

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AARON BREWSTER, Plaintiff, vs. MOLLY NICOLE KALKWARF, Defendant.	CASE NO: LACL140025 FINAL JURY INSTRUCTIONS
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STATEMENT OF THE CASE

This case involves a motor vehicle accident. On May 31, 2016, the defendant, Molly Kalkwarf, collided with the plaintiff, Aaron Brewster, while Aaron was stopped at a red light. Plaintiff Aaron Brewster seeks to recover damages for bodily injury he allegedly sustained in that motor vehicle accident.

Molly Kalkwarf admits that she was at fault in causing the collision between her vehicle and Aaron Brewster's vehicle. Molly Kalkwarf denies the existence, nature, and extent of the injuries and damages claimed by Aaron Brewster.

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.

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CLERK DISTRICT COURT

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.

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.

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, 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 in writing. 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 evidence claiming Aaron Brewster 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 Aaron Brewster had made it under oath during the trial.

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

Instruction No. 7

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.

"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.

In this case, the Defendant Molly Kalkwarf admits that she was negligent in operating her vehicle and therefore at fault for causing the accident.

Instruction No. 8

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

Instruction No. 9

In this case, the defendant has admitted fault in this case. To recover damages, the plaintiff must prove the following propositions:

1. The defendant's fault was a cause of damage to the plaintiff.
2. 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, the plaintiff is entitled to damages in some amount.

Instruction No. 10

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

1. The reasonable cost of necessary doctor charges and any 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.
2. 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.
3. Future pain and suffering.
4. Loss of function of the mind and body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner.
5. Future loss of mind and body.

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.

The amount you assess for physical and mental pain and suffering 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.

Instruction No. 11

If you find plaintiff had a condition of neck pain or limitation of motion, or shoulder pain or limitation of motion, before this incident and any such condition was aggravated by this incident causing further suffering, then he is entitled to recover damages caused by the aggravation. He 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 Molly Kalkwarf's actions.

Instruction No. 12

If you find plaintiff was injured by another act after this incident, he cannot recover for any later injury or aggravation of injury not caused by this incident.

Instruction No. 13

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. 14

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. 15

Upon retiring you shall select a foreperson. It will be that person's 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. 16

I am giving you 1 verdict form. 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 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.