

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
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FILED

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RALPH F. MADISON,  
Plaintiff,  
v.  
ARNOLD C. REYNOLDS,  
Defendant.

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Civil No. 1:03-CV-336

CLERK  
BY mfm  
DEPUTY CLERK

CHARGE TO THE JURY

Now that you have heard the evidence and arguments, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and not question it, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole.

The lawyers may have referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by the lawyers and the law stated by the Court in these instructions, you are to follow the Court's instructions.

Nothing I say in these instructions is an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather it is yours.

You must perform your duties as jurors without bias or

prejudice as to any party. You are not to be governed by sympathy, prejudice or public opinion.

All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

### Evidence in the Case

Statements and arguments of counsel are not evidence in the case. However, when the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, and all facts which may have been admitted or stipulated.

Any evidence to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be disregarded.

### Evidence--Direct, Indirect, or Circumstantial

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence--such as the testimony of an eyewitness. The other is indirect or circumstantial evidence --the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

## Credibility of Witnesses -- Discrepancies in Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is believable. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness' ability to observe the matters to which the witness testifies, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, any bias or prejudice, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or

hear it differently, which is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Verdict -- Unanimous -- Duty to Deliberate

The verdict must represent the considered judgment of each juror. To return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTIONS OF LAW

It is now my duty to give you instructions concerning the law that applies to this case. It is your duty as jurors to follow the law as stated in these instructions. You must then apply these rules of law to the facts you find from the evidence.

It is the sole province of the jury to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any question of fact.

As you have heard, this case involves a dispute about who was at fault in the collision between the pickup truck driven by Ralph Madison and the farm tractor driven by Arnold Reynolds.

The plaintiff's claims are based on a theory of negligence. To prevail, the plaintiff must prove to you, by a preponderance of the evidence, each element of that theory. The defendant denies he is at fault and asserts that plaintiff is comparatively negligent. To prevail, defendant must prove to you, by a preponderance of the evidence, each element of the theory of comparative negligence.

## Burden of Proof and Preponderance of the Evidence

Ordinarily, the burden is on the plaintiff in a civil action to prove every essential element of its claim by a preponderance of the evidence. In this case, to prevail, plaintiff Madison must prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claims by a preponderance of the evidence, you should find for the defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true.

Stated another way, to establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a fact, claim or affirmative defense has been proven by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called

them, and all the relevant exhibits received in evidence,  
regardless of who may have produced them.

## Negligence

Plaintiff Ralph Madison is proceeding against defendant Arnold Reynolds on a theory of negligence. Negligence is the breach of a legal duty to exercise ordinary or due care which a prudent person would exercise under the same or similar circumstances. Negligence may consist of omitting to do something a reasonably prudent person would do or doing something which a reasonably prudent person would not do under the same or similar circumstances.

In general, a duty in negligence cases may be defined as an obligation to conform to a particular standard of conduct toward another. Here, an operator of a vehicle or tractor has the duty at all times to maintain a lookout for persons and property on the highway, and to use reasonable care to avoid inflicting injuries on such persons or property; and he is chargeable with knowledge of objects on the highway which are in plain view.

To prevail on his negligence claim, the plaintiff must prove the following by a preponderance of the evidence.

First, plaintiff must prove that Arnold Reynolds had duty to act with reasonable, ordinary care for his own safety and the safety of others under substantially similar circumstances.

Second, plaintiff must prove that Mr. Reynolds failed to act with reasonable, ordinary care under the circumstances. Ordinary care is defined as that care which a reasonable,

prudent person would exercise under substantially similar circumstances in order to avoid injury to themselves or to the person or property of others.

Lastly, the plaintiff must prove defendant's negligence was a proximate cause of the damage sustained by the plaintiff. Injuries or damages are "proximately caused" by the act of another when it appears by a preponderance of the evidence that the act played a substantial part in bringing about or actually causing the harm. This does not mean, however, that the law recognizes only one proximate cause of an injury or damage, consisting of only one factor or thing, or the conduct of only one person or entity. On the contrary, many factors or things, or the conduct of two or more persons, may operate either independently or together, to cause injury or damage, and in such a case, each may be a proximate cause.

### Violation of Safety Statute

You may find certain Vermont safety statutes, or "rules of the road," relevant to whether the plaintiff Madison and/or defendant Reynolds were negligent under the circumstances. A violation of one or more of these rules of the road, if established, may be evidence of negligence, that is, a failure to use reasonable, ordinary care.

Such a rule violation initially creates a rebuttable presumption of negligence by the violator. If the violator provides evidence that the particular rule violation was justified, or that he exercised due care despite the rule violation, the presumption of negligence disappears, although you may still ultimately conclude that the particular violation is evidence of negligence.

