

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NAWAL SARA,

Plaintiff,

Case No: 13-10185

Honorable Laurie J. Michelson

v.

J.C. Penney Corp.,

Defendant.

---

**JURY INSTRUCTIONS**

**INDEX TO JURY INSTRUCTIONS**

<b>Instructions at Close of Evidence: Duties of Court and Jury</b>		<b>PAGE NUMBER</b>
103.01	General Introduction	1
103.10	Instructions Apply to Each Party	2
103.11	All Persons Equal Before the Law – Individuals	3
MCivJI 3.05	Corporations Entitled to Unprejudiced Treatment	4
103.30	Evidence in the Case	5
MCivJI 3.11	Jurors May Take into Account Ordinary Experience and Observations	6
MCivJI 4.06	Witness Who has Been Interviewed by an Attorney	7
MCivJI 4.07	Weighing Conflicting Evidence – Number of Witnesses	8
103.33	Court’s Comments Not Evidence	9
103.34	Questions Not Evidence	10
<b>Instructions at Close of Evidence: Burden of Proof</b>		
104.01	Preponderance of the Evidence	11
104.04	“If You Find” or “If You Decide”	12
104.05	“Direct” and “Circumstantial Evidence” – Defined	13
104.20	“Inferences” Defined	14
<b>Instructions at Close of Evidence: Credibility of Witnesses</b>		
105.01	Discrepancies in Testimony	15
105.04	Impeachment – Inconsistent Statement or Conduct	17
105.09	Effect of Prior Inconsistent Statements or Conduct	18
105.11	All Available Witnesses or Evidence Need Not be Produced	19
<b>Instructions</b>		
MCivJI 10.01	Definitions Introduced	20

MCivJI 10.02 Negligence of Defendant – Definition	21
MCivJI 10.05 Duty to Use Ordinary Care – Defendant	22
MCivJI 15.01 Definition of Proximate Cause	23
MCivJI 16.08 Burden of Proof in Negligence Cases	24
MCivJI 50.01-05 Measure of Damages – Personal and Property	25
MCivJI 50.10 Defendant Takes the Plaintiff As He/She Finds Him/Her	26
MCivJI 50.21 Personal Injury Action: Definition of Economic Loss and Noneconomic Loss Damages; Separation of Future Damages by Year	27
MCivJI53.05. Mitigation of Damages – Failure to Exercise Ordinary Care	28
 <b>Instructions at Close of Evidence: The Verdict</b>	
106.01 Duty to Deliberate	29
106.02 Effect of Instruction on Damages	30
106.05 Election of Foreperson – Verdict	31
106.07 Verdict Forms – Jury’s Responsibility	32
106.08 Communications Between Court and Jury During Jury’s Deliberations	33
Notes	34
Jury Instructions	35
Verdict	36

**§ 103.01 General Introduction**

Now that you have heard the evidence it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and as stated in these instructions, you are governed by my instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

**§ 103.10 Instructions Apply To Each Party**

Unless I state otherwise, you should consider each instruction given to apply separately and individually to the plaintiff and to defendant in the case.

**§ 103.11 All Persons Equal Before The Law – Individuals**

This case should be considered and decided by you as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law and are to be treated as equals.

**Corporations Entitled to Unprejudiced Treatment**

The corporation J.C. Penney Corporation, Inc. in this case is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.

Michigan Civil Jury Instruction 3.05

**§ 103.30 Evidence In The Case**

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witness, all exhibits received in evidence regardless of who may have produced them, and all facts and events that may have been admitted or stipulated to.

Statements and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statement, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. However, when the lawyers on both sides stipulate or agree on the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Any evidence to which I have sustained an objection, must be disregarded.

**Jurors May Take into Account Ordinary Experience and Observations**

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life, and to take into account whether any particular evidence seems reasonable and probable. However, if you have personal knowledge of any particular fact in this case, that knowledge may not be used as evidence.

Michigan Civil Jury Instruction 3.11



**Witness Who Has Been Interviewed by an Attorney**

It has been brought out that a lawyer has talked with a witness. There is nothing wrong with a lawyer talking with a witness for the purpose of learning what the witness knows about the case and what testimony the witness will give.

