORPORATION (a/k/a "Omni Hotels"),	:	
and JOHN DOES 1-20,	:	
Defendants.	:	

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case. This is the law that will govern your deliberations. I will send a written copy of my instructions into the jury room.

A. Province of the Court and Jury

It is your duty as jurors to follow the law as I 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. You are not to be concerned with the wisdom of any rule of law.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case. Also, nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my function to determine the facts; 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, compassion or public

opinion. All parties 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.

B. All Parties Equal before the Law

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. That is, both parties stand equal before the law and are to be dealt with as equals in a court of justice. The Defendant, Omni Hotels Management Corporation, is a corporation. As a corporation, it is entitled to the same fair trial as is Mr. Mu, a private individual. The law makes no distinction between corporations and private individuals, nor does it distinguish between the size or type of business in which a corporation engages. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice. Corporations act through their agents and employees.

As I did during voir dire, in these instructions, I will use the phrase “Omni” or “the Omni Hotel” – in all such instance, I am referring to the Defendant in this case, Omni Hotels Management Corporation.

C. Evidence in the Case

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

1. The sworn testimony of the witnesses;
2. The exhibits that are admitted into evidence; and
3. Any facts to which the lawyers have agreed or stipulated.

Evidence that the Court admits in full 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.

It is the duty of the lawyers to protect the rights and interests of his or her client, and in the performance of that duty each freely may make objections to the admission of proffered evidence. You should not, in any manner, penalize them for doing so.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give that evidence. Nor should statements made by counsel, either for or against the admission of 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 each piece of evidence on the basis of your own consideration and without regard to the ruling of the Court or the statements of counsel concerning its admissibility.

D. Not Evidence

Certain things are not evidence, and you may not consider them in deciding what the facts are.

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and 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 controls.
2. Questions and objections by lawyers are not 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 is not evidence and must not be considered.
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 during the trial.

E. Evidence – Direct and Circumstantial

There are two types of evidence from which you may properly find the facts of a case. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

F. Inferences

In your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are allowed to draw reasonable inferences from the evidence.

Inferences are deductions or conclusions that reason and common sense lead you to draw from facts that have been established by the evidence. Inferences may not be based on speculation or conjecture. They must be based on evidence.

Let me give you an example of an inference. If your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the letter carrier delivered the mail. Now, obviously, you didn't see the letter carrier deliver the

mail, but from the fact that it was empty this morning and is filled tonight, you can properly infer that your letter carrier came in the interim and delivered the mail. That is all that we mean by an inference. You are permitted to draw reasonable inferences that seem justified in light of your experience, and from facts that you find have been proven.

G. Deposition Testimony

During the trial, you heard references to the terms “examination under oath” and “deposition.” As it applies in this case, these terms mean sworn testimony, under oath, given by a witness before this trial began. To the extent that you have heard testimony from, reference to, or quotations from, a “deposition” or “examination under oath,” you may give such testimony the same credibility or weight as live witness testimony. That is to say, whatever credibility or weight, if any, you think it may deserve.

H. Redacted Documents

During the trial, both parties offer into evidence documents that had been partially “redacted.” “Redacted” means that certain content of the document has been blacked or whited out and stamped “redacted.” Redactions are necessary for a variety of reasons, including that the redacted information is totally unrelated to the case, that the Court has determined that the information is inadmissible, or to protect the personal information of individuals who are not parties to this lawsuit. Those are just examples. You may give the information that you can see (the unredacted information) in such a redacted document whatever weight you choose, and you should not speculate regarding why the redactions were made or what has been redacted or let the existence of such redactions influence your decision one way or another.

I. Credibility of Witnesses

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 or she has testified, and whether she or 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, the testimony of the witness is either supported or contradicted by other evidence in the case – including whether he or she has made contradictory statements on prior occasions.

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 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.

J. Burden of Proof – Preponderance of the Evidence

The burden is on Mr. Mu, as the Plaintiff in a civil action such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of Mr. Mu's claim by a preponderance of the evidence in the

case, then you should find in favor of Omni. As Defendant, Omni does not have any obligation to disprove any of what Mr. Mu asserts or claims.

However, Omni does have the burden of proving its affirmative defenses by a preponderance of the evidence; I will talk more about those in a few minutes.

