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SUPREME COURT OF TEXAS
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No. 13-0961

IN THE SUPREME COURT OF TEXAS

OCCIDENTAL CHEMICAL CORPORATION,

Petitioner,

v.

JASON JENKINS,

Respondent.

On Appeal from the First Court of Appeals at Houston

REPLY IN SUPPORT OF PETITION FOR REVIEW

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INTRODUCTION

Jenkins's claim against Occidental on its face is a premises-liability claim. *See Keetch v. Kroger*, 845 S.W.2d 262 (Tex. 1992) (requiring person injured by condition of real property prove premises-liability claim). As a former premises owner, Occidental owed no duty to Jenkins under well-settled Texas law. Yet, the court of appeals reversed a take-nothing judgment and rendered judgment against Occidental on Jenkins's negligent-design claim by circumventing *Keetch* and misapplying *Strakos v. Gehring*, 360 S.W.2d 787 (Tex. 1962) (abrogating accepted-work doctrine for independent contractors). The result is an unprecedented, outlier liability theory. Even if this expansive new liability theory could survive this Court's review, given the undisputed and conclusive evidence, two separate statutes of repose bar as a matter of law the negligent-design claim that Jenkins asserted.

I. OCCIDENTAL OWED NO DUTY TO JENKINS.

Well-settled law controls the duty question in premises-liability cases. The *Restatement (Second) of Torts* states that a former property owner, like Occidental, owes no duty to third parties, like Jenkins, for injuries caused by allegedly dangerous conditions on property it previously owned, except in rare circumstances that do not apply here:

> [A] vendor of land is not subject to liability for physical harm caused to his vendee or others while upon the land after the vendee has taken

> possession by any dangerous condition, whether natural or artificial, which existed at the time that the vendee took possession.

RESTATEMENT (SECOND) OF TORTS § 352 (1965); *see id.* § 352 cmt. a ("The vendee is required to make his own inspection of the premises, and the vendor is not responsible to him for their defective condition, existing at the time of transfer. Still less is he liable to any third person who may come upon the land, even though such entry is in the right of the vendee."); *Lefmark Mgmt. Co. v. Old*, 946 S.W.2d 52, 54-55 (Tex. 1997) (noting that Section 352 applies to "vendors"—*i.e.*, former owners of property).[1] This rule is consistent with tort law across the country. *See* Pet. at 11-13 (former property owners in California, Georgia, Illinois, Montana, Pennsylvania, and West Virginia are not liable for injuries caused by dangerous conditions on their formerly owned properties). The *Restatement* rule for former property owners is also consistent with Texas law. *See Roberts v. Friendswood Dev. Co.*, 886 S.W.2d 363, 367-68 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (former owners "of real property are [generally] not liable for injuries caused by dangerous conditions on [that] property after [its] conveyance"—even if they are alleged to have created condition); *First Fin. Dev. Corp. v. Hughston*, 797 S.W.2d 286, 289-92 (Tex. App.—Corpus Christi 1990, writ denied) (former

[1] Jenkins's reliance on Sections 395 and 398 of the *Restatement (Second) of Torts*, Resp. at 17, is telling and unavailing. Both sections outline the duties owed by "Manufacturers of Chattel," not former property owners who create permanent improvements on their property.

property owner not liable for injury caused by condition of property even though plaintiff alleged that former owner created condition); *see also Beall v. Lo-Vaca Gathering Co.*, 532 S.W.2d 362, 364-66 (Tex. Civ. App.—Corpus Christi 1975, writ ref'd n.r.e.) (former possessor of real property not liable for dangerous condition it created before relinquishing possession).

The law that informs imposing a duty in premises-liability cases is grounded in sound public policy. A central tenet of all premises-liability law is that one who owns or controls property should be responsible for its condition. *See Allen Keller Co. v. Foreman*, 343 S.W.3d 420, 426 (Tex. 2011). Only an owner or possessor of property holds the right to enter and inspect the property and take reasonable measures to warn of, or remedy, any existing dangerous condition. One who no longer owns or controls property cannot be held responsible for dangerous conditions on the property because that person does not have the legal status to go on the property to make effective warnings of danger or prevent injuries that might otherwise be caused by the dangerous condition. *See Preston v. Goldman*, 720 P.2d 476, 487 (Cal. 1986). The law does not impose a legal duty upon one who has no legal way to discharge that duty.[2]

[2] This rule of law prevails for a second, historical reason. Under caveat emptor, "in the absence of express agreement, the vendor of land was not liable to his vendee, or a fortiori to any other person, for the condition of the land existing at the time of transfer. As to sales of land this

(Continued . . .)

