

IN THE DISTRICT COURT IN AND FOR DUBUQUE COUNTY**TAYLOR WHITACRE and DAVAUN
LEWIS, as next of kin of I.L.****Plaintiffs,****Vs.****MCDERMOTT ENTERPRISES, LLC
Defendant / Cross Plaintiff,****Vs.****URIAH MILLER,
Cross Defendant.****Case No. 01311 LACV114484****JURY INSTRUCTIONS****STATEMENT OF THE CASE****Ladies and Gentlemen of the Jury:**

This action involves lead poisoning of I.L. The Plaintiffs allege that McDermott Enterprises, LLC as owner and landlord of the property located at 2515 Central Avenue, had a duty under state and federal law to provide the pamphlet to inform them of the presence and / or risk of lead-based paint hazards in the residence they leased from it commencing in 2018. They claim that McDermott Enterprises, LLC as owner and landlord had a duty to maintain the property in a habitable and safe condition. They assert McDermott Enterprises failure to maintain the property resulted in a diagnosis of lead poisoning that has caused permanent physical and cognitive injury to I.L. that will continue to manifest itself into her adulthood. Plaintiffs further allege that McDermott Enterprises engaged in consumer fraud under Iowa law. Plaintiffs allege that Uriah Miller, as the former owner and seller of the property to McDermott Enterprises, failed to properly disclose the presence of lead-based paint and / or on-going monitoring obligations.

McDermott Enterprise denies that its conduct was the cause of any of Plaintiffs' injuries. McDermott Enterprises asserts that Lead-Based Pamphlet was provided at the time of the review of the property. It also asserts conduct of the Plaintiffs contributed to, resulted in or caused Plaintiffs' injury.

McDermott Enterprises alleges that Uriah Miller has responsibility for Plaintiffs' injuries as the former owner and seller of the property. McDermott asserts that Uriah Miller fraudulently misrepresented the condition of the property or negligently failed to disclose the condition of the property at the time of the sale to McDermott Enterprises.

Uriah Miller denies Plaintiffs' and McDermott Enterprises claims against him. He further asserts that the claims raised against by McDermott Enterprises are time barred by the Statute of Limitations.

In your deliberations, you will be making decisions about the claims raised by the Plaintiffs against both Defendants; claims raised between the Defendants; and defenses raised by both Defendants as to Plaintiffs' claims and the claims between them.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you after all the evidence has been presented.

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 2

Unless the Court instructs you to the contrary, whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 5

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 6

Certain testimony has been read into evidence from a deposition or received by video. A deposition is testimony taken under oath before the trial and preserved in writing or video. Consider that testimony as if it had been given in court.

You have also heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 7

The Plaintiffs served McDermott Enterprises with a written Request for the Admissions directed to the truth of certain facts. You will regard all facts which were expressly admitted by McDermott Enterprises as conclusively proven.

INSTRUCTION NO. 8

You have heard evidence claiming one or more parties made statements before this trial while under oath and not under oath.

If you find such statements were made, you may regard the statement as evidence in this case the same as if the party had made them under oath during the trial.

If you find such statements were made and were inconsistent with trial testimony during the trial you may also use the statement as a basis for disregarding all or any part of testimony during the trial but you are not required to do so. You should not disregard testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 9

The fact that McDermott Enterprises, LLC is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 10

The Residential Landlord Tenant Act requires landlords, or the owner or lessor of a dwelling unit including apartments, to:

- (1) Comply with the requirements of applicable building and housing codes materially affecting health and safety;
- (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition; and
- (3) Keep all common areas of the premises in a clean and safe condition.

If Plaintiffs have proved Defendant McDermott failed to comply any of these requirements, Plaintiffs may recover actual damages, as defined in Instruction No. __39__.

