

IN THE IOWA DISTRICT COURT FOR APPANOOSE COUNTY

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

Plaintiffs,

vs.

5 POINT 5 HUNT CLUB LLC AND BRIAN
MANN,

Defendants.

File No: LALA002481

PLAINTIFFS' PROPOSED JURY
INSTRUCTIONS

COME NOW Plaintiffs Vanessa I. Oden and Steven P. Widmar, and provide the Court
with the following Proposed Jury Instructions.

Dated this 26th day of July, 2019.

Respectfully submitted,

GREFE & SIDNEY, P.L.C.

By /s/ Mark W. Thomas.

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ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE

The undersigned certified that the foregoing instrument was served upon all parties to the above cause by service upon each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 26th day of July, 2019 pursuant to electronic filing procedures.

Signature: /s/ Mark W. Thomas

INSTRUCTION NO. ____

Members of the Jury: In this case the plaintiffs, Vanessa Oden and Steven Widmar claim that their acreage was damaged by a fire intentionally 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 the loss sustained by the plaintiffs, and also over whether or not treble damages should be awarded in this instance.

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

Authority

Iowa Civil Jury Instruction 100.1

JURY 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.

Authority

Iowa Civil Jury Instruction 100.2

JURY 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.

Authority

Iowa Civil Jury Instruction 100.3

JURY 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; 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. _____

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.

Authority

Iowa Civil Jury Instruction 100.5

JURY 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.

Authority

Iowa Civil Jury Instruction 100.6

JURY 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.

Authority

Iowa Civil Jury Instruction 100.9

JURY INSTRUCTION NO. _____

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.

Authority

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

Iowa Civil Jury Instruction 100.11

JURY 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

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

Iowa Civil Jury Instruction 100.12

JURY INSTRUCTION NO. _____

Statements By A Party Opponent. You have heard evidence claiming Brian Mann made statements before this trial 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 Brian Mann had made it under oath during the trial.

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

Authority:

Iowa Civil Jury Instruction 100.15

JURY 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.

Authority

Iowa Civil Jury Instruction 100.18

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.

Iowa Civil Jury Instruction 100.21

INSTRUCTION NO. _____

Willful and Wanton - Defined. Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Authority

Fell v. Kewanee Farm Equipment Co., 457 N.W.2d 911 (Iowa 1990)

Kosmacek v. Farm Service Coop of Persia, 485 N.W.2d 99 (Iowa App. 1992)

Iowa Civil Jury Instruction 210.4

INSTRUCTION NO. _____

Fault - Defined. In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards [the person] [the property] of the actor or of another which constitutes [negligence] [recklessness] [subjects a person to strict tort liability] [breach of warranty] [unreasonable assumption of risk not constituting an enforceable express consent] [misuse of a product for which the defendant otherwise would be liable] [unreasonable failure to avoid an injury] [unreasonable failure to mitigate damages].

Authority

Iowa Code section 668.1

Iowa Civil Jury Instruction 400.1

INSTRUCTION NO. _____

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 grounds of fault have been explained to you in other instructions. The plaintiff must prove all of the following propositions:

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

Authority:

Iowa Civil Jury Instruction 400.5

INSTRUCTION NO. _____

Proximate Cause - Defined. The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

Authority

Gertst v. Marshall, 549 N.W.2d 810 (Iowa 1996)

Benn v. Thomas, 512 N.W.2d 537, 538-40 (Iowa 1994)

Walker v. Mlaker, 489 N.W.2d 401 (Iowa 1992)

Kelly v. Sinclair Oil Corp., 476 N.W.2d 341 (Iowa 1991)

Jones v. City of Des Moines, 355 N.W.2d 49 (Iowa 1984)

Iowa Civil Jury Instruction 700.3

INSTRUCTION NO. _____

Liability Of Employer. 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. _____

Scope of Employment. 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 not 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. ____

If you find Vanessa Oden and Steven Widmar are entitled to recover damages, you shall consider the following items:

- (a) The cost of restoration which has been or may be reasonably incurred;
- (b) the loss of use of the land; and
- (c) discomfort and annoyance

The amount you assess for discomfort and annoyance 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.

Authority:

Restatement (First) of Torts § 929 (1939)

Iowa Civil Jury Instruction 200.1 (as modified)

INSTRUCTION NO. ____

The cost of restoration is the cost which has been or may be reasonably incurred to replace the 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. ____

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)

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MANN,

Defendants.

File No: LALA002481

VERDICT FORM

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

Question No. 1: What is the amount, if any, that you find for the restoration conducted or to be conducted on the property?

ANSWER: _____

Question No. 2: What is the amount, if any, that you find for plaintiffs' loss of use of the property?

ANSWER: _____

Question No. 3: What is the amount, if any, that you find for plaintiffs' discomfort and annoyance?

ANSWER: _____

Question No. 4: Do you find that the defendant acted intentionally and deliberately without regard to the rights of others?

Answer “yes” or “no.”

ANSWER: _____

Question No. 5: What value do you place on the loss of the trees sustained by the plaintiffs as a result of the fire or the damage continuing thereafter?

ANSWER: _____

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

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