

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PAUL GOODMAN and
LINDA GOODMAN,

Plaintiffs,

Case No. 2:14-cv-11473-AJT-RSW
Hon. Arthur J. Tarnow

v

DILLON TRANSPORTATION, LLC,
a Tennessee limited liability company,

Defendant.

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M Civ JI 1.01 Introductory Comments

Ladies and gentlemen, I am Judge Tarnow, and it is my pleasure to welcome you to the United States District Court in the Eastern District of Michigan.

You have been called here today for possible selection as a juror in a civil case. The remarks which I am about to make are intended as an outline of the trial of this case so that you may be generally aware of what occurs during a trial and some of the legal principles that control the conduct of civil cases.

I know that jury duty may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are asked to perform. Our system of self-government could not exist without it.

The jury is an important part of this court. The right to a jury trial is an ancient tradition and part of our heritage. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Therefore, jurors must be as free as humanly possible from bias, prejudice, or sympathy for either side. Each side in a trial is entitled to jurors who keep open minds until the time comes to decide the case.

M Civ JI 1.02 Defining Legal Names of Parties and Counsel

This is a civil case involving a trailer that lowered approximately one foot while the Plaintiff was in the process of unloading it, which I will explain more fully later.

The persons bringing this case are called the plaintiffs. The plaintiffs are Paul and Linda Goodman [indicate where seated]. The lawyer for the plaintiff is Andrew Concannon [indicate where seated]. The person defending the case brought by the plaintiffs is called the defendant. The defendant is Dillon Transportation, LLC, their representative Klark Koharik, is seated with counsel [indicate where seated]. The lawyers for the defendant are David Yates and Eric Conn [indicate where seated].

M Civ JI 1.03 Explanation of Jury Selection and Voir Dire

A trial begins with jury selection. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case.

During jury selection the lawyers and I will ask you questions. The questions are meant to find out if you know anything about the case. Also, we need to find out if you have any opinions or personal experiences that might influence you for or against a party or witness. One of these could cause you to be excused, even though you may be otherwise qualified to be a juror.

The questions may probe deeply into your attitudes, beliefs, and experiences. The law requires that we get this information so that an impartial jury can be chosen. They are not meant to be an unreasonable prying into your private life.

If you do not hear or understand a question, you should say so. If you do understand it, you should answer it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

During jury selection you may be excused from serving on the jury in one of two ways. First, I may excuse you for cause; that is, I may decide that there is a valid reason why you cannot or should not serve in this case. The second way to be excused is by one of the lawyers. The law gives the lawyers for each side the right to excuse a limited number of jurors without giving any reason for doing so. If you are excused, don't feel bad or take it personally.

During the course of the jury selection process, if there is any matter you wish to discuss in private, please raise your hand or write a note to the bailiff.

M Civ JI 1.04 Juror Oath Before Voir Dire

I will now ask you to swear or affirm to answer truthfully, fully, and honestly all the questions that you will be asked about your qualifications to serve as a juror in this case. Please stand and raise your right hand.

“Do you solemnly swear or affirm that you will truthfully and completely answer all questions about your qualifications to serve as jurors in this case?”

M Civ JI 1.05 Prospective Jurors—Health and Other Problems

- (a) The witnesses who may be called in this case are: [read list of witnesses without designation of party who will call them] Plaintiff Paul Goodman, Plaintiff Linda Goodman, Miguel Urjiles, Klark Koharik, Dr. LaTonya Thomas, Dr. Paul LaClair, Dr. Mark Adams, Dr. Philip Mayer, Dr. Lisa Porter-Grenn, Michelle Robb, Scott Turner, Donald Willcutt, Dr. James Sprague, Andrew Nay, Craig Kitchen, Tom Wyroba, and Eric Mack. Does anyone know the defendant, the plaintiffs, or any of the lawyers or witnesses?
- (b) We think this trial will last for approximately two weeks. If you believe that the length of the trial will be a real hardship for you, please let me know now.
- (c) Some of you may have health problems that would prevent you from serving on a jury. Does anyone have a physical, mental, or other problem that may prevent you from serving on the jury? For example, does anyone have a medical problem that makes you unable to sit for two or three hours at a time? Does anyone have a sight or hearing problem?
- (d) Under guidelines established by the Michigan Supreme Court, I have approved a media request for cameras to be used during trial. I'll discuss this more later, but one of the rules is that you cannot be filmed or photographed. However, if you believe that the presence of the cameras will interfere with your ability to concentrate and render a fair and impartial verdict, raise your hand.

