

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form of verdict and return it into court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

If you find for plaintiff and against both Garlock and Sprinkmann, then you should use Verdict Form A.

If you find for plaintiff and against Garlock, and for Sprinkmann and against plaintiff, then you should use Verdict Form B.

If you find for Garlock and against plaintiff, and for plaintiff and against Sprinkmann, then you should use Verdict Form C.

If you find for both Garlock and Sprinkmann and against plaintiff, then you use Verdict Form D.

Plaintiff's Instruction No. 31A

IPI (2000) 45.01 (Modified)

**VERDICT FORM A**

We, the jury, find the plaintiff, and against both Garlock and Sprinkmann. We assess the damages as follows:

Damages for losses sustained by Don White during his lifetime \$ \_\_\_\_\_  
Damages for the wrongful death of Don White \$ \_\_\_\_\_  
In addition to the damages to compensate the plaintiff, we further assess punitive damages against Sprinkmann as follows: \$ \_\_\_\_\_

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 32A

IPI (2000 & 2005) B45.01.A (Modified)

**VERDICT FORM B**

We, the jury, find for the plaintiff, and against Garlock, and assess the damages as follows:

Damages for the wrongful death of Don White \$ \_\_\_\_\_  
We further find for Sprinkmann and against the plaintiff.

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 33A  
IPI (2000 & 2005) B45.01.A (Modified)

**VERDICT FORM C**

We, the jury, find for Garlock and against the plaintiff.

We further find for the plaintiff, and against Sprinkmann. We assess the damages as follows:

Damages for losses sustained by Don White during his lifetime \$ \_\_\_\_\_  
Damages for the wrongful death of Don White \$ \_\_\_\_\_  
In addition to the damages to compensate the plaintiff, we further assess punitive damages against Sprinkmann as follows: \$ \_\_\_\_\_

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 34A  
IPI (2000 & 2005) B45.01.A (Modified)

**VERDICT FORM D**

We, the jury, find for both Sprinkmann and Garlock, and against the plaintiff.

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 35A  
IPI (2000 & 2005) B45.01.A (Modified)

As to Sprinkmann, the plaintiff claims that Sprinkmann sold and/or delivered asbestos-containing **products** that were used at the Havana Power Plant, including **products** manufactured or sold by Garlock, and others, such as Owens Corning. The plaintiff further claims that with knowledge of their value to those who would bring claims in the future, Sprinkmann intentionally destroyed the records.

The plaintiff further claims that Sprinkmann's intentional destruction of records was a proximate cause of her inability to prove her claim against Garlock and Owens Corning. The defendant, Sprinkmann, denies that Plaintiff is unable to prove her claims against Garlock and Owens Corning and denies that its destruction of records was a proximate cause of plaintiff's inability, if any, to prove her case against Garlock and Owens Corning.

Plaintiff's Instruction No. 37  
[IPI 20.01](#) (2005) Modified

If you find that the conduct of defendant, Sprinkmann, was intentional and proximately caused injury to the plaintiff, and if you believe that justice and the public good require it, you

may, in addition to any other damages to which you find the plaintiff entitled, award an amount which will serve to punish Sprinkmann and to deter Sprinkmann and others from similar conduct.

Plaintiff's Instruction 28

[IPI 35.01](#) (2005) (Modified)

It was the duty of the defendant, before and at the time of the occurrence, to use ordinary care for the safety of Don White. That means it was the duty of the defendant to be free from negligence.

Plaintiff's Instruction No. 9

IPI (2000 & 2005) 10.04

More than one person may be to blame for causing an injury. If you decide that the defendant was negligent and that its negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

Plaintiff's Instruction No. 10

IPI (2000 & 2005) 12.04

If you decide that the defendant was negligent and that its negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else may have been a cause of the injury.

Plaintiff's Instruction No. 11

IPI (2000 & 2005) 12.05

If you decide for the plaintiff and against Sprinkmann on the question of **liability**, you must then fix the amount of money which will reasonably and fairly compensate the estate for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendant, Sprinkmann, during the time of the decedent's injuries up to the time of his death, taking into consideration the nature, extent and duration of the injury.

- a) the loss of his normal life experienced by decedent as a result of his disease;
- b) the pain and suffering experienced by decedent as a result of his disease.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

The damages awarded under this instruction, if any, should be listed on your verdict form in the blank following the words "damages for losses sustained by Don White during his lifetime."

Plaintiff's Instruction No. 16

IPI (2005) 31.10 (Modified)

If you find for the plaintiff, then in assessing damages you may consider how long the widow and next of kin will be likely to sustain pecuniary losses as a result of Don White's death, considering how long Don White was likely to have lived and how long Rose White, Rosalie Melton, Irvin White, Christine Gibbs, Robert White and Marc White, are likely to live.

According to the table of mortality in evidence, the life expectancy of a male person aged 75 years is 9.4 years. That of a female person aged \_\_\_\_\_ years is 12.0 years. These

figures are not conclusive. They are the average life expectancies of persons who have reached those ages. They may be considered by you in connection with other evidence relating to the probable life expectancies of the decedent and his widow and next of kin including evidence of the decedent's habits and activities and excluding the influence of his occupation, bearing in mind that some persons live longer and some persons live less than the average.

In calculating the amount of these pecuniary losses consisting of money, benefits, goods or services, you must not simply multiply the life expectancies by the annual losses. Instead, you must determine their present cash value. "Present cash value" means the sum of money needed now which, together with what sum may reasonably be expected to earn in the future, will equal the amounts of those pecuniary losses at the times in the future when they will be sustained.

Damages for loss of society are not reduced to present cash value.

Plaintiff's Instruction No. 21

IPI (2000 & 2005) 31.13 (Modified)

The plaintiff claims that Don White was injured and died, and that the defendant, Sprinkmann, was negligent in its failure to preserve evidence that would have enabled plaintiff to document the sales or delivery of **products**, including **products** manufactured by Garlock and Owens Corning, that were used at the Havana Power Plant.

The defendant, Sprinkmann, denies that it did any of the things claimed by the plaintiff, denies that it was negligent in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the part of the defendant, Sprinkmann, has caused Plaintiff to be unable to prove the **liability** of Garlock, or others, such as Owens Corning.

Plaintiff's Instruction No. 27

IPI (2000 & 2005) 20.01 (Modified)

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form of verdict and return it into court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

If you find for plaintiff and against defendant, Garlock, then you should use Verdict Form A.

If you find for defendant, Garlock and against plaintiff, then you use Verdict Form A.1.

If you find for plaintiff and against defendant, Sprinkmann Sons Corporation of Illinois, then you should use Verdict Form B.

If you find for defendant, Sprinkmann Sons Corporation of Illinois, and against plaintiff, then you use Verdict Form B.1.

If you find for both defendants and against Plaintiff, then you use Verdict Form C.

Plaintiff's Instruction No. 31

IPI (2000) 45.01 (Modified)

**VERDICT FORM A**

We, the jury, find the plaintiff, and against defendant, Garlock. We assess the damages as follows:

Damages for the wrongful death of Don White \$ \_\_\_\_\_

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 32  
IPI (2000 & 2005) B45.01.A (Modified)

**VERDICT FORM A.1**

We, the jury, find for the defendant, Garlock, and against the plaintiff.

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 33  
IPI (2000 & 2005) B45.01.A (Modified)

**VERDICT FORM B**

We, the jury, find for the plaintiff, and against defendant, Sprinkmann. We assess the damages as follows:

Damages for losses sustained by Don White during his lifetime \$ \_\_\_\_\_

Damages for the wrongful death of Don White \$ \_\_\_\_\_

In addition to the damages to compensate plaintiff, we further assess punitive damages against defendant, Sprinkmann, as follows:

\$ \_\_\_\_\_

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff's Instruction No. 34  
IPI (2000 & 2005) B45.01.A (Modified)

**VERDICT FORM B.1**

We, the jury, find for defendant, Sprinkmann, and against the plaintiff.

