IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

WAYMOND GLENN LYONS,	)	
Plaintiff,	)	
v.	)	**Civil No. 09-2005-P**
JOHN W. HUNTER and HEARTLAND EXPRESS, INC. OF IOWA,	)	
Defendants.	)	

JURY INSTRUCTIONS

Introduction Before Deliberations

Members of the Jury:

You have now heard all of the evidence in the case. It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is also my duty at the end of the trial to instruct you on the law applicable to the case.

You, as jurors, are the judges of the facts. But in determining what actually happened in this case -- that is, in

reaching your decision as to the facts -- it is your sworn duty to follow the law I am now in the process of defining for you.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

EVIDENCE

You are to decide this case only from the evidence which was presented at this trial. The evidence consists of:

1. The sworn testimony of the witnesses who have testified, both in person and by deposition;

2. The exhibits that were received and marked as evidence;

3. Any facts to which all the lawyers have agreed or stipulated; and

4. Any other matters that I have instructed you to consider as evidence.

Direct and Circumstantial Evidence

There are two kinds of evidence; direct and circumstantial. By way of explanation, direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves. You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

STATEMENTS OF COUNSEL – EVIDENCE STRICKEN OUT – INSINUATIONS OF QUESTIONS

In reaching your verdict you may consider only the evidence that was admitted. Remember that any questions, objections, statements or arguments made by the attorneys during the trial are not evidence. If the attorneys have stipulated or agreed to any fact, however, you will regard that fact as having been proved. Testimony that you have been instructed to disregard is not evidence and must not be considered. If evidence has been received only for a limited purpose, you must follow the limiting instructions I have given you. You are to decide the case solely on the evidence received at trial.

ORDINARY OBSERVATIONS AND EXPERIENCES

Although you must only consider the evidence in this case in reaching your verdict, you are not required to set aside your common knowledge. You are permitted to weigh the evidence in the light of your common sense, observations and experience.

Credibility Of Witnesses

You, as members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you, and to give the testimony of the witnesses the weight, faith, credit and value to which you think it is entitled.

You will note the manner and demeanor of witnesses while on the stand or on video. You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood and whether or not the witness was a frank witness.

You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common

observations gained by you in your various walks in life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which ones of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood. Immaterial discrepancies do not affect a witness' testimony, but material discrepancies do. The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular state of facts. Rather, it depends on the weight, credit and value of the total evidence on either side of the issue, and of this you, as jurors, are the exclusive judges. If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then the jury must find against that party upon whom the burden of proof has been cast in accordance with these instructions.

DISCREPANCIES IN TESTIMONY

There may be discrepancies or differences within a witness' testimony or between the testimony of different witnesses. This does not necessarily mean that a witness should be disbelieved. Sometimes when two people observe an event they will see or hear it differently. Sometimes a witness may have an innocent lapse of memory. Witnesses may testify honestly but simply may be wrong about what they thought they saw or remembered. You should consider whether a discrepancy relates to an important fact or only to an unimportant detail.

Impeachment-Inconsistent Statements

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony. If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves. If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves. An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

EXPERT TESTIMONY — DETERMINATION OF WEIGHT

Usually witnesses are not permitted to testify as to opinions or conclusions. However, a witness who has scientific, technical, or other specialized knowledge, skill, experience, training, or education may be permitted to give testimony in the form of an opinion. Those witnesses are often referred to as “expert witnesses.”

You should determine the weight that should be given to each expert's opinion and resolve conflicts in the testimony of different expert witnesses. You should consider:

1. The education, qualifications, and experience of the witnesses; and,

2. The credibility of the witnesses; and,

3. The facts relied upon by the witnesses to support the opinion; and,

4. The reasoning used by witnesses to arrive at the opinion.

You should consider each expert opinion and give it the weight, if any, that you think it deserves. You are not required to accept the opinion of any expert.

The Law

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If a lawyer or party has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty, but it is your duty, and yours alone, to determine what the facts are and after you have determined what the facts are, to apply the law as I give it to you, free from any bias, prejudice or sympathy, either one way or the other.

ADMITTED FAULT

Heartland and John Hunter admit that the 18-wheeler wreck was caused by John Hunter's negligence. However, defendants deny the nature and extent of the injuries and losses claimed by the plaintiff.

The plaintiff has the burden of proving the following issues by a preponderance of the evidence:

1. The nature and extent of the plaintiff's injuries caused by the incident; and

2. The amount of damages that will compensate the plaintiff for his damages, if any, that the plaintiff has experienced as a result of Defendants' liability in the wreck Defendant caused.

