

Completed Elements-of-Proof Rubric for Sample Case

ELEMENTS-OF-PROOF RUBRIC

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Claim	Elements	Evidence <i>Proving/Disproving</i>
Def's Negligent operation of a motor vehicle	<p>Establish by the greater weight of the credible evidence that the def. failed to exercise ordinary care, such as by failing to keep a careful lookout ahead and about him for the presence or movement of other vehicles. When hazards exist because of highway conditions or obstructions to vision, care must be exercised consistent with the hazards.</p> <p>The driver shall yield the right of way to other vehicles which have entered or are approaching the intersection upon the through highway.</p> <p>The law gives preference to traffic on a through highway. Driver entering must look sufficient distances to determine that a vehicle approaching on the through highway cannot reasonably be expected to interfere with the driver's crossing the through highway before the driver proceeds to do so. If a person looks and does not see what is in plain sight, the person did not keep a proper lookout.</p>	<p>Def. did not see Pl. before crash. Should have known icy roads. Knew Melvina was ¼ block back. Melvina's deposition page 4 line 5</p> <p>Def. had stop sign, Pl did not. Pl. was on the highway for nearly 2 blocks. Pl. had to have been approaching the inter§ when def. entered the inter§. Affidavit of Defendant, page 2 second paragraph</p> <p>Pl. was on through highway for 2 blocks. Def. did not see Pl before crash. There were no obstructions to vision. Approaching lights are visible on video. Deposition of John Smith, page 5 line 12-30 Deposition of Steve Doe, pages 13-22.</p>

Defenses	Elements	Evidence Proving/Disproving
Denial	The def. exercised ordinary care,	<p>Claimed PI was coming from Melvina—only ¼ block before so pl. would allegedly not have been on the through highway when def. entered the intersection. <i>(Pl. denies and map supports Pl)</i> Def. claims he was 75% through inter§.</p>
Contributory negligence	<p>Establish by the greater weight of the credible evidence that the pl. failed to exercise ordinary care, such as by failing to keep a careful lookout ahead and about him for the presence or movement of other vehicles.</p> <p>When hazards exist because of highway conditions or obstructions to vision, care must be exercised consistent with the hazards.</p> <p>The user of a through highway is not bound to so reduce speed at each intersection as to be able to stop at any time it becomes apparent that the other driver is not stopping.</p> <p>A driver must use ordinary care to keep his vehicle under proper management and control so that when danger appears he may take proper means to avoid injury/damage, but if driver does not become aware of danger in time, the driver is not negligent as to management and control.</p>	<p>Bus was well lit, so pl. should have seen. Hit rear of bus? <i>(Pl. denies and video helps.)</i> Eating chips? <i>(Pl. denies.)</i> Vision problems? <i>(Pl. denies. Tests and license will show.)</i> Affected by meds? <i>(Cops didn't think so enough to test, and no warnings on drugs)</i> <i>Def. has honesty issues.</i></p> <p>Pl. admitted roads were slick, but was driving in excess of speed limit.</p> <p>Reasonably prudent speed? <i>Saw bus 25 feet away and braked, but couldn't stop in time.</i></p> <p>Pl. was going too fast to stop. <i>Pl. confronted an emergency when def. pulled out in front of him. Not enough time to stop. Video shows just seconds to see and that Def. was hidden by another vehicle initially. Bus also pulled out very slowly at first—probably not enough to catch Pl's eye.</i></p>