\_\_\_\_\_  
Foreperson \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff's Instruction No. 35

IPI (2000 & 2005) B45.01.A (Modified)

All reasonable presumptions should be indulged against a party who deliberately destroys evidence.

Plaintiff's Instruction No. 24B

Not in IPI

[Boldini v. Owens Corning](#), 318 Ill. App. 3d 1167, 1173-74 (4th Dist. 2001)

[Kearney v. Brakegate, Ltd.](#), 263 Ill. App. 3d 355, 363 (4th Dist. 1994)

[Haynes v. Coca Cola Bottling Co.](#), 391 Ill. App. 3d 39, 46 (3rd Dist. 1976)

You are instructed that the law presumes that warnings, if given, will be heeded and followed.

The weight to be given this presumption is for you to decide from the evidence in this case.

Plaintiffs' Instruction No. 30

Not in IPI; [Mahr v. G. D. Searle & Co.](#), 72 Ill. App. 3d 540, 567 (1st Dist. 1979).

When a party has a duty to communicate, silence is a misrepresentation.

Plaintiffs' Instruction No. 29

Not in IPI

[Chicago Park Dist. V. Kenroy, Inc.](#); 78 Ill. 2d 555, 562 (1980);

[Shaver v. N.C. Monroe Const. Co.](#), 63 N.C. App. 605, 306 S.E.2d 519, 525 (1983);

[R.A.P. v. B.J.P.](#), 428 N.W.2d 103, 108 (Minn. App. 1988);

[B.N. v. K.K.](#), 312 Md. 135, 538 A.2d 1175, 1183 (1988).

More than nine months ago, Garlock disclosed that it had retained Dr. Michael Graham, a pathologist from St. Louis, MO to testify as one of its witnesses. Dr. Graham, in his report to Garlock dated February 18, 2005, noted that "properly sampled autopsy tissue would be the most sensitive and specific specimen for assessing whether or not asbestosis was present" in Don White.

Plaintiff's Instruction No. 40

Not in IPI

[Bargman v. Economics Laboratory, Inc.](#), 181 Ill. App. 3d 1023, 1025-28 (3d dist. 1989)

If you find for the plaintiff and against Garlock on the question of **liability**, then by definition you will have decided that Sprinkmann's destruction of records did not prevent the plaintiff from proving her case against Garlock.

If you find for the plaintiff and against Garlock on the question of **liability**, then as to the "Third" element of plaintiff's claim against Sprinkmann, you will need to consider only whether Sprinkmann's conduct was a proximate cause of plaintiff's inability, if any, to prove her claim against Owens Corning.

Plaintiff's Instruction No. 39

Not in IPI

As to Sprinkmann, the plaintiff claims that Sprinkmann sold and/or delivered asbestos-containing **products** that were used at the Havana Power Plant, including **products** manufactured or sold by Garlock, and Owens Corning.

The plaintiff further claims that with knowledge of their value to those who would bring claims in the future, & having a duty to preserve the records for potential claimants, Sprinkmann intentionally destroyed records of those sales and/or deliveries.

The plaintiff further claims that Sprinkmann's intentional destruction of records was a proximate cause of her inability to prove her claim against Garlock and Owens Corning.

The defendant, Sprinkmann, denies it had any duty to ?? records denies that Plaintiff is unable to prove her claims against Garlock and Owens Corning and denies that its destruction of records was a proximate cause of plaintiff's inability, if any, to prove her case against Garlock and Owens Corning.

Plaintiff's Instruction No. 37A

[IPI 20.01](#) (2005) Modified

As to Sprinkmann, the plaintiff has the burden of proving each of the following propositions: First, that Sprinkmann possessed records, including the records of its sales and deliveries to Havana Power Plant.

Second, that with knowledge the records were of value in future claims, ?? Sprinkmann intentionally destroyed the records.

Third, the intentional destruction of records was a proximate cause of the plaintiff's inability to prove her claim against Garlock and/or Owens Corning.

If you find from your consideration of all the evidence that each of these propositions have been proved, then your verdict should be for plaintiff and against Sprinkmann. If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for Sprinkmann.

