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CAUSE NO. 06-0504614

CHARLES DUFF, INDIVIDUALLY, AND
JUDITH LEE HUNTS, INDIVIDUALLY,
AND AS THE INDEPENDENT
ADMINISTRATOR OF THE ESTATE OF
DAVID SCOTT DUFF, DECEASED

IN THE DISTRICT COURT OF

RECEIVED AND FILED
FOR RECORD
At 10:10 O'clock A M.
NOV 20 2008
BARBARA GLADDEN ADAMICK
District Clerk
MONTGOMERY COUNTY TEXAS
By *[Signature]* Deputy

Plaintiffs,

V.

MONTGOMERY COUNTY, TEXAS

MICHAEL SPEARMAN; INNOVA
AIRCRAFT, INC.

Defendants.

410TH JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury unless otherwise instructed. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

During this trial, certain testimony and evidence has been presented to you by way of deposition and may also have been videotaped. A deposition consisted of questions and sworn, recorded answers to those questions that were given in advance of this trial. You must give this testimony the same consideration and it is to be judged in the same way as if the witness had been present and testified from the witness stand.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless otherwise instructed.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

If you answer questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in one of your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount of interest on damages, if any.

The Court has found that the defendant Michael Spearman failed to preserve certain computer information and data that was material and relevant to pending litigation. You may presume that such information and data would have been unfavorable to defendant Michael Spearman.

“Pilot in Command” means the person who:

1. Has final authority and responsibility for the operation and safety of the flight;
2. Has been designated as pilot in command before or during the flight; and
3. Holds the appropriate category, class, and type rating, if appropriate, for the conduct of the flight.

QUESTION NO. 1

Was Terry Willis acting in the furtherance of a mission for the benefit of Michael Spearman and subject to control by Michael Spearman as to the details and means of the mission?

Answer "Yes" or "No."

Answer: _____ *NO - EVERYBODY*

Question No. 2

Was Charles Lawrence acting as an employee of Innova Aircraft, Inc. or Michael Spearman?

An "employee" is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result to be accomplished.

An employee ceases to be the employee of his general employer if he becomes the "borrowed servant" of another. One who would otherwise be in the general employment of one employer is a borrowed servant of another employer or his agents if such other employer or his agents have the right to direct and control the details of the particular work inquired about.

For purposes of the question, the term "employee" includes "borrowed employee." Charles Lawrence could not have been an employee of both Innova Aircraft, Inc. and Michael Spearman.

Answer either "Innova Aircraft, Inc." or "Michael Spearman."

Answer: _____

INNOVA
ALL

Question No. 3

Was John Cunningham acting as an employee of Innova Aircraft, Inc. or Michael Spearman?

An "employee" is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result to be accomplished.

An employee ceases to be the employee of his general employer if he becomes the "borrowed servant" of another. One who would otherwise be in the general employment of one employer is a borrowed servant of another employer or his agents if such other employer or his agents have the right to direct and control the details of the particular work inquired about.

For purposes of the question, the term "employee" includes "borrowed employee." John Cunningham could not have been an employee of both Innova Aircraft, Inc. and Michael Spearman.

Answer either "Innova Aircraft, Inc." or "Michael Spearman."

Answer: _____

ALL

Did the negligence, if any, of those named below proximately cause the death of David Duff?

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

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

"Proximate cause" means that cause which, in a natural and continuous sequence, produces 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" for each of the following:

