

Weir, et al. v. Painter, et al.  
Civil Action No. 13014

DEFENDANT PAINTER AND FOLEY AERO CHARGE NO. 1

The Court charges the jury that Floyd Painter and Foley Aero were only under a duty to exercise reasonable care for the safekeeping of the aircraft of the plaintiff Clyde Weir. If you are reasonably satisfied that Floyd Painter and Foley Aero did exercise reasonable care in the keeping of Clyde Weir's aircraft, then they were guilty of no negligence and you could not return a verdict in favor of Clyde Weir and Monarch Insurance Company.

*Given*  
*Jeffrey J. Washburn*  
*judge*

Weir, et al. v. Painter, et al.  
Civil Action No. 13014

DEFENDANT PAINTER AND FOLEY AERO CHARGE NO. 1

The Court charges the jury that Floyd Painter and Foley Aero were only under a duty to exercise reasonable care as to each aircraft involved in this case. If you are reasonably satisfied that the actions of Floyd Painter were consistent with what a reasonable and prudent person would have done under the same or similar circumstances, then he was guilty of no negligence and you could not return a verdict against Floyd Painter and Foley Aero.

*J. J. Mason*  
*Jefferson J. Mason*  
*Judge*

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DEFENDANT PAINTER AND FOLEY AERO CHARGE NO. 3

The Court charges the jury that as to the aircraft owned by Liberto, Floyd Painter and Foley Aero only had the duty to exercise reasonable care. Reasonable care would be determined by what a reasonable and prudent person would have done under the same or similar circumstances existing at the time and place of the accident made the basis of this suit. If you are reasonably satisfied from the evidence in this case that the actions of Floyd Painter were consistent with what a reasonable and prudent person would have done under the same or similar circumstances, then he was guilty of no negligence and you could not return a verdict against Floyd Painter and Foley Aero.

*J. Fairman*  
*J. Fairman*  
Judge

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DEFENDANT PAINTER AND FOLEY AERO CHARGE NO. 4

The Court charges the jury that as to personal property, such as an airplane, the measure of damages is the difference between the fair and reasonable market value of the aircraft before the accident and the fair and reasonable market value immediately after the accident, in its damaged condition.

*Given,  
Jeffery Washburn  
judge*

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DEFENDANT PAINTER AND FOLEY AERO CHARGE NO. 5

The Court charges the jury that Floyd Painter and  
Foley Aero were not insurers of the safety and wellkeeping  
of the aircraft involved in the accident made the basis  
of this suit.

*D. W. ...*  
*Stephen M. ...*  
*Judge*

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DEFENDANT PAINTER AND FOLEY AERO CHARGE NO. 6

The Court charges the jury that the mere fact that this accident occurred and that both aircraft were damaged does not in and of itself allow this jury to conclude that it was caused by the negligence of anyone.

~~James~~  
James J. Washburn  
Judge

31 FOLEY AERO

DEFENDANT PAINTER CHARGE # \_\_\_\_\_

The Court charges the jury that

If a person, without fault of his own, is faced with a sudden emergency, he is not to be held to the same correctness of judgment and action as if he had time and opportunity to fully consider the situation, and the fact, if it be a fact, that he does not choose the best or safest way of escaping peril or preventing injury is not necessarily negligence, but the standard of care required in an emergency situation is that care which a reasonably prudent person would have exercised under the same or similar circumstances.

*Over*

*Jeffrey M. Madsen  
Judge*

IN THE CIRCUIT COURT FOR BALDWIN COUNTY, ALABAMA

CLYDE B. WEIR and )  
MONARCH INSURANCE COMPANY, )  
 )  
Plaintiffs, )  
 )  
vs. ) CIVIL ACTION NO. 13014  
 )  
FLOYD PAINTER, et al, )  
 )  
Defendants. )

INSTRUCTIONS TO THE JURY

1 Comes now the defendant, Vincent A. Liberto, pursuant to Rule 51 of the Alabama Rules of Civil Procedure and requests the Court to give the jury the following instructions:

1. The Court charges you that the burden of proof is upon the plaintiff to prove to your reasonable satisfaction each and every material allegation of the complaint.

GIVEN  \_\_\_\_\_ Jeffrey J. Maskeburn  
Judge

REFUSED \_\_\_\_\_

2. The Court charges you that any verdict rendered in this case must be the unanimous verdict of each and all of you-

GIVEN  \_\_\_\_\_ Jeffrey J. Maskeburn  
Judge

REFUSED \_\_\_\_\_

3. The Court charges you that you are not bound by the testimony of any single witness, expert or otherwise, and in reaching your verdict in this case you are entitled to take into consideration all of the evidence in the case.

