

IN THE IOWA DISTRICT COURT IN AND FOR LYON COUNTY

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

Plaintiffs,

vs.

DENNIS J. SCHOLTEN AND JEFF
MATTOON ,

Defendants.

No. LACV501888

INSTRUCTIONS TO THE JURY

INSTRUCTION NO. 1

Members of the Jury: Plaintiffs Calico Skies Winery and Vineyard, Inc., d/b/a Calico Skies Winery & Vineyard, William B. Kimberley and Ashlee Bahnson-Kimberley contend that on June 9, 2015, Defendant Dennis J. Scholten, through his employee, Defendant Jeff Mattoon, negligently applied Lo-Vol 6 2,4-D Herbicide to hay ground located just to the east of a vineyard and winery owned by Plaintiffs Calico Skies Winery and Vineyard, Inc., d/b/a Calico Skies Winery & Vineyard, William B. Kimberley and Ashlee Bahnson-Kimberley

Defendants deny that they were negligent and further deny they legally caused the damage alleged by 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.

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. 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. 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 (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. 5

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. 6

Certain testimony has been read into evidence from a deposition. 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. 7

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. 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

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. 10

You have heard evidence claiming Defendants made statements before this trial while under oath which were inconsistent with what Defendants 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 that 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. 11

For purposes of the remaining instruction and the verdict form, Plaintiffs Calico Skies Winery and Vineyard, Inc., d/b/a Calico Skies Winery & Vineyard, William B. Kimberley, and Ashlee Bahnson-Kimberly shall be considered by you as one party and will hereinafter be collectively referred to as "Plaintiffs".

In addition, because Defendant Dennis J. Scholten and Defendant Jeff Mattoon admit that Defendant Mattoon was an employee of Defendant Scholten at the time of the spraying incident involved in this case, and that the acts of Defendant Mattoon were done in the scope of his employment by Defendant Scholten; they shall also be considered by you as one party and will hereinafter be collectively referred to as "Defendants."

INSTRUCTION NO. 12

Plaintiffs claim that Defendants were at fault for the spraying incident that allegedly caused them damages.

To recover on their negligence claim, Plaintiffs must prove all of the following propositions:

1. Defendants were negligent in one or more of the following ways:
 - a. By spraying Lo-Vol 6 2,4-D Herbicide under such weather conditions as to

- permit the application to later volatilize and drift into the vineyard; or,
- b. By spraying Lo- Vol 6 2,4-D Herbicide near the vineyard, which contained sensitive crops and not taking reasonable care to prevent the herbicide from affecting the vineyard.
2. The negligence was a cause of damage to Plaintiffs.
3. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, Plaintiffs are not entitled to damages. If Plaintiffs have proved all of these propositions, Plaintiffs are entitled to damages in some amount.

INSTRUCTION NO. 13

'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. 14

The mere fact an incident occurred that caused Plaintiffs damages does not mean Defendants were negligent or at fault.

INSTRUCTION NO. 15

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

INSTRUCTION NO. 16

If you find Plaintiffs are entitled to recover damages, you shall consider the following items of damage:

1. Laboratory and testing fees;
2. Increased labor costs;
3. Increased fertilizer and chemical costs;
4. Cost of replacement grapes beyond what was historically purchased;
5. Cost of replacement grape juice beyond what was historically purchased;
6. Cost of replacement grape vines; and,
7. Lost profits from wine sales from June 9, 2015, to December 31, 2018, due to the death of or the damage to the grape vines.

Plaintiffs 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. 17

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. 18

You may not communicate about this case before reaching your verdict. This includes cell phones, electronic media such as text messages and emails, and any form of social media, including but not limited to, Facebook, Twitter, Instagram, 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. 19

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. 20

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. 21

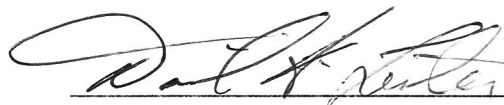
Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by 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. 22

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 must be signed by your foreperson.

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.

Dated this 10th day of May 2019.



JUDGE, Third Judicial District of Iowa

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

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MATTOON ,

Defendants.

No. LACV501888

VERDICT FORM

We, the jury, find the following verdict on the questions submitted to us:

Question No. 1: Were Defendants at fault?

Answer "yes" or "no."

ANSWER: Yes

[If your answer is "yes", go on to Question No. 2. If your answer is "no," do not answer Question No. 2, sign your verdict form, and notify the court attendant.]

Question No. 2: Was the fault of Defendants a cause of any item of damage to Plaintiffs?

Answer "yes" or "no."

ANSWER: Yes

[If your answer is "yes", go on to Question No. 3. If your answer is "no", do not answer Question No. 3, sign your verdict form, and notify the court attendant.]

Question No. 3: State the amount of damages sustained by Plaintiffs caused by Defendants' fault as to each of the following items of damage. If Plaintiffs have failed to prove any item of damage, or have failed to prove that any item of damage was caused by Defendants' fault, enter 0 for that item.

1. Laboratory and testing fees \$775
 2. Increased labor costs \$22,500
 3. Increased fertilizer and chemical costs \$3,993.00
 4. Cost of replacement grapes beyond what was historically purchased \$6,630.00
 5. Cost of replacement grape juice beyond what was historically purchased \$5,802.00
 6. Cost of replacement grape vines \$1,000
 7. Lost profits from wine sales from June 9, 2015, to December 31, 2018 \$0
- TOTAL:** \$40,700

[After you have completed this question, sign your verdict form and notify the court attendant.]

Ethan De Jager
Foreperson*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.