

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

THE DUCKS SEPTEMBER 24, 2015

No. 15-2-28905-5 SEA

AURORA BRIDGE COLLISION

COURT'S INSTRUCTIONS TO THE JURY

DATED:

By: _____
HONORABLE CATHERINE SHAFFER
SUPERIOR COURT JUDGE

INSTRUCTION 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness, and of the value or weight to be given to the testimony of each witness. In assessing credibility, you must avoid bias, conscious or unconscious, including bias based on religion, ethnicity, race, sexual orientation, gender or disability.

In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on the evidence in any way. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done

so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

The comments of the lawyers during this trial are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

INSTRUCTION 2

The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION 3

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

When certain experts testified, I informed you that some information was admitted as part of the basis for their opinions, but may not be considered for other purposes. You must not consider this testimony as proof that the information relied upon by the witness is true. You may use this testimony only for the purpose of deciding what credibility or weight to give to the witness's opinion.

INSTRUCTION 4

You have been permitted to view a site involved in this case for the sole purpose of helping you understand the evidence presented to you in this courtroom. What you actually saw at the site or its surrounding area is not evidence. The physical features at the site may or may not have changed. The conditions that prevailed at the time of the occurrence or other relevant times may or may not have changed. You are to rely solely on the testimony of witnesses and on the exhibits in order to decide issues involving the physical characteristics or appearance of the site at the time of the events in question.

INSTRUCTION 5

Whether a party has insurance or does not have insurance has no bearing on any issue that you must decide. You must not speculate about whether any of the parties has insurance or other coverage or funds available to them. You are not to make or decline to make any award, or increase or decrease any award, because you believe that a party may have medical insurance, workers' compensation, liability insurance coverage or some other funding or insurance policy. Even if there is insurance or other funding available to one or more parties, the question of who pays or who reimburses whom would be decided in a different proceeding. Therefore, do not discuss insurance during your deliberations. You are to decide only those questions that are given to you to decide in this case.

INSTRUCTION 6

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression “if you find” is used, it means that you must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true.

INSTRUCTION 7

The law treats all parties equally whether they are corporations, government entities, or individuals. This means that corporations, government entities, and individuals are to be treated in the same fair and unprejudiced manner.

INSTRUCTION 8

Defendants Ride the Ducks International, LLC (RTDI) and Ride the Ducks of Seattle, LLC (RTDS) are corporations. A corporation can act only through its officers and employees. Any act or omission of an officer or employee is the act or omission of the corporation.

Defendants State of Washington (State) and City of Seattle (City) are governmental entities. A governmental entity can act only through its officers and employees. Any act or omission of an officer or employee is the act or omission of the governmental entity.

INSTRUCTION 9

You should decide the case of each plaintiff separately as if it were a separate lawsuit. The instructions apply to each plaintiff unless a specific instruction states that it applies only to a specific plaintiff.

You are not to consider nor are you responsible for deciding the claims or potential damages of injured persons who are not plaintiffs in this case.

INSTRUCTION 10

Plaintiff Partners in Care, as personal representative of the estate of Claudia Derschmidt brings a claim on behalf of the estate for the personal losses suffered by Claudia Derschmidt and brings a claim for the losses suffered by the beneficiaries of the estate, Moritz and Felix Derschmidt.

INSTRUCTION 11

Plaintiff Soon Won Kim, as personal representative of the estate of HaRam Kim brings a claim on behalf of the estate for the personal losses suffered by HaRam Kim.

INSTRUCTION 12

You should decide the case of each defendant separately as if it were a separate lawsuit. The instructions apply to each defendant unless a specific instruction states that it applies only to a specific defendant.

INSTRUCTION 13

Plaintiffs' Claim against RTDS

Plaintiffs who were passengers of Duck 6 claim that RTDS was negligent for breaching the duty of a common carrier owed to its passengers on Duck 6.

Plaintiffs who were not passengers on Duck 6 claim that RTDS was negligent for breaching the duty of ordinary care. Plaintiffs claim that such negligence was a proximate cause of their injuries.

Defendant RTDS denies these claims.

Plaintiffs' Claim against the State and City

Plaintiffs claim that the State and City were negligent for breaching their duty to exercise ordinary care to keep the Aurora Bridge in a reasonably safe condition for ordinary travel. Plaintiffs claim that such negligence was a proximate cause of their injuries.

Defendants State and City deny these claims.

Plaintiffs' Claim against RTDI

Plaintiffs claim that RTDI breached five different duties under the Products Liability Act:

Claim 1 (Product Construction Defect): Plaintiffs claim that RTDI breached its duty to supply products that are reasonably safe in construction.

Claim 2 (Unsafe Product Design): Plaintiffs claim that RTDI breached its duty to design products that are reasonably safe.

Claim 3 (Failure to Provide Warnings or Instructions with Product): Plaintiffs claim that RTDI breached its duty to provide adequate warnings or instructions with the product.

Claim 4 (Failure to Provide Warnings or Instructions After Sale): Plaintiffs claim that RTDI breached its duty to provide adequate warnings or instructions after the product was manufactured.

Claim 5 (Enhanced Injuries—Crashworthiness): As to passengers of Duck 6, Plaintiffs claim that RTDI breached its duty to design and manufacture the product to be crashworthy, meaning reasonably safe in reasonably foreseeable collisions.

Defendant RTDI denies these claims.

INSTRUCTION 14

The plaintiff has the burden of proving each of the following propositions with respect to their negligence claims against RTDS, State, and City:

First, that one or more of the defendants acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting, or failing to act, one or more of the defendants was negligent;

Second, that the plaintiff was injured and/or the plaintiff's property was damaged;

Third, that the negligence of one or more of the defendants was a proximate cause of the injury to the plaintiff and/or the damage to plaintiff's property.