INSTRUCTION NO. 11

For their claim of fault against McDermott Enterprises, Plaintiffs must prove propositions 1, 2 and 3:

1. McDermott Enterprises was negligent **in one or more** of the following ways:
 - a. Failing to provide an EPA-approved pamphlet regarding the presence of lead or the possibility of the presence of lead in the premises of 2515 Central Avenue;
 - b. Failing to maintain, repair, remove or cover any peeling, chipping, flaking or abraded paint in the premises;
 - c. Failing to keep the premises in a clean and safe condition;
 - d. Failing to provide any records or reports available to it pertaining to lead-based paint and/or lead based hazards;
 - e. Failing to inspect the premises; or
 - f. Violating the International Property Maintenance Code as set forth in Instruction 14.
2. The negligence was a cause of damage to Plaintiffs.
3. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, Plaintiffs are not entitled to damages for their claim of fault against McDermott Enterprises. If Plaintiffs have proved all of these propositions, you will consider the defenses of lack of proximate cause and failure of mitigation as explained in Instruction No. 25.

INSTRUCTION NO. 12

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

INSTRUCTION NO. 13

There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

INSTRUCTION NO. 14

The City of Dubuque has adopted the International Property Maintenance Code which requires that the owner of property maintain the interior surfaces, including windows and doors in good, clean and sanitary condition. Peeling, chipping, loose, flaking, or abraded paint must be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions are to be corrected.

All residential property must comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992, requiring the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of certain housing built before 1978.

The lessor, or any agent, shall provide within the contract to lease property built before 1978, a warning statement informing the tenant of the harms that may be suffered upon the exposure to lead-based paint from the paint, paint chips and dust if not managed properly. Tenant must also receive a federally approved pamphlet on lead poisoning prevention and signify the receipt of the same in writing.

The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required as set forth herein regarding disclosure of the presence of lead-based paint for not less than three (3) years from the commencement of the lease period.

A violation of this code is negligence.

INSTRUCTION NO. 15

For their claim of fault against Miller, Plaintiffs must prove elements of propositions 1, 2, and 3:

1. Miller was negligent **in one or more** of the following ways:
 - a. Failing to disclose the presence of lead-based paint during the course of the sale of the Property; or
 - b. Failing to disclose the lead abatement reports or records during the course of the sale of the Property; or
 - c. Failing to disclose future monitoring obligations of lead-based paint hazards contained in the Property; or
 - d. Failing to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992, as set forth in Instruction No. ____14____; or
 - e. Otherwise failing to disclose known information on lead-based paint and lead-based paint hazards before selling housing built before 1978; or
 - f. Representing that the Property was “abated,” if that statement was false at the time it was made, and if Miller failed to exercise reasonable care in making the statement, thereby creating an unreasonable risk of harm to McDermott Enterprises and / or causing injury to I.L.; or
 - g. Representing that the property was “lead safe,” if that statement was false at the time it was made, and if Miller failed to exercise reasonable care in making the statement, thereby creating an unreasonable risk of harm to McDermott Enterprises and / or causing injury to I.L.
2. Miller’s negligence was a cause of damage to the Plaintiffs.
3. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, they are not entitled to damages on their claim of fault against Miller. If Plaintiffs have proved all of these propositions, you will consider the defense of lack of proximate cause as explained in Instruction No. ____37____.

INSTRUCTION NO. 16

If you find Plaintiffs are entitled to recover damages, as set forth in Instruction Nos. 11 & 15 , you shall consider the following items:

1. The present value of I.L.'s loss of future earning capacity;
2. The present value of I.L.'s future medical expenses;
3. I.L.'s past loss of function of the mind and body from the date of injury to the present time;
4. The present value of I.L.'s future loss of function of the mind and body;
5. I.L.'s past physical and mental pain, suffering, and loss of enjoyment of life from the date of the injury to the present time;
6. The present value of I.L.'s future physical and mental pain, suffering, and loss of enjoyment of life; and
7. Taylor Whitacre's past and future loss of companionship and society of the child; and
8. DaVaun Lewis's past and future loss of companionship and society of the child.

The amount you assess for physical and mental pain and suffering in the past and future, and loss of function of the mind and body in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages for their fault claims. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the verdicts.

INSTRUCTION NO. 17

If you find Plaintiffs are entitled to recover for damage sustained by them as the result of the injury to I.L. it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of the past loss of services, which include loss of companionship and society of the child, from the date of the child's injury to the present time, minus the probable cost of the child's board and maintenance during that time period.
2. The present value of the future loss of services, which includes loss of companionship and society of the child, from the present time until the child reaches age eighteen years minus the present value of the probable cost of child support and maintenance during that same time period.
3. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred for the child's injuries from the present time until the child reaches age eighteen years.

