

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

GRACE FLEENOR and
LEROY FLEENOR,

Plaintiffs,

vs.

J. C. PENNEY COMPANY, INC.,

Defendant.

No. 3-98-CV-20180

JURY INSTRUCTIONS

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INSTRUCTION NO. _____

Members of the jury, we are about to begin the trial of the case about which you have heard some details during the process of jury selection. Before the trial begins, however, there are certain instructions you should have in order to better understand what will be presented before you and how you should conduct yourselves during the trial. At the end of the trial I may give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed. You must not single out some instructions and ignore others, because all the instructions are important. In considering these instructions, you will attach no importance or significance whatsoever to the order in which they are given.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate at the close of the case, I will again instruct you on the law that you must follow and apply in deciding your verdict.

Since you will be called upon to decide the facts of this case, you should give careful attention to the testimony and evidence presented for your consideration, bearing in mind that I will instruct you concerning the manner in which you should determine the credibility, or "believability," of each witness and the weight to be given to his or her testimony. During the trial, however, you should keep an open mind and should not form or express any opinion about the case one way or the other until you have heard all the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

You must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. You should avoid reading newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial.

During the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the attorneys to object when they believe evidence is not properly admissible. You should not show prejudice against an attorney or client because the attorney has made objections. You should not think that due to any ruling or other comment I may make, that I have any opinions on the merits of the case favoring one side or the other. If I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. ____

Members of the jury:

This is a civil case brought by the plaintiffs, Grace Fleenor and Leroy Fleenor, against the defendant, J. C. Penney Company, Inc. Plaintiffs allege that Defendant was negligent in the care and maintenance of its property and that its negligence caused Plaintiff Grace Fleenor to trip and fall over an electric cord that was enclosed in a metal conduit on the floor in Defendant's store in West Burlington, Iowa, on August 23, 1997. Plaintiffs allege that Defendant's negligence caused their damages.

Defendant denies that it was negligent or that it caused Plaintiff Grace Fleenor's fall and the plaintiffs' damages. Defendant also contends Plaintiff Grace Fleenor was negligent, and that her negligence caused her fall and Plaintiffs' damages. This summary is given to you by the Court and is not to be considered as evidence in this case. Determine the questions submitted to you from the evidence and apply the law that I will give you.

Stock

Def.'s Nos. 4, 31

INSTRUCTION NO. ____

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The parties to this lawsuit are individuals and a corporation. The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons, including corporations, 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. All the parties and the public expect that, regardless of the consequences, you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict. The fact that this case is pending in federal district court does not make it any more or less important than if it was pending in Iowa district court.

INSTRUCTION NO. ____

The trial will proceed in the following order:

After I finish these preliminary instructions, the plaintiffs' lawyer will make an opening statement. An opening statement is not evidence, but is simply a summary of what the lawyers expect the evidence to be. The plaintiffs will then present evidence, and counsel for the defendant may cross-examine. Following the plaintiffs' case, the defendant may present evidence, and the plaintiffs' counsel may cross-examine. Following the defendant's case, the plaintiffs may take the opportunity to present additional evidence.

After the parties have presented their cases and the evidence is concluded, I will further instruct you on the law that you are to apply in reaching your verdict.

After presentation of the evidence is completed and I have further instructed you on the law, the lawyers will make closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

You will then retire to deliberate on your verdict.

INSTRUCTION NO. ____

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; the witness's memory; any motives that witness may have for testifying a certain way; the age and manner of the witness while testifying; whether that witness said something different at an earlier time; the general reasonableness and probability or improbability of the testimony; and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood. This may depend on whether the contradiction has to do with an important fact or only a small detail.

If you believe from the evidence that a witness previously made a statement that is inconsistent with the witness's testimony at this trial, the only purpose for which you may consider the previous statement is for its bearing on the witness's credibility. It is not evidence that what the witness previously said was true. However, if you believe from the evidence that a witness who is a party made a previous statement that is inconsistent with the party's testimony at this trial, you may consider the previous statement both for its bearing on the party's credibility and as evidence that what the party previously said was true.

INSTRUCTION NO. ____

You shall base your verdict only on the evidence and these and other instructions that I give you during the trial. Evidence is:

1. Testimony in person or testimony previously given, which includes depositions.
2. Exhibits received by the court.
3. Stipulations that are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. The following are not evidence:

1. Statements, arguments, comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.

INSTRUCTION NO. ____

Plaintiffs and Defendant have agreed to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts as having been proved.

