

NO. 91-11-10826-CV

GLENN W. COLLINS and
GLENDA M. COLLINS

§

IN THE DISTRICT COURT OF

§

§

VS.

§

MAVERICK COUNTY, TEXAS

REMINGTON ARMS COMPANY, INC., §

293RD JUDICIAL DISTRICT

JURY CHARGE

A.

LADIES AND GENTLEMEN OF THE JURY:

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

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in the case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the question accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agreed to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.
6. You may render your verdict only upon the unanimous vote of the jury. You must unanimously agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority of any vote of less than the entire jury. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. ~~If any juror disagrees as to any answer made by the verdict, those jurors who disagree to all findings shall each sign the verdict.~~
- A.P.*

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

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

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

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

B(1). INSTRUCTIONS

Any award you make for loss of earning capacity in the future must take into account the fact that the money awarded by you is being received all at one time instead of over a period of time extending into the future and that Plaintiff will have the use of this money in a lump sum. You must, therefore, determine the present value or present worth of the money which you award for such future loss.

Any award you make for loss of earnings in the past or in the future must not be reduced on account of disability payments received by Mr. Collins from Aetna Insurance Company.

You are instructed that the defendant must have actual awareness of the extreme risk, if any, created by its conduct in order to be grossly negligent. The defendant's mental state can be proven by direct or circumstantial evidence. Additionally, the defendant's conduct must involve what a person of ordinary prudence under the same or similar circumstances would consider an "extreme degree of risk." An "extreme degree of risk" is the likelihood of a serious injury to the plaintiff, not a remote possibility of injury. In determining whether the defendant's conduct posed an extreme risk, you should examine the events and circumstances from the viewpoint of the defendant at the time the events occurred, without viewing the matter in hindsight.

B(2). DEFINITIONS

"PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in evidence in this case.

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

"NEGLIGENCE" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"ORDINARY CARE" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"GROSS NEGLIGENCE" means more than momentary thoughtlessness, inadvertence, or error of judgment. It means such an entire want of care as to establish that the act or omission in question was the result of actual conscious indifference to the rights, welfare, or safety of the persons affected by it.

"PROXIMATE CAUSE" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"PRODUCING CAUSE" means an efficient, exciting or contributing cause, which, in a natural sequence, produced the occurrence. There can be more than one producing cause.

"CONSORTIUM" means the mutual right of the husband and wife to that affection, solace, comfort, companionship, society, assistance, sexual relations, emotional support, love, and felicity necessary to a successful marriage.

"EXEMPLARY DAMAGES" means an amount that you may in your discretion award as punishment of the wrongdoer and as a warning and example to the wrongdoer and others to deter the same or similar conduct in the future. These damages are in addition to any amount that you may have found as actual damages.

QUESTION NO. 1

Was the rifle in question defectively designed at the time it was manufactured and was such defective design, if any, a producing cause of the occurrence in question?

A "DEFECTIVELY DESIGNED" product is a product that is unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use.

Answer "Yes" or "No".

Answer:

Yes

QUESTION NO. 2

Was REMINGTON ARMS COMPANY, INC. negligent and if so was their negligence a proximate cause of the occurrence in question?

Answer "Yes" or "No."

Answer: Yes

QUESTION NO. 3

Was GLENN COLLINS negligent and if so did his negligence proximately cause the occurrence in question?

Answer "Yes" or "No."

Answer: Yes

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If you answered yes to Questions 1 or 2 and you also answered yes to question 3, and only in that event, then answer Question 4.

In answering Question 4, you are instructed that the percentage of causation attributable to a party or product is not necessarily measured by the number of acts, omissions, or product defects found. The percentages you find must total 100 percent.

QUESTION NO. 4

For each product or party found by you to have caused the occurrence, find the percentage caused by:

a. Remington Arms Company, Inc.	<u>85</u> %
b. Glenn W. Collins	<u>15</u> %
Total	<u>100</u> %

If you have answered "Yes" to Question 2, then answer
Question No. 2.

