

PLAINTIFF'S REQUESTED JURY INSTRUCTIONS

1. 1.1 INTRODUCTION

a. Instructions at Beginning of Trial

(1) Explanation of Trial Procedure

Members of the jury, in this case the Plaintiff, Cristen Weiss, has sued the Defendants Jacob Wilson and GEICO Insurance, claiming permanent injuries as the result of an auto accident in Baltimore City, Maryland.

The trial will proceed in the following way. You will first hear opening statements by the lawyers. Each party has the right to make an opening statement for the purpose of outlining for you what the party expects to prove. The plaintiff's lawyer will make the first opening statement and then the defendant's lawyer may choose whether to make an opening statement.

The plaintiff will then present evidence. After the plaintiff's case has been presented through witnesses and exhibits, the defendant will then have an opportunity to present evidence. Each witness is first examined by the party who calls the witness to testify and then the opposing party is permitted to cross-examine the witness.

During the trial the lawyers may make objections to the introduction of evidence, or make motions concerning the law. Arguments in connection with objections or motions are usually made out of the hearing of the jury, either here at the bench or after the jury has been excused from the courtroom. This is because questions of law and admissibility of evidence do not involve the jury; they are decided by the judge. It is the duty of a lawyer to make objections and motions which the lawyer believes are proper. You should not be influenced by the fact that a lawyer has made objections or by the number of objections which have been made. You should draw no conclusions from my rulings, either as to the merits of the case or as to my views regarding any witness or the case itself.

After the conclusion of all of the evidence, I will instruct you as to the law which is applicable to this case. You must follow and apply the law as I will explain it to you. After these instructions, the lawyers will make their closing arguments. In their arguments, the lawyers will point out to you what they contend the evidence has shown and the conclusions they would like you to draw from the evidence. The plaintiff's lawyer will make the first closing argument, then the defendant's lawyer will make a closing argument. After the

defendant's argument, the plaintiff will have an opportunity to make an argument in rebuttal to the defendant's argument. What the lawyers say in their opening statements, in their closing arguments, and in making objections or motions during the trial, is not evidence. The reason the plaintiff goes first in each instance is because the plaintiff has the burden of proof.

After closing arguments, you will retire to the jury room and begin your deliberations. It will then be your function and responsibility to decide the facts. You must base your findings only upon the testimony, the exhibits received and the stipulation(s) of the parties and any conclusions which may fairly be drawn from that evidence.

(2) General Principles

The following general principles are intended to assist you in judging the evidence and to guide you in the performance of your duties as jurors during the course of the trial:

Witness Testimony Consideration

You are the sole judges of whether testimony should be believed. In making this decision, you may apply your own common sense and everyday experiences.

In determining whether a witness should be believed, you should carefully judge all the testimony and evidence and the circumstances under which each witness has testified. Among the factors that you should consider are the following:

1. the witness' behavior on the stand and way of testifying;
2. the witness' opportunity to see or hear the things about which testimony was given;
3. the accuracy of the witness' memory;
4. did the witness have a motive not to tell the truth?;
5. does the witness have an interest in the outcome of the case?;
6. was the witness' testimony consistent?;
7. was the witness' testimony supported or contradicted by other evidence?; and
8. whether and the extent to which the witness' testimony in the court differed from the statements made by the witness on any previous occasion.

You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

Expert Opinion Testimony

An expert is a witness who has special training or experience in a given field. You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider an expert's opinion together with all the other evidence.

Impartiality in Consideration

You must consider and decide this case fairly and impartially. All persons, including corporations, stand equal before the law and are entitled to the same treatment under the law. You should not be prejudiced for or against a person because of that person's race, color, religion, political or social views, wealth or poverty. You should not even consider such matters. The same is true as to prejudice, for or against, and sympathy for any party.

Inferences From Statements of Court

You should not conclude from any conduct or words of mine that I favor one party or another, or that I believe or disbelieve the testimony of any witness. You, not I, are the sole judges of the believability of witnesses and the weight of the evidence. You must not be influenced in any way by my conduct during the course of the trial.

Burden of Proof — Preponderance of Evidence Standard

a. Preponderance of the Evidence

The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence.

In order to prove something by a preponderance of the evidence a party must prove that it is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

In determining whether a party has met the burden of proof you should consider the quality of all of the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced.

If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it.

Spoliation

The destruction of or the failure to preserve evidence by a party may give rise to an inference unfavorable to that party. If you find that the intent was to conceal the evidence, the destruction or failure to preserve must be inferred to indicate that the party believes that his or her case is weak and that he or she would not prevail if the evidence was preserved. If you find that the destruction or failure to preserve the evidence was negligent, you may, but are not required to, infer that the evidence, if preserved, would have been unfavorable to that party.