Michigan Civil Jury Instruction 4.06

**Weighing Conflicting Evidence – Number of Witnesses**

Although you may consider the number of witnesses testifying on one side or the other when you weigh the evidence as to a particular fact, the number of witnesses alone should not persuade you if the testimony of the lesser number of witnesses is more convincing.

Michigan Civil Jury Instruction 4.07

**§ 103.33 Court's Comments Not Evidence**

The law permits me to comment to you on the evidence in the case. These comments are only an expression of my opinion as to the facts. You may disregard my comments entirely, since you as jurors are the sole judges of the facts and are not bound by my comments or opinions.

**§ 103.34 Questions Not Evidence**

If a lawyer asks a witness a question that contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's questions and statements are not evidence.

### **§ 104.01 Preponderance Of The Evidence**

Plaintiff has the burden in a civil action, such as this, to prove every essential element of her claim by a preponderance of the evidence. If plaintiff should fail to establish any essential element of her claim by a preponderance of the evidence, you should find for defendant as to that claim.

“Establish by a preponderance of the evidence” means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

**§ 104.04 “If You Find” Or “If You Decide”**

When I instruct you that a party has the burden of proof on any proposition, or use the expression “if you find,” or “if you decide,” I mean that you must be persuaded, considering all the evidence in the case that the proposition is more probably true than not.

**§ 104.05 “Direct” And “Circumstantial” Evidence – Defined**

Generally speaking, there are two types of evidence that are presented during a trial – direct evidence and circumstantial evidence. “Direct evidence” is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. “Indirect or circumstantial” evidence is proof of a chain of facts and circumstances indicating the existence or nonexistence of a fact.

As a general rule, the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

**§ 104.20 “Inferences” Defined**

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

“Inferences” are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.



## **§ 105.01 Discrepancies In Testimony**

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence contrary to the testimony.

You should carefully examine all the testimony given, the circumstances under which each witness has testified, and every matter in evidence tending to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while testifying.

Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters. Also, consider any relation each witness may have with either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which the testimony of each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons seeing an event may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, that you may think it deserves. In short, you may accept or reject the testimony of any witness, in whole or in part.

In addition, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

**§ 105.04 Impeachment – Inconsistent Statement Or Conduct**

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

**§ 105.09 Effect Of Prior Inconsistent Statements Or Conduct**

Evidence that, at some other time while not under oath a witness who is not a party to this action has said or done something inconsistent with the witness' testimony at the trial, may be considered for the sole purpose of judging the credibility of the witness. However, such evidence may never be considered as evidence of proof of the truth of any such statement.

Where the witness is a party to the case, and by such statement or other conduct admits some fact or facts against the witness' interest, then such statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact or facts so admitted by such party, as well as for the purpose of judging the credibility of the party as a witness.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

**§ 105.11 All Available Witnesses Or Evidence Need Not Be Produced**

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

## **Definitions Introduced**

I shall now give you the definitions of some important legal terms. Please listen carefully to these definitions so that you will understand the terms when they are used later.

Michigan Civil Jury Instruction 10.01

**Negligence of Defendant – Definition**

Negligence is the failure to use ordinary care. Ordinary care means the care a reasonably careful person/corporation would use. Therefore, by “negligence,” I mean the failure to do something that a reasonably careful person/corporation would do, or the doing of something that a reasonably careful person/corporation would not do, under the circumstances that you find existed in this case.

The law does not say what a reasonably careful person/corporation using ordinary care would or would not do under such circumstances. That is for you to decide.

Michigan Civil Jury Instruction 10.02

**Duty to Use Ordinary Care – Defendant**

It was the duty of the defendant, in connection with this occurrence, to use ordinary care for the safety of the plaintiff.

Michigan Civil Jury Instruction 10.05



### **Definition of Proximate Cause**

When I use the words “proximate cause” I mean first, that the negligent conduct must have been a cause of plaintiff’s injury, and second, that the plaintiff’s injury must have been of a type that is a natural and probable result of the negligent conduct.

Michigan Civil Jury Instruction 15.01

### **Burden of Proof in Negligence Cases**

The plaintiff has the burden of proof on the following propositions:

that the defendant was negligent in one or more of the ways claimed by the plaintiff as stated to you in these instructions;

that the plaintiff was damaged;

that the negligence of the defendant was a proximate cause of the damages to the plaintiff.

