
IN THE IOWA DISTRICT COURT FOR HANCOCK COUNTY

KELLY LILLIE and RICHARD LILLIE,**Plaintiffs,****v.****HANCOCK COUNTY HEALTH
SYSTEM, d/b/a HANCOCK COUNTY
MEMORIAL HOSPITAL,****Defendant.****LAW NO. LACV020028****INSTRUCTIONS TO THE JURY**

STATEMENT OF THE CASE

Plaintiffs Kelly and Richard Lillie claim that Defendant Hancock County Health System, d/b/a Hancock County Memorial Hospital were negligent regarding snow and ice removal and that negligence caused Kelly Lillie's fall on February 22, 2021, and suffer damages.

The Defendant denies Plaintiffs' allegations and further contend Kelly Lillie's own negligence was a cause of her fall.

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.

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 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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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.

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.

Instruction No. 3

You shall base your verdict only upon the evidence and these instructions. Evidence is:

1. Testimony in person or by depositions.
2. Exhibits received by the Court.
3. Stipulations which are agreements between attorneys.
4. Any other matter admitted (e.g., answers to interrogatories, matters 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, 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 attorneys.
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.

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, some 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;
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

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's education and experience, the reasons given for the opinion, and all the other evidence in this case.

Instruction No. 6

An expert witness 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.

Instruction No. 7

You have heard evidence claiming one of the parties 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 the party or party's agent had made it under oath during the trial.

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

Instruction No. 8

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.

Instruction No. 9

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.

Instruction No. 10

The fact that a plaintiff or defendant is a corporation 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. 11

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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.

Instruction No. 12

In these instructions I will be using the term "fault." Fault means one or more acts or omissions towards the person or property of another which constitutes negligence, or unreasonable failure to avoid an injury.

"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.

Instruction No. 13

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

Instruction No. 14

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 Plaintiffs 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. Defendant Hancock County Health System and its agents or employees are to be treated as a single party for the purpose of determining their percentage of fault.

Instruction No. 15

The mere fact that an accident occurred or a party was injured does not necessarily mean a party was negligent or at fault.

Instruction No. 16

The Plaintiff Kelly Lillie must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. The defendant knew or in the exercise of reasonable care should have known:
 - a. the plaintiff would not discover the condition, or
 - b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
 - c. the plaintiff would not protect herself from the condition.
3. The defendant was negligent in;
 - a. failing to properly treat the parking lot for snow or ice, or
 - b. failing to clear the parking lot of snow or ice.
4. The negligence was a cause of the plaintiff's damage.
5. The nature and extent 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.

Instruction No. 17

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether the Defendant has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

Instruction No. 18

The owner of land must remove, within a reasonable amount of time, any snow and ice that has naturally accumulated on the sidewalk and parking lot. The owner must exercise ordinary care in removing the snow and ice.

The plaintiff must prove that the owner knew about the natural accumulation of snow and ice, or that it existed long enough for the owner to have discovered and removed it in the exercise of ordinary care.

The Defendant does not have to remove snow and ice from its sidewalks and parking lot during a storm. The Defendant is permitted to wait until the end of a storm, and have a reasonable time after the storm is over, to remove snow and ice from its sidewalks and parking lot.

Instruction No. 19

"Natural accumulation" refers to snow or ice which is on the sidewalk or parking lot as the result of nature, as compared to snow or ice which was caused to be on the sidewalk or parking lot as the result of something that a person has done.

Instruction No. 20

The owner of premises is presumed to know all conditions on the premises that are caused or created by the owner or the owner's employee. The owner of premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the owner had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the owner should have known about it.

Instruction No. 21

The Defendant claims the Plaintiff was at fault in one or more of the following particular(s):

1. Failure to maintain a proper lookout;
2. Failure to use designated sidewalks; and
3. Failure to follow warnings.

The Defendant must prove both of the following propositions:

1. The Plaintiff was at fault. In order to prove fault, the Defendant must prove one or more of the above particulars.
2. The Plaintiff's fault was a cause of the Plaintiff's damage.

