

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**GERALDINE GANN, Personal )  
Representative of the Estate of JESSE L. )  
GANN, deceased )**

**Plaintiff,**

**v.**

**DENNIS OLTESVIG, and TTI, INC. )**

**Defendants. )**

**No. 06 C 2366**

**Magistrate Judge Morton Denlow**

**JURY INSTRUCTIONS**

## **FUNCTIONS OF THE COURT AND THE JURY**

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 to influence you.

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.

## **NO INFERENCE FROM JUDGE'S QUESTIONS**

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.

## **ALL LITIGANTS EQUAL BEFORE THE LAW**

In this case, one of the defendants, TTI, Inc., is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

## **EVIDENCE**

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

## **DEPOSITION TESTIMONY**

During the trial, certain testimony was presented to you by video. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.

## **WHAT IS NOT EVIDENCE**

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. The purpose of these 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.

## **NOTE-TAKING**

Any notes you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not your notes. 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.



**CONSIDERATION OF ALL EVIDENCE  
REGARDLESS OF WHO PRODUCED IT**

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

### **LIMITED PURPOSE OF EVIDENCE**

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.

## **WEIGHING THE EVIDENCE**

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 often 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.

## **DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE**

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 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.

## **TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)**

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.

## **PRIOR INCONSISTENT STATEMENTS OR ACTS**

You may consider statements given before trial by a Witness while under oath, or by a Party whether or not while under oath, as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statements or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

## **LAWYER INTERVIEWING WITNESS**

It is proper for a lawyer to meet with any witness in preparation for trial.

## **NUMBER OF WITNESSES**

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.



## **ABSENCE OF EVIDENCE**

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.

## **CLAIMS AND DEFENSES**

The plaintiff claims that he was injured and sustained damage, and that defendants Dennis Oltesvig and TTI, Inc. were negligent in one or more of these respects:

- a. Mr. Oltesvig failed to keep a proper lookout for other vehicles or people in his path of travel; or
- b. Mr. Oltesvig backed his vehicle when such movement could not be made with safety and without interfering with other traffic; or
- c. Mr. Oltesvig failed to sound his horn or give other warning to users of the roadway.

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

Defendants deny that they did any of the things claimed by the plaintiff, they deny that they were negligent, and they deny that any claimed negligence was a proximate cause of the plaintiff's claimed injuries.

The defendants claim that the plaintiff was contributorily negligent in the following respects: Mr. Gann failed to maintain a proper lookout when working in and around his truck.

The defendants further claim that the foregoing was a proximate cause of the plaintiff's injuries.

The plaintiff denies that he failed to keep a proper lookout for vehicles, denies that he was negligent in doing any of the things claimed by defendants, and denies that any claimed act or omission on his part was a proximate cause of his claimed injuries or death.

Defendants further deny that the plaintiff was injured or sustained damages to the extent claimed.

## **BURDEN OF PROOF ON THE ISSUES**

The plaintiff has the burden of proving each of the following propositions as to the defendants:

First, that Mr. Oltesvig 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, he was negligent;

Second, that the plaintiff was injured;

Third, that the negligence of Mr. Oltesvig was a proximate cause of the injury to the plaintiff.

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

If you find for the plaintiff and against the defendants, you must consider the defendants' claim that the plaintiff was contributorily negligent.

As to that claim, the defendants have the burden of proving both of the following propositions:

A: That Mr. Gann acted or failed to act in one of the ways claimed by the defendants as stated to you in these instructions and that in so acting, or failing to act, Mr. Gann was negligent;

B: That Mr. Gann's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendants have not proved both of the propositions required of the defendants, then your verdict shall be for the plaintiff and you shall not reduce plaintiff's damages.

If you find from your consideration of all the evidence that the defendants have proved both of the propositions required of the defendants, and if you find that the plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict shall be for the defendants.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendants have proved both of the propositions required of the defendants, and if you find that the plaintiff'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 shall be for the plaintiff and you shall reduce the plaintiff's damages in the manner stated to you in these instructions.

## **MEANING OF BURDEN OF PROOF**

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.

## **DEFINITION OF NEGLIGENCE**

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.

### **DEFINITION OF ORDINARY CARE**

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.



