

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

GUMAA HASSABALLA,)	NO. LACV089439
)	
Plaintiff,)	
)	
vs.)	PROPOSED STATEMENT OF THE
)	CASE, JURY INSTRUCTIONS AND
WOODLAND SQUARE INVESTMENTS)	VERDICT FORMS
L.L.C.,)	
)	
Defendant.)	

COMES NOW the Defendant, Woodland Square Investments, L.L.C., by and through counsel, and hereby submits the following proposed Statement of the Case, jury instructions and verdict form to be submitted to the jury for their consideration in this matter. The Defendant reserves the right to supplement the proposed jury instructions prior to the time they are given to the jury, with such additional or different instructions as may be necessary, based upon testimony and exhibits introduced during trial, and any other factors which may affect the appropriate form of jury instructions or forms of verdict.

ELDERKIN & PIRNIE, PLC

By: 

WILLIAM H. ROEMERMAN

AT0006731

316 2nd St. S.E, Suite 124

PO Box 1968

Cedar Rapids, IA 52401

Tele: 319-362-2137

Fax: 319-362-1640

Email: WRoerman@elderkinpirnie.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on March 8, 2019, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to the following:

William Nicholson
Andrew Giller
Rush & Nicholson, PLC
115 First Avenue SE, Suite 201
PO Box 637
Cedar Rapids, IA 52406

s/William H. Roerman

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

GUMAA HASSABALLA,)	NO. LACV089439
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Plaintiff,)	
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vs.)	STATEMENT OF THE CASE
)	
WOODLAND SQUARE INVESTMENTS)	
L.L.C.,)	
)	
Defendant.)	

Members of the Jury:

Plaintiff, Gumaa Hassaballa, claims that he was injured when a sink became detached from the bathroom wall of an apartment where he was living. He claims that Defendant's fault caused or allowed the accident and his injury.

The Defendant, Woodland Square Investments L.L.C., denies that it was negligent. It also claims that the Plaintiff was, himself, at fault and that his fault caused or contributed to the accident and Plaintiff's injury. Defendant also disputes the amount of the 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.

PROPOSED 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.

Authority: Iowa Civil Jury Instruction 100.2

PROPOSED 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.

Authority: Iowa Civil Jury Instruction 100.3

PROPOSED 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 (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. 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.

Authority: Iowa Civil Jury Instruction 100.4

PROPOSED JURY INSTRUCTION NO. 4

Certain Testimony has been 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.

Authority: Iowa Civil Jury Instruction 100.5

PROPOSED 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.

Authority: Iowa Civil Jury Instruction 100.6

PROPOSED 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.

Authority: Iowa Civil Jury Instruction 100.9

PROPOSED JURY INSTRUCTION NO. 7

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: Iowa Civil Jury Instruction 100.11

PROPOSED JURY INSTRUCTION NO. 8

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.

Authority: Iowa Civil Jury Instruction 100.12

PROPOSED JURY INSTRUCTION NO. 9

You have heard evidence claiming [name of witness] made statements before this trial while under oath which were inconsistent with what [name of witness] said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe [name of non-party witness]. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Authority: Iowa Civil Jury Instruction 100.14

PROPOSED JURY INSTRUCTION NO. 10

You have heard evidence claiming a party 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 the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

Authority: Iowa Civil Jury Instruction 100.15 (slightly modified to apply to any party)

PROPOSED JURY INSTRUCTION NO. 11

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: Iowa Civil Jury Instruction 100.18

PROPOSED JURY INSTRUCTION NO. 12

The fact that defendant is an LLC should not affect your decision. All person 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.

Authority: Iowa Civil Jury Instruction 100.20 tailored for use with an LLC rather than a corporation.

PROPOSED JURY INSTRUCTION NO. 13

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: Iowa Civil Jury Instruction 100.21

PROPOSED JURY INSTRUCTION NO. 14

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: Iowa Civil Jury Instruction 100.23

PROPOSED JURY INSTRUCTION NO. 15

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

a. The reasonable cost of necessary hospital charges, doctor charges, and other medical services from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, and other medical services, you may consider the amount charged, or the amount actually paid.

b. The reasonable value of time from business from the date of injury to the present time.

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, 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.

Authority: Iowa Civil Jury Instructions 200.1, 200.6, 200.8, 200.10, 200.11B, 200.12 and 200.13B combined and tailored to the claims in this case.

PROPOSED JURY INSTRUCTION NO. 16

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.

Authority: Iowa Civil Jury Instruction 200.35B

PROPOSED JURY INSTRUCTION NO. 17

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.

Authority: Iowa Civil Jury Instruction 200.38

PROPOSED JURY INSTRUCTION NO. 18

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 _____ 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.

Authority: Iowa Civil Jury Instruction 300.1

PROPOSED JURY INSTRUCTION NO. 19

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, unreasonable assumption of risk not constituting an enforceable express consent, or unreasonable failure to avoid an injury.

Authority: Iowa Civil Jury Instruction 400.1 tailored for the fault alleged.