If the Defendant failed to prove either of these propositions, the Defendant has not proved its defense. If the Defendant has proved both of these propositions, then you will assign a percentage of fault against the Plaintiff and include the Plaintiff's fault in the total percentage of fault found by you answering the verdict forms.

Instruction No. 22

"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 one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

Instruction No. 23

After you have compared the conduct of all parties, if you find the Plaintiff, Kelly Lillie, was at fault and the Plaintiff's fault was more than 50% of the total fault, Plaintiffs 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 Plaintiff's fault.

Instruction No. 24

If you find that the Plaintiff Kelly Lillie is entitled to recover damages, you shall consider the following items:

1. Future medical expenses. Future Medical Expenses are defined as the present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

If you find allow for future medical expenses, then you must make some allowance for future pain and suffering.
2. Past Physical and Mental Pain and Suffering. Past Physical and Mental Pain and Suffering is defined as 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.
3. Future Physical and Mental Pain and Suffering. Future Physical and Mental Pain and Suffering are defined as and calculated using the present value of future physical and mental pain and suffering.
4. Past Loss of Function of Full Mind and Body. Past loss of function of the full mind and body is defined as loss of function of the mind and body from the date of injury to the present time. Loss of function of the mind and body is the inability of a particular part of the mind and body to function in a normal manner.

5. Future Loss of Function of Full Mind and Body. Future loss of function of the full mind and body is defined as the present value of future loss of function of full mind and body.
6. Wage Loss. The reasonable value of lost wages from the date of injury to present.
7. Loss of Future Earning Capacity. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

The amount you assess for physical and mental pain and suffering in the past and future, and past and future loss of function of full mind and body 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 the Defendant 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. Add together the amounts, if any, you find for each of the above items and the total will be used to answer the questions on the verdict form.

Instruction No. 25

If you find Plaintiff had a pre-existing condition before this incident and this condition was 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 the defendant's actions.

Instruction No. 26

"Spousal consortium" is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry, and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find Richard Lillie is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Richard Lillie would otherwise have received from the date of injury until the present time.
2. The present value of loss of spousal consortium which Richard Lillie would otherwise have received in the future.

Damages for loss of spousal consortium are limited in time to the shorter of the spouse's normal life expectancy.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of injured spouse's life.
2. Injured spouse's age at the time of injured spouse's injury.
3. Injured spouse's health, strength, character, and life expectancy.
4. Injured spouse's capabilities and efficiencies in performing the duties of a spouse.
5. Injured spouse's skills and abilities in providing instructions, guidance, advice, and assistance.
6. The spouse's needs.
7. All other facts and circumstances bearing on this issue.

The amount you assess for loss of spousal consortium 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 the Defendant 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.

The amounts, if any, you find for each of the above items will be used to answer the verdict form.

Instruction No. 27

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Kelly Lillie is twenty (20) years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Kelly Lillie's health, habits, occupation, and lifestyle, when deciding issues of future damages.

Instruction No. 28

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.

Instruction No. 29

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 a percentage of fault, and agreeing in advance that the average of those estimate shall be your item of damage or percentage of fault.

Instruction No. 30

During the trial, you may have taken notes. You may take these with you to the jury room to use in your deliberations. But 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.

Instruction No. 31

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.

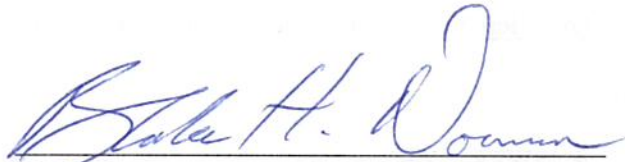
Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown 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.

Instruction No. 32

I am giving you a verdict form with six questions. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreperson.

After deliberating for six (6) hours from 1:03 o'clock P.M. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case the verdict must be signed by all seven jurors who are in agreement.

When you have agreed upon a verdict and appropriately signed it, inform the Court
Attendant

A handwritten signature in blue ink, reading "Blake H. Norman", written over a horizontal line.

Blake H. Norman
Judge of the Second Judicial District of Iowa