

ORIGINAL

CAUSE NO. CC-21-00138-E

JOSE REFUGIO TAPIA SILVA,
Plaintiff,

vs.

PERFORMANCE SPRAY FOAM, INC.
Defendant.

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§
§
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§
§

IN THE COUNTY COURT

AT LAW NO. 5

DALLAS COUNTY, TEXAS

FILED
JOHN E. WARE
COUNTY CLERK
DALLAS COUNTY, TEXAS
APR - 7 PM 2:10

CHARGE OF COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.



ORIGINAL

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. Unless otherwise instructed. The answers to the questions must be based on the decision of at least five of the six jurors. The same five jurors must agree on every answer. Do not agree to be bound by a vote of anything less than five jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties’ money and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

Definitions

“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 or entity of ordinary prudence under the same or similar circumstances.

“Proximate cause” means a cause that was a substantial factor in bringing about an occurrence, and without which cause such occurrence 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 occurrence, or some similar occurrence, might reasonably result therefrom. There may be more than one proximate cause of an occurrence.

"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 words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

"Occurrence" means the alleged incident involving Jose Refugio Tapia-Silva that occurred on or about April 15, 2020 in Dallas, Texas.

QUESTION NO. 1:

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "Yes" or "No" for each of the following:

ANSWER:

a. PERFORMANCE SPRAY FOAM, INC.

No

b. JOSE REFUGIO TAPIA SILVA

No

QUESTION NO. 2:

Did the negligence, if any, of those named below proximately cause the occurrence in question?

With respect to the condition on the premises, PERFORMANCE SPRAY FOAM, INC. was negligent if:

- a. The condition posed an unreasonable risk of harm, and
- b. PERFORMANCE SPRAY FOAM, INC. had actual knowledge of the danger, and
- c. JOSE REFUGIO TAPIA SILVA did not have actual knowledge of the danger, and
- d. PERFORMANCE SPRAY FOAM, INC. failed to exercise ordinary care to protect JOSE REFUGIO TAPIA SILVA from the danger, by both failing to adequately warn JOSE REFUGIO TAPIA SILVA of the condition and failing to make that condition reasonably safe.

“Negligence,” when used with respect to the conduct of JOSE REFUGIO TAPIA SILVA, 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.

Answer “Yes” or “No” for each of the following:

PERFORMANCE SPRAY FOAM, INC.

No

JOSE REFUGIO TAPIA SILVA

No

QUESTION NO. 3:

If you answered "Yes" to Question 1 and/or Question 2 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

For each below that you found caused or contributed to cause the occurrence, find the percentage of responsibility attributable to each:

- | | | |
|--------|------------------------------|-------------|
| a. | PERFORMANCE SPRAY FOAM, INC. | _____% |
| b. | JOSE REFUGIO TAPIA SILVA | _____% |
| Total: | | <u>100%</u> |

QUESTION NO. 4:

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "Yes" or "No" for each of the following:

ANSWER:

- a. DALMAR ELECTRICAL, LLC
- b. HOWARD OKON HOMES, INC.

No
YES

If you answered "Yes" to Question No. 1, 2 or 4 for more than one of those named below, then answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentage you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION NO. 5:

With respect to causing or contributing to cause in any way the injury to Jose Refugio Tapia Silva, find the percentage of responsibility, if any, attributable as between or among:

a. DALMAR ELECTRICAL, LLC	<u>0</u>
b. PERFORMANCE SPRAY FOAM, INC	<u>0</u>
c. HOWARD OKON HOMES, INC.	<u>100</u>
Total	100%

Answer Question 6 if you answered "Yes" to Question No. 1 and/or No. 2 as to PERFORMANCE SPRAY FOAM, INC. and answered:

1. "No" for Jose Refugio Tapia Silva to Question 1 and 2 or
2. 50% or less for Jose Refugio Tapia Silva to Question No. 3.

Otherwise, do not answer Question 6.

QUESTION NO. 6:

What sum of money, if paid now, would fairly and reasonably compensate Jose Refugio Tapia Silva for his injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Jose Refugio Tapia Silva. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Physical pain sustained in the past.

