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CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

PHILLIP FINKLE, Plaintiff, -vs- REGENCY CSP VENTURES LIMITED PARTNERSHIP; U.S. HOTEL AND RESORT MANAGEMENT, INC., Defendants.	CIV 13-4019 JURY INSTRUCTIONS

Lawrence L. Piersol
Judge

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Eighth Circuit Manual of Model Civil Jury Instructions, No. 3.01 (2013) (modified).

INSTRUCTION NO. 2

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

Eighth Circuit Manual of Model Civil Jury Instructions, No. 3.02 (2013).

INSTRUCTION NO. 3

As I stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in this case. When I use the word "evidence," I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers' statements, arguments, questions, and comments are not evidence.

2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.

3. Objections are not evidence. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer's objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.

4 . Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.

5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for.

INSTRUCTION NO. 3, continued

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

Eighth Circuit Manual of Model Civil Jury Instructions, No. 1.04 (2013).

INSTRUCTION NO. 4

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.

O'Malley, Grenig, and Lee, Federal Jury Practice and Instructions, § 12.07 (5th ed. 2000).

INSTRUCTION NO. 5

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

United States v. Rhodes, 631 F.2d 43, 46 n.3 (5th Cir. 1980).

INSTRUCTION NO. 6

During the trial, certain evidence was presented to you by deposition. The witnesses testified under oath at the depositions, just as if the witnesses were in court, and you should consider this testimony together with all other evidence received.

South Dakota Pattern Jury Instructions (Civil), No. 1-30-40 (2014).

INSTRUCTION NO. 7

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

Eighth Circuit Manual of Model Civil Jury Instructions, No. 3.03 (2013).

INSTRUCTION NO. 8

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if the act is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

O'Malley, Grenig, & Lee, Federal Jury Practice & Instructions, § 105.04 (5th ed. 2000).

INSTRUCTION NO. 9

A witness may qualify as an expert and give an opinion on a matter at issue if the witness has special knowledge, skill, experience, training, or education in a particular science, profession, or occupation. In deciding the weight to give to the opinion, you should consider the expert's qualifications and credibility and the reasons for the opinion. You should consider each expert opinion received in evidence in this case, and give it such weight as you think it deserves. You are not bound by the opinion; therefore, if you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons for the opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

South Dakota Pattern Jury Instruction No. 1-30-50 (2014) (modified); Devitt, Blackmar, Wolff & O'Malley, Federal Jury Practice and Instructions, § 72.08 (modified).

INSTRUCTION NO. 10

Defendants are a partnership and a corporation and can act only through their officers and employees. Any act or omission of an officer or employee within the scope of her employment is the act or omission of the corporation for which she was then acting.

South Dakota Civil Pattern Jury Instructions, No. 30-50-200 (2014) (modified).

INSTRUCTION NO. 11

Kathleen Funk, Josh Schmaltz, and Wade Lampert were the agents of the defendants Regency CSP Ventures Limited Partnership and U.S. Hotel and Resort Management, Inc., at and before the time of the occurrence. Therefore, any act or omission of Kathleen Funk, Josh Schmaltz, and Wade Lampert at that time is considered the act or omission of the defendants Regency CSP Ventures Limited Partnership and U.S. Hotel and Resort Management, Inc.

Source: South Dakota Civil Pattern Jury Instruction 30-50-160.

INSTRUCTION NO. 12

Regency CSP Ventures has contracted with the State of South Dakota to operate the lodges, restaurants, and activities in Custer State Park. U.S. Hotel and Resort Management is the general partner of Regency CSP Ventures.

Thus, Regency CSP Ventures and U.S. Hotel and Resort Management are connected entities and should be considered a single entity for purposes of your deliberations.

Source: SDCL § 48-7A-306 and *Action Mechanical, Inc. v. Deadwood Historic Preservation Comm'n*, 652 N.W.2d 742, 755 (S.D. 2002).