## **DUTY TO USE ORDINARY CARE - DEFENDANTS**

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

## **DUTY TO USE ORDINARY CARE - DECEDENT**

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

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

### **PROXIMATE CAUSE—DEFINITION**

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.

## **CAREFUL HABITS AS PROOF OF ORDINARY CARE**

If you decide there is evidence tending to show that the decedent was a person of careful habits, you may infer that he was in the exercise of ordinary care for his own safety at and before the time of the occurrence, unless the inference is overcome by other evidence. In deciding the issue of the exercise of ordinary care by the decedent, you may consider this inference and any other evidence upon the subject of the decedent's care.

## **FAILURE TO PRODUCE EVIDENCE OR A WITNESS**

You should consider this instruction only if you find by a preponderance of the evidence that Dennis Oltesvig took photographs at the scene.

If a party to this case has failed to offer evidence within his power to produce, you may infer that the evidence would be adverse to that party if you believe each of the following elements:

1. The evidence was under the control of the party and could have been produced by the exercise of reasonable diligence.
2. The evidence was not equally available to an adverse party.
3. A reasonably prudent person under the same or similar circumstances would have offered the evidence if he believed it to be favorable to him.
4. No reasonable excuse for the failure has been shown.

### **BOTH PRINCIPAL AND AGENT SUED—NO ISSUE AS TO AGENCY**

The defendants Dennis Oltesvig and TTI, Inc. are sued as principal and agent. Defendant TTI, Inc. is the principal and defendant Dennis Oltesvig is its agent. If you find that defendant Dennis Oltesvig is liable, then you must find that defendant TTI, Inc. is also liable. However, if you find that Dennis Oltesvig is not liable, then you must find that TTI, Inc. is not liable.

**ACTION FOR WRONGFUL DEATH AND SURVIVAL ACTION BROUGHT BY  
PERSONAL REPRESENTATIVE**

The plaintiff Geraldine Gann brings this action in a representative capacity by reason of her being the Personal Representative of the estate of Jessie Lee Gann, deceased. She represents the next of kin of the deceased, herself, Jessie Lee Gann, Jr., Tim Gann and Bradley Gann, and the estate. They are the real parties in interest in this lawsuit, and in that sense, they are the real plaintiffs whose damages you are to determine if you decide for the Personal Representative of the Estate of Jessie Lee Gann.

**IN ABSENCE OF LIABILITY—NO OCCASION TO CONSIDER DAMAGES**

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



## **DAMAGES–SURVIVAL ACTION**

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 the estate for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendants during the period between the time of the decedent's injuries and the time of his death, taking into consideration the nature, extent, and duration of the injury:

The reasonable value of necessary medical care, treatment, and services received;

The pain and suffering experienced;

The disability experienced.

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

## **MEASURE OF DAMAGES–WRONGFUL DEATH**

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 the widow and the children of the decedent for the pecuniary loss proven by the evidence to have resulted from the death of Jessie Lee Gann.

"Pecuniary loss" may include loss of money, benefits, goods, services, society and sexual relations.

Where a decedent leaves a widow and children, the law recognizes a presumption that they have sustained some substantial pecuniary loss by reason of the death. The weight to be given this presumption is for you to decide from the evidence in this case.

In determining pecuniary loss, you may consider what the evidence shows concerning the following:

What money, benefits, goods, and services the decedent customarily contributed in the past;

What money, benefits, goods, and services the decedent was likely to have contributed in the future;

What instruction, moral training, and superintendence of education the decedent might reasonably have been expected to give his children had he lived;

His age;

His sex;

His health;

His habits of industry, sobriety, and thrift;

His occupational abilities;

The marital relationship that existed between Geraldine Gann and Jessie Lee Gann;

The relationship between Jessie Lee Gann and his children.

In determining “pecuniary loss” you may not consider the the grief or sorrow of the widow and next of kin.

## **LOSS OF SOCIETY-DEFINITION**

When I use the term "society" in these instructions, I mean the mutual benefits that each family member receives from the other's continued existence, including love, affection, care, attention, companionship, comfort, guidance, and protection.

