

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ALAN EISENBERG

Plaintiff,

vs.

CATHERINE VAN METER

Defendant.

Case No. 0703-03329

FINAL JURY INSTRUCTIONS

Members of the jury, I will now give you the rest of your instructions on the law that applies to this case. The instructions I gave you at the beginning of the trial still apply and should be considered together with these instructions. If you do not have a copy of the preliminary instructions, please tell the clerk and we will give you another copy. Once again, I have provided you with a copy of these instructions so that you may follow along, if you wish. Please do not read ahead.

Do not put too much emphasis on one part of these instructions. You must consider them as a whole.

## SPECIFICATIONS OF NEGLIGENCE

I defined negligence for you at the beginning of the trial, and told you that I would give you more instructions about it at the end of the trial. Mr. Eisenberg has alleged that Ms. Van Meter was negligent in three specific ways:

1. Failing to keep a proper lookout;
2. Failing to maintain proper control of her vehicle; and
3. Failing to yield the right of way to a vehicle approaching from the opposite direction that was within the intersection or so close as to constitute an immediate hazard.

### Lookout

It is the continuing duty of a driver of a car to keep a reasonable lookout for other vehicles to avoid causing harm to others. A reasonable lookout means looking out the way a reasonably prudent person would under the same or similar circumstances.

In determining whether Ms. Van Meter failed to keep a proper lookout you should take into consideration the danger reasonably to be expected. A driver does not satisfy the duty to keep a reasonable lookout by simply looking and not seeing something that is plainly visible and that would have been seen by someone who was being reasonably careful when she looked.

### Control

A driver of a vehicle also has a continuing duty to keep her vehicle under reasonable control. That means the amount of control that a

reasonably prudent person in the same or similar circumstances would exercise.

### Yielding the Right of Way in Making a Left Turn

Oregon law requires that an operator of a motor vehicle intending to turn left at an intersection must yield the right of way to a vehicle approaching from the opposite direction that is within the intersection or so close as to constitute an immediate hazard.

### CAUSATION – ADDITIONAL INSTRUCTION

In my preliminary instructions I talked to you about prior existing conditions and injuries that would not have been sustained by someone who was in normal health. In connection with that instruction, I must add that Mr. Eisenberg is entitled to recover for the worsening, or aggravation, of any pre-existing condition if he has proved the aggravation was caused by the accident.

### DAMAGES

There are two types of damages that may be recovered in a case like this – they are called economic and non-economic damages.

#### Economic Damages

Economic damages are objectively verifiable monetary losses. In this case, Mr. Eisenberg seeks economic damages for past medical expenses in the amount of \$33,806.55. He also seeks as economic damages \$15,683.87 in lost wages.

## Non-Economic Damages

Non-economic damages are subjective non-monetary losses. Mr. Eisenberg claims non-economic damages in the amount of \$300,000. The law does not give you any fixed standard by which to measure non-economic damages. You must apply your own considered judgment to determine any amount of non-economic damages to be awarded to Mr. Eisenberg, but the law requires that all damages awarded be reasonable.

In making your decision, you may consider the amount that will compensate Mr. Eisenberg for any pain he has suffered and is likely to suffer in the future. You may also consider any pain-caused inconvenience and interference with Mr. Eisenberg's normal activities apart from work.

If you find that Mr. Eisenberg is entitled to recover economic damages, you must award some non-economic damages.

## Life Expectancy

According to standard mortality tables the life expectancy of a man aged 60 years is an additional 20 years. You may consider this in arriving at the amount of damages if you find that Mr. Eisenberg is entitled to a recovery for permanent injury.

Life expectancy shown by the mortality tables is an estimate of the probable average remaining length of life of all persons in our country of a given sex and age. You must determine Mr. Eisenberg's probable life expectancy from the evidence in this case, taking into consideration any evidence of other factors that might affect the length of his life, such as his occupation, health, habits, and activities.

### Significance of the Amount Claimed as Damages

Mr. Eisenberg's claims for damages, like all other allegations in the case, are not evidence. However, they do act as a cap. You cannot award more in damages than he has asked for.

### MATTERS YOU ARE (AND ARE NOT) TO CONSIDER

As I have told you from the beginning of the trial, your job is to decide whether Ms. Van Meter was negligent, and, if so, whether her negligence caused the collision with Mr. Eisenberg, and, if so, what injuries Mr. Eisenberg sustained as a result of the accident and what damages should be given.

### Matters You Must *Not* Consider

You must not consider or concern yourselves with who will pay any damages awarded or how they will be paid, the effect of a damage award on anyone, how attorney fees have been or will be paid, tax consequences or any other irrelevant issues.

### DELIBERATIONS AND VERDICT

Your verdict in this case is the answers to the questions on the verdict form that I will now review with you. The instructions on the form are part of my instructions to you.

At least nine of you must agree on your answers.

When you retire to deliberate you will first select your presiding juror. The presiding juror has no greater voting weight than the rest of you. As the name implies, that person presides over your deliberations and is the spokesperson for the jury. Once you have selected your presiding juror,

you should deliberate and reach your verdict. In selecting your presiding juror, you should consider who among you can best lead the discussion so that all voices are heard and no juror dominates things too much.

If you have not read the guide for deliberations in the jury room, you may find it helpful to do so before you start.

It is important that each of you hear what the others have to say in your deliberations. If someone is in the restroom, or if I have authorized a smoke break, you must stop talking about the case until everyone is around the table once again. During your deliberations, you must not go out for breaks on your own. If you need a break, signal the bailiff and he will ask me if you may go out. During deliberations, the bailiff will accompany anyone leaving the jury room.

The bailiff will also collect all of your cell phones, pagers and any other telecommunication devices and keep them while you deliberate. They will be returned to you at the end of the trial or at the end of the day if we recess before you have reached a verdict. It is extremely important now, as always throughout the trial, that you not talk to anyone about this case or your deliberations.

If you have a question, your presiding juror should put it in writing and signal the bailiff. He will bring the question to me. I will show it to the lawyers and give you a response. The response may be that I cannot answer your question, but I will tell you if that is the case. This process can take some time. Do not tell me how you stand numerically (what the vote count is) until you have reached a verdict. When you return with a

verdict I may ask each of you, in open court, to tell me if you voted for the answer on the verdict form. In our courts (unlike TV), the judge, not the presiding juror, reads the verdict out loud in court.