To establish by “a preponderance of the evidence” means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, to prove his claim by a preponderance, Mr. Mu’s evidence would have to make one end of the scale tip somewhat to his side. When I say in these instructions that a party has the burden of proof on any proposition, or I use the expression “if you find,” I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even a near certainty.

K. Preponderance – Not Reasonable Doubt

Don’t confuse the burden of proof by a fair preponderance of the evidence with the burden of proving something beyond a reasonable doubt. As some of you know, in a criminal case, the prosecutor has to prove the Defendant guilty beyond a reasonable doubt. This is not a criminal case. Therefore, in order to prevail, Mr. Mu need not prove his claim beyond a reasonable doubt; he need only prove it by a fair preponderance of the evidence.

II. CASE-SPECIFIC INSTRUCTIONS

A. Plaintiff’s Claim – Negligence/Defendant’s Affirmative Defenses

As you know, this is a civil case brought by Henry Mu against Omni Hotels Management Corporation. Mr. Mu has one claim: negligence. He alleges that Omni was negligent in that it breached its duty to exercise reasonable care for the safety of persons like him who are reasonably expected to be on its premises. Omni denies these allegations. In considering Mr.

Mu's claim of negligence, you will be asked to determine whether Mr. Mu has proven by a preponderance of the evidence that Omni was negligent, that Omni's negligence was the proximate cause of Mr. Mu's injury, and if so, what damages did Mr. Mu sustain.

In addition to Mr. Mu's claim of negligence, you will also consider Omni's three claims that the Plaintiff is not entitled to recover, in whole or in part, regardless of Omni's negligence. These claims are called affirmative defenses. Omni asserts the following three affirmative defenses:

1. independent intervening force and superseding cause;
2. assumption of the risk; and
3. comparative negligence.

Just as Mr. Mu has the burden of proving his negligence claim, Omni has the burden of proving these affirmative defenses by a preponderance of the evidence. First, I will explain the law of negligence that applies to Mr. Mu's claim. After that I will explain the law applicable to the three affirmative defenses.

B. Negligence Standard of Care – Defined

Negligence is the doing of some act that a reasonably prudent person would not do, or the failure to do something that a reasonably prudent person would do. To prevail in a negligence action, the Plaintiff must introduce competent evidence to establish that the Defendant breached a duty of care that it owed to the Plaintiff and that the breach of that duty was a proximate cause of the harm or injury about which the Plaintiff complains.

In other words, when a person either by acting or not acting in a given set of circumstances, fails to exercise the degree of care for the safety of another person that a reasonably prudent person would have used under the same or similar circumstances, you have

negligence. When we say that a person was acting with due and reasonable care, we mean that this person was not negligent.

Negligence involves a lack of the reasonable care that ordinarily should be exercised under the same or similar circumstances. We often call it ordinary care. Ordinary care is the care that a reasonably careful person would use under the circumstances that you find existed in this case. Ordinary care is not an absolute term. It is a relative term. The degree of care required may vary with the circumstances. The greater the risk of harm posed by the circumstances, the higher degree of care necessary to constitute ordinary care. So, in deciding whether ordinary care was exercised by a person in a given situation, that person's conduct must be viewed in light of all the circumstances as shown by the evidence. As the apparent risk of harm or injury increases, so too, must the degree of care to be exercised in order to constitute ordinary care.

The law does not say what a reasonably careful person would ordinarily do or would not do under the circumstances shown by the evidence in this case. This is for you, the jury, to decide.

C. Duty of Care – Premises Liability

Ladies and gentlemen, now that I have explained the general concepts of negligence to you, I will take a moment to explain the law of negligence as it relates to this case. This area of law is called the law of premises liability and it governs the relationship between landowners or others in control of property and those who are reasonably expected to come onto the property.

In this case, Mr. Mu was on the Omni Hotel property at the invitation of/with the permission of the Omni. As such, we call Mr. Mu an "invitee." Therefore, the Omni Hotel owed a duty of care to Mr. Mu.

