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IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY, IOWA MAR 21 PM 4:17

CLERK OF DISTRICT COURT  
LINN COUNTY, IOWA

<b>GUMAA HASSABALLA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>WOODLAND SQUARE INVESTMENTS,</b> <b>L.L.C.,</b>  <b>Defendant.</b>	<b>CASE NO. LACV089439</b>  <b>STATEMENT OF THE CASE AND JURY</b> <b>INSTRUCTIONS</b>  <i>ORIGINAL</i>
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### STATEMENT OF THE CASE

Members of the Jury: In this case plaintiff Gumaa Hassaballa claims his landlord, the defendant Woodland Square Investments, L.L.C., was at fault in certain particulars and its fault caused him bodily injury. The defendant Woodland Square Investments, L.L.C., denies it was at fault and claims the plaintiff was at fault and his fault caused his injury. Defendant also disputes the amount 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.

## **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. 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.

## **JURY INSTRUCTION NO. 2**

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 parties.
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. Statements, arguments and comments made at the bench intended to be outside your presence.
3. Objections and rulings on objections.
4. Any testimony I told you to disregard.
5. Anything you saw or heard about this case outside the courtroom.

### **JURY INSTRUCTION NO. 3**

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. 4**

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

## **JURY INSTRUCTION NO. 5**

Certain testimony has been presented by video or 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.

## **JURY INSTRUCTION NO. 6**

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. 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.

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**

Expert witnesses were asked to assume certain facts were true and to give opinions based on those assumptions. These are called hypothetical questions. If any fact assumed in any question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

### **JURY INSTRUCTION NO. 9**

You have heard evidence claiming parties made statements before this trial.

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 that party's testimony during the trial, but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

For purposes of this instruction, Jeffrey Niemeier, the manager of defendant Woodland Square Investments, L.L.C., is considered a party.

## **JURY INSTRUCTION NO. 10**

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. 11**

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 or unreasonable failure to avoid an injury.

## **JURY INSTRUCTION NO. 12**

"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.

### **JURY INSTRUCTION NO. 13**

A party is required to exercise reasonable care for their own safety. This means that, if in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party in order to avoid an injury, then they are under a duty to take such action.

# **JURY INSTRUCTION NO. 14**

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

### **JURY INSTRUCTION NO. 15**

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



## **JURY INSTRUCTION NO. 16**

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. 17**

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 and the defendant 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.

### **JURY INSTRUCTION NO. 18**

After you have compared the conduct of all parties, if you find the plaintiff, Gumaa Hassaballa, was at fault and his fault was more than 50% of the total fault, the plaintiff, Gumaa Hassaballa, cannot recover damages. However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

## **INSTRUCTION NO. 19**

In order to prove fault of the defendant, the plaintiff Gumaa Hassaballa must prove all of the following propositions:

1. The defendant was negligent in failing to properly maintain the bathroom sink in good and safe working order.

2. The negligence was a cause of damage to the plaintiff.

3. The amount of damage.

These grounds of fault have been explained to you in other instructions.

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, you will consider the defense of comparative fault as explained in Instruction No. 20.

## **JURY INSTRUCTION NO. 20**

In order to prove fault of the plaintiff, the defendant must prove both of the following propositions:

1. The plaintiff was at fault as explained in one or more of the following ways:
  - a. Negligence in failing to disclose to the landlord knowledge of the dangerous condition of the sink; or
  - b. Negligence in raising the sink off of its fastener; or
  - c. Unreasonable failure to avoid injury by using the sink knowing it was in a dangerous condition.
2. The plaintiff's fault was a cause of the plaintiff's damage.

These grounds of fault have been explained to you in other instructions.

If the defendant has failed to prove either of these propositions, the defendant has not proved its defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

## **INSTRUCTION NO. 21**

A landlord has a duty to do whatever is reasonable and necessary to put and keep leased premises in a fit and habitable condition. This duty includes maintaining in good and safe working order plumbing and sanitary fixtures supplied by the landlord.

## **JURY INSTRUCTION NO. 22**

You must decide whether the claimed harm to plaintiff is within the scope of defendant's liability. The plaintiff's claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

### INSTRUCTION NO. 23

If you find Gumaa Hassaballa is entitled to recover damages, you shall consider the following items:

**Past Medical Expenses.** The parties stipulate that past medical expenses total \$4,607.74.

**Loss Of time - Earnings.** The reasonable value of lost time off work from the date of injury to the present time.

**Loss Of Future Earning Capacity.** 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.

**Loss Of Full Mind And Body - Past.** 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.

**Loss Of Full Mind And Body – Future.** The present value of future loss of function of the body.

**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 or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish, loss of enjoyment of life, and embarrassment.



**Physical And Mental Pain And Suffering-Future.** 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, loss of earning capacity, 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 special verdicts.

## **INSTRUCTION NO. 24**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Gumaa Hassaballa is 36.3 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Mr. Hassaballa's health, habits, occupation, and lifestyle when deciding issues of future damages.

### **JURY INSTRUCTION NO. 25**

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. 26**

If you award damages for medical expenses or loss of income as a result of plaintiff's Injuries, then you must award damages in some amount for pain and suffering.

## **JURY INSTRUCTION NO. 27**

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 percentage of fault.

## **JURY INSTRUCTION NO. 28**

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. 29**

The Court has not by these instructions or by any ruling, or by any act, or by anything said during the trial, or by any facial expressions, gesture or tone of voice, 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, nor what your verdict should be.

During the trial the Court has ruled upon objections to evidence which have been made by counsel. Such rulings are the responsibility of the Court, and in your consideration of the case, you will give no significance or weight whatever to such rulings, and you will consider only such evidence which has been received before you as part of the record in this case.

### **JURY INSTRUCTION NO. 30**

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.



### **JURY INSTRUCTION NO. 31**

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. 32**

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering the model instructions and after considering this case with the parties and lawyers. The instructions attempt to use language which is generally understandable. Usually your questions about the instructions can be answered by carefully re-reading them. If, however, you feel it necessary to ask a question, you must do so in writing, and I must respond in writing. I cannot communicate with you without first discussing your question and potential answer with the parties and the lawyers. This naturally takes time and deliberation before I can reply.

The court attendant who has been working with you on this case takes an oath not to communicate with you about the substance of the case. She cannot speak to you except to ask if you have agreed upon a verdict and to manage the logistics of your service. Please do not put her on the spot by asking any questions about the instructions or the evidence.

During the period of your deliberations, you may not conduct any experiments, tests or research, including computer research such as Internet searches, pertaining to any matter related to this case.

Finally, if you need to notify anyone about the time you will be deliberating, please notify them before entering the jury room.

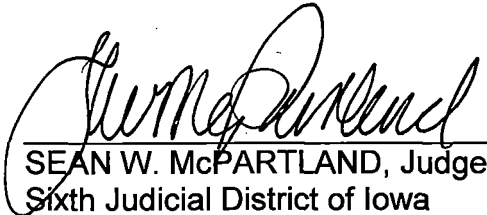
### JURY INSTRUCTION NO. 33

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 must be signed by your foreman or forewoman.

After deliberating for six hours from 12:15 o'clock p. m. excluding meals or recesses outside your jury room, then it is necessary that only six of you agree upon the answers to the questions. In that case, the verdict must be signed by all six jurors who agree.

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

Dated this 21st day of March, 2019.



SEAN W. McPARTLAND, Judge  
Sixth Judicial District of Iowa