Items 1 and 2 include the loss of earnings of the child, the economic or financial value of the child's labor where the child is not employed, as well as the parents' right to the intangible benefits of companionship, cooperation and affection of the child. They do not include mental anguish by the parent caused by the injury to the child.

In determining loss of companionship and society, you may consider the circumstances of the life of the child including:

1. The child's age, health, strength, intelligence, character, interests and personality.
2. Activities in the household and community.
3. All other facts and circumstances bearing on the issue.

The amounts, if any, you find for each of the above items will be used to answer the verdicts.

INSTRUCTION NO. 18

If you find I.L. is entitled to recover damages, you shall consider the following items:

1. **Past Loss of Full Mind or Body:** Loss of function of the mind or body from the date of injury to the present time. Loss of mind or body is the inability of a particular part of the mind or body to function in a normal manner.
2. **Future Loss of Full Mind or Body:** The present value of future loss of function of the mind or body.
3. **Past Physical and Mental Pain and Suffering:** Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
4. **Future Physical and Mental Pain and Suffering:** The present value of future physical and mental pain and suffering.
5. **Future Earning Capacity:** The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
6. **Future Medical Expenses after age 18:** The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

The amount you assess for physical or mental pain and suffering in the past and future, loss of function of the body or mind in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to complete the verdict.

INSTRUCTION NO. 19

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the Plaintiffs for future losses.

INSTRUCTION NO. 20

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as I.L. is 79 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about I.L.'s health, habits, occupation, and lifestyle, when deciding on issues of future damages.

INSTRUCTION NO. 21

Fault as used in these instructions means one or more acts or omissions towards the person of the actor or of another which constitutes negligence.

INSTRUCTION NO. 22

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Taylor Whitacre and Davaun Lewis, McDermott Enterprises and Uriah Miller, the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 23

After you have compared the conduct of all parties, if you find Taylor Whitacre and Davaun Lewis, were at fault and their fault was more than 50% of the total fault, they cannot recover loss of companionship damages.

However, if you find Taylor Whitacre's and Davaun Lewis' fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of their fault.

INSTRUCTION NO. 24

When you consider I.L.'s claim for injuries, you will not charge I.L. with the fault, if any of Taylor Whitacre and Davaun Lewis. Also, the fault of Taylor Whitacre and Davaun Lewis shall not be considered in the 100% total of casual fault of I.L.'s damages and I will not reduce the damages awarded to I.L.

INSTRUCTION NO. 25

McDermott Enterprises claims Taylor Whitacre and Davaun Lewis were at fault for failing to mitigate or prevent damages by not exercising ordinary care to obtain reasonable medical treatment, exercising ordinary care to follow medical advice and treatment prior to I.L.'s diagnosis, failing to supervise I.L. or otherwise exercising ordinary care.

Taylor Whitacre and Davaun Lewis have a duty to exercise ordinary care to reduce, minimize or limit damages. However, they have no duty to do something that is unreasonable under the circumstances, such as undergoing serious or speculative medical treatment, undertake action which is unreasonably expensive or intrusive or undertake action which imposes unreasonable inconvenience.

To prove McDermott Enterprises' claim of failure to mitigate, it must prove all of the following:

1. There was something Taylor Whitacre and Davaun Lewis could do to mitigate damages, prior to I.L.'s diagnosis;
2. Requiring Taylor Whitacre and Davaun Lewis to do so was reasonable under the circumstances;
3. Taylor Whitacre and Davaun Lewis acted unreasonable in failing to undertake the mitigating activity; and
4. Taylor Whitacre's and Davaun Lewis' failure to undertake the mitigating activity caused an identifiable portion of damages.

If McDermott Enterprises has proved all of these numbered propositions, then it has proved this defense, and you shall assign a percentage of fault to the Taylor Whitacre and Davaun Lewis for the time period after the failure to mitigate.

If McDermott has failed to prove one or more of these numbered propositions, then it has not proved Taylor Whitacre and Davaun Lewis failed to mitigate their damages.

