

IN THE IOWA DISTRICT COURT FOR LYON COUNTY

CALICO SKIES VINEYARD AND WINERY,
INC. D/B/A CALICO SKIES VINEYARD &
WINERY, WILLIAM B. KIMBERLEY AND
ASHLEE BAHNSON-KIMBERLEY,

Plaintiffs,

vs.

DENNIS J. SCHOLTEN AND JEFF
MATTOON,

Defendants.

NO. LACV501888

**DEFENDANTS' PROPOSED
PRELIMINARY JURY
INSTRUCTIONS**

COME NOW Defendants, Dennis J. Scholten and Jeff Mattoon and request that the following be included in the Court's Instructions to the jury.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing
instrument was served upon all parties to the
above cause to each of the attorneys of record
herein at their respective addresses disclosed
on the pleading on April 24, 2019

By: ☐ U.S. Mail ☐ Facsimile
☐ Hand delivered ☐ Overnight courier
☐ Email ☒ ECF



Signature _____

PRELIMINARY INSTRUCTION INTRODUCTION

Members of the jury, throughout the course of this trial you will be hearing witnesses testify about events which form the basis of this action and exhibits may be received as evidence. Because you, as the jury, are the judges of the facts, to better enable you to understand the evidence and testimony as it is received and to apply it to the law, at this time the court will preliminarily instruct you on certain matters. You are instructed as follows:

STATEMENT OF THE CASE

This claim arises out of an alleged farm chemical overspray incident. The Plaintiff's, Ashlee Kimberley, William Kimberley and Calico Skies Vineyard and Winery, Inc. contend that on June 9, 2015, the Defendant Dennis Scholten by and through his employee Jeff Mattoon made a pesticide and/or herbicide application to a pasture located just to the east of the Plaintiffs' vineyard and winery. The plaintiffs' property is located adjacent just west of Inwood Iowa.

The Defendants deny that they were negligent and further deny they legally caused the damages, if any, alleged by the Plaintiffs.

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.

PRELIMINARY INSTRUCTION NO. 1

The trial will proceed in the following order:

After I conclude these preliminary instructions, the plaintiffs' lawyer may make an opening statement. Next, the lawyer for the defendants may make an opening statement. An opening statement is not evidence but is simply a summary of what the lawyers expects the evidence to be.

The plaintiffs will then present evidence and counsel for the defendant may cross-examine. Following the plaintiffs' case, the defendants may present evidence and plaintiffs' counsel may cross-examine. Following the defendants' case, the plaintiffs may present further evidence, called "rebuttal" evidence, to challenge the defendants' evidence.

After the parties have presented their cases and the plaintiffs have presented any rebuttal evidence, I will further instruct you on the law that you are to apply in reaching your verdict.

After presentation of the evidence is completed and I have further instructed you on the law, the lawyers will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. You will then retire to deliberate on your verdict.

PRELIMINARY JURY 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. Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

PRELIMINARY JURY 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.

PRELIMINARY JURY 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 (e.g., answers to interrogatories, matters which judicial notice was taken, 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.

PRELIMINARY INSTRUCTION NO. 5

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.

PRELIMINARY JURY INSTRUCTION 6

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.

PRELIMINARY INSTRUCTION NO. 7

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, Instagram, LinkedIn, Snapchat, 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 must 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.

PRELIMINARY INSTRUCTION CONCLUSION

At the end of the trial I will also instruct you on the law of the case as it applies to the evidence. The court, by instructing you at this time, does not mean to imply that these are the most important instructions or that they will be the only ones given to you. Rather, they are given to you preliminarily to enable you to understand the evidence as it is received during the course of the trial.

Dated this ____ day of _____, 2019.

JUDGE, Third Judicial District