

Instruction No. _____

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any Internet chat room, blog, Web site or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials;

and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please notify the court immediately.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 1

Source: Ninth Circuit Model Civil Instruction No. 1.12 (2007) (modified to eliminate bracket comment regarding mistrial)

Title: Jury Restrictions

Disposition: G ____ R ____ W ____

Instruction No. _____

A city and a library are persons when they come before this court. All persons, including cities and libraries, stand equal before the law and are to be dealt with as equals in this Court. A city and a library are entitled to the same fair trial at your hands as is a private individual.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 2

Source: *Levitt & Blackmar* § 17.04 (modified) (city and library for corporation)

Title: Equal Treatment of Entities

Disposition: G _____ R _____ W _____

Instruction No. _____

Your verdict should be based on the evidence and the instructions which I have given to you. You are not to base your decisions on sympathy or emotion.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 3

Source: *Muchhala v. U.S.*, 532 F. Supp. 2d 1215, 1238 (9th Cir. 2007)

Title: Basis of Jury Determination

Disposition: G _____ R _____ W _____

Instruction No. _____

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

Mr. Spreadbury claims that the negligence of Officers Snavely and Murphy in investigating him caused him damage or injury. Mr. Spreadbury also alleges his library privileges at the Bitterroot Public Library were negligently revoked causing him damage or injury.

The City and the Bitterroot Public Library deny these claims. They also allege Mr. Spreadbury's own negligence caused his damages or injuries, if any. The City and the Bitterroot Public Library have the burden of proof on those claims. Mr. Spreadbury denies the claims.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 4

Source: Doc. 250, pp. 39-46; Ninth Circuit Model Civil Instruction No. 1.2 (2007); *Giambra v. Kelsey*, 162 P.3d 134 ¶ 51 (Mont. 2007)

Title: Summary of Claims

Disposition: G _____ R _____ W _____

Instruction No. _____

In a civil case, such as this one, the party that makes a claim must prove that claim by the greater weight of the evidence, sometimes referred to as the preponderance of the evidence. This is called the burden of proof.

A party who has the burden of proof must persuade you by the evidence that his/her claim is more probably true than not true. In other words, the evidence supporting the propositions which a party has the burden of proving, must outweigh the evidence opposed to it. In determining whether a party has met this burden, you will consider all the evidence, whether produced by the plaintiff or defendant.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 5

Source: Montana Pattern Instructions 2d, No. 2.12

Title: Burden of Proof

Disposition: G _____ R _____ W _____

Instruction No. _____

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.
4. any facts to which the court has taken judicial notice.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 6

Source: Ninth Circuit Model Civil Instruction No. 1.6 (2007)

Title: Types of Evidence

Disposition: G _____ R _____ W _____

Instruction No. _____

The following things are *not* evidence, and you must not consider them as evidence in deciding the facts of this case:

1. statements and arguments of the attorneys or Mr. Spreadbury when not testifying;
2. questions and objections of the attorneys or Mr. Spreadbury;
3. testimony that I instruct you to disregard;
4. anything you may see or hear when court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 7

Source: Ninth Circuit Model Civil Instruction No. 1.7 (2007)

Title: Things That Are Not Evidence

Disposition: G _____ R _____ W _____

Instruction No. _____

The law does not require a party to call as witnesses all persons who may have knowledge concerning a given matter or to produce all other evidence which relates to the matter. When such witnesses or evidence is available to all parties, or where the evidence would merely be cumulative, you may not draw an inference that the evidence would have been unfavorable to a given party who does not call the witness or present the evidence.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 8

Source: *U.S. v. Ravandi*, 261 Fed. Appx. 46, 49 (9th Cir. 2007)

Title: Adverse Inference

Disposition: G _____ R _____ W _____

Instruction No. _____

You are not required to accept the testimony of a witness, even though the testimony is uncontradicted and the witness is not impeached, unless you believe the testimony of the witness is truthful.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 9

Source: *U.S. v. Butcher*, 557 F.2d 666, 668 n. 5 (9th Cir. 1973)

Title: Acceptance of Witness Testimony

Disposition: G _____ R _____ W _____

Instruction No. _____

Proof of collateral facts which do not reasonably lead to a conclusion without involving assumptions or speculation is not sufficient to prove that conclusion. Speculation, conjecture or guess do not constitute credible evidence of a fact.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 10

Source: *State v. Musgrove*, 178 Mont. 162, 173, 582 P.2d 1246, 1253 (1978) (definition of circumstantial evidence); *Smith v. Rorvik*, 231 Mont. 85, 90, 751 P.2d 1053, 1056 (1988); *Conley v. R.J. Reynolds Tobacco Co.*, 286 F. Supp. 2d 1097, 1103-04 (N.D. Cal. 2002)

