

IN THE IOWA DISTRICT COURT FOR MARSHALL COUNTY

GABRIEL NEIGHBORS,

Plaintiff,

v.

ESTATE OF CRAIG HARDERS,
JAIME L. SCHMIDT EXECUTOR
OF THE ESTATE OF CRAIG
HARDERS and MLS TRANSFER,
LLC,

Defendants.

LACI012346 and LACI012356

EUGENE WHISENAND,

Plaintiff,

v.

ESTATE OF CRAIG HARDERS,
JAIME L. SCHMIDT, as Executor of
the ESTATE OF CRAIG HARDERS
and MLS TRANSFER, LLC,

Defendants.

JURY INSTRUCTIONS

Statement of the Case

These two cases have been consolidated for trial because they both arise out of the same incident, a motor vehicle collision that occurred on October 26, 2022. At the time of the collision, Gabriel Neighbors was driving his

2022 Ford F250 pickup northbound on Zeller Avenue here in Marshall County. Eugene Whisenand was a passenger in that vehicle. Craig Harders was driving a 2014 Kenworth T800 southbound on Zeller when he attempted to make a left turn onto Highway 30 and struck Gabriel Neighbors's F250. The truck Craig Harders was driving was owned by MLS Transfer. The parties agree that Craig Harders was at fault for causing the collision, and that he and his employer, MLS Transfer, are liable for any damages caused by his fault. Craig Harders died on May 23, 2024, of causes unrelated to the collision. His estate has been substituted as one of the defendants in these cases.

Gabriel Neighbors and Eugene Whisenand are the plaintiffs. The estate of Craig Harders and MLS Transfer are the defendants. As I have mentioned, these are two separate cases. The issues presented to you in each of the two cases should be decided without reference to the other case.

Gabriel Neighbors seeks to recover money damages for his personal injuries caused by this collision. Eugene Whisenand seeks to recover money damages for his personal injuries caused by this collision. The defendants have admitted that Craig Harders was at fault for the collision and that his estate and MLS Transfer LLC are liable to the plaintiffs for damages caused by Craig Harder's fault. The defendants dispute the nature, cause, and

extent of the personal injuries and money damages being claimed by both plaintiffs. The only issues for you are whether particular items of damage claimed by the plaintiffs were caused by the collision and what amount will compensate the plaintiffs for those damages.

This summary is not proof or evidence of any claim. You will decide the facts from the evidence presented to you here in the courtroom during the trial and will apply the law that I am giving you in these instructions.

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 single 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.

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 presented in this courtroom and the final instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations, which are agreements among the attorneys.

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 tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.

INSTRUCTION NO. 4

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 witness's 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 witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts; and,
3. The witness's interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

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

INSTRUCTION NO. 7

The fact that a defendant is a limited liability company (LLC) should not affect your decision. All persons are equal before the law, and limited liability companies, corporations, and other business entities, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 8

Defendant MLS Transfer, LLC was Craig Harders' employer. Defendant MLS Transfer, LLC admits it is liable for Craig Harders' acts that were done in the scope of his employment. Defendant MLS Transfer, LLC has stipulated that Craig Harders was its employee and was acting within the scope of his employment at the time the MLS Transfer, LLC dump truck hit the vehicle carrying the plaintiffs on October 26, 2022. Therefore, Defendant MLS Transfer, LLC is responsible for all the harm Craig Harders' fault caused to Gabriel Neighbors and Eugene Whisenand.

INSTRUCTION NO. 9

In order to recover on his claim against the Defendants, a plaintiff must prove all of the following propositions:

1. Craig Harders was at fault. Again, the Defendants admit Defendant Harders was at fault.
2. Craig Harders' fault caused injuries to the plaintiffs. Defendants admit Mr. Harders' fault caused some injuries, but not all.
3. The amount of damage arising from injuries caused by Mr. Harders' fault.

If either plaintiff fails to prove any of these propositions, that plaintiff is not entitled to damages. If a plaintiff has proven all of these propositions, that

plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

In arriving at an item of damage, you may not 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. 12

In determining the amount of damages each plaintiff should receive, you shall consider the following items:

- A. 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 and outstanding, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

- B. 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.

C. The present value of future physical and mental pain and suffering from today into the future.

D. Loss of full function of the mind or body from the date of injury to the present time. Loss of full mind or body is the inability of a particular part of the mind or body to function in a normal manner.

