

1 turn to go home. That's -- if that's correct.

2 Q: But you -- you can't tell us if you did
3 that on this day though, can you?

4 MR. STEPHENSON: Asked and answered, Your
5 Honor.

6 THE COURT: Well, can you answer that, sir?

7 A: It's the way I turn to go home.

8 THE COURT: Okay.

9 Q: Thank you, Your Honor.

10 THE COURT: Any other cross?

11 Q: No questions.

12 THE COURT: Re-direct?

13 MR. STEPHENSON: No, thank you, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 THE COURT: Rebuttal?

16 MR. BRATT: None, Your Honor.

17 THE COURT: Okay, Counsel approach.

18 (Counsel approaches the bench.)

19 Motions?

20 MR. FORD: On behalf of the Defendant, Your
21 Honor, I would again move for -- judgment and I would
22 adopt the argument that I made at the close of the
23 Plaintiff's case.

24 THE COURT: Response.

25 MR. BRATT: I -- I'd make the same response,

1 Your Honor.

2 THE COURT: Are you gonna have a Motion Mr.
3 Stephenson?

4 MR. STEPHENSON: I -- I'm gonna let this go to
5 the jury, Your Honor.

6 THE COURT: Well, as I said before I'm glad I'm
7 not the tryer of fact cause this really is gonna hang on
8 credibility in my opinion. And I think Mr. Ford you're
9 close but you're -- can't do it. Can't pull the switch
10 because of the inferences.

11 So, I think the Verdict Sheet should be done
12 and what I do is I give them several written instructions
13 which are duplicative, oral ones like what negligence is,
14 preponderance, clocation and probably contributory will
15 be the ones we have here.

16 Any objection to that procedure?

17 MR. BRATT: No, Your Honor.

18 MR. STEPHENSON: No.

19 THE COURT: Motion is denied.

20 MR. BRATT: I have one request.

21 THE COURT: What?

22 MR. BRATT: If -- if we could have a brief
23 recess before we close.

24 THE COURT: We're going to get a recess; yeah.

25 MR. BRATT: Thank you.

1 (Counsel returns to trial tables.)

2 THE COURT: Okay members of the jury. That

3 concludes the evidentiary portion of the trial. We're

4 gonna take a break of about 15 minutes so I can get

5 together the jury instructions and the Verdict Sheet.

6 So Mr. Swann please show them out.

7 (Jurors are excused at 1:59 p.m.)

8 Okay.

9 THE CLERK: All rise.

10 (Court recesses at 1:59 p.m.)

11 (Court is in session at 2:26 p.m.)

12 THE COURT: Please be seated.

13 Who's our alternate? What number is that?

14 THE CLERK: I'm sorry, Your Honor.

15 THE COURT: The alternate number?

16 THE CLERK: Alternate; Number 30.

17 THE COURT: All right.

18 Thank you.

19 Anything before we bring the jury in?

20 Nope.

21 Let's bring them in.

22 (The jurors return to the courtroom at 2:26

23 p.m.)

24 Okay, let the record reflect the jury has

25 returned.

1 Members of the jury on each of your chairs are
2 two packets. One is your individual Verdict Sheet. I'd
3 ask the Foreman not make any stray markings on hers
4 because that will provided to the Clerk after you've
5 reached a verdict.

6 Additionally, there -- there's another packet
7 of I think four pages. Those are written instructions.
8 They're duplicate of my oral instructions. I'm merely
9 giving those to you in written form to cut down on your
10 note taking.

11 COURT'S INSTRUCTIONS

12 Now the time has come for the Court to give you
13 it's instructions with respect to the law which is
14 applicable in this case.

15 You must apply the law as I explain it to you.
16 Any comments I may make about the facts are only to help
17 you and you are not required to agree with them. It is
18 your function and responsibility to decide the facts.
19 You must base your finding only upon the testimony,
20 exhibits received, and the stipulations of the party
21 including any conclusions which may be fairly drawn from
22 that -- that evidence.

23 Opening statements and arguments of the
24 attorneys are not evidence in this case. If your memory
25 of the testimony, of any of the testimony, is different

1 from any statement that I may make during the course of
2 these instructions or that Counsel may make in argument
3 you must rely on your own memory.

