

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY****DIANE WIECZOREK,  
ANTOINE WIECZOREK,****Plaintiffs,****v.****WAL-MART STORES,  
d/b/a WALMART SUPERCENTER,****Defendant.****CASE NO. LACL152871****FINAL JURY INSTRUCTIONS**

## JURY INSTRUCTION 1

Members of the Jury:

In this case Plaintiffs Diane Wieczorek and Antoine Wieczorek claim that Plaintiff Diane Wieczorek was injured when a pedestrian gate at the Walmart in Windsor Heights, Iowa closed on her and threw her to the ground. Plaintiffs assert Walmart was negligent and is at fault for the incident.

The Defendant Walmart denies that it is responsible for this incident and states that Plaintiff's own conduct in walking into a pedestrian gate the wrong way as it closed, ignoring warning signs, caused or contributed to the incident.

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 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.

## JURY INSTRUCTION 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.

## JURY INSTRUCTION 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.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted

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 pretrial 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 are 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 ruling on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside this courtroom.

## JURY INSTRUCTION 5

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

## JURY INSTRUCTION 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 the 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 7

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

## JURY INSTRUCTION 8

You have heard evidence claiming the Plaintiff, Diane Wieczorek, made statements before this trial.

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

If you find such a statement was made and was inconsistent with that 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 that party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

## JURY INSTRUCTION 9

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 10

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.

## JURY INSTRUCTION 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.

## JURY INSTRUCTION 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 13

The Defendant, Walmart, owes a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether the Defendant has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the Defendant and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

## JURY INSTRUCTION 14

The Plaintiffs must prove all of the following propositions:

1. The Defendant Walmart knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in Diane Wieczorek's position.
2. Walmart knew or in the exercise of reasonable care should have known:
  - a. Diane Wieczorek would not discover the condition, or
  - b. Diane Wieczorek would not realize the condition presented an unreasonable risk of injury, or
  - c. Diane Wieczorek would not protect herself from the condition.
3. Walmart was negligent in the manner in which they operated the pedestrian gate at issue in this case.
4. The negligence was a cause of the Plaintiffs' damage.
5. The nature and extent of damage.

If the Plaintiffs have failed to prove any of these propositions, they are not entitled to damages.

If the Plaintiffs have proved all of these propositions, then you will consider the defense of known or obvious as explained in Instruction No. 15, and you will consider the defense of comparative fault as explained in Instruction Nos. 16 through 20.

## JURY INSTRUCTION 15

Concerning item 2 of Instruction No. 14, the Defendant Walmart is not liable for injuries or damages caused by a condition that is known or obvious to a person in the Plaintiff Diane Wieczorek's position unless Walmart should anticipate the harm despite such knowledge or obviousness.

A condition is "known" if one is aware of conscious of its existence and of the risk of harm it presents.

A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

## JURY INSTRUCTION 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 17

The Defendant Walmart claims the Plaintiff Diane Wieczorek was at fault in one or more of the following particulars:

1. By walking the wrong way through an entrance gate;
2. By disregarding warnings; and/or
3. By failing to use reasonable care to prevent injury to herself.

Walmart must prove both of the following propositions:

1. Diane Wieczorek was at fault. In order to prove fault, Walmart must prove Diane Wieczorek was negligent by walking the wrong way through an entrance gate, by disregarding warnings; and/or by failing to use ordinary care to prevent injury to herself.
2. Diane Wieczorek's fault was a cause of her damage.

If Walmart has failed to prove either of these propositions, Walmart has not proved its defense.

If Walmart has proved both of these propositions, then you will assign a percentage of fault against Diane Wieczorek and include the Diane Wieczorek's fault in the total percentage of fault found by you answering the verdict questions.

## JURY INSTRUCTION 18

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 19

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 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 20

After you have compared the conduct of the parties, if you find Plaintiff Diane Wieczorek was at fault and her fault was more than 50% of the total fault, she cannot recover damages.

However, if you find Plaintiff Diane Wieczorek's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of Diane Wieczorek's fault.

JURY INSTRUCTION 21

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

## JURY INSTRUCTION 22

If you find that Plaintiff Diane Wieczorek is entitled to recover damages, you shall consider the following items:

1. Past Physical and Mental Pain and Suffering. 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 it not limited to, mental anguish or loss of enjoyment of life.
2. Past Loss of Full Mind And Body. Loss of function of the mind and/or body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner.

The amount you assess for physical and mental pain and suffering or loss of full mind and body cannot be measured by any exact or mathematical standard. You should 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 verdict questions.

## JURY INSTRUCTION 23

If you find the Plaintiff Diane Wieczorek suffered from a back condition before this incident and any such condition was aggravated by this incident causing further suffering and/or disability, then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by the defendant's actions.

## JURY INSTRUCTION 24

If you find the plaintiff Diane Wieczorek, is entitled to recover damages, you shall also consider the plaintiff Antoine Wieczorek's claim for damages for loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each other to the intangible benefits of company, cooperation, affection and the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of monetary support from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find that Antoine Wieczorek is entitled to recover damages for loss of spousal consortium, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Mr. Wieczorek would otherwise have received from the date of the injury to the present time.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Diane Wieczorek's life.
2. Mr. and Mrs. Wieczoreks' ages at the time of injury.
3. Mrs. Wieczorek's health, strength, and character.
4. Mrs. Wieczorek's capabilities and efficiencies in performing the duties as a spouse.
5. Mrs. Wieczorek's skills and abilities in providing instructions, guidance, advice and assistance.
6. Mr. Wieczorek's needs.
7. All other facts and circumstances bearing on the issue.

The amount you assess for loss of spousal consortium 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 the defendant as proved by the evidence.

Damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for the above item will be used to answer the verdict questions.

## JURY INSTRUCTION 25

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.

## JURY INSTRUCTION 26

Upon retiring you shall select a foreperson. It will be that person's 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 their 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 27

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 28

Occasionally, during jury deliberations, jurors may have questions for the court, particularly about the instructions. I have prepared the instructions after carefully considering the facts of this case, researching the law and discussing them with the lawyers. I have tried to use language which is generally understandable. Usually questions about the instructions can be answered by carefully re-reading them. If after doing so, however, you still feel it necessary to ask the court a question, you must submit it in writing and deliver the question to the judicial assistant, who will deliver it to the court.

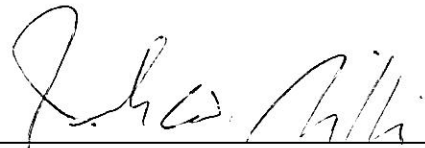
I cannot communicate with you until first discussing your question and the potential response with the lawyers, which will naturally take time before I can reply. Once the court's answer is received in the jury room, the jury foreperson shall read the court's response to the jury. You are to keep any written question and response and return it to the court with the verdict.

## JURY INSTRUCTION 29

I am giving you a verdict form and 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 interrogatories must be signed by your foreperson.

After deliberating for six hours from 2:48 o'clock P. m. on November 1, 2023, 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 Judicial Assistant.

  
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Joseph W. Seidlin, Judge

Jury Instruction #20  
and Verdict Form #6  
~~They~~ contradict each  
other. Does the jury  
determine the amount  
of damages or is it the  
requested \$175,000?  
Adjusted by jury instruction  
#20?

Tammie  
Rasmussen

Please re-read the instructions.

The jury decides the amount of  
any damages.

John M. Hill  
Judge