

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CAROL ANN BARTH,

Plaintiff,

vs.

PATRICIA MARGARET HAMAND,

Defendant.

CASE NO.: LACL141744

PLAINTIFF'S REQUESTED JURY
INSTRUCTIONS

COMES NOW, the Plaintiff, Carol Ann Barth, by and through her attorney, Allison R. Abbott, of Elverson, Vasey and Abbott, LLP, and pursuant to the Order Setting Trial and Approving Discovery Plan in the above captioned-case requests the following instructions to be considered by the Court if supported by the evidence at trial.

ELVERSON VASEY

BY



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E-filed.

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served 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.

By: ☐ US Mail ☐ Fax
☐ Hand Delivered ☐ Overnight Courier
☐ Federal Express ☒ EDMS

Signature



FACTS

This case arises from a two vehicle crash which occurred on August 4, 2016, at approximately 7:15 a.m. the intersection of Mulberry and 10th Street in Des Moines, Polk County, Iowa. The Plaintiff was northbound on 10th Street. The Defendant was westbound on Mulberry. Both parties claim the other is at fault for the accident.

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. _____

100.1 Statement Of The Case. Members of the Jury: In this case Plaintiff, Carol Barth, claims Defendant, Patricia Hamand, was negligent in the operation of her motor vehicle and that such negligence was the cause of damages and injuries to the Plaintiff. Defendant, Patricia Hamand, denies that she was negligent.

The Plaintiff is asserting a claim against the Defendant for injuries and damages sustained in the August 4, 2016, accident. The Defendant is not asserting any claims for injuries and damages against the Plaintiff.

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. __

100.2 Duties Of Judge And Jury, Instructions As Whole. 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. __

100.3 Burden Of Proof, Preponderance Of Evidence. 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. __

100.4 Evidence. 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. __

100.5 Deposition Testimony. 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. __

100.6 Interrogatories. 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.

JURY INSTRUCTION NO. __

100.9 Credibility Of Witnesses. 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. __

100.11 Hypothetical Question, Expert Testimony. 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. __

100.12 Opinion Evidence, Expert Witness. 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. __

100.15 Statements By A Party Opponent. You have heard evidence claiming Defendant, Patricia Hamand, 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 Defendant, Patricia Hamand, had made it under oath during the trial.

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

JURY INSTRUCTION NO. __

100.18 General Instruction To Jury. 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. __

100.21 Cautionary Instruction - Juror's Notes. 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. ____

200.1 Elements - Personal Injury. 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 \$22,462.04.

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. __

200.37. Standard Mortality Table.

A Life Expectancy Table indicate 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. __

200.32 Aggravation of Pre-Existing Condition. If you find Plaintiff, Carol Barth, had prior similar neck or headache issues before this incident and these problems were 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. __

200.34 Previous Inform Condition. 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. ____

200.38 Quotient Verdict. 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.: __

400.1 Fault-defined. 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.: __

400.2 Comparative Fault. 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.: __

400.3 Comparative Fault – Effects of Verdict. 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. __

600.7. Control – Common Law. 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. __

600.36. Traffic Control Signals. 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.

4. Vehicles facing a signal displaying a green arrow light alone or with another official control signal may cautiously enter the intersection and go in the direction indicated by the arrow, but shall yield the right of way to other vehicles and pedestrians

lawfully within the intersection. Stopping means stopping at the first opportunity at either the clearly marked stop line or before entering the cross-walk or before entering the intersection.

A violation of this law is negligence.

JURY INSTRUCTION NO. __

600.71. Right of Assumption. 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. __

600.72. Lookout. “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. __

700.1 Essentials for Recovery. 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.

700.2 Ordinary Care – Common Law Negligence – Defined. “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. __

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

JURY INSTRUCTION NO. __

700.3A Scope of Liability - Defined. You must decide whether the claimed harm to Plaintiff is within the scope of Defendant's liability. The Plaintiff's claimed harm is within the scope of Defendant's liability if that harm arises from the same general types of danger that the Defendant should have taken reasonable steps to avoid.

Consider whether repetition of Defendant's 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.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CAROL ANN BARTH, Plaintiff, vs. PATRICIA MARGARET HAMAND, Defendant.	CASE NO.: LACL141744 VERDICT
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We find the following verdict on the questions submitted to us:

Question No. 1: Was the Defendant, Patricia Hamand, at fault? Check: 'yes' or 'no'

ANSWER: YES: _____ NO: _____

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

Question No. 2: Was the fault of Defendant, Patricia Hamand, a cause of any item of damage to the Plaintiff, Carol Barth? Check: 'yes' or 'no'

ANSWER: YES: _____ NO: _____

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

Question No. 3: Was any item of damage to the Plaintiff, Carol Barth, within the scope of Defendant, Patricia Hamand's, liability?

Check: 'yes' or 'no'

ANSWER: YES: _____ NO: _____

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

Question No. 4: Was the Plaintiff, Carol Barth, at fault? Check: 'yes' or 'no'

ANSWER: YES: _____ NO: _____

If your answer is "no," do not answer questions 5 or 6.

Question No. 5: Was the Plaintiff, Carol Barth's, fault a cause of any damage to the Plaintiff?

Check: 'yes' or 'no'

ANSWER: YES: _____ NO: _____

If your answer is "no," do not answer question 6.

Question No. 6: Was any item of damage to the Plaintiff, Carol Barth, within the scope of Plaintiff's liability? Check: 'yes' or 'no'

ANSWER: YES: _____ NO: _____

If your answer is "no," do not answer question 7.

Question No. 7: Using 100% as the total combined fault of Plaintiff and Defendant which was a cause of Plaintiff's damages and within the scope of liability, what percentage of such combined fault do you assign to the Plaintiff and what percentage of such combined fault do you assign to the Defendant?

ANSWER: Plaintiff: _____ %
Defendant: _____ %
TOTAL: _____ 100%

If you find Plaintiff to be more than 50% at fault, do not answer Question No. 8.

Question No. 8:

State the amount of damages sustained by the Plaintiff, Carol Barth, caused by Defendant, Patricia Hamand's, negligence [and within the scope of Defendant's liability] as to each of the following items of damage. If the Plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by Defendant, Patricia Hamand's, negligence, [or was within the scope of Defendant's liability] enter 0 for that item. Do not take into consideration any reduction of damages due to the Plaintiff's fault.

- | | |
|------------------------------|--------------------------------------|
| 1. Past medical expenses | \$ _____ [not to exceed \$22,462.04] |
| 2. Future medical expenses | \$ _____ |
| 3. Past pain and suffering | \$ _____ |
| 4. Future pain and suffering | \$ _____ |

5. Past loss of function	\$ _____
6. Future loss of function	\$ _____
7. Past loss of wages	\$ _____
8. Future loss of wages	\$ _____
 TOTAL (add all damages)	 \$ _____

Head Juror*

Dated this _____ day of January, 2020.

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after 6 hours or more of deliberating.