

Brittney Fulghum

ORIGINAL

CAUSE NO. 2019-81830

P-18

CECILIA CRUZ, INDIVIDUALLY §
AND AS REPRESENTATIVE OF §
ULYSSES D. CRUZ AND S. CRUZ, §
A MINOR AND ANGELO G. CRUZ, §
Plaintiffs, §

V. §

ALLIED AVIATION FUELING §
COMPANY OF HOUSTON, INC., §
AND REGINALD WILLIS §
Defendants. §

IN THE DISTRICT COURT

127TH JUDICIAL DISTRICT

FILED

Marilyn Burgess
District Clerk

OCT 25 2021

Time: 2:20 pm

By D. P. J. Harris County, Texas

HARRIS COUNTY, TEXAS

CHARGE OF THE 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.

We all have feelings, assumptions, perceptions, fears and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which are called “implicit” or “unconscious biases.” No matter how unbiased we think we are, our brains are hardwired to make unconscious decisions. We look at others and filter what they say through the lens of our own personal experience and background. Because we all do this, we often see life—and evaluate evidence—in a way that tends to favor people who are like ourselves or who have had life experiences like our own. We can also have biases about people like ourselves. One common example is the automatic association of male with career and female with family. Bias can affect our thoughts, how we remember what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make important decisions in this case. You must:

- a. Take the time you need to reflect carefully and thoughtfully about the evidence;
- b. Think about why you are making the decision you are making and examine it for bias. Reconsider your first impressions of the people and the evidence in this case. If the people involved in this case were from different backgrounds, for example, richer or poorer, more or less educated, older or younger, of a different gender, gender identity, race, religion or sexual orientation would you still view them and the evidence the same way;
- c. Listen to one another. You must carefully evaluate the evidence, resist and help each other resist any urge to reach a verdict influenced by bias for or against any party or witness. Each of you have different backgrounds and will be viewing the case in the light of your own insights, assumptions and biases. Listening to different perspectives may help you to better identify the possible effects these hidden biases may have on decision-making.

- d. Resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes or unconscious biases.

The law demands that you make a fair decision, based solely on the evidence, your individual evaluations of that evidence, your reason, common sense and these instructions.

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.

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. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence.

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. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten 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.

INSTRUCTIONS

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.

Deposition testimony consists of the sworn testimony of witnesses taken by a court reporter in the presence of attorneys for the parties. Deposition testimony read into evidence during the trial or presented by videotape is to be considered by you in the same manner as though the witness had personally appeared before you and testified from the witness stand.

The rules of evidence provide that where testimony and opinions on certain issues might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify and state his or her opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

DEFINITIONS

“Allied Aviation” means Allied Aviation Fueling Company of Houston, Inc.

“United Airlines” means United Airlines, Inc.

The “occurrence in question” refers to the September 7, 2019 incident involving Reginald Willis and Ulysses Cruz at the Houston Intercontinental Airport.

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

“Ordinary care” means the degree of care that would be used by a person or company of ordinary prudence under the same or similar circumstances.

“Proximate cause” means that cause that was a substantial factor in bringing about an occurrence, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the occurrence, or a similar occurrence, might reasonably result therefrom. There may be more than one proximate cause of an occurrence.

QUESTION 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:

- | | |
|--------------------|------------|
| a. Reginald Willis | <u>Yes</u> |
| b. United Airlines | <u>No</u> |
| c. Ulysses D. Cruz | <u>No</u> |

QUESTION 2

Did the negligence, if any, of Allied Aviation in the following way proximately cause the occurrence in question?

Allied Aviation's negligence, if any, can only be based on the following:

a. negligent training

An employer is negligent in training an employee if (1) the employer failed to use ordinary care when training an employee during his employment, and (2) the risk of harm to others presented by the employer's failure to properly train the employee proximately caused the occurrence in question.

To establish a claim for negligent training, a plaintiff must prove that a reasonably prudent employer would have provided training beyond that which was given and that the failure to do so caused his injuries.

An employer has no duty to warn, instruct, or train an employee already experienced with respect to the work assigned.

An employer owes no duty to warn of hazards that are commonly known or already appreciated by the employee.

An employer owes no duty to train employees regarding the commonly-known dangers of driving.

An employer owes no duty to warn or instruct an employee with regard to dangers that are ordinarily incident to driving a vehicle and require no special skills or knowledge other than that expected of all licensed drivers.

In determining whether Allied Aviation was negligent and whether any negligence of Allied Aviation proximately caused the occurrence in question, you are instructed to consider only the conduct of Allied Aviation employees other than Reginald Willis.

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" to Question 1 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.

QUESTION 3

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

a. Allied Aviation	<u>70%</u>
b. Reginald Willis	<u>30%</u>
c. United Airlines	<u>0</u>
d. Ulysses D. Cruz	<u>0</u>

TOTAL

100%

Answer Question 4 through Question 7 if you answered "Yes" in Question 1 or Question 2 for one or more of the following: Allied Aviation Fueling Co. or Reginald Willis and answered:

- 1. "No" for Ulysses D. Cruz to Question 1, or**
- 2. 50 percent or less for Ulysses D. Cruz to Question 3.**

Otherwise, do not answer any more Questions.

QUESTION 4

What sum of money, if paid now in cash, would fairly and reasonably compensate Ulysses D. Cruz 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 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 Ulysses D. Cruz. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment.

