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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

RE:

ADOPTION OF THE MODEL
CIVIL JURY INSTRUCTIONS

Supreme Court Case No. PRM07-002

PROMULGATION ORDER NO.
07-002-01

The Subcommittee on Proposed Civil Jury Instructions was formed and tasked with drafting "plain English" pattern civil jury instructions tailored to the laws of Guam. The Subcommittee, chaired by Justice Robert J. Torres, Jr. and co-chaired by Judge Michael J. Bordallo, included members Atty. Bill Mann, Atty. Patrick Mason, Atty. Thomas L. Roberts, Atty. Michael D. Flynn, Atty. Wayson Wong, Esq, Atty. Ray Haddock, Atty. Jeanne Quinata, Atty. Leevin Camacho, and Atty. Danielle T. Rosete.

The Subcommittee completed a draft of the first series of the proposed Civil Jury Instructions and forwarded a draft to the Guam Bar Association for review and comment on January 25, 2007. The Subcommittee also held a forum on the proposed Instructions on March 14, 2007 and no responses were received.

On January 25, 2007, the Subcommittee submitted its report to the Supreme Court of Guam recommending adoption of the first series of Instructions.

Upon the recommendation of the Subcommittee, and under the authority to "make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam," 48 U.S.C. § 1424-1(1)(6), the Supreme Court hereby promulgates the first series of Model Civil Jury Instructions attached as Exhibit A, and encourages the use of these instructions by the Superior Court of Guam and members of the Guam Bar Association in all civil actions, cases and proceedings brought after the instant Promulgation Order takes effect and to all actions, cases and proceedings commenced prior to the effective date hereof and still pending. The first series of Model Civil Jury Instructions are meant as an aide to

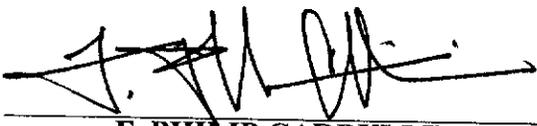
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1 practitioners appearing before the Superior Court of Guam and will only have binding effect as they
2 are reviewed by the Supreme Court of Guam on a case by case basis.

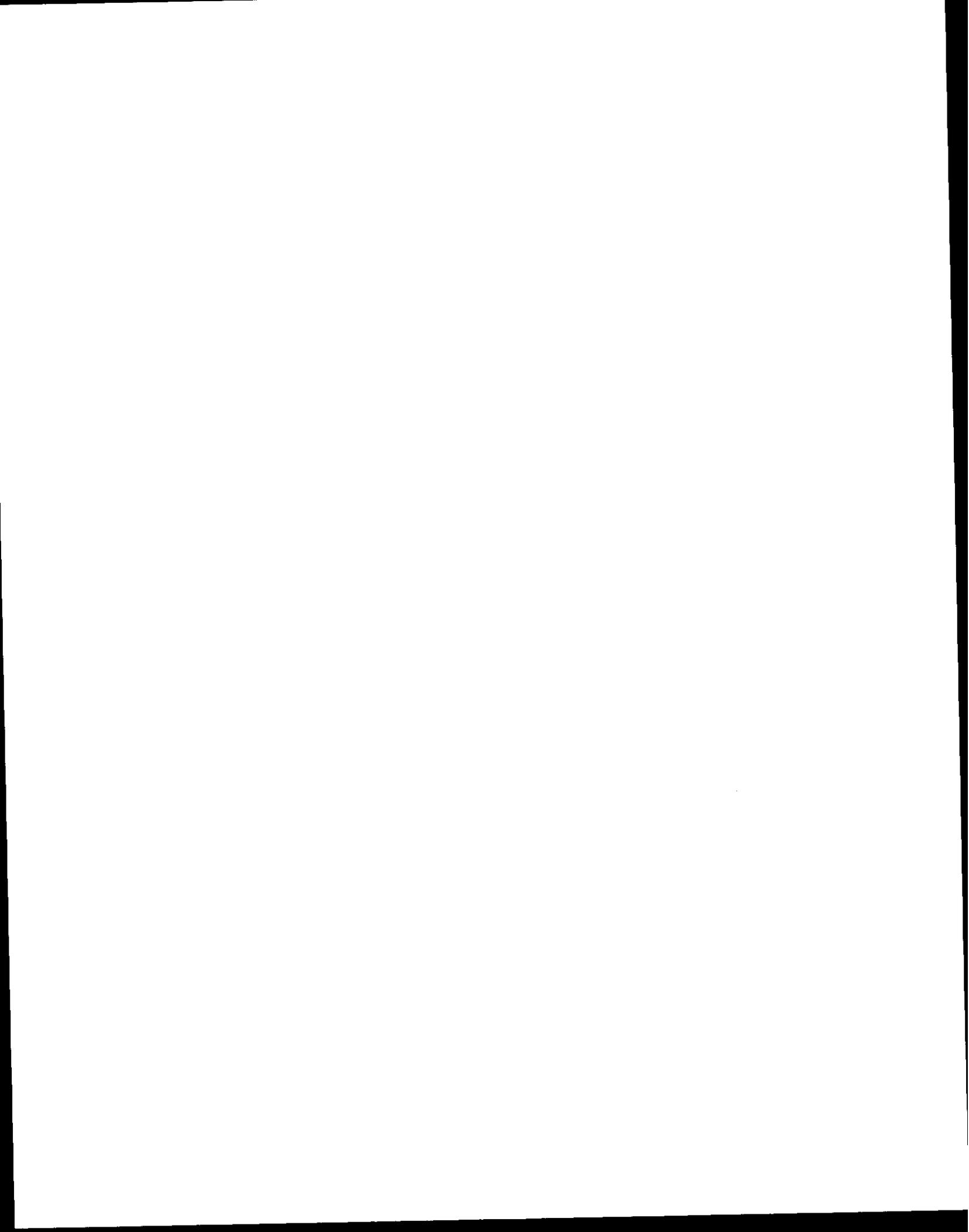
3 **SO ORDERED**, this 3rd day of May, 2007.

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5 
6 **KATHERINE A. MARAMAN**
Justice Pro Tempore


ROBERT J. TORRES
Associate Justice

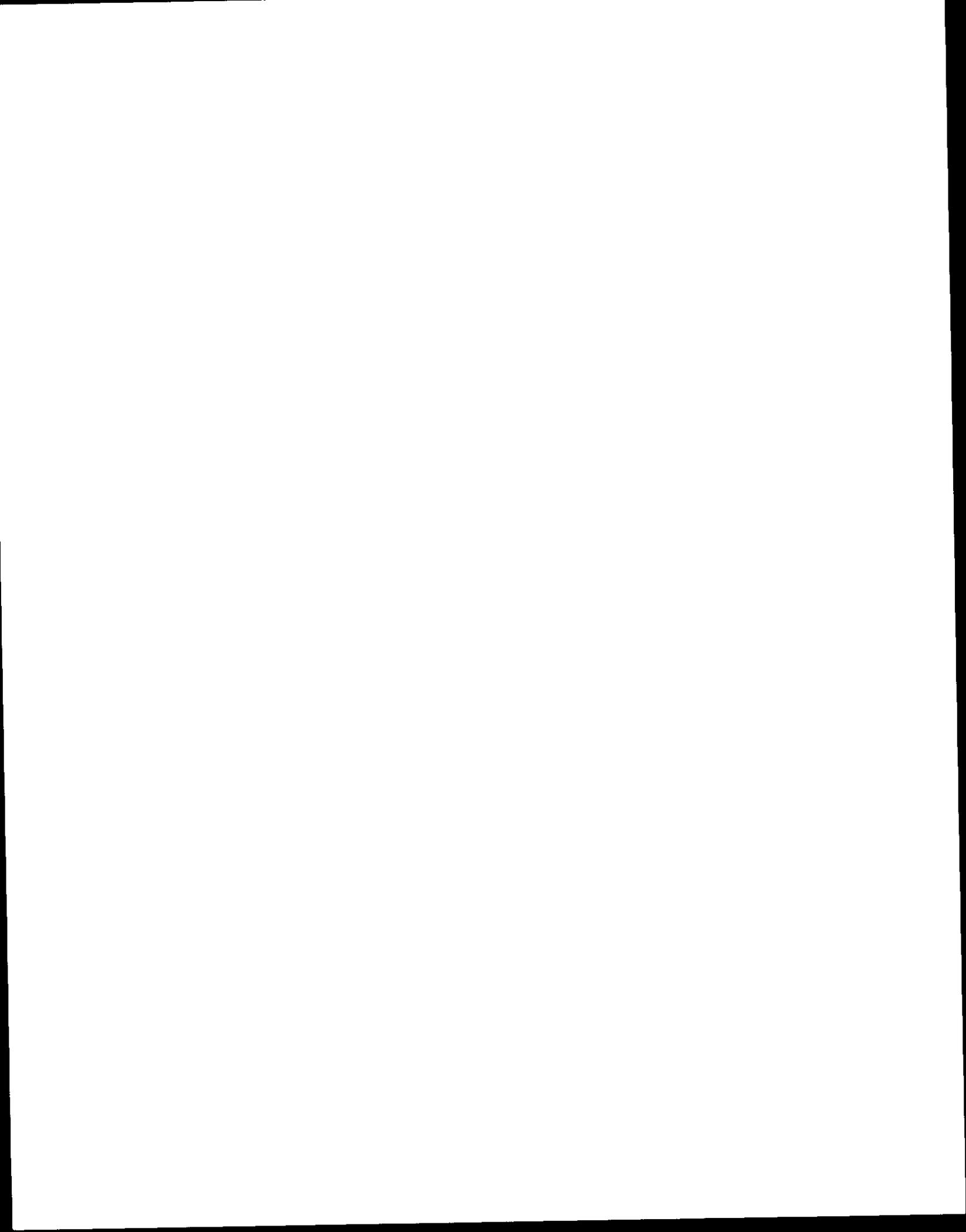
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9 **F. PHILIP CARBULLIDO**
Chief Justice

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MODEL CIVIL JURY INSTRUCTIONS

Effective May 3, 2007



Model Civil Jury Instructions

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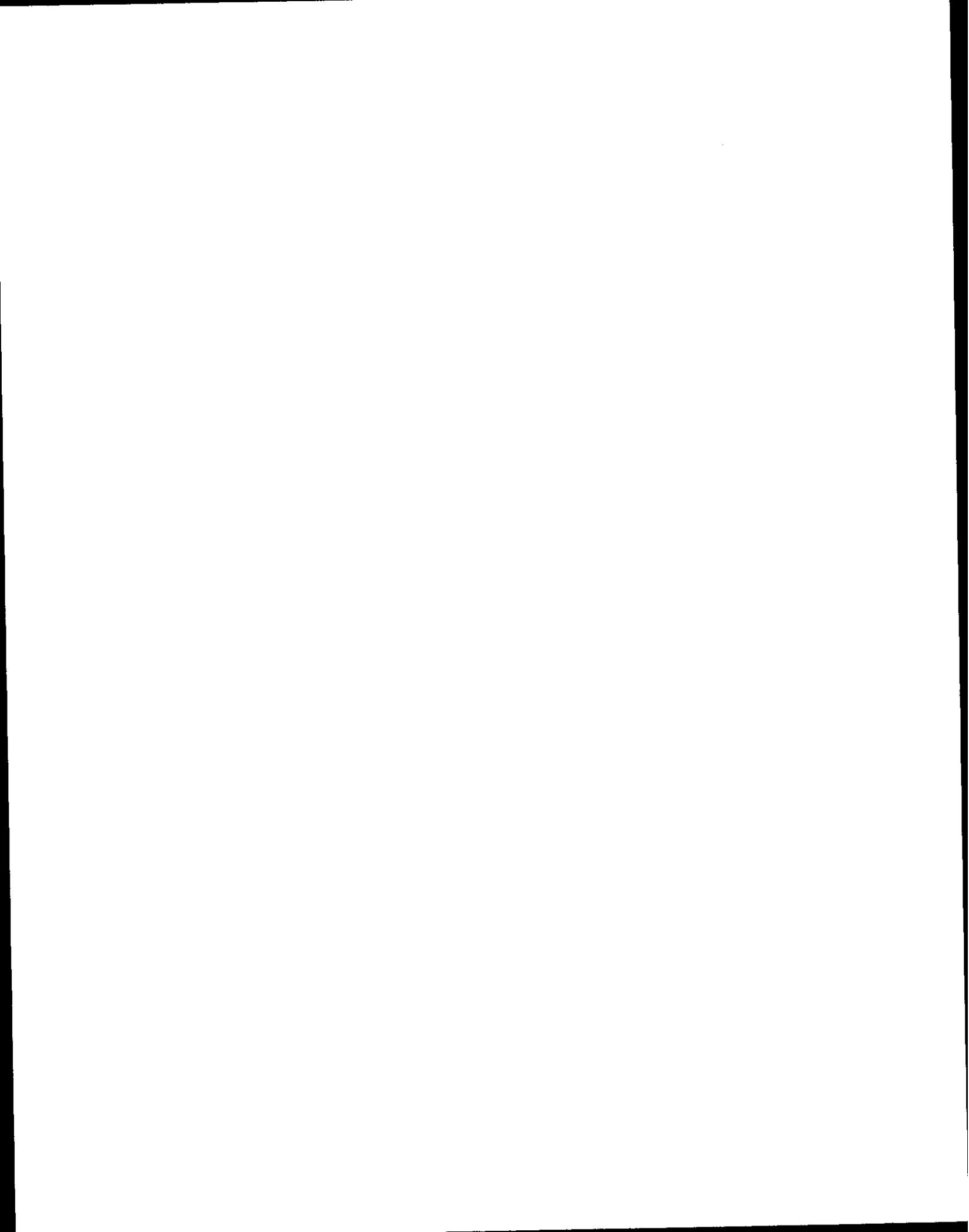
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Judiciary of Guam Subcommittee on Civil Jury Instructions

Preface

The Judiciary of Guam Subcommittee on Civil Jury Instructions was formed and began meeting in the summer of 2003. It was tasked with drafting "plain English" pattern jury instructions tailored to the laws of Guam. Given Guam's statutory similarity to California, the Subcommittee began its work by revising instructions found in California's "Book of Approved Jury Instructions," commonly referred to as "BAJI." Almost immediately, however, the Subcommittee discovered that at its July 2003 meeting, the California Judicial Council unanimously approved approximately 800 new civil "plain English" jury instructions and special verdict forms for use in California's trial courts. Those pattern instructions were the result of nearly six (6) years of work by the California Judicial Council's "Task Force on Jury Instructions." Formed in 1996, the Task Force's mission was to draft comprehensive and legally accurate jury instructions designed to be easily understood by the average juror.

The Subcommittee unanimously found the new California pattern jury instructions to be a vast improvement on the outdated BAJI instructions. Accordingly, in drafting the instructions which follow, the Subcommittee utilized the Judicial Council of California Civil Jury Instructions wherever possible. Obviously, however, the California instructions are based solely on California case law and statutory law, so frequently the California instructions were found to be inapplicable. Almost without exception, though, in those areas where Guam has previously adopted California statutes, the Subcommittee utilized the California pattern instructions. These instructions are fundamental instructions which cover these areas of the law. The Subcommittee continues to work on drafting additional instructions.

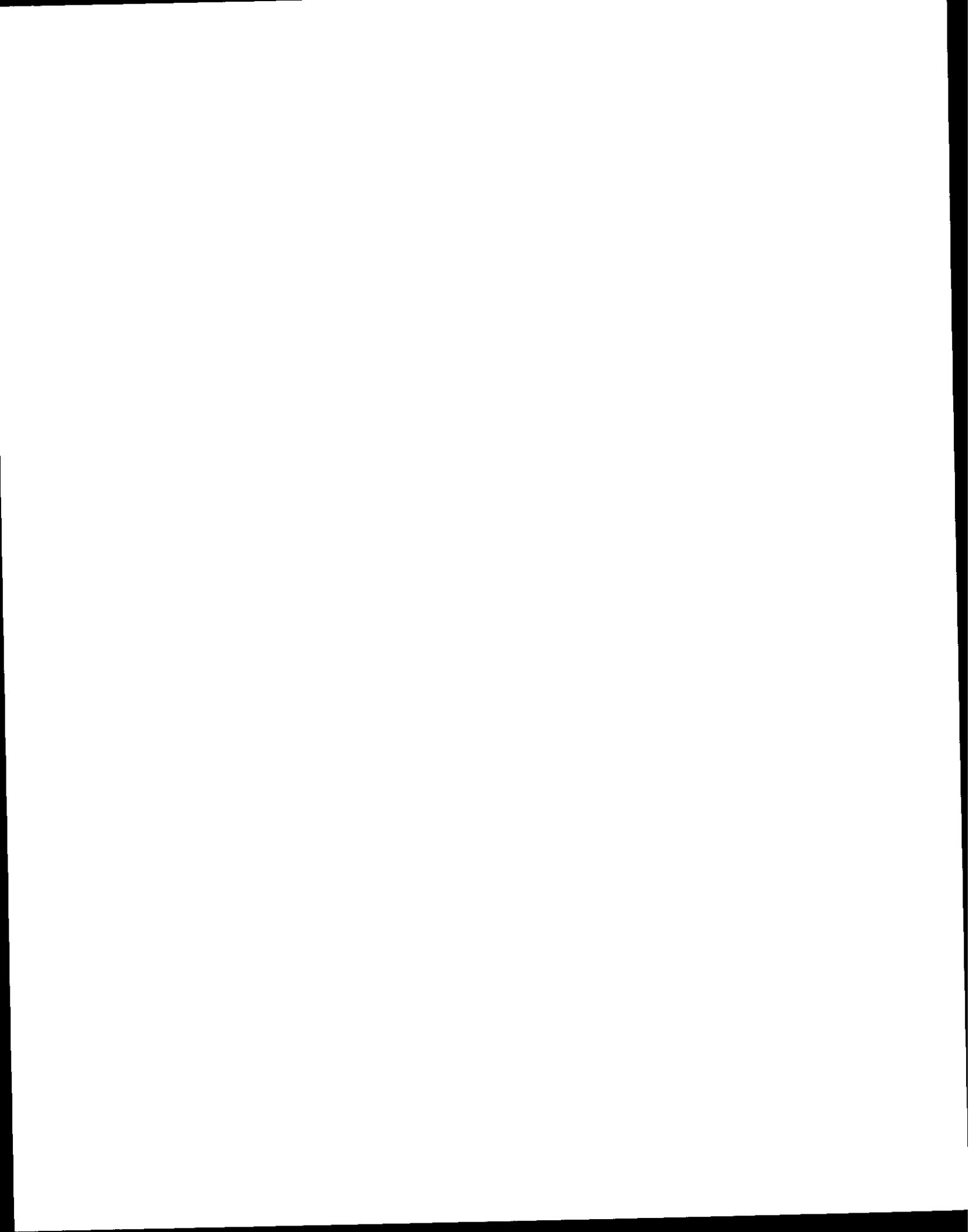
In many instances, certain California pattern jury instructions appeared to contain accurate statements of law, but for which there is no existing supporting Guam statutes or Supreme Court of Guam opinion directly on point.¹ The Subcommittee decided to adopt some of these instructions. The Subcommittee's caveats to the adoption of these instructions are expressed in a numbered categorization system for all adopted instructions.

The Subcommittee placed an instruction in Category No. 1 when the legal concept expressed in the instruction is directly supported by Guam law, or the language of the instruction is either directly supported by Guam law or consistent with Guam law.

The Subcommittee placed an instruction in Category No. 2 when the instruction is of a fundamental and non-controversial nature, but there is presently no direct Guam authority to support the instruction.

The Subcommittee placed an instruction in Category No. 3 when the instruction is

¹ As a matter of policy, the Subcommittee decided to only cite as supporting case authority decisions by the Supreme Court of Guam and the Appellate Division of the District Court of Guam, rather than authority from the Superior Court of Guam, which has no binding effect.



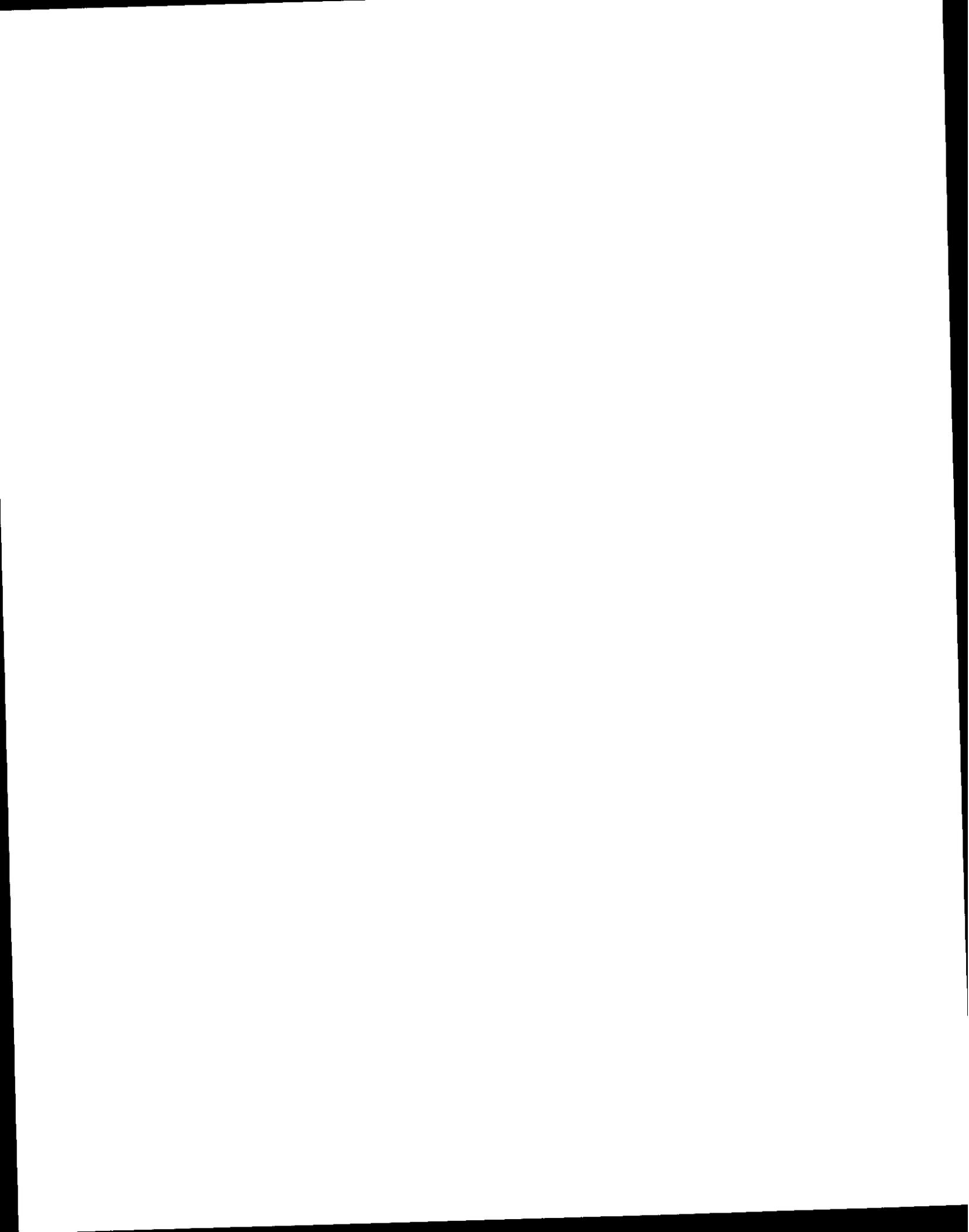
fundamental, but either the legal concept or the language used to express the legal concept, or both, may be subject to some controversy, and there is no direct Guam authority.

Other California instructions were not adopted at all, either because they are contrary to Guam law, or based on a California statute that Guam has not adopted. Because California's statutory framework is far more comprehensive than Guam's, many of the California pattern jury instructions are inapplicable on Guam and were not adopted.

The Bench and Bar are urged to review the "Sources and Authority" section of the California Jury Instructions in the event questions arise regarding the applicability of a given instruction to Guam. This is especially true for Category No. 3 instructions, where there may be considerable room for debate.

The Subcommittee cautions that these pattern jury instructions are meant only as an aide to practitioners and the Superior Court. Although the Civil Jury Instructions have been endorsed and promulgated by the Supreme Court of Guam, their use is not mandatory by the Superior Court of Guam. Use of these instructions, however, is encouraged. These instructions will only have binding effect as they are reviewed on a case by case basis by the Supreme Court of Guam.

Members of the Subcommittee include: Justice Robert J. Torres, Jr., Co-Chairperson, Judge Michael J. Bordallo, Co-Chairperson, Bill Mann, Esq., Patrick Mason, Esq., Thomas L. Roberts, Esq., Michael D. Flynn, Esq., Wayson Wong, Esq., Ray Haddock, Esq., Jeanne Quinata, Esq., Leevin Camacho, Esq., Danielle T. Rosete, Esq.,



Guide for Using These Instructions.

Ease of understanding by jurors, without sacrificing accuracy, is the primary goal of these Civil Jury Instructions. A secondary goal is ease of use by lawyers. This guide provides an introduction to the instructions, explaining conventions and features that will assist in the use of these instructions.

Jury Instructions as a Statement of the Law: While jury instructions are not a primary source of the law, they are a statement or compendium of the law, a secondary source. That the instructions are in plain English does not change their status as an accurate statement of the law.

Instructions Promulgated by the Supreme Court of Guam: The Model Civil Jury Instructions were endorsed and promulgated on May 3, 2007 in PRM07-_____ and use of these instructions is strongly encouraged.

USING THE INSTRUCTIONS

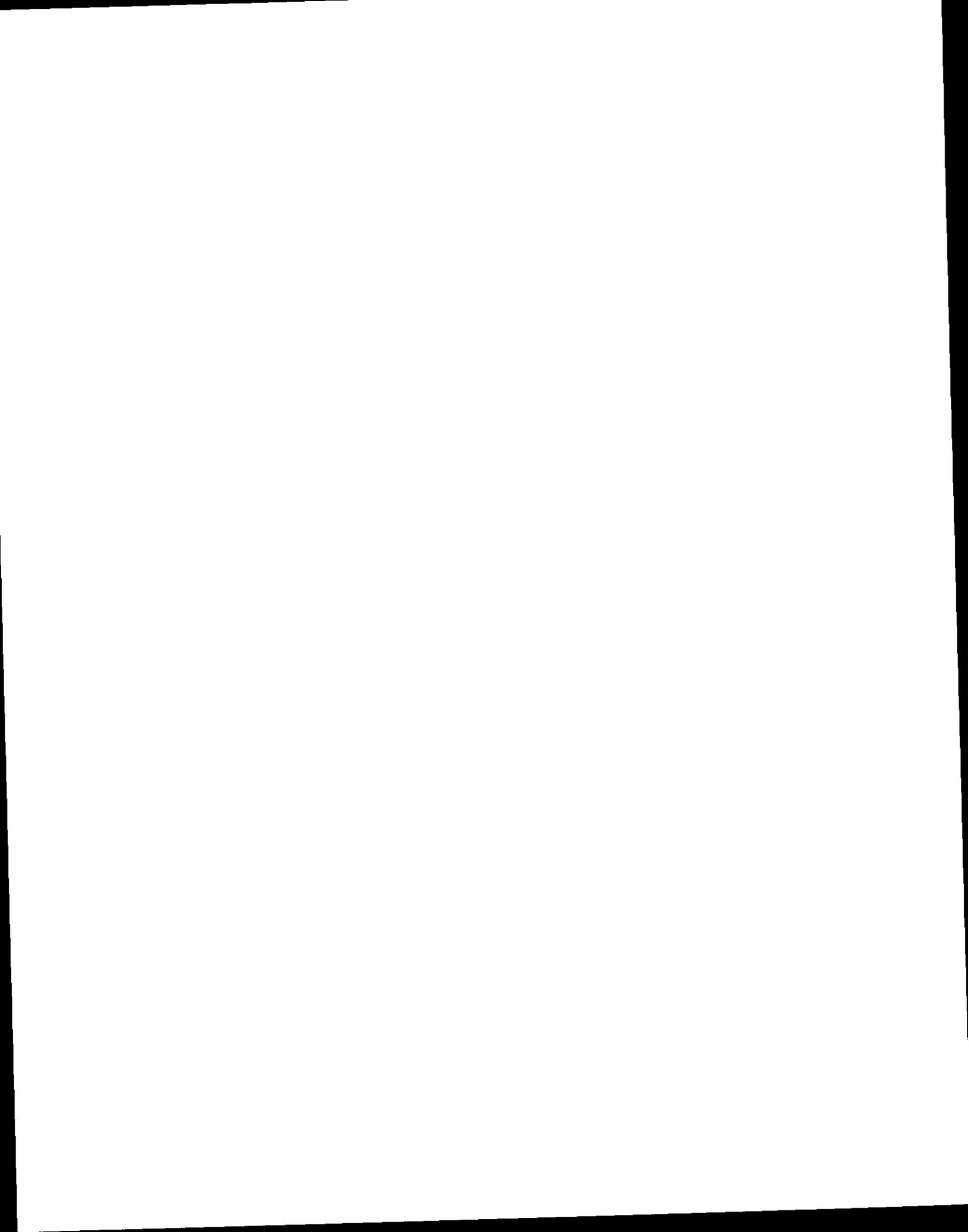
Directions for Use: The instructions contain directions for use. The directions alert the user to special circumstances involving the instruction and may include references to other instructions that should or should not be used. In some cases the directions include suggestions for modifications or for additional instructions that may be required. Prior to using any instruction, reference should be made to the directions for use.