## **MORTALITY TABLES AS EVIDENCE OF DAMAGES**

If you find for the plaintiff, then in assessing damages you may consider how long Geraldine Gann, Jessie Lee Gann, Jr., Tim Gann, and Bradley Gann are likely to sustain pecuniary losses as a result of Jessie Lee Gann's death, considering how long Jessie Lee Gann was likely to have lived.

According to a table of mortality in evidence, the life expectancy of a male person aged 48 years is 30.5 years. This figure is not conclusive. It is the average life expectancy of persons who have reached that age. It may be considered by you in connection with other evidence relating to the probable life expectancies of the decedent, including evidence of the decedent's occupation, health, habits and activities, bearing in mind that some persons live longer and some persons live less than the average.

In calculating the amount of these pecuniary losses consisting of money, benefits, goods or services, you must determine their present cash value. "Present cash value" means the sum of money needed now which, together with what that sum may reasonably be expected to earn in the future, will equal the amounts of those pecuniary losses at the times in the future when they will be sustained.

Damages for loss of sexual relations and loss of society are not reduced to present cash value.

### **EFFECT OF INSTRUCTION AS TO DAMAGES**

The fact that the Court has instructed you as to the proper measure of damages should not be considered as intimating any view of the Court as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from a preponderance of the evidence in the case, in accordance with the other instructions.

## **VERDICT–UNANIMOUS–DUTY TO DELIBERATE**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict, whether for or against the parties, must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

## **SELECTION OF A FOREPERSON**

Upon retiring to the jury room, you will first select one of your number to act as foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

You are free to deliberate in any way you decide or select whomever you like as a foreperson. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be foreperson, you may want to consider the role that the foreperson usually plays. The foreperson serving as the chairperson during the deliberations should ensure a complete discussion by all jurors who desire to speak before any vote. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The foreperson should help facilitate the discussion and make sure everyone has a chance to say what they want to say.



## **VERDICT FORMS–JURY’S RESPONSIBILITY**

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form and return it to the court. Your verdict must be signed by each of you.

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for you convenience is meant to suggest or convey in any way or manner any intimation as to what verdict the Court thinks you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

## **CONDUCTING THE DELIBERATIONS**

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I encourage you at all times to keep an open mind if you ever disagree or come to different conclusions on facts from any of your fellow jurors. Thinking about the other juror's point of view may help you understand their position better or give you a better way to explain why you think your position is correct.

## **COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson or by one or more of the members of the jury, but you should understand that you, as the jury, must decide the facts. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case.

You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. I will either answer your question, or explain why I cannot answer your question.

Bear in mind that you are never to reveal to any person - not even to the Court - how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

## VERDICT FORM A

We, the jury, find for Plaintiff, Geraldine Gann, as Personal Representative of the Estate of Jessie Lee Gann, Deceased, and against the Defendants, Dennis Oltesvig and TTI, Inc.

We further find the following:

First: We find that the total of damages suffered by Geraldine Gann as Personal Representative of the Estate of Jesse Lee Gann, Deceased is:

\$ \_\_\_\_\_, itemized as follows:

Medical, funeral and burial  
expenses incurred: \$ \_\_\_\_\_

Pain and suffering sustained  
by Jessie Lee Gann: \$ \_\_\_\_\_

The Disability experienced  
by Jesse Lee Gann: \$ \_\_\_\_\_

Loss of money, goods and services: \$ \_\_\_\_\_

Loss of society and loss  
of sexual relations: \$ \_\_\_\_\_

Second: Assuming that 100% represents the total combined fault of all persons or entities whose negligence proximately caused the plaintiff's injury, we find the percentage of such fault attributable to each as follows:

a) Jesse Lee Gann, Deceased \_\_\_\_\_%

b) Dennis Oltesvig, TTI, Inc. \_\_\_\_\_%

\_\_\_\_\_(Foreperson) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

## VERDICT FORM B

We, the jury, find for the Defendants, Dennis Oltesvig and TTI, Inc. and against the Plaintiff, Geraldine Gann, as Personal Representative of the Estate of Jessie Lee Gann, Deceased.

_____ (Foreperson)	_____
_____	_____
_____	_____
_____	_____

Date: \_\_\_\_\_