

## Closing Instruction No.1

Members of the jury, now that you have heard all the evidence and the arguments of the lawyers, it is my duty to instruct you on the law which applies to this case. Each of you is in possession of a copy of these jury instructions, which you may take into the jury room for your use if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be. Unless otherwise stated, the instructions apply to each party.

## Closing Instruction No. 2

When a party has the burden of proof on any claim or defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

### Closing Instruction No. 3

You should decide the case as to each plaintiff separately.  
Unless otherwise stated, the instructions apply to all parties.

## Closing Instruction No. 4

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

## Closing Instruction No. 5

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

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which the lawyers have agreed.

## Closing Instruction No. 6

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

First, arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, 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 of them controls.

Second, questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

Third, testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.

Fourth, 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 at the trial.

## Closing Instruction No. 7

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.



## Closing Instruction No. 8

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

## Closing Instruction No. 9

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

the opportunity and ability of the witness to see or hear or know the things testified to;

the witness' memory;

the witness' manner while testifying;

the witness' interest in the outcome of the case and any bias or prejudice;

whether other evidence contradicted the witness' testimony;

the reasonableness of the witness' testimony in light of all the evidence; and

any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

## Closing Instruction No. 10

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

## Closing Instruction No. 11

The right-side (passenger side) brake pads on the AMT vehicle were present following the accident. Homer Fagan removed and subsequently lost those brake pads.

Due to the seriousness of the accident, Homer Fagan should have known that the brake pads might be relevant to future litigation. Therefore, he was under a duty to preserve the brake pads at the time he lost them and his failure to do so constitutes what is known as spoliation of evidence.

As a result, you may conclude that this lost evidence would have been unfavorable to plaintiff Marlene Fagan.

You may not draw an adverse inference that this evidence would have been unfavorable to plaintiff J.S.

## Closing Instruction No. 12

Plaintiffs claim that they were harmed by the Deere AMT 622 utility vehicle designed and marketed by defendant that was defectively designed.

To establish this claim, plaintiffs must prove by a preponderance of the evidence all of the elements of either the Consumer Expectation Test or the Risk-Benefit Test, which I will instruct you on now. Plaintiffs do not need to prove the elements of both tests.

### **Consumer-Expectation Test**

Plaintiffs must prove all of the following:

First, that the AMT 622 did not perform as safely as an ordinary consumer would have expected at the time of use;

Second, that Plaintiffs were harmed while using the AMT 622 in a reasonably foreseeable way; and

Third, that the AMT 622's failure to perform safely was a substantial factor in causing Plaintiffs' harm.

### **Risk-Benefit Test**

Plaintiffs must prove all of the following:

First, Plaintiffs were harmed while using the AMT 622 in a

reasonably foreseeable way;

Second, that the AMT 622's design was a substantial factor in causing plaintiffs' harm.

If plaintiffs have proved these two facts, then your decision on this claim must be for plaintiffs unless defendant proves that the benefits of the design outweigh the risks of the design. In deciding whether the benefits outweigh the risks, you should consider the following:

The gravity of the potential damage resulting from the use of the AMT 622;

The likelihood that this harm would occur;

The feasibility of an alternative safer design at the time of manufacture;

The cost of an alternative design; and

The disadvantages of an alternative design.

### Closing Instruction No. 13

Plaintiffs also claim that they were harmed by defendant's negligence and that defendant should be held responsible for that harm. To establish this claim, plaintiffs must prove each of the following elements by a preponderance of the evidence:

First, that defendant failed to meet the required standard of care in designing the AMT 622;

Second, that plaintiffs were harmed; and

Third, that defendant's failure to meet the required standard of care was a substantial factor in causing plaintiffs' harm.

## Closing Instruction No. 14

The designer of a product is required to use the standard of care in designing the product that a reasonably careful designer would use in similar circumstances to avoid exposing others to a foreseeable risk of harm.

In determining whether defendant satisfied this standard of care, you should balance what defendant knew or should have known about the likelihood and severity of potential harm from the product against the burden of taking safety measures to reduce or avoid the harm.



## Closing Instruction No. 15

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

## Closing Instruction No. 16

Defendant claims that the negligence of Marlene Fagan and Homer Fagan contributed to plaintiffs' harm. To succeed on this claim, defendant must prove each of the following by a preponderance of the evidence:

First, that Marlene Fagan and Homer Fagan failed to use reasonable care; and

Second, that Marlene Fagan and Homer Fagan's failure to use reasonable care was a substantial factor in causing plaintiffs' harm.

A person fails to use reasonable care if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation.

If you find that the fault of more than one person including defendant, Marlene Fagan and Homer Fagan, was a substantial factor in causing plaintiffs' harm, you must then decide how much responsibility each has by assigning percentages of responsibility to each person listed on the verdict form. The percentages must total 100 percent.

You will make a separate finding of plaintiffs' total damages, if any. In determining an amount of damages, you should not take into account any person's assigned percentage of responsibility.

## Closing Instruction No. 17

Some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, may not be accurate, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

## Closing Instruction No. 18

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

## Closing Instruction No. 19

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

## Closing Instruction No. 20

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that will be given to you, sign and date it and advise the United States Marshal's representative outside your door that you are ready to return to the courtroom.

## Closing Instruction No. 21

If it becomes necessary during your deliberations to communicate with me, you may send a note through the United States Marshal's representative, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.