References: Some instructions have a reference applicable to Guam law.

Instructions for the Common Case: These instructions were drafted for the common type of case and can be used as drafted in most cases. When unique or complex circumstances prevail, users will have to adapt the instructions to the particular case.

Multiple Parties: Because jurors more easily understand instructions that refer to parties by name rather than by legal terms such as "plaintiff" and "defendant," the instructions provide for insertion of names. For simplicity of presentation, the instructions use single party plaintiffs and defendants as examples. If a case involves multiple parties or cross-complaints and counterclaims, the user will want to modify the instructions. Rather than naming a number of parties in each place calling for names, the user may consider putting the names of all applicable parties in the beginning and thereafter identifying them as "plaintiffs," "defendants," "cross-complaints," etc.

Reference to "Harm" in Place of "Damage" or "Injury": In many of the instructions, the word harm is used in place of damage, injury or other similar words. The Subcommittee members felt that this word was clearer to jurors.



Listing of Elements and Factors: For ease of understanding, elements of causes of action or affirmative defenses are listed by numbers (*e.g.*, 1, 2, 3) and factors to be considered by jurors in their deliberations are listed by letters (*e.g.*, a, b, c)

Burdens of Proof: The applicable burden of proof is included within each instruction explaining a cause of action or affirmative defense. The Subcommittee members felt that placing the burden of proof in that position provided a clearer explanation for the jurors.

Affirmative Defenses: For ease of understanding by users, all instructions explaining affirmative defenses use the term "affirmative defense" in the title.

TITLES AND DEFINITIONS

Titles of Instructions: Titles to instructions are directed to lawyers and sometimes use words and phrases not used in the instructions themselves. Since the title is not a part of the instruction, the titles may be removed prior to presentation to the jury.

Definitions of Legal Terms: The instructions avoid separate definitions of legal terms whenever possible. Instead, definitions have been incorporated into the language of the instructions. In some instances (*e.g.*, specific statutory definitions) it was not possible to avoid providing a separate definition.

EVIDENCE

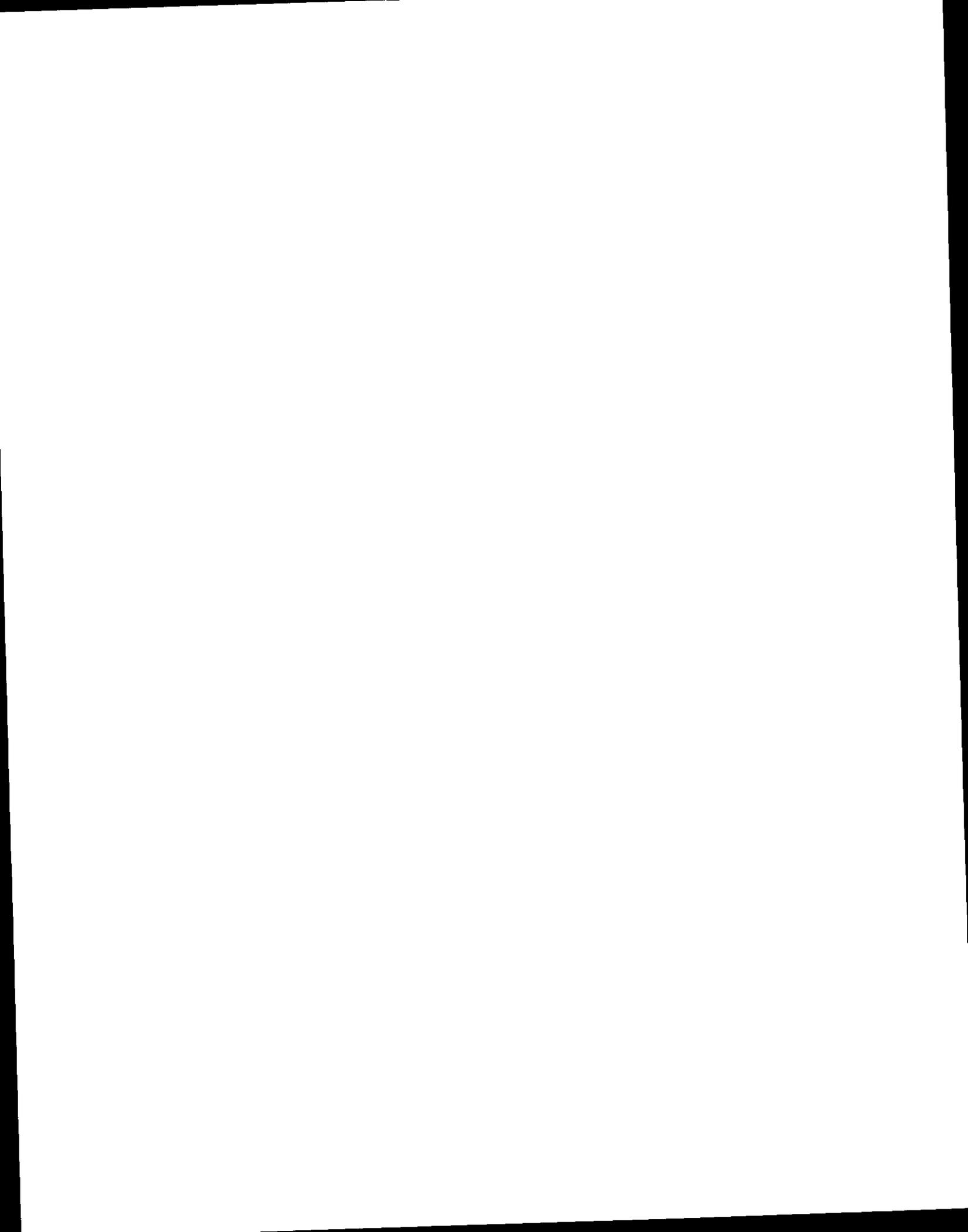
Circumstantial Evidence: The words "indirect evidence" have been substituted for the expression "circumstantial evidence". The Subcommittee members added a sentence indicating that indirect evidence is sometimes known as circumstantial evidence.

Preponderance of the Evidence: To simplify the instructions' language, the Subcommittee avoided the phrase preponderance of the evidence and the verb preponderate. The instructions substitute in place of that phrase reference to evidence that is "more likely to be true than not true."

USING VERDICT FORMS

Verdict Forms are Models: Special verdict forms sometimes accompany the instructions. Users of the forms must bear in mind that these are models only. Rarely can they be used without modifications to fit the circumstances of a particular case.

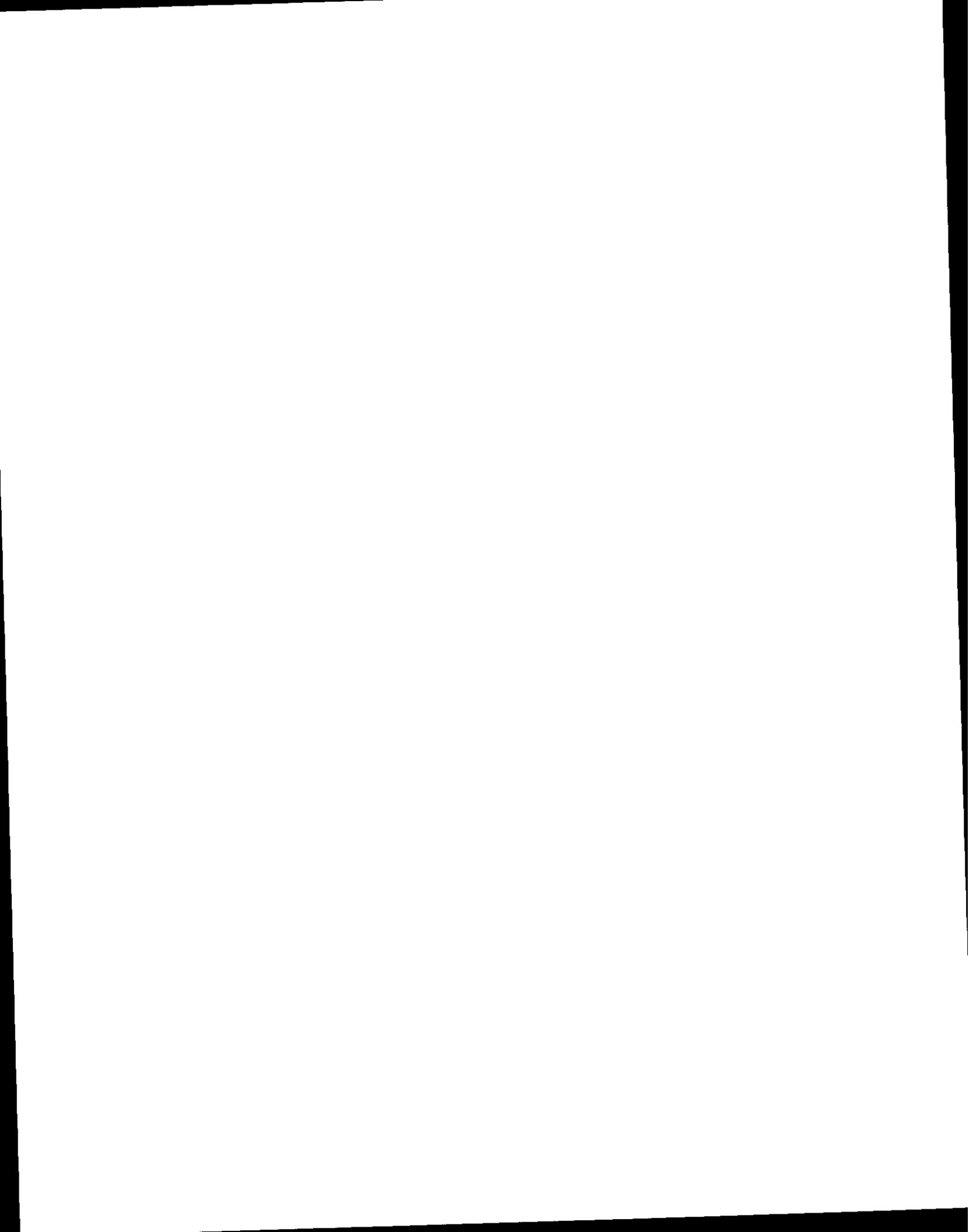
Purpose of Verdict Forms: The special verdict forms generally track the elements of the applicable cause of action. Their purpose is to obtain the jury's finding on the elements defined in the instructions. The special verdict must present the conclusions of fact as established by the evidence. Modifications made to the instructions in particular cases ordinarily will necessitate corresponding modifications to the special verdict form.



Multiple Parties: The verdict forms have been written to address one plaintiff against one defendant. In nearly all cases involving multiple parties, the issues and the evidence will be such that the jury could reach different results for different parties. The liability of each defendant should always be evaluated individually, and the damages to be awarded to each plaintiff must usually be determined separately. Therefore, separate special verdicts should usually be prepared for each plaintiff with regard to each defendant. In some cases, the facts may be sufficiently simple to include multiple parties in the same verdict form, but if this is done, the transitional language from one question to another must be modified to account for all the different possibilities of yes and no answers for the various parties.

Multiple Causes of Action: The verdict forms are self-contained for a particular cause of action. When multiple causes of action are being submitted to the jury, it may be better to combine the verdict forms and eliminate duplication.

Modifications as Required by Circumstances: The verdict forms must be modified as required by the circumstances. It is necessary to determine whether any lesser or greater specificity is appropriate. The question in special verdict forms for plaintiff's damages provides an illustration. Consistent with the jury instructions, the question asks the jury to determine separately the amounts of past and future economic loss, and of past and future non-economic loss. These four choices are included in brackets. In some cases it may be unnecessary to distinguish between past and future losses. In others there may be no claim for either economic or non-economic damages. In some cases the court may wish to eliminate the terms "economic loss" and "non-economic loss" from both the instructions and the verdict form. Without defining those terms, the court may prefer simply to ask the jury to determine the appropriate amounts for the various components of such losses without categorizing those losses for the jury as economic or non-economic. The court can fix liability as joint or several based on the verdicts. A more itemized breakdown of damages may be appropriate if the court is concerned about the sufficiency of the evidence supporting a particular component of damages.



MODEL CIVIL JURY INSTRUCTIONS

INTRODUCTORY INSTRUCTIONS

- 100. Preliminary Admonitions
- 101. Overview of Trial
- 102. Taking Notes During the Trial
- 103. Multiple Parties
- 104. Non-Person Party
- 105. Insurance
- 106. Evidence
- 107. Witnesses
- 108. Duty to Abide by Translation Provided in Court
- 109. Removal of Claims or Parties
- 110. Service Provider for Juror With Disability
- 111—199. Reserved for Future Use

100. Preliminary Admonitions

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. There is a right to a trial by jury in Guam. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a fair verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial, do not talk about this case or the people involved in it with anyone, including your family and friends. You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to me as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] You must decide this case based only on the evidence presented in this trial. Nothing presented outside this courtroom is evidence unless I specifically tell you it is.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

When it is time to begin your deliberations, you will meet in the jury room. You may discuss the case only in the jury room and only when all the jurors are present. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

You, and only you, must decide what the facts are in this case. And, I repeat, your verdict must be based only on the evidence that you hear or see in this courtroom.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

Directions for Use

This instruction should be given at the outset of every case.

References

48 U.S.C. § 1421b (u) provides that “(t)he following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect as in the United States or in any state of the United States: ... the first to ninth amendments inclusive ...” See also, Rule 38, Guam Rules of Civil Procedure (“Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue.”);

Judicial Council of California Civil Jury Instructions, Inst. 100.

101. Overview of Trial

To assist you in your tasks as jurors, I will now explain how the trial will proceed. *[Name of plaintiff]* filed this lawsuit. *[He/She]* is called a plaintiff. *[He/She]* seeks damages [or other relief] from *[name of defendant]*, who is called a defendant. Each plaintiff and each defendant is called a party to the case.

[[A counterclaim/cross-claim/third party complaint] has also been filed by *[Name]* against *[Name]* for *[insert cause of action].*]

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence. You cannot use it to make any decisions in this case.

Next, the jury will start hearing the evidence. *[Name of plaintiff]* will present *[his/her]* evidence first. When *[name of plaintiff]* is finished, *[name of defendant]* will have an opportunity to present *[his/her]* evidence.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits will be given a number and marked so they may be clearly identified. Exhibits are not evidence until I admit them into evidence. You will be able to look at these exhibits during your deliberations.

There are many rules that govern whether something will be considered evidence in the trial. As one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

Directions for Use

This instruction is intended to provide a "road map" for the jurors. This instruction should be read in conjunction with Instruction 100, *Preliminary Admonitions*.

Throughout these instructions, the names of the parties should be inserted as indicated. This instruction should be modified to reflect the number of plaintiffs and defendants involved in the suit.

If the case involves cross-claims, counterclaims, or third party claims, make sure that the names of the parties inserted in the applicable instructions are adjusted accordingly.

References

Judicial Council of California Civil Jury Instructions, Inst. 101.

102. Taking Notes During the Trial

You have been given notebooks and may take notes during the trial. Do not remove the notebooks from the jury box at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

[The court reporter is tape recording everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court's records be [played back] [read] to you. You must accept the court's record as accurate.]

Directions for Use

The last bracketed paragraph should not be read if a court reporter is not being used to record the trial proceedings.

References

Judicial Council of California Civil Jury Instructions, Inst. 102.

103. Multiple Parties

[There are *[number]* plaintiffs in this trial. You should decide the case of each plaintiff separately as if it were a separate lawsuit. Each plaintiff is entitled to separate consideration of his or her own claim(s). Unless I tell you otherwise, all instructions apply to each plaintiff.]

[There are *[number]* defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own defenses. Unless I tell you otherwise, all instructions apply to each defendant.]

References

Judicial Council of California Civil Jury Instructions, Inst. 103.

104. Non-Person Party

A [corporation/partnership/city/county/other *other entity*], [name of entity], is a party in this lawsuit. [*Name of entity*] is entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like “person” or “he” or “she” in these instructions to refer to a party, those instructions also apply to [*name of entity*].

Directions for Use

This instruction should be given as an introductory instruction if one of the parties is an entity. Select the type of entity and insert the name of the entity where indicated in the instruction.

References

Title 1 GCA §7 15 (“the word person includes a corporation, firm, association, organization, partnership, business trust or company unless this Code otherwise provides);

Judicial Council of California Civil Jury Instructions, Inst. 104.

105. Insurance

A. Plaintiff sues both insurance company and insured.

[Plaintiff] has made a claim against both [defendant] and his/her insurance company. The presence of insurance is totally irrelevant to the issue of liability or damages.

B. Plaintiff sues only insurance company.

[Insurance company] has issued an insurance policy to [insured]. [Plaintiff] has made a claim against [insurance company]. [Plaintiff] may make a claim against [insurance co.] without making a claim against [insured]. The presence of insurance is totally irrelevant to the issue of liability or damages.

References

Title 22 GCA § 18305 provides: "On any policy of liability insurance the injured person or his heirs or representatives shall have a right of direct action against the insurer within the terms and limits of the policy, whether or not the policy of insurance sued upon was written or delivered in Guam, and whether or not such policy contains a provision forbidding such direct action, provided that the cause of action arose in Guam. Such action may be brought against the insurer alone, or against both the insured and insurer." was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness,"

Title 6 GCA § 411 states: Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Judicial Council of California Civil Jury Instructions, Inst. 105.

106. Evidence

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence. The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial. Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the. Sometimes an attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as though it did not exist.

Directions for Use

This instruction should be given as an introductory instruction.

References

Title 6 GCA § 2102 provides: "Definition of Evidence. Judicial Evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact."

Title 6 GCA § 401 defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Title 6 GCA § 402 provides: "All relevant evidence is admissible except as otherwise provided by the Constitution of the United States, by Act of the Guam Legislature, or by these Rules. Evidence which is not relevant is not admissible."

Title 6 GCA § 2106 specifies the kinds of evidence.

Title 6 GCA § 2117 provides that the jury decides questions of fact.

Judicial Council of California Civil Jury Instructions, Inst. 106.

107. Witnesses

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased against any witness because of his or her race, sex, religion, occupation, sexual orientation, [or] national origin [or *insert any other impermissible form of bias*].

References

Title 6 GCA § 2503 provides: A witness is presumed to speak the truth. This presumption, however, may be contradicted by the manner in which he testifies, by the character of his testimony, or by the evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence, and the judge or jury, as the case may be, is the exclusive judge of his credibility.

Title 6 GCA § 2117 provides: All questions of fact, on trial before a jury, judge, referee or other officer are to be decided by the jury, judge, referee or other officer, and all evidence thereon is to be addressed to them.

Judicial Council of California Civil Jury Instructions, Inst. 107.

108. Duty to Abide by Translation Provided in Court

Some testimony will be given in [insert language other than English]. An interpreter will provide a translation for you at the time that the testimony is given. You must rely on the translation provided by the interpreter, even if you understand the language spoken by the witness. Do not retranslate any testimony for other jurors. If you believe the court interpreter translated testimony incorrectly, let me know immediately by writing a note and giving it to the [clerk/bailiff].

References

Title 6 GCA § 604 provides: "An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation."

Judicial Council of California Civil Jury Instructions, Inst. 108.

109. Removal of Claims or Parties

[[Name of plaintiff]]'s claim for [insert claim] is no longer an issue in this case.

[[Name of party] is no longer a party to this case.]

Do not speculate as to why this [claim/person] is no longer involved in this case. You should not consider this during your deliberations.

Directions for Use

This instruction may be read during trial as appropriate.

References

Judicial Council of California Civil Jury Instructions, Inst. 109.

110. Service Provider for Juror With Disability

During trial, *[name of juror]* will be assisted by a *[insert service provider]*. The *[insert service provider]* is not a member of the jury and is not to participate in the deliberations in any way other than as necessary to provide the service to *[name of juror]*.

References

Title 7 GCA §22103 provides that “[a] citizen shall not be excluded from jury service in the courts of Guam on account of race, color, religion, sex, national origin, economic status, or on account of a physical disability except as provided in “7 G.C.A. §22105(5).

Title 7 GCA §22105(5) provides that “[a] prospective juror is disqualified to serve as a juror if . . . he is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician’s certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion.”

Title 7 GCA §22101 provides that “[p]hysical disability means a physical impairment which substantially limits one or more of a person’s major life activities”.

Judicial Council of California Civil Jury Instructions, Inst. 110.

111 – 199. Reserved for Future Use

EVIDENCE

- 200. Obligation to Prove—More Likely True Than Not True
- 201. More Likely True—Clear and Convincing Proof
- 202. Direct and Indirect Evidence
- 203. Party Having Power to Produce Better Evidence
- 204. Willful Suppression of Evidence
- 205. Failure to Explain or Deny Evidence
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- 208. Deposition as Substantive Evidence
- 209. Use of Interrogatories of a Party
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- 215. Exercise of a Communication Privilege
- 216. Exercise of Witness' Right Not to Testify
- 217. Evidence of Settlement
- 218. Not Adopted
- 219. Expert Witness Testimony
- 220. Experts—Questions Containing Assumed Facts
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200. Obligation to Prove—More Likely True Than *Not* True

When I tell you that a party must prove something, I mean that the party must persuade you, by the evidence presented in court, that what he or she is trying to prove is more likely to be true than not true. This is sometimes referred to as “the burden of proof.”

After weighing all of the evidence, if you cannot decide whether a party has satisfied the burden of proof, you must conclude that the party did not prove that fact. You should consider all the evidence that applies to that fact, no matter which party produced the evidence.

In criminal trials, the prosecution must prove facts showing that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove a fact need only prove that the fact is more likely to be true than not true.

References

Title 6 GCA § 8101(5) states: The judges or referees or juries are the judges of the effect or value of evidence addressed to them, except when it is declared by law to be conclusive. In so weighing the evidence, they shall consider. . . . [t]hat in civil cases, the affirmative of the issue must be proved, and when the evidence is contradictory, the decision must be made according to the preponderance of the evidence, that in criminal cases guilt must be established beyond reasonable doubt. . . .

Judicial Council of California Civil Jury Instructions, Inst. 200.

201. More Likely True—Clear and Convincing Proof

In this case, there are some specific facts that must be proved by the higher standard of clear and convincing evidence. This means that the party must persuade you that it is highly probable that the fact is true.

I will tell you specifically which of the facts must be proved by clear and convincing evidence. All the other facts will be proved if they are more likely to be true than not true.

Directions for Use

Evidence Code section 502 requires the court to instruct the jury regarding which party bears the burden of proof on each issue and the requisite degree of proof.

This instruction should be read immediately after Instruction 200, *Obligation to Prove—More Likely True Than Not True*, if the jury will have to decide an issue by means of the clear-and-convincing evidence standard.

References

Discussing the requirements of Title 11 GCA § 106601(b), the court in *Bank of Guam v. Guam Banking Bd.*, 2003 Guam 9, ¶ 40, stated:

Pursuant to section 106601(b), “[a] bank engaging in the banking business in Guam” may establish additional branches, subject to the approval of the Banking Board, if it shows: (1) there is sufficient need for such branch; (2) the proposed branch has reasonable opportunity to be economically self-sustaining; and (3) the applicant demonstrates by clear and convincing evidence that the establishment and operation of such branch will promote community reinvestment and fair lending.

Regarding the evidence required to set aside a judgment for fraud under Rule 60(b)(3) of the Guam Rules of Civil Procedure, the court in *Town House Dept. Stores, Inc. v. Ahn*, 2003 Guam 6, ¶ 59, stated:

To set aside a judgment for fraud under Rule 60(b)(3), the trial court must determine whether the movant has “(1) prove[n] by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct, and (2) establish[ed] that the conduct complained of prevented the losing party from fully and fairly presenting his case or defense.” (quoting *Guam Bar Ethics Comm. v. Maquera*, 2001 Guam 20, ¶ 35). Moreover, a movant is only entitled to relief under Rule 60(b)(3) if he shows by clear and convincing evidence that the judgment was procured by fraud. A showing which reveals a conflict of evidence is not enough to justify relief; rather, the movant carries the burden of showing clear and convincing evidence that a witness perjured himself.

(citations omitted).

Discussing the evidence required to overcome the presumption of authenticity of documents duly acknowledged by a notary public, the court in *Shorehaven Corp. v. Taitano*, 2001 Guam 16, ¶ 19, stated:

Jones v. Minton provides the rule that the evidence to overcome the presumption of veracity or of documents duly acknowledged by a notary must be “clear, strong, and convincing.” (quoting *Jones v. Minton*, 141 So.2d 564, 565 (Miss.1962). Clear and convincing evidence must be of “extraordinary persuasiveness.” “Clear and convincing evidence means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.”

(citations omitted).

"Clear and convincing evidence means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Shorehaven Corp. v. Taitano*, 2001 Guam 16, ¶ 19 (Guam 2001) (in the context of evidence necessary to overcome the presumption of veracity or of documents duly acknowledged by a notary, quoting *In re Chiovero*, 570 A.2d 57, 60 (Pa.1990)).

Regarding the termination of parental rights, “[c]lear and convincing evidence is defined as ‘that measure of degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.’” 19 GCA § 13101(h) (1994). *Coffey v. Government of Guam*, 1997 Guam 14, ¶3; 1997 WL 1051626 (Sup. Ct. Guam 1997).

Judicial Council of California Civil Jury Instructions, Inst. 201.

202. Direct and Indirect Evidence

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence". In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

References

Title 6 GCA § 2109 states:

Direct Evidence is that which proves a fact in dispute, directly, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. For example, if the fact in dispute be an agreement, the evidence of a witness who was present and witnessed the making of it, is direct.

Title 6 GCA § 5102 states: "An inference is a deduction which the reason of the judge or jury makes from the facts proved, without an express direction of law to that effect."

Title 6 GCA § 2110 states:

Indirect Evidence is that which tends to establish the fact in dispute by proving another, and which though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact, from which the fact in dispute is inferred.

Title 6 GCA § 5104 states:

An inference must be founded both on a fact legally proved and on such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

Judicial Council of California Civil Jury Instructions, Inst. 202.

203. Party Having Power to Produce Better Evidence

You [may]/[must] consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you [may/should] distrust the weaker evidence.

References

Title 6 § 8101(7) states:

The judges or referees or juries are the judges of the effect or value of evidence addressed to them, except when it is declared by law to be conclusive. In so weighing the evidence, they shall consider. . . . [t]hat if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

See People v. Santos, 1999 Guam 1 (1994), citing 6 GCA § 8101 with approval.

Judicial Council of California Civil Jury Instructions, Inst. 203.

204. Willful Suppression of Evidence

You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party.

Directions for Use

This instruction should be given only if there is evidence of suppression.

References

Judicial Council of California Civil Jury Instructions, Inst. 204.

205. Failure to Explain or Deny Evidence

You may consider whether a party failed to explain or deny some unfavorable evidence. Failure to explain or to deny unfavorable evidence may suggest that the evidence is true.

Directions for Use

This instruction should be given only if there is a failure to deny or explain a fact that is material to the case.

References

Judicial Council of California Civil Jury Instructions, Inst 205.

206. Evidence Admitted for Limited Purpose

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

Directions for Use

Where appropriate, an instruction limiting the purpose for which evidence is to be considered must be given upon request. It is recommended that the judge call attention to the purpose to which the evidence applies.

For instruction on evidence applicable to one party or a limited number of parties, see Instruction 207, Evidence Applicable to One Party.

References

Rule 105 of the Guam Rules of Evidence provides:

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Judicial Council of California Civil Jury Instructions, Inst. 206.

207. Evidence Applicable to One Party

[During the trial, I explained that certain evidence could be considered as to only one party. You may not consider that evidence as to any other party.]

[During the trial, I explained that certain evidence could be considered as to one or more parties but not to every party. You may not consider that evidence as to any other party.]

Directions for Use

Where appropriate, an instruction limiting the parties to whom evidence applies must be given upon request. It is recommended that the judge call attention to the party or parties to which the evidence applies.

For instruction on evidence admissible for a limited purpose, see Instruction 206, Evidence Admitted for Limited Purpose.

References

Rule 105 of the Guam Rules of Evidence provides:

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Judicial Council of California Civil Jury Instructions, Inst. 207.