(3) Admonitions as to Juror Conduct

This case will probably take (insert number) days to conclude. During that period, there will be recesses and adjournments of court when you will be excused. From this point forward, until the case is over and you have rendered your verdict, you may not discuss the case with anyone who is not on the jury. You may not discuss the case even with each other during the trial. You must wait until after you have heard (1) all of the evidence, (2) my instructions as to the law, and (3) closing arguments. In fairness to all the parties to this case, you should keep an open mind throughout the trial. You should reach your final conclusions only during your deliberations after having heard all of the evidence, my instructions as to the law and the lawyers' closing arguments. Until the trial is over, you must avoid all contact of any kind with any of the participants in the trial, except for common courtesy such as the exchange of greetings. That includes the parties, the lawyers, the witnesses and any persons whom you see in close contact with these individuals. Do not visit the scene of any incident mentioned in the testimony or seek advice from friends or acquaintances as to any issues in this case or otherwise conduct investigation outside the courtroom. The reason for this is that you must decide the case only on the evidence which you have heard and seen in the courtroom and on nothing else.

b. Instructions at End of Trial

Members of the jury, the time has come for the Court to give you its instructions with respect to the law which is applicable in this case. You must apply the law as I explain it to you. Any comments I may make about the facts are only to help you and you are not required to agree with them. It is your function and responsibility to decide the facts. You must base your findings only upon the testimony, the exhibits received and the stipulation[s] of the parties, including any conclusions which may be fairly drawn from that evidence. Opening statements and arguments of the lawyers are not evidence in this case. If your memory of any of the testimony is different from any statement that I might make during the course of these instructions or that counsel might make in argument, you must rely on your own memory.

2. 1.2 QUESTIONS OF LAW DURING THE TRIAL

Questions of Law During Trial

During the course of the trial, it has been my duty to rule on a number of questions of law, such as objections to the admissibility of evidence, the form of questions, and other legal points. You should not draw any conclusions from these rulings either as to the merits of the case, or as to my views regarding any witness, party, or the case itself.

It is the duty of a lawyer to make objections which that lawyer believes are proper. You should not be influenced by the fact that these objections were made, no matter how the court may have ruled on them. You must disregard any evidence which I have ordered stricken.

3. 1.3 WITNESS TESTIMONY DURING TRIAL

Witness Testimony Consideration

You are the sole judges of whether testimony should be believed. In making this decision, you may apply your own common sense and everyday experiences.

In determining whether a witness should be believed, you should carefully judge all the testimony and evidence and the circumstances under which each witness has testified. Among the factors that you should consider are the following:

1. the witness' behavior on the stand and way of testifying;

2. the witness' opportunity to see or hear the things about which testimony was given;
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8. whether and the extent to which the witness' testimony in the court differed from the statements made by the witness on any previous occasion.

You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

4. 1.4 EXPERT WITNESS TESTIMONY

Expert Opinion Testimony

An expert is a witness who has special training or experience in a given field. You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider an expert's opinion together with all the other evidence.

5. 1.5 IMPARTIALITY IN CONSIDERATION

Impartiality in Consideration

You must consider and decide this case fairly and impartially. All persons, including corporations, stand equal before the law and are entitled to the same treatment under the law. You should not be prejudiced for or against a person because of that person's race, color, religion, political or social views, wealth or poverty. You should not even consider such matters. The same is true as to prejudice, for or against, and sympathy for any party.

6. 1.6 INFERENCES FROM STATEMENTS MADE BY THE COURT

Inferences From Statements of Court

You should not conclude from any conduct or words of mine that I favor one party or another, or that I believe or disbelieve the testimony of any witness.

You, not I, are the sole judges of the believability of witnesses and the weight of the evidence. You must not be influenced in any way by my conduct during the course of the trial.

7. 1.7 BURDEN OF PROOF-PREPONDERANCE OF THE EVIDENCE

Burden of Proof — Preponderance of Evidence Standard

a. Preponderance of the Evidence

The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence. In order to prove something by a preponderance of the evidence a party must prove that it is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

In determining whether a party has met the burden of proof you should consider the quality of all of the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced.

If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it.

8. 1.13 UNANIMOUS VERDICT

Conclusion — Unanimous Verdict

In order to reach a verdict in this case, each of you must agree upon it. Your verdict must be unanimous.

9. 10.1 INTRODUCTORY STATEMENT

Introductory Statement

In the event that you find for the plaintiff on the issue of liability, then you must go on to consider the question of damages. It will be your duty to determine what, if any, award will fairly compensate the plaintiff for the losses.

