

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JESSICA MALONE; NORMAN H TIMM,
AS EXECUTOR OF THE ESTATE OF
DONNA L. TIMM and on behalf of
NORMAN H. TIMM, husband and on behalf
of natural born children DEBORAH
KRATOCHVIL, DODIE LAYTON,
DEANNA MULLEN, DENISE OSSENKOP,
& DANETTE THIBAULT; LARRY
MALONE INDIVIDUALLY
AND AS ADMINISTRATOR OF THE
MYRNA MALONE ESTATE and on behalf of
LARRY MALONE, husband and on behalf of
her natural born children RYAN MALONE
AND JESSICA MALONE.

Plaintiffs,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION; GRINNELL SELECT
INSURANCE COMPANY; and AMERICAN
FAMILY INSURANCE COMPANY,

Defendants.

CASE NO: LACL134770

FIRST PROPOSED JURY INSTRUCTIONS
BY DEFENDANT AMERICAN FAMILY
MUTUAL INSURANCE COMPANY

COMES NOW the Defendant, American Family Mutual Insurance Company and hereby
submits its First Proposed Jury Instructions.



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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served by Email upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on September 11, 2017.



INSTRUCTION NO. _____

Statement of the Case. Members of the Jury: In this case, the Plaintiff Estate of Donna Timm and the Plaintiff Estate of Myrna Malone will ask you to decide the damages that the Plaintiffs may receive because of the deaths of Donna Timm and Myrna Malone in an automobile accident.

The issue you will determine in this case is the amount of damages sustained by the Plaintiffs. Decide the facts from the evidence and apply the law which I will now give you.

Authority: Iowa Civil Jury Inst. No. 100.1 (as modified).

INSTRUCTION NO. _____

Duties of Judge And Jury, Instructions As Whole. 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.

Authority: Iowa Civil Jury Inst. No. 100.2.

INSTRUCTION NO. _____

Burden of Proof, Preponderance of Evidence. 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 Inst. No. 100.3.

INSTRUCTION NO. _____

Evidence. 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.

Authority: Iowa Civil Jury Inst. No. 100.4.

INSTRUCTION NO. _____

Deposition Testimony. 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 Inst. No. 100.5.

INSTRUCTION NO. _____

Interrogatories. 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 Inst. No. 100.6.

INSTRUCTION NO. _____

Credibility Of Witnesses. 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 Inst. No. 100.9.

INSTRUCTION NO. _____

Contradictory Statements, Non-Party, Witness Under Oath. You have heard evidence claiming [name of witness] made statements before this trial while under oath which were inconsistent with what [name of witness] 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 [name of non-party 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.

Authority: Iowa Civil Jury Inst. No. 100.14.

INSTRUCTION NO. _____

General Instruction To Jury. 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 Inst. No. 100.18.

INSTRUCTION NO. _____

Corporate Party. The fact that a defendant is an insurance company should not affect your decision. All persons are equal before the law, and insurance companies are entitled to the same fair and conscientious consideration by you as any other person.

Authority: Iowa Civil Jury Inst. No. 100.20 (as modified).

INSTRUCTION NO. _____

Cautionary Instruction - Juror's Notes. 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.

Authority: Iowa Civil Jury Inst. No. 100.21.

INSTRUCTION NO. _____

Use of Electronic Devices. You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, 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 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.

Authority: Iowa Civil Jury Inst. No. 100.23.

INSTRUCTION NO. _____

Elements - Death - Damages Recovered by Personal Representatives. If you find Larry Malone, as personal representative of the Estate of Myrna Malone and Norman Timm as personal representative of the Estate of Donna Timm are entitled to recover, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of Myrna Malone and the Estate of Donna Timm for the damages incurred:

Burial Expenses

Services – Spousal Consortium

Services – Parental Consortium

The amount you assess for present value of consortium 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 accident 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 Inst. No. 200.14 (as modified).

INSTRUCTION NO. _____

Burial Expenses. The interest on the reasonable burial expenses of decedent from the time of death until the time when those expenses would be paid. The amount cannot exceed the reasonable cost of the burial.

Authority: Iowa Civil Jury Inst. No. 200.16.

INSTRUCTION NO. _____

Services - Spousal Consortium. The present value of the services which (decedent) would have performed for her spouse, but for death. This is also known as loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of the spouse's or decedent's normal life expectancy.

Authority: Iowa Civil Jury Inst. No. 200.19.

INSTRUCTION NO. _____

Services - Parental Consortium. The present value of the services which (decedent) would have performed for [his] [her] children, but for her death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

Damages for loss of parental consortium are limited in time to the shorter of the child's or decedent's normal life expectancy.

Authority: Iowa Civil Jury Inst. No. 200.20.

INSTRUCTION NO. _____

Considerations - Loss Of Value Of The Estate - Loss Of Consortium [Spousal And Parental] - Loss Of Support.

In determining the present value of the services (decedent) would have provided as a parent and spouse, item _____, [Instruction No. _____], you may consider:

1. The circumstances of her life.
2. Her age at the time of her death.
3. Her health, strength, character, life expectancy and that of her spouse and children.
4. Her capacities, abilities and efficiencies in performing duties as a spouse and parent.
5. Her skills and abilities in providing instruction, guidance, advice and assistance to the spouse and children.
6. Spouses and children's respective needs.
7. All other facts and circumstances bearing on the present value of services.

Authority: Iowa Civil Jury Inst. No. 200.12 (as modified).

INSTRUCTION NO. _____

Definition Of Present Value - Actions Filed On Or After July 1, 1997. 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.

Authority: Iowa Civil Jury Inst. No. 200.35.

INSTRUCTION NO. _____

Mortality Tables - Death Cases. Standard Mortality Table indicates the normal life expectancy of people who are the same age as Myrna Malone is 14.91 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Myrna Malone's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

Authority: Iowa Civil Jury Inst. No. 200.36 (as modified).

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JESSICA MALONE; NORMAN H TIMM,
AS EXECUTOR OF THE ESTATE OF
DONNA L. TIMM and on behalf of
NORMAN H. TIMM, husband and on behalf
of natural born children DEBORAH
KRATOCHVIL, DODIE LAYTON,
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MYRNA MALONE ESTATE and on behalf of
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Plaintiffs,

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UNITED SERVICES AUTOMOBILE
ASSOCIATION; GRINNELL SELECT
INSURANCE COMPANY; and AMERICAN
FAMILY INSURANCE COMPANY,

Defendants.

CASE NO: LACL134770

FIRST PROPOSED VERDICT FORM BY
DEFENDANT AMERICAN FAMILY
MUTUAL INSURANCE COMPANY

If you find Plaintiff Estate of Myrna Malone is entitled to recover and the award of damages includes an amount for loss of spousal consortium and loss of parental consortium to the surviving children, it will be necessary for you to allocate that portion of the award which represents damage for loss of consortium.

You will do this by answering the following questions:

Question No. 1: Does the damage award include an amount for loss of spousal consortium to the Larry Malone?

Answer "yes" or "no."

ANSWER:

[Answer questions No. 2 only if your answer above is "yes."]

Question No. 2: What amount of the total damage award is for loss of spousal consortium to the surviving spouse?

ANSWER: \$

Question No. 3: Does the damage award include an amount for loss of parental consortium to the surviving children?

Answer "yes" or "no."

ANSWER:

[Answer Questions No. 5 only if your answer above is "yes."]

Question No. 5: What amount of the total damage award is for loss of parental consortium for each surviving child?

	Amount of Damage for Loss of Parental Consortium
Name of Child	
a. Ryan Malone	\$
b. Jessica Malone	\$

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

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