

**Instructions given to the jury in *Kirkland v. Amtrak*, 98 C 3699 (trial held 12/99)
(Personal injury claim with defense of contributory negligence and
third party claim for contribution)**

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the laws that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation is entitled to the same fair consideration as a private individual. All persons and corporations stand equal before the law and are to be dealt with as equals in a court of justice.

As I stated earlier, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses and the exhibits are admitted in evidence.

During the trial, certain testimony was presented to you by videotape. This testimony is entitled to the same consideration you would give it had the witness personally appeared in court.

Certain things are not evidence. I will list them for you.

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of the witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.

You have heard a witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

When I use the word "negligence" in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

When I use the words "ordinary care," I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

When I use the expression "proximate cause," I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

It was the duty of the defendant Amtrak, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff. That means it was the duty of the defendant Amtrak to be free from negligence.

It was the duty of the plaintiff, before and at the time of the occurrence, to use ordinary care for his own safety. A plaintiff is contributorily negligent if (1) he fails to use ordinary care for his own safety and (2) his failure to use such ordinary care is a proximate cause of the injury.

The plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury or damage for which recovery is sought, does not bar his recovery. However, the total amount of damages to which he would otherwise be entitled is reduced in proportion to the amount of his negligence. This is known as comparative negligence.

If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury or damage for which recovery is sought, the defendant shall be found not liable.

The plaintiff claims that he was injured and sustained damage, and that the defendant—Amtrak was negligent in one or more of the following respects:

- a. unhooked the baggage cart from the tractor while on an incline;
- b. failed to place wheel chocks behind the rear wheels of the baggage cart to prevent it from rolling downhill;
- c. left the baggage cart unattended at the crest of the downward sloping sidewalk.

The plaintiff further claims that one or more of the foregoing was a proximate cause of his injuries.

The defendant-Amtrak denies that it did any of the things claimed by the plaintiff, denies that it was negligent in doing any of the things claimed by the plaintiff and denies that any claimed act or omission on the part of the defendant was a proximate cause of the plaintiff's claimed injuries.

The defendant-Amtrak claims that the plaintiff was contributorily negligent in one or more of the following respects:

- a. failing to observe what was present on the sidewalk before turning his back to Canal Street just before the accident;
- b. turning his back and facing west such that he was unable to observe the activity of persons handling baggage and/or baggage carts on a sidewalk with an incline known to run downward in his direction;
- c. after having previously observed baggage carts sitting on the subject sidewalk, turning his back and facing west such that he was unable to observe any baggage carts which might roll back on an incline known to run downward in his direction.

The defendant-Amtrak further claims that one or more of the foregoing was a proximate cause of the plaintiff's injuries.

The plaintiff denies that he did any of the things claimed by defendant-Amtrak, denies that he was negligent, and denies that any claimed act or omission on his part was a proximate cause of his claimed injuries.

The defendant-Amtrak further denies that the plaintiff was injured or sustained damages to the extent claimed.

One who may be required to pay money for causing injury to another may be entitled to contribution for a percentage of that sum from a third party. The circumstances under which such contribution is permitted will be explained to you in the following instructions.

In addition to the claim of Billy Kirkland against Amtrak, Amtrak makes a claim against Chicago Sightseeing Company. Amtrak claims that if it is liable to Billy Kirkland for damages, then it is entitled to contribution from Chicago Sightseeing Company for a percentage of those damages.

If you find Amtrak liable to Billy Kirkland, then you must consider the claim for contribution by Amtrak.

Amtrak claims that Chicago Sightseeing Company was negligent in one or more of the following respects:

- a. failing to exercise reasonable care while unloading their passengers' baggage from a baggage cart on an inclining sidewalk;
- b. causing or failing to prevent the baggage cart from rolling away and/or striking Mr. Kirkland;
- c. failing to adequately supervise Mr. Kirkland so as to keep him from positioning himself in a manner which would prevent him from observing any baggage carts which might roll back on an incline known to run downward in his direction.

Amtrak further claims that one or more of the foregoing was a proximate cause of Billy Kirkland's injuries.