M Civ JI 1.10 Juror Oath Following Selection

I will now ask you to swear or affirm to perform your duty to try the case justly and to reach a true verdict. Please stand and raise your right hand.

“Do you solemnly swear or affirm that, in this case now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God?”

M Civ JI 2.01 Responsibilities of Judge and Jury

Now I am going to briefly explain to you my responsibilities as judge and your responsibility as jurors.

My responsibilities as the judge in this trial are to make sure that the trial is run fairly and efficiently, to make decisions about evidence, and to instruct you about the law that applies to this case. You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the facts of the case.

Your responsibility as jurors is to decide what the facts of the case are. This is your job, and no one else's. You must think about all the evidence and all the testimony and then decide what each piece of evidence means and how important you think it is.

M Civ JI 2.02 Description of Trial Procedure

Now I will briefly explain the general order of procedure in the trial from this point forward. First, the lawyer for the Plaintiff makes an opening statement in which he outlines his theory of the case. The lawyer for the defendant can then make an opening statement, or he can wait until later. These opening statements are not evidence. They are only intended to assist you in understanding the viewpoints and claims of the parties.

After the opening statements, we will begin the taking of evidence. Plaintiff's lawyer will present evidence first. He may call witnesses to testify and may also offer exhibits such as documents or physical objects. Defendant's lawyer has a right to cross-examine the witnesses called by the plaintiff. Following the Plaintiff's presentation, the defendant has the opportunity to present evidence. Plaintiff's lawyer has a right to cross-examine the witnesses called by the defendant.

After all the evidence has been presented, the lawyers for each side will make their closing arguments to you in support of their cases. You are again reminded that the statements of the lawyers are not evidence but are only intended to help you in understanding the evidence and the way each side sees the case. You must base your decision only on the evidence.

In this case, the Plaintiff has brought a claim involving negligence. Plaintiff, Paul Goodman, has the burden of proof of a preponderance of the evidence as to the following elements: Res Ipsa Loquitur. Plaintiff also has the burden of proof of a preponderance of the evidence that the incident caused him injury and that he has suffered damages as a result of the incident.

Plaintiff, Linda Goodman, has the burden of proof of a preponderance of the evidence the incident caused her a loss of society and companionship and that the incident caused her damages.

Defendant has the burden of proof of a preponderance of the evidence that the other non-parties such as TRW and/or Hendrickson were negligent and that their negligence caused the Plaintiff's injuries.

Defendant also has the burden of proof that the Plaintiff, Paul Goodman, was comparatively negligent.

Because no one can predict the course of a trial, these instructions may change at the end of the trial; if so, you should follow the instructions given at the conclusion of the trial. You will be given a written copy of the instructions I have just read for your use during the trial.

M Civ JI 2.03 Jury Deliberation; Jurors as Triers of Fact

After all of the evidence has been presented and the lawyers have given their arguments, I will give you detailed instructions about the rules of law that apply to this case. Then you will go to the jury room to decide on your verdict.

The responsibility of the jury is to determine the facts. You are the judges of the facts. You determine the weight, effect, and value of the evidence, as well as the credibility of the witnesses. You must consider and weigh the testimony of all witnesses who appear before you, and you determine whether to believe any witnesses and the extent to which any witness should be believed. It is your responsibility to consider any conflicts in testimony which may arise during the course of the trial. Your decision as to any fact in the case is final. On the other hand, it is your duty to accept the law as I instruct you.

M Civ JI 2.04 Jury Must Only Consider Evidence; What Evidence Is / Prohibited Actions by Jurors

(1) Your determination of the facts in this case must be based only upon the evidence admitted during the trial. Evidence consists of the sworn testimony of the witnesses. It also includes exhibits, which are documents or other things introduced into evidence.

(2) There are some things presented in the trial that are not evidence, and I will now explain what is not evidence:

(a) The lawyers' statements, commentaries, and arguments are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge. However, an admission of a fact by a lawyer is binding on his client.

(b) Questions by the lawyers, you or me to the witnesses are not evidence. You should consider these questions only as they give meaning to the witnesses' answers.