If you find from your consideration of all the evidence that each of these propositions has been proved against one or more of the defendants, your verdict should be for the plaintiff and against the defendant or those defendants. On the other hand, if any of these propositions has not been proved against one or more of the defendants, your verdict should be for that defendant or those defendants.

INSTRUCTION 15

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances.

INSTRUCTION 16

The term “proximate cause” means a cause which in a direct sequence produces the injury and/or event complained of and without which such injury and/or event would not have happened.

There may be more than one proximate cause of the same injury and/or event. If you find that a defendant was negligent and that such negligence was a proximate cause of injury or damage to a plaintiff, it is not a defense that some other cause may also have been a proximate cause.

INSTRUCTION 17

As to Plaintiffs' Products Liability Act claims against RTDI for breaching duties of a product manufacturer, the violation, if any, of a statute or regulation is not necessarily proof of such breach, but may be considered by you as evidence in determining whether or not RTDI breached a duty of a product manufacturer.

INSTRUCTION 18

At the time of the occurrence in question, RTDS was a common carrier.

A common carrier has a duty to its passengers to exercise the highest degree of care consistent with the practical operation of its type of transportation and its business as a common carrier. Any failure of a common carrier to exercise such care is negligence.

INSTRUCTION 19

The State and City have a duty to exercise ordinary care in the design, construction, maintenance, and repair of public roads and highways to keep them in a reasonably safe condition for ordinary travel.

INSTRUCTION 20

Product Construction Defect (Claim 1 against RTDI)

With respect to Plaintiffs' product construction defect claim against RTDI, plaintiffs have the burden of proving each of the following propositions:

First, that RTDI was a manufacturer and supplied a product that was not reasonably safe in construction at the time the product left RTDI's control;

Second, that the plaintiff was injured, and

Third, that the unsafe condition of the product was a proximate cause of the plaintiff's injury.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiff against RTDI on Claim 1. On the other hand, if any of these propositions has not been proved, your verdict should be for RTDI on Claim 1.

INSTRUCTION 21

Product Construction Defect (Claim 1 against RTDI)

A manufacturer has a duty to supply products that are reasonably safe in construction. The duty to construct products that are reasonably safe is not relieved by a manufacturer delegating or seeking to delegate that duty to another person or entity.

The plaintiff may prove that the product was not reasonably safe in construction using the following test.

The test is whether the product is unsafe to an extent beyond that which would be contemplated by the ordinary user. In determining what an ordinary user would reasonably expect, you should consider the following:

- (a) the relative cost of the product;
- (b) the seriousness of the potential harm from the claimed defect;
- (c) the cost and feasibility of eliminating or minimizing the risk; and
- (d) such other factors as the nature of the product and the claimed defect indicate are appropriate.

If you find that the product was not reasonably safe in construction and this was a proximate cause of the plaintiff's injury, then the manufacturer is at fault.

INSTRUCTION 22

Unsafe Product Design (Claim 2 against RTDI)

With respect to Plaintiffs' unsafe product design claim against RTDI, plaintiffs have the burden of proving each of the following propositions:

First, that RTDI was a manufacturer and supplied a product that was not reasonably safe as designed at the time the product left RTDI's control;

Second, that the plaintiff was injured; and

Third, that the unsafe condition of the product was a proximate cause of the plaintiff's injury.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiffs against RTDI on Claim 2. On the other hand, if any of these propositions has not been proved, your verdict should be for RTDI on Claim 2.

INSTRUCTION 23

Unsafe Product Design (Claim 2 against RTDI)

A manufacturer has a duty to design products that are reasonably safe as designed. The duty to design products that are reasonably safe is not relieved by a manufacturer delegating or seeking to delegate that duty to another person or entity.

There are two tests for determining whether a product is not reasonably safe as designed. The plaintiff may prove that the product was not reasonably safe at the time it left the manufacturer's control using either of these two tests.

The first test is a balancing test. Under that test, you should determine whether, at the time the product was manufactured:

the likelihood that the product would cause injury or
damage similar to that claimed by the plaintiff, and
the seriousness of such injury or damage
outweighed

the burden on the manufacturer to design a product
that would have prevented the injury or damage, and
the adverse effect that a practical and feasible
alternative design would have on the usefulness of
the product.

The second test is whether the product is unsafe to an extent beyond that which would be contemplated by the ordinary user. In determining what an ordinary user would reasonably expect, you should consider the following:

- a. the relative cost of the product;
- b. the seriousness of the potential harm from the claimed defect;
- c. the cost and feasibility of eliminating or minimizing the risk; and
- d. such other factors as the nature of the product and the claimed defect indicate are appropriate.

A product can be “not reasonably safe” even though the risk that it would cause the plaintiff’s harm or similar harms was not foreseeable by the manufacturer at the time the product left the manufacturer’s control.

If you find that the product was not reasonably safe as designed at the time it left the manufacturer’s control and this was a proximate cause of the plaintiff’s injury, then the manufacturer is at fault.

INSTRUCTION 24

Failure to Provide Warnings or Instructions with Product (Claim 3 against RTDI)

With respect to Plaintiffs' claim for failure to provide adequate warnings or instructions with the product against RTDI, plaintiffs have the burden of proving each of the following propositions:

First, that RTDI was a manufacturer and supplied a product that was not reasonably safe because adequate warnings or instructions were not provided with the product;

Second, that the plaintiff was injured; and

Third, that the unsafe condition of the product was a proximate cause of the plaintiff's injury.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiffs against RTDI on Claim 3. On the other hand, if any of these propositions has not been proved, your verdict should be for RTDI on Claim 3.

INSTRUCTION 25

Failure to Provide Warnings or Instructions With Product (Claim 3 against RTDI)

A manufacturer has a duty to supply products that are reasonably safe.

A product may be not reasonably safe because adequate warnings or instructions were not provided with the product. The duty to provide adequate warnings or instructions with the product is not relieved by a manufacturer delegating or seeking to delegate that duty to another person or entity.