PROPOSED JURY INSTRUCTION NO. 20

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.

Authority: Iowa Civil Jury Instruction 400.2 Comparative Fault, tailored for a single defendant, single plaintiff lawsuit.

PROPOSED JURY INSTRUCTION NO. 21

After you have compared the conduct of all parties, if you find the plaintiff, Gumaa Hassaballa, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, Gumaa Hassaballa, cannot recover damages.

Authority: Iowa Civil Jury Instruction 400.3 Comparative Fault - Effects Of Verdict, tailored by the insertion of plaintiff's name.

PROPOSED JURY INSTRUCTION NO. 22

The defendant claims the plaintiff was at fault in one or more of the following particular(s):

- a. Negligence
- b. Assumption of the risk
- c. Unreasonable failure to avoid injury

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

The defendant must prove both of the following propositions:

1. The plaintiff was at fault as explained one or more of the following instructions: [negligence defined], [assumption of the risk defined], or [unreasonable failure to avoid injury to find].
2. The plaintiff's fault was a cause of the plaintiff's damage.

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.

Authority: Iowa Civil Jury Instruction 400.6. Comparative Fault - Single Defendant - Essentials for Defense – tailored to the claims made in this case.

PROPOSED JURY INSTRUCTION NO. 23

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.

In this case defendant claims that plaintiff unreasonably failed to take action to avoid an injury because:

Although plaintiff claims to have believed that the sink was loose and claims to have known that the sink was in a dangerous condition, plaintiff failed to exercise ordinary care to notify the landlord of this allegedly dangerous condition or to otherwise use ordinary care to seek its repair.

Authority: Iowa Civil Jury Instruction 400.8. Unreasonable Failure To Avoid An Injury – Defined – tailored to the facts of this case.

PROPOSED JURY INSTRUCTION NO. 24

The defendant claims that plaintiff unreasonably assumed the risk by:

Continuing to use the sink after the plaintiff claims to have known that it was in a dangerous condition.

To prove this defense, the defendant must prove all of the following propositions:

1. The plaintiff knew the risk was present.
2. The plaintiff understood the nature of the risk to himself.
3. Nevertheless, the plaintiff unreasonably, freely and voluntarily took the risk.
4. The plaintiff's assumption of the risk was a cause of plaintiff's damage.

If the defendant has failed to prove any of these propositions, the defendant has not proved this defense. If the defendant has proved all of these propositions, then you will assign a percentage of fault against the plaintiff and include it in the total percentage of fault, if any, found by you in your answers to the special verdicts.

Authority: Iowa Civil Jury Instruction 400.9. Unreasonable Assumption Of Risk – Defined – tailored to the claims made in this case.

PROPOSED JURY INSTRUCTION NO. 25

"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.

Authority: Iowa Civil Jury Instruction 700.2

PROPOSED JURY INSTRUCTION NO. 26

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

Authority: Iowa Civil Jury Instruction 700.3

PROPOSED JURY INSTRUCTION NO. 27

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 [or other tort obligation] 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.

Authority: Iowa Civil Jury Instruction 700.3A

PROPOSED JURY INSTRUCTION NO. 28

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.

Authority: Iowa Civil Jury Instruction 700.4

PROPOSED JURY INSTRUCTION NO. 29

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

Authority: Iowa Civil Jury Instruction 700.8

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)	
Plaintiff,)	
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vs.)	VERDICT FORM
)	
WOODLAND SQUARE INVESTMENTS)	
L.L.C.)	
)	
Defendant.)	

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

Question No. 1: Was the defendant at fault?
Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the defendant a cause of any item of damage to the plaintiff?
Answer "yes" or "no."

ANSWER: _____

[If your answer is "no", do not answer any further questions.]

Question No. 3: Was any item of damage to the plaintiff within the scope of defendant's liability?
Answer "yes" or "no."

ANSWER: _____

[If your answer is "no", do not answer any further questions.]

Question No. 4: Was the plaintiff at fault?
Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer Questions No. 5 or 6.]

Question No. 5: Was the plaintiff's fault a cause of any damage to the plaintiff?
Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer Question No. 6.]

Question No. 6: Was any item of damage to the plaintiff within the scope of plaintiff's liability?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer Question No. 7.]

Question No. 7: Using 100% as the total combined fault of plaintiff and defendant which was a cause of plaintiff's damage [and within the scope of liability], what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant?

ANSWER: Plaintiff _____%

Defendant _____%

TOTAL 100%

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 8.]

Question No. 8: State the amount of damages sustained by the plaintiff by defendant's fault [and within the scope of defendant's liability] as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendant's fault [or within the scope of defendant's liability], enter 0 for that item.

1. Past medical expenses	\$ _____
2. Past loss of time from business	\$ _____
2. Past pain and suffering	\$ _____
3. Future pain-and-suffering	\$ _____
4. Past lost use of body	\$ _____
5. Future lost use of body	\$ _____

TOTAL (add the separate items of damage) \$ _____

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 to it after six hours or more of deliberation.