

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

RUBY ANDERSON,
Plaintiff,

vs.

WAL-MART STORES, INC.,
Defendant.

CIV. 15-4180-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION AND DEFINITIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of the trial.

You will have copies of all of the instructions in the jury room. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

FINAL INSTRUCTION NO. 2 – BURDEN OF PROOF

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

In determining whether or not an issue has been proved by the greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 3 – IMPEACHMENT

In Preliminary Instruction No. 3, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 4 – EXPERT TESTIMONY

A witness may qualify as an expert and give an opinion on a matter at issue if the witness has special knowledge, skill, experience, training, or education concerning the matter on which the expert testifies. In deciding the weight to give to the opinion, you should consider the expert's qualifications, credibility, and reasons for the opinion. You are not bound by the opinion. If you decide that the reasons for the expert's opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

FINAL INSTRUCTION NO. 5 – CORPORATION ACTS THROUGH ITS
EMPLOYEES

Wal-Mart is a corporation and can act only through its officers and employees. Any act or omission of an officer or employee within the scope of his or her employment is the act or omission of the corporation for which he or she was then acting.

FINAL INSTRUCTION NO. 6 – NEGLIGENCE

Anderson claims that Wal-Mart acted negligently when it installed a spare tire on the front driver's side of Anderson's vehicle. The issues to be determined by you with regard to Anderson's negligence claim against Wal-Mart are these:

One, was Wal-Mart negligent?

Negligence is the failure to use reasonable care. It is the doing of something that a reasonable person would not do, or the failure to do something that a reasonable person would do, under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by evidence. That is for you to decide.

Two, was the negligence a legal cause of an injury to Anderson?

A legal cause is a cause that produces some harmful result in a natural and probable sequence, and without which the harmful result would not have occurred.

A legal cause does not need to be the only cause of the harmful result. A legal cause may act in combination with other causes to produce the harmful result.

The term "legal cause" means an immediate cause which, in the natural or probable sequence, produces the injury complained of. For legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of. Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. Wal-Mart's conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of Anderson's injury.

The burden is on Anderson to prove issues one and two by the greater convincing force of the evidence. If you answer no to either question, enter your

verdict for Wal-Mart. If you answer yes to both questions, go on to question three.

Three, was Anderson contributorily negligent?

Contributory negligence is negligence on the part of a plaintiff which, when combined with the negligence of a defendant, contributes as a legal cause in bringing about the injury to the plaintiff.

The burden is on Wal-Mart to prove that Anderson was contributorily negligent by the greater convincing force of the evidence. If you answer no to question three, then Anderson is entitled to recover damages and you should enter a verdict in her favor. If you answer yes, go to question four.

Four, was Anderson's contributory negligence a legal cause of her injury?

"Legal cause" was defined in Question #2 in this instruction.

The burden is on Wal-Mart to prove that Anderson's contributory negligence was a legal cause of Anderson's injury by the greater convincing force of the evidence. If you answer no to question four, then you must determine the amount of Anderson's damages and return a verdict for Anderson. If you answer yes to question four, then go to question five.

Five, was Anderson's negligence slight or less than slight?

The term "slight" means small when compared with the negligence of the defendant.

In answering this question, you must make a direct comparison between the conduct of Anderson and Wal-Mart.

If you answer no to question five, then Anderson is not entitled to recover damages and you should return a verdict for Wal-Mart on the negligence claim.

If you answer yes to question five, then Anderson is entitled to recover damages, but the damages Anderson may recover must be reduced in proportion to the amount of Anderson's contributory negligence.

FINAL INSTRUCTION NO. 7 – DAMAGES

If you decide for Anderson on the question of liability, you must then fix the amount of money that will reasonably and fairly compensate Anderson for any of the following elements of loss or harm suffered in person or property proved by the evidence to have been legally caused by Wal-Mart's conduct, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

- A. The reasonable value of reasonable medical care, treatment, and services received.
- B. The pain, suffering, and mental anguish experienced in the past and reasonably certain to be experienced in the future as a result of Wal-Mart's conduct.
- C. Permanent physical impairment.

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, conjecture, or sympathy.

FINAL INSTRUCTION NO. 8 – DUTY TO MITIGATE

In determining the amount of money that will reasonably and fairly compensate Anderson, you are instructed that a person who suffers personal injury must exercise reasonable care to avoid further injury that could be prevented by the exercise of reasonable care after the injury occurred.

Anderson cannot recover for loss or harm that could have been avoided by the exercise of reasonable care.

FINAL INSTRUCTION NO. 9 – DUTIES DURING DELIBERATIONS

In conducting deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in

writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated October 25, 2018.


KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE