

[Redacted]

Plaintiff

vs.

[Redacted]

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* HOWARD COUNTY
* Case No. 13-C-05-063121

REQUEST FOR INSTRUCTIONS ON BEHALF OF DEFENDANT

MARY P. PREISINGER

[Redacted]

, Defendant, by [Redacted], her attorney, pursuant to Maryland

Rule 2-520, requests that the Court give the attached instructions to the jury at the close of all of the evidence in this case.

[Handwritten signature] _____
[Redacted]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That on this ____ day of October, 2006, a copy of the foregoing Request for Instructions on Behalf of Defendant, was hand delivered, to Laura Zois, Esquire, 7310 Ritchie Highway, Glen Burnie, Maryland 21060, Attorney for Plaintiff.

[Handwritten signature] _____
[Redacted]

DEFENDANT'S INSTRUCTION NO: 1

INTRODUCTION

a. Instructions at Beginning of Trial

(1) Explanation of Trial Procedure

Members of the jury, in this case the Plaintiff, Nasira Naveed, has sued the Defendant, Mary P. Preisinger.

The trial will proceed in the following way. You will first hear opening statements by the lawyers. Each party has the right to make an opening statement for the purpose of outlining for you what the party expects to prove. The Plaintiff's lawyer will make the first opening statement and then the Defendant's lawyer may choose whether to make an opening statement.

The Plaintiff will then present evidence. After the Plaintiff's case has been presented through witnesses and exhibits, the Defendant will then have an opportunity to present evidence. Each witness is first examined by the party who calls the witness to testify and then the opposing party is permitted to cross-examine the witness.

During the trial the lawyers may make objections to the introduction of evidence, or make motions concerning the law. Arguments in connection with objections or motions are usually made out of the hearing of the jury, either here at the bench or after the jury has been excused from the courtroom. This is because questions of law and admissibility of evidence do not involve the jury; they are decided by the judge. It is the duty of a lawyer to make objections and motions which the lawyer believes are proper. You should not be influenced by the fact that a lawyer has made objections or by the number of objections which have been made. You should draw no conclusions from my rulings, either as to the merits of the case or as to my views regarding any witness or the case itself.

After the conclusion of all of the evidence, I will instruct you as to the law which is

applicable to this case. You must follow and apply the law as I will explain it to you. After these instructions, the lawyers will make their closing arguments. In their arguments, the lawyers will point out to you what they contend the evidence has shown and the conclusions they would like you to draw from the evidence. The Plaintiff's lawyer will make the first closing argument, then the Defendant's lawyer will make a closing argument. After the Defendant's argument, the Plaintiff will have an opportunity to make an argument in rebuttal in their closing arguments, and in making objections or motions during the trial, is not evidence. The reason the Plaintiff goes first in each instance is because the Plaintiff has the burden of proof.

After closing arguments, you will retire to the jury room and begin your deliberations. It will then be your function and responsibility to decide the facts. You must base your findings only upon the testimony, the exhibits received and the stipulation{s} of the parties and any conclusions which may fairly be drawn from that evidence. (Maryland Pattern Jury Instructions 4th Ed. 1:1)

DEFENDANT'S INSTRUCTION NO. 2
QUESTIONS OF LAW DURING TRIAL

During the course of the trial, it has been my duty to rule on a number of questions of law, such as objections to the admissibility of evidence, the form of questions, and other legal points. You should not draw any conclusions from these rulings either as to the merits of the case, or as to my views regarding any witness, party, or the case itself.

It is the duty of a lawyer to make objections which that lawyer believes are proper. You should not be influenced by the fact that these objections were made, no matter how the court may have ruled on them. You must disregard any evidence which I have ordered stricken.

(Maryland Pattern Jury Instruction 4th Ed. 1:2)

DEFENDANT'S INSTRUCTION NO: 3

IMPARTIALITY IN CONSIDERATION

You must consider and decide this case fairly and impartially. All persons, including corporations stand equal before the law and are entitled to the same treatment under the law.

You should not be prejudiced for or against a person because of that person's race, color, religion, political or social views, wealth or poverty. You should not even consider such matters. The same is true as to prejudice, for or against, and sympathy for any party. (Maryland Pattern Jury Instruction 4th Ed. 1:5)

DEFENDANT'S INSTRUCTION NO: 4

INFERENCES FROM STATEMENTS OF COURT

You should not conclude from any conduct or words of mine that I favor one party or another, or that I believe or disbelieve the testimony of any witness. You, not I, are the sole judges of the believability of witnesses and the weight of the evidence. You must not be influenced in any way by my conduct during the course of the trial. (Maryland Pattern Jury Instruction 4th Ed. 1:6)

DEFENDANT'S INSTRUCTION NO: 5

BURDEN OF PROOF-PREPONDERANCE OF EVIDENCE STANDARD

a. Preponderance of the Evidence

The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence.

In order to prove something by a preponderance of the evidence a party must prove that it is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

In determining whether a party has met the burden of proof you should consider the quality of all the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced.

