

ORIGINAL

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

TIMOTHY KONO,

Plaintiff,

Vs.

D.R. HORTON, INC., and D.R. HORTON –
IOWA, LLC d/b/a CLASSIC BUILDERS

Defendant.

*
*
*
*
*
*
*
*
*
*
*

CASE NO. CVCV061592

STATEMENT OF THE CASE AND
INSTRUCTIONS OF THE COURTJUDGE ROBERT HANSON

Statement of the Case

Members of the Jury: In this case, plaintiff Timothy Kono claims that on April 9, 2019, defendants as the general contractor on a home construction site located at ^{931 (ROH)} ~~911~~ Lost Lake Drive in Polk City, Iowa, and owned and controlled by defendants, were at fault in failing to provide a safe place for plaintiff, an employee of Royal Plumbing, a plumbing subcontractor of defendants. Plaintiff claims that defendants' fault resulted in the collapse of a trench in which plaintiff was working, causing him injuries and damages. Plaintiff further claims that defendants' conduct was willful and wanton, thus entitling him to an award of punitive damages. Defendants deny they were at fault and deny that their conduct was a cause of plaintiff's injuries and damages. Defendants also deny that their conduct was willful and wanton and therefore that plaintiff is not entitled to an award of punitive damages. Defendants further contend that certain released parties - Russell Hall, Ernest Landwehr and Travis Landwehr (owners and/or employees of the aforementioned plumbing subcontractor) - were at fault and that their fault was a cause of plaintiff's injuries and damages. Defendants also contend that plaintiff was at fault and that his fault was a cause of his injuries and 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.

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, prejudice 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

The fact that the 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. 3

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. 4

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. Direct evidence is the evidence of the witnesses to facts which they have knowledge of by means of their senses. Circumstantial evidence is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The weight to be given any evidence is for you to decide.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

Certain testimony has been presented by deposition. A deposition is testimony taken under oath before the trial and preserved in writing or by video. You are to consider that testimony as if it had been given in court.

INSTRUCTION NO. 6

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 witness' 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 witness' appearance, conduct, age, intelligence, memory and knowledge of the facts;
and,
3. The witness' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 7

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. 8

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.9

You have heard evidence claiming a 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.

INSTRUCTION NO. 10

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the 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 the 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.

INSTRUCTION NO. 11

You have heard evidence claiming a 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 she or he had made it under oath during the trial.

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

INSTRUCTION NO. 12

In these instructions, I will be using the term “fault.” Fault means one or more acts or omissions by defendant towards plaintiff which constitute negligence. Fault also includes one or more acts or omissions by other persons, referred to herein as “released “ parties, towards plaintiff which constitute gross negligence. Finally, fault also includes one or more acts or omissions by plaintiff which constitute negligence or unreasonable failure to avoid injury. These standards of conduct are explained in other instructions.

INSTRUCTION NO. 13

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

INSTRUCTION NO. 14

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, Released Party Russell Hall, Released Party Ernest Landwehr, and Released Party Travis Landwehr 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 D.R. Horton, Inc. and D.R. Horton – Iowa, LLC d/b/a Classic Builders are to be treated as a single party for the purpose of determining their percentage of fault, if any.

INSTRUCTION NO. 15

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.

If you assign to a party less than 50% of the total fault, that party will only be liable to the extent of the percentage of fault assigned by you.

If you assign a percentage of fault to ^{a released party (RBA)} ~~the settling party~~, I will reduce the amount of plaintiff's recovery by that percentage.

INSTRUCTION NO. 16

Plaintiff claims defendants were at fault in that they were negligent in one or more ways. In order to recover damages, Plaintiff must prove all of the following propositions:

1. Defendants were negligent in one or more ways (which are explained in other instructions);
2. Their negligence was a cause of damage to Plaintiff; and
3. The amount of damage.

If Plaintiff has failed to prove any of these propositions, he is not entitled to damages. If Plaintiff has proved all of these propositions, you will consider the defendants' claims of comparative fault as explained in Instruction Nos. 21-27.

INSTRUCTION NO. 17

“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. 18

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

A general contractor must use ordinary care to provide a reasonably safe place for employees to work, including employees of its subcontractors. A violation of this duty is evidence of negligence. Such evidence is relevant and you should consider it, but it is not conclusive proof.