Chicago Sightseeing Company denies that it did any of the things claimed by Amtrak, denies that it was negligent in doing any of the things claimed by Amtrak, and denies that any claimed act or omission on the part of Chicago Sightseeing Company was a proximate cause of Billy Kirkland's injuries.

When I say that a party has the burden of proof on any proposition, or use the expression “if you find,” or “if you decide,” I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

Plaintiff's Claim Against Defendant Amtrak

Under our law, Billy Kirkland may attempt to prove in either of two ways that National Railroad Passenger Corp., a/k/a Amtrak was negligent. Under the first method, in order for Billy Kirkland to recover, he has the burden of proving each of the following propositions:

First, that the defendant-Amtrak acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant-Amtrak was negligent.

Second, that the plaintiff was injured;

Third, that the negligence of the defendant-Amtrak was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for Amtrak as to Billy Kirkland's complaint. On the other hand, if you find from your consideration of all the evidence that all of these propositions have been proved, then you must consider Amtrak's claim that Billy Kirkland was contributorily negligent.

Under the second method, in order for Billy Kirkland to recover, he has the burden of proving each of the following propositions:

First: that Billy Kirkland was injured.

Second: that the injury was received from a baggage cart which was under the defendant-Amtrak's control.

Third: that in the normal course of events, the injury would not have occurred if defendant-Amtrak had used ordinary care while the baggage cart was under its control.

If you find that each of these propositions has been proved, the law permits you to infer from them that defendant-Amtrak was negligent with respect to the baggage cart while it was under its control.

If you do draw such an inference, and if you further find that the Billy Kirkland's injury was proximately caused by that negligence, you must next consider the defendant-Amtrak's claim that the plaintiff was contributorily negligent.

Defendant-Amtrak's Claim that Plaintiff was Contributorily Negligent

As to defendant-Amtrak's claim that the plaintiff was contributorily negligent, defendant-Amtrak has the burden of proving each of the following propositions:

A: That Billy Kirkland acted or failed to act in one of the ways claimed by defendant-Amtrak as stated to you in these instructions and that in so acting, or failing to act, Billy Kirkland was negligent;

B: That Billy Kirkland's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that defendant-Amtrak has not proved both of the propositions required of it, then your verdict should be for Billy Kirkland and you will not reduce the Billy Kirkland's damages.

If you find from your consideration of all the evidence that defendant-Amtrak has proved both of the propositions required of it, and if you find that Billy Kirkland's contributory negligence was greater than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for defendant-Amtrak.

If you find from your consideration of all the evidence that defendant-Amtrak has proved both of the propositions required of it, and if you find that Billy Kirkland's contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for Billy Kirkland and you will reduce the his damages in the manner stated to you in these instructions.

On the other hand, if you find that any of the propositions required of Billy Kirkland has not been proved, or if you find that the defendant-Amtrak used ordinary care for the safety of Billy Kirkland in its control of the baggage cart, or if you find that the defendant-Amtrak's negligence, if any, was not a proximate cause of the Billy Kirkland's injury, then your verdict should be for defendant-Amtrak under this Count.

Defendant-Amtrak's Claim Against Chicago Sightseeing Company

As to the claim of Amtrak against Chicago Sightseeing Company, Amtrak has the burden of proving each of the following propositions:

First, that Chicago Sightseeing Company acted or failed to act in one of the ways claimed in these instructions, and that in so acting, or failing to act, Chicago Sightseeing Company was negligent;

Second, that the negligence of Chicago Sightseeing Company was a proximate cause of Billy Kirkland's injuries.

If you find from your consideration of all the evidence that both of these propositions have been proved, then your verdict should be for Amtrak and against Chicago Sightseeing Company, and you should include Chicago Sightseeing Company in the apportionment of damages.

If, on the other hand, you find from your consideration of all the evidence that either one or both of these propositions has not been proved, then your verdict should be for Chicago Sightseeing Company and you will have no occasion to consider the apportionment of damages against Chicago Sightseeing Company.

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendant, taking into consideration the nature, extent and duration of the injury.

