

ORIGINAL

IN THE DISTRICT COURT FOR POTTAWATTAMIE COUNTY, IOWA

CHRISTINE KELLOGG,

Case No. 04781 LACV118387

Plaintiff,

JURY INSTRUCTIONS

v.

HARVEY'S IOWA MANAGEMENT
COMPANY, INC., d/b/a HARRAH'S
COUNCIL BLUFFS CASINO and HOTEL,

Defendant.

2016 OCT -2 PM 4:22
CLERK OF DISTRICT COURT
POTTAWATTAMIE COUNTY
IOWA

Members of the Jury:

November 23, 2016, plaintiff Christine Kellogg was a guest at defendant Harrah's Iowa Management Company, Inc. d/b/a Harrah's Council Bluffs Casino and Hotel's property when she slipped and fell on the entryway driveway. Christine Kellogg alleges she sustained various injuries as a result.

Christine Kellogg claims that Harrah's was negligent as follows:

1. Harrah's negligently failed to keep the entryway clean and safe for pedestrian safety.
2. Harrah's failed to warn Christine Kellogg and others of the dangerous condition.

She alleges she sustained permanent personal injuries and claims past medical expenses, past and future physical and mental pain and suffering, permanent physical impairment, and past and future loss of function of the full mind or body.

Harrah's denies it was at fault for Christine Kellogg's claimed injury and damages and asserts that she was negligent in the following particulars:

- a. In failing to maintain a proper lookout;
- b. In failing to exercise ordinary care for her own safety; and
- c. In failing to take action to avoid injury.

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.

JURY 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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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.

JURY 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.

JURY 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 (e.g. answers to Interrogatories, matters which judicial notice was taken, 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 this courtroom.

JURY INSTRUCTION NO. 4

Certain testimony has come into evidence from video depositions. 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.

JURY 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.

JURY INSTRUCTION NO. 6

The parties have stipulated that if the proper person were called, they would testify that Christine Kellogg's medical bills were fair and reasonable. Consider stipulated testimony as if it had been given in court.

JURY 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 that 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.

JURY 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 given for the opinion, and all the other evidence in the case.

JURY 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.

JURY INSTRUCTION NO. 10

You have heard evidence claiming a witness or witnesses made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

JURY INSTRUCTION NO. 11

You have heard evidence claiming Christine Kellogg made statements before this trial while under oath and while not under oath.

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

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

JURY INSTRUCTION NO. 12

The fact that Harrah's 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.

JURY INSTRUCTION 13

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.

It is important that we have your full and undivided attention during this trial.

JURY INSTRUCTION NO. 14

If you find Christine Kellogg is entitled to recover damages, you shall consider the following items:

1. The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and 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;
2. The loss of Christine Kellogg's 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;
3. Christine Kellogg's 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; and
4. The present value of future physical and mental pain and suffering; and
5. The present value of future loss of mind or body; and

The amount you assess for physical and mental pain and suffering in the past and the loss of function of the mind or body in the past 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 another item of damage.

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

JURY INSTRUCTION NO. 15

If you find Christine Kellogg had a condition in her right knee before this incident and this condition or conditions was aggravated or made active by this incident causing further suffering or disability then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by Harrah's actions.

JURY INSTRUCTION NO. 16

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 Christine Kellogg for future losses.

JURY INSTRUCTION NO. 17

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Christine Kellogg is 27.41 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Christine Kellogg's health, habits, occupation, and lifestyle, when deciding issues of future damages.

JURY INSTRUCTION NO. 18

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.

JURY INSTRUCTION NO. 19

In these instructions I will be using the term "fault." Fault means one or more acts or omissions towards the person or the acts of another which constitutes negligence or unreasonable failure to avoid an injury.

JURY INSTRUCTION NO. 20

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of plaintiff Christine Kellogg and defendant Harrah's and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

JURY INSTRUCTION NO. 21

After you have compared the conduct of all parties, if you find Christine Kellogg was at fault and her fault was more than 50% of the total fault, then Christine Kellogg cannot recover damages.