In no case will the general contractor be relieved of overall responsibility for excavation safety requirements under OSHA for all work to be performed under the construction contract. The general contractor assumes all obligations, prescribed as employer obligations under OSHA excavation standards, whether or not the general contractor subcontracts any part of the work. The general contractor assumes the entire responsibility for construction safety under the contract, and the subcontractor assumes responsibility with respect to its portion of the work. With respect to subcontracted work, the general contractor and any subcontractor have joint responsibility. In no case will the general contractor be relieved of overall responsibility for compliance with OSHA requirements for all work to be performed under the contract. The general contractor assumes all obligations prescribed as employer obligations under OSHA standards, whether or not the general contractor subcontracts any part of the work.

To the extent that a subcontractor agrees to perform any part of the contract, both the subcontractor and general contractor are responsible for complying with OSHA safety standards. The general contractor assumes the entire responsibility under the contract, and the subcontractor assumes joint responsibility only with respect to its portion of the work.

INSTRUCTION NO. 20

You have received evidence that the Iowa Administrative Code for workplace safety required Defendants and the Released Parties to protect Plaintiff from cave-ins in an excavation by providing adequate protective systems designed in accordance with OSHA trench protection rules. You have received evidence that the Plumbing Scope of Work Agreement between Defendants and the Released Parties required Defendants' job superintendents and field representatives to make sure that the Released Parties were "utilizing OSHA-compliant trench protection, as needed, during installation of the water and sewer laterals" at ^{931 (R94)} ~~911~~ Lost Lake Drive in Polk City.

You have received evidence that the Plumbing Scope of Work Agreement also required Defendants' job superintendents and field representatives to provide regular supervision at job sites and that these job superintendents and field representatives had the authority to direct all work of subcontractors' employees and to make all final decisions including the ability to stop any unsafe work practices they observed by subcontractor employees.

There is a factual dispute in this case as to whether the soil was Type B or Type C. These OSHA trench protection rules prohibited benching in Type C soil, or in soil that has not been properly tested to confirm that it is Type B cohesive soil. The rules also required the use of a support or shield system, or that the walls not exceed the defined maximum slope, in all Type C soil for excavations greater than 5 feet but less than 20 feet in depth. All excavations in Type B soil must have a maximum slope of 1/1 (1 foot of horizontal length for every one foot of vertical height.) All excavations in Type C soil must have a maximum slope of 1 ½ to 1 (1 ½ feet of horizontal length for every one foot of vertical height).

A violation of this law is evidence of negligence. Such evidence is relevant and you should consider it but it is not conclusive proof.

INSTRUCTION NO. 21

Defendants claim Plaintiff was at fault in one or more of the following particular(s):

- a. In unreasonably failing to avoid injury; or
- b. In performing work outside the scope of his duties.

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

Defendants must prove both of the following propositions:

- 1. Plaintiff was at fault in that Plaintiff was negligent.
- 2. Plaintiff's fault was a cause of his damage.

If Defendants have failed to prove either of these propositions, Defendants have not proved its defense. If Defendants have proved both of these propositions, then you will assign a percentage of fault against Plaintiff and include Plaintiff's fault in the total percentage of fault found by you answering the questions in the verdict form.

INSTRUCTION NO. 72

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.

INSTRUCTION NO. 23

For work to be within the scope of an employee's duties, the work must be necessary to accomplish the purpose of those duties and it must be intended to accomplish that purpose.

INSTRUCTION NO. 24

Defendants claim that released party Russell Hall was at fault in one or more of the following particular(s):

- a. Released Party Hall failed to provide and / or use adequate equipment or methods to prevent known excavation / safety hazards or aid in escape from a trench collapse;
- b. Released Party Hall chose not to take reasonable and necessary steps to maintain a safe work environment and / or prevent the trench collapse, despite being aware of previous incidents in which his same failures resulted in trench collapses and injury to a Royal Plumbing employee;
- c. Released Party Hall chose not to take reasonable and necessary steps to maintain a safe work environment and / or prevent the trench collapse, despite recent training on how to prevent trench cave-ins, and the substantial risk of serious injury from trench cave-ins;
- d. Released Party Hall ordered Plaintiff to remain in the trench, knowing that water was coming in, the walls were undermining, and a trench collapse was imminent;
- e. Released Party Hall chose not to call 911 or any other police or rescue service for assistance in safely rescuing and / or removing Plaintiff from the trench;
- f. Released Party Hall chose to have a Royal Plumbing employee drive Plaintiff to an Urgent Care Clinic instead of calling an ambulance and/or transporting Plaintiff to an emergency room; or
- g. Released Party Hall violated state and federal laws and regulations.

