

ORIGINAL

CAUSE NO. 97-12163

TEXAS DISPOSAL SYSTEMS
LANDFILL, INC.

Plaintiff,

vs.

WASTE MANAGEMENT OF
TEXAS, INC.,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126th 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 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, the evidence 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 question 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 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.

Filed in The District Court
of Travis County, Texas

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of Travis County, Texas

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NOV 05 2010 LAM

At 11:45 A.M.
Amalia Rodriguez-Mendoza, Clerk

At 10:37 A.M.
Amalia Rodriguez-Mendoza, Clerk

6. You may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

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 juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the instruction 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 unless you are 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 of credible evidence presented 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 unless you are 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.

Throughout this Charge, "TDSL" refers to the plaintiff, Texas Disposal Systems Landfill, Inc. and "WMT" refers to the defendant, Waste Management of Texas, Inc.

QUESTION NO. 1

Were the following implications and statements from the Action Alert false when made?

“False” means that a statement or implication is neither literally true nor substantially true. A statement or implication is not “substantially true” if, in the mind of the ordinary person, the gist or sting of the statement or implication is more damaging to the person or entity affected by it than a literally true statement would have been.

In deciding whether a statement or implication is false, you are to consider an ordinary person’s perception of the statement or implication taken as a whole, and the statement or implication should be construed in light of the surrounding circumstances and based upon how a person of ordinary intelligence would understand the entire statement or implication.

Answer “Yes” or “No” for each implication and statement below.

The implication that TDSL does not have a leachate collection system.

Answer: YES

The implication that the TDSL facility is environmentally less protective than other area landfills, including WMT’s Austin Community Landfill.

Answer: YES

The TDSL facility “applied for and received an exception to the EPA Subtitle D environmental rules.”

Answer: YES

“Other landfills in Central Texas and San Antonio in similar clay formations are using the full synthetic liner in addition to the clay soils.”

Answer: YES

QUESTION NO. 2

Was the following statement from the Action Alert, in quotes below, defamatory?

“There are no restrictions on the types of waste that may be disposed of in the TDS landfill, with the exception of hazardous waste.”

A defamatory statement is one that (1) tends to injure an entity’s reputation or exposes an entity to public hatred, contempt, ridicule, or financial injury, or (2) tends to impeach an entity’s honesty, integrity, virtue, or reputation.

Answer “Yes” or “No.”

Answer: YES

If you answered "Yes" to Question No. 2, answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 3

Was the following statement from the Action Alert, in quotes below, false when made?

"There are no restrictions on the types of waste that may be disposed of in the TDS landfill, with the exception of hazardous waste."

"False" means that a statement or implication is neither literally true nor substantially true. A statement or implication is not "substantially true" if, in the mind of the ordinary person, the gist or sting of the statement or implication is more damaging to the person or entity affected by it than a literally true statement would have been.

In deciding whether a statement or implication is false, you are to consider an ordinary person's perception of the statement or implication taken as a whole, and the statement or implication should be construed in light of the surrounding circumstances and based upon how a person of ordinary intelligence would understand the entire statement or implication.

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" to any part of Question No. 1 and/or "Yes" to Question No.3, then answer the following question. Otherwise, do not answer the following question and proceed to the last page.

QUESTION NO. 4

Do you find by clear and convincing evidence that, with respect to the statements or implications below that you found to be false, WMT made the statement or implication knowing it was false or with reckless disregard of whether it was true or not?

"Clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the jury a firm belief or conviction as to the truth of the allegations sought to be established.

In determining whether WMT knew that the Action Alert was false or acted with reckless disregard of whether it was true or not, consider only the conduct and knowledge of Don Martin, Al Erwin and any WMT employee who knowingly contributed to the publication of the Action Alert.

Answer "Yes" or "No" for each statement or implication regarding which you answered "Yes" in answer to Question No. 1 or "Yes" in answer to Question No.3. Otherwise, leave the answer regarding that statement or implication blank.

The implication that TDSL does not have a leachate collection system.