Under the law, a property owner has a general duty to use reasonable care in seeing that the premises are free from dangerous conditions or defects that might cause injury to those who enter upon the property. Within the context of that general duty, a property owner is also under a duty or obligation to keep and maintain the premises in a safe condition and to use reasonable care in inspecting the premises so as to discover dangerous conditions or defects. A property owner also has a duty to use reasonable care to cure or remedy those conditions so that the premises are made safe. When the condition or defect is one that cannot be remedied, then the property owner has a duty to use reasonable care to adequately warn invitees of the potential danger. In other words, a property owner has a duty to use reasonable care to keep and maintain the premises in a safe condition and to protect those individuals reasonably expected to be on the premises against the risks to be apprehended from a dangerous condition existing on the premises. However, a property owner does not insure or guarantee the safety of individuals on its premises. A property owner's duty is limited to the exercise of reasonable care in keeping the premises reasonably safe.

In this case, I instruct you that Omni owed a duty to Mr. Mu to exercise reasonable care to keep and maintain the premises in a reasonably safe condition for Mr. Mu's visit to the Omni Hotel's premises.

D. Notice of a Dangerous or Unsafe Condition

Before a property owner can be held responsible for failing to remedy or cure a dangerous condition, the Plaintiff must prove that the property owner knew or should have known about the dangerous condition and failed to exercise the reasonable care to remedy or cure the condition within a reasonable time after having discovered it.

Whether Omni should have known about the existence of the danger that resulted in the injury to Mr. Mu is a question for the jury to decide. Thus, Mr. Mu must prove by a preponderance of the evidence that the dangerous condition on Omni premises existed for a sufficiently long period of time in order to have afforded Omni with reasonable notice of the existence of the condition, and that Omni, after having acquired such notice of the dangerous condition, failed to remedy the condition or to warn the Mr. Mu of the danger.

In deciding whether Omni should have known of and remedied a dangerous condition, you may consider the length of time the dangerous condition existed and the opportunities available to discover its existence by conducting a reasonable inspection. The law does not tell us what constitutes a reasonable inspection. That is for the jury to decide based on the circumstances. Mr. Mu must also prove that Omni failed to exercise reasonable care to remedy or cure the condition within a reasonable time of having discovered the dangerous condition. The law does not say what constitutes a reasonable time to cure or remedy the condition. That, too, is to be determined by you in light of the evidence.

In deciding whether Omni should have known of and remedied a dangerous condition, you may consider that a reasonable time to discover and remedy a condition will vary depending on the circumstances. Some that you might consider include:

1. the nature and size of the business;
2. the number of customers or guests visiting the premises at the time when the condition arose;
3. the location of the dangerous condition; or
4. the opportunity of the Defendant to see and observe the dangerous condition.

E. Duty of Care – Open and Obvious Condition

As a matter of law, a property owner has no duty to warn and/or safeguard against an open and obvious condition existing on the premises. However, whether the condition that occurred between 2 and 3 am on August 24, 2014, was open and obvious under the circumstances of this case is a question of fact. If you find that the condition was so open and obvious that an ordinary person acting under the same or similar circumstances as Mr. Mu could have observed, taken into account that condition and taken steps toward his own safety, then Omni had no duty to warn or safeguard Mr. Mu against the potential harm.

F. Proximate Cause

If you find Omni was negligent, you must then consider whether its negligence was a proximate cause of Mr. Mu's injuries.

Negligence and the legal term "proximate cause" work together. We refer to "proximate cause" as a necessary element of negligence. The concept is that even if a person has been negligent that person will not be held responsible or liable unless that negligent conduct caused actual harm to someone else. If a person is negligent but that negligence is not a substantial or moving cause of some harm, then the person should not be held responsible for his negligence.

Only where a person's negligence causes harm do we hold the person responsible for that harm. There must be a link or connection between the negligence and the harm in order to hold a person responsible.

The question is to what extent did the negligent conduct cause the injury? The law requires that the connection or link between the Omni's alleged negligent conduct and the resulting harm be *legally* sufficient, that is, something more than insubstantial or insignificant.

Proximate cause means a cause that in a natural, continuous, and unbroken sequence produces an event or injury and without which the event or injury would not have occurred. The

proximate cause of an event or injury is a substantial, primary, or moving cause without which the event or injury would not have happened. Causes that are merely incidental are not proximate causes. Unless the Defendant's negligence is a proximate cause of some harm caused to the Plaintiff, then the Defendant cannot be held responsible to the Plaintiff for negligence.

