

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

FILED

MAY 16 2001

**CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

THOMAS L. STALEY,)	
)	
Plaintiff,)	Civil No. 3-99-cv-80169
)	
vs.)	
)	
IOWA INTERSTATE RAILROAD, LTD.,)	JURY INSTRUCTIONS
)	
Defendant.)	

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING
INSTRUCTIONS:

INSTRUCTION NO. 1

Now that you have heard the evidence, the time has come to instruct you as to the law governing this case. You are to consider all of the instructions together, apply them as a whole to the facts as you find them to have been established by the evidence, and return your verdict accordingly.

You as jurors are the sole judges of the facts. No language used by the court in these instructions and no statements, conduct, remarks, or rulings of the court during the progress of the trial should be considered by you as an indication that the court has any opinion as to the facts of the case or what your verdict should be.

You are to follow the instructions now given you in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

In considering these instructions, you will attach no importance or significance whatever to the order in which they are given.

INSTRUCTION NO. 2

This lawsuit arises out of plaintiff's employment with the defendant Iowa Interstate Railroad, Ltd. Plaintiff, Thomas L. Staley, claims he suffered injury as a result of his employment with the railroad due to an incident on the evening of October 2, 1996. Plaintiff was performing duties of his position on the railroad tracks at the time of the alleged injury.

Defendant Iowa Interstate Railroad, Ltd. is a common carrier engaged in interstate commerce; therefore, the rights and liabilities of the parties are governed by the Federal Employers' Liability Act.

The plaintiff claims that under this Act the defendant was negligent and that such negligence caused in whole or in part the injury of which he complains. Plaintiff claims money damages for his injury. Defendant denies it was negligent in any manner.

This statement has been given to you by the court solely to inform you, by way of summary, of the respective claims of the parties. Neither the claims made nor this instruction is to be considered by you as evidence in this case.

INSTRUCTION NO. 3

During this trial, I permitted you to take notes. Many courts do not permit note-taking by jurors, and a word of caution is in order. There is always a tendency to attach undue importance to matters 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 other jurors in determining the context 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 all 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.

INSTRUCTION NO. 4

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 on 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotion.

INSTRUCTION NO. 5

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.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The law makes no distinction between direct and circumstantial evidence, and either or both may be used by a party to prove a particular fact. The weight to be given any evidence is for you to decide.

The following are not evidence:

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

INSTRUCTION NO. 6

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 so that all of it may be given weight. 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 witness' 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 witness' appearance, conduct, age, intelligence, memory and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 7

Certain testimony has been received into evidence from deposition transcripts. This is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience 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 other evidence in the case.

INSTRUCTION NO. 8a

During this trial, you have heard 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.

INSTRUCTION NO. 9

Whenever a party must prove something they must do so by the preponderance or greater weight 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.

Whenever in these instructions the words “prove,” “proven,” or “established” are used in connection with any matter, they shall be construed to mean that the matter referred to must be established by the preponderance of the evidence.

INSTRUCTION NO. 10

In this case, the plaintiff is an individual and the defendant, Iowa Interstate Railroad, Ltd., is a corporation. Each party has equal rights in court. This case should be determined by you with the same fairness and consideration as though it were a case between individuals, and no influence or presumption is to be drawn against the defendant that would be improper in a case between individuals. Both parties in this case are entitled to equal justice in your hands and to a fair and impartial consideration of the entire case.

INSTRUCTION NO. 11

A corporation can act only through its officers, employees, or other agents. Any acts or omissions of an officer, employee, or agent of a corporation are held in the law to be the acts or omissions of the corporation, and these acts or omissions are chargeable to and imputed to the corporation. Whenever in these instructions reference is made to acts or omissions of any party to this lawsuit, such reference should be construed to refer to the acts or omissions, if any, of its officers, employees, or agents.

