

ORIGINAL

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**SANDRA M. HASS, Personal
Representative of the Estate of Keith E.
Hass,**

Plaintiff,

vs.

**FAWAD S. ZAFAR, M.D., FAWAD S.
ZAFAR, M.D., P.C. and AUDUBON
COUNTY MEMORIAL HOSPITALS
AND CLINICS,**

Defendants.

CASE NO. LACL145009

**INSTRUCTIONS
TO THE JURY**

FILED
POLK COUNTY, IOWA
2021 MAR 26 PM 3:22
CLERK DISTRICT COURT

Members of the Jury:

In this case, the plaintiff alleges that the defendants negligently provided medical services to Keith Hass regarding an incidental finding on a CT scan taken on May 16, 2017, and that as a result of this negligence Keith Hass died and the plaintiff sustained damages. The defendants deny that they were negligent, or that their actions caused any injuries or damages to the plaintiff.

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.

Upon the issues thus joined, you are hereby instructed as follows:

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.

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. 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 or the number of exhibits offered by 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.
4. Any other matter admitted.

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. 4

Certain testimony has been presented into evidence from a deposition. A deposition is testimony taken under oath before the trial, and preserved in writing or on video. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5

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.

INSTRUCTION NO. 6

You have heard evidence claiming witnesses made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if that witness had made it under oath during the trial.

If you find such a statement was made and was inconsistent with a witness' testimony during the trial you may also use the statement as a basis for disregarding all or any part of that witness' testimony during the trial but you are not required to do so. You should not disregard a witness' testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

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 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

In these instructions I will be using the term "fault." 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. 11

A physician must use the degree of skill, care and learning ordinarily possessed and exercised by other physicians in similar circumstances. A violation of this duty is negligence.

Physicians who hold themselves out as specialists must use the degree of skill, care and learning ordinarily possessed and exercised by specialists in similar circumstances, not merely the average skill and care of a general practitioner. A violation of this duty is negligence.

A hospital must use the degree of skill, care and learning ordinarily possessed and exercised by other hospitals in similar circumstances. A violation of this duty is negligence.

INSTRUCTION NO. 12

A corporate entity such as Audubon County Memorial Hospitals and Clinics or Fawad S. Zafar, M.D., P.C, can only act through its agents and employees. An employer is liable for the negligent or wrongful acts of an employee if the acts are done in the scope of that employment. Audubon County Memorial Hospitals and Clinics and Fawad S. Zafar, M.D., P.C. admits that its employees were acting within the scope of their employment at all times material to this dispute. In addition, there is no dispute that Dr. Zafar was at all material times an employee of Fawad S. Zafar, M.D., P.C. Finally, it is undisputed that at no material time was Dr. Zafar either an employee or agent of Audubon County Memorial Hospitals and Clinics.

The fact that a defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 13

As to the claim against Dr. Zafar and Fawad S. Zafar, M.D., P.C., the plaintiffs must prove all of the following propositions:

1. Dr. Zafar was negligent in failing to meet the standard of care in one or more of the following particulars:

- a. In failing to timely notify Keith Hass of radiology findings within the May 16, 2017 CT scan and refer him for timely diagnosis and treatment; or
- b. In failing to timely notify Keith Hass' primary care physician of radiology findings within the May 16, 2017 CT scan.

2. The negligence was a cause of the death of Keith Hass and damages to the plaintiff.

3. The amount of damage.

If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages from these defendants in some amount as explained in Instruction No. 17. If the plaintiff has proven element No. 1 but has not proven element No. 2, you shall consider plaintiff's claim for lost chance of survival as explained in Instruction Nos.

19, 21 & 22

INSTRUCTION NO. 14

As to the claim against Audubon County Memorial Hospitals and Clinics, the plaintiff must prove all of the following propositions:

1. Audubon County Memorial Hospitals and Clinics was negligent in failing to meet the standard of care in one or more of the following particulars:

- a. In failing to have a policy regarding the timely notification of Keith Hass' primary care physician of radiology findings within the May 16, 2017 CT scan; or
- b. In failing to timely notify Keith Hass' primary care physician of radiology findings within the May 16, 2017 CT scan.

2. The negligence was a cause of the death of Keith Hass and damages to the plaintiff.

3. The amount of damage.

If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages from this defendant in some amount as explained in Instruction No. 17. If the plaintiff has proven element No. 1 but has not proven element No. 2, you shall consider plaintiff's claim for lost chance of survival as explained in Instruction Nos.

20-22

INSTRUCTION NO. 15

Damages may be the fault of more than one party. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the defendants and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages. The defendants Fawad S. Zafar, M.D. and Fawad S. Zafar, M.D., P.C. are to be treated as a single party for the purposes of determining fault.

INSTRUCTION NO. 16

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

There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each person or party may be a cause.