INSTRUCTION NO. 26

For its claim of Fraudulent Misrepresentation against Uriah Miller, McDermott Enterprises must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. Uriah Miller on or about the 1st day of August, 2018, made a representation to McDermott Enterprises in the Property Disclosure Statement for 2515 Central indicating the property was “lead safe” and underwent “lead abatement in 2009”.
2. The representation was false.
3. The representation was material.
4. Uriah Miller knew the representation was false.
5. Uriah Miller intended to deceive McDermott Enterprises.
6. McDermott Enterprises acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of McDermott Enterprises’ damage; and
8. The amount of damage.

If McDermott Enterprises has failed to prove any one of these propositions, it cannot recover damages.

If McDermott Enterprises has proved all of these propositions, you will consider Miller’s assertion that the claims are barred by the Statute of Limitations, as explained in Instruction No.

____28____.

INSTRUCTION NO. 27

For its claim of fault against Miller, McDermott Enterprises must prove the elements of propositions 1, 2, and 3:

1. Miller was negligent in one or more of the following ways:
 - a. Failing to disclose the presence of lead-based paint during the course of the sale of the Property; or
 - b. Failing to disclose the lead abatement reports or records during the course of the sale of the Property; or
 - c. Failing to disclose future monitoring obligations of lead-based paint hazards contained in the Property; or
 - d. Failing to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992, as set forth in Instruction No. ___14___; or
 - e. Otherwise failing to disclose known information on lead-based paint and lead-based paint hazards before selling housing built before 1978; or
 - f. Representing that the Property was “abated,” if that statement was false at the time it was made, and if Miller failed to exercise reasonable care in making the statement, thereby creating an unreasonable risk of harm to McDermott Enterprises and / or causing injury to I.L.; or
 - g. Representing that the property was “lead safe,” if that statement was false at the time it was made, and if Miller failed to exercise reasonable care in making the statement, thereby creating an unreasonable risk of harm to McDermott Enterprises and / or causing injury to I.L.
2. Miller’s negligence was a cause of damage to the McDermott Enterprises.
3. The amount of damage.

If McDermott Enterprises has failed to prove any of these propositions, it is not entitled to damages on their claim of fault against Miller.

If McDermott Enterprises has proved all of these propositions, you will consider the defenses of proximate cause as explained in Instruction No. ____37____ and Statute of Limitations as explained in Instruction No. ____28____.

INSTRUCTION NO. 28

Uriah Miller has raised a Statute of Limitations defense for the claims brought against him by McDermott Enterprises. This defense requires that a claim be filed within a specific period of time; otherwise, the suit is barred, even if it is commenced one day late.

McDermott Enterprises filed its claim under the theory of Fraudulent Misrepresentation on May 10, 2024. The statute of limitations required McDermott Enterprises to file this claim within five (5) years of the date when the incident took place. You must decide when the incident occurred, which serves as the basis for McDermott Enterprises' Fraudulent Misrepresentation claim.

McDermott Enterprises filed its claim under the theory of Negligence on February 24, 2025. The statute of limitations required McDermott Enterprises to file this claim within two (2) years of the date when the incident took place. You must decide when the incident occurred, which serves as the basis for McDermott Enterprises' Negligence claim.

Because Uriah Miller has raised a statute of limitations defense, he must prove that the incident took place more than five (5) years (for Fraudulent Misrepresentation) and two (2) years (for Negligence) before McDermott Enterprises filed this claim.

The time for filing its claim may, however, be extended for the period of time that McDermott Enterprises would not have reasonably known or discovered that the incident took place. This would be a rebuttal of Uriah Miller's Statute of Limitations defense. Therefore, Uriah Miller must prove when McDermott Enterprises knew or reasonably should have known or discovered the incident took place. If McDermott Enterprises had information that would normally have led a reasonably careful person to make inquiry, then you may conclude McDermott Enterprises had actual knowledge of those facts.

You must decide by a preponderance of the evidence whether the statute of limitations defense is applicable. If the evidence supports Uriah Miller's position, your verdict should be for Uriah

Miller and against McDermott Enterprises on the claims of Fraudulent Misrepresentation and Negligence.

If, however, the evidence does not support Uriah Miller's position or McDermott Enterprises has demonstrated by the evidence that the Statute of Limitations is extended to cover McDermott Enterprises' claim, the Statute of Limitations defense does not apply and you should consider the merits of McDermott Enterprises' claims.