Emergency	<p>Skidding may occur without fault or may have been precipitated by the negligence of the driver.</p> <p>No one should drive at a speed greater than is reasonable and prudent under existing conditions. Any speed in excess of posted limit would be negligent speed regardless of other conditions.</p> <p>Establish by the greater weight of the credible evidence that the def. confronted an emergency not brought about by his own negligence. If so, and he is compelled to act instantly, the driver is not negligent if he makes a choice that an ordinarily prudent person might make in the same position.</p>	<p>Roads were slick. PI. should have known and slowed down.</p> <p>PI. admitted exceeding the speed limit and admitted knowing the roads were slick.</p> <p><i>There is no evidence supporting the claim that the bus driver confronted an emergency.</i></p>
Claim	Elements	Evidence Proving/Disproving
Past and future pain and suffering	<p>Establish by the greater weight of the credible evidence that the def's negligence was a cause of past and/or future pain, suffering, disability and disfigurement.</p> <p>Jury should consider PI's life expectancy.</p>	<p>See Quantifying Pain and Suffering Log. Dr. report supports fully.</p> <p>Medical records are consistent.</p> <p>Had prior problems, but recovered quickly.</p> <p>Car was totaled.</p> <p>Air bag exploded.</p> <p>His car stopped dead.</p> <p>His body lurched forward.</p> <p>His knees hit inside the car.</p>
Defenses	Elements	Evidence Proving/Disproving
Pre-existing injury	<p>Establish by the greater weight of the credible evidence that pl. was previously injured and the injuries pl. received in the accident aggravated the pl's physical condition from the earlier injury. If so only allow compensation for the aggravation to the extent the aggravation to be a natural result of the injuries from the accident.</p> <p>Establish by the greater weight of the credible evidence that the pl. failed to use ordinary care to lessen his damages.</p>	<p>PI. taking meds before and no new pain meds due to this injury alone.</p> <p>Many medical probs before. But none to his knees and very little to his low back.</p>
Failed to Mitigate Damages		<p>No more pain meds given due to positive cocaine test. <i>Got treatment as recommended by doctors.</i></p>

Claim	Elements	Evidence Proving/Disproving
Past and future medical bills	Establish by the greater weight of the credible evidence that def's negligence was a cause of pl's incurring past health care services, and/or future health care expenses. The jury should insert the sum that will fairly and reasonably compensate the pl. for the care of the injuries sustained as a result of the accident. Jury should consider that Pl's life expectancy.	<p>Same as above for pain and suffering. Permanency report by Dr. Hanryx.</p> <p>Has regularly had shots to back every 3 months and will continue.</p> <p><i>No future knee surgeries.</i></p>
Defenses	Elements	Evidence Proving/Disproving
Pre-existing injury	Establish by the greater weight of the credible evidence that pl. was previously injured and the injuries pl. received in the accident aggravated the pl's physical condition from the earlier injury. Only allow compensation for the aggravation to the extent find the aggravation to be a natural result of the injuries from the accident.	<p>Pl had prior treatment to his low back.</p> <p>Taking meds before and no new pain meds due to this injury alone, so shouldn't be included Many</p> <p>medical probs before. But none to his knees and very little to his low back.</p>
Failed to Mitigate Damages	Establish by the greater weight of the credible evidence that the pl. failed to use ordinary care to lessen his damages.	Needs more expensive shots because can't have drugs?
Claim	Elements	Evidence Proving/Disproving
Past and future loss of earnings	Establish by the greater weight of the credible evidence that def's neg. was a cause for a past and/or future loss of earning capacity. The jury should award the sum that will fairly and reasonably compensate the plaintiff for the difference between what he was reasonably capable of earning had he not been injured and what he was/will be reasonably capable of earning due to his injuries. Jury should consider that Pl's life expectancy.	<i>Dr. Hanryx said these injuries would not prevent him from working but he would require accommodations.</i>
Defenses	Elements	Evidence Proving/Disproving
Pre-existing injury--on full disability	Establish by the greater weight of the credible evidence that pl. was previously injured and the injuries pl. received in the accident aggravated the pl's physical condition from the earlier injury. If so only allow compensation for the	<p>Did not work for 8 years before injury due to other medical issues.</p> <p>No real claim for lost wages.</p>

	aggravation to the extent find the aggravation to be a natural result of the injuries from the accident.	
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