(c) My comments, rulings, [summary of the evidence,] and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

(3) In addition, you are not to consider anything about the case from outside of the courtroom as it is not evidence admitted during the trial. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because information obtained outside of the courtroom does not have to meet these standards, it could give you incorrect or misleading information that might unfairly favor one side, or you may begin to improperly form an opinion on information that has not been

admitted. This would compromise the parties' right to have a verdict rendered only by the jurors and based only on the evidence you hear and see in the courtroom. So, to be fair to both sides, you must follow these instructions. I will now describe some of the things you may not consider from outside of the courtroom:

(a) Newspaper, television, radio and other news reports, emails, blogs and social media posts and commentary about this case are not evidence. Until I discharge you as jurors, do not search for, read, listen to, or watch any such information about this case from any source, in any form whatsoever.

(b) Opinions of people outside of the trial are not evidence. You are not to discuss or share information, or answer questions, about this case at all in any manner with anyone—this includes family, friends or even strangers—until you have been discharged as a juror. Don't allow anyone to say anything to you or say anything about this case in your presence. If anyone does, advise them that you are on the jury hearing the case, ask them to stop, and let me know immediately.

(c) Research, investigations and experiments not admitted in the courtroom are not evidence. You must not do any investigations on your own or conduct any research or experiments of any kind. You may not research or investigate through the Internet or otherwise any evidence, testimony, or information related to this case, including about a party, a witness, an attorney, a court officer, or any topics raised in the case.

(d) Except as otherwise admitted in trial, the scene is not evidence. You must not visit the scene of the occurrence that is the subject of this trial. If it should become necessary that you view or visit the scene, you will be taken as a group. You must not consider as evidence any personal knowledge you have of the scene.

(4) To avoid even the appearance of unfairness or improper conduct on your part, you must follow the following rules of conduct:

(a) While you are in the courtroom and while you are deliberating, you are prohibited altogether from using a computer, cellular telephone or any other electronic device capable of making communications. You may use these devices during recesses so long as your use does not otherwise violate my instructions.

(b) Until I have discharged you as a juror, you must not talk to any party, lawyer, or witness even if your conversation has nothing to do with this case. This is to avoid even the appearance of impropriety.

(5) If you discover that any juror has violated any of my instructions about prohibited conduct, you must report it to me.

(6) After you are discharged as a juror, you may talk to anyone you wish about the case. Until that time, you must control your natural desire to discuss the case outside of what I've said is permitted.

M Civ JI 2.06 Prohibited Actions by Jurors

(1) Because the law requires that cases be decided only on the evidence presented during the trial and only by the deliberating jurors, you must keep an open mind and not make a decision about anything in the case until after you have (a) heard all of the evidence, (b) heard the closing arguments of counsel, (c) received all of my instructions on the law and the verdict form, and (d) any alternate jurors have been excused. At that time, you will be sent to the jury room to decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

(2) Before you are sent to the jury room to decide the case, you are not to discuss the case even with the other members of the jury. This is to ensure that all of you are able to participate in all of the discussions about the case, and so that you do not begin to express opinions about the case until it has been submitted to you for deliberation.

M Civ JI 2.08 Objections; Out-of-Presence Hearings

A trial follows established rules of procedure and evidence. During the trial the lawyers might make objections and motions. I will rule on these objections and motions according to the law. Don't conclude from any of my rulings that I have an opinion on the case or that I favor one side or the other. If I sustain an objection to a question and do not permit the witness to answer, don't guess what the answer might have been or draw any inference from the question itself.

Sometimes the lawyers and I are required to consider objections and motions outside your hearing. We may take care of these matters at the bench or in my chambers, or I may excuse you so that we can take care of them in the courtroom. It is impossible to predict when such a conference may be required or how long it will last. I will conduct these conferences so as to use as little of your time as possible. I may also have to take care of other matters which have nothing to do with this case. Do not concern yourselves with any of these matters which must be decided out of your presence or hearing.

M Civ JI 2.10 Inability to Hear Witness or See Exhibit

Please let me know immediately if you cannot hear a witness or see what is being demonstrated.

M Civ JI 2.11 Questions by Jurors Allowed

During the testimony of a witness, you might think of an important question that you believe will help you better understand the facts in this case. Please wait to ask the question until after the witness has finished testifying and both sides have finished their questioning. If your question is still unanswered, write the question down, raise your hand, and pass the question to the bailiff. The bailiff will give it to me. Do not ask the witness the question yourself, show the question to the other jurors, or announce what the question is.