Title: Collateral Facts

Disposition: G _____ R _____ W _____

Instruction No. _____

There are rules of evidence that control what can be received into evidence. When a party asks a question or offers an exhibit into evidence and the other side thinks that it is not permitted by the rules of evidence, the lawyer or party may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 11

Source: Ninth Circuit Model Civil Instruction No. 1.10 (2007) (modified to reflect *pro se* party)

Title: Evidentiary Rulings

Disposition: G _____ R _____ W _____

Instruction No. _____

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. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

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

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. 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 about it.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 12

Source: Ninth Circuit Model Civil Instruction No. 1.11 (2007)

Title: Weighing Testimony

Disposition: G ____ R ____ W ____

Instruction No. _____

Statements made for purposes of medical diagnosis or treatment which describe medical history, past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment may be considered by you as proof of the matter so stated.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 13

Source: Rule 802(4), Fed. R. Civ. Evid.

Title: Hearsay Exception

Disposition: G _____ R _____ W _____

Instruction No. _____

A past statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter may be considered by you as proof of the matter so stated.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 14

Source: Rule 803(1), Fed. R. Civ. Evid.

Title: Hearsay Exception

Disposition: G _____ R _____ W _____

Instruction No. _____

Evidence that at some other time prior to the trial a party has said something which is inconsistent with his testimony at the trial may be considered by you as evidence of the truth of the matter stated in the prior statement, as well as for purposes of judging the credibility of the witness.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 15

Source: 801(d)(2), Fed. R. Evid.

Title: Statement Which is Not Hearsay

Disposition: G _____ R _____ W _____

Instruction No. _____

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.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 16

Source: Ninth Circuit Model Civil Instruction No. 2.11 (2007)

Title: Expert Opinions

Disposition: G _____ R _____ W _____

Instruction No. _____

The court has decided to accept certain facts as proved even though no evidence has been introduced on the subject. You must accept these facts as true:

1. The City is entitled to absolute prosecutorial immunity on any claim based on Mr. Spreadbury's prosecution for trespass at the Bitterroot Public Library;
2. Probable cause existed to prosecute Mr. Spreadbury for trespass at the Bitterroot Public Library;
3. The Bitterroot Public Library did not have an obligation to add material to its collection;
4. Mr. Spreadbury was afforded adequate due process relating to the termination of his library privileges;
5. The City and the Bitterroot Public Library are immune from any claim for punitive damages;
6. Robert Brophy did not make a negligent representation concerning Mr. Spreadbury;
7. Mayor Steele did not make a statement concerning Plaintiff which had defamatory meaning;
8. Mr. Spreadbury may not recover damages for an economic or business interest alleged to have been damaged;

9. On November 20, 2009, the Hamilton City Court issued a permanent Order of Protection which was affirmed by the District Court, Twenty-First Judicial District, Ravalli County. It requires Mr. Spreadbury to stay at least 600 feet away from the Bitterroot Public Library, and it will not expire until November 2014.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 17

Source: Ninth Circuit Model Civil Instruction No. 2.3 (judicial notice) (2007); *U.S. v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (law of the case); Doc. 250 (No. 1, pp. 31-32; No. 2, pp. 50-52; No. 3, pp. 10-11; No. 4, pp. 12-20; No. 5, pp. 35, 61; No. 6, pp. 47-48; No. 7, pp. 54-56; No. 8, pp. 53-54) No. 9; Doc. 121, p. 10

Title: Judicial Notice

Disposition: G ____ R ____ W ____

Instruction No. _____

The parties have agreed to certain facts. You should therefore treat those facts as having been proven. The agreed facts include:

1. On May 29, 2009, Mr. Spreadbury entered the BPL. He wanted to place a letter to President Obama written by another Bitterroot Valley resident in BPL's reserve collection. The letter alleged corruption by local officials.
2. Mr. Spreadbury's submission of the letter to be placed in the Library's reserve collection was refused.
3. Mr. Spreadbury made a similar demand of the North Valley Library in Stevensville, Montana. At the time, that library also refused Mr. Spreadbury's request.
4. On June 8, 2009, Mr. Spreadbury wrote to the Directors of both libraries concerning the refusals.
5. On June 9, 2009, Gloria Langstaff, BPL's Library Director, wrote to Mr. Spreadbury denying his request, citing library collection management policy.
6. On June 11, 2009, Mr. Spreadbury entered the BPL. His interaction with a library staff person was reported to law enforcement.

