

Original

IN THE DISTRICT COURT OF IOWA IN AND FOR POLK COUNTY

<p>ELAINE GAUDEN,</p> <p>Plaintiff,</p> <p>vs.</p> <p>HY-VEE INC</p> <p>Defendants.</p>	<p>Case No: LACL155784</p> <p>STATEMENT OF THE CASE, JURY INSTRUCTIONS AND VERDICT FORM</p>
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FILED
POLK COUNTY, IA.
2024 OCT -9 PM 2:43
CLERK DISTRICT COURT

STATEMENT OF THE CASE

Members of the Jury:

Elaine Gauden is the Plaintiff in this case. This case involves an incident that occurred on June 30, 2021, in the parking lot of the Hy-Vee located at 1025 N. Quincy Avenue, Wapello County, Iowa. The plaintiff claims that she sustained injuries as a result of a fall caused by the negligence of the defendant Hy-Vee. The defendant Hy-Vee denies negligence and that whatever injuries Ms. Gauden suffered were a result of her own fault. Your job as jurors in this trial is to determine whether defendant Hy-Vee was negligent or if the plaintiff Elaine Gauden was at fault for her injuries.

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. 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 (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. 4

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

INSTRUCTION NO. 5

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. 6

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. 2

The fact that Hy-Vee is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether they are large or small, are entitled to the same fair and conscientious consideration by you as any other person

INSTRUCTION NO. 8

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.

INSTRUCTION NO. 9

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. 10

If Plaintiff Elaine Gauden is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

Past Medical Expenses: The reasonable value of necessary hospital charges, doctor charges, prescriptions, and any other medical services from the date of injury to the present time.

Physical and Mental Pain and Suffering and Scarring damages (past and future): Physical and mental pain and suffering and disfigurement from the date of injury to the present time and the present value of future physical and mental pain and suffering. Physical pain and suffering may include, but is not limited to, bodily suffering, discomfort, and scarring. Mental pain and suffering may include, but is not limited to, mental anguish, disappointment, worry, fright, anxiety, humiliation, embarrassment, emotional distress, scarring, or loss of enjoyment of life.

Loss of full mind and body damages (past and future): Loss of function of the mind and/or body from the date of injury to the present time and the present value of future loss of function of the mind and/or body. Loss of mind and/or body is the inability of a particular part of the mind, body to function in a normal manner.

The amount you assess for past pain and suffering and scarring, future pain and suffering and scarring, past loss of full mind and body, and future loss of full mind and 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 verdict form.

INSTRUCTION NO. 11

In determining the reasonable cost of necessary hospital charges, Doctor's appointments, prescriptions, surgery, physical therapy, and other services from the date of injury to the present time, you may consider \$33,124.27.

INSTRUCTION NO. 12

Loss of Full Mind and Body –Past is the 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 or body to function in a normal manner.

INSTRUCTION NO. 13

Physical pain and suffering may include, but is not limited to, bodily suffering, discomfort, and scarring.

Mental pain and suffering and scarring may include, but is not limited to, mental anguish, disappointment, worry, fright, anxiety, humiliation, embarrassment, emotional distress, scarring, or loss of enjoyment of life.

INSTRUCTION NO. 14

Physical And Mental Pain and Suffering – Future- The present value of future physical and mental pain and suffering.

INSTRUCTION NO. 15

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. 16

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Elaine Gauden is 12.49 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Elaine Gauden's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 17

Quotient Verdict. 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.

INSTRUCTION NO. 18

You have received evidence of American Society for Testing and Materials (ASTM) F1637-17 "Standard Practice for Safe Walking Surfaces as well as evidence of the City of Ottumwa ordinances and codes. Such evidence is relevant, and you should consider it, but it is not conclusive proof.

INSTRUCTION NO. 19

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 maintain a parking lot in a reasonable manner.
4. The negligence was a cause of the plaintiff's damage.
5. The nature and extent 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, the plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 20

Hy-Vee, is the owner of the premises and is presumed to know all conditions on the premises that are caused or created by their employees, customers, or time itself. Hy-Vee is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the owner had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the owner should have known about it.

INSTRUCTION NO. 21

"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. 22

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 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.

INSTRUCTION NO. 23

After you have compared the conduct of all parties, if you find plaintiff was at fault and plaintiff's fault was more than 50% of the total fault, plaintiff cannot recover damages.

However, if you find 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. 24

Defendant claims plaintiff was at fault by failing to keep a proper lookout. Defendant must prove both of the following propositions:

1. Plaintiff was at fault by failing to keep a proper lookout.
2. Plaintiff's fault was a cause of plaintiff's damage.

If defendant has failed to prove either of these propositions, defendant has not proved its defense.

If defendant has proved both of these propositions, then you will assign a percentage of fault against plaintiff and include plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. 25

"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 one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 26

The mere fact an accident occurred, or a party was injured does not mean a party was negligent.

INSTRUCTION NO. 27

A defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in plaintiff's position unless 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 visitor, exercising ordinary perception, intelligence, and judgment.

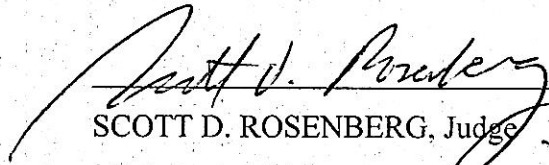
INSTRUCTION NO. 28

I am giving you one verdict form and six questions. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreperson.

After deliberating for six hours from ^{10:} o'clock a.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case the verdict must be signed by all seven jurors who are in agreement.

When you have agreed upon a verdict and appropriately signed it, inform the judicial assistant.

Dated 9th day of October 2024.


SCOTT D. ROSENBERG, Judge
Fifth Judicial District of Iowa

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