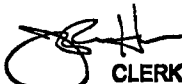


**FILED**

**AUG 23 2012**

  
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

DEBORAH JEAN KATES,	)	CIV. 10-5025-JLV
	)	
Plaintiff,	)	
	)	FINAL INSTRUCTIONS
vs.	)	TO THE JURY
	)	
DWIGHT BLAKE,	)	
	)	
Defendant.	)	

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**FINAL INSTRUCTION NO. 1 - INTRODUCTION**

Members of the jury, I will take a few minutes to give you the instructions that are to guide and govern you in arriving at a verdict. These final instructions will be available to you in the jury room. The instructions explain the law that applies to this case. You must consider my instructions as a whole and not single out some instructions and ignore others. All instructions, whenever given and whether in writing or not, are equally binding on you and must be followed. The order in which the instructions are given has no significance as to their relative importance.

This case is presented to you because the parties dispute certain facts. You will decide the facts from the evidence presented in court. "Evidence" is defined in Final Instruction No. 3. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts established by the evidence. You will then apply the law to the facts to reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with the law or not.

It is vital to the administration of justice that each of you faithfully perform your duties as jurors. You must carefully and honestly consider this case with due regard for the rights and interests of both parties. Do not allow sympathy or prejudice to influence you. The law demands of you a

just verdict based solely on the evidence, your common sense, and the law as I give it to you. Your verdict must not be based on speculation, guess, or conjecture.

Finally, do not take anything I said or did during the trial as an indication of what I think about the evidence or what I think your verdict should be. Do not conclude from any ruling or comment I made that I have any opinion on how you should decide the case.

**FINAL INSTRUCTION NO. 2 - MATTERS TO BE DISREGARDED**

It is your duty as a juror to determine the facts, and you must do this from the evidence produced here in open court. This consists of the testimony of the witnesses and the exhibits which have been received. This evidence is governed by various rules of law. Under these rules, it has been my duty as judge to rule on the admissibility of the evidence from time to time. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit which was not received in evidence or any testimony which I ordered stricken. Such things you must put out of your mind. You must not consider anything you may have heard or read about this case other than the evidence produced here in open court.

**FINAL INSTRUCTION NO. 3 - DEFINITION OF EVIDENCE**

I mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated—that is, formally agreed to by the parties—and any facts that have been judicially noticed—that is, facts which I say you may, but are not required to accept as true, even without evidence. Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence. Opening statements and closing arguments by lawyers are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections and rulings on objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony I struck from the record or told you to disregard is not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence.

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

The fact that an exhibit was shown to you does not mean you must rely on it more than you rely on other evidence.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

Finally, the weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of the evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

**FINAL INSTRUCTION NO. 4 - USE OF NOTES**

You must make your decision based on the evidence. We have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the trial available for your use in reaching a verdict. Notes you took during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

At the end of the trial, you may take your notes out of the notebook and keep them or leave them, and we will destroy them. No one will read the notes.



**FINAL INSTRUCTION NO. 5 - OBJECTIONS**

The lawyers made objections during the trial that I ruled upon. If I sustained an objection to a question before it was answered, do not draw any inferences or conclusions from the question itself. The lawyers have a duty to object to testimony or other evidence they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer made objections.

**FINAL INSTRUCTION NO. 6 - CREDIBILITY OF WITNESSES**

You are the sole judges of all questions of fact and the credibility of witnesses. 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 says, only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; the witness's memory; any motives the witness may have for testifying a certain way; the behavior of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness of the testimony; and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind people sometimes see or hear things differently and sometimes forget things. You need to consider whether a contradiction results from an innocent misrecollection or sincere lapse of memory or instead from an intentional falsehood or pretended lapse of memory.

**FINAL INSTRUCTION NO. 7 - IMPEACHMENT**

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

**FINAL INSTRUCTION NO. 8 - EXPERT WITNESSES**

You may have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it and give it as much weight as you think it deserves considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

**FINAL INSTRUCTION NO. 9 - BURDEN OF PROOF**

In civil actions, the party who has the burden of proving an issue must prove that issue by the 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 the evidence is evenly balanced so that you are unable to say the evidence on either side of an issue has the greater weight, then your finding upon the issue must be against the party who has the burden of proving it.

