

## INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial are still in effect. Now I'm going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others because they are all important. This is true even though I am not going to repeat some of the instructions I gave you before and during the trial.

You will have copies of the instructions I am about to give you now in the jury room. This does not mean they are more important than my earlier instructions. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

## INSTRUCTION NO. 2

There are rules you must follow when you go to the jury room to deliberate and return with your verdict:

*First*, you must select a foreperson. That person will preside over your discussions and speak for you all here in court.

*Second*, it is your duty as jurors to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must make your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But do not come to a decision just because other jurors think it is right, or just to reach a verdict.

Remember you are not for or against a party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer; and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone—including me—how many jurors are voting for any side.

*Fourth*, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

### INSTRUCTION NO. 3

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you don't believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider several things: the witnesses' intelligence; their opportunity to have seen or heard the things they testify about; their memories; any motives they may have for testifying a certain way; their demeanor while testifying; whether they said something different at an earlier time; the general reasonableness of their testimony; and the extent to which their testimony is consistent with other evidence that you believe.

A caution about considering a witness's demeanor while testifying. Many folks are nervous just being in court. And there are bold liars and shy truth tellers. Use your common sense and be

discerning when judging someone's credibility based on their demeanor on the stand.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, a lapse of memory, or a lie – and that may depend on whether the contradiction has to do with an important fact or only a small detail.

## INSTRUCTION NO. 4

In considering the evidence in this case, you aren't required to set aside your common sense or common knowledge. Consider the evidence in light of your own observations and experiences in the affairs of life. Use your common sense.

## INSTRUCTION NO. 5

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved if you find that it is more likely true than not true. You decide that by considering all the evidence, and then deciding what evidence is more believable. The greater weight of the evidence is not established by who has the most witnesses or exhibits. You are, instead, looking for the truth in the whole case.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” The standard of “proof beyond a reasonable doubt” applies in criminal cases, but not in this civil case; so put it out of your minds.

## INSTRUCTION NO. 6

Prince has the burden of proving four elements:

*First*, Prince has sustained damages;

*Second*, Southern Snow was engaged in the business of manufacturing, assembling, selling, or otherwise distributing snow cone machines;

*Third*, the snow cone machine that Southern Snow supplied was in a defective condition that rendered it unreasonably dangerous for reasonable and foreseeable uses; and

*Fourth*, the defective condition was a proximate cause of Prince's damages.

If Prince doesn't prove all four of the elements listed above, then your verdict must be for Southern Snow. If Prince proves all four elements, then you must compare her fault (if any) with

Southern Snow's fault to decide who is entitled to your verdict. See Instructions No. 12-13.

"Defective condition" means a condition of the snow cone machine that renders it unsafe for reasonably foreseeable use.

"Unreasonably dangerous" means that the snow cone machine is dangerous to an extent beyond what an ordinary and reasonable user would expect. An ordinary and reasonable user has the ordinary knowledge of a community member about the snow cone machine's characteristics, propensities, risks, dangers, and proper and improper uses. An ordinary and reasonable user also has any special knowledge, training, or experience that Prince individually had, or that she was required to have. In evaluating whether this snow cone machine was unreasonably dangerous, you should also consider what warnings were given about the machine.

**[Note to counsel: The Court has used the Arkansas Model Jury Instructions, Civil 2015 edition, as a foundation but has made changes in several instructions. For example, this instruction has been revised. See the Court's notes on later instructions.]**

## INSTRUCTION NO. 7

In determining whether Southern Snow supplied the snow cone machine in a defective condition, you may consider the state of scientific and technological knowledge available to Southern Snow when the machine left its control. In considering whether the design of the machine is defective, you may also consider the customary designs and techniques used by other manufacturers of snow cone machines at that time.

## INSTRUCTION NO. 8

Prince alleges that the snow cone machine was defectively designed. You may not find that the machine was defectively designed solely because there was an injury or an accident. Instead, you may find that the machine was defectively designed only if you find that it was unsafe for its reasonably foreseeable uses.

## INSTRUCTION NO. 9

Southern Snow contends that Prince was negligent and that her negligence was the only proximate cause of her injuries. Southern Snow has the burden of proving this contention.

## INSTRUCTION NO. 10

When I use the word “negligence” in these instructions, I mean not doing something that a reasonably careful person would do, or doing something that a reasonably careful person would not do, under circumstances similar to those shown by the evidence in this case. To be negligent, an act must be one from which a reasonably careful person would foresee such an appreciable risk of harm to herself or others that she would not to do the act, or she would do it in a more careful manner.

