

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ABDULMOKNE GHALEB,

Plaintiff,

v.

Civil Case No. 13-13822
Honorable Linda V. Parker

AMERICAN STEAMSHIP COMPANY,

Defendant.

Instruction No. 1
Juror Attentiveness to Instructions

Ladies and gentlemen, before you begin your deliberations, I now am going to instruct you on the law. You must pay close attention and I will be as clear as possible.

It has been obvious to me and counsel that until now you have faithfully discharged your duty to listen carefully and observe each witness who testified. Your interest never flagged, and you have followed the testimony with close attention.

I ask you to give me that same careful attention as I instruct you on the law.

Authority: Modem Federal Jury Instructions § 71.01, Part 71-1

Jury Instruction No. 2
Role of the Court

You have now heard all of the evidence in the case as well as the final arguments of the lawyers for the parties.

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be-or ought to be-it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-2

Jury Instruction No. 3
Role of the Jury

As members of the jury, you are the sole and exclusive judges of the facts. You determine the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In determining these issues, no one may invade your province or functions as jurors. In order for you to determine the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. Nor is what I may have said-or what I may say in these instructions-about a fact issue evidence. In this connection, you should bear in mind that a question put to a witness is never evidence; it is only the answer which is evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your

decision should be as to whether or not the (plaintiff/defendant) has proven his case.

I also ask you to draw no inference from the fact that upon occasion I asked questions of certain witnesses. These questions were only intended for clarification or to expedite matters and certainly were not intended to suggest any opinions on my part as to the verdict you should render, or whether any of the witnesses may have been more credible than any other witnesses. You are expressly to understand that the court has no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You are to perform the duty of finding the facts without bias or prejudice to any party.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-3 (modified)

Jury Instruction No. 4
Juror Oath

In determining the facts, you are reminded that you took an oath to render judgment impartially and fairly, without prejudice or sympathy and without fear, solely upon the evidence in the case and the applicable law. I know that you will do this and reach a just and true verdict.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-4

Jury Instruction No. 5
Jury to Disregard Court's View

I have not expressed nor have I intended to intimate any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference or inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it. You are, I repeat, the exclusive, sole judges of all of the questions of fact submitted to you and of the credibility of the witnesses. Your authority, however, is not to be exercised arbitrarily; it must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law which I give you. In making your determination of the facts in this case, your judgment must be applied only to that which is properly in evidence. Arguments of counsel are not in evidence, although you may give consideration to those arguments in making up your mind on what inferences to draw from the facts which are in evidence.

From time to time the court has been called upon to pass upon the admissibility of certain evidence, although I have tried to do so, in so far as it was practicable, out of your hearing. You have no concern with the reasons for any such rulings and you are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law in the province of the

court and outside the province of the jury. In admitting evidence to which objection has been made, the court does not determine what weight should be given to such evidence, nor does it pass on the credibility of the evidence. Of course, you will dismiss from your mind, completely and entirely, any evidence which has been ruled out of the case by the court, and you will refrain from speculation or conjecture or any guesswork about the nature or effect of any colloquy between court and counsel held out of your hearing or sight.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-5

Jury Instruction No. 6
Conduct of Counsel

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsels also have the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not, unless expressly stated by me, indicate any opinion as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-6

Jury Instruction No. 7
Sympathy

Under your oath as jurors you are not to be swayed by sympathy. You should be guided solely by the evidence presented during the trial, without regard to the consequences of your decision.

You have been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your clear thinking there is a risk that you will not arrive at a just verdict. All parties to a civil lawsuit are entitled to a fair trial. You must make a fair and impartial decision so that you will arrive at the just verdict.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-10

Jury Instruction No. 8
Corporations and Corporate Responsibility

In this case, Defendant American Steamship Company is a corporation.

A corporation may act only through natural persons as its agents or employees. In general, any agents or employees of a corporation may bind the corporation by their acts and declarations made while acting within the scope of their authority delegated to them by the corporation or within the scope of their duties as employees of the corporation.

The mere fact that one of the parties is a corporation does not mean it is entitled to any lesser consideration by you. All litigants are equal before the law, and corporations, big or small, are entitled to the same fair consideration as you would give any other individual party.

Authority: Modern Federal Jury Instructions §72.01

Jury Instruction No. 9
Whether Party is Insured is Irrelevant

Whether a party is insured has no bearing whatever on any issue that you must decide. You must refrain from any inference, speculation, or discussion about insurance.

