

FILED

2010 APR 14 PM 3:57

CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

JACK DOE 1, an individual proceeding under a fictitious name; JACK DOE 2, an individual proceeding under a fictitious name; JACK DOE 3, an individual proceeding under a fictitious name; JACK DOE 4, an individual proceeding under a fictitious name; JACK DOE 5, an individual proceeding under a fictitious name; and JACK DOE 6, an individual proceeding under a fictitious name,

Plaintiffs,

v.

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a foreign corporation sole registered to do business in the State of Oregon; CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AND SUCCESSORS, a foreign corporation sole registered to do business in the State of Oregon; THE BOY SCOUTS OF AMERICA, a congressionally chartered corporation, authorized to do business in Oregon; and CASCADE PACIFIC COUNCIL, BOY SCOUTS OF AMERICA, an Oregon non-profit corporation,

Defendants.

Case No. 0710-11294

JURY INSTRUCTIONS

ENTERED  
APR 15 2010  
IN REGISTER BY SLF

Attached hereto are the written instructions that were submitted to the jury upon the trial for plaintiff Jack Doe #4, whose true name is Kerry Lewis.

## FUNCTIONS OF THE COURT AND JURY

It is your sole responsibility to make all the decisions about the facts in this case. You must evaluate the evidence to determine how reliable or how believable that evidence is. When you make your decision about the facts, you must then apply the legal rules to those facts and reach your verdict.

Remember, however, that your power to reach a verdict is not arbitrary. When the court tells you what the law is on a particular subject or tells you how to evaluate certain evidence, you must follow these instructions.

Do not allow anything that the court has said or done during the course of this trial to suggest that the court has formed any opinion about this case. Keep in mind that the court is required by law to give certain instructions in every case.

When the court has sustained objections to evidence, or ordered that evidence be stricken or excluded from your consideration, you must follow the court's rulings. Do not consider such matters during your deliberations. Base your verdict on the evidence and these instructions. The attorneys' statements and arguments are not evidence. If your recollection of the evidence is different from the attorney's recollection, you must rely on your own memory.

In deciding this case, you are to consider all the evidence that you find worthy of belief. It is your duty to weigh the evidence calmly and dispassionately and to decide this case on its merits. Do not allow bias, sympathy, or prejudice any place in your deliberations; all parties are equal before the law. Do not decide this case on guesswork, conjecture, or speculation.

Generally, the testimony of any witness whom you believe is sufficient to prove any fact in dispute. You are not simply to count the witnesses, but you are to weigh the evidence.

Keep in mind that each party is entitled to the considered decision of each juror. Therefore, you should not give undue weight to another juror's notes if those notes conflict with your recollection of the evidence.

### CONSIDER ALL THE EVIDENCE

The term *evidence* refers to testimony and exhibits. In deciding this case, you are to consider and weigh all the evidence that you find worthy of belief.

The statements and arguments that you have heard from the attorneys are not evidence. They are intended to be helpful to you, and I trust they have been helpful to you, but if your recollection of the evidence differs from the attorneys', rely on your own memory.

### EVALUATING WITNESS TESTIMONY

The term witness includes every person who has testified in this case. Every witness has taken an oath to tell the truth and is assumed to speak truthfully. However, this assumption may be overcome by:

- (1) The manner in which the witness testifies.
- (2) The nature or quality of the witness's testimony.

- (4) Contradictory evidence that you find to be more probably true.  
Evidence concerning the bias, motives, or interest of the witness.

**UCJI 10.04**

**WITNESS FALSE IN PART**

If you find that any person has intentionally given false testimony in some part, you may distrust the rest of that person's testimony.

**UCJI 10.06**

**EXPERT WITNESS**

An expert witness may give an opinion on any matter in which that witness has special knowledge, skill, experience, training, or education.

You should consider the qualifications and credibility of the expert witness and the reasons given for the opinion. You are not bound by the opinion. Give it the weight, if any, to which you consider it is entitled.