Applying premises-liability law to the facts of this case advances these important policy concerns. Occidental sold the chemical plant to Equistar lock, stock, and barrel in 1998. 8.RR.156. At the time of the sale, there had been no accidents related to the pH-balancing system since its design and construction in 1992. 8.RR.179. Occidental handed over all documents related to the plant, retaining no control over them. 8.RR.143-44. Thereafter, Occidental had no control over the plant, including the improvements, and plant operations. 8.RR.156. That authority belonged to Equistar, the plant owner. 8.RR.156. Without control of the plant, Occidental could not assess the continued safety of, or modify, the pH-balancing system. Occidental could not train, supervise, or control the persons who worked with the pH-balancing system. Occidental simply had no way to prevent the injury to Jenkins eight years after it sold the plant to Equistar.[3] On these facts, the answer to the "broad, policy-laden question[] of duty" is that Occidental owed no duty to Jenkins. *See Allen Keller*, 343 S.W.3d at 424 n.4.

The court of appeals abandoned this well-settled law and its underlying policies when it ruled that Occidental was liable for an injury caused by the

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(Continued . . .)

rule has retained much of its original force . . . ." RESTATEMENT (SECOND) OF TORTS § 352 cmt. a.

[3] When this case was tried in 2009, there had been no other injuries before or after Jenkins's accident in 2006. 8.RR.156.

condition of an improvement Occidental built in the chemical plant it conveyed to Jenkins's employer eight years before the accident. The court of appeals's imposition of a duty on these facts is unprecedented, unsettles Texas law, and requires this Court's attention.

II. *STRAKOS V. GEHRING* DOES NOT APPLY.

Unable to advocate that Occidental owed a duty under premises-liability law, Jenkins led the court of appeals astray with *Strakos v. Gehring*, 360 S.W.2d 787 (Tex. 1962). Nothing in *Strakos* supports Jenkins's total reliance upon it. Instead, *Strakos* highlights the conclusion that Occidental owed no duty to Jenkins, because as the Court clarified in *Allen Keller*, no duty is presumed under *Strakos* and duty is a policy-laden question. 343 S.W.3d at 424 & n.4. Under the *Allen Keller* analysis, existing policy supports the absence of a duty here.

Before *Strakos*, Texas law held that *independent contractors* who constructed improvements to real property were not liable for the dangerous condition of those improvements after the property owner accepted the work. *See* 360 S.W.2d at 789. This rule was known as the "accepted work" doctrine. *Id.* at 789-90. In *Strakos*, the Court abrogated the "accepted work" doctrine and held that independent contractors may be liable for the dangerous condition of their improvements to real property—even after the property owner has accepted the work. *Id*. at 790.

Strakos has nothing to do with the liability of *former owners* of real property who construct improvements on their property (like Occidental). The *Strakos* rule is found in Section 385 of the *Restatement (Second) of Torts*, which applies only to independent contractors:

> One *who on behalf of the possessor of land* erects a structure or creates any other condition thereon is subject to liability to others upon or outside of the land for physical harm caused to them by the dangerous character of the structure or condition after his work has been accepted by the possessor, under the same rules as those determining the liability of one who as manufacturer or independent contractor makes a chattel for the use of others.

RESTATEMENT (SECOND) OF TORTS § 385 (1965) (emphasis added).[4] The cases Jenkins cites illustrate that this Court has never applied *Strakos* beyond the context of independent contractors. *See Allen Keller*, 343 S.W.3d at 424 (clarifying that *Strakos* does not impose a duty on independent contractors in all circumstances); *Lefmark*, 946 S.W.2d at 54 (former manager of shopping center owed no duty to keep shopping center safe); *Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 912 (Tex. 1997) (reversing summary judgment because defendant did not move on *Strakos* issue); *City of Denton v. Page*, 701 S.W.2d 831, 835 (Tex. 1986) ("We agree that a person put in control of premises by the owner, such as an independent

[4] Section 385 addresses the "Liability of Persons ***Other Than a*** Possessor, ***Vendor***, or Lessor" of property. *See* RESTATEMENT (SECOND) OF TORTS § 385 (1965) (emphasis added).

contractor, is under the same duty as the owner to keep the premises under his control in safe condition.").