Plaintiff's Instruction No. 38

[IPI 21.02](#) (2005) Modified

If you decide for the plaintiff and against Sprinkmann on the question of **liability**, ?? you must then fix the amount of money which will reasonably and fairly compensate the estate for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of Sprinkmann, during the period between the time of the decedent's injuries and the time of his death, taking into consideration the nature, extent and duration of the injury.

- a) the loss of a normal life experienced by decedent as a result of his disease;
- b) the pain and suffering experienced by decedent as a result of his disease.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

The damages awarded under this instruction, if any, should be listed on your verdict form in the blank following the words "damages for losses sustained by Don White during his lifetime."

Plaintiff's Instruction No. 16A

IPI (2005) 31.10 (Modified)

More than one person may be to blame for causing an injury. If you decide that the defendant, Garlock, was negligent and that its negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

Plaintiff's Instruction No. 10A

IPI (2000 & 2005) 12.04

If you decide that the defendant, Garlock, was negligent and that its negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else may have been a cause of the injury.

Plaintiff's Instruction No. 11A

IPI (2000 & 2005) 12.05

**36.01 In Absence of Liability -- No Occasion to Consider Damages**

If you find for the Plaintiff and against Garlock on the question of **Liability**, then you will have decided that Sprinkmann's destruction of records did not prevent the Plaintiff from proving her case against Garlock.

If you find for the Plaintiff and against Owens Corning on the question of **Liability**, then you will have decided that Sprinkmann's destruction of records did not prevent the Plaintiff from proving her case against Owens Corning.

Furthermore, if you find for either Garlock and/or Owens Corning and you decided that Sprinkmann's destruction of records did not prevent the Plaintiff from proving her case against Garlock and/or Owens Corning, you will have no occasion to consider the question of damages as to Sprinkmann.

SPRINKMANN'S PROPOSED INSTRUCTION NO. 10B (MODIFIED)

GRANTED

DENIED

Non-IPI (modified 10.04)

[Dardeen v. Kuehling, 213 Ill.2d 329 \(2004\)](#) citing [Boyd v. Travelers Insurance Company, 166 Ill.2d 188 \(1995\)](#)

It was the duty of Sprinkmann to preserve evidence if a reasonable person in the defendant's position should have foreseen that the evidence was material to Plaintiff's potential civil action.

The court has stricken all of the testimony of Dr. Smith. That testimony is not evidence in this case and may not be considered by you. There are a combination of reasons for this ruling, one of which is that the parties are required to disclose in advance of the trial the opinions that will be rendered by their retained experts, and Garlock did not disclose that Dr. Smith held the opinion that Don White did not have asbestosis. In fact, Garlock's disclosure incorporated the report of Dr. Smith in which he stated "it is not possible for me to state, to a reasonable degree of medical certainty, that Mr. White either did have or did not have bona fide asbestosis."

Plaintiff's Instruction No. 1B

Not in IPI

In response to your question related to the "Third" proposition in the claim against Sprinkmann, you are further instructed as follows:

You should not concern yourselves with the reason why Owens Corning is not a defendant in this case.

If you find for the plaintiff and against Garlock on the question on **liability**, you will have no occasion to consider Garlock under the "Third" proposition.

If you find for Garlock and against the plaintiff on the question of **liability**, you should then consider under the "Third" proposition whether Sprinkmann's intentional destruction was a proximate cause of the plaintiff's inability to prove that asbestos from **products** of Garlock was a proximate cause of the injury to and death of Don White.

If you find that the evidence presented in this case established that asbestos from Owens Corning Kaylo was a proximate cause of the injury to and death of Don White, then you will have no occasion to consider Owens Corning under the "Third" proposition.

If you find that the evidence presented in this case did not establish that asbestos from Owens Corning Kaylo was a proximate cause of the injury to and death of Don White, you should then consider under the "Third" proposition whether Sprinkmann's intentional destruction was a proximate cause of the plaintiff's inability to establish that asbestos from Owens Corning Kaylo was a proximate cause of the injury to and death of Don White.

The verdict you reach and your answers to the interrogatories I am now submitting to you, must be unanimous.