

CAUSE NO. S-17-5182CV-B

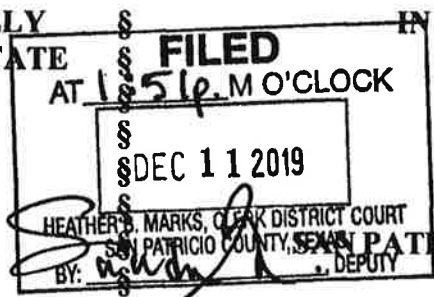
DENISE MAREZ, INDIVIDUALLY  
AND ON BEHALF OF THE ESTATE  
OF JUAN PEREZ,

*Plaintiff,*

V.

ISAAC G RODRIGUEZ SR. D/B/A  
I & R TRUCKING AND  
RODRIGUEZ TRUCKING,

*Defendant.*



IN THE DISTRICT COURT

SAN PATRICIO COUNTY, TEXAS

156<sup>TH</sup> JUDICIAL DISTRICT

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.

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 unless you are told otherwise.

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.

**QUESTION NO. 1**

On the occasion in question, was Juan Perez an invitee or licensee on that part of Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking's premises under consideration?

An **"invitee"** is a person who is on the premises at the express or implied invitation of the possessor of the premises and who has entered thereon either as a member of the public for a purpose for which the premises are held open to the public or for a purpose connected with the business of the possessor that does or may result in their mutual economic benefit.

A **"licensee"** is a person on the premises of another with the express or implied permission of the possessor but without an express or implied invitation.

Answer "Yes" or "No."

Answer: YES

**QUESTION NO. 2**

Did the negligence, if any, of Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking proximately cause Juan Perez' death in question?

With respect to the condition of the premises Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking was negligent if—

1. the condition posed an unreasonable risk of harm, and
2. Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking had actual knowledge of the danger, and
3. Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking failed to exercise ordinary care to protect Juan Perez from the danger, by both failing to adequately warn Juan Perez of the condition and failing to make that condition reasonably safe.

**“Ordinary care,”** when used with respect to the conduct of Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking, as an owner of a premises, means that degree of care that would be used by an owner of ordinary prudence under the same or similar circumstances.

**“Proximate Cause”** means a cause that was a substantial factor in bringing about an event, 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 event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer “Yes” or “No.”

Answer: YES

If you answered “Yes” to Question No. 2, proceed to Question No. 3.

If you answered “No” to Question No. 2, do not answer any more questions.

**QUESTION NO. 3**

Was Juan Perez an employee of Isaac G. Rodriguez Sr. D/B/A I & R Trucking and Rodriguez Trucking at the time of his injury?

An “**employee**” means a person in the service of another under a contract of hire, whether express or implied, or oral or written.

Answer “Yes” or “No.”

Answer: YES

If you answered “Yes” skip to Question No. 5.

If you answered “No” answer Question No. 4.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence in question. 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 attributable to that one in answering another question.

**QUESTION NO. 4**

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

- |  |                     |
|--|---------------------|
| 1. Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking | _____ %             |
| 2. Juan Perez  | _____ %             |
| <b>Total</b>   | <b><u>100</u> %</b> |

Answer the following Question if you answered "Yes" in response to Question 2. Otherwise, do not answer the following Question.

**QUESTION NO. 5**

What sum of money, if paid now in cash, would fairly and reasonably compensate Denise Marez for her damages, 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 include damages for one element in 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 the same 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 Denise Marez. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

1. Loss of Consortium.

"Loss of 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: \$ 250,000.00

2. Pecuniary loss sustained in the past.

"Pecuniary loss" means the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Denise Marez, in reasonable probability, would have received from Juan Perez had he lived.

Answer: \$ 250,000.00

3. Pecuniary loss will sustain in the future.

Answer: \$ 500,000.00



4. Mental anguish sustained in the past.

“Mental anguish” means the emotional pain, torment, and suffering experienced by Denise Marez because of the death of Juan Perez.

Answer: \$ 4,000,000.00

5. Mental anguish Denise Marez will sustain in the future.

Answer: \$ 2,000,000.00

6. Loss of inheritance.

“Loss of inheritance” means the loss of the present value of the assets that the deceased, in reasonable probability, would have added to the estate and left at natural death to Denise Marez.

Answer: \$ 0

**QUESTION NO. 6**

What sum of money would have fairly and reasonably compensated Juan Perez for his—

1. Pain and Mental Anguish of Juan Perez up to the time of his death.

“Pain and mental anguish” means the conscious physical pain and emotional pain, torment, and suffering experienced by Juan Perez before his death as a result of the occurrence in question.

Answer: \$ 1,000,000.00

**QUESTION NO. 7**

Was Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking's gross negligence, if any, a proximate cause of Juan Perez' death in question?

Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking was grossly negligent with respect to the condition of the premises if—

1. the condition posed an unreasonable risk of harm, and
2. Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking failed to adequately warn Juan Perez of the danger and failed to make that condition reasonably safe, and
  - a. which, when viewed objectively from the standpoint of Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
  - b. of which Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

Answer: YES

Answer the following question only if you unanimously answered "Yes" to Question No. 7. Otherwise, do not answer the following question.

**QUESTION NO. 8**

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against Isaac Rodriguez D/B/A I & R Trucking and Rodriguez Trucking and awarded to the Plaintiff as exemplary damages for the conduct found in response to Question 7.

"Exemplary Damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages include punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of the wrongdoer.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.
- f. The net worth of Isaac Rodriguez D/B/A I&R Trucking.

Award in dollars and cents, if any.

Answer: \$ 10,000,000.00

## **Presiding Juror**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. Have the complete charge read aloud if it will be helpful to your deliberations;
  - 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 presiding juror? 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 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 of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

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

  
\_\_\_\_\_  
JUDGE PRESIDING 12-11-19

### 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.

BZUA  
Signature of Presiding Juror

Foy CLINT  
Printed Name of Presiding Juror

Our verdict is not unanimous. Either eleven or ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

- |     |       |       |
|-----|-------|-------|
| 1.  | _____ | _____ |
| 2.  | _____ | _____ |
| 3.  | _____ | _____ |
| 4.  | _____ | _____ |
| 5.  | _____ | _____ |
| 6.  | _____ | _____ |
| 7.  | _____ | _____ |
| 8.  | _____ | _____ |
| 9.  | _____ | _____ |
| 10. | _____ | _____ |
| 11. | _____ | _____ |