

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
SEP 19 2007
[Signature]
CLERK

TRACY A. MUNROE,

Plaintiff,

-vs-

U.S. XPRESS, INC.,

Defendant.

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CIV 06-4103

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

INSTRUCTION NO. 3

As I stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in this case. "Evidence" includes the testimony of witnesses, documents and other things received as exhibits, any facts that are stipulated – that is, formally agreed to by the parties, and any facts that are judicially noticed – that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I have stricken from the record, or have told you to disregard, is not evidence and must not be considered.

4. Anything you have seen or heard about this case outside the courtroom is not evidence, unless I specifically told you otherwise during the trial.

A particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you for only one particular purpose, and not for any other purpose. When this occurred during the trial, I instructed you on the purposes for which the item can and cannot be used.

INSTRUCTION NO. 3, continued

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 4

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.

INSTRUCTION NO. 5

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 6

During the trial, certain evidence was presented to you by deposition. The witness testified under oath at the deposition, just as if the witness were in court, and you should consider this testimony together with all other evidence received.

INSTRUCTION NO. 7

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, you may consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness 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 need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 8

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 that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony 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.

INSTRUCTION NO. 9

A witness may qualify as an expert and give an opinion on a matter at issue if the witness has special knowledge, skill, experience, training, or education in a particular science, profession, or occupation. In deciding the weight to give to the opinion, you should consider the expert's qualifications and credibility and the reasons for the opinion. You should consider each expert opinion received in evidence in this case, and give it such weight as you think it deserves. You are not bound by the opinion; therefore, if you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons for the opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

South Dakota Pattern Jury Instruction No. 2-12 (2007) (modified); Devitt, Blackmar, Wolff & O'Malley, Federal Jury Practice and Instructions, § 72.08 (modified); Plaintiff's Proposed Jury Instruction No. 21.

INSTRUCTION NO. 10

As explained in my prior instructions, this is a civil case, brought by the Plaintiff, Tracy Munroe, against the Defendant, U.S. Xpress, Inc.

This lawsuit arises out of an automobile collision that occurred on January 1, 2006. Plaintiff alleges Defendant and its employee, Karen Quintana, were negligent and that negligence was the cause of the injuries and damages suffered by the Plaintiff. The Plaintiff claims to have been injured and sustained damages as a legal result of the negligence of the Defendant in one or more of the following aspects:

- a. The failure of U.S. Xpress to provide Karen Quintana proper training regarding rules applicable to dangerous road conditions.
- b. The failure of U.S. Xpress to provide training to Karen Quintana in driver accident procedures.
- c. The failure of U.S. Xpress to provide training to Karen Quintana in procedures for employment of emergency triangles.
- d. The failure of Karen Quintana to exit the slippery roadway at the first suitable location, after she became aware of dangerous conditions.
- e. The failure of Karen Quintana to maintain control of her vehicle, resulting in a semi with trailer jack-knifed on I-90 partially blocking lanes of travel.
- f. The failure of Karen Quintana to employ emergency triangles as required by law to warn approaching motorists of the obstruction on the roadway.

The Plaintiff seeks compensatory damages for the injuries and losses she sustained.

INSTRUCTION NO. 10 (continued)

Defendant denies that it or its employee, Karen Quintana, were negligent. Defendant further denies that any alleged negligent act or omission was a legal cause of any damage to Plaintiff. Defendant alleges Plaintiff was contributorily negligent and that her negligence was a legal cause of her injuries and damages. Defendant also denies the nature and extent of Plaintiffs' alleged injuries and damages. Defendant asks that Plaintiff receive nothing under her Complaint.

South Dakota Civil Pattern Jury Instructions, No. 1-01-3 (2001); Defendant's Proposed Jury Instruction Nos. 1 and 18 (modified).

INSTRUCTION NO. 11

The Defendant is a corporation and can act only through its officers and employees. Any act or omission of an officer or employee within the scope of his or her employment is the act or omission of the corporation for which he or she was then acting.

INSTRUCTION NO. 12

In civil actions, the party who asserts the affirmative of an issue must prove that issue by greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it. In this action, the Plaintiff has the burden of proving the following issues:

- (1) That the Defendant was negligent or violated the standard of care, as defined elsewhere in these instructions, owed to Plaintiff Tracy Munroe;
- (2) That such negligence was the legal cause of any damage, injury, or loss suffered or experienced by Plaintiff Tracy Munroe; and
- (3) The nature and extent of the damages, injuries, and losses suffered by Tracy Munroe as a legal result of the negligence of the Defendant.

