

UNITED STATES DISTRICT COURT  
 DISTRICT OF SOUTH DAKOTA  
 WESTERN DIVISION

EDWIN JAKUBOWSKI JR.,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> CHRISTLE BEUCKENS,  <p style="text-align: center;">Defendant.</p>	CIV. 16-5116-JLV  JURY INSTRUCTIONS
---	---

**TABLE OF CONTENTS**

NO. 1 - ROLE OF INSTRUCTIONS.....3

NO. 2 - NATURE OF THE CASE.....5

NO. 3 - BURDEN OF PROOF.....6

NO. 4 - LEGAL CAUSE.....7

NO. 5 - DEFINITION OF NEGLIGENCE.....8

NO. 6 - DEFINITION OF CONTRIBUTORY AND COMPARATIVE  
 NEGLIGENCE.....9

NO. 7 - RIGHT TO ASSUME OTHER'S GOOD CONDUCT.....11

NO. 8 - DUTY OF DRIVER USING HIGHWAY.....12

NO. 9 - PROPER LOOKOUT AND CONTROL OF VEHICLE.....13

NO. 10 - SPEED.....14

NO. 11 - CHANGING LANES.....15

NO. 12 - U-TURN PROHIBITED WHERE UNSAFE.....16

NO. 13 - WHEN SIGNALS ARE REQUIRED.....17

NO. 14 - FOLLOWING TOO CLOSELY.....18

NO. 15 - PASSING ON LEFT.....19

NO. 16 - PASSING ON RIGHT.....20

NO. 17 - LEGAL EXCUSE.....21

NO. 18 - ASSUMPTION OF RISK.....22

NO. 19 - DAMAGES.....23

NO. 20 - AGGRAVATION.....24

NO. 21 - FUTURE DAMAGES.....25

NO. 22 - LIFE EXPECTANCY.....26

NO. 23 - DUTY TO MITIGATE DAMAGES.....27

NO. 24 - ISSUES TO BE DECIDED.....28

NO. 25 - DEFINITION OF EVIDENCE.....30

NO. 26 - CREDIBILITY OF WITNESSES.....32

NO. 27 - IMPEACHMENT ..... 33  
NO. 28 - EXPERT WITNESSES ..... 34  
NO. 29 - BENCH CONFERENCES AND RECESSES ..... 35  
NO. 30 - OBJECTIONS..... 36  
NO. 31 - DEPOSITION EVIDENCE.....37  
NO. 32 - CHARTS AND SUMMARIES..... 38  
NO. 33 - NOTE TAKING..... 39  
NO. 34 - MEDIA AND TECHNOLOGY.....40  
NO. 35 - CONDUCT OF THE JURY..... 43  
NO. 36 - OUTLINE OF THE TRIAL.....45

**INSTRUCTION NO. 1 - ROLE OF INSTRUCTIONS**

Members of the jury, I will take a few minutes to give you some initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. These instructions explain the law that applies to this case. Unless I specifically tell you otherwise, all instructions, both those I give you now and those I give you later, are equally binding on you and must be followed. Consider these instructions with all written and oral instructions given to you during and at the end of the trial and apply them to the facts of the case. You must consider my instructions as a whole and not single out some instructions and ignore others.

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 Instruction No. 25. This evidence is governed by various rules of law. Under these rules, it is 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 that I order stricken. You must put such things out of your mind.

You are entitled to consider the 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, which I will

give you in my instructions, 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 the 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 may say or do 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 may make that I have any opinion on how you should decide the case.

**INSTRUCTION NO. 2 - NATURE OF THE CASE**

This is a civil case brought by plaintiff Edwin Jakubowski Jr. against the defendant Christle Beuckens. The lawsuit arises out of a motor vehicle collision. Mr. Jakubowski alleges he was injured in the collision and Mrs. Beuckens' negligence caused the collision. Mr. Jakubowski seeks damages for his injuries. Mrs. Beuckens denies that she was negligent or that her negligence, if any, caused the collision. She further denies the nature and extent of Mr. Jakubowski's claimed damages. Mrs. Beuckens affirmatively alleges that the collision was caused by the contributory negligence of Mr. Jakubowski, that he assumed the risk of injury and that he failed to mitigate his damages.