INSTRUCTION NO. 17

If you find the plaintiff is entitled to recover damages, 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 plaintiff for the damages incurred:

1. Conscious physical and mental pain and suffering of Keith Hass from the date of injury to the date of his death. 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 and loss of enjoyment of life.
2. Loss of function of the mind and body of Keith Hass from the date of injury to the date of his death. Loss of body and mind is the inability of a particular part of the body or the mind to function in a normal manner.
3. The value of the services which Keith Hass would have performed for his spouse from the date of his death to the present time. 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.
4. The present value of future loss of spousal consortium. Damages for future spousal consortium are limited in time to the shorter of the spouse's or decedent's normal life expectancy.
5. The value of the services which Keith Hass would have performed for his children from the date of his death to the present time. 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.

6. The present value of future loss of parental consortium. Damages for future loss of parental consortium are limited in time to Keith Hass' normal life expectancy.

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

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

INSTRUCTION NO. 18

In determining the value of the services Keith Hass would have provided as a parent and spouse, as you consider items 3 through 6 in Instruction No. 17, you may consider the following:

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

INSTRUCTION NO. 19

If you find that plaintiff has failed to prove the second proposition of her claim for negligence against Dr. Zafar as set forth in Instruction No. 13, you must then consider plaintiff's alternative claim for lost chance of survival. If you find that plaintiff has proven her claim of negligence against Dr. Zafar as set forth in Instruction No. 13, you should not consider plaintiff's alternative claim for lost chance of survival.

The plaintiff claims that the defendant caused Keith Hass to lose a chance of survival. The plaintiff must prove all of the following propositions:

1. Dr. Zafar was negligent in failing to meet the standard of care in one or more of the following particulars:

- a. In failing to timely notify Keith Hass of radiology findings within the May 16, 2017 CT scan and refer him for timely diagnosis and treatment; or
- b. In failing to timely notify Keith Hass' primary care physician of radiology findings within the May 16, 2017 CT scan.

2. The negligence caused a loss of chance of survival.

3. The amount of damage.

If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages from these defendants in some amount as explained in Instruction No. 21^e 22. If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages from Dr. Zafar.

INSTRUCTION NO. 20

If you find that plaintiff has failed to prove the second proposition of her claim for negligence against Audubon County Memorial Hospitals and Clinics as set forth in Instruction No. 14, you must then consider plaintiff's alternative claim for lost chance of survival. If you find that plaintiff has proven her claim of negligence against Audubon County Memorial Hospitals and Clinics as set forth in Instruction No. 14, you should not consider plaintiff's alternative claim for lost chance of survival.

The plaintiff claims that the defendant Audubon County Memorial Hospitals and Clinics caused Keith Hass to lose a chance of survival. The plaintiff must prove all of the following propositions:

1. Audubon County Memorial Hospitals and Clinics was negligent in failing to meet the standard of care in one or more of the following particulars:
 - a. In failing to have a policy regarding the timely notification of Keith Hass' primary care physician of radiology findings within the May 16, 2017 CT scan; or
 - b. In failing to timely notify Keith Hass' primary care physician of radiology findings within the May 16, 2017 CT scan.
2. The negligence caused a loss of chance of survival.
3. The amount of damage.

If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages from Audubon County Memorial Hospitals and Clinics in some amount as explained in Instruction No. 21⁶²². If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages from Audubon County Memorial Hospitals and Clinics.

INSTRUCTION NO. 21

Lost chance of survival means a reduction in the chance to survive the underlying disease because Keith Hass failed to receive earlier diagnosis or treatment.

With regard to the second proposition of Instruction No. 19~~9~~20, plaintiff must prove that defendant's negligence, if any, caused a loss of a chance of survival. To prove a loss of a chance of survival, the plaintiff must show, by a preponderance of the evidence, that there is a causal connection between the defendant's negligence, if any, and the loss of a chance to survive the harm.

INSTRUCTION NO. 22

You must determine the value of the harm suffered by plaintiff and determine the percentage of lost chance to avoid that harm which the defendants caused. I will use your answers to the questions in the verdict form to calculate the appropriate amount of damages recoverable by plaintiff.

You should determine the value of the harm suffered by plaintiff in accordance with Instruction Nos. 17¹ & 18. To determine the percentage of lost chance to avoid the harm caused by the defendants, you must determine the difference between Keith Hass' chance of avoiding the harm in the absence of any negligence on the part of the defendants and Keith Hass' chance of avoiding the harm following any negligence on the part of the defendants which you have found.

INSTRUCTION NO. 23

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. 24

In arriving at an item of damage or a 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.

INSTRUCTION NO. 25

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Keith Hass at the time of his death was 9.05 years. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Sandra Hass is 9.92 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about his health, habits and lifestyle, when deciding issues of damages.

INSTRUCTION NO. 26

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. 27

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. 28

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as email, 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.

INSTRUCTION NO. 29

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.

The court attendant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking him or her any questions. You should direct your questions to the court and not to the court attendant.