Your verdict will be for the plaintiff if you decide that all of these have been proved.

Your verdict will be for the defendant if you decide that any one of these has not been proved.

The Court will furnish a Special Verdict Form to assist you in your duties. Your answers to the questions in the Special Verdict Form will provide the basis on which this case will be resolved.

Michigan Civil Jury Instruction 16.08

### **Measure of Damages – Personal and Property**

If you decide that the plaintiff is entitled to damages, it is your duty to determine the amount of money which reasonably, fairly and adequately compensates her for each of the elements of damage which you decide has resulted from the negligence of the defendant, taking into account the nature and extent of the injury.

You should include each of the following elements of damage which you decide has been sustained by the plaintiff to the present time:

- (a) physical pain and suffering; and
- (b) the reasonable expenses of necessary medical care, treatment and services.

You should also include each of the following elements of damage which you decide plaintiff is reasonably certain to sustain in the future:

physical pain and suffering.

If any element of damage is of a continuing nature, you shall decide how long it may continue.

Which, if any, of these elements of damage has been proved is for you to decide based upon evidence and not upon speculation, guess or conjecture. The amount of money to be awarded for certain of these elements of damage cannot be proved in a precise dollar amount. The law leaves such amount to your sound judgment. Your verdict must be solely to compensate plaintiff for her damages, and not to punish the defendant.

Michigan Civil Jury Instruction 50.01-05

**Defendant Takes the Plaintiff As It Finds Her**

You are instructed that the defendant takes the plaintiff as it finds her. If you find that the plaintiff was unusually susceptible to injury, that fact will not relieve the defendant from liability for any and all damages resulting to plaintiff as a proximate result of defendant's negligence.

Michigan Civil Jury Instruction 50.10

**Personal Injury Action: Definition of Economic Loss and Noneconomic Loss Damages; Separation of Future Damages by Year**

In this case, you must determine a separate amount for each year in the future for which plaintiff will sustain damages.

You will also be required to determine “noneconomic loss” damages, means damages or loss due to pain and suffering.

Michigan Civil Jury Instruction 50.21

**Mitigation of Damages – Failure to Exercise Ordinary Care**

A person has a duty to use ordinary care to minimize his or her damages after he or she has been damaged. It is for you to decide whether plaintiff failed to use such ordinary care and, if so, whether any damage resulted from such failure. You must not compensate the plaintiff for any portion of her damages which resulted from her failure to use such care.

Michigan Civil Jury Instruction 53.05

**§ 106.01 Duty To Deliberate**

The verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that all jurors agree.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without disregard of individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning 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.

**§ 106.02 Effect Of Instruction As To Damages**

The fact that I have instructed you as to the proper measure of damages should not be considered as indicating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance only in the event you should find in favor of the plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.



**§ 106.05 Election Of Foreperson – Verdict**

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court. A form of special verdict has been prepared for your convenience. You will take this form to the jury room.

**§ 106.07 Verdict Forms – Jury’s Responsibility**

Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

**§ 106.08 Communications Between Court And Jury During Jury's Deliberations**

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by your foreperson. No member of the jury should ever attempt to communicate with me by any means other than a signed writing, and I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by Ms. Pinegar or Ms. Vertriest that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person – not even to me – how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

## **Notes**

During the trial, I permitted you to take notes and I have noticed that several of you have done so. As I said at the beginning of the trial, there is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus was not written down, may have taken on greater importance later in the trial in light of all the evidence presented. Therefore, you are again instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and may not be a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

## **Jury Instructions**

I will give you a copy of these instructions for your use while deliberating. It is available to each of you. If you have questions about the law or your duties as jurors, you should consult the copy of the instructions as given to you.

I am also sending in all of the exhibits with you for your use while deliberating.

## **Verdict**

A special verdict form is attached to these instructions. You will take this form to the jury room and when the required number of jurors have reached agreement as to the answers, in accordance with these instructions, you will have your foreman fill in the date and sign the form. You will then notify the Court's staff that you have reached a verdict, and bring the verdict form with you upon your return to the Court.

I will now explain the verdict form to you.