INSTRUCTION NO. 13

As explained in my prior instructions, this is a civil case, brought by the Plaintiff, Phillip Finkle, against the Defendants Regency CSP Ventures Limited Partnership and U.S. Hotel and Resort Management, Inc..

This lawsuit arises out of a motorcycle accident that occurred on August 6, 2012. Plaintiff alleges Defendants and their employee, Kathleen Funk, were negligent and that negligence was the cause of the injuries and damages suffered by the Plaintiff. Plaintiff claims Kathleen Funk was negligent for stopping on a highway in violation of SDCL § 32-30-1. Plaintiff claims the Defendants were negligent for failing to provide its employees proper training and supervision so that they would not improperly stop a tour jeep on the road.

The Plaintiff seeks compensatory damages for the injuries and losses he sustained.

Defendants deny that they or their employee, Kathleen Funk, were negligent or caused Plaintiff's injuries, and further allege Plaintiff himself was contributorily negligent more than slight. Defendants also deny the nature and extent of Plaintiff's alleged injuries and damages.

South Dakota Civil Pattern Jury Instructions, No. 1-10-20 (2014).

INSTRUCTION NO. 14

In civil actions, the party who asserts the affirmative of an issue must prove that issue by greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it. In this action, the Plaintiff has the burden of proving the following issues:

(1) That the Defendants or their employees were negligent;

(2) That Defendants' negligence, or their employees' negligence, was a legal cause of Plaintiff's damages or injuries; and

(3) The amount of damages, if any, Plaintiff sustained as a legal result of Defendants' negligence or their employees' negligence.

Defendants have the burden of proving the following issues:

(1) That Plaintiff was contributorily negligent as elsewhere defined in these instructions;

(2) That Plaintiff's contributory negligence was a legal cause of his injuries.

In determining whether or not an issue has been proved by greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

South Dakota Civil Pattern Jury Instructions, No. 1-60-10 (2014).

INSTRUCTION NO. 15

The issues to be determined by you in this case are these:

First, were the defendants negligent?

If you find the defendants were not negligent, you will return a verdict for the defendants. If you find the defendants were negligent, you have a second issue to determine, namely:

Was defendants' negligence a legal cause of any injury to the plaintiff?

If you find defendants' negligence was not a legal cause of plaintiff's injury, plaintiff is not entitled to recover and you will return a verdict for the defendants.

If you find defendants' negligence was a legal cause of plaintiff's injury, you then must determine a third issue:

Was the plaintiff contributorily negligent?

If you find that the plaintiff was not contributorily negligent, you then must fix the amount of plaintiff's damages and return a verdict for the plaintiff.

If you find that plaintiff was contributorily negligent, you then must determine a fourth issue, namely:

Was that contributory negligence a legal cause of the plaintiff's injury?

If you find that his contributory negligence was not a legal cause of plaintiff's injury, you then must fix the amount of plaintiff's damages and return a verdict for the plaintiff.

If you find that plaintiff's contributory negligence did contribute as a legal cause of plaintiff's injury, the plaintiff may still recover if the jury should find that such contributory negligence of the plaintiff was slight in comparison with the negligence of the defendants. If you find that the plaintiff is contributorily negligent, but that such plaintiff's negligence is under the

INSTRUCTION NO. 15 (continued)

circumstances slight in comparison with defendants' negligence, the plaintiff is still entitled to recover, but the damages to be awarded plaintiff must be reduced in proportion to the amount of plaintiff's contributory negligence. If you find that the contributory negligence of the plaintiff is more than slight in comparison with the negligence of the defendants, the plaintiff cannot recover and you must return a verdict for defendants.

As indicated in this instruction, you should first determine the questions of liability before you undertake to fix an amount that would compensate for damages, if any, found to have been suffered.

South Dakota Civil Jury Instructions, No. 1-50-20 (2014).

INSTRUCTION NO. 16

Negligence is the failure to use reasonable care. It is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by the evidence. That is for you to decide.

South Dakota Civil Pattern Jury Instruction 20-20-10 (2014).

