

## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MICHAEL CUNNINGHAM, as Executor of  
the ESTATE OF MARTI BREIT,

Plaintiff,

v.

JEFFREY E. BREIT,

Defendant.

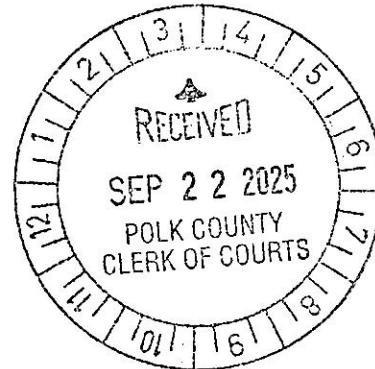
Case No. LACL159044

**JURY INSTRUCTIONS****Statement of The Case.****Members of the Jury:**

On June 11, 2022, Marti Breit was found deceased in her home in West Des Moines, Iowa. At the time of her death, she was married to Jeffrey Breit.

The Estate of Marti Breit alleges that Jeff was negligent and that his negligence caused Marti Breit's death. The Estate also alleges Jeff violated his fiduciary duties to the Estate while he was serving as the Executor. The Defense denies these claims.

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 and to decide all fact questions.

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions.

## INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person.
2. Exhibits received by the court.

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. 3

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. 4

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. 5

An expert was asked to assume certain facts were true and 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. 6

You have heard evidence claiming a Party made statements before this trial while under oath 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 making the statement 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 the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

## INSTRUCTION NO. 7

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. 8  
**COUNT I – Negligence.**

To prove it's claim of Negligence, the Plaintiff the Estate of Marti Breit must prove all of the following propositions:

1. The defendant was negligent (at fault) in one or more of the following ways:
  - a. Jeff Breit undertook to render services to Marti and knew or should have known that the services would reduce the risk of physical harm to Marti and failed to exercise reasonable care in conducting the undertaking, or unreasonably terminated the undertaking, which:
    - i. increased the risk of harm to Marti beyond that which existed without the undertaking, or
    - ii. Marti relied on Jeff's exercising reasonable care in the undertaking; and/or
  - b. Jeff Breit's conduct in removing alcohol from Marti created a continuing risk of physical harm to Marti of a type characteristic of that conduct, and failed to exercise reasonable care to prevent or minimize the harm; and/or
  - c. Jeff was a "Caretaker" of Marti, Marti was a "Dependent Adult", and Jeff in the absence of ordinary care:
    - i. deprived Marti of the minimum supervision, physical health care, or other care necessary to maintain Marti's life or health as a result of the acts or omissions of Jeff; or
    - ii. deprived Marti of the minimum supervision, physical health care, or other care necessary to maintain Marti's life or health as a result of the acts or omissions of Marti.
2. The negligence (fault) was a cause of damage to the Plaintiff.
3. The amount of damage.

If the Plaintiff has 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. 9

“Caretaker” means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

“Dependent adult” means a person eighteen years of age or older who is unable to protect the person’s own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another.

## INSTRUCTION NO. 10

"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. 11

The mere fact that an injury or death occurred does not mean a party was negligent (at fault).

## INSTRUCTION NO. 12

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

## INSTRUCTION NO. 13

There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

## INSTRUCTION NO. 14

If you find Michael Cunningham, as executor of the Estate of Marti Breit, is entitled to recover on the claim of Negligence, 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 the Estate of Marti Breit for the harm and subsequent death that occurred:

1. Marti's pre-death physical and mental pain and suffering
2. Present value of the additional amounts Marti Breit would reasonably be expected to have accumulated as a result of her own efforts had she lived out the term of her natural life.
3. Loss of Consortium to Marianne Shubert

The amounts, if any, you find for each of the above items will be used to answer the questions on the verdict form.

A party cannot recover duplicate damages. If you award damages for negligence, do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

## INSTRUCTION NO. 15

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. 16

In determining the present value of the amount Marti Breit would have accumulated, you may consider:

1. Her life expectancy, health, physical condition, age and occupation at the time of death.
2. Her ability to earn money and any amount from income which would have been used for support of her spouse and family.
3. The amount of taxes, both federal and state, which would be payable out of earnings.
4. Her habits as to industry, thrift and economy.
5. The uncertainties of life such as ill health or employment, increase or decrease of earning capacity as age advances.
6. All other facts and circumstances bearing on the amount she would have accumulated.

## INSTRUCTION NO. 17

“Consortium” is the relationship between parent and child and the right of the parent to recover the benefits of the expense and actual loss of services, companionship, and society resulting from the death of an adult child.

Consortium does not include the loss of financial support from the child, nor mental anguish caused by the child's death.

A parent is not entitled to damages for loss of consortium unless the child's death has caused a significant disruption or diminution of the parent-child relationship.

If you find, Estate of Marti Breit on behalf of Marianne Shubert as parent of Marti Breit 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 consortium which Marianne Shubert would otherwise have received from the date of Marti Breit's death until the present time.
2. The present value of loss of consortium which Marianne Shubert would otherwise have received in the future. Damages for loss of future consortium are limited in time to the shorter of Marianne Shubert or Marti Breit's normal life expectancy.

## INSTRUCTION NO. 18

The amount you assess for pre-death physical and mental pain and suffering and/or present value of loss of 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.

## INSTRUCTION NO. 19

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. 20

The Instructions and verdict form will use the term "fault." Fault means one or more acts or omissions a person takes towards themselves or another which constitutes negligence.