Defendant U.S. Xpress, Inc. has the burden of proving the following issues:

- (1) That Plaintiff Tracy Munroe was contributorily negligent;
- (2) That Plaintiff Tracy Munroe's contributory negligence was a legal cause of her injuries; and
- (3) That Plaintiff Tracy Munroe's negligence was more than slight when compared to the negligence, if any, of Defendant U.S. Xpress, Inc., and its driver, Karen Qunitana.

INSTRUCTION NO. 12 (continued)

In determining whether or not an issue has been proved by greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

INSTRUCTION NO. 13

The issues to be determined by you in this case are these:

First, was the Defendant negligent?

If your answer to that question is “no,” you will return a verdict for the Defendant. If your answer is “yes,” you will have another issue to determine, namely:

Second, was that negligence a legal cause of any injury or damage to the Plaintiff?

If your answer to that question is “no,” the Plaintiff is not entitled to recover. If your answer is “yes,” you will have a third issue to determine, namely:

Third, was Plaintiff contributorily negligent?

If your answer to that question is “no,” you then must fix the amount of Plaintiff’s damages and return a verdict for the Plaintiff. If your answer to that question is “yes,” you then must determine another issue, namely:

Fourth, was the Plaintiff’s contributory negligence a legal cause of the Plaintiff’s injury?

If you find that Plaintiff’s contributory negligence was not a legal cause of Plaintiff’s injury, you must then fix the amount of Plaintiff’s damages and return a verdict for the Plaintiff.

If you find that Plaintiff’s contributory negligence did contribute as a legal cause of Plaintiff’s injury, the Plaintiff may still recover if the jury should find that such contributory negligence of the Plaintiff was slight in comparison with the negligence of the Defendant. If you find that the Plaintiff is contributorily negligent, but that such Plaintiff’s negligence is under the circumstances slight in comparison with the Defendant’s negligence, the Plaintiff is still entitled to a recovery, but the damages to be awarded Plaintiff must be reduced in proportion to the amount of Plaintiff’s contributory negligence. If you find that such contributory negligence of the Plaintiff is more than

INSTRUCTION NO. 13 (continued)

slight in comparison with the negligence of the Defendant, the Plaintiff cannot recover and you must return a verdict for the Defendant.

You should first determine the questions of liability before you consider the question of damages.

INSTRUCTION NO. 14

Negligence is the failure to use reasonable care. It is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by the evidence. That is for you to decide.

South Dakota Civil Pattern Jury Instruction 10-01 (1997) (modified); Plaintiff's Proposed Instruction No. 5 (modified); Defendant's Proposed Jury Instruction 2 (modified).

INSTRUCTION NO. 15

A person operating a vehicle on a public highway has a duty to exercise reasonable care under the circumstances to keep such lookout for other users of the highway and to maintain control of the vehicle so as to be able to stop the vehicle or otherwise avoid an accident within that person's range of vision.

INSTRUCTION NO. 16

The driver of an automobile may assume that other drivers using the highways will obey the laws of the road until said driver knows, or in the exercise of reasonable care should know, otherwise.

INSTRUCTION NO. 17

The portion of the Code of Federal Regulations commonly known as the Federal Motor Carrier Safety regulations sets the standard of care for commercial motor carriers including drivers. These regulations set the standard of care of a reasonable person. If you find Defendant violated one or more of the Federal Motor Carrier Safety regulations, such violation is negligence. Violation of one or more of the Federal Motor Carrier Safety regulations, however, does not establish Defendant is liable to Plaintiff for damages. Rather, Plaintiff must prove that the violation of one or more of the Federal Motor Carrier Safety regulations was the legal cause of Plaintiff's injury to support Plaintiff's recovery of damages from Defendant based upon any such violation.

South Dakota Civil Jury Instructions, No. 60-01-1 (2004); Hertz Motel v. Ross Signs, 698 N.W.2d 532, 537-38 (S.D. 2005); Fritz v. Howard Township, 570 N.W.2d 240, 243-44 (S.D. 1997); Thompson v. Summers, 567 N.W.2d 387, 393-94 (S.D. 1997); Plaintiff's Proposed Jury Instruction Nos. 6 and 8 (modified).