Answer: Yes

The implication that the TDSL facility is environmentally less protective than other area landfills, including WMT's Austin Community Landfill.

Answer: Yes

The TDSL facility "applied for and received an exception to the EPA Subtitle D environmental rules."

Answer: Yes

"Other landfills in Central Texas and San Antonio in similar clay formations are using the full synthetic liner in addition to the clay soils."

Answer: Yes

"There are no restrictions on the types of waste that may be disposed of in the TDSL landfill, with the exception of hazardous waste."

Answer: Yes

Answer the following question only if you answered "Yes" to any part of Question No. 4. Otherwise, do not answer the following question and proceed to the last page.

QUESTION NO. 5

What sum of money, if paid now in cash, would fairly and reasonably compensate TDSL for the following elements of damage, if any, proximately caused by the publication of the statements or implications regarding which you answered "Yes" to Question No. 4?

A publication "proximately causes" damage if, in a natural and continuous sequence, it produces the damage, the damage would not have happened without that publication, and the damage was foreseeable. Damage is foreseeable if a business using ordinary care would have been able to foresee that the publication might reasonably result in the damage or some similar damage. More than one thing may proximately cause damage.

For this question, consider the elements of damages listed below and none other. Consider each element separately. Do not include damages for one element in any other element. Do not include interest on any amount of damages you find.

Answer in dollars and cents, if any, with respect to the following:

1. TDSL's lost profits sustained in the past.

Answer: \$ Ø

2. Reasonable and necessary expenses incurred by TDSL in defending against WMT's defamatory statements.

Answer: \$ 450,592.03

Answer the following question if you answered "Yes" to any part of Question No. 4. Otherwise, do not answer the following question and proceed to the last page.

QUESTION NO. 6

With respect to each of the statements or implications below regarding which you answered "Yes" in answer to Question No. 4, does the statement or implication tend to affect an entity injuriously in its business, occupation, or office, or charge an entity with illegal or immoral conduct?

You are to consider an ordinary person's perception of the statement or implication in the context of the Action Alert as a whole, and in light of the surrounding circumstances.

Answer "Yes" or "No" as to each statement or implication regarding which you answered "Yes" in answer to Question No. 4. Otherwise, leave the answer regarding that statement or implication blank.

The implication that TDSL does not have a leachate collection system.

Answer: Yes

The implication that the TDSL facility is environmentally less protective than other area landfills, including WMT's Austin Community Landfill.

Answer: Yes

The TDSL facility "applied for and received an exception to the EPA Subtitle D environmental rules."

Answer: Yes

"Other landfills in Central Texas and San Antonio in similar clay formations are using the full synthetic liner in addition to the clay soils."

Answer: Yes

"There are no restrictions on the types of waste that may be disposed of in the TDS landfill, with the exception of hazardous waste."

Answer: Yes

Answer the following question only if you answered "Yes" to any part of Question No. 6. Otherwise, do not answer the following question.

QUESTION NO. 7

What sum of money, if paid now in cash, would fairly and reasonably compensate TDSL for damage to its reputation caused by the publication of the statements or implications regarding which you answered "Yes" to Question No. 4?

Do not include interest on any amount of damages you find.

Answer in dollars and cents:

Damage to reputation in the past.

With respect to the publication of statements and implications regarding which you answered "Yes" in answer to Question No. 6, damage to reputation may be presumed; no evidence is required of damages.

With respect to the publication of statements and implications, regarding which you answered "No" in your answer to Question No.6, there must be evidence of damage to reputation proximately caused by that publication. A publication "proximately causes" damage if, in a natural and continuous sequence, it produces the damage, the damage would not have happened without that publication, and the damage was foreseeable. Damage is foreseeable if a business using ordinary care would have been able to foresee that the publication might reasonably result in the damage or some similar damage. More than one thing may proximately cause damage.

Answer: \$ 5,000,000⁰⁰

Answer the following question only if as to all parts of Question No. 6 you answered "No" or left the answer blank. Otherwise, do not answer the following question.