- a. Michael Spearman *Yes 11-1*
- b. Charles Lawrence (for purposes of this subsection, do not consider acts or omissions, if any, of Charles Lawrence while he was employed by Turbine Design) *11-1 Yes*
- c. John Cunningham (for purposes of this subsection, do not consider acts or omissions, if any, of John Cunningham while he was employed by Turbine Design) *11-1 Yes*
- d. Pilot in Command (for purposes of this subsection, consider only acts or omissions, if any, of the Pilot In Command of the flight from Daytona to Bogalusa) *EVERYBODY Yes - 12*
- e. Terry Willis (for purposes of this subsection, do not consider acts or omissions of Terry Willis, if any, as the Pilot In Command of the flight from Daytona to Bogalusa) *Yes ~~Yes + 2~~ 11-1*
- f. David Duff (for purposes of this subsection, do not consider acts or omissions of David Duff, if any, as the Pilot In Command of the flight from Daytona to Bogalusa) *- Yes - 12*

If you have answered "Yes" to Question No. 4 for more than one person or entity, then answer the following question. Otherwise, do not answer the following question.

The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The negligence attributable to any one named below is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION NO. 5

What percentage of the negligence that caused the death of David Duff do you find to be attributable to each of those listed below and found by you, in your answer to Question No. 4 to have been negligent?

- a. Michael Spearman 4%
 - b. Charles Lawrence (for purposes of this subsection, do not consider acts or omissions, if any, of Charles Lawrence while he was employed by Turbine Design) 4%
 - c. John Cunningham (for purposes of this subsection, do not consider acts or omissions, if any, of John Cunningham while he was employed by Turbine Design) 2%
 - d. Pilot in Command (for purposes of this subsection, consider only acts or omissions, if any, of the Pilot In Command of the flight from Daytona to Bogalusa) 70%
 - e. Terry Willis (for purposes of this subsection, do not consider acts or omissions of Terry Willis, if any, as the Pilot In Command of the flight from Daytona to Bogalusa) 10%
 - f. David Duff (for purposes of this subsection, do not consider acts or omissions of David Duff, if any, as the Pilot In Command of the flight from Daytona to Bogalusa) 10%
- 100%
- Total 100 %

Answer the following question regarding Michael Spearman only if you unanimously answered "Yes" to Question 4 regarding Michael Spearman. Otherwise, do not answer the following question regarding Michael Spearman.

You are instructed that, in order to answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 4

Do you find by clear and convincing evidence that the harm to David Duff resulted from Michael Spearman's gross negligence?

NA

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by Michael Spearman:

- (a) which when viewed objectively from the standpoint of Michael Spearman at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- (b) of which Michael Spearman has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

Answer: _____

Did Michael Spearman commit fraud against David Duff?

Fraud occurs when-

- a. a party fails to disclose a material fact within the knowledge of that party,
- b. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth,
- c. the party intends to induce the other party to take some action by failing to disclose the fact, and
- d. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

Answer "Yes" or "No": No 112*

Answer: _____

Answer the following question only if you unanimously answered "Yes" to Question 7.
Otherwise, do not answer the following question.

You are instructed that, in order to answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 8

N/A

Do you find by clear and convincing evidence that the harm to David Duff resulted from fraud by Michael Spearman?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Answer "Yes" or "No."

Answer: _____

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QUESTION NO. 9

Did Michael Spearman knowingly or intentionally secure the execution of the Airworthiness Certificate by deception and was such deception, if any, a proximate of the death of David Duff?

A person secures the execution of a document by deception if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

"Deception" means:

(A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

(C) preventing another from acquiring information likely to affect his judgment in the transaction; or

(D) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

Answer "Yes" or "No."

Answer: _____

12

Answer the following question only if you unanimously answered "Yes" to Question 9.
Otherwise, do not answer the following question.

You are instructed that, in order to answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 10

N/A

Do you find by clear and convincing evidence that the harm to David Duff resulted from Michael Spearman's securing the execution of the Airworthiness Certificate by deception?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Answer "Yes" or "No."

Answer: _____

Is Michael Spearman responsible for the conduct of Innova Aircraft, Inc.?

Michael Spearman is "responsible" for the conduct of Innova Aircraft, Inc. if:

Innova Aircraft, Inc. was organized and operated as a mere tool or business conduit of Michael Spearman and there was such unity between Innova Aircraft, Inc. and Michael Spearman that the separateness of Innova Aircraft, Inc. had ceased and holding only Innova Aircraft, Inc. responsible would result in injustice.