There are rules of evidence that a trial must follow. If your question is allowed under those rules, I will ask the witness your question. If your question is not allowed, I will either rephrase it or I will not ask it at all.

M Civ JI 2.13 Note Taking by Jurors Allowed

You may take notes during the trial if you wish, but of course you don't have to. If you do take notes, you should be careful that it does not distract you from paying attention to all the evidence. When you go to the jury room to decide your verdict, you may use your notes to help you remember what happened in the courtroom. If you take notes, do not let anyone see them. After you have begun your deliberations, it is then permissible to allow other jurors to see your notes. [You must turn your notes over to the bailiff during recesses.] The notes will be destroyed at the end of the trial.)

M Civ JI 2.14 Reference Documents

You will now be given a binder including the instructions I just read. You must turn your binder over to the bailiff during recesses.

M Civ JI 3.01 Faithful Performance of Duties; Jury to Follow Instructions

Members of the jury, the evidence and argument in this case have been completed and I will now instruct you on the law. That is, I will explain the law that applies to this case.

Faithful performance by you of your duties is vital to the administration of justice.

The law you are to apply in this case is contained in these instructions, and it is your duty to follow them. In other words, you must take the law as I give it to you. You must consider them as a whole and not pick out one or some instructions and disregard others.

Following my instructions you will go to the jury room and deliberate and decide on your verdict.

M Civ JI 3.02 Facts to Be Determined from Evidence

It is your duty to determine the facts from evidence received in open court. You are to apply the law to the facts and in this way decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

M Civ JI 3.03 Admission of Evidence

The evidence you are to consider consists of testimony of witnesses and exhibits offered and received. The admission of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit to which an objection was sustained or any testimony which was ordered stricken.

M Civ JI 3.05 Corporations Entitled to Unprejudiced Treatment

The corporation defendant in this case is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.

M Civ JI 3.06 Whether Party Is Insured Is Irrelevant

Whether a party is insured has no bearing whatever on any issue that you must decide. Don't even discuss or speculate about insurance.

M Civ JI 3.09 Jury to Consider All the Evidence

In determining whether any fact has been proved, you shall consider all of the evidence bearing on that fact without regard to which party produced the evidence.

M Civ JI 3.10 Circumstantial Evidence

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it is raining.

Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You must consider all the evidence, both direct and circumstantial.

M Civ JI 3.11 Jurors May Take into Account Ordinary Experience and Observations

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life, and to take into account whether any particular evidence seems reasonable and probable. However, if you have personal knowledge of any particular fact in this case, that knowledge may not be used as evidence.

M Civ JI 3.15 Prior Inconsistent Statement of Witness

If you decide that a witness said something earlier that is not consistent with what the witness said at this trial, you may consider the earlier statement in deciding whether to believe the witness, but you may not consider it as proof of the facts in this case.

However, there are exceptions. You may consider an earlier statement as proof of the facts in this case if:

- (a) the statement was made by the Plaintiff, the Defendant, or an agent or employee of either party; or
- (b) the statement was given under oath subject to the penalty of perjury at a trial, hearing, or in a deposition; or
- (c) the witness testified during the trial that the earlier statement was true.

M Civ JI 4.01 Credibility of Witnesses

You are the judges of the facts in this case, and you must determine which witnesses to believe and what weight to give to their testimony. In doing so you may consider each witness's ability and opportunity to observe, his or her memory, manner while testifying, any interest, bias or prejudice, and the reasonableness of the testimony considered in the light of all the evidence.

M Civ JI 4.06 Witness Who Has Been Interviewed by an Attorney

It has been brought out that a lawyer or a representative of a lawyer has talked with a witness. There is nothing wrong with a lawyer or a representative of a lawyer talking with a witness for the purpose of learning what the witness knows about the case and what testimony the witness will give.

M Civ JI 4.07 Weighing Conflicting Evidence—Number of Witnesses

Although you may consider the number of witnesses testifying on one side or the other when you weigh the evidence as to a particular fact, the number of witnesses alone should not persuade you if the testimony of the lesser number of witnesses is more convincing.

