

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

JERRI TINKER

Plaintiff,

vs.

PHILIP JOSEPH HAEFS,

Defendant.

LACV 167801

PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS

COMES NOW the Plaintiff and hereby submits the following proposed jury instructions
for the above entitled action.

HAUSMANN-McNALLY, S.C.
Attorney for Plaintiff

By:

Ken A. Winjum, AT0008602

1220 Sunset Drive, Suite 103

Norwalk, IA 50211

Telephone: (515) 981-5220

E-Mail: kwinjum@hminjurylaw.com

Original Filed.

Copies to:

Scott Green
4200 Corporate Drive, Suite 120
West Des Moines, IA 50266

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument
was served upon one of the attorney of record for all parties to the above-
entitled cause by serving the same on such attorney at his/her respective
address/fax number as disclosed by the pleadings of record herein, on the

4 of October, 2014, by:

U.S. Mail _____

Hand Delivery _____

E-Mail _____

FAX _____

UPS _____

E-Mail _____

Ken A. Winjum

STATEMENT OF THE CASE

Members of the Jury: This case arises out of a motor vehicle accident which occurred on November 4, 2013 in Sioux City, Iowa. Plaintiff Jerri Tinker claims that the Defendant Philip Joseph Haefs was negligent or at fault in causing the accident and resulting damages.

The Defendant denies the claims of 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.

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

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

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

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

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

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

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.

Authority

Iowa Civil Jury Instruction 100.21

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

INSTRUCTION NO. _____

If you find Jerri Tinker is entitled to recover damages, you shall consider the following items:

1. The reasonable cost of repair of her vehicle.
2. The reasonable cost of necessary hospital charges, doctor charges, prescriptions and other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

3. 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.

4. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

The amount you assess for physical and mental pain and suffering and for loss of function of the body 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 Instruction 200.1, 200.6, 200. 7, 200. 10, 200. 11B, 200.12, 200.13B.

INSTRUCTION NO. _____

If you find Plaintiff had a condition before this incident and this condition was aggravated or made active by this incident causing further suffering or disability 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 he now has which were not caused by the defendant's actions.

Authority

Iowa Civil Jury Instruction 200.32

INSTRUCTION NO. _____

If Plaintiff had a condition making her more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by plaintiff that are caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

Authority

Iowa Civil Jury Instruction 200.34

INSTRUCTION NO. _____

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

Authority

Iowa Jury Instruction 200.38

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 [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 must be signed by all seven jurors who agree.

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

Authority

Iowa Civil Jury Instruction 300.1

INSTRUCTION NO. _____

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

Authority

Iowa Civil Jury Instruction 400.1

INSTRUCTION NO. _____

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.

Authority

Iowa Civil Jury Instruction 400.2

INSTRUCTION NO. _____

The Plaintiff claims the defendant Philip Joseph Haefs was at fault in one or more of the following particulars:

1. Failure to yield;
2. Failure to maintain a proper lookout;
3. Failure to maintain control;
4. Moving a parked vehicle improperly;
5. Failure to operate a vehicle in a safe and prudent manner under the circumstances.

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

The plaintiff must prove all of the following propositions:

1. The defendant Philip Joseph Haefs was at fault. In order to prove fault, the plaintiff must prove one of the following :
 - a. Defendant failed to yield;
 - b. Defendant failed to maintain a proper lookout;
 - c. Defendant failed to have control of his vehicle;
 - d. Defendant moved a parked vehicle improperly;
 - e. Defendant failed to operate a vehicle in a safe and prudent manner under the circumstances.
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 from this defendant. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority

Iowa Civil Jury Instruction 400.5

INSTRUCTION NO. _____

No person shall drive any vehicle on a highway at a speed greater than will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen.

A violation of this law is negligence.

Authority

Iowa Civil Jury Instruction 600.3

INSTRUCTION NO. _____

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 Instruction 600.7

INSTRUCTION NO. _____

A driver shall not move a vehicle which is stopped, standing, or parked unless the movement can be made with reasonable safety.

A violation of this law is negligence.

Authority

Iowa Civil Jury Instruction 600.31

INSTRUCTION NO. _____

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

Authority

Iowa Civil Jury Instruction 600.71

INSTRUCTION NO. _____

"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 violation of this duty is negligence.

Authority

Iowa Civil Jury Instruction 600.72

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.

Authority

Iowa Civil Jury Instruction 700.2

INSTRUCTION NO. _____

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 Instruction 700.3

IN THE IOWA DISTRICT COURT FOR BOONE COUNTY

JERRI TINKER

Plaintiff,

vs.

PHILIP J. HAEFS

Defendant.

LACV NO. 167801

VERDICT

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

Question No. 1: Was the defendant Philip J. Haefs 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 Jerri Tinker?

Answer "yes" or "no."

ANSWER:

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

Question No. 3: Was the plaintiff Jerri Tinker at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 4.]

Question No. 4: Was the fault of the plaintiff Jerri Tinker a cause of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer to either Question No. 3 or No. 4 is "no," then you shall not assign any fault to plaintiff Jerri Tinker].

Question No. 5: Using 100% as the total combined fault of the plaintiff and defendant which was a cause of plaintiff's damages, 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	1	_____ %
Defendant		_____ %
TOTAL		100 %

Question No. 6: State the amount of damages sustained by the plaintiff caused by a defendant's fault 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 proximately caused by a defendant's fault, enter 0 for that item.

1. Vehicle Damage	\$ _____
2. Past medical expenses	\$ _____
3. Past pain and suffering	\$ _____
4. Past loss of body (function)	\$ _____
OTAL (add the separate items of damage)	\$ _____

Authority

Iowa Civil Jury Instruction 300.6