Authority: Michigan Civil Jury Instructions § 3.06.

Jury Instruction No. 10
Burden of Proof

This is a civil case and as such Plaintiff Abdulkne Ghaleb has the burden of proving the material allegations of his complaint by a preponderance of the evidence. If after considering all of the testimony you are satisfied that Plaintiff Abdulkne Ghaleb has carried his burden on each essential point as to which he has the burden of proof, then you must find for him on his claims. If after such consideration you find the testimony of both parties to be in balance or equally probable, then Plaintiff Abdulkne Ghaleb has failed to sustain his burden and you must find for Defendant American Steamship Company.

If upon a consideration of all the facts on the issues you find that Plaintiff Abdulkne Ghaleb has failed to sustain the burden cast upon it, then you should proceed no further and your verdict must be for Defendant American Steamship Company. If, however, you find that Plaintiff Abdulkne Ghaleb has sustained the burden on these issues, then you should proceed to consider the affirmative defense of contributory negligence. In this regard, the burden is upon Defendant American Steamship Company to establish the affirmative defense of contributory negligence by a preponderance of the evidence.

Authority: Modern Federal Jury Instructions § 73.01, Part 73-1 (modified as applicable)

Jury Instruction No. 11
Burden of Proof - Preponderance of the Evidence

The party with the burden of proof on any given issue has the burden of proving every disputed element of his claim to you by a preponderance of the evidence. If you conclude that the party bearing the burden of proof has failed to establish his claim by a preponderance of the evidence, you must decide against him on the issue you are considering.

What does a "preponderance of evidence" mean? To establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proved by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence, regardless of who may have produced them.

If you find that the credible evidence on a given issue is evenly divided between the parties-which it is equally probable that one side is right as it is that the other side is right-then you must decide that issue against the party having this burden of proof. That is because the party

bearing this burden must prove more than simple equality of evidence-he must prove the element at issue by a preponderance of the evidence. On the other hand, the party with this burden of proof need prove no more than preponderance. So long as you find that the scales tip, however slightly, in favor of the party with this burden of proof that what the party claims is more likely true than not true-then that element will have been proved by a preponderance of evidence.

Some of you may have heard of proof beyond a reasonable doubt, which is the proper standard of proof in a criminal trial. That requirement does not apply to a civil case such as this and you should put it out of your mind.

Authority: Modern Federal Jury Instructions § 73.01, Part 73-2

Jury Instruction No.12
What Is and Is Not Evidence

The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, stipulations, and judicially noticed facts.

By contrast, the questions of the lawyers are not to be considered by you as evidence. It is the witnesses' answers that are evidence, not the questions. At times, a lawyer may have incorporated into a question a statement which assumed certain facts to be true, and asked the witness if the statement was true. If the witness denied the truth of a statement, and if there is no direct evidence in the record proving that assumed fact to be true, then you may not consider it to be true simply because it was contained in the lawyer's question.

Testimony that has been stricken or excluded is not evidence and may not be considered by you in rendering your verdict. Also, if certain testimony was received for a limited purpose- such as for the purpose of assessing a witness's credibility-you must follow the limiting instructions I have given.

Arguments by lawyers are not evidence, because the lawyers are not witnesses. What they have said to you in their opening statements and in their summations is intended to help you understand the evidence to reach

your verdict. However, if your recollection of the facts differs from the lawyers' statements, it is your recollection which controls.

To constitute evidence which may be considered by you, exhibits must be received in evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials brought forth only to refresh a witness' recollection.

Finally, statements which I may have made concerning the quality of the evidence do not constitute evidence.

It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

Authority: Modern Federal Jury Instructions § 74.01, Part 74-1 (modified)

Jury Instruction No. 13
Direct and Circumstantial Evidence

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he knows by virtue of his own senses-something he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit when the fact to be proved is its present existence or condition.

The other type of evidence is circumstantial evidence. This is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence consists of proof of facts and circumstances from which, in terms of common experience, one may reasonably infer the ultimate fact sought to be established. Such evidence, if believed, is of no less value than direct evidence.

There is a simple example of circumstantial evidence which is often used in this courthouse. Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella which was dripping wet. Then a few minutes later another person also entered with a wet umbrella. Now, you cannot look outside of the courtroom and you cannot see whether or not it is

raining. So you have no direct evidence of that fact. But on the combination of facts which I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence; for, it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but simply requires that your verdict must be based on (e.g., a preponderance of) all the evidence presented.

