

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

BRIAN OEDEKOVEN,	)	
	)	No. CVCV170280
	)	
Plaintiff,	)	
	)	DEFENDANT'S PROPOSED
v.	)	JURY INSTRUCTIONS
	)	
FORD MOTOR COMPANY,	)	
	)	
Defendant.	)	

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COMES NOW Defendant, Ford Motor Company ("Ford"), and hereby provides the following proposed Jury Instructions to be used during the trial of this matter.

GREFE & SIDNEY, P.L.C.,

/s/ Laura N. Martino

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ATTORNEY FOR DEFENDANT  
FORD MOTOR COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2017, I electronically filed the foregoing with the Clerk of Court using the Iowa Courts E-file system which will send notification of such filing to the following:

R Scott Rhinehart  
2000 Leach Ave  
Sioux City, IA 51106

/s/ Laura N. Martino

## **STATEMENT OF THE CASE**

Members of the Jury:

Plaintiff alleges that the vehicle he purchased, a 2015 Ford F-150, is defective and cannot be brought into conformity with the warranty. He seeks a full refund for the motor vehicle. Ford Motor Company denies that the vehicle is defective and instead asserts that the plaintiff's misuse of the vehicle is the cause of any alleged nonconformity.

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.

### **Authority**

Iowa Civil Jury Instruction 100.1

**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, 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.

**Authority**

Iowa Civil Jury Instruction 100.23

**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.

**Authority**

Iowa Civil Jury Instruction 100.2

**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.

**Authority**

Iowa Civil Jury Instruction 100.3

**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.

**Authority**

Iowa Civil Jury Instruction 100.4

**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.

**Authority**

Iowa Civil Jury Instruction 100.9

**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.

**Authority**

Iowa Civil Jury Instruction 100.12

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930).



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

The fact that a plaintiff or defendant is a corporation should not affect your decision. All person 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.

**Authority**

Iowa Civil Jury Instruction 100.20

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

“Nonconformity” means a defect, malfunction, or condition in a motor vehicle such that the vehicle fails to conform to the warranty, but does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alternation of the motor vehicle by person other than the manufacturer or its authorized service agent.

**Authority**

Iowa Code § 322G.2(14)

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

“Substantially impair” means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the motor vehicle.

**Authority**

Iowa Code § 322G.2(20)

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

“Warranty” means any written warranty issued by the manufacturer; or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance.

**Authority**

Iowa Code § 322G.2(4)

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

“Purchase price” means the cash price paid for the motor vehicle appearing in the sales agreement or contract, including any net allowances given for a trade-in vehicle.

**Authority**

Iowa Code § 322G.2(17)

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

“Collateral charges” means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. Collateral charges include, but are not limited to, charges for manufacturer-installed or agent-installed items, earned finance charges, use taxes and title charges.

**Authority**

Iowa Code § 322G.2(1)

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

“Incidental charges” means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining alternative transportation, which are the direct result of the nonconformity or nonconformities which are the subject of the claim. Incident al charges do not include loss of use, loss of income, or personal injury claims.

**Authority**

Iowa Code § 322G.2(6)

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

“Reasonable offset for use” means the number of miles attributable to a consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle, or in the event of a leased vehicle, the lessor’s actual lease price plus an amount equal to two percent of the purchase price, and divided by one hundred twenty thousand.

**Authority**

Iowa Code § 322G.2(18) (modified)



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

To recover damages, a Plaintiff must prove all of the following propositions:

1. The 2015 F-150 has one or more nonconformities;
2. The nonconformity substantially impairs the motor vehicle;
3. Ford or an authorized service agent of Ford has made three attempts to repair the same nonconformity plus a final attempt by Ford **or** the motor vehicle has been out of service by reason of repair after thirty or more cumulative days, exclusive of and the nonconformity continues to exist.
4. The nonconformities were covered by the manufacturer's written warranty;
5. Damages including the purchase price, collateral charges and reasonably incurred incidental charges.

If a Plaintiff has failed to prove any of the propositions, the Plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of abuse as explained in Instruction No. \_\_\_\_\_.

**Authority**

Iowa Code § 322G.4

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

The defendant claims that any nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a person other than the manufacture or its authorized service agent. If the defendant fails to prove this proposition, then it has not proved its defense. If the defendant has proved this proposition, then the Plaintiff is not entitled to damages.

**Authority**

Iowa Code § 322G.5

**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.

**Authority**

Iowa Civil Jury Instruction 100.18

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

I am giving you a 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 [and answers to questions] 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) (six)\* of you agree upon the answers to the questions. In that case, the verdict [and questions] must be signed by all (seven) (six)\* jurors who agree.

When you have agreed upon the verdict [and answers to questions] and appropriately signed it, tell the Court Attendant.

**Authority**

Iowa Civil Jury Instruction 300.1

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

BRIAN OEDEKOVEN,	)	
	)	No. CVCV170280
	)	
Plaintiff,	)	
	)	VERDICT FORM
v.	)	
	)	
FORD MOTOR COMPANY,	)	
	)	
Defendant.	)	

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

Question 1. Did plaintiff's motor vehicle suffer from a nonconformity?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question 2. Is the nonconformity a condition or defect that substantially impairs the use, value, or safety of the motor vehicle?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question 3. Was

(a) the same condition or defect subject to repair by the manufacturer or any of its authorized motor vehicle dealers at least four (3) times with a final repair attempt by the manufacture, and the problem continued after the fourth time?

(b) plaintiff's motor vehicle out of service for a total of at least thirty (30) days because of one or more conditions or defects?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question 4. Were the conditions and defects referred to in No. 3 above all covered by the manufacturer's written warranty?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer any further questions.]

Question 5. Is the nonconformity a result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a person other than Ford or its authorized service agent?

Answer "yes" or "no."

ANSWER:

[If your answer is "yes," do not answer any further questions.]

Question 6. What sum of money did plaintiff pay for the following items?

(a) Purchase price \$ \_\_\_\_\_

(b) Collateral costs \$ \_\_\_\_\_

(c) Reasonably Incurred Incidental charges \$ \_\_\_\_\_

Total: \$ \_\_\_\_\_

Question 7. How many miles was the plaintiff's motor vehicle driven before plaintiff first reported the condition or defect to the manufacturer or one of its authorized motor vehicle dealers?

**Authority**

39 Am. Jur. Trials 1 (Originally published in 1989)  
Iowa Code § 322G.4 and 322G.5