7. On June 11, 2009, Ms. Langstaff wrote to Mr. Spreadbury terminating his library privileges.
8. On June 15, 2009, Mr. Spreadbury requested library patrons outside the library to deliver a message to Ms. Langstaff.
9. On June 16, 2009, Mr. Spreadbury called the library to speak with Ms. Langstaff. He asked Ms. Langstaff to meet him off premises. She refused.
10. On June 16, 2009, Mr. Spreadbury emailed library board member Ellyn Jones.
11. On July 8, 2009, Mr. Spreadbury submitted a reconsideration request form to the library again demanding that the letter to President Obama be placed in the reserve collection.
12. On July 15, 2009, Mr. Spreadbury requested a library patron outside the library to deliver a letter to Ms. Langstaff. After reviewing the letter, Ms. Langstaff met with one or more members of the City Police Department.
13. On August 20, 2009, Ms. Langstaff called the City Police Department concerning Mr. Spreadbury being on library grounds. Officer Snavelly spoke with Mr. Spreadbury and Ms. Langstaff, and Officer Snavelly took a report. Mr. Spreadbury left the library grounds.

14. On August 20, 2009, Officer Snavelly met with Mr. Spreadbury at City Hall. Officer Snavelly warned Mr. Spreadbury not to go back to the library. Officer Snavelly told Mr. Spreadbury that if he returned, he would be charged with trespassing.
15. Mr. Spreadbury returned to the library on August 20, 2009. He spoke with a female patron, Kay Cousins.
16. Ms. Cousins reported the incident to the BPL, and Ms. Langstaff called law enforcement. Two officers responded and made a report.
17. That same day, Dr. Robert Brophy, on behalf of the BPL Board of Trustees, sent Mr. Spreadbury a letter. It stated the Board supported the Director's decision to ban Mr. Spreadbury from the library.
18. On August 25, 2009, Mr. Spreadbury wrote the BPL Board of Trustees complaining of the library ban.
19. Mr. Spreadbury was charged with criminal trespass for the instance on August 20, 2009.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 18

Source: Ninth Circuit Model Civil Instruction 2.2

Title: Agreed Facts

Disposition: G ____ R ____ W ____

Instruction No. _____

Officers Steve Snavelly and Stephen Murphy were agents of the City of Hamilton. Dr. Robert Brophy and Gloria Langstaff were agents of the Bitterroot Public Library. Therefore, any act or omission of Officers Snavelly and Murphy were acts or omissions of the City of Hamilton. Likewise, any acts or omissions of Dr. Brophy or Ms. Langstaff were acts or omissions of the Bitterroot Public Library.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 19

Source: Based on Ninth Circuit Model Civil Instruction No. 4.8 (2007)

Title: Admitted Agency

Disposition: G _____ R _____ W _____

Instruction No. _____

Every person is responsible for injury to the person of another, caused by his negligence.

Negligence is the failure to use reasonable care. Negligence may consist of action or inaction. A person is negligent if he fails to act as an ordinary prudent person would act under the circumstances.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 20

Source: Montana Pattern Jury Instructions, No. 2.00 (modified. "his" for "his/her" and "he" for "he/she")

Title: Negligence

Disposition: G _____ R _____ W _____

Instruction No. _____

The mere fact of injury, standing alone, is not proof of negligence. The law imposes liability only for a breach of legal duty by the party causing the injury to another party.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 21

Source: *Juedeman v. Montana Deaconess Medical Center*, 223 Mont. 311, 726 P.2d 301, 307 (1986); *Hunsaker v. Bozeman Deaconess Foundation*, 179 Mont. 305, 588 P.2d 493, 605-07 (1978); *Clark v. Norris*, 226 Mont. 43, 734 P.2d 182, 185 (1987)

Title: Necessity of Legal Duty

Disposition: G _____ R _____ W _____

Instruction No. _____

Mr. Spreadbury has the burden of proving:

1. that an agent of the City and/or the Bitterroot Public Library was negligent;
2. that Mr. Spreadbury was injured;
3. that the agent's negligence was a cause of the injury to Mr. Spreadbury;
4. the amount of money that will compensate Mr. Spreadbury for his injury.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 22

Source: Montana Pattern Jury Instructions 2d, No. 2.13

Title: Plaintiff's Burden of Proof

Disposition: G _____ R _____ W _____

Instruction No. _____

The City and the Bitterroot Public Library allege Mr. Spreadbury was negligent. The City and the Bitterroot Public Library have the burden of proving the following:

