

CRIMINAL

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

RICHARD D. HOSEA, Plaintiff, vs. HY-VEE, INC., Defendant.	607107 11/17/04 LACV150536 JURY INSTRUCTIONS
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Members of the jury: In this case, the Plaintiff claims the Defendant was negligent in the stocking of shelves at the Hy-Vee Store located at 6301 University Avenue in Cedar Falls, Iowa. The Plaintiff claims that the Defendant's negligence caused injuries and damages to the Plaintiff.

The Defendant denies it was negligent and the cause of Plaintiff's damages.

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 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. 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 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. 4

Certain testimony has been read into evidence from a deposition or shown by video. A deposition is testimony taken under oath before the trial and preserved in writing or by video. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5

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. 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

An expert witness was 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. 9

You have heard evidence claiming that the Plaintiff and employees of the Defendant Hy-Vee made statements before this trial.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the Plaintiff and/or Hy-Vee employees 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.

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. II

An employer is liable for the negligent acts of an employee if the acts are done in the scope of the employment. You are instructed that Kolbe Sundell was acting within the scope of his employment with the Defendant Hy-Vee at the time of the incident on July 10, 2022.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

“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. 14

The Plaintiff must prove all of the following propositions:

1. The Defendant Hy-Vee was negligent in one or more of the following ways:
 - a. Through its employee stocking shelves by climbing on the shelves and not using a ladder or step system when it was required;
 - b. By failing to prevent its employee from climbing on shelves;
 - c. By failing to prevent its employee from working at a height without a ladder or step system when it was required;
 - d. By failing to adequately warn customers of the dangerous and unsafe condition existing in the area;
 - e. By failing to correct the dangerous and unsafe condition existing in said area;
 - f. By failing to properly train its employees to be able to maintain existing safety measures;
 - g. By failing to properly supervise its employees to be able to maintain existing safety measures;
2. The Defendant's negligence was a cause of damage to the Plaintiff.
3. The amount of damage.

If the Plaintiff have 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. 15

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

INSTRUCTION NO. 16

You must decide whether the claimed harm to the Plaintiff is within the scope of the Defendant's liability. The Plaintiff's claimed harm is within the scope of the Defendant's liability if that harm arises from the same general types of danger that the Defendant should have taken reasonable steps to avoid.

Consider whether repetition of the Defendant's conduct makes it more likely harm of the type the Plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

INSTRUCTION NO. 17

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

INSTRUCTION NO. 18

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

1. **FUTURE MEDICAL EXPENSES.** The present value of reasonably and necessary doctor charges, medications, prescriptions, and other medical services which will be incurred in the future.
2. **PHYSICAL AND MENTAL PAIN AND SUFFERING – PAST.** 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. **PHYSICAL AND MENTAL PAIN AND SUFFERING – FUTURE.** The present value of future physical and mental pain and suffering.
4. **LOSS OF FULL MIND AND BODY – PAST.** Loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind or body to function in a normal manner.
5. **LOSS OF FULL MIND AND BODY – FUTURE.** The present value of future loss of function of the mind and body.

The amount you assess for physical and mental pain and suffering in the past and future and for loss of full use of mind and body in the past and future 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 Defendants 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.

INSTRUCTION NO. 19

If you find Richard Hosea had a degenerative condition in his low back or bursitis in his hip or arthritis in his lumbar spine before this incident and this condition was aggravated by this incident causing further suffering, then he is entitled to recover damages caused by the aggravation. He 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.

INSTRUCTION NO. 20

If you find Richard Hosea was injured by another act after this incident, he cannot recover for any later injury, or aggravation of injury, not caused by this incident.

INSTRUCTION NO. 21

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. 22

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as the Plaintiff Richard Hosea is 12.66 more years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Richard's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 23

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. 24

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 deliberation 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. 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, 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.

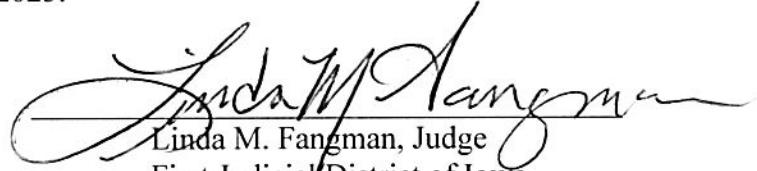
INSTRUCTION NO. 27

I am giving you one blank verdict form. 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 must be signed by your foreman or forewoman.

After deliberating for six hours from 4:10 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 must be signed by all seven jurors who agree.

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

Dated this 14th day of November, 2025.



Linda M. Fangman
Linda M. Fangman, Judge
First Judicial District of Iowa