The disability resulting from the injury.

The disfigurement resulting from the injury.

The pain and suffering experienced and reasonably certain to be experienced in the future as a result of the injuries.

The reasonable expense of necessary medical care, treatment, and services received.

The value of earnings lost.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

If you decide for the plaintiff on the question of liability, you may not deny or limit the plaintiff's right to damages resulting from this occurrence because any injury resulted from an aggravation of a pre-existing condition or a pre-existing condition which rendered the plaintiff more susceptible to injury.

If you find that the plaintiff is entitled to damages arising in the future because of injuries, you must determine the amount of these damages which will arise in the future.

If these damages are permanent in nature, then in computing these damages you may consider how long the plaintiff is likely to live.

According to a table of mortality in evidence, the life expectancy of a person aged 65 years is 15.6 years. This figure is not conclusive. It is the average life expectancy of persons who have reached the age of 65. It may be considered by you in connection with other evidence relating to the probable life expectancy of the plaintiff in this case, including evidence of his occupation, health, habits, and other activities, bearing in mind that some persons live longer and some persons less than the average.

If you decide for the defendant Amtrak on the question of liability, you will have no occasion to consider the question of damages.

If you find for Billy Kirkland and against defendant-Amtrak, and if you also find that more than one corporation identified on the form of verdict, whether a defendant or not, was negligent in a manner which proximately caused Billy Kirkland's injuries, then you must apportion damages by determining the relative degree of fault, if any, of each corporation named or described on the verdict form.

In making that determination you should consider the duty owed by each to Billy Kirkland; the extent to which the conduct of each may have deviated from the duty owed to Billy Kirkland; and the extent to which the negligent conduct of each proximately caused Billy Kirkland's injuries.

In your verdict form, you will state the percentage of fault of each of these persons, as well as the percentage of fault, if any, attributable to the plaintiff's contributory negligence. The total of these percentages must add up to 100%.

The defendant is a corporation and can act only through its officers and employees. Any act or omission of an officer or employee within the scope of his employment is the action or omission of the defendant corporation.

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdicts must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate forms of verdict and return them into court.

Each verdict should be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiff: Billy Kirkland

Defendant/Third-Party Plaintiff: National Railroad Passenger Corporation a/k/a Amtrak

Third-Party Defendant: Chicago Sightseeing Company

You must fill in a percentage for each party. If you find in favor of the defendant, or the third-party defendant, then you must fill in zero percent for defendant-Amtrak or the third-party defendant. The total of the percentages must equal 100.

Verdict Form A

We, the jury, find for Billy Kirkland and against the Defendant, National Railroad Passenger Corporation a/k/a Amtrak.

We further find the following:

First: Without taking into consideration the question of reduction of damages due to the negligence of Billy Kirkland, if any, we find that the total amount of damages suffered by Billy Kirkland as a proximate result of the occurrence in question is \$ _____ itemized as follows:

Disability resulting from the injury:	\$
Disfigurement resulting from the injury:	\$
Pain and suffering experienced in the past:	\$
Pain and suffering to be experienced in the future:	\$
The reasonable expense of past medical and medically related expenses:	\$
The value of earnings lost:	\$
PLAINTIFF'S TOTAL DAMAGES:	\$

Second: As to the contribution claims against third-party defendant Chicago Sightseeing Company, we find as follows:

For Amtrak and against Chicago Sightseeing Company Yes _____ No _____

Third: Assuming that 100% represents the total combined negligence of all persons or entities whose negligence proximately caused Billy Kirkland's injury, including Billy Kirkland, any defendant whom you have found liable, and any third-party defendant you find liable, we find the percentage of such negligence attributable to each as follows:

(a) Billy Kirkland %
(b) National Railroad Passenger Corporation a/k/a Amtrak %
(c) Chicago Sightseeing Company %
TOTAL	100%

Verdict Form B

We, the jury, find for the Defendant, National Railroad Passenger Corporation a/k/a Amtrak, and against the Plaintiff, Billy Kirkland.

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Foreperson	
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I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions or your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.