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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARLTON SULLINS, an individual, RITA
SULLINS, an individual, DON-SUL,
INC., a California Corporation,

No. C 08-4927 CW

FINAL JURY INSTRUCTIONS

Plaintiffs,

v.

EXXON MOBIL CORPORATION, a New Jersey
Corporation,

Defendant.

_____ /

DUTY OF THE JURY

Members of the Jury: Now that you have heard all of the evidence, it is my duty to instruct you as to the law of the case. A copy of these instructions will be sent with you to the jury room when you deliberate. You should discard the preliminary instructions; the final instructions control and you need not concern yourselves with differences between them and the preliminary instructions. You must not infer from these instructions or from anything I may say or do that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with

1 it or not. And you must not be influenced by any personal likes or
2 dislikes, opinions, prejudices, or sympathy. That means that you
3 must decide the case solely on the evidence before you. You will
4 recall that you took an oath to do so.

5 In following my instructions, you must follow all of them and
6 not single out some and ignore others; they are all important.

7 **CORPORATIONS**

8 Under the law, a corporation is considered to be a person. It
9 can only act through its employees, agents, directors, or officers.
10 Therefore, a corporation is responsible for the acts of its
11 employees, agents, directors, and officers performed within the
12 scope of authority. All parties are equal before the law and a
13 corporation is entitled to the same fair and conscientious
14 consideration by you as any party.

15 **BURDEN OF PROOF**

16 Plaintiffs must prove their claims by a preponderance of the
17 evidence. When a party has the burden of proof on any claim by a
18 preponderance of the evidence, it means you must be persuaded by
19 the evidence that the claim is more probably true than not true.

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

22 You should decide the case as to each party separately.
23 Unless otherwise stated, the instructions apply to both parties.

24 **WHAT IS EVIDENCE**

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

- 27 (1) the sworn testimony of any witness;
28 (2) the exhibits which have been received into evidence; and

1 (3) any facts to which the lawyers have agreed.

2 **WHAT IS NOT EVIDENCE**

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

7 (1) Arguments and statements by lawyers are not evidence. The
8 lawyers are not witnesses. What they say in their opening
9 statements, closing arguments, and at other times is intended to
10 help you interpret the evidence, but it is not evidence. If the
11 facts as you remember them differ from the way the lawyers state
12 them, your memory of them controls.

13 (2) Questions and objections by lawyers are not evidence. You
14 should not be influenced by the objection or by the Court's ruling
15 on it.

16 (3) Testimony that is excluded or stricken, or that you are
17 instructed to disregard, is not evidence and must not be
18 considered.

19 (4) Anything you see or hear when the Court is not in session
20 is not evidence. You are to decide the case solely on the evidence
21 received at the trial.

22 **EVIDENCE FOR LIMITED PURPOSE**

23 Some evidence was admitted for a limited purpose only. When I
24 instructed you that an item of evidence was admitted for a limited
25 purpose, you must consider it only for that limited purpose and for
26 no other. You have heard evidence that there was a settlement
27 between Plaintiffs and Pitcock Petroleum. This settlement is not
28 relevant to your determination of the responsibility for the

1 contamination on Plaintiffs' property, or of the amount of damages
2 suffered by Plaintiffs.

3 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

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

12 **RULING ON OBJECTIONS**

13 There are rules of evidence that control what can be received
14 into evidence. When a lawyer asked a question or offered an
15 exhibit into evidence and a lawyer on the other side thought that
16 it was not permitted by the rules of evidence, that lawyer may have
17 objected. If I overruled the objection, the witness was permitted
18 to answer the question. If I sustained the objection, the witness
19 was not permitted to answer the question. If I sustained an
20 objection to a question, you must ignore the question and must not
21 guess what the answer might have been.

22 Sometimes I ordered that evidence be stricken from the
23 record and that you disregard or ignore the evidence. That
24 means that when you are deciding the case, you must not consider
25 the evidence that I told you to disregard.

26 **CREDIBILITY OF WITNESSES**

27 In deciding the facts in this case, you may have to decide
28 which testimony to believe and which testimony not to believe. You

1 may believe everything a witness says, or part of it, or none of
2 it.

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

- 5 (1) the opportunity and ability of the witness to see or hear
6 or know the things testified to;
- 7 (2) the witness's memory;
- 8 (3) the witness's manner while testifying;
- 9 (4) the witness's interest in the outcome of the case and any
10 bias or prejudice;
- 11 (5) whether other evidence contradicts the witness's
12 testimony;
- 13 (6) the reasonableness of the witness's testimony in light of
14 all the evidence; and
- 15 (7) any other factors that bear on believability.

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

18 **EXPERT OPINION**

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

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

26 **DEMONSTRATIVE EXHIBITS NOT IN EVIDENCE**

27 Certain demonstrative exhibits and displays not received into
28 evidence have been shown to you to illustrate information brought

1 out at trial. They are not themselves evidence or proof of any
2 facts. Demonstrative exhibits and displays are only as good as the
3 underlying evidence that supports them. If they do not correctly
4 reflect the facts shown by the evidence in the case, you should
5 disregard these demonstrative exhibits and determine the facts from
6 the underlying evidence.

7 **CLAIMS AND DEFENSES**

8 Plaintiffs claim that contamination from leaking underground
9 storage tanks interferes with their use and enjoyment of their
10 property. To establish this claim, Plaintiffs must prove all of
11 the following:

12 (1) That Defendant, by acting or failing to act, created a
13 condition that was harmful to health, or was offensive to the
14 senses, or was an obstruction to the free use of the property, so
15 as to interfere with the comfortable enjoyment of life or the
16 property;

17 (2) That this condition substantially interferes with
18 Plaintiffs' use or enjoyment of their property;

19 (3) That an ordinary person would be reasonably annoyed or
20 disturbed by Defendant's conduct;

21 (4) That Plaintiffs were harmed;

22 (5) That Defendant's conduct was a substantial factor in
23 causing Plaintiffs' harm; and

24 (6) That the seriousness of the harm outweighs any public
25 benefit of Defendant's conduct.

26 **CAUSATION: SUBSTANTIAL FACTOR**

27 A substantial factor in causing harm is a factor that a
28 reasonable person would consider to have contributed to the harm.

1 It must be more than a remote or trivial factor. It does not have
2 to be the only cause of the harm. Conduct is not a substantial
3 factor in causing harm if the same harm would have occurred without
4 that conduct.

5 **DAMAGES**

6 If you decide that Plaintiffs proved their claim against
7 Defendant for continuing nuisance, you must determine Plaintiffs'
8 damages. Damages means the amount of money that will reasonably
9 and fairly compensate Plaintiffs for any injury you find was caused
10 by Defendant. Plaintiffs have the burden of proving their damages
11 by a preponderance of the evidence.

12 The parties have agreed that Plaintiffs incurred costs in the
13 amount of \$42,377.95 to investigate and remediate all of the
14 contamination on their Property between September 24, 2005 and
15 today that were not reimbursed by the Underground Storage Tank
16 Fund. Plaintiffs' damages are the portion of those unreimbursed
17 funds for which Defendant is responsible.

18 **USE OF NOTES**

19 Some of you have taken notes during the trial. Whether or not
20 you took notes, you should rely on your own memory of what was
21 said. Notes are only to assist your memory. You should not be
22 overly influenced by the notes.

23 **DUTY TO DELIBERATE**

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

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

