

VS.

**TOMMY NORRIS and
HY-VEE, INC.,
Defendants.**

CASE NO.: LACL136153

JURY INSTRUCTIONS

Plaintiff hereby submits the following proposed Jury Instructions and Verdict Forms.

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above entitled cause herein at their respective addresses disclosed on the pleadings of record on this 19 day of February, 2018.

BY: ☐ U.S. Mail ☐ Facsimile ☐ E-mail
☐ Private Carrier ☐ Hand Delivery
☒ Other: EDms

Signature: Sada Saca, lij

BY:

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ATTORNEY FOR PLAINTIFF

INSTRUCTION NO. 1

Members of the Jury:

In this case plaintiff claims Tommy Norris was negligent in the operation of a semi-tractor trailer causing a rear end collision with semi-tractor trailer in which Plaintiff Franjo Breskic was a passenger at the time. Plaintiff is claiming damages as set forth below. Tommy Norris was employed by Hy-Vee, Inc. at the time of this collision and was driving a semi-tractor trailer owned by Hy-Vee, Inc. in the course of his employment.

The defendants, Tommy Norris and Hy-Vee Inc., deny Mr. Norris was negligent and deny Plaintiff is entitled to 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.

Authority

Iowa Civil Jury Instructions, 100.1

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 Raytown, 161 N.W.2d 180 (1968)

INSTRUCTION NO. 3

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)

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.

Authority

Iowa Rules of Evidence.

INSTRUCTION NO. 5

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.

Authority

Iowa R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

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.

Authority

Iowa R. Civ. P. 1.509

INSTRUCTION NO. 7

Hy-Vee, Inc., as employer, is liable for the negligent acts of Tommy Norris, its' employee, if the acts are done in the scope of the employment.

INSTRUCTION NO. 8

For an act to be within the scope of Tommy Norris' employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

INSTRUCTION NO. 9

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

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

INSTRUCTION NO. 10

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.

Authority

Cody v. Toller Drug Co., 232 Iowa 475, 5 N.W.2d 824 (1942)

INSTRUCTION NO. 11

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.

Authority

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930).

INSTRUCTION NO. 12

Certain testimony has been received into evidence from a deposition and video recording. 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.

Authority

Iowa R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

INSTRUCTION NO. 13

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.

Authority

Iowa Code section 668.1

INSTRUCTION NO. 14

“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. 15

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

Authority

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

Royal Indemnity Co. v. Factory Mut. Ins. Co., ___ N.W.2d ___, ___, No. 07-1324 slip. op. at 19 (Iowa June 11, 2010)

Restatement (Third) of Torts: Liability for Physical and Emotional Harm, § 26

INSTRUCTION NO. 16

Assured Clear Distance Ahead. 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.

Authority:

Iowa Model Jury Instruction No. 600.3

INSTRUCTION NO. 17

Following too closely. The driver of a vehicle shall not allow another vehicle closer than is reasonable, considering the speed of the vehicles, the traffic and the condition of the highway.

A violation of this law is negligence.

Authority:

Iowa Model Jury Instruction No. 600.24, Iowa Code §321.307.

INSTRUCTION NO. 18

TRUCK ACCIDENTS:

600.25 Trucks And Towed Vehicles - Distance Requirements. The driver of a [truck] towing another vehicle outside of a business or residence district shall not follow within 300 feet of another [truck] towing another vehicle. This, however, shall not prevent overtaking and passing, nor shall it apply to any lane specifically designated for use of motor trucks.

A violation of this law is negligence.

Authority

Iowa Code section 321.308

INSTRUCTION NO. 19

Plaintiff claims that defendant Tommy Norris and Hy-Vee, Inc., were at fault due to Tommy Norris' negligence.

"Negligence" has been explained in Instruction No. 14.

The Plaintiff must prove all of the following propositions:

1. Tommy Norris was negligent in at least one of the following ways:
 - a. In failing to keep assured clear distance ahead
 - b. Following too closely
 - c. Failing to keep 300 foot distance requirement
 - d. In failing to have his vehicle under control
 - e. In failing to keep a proper lookout
2. Tommy Norris' fault was a cause of plaintiff's damages.
3. The amount of damage.

If plaintiff has failed to prove either proposition, he is not entitled to damages. If plaintiff has proven all of these propositions, then you will determine damages when answering special verdicts.

INSTRUCTION NO. 20

If you find the Franjo Breskic is entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate her for the damages incurred:

The amount you assess for present value of future damages 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(s) 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.

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 party for future losses.

Authority

Iowa Civil Jury Instructions, 200.35B.

