

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

GREENWELL, et al

PLAINTIFFS

v.

CIVIL ACTION NO. 3:94CV-614-S

BOATWRIGHT and
KLLM, INC.

DEFENDANTS

JURY INSTRUCTIONS

Ladies and Gentlemen:

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.

You are not to single out one instruction alone as stating the law. You must consider the instructions as a whole.

You are not to 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.

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.

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, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you.

The rules of evidence permit a witness who by education and experience has become expert in any art, science, or profession to state an opinion as to a matter in which he is versed and which is material to the case, and he may also state the reasons for such an opinion. You should consider such expert opinion 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 his opinion are not sound, or that his opinion is outweighed by other credible evidence in the case, or by the opinion of some other expert, then you may reject the opinion of such 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.

This case should be considered and decided by you as an action between persons of equal standing in the community, holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as an individual. All persons, including corporations, stand equal before the law.

It was the duty of David Boatwright, in operating his vehicle, to exercise ordinary care for the safety of others, and this general duty included the following specific duties:

1. To keep a lookout ahead for other vehicles in front of him or so near his intended line of travel as to be in danger of collision;
2. To keep and operate his vehicle under reasonable control at all times;
3. Not to turn his vehicle from a direct course upon the highway unless and until such movement could be made with reasonable safety;
4. To drive at a speed no greater than was reasonable and prudent having regard for the traffic and the condition and use of the highway;
5. To have his vehicle properly equipped and to comply with all government regulations.

“Ordinary care” means such care as a reasonably prudent person would exercise under the same or similar circumstances.

If you believe from the evidence that David Boatwright failed to comply with one or more of these duties and that such failure was a substantial factor in causing the collision, you will find for Greenwell. Otherwise, you will find for Boatwright. You will record your verdict on Verdict Form A and proceed to the next instruction.

It was the duty of KLLM, Inc., in operating its business as a motor carrier, to exercise such degree of care and skill as a reasonably prudent vehicle inspector would exercise under the same or similar circumstances in inspecting or causing to be inspected leased vehicles in accordance with government regulations and the lease.

If you believe from the evidence that KLLM, Inc. or its inspectors failed to comply with this duty and that such failure was a substantial factor in causing the collision, you will find for Greenwell. Otherwise, you will find for KLLM, Inc. You will record your verdict on Verdict Form B.

If you have found for the plaintiffs on Verdict Form A, Verdict Form B, or on both of them, you will proceed to the next instruction.

If you have found for the defendants on both Verdict Forms A and B, you will end your deliberations and return to the courtroom.

You will now determine what sum or sums of money you believe from the evidence will fairly and reasonably compensate Nancy Robin Greenwell and the Greenwell Estate for such damages as they sustained directly by reason of the collision, including:

1. Destruction of Richard Greenwell's power to labor and earn money;
2. Reasonable funeral expenses for Richard Greenwell;
3. Conscious mental and physical pain and suffering endured by Richard Greenwell from the time of the collision until his death;
4. Necessary and reasonable medical expenses incurred by Nancy Robin Greenwell;
5. Mental and physical pain and suffering Nancy Robin Greenwell has endured or is reasonably certain to endure in the future as a direct result of her physical injuries.

In determining the amount of damages, you will disregard the fault of any party. You will indicate these amounts on Verdict Form C.

After you have completed Verdict Form C, you will proceed to the next instruction.

It was the duty of Richard Greenwell, in driving his vehicle on the occasion about which you have heard evidence, to exercise ordinary care for his own safety and the safety of Nancy Robin Greenwell, his passenger, and this general duty included the following specific duties:

1. To keep a lookout ahead for other vehicles in front of him or so near his intended line of travel as to be in danger of collision;
2. To keep and operate his vehicle under reasonable control at all times;
3. Not to turn his vehicle from a direct course upon the highway unless and until such movement could be made with reasonable safety; and
4. To drive at a speed no greater than was reasonable and prudent, having regard for the traffic and the condition and use of the highway.

“Ordinary care” means such care as an ordinarily prudent person would exercise under similar circumstances.

If you believe from the evidence that Richard Greenwell failed to comply with one or more of these duties and that such failure was a substantial factor in causing the collision, you will determine the percentages of total fault attributable to Richard Greenwell, David Boatwright, and/or KLLM, Inc. In determining the percentages of fault, you shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. If you found for David Boatwright or KLLM, Inc. on Verdict Form A or Verdict Form B, respectively, you will enter a zero for that defendant on Verdict Form D. You will indicate these percentages of fault on Verdict Form D. The total fault of Greenwell, Boatwright, and/or KLLM, Inc. must equal 100%.

When you have completed Verdict Form D and the foreperson has signed the verdict forms, you will end your deliberations and return with the verdicts to the courtroom.

Your 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 reaching 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 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 speak for you here in court.

Forms of verdict have been prepared for your convenience.

You will take these forms 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 forms which set forth 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.