

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

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AMBER LEE GILES and	*	
THOMAS LEROY GILES,	*	4:97-CV-90488
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
MINERS, INC., d/b/a SUPER ONE	*	
FOODS,	*	
	*	FINAL JURY INSTRUCTIONS
Defendant.	*	
	*	

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**Table of Contents**

- NO. 1- Explanatory
- NO. 2- Judge's Opinion
- NO. 3- Burden of Proof, Preponderance of the Evidence
- NO. 4- Evidence
- NO. 5- Credibility of Witnesses
- NO. 6- Depositions
- NO. 7- Expert Witnesses
- NO. 8- Essentials for Recovery- Condition of Premises- Duty to Invitees
- NO. 9- Ordinary Care- Common Law Negligence- Defined
- NO. 10- Proximate Cause- Defined
- NO. 11- Known or Obvious
- NO. 12- Liability of Employer and Scope of Employment
- NO. 13- Foreseeability
- NO. 14- Condition of the Premises- Knowledge or Notice of the Condition
- NO. 15- Fault- Defined
- NO. 16- Comparative Fault
- NO. 17- Comparative Fault- Single Plaintiff- Essentials for Defense
- NO. 18- Comparative Fault- Effects of Verdict
- NO. 19- Elements- Personal Injury
- NO. 20- Elements- Injury to a Minor- Rule 8 Claim
- NO. 21- Definition of Present Value
- NO. 22- Past Medical Expenses

- NO. 23- Future Medical Expenses
- NO. 24- Loss of Future Earning Capacity
- NO. 25- Loss of Full Mind and Body- Past
- NO. 26- Loss of Full Mind and Body- Future
- NO. 27- Physical and Mental Pain and Suffering- Past
- NO. 28- Physical and Mental Pain and Suffering- Future
- NO. 29- Mortality Tables- Personal Injury
- NO. 30- Quotient Verdict
- NO. 31- Corporate Party
- NO. 32- Duty to Deliberate

**FINAL INSTRUCTION NO. 1**  
**EXPLANATORY**

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

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

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. Again, all instructions, whenever given and whether in writing or not, must be followed.

**FINAL INSTRUCTION NO. 2**  
**JUDGE'S OPINION**

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be. My duty is to tell you what the law is. Your duty is to accept and apply this law and decide all fact questions.

During this trial I may have asked questions of witnesses or the lawyers in order to clarify certain matters. Do not assume that I hold any opinion on the matters to which my questions related.

**FINAL INSTRUCTION NO. 3**  
**BURDEN OF PROOF, PREPONDERANCE OF EVIDENCE**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The standard referred to in these instructions is proof by a preponderance of the evidence.

To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering of all the evidence and deciding which evidence is more believable. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

**FINAL INSTRUCTION NO. 4**  
**EVIDENCE**

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, etc.)

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses depositions or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

**FINAL INSTRUCTION NO. 5**  
**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 said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a 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 that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**FINAL INSTRUCTION NO. 6**  
**DEPOSITIONS**

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in Court.

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in Court.

**FINAL INSTRUCTION NO. 7**  
**EXPERT WITNESSES**

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

**FINAL INSTRUCTION NO. 8**  
**ESSENTIALS FOR RECOVERY- CONDITION OF PREMISES- DUTY TO INVITEES**

The Plaintiff must prove all of the following propositions:

1. The Defendant, Miners, Inc. doing business as Super One Foods, (hereinafter referred to as “Miner’s Inc.”) knew or in the exercise of reasonable care should have known of conditions concerning the spot-freezer herein that involved an unreasonable risk of injury to a person in plaintiff Amber Giles’ position.
2. The Defendant, Miners, Inc., knew or in the exercise of reasonable care should have known that either:
  - a. That plaintiff would not discover the condition, or
  - b. That plaintiff would not realize the condition presented an unreasonable risk of injury, or
  - c. That plaintiff would not protect herself from the condition.
3. The Defendant, Miners, Inc., was negligent based on any of the following particulars:
  - a. Failing to timely and adequately inspect this spot-freezer for safety issues.
  - b. Failing to implement an effective maintenance program to prevent this freezer from becoming repeatedly unplugged.
  - c. In failing to modify the electrical outlets to accommodate properly the plug heads used on these spot-freezers so that they could not be subject to being inadvertently unplugged.
  - d. In failing to properly and adequately guard, shield, or protect the plug heads, adapters, outlets, cords of these spot-freezers so that they would not be inadvertently unplugged.
  - e. Failing to insure that spot-freezers had a sufficient protective layer of ice before the shopping public was invited to put their hands into the freezers.
  - f. Failing to adequately warn the general public, customers and invitees such as Amber Giles of the danger and consequences of coming into contact with or inserting her hand into the spot-freezer before it had developed a protective frost layer.
4. The negligence was a proximate cause of Amber Giles’ damage.
5. The nature and extent of damage.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, then you will consider the defense of comparative fault as

