

Jury Instructions

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

Your verdict must be unanimous.

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

1. 01 Preliminary Cautionary Instructions

Now that the evidence has concluded, I will instruct you as to the law and your duties.

The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party, whether a company or an individual, should receive your same fair consideration. My rulings, remarks or instructions do not indicate any opinion as to the facts.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

You should not do any independent investigation or research on any subject relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet.

Defendant's Instruction No. 1

1. 01 IPI

Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

For example, you must not use the Internet, including Google, Wikipedia, Twitter, Facebook, or any other sources that you might use every day, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including blogs, chat-rooms, or any social-networking websites, such as Twitter, or Facebook or any other means.

You cannot use any electronic devices or services to communicate about this case, and this includes cell-phones, smart-phones, lap-tops, the Internet, and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I will provide to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. You should feel free to remind each other that your verdict is to be based only on the evidence admitted in court and that you cannot use information from any other sources. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

Disobeying these instructions could cause a mistrial, meaning all of our efforts have been wasted and we would have to start over again with a new trial. If you violate these instructions you could be found in contempt of court.

Defendant's Instruction No. 1

1. 01 IPI

An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

Defendant's Instruction No. 1

1.01 IPI

50.11 A Corporation Acts Through Its Employees

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.

Defendant's Instruction No. 23

50.11 IPI

31.09 Action for Wrongful Death and Survival Action Brought By Personal Representative

The plaintiff William Groeller, Jr. brings this action in a representative capacity by reason of his being Special Administrator of the estate of Eleanor Groeller, deceased. He represents himself, and the estate of the deceased. They are the real parties in interest in this lawsuit, and in that sense are the real plaintiff's whose damages you are to determine if you decide for the Special Administrator of the Estate Eleanor Groeller.

Defendant's Instruction No. 17

31.09 IPI

2.01 Evaluation of Deposition or Prior Testimony

The testimony of Dr. Adeboye Ogunseitan was presented by the reading of his testimony. You should give this testimony the same consideration you would give it had the witness personally appeared in court.

Defendant's Instruction No. 2

2.01 IPI

3.08 Opinion Testimony

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way you judge the testimony from any other witness. The fact that such persons have 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.

Defendant's Instruction No. 6

3.08 IPI

3.02 Witness Who Has Been Interviewed by Attorney

An attorney is allowed, if the witness agrees, to talk to a witness to learn what testimony will be given. Such an interview, by itself, does not affect the credibility of the witness.

Defendant's Instruction No. 3

3.02 IPI

3.03 Insurance/Benefits

Whether a party is insured or not insured has no bearing on any issue that you must decide. You must refrain from any inference, speculation, or discussion about insurance. If you find for the plaintiff, you shall not speculate about or consider any possible sources of benefits the plaintiff may have received or might receive. After you have returned your verdict, the court will make whatever adjustments are necessary in this regard.

Defendant's Instruction No. 4

3.03 IPI

3.04 Circumstantial Evidence

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of the proof of facts or circumstances which leads to a reasonable inference of the existence of other facts sought to be established.

Defendant's Instruction No. 5

3.04 IPI

105. 03.01 Duty of a Health Care Institution--Institutional Negligence

Negligence by a **nursing home** is the failure to do something that a reasonably careful **nursing home** would do, or the doing of something that a reasonably careful **nursing home** would not do, under circumstances similar to those shown by the evidence.

In deciding whether the defendant Evergreen Healthcare Center, LLC was negligent, you may consider opinion testimony from qualified witnesses, evidence of professional

standards, evidence of policies and procedures, evidence of community practice, and other evidence presented in this case.

The law does not say how a reasonably careful **nursing home** would act under these circumstances. That is for you to decide.

Plaintiff's #1

[I.P.I 105.03.01](#)

IPI 22.02: Burden of Proof on the Issues

The Plaintiff William Groeller, Jr. has the burden of proving each of the following propositions as to his claim under the **Nursing Home** Act:

First, that the Defendant Evergreen Healthcare Center. LLC 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 was negligent;

Second, that Eleanor Groeller was injured;

Third, that the negligence of the Defendant was a proximate cause of the injury to Eleanor Groeller.

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 on the **Nursing Home** Act claim.

On the other hand, 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 the Defendant on that count.

The Plaintiff William Groeller, Jr. has the burden of proving each of the following propositions as to his the claim under the Wrongful Death Act

First, that the Defendant 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 was negligent;

Second, that Eleanor Groeller died;

Third, that the negligence of the Defendant was a proximate cause of the death of Eleanor Groeller.

If you find from your consideration of all the evidence that each of these propositions has been proved as to ?? then your verdict should be for the Plaintiff on the Wrongful Death Act claim. On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved as to ?? then your verdict should be for the Defendant as to the Wrongful Death Act claim.

[IPI 60.01: Quality of Care Regulation](#)

There was in force in the United States at the time of the occurrence in question a certain federal regulation which provided that:

Sec. 483.25 Quality of care.

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

If you decide that a party violated this federal regulation on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether and to what extent, if any, a party committed neglect or was negligent before and at the time of the occurrence.

I. P. I. #60.01

Plaintiff's Instr. No. 7

[42 CFR 483.25](#);

105. 01 Professional Negligence--Duty

“Professional negligence” by a nurse is the failure to do something that a reasonably careful nurse practicing in the same or similar localities as the nurse would do, or the doing of something that a reasonably careful nurse would not do, under circumstances similar to those shown by the evidence.

The phrase “deviation from the standard of care” means the same thing as “professional negligence.”

