

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CAROL ANN BARTH, Plaintiff, vs. PATRICIA MARGARET HAMAND, Defendant.	CASE NO: LACL141744 DEFENDANT'S PROPOSED JURY INSTRUCTIONS AND VERDICT FORM
--	---

Comes now the defendant and submits the following List of Iowa Civil Jury Instructions, 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.

IPJI INSTRUCTION	GIVEN	NOT GIVEN	GIVEN AS MODIFIED
100.1 Statement of the Case			
100.2 Duties Of Judge And Jury, Instructions As Whole			
100.3 Burden Of Proof, Preponderance Of Evidence			
100.4 Evidence			
100.5 Deposition Testimony			
100.6 Interrogatories			
100.9 Credibility of Witnesses			
100.12 Opinion Evidence, Expert Witnesses			
100.15 Statements by a Party Opponent			
400.1 Fault – Defined			
700.2 Ordinary Care - Common Law Negligence - Defined			
700.8 Accident Does not Constitute or Raise Presumption of Negligence			
700.3 Cause - Defined			
600.36(3) Traffic Control			

Signals			
600.72 Lookout			
400.2 Comparative Fault			
400.3 Comparative Fault - Effects Of Verdict			
400.5 Comparative Fault - Single Plaintiff - Essentials for Recovery			
400.6 Comparative Fault - Single Defendant - Essentials for Defense			
200.1 Elements - Personal Injury And Vehicle Damage			
200.6 – Past Medical Expenses			
200.32 Aggravation of Pre-Existing Condition			
200.33 No Recovery for Second Injury			
200.38 Quotient Verdict			
100.18 General Instruction to Jury			
100.21 Cautionary Instruction - Juror's Notes			
300.1 Return of Verdict - Forms of Verdict			
Verdict Forms			
300.4 Single Plaintiff - Single Defendant - Comparative Fault			



Kelly W. Otto
4200 Corporate Drive, Suite 120
West Des Moines, IA 50266
Phone: (515)224-1555, x60197
Fax: (877) 888-1482
kotto@amfam.com
ATTORNEY FOR DEFENDANT
PATRICIA HAMAND

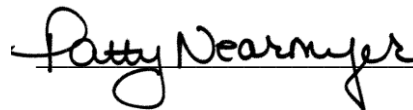
Original filed.

Copy to:

Allison R. Abbott
ELVERSON VASEY
700 Second Avenue
Des Moines, IA 50309
ATTORNEY FOR PLAINTIFF

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served by (EDMS) upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on December 30, 2019.



"Plaintiff Carol Barth seeks to recover damages for bodily injury she allegedly sustained in a motor vehicle accident that occurred on August 4, 2016 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."

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.

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.

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. _____

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.

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.

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 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. _____

You have heard evidence claiming Carol Barth 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 Carol Barth had made it under oath during the trial.

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

Instruction No. _____

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. _____

"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. _____

The mere fact an accident occurred or a party was injured does not mean a party was negligent.

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. _____

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 traffic lawfully within the intersection at the time the signal is exhibited.
2. Vehicles facing a signal displaying a circular red light shall stop and remain stopped the signal is green.

Instruction No. _____

"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 driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver's actions may be dangerous to others.]

A violation of this duty is negligence.

Instruction No. _____

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.

Instruction No. _____

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

Instruction No. _____

The plaintiff claims that Patricia Hamand , was at fault in one or more of the following particular(s):

*
*
*

These grounds of fault have been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. That Patricia Hamand was at fault.
2. The defendant's fault was a cause of the plaintiff's damage.
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, you will consider the defense of comparative fault as explained in Instruction Nos. _____, _____, and _____.

Instruction No. _____

The defendant claims the plaintiff was at fault in one or more of the following particular(s):

1. In failing to stop at a red light;
2. In failing to keep a proper lookout.

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.

Instruction No. _____

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

1. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions 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. 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 future], 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.

Instruction No. _____

If you find Carol Barth had a condition of depression, anxiety or of sadness, or of impaired memory, or of impaired balance, or of other difficulty walking, or of impaired emotional controls, or of neck pain, or of headaches, before this incident and this 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 the defendant's actions.

Instruction No. _____

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

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 foreman or forewoman. 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. _____

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. _____

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) (six) of you agree upon the answers to the questions. In that case, the verdict must be signed by all (seven) (six) 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 defendant at fault?

Answer "yes" or "no."

ANSWER:

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

Question No. 2: Was defendant's fault a cause of any item of damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

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

Question No. 3: Was the plaintiff at fault?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Questions No. 4 or 5.]

Question No. 4: Was the plaintiff's fault a cause of any damage to the plaintiff?

Answer "yes" or "no."

ANSWER:

[If your answer is "no," do not answer Question No. 5.]

Question No. 5: Using 100% as the total combined fault of plaintiff and defendant which was a proximate cause of plaintiff's damage, what percentage of such combined fault do you assign to

ANSWER:

Plaintiff	_____	%
Defendant	_____	%
TOTAL	100%	

[If you find plaintiff to be more than 50% at fault, do not answer Question No. 6.]

Question No. 6: State the amount of damages sustained by the plaintiff proximately caused by defendant's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff's fault. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by defendant'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.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

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