

IN THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY

KEVIN E. HEUN AND SUSAN J. HEUN,

Plaintiffs,

vs.

BONNIE MAREE HENDERSON AND
SELECTIVE INSURANCE COMPANY OF
SOUTH CAROLINA,

Defendants.

NO. LACV027226

**DEFENDANT BONNIE MAREE
HENDERSON'S PROPOSED FINAL
JURY INSTRUCTIONS**

INSTRUCTION NO. _____

Members of the Jury: In this case, Plaintiffs claim that Bonnie Maree Henderson was negligent in her operation of her motor vehicle, that the negligence of Ms. Henderson caused a collision between her automobile and an automobile driven by Susan Heun, and that Susan and Kevin Heun were injured in the collision.

Ms. Henderson denies that she was negligent and further denies that she legally caused the damages, if any, alleged by Susan and Kevin Heun. Ms. Henderson further claims that if she was negligent, Plaintiff Susan Heun was comparatively negligent and legally caused the Heuns' damages, if any. 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. _____

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 parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

INSTRUCTION NO. _____

The court attendant who has been working with me on this case is in the same position as I am. He/She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put him/her on the spot by asking him/her any questions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. _____

During the trial, the Court has ruled upon objections to evidence which have, from time to time, been made by counsel, and this Court has done so according to the rules of evidence. Such rulings made by the Court are the responsibility of the Court solely, and in your consideration of the case you will give no significance or weight whatever to such rulings, and you will consider only such evidence as has been received before you, and which has not been stricken by the Court.

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 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 acts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

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. _____

You have heard evidence claiming Kevin Heun made statements before this trial while not under oath which were inconsistent with what he said in this trial or in his deposition.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

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. _____

There are two types of evidence, direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. Circumstantial evidence is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in this case, both direct and circumstantial.

INSTRUCTION NO. _____

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. ____

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.

Iowa Civil Jury Instruction No. 100.5.

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. _____

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.

"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. _____

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

INSTRUCTION NO. _____

When two vehicles enter an intersection from different highways or public streets at approximately the same time, the driver on the left shall yield the right-of-way to the vehicle on the right.

INSTRUCTION NO. _____

The driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at the first opportunity at either the clearly marked stop line or before entering the intersection or at a point where the driver has a view of approaching traffic on the intersecting road or highway. Before proceeding, the driver shall yield the right-of-way to any vehicle on the intersecting roadway which has entered the intersection or which is approaching so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection.

INSTRUCTION NO. _____

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

Iowa Civil Jury Instruction No. 700.3.

INSTRUCTION NO. _____

The Plaintiffs claim that the Defendant, Bonnie Henderson, was at fault for this accident. Plaintiffs Susan and Kevin Heun are to be considered a single party for purposes of determining fault. In order to recover damages, the Plaintiffs must prove all of the following propositions:

1. The Defendant, Bonnie Henderson was at fault. In order to prove fault, the Plaintiffs must prove:
 - a. **(Plaintiffs to supply the specifications of fault).**
2. The Defendant's fault legally caused the Plaintiffs' damages; and,
3. The amount of damages.

If the Plaintiffs have failed to prove any of these propositions, the Plaintiffs are not entitled to damages. If the Plaintiffs have proven all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. _____, _____, and _____.

INSTRUCTION NO. _____

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 Plaintiff Susan Heun and Defendant Bonnie Henderson, and the extent of the causal relationship between their conduct and the damages claimed. Plaintiffs Susan and Kevin Huen are to be considered a single party for purposes of determining fault. You should then determine what percentage, if any, each person's fault contributed to the damages.

Iowa Civil Jury Instruction No. 400.2.

INSTRUCTION NO. _____

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;
- 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. _____

"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 the operation of the driver's vehicle in relation to what the driver saw or should have seen. A driver must be aware of the presence of others when the driver's actions may be dangerous to others.

A violation of this duty is negligence.

INSTRUCTION NO. _____

After you have compared the conduct of all parties, if you find the Plaintiff Susan Heun was at fault and his fault was more than 50% of the total fault, then the Plaintiffs cannot recover damages.

However, if you find the Plaintiffs' fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of the Plaintiffs' fault.

INSTRUCTION NO. _____

A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

In this case, the Defendant claims that the Plaintiffs unreasonably failed to take action to avoid an injury because he failed to exercise reasonable care for his own safety.

INSTRUCTION NO. _____

The law does not impose liability for negligence unless the breach of a duty of care is also the cause in fact of the Plaintiffs' claimed damages. The Defendant Bonnie Henderson's conduct must have in fact caused the Plaintiff's claimed damages. To recover for damages, the Plaintiffs must prove that the damages would not have occurred but for the Defendant Bonnie Henderson's negligence.

Authority:

Garr v. City of Ottumwa, 846 N.W.2d 865, 869 (Iowa 2014)

Thompson v. Kaczinski, 774 N.W.2d 829, 839 (Iowa 2009)

Berte v. Bode, 692 N.W.2d 368, 372 (Iowa 2005)

INSTRUCTION NO. _____

If you find Plaintiff Kevin Huen had a prior neck/back injury and/or other physical disabilities such as headaches before this incident and this condition was aggravated by this incident causing further suffering and/or 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 Defendants' actions.

INSTRUCTION NO. _____

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. _____

The reasonable cost of necessary of 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 expense.

INSTRUCTION NO. _____

If you find the Plaintiff is entitled to recover damages, you shall consider the following items of damage:

- a) Past pain and suffering;
- b) Past loss of function;
- c) Lost income; and
- d) Loss of consortium.

Physical pain and suffering may include, but is not limited to, unpleasant feelings, bodily distress and uneasiness, bodily suffering, sensations or discomfort.

Loss of function of the body is the inability of a particular part of the body to function in a normal manner.

The amount you assess for physical pain and suffering in the past and/or loss of function of the 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.

“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 that Plaintiff, Susan Heun, is entitled to recover damages for loss of consortium, it is your duty to determine the amount. In so doing, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Kevin Heun would have performed for Plaintiff Susan Heun.

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

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

The amount you assess for 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 the defendant as proven 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 damages. Add together the amounts, if any, you find for each of the above items and the total will be used to answer the special verdicts.

INSTRUCTION NO. ____

The fact that I have instructed you on the proper measure of damages should not be considered as an indication of any view of mine as to which party is entitled to your verdict in this case. Instructions as to measure of damages are given only for your guidance.

INSTRUCTION NO. _____

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.

Iowa Civil Jury Instruction No. 200.38.

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 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. _____

I am giving you one 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 _____ o'clock ____ .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 ____ day of _____, 2019.

District Court Judge Charles Borth