There are two tests for determining whether a product is not reasonably safe because adequate warnings or instructions were not provided with the product. The plaintiff may prove that the product was not reasonably safe because adequate warnings or instructions were not provided with the product using either of these two tests.

The first test is whether, at the time of manufacture:

- a. the likelihood that the product would cause injury or damage similar to that claimed by the plaintiff, and the seriousness of such injury or damage, rendered the warnings or instructions of the manufacturer inadequate; and
- b. the manufacturer could have provided adequate warning or instructions.

The second test is whether the product is unsafe to an extent beyond that which would be contemplated by an ordinary user. In determining what an ordinary user would reasonably expect, you should consider the following:

- a. the relative cost of the product;
- b. the seriousness of the potential harm from the claimed defect;
- c. the cost and feasibility of eliminating or minimizing the risk; and
- d. such other factors as the nature of the product and the claimed defect indicate are appropriate.

A product can be “not reasonably safe” even though the risk that it would cause the plaintiff’s harm or similar harms was not foreseeable by the manufacturer at the time the product left the manufacturer’s control.

If you find that the product was not reasonably safe because adequate warnings or instructions were not provided with the product and this was a proximate cause of the plaintiffs’ injury, then the manufacturer is at fault.

INSTRUCTION 26

Failure to Provide Warnings or Instructions After Sale (Claim 4 against RTDI)

With respect to Plaintiffs' claim for failure to provide adequate warnings or instructions after the product was manufactured against RTDI, plaintiffs have the burden of proving each of the following propositions:

First, that RTDI was a manufacturer and was negligent in that the product was not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured;

Second, that the plaintiff was injured; and

Third, that the unsafe condition of the product was a proximate cause of the plaintiff's injury.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiffs against RTDI on Claim 4. On the other hand, if any of these propositions has not been proved, your verdict should be for RTDI on Claim 4.

INSTRUCTION 27

Failure to Provide Warnings or Instructions After Sale (Claim 4 against RTDI)

A manufacturer has a duty to supply products that are reasonably safe.

A product may be not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured. The duty to provide adequate warnings or instructions after the product was manufactured is not relieved by a manufacturer delegating or seeking to delegate that duty to another person or entity.

A product is not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured if:

1. A manufacturer learned, or if a reasonably prudent manufacturer should have learned, about a danger connected with the product after it was manufactured;
2. Without adequate warnings or instructions, the product was unsafe to an extent beyond that which would be contemplated by an ordinary user; and
3. The manufacturer failed to issue warnings or instructions concerning the danger in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances.

The duty to issue warnings or instructions is satisfied if the manufacturer exercises reasonable care to inform product users.

In determining whether a product was unsafe to an extent beyond that which would be contemplated by an ordinary user, you should consider the following:

- a. the relative cost of the product;
- b. the seriousness of the potential harm from the claimed defect;
- c. the cost and feasibility of eliminating or minimizing the risk; and
- d. such other factors as the nature of the product and the claimed defect indicate are appropriate.

If you find the product was not reasonably safe because the manufacturer did not provide adequate warnings or instructions after the product was manufactured and this was a proximate cause of the plaintiffs' injury, then the manufacturer is at fault.

INSTRUCTION 28

Enhanced Injuries—Crashworthiness (Claim 5 against RTDI)

With respect to Plaintiffs who were Duck 6 passengers claims against RTDI for enhanced injuries, plaintiffs have the burden of proving each of the following propositions:

First, that RTDI designed or manufactured a product, Duck 6, that was not reasonably safe in reasonably foreseeable accidents or collisions; and

Second, that the unsafe condition of Duck 6 proximately caused the plaintiff injuries which they would not have otherwise sustained in the accident or collision, absent the product defect.

The plaintiff need not prove that the unsafe condition of the product was a cause of the accident or collision itself, just that the unsafe condition of the product was a proximate cause of the enhanced injury.

If you find from your consideration of all of the evidence that both of these propositions has been proved against RTDI, then your verdict should be for the plaintiffs who were Duck 6 passengers against RTDI on Claim 5. On the other hand, if any of these propositions has not been proved, your verdict should be for RTDI as to plaintiffs who were Duck 6 passengers on Claim 5.

INSTRUCTION 29

Enhanced Injuries—Crashworthiness (Claim 5)

A manufacturer of an amphibious passenger vehicle has a duty to design and manufacture the product to be crashworthy, that is, the product must be reasonably safe in reasonably foreseeable accidents or collisions. Based on this duty, a manufacturer is liable for that portion of the injury caused by the product design or manufacturing defect over and above the injury that probably would have occurred as a result of a reasonably foreseeable accident or collision impact even without the product defect. The manufacturer is liable for this enhanced injury even though the defect did not cause the accident or collision itself.

INSTRUCTION 30

More than one entity may be at fault for the injury or damage complained of. "Fault" includes any act or omission that is negligent or which violates a duty under the Products Liability Act and a plaintiff's unreasonable failure to mitigate damages.

In order for you to find an entity at fault, the entity's act or omission must be a proximate cause of the injury or damage claimed.

If you find that more than one entity was at fault, you must determine what percentage of the total fault is attributable to each entity that proximately caused the injury to the plaintiff. The total fault attributable to each entity that proximately caused the injury to the plaintiff must equal one hundred percent.

The court will provide you with a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will apportion liability, if any.

As a matter of law, plaintiffs Tam Nguyen and Mazda Hutapea may not recover damages from the State of Washington. You may not attribute fault to the State of Washington for these plaintiffs' injuries.

INSTRUCTION 31

This instruction applies to Plaintiffs Seohee Bak, Li Liu Edwards, Jennifer Emery, Yousuke Hiraoka, Sarah Johnson, Sang Woo Kim, Yunsu Kim, Alena Lutz, Jae Young Park, Jin Young Park, Minje Sa, and Ayane Sawada.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- Any disfigurement.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 32

This instruction applies to Plaintiff Simon Lee.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 33

This instruction applies to Plaintiffs Min Kyeong Kang, Kwang Hyeon Park, and Yu Zhuang.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following future economic damages elements:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.
- The reasonable value of earning capacity with reasonable probability to be lost in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.