In this action, Ms. Kates has the burden of proving the following issues:

1. That Mr. Blake was negligent;
2. That the negligence of Mr. Blake was a legal cause of Ms. Kates' injuries; and
3. That the amount of Ms. Kates' damages, if any, were legally caused by the negligence of Mr. Blake.

Mr. Blake has the burden of proving the following issues:

1. That Ms. Kates was contributorily negligent.

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

**FINAL INSTRUCTION NO. 10 - DEFINITION OF NEGLIGENCE**

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 evidence. That is for you to decide.

**FINAL INSTRUCTION NO. 11 - DEFINITION OF LEGAL CAUSE**

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.

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. In other words, liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. The defendant’s conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of plaintiff’s injuries.

**FINAL INSTRUCTION NO. 12 - DEFINITION OF CONTRIBUTORY NEGLIGENCE AND COMPARATIVE NEGLIGENCE**

Contributory negligence is negligence on the part of Ms. Kates which, when combined with the negligence of Mr. Blake, contributes as a legal cause in the bringing about Ms. Kates' injuries.

If Ms. Kates was contributorily negligent, she may still recover damages if her contributory negligence was slight, or less than slight, when compared with the negligence of Mr. Blake. The term "slight" means small when compared with the negligence of Mr. Blake.

In deciding this issue you must determine the answer to two questions:

1. Whether Ms. Kates and Mr. Blake were negligent; and
2. If both were negligent, whether Ms. Kates' negligence was
  - a. "slight" or less than "slight" or
  - b. more than "slight"

in comparison with the negligence of Mr. Blake.

In answering both parts in question #2, you must make a direct comparison between the conduct of Ms. Kates and Mr. Blake.

If you find Ms. Kates' contributory negligence was more than slight when compared with the negligence of Mr. Blake, then Ms. Kates is not entitled to recover.



If you find Ms. Kates' contributory negligence was slight, or less than slight, when compared with the negligence of Mr. Blake, then Ms. Kates is entitled to recover damages. However, Ms. Kates' damages must be reduced in proportion with the amount of her contributory negligence.

**FINAL INSTRUCTION NO. 13 - SUDDEN EMERGENCY**

When a person is confronted with a sudden emergency, the person has a duty to exercise the care that a reasonable person would exercise in the same or similar situation. Mr. Blake is not relieved of liability because of a sudden emergency unless, based on the facts, you find:

1. That Mr. Blake was confronted with a sudden and unexpected danger;
2. The Mr. Blake's own negligence did not bring about the dangerous situation;
3. That Mr. Blake had at least two courses of action available after perceiving the dangerous situation; and
4. That Mr. Blake's choice of action after confronting the danger was a choice which a reasonable person would have taken under similar circumstances, even though it may later develop that some other choice would have been better.

**FINAL INSTRUCTION NO. 14 -  
RIGHT TO ASSUME OTHER'S GOOD CONDUCT**

A person who is exercising reasonable care has a right to assume that others will perform their duty and obey the law. Unless there is reasonable cause for thinking otherwise, people can assume that they are not exposed to danger from another person's violation of the law or duty of care.

**FINAL INSTRUCTION NO. 15 - DUTY OF DRIVER USING HIGHWAY**

The driver of any vehicle using a public highway has a duty to exercise reasonable care at all times 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 a collision within that person's range of vision.

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.

**FINAL INSTRUCTION NO. 16 - CARELESS DRIVING**

No operator of a vehicle on a highway may drive carelessly or heedlessly in disregard of the rights or safety of others, or without due caution or circumspection or at a speed or in a manner so as to endanger or be likely to endanger any person.

This law sets the standard of care of a reasonable person. If you find Mr. Blake violated this law, such violation is negligence.

**FINAL INSTRUCTION NO. 17 -  
DUTY OF PEDESTRIAN USING HIGHWAY**

A pedestrian has a legal right to cross a highway on foot. While crossing a highway a pedestrian has a duty to look both ways before crossing and to keep a constant lookout for his or her own safety by looking in both directions for approaching traffic.

**FINAL INSTRUCTION NO. 18 - ELEMENTS OF DAMAGES**

If you decide for Ms. Kates on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate her for any of the following elements of loss or harm suffered and proven by the evidence to have been legally caused by Mr. Blake's 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.
2. The pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future as a result of the injury.
3. The 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 injury.
4. The reasonable value of necessary medical care, treatment, and services received and the reasonable value of the necessary expense of medical care, treatment and services reasonably certain to be received in the future.
5. The lost wages.
6. The loss of earning capacity reasonably certain to occur in the future.