M Civ JI 4.11 Consideration of Deposition Evidence

During the trial, you heard testimony from a deposition. A deposition is the sworn testimony of a party or witness taken before trial. All parties and their lawyers had the right to be present and to ask questions.

You are to give this evidence the same consideration as you would have given it had the witnesses testified in open court.

M Civ JI 10.01 Definitions Introduced

I shall now give you the definitions of some important legal terms. Please listen carefully to these definitions so that you will understand the terms when they are used later.

“Accident not proof of negligence—Exception: res ipsa loquitur”

The Plaintiffs are proceeding on the basis of a legal theory or doctrine known in the law as *res ipsa loquitur*, which means “the thing speaks for itself.” If the Plaintiff satisfies the elements of *res ipsa loquitur*, it will entitle them to a presumption or inference of negligence. To avail themselves of the doctrine of *res ipsa loquitur*, the Plaintiff must satisfy the following elements:

- (1) The event must be of a kind which ordinarily does not occur in the absence of someone’s negligence;
- (2) It must be caused by an agency or instrumentality within the exclusive control of the Defendant;
- (3) It must not have been due to any voluntary action or contribution on the part of the Plaintiff; and
- (4) Evidence of the true explanation of the event must be more readily accessible to the Defendant than to the Plaintiffs.

M Civ JI 10.02 Negligence of Adult—Definition

Negligence is the failure to use ordinary care. Ordinary care means the care a reasonably careful person would use. Therefore, by “negligence,” I mean the failure to do something that a reasonably careful person would do, or the doing of something that a reasonably careful person would not do, under the circumstances that you find existed in this case.

The law does not say what a reasonably careful person using ordinary care would or would not do under such circumstances. That is for you to decide.

M Civ JI 10.05 Duty to Use Ordinary Care—Adult—Defendant

It was the duty of Paul Goodman, Dillon Transportation LLC, TRW and Hendrickson, in connection with this occurrence, to use ordinary care for the safety of the Plaintiff.

M Civ JI 11.01 Comparative Negligence—Definition

The total amount of damages that the Plaintiff would otherwise be entitled to recover shall be reduced by the percentage of Plaintiff's negligence that contributed as a proximate cause to his injury.

This is known as comparative negligence.

The Plaintiff, however, is not entitled to noneconomic damages if he is more than 50 percent at fault for his injury.

M Civ JI 15.01 Definition of Proximate Cause

When I use the words “proximate cause” I mean first, that the negligent conduct must have been a cause of Plaintiff’s injury, and second, that the Plaintiff’s injury must have been of a type that is a natural and probable result of the negligent conduct.

M Civ JI 15.03 More Than One Proximate Cause

There may be more than one proximate cause. To be a proximate cause, the claimed negligence need not be the only cause nor the last cause. A cause may be proximate although it and another cause act at the same time or in combination to produce the occurrence.

M Civ JI 36.15 No-Fault Auto Negligence: Burden of Proof—Economic and/or Noneconomic Loss (To Be Used in Cases in Which 1995 PA 222 Applies)*

In order to recover damages for either economic or noneconomic loss, Plaintiff has the burden of proof on each of the following three elements:

- (1) The event must be of a kind which ordinarily does not occur in the absence of someone's negligence;
- (2) It must be caused by an agency or instrumentality within the exclusive control of the Defendant;
- (3) It must not have been due to any voluntary action or contribution on the part of the Plaintiff;
- (4) Evidence of the true explanation of the event must be more readily accessible to the Defendant than to the Plaintiffs;
- (5) Plaintiff, Paul Goodman suffered an injury related to the incident on April 26, 2012; and
- (6) The April 26, 2012 incident was a proximate cause of Plaintiff, Paul Goodman's injury.

ECONOMIC LOSS

I instruct you that you may not arrive at your verdict by the process of guess, conjecture, or speculation.

If you decide that all of these have been proved, then (subject to the rule of comparative negligence, which I will explain) Plaintiff is entitled to recover damages for economic loss resulting from that injury, including all wage loss after April 26, 2015 that you determine the plaintiff has incurred.

If you find that Plaintiff is entitled to recover for work loss, you must reduce that by the taxes that would have been payable on account of income plaintiff would have received if he or she had not been injured.

NONECONOMIC LOSS

As to Plaintiff's claim for damages for noneconomic loss, plaintiff has the burden of proving an additional element:

(7) that Plaintiff's injury resulted in serious impairment of body function or permanent serious disfigurement.

