

IN THE IOWA DISTRICT COURT IN AND FOR CHICKASAW COUNTY

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<p>THEODORE GEERTS, as the Administrator of the ESTATE OF VERONICA GEERTS,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>JODY HARMSSEN, MD,</p> <p style="text-align: center;">Defendant.</p>	<p>No. LACV004183</p> <p style="text-align: center;"><b>JURY INSTRUCTIONS</b></p>
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**Instruction No. 1**

Members of the Jury:

In this case, Plaintiff, Theodore Geerts, as the Administrator of the Estate of Veronica Geerts, claims Defendant, Dr. Jody Harmsen, committed medical malpractice in the medical care and treatment she provided to Veronica Geerts on July 29, 2019. Mr. Geerts alleges that Dr. Harmsen was negligent in her care and treatment of Veronica Geerts and as a result of this alleged negligence Veronica Geerts, Theodore Geerts and the Geerts family were damaged. Theodore Geerts has filed this lawsuit on behalf of himself, as the surviving spouse of Veronica Geerts, the four adult children of Veronica Geerts, and the Estate of Veronica Geerts. Depending upon the context, throughout these instructions I will primarily refer to the Plaintiff as either Theodore Geerts, the Estate of Veronica Geerts or, occasionally, the Geerts family and you should consider each of these references as referring to the Plaintiff in this matter.

Dr. Harmsen denies that she was negligent and denies that the care and treatment she provided to Veronica Geerts caused harm to Mrs. Geerts.

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. 2**

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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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. 3**

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. 4**

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.

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. 5**

Certain testimony has been taken under oath before the trial and shown on video. Consider that testimony as if it had been given in person in court.

**Instruction No. 6**

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. 7**

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. 8**

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. 9**

Theodore Geerts, Administrator of the Estate of Veronica Geerts, claims that Dr. Harmsen at fault. In order to prevail on this claim, Geerts must prove all of the following propositions:

1. Dr. Harmsen was negligent by failing to meet the standard of care in one of the following ways:
  - a. Removal of the cervical collar;
  - b. Failing to continue cervical spine precautions;
  - c. Failing to order a cervical MRI; or
  - d. Failing to recognize and treat a spinal cord injury;
2. Dr. Harmsen's negligence, if any, was a cause of damage to Veronica Geerts.
3. The amount of damage.

If Theodore Geerts has proved all of these propositions, you will consider the claim of comparative fault as explained in Instruction No. 13. If Theodore Geerts has failed to prove any of these propositions, the Geerts is not entitled to damages.

*family*

**Instruction No. 10**

A physician must use the degree of skill, care and learning ordinarily possessed and exercised by other physicians in similar circumstances.

Physicians who hold themselves out as specialists must use the degree of skill, care and learning ordinarily possessed and exercised by specialists in similar circumstances, not merely the average skill and care of a general practitioner.

A violation of this duty is negligence.

**Instruction No. 11**

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

The mere fact that a party has suffered injury does not mean another party was negligent or at fault.

**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 the actor or of another which constitutes negligence.

## Instruction No. 13

Dr. Harmsen claims that Dr. Ocel was at fault. In order to prevail on this claim, Dr. Harmsen must prove both of the following propositions:

1. Dr. Ocel was negligent by failing to meet the standard of care in failing to properly read and interpret the CT scan, including failing to identify a fracture or other abnormality in the resulting report.
2. Dr. Ocel's negligence, if any, was a cause of damage to Veronica Geerts.

If Dr. Harmsen has proved both of these propositions, then you will assign a percentage of fault against Dr. Ocel and include Dr. Ocel's fault in the total percentage of fault found by you in answering the special verdict. If Dr. Harmsen has failed to prove either of these propositions, you cannot assign any percentage of fault to Dr. Ocel.

**Instruction No. 14**

Damages may be the fault of more than one person. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Dr. Harmsen and Dr. Ocel 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. 15**

If you find Theodore Geerts, as Administrator of the Estate of Veronica Geerts, is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of Veronica Geerts and the Geerts family for the injuries and damages incurred:

- 1) Spousal Loss of Consortium of Theodore Geerts;
- 2) Parental Loss of Consortium for Theodore Geerts, Jr., Scott Geerts, Teresa Geerts and Shawn Geerts;
- 3) Pre-death physical and mental pain and suffering of Veronica Geerts; and
- 4) Pre-death loss of full mind and body of Veronica Geerts.