INSTRUCTION NO. 18

A legal cause is a cause that produces a result in a natural and probable sequence, and without which the result would not have occurred.

A legal cause does not need to be the only cause of a result. A legal cause may act in combination with other causes to produce a result.

INSTRUCTION NO. 19

Federal Motor Carrier Safety Regulations require that all commercial vehicle operators must have knowledge of the following areas (including among others):

Extreme Driving Conditions. The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions.

Hazard perceptions. The basic information on hazard perception and clues for recognition of hazards.

Skid control and recovery. The information on the causes and major types of skids, as well as the procedures for recovering from skids.

INSTRUCTION NO. 20

The Federal Motor Carrier Safety Regulations require that if a duty is prescribed for a driver, it shall be the duty of the Motor Carrier to require observance of such duty.

INSTRUCTION NO. 21

Federal Motor Carrier Safety Regulations require that every motor carrier, its officers, agents, representatives and employees responsible for the management, maintenance, operation or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules of Driving of Commercial Motor Vehicles.

INSTRUCTION NO. 22

The Federal Motor Carrier Safety Regulations require that a motor carrier shall not permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle. A person is qualified to drive a commercial motor vehicle if he/she can, by experience, training or both, safely operate the type of commercial motor vehicle he/she drives.

INSTRUCTION NO. 23

Federal Motor Carrier Safety Regulations require that extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust or smoke, adversely effect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

INSTRUCTION NO. 24

Federal Motor Carrier Safety Regulations require that whenever a commercial motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped commercial motor vehicle shall immediately activate the vehicular hazard warning signal flashes and continue the flashing until the driver places the warning devices (reflector triangles or flares) required by the regulations. Additionally, the driver shall, as soon as possible, but in any event within 10 minutes, place the required warning devices as required by the regulations.

Federal Motor Carrier Safety Regulations require that if the commercial motor vehicle is stopped upon the traveled portion of or shoulder of a divided one-way highway, the driver shall place the warning devices with one warning device at a distance of 200 feet and one warning device at a distance of 100 feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the commercial vehicle. He/she shall place one warning device at the traffic side of the commercial motor vehicle within 10 feet of the rear of the commercial motor vehicle.

INSTRUCTION NO. 25

Federal Motor Carrier Safety Regulations require that every motor carrier, its officers, drivers, agents, representatives and employees directly concerned with the inspection or maintenance of motor vehicles shall comply and be conversant with the rules of the regulations part governing inspection, repair and maintenance of commercial motor vehicles.

The regulations require that every motor carrier shall requires its drivers to report, and every driver shall prepare a report in writing at the completion of each days work on each vehicle operated and the report shall cover (among other things) emergency equipment.

INSTRUCTION NO. 26

Federal Motor Carrier Safety Regulations require that no commercial motor vehicle shall be driven unless the driver thereof is satisfied that the emergency equipment required by the regulations is in place and ready for use; nor shall any driver fail to use or make use of such equipment when and as needed.

49 CFR § 392.8 (2006); Plaintiff's Proposed Jury Instruction No. 17.

INSTRUCTION NO. 27

Contributory negligence is negligence on the part of a plaintiff which, when combined with the negligence of a defendant, contributes as a legal cause in the bringing about of the injury to the plaintiff.

INSTRUCTION NO. 28

A plaintiff who is contributorily negligent may still recover damages if that contributory negligence is slight, or less than slight, when compared with the negligence of the defendant. The term "slight" means small when compared with the negligence of the Defendant.

In determining this issue you must determine the answer to two question:

1. Whether both the Plaintiff and the Defendant are negligent; and
2. If both are negligent, whether the Plaintiff's negligence is
 - a. "slight" or less than "slight," or
 - b. more than "slight" in comparison with the Defendant's negligence.

In answering the second question you must make a direct comparison between the conduct of the Plaintiff and the Defendant.

If you find the Plaintiff's contributory negligence is more than slight when compared with the negligence of the Defendant, then the Plaintiff is not entitled to recover any damages.

If you find the Plaintiff's contributory negligence is slight, or less than slight, when compared with the negligence of the Defendant, then the Plaintiff is entitled to recover damages. However, the Plaintiff's damages must be reduced in proportion with the amount of the Plaintiff's contributory negligence.

