



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

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

Your second duty is to apply the law 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.

Perform these duties fairly and impartially. Do not allow, sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

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.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

In this case the defendants are corporations. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits 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. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

Each party is entitled to have the case decided solely on the evidence that applies to that party. During the trial, you heard evidence regarding CSX Transportation's rules about getting onto moving equipment. As I instructed you during the trial, you may consider this evidence only as to the defendant Chicago Rail Link. You may not consider it against any other party.

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

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

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a the witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

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

A witness may be discredited or “impeached” by contradictory evidence; by, among other things, a showing that he or she testified falsely concerning a significant 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 a lawyer to meet with and interview any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

You have heard 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 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.

The plaintiffs in this case are Gary Pierce and Heidi Pierce.

The defendants in this case are Chicago Rail Link, LLC; CSX Transportation, Inc.; and CSX Intermodal, Inc. For the sake of simplicity, I will refer to Chicago Rail Link, LLC as “CRL”; I will refer to CSX Transportation, Inc. as “CSXT”; and I will refer to CSX Intermodal, Inc. as “CSXI.”

Gary Pierce has made claims against CRL, CSXT, and CSXI. Heidi Pierce has made claims against CSXT and CSXI. You must give separate consideration to each claim.

The defendants are corporations and can act only through their officers and employees. An act or omission of an officer or employee within the scope of his employment is considered to be the action or omission of the corporation by which he was employed.

When I say a particular party must prove something by a “preponderance of the evidence,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

### **First claim against CRL**

Gary Pierce's first claim against CRL is made under a law called the Federal Employers Liability Act, or FELA. Gary Pierce was employed by CRL at the time of the occurrence that is at issue in this case. The FELA, which applies only to an employer, provides that if an employee of a railroad is injured while engaged in the course of his employment, the railroad shall be liable in damages to the injured employee, if the injury results in whole or in part from the negligence of any of the officers, agents, or other employees of the railroad.

**First claim against CRL (continued)**

To succeed on his claim against CRL under the FELA, Gary Pierce must prove two things by a preponderance of the evidence:

First: CRL was negligent; and

Second: CRL's negligence caused or contributed , in whole or in part, to some injury and consequent damage sustained by Pierce.

### **First claim against CRL (continued)**

Negligence means 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.

The FELA imposed on CRL a duty to Gary Pierce, and to all its employees, to exercise reasonable care to provide a reasonably safe place in which to work, reasonably safe conditions in which to work and reasonably safe tools and equipment.

CRL's duty to provide a reasonably safe place to work under the FELA may not be delegated to a third party. Thus, CRL had a duty to provide a reasonably safe place to work even when Pierce's duties required him to enter property or use equipment owned and controlled by a third party.

This does not mean that CRL is a guarantor of Gary Pierce's safety, and the mere fact that an injury occurred, standing alone, does not permit you to draw the inference that the injury was caused by anyone's negligence.

**First claim against CRL (continued)**

Gary Pierce's injury was "caused or contributed to, in whole or in part" by CRL's negligence if that negligence played a part, no matter how small, in actually bringing about or causing Gary Pierce's injury.

### **First claim against CRL (continued)**

If you find that CRL was negligent and that its negligence played a part in Gary Pierce's injury, you must consider CRL's contention that Pierce was negligent. The law imposed upon Gary Pierce the duty to use ordinary care for his own safety. Negligence means the failure to act as a reasonably careful person would under circumstances similar to those shown by the evidence. To succeed on this contention, CRL must prove two things by a preponderance of the evidence:

First: Gary Pierce was negligent; and

Second: Pierce's negligence caused or contributed, in whole or in part, to his own injury and consequent damage.

If you decide that Gary Pierce was negligent and that his negligence was a cause of his injury you must then decide how much of his injury was caused by his negligence. This should be fixed as a percentage. The percentage of Gary Pierce's negligence, if any, is for you to decide.

