Original

IN THE IOWA DISTRICT COURT IN AND FOR ADAIR COUNTY

JULIA GILES,	:	
Plaintiff,	:	**NO. LACV006218**
vs.	:	**JURY INSTRUCTIONS**
TLH CLEANING, L.L.C.,	:	
Defendant.	__ : __	

STATEMENT OF THE CASE

In this civil case the Plaintiff, Julia Giles, claims that she was injured when she fell due to the negligence of the Defendant, TLH Cleaning, L.L.C. in maintaining the walkway at an Interstate Rest Area. The Defendant denies that it was negligent, denies that it caused any damages to the Plaintiff and claims that any injuries sustained by Plaintiff were due to her own negligence.

This summary is not evidence and should not be considered as proof of any claim. You should decide this case from the evidence presented and apply the law which I will now give you.

INSTRUCTION NO. 1

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.

INSTRUCTION NO. 2

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.

INSTRUCTION NO. 3

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.

Evidence may be direct or circumstantial. Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is evidence about a chain of events which establishes a fact. The law makes

no distinction between direct evidence and circumstantial evidence. The weight to be given to 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.

INSTRUCTION NO. 4

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.

INSTRUCTION NO. 5

Certain testimony has been read into evidence from a deposition or played for you on a videotape. These are both methods of taking and preserving testimony under oath before trial. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 6

During this trial, you have heard the word "interrogatories". An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. "Requests for production" must also be responded to under oath in writing. Consider interrogatories and requests for production and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

Defendant TLH Cleaning, L.L.C., is a corporation. All parties are equal before the law and corporations, whether large or small, are entitled to the same fair and unbiased consideration by the jury as any individual.

INSTRUCTION NO. 9

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what that witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe this witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NO. 10

In these instructions the term "fault" is used. Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence.

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 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.

The mere fact that an accident happened or a person was injured does not mean a party is at fault.

After you have compared the conduct of all parties, if you find the plaintiff was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff 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.

INSTRUCTION NO. 11

"Negligence" means failure to use ordinary care. Ordinary care is the care that 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.

INSTRUCTION NO. 12

The conduct of a party is a cause of damage when the damage would not have occurred absent the conduct. There can be more than one cause of an injury or damage.

INSTRUCTION NO. 13

Defendant has a duty to exercise reasonable care in the maintenance of the rest area for the protection of those who used the rest area. In evaluating whether defendant exercised reasonable care for the protection of plaintiff, you may consider the following factors:

1. the foreseeability of possibility of harm to the plaintiff,
2. the purpose for which the plaintiff came to the rest area,
3. the time, manner and circumstances under which the plaintiff entered the rest area,
4. the use to which the premises are put or are expected to be put,
5. the reasonableness of any inspection, maintenance, or warning,
6. the opportunity and ease of repair or correction or giving of any warning,
7. the burden on defendant in terms of inconvenience or cost in providing adequate protection.

INSTRUCTION NO. 14

Defendant was obligated to remove, within a reasonable amount of time, any snow and ice that naturally accumulated on the walkways at the rest area. Defendant was obligated to exercise reasonable care in removing the snow and ice.

Plaintiff must prove that Defendant knew about the natural accumulation of snow and ice, or that it existed long enough for the Defendant to have discovered and removed it in the exercise of ordinary care. "Natural accumulation" refers to snow or ice which is on the sidewalk as the result of nature, as compared to snow or ice which was caused to be on the walkways as the result of something that a person has done.

A violation of this law is negligence.

INSTRUCTION NO. 15

In order to recover from the defendant the plaintiff must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. The defendant knew or in the exercise of reasonable care should have known:
    a. The plaintiff would not discover the condition, or
    b. The plaintiff would not realize the condition presented an unreasonable risk of injury, or
    c. The plaintiff would not protect herself from the condition.
3. The defendant was negligent in failing to keep the walkways at the rest area free from an accumulation of ice or snow.
4. The negligence of the defendant was a cause of plaintiff's damages.
5. The nature and extent of damages.

If the plaintiff has failed to prove any of the propositions, the plaintiff is not entitled to recover damages from the defendant. If the plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 16, VJ 18 and 19.

INSTRUCTION NO. 16

Concerning element number 2 of Instruction No. 15, a defendant is not liable.for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position unless the defendant should anticipate the harm despite such knowledge or obviousness.

A condition is "known" if one is aware or conscious of its existence and of the risk of harm it presents.

A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence and judgment.

INSTRUCTION NO. 17

The defendant alleges the plaintiff was at fault because of negligence. The defendant must prove both of the following propositions:

1. The plaintiff was at fault. In order to prove fault, the defendant must prove the plaintiff was negligent in one or both of the following ways:

   a. In failing to keep proper lookout.

   b. In failing to take reasonable action to protect herself from open and obvious conditions.

2. The fault of the plaintiff was a cause of her damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved its 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 in answering the special verdicts.

INSTRUCTION NO. 18

"Proper lookout", as used in element 1(a) of Instruction No. 17, 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 one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 19

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

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

2. The present value of future loss of function of the mind and body.

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, sensation or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish, anxiety, embarrassment, loss of enjoyment of life, a feeling of uselessness or other emotional distress, including emotional distress caused by scarring.

4. 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, and 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 the defendant 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. 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.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 20

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 future losses.

INSTRUCTION NO. 21

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff is 25.73 years. 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.

INSTRUCTION NO. 22

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 that 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.

INSTRUCTION NO. 23

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 judges – judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 24

I am giving you one verdict form containing special interrogatories. 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 interrogatories must be signed by your foreman or forewoman.

After deliberating for six hours from 2:45 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 and interrogatories must be signed by all seven jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, tell the court attendant.

Dated this 7th day of April, 2021.

Brad McCall – District Court Judge
Fifth Judicial District of Iowa