

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

JOSE LUIS PEREZ
Plaintiff,

CIVIL DIVISION

CASE NO: 08-10517 CA 08

v.

ERIKA PALMER, YVETTE PALMER, and
FRANK PALMER
Defendants.

**PLAINTIFF'S NOTICE OF FILING PROPOSED JURY INSTRUCTIONS AND
VERDICT FORM**

The Plaintiff, JOSE LUIS PEREZ, by and through undersigned counsel, and pursuant to all applicable rules of civil procedure, hereby file this, their Proposed Jury Instructions and Verdict Form.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. mail, email and facsimile this ____ day of September 2010 to all counsel on the attached Service list.

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By: _____
Maria L. Rubio
Florida Bar No.: 623891

Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

The claims and defenses in this case are as follows. Jose Luis Perez claims that Erika Palmer was negligent in the operation of the vehicle she was driving which caused him harm.

Erika Palmer denies that claim and also claims that Jose Luis Perez was himself negligent in ----
--which caused his harm. Additionally, Erika Palmer claims that Jose Luis Perez's injuries are due to the negligence of Kim Soon and/or Daniel Ricardo.

The parties must prove their claims by the greater weight of the evidence. I will now define some of the terms you will use in deciding the case.

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in this case.

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Florida Statutes state:

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. In every event, speed shall be controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance or object on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

316.183(1), Fla. Stat

The driver of every vehicle shall drive at an appropriately reduced speed when: any special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

316.183(4)(e), Fla. Stat.

The fact that speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazards exist or may exist with respect to pedestrians or other traffic or by reason of weather or other roadway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to use due care.

316.185, Fla. Stat.

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as to not endanger the life, limb or property of any person.

316.1925(1), Fla. Stat.

Violation of these statutes is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that Erika Palmer violated any of these statutes, you may consider that fact, together with the other facts and circumstances, in deciding whether such person was negligent.

Negligence is a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred.

In order to be regarded as a legal cause of loss, injury or damage negligence need not be the only cause. Negligence may be a legal cause of loss, injury or damage even though it operates in combination with the act of another or some natural cause or some other cause if the negligence contributes substantially to producing such loss, injury or damage.

The court has determined and now instructs you that Frank Palmer is responsible for any negligence of Erika Palmer in the operation of the vehicle she was driving.

The issues you must decide on Jose Luis Perez's claim against Erika Palmer are:

Whether Erika Palmer was negligent in the operation of the vehicle she was driving, and, if so, whether that negligence was the legal cause of the loss, injury or damage to Jose Luis Perez.

If the greater weight of the evidence does not support Jose Luis Perez's claim, your verdict shall be for Erika Palmer in that claim.

However, if the greater weight of the evidence supports Jose Luis Perez's claim, then you shall consider the defenses raised by Erika Palmer.

On the first defense, the issue for you to decide is whether Jose Luis Perez was himself negligent in ---- and, if so, whether that negligence was a contributing legal cause of injury or damage to Jose Luis Perez.

On the second defense, the issue for you to decide is whether Kim Soon and/or Daniel Ricardo were also negligent; and if so, whether that negligence was a contributing legal cause of loss, injury or damage to Jose Luis Perez.

If the greater weight of the evidence does not support Erika Palmer's defenses and the greater weight of the evidence does support Jose Luis Perez's claim, then your verdict should be for Jose Luis Perez in the total amount of his damages.

If, however, the greater weight of the evidence shows that both Jose Luis Perez and Erika Palmer and Kim Soon and/or Daniel Ricardo were negligent and that the negligence of each contributed as a legal cause as a legal cause of loss, injury or damage sustained by Jose Luis Perez, you should decide and write on the verdict form what percentage of the total negligence of Erika Palmer, Kim Soon and/or Daniel Ricardo was caused by each of them.

If your verdict is for Erika Palmer, you will not consider the matter of damages. But if your verdict is for Jose Luis Perez, you should determine and write on the verdict form, in dollars, the total amount of loss, injury or damage, which the greater weight of the evidence shows will fairly and adequately compensate him, including any damages Jose Luis Perez is reasonably certain to incur or experience in the future. You shall consider the following elements:

- a. Any bodily injury sustained by Jose Luis Perez and any resulting pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life experienced in the past or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just in light of the evidence.
- b. The reasonable value or expense of hospitalization and medical, nursing care and treatment necessarily or reasonably obtained by Jose Luis Perez in the past or to be so obtained in the future.
- c. Any earnings, work time lost in the past and any loss of ability to earn money in the past and/or in the future.