**[Note to counsel: The Court has revised this instruction.]**

## INSTRUCTION NO. 11

“Proximate cause” is a legal term. When I use the term “proximate cause” in these instructions, I mean a cause which, in a natural and continuous sequence, produces damage and without which the damage would not have occurred.

This does not mean that the law recognizes only one proximate cause of damage. To the contrary, if two or more causes work together to produce damage, then you may find that each of them was a proximate cause. But, in some instances, there is only one proximate cause. You must decide whether there was one or more proximate causes of this occurrence.

**[Note to counsel: The Court has revised this instruction.]**

## INSTRUCTION NO. 12

If you find that the occurrence was proximately caused by Southern Snow's fault and not by Prince's fault, then Prince is entitled to recover the full amount of any damages you may find she has sustained as a result of the occurrence.

If you find that the occurrence was proximately caused by the fault of both Prince and Southern Snow, then you must compare the percentages of their fault. Use 100% and divide the fault, as you decide from the evidence, between Prince and Southern Snow.

If Prince's fault is less than Southern Snow's fault, then Prince is entitled to recover reduced damages: any damages that you may find she has sustained as a result of the occurrence, reduced by you in proportion to Prince's own fault.

On the other hand, if Southern Snow was not at fault, or if Prince's fault is equal to or greater than Southern Snow's fault, then Prince is not entitled to recover any damages, and you must find for Southern Snow.

**[Note to counsel: The Court has revised this instruction.]**

### INSTRUCTION NO. 13

When I use the word “fault” in these instructions, I mean to cover both Prince’s alleged negligence and Southern Snow’s allegedly supplying the snow cone machine in a defective condition that made it unreasonably dangerous.

**[Note to counsel: The Court has revised this instruction.]**

## INSTRUCTION NO. 14

It was the duty of both Prince and Southern Snow to use ordinary care for their own safety and the safety of others.

## INSTRUCTION NO. 15

If you decide for Prince on the question of liability against Southern Snow, you must fix the amount of money which will reasonably and fairly compensate her for any damages she sustained which you find were proximately caused by the fault of Southern Snow. You should consider the following elements of damages:

*First:* Any physical pain and mental or emotional suffering Prince has experienced and is reasonably certain to experience in the future;

*Second:* The nature and extent of any injury, whether that injury is temporary or permanent;

*Third:* The reasonable value of any necessary medical care, treatment and services received, and the present value of such expense reasonably certain to be needed and provided in the future;

*Fourth:* The reasonable value of the working time Prince has lost and the present value of any earnings reasonably certain to be lost in the future;

*Fifth:* The present value of any loss of ability to earn in the future because of her diminished ability to work; and

*Sixth:* Any scars and disfigurement and visible results of her injury.

Whether any of these elements of damage has been proved by the evidence is for you to decide. Remember, throughout your deliberations you must not engage in speculation, guesswork, or conjecture. And you must not award any damages under this Instruction as punishment or because of sympathy.

## INSTRUCTION NO. 16

I have used the expression “present value” in these instructions about certain elements of damage which you may find that Prince will sustain in the future. This simply means you must take into consideration the fact that money recovered will earn interest, if invested, until the time in the future when these losses will actually occur. You must therefore reduce any award of future damages to compensate for the reasonable earning power of money.

**[Note to counsel: The Court has revised this instruction.]**

## INSTRUCTION NO. 17

The fact that I've instructed you on damages is not intended to suggest what I think your liability verdict should be. I've given instructions on damages, as I do in all cases, for your guidance in the event you find for Prince on liability. But the question of damages is entirely distinct and different from the question of liability. Do not consider damages until you have first considered and decided whether Southern Snow is liable to Prince.

## INSTRUCTION NO. 18

The verdict is simply your written decision. I'm going to hand out the verdict form now and go over it with you.

You will take this form to the jury room. When each of you has agreed on the verdict, your foreperson will fill in the form to reflect your unanimous decisions, sign and date it, and then advise the court security officer that you are ready to return to the courtroom.

I add the caution that nothing said in the instructions – and nothing in the verdict form – is intended to suggest what answers I think you should give. How you chose to complete the verdict form is solely and exclusively your responsibility.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more

members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden from communicating in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you must never reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issue presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?