

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

SCHATZILEIN BUCK, :
 :
 Plaintiff, :
 :
 v. : Case No. 2:14-cv-157
 :
 NORTHERN NEW ENGLAND : (Lead Case)
 TELEPHONE OPERATIONS, LLC :
 :
 Defendant. :

and

YOLANDA BLAIR, :
 :
 Plaintiff, :
 :
 v. : Case No. 2:14-cv-158
 :
 NORTHERN NEW ENGLAND :
 TELEPHONE OPERATIONS, LLC :
 :
 Defendant. :

JURY CHARGE

Members of the Jury:

As you now know, this case stems from a car accident that took place in Irasburg, Vermont on August 2, 2011. Plaintiffs Schatzilein Buck and Yolanda Blair claim that the accident was caused by the negligence of James Baker. Mr. Baker was an employee of the Defendant, Northern New England Telephone Operations, LLC. The Defendant argues that it was Ms. Buck whose negligence caused the accident.

ROLE OF THE COURT, THE JURY AND COUNSEL

You have listened carefully to the testimony presented to you. Now you must pass upon and decide the factual issues of

this case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them. I shall shortly define the word "evidence" and instruct you on how to assess it, including how to judge the credibility of the witnesses.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. 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 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 these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. That is your function.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should appraise the evidence deliberatively and without the slightest trace of sympathy, bias or prejudice for or against any party. All parties expect that you will carefully 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

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits admitted into evidence, and all the facts admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses - something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is the exhibit's existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence for it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but requires that your verdict must be based on all the evidence presented.

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 accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness since you may accept or reject the testimony of any witness in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. 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. Innocent misrecollection or failure of recollection is not an uncommon experience. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or 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.

EXPERT WITNESSES

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience or training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, his or her opinions, reasons for testifying, as well as all of the other considerations that

ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in the case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists only of the sworn testimony of witnesses, the stipulations made by the parties and all exhibits admitted into evidence.

During the course of the trial I occasionally asked questions of a witness in order to bring out facts not then fully covered in his or her testimony. Do not assume that I hold any opinion on matters related to my questions.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the statements of the

witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

BURDEN OF PROOF

This is a civil case and as such Ms. Buck and Ms. Blair have the burden of proving every element of their claims by a "preponderance of the evidence." The phrase "preponderance of the evidence" means the evidence of greater weight, logic, or persuasive force. It does not mean the greater number of witnesses or documents. It is a matter of quality, not quantity. Preponderance of the evidence is evidence that is more convincing and produces in your minds a belief that what is sought to be proved is more likely true than not. In other words, to establish a claim or a defense by a "preponderance of the evidence" means proof that the claim or defense is more likely so than not so. In determining whether any fact at issue has been proven by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of which party called them, and all the exhibits received in evidence, regardless of which party may have produced them.

CORPORATION ENTITLED TO TREATMENT AS A PERSON

The Defendant in this case is a corporation. The fact that

a corporation is involved must not affect your decision in any way. A corporation and all other persons are equal before the law and must be treated as equals in a court. You should consider and decide this case as an action between persons.

VICARIOUS LIABILITY

A corporation can only act through its officers, employees, and agents and is liable for the acts and omissions of an employee who is acting within the scope of his employment. For the purposes of your deliberations, you should consider any act or omission of James Baker to be the act or omission of the Defendant.

NEGLIGENCE

In their complaint, the Plaintiffs allege that Mr. Baker's negligence caused their injuries. To prevail on their claims, the Plaintiffs must prove by a preponderance of the evidence both of the following elements:

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

To establish the first element, the Plaintiffs must prove by a preponderance of the evidence that Mr. Baker 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 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. A driver also has a duty, when intending to turn to the left within an intersection, to yield the right of way to any vehicle approaching from the opposite direction which is either within the intersection or so close as to constitute an immediate hazard. 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, the Plaintiffs must prove by a preponderance of the evidence that Mr. Baker'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. The Plaintiffs must prove by a preponderance of

the evidence that Mr. Baker's breach of duty was a proximate cause of the accident, but they are not required to show that it was the only proximate cause.

COMPARATIVE NEGLIGENCE

As part of its defense to Ms. Buck's claims, the Defendant has raised the defense of comparative negligence. The Defendant claims that Ms. Buck was herself negligent and that her negligence was a proximate cause of the accident.

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

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

To establish the first element, the Defendant must prove by a preponderance of the evidence that Ms. Buck breached her duty to operate with due care. The same rules of the road that applied to Mr. Baker's actions also apply to Ms. Buck's actions. That is, a driver must drive at a speed no greater than is reasonable and prudent under the conditions, having regard for actual and potential hazards. She has a duty to maintain a proper lookout for persons on the highway and use reasonable

diligence to avoid injuries to herself 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, the Defendant must prove by a preponderance of the evidence that Ms. Buck'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. The Defendant must prove by a preponderance of the evidence that Ms. Buck's breach of duty was a proximate cause of the accident, but it is not required to show that Ms. Buck's breach was the only proximate cause.

ASSIGNING PERCENTAGE OF RESPONSIBILITY IF BOTH MR. BAKER AND MS. BUCK ARE RESPONSIBLE

If you conclude that both Mr. Baker and Ms. Buck 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 those parties. That is, you must determine what percentage of the accident is a result of Mr. Baker's negligence, and what percentage is the result of Ms. Buck's negligence. Those percentages must add up to 100%.

