IN THE IOWA DISTRICT COURT FOR ADAIR COUNTY

JULIA GILES Plaintiff, vs. TLH CLEANING LLC Defendant.	NO. LACV006218 **FINAL JURY INSTRUCTIONS**

STATEMENT OF THE CASE

This is an action by the Plaintiff Julia Giles seeking damages that she claims were caused by a fall that occurred on January 2, 2017 at the rest area on I-80 eastbound in Adair County, Iowa. Plaintiff Julia Giles has alleged that she slipped and fell on ice on brick outside the rest area, and that the Defendant TLH Cleaning, LLC was negligent in failing to address the alleged hazard that caused Plaintiff's fall. The Defendant TLH Cleaning, LLC has denied fault, claiming that it did not know or have reason to know of the ice on the property, and that the condition did not exist for long enough for TLH Cleaning, LLC to discover it and remove it. Defendant TLH Cleaning, LLC further claims that the Plaintiff Julia Giles is at fault for her fall, and that her fault should bar her recovery. Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. _____

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law. The order in which I give these instructions is not important. Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. _____

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

INSTRUCTION NO. _____

The court attendant who has been working with me on this case is in the same position as I am. He/She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put him/her on the spot by asking him/her any questions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. _____

During the trial, the Court has ruled upon objections to evidence which have, from time to time, been made by counsel, and this Court has done so according to the rules of evidence. Such rulings made by the Court are the responsibility of the Court solely, and in your consideration of the case you will give no significance or weight whatever to such rulings, and you will consider only such evidence as has been received before you, and which has not been stricken by the Court.

INSTRUCTION NO. _____

Whenever a party must prove something they must do so by the preponderance of the evidence.

To prove something by a preponderance of the evidence means to prove that something is more likely true than not. In other words, a preponderance of the evidence in this case means such evidence, as when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proven is more likely true than not true.

The preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them.

INSTRUCTION NO. _____

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;

2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the acts; and,

3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. _____

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.

2. Exhibits received by the court.

3. Stipulations which are agreements between the attorneys.

4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.

2. Objections and rulings on objections.

3. Any testimony I told you to disregard.

4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. _____

There are two types of evidence, direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. Circumstantial evidence is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in this case, both direct and circumstantial.

INSTRUCTION NO. _____

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. _____

Certain Testimony has been read into evidence from a deposition or played by videotape. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. _____

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. _____

You have heard evidence claiming Julia Giles made statements before this trial while under oath which were inconsistent with what Julia Giles said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe Julia Giles. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NO. _____

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence.

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. _____

The mere fact an accident occurred or that a party was injured does not mean a party was negligent or at fault.

INSTRUCTION NO._____

The fact the Defendant is a company should not affect your decision. All person are equal before the law, and companies, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

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INSTRUCTION NO. _____

The owner of land next to a sidewalk must remove, within a reasonable amount of time, any snow and ice that has naturally accumulated on the sidewalk. The owner must exercise ordinary care in removing the snow and ice.

The plaintiff must prove that the owner knew about the natural accumulation of snow and ice, or that it existed long enough for the owner to have discovered and removed it in the exercise of ordinary care.

A violation of this law is negligence.

INSTRUCTION NO. _____

"Natural accumulation" refers to snow or ice which is on the sidewalk as the result of nature, as compared to snow or ice which was caused to be on the sidewalk as the result of something that a person has done.

INSTRUCTION NO. _____

On Plaintiff's claim against Defendant plaintiff must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.

2. The defendant knew or in the exercise of reasonable care should have known:

   a. the plaintiff would not discover the condition, or
   b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
   c. the plaintiff would not protect herself from the condition.

3. The defendant was negligent in the following:

   a. failing to remove ice from the sidewalk within a reasonable time period

4. The negligence was a cause of the plaintiff's damage.

5. The harm to Plaintiff was in the scope of Defendant's liability

6. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. ___

INSTRUCTION NO. _____

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether the Defendant has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

INSTRUCTION NO. _____

The owner of a premises is presumed to know all conditions on the premises that are caused or created by the owner or the owner's employee. The owner of a premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the owner had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the owner should have known about it.

INSTRUCTION NO. _____

Concerning number 2 of Instruction _____, a defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the Plaintiff's position unless the Defendant should anticipate the harm despite such knowledge or obviousness.

INSTRUCTION NO. _____

A condition is known if one is aware or conscious of its existence and of the risk of harm it presents.

A condition is obvious when both the condition and risk of harm are apparent to and would be recognized by a reasonable person in the position of a visitor exercising ordinary perception, intelligence, and judgment.

INSTRUCTION NO. _____

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Plaintiff Julia Giles and Defendant TLH Cleaning, LLC the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. _____

The defendant claims that the Plaintiff was at fault in one or more of the following particulars:

1) In failing to protect herself from the alleged condition on the property

2) In failing to keep a proper lookout.

These grounds of fault have been explained to you in other instructions.

The defendant must prove both of the following propositions.

1) The plaintiff was at fault.

2) The plaintiff's fault was a cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved its defense. If defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. _____

After you have compared the conduct of all parties, if you find the Plaintiff, Julia Giles, was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff Julia Giles, cannot recover damages.

However, if you find the Plaintiff's fault was 50% of less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

INSTRUCTION NO. _____

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's own movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. _____

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. _____

You must decide whether the claimed harm to plaintiff is within the scope of the defendant's liability. The plaintiffs claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

INSTRUCTION NO. _____

If you find the Plaintiff Julia Giles is entitled to recover damages, you shall consider the following items of damage:

a) Past medical expenses;

b) Past pain and suffering;

c) Present value of future pain and suffering;

d) Past loss of function; and

e) Present value of future loss of function

Physical pain and suffering may include, but is not limited to, unpleasant feelings, bodily distress and uneasiness, bodily suffering, sensations or discomfort.

Loss of function of the body is the inability of a particular part of the body to function in a normal manner.

The amount you assess for physical pain and suffering in the past and/or loss of function of the mind and body in the past cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damages. Add together the amounts, if any, you find for each of the above items and the total will be used to answer the special verdicts.

INSTRUCTION NO. _____

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

INSTRUCTION NO. ____

The fact that I have instructed you on the proper measure of damages should not be considered as an indication of any view of mine as to which party is entitled to your verdict in this case. Instructions as to measure of damages are given only for your guidance.

INSTRUCTION NO. _____

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO._____

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.] It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. _____

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. _____

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete. Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. _____

I am giving you one verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock ___.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree. When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.