explain in Instruction No.16.

**FINAL INSTRUCTION NO. 9**  
**ORDINARY CARE- COMMON LAW NEGLIGENCE- DEFINED**

“Negligence” means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

At the time of the injury, Amber Giles was a child. Ordinary care of a child is the care which a reasonable child of like age, intelligence and experience would do under similar circumstances.

**FINAL INSTRUCTION NO. 10**  
**PROXIMATE CAUSE- DEFINED**

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

“Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

**FINAL INSTRUCTION NO. 11**  
**KNOWN OR OBVIOUS**

A condition is “known” if one is aware of or conscious of its existence and of the risk of harm it presents. A condition is “obvious” when both the condition and the risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment. A defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the Plaintiff’s position unless the Defendant should anticipate the harm despite such knowledge or obviousness. When a child can be expected to appreciate a dangerous condition, considering the child’s age and the obviousness of the danger, and the condition is open and obvious, then the property owner is not negligent.

**FINAL INSTRUCTION NO. 12**  
**LIABILITY OF EMPLOYER AND SCOPE OF EMPLOYMENT**

A corporation like the Defendant in this matter, Miner's Inc., is liable for the negligent acts of their employees or agents if the acts are done in a scope of their employment. For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of employment and must be intended to accomplish that purpose. It can also include a failure to act. Furthermore, Miner's Inc. is chargeable with and bound by the knowledge of its employees and agents.

**FINAL INSTRUCTION NO. 13**  
**FORESEEABILITY**

If Miner's employees could not reasonably foresee any injury as the result of their acts, they cannot be negligent. The fact that Amber Giles' accident was the first reported accident with a defrosted freezer does not necessarily mean that the accident was unforeseeable. You must consider all the facts and circumstances to determine whether the Miner's employees should nevertheless have foreseen that injury could result from their acts.

**FINAL INSTRUCTION NO. 14**  
**CONDITION OF THE PREMISES- KNOWLEDGE OR NOTICE OF THE CONDITION**

The occupant of premises such as Defendant Miner's Inc. is presumed to know all conditions on the premises that are caused or created by the occupant or the occupant's agent or employee. The occupant of premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the occupant had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the occupant should have known about it. Defendant is also responsible (or has a duty) to inspect their premises to discover any dangerous conditions or latent defects that may exist and to repair or safeguard their patrons against said dangers or defects. Defendant is presumed under the law to know that its customers will be distracted while shopping, and therefore, they are required to have knowledge of all unreasonably dangerous conditions on its premises, including with its appliances.

**FINAL INSTRUCTION NO. 15**  
**FAULT- DEFINED**

In these instructions I will be using the term “fault.” Fault means one or more acts or omissions towards oneself or another which constitutes negligence

**FINAL INSTRUCTION NO. 16**  
**COMPARATIVE FAULT**

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiff and the Defendant and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

**FINAL INSTRUCTION NO. 17**  
**COMPARATIVE FAULT- SINGLE PLAINTIFF- ESSENTIALS FOR DEFENSE**

The Defendant claims the Plaintiff was at fault due to her own negligence. This ground of fault has been explained to you in other instructions. The Defendant must prove both of the following propositions:

1. The Plaintiff was at fault. In order to prove fault, the Defendant must prove that Amber Giles failed to exercise ordinary care.
2. The Plaintiff's fault was a proximate cause of the Plaintiff's damage.

