

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:90CV-858-H

MORRIS R. BUSH, et al.

PLAINTIFFS

V.

MICHELIN TIRE CORPORATION, et al.

DEFENDANTS

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions and to apply that law to the facts you find from the evidence. Do not to single out one instruction alone as stating the law; consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

This case should be considered and decided by you as an action between parties of equal standing in the community. A corporation is entitled to the same fair trial at you hands as a private individual. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice without prejudice or sympathy.

It is your duty to determine the facts and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the

evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, the witness' frankness or lack of it, and the witness' interest in the outcome of the case, if any.

A witness, who by education and experience has become expert in any art, science, or profession, may be permitted to state an opinion about a matter in which he is versed and which is material to the case, and the reasons for such an opinion. You should consider this evidence and give it such weight as you, in the application of your common sense, may think it deserves. If you should conclude that the reasons given by the expert witness in support of an opinion are not sound, or that the opinion is outweighed by other credible evidence in the case or the opinion of some other expert, then you may reject the opinion of the expert in whole or in part.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

Although there are two defendants in this action, it does not follow from that fact alone that if one is liable, then both are liable. Each defendant is entitled to a fair consideration of its

own defense, and should not be prejudiced by the fact, if it should become a fact, that you find against the other. Unless otherwise stated, all instructions given to you govern the case as to each defendant.

INSTRUCTION 1

In this case, Plaintiffs claim that the design of the 16-inch light truck tire manufactured by Defendant, Michelin, and the design of the 16.5-inch wheel manufactured by Defendant, Kelsey-Hayes Co., were defective and unreasonably dangerous.

In order for Plaintiffs to recover against Michelin you must be satisfied from the evidence that:

- (1) The 16-inch light truck tire, at the time it was manufactured by Michelin, was defective in design and unreasonably dangerous for use, and
- (2) The defective design was a substantial factor in causing the accident and injury to Plaintiffs.

Otherwise, you will find for Defendant Michelin on this issue.

In order for Plaintiffs to recover against Kelsey-Hayes, you must be satisfied from the evidence that:

- (1) The 16.5 inch wheel, at the time it was manufactured by Kelsey-Hayes, was defective in design or manufacture and unreasonably dangerous for use and
- (2) The defective design was a substantial factor in causing the accident and injury to Plaintiffs.

Otherwise, you will find for Defendant Kelsey-Hayes on this issue.

As the term is used in this instruction, a product is “defective and unreasonably dangerous” if it creates such a risk of injuring its user that an ordinarily prudent manufacturer of tires or wheels, being fully aware of the risk, would not have put it on the market. In considering

whether an ordinarily prudent company would put this product on the market, you must find that: (1) there existed an alternative feasible design of greater overall safety at the time the product was manufactured and (2) a reasonably prudent manufacturer would have used this alternative. A manufacturer is not required to design the best possible tire or wheel, or products as good as other tire and wheel manufacturers', or products better than it has designed, so long as the products are reasonably safe. The manufacturer is not a guarantor that nobody will get hurt in using the product, and a product is not defective or unreasonably dangerous merely because it is possible to be injured while using it. What the manufacturer is required to do is to make a product which is free from defective and unreasonably dangerous conditions.

Failure to adequately warn of a risk also may make a product unreasonably dangerous, if the product could be used without seeing the risk. The duty to warn extends to dangers likely to result from foreseeable misuse of a product. A warning is merely another factor to be considered in determining whether the product is defective and unreasonably dangerous.

The term "adequate warning" as used in these instructions means a warning that provides the user, exercising ordinary care on his part, fair and adequate notice of how to avoid the potential danger that may arise from its use or reasonably foreseeable misuse. A manufacturer is not required to provide the best possible warning, or one as good as others provide, or a better warning than it has, so long as the warnings and directions provided are adequate. In determining whether an inadequate warning was a substantial factor in causing an injury to Plaintiffs, you should consider whether Plaintiffs would have acted differently had adequate directions or warnings been given.

Indicate your verdict on Interrogatory 1 of the verdict form.

INSTRUCTION 2

In this case, Plaintiff also claims that Defendant Michelin failed to exercise ordinary care in the design of the 16-inch light truck tire and Defendant Kelsey-Hayes failed to exercise ordinary care in the design of the 16.5-inch wheel. In order for Plaintiffs to recover against Michelin, you must be satisfied from the evidence that:

(1) Michelin, at the time this 16-inch light truck tire was manufactured, failed to exercise ordinary care in the design of the tire, and

(2) Such failure was a substantial factor in causing injuries to Plaintiffs.

Otherwise, you will find for Defendant Michelin on this issue.

In order for Plaintiffs to recover against Kelsey-Hayes, you must be satisfied from the evidence that:

(1) Kelsey-Hayes, at the time this 16.5-inch wheel was manufactured, failed to exercise ordinary care in the design and manufacture of the wheel, and

(2) Such failure was a substantial factor in causing injuries to Plaintiffs.

Otherwise you will find for Defendant Kelsey-Hayes on this issue.

As the term is used in this instruction, “ordinary care” as applied to Defendant Michelin means such care as an ordinarily prudent tire manufacturer would exercise under like or similar circumstances. “Ordinary care” as applied to Defendant Kelsey-Hayes, means such care as an ordinarily prudent wheel manufacturer would exercise under like or similar circumstances.

Indicate your verdict on Interrogatory 2 of the verdict form.