**UCJI No. 10.07**

**HYPOTHETICAL QUESTIONS**

Hypothetical questions have been asked. A hypothetical question asks a witness to assume that certain facts are true, and then to give an opinion based on those assumed facts.

If you find that any of the facts assumed and relied on by the witness when forming an opinion were not established by the evidence or were untrue, you must disregard that opinion.

**UCJI No. 10.08**

**CIRCUMSTANTIAL EVIDENCE**

There are two types of evidence. One is *direct evidence*—such as the testimony of an eyewitness. The other is *circumstantial evidence*—the proof of a chain of circumstances pointing to the existence or nonexistence of a certain fact. Proof may be either type or both.

**UCJI No. 11.01**

**ORAL ADMISSIONS**

Statements made by the plaintiff or the defendant that are unfavorable to that party are called *oral admissions*. A witness's testimony, or other evidence about such statements, is to be viewed with caution. In evaluating testimony or other evidence about an oral admission, you should consider two things:

- and
- (1) Whether the statement was clearly and understandingly made by the plaintiff or the defendant;
  - (2) Whether the language is correctly remembered and accurately reported by the witness.

**UCJI No. 13.01**

**PLEADINGS AND ISSUES**

The questions to be decided in a lawsuit are defined in certain formal papers filed in court by the parties and known collectively as the *pleadings*. These consist of the plaintiff's complaint, which sets forth the plaintiff's claims as to the facts; the defendant's answer, in which the defendant either admits or denies the various claims of the plaintiff and sets forth any additional claims or defenses on which the defendant relies; and the plaintiff's reply, in which the plaintiff admits or denies the various claims or defenses in the defendant's answer. By these pleadings questions of fact are presented and it is these questions and only these that are submitted for the jury's determination.

### **SUMMARY OF THE PLEADINGS**

In his Complaint, Kerry Lewis has alleged that he was sexually abused as a child by his Boy Scout Leader. Kerry Lewis alleged that the Boy Scouts of America and the Cascade Pacific Council of the Boy Scouts of America were negligent in two ways that caused the injuries Plaintiff suffered. First, Kerry Lewis alleged that the Defendants were negligent in that, before the abuse of Kerry Lewis, Defendants had direct knowledge through their agents that Dykes posed a danger to Scouts – including that Dykes had sexually abused several minor children. Kerry Lewis alleges that, despite this knowledge, the Defendants failed to take reasonable steps to protect Plaintiff, including failing to prevent Dykes from participating in Scouting, and by failing to inform the parents of Kerry Lewis about the risk posed by Dykes. It was foreseeable to Defendants that without such action, Plaintiff would be abused.

Second, Kerry Lewis alleged that from at least the 1970's, if not earlier, Boy Scout Defendants knew that they had an institution-wide problem with Scout Leaders sexually abusing children. Despite this knowledge, Boy Scout Defendants did not implement adequate policies to prevent sexual abuse of children. It was foreseeable to Boy Scout Defendants that, if their policies remained unchanged, Plaintiff would be sexually abused by adult Scout Leaders while participating in the Boy Scouts of America program.

Finally, Kerry Lewis has alleged that, in failing to warn or protect him from the risk of sexual abuse by a Scout Leader, Defendants acted with a reckless and outrageous indifference to a highly unreasonable risk of harm and with a conscious indifference to the health, safety and welfare of Plaintiff. Accordingly, Kerry Lewis alleges that he is entitled to punitive damages against Defendants.

In their answers to Plaintiff's Complaint, defendants Boy Scouts of America and Cascade Pacific Council admitted that on at least one occasion, Timur Dykes made illegal physical contact with Kerry Lewis.

Defendants denied they knowingly allowed, permitted or encouraged any acts of childhood sexual abuse of Kerry Lewis, and on that basis asserted a statute of limitations defense under Oregon law. Defendants also denied fault and liability for damages under any claims made by Kerry Lewis.

**UCJI No. 13.02**

### **SUMMARY OF PLEADINGS NOT EVIDENCE**

What I have just read is merely a summary of the pleadings. You are not to take anything in them as true unless it is admitted or proved by the evidence.