INSTRUCTION NO. ____

Unless otherwise instructed, in these instructions you are told that your verdict depends on whether you find certain facts have been proved by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that the issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard, which applies only in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. ____

During the trial of this case, certain deposition testimony may be read into evidence. A deposition is taken before trial. It consists of questions asked the witness and the witness's answers given under oath. Deposition testimony is preserved in writing. You should consider deposition testimony the same as you would testimony given in court.

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Stock

Def.'s No. 3

INSTRUCTION NO. ____

During the course of the trial, I occasionally may ask questions of a witness or counsel. Do not assume that I hold any opinion on the matters to which my questions may relate. Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court or counsel in arriving at your own findings as to the facts.

INSTRUCTION NO. ____

During this trial I will permit you to take notes. Many courts do not permit jurors to take notes, and a word of caution is in order. There is a tendency to attach undue importance to matters that one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory, and you should not compare your notes with the notes of other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back testimony. You must pay close attention to the testimony as it is given.

INSTRUCTION NO. ____

You will not be required to remain together while court is in recess. It is important that you obey the following instructions with reference to court recesses:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial. You should reach your conclusion only during your final deliberations after all evidence is in and you have heard the attorneys' summations, my instructions to you on the law, and an interchange of views with other jury members.

Second, do not permit any third person to discuss the case in your presence. If anyone does so despite your telling them not to, report that fact to the court as soon as you are able. You should not, however, discuss with other jurors either that fact or any other fact that you feel necessary to bring to the attention of the court.

Third, during the time you serve on this jury, please do not speak, in or out of the courtroom, with any of the parties or their attorneys, or any witness. By this I mean not only do not speak about the case, but do not speak at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Def.'s No. 14
ICJI 100.11, 100.12,

INSTRUCTION NO. ____

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have become an expert in some field may state their opinions on matters in that field and the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

Expert witnesses were 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.

Pls.' No. 1, 3, 4, 5

Def.'s No. 17, 18, 21, 28

ICJI 400.1, 400.2, 400.3, 400.8

INSTRUCTION NO. ____

In these instructions I will use the term "fault." Fault means one or more acts or omissions towards the person of the actor or of another that constitutes negligence, or an unreasonable failure to avoid an injury.

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

After you have compared the conduct of all parties, if you find that Plaintiff Grace Fleenor was at fault and that her fault was more than 50 percent of the total fault, the plaintiffs cannot recover damages.

However, if you find Plaintiff Grace Fleenor's fault was 50 percent or less of the total fault, then I will reduce the total damages by the percentage of the plaintiff's fault.

A party is required to exercise reasonable care for his own safety. This means that if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party in order to avoid an injury, then she was under a duty to take such action.

In this case, Defendant claims that Plaintiff Grace Fleenor unreasonably failed to take action to avoid an injury because:

1. she trespassed into a restricted area reserved for store personnel;
2. she failed to maintain a proper lookout;
3. she failed to exercise ordinary, reasonable care by backing up, not watching where she was going, and tripping over an

- open and obvious wire cover; and
4. she failed to wait for her husband.

Pls.' No. 2, 10, 11, 12

Def.'s No. 16, 23, 29, 30

ICJI 700.2, 700.3, 700.8, 730.1

Downing v. Merchants Natl. Bank, 183 Iowa 1250, 184 N.W. 722 (Iowa 1921)

Hackley v. Robinson, 219 N.W. 398 (Iowa 1928)

Sumpter v. City of Moulton, 519 N.W. 2d 427 (Iowa App. 1994)

INSTRUCTION NO. ____

“Negligence” means failure to use ordinary care. Ordinary care is the care that 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.

It is not “negligence” to fail to look out for danger when there is no reason to apprehend any.

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. “Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

You have heard evidence concerning Grace Fleenor’s prior medical treatment. If the defendant’s negligence is the proximate cause of the plaintiff’s injury which aggravates a prior medical condition, the defendant may be responsible in damages for the full disability or injury.

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

“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 one’s movements in relation to things seen or that could have been seen in the exercise of ordinary care.

A corporation is liable for the negligent acts of an employee if the acts are done in the scope of the employment.