The term "preponderance of the evidence" means that amount of evidence that causes you to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince you that the allegation is more likely true than not true.

If the evidence on a particular issue is equally balanced, that issue has not been proven by a preponderance of the evidence and the party having the burden of proving that issue has failed.

You must consider all the evidence on each issue.

The admission of liability should not prejudice you for or against the defendant in fixing the amount of damages, if any.

RESPONDEAT SUPERIOR

As John Hunter's employer, Heartland Express, Inc. Of Iowa, is responsible for John Hunter's negligence. In addition, you may also attribute fault directly against Heartland Express, Inc. Of Iowa if you find that Heartland Express, Inc. Of Iowa was at fault separate and apart from the fault of John Hunter.

INSURANCE AND INSURANCE COMPANIES

There is no evidence before you that any party has or does not have insurance. Whether or not insurance exists has no bearing upon any issue in this case. You may not discuss insurance or speculate about insurance, based on your general knowledge.

There are sound reasons for this rule. Injuries and damages, if any, are not increased or decreased because a party does or does not have insurance.

CAUSATION

A negligence claim requires proof of two types of causation: Cause in fact and legal cause. Cause in fact and legal cause are distinct elements of a negligence claim and both must be proven by the plaintiff by a preponderance of the evidence.

CAUSE IN FACT

The defendant's negligent conduct is a cause in fact of the plaintiff's injury if, as a factual matter, it directly contributed to the plaintiff's injury and without it plaintiff's injury would not have occurred.

LEGAL CAUSE

Once you have determined that a defendant's negligence is a cause in fact of the plaintiff's injury, you must decide whether the defendant's negligence was also a legal cause of the plaintiff's injury.

The law in Tennessee sets out two requirements to determine whether an act or omission was a legal cause of the injury or damage.

1. The conduct must have been a substantial factor in bringing about the harm being complained of; and,
2. The harm giving rise to the action could have been reasonably foreseen or anticipated by a person of ordinary intelligence and care.

To be a legal cause of an injury there is no requirement that the cause be the only cause, the last act, or the one the nearest to the injury, so long as it is a substantial factor in producing the injury or damage.

The foreseeability requirement does not require the person guilty of negligence to foresee the exact manner in which the injury takes place or the exact person who would be injured. It is enough that the person guilty of negligence could foresee, or through the use of reasonable care, should have foreseen the general manner in which the injury or damage occurred.

COMPENSATORY DAMAGES

If, under the Court's instructions, you find that the plaintiff is entitled to damages, then you must award plaintiff damages that will reasonably compensate the plaintiff for claimed loss or harm which has been proven by a preponderance of the evidence, provided you also find it was or will be suffered by the plaintiff and was legally caused by the act or omission upon which you base your finding of liability.

Each of these elements of damage is separate. You may not duplicate damages for any element by also including that same loss or harm in another element of damage. In determining the amount of damages, you should consider the following elements:

Medical expenses. Medical expenses are the cost of medical care, services and supplies reasonably required and actually given in the treatment of the plaintiff as shown by the evidence and the present cash value of similar services likely to be required in the future.

Loss of earning capacity. Loss of earning capacity is the value of earning capacity that has been lost in the past and the present cash value of lost earning capacity that is likely to be lost in the future as a result of the injury in question.

It is not the loss of time or actual earnings that make up this item of damages, but the loss of the ability to earn. There may be a loss of earning capacity even though there has been no

loss of earnings. The loss of the ability to earn money may include, but is not limited to, actual loss of income.

In deciding what, if any, award should be made for loss of the ability to earn, you should consider any evidence of plaintiff's earning capacity, including, among other things, the plaintiff's health, age, character, occupation, past earnings, intelligence, skill, talents, experience and record of employment.

Physical pain and mental suffering. Physical pain and suffering is reasonable compensation for any physical pain and suffering, physical and mental discomfort suffered by the plaintiff, and the present cash value for pain and suffering likely to be experienced in the future. Mental suffering includes anguish, grief, shame, or worry.

Permanent Injury. A permanent injury is an injury that the plaintiff must live with for the rest of the plaintiff's life that may result in inconvenience or the loss of physical vigor. Damages for permanent injury may be awarded whether or not it causes any pain or inconvenience.

Loss of enjoyment of life: Loss of the enjoyment of life takes into account the loss of the normal enjoyments and pleasures in life in the future as well as limitations on the person's lifestyle resulting from the injury.

