

IN THE IOWA DISTRICT COURT FOR MARSHALL COUNTY

ALYSON MARIE SWARTZBAUGH, Plaintiff, vs. GORIDIANO GASORE and CLEMENTINE NIYOGUSHIMA, Defendants.	Case No.: <u>LACI012063</u> JURY INSTRUCTIONS
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INSTRUCTION NO. 1

Members of the Jury: Members of the Jury: Plaintiff Alyson Swartzbaugh was involved in an auto accident with Defendant Goridiano Gasore on November 15, 2021. Ms. Swartzbaugh has brought this lawsuit against Mr. Gasore alleging negligence. Mr. Gasore admits to being at fault (negligent) for the subject accident. Ms. Swartzbaugh has also brought suit against the owner of the vehicle driven by Mr. Gasore - Clementine Niyogushima. Ms. Niyogushima admits that Mr. Gasore had permission to drive her vehicle at the time of the accident. As such, Ms. Niyogushima is responsible for the negligence of Mr. Gasore as a matter of law.

Defendants Gasore and Niyogushima are challenging the nature and extent of the damages being claimed by Ms. Swartzbaugh.

This brief summary of the parties' claims, and defenses is not proof of any claim. You must now decide this case by applying the general principals of law described in these instructions to the evidence presented in the courtroom.

INSTRUCTION NO. 2

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.

INSTRUCTION NO. 3

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. 4

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.

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. Anything you saw or heard about this case outside the courtroom.

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.

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.

INSTRUCTION NO. 7

Defendants have admitted legal fault for the collision and are not required to be present for the damages portion of this trial. The fact that the defendants are not present at this trial shall not affect your decision regarding the amount of damages to award Ms. Swartzbaugh.

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.

JURY INSTRUCTION NO. 9

In these instructions, I will be using the terms "fault" and "negligence." Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence. "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.

Alyson Swartzbaugh claims that the Defendants were negligent and at fault. Defendant Goridiano Gasore admits he was negligent in the operation of the motor vehicle which collided with Alyson Swartzbaugh and acknowledges he is at fault. Defendant Clementine Niyogushima admits she was the owner of the motor vehicle operated by Goridiano Gasore and admits that Goridiano Gasore operated the vehicle with Clementine Niyogushima's consent. Therefore, Clementine Niyogushima admits that she is negligent and at fault. Because Defendants have admitted that they were negligent and at fault, the jury will not be asked to consider matters of negligence or fault as they have already been determined.

INSTRUCTION NO. 10

Defendants have admitted that they were negligent and at fault. Therefore, Plaintiff must prove both of the following propositions:

1. The Defendant's fault was a cause of damage to Alyson Swartzbaugh.
2. The amount of damages to Alyson Swartzbaugh.

If Alyson Swartzbaugh has failed to prove either of these propositions, she is not entitled to damages. If the Alyson Swartzbaugh has proved both of these propositions, she is entitled to damages in some amount.

INSTRUCTION NO. 11

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

JURY INSTRUCTION NO. 12

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

1. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, 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.
2. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future. 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.
3. The present value of future loss of function of the mind and body.
4. 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.
5. 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, future medical care, and 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 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. The amounts, if any, you find for each of the above items will be used to answer the questions in the verdict form.

INSTRUCTION NO. 13

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 plaintiffs for future losses.

INSTRUCTION NO. 14

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Alyson Swartzbaugh is 81 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Alyson Swartzbaugh's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 15

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. 16

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. 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

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, Instagram, LinkedIn, YouTube, X (formerly 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.

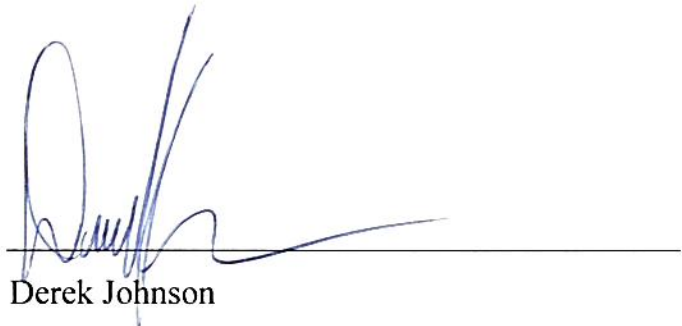
It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 19

I am giving you a form verdict containing three questions. 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 and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 2:20 o'clock 4 .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 and interrogatories must be signed by all seven jurors who agree.

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



Derek Johnson

Judge, Second Judicial District of Iowa