

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

<p>RANDY BRIES,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CARDINAL CONSTRUCTION, INC., a/k/a CARDINAL CONSTRUCTION COMPANY,</p> <p>Defendant.</p>	<p>No. LACV 136269</p> <p>DEFENDANT'S PROPOSED JURY INSTRUCTIONS</p>
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Defendant submits the following Proposed Jury Instructions.

PICKENS, BARNES & ABERNATHY

By /s/ Matthew G. Novak
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this document was served on the 18th day of February 2020, upon all parties in the above cause by serving the attorneys of record at their respective addresses disclosed on the pleadings. Service was made by:

<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Facsimile
<input type="checkbox"/> Hand-Delivery	<input type="checkbox"/> Email
<input type="checkbox"/> Overnight Carrier	<input checked="" type="checkbox"/> Other-EDMS

/s/ Christina Updegraff

Instruction No. 1

Members of the jury:

In this case Plaintiff, Randy Bries seeks damages as a result of injuries he received in a motor vehicle accident on April 26, 2018 caused by the negligence of Todd Walters. The pickup truck Walters was operating was owned by Cardinal Construction, Inc. and was being driven within the scope of his employment. Cardinal admits it is responsible for any damages caused by Walters. Cardinal does not dispute Walters' negligence caused the accident but disputes the amount of damages sought by Plaintiff.

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.

Iowa Civil Jury Instruction 100.1 as modified.

Instruction No. 2

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.

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 jury 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.

Iowa Civil Jury Instruction 100.2

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 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.

Iowa Civil Jury Instruction 100.4

Instruction No. 4

Certain Testimony has been submitted 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.

Iowa Civil Jury Instruction 100.5 as modified

Instruction No. 5

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.

Iowa Civil Jury Instruction 100.9

Instruction No. 6

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.

Iowa Civil Jury Instruction 100.12

Instruction No. 7

The fact that a plaintiff or 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.

Iowa Civil Jury Instruction 100.20

Instruction No. 8

The plaintiff must prove all of the following propositions:

1. The negligence of defendant was a cause of damage to plaintiff.
2. 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 both of these propositions, the plaintiff is entitled to damages in some amount.

Iowa Civil Jury Instruction 700.1 as modified

Instruction No. 9

If you find plaintiff is entitled to recover damages, you should consider the following items:

1. The cost of necessary medical costs from the date of injury to the present time. In determining the cost of necessary medical charges, you should and may consider the amount actually paid.
2. The reasonable value of lost wages from the date of injury to the present time.
3. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a part of the body to function in a normal manner.
4. The present value of future loss of function of the body.
5. 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.

6. The present value of future physical and mental pain and suffering

The amount you assess for any element of damage 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.

Iowa Civil Jury Instruction 200.1, 200.6, 200.8, 200.10, 200.11B, 200.12, 200.13B as modified

Instruction No. 10

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.

Iowa Civil Jury Instruction 200.35B

Instruction No. 11

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.

Iowa Civil Jury Instruction 200.38

Instruction No. 12

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

Iowa Civil Jury Instruction 200.37

Instruction No. 13

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.

Iowa Civil Jury Instruction 100.21

Instruction No. 14

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.

Iowa Civil Jury Instruction 100.23

Instruction No. 15

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.

Iowa Civil Jury Instruction 100.18

Instruction No. 16

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 hours excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the question. 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, tell the Court Attendant.

Iowa Civil Jury Instruction 300.1

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

RANDY BRIES, Plaintiff, vs. CARDINAL CONSTRUCTION, INC., a/k/a CARDINAL CONSTRUCTION COMPANY, Defendant.	No. LACV 136269 VERDICT FORM
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We find the following verdict on the question submitted to us:

Question: State the amount of damages sustained by plaintiff caused by defendant's negligence as to each of the following items of damage. If plaintiff has failed to prove any item of damages, or has failed to prove any item of damage was caused by defendant's negligence, enter "O" for that item:

Past medical expenses	\$ _____
Past lost wages	\$ _____
Past pain and suffering	\$ _____
Present value of future pain and suffering	\$ _____
Past loss of function	\$ _____
Present value of future Loss of function	\$ _____
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.

Iowa Civil Jury Instruction 300.4 as modified