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

11 It is the duty of an attorney to make
12 objections which that attorney believes are proper. You
13 should not be influenced by the fact that these
14 objections were made no matter how I ruled upon them.

15 You must disregard any evidence which I have
16 order -- ordered stricken. You must consider and decide
17 this case fairly and impartially. All persons including
18 corporations stand equal before the law and are entitled
19 to the same treatment under the law.

20 You should not be prejudice for or against the
21 person because of that person's race, color, religion,
22 political or social views, wealth or poverty. You should
23 not even consider such matters. The same is true as to
24 prejudice for or against and sympathy for any party.

25 You should not draw -- or you should conclude

1 from any conduct or (unintelligible) of mine that I favor
2 one party or another or that I believe or disbelieve the
3 testimony of any witness. You, not I, are the sole
4 judges of believability of witnesses and the weight of
5 the evidence. You must not be influenced in any way by
6 my conduct during the course of the trial.

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

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

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

25 Now, if you look on your Verdict Sheet you'll

1 count Sections 1 and 2. Those concern the allegations by
2 the Platen that one or both -- of the Defendants were
3 negligent. That burden is on the Plaintiff to prove.

4 On Question 3 which deals with contributory
5 negligence, each of the Defendants is saying well, if we
6 were negligent so was the Plaintiff. The burden of
7 proving contributory negligence will be on the Defense.

8 Now any person who testifies including the
9 party is a witness. You're the sole judges of whether
10 testimony should be believed. In making this decision
11 you may apply your own common sense in everyday
12 experiences. In determining whether a witness should be
13 believed you should carefully judge all the testimony and
14 evidence and the circumstances under which each witness
15 has testified.

16 Among the factors you should consider the
17 following. The witness's behavior on the stand and way
18 of testifying. The witness's opportunity to see or hear
19 the things about which testimony was given. The accuracy
20 of the witness's memory. Did the witness have a motive
21 not to tell the truth? Does the witness have an interest
22 in the outcome of the case? Was the witness's testimony
23 consistent? Was the witness's testimony supported or
24 contradicted by other evidence. And whether and the
25 extent to which the witnesses testimony in the courtroom

1 differed from statements made by the witness on any
2 previous occasion.

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

6 Now, negligence is doing something that a
7 person using reasonable care would not do or not doing
8 something that a person using reasonable care would do.

9 Reasonable care means that caution, attention
10 or skill a reasonable person would use under similar
11 circumstances.

12 In order for the Plaintiff to recover damages
13 the Defendant's negligent must be a cause of the
14 Plaintiff's injury. There may be more than one cause of
15 an injury. That is several negligent acts may work
16 together. Each person whose negligent act is the cause
17 of an injury is responsible.

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

24 A reasonable person changes conduct according
25 to the circumstances and the danger that is known or

1 would be appreciated by a reasonable person. Therefore,
2 if the foreseeable danger increases a reasonable acts
3 more carefully.

4 When the driver of a motor vehicle is faced
5 with a sudden and real emergency which was not created by
6 the driver's own conduct, the driver must exercise
7 reasonable care for his or her own safety and for the
8 safety of others.

9 The reasonableness of the driver's actions must
10 be measured by the standard of the acts of other drivers
11 of ordinary skill and judgment faced with the same
12 situation. A driver is not required to use the same
13 coolness or accuracy of judgment which is required of a
14 person who has an ample opportunity fully to exercise
15 judgment.

16 Now, the violation of the statute which is a
17 cause of the Plaintiff's injuries is evidence of
18 negligent. In this respect I've taken judicial notice of
19 certain sections of the Transportation Article of the
20 Annotated Code of Maryland.

21 The first is 21-303(B); the driver of a vehicle
22 overtaking another vehicle that is going in the same
23 direction shall pass to the left of the overtaking
24 vehicle at a safe distance.

25 Next is Section 21-309(A) (B), on any roadway

1 that is divided into two or more clearly marked lanes for
2 vehicular traffic, the following rules in addition to any
3 others consistent with them apply. A vehicle shall be
4 driven as nearly as practical entirely within a single
5 lane. It may not be moved from that lane or moved from a
6 shoulder or bikeway into a lane until the driver has
7 determined that it is safe to do so.