A cause that is a proximate cause may be the sole or only cause or even the last or nearest of an event or injury. Or, it may be one of two or more or even several causes of an event or injury some of which are a proximate cause and some of which are not. A cause is a proximate cause even if it comes together with or unites with some other cause and produces the event or injury. The test is whether the particular cause at issue is a substantial cause or whether it is merely incidental. Put differently, it is the proximate cause if, but for that cause, the injury would not have happened.

G. Respondeat Superior – Employer Liability

I previously told you that Omni is a corporation and that corporations act through their employees. While generally one person is not legally responsible for the conduct of another person, an exception to this principle arises in the context of the special relationship between an employer and its employees. Under the law of negligence, an employer is liable for the acts of its employees when the employee is negligent while acting within the scope of his or her employment. Some the witnesses who testified during the trial said that they were Omni's employees working at the Omni Hotel in Providence; some witnesses identified other persons as Omni's employees. If you find that Mr. Mu's injuries were proximately caused by the negligence of one or more individuals, and you find that those individuals were Omni employees acting within the scope of their employment with Omni at the time of the events in issue, then you must find that Omni is legally responsible for their conduct.

H. Independent Contractor

As a general rule, the law does not hold a corporation like Omni responsible for the acts of an independent contractor like LAZ Parking. An independent contractor is one who is engaged to perform services for another according to its own skill and judgment as to the manner or method of performance. An independent contractor performs services free from the control and direction of the person for whom the services are being performed. An independent contractor is in all matters connected with the manner or method of performance, except as to when and where, in general, the work should be done and the results or product of the work. An independent contractor has the absolute control over its assistants and executes the work entirely in accord with its own ideas or with a plan previously given it by the person for whom the work is being done. Stated differently, if Omni does not have the right to control LAZ Parking's manner or means of performing services, LAZ Parking should be considered to be an independent contractor. If you find that LAZ Parking was an independent contractor, you cannot find that Omni is legally responsible for the negligence (if any) of LAZ Parking's employee, Mr. Lebron.

III. AFFIRMATIVE DEFENSES

A. Summary of Affirmative Defenses

As I told you a while ago, after you evaluate Mr. Mu's negligence claim and if you find that Omni was negligent and is legally responsible for Mr. Mu's injury, you will next consider Omni's three affirmative defenses. That is, you will reach these affirmative defenses only if you find that the Mr. Mu has proven his negligence claim by a fair preponderance of the evidence. The wording of next set of instructions assumes that you have made that finding.

The three affirmative defenses are:

1. independent intervening force and superseding cause;
2. assumption of the risk; and
3. comparative negligence.

If Omni proves either its intervening force/superseding cause defense or its assumption of the risk defense, then Mr. Mu cannot recover anything. If Omni does not prove either of those defenses, but proves its third affirmative defense, comparative negligence, then you must allocate responsibility for Mr. Mu's injury between Mr. Mu and Omni.

The burden of proving each of the affirmative defenses is on Omni. In other words, since Omni is the one asserting these defenses, the law imposes on it the obligation of proving them. It is not up to Mr. Mu to disprove the affirmative defenses; rather, it is up to Omni to prove them by a fair preponderance of the evidence.

B. Independent/Intervening Force and Superseding Cause

First, I will explain independent/intervening force and superseding cause. I have already explained to you that a proximate cause is the natural, continuous, and unbroken sequence that produces an event or injury and without which the event or injury would not have occurred. Let us turn now to the question of independent forces that intervene to break that sequence and thereby relieve a negligent person from liability for the harm done to another. If an intervening and unforeseeable act of intentional harm or a criminal act triggers the injury to a Plaintiff, that intentional act is called an independent or superseding cause, with the result that the Defendant who negligently created the opportunity for such an intentional act escapes liability. But if the intervening act could reasonably have been foreseen by the Defendant as a natural and probable result of its original act of negligence, the Defendant remains responsible.

There is evidence in this case that a group of unknown individuals engaged in the acts that directly caused Mr. Mu's injuries. Omni contends that the actions of this group of individuals were an independent and unforeseeable intervening force that intervened in the natural sequence of events such that their conduct replaced Omni's conduct as the sole proximate cause of the injury. Mr. Mu contends that the unknown individuals' conduct was reasonably foreseeable to Omni, leaving the causal connection to Omni's negligence unbroken.