Pain and suffering, permanent injury, and loss of enjoyment of life are separate types of losses. A plaintiff is entitled to

recover for these losses if the plaintiff proves by a preponderance of the evidence that each was caused by the defendant's fault.

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering, permanent injury, and loss of enjoyment of life. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for pain and suffering, loss of enjoyment of life, and/or permanent injury, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

The amount of damages does not have to equal or exceed the amount of medical expenses proven or incurred.

AGGRAVATION OF PRE-EXISTING CONDITION

A person who has a condition or disability at the time of an injury is entitled to recover damages only for any aggravation of the pre-existing condition. Recovery is allowed even if the pre-existing condition made plaintiff more likely to be injured and even if a normal, healthy person would not have suffered substantial injury.

A plaintiff with a pre-existing condition may recover damages only for any additional injury or harm resulting from the fault you may have found in this case.

If you find that defendant's fault aggravated plaintiff's pre-existing condition you must apportion the amount of disability and pain between that caused by the pre-existing condition and that caused by the incident. If, however, you find that the defendant's fault makes it impossible to apportion the amount of disability or pain that pre-existed the incident, then defendant is responsible for all harm caused by the incident even though it is greater because of the pre-existing condition than it might otherwise have been.

DETERMINING FUTURE DAMAGES WITHOUT SPECULATION

If you are to determine a party's damages, you must compensate that party for loss or harm that is reasonably certain to be suffered in the future as a result of the injury in question. You may not include speculative damages, which is compensation for future loss or harm that, although possible, is conjectural or not reasonably certain.

In order to meet his burden of proof to show additional medical treatment is reasonably certain to be required in the future, the Plaintiff must establish that it is more probable than not that he will require and undergo future medical treatment for the injuries caused by Defendants' negligence.

DUTY TO MITIGATE

A person who has been injured has the duty to mitigate damages by using reasonable diligence in caring for an injury and employing reasonable means to accomplish healing. When one does not use reasonable diligence to care for injuries and they are aggravated as a result of that failure, the damages you determine must be limited to the amount of damage that would have been suffered had the injured person used the diligence required.

MEANING OF PRESENT CASH VALUE

I have used the expression "present cash value" in these instructions concerning damages for future losses that may be awarded to the plaintiff.

In determining the damages arising in the future, you must determine the present cash value of those damages. That is, you must adjust the award of those damages to allow for the reasonable earning power of money and the impact of inflation.

"Present cash value" means the sum of money needed now which, when added to what that sum may reasonably be expected to earn in the future when invested, would equal the amount of damages, expenses, or earnings at the time in the future when the damages from the injury will be suffered, or the expenses must be paid, or the earnings would have been received. You should also consider the impact of inflation, its impact on wages, and its impact on purchasing power in determining the present cash value of future damages.

HOW JURORS SHOULD APPROACH THEIR TASK

Your attitude and conduct at the beginning of your deliberations are very important. It is rarely productive for any juror to immediately announce a determination to hold firm for a certain verdict before any deliberations or discussions take place. Taking that position might make it difficult for you to consider the opinions of your fellow jurors or change your mind, even if you later decide that you might be wrong. Please remember that you are not advocates for one party or another. You are the judges of the facts in this case.

CHANCE OR QUOTIENT VERDICT PROHIBITED

The law forbids you to determine any issue in this case by chance. If you decide that a party is entitled to recover damages, you must not arrive at the amount of those damages by agreeing in *advance:* 1) to use each juror's independent estimate of the amount to be awarded; 2) to total those amounts; 3) to divide the total by eight; and 4) to make the resulting average the amount that you award.

AT THE CLOSE OF THE CASE

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any test or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Closing Instructions

Finally, ladies and gentlemen, we come to the point where we will discuss the form of your verdict and the process of your deliberations. As an initial matter, nothing in the instructions that I have given nor any ruling or remark that I have made in this case should be interpreted as giving an opinion as to what your verdict should be.

You will be taking with you to the jury room a verdict form that will reflect your findings. The verdict form reads as follows:

[READ VERDICT FORM]

You will be selecting a foreperson after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your foreperson will fill in and sign the verdict form. Your verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of your agree to that verdict. That is, 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. Each of you must 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 re-examine 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 the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case. You may have not seen all of these previously and they will be there for your review and consideration.

You may take a break before you begin the case. However, you may not deliberate at any time unless all eight of you are present together in the jury room.

Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

You will take the verdict form to the jury room and when you have reached a unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

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's security officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify the vote of the jury at the time.