

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

CHRISTOPHER KOLTZ,  
Plaintiff,

vs.

DANIEL HAWS, III,  
Defendant.

CIV. 16-4116-KES

**FINAL  
INSTRUCTIONS  
TO THE JURY**

**TABLE OF CONTENTS**

FINAL INSTRUCTION

NO. 1 – INTRODUCTION AND DEFINITIONS .....	1
NO. 2 – BURDEN OF PROOF .....	2
NO. 3 – IMPEACHMENT .....	3
NO. 4 – EXPERT WITNESS TESTIMONY.....	4
NO. 5 – ACTUAL DAMAGES.....	5
NO. 6 – MORTALITY TABLE .....	6
NO. 7 – PRESENT VALUE .....	7
NO. 8 – DUTIES DURING DELIBERATION .....	11

VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION AND DEFINITIONS

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 have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of the trial.

You will have copies of all of the instructions in the jury room. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

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

FINAL INSTRUCTION NO. 2 – 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 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 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.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 3 – IMPEACHMENT

In Preliminary Instruction No. 3, 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. 4 – EXPERT TESTIMONY

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 concerning the matter on which the expert testifies. In deciding the weight to give to the opinion, you should consider the expert's qualifications, credibility, and reasons for the opinion. You are not bound by the opinion. If you decide that the reasons for the expert's opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

FINAL INSTRUCTION NO. 5 – ACTUAL DAMAGES

You must fix the amount of money that will reasonably and fairly compensate Koltz for any of the following elements of loss or harm proved by the evidence to have been legally caused by Haws's negligence, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

- (1) Koltz's past pain and suffering;
- (2) the value of necessary medical care, treatment, and services received;
- (3) Koltz's past emotional distress and loss of capacity of the enjoyment of life;
- (4) Koltz's permanent impairment;
- (5) Koltz's pain and suffering reasonably certain to occur in the future;
- (6) the value of necessary medical care, treatment, and services reasonably certain to be received in the future; and
- (7) Koltz's emotional distress and loss of capacity of the enjoyment of life reasonably certain to be experienced in the future.

Whether any of these elements of damages has 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. 6 – MORTALITY TABLE

According to the mortality table, Christopher Koltz's life expectancy, as a 45-year-old male, is 79.04 years of age, or 34.04 more 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 the person whose life expectancy is in question.

FINAL INSTRUCTION NO. 7 – PRESENT VALUE

If you should find that Koltz is entitled to a verdict, and further find that the evidence in the case establishes a reasonable likelihood of future medical expenses, 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 Koltz will in effect be reimbursed in advance of the loss, and so will have the use of money which Koltz 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 Koltz 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.

This computation is made by using the so-called “present value” table which is attached to this instruction for your use.



Bear in mind that your duty to discount to present value applies only to loss of future medical expenses. Damages for future pain and suffering and future emotional distress and loss of capacity of the enjoyment of life 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.

## 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	1.808	1.7833
3	2.941	2.8839	2.8286	2.7751	2.7232	2.673	2.6243	2.5771
4	3.902	3.8077	3.7171	3.6299	3.546	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	6.472	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	8.566	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	7.139
12	11.2551	10.5753	9.954	9.3851	8.8633	8.3838	7.9427	7.5361
13	12.1337	11.3484	10.635	9.9856	9.3936	8.8527	8.3577	7.9038
14	13.0037	12.1062	11.2961	10.5631	9.8986	9.295	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	14.992	13.7535	12.6593	11.6896	10.8276	10.0591	9.3719
19	17.226	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	10.594	9.8181
21	18.857	17.0112	15.415	14.0292	12.8212	11.7641	10.8355	10.0168
22	19.6604	17.658	15.9369	14.4511	13.163	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	15.247	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	20.121	17.8768	15.9828	14.3752	13.0032	11.8258	10.81
27	23.5596	20.7069	18.327	16.3296	14.643	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	17.292	15.3725	13.7648	12.409	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	14.084	12.6466	11.435
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	12.854	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	14.621	13.0352	11.7172
37	30.7995	25.9695	22.1672	19.1426	16.7113	14.7368	13.117	11.7752
38	31.4847	26.4406	22.4925	19.3679	16.8679	14.846	13.1935	11.8289
39	32.163	26.9026	22.8082	19.5845	17.017	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	15.138	13.3941	11.9672
42	34.1581	28.2348	23.7014	20.1856	17.4232	15.2245	13.4524	12.0067
43	34.81	28.6616	23.9819	20.3708	17.5459	15.3062	13.507	12.0432
44	35.4555	29.08	24.2543	20.5488	17.6628	15.3832	13.5579	12.0771
45	36.0945	29.4902	24.5187	20.72	17.7741	15.4558	13.6055	12.1084
46	36.7272	29.8923	24.7754	20.8847	17.8801	15.5244	13.65	12.1374
47	37.3537	30.2866	25.0247	21.0429	17.981	15.589	13.6916	12.1643
48	37.974	30.6731	25.2667	21.1951	18.0772	15.65	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

FINAL INSTRUCTION NO. 8 – DUTIES DURING DELIBERATIONS

In conducting 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 an 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 court security officer, 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.

*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 or court security officer that you are ready to return to the courtroom.

Dated April 12, 2018.

  
KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE

**INSTRUCTION NO. 2 – INSURANCE**

Whether a party is insured has no bearing whatever on any issue that you must decide. You must refrain from any inference, speculation or discussion about insurance.

4-10-18  
Dennis  
K. Schreier

SDPJI 1-20-60