

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9047a

## TECHNICAL CORRECTION TO THE AMENDMENTS TO THE JURY INSTRUCTIONS UNDER TEXAS RULE OF CIVIL PROCEDURE 226A

**ORDERED** that:

1. The amendments to the jury instructions promulgated by Order dated March 15, 2011, in Misc. Docket No. 11-9047, are corrected as follows, effective immediately.

2. In Section III of the jury instructions, which are included in the court's charge, the following guidance regarding special instructions for exemplary damages should be reincorporated.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

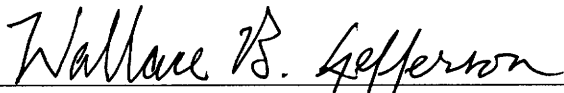
Answer Question (iii) for D1 only if you answered “Yes” to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

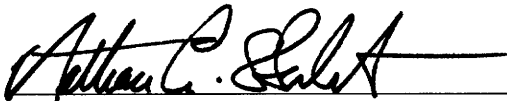
You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

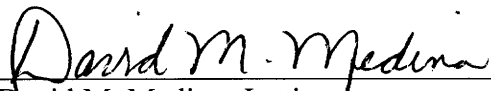
3. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of the Order for publication in the *Texas Register*.


Dated: April 13, 2011.

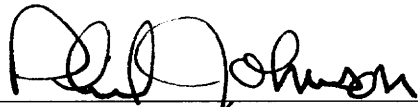
  
Wallace B. Jefferson, Chief Justice


  
Nathan L. Hecht, Justice

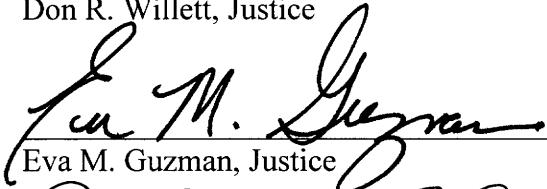
  
Dale Wainwright, Justice


  
David M. Medina, Justice

  
Paul W. Green, Justice

  
Phil Johnson, Justice

  
Don R. Willett, Justice

  
Eva M. Guzman, Justice

  
Debra H. Lehrmann, Justice