208. Deposition as Substantive Evidence

During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

References

Rule 7301 of the Guam Rules of Evidence states: "The testimony of a witness may be taken by affidavit, by deposition, or by oral examination." Title 6 GCA § 7301

Rule 32 of the Guam Rules of Civil Procedure states:

Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence [Title 6, Guam Code Annotated] applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the [provisions laid out in this rule]. . . .

Rule 804 of the Guam Rules of Evidence states:

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: (1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with a law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Judicial Council of California Civil Jury Instructions, Inst 208.

209. Use of Interrogatories of a Party

Before trial, each party has the right to ask the other parties to answer written questions. These questions are called interrogatories. The answers are also in writing and are given under oath. You must consider the questions and answers that were read to you the same as if the questions and answers had been given in court.

References

GRCP Rule 33. Interrogatories to Parties.

(a) Availability; Procedures for Use. Any party may serve upon another party written interrogatories to be answered by the party served . . . Each Interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. . . .

(b) Scope: Use At Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

Judicial Council of California Civil Jury Instructions, Inst. 209.

210. Requests for Admissions

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.

[However, these matters must be considered true only as they apply to the party who admitted they were true.]

Directions for Use

The bracketed phrase should be given if there are multiple parties.

References

Requests for admission are authorized by Rule 36 of the Guam Rules of Civil Procedure, subsection (b) of which provides that "(a)ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

Judicial Council of California Jury Instructions, Inst. 210.

211. Prior Conviction of a Felony

You have heard that a witness in this trial has been convicted of a felony. You were told about the conviction only to help you decide whether you should believe the witness. You must not consider it for any other purpose.

References

6 G.C.A. §609 governs the admissibility of evidence of prior felonies.

Judicial Council of California Jury Instructions, Inst. 211.

212. Statements of a Party Opponent

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

- 1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.**
- 2. If you believe that the statement was made, do you believe it was reported accurately?**

You should view testimony about an oral statement made by a party outside the courtroom with caution.

References

6 G.C.A. §801(d)(2) provides that a statement is not hearsay if it is "offered against a party and is (A) his own statement, in either his individual or a representative capacity or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Judicial Council of California Jury Instructions, Inst. 212.

213. Adoptive Admissions

You have heard evidence that [insert name of declarant] made the following statement: [insert description of statement]. You may consider that statement as evidence against [insert name of party against whom statement was offered] only if you find that both of the following conditions are true:

1. That [name of party against whom statement was offered] was aware of and understood the statement; and
2. That [name of party against whom statement was offered], by words or conduct, either
 - (a) expressed [his/her] belief that the statement was true; or
 - (b) implied that the statement was true.

If you do not decide that these conditions are true, you must not consider the statement at all.

Directions for Use

[Under Evidence Code section 403(c), the court must instruct the jury to disregard the evidence of an adoptive admission if it finds that the preliminary facts do not exist.]

For statements of a party opponent, see Instruction 212, *Statements of a Party Opponent*. For admissions by silence, see Instruction 214, *Admissions by Silence*. Evasive conduct falls under this instruction rather than Instruction 212 or 214.

References

6 G.C.A. §801(d)(2)(B) provides that a statement is not hearsay if it is “offered against a party and is ... a statement of which the party has manifested an adoption of belief in its truth ...”.

Judicial Council of California Jury Instructions, Inst. 213.

Committee Note

The original Civil Jury Instruction 213 contained a provision that is based on a CA statute not enacted in Guam which was not adopted by the committee and may be subject to controversy.

214. Admissions by Silence

You have heard evidence that [insert name of declarant] made a statement in the presence of [insert name of party who remained silent] that [insert description of statement]. You have also heard that [insert name of party who remained silent] did not deny the statement.

You may treat the silence of [insert name of party who remained silent] as an admission that the statement was true only if you believe all of the following conditions are true:

That [insert name of party who remained silent] was aware of and understood the statement;

That [he/she], by either words or actions, could have denied the statement but [he/she] did not; and

That [he/she] would have denied the statement if [he/she] thought it was false. In determining this, you may consider whether, under the circumstances, a reasonable person would have denied the statement if he or she thought it was false.

If you do not decide that all three of these conditions are true, you must not consider [insert name of party who remained silent]'s silence as an admission.

Directions for Use

The jury should be instructed on the doctrine of adoptive admission by silence if the evidence giving rise to the doctrine is conflicting.

For statements of a party opponent, see Instruction 212, *Statements of a Party Opponent*. For admissions by words or evasive conduct, see Instruction 213, *Adoptive Admissions*.

References

6 G.C.A. §801(d)(2)(B) provides that a statement is not hearsay if it is "offered against a party and is ... a statement of which the party has manifested an adoption of belief in its truth ...".

Judicial Council of California Jury Instructions, Inst. 214.

Committee Note

The original Civil Jury Instruction 214 contained a provision that is based on a CA statute not enacted in Guam which was not adopted by the committee and may be subject to controversy.

215. Exercise of a Communication Privilege

People have a legal right not to disclose what they told their [doctor/attorney, etc.] in confidence because the law considers this information privileged. People may exercise this privilege freely.

Directions for Use

This instruction may be given upon request, where appropriate.

References

6 G.C.A. Sections 501 – 505

Judicial Council of California Civil Jury Instructions, Inst. 215.

Committee Note

The original Civil Jury Instruction 215 contained a provision that is based on a CA statute not enacted in Guam which was not adopted by the committee and may be subject to controversy.

216. Exercise of Witness' Right Not to Testify

[Name of party/witness] has exercised [his/her] legal right not to testify concerning certain matters. A [party/witness] may exercise this right freely and without fear of penalty.

References

Judicial Council of California Civil Jury Instructions, Inst. 216.

Committee Note

The original Civil Jury Instruction 216 contained a provision that is based on a CA statute not enacted in Guam which was not adopted by the committee and may be subject to controversy.

217. Evidence of Settlement

You have heard evidence that there was a settlement between *[insert names of settling parties]*. You must not consider this settlement to determine responsibility for any harm. You may consider this evidence only to decide whether *[insert name of witness who settled]* is biased or prejudiced and whether **[his/her] testimony is believable.**

References

6 GCA § 8205: "An offer of compromise is not an admission that anything is due."

Judicial Council of California Civil Jury Instructions, Inst. 217.

218. Not Adopted.

219. Expert Witness Testimony

During the trial you heard *testimony* from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

1. The expert's training and experience;
2. The facts the expert relied on; and
3. The reasons for the expert's opinion.

Directions for Use

For instruction on hypothetical questions see Instruction 220, *Experts— Questions Containing Assumed Facts*. For instruction on conflicting expert testimony see Instruction 221, *Conflicting Expert Testimony*.

References

6 GCA § 602. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This Rule is subject to the provisions of 703, relating to opinion testimony by expert witnesses."

6 GCA § 701. "If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue."

6 GCA § 702. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

6 GCA § 703. "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."

6 GCA § 704. "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."

6 GCA § 705. "The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination."

220. Experts—Questions Containing Assumed Facts

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

References

6 G.C.A. § 703 provides that “[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”

Judicial Council of California Civil Jury Instructions, Inst. 220.

221. Conflicting Expert Testimony

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

References

6 G.C.A. § 2503 provides that “[a] witness is presumed to speak the truth. This presumption, however, may be contradicted by the manner in which he testifies, by the character of his testimony, or by the evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence, and the judge or jury, as the case may be, is the exclusive judge of his credibility.”

Judicial Council of California Civil Jury Instructions, Inst. 221.

222 – 299. Reserved for Future Use

CONTRACTS

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300. Essential Factual Elements

[Name of plaintiff] **claims that [he/she/it] and [name of defendant] entered into a contract for [insert brief summary of alleged contract].**

[Name of plaintiff] **claims that [name of defendant] breached this contract by [briefly state the alleged breach].**

[Name of plaintiff] **also claims that [name of defendant]'s breach of this contract caused harm to [name of plaintiff] for which [name of defendant] should pay.**

[Name of defendant] **denies [insert denial of any of the above claims]. [Name of defendant] also claims [insert affirmative defense].**

Directions for Use

This instruction is designed to introduce the jury to the issues involved in the case. It should be read before the instructions on the substantive law.

References

Judicial Council of California Civil Jury Instructions, Inst 300.

301. Third-Party Beneficiary

***[Name of plaintiff]* is not a party to the contract. However, *[name of plaintiff]* may be entitled to damages for breach of contract if *[he/she/it]* proves that *[insert names of the contracting parties]* intended for *[name of plaintiff]* to benefit from their contract.**

It is not necessary for *[name of plaintiff]* to have been named in the contract. In deciding what *[insert names of the contracting parties]* intended, you should consider the entire contract and the circumstances under which it was made.

References

18 GCA §85204 provides: "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Ronquillo v. Korea Auto., Fire, & Marine Ins. Co., 2001 Guam 25, ¶ 20 (quoting 18 GCA § 85204).

Judicial Council of California Civil Jury Instructions, Inst 301.

302. Contract Formation—Essential Factual Elements

[Name of plaintiff] claims that the parties entered into a contract. To prove that a contract was created, *[name of plaintiff]* must prove all of the following:

1. That the parties were legally capable of entering into the contract;
2. That the contract terms were clear enough that the parties could understand what each was required to do;
3. That the contract had a legal purpose;
4. That the parties agreed to give each other something of value. [A promise to do something or not to do something may have value]; and
5. That the parties agreed to the terms of the contract.

[When you examine whether the parties agreed to the terms of the contract, ask yourself if, under the circumstances, a reasonable person would conclude, from the words and conduct of each party, that there was an agreement. You may not consider the parties' hidden intentions.]

If *[name of plaintiff]* did not prove all of the above, then a contract was not created.

Directions for Use

This instruction should only be given where the existence of a contract is contested. If both parties agree that they had a contract, then the instructions relating to whether or not a contract was actually formed would not need to be given. At other times, the parties may be contesting only a limited number of contract formation issues. Also, some of these issues may be decided by the judge as a matter of law. Users should omit elements in this instruction that are not contested so that the jury can focus on the contested issues. Read the bracketed paragraph only if element #5 is read.

The terms "legally capable" and "legal purpose" may require further definition if these issues are before the jury. However, the judge would most likely decide these two issues and so these issues could be deleted from the instruction before it is given to the jury.

The final element of this instruction would be given prior to instructions on offer and acceptance. If neither offer nor acceptance is contested, then this element of the instruction will not need to be given to the jury.

References

18 GCA § 85102 states: "It is essential to the existence to to the existence (sic) of a contact that there should be: 1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and 4. A sufficient cause of consideration."

"The three recognized elements of a contract are an offer, acceptance, and consideration" *Mobil v. Tendido*, 2004 Guam 7, ¶ 34 (citing 18 GCA § 85102).

Takano-Towa Guam Co., Ltd. v. Cox, 1993 WL 128214, *8 (D.Guam A.D. 1993) ("[C]ourts will not uphold agreements which contain indefinite and uncertain provisions regarding the obligations imposed upon the parties

thereto, and which contracts are devoid of mutuality and consideration. Contracts must be definite enough to enable the court ascertain what is required of the respective parties in the performance thereof. . . . if an essential element of the contract is reserved for future agreement of both parties, there is no legal obligation created until such agreement is entered into. (Citations omitted).

Judicial Council of California Civil Jury Instructions, Inst. 302.

303. Breach of Contract—Essential Factual Elements

To recover damages from *[name of defendant]* for breach of contract, *[name of plaintiff]* must prove all of the following:

1. That *[name of plaintiff]* and *[name of defendant]* entered into a contract;
2. That *[name of plaintiff]* did all, or substantially all of the significant things that the contract required *[him/her/it]* to do [or that *[he/she/it]* was excused from having to do those things];
3. That all conditions required for *[name of defendant]*'s performance had occurred;
4. That *[name of defendant]* failed to do something that the contract required *[him/her/it]* to do; and
5. That *[name of plaintiff]* was harmed by that failure.

If you decide that *[name of plaintiff]* has proved each of the above, your verdict on this claim must be for *[name of plaintiff]*. If you do not find that all of the above have been proved, your verdict must be for *[name of defendant]*.

Directions for Use

In many cases, some of the above elements may not be contested. In those cases, users should delete the elements that are not contested so that the jury can focus on the contested issues.

If the allegation is that the defendant breached the contract by doing something that the contract prohibited, then change element 4 to the following: "That *[name of defendant]* did something that the contract prohibited *[him/her/it]* from doing."

References

18 GCA § 85101 states: "A contract is an agreement to do or not to do a certain thing."

18 GCA § 85102 states: "It is essential to the existence to to the existence (sic) of a contract that there should be: 1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and 4. A sufficient cause of consideration."

"The three recognized elements of a contract are an offer, acceptance, and consideration" *Mobil v. Tendido*, 2004 Guam 7, ¶ 34 (citing 18 GCA § 85102).

Judicial Council of California Civil Jury Instructions, Inst. 303.

304. Oral or Written Contract Terms

[Contracts may be written or oral.] [Contracts may be partly written and partly oral.] Oral contracts are just as valid as written contracts.

Directions for Use

Give the bracketed alternative that is most applicable to the facts of the case.

If the agreement is fully integrated, this instruction should not be given. See *Bank of Guam v. Flores*, 2004 Guam 25, ¶ 17 (discussing Guam's parol evidence rule and stating: "When the parties have reduced the terms of an agreement to a writing, [Title 6 GCA §] 2511 prohibits the introduction of any evidence of the terms of the agreement other than the contents of the writing, except where a mistake or imperfection of the writing is an issue or where the validity of the agreement is in dispute."); *Leong v. Deng*, 2002 Guam 2, ¶ 17 ("The general rule is that a written contract 'supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.'").

References

18 GCA § 86104 states: "All contracts may be oral, except such as are specially required by statute to be in writing."

Judicial Council of California Civil Jury Instructions, Inst 304.

305. Implied in Fact Contract

In deciding whether a contract was created, you should consider the conduct and relationship of the parties as well as all the circumstances of the case.

Contracts can be created by the conduct of the parties, without spoken or written words. Contracts created by conduct are just as valid as contracts formed with words.

Conduct will create a contract if the conduct of both parties is intentional and each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract.

References

18 GCA § 86101 states: "A contract is either express or implied."

18 GCA § 86102 states: "An implied contract is one, the existence and terms of which are manifested by conduct."

18 GCA § 86103 states: "An express contract is one, the terms of which are stated in words."

Judicial Council of California Civil Jury Instructions, Inst. 305.

306. Unformalized Agreement

[Name of defendant] contends that the parties did not enter into a contract because the agreement was never written and signed. To overcome this contention, *[name of plaintiff]* must prove both of the following:

That the parties understood and agreed to the terms of the agreement; and

That the parties agreed to be bound without a written agreement [or before a written agreement was prepared].

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

References

Judicial Council of California Civil Jury Instructions, Inst. 306.

307. Contract Formation - Offer

Both an offer and an acceptance are required to create a contract. [Name of defendant] contends that a contract was not created because there was never any offer. To overcome this contention, [name of plaintiff] must prove all of the following:

That [name of plaintiff] communicated to [name of defendant] that [he/she/it] was willing to enter into a contract with [name of defendant];

That the communication contained specific terms; and

That, based on the communication, [name of defendant] could have reasonably concluded that a contract with these terms would result if [he/she/it] accepted the offer.

If [name of plaintiff] did not prove all of the above, then a contract was not created.

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention. This instruction assumes that the defendant is claiming the plaintiff never made an offer. Change the identities of the parties in the indented paragraphs if, under the facts of the case, the roles of the parties are switched (e.g., if defendant was the alleged offeror.) If the existence of an offer is not contested, then this instruction is unnecessary.

References

18 GCA § 85102 states: "It is essential to the existence of a contract that there should be: 1) Parties capable of contracting; 2) Their consent; 3) A lawful object; and 4) A sufficient cause or consideration."

"The three recognized elements of a contract are an offer, acceptance, and consideration" *Mobil v. Tendido*, 2004 Guam 7, ¶ 34 (citing 18 GCA § 85102).

The Supreme Court of Guam in *Tendido*, 2004 Guam 7 at ¶ 35, stated:

An offer is an manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. . . . In order for there to be an offer which may ripen into a contract by a simple acceptance, the offer must be reasonably definite in its terms and must sufficiently cover the essentials of the proposed transaction so that, with an expression of assent⁶, there will be a completed and definite agreement on all essential details.
(citations omitted).

Judicial Council of California Civil Jury Instructions, Inst. 307.

308. Contract Formation—Revocation of Offer

Both an offer and an acceptance are required to create a contract. [Name of defendant] contends that the offer was withdrawn before it was accepted. To overcome this contention, [name of plaintiff] must prove one of the following:

1. That [name of defendant] did not withdraw the offer; or
2. That [name of plaintiff] accepted the offer before [name of defendant] withdrew it; or
3. That [name of defendant]'s withdrawal of the offer was never communicated to [name of plaintiff].

If [name of plaintiff] did not prove any of the above, then a contract was not created.

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

This instruction assumes that the defendant is claiming to have revoked his or her offer. Change the identities of the parties in the indented paragraphs if, under the facts of the case, the roles of the parties are switched (e.g., if defendant was the alleged offeree).

References

18 GCA § 85233 provides: "A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards." The methods for revocation are listed in section 85323 and include:

- 1) Communication of revocation,
- 2) Lapse of time for acceptance,
- 3) Failure to fulfill condition precedent to acceptance, and
- 4) By death or insanity of proposer.

This instruction addresses the first method.

See eg, Mobil v. Tendido, 2004 Guam 7, ¶¶ 23-24 (regarding options) ("Defined at its most basic level, an option is simply a contract to keep an offer open. . . . [and] may be revoked prior to being accepted unless the option is supported by consideration.")

Judicial Council of California Civil Jury Instructions, Inst. 308.

309. Contract Formation—Acceptance

Both an offer and an acceptance are required to create a contract. [Name of defendant] contends that a contract was not created because the offer was never accepted. To overcome this contention, [name of plaintiff] must prove both of the following:

1. That [name of defendant] agreed to be bound by the terms of the offer. [If [name of defendant] agreed to be bound only on certain conditions, or if [he/she/it] introduced a new term into the bargain, then there was no acceptance]; and
2. That [name of defendant] communicated [his/her/its] agreement to [name of plaintiff]

If [name of plaintiff] did not prove both of the above, then a contract was not created.

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

This instruction assumes that the defendant is claiming to have not accepted plaintiff's offer. Change the identities of the parties in the indented paragraphs if, under the facts of the case, the roles of the parties are switched (e.g., if defendant was the alleged offeror).

References

18 GCA § 85102 states: "It is essential to the existence of a contract that there should be: 1) Parties capable of contracting; 2) Their consent; 3) A lawful object; and 4) A sufficient cause or consideration."

"The three recognized elements of a contract are an offer, acceptance, and consideration" *Mobil v. Tendido*, 2004 Guam 7, ¶ 34 (citing 18 GCA § 85102).

18 GCA § 85321 states: "An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal."

See Guam United Warehouse Corp. v. DeWitt Transportation Services of Guam, Inc., 2003 Guam 20, n.10 ("[I]t is not necessarily true that any communication other than an unequivocal acceptance is a rejection. Thus, an acceptance is not invalidated by the fact that it is 'grumbling', or that the offeree makes some simultaneous 'request'").

Judicial Council of California Civil Jury Instructions, Inst. 309.

310. Contract Formation—Acceptance by Silence

Ordinarily, if a party does not say or do anything in response to another party's offer, then he or she has not accepted the offer. However, if *[name of plaintiff]* proves that both *[he/she/it]* and *[name of defendant]* understood silence or inaction to mean that *[name of defendant]* had accepted *[name of plaintiff]*'s offer, then there was an acceptance.

Directions for Use

This instruction assumes that the defendant is claiming to have not accepted plaintiff's offer. Change the identities of the parties in the last two sets of brackets if, under the facts of the case, the roles of the parties are switched (e.g., if defendant was the alleged offeror).

This instruction should be read in conjunction with and immediately after Instruction 309, *Contract Formation—Acceptance*, if acceptance by silence is an issue.

References

18 GCA § 85325 states: "A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting."

Judicial Council of California Jury Instructions, Inst. 310.

311. Contract Formation—Rejection of Offer

[Name of defendant] contends that the offer to enter into a contract terminated because *[name of plaintiff]* rejected it. To overcome this contention, *[name of plaintiff]* must prove both of the following:

1. That *[name of plaintiff]* did not reject *[name of defendant]*'s offer; and
2. That *[name of plaintiff]* did not make any additions or changes to the terms of *[name of defendant]*'s offer.

If *[name of plaintiff]* did not prove both of the above, then a contract was not created.

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

This instruction assumes that the defendant is claiming plaintiff rejected defendant's offer. Change the identities of the parties in the indented paragraphs if, under the facts of the case, the roles of the parties are switched (e.g., if defendant was the alleged offeree).

Conceptually, this instruction dovetails with Instruction 309, *Contract Formation—Acceptance*. This instruction is designed for the situation where a party has rejected an offer by not accepting it on its terms.

References

18 GCA § 85321 provides: "An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal."

Judicial Council of California Civil Jury Instructions, Inst. 311

312. Substantial Performance

[Name of defendant] contends that *[name of plaintiff]* did not perform all of the things that *[he/she/it]* was required to do under the contract, and therefore *[name of defendant]* did not have to perform *[his/her/its]* obligations under the contract. To overcome this contention, *[name of plaintiff]* must prove both of the following:

1. That *[name of plaintiff]* made a good faith effort to comply with the contract; and
2. That *[name of defendant]* received essentially what the contract called for because *[name of plaintiff]*'s failures, if any, were so trivial or unimportant that they could have been easily fixed or paid for.

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

References

20 GCA § 3227 states: "Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default."

20 GCA § 15125 states: "The law disregards trifles."

B. M. Co. v. Avery, 2001 Guam 27, ¶ 14 ("Where a construction contract is substantially performed within the time limit, delay in the completion of minor details which does not cause material damage to the project will not subject the builder to liquidated damages.")

JWS Refrigeration & Air Conditioning, Ltd. v. Charles Young Construction Co., 1987 WL 109891 (D. Guam. A.D. 1987) ("The de minimus rule provides that some technical breaches of a contract are so trifling that the law will not therefore relieve the non-breaching party from his duty to perform.").

Judicial Council of California Civil Jury Instructions, Inst. 312.

313. Modification

***[Name of party]* claims that the original contract was modified, or changed. *[Name of party]* must prove that the parties agreed to the modification. *[Name of other party]* denies that the contract was modified.**

The parties to a contract may agree to modify its terms. You must decide whether a reasonable person would conclude from the words and conduct of *[name of plaintiff]* and *[name of defendant]* that they agreed to modify the contract. You cannot consider the parties' hidden intentions.

[A contract in writing may be modified by a contract in writing.]

[A contract in writing may be modified by an oral agreement to the extent the oral agreement is carried out by the parties.]

[An oral contract may be modified by consent of the parties, in writing, without an agreement to give each other something of value.]

References

18 GCA § 89301 states: "A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration."

18 GCA § 89302 states: "A contract in writing may be altered by a contract, in writing, or by an executed oral agreement, and not otherwise."

18 GCA § 87125 states: "An executed contract is one, the object of which is fully performed. All others are executory."

Judicial Council of California Civil Jury Instructions, Inst. 313.

314. Interpretation—Disputed Term

[Name of plaintiff] and *[name of defendant]* dispute the meaning of the following term contained in their contract: *[insert text of term]*.

[Name of plaintiff] claims that the term means: *[insert plaintiff's interpretation of the term]*. *[Name of defendant]* claims that the term means: *[insert defendant's interpretation of the term]*. *[Name of plaintiff]* must prove that *[his/her/its]* interpretation of the term is correct.

In deciding what the terms of a contract mean, you must decide what the parties intended at the time the contract was created. You may consider the usual and ordinary meaning of the language used in the contract as well as the circumstances surrounding the making of the contract.

[The following instructions may also help you interpret the terms of the contract:]

Directions for Use

Read any of the following instructions (as appropriate) on tools for interpretation (Instructions 315 through 320) after reading the last bracketed sentence.

References

18 GCA § 87102 states: “A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.”

18 GCA § 87105 states: “When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible”

18 GCA § 87113 states: “A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.”

18 GCA § 87110 states: “The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.”

Leon Guerrero v. Moylan, 2000 Guam 28, ¶ 8 (“In the interpretation of contracts, effect must be given to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.”)

Camacho v. Camacho, 1997 Guam 5, ¶ 33 (“The words of a contract should be given an ordinary meaning, unless they are technical words, such as legal terms of art.”)

Bank of Guam v. Flores, 2004 Guam 25, ¶ 14 (“[I]t is a well-settled principle that if a contract is ambiguous on its face, a court must look to extrinsic evidence to interpret the contract.”)

Judicial Council of California Civil Jury Instructions, Inst. 314.

315. Interpretation—Meaning of Ordinary Words

You should assume that the parties intended the words in their contract to have their usual and ordinary meaning unless you decide that the parties intended the words to have a special meaning.

References

18 GCA § 87110 states:

The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

1 GCA § 724 states:

Words and phrases are construed according to the context and the approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

Camacho v. Camacho 1997 Guam 5, ¶ 33 (“It is clear from the four sections of Title 18, cited above [including section 97110], that in interpreting a clause of a contract to determine the intent of the contracting parties, whenever possible, the express language of the contract should control. The words of a contract should be given an ordinary meaning, unless they are technical words, such as legal terms of art”).

Bank of Guam v. Flores, 2004 Guam 25, ¶ 14 (“[I]f the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning.”)

Judicial Council of California Civil Jury Instructions, Inst. 315.

316. Interpretation—Meaning of Technical Words

You should assume that the parties intended technical words used in the contract to have the meaning that is usually given to them by people who work in that technical field, unless you decide that the parties clearly used the words in a different sense.

References

18 GCA § 87111 provides: “Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.”

1 GCA § 724 states:

Words and phrases are construed according to the context and the approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

See Camacho v. Camacho 1997 Guam 5, ¶ 33 (“It is clear from the four sections of Title 18, cited above [including section 97110], that in interpreting a clause of a contract to determine the intent of the contracting parties, whenever possible, the express language of the contract should control. The words of a contract should be given an ordinary meaning, unless they are technical words, such as legal terms of art”).

Bank of Guam v. Flores, 2004 Guam 25, ¶ 14 (“[I]f the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning.”)

Judicial Council of California Civil Jury Instructions, Inst. 316.

317. Interpretation—Construction of Contract as a Whole

In deciding what the words of a contract meant to the parties, you should consider the whole contract, not just isolated parts. You should use each part to help you interpret the others, so that all the parts make sense when taken together.

References

18 GCA § 87107 states: "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."

Pittsburgh, Pa. v. Guam Housing and Urban Renewal Authority, 2003 Guam 19, ¶ 21 ("Generally, an insurance contract must be construed as a whole . . .") (quoting *Indep. Sch. Dist. No. 697, Eveleth v. St. Paul Fire & Marine Ins. Co.*, 515 N.W.2d 576, 579 (Minn.1994)).

Bank of Guam v. Flores, 2004 Guam 25, ¶ 10 ("Interpretation of a contract to determine what is intended by its various provisions is properly done by considering the contract as a whole and not by considering a particular part of the contract in isolation.").

Judicial Council of California Civil Jury Instructions, Inst. 317.

318 Interpretation -- Construction by Conduct

In deciding what the words in a contract meant to the parties, you may consider how the parties acted after the contract was created but before any disagreement between the parties arose.

References

Judicial Council of California Civil Jury Instructions, Inst. 318.

319 Interpretation--Reasonable Time

If a contract does not state a specific time in which the parties are to meet the requirements of the contract, then the parties must meet them within a reasonable time. What is a reasonable time depends on the facts of each case, including the subject matter of the contract, the reasons each party entered into the contract, and the intentions of the parties at the time they entered the contract.

References

18 GCA § 87123 states:

If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly -- as, for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

Judicial Council of California Civil Jury Instructions, Inst. 319.

320. Interpretation--Construction Against Drafter

In determining the meaning of a term of the contract, you must first consider all of the other instructions that I have given you. If, after considering these instructions, you still cannot agree on the meaning of the term, then you should interpret the contract term against [the party that drafted the term] [the party that caused the uncertainty].

Directions for Use

This instruction should be given only to a deadlocked jury, so as to avoid giving them this tool to resolve the case before they have truly exhausted the other avenues of approach.

References

18 GCA § 87120 states:

In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by private party.

Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth., 2003 Guam 19, n.17 (“We acknowledge that there are few, if any, causes of action which require a claimant to prove awareness of wrongfulness. This fact, however, is not our concern. We are merely required to interpret the contract as written, in light of the plain language and the reasonable expectations of the insured. If the Policy is drafted in a way that will never be of benefit to the insurer, the disadvantage created therein must fall on the shoulders of the drafter.”)