In determining whether or not plaintiff Madison and/or defendant Reynolds were negligent under the circumstances, you may also consider that each of them had the right to assume that the other would observe Vermont's rules of the road. A motorist will be justified in proceeding on this assumption until reasonable prudence indicates that such an assumption is unwarranted.

Finally, if you decide that plaintiff Madison and/or defendant Reynolds' violation of one or more Vermont rules of the road constitutes negligence, you must decide whether this negligence was a proximate cause of the harm, that is, whether

the particular rule violation (1) led to the harm in a natural and uninterrupted sequence of events; (2) was a substantial factor in bringing about the harm; and (3) the harm would not have happened if the particular rule had not been violated.

### Slow Moving Vehicles

A person operating a farm tractor upon the public highways is subject to all Vermont motor vehicle laws. Under the Vermont rules of the road, upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as reasonably practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway. A person operating a slow-moving vehicle which impedes other traffic on a highway shall pull off the highway at the first opportunity to allow the traffic to pass before proceeding.

### Speed

Under Vermont rules of the road, no person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions, having regard for the actual and potential hazards then existing. Every person shall drive at an appropriate, reduced speed when approaching and crossing an intersection.

### Turning

A vehicle shall only be driven within the proper lane of travel and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety. No person shall stop, change direction, or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give such a signal. A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning. The driver of a vehicle intending to turn to the left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction.

### Overtaking from Behind and Passing on the Left

A vehicle may overtake another vehicle proceeding in the same direction from behind by passing to the left of the center of the highway if this movement can be made with safety. A person must ascertain that the left side of the highway is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completed without interfering with the operation of any vehicle overtaken. A vehicle being overtaken must give way to the right in favor of the overtaking vehicle on audible signal and shall not increase its speed until it has been completely passed. A vehicle shall not pass another from the rear when approaching within 100 feet of, or traversing, any intersection unless otherwise indicated by official traffic control devices.

### Comparative Negligence

Defendant Arnold Reynolds claims that plaintiff Ralph Madison was comparatively negligent for any harm he suffered. If you find that plaintiff Madison has failed to prove that defendant Reynolds was negligent or that plaintiff has failed to prove that any negligence on the part of Mr. Reynolds was a proximate cause of the harm, you need go no further in your deliberations.

If, however, you find that plaintiff Madison has carried his burden of proving that Mr. Reynolds was negligent and that this negligence was a proximate cause of the harm, then you will go on to consider whether Mr. Madison himself was comparatively negligent.

The burden of proof is on defendant Reynolds to prove each and every element of comparative negligence. These elements mirror those elements which you have already considered when determining whether Arnold Reynolds was negligent. Accordingly, in making your determination on the issue of comparative negligence, you should refer to the definitions of "negligence," "duty," and "proximate cause" and the Vermont statutes which I have already given you.

To prevail on a comparative negligence defense, defendant Reynolds must first prove that plaintiff Madison had a duty to act with reasonable care for his own safety and the safety of

others under substantially similar circumstances. Second, defendant Reynolds must prove that plaintiff Madison failed to act with reasonable, ordinary care under the circumstances. And third, defendant Reynolds must prove that plaintiff Madison's failure to use ordinary care was a proximate cause of the harm.

### Allocation of Causal Negligence

If you find that defendant Reynolds has failed to prove that plaintiff Madison was negligent or that defendant has failed to prove that any negligence on the part of Mr. Madison was a proximate cause of the harm, your task is complete and you need deliberate no further.

If you determine that plaintiff Madison's responsibility is 51% (or more than 51%), your task is complete and you need deliberate no further. In other words, if you find that plaintiff Madison's own causal negligence is greater than 50%, then plaintiff Madison cannot recover anything and you must enter a verdict for defendant Reynolds.

If, however, you find that defendant Reynolds has carried his burden of proving that plaintiff Madison was himself negligent and that Mr. Madison's negligence was a proximate cause of the harm he himself suffered in the accident, then you should allocate or assign a percentage of causal negligence to Mr. Madison and a percentage of causal negligence to Mr. Reynolds (when added together, these two percentage figures must equal 100%).

Election of a Foreperson

I will select \_\_\_\_\_ to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

A form of special verdict has been prepared for your convenience. You will take this form to the jury room. I direct your attention to the form of the special verdict.

[Form of special verdict is read.]

The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided for each question and will date and sign the special verdict, when completed.

Verdict Form -- Jury's Responsibility

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

### Conclusion

To return a verdict, all jurors must agree to the verdict. In other words, your verdict must be unanimous.

Upon retiring to the jury room your foreperson will preside over your deliberations and be your spokesperson here in court.

When you have reached a unanimous verdict, your foreperson should sign and date the verdict form.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing, signed by the foreperson, and pass the note to the court security officer. He will then bring the message to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I may address your question orally. I caution you, with regard to any message or question you might send, that you should never specify where you are in your deliberations or your numerical division, if any, at the time.