INSTRUCTION NO. 12

No party is required to call as witnesses all persons who may have been present at any time or place involved in this case, or who may appear to have some knowledge of the matters in issue at this trial; nor is a party required to produce as exhibits all papers and other things mentioned in this case.

INSTRUCTION NO. 13

You have heard evidence claiming certain witnesses made statements before this trial which were inconsistent with what the witness said in this trial. Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if an earlier statement of a witness was made and whether it was inconsistent with testimony given. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given, but you are not required to do so.

However, you should not disregard the testimony if other believable evidence supports it, or if for some other reason you believe it.

INSTRUCTION NO. 14

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was when received by you.

INSTRUCTION NO. 15

The mere fact an incident occurred or a party was injured does not mean a party was negligent.

INSTRUCTION NO. 15a

Section 1 of the Federal Employers' Liability Act, 45 U.S.C. Section 51, under which the plaintiff claims the right to recover damages against the Railroad, provides in part that:

Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier

It is agreed that at the time and place alleged in the complaint, the Railroad was a common carrier by rail engaged in interstate commerce; that the plaintiff was then an employee of the Railroad; and that the plaintiff's right, if any, to recover in this case against the Railroad is governed by the provisions of the Federal Employers' Liability Act.

INSTRUCTION NO. 16

Your verdict must be for plaintiff if all of the following elements have been proved by a preponderance of the evidence :

First, defendant Iowa Interstate Railroad, Ltd. failed to provide reasonably safe conditions and methods for work in that it:

- a.) failed to adopt and enforce a safe method for the removal of grease and other slipping hazards from work areas; or
- b.) failed to adopt and enforce a safe method for periodically inspecting work areas for slipping hazards; or
- c.) failed to properly lubricate its locomotive engines, and this led to grease spills from the engines to the ground; or
- d.) allowing unsafe condition to exist by having crater grease on the ground; and

Second, defendant Iowa Interstate Railroad, Ltd. in any one or more of the ways described in the *first* paragraph was negligent; and

Third, such negligence resulted in whole or in part in injury to plaintiff.

If any of the above elements has not been proved by a preponderance of the evidence then your verdict must be for defendant Iowa Interstate Railroad, Ltd.

INSTRUCTION NO. 17

The term “negligent” or “negligence” as used in these instructions means the failure to use ordinary care. The phrase “ordinary care” means that degree of care that an ordinarily careful person would use under the same or similar circumstances. The degree of care used by an ordinarily careful person depends upon the circumstances which are known or should be known and varies in proportion to the harm that person reasonably should foresee.

In deciding whether a person was negligent you must consider what that person knew or should have known and the harm that should reasonably have been foreseen.

INSTRUCTION NO. 18

You are instructed that the rules of law with respect to liability are the same whether the injury complained of is serious or slight. In arriving at your verdict, you should first decide if there is any liability on the part of the defendant without allowing the nature of the injury complained of to influence you in any manner. If you should find that there is liability on the part of the defendant, it would then be your duty to proceed to determine the question of damages.

INSTRUCTION NO. 19

If you find in favor of plaintiff under Instruction 16, you must consider whether plaintiff was also negligent. Under this Instruction, you must assess a percentage of the total negligence to plaintiff if all of the following elements have been proved by a preponderance of the evidence.

First, plaintiff failed to exercise ordinary care under the circumstances for his own safety at the time and place in question, and

Second, plaintiff was thereby negligent, and

Third, such negligence of plaintiff resulted in whole or in part in his injury.

If you find that the above elements are met, the court will then reduce the total damages you assess above by the percentage of negligence you assess to plaintiff.

If any of the above elements have not been proved by a preponderance of the evidence, then you must not assess a percentage of negligence to plaintiff.

JURY INSTRUCTION NO. 20

Plaintiff was required to exercise reasonable care to protect himself from injury from the ordinary hazards and dangers of his employment not resulting from defendant's negligence and to protect himself from injury from such hazards however and whenever they might be encountered.

