

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

EDWARD S. BAKER,	:	
Plaintiff,	:	
	:	
v.	:	Docket No. 2:04-CV-58
	:	
SCOTT YELLE,	:	
Defendant.	:	

**JURY CHARGE**

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

The Plaintiff in this case is Edward Baker, represented by John Evers and James Swift. The Defendant is Scott Yelle, represented by Barbara Blackman. As you are aware, this case involves an accident on Route 78 in Alburg, Vermont. Plaintiff alleges that the accident was caused by Defendant's negligence. Defendant denies this allegation.

As you have already been told, the sole issue before you is whether Plaintiff or Defendant is responsible for the accident. You should not speculate or consider whether either party may have sustained damages or injuries in the accident.

## ROLE OF THE COURT AND THE JURY

Now that you have listened carefully to the testimony presented to you, you must decide the factual issues of this case. You are the sole and exclusive judges of the facts.

You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law may be or ought to be, it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything but the evidence in the case.

Nothing I say in court or in these instructions is to be taken as an indication that I have any opinion about the facts of the case. It is your function, not mine, to determine the facts.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should appraise the evidence deliberatively and without sympathy, bias, or prejudice for or against any party.

## DIRECT AND CIRCUMSTANTIAL EVIDENCE

The law recognizes two types of evidence: direct and circumstantial. Direct evidence is provided when, for example, people testify to what they saw or heard themselves; that is, something of which they have knowledge by virtue of their senses. Circumstantial evidence consists of proof of facts and circumstances from which in terms of common experience, one may reasonably infer the ultimate fact sought to be established. As

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

### CREDIBILITY OF WITNESSES

You as jurors are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to give the same weight to the testimony of each witness; you may accept or reject the testimony of any witness in whole or in part.

The weight of the evidence is not determined by the number of witnesses testifying. 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 may well hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance or to unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

### **BURDEN OF PROOF AND PREPONDERANCE OF THE EVIDENCE**

Because this is a civil case, Plaintiff has the burden of proving every element of his claim by a preponderance of the evidence. To prove something by a preponderance of the evidence means to prove that something is more likely true than not true. A preponderance of the evidence means the greater weight, or logic, or persuasive force of the evidence. It does not mean the greater number of witnesses or documents. It is a matter of quality, not quantity.

If, after considering all of the evidence, you conclude that Plaintiff has failed to establish any essential element of his claim by a preponderance of the evidence, you should find for Defendant. If after such consideration you find the evidence of both parties to be in balance or equally probable, then Plaintiff has failed to sustain his burden and you must find for Defendant. If you find that Plaintiff has established all essential elements of his claim by a preponderance of the evidence, you should find for Plaintiff.

### **NEGLIGENCE**

Plaintiff alleges that the accident was caused by Defendant's negligent failure to operate his vehicle with due care. To prevail on this claim, Plaintiff must prove by a preponderance of the evidence both of the following elements:

1. That Defendant failed to operate his vehicle with due care; and
2. That Defendant's failure to operate with due care was a proximate cause of the accident.

To establish the first element, Plaintiff must prove by a preponderance of the evidence that Defendant breached his duty to operate with due care. In making this determination, you should take the following rules of the road into consideration. A driver has the duty to drive his vehicle, as nearly as practicable, entirely within a single lane, and not to move from that lane without first ascertaining that the movement can be made with safety. If attempting to pass, he must exercise care that a careful and prudent person would exercise in the same circumstances. In addition, a driver must drive at a speed no greater than is reasonable and prudent under the conditions, having regard for actual and potential hazards. He has a duty to maintain a proper lookout for persons on the highway and use reasonable diligence to avoid injuries to himself and others. In this regard, a driver is deemed to be aware of objects that are in plain view. Finally, negligence may lie in the creation of a dangerous situation, even if the final injury is activated by the conduct of someone else.

To establish the second element, Plaintiff must prove by a preponderance of the evidence that Defendant's failure to operate with due care was a proximate cause of the accident. An act or

omission is the proximate cause of an injury if it directly and in a natural and continuous sequence produces, or contributes substantially to producing the injury, so it can reasonably be said that, except for the act or omission, the injury would not have occurred.

The law recognizes that there may be more than one proximate cause of an accident. Multiple factors may operate at the same time, or independently, to cause the accident, and each may be a proximate cause. Plaintiff must prove by a preponderance of the evidence that Defendant's breach of duty was a proximate cause of the accident, but he is not required to show that it was the only proximate cause.