INSTRUCTION NO. 29

Concerning proposition no. 1 of Instruction No. ____26____, "a representation" is any word or conduct asserting the existence of a fact. It may include silence if Uriah Miller failed to disclose information which he had a duty to disclose and which McDermott Enterprises had reason to believe would be disclosed.

A representation also includes an opinion. An opinion is a statement of a person's belief that a fact exists or their judgment as to quality, value, authenticity, or similar matter. A representation of fact implies that the maker has definite knowledge or information supporting their statement; a representation of opinion does not. You must consider all of the surrounding circumstances, including the exact words used, in deciding whether a representation is one of fact or opinion.

INSTRUCTION NO. 30

Concerning proposition No. 3 of Instruction ____26____, a representation is "material" if:

1. A reasonable person would consider it as important in making a decision;
2. Uriah Miller knows or has reason to know that the McDermott Enterprises considers, or is likely to consider, the representation as important in making a decision; and
3. The representation influences a person to enter into a transaction which would not have occurred otherwise.

INSTRUCTION NO. 31

Concerning proposition No. 4 of Instruction No. ____26____, Uriah Miller knew the representation was false if any of the following situations existed:

1. Uriah Miller actually knew or believed the representation was false.
2. Uriah Miller made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. Uriah Miller falsely stated or implied that the representation was based on his personal knowledge or investigation.
4. Uriah Miller made a representation which he knew or believed was materially misleading because it left out unfavorable information.
5. Uriah Miller knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard of how it would be understood.
6. Uriah Miller' special source of information made it Uriah Miller's duty to know whether the representation was true or false.

INSTRUCTION NO. 32

Concerning proposition No. 5 of Instruction No. ____26____, Uriah Miller intended to deceive McDermott Enterprises if any of the following situations existed when he made a representation:

1. Uriah Miller wanted to deceive McDermott Enterprises or believed that McDermott Enterprises would in all likelihood be deceived.
2. Uriah Miller had information from which a reasonable person would conclude that McDermott Enterprises would be deceived.
3. Uriah Miller made the representation without concern for the truth.

INSTRUCTION NO. 33

Concerning proposition No. 5 of Instruction No. ____26____, Uriah Miller is liable only to a person or group of persons whom he intended or had reason to expect would act or refrain from acting in reliance on the representation. It is not necessary that Uriah Miller knew McDermott Enterprises 's name so long as Uriah Miller intended or had reason to expect that the representation would be received and relied upon by a group of persons including McDermott Enterprises. A person has reason to expect a result if he has information from which a reasonable person would conclude that the result will follow.

Uriah Miller is liable only to those persons who rely on the representation in the type of transaction in which Uriah Miller intends or has reason to expect the conduct of others will be affected.

INSTRUCTION NO. 34

Concerning proposition No. 6 of Instruction No. ____26____, McDermott must rely on the representation and the reliance must be justified.

It is not necessary that the representation be the only reason for McDermott Enterprises' action.

It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what McDermott Enterprises can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

INSTRUCTION NO. 35

Concerning proposition No. 6 of Instruction No. ____26____, McDermott Enterprises is justified in relying on Uriah Miller's representation of opinion only if one or more of the following situations exist:

1. Uriah Miller has or claims to have special knowledge of the matter that McDermott Enterprises does not have.
2. Uriah Miller has a fiduciary or other similar relation of trust and confidence with McDermott Enterprises.
3. Uriah Miller has successfully tried to gain McDermott Enterprises' confidence.
4. Uriah Miller knows of some special reason to expect that McDermott Enterprises will rely on the opinion.

INSTRUCTION NO. 36

Concerning proposition No. 6 of Instruction No. ____26_____, a person is presumed to be able to form their own opinion about the quality or value of ordinary merchandise or the wisdom of entering into a routine transaction. A buyer of ordinary merchandise is not justified in relying upon the seller's "puffing," "sales talk," or other general opinion of quality or value. A buyer may be justified in relying upon a statement that the merchandise is satisfactory for the buyer's announced purpose.

INSTRUCTION NO. 37

Uriah Miller claims the conduct of McDermott Enterprises was the proximate cause of Plaintiffs' damages.

