

IN THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY

KEVIN E. HEUN AND SUSAN J. HEUN,
PLAINTIFFS,

v.

BONNIE MAREE HENDERSON,
DEFENDANT.]
] CASE NO. LACV027226
]
]
] JURY INSTRUCTIONS
]
]
]**Statement of the Case**

On July 17, 2016, a motor vehicle accident occurred at the intersection of Highway 169 and Highway 18 in Algona. The accident involved vehicles driven by Plaintiff Susan Heun and Defendant Bonnie Henderson. Plaintiff Kevin Heun was a passenger in the vehicle with Susan Heun.

The Plaintiffs Susan and Kevin Heun claim Defendant Bonnie Henderson was negligent in the operation of her vehicle and said negligence was the legal cause of their claimed injuries.

Ms. Henderson denies that she was negligent and further denies that she legally caused the damages, if any, alleged by the Heuns. Ms. Henderson further claims that if she was negligent, Ms. Heun was comparatively negligent and legally caused her and Mr. Heun's damages, if any.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and the 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 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. 4

Certain testimony has been read into evidence from a deposition or presented by 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.

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.

Instruction No. 6

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. 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

You have heard evidence claiming a party made statements before this trial while under oath and/or while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of the party's testimony during the trial but you are not required to do so. You should not disregard any party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

Instruction No. 9

During this trial, you may see that some of the exhibits have been redacted meaning that information has been removed or blacked out. Iowa law requires that certain things such as social security numbers, bank account numbers, etc. to be redacted such that the public does not have access to this confidential information. This should have no effect in your evaluation of the documents and the evidence in this case.

Instruction No. 10

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

Instruction No. 11

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 Plaintiff, Susan Heun, and defendant, Bonnie Henderson, 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. 12

"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. 13

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

Instruction No. 14

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

Instruction No. 15

The Plaintiff Kevin Heun claims the defendant was at fault in the following particular:

Negligence

This ground of fault has been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove Defendant was negligent in one or more of the following ways:
 - A. Failing to maintain a proper lookout;
 - B. Failing to obey a stop sign
 - C. Failing to have her vehicle under control
2. The defendant's fault was a cause of the plaintiff's damage.
3. The amount of damage.

If plaintiff, Kevin Heun, has failed to prove any of these propositions, the plaintiff is not entitled to damages. If plaintiff, Kevin Heun, has proved all of these propositions, he is entitled to damages in some amount.

Instruction No. 16

The Plaintiff Susan Heun claims the defendant was at fault in the following particular:

Negligence

This ground of fault has been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove Defendant was negligent in one or more of the following ways:

- A. Failing to maintain a proper lookout;
 - B. Failing to obey a stop sign
 - C. Failing to have her vehicle under control
2. The defendant's fault was a cause of the plaintiff's damage.
3. The amount of damage.

If plaintiff, Susan Heun, has failed to prove any of these propositions, the plaintiff is not entitled to damages. If plaintiff, Susan Heun, has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 10 and 11.

Instruction No. 17

Bonnie Henderson claims Susan Heun was at fault in one or more of the following particulars and that fault was the legal cause of the Plaintiff's claimed damages:

- a. Failing to yield to the right of way, as defined in Instruction No. 20;
- b. speeding through the intersection;

- c. failing to maintain a proper lookout; and
- d. Failure to exercise reasonable care for their own safety.

These grounds of fault have been explained to you in other instructions.

Bonnie Henderson must prove both of the following propositions:

1. Susan Heun was at fault
2. Susan Heun's fault was a legal cause of Plaintiffs' damages, if any.

If Bonnie Henderson has failed to prove either of these propositions, she has not proven her affirmative defense of comparative fault. If Bonnie Henderson has proven both of these propositions then you will assign a percentage of fault against Plaintiffs and include Plaintiffs' fault in the total percentage of fault found by you in answering the special verdicts.

Instruction No. 18

"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 one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

Instruction No. 19

A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

Instruction No. 20

The driver of a vehicle approaching a stop intersection indicated by a stop sign or a flashing red light shall stop at the first opportunity at either the clearly marked stop line, or before entering the crosswalk, or before entering the intersection, or at a point nearest the

intersecting road where the driver has a view of approaching traffic on the intersecting road before entering the intersection. Before going ahead, the driver shall yield the right-of-way to any vehicle in the intersecting road which has entered the intersection or which is approaching so closely that it is an immediate danger during the time the driver is moving through the intersection.

A violation of this law is negligence.

Instruction No. 21

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. 22

If you find Kevin Heun is entitled to recover damages, you shall consider the following items:

1. Past loss of time from business and loss of earnings
2. Past and future medical expense
3. Loss of function of the body in the past
4. Pain, suffering and mental anguish past and future

The amount you assess for physical and mental pain and suffering in the past and future, loss of function of the 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 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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Instruction No. 23

If you find Susan Heun is entitled to recover damages, you shall consider the following items:

1. Loss of spousal consortium
2. Past medical expense
3. Loss of function of the body in the past
4. Pain, suffering and mental anguish past

The amount you assess for physical and mental pain and suffering in the past and future, loss of function of the body in the past and future and loss of spousal consortium 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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Instruction No. 24

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

Instruction No. 25

Future Medical Expenses include the present value of reasonable and necessary hospital charges, doctor charges, prescriptions and other medical services which will be incurred in the future.

Instruction No. 26

Loss Of time – Earnings includes the reasonable value of lost wages and lost time from business from the date of injury to the present time. Loss of time from business is measured by the value of a person's own labor.

Instruction No. 27

Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

Instruction No. 28

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.

Instruction No. 29

"Spousal consortium" is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's injury.

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

1. The reasonable value of loss of spousal consortium which Susan Heun would otherwise have received from the date of injury until the present time.
2. The present value of loss of spousal consortium which Susan Heun would otherwise have received in the future.

Damages for future loss of spousal consortium are limited in time to the shorter of the spouses' normal life expectancies.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Kevin Heun's life.
2. Kevin Heun's and Susan Heun's ages at the time of Kevin's injury.
3. Kevin's health, strength, character and life expectancy.
4. Kevin's capabilities and efficiencies in performing the duties of a spouse.
5. Kevin's skills and abilities in providing instructions, guidance, advice and assistance.
6. Susan's needs.
7. All other facts and circumstances bearing on this issue.

The amount you assess for loss of spousal consortium past, present 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 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.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Instruction No. 30

If you find Kevin had a shoulder condition before this incident and this condition was aggravated or made active by this incident causing further suffering and disability 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. 31

If you find that the Plaintiff Kevin Heun was injured by another act after this incident, he cannot recover for any later injury or aggravation of an injury not caused by this incident.

Instruction No. 32

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Kevin Heun is 19.85 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Kevin Heun's health, habits, occupation, and lifestyle, when deciding issues of future damages.

Instruction No. 33

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

Instruction No. 34

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. 35

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.

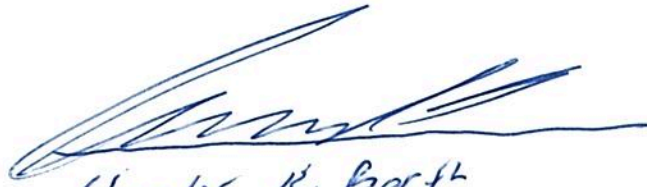
Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Instruction No. 36

I am giving you one verdict form with 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 11:15 o'clock 5.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 questions must be signed by all seven jurors who agree.

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



Charles R. Borth
District Court Judge