

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

**CODY L. MOTZ**

**Plaintiff,**

**v.**

**JOHNNIE B. CLEMMONS,**

**Defendant.**

**CASE NO.: LACE138186**

**JURY INSTRUCTIONS**

**Members of the Jury:**

This case arises from a motor vehicle incident that occurred on November 23, 2022, on W. Locust Street in Davenport, Scott County, Iowa. On that date, Plaintiff was driving a motorcycle westbound on W. Locust Street in Davenport, Scott County, Iowa. At the same place and time, Defendant was driving his motor vehicle eastbound on the same street. Defendant turned left into a parking lot in front of Plaintiff's path of travel. Plaintiff and his motorcycle were involved in an incident at this location. Plaintiff claims Defendant was at fault and that Defendant caused his injuries and damages.

Defendant denies that he was the cause of Plaintiff's claimed injuries and damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law, which I 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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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 video-taped deposition.
2. Exhibits received by the court. You may examine the exhibits closely, but be careful not to alter or destroy them.
3. Stipulations, which are agreements between the attorneys.
4. Any other matter admitted (e.g., answers to interrogatories, matters which judicial notice was taken, etc.).

Evidence may be direct or circumstantial. The weight to be given to any evidence is for you to decide.

Sometimes, during a trial, references are made to pretrial 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 entered into evidence from a videotaped perpetuation deposition. A videotaped perpetuation deposition is trial testimony taken under oath before the trial. Consider that testimony as if it had been given in court.

## **INSTRUCTION NO. 5**

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. 6**

You have heard evidence claiming the Plaintiff and/or the Defendant made statements before this trial while under oath and 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 Plaintiff and/or the Defendant had made it under oath during the trial.

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

## INSTRUCTION NO. 7

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. 8**

You have heard testimony from people 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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

## **INSTRUCTION NO. 9**

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. 10**

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.

### **INSTRUCTION NO. 11**

“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. 12**

The driver of a vehicle intending to turn left into a private drive or parking lot shall yield the right-of-way to all vehicles approaching from the opposite direction which are at the intersection or so close to the intersection as to be an immediate danger. Then the driver, having yielded and having given the required signal, may make the left turn.

A violation of this law is negligence.

### **INSTRUCTION NO. 13**

A driver shall not turn a vehicle from a direct course on a road unless the movement can be made with reasonable safety and after giving an appropriate signal if any other vehicle may be affected by the movement. The signal to turn left must be continuously given during the last 100 feet travelled by the vehicle before turning. The signal may be given by hand or by a mechanical or electrical turn signal. These signal devices shall be capable of clearly indicating any intention to turn either to the right or the left, and shall be visible and understandable during both daylight and darkness from a distance of at least 100 feet from the front and rear of the vehicle. Hand signals shall be given by extending the hand and arm straight out from the left side of the vehicle for a left-hand turn.

A violation of this law is negligence.

## **INSTRUCTION NO. 14**

Any person driving a vehicle on a highway or roadway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway or roadway and of any other existing conditions.

A violation of this law is negligence.

### **INSTRUCTION NO. 14**

Any person driving a vehicle on a highway or roadway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway or roadway and of any other existing conditions.

A violation of this law is negligence.

## **INSTRUCTION NO. 15**

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.

## **INSTRUCTION NO. 16**

A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

## **INSTRUCTION NO. 17**

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. 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 the operation of the driver’s vehicle in relation to what the driver saw or should have seen.

A violation of this duty is negligence.

**INSTRUCTION NO. 19**

A driver of a vehicle shall not stop a vehicle in front of a public or private driveway.

A violation of this law is negligence.

### **INSTRUCTION NO. 20**

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. 21

The Plaintiff must prove all of the following propositions:

1. Defendant was negligent in one or more of the following ways:
  - a. In failing to observe due care and precaution in the operation of his motor vehicle;
  - b. In failing to maintain proper and adequate control of his motor vehicle;
  - c. In failing to keep a proper lookout;
  - d. In failing to yield the right-of-way;
  - e. In stopping his vehicle in front of a private driveway; and/or
  - f. In failing to exercise reasonable care in the operation of his motor vehicle under the circumstances then and there existing.
2. The negligent act or acts of the Defendant were a cause of damage to the Plaintiff.
3. The amount of Plaintiff's damages.

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

**INSTRUCTION NO. 22**

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

**INSTRUCTION NO. 23**

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

## INSTRUCTION NO. 24

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

1. past medical expenses;
2. past physical and mental pain and suffering;
3. past loss of full mind and body;
4. lost wages;
5. future medical expenses;
6. future physical and mental pain and suffering; and
7. future loss of full body and mind.

The amount you assess for past and future physical and mental pain and suffering and past and future loss of function of the mind and body 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. 25**

If you find Plaintiff is entitled to past medical expenses, he may recover 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.

**INSTRUCTION NO. 26**

If you find Plaintiff is entitled to future medical expenses, he may recover the present value of reasonable and necessary hospital charges, doctor charges, prescriptions, chiropractic care, and other medical services which will be incurred in the future.

**INSTRUCTION NO. 27**

If you find Plaintiff is entitled to lost wages, he may recover the reasonable value of lost wages from the date of injury to the present time.

**INSTRUCTION NO. 28**

If you find Plaintiff is entitled to past loss of full mind and body, he may recover for 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 or body to function in a normal manner.

**INSTRUCTION NO. 29**

If you find Plaintiff is entitled to future loss of full mind and body, he may recover the present value of future loss of function of the mind and body.

**INSTRUCTION NO. 30**

If you find Plaintiff is entitled to past physical and mental pain and suffering, he may recover for 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. 31**

If you find Plaintiff is entitled to future physical and mental pain and suffering, he may recover the present value of future physical and mental pain and suffering.

### **INSTRUCTION NO. 32**

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. 33**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff is thirty-five (35) years old. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Plaintiff's health, habits, occupation, and lifestyle, when deciding issues of future damages.

### **INSTRUCTION NO. 34**

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 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. 35**

Upon retiring to your jury room, you shall select a foreman or forewoman. It will be his or her duty to see that 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. 36**

During the trial, you were 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. 37

You may not communicate about this case before reaching your verdict. This includes via 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, Twitter, 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 the 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 the 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.

### **INSTRUCTION NO. 38**

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.

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

### INSTRUCTION NO. 39

I am giving you one verdict form 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 10:20 clock A.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 the questions, and appropriately signed it, tell the Court Attendant.



Tamm J. Roberts

Judge of the 7<sup>th</sup> Judicial District