QUESTION NO. 5

Did the negligent acts and/or omissions of REMINGTON ARMS
COMPANY, INC. constitute "gross negligence?"

Answer "Yes" or "No".

Answer:

HPK [initials] Yes

QUESTION NO. 6

Find from a preponderance of the evidence what sum of money, if any, if paid now in cash, would fairly and reasonably compensate GLENN W. COLLINS for his injuries, if any, resulting from the occurrence in question.

You are to consider each element of damage separately, so as not to include damages for one element in any other element. Do not include interest on any amount of damages you find. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of GLENN W. COLLINS.

"Mental anguish" means the emotional pain, torment and suffering, if any, experienced by GLENN W. COLLINS because of his injuries, if any.

Answer separately in dollars and cents, if any, with respect to each of the following elements:

- (a) Physical pain, mental anguish, disfigurement and physical impairment suffered in the past as well as physical pain, mental anguish, disfigurement and physical impairment that, in reasonable probability, he will suffer in the future.

Answer: \$ ~~24,333.33~~ 850,000

- (b) Loss of earnings sustained in the past.

Answer: \$ 280,000

- (c) Loss of earning capacity that, in reasonable probability, he will sustain in the future.

Answer: \$ 850,000

- (d) Medical expenses that, in reasonable probability, he will incur in the future.

Answer: \$ 33,000

- (e) Loss of ability to perform household services sustained in the past and that, in reasonable probability, he will sustain in the future.

Answer: \$ 10,000

QUESTION NO. 7

What sum of money, if paid now in cash, would fairly and reasonably compensate GLENDA COLLINS for the mental anguish and loss of consortium, if any, which she has suffered and will in reasonable probability suffer in the future, as a result of the injuries to her husband, GLENN COLLINS, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not include damages for one element in any other element. Do not include interest on any amount of damages you find.

Answer:

Mental anguish that GLENDA COLLINS has suffered in the past and will in reasonable probability suffer in the future.

\$ 1,000

Loss of consortium that GLENDA COLLINS has suffered in the past and will in reasonable probability suffer in the future

\$ 0

5. If you answered yes for "gross negligence" in Question No. 8, then answer Question No. 8.

QUESTION NO. 8

What sum of money, if any should be awarded against REMINGTON ARMS COMPANY, INC. as exemplary damages?

In determining such amounts, you may consider:

- 1) the nature of the wrong;
- 2) the character of the conduct involved;
- 3) the degree of culpability of the wrongdoer;
- 4) the situation and the sensibilities of the parties concerned;
- 5) the extent to which such character offends a public sense of justice and propriety.
- (6) frequency of the wrongs committed; and
- (7) the size of the award needed to deter similar wrongs in the future.

Answer in dollars and cents, if any.

Answer: \$

~~15,000,000.00~~
\$ 15,000,000

C.

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

It is the duty of the presiding juror:

1. to preside during your deliberations;
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;
4. to vote on the questions;
5. to write your answers to the questions in the spaces provided; and
6. to certify to your verdict in the space provided for the presiding juror's signature.
~~Presiding juror's signature is required for the verdict to be valid.~~

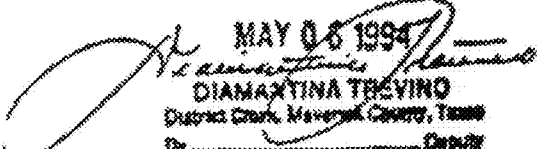
You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all of the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.


JUDGE PRESIDING

FILED
AT 11:05 O'CLOCK AM

MAY 06 1994


DIAMANTINA TREVINO
District Clerk, Maverick County, Texas
By _____ Deputy

CERTIFICATE

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

[Signature]
Presiding Juror

David Bonilla

[Signature]

Donatello

Ante J. Martinez

Sandra Garcia

[Signature]

Eugene Acuna Jr.

Rosalinda Barona

[Signature]

4:58 FILED
AT 5:00 O'CLOCK P.M.

MAY 07 1994

DIAMANTINA TREVIÑO
[Signature]
Deputy