E. The present value of future loss of full function of the mind or body from today into the future.

The amount you assess for physical and mental pain and suffering and loss of full mind or 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 you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 13

If you find a plaintiff had a pre-existing medical condition before this incident and this pre-existing condition was aggravated or made active by this incident causing further suffering or disability, 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 that were not caused by the defendants' actions.

INSTRUCTION NO. 14

A standard mortality table indicates the normal life expectancy of people who are the same age as Gabriel Neighbors is 28.4 years and the normal life expectancy of people who are the same age as Eugene Whisenand is 29.18 years. The statistics from a standard mortality table are not conclusive. You may use this information, together with all the other evidence about each plaintiff's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 15

The court has not by its instructions, or by any ruling made, or by any act done, or by anything said during the trial, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, or what your verdict should be.

INSTRUCTION NO. 16

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. 17

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. 18

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing, have the foreperson sign it, and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict

INSTRUCTION NO. 19

You may not communicate about this case with anyone by any means before reaching your verdict. This includes cell phones, and electronic media such

as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, SnapChat, TikTok, Instagram, email, etc. You may tell people who need to know that you are a juror in a civil case, but that is all. You may not tell anyone who the parties are or what the case is about. You may not tell anyone about any witnesses or evidence. This will remain true until your service as a juror in these cases is finished. After you have been released, you may discuss anything that happens here with anyone, or with no one. That will be entirely your choice. After the case is finished, one or the other of the lawyers may ask to speak with you. That also will be your choice. They will be polite, regardless of how the case comes out, and they will respect your decision if you decide not to talk to them. I would encourage you to talk to them, if they call you, because many lawyers see this as a method of professional development, but, again, that is entirely your choice, and your choice will be respected.

While you are deliberating, 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 has been tried on evidence presented in the courtroom. If you conduct independent research, you would 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 research or some investigation or experiment that we do not know about, your verdict might 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.

INSTRUCTION NO. 20

I am giving you a verdict form in each of the two cases. If you all agree to the answers to the questions, the verdict will be signed by the juror you select to be foreperson.

After deliberating for six hours, from 11:17 o'clock 9.m, excluding meals and recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case, your verdict must be signed by all seven jurors who are in agreement.

When you have agreed upon the verdict and appropriately signed it, inform the Court Attendant.



James C. Ellefson,
Senior Judge, 2nd Judicial District of Iowa

IN THE IOWA DISTRICT COURT OF IOWA IN AND FOR MARSHALL COUNTY

GABRIEL NEIGHBORS,

Plaintiff,

v.

ESTATE OF CRAIG HARDERS, JAIME L.
SCHMIDT EXECUTOR OF THE ESTATE
OF CRAIG HARDERS, and MLS
TRANSFER LLC,

Defendants.

LAW NO. LACI012346

VERDICT FORM

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

Question No. 1: Was the fault of the Defendant a cause of damages
to Plaintiff?

(If your answer is "no", then stop.)

(If your answer is "yes", then proceed to answer the following
questions:

1. Past medical expenses

\$ _____

2. Loss of function – past

\$ _____

3. Pain and suffering - past

\$ _____

4. Loss of function - future

\$ _____

5. Pain and suffering - future

\$ _____

FOREMAN OR FOREWOMAN*

*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 hours or more of deliberation

IN THE IOWA DISTRICT COURT OF IOWA IN AND FOR MARSHALL COUNTY

EUGENE HENRY WHISENAND,

Plaintiff,

v.

ESTATE OF CRAIG HARDERS, JAIME L.
SCHMIDT EXECUTOR OF THE ESTATE
OF CRAIG HARDERS, and MLS
TRANSFER LLC,

Defendants.

LAW NO. LACI012356

VERDICT FORM

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

Question No. 1: Was the fault of the Defendant a cause of damages
to Plaintiff?

(If your answer is "no", then stop.)

(If your answer is "yes", then proceed to answer the following
questions:

1. Past medical expenses

\$ _____

2. Loss of function – past

\$ _____

3. Pain and suffering - past

\$ _____

4. Loss of function - future

\$ _____

5. Pain and suffering - future

\$ _____

FOREMAN OR FOREWOMAN*

*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 hours or more of deliberation