### **PRIOR PLEADING AS EVIDENCE**

A prior pleading of a party can be used to refute or impeach the present pleading or the testimony of the party, subject to the right of that party to explain any inconsistency.

**UCJI No. 13.04**

**WITHDRAWAL OF ISSUES**

The court hereby withdraws from your consideration the following claims made by the plaintiff against the defendant in the complaint and claims of defense made by the defendants against the plaintiff in the affirmative answer:

- (1) Plaintiff's claim for economic damages; and
- (2) Defendants' claim plaintiff failed to mitigate his damages.

These claims are out of the case for all purposes and you are not to concern yourselves with why the court has withdrawn them.

**DEFINITION OF "CHILD ABUSE"**

Child abuse includes sexual abuse of a child.

**DEFINITION OF "SEXUAL ABUSE"**

"Sexual abuse" means sexual contact by an adult with a victim under the age of 18.

**DEFINITION OF "SEXUAL CONTACT"**

"Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

**UCJI No. 14.01**

**BURDEN OF PROOF**

With respect to all issues except for punitive damages, a party has the burden of proving by a preponderance of the evidence any claim or defense made in that party's pleadings. In the absence of such proof, the party cannot prevail as to that claim or defense.

**UCJI No. 14.02**

**PREPONDERANCE OF THE EVIDENCE**

When a party must prove a claim by a preponderance of the evidence, that party must persuade you by evidence that makes you believe the claim is more likely true than not true.

After weighing all of the evidence, if you cannot decide that something is more likely true than not true, you must conclude that the party did not prove it. You should consider all of the evidence, no matter who produced it.

In criminal trials, the state must prove that the person charged with a crime is guilty beyond a reasonable doubt. That is not the standard to use in this civil trial. Instead, the party who is required to prove something by a preponderance of the evidence only has to prove that it is more likely true than not true.

## **STATUTE OF LIMITATIONS**

BSA and CPC contend that this case is barred by the statute of limitations. To prevail on this defense, these Defendants must prove by a preponderance of the evidence that their conduct did not knowingly allow, permit or encourage child abuse.

### **“KNOWINGLY” DEFINED**

The term “knowingly” as used in the phrase “knowingly allowing, permitting or encouraging child abuse” does not require actual knowledge of a particular act of child abuse, or actual knowledge of a particular child being abused

#### **UCJI No. 20.01**

### **NEGLIGENCE AND CAUSATION**

The law assumes that all persons have obeyed the law and have been free from negligence. The mere fact alone that something happened or that a person was injured is not sufficient of itself to prove negligence. It is, however, a circumstance that may be considered along with other evidence.

To recover, the Plaintiff must prove two things by a preponderance of the evidence: (1) that the BSA and the CPC Defendants were negligent in at least one of the ways claimed in the Plaintiff’s Complaint; and (2) that the BSA and CPC Defendants’ negligence was a cause of damage to the Plaintiff.

#### **UCJI No. 20.02**

### **COMMON-LAW NEGLIGENCE**

The law requires every person or organization to use reasonable care to avoid harming others. Reasonable care is the degree of care and judgment used by reasonably careful people or organizations in the management of their own affairs to avoid harming themselves or others.

In deciding whether a party used reasonable care, consider the dangers apparent or reasonably foreseeable when the events occurred. Do not judge the party’s conduct in light of subsequent events; instead, consider what the party knew or should have known at the time.

A person or organization is negligent, therefore, when that person or organization does some act that a reasonably careful person or organization would not do, or fails to do something that a reasonably careful person or organization would do under similar circumstances.

#### **UCJI No. 20.06**

### **FORESEEABILITY**

A person is liable only for the reasonably foreseeable consequences of his or her actions. There are two things that must be foreseeable. First, the plaintiff must be within the general class of persons that one reasonably would anticipate might be threatened by the defendant’s conduct. Second, the harm suffered must be within the general class of harms that one reasonably would anticipate might result from the defendant’s conduct.

