

**IN THE IOWA DISTRICT COURT FOR HUMBOLDT COUNTY**

<p>MARK A. DICKEY, TRUSTEE OF MARK A. DICKEY REVOCABLE TRUST, MARK A. DICKEY, AND ELIZABETH DICKEY,</p> <p align="center">Plaintiffs,</p> <p>vs.</p> <p>MITCH B. NAEVE REVOCABLE TRUST, REBECCA J. NAEVE REVOCABLE TRUST, BLAKE NAEVE, and MBN FARMS, INC.,</p> <p align="center">Defendants.</p>	<p>Case No.: EQCV019198</p> <p align="center"><b>JURY INSTRUCTIONS</b></p> <p align="right">FILED 2025 NOV -6 PM 4:05 CLERK OF DIST COURT HUMBOLDT COUNTY IOWA</p>
---	--

**INSTRUCTION NO. 1**

Members of the Jury: This case involves a dispute between Plaintiffs, Mark A. Dickey Revocable Trust, Mark A. Dickey and Elizabeth Dickey (hereinafter “the Dickeys”), and Defendants, Mitchell B. Naeve Trust, Rebecca J. Naeve Trust, Blake Naeve, and MBN Farms, Inc. (hereinafter “ the Naeves”). The dispute concerns the alleged release of used motor oil on one occasion and 5,000 gallons of 28% liquid nitrogen on a second occasion from storage containers on lands owned by the Naeves, at 1856 Birch Avenue, Bradgate, Iowa. The Dickeys contend the materials entered tile lines through intakes on the Naeves’ property and flowed through the tile lines to an outlet structure on the Dickeys’ land and then into a pond at 1804 Birch Avenue, Bradgate, Iowa and caused damages to the pond and the fish in the pond. The Naeves dispute that any discharge occurred (waste oil or 28% nitrogen) and, if a discharge occurred, dispute that it caused any damages to the Dickeys or their lands.

The Naeves admit some oil was discharged in their shed that reached a tile into the drainage district tile system but deny that it reached or affected the fishpond, and they admit some quantity of nitrogen was released from their tank and some of it reached the fish pond, but deny the causation and extent of damages.

Do not consider this summary as proof of any claim. You will decide the facts from the evidence and apply the law which I will 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.

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.

### **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.
2. Exhibits received by the court.

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. Anything you saw or heard about this case outside the courtroom.
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 containing 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**

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. 7**

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. 8**

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.



### **JURY INSTRUCTION NO. 9**

In these instructions, I will be using the terms "fault" and "negligence." Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence. "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. 10**

The Dickeys claim the Naeves were negligent in the handling and storage of hazardous substances and that this negligence caused harm to the Dickeys and their property. To recover on that claim, the Dickeys must prove each of the following by a preponderance of the evidence:

1. That the Naeves owed a duty to use reasonable care with respect to the handling and storage, of hazardous substances or pollutants; and
2. That the Naeves failed to use that care (that is, the Naeves were negligent); and
3. That this failure was a cause of harm to the Dickeys' land and property; and
4. That the Naeves suffered damages.

### **INSTRUCTION NO. 11**

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

## **JURY INSTRUCTION NO. 12**

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 Dickey's and the Naeves 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.

### INSTRUCTION NO. 13

Dickeys must prove all of the following propositions:

1. Naeves were at fault. In order to prove fault, Dickey's must prove Naeves were negligent in one or more of the following ways:

- a. In failing to keep 28% liquid nitrogen fertilizer (Urea Ammonium Nitrate) from spilling; and,
- b. In failing to keep the spilled 28% liquid nitrogen fertilizer (Urea Ammonium Nitrate) from reaching the fish pond.

2. Naeves' fault was the cause of Dickey's damage.

3. The amount of damage.

If Dickey's have failed to prove any of these propositions, they are not entitled to recover damages. If Dickey's have proven all of these propositions, you will consider the defense of comparative fault.

If the Dickey's failed to prove any of these propositions, they are not entitled to damages. If the Dickey's have proved all of these propositions, the Dickey's are entitled to damages in some amount.

