

## IN THE IOWA DISTRICT COURT FOR APPANOOSE COUNTY

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VANESSIA I. ODEN, and  
STEVEN P. WIDMAR, Individuals,

Plaintiffs,

vs.

5 POINT 5 HUNT CLUB LLC, and  
BRIAN MANN,

Defendants.

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No: LALA 002481

JURY INSTRUCTIONS

Statement of the case:

Members of the Jury: In this case the plaintiffs, Vanessa Oden and Steven Widmar, claim that their acreage was damaged by a fire set by the defendant on February 17, 2017. The defendant, Mr. Mann, individually and behalf of his company, 5 Point 5 Hunt Club, admits that he set the fire on February 17, 2017 and that the fire caused damages to the plaintiffs. The parties disagree over the value of Plaintiffs' claimed damages.

Do not consider this summary proof of any claim. Decide the facts from the law I will now give you.

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

**Authority**

Iowa Civil Jury Instruction 100.2

## JURY INSTRUCTION NO. 2

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.

**Authority**

Iowa Civil Jury Instruction 100.3

## JURY INSTRUCTION NO. 3

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; and
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; and
4. Anything you saw or heard about this case outside the courtroom.

**Authority**

Iowa Civil Jury Instruction 100.4

## JURY INSTRUCTION NO. 4

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.

**Authority**

Iowa Civil Jury Instruction 100.9

## JURY INSTRUCTION NO. 5

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.

Authority

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930).

Iowa Civil Jury Instruction 100.12

## JURY INSTRUCTION NO. 6

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.

## Authority

Cody v. Toller Drug Co., 232 Iowa 475, 5 N.W.2d 824 (1942)

Iowa Civil Jury Instruction 100.11

## INSTRUCTION NO. 7

A corporation is liable for the negligent acts of an officer, agent or employee if the acts are done in the scope of the employment.

## Authority

Bethards v. Shivvers, Inc., 355 N.W.2d 39 (Iowa 1984)  
Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966)  
Iowa Civil Jury Instruction 730.1



## INSTRUCTION NO.8

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. There is no dispute in this case that Mr. Mann was acting on behalf of 5 Point 5 Hunt Club. For purposes of this trial the two defendants are treated as one entity.

## Authority

Merchants National Bank of Cedar Rapids v. Waters, 447 F.2d 234 (8th Cir. 1971)  
Sandman v. Hagan, 261 Iowa 560, 154 N.W.2d 113 (1967)  
Iowa Civil Jury Instruction 730.2 (as modified)

## INSTRUCTION NO. 9

The fact that Defendant 5 Point 5 Hunt Club is a business entity 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. 10

The plaintiffs claim that the defendant was at fault in starting the fire on February 17, 2017. The defendant admits he was at fault in starting that fire. The defendant also admits that he caused damages in some amount. The plaintiffs must prove all of the elements of proof:

1. The defendant is at fault. This element has been conceded by the defendant.
2. The defendant's fault was the cause of damage to the plaintiffs. This element has been conceded by the defendant.
3. The amount of damages. This element is disputed between the parties.

Authority:

Iowa Civil Jury Instruction 400.5

## INSTRUCTION NO. 11

In awarding damages, your goal is to put Plaintiffs in as favorable of a position (not more or less favorable) as they would be in if the fire had not occurred. You shall consider the following factors in determining damages:

- (a) The cost of restoration of the affected land which has been or may be reasonably incurred;
- (b) the loss of use of the affected land;
- (c) the fair market value of the affected land before and after the loss occurred.

The amount you assess for damages 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. 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.

## INSTRUCTION NO. 12

The cost of restoration is the cost which has been or may be reasonably incurred to replace the affected land to its original position.

## AUTHORITY:

Restatement (First) of Torts § 929, comment b (1939)  
Bangert v. Osceola County, 456 N.W.2d 183, 191 (Iowa 1990)

## INSTRUCTION NO. 13

The loss of use of the land is compensation for the past or prospective loss of use caused by the defendant's wrong as far as this has not been included in the other elements of damages.

## AUTHORITY:

Restatement (First) of Torts § 929, comment f (1939)

## INSTRUCTION NO. 14

“Fair market value” is defined as the agreed sale price between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of comparable property shall be taken into consideration in arriving at a property’s fair market value.

## INSTRUCTION NO. 15

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or percentage of fault and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.



## INSTRUCTION NO. 16

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

## JURY INSTRUCTION NO. 17

Upon retiring you shall select a presiding juror. 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.

**Authority**

Iowa Civil Jury Instruction 100.18

## INSTRUCTION NO. 18

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.

Iowa Civil Jury Instruction 100.21

## INSTRUCTION NO. 19

Smoking is prohibited in the jury room during deliberations. If a juror feels it necessary to smoke, the juror must leave the jury room and smoke in an area designated by the court attendant. During this juror's absence, the jury may not continue to deliberate, as all jurors must be present during deliberations.

## INSTRUCTION NO. 20

Occasionally after a jury retires to the jury room, the members have questions. Usually questions about instructions can be answered by carefully re-reading them. One question sometimes asked relates to whether or not the jurors can obtain a copy of a transcript of the testimony. You must rely upon your memory of the evidence as there is no transcript available.

If, however, any of you feel it necessary to ask any question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes considerable time before I can reply. Keep the written question and response and return it to the Court with the verdict.

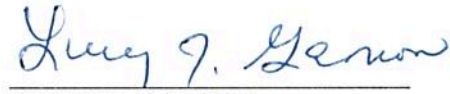
## INSTRUCTION NO. 21

I am giving you a 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 presiding juror.

After deliberating for six hours from 9:45 o'clock A.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 Court Attendant.

Dated this 1<sup>st</sup> day of August, 2019.

  
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LUCY J. GAMON  
District Court Judge