- The disability and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- Any disfigurement.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 34

This instruction applies to Plaintiff Donald Clouse.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following future economic damages elements:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.

In addition, you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- Any disfigurement.

- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 35

This instruction applies to Plaintiffs Rhonda Cooley and JoAnn Gerke.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following past economic damages elements:

- The reasonable value of necessary medical care, treatment, and services received to the present time. The following amounts are undisputed: Rhonda Cooley, \$69,470.25 and JoAnn Gerke, \$44,423.40.
- The reasonable value of earnings lost to the present time.

In addition, you should consider the following future economic damages elements:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.

- The reasonable value of earnings with reasonable probability to be lost in the future.
- The reasonable value of necessary non-medical expenses that will be required with reasonable probability in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.
- Loss to the plaintiff spouse of the consortium of her spouse. The term “consortium” means the fellowship between one spouse and the other, and the right of one spouse to the company, cooperation, and aid of the other in the matrimonial relationship. It includes emotional support, love, affection, care, services, companionship, including sexual companionship, as well as assistance from one spouse to the other.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 36

This instruction applies to Plaintiff Fenna Zielinski.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

Your verdict must include the following undisputed items:

- The undisputed value of necessary medical care, treatment, and services received to the present time: \$113,864.44.

You should consider the following past economic damages element:

- The reasonable value of earnings lost to the present time.

In addition, you should consider the following future economic damages elements:

- The reasonable value of earnings with reasonable probability to be lost in the future.
- The reasonable value of necessary non-medical expenses that will be required with reasonable probability in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.
- Loss to the plaintiff spouse of the consortium of her spouse.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 37

This instruction applies to Plaintiff Phuong Dinh and Mazda Hutapea.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

Your verdict must include the following undisputed items:

- The undisputed value of necessary medical care, treatment, and services received to the present time: Phuong Dinh, \$613,109.03; Mazda Hutapea, \$81,803.29.

In addition, you should consider the following future economic damages elements:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.
- The reasonable value of earnings capacity with reasonable probability to be lost in the future.

- The reasonable value of necessary non-medical expenses that will be required with reasonable probability in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 38

This instruction applies to Plaintiff Yuta Masumoto.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

Your verdict must include the following undisputed items:

- The undisputed value of necessary medical care, treatment, and services received to the present time: Yuta Masumoto, \$341,098.91.

In addition, you should consider the following future economic damages elements:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.
- The reasonable value of earnings capacity with reasonable probability to be lost in the future.
- The reasonable value of necessary non-medical expenses that will be required with reasonable probability in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 39

This instruction applies to Plaintiff Tam Nguyen.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following past economic damages element:

- The reasonable value of earnings lost to the present time.

In addition, you should consider the following future economic damages elements:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.
- The reasonable value of earning capacity with reasonable probability to be lost in the future.

In addition, you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.

- The disability and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 40

This instruction applies to Plaintiff Kenichiro Hiraoka.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following future economic damages element:

- The reasonable value of earning capacity with reasonable probability to be lost in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.

- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 41

This instruction applies to Plaintiffs Susan Gesner, Timothy Gesner, Young Yee Lee, Young Ki Kim, Kathleen Sheldon, Ronald Sheldon, Terry Sheldon, and Gunter Zielinski.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- Any disfigurement.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.
- Loss to the plaintiff spouse of the consortium of his or her spouse.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 42

This instruction applies to Plaintiff Toshihiko Hiraoka.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

In addition, you should consider the following future economic damages element:

- The reasonable value of earning capacity with reasonable probability to be lost in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future

- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.
- Loss to the plaintiff spouse of the consortium of his spouse.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 43

This instruction applies to Plaintiff Richard Sheldon.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

Your verdict must include the following undisputed items:

- The undisputed value of necessary medical care, treatment, and services received to the present time: The undisputed amount is \$110,778.97.

You should consider the following past economic damages element:

- The reasonable value of earnings lost to the present time.

In addition, you should consider the following future economic damages element:

- The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.
- Loss to the plaintiff of the consortium of his spouse.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 44

This instruction applies to Plaintiff Sonoko Hiraoka.

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

Your verdict must include the following undisputed items:

- The undisputed value of necessary medical care, treatment, and services received to the present time: The undisputed amount is \$167,947.90.

You should consider the following future economic damages elements:

- The reasonable value of earning capacity with reasonable probability to be lost in the future.
- The reasonable value of necessary non-medical expenses that will be required with reasonable probability in the future.

In addition you should consider the following noneconomic damages elements:

- The nature and extent of the injuries.
- The disability, disfigurement, and/or loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.
- Loss to the plaintiff of the consortium of her spouse.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 45

It is the duty of the court to instruct you as to the measure of damages on Plaintiff Personal Representative Partners in Care's claim for personal losses suffered by Claudia Derschmidt. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate Claudia Derschmidt's estate for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

You should consider the following economic damages:

- The net accumulations lost to her estate. In determining the net accumulations, you should take into account Claudia Derschmidt's age, health, life expectancy, occupation, and habits of industry, responsibility, and thrift. You should also take into account Claudia Derschmidt's earning capacity, including her actual earnings prior to death and the earnings that reasonably would have been expected to be earned by her in the future, including any pension benefits. Further, you should take into account the amount you find that Claudia Derschmidt reasonably would have consumed as personal expenses or reasonably would have contributed to Moritz

Derschmidt and Felix Derschmidt during her lifetime and deduct this from her expected future earnings to determine the net accumulations.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

INSTRUCTION 46

It is the duty of the court to instruct you as to the measure of damages for losses suffered by Moritz Derschmidt and Felix Derschmidt. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate Moritz Derschmidt and Felix Derschmidt for such damages as you find were proximately caused by the death of Claudia Derschmidt.

