

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

ALAN EISENBERG

Plaintiff,

vs.

CATHERINE VAN METER

Defendant.

Case No. 0703-03329

PRELIMINARY JURY
INSTRUCTIONS

Members of the jury, the law that applies to this case will be given to you in part in these preliminary instructions. After you have heard the evidence I will give you further instructions regarding the legal rules you must follow in deciding this case. Please be sure to keep your copy of these instructions for your reference and use during your deliberations at the end of this trial. 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.

Your duty is to decide the facts from the evidence. You, and you alone, are the judges of the facts. You will hear the evidence, decide the facts, and then apply those facts to the law I will give you. That is how you will reach your verdict.

Remember, however, that your power to reach a verdict is not arbitrary. When I tell you what the law is on a particular subject or tell you how to evaluate certain evidence, you must follow these instructions. You have no right to disregard the court's instructions as to the law or to substitute your own opinion as to what you think the law is or ought to be.

You must not interpret any statement, ruling, or remark I make during this trial to suggest that I have formed any opinion as to the facts, or as to the credibility of any witness. If you thought I had an opinion, you should ignore it. Those decisions are for you to make. Your verdict must be based only on the evidence received in the courtroom during the trial and upon these instructions and the instructions of the law that you will receive prior to deliberations.

PARTIES AND CLAIMS

As I told you at the beginning of jury selection, the plaintiff in this case is Alan Eisenberg and the defendant is Catherine Van Meter.

On May 12, 2005, Mr. Eisenberg was in his car on SE 76th, stopped and waiting to turn right onto SE Division. Ms. Van Meter was driving on SE Division, making a left turn onto SE 76th. There was another car going the other way on SE Division driven by Mark Wrede. Ms. Van Meter and Mr. Wrede collided and Ms. Van Meter's car was pushed into Mr. Eisenberg's.

Mr. Eisenberg claims that Ms. Van Meter was negligent, that her negligence caused the collision with Mr. Eisenberg, and that the collision caused him injury to his neck, back and shoulders, as well as post traumatic stress. He is asking for \$33,806.55 for his past medical care, \$15,683.87 in lost wages and \$300,000 in non-economic damages (pain and suffering).

Ms. Van Meter denies that she was negligent or caused the collision. She also denies that Mr. Eisenberg suffered the injuries and damages he is suing for.

NEGLIGENCE

Negligence is doing something that a reasonable person would not do in the same or similar circumstances or the failure to do something that a reasonable person would do in the same or similar circumstances. I will give you more detailed instructions about negligence at the end of the trial.

CAUSATION

In order to be a cause of injury, an act must be a substantial factor in producing the injury. “Substantial” means important or material, and not insignificant. In order to establish causation, Mr. Eisenberg must prove that but for the car collision, he probably would not have suffered the injuries he is suing for.

PREVIOUS CONDITION

If Mr. Eisenberg had a physical condition that made him more likely to be injured, Ms. Van Meter is still liable for any injuries to Mr. Eisenberg caused by her negligence. This is so even if you conclude that the injuries are greater than the injuries that would have been suffered by a person in normal health. Mr. Eisenberg is not, however, entitled to recover damages for any condition he already had.

EVIDENCE

You will hear the term “evidence” during the course of this trial. I want to discuss with you what is meant by evidence and how you should consider it.

There are two types of evidence – direct and circumstantial. Direct evidence is the testimony of an eyewitness or an object actually involved in

the case. Circumstantial evidence is a chain of circumstances pointing to the existence or non-existence of a certain fact. It is just another way of describing inferences. For example, if a witness testifies that she saw a jet fly across the sky, that is *direct* evidence that a jet flew across the sky. On the other hand, if a witness testifies that he saw a vapor trail move across the sky, that is *circumstantial* evidence that a jet flew across the sky. As another example, someone's fingerprint on the inside of a window is circumstantial evidence that the person was in the room and touched the window, even though no one saw it happen.

You may base your verdict on direct evidence, or on circumstantial evidence, or on both.

Forms of Evidence

The evidence from which you must decide the facts comes in one of three forms.

First, there is the sworn testimony of witnesses, both on direct- and cross- examination, and regardless of who calls the witness.

Second, there are exhibits that the court receives and which you will have with you in the jury room. Exhibits are physical things such as letters, photographs, charts, or physical objects. You will be able to examine the exhibits while you deliberate.

Third, there are any facts to which the lawyers have agreed or stipulated.

Duty to Weigh Evidence

In deciding this case, it is your duty to calmly and without emotion consider and weigh all the evidence that you find worthy of belief. To be an effective juror, you must not be influenced in any degree by personal feelings or sympathy for or prejudice against any party to this case. You may draw inferences from the evidence, provided that your inferences and

conclusions are reasonable and are based on your common sense and experience. Do not allow bias, sympathy, or prejudice to have any place in your deliberations; all parties are equal before the law. Do not decide this case on guesswork, conjecture, or speculation.

What is Not Evidence

Certain things are not evidence and are to be disregarded by you in deciding the facts:

1. The opening statements and closing arguments of the attorneys are not part of the evidence. These statements and arguments are merely intended to help you understand the evidence.

2. The questions asked of the witnesses are not evidence. They can be considered only to give meaning to the witnesses' answers.

3. Objections to questions are not evidence. Attorneys have a duty to their client to object when they believe a question is improper under the rules of evidence. I will decide whether or not it is proper for you to consider such evidence under the law. You should not be influenced by the objection or by the court's ruling. If I sustain an objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, ignore the question and do not guess what the answer might have been. If the objection is overruled, treat the answer like any other answer.

