

## CREATION OF A CIVIL JURY CHARGE “UNDER FIRE”

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### 1. INTRODUCTION

The purpose of this training session is to stress the techniques and skills that are useful in actually preparing a jury charge while also conducting a jury trial.

- a. Goals of this training:
  - i. Mastering the search methods;
  - ii. Reporting errors in the instructions;
  - iii. Sending your product to the PJI committee;
  - iv. Asking for assistance;
  - v. Working effectively under pressure;
- b. Are you Sherlock Holmes?

### 2. THE HYPOTHETICAL, PART I.

*FORREST FERRELL, Plaintiff,*

VS.

*W & S MFG. AND THE GLOBE CORP., Defendants.*

The Plaintiff brings this action seeking money damages for personal injury. The causes of action are:

BREACH OF EXPRESS WARRANTY  
BREACH OF WARRANTY OF MERCHANTABILITY  
BREACH OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE  
DAMAGES FOR BREACH OF WARRANTY  
FRAUD  
UNFAIR TRADE PRACTICES  
COMMON LAW NEGLIGENCE  
CONTRIBUTORY NEGLIGENCE  
DAMAGES FOR COMMON LAW NEGLIGENCE  
PUNITIVE DAMAGES

*FIRST DEDUCTION: IT'S A CIVIL CASE!!!*

### 3. THE PRE-TRIAL PREPARATION.

- a. Study the pleadings;
  - i. Causes of action;
  - ii. Affirmative defenses;
  - iii. Counterclaims;

- iv. Motions.
- b. Counsel at the pre-trial conference;
  - i. Forecast of evidence;
  - ii. Motions in limine;
  - iii. Formulation of the issues;
  - iv. Stipulations

The parties stipulate as follows:

W & S MANUFACTURING, INC., AND THE GLOBE CORPORATION, ARE, FOR THE PURPOSES OF THIS CASE, THE SAME CORPORATION, AND MAY BE REFERRED TO COLLECTIVELY AS “THE DEFENDANT.”

- c. Locating the pattern instructions;
- d. Selecting the standard instructions;
- e. Is it time to create a WORD document? Answer: NO.

#### 4. PREPARATION DURING TRIAL

- a. FIND THE APPLICABLE INSTRUCTIONS AND ADD TO THE QUICK PREP.

#### HYPOTHETICAL, PART II:

Plaintiff goes to “SportWorld” to buy a tree stand for deer hunting. On display is a “W & S” brand “TreeStand model 300.” The display unit is the only one in stock. He purchases it. SportWorld can’t find the box, the instruction book or the “safety strap” which is a standard part of the Model 300 package. On the Model 300 itself there is a label that says: “Warning, read the instructions before using. If you do not have the instructions, call 1-800-555-555, ask for an instruction book, and it will be sent to you. Using the tree stand without reading the instructions can cause death or serious injury.” Plaintiff goes hunting, attaches the tree stand to his body, and climbs a tree. As Plaintiff is standing on the lower part of the tree stand, a defective weld breaks, and he falls 30 feet, breaking his cervical spine.

There is evidence from an engineer that the weld was defective, and was the cause of the stand collapse.

The Plaintiff’s hunting buddy arrived on the scene minutes after the fall. He testified: “Forrest was screaming. I could tell he was in a lot of pain. The bark on the tree was scraped off where the stand had broken.” On cross exam the buddy admits that in a deposition he had said: “I wasn’t sure which tree it was.” He explains: “I went back later and looked at the tree and figured out where it happened.”

*SECOND DEDUCTION: WARRANTY BREACH DEFENSES ARE SIGNIFICANT IN THIS CASE.*

#### HYPOTHETICAL, PART III:

The Plaintiff testifies that he is aware of the warning to use the safety strap, and the warning to read instructions. He says that he knows that using the safety strap can result

in serious injuries to the chest, and can restrict breathing causing suffocation. Therefore, he would not have used the strap if it had been part of the tree stand equipment.

Plaintiff's injury requires surgery. He is unable to work for six months, and suffers some degree of pain every day from the time of the injury until trial. The surgeon gives an opinion of a 9 % permanent partial disability. The medical bills are in evidence, and are large.

The plaintiff presents evidence that he was a carpenter. He presents no evidence of hourly wage rates before the accident, or the number of hours typically worked per week.

The Defendant presents expert testimony, by use of a deposition, that proper use of the safety strap will prevent catastrophic injury, and there is little risk of injury from the strap.

*DEDUCTION III: THERE IS VERY LITTLE EVIDENCE ABOUT LOST WAGES.*

5. AT THE END OF ALL THE EVIDENCE.
  - a. Has the plaintiff pursued all the causes of action?
  - b. Has the defendant pursued all affirmative defenses?
  - c. What types of damages should the jury consider?

6. DUTY: INSTRUCT THE JURY ON ALL THE APPLICABLE LAW.

See: NCRCP RULE 51; G.S. 15A-1231 and 1232.

"This Court has recognized that the preferred method of jury instruction is the use of the approved guidelines of the North Carolina Pattern Jury Instructions" so long as the pattern instruction "is an accurate summary of the law." *In re Will of Allen*, 148 N.C. App. 526, 533, 559 S.E.2d 556, 560 (2002) (quoting *Caudill v. Smith*, 117 N.C. App. 64, 70, 450 S.E.2d 8, 13 (1994), disc. review denied, 339 N.C. 610, 454 S.E.2d 247 (1995)). We see no basis for concluding that the trial court erred in giving this pattern instruction. Accordingly, we find that the challenged instructions did not amount to plain error.

*State v. Page*, 2008 N.C. App. LEXIS 644 (N.C. Ct. App. Apr. 1, 2008)

7. THE CHARGE CONFERENCE (Rule 21, Superior and District Court Rules).
  - a. Saving as a document;
  - b. How do you copy and paste footnote contents into an instruction (Copy the page and paste as a word document, then highlight the footnote portion desired, copy and paste it into the saved charge document.

- c. Printing and distribution to counsel
  - i. Save to a flash drive, change to a computer with a printer;
  - ii. Save to computer, email to a clerk of J.A. having a printer;
  - iii. NEW!! Direct printing from your computer to a designated printer “network printer.”
- d. Revising the charge: copying, pasting, editing.

#### 8. THE CHARGING OF THE JURY

- a. In open court, by verbal recitation;
- b. By answering questions;
- c. By giving the jury a copy of the instructions.
  - i. Clean copy;
  - ii. Review by the attorneys;
  - iii. A copy for the record.

#### 9. CONCLUSION

It is a good practice to begin assembling the charge at the commencement of a trial, and continue to do so as the trial unfolds. There are various techniques that are equally effective. Find and use the techniques that suit you best. Printing the instructions for use at the charge conference and for the possible use of the jury are reasonable practices in some cases.