

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

DENNIS J. PICKENS,  Plaintiff,  vs.  JEREMIAH WAYNE ZEIEN, MELISSA WULF- ZEIEN,  Defendants.	CASE NO: LACV089735  JOINT PROPOSED JURY INSTRUCTIONS
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COMES NOW the Defendant, by and through the undersigned and submits the following Iowa Civil Jury Instructions and Verdict form. The Defendant, by including certain elements of damage in the instructions, does not admit that such damages are owed, but are included for the convenience of the parties and court in a later charge conference.



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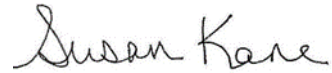
Original filed.

Copy to:

Dennis J. Pickens  
18 Chapelridge Cir. Apt. C  
Marion, IA 52302  
PRO SE PLAINTIFF

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served by EDMS and/or Regular Mail upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on January 23, 2019.

A handwritten signature in cursive script that reads "Susan Kane".

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Susan Kane

**DEFENDANT'S PROPOSED STATEMENT OF THE CASE**

Plaintiff Dennis J. Pickens seeks to recover damages for injuries he allegedly sustained in a motor vehicle accident that occurred on February 29, 2016 between a vehicle she was driving and a vehicle driven by Defendants Jeremiah Wayne Zeien and owned by Jeremiah Zeien and Melissa Wulf-Zeien.

Defendants admit that Jeremiah was at fault in causing the accident but disputes the nature and extent of injuries claimed by the Plaintiff.

Plaintiff requests that the following sentence be added above: Defendants admits that Plaintiff suffered "physical injuries."

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.

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.

Iowa Civil Jury Instruction 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.

Iowa Civil Instruction 100.3

Plaintiff's Proposed Instruction

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. Preponderance of the evidence is evidence that tends to make something more true than not true.

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, 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. \_\_\_\_\_

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.

PLAINTIFF'S PROPOSED INSTRUCTION

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

The plaintiff served on the defendant a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the defendant or which defendant failed to deny.



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.

Instruction No. \_\_\_\_\_

You have heard evidence claiming Dennis Pickens or Jeremiah Zeien made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the statement had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the person's testimony during the trial you may also use the statement as a basis for disregarding all or any part of his testimony during the trial but you are not required to do so. You should not disregard Dennis Pickens's or Jeremiah Zeien's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

Instruction No. \_\_\_\_\_

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

Instruction No. \_\_\_\_\_

The plaintiff must prove all of the following propositions:

1. That Jeremiah Zeien was guilty of negligence in causing the accident of February 29, 2016.

Defendants admit that Jeremiah Zeien was at fault for failing to stop at a stop sign resulting in the accident with the vehicle driven by plaintiff Dennis Pickens.

2. That Defendants' negligence was a cause of damage to the plaintiff.
3. The amount of damage.

If the plaintiff have failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to damages in some amount.

#### PLAINTIFF PROPOSED INSTRUCTION

Plaintiff wishes to have the following inserted after paragraph 2:

Defendant's have admitted causing Plaintiff "physical injuries."

Jeremiah (Mr.) Zeien has admitted liability for any compensatory damages sustained by Dennis (Mr.) Pickens which were proximately caused by the occurrence. You need only decide what those compensatory damages are and what amount Dennis (Mr.) Pickens should recover. Dennis (Mr.) Pickens has the burden of proving the amount of those damages.

Instruction No. \_\_\_\_\_

If you find that plaintiff Dennis Pickens had a condition in his neck, back, or other area of his body, before this incident and that this condition was aggravated by this incident causing further suffering, 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 which were not caused by Jeremiah Zeien's actions.

Instruction No. \_\_\_\_

Elements - Personal Injury and Vehicle Damage. If you find Dennis Pickens is entitled to recover damages, you shall consider the following items:

Physical Pain and Suffering - Past. Physical 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.

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.

The amount you assess for physical pain and suffering in the past and loss of function of the body in the past 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.

#### **PLAINTIFF'S PROPOSED INSTRUCTION**

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

##### **Past Medical Expenses.**

The reasonable value of necessary hospital charges, doctor charges, and other medical services from the date of injury to the present time.

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

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.

##### **Loss Of Full Mind And Body**

The present value of future loss of function of the mind and 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 or loss of enjoyment of life.

##### **Physical And Mental Pain And Suffering**

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 mind and 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. \_\_\_\_

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. \_\_\_\_\_

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. \_\_\_\_\_

Upon retiring you shall select a foreperson. 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. \_\_\_\_

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. \_\_\_\_\_

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. \_\_\_\_\_

Plaintiff must prove each of the nature and extent of the Dennis Pickens's damage caused by the motor vehicle accident.

If the plaintiff has failed to prove any of his claimed damages were caused by the motor vehicle accident, then the plaintiff is not entitled to those damages.

Instruction No. \_\_\_\_\_

I am giving you 1 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 foreperson.

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.

VERDICT FORM

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

Question No. 1: Was Jeremiah Zeien's fault a cause of any item of damage to the plaintiff DENNIS PICKENS?

Answer "yes" or "no."

ANSWER:

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

Question No. 2: State the amount of damages sustained by the plaintiff Dennis Pickens caused by Jeremiah Zeien's fault as to each of the following items of damage. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by Jeremiah Zeien's fault, enter 0 for that item.

- |                                  |          |
|----------------------------------|----------|
| 1. Past medical expenses         | \$ _____ |
| 2. Past loss of function of body | \$ _____ |
| 3. Past pain and suffering       | \$ _____ |

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

\_\_\_\_\_  
Presiding Juror\*

\*To be signed only if 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\*\*

\_\_\_\_\_  
Juror\*\*

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