

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 19-037329 CA 24

JOSE SANTANA, as Personal Representative
of the Estate of TOMASA SANTANA,

Plaintiff,

v.

PHILIP MORRIS USA, INC.,

Defendant.

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FINAL JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

INSTRUCTION NO. 2

In deciding this case, it is your duty as jurors to decide the issues, and only those issues, that I submit for your determination. You must come to an agreement about what your answers will be. Your agreed upon answers to my questions are called your jury verdict.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, and all facts that were admitted or agreed to by the parties.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

INSTRUCTION NO. 3

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

You have heard opinion testimony from persons referred to as expert witnesses. You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

INSTRUCTION NO. 4

Plaintiff has the burden to prove his case by the greater weight of the evidence. If the greater weight of the evidence does not support Plaintiff's claims, your verdict will be for Philip Morris USA Inc. However, if the greater weight of the evidence does support some or all of Plaintiff's claims, then your verdict should be for Plaintiff on that claim or those claims.

Philip Morris USA Inc. has the burden of proving its affirmative defenses of statute of limitations and comparative fault by the greater weight of the evidence.

INSTRUCTION NO. 5

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

INSTRUCTION NO. 6

The first issue for your determination is Philip Morris USA Inc.'s statute of limitations defense. In order to prevail on that defense, Philip Morris USA Inc. must prove by the greater weight of the evidence that Tomasa Santana knew, or by the use of reasonable care should have known, on or before December 25, 2015, that there was a reasonable possibility that her laryngeal cancer, which was diagnosed on July 15, 2015, was caused by cigarette smoking.

Second, if you find against Philip Morris USA Inc. on the first issue, you will determine whether Philip Morris USA Inc. is liable to Plaintiff on his claim for strict liability based on design defect.

Third, if you find for Plaintiff and against Philip Morris USA Inc. on his strict liability design defect claim then you will need to determine whether Tomasa Santana bears any fault for causing her laryngeal cancer, and if so, what percentage of fault, if any, you charge to Tomasa Santana for her own laryngeal cancer, and what percentage of fault, if any, you charge to Philip Morris USA Inc. if you find it to be at fault to some degree for Mrs. Santana's laryngeal cancer.

Finally, if you decide Philip Morris USA Inc. is at fault to some degree for Mrs. Santana's laryngeal cancer, you will determine the amount of compensatory damages, if any, that Plaintiff is entitled to recover as a result of Mrs. Santana's laryngeal cancer from Philip Morris USA Inc.

Plaintiff must prove the amount of the compensatory damages, if any, by the greater weight of the evidence.

INSTRUCTION NO. 7

The first issue for your determination is Philip Morris USA Inc.'s statute of limitations defense. In order to prevail on that defense, Philip Morris USA Inc. must prove by the greater weight of the evidence that Tomasa Santana knew, or by the use of reasonable care should have known, on or before December 25, 2015, that there was a reasonable possibility that her laryngeal cancer, which was diagnosed on July 15, 2015, was caused by cigarette smoking. In making your determination, you may properly consider what Mrs. Santana knew or didn't know about the health risks of smoking prior to December 25, 2015.

Philip Morris USA Inc. must prove this issue by the greater weight of the evidence. If the greater weight of the evidence supports Philip Morris USA Inc.'s defense on this issue, then your verdict is for Philip Morris USA Inc. If, however, the greater weight of the evidence does not support Philip Morris USA Inc.'s defense on this issue, then your verdict on this issue should be for Plaintiff and you will proceed to decide additional issues regarding Plaintiff's claims.

Reasonable care is the care that a reasonable person would use under like circumstances.

INSTRUCTION NO. 8

The fact that Philip Morris USA Inc. is a corporation must not prejudice you in any way in any of your deliberations or in your verdict. You may not discriminate between corporations and natural individuals. Both are persons in the eyes of the law, and both are entitled to the same fair and impartial consideration under the same legal standard.

INSTRUCTION NO. 9

From 1966 to 1970, federal law required all cigarette packages sold in the United States to include the following warning label:

- Caution: Cigarette Smoking May Be Hazardous To Your Health.

From 1970 to 1985, federal law required all cigarette packages sold in the United States to include the following warning label:

- Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health.

From 1985 forward, federal law required all cigarette packages to include one of the following warning labels:

- SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
- SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
- SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.
- SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

When requiring these warnings, Congress determined that placing this language on Philip Morris USA Inc.'s cigarette packages was sufficient as a matter of law to warn the public of the health risks of smoking.

Congress separately required that those same warnings appear on each cigarette advertisements as of 1972. Effective August 9, 1973, all Spanish-language cigarette advertising was required to have Spanish-language warnings.