Nevertheless, stretching *Strakos* beyond its limits, Jenkins contends, and the court of appeals held, that former property owners who design and construct improvements to their property "wear two hats"—the hat of a "property owner" and the hat of a "designer and constructor of the improvement." Resp. at 16; *see Jenkins v. Occidental Chem. Corp.*, 415 S.W.3d 14, 29 (Tex. App.—Houston [1st Dist.] 2013, pet. filed). According to this novel liability theory, once a former property owner sells his property and can no longer be held liable in premises liability, he may still be held liable for his prior "negligence" in designing and constructing the improvement. In other words, former property owners who design and construct improvements to their real property are forever liable for the "negligent activity" of having designed and constructed the improvement.

This Court expressly disavowed this idea in *Keetch v. Kroger*, 845 S.W.2d 262 (Tex. 1992). In *Keetch*, the Court held that a property owner can only be liable for a negligent activity that creates a dangerous condition if the claimant is injured "as a contemporaneous result of the activity itself rather than by a condition created by the activity." *Id*. at 264. Jenkins complains that he was injured by a "dangerous condition." Resp. at 1. But he was injured not contemporaneously with, but fourteen years after, Occidental designed and constructed that condition.

Applying *Keetch* to these facts leads to the inescapable conclusion that a premises-liability question should have gone to the jury. It did not. Jenkins instead disavowed a premises-liability claim. 10.RR.47. The jury, at Jenkins's insistence, was asked to decide whether Occidental was negligent in the "design and operating instructions for the Acid Addition System" by "failing to do that which a company engaged in the *manufacture of like or similar equipment* would have done" or "by doing that which a company engaged in the *manufacture of like or similar equipment* would not have done under same or similar circumstances."[5] 10.CR.2636 (emphasis added) (Tab A).

Putting aside the obvious problem of holding Occidental liable as a "manufacturer of equipment," which of course it was not, the court of appeals's decision swept away the negligent-activity/premises-liability dichotomy recognized in *Keetch* and its progeny. In lieu of *Keetch*, the court of appeals validated Jenkins's "two-hats" paradigm. The result is an unprecedented, outlier

[5] Jenkins also could not recover under a negligent-design theory because the pH-balancing system was not a "product" that Occidental "manufactured" and placed into the "stream of commerce." *See Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 437 (Tex. 1997). Occidental is not a manufacturer of pH-balancing systems. The jury found that the pH-balancing system was an improvement to real property, not a product. *See* 10.CR.2642 (Tab A). And Jenkins stipulated that Occidental never placed the pH-balancing system into the stream of commerce. *See* 7.RR.78-79.

liability theory. The court of appeals's holdings are plainly incorrect and merit this Court's review.

III. THE STATUTES OF REPOSE BAR JENKINS'S CLAIM.

The two clearly applicable statutes of repose become at issue only if Occidental owes Jenkins a duty and Jenkins proves that Occidental is liable to him. In claiming otherwise, Jenkins's response puts the cart before the horse. If the ten-year statutes of repose for construction and engineering do come into play, then Occidental is entitled to repose as a matter of law because the evidence material to applying both statutes is conclusive.[6] *See* Pet. at 1-4 (detailing the evidence required by the statutes to establish repose)[7]; *Bank of Tex. v. VR Elec., Inc.*, 276 S.W.3d 671, 677 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (no jury finding necessary if matter is conclusively established). The court of appeals's conclusions denying Occidental the protections afforded by the statutes of repose

[6] Occidental did not "los[e] the verdict" on the statutes of repose, as Jenkins suggests. *See* Resp. at 1. Rather, the jury answered a question for Occidental that triggered the application of the engineering statute of repose and answered a question for Occidental that triggered the application of the construction statute of repose. 10.CR.2642 (Tab A).