Judicial Council of California Civil Jury Instructions, Inst. 320.

321. Existence of Condition Precedent Disputed

[Name of defendant] claims that the contract with [name of plaintiff] provides that [he/she/it] was not required to [insert duty] unless [insert condition precedent].

[Name of defendant] must prove that the parties agreed to this condition. If [name of defendant] proves this, then [name of plaintiff] must prove that [insert condition precedent].

If [name of plaintiff] does not prove that [insert condition precedent], then [name of defendant] was not required to [insert duty].

Directions for Use

This instruction should only be given where both the existence and the occurrence of a condition precedent are contested. If only the occurrence of a condition precedent is contested, use Instruction 322, Occurrence of Agreed Condition Precedent.

References

18 GCA § 80401 states: "An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event."

18 GCA § 80402 states: "Kinds of Conditions. Conditions may be precedent, concurrent, or subsequent."

18 GCA § 80403 provides: "A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed."

See Leong v. Deng, 2002 Guam 2, ¶ 16 ("The existence of a condition precedent is a question of fact.") (discussing conditions precedent relative to the parol evidence rule);

Bank of Guam v. Del Priore, 2001 Guam 10, ¶ 30 (holding that "compliance with the notice requirement of 13 GCA § 9504(3) is a condition precedent to receiving a deficiency judgment).

Judicial Council of California Civil Jury Instructions, Inst. 321.

322. Occurrence of Agreed Condition Precedent

The parties agreed in their contract that [name of defendant] would not have to [insert duty] unless [insert condition precedent]. [Name of defendant] contends that this condition did not occur and that [he/she/it] did not have to [insert duty]. To overcome this contention, [name of plaintiff] must prove that [insert condition precedent].

If [name of plaintiff] does not prove that [insert condition precedent], then [name of defendant] was not required to [insert duty].

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

If both the existence and the occurrence of a condition precedent are contested, use Instruction 321, Existence of Condition Precedent Disputed.

References

Title 18 GCA § 80401 states: “An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.”

Title 18 GCA § 80402 states: “Kinds of Conditions. Conditions may be precedent, concurrent, or subsequent.”

18 GCA § 80403 provides: “A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.”

See Leong v. Deng, 2002 Guam 2, ¶ 16 (“The existence of a condition precedent is a question of fact.”) (discussing conditions precedent relative to the parol evidence rule);

Bank of Guam v. Del Priore, 2001 Guam 10, ¶ 30 (holding that “compliance with the notice requirement of 13 GCA § 9504(3) is a condition precedent to receiving a deficiency judgment).

Judicial Council of California Civil Jury Instructions, Inst. 322.

323. Waiver of Condition Precedent

***[Name of plaintiff]* and *[name of defendant]* agreed in their contract that *[name of defendant]* would not have to *[insert duty]* unless *[insert condition precedent]*. That condition did not occur. Therefore, *[name of defendant]* contends that *[he/she/it]* did not have to *[insert duty]*.**

To overcome this contention, *[name of plaintiff]* must prove that *[name of defendant]*, by words or conduct, gave up *[his/her/its]* right to require *[insert condition precedent]* before having to *[insert duty]*.

Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

References

18 GCA § 80402 states: "Kinds of Conditions. Conditions may be precedent, concurrent, or subsequent."

18 GCA § 80403 states: "Conditions precedent. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

18 GCA § 80406 states:

When performance is essential. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself, and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided in the next section [80407].

Judicial Council of California Civil Jury Instructions, Inst. 323.

324. Anticipatory Breach

A party can breach, or break, a contract before performance is required by clearly and positively indicating, by words or conduct, that he or she will not or can not meet the requirements of the contract.

If *[name of plaintiff]* proves that *[he/she/it]* would have been able to fulfill the terms of the contract and that *[name of defendant]* clearly and positively indicated, by words or conduct, that *[he/she/it]* would not or could not meet the contract requirements, then *[name of defendant]* breached the contract.

References

18 GCA § 80407 states:

When performance excused. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.

13 GCA § 2610 (Guam UCC) states:

Anticipatory Repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

- (a) For a commercially reasonable time await performance by the repudiating party; or
- (b) Resort to any remedy for breach (Section 2703 or Section 2711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and
- (c) In either case suspend his own performance or proceed in accordance with the provisions of this division on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2704).

Judicial Council of California, Civil Jury Instructions, Inst. 324.

325 – 329. Reserved for Future Use

330. Affirmative Defense—Unilateral Mistake of Fact

[Name of defendant] claims that there was no contract because *[he/she/it]* was mistaken about *[insert description of mistake]*. To succeed, *[name of defendant]* must prove all of the following:

1. That *[name of plaintiff]* knew *[name of defendant]* was mistaken about *[insert description of mistake]* and used that mistake to take advantage of *[him/her/it]*;
2. That *[name of defendant]*'s mistake was not caused by *[his/her/its]* excessive carelessness; and
3. That *[name of defendant]* would not have agreed to enter into the contract if *[he/she/it]* had known about the mistake.

If you decide that *[name of defendant]* has proved all of the above, then no contract was created.

Directions for Use

If the mistake is one of law, this may not be a jury issue.

References

18 GCA § 85312 states: "Mistake may be either of fact or law."

18 GCA § 85313 states:

Mistake of fact. Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in---

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,
2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Cf. 18 GCA § 85314, which provides:

Mistake of law. A mistake of law constitutes a mistake within the meaning of this Article only when it arises from---

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or
2. A misapprehension of the law by one party, of which the others are aware at the time of the contracting, but which they do not rectify.

Judicial Council of California, Civil Jury Instructions, Inst. 330.

331. Affirmative Defense—Bilateral Mistake

[Name of defendant] claims that there was no contract because both parties were mistaken about *[insert description of mistake]*.

To succeed, *[name of defendant]* must prove both of the following:

1. That both parties were mistaken about *[insert description of mistake]*; and
2. That *[name of defendant]* would not have agreed to enter into this contract if *[he/she/it]* had known about the mistake.

If you decide that *[name of defendant]* has proved both of the above, then no contract was created.

Directions for Use

If the mistake is one of law, this may not be a jury issue.

References

18 GCA § 85312 states: "Mistake may be either of fact or law.

18 GCA § 85313 states:

Mistake of fact. Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in---

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,
2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Cf. 18 GCA § 85314, which provides:

Mistake of law. A mistake of law constitutes a mistake within the meaning of this Article only when it arises from---

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or
2. A misapprehension of the law by one party, of which the others are aware at the time of the contracting, but which they do not rectify.

Judicial Council of California, Civil Jury Instructions, Inst. 331.

332. Affirmative Defense - Duress

[Name of defendant] claims that there was no contract because *[his/her]* consent was given under duress. To succeed, *[name of defendant]* must prove all of the following:

1. That *[name of plaintiff]* used a wrongful act or wrongful threat to pressure *[name of defendant]* into consenting to the contract;
2. That *[name of defendant]* was so afraid or intimidated by the wrongful act or wrongful threat that *[he/she]* did not have the free will to refuse to consent to the contract; and
3. That *[name of defendant]* would not have consented to the contract without the wrongful act or wrongful threat.

An act or a threat is wrongful if *[insert relevant rule—e.g., "what is threatened is a criminal act"]*.

If you decide that *[name of defendant]* has proved all of the above, then no contract was created.

References

18 GCA §§ 85303 and 85304 provides that consent is not free when obtained through duress, menace, fraud, undue influence, or mistake, and is deemed to have been so obtained when it would not have been given but for such fraud or mistake.

18 GCA § 85305 provides that the following acts constitute duress:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
2. Unlawful detention of the property of any such person; or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

18 GCA § 85306 provides:

Menace consists in a threat:

1. Of such duress as is specified in Subdivisions 1 and 3 of the last section;
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,
3. Of injury to the character of any such person.

Judicial Council of California Civil Jury Instructions, Inst. 332.

333. Affirmative Defense - Economic Duress

[Name of defendant] claims that there was no contract because *[his/her/its]* consent was given under duress. To succeed, *[name of defendant]* must prove both of the following:

1. That *[name of plaintiff]* used a wrongful threat to pressure *[name of defendant]*'s consent to the contract; and
2. That a reasonable person in *[name of defendant]*'s position would have felt that he or she had no reasonable alternative except to consent to the contract.

A threat is wrongful if *[insert relevant rule, e.g., "what is threatened is a bad-faith breach of contract"]*.

If you decide that *[name of defendant]* has proved both of the above, then no contract was created.

References

18 GCA §§ 85303 and 85304 provide that consent is not free when obtained through duress, menace, fraud, undue influence, or mistake, and is deemed to have been so obtained when it would not have been given but for such fraud or mistake.

Judicial Council of California Civil Jury Instructions, Inst. 333.

334. Affirmative Defense- Undue Influence

[Name of defendant] claims that no contract was created because *[he/she]* was unfairly pressured by *[name of plaintiff]* into consenting to the contract.

To succeed, *[name of defendant]* must prove both of the following:

1. That *[name of plaintiff]* used *[a relationship of trust and confidence]* *[or]* *[[name of defendant]'s weakness of mind]* *[or]* *[[name of defendant]'s needs or distress]* to induce or pressure *[name of defendant]* into consenting to the contract; and
2. That *[name of defendant]* would not otherwise have consented to the contract.

If you decide that *[name of defendant]* has proved both of the above, then no contract was created.

References

18 GCA §§ 85303 and 85304 provide that consent is not free when obtained through duress, menace, fraud, undue influence, or mistake, and is deemed to have been so obtained when it would not have been given but for such fraud or mistake.

18 GCA § 85311 provides three circumstances that support a finding of undue influence:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
2. In taking an unfair advantage of another's weakness of mind; or,
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

Judicial Council of California Civil Jury Instructions, Inst. 334.

335. Affirmative Defense—Fraud

[Name of defendant] claims that no contract was created because *[his/her/its]* consent was obtained by fraud. To succeed, *[name of defendant]* must prove all of the following:

1. That *[name of plaintiff]* represented that *[insert alleged fraudulent statement]*;
2. That *[name of plaintiff]* knew that the representation was not true;
3. That *[name of plaintiff]* made the representation to persuade *[name of defendant]* to agree to the contract;
4. That *[name of defendant]* reasonably relied on this representation; and
5. That *[name of defendant]* would not have entered into the contract if *[he/she/it]* had known that the representation was not true.

If you decide that *[name of defendant]* has proved all of the above, then no contract was created.

Directions for Use

This instruction covers intentional misrepresentation under the first alternative presented in 18 G.C.A. §85308. The other types of fraud that are set forth in section 85308 are negligent misrepresentation, concealment of a material fact, and false promise.

If the case involves an alleged negligent misrepresentation, substitute the following for element 2: "That *[name of plaintiff]* had no reasonable grounds for believing the representation was true."

If the case involves concealment, the following may be substituted for element 1: "That *[name of plaintiff]* intentionally concealed an important fact from *[name of defendant]*, creating a false representation." See Instruction 1901, *Concealment*, for alternative ways of proving this element.

If the case involves a false promise, substitute the following for element 1: "That *[name of plaintiff]* made a promise that *[he/she/it]* did not intend to perform" and insert the word "promise" in place of the word "representation" throughout the remainder of the instruction.

References

Title 18 GCA §§ 85303 and 85304 provide that consent is not free when obtained through duress, menace, fraud, undue influence, or mistake, and is deemed to have been so obtained when it would not have been given but for such fraud or mistake. (Civ. Code, §§ 1567, 1568.)

18 GCA § 85308 provides:

Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

Trans Pacific Export Co. v. Oka Towers Corp., 2000 Guam 3, ¶ 23 (“The elements of fraud include: 1) a misrepresentation; 2) knowledge of falsity (or scienter); 3) intent to defraud to induce reliance; 4) justifiable reliance; 5) resulting damages.”)

Judicial Council of California Civil Jury Instructions, Inst. 335.

336. Affirmative Defense—Waiver

[Name of defendant] claims that *[he/she/it]* did not have to *[insert description of performance]* because *[name of plaintiff]* gave up *[his/ her/its]* right to have *[name of defendant]* perform *[this/these]* obligation[s]. This is called a “waiver.”

To succeed, *[name of defendant]* must prove both of the following:

1. That *[name of plaintiff]* knew *[name of defendant]* was required to *[insert description of performance]*; and
2. That *[name of plaintiff]* freely and knowingly gave up *[his/her/its]* right to have *[name of defendant]* perform *[this/ these]* obligation[s].

A waiver may be oral or written or may arise from conduct that shows that *[name of plaintiff]* gave up that right.

If *[name of defendant]* proves that *[name of plaintiff]* gave up *[his/ her/its]* right to *[name of defendant]*'s performance of *[insert description of performance]*, then *[name of defendant]* was not required to perform *[this/these]* obligation[s].

Directions for Use

This committee takes no position as to whether this issue is decided under the “preponderance of evidence” or “clear and convincing” standard of proof. See Instruction 200, *Obligation to Prove—More Likely True Than Not True*. See Instruction 201, *More Likely True—Clear and Convincing Proof*.

References

Mobil Oil Guam, Inc. v. Lee, 2003 Guam 15, n.6; (“A waiver is an intentional relinquishment of a known right and is a voluntary act ...”).

GHURA v. Dongbu Insurance Co., 2001 Guam 24, ¶16 (“Waiver is the intentional relinquishment of a known right.”)

Judicial Council of California Civil Jury Instructions, Inst. 336.

337. Affirmative Defense—Novation

[Name of defendant] claims that the original contract with *[name of plaintiff]* cannot be enforced [because the parties substituted a new and different contract for the original] [because a party to the original contract, *[insert name]*, was substituted by a new party, *[insert name]*, and at the same time, *[original party name]* [was released from liability/transferred his rights to the new party]. To succeed, *[name of defendant]* must prove that all parties agreed, by words or conduct, to cancel the original contract and to substitute a new contract in its place.

If you decide that *[name of defendant]* has proved this, then the original contract is not enforceable.

Directions for Use

If the contract in question is not the original contract, specify which contract it is instead of "original." Use the term "was released from liability" where the party substituted is a debtor and the term "transferred his rights to the new party" where the party substituted is a creditor. See 18 GCA § 82502 ("Novation is made . . . [b]y the substitution of a new debtor in place of the old one, with intent to release the latter" or "[b]y the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.").

References

18 GCA § 82501:

Novation is the substitution of a new obligation for an existing one.

18 GCA § 82502:

Novation is made . . . [b]y the substitution of a new obligation between the same parties, with intent to extinguish the old obligation.

18 GCA § 82502

Novation is made . . . [b]y the substitution of a new debtor in place of the old one, with intent to release the latter" or "[b]y the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

Pangelinan v. Gutierrez/GRPP, 2004 Guam 16, ¶¶ 24-25:

A novation "is the substitution of a new obligation for an existing one." Title 18 GCA § 82501 (1994). Novation of a contract generally occurs in one of two ways. The first is by "replacement of an unexpired contract by another contract reached through renegotiation" *Williams Petroleum Co. v. Midland Coops.*, 679 F.2d 815, 819 (10th Cir. 1982); see also Title 18 GCA § 82502 (1994) ("Novation is made . . . [b]y the substitution of a new obligation between the same parties, with intent to extinguish the old obligation"). This is the interpretation of novation raised by Appellants, who contend that the 1982 License has been renegotiated and replaced by the parties' subsequent agreements. However, "[r]egardless of the extent to which a contract is modified, a novation cannot be found unless it be shown that the parties intended and agreed to extinguish the original contract." *Howard v. Amador*, 269 Cal. Rptr. 807, 817 (Ct. App. 1990). Appellants in this instance have offered only the substantial change in the contract's terms as proof that the parties entered into a new contract. . . . [T]he second method of novation, which occurs where there is "the substitution of a new party concurrent with the release of an original party from liability." *Williams*, 679 F.2d at 819; see also 18 GCA § 82502 ("Novation is made . . . [b]y the substitution of a new debtor in place of the old one, with intent to release

the latter" or "[b]y the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former. ").

Judicial Council of California Civil Jury Instructions, Inst. 337.

338 – 349. Reserved for Future Use

350. Introduction to Contract Damages

If you decide that *[name of plaintiff]* has proved *[his/her/its]* claim against *[name of defendant]* for breach of contract, you also must decide how much money will reasonably compensate *[name of plaintiff]* for the harm caused by the breach. This compensation is called "damages." The purpose of such damages is to put *[name of plaintiff]* in as good a position as *[he/she/it]* would have been if *[name of defendant]* had performed as promised.

To recover damages for any harm, *[name of plaintiff]* must prove:

1. That the harm was likely to arise in the ordinary course of events from the breach of the contract; or
2. That when the contract was made, both parties could have reasonably foreseen the harm as the probable result of the breach.

[Name of plaintiff] also must prove the amount of *[his/her/its]* damages according to the following instructions. However, *[he/she/it]* does not have to prove the exact amount of damages. You must not speculate or guess in awarding damages.

[Name of plaintiff] claims damages for *[identify general damages claimed]*.

Directions for Use

This instruction should be always be read before any of the following specific damages instructions.

References

20 GCA § 2101 states:

Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor, in money, which is called damages.

20 GCA § 2102:

Detriment is a loss or harm suffered in person or property.

20 GCA § 2201:

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

20 GCA § 2202:

No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

20 GCA § 2280:

Notwithstanding the provisions of this Chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in §§ 2219 (Breach of Promise of Marriage), 2231 (Seduction), and 2232 (Injury to Animals).

20 GCA § 2281:

Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Judicial Council of California Civil Jury Instructions, Inst. 350.

351. Special Damages

[Name of plaintiff] [also] claims damages for *[identify special damages]*.

To recover for this harm, *[name of plaintiff]* must prove that when the parties made the contract, *[name of defendant]* knew or reasonably should have known of the special circumstances leading to such harm.

Directions for Use

Before giving this instruction, the judge should determine whether a particular item of damage qualifies as "special."

References

20 GCA § 2201:

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

Judicial Council of California Civil Jury Instructions, Inst. 351.

352. Loss of Profits—No Profits Earned

To recover damages for lost profits, *[name of plaintiff]* must prove that it is reasonably certain *[he/she/it]* would have earned profits but for *[name of defendant]*'s breach of the contract.

To decide the amount of damages for lost profits, you must determine the gross, or total, amount *[name of plaintiff]* would have received if the contract had been performed and then subtract from that amount the costs *[including the value of the [labor/materials/rents/expenses/interest on loans invested in the business]]* *[name of plaintiff]* would have had if the contract had been performed.

You do not have to calculate the amount of the lost profits with mathematical precision, but there must be a reasonable basis for computing the loss.

Directions for Use

This instruction applies to both past and future lost profit claims. Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*, or Instruction 351, *Special Damages*.

Insertion of specified types of costs to be deducted from gross earnings is optional, depending on the facts of the case. Other types of costs may be inserted as appropriate.

References

20 GCA § 2202 states: "No damages can be recovered for breach of contract which are not clearly ascertainable in both their nature and origin."

B.M. Co. v. Avery, 2001 Guam 27, ¶ 34 ("Moreover, the exact amount of damages need not be proven, and a jury's award will stand so long as there is a reasonable basis in the evidence for the amount awarded. (citation) So long as the award is not based on speculation and conjecture and a prudent impartial person can estimate the amount with reasonable certainty, the award should be left standing. . . .").

Judicial Council of California Civil Jury Instructions, Inst. 352.

353. Loss of Profits—Some Profits Earned

To recover damages for lost profits, *[name of plaintiff]* must prove that it is reasonably certain *[he/she/it]* would have earned more profits but for *[name of defendant]*'s breach of the contract.

To decide the amount of damages for lost profits, you must:

1. First, calculate *[name of plaintiff]*'s estimated total profit by determining the gross amount *[he/she/it]* would have received if the contract had been performed, and then subtracting from that amount the costs *[including the value of the [labor/materials/rents/expenses/interest on loans invested in the business]]* *[name of plaintiff]* would have had if the contract had been performed;
2. Next, calculate *[name of plaintiff]*'s actual profit by determining the gross amount *[he/she/it]* actually received, and then subtracting from that amount *[name of plaintiff]*'s actual costs *[including the value of the [labor/materials/ rents/expenses/interest on loans invested in the business]]*; and
3. Then, subtract *[name of plaintiff]*'s actual profit, which you determined in the second step, from *[his/her/its]* estimated total profit, which you determined in the first step. The resulting amount is *[name of plaintiff]*'s lost profit.

You do not have to calculate the amount of the lost profits with mathematical precision, but there must be a reasonable basis for computing the loss.

Directions for Use

Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*, or Instruction 351, *Special Damages*.

Insertion of specified types of costs to be deducted from gross earnings is optional, depending on the facts of the case. Other types of costs may be inserted as appropriate.

References

20 GCA § 2202 states: "No damages can be recovered for breach of contract which are not clearly ascertainable in both their nature and origin."

B.M. Co. v. Avery, 2001 Guam 27, ¶ 34 ("Moreover, the exact amount of damages need not be proven, and a jury's award will stand so long as there is a reasonable basis in the evidence for the amount awarded. (citation) So long as the award is not based on speculation and conjecture and a prudent impartial person can estimate the amount with reasonable certainty, the award should be left standing. . . .")

Judicial Council of California Civil Jury Instructions, Inst. 353.

354 Owner's/Lessee's Damages for Breach of Contract to Construct Improvements on Real Property

To recover damages for breach of a contract to construct improvements on real property [*name of plaintiff*] must prove:

[[The reasonable cost to [*name of plaintiff*] of completing the work;]

[And the value of loss of use of the property;]

[And the reasonable cost of alternative housing from the date the work was to have been completed until the date the work was completed;]

[Less any amounts unpaid under the contract with [*name of defendant*];]

[*or*]

[The difference between the fair market value of the [*lessee's interest in the*] property and its fair market value had the improvements been constructed.]

Directions for Use

Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*. The bracketed options state alternative measures of damage. Choose the option appropriate to the facts of the case.

References

20 GCA § 2201 states:

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

Judicial Council of California Civil Jury Instructions, Inst. 354.

355. Obligation to Pay Money Only

To recover damages for the breach of a contract to pay money, [*name of plaintiff*] must prove the amount due under the contract.

Directions for Use

Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*. If there is a dispute as to the appropriate rate of interest, the jury should be instructed to determine the rate. Otherwise, the judge should calculate the interest and add the appropriate amount of interest to the verdict.

References

20 GCA § 2203 provides: "The detriment caused by a breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon."

20 GCA § 2201 provides: "For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom."

Judicial Council of California Civil Jury Instructions, Inst. 355

356. Buyer's Damages for Breach of Contract for Sale of Real Property – Bad Faith

To recover damages for the bad faith breach of a contract to sell real property, *[name of plaintiff]* must prove:

- 1. The difference between the fair market value of the property on the date of the breach and the contract price;**
- 2. The amount of any payment made by *[name of plaintiff]* toward the purchase;**
- 3. The amount of any reasonable expenses for examining title and preparing documents for the sale;**
- 4. The amount of any reasonable expenses in preparing to occupy the property; and**
- 5. *[Insert item(s) of claimed consequential damages]*.**

Directions for Use

Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*. If the appropriate rate of interest is in dispute, the jury should be instructed to determine the rate. Otherwise, the judge should calculate the interest and add the appropriate amount of interest to the verdict.

References

20 GCA § 2206 states :

The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

20 GCA § 2201 states:

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

20 GCA § 2276 states:

In estimating damages, except as provided by §§ 2277 and 2278, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

Judicial Council of California Civil Jury Instructions, Inst. 356.

356A. Buyer's Damages for Breach of Contract for Sale of Real Property – No Bad Faith

To recover damages for the breach of a contract to sell real property, *[name of plaintiff]* must prove:

1. The amount of any payment made by *[name of plaintiff]* toward the purchase;
2. The amount of any reasonable expenses for examining title and preparing documents for the sale; and
3. *[Insert item(s) of claimed consequential damages]*.

Directions for Use

Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*. If the appropriate rate of interest is in dispute, the jury should be instructed to determine the rate. Otherwise, the judge should calculate the interest and add the appropriate amount of interest to the verdict.

References

20 GCA § 2206 states:

The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

20 GCA § 2201 states:

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

20 GCA § 2276 states:

In estimating damages, except as provided by §§ 2277 and 2278, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

357. Seller's Damages for Breach of Contract to Purchase Real Property

To recover damages for the breach of a contract to buy real property, *[name of plaintiff]* must prove:

1. The difference between the amount that was due to *[name of plaintiff]* under the contract and the fair market value of the property at the time of the breach; [and]
2. *[Insert item(s) of claimed consequential damages, e.g., resale expenses].*

Directions for Use

Read this instruction in conjunction with Instruction 350, *Introduction to Contract Damages*. If there is a dispute regarding the appropriate rate of interest, the judge should determine and calculate the interest and add the appropriate amount of interest to the verdict.

References

20 GCA § 2207 provides: "The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him."

20 GCA § 2201 provides: "For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided in Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom."

20 GCA § 2275 provides: "In estimating damages, the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale."

Judicial Council of California Civil Jury Instructions, Inst. 357.

358. Mitigation of Damages

If [name of defendant] breached the contract and the breach caused harm, [name of plaintiff] is not entitled to recover damages for harm that could have been avoided with reasonable efforts or expenditures. You should consider the reasonableness of [name of plaintiff]'s efforts in light of the circumstances facing [him/her/it] at the time, including [his/her/its] ability to make the efforts or expenditures without undue risk or hardship.

If [name of plaintiff] made reasonable efforts to avoid harm, then your award should include reasonable amounts that [he/she/it] spent for this purpose.

In this case, [name of plaintiff / defendant] has the burden of showing that [defendant / plaintiff] [has / has not] mitigated damages.

References

The Supreme Court of Guam in *Guam Warehouse Corporation v. DeWitt Transportation Services of Guam, Inc.*, 2003 Guam 20, ¶ 26, stated:

[A] commercial landlord has a duty to make reasonable efforts to mitigate its damages when its tenant abandons the leased property. The duty to mitigate is triggered as soon as the landlord has notice of the tenant's abandonment, even if the lease has not been formally terminated. *The burden is on the lessor to show due diligence* and the lessor is not required to adopt any specific method in attempting to relet the premises.

(citations and quotation marks omitted).

The Ninth Circuit, in *Haeuser v. Department of Law*, 368 F.3d 1091, 1099 -1100 (9th Cir. 2004), stated:

According to the Guam Supreme Court, a wrongfully terminated employee in Guam cannot collect back pay unless that employee has fulfilled his duty to mitigate damages. *Haeuser I*, 1999 Guam 12, ¶ 11(citing *Sangster v. United Air Lines, Inc.*, 633 F.2d 864, 868 (9th Cir.1980)). In order to fulfill this duty to mitigate, the terminated employee must make "reasonable efforts" to obtain employment. *Id.* at ¶ 12. The burden of demonstrating that reasonable efforts to find employment were not made rests on the employer, who must show: "a) there were substantially equivalent jobs available during the time in question; b) that the employee could have obtained an equivalent job; c) and the employee failed to use reasonable diligence in seeking one." *Id.* (citing *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1497 (9th Cir.1995)). Alternatively, an employer is "released from a duty to establish the availability of comparable employment" if the employer can prove "that the employee made no reasonable efforts to seek such employment." *Id.* (citing *Greenway v. Buffalo Hilton Hotel*, 143 F.3d 47, 54 (2d Cir.1998)).

Committee Notes

The committee has added the last instruction to reflect the allocations of the burden of proof in particular cases.

359. Present Cash Value of Future Damages

To recover for future harm, *[name of plaintiff]* must prove that such harm is reasonably certain to occur and must prove the amount of those future damages. The amount of damages for future harm must be reduced to present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future.

To find present cash value, you must determine the amount of money which, if reasonably invested today, will provide *[name of plaintiff]* with the amount of *[his/her/its]* future damages.

[You may consider expert testimony in determining the present cash value of future damages.]

[You will be provided with a table to help you calculate the present cash value.]

Directions for Use

Present cash value tables have limited application. In order to use the tables, the discount rate to be used must be established by stipulation or by the evidence. Care must be taken that the table selected fits the circumstances of the case. Expert testimony will usually be required to accurately establish present values for future economic losses. However, tables may be helpful in many cases.

Give the second bracketed option if parties have stipulated to a discount rate or evidence has been presented from which the jury can determine an appropriate discount rate. A table appropriate to this calculation should be provided.

References

20 GCA § 2103 provides: "Injuries resulting after suit. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future."

Judicial Council of California Civil Jury Instructions, Inst. 359.

360. Nominal Damages

If you decide that [name of defendant] breached the contract but also that [name of plaintiff] was not harmed by the breach, you may still award [him/her/it] nominal damages such as one dollar.