INSTRUCTION NO. 17

Contributory negligence is negligence on the part of a plaintiff which, when combined with the negligence of a defendant, contributes as a legal cause in the bringing about of the injury to the plaintiff.

South Dakota Civil Pattern Jury Instructions, No. 20-20-30 (2014).

INSTRUCTION NO. 18

A plaintiff who is contributorily negligent may still recover damages if that contributory negligence is slight, or less than slight, when compared with the negligence of the defendants. The term "slight" means small when compared with the negligence of the Defendants.

In determining this issue you must determine the answer to two question:

1. Whether both the Plaintiff and the Defendants are negligent; and
2. If both are negligent, whether the Plaintiff's negligence is
    a. "slight" or less than "slight," or
    b. more than "slight" in comparison with the Defendants' negligence.

In answering the second question you must make a direct comparison between the conduct of the Plaintiff and the Defendants.

If you find the Plaintiff's contributory negligence is more than slight when compared with the negligence of the Defendants, then the Plaintiff is not entitled to recover any damages.

If you find the Plaintiff's contributory negligence is slight, or less than slight, when compared with the negligence of the Defendants, then the Plaintiff is entitled to recover damages. However, the Plaintiff's damages must be reduced in proportion with the amount of the Plaintiff's contributory negligence.

South Dakota Civil Pattern Jury Instructions, No. 20-20-40 (2014).

INSTRUCTION NO. 19

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 the negligence of anyone.

Source: *Del Vecchio v. Lund*, 293 N.W.2d 474, 476-77 (S.D. 1980). *Steffen v. Schwan's Sales Enterprises, Inc.*, 713 N.W.2d 614, 618 (S.D. 2006)

INSTRUCTION NO. 20

More than one person may be responsible for causing injury to another. If you find that the defendants were negligent and that the defendants' negligence was a legal cause of the plaintiff's injury, it is not a defense that some third person, not a party to this action, was partly responsible.

Source: South Dakota Civil Pattern Jury Instruction 20-30-40.

INSTRUCTION NO. 21

A statute in this state provides:

No person may drive a motor vehicle on a highway located in this state at a speed greater than is reasonable and prudent under the conditions then existing or at speeds in excess of the posted speed limit.

This statute sets the standard of care of a reasonable person. The posted speed limit on the Wild Life Loop Road is 35 miles per hour.

If you find plaintiff violated the statute, such violation is negligence.

Source: South Dakota Civil Pattern Jury Instruction 20-200-30 (modified)
SDCL § 32-25-3
ARSD 41:03:02:02

INSTRUCTION NO. 22

A statute in this State provides:

> No person may stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main-traveled portion of any highway, outside of a business or residence district, when it is practical to stop, park, or leave such vehicle standing off of the paved or improved or main-traveled portion of the highway.

This statute sets the standard of care of a reasonable person. If you find the defendants' employee violated it, such violation is negligence unless you find from all the evidence that compliance was excusable because of legal excuse. A legal excuse is defined as:

1. Anything that would make compliance with the statute impossible;
2. Anything over which the driver has no control which places the car in a position violative of the statute; and
3. An emergency not of the driver's own making by reason of which the driver fails to observe the statute.

Within the meaning of this and other South Dakota statutes, the Wildlife Loop in Custer State Park is a "highway."

Source: SDCL 32-30-1; South Dakota Civil Pattern Jury Instructions 20-200-00 (Comment); 20-200-10; 20-200-20.

INSTRUCTION NO. 23

A statute in this State provides:

> No person may park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear or unobstructed width of not less than twenty feet upon the main- traveled portion of such highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred feet in each direction upon such highway.

This statute sets the standard of care of a reasonable person. If you find the defendants' employee violated it, such violation is negligence unless you find from all the evidence that compliance was excusable because of legal excuse. A legal excuse is defined as:

1. Anything that would make compliance with the statute impossible;
2. Anything over which the driver has no control which places the car in a position violative of the statute; and
3. An emergency not of the driver's own making by reason of which the driver fails to observe the statute.