Pls.' Nos. 5, 7, 8, 9

Def.'s No. 22, 26, 27

ICJI 900.5, 900.6, 900.7

Konicek v. Loomis Bros., Inc., 457 N.W. 2d 614 (Iowa 1990)

Adams v. R.S. Bacon Veneer Co., 162 N.W. 2d 470 (Iowa 1968)

Van Essen v. McCormick Enterprises Co., 599 N.W. 2d 716 (Iowa 1999)

Sheets v. Ritt, Ritt & Ritt, Inc., 581 N.W. 2d 602, 606 (Iowa 1993)

Schleisman v. Dolezal, 120 N.W. 2d 393, 400 (1963)

Lamb v. Manitowoc Co. Inc., 570 N.W. 2d 65, 68-69 (Iowa 1997)

Schuller v. Hy-Vee Food Stores, 328 N.W. 2d 328, 330 (Iowa 1982)

INSTRUCTION NO. ____

The possessor or occupant of premises is presumed to know all conditions on the premises that are caused or created by the possessor or occupant, or its agent or employee. The possessor or occupant of premises is not responsible for an injury suffered by a person visiting the premises that resulted from a condition of which the possessor or occupant had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the possessor or occupant should have known about it.

Concerning number 1(b) of Instruction No.____, a defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position, unless the defendant should anticipate the harm despite such knowledge or obviousness.

The defendant may be expected to anticipate the harm if you find that the defendant had reason to expect that the invitee's attention may be distracted so that she will not discover what is obvious, or will forget what she has discovered.

If the defendant should anticipate that the dangerous condition will cause physical harm to the invitee notwithstanding its known or obvious danger, the defendant has a duty to warn the invitee of the harm, or to take other reasonable steps to protect the

customer.

A condition is “known” when one is aware or conscious of its existence and appreciates the risk of harm it presents. A condition is not “known” if the knowledge and appreciation of the danger were so close in time as to negate any reasonable possibility of known risk. A condition is “obvious” when both the condition and risk of harm are apparent to, and would be recognized by, a reasonable person in the plaintiff’s position, exercising ordinary perception, intelligence and judgment.

A business invitee is one who is invited to enter or remain on the premises for the purpose directly or indirectly connected with business dealings with the possessor of the premises.

The possessor of real estate is not an insurer of the safety of those who are invited upon its premises. The possessor of the premises is under a duty to use ordinary care to keep the premises in a reasonably safe condition for business invitees, or to give warning of the actual condition and risk involved. This duty requires the possessor to use reasonable care to ascertain the actual condition of the premises.

You have received evidence of the absence of injuries or accidents involving covered wires behind the counters at the J. C. Penney Store. The absence of other injuries or accidents is evidence of the absence of danger or lack of knowledge or the danger by J. C. Penney Company. Such evidence is relevant and you should consider it, but it is not conclusive proof.

Pls.' No. 6

Def.'s No. 19

ICJI 400.5, 900.1

INSTRUCTION NO. ____

The Plaintiff claims the defendant was at fault in the following particular:

negligently placing wires and wire cover on the floor between the back side of the jewelry display cabinets and the cash register.

These grounds of fault have been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove all of the following propositions:

a. The defendant knew, or in the exercise of reasonable care should have known, of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.

b. The defendant knew or in the exercise of reasonable care should have known:

1) The plaintiff would not discover the condition, or

2) The plaintiff would not realize the condition presented an unreasonable risk of injury, or

3) The plaintiff would not protect herself from the condition.

c. The defendant was negligent in:

1) Permitting the dangerous condition to exist in an area where a customer may be walking, or

2) Failing to provide proper warnings to customers of the dangerous condition, or

3) Failing to take reasonable steps to prevent customers from being in the area where the dangerous condition existed, or

4) Failing to properly assist or warn a customer who goes into the area where the dangerous condition existed.

2. The defendant's fault was a proximate cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. ____ and ____.

INSTRUCTION NO. ____

Defendant claims that Plaintiff Grace Fleenor was at fault in failing to exercise reasonable care for her own safety.

This ground of fault has been explained to you in other instructions.

The defendant must prove both the following propositions:

1. Grace Fleenor was at fault in one or more of the following ways:
 - a. she trespassed into a restricted area reserved for store personnel;
 - b. she failed to maintain a proper lookout;
 - c. she failed to exercise ordinary, reasonable care by backing up, not watching where she was going, and tripping over an open and obvious wire cover; and
 - d. she failed to wait for her husband.
2. Grace Fleenor's fault was a proximate cause of plaintiffs' damages.