A claim must be established by the party bearing the burden of proof for that particular claim, and that party may use either direct or circumstantial evidence.

Authority: Modern Federal Jury Instructions § 74.01, Part 74-2

Federal Jury Practice & Instructions § 71.08

Sarter v. Arkansas Gas Corp., 321 U.S. 620 (1943)

Jury Instruction No. 14
Judicial Notice and Stipulations

I have taken judicial notice of certain facts which are not subject to reasonable dispute. I have accepted these facts to be true, even though no direct evidence has been introduced proving them to be true. You are required to accept these facts as true in reaching your verdict.

Authority: Modern Federal Jury Instructions § 74.02, Part 74-3

Jury Instruction No. 15
Statements to Doctors

You have heard the testimony of physicians, concerning statements made by Plaintiff Abdulmokne Ghaleb, who was a patient, for the purpose of facilitating medical diagnosis or treatment. These statements included descriptions of the patient's medical history and symptoms and the general cause of his illness. You may consider these statements as evidence of the facts stated. It is up to you, the jury, to decide what weight, if any, to give these statements, just as you would any other evidence.

Authority: Modern Federal Jury Instructions § 74.05, Part 74-10

Jury Instruction No. 16
Use of Depositions

Some of the testimony before you is in the form of depositions which have been received in evidence. A deposition is simply a procedure where prior to trial the attorneys for one side may question a witness or an adversary party under oath before a court stenographer. This is part of the pretrial discovery, and each side is entitled to take depositions. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness given at trial.

Authority: Modern Federal Jury Instructions § 74.07, Part 74-14

Jury Instruction No. 17
Inferences

During the trial you have heard the attorneys use the term "inference," and in their arguments they have asked you to infer, on the basis of your reason, experience, and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact which has been shown to exist.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The plaintiff asks you to draw one set of inferences, while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw-but not required to draw-from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

Authority: Modern Federal Jury Instructions § 75.01, Part 75-1

Jury Instruction No. 18
Effect of Inference

The mere existence of an inference against the defendant does not relieve the plaintiff of the burden of establishing his case by a preponderance of the evidence. If Plaintiff Abdulkne Ghaleb is to obtain a verdict, you must still believe from the credible evidence that he has sustained the burden cast upon him. If he has failed, then your verdict must be for Defendant American Steamship Company. If you should find that all of the evidence is evenly balanced, then Plaintiff Abdulkne Ghaleb has failed to sustain the burden of proof and your verdict should be for Defendant American Steamship Company.

If and only if you determine, after carefully weighing all the evidence, that the facts favor Plaintiff Abdulkne Ghaleb by the standard I have articulated, then he has met the burden of proof.

Authority: Modern Federal Jury Instructions § 75.01, Part 75-2

Jury Instruction No.18(A)
Witnesses Equally Available

There are several persons whose names you have heard during the course of the trial but who did not appear here to testify, and one or more of the attorneys has referred to their absence from the trial. I instruct you that each party had an equal opportunity or lack of opportunity to call any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions as to what they would have testified had they been called. Their absence should not affect your judgment in any way.

Authority: Modern Federal Jury Instructions § 75.01, Part 75-4

**Jury Instruction No. 19
Presumptions**

You have heard arguments by counsel which call on you to make certain presumptions. What is a presumption? A presumption requires you to find one fact from the existence of another fact.

Before you may find the presumed fact to exist, you must, therefore, determine whether the underlying or basic fact has been proved. Only if you find the basic fact to exist will the presumption operate to require you to find that the presumed fact also was proved.

One word of caution. The mere existence of a presumption never shifts the burden of proof. In this case, even if you find the basic fact that compels you to find the presumed fact, the burden of proof still remains on the plaintiff to prove all the elements of his claim. The presumptive fact, therefore, would only be a circumstance to be considered along with all of the other circumstances in this case in deciding the issue of liability.

Authority: Modern Federal Jury Instructions § 75.02, Part 75-8

Jury Instruction No. 20
Witness Credibility

You have had the opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called on to resolve various factual issues raised by the parties in the face of very different pictures painted by both sides. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence that may help you decide the truth and the importance of each witness's testimony.