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

JURY INSTRUCTION NO. 22

A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

JURY INSTRUCTION NO. 23

"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.

JURY INSTRUCTION NO. 24

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

JURY INSTRUCTION NO. 25

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 party may be a cause.

JURY INSTRUCTION NO. 26

The mere fact an accident occurred or a party was injured does not mean a party was negligent/at fault.

JURY INSTRUCTION NO. 27

“Proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one’s movements in relation to things seen or that could have been seen in the exercise of ordinary care.

JURY INSTRUCTION NO. 28

Christine Kellogg must prove all of the following propositions:

1. Harrah's knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in Christine Kellogg's position.
2. Harrah's knew or in the exercise of reasonable care should have known:
 - a. Christine Kellogg would not discover the condition, or
 - b. Christine Kellogg would not realize the condition presented an unreasonable risk of injury, or
 - c. Christine Kellogg would not protect herself from the condition.
3. Harrah's was negligent in one or more of the ways alleged by Christine Kellogg:
 - a. Failing to keep the entryway clean and safe for pedestrian safety; and
 - b. Failing to warn Christine Kellogg and others of the dangerous condition.
4. The negligence was a proximate cause of Christine Kellogg's damage.
5. The nature and extent of damage.

If Christine Kellogg has failed to prove any of these propositions, she is not entitled to damages. If she has proved all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. 29.

JURY INSTRUCTION NO. 29

Harrah's claims Christine Kellogg was at fault in one or more of the following particulars:

- a. In failing to maintain a proper lookout;
- b. In failing to exercise ordinary care for her own safety; and
- c. In failing to take action to avoid injury.

These grounds of fault have been explained to you in other instructions.

Harrah's must prove both of the following propositions:

1. Christine Kellogg was at fault in one or more of the ways claimed by Harrah's; and
2. Christine Kellogg's fault was a cause of her damage.

If Harrah's has failed to prove either of these propositions, Harrah's has not proved its defense. If Harrah's has proved both of these propositions, then you will assign a percentage of fault against Christine Kellogg and include her fault in the total percentage of fault found by you when answering the special verdicts.

JURY INSTRUCTION NO. 30

The owner of premises is presumed to know all conditions on the premises that are caused or created by the owner or the owner's employees. The owner or occupant of premises is not responsible for an injury suffered by a person on the premises that resulted from a condition of which the owner had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the owner should have known about it.

JURY INSTRUCTION NO. 31

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether Harrah's has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

JURY INSTRUCTION NO. 32

Concerning number 2 of Instruction No. 28, Harrah's is not liable for injuries or damages caused by a condition that is known or obvious to a person in Christine Kellogg's position unless Harrah's should anticipate the harm despite such knowledge or obviousness.

JURY INSTRUCTION NO. 33

A condition is "known" if one is aware or conscious of its existence and of the risk of harm it presents.

A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

JURY INSTRUCTION NO. 34

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.

JURY INSTRUCTION NO. 35

Upon retiring you shall select a foreperson. It will be the foreperson's duty to see discussion 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.

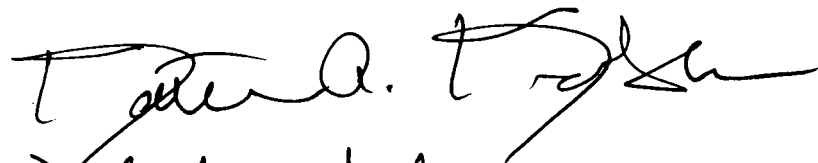
JURY INSTRUCTION NO. 36

I am giving you one verdict form with six questions. 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 foreperson.

After deliberating for six hours from 12:45 o'clock p.m. excluding meals or recesses outside your jury room, then it is necessary that only (seven)(six)* of you agree upon the answers to the questions. In that case, the verdict must be signed by all (seven)(six)* jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

10/2/2020


District Judge