If you find for the plaintiff, you should consider the following items:

(1) Economic Damages:

(a) You should consider as past economic damages any benefit of value, including money, goods, and services that Moritz Derschmidt and Felix Derschmidt would have received from Claudia Derschmidt up to the present time if Claudia Derschmidt had lived.

(b) You should also consider as future economic damages what benefits of value, including money, goods, and services Claudia Derschmidt would have contributed to Moritz Derschmidt and Felix Derschmidt in the future had Claudia Derschmidt lived.

(2) Noneconomic Damages:

You should also consider what Claudia Derschmidt reasonably would have been expected to contribute to Moritz Derschmidt and Felix Derschmidt in the way of love, care, companionship, and guidance.

In making your determinations, you should take into account Claudia Derschmidt's age, health, life expectancy, occupation, and habits of industry, responsibility and thrift. You should also take into account Claudia Derschmidt's earning capacity, including Claudia Derschmidt's actual earnings prior to death and the earnings that reasonably would have been expected to be earned by Claudia Derschmidt in the future. In determining the amount that Claudia Derschmidt reasonably would have been expected to contribute in the future to Moritz Derschmidt and Felix Derschmidt, you should take into account the amount you find Claudia Derschmidt customarily contributed to Moritz Derschmidt and Felix Derschmidt.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION 47

It is the duty of the court to instruct you as to the measure of damages on Plaintiff Personal Representative Soon Won Kim's claim for personal losses suffered by HaRam Kim. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate HaRam Kim's estate for such damages as you find were proximately caused by the negligence and/or fault of one or more of the defendants.

If you find for the plaintiff, your verdict must include the following undisputed item:

- Health care expenses of \$273,389.72.

In addition, you should consider the following economic damages:

- The net accumulations lost to her estate. In determining the net accumulations, you should take into account HaRam Kim's age, health, life expectancy, occupation, and habits of industry, responsibility, and thrift. You should also take into account HaRam Kim's earning capacity, including her actual earnings prior to death and the earnings that reasonably would have been expected to be earned by her in the future, including any pension benefits. Further,

you should take into account the amount you find that HaRam Kim reasonably would have consumed as personal expenses and deduct this from her expected future earnings to determine the net accumulations.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

INSTRUCTION 48

A person who is liable for an injury to another is not liable for any damages arising after the original event that are proximately caused by failure of the injured person to exercise ordinary care to avoid or minimize such new or increased damages.

In determining whether, in the exercise of ordinary care, a person should have secured or submitted to medical treatment, as contended by the defendants, you may consider the nature of the treatment, and all of the surrounding circumstances.

The defendants have the burden to prove a plaintiff's failure to exercise ordinary care and the amount of damages, if any, that would have been minimized or avoided.

INSTRUCTION 49

If you find that:

(1) before this occurrence a plaintiff had a pre-existing bodily or mental condition that was causing pain or disability, and

(2) because of this occurrence the condition or the pain or the disability was aggravated,

then you should consider the degree to which the condition or the pain or disability was aggravated by this occurrence.

However, you should not consider any condition or disability that may have existed prior to this occurrence, or from which a plaintiff may now be suffering, that was not caused or contributed to by this occurrence.

INSTRUCTION 50

If you find that:

(1) before this occurrence a plaintiff had a bodily or mental condition that was not causing pain or disability; and

(2) because of this occurrence the pre-existing condition was lighted up or made active,

then you should consider the lighting up and any other injuries that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstances by a person without that condition.

There may be no recovery, however, for any injuries or disabilities that would have resulted from natural progression of the pre-existing condition even without this occurrence.

INSTRUCTION 51

If you find that:

(1) before this occurrence a plaintiff had a bodily or mental condition that was not causing pain or disability; and

(2) the condition made the plaintiff more susceptible to injury than a person in normal health,

then you should consider all the injuries and damages that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstances by a person without that condition.

There may be no recovery, however, for any injuries or disabilities that would have resulted from natural progression of the pre-existing condition even without this occurrence.

INSTRUCTION 52

Any award for future economic damages must be for the present cash value of those damages.

Noneconomic damages such as pain and suffering, inconvenience, disability, disfigurement, loss of enjoyment of life, loss of society and companionship of a parent or child, and loss of consortium of a spouse are not reduced to present cash value.

“Present cash value” means the sum of money needed now which, if invested at a reasonable rate of return, would equal the amount of loss at the time in the future when the expenses must be paid, or the earnings would have been received, or the benefits would have been received.

The rate of interest to be applied in determining present cash value should be that rate which in your judgment is reasonable under all the circumstances. In this regard, you should take into consideration the prevailing rates of interest in the area that can reasonably be expected from safe investments that a person of ordinary prudence, but without particular financial experience or skill, can make in this locality.

In determining present cash value, you may also consider decreases in value of money that may be caused by future inflation.

INSTRUCTION 53

According to U.S. population mortality tables, the average life expectancy of the plaintiffs, based on their age and gender, is stated in the Life Expectancy column in the chart below.

This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits, and activity of the person whose life expectancy is in question.

