

## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LUISA DREW,  Plaintiff,  vs.  KIMBERLY VAN GUNDY,  Defendant.	Law No. LACL 135387   JURY INSTRUCTIONS AND VERDICT FORM
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## Members of the Jury:

This case arises from an automobile collision which occurred between Plaintiff, Luisa Drew, and Defendant, Kimberly Van Gundy, in Des Moines, Iowa. Plaintiff Luisa Drew alleges that the Defendant's conduct was a proximate cause of Plaintiff's injuries. Plaintiff Luisa Drew seeks monetary damages for personal injuries she alleges she sustained as a result of the conduct of the Defendant.

The Defendant admits that Defendant was liable for the collision. The issues to be decided are causation and the extent of Plaintiff's damages.

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.

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POLK COUNTY, IA.  
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CLERK DISTRICT COURT

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 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.

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.

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

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told 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

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

INSTRUCTION NO. 6

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. 7

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. 8

The Plaintiff must prove all of the following propositions:

1. The amount of damage, if any, proximately caused by the defendant's conduct.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages. If Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 9

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

“Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

There can be more than one proximate cause of an injury or damage.

INSTRUCTION NO. 10

If you find Luisa Drew is entitled to recover damages, you shall consider the following items:

1. The reasonable value of necessary hospital charges, doctor charges, prescriptions, other medical services from the date of injury to the present time.
2. Loss of function of the body from the date of injury to the present time.
3. The future loss of function of the body.
4. 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.
5. The future physical and mental pain and suffering.
6. The reasonable value of lost wages from the date of injury to the present time.

The amount you assess for physical and mental pain and suffering in the past and future, loss of function of the mind and body in the past and future 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.

INSTRUCTION NO. 10 (Cont'd)

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. 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.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 11

The reasonable value of necessary hospital charges, doctor charges, prescriptions, other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

The present value of future loss of function of the mind or body.

INSTRUCTION NO. 14

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.



INSTRUCTION NO. 15

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. 16

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. 17

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Luisa Drew is an additional 47.71 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about the individual's health, habits, occupation, and lifestyle, when deciding issues of future damage.

INSTRUCTION NO. 18

If you find Luisa Drew had a condition before this incident and this condition was aggravated by this incident causing further suffering and/or disability then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any condition which existed before this incident or for any injuries or damages which she now has which were not caused by the defendant's actions.

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 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. 21

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 head juror.

After deliberating for six hours from 10:12 o'clock 9.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 19<sup>th</sup> day of December, 2018.

A handwritten signature in black ink, appearing to be 'T. R. B.', written over a horizontal line.

JUDGE, FIFTH JUDICIAL DISTRICT