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FILED
DISTRICT COURT CARROLL CO
2018 FEB 23 PM 3:07

IN THE IOWA DISTRICT COURT FOR CARROLL COUNTY

REGION XII COUNCIL OF
GOVERNMENTS,

Plaintiffs,

vs.

GLENDA PUDENZ

Defendant.

NO. LACV039605

PROGRESSIVE UNIVERASAL
INSURANCE COMPANY, as subrogee of
GLENDA PUDENZ, and GLENDA
PUDENZ, Individually,

Counterclaim Plaintiffs,

vs.

REGION XII COUNCIL OF
GOVERNMENTS,

Counterclaim Defendant.

JURY INSTRUCTIONS

INSTRUCTION NO. 1

This case arises out of a motor vehicle collision that occurred on February 3, 2016. Plaintiff, Region XII Counsel of Governments, claims that Defendant, Glenda Pudenz, negligently operated her vehicle causing the collision. Plaintiff further claims that Defendant's negligence caused the damage to their vehicle for which they seek reasonable compensation.

Defendant denies the assertions made by Plaintiff and has filed a counterclaim against Plaintiff alleging that their employee, Winston Hubener, who was operating a vehicle owned by Plaintiff at the time of the collision, caused the collision as a result of his negligence and that Plaintiff is liable. Defendant further claims that she suffered damages including personal injury as a result of Plaintiff's negligence. Progressive Universal Insurance Company has joined the case as a subrogee of Glenda Pudenz.

Plaintiff denies the assertions made by the defendant and denies that the plaintiff's medical treatment and damages following the incident, if any, were not a proximate cause of the collision.

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. 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.

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

INSTRUCTION NO. 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.

INSTRUCTION NO. 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 (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.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

Certain testimony has been read into evidence from a deposition or presented via video. 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. 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 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.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

The fact that Progressive Universal Insurance Company is a corporation should not affect your decision. The fact that Region XII Council of Governments is a not for profit corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, for profit or not for profit, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 9

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. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 10

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person or the property of a party which constitutes negligence.

INSTRUCTION NO. 11

"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. 12

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

INSTRUCTION NO. 13

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 plaintiff, Region XII and Winston Hubener, and the defendant, Glenda Pudenz 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. Region XII and Winston Hubener are to be treated as a single party for the purpose of determining their percentage of fault.

INSTRUCTION NO. 14

The plaintiff, Region XII, claims the defendant, Glenda Pudenz, was at fault. The plaintiff must prove all of the following propositions:

1. The defendant, Glenda Pudenz, was at fault in one or more of the following propositions:

- a. In stopping in the traveled portion of the roadway; and
- b. In improperly backing a vehicle on a highway;

2. Glenda Pudenz's fault was a cause of each of the plaintiffs' damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved both of these propositions, then you will assign a percentage of fault against Glenda Pudenz and include Mr. Hubener's fault, if any, in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. 15

No person shall drive a vehicle on a highway in reverse unless it can be done with reasonable safety. The driver shall yield the right of way to any approaching vehicle on the highway or intersecting highway which is close enough to constitute an immediate danger.

A violation of this law is negligence.

INSTRUCTION NO. 16

A driver of a vehicle shall not stop any vehicle, whether attended or unattended upon the main traveled part of the highway when it is practical to stop off the highway. A clear and unobstructed width of at least twenty feet of the part of the highway opposite the standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicle must be available from a distance of two hundred feet in each direction.

A violation of this law is negligence.

INSTRUCTION NO. 17

The defendant, Glenda Pudenz, claims that Winston Hubener was at fault and that Region XII is vicariously liable for their damages. Glenda Pudenz must prove all of the following propositions:

1. Winston Hubener was at fault in one or more of the following propositions:
 - a. failing to keep a proper lookout;
 - b. in failing to have his vehicle under control;
 - c. in failing to stop within an assured clear distance;
 - d. in failing to operate his vehicle in a reasonable and safe manner; and
 - e. if failing to use ordinary care where conditions require less than statutory speed.
2. Winston Hubener's fault was a proximate cause of Ms. Pudenz's damage.
3. The amount of damage.

If Ms. Pudenz has failed to prove any of these propositions, she is not entitled to damages. If she has proved all of these propositions, then you will assign a percentage of fault against Winston Hubener and include Ms. Pudenz's fault, if any, in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. 18

"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 the operation of the driver's vehicle in relation to what the driver saw or should have seen. [A driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver's actions may be dangerous to others.]

A violation of this duty is negligence.

INSTRUCTION NO. 19

A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

INSTRUCTION NO. 20

No person shall drive any vehicle on a highway at a speed greater than will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen.

A violation of this law is negligence.

INSTRUCTION NO. 21

Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this law is negligence.

INSTRUCTION NO. 22

Road conditions may be such that speed should be less than the legal limit. Traffic laws call for the minimum of care and not the maximum. A driver should not operate a vehicle up to the legal speed limit of 55 mph if the circumstances are such that ordinary care requires a lesser speed.

