

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

ROSEMARY ZERBONIA,)	
)	
Plaintiff,)	
)	NO. LACE130393
vs.)	
)	JOINTLY PROPOSED
BRIAN BANE,)	JURY INSTRUCTIONS
)	
Defendant.)	

The parties hereby request the following Jointly Proposed Jury Instructions pursuant to Iowa Rule of Civil Procedure 1.281(4)(c) in this matter:

- 100.1 Statement Of The Case
- 100.2 Duties Of Judge And Jury, Instructions As Whole
- 100.3 Burden Of Proof, Preponderance Of Evidence
- 100.4 Evidence
- 100.5 Deposition Testimony (modified)
- 100.9 Credibility Of Witnesses
- 100.12 Opinion Evidence, Expert Witness
- 100.18 General Instruction To Jury
- 100.21 Cautionary Instruction - Juror's Notes
- 100.23 Use of Electronic Devices
- 200.1 Elements - Personal Injury And Vehicle Damage
- 200.10 Loss Of Full Mind And Body – Past
- 200.12 Physical And Mental Pain And Suffering – Past
- 200.38 Quotient Verdict
- 300.1 Return Of Verdict - Forms Of Verdict (modified)
- 300.4 Verdict – Single Plaintiff – Single Defendant – 668
- 400.1 Fault – Defined
- 400.2 Comparative Fault
- 400.3 Comparative Fault – Effects of Verdict
- 400.6 Comparative Fault – Single Defendant – Essentials for Defense
- 600.72 Lookout
- 700.2 Ordinary Care – Common Law Negligence – Defined
- 700.3 Cause – defined (modified)

ROSEMARY ZERBONIA, Plaintiff,

By: _____
Howard E. Zimmerle, Attorney at Law
Attorney PIN: AT0000338

WARNER & ZIMMERLE
Attorneys for Plaintiff
201 W. 2nd Street, Suite 801
Davenport, Iowa 52801
Telephone: (563) 323-5961
Facsimile: (309) 794-1454
Email: hzimmerle@qclawyers.com

INSTRUCTION NO: _____

Members of the Jury:

This case arises out of an accident that occurred on June 19, 2016 in the parking lot for Kraft employees located in Davenport, Iowa. The plaintiff, Rosemary Zerbonia claims that the defendant, Brian Bane was negligent by hitting her with his car. The plaintiff Rosemary Zerbonia claims she sustained damages as a result of this accident.

Defendant, Brian Bane, denies that he was negligent and denies that he was the cause of any damage to plaintiff. Defendant further claims that Rosemary Zerbonia was negligent.

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.

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: _____

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.

INSTRUCTION NO: _____

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.

INSTRUCTION NO: _____

Certain Testimony has been presented by video deposition. Consider that testimony as if it had been given in court.

INSTRUCTION NO: _____

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: _____

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.

INSTRUCTION NO: _____

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: _____

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: _____

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.

INSTRUCTION NO: _____

If you find that Rosemary Zerbonia, is entitled to recover damages, you shall consider the following items:

- A. Loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.
- B. 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.

The amount you assess for physical and mental pain and suffering and loss of function of the mind and body, 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: _____

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.

INSTRUCTION NO: _____

I am giving you _____ verdict forms [and questions]. During the first three hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict [and interrogatories] 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 five of you agree upon the answers to the questions. In that case, the verdict [and interrogatories] must be signed by all five jurors who agree.

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

INSTRUCTION NO: _____

“Proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. For the driver of a motor vehicle, it includes being aware of the operation of the driver's vehicle in relation to what the driver saw or should have seen in the exercise of ordinary care. For a pedestrian, it includes being aware of the pedestrian’s movements in relation to what the pedestrian saw or should have seen in the exercise of ordinary care.

A violation of this duty is negligence.

INSTRUCTION NO: _____

"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: _____

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.

INSTRUCTION NO: _____

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 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.

INSTRUCTION NO: _____

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

INSTRUCTION NO: _____

The defendant claims the plaintiff was at fault because she was negligent.

This ground of fault has 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 that the plaintiff was negligent in one or both of the following ways:
 - a. Failure to maintain a proper lookout
 - b. Failure to yield
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 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.

INSTRUCTION NO: _____

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

VERDICT FORM

VERDICT NO. _____

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 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 the plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Questions No. 4 or 5.]

Question No. 4: 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. 5.]

Question No. 5: Using 100% as the total combined fault of plaintiff and defendant which was a cause of the plaintiff's damage, 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. 6.]

Question No. 6: State the amount of damages sustained by the plaintiffs by defendant's fault 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 plaintiffs have failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendant's fault, enter 0 for that item.

1. Past Loss of Function of the Body \$ _____

2. Past physical and mental pain and suffering \$ _____

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

FOREPERSON*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

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