

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**ROBYN MENGWASSER**

**Plaintiff,**

**vs.**

**JOSEPH COMITO and CAPITAL CITY  
FRUIT CO.,**

**Defendants.**

**CIVIL NO. LACL139112**

**PLAINTIFFS'S PROPOSED JURY  
INSTRUCTIONS**

**COMES NOW** the Plaintiff and hereby submits, prior to trial, the proposed jury instructions attached hereto. Plaintiff respectfully reserves the right to submit supplemental and/or alternative instructions to conform to the issues and proof presented at trial.

Respectfully Submitted,

/S/ Jeff Carter

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/S/ Zach Priebe

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>TH</sup> day of June, 2019, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16.317(1)(a), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

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**STATEMENT OF THE CASE**

Members of the jury:

This case arises from a motor vehicle collision which occurred between the Plaintiff, Robyn Mengwasser, and the Defendant Joseph Comito, who was operating a vehicle owned by the Defendant Capital City Fruit Co. The collision happened on September 28, 2015 in Polk County.

The Plaintiff Robyn Mengwasser seeks monetary damages for personal injuries that she alleges she sustained as a result of the collision.

Defendants admit that they are at fault for the collision. The issues to be decided are causation and the extent of Plaintiff's 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. \_\_\_\_**

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.

Authority:

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

I.C.J.I. 100.2

**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

Mabrier v. A.M. Servicing Corporation of Ravtown, 161 N.W.2d 180 (1968)

I.C. J.I. 100.3

**INSTRUCTION NO. \_\_\_\_**

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.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority:

I.C.J.I. 100.4

**INSTRUCTION NO. \_\_\_\_**

Certain testimony has been read into evidence from a deposition or been presented through a videotaped 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.

Authority:

I.C.J.I. 100.5

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C.J.I. 100.6



**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C.J.I. 100.9

**INSTRUCTION NO. \_\_\_\_**

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 the field and the reasons for their opinions.

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 witnesses' education and experience, the reasons given for the opinion, and all other evidence in the case.

Authority:

I.C.J.I. 100.12

**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C. J.I. 100.11

Cody v. Toller Drug Co., 232 Iowa 475, 5 N.W.2d 824 (1942)

**INSTRUCTION NO. \_\_\_\_**

Conduct is a factual cause of an injury when the injury would not have occurred in the absence of the conduct.

Authority:

Thompson v. Kaszinski, 774 N.W.2d 829 (Iowa 2009)

I.C.J.I. 700.3

**INSTRUCTION NO. \_\_\_\_**

The Plaintiff Robyn Mengwasser must prove all of the following propositions:

1. The amount of damage, if any, caused by the Defendants' conduct.

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.

**Authority:**

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)

Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)

Bauman v. City of Waverly, 164 N.W.2d 840 (Iowa 1969)

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

**INSTRUCTION NO. \_\_\_\_**

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

1. Past medical expenses;
2. Future medical expenses;
3. Past pain and suffering;
4. Future pain and suffering;
5. Past loss of full mind and body;
6. Future loss of full mind and body;
7. Past Wage Loss;
8. Future Wage Loss.

The amount you assess for physical and mental pain and suffering in the past and future and past 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 the Defendant 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.

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

Authority:

I.C.J.I. 200.1

**INSTRUCTION NO. \_\_\_\_**

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

Authority:

I.C.J.1.200.37

**INSTRUCTION NO. \_\_\_\_**

Past Physical and Mental Pain and Suffering is defined as 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.

Authority:

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)

Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa App. 1977)

I.C.J.I. 200.12



**INSTRUCTION NO. \_\_\_\_**

Future Physical and Mental Pain and Suffering are defined as and calculated using the present value of future physical and mental pain and suffering.

Authority:

Iowa Code section 624.18 (2), 668.3(b)

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

I.C.J.I. 200.13B

**INSTRUCTION NO. \_\_\_\_**

Past medical expenses are defined as the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and 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.

If you find allow for past medical expenses, then you must make some allowance for past pain and suffering.

Authority:

Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004)  
Worez v. Des Moines City Ry. Co., 175 Iowa 1, 156 N.W. 867 (1916)  
Elzig v. Bales, 135 Iowa 208, 112 N.W. 540 (1907)  
Cowen v. Flannery, 461 N.W.2d 155 (Iowa 1990)  
I.C.J.I. 200.6

**INSTRUCTION NO. \_\_\_\_**

Future Medical Expenses are defined as the present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

If you find allow for future medical expenses, then you must make some allowance for future pain and suffering.

Authority:

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Zach v. Morningstar, 258 Iowa 1365, 142 N.W.2d 440 (1966)

Cowen v. Flannery, 461 N.W.2d 155 (Iowa 1990)

I.C.J.I. 200.7

**INSTRUCTION NO. \_\_\_\_**

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 and body to function in a normal manner.

Authority:

I.C.J.I. 200.10

I.C.J.I. 200.11B

**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C.J.I. 200.9

Bergquist v. Mackay Engines, Inc., 538 N.W.2d 655 (Iowa App. 1995)

Truscheff v. Abell-Howe Company, 239 N.W.2d 116 (Iowa 1976)

Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)

**INSTRUCTION NO. \_\_\_\_**

If you find Robyn Mengwasser had a neck injury before this incident and this condition was aggravated by this incident causing further suffering then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by the defendant's actions.

Authority:

I.C.J.I. 200.32

**INSTRUCTION NO. \_\_\_\_**

If Robyn Mengwasser had a neck injury making her more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by Robyn Mengwasser that are caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

Authority:

I.C.J.I. 200.34

**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C.J.I. 100.21



**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C.J.I. 100.23

**INSTRUCTION NO. \_\_\_\_**

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.

Authority:

I.C.J.I. 100.18

**INSTRUCTION NO. \_\_\_\_**

I am giving you 1 verdict form. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreman or forewoman.

After deliberating for six (6) 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 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 Court Attendant.

Authority:

I.C.J.I. 300.1

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**ROBYN MENGWASSER**

**CIVIL NO. LACL139112**

**Plaintiff,**

**vs.**

**JOSEPH COMITO and CAPITAL CITY  
FRUIT CO.,**

**PLAINTIFFS'S PROPOSED VERDICT  
FORM**

**Defendants.**

We find the following verdict as to the questions submitted to us:

**Question No. 1:** Did the Defendants cause any item of damage to the Plaintiff Robyn Mengwasser?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

(If your answer is "yes," then go to Question 2. If your answer is "no," then please sign and return to the Court Attendant.)

**Question No. 2:** State the amount of damage sustained by the Plaintiff Robyn Mengwasser for each of the following items of damage:

<b>Item of Damage</b>	<b>Amount</b>
a) Past medical expenses;	_____
b) Future medical expenses;	_____
c) Past pain and suffering;	_____
d) Future pain and suffering;	_____
e) Past loss of full mind and body;	_____
f) Future loss of full mind and body.	_____
g) Past Wage Loss	_____
h) Future Wage Loss	_____
Total:	\$ _____

(Please sign below and return the special verdict form to the Court attendant.)

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FOREPERSON\*

\*To be signed only if the verdict is unanimous

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

\*\*To be signed by the jurors agreeing to it after six hours or more of deliberation