## **Second claim against CRL**

Gary Pierce's second claim against CRL is that CRL violated certain regulations issued by the Federal Railroad Administration pursuant to the Federal Railroad Safety Act. That Act was adopted to protect the safety of railroad employees by imposing certain standards on railroads.

The standard that applies to this claim is different from the standard I have described for Gary Pierce's claim under the FELA. You must address the two claims separately.

To succeed on his second claim against CRL, Gary Pierce must prove two things by a preponderance of the evidence:

- First: CRL violated a regulation issued by the Federal Railroad Administration, specifically, one or more provisions of that agency's radio communication regulation; and
- Second: CRL's violation of the regulation contributed, in whole or in part, to Gary Pierce's injuries.

### **Claims against CSXT and CSXI**

The plaintiffs' claims against CSXT and CSXI are made under the common law of negligence, not under the FELA or the Federal Railroad Safety Act.

As I stated earlier, you must give separate consideration to each of these claims. I will, however, describe the claims together, to avoid repetition.

### **Claims against CSXT and CSXI (continued)**

To succeed on their claim against CSXT and their claim against CSXI, plaintiffs Gary Pierce and Heidi Pierce must prove two things by a preponderance of the evidence as to the particular defendant you are considering:

- First: That defendant was negligent; and
- Second: That defendant's negligence legally caused some injury and consequent damage sustained by the plaintiffs.

### **Claims against CSXT and CSXI (continued)**

The law imposed upon CSXT and CSXI the duty to use ordinary care for the safety of Gary Pierce. That means it was the duty of the defendants to be free from negligence.

Negligence means 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.

The term “legal cause” means any cause which, in natural or probable sequence, produced the injuries claimed by the plaintiffs. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, caused the injury.

### **Claims against CSXT and CSXI (continued)**

If you find that CSXT and/or CSXI was negligent and that its negligence played a part in Gary Pierce's injury, you must consider CSXT's and CSXI's contention that Pierce was negligent. The law imposed upon Gary Pierce the duty to use ordinary care for his own safety. Negligence means the failure to act as a reasonably careful person would under circumstances similar to those shown by the evidence.

To succeed on the contention that Gary Pierce was negligent, the particular defendant whose case you are considering must prove two things by a preponderance of the evidence:

First: Gary Pierce was negligent; and

Second: Pierce's negligence was a legal cause of his injury.

The defendants CSXT and CSXI are not liable to the plaintiffs if Gary Pierce's negligence was more than 50% of the total legal cause of his injury. Any negligence by Gary Pierce that was 50% or less of the total legal cause of his injury will not bar the plaintiffs from recovering from CSXT and CSXI.

### **Claims against CSXT and CSXI (continued)**

If you find that CSXT entrusted to an independent contractor the complete responsibility for maintenance and inspection of the track, drainage, and walkways at the Bedford Park terminal, you may find CSXT liable only if CSXT retained control of some part of the work, and Gary Pierce's injury was caused by CSXT's failure to exercise that control with reasonable care.

If you find that CSXI entrusted to an independent contractor the complete responsibility for maintenance and inspection of the track, drainage, and walkways at the Bedford Park terminal, you may find CSXI liable only if CSXI retained control of some part of the work, and Gary Pierce's injury was caused by CSXI's failure to exercise that control with reasonable care.

**Instruction applicable to all claims**

This instruction applies to all of the plaintiffs' claims against all of the defendants.

If you find that Gary Pierce was negligent and that his negligence was the sole cause of any injuries he may have sustained, then you must find for the defendants on each of the plaintiffs' claims.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you.

[Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the form, and all of you will sign it.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

The verdicts 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 opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine 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 of other jurors or for the purpose of returning a unanimous verdict.