INSTRUCTION NO. 29

If you decide for Plaintiff on the question of liability you must then fix the amount of money which will reasonably and fairly compensate her for any of the following elements of loss or harm suffered in person proved by the evidence to have been legally caused by the Defendant's conduct, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

- (1) The disability and disfigurement suffered by Plaintiff Tracy Munroe.
- (2) The pain and suffering, mental anguish and loss of capacity of the enjoyment of life experienced in the past and reasonably certain to be experienced in the future as a result of the injuries sustained by Plaintiff Tracy Munroe.
- (3) The reasonable value of necessary medical care, treatment, and services received by Plaintiff Tracy Munroe.
- (4) The earnings that Plaintiff Tracy Munroe lost, if any, from any source from the date of the injury until the date of the trial.

Whether any of these elements or damages have been proved by the evidence is for you to determine. Your verdict must be based on the evidence and not upon speculation, guesswork, or conjecture.

INSTRUCTION NO. 30

If you find the Plaintiff had a prior condition of poor dental health making her more susceptible to injury to her teeth than a person in normal dental health, then you may award damages for the injuries caused by Defendant's conduct, even though those injuries may be greater than what might have been experienced by a person in normal dental health under the same circumstances. Before awarding such damages, however, Plaintiff must prove that the conduct of the Defendant at issue was a substantial factor in bringing about the harm alleged.

INSTRUCTION NO. 31

The law allows damages for detriment reasonably certain to result in the future. By their nature, all future happenings are somewhat uncertain. The law simply requires that facts exist which establish a basis for measuring any claimed future damages with reasonable certainty. The requirement of reasonable certainty applies only to whether future damages exist; once such detriment is established, the law does not require certainty as to the amount of such damages. Thus, once the existence of such damages is established, uncertainty as to the measure or extent of damages or the fact that they cannot be measured with exactness does not bar their recovery. On the other hand, conjecture, speculation, or the mere possibility of future damages does not warrant such an award.

INSTRUCTION NO. 32

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from the greater weight of the evidence in accordance with the other instructions.

INSTRUCTION NO. 33

If you should determine that the Plaintiff should recover a verdict, you should not return what is known as a quotient verdict in this case. By a quotient verdict is meant one which is reached pursuant to a prior agreement made by all the jurors to add up the amount which each of the several jurors would award and divide such sum by the number of jurors and treat the quotient or result of such division as the amount of the verdict to be returned by the jury.

If you find the issues in favor of the Plaintiff, the verdict you are to return must be for such an amount as you unanimously agree upon as the proper amount in this case. A verdict reached by adding the amounts suggested by the several jurors and then dividing in the manner I have indicated would not be the judgment of the individual jurors and such a method is likely to produce a verdict at variance with the sound judgment of each member of the jury. The rights of the parties to a suit should never be finally determined in this manner. It is for you to determine by the use of your best judgment the verdict which you should return in this case without resort to chance or the method above indicated.

INSTRUCTION NO. 34

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, 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.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

INSTRUCTION NO. 34, continued

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TRACY A. MUNROE,

Plaintiff,

-vs-

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CIV 06-4103

VERDICT FORM

Please return your verdicts by placing an "X" or "√" in the spaces provided, or as otherwise instructed below.

VERDICT ONE

We, the jury in the above entitled and numbered case, on Plaintiff Tracy Munroe's claim of negligence against Defendant U.S. Xpress, Inc. find in favor of:

_____ Plaintiff, Tracy Munroe

_____ Defendant, U.S. Xpress, INC.

If you found in favor of Defendant, U.S. Xpress, Inc., skip the remainder of this Verdict Form and have your foreperson sign and date the Verdict Form below. If you found in favor of Plaintiff, Tracy Munroe, please complete Verdict Two below.

VERDICT TWO

We, the jury in the above entitled and numbered case, having found in favor of Plaintiff Tracy Munroe on her claim of negligence against Defendant U.S. Xpress, Inc., further find Plaintiff Tracy Munroe is entitled to recover the following damages from Defendant U.S. Xpress, Inc.:

1. Past medical expenses in the sum of \$ _____ (stating amount or if none, write the word "none").
2. Lost wages or income in the sum of \$ _____ (stating amount or if none, write the word "none").
3. General damages, including pain and suffering, loss of enjoyment of life, and disability or disfigurement, in the sum of \$ _____ (stating amount or if none, write the word "none").

Dated this ____ day of September, 2007.

Foreperson