Source: SDCL 32-30-2; South Dakota Civil Pattern Jury Instructions 20-200-00 (Comment); 20-200-10; 20-200-20.

INSTRUCTION NO. 24

A statute in this State provides:

> All motorcycles are entitled to full use of a lane and no motor vehicle may be driven in such manner as to deprive any motorcycle of the full use of a lane. This section does not apply to motorcycles operated two abreast in a single lane.

Source: SDCL 32-20-9.1.

INSTRUCTION NO. 25

The driver of a vehicle using a public highway has a duty to exercise ordinary care at all times to avoid placing the driver or others in danger and to exercise ordinary care to avoid an accident.

While a driver may assume that others will exercise due care and obey the law, a driver may not for that reason omit any care which the law demands. Any person driving on a public highway is required to anticipate the presence on the highway of other persons, vehicles, and objects.

Source: South Dakota Civil Pattern Jury Instruction 20-210-10

INSTRUCTION NO. 26

A person operating a vehicle on a public highway has a duty to exercise reasonable care under the circumstances to keep a lookout for other users of the highway and to maintain control of the vehicle so as to be able to stop the vehicle or otherwise avoid an accident within that person's range of vision.

South Dakota Civil Jury Instructions, No. 20-210-30 (2014).

INSTRUCTION NO. 27

The driver of a vehicle such as a motorcycle or an automobile may assume that other drivers using the highways will obey the laws of the road until the driver knows, or in the exercise of reasonable care should know, otherwise.

South Dakota Civil Jury Instructions, No. 20-210-60 (2014).

INSTRUCTION NO. 28

The defendants contend the plaintiff was negligent by driving too fast, failing to keep a proper lookout, and by losing control of his motorcycle, instead of passing the jeep. The plaintiff contends he was presented with a sudden emergency and his decision was reasonable.

When a person is confronted with a sudden emergency, the person has a duty to exercise the care that an ordinarily prudent person would exercise in the same or similar situation. The plaintiff is not relieved of negligently operating his motorcycle because of a sudden emergency unless, based on the facts, you find:

(1) that the plaintiff was confronted with a sudden and unexpected danger; and

(2) that plaintiff's own negligence did not bring about the dangerous situation; and

(3) that the plaintiff had at least two courses of action available after perceiving the dangerous situation; and

(4) that the plaintiff's choice of action after confronting the danger was a choice which a reasonably prudent person would have taken under similar circumstances, even though it may later develop that some other choice would have been better.

Source: South Dakota Civil Pattern Jury Instruction 20-30-30.

INSTRUCTION NO. 29

The plaintiff claims that the defendants negligently trained and supervised Kathleen Funk and has the burden of proving each of the following four essential propositions:

First, that the plaintiff sustained damages;

Second, that the defendants knew, or in the exercise of reasonable care should have known, that Kathleen Funk subjected others to an unreasonable risk of harm;

Third, that the defendants were negligent in training or supervising Kathleen Funk; and

Fourth, that the defendants' negligence in training or supervising Kathleen Funk was a legal cause of the plaintiff's damages.

If you find from the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff; but if, on the other hand, you find that any of these propositions has not been proved, then your verdict should be for the defendants on the plaintiff's negligent training and supervision claim.

Source: Ark. Model Jury Instr., Civil AMI 709A; *Kirlin v. Halverson*, 758 N.W.2d 436, 452 (S.D. 2008); *Jarvis v. Securitas Security Services USA, Inc.*, 2012 WL 527597 (D. Md. 2012); *Glover v. Transcor Am., Inc.*, 57 F.Supp.2d 1240 (D. Wyo 1999).

INSTRUCTION NO. 30

A legal cause is a cause that produces a result in a natural and probable sequence, and without which the result would not have occurred.

A legal cause does not need to be the only cause of a result. A legal cause may act in combination with other causes to produce a result.