INSTRUCTION 3

Defendants claim that Plaintiffs are negligent with respect to their own safety. It was Plaintiffs Morris Bush and Raymond Bush's duty at the time and place in question to exercise ordinary care for their own safety. If you find for Plaintiffs under Instruction 1 or Instruction 2, but you are also satisfied from the evidence that:

(1) Either Plaintiff or both Plaintiffs failed to exercise ordinary care for their own safety, and

(2) Such failure was a substantial factor in causing Plaintiffs' injuries.

Indicate this on Interrogatory 3 of the verdict form.

"Ordinary care," as used in this instruction, means such care as the jury would expect an ordinarily prudent person to exercise under similar circumstances. The failure to use ordinary care may consist either in doing something that an ordinarily careful person would not do under like circumstances, or in failing to do something that an ordinarily careful person would do under like circumstances.

INSTRUCTION 4

If you find for Plaintiff, Morris Bush, you will award him such a sum in damages as will fairly and adequately compensate him for the following which you believe he sustained as a direct result of the accident:

(1) The reasonable medical expenses incurred by him for hospital and medical services, medicine and medical supplies, not to exceed \$ 63,485.22, the amount claimed by him on this account;

(2) Reasonable medical expenses which it is probable he will incur in the future, not to exceed \$ 11,000, the amount claimed by him on this account;

(3) Any wages or earnings lost in the past, not to exceed \$104,000;

(4) Any loss of power to labor and earn money in the future; and

(5) Damages for mental and physical pain and suffering including that which he is reasonably probable to incur in the future.

Indicate your award on Interrogatory 4 of the verdict form. Do not reduce the total damages by the percentage of any fault that you attributed to Plaintiff. The Court will perform these calculations, if they are necessary.

INSTRUCTION 5

If you find for Plaintiff, Raymond Bush, you will award him such a sum in damages as will fairly and adequately compensate him for the following which you believe he sustained as a direct result of the accident:

(1) The reasonable medical expenses incurred by him for hospital and medical services, medicine and medical supplies, not to exceed \$ 17,831.25, the amount claimed by him on this account;

(2) Any wages or earnings lost in the past, not to exceed \$3600; and

(3) Damages for mental and physical pain and suffering including that which he is reasonably probable to incur in the future.

Indicate your award on Interrogatory 5 of the verdict form. Do not reduce the total damages by the percentage of any fault that you attributed to Plaintiff. The Court will perform these calculations, if they are necessary.

INSTRUCTION 6

If you find for Plaintiffs under Instruction 1 and 2, you must determine from the evidence what percentage of total fault was attributable to each of the parties you find at fault. In determining the percentages of fault, you shall consider both the nature and conduct of each party at fault and the extent of the causal relation between his or its conduct and the damages claimed.

Indicate your verdict on Interrogatory 6 of the verdict form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine 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 the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

WE, THE JURY FIND:

INTERROGATORY NO. 1

(A) Do you find that the Michelin tire is defective and unreasonably dangerous AND that this defective condition, if found to be present, was a substantial factor in causing Plaintiffs' injuries?

(Check appropriate answer)

YES _____

NO _____

(B) Do you find that the Kelsey-Hayes wheel is defective and unreasonably dangerous AND that this defective condition, if found to be present, was a substantial factor in causing Plaintiffs' injuries?

(Check appropriate answer)

YES _____

NO _____

INTERROGATORY NO. 2

(A) Do you find that the designer of the Michelin tire failed to exercise ordinary care in the design of the tire in question AND that such failure was a substantial factor in causing the injuries to Plaintiffs?

(Check appropriate answer) YES _____

NO _____

(B) Do you find that Kelsey-Hayes Co. failed to exercise ordinary care in the design or manufacture of the rim in question AND that such failure was a substantial factor in causing the injuries to Plaintiffs?

(Check appropriate answer) YES _____

NO _____

If you have answered “No” to both Interrogatory 1(A) and Interrogatory 2(A), you should sign the verdict form and return to the courtroom. If you answer “Yes” to either Interrogatory 1(A) or Interrogatory 2(A), you must answer all of the remaining Interrogatories (including 1(B) and 2(B)).

INTERROGATORY 3

(A) Do you find that Plaintiff, Morris Bush, failed to exercise ordinary care for his own safety AND that such failure was a substantial factor in causing his injuries?

(Check appropriate answer) YES _____

NO _____

(B) Do you find from the evidence that Plaintiff, Raymond Bush, failed to exercise ordinary care for his own safety on the occasion about which you have heard evidence, AND that such failure was a substantial factor in causing the injuries which he sustained?

(Check appropriate answer) YES _____

NO _____

INTERROGATORY NO. 4

If you find for Plaintiff, Morris Bush, you will award him such a sum in damages as will fairly and adequately compensate him for the following which you believe he sustained as a direct result of the accident:

- (1) Medical expenses incurred \$ _____
- (2) Future medical expenses likely to incur \$ _____
- (3) Lost wages and earnings \$ _____
- (4) Loss of power to labor and earn \$ _____
- (5) Mental and physical pain and suffering \$ _____

INTERROGATORY NO. 5

If you find for Plaintiff, Raymond Bush, you will award him such a sum in damages as will fairly and adequately compensate him for the following which you believe he sustained as a direct result of the accident:

- (1) Medical expenses incurred \$ _____
- (2) Lost wages and earnings \$ _____
- (3) Mental and physical pain and suffering \$ _____

INTERROGATORY NO. 6

Using 100% to represent the total fault of all parties, apportion the fault between the parties by stating the percentage of the total fault that is chargeable to each of the parties as follows:

Michelin North America, Inc.	_____ %
Kelsey-Hayes	_____ %
Morris Bush	_____ %
Raymond Bush	_____ %
TOTAL	100%

FOREPERSON

Date: _____