

Original

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

BRIAN LESLIE, Plaintiff, v. CHICKEN COUPE, LLC, AND COMES INVESTMENTS, INC., D/B/A PIZZA HUT, Defendants.	CASE NO. LACV098535 JURY INSTRUCTIONS MICHAEL JACOBSEN, JUDGE
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STATEMENT OF THE CASE

On March 9, 2022, the Plaintiff Brian Leslie went to the Pizza Hut in Knoxville, Iowa. The Plaintiff alleges he slipped and fell on snow or ice when exiting the building.

The Plaintiff has alleged that the CHICKEN COUPE, LLC, AND COMES INVESTMENTS, INC., D/B/A PIZZA HUT was negligent in maintaining the premises of the restaraunt. The plaintiff further alleges he was injured as a result of the CHICKEN COUPE, LLC, AND COMES INVESTMENTS, INC., D/B/A PIZZA HUT's alleged negligence.

The Defendants have denied the Plaintiff's claim of negligence and asserted the affirmative defense of comparative fault.

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. 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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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. 2

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof or what your verdict should be.

INSTRUCTION NO. 3

During the trial, the Court has ruled upon objections to evidence which have, from time to time, been made by counsel, and this Court has done so according to the rules of evidence. Such rulings made by the Court are the responsibility of the Court solely, 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 as has been received before you, and which has not been stricken by the Court.

INSTRUCTION NO. 4

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. 5

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. Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is evidence about a chain of events which establishes a fact. The law makes no distinction between direct evidence and circumstantial evidence. The weight to be given to 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. 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

There are two types of evidence, direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. Circumstantial evidence is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in this case, both direct and circumstantial.

INSTRUCTION NO. 8

You have heard evidence claiming that the parties 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 individual had made it under oath during the trial.

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

INSTRUCTION NO. 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.

INSTRUCTION NO. 10

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.

INSTRUCTION NO. 11

"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.

INSTRUCTION NO. 12

The plaintiff must prove all of the following propositions:

1. The defendants 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 the plaintiff's position.
2. The defendant knew or in the exercise of reasonable care should have known:
 - a. the plaintiff would not discover the condition, or
 - b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
 - c. the plaintiff would not protect himself from the condition.
3. The defendant was negligent in failing to exercise reasonable care in maintaining the walkway. Reasonable care is defined in instruction no. 19.
4. The Negligence was a cause of the plaintiff's damage.
5. The nature extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proven all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. 24

INSTRUCTION NO. 13

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

INSTRUCTION NO. 14

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

Consider whether repetition of defendants' 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. 15

A defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position unless the defendant should anticipate the harm despite such knowledge or obviousness.

INSTRUCTION NO. 16

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

INSTRUCTION NO. 17

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.

INSTRUCTION NO. 18

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's own movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 19

Owners and occupiers owe 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 Defendants had 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 land occupier 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.

INSTRUCTION NO. 20

The occupant of premises is presumed to know all conditions on the premises that exist on, or about, the premises. The occupant of premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the occupant had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the occupant should have known about it.

INSTRUCTION NO. 21

The fact that a party 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.

INSTRUCTION NO. 22

An employer is liable for the negligent acts of an employee if the acts are done in the scope of the employment.

INSTRUCTION NO. 23

For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

INSTRUCTION NO. 24

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 Defendants 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.

INSTRUCTION NO. 25

An individual has a duty to exercise reasonable and ordinary care for his own safety and protection. 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 the defendant claims the plaintiff unreasonably failed to take an action to avoid injury because he failed to account for the open and obvious conditions apparent at the time of the accident.

INSTRUCTION NO. 26

The defendants claim the plaintiff was at fault in one or more of the following particulars:

- A. Failure to maintain a proper lookout;
- B. Failure to exercise reasonable care for his own safety;
- C. Failure to exercise reasonable care when the plaintiff knew of an open and obvious dangerous condition.

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. In order to prove fault, the defendant must prove either the plaintiff failed to maintain a proper lookout or failed to exercise reasonable care for her own safety.
2. The plaintiff's fault was a proximate cause of the plaintiff's damages.

If the defendant has failed to prove either of these propositions, the defendant has not proven its defense. If the defendant has proven 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 in answering the special verdicts.

INSTRUCTION NO. 27

After you have compared the conduct of all parties, if you find the Plaintiff, Brian Leslie, was at fault and the Plaintiff's fault was more than 50% of the total fault, the plaintiff, Brian Leslie, 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 the Plaintiff's fault.

INSTRUCTION NO. 28

The mere fact an accident happened or a party claims he was injured does not mean a party was negligent or at fault.

INSTRUCTION NO. 29

If you find the Plaintiff Brian Leslie entitled to recover damages, you shall consider the following items of damage:

- a) Past medical expenses: The reasonable value of necessary hospital charges, doctor charges and prescriptions from the date of injury to the present time;
- b) Past physical and mental pain and suffering: Physical and mental pain and suffering from the date of injury to the present time; and
- c) Future physical and mental pain and suffering: Present value of future physical and mental pain and suffering.
- d) Past loss of full use of mind and body: Loss of function of the mind and body from the date of injury to the present time. Loss of mind] [body] is the inability of a particular part of the [mind] [body] to function in a normal manner.
- e) Future loss of full use of mind and body: The present value of future loss of function of the mind and body.

Physical pain and suffering may include, but is not limited to, unpleasant feelings, bodily distress and uneasiness, bodily suffering, sensations or discomfort.

The amount you assess for physical and mental pain and suffering in the past and future and/or loss of function of the mind and 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 damages. Add together the amounts, if any, you find for each of the above items and the total will be used to answer the special verdicts.

INSTRUCTION NO. 30

If you find that the Plaintiff Brian Leslie had medical problems and/or issues following the accident, he cannot recover for any later injury or condition or aggravation of injury not caused by this accident.

INSTRUCTION NO. 31

If you find the Plaintiff Brian Leslie had medical condition(s) before this accident and this/these condition(s) were aggravated by this accident causing further suffering and/or disability 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 accident or for any injuries or damages which he now has which were not caused or aggravated by the defendants' negligence.

INSTRUCTION NO. 32

If Plaintiff Brian Leslie had medical condition(s) making him more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by Plaintiff Brian Leslie that are caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

INSTRUCTION NO. 33

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. 34

The reasonable cost of necessary hospital charges, doctor charges, prescriptions, and 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.

INSTRUCTION NO. 35

If you find that the Defendants were at fault, the total amount of medical payments were \$7,310.77.

INSTRUCTION NO. 36

Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.

INSTRUCTION NO. 37

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.

INSTRUCTION NO. 38

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. 39

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff Brian Leslie is 28.28 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Plaintiff Brian Leslie's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 40

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 that 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. 41

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

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

INSTRUCTION NO. 42

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 judges – judges of the facts. Your sole interest is to find the truth and do justice.


INSTRUCTION NO. 43

I am giving you one 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 questions must be signed by your foreperson.

After deliberating for six hours from 4:30 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 and questions must be signed by all six jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, tell the court attendant.

Dated this 2nd day of April 2025.



Michael Jacobsen – District Court Judge
Fifth Judicial District of Iowa