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WASHINGTON MUNOZ, **Plaintiff(s)** **v.** **LP CIMINELLI, INC.; PAINO ROOFING CO. INC.; ET AL.** **Defendant(s).**	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: MIDDLESEX COUNTY** **DOCKET NO.: MID-L-3284-15** **Civil Action**

STANDARD JURY CHARGES

Plaintiff requests the standard applicable Model Civil Jury Charges including the following:

5.10 NEGLIGENCE AND ORDINARY CARE - GENERAL

5.11 FORESEEABILITY (AS AFFECTING NEGLIGENCE)

6.10-6.11 - PROXIMATE CAUSE

8.10 DAMAGES -- EFFECT OF INSTRUCTIONS (12/95)

8.11 DAMAGES - PERSONAL INJURIES

8.11C- PAST AND FUTURE LOSS OF EARNINGS

8.11A and I- PAST AND FUTURE MEDICAL EXPENSES

8.11 DAMAGES CHARGES — GENERAL
A. MEDICAL EXPENSES (NON-AUTO) (Approved 12/96)

A plaintiff who is awarded a verdict is entitled to payment for medical expenses which were reasonably required for the examination, treatment and care of injuries proximately caused by the defendant's negligence. Medical expenses are the costs of doctors' services, hospital

services, medicines, medical supplies and medical tests and any other charges for medical services. The amount of payment is the fair and reasonable value of such medical expenses. You have heard testimony on whether these medical expenses were fair and reasonable in amount and whether they were reasonably necessary for the examination, care and treatment of the worker here. If you determine that any of these bills were not fair and reasonable to any extent, or that any of these services were not reasonably necessary to any extent, you need not award the full amount claimed. In this case, plaintiff is seeking the sum of *[$104,671]* in past medical expenses. As a result, the upper limit of the award which you may make for past medical expenses is *[$104,671]*, since you may not award more than plaintiff is seeking.

Supplemental Charge to deal with mention of medical insurance during testimony of plaintiff and discussion of it on Paula Sociodade:

During the trial you may have heard some mention about whether or not there was medical insurance to cover some or all of the medical expenses. I instruct you that in your consideration of medical expenses, you are not to consider or speculate about medical insurance. There are mechanisms in the law this Court would use after your service is concluded to prevent any double recovery by the plaintiff.

It is your obligation to evaluate the evidence, and, if money is awarded, the amount must be sufficient to adequately compensate plaintiff for all the damages and injuries sustained and presented to you, without regard to speculation about what, if any medical insurance there may have been.

8.11 DAMAGES CHARGES — GENERAL
I. FUTURE MEDICAL EXPENSES (Approved 5/97)

Plaintiff in this case also seeks to recover future medical expenses. Plaintiff has a right to be compensated for any future medical expenses resulting from the injuries brought about by defendant's wrongdoing.

If it is reasonably probable that plaintiff will incur medical expenses in the future then you should also include an amount to compensate the plaintiff for those medical expenses. In deciding how much to award for future medical expenses think about the factors mentioned in discussing the nature, extent and duration of plaintiff's injury. Also consider plaintiff's age today, his general state of health before the accident, and how long you reasonably expect the medical expenses to continue. Obviously, the time period covering plaintiff's future medical expenses cannot go beyond that point when it is expected that he/she may recover from his/her injuries. You should also consider plaintiff's life expectancy in assessing future medical expenses.

But you should be aware that the figures that you have been given on life expectancy are only statistical averages. Do not treat them as necessary or fixed rules, since they are general estimates. Use them with caution and use your sound judgment in taking them into account.

For future medical expenses you must base your decision on the probable amount that plaintiff will incur. It is the burden of the plaintiff to prove, by a preponderance of the evidence, the probable need for future medical care and the reasonableness of the charge for future medical care.

In deciding what plaintiff's future medical expenses are, understand that the law does not require of you mathematical exactness. Rather, you must use sound judgment based on reasonable probability.

Once you have decided how much medical care plaintiff will need in the future, you must then consider the effects of inflation and interest. As to inflation, you should consider the effects it probably will have in reducing the purchasing power of money. Any award for future medical expenses should be increased to account for losses due to inflation. The consideration of interest requires that you should not just award plaintiff the exact amount of medical care that he/she will need in the future. The reason for that is that plaintiff will have that money now even though he/she will not have needed that money until some time in the future. And that means that plaintiff will be able to invest the money and earn interest on it now even though he/she otherwise would not have had that money to invest until some future date.

To make up for this, you must make an adjustment for having the money available now even though the expense will not be experienced until the future. This adjustment is known as

discounting, and what discounting does is give you the value of the money that you get now instead of getting it at some future time. In other words, it gives you the present value or present worth in a single lump sum of money which otherwise was going to be received over a number of years at so much per year.

Your goal is to create a fund of money which will be enough to provide plaintiff future medical care and which will be used up at the end of the total period of need. In arriving at the amount of that fund — the present value of future need — you should consider the interest the fund would earn, the probable amount by which taxation on the interest would decrease the money available to plaintiff and the effect of inflation in decreasing the purchasing power of money.