In order to establish this defense Uriah Miller must prove all of the following propositions:

1. The conduct of McDermott Enterprises was the cause of Plaintiffs' damages and occurred after the conduct of Uriah Miller which you have found to constitute negligence.
2. The conduct of Uriah Miller did not create or substantially increase the risk that the Plaintiffs would sustain damage through the conduct of McDermott Enterprises.
3. The conduct of McDermott Enterprises was not reasonably foreseeable to someone in Uriah Miller's position.

If Uriah Miller has proven all of these propositions, then Plaintiffs cannot recover damages from Uriah Miller.

INSTRUCTION NO. 38

Plaintiffs must prove the following to prevail on their claim of Consumer Fraud against McDermott Enterprises:

1. McDermott Enterprises engaged in a practice or act that it knew or reasonably should have known was a) an unfair practice, b) a deceptive, c) a fraud, d) a false pretense or promise, or e) a misrepresentation, concealment, suppression or omission of a material fact.
2. McDermott Enterprises' prohibited practice or act was made in connection with the lease of property.
3. McDermott Enterprises intended for others to rely upon the prohibited practice or act.
4. Plaintiffs suffered an ascertainable loss of money as the result of McDermott Enterprises prohibited acts.
5. Plaintiffs' actual damages.

If the Plaintiffs have failed to ^{prove} any one of these propositions, Plaintiffs are not entitled to damages. If the Plaintiffs have proved all of the propositions Plaintiffs are entitled to actual damages in some amount.

INSTRUCTION NO. 39

Concerning Instruction No. ____10____ and proposition 5 of Instruction No. ____38____ “actual damages” means all compensatory damages proximately caused by the prohibited practice or act that are reasonably ascertainable in amount. “Actual damages” does not include damages for bodily injury, pain and suffering, mental distress, or loss of companionship, loss of life, or loss of enjoyment of life.

INSTRUCTION NO. 40

As used in Instruction No. 38:

“Deception” means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.

“Unfair practice” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

If you find by a preponderance of clear, convincing, and satisfactory evidence that a prohibited practice or act in violation of the Consumer Fraud claim of the Plaintiffs constitutes willful and wanton disregard for the rights or safety of another, in addition to an award of actual damages, statutory damages up to three times the amount of actual damages may be awarded to a prevailing consumer.

INSTRUCTION NO. 41

An employer / corporation is liable for the negligent acts of an employee / agent if the acts are done in the scope of the employment.

INSTRUCTION NO. 42

In arriving at an item of damage or any percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 43

Punitive damages may be awarded if the Plaintiffs have proven by a preponderance of clear, convincing and satisfactory evidence the Defendants conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the Plaintiffs.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the Defendants and others from like conduct in the future. You may award punitive damages only if McDermott Enterprises and / or Uriah Miller's conduct warrants a penalty in addition to the amount you award to compensate for Plaintiffs' actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of Defendants conduct that harmed the Plaintiffs.
2. The amount of punitive damages which will punish and discourage like conduct by the Defendants. You may consider the Defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the Defendant's wealth or ability to pay.
3. The Plaintiffs' actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the Plaintiffs.
4. The existence and frequency of prior similar conduct. Although you may consider harm to others in determining the nature of Defendant's conduct, you may not award punitive damages to punish the Defendant for harm caused to others, or for any conduct by the Defendant that is not similar to the conduct which caused the harm to the Plaintiffs in this case.

INSTRUCTION NO. 44

As used in Instruction No. __43__, evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

INSTRUCTION NO. 45

As referenced in Instruction No. ____43____, conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

INSTRUCTION NO. 46

The law implies a warranty of habitability in every residential lease. This means that the landlord must maintain the rental property in a condition fit for human habitation—free from conditions that materially affect the health or safety of the tenant.

In order to prevail on their claim for breach of the Implied Warranty of Habitability against McDermott Enterprises, Plaintiffs must prove all of the following propositions in reference to 2515 Central Avenue:

1. The premises were not fit for human habitation;
2. The uninhabitable condition was not caused by the Plaintiff or others under the Plaintiffs' control;
3. The landlord knew or reasonably should have known of the condition, or the Plaintiff gave the landlord notice of the condition;
4. The landlord failed to correct the condition within a reasonable time after learning of it; and
5. The Plaintiff was harmed as a result.