If you find that the unknown individuals' acts were a natural and foreseeable result of Omni's initial negligence, then Omni is not relieved of liability to Mr. Mu by this affirmative defense. On the other hand, if you find that the unknown individuals' actions were unforeseen and not a natural and probable result of Omni's initial negligence, then Omni is relieved of liability to Mr. Mu and your verdict must be for Defendant Omni.

C. Assumption of the Risk

Next I will explain the defense of assumption of the risk.

Omni's second affirmative defense is based on the legal doctrine known as "Assumption of the Risk." This doctrine is based upon the legal principle that a Plaintiff should be barred from recovering from a negligent Defendant if the Defendant proves by a preponderance of the evidence that the Plaintiff knew of the existence of the danger posed by the Defendant's conduct, appreciated and understood its significance or unreasonable character, and then voluntarily exposed himself to that danger at the time of the incident. If justified by the facts, the defense operates to relieve a Defendant of liability for creating a risk of harm to the Plaintiff.

In this case, you must decide whether Mr. Mu assumed the risk of the danger posed by Omni's negligence. Omni carries the burden of proving that Mr. Mu voluntarily assumed the risk of his injuries; it is Omni who must prove each element by a preponderance of the evidence.

In deciding whether Omni has proved that Mr. Mu assumed the risk of his injuries, you should consider all of the evidence introduced at trial that bears on whether Mr. Mu actually knew about the danger, understood its significance or unreasonable character, and then voluntarily undertook to proceed in the face of that danger at the time of the incident. If you find that Mr. Mu either did not know of the risk or did not appreciate its significance or unreasonable character or did not, at that time, undertake that risk voluntarily, then Omni is not entitled to the benefit of the defense of assumption of the risk. On the other hand, if you find that Mr. Mu did know about the danger, understood its significance, and undertook to proceed in the face of that danger, then your verdict must be for Omni.

Whether Mr. Mu knew of the existence of the danger, and appreciated or understood its significance and unreasonable character, must be measured subjectively. By that I mean that Mr. Mu must actually have known about the danger and must truly have appreciated the risk before deliberately and voluntarily taking on that risk. A person does not assume the risk of danger in the absence of a meaningful warning or personal knowledge the significance of which the person truly understands. The fact that Mr. Mu or some other person objectively should have known about and understood the danger is not sufficient to relieve Omni from responsibility for Mr. Mu's injuries.

D. Comparative Negligence

Now, I will return again to negligence. I'd like to talk to you for a few moments about a concept known as comparative negligence. This is Omni's third affirmative defense.

In explaining the law of negligence to you, I told you that a Defendant may owe a duty of care to a Plaintiff. In this case, the Plaintiff also has a duty of care. That is, Mr. Mu had a duty to use ordinary care for his own safety. A breach of that duty is also negligence.

In this case, Omni contends that Mr. Mu was negligent and that his own negligence was a cause of his injuries. To consider this affirmative defense, you must determine whether Mr. Mu met the duty I have described or whether he breached that duty. In other words, this case requires that you determine whether or not Mr. Mu was also negligent. You must determine whether Mr. Mu exercised that degree of care for his own safety that a reasonably prudent person would exercise under the same or similar circumstances and whether Mr. Mu's negligence was a proximate cause of his injuries.

In determining whether or not Mr. Mu was negligent, you must keep in mind that all of my instructions concerning the elements of negligence and burden and standard of proof apply to the question of Mr. Mu's negligence, just as to the question of Omni's negligence. To prove Mr. Mu's negligence, Omni bears the burden of proving each of the elements of negligence by a preponderance of the evidence.

Importantly, the law provides that a Plaintiff's negligence does not necessarily operate to bar or to stop him from recovering damages from the Defendant. Rather, a Plaintiff's negligence operates to reduce his damages by the percentage that his own negligence contributed as a proximate cause to his own injury. In this case, if you find that Mr. Mu's injury was proximately caused by the negligence of both Omni and Mr. Mu, you must compare the negligence of both parties and allocate responsibility between them.