If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it. (Maryland Pattern Jury Instruction 4th Ed. 1:7)

DEFENDANT'S INSTRUCTION NO: 6

NEGLIGENCE-DEFINITION

Negligence is doing something that a person using reasonable care would not do, or not doing something that a person using ordinary care would do. Ordinary care means that caution, attention or skill a reasonable person would use under similar circumstances. (Maryland Pattern Jury Instruction 4th Ed 19:1)

DEFENDANT'S INSTRUCTION NO: 7

STANDARD OF CARE

The driver of a motor vehicle must use reasonable care. Reasonable care is that degree of caution and attention which a person of ordinary skill and judgment would use under similar circumstances. What constitutes reasonable care depends upon the circumstances of a particular case. (Maryland Pattern Jury Instruction 4th Ed. 18:1)

DEFENDANT'S INSTRUCTION NO: 8

EVIDENCE OF NEGLIGENCE

In an action for injuries sustained in an automobile accident, the burden is on the Plaintiff to show that the Defendant was guilty of negligence which directly contributed to the accident since the happening of the accident does not, of itself, constitute negligence and evidence of negligence does not make the Defendant responsible unless the negligence was the cause of an injury. Lewis v. State Farm Mutual Auto Ins. Co. 112 Md. App 311 (1996); Brehm v. Lorenz, 206 Md. 500, 506 (1954); Finney v. Frevel, 183 Md. 355, 362 (1944); Gloyd v. Wills, 180 Md. 161, 165 (1942)

DEFENDANT'S INSTRUCTION NO: 9

VIOLATION OF STATUTE

The violation of a statute, which is a cause of Plaintiff injuries or damages, is evidence of negligence. (Maryland Pattern Jury Instructions 4th Ed. 19:7)

DEFENDANT'S INSTRUCTION NO. 10:
§ 21-604: TURNING, SLOWING, AND STOPPING MOVEMENTS:
REQUIRE SIGNALS.]

Maryland law (Transportation Article, §21-604(e) provides that "If there is an opportunity to signal, a person may not stop or suddenly decrease the speed of a vehicle until he gives an appropriate signal in the manner required by this subtitle to the driver of any other vehicle immediately to the rear."

There are duties incumbent upon both drivers. The general rule in Maryland is that where motor vehicles are traveling in the same direction there exist duties incumbent upon both drivers. The driver to the rear has a duty to exercise reasonable and ordinary care to avoid injury to the vehicle in front of him. However, the driver in the vehicle ahead also must exercise the same degree of care to avoid injury to the vehicle behind him. And the degree of care incumbent on the driver to the rear to avoid colliding with the vehicle ahead is not susceptible of precise formulation, but must depend on the facts and circumstances of each particular situation. Clark v. Junkins, 245 Md. 104, 225 A.2d 275 (1967).

DEFENDANT'S INSTRUCTION NO: 11

GENERAL RULE GOVERNING OVERTAKING AND PASSING VEHICLES

Maryland Transportation Code §21-303 (a)(b)(c), states:

(a) *In general.* – Except as otherwise provided in this subtitle, this section governs the overtaking and passing of vehicles going in the same direction.

(b) *Overtaking vehicle to pass to the left.* – The driver of a vehicle overtaking another vehicle that is going in the same direction shall pass to the left of the overtaken vehicle at a safe distance.

(c) *Overtaking vehicles going in the same direction.* – The driver of a vehicle overtaking another vehicle that is going in the same direction, until safely clear of the overtaken vehicle, may not driver any part of his vehicle directly in front of the overtaken vehicle. (An. Code 1957 art. 66 ½, § 11-303; 1977, ch. 14, § 2; 1986, ch. 472, § 1; 1988, ch. 6, § 1.)

DEFENDANT'S INSTRUCTION NO: 12

PASSING ON RIGHT

Maryland Transportation Code §221-304 states:

(a) *In general.* – Subject to the requirements of subsection (b) of this section, the driver of a vehicle may overtake and pass to the right of another vehicle only:

(1) If the overtaken vehicle is making or about to make a left turn.

(2) On a highway with unobstructed pavement not occupied by parked vehicles and wide enough for two or more lines of vehicles moving lawfully in the same direction as the overtaking vehicle; or

(3) On any one-way roadway, if the roadway is free from obstruction and wide enough for two or more lines of moving vehicle.

(b) *Safe conditions required.* – The driver of a vehicle may overtake and pass another vehicle to the right only if it is safe to do so.

(c) *Driving off roadway.* – The movement described under subsection (b) this section may not be made by driving off the roadway. (An. Code 1957, art. 66 1/2, § 11-304; 1977, ch. 14, § 2; 1986, ch. 472, § 1.)

DEFENDANT'S INSTRUCTION NO: 13

CONTRIBUTORY NEGLIGENCE-GENERALLY

A Plaintiff cannot recover if the Plaintiff's negligence is a cause of the injury.

The Defendant has the burden of proving by a preponderance of the evidence that the Plaintiff's negligence was a cause of the Plaintiff's injury. (Maryland Pattern Jury Instruction 4th Ed. 19:11)

DEFENDANT'S INSTRUCTION NO: 14

PROXIMATE AND CONCURRING CAUSES

For the Plaintiff to recover damages, the Defendant's negligence must be a cause of the Plaintiff's injury. [There may be more than one cause of an injury, that is, several negligent acts may work together. Each person whose negligent act is a cause of an injury is responsible.]