### INSTRUCTION NO. 3 - BURDEN OF PROOF

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing weight of the evidence.

“Greater convincing weight” 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.

Mr. Jakubowski has the burden to prove the following:

**First, that Mrs. Beuckens was negligent;**

**Second, that Mrs. Beuckens’ negligence was a legal cause of Mr. Jakubowski’s injuries; and**

**Third, the amount, if any, of Mr. Jakubowski’s damages that were legally caused by Mrs. Beuckens’ negligence.**

Mrs. Beuckens has the burden to prove the following:

**First, that Mr. Jakubowski was contributorily negligent;**

**Second, that Mr. Jakubowski’s contributory negligence was a legal cause of his damages;**

**Third, that Mr. Jakubowski assumed the risk of injury; and**

**Fourth, that Mr. Jakubowski failed to mitigate his damages.**

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

**INSTRUCTION NO. 4 - LEGAL CAUSE**

A legal cause is a cause that produces a harm in a natural and probable sequence and without which the harm would not have occurred. For legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of. The legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it caused the result. However, for legal cause to exist, you must find that the cause complained of was a substantial factor in bringing about the harm.

Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to the harm. A party's conduct must have had such an effect in producing Mr. Jakubowski's harm as to lead a reasonable person to regard it as a cause of the harm.

**INSTRUCTION NO. 5 - 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.

**INSTRUCTION NO. 6 -**

**DEFINITION OF CONTRIBUTORY NEGLIGENCE**

**AND COMPARATIVE NEGLIGENCE**

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

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 defendant. The term "slight" means small when compared with the negligence of the defendant.

In deciding this issue you must answer two questions:

1. Whether both Mr. Jakubowski and Mrs. Beuckens were negligent; and
2. If both were negligent, whether Mr. Jakubowski's negligence in comparison with Mrs. Beuckens' negligence was:
  - (a) "slight" or less than "slight," or
  - (b) more than "slight"

In answering both parts of the second question, you must make a direct comparison between the conduct of Mr. Jakubowski and Mrs. Beuckens.

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

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

**INSTRUCTION NO. 7 -**

**RIGHT TO ASSUME OTHER'S GOOD CONDUCT**

A person who is exercising ordinary 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 they are not exposed to danger from another person's violation of the law or duty of care.

A person has a right to rely and act on this assumption. However, this right does not exist when a person perceives or in the exercise of ordinary care should perceive that others are not going to perform their duty. One is not justified in ignoring obvious danger even though it is created by another's misconduct.

**INSTRUCTION NO. 8 - DUTY OF DRIVER USING HIGHWAY**

The driver of any 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 a collision.

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.

**INSTRUCTION NO. 9 -**

**PROPER LOOKOUT AND CONTROL OF VEHICLE**

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 a collision within that person's range of vision.

**INSTRUCTION NO. 10 - SPEED**

A driver may be considered negligent in the operation of a motor vehicle even though the driver was driving within the speed limit if the speed was greater than was reasonable and prudent under the conditions.

**INSTRUCTION NO. 11 - CHANGING LANES**

A statute in this state provides:

On a roadway divided into lanes, a vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

This statute sets the standard of care of a reasonable person. If you find Mrs. Beuckens violated the statute, the violation is negligence.

**INSTRUCTION NO. 12 -**

**U-TURN PROHIBITED WHERE UNSAFE**

A statute in this state provides:

No vehicle may be turned so as to proceed in the opposite direction unless it can be made in safety and without interfering with other traffic.

This statute sets the standard of care of a reasonable person. If you find

Mrs. Beuckens violated the statute, the violation is negligence.

**INSTRUCTION NO. 13 - WHEN SIGNALS ARE REQUIRED**

A statute in this state provides:

The driver of any vehicle upon a highway before starting, stopping, or turning from a direct line shall first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement shall give a signal plainly visible to the driver of such other vehicle of the intention to make such movement.