How do you determine where the truth lies? You watched each witness testify. Everything a witness said or did on the witness stand counts in your determination. How did the witness impress you? Did he or she appear to be frank, forthright, and candid, or evasive and edgy as if hiding something? How did the witness appear; what was his or her demeanor—that is, his or her carriage, behavior, bearing, manner, and appearance while testifying? Often it is not what a person says but how he or she says it that moves us.

You should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should

consider any bias or hostility the witness may have shown for or against any party as well as any interest the witness has in the outcome of the case. You should consider the opportunity the witness had to see, hear, and know the things about which he or she testified, the accuracy of the witness's memory, the witness's candor or lack of candor, the witness's intelligence, the reasonableness and probability of the witness's testimony and its consistency or lack of consistency and its corroboration or lack of corroboration with other credible testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given, and all of the other evidence in the case. Always remember that you should use your common sense, your good judgment, and your own life experience.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-1

Jury Instruction No. 21
Interest of Witnesses

In evaluating the credibility of the witnesses, you should take into account any evidence that a witness may benefit in some way from the outcome of the case. Such interest in the outcome creates a motive to testify falsely and may sway a witness to testify in a way that advances his own interests.

Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony, and accept it with great care.

Keep in mind, though, that it does not automatically follow that testimony given by an interested witness is to be disbelieved. There are many people who, no matter what their interest in the outcome of the case may be, would not testify falsely. It is for you to decide, based on your own perceptions and common sense, to what extent, if at all, the witness's interest has affected his testimony.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-3

Jury Instruction No. 22
Discrepancy in Testimony

You have heard evidence of discrepancies in the testimony of certain witnesses, and counsel have argued that such discrepancies are a reason for you to reject the testimony of those witnesses.

You are instructed that evidence of discrepancies may be a basis to disbelieve a witness's testimony. On the other hand, discrepancies in a witness's testimony or between his or her testimony and that of others do not necessarily mean that the witness's entire testimony should be discredited.

People sometimes forget things and even a truthful witness may be nervous and contradict himself. It is also a fact that two people witnessing an event will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance; but a willful falsehood always is a matter of importance and should be considered seriously.

It is for you to decide, based on your total impression of the witness, how to weigh the discrepancies in his or her testimony. You should, as always, use common sense and your own good judgment.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-4

Jury Instruction No. 23
Impeachment by Prior Inconsistent Statement

You have heard evidence that at some earlier time the witness has said or done something that counsel argues is inconsistent with the witness's trial testimony.

Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence in determining liability. Evidence of a prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to give to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-5

Jury Instruction No. 24
Expert Witnesses

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience, and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-9

Jury Instruction No. 25
Conflicting Expert Testimony

You have heard testimony of two witnesses who were called by each side to give their opinion about certain issues.

The witnesses who testified in this case did so in order to assist you in reaching a decision on these issues.

The testimony of these witnesses is in conflict. They disagree. You must remember that you are the sole trier of the facts and their testimony relates to a question of fact; so, it is your job to resolve the disagreement.

The way you resolve the conflict between these witnesses is the same way that you decide other fact questions and the same way you decide whether to believe ordinary witnesses. In addition, because they gave their opinions, you should consider the soundness of each opinion, the reasons for the opinion, and the witness's motive, if any, for testifying.

You may give the testimony of each of these witnesses such weight, if any, that you think it deserves in the light of all the evidence. You should not permit a witness's opinion testimony to be a substitute for your own reason, judgment, and common sense.

You may reject the testimony of any opinion witness in whole or in part, if you conclude the reasons given in support of an opinion are unsound or, if you, for other reasons, do not believe the witness. The determination of the facts in this case rests solely with you.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-10

Jury Instruction No. 26
Summary of Plaintiff's Claims

Plaintiff Abdulmokne Ghaleb, an Able-Bodied seaman, is asserting two separate claims against Defendant American Steamship Company.

The Plaintiff's first claim, under the federal law known as the Jones Act, is that his employer, the Defendant, was negligent, and that this negligence was a cause of his injuries. Plaintiff's second claim is that unseaworthiness of a vessel caused his injuries.

Plaintiff Abdulmokne Ghaleb is not required to prove both of these claims. He may recover if he proves either one of them. However, he may recover only those damages or benefits that the law provides for the claims that he proves, and he may not recover the same damages or benefits more than once.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.3
(modified) Modern Federal Jury Instructions §
90.02, Part 90-1 (modified)

Jury Instruction No. 26(A)
Jones Act -Introduction

The Jones Act provides in substance that every employer whose employees are members of the crew of a vessel in navigation shall be liable in damages for injuries to its employees resulting in whole or in part from the negligence of any of its officers, agents or employees or from any defect or deficiency, due to its negligence, in the vessel, its crew or its equipment.