If you decide that all four elements have been proved, then (subject to the rule of comparative negligence, which I will explain) Plaintiff is entitled to recover damages for noneconomic loss that you determine the Plaintiff has sustained as a result of that injury.

COMPARATIVE NEGLIGENCE

The Defendant has the burden of proof on their claim that the Plaintiff was negligent and that such negligence was a proximate cause of plaintiff's injury.

If your verdict is for the Plaintiff and you find that the negligence of both parties was a proximate cause of Plaintiff's injury, then you must determine the degree of such negligence, expressed as a percentage, attributable to each party.

Negligence on the part of the Plaintiff does not bar recovery by Plaintiff against the Defendants for damages for economic loss. However, the percentage of negligence attributable to the Plaintiff will be used by the court to reduce the amount of damages for economic loss that you find were sustained by Plaintiff.

Negligence on the part of the Plaintiff does not bar recovery by Plaintiff against the Defendants for damages for noneconomic loss unless Plaintiff's negligence is more than 50 percent. If the Plaintiff's negligence is more than 50 percent, your verdict will be for the Defendants as to Plaintiff's claim for damages for noneconomic loss. Where the Plaintiff's negligence is 50 percent or less, the percentage of negligence attributable to Plaintiff will be used by the court to reduce the amount of damages for noneconomic loss that you find were sustained by the Plaintiff.

The Court will furnish a Special Verdict Form that will list the questions you must answer. Your answers to the questions in the verdict form will constitute your verdict.

M Civ JI 8.01 Definition of Burden of Proof

I have just listed for you the propositions on which the Plaintiff has the burden of proof. For the Plaintiff to satisfy this burden, the evidence must persuade you that it is more likely than not that the proposition is true.

You must consider all the evidence regardless of which party produced it.

M Civ JI 36.11 No-Fault Auto Negligence: Serious Impairment of Body Function—Definition (To Be Used in Cases in Which 1995 PA 222 Applies)

One of the elements Plaintiff must prove in order to recover noneconomic loss damages in this case is that he sustained a serious impairment of body function.

Serious impairment of body function means an objectively manifested impairment of an important body function that affects the Plaintiff's general ability to lead his normal life. An impairment does not have to be permanent in order to be a serious impairment of body function.

M Civ JI 36.01A No-Fault Auto Negligence: Noneconomic Loss Damages for Non-Continuing Serious Impairment Threshold Injury

If you find Plaintiff suffered serious impairment of body function his injury has ceased, or may in the future cease to be a serious impairment of body function, that fact will not relieve Defendant from liability for any of the noneconomic loss damages suffered by Plaintiff as a proximate result of Defendant's negligence.

M Civ JI 36.04 No-Fault Auto Negligence: Elements of Proof—Explanation of Noneconomic-Economic Distinction

The Plaintiff claims two different types or classes of damages in this case. The elements which the Plaintiff has the burden of proving with respect to each type of damages are somewhat different. The first type or class of damages is generally referred to as “noneconomic” loss damages and consists of such things as physical pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation or mortification, disability, aggravation of preexisting ailment or condition, future physical pain and suffering, future mental anguish, future fright and shock, future denial of social pleasure and enjoyments, future embarrassment, humiliation or mortification, future disability and/or future aggravation of preexisting ailment or condition...

The second type or class of damages sought by Plaintiff is generally referred to as “economic” loss damages and consists of all wage loss after April 26, 2015.

As I indicated, what the Plaintiff must prove differs somewhat depending on which type of damages claim is being considered—economic or noneconomic loss damages. I will now instruct you regarding the elements which the Plaintiff must prove.

M Civ JI 36.06 No-Fault Auto Negligence: Burden of Proof—Economic Loss

As to Plaintiff's claim for economic loss damages, the Plaintiff has the burden of proof on each of the following:

- (1) The event must be of a kind which ordinarily does not occur in the absence of someone's negligence;
- (2) It must be caused by an agency or instrumentality within the exclusive control of the Defendant;
- (3) It must not have been due to any voluntary action or contribution on the part of the Plaintiff;
- (4) Evidence of the true explanation of the event must be more readily accessible to the Defendant than to the Plaintiffs;
- (5) That the Plaintiff sustained economic damages beyond three years;
- (6) That the negligence of the Defendant was a proximate cause of Plaintiff's damages.