INSTRUCTION NO. 22

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.

Authority

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)

Sheker v. Jensen, 241 Iowa 583, 41 N.W.2d 679 (1950)

Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

INSTRUCTION NO. 23

A Standard Mortality Table indicates the normal life expectancy of men who are the same age as Franjo Breskic is 79. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all other evidence, about each person's health, habits, occupation, and lifestyle, when deciding issues of future damages.

Authority

Iowa Civil Jury Instructions, 200.37.

INSTRUCTION NO. 24

If Plaintiff's prior degenerative changes in the lumbar spine was causing him some disability or pain at the time of the incident that was aggravated or made worse by Defendant's negligence, Plaintiff is entitled to recover only for the additional pain and disability, and additional medical expense and loss of income, if any, caused by Defendant's negligence, but not for any pain, disability, medical expense, or loss of income which she would have incurred despite Defendant's negligence. If Plaintiff had a condition at the time of the incident which was not then causing him disability or pain, and Defendant's negligence lighted up this condition resulting in pain, disability, medical expense, or loss of income, Plaintiff is entitled to recover for the entire pain, disability, medical expense, and loss of income caused by the lighting up of this condition even though these damages may be greater than if she had not had the condition at the time of the incident.

Authority: Iowa Civil Jury Instructions 200.32 and 200.34; Waits v. United Fire and Casualty Co., 572 N.W.2d 565, 578.

INSTRUCTION NO. 25

When the mental or physical condition of Plaintiff Jane Doe's is in controversy, the Defendant(s) have the opportunity to ask the court to order that the Plaintiff be examined by a doctor of their choice. In this case, Defendant(s) chose not to request an order for the Plaintiff to be examined by its own doctor. You may give this as much weight as you think it deserves, considering all the other evidence in the case.

Authority:

Iowa Rule of Civil Procedure 1.515.

INSTRUCTION NO. 26

Previous Infirm Condition. If Franjo Breskic had degenerative changes in the lumbar spine making him more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by Franjo Breskic proximately caused by defendant'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.

Authority:

Iowa civil Jury Instruction 200.34. Benn v. Thomas, 512 N.W.2d 537, 538-40 (Iowa 1994).

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

INSTRUCTION NO. 27

Past Medical Expenses. 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 expenses.

Authority:

Iowa Model Jury Instruction No. 200.6

Future Medical Expenses. The present value of reasonable and necessary doctor charges, prescriptions and other medical services which will more likely than not be incurred in the future.

Authority:

Iowa Model Jury Instruction No. 200.7, modified to add the appropriate burden of proof “more likely than not” instead of “will be incurred.”

Loss of Time – Earnings. The reasonable value of lost wages from the date of injury to the present time *without taking into consideration any payments which may have been made to Plaintiff.

Authority:

Iowa Model Jury Instruction No. 200.8 Iowa Des Moines National Bank v. Schwerman Trucking Co., 288 N.W.2d 198 (Iowa 1980) Amelsburg v. Lunning, 234 Iowa 852, 14 N.W.2d 680 (1944)

INSTRUCTION NO. 28

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 and body to function in a normal manner.

Authority:

Iowa Model Jury Instruction No. 200.10

INSTRUCTION NO. 29

Loss of Full Mind and Body – Future. The present value of future loss of function of the mind and body. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.

Authority:

Iowa Model Jury Instruction No. 200.11B

INSTRUCTION NO. 30

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, unpleasant feelings, bodily distress or uneasiness, bodily suffering, sensations or discomfort.

Mental pain and suffering may include, but is not limited to mental anguish or loss of enjoyment of life

Authority:

Iowa Model Jury Instruction No. 200.12

INSTRUCTION NO. 31

Physical and Mental Pain and Suffering – Future. The present value of future physical and mental pain and suffering. Physical and mental pain and suffering have already been explained to you in this instruction.

Authority:

Iowa Model Jury Instruction No. 200.13B

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 not evidence. Generally, they reflect the recollection or impression 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:

Iowa Rule of Civil Procedure 1.926

INSTRUCTION NO. 33

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. When ballots are taken the foreman or forewoman will see that it is done.

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:

Iowa Model Jury Instruction No. 100.18, modified and Model Instruction No. 28

INSTRUCTION NO. 34

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, LinkedIn, YouTube, Twitter, e-mail, 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 of 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. 35

I am giving you _____ verdict forms [and 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 _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) (six)* of you agree upon the answers to the questions. In that case, the verdict [and questions] must be signed by all (seven) (six)* jurors who agree.

When you have agreed upon the verdict [and answers to questions] and appropriately signed it, tell the Court Attendant.