The burden is on the plaintiff to prove by the preponderance of the evidence each item of damage claimed to be caused by the defendant. In considering the items of damage, you must keep in mind that your award must adequately and fairly compensate the plaintiff, but an award should not be based on guesswork.

10. 10.2 COMPENSATORY DAMAGES

11. 10.3 SUSCEPTIBILITY TO INJURY

The effect that an injury might have upon a particular person depends upon the susceptibility to injury of the plaintiff. In other words, the fact that the injury would have been less serious if inflicted upon another person should not affect the amount of damages to which the plaintiff may be entitled.

12. 10:4 AGGRAVATION OF PREVIOUS CONDITION

A person who had a particular condition before the accident may be awarded damages for the aggravation or worsening of that condition.

Compensatory Damages for Bodily Injury

In an action for damages in a personal injury case, you shall consider the following:

1. The personal injuries sustained and their extent and duration;
2. The effect such injuries have on the overall physical and mental health and well-being of the plaintiff;
3. The physical pain and mental anguish suffered in the past and which with reasonable probability may be expected to be experienced in the future;
4. The disfigurement and humiliation or embarrassment associated with such disfigurement;
5. The medical and other expenses reasonably and necessarily incurred in the past and which with reasonable probability may be expected in the future;
6. The loss of earnings in the past and such earnings or reduction in earning capacity which with reasonable probability may be expected in the future.
7. In awarding damages in this case you must itemize your verdict or award to show the amount intended for:
8. The medical expenses incurred in the past;

9. The medical expenses reasonably probable to be incurred in the future;
10. The loss of earnings and/or earning capacity incurred in the past;
11. The loss of earnings and/or earning capacity reasonably probable to be expected in the future;
12. The “Noneconomic Damages” sustained in the past and reasonably probable to be sustained in the future. All damages which you may find for pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury are “Noneconomic Damages”;
13. Other damages.

13. 10.8 DAMAGES -COLLATERAL SOURCE RULE

Damages — Collateral Source Rule

In arriving at the amount of damages to be awarded for past and future medical expenses and past loss of earnings, you may not reduce the amount of your award because you believe or infer that the plaintiff has received or will receive reimbursement for or payment of proven medical expenses or lost earnings from persons or entities other than the defendant, such as, for example, sick leave paid by the plaintiff’s employer or medical expenses paid by plaintiff’s health insurer.

14. 10:26 MORTALITY TABLE - LIFE EXPECTANCE

Mortality Table — Life Expectancy

According to life expectancy tables, the life expectancy of a person of (insert number) years of age is (insert number) years. This figure is to assist you in determining the probable life expectancy of the plaintiff as it bears on future losses and damages. It is not conclusive proof of the life expectancy, and you are not bound by it. It is only an estimate based on average experience.

15. 18.1 STANDARD OF CARE

Standard of Care

The driver of a motor vehicle must use reasonable care. Reasonable care is that degree of caution and attention which a person of ordinary skill and judgment would use under similar circumstances. What constitutes reasonable care depends upon the circumstances of a particular case.

16. 18.4 VIOLATION OF STATUTE

Violation of Statute

The violation of a statute, which is a cause of the plaintiff's injuries or damages, is evidence of negligence.

17. 19.1 NEGLIGENCE - DEFINITION

Definition

Negligence is doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention or skill a reasonable person would use under similar circumstances.

18. 19.10 PROXIMATE AND CONCURRING CAUSES

Proximate and Concurring Causes

For the plaintiff to recover damages, the defendant's negligence must be a cause of the plaintiff's injury. [There may be more than one cause of an injury, that is, several negligent acts may work together. Each person whose negligent act is a cause of an injury is responsible.]

19. Transportation Article Section 21-901.1(b) Negligent Driving: You are instructed that a person is guilty of negligent driving if he drives a motor vehicle in a careless or imprudent manner that endangers any property or the life or person of any individual.

20. Transportation Article Section 21-801(b) Driver to Control Speed: You are instructed that it is the law of this State that at all times, the driver of a vehicle on a highway shall control the speed of the vehicle as necessary to avoid colliding with any person or any vehicle or other conveyance that, in compliance with legal requirements and the duty all persons to use due care, while on or entering the highway.

21. Transportation Article Section 21-310 Following Too Closely: You are instructed that it is the law of this State that the driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the other vehicle and of the traffic on and the condition of the highway.

22. A presumption of negligence arises where a motor vehicle stopped and that vehicle is suddenly struck from behind by another vehicle. From that presumption, the trier of fact may reasonably infer negligence on the part of the driver of the following vehicle. *Andrade v. Housein*, 147 Md. App. 617 (2002).

Respectfully submitted,

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