INSTRUCTION NO. 21

There is evidence in this case that plaintiff had a pre-existing condition which existed prior to October 2, 1996. The Railroad is only liable for damages you find to be caused by the occurrence of October 2, 1996. However, if you find that the railroad's negligence, in whole or in part, caused this pre-existing condition to be aggravated by virtue of a rotator cuff tear then you may award to plaintiff damages caused by that aggravation. The Railroad bears the burden of establishing a pre-existing condition.

INSTRUCTION NO. 22

If you find that Thomas L. Staley is entitled to recover damages, you shall consider the following items:

1. Physical pain and mental suffering from the date of the injury to the present time.

Physical pain and suffering may include, but is not limited to, Unpleasant feelings, bodily distress or uneasiness, bodily suffering, sensations or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish, nervousness, worry, anxiety, irritability, disappointment, depression, confusion, disorientation, apprehension, embarrassment, loss of enjoyment of life, a feeling of uselessness or emotional distress.

2. Future physical and mental pain and suffering.

Factors to be considered are the nature and extent of the injury and whether the injury is temporary or permanent.

3. Loss of function of the body from the date of injury to the present time.
4. Future loss of function of the body.
5. Past wages lost.
6. 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.

INSTRUCTION NO. 23

The amount you assess for physical and mental pain and suffering cannot be measured by an 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 any party.

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 type of damage.

Damages must be reasonable. If you should find that the plaintiff is entitled to a verdict, you may award him only such damages as will reasonably compensate him for such injury and damages as you find, from a preponderance of the evidence in the case, that the plaintiff has sustained as a proximate result of the accident.

You are not permitted to award speculative damages. You are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

Add together the amount, if any, you find for each of the items and enter it on the appropriate interrogatory.

INSTRUCTION NO. 24

Any award of damages for future loss of earning capacity must be reduced to its present cash value. Any award of damages for future pain and suffering should not 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 plaintiff for future losses.

INSTRUCTION NO. 25

There is evidence showing the normal life expectancy of persons of the age of Thomas L. Staley to be 29 years. The length of time one would probably live is based upon the supposed life expectancy of persons of ordinary occupation. You are not to regard this as proof that he would live any number of years. In determining the life expectancy you may consider the person's health, habits, occupation and any other evidence bearing on the issue of how long he may live. You are to determine the probably length of the life of Thomas L. Staley.

INSTRUCTION NO. 26

You are instructed that any award which you make to the plaintiff in this case will not be subject to State and Federal income taxes and you should not consider such taxes in the amount of the award, if any.

INSTRUCTION NO. 27

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

INSTRUCTION NO. 28

It is the duty of one who has been injured to use reasonable diligence and means in caring for his injuries in order to prevent their aggravation, to accomplish healing, and to minimize his resulting damage. Failure of the injured party to make a reasonable effort to minimize damages does not prevent all recover, but does preclude recover for damages or losses which could have been avoided had a reasonable effort to lessen damages been made.

INSTRUCTION NO. 29

The verdict must represent the considered judgment of each juror. 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. 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 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 evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. 30

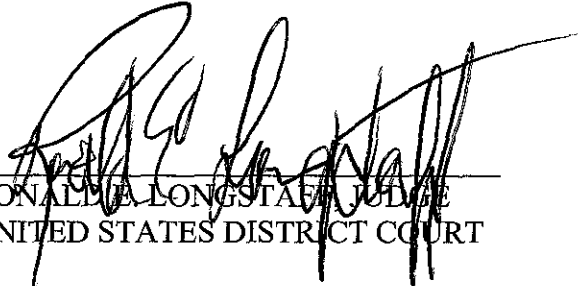
Submitted to you with these instructions are 2 special interrogatories. After you have agreed and appropriately signed the interrogatories, inform the court security officer outside the room.

INSTRUCTION NO. 31

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. 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. The foreperson will supervise the balloting and sign the interrogatories 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 covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or 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.


RONALD A. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT