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FILED

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY, IOWA

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LINN COUNTY, IOWA

MATTHEW MCQUILLEN and
ELIZABETH MCQUILLEN, as LIMITED
CO-GUARDIANS AND CO-
CONSERVATORS OF MARGARET G.
MCQUILLEN,

Plaintiffs,

vs.

WEST SIDE TRANSPORT, INC. and
CLIFFORD CHARLES TAKES,

Defendants.

CASE NO. LACV099133

FINAL JURY INSTRUCTIONS

STATEMENT OF THE CASE

On March 19, 2020, Margaret McQuillen was operating her vehicle on Highway 151 near the intersection of Circle Drive in Anamosa, Iowa. At the same time and place, Clifford Takes was an employee of West Side Transport, Inc. and was operating a Freightliner tractor and semi-trailer owned by West Side Transport, Inc. Clifford Takes was traveling northbound on Highway 151. An accident occurred when Clifford Takes was turning left across the southbound lanes of Highway 151 in foggy conditions at the intersection of Circle Drive. The vehicle operated by Margaret McQuillen collided with the underside of the semi-trailer. As a result of the collision, Margaret McQuillen was injured. Plaintiffs Matthew McQuillen and Elizabeth McQuillen, as Co-Guardians and Co-Conservators of Margaret McQuillen, seek damages from West Side Transport, Inc. and Clifford Takes. West Side Transport, Inc. and Clifford Takes deny they were negligent and allege Margaret McQuillen was negligent.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

YOU ARE INSTRUCTED AS FOLLOWS:

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Whether or not any party has insurance has nothing to do with the issues to be decided by the jury.

INSTRUCTION NO. 2

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes during a trial references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory, and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias, and prejudice

INSTRUCTION NO. 5

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 6

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 7

You have heard evidence claiming Clifford Takes made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the person had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that person's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that person's testimony during the trial but you are not required to do so. You should not disregard that person's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 8

You have seen witnesses use demonstrative aids in explaining their testimony. The demonstrative aids may be used to assist witnesses in their testimony but are not by themselves considered evidence.

INSTRUCTION NO. 9

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 10

In these instructions I will be using the term “fault.” Fault means one or more acts or omissions towards the person or property of another which constitutes negligence.

The mere fact an accident occurred or a party was injured does not mean a party was at fault.

INSTRUCTION NO. 11

“Negligence” means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 12

The conduct of a party is a “cause” of damage when the damage would not have happened except for the conduct.

There can be more than one cause of an injury or damage.

INSTRUCTION NO. 13

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the parties, and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 14

After you have compared the conduct of all parties, if you find that Margaret McQuillen was at fault, and her fault was more than 50% of the total fault, the Plaintiffs cannot recover damages.

However, if you find that Margaret McQuillen's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of Margaret McQuillen's fault.

INSTRUCTION NO. 15

A corporation is liable for the negligent, wrongful acts of an employee if the acts are done in the scope of the employment. It is stipulated that Clifford Takes was operating the Freightliner tractor and semi-trailer within the scope of his employment for West Side Transport, Inc. Therefore, West Side Transport, Inc. will be liable for the negligence, if any, of Clifford Takes.

INSTRUCTION NO. 16

FAULT OF CLIFFORD TAKES

Plaintiffs allege that Clifford Takes was at fault. Plaintiffs must prove all of the following three numbered propositions in one or more of the specifications in order to find Clifford Takes at fault.

1. Clifford Takes was negligent in one or more of the following ways:
 - a. Failing to yield the right-of-way upon a left turn; or
 - b. Failure to maintain a proper lookout; or
 - c. Failure to discontinue operation of a vehicle under hazardous conditions.
2. The negligence was a cause of damage to Margaret McQuillen; and
3. The amount of damages.

If the Plaintiffs have failed to prove any one of these three numbered propositions, then Plaintiffs are not entitled to damages against Clifford Takes, and you shall not assign any fault to Clifford Takes on the verdict form. If the Plaintiffs have proved all three of the numbered propositions, you will then consider the defense of comparative fault as explained in Instruction Nos. 13, 14, and 17.

INSTRUCTION NO. 17

FAULT OF MARGARET MCQUILLEN

Defendants West Side Transport and Clifford Takes claim that Margaret McQuillen was at fault. Defendants must prove both of the following propositions to establish fault on the part of Margaret McQuillen:

1. Margaret McQuillen was negligent in one or more of the following ways:
 - a. Driving her vehicle without having the vehicle's headlights illuminated when fog conditions reduced visibility to 500 feet or less; or
 - b. Failing to maintain a proper lookout; and
2. Margaret McQuillen's negligence was a cause of damage to Margaret McQuillen.

If Defendants have failed to prove either of these propositions, then they have not proved their defense of comparative fault. If Defendants have proved both of these propositions, then you will assign a percentage of fault against Margaret McQuillen and include her fault in the total percentage of fault found by you in answering the verdict form.

INSTRUCTION NO. 18

As used in these instructions, a “proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver’s vehicle in relation to what the driver saw or should have seen. The duty to maintain a proper lookout includes the duty to use reasonable care in the operation of the driver’s vehicle given the particular conditions in existence at the time.

INSTRUCTION NO. 19

Drivers of commercial motor vehicles have a duty to discontinue operation of their vehicle under hazardous conditions, until the commercial motor vehicle can be safely operated.

INSTRUCTION NO. 20

Under Iowa law, the driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or so close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.

A violation of this law is negligence.

INSTRUCTION NO. 21

Iowa law requires that every motor vehicle on the highway display headlights when conditions such as fog, snow, sleet or rain provide insufficient lighting to render clearly noticeable persons and vehicles on the highway 500 feet ahead. Headlights are not required under Iowa law when visibility exceeds 500 feet.

A violation of this law is negligence.

INSTRUCTION NO. 22

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

INSTRUCTION NO. 23

Conformity with federal regulations is evidence that a party was not negligent and nonconformity with regulations is evidence a party was negligent.

INSTRUCTION NO. 24

If you find Plaintiffs are entitled to recover damages, you shall consider the following items:

1. The present value of reasonable and necessary hospital, doctor, and medical services which will be incurred in the future.
2. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
3. Loss of function of the body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner.
4. The present value of future loss of function of the body.
5. Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
6. The present value of future physical and mental pain and suffering.
7. Permanent disfigurement and scarring.

The amount you assess for physical pain and suffering and for loss of function of the body cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for

INSTRUCTION NO. 24, CONTINUED

any item of damage must not exceed the amount caused by Clifford Takes and/or West Side Transport as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 25

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

INSTRUCTION NO. 26

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Margaret McQuillen is 59.31 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Margaret McQuillen's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 27

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 28

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

INSTRUCTION NO. 29

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence.

Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 30

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, X (formerly known as Twitter), email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

It is important that we have your full and undivided attention during the remainder of this trial and during your deliberations.

INSTRUCTION NO. 31

Upon retiring to deliberate, you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 32

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering the case with the parties. I have tried to use language which is generally understandable. Usually your questions about the instructions can be answered if you carefully re-read them.

If, however, you feel it necessary to ask a question about the instructions, your foreperson must write the question down and give it to the court attendant, who will deliver it to me. I must then contact the parties and speak to them about your question. This will not occur in your presence. Therefore, it will take some time and deliberation before I can provide you a written answer to your question. Because no additional evidence will be presented, and because these instructions contain all of the law necessary to render verdicts in this case, my written answer may simply refer you back to these instructions. Please save any written questions and the written answers and return them with your verdict form when you have completed your deliberations.

The court attendants who work with you in this case are in the same position as I am. They will take an oath not to communicate with you about your deliberations. They have not spoken to you during the trial except about the mechanics of being a juror; they will not speak to you when you have retired to deliberate except to ask if you have agreed upon a verdict and to manage the logistics of your service. Please do not place the court attendants on the spot by asking any questions about the instructions or the evidence. Any such questions must be directed to the court, pursuant to the procedure described above.

INSTRUCTION NO. 33

There is no deadline for your deliberations. You will not be sequestered—that is, you will be free to go home each evening if you deliberate for more than one day. You will stay together during the day while you deliberate, including during meals, which will be provided for you by the Court. You may generally choose when to take breaks, but you should not resume deliberations until all jurors are back together. Generally, deliberations will end at 4:30 p.m. and begin again at 9:00 a.m. the next business day, if necessary.

Cell phones are not allowed in the jury room during deliberations. Before you enter the jury room, give your cell phones to the court attendant for safekeeping. The cell phones will be returned to their owners when the jury deliberations are concluded or when you leave the courthouse for the day. Should you need to notify a family member or anyone else about the time you will be here or the time you will be getting home, please notify the court attendant and we will make a phone available for you.

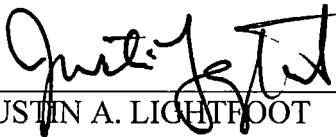
INSTRUCTION NO. 34

I am giving you one verdict form containing several questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your verdict must be unanimous. If you all agree, the verdict must be signed by your foreperson.

After deliberating for six hours from 1 o'clock P.m., excluding meals or recesses outside your jury room, then it is necessary that all but one of you agree upon the verdict. In that case, the verdict and questions must be signed by all seven jurors who are in agreement.

When you have agreed upon the verdict and appropriately signed it, inform the Court Attendant that you have arrived at a verdict.

Dated this 7th day of June, 2024.



JUSTIN A. LIGHTFOOT
District Judge
Sixth Judicial District, State of Iowa