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



**FINAL INSTRUCTION NO. 19 - LIFE EXPECTANCY**

Ms. Kates was 55 years old at the time of her injuries. According to the mortality table, the life expectancy of a 55-year-old white female is 28.2 additional years. The court takes judicial notice of these facts, 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 as 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.

**FINAL INSTRUCTION NO. 20 - LOSS OF EARNING CAPACITY**

Factors to be considered in determining Ms. Kates' damages, if any, for loss of earning capacity include:

1. What she earned before the injury;
2. What she is capable of earning after the injury;
3. Her prior ability;
4. The extent to which any injuries affect her power to earn;
5. Her age, life expectancy, physical condition, occupation, and skill; and
6. The habits of industry.

**FINAL INSTRUCTION NO. 21 - FUTURE DAMAGES**

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.

**FINAL INSTRUCTION NO. 22 - PRESENT VALUE**

If you should find Ms. Kates is entitled to a verdict, and further find that the evidence in the case establishes either:

1. A reasonable likelihood of future medical expense; or
2. A reasonable likelihood of loss of future earnings;

then you must ascertain the present value in dollars of such future damage, since the award of future damages necessarily requires that payment be made now for a loss that will not be sustained until some future date.

Under these circumstances, the result is that Ms. Kates will in effect be reimbursed in advance of the loss, and so will have the use of money which she would not have received until some future date, but for the verdict.

In order to make a reasonable adjustment for the present use of money representing a lump-sum payment of anticipated future loss, the law requires that you discount, or reduce to its present value, the amount of the anticipated future loss, by considering (1) the interest rate or return which Ms. Kates could reasonably be expected to receive on an investment of the lump sum payment together with (2) the period of time over which the future loss is reasonably certain to be sustained; and then reduce, or in effect deduct from, the total amount of future loss whatever that amount would be reasonably certain to earn or return, if invested at such rate of

interest over such period of time; and include in the verdict an award for only the present worth—the reduced amount of anticipated future loss.

Bear in mind that your duty to discount to present value applies only to loss of future medical expenses and loss of future earnings. Damages for future pain and suffering, future mental anguish, disability, and disfigurement are not subject to any reduction for the present value of such money.

Finally, in determining the present value of future damages, you may also take into consideration the effect of inflation or deflation on the future damages.

**FINAL INSTRUCTION NO. 23 - PRESENT VALUE CALCULATION**

The attached table may be used to calculate the present value of future damages. This process requires that you make three determinations.

1. Determine the number of years that the future expenses will be incurred. That number is designated as “n” in the attached table.
2. Determine the net discount rate. The net discount rate is the interest rate which plaintiff could reasonably be expected to receive on an investment of the lump-sum payment minus the inflation rate.
3. Determine the annual amount of the future damages to be incurred, without consideration of inflation.

Using the number of years (n value) and the net discount rate, ascertain the “factor” from the table. Multiply the annual amount of the future damages by the “factor” to calculate the present value of future damages.

## PRESENT VALUE TABLE

PRESENT VALUE CALCULATIONS  
PRESENT VALUE OF 1 PER PERIOD RECEIVED FOR n PERIODS  
(Uniform Series)