Defendants must prove all of the following propositions:

1. Released Party Russell Hall was at fault. In order to prove fault, Defendants must prove that Russell Hall was grossly negligent toward Plaintiff;
2. Released Party Russell Hall's fault was a cause of damage to the Plaintiff.

If Defendants has failed to prove either of these propositions, you cannot assign any percentage of fault to Released Party Russell Hall. If the Defendants have proved both of these propositions, then you will assign a percentage of fault against Released Party Russell Hall and include Released Party Russell Hall's fault in the total percentage of fault found by you in answering the questions in the verdict form.

INSTRUCTION NO. 25

Defendants claim that released party Ernest Landwehr was at fault in one or more of the following particular(s):

- a. Failing to ensure Released Party Hall was provided and / or used adequate equipment or methods to prevent known excavation / safety hazards or aid in escape from a trench collapse;
- b. Failing to ensure Released Party Hall undertook reasonable and necessary steps to maintain a safe work environment and / or prevent the trench collapse, despite being aware of previous incidents in which Released Party Hall's safety failures resulted in one or more trench collapses and injuries to a Royal Plumbing employee;
- c. Allowing Released Party Hall to serve as a "competent person" and/or supervise trench / excavation work on the Royal Plumbing job site, located at 931 Lost Lake Drive, when Released Party Hall's trenching / excavation methods constituted an unreasonable safety hazard;
- d. Creating a compensation system for Released Party Hall which incentivized speed, and disincentivized safety, knowing employees lives and health were at risk;
- e. Failing to warn Plaintiff and other Royal Plumbing employees of the hazardous conditions of performing trench / excavation work at Royal Plumbing job sites, particularly those supervised by Released Party Hall;
- f. Failing to oversee, inspect, discover and prevent hazardous conditions at the Royal Plumbing job site located at 931 Lost Lake Drive;
- g. Failing to enforce or remedy violations of OSHA / IOSHA safety standards that were then and there occurring;

- h. Failing to train Released Party Hall and other Royal Plumbing trenching / excavation employees on obtaining and providing appropriate rescue, first aid, and medical care in the event of an emergency; or
- i. Allowing unsafe conditions to exist at the Royal Plumbing job site, knowing such conditions violated state and federal laws and regulations.

Defendants must prove all of the following propositions:

1. Released Party Ernest Landwehr was at fault in that he was grossly negligent toward Plaintiff.
2. Released Party Ernest Landwehr's fault was a cause of damage to the Plaintiff.

If Defendants have failed to prove either of these propositions, you cannot assign any percentage of fault to Released Party Ernest Landwehr. If Defendants have proved both of these propositions, then you will assign a percentage of fault against Released Party Ernest Landwehr and include Released Party Ernest Landwehr's fault in the total percentage of fault found by you in answering the questions in the verdict form.

INSTRUCTION NO. 26

Defendants claim that Released Party Travis Landwehr was at fault in one or more of the following particular(s):

- a. Failing to ensure Released Party Hall was provided and / or used adequate equipment or methods to prevent known excavation / safety hazards or aid in escape from a trench collapse;
- b. Failing to ensure Released Party Hall undertook reasonable and necessary steps to maintain a safe work environment and / or prevent the trench collapse, despite being aware of previous incidents in which Released Party Hall's safety failures resulted in one or more trench collapses and injuries to a Royal Plumbing employee;
- c. Allowing Released Party Hall to serve as a "competent person" and/or supervise trench / excavation work on the Royal Plumbing job site, located at 931 Lost Lake Drive, when Released Party Hall's trenching / excavation methods constituted an unreasonable safety hazard;
- d. Creating a compensation system for Released Party Hall which incentivized speed, and disincentivized safety, knowing employees lives and health were at risk;
- e. Failing to warn Plaintiff and other Royal Plumbing employees of the hazardous conditions of performing trench / excavation work at Royal Plumbing job sites, particularly those supervised by Released Party Hall;
- f. Failing to oversee, inspect, discover and prevent hazardous conditions at the Royal Plumbing job site located at 931 Lost Lake Drive;
- g. Failing to enforce or remedy violations of OSHA / IOSHA safety standards that were then and there occurring;

- h. Failing to train Released Party Hall and other Royal Plumbing trenching / excavation employees on obtaining and providing appropriate rescue, first aid, and medical care in the event of an emergency; or
- i. Allowing unsafe conditions to exist at the Royal Plumbing job site, knowing such conditions violated state and federal laws and regulations.

Defendants must prove all of the following propositions:

1. Released Party Travis Landwehr was at fault. In order to prove fault, Defendants must prove that Released Party Travis Landwehr was grossly negligent toward Plaintiff.
2. That Released Party Hall's fault was a cause of the plaintiff's damage.

If Defendants have failed to prove either of these propositions, you cannot assign any percentage of fault to Released Party Travis Landwehr. If Defendants have proved both of these propositions, then you will assign a percentage of fault against Released Party Travis Landwehr and include Released Party Travis Landwehr's fault in the total percentage of fault found by you in answering the questions in the verdict form.

INSTRUCTION NO. 27

Gross negligence by a person exists when the person has 1) knowledge of the danger to be apprehended, 2) knowledge that injury is a probable, as opposed to a possible, result of the danger, and 3) consciously fails to avoid the danger.

INSTRUCTION NO. 28

Elements - Personal Injury. If you find Plaintiff is entitled to recover damages, you shall consider the following items:

1. **Past Medical Expenses.** The reasonable cost of necessary hospital charges, doctor charges, counseling charges, prescriptions and other medical and mental health services from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, counseling charges and prescriptions, 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. **Future Medical Expenses.** The present value of reasonable and necessary hospital charges, doctor charges, counseling charges, prescriptions and other medical and mental health services, which will be incurred in the future.
3. **Loss of Time - Earnings.** The reasonable value of lost wages from the date of injury to the present time.
4. **Loss of Future Earning Capacity.** The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

In considering the amount of Plaintiff's loss of future earning capacity, you may consider his wages and earnings prior to his injury, along with his wages and earnings following his injury.
5. **Loss of Full Mind and Body - Past.** Loss of function of the mind and body ^{function of the (RBH)} from the date of injury to the present time. Loss of mind or body is the inability of a particular part of the mind or body to function in a normal manner.
6. **Loss of Full Mind and Body - Future.** The present value of future loss of function of the mind and body.
7. **Physical and Mental Pain and Suffering -- Past,** including physical and mental

05771 CYCV061592 - 2023 OCT 04 10:34 AM POLK
E-FILED CLERK OF DISTRICT COURT Page 34 of 45

pain and suffering from the date of the 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. Mental anguish may include, but is not limited to, nervousness, worry, anxiety, irritability, disappointment, depression, confusion, apprehension, or a feeling of uselessness.

8. **Physical and Mental Pain and Suffering - Future.** The present value of future physical and mental pain and suffering. Physical and mental pain and suffering have already been explained to you in this Instruction.

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, and loss of function of the mind and body in the past and future 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 the defendants as proven 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.

Add together the amounts, if any, you find for each of the above items and the total will be used to answer the questions in the verdict form.

INSTRUCTION NO. 29

A Standard Mortality Table indicates the normal life expectancy of men who were the same age as Plaintiff is 41.5 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about the person's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 30

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. 31

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.

Punitive Damages. Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendants' conduct constituted a willful ^{and wanton (R B H)} disregard for the rights and safety of another and caused actual damage to the plaintiff. A willful ^{and wanton (R B H)} violation of an OSHA safety standard exists when the violation is committed with intentional disregard of, or plain indifference to, the requirements of the regulation.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendants and others from like conduct in the future. You may award punitive damages only if the defendants' conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendants' conduct that harmed the plaintiff;
2. The amount of punitive damages which will punish and discourage like conduct by the defendants. You may consider the defendants' financial condition or ability to pay.

You may not, however, award punitive damages solely because of the defendants' wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct.

INSTRUCTION NO. 32A

Conduct is willful and wanton when a person does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

INSTRUCTION NO. 33

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

INSTRUCTION NO. 34

Upon retiring you shall select a foreperson. 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.

INSTRUCTION NO. 35

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, 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 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 this 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 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~~ ^(RBH) 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.

INSTRUCTION NO. 36

During the trial, you have been allowed to take notes. You may take these notes with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollections 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. 37

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 the 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 the 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. He/she has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put him/her on the spot by asking him/her any questions. You should direct your questions to the court and not the court attendant.

INSTRUCTION NO. 38

I am giving you one verdict form containing 15 questions. You will answer the applicable questions following the directions contained in the verdict form. During the first six (6) 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 the ~~presiding juror~~ ^{foreperson (RBA)}.

After deliberating for six (6) hours from 1:54 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 ^{on Oct. 2, 2023, (RBA)} 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, please tell the Court Attendant.

Dated and signed this 2nd day of October, 2023.



District Court Judge
Fifth Judicial District of Iowa