Your verdict will be for the Plaintiff if he sustained economic damages beyond three years and Defendant was negligent, and such negligence was a proximate cause of Plaintiff's damages.

Your verdict will be for the Defendant if Plaintiff did not sustain economic damages beyond three years, or if Defendant's negligence was not a proximate cause of Plaintiff's damages.

The Court will furnish you with a Special Verdict Form that will list the questions you must answer. Your answers to the questions will constitute your verdict.

M Civ JI 40.01 Two or More Plaintiffs—Separate Consideration—Repeating Instructions

There are two Plaintiffs in this trial. Each Plaintiff is entitled to separate consideration of their own case. I shall not repeat my instructions for each Plaintiff. Unless I tell you otherwise, all instructions apply to each Plaintiff.

M Civ JI 40.02 Assessment of Damages

If your verdict is for one of the Plaintiffs, you shall determine their damages and return a verdict in that amount. If your verdict is for more than one of the Plaintiffs, you shall determine the amount of their damages separately, and return a verdict in that separate amount for each Plaintiff.

M Civ JI 42.05 Allocation of Fault of Parties and Identified Nonparties

If you find that Defendant and an identified nonparty are at fault, then you must allocate the total fault among all the parties and identified nonparties who are at fault.

In determining the percentage of fault of each person, you must consider the nature of the conduct of each person and the extent to which each person's conduct caused or contributed to the Plaintiff's injury. The total must add up to 100 percent.

M Civ JI 50.01 Measure of Damages—Personal and Property

If you decide that the Plaintiffs are entitled to damages, it is your duty to determine the amount of money which reasonably, fairly and adequately compensates them for each of the elements of damage which you decide has resulted from the negligence of the defendant, taking into account the nature and extent of the injury.

You should include each of the following elements of damage which you decide has been sustained by the Plaintiff to the present time:

- (a) physical pain and suffering
- (b) mental anguish
- (c) fright and shock
- (d) denial of social pleasure and enjoyments
- (e) embarrassment, humiliation or mortification
- (f) increase in pain arising from aggravation of a preexisting ailment or condition
- (g) reasonable expenses of necessary medical care, treatment and services
- (h) loss of earning capacity

You should also include each of the following elements of damage which you decide plaintiff is reasonably certain to sustain in the future:

- (a) physical pain and suffering
- (b) mental anguish
- (c) fright and shock
- (d) denial of social pleasure and enjoyments
- (e) embarrassment, humiliation or mortification

(f) increase in pain arising from aggravation of a preexisting ailment or condition

(g) reasonable expenses of necessary medical care, treatment and services

(h) loss of earning capacity

If any element of damage is of a continuing nature, you shall decide how long it may continue. If an element of damage is permanent in nature, then you shall decide how long the Plaintiff is likely to live.

Which, if any, of these elements of damage has been proved is for you to decide based upon evidence and not upon speculation, guess or conjecture. The amount of money to be awarded for certain of these elements of damage cannot be proved in a precise dollar amount. The law leaves such amount to your sound judgment. Your verdict must be solely to compensate Plaintiff for his damages, and not to punish the Defendant.

M Civ JI 50.10 Defendant Takes the Plaintiff As They Finds Them

You are instructed that the Defendant takes the Plaintiffs as they find them. If you find that the Plaintiffs were unusually susceptible to injury, that fact will not relieve the Defendant from liability for any and all damages resulting to Plaintiff as a proximate result of Defendant's negligence.

M Civ JI 50.11 Inability to Determine Extent of Aggravation of Injuries

If an injury suffered by Plaintiff is a combined product of both a preexisting injury and the effects of Defendant's negligent conduct, it is your duty to determine and award damages caused by Defendant's conduct alone. You must separate the damages caused by Defendant's conduct from the condition which was preexisting if it is possible to do so.

However, if after careful consideration, you are unable to separate the damages caused by Defendant's conduct from those which were preexisting, then the entire amount of Plaintiff's damages must be assessed against the Defendant.

M Civ JI 50.21 Personal Injury Action: Definition of Economic Loss and Noneconomic Loss Damages; Separation of Future Damages by Year

In this case, you must determine a separate amount for each year in the future for which Plaintiff will sustain damages.