[7] Jenkins either distorts or ignores the undisputed evidence about Neil Ackerman's role, Kathryn Hanneman's role, and the work the engineering team performed. Given the undisputed evidence, the Court can decide the engineering-repose issue as a matter of law. *See* Pet. at 1-4. For the first time, Jenkins also suggests that Occidental should be liable because it "entrusted the work to an unlicensed engineer." *See* Resp. at 11, 18. Jenkins not only mischaracterizes the evidence, Occidental's employ of Neil Ackerman as part of the design team for the pH-balancing system has never before been urged as a basis for liability.

on this record contravene the language, purpose, and previously well-settled construction of the statutes. *See* Pet. at 14-17 (discussing engineering statute); *id*. at xiii (reserving as unbriefed the construction statute of repose).

CONCLUSION

As a former premises owner, Occidental owed no duty to Jenkins under well-settled Texas law. To impose a duty upon Occidental in circumstances where none has ever been recognized, the court of appeals adopted a "two-hats" liability theory that radically changes Texas law. Under the court of appeals's new regime, Texas premises-liability law would no longer couple a duty with the legal status that allows the duty to be discharged. The result is uncertainty and an unnecessary expansion of tort liability for Texas real-property owners. The petition for review should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TEXAS RULE OF APPELLATE PROCEDURE 9.4

I hereby certify that this reply includes 2,400 words and was produced in 14-point font.

/s/ Rick Thompson
Rick Thompson

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2014, a true and correct copy of this reply was served on the following counsel via electronic mail:

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Tab A

#71 ORIGINAL

CAUSE NO. 2007-73468

Jason Jenkins	§	**IN THE DISTRICT COURT OF**
	§	
v.	§	**HARRIS COUNTY, T E X A S**
	§	
Occidental Chemical	§	**295TH JUDICIAL DISTRICT**

FILED
Loren Jackson
District Clerk
JUL - 1 2009
Time: Harris County, Texas
By Deputy

CHARGE OF THE COURT

Members 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.

Remember my previous instructions: Do not discuss the case with anyone else. 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 share any special knowledge or experiences with the other jurors. Do not use your mobile phone or any other electronic devices during your deliberations.

Any notes you have taken are for your own personal use and may be taken back into the jury room and consulted by you 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 upon your independent recollection of the evidence and not be influenced by the fact that another juror has taken notes.

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 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 this 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. Unless otherwise instructed, you may render your verdict upon the vote of ten or more members of the jury. 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.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. 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 of credible evidence admitted in this case. 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. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

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.

Question No. 1

Did the negligence, if any, in Occidental Chemical's design and operating instructions for the Acid Addition System proximately cause the occurrence in question?

"Negligence" means failure to use ordinary care, that is, failing to do that which a company engaged in the manufacture of like or similar equipment would have done under the same or similar circumstances, or doing that which a company engaged in the manufacture of like or similar equipment would not have done under the same or similar circumstances.

To answer "yes" to this question, there must also have been a safer alternative design.

"Safer alternative design" means a design other than the one actually used that in reasonable probability—
(1) would have prevented or significantly reduced the risk of the occurrence in question without substantially impairing the Acid Addition System's utility and
(2) was economically and technologically feasible in 1992 by the application of existing or reasonably achievable scientific knowledge.

"Ordinary care" means that degree of care that would be used by a company engaged in the manufacture of like or similar equipment under the same or similar circumstances.

"Proximate cause" has two parts:
1. A proximate cause is a substantial factor that brings about an event and without which the event would not have occurred; and
2. A proximate cause is foreseeable. "Foreseeable" means that a person using ordinary care would have reasonably anticipated that his acts or failure to act would have caused the event or some similar event.

There may be more than one proximate cause of an event.

Answer "Yes" or "No":

Answer: 12

Question No. 2

Did the negligence, if any, of Jason Jenkins proximately cause the occurrence in question?

"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" has two parts:
1. A proximate cause is a substantial factor that brings about an event and without which the event would not have occurred; and
2. A proximate cause is foreseeable. "Foreseeable" means that a person using ordinary care would have reasonably anticipated that his acts or failure to act would have caused the event or some similar event.