**VERDICT FORM**

We, the jury, find as follows regarding the claims of plaintiffs Gary Pierce and Heidi Pierce against the defendants Chicago Rail Link, LLC, CSX Transportation, Inc., and CSX Intermodal, Inc.:

1. Was Chicago Rail Link negligent, as defined in the instructions regarding Gary Pierce’s claim against Chicago Rail Link?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(If you answer “yes,” proceed to question 2. If you answer “no,” skip question 2 and proceed to question 3.)

2. Did Chicago Rail Link’s negligence cause or contribute, in whole or in part, to some injury and consequent damage sustained by Gary Pierce, as defined in the instructions regarding Gary Pierce’s claim against Chicago Rail Link?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(Proceed to question 3.)

3. Was CSX Transportation negligent, as defined in the instructions regarding Gary and Heidi Pierce’s claim against CSX Transportation?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(If you answer “yes,” proceed to question 4. If you answer “no,” skip question 4 and proceed to question 5.)

4. Did CSX Transportation’s negligence legally cause some injury and consequent damage sustained by Gary Pierce, as defined in the instructions regarding Gary and Heidi Pierce’s claim against CSX Transportation?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(Proceed to question 5.)

5. Was CSX Intermodal negligent, as defined in the instructions regarding Gary and Heidi Pierce's claim against CSX Intermodal?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(If you answer "yes," proceed to question 6. If you answer "no," skip question 6 and proceed to question 7.)

6. Did CSX Intermodal's negligence legally cause some injury and consequent damage sustained by Gary Pierce, as defined in the instructions regarding Gary and Heidi Pierce's claim against CSX Intermodal?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(Proceed to question 7.)

7. (Answer question 7 only if you have found that one or more of the defendants was negligent.)

Was Gary Pierce negligent, as defined in the instructions I have given you?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

(If you answer "yes," proceed to question 8. If you answer "no," skip question 8 and proceed to question 9.)

8. Did Gary Pierce's negligence cause or contribute, in whole or in part, to his own injury and consequent damage, as defined in the instructions I have given you?

\_\_\_\_\_                      \_\_\_\_\_  
Yes                                      No

9. Answer question 9 only if you have found that one or more of the defendants and/or Gary Pierce was negligent.

To what extent (expressed in percentages) did each party's negligence cause Gary Pierce's injury?

Gary Pierce \_\_\_\_\_ %  
Chicago Rail Link \_\_\_\_\_ %  
CSX Transportation \_\_\_\_\_ %  
CSX Intermodal \_\_\_\_\_ %

(total must add up to 100%)

(Proceed to question 10.)

10. Did Chicago Rail Link violate 49 Code of Federal Regulations section 220.45, entitled "radio communication shall be complete"?

\_\_\_\_\_  
Yes                      No

(If you answer "yes," proceed to question 11. If you answer "no," skip question 11 and proceed to question 12.)

11. Did Chicago Rail Link's violation of 49 Code of Federal Regulations section 220.45 contribute, in whole or in part, to Gary Pierce's injuries?

\_\_\_\_\_  
Yes                      No

(Proceed to question 12.)

12. Did Chicago Rail Link violate 49 Code of Federal Regulations section 220.49, entitled "radio communication used in shoving, backing or pushing movements"?

\_\_\_\_\_  
Yes                      No

(If you answer "yes," proceed to question 13. If you answer "no," skip question 13.)

13. Did Chicago Rail Link's violation of 49 Code of Federal Regulations section 220.49 contribute, in whole or in part, to Gary Pierce's injuries?

\_\_\_\_\_  
Yes                      No

(Please proceed to question 14.)

14. Did Gary Pierce violate 49 Code of Federal Regulations section 220.49, entitled "radio communication used in shoving, backing or pushing movements"?

\_\_\_\_\_  
Yes                      No

(If you answer "yes," proceed to question 15. If you answer "no," skip question 15.)

15. Did Gary Pierce's violation of 49 Code of Federal Regulations section 220.49 contribute, in whole or in part, to his injuries?

\_\_\_\_\_  
Yes                      No

\_\_\_\_\_  
Presiding juror

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Date: July \_\_, 2006