

IN THE IOWA DISTRICT COURT IN AND FOR HANCOCK COUNTY

BRUCE DAVID JOHNSON,)	
	)	Law No. LACV019580
Plaintiff,)	
)	
vs.	)	DEFENDANTS, SHAWN DOUGLAS
	)	MEWES AND ELIASON TRUCKING,
SHAWN DOUGLAS MEWES,	)	INC.'S PROPOSED JURY
ELIASON TRUCKING, INC.,	)	INSTRUCTIONS
)	
Defendants.)	

COME NOW the Defendants, Shawn Douglas Mewes and Eliason Trucking, Inc., pursuant to Court Order and subject to all defenses raised by answer, motion or otherwise, and request that the following instructions and verdict form be given to the jury upon the submission of this case:

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Respectfully submitted,

SWISHER & COHRT, P.L.C.

By: Stephen J. Powell, AT0006333
Stephen J. Powell, AT0006333

By: Dustin T. Zeschke, AT0011120
Dustin T. Zeschke, AT0011120
528 West 4th Street
P.O. Box 1200
Waterloo, IA 50704-1200
Telephone: (319) 232-6555
Facsimile: (319) 232-4835
Email: powell@s-c-law.com
zeschke@s-c-law.com

Attorneys for Defendants, Shawn Douglas Mewes
and Eliason Trucking, Inc.

Original filed.

Copy to:

Richard S. Piscopo, Jr.
Piscopo Law Firm P.L.C.
29 1st Street NE
Mason City, IA 50401
Plaintiff's attorney

Adam P. Bates
Marshall W. Tuttle
Peddicord Wharton, LLP
6800 Lake Drive, Ste. 125
West Des Moines, IA 50266
Attorney for Progressive Casualty Insurance Company

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case by service on each of the attorneys of record herein at their respective addresses disclosed on the pleadings by:

- U.S. Mail
- Other: EDMS
- Hand Delivered
- FAX

on January 27, 2021.

Sandra K. Emerson

Defendants' Proposed Jury Instruction No. ___
Statement of the Case

Members of the Jury: On August 12, 2015, Plaintiff Bruce Johnson was driving southbound on Highway 69. Shawn Mewes was driving a truck owned by Eliason Trucking, Inc., and heading westbound on 140th Street. An accident occurred between the two vehicles. Mr. Johnson has brought suit against Shawn Mewes and Eliason Trucking, Inc., to recover damages allegedly caused by Shawn Mewes' negligence. Shawn Mewes and Eliason Trucking, Inc., admit they were at fault. Shawn Mewes and Eliason Trucking, Inc., deny that any negligence on the part of Shawn Mewes was a cause 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.

Authority
ICJI 100.1

Defendants' Proposed Jury 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. 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.

Authority
ICJI 100.2

Defendants' Proposed Jury 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
ICJI 100.3

Defendants' Proposed Jury 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
ICJI 100.4

Defendants' Proposed Jury 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
ICJI 100.5

Defendants' Proposed Jury 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
ICJI 100.6

Defendants' Proposed Jury Instruction No. ___
Request For Admissions

The [plaintiff] [defendant] served on the [defendant] [plaintiff] a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the [defendant] [plaintiff] or which [defendant] [plaintiff] failed to deny.

Authority
ICJI 100.7

Defendants' Proposed Jury Instruction No. ____
Stipulated Testimony

Counsel has stipulated that ifwere called as a witness [he] [she] would testify as stipulated. Consider stipulated testimony as if it had been given in court.

Authority
ICJI 100.8

Defendants' Proposed Jury 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
ICJI 100.9

Defendants' Proposed Jury Instruction No. ___
Hypothetical Question, Expert Testimony

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.

Authority
ICJI 100.11

Defendants' Proposed Jury Instruction No. ___
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
ICJI 100.12

Defendants' Proposed Jury Instruction No. __
Contradictory Statement, Non-party, Witness Not Under Oath

You have heard evidence claiming [name of witness] 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.

Authority
ICJI 100.13

Defendants' Proposed Jury 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
ICJI 100.14

Defendants' Proposed Jury Instruction No. __
Statements By A Party Opponent

You have heard evidence claiming [name of party] 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 [name of party] had made it under oath during the trial.

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

Authority
ICJI 100.15

Defendants' Proposed Jury Instruction No. ___
Corporate Party

The fact that a plaintiff or defendant is a corporation should not affect your decision. All person 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.

Authority
ICJI 100.20

Defendants' Proposed Jury 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
ICJI 100.23

Defendants' Proposed Jury Instruction No. __
Fault - Defined

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards [the person] [the property] of the actor or of another which constitutes [negligence] [recklessness] [subjects a person to strict tort liability] [breach of warranty] [unreasonable assumption of risk not constituting an enforceable express consent] [misuse of a product for which the defendant otherwise would be liable] [unreasonable failure to avoid an injury] [unreasonable failure to mitigate damages].

Authority
ICJI 400.1

Defendants' Proposed Jury Instruction No. __
Comparative Fault

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 the [plaintiff] [defendant(s)] [third party defendant(s)] [persons who have been released] 1 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. Defendants (name) and (name) are to be treated as a single party for the purpose of determining their percentage of fault.

Authority
ICJI 400.2

Defendants' Proposed Jury Instruction No. ___
Comparative Fault - Effects Of Verdict

After you have compared the conduct of all parties, if you find the plaintiff, _____, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, _____, 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.

Authority
ICJI 400.3

Defendants' Proposed Jury Instruction No. ___
Comparative Fault - Single Defendant - Essentials For Defense

The defendant claims the plaintiff was at fault in one or more of the following particular(s):

(Insert the grounds of fault pleaded and supported by the evidence.)

