

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

LINO NAVEJA,

Plaintiff,

vs.

HY-VEE, INC.,

Defendant.

FILED

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CASE NO. LACV213502

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the Jury:

In this case plaintiff Lino Naveja claims to have been injured by the negligence of defendant Hy-Vee, Inc.

Hy-Vee denies it committed negligence and affirmatively alleges that Mr. Naveja was at fault.

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. 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.

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.

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, 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.

INSTRUCTION NO. 5

Certain testimony has been read into evidence from a deposition or was shown by video. A deposition is testimony taken under oath before the trial and preserved in writing or video. Consider that testimony as if it had been given in court.

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.

INSTRUCTION NO. 7

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. 8

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.

INSTRUCTION NO. 9

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. 10

"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.

INSTRUCTION NO.11

Mr. Naveja must prove all of the following propositions:

1. The defendant Hy-Vee, Inc. knew or in the exercise of reasonable care should have known of a condition on its premises and that it involved an unreasonable risk of injury to a person in Mr. Naveja's position.
2. Hy-Vee, Inc. knew or in the exercise of reasonable care should have known:
 - a. Mr. Naveja would not discover the condition, or
 - b. Mr. Naveja would not realize the condition presented an unreasonable risk of injury, or
 - c. Mr. Naveja would not protect himself from the condition.
3. Hy-Vee, Inc. was negligent in failing to treat ice on the property in the area where Mr. Naveja fell.
4. The negligence was a cause of Mr. Naveja's damage.
5. The nature and extent of damage.

If Mr. Naveja has failed to prove any of these propositions, Mr. Naveja is not entitled to damages. If Mr. Naveja has proved all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. 19.

INSTRUCTION NO. 12

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether Hy-Vee, Inc. has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning;
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection; and
8. Any other factor shown by the evidence bearing on this question.

INSTRUCTION NO. 13

The occupant of premises is presumed to know all conditions on the premises that are caused or created by the occupant or the occupant's agents or employees. The occupant of premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the occupant had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the occupant should have known about it.

INSTRUCTION NO. 14

Concerning number 2 of Instruction No. 11, 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.

INSTRUCTION NO. 15

A condition is "known" if one is aware 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. 16

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.

INSTRUCTION NO. 17

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

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 Mr. Naveja and Hy-Vee, Inc. 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.

INSTRUCTION NO. 19

Hy-Vee claims the Mr. Naveja was at fault in failing to exercise reasonable care for his own safety

This ground of fault has been explained to you in other instructions.

Hy-Vee must prove both of the following propositions:

1. Mr. Naveja was at fault. In order to prove fault, Hy-Vee must prove that Mr. Naveja failed to exercise ordinary care.
2. Mr. Naveja's fault was a cause of the plaintiff's damage.

If Hy-Vee has failed to prove either of these propositions, Hy-Vee has not proved its defense. If Hy-Vee has proved both of these propositions, then you will assign a percentage of fault against Mr. Naveja and include Mr. Naveja 's fault in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. 20

A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

In this case Hy-Vee claims that Mr. Naveja unreasonably failed to take action to avoid an injury because he failed to exercise ordinary care.

INSTRUCTION NO. 21

After you have compared the conduct of both parties, if you find the plaintiff, Mr. Naveja, was at fault and that his fault was more than 50% of the total fault, Mr. Naveja cannot recover damages.

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

INSTRUCTION NO. 22

If you find Mr. Naveja is entitled to recover damages, you shall consider the following items:

1. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services is the amount actually paid for those services or amounts actually necessary to pay for those services incurred but not yet paid.
2. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

A plaintiff seeking to recover future medical expenses must demonstrate a need for future treatments and the costs associated with the future treatments.

The cost of future medical care need not be accurately determined, so long as there is at least one qualified witness available to provide an opinion upon which you may reasonably fix an allowance.

In determining a reasonable estimate for any award of future medical expenses, you may consider testimony regarding the necessity of future treatment, and/or the permanent/chronic nature of the plaintiff's injuries, together with medical records establishing the costs of the plaintiff's past care.

3. The reasonable value of lost wages from the date of injury to the present time.
4. Loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.
5. The present value of future loss of function of the mind and body.
6. 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.

7. The present value of future physical pain and suffering.

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, and loss of function of the mind and 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 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 verdict question 6.

INSTRUCTION NO. 23

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. 24

If you find that Mr. Naveja had a condition making him more susceptible to mental or physical injury than a person in normal health, then Hy-Vee, Inc. is responsible for all injuries and damages which are experienced by Mr. Naveja that are caused by Hy-Vee, Inc.'s negligence, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

INSTRUCTION NO. 25

Plaintiff Lino Naveja was born on September 18, 1989, making him 35 years old at this time. According to the Iowa Department of Revenue Mortality tables, Plaintiff has a life expectancy of 43 years.

The statistics from a mortality table are not conclusive. You may use this information, together with all other evidence, about Plaintiff's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 26

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.

INSTRUCTION NO. 27

Your cell phones and smart watches must be surrendered to the court attendant during deliberations. If the length of deliberations causes you to need to make a call or contact regarding personal arrangements such as child care or other scheduling issues, you may make such calls or contacts when the jury takes a break and temporarily stops deliberations, but you must not discuss the case with any non-juror until after you have reached your verdict and I have released you from jury duty.

INSTRUCTION NO. 28

In conducting your deliberations and returning your verdict, you must follow these rules:

First, when you go to the jury room, you must select a foreperson to preside over your discussions and to speak for you here in court. It will be his or her duty to see that discussion is carried on in an orderly fashion, the issues are discussed fully and freely, and each juror is given an opportunity to express his or her views.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. 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 hesitate later to change an announced position, even if shown it may be incorrect.

You should try to reach agreement if you can do so without violence to your individual judgment. Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right or simply to reach a verdict. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to their views. Remember at all times, you are not partisans, but judges of the facts. Your only interest in this case is to seek the truth from the evidence, and to do justice.

Third, occasionally, jurors want to ask questions after they begin deliberating. If that should occur, please consider the following:

- A. Words not defined in these instructions should be given their ordinary meaning.
- B. There will be no additional evidence and no additional instructions of law. These instructions contain all the law you need to decide the case.
- C. I will meet with you after you reach a verdict, if I can. At that time I will be happy to answer your questions about the trial process.

D. If you ask me a question during your deliberations, your foreperson must reduce the question to writing and give it to the court attendant who will deliver it to me. I must then contact the lawyers and conduct a hearing with them, but not in your presence. After that, I will send you a written answer consistent with subparagraphs (A) and (B).

If, after considering these matters, you still wish to ask me a question, follow the procedure outlined here. I will respond as soon as possible, either in writing or orally in open court. If you are brought into open court, you should not tell anyone - including me - how your vote stands numerically, unless I specifically ask you for that information. Then save your written question and the written answer I send you and return them with your Verdict Form when you have completed your deliberations and returned a verdict.

The court attendant(s) who has been working with me on this case is(are) in the same position I am. They have taken an oath not to communicate with you except to ask you if you have agreed upon a verdict. Please do not put them on the spot by asking them any questions. You should direct any questions to the court and not to the court attendant.

Fourth, your verdict must be based solely on the evidence and on the law I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.


INSTRUCTION NO. 29

I am giving you a verdict form with ^{six (6)} ~~eight (8)~~ questions. 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 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) (six)* jurors who agree.

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

Dated this 13th day of March, 2025.


JAMES N. DAANE, District Judge
Third Judicial District