If the defendant had failed to prove either of these propositions, the defendant has not proved its defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against Grace Fleenor and include her fault in the total percentage of fault found by you in answering the special verdict form.

INSTRUCTION NO. ____

Future Medical Expenses. The present value of reasonable and necessary medical services which will be incurred in the future.

Past Loss of Full Body. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

Future Loss of Full Body. The present value of future loss of function of the body.

Past Pain And Suffering. 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.

Future Pain And Suffering. The present value of future physical and mental pain and suffering.

Spousal Consortium. The present value of the services that Plaintiff Grace Fleenor would have performed for her spouse, but for her injury. This is also known as loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's injury.

Damages for spousal consortium are limited in time to the shorter of the spouse's or injured spouses's normal life expectancy.

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

losses.

Mortality Tables. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Grace Fleenor is 86.5 years, and the normal life expectancy of people who are the same age as Leroy Fleenor is 86.8 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Grace Fleenor's and Leroy Fleenor's health, habits, occupation, and lifestyle, when deciding issues of future damages.

Quotient Verdict. 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. ____

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. If you deliberate for over six hours and are unable to arrive at a unanimous verdict, seven of the eight of you may agree upon and return a verdict; it must be signed by the seven of eight of you who agree on the verdict. If your foreperson is a dissenting juror, he or she should not sign the verdict. When you have agreed upon an appropriately signed verdict, you will inform the Court Security Officer outside the room.

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. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other 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 evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. _____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as presiding juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

If you need to communicate with me during your deliberation, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone -- including me -- how your votes stand numerically.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated at ____ a.m/p.m on this ____ day of June, 2000.

CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

GRACE FLEENOR and
LEROY FLEENOR,

Plaintiffs,

vs.

J. C. PENNEY COMPANY, INC.,

Defendant.

No. 3-98-CV-20180

Special Verdict Form

We find the following verdict on the questions submitted to us:

Question No. 1: Was the defendant, J.C. Penney Company, at fault?

Answer "yes" or "no."

Answer: _____

(If your answer is "no", do not answer any further questions, sign the verdict form, and notify the court attendant.)

Question No. 2: Was the fault of the defendant, J.C. Penney Company, a proximate cause of damage to the plaintiffs?

Answer "yes" or "no."

Answer: _____

(If your answer is "no", do not answer any further questions, sign the verdict form, and notify the court attendant.)

Question No. 3: Was Plaintiff Grace Fleenor at fault?

Answer "yes" or "no."

Answer: _____

(If your answer is "no", do not answer questions 4 or 5.)

Question No. 4: Was Plaintiff Grace Fleenor's fault a proximate cause of any damage to the plaintiffs?

Answer "yes" or "no."

Answer: _____

(If your answer is "no", do not answer Question No. 5.)

Question No. 5: Using 100% as the total combined fault of Defendant J.C. Penney Company and Plaintiff Grace Fleenor, which was a proximate cause of the plaintiffs' damage, what percentage of such combined fault do you assign to each party?

Answer:	Defendant J.C. Penney Company	_____ %
	Plaintiff Grace Fleenor	_____ %
	Total	100%

(If you find Plaintiff Grace Fleenor to be more than 50% at fault, do not answer Question No. 6 or Question No. 7)

Question No. 6: What is the total amount of damages, if any, sustained by Plaintiff Grace Fleenor, **without** taking into consideration any reduction of damages due to plaintiff's fault, if any. If Plaintiffs failed to prove any damage item, or failed to prove that any damage item was proximately caused by Defendant's fault, enter 0 for that item.

Answer:	Past Medical expenses	\$ _____
	Future Medical expenses	\$ _____
	Past pain and suffering	\$ _____
	Future pain and suffering	\$ _____
	Past loss of full body	\$ _____
	Future loss of full body	\$ _____

(If you found Plaintiff Grace Fleenor to be more than 50% at fault in Question No. 5, do not answer Question No. 7.)

Question No. 7: What is the total amount of damages, if any, sustained by Plaintiff Leroy Fleenor, *without* taking into consideration any reduction of damages due to Plaintiff Grace Fleenor's fault, if any. If Plaintiffs failed to prove this damage item, or failed to prove that the damage item was proximately caused by Defendant's fault, enter 0 below.

Answer: Loss of support/ spousal consortium: \$_____

FOREMAN OR FOREWOMAN*

* To be signed only if verdict is unanimous