

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LUISA DREW and JESSE VANGUNDY,</p> <p>Plaintiff,</p> <p>vs.</p> <p>KIMBERLY VAN GUNDY,</p> <p>Defendant.</p>	<p>Law No. LACL 135387</p> <p>PLAINTIFF LUISA DREW'S PROPOSED JURY INSTRUCTIONS AND VERDICT FORM</p>
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Members of the Jury:

This case arises from an automobile collision which occurred between Plaintiffs, Luisa Drew and Jesse VanGundy, and Defendant, Kimberly Van Gundy, in Des Moines, Iowa. Plaintiff Luisa Drew alleges that the Defendant was negligent and her negligence 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 negligence of the Defendant.

The Defendant admits that Defendant was negligent. 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.

PROPOSED 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.

PROPOSED 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.

PROPOSED 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.
4. Any other matter admitted (e.g. answers to interrogatories, responses to requests for admissions, etc.).

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.

PROPOSED 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.

PROPOSED 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.

PROPOSED 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.

PROPOSED 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.



PROPOSED 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.

PROPOSED INSTRUCTION NO. \_\_\_\_

After you have compared the conduct of all parties, if you find the Plaintiff, Luisa Drew, was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff, Luisa Drew, cannot recover damages.

However, if you find the Plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of Plaintiff's fault.

PROPOSED INSTRUCTION NO. \_\_\_\_

“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.

PROPOSED INSTRUCTION NO. \_\_\_\_

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.

PROPOSED INSTRUCTION NO. \_\_\_\_

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.

PROPOSED INSTRUCTION NO. \_\_\_\_

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.

PROPOSED INSTRUCTION NO. \_\_\_\_

In these instructions I will be using the term “fault.” Fault means one or more acts or omissions towards the person or the actor or of another which constitutes negligence.

PROPOSED INSTRUCTION NO. \_\_\_\_

The Plaintiff must prove all of the following propositions:

1. Defendant's negligence was a proximate cause of the Plaintiff's damage.
2. The amount of damage.

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.



PROPOSED INSTRUCTION NO. \_\_\_\_

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

Iowa Civil Jury Instruction 700.3

**Authority:**

*Thompson v. Kaczinski*, 774 N.W.2d 829, 836-39 (Iowa 2009)

*Royal Indemnity Co. v. Factory Mut. Ins. Co.*, \_\_\_\_ N.W.2d \_\_\_\_, \_\_\_\_, No. 07-1324 slip. op. at 19 (Iowa June 11, 2010)

*Restatement (Third) of Torts: Liability for Physical and Emotional Harm*, § 26

PROPOSED INSTRUCTION NO. \_\_\_\_

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. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, other medical services which will be incurred in the future.
3. Loss of function of the body from the date of injury to the present time.
4. The future loss of function of the body.
5. 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.
6. The future physical and mental pain and suffering.
7. The reasonable value of lost wages from the date of injury to the present time.
8. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

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

PROPOSED INSTRUCTION NO. \_\_\_\_ (Cont'd)

assess for any item of damage must not exceed the amount caused by the defendant 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.

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.

Iowa Civil Jury Instruction 200.6  
Iowa Civil Jury Instruction 200.7  
Iowa Civil Jury Instruction 200.8  
Iowa Civil Jury Instruction 200.9  
Iowa Civil Jury Instruction 200.10  
Iowa Civil Jury Instruction 200.11  
Iowa Civil Jury Instruction 200.12  
Iowa Civil Jury Instruction 200.13

PROPOSED INSTRUCTION NO. \_\_\_\_

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.

PROPOSED INSTRUCTION NO. \_\_\_\_

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.

Note: An exception may exist to the general rule stated above if the pre-existing condition was asymptomatic before the incident and plaintiff has proven that apportionment is not possible. Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976). See Proposed Jury Instruction No. 23.

Iowa Civil Jury Instruction 200.32

**Authority:** Waits v United Fire & Casualty Co., 572 NW2d 565, 578 (Iowa 1998).

PROPOSED INSTRUCTION NO. \_\_\_\_

If Luisa Drew had a physical condition making her more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by plaintiff proximately caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

PROPOSED 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.

Iowa Civil Jury Instruction 100.9

**Authority:** Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W. 35 (Iowa 1908)

PROPOSED INSTRUCTION NO. \_\_\_\_

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 \_\_\_\_\_ 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 \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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JUDGE, FIFTH JUDICIAL DISTRICT



VERDICT FORM

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

QUESTION NO. 1: Was the negligence of Defendant a proximate cause of damage to the Plaintiff Luisa Drew?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

QUESTION NO. 2: State the amount of damages sustained by plaintiff Luisa Drew for each of the following items of damage. If plaintiff has failed to prove any item of damage, enter 0 for that item.

- |       |   |         |
|-------|---|---------|
| 1.    | Past medical expenses                         | \$_____ |
| 2.    | Future medical expenses                       | \$_____ |
| 3.    | Past loss of body function                    | \$_____ |
| 4.    | Future loss of body function                  | \$_____ |
| 5.    | Past physical and mental pain and suffering   | \$_____ |
| 6.    | Future physical and mental pain and suffering | \$_____ |
| 7.    | Past Lost Wages                               | \$_____ |
| 8.    | Future Loss of Earning Capacity               | \$_____ |
| TOTAL |   | \$_____ |

\_\_\_\_\_  
FOREPERSON\*

\*To be signed only if verdict is unanimous.

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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

BY: Erin M. Tucker

Erin M. Tucker AT0012585

TUCKER LAW OFFICE

2400 86<sup>th</sup> Street, Suite 35

Des Moines, IA 50322

(515) 276-8282

Email: [erintucker@tuckerlaw.net](mailto:erintucker@tuckerlaw.net)

ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of December, 2018, a true and correct copy of the above and foregoing Plaintiff Luisa Drew's Proposed Jury Instructions, was served by EDMS to:

Mark W. Thomas  
Grefe & Sidney, P.L.C.  
500 East Court Avenue, Ste 200  
P.O. Box 10434  
Des Moines, IA 50306  
E-mail: [Mthomas@grefesidney.com](mailto:Mthomas@grefesidney.com)

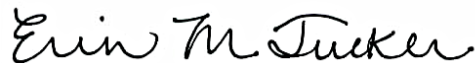
ATTORNEY FOR DEFENDANT

Kent A. Gummert  
Lederer Weston Craig, PLC  
4401 Westown Parkway, Ste 212  
West Des Moines, IA 50266  
Email: [kgummert@lwclawyers.com](mailto:kgummert@lwclawyers.com)

ATTORNEY FOR STATE FARM  
MUTUAL AUTOMOBILE INSURANCE

Marc S. Harding  
Harding Law Office  
1217 Army Post Road  
Des Moines, IA 50315  
Email: [marc@iowalawattorneys.com](mailto:marc@iowalawattorneys.com)

ATTORNEY FOR JESSE VAN GUNDY



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Erin M. Tucker

ATTORNEY FOR PLAINTIFF