

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**PATRICIA KERNS,****Plaintiff,****v.****ANDREW GARDNER,****Defendant.****CASE NO. LACL151510****FINAL JURY INSTRUCTIONS**

JURY INSTRUCTION 1

Members of the Jury:

This case arises out of an automobile accident occurring on December 17, 2019, involving vehicles being driven by Plaintiff Patricia Kerns and Defendant Andrew Gardner. Plaintiff claims Defendant was negligent in the operation of his vehicle and that negligence was the cause of damages to Plaintiff. The Defendant admits he was negligent in the operation of his vehicle but denies Plaintiff was injured in the nature and to the extent as alleged.

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 2

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

JURY INSTRUCTION 3

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 4

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

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 pretrial 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 are 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 ruling on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside this courtroom.

JURY INSTRUCTION 5

Certain deposition testimony has read into evidence. 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 6

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 the 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 7

You have heard evidence claiming the Plaintiff, Patricia Kerns, and Defendant, Andrew Gardner, made statements before this trial.

If you find such statement was made, you may regard the statement as evidence in this case the same as if a party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that party's testimony during the trial but you are not required to do so.

You should not disregard that party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

JURY INSTRUCTION 8

The Defendant admits that he was negligent, and that his negligence was the sole cause of the collision at issue here.

The Plaintiff must prove both of the following propositions:

1. The negligence was a cause of injury to the Plaintiff; and
2. The amount of damages.

If the Plaintiff has failed to prove either of these propositions, the Plaintiff is not entitled to damages for Defendant's negligence. If the Plaintiff has proven both of the foregoing propositions, the Plaintiff is entitled to damages in some amount from the Defendant.

JURY INSTRUCTION 9

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

JURY INSTRUCTION 10

In determining the nature and extent of Plaintiff's damages, you shall consider the following items:

Past Physical and Mental Pain and Suffering. 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 it 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 cannot be measured by any exact or mathematical standard. You should 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 the Defendant as proved by the evidence.

The amounts, if any, you find for the above item will be used to answer the verdict question.

JURY INSTRUCTION 11

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 12

Upon retiring you shall select a foreperson. It will be that person's 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 their 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 13

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 14

Occasionally, during jury deliberations, jurors may have questions for the court, particularly about the instructions. I have prepared the instructions after carefully considering the facts of this case, researching the law and discussing them with the lawyers. I have tried to use language which is generally understandable. Usually questions about the instructions can be answered by carefully re-reading them. If after doing so, however, you still feel it necessary to ask the court a question, you must submit it in writing and deliver the question to the judicial assistant, who will deliver it to the court.

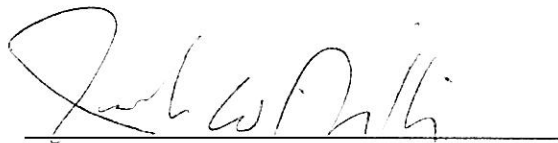
I cannot communicate with you until first discussing your question and the potential response with the lawyers, which will naturally take time before I can reply. Once the court's answer is received in the jury room, the jury foreperson shall read the court's response to the jury. You are to keep any written question and response and return it to the court with the verdict.

JURY INSTRUCTION 15

I am giving you a verdict form and questions. 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 and interrogatories must be signed by your foreperson.

After deliberating for six hours from 10.02 o'clock 9 . m. on September 20, 2023, 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 and interrogatories must be signed by all seven jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, tell the Judicial Assistant.



Joseph W. Seidlin, Judge

10/16/23 10:01 AM
CLERK OF DISTRICT COURT