<u>Client Name</u>	<u>Age</u>	<u>Gender</u>	<u>Life Expectancy (Additional Years)</u>
Bak, Seohee	24	Female	56.69
Clouse, Don	71	Male	12.52
Cooley, Rhonda	51	Female	31.19
Derschmidt, Claudia (deceased)	49	Female	32.99
Derschmidt, Felix	19	Male	56.42
Derschmidt, Moritz	22	Male	53.66
Dinh, Phuong	21	Female	59.61
Edwards, Li	39	Female	42.24
Emery, Jennifer	33	Female	47.97
Gerke, JoAnn	57	Female	25.93
Gesner, Susan	63	Female	21.00
Gesner, Timothy	64	Male	17.13
Hiraoka, Toshihiko	64	Male	17.13
Hiraoka, Sonoko	58	Female	25.09
Hiraoka, Kenichiro	27	Male	49.01
Hiraoka, Yousuke	23	Male	52.73
Hutapea, Mazda	21	Female	59.61
Johnson, Sarah	43	Female	38.50

Kang, Min Kyeong	24	Female	56.69
Kim, Ha Ram (deceased)	20	Female	60.58
Kim, Young Ki	81	Male	7.27
Kim, Yunsu	53	Female	28.53
Kim, Sang Woo	23	Male	52.73
Lee, Young Yee	77	Female	11.10
Lee, Simon	48	Male	29.87
Lutz, Alena	24	Female	56.69
Masumoto, Yuta	24	Male	51.80
Nguyen, Tam	40	Male	36.95
Park, Kwang Hyeon	26	Male	49.94
Park, Jae Young	27	Male	49.01
Park, Jin Young	25	Male	50.88
Sa, Minje	22	Male	53.66
Sawada, Ayane	24	Female	56.69
Sheldon, Kathleen	74	Female	13.00
Sheldon, Richard	65	Male	16.43
Sheldon, Ronald	80	Male	7.73
Sheldon, Terry	62	Female	21.79
Zhuang, Yu	23	Male	52.73
Zielinski, Fenna	60	Female	23.42
Zielinski, Gunter	71	Male	12.52

INSTRUCTION 54

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

You will be given the exhibits admitted in evidence and these instructions. You will also be given a special verdict form that consists of several questions for you to answer. You must answer the questions in the order in which they are written, and according to the directions on the form. It is important that you read all the questions before you begin answering, and that you follow the directions exactly. Your answer to some questions will determine whether you are to answer all, some, or none of the remaining questions.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to answer any question on the special verdict form, ten jurors must agree upon the answer. It is not necessary that the jurors who agree on the answer be the same jurors who agreed on the answer to any other question, so long as ten jurors agree to each answer.

When you have finished answering the questions according to the directions on the special verdict form, the presiding juror will sign the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with the verdict. The presiding juror will then tell the bailiff that you have reached a verdict. The bailiff will bring you back into court where your verdict will be announced.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE DUCKS SEPTEMBER 24, 2015
AURORA BRIDGE COLLISION

No. 15-2-28905-5 SEA

SPECIAL VERDICT FORM

We, the jury, answer the questions submitted by the Court as follows:

(Direction: You are to answer the following questions in numerical order according to the instructions provided.)

We, the Jury, answer the Questions submitted by the Court as follows:

QUESTION 1: Was RTDS negligent by breaching the duty of a common carrier as to its Duck 6 passengers?

Yes _____ No _____

(DIRECTION: If you answered "Yes" to Question 1, please answer Question 2. If you answered "No" to Question 1, skip Question 2 and proceed to Question 3.)

QUESTION 2: Was RTDS' negligence as a common carrier a proximate cause of injury to the plaintiffs who were Duck 6 passengers?

Yes _____ No _____

(DIRECTION: Please answer Question 3.)

QUESTION 3: As to plaintiffs who were not Duck 6 passengers, was RTDS negligent?

Yes _____ No _____

(DIRECTION: If you answered “Yes” to Question 3, please answer Question 4. If you answered “No” to Question 3, skip Question 4 and proceed to Question 5.)

QUESTION 4: Was RTDS’ negligence a proximate cause of injury to plaintiffs who were not Duck 6 passengers?

Yes _____ No _____

(DIRECTION: Please answer Question 5.)

QUESTION 5: Was the State negligent?

Yes _____ No _____

(DIRECTION: If you answered “Yes” to Question 5, please answer Question 6(a) and Question 6(b). If you answered “No” to Question 5, skip Questions 6(a) and 6(b), and proceed to Question 7.)

QUESTION 6(a): Was the State’s negligence a proximate cause of injury to the plaintiffs who were Duck 6 passengers?

Yes _____ No _____

(DIRECTION: Please answer Question 6(b).)

QUESTION 6(b): Was the State’s negligence a proximate cause of injury to the plaintiffs who were not Duck 6 passengers?

Yes _____ No _____

(DIRECTION: Please answer Question 7.)

QUESTION 7: Was the City negligent?

Yes _____ No _____

(DIRECTION: If you answered “Yes” to Question 7, please answer Questions 8(a) and 8(b). If you answered “No” to Question 7, please skip Questions 8(a) and 8(b), and proceed to Question 9.)

QUESTION 8(a): Was the City’s negligence a proximate cause of injury to the plaintiffs who were Duck 6 passengers?

Yes _____ No _____

(DIRECTION: Please answer Question 8(b).)

QUESTION 8(b): Was the City's negligence a proximate cause of injury to the plaintiffs who were not Duck 6 passengers?

Yes _____ No _____

(DIRECTION: Please answer Question 9.)

QUESTION 9: Did RTDI breach a duty owed under the Products Liability Act in one of the following ways?

(a)(i). Claim 1 (Product Construction Defect): Did RTDI supply a product that was not reasonably safe in construction at the time the product left RTDI's control?

Yes _____ No _____

(DIRECTION: If you answered yes to Question 9(a)(i), answer Question 9(a)(ii).)

(a)(ii). Was this breach of the Product Liability Act a proximate cause of injury to the plaintiffs?

Yes _____ No _____

(b)(i). Claim 2 (Unsafe Product Design): Did RTDI supply a product that was not reasonably safe in design at the time the product left RTDI's control?

Yes _____ No _____

(DIRECTION: If you answered yes to Question 9(b)(i), answer Question 9(b)(ii).)

(b)(ii). Was this breach of the Product Liability Act a proximate cause of injury to the plaintiffs?