n	1%	2%	3%	4%	5%	6%	7%	8%
1	0.9901	0.9804	0.9709	0.9615	0.9524	0.9434	0.9346	0.9259
2	1.9704	1.9416	1.9135	1.8861	1.8594	1.8334	1.8080	1.7833
3	2.9410	2.8839	2.8286	2.7751	2.7232	2.6730	2.6243	2.5771
4	3.9020	3.8077	3.7171	3.6299	3.5460	3.4651	3.3872	3.3121
5	4.8534	4.7135	4.5797	4.4518	4.3295	4.2124	4.1002	3.9927
6	5.7955	5.6014	5.4172	5.2421	5.0757	4.9173	4.7665	4.6229
7	6.7282	6.4720	6.2303	6.0021	5.7864	5.5824	5.3893	5.2064
8	7.6517	7.3255	7.0197	6.7327	6.4632	6.2098	5.9713	5.7466
9	8.5660	8.1622	7.7861	7.4353	7.1078	6.8017	6.5152	6.2469
10	9.4713	8.9826	8.5302	8.1109	7.7217	7.3601	7.0236	6.7101
11	10.3676	9.7868	9.2526	8.7605	8.3064	7.8869	7.4987	7.1390
12	11.2551	10.5753	9.9540	9.3851	8.8633	8.3838	7.9427	7.5361
13	12.1337	11.3484	10.6350	9.9856	9.3936	8.8527	8.3577	7.9038
14	13.0037	12.1062	11.2961	10.5631	9.8986	9.2950	8.7455	8.2442
15	13.8651	12.8493	11.9379	11.1184	10.3797	9.7122	9.1079	8.5595
16	14.7179	13.5777	12.5611	11.6523	10.8378	10.1059	9.4466	8.8514
17	15.5623	14.2919	13.1661	12.1657	11.2741	10.4773	9.7632	9.1216
18	16.3983	14.9920	13.7535	12.6593	11.6896	10.8276	10.0591	9.3719
19	17.2260	15.6785	14.3238	13.1339	12.0853	11.1581	10.3356	9.6036
20	18.0456	16.3514	14.8775	13.5903	12.4622	11.4699	10.5940	9.8181
21	18.8570	17.0112	15.4150	14.0292	12.8212	11.7641	10.8355	10.0168
22	19.6604	17.6580	15.9369	14.4511	13.1630	12.0416	11.0612	10.2007
23	20.4558	18.2922	16.4436	14.8568	13.4886	12.3034	11.2722	10.3711
24	21.2434	18.9139	16.9355	15.2470	13.7986	12.5504	11.4693	10.5288
25	22.0232	19.5235	17.4131	15.6221	14.0939	12.7834	11.6536	10.6748
26	22.7952	20.1210	17.8768	15.9828	14.3752	13.0032	11.8258	10.8100
27	23.5596	20.7069	18.3270	16.3296	14.6430	13.2105	11.9867	10.9352
28	24.3164	21.2813	18.7641	16.6631	14.8981	13.4062	12.1371	11.0511
29	25.0658	21.8444	19.1885	16.9837	15.1411	13.5907	12.2777	11.1584
30	25.8077	22.3965	19.6004	17.2920	15.3725	13.7648	12.4090	11.2578
31	26.5423	22.9377	20.0004	17.5885	15.5928	13.9291	12.5318	11.3498
32	27.2696	23.4683	20.3888	17.8736	15.8027	14.0840	12.6466	11.4350
33	27.9897	23.9886	20.7658	18.1476	16.0025	14.2302	12.7538	11.5139
34	28.7027	24.4986	21.1318	18.4112	16.1929	14.3681	12.8540	11.5869
35	29.4086	24.9986	21.4872	18.6646	16.3742	14.4982	12.9477	11.6546
36	30.1075	25.4888	21.8323	18.9083	16.5469	14.6210	13.0352	11.7172
37	30.7995	25.9695	22.1672	19.1426	16.7113	14.7368	13.1170	11.7752
38	31.4847	26.4406	22.4925	19.3679	16.8679	14.8460	13.1935	11.8289

PRESENT VALUE TABLE CONT.

## PRESENT VALUE TABLE CONT.

n	1%	2%	3%	4%	5%	6%	7%	8%
39	32.1630	26.9026	22.8082	19.5845	17.0170	14.9491	13.2649	11.8786
40	32.8347	27.3555	23.1148	19.7928	17.1591	15.0463	13.3317	11.9246
41	33.4997	27.7995	23.4124	19.9931	17.2944	15.1380	13.3941	11.9672
42	34.1581	28.2348	23.7014	20.1856	17.4232	15.2245	13.4524	12.0067
43	34.8100	28.6616	23.9819	20.3708	17.5459	15.3062	13.5070	12.0432
44	35.4555	29.0800	24.2543	20.5488	17.6628	15.3832	13.5579	12.0771
45	36.0945	29.4902	24.5187	20.7200	17.7741	15.4558	13.6055	12.1084
46	36.7272	29.8923	24.7754	20.8847	17.8801	15.5244	13.6500	12.1374
47	37.3537	30.2866	25.0247	21.0429	17.9810	15.5890	13.6916	12.1643
48	37.9740	30.6731	25.2667	21.1951	18.0772	15.6500	13.7305	12.1891
49	38.5881	31.0521	25.5017	21.3415	18.1687	15.7076	13.7668	12.2122
50	39.1961	31.4236	25.7298	21.4822	18.2559	15.7619	13.8007	12.2335

(Reviewed 2004)



**FINAL INSTRUCTION NO. 24 - PREJUDGMENT INTEREST**

Any person who is entitled to recover damages is entitled to recover interest 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; and
2. Interest is not recoverable on damages that will occur in the future or intangible damages such as pain and suffering, emotional distress, or loss of enjoyment of life.