QUESTION NO. 8

What sum of money, if paid now in cash, would fairly and reasonably compensate TDSL for damage, if any, to its reputation, proximately caused by the publication of the statements or implications regarding which you answered "Yes" in answer to Question No. 4?

A publication "proximately causes" damage if, in a natural and continuous sequence, it produces the damage, the damage would not have happened without that publication, and the damage was foreseeable. Damage is foreseeable if a business using ordinary care would have been able to foresee that the publication might reasonably result in the damage or some similar damage. More than one thing may proximately cause damage.

Do not include interest on any amount of damages you find.

Answer in dollars and cents, if any:

Damage to reputation in the past.

Answer: \$ _____

If you answered "Yes" to any part of Question No. 4, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 9

Do you find by clear and convincing evidence that WMT published the statements or implications you found to be false with malice?

"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.

"Malice" means:

- (a) a specific intent by WMT to cause substantial injury to TDSL; or
- (b) an act or omission by WMT,
 - (i) which when viewed objectively from the standpoint of WMT at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
 - (ii) of which WMT 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: Yes

If you answered "Yes" to Question No. 9, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 10

What sum of money, if any, if paid now in cash, should be assessed against WMT and awarded to TDSL as exemplary damages for the conduct found in response to Question No. 4?

"Exemplary Damages" means an amount that you may, in your discretion, award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are:

- (a) The nature of the wrong.
- (b) The character of the conduct involved.
- (c) The degree of culpability of WMT.
- (d) The situation and sensibilities of the parties concerned.
- (e) The extent to which such conduct offends a public sense of justice and propriety.
- (f) The net worth of WMT.

Answer in dollars and cents, if any.

Answer: \$ 20,000,000⁰⁰

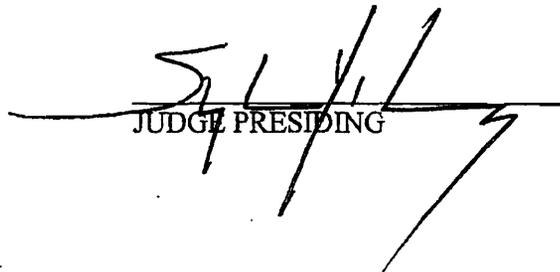
After you retire to the jury room, you will select your own presiding juror. Then you will deliberate upon your answers to the questions asked.

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 this 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 instruction 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

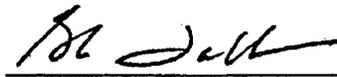
CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror, if unanimous.)

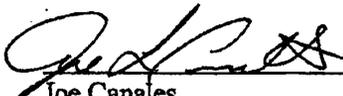
PRESIDING JUROR

(To be signed by those rendering the verdict, if not unanimous.)

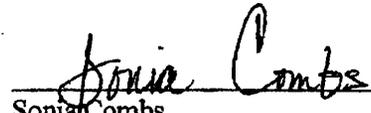


Robert Talbot

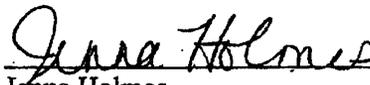
Charles Schmidt



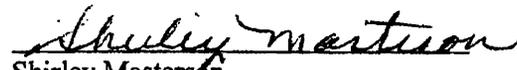
Joe Canales



Sonia Combs



Jenna Holmes



Shirley Masterson

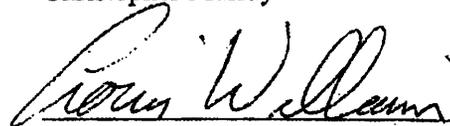


Diana Marshall

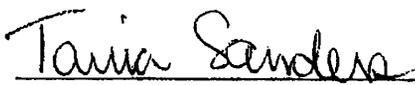
Christopher Murray



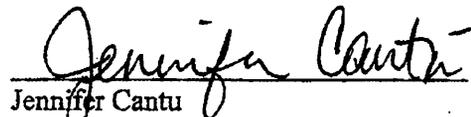
Kathleen Holt



Louis Williams



Tania Sanders



Jennifer Cantu