

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

DONALD DOWNEY,

Plaintiff,

v.

JOLENE FRANCES INGERSOLL f/k/a  
JOLENE MURRY,

Defendant.

Case No.: LACL139308

**PLAINTIFF'S PROPOSED JURY  
INSTRUCTIONS**

**COMES NOW**, the Plaintiff, and hereby submits, prior to trial, the attached proposed jury instructions. Plaintiff respectfully reserves the right to submit supplemental and/or alternative instructions to conform to the issues and proof presented at trial.

Respectfully submitted,

/s/ Travis J. Burk

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CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of October, 2018, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per Rule 16.317(1) (a), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

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*/s/ Kellie Hauge*

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Kellie Hauge

**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 10, 2015. Plaintiff alleges that Defendant Ingersoll 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 and future medical expenses, past and future loss of function of full mind and body, 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.

I.C.J.I. 100.1

**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.

**Authority:**

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

I.C.J.I. 100.2

**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.

**Authority:**

Mabrier v. A.M. Servicing Corporation of Ravtown, 161 N.W.2d 180 (1968)

I.C. J.I. 100.3

**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, 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.

**Authority:**

Iowa Rules of Evidence.

I.C.J.I. 100.4

**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.

**Authority:**

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

I.C.J.I. 100.9

**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 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.

**Authority:**

I.C.J.I. 100.12



**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.

I.C.J.I. 100.23

**INSTRUCTION NO. \_\_\_\_**

In these instructions I will be using the term “fault”. Fault means one or more acts or omissions towards the Plaintiff which constitutes negligence.

**Authority:**

Iowa Code §668.1

I.C.J.I. 400.1

**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.

**Authority:**

Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992)

Schalk v. Smith, 224 Iowa 904, 277 N.W. 303 (1938)

**INSTRUCTION NO. \_\_\_\_**

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 law is negligence.

**Authority:**

Matuska v. Bryant, 260 Iowa 726, 150 N.W.2d 716 (1967)

**INSTRUCTION NO. \_\_\_\_**

A "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 violation of this duty is negligence.

**Authority:**

Matuska v. Bryant, 260 Iowa 726, 150 N.W.2d 716 (1967)

**INSTRUCTION NO. \_\_\_\_**

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.

**Authority:**

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)

Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)

Bauman v. City of Waverly, 164 N.W.2d 840 (Iowa 1969)

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

If you find the Plaintiff had a pre-existing injury to her left shoulder AC joint 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.

**Authority**

Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)  
I.C.J.I. 200.32

**INSTRUCTION NO. \_\_\_\_**

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 or loss of enjoyment of life.

**Authority:**

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)

Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa App. 1977)

I.C.J.I. 200.12



**INSTRUCTION NO. \_\_\_\_**

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

**Authority:**

Iowa Code section 624.18 (2), 668.3(b)  
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)  
I.C.J.I. 200.13B

**INSTRUCTION NO. \_\_\_\_**

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.

**Authority:**

Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004)

Worez v. Des Moines City Ry. Co., 175 Iowa 1, 156 N.W. 867 (1916)

Elzig v. Bales, 135 Iowa 208, 112 N.W. 540 (1907)

I.C.J.I. 200.6

**INSTRUCTION NO. \_\_\_\_**

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. \_\_\_\_**

The amount you assess for physical and mental pain and suffering in the past and future and past and future emotional distress 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.

**Authority:**

I.C.J.I. 200.1, 200.5-200.13 (Modified)

**INSTRUCTION NO. \_\_\_\_**

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.

**Authority:**

I.C.J.I. 200.10

**INSTRUCTION NO. \_\_\_\_**

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

**Authority:**

I.C.J.I. 200.11B

Iowa Code sections 624.18 (2) and 668.3(b)

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

**INSTRUCTION NO. \_\_\_\_**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Donald Downey is 27.4. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about April Hawkins' health, habits, occupation, and lifestyle, when deciding issues of future damages.

**Authority:**

I.C.J.I. 200.37

**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.

**Authority:**

I.C.J.I. 100.18



**INSTRUCTION NO. \_\_\_\_**

I am giving you 1 verdict form. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as 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 verdict. In that case, the verdict must be signed by all seven jurors who are in agreement.

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

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JOLENE FRANCES INGERSOLL f/k/a  
JOLENE MURRY,

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Case No.: LACL139308

**VERDICT FORM**

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

**Question No. 1:** Was the Defendant Jolene Ingersoll at fault?

Answer “yes” or “no.”

ANSWER: \_\_\_\_\_

(If your answer is “yes,” then go to Question 2. If your answer is “no,” then please sign and return the Special Verdict Form to the Court Attendant.)

**Question No. 2:** Was the fault of the Defendant Jolene Ingersoll a cause of any item of damage to the Plaintiff Donald Downey?

Answer “yes” or “no.”

ANSWER: \_\_\_\_\_

(If your answer is “yes,” then go to Question 3. If your answer is “no,” then please sign and return the Special Verdict Form to the Court Attendant.)

**Question No. 3:** What are the total damages that you attribute to Defendant Jolene Ingersoll’s negligence:

<b>Item of Damage</b>	<b>Amount</b>
a) Past pain and suffering;	
b) Future pain and suffering;	
c) Past medical expenses;	
d) Past loss of full mind and body;	
e) Future loss of full mind and body;	
Total:	\$

\_\_\_\_\_  
FOREPERSON\*

\*To be signed only if the verdict is unanimous

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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