If the defect was latent, meaning not readily visible or obvious, the landlord is not responsible unless the landlord had actual knowledge, reasonable opportunity to discover it, or was notified by the tenant of the condition and failed to correct it.

If you find all the elements above have been proved, your verdict should be for the Plaintiffs. If not, your verdict should be for McDermott Enterprises.

INSTRUCTION NO. 47

A landlord is in a superior position to know of housing law violations and to discover deficiencies in the premises to be leased. The landlord has a duty to discover latent defects even if it has no actual knowledge of such defects provided that such defects can be discovered without taking extraordinary measures or making unreasonable expenditures of time and money.

It is enough if the latent defect is discoverable by the Defendant by reasonable inspection.

A tenant may legitimately expect the premises will be fit for habitation for the time period in which it is rented.

INSTRUCTION NO. 48

All oral or written leases for a dwelling, including apartments, contain an implied warranty of habitability.

A landlord impliedly warrants at the beginning of a lease that there are no latent defects in the facilities and utilities vital to the use of the premises for residential purposes and these essential features shall remain during the entire term in such condition to maintain the habitability of the dwelling. The landlord further impliedly warrants there is neither nor shall be during the term of the lease, any violation of law, ordinance or regulation which shall render the premises unsafe, unsanitary or unfit for living.

INSTRUCTION NO. 49

The Court has not by its instructions, or by any ruling made, or by any act done, or by anything said during the trial, intended or attempted to give any intimation or opinion as to what the facts are or what the facts are not, what proof is or what proof is not or what your verdict should be.

INSTRUCTION NO. 50

Upon retiring you shall select a foreperson. It will be their duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth.

INSTRUCTION NO. 51

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence.

Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 52

Occasionally, jurors want to ask a question after they begin deliberating. If that should occur, please consider the following:

1. Words not defined in these instructions should be given their ordinary meaning.
2. There will be no additional evidence and I cannot comment to you about evidence.
3. If possible, I will meet with you after you reach a verdict and answer your questions about the trial process.
4. If you ask me a question during your deliberations, your foreperson must reduce the question to writing and give it to the court attendant, who will deliver it to me. Never attempt to communicate with me by any means other than a signed writing. You are not permitted to tell me or anyone else how you stand numerically or otherwise until you have reached a unanimous verdict.

After receiving your question, I will contact the lawyers and conduct a hearing with them out of your presence. Only then will you receive a written answer. Considerable time may go by between question and answer.

If, after considering these matters, you still wish to ask a question, follow the procedure just described. Save your questions and the answer and return them with these instructions when you return your verdict.

INSTRUCTION NO. 53

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Android device or computer; the Internet, or Internet service, or any text or instant messaging service; or any Internet chat room, blog, or website such as Facebook, Instagram, Snapchat, LinkedIn, YouTube, Tik Tok, or “X”, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

This case has been tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

The court attendant will keep your cell phones during deliberations. If the length of deliberations causes you to need to make a call regarding personal arrangements such as child care or other scheduling issues, you may make such calls when the jury takes a break and temporarily stops deliberations, but you must not discuss the case until after you have reached your verdict and I have released you from jury duty.

INSTRUCTION NO. 54

I am giving you five (5) verdict forms: Plaintiffs' claims are set forth in four (4) of the forms; McDermott Enterprises' claims are set forth in one (1) form. You are also being provided a Special Interrogatory re: Negligence Claims for the Plaintiffs' theories of negligence that we ask you to answer.

Do not take into consideration any reduction of damage due to Plaintiffs' fault, if any you find, and do not reduce the damages for a single claim if you find damages for another claim. After you have submitted your verdict, the Court will apportion the damages, if any, based on your verdict and consistent with the applicable law.

During the first **six** hours of deliberations, excluding meals and recesses outside your jury room, your decision must be **unanimous**. If you all agree, the verdicts and interrogatory must be signed by your foreperson.

After deliberating for six hours from 1:25 o'clock 7 .m. excluding meals and recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdicts must be **signed by all seven jurors** who agree. When you have agreed upon the verdicts and appropriately signed them, tell the Court Attendant.

Dated this 27th day of May, 2025.



Hon. MONICA ACKLEY
District Court Judge, 1st Judicial District