

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

MATTHEW M. TENTINGER and JILL F. TENTINGER, Plaintiffs, vs. BENJAMIN HOEFER, REBECCA L. HOEFER, and WILLIAM C. HOEFER, Defendants.	Case No. LACV084091 STATEMENT OF THE CASE, JURY INSTRUCTIONS, AND VERDICT FORMS
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STATEMENT OF THE CASE

Members of the Jury:

This case arises from a vehicular accident that happened on June 21, 2021. Plaintiffs claim that the accident was the fault of Defendant Benjamin Hoefer. Benjamin's fault, if you find any, is attributed to Rebecca Hoefer and William Hoefer as owners of the vehicle Benjamin was driving. Plaintiffs claim that Defendants' fault was the cause of various items of damage.

Defendants deny that Benjamin Hoefer's fault caused the vehicular accident and dispute the causation and amount of the Plaintiffs' claimed damages. In addition, defendants claim that the Plaintiff Matthew Tentinger was, himself, at fault and that his fault was a cause of the injuries and damages the Plaintiffs now claim.

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.

JURY 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. 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.

JURY 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.

JURY 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 (for example, answers to interrogatories, matters which judicial notice was taken, and the like).

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.

JURY INSTRUCTION NO. 4

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

JURY INSTRUCTION NO. 5

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.

JURY INSTRUCTION NO. 6

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.

JURY 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.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the 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.

JURY INSTRUCTION NO. 8

You have heard evidence claiming parties 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 the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the party'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 his testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

JURY INSTRUCTION NO. 9

Upon retiring you will select a foreperson. 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.

JURY INSTRUCTION NO. 10

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.

JURY INSTRUCTION NO. 11

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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 and that we have your full and undivided attention during this trial.

JURY INSTRUCTION NO. 12

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.

JURY INSTRUCTION NO. 13

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 Matthew Tentinger and defendant Benjamin Hoefer 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. Defendants Benjamin Hoefer, Rebecca Hoefer, and William Hoefer are to be treated as a single party for the purpose of determining their percentage of fault.

JURY INSTRUCTION NO. 14

After you have compared the conduct of all parties, if you find the Plaintiff Matthew Tentinger was at fault and that his fault was more than 50% of the total fault, the Plaintiffs cannot recover damages.

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

JURY INSTRUCTION NO. 15

The Plaintiffs claim defendant Benjamin Hoefer was at fault by being negligent.

In order to recover on their claim for damages, Plaintiffs must prove all three of the following propositions:

1. Defendant Benjamin Hoefer was negligent in one or more of the following ways:
 - a. Failing to execute a left turn at an intersection in a reasonable and safe manner,
 - b. Failing to yield the right of way.
 - c. Failure to turn his vehicle from a direct course with reasonable safety.
 - d. Failure to maintain control of his vehicle in violation of the common law.
 - e. Failure to obey a traffic control signal.
 - f. Failure to keep and maintain a proper lookout.
2. Benjamin Hoefer's negligence was a cause of damage to the Plaintiffs.
3. The amount of damage caused by Benjamin Hoefer's negligence.

If the Plaintiffs have failed to prove any of these three propositions, the Plaintiffs are not entitled to damages. If the Plaintiffs have proved all of these propositions, you will consider the defense of comparative fault as explained in the next instruction.

JURY INSTRUCTION NO. 16

The Defendants claim Plaintiff Matthew Tentinger was at fault by being negligent.

In order to establish their defense of comparative fault, Defendants must prove both of the following propositions:

1. Plaintiff Matthew Tentinger was negligent in one or more of the following ways:
 - a. Driving at a speed greater than was reasonable and proper.
 - b. Driving at a speed in excess of the statutory limit.
 - c. Driving at a speed greater than would permit him to stop within the assured clear distance ahead.
 - d. Failure to maintain control of his vehicle in violation of the common law.
 - e. Failure to maintain control of his vehicle in violation of a statute.
 - f. Failure to obey a traffic control signal.
 - g. Failure to keep and maintain a proper lookout.
2. Matthew Tentinger's negligence was a cause of damage to the Plaintiffs.

If Defendants have failed to prove both of these propositions, they have not proved their defense of comparative fault. If Defendants have proved both of these propositions, then you will assign a percentage of fault against the Plaintiff and include his fault in the total percentage of fault found by you answering the questions on the verdict form.

JURY INSTRUCTION NO. 17

"Negligence" means a 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.

JURY INSTRUCTION NO. 18

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

There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

JURY INSTRUCTION NO. 19

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

JURY INSTRUCTION NO. 20

Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this law is negligence.

JURY INSTRUCTION NO. 21

At the time and place, and with the motor vehicle involved in this case, any speed over 35 miles per hour was unlawful.