4. Testimony that has been excluded, stricken, or that you have been instructed to disregard is not evidence and must be disregarded. In addition, if some testimony has been received only for a limited purpose, you must follow the court's limitation.

5. Anything that you may have seen or heard outside the courtroom is not evidence. You are to decide the case solely on the evidence offered and received in the trial.

Witnesses

Generally the testimony of any witness whom you believe is enough to prove any fact in dispute. You are not to simply count the witnesses, but you are to weigh the evidence.

Every witness has taken an oath to tell the truth and is assumed to speak truthfully. However, this assumption may be overcome by:

1. The manner in which the witness testifies.
2. The nature or quality of the witness's testimony.
3. Contradictory evidence that you find to be more probably true.
4. Evidence concerning the bias, motives, or interest of the witness.

Hypothetical Questions

Hypothetical questions may be asked. These are questions in which the witness is asked to assume that certain facts are true, then to give an opinion based on those assumed facts. Sometimes witnesses may give opinions and tell you they are assuming certain facts even though the question wasn't precisely in the form of a hypothetical. In either situation, if you conclude that the facts the witness assumed are *not* true, then you must disregard the witness's opinion.

Expert Witnesses

Most witnesses are allowed to talk only about their personal observations and they cannot state opinions. Witnesses with special knowledge or training are called expert witnesses. Expert witnesses are allowed to express opinions. You do not, however, have to accept any witness's opinions. In deciding what weight, if any, you should give to an expert witness's opinions, you should consider the factors for evaluating all witness testimony (which I just listed), and you should also consider:

- the qualifications of the witness as an expert;
- the evidence or assumptions on which the witness relied; and

- the reasons given for the opinion.

BURDEN OF PROOF

“Burden of proof” has two meanings: who has to prove something and how strong the proof has to be.

First, let me talk about who has the job of proving something. The person making a claim has the burden of proving what is alleged. In this case that means that the plaintiff, Mr. Eisenberg, must prove that Ms. Van Meter was negligent, that her negligence caused the collision with his car, and the injuries and damages he is claiming.

The strength of proof aspect of “burden of proof” means the level of confidence you must have to reach a decision. In this case the burden of proof is “preponderance of the evidence,” which means that something is more likely or more probably true than not.

On any matter where the burden of proof preponderance of the evidence if you cannot decide what is more probably true, or if you think the evidence is equally convincing for both sides, then Mr. Eisenberg loses that claim or issue.

FURTHER INSTRUCTIONS

Note Taking

You may take notes, if you wish, during the trial. However, please keep in mind that each party is entitled to the considered decision of each juror. Therefore, during deliberation, you should not give undue weight to another juror's notes if those notes conflict with your recollection of the evidence. Do not allow your note taking to interfere with your ability to observe and evaluate testimony. Don't feel obligated to take notes just because we have notepads. For some people it helps them to listen and remember, but for others it gets in the way and they remember better if they don't try to take notes. Do whatever works for you. Whenever you

leave the courtroom, your notes should be left on your chair in the jury box or in the jury room. They must not leave the courthouse and they are not to be read by your fellow jurors – they are for your own use.

Questions for Witnesses

During this trial, you will be allowed to ask questions of the witnesses if you need to clarify their testimony. Please wait until the end of the witness's testimony, since the question may be answered by the time the lawyers are through. The attorney calling a witness asks questions, then the other attorneys are allowed to ask questions (this is cross-examination) and, finally, the first lawyer gets to ask follow-up questions (this is re-direct examination). You can imagine that a question you have at the beginning of the testimony may be cleared up by the time the lawyers are through.

At the end of a witness's testimony, if you still have a question, please raise your hand and let me know so I can hold the witness. Write the question down, fold the piece of paper and the clerk will get it from you.

Your questions are subject to the rules of evidence, just as the lawyers' are (even though you may not have taken a course on evidence). I will review the questions you ask with the lawyers and I will ask the question of the witness if I decide it is proper. I may not ask the question even if none of the lawyers has a problem with it. You should not take offense or draw any conclusions if I do not ask your question. If a lawyer tells me that another witness will address the question you have asked, I will tell you that.

Discussions During Trial

Do not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. Do not discuss this case with other jurors until you begin your deliberations at the end of the case. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don't think you are paying attention, but because, in my experience, this is the hardest instruction for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common – what they just watched together.

There are at least two reasons for this rule. The first is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won't have that until the very end of the trial. The second reason for the rule is that we want all of you working together on this decision when you deliberate. If you have conversations in groups of two or three during the trial, you won't remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial.

Ignore any attempted improper communication. If any person tries to talk to you about this case, tell that person that you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to my staff.

Do not make any independent personal investigations into any facts or locations connected with this case. **Do not** look up any information from any source, including the Internet. **Do not** communicate any private or special knowledge about any of the facts of this case to your fellow jurors. **Do not** read any news stories or listen to any radio or television reports about this case or about anyone involved in this case. I specifically instruct that you must decide the case only on the evidence received here in court.

We will now hear the opening statements in which the attorneys will outline the evidence as they expect it to be. After the opening statements,

the evidence will be presented. At the conclusion of the evidence, I will instruct you further about the law that applies to this case, the attorneys will make their closing arguments to you, and you will begin your deliberations.

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult, so I urge you to pay close attention to the testimony as it is given.

You may find it helpful to read the brochure in the jury room, *Behind Closed Doors – A Guide to Jury Deliberations*, before we get to the end of the trial.