References

20 GCA § 2282 states: "Nominal Damages Recoverable. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages."

Coastal Development Corp. v. Sammi Const. Co., 1986 WL 68925, *4 (D.Guam App. Div. 1986) (citations omitted) provides:

Nominal damages are generally held to be a trifling sum awarded to a Plaintiff in an action where there has been a technical invasion of his rights or a breach of a Defendant's duty but where no substantial loss or injury is to be compensated, or in an action where there has been real injury to Plaintiff, but no evidence to show its amount. A plaintiff is also entitled to recover nominal damages in a breach of contract action where there has been a breach of contract but no showing that actual damages were inflicted upon the Plaintiff. In terms of the amount of nominal damages to be awarded, it generally ranges from \$1.00 or less, up to \$500 depending on the circumstances of the particular case.

Judicial Council of California Civil Jury Instructions, Inst. 360.

361. Plaintiff May Not Recover Duplicate Contract and Tort Damages

***[Name of plaintiff]* has made claims against *[name of defendant]* for breach of contract and *[insert tort action]*. If you decide that *[name of plaintiff]* has proved both claims, the same damages that resulted from both claims can be awarded only once.**

Directions for Use

If the issue of punitive damages is not bifurcated, read the following instruction: “*You may consider awarding punitive damages only if [name of plaintiff] proves [his/her/its] claim for [insert tort action].*”

References

Judicial Council of California Civil Jury Instructions, Inst. No. 361.

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NEGLIGENCE

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400. Essential Factual Elements

[Name of plaintiff] claims that *[he/she]* was harmed by *[name of defendant]*'s negligence. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* was negligent;
2. That *[name of plaintiff]* was harmed; and
3. That *[name of defendant]*'s negligence was a substantial factor in causing *[name of plaintiff]*'s harm.

Just because *[name of plaintiff]* was harmed does not, by itself, mean that *[name of defendant]* is legally responsible for the harm.

Directions for Use

In medical malpractice or professional negligence cases, the word "medical" or "professional" should be added before the word "negligence" in the first paragraph.

The last sentence of this instruction is intended to address a false belief held by some jurors that they must assign fault just because there is an injury.

References

18 GCA § 90107 states:

Responsibility for negligence. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief [Title 20 of this Code].

18 GCA § 90108 states:

When recovery barred by Contributory Negligence. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed under the law on Compensatory Relief shall be diminished in proportion to the amount of negligence attributable to the person recovering.

See *Guerrero v. DLB Const. Co.* 1999 Guam 9, ¶ 14, citing RESTATEMENT (SECOND) TORTS §§ 281 and 282 (1988), and stating:

Under a cause of action for negligence, an injured party must prove the following elements to prevail: a) that the tortfeasor had a duty to act in a manner that does not place others in an unreasonable risk of harm; b) that duty was breached; c) as a result of that breach it is the cause; d) of harm or damages suffered by a party.

See *Merchant v. Nanyo Realty, Inc.*, 1998 Guam 26, ¶ 14, citing W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 30 (West 5th ed.1984), and stating :

To succeed on a claim of negligence, [the plaintiff] must prove:

- i. A duty, or obligation, recognized by law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks of harm;
- ii. A breach of that duty, or failure to conform to the required standard;
- iii. Proximate cause (a close and causal connection, also known as “legal cause”);
- iv. Actual loss or damage resulting to the interests of another.

Judicial Council of California, Civil Jury Instructions, Inst. 400.

401. Basic Standard of Care

Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

A person can be negligent by acting or by failing to act. A person is negligent 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.

You must decide how a reasonably careful person would have acted in [name of plaintiff/defendant]'s situation.

References

18 GCA § 90107 states:

Responsibility for negligence. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief [Title 20 of this Code].

18 GCA § 90108 states:

When recovery barred by Contributory Negligence. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed under the law on Compensatory Relief shall be diminished in proportion to the amount of negligence attributable to the person recovering.

See *Guerrero v. DLB Const. Co.* 1999 Guam 9, ¶ 14, citing RESTATEMENT (SECOND) TORTS §§ 281 and 282 (1988), and stating:

Under a cause of action for negligence, an injured party must prove the following elements to prevail: a) that the tortfeasor had a duty to act in a manner that does not place others in an unreasonable risk of harm; b) that duty was breached; c) as a result of that breach it is the cause; d) of harm or damages suffered by a party.

RESTATEMENT (SECOND) TORTS § 282, referenced in *Guerrero, supra*, defines negligence as “conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.”

See *Nissan Motor Corp. in Guam v. Sea Star Group Inc.*, 2002 Guam 5. There, the court cited Title 18 GCA § 90107, and held that “[u]nder Guam law, every landowner owes a duty to exercise reasonable care in the management of his property.” *Id* at ¶ 11. In response to the defendant Sea Star’s argument that the occurrence of a supertyphoon relieves landowners of their duty to reasonably secure their property, the *Nissan* court enumerated the following factors to be considered in determining whether to depart from the statutory, reasonable person standard of care. Specifically, these factors are: the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant’s conduct and the injury suffered, the moral blame attached to the defendant’s conduct, the policy of preventing future harm, the extent of the burden to

the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. *Id.* (applying the above factors and declining to depart from the statutory standard of care).

Judicial Council of California, Civil Jury Instructions, Inst. 401.

402. Standard of Care for Minors

[Name of plaintiff/defendant] is a child who was _____ years old at the time of the incident. Children are not held to the same standards of behavior as adults. A child is required to use the amount of care that a reasonably careful child of the same age, intelligence, knowledge, and experience would use in that same situation.

References

19 GCA § 1115 states: "A minor or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful."

Salas v. Hanil Development, (D. Guam App. Div. 1993) ("Appellant was but fifteen years old at the time of the accident. Because of his age, he was required to exercise that standard of care required of a minor.").

Judicial Council of California Civil Jury Instructions, Inst. 402.

403. Standard of Care for Physically Disabled Person

A person with a physical disability is required to use the amount of care that a reasonably careful person who has the same physical disability would use in the same situation.

Directions for Use

By "same" disability, this instruction is referring to the effect of the disability, not the cause.

References

Judicial Council of California Civil Jury Instructions, Inst. 403.

404. Intoxication

A person is not necessarily negligent just because he or she used alcohol [or drugs]. However, people who drink alcohol [or take drugs] must act just as carefully as those who do not.

Directions for Use

This instruction should be given only if there is evidence of alcohol or drug consumption. This instruction is not intended for situations in which intoxication is grounds for a negligence per se instruction (e.g., driving under the influence).

References

Judicial Council of California Civil Jury Instructions, Inst. 404.

405. Plaintiff's Contributory Negligence

[Name of defendant] claims that *[name of plaintiff]*'s harm was caused in whole or in part by *[name of plaintiff]*'s own negligence. To succeed on this claim, *[name of defendant]* must prove both of the following:

1. That *[name of plaintiff]* was negligent; and
2. That *[name of plaintiff]*'s negligence was a substantial factor in causing [his/her] harm.

If *[name of defendant]* proves the above, you must decide how much responsibility the plaintiff and defendant have by determining, on a percentage basis, the extent to which the plaintiff's and the defendant's [negligence/fault] each contributed to causing the harm.

Directions for Use

This instruction should be used only where the defendant claims that plaintiff was negligent, there is only one defendant, and the defendant does not claim that any other factor caused the harm.

This instruction should not be given absent evidence sufficient to support a finding that plaintiff was negligent. Title 6 GCA § 104(b) ("When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.").

References

18 GCA § 90107 states:

Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief.

18 GCA § 90108 states:

Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed under the law on Compensatory Relief shall be diminished in proportion to the amount of negligence attributable to the person recovering.

Salas v. Hanil Dvlpt. Co., 1993 WL 128224, *4 (D. Guam App. Div. 1993) (Guam "follows the doctrine of comparative negligence and the amount of negligence attributable to each party is solely within the province of the jury.")

Judicial Council of California Civil Jury Instructions, Inst. 405.

Committee Notes

There is no Supreme Court of Guam opinion or Guam statute addressing whether the jury should be informed that the jury's assignment of a percentage of negligence to the Plaintiff will reduce or bar the Plaintiff's damages.

406. Apportionment of Responsibility

More than one person's [negligence/fault], [including *[name of plaintiff]*'s, may have been a substantial factor in causing *[name of plaintiff]*'s harm. If so, you must decide how much responsibility each person has by determining, on a percentage basis, the extent to which his or her [negligence/fault] contributed to causing the harm.

Directions for Use

Do not give the second bracketed phrase if plaintiff's contributory negligence is not at issue.

Use "fault" if there is a need to allocate harm between defendants who are sued for conduct other than negligence, e.g., strict products liability.

References

18 GCA § 90107 states:

Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief.

18 GCA. § 90108 states:

Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed under the law on Compensatory Relief shall be diminished in proportion to the amount of negligence attributable to the person recovering.

Salas v. Hanil Dvlpt. Co., 1993 WL 128224, *4 (D. Guam App. Div. 1993) (Guam "follows the doctrine of comparative negligence and the amount of negligence attributable to each party is solely within the province of the jury.")

Judicial Council of California Civil Jury Instructions, Inst. 406.

Committee Notes

There is no Guam Supreme Court opinion or Guam statute addressing whether the jury should be informed that the jury's assignment of a percentage of negligence to the Plaintiff will reduce or bar the Plaintiff's damages.

407. Decedent's Contributory Negligence

[Name of defendant] claims that *[name of decedent]*'s death was caused in whole or in part by *[name of decedent]*'s own negligence. To succeed on this claim, *[name of defendant]* must prove both of the following:

1. That *[name of decedent]* was negligent; and

That *[name of decedent]*'s negligence was a substantial factor in causing *[his/her]* death.

If *[name of defendant]* proves the above, you must decide how much responsibility the decedent and defendant have by determining, on a percentage basis, the extent to which the decedent's and the defendant's [negligence/fault] each contributed to causing the decedent's death.

Directions for Use

This instruction should not be given absent evidence that the decedent was negligent. Title 6 GCA § 104 (b): ("When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.")

References

18 GCA § 90107 states:

Responsibility for negligence. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief [Title 20 of this Code].

18 GCA § 90108 states:

When recovery barred by Contributory Negligence. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed under the law on Compensatory Relief shall be diminished in proportion to the amount of negligence attributable to the person recovering.

Salas v. Hanil Dvlpt. Co., 1993 WL 128224, *4 (D. Guam App. Div. 1993) (Guam "follows the doctrine of comparative negligence and the amount of negligence attributable to each party is solely within the province of the jury.")

Judicial Council of Californian Civil Jury Instructions, Inst. 407.

Committee Notes

There is no Guam Supreme Court opinion or Guam statute addressing whether the jury should be informed that the jury's assignment of a percentage of negligence to the Plaintiff will reduce or bar the Plaintiff's damages.

408 - 410. Not Adopted..

411. Reliance on Good Conduct of Others

Every person has a right to expect that every other person will use reasonable care [and will not violate the law], unless he or she knows, or should know, that the other person will not use reasonable care [or will violate the law].

Directions for Use

This instruction should not be used if the only other actor is the plaintiff and there is no evidence that the plaintiff acted unreasonably.

References

8 GCA § 90107:

Responsibility for negligence. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief [Title 20 of this Code].

6 GCA § 5107:

All other presumptions are satisfactory if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind: . . .
4. That a person takes ordinary care of his own concern

Judicial Council of Californian Civil Jury Instruction, Inst. 411.

412. Duty of Care Owed Children

An adult must anticipate the ordinary behavior of children. An adult must be more careful when dealing with children than with other adults.

Directions for Use

This instruction is to be used where the plaintiff seeks damages for injury to a minor.

For standard of care for minors, see Instruction 402, *Standard of Care for Minors*.

References

Salas by and through Gaa v. Hanil Development Co., Ltd., 1993 WL 128224 (D.Guam A.D. 1993) (holding that defendant driver was under a heightened standard of care due to the fact he noticed the child's presence in the roadway ahead of him).

Judicial Council of California Civil Jury Instructions, Inst. 412.

413. Custom or Practice

You may consider customs or practices in the community in deciding whether *[name of plaintiff/defendant]* acted reasonably.

Customs and practices do not necessarily determine what a reasonable person would have done in *[name of plaintiff/defendant]*'s situation. They are only factors for you to consider.

Following a custom or practice does not excuse conduct that is unreasonable. You should consider whether the custom or practice itself is reasonable.

References

Judicial Council of California Civil Jury Instructions, Inst. 413.

414. Amount of Caution Required in Dangerous Situations

People must be extremely careful when they deal with dangerous items or participate in dangerous activities. *[insert type of dangerous item or activity]* is dangerous in and of itself. The risk of harm is so great that the failure to use extreme caution is negligence.

References

Judicial Council of California Civil Jury Instructions, Inst. 414.

415-416. Not Adopted.

417. Special Doctrines: Res ipsa loquitur

In this case, *[name of plaintiff]* may prove that *[name of defendant]*'s negligence caused *[his/her]* harm if *[he/she]* proves all of the following:

1. That *[name of plaintiff]*'s harm ordinarily would not have happened unless someone was negligent;
2. That the harm was caused by something that only *[name of defendant]* controlled; and
3. That *[name of plaintiff]*'s voluntary actions did not cause or contribute to the event[s] that harmed *[him/her]*.

If you decide that *[name of plaintiff]* did not prove one or more of these three things, then *[insert one of the following]*

[your verdict must be for [name of defendant].]

[or]

[you must decide whether [name of defendant] was negligent in light of the other instructions I have read.]

If you decide that *[name of plaintiff]* proved all of these three things, you may, but are not required to, find that *[name of defendant]* was negligent or that *[name of defendant]*'s negligence was a substantial factor in causing *[name of plaintiff]*'s harm, or both.

You must carefully consider the evidence presented by both *[name of plaintiff]* and *[name of defendant]* before you make your decision. You should not decide in favor of *[name of plaintiff]* unless you believe, after weighing all of the evidence, that it is more probable than not that *[name of defendant]* was negligent and that *[his/her]* negligence was a substantial factor in causing *[name of plaintiff]*'s harm.

Directions for Use

In the second paragraph, the first bracketed option is to be used when plaintiff is relying solely on a res ipsa loquitur theory and has introduced no other evidence of defendant's negligence. The second option is to be used when plaintiff has introduced other evidence of defendant's negligence.

References

Judicial Council of California Civil Jury Instructions, Inst. 417.

418. Presumption of Negligence per se

[Insert citation to statute, regulation, or ordinance] states:

If you decide:

1. That *[name of plaintiff/defendant]* violated this law, and
2. That the violation was a substantial factor in bringing about the harm, then you must find that *[name of plaintiff/ defendant]* was negligent [unless you also find that the violation was excused].

If you find that *[name of plaintiff/defendant]* did not violate this law or that the violation was not a substantial factor in bringing about the harm [or if you find the violation was excused], then you must still decide whether *[name of plaintiff/defendant]* was negligent in light of the other instructions.

Directions for Use

If a rebuttal is offered on the grounds that the violation was excused, then the bracketed portion of (b) in the second paragraph should be read. For an instruction on excuse, see Instruction 420, Negligence per Se: Rebuttal of the Presumption of Negligence (Violation Excused).

If the statute is lengthy, the judge may want to read it at the end of this instruction instead of at the beginning. The instruction would then need to be revised, to tell the jury that they will be hearing the statute at the end.

Rebuttal of the presumption of negligence is addressed in the instructions that follow (see Instructions 420 and 421).

References

Salas v. Hanil Development Co., Ltd., 1993 WL 128224 (D.Guam A.D. 1993). ("Although violating the speed limit may constitute negligence per se, observing the posted speed limit does not in and of itself constitute the exercise of due care.")

See eg 10 GCA § 41104 ("Violations of federal cleanup regulations shall constitute negligence per se for the purposes of [the Toxic Substances Exposure Compensation Act]."); Title 19 GCA § 2118. ("A totally or partially blind pedestrian shall have all of the rights and privileges conferred by law upon other person in any of the places, accommodations or conveyances specified in §§ 2114 and 2115 notwithstanding the fact that such person is not carrying a predominantly white cane (with or without a red tip), or using a guide dog. The failure of a totally or partially blind person to carry such a cane or to use such a guide dog shall not constitute negligence per se.")

Judicial Council of California Civil Jury Instructions, Inst. 418.

419. Presumption of Negligence per se (Causation Only at Issue)

[Insert citation to statute, regulation, or ordinance] states:

A violation of this law has been established and is not an issue for you to decide.

[However, you must decide whether the violation was excused. If it was not excused, then you] [You] must decide whether the violation was a substantial factor in harming *[name of plaintiff]*.

If you decide that the violation was a substantial factor, then you must find that *[name of plaintiff/defendant]* was negligent.

Directions for Use

The trier of fact usually decides the question of whether the violation occurred. However, "if a party admits the violation or if the evidence of the violation is undisputed, it is appropriate for the judge to instruct the jury that a violation of the statute, ordinance, or regulation has been established as a matter of law." In such cases, the jury would decide causation and, if applicable, the existence of any justification or excuse. For an instruction on excuse, see Instruction 420, Negligence per se: Rebuttal of the Presumption of Negligence (Violation Excused).

References

Judicial Council of California Civil Jury Instructions, Inst. 419.

420. Negligence per se: Rebuttal of the Presumption of Negligence (Violation Excused)

A violation of a law is excused if one of the following is true:

- (a) The violation was reasonable because of *[name of plaintiff/defendant]*'s [specify type of "incapacity"]; [or]
- (b) Despite using reasonable care, *[name of plaintiff/defendant]* was not able to obey the law; [or]
- (c) *[Name of plaintiff/defendant]* faced an emergency that was not caused by [his/her] own misconduct; [or]
- (d) Obeying the law would have involved a greater risk of harm to *[name of plaintiff/defendant]* or to others; [or]
- (e) [Other reason excusing or justifying noncompliance.]

Directions for Use

Subparagraph (b), regarding an attempt to comply with the applicable statute or regulation, should not be given where the evidence does not show such an attempt. Subparagraph (b) should be used only in special cases because it relies on the concept of due care to avoid a charge of negligence per se.

References

Judicial Council of California Civil Jury Instructions, Inst. 420.

**421. Negligence per Se: Rebuttal of the Presumption of Negligence
(Violation of Minor Excused)**

[Name of plaintiff/defendant] claims that even if *[he/she]* violated the law, *[he/she]* is not negligent because *[he/she]* was _____ years old at the time of the incident. If you find that *[name of plaintiff/defendant]* was as careful as a reasonably careful child of the same age, intelligence, knowledge and experience would have been in the same situation, then *[name of plaintiff/defendant]* was not negligent.

Directions for Use

This instruction does not apply if the minor is engaging in an adult activity.

References

Judicial Council of California Civil Jury Instructions, Inst. 421. *See also* Judicial Council of California Civil Jury Instructions, Inst. 402.

422-423. Not Adopted.

424 – 429. Reserved for Future Use

430. Causation: Substantial Factor

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.

Directions for Use

Tentative Draft No. 3 (April 7, 2003) for the Restatement Third of Torts, in its treatment of Torts: Liability for Physical Harm (Basic Principles), section 29, proposes a “scope of liability” approach that de-emphasizes causation and focuses on (1) the nature of the harms that are within the scope of the risk created by the actor’s conduct and (2) whether those harms resulted from the risk; this Restatement is not final, and it has not been subject to California judicial review.

References

Merchant v. Nanyo Realty, Inc., 1998 Guam 26, ¶14 (“To succeed on a claim of negligence, Merchant must prove. . . [p]roximate cause (a close and casual connection, also known as ‘legal cause’)”).

Nissan Motor Corp. v. Sea Star Group, Inc., 2002 Guam 5, ¶19 (“The record also indicates that Sea Star’s conduct combined with the winds of Typhoon Paka to contribute to Nissan’s damage. If a defendant’s negligence combines with a force of nature to produce injury, then a defendant may still be held liable. . .”).

Restatement Second of Torts, section 431, provides: “The actor’s negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and, (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.”

This instruction incorporates Restatement Second of Torts, section 431, comment a, which provides, in part: “The word ‘substantial’ is used to denote the fact that the defendant’s conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called ‘philosophic sense’ which includes every one of the great number of events without which any happening would not have occurred.”

Judicial Council of California Civil Jury Instructions, Inst. 430.

431. Causation: Multiple Causes

A person's negligence may combine with another factor to cause harm. If you find that *[name of defendant]*'s negligence was a substantial factor in causing *[name of plaintiff]*'s harm, then *[name of defendant]* is responsible for the harm. *[Name of defendant]* cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing *[name of plaintiff]*'s harm.

Directions for Use

This instruction will apply only when negligence is the theory asserted against the defendant. This instruction should be modified if the defendant is sued on a theory of product liability or intentional tort.

References

Merchant v. Nanyo Realty, Inc., 1998 Guam 26, ¶14 (“To succeed on a claim of negligence, Merchant must prove. . .[p]roximate cause (a close and casual connection, also known as ‘legal cause’)”).

Nissan Motor Corp. v. Sea Star Group, Inc., 2002 Guam 5 at ¶19 (“The record also indicates that Sea Star’s conduct combined with the winds of Typhoon Paka to contribute to Nissan’s damage. If a defendant’s negligence combines with a force of nature to produce injury, then a defendant may still be held liable. . .”).

Judicial Council of California Civil Jury Instructions, Inst. 431.

432. Causation: Third-Party Conduct as Superseding Cause

[Name of defendant] claims that *[he/she/it]* is not responsible for *[name of plaintiff]*'s harm because of the later misconduct of *[insert name of third party]*. To avoid legal responsibility for the harm, *[name of defendant]* must prove all of the following:

1. That *[name of third party]*'s conduct occurred after the conduct of *[name of defendant]*;
2. That a reasonable person would consider *[name of third party]*'s conduct as a highly unusual or an extraordinary response to the situation;
3. That *[name of defendant]* did not know and had no reason to expect that *[name of third party]* would act in a *[negligent/wrongful]* manner; and
4. That the kind of harm resulting from *[name of third party]*'s conduct was different from the kind of harm that could have been reasonably expected from *[name of defendant]*'s conduct.

References

Cruz v. Quichocho, 1989 W.L. 265038 (D. Guam A. D.) ("An intervening superseding cause which breaks the chain of causation from the original negligent act is itself regarded as the proximate cause of the injury and relieves the original negligent actor of liability. The foreseeability of the independent intervening act determines whether the chain of causation is broken. . .").

Judicial Council of California Civil Jury Instructions, Inst. 432.

433. Causation: Intentional Tort/Criminal Act as Superseding Cause

[Name of defendant] claims that *[he/she/it]* is not responsible for *[name of plaintiff]*'s harm because of the later [criminal/intentional] conduct of *[insert name of third party]*. *[Name of defendant]* is not responsible for *[name of plaintiff]*'s harm if *[name of defendant]* proves both of the following:

1. That the [intentional/criminal] conduct of *[name of third party]* happened after the conduct of *[name of defendant]*; and
2. That *[name of defendant]* did not know and could not have reasonably foreseen that another person would be likely to take advantage of the situation created by *[name of defendant]*'s conduct to commit this type of act.

References

Cruz v. Quichocho, 1989 W.L. 265038 *3-4 (D.Guam A.D.), states:

An intervening superseding cause which breaks the chain of causation from the original negligent act is itself regarded as the proximate cause of the injury and relieves the original negligent actor of liability. The foreseeability of the independent intervening act determines whether the chain of causation is broken.

.....
Section 448 of the Restatement (Second) of Torts exempts from liability a person who creates situations which others take advantage of to commit crimes or intentional torts, except where the person realized or should have realized the likelihood that such a situation might be created and that a third person might take advantage of the opportunity to commit such a tort or crime.

.....
Section 449 of the Restatement (Second) of Torts allows for imposition of liability where: the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby.

See also *Duenas v. Department of Public Works*, 1992 W.L. 97213 *4 (D. Guam A.D.).

Judicial Council of California Civil Jury Instructions, Inst. 433.

434. Alternative Causation

You may decide that more than one of the defendants was negligent, but that the negligence of only one of them could have actually caused *[name of plaintiff]*'s harm. If you cannot decide which defendant caused *[name of plaintiff]*'s harm, you must decide that each defendant is responsible for the harm.

However, if a defendant proves that *[he/she/it]* did not cause *[name of plaintiff]*'s harm, then you must conclude that defendant is not responsible.

References

Judicial Council of California Civil Jury Instructions, Inst. 434.

Committee Notes

This instruction expresses a generally accepted principle that is stated in § 433B(3) of the Restatement Second of Torts. The notes to the Restatement state that the rule has been applied when all of the actors involved have been joined as defendants.

435. Not Adopted.

436 – 449. Reserved for Future Use

450. Not Adopted.

451. Express Assumption of Risk

[Name of defendant] claims that *[name of plaintiff]* may not recover any damages because [he/she] agreed before the incident that [he/she] would not hold *[name of defendant]* responsible for any damages.

If *[name of defendant]* proves that there was such an agreement and that it applies to *[name of plaintiff]*'s claim, then you must find that *[name of defendant]* is not responsible for *[name of plaintiff]*'s harm.

Directions for Use

This instruction would be given in very limited circumstances. The interpretation of a waiver agreement and application of its legal effect are generally resolved by the judge before trial.

There may be contract law defenses (such as fraud, lack of consideration, duress, unconscionability) that could be asserted by the plaintiff to contest the validity of a waiver. If these defenses were to be considered by a jury, then an instruction on express assumption of the risk would probably be necessary.

References

Judicial Council of California Civil Jury Instructions, Inst. 451.

Committee Notes

This instruction is based in contract law and expresses a generally accepted principle. As stated in the Directions for use, the principal is subject to regular contract claim defenses.

452 Sudden Emergency

[Name of plaintiff/defendant] claims that *[he/she]* was not negligent because *[he/she]* acted with reasonable care in an emergency situation. *[Name of plaintiff/defendant]* was not negligent if *[he/she]* proves all of the following:

1. That there was a sudden and unexpected emergency situation in which someone was in actual or apparent danger of immediate injury;
2. That *[name of plaintiff/defendant]* did not cause the emergency; and
3. That *[name of plaintiff/defendant]* acted as a reasonably careful person would have acted in similar circumstances, even if it appears later that a different course of action would have been safer.

Directions for Use

The instruction should not be given unless at least two courses of action are available to the party after the danger is perceived. (*Anderson v. Latimer* (1985) 166 Cal.App.3d 667, 675 [212 Cal.Rptr. 544] .)

Additional instructions should be given if there are alternate theories of negligence.

References

10 GCA § 19804 provides for limited immunity to certain persons or entities during a state of public health emergency.

Judicial Council of California Civil Jury Instructions, Inst. 452.

453. Rescue

[Name of plaintiff] claims that *[he/she]* was not responsible for *[his/her]* own injury because *[he/she]* was attempting to rescue a person who was placed in danger as a result of *[name of defendant]*'s negligence.

[Name of plaintiff] is not responsible for *[his/her]* own injuries if *[he/she]* proves all of the following:

1. That there was an emergency situation in which someone was in actual or apparent danger of immediate injury;
2. That the emergency was created by *[name of defendant]*'s negligence; and
3. That *[name of plaintiff]* did not act rashly or recklessly when *[he/she]* attempted to rescue the victim.

References

Judicial Council of California Civil Jury Instructions, Inst. 453.

See also Volunteer Liability Protection Act 7 GCA 16101 et seq.

454 – 459. Reserved for Future Use

460. Strict Liability for Ultrahazardous Activities—Essential Factual Elements

[Name of plaintiff] claims that *[name of defendant]* was engaged in an ultrahazardous activity that caused *[him/her/it]* to be harmed and that *[name of defendant]* is responsible for that harm.

People who engage in ultrahazardous activities are responsible for the harm these activities cause others, regardless of how carefully they carry out these activities. *[Insert ultrahazardous activity]* is an ultrahazardous activity.

To establish *[his/her/its]* claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* was engaged in *[insert ultrahazardous activity]*;
2. That *[name of plaintiff]* was harmed;
3. That *[name of plaintiff]*'s harm was the kind of harm that would be anticipated as a result of the risk created by *[insert ultrahazardous activity]*; and
4. That *[name of defendant]*'s *[insert ultrahazardous activity]* was a substantial factor in causing *[name of plaintiff]*'s harm.

References

Judicial Council of California Civil Jury Instructions, Inst. 460.

461. Strict Liability for Injury Caused by Wild Animal—Essential Factual Elements

[Name of plaintiff] claims that *[name of defendant]*'s *[insert type of animal]* harmed *[him/her]* and that *[name of defendant]* is responsible for that harm.

People who own wild animals are responsible for the harm that these animals cause to others, no matter how carefully they guard or restrain their animals.

To establish *[his/her]* claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* owned a *[insert type of animal]*;
2. That *[name of plaintiff]* was harmed; and
3. That *[name of defendant]*'s *[insert type of animal]* was a substantial factor in causing *[name of plaintiff]*'s harm.

References

In pertinent part, 10 GCA § 34206 provides:

(a) Animal means any live non-human vertebrate creature, domestic or wild;

.....
(i) Owner means any person, partnership or corporation owning, keeping or harboring one (1) or more animals. An animal shall be deemed to be harbored if it is fed or sheltered three (3) consecutive days or more;

.....
(r) Wild animal means any animal which is not commonly domesticated, or which is not native to Guam, or which, irrespective of geographic origin, is of a wild or predatory nature, or any domesticated animal, which because of its size, vicious nature or other characteristics would constitute an unreasonable danger to human life or property if not kept, maintained or contained in a safe and secure manner.

21 GCA § 1103 states: "Animals wild by nature are the subject of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued."

10 GCA § 34206 provides:

(a) No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply for zoological parks, performing animal exhibitions or circuses.

(b) No person shall keep or permit to be kept any wild animal as a pet.

(c) The permitting authority shall have the power to release or order the release of any infant wild animal kept under temporary permit which is deemed capable of survival.

5 GCA § 62104.1 provides:

Residents of Guam are authorized to raise Guam deer, wild and feral pigs, and feral Asiatic water buffalo (carabao) as livestock. Nothing herein shall prevent residents of Guam from raising Guam deer, wild and feral pigs, and feral Asiatic water buffalo (carabao) as pets; however, all laws, rules and regulations that apply to raising game as livestock shall apply to raising Guam deer, wild and feral pigs, and feral Asiatic water buffalo (carabao) as pets.

Judicial Council of California Civil Jury Instructions, Inst. 461.

462. Strict Liability for Injury Caused by Domestic Animal With Dangerous Propensities—Essential Factual Elements

[Name of plaintiff] claims that *[name of defendant]*'s *[insert type of animal]* harmed **[him/her]** and that *[name of defendant]* is responsible for that harm.

People who own, keep, or control animals with unusually dangerous natures or tendencies can be held responsible for the harm that their animals cause to others, no matter how carefully they guard or restrain their animals.

To establish **[his/her]** claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* owned, kept, or controlled a *[insert type of animal]*;
2. That the *[insert type of animal]* had an unusually dangerous nature or tendency;
3. That before *[name of plaintiff]* was injured, *[name of defendant]* knew or should have known that the *[insert type of animal]* had this nature or tendency;
4. That *[name of plaintiff]* was harmed; and
5. That the *[insert type of animal]*'s unusually dangerous nature or tendency was a substantial factor in causing *[name of plaintiff]*'s harm.

References

10 GCA § 34206 provides in relevant part:

(a) Animal means any live non-human vertebrate creature, domestic or wild;

....

(i) Owner means any person, partnership or corporation owning, keeping or harboring one (1) or more animals. An animal shall be deemed to be harbored if it is fed or sheltered three (3) consecutive days or more;

....

(q) Vicious animal means any animal that constitutes a physical threat to human beings or other animals.

Judicial Council of California Jury Instructions, Inst. 462.

463. Not Adopted.

464 – 499. Reserved for Future Use

VF-400. Negligence—Single Defendant

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are *[name of plaintiff]*'s damages?

[a. Past economic loss, including [lost earnings/lost profits/medical expenses:]
\$ _____]

[b. Future economic loss, including [lost earnings/lost profits/lost earning capacity/ medical expenses:] \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____]

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on Instruction 400, *Negligence—Essential Factual Elements*.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form.

This form may be modified if the jury is being given the discretion under Title 20 GCA § 2111 to award prejudgment interest on specific losses that occurred prior to judgment. *See* Title 20 GCA § 2111 (“In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given.”). Note also that section 2111 is derived from California Civil Code 3288, which similarly allows prejudgment interest on specific losses occurring prior to judgment. *See* notes to Title 20 Title 20 GCA § 2111 (May need to revisit/pending decision of Supreme Court).

References

Judicial Council of California Civil Jury Instructions, VF-400.

Committee Notes

This corresponds with JI 400, adopted by the Committee.

VF-401. Negligence—Single Defendant—Plaintiff's Negligence at Issue—Fault of Others Not at Issue

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are *[name of plaintiff]*'s total damages? [Do not reduce the damages based on the fault, if any, of *[name of plaintiff]*.]

[a. Past economic loss, including [lost earnings/lost profits/medical expenses:]
\$ _____]

[b. Future economic loss, including [lost earnings/lost profits/lost earning capacity/medical expenses:] \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____]

If *[name of plaintiff]* has proved any damages, then answer question 4. If *[name of plaintiff]* has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* negligent?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s negligence a substantial factor in causing [his/her] harm?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:

[Name of defendant]: ____%

[Name of plaintiff]: ____%

TOTAL **100 %**

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on Instruction 400, *Negligence—Essential Factual Elements*, and Instruction 405, *Plaintiff's Contributory Negligence*.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form.

The bracketed language in paragraph 3 should be given if option 1 of Jury Instruction 405, *Plaintiff's Contributory Negligence*, is used. The parties may argue for the inclusion or exclusion of the bracketed language if option 2 of Jury Instruction 405 is used instead.

This form may be modified if the jury is being given the discretion under 20 GCA § 2111 to award prejudgment interest on specific losses that occurred prior to judgment. See 20 GCA § 2111 ("In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given."). Note also that section 2111 is derived from California Civil Code 3288, which similarly allows prejudgment interest on specific losses occurring prior to judgment. See notes to 20 Title 20 GCA § 2111 (may need to revisit)

References

Judicial Council of California Civil Jury Instructions, VF-401.

VF-402. Negligence—Fault of Plaintiff and Others at Issue

We answer the questions submitted to us as follows:

1. Was [name of first defendant] negligent?

Yes No

Was [name of second defendant] negligent?

Yes No

[Repeat as necessary for other defendants.]

If you answered yes in any part of question 1, then answer question 2. If you answered no to all parts of question 1, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. For each defendant that received a "yes" answer in question 1, answer the following:

Was [name of first defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?

Yes No

Was [name of second defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?

Yes No

[Repeat as necessary for other defendants.]

If you answered yes in any part of question 2, then answer question 3. If you answered no to all parts of question 2, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s total damages? Do not reduce the damages based on the fault, if any, of [name of plaintiff] or others.

[a. Past economic loss, including [lost earnings/lost profits/medical expenses:]

\$ _____]

[b. Future economic loss, including [lost earnings/lost profits/lost earning capacity/medical expenses:] \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____]

If *[name of plaintiff]* has proved any damages, then answer question 4. If *[name of plaintiff]* has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* negligent?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, answer question 6.

5. Was *[name of plaintiff]*'s negligence a substantial factor in causing *[his/her]* harm?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, insert the number zero next to *[name of plaintiff]*'s name in question 8 and answer question 6.

6. Was *[name/description of first nonparty]* negligent?
 Yes No

Was *[name/description of second nonparty]* negligent?
 Yes No

If you answered yes in any part of 6, then answer question 7. If you answered no to all parts of question 6, answer question 8.

7. For each person who received a "yes" answer in question 6, answer the following:

Was *[name/description of first nonparty]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

Was *[name/description of second nonparty]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If you answered yes in any part of question 7, then answer question 8. If you answered no regarding all persons in question 7, then insert the number zero next to their names in question 8 and answer question 8.

8. What percentage of responsibility for *[name of plaintiff]*'s harm do you assign to the following? Insert a percentage for only those who received "yes" answers in questions 2, 5, or 7:

[Name of first defendant]: _____ %
[Name of second defendant]: _____ %
[Name of plaintiff]: _____ %
[Name/description of first nonparty]: _____ %
[Name/description of second nonparty]: _____ %

TOTAL 100 %

Signed: _____

Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on Instruction 400, *Negligence—Essential Factual Elements*, Instruction 405, *Plaintiff's Contributory Negligence*; and Instruction 406, *Apportionment of Responsibility*.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form.

This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

Users may wish to have the jury specify the liability and causation of each nonparty actor.

If a second plaintiff is contributorily negligent, add his or her name to the list of possible contributing persons, notwithstanding the fact that the bracket is currently designated as "nonparty."

If superseding cause is an issue, insert a question on that issue after question 5.

This form may be modified if a nonparty is a product manufacturer.

References

Judicial Council of California Civil Jury Instructions, VF402.

VF 403 – 406. Not Adopted.

VF-407. Strict Liability—Ultrahazardous Activities

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* engaged in *[insert ultrahazardous activity]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* harmed?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]*'s harm the kind of harm that would be anticipated as a result of the risk created by *[insert ultrahazardous activity]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s *[insert ultrahazardous activity]* a substantial factor in causing *[name of plaintiff]*'s harm?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss, including [lost earnings/lost profits/medical expenses:]

\$ _____]

[b. Future economic loss, including [lost earnings/lost profits/lost earning capacity/medical expenses:] \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on Instruction 460, *Strict Liability for Ultrahazardous Activities—Essential Factual Elements*.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form.

References

Judicial Council of California Civil Jury Instructions, VF-407.

VF-408. Strict Liability for Domestic Animal With Dangerous Propensities

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* own, keep, or control a *[insert type of animal]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the *[insert type of animal]* have an unusually dangerous nature or tendency?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* know, or should *[he/she]* have known, that the *[insert type of animal]* had this nature or tendency?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the *[insert type of animal]* 's unusually dangerous nature or tendency a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]* 's damages?

[a. Past economic loss, including [lost earnings/ lost profits/medical expenses:]

\$ _____

[b. Future economic loss, including [lost earnings/lost profits/lost earning capacity/medical expenses:] \$ _____

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on Instruction 462, *Strict Liability for Injury Caused by Domestic Animal With Dangerous Propensities—Essential Factual Elements*.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional; depending on the circumstances, users may wish to break down the damages even further.

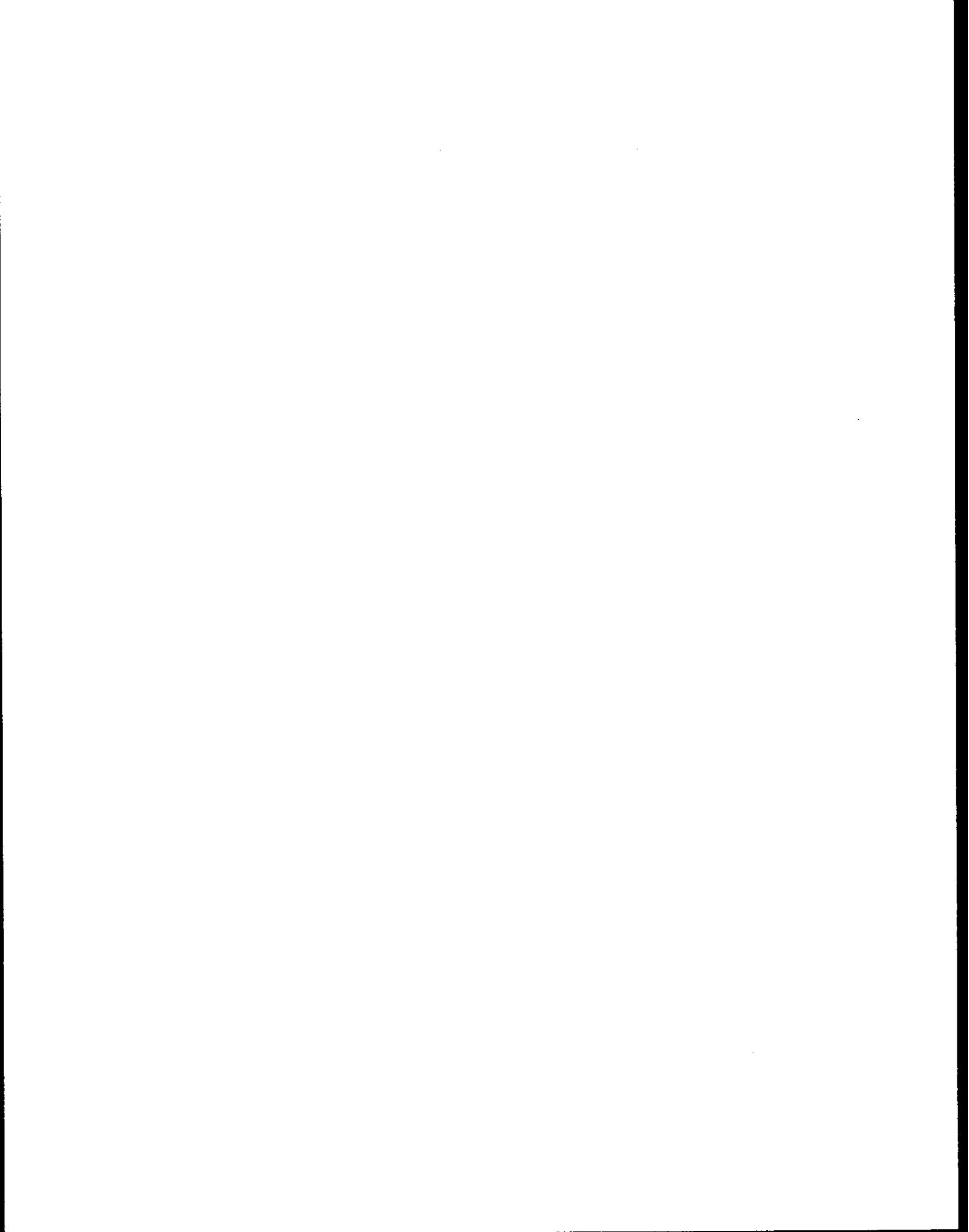
If there are multiple causes of action, users may wish to combine the individual forms into one form.

References

Judicial Council of California Civil Jury Instructions, VF-408.

VF 409. Not Adopted.

VF 410 – 499. Reserved for Future Use.



DAMAGES

- 3900. Introduction to Tort Damages—Liability Contested
- 3901. Introduction to Tort Damages—Liability Established
- 3902. Economic and Noneconomic Damages
- 3903. Items of Economic Damage
 - 3903A. Medical Expenses—Past and Future
 - 3903B. Medical Monitoring—Toxic Exposure
 - 3903C. Past and Future Lost Earnings
 - 3903D. Lost Earning Capacity
 - 3903E. Loss of Ability to Provide Household Services
 - 3903F. Damage to Real Property
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 - 3903I. Damage to Perennial Crop
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- 3904. Present Cash Value
- 3905. Items of Noneconomic Damage
 - 3905A. Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)
- 3906–3919. Reserved for Future Use
- 3920. Loss of Consortium
- 3921. Wrongful Death (Death of an Adult)
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3924. No Punitive Damages

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3927. Aggravation of Preexisting Condition or Disability

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3930. Mitigation of Damages (Personal Injury)

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3940. Punitive Damages—Individual Defendant—Trial Not
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3941. Punitive Damages—Individual Defendant—Bifurcated Trial
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(Second Phase)

3943. Punitive Damages Against Employer or Principal for
Conduct of a Specific Agent or Employee—Trial Not
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3944. Punitive Damages Against Employer or Principal for
Conduct of a Specific Agent or Employee—Bifurcated Trial
(First Phase)

3945. Punitive Damages—Entity Defendant—Trial Not Bifurcated

3946. Punitive Damages—Entity Defendant—Bifurcated Trial
(First Phase)

3947. Punitive Damages—Individual and Entity Defendants—Trial
Not Bifurcated

3948. Punitive Damages—Individual and Corporate Defendants
(Corporate Liability Based on Acts of Named Individual)—
Bifurcated Trial (First Phase)

3949. Punitive Damages—Individual and Corporate Defendants
(Corporate Liability Based on Acts of Named Individual)—

Bifurcated Trial (Second Phase)

3950–3959. Reserved for Future Use

3960. Contributory Negligence—General Verdict

3961. Duty to Mitigate Damages for Past Lost Earnings

3962. Duty to Mitigate Damages for Future Lost Earnings

3963. No Deduction for Workers' Compensation Benefits Paid

3964–3999. Reserved for Future Use

VF-3900. Punitive Damages—Trial Not Bifurcated

VF-3901. Punitive Damages Against Employer or Principal for
Conduct of a Specific Agent or Employee—Trial Not
Bifurcated

VF-3902. Punitive Damages—Entity Defendant—Trial Not Bifurcated

VF-3903. Punitive Damages—Entity Defendant—Ratification—Trial
Not Bifurcated

VF-3904. Punitive Damages—Entity Defendant—Authorization—Trial
Not Bifurcated

VF-3905. Damages for Wrongful Death (Death of an Adult)

VF-3906. Damages for Wrongful Death (Parents' Recovery for Death
of a Minor Child)

VF-3907. Damages for Loss of Consortium (Noneconomic Damage)

VF-3999. Reserved for Future Use

Table A Life Expectancy Table—Male

Table B Life Expectancy Table—Female

3900. Introduction to Tort Damages—Liability Contested

If you decide that *[name of plaintiff]* has proved *[his/her]* claim against *[name of defendant]*, you also must decide how much money will reasonably compensate *[name of plaintiff]* for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by *[name of defendant]*’s wrongful conduct, even if the particular harm could not have been anticipated.

***[Name of plaintiff]* does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.**

[The following are the specific items of damages claimed by *[name of plaintiff]*:]

[Insert applicable instructions on items of damage.]

Directions for Use

This instruction should be followed by applicable instructions (see GCI Nos. 3903A through 3903N, and GCI No. 3905A) concerning the items of damage claimed by the plaintiff. These instructions should be inserted into this instruction as sequentially numbered items.

References

20 G.C.A. §2225 provides: “For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19, 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”

20 G.C.A. §2101 provides: “Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation in money, which is called damages.”

20 G.C.A. §2103 provides: "Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future."

20 G.C.A. §2281 provides: "Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered."

Judicial Council of California Civil Jury Instructions, Inst. 3900.

3901. Introduction to Tort Damages—Liability Established

If you decide that [name of plaintiff] was harmed and that [name of defendant]’s [insert description of cause of action, e.g., “negligence”] was a substantial factor in causing the harm, you also must decide how much money will reasonably compensate [name of plaintiff] for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by [name of defendant]’s wrongful conduct, even if the particular harm could not have been anticipated.

[Name of plaintiff] does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

[The following are the specific items of damages claimed by [name of plaintiff]:]

[Insert applicable instructions on items of damage.]

Directions for Use

This instruction is intended for cases in which the defendant “admits” liability, but contests causation and damages. See, *Negligence Not Contested—Essential Factual Elements*.

This instruction should be followed by applicable instructions (see GCI Nos. 3903A through 3903N, and GCI No. 3905A) concerning the items of damage claimed by the plaintiff. These instructions should be inserted into this instruction as sequentially numbered items.

Read, *Causation: Substantial Factor*, as the definition of “substantial factor.”

References

20 G.C.A. §2225 provides: “For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19,

20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”

20 G.C.A. §2101 provides: “Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation in money, which is called damages.”

20 G.C.A. §2103 provides: “Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.”

20 G.C.A. §2281 provides: “Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.”

Judicial Council of California Civil Jury Instructions, Inst. 3901.

3902. Economic and Noneconomic Damages

The damages claimed by *[name of plaintiff]* for the harm caused by *[name of defendant]* fall into two categories called economic damages and noneconomic damages. [You will be asked on the verdict form to state the two categories of damages separately.]

Directions for Use

The separation of damages between economic and noneconomic damages has statutory significance in California but not necessarily in Guam; therefore, the use of the categories of damages is optional. Bracketed language is optional. This instruction with the bracketed language included must be used with a claim involving the Volunteer Protection Act of 1999, 7 G.C.A. §16101 et seq.

References

Judicial Council of California Civil Jury Instructions, Inst. 3902.

3903. Items of Economic Damage

The following are the specific items of economic damages claimed by [name of plaintiff]:

[Insert applicable instructions on items of economic damage.]

Directions for Use

This instruction shall be used with a claim involving the Volunteer Protection Act of 1999, 7 G.C.A. §16101 et seq.

References

Judicial Council of California Civil Jury Instructions, Inst. 3903.

3903A. Medical Expenses—Past and Future

[Insert number, e.g., “1.”] [Past] [and] [future] medical expenses.

[To recover damages for past medical expenses, *[name of plaintiff]* must prove the reasonable cost of reasonably necessary medical care that *[he/she]* has received.]

[To recover damages for future medical expenses, *[name of plaintiff]* must prove the reasonable cost of reasonably necessary medical care that *[he/she]* is reasonably certain to need in the future.]

References

In *Abuan v. General Electric Co.*, 1992 WL 535958, *4 (D. Guam A.D. 1992), the Court stated “Plaintiffs have submitted no competent evidence to indicate they faced an increased risk of future injury, illness, or disease. Because a jury cannot award damages based on speculation or conjecture, a claim of increased risk of future injury, illness or disease, must be shown to be probable and reasonably certain, not a mere possibility...”.

Judicial Council of California Civil Jury Instructions, Inst. 3903A.

3903B. Medical Monitoring—Toxic Exposure

[Insert number, e.g., “2.”] The cost of future medical monitoring. To recover damages for this item, [name of plaintiff] must prove that the exposure to the toxic substance was above federally permitted levels. If the Plaintiff proves this, the burden shifts to the Defendant(s) to disprove an increased likelihood of disease or injury to the Plaintiff. In making this determination, you shall resolve all doubts in favor of the Plaintiff.

Directions for Use

This instruction should be given only in a case arising under the Toxic Substances Exposure Compensation Act, 10 G.C.A. §41101 et seq.

References

See Toxic Substances Exposure Compensation Act, 10 G.C.A. §41101 et seq. But see *Abuan v. General Electric Co.*, 1992 WL 535958 (D. Guam A.D. 1992), where the court, in a case arising under this statute, stated “Plaintiffs have submitted no competent evidence to indicate they faced an increased risk of future injury, illness, or disease. Because a jury cannot award damages based on speculation or conjecture, a claim of increased risk of future injury, illness, or disease, must be shown to be probable and reasonably certain, not a mere possibility...”

Judicial Council of California Civil Jury Instructions, Inst. 3903B.

3903C. Past and Future Lost Earnings

[Insert number, e.g., "3."] [Past] [and] [future] lost earnings.

[To recover damages for past lost earnings, [name of plaintiff] must prove the amount of [insert one or more of the following: income/earnings/salary/wages] that [he/she] has lost to date.]

[To recover damages for future lost earnings, [name of plaintiff] must prove the amount of [insert one or more of the following: income/earnings/salary/wages] [he/she] will be reasonably certain to lose in the future as a result of the injury.]

Directions for Use

This instruction is not intended for use in employment cases.

References

20 G.C.A. §2225: Breach obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. SOURCE: CC § 3333.

20 G.C.A. §2280: Limitation of damages. Notwithstanding the provisions of this Chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in " 2219 (*Breach of Promise of Marriage*), 2231 (*Seduction*), and 2232 (*Injury to Animals*). SOURCE: CC § 3358.

20 G.C.A. §2281. Damages, reasonable. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered. SOURCE: CC § 3359.

Judicial Council of California Civil Jury Instructions, Inst. 3903C.

3903D. Lost Earning Capacity

[Insert number, e.g., "4."] **The loss of [name of plaintiff]'s ability to earn money.**

To recover damages for the loss of the ability to earn money, [name of plaintiff] must prove the amount of money [he/she] would have been reasonably certain to earn if the injury had not occurred. It is not necessary that [he/she] have a work history.

Directions for Use

This instruction is not intended for use in employment cases.

If lost profits are asserted as an element of damages, see GCI No. 3903N, *Lost Profits (Economic Damage)*.

References

30 G.C.A. §2225: Breach obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. SOURCE: CC § 3333.

30 G.C.A. §2280: Limitation of damages. Notwithstanding the provisions of this Chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in " 2219 (*Breach of Promise of Marriage*), 2231 (*Seduction*), and 2232 (*Injury to Animals*). SOURCE: CC § 3358.

30 G.C.A. §2225: 2281. Damages, reasonable. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered. SOURCE: CC § 3359.

Judicial Council of California Civil Jury Instructions, Inst. 3903D.

3903E. Loss of Ability to Provide Household Services

[Insert number, e.g., "5."] The loss of [name of plaintiff]'s ability to provide household services.

To recover damages for the loss of the ability to provide household services, [name of plaintiff] must prove the reasonable value of the services [he/she] would have been reasonably certain to provide to [his/her] household if the injury had not occurred.

Directions for Use

This instruction is not intended to include compensation for loss of consortium. See GCI No. 3920.

References

30 G.C.A. §2225: Breach obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. SOURCE: CC § 3333.

30 G.C.A. §2280: Limitation of damages. Notwithstanding the provisions of this Chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in " 2219 (*Breach of Promise of Marriage*), 2231 (*Seduction*), and 2232 (*Injury to Animals*). SOURCE: CC § 3358.

30 G.C.A. §2225: 2281. Damages, reasonable. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered. SOURCE: CC § 3359.

Judicial Council of California Civil Jury Instructions, Inst. 3903E.

3903F. Damage to Real Property

[Insert number, e.g., "6."] The harm to [name of plaintiff]'s property.

To recover damages for harm to property, [name of plaintiff] must prove the reduction in the property's value or the reasonable cost of repairing the harm. [If there is evidence of both, [name of plaintiff] is entitled to the lesser of the two amounts.]

To determine the reduction in value, you must determine the fair market value of the property before the harm occurred and then subtract the fair market value of the property immediately after the harm occurred. The difference is the reduction of value.

"Fair market value" is the highest price for the property that a willing buyer would have paid to a willing seller, assuming:

1. That there is no pressure on either one to buy or sell; and
2. That the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.

[If [name of plaintiff] has a genuine desire to repair the property for personal reasons, and if the costs of repair are reasonable given the damage to the property and the value after repair, then the costs of repair may be awarded even if they exceed the property's loss of value.]

Directions for Use

Before the last bracketed sentence is given, the judge should decide whether the claimed personal reasons are legally sufficient to justify the costs of repair. In the case of certain injuries to timber, trees or underwood upon land of another, the double damage provisions of 20 GCA § 2252 apply. In certain cases of negligently setting a fire, the double damage provisions of 20 GCA § 2253 apply.

References

20 GCA § 2225: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

20 GCA § 2281: "Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered."

20 GCA § 2277: "Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value

against one who had notice thereof before incurring a liability to damages in respect thereof, or against a wilful wrongdoer."

Judicial Council of California Civil Jury Instructions, Inst. 3903F.

3903G. Loss of Use of Real Property

[Insert number, e.g., "7."] **The loss of use of [name of plaintiff]'s [insert identification of real property].**

To recover damages for the loss of use, [name of plaintiff] must prove the reasonable cost to rent similar property for the time when [he/she/it] could not use [his/her/its] own property.

Directions for Use

This instruction is not intended for cases in which the plaintiff is a landlord seeking to recover compensation for lost rents. A more appropriate instruction for that situation is CACI No. 3903N, *Lost Profits*.

References

20 GCA § 2225: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

20 GCA § 2281: "Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered."

Judicial Council of California Civil Jury Instructions, Inst. 3903G.

3903H. Damage to Annual Crop

[Insert number, e.g., "8."] The harm to [name of plaintiff]'s crop.

[Damages for the destruction of an entire annual crop are determined as follows:

1. Determine the expected market value of the crop before the harm occurred; and
2. Subtract from this amount the estimated costs of producing and marketing the crop, excluding costs that have already been paid by [name of plaintiff].]

[Damages for the destruction of part of an annual crop are determined as follows:

1. Determine the expected market value of the crop before the harm occurred;
2. Subtract from this amount the estimated costs of producing and marketing the crop. This is the expected net profit.
3. Next, subtract the actual cost of producing and marketing the surviving crop from the actual receipts. This is actual net profit.
4. Subtract number 3 from number 2. This amount is [name of plaintiff]'s damages for this loss.]

Directions for Use

Select one of the bracketed options depending on whether the plaintiff is seeking damages for the destruction of all or part of a crop.

References

Judicial Council of California Civil Jury Instructions, Inst. 3903H.

3903I. Damage to Perennial Crop

[Insert number, e.g., "9."] **The harm to [name of plaintiff]'s crop.**

[Damages for destruction of [describe perennial crop] are determined as follows. For the time period from the destruction of the crop until the crop can be restored you must:

- 1. Determine the rental value of the land with the crop; and**
- 2. Subtract from this amount the rental value of the land without the crop.]**

[Damages for destruction of [describe perennial crop], which can be harvested and sold, are determined as follows:

- 1. Determine the expected market value of the crop before the harm occurred; and**
- 2. Subtract from this amount the estimated costs of producing and marketing the crop, excluding costs that have already been paid by [name of plaintiff].]**

[If the [plants/roots/seeds] responsible for producing the crop are destroyed, the measure of damages may also include the costs of [reseeding/replanting].]

Directions for Use

If the plaintiff claims damages for multiple crops, damages must be calculated for each crop that would have been produced until the land was restored.

References

Judicial Council of California Civil Jury Instructions, Inst. 3903I.

3903J. Damage to Personal Property

[Insert number, e.g., "10."] The harm to [name of plaintiff]'s [item of personal property].