This statute sets the standard of care of a reasonable person. If you find Mrs. Beuckens violated the statute, the violation is negligence.

**INSTRUCTION NO. 14 - FOLLOWING TOO CLOSELY**

A statute in this state provides:

The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed for such vehicles and the traffic upon and condition of the highway.

This statute sets the standard of care of a reasonable person. If you find Mr. Jakubowski violated it, the violation is contributory negligence.

**INSTRUCTION NO. 15 - PASSING ON LEFT**

A statute in this state provides:

The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof. The driver of an overtaking vehicle shall pass at a safe distance to the side of an overtaken vehicle.

This statute sets the standard of care of a reasonable person. If you find Mr. Jakubowski violated it, the violation is contributory negligence.

**INSTRUCTION NO. 16 - PASSING ON RIGHT**

A statute in this state provides:

The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety.

This statute sets the standard of care of a reasonable person. If you find Mr. Jakubowski violated it, the violation is contributory negligence.

**INSTRUCTION NO. 17 - LEGAL EXCUSE**

Under the law, there are four circumstances in which the violation of a safety statute may be excused:

- (1) anything that would make compliance with the statute impossible;
- (2) anything outside the driver's control which causes the driver to violate the statute;
- (3) an emergency which the driver did not create but which causes the driver to violate the statute; and
- (4) an excuse specifically provided by statute.

A legal excuse must be something that would make it impossible to comply with the statute. Noncompliance must be caused by circumstances beyond the driver's control and not produced by the driver's own misconduct.

If a party claims emergency as a legal excuse, the party must prove:

- (1) that an emergency existed;
- (2) that he or she was not engaged in prior conduct which caused or contributed to the emergency; and
- (3) that he or she was unable to comply with the statute because of the emergency.

Mrs. Beuckens has the burden of proving that her statutory violations, if any, are legally excused. Mr. Jakubowski has the burden of proving that his statutory violations, if any, are legally excused. The burden of proof is by the greater convincing weight of the evidence.

**INSTRUCTION NO. 18 - ASSUMPTION OF RISK**

If a person assumes the risk of injury or damage, the person is not entitled to any recovery. To support an assumption of the risk defense, Mrs. Beuckens must show:

- (1) that Mr. Jakubowski had actual or constructive knowledge of the existence of the specific risk involved; and
- (2) that Mr. Jakubowski appreciated the risk's character; and
- (3) that Mr. Jakubowski voluntarily accepted the risk, having had the time, knowledge, and experience to make an intelligent choice.

The failure to establish any one of the three elements defeats the defense of assumption of the risk.

While the same conduct on the part of Mr. Jakubowski may amount to both assumption of risk and contributory negligence, the two defenses are distinct. Assumption of the risk involves a voluntary or deliberate decision to encounter a known danger whereas contributory negligence frequently involves the inadvertent failure to notice danger. In addition, contributory negligence must be a legal cause of the injury in order to be a defense, while assumption of the risk need not cause the injury in order to bar recovery.

**INSTRUCTION NO. 19 - DAMAGES**

If you decide for Mr. Jakubowski 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 and proved by the evidence to have been legally caused by Mrs. Beuckens' conduct. You must take into consideration the nature, extent, and duration of the injury, whether the loss or harm could have been anticipated or not. The elements of loss or harm suffered are:

- (1) Disability.
- (2) The aggravation of any pre-existing ailment or condition.
- (3) Pain, suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future as a result of the injury.
- (4) 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.
- (5) Lost earning capacity.

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.

**INSTRUCTION NO. 20 - AGGRAVATION**

If you find that Mr. Jakubowski had a condition prior to the conduct of Mrs. Beuckens at issue in this case, you may not award damages for any previous or subsequent injuries or conditions unrelated to Mrs. Beuckens' conduct. However, if you find that Mrs. Beuckens' conduct caused an aggravation of Mr. Jakubowski's pre-existing condition, you may award damages for that aggravation. Before awarding these damages, Mr. Jakubowski must prove that the conduct of Mrs. Beuckens was a substantial factor in bringing about the harm alleged.