(Maryland Pattern Jury Instruction 4th Ed. 19:10)

DEFENDANT'S INSTRUCTION NO: 15

DAMAGES – INTRODUCTORY STATEMENT

In the event that you find for the Plaintiff on the issue of liability, then you must go on to consider the question of damages. It will be your duty to determine what, if any, award will fairly compensate the Plaintiff for the losses.

The burden is on the Plaintiff to prove by the preponderance of the evidence each item of damage claimed to be caused by the Defendant. In considering the items of damage, you must keep in mind that your award must adequately and fairly compensate the Plaintiff, but an award should not be based on guesswork. (Maryland Pattern Jury Instructions 4th Ed. 10:1)

DEFENDANT'S INSTRUCTION NO: 16

COMPENSATORY DAMAGES FOR BODILY INJURY

In an action for damages in a personal injury case, you shall consider the following:

- (1) The personal injuries sustained and their extent and duration;
- (2) The effect such injuries have on the overall physical and mental health and well-being of the Plaintiff;
- (3) The physical pain and mental anguish suffered;
- (4) The medical and other expenses reasonably and necessarily incurred in the past.

In awarding damages in this case you must itemize your verdict or award to show the amount intended for:

- (1) The medical expenses incurred in the past;
- (2) The "Noneconomic Damages" sustained in the past and reasonably probable to be sustained in the future. All damages which you may find for pain, suffering, inconvenience, physical impairment, or other nonpecuniary injury are "Noneconomic Damages";
- (3) Other damages. (Maryland Pattern Jury Instruction 4th Ed. 10:2, with modifications)

DEFENDANT'S INSTRUCTION NO: 17

MINIMIZING (MITIGATING) DAMAGES

A Plaintiff has a duty to use reasonable efforts to reduce the damages, but is not required to accept the risk of additional loss or injury in these efforts. (Maryland Pattern Jury Instruction 4d Ed. 10:6)

DEFENDANT'S INSTRUCTION NO: 18

WITNESS TESTIMONY CONSIDERATION

You are the sole judges of whether testimony should be believed. In making this decision, you may apply your own common sense and everyday experiences.

In determining whether a witness should be believed, you should carefully judge all the testimony and evidence and the circumstances under which each witness has testified. You should consider the following:

- (1) the witness' behavior on the stand and way of testifying;
- (2) the witness' opportunity to see or hear the things about which testimony was given;
- (3) the accuracy of the witness' memory;
- (4) did the witness have a motive not to tell the truth?;
- (5) does the witness have an interest in the outcome of the case?;
- (6) was the witness' testimony consistent?;
- (7) was the witness' testimony supported or contradicted by other evidence?; and
- (8) whether and the extent to which the witness' testimony differed from the statements made by the witness on any previous occasion.

You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness. (Maryland Pattern Jury Instruction 4th Ed. 1:3)

DEFENDANT'S INSTRUCTION NO: 19

EXPERT OPINION TESTIMONY

An expert is a witness who has special training or experience in a given field.

You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider an expert's opinion together with all the other evidence. (Maryland Pattern Jury Instruction 4d Ed. 1:4)

DEFENDANT'S INSTRUCTION NO: 30

DAMAGE AWARD NOT SUBJECT TO FEDERAL OR STATE INCOME TAX

Any compensatory damages awarded to the Plaintiff are not income within the meaning of Federal and Maryland income tax laws and the Plaintiff will not owe or have to pay any income tax on the amount awarded as damages. Therefore you should not add an amount to an award to compensate for anticipated taxes. (Maryland Pattern Jury Instruction 4th Ed. (0:11))

DEFENDANT'S INSTRUCTION NO: 21

ARGUMENTS OF COUNSEL

You are instructed that you must decide whether the Plaintiff was contributorily negligent or whether the Defendant was negligent based solely upon the testimony which you have heard from the witnesses and exhibits which have been introduced into evidence. If you find that the Defendant was negligent, you are instructed that the Plaintiff's recovery against the Defendant must be based solely on the testimony and exhibits introduced into evidence. Arguments of counsel on the issue of liability, and any figures suggested as compensation by Plaintiff's counsel in argument are not evidence and, therefore, should not be considered as such in your deliberations.

DEFENDANT'S INSTRUCTION NO: 22**COMMON SENSE AND UNANIMITY**

Just one last thing, and that is, in addition to the spoken evidence and exhibits, as jurors, you are entitled to use your own good judgment and your own common sense, and your own experience in reaching a conclusion as to what an ordinary person would do under the circumstance of this case. The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

You are not partisans, you are judges - judges of the facts. Your sole interest is to ascertain the truth from the evidence in this case.

DEFENDANT'S INSTRUCTION NO: 23

CONCLUSION - UNANIMOUS VERDICT

In order to reach a verdict in this case, each of you must agree upon it. Your verdict must be unanimous. (Maryland Pattern Jury Instruction 4th Ed. 1:13)