

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LUISA DREW and
JESSE VAN GUNDY

Plaintiff,

vs.

KIMBERLY VAN GUNDY,

Defendant.

File No: LACL135387

DEFENDANT'S PROPOSED JURY
INSTRUCTIONS

COMES NOW the defendant, Kimberly Van Gundy, and provides the following proposed jury instructions for the Court's consideration in advance of the December 17th trial of this matter.

Respectfully submitted,

GREFE & SIDNEY, P.L.C.

By /s/ Mark W. Thomas

Mark W. Thomas AT0007832
500 East Court Avenue, Suite 200
P.O. Box 10434
Des Moines, IA 50306
Telephone: 515/245-4300
Telefax: 515/245-4452
mthomas@grefesidney.com

ATTORNEYS FOR DEFENDANT

Original filed.

PROOF OF SERVICE

The undersigned certified that the foregoing instrument was served upon all parties to the above cause by service upon each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 29th day of November, 2018 pursuant to electronic filing procedures.

Signature: /s/ Mark W. Thomas

STATEMENT OF THE CASE

Members of the jury: In this case the plaintiffs, Luisa Drew Van Gundy and Jesse Van Gundy, each claim that they were injured in a car/motorcycle accident that occurred on August 19, 2014. The defendant, Kimberly Van Gundy, acknowledges that she was responsible for causing the accident and also acknowledges that she is responsible for any injuries sustained by each plaintiff in the accident. The parties have a disagreement over which problems are caused by the accident and the reasonable value to be placed on those problems. Your job will be to determine what problems are caused by the accident and place a value thereon. Do not consider this summary as proof of any claim, decide the facts from the evidence and apply the law that I will now give you.

Do not consider this summary a proof of any claim. Decide the facts from the evidence and apply the law that I will now give you.

Authority

Iowa Civil Jury Instruction 100.1

JURY INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 100.2

JURY INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 100.3

JURY INSTRUCTION NO. _____

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; and
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; and
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Civil Jury Instruction 100.4

JURY INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 100.5

JURY INSTRUCTION NO. _____

During this trial, you have heard 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.

Authority

Iowa Civil Jury Instruction 100.6

JURY INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 100.9

INSTRUCTION NO. ____

HYPOTHETICAL QUESTION, EXPERT TESTIMONY.

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.

Authority

Iowa Civil Jury Instruction 100.11

Cody v. Toller Dug Co., 232 Iowa 475, 5 N.W.2d 824 (1942)100.11

JURY INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 100.12

JURY INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 100.18

INSTRUCTION NO. _____

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.

Iowa Civil Jury Instruction 100.21

JURY INSTRUCTION NO. _____

ELEMENTS-PERSONAL INJURY AND VEHICLE DAMAGE

If you find (injured party) is entitled to recover damages, you shall consider the following items:

(Enter applicable elements from Instructions 200.2 - 200.13)

The amount you assess for [physical and mental pain and suffering in the past and future] [future earning capacity] [loss of function of the [mind] [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 a party 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. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

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

Authority

Iowa Civil Jury Instruction 200.1

INSTRUCTION NO. _____

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].

Authority

Iowa Civil Jury Instruction 200.6

JURY INSTRUCTION NO. _____

PHYSICAL AND MENTAL PAIN AND SUFFERING – PAST

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.

Authority:

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)

Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa App. 1977)

Iowa Civil Jury Instruction 200.12

JURY INSTRUCTION NO. _____

NO RECOVERY FOR SECOND INJURY

If you find (plaintiff) was injured by another act after this incident, [he] [she] cannot recover for any later [injury] [aggravation of injury] not caused by this incident.

Authority:

Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)

Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R.R., 244 Iowa 1364, 60 N.W.2d 572 (1953)

Instruction No. 200.33

JURY INSTRUCTION NO. _____

QUOTIENT VERDICT

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].

Authority:

Iowa Civil Jury Instruction 200.38

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)

Sheker v. Jensen, 241 Iowa 583, 41 N.W.2d 679 (1950)

Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

INSTRUCTION NO. _____

ESSENTIALS FOR RECOVERY.

The plaintiff must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
 - (a)
 - (b)
 - (c)
2. The negligence was a proximate cause of damage to the plaintiff.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of _____ as explained in Instruction No. _____.]

Authority

Iowa Civil Jury Instruction 700.1

INSTRUCTION NO. _____

ORDINARY CARE – COMMON LAW NEGLIGENCE - DEFINED

"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.

Authority

Iowa Civil Jury Instruction 700.2

Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992)

Schalk v. Smith, 224 Iowa 904, 277 N.W. 303 (1938)

JURY INSTRUCTION NO. _____

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

Authority

Iowa Civil Jury Instruction 700.3

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LUISA DREW and
JESSE VAN GUNDY

Plaintiff,

vs.

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VERDICT FORM

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

Question No. 1: Was the defendant at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the defendant a proximate cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

Question No. 2: State the amount of damages sustained by the plaintiff proximately caused by defendant's fault as to each of the following items of damage. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by defendant's fault, enter 0 for that item.

1. Past medical expenses \$ _____

2. Past pain and suffering \$ _____

TOTAL (add the separate items of damage) \$ _____

Authority:

Iowa Civil Jury Instruction 300.4

Iowa Code section 668.3(8)

Johnson v. Knoxville Comm. Sch. Dist., 570 NW2d 633, 644 (Iowa 1997)