**INSTRUCTION NO. 21 - FUTURE DAMAGES**

The law allows damages for losses reasonably certain to occur 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 loss is established, the law does not require certainty as to the amount of those damages. Once the existence of those 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.

**INSTRUCTION NO. 22 - LIFE EXPECTANCY**

According to the mortality table, Mr. Jakubowski's life expectancy is 34.30 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 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 Mr. Jakubowski.

**INSTRUCTION NO. 23 - DUTY TO MITIGATE DAMAGES**

In determining the amount of money which will reasonably compensate Mr. Jakubowski, you are instructed that a person who suffers personal injury must exercise reasonable care to minimize the existing injury and prevent further injury and damages. Mr. Jakubowski cannot recover money for damages which could have been avoided by the exercise of reasonable care.

**INSTRUCTION NO. 24 - ISSUES TO BE DECIDED**

You must determine the following issues:

**First, did Mr. Jakubowski assume the risk of injury?**

If you find Mr. Jakubowski assumed the risk of injury, you must return a verdict for Mrs. Beuckens. If you find Mr. Jakubowski did not assume the risk of injury, you must determine a second issue:

**Was Mrs. Beuckens negligent?**

If you find Mrs. Beuckens was *not* negligent, you must return a verdict for Mrs. Beuckens. If you find Mrs. Beuckens was negligent, you must determine a third issue:

**Was Mrs. Beuckens' negligence a legal cause of any injury to Mr.**

**Jakubowski?**

If you find Mrs. Beuckens' negligence was *not* a legal cause of any injury to Mr. Jakubowski, he is not entitled to recover and you must return a verdict for Mrs. Beuckens.

If you find Mrs. Beuckens' negligence was a legal cause of any injury to Mr. Jakubowski, then you must determine a fourth issue:

**Was Mr. Jakubowski contributorily negligent?**

If you find Mr. Jakubowski was *not* contributorily negligent, you must fix the amount of his damages and return a verdict in his favor.

If you find Mr. Jakubowski was contributorily negligent, then you must determine a fifth issue:

**Was Mr. Jakubowski's contributory negligence a legal cause of his own injury?**

If you find Mr. Jakubowski's contributory negligence was *not* a legal cause of his injury, you must fix the amount of his damages and return a verdict in his favor.

If you find Mr. Jakubowski's negligence did contribute as a legal cause of his injury, he may still recover if you find his contributory negligence was slight in comparison with Mrs. Beuckens' negligence. If you find Mr. Jakubowski is contributorily negligent, but that his negligence is slight in comparison with Mrs. Beuckens' negligence, he is entitled to recover. In that situation, Mr. Jakubowski's damages must be reduced in proportion to the amount of his contributory negligence.

If you find that Mr. Jakubowski's contributory negligence is more than slight in comparison with Mrs. Beuckens' negligence, you must return a verdict for Mrs. Beuckens.

As indicated in this instruction, you should first determine the question of liability before you determine an amount that would compensate for any damage you find Mr. Jakubowski suffered.

### **INSTRUCTION NO. 25 - DEFINITION OF EVIDENCE**

I mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits and stipulated facts. Stipulated facts are facts that are formally agreed to by the parties. Certain things are not evidence. I shall list those things for you now:

- 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.
- 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 sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- Testimony I strike from the record or tell you to disregard is not evidence and must not be considered.
- Anything you see or hear about this case outside the courtroom is not evidence.

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

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

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 evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

**INSTRUCTION NO. 26 - 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, consider:

- The witness' intelligence;
- The opportunity the witness had to see or hear the things testified about;
- The witness' 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.

**INSTRUCTION NO. 27 - IMPEACHMENT**

The credibility of a witness may be attached by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the witness's testimony during trial on a matter material to the issues. You may consider evidence of this kind in connection with all the other facts and circumstances in evidence in deciding the weight to give to the testimony of that witness.

