

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AARON BREWSTER,

Plaintiff,

v.

MOLLY NICOLE KALKWARF,

Defendant.

Law No. LACL140025

**PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS**

COMES NOW Plaintiff, Aaron Brewster, and submits his Proposed Jury Instructions.

Respectfully submitted,

WHITFIELD & EDDY, P.L.C.

699 Walnut St., Suite 2000

Des Moines, IA 50309

Telephone: (515) 288-6041

Fax: (515) 246-1474

Email: hermsen@whitfieldlaw.com

By /s/ Zach Hermsen

Zach Hermsen

ATTORNEYS FOR AARON BREWSTER

Original filed.

Copies via EDMS to:

Kelly W. Otto

4200 Corporate Drive, Suite 120

West Des Moines, IA 50266

Email: kotto@amfam.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause or to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 1, 2019.

By: ☐ U. S. Mail ☐ E-Mail
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☒ Other: EDMS
☐ FAX

Signature: /s/ Zach Hermsen

INSTRUCTION NO	UNIFORM INSTRUCTION NO.	OTHER AUTHORITY	AGREED?	DESCRIPTION
1				Statement of the Case
2	100.2			Duties Of Judge And Jury, Instructions As Whole.
3	100.23			Use Of Electronic Devices
4	100.3			Burden of Proof, Preponderance of Evidence
5	100.4			Evidence
6	100.5			Deposition Testimony
7	100.6			Interrogatories
8	100.7			Request For Admissions
9	100.9			Credibility of Witnesses
10	400.1			Fault – Defined.
11	700.2			Ordinary Care – Common Law Negligence - Defined
12	700.1			Essentials For Recovery
13	700.3			Cause – Defined.
14	200.1			Elements – Personal Injury and Vehicle Damage
15	200.32 (modified)			Aggravation of Pre-Existing Condition
16	200.35B			Definition of Present Value.
17	200.38			Quotient Verdict
18	100.21			Juror's Notes
19	100.18			General Instruction To The Jury
20	300.1			Return Of Verdict – Forms Of Verdict

INSTRUCTION NO. 1

Statement of the Case. Members of the Jury:

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. The defendant has admitted that she is 100% legally at fault for the collision.

The plaintiff alleges that the defendant's actions caused him to sustain injuries. The defendant denies that she caused the plaintiff's 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. 2

Duties of Judge and Jury; Instructions as a Whole. 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. 3

Use Of Electronic Devices. 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.

INSTRUCTION NO. 4

Burden Of Proof, Preponderance of Evidence. 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. 5

Evidence. 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. 6

Deposition Testimony. 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. 7

Interrogatories. 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. 8

Request For Admissions. The plaintiff served on the defendant a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the defendant or which the defendant failed to deny.

INSTRUCTION NO. 9

Credibility Of Witnesses. 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. 10

Fault – Defined. 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. 11

Ordinary Care – Common Law Negligence – Defined. “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. 12

Essentials For Recovery. 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. 13

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

INSTRUCTION NO. 14

Elements – Personal Injury and Vehicle Damage. If you find Aaron Brewster is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of hospital charges, doctor charges, prescriptions, other medical services from the date of injury to the present time.
2. Physical pain and suffering from the date of injury to the present time.
3. Future pain and suffering.
4. Loss of function of the mind and body from the date of injury to the present time.
5. Future loss of mind and body.

The amount you assess for physical and mental pain and suffering in the past and future and loss of function of the 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 a party as proved by the evidence.

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

INSTRUCTION NO. 15

Aggravation Of Pre-Existing Condition. If you find Aaron Brewster had a health condition or conditions before this incident and this condition or conditions were aggravated by this incident causing further suffering, then Aaron Brewster is entitled to recover damages for this further suffering. He is not entitled to recover for a physical ailment or disability which existed before this incident unless the defendant's actions aggravated the physical ailment or disability.

INSTRUCTION NO. 16

Definition Of Present Value. 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. 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

Juror's Notes. 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. 19

General Instruction To The Jury. 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. 20

Return Of Verdict – Forms Of Verdict. 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 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.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AARON BREWSTER,

Plaintiff,

v.

MOLLY NICOLE KALKWARF,

Defendant.

Law No. LACL140025

SPECIAL VERDICT FORM

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

QUESTION NO. 1: Was the fault of Molly Nicole Kalkwarf a cause of any item of damage to Aaron Brewster?

Answer “yes” or “no.”

ANSWER: _____

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

QUESTION NO. 2: What is the total amount of damages Aaron Brewster sustained?

- | | |
|------------------------------|---------|
| 1. Past Medical Expenses | \$_____ |
| 2. Past Pain and Suffering | \$_____ |
| 3. Future Pain and Suffering | \$_____ |
| 4. Past Loss of Body | \$_____ |
| 5. Future Loss of Body | \$_____ |

Foreperson *

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

* To be signed only if the verdict is unanimous

** To be signed by the jurors agreeing thereto after six hours or more of deliberation