In determining the total amount of damages, you should not make any reduction because of the negligence, if any, of Jose Luis Perez. The court will enter a judgment based on your verdict and, if you find that Jose Luis Perez was negligent in any degree, the court in entering judgment will reduce the total amount of damages by the percentage of negligence which you find was caused by Jose Luis Perez.

In determining the total amount of damages, you should also not make any reduction because of the negligence, if any, of Kim Soon and/or Daniel Ricardo. The court in entering judgment will also take into account your allocation of negligence or fault among all persons who you find contributed to Jose Luis Perez's damages.

If you find that Erika Palmer caused a bodily injury, and that the injury resulted in an aggravation of an existing disease or physical defect, you should attempt to decide what portion of Jose Luis Perez's condition resulted from the aggravation. If you can make that determination, then you should award only those damages resulting from the aggravation. However, if you cannot make that determination, or if it cannot be said that the condition would have existed apart from the injury, then you should award damages for the entire condition suffered by Jose Luis Perez.

If the greater weight of the evidence shows that Jose Luis Perez has been permanently injured, you may consider his life expectancy. The mortality tables received in evidence may be considered in determining how long Jose Luis Perez may be expected to live. Mortality tables are not binding on you but may be considered together with other evidence in the case bearing on Jose Luis Perez's health, age and physical condition, before and after the injury, in determining the probable length of his life.

Any amount of damages which you allow for future medical expenses and/or loss of ability to earn money in the future should be reduced to its present money value and only the present money value of these future economic damages should be included in your verdict.

The present money value of future economic damages is the sum of money needed now which, together with that sum will earn in the future, will compensate Jose Luis Perez for these losses as they are actually experienced in the future years.

You should not reduce the amount of compensation to which Jose Luis Perez is otherwise entitled on account of wages, medical insurance payments or other benefits which the evidence shows Jose Luis Perez received from his employer, insurance company or some other source. The court will reduce as necessary the amount of compensation to which Jose Luis Perez is entitled on account of any such payments.

In deciding this case, it is your duty as jurors to decide the issues, and only those issues, that I submit for your determination, to answer certain questions I ask you to answer on a special form, called a verdict form. You must come to an agreement about your verdict. Your agreed-upon answers to my questions are called your jury verdict.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that were admitted or agreed to by the parties, and any fact of which the court has taken judicial notice.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

You have heard opinion testimony on certain technical subjects from persons referred to as expert witnesses. Some of the testimony before you was in the form of opinions about certain technical subjects.

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

A witness has testified in Spanish which was interpreted into English.

The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must disregard any different meaning.

If, during the testimony there was a question as to the accuracy of the English interpretation and steps were taken to resolve any discrepancies and despite these efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.

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Defendants.

_____ /

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of ERIKA PALMER which was a legal cause of [loss] injury or damage to JOSE LUIS PEREZ?

YES _____ NO _____

If your answer to question 1 is NO, your verdict is for defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of JOSE LUIS PEREZ which was a legal cause of his loss injury or damage?

YES _____ NO _____

Please answer question 3.

3. Was there negligence on the part of KIM SOON and/or DANIEL RICARDO which was a contributing legal cause of loss injury or damage to JOSE LUIS PEREZ?

YES _____ NO _____

Please answer question 4.

4. State the percentage of any negligence, which was a legal cause of loss injury or damage to JOSE LUIS PEREZ that you charge to:

ERIKA PALMER _____ %
KIM SOON _____ %
DANIEL RICARDO _____ %
JOSE LUIS PEREZ _____ %

Total must be 100%

(Note: For any response of "NO" to question 1, 2, or 3, place a zero as to that person in answering question 4.)

In determining the amount of damages, do not make any reduction because of the negligence, if any, of JOSE LUIS PEREZ or the negligence, if any, of KIM SOON and/or DANIEL RICARDO. If you find that JOSE LUIS PEREZ or KIM SOON or DANIEL RICARDO were negligent, the court in entering judgment will make an appropriate reduction in the damages awarded.

Please answer questions 5A and 5B.

5A. What is the total amount of JOSE LUIS PEREZ'S damages for lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past, medical expenses to be incurred in the future? \$ _____

5B. What is the total amount of JOSE LUIS PEREZ'S damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future? \$ _____

TOTAL DAMAGES OF JOSE LUIS PEREZ
(add lines 5A and 5B) \$ _____

SO SAY WE ALL, this _____ day of October, 2010.

FOREPERSON