You must decide:

1. The amount of damages, if any;
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 Ms. Kates, you must indicate on the verdict form whether you find she 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 Ms. Kates is entitled to recover.

**FINAL INSTRUCTION NO. 25 - WITHDRAWAL OF CLAIM**

Mr. Kates' loss of consortium claim is no longer a part of this case, so you will not decide that claim.

**FINAL INSTRUCTION NO. 26 - ISSUES TO BE DECIDED**

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

First, was Mr. Blake negligent?

If you find Mr. Blake was not negligent, you will return a verdict for defendant. If you find Mr. Blake was negligent, the next issue you must decide is:

Was that negligence a legal cause of any injury to Ms. Kates?

If you find Mr. Blake's negligence was not a legal cause of Ms. Kates' injuries, she is not entitled to recover and you will return a verdict for defendant. If you find Mr. Blake's negligence was a legal cause of Ms. Kates' injuries, the next issue you must decide is:

Was Ms. Kates also negligent?

If you find Ms. Kates was not negligent, you then must fix the amount of her damages and return a verdict for plaintiff.

If you find Ms. Kates was also negligent, the next issue you must decide is:

Was that negligence a legal cause of her injuries?

If you find Ms. Kates' negligence was not a legal cause of her injuries, you then must fix the amount of her damages and return a verdict for plaintiff.

If you find that Ms. Kates' negligence did contribute as a legal cause of her injuries, she may still recover if the jury finds that her contributory negligence was slight in comparison with the negligence of Mr. Blake. If you find that Ms. Kates was contributorily negligent, but that her negligence is under the circumstances slight in comparison with Mr. Blake's negligence, Ms. Kates is still entitled to recover, but the damages to be awarded her must be reduced in proportion to the amount of her contributory negligence. If you find that Ms. Kates' contributory negligence was more than slight in comparison with the negligence of Mr. Blake, Ms. Kates cannot recover.

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

**FINAL INSTRUCTION NO. 27 - DUTY AS JURORS**

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself, but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations, you should not hesitate to re-examine your own views and change your opinion if you are convinced it is wrong. To bring the jury to a unanimous result, you must examine the questions submitted to you openly and frankly with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest you carefully consider all of the evidence bearing upon the questions before you. You may take all the time you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be resolved at some later time.

**FINAL INSTRUCTION NO. 28 - DUTY DURING DELIBERATIONS**

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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

Second, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, 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.

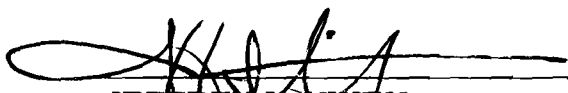
Third, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict must be unanimous.** Nothing I said or did was intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision you reach in this case. You will take this form to the jury room. When you have unanimously agreed on the verdict, the foreperson will fill in the form, sign and date it, and advise the court security officer that you have reached

a verdict. You will then return to the courtroom where your verdict will be received and announced.

Dated August 23, 2012.

BY THE COURT:

  
\_\_\_\_\_  
JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

DEBORAH JEAN KATES,	)	CIV. 10-5025-JLV
	)	
Plaintiff,	)	
	)	VERDICT FOR PLAINTIFF
vs.	)	
	)	
DWIGHT BLAKE,	)	
	)	
Defendant.	)	

We, the jury, duly impaneled in the above-entitled action and sworn to try the issues therein, unanimously find for the plaintiff and assess plaintiff's damages as follows: \$ \_\_\_\_\_

We further find as follows:

\_\_\_\_\_ Yes, plaintiff is entitled to prejudgment interest, beginning on \_\_\_\_\_ (date) on the amount of \$ \_\_\_\_\_. The court will calculate the amount of prejudgment interest.

\_\_\_\_\_ No, plaintiff is not entitled to prejudgment interest.

Dated \_\_\_\_\_

\_\_\_\_\_  
Foreperson