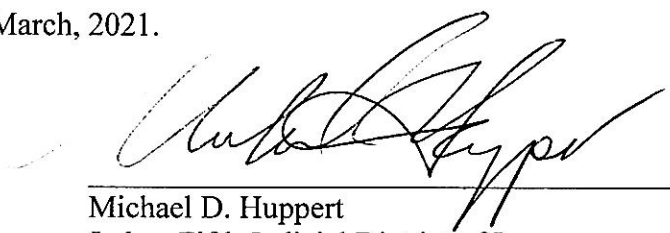
INSTRUCTION NO. 30

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 foreman or forewoman.

After deliberating for six hours from 1:30 o'clock p.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 25th day of March, 2021.



Michael D. Huppert
Judge, Fifth Judicial District of Iowa

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**SANDRA M. HASS, Personal
Representative of the Estate of Keith E.
Hass,**

Plaintiff,

vs.

**FAWAD S. ZAFAR, M.D., FAWAD S.
ZAFAR, M.D., P.C. and AUDUBON
COUNTY MEMORIAL HOSPITALS
AND CLINICS,**

Defendants.

CASE NO. LACL145009

VERDICT FORM

FILED
POLK COUNTY, IOWA
2021 MAR 26 PM 3:27
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QUESTION NO. 1: Was Dr. Zafar negligent?

Answer "yes" or "no."

ANSWER: yes

(If your answer to Question No. 1 is "no," do not answer Question 2, do not assign any fault to Dr. Zafar, and go to Question No. 4. If your answer to Question No. 1 is "yes," go to Question No. 2.)

QUESTION NO. 2: Do you find the negligence of Dr. Zafar was a cause of the death of Keith Hass?

Answer "yes" or "no."

ANSWER: no

(If your answer to Question No. 2 is "yes," then go to Question No. 4. If your answer to Question No. 2 is "no," go to Question No. 3.)

QUESTION NO. 3: Was the negligence of Dr. Zafar a cause of a loss of a chance of survival for Keith Hass?

Answer "yes" or "no."

ANSWER: yes

(If your answer to Question No. 3 is "yes," then answer Question No. 7 after you have answered Questions No. 4 through 6. If your answer to Question No. 3 is "no," then do not assign any fault to Dr. Zafar.)

QUESTION NO. 4: Do you find that Defendant Audubon County Memorial Hospital was negligent?

Answer "yes" or "no."

ANSWER: no

(If your answer to Question No. 4 is "no," do not answer Question 5 and do not assign any fault to Audubon County Memorial Hospital. If your answer to Question No. 4 is "yes," go to Question No. 5.)

QUESTION NO. 5: Was the negligence of Audubon County Memorial Hospitals and Clinics a cause of the death of Keith Hass?

Answer "yes" or "no."

ANSWER: _____

(If your answer to Question No. 5 is "yes," then go to Question No. 8. If your answer to Question No. 5 is "no," go to Question No. 6.)

QUESTION NO. 6: Was the negligence of Audubon County Memorial Hospitals and Clinics a cause of a loss of a chance of survival for Keith Hass?

Answer "yes" or "no."

ANSWER: _____

(If your answer to either Question No. 3 or Question No. 6 is "yes," go to Question No. 7. If your answer to Question No. 6 is "no," and your answer to either Question No. 2 or 3 was "yes," then go to Question No. 8 and you shall not assign any fault to Audubon County Memorial Hospitals and Clinics. If your answer to Question No. 6 is "no," and your answer to Question No. 2 or 3 was "no," do not answer any further questions and sign the verdict form.)

QUESTION NO. 7: What percentage of lost chance of survival caused by the defendants do you find?

ANSWER: 20%

QUESTION NO. 8: What percentage of the total fault do you attribute to each of the defendants?

(If you previously found that a party was not at fault or did not cause damage to plaintiff, then enter "0" after that party's name.)

ANSWER

Dr. Zafar 100 %

Audubon County Memorial Hospitals and Clinics 0 %

TOTAL: 100%

QUESTION NO. 9: State the amount of damages sustained by the plaintiff caused by the defendants' negligence as to each of the following items of damage. If plaintiff has failed to prove any item of damage or has failed to prove that any item of damage was caused by the defendants' negligence, enter 0 for that item.

- | | |
|--|-------------------|
| 1. Pain and suffering | \$ <u>0</u> |
| 2. Loss of full mind and body | \$ <u>0</u> |
| 3. Loss of past spousal consortium | \$ <u>200,000</u> |
| 4. Loss of future spousal consortium | \$ <u>0</u> |
| 5. Loss of past parental consortium—Teresa Kasperbauer | \$ <u>30,000</u> |
| 6. Loss of past parental consortium—Lisa Hodne | \$ <u>30,000</u> |
| 7. Loss of past parental consortium—Anissa Irlmeier | \$ <u>30,000</u> |
| 8. Loss of future parental consortium—Teresa Kasperbauer | \$ <u>0</u> |
| 9. Loss of future parental consortium—Lisa Hodne | \$ <u>0</u> |
| 10. Loss of future parental consortium—Anissa Irlmeier | \$ <u>0</u> |
| TOTAL (add the separate items of damage) | \$ <u>290,000</u> |



FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

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