In allocating based on the comparative negligence of Mr. Mu and Omni, you must consider not only whether each was negligent, but also the extent to which the negligence of each contributed as a proximate cause of Mr. Mu's injuries. If you find that Mr. Mu was not negligent or that his negligence was not a proximate cause of his own injuries, then your verdict must be for Mr. Mu. On the other hand, if you find that Mr. Mu was negligent and that his

negligence was a proximate cause of his own injuries, then your verdict must be for Omni on the question of the Mr. Mu's negligence, as well as for Mr. Mu on the question of Omni's negligence. Then, Mr. Mu's and Omni's negligence must be compared against each other to allocate the comparative fault or comparative responsibility for Mr. Mu's injuries.

I will explain the mechanics of how to record your finding of allocation based on comparative negligence when we go over the verdict form.

IV. DAMAGES

A. General Damages Instruction

I am next going to talk about damages. I emphasize that, in discussing damages, I don't mean to imply in any way that I am suggesting that you should find Omni liable or not liable. That is up to you to decide. I am simply discussing damages with you so that, if you determine that Mr. Mu is entitled to recover because of Omni's negligence, you will need to know what are the legal principles that you will use to determine how much Mr. Mu ought to be awarded in the way of damages.

When you assess damages, you must not be oppressive or unconscionable, and you may assess only such damages as will fairly and reasonably compensate Plaintiff insofar as that may be computed in money. You must confine your deliberations to the evidence, and you must not indulge in guesswork, speculation, or conjecture.

B. Compensatory Damages

In this case, Mr. Mu is seeking what are called compensatory damages. Like any other part of Mr. Mu's case, Mr. Mu has the burden of proving his damages by a fair preponderance of the evidence. Damages are defined in law as that amount of money that will compensate an injured party for the harm or loss that he has sustained. The rationale behind compensatory

damages is to restore a person to the position he was in prior to the harm or the loss.

Compensatory damages, then, are the amount of money which will replace, as near as possible, the loss or harm caused to a person.

I will now discuss the two types of compensatory damages sought by Mr. Mu in this case – they are his medical expenses and damages in the form of pain and suffering.

If you find that Omni is liable, Mr. Mu is entitled to recover what he incurred for reasonable and necessary medical expenses. In assessing these damages, you may consider evidence that establishes that the medical treatment was necessary as well as evidence that establishes the reasonable charge for the medical services.

Mr. Mu also seeks to be compensated for the pain and suffering that he claims he endured as a result of the negligence complained of. I will define pain and suffering for you.

Pain means physical pain, the kind resulting from a physical impact or injury. It includes what we ordinarily think of as physical pain, as well as discomfort, stiffness, and restriction of bodily motion that is caused by the pain or discomfort.

Suffering can be equated with what we sometimes call the mental anguish that arises from the physical pain or injury to the body. Suffering means recognizing the pain, the danger resulting from the pain, and the knowledge that the pain and treatment for it will continue. If you find that Mr. Mu has proven that, in addition to physical pain, he also experienced fright, anguish, nervousness, grief, anxiety, worry, humiliation, embarrassment, shock or terror, he is entitled to recover for this mental suffering.

An award for pain and suffering must be fair and reasonable. It must be grounded in the evidence and not based upon speculation or conjecture. Nor may you arbitrarily pick some

amount. Your award for pain and suffering should be based on the evidence that has been presented to show just how much pain and suffering Mr. Mu endured as a result of his injury. There is no particular formula by which to compute damages for pain and suffering. There are no objective guidelines by which you can measure the money equivalent of this injury; the only real measuring stick, if it can be so described, is your collective and enlightened conscience. You alone are the sole judges of what, if anything, should be awarded for pain and suffering.

V. 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 final instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, prejudice, sympathy or compassion should not be permitted to influence you in the course of your deliberations. However, 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.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, or computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept

your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

In order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all eight of you are in agreement as to the verdict. 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 with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. 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 Mr.  Juror # 1 as the Foreperson of this jury. Mr.  will be your responsibility to 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 provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but, as soon as we do, it will be brought to the jury room, together with a copy of these instructions.

You will also be given a verdict form. When you have reached a unanimous verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to Court Security Officer Troina, in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.