GIVEN  \_\_\_\_\_ Jeffrey J. Maskeburn  
Judge

REFUSED \_\_\_\_\_

4. The Court charges you that your verdict should not be based on speculation, conjecture, or guesswork.

GIVEN  \_\_\_\_\_ Jeffrey J. Maskeburn  
Judge

REFUSED \_\_\_\_\_



5. The Court charges you that if you are reasonably satisfied from all the evidence that the defendant V. A. Liberto was not in custody and control of the plaintiff's airplane on the occasion of the accident, nor had entered into any agreement with the plaintiff whereby for a consideration he agreed to store and take care of the plaintiff's airplane, then your verdict must be for the defendant, V. A. Liberto.

GIVEN  \_\_\_\_\_

*Jeffrey J. Madaleno*  
Judge

REFUSED \_\_\_\_\_

6. The Court charges you that if you are reasonably satisfied from the evidence that Floyd Painter was not under the control, or acting at the instructions of V. A. Liberto on the occasion of the accident, then your verdict must be for the defendant V. A. Liberto.

GIVEN  \_\_\_\_\_

*Jeffrey J. Madaleno*  
Judge

REFUSED \_\_\_\_\_

7. The Court charges you that if you are reasonably satisfied from the evidence that the defendant V. A. Liberto was not guilty of negligence in maintaining his aircraft, then you must render a verdict in favor of the defendant V. A. Liberto on the cross-claim filed against him by Floyd Painter and Foley Aero, Inc.

GIVEN  \_\_\_\_\_

*Jeffrey J. Madaleno*  
Judge

REFUSED \_\_\_\_\_

8. The Court charges you that if you are reasonably satisfied from the evidence that Floyd Painter was not operating Mr. Liberto's airplane as a reasonably prudent person would have operated an airplane under the same or similar circumstances on the occasion of the accident, then you may find him guilty of negligence and return a verdict in favor of the defendant V. A. Liberto on his cross-claim for the damages to his airplane.

GIVEN  \_\_\_\_\_

*Jeffrey J. Madaleno*  
Judge

REFUSED \_\_\_\_\_

9. The Court charges you that in weighing the testimony of any witness who has testified in this case, you are instructed to take into consideration in your deliberation any interest such witness has shown in the outcome of the case.

GIVEN ✓

*Jeffery J. Washburn*  
Judge

REFUSED \_\_\_\_\_

~~10. The Court charges you that the mere fact that Floyd Painter was operating V. A. Liberto's airplane on the occasion of the accident does not raise any presumption of agency between these defendants and does not render Mr. Liberto liable for the actions of Floyd Painter which may have caused injury to the plaintiff.~~

GIVEN ✓

*Jeffery J. Washburn*  
Judge

REFUSED \_\_\_\_\_

~~11. The Court charges you that before you can find an agency relationship to exist between V. A. Liberto and Floyd Painter, you must be reasonably satisfied from the evidence that V. A. Liberto had the right to and did in fact control the activities of Floyd Painter, including instructing Mr. Painter as to the manner and method of doing the activity in which he was engaged on the occasion of the accident. If you are reasonably satisfied from the evidence that Mr. Liberto did not control the activities of Floyd Painter in such a manner, then you cannot hold Mr. Liberto responsible for the actions of Floyd Painter.~~

GIVEN ✓

*Jeffery J. Washburn*  
Judge

REFUSED + \_\_\_\_\_

~~12. The Court charges you that an independent contractor is one who undertakes to do work for another according to his own methods and means, not being subject to the control of such other person except as to the result to be accomplished. One who is engaged an independent contractor is not liable to others for the negligence of that contractor. Therefore, if you are reasonably satisfied~~

from the evidence that Floyd Painter was an independent contractor on the occasion of the accident and that his negligence proximately caused the damages to the plaintiff's airplane, then you cannot hold V. A. Liberto responsible for the negligence of Floyd Painter in his capacity as an independent contractor.

GIVEN \_\_\_\_\_

*Judge J. M. Liberto*  
*Judge*

REFUSED  \_\_\_\_\_

MCDANIEL, HALL, PARSONS & CONERLY  
By:

*Bert P. Taylor*

\_\_\_\_\_  
Bert P. Taylor  
1000 City Federal Building  
Birmingham, Alabama 35203  
251-8143

CERTIFICATE OF SERVICE

I do hereby certify that the above and foregoing instructions to the jury have been served in Open Court this 5<sup>th</sup> day of Aug., 1976, upon all parties to this proceeding.

*Bert P. Taylor*  
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OF COUNSEL