

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

RANDY BRIES,	)	
	)	CASE NO. <u>LACV136269</u>
Plaintiff,	)	
	)	
vs.	)	
	)	PLAINTIFF'S PROPOSED
CARDINAL CONSTRUCTION, INC.	)	JURY INSTRUCTIONS
a/k/a CARDINAL CONSTRUCTION CO.)	)	
	)	
Defendant.	)	

Plaintiff submits the following Proposed Jury Instructions. Plaintiff reserves the right to amend these requested Instructions and to either delete or request additional Instructions.

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ATTORNEY FOR PLAINTIFFS

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

This case arises out a motor vehicle collision that occurred on April 26, 2018, at the intersection of Highway 150 and the southbound offramp of Interstate 380 in Benton County, Iowa. Plaintiff alleges that as he was northbound on highway 150, a pick-up truck owned by Cardinal Construction, Inc. and driven by the company's employee, Todd Walters down the southbound off ramp of I-380 drove into the path of his car causing the collision. Plaintiff claims that Todd Walters was negligent, and that the accident was a cause of Plaintiff's injuries and damages. Plaintiff also alleges that Cardinal Construction, Inc. is responsible for Plaintiff's damages caused by Todd Walter's negligence.

The court has already entered judgment in favor of Plaintiff and against Defendant, Cardinal Construction, Inc. as follows:

1. Todd Walters was negligent in connection the operation of his vehicle and his negligence was the cause of the collision with the vehicle driven by Randy Bries.
2. Randy Bries was not negligent in the operation of his vehicle at the time of the collision with the vehicle driven by Todd Walters.
3. Todd Walters' negligence was a cause of bodily injury to Randy Bries.
4. Todd Walters was operating his vehicle within the scope of his employment or agency with Cardinal Construction and with the permission of Cardinal Construction as the owner of the vehicle.
5. The defendant is liable to the plaintiff for damages caused by the collision between plaintiff and Todd Walters.
6. Trial shall proceed on the issue of the nature and extent of the plaintiff's damages caused by defendant's negligence.

Cardinal Construction, Inc. disputes the nature, extent and cause of the damages claimed by plaintiff.

Do not consider this summary as proof of the nature, extent and cause of plaintiff's damages. Decide the facts from the evidence and apply the law which I will now give you.

**JURY 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.

**JURY 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.

**JURY 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, Instagram, 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.

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

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

Certain Testimony has been read or played into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing or by video recording. Consider that testimony as if it had been given in court.

**JURY 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.



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

The plaintiff served on the defendant a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the defendant or which defendant failed to deny.

Iowa R. Civ. P. 1.510, 1.511

**JURY 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.

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

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

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

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

**JURY 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.

In this case, the court has determined and defendant has admitted that Todd Walters was negligent in the operation of his vehicle and that his negligence is attributable to Cardinal Construction, Inc. as the vehicle's owner and Todd Walters' employer.

The court has also determined and defendant has admitted that plaintiff Randy Bries was not negligent in the operation of his vehicle.

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

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

Iowa Civil Jury Instruction 700.3

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

Plaintiff must prove all of the following propositions:

1. The nature and extent of Plaintiff's damages caused by Defendant's negligence.
2. The amount of damage.

If Plaintiff has failed to prove either of these propositions with respect to any item of damages, Plaintiff is not entitled to damages with respect to that item.

If Plaintiff has proved all of these propositions with respect to any item of damage, Plaintiff is entitled to damages in some amount.

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

In determining the nature and extent of Plaintiff's damages, you shall consider the following items:

1. **Past Medical Expenses:** The reasonable cost of necessary hospital charges, doctor charges, home healthcare costs, prescriptions and other medical services from the date of the accident to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, home healthcare costs, prescriptions and other medical services, you may consider the amount of the charges, 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, prescriptions, and other medical services which will be incurred in the future.
3. **Loss of Time – Earnings:** The reasonable value of lost wages and time from business 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.
5. **Loss of Full Mind and Body – Past:** Loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner. It includes scarring and disfigurement.
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:** 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.

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



The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, 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 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.

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

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 further losses.

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

Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff Randy Bries at the time of trial is 20.64. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Plaintiff's health, habits, occupation and lifestyle, when deciding issues of future damages.

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

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.

**JURY 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.

**JURY 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.

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

I am giving you \_\_\_\_\_ verdict forms. 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 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 the verdict and appropriately signed it, tell the Court Attendant.

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

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

RANDY BRIES,	)	
	)	CASE NO. <u>LACV136269</u>
Plaintiff,	)	
	)	
vs.	)	
	)	VERDICT FORM
CARDINAL CONSTRUCTION, INC.	)	
a/k/a CARDINAL CONSTRUCTION CO.)	)	
	)	
Defendant.	)	

With respect to Plaintiff's claims, we find the following verdict on the question submitted to us:

Question: State the amount of damages sustained by Plaintiff Randy Bries caused by Defendant's negligence as to each of the following items of damage. If Plaintiff failed to prove any item of damage, or has failed to prove that any item of damage was caused by Defendant's negligence, enter 0 for that item:

- |    |  |       |
|----|--|-------|
| 1. | Past medical expenses  | _____ |
| 2. | Present value of future medical expenses                       | _____ |
| 3. | Past loss of function of mind and body                         | _____ |
| 4. | Present value of future loss of function of mind and body      | _____ |
| 5. | Past physical and mental pain and suffering                    | _____ |
| 6. | Present value of future physical and mental pain and suffering | _____ |
| 7. | Loss of time – earnings  | _____ |



8. Loss of future earning capacity \_\_\_\_\_

TOTAL (add the separate items of damage) \_\_\_\_\_

\_\_\_\_\_  
\*Foreman or Forewoman

\*To be signed only if 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 \*\*

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

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

Iowa Civil Jury Instruction 300.6