1. that Mr. Spreadbury was negligent;
2. that Mr. Spreadbury's negligence was a cause of his injury, if any.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 23

Source: Montana Pattern Jury Instructions 2d No. 2.14; *Busta v. Columbus Hosp. Corp.*, 916 P.2d 122 (Mont. 1996) (causation)

Title: Defendant's Burden of Proof

Disposition: G _____ R _____ W _____

Instruction No. _____

Conduct is a cause of the accident if the accident would not have occurred
but for the person's conduct.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 24

Source: *Olson v. Shumaker Trucking and Excavating Contractors, Inc.*, 196 P.3d
1265 ¶ 67 (Mont. 2008) (negligence per se); *Giambra v. Kelsey*, 162 P.3d 134
¶¶ 48-51 (Mont. 2007)

Title: Causation

Disposition: G _____ R _____ W _____

Instruction No. _____

Probable cause existed to charge and prosecute Mr. Spreadbury for the crime of criminal trespass at the Bitterroot Public Library. Probable cause exists when, in light of the officer's knowledge and all the relevant circumstances, the facts and circumstances warrant a reasonable person to believe someone has committed an offense. Probable cause does not require proof of guilt, but it requires something more than suspicion.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 25

Source: Doc. 250, pp. 51-53 (existence of probable cause); *State v. Van Dort*, 68 P.3d 728 ¶ 19 (Mont. 2003) (standard for probable cause); *see also U.S. v. Hernandez*, 322 F.3d 592, 596 (9th Cir. 2003)

Title: Probable Cause

Disposition: G _____ R _____ W _____

Instruction No. _____

To establish that a representation was negligent, Mr. Spreadbury must prove:

1. an agent of the City or the Bitterroot Public Library made a representation about a past or existing fact;
2. the representation was not true;
3. regardless of the agent's actual belief, he or she made the representation without any reasonable ground for believing it to be true;
4. the representation was made with the intent that Mr. Spreadbury would rely upon it;
5. Mr. Spreadbury was unaware of the falsity of the representation, acted in reliance upon the truth of the representation and was justified in relying on the representation; and
6. as a result of his reliance, Mr. Spreadbury sustained damage or injury.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 26

Source: *Deichl v. Savage*, 216 P.3d 749 ¶ 19 (Mont. 2009)

Title: Negligent Misrepresentation

Disposition: G _____ R _____ W _____

Instruction No. _____

Mr. Spreadbury had a duty to use reasonable care for himself. Every person has a duty to exercise reasonable care to discover, appreciate and avoid things which may threaten him or others.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 27

Source: *Stenberg v. Beatrice Foods Co.*, 576 P.2d 725, 727 (Mont. 1978) (first sentence); *Hanson v. Colgrove*, 447 P.2d 486, 490 (Mont. 1968) (second sentence); *Hennessey v. Burlington Transp. Co.*, 103 F. Supp. 660 (D. Mont. 1950) (second sentence)

Title: Plaintiff's Duty of Care

Disposition: G _____ R _____ W _____

Instruction No. _____

Negligence, if any, on the part of Mr. Spreadbury does not bar his recovery unless such negligence was greater than the negligence, if any, of the City and/or the Bitterroot Public Library. However, the total amount of damages that Mr. Spreadbury would otherwise be entitled to recover will be reduced by the court in proportion to the amount of negligence you attribute to Mr. Spreadbury.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 28

Source: Montana Pattern Jury Instructions 2d, No. 2.05 (modified to reflect parties and to add "if any")

Title: Effect of Comparative Fault

Disposition: G _____ R _____ W _____

Instruction No. _____

To be defamatory, a statement or publication must be false and unprivileged. A statement is privileged if (1) it is made in the proper discharge of an official duty, (2) it is made in a judicial proceeding or in any other official proceeding authorized by law, or (3) it is made in a communication without malice to a person interested in it or by one who stands in such relation to the person interested as to afford a reasonable ground for supporting that the motive for the communication is innocent. Actual malice exists if the statement was made with actual knowledge of its falsity or reckless disregard for its truth or falsity.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 29

Source: MCA §§ 27-1-802, 27-1-803, 27-1-804; *Williams v. Pasma*, 656 P.2d 212, 215 (Mont. 1982); *Madison v. Yunker*, 589 P.2d 126, 133 (Mont. 1978)

Title: Privilege

Disposition: G _____ R _____ W _____

Instruction No. _____

If you find for Mr. Spreadbury on the question of liability, then you must determine the amount of money which will reasonably and fairly compensate Mr. Spreadbury for all loss, if any, caused by the City and/or the Bitterroot Public Library, regardless of whether such loss could have been anticipated.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 30

