

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

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| <p>BETH BLUEDORN AND MARVIN BLUEDORN,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>LINDA NORTON,</p> <p style="text-align: center;">Defendant.</p> | <p style="text-align: center;">CASE NO. LACV088762</p> <p style="text-align: center;">DEFENDANT’S PROPOSED JURY INSTRUCTIONS</p> |
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COMES NOW, Defendant, Linda Norton, and hereby submits her proposed jury instructions. Defendant reserves the right to supplement and/or amend the proposed jury instructions prior to the time they are given to the jury with such additional and different instructions as may be necessary based upon the testimony and exhibits at trial and any other factors which may affect the appropriate form of jury instructions or form of verdict.

STANDARD IOWA JURY INSTRUCTIONS

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100.2 – Duties of Judge and Jury, Instructions As Whole
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100.4 – Evidence
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MODIFIED

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700.1 – Essentials for Recovery

700.2 – Ordinary Care – Common Law Negligence - Defined

700.3 – Fault - Defined

LEDERER WESTON CRAIG PLC

By: /s/ Kimberly K. Hardeman

Kimberly K. Hardeman, AT0003230

118 Third Avenue SE, Suite 700

P. O. Box 1927

Cedar Rapids, IA 52406-1927

Telephone: (319) 365-1184

Fax: (319) 365-1186

E-mail: khardeman@lwclawyers.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on January 14, 2019, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to the following:

Ann E. Brown

ANN BROWN LEGAL PC

Email: ann@annrbownlegal.com

ATTORNEY FOR PLAINTIFFS

I am not aware of any non-ECF system participants in this proceeding that require service by mail.

/s/ Kimberly K. Hardeman

100.1

INSTRUCTION NO. _____

Members of the Jury:

In this case Plaintiff, Beth Bluedorn, claims she was injured as a result of a motor vehicle accident that occurred on May 27, 2016, at the intersection of 20th Street NE and B Avenue NE in Cedar Rapids, Iowa. Plaintiff was operating her vehicle heading south on 20th Street NE.

Plaintiff claims Defendant, Linda Norton, was negligent in the operation of the vehicle she was driving, and that Defendant's negligence was the cause of Plaintiff's claimed injuries and damages. Defendant admits she was at fault but denies that her actions were the cause of Plaintiff's injuries and damages. Defendant further submits she was not negligent because she was faced with a sudden emergency when her brakes malfunctioned and therefore has a legal excuse. Defendant submits she could not have been negligent because she exercised a degree of care which a reasonably careful person would have exercised under the same or similar circumstances.

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.

100.1 – STATEMENT OF THE CASE

100.2

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.

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

100.2 - DUTIES OF JUDGE AND JURY, INSTRUCTIONS AS WHOLE

100.3

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.

100.3 – BURDEN OF PROOF, PREPONDERANCE OF EVIDENCE

100.4

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 ruling on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside this courtroom.

100.4 – EVIDENCE

100.5

INSTRUCTION NO. _____

Certain testimony has been read into evidence or viewed in video form 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.

100.5 – DEPOSITION TESTIMONY

100.6

INSTRUCTION NO. ____

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.

100.6 – INTERROGATORIES

100.9

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.

100.9 – CREDIBILITY OF WITNESSES

100.11

INSTRUCTION NO. ____

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.

100.11 – HYPOTHETICAL QUESTION, EXPERT TESTIMONY

100.12

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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

100.12 – OPINION EVIDENCE, EXPERT WITNESS

100.13

INSTRUCTION NO. ____

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 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.

100.13 – CONTRADICTORY STATEMENT, NON-PARTY, WITNESS NOT UNDER OATH

100.14

INSTRUCTION NO. ____

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 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.

100.14 – CONTRADICTORY STATEMENTS, NON-PARTY, WITNESS UNDER OATH

100.15

INSTRUCTION NO. ____

You have heard evidence claiming _____ 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 _____ had made it under oath during the trial.

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

100.15 STATEMENTS BY PARTY OPPONENT

100.18

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.

100.18 – GENERAL INSTRUCTION TO JURY

100.21

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.

100.21 – CAUTIONARY INSTRUCTION – JUROR’S NOTES

100.23

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.

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

100.23 – USE OF ELECTRONIC DEVICES

200.1

INSTRUCTION NO. _____

If you find Plaintiffs are entitled to recover damages, you shall consider the following:

Past medical expenses

Future medical expenses

Past and future pain and suffering

Past and future loss of use of the body

The amount you assess for past and future pain and suffering and loss of enjoyment of life, past and future loss of use of the 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 damages must not exceed the amount caused by a party or 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.

200.1 – ELEMENTS – PERSONAL INJURY AND VEHICLE DAMAGE

200.32

INSTRUCTION NO. _____

If you find Plaintiff had lower back or hip pain before this incident, and this condition was aggravated by this incident causing further suffering, 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 the defendant's actions.

200.32 –AGGRAVATION OF PRE EXISTING CONDITION

200.38

INSTRUCTION NO. _____

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.

200.38 – QUOTIENT VERDICT

300.1

INSTRUCTION NO. _____

I am giving you one verdict form. 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 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 answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

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

300.1 - RETURN OF VERDICT - FORMS OF VERDICT

400.1

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].

400.1 – FAULT

600.74

INSTRUCTION NO. _____

Defendant Linda Norton claims that if you find that she violated the law in the operation of her vehicle, she had a legal excuse for doing so because her brakes unexpectedly stopped functioning properly and, therefore, she was not negligent. "Legal excuse" means that someone seeks to avoid the consequences of her conduct by justifying acts which would otherwise be considered negligent. The burden is upon Defendant to establish as a legal excuse:

1. Anything that would make complying with the law impossible.
2. Anything over which the driver has no control which places her vehicle in a position contrary to the law.
3. Failure to obey the law when the driver is confronted with sudden emergency not of her own making.
4. An excuse or exception provided by the law.

If you find that Linda Norton has violated the law as submitted to you in other instructions, and that she has established a legal excuse for doing so under any one of the four definitions set forth above, then you should find that Linda Norton was not negligent for violating the particular law involved.

600.74 – LEGAL EXCUSE

600.75

INSTRUCTION NO. _____

A sudden emergency is an unforeseen combination of circumstances that calls for immediate action or a sudden or unexpected occasion for action. A driver of a vehicle who, through no fault of her own, is placed in a sudden emergency, is not chargeable with negligence if the driver exercises that degree of care which a reasonably careful person would have exercised under the same or similar circumstances.

600.75 – SUDDEN EMERGENCY

700.1

INSTRUCTION NO. _____

The plaintiff must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
 - a. Failing to stop at a stop sign in violation of Iowa Code § 321.322;
 - b. Failing to maintain control of her vehicle;
 - c. Failing to maintain a proper lookout
 - d. Operating her vehicle at a rate of speed that was too fast given the traffic conditions; and
 - e. Operating her vehicle in an unsafe manner.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

Defendant, Linda Norton has admitted she was negligent in this accident and received a citation for failing to maintain control of her vehicle, and paid the fine.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of legal excuse and sudden emergency as explained in Instruction No.600.74 and 600.75.

700. 1 – ESSENTIALS FOR RECOVERY

700.2

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.

700.2 – ORDINARY CARE – COMMON LAW NEGLIGENCE - DEFINED

700.3

INSTRUCTION NO. _____

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

700.3 – CAUSE - DEFINED

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

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|------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| BETH BLUEDORN AND MARVIN BLUEDORN, Plaintiffs, vs. LINDA NORTON, Defendant. | CASE NO. LACV088762 VERDICT FORM |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------|

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

Question No. 1. Defendant, Linda Norton has admitted fault for the accident. Was the fault of Defendant, Linda Norton, a cause of any item of damage to Plaintiff?

Answer "Yes" or "No"

ANSWER: _____

If your answer is "yes," proceed to Question 2. If your answer is "no," answer no additional questions and proceed to sign the verdict form.

Question No. 2: Did the Defendant have a legal excuse for her fault?

Answer "Yes" or "No."

ANSWER: _____

If your answer is "yes," answer no additional questions and proceed to sign the verdict form. If your answer is "no," proceed to Question 3.

Question No. 3: State the amount of damages sustained by Plaintiff for each of the following items of damage. If Plaintiff has failed to prove any item of damage or has failed to prove that any item was caused by Linda Norton's fault, enter "0" for that item.

Past medical expenses: \$ _____

Future medical expenses: \$ _____

Past physical and mental past pain and suffering: \$ _____

Future physical and mental pain and suffering: \$ _____

Past loss of function of the mind and body: \$ _____

Future loss of function of the mind and body: \$ _____

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

FOREMAN OR FOREWOMAN*

***To be signed only if verdict is unanimous**

JUROR **

JUROR **

JUROR **

JUROR **

JUROR **

JUROR **

JUROR **

****To be signed by the jurors agreeing thereto after six hours or more of deliberation.**