To determine what the standard of care required in this case, you must rely upon opinion testimony from qualified witnesses, evidence of professional standards, evidence of bylaws/rules regulations/policies/procedures, and other sources. You must not attempt to determine this question from any personal knowledge you have. The law does not say how a reasonably careful nurse would act under these circumstances. That is for you to decide.

Defendant's Instruction No. 24

105.01 IPI

36. 01 In Absence of Liability--No Occasion to Consider Damages

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

Defendant's Instruction No. 21

36.01 IPI

31.04 (version B) Measure of Damages--Wrongful Death--Adult Decedent--Widow and/or Lineal Next of Kin Surviving

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 William Groeller Sr. and William Groeller Jr. for the pecuniary loss proved by the evidence to have resulted to them. “Pecuniary loss” may include loss of benefits, goods, services, and society.

Where a decedent leaves lineal next of kin, the law recognizes a presumption that the lineal next of kin 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 about Eleanor Groeller concerning the following:

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

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

Her age;

Her sex;

Her health;
Her habits of industry, sobriety, and thrift;
The grief, sorrow, and mental suffering of her next of kin;
The relationship between William Groeller Jr. and Eleanor Groeller;
The marital relationship between William Groeller Sr. and Eleanor Groeller.
Defendant's Instruction No. 16 (version B)

31.04 IPI

31.13 Mortality Tables as Evidence of Damages--Wrongful Death Case

If you find for the plaintiff, then in assessing damages you may consider how long William Groeller Sr. and William Groeller Jr. sustained pecuniary losses as a result of Eleanor Groeller's death, considering how long Eleanor Groeller was likely to have lived. According to a table of mortality in evidence, the life expectancy of a female person aged 90 years is 4.6 years. This figure is not conclusive. It is the average life expectancy of persons who have reached the age of 90. It may be considered by you in connection with other evidence relating to the probable life expectancy 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.

Defendant's Instruction No. 20

31.13 IPI

31.10 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 defendant during the period between the time of the decedent's injuries and the time of her death, taking into consideration the nature, extent, and duration of the injury:

The pain and suffering experienced as a result of the injuries;

The emotional distress experienced;

Loss of a normal life experienced;

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

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

Plaintiff's #4

[I.P.I 31.10](#), [30.06](#), 30.05, 30.05.01, 30.04.01

30.04.02 Loss of a Normal Life--Definition

When I use the expression "loss of a normal life," I mean the temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life.

Defendant's Instruction No. 13

30.04.02 IPI

31.11 Damages--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.

Plaintiff's #5

[IPI 31.11](#)

30.21 Measure of Damages--Personal Injury--Aggravation of Pre-Existing Condition--No Limitations

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 a pre-existing condition which rendered the plaintiff more susceptible to injury.

IPI.21

Plaintiff's #6

15.01 Proximate Cause--Definition

When I use the expression “proximate cause,” I mean a cause that, in the natural or ordinary course of events, produced the plaintiff's injury. It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury.

Defendant's Instruction No. 8

15.01 IPI

20.01 Issues Made by the Pleadings--Negligence--One Defendant

The plaintiff William Groeller, Jr. claims that Eleanor Groeller was injured and died and sustained damage, and that the defendant was negligent in one or more of the following respects:

Failed to provide appropriate and necessary nutrition to Mrs. Groeller;

Failed to properly assess and evaluate Mrs. Groeller's mental status;

Failed to turn and reposition Mrs. Groeller in her bed;

The plaintiff further claims that one or more of the foregoing was a proximate cause of Eleanor Groeller's injuries and death.

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

The defendant further denies that Eleanor Groeller was injured or that Mrs. Groeller's estate sustained damages to the extent claimed.

Plaintiff's #2

[I.P.I 20.01](#)

21.01 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 that party has the burden of proof is more probably true than not true.

Defendant's Instruction No. 10

21.01 IPI

B45.01.A Verdict Form A--Single Plaintiff and Defendant--No Contributory Negligence Pleaded

VERDICT FORM A: NURSING HOME CLAIM

We, the jury, find for William Groeller, Jr., as Special Administrator of the Estate of Eleanor Groeller, deceased, and against Evergreen Healthcare Center, LLC on his claim under the **Nursing Home Act**. We assess the damages in the sum of \$_____.

The pain and suffering experienced: \$ ____;
The emotional distress experienced: \$ ____;
Loss of a normal life: \$ ____;
Reasonable expense of necessary medical treatment, and services received. \$ ____;

(Foreperson)

[IPI 45.01](#); Plaintiff's #8

B45.02.C Verdict Form B--Single Plaintiff and Defendant--No Contributory Negligence Pleaded

VERDICT FORM B: NURSING HOME CLAIM

We, the jury, find for Evergreen Healthcare Center, LLC, ?? and against William Groeller, Jr as Special Administrator of the Estate of Eleanor Groeller on his claim under the **Nursing Home Act**.

(Foreperson)

[IPI 45.01](#)

B45.01.A Verdict Form C--Single Plaintiff and Defendant--No Contributory Negligence Pled

VERDICT FORM C: WRONGFUL DEATH CLAIM

We, the jury, find for William Groeller, Jr., as Special Administrator of the Estate of Eleanor Groeller and against Evergreen Healthcare Center, LLC on his claim under the Wrongful Death Act. We assess the damages in the sum of \$ _____,

(Foreperson)

[IPI 45.01](#); Plaintiff's #9

B45.01.A Verdict Form D--Single Plaintiff and Defendant--No Contributory Negligence Pled

VERDICT FORM D: WRONGFUL DEATH CLAIM

We, the jury, find for Evergreen Healthcare Center, LLC and against William Groeller, Jr., as Special Administrator of the Estate of Eleanor Groeller, on his claim under the Wrongful Death Act.

(Foreperson)

[IPI 45.01](#)