

If you find Red Robin was negligent, then you must then consider whether that actionable conduct was a proximate cause of Ms. Sepe's slip and fall at Red Robin restaurant.

For a cause to be a proximate cause, it need not of necessity be the sole or only cause or even the last or nearest cause. It is the proximate cause if it continues or unites with some other cause in acting at the same time and in combination with some other cause produces the injury. It is the proximate cause if, but for that cause, the accident would not have happened.

C. AGGRAVATION OF PRE-EXISTING CONDITION

The defendant must take the plaintiff as it finds her at the time of the accident. If Ms. Sepe had a physical condition prior to the accident that caused her to endure more pain and suffering as a result of the accident than an ordinary person in good health would have endured, Red Robin nevertheless is liable to her for all the damages that resulted from its negligence. This includes all of the damages resulting from the aggravation of a pre-existing medical condition.

It is unimportant that the condition pre-existed the accident. The defendant is liable for the natural and probable consequences of its negligence including aggravation of a pre-existing condition.

D. DAMAGES

I will now turn to the question of damages. In so doing, this Court does not intend to indicate that it is of the opinion that Red Robin is liable or that Ms. Sepe is owed damages. If you find that Red Robin is not liable, you will not consider the question of damages.

Ms. Sepe alleges that she has sustained damages as a proximate result of Red Robin's negligence. Just as she has the burden of proving liability by a preponderance of the evidence, the plaintiff must prove her damages by a preponderance of the evidence.

Damages are defined in the law as that amount of money that will compensate an injured party for the harm or loss sustained. These damages are referred to as compensatory damages. The rationale behind compensatory damages is to restore a person to the position he/she was in prior to the harm or the loss. Compensatory damages, then, is the amount of money that will replace, as near as possible, the loss or harm proximately caused by a defendant's negligence.

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

I will now discuss the type of damages sought by plaintiff in this case – they are medical expenses and compensatory damages in the form of pain and mental suffering.

1. MEDICAL EXPENSES

If you find that is Red Robin liable, Ms. Sepe is entitled to recover reasonable and necessary medical expenses incurred. In assessing these damages, you may consider evidence that establishes that her medical treatment was necessary as a result of her fall at Red Robin and you may consider evidence that establishes the reasonable charge for the medical, hospital and/or nursing services.

2. COMPENSATORY DAMAGES--PAIN AND SUFFERING

The plaintiff seeks to be compensated for the conscious pain and suffering that she 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