A violation of this law is negligence.

JURY INSTRUCTION NO. 22

No person shall drive any vehicle on a highway at a speed greater than will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen.

A violation of this law is negligence.

JURY INSTRUCTION NO. 23

A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

JURY INSTRUCTION NO. 24

A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

JURY INSTRUCTION NO. 25

A driver shall not turn a vehicle from a direct course on a highway unless the movement can be made with reasonable safety.

A violation of this law is negligence.

JURY INSTRUCTION NO. 26

When signals display different colored lights:

1. Vehicles facing a signal displaying a green light may go straight, turn right or turn left through the intersection unless specifically prohibited. However, vehicles shall yield the right-of-way to other vehicular traffic lawfully within the intersection at the time the signal is exhibited.

2. Vehicles facing a signal displaying a circular yellow light are warned that the related green movement is stopped and vehicles should no longer proceed into the intersection and shall stop. If the stop cannot be made safely, the vehicle may go cautiously through the intersection.

3. Vehicles facing a signal displaying a circular red light shall stop and remain stopped until the signal is green.

Stopping means stopping at the first opportunity at either the clearly marked stop line or before entering the cross-walk or before entering the intersection.

A violation of this law is negligence.

JURY INSTRUCTION NO. 27

The driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or so close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.

A violation of this law is negligence.

JURY INSTRUCTION NO. 28

"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 the operation of the driver's vehicle in relation to what the driver saw or should have seen.

A violation of this duty is negligence.

JURY INSTRUCTION NO. 29

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care should have known, the other driver was not going to obey the law.

JURY INSTRUCTION NO. 30

If you find Plaintiff Matthew Tentinger is entitled to recover damages, you shall consider the following items:

- a. The reasonable value of lost time from business from the date of injury to the present time. Loss of time from business is not measured by loss of profits from a business, but is measured by the value of a person's own labor. Profits represent the gain from an investment in capital or business and the labor of others, after payment of expenses. You will not consider evidence of loss of profits, unless the evidence proves the value of plaintiff's services to their business as distinct from the profits of the business.
- b. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job. Future loss of earning capacity is not measured by future loss of profits from a business, but is measured by the value of a person's own labor. Profits represent the gain from an investment in capital or business and the labor of others, after payment of expenses. You may consider evidence of past profits of the business in determining the plaintiff's earning capacity prior to the injury only if the evidence shows the value of plaintiff's services to the business as distinct from the profits derived from invested capital and the labor of others.
- c. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.
- d. The present value of future loss of function of the body.
- e. 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.

f. 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, future earning capacity, 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.

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 questions on the verdict form.

JURY INSTRUCTION NO. 31

If you find Plaintiff Matthew Tentinger had a low back condition before this incident and this condition was aggravated by this incident causing further suffering, Plaintiff is entitled to recover damages caused by the aggravation. Plaintiff 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 the defendant's actions.

JURY INSTRUCTION NO. 32

"Spousal consortium" is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find Jill Tentinger 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 loss of spousal consortium which Jill Tentinger would otherwise have received from the date of injury until the present time.
2. The present value of loss of spousal consortium which Jill Tentinger would otherwise have received in the future.

Damages for loss of spousal consortium are limited in time to the shorter of the spouse's or Matthew Tentinger's normal life expectancy.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Jill Tentinger's life.
2. Jill Tentinger's and Matthew Tentinger's ages at the time of Matthew's injury.
3. Matthew's health, strength, character and life expectancy.
4. Matthew's capabilities and efficiencies in performing the duties of a spouse.
5. Matthew's skills and abilities in providing instructions, guidance, advice and assistance.
6. Jill's needs.
7. All other facts and circumstances bearing on this issue.

The amount you assess for loss of spousal consortium 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(s) 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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the questions on the verdict form.

JURY INSTRUCTION NO. 33

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.

JURY INSTRUCTION NO. 34

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Matthew Tentinger is 28.28 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Matthew M. Tentinger's health, habits, occupation, and lifestyle, when deciding issues of future damages.

JURY INSTRUCTION NO. 35

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault and agreeing in advance that the average of those estimates shall be your item of damage or any percentage of fault.

JURY INSTRUCTION NO. 36

Whether any party to this case had any type of liability insurance has nothing whatsoever to do with the issues to be decided by the jury, and insurance is a matter that you cannot consider.

JURY INSTRUCTION NO. 37

I am giving you one verdict form with six 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 and answers to the questions must be signed by your foreperson.

After deliberating for six hours from 1:15 o'clock p.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 form must be signed by all seven jurors who agree.

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



Andrew B. Chappell, District Court Judge
Sixth Judicial District of Iowa

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