

## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CAROL ANN BARTH,  Plaintiff,  vs.  PATRICIA MARGARET HAMAND,  Defendant.	CASE NO: LACL141744   <b>STATEMENT OF THE CASE AND INSTRUCTIONS OF THE COURT</b>  <b>JUDGE WILLIAM P. KELLY</b>
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Statement from the Iowa Supreme Court

PERSONAL PREJUDICES HAVE NO PLACE IN COURT. YOU MUST SET ASIDE AND DISREGARD ANY PERSONAL FEELINGS OF BIAS OR PREJUDICE YOU MAY HAVE BASED ON SEX, RACE, RELIGION, NATIONAL ORIGIN, AGE OR DISABILITY. YOU MUST DECIDE THIS CASE ONLY UPON THE BASIS OF THE EVIDENCE ADMITTED AND THE LAW AS I EXPLAIN IT TO YOU.

## JURY INSTRUCTION NO. 1

Members of the Jury: In this case, Plaintiff, Carol Barth, seeks to recover damages for bodily injury she allegedly sustained in a motor vehicle accident that occurred on August 4, 2016, at the intersection of 10<sup>th</sup> and Mulberry in Des Moines, Iowa between a vehicle she was driving and a vehicle driven by Defendant, Patricia Hamand. Carol Barth claims that Patricia Hamand was at fault in causing the collision. Patricia Hamand denies that she was guilty of fault in causing the collision. Patricia Hamand claims that Carol Barth was guilty of fault in causing the collision.

Patricia Hamand denies the existence, nature, and extent of the damages claimed by Carol Barth.

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 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

## JURY 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.

## JURY 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.
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.

## JURY INSTRUCTION NO. 5

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.

## 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.

## 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.

## 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.



## JURY INSTRUCTION NO. 9

You have heard evidence claiming both 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 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 NO. 10

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.

## JURY INSTRUCTION NO. 11

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 NO. 12

If you find Plaintiff, Carol Barth, is entitled to recover damages, you shall consider the following items:

1. Past Medical Expenses. The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of the injury to the present time. This amount should not exceed \$22,340.65.

2. Future Medical Expenses. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

3. 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.

4. Loss of Full Mind and Body – Future. The present value of future loss of function of the mind or body.

5. 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.

The amount you assess for physical and mental 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.

6. Physical and Mental Pain and Suffering – Future. The present value of future physical and mental pain and suffering.

7. Lost wages – Past. The reasonable value of lost wages from the date of the injury to the present time.

8. Lost wages – Future. The present value of future lost wages.

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.

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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

## JURY INSTRUCTION NO. 13

A Life Expectancy Table indicates the normal life expectancy of people who are the same age as Plaintiff, Carol Barth, who is 46 years old to be 36.36 more years. The statistics from a Life Expectancy Table are not conclusive. You may use this information, together with all the other evidence about Plaintiff, Carol Barth's health, habits and lifestyle, when deciding issues of future damages.

## JURY INSTRUCTION NO. 14

If you find Plaintiff, Carol Barth, had a condition of neck pain, headaches, dizziness or ear pain, before this incident and such condition was aggravated by this incident causing further suffering, 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 Defendant, Patricia Hamand's, actions.

## JURY INSTRUCTION NO. 15

If you find Plaintiff, Carol Barth, was injured by another act after this incident, she cannot recover for any later injury not caused by this incident.



## JURY INSTRUCTION NO. 16

If Plaintiff, Carol Barth, had degenerative disc disease or another condition of her body making her more susceptible to injury than a person who did not have such a condition, then Defendant is responsible for all injuries and damages which are experienced by the Plaintiff that are caused by Defendant Hamand's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a different person under the same circumstances.

## JURY INSTRUCTION NO. 17

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 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 Judicial Assistant.

## 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.

## 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 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 NO.: 21

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

## JURY INSTRUCTION NO. 22

A driver must have her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

## JURY INSTRUCTION NO. 23

When signals display different colored lights:

1. Vehicles facing a signal displaying a green light may go straight, turn right or turn left through the intersection unless specifically prohibited. However, vehicles shall yield the right of way to other vehicular and pedestrian traffic lawfully within the intersection at the time the signal is exhibited.

2. Vehicles facing a signal displaying a circular yellow or yellow arrow light are warned that the related green movement is stopped and vehicles should no longer proceed into the intersection and shall stop. If the stop cannot be made safely, the vehicle may go cautiously through the intersection.

3. Vehicles facing a signal displaying a circular red light shall stop and remain stopped until the signal is green. However, unless prohibited by a sign, vehicles may cautiously enter the intersection to make a right turn from the right lane of traffic, or a left turn from the left lane of a one way street to left most lane of traffic on a one way street. Any turn shall be made so that it does not interfere with other vehicles or pedestrians lawfully using the intersection.



## JURY INSTRUCTION NO. 24

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

## JURY INSTRUCTION NO. 25

“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 the operation of the driver’s vehicle in relation to what the driver saw or should have seen.

A violation of this duty is negligence.

## JURY INSTRUCTION NO. 26

The Plaintiff must prove all the following propositions:

1. The Defendant, Patricia Hamand, was negligent by:
  - a. Failing to have and maintain a proper lookout AND/OR
  - b. Failing to have and maintain proper control AND/OR
  - c. Failing to obey a traffic control signal AND/OR
  - d. Failing to yield to a vehicle lawfully within the intersection AND/OR
  - e. Failing to exercise ordinary and reasonable care under the circumstances then

and there existing.

2. The negligence was a cause of damage to the Plaintiff, Carol Barth.
3. The amount of damage.

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

## JURY INSTRUCTION NO. 27

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

- a. Failing to have and maintain a proper lookout AND/OR
- b. Failing to have and maintain proper control AND/OR
- c. Failing to obey a traffic control signal AND/OR
- d. Failing to yield to a vehicle lawfully within the intersection AND/OR
- e. Failing to exercise ordinary and reasonable care under the circumstances then

and there existing.

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.
- 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 her 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.

## JURY INSTRUCTION NO. 28

“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 NO. 29

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

## JURY INSTRUCTION NO. 30

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the judicial assistant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

The judicial assistant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct your written questions to the Court and not to the judicial assistant.