

IN THE IOWA DISTRICT COURT IN AND FOR POTTAWATTAMIE COUNTY

ANTHONY GRESS, : CASE NO. LACV114520
 :
 Plaintiff, :
 :
 v. : DEFENDANTS' PROPOSED
 : JURY INSTRUCTIONS
 JAKE BERTRAND and SARAH :
 BERTRAND, :
 :
 Defendants. :

* * * * *

The Defendants, Jake Bertrand and Sarah Bertrand, submit the following proposed jury instructions to the Court for consideration in this case.



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CERTIFICATE OF SERVICE

I hereby certify that on the date below, a copy of the foregoing document was served upon each *pro se* party or attorney whose name appears below by

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| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
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| <input type="checkbox"/> Certified Mail | <input checked="" type="checkbox"/> Other: EDMS Filing |

6-5-17 Kuepferman
Date Server

TO: J. Joseph Narmi, Esq.
Kristina M. Kaeding, Esq.
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PROPOSED INSTRUCTION NO. 1

MEMBERS OF THE JURY:

This case involves a motor vehicle accident between a car owned and being driven by Timothy Gress containing Plaintiff Anthony Gress as a passenger and a car owned by Jake Bertrand and being driven by his daughter, Sarah Bertrand, on Broadway near Mercy Hospital in Council Bluffs, IA. At the time of the accident Plaintiff was stopped at a stop light and Defendants' vehicle tapped the back of Plaintiff's vehicle.

Plaintiff claims Defendant Sarah Bertrand was negligent in operating her vehicle and that her negligence was a cause of the accident. Plaintiff also claims he was injured as a result of the accident.

Defendants admit that Sarah Bertrand caused the accident. Defendants dispute the nature and extent of the injuries and damages claimed by the Plaintiff.

It will be your responsibility to determine the amount of damages sustained by Plaintiff in the accident, if any.

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.

PROPOSED INSTRUCTION NO. 2

100.2 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Authority

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

PROPOSED INSTRUCTION NO. 3

100.3 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

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

PROPOSED INSTRUCTION NO. 4

100.4 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 Rules of Evidence.

PROPOSED INSTRUCTION NO. 5

100.5 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 R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

PROPOSED INSTRUCTION NO. 6

100.6 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 R. Civ. P. 1.509

PROPOSED INSTRUCTION NO. 7

100.9 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

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

PROPOSED INSTRUCTION NO. 8

100.12 Opinion Evidence, Expert Witness. 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

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930).

PROPOSED INSTRUCTION NO. 9

100.15 Statements By A Party Opponent. You have heard evidence claiming Anthony Gress made statements before this trial.

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

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

PROPOSED INSTRUCTION NO. 10

200.33 No Recovery For Second Injury. If you find Plaintiff was injured by another act after this incident, she cannot recover for any later injury or 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)

PROPOSED INSTRUCTION NO. 11

200.35B 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 Code section 624.18 (2), 668.3(b)

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

In Re Millard Estate, 251 Iowa 1282, 105 N.W.2d 95 (1960)
10/97

PROPOSED INSTRUCTION NO. 12

200.38 Quotient Verdict. 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.

Authority

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)

PROPOSED INSTRUCTION NO. 13

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

Authority

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

PROPOSED INSTRUCTION NO. 14

The Plaintiff must prove the following propositions:

The Plaintiff must prove that the Defendant Sarah Bertrand was at fault. In this case, Defendant admits that she was at fault. However, in order for the Plaintiff to be entitled to recover damages, he must prove the following propositions:

1. That Sarah Bertrand's fault was a cause of all of Plaintiff's injuries and damages.
2. The amount of damages.

If the Plaintiff failed to prove either of these propositions, the Plaintiff is not entitled to damages. If the Plaintiff has proved both of these propositions, the Plaintiff is entitled to damages in some amount.

Authority

Iowa Civil Jury Instruction 700.1

PROPOSED INSTRUCTION NO. 15

100.21 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 R. Civ. P. 1.926 (1)

PROPOSED INSTRUCTION NO. 16

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 lawyers for each party. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully rereading 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.

If a question is asked, I cannot communicate with you without first discussing your question and potential answers with the lawyers. This process naturally takes time and deliberation before I can reply to the jury.

The foreperson shall read my response to the jury. Keep the written questions and responses and return them to the court with your verdict.

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

PROPOSED INSTRUCTION NO. 17

100.18 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.

PROPOSED INSTRUCTION NO. 18

I am giving you one (1) verdict form with two (2) questions. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreman or forewoman. After deliberating for six (6) 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 verdict. In that case, the verdict must be signed by all seven jurors who are in agreement.

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

IN THE IOWA DISTRICT COURT IN AND FOR POTTAWATTAMIE COUNTY

ANTHONY GRESS, : CASE NO. LACV114520
 Plaintiff, :
 v. : SPECIAL VERDICT FORM
 JAKE BERTRAND and SARAH :
 BERTRAND, :
 Defendants. :

* * * * *

We, the jury, find the following special verdicts on the questions submitted to us:

QUESTION NO. 1: Did the Plaintiff prove damages caused by the collision of April 23, 2014?

ANSWER: _____ Yes _____ No

(If your answer is "no", do not answer any further questions.)

QUESTION NO. 2: We the jury find in favor of the plaintiff Anthony Gress and fix the amount of his recovery against the Defendants as to each of the following items of damages. If the 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 zero for that item.

ANSWER:

- 1. Past medical expenses \$ _____
- 2. Past Pain and Suffering \$ _____
- 3. Past loss of function of mind and body \$ _____

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

Foreperson*

*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.