Supplemental as to medical insurance- again, as I instructed you with past medical expenses, you are not to consider or speculate about the possibility of medical insurance. The court will insure there is no double recovery after your service is concluded.

1. VIOLATION OF STATUTE- EFFECT OF OSHA- DUTY FOR OSHA COMPLIANCE AND STANDARDS OF CONSTRUCTION, CUSTOM AND USAGE IN INDUSTRY

(After Model Jury Charge - 5.10H and 5.30D)

Evidence has been produced in this case as to the worker safety standard of care including from the federal workplace safety law known as OSHA, the National Safety Council, the Construction Management Association of America, and the Associated General Contractors of America. In determining the scope of the duty owed by defendants to the worker in this case and the breach of such duty, the applicability of the federal OSHA safety rules is highly relevant.[4] Under OSHA, defendant LP Ciminelli Company as the general contractor or construction manager on the Meadowlands Racetrack project, and Paino Roofing Company as the subcontractor for the roofing work, have a joint, non-delegable duty to maintain a safe workplace. If you find that the defendants did not comply with these standards, you may find either or both defendants to have been negligent.[5] [6] [7]

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[4] *Alloway v. Bradlees, Inc.*, 157 N.J. 221, 233-234 (1999)

[5] *Alloway v. Bradlees, Inc.*, 157 N.J. 221, 233 (1999); *citing, Kane v. Hartz Mountain*, 278 N.J.Super. 129, 142-43 (App. Div. 1994) *Meder v. Resorts International*, 240 N.J.Super. 470, 473-77 (App. Div. 1989), *cert. den.* 121 N.J. 608; *Kane*, 278 N.J.Super. at 142-43; *Dawson v. Bunker Hill Plaza Assocs.,* 289 N.J.Super. 309, 320-21 (App.Div.1996).

[6] *Alloway*, 157 N.J. at 238, *citing, Bortz v. Rammel*, 151 *N.J.Super.* at 321

[7] *Dawson v. Bunker Hill Plaza Assocs.*, 289 N.J.Super. 309, 320- (App.Div.1996) (reaffirming state public policy favoring general contractor as single repository of responsibility of safety of all employees on job but declining to extend liability to landowner, upon whom OSHA imposes

As a general contractor or prime contractor, the LP Ciminelli Company may be liable for any of its subcontractor's violations of OSHA regulations as well as its own by the terms of 29 *C.F.R.* § 1926.16. That regulation states that "[b]y contracting for full performance of a contract ... the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work." 29 *C.F.R.* § 1926.16(b). It further provides that "[w]ith respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility." 29 *C.F.R.* 1926.16(c).[8] [9]

In this case, in support of the charge of negligence made, it is asserted that the defendants LP Ciminelli and Paino Roofing Company are responsible for violations of various provisions of the federal workplace safety law known as OSHA. Among these provisions are the following:

> Keep in mind that "*Employer*" as referred to in these OSHA regulatory provisions is defined as "contractor or subcontractor" **29 CFR §1926.32** and furthermore, under OSHA, the prime or general contractor assumes all obligations prescribed as "*employer*" obligations under the OSHA safety law. 29 CFR 1926.16[10]

29 CFR §1903.1 Purpose and Scope

> The [OSHA law] requires, in part, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. …

29CFR1926.20(b)(1). "It shall be the responsibility of the employer to initiate and maintain accident prevention programs as may be necessary to comply with this part."

29CFR1926.20(b)(2). "Accident prevention programs shall provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employers."

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no affirmative duties).

[8] *Alloway*, 157 N.J. at 238; *Meder v. Resorts International*, 240 N.J.Super. 470, 476 (App.Div. 1989).

[9] *Kane v. Hartz Mountain*, 278 N.J.Super. 129, 142-43 (App. Div. 1994)

[10] "By contracting for full performance of a contract subject to section 107 of the Act, the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work." **29 CFR §1926.16**

29 C.F.R. 1910.22 "The employer must ensure: All places of employment [including] walking-working surfaces ...are maintained free of hazards...and can support the maximum intended load for that surface."
"The employer must ensure: Walking-working surfaces are inspected, regularly and as necessary, and maintained in a safe condition; [the employer must also ensure] Hazardous conditions on walking-working surfaces are corrected or repaired before an employee uses the walking-working surface..."

29CFR1926.500(a). "Definition. Hole: Means a gap or void two inches or more in its least dimension, in a floor, roof, or other walking/working surface."

29CFR1926.501(a)(2). "The employer shall determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to support employees safely. Employees shall be allowed to work on those surfaces only when the surfaces have the requisite strength and structural integrity."

29CFR1926.501(b)(4)(ii). "Each employee on a walking/working surface shall be protected from tripping in or stepping into or through holes (including skylights) by covers."

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By: ______________________________
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Dated: July 14, 2017

jury charge- Munoz- general.wpd