Before you may find Defendant American Steamship Company liable to Plaintiff Abdulmokne Ghaleb under that statute, you must find by a preponderance of the evidence:

First, that Plaintiff Abdulmokne Ghaleb was a member of the crew of a vessel, acting in the course of his employment, as I will define those terms;

Second, that Defendant American Steamship Company was plaintiff's employer;

Third, that Defendant American Steamship Company or one of its officers, employees or agents was negligent; and,

Fourth, that such negligence played a part, no matter how slight, in bringing about an injury to Plaintiff Abdulmokne Ghaleb.

Only then do you reach the question of damages, which I will discuss later.

In this case, there is no dispute that Plaintiff Abdulmokne Ghaleb was a member of the crew of the ATB KEN BOOTHE, SR. and LAKES CONTENDER, acting in the course of his employment, and that Defendant American Steamship Company was Plaintiff Abduhnokne Ghaleb's employer.

Authority: Modern Federal Jury Instructions § 90.02, Parts 90-1

(modified) Modern Federal Jury Instructions § 90.02,

Parts 90-2

Jury Instruction No. 26(B)
Negligence under the Jones Act

Under the Jones Act, Plaintiff Abdulkne Ghaleb must prove that Defendant American Steamship Company was negligent. Negligence is doing an act that a reasonably prudent person would not do, or failing to do something that a reasonably prudent person would do under the same or similar circumstances. The occurrence of an accident, standing alone, does not mean that anyone was negligent or that anyone's negligence caused the accident. The fact that Plaintiff Abdulkne Ghaleb was injured during his employment does not automatically entitle him to recover from his employer.

In a Jones Act claim, the word "negligence" is liberally interpreted. It includes any breach of duty that an employer owes to its employees who are seamen, including the duty of providing for the safety of the crew. Under the Jones Act, if the employer's negligent act was the cause, in whole or in part, of injury to a seaman employee, then you must find that the employer is liable under the Jones Act. In other words, under the Jones Act, Defendant American Steamship Company bears the responsibility for any negligence that played a part, however slight, in causing Plaintiff Abdulkne Ghaleb's injury.

Negligence under the Jones Act may consist of a failure to comply with a duty required by law. Employers of seamen have a duty to provide their employees with a reasonably safe place to work. If you find that Plaintiff

Abdulkne Ghaleb was injured because Defendant American Steamship Company failed to furnish him with a reasonably safe place to work, and that Plaintiff Abdulkne Ghaleb's working conditions could have been made safe through the exercise of reasonable care, then you must find that Defendant American Steamship Company was negligent.

The fact that Defendant American Steamship Company conducted its operations in a manner similar to that of other companies is not conclusive as to whether Defendant American Steamship was negligent or not.

You must determine if the operation in question was reasonably safe under the circumstances. The fact that a certain practice had been continued for a long period of time does not necessarily mean that it is reasonably safe under all circumstances. A long-accepted practice may be an unsafe practice. A practice is not necessarily unsafe or unreasonable, however, merely because it injures someone.

A seaman's employer is legally responsible for the negligence of one of his employees while that employee is acting within the course of his employment.

Jury Instruction No. 26(C)
Respondent Superior

A corporation may act only through natural persons as its agents or employees. In general, agents or employees of a corporation may bind the corporation by their acts and declarations made while acting within the scope of their authority delegated to them by the corporation, or within the scope of their duties as employees of the corporation.

Plaintiff alleges that the negligence of Defendant's employee(s) caused Plaintiff's injury. If you find by a preponderance of the evidence that the negligence of Defendant's employee(s) caused Plaintiff's injury and that Defendant's employee(s) was acting within the scope of his employment at the time, you should find Defendant liable for the employee's actions.

Authority: Kevin F. O'Malley, et al., Federal Jury Practice and Instructions § 108:01 (6th ed. 2011)

Jury Instruction No. 26(D)
Inadequate Medical Treatment

If the jury finds Defendant American Steamship Company negligent, Defendant American Steamship Company will be liable for any additional injuries inflicted on Plaintiff Abdulkne Ghaleb by a medical care provider during treatment, regardless of whether the intervening agency acts prudently or negligently.