To recover damages for harm to personal property, [name of plaintiff] must prove the reduction in the [item of personal property]'s value or the reasonable cost of repairing it, whichever is less. [If there is evidence of both, [name of plaintiff] is entitled to the lesser of the two amounts.]

To determine the reduction in value, you must determine the fair market value of the [item of personal property] before the harm occurred and then subtract the fair market value of the [item of personal property] immediately after the harm occurred.

"Fair market value" is the highest price that a willing buyer would have paid to a willing seller, assuming:

1. That there is no pressure on either one to buy or sell; and
2. That the buyer and seller are fully informed of the condition and quality of the [item of personal property].

[If you find that [name of plaintiff]'s [item of personal property] cannot be completely repaired, the damages are the difference between its value before the harm and its value after the repairs have been made, plus the reasonable cost of making the repairs. The total amount awarded must not exceed the [item of personal property]'s value before the harm occurred.]

References

20 GCA § 2228 provides the standard for damages in wrongful conversion actions.

Judicial Council of California Civil Jury Instructions, Inst. 3903J.

3903K. Loss or Destruction of Personal Property

[Insert number, e.g., "11."] The [loss/destruction] of [name of plaintiff]'s [item of personal property].

To recover damages for the [loss/destruction], [name of plaintiff] must prove the fair market value of the [item of personal property] just before the harm occurred.

"Fair market value" is the highest price that a willing buyer would have paid to a willing seller, assuming:

- 1. That there is no pressure on either one to buy or sell; and**
- 2. That the buyer and seller are fully informed of the condition and quality of the [item of personal property].**

References

20 GCA § 2228 contains the standard for damages in wrongful conversion actions.

Judicial Council of California Civil Jury Instructions, Inst. 3903K.

3903L. Damage to Personal Property Having Special Value

[Insert number, e.g., "12."] The unique value of [name of plaintiff]'s [item of personal property].

To recover damages for the unique value, [name of plaintiff] must prove all of the following:

1. That the [item of personal property] had some market value;
2. That the [item of personal property] had unique value to [name of plaintiff];
and
3. [That [name of defendant] had notice of this unique value before the harm;]
[or] [That [name of defendant]'s conduct was intentional and wrongful.]

No fixed standard exists for deciding the amount of this value. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

Directions for Use

The judge should determine whether the peculiar value claimed by the plaintiff is legally sufficient. While the subcommittee been unable to locate cases that state this rule explicitly, cases have upheld the giving of this type of instruction where there is substantial evidence of peculiar value.

References

20 GCA § 2277 provides: "Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer."

Judicial Council of California Civil Jury Instructions, Inst. 3903M.

3903M. Loss of Use of Personal Property

[Insert number, e.g., "13.]" **The loss of use of** *[name of plaintiff]'s [item of personal property]*.

To recover damages for loss of use, *[name of plaintiff]* **must prove the reasonable cost to rent a similar** *[item of personal property]* **for the amount of time reasonably necessary to repair or replace the** *[item of personal property]*.

References

Judicial Council of California Civil Jury Instructions, Inst. 3903M.

3903N. Lost Profits

[Insert number, e.g., "13."] Lost profits.

To recover damages for lost profits, [name of plaintiff] must prove it is reasonably certain [he/she/it] would have earned profits but for [name of defendant]'s conduct.

To decide the amount of damages for lost profits, you must determine the gross amount [name of plaintiff] would have received but for [name of defendant]'s conduct and then subtract from that amount the expenses [including the value of the [specify categories of evidence, such as labor/materials/rents/all expenses/interest of the capital employed]] [name of plaintiff] would have had if [name of defendant]'s conduct had not occurred.

The amount of the lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss.

Directions for Use

This instruction is not intended for personal injury cases. Instead, use GCI No. 3903C, *Past and Future Lost Earnings*.

Insertion of specified types of costs to be deducted from gross earnings is optional, depending on the facts of the case. Other types of costs may be inserted as appropriate.

References

"Loss of income is 'measure by the amount of profit that a plaintiff could prove would have been generated had the plaintiff not been deprived of the use of the property' As a retailer, Nissan's loss of income is measured by the price it could have sold a vehicle for before it was damaged versus the price it is able to sell a vehicle for after it is damaged." *Nissan Motor Corp. v. Sea Star Group, Inc.*, 2002 Guam 5 ¶ 27.

"Courts in many cases have awarded lost profits that could be proved by a 'reasonable degree of certainty.'" The law of Guam expresses a stricter standard. Guam Civil Code Section 3301 [sic] requires that damages be 'clearly ascertainable in both their nature and origin.'" *Burke v. Cocos Lagoon Dev. Corp.*, 1986 WL 68923 at *1 (D. Guam A.D. 1986). *But see Coastal Dev. Corp. v. Sammi Const. Co.*, 1986 WL 68925 at *2 (D. Guam A.D. 1986) (requiring that a plaintiff demonstrate "reasonable probability" of profits).

Title 20 GCA § 2202 states, "No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin."

Judicial Council of California Civil Jury Instructions, Inst. 3903N.

3904. Present Cash Value

If you decide that [name of plaintiff]'s harm includes future [economic] damages for [loss of earnings/future medical expenses/lost profits/[insert other damages]], then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide [name of plaintiff] with the amount of [his/her/its] future damages.

[You may consider expert testimony in determining the present cash value of future [economic] damages.]

[You will be provided with a table to help you calculate the present cash value.]

Directions for Use

Give the second bracketed option if parties have stipulated to a discount rate or if evidence from which the jury can determine an appropriate discount rate has been presented. A table appropriate to this calculation should be provided.

Expert testimony will usually be required to accurately establish present values for future economic losses. However, tables may be helpful to the jury in many cases.

References

Judicial Council of California Civil Jury Instructions, Inst. 3904.

3905. Items of Noneconomic Damage

The following are the specific items of noneconomic damages claimed by [name of plaintiff]:

[Insert applicable instructions on items of noneconomic damage.]

Directions for Use

This instruction may not be needed in every case. For example, if the plaintiff is not claiming any economic damages, there is no need to define the claimed damages as "noneconomic." If this instruction is used, it should be followed by applicable instructions concerning the items of noneconomic damage claimed by the plaintiff. These instructions should be inserted into this instruction as sequentially numbered items.

References

Judicial Council of California Civil Jury Instructions, Inst. 3905.

Cross References

Guam Civil Jury Instructions, Inst. 3902.

**3905A. Physical Pain, Mental Suffering, and Emotional Distress
(Noneconomic Damage)**

[*Insert number, e.g., "1."*] [Past] [and] [future] [physical pain/mental suffering/loss of enjoyment of life/disfigurement/physical impairment/inconvenience/grief/anxiety/humiliation/emotional distress [*insert other damages*]].

[To recover for future [*insert item of pain and suffering*], [*name of plaintiff*] must prove that [he/she] is reasonably certain to suffer that harm.]

No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

[Your award for future noneconomic damages should be the present value of such damages.]

Directions for Use

Insert the bracketed terms that best describe the damages claimed by the plaintiff. The final bracketed sentence should be used if the plaintiff is claiming both economic and noneconomic damages.

References

20 GCA § 2101 provides, "Persons suffering detriment may recover damages. Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor, in money, which is called damages."

20 GCA § 2280 provides, "Limitation of damages. Notwithstanding the provisions of this Chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in " 2219 (*Breach of Promise of Marriage*), 2231 (*Seduction*), and 2232 (*Injury to Animals*)."

20 GCA § 2281 provides, "Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered."

Judicial Council of California Civil Jury Instructions, Inst. 3905A.

Cross References

Guam Civil Jury Instructions, Inst. 3902.

3920 Loss of Consortium

[Name of plaintiff] claims that [he/she] has been harmed by the injury to [his/her] [husband/wife]. If you decide that [name of injured spouse] has proved [his/her] claim against [name of defendant], you also must decide how much money, if any, will reasonably compensate [name of plaintiff] for loss of [his/her] [husband/wife]'s companionship and services, including:

- 1. The loss of love, companionship, comfort, care, assistance, protection, affection, society, moral support; and**
- 2. The loss of the enjoyment of sexual relations [or the ability to have children].**

[Name of plaintiff] may recover for harm [he/she] proves [he/she] has suffered to date and for harm [he/she] is reasonably certain to suffer in the future. No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

Do not include in your award any compensation for the following:

- 1. The loss of financial support from [name of injured spouse];**
- 2. Personal services, such as nursing, that [name of plaintiff] has provided or will provide to [name of injured spouse]; or**
- 3. Any loss of earnings that [name of plaintiff] has suffered by giving up employment to take care of [name of injured spouse].**

Directions for Use

Depending on the circumstances of the case, it may be appropriate to add after "to be suffered in the future" either "during the period of [name of injured spouse]'s disability" or "as measured by the life expectancy that [name of injured spouse] had before [his/her] injury or by the life expectancy of [name of plaintiff], whichever is shorter."

Insofar as this instruction addresses the loss of a spouse's assistance in operating the household, it is not intended to include the cost of obtaining household services. (See *Kellogg v. Asbestos Corp. Ltd.* (1996) 41 Cal.App.4th 1397, 1408 [49 Cal.Rptr.2d 256]: "Although the trial court labeled the damages awarded Mrs. Kellogg as being for 'loss of consortium' (a noneconomic damages item under Proposition 51), much of the testimony at trial actually involved the 'costs of obtaining substitute domestic services' on her behalf (an economic damage item in the statute). (See *Civ. Code*, § 1431.2, subd. (b)(1), (2))")

References

Judicial Council of California Civil Jury Instructions, Inst. 3920.

3921 Wrongful Death (Death of an Adult)

If you decide that *[name of plaintiff]* has proved *[his/her]* claim against *[name of defendant]* for the death of *[name of decedent]*, you also must decide how much money will reasonably compensate *[name of plaintiff]* for the death of *[name of decedent]*. This compensation is called "damages."

[Name of plaintiff] does not have to prove the exact amount of these damages. However, you must not speculate or guess in awarding damages.

[Name of plaintiff] claims the following damages:

1. The financial support, if any, that *[name of decedent]* would have contributed to the family during either the life expectancy that *[name of decedent]* had before *[his/her]* death or the life expectancy of *[name of plaintiff]*, whichever is shorter;
2. The loss of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*;
3. Funeral and burial expenses; and
4. The reasonable value of household services that *[name of decedent]* would have provided.

Your award of any of these previously described damages must be reduced to present cash value.

[Name of plaintiff] also claims the following damages:

1. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, moral support; [and]
- [2. The loss of the enjoyment of sexual relations.]
- [2. The loss of *[name of decedent]*'s training and guidance.]

No fixed standard exists for deciding the amount of those described damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense. [Your award for those described damages should not be reduced to present cash value.]

In determining *[name of plaintiff]*'s loss, do not consider:

1. *[Name of plaintiff]*'s grief, sorrow, or mental anguish;
2. *[Name of decedent]*'s pain and suffering; or

3. The poverty or wealth of [name of plaintiff].

In deciding a person's life expectancy, you may consider, among other factors, the average life expectancy of a person of that age, as well as that person's health, habits, activities, lifestyle, and occupation. According to [insert source of information], the average life expectancy of a [insert number]-year-old [male/female] is [insert number] years, and the average life expectancy of a [insert number]-year-old [male/female] is [insert number] years. This published information is evidence of how long a person is likely to live but is not conclusive. Some people live longer and others die sooner.

[In computing these damages, consider the losses suffered by all plaintiffs and return a verdict of a single amount for all plaintiffs. I will divide the amount [among/between] the plaintiffs.]

Directions for Use

One of the life-expectancy subjects in the second sentence of the second-to-last paragraph should be the decedent, and the other should be the plaintiff. This definition is intended to apply to the element of damages pertaining to the financial support that the decedent would have provided to the plaintiff.

References

Judicial Council of California Civil Jury Instructions, Inst. No. 3921.

3922 Wrongful Death (Parents' Recovery for Death of a Minor Child)

If you decide that *[name of plaintiff]* has proved *[his/her]* claim against *[name of defendant]* for the death of *[name of minor]*, you also must decide how much money will reasonably compensate *[name of plaintiff]* for the death of *[name of minor]*. This compensation is called "damages."

[Name of plaintiff] does not have to prove the exact amount of these damages. However, you must not speculate or guess in awarding damages.

[Name of plaintiff] claims the following damages:

1. The value of the financial support, if any, that *[name of minor]* would have contributed to the family during either the life expectancy that *[name of minor]* had before *[his/her]* death or the life expectancy of *[name of plaintiff]*, whichever is shorter;
2. The loss of gifts or benefits that *[name of plaintiff]* could have expected to receive from *[name of minor]*;
3. Funeral and burial expenses; and
4. The reasonable value of household services that *[name of minor]* would have provided.

Your award of any of these previously described damages must be reduced to present cash value.

[Name of plaintiff] also claims the following damages: The loss of *[name of minor]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support.

No fixed standard exists for deciding the amount of those described damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense. [Your award for those described damages should not be reduced to present cash value.]

Do not include in your award any compensation for the following:

1. *[Name of plaintiff]*'s grief, sorrow, or mental anguish; or
2. *[Name of minor]*'s pain and suffering.

In computing these damages, you should deduct the present cash value of the probable costs of *[name of minor]*'s support and education.

In deciding a person's life expectancy, consider, among other factors, that person's health, habits, activities, lifestyle, and occupation. Life expectancy tables are evidence of a person's life expectancy but are not conclusive.

[In computing these damages, consider the losses suffered by all plaintiffs and return a verdict of a single amount for all plaintiffs. I will divide the amount [among/between] the plaintiffs.]

References

Judicial Council of California Jury Instructions, Inst. No. 3922.

3923. Collateral Source Payments

You shall award damages in an amount that fully compensates plaintiff for damages in accordance with instructions from the court. You shall not speculate or consider any other possible sources of benefit the plaintiff may have received. After you have returned your verdict the court will make whatever adjustments are necessary in this regard.

References

Judicial Council of California Civil Jury Instructions, Inst. 3923.

3924. No Punitive Damages Where Unavailable as a Matter of Law

You must not include in your award any damages to punish or make an example of [name of defendant]. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate [name of plaintiff] for [his/her/its] loss.

Directions for Use

This instruction may only be used in cases where the court has determined that punitive damages are legally unavailable. Examples of such cases are actions for wrongful death, contract actions, and actions against the government.

References

Guam Government Claims Act, 5 G.C.A. §6301(a) (“neither line agencies nor autonomous agencies nor the government of Guam shall be liable ... for any punitive damages ...”).

Park v. Mobil Oil Guam, Inc., 2004 Guam 20, citing 20 GCA §2120 (“In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.”)

Judicial Council of California Civil Jury Instructions, Inst. 3924.

3925. Arguments of Counsel Not Evidence of Damages

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

Directions for Use

If a pleading is admitted into evidence, the following may be added: “The amount of damages that [*name of plaintiff*] has claimed in [his/her] written pleadings is not evidence of [*name of plaintiff*]’s damages.”

References

B.M. Co. v. Avery, 2002 Guam 19, ¶11 (Quoting with approval from trial court decision and order that “statements made by Defense Counsel in opening arguments” are not evidence which could support defendant’s affirmative claim for damages.

Judicial Council of California Civil Jury Instructions, Inst. No. 3925.

3926. Settlement Deduction

You have heard evidence that [name of plaintiff] has settled [his/her/its] claim against [name of defendant]. Your award of damages to [name of plaintiff] should be made without considering any amount that [he/she/it] may have received under this settlement. After you have returned your verdict, I will make the proper deduction from your award of damages.

References

7 G.C.A. §24605: “When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It does not discharge any of the other tortfeasors from liability from the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

2. It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Judicial Council of California Civil Jury Instructions, Inst. No. 3926.

3927. Aggravation of Preexisting Condition or Disability

[Name of plaintiff] is not entitled to damages for any physical or emotional condition that [he/she] had before [name of defendant]'s conduct occurred. However, if [name of plaintiff] had a physical or emotional condition that was made worse by [name of defendant]'s wrongful conduct, you must award damages that will reasonably and fairly compensate [him/her] for the effect on that condition.

References

Judicial Council of California Civil Jury Instructions, Inst. No. 3927.

3928. Unusually Susceptible Plaintiff

You must decide the full amount of money that will reasonably and fairly compensate [name of plaintiff] for all damages caused by the wrongful conduct of [name of defendant], even if [name of plaintiff] was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury.

References

18 GCA §90107: "Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by '90108 and the law on Compensatory Relief [Title 20 of this Code]."

20 GCA §2225: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

Judicial Council of California Civil Jury Instructions, Inst. 3928.

3929. Subsequent Medical Treatment

If you decide that [name of defendant] is legally responsible for [name of plaintiff]'s harm, [he/she/it] is also responsible for any additional harm resulting from the acts of others in providing aid that [name of plaintiff]'s injury reasonably required, even if those acts were negligently performed.

Directions for Use

A physician is entitled to have the jury allocate fault among other negligent physicians who subsequently treat the plaintiff and is not barred by Proposition 51 from presenting evidence regarding the negligence of *Court*

References

20 GCA §2225: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19 20 and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

Judicial Council of California Civil Jury Instructions, Inst. 3929.

3930. Mitigation of Damages (Personal Injury)

If you decide [name of defendant] is responsible for the original harm, [name of plaintiff] is not entitled to recover damages for harm that [name of defendant] proves [name of plaintiff] could have avoided with reasonable efforts or expenditures.

You should consider the reasonableness of [name of plaintiff]'s efforts in light of the circumstances facing [him/her] at the time, including [his/her] ability to make the efforts or expenditures without undue risk or hardship.

If [name of plaintiff] made reasonable efforts to avoid harm, then your award should include reasonable amounts that [he/she] spent for this purpose.

References

"Although it has been said that a plaintiff is ordinarily under a duty to mitigate damages, this is not strictly true, since there are no damages for breach of the duty; rather, the plaintiff simply cannot recover those damages that it could have avoided. Damages which the plaintiff might have avoided with reasonable effort without undue risk, expense, burden, or humiliation will be considered either as not having been caused by the defendant's wrong or as not being chargeable against the defendant." (citations omitted). *Haeuser v. Department of Law*, 2005 Guam 14 at ¶ 21.

Judicial Council of California Civil Jury Instructions, Inst. 3930.

3931. Mitigation of Damages (Property Damage)

If you decide [name of defendant] is responsible for the original harm, [name of plaintiff] is not entitled to recover damages for harm to [his/her] property that [name of defendant] proves [name of plaintiff] could have avoided with reasonable efforts or expenditures.

You should consider the reasonableness of [name of plaintiff]'s efforts in light of the circumstances facing [him/her] at the time, including [his/her] ability to make the efforts or expenditures without undue risk or hardship.

If [name of plaintiff] made reasonable efforts to avoid harm, then your award should include reasonable amounts that [he/she] spent for this purpose.

References

“It is well-settled that any injured party, who is entitled to damages, is required to mitigate those damages. In the case of an award for back pay due to an aggrieved employee, that employee is under a duty to mitigate damages. The employer has the burden of showing that the employee has not mitigated damages.” *Haeuser v. Department of Law* 14 GUAM 2005 (citations omitted.)

“The duty to mitigate is triggered ‘as soon as the landlord has notice of the tenant's abandonment, even if the lease has not been formally terminated.’” *Guam United Warehouse Corporation v. DeWitt Transportation Services of Guam, Inc.* 20 Guam 2003 (citations omitted.)

Judicial Council of California Civil Jury Instructions, Inst. 3931.

3932. Life Expectancy

If you decide [name of plaintiff] has suffered damages that will continue for the rest of [his/her] life, you must determine how long [he/she] will probably live. According to [insert source of information], a [insert number]-year-old [male/female] is expected to live another [insert number] years. This is the average life expectancy. Some people live longer and others die sooner.

This published information is evidence of how long a person is likely to live but is not conclusive. In deciding a person's life expectancy, you should also consider, among other factors, that person's health, habits, activities, lifestyle, and occupation.

Directions for Use

Use of the life tables in *Vital Statistics of the United States*, published by the National Center for Health Statistics, is recommended. (See *Damages*, Table A, Life Expectancy Table-Male and Table B, Life Expectancy Table-Female.)

References

Judicial Council of California Civil Jury Instructions, Inst. 3932.

3940. Punitive Damages—Individual Defendant—Trial Not Bifurcated

If you decide that *[name of defendant]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages only if *[name of plaintiff]* proves that *[name of defendant]* engaged in that conduct with malice, oppression, or fraud.

“Malice” means that *[name of defendant]* acted with intent to cause injury or that *[name of defendant]*'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

“Oppression” means that *[name of defendant]*'s conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of *[his/her]* rights.

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

“Fraud” means that *[name of defendant]* intentionally misrepresented or concealed a material fact and did so intending to harm *[name of plaintiff]*.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following in determining the amount:

- (a) How reprehensible was *[name of defendant]*'s conduct?
- (b) Is there a reasonable relationship between the amount of punitive damages and *[name of plaintiff]*'s harm?
- (c) In view of *[name of defendant]*'s financial condition, what amount is necessary to punish *[him/her]* and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because *[name of defendant]* has substantial financial resources. [Any award you impose may not exceed *[name of defendant]*'s ability to pay.]

Directions for Use

This instruction is intended to apply to individual persons only. When the plaintiff is seeking punitive damages against corporate defendants, use GCI No. 3943, *Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee*—

Trial Not Bifurcated, or GCI No. 3945, *Punitive Damages—Entity Defendant—Trial Not Bifurcated*.

When plaintiff is seeking punitive damages against both an individual person and a corporate defendant, use GCI No. 3947, *Punitive Damages—Individual and Entity Defendants—Trial Not Bifurcated*.

Read the bracketed language in subdivision (c) only if the defendant has presented relevant evidence regarding this issue.

“A jury must be instructed . . . that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred.” (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408, 422 [123 S.Ct. 1513, 155 L.Ed.2d 585].) An instruction on this point should be included within this instruction if appropriate to the facts.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word “misrepresentation” is used in the instruction’s definition of “fraud.”

In June 2003, the United States Supreme Court restated the due process principles limiting awards of punitive damages in *State Farm Mutual Automobile Insurance Co.*, *supra*, 538 U.S. at p. 418. The Guam Supreme Court responded to and applied the United States Supreme Court’s reasoning in *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 50.

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

20 GCA § 2281 provides: Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

For a general discussion of punitive damages *see Park v. Mobil Oil Guam Inc.*, 2004 Guam 20 ¶ 13.

Judicial Council of California Civil Jury Instructions, Inst. 3940.

3941. Punitive Damages—Individual Defendant—Bifurcated Trial (First Phase)

If you decide that *[name of defendant]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages. At this time, you must decide whether *[name of plaintiff]* has proved that *[name of defendant]* engaged in that conduct with malice, oppression, or fraud. The amount of punitive damages, if any, will be decided later.

“Malice” means that *[name of defendant]* acted with intent to cause injury or that *[name of defendant]*'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

“Oppression” means that *[name of defendant]*'s conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of *[his/her]* rights.

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

“Fraud” means that *[name of defendant]* intentionally misrepresented or concealed a material fact and did so intending to harm *[name of plaintiff]*.

Directions for Use

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word misrepresentation” is used in the instruction’s definition of “fraud.”

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Judicial Council of California Civil Jury Instructions, Inst. 3941.

3942. Punitive Damages—Individual Defendant—Bifurcated Trial (Second Phase)

You must now decide the amount, if any, that you should award [*name of plaintiff*] in punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following in determining the amount:

(a) How reprehensible was [*name of defendant*]’s conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and [*name of plaintiff*]’s harm?

(c) In view of [*name of defendant*]’s financial condition, what amount is necessary to punish [him/her] and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because [*name of defendant*] has substantial financial resources. [Any award you impose may not exceed [*name of defendant*]’s ability to pay.]

Directions for Use

Read the bracketed language in subdivision (c) only if the defendant has presented relevant evidence regarding this issue.

“A jury must be instructed . . . that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred.” (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408, 422 [123 S.Ct. 1513, 155 L.Ed.2d 585].) An instruction on this point should be included within this instruction if appropriate to the facts.

In June 2003, the United States Supreme Court restated the due process principles limiting awards of punitive damages in *State Farm Mutual Automobile Insurance Co., supra*, 538 U.S. at p. 418. The Guam Supreme Court responded to and applied the United States Supreme Court’s reasoning in *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 50.

References

20 GCA § 2120 provides: “In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.”

“The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.” (*State Farm Mutual Automobile Insurance Co.*, *supra*, 538 U.S. at p. 427, internal citation omitted.)

Judicial Council of California Civil Jury Instructions, Inst. 3942.

3943. Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee—Trial Not Bifurcated

If you decide *[name of employee/agent]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages against *[name of defendant]* for *[name of employee/agent]*'s conduct. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against *[name of defendant]* for *[name of employee/agent]*'s conduct only if *[name of plaintiff]* proves that *[name of employee/agent]* engaged in that conduct with malice, oppression, or fraud.

“Malice” means that *[name of employee/agent]* acted with intent to cause injury, or that *[name of employee/agent]*'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

“Oppression” means that *[name of employee/agent]*'s conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of *[his/her]* rights.

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

“Fraud” means that *[name of employee/agent]* intentionally misrepresented or concealed a material fact and did so intending to harm *[name of plaintiff]*.

[Name of plaintiff] must also prove *[one of]* the following:

1. **[That *[name of employee/agent]* was an officer, a director, or a managing agent of *[name of defendant]*, who was acting on behalf of *[name of defendant]*; *[or]*]**
2. **[That an officer, a director, or a managing agent of *[name of defendant]* had advance knowledge of the unfitness of *[name of employee/agent]* and employed *[him/her]* with a knowing disregard of the rights or safety of others; *[or]*]**
3. **[That an officer, a director, or a managing agent of *[name of defendant]* authorized *[name of employee/agent]*'s conduct; *[or]*]**
4. **[That an officer, a director, or a managing agent of *[name of defendant]* knew of *[name of employee/agent]*'s wrongful conduct and adopted or approved the conduct after it occurred.]**

An employee is a “managing agent” if he or she exercises substantial independent

authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following in determining the amount:

(a) How reprehensible was [name of defendant]'s conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and [name of plaintiff]'s harm?

(c) In view of [name of defendant]'s financial condition, what amount is necessary to punish [him/her/it] and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because [name of defendant] has substantial financial resources. [Any award you impose may not exceed [name of defendant]'s ability to pay.]

Directions for Use

This instruction is intended for use when the plaintiff is seeking to hold only an employer or principal liable for punitive damages based on the conduct of a specific employee or agent. When the plaintiff is seeking punitive damages from both the employer/principal and the employee/agent, use GACI No. 3947, *Punitive Damages—Individual and Entity Defendants—Trial Not Bifurcated*. When punitive damages are sought against a corporation or other entity for the conduct of its directors, officers, and managing agents, use GACI No. 3945, *Punitive Damages—Entity Defendant—Trial Not Bifurcated*.

Read the bracketed language in subdivision (c) only if the defendant has presented relevant evidence regarding this issue.

If any of the alternative grounds for seeking punitive damages are inapplicable to the facts of the case, they may be omitted.

“A jury must be instructed . . . that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred.” (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408, 422 [123 S.Ct. 1513, 155 L.Ed.2d 585].) An instruction on this point should be included within this instruction if appropriate to the facts.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word “misrepresentation” is used in the instruction’s definition of “fraud.”

In June 2003, the United States Supreme Court restated the due process principles

limiting awards of punitive damages in *State Farm Mutual Automobile Insurance Co., supra*, 538 U.S. at p. 418. The Guam Supreme Court responded to and applied the United States Supreme Court's reasoning in *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 50.

See GCI No. 3940, *Punitive Damages—Individual Defendant—Trial Not Bifurcated* for additional References.

References

Title 20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where it is proven that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

“[W]e expressly adopt the Restatement (Second) Torts § 909 as the rule of corporate liability for punitive damages in this jurisdiction.” *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 27.

“[A] ‘managerial agent’ is an employee who exercises substantial discretionary authority which results in the ad hoc formulation of policy over an aspect of the corporation’s business.” *Park*, 2004 Guam 20 ¶ 27 (citing *Egan v. Mutual of Omaha*, 620 P.2d 141, 148 (Cal. 1979)).

Judicial Council of California Civil Jury Instructions, Inst. 3943.

3944. Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee—Bifurcated Trial (First Phase)

If you decide that *[name of employee/agent]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages against *[name of defendant]* for *[name of employee/agent]*'s conduct. At this time, you must decide whether *[name of plaintiff]* has proved that *[name of employee/agent]* engaged in that conduct with malice, oppression, or fraud. The amount of punitive damages, if any, will be decided later.

“Malice” means that *[name of employee/agent]* acted with intent to cause injury or that *[name of employee/agent]*'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

“Oppression” means that *[name of employee/agent]*'s conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of *[his/her]* rights.