You will also be required to separate the two types of damages available in this case. The first type, “economic loss” damages, consists of such things as medical expenses, loss of wages or lost earning potential, and miscellaneous expenses. The second type, “noneconomic loss” damages, means damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, and loss of earning capacity.

M Civ JI 52.01 Measure of Damages—Injury to Spouse

In this case Linda Goodman is claiming that she sustained damages as a result of injury to her spouse. If you find that Paul Goodman is entitled to damages, then it is your duty to determine the amount of money which will reasonably, fairly and adequately compensate Linda Goodman for any of the following elements of damage she has sustained to the present time as a result of injury to her spouse.

- (a) the reasonable expense of necessary medical care, treatment and services received by her spouse
- (b) the reasonable value of the services of her spouse of which she has been deprived
- (c) the reasonable value of the society, companionship and sexual relationship with her spouse of which she has been deprived

You should also include the amount of money that will compensate Linda Goodman for such of these elements of damage as you decide are reasonably certain to be sustained in the future. If any element is of a continuing nature, you shall decide how long it may continue. If an element of damage is permanent in nature, then you shall decide how long Linda Goodman and her spouse are each likely to live and how long the Plaintiff is likely to sustain that element of damage.

Which, if any, of these elements of damage have been proved is for you to decide based upon evidence and not upon speculation, guess or conjecture. The amount of money to be awarded for certain of these elements of damage cannot be proved in a precise dollar amount. The law leaves such amount to your sound judgment. Your verdict must be solely to compensate Linda Goodman and not to punish the Defendant.

M Civ JI 53.03A Future Damages (Personal Injury Action)—Reduction to Present Cash Value

If you decide that Plaintiff is entitled to an award of future damages, you should award the full value of future damages as you determine them. You should not reduce any award of future damages to present cash value.

M Civ JI 53.04 Interest—As Part of Damages

If you decide Plaintiff has suffered damages, you should determine when those damages began, and add interest from then to March 24, 2014[at a rate of [*insert rate*] percent per year.

M Civ JI 53.05 Mitigation of Damages—Failure to Exercise Ordinary Care

A person has a duty to use ordinary care to minimize his damages after he has been injured. It is for you to decide whether Plaintiff failed to use such ordinary care and, if so, whether any damage resulted from such failure. You must not compensate the Plaintiff for any portion of his damages which resulted from his failure to use such care.

M Civ JI 53.06 Effect of Inflation on Future Damages

If you decide that the Plaintiff will sustain damages in the future, you may consider the effect of inflation in determining the damages to be awarded for future losses.

M Civ JI 60.01 Jury Deliberations

You will be given a written copy of the final jury instructions for your use in the jury room for deliberation.

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. She or he should see to it that the discussion goes forward in an orderly fashion and that each juror has full opportunity to discuss the issues.

When at least five of you agree upon a verdict, it will be received as your verdict. In your deliberations, you should weigh the evidence with an open mind and consideration for each other's opinions.

If differences of opinion arise, you should discuss them in a spirit of fairness and frankness. You should express not only your opinion but also the facts and reasons upon which you base it.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced that it is wrong. However, none of you should surrender your honest conviction as to the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

During your deliberations, and before you reach a verdict, you must not disclose anything about your discussions to others outside the jury room, not even how your voting stands. Therefore, until you reach a verdict, do not disclose that information, even in the courtroom.

During your deliberations you may not communicate with persons outside the jury room (other than the judge), or seek information by any means, including cellular telephones or other electronic devices. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. You may not use these electronic means to investigate or communicate about the case because it is important that you decide the case based solely on the evidence presented in the courtroom and my instructions on the law. Information from the Internet or available through social media might be wrong, incomplete, or inaccurate.

If you discover a juror has violated my instructions, you should report it to me right away.

That concludes my instructions on the law. If you have any questions about these instructions at this point, please write them down and give them to the bailiff. The bailiff will then give them to me, and after consulting with counsel, I will address your questions.

[There being no further questions / No questions having been asked], it is now time for you to go into the jury room and begin your deliberations.

If you wish to communicate with me or examine the exhibits while you are deliberating, please have your foreperson write a note and give it to the bailiff. If you have any questions about my instructions on the law, please place those particular questions in a sealed envelope. Any questions or communications with me must be given to the bailiff, who will then pass them to me, and I will address the questions or communications with counsel and respond as appropriate.