INSTRUCTION NO. 10

The next issue for you to determine is whether Philip Morris USA Inc. is liable to Plaintiff on his claim for strict liability based on design defect.

INSTRUCTION NO. 11

The issues you must decide on Plaintiff's strict liability design defect claim against Philip Morris USA Inc. are whether the Virginia Slims cigarettes manufactured by Philip Morris USA Inc. and smoked by Tomasa Santana were defective by reason of their design and, if so, whether such design defect was a legal cause of Mrs. Santana's laryngeal cancer.

INSTRUCTION NO. 12

A product is defective because of a design defect if it is in a condition unreasonably dangerous to the user and the product is expected to and does reach the user without substantial change affecting that condition.

A product is unreasonably dangerous because of a design defect if the product fails to perform as safely as an ordinary consumer would expect when used as intended or when used in a manner reasonably foreseeable by the manufacturer.

INSTRUCTION NO. 13

Plaintiff must show that because of a defect in their design, the Virginia Slims cigarettes Tomasa Santana smoked were dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases them, with the ordinary knowledge common to the community as to their characteristics.

INSTRUCTION NO. 14

When deciding whether Virginia Slims cigarettes were defective by reason of their design you can consider the availability, or lack of availability, of a reasonable alternative design of the product.

INSTRUCTION NO. 15

In determining whether Virginia Slims cigarettes were defectively designed, you must consider the state of scientific and technical knowledge and other circumstances that existed at the time of manufacture, not the state of scientific and technical knowledge at the time of Tomasa Santana's injuries or as it exists today.

INSTRUCTION NO. 16

Manufacturing, selling, and advertising cigarettes are lawful activities. Therefore, I instruct you that Philip Morris USA Inc. cannot be held liable for merely manufacturing, selling, or advertising cigarettes.

INSTRUCTION NO. 17

A defect in the design of Virginia Slims cigarettes was a legal cause of Tomasa Santana's laryngeal cancer if it directly and in natural and continuous sequence produced or contributed substantially to producing such laryngeal cancer, so that it can reasonably be said that, but for the defect, the laryngeal cancer would not have occurred.

INSTRUCTION NO. 18

If the greater weight of the evidence does not support Plaintiff's claim against Philip Morris USA Inc. for strict liability design defect, then your verdict should be for Philip Morris USA Inc. on that claim. If, however, the greater weight of the evidence supports Plaintiff's claim for strict liability design defect against Philip Morris USA Inc., then you shall consider the defense of comparative fault raised by Philip Morris USA Inc.

If you find for Plaintiff and against Philip Morris USA Inc. on Plaintiff's claim, then you will need to determine whether Tomasa Santana bears any fault for causing her laryngeal cancer, and if so, what percentage of fault, if any, that you charge to Tomasa Santana for her own laryngeal cancer, and what percentage of fault, if any, that you charge to Philip Morris USA Inc. if you find it to be at fault to some degree for Mrs. Santana's laryngeal cancer.

INSTRUCTION NO. 19

If your verdict is for Philip Morris USA Inc. on Plaintiff's claim, you will not consider the matter of damages. But if your verdict is for Plaintiff on his claim, you should determine and write on the verdict form, in dollars, the total amount of damages which the greater weight of the evidence shows will fairly compensate the estate of Tomasa Santana for Mrs. Santana's laryngeal cancer.

In making this determination, you shall consider the following element:

Any bodily injury sustained by Mrs. Santana and any resulting pain and suffering, disability or physical impairment, mental anguish, inconvenience or loss of capacity for the enjoyment of life from July 15, 2015 to January 28, 2018, resulting from her laryngeal cancer.

There is no exact standard for measuring such damage. The amount should be fair and just in light of the evidence. However, you may only award damages sustained as a result of Mrs. Santana's laryngeal cancer. You may not consider Jose Santana's pain and suffering for any purpose.

Plaintiff makes no claim that smoking caused Mrs. Santana's death.

In determining the total amount of damages, you should not make any reduction because of the fault of Mrs. Santana. The Court will enter a judgment based on your verdict and will reduce the amount of damages by the percentage of fault you charge to Mrs. Santana. Compensatory damages are meant to compensate for actual loss caused by a Defendant.

INSTRUCTION NO. 20

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.

INSTRUCTION NO. 21

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict, and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not visit or view the scene of any event involved in this case or look at maps or pictures on the Internet. 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. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own

memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way, and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced

that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next.

(Court reads and explains verdict form.)

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have finished filling out the form, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split. You may now retire to decide your verdict.

 6/27/24

Antonio Arzola
Circuit Court Judge