Source: Montana Pattern Jury Instructions 2d, No. 25.00 (amended to insert names of parties and to insert "if any" after "loss")

Title: Compensatory Damages

Disposition: G _____ R _____ W _____

Instruction No. _____

The purpose of an award of damages is to compensate a party for his or her actual loss or injury caused by another party, no more and no less. Any award should be neither increased or decreased for any other purpose.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 31

Source: *Spackman v. Ralph M. Parsons Co.*, 414 P.2d 918, 147 Mont. 500 (1966)

Title: Purpose of Compensatory Damages

Disposition: G _____ R _____ W _____

Instruction No. _____

Your award should include reasonable compensation for any pain and suffering experienced and reasonably probable to be experienced in the future.

The law does not set a definite standard by which to calculate compensation for mental pain and suffering. Neither is there any requirement that any witness express any opinion about the amount of compensation that is appropriate for this kind of loss. The law does require, however, that when making an award for pain and suffering, you shall exercise calm and reasonable judgment. The compensation must be just and reasonable.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 32

Source: Montana Pattern Jury Instructions 2d, No. 25.01 (modified to remove reference to physical pain and suffering)

Title: Pain and Suffering

Disposition: G _____ R _____ W _____

Instruction No. _____

A plaintiff cannot recover compensatory damages resulting from a medical condition which is beyond the common knowledge of lay people unless its existence, nature, cause and duration are supported by qualified medical evidence.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 33

Source: *Cain v. Stevenson*, 706 P.2d 128, 131 (Mont. 1985); *Bleek v. Supervalu, Inc.*, 95 F. Supp. 2d 1118 (D. Mont. 2000)

Title: Need for Medical Testimony

Disposition: G _____ R _____ W _____

Instruction No. _____

To prevail on a claim for damages, if any, based on Mr. Spreadbury's aspirations, Mr. Spreadbury must prove that is reasonably certain that his aspirations would have been achieved.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 34

Source: MCA § 27-1-203; *Stark v. Circle K Corp.*, 230 Mont. 468, 477-78, 751 P.2d 162, 168 (1988)

Title: Future Damages

Disposition: G _____ R _____ W _____

Instruction No. _____

Mr. Spreadbury had a duty to minimize his damages, if any. However, that duty did not require him to do what is unreasonable or impracticable.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 35

Source: Montana Pattern Jury Instructions 2d, No. 25.94

Title: Plaintiff's Mitigation of Damages

Disposition: G _____ R _____ W _____

Instruction No. _____

You must determine in your verdict the percentage of negligence, if any, attributable to each person or entity whose name appears on the special verdict form which will be submitted to you. Your verdict must apportion the percentage of negligence of all such persons, so that your separate percentages, when added together, equal one hundred percent.

After your verdict is returned, the court will apportion the dollar amount, if any, of your verdict in accordance with the percentages you have determined.

After your verdict is returned, the court will enter judgment for and against the persons who are parties to this lawsuit in accordance with your verdict.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 36

Source: Montana Pattern Jury Instructions 2d, No. 25.96 (amended to add "if any" in two places and to add "or entity")

Title: Comparative Fault

Disposition: G _____ R _____ W _____

Instruction No. _____

You may not award punitive damages against the City or the Bitterroot
Public Library.

Given: _____

Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 37

Source: Doc. 250, pp. 35, 61; MCA § 2-9-105

Title: Immunity From Punitive Damages

Disposition: G _____ R _____ W _____

Instruction No. _____

Mr. Spreadbury also seeks punitive damages under Montana law. If you find an agent of the City or the Bitterroot Public Library acted with malice in injuring Mr. Spreadbury, you may, but are not required, to award punitive damages for the sake of example and by way of punishment.

Mr. Spreadbury must prove all elements of the claim for punitive damages by clear and convincing evidence. "Clear and convincing" means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. The elements may be proved by direct or circumstantial evidence.

A person is guilty of malice if he or she has knowledge of facts or intentionally disregards facts that create a high probability of injury to Mr. Spreadbury, and he or she either:

1. deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or
2. deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

An award of punitive damages under state law may not exceed three percent of that person's net worth. In this connection, the person's financial condition and

net worth must be considered in determining the amount, if any, of punitive damages to be awarded under state law.

Given: _____
Hon. Donald W. Molloy
U.S. District Judge

City/BPL No. 38

Source: MCA §§ 27-1-220 and 27-2-221

Title: Punitive Damages

Disposition: G ____ R ____ W ____