South Dakota Civil Pattern Jury Instructions, 20-10-10.

INSTRUCTION NO. 31

The term "legal cause" means an immediate cause which, in the natural or probable sequence, produces the injury complained of. For legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of. Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. The conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of the Plaintiff's injury.

Source: South Dakota Civil Pattern Jury Instruction 20-10-20

INSTRUCTION NO. 32

If you decide for Plaintiff on the question of liability you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of loss or harm suffered in person proved by the evidence to have been legally caused by the Defendants' conduct, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

(1) The disability and disfigurement suffered by Plaintiff.

(2) The pain and suffering, mental anguish and loss of capacity of the enjoyment of life experienced in the past and reasonably certain to be experienced in the future as a result of the injuries sustained by Plaintiff.

(3) The reasonable value of necessary medical care, treatment, and services received by Plaintiff.

Whether any of these elements or damages have been proved by the evidence is for you to determine. Your verdict must be based on the evidence and not upon speculation, guesswork, or conjecture.

South Dakota Civil Jury Instructions, Nos. 50-00-10, 50-10-60, 50-10-70, 50-10-80.

INSTRUCTION NO. 33

The law allows damages for detriment reasonably certain to result in the future. By their nature, all future happenings are somewhat uncertain. The fact and cause of the loss must be established with reasonable certainty. Once future detriment is established, the law does not require certainty as to the amount of such damages. Thus, once the existence of such damages is established, recovery is not barred by uncertainty as to the measure or extent of damages, or the fact that they cannot be measured with exactness. On the other hand, an award of future damages cannot be based on conjecture, speculation, or mere possibility.

Source: South Dakota Civil Pattern Jury Instruction 50-120-10.

INSTRUCTION NO. 33 A

Philip Finkle is 65 years old. According to the mortality table, the life expectancy of a 65 year old white male is 17.4 years. The court takes judicial notice of this fact, which is now evidence for you to consider.

You should note the restricted significance of this evidence. Life expectancy shown by the mortality table is merely an estimate of the probable average length of life of all persons of a given age in the United States. It is an estimate because it is based on a limited record of experience. Because it reflects averages, the table applies only to one who has the same health and exposure to danger of the average person that age.

Therefore, in connection with the mortality table evidence, you should also consider other evidence bearing on life expectancy. For example, you should consider the occupation, health, habits, and activities of the person whose life expectancy is in question.

Source: National Vital Statistics Reports, Vol. 61, No. 3 (Sept. 24, 2012).

INSTRUCTION NO. 34

Any person who is entitled to recover damages is entitled to recover interest thereon from the day that the loss or damage occurred except:

1. During a period of time, the person liable for the damages was prevented by law, or an act of the person entitled to recover the damages from paying the damages, or

2. Interest is not recoverable on damages which will occur in the future, punitive damages, or intangible damages such as pain and suffering, emotional distress, injury to credit, reputation or financial standing, loss of enjoyment of life, or loss of society and companionship.

If Plaintiff is entitled to recover damages for past medical expenses, he is entitled to prejudgment interest for those damages.

You must decide:

1. The amount of damages, if any, and
2. The amount of damages which are subject to prejudgment interest, if any, and
3. The date or dates on which the damages occurred.

If you return a verdict for the plaintiff, you must indicate on the verdict form whether you find plaintiff is entitled to prejudgment interest, and if so, the amount of damages upon which interest is granted and the beginning date of such interest. Based upon your findings, the Court will calculate the amount of interest the plaintiff is entitled to recover.

Source: South Dakota Civil Pattern Jury Instruction 50-130-10.

INSTRUCTION NO. 35

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from the greater weight of the evidence in accordance with the other instructions.

O'Malley, Grenig, & Lee, Federal Jury Practice & Instructions, § 106.02 (5th ed. 2000).

INSTRUCTION NO. 36

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

INSTRUCTION NO. 36, continued

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

Eighth Circuit Manual of Model Civil Jury Instructions, No. 3.06 (2013).