## INSTRUCTION NO. 21

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 Marti Breit and Jeffrey Breit 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. 22

After you have compared the conduct of all parties, if you find Marti Breit was at fault and her fault was more than 50% of the total fault, the plaintiff cannot recover damages for negligence.

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

You should not adjust any damages you award based on the percentage findings of fault. I will make that adjustment based on how you answer the questions on the verdict form.

## INSTRUCTION NO. 23

The defendant claims the Decedent Marti Breit was at fault. The Defendant must prove both of the following propositions:

1. Marti Breit was at fault in one or more of the following ways:
  - a. Failing to exercise ordinary care to obtain reasonable medical treatment, and/or
  - b. Failing to exercise ordinary care to follow medical advice and treatment.
2. Marti Breit's fault was a cause of damage to herself.

If the Defendant has failed to prove either of these propositions, the Defendant has not proved his defense. If the Defendant has proved both of these propositions, then you will assign a percentage of fault against Marti Breit and include Marti Breit's fault in the total percentage of fault found by you answering the questions on the verdict form.

INSTRUCTION NO. 24  
**COUNT II – Breach of Fiduciary Duty.**

A fiduciary relationship is a relationship of trust and confidence on a subject between two persons. One of the persons is under a duty to act for or give advice to the other on that subject.

To prove the claim of breach of fiduciary duty, the Plaintiff must prove the following propositions:

1. A fiduciary duty existed between the Estate of Marti Breit and the Defendant Jeffrey Breit during the time period when Jeffrey Breit acted as Executor of the Estate of Marti Breit. The Parties agree that such fiduciary duty existed.
2. Defendant breached his fiduciary duty. The Parties agree that Jeffrey Breit breached his fiduciary duty.
3. Jeffrey Breit's breach of the fiduciary duty was a cause of damage to the Estate of Marti Breit.
4. The amount of damage.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff cannot recover damages. If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to recover damages in some amount.

INSTRUCTION NO. 25  
**COUNT III – Conversion.**

To prove the claim of conversion, the Plaintiff must prove the following:

1. Jeffrey Breit exercised wrongful control or dominion over the property of the Estate of Marti Breit, in denial of or inconsistent with the Estate of Marti Breit's possessory right to the property.

## INSTRUCTION NO. 26

Conversion cannot be found where the control exercised over the property was not wrongful. This includes circumstances where the property was rightfully in the possession of the defendant, where the plaintiff abandoned the property, or where the plaintiff expressly or implicitly consented to the interference.

## INSTRUCTION NO. 27

Liability may be imposed for conversion only when the intentional and wrongful interference with the property is so serious that the actor may justly be required to pay full value.

The following list of factors is to be considered in determining whether the interference was sufficiently serious to give rise to a conversion:

- (a) the extent and duration of the actor's exercise of dominion or control;
- (b) the actor's intent to assert a right in fact inconsistent with the other's right of control;
- (c) the actor's good faith;
- (d) the extent and duration of the resulting interference with the other's right of control;
- (e) the harm done to the property;
- (f) the inconvenience and expense caused to the other.

## INSTRUCTION NO. 28

The Plaintiff seeks damages to the estate based on claims of Breach of Fiduciary Duty and Conversion. In deciding whether to award damages for these two claims, please determine the amount of damages, if any, proven by the Plaintiff for each claim. Do not adjust your verdict form for duplicate damages. If any of the damages awarded on these two claims are duplicative, the Court will adjust any judgment accordingly.

## INSTRUCTION NO. 29

As of the date of Marti Breit's death, a Standard Mortality Table indicates the normal life expectancy of people who are the same age as Marti Breit is 24.47 years, and for people the same age as Marianne Shubert it is 7.73 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about these individual's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

## INSTRUCTION NO. 30

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. 31

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. 32

You may not communicate about this case before reaching your verdict other than to deliberate within the jury room. This prohibition includes cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, X, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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.

## 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.

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. 34

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 and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours, excluding meals or recesses taken 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.



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Sarah Crane

9/18/2025

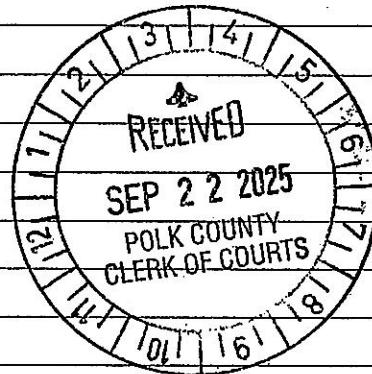
## INTSRUCTION NO. 35

Occasionally, after a jury retires to the jury room, jurors have questions. These instructions have been prepared carefully after considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually, questions about instructions are answered by careful re-reading. 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 the question and answer with the parties and lawyers. This process takes time and requires deliberation before I can reply. I will reply in writing. The foreperson shall read my response to the jury. The written question and response are to be returned to the Court with the verdict.

The court attendant who has been working with me on this case has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not ask ~~her~~ any questions. You should direct your questions to the Court and not the court attendant. *min*

*Sarah Crane*  
Sarah Crane  
9/19/2025  
9:14 AM

In regards to cash/items  
within the residence that is  
not tied to documentation  
specifying ownership, according  
to the law who takes control  
of those items?



Received by the Court  
9/19/2025  
4:25 PM

Members of the Jury:

Please re-read the instructions and consider the evidence that has been submitted to you.



Sarah Crane

9/22/2025, 9:02 AM

