

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FRANJO BRESKIC,

Plaintiff,

v.

TOMMY NORRIS and HY-VEE, INC.,

Defendants.

LAW NO. LACL136153

**DEFENDANTS' PROPOSED
JURY INSTRUCTIONS**

COME NOW the Defendants, Tommy Norris and Hy-Vee, Inc., and hereby submit their proposed Jury Instructions as follows:

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Original filed with EDMS

Copy by EDMS

STATEMENT OF THE CASE

Members of the Jury: In this case, the plaintiff alleges that the defendants were negligent in the operation of a motor vehicle on October 6, 2014, and as a result of that negligence, the plaintiff was injured. The defendants, Tommy Norris and Hy-Vee, Inc., deny that they were negligent, or that their negligence was the cause of this accident. Defendants deny that the plaintiff was injured to the extent that he is now claiming.

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.

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.

The fact that one of the 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.

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.

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.

Certain Testimony has been read into evidence from a deposition or the videotape of the deposition was played for you. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

INSTRUCTION NO.

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.

You have heard testimony from person 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.

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.

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO.

If you find plaintiffs are entitled to recover damages, you shall consider the following items:

1. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, and any 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 any 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.
2. Physical and mental pain and suffering from the date of the 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. Loss of use of the full mind and body is the inability of a particular part of the mind or body to function in a normal manner.

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

INSTRUCTION NO.

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 plaintiffs for future losses.

INSTRUCTION NO.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Franjo Breskic is 30.07 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Franjo's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO.

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.

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.

INSTRUCTION NO.

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.

The mere fact that an accident happened and a party or parties sustained damages because of such accident, in and of itself, does not give rise to any inference that it was caused by negligence of anyone.

INSTRUCTION NO.

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

INSTRUCTION NO.

Tommy Norris and Hy-Vee claim that if you find that Norris violated the law in the operation of his vehicle, he had a legal excuse for doing so because the vehicle in which the plaintiff was a passenger was traveling at 20-25 MPH without flashers on the traveled portion of an interstate highway, and, therefore, is not negligent. "Legal excuse" means that someone seeks to avoid the consequences of his conduct by justifying acts which would otherwise be considered negligent. The burden is upon Tommy Norris and Hy-Vee to establish as a legal excuse:

Failure to obey the law when the driver is confronted with a sudden emergency not of his own making.

If you find that Tommy Norris has violated the law as submitted to you other instructions, and that he has established a legal excuse for doing so, then you should find that Tommy Norris was not negligent for violating the particular law involved.

INSTRUCTION NO.

A sudden emergency is a combination of circumstances that calls for immediate action or a sudden or unexpected occasion for action. A driver of a vehicle who, through no fault of his own, is placed in a sudden emergency, is not chargeable with negligence if the driver exercises that degree of care which a reasonably careful person would have exercised under the same or similar circumstances.

INSTRUCTION NO.

At the time and place in question, the speed of any vehicle less than 40 miles per hour, road conditions permitting, was unlawful.

INSTRUCTION NO.

I am giving you _____ verdict forms containing special interrogatories. 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 interrogatories must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____ an. excluding meals or recesses outside your jury room, then it is necessary 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 _____ day of _____, 2018.

PRESIDING JUDGE
Fifth Judicial District of Iowa

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FRANJO BRESKIC,

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v.

TOMMY NORRIS and HY-VEE, INC.,

Defendants.

LAW NO. LACL136153

VERDICT FORM

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

Question No. 1: Were the Defendants at fault?

ANSWER: _____ Yes _____ No

Question No. 1: Was the fault of Tommy Norris and Hy-Vee, Inc. a cause of damage to Franjo Breskic?

ANSWER: _____ Yes _____ No

[If your answer is “no,” do not answer any further questions on this verdict form.]

Question No. 2: State the amount of damages sustained by Franjo Breskic because of Tommy Norris and Hy-Vee, Inc.’s fault for each of the following items. If Franjo Breskic have failed to prove these items, or that Tommy Norris and Hy-Vee, Inc. is responsible for any of these items, enter “0” for that item.

1. Past pain and suffering \$ _____

2. Past loss of full mind and body \$ _____

FOREMAN OR FOREWOMAN

*To be signed only if verdict is unanimous.

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**