### **KNOWLEDGE -- FORESEEABILITY**

When determining if the risk of harm to Plaintiff was foreseeable, you may consider any specialized knowledge of the Defendants.

**UCJI No. 23.01**

**CAUSATION (CAUSE DEFINED)**

A cause is defined as an act or omission that is a substantial factor in producing or bringing about the injury and damage. A substantial factor is an important or material factor and not one that is insignificant.

**UCJI No. 23.02**

**MULTIPLE CAUSATION**

Many factors may operate either independently or together to cause injury and damage. In such a case, each may be a cause of injury and damage even though the others by themselves would have been sufficient to cause the same injury and damage. If you find that the Scout Defendants' acts or omissions were a substantial factor in causing injury and damage to the Plaintiff, you may find that the Defendants' conduct caused the injury and damage even though it was not the only cause.

**UCJI No. 30.03**

**CORPORATION ACTS THROUGH AGENTS**

A corporation can act only through its officers, agents, or employees. Any action by the agent of the corporation is the act of that corporation if the act was within the scope of that person's agency.

**IMPUTED KNOWLEDGE**

A corporation cannot know anything except through its agents. A corporation is said to have knowledge of facts that its agents learn within the scope of their agency.

**KNOWLEDGE OF AGENT**

A principal is not charged with the knowledge an agent acquires while not acting in the course of his agency, or which relates to matters not within the scope of his authority, unless the agent actually communicates the information to his principal.

The agent's knowledge is not chargeable to the principal where the interests of the agent in the matter are in conflict with the interests of the principal.

**UCJI No. 30.04**

**PRINCIPAL DEFINED**

The person or organization who authorizes, or appears to authorize, an agent to act is called the principal. A principal may be liable for acts of an actual agent, or apparent agent.

**UCJI No. 30.04A**

**ACTUAL AGENT**

A person or entity is an actual agent when a principal, through words or conduct, gives that person or entity the authority to act on the principal's behalf subject to the principal's right to control and that person or entity agrees to act on the principal's behalf.

### **DUAL AGENCY**

The fact that a person is the agent of one principal does not preclude the person from being the agent of another principal. A person can be the agent of two principals at the same time

**UCJI No. 30.04B**

### **ACTUAL AUTHORITY**

Actual authority exists when a principal, through words or conduct, directs an agent to act and the agent consents, and includes any other acts that are reasonably necessary to carry out the authorized act.

Actual authority may be evidenced by express agreement or implied from the circumstances and conduct of the parties; in both circumstances, however, the principal's consent to the agency, the agent's consent, and right to control the agent are essential.

**UCJI No. 30.04C**

### **APPARENT AGENT**

A person or an entity is an apparent agent if a principal, through words or conduct, leads a third person to reasonably believe that the person or entity is authorized to act for the principal, and the third person relies upon that belief even though no actual authority exists.

**UCJI No. 30.04D**

### **APPARENT AUTHORITY**

Apparent authority may exist when an agent does not possess the actual or implied authority to act for the principal. An agent has apparent authority if the principal's conduct causes people to reasonably believe that the principal consents to have the agent act for the principal in a particular matter or function, and people relies upon that belief.

### **AGENCY CONTROL**

A person is considered an "agent" of the principal if the principal has the right to control the manner of performance of the work, not only the end result, but how that result is reached. A mere furtherance of the purpose of the principal is not sufficient.

A principal controls the conduct of a non-employee agent if the principal controls the details of the manner of performance of the conduct which is alleged to have caused the injury.

**UCJI No. 30.04E**

### **SCOPE OF AUTHORITY**

The Plaintiff claims that Gordon McEwen and Earl Wiest were the BSA and CPC's agents and were acting within the scope of their authority at the time involved in this case. These Defendants deny that Gordon

McEwen and Earl Wiest were their agents. A principal is bound only by the acts of the agent that are within the scope of the agent's actual or apparent authority.