Authority: *Alholm v. American Steamship Co.*, 144 F.3d 1172 (1998).

Jury Instruction No. 27
Unseaworthiness - Separate Claim

Plaintiff Abdulmokne Ghaleb also makes a claim for damages for personal injury that he claims was caused by the unseaworthiness of American Steamship Company's vessel, the ATB KEN BOOTHE, SR. and LAKES CONTENDER.

However, it is important to note at the outset that Plaintiff Abdulmokne Ghaleb's claims of negligence under the Jones Act and of unseaworthiness are alternative claims arising from the same injury. Each claim is governed by separate standards and must be considered separately. But Plaintiff Abdulmokne Ghaleb can only recover once for his injuries, even if you find that he has established both theories.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.5

Modem Federal Jury Instructions § 90.04, Part 90-32

Jury Instruction No. 28
Unseaworthiness - Introduction

To recover on an unseaworthiness claim, Plaintiff Abdulkne Ghaleb must establish by a preponderance of the evidence:

First, that the ship or its equipment or crew, was unseaworthy; and

Second, that such unseaworthiness was a proximate cause of an injury to Plaintiff Abdulkne Ghaleb.

Only if these two elements are satisfied do you reach the question of damages under the unseaworthiness claim.

Authority: Fifth Circuit Pattern Civil Jury Instructions §4.5

Modern Federal Jury Instructions §90.04, Part 90-33

Jury Instruction No. 29

Unseaworthiness - Duty to Provide Adequate Crew

The duty to provide a seaworthy vessel includes the duty to supply an adequate and competent crew. A vessel may be unseaworthy even though it has a numerically adequate crew, if too few persons are assigned to a given task.

However, the vessel owner is not required to furnish an accident-free ship. American Steamship Company need only furnish a vessel and appurtenances that are reasonably fit for the intended use and a crew that is reasonably adequate for the assigned tasks.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.5

Jury Instruction No. 30

Unseaworthiness - No Duty to Provide Best Equipment or Crew

The vessel owner is not required to provide the best appliances and equipment, or the finest crews, on its vessel. American Steamship Company is required to provide only gear that is reasonably proper and suitable for its intended use and a crew that is reasonably adequate.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.5

Jury Instruction No. 31
Unseaworthiness - Causation

Not every injury that follows an accident necessarily results from it. The accident must be the cause of the injury.

In determining causation, a different rule applies to the Jones Act claim than the unseaworthiness claim.

For the unseaworthiness claim, the seaman must show not merely that the unseaworthy condition was a cause of the injury, but that such condition was a proximate cause of the injury. This means that Plaintiff Abdulmokne Ghaleb must show that the condition in question played a substantial part or was a substantial factor in bringing about or actually causing his injury, and that the injury was either a direct result or a reasonably probable consequence of the condition.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.6

Jury Instruction No. 32
Unseaworthiness - Conclusion

In summary, if you find that the vessel owner did not provide an adequate crew of sufficient number to perform the tasks required, or if you find that the vessel was in any manner unfit under the law as I have explained it to you and that this was a proximate cause of the injury, a term I have explained to you, then you may find that the vessel was unseaworthy and the vessel owner liable, without considering any negligence on the part of the vessel owner or any of its employees.

However, if you find that the owner had a capable crew, and had appliances and gear that were safe and suitable for their intended use, then the vessel was not unseaworthy, and Defendant American Steamship Company is not liable to Plaintiff Abdulmokne Ghaleb on the claim of unseaworthiness.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.5

Jury Instruction No. 33
Comparative Negligence

In an action based on negligence under the Jones Act or on the doctrine of unseaworthiness, the defense of contributory negligence, if established, results in an allocation of fault on a comparative basis rather than a bar to recovery.

Contributory negligence is not a bar to a seaman's recovery under either doctrine of unseaworthiness or the Jones Act. When Plaintiff has been negligent, however, damages otherwise awardable are reduced in accordance with the doctrine of comparative negligence.

Defendant contends that Plaintiff was negligent, and that Plaintiff's negligence caused or contributed to causing his injury. Defendant has the burden of proving that Plaintiff was negligent, and that Plaintiff's negligence was a cause of Plaintiff's injury, no matter how slight. The amount of his recovery will be reduced by the extent of his comparative negligence.