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

The defendant must prove both of the following propositions:

1. The plaintiff was at fault. In order to prove fault, the defendant must prove (use the appropriate elements from the marshalling instruction in relevant chapters).
2. The plaintiff's fault was a cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved [his] [her] defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

Authority
ICJI 400.6

Defendants' Proposed Jury Instruction No. ___
Comparative Fault - Mitigation

Defendant claims plaintiff was at fault for failing to mitigate [his] [her] damages by not [exercising ordinary care to obtain reasonable medical treatment] [exercising ordinary care to follow medical advice and treatment] [exercising ordinary care (specify manner in which defendant claims plaintiff had a duty to reduce damages)].

Plaintiff has a duty to exercise ordinary care to reduce, minimize or limit [his] [her] damages. However, plaintiff has no duty to do something that is unreasonable under the circumstances, such as [undergo serious or speculative medical treatment] [undertake action which is unreasonably expensive or intrusive] [undertake action which imposes unreasonable inconvenience].

To prove defendant's claim of failure to mitigate, [he] [she] must prove all of the following:

1. There was something plaintiff could do to mitigate [his] [her] damages;
2. Requiring plaintiff to do so was reasonable under the circumstances;
3. Plaintiff acted unreasonable in failing to undertake the mitigating activity; and
4. Plaintiff's failure to undertake the mitigating activity caused an identifiable portion of [his] [her] damages.

If the defendant has proved all of these numbered propositions, then defendant has proved this defense, and you shall assign a percentage of fault to the plaintiff for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict. If the defendant has failed to prove one or more of these numbered propositions, then defendant has not proved plaintiff failed to mitigate [his] [her] damages.

Authority
ICJI 400.7

Defendants' Proposed Jury Instruction No. __
Ordinary Care - Common Law Negligence - Defined

“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.

Authority
ICJI 700.2

Defendants' Proposed Jury Instruction No. ___
Cause - Defined

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

Authority
ICJI 700.3

Defendants' Proposed Jury Instruction No. __
Reasonable And Proper

Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this law is negligence.

Authority
ICJI 600.1

Defendants' Proposed Jury Instruction No. ___
Assured Clear Distance Ahead

No person shall drive any vehicle on a highway at a speed greater than will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen.

A violation of this law is negligence.

Authority
ICJI 600.3

Defendants' Proposed Jury Instruction No. ___
Control - Common Law

A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

Authority
ICJI 600.7

Defendants' Proposed Jury Instruction No. __
Control Of Vehicle - Statutory

A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

Authority
ICJI 600.8

Defendants' Proposed Jury Instruction No. ___
Right Of Assumption

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

Authority
ICJI 600.71

Defendants' Proposed Jury Instruction No. __
Lookout

“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 the operation of the driver’s vehicle in relation to what the driver saw or should have seen. [A driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver’s actions may be dangerous to others.]

A violation of this duty is negligence.

Authority
ICJI 600.72

Defendants' Proposed Jury 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
ICJI 100.18

Defendants' Proposed Jury 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
ICJI 100.21

Defendants' Proposed Jury Instruction No. ____
Return Of Verdict - Forms Of Verdict

I am giving you _____ verdict forms [and 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 [and answers to questions] must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock ____ .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 [and questions] must be signed by all (seven) (six)* jurors who agree.

When you have agreed upon the verdict [and answers to questions] and appropriately signed it, tell the Court Attendant.

Authority
ICJI 300.1

Defendants' Proposed Jury Instruction No. __
Quotient Verdict

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].

Authority
ICJI 200.38

IN THE IOWA DISTRICT COURT IN AND FOR HANCOCK COUNTY

BRUCE DAVID JOHNSON,)	
	)	Law No. LACV019580
Plaintiff,)	
)	
vs.	)	PROPOSED VERDICT FORM BY
	)	DEFENDANTS, SHAWN DOUGLAS
SHAWN DOUGLAS MEWES,	)	MEWES AND ELIASON TRUCKING,
ELIASON TRUCKING, INC.,	)	INC.
)	
Defendants.)	

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

Question No. 1: Was the defendant at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the defendant a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no", do not answer any further questions.]

Question No. 3: Was any item of damage to the plaintiff within the scope of defendant's liability?

Answer "yes" or "no."

ANSWER

[If your answer is "no", do not answer any further questions.]

Question No. 4: Was the plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Questions No. 5 or 6.]

Question No. 5: Was the plaintiff's fault a cause of any damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 6.]

Question No. 6: Was any item of damage to the plaintiff within the scope of plaintiff's liability?
Answer "yes" or "no."

ANSWER

[If your answer is "no," do not answer Question No. 7.]

Question No. 7: Using 100% as the total combined fault of plaintiff and defendant which was a cause of plaintiff's damage [and within the scope of liability], what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant?

ANSWER:	Plaintiff	_____	%
	Defendant	_____	%
	TOTAL	100	%

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 8.]

Question No. 8: State the amount of damages sustained by the plaintiff by defendant's fault [and within the scope of defendant's liability] as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendant's fault [or within the scope of defendant's liability], enter 0 for that item.

- *1. Past medical expenses \$ _____
- 2. Future medical expenses \$ _____
- 3. Past pain and suffering \$ _____
- 4. Future pain and suffering \$ _____
- TOTAL (add the separate items of damage) \$ _____

FOREMAN OR FOREWOMAN*

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing to it after six hours or more of deliberation.
*To be signed only if verdict is unanimous.

Authority
ICJI 300.4