**INSTRUCTION NO. 28 - EXPERT WITNESSES**

You may hear testimony from individuals described as experts. An individual who, by knowledge, skill, training, education or experience has 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' 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.

**INSTRUCTION NO. 29 - BENCH CONFERENCES AND RECESSES**

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error and to save your valuable time. We will do what we can to keep the number and length of these conferences to a minimum.

Please be patient because while you are waiting, we are working.

**INSTRUCTION NO. 30 - OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is 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 may make objections.

**INSTRUCTION NO. 31 - DEPOSITION EVIDENCE**

Testimony may be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person.

**INSTRUCTION NO. 32 - CHARTS AND SUMMARIES**

During trial charts and summaries may be shown to you in order to help explain the facts disclosed by the books, records or other evidence in the case. These charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence, you should disregard these charts and summaries.

**INSTRUCTION NO. 33 - NOTE TAKING**

At the end of the trial, 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 testimony of any witness for your use in reaching a verdict. You must pay close attention to the evidence as it is presented.

If you want to take notes during the trial, you may, but be sure your note taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your personal responsibility to listen carefully to the evidence.

Notes you take 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.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes in the jury room. 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, either during or after the trial.

**INSTRUCTION NO. 34 - MEDIA AND TECHNOLOGY**

You are required to decide this case based solely on the evidence and exhibits that you see and hear in the courtroom. If one or more of you were to get additional information from an outside source, that information might be inaccurate or incomplete, or for some other reason not applicable to this case, and the parties would not have a chance to explain or contradict that information because they would not know about it. This is why it is so important that you base your verdict only on information you receive in this courtroom.

In order for your verdict to be fair, you must not be exposed to any other information about the case, the law or any of the issues involved in this trial during the course of your jury duty. This is very important, so I am taking the time to give you a detailed explanation about what you should do and not do during your time as jurors.

*First*, you must not try to get information from any source other than what you see and hear in this courtroom. That means you may not speak to anyone, including your family and friends, about this case. You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, smartphones, or any other electronic device. You may not do any personal investigation, such as visiting any of the places involved in this case, using internet maps or Google Earth or any other such technology, talking to any possible witnesses, or creating your own demonstrations or reenactments of the events which are the subject of this case.

*Second*, you must not communicate with anyone about this case or your jury service, and you must not allow anyone to communicate with you. In particular, you may not communicate about the case through emails, text messages, tweets, blogs, chat rooms, comments or other postings, social networking sites, including but not limited to Facebook, Instagram, Twitter, or any other website or application. This applies to communicating with your fellow jurors, your family members, your employer and the people involved in the trial, although you may notify your family and employer that you have been seated as a juror in the case. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and immediately report the contact to the court.

I recognize these rules and restrictions may affect activities you would consider to be normal and harmless. I assure you that I am very much aware I am asking you to refrain from activities which may be very common and very important in your daily lives. However, the law requires these restrictions to ensure the parties have a fair trial based on the evidence each party has an opportunity to address.

Any juror who violates these restrictions I have explained to you jeopardizes the fairness of these proceedings, and a mistrial could result which would require the entire trial process to start over. As you can imagine, a mistrial is a tremendous expense and inconvenience to the parties, the court and the taxpayers. If any juror is exposed to any outside information or has any

difficulty whatsoever in following these instructions, please notify the court immediately. If any juror becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that violation to the court as well.

These restrictions remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, post or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

**INSTRUCTION NO. 35 - CONDUCT OF THE JURY**

Finally, to insure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and I discharge you as jurors. This means you must not talk to your spouse, other family members or friends about this case until I discharge you as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case or about anyone involved with it, until the trial has ended and I accept your verdict. If someone tries to talk to you about the case, please report it to me.

*Fourth*, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side, even if it is simply to pass the time of day, an unwarranted and unnecessary suspicion about your fairness might be created. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

*Fifth*, do not read any news stories or articles, in print, on the internet or in any blog, about the case or about anyone involved with it. Do not listen to any

radio or television reports about the case or about anyone involved with it. If you want, you may have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, by the time you have heard the evidence, you will know more about the case than anyone will learn through the news media.