A seaman is obligated under the Jones Act to act with ordinary prudence under the circumstances. The circumstances of a seaman's employment include not only his reliance on his employer to provide a safe work environment, but also his own experience, training and education. In other words, under the Jones Act, a seaman has the duty to exercise that degree of care for his own safety that a reasonable seaman would exercise in like circumstances.

If you find that Defendant was negligent, and the negligence was a cause of Plaintiff's injury, no matter how slight, but you also find that the accident was due partly to the comparative negligence of Plaintiff, then you must determine the percentage that Plaintiff's comparative negligence contributed to the accident. You will provide this information by filling in the appropriate blanks in the special interrogatories. Do not make any reduction in the amount of damages that you award to Plaintiff. I will reduce the damages that you award by the percentage of contributory negligence that you assign to Plaintiff.

Authority: Fifth Circuit Pattern Jury Instructions § 4.7

Tolar v. Kinsman Marine Transit Co., 618 F.2d 1193, 1195 (6th Cir. 1990)

Webb v. Dresser Indus., 536 F.2d 603 (5th Cir. 1976)

Jury Instruction No. 34
Negligence Per Se

Plaintiff claims that Defendant violated 46 U.S.C. § 8104(c). The statute states the following:

On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

46 U.S.C. § 8104(c).

If you find by a preponderance of the evidence that Defendant violated 46 U.S.C. § 8104(c), and that this violation caused Plaintiff's injuries, then Defendant has committed negligence per se.

If you find by a preponderance of the evidence that Defendant violated this statute and that the violation played any part, no matter how small, in bringing about or actually causing injury to Plaintiff, then the Plaintiff is entitled to recover from Defendant such damages you determine the Plaintiff actually sustained as a result of the violation.

The negligence of the Plaintiff is not a defense and does not reduce the recovery by the Plaintiff for any damages caused by any violation of 46 U.S.C. § 8104(c).

Authority: *McKinney v. Am River Transp. Co.*, 954 F. Supp. 2d 799, 804-06 (S.D. Ill. 2013)

Fifth Circuit Pattern Jury Instructions, § 5.2.

Jury Instruction No. 35

Damages

If you find that the defendant is liable for the Plaintiff's injuries, you must award the amount you find by a preponderance of the evidence is full and just compensation for all of Plaintiff's damages.

Compensatory damages are not allowed as a punishment against a party. Such damages cannot be based on speculation, because compensatory damages must be actual damages to be recoverable. But compensatory damages are not restricted to out-of-pocket losses of money or lost time. Instead, compensatory damages may include mental and physical aspects of injury, tangible and intangible. Compensatory damages are intended to make Plaintiff whole, or to restore him to the position he would have been in if the accident had not happened.

In determining compensatory damages, you should consider only the following elements, to the extent you find that Plaintiff has established them by a preponderance of the evidence: past and future physical pain and suffering, including physical disability, impairment, and inconvenience, and the effect of Plaintiff's injuries and inconvenience on the normal pursuits and pleasures of life; past and future mental anguish and feelings of economic insecurity caused by disability; income loss in the past; impairment of earning capacity or ability in the future, including impairment of Plaintiff's earning capacity due to his physical condition; and the reasonable value, not exceeding actual cost to Plaintiff, of medical care that you find from the evidence will be reasonably certain to be required in the future as a proximate result of the

injury in question.

If you find that Plaintiff is entitled to an award of damages for loss of past earnings or loss of future earning capacity, there are two particular factors you must consider. First you should consider loss after income taxes; that is you should determine the actual or net income that Plaintiff has lost or will lose, taking into consideration that any past earnings or future earning capacity would be subject to income taxes. You must award the Plaintiff only his net earnings after tax. This is so because any award you may make here is not subject to income tax. The federal or state government will not tax any amount that you award on this basis.

Second, an amount to cover a future loss of earning capacity is more valuable to Plaintiff if he received the amount today than if he received the same amount in the future. If you decide to award Plaintiff an amount for lost future earnings, you must discount that amount to present value by considering what return would be realized on a relatively risk free investment and deducting that amount from the gross future earning capacity award.

However, some of these damages, such as mental or physical pain and suffering, are intangible things about which no evidence of value is required. In awarding these damages, you are not determining value, instead determining what amount that will fairly compensate Plaintiff for his injuries.