If the Defendant fail to prove this proposition, the Defendant has not proved their defense. If the Defendant has proved this proposition, then you will assign a percentage of fault against the Plaintiff and include the Plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

**FINAL INSTRUCTION NO. 18**  
**COMPARATIVE FAULT- EFFECTS OF VERDICT**

After you have compared the conduct of all parties, if you find the Plaintiff, Amber Giles, was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff, Amber Giles, cannot recover damages. However, if you find the Plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of the Plaintiff's fault.

**FINAL INSTRUCTION NO. 19**  
**ELEMENTS- PERSONAL INJURY**

If you find that the Plaintiffs are entitled to recover damages, you shall consider the following items:

1. Physical and mental pain and suffering in the past.
2. Physical and mental pain and suffering in the future.
3. Past medical expenses.
4. Future medical expenses.
5. Future earning capacity.
6. Loss of function of the mind or body in the past.
7. Loss of function of the mind or body in the future.

The amount you assess for physical and mental pain and suffering and loss of function of the mind or body, if any you find, cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the Defendant as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

**FINAL INSTRUCTION NO. 20**  
**ELEMENTS- INJURY TO A MINOR- RULE 8 CLAIM**

If you find Tom Giles is entitled to recover for damage sustained by him as the result of the injury to Amber Giles during her minority from July 8, 1996 to December 31, 2001, it is your duty to determine the amount. In doing so you shall consider the following item:

The reasonable value of hospital charges, doctor charges, prescriptions and other medical services from the date of injury through Amber Giles' minority, which ended on December 31, 2001.

The amounts, if any, you find for the above item will be used to answer the special verdicts.

**FINAL INSTRUCTION NO. 21**  
**DEFINITION OF PRESENT VALUE**

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

**FINAL INSTRUCTION NO. 22**  
**PAST MEDICAL EXPENSES**

Past medical expenses are defined as the reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.

**FINAL INSTRUCTION NO. 23**  
**FUTURE MEDICAL EXPENSES**

Future medical expenses are defined as the reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

**FINAL INSTRUCTION NO. 24**  
**LOSS OF FUTURE EARNING CAPACITY**

Lost future earning capacity is the present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

**FINAL INSTRUCTION NO. 25**  
**LOSS OF FULL MIND AND BODY- PAST**

Loss of function of the mind or body past is the loss of function of the mind or body from the date of injury to the present time. Loss of mind or body is the inability of a particular part of the mind or body to function in a normal manner.

**FINAL INSTRUCTION NO. 26**  
**LOSS OF FULL MIND AND BODY- FUTURE**

Loss of function of the mind or body future is the present value of future loss of the mind or body.

**FINAL INSTRUCTION NO. 27**  
**PHYSICAL AND MENTAL PAIN AND SUFFERING- PAST**

Physical and mental pain and suffering past is defined as the physical and mental pain and suffering from the date of the injury to the present time. Physical and mental pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

**FINAL INSTRUCTION NO. 28**  
**PHYSICAL AND MENTAL PAIN AND SUFFERING- FUTURE**

Physical and mental pain and suffering future is defined as the present value of future physical and mental pain and suffering.

**FINAL INSTRUCTION NO. 29**  
**MORTALITY TABLES- PERSONAL INJURY**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Amber Giles is 58.93 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Amber Giles' health, habits, occupation, and lifestyle, when deciding issues of future damages.

**FINAL INSTRUCTION NO. 30**  
**QUOTIENT VERDICT**

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

**FINAL INSTRUCTION NO. 31**  
**CORPORATE PARTY**

The fact that a plaintiff or a defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

**FINAL INSTRUCTION NO. 32**  
**DUTY TO DELIBERATE**

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

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

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

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

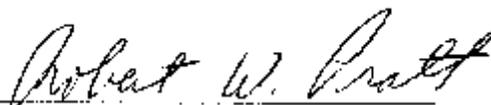
Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest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

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal, 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.

Dated this \_\_\_24th\_\_\_ day of May, 2002.

  
\_\_\_\_\_  
ROBERT W. PRATT  
U.S. DISTRICT JUDGE