*Sixth*, during the trial, do not make up your mind about what the verdict should be. Keep an open mind until you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

*Seventh*, if at any time during the trial you have a problem you would like to bring to my attention or if you feel ill or need to go to the restroom, please send a note to the court security officer, who will deliver it to me. Or just raise your hand and get my attention. I want you to be comfortable, so please do not hesitate to inform me of any problem.

**INSTRUCTION NO. 36 - OUTLINE OF THE TRIAL**

The trial will proceed as follows:

After these instructions, the lawyer for Mr. Jakubowski may make an opening statement. Next, the lawyer for Mrs. Beuckens may make an opening statement. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

Mr. Jakubowski will present his evidence and call witnesses. The lawyer for Mrs. Beuckens may cross-examine them. Following Mr. Jakubowski's case, Mrs. Beuckens may present evidence and call witnesses. If Mrs. Beuckens calls witnesses, the lawyer for Mr. Jakubowski may cross-examine them.

After presentation of the evidence is complete, the lawyers will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will give you further instructions. You will then retire to deliberate on your verdict.

Dated May 6, 2019.

BY THE COURT:



---

JEFFREY L. VIKEN  
CHIEF JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>EDWIN JAKUBOWSKI JR.,  Plaintiff,  vs.  CHRISTLE BEUCKENS,  Defendant.</p>	<p>CIV. 16-5116-JLV  SUPPLEMENTAL JURY INSTRUCTIONS</p>
---	---

**TABLE OF CONTENTS**

NO. 37 - EQUALLY IMPORTANT INSTRUCTIONS.....2  
NO. 38 - PRIOR CONDITION.....3  
NO. 39 - DUTY TO DELIBERATE.....4  
NO. 40 - DUTY DURING DELIBERATIONS.....5

VERDICT FORMS

**INSTRUCTION NO. 37 - EQUALLY IMPORTANT INSTRUCTIONS**

Members of the jury, I will now take a few minutes to give you additional instructions explaining the law which applies to this case. All instructions, both those I gave you earlier and these instructions, are equally binding on you and must be followed. You must consider my instructions as a whole and not single out some instructions and ignore others.

**INSTRUCTION NO. 38 - PRIOR CONDITION**

If you find that Mr. Jakubowski had a prior condition making him more susceptible to injury than a person in normal health, then you may award damages for the injuries caused by Mrs. Beuckens' conduct, even though those injuries may be greater than what might have been experienced by a person in normal health under the same circumstances. Before awarding such damages, however, Mr. Jakubowski must prove that the conduct of Mrs. Beuckens was a substantial factor in bringing about the harm alleged.

**INSTRUCTION NO. 39 - DUTY TO DELIBERATE**

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 of 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. 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, then this case is left open and must be resolved at some later time.

**INSTRUCTION NO. 40 - 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 your foreperson, who 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 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 have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Fourth*, 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 appropriate form, date and sign it, and advise the court security officer you have reached a verdict. You will then return to the courtroom where your verdict will be received and announced.

Dated May 9<sup>th</sup>, 2019.

BY THE COURT:

  
\_\_\_\_\_  
JEFFREY L. VIKEN  
CHIEF JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>EDWIN JAKUBOWSKI JR., Plaintiff, vs. CHRISTLE BEUCKENS, Defendant.</p>	<p>CIV. 16-5116-JLV  VERDICT FOR PLAINTIFF</p>
---	--

We, the jury, duly empaneled in the above-entitled action and sworn to try the issues, unanimously find for the plaintiff and assess his damages in the total sum of \$\_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

EDWIN JAKUBOWSKI JR.,  
Plaintiff,

vs.

CHRISTLE BEUCKENS,  
Defendant.

CIV. 16-5116-JLV

VERDICT FOR DEFENDANT

We, the jury, duly empaneled in the above-entitled action and sworn to try the issues, unanimously find for the defendant.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson