

*Original*

## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DONALD DOWNEY,

Plaintiff,

v.

JOLENE FRANCES INGERSOLL f/k/a  
JOLENE MURRY,

Defendant.

Case No.: LACL139308

**JURY INSTRUCTIONS  
AND STATEMENT OF THE CASE****JUDGE JEANIE K. VAUDT****STATEMENT OF THE CASE**

Members of the Jury:

In this case, Plaintiff Donald Downey is seeking damages against Defendant Jolene Ingersoll for injuries he sustained as the result of a motor vehicle accident that occurred on October 30, 2015. Plaintiff alleges that Defendant was negligent in the operation of her vehicle. Defendant admits that she is at fault for the collision. Plaintiff further alleges that as a result of Defendant's negligence he sustained injuries. Plaintiff claims a loss of past medical expenses, past and future loss of function of full mind and body, and past and future physical and mental pain and suffering.

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.

CLERK DISTRICT COURT

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POLK COUNTY, IA.

**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.

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

**INSTRUCTION NO. 2**

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. 3**

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 of which judicial notice was taken, 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. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

**INSTRUCTION NO. 4**

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. 5**

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 the field and the reasons for their opinions.

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

**INSTRUCTION NO. 6**

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.

**INSTRUCTION NO. 7**

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

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



**INSTRUCTION NO. 8**

"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. 9**

The Plaintiff must prove all of the following propositions:

1. The Defendant was negligent in the operation of her vehicle:
2. The negligence was a cause of damage to the Plaintiff.
3. The amount of damage.

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, the Plaintiff is entitled to damages in some amount.

**INSTRUCTION NO. 10**

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. 11**

If you find the Plaintiff had a pre-existing injury to his left shoulder before this incident and this condition was aggravated by this incident causing further injury, then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which he now has which were not caused by the Defendant's actions.

**INSTRUCTION NO. 12**

Past Physical and Mental Pain and Suffering is defined as 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 and loss of enjoyment of life.

**INSTRUCTION NO. 13**

Future Physical and Mental Pain and Suffering are calculated by using the present value of future physical and mental pain and suffering.

**INSTRUCTION NO. 14**

Past medical expenses are defined as the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

INSTRUCTION NO. 15

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

1. Past and future pain and suffering;
2. Past and future loss of function of the full mind and body; and
3. Past medical expenses.



**INSTRUCTION NO. 16**

The amount you assess for past and future pain and suffering and past and future loss of full 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 the Defendant 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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

Add together the amounts, if any, you find for each of the above items and the total will be used to answer the special verdicts.

**INSTRUCTION NO. 17**

Past Loss of Full Mind and Body is defined as loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

**INSTRUCTION NO. 14**

Future Loss of Full Mind and Body is the present value of future loss of function of the body.

**INSTRUCTION NO. 19**

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. 20**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Donald Downey is 27. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Donald Downey's health, habits, occupation, and lifestyle, when deciding issues of future damages.

**INSTRUCTION NO. 21**

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. 22**

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.

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. 23**

Occasionally after a jury retires to their jury room, the members have questions. I have prepared the instructions after carefully considering this case with the lawyers. I have tried to use language that is generally understandable. Usually, questions about instructions can be answered by carefully re-reading them. If, however, any of you feel it is necessary to ask a question, you must do so in writing and the foreperson must deliver the question to the court attendant.

I cannot communicate with you without first discussing your question and the potential answers with the lawyers. This process naturally takes time and deliberation before I can reply. When I respond, it will be in writing and the foreperson must read the 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 has taken an oath not to communicate with you except to ask if you have reached a verdict. Please do not put her on the spot by asking her questions about this case.



INSTRUCTION NO. 24

I am giving you one (1) verdict form containing several 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 to the answers to the questions, the verdict form must be signed by your foreperson.

After deliberating for six (6) hours from 12:05 o'clock p.m., excluding meals and recesses outside your jury room, then it is necessary that only seven (7) of you agree upon the answers to the questions and the verdict. In that case, the verdict form must be signed by all seven (7) jurors who are in agreement.

When you have agreed upon a verdict and appropriately signed it, please inform the court attendant.

DATED this 7<sup>th</sup> day of November, 2018, at 12:05 ~~a.m.~~ p.m.

Jeanie K. Vaudt  
JEANIE K. VAUDT, Judge  
Fifth Judicial District of Iowa