A violation of this law is negligence.

INSTRUCTION NO. 23

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

INSTRUCTION NO. 24

If you find Glenda Pudenz is entitled to recover damages, you shall consider the following items:

1. **Vehicle Damage;**
2. **Past Medical Expenses;**
3. **Loss Of time – Earnings;**
4. **Loss Of Full Mind And Body – Past;**
5. **Physical And Mental Pain And Suffering – Past;**

The amount you assess for physical and mental pain and suffering, loss of function of the mind and/or 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 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.

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

Past medical expenses

INSTRUCTION NO. 25

are

The reasonable value of necessary hospital charges, doctor charges, prescriptions and other medical services from the date of injury to the present time.

Loss of time is

INSTRUCTION NO. 26

The reasonable value of lost wages from the date of injury to the present time.

Loss of full mind
and body, past, is

INSTRUCTION NO. 27

/ Loss of function of the mind and/or body from the date of injury to the present time.

Loss of mind and/or ^{body} is the inability of a particular part of the mind and/or body to function in a normal manner.

INSTRUCTION NO. 28

Physical and mental pain and suffering^{is} 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.

INSTRUCTION NO. 29

If you find Glenda Pudenz had a chronic headache or migraine condition before this incident and this condition was aggravated or made active 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 plaintiff's actions.

INSTRUCTION NO. 30

If Glenda Pudenz had chronic headache or migraines making her more susceptible to injury than a person in normal health, then the plaintiff is responsible for all injuries and damages which are experienced by Glenda Pudenz proximately caused by plaintiff's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

INSTRUCTION NO. 31

The law provides that where damage is done by any motor vehicle by reason of the negligence of that driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage. By reason of this law, Region XII is liable for damage caused by the negligence, if any, of its driver, Winston Hubener.

INSTRUCTION NO. 32

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.

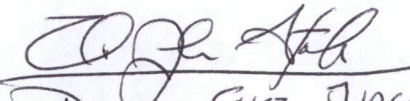
INSTRUCTION NO. 33

Return of Verdict - Forms of Verdict. I am giving you 1 verdict forms. During the first three 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 foreman or forewoman.

After deliberating for three hours from 1:00 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only five of you agree upon the answers to the questions. In that case, the verdict must be signed by all five jurors who agree.

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

33 instruction and Verdict with 7 questions
given to the jury at 1:00pm on February 23, 2018.


DISTRICT COURT JUDGE

INSTRUCTION NO. 34

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

Question No. 1: Was Glenda Pudenz at fault?

Answer "yes" or "no."

ANSWER: yes

[If your answer is "no," skip ahead to Question No. 4.]

Question No. 2: Was the fault of Glenda Pudenz a cause of Region XII's property damage?

Answer "yes" or "no."

ANSWER: yes

Question No. 3: State the amount of damages sustained by Region XII.

**Property Damage \$29,675.00

Question No. 4: Was Winston Huebner at fault?

Answer "yes" or "no."

ANSWER: NO

[If your answer is "no," do not answer any further questions]

Question No. 5: Was the fault of Winston Huebner a cause of any item of damage to Glenda Pudenz?

Answer "yes" or "no."

ANSWER: _____

[If your answer to Question No. 5 is "no," do not answer any further questions.]

Question No. 6: What percentage of the total fault, if any, do you attribute to Glenda Pudenz and what percentage of the total fault, if any, do you attribute to Winston Hubener? The percentages must total 100%.

ANSWER:

Winston Hubener/Region XII	_____	%
Glenda Pudenz	_____	%
TOTAL	100	%

[If you find Ms. Pudenz to be more than 50% at fault, do not answer Question No. 7.]

Question No. 7. State the amount of damages sustained by Ms. Pudenz by Region XII's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to Ms. Pudenz's fault. If Ms. Pudenz has failed to prove any item of damage, or has failed to prove that any item of damage was caused by Region XII's fault, enter 0 for that item.

*1. Past medical expenses \$ _____

2. Past pain and suffering \$ _____

3. Past lost function \$ _____

4. Past lost wages \$ _____

**5. Property damage \$ _____

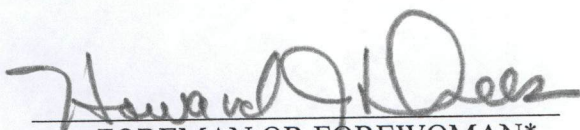
TOTAL (add the separate items of damage) \$ _____

*The parties have agreed that if you find that Glenda Pudenz's injuries are causally related to the February 3, 2016, motor vehicle accident her past medical expenses total ~~\$8,843.03~~ ^{\$10,332.67}

**The parties have agreed that if you find that either party is entitled to recover property damage the damages are as follows:

Region XII: \$29,675.00

Progressive Insurance Company as Subrogee of Glenda Pudenz: \$6,278.89



FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing to it after three (3) hours or more of deliberation.