

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

ROBYN MENGWASSER,

Plaintiff,

vs.

JOSEPH COMITO, CAPITAL CITY FRUIT
CO., AND EMPLOYERS MUTUAL
CASUALTY COMPANY,

Defendant.

Case No.: LACL139112

**DEFENDANTS JOSEPH COMITO AND
CAPITAL CITY FRUIT CO.'S PROPOSED
JURY INSTRUCTIONS**

COME NOW the Defendants, Joseph Comito and Capital City Fruit Company, and
submit the following as their proposed Jury Instructions:

HOPKINS & HUEBNER, P.C.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served
upon each of the attorneys of record of all parties to the above-entitled
cause herein at their respective addresses disclosed on the pleadings
of record on the 17th day of June, 2019.

By ☐ U.S. Mail ☐ Fax
☐ Hand Delivery ☒ Electronically through CM-ECF
☐ Private Carrier ☐ Other: _____

Signature /s/ Kathy Flaherty

Janice M. Thomas
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ATTORNEYS FOR DEFENDANT
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Defendants' List of Proposed Instructions by Iowa Uniform Civil Instruction Number

100.1 Statement Of The Case
100.2 Duties Of Judge And Jury, Instructions As Whole
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Instruction No. ____

100.1 Statement Of The Case.

Members of the Jury:

Plaintiff, Robyn Mengwasser, alleges that she was involved in an automobile accident with a vehicle driven by Defendant Joseph Comito and owned by Comito's employer, Capital City Fruit Company, on September 28, 2015. Mengwasser claims that Comito's negligence caused the accident, that the accident caused her personal injuries and damages, and that Capital City Fruit Company is vicariously liable for Comito's negligence.

Defendants have admitted that Comito was negligent and that Capital City Fruit Company is vicariously liable for Comito's negligence. However, Defendants dispute the nature, extent, and causation of Mengwasser's claimed damages.

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. ____

100.2 Duties Of Judge And Jury, Instructions As 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. ____

100.3 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. ____

100.4 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, 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. ____

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

Instruction No. ____

100.6 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. ____

100.9 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. ____

100.11 Hypothetical Question, Expert Testimony. 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.

Instruction No. ____

100.12 Opinion Evidence, Expert Witness. 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. ____

300.4 Verdict – Single Plaintiff – Essentials for Recovery. The Plaintiff, Robyn Mengwasser, must prove all of the following propositions:

1. Defendant Jessica Rivera's negligence was a cause of Mr. Hasso's damages.
2. The nature and extent of damage.

If Mengwasser has failed to prove any of these propositions, then she is not entitled to damages.

If Mengwasser has proved all of these propositions, then she is entitled to damages.

Instruction No. ____

700.3 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. ____

700.4 Concurrent Cause - Defined. 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.

Instruction No. ____

200.1 Elements - Personal Injury And Vehicle Damage. If you find Plaintiff Mengwasser is entitled to recover damages, you shall consider the following items:

200.6 Past Medical Expenses

200.8 Past Lost Wages

200.12 Physical And Mental Pain And Suffering – Past

200.13B Physical And Mental Pain And Suffering – Future.

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

Instruction No. ____

200.38 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. ____

200.6 Past Medical Expenses. The reasonable cost of necessary doctor charges, prescriptions, and other medical services from the date of injury to the present time.

Instruction No. ____

200.8 Loss Of Earnings. The reasonable value of lost wages from the date of injury to the present time.

Instruction No. ____

200.12 Physical And Mental Pain And Suffering – Past. 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 and discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Instruction No. ____

200.13B Physical And Mental Pain And Suffering - Future - Actions Filed On Or After July 1, 1997. The present value of future physical and mental pain and suffering.

Instruction No. ____

200.33 No Recovery For Second Injury. If you find Plaintiff Mengwasser was injured by another act after this incident, she cannot recover for any later injury or aggravation of injury not caused by this incident.

Instruction No. ____

100.18 General Instruction To 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. ____

100.21 Cautionary Instruction - 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. ____

100.23 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. ____

300.1 Return Of Verdict - Forms Of Verdict. I am giving you one 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 and answers to questions 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.

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<p>ROBYN MENGWASSER,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JOSEPH COMITO, CAPITAL CITY FRUIT CO., AND EMPLOYERS MUTUAL CASUALTY COMPANY,</p> <p>Defendant.</p>	<p>Case No.: LACL139112</p> <p>DEFENDANTS JOSEPH COMITO AND CAPITAL CITY FRUIT CO.'S PROPOSED VERDICT FORM</p>
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We find the following verdict on the questions submitted to us:

Question No. 1: Was the fault of Defendant Joseph Comito a cause of any item of damage to Plaintiff?

Answer "yes" or "no."

ANSWER: _____

Question No. 2: Was the fault of Defendant Capital City Fruit Company a cause of any item of damage to Plaintiff?

Answer "yes" or "no."

ANSWER: _____

If your answers to Question Nos. 1 and 2 are "no," do not answer any further questions, sign the verdict form, and inform the Judicial Assistant.

Question No. 3: State the amount of damages sustained by Plaintiff caused by the fault of Defendants Joseph Comito and/or Capital City Fruit Company as to each of the following items of damages. If the Plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by Defendants' fault, enter 0 (zero) for that item.

1.	Past Medical Expenses:	\$ _____
2.	Future Medical Expenses:	\$ _____
3.	Past Pain and Suffering:	\$ _____
4.	Future Pain and Suffering:	\$ _____
5.	Past Lost Wages:	\$ _____
6.	Past Loss of Mind and Body	\$ _____
7.	Future Loss of Mind and Body	\$ _____
TOTAL		\$ _____

Foreperson*

*To be signed only if verdict is unanimous.

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

**To be signed by the jurors agreeing thereto after six (6) hours or more of deliberation.