

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LAMONT D. WALKER,

Plaintiff,

10-cv-313-slc

v.

RYAN ARMSON and JAMES KOTTKA,

Defendants.

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**II. POST-TRIAL JURY INSTRUCTIONS**

**Introduction**

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict consisting of 6 questions. In answering the questions, you should consider only the evidence that has been received at this trial. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you undertake to answer it. Do not answer questions needlessly.

## **Elements**

To succeed on his claim against either defendant, plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Plaintiff had a serious medical need;
2. The defendant whom you are considering consciously disregarded plaintiff's serious medical need; and
3. This defendant's conduct caused harm to plaintiff;

If you find that plaintiff has proved each of these three elements by a preponderance of the evidence as to the defendant whom you are considering, then you should find for plaintiff against that defendant, and go on to consider the question of damages.

If, on the other hand, you find that plaintiff has failed to prove any one of these three elements by a preponderance of the evidence as to the defendant whom you are considering, then you should find for that defendant, and you will not consider the question of damages.

## **Burden of Proof**

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. On the liability questions in the special verdict, the burden of proof is on the party contending that the answer to a question should be "yes." You should base your decision on all of the evidence, regardless of which party presented it.

## **Expert Witnesses**

A person's training and experience may make him or her a true expert in a technical field. The law allows that person to state an opinion here about matters in that particular field. It is up to you to decide whether you believe the expert's testimony and choose to rely upon it. Part of that decision will depend on your judgment about whether the expert's background of training and experience is sufficient for him or her

to give the expert opinion that you heard, and whether the expert's opinions are based on sound reasons, judgment, and information.

During the trial, an expert witness may be asked a question based on assumptions that certain facts are true and then asked for his or her opinion based upon that assumption. Such an opinion is of use to you only if the opinion is based on assumed facts that are proven later. If you find that the assumptions stated in the question have not been proven, then you should not give any weight to the answer the expert gave to the question.

### Special Verdict Questions

Question No. 1 asks whether plaintiff Walker had a serious medical need on July 7, 2009.

A serious medical need is a condition that a doctor has recognized as needing treatment or something so obvious that even someone who is not a doctor would recognize it as requiring treatment. The condition does not have to be life threatening. A medical need may be serious if it significantly affects an individual's daily activities, if it causes pain or if it otherwise subjects the individual to a substantial risk of serious harm.

In deciding whether a medical need is serious, you should consider the severity of the condition; the harm (including pain and suffering) that could result from a lack of medical care; whether providing treatment was feasible; and the actual harm caused by the lack of medical care.

Question No. 2 asks in two parts whether defendant Armson or defendant Kottka were aware that plaintiff Walker had a serious medical need.

It is not enough that you believe that a defendant *should have been* aware of a serious medical need. Rather, to answer "yes" to Question No. 2, you must find that a particular defendant actually *was aware* that plaintiff Walker had a serious medical need.

Question No. 3 asks in two parts whether defendant Armson or defendant Kottka consciously disregarded plaintiff's need by failing to take reasonable measures to retrieve his inhaler.

In answering this question for each defendant, you may consider whether it was practical for a particular defendant to take corrective action. If a defendant took reasonable measures to respond, then he did not consciously disregard plaintiff's serious medical need.

### **Answers Not Based on Guesswork**

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

### **Personal Involvement**

Plaintiff must prove by a preponderance of the evidence that the defendants were personally involved in the conduct that plaintiff complains about. You may not hold the defendants liable for what other employees did or did not do.

### **Multiple Defendants**

You must give separate consideration to each party in this case. Although there are two defendants, it does not follow that if one is liable, the other is also liable. In considering a claim against one defendant, you must not consider evidence admitted only against the other defendant.

### **Absence of Evidence**

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

### **Limiting Instruction Concerning Evidence of Statutes, Administrative Rules, Regulations, and Policies**

You have heard evidence about whether defendants' conduct violated a state statute, administrative rule, locally-imposed procedure or regulation. You may consider this evidence in your deliberations. But remember that the issue is whether plaintiff has proven the elements of his claim, not whether a statute, rule, procedure or regulation might have been violated.

### III. DAMAGES

#### General

Questions Nos. 4 and 6 relate to damages. Plaintiff has the burden of convincing you, by the preponderance of the evidence, both that he has been injured or damaged and the amount of the damages. Plaintiff need not produce evidence that is as exact as the evidence needed to support findings on other questions in the verdict. Determining damages involves the consideration of many different factors that cannot be measured precisely. In determining the damages you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates plaintiff for his injuries.

Do not measure damages by what the lawyers ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do not make any deductions because of a doubt in your minds about the liability of any of the parties.

#### Compensatory Damages

In answering Question No. 4, you must determine the amount of money that will fairly compensate plaintiff for any injury that you find he sustained, and is reasonably certain to sustain in the future, as a result of defendants' failure to provide him with an inhaler for his asthma. These are called "compensatory damages."

Plaintiff must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if these are not easy to measure. You should consider the physical, mental and emotional pain and suffering that plaintiff has experienced. No evidence

of the dollar value of physical, mental or emotional pain and suffering has been or needs to be introduced.

There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate the plaintiff for the pain and suffering that he has sustained. If you find in favor of plaintiff but find that he has failed to prove compensatory damages, you must return a verdict for plaintiff in the amount of one dollar.

### **Income Taxes**

You must not add to any award of damages any money to compensate the plaintiff for state or federal income taxes. Damages received as an award for personal injuries are exempt from income taxes. On the other hand, you must not subtract any money from your award of damages just because the plaintiff is not required to pay income taxes.

### **Punitive Damages**

Question No. 5 asks whether defendants' conduct demonstrated a willful or reckless disregard for the law. If you answer "yes" to Question No. 5, you may award punitive damages in Question No. 6.

Punitive damages are never a matter of right. This means that you are not required to make any award of punitive damages, but you may do so if you think it is proper under the circumstances. It is in the jury's discretion to award or withhold them.

Punitive damages may be awarded even if the violation of plaintiff's rights resulted in only nominal compensatory damages. That is, you may award punitive damages even if the plaintiff can show no damages or other injury as a result of a defendant's actions.

The purposes of punitive damages are to punish the defendants for their conduct and to serve as an example or warning to the defendants and others not to engage in similar conduct in the future. Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against defendants.

You may assess punitive damages only if you find that a defendant's conduct was in reckless disregard of plaintiff Walker's rights. An action is in reckless disregard of plaintiff's rights if under the circumstances, it reflects complete indifference to plaintiff's safety or rights. If you find that defendants' conduct was motivated by evil motive or intent, such as ill will or spite or grudge either toward plaintiff individually or toward all persons such as plaintiff, then you may find that the defendant deliberately violated the plaintiff's rights. In addition, if the defendant was in a position in which he certainly should have known that his conduct would violate the plaintiff's rights, and proceeded to act in disregard of that knowledge and of the harm or the risk of harm that would result to the plaintiff, then he acted with reckless disregard for the plaintiff's rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of defendants' conduct;
- the impact of a defendants' conduct on plaintiff;
- the relationship between the plaintiff and defendants;
- the likelihood that defendants would repeat the conduct if an award of punitive damages is not made;
- defendants' financial condition; and
- the relationship of any award of punitive damages to the amount of actual harm the plaintiff suffered.

### Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. However, I am going to provide a general suggestion on the process to help you get started. When thinking about who should be presiding juror, you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the court.