You should not interpret the fact that I am giving instructions about

damages as an indication in any way that I believe that Plaintiff Abdulkhane Ghaleb's should or should not win this case. It is your task to decide whether American Steamship Company is liable. I am instructing you on damages only so that you will have guidance in the event you decide that American Steamship Company is liable and that Plaintiff Abdulkhane Ghaleb is entitled to recover damages from Defendant American Steamship Company.

Authority: Fifth Circuit Pattern Jury Instruction. Civil, § 4.8.

Jones & Laughlin Steel Com v. Pfeifer, 462 U.S. 522, 103 S.Ct. 2541 (1983).

Miller v. Am. President Lines, Ltd., 989 F.2d 1450 (6th Cir. 1992).

Fifth Circuit Patter Civil Jury Instructions § 15.1

Jury Instruction No. 35(A)
Damages – Mitigation

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate his damages, that is, to avoid or to minimize those damages.

If you find that Defendant American Steamship Company is liable and that Plaintiff Abdulkne Ghaleb has suffered damages, Plaintiff Abdulkne Ghaleb may not recover for any item of damage that he could have avoided through reasonable effort. If you find that Defendant American Steamship Company has proved by a preponderance of the evidence that Plaintiff Abdulkne Ghaleb unreasonably failed to take advantage of an opportunity to lessen his damages, you should deny him recovery for those damages that he would have avoided had he taken advantage of the opportunity.

You are the sole judge of whether Plaintiff Abdulkne Ghaleb acted reasonably in avoiding or minimizing his damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce his damages. However, he is not required to make unreasonable efforts or to incur unreasonable expenses in mitigating damages. Defendant American Steamship Company has the burden of proving the damages that Plaintiff Abdulkne Ghaleb could have reasonably mitigated. In deciding whether to reduce Plaintiff Abdulkne Ghaleb's damages because of his failure to mitigate, you must weigh all the evidence in

light of the circumstances of the case, using sound discretion in deciding whether Defendant American Steamship Company has satisfied its burden of proving that Plaintiff Abdulkhane Ghaleb's conduct was not reasonable.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 15.5

Jones v. Consol. Rail Corp., 800 F.2d 590, 594 (6th Cir. 1986)

Jury Instruction No. 36
Pre-existing Injury

When a defendant's wrongful act or omission aggravates or accelerates a plaintiff's pre-existing condition and disables a plaintiff, thus rendering him unable to continue his work, or said aggravation awakens a dormant condition that causes a plaintiff to experience pain although he had suffered no pain from the condition prior to the aggravation, the defendant is liable in full for the disability and/or pain it caused.

A defendant is liable if, and only if, its breach of duty played any part, even the slightest, in producing the injury for which damages are sought.

If vessel owner's act merely advanced a disability that would have occurred in any event, the vessel owner would be held liable in damages only for such advancement of the disability caused by it.

Authority: Burden v. Evansville Materials, Inc., 636 F. Supp. 1022, 1040 (W.D. Ky. 1986), *aff'd*, 840 F.2d 343 (6th Cir. 1988)

Joint Jury Instruction No. 37
Deliberations -Introduction

You are about to go into the jury room and begin your deliberations. If during those deliberations you want to see any of the exhibits, you may request that they be brought into the jury room. If you want any of the testimony read back to you, may also request that. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of the testimony.

Your requests for exhibits or testimony-in fact any communication with the court- should be made to me in writing, signed by your foreperson, and given to one of the marshals. In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-1

Joint Jury Instruction No. 38
Duty to Deliberate to Unanimous Verdict

You will now return to decide the case. In order to prevail, Plaintiff Abdulkhane Ghaleb must sustain his or her burden of proof as I have explained to you with respect to each element of the complaint. If you find that he has succeeded, you should return a verdict in his favor on that claim. If you find that he has failed to sustain the burden on any element of the claim, you should return a verdict against him.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper

outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-3

Joint Jury Instruction No. 39
Selection of Foreperson

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in open court.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-5

**Joint Jury Instruction No. 40
Return of Verdict**

After you have reached a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the marshal outside your door that you are ready to return to the courtroom.

I will stress that each of you should be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-6

Joint Jury Instruction No. 41
Special Verdict

I have prepared a special verdict form for you to use in recording your decision. The special verdict form is made up of questions concerning the important issues in this case. These questions are to be answered "yes" or "no." Your answers must be unanimous and must reflect the conscientious judgment of each juror. You should answer every question except where the verdict form indicates otherwise.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-9