If a pre-existing injury or condition was not causing any symptoms at the time of the occurrence in question but made the plaintiff more susceptible to injury than a person without that injury or condition, include damages, if any, resulting from a combination of the pre-existing injury or condition and the occurrence in question.

- 1. Physical pain sustained in the past.**

Answer: 15 million

- 2. Mental anguish sustained in the past.**

Answer: 15 million

3. Physical pain that, in reasonable probability, Ulysses D. Cruz will sustain in the future.

Answer: 70 million

4. Mental anguish that, in reasonable probability, Ulysses D. Cruz will sustain in the future.

Answer: 70 million

5. Physical impairment sustained in the past.

Answer: 15 million

6. Physical impairment that, in reasonable probability, Ulysses D. Cruz will sustain in the future.

Answer: 35 million

7. Disfigurement sustained in the past.

Answer: 10 million

8. Disfigurement that, in reasonable probability, Ulysses D. Cruz will sustain in the future.

Answer: 22.5 million

9. Reasonable expenses of necessary medical care incurred in the past.

Answer: 2 million

10. Reasonable expenses of necessary medical care that, in reasonable probability, Ulysses D. Cruz will incur in the future.

Answer: 30 million

11. Loss of earning capacity sustained in the past.

Answer: 290,000

12. Loss of earning capacity that, in reasonable probability, Ulysses D. Cruz will sustain in the future.

Answer: 2.6 million

QUESTION 5

What sum of money, if paid now in cash, would fairly and reasonably compensate Cecilia Cruz for her injuries, if any, to her husband, Ulysses D. Cruz, 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 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 Ulysses D. Cruz. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment.

1. Loss of household services sustained in the past.

“Household services” means the performance of household and domestic duties by a spouse to the marriage.

Answer: 32,000

2. Loss of household services that, in reasonable probability, Cecilia Cruz will sustain in the future.

Answer: 100,000

3. Loss of consortium sustained in the past.

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

Answer: 150,000

4. Loss of consortium that, in reasonable probability, Cecilia Cruz will sustain in the future.

Answer: 25 million

QUESTION 6

What sum of money, if paid now in cash, would fairly and reasonably compensate S.C. for the loss, if any, of parental consortium that resulted from the physical injury to Ulysses D. Cruz?

“Parental consortium” means the positive benefits flowing from the parent’s love, affection, protection, emotional support, services, companionship, care, and society.

In considering your answer to this question, you may consider only the following factors: the severity of the injury to the parent and its actual effect on the parent-child relationship, the child’s age, the nature of the child’s relationship with the parent, the child’s emotional and physical characteristics, and whether other consortium-giving relationships are available to the child.

Do not include interest on any amount of damages you find. Do not reduce the amounts, if any, in your answer because of negligence, if any, of Ulysses D. Cruz. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer in dollars and cents for damages, if any, that –

1. were sustained in the past;

Answer: 50,000

2. in reasonable probability will be sustained in the future.

Answer: 20 million

QUESTION 7

What sum of money, if paid now in cash, would fairly and reasonably compensate Angelo Cruz for the loss, if any, of parental consortium that resulted from the physical injury to Ulysses D. Cruz?

“Parental consortium” means the positive benefits flowing from the parent’s love, affection, protection, emotional support, services, companionship, care, and society.

In considering your answer to this question, you may consider only the following factors: the severity of the injury to the parent and its actual effect on the parent-child relationship, the child’s age, the nature of the child’s relationship with the parent, the child’s emotional and physical characteristics, and whether other consortium-giving relationships are available to the child.

Do not include interest on any amount of damages you find. Do not reduce the amounts, if any, in your answer because of negligence, if any, of Ulysses D. Cruz. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer in dollars and cents for damages, if any, that –

1. were sustained in the past;

Answer: 50,000

2. in reasonable probability will be sustained in the future.

Answer: 20 million

INSTRUCTIONS upon RETIRING to the jury room

When you go into the jury room to answer the questions, the first thing you will need to do is choose a foreperson. The foreperson has these duties:

- a. have the complete charge read aloud;
- 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 foreperson? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

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

2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve 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 twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten or eleven jurors who agree on every answer will sign the verdict.

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

A handwritten signature in black ink, appearing to read 'Ravi Sandill', written over a horizontal line.

Ravi Sandill, Judge Presiding

Verdict Certificate

Check one:

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

B. Fulghum
Signature of Presiding Juror

Brittney Fulghum
Printed Name of Presiding Juror

☒ Our verdict is not unanimous. Eleven of us have agreed to each and every answer
and have signed the certificate below. Please also print your names below.

 Our verdict is not unanimous. Ten of us have agreed to each and every answer and
have signed the certificate below. Please also print your names below.

Signature

Name Printed

1. Thomas Baker
2. Cynthia Craig
3. Rose Grant
4. Ronda Henderson
5. Jeremy Hamilton
6. Mario Ruyalcaba
7. Wilbert Taylor
8. Magdalena Ramirez
9. Katherine Bryant
10. Jennet Cartledge
11. _____

Thomas Baker
Cynthia Craig
Rose Grant
Ronda Henderson
Jeremy Hamilton
Mario Ruyalcaba
Wilbert Taylor
Magdalena Ramirez
Katherine Bryant
Jennet Cartledge