In deciding whether there was such unity between Michael Spearman and Innova Aircraft, Inc. that the separateness of Innova Aircraft, Inc. had ceased, you are to consider the total dealings of Innova Aircraft, Inc. and Michael Spearman, including-

1. the degree to which Innova Aircraft, Inc.'s property had been kept separate from that of Michael Spearman;
2. the amount of financial interest, ownership, and control Michael Spearman maintained over Innova Aircraft, Inc; and
3. whether Innova Aircraft, Inc. had been used for personal purposes of Michael Spearman.

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 12

What sum of money, if paid now in cash, would fairly and reasonably compensate Charles Duff and Judith Lee Hunts for their damages, if any, resulting from the death of David Duff?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

a. Pecuniary loss.

"Pecuniary loss" means the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Charles Duff and Judith Lee Hunts, in reasonable probability, would have received from David Duff had he lived.

b. Loss of companionship and society.

"Loss of companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Charles Duff and Judith Lee Hunts, in reasonable probability, would have received from David Duff had he lived.

c. Mental anguish.

"Mental anguish" means the emotional pain, torment, and suffering experienced by Charles Duff and Judith Lee Hunts because of the death of David Duff.

In determining damages for elements b and c, you may consider the relationship between David Duff and his parents, their living arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

Answer, with respect to the elements listed above, in dollars and cents for damages, if any, that were sustained in the past by:

Charles Duff for:

1. Pecuniary loss

\$ 3000⁰⁰ 11-1

- 2. Loss of companionship and society 11-1 25K
- 3. Mental anguish 11-1 25K

Judy Hunts for:

- 1. Pecuniary loss 100 K 11-1
- 2. Loss of companionship and society 100 K 11-1
- 3. Mental anguish 100 K 11-1

Answer, with respect to the elements listed above, in dollars and cents for damages, if any, that in reasonable probability will be sustained in the future by:

Charles Duff for:

- 1. Pecuniary loss 25K 11-1
- 2. Loss of companionship and society 150K 11-1
- 3. Mental anguish 75K 10-2

Judy Hunts for:

- 1. Pecuniary loss: 125K 11-1
- 2. Loss of companionship and society 250K 11-1
- 3. Mental anguish 300K 10-2

QUESTION NO. 13

What sum of money would have fairly and reasonably compensated David Duff for-

- a. Pain and mental anguish.

12 ALL NO

"Pain and mental anguish" means the conscious physical pain and emotional pain, torment, and suffering experienced by David Duff before his death as a result of the occurrence in question.

Answer in dollars and cents for damages, if any.

Answer:

0\$

- b. Funeral and burial expenses.

"Funeral and burial expenses" means the reasonable amount of expenses for funeral and burial for David Duff reasonably suitable to his station in life.

Answer in dollars and cents for damages, if any.

Answer:

\$15^k000

Do not reduce the amount, if any, in your answers because of the negligence, if any, of David Duff.

After you retire to the Jury room, you will select your own Presiding Juror. The first thing the Presiding Juror will do is to have this complete Charge read aloud, and then you will deliberate upon your answers to the questions asked.

It is the duty of the Presiding Juror:

1. To preside during your deliberations;
2. To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge.
3. To write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the Judge;
4. To vote on the questions;
5. To write your answers to the questions in the spaces provided; and
6. To certify to your verdict in the space provided for the Presiding Juror's signature, or to obtain the signatures of all the Jurors who agree with the verdict, if your verdict is less than unanimous. You should not discuss the case with anyone, not even with other members of the Jury, unless all of you are present and assembled in the Jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the Judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the Judge, and your Presiding Juror has placed your answers in the spaces provided and signed the verdict as Presiding Juror, or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.



JUDGE PRESIDING