#### **COMPARATIVE NEGLIGENCE**

As part of his defense to Plaintiff's suit, Defendant has raised the defense of comparative negligence. Defendant claims that Plaintiff was himself negligent and that his own negligence was the cause of his injuries.

Just as Plaintiff bears the burden of proof in showing that Defendant was negligent, Defendant bears the burden of showing that Plaintiff was negligent. To do so, Defendant must prove by a preponderance of the evidence both of the following elements:

1. That Plaintiff failed to operate his vehicle with due care; and
2. That Plaintiff's failure to operate with due care was a proximate cause of the accident.

To establish the first element, Defendant must prove by a preponderance of the evidence that Plaintiff breached his duty to operate with due care. The same rules of the road that applied to Defendant's actions also apply to Plaintiff's actions. That is, a driver has the duty to drive his vehicle, as nearly as practicable, entirely within a single lane, and not to move from that lane without first ascertaining that the movement can be made with safety. If attempting to pass, he must exercise care that a careful and prudent person would exercise in the same circumstances. In addition, a driver must drive at a speed no greater than is reasonable and prudent under the conditions, having regard for actual and potential hazards. He has a duty to maintain a proper lookout for persons on the highway and use reasonable diligence to avoid injuries to himself and others. In this regard, a driver is deemed to be aware of objects that are in plain view. Finally, negligence may lie in the creation of a dangerous situation, even if the final injury is activated by the conduct of someone else.

If you find by a preponderance of the evidence that Plaintiff was confronted with a situation which would have appeared perilous to an ordinary prudent person in Plaintiff's situation, you may consider that fact in determining whether Plaintiff was negligent. When one is confronted with a sudden peril through no fault of his own, he is not held to the same

standard as when he has time for reflection, for the law recognizes that a prudent person brought face to face with an unexpected danger may fail to use the best judgment or may not choose the best available method of meeting the dangers of the situation. Under such circumstances, he is not negligent if he does what a prudent man would have done.

To establish the second element, Defendant must prove by a preponderance of the evidence that Plaintiff's failure to operate with due care was a proximate cause of the accident. I have already explained the definition of proximate cause. Remember that there may be more than one proximate cause of an accident. Defendant must prove by a preponderance of the evidence that Plaintiff's breach of duty was a proximate cause of the accident, but he is not required to show that it was the only proximate cause.

**ASSIGNING PERCENTAGE OF RESPONSIBILITY IF BOTH PARTIES ARE RESPONSIBLE**

If you conclude that both Defendant and Plaintiff failed to operate with due care, and that the failures of both parties contributed to the accident, then it will be your job to ascribe a percentage of responsibility to each party. That is, you must determine what percentage of the accident is a result of Defendant's negligence, and what percentage is the result of Plaintiff's. Those percentages must add up to 100%.

If you find that Plaintiff's responsibility for the accident



was more than 50%, then your verdict will be for Defendant, and Plaintiff will not be entitled to damages. If Plaintiff's responsibility was 50% or less, then your verdict will be for Plaintiff.

#### **UNANIMOUS VERDICT**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree.

It is your duty as jurors to consult with one another, and to deliberate with a view toward reaching an agreement, if you can do so without violence to your 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 your fellow jurors or for the mere purpose of returning a verdict.

#### **CLOSING INSTRUCTIONS**

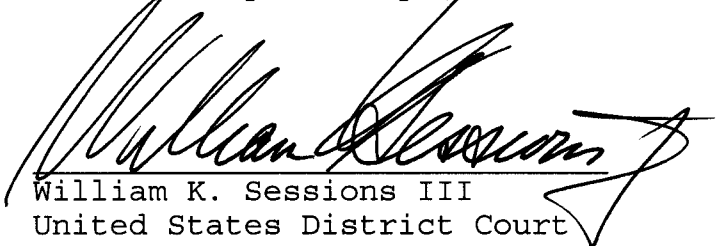
I have selected \_\_\_\_\_ to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court. A copy of this charge will go with you into the jury room for your use.

A verdict form has been prepared for your convenience. You will take this form to the jury room. Each of the questions on the verdict form requires the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question, and will date and sign the form when it is completed.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the Courtroom Security Officer signed by your foreperson. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing. All other persons are also forbidden to communicate in any way or manner with any member of the jury on any subject related to the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Dated at Burlington, Vermont this 26th day of July, 2006



William K. Sessions III  
United States District Court