\$ _____

- b. Physical pain that, in reasonable probability, Jose Refugio Tapia Silva will sustain in the future.

\$ _____

- c. Loss of earning capacity sustained in the past.

\$ _____

- d. Loss of earning capacity that, in reasonable probability, Jose Refugio Tapia Silva, will sustain in the future.

\$ _____

e. Mental anguish sustained in the past.

\$ _____

f. Mental anguish that, in reasonable probability, Jose Refugio Tapia Silva, will sustain in the future.

\$ _____

g. Disfigurement sustained in the past.

\$ _____

h. Disfigurement that, in reasonable probability, Jose Refugio Tapia Silva, will sustain in the future.

\$ _____

i. Physical impairment sustained in the past.

\$ _____

j. Physical impairment that, in reasonable probability, Jose Refugio Tapia Silva, will sustain in the future.

\$ _____

k. Medical care expenses incurred in the past.

\$ _____

l. Medical care expenses that, in reasonable probability, Jose Refugio Tapia Silva, will sustain in the future.

\$ _____

Answer the following question regarding PERFORMANCE SPRAY FOAM, INC., only if you unanimously answered "Yes" to Question No.1 and/or No. 2 regarding PERFORMANCE SPRAY FOAM, INC. Otherwise, do not answer the following question regarding PERFORMANCE SPRAY FOAM, INC.

To answer "Yes" to the following question, your answer must be unanimous. You may answer 'No' to any part of the following question only upon a vote of 5 jurors. Otherwise, you must not answer that part of the following question.

QUESTION NO. 7:

Do you find by clear and convincing evidence that the harm to Jose Refugio Tapia Silva resulted from gross negligence attributable to PERFORMANCE SPRAY FOAM, INC.?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by PERFORMANCE SPRAY FOAM, INC.,

1. which when viewed objectively from the standpoint of PERFORMANCE SPRAY FOAM, INC at the time of the occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which PERFORMANCE SPRAY FOAM, INC has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

ANSWER: No

QUESTION NO. 8:

If you answered "Yes" to Question No. 7, then answer the following question. Otherwise, do not answer the following question.

What sum of money, if any, should be assessed against PERFORMANCE SPRAY FOAM, INC. and awarded to Jose Refugio Tapia Silva as exemplary damages for the conduct found in response to Question 7.

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not to compensate Jose Refugio Tapia Silva. Exemplary damages include punitive damages.

In determining the amount of exemplary damages you shall consider evidence, if any, relating to –

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 sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of PERFORMANCE SPRAY FOAM.

Answer in dollars and cents, if any.

ANSWER: \$ _____

PRESIDING JUROR:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of five jurors. The same five jurors must agree on every answer in the charge. This means you may not have one group of five jurors agree on one answer and a different group of five jurors agree on another answer.

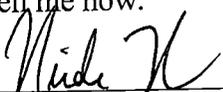
2. If five jurors agree on every answer, those five jurors sign the verdict.

If all six of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all six of you agreeing on some answers, while only five of you agree on other answers. But when you sign the verdict, only those five who agree on every answer will sign the verdict.

4. There are some special instructions before Questions 7 and 8 explaining how to answer those questions. Please follow those instructions. If all six of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.



JUDGE PRESIDING

CERTIFICATE

Check one:

 Our verdict is unanimous. All six of us have agreed to each and every answer. The presiding juror has signed the certificate for all six of us.

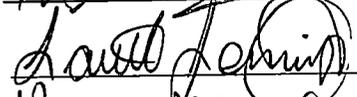
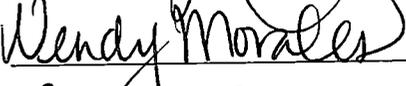
Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Five of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. 
2. 
3. 
4. 
5. 

- IAN NELSON
- Theresa Murphy
- Larette Jennings S
- Wendy Morales
- Brenda Evans

If you have answered Question No. 8, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All six of us agreed to each of the answers. The presiding juror has signed the certificate for all six of us.

Signature of Presiding Juror

Printed Name of Presiding Juror