There may be more than one proximate cause of an event.

Answer "yes" or "no:"

Answer: 12

Question No. 3

Did the negligence, if any, of Equistar proximately cause the occurrence in question?

"Negligence" means failure to use ordinary care, that is, failing to do that which a company of ordinary prudence would have done under the same or similar circumstances, or doing that which a company 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 company of ordinary prudence under the same or similar circumstances.

"Proximate cause" has two parts:
1. A proximate cause is a substantial factor that brings about an event and without which the event would not have occurred; and
2. A proximate cause is foreseeable. "Foreseeable" means that a person using ordinary care would have reasonably anticipated that his acts or failure to act would have caused the event or some similar event.

There may be more than one proximate cause of an event.

Answer "yes" or "no:"

Answer: 12

Question No. 4

Was there a defect in the marketing of the safety goggles at the time it left the possession of Sperian Protection, Inc. that was a producing cause of the injury in question?

A "marketing defect" with respect to the product means the failure to give adequate warnings of the product's dangers that were known or by the application of reasonably developed human skill and foresight should have been known or failure to give adequate instructions to avoid such dangers, which failure rendered the product unreasonably dangerous as marketed.

"Adequate" warnings and instructions mean warnings and instructions given in a form that could reasonably be expected to catch the attention of a reasonably prudent person in the circumstances of the product's use; and the content of the warnings and instructions must be comprehensible to the average user and must convey a fair indication of the nature and extent of the danger and how to avoid it to the mind of a reasonably prudent person.

An "unreasonably dangerous" product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary user of the product with the ordinary knowledge common to the community as to the product's characteristics.

"Producing cause" means a cause that was a substantial factor in bringing about the injury, and without which the injury would not have occurred. There may be more than one producing cause.

Answer "Yes" or "No"

Answer: No

If you have answered "yes" as to more than one person or entity in answer to Question No. 1, 2, 3, or 4 then answer the following question as to those persons or entities. Otherwise, do not answer the following question.

Question No. 5

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence or injury. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to a person or product is not necessarily measured by the number of acts, omissions, or product defects found.

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

a.	Occidental Chemical	75 %
b.	Jason Jenkins	5 %
c.	Equistar	20 %
d.	Sperian Protection	Ø %
	Total	100 %

If you have answered "yes" to Question No. 1 and if in answer to Question No. 5 you have answered 50 percent or less as to Jason Jenkins, then answer the following question. Otherwise, do not answer the following question.

Question No. 6

What sum of money, if paid now in cash, would fairly and reasonably compensate Jason Jenkins for his damages, if any, resulting from the occurrence in question?

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.

If you have found that Jason Jenkins was negligent, do not reduce the amounts in your answers, if any, because of his negligence. After you have made your answers, the judge will apply the law to determine the amount, if any, to which he is entitled.

Answer in dollars and cents for damages, if any, that were sustained in the past; and in reasonable probability will be sustained in the future for-

Element	Past	Future
a. Physical pain and mental anguish	$1 MIL	$1 MIL
b. Physical impairment	$1 MIL	$1 MIL
c. Loss of earning capacity	$163,187	$1.7 MIL
d. Medical care	$286770.40	$3.5 MIL

Question No. 7

Was the Acid Addition System an improvement to real property?

An improvement is an addition that is attached to the property with the intent by Occidental Chemical that it be permanently attached.

Answer "yes" or "no"

Answer: 12

Question No. 8

Was the Acid Addition System designed by one or more persons employed by Occidental who were registered or licensed engineers?

Answer "yes" or "no"

Answer: 12

Question No. 9

Was the Acid Addition System designed under the supervision of one or more persons employed by Occidental who were registered or licensed engineers?

Answer "yes" or "no"

Answer: 12

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. This means the presiding juror will manage the discussions, and see that you follow the 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.
    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 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you cannot have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
   If 11 jurors agree on every answer, those 11 jurors sign the verdict.
   If all 12 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 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on **every** answer will sign the verdict.

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

Tracy Christopher
Judge Presiding

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 12 of us.

Signature of Presiding Juror

MICHAEL D. EDWARDS
Printed name of Presiding Juror

____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	SIGNATURE	NAME PRINTED
1.		
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