

In the Iowa District Court for Story County

RICKY LOVE,

Plaintiff,

No. 02851 LACV051012

vs.

LISA FLYGSTAD,

Defendant.

**PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS**

COMES NOW the Plaintiff and hereby submits, prior to trial, the proposed jury instructions attached hereto. Plaintiff respectfully reserves the right to submit supplemental or alternative instructions to conform to the issues and proof presented at trial.

Respectfully submitted,

Dated February 4, 2020.

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Amanda Hassid

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Attorney for Plaintiff

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 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:

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

I.C.J.I. 100.2

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.

Authority:

Mabrier v. A.M. Servicing Corporation of Ravtown, 161 N.W.2d 180 (1968)

I.C. J.I. 100.3

INSTRUCTION NO. 3

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.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority:

I.C.J.I. 100.4

INSTRUCTION NO. 4

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:

I.C.J.I. 100.6

INSTRUCTION NO. 5

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:

I.C.J.I. 100.9

INSTRUCTION NO. 6

Conduct is a factual cause of an injury when the injury would not have occurred in the absence of the conduct.

Authority:

Thompson v. Kaszinski, 774 N.W.2d 829 (Iowa 2009)

I.C.J.I. 700.3

INSTRUCTION NO. 7

"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.

Authority:

Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992)
Schalk v. Smith, 224 Iowa 904, 277 N.W. 303 (1938)

INSTRUCTION NO. 8

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.

Authority:

I.C.J.I. 600.1

Iowa Code §321.285

INSTRUCTION NO. 9

"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. Duty to maintain a proper lookout includes the duty to stop if a driver has lost visibility entirely.

A violation of this duty is negligence.

Authority:

I.C.J.I. 600.72

Matuska v. Bryant, [260 Iowa 726](#), [150 N.W.2d 716](#) (1967)

Coulthard v. Keenan, [256 Iowa 890](#), [129 N.W.2d 597](#) (1964).

INSTRUCTION NO. 10

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.

This duty is not diminished by blizzard conditions, darkness of night or presence of a fog or rain or similar conditions. The assured clear distance constantly changes as the motorist proceeds and is measured at any moment by the distance between the motorist's vehicle and the limit of his vision ahead, or by the distance between the motorist's vehicle and any intermediate discernible object in the highway ahead constituting obstruction in the motorist's proper lane of travel.

A violation of this law is negligence.

Authority:

I.C.J.I. 600.3, as amended pursuant to case law (*Ruan Transport*)

Iowa Code §321.285

Ruan Transport Corp. v. Jacobs, 216 N.W.2d 182 (Iowa 1974).

INSTRUCTION NO. 11

A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

Authority:

I.C.J.I. 600.7

Matuska v. Bryant, 260 Iowa 726, 150 N.W.2d 716 (1967)

INSTRUCTION NO. 12

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.

Authority

I.C.J.I. 600.9

Richards v. Begenstos, 237 Iowa 398, 408; 21 N.W.2d 23 (1945)

Iowa Code section 321.285

INSTRUCTION NO. 13

The Plaintiff Ricky Love must prove all of the following propositions:

1. The Defendant Lisa Flystad was negligent in one or more of the following ways:
 - a. In failing to exercise reasonable care; or
 - b. In failing to operate her vehicle in a reasonable and proper manner, or;
 - c. In failing to operate her vehicle at a speed that would permit her to stop within the assured clear distance ahead; or
 - d. In failing to keep a proper lookout, or;
 - e. In failing to have her vehicle under control.
2. The negligence was a cause of damage to the Plaintiff Ricky Love.
3. The amount of damage to Plaintiff Ricky Love.

If the Plaintiff Ricky Love has failed to prove any of these propositions, then the Plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, then the Plaintiff is entitled to damages in some amount.

Authority:

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)

Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985)

Bauman v. City of Waverly, 164 N.W.2d 840 (Iowa 1969)

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

INSTRUCTION NO. 14

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

1. Past medical expenses. Past medical expenses are defined as the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

If you find allow for past medical expenses, then you must make some allowance for past pain and suffering.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

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.

Authority:

I.C.J.I. 200.1

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)

Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa App. 1977)

I.C.J.I. 200.12

Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004)

Worez v. Des Moines City Ry. Co., 175 Iowa 1, 156 N.W. 867 (1916)

Elzig v. Bales, 135 Iowa 208, 112 N.W. 540 (1907)

Cowen v. Flannery, 461 N.W.2d 155 (Iowa 1990)

I.C.J.I. 200.6

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

Zach v. Morningstar, 258 Iowa 1365, 142 N.W.2d 440 (1966)

Cowen v. Flannery, 461 N.W.2d 155 (Iowa 1990)

I.C.J.I. 200.7

Iowa Code § 624.18 (2), 668.3(b)

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

I.C.J.I. 200.13B

I.C.J.I. 200.10

I.C.J.I. 200.11B

I.C.J.I. 200.9

Bergquist v. Mackay Engines, Inc., 538 N.W.2d 655 (Iowa App. 1995)

Truscheff v. Abell-Howe Company, 239 N.W.2d 116 (Iowa 1976)

Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)

INSTRUCTION NO. 15

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. 16

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

Authority:

I.C.J.I. 200.37

INSTRUCTION NO. 17

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:

I.C.J.I. 100.21

INSTRUCTION NO. 18

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.

Authority:

I.C.J.I. 100.23

INSTRUCTION NO. 19

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:

I.C.J.I. 100.18

INSTRUCTION NO. 20

I am giving you one verdict form. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreman or forewoman.

After deliberating for six (6) 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 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.

Authority:

I.C.J.I. 300.1

INSTRUCTION NO. 21

If you find Rick Love had an existing injury to his neck before this incident and this condition was made active by this incident causing suffering and/or disability, then he is entitled to recover damages caused by the aggravation. Rick Love is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which he now has which were not caused by the defendant's actions.

However, an exception to the above rule applies if the pre-existing condition was asymptomatic before the incident and Rick Love has proven that it is not possible to apportion the pre-existing injury from the injury in this case.

Authority:

I.C.J.I. 200.32

Becker v. D & E Distributing Company, 247 N.W.2d 727 (Iowa 1976)

NOTE: Plaintiff in particular reserves the right to request an amended version of the aggravation or eggshell instruction or to delete those instructions altogether after hearing the evidence.