

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

JACKSON E. WARE,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 02CV211124
)	
JOHN J. MASSEN,)	
)	
Defendant.)	

PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

Following are plaintiffs’ proposed jury instructions, with authorities cited:

MAI 2.01 Explanatory - Instruction For All Cases

MAI 2.03 Explanatory - Order of Instructions: “As you remember...”

MAI 2.02 Explanatory - Facts Not Assumed: “In returning your verdict...”

MAI 3.01 Burden of Proof - General: “In these instructions...”

MAI 2.04 Explanatory - Return of Verdict: “The verdict form contained in these instructions...”

MAI 17.16 Verdict Directing: “Your verdict must be for. . .”

MAI 4.01 Damages – Personal and Property: “If you find in favor of plaintiff. . .”

MAI 10.02 Damages – Exemplary: “If you find in favor of plaintiff. . .”

MAI 36.11 Verdict Form

Instruction No. _____

(1) GENERAL – JURY INSTRUCTIONS

This instruction and other instructions which I will read to you near the end of the trial are in writing. All of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts that you will be called upon to decide.

(2) OPENING STATEMENTS

The trial may begin with opening statements by the lawyers as to what they expect the evidence to be. What is said in opening statements is not to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of his client, the other party is relieved of the responsibility of proving that fact.

(3) EVIDENCE

After the opening statements, the plaintiff will introduce evidence. The defendant may then introduce evidence. There may be rebuttal evidence after that. The evidence may include the testimony of witnesses who appear personally in court, the testimony of witnesses who may not appear personally but whose testimony may be read or shown to you, and exhibits such as pictures, documents, and other objects.

(4) OBJECTIONS

There may be some questions asked or evidence offered by the parties to which objection may be made. If I overrule an objection, you may consider that evidence when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded as evidence and must not be considered by you in your deliberations.

(5) RULINGS OF LAW AND BENCH CONFERENCES

While the trial is in progress, I may be called upon to determine questions of law and to decide whether certain matters may be considered by you under the law. No ruling or remark that I make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with issues of fact, which you must decide. We will not be trying to keep secrets from you.

(6) OPEN MINDS AND NO PRELIMINARY DISCUSSIONS

Justice requires that you keep an open mind about the case until the parties have had the opportunity to present their cases to you. You must not make up your mind about the case until all evidence, and the closing arguments of the parties, have been seen or heard. You must not comment on or discuss with anyone, not even among yourselves, what you hear or learn in trial until the case is concluded and then only when all of you are present in the jury room for deliberation of the case under the final instructions I give to you.

(7) OUTSIDE INFLUENCES

During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise some outside influence or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk with you until the trial is completed. Your decision must be based only on the evidence presented to you in the proceedings in this courtroom; and you may not conduct your own research or investigation into any of the issues in this case.

(8) FINAL INSTRUCTIONS

After all of the evidence has been presented, you will receive my final instructions. They will guide your deliberation of the issues of fact you are to decide in arriving at your verdict.

(9) CLOSING ARGUMENTS

After you have received my final instructions, the lawyers may make closing arguments. In closing arguments, the lawyers have the opportunity to direct your attention to the significance of the evidence and to suggest the conclusions that may be drawn from the evidence.

(10) DELIBERATIONS

You will then retire to the jury room for your deliberations. It will be your duty to select a foreperson, to decide the facts, and to arrive at a verdict. When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give any evidence or the testimony of any witness such weight and value as you believe that evidence or testimony is entitled to receive.

Instruction No._____

As you remember, the court gave you a general instruction before the presentation of any evidence in this case. The court will not repeat that instruction at this time. However, that instruction and the additional instructions, to be given to you now, constitute the law of this case and each such instruction is equally binding upon you. You should consider each instruction in light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. The order in which the instructions are given is no indication of their relative importance. All of the instructions are in writing and will be available to you in the jury room.

Instruction No. _____

In returning your verdict you will form beliefs as to the facts. The court does not mean to assume as true any fact referred to in these instructions but leaves it to you to determine what the facts are.

Instruction No. _____

In these instructions, you are told that your verdict depends on whether or not you believe certain propositions of fact submitted to you. The burden is upon plaintiff to cause you to believe that the evidence has clearly and convincingly established the propositions of fact required for the recovery of punitive damages as submitted in Instruction No. _____. However on all other propositions of fact, the burden is upon the party who relies upon any such proposition to cause you to believe that such proposition is more likely to be true than not true.. In determining whether or not you believe any such proposition, you must consider only the evidence and the reasonable inferences derived from the evidence. If the evidence in the case does not cause you to believe a particular proposition submitted, then you cannot return a verdict requiring belief of that proposition.

Instruction No. _____

The verdict form included in these instructions contains directions for completion and will allow you to return the permissible verdict in this case. Nine or more of you must agree in order to return any verdict. A verdict must be signed by each juror who agrees to it.

Instruction No. _____

Your verdict must be for plaintiff Jackson Ware if you believe that as a direct result of the collision, he sustained damage.

Instruction No. _____

If you find in favor of plaintiff, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe plaintiff sustained as a direct result of the occurrence mentioned in the evidence.

Instruction No. _____

If you find in favor of plaintiff under Instruction No. _____, and if you believe the conduct of defendant as submitted in Instruction No. _____ showed complete indifference to or conscious disregard for the safety of others, then in addition to any damages to which you may find plaintiff entitled under Instruction No. _____ you may award plaintiff an additional amount as punitive damages in such sum as you believe will serve to punish defendant and to deter defendant and others from like conduct.

VERDICT

Note: Complete this form by writing in the name required by your verdict.

On the claim of plaintiff Jackson Ware for personal injuries against defendant John Maasen, we, the undersigned jurors, find in favor of:

(Plaintiff Jackson Ware) or (Defendant John Maasen)

Note: Complete the following paragraph only if the above finding is in favor of plaintiff Jackson Ware.

We, the undersigned jurors, assess the damages of plaintiff Jackson Ware as follows:

For actual damages \$_____ (stating the amount).

For punitive damages \$_____ (state the amount or, if none, write the word, "none").

Note: All jurors who agree to the above findings must sign below:

HENNING & BOUGH, P.C.

By _____

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ATTORNEY FOR PLAINTIFF

Signature of this document certifies that this document was served to the persons named below on the date and in the manner indicated:

Person Served	Party	Date	Method
Timothy J. Mudd Harris, McCausland & Schmitt 9233 Ward Parkway, Suite 270 Kansas City, MO 64114 (816) 523-3000 (816) 523-1588 fax	Defendant	10/7/03	Personal
Ralph A. Monaco II Monaco, Sanders, Gotfredson & Racine, L.C. 1001 E. 101 st Terrace, Suite 170 Kansas City, MO 64131 (816) 523-2400 (816) 942-0006 fax	Defendant Massen	10/7/03	Personal