### **VOLUNTEERS AS AGENTS**

A volunteer may be an agent.

#### **UCJI No. 70.01**

### **DAMAGES—PRELIMINARY INSTRUCTION**

If you find that the Plaintiff is entitled to prevail, then you must decide whether the Plaintiff has been damaged and, if so, the amount of his damages.

The fact that I am instructing you with respect to damages is not to be considered by you as an attempt by the court to suggest that you should or should not award damages.

Nor should the amount claimed for damages by the Plaintiff in the Complaint be considered by you in arriving at your verdict except in one respect: that is, the amount of damages claimed does fix a maximum amount you can award the Plaintiff.

There are two types of damages alleged in this case: noneconomic and punitive damages. You are only considering noneconomic damages and liability for punitive damages in this phase of the case.

Of these two types of damages, you should consider those which you find to have been sustained by the Plaintiff as a result of the Defendants' negligence.

The Plaintiff must prove noneconomic damages by a preponderance of the evidence.

I will now explain what are noneconomic damages.

#### **UCJI No. 70.02**

### **DAMAGES—NONECONOMIC (In Claims Subject to ORS 31.710)**

Noneconomic damages are the subjective, nonmonetary losses that a Plaintiff has sustained or probably will sustain in the future.

The law does not furnish you with any fixed standard by which to measure the exact amount of noneconomic damages. However, the law requires that all damages awarded be reasonable. You must apply your own considered judgment, therefore, to determine the amount of noneconomic damages.

In determining the amount of noneconomic damages, if any, consider each of the following:

- (1) The pain, mental suffering, emotional distress, humiliation that the Plaintiff has sustained from the time he was injured until the present and that the Plaintiff probably will sustain in the future as the result of his injuries; and

(2) Any inconvenience and interference with the Plaintiff's normal and usual activities that you find have been sustained from the time he was injured until the present and that the Plaintiff probably will sustain in the future as the result of his injuries.

The amount of noneconomic damages may not exceed the sum of \$4,000,000.

### **INCREASED SUSCEPTIBILITY TO FUTURE PROBLEMS**

In determining the amount, if any, of compensatory damages, you may consider whether Plaintiff's injury, if any, has made him susceptible to an additional injury, disability, or other problem in the future.

**UCJI No. 75.02**

### **PUNITIVE DAMAGES**

If the Plaintiff prevails on the negligence claims, then you must consider whether or not to award punitive damages.

You may determine liability for punitive damages against the defendants if the plaintiff shows by clear and convincing evidence that the defendant has shown a reckless and outrageous indifference to a highly unreasonable risk of harm and has acted with a conscious indifference to the health, safety, and welfare of others.

Clear and convincing evidence is evidence that makes you believe that the truth of the claim is highly probable.

**UCJI No. 14.03**

### **CLEAR AND CONVINCING EVIDENCE**

When a party must prove a claim by clear and convincing evidence, that party must persuade you by evidence that makes you believe the truth of the claim is highly probable.

You should consider all of the evidence no matter who presented it.

This is a higher standard of proof than preponderance of the evidence, but lower than the criminal standard of beyond a reasonable doubt.

**UCJI No. 90.01**

### **VERDICT**

When you return to the jury room, select one of your members to act as presiding juror. The presiding juror is to participate like all other jurors and has no greater weight or voice than any other juror. After selecting your presiding juror, deliberate until you reach your verdict.

You will have the following verdict form with you in the jury room: [*read verdict form*].

Answer the questions according to the directions on the form and all the instructions of the court.

This is a civil case. At least the same nine jurors must agree on each answer unless the verdict form instructs you otherwise as to a particular question. When you have answered each question you are required to

answer, your presiding juror should insert the answers on the verdict form, sign and date the verdict form, and then signal the bailiff.

Court will then reconvene and receive your verdict.

**UCJI No. 90.03**

### **WRITTEN INSTRUCTIONS**

The court has prepared written instructions for your use. When you use these written instructions, do not place undue emphasis on any particular instruction, but rather consider the instructions as a whole.