

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

JERRI TINKER, Plaintiff, v. PHILIP J. HAEFS, Defendant.	CASE NO: LACV167801 PROPOSED JURY INSTRUCTIONS AND VERDICT FORM SUBMITTED BY DEFENDANT
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COMES NOW the Defendant Philip J. Haefs and hereby submits the following Proposed Jury Instructions and Verdict Form.



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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served by (U. S. Mail/Fax/Hand Delivered/Overnight Courier/E-mail) upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on October 4, 2016.

A handwritten signature in blue ink, appearing to read "Att K. Gu", is written above a horizontal line.

INSTRUCTION NO. _____

Statement Of The Case. Members of the Jury: In this case Plaintiff Jerri Tinker claims that Defendant Philip Haes negligently operated his vehicle in a parking lot causing a collision between his vehicle and her vehicle. She claims that the collision caused property damage to her truck and that it injured her.

The Defendant Philip Haes denies that he was negligent and disputes the extent of the damages claimed by the 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.

Authority: Iowa Civil Jury Inst. No. 100.1 (as modified).

INSTRUCTION NO. _____

Duties of Judge And Jury, Instructions As Whole. 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. 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 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.

Authority: Iowa Civil Jury Inst. No. 100.2.

INSTRUCTION NO. _____

Burden of Proof, Preponderance of Evidence. 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 Inst. No. 100.3.

INSTRUCTION NO. _____

Evidence. 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 Inst. No. 100.4.

INSTRUCTION NO. _____

Interrogatories. 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.

Authority: Iowa Civil Jury Inst. No. 100.6.

INSTRUCTION NO. _____

Credibility Of Witnesses. 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 Inst. No. 100.9.

INSTRUCTION NO. _____

Opinion Evidence, Expert Witness. 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 Inst. No. 100.12.

INSTRUCTION NO. _____

Statements By A Party Opponent. You have heard evidence claiming [name of 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 [name of party] had made it under oath during the trial.

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

Authority: Iowa Civil Jury Inst. No. 100.15.

INSTRUCTION NO. _____

General Instruction To Jury. 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 Inst. No. 100.18.

INSTRUCTION NO. _____

Cautionary Instruction - Juror's Notes. 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.

Authority: Iowa Civil Jury Inst. No. 100.21.

INSTRUCTION NO. _____

Use of Electronic Devices.

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 Inst. No. 100.23.

INSTRUCTION NO. _____

Elements - Personal Injury and Vehicle Damage. If you find Plaintiff Jerri Tinker is entitled to recover damages, you shall consider the following items:

a. Vehicle Damage - Repairs Only - Repairable To Prior Condition For Less Than Market Value.

The reasonable cost of repair of the vehicle.

b. Past Medical Expenses. The reasonable cost of necessary hospital charges, doctor charges, or prescriptions from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, or prescriptions, you may consider the amount actually paid.

c. Physical And Mental Pain And Suffering - Past. 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.

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

Authority: Iowa Civil Jury Inst. Nos. 200.1, 200.2, 200.6 and 200.12 (as modified).

INSTRUCTION NO. _____

Aggravation of Pre-Existing Condition. If you find Plaintiff Jerri Tinker had back and neck pain before this incident and this condition was aggravated by this incident causing further suffering then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by the defendant's actions.

Authority: Iowa Civil Jury Inst. No. 200.32.

INSTRUCTION NO. _____

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

Authority: Iowa Civil Jury Inst. No. 400.1 (as modified).

INSTRUCTION NO. _____

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

Authority: Iowa Civil Jury Inst. No. 700.3.

INSTRUCTION NO. _____

Scope of Liability – Defined. You must decide whether the claimed harm to plaintiff is within the scope of defendant's liability. The plaintiff's claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

Authority: Iowa Civil Jury Inst. No. 700.3A.

INSTRUCTION NO. _____

Accident Does Not Constitute or Raise Presumption of Negligence. The mere fact an accident occurred or a party was injured does not mean a party was negligent.

Authority: Iowa Civil Jury Inst. No. 700.8.

INSTRUCTION NO. _____

Comparative Fault - Single Plaintiff - Essentials For Recovery. The Plaintiff claims the defendant was at fault in [one or more of] the following particular(s):

Failure to maintain proper lookout.

These grounds of fault have been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove [use the appropriate elements from the marshalling instructions in relevant chapters].
2. The defendant's fault was a cause of the plaintiff's damage.
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, you will consider the defense of comparative fault as explained in Instruction Nos. _____, _____, and _____.

Authority: Iowa Civil Jury Inst. No. 400.5 (as modified).

INSTRUCTION NO. _____

Comparative Fault - Single Defendant - Essentials For Defense. The defendant claims the plaintiff was at fault in one or more of the following particular(s):

Improper Turn, Failure to Maintain Control and Improper Lookout.

These grounds of fault have been explained to you in other instructions.

The defendant must prove both of the following propositions:

1. The plaintiff was at fault. In order to prove fault, the defendant must prove (use the appropriate elements from the marshalling instruction in relevant chapters).
2. The plaintiff's fault was a cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved [his] [her] defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

Authority: Iowa Civil Jury Inst. No. 400.6 (as modified).

INSTRUCTION NO. _____

Control - Common Law. 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 duty is negligence.

Authority: Iowa Civil Jury Inst. No. 600.7.

INSTRUCTION NO. _____

Left Turns - Yielding. The driver of a vehicle intending to turn left into a driveway or private road shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or so close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.

A violation of this law is negligence.

Authority: Iowa Civil Jury Inst. No. 600.37 (as modified).

INSTRUCTION NO. _____

Lookout. "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 driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver's actions may be dangerous to others.]

A violation of this duty is negligence.

Authority: Iowa Civil Jury Inst. No. 600.72 (as modified).

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

Question No. 1: Was the defendant at fault?

Answer "yes" or "no."

ANSWER:

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

Question No. 2: Was the fault of the defendant a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

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

Question No. 3: Was any item of damage to the plaintiff within the scope of defendant's liability?

Answer "yes" or "no."

ANSWER

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

Question No. 4: Was the plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Questions No. 5 or 6.]

Question No. 5: Was the plaintiff's fault a cause of any damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 6.]

Question No. 6: Was any item of damage to the plaintiff within the scope of plaintiff's liability?

Answer "yes" or "no."

ANSWER

[If your answer is "no," do not answer Question No. 7.]

Question No. 7: Using 100% as the total combined fault of plaintiff and defendant which was a cause of plaintiff's damage [and within the scope of liability], what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant?

ANSWER: Plaintiff _____%
Defendant _____%
TOTAL 100%

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 8.]

Question No. 8: State the amount of damages sustained by the plaintiff by defendant's fault [and within the scope of defendant's liability] as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendant's fault [or within the scope of defendant's liability], enter 0 for that item.

*1. Past medical expenses	\$ _____
2. Past pain and suffering	\$ _____
4. Vehicle damage	\$ _____
TOTAL (add the separate items of damage)	\$ _____