The amount you assess for these damages 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 Dr. Harmsen or the combined fault of Dr. Harmsen and Dr. Ocel 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. 16**

The present value of the services which Veronica Geerts would have performed for Theodore Geerts but for her death. This is also known as loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of Veronica Geerts' normal life expectancy or Theodore Geerts' normal life expectancy.

If you find Theodore Geerts is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Theodore Geerts would otherwise have received from the date of injury until the date of death; and
2. The present value of loss of spousal consortium which Theodore Geerts would otherwise have received in the future.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Veronica Geerts' life;
2. Veronica Geerts' and Theodore Geerts' ages at the time of Veronica Geerts' death;
3. Veronica Geerts' health, strength, character and life expectancy;
4. Veronica Geerts' capabilities and efficiencies in performing the duties of a spouse;
5. Veronica Geerts' skills and abilities in providing instructions, guidance, advice and assistance;
6. The needs of Theodore Geerts; and
7. All other facts and circumstances bearing on this issue.

**Instruction No. 17**

The present value of the services which Veronica Geerts would have performed for her children, but for her death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death. A child is not entitled to damages for loss of parental consortium unless the parent's death has caused significant disruption of the parent-child relationship.

Damages for loss of parental consortium are limited to the period of Veronica Geerts' normal life expectancy.

**Instruction No. 18**

Physical and mental pain and suffering from the date of injury to the date of death.

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.

**Instruction No. 19**

Loss of function of the mind and body from the date of injury to the date of death. Loss of mind and body is the inability of a particular part of the mind or body to function in a normal manner.

**Instruction No. 20**

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. 21**

Standard Mortality Table indicates the normal life expectancy of people who are the same age as Veronica Geerts at the time of her death is 15.9 years. The normal life expectancy of men who are the same age as Theodore Geerts at the time of Veronica Geerts' death is 11.2 years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Veronica Geerts' prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

**Instruction No. 22**

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

**Instruction No. 23**

Upon retiring you shall select a presiding juror. 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. 24**

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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 has been 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.

**Instruction No. 25**

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.

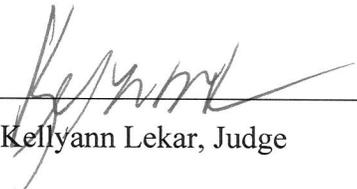
Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

**Instruction No. 26**

I am giving you a 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 must be signed by your presiding juror.

After deliberating for six hours from ~~1:00~~<sup>1:00 kml</sup> o'clock 4.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 and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.

  
\_\_\_\_\_  
Kellyann Lekar, Judge

CASE NUMBER LACV004183

**JURY QUESTION TO THE COURT**

DATE: 10-13-23

TIME: 2:35

Why wasn't Daisy Heins brought in as a  
witness?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Quinn Merrill  
Presiding Jury/Foreperson

**COURT'S RESPONSE**

DATE: 10-13-23

TIME: 3:16 pm

You have heard all evidence presented by the  
parties in this case. There will be no additional  
evidence.

\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Judge/First Judicial District

CASE NUMBER LACV004183

**JURY QUESTION TO THE COURT**

DATE: 10-13-23

TIME: 2:35pm

what time was the pain medicine administered?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Quint Mirek

Presiding Jury/Foreperson

**COURT'S RESPONSE**

DATE: 10-13-23

TIME: 3:17 pm

You have heard all evidence presented by the  
parties in this case. There will be no additional  
evidence.

\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Judge/First Judicial District

CASE NUMBER LACV004183

**JURY QUESTION TO THE COURT**

DATE: 10-13-23

TIME: 2:30

Did the Geerts Family ever ask  
to be transferred during the 8 hours  
Ronnie was at New Hampton?

\_\_\_\_\_  
\_\_\_\_\_

Quinn Menick

Presiding Jury/Foreperson

**COURT'S RESPONSE**

DATE: 10-13-23

TIME: 3:18 pm.

You have heard all evidence presented by  
the parties in this case. There will be no  
additional evidence.

\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Judge/First Judicial District