8 And Section 6 or 21604(C); a person may not if
9 another vehicle might be affected by the movement, turn a
10 vehicle until it gives an appropriate signal in the
11 manner required by the subtitle.

12 And Section 21-801(A) (B); a person may not move
13 a vehicle on a highway at a speed that with regard to the
14 actual and potential dangers existing is more than that
15 which is reasonable and prudent under the conditions. At
16 all times the driver of a vehicle on a highway shall
17 control the speed of the vehicle as necessary to avoid
18 colliding with any person or any vehicle or any other
19 conveyance that in compliance with legal requirements and
20 the duty of all persons to use due care is on or entering
21 the highway.

22 And then we have Section B of the -- okay, this
23 is 21-801.1(A) (B)4; unless there is a special danger that
24 requires a lower speed to comply with Section 21-801 of
25 the subtitle. The limit specified in this section or

1 otherwise established under the subtitle are maximum
2 speed limits. A person may not drive a vehicle on a
3 highway at a speed that exceeds these limits except as
4 otherwise provided in the section the maximum speed
5 limits are 50 miles and hour on undivided highways in
6 other locations.

7 Now a Plaintiff cannot recover if the
8 Plaintiff's negligence is a cause of the injury. The
9 Plaintiff has the burden of proving by preponderance of
10 the evidence that the Plaintiff's negligent was the cause
11 of the Plaintiff's injury.

12 An employer or a principle is responsible for
13 injuries or damages caused to others by acts of employees
14 or agents if the acts causing the injuries or damages
15 were within the scope of employment. The Defendant's are
16 -- the Defendant's suit as employer to employee.

17 Now in this case we have the Defendant who is
18 Mr. -- Danny Quade but he's technically not a Defendant.
19 But it has been stipulated that he was an employee of
20 Baltimore Tank Lines at the time of the alleged
21 collision. So the employer is responsible if you find
22 that Mr. Quade was negligent and his negligence was the
23 cause of the injury.

24 In this case it will be your duty to return
25 your verdict in the form of written questions to the

1 written -- or written answers to the written questions
2 which are submitted to you by the Court. Your answers
3 will constitute your verdict. Each answer is to be
4 written in the space provided after each question.

5 Before making each answer all of you must agree
6 upon it. In other words your verdict must be unanimous.
7 It is your duty to answer each of these questions in
8 accordance with the evidence in this case.

9 Counsel approach please.

10 (Counsel approaches the bench.)

11 Is the Plaintiff satisfied?

12 MR. BRATT: No, Your Honor. I have one issue.

13 THE COURT: What?

14 MR. BRATT: I -- I think the Court mixed the
15 words up on the contrib instruction. I think what Your
16 Honor said was the Plaintiff has the burden to -- to
17 prove whether the Plaintiff's negligence was a cause of
18 the injury.

19 THE COURT: Didn't I say the Defendant?

20 MR. BRATT: No.

21 THE COURT: Okay, I've given that one to them
22 in writing but I'll correct it again.

23 MR. BRATT: Thank you, Your Honor.

24 THE COURT: I'm sorry about that.

25 MR. FORD: Nothing.

1 THE COURT: Defense.

2 MR. STEPHENSON: (Inaudible.)

3 (Counsel returns to trial tables.)

4 Okay, members of the jury, when I gave you the
5 instruction on contributory negligence which is also
6 covered in the written instructions, it's the Defendant
7 has the burden of proving by preponderance of the
8 evidence that the Plaintiff's negligent was the cause of
9 an injury.

10 If I said it was the Plaintiff's burden I
11 apologize.

12 Now, at the end of all argument I'll have some
13 housekeeping instructions for the jury.

14 Please proceed.

15 MR. BRATT: Thank you, Your Honor.

16 CLOSING ARGUMENTS

17 BY MR. BRATT:

18 Good afternoon.

19 You can make an accident sound pretty
20 complicated if you try really hard, right? I don't
21 really think this is one of those situations. I don't
22 think this is a complicated accident. I don't think that
23 you should think this was a complicated accident.

24 You've heard exactly one version of how this
25 accident happened today. The only person who said