#### **INSTRUCTION NO. 14**

If you find Dickeys entitled to recover damages, you shall determine the reasonable amount of damages.

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 items will be used to answer the special verdicts.

### **INSTRUCTION NO. 15**

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.

### **INSTRUCTION NO. 16**

If you find the Naeves were negligent and that such negligence was a cause of damage to the Dickeys, and if you further find that the conduct of the Naeves constituted a willful and wanton disregard for the rights or safety of another, then, in addition to any actual damages, you may award punitive damages. The purpose of punitive damages are to punish the Naeves and to deter the Naeves and others from similar conduct in the future. Punitive damages are not to compensate the Dickeys.



### **INSTRUCTION NO. 17**

The Dickeys must prove the Naeves' willful and wanton conduct by a preponderance of clear, convincing, and satisfactory evidence. This means evidence that leaves you with no serious or substantial doubt about the truth of the claim.

### **INSTRUCTION NO. 18**

“Willful and wanton disregard for the rights or safety of another” means that the defendant has intentionally done an act of an unreasonable character, in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and has done so with a conscious indifference to the consequences. It is more than mere negligence, but it does not require intent to cause harm.

### **INSTRUCTION NO. 19**

You may consider punitive damages only if you first find that the Dickeys have proven the Naeves were negligent and that the negligence was a proximate cause of the Dickeys' damages, and you further find, by clear, convincing, and satisfactory evidence, that the Naeves' conduct was willful and wanton as defined in these instructions. If you do not so find, you must not consider punitive damages.

### **INSTRUCTION NO. 20**

If you decide to award punitive damages, you may consider all of the following:

1. The nature of the Naeves' conduct.
2. The amount of actual damages awarded.
3. The Naeves' financial condition.
4. The existence and frequency of similar past conduct by the Naeves.
5. All of the circumstances surrounding the occurrence.

You may award no punitive damages, or any amount you deem proper under the evidence and these instructions.

### **INSTRUCTION NO. 21**

Punitive damages, if awarded, are in addition to actual damages. You must not increase punitive damages to make up for any reduction in actual damages for comparative fault or any other reason.

**INSTRUCTION NO. 22**

Your decision regarding punitive damages must be based solely on the evidence and these instructions, not on passion, prejudice, or sympathy.

### **INSTRUCTION NO. 23**

Upon retiring you shall select a foreperson. 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. 24**

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the attorneys. I have tried to use language that is generally understandable. Usually, questions about instructions can be answered by carefully rereading them. If, however, any of you feel it is necessary to ask a question, you must do so in writing and deliver the question to the judicial specialist.

I cannot communicate with you without first discussing your question and potential answers with the parties and attorneys. This process naturally takes time and deliberation before I can respond. When I respond, it will be in writing, and the foreperson must read the response to the jury. Keep the written question and response and return it to open court with the Verdict.

The Court Attendant who has been working with me on this case is in the same position as I am. She will be taking an oath not to communicate with you except to ask if you have reached a verdict. Please do not put her on the spot by asking questions about the case.



### **INSTRUCTION NO. 25**

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. 26**

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, Instagram, LinkedIn, YouTube, X (formerly 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

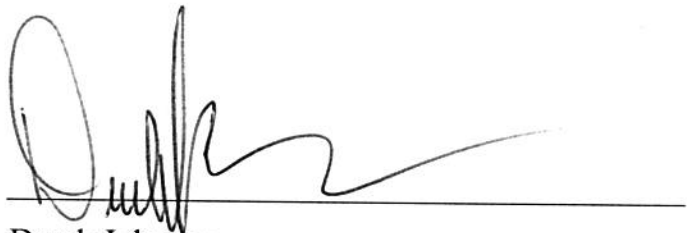
these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

### INSTRUCTION NO. 27

I am giving you a form verdict containing 8 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 answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 12:05 o'clock p.m. 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 Court Attendant.

A handwritten signature in black ink, appearing to read 'Derek Johnson', is written over a horizontal line.

Derek Johnson

Judge, Second Judicial District of Iowa