
IN THE IOWA DISTRICT COURT FOR WAPELLO COUNTY

IOWA NETWORK SERVICES
d/b/a AUREON

CASE NO. LALA106738

Plaintiff,

v.

JURY INSTRUCTIONS

DELONG CONSTRUCTION, INC.

Defendant.

INSTRUCTION NO. 1

Members of the Jury: In this case, the parties agree that Defendant's employees cut a buried fiber-optic cable owned by Plaintiff on or about September 26, 2023. Any time you hear me refer to "Defendant" in these instructions, you should assume that includes actions by Defendant's employees.

Plaintiff claims that the Defendant cut the fiber-optic cable because Defendant's employees were negligent. Plaintiff claims that the location of the fiber-optic cable was marked by its agent, USIC, in the manner required. Plaintiff claims Defendant failed to locate the actual location, including the depth of the cable, using hand digging or other non-destructive means, and that Defendant used a backhoe within 18 inches of the marked location of the underground facility. Plaintiff claims it cost \$71,527.25 to repair the cut cable, and that Defendant should be responsible for paying the cost of the repair.

The defendant denies that it was negligent, and asserts the cable was not buried at the required depth, and that the sole and proximate cause of the damages was Plaintiff's own negligence. Defendant asserts the cable was too shallow in the ground, and that Plaintiff is

responsible for the depth of the cable in the ground. Defendant claims it should not be required to pay for the cost of the repair.

100.1 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.

100.2

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. The order in which I give these instructions is not important. 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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just 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.

100.3

INSTRUCTION NO. 3

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.

100.4

INSTRUCTION NO. 4

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. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

100.9

INSTRUCTION NO. 5

Decide the facts from the evidence. Consider the evidence using your observations, reasoning, common sense, and experience. It is your duty to determine the credibility of witnesses, to resolve any conflicts in the evidence, and to draw reasonable inferences from the evidence. In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness's 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. Whether a witness has made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts.
4. The witness's interest in the trial, their motive, candor, bias, and prejudice.

Try to reconcile any conflicts in the evidence; but if you cannot, accept any evidence you find believable and give it the weight you believe it deserves.

100.6

INSTRUCTION NO. 6

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.

100.7

INSTRUCTION NO. 7

The plaintiff and defendant served on one another written requests 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 either party or which either party failed to deny.

100.12

INSTRUCTION NO. 8

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.

100.18

INSTRUCTION NO. 9

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.

100.20

INSTRUCTION NO. 10

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.

700.2

INSTRUCTION NO. 11

"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.

400.1

INSTRUCTION NO. 12

In these instructions I will be using the term "fault." Fault means one or more acts or omissions towards the property of the actor or of another which constitutes negligence.

700.1

INSTRUCTION NO. 13

The plaintiff must prove all of the following propositions:

1. That the defendant was negligent in one or more of the following ways:
 - a. The defendant failed to act as a reasonable contractor would have in the same situation.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of the damage.

If Plaintiff has failed to prove any of these propositions, Plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of sole proximate cause as explained in Instruction No 15 and the defense of comparative fault as explained in Instruction No. 16.

700.11

INSTRUCTION NO. 14

You have received evidence of the requirements set by Iowa Code Chapter 480 and the One Call regulations issued pursuant to that statute. Conformity with Chapter 480 and the regulations is evidence that Defendant was not negligent and failure to comply with Iowa Code Chapter 480 and the One Call regulations may be evidence that Defendant was negligent. Such evidence is relevant to what a reasonable party in Defendant's situation would or should have done on September 26, 2023. You should consider this evidence, but it is not conclusive proof.

700.3

INSTRUCTION NO. 15

The defendant claims the sole proximate cause of the plaintiff's damages was because, Defendant alleges, Plaintiff did not bury the cable deeply enough in the ground. Sole proximate cause means the only proximate cause. In order to prove this affirmative defense, the Defendant must prove both of the following propositions:

1. The reason the cable was cut was because it was located too shallow in the ground and was not as deep as Defendant expected it to be.
2. The shallow depth of the cable was due to Plaintiff's action or inaction, and the shallow depth was the only proximate cause of Plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has failed to prove the defense of sole proximate cause. If the defendant has proved both of these propositions, the defendant has proved the defense of sole proximate cause and you must find the fault of the defendant, if any, was not a proximate cause of the plaintiff's damages when you answer the special verdicts.

400.3

INSTRUCTION NO. 16

After you have compared the conduct of all parties, if you find the plaintiff, Aureon, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, Aureon, cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

700.3

INSTRUCTION NO. 17

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. This includes the conduct of the party's employees acting on behalf of the party and within the scope of the employment relationship with the party. There can be more than one cause of the damage.

400.2

INSTRUCTION NO. 18

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiff and the Defendant, and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

100.23

INSTRUCTION NO. 19

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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.

100.21

INSTRUCTION NO. 20

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, please give your notes to the court attendant.

INSTRUCTION NO. 21

Occasionally, jurors have questions during deliberations. I have prepared the Instructions after carefully conferring with the parties and their counsel. I have tried to use language which is generally understandable. Usually, questions about the Instructions can be answered by carefully re-reading them. If, however, you deem it necessary to ask the court a question, please do so in writing. After I receive a question from you, I am required to confer with the parties and their attorneys before responding. This process, of course, takes time. My response to any question will be in writing.

Please do not ask the court attendant any questions about the Instructions.

INSTRUCTION NO. 22

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.

300.1

INSTRUCTION NO. 23

I am giving you one copy of the verdict form.

During the first three hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. This means all of you must agree on the answers to the questions on the verdict form. If you all agree, the verdict form will be signed by your foreperson.

After deliberating for three hours, excluding meals or recesses outside your jury room, then it is necessary that only five of you agree upon the answers to the questions. In that case, the verdict must be signed by all five jurors who agree.

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

INSTRUCTION NO. 24

I have not by these instructions, by any ruling made, by any act done, or by anything said during the trial intended or attempted to give any opinion as to what the facts are, what the proof is, or what your verdict should be.



State of Iowa Courts

Case Number
LALA106738

Case Title
AUREON NETWORK SVCS VS. DELONG CONSTRUCTION
INC
Type: JURY INSTRUCTIONS

So Ordered

A handwritten signature in blue ink, reading "Amber L. Thompson", is written over a horizontal line.

Amber L. Thompson, District Court Judge,
Eighth Judicial District of Iowa

Electronically signed on 2025-09-12 11:46:08