

Original

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

NATHAN CARAWAY,

Plaintiff,

vs.

SUN CONCRETE PUMPING CO.,

Defendant.

Case No.: LACV095528

FINAL JURY
INSTRUCTIONS

CLERK OF DISTRICT COURT
2023 OCT 30 PM 3:47
LINN COUNTY, IOWA

MEMBERS OF THE JURY:

Plaintiff Nathan Caraway hired Sun Concrete Pumping Company to provide concrete pumping services for the construction of a concrete vault. Nathan Caraway claims that on June 12, 2018, while in the process of pouring concrete for the vault project with the pump, hose, and equipment supplied by Sun Concrete Pumping Company, the pumping equipment either failed or its operator was negligent, causing Nathan Caraway to be covered with wet concrete. Nathan Caraway claims the concrete splattered on him resulted in burns and other injuries. As a result, Nathan Caraway seeks damages from Sun Concrete Pumping Company. Sun Concrete Pumping Company denies it was negligent and alleges Nathan Caraway was negligent and responsible for his injuries.

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.

YOU ARE INSTRUCTED AS FOLLOWS:

INSTRUCTION NO. 1

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

You must consider all 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. 2

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

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

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 into evidence.

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

INSTRUCTION NO. 4

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

INSTRUCTION NO. 5

During this trial, you may hear 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. 6

The Defendant served on the Plaintiff a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the Plaintiff.

INSTRUCTION NO. 7

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 8

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. 9

You have heard evidence claiming one or more witnesses made statements before this trial while under oath which were inconsistent with what the witness 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 a witness. 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. 10

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Evidence has been offered to show that ~~the~~ one or more parties or party representatives in this case made statements before this trial while not under oath which were inconsistent with what the party said in this trial.

If you find any of the statements were made, then you may consider them as part of the evidence.

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

INSTRUCTION NO. 11

The fact that the Defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person. Sun Concrete is liable for the negligence of its employees if the employees were acting within the scope of their employment. The parties agree that Sun Concrete's employees were acting within the scope of their employment.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

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 the Plaintiff and Defendant and 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. 14

After you have compared the conduct of all parties, if you find the Plaintiff was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff cannot recover damages. However, if you find the Plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of Plaintiff's fault.

INSTRUCTION NO. 15

The Plaintiff must prove all of the following three numbered propositions:

1. The Defendant was negligent in one or more of the following ways:
 - a. Failing to provide a ground pump; or
 - b. Failure of the operator of the pumping equipment to follow Defendant's safety policies and training; or
 - c. Failing to warn Nathan Caraway of burn injuries for concrete splattered on him; or
 - d. Failing to exercise reasonable care to protect Nathan Caraway from a dangerous condition known to Sun Concrete Pumping, Co.
2. The negligence was a cause of damage to the Plaintiff; and
3. The amount of damage.

If the Plaintiff fails to prove any of these three numbered propositions, then Plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction No. 16.

INSTRUCTION NO. 16

The Defendant claims the Plaintiff was at fault in one or more of the following particular(s):

- a. In failing to wash off the concrete after skin contact.
- b. In placing himself in an unsafe position.

These grounds of fault have been explained to you in other instructions. The Defendant must prove both of the two following numbered propositions:

1. The Plaintiff was at fault.
2. The Plaintiff's fault was a cause of the Plaintiff's damage.

CAB If the Defendant has failed to prove either of these two numbered propositions, the Defendant has not proved ~~his~~^{its} defense. If the 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 when answering the special verdicts.

INSTRUCTION NO. 17

“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. 18

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

INSTRUCTION NO. 19

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

INSTRUCTION NO. 20

You have received evidence of Sun Concrete's manual and the Putzmeister pump manual. Conformity with the requirements of manuals is evidence that a party was not negligent and non-conformity is evidence that a party was negligent. Such evidence is relevant and you should consider it, but it is not conclusive proof.

INSTRUCTION NO. 21

If you find Nathan Caraway is entitled to recover damages, you shall consider the following items:

1. Physical and mental pain and suffering from the date of injury to the present time.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life. Mental pain and suffering includes emotional distress arising from scarring and disfigurement;

2. The present value of future physical and mental pain and suffering;
3. Loss of function of the body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner;
4. The present value of future loss of function of the body; ~~and~~ *and, Cxb*

The amount you assess for physical pain and suffering and for loss of function of the body 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 the Defendant 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 damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 22

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. 23

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Nathan Caraway is 30 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Nathan Caraway's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 24

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. 25

Juror's Notes. 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.

INSTRUCTION NO. 26

The Court has not by its instructions or by any ruling made, or by any act done, or by anything said during the trial, or by any facial expression, gesture or tone of voice, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, nor what your verdict should be.

During the trial, the Court has ruled upon objections to evidence which have been made by counsel. Such rulings are the responsibility of the Court, 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 which has been received before you as part of the record in this case.

INSTRUCTION NO. 27

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, X, 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. 28

Occasionally, after a jury retires to the jury room, the members have questions. Usually questions about instructions can be answered by carefully re-reading them. If, however, any of you feels 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 considerable time before I can reply. Keep the written question and response and return it to the Court with the verdict.

INSTRUCTION NO. 29

Upon retiring you shall select a foreperson. 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. 30

I am giving you one verdict form containing several questions. If you all agree to the answers to the questions, the verdict will be signed by the person you select as presiding juror.

After deliberating for six hours after 11:30 o'clock a.m. on this date, excluding meals or recesses outside your jury room, then it is necessary that all but one of you agree upon the verdict. In that case the verdict must be signed by all seven jurors who are in agreement.

When you have agreed upon a verdict and appropriately signed it, inform the Court Attendant.

Dated at Cedar Rapids, Iowa, this 30th day of October, 2023.



JUDGE, SIXTH JUDICIAL DISTRICT OF IOWA