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

“Fraud” means that *[name of employee/agent]* intentionally misrepresented or concealed a material fact and did so intending to harm *[name of plaintiff]*.

[Name of plaintiff] must also prove *[one of]* the following:

1. *[That [name of employee/agent] was an officer, a director, or a managing agent of [name of defendant] who was acting on behalf of [name of defendant]; [or]]*
2. *[That an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of [name of employee/agent] and employed [him/her] with a knowing disregard of the rights or safety of others; [or]]*
3. *[That an officer, a director, or a managing agent of [name of defendant] authorized [name of employee/agent]'s conduct; [or]]*
4. *[That an officer, a director, or a managing agent of [name of defendant] knew of [name of employee/agent]'s wrongful conduct and adopted or approved the conduct after it occurred.]*

An employee is a “managing agent” if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

Directions for Use

GCI No. 3942, *Punitive Damages—Individual Defendant—Bifurcated Trial (Second Phase)* may be used for the second phase of a bifurcated trial.

This instruction is intended for use when the plaintiff is seeking to hold only an employer or principal liable for punitive damages based on the conduct of a specific employee or agent. When the plaintiff is seeking punitive damages from both the employer/principal and the employee/agent, use GCI No. 3948, *Punitive Damages—Individual and Corporate Defendants (Corporate Liability Based on Acts of Named Individual)—Bifurcated Trial (First Phase)*. When punitive damages are sought against a corporation or other entity for the conduct of its directors, officers, and managing agents, use GCI No. 3946, *Punitive Damages—Entity Defendant—Bifurcated Trial (First Phase)*.

If any of the alternative grounds for seeking punitive damages are inapplicable to the facts of the case, they may be omitted.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word "misrepresentation" is used in the instruction's definition of "fraud."

References

20 GCA § 2120 provides, in part: In an action for the breach of an obligation not arising from contract, where it is that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

"[W]e expressly adopt the Restatement (Second) Torts § 909 as the rule of corporate liability for punitive damages in this jurisdiction." *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 27.

"[A] 'managerial agent' is an employee who exercises substantial discretionary authority which results in the ad hoc formulation of policy over an aspect of the corporation's business." *Park*, 2004 Guam 20 ¶ 27 (citing *Egan v. Mutual of Omaha*, 620 P.2d 141, 148 (Cal. 1979)).

Judicial Council of California Civil Jury Instructions, Inst. 3944.

3945 Punitive Damages--Entity Defendant--Trial Not Bifurcated

If you decide that *[name of defendant]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against *[name of defendant]* only if *[name of plaintiff]* proves that *[name of defendant]* engaged in that conduct with malice, oppression, or fraud. To do this, *[name of plaintiff]* must prove [one of] the following:

1. [That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of *[name of defendant]*, who acted on behalf of *[name of defendant]*; [or]]
2. [That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of *[name of defendant]*; [or]]
3. [That one or more officers, directors, or managing agents of *[name of defendant]* knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.]

"Malice" means that *[name of defendant]* acted with intent to cause injury or that *[name of defendant]*'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that *[name of defendant]*'s conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of [his/her] rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that *[name of defendant]* intentionally misrepresented or concealed a material fact and did so intending to harm *[name of plaintiff]*.

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following in determining the amount:

(a) How reprehensible was [name of defendant]'s conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and [name of plaintiff]'s harm?

(c) In view of [name of defendant]'s financial condition, what amount is necessary to punish it and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because [name of defendant] has substantial financial resources. [Any award you impose may not exceed [name of defendant]'s ability to pay.]

Directions for Use

This instruction is intended for use when the plaintiff is seeking punitive damages against a corporation or other entity for the conduct of its directors, officers, and managing agents. When the plaintiff seeks to hold an employer or principal liable for the conduct of a specific employee or agent, use GCI No. 3943, *Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee--Trial Not Bifurcated*. When the plaintiff is seeking punitive damages from both the employer/principal and the employee/agent, use GCI No. 3947, *Punitive Damages--Individual and Entity Defendants--Trial not Bifurcated*.

Read the bracketed language in subdivision (c) only if the defendant has presented relevant evidence regarding this issue.

If any of the alternative grounds for seeking punitive damages are inapplicable to the facts of the case, they may be omitted.

See GCI No. 3940, *Punitive Damages--Individual Defendant--Trial Not Bifurcated*, for additional sources and authority.

"A jury must be instructed ... that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred." (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408, 422 [123 S.Ct. 1513, 155 L.Ed.2d 585] .) An instruction on this point should be included within this instruction if appropriate to the facts.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word "misrepresentation" is used in the instruction's definition of "fraud."

In June 2003, the United States Supreme Court restated the due process principles limiting awards of punitive damages in *State Farm Mutual Automobile Insurance Co., supra*, 538 U.S. at p. 418. The Guam Supreme Court responded to and applied the United States Supreme Court's reasoning in *Park v. Mobil Oil Guam, Inc.*, 2004 Guam

20 ¶ 50,

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

20 GCA § 2281 provides: Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

For a general discussion of punitive damages *see Park v. Mobil Oil Guam Inc.*, 2004 Guam 20 ¶ 13.

Judicial Council of California Civil Jury Instructions, Inst. 3945.

3946 Punitive Damages--Entity Defendant--Bifurcated Trial (First Phase)

If you decide that [name of defendant]'s conduct caused [name of plaintiff] harm, you must decide whether that conduct justifies an award of punitive damages. The amount, if any, of punitive damages will be an issue decided later.

At this time, you must decide whether [name of plaintiff] has proved that [name of defendant] engaged in that conduct with malice, oppression, or fraud. To do this, [name of plaintiff] must prove [one of] the following:

- 1. [That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of [name of defendant] who acted on behalf of [name of defendant]; [or]]**
- 2. [That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of [name of defendant]; [or]]**
- 3. [That one or more officers, directors, or managing agents of [name of defendant] knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.]**

"Malice" means that [name of defendant] acted with intent to cause injury or that [name of defendant]'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that [name of defendant]'s conduct was despicable and subjected [name of plaintiff] to cruel and unjust hardship in knowing disregard of [his/her] rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that [name of defendant] intentionally misrepresented or concealed a material fact and did so intending to harm [name of plaintiff].

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

Directions for Use

GCI No. 3942, *Punitive Damages--Individual Defendant--Bifurcated Trial (Second Phase)* may be used for the second phase of a bifurcated trial.

This instruction is intended for use when the plaintiff is seeking punitive damages against a corporation or other entity for the conduct of its directors, officers, and managing agents. When the plaintiff is seeking to hold an employer or principal liable for the conduct of a specific employee or agent, use GACI No. 3944, *Punitive Damages Against Employer or Principal For Conduct of a Specific Agent or Employee--Bifurcated Trial (First Phase)*. When the plaintiff is seeking punitive damages from both the employer/principal and the employee/agent, use GACI No. 3948, *Punitive Damages--Individual and Corporate Defendants (Corporate Liability Based on Acts of Named Individual)--Bifurcated Trial (First Phase)*.

If any of the alternative grounds for seeking punitive damages are inapplicable to the facts of the case, they may be omitted.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word "misrepresentation" is used in the instruction's definition of "fraud."

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Judicial Council of California Civil Jury Instructions, Inst. 3946.

3947 Punitive Damages--Individual and Entity Defendants--Trial Not Bifurcated

If you decide that *[name of individual defendant]*'s or *[name of entity defendant]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against *[name of individual defendant]* only if *[name of plaintiff]* proves by clear and convincing evidence that *[name of individual defendant]* engaged in that conduct with malice, oppression, or fraud.

You may award punitive damages against *[name of entity defendant]* only if *[name of plaintiff]* proves that *[name of entity defendant]* acted with malice, oppression, or fraud. To do this, *[name of plaintiff]* must prove [one of] the following:

1. [That the malice, oppression, or fraud was conduct of one or more officers, directors, or managing agents of *[name of entity defendant]*, who acted on behalf of *[name of entity defendant]*; [or]]
2. [That an officer, a director, or a managing agent of *[name of entity defendant]* had advance knowledge of the unfitness of *[name of individual defendant]* and employed [him/her] with a knowing disregard of the rights or safety of others; [or]]
3. [That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of *[name of entity defendant]*; [or]]
4. [That one or more officers, directors, or managing agents of *[name of entity defendant]* knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.]

"Malice" means that a defendant acted with intent to cause injury or that a defendant's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A defendant acts with knowing disregard when the defendant is aware of the probable dangerous consequences of his, her, or its conduct and deliberately fails to avoid those consequences.

"Oppression" means that a defendant's conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of [his/her] rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that a defendant intentionally misrepresented or concealed a

material fact and did so intending to harm [name of plaintiff].

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following separately for each defendant in determining the amount:

(a) How reprehensible was that defendant's conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and [name of plaintiff]'s harm?

(c) In view of that defendant's financial condition, what amount is necessary to punish [him/her/it] and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because a defendant has substantial financial resources. [Any award you impose may not exceed that defendant's ability to pay.]

Directions for Use

This instruction is intended to apply to cases where punitive damages are sought against both an individual person and a corporate defendant. When punitive damages are sought only against corporate defendants, use GCI No. 3943, *Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee--Trial Not Bifurcated* or GACI No. 3945, *Punitive Damages--Entity Defendant--Trial Not Bifurcated*. When punitive damages are sought against an individual defendant, use GCI No. 3940, *Punitive Damages--Individual Defendant--Trial Not Bifurcated*.

Read the bracketed language in subdivision (c) only if the defendant has presented relevant evidence regarding this issue.

If any of the alternative grounds for seeking punitive damages are inapplicable to the facts of the case, they may be omitted.

See GCI No. 3940, *Punitive Damages--Individual Defendant--Trial Not Bifurcated*, for additional sources and authority.

"A jury must be instructed ... that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred." (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408, 422 [123 S.Ct. 1513, 155 L.Ed.2d 585] .) An instruction on this point should be included within this instruction if appropriate to the facts.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word "misrepresentation" is used in the instruction's definition of "fraud."

In June 2003, the United States Supreme Court restated the due process principles limiting awards of punitive damages in *State Farm Mutual Automobile Insurance Co., supra*, 538 U.S. at p. 418. The Guam Supreme Court responded to and applied the United States Supreme Court's reasoning in *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 50,

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

20 GCA § 2281 provides: Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

For a general discussion of punitive damages see *Park v. Mobil Oil Guam Inc.*, 2004 Guam 20 ¶ 13.

Judicial Council of California Civil Jury Instructions, Inst. 3947.

3948 Punitive Damages--Individual and Corporate Defendants (Corporate Liability Based on Acts of Named Individual)--Bifurcated Trial (First Phase)

If you decide that *[name of individual defendant]*'s conduct caused *[name of plaintiff]* harm, you must decide whether that conduct justifies an award of punitive damages against *[name of individual defendant]* and, if so, against *[name of corporate defendant]*. The amount, if any, of punitive damages will be an issue decided later.

You may award punitive damages against *[name of individual defendant]* only if *[name of plaintiff]* proves that *[name of individual defendant]* engaged in that conduct with malice, oppression, or fraud.

"Malice" means that a defendant acted with intent to cause injury or that a defendant's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A defendant acts with knowing disregard when the defendant is aware of the probable dangerous consequences of his, her, or its conduct and deliberately fails to avoid those consequences.

"Oppression" means that a defendant's conduct was despicable and subjected *[name of plaintiff]* to cruel and unjust hardship in knowing disregard of [his/her] rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that a defendant intentionally misrepresented or concealed a material fact and did so intending to harm *[name of plaintiff]*.

You may also award punitive damages against *[name of corporate defendant]* based on *[name of individual]*'s conduct if *[name of plaintiff]* proves [one of] the following:

1. [That *[name of individual defendant]* was an officer, a director, or a managing agent of *[name of corporate defendant]* who was acting on behalf of *[name of corporate defendant]* at the time of the conduct constituting malice oppression or fraud; [or]]
2. [That an officer, a director, or a managing agent of *[name of corporate defendant]* had advance knowledge of the unfitness of *[name of individual defendant]* and employed [him/her] with a knowing disregard of the rights or safety of others; [or]]
3. [That *[name of individual defendant]*'s conduct constituting malice, oppression, or fraud was authorized by an officer, a director, or a managing agent of *[name of corporate defendant]*; [or]]
4. [That an officer, a director, or a managing agent of *[name of corporate defendant]* knew of *[name of individual defendant]*'s conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.]

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

Directions for Use

Use GCI No. 3949, *Punitive Damages--Individual and Corporate Defendants (Corporate Liability Based on Acts of Named Individual)--Bifurcated Trial (Second Phase)*, for the second phase of a bifurcated trial.

This instruction is intended to apply to cases where punitive damages are sought against both an individual person and a corporate defendant. When damages are sought only against a corporate defendant, use GCI No. 3944, *Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee--Bifurcated Trial (First Phase)*, or GCI No. 3946, *Punitive Damages--Entity Defendant--Bifurcated Trial (First Phase)*. When damages are sought against individual defendants, use GCI No. 3941, *Punitive Damages--Individual Defendant--Bifurcated Trial (First Phase)*.

If any of the alternative grounds for seeking punitive damages are inapplicable to the facts of the case, they may be omitted.

See GCI No. 3940, *Punitive Damages--Individual Defendant--Trial Not Bifurcated*, for additional sources and authority.

In an appropriate case, the jury may be instructed that a false promise or a suggestion of a fact known to be false may constitute a misrepresentation as the word "misrepresentation" is used in the instruction's definition of "fraud."

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Judicial Council of California Civil Jury Instructions, Inst. 3948.

3949 Punitive Damages--Individual and Corporate Defendants (Corporate Liability Based on Acts of Named Individual)--Bifurcated Trial (Second Phase)

You must now decide the amount, if any, that you should award [name of plaintiff] in punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

There is no fixed standard for determining the amount of punitive damages and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following separately for each defendant in determining the amount:

(a) How reprehensible was that defendant's conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and [name of plaintiff]'s harm?

(c) In view of that defendant's financial condition, what amount is necessary to punish [him/her/it] and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because a defendant has substantial financial resources. [Any award you impose may not exceed that defendant's ability to pay.]

Directions for Use

Read the bracketed language in subdivision (c) only if the defendant has presented relevant evidence regarding this issue.

"A jury must be instructed ... that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred." (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408, 422 [123 S.Ct. 1513, 155 L.Ed.2d 585] .) An instruction on this point should be included within this instruction if appropriate to the facts.

In June 2003, the United States Supreme Court restated the due process principles limiting awards of punitive damages in *State Farm Mutual Automobile Insurance Co., supra*, 538 U.S. at p. 418. The Guam Supreme Court responded to and applied the United States Supreme Court's reasoning in *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 50,

References

20 GCA § 2120 provides: In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the

plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

“The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.” (*State Farm Mutual Automobile Insurance Co.*, *supra*, 538 U.S. at p. 427, internal citation omitted.)

Judicial Council of California Civil Jury Instructions, Inst. 3949.

3960 Contributory Negligence--General Verdict

If you decide that [name of plaintiff]'s negligence combined with [name of defendant]'s [negligence/conduct/product] in causing [name of plaintiff]'s harm, then you must decide the percentage of responsibility for the harm that you attribute to each of them.

First, decide the total amount of [name of plaintiff]'s damages. Then decide the percentage of responsibility that [name of plaintiff] and [name of defendant] have for the damages.

Directions for Use

This instruction is intended to apply to negligence cases in which both the issues of plaintiff's contributory negligence and defendant's or defendants' negligence are involved.

References

Title 18 GCA § 90107 states: Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. The extent of liability in such cases is defined by § 90108 and the law on Compensatory Relief.

Title 18 GCA. § 90108 states: Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed under the law on Compensatory Relief shall be diminished in proportion to the amount of negligence attributable to the person recovering.

Salas v. Hanil Dvlpt. Co., 1993 WL 128224, *4 (D. Guam App. Div. 1993) (Guam "follows the doctrine of comparative negligence and the amount of negligence attributable to each party is solely within the province of the jury.")

Judicial Council of California Civil Jury Instructions. Inst. 3960.

Committee Notes

There is no Guam Supreme Court opinion or Guam statute addressing whether the jury should be informed that the jury's assignment of a percentage of negligence to the Plaintiff will reduce or bar the Plaintiff's damages.

3961. Duty to Mitigate Damages for Past Lost Earnings

[*Name of plaintiff*] is not entitled to recover damages for economic losses that [*name of defendant*] proves [*name of plaintiff*] could have avoided by returning to gainful employment as soon as it was reasonable for [him/her] to do so.

To calculate the amount of damages you must:

1. Determine the amount [*name of plaintiff*] would have earned from the job [he/she] held at the time [he/she] was injured; and
2. Subtract the amount [*name of plaintiff*] earned or could have earned by returning to gainful employment.

The resulting amount is [*name of plaintiff*]'s damages for lost earnings.

Directions for Use

For an instruction on mitigation of damages involving personal injury, see Civil Jury Instruction No. 3930, *Mitigation of Damages (Personal Injury)*.

References

Haeuser v. Dep't of Law, 2005 Guam 14, citing *Haeuser v. Dep't of Law*, 1999 Guam 12 (“It is well-settled that any injured party, who is entitled to damages, is required to mitigate those damages. In the case of an award for back pay due to an aggrieved employee, that employee is under a duty to mitigate damages. The employer has the burden of showing that the employee has not mitigated damages”).

Judicial Council of California Civil Jury Instructions, Inst. No. 3691.

3962. Duty to Mitigate Damages for Future Lost Earnings

[Name of plaintiff] is not entitled to recover damages for future economic losses that *[name of defendant]* proves *[name of plaintiff]* will be able to avoid by returning to gainful employment as soon as it is reasonable for *[him/her]* to do so.

If you decide that *[name of plaintiff]* will be able to return to work, then you must not award *[him/her]* any damages for the amount *[he/she]* will be able to earn from future gainful employment. To calculate the amount of damages you must:

1. Determine the amount *[name of plaintiff]* would have earned from the job *[he/she]* held at the time *[he/she]* was injured; and
2. Subtract the amount *[name of plaintiff]* is reasonably able to earn from alternate employment.

The resulting amount is *[name of plaintiff]*'s damages for future lost earnings.

Directions for Use

For an instruction on mitigation of damages involving personal injury, see Civil Jury Instruction No. 3930, *Mitigation of Damages (Personal Injury)*.

References

Haeuser v. Dep't of Law, 2005 Guam 14.

Judicial Council of California Civil Jury Instructions, Inst. 3962.

3963. No Deduction for Workers' Compensation Benefits Paid

Do not consider whether or not [*name of plaintiff*] received workers' compensation benefits for [*his/her*] injuries. If you decide in favor of [*name of plaintiff*], you should determine the amount of your verdict according to my instructions concerning damages.

Directions for Use

This instruction is intended for use in conjunction with a special verdict form, in which case the judge can make any necessary deductions if double recovery is an issue. It may also be read in cases where there are no allegations regarding the employer's contributory negligence.

References

18 G.C.A. § 9134. Compensation for Injuries Where Third Persons are Liable.

Compensation for Injuries where third persons are liable. When an injury for which compensation is payable under some person other than the employer a legal liability to pay damages in respect thereto, the injured employee a legal liability to pay damages in respect thereto, the injured employee may claim compensation under this Title and, at his option, may also obtain damages from a proceed at law against the other person in order to recover damages. If compensation is claimed and awarded under this Title, an employer or his insurance carrier, having paid the compensation or having become liable therefor, shall be subrogated to the rights of the injured employee up to the amount paid by the employer or his insurance carrier to the employee and shall be entitled to recover against such third person up to said amounts; provided, if the employer or its insurance carrier shall recover from said third person damages in excess of compensation already paid or awarded to the employee under this Title, then any such excess shall be paid to the injured employee, or other person entitled thereto, less the employer's expenses and costs of action. The amount of compensation paid by the employer, or in the amount of compensation to which the injured employee or his dependents are entitled, shall not be used in order to diminish the employer's claim or the employee's claim against said third person. The collateral source doctrine is **reemphasized** and reestablished by this Code Section.

Judicial Council of California Civil Jury Instructions, Inst. 3963.

VF-3900 Punitive Damages--Trial Not Bifurcated

We answer the questions submitted to us as follows:

1. Did [name of defendant] engage in the conduct with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. What amount of punitive damages, if any, do you award [name of plaintiff]?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

This form is based on GCI No. 3940, *Punitive Damages--Individual Defendant--Trial Not Bifurcated*.

VF-3901. Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee—Trial Not Bifurcated

We answer the questions submitted to us as follows:

1. Did [name of agent/employee] engage in the conduct with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of employee/agent] an officer, director, or managing agent of [name of defendant] acting in a [corporate/employment] capacity?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What amount of punitive damages, if any, do you award [name of plaintiff]?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Normally, this verdict form should be combined with the verdict form(s) on the underlying cause(s) of action.

This form is based on GCI No. 3943, *Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee—Trial Not Bifurcated*.

Depending on the facts of the case, alternative grounds for liability may be substituted in question 2, as in GCI No. 3943.

VF-3902. Punitive Damages—Entity Defendant—Trial Not Bifurcated

We answer the questions submitted to us as follows:

1. Was the conduct constituting malice, oppression, or fraud committed by one or more officers, directors, or managing agents of *[name of defendant]* acting in a corporate capacity?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. What amount of punitive damages, if any, do you award *[name of plaintiff]*?
\$ _____

Signed: _____
 Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Normally, this verdict form should be combined with the verdict form(s) on the underlying cause(s) of action.

This form is based on GCI No. 3945, *Punitive Damages—Entity Defendant—Trial Not Bifurcated*. This form is intended to address the first bracketed option in GCI No. 3945.

VF-3903. Punitive Damages—Entity Defendant—Ratification—Trial Not Bifurcated

We answer the questions submitted to us as follows:

VF-3904. Punitive Damages—Entity Defendant—Authorization—Trial Not Bifurcated

We answer the questions submitted to us as follows:

1. Did an agent or employee of [name of defendant] engage in the conduct with malice, oppression, or fraud?

____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did one or more officers, directors, or managing agents of [name of defendant] authorize this conduct?

____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What amount of punitive damages, if any, do you award [name of plaintiff]?
\$ _____

Signed: _____
 Presiding Juror

Dated: _____

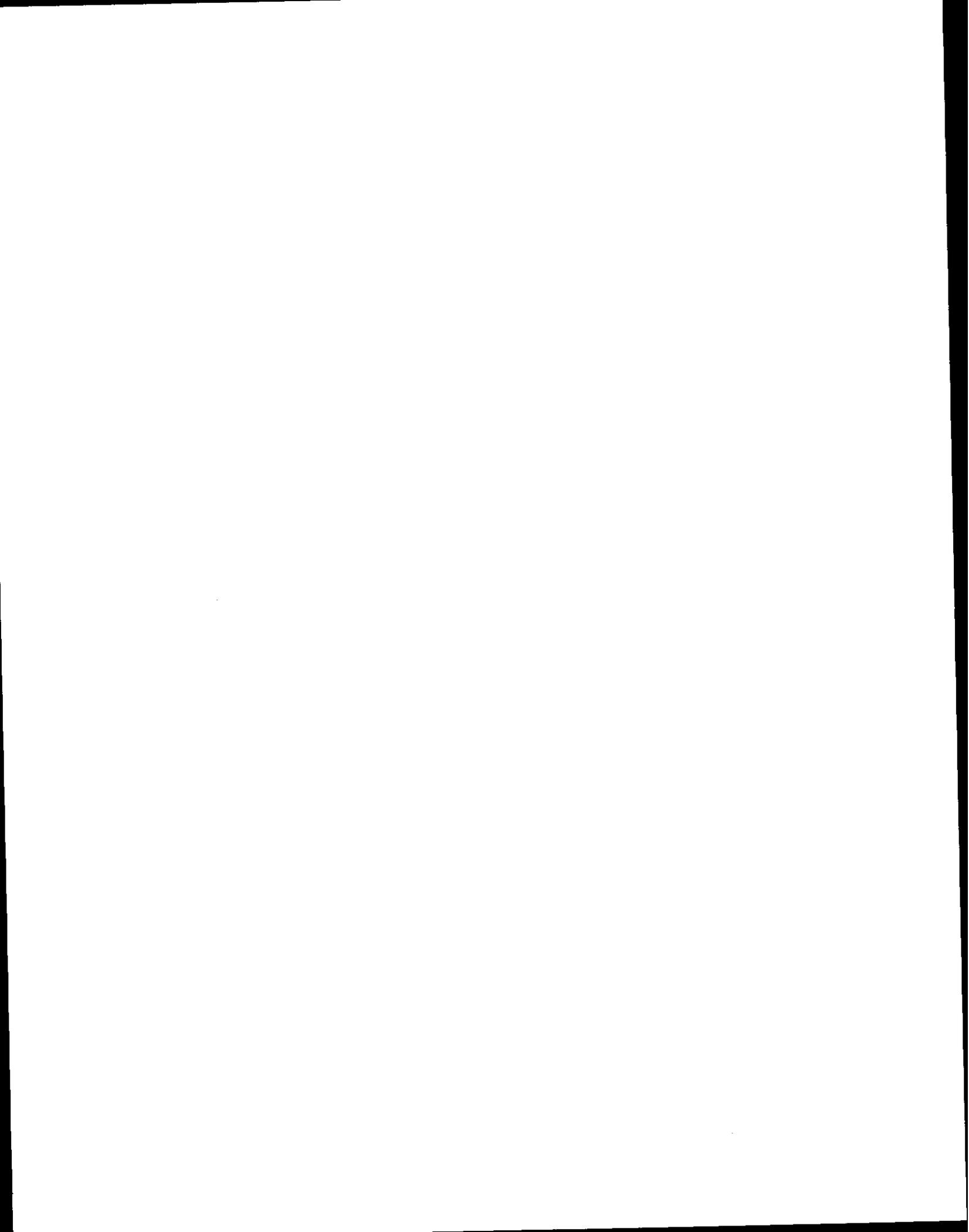
[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This form is based on GCI No. 3945, *Punitive Damages—Entity Defendant—Trial Not Bifurcated*. This form is intended to address the second bracketed option in GCI No. 3945.

Users may wish to combine this verdict form with the verdict form(s) on the underlying cause(s) of action.



VF-3905. Damages for Wrongful Death (Death of an Adult)

We answer the questions submitted to us as follows:

What are *[name of plaintiff]*'s damages for?

[a. Past financial support that *[name of decedent]* would have contributed to the family: \$_____]

[b. Future financial support that *[name of decedent]* would have contributed to the family: \$_____]

[c. Past losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*: \$_____]

[d. Future losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*: \$_____]

[e. *[Name of decedent]*'s funeral and burial expenses: \$_____]

[f. Past household services that *[name of decedent]* would have provided: \$_____]

[g. Future household services that *[name of decedent]* would have provided: \$_____]

[h. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support, [and] [the enjoyment of sexual relations/*[name of decedent]*'s training and guidance] from *[insert date of death]* to the present:

\$_____]

[i. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support, [and] [the enjoyment of sexual relations/*[name of decedent]*'s training and guidance] from today forward:

\$_____]

Signed: _____
 Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Delete any questions that do not apply to the facts of the case. Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

This form is based on GCI No. 3921, *Wrongful Death (Death of an Adult)*.

VF-3906. Damages for Wrongful Death (Parents' Recovery for Death of a Minor Child)

We answer the questions submitted to us as follows:

1. What are [name of plaintiff]'s economic damages?

- [a. Past financial support that [name of decedent] would have contributed to the family:** \$_____]
- [b. Future financial support that [name of decedent] would have contributed to the family:** \$_____]
- [c. Past losses of gifts or benefits that [name of plaintiff] would have expected to receive from [name of decedent]:** \$_____]
- [d. Future losses of gifts or benefits that [name of plaintiff] would have expected to receive from [name of decedent]:** \$_____]
- [e. [Name of decedent]'s funeral and burial expenses:** \$_____]
- [f. Past household services that [name of decedent] would have provided:** \$_____]
- [g. Future household services that [name of decedent] would have provided:** \$_____]
- [h. The loss of [name of decedent]'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from [insert date of death] to the present:** \$_____]
- [i. The loss of [name of decedent]'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from today forward:** \$_____]

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Delete any questions that do not apply to the facts of the case. Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

This form is based on GCI No. 3922, *Wrongful Death (Parents'*

Recovery for Death of a Minor Child).

VF-3907. Damages for Loss of Consortium

We answer the question submitted to us as follows:

1. What are [name of plaintiff]'s damages for loss of [his/her] [husband/wife]'s love, companionship, comfort, care, assistance, protection, affection, society, moral support, and enjoyment of sexual relations [or the ability to have children]? \$ _____

Signed: _____
Presiding Juror

Dated: _____

[After it has been signed/After all verdict forms have been signed], deliver this verdict form to the [clerk/bailiff/judge].

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action. Insert the name of the spouse of the injured party as "name of plaintiff."

This form is based on GCI No. 3920, *Loss of Consortium*.

