

IN THE IOWA DISTRICT COURT FOR APPANOOSE COUNTY

<p>VANESSIA I. ODEN and STEVEN P. WIDMAR, Individuals,</p> <p>Plaintiff,</p> <p>v.</p> <p>5 POINT 5 HUNT CLUB LLC AND BRIAN MANN,</p> <p>Defendants.</p>	<p>File No: LALA002481</p> <p>DEFENDANTS' PROPOSED JURY INSTRUCTIONS</p>
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COME NOW Defendants 5 Point 5 Hunt Club LLC and Brian Mann, and in the event the Court determines that any claims are submissible, respectfully requests that the following instructions and verdict form be provided to the jury.

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INSTRUCTION NO. _____

Statement Of The Case.

Members of the Jury: On February 17, 2017, Defendant Brian Mann attempted a controlled burn on the property of Five Point Five Hunt LLC, which spread onto the property of Plaintiffs Vanessa Oden and Steven Widmar. Defendants admit that the fire was their fault and that the fire caused property damage. Defendants deny, however, that they willfully damaged Plaintiffs trees and the extent of Plaintiffs' claimed damages.

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.

Authority: Iowa Jury Inst. 100.1

INSTRUCTION NO. _____

Corporate Party. The fact that Defendant 5 Point 5 Hunt Club is a business entity should not affect your decision. All person 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.

Authority: Iowa Jury Inst. 100.20

INSTRUCTION NO. _____

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.

Authority: Iowa Jury Inst. 100.2

INSTRUCTION NO. _____

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.

Authority: Iowa Jury Inst. 100.3

INSTRUCTION NO. _____

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 as evidence (e.g. answers to interrogatories, matters as to 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, 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.

Authority: Iowa Jury Inst. 100.4

INSTRUCTION NO. _____

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.

Authority: Iowa Jury Inst. 100.6

INSTRUCTION NO. _____

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.

Authority: Iowa Jury Inst. 100.9

INSTRUCTION NO. _____

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.

Authority: Iowa. Jury Inst. 100.12; *Crouch v. National Livestock Remedy Co.*, 210 Iowa 849, 231 N.W. 323 (1930).

INSTRUCTION NO. _____

Statements By A Party Opponent. You have heard evidence claiming Plaintiffs 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 Plaintiffs made it under oath during the trial.

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

Authority: Iowa Jury Inst. 100.15

INSTRUCTION NO. _____

Use of Electronic Devices.

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.

Authority: Iowa Jury Inst. 100.23

INSTRUCTION NO. _____

Essentials For Recovery.

To recover damages in this case, Plaintiffs must prove all of the following propositions:

1. Defendants' conduct was a proximate cause of Plaintiffs' damages.
2. The amount of damages.

If Plaintiffs have failed to prove either of these propositions, they are not entitled to damages.

Authority: Iowa Jury Inst. 1440.1; 400.5

INSTRUCTION NO. _____

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

Authority: Iowa Jury Inst. 700.3

INSTRUCTION NO. _____

Elements – Property Damage. If you find Plaintiffs are entitled to recover 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. In reaching your determination, you shall consider the following items:

1. The fair market value of the Plaintiffs' property immediately before the fire.
2. The fair market value of the Plaintiffs' property immediately after the fire.

The difference between these two dollar amounts will equal the damage award necessary to put Plaintiffs back in their pre-fire financial position.

Authority: Zech v. Klemme, 803 N.W.2d 128 (Table), 2011 WL 2556080 (Iowa Ct. App. 2011).
See also Iowa Jury Inst. 200.4, 200.5

INSTRUCTION NO. _____

Elements – Fair Market Value -- Defined. “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.

Authority: Iowa Code § 441.21.

INSTRUCTION NO. _____

Damages – Willful Injury. The Court will adjust the amount of damages that you award if you find that Defendants “willfully” injured any timber or trees on Plaintiffs property. (**Do not** consider any potential adjustment in arriving at any damage amount.) “Willfully” means intentionally and deliberately, without regard to the rights of others and without reasonable excuse. Accidental conduct is not willful.

Authority: Iowa Code § 658.4; *Bangert v. Osceola County*, 456 N.W.2d 183, 188 (Iowa 1990) (citing *Cozad v. Strack*, 119, N.W.2d 266, 271 (1963)); *Lackman v. Muff*, 2015 WL 1848602, at *5 (Iowa Ct. App. 2015) (unpublished); *Drew v. Lionberger*, 508 N.W.2d 83, 86 (Iowa Ct. App. 1993); *Hurley v. Youde*, 503 N.W.2d 636, 27-28 (Iowa 1993).

INSTRUCTION NO. _____

Quotient Verdict. 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.

Authority: Iowa Jury Inst. 200.38

INSTRUCTION NO. _____

General Instruction To Jury. 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.

Authority: Iowa Jury Inst. 100.18

INSTRUCTION NO. _____

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.

Authority: Iowa Jury Inst. 100.21

INSTRUCTION NO. _____

Return Of Verdict - Forms Of Verdict. 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 form 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 form must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

Authority: Iowa Jury Inst. 300.1

IN THE IOWA DISTRICT COURT FOR APPANOOSE COUNTY

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

Plaintiff,

v.

5 POINT 5 HUNT CLUB LLC AND BRIAN
MANN,

Defendants.

File No: LALA002481

VERDICT FORM

We find the following verdict on the questions submitted to us:

Question No. 1: State the amount of property damage sustained by Plaintiffs and caused by Defendants' conduct.

Answer: \$ _____

Question No. 1: Did Defendants willfully injure Plaintiffs' timber or trees?

Answer "yes" or "no."

Answer: _____

Head Juror*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

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