If you find that Ms. Buck's responsibility for the accident was more than 50%, then she will not be entitled to damages. If

Ms. Buck's responsibility was 50% or less, then you will render a verdict in her favor and should go on to consider damages, but you will reduce any damage award for Ms. Buck by the percentage of negligence you have attributed to her.

COMPARATIVE NEGLIGENCE DOES NOT APPLY TO MS. BLAIR

The Defendant does not assert comparative negligence with respect to Ms. Blair, the passenger in the car driven by Ms. Buck. Consequently, you may not assign any percentage of negligence to Ms. Blair. Because Ms. Blair's only claim is against the Defendant, she may recover any and all damages due to her if you find that Mr. Baker's negligence was a proximate cause of the accident. In other words, Ms. Blair is entitled to a full recovery if you find that Mr. Baker was at least 1% responsible for the accident.

DAMAGES

If you determine that the Defendant is liable to the Plaintiffs, you must determine the amount of damages that each Plaintiff sustained as a result of Mr. Baker's negligence. The fact that I am about to instruct you as to the proper measure of damages does not reflect any view of mine as to which party is entitled to your verdict. Instructions as to the measure of damages are given for your guidance in the event you find in favor of the Plaintiffs by a preponderance of the evidence in accordance with the other instructions.

The word "damages" is a legal term referring to the amount of monetary payment to which the Plaintiffs are entitled in order to compensate them for injuries that resulted from the accident. These are called "compensatory damages." Compensatory damages seek to make a plaintiff whole--that is, to compensate them for any harm that they may have suffered.

The Plaintiffs have the burden of proving by a preponderance of the evidence the extent and nature of any injuries, that the injuries they sustained were proximately caused by the accident, and the amount of money to be awarded. You may only award such damages as are supported by the evidence.

In determining the amount of damages to allow the Plaintiffs, you may draw such inferences as are justified by your common experiences and observations of humankind, from the evidence of the nature of the injuries and the results thereof. You may also consider whether it is more probable than not that their damages will continue into the future as a direct, natural and probable consequence of Mr. Baker's negligence and, if so, award the Plaintiffs full, fair and adequate compensation for those future damages.

The damages you award must be fair and reasonable, neither inadequate nor excessive. You should not award damages for speculative injuries, but only for those injuries that Plaintiffs have actually suffered or which they are reasonably likely to

suffer in the future. The reason behind awarding damages to a plaintiff is not to punish a defendant for any wrongdoing but to compensate the plaintiff for injuries incurred as a result of the defendant's negligence.

In awarding compensatory damages, should you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. However, the law does not require the Plaintiffs to prove the amount of their losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

AGGRAVATION OF PRE-EXISTING CONDITION

In calculating the Plaintiffs' damages, keep in mind that the Plaintiffs cannot recover for any physical ailment or disability that existed before the accident. Each Plaintiff can only recover for damage due to enhancement or aggravation of a preexisting condition, and not the condition itself. In essence, each Plaintiff should only be compensated to the extent you find that she was further injured by the negligence of the Defendant.

ITEMS TO BE CONSIDERED IN CALCULATING DAMAGES

You may consider the following in order to determine compensatory damages:

1. The cost of medical expenses incurred by the Plaintiffs, and the reasonable present value of similar expenses that will likely be incurred in the future.

2. Any pain, suffering and mental distress that the Plaintiffs suffered as a result of the accident, experienced from the date of the accident to the present. This includes compensation for physical pain, discomfort, fears, anxiety, and mental and emotional distress.
3. Any pain, suffering and mental distress, if any, as you may reasonably find they are likely to endure in the future as a result of the accident.
4. If you find that the Plaintiffs have established permanent injuries, such compensation as would fairly and fully compensate them for any loss of enjoyment of life which they have sustained as a result of the Defendant's negligence--that is, the inability, if any, to carry on and enjoy a life in the same manner as if the accident had not occurred.

It may be difficult to place a dollar value on some of these elements of damages, because they cannot be exactly determined. You must use your own reasonable judgment to determine what amount will fully, fairly and reasonably compensate the Plaintiffs for the categories of damages I have described to you.

MITIGATION OF DAMAGES

A person who is injured by the negligent acts of another is bound to exercise reasonable care and diligence to avoid loss or to minimize or lessen the resulting damages. For example, a plaintiff's failure to follow recommended treatment following an accident could be a basis for concluding that the plaintiff had failed to mitigate or lessen her own damages. If you find that either Plaintiff could reasonably have avoided some of her damages claimed by taking any reasonable action, such as seeking other medical care or engaging in reasonable rehabilitation, you

must reduce your award of damages by an amount equal to those damages that the Plaintiff could have avoided.

VERDICT BASED UPON EVIDENCE

Your verdict in this case must be based solely upon the evidence presented at the trial of this case, whether testimonial or documentary, and legitimate inferences to be drawn therefrom. Your verdict may not be based upon sympathy for a party, prejudice, passion, speculation or conjecture.

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 3rd day of November, 2016

/s/ William K. Sessions III
William K. Sessions III
United States District Court