Yes _____ No _____

(c)(i). Claim 3 (Failure to Provide Warnings or Instructions with Product): Did RTDI supply a product that was not reasonably safe because adequate warnings or instructions were not provided with the product?

Yes _____ No _____

(DIRECTION: If you answered yes to Question 9(c)(i), answer Question 9(c)(ii).)

(c)(ii). Was this breach of the Product Liability Act a proximate cause of injury to the plaintiffs?

Yes _____ No _____

(d)(i). Claim 4 (Failure to Provide Warnings or Instructions after Sale): Did RTDI supply a product that was not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured?

Yes _____ No _____

(DIRECTION: If you answered yes to Question 9(d)(i), answer Question 9(d)(ii).)

(d)(ii). Was this breach of the Product Liability Act a proximate cause of injury to the plaintiffs?

Yes _____ No _____

(e)(i). Claim 5 (Crashworthiness): As to Duck 6 passengers, did RTDI supply a product that was not reasonably safe in reasonably foreseeable collisions?

Yes _____ No _____

(DIRECTION: If you answered yes to Question 9(e)(i), answer Question 9(e)(ii).)

(e)(ii). Was this breach of the Product Liability Act a proximate cause of injury to the plaintiffs who were Duck 6 passengers?

Yes _____ No _____

(DIRECTION: If you found that no defendant was negligent or breached the Product Liability Act or that no defendant's negligence or breach proximately caused plaintiffs' injuries, sign the verdict and notify the bailiff. Otherwise, please answer Questions 10, 11, and 12.)

QUESTION 10 (As to Plaintiffs who were Duck 6 passengers): For all plaintiffs who were Duck 6 passengers, assume that 100% represents the total combined negligence or fault that proximately caused the plaintiffs' injuries. What percentage of this 100% is attributable to each defendant you answered "yes" to in Questions 2, 6(a), 8(a), and 9(a)(ii), (b)(ii), (c)(ii), (d)(ii), or (e)(ii)? Your total must equal 100%.

ANSWER:

Ride the Ducks of Seattle _____ %

State of Washington _____ %

City of Seattle _____ %

Ride the Ducks International _____ %

QUESTION 11 (As to Plaintiffs Tam Nguyen and Mazda Hutapea who were not Duck 6 passengers): As to Plaintiffs Tam Nguyen and Mazda Hutapea, no fault may be attributed to the State. Assume that 100% represents the total combined negligence or fault that proximately caused these Plaintiffs' injuries. What percentage of this 100% is attributable to each defendant you answered "yes" to in Questions 4, 8(b), and 9(a)(ii), (b)(ii), (c)(ii), or (d)(ii)? Your total must equal 100%.

ANSWER:

Ride the Ducks of Seattle _____ %

City of Seattle _____ %

Ride the Ducks International _____ %

QUESTION 12 (As to Plaintiffs who were not Duck 6 passengers): For all plaintiffs who were not Duck 6 passengers except Tam Nyugen and Mazda Hutapea, assume that 100% represents the total combined negligence or fault that proximately caused the plaintiffs' injuries. What percentage of this 100% is attributable to each defendant you answered "yes" to in Questions 4, 6(b), 8(b), and 9(a)(ii), (b)(ii), (c)(ii), or (d)(ii)? Your total must equal 100%.

ANSWER:

Ride the Ducks of Seattle	_____ %
State of Washington	_____ %
City of Seattle	_____ %
Ride the Ducks International	_____ %

(DIRECTION: If you found any defendant liable for plaintiffs' injuries, please answer the following questions as applicable to the particular plaintiffs.)

SEOHEE BAK (Bus) (Instruction No. 31)

QUESTION 13: What do you find to be Seohee Bak's damages?

Non-Economic Damages \$ _____

RHONDA COOLEY (Duck 6) (Instruction No. 35)

QUESTION 14: What do you find to be Rhonda Cooley's damages?

Past medical care, treatment and services

Undisputed Amount: \$ 69,470.25

Disputed Amount:	\$ _____
Past Lost Earnings	\$ _____
Future Economic Damages	\$ _____
Non-Economic Damages	\$ _____

JOANNE GERKE (Duck 6) (Instruction No. 35)

QUESTION 15: What do you find to be JoAnne Gerke's damages?

Past medical care, treatment and services

Undisputed Amount:	\$ 44,423.40
Disputed Amount:	\$ _____
Past Lost Earnings	\$ _____
Future Economic Damages	\$ _____
Non-Economic Damages	\$ _____

DON CLOUSE (Bus) (Instruction No. 34)

QUESTION 16: What do you find to be Don Clouse's damages?

Future Economic Damages	\$ _____
Non-Economic Damages	\$ _____

ESTATE OF CLAUDIA DERSCHMIDT (Bus) (Instruction No. 45)

QUESTION 17: What do you find to be the Estate of Claudia Derschmidt's damages?

Net Accumulations	\$ _____
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FELIX DERSCHMIDT (Non-Duck 6, Non-Bus) (Instruction No. 46)

QUESTION 18: What do you find to be Felix Derschmidt's damages?

Economic Damages \$ _____

Non-Economic Damages \$ _____

MORITZ DERSCHMIDT (Non-Duck 6, Non-Bus) (Instruction No. 46)

QUESTION 19: What do you find to be Moritz Derschmidt's damages?

Economic Damages \$ _____

Non-Economic Damages \$ _____

PHUONG DINH (Bus) (Instruction No. 37)

QUESTION 20: What do you find to be Phuong Dinh's damages?

Past medical care, treatment and services \$ 613,109.03

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

LI LIU EDWARDS (Duck 6) (Instruction 31)

QUESTION 21: What do you find to be Li Liu Edward's damages?

Non-Economic Damages \$ _____

JENNIFER EMERY (Duck 6) (Instruction 31)

QUESTION 22: What do you find to be Jennifer Emery's damages?

