

ORIGINAL



09-11739-L

CAUSE NO. DC-08-02034

FILED
11 MAR 30 AM 10:25
CLERK
DALLAS CO. TEXAS
Rose Christ
DEPUTY

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| GERALD MEDOW, Plaintiff | § | IN THE DISTRICT COURT |
| | § | |
| | § | |
| v. | § | 193 RD JUDICIAL DISTRICT |
| | § | |
| PLANO LINCOLN-MERCURY, INC. d/b/a | § | |
| DAVID McDAVID LINCOLN MERCURY | § | |
| OF PLANO, Defendant | § | DALLAS COUNTY, TEXAS |

SUPPLEMENTAL CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. During trial it was permissible for you to take notes. You may carry those notes to the jury room for your personal use during deliberation on the court's charge. You may not share these notes with other jurors. Your personal recollection of the evidence takes precedence over any notes you have taken. A juror may not rely on the notes of another juror. If you disagree about the evidence, the presiding juror may apply to the court and have the court reporter's notes read to the jury.

6. You will not decide a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers, that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other person who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other definition or meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence, unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "PREPONDERANCE OF THE EVIDENCE" means the greater weight of credible evidence admitted in this case. A "PREPONDERANCE OF THE EVIDENCE" is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a "PREPONDERANCE OF THE EVIDENCE," you must find that the fact is more likely true than not true. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are instructed otherwise.

A fact may be established by direct evidence, by circumstantial evidence, or both. A fact is established by **DIRECT EVIDENCE** when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by **CIRCUMSTANTIAL EVIDENCE** when it may be fairly and reasonably inferred from other facts proved.

In answering questions about damages, answer each question separately in accordance with the evidence. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what the ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

For the purposes of this charge, David McDavid refers to Defendant Plano Lincoln-Mercury, Inc. d/b/a David McDavid Lincoln Mercury of Plano.

Question 1

What sum of money, if any, in addition to the damages you found in your original verdict, should be awarded to Gerald Medow against David McDavid resulting from the Defendant's intentional conduct you have found in response to Questions 1 or 2 from the original charge.

Factors to consider in awarding such additional damages, if any, are:

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of David McDavid.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.
- f. The net worth of David McDavid.

Answer separately in dollars and cents for damages, if any:

\$ 200,000.00

After you retire to the jury room, you will select your presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked. It is the duty of the presiding juror —

- (1) to preside during your deliberations;
- (2) to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
- (3) to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the Judge;
- (4) to vote on the questions;
- (5) to write your answers to the questions in the spaces provided; and
- (6) to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff of this Court. You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the Judge of this fact.

When you have answered all of the questions which you are required to answer under the instructions of the Court, and the presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, the presiding juror shall advise the bailiff, at the door of the jury room, that you have reached a verdict and give the verdict to the bailiff to deliver to the Judge. You will then wait to be called back into the courtroom.

Signed on March 25, 2011



Carl Ginsberg, District Judge
193rd Judicial District Court

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

I certify that the jury was unanimous in answering the following questions:

Answer "All" or list the individual questions: _____

Presiding Juror (Signature)

Presiding Juror (Printed Name)

(If the answers to some questions were not unanimous, the jurors who agreed to those answers must certify as follows:)

List the individual questions: / _____