Non-Economic Damages \$ _____

SUSAN GESNER (Duck 6) (Instruction 41)

QUESTION 23: What do you find to be Susan Gesner's damages?

Non-Economic Damages \$ _____

TIMOTHY GESNER (Duck 6) (Instruction No. 41)

QUESTION 24: What do you find to be Timothy Gesner's damages?

Non-Economic Damages \$ _____

KENICHIRO HIRAOKA (Duck 6) (Instruction No. 40)

QUESTION 25: What do you find to be Kenichiro Hiraoka's damages?

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

SONOKO HIRAOKA (Duck 6) (Instruction No. 44)

QUESTION 26: What do you find to be Sonoko Hiraoka's damages?

Past medical care, treatment and services \$ 167,947.90

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

TOSHIHIKO HIRAOKA (Duck 6) (Instruction No. 42)

QUESTION 27: What do you find to be Toshihiko Hiraoka's damages?

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

YOUSUKE HIRAOKA (Duck 6) (Instruction 31)

QUESTION 28: What do you find to be Yousuke Hiraoka's damages?

Non-Economic Damages \$ _____

MAZDA HUTAPEA (Bus) (Instruction 37)

QUESTION 29: What do you find to be Mazda Hutapea's damages?

Past medical care, treatment and services \$ 81,803.29

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

SARAH JOHNSON (Duck 6) (Instruction No. 31)

QUESTION 30: What do you find to be Sarah Johnson's damages?

Non-Economic Damages \$ _____

MIN KYEONG KANG (Bus) (Instruction No. 33)

QUESTION 31: What do you find to be Min Kyeong Kang's damages?

Future Medical Damages \$ _____

Future Earning Capacity \$ _____

Non-Economic Damages \$ _____

ESTATE OF HARAM KIM (Bus) (Instruction No. 47)

QUESTION 32: What do you find to be the Estate of HaRam Kim's damages?

Undisputed Healthcare Expenses \$273,389.72

Net Accumulations \$ _____

SANG WOO KIM (Duck 6) (Instruction No. 31)

QUESTION 33: What do you find to be Sang Woo Kim's damages?

Non-Economic Damages \$ _____

YOUNG KI KIM (Duck 6) (Instruction No. 41)

QUESTION 34: What do you find to be Young Ki Kim's damages?

Non-Economic Damages \$ _____

YUNSU KIM (Duck 6) (Instruction No. 31)

QUESTION 35: What do you find to be Yunsu Kim's damages?

Non-Economic Damages \$ _____

YOUNG YEE LEE (Duck 6) (Instruction No. 41)

QUESTION 36: What do you find to be Young Yee Lee's damages?

Non-Economic Damages \$ _____

JAE YOUNG PARK (Duck 6) (Instruction No. 31)

QUESTION 37: What do you find to be Jae Young Park's damages?

Non-Economic Damages \$ _____

JIN YOUNG PARK (Duck 6) (Instruction No. 31)

QUESTION 38: What do you find to be Jin Young Park's damages?

Non-Economic Damages \$ _____

SIMON LEE (Non-Duck 6, Non-Bus) (Instruction No. 32)

QUESTION 39: What do you find to be Simon Lee's damages?

Non-Economic Damages \$ _____

ALENA LUTZ (Duck 6) (Instruction No. 31)

QUESTION 40: What do you find to be Alena Lutz's damages?

Non-Economic Damages \$ _____

YUTA MASUMOTO (Bus) (Instruction 38)

QUESTION 41: What do you find to be Yuta Matsumoto's damages?

Past medical care, treatment and services \$ 341,098.91

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

TAM NGUYEN (Non-Duck 6, Following Bus) (Instruction 39)

QUESTION 42: What do you find to be Tam Nguyen's damages?

Past Economic Damages \$ _____

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

KWANG HYEON PARK (Bus) (Instruction No. 33)

QUESTION 43: What do you find to be Kwang Hyeon Park's damages?

Future Medical Damages \$ _____

Future Earning Capacity \$ _____

Non-Economic Damages \$ _____

MINJE SA (Bus) (Instruction No. 31)

QUESTION 44: What do you find to be Minje Sa's damages?

Non-Economic Damages \$ _____

AYANE SAWADA (Bus) (Instruction No. 31)

QUESTION 45: What do you find to be Ayane Sawada's damages?

Non-Economic Damages \$ _____

KATHLEEN SHELDON (Duck 6) (Instruction No. 41)

QUESTION 46: What do you find to be Kathleen Sheldon's damages?

Non-Economic Damages \$ _____

RICHARD SHELDON (Duck 6) (Instruction No. 43)

QUESTION 47: What do you find to be Richard Sheldon's damages?

Past medical care, treatment and services \$ 110,778.97

Past Economic Damages \$ _____

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

RONALD SHELDON (Duck 6) (Instruction No. 41)

QUESTION 48: What do you find to be Ronald Sheldon's damages?

Non-Economic Damages \$ _____

TERRY SHELDON (Duck 6) (Instruction No. 41)

QUESTION 49: What do you find to be Terry Sheldon's damages?

Non-Economic Damages \$ _____

YU ZHUANG (Bus) (Instruction No. 33)

QUESTION 50: What do you find to be Yu Zhuang's damages?

Future Medical Damages \$ _____

Future Earning Capacity \$ _____

Non-Economic Damages \$ _____

FENNA ZIELINSKI (Duck 6) (Instruction No. 36)

QUESTION 51: What do you find to be Fenna Zielinski's damages?

Past medical care, treatment and services \$113,864.44

Past Lost Earnings \$ _____

Future Economic Damages \$ _____

Non-Economic Damages \$ _____

GUNTER ZIELINSKI (Duck 6) (Instruction No. 41)

QUESTION 52: What do you find to be Gunter Zielinski's damages?

Non-Economic Damages \$ _____

(DIRECTION: Please sign this verdict form and notify the bailiff)

DATE:

Presiding Juror