

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

KACEY STROUGH,

Plaintiff,

v.

BEDFORD COMMUNITY SCHOOL  
DISTRICT and ANDREA SCHUELKE,  
R.N., Individually and in her official  
capacity as school nurse,

Defendants.

\* CIVIL NO. 4:13-cv-00147-HCA

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**FINAL  
JURY INSTRUCTIONS**

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Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to 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 or during the trial. You will have copies of the instructions I am about to give you now 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. 1**

You will have to decide whether certain facts have been proved by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other. You decide that by considering all of the evidence and deciding what evidence is more believable.

**FINAL INSTRUCTION NO. 2**

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.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

**FINAL INSTRUCTION NO. 3**

You have heard evidence claiming a witness or party made statements before this trial while under oath which were inconsistent with what the witness or party said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You also may use these statements to help you decide if you believe the witness or party. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

**FINAL INSTRUCTION NO. 4**

You have heard evidence claiming a witness or party made statements before this trial while not under oath which were inconsistent with what the witness or party said in this trial.

Because the witness or party did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness or party.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

**FINAL INSTRUCTION NO. 5**

Certain testimony from a deposition was read to you or shown from a video recording. A deposition is testimony taken under oath before the trial and preserved in writing or on video. Consider that testimony as if it had been given in court.

**FINAL INSTRUCTION NO. 6**

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

An employer is liable for the negligent acts of its employees if the acts are done in the scope of the employment. Defendant Bedford Community School District admits that at all times material hereto Andrea Schuelke was its employee and was acting within the scope of her employment. Therefore, if you find Andrea Schuelke is negligent, you will impute such negligence to defendant Bedford Community School District.

**FINAL INSTRUCTION NO. 7**

The parties have stipulated - that is, they have agreed - that certain facts are as stated into the record during trial. You should, therefore, treat those facts as having been proved.



**FINAL INSTRUCTION NO. 8**

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' 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. 9**

**Statement of Claims**

Plaintiff Strough asserts defendants Bedford Community School District and Schuelke were negligent and their negligence caused injury to plaintiff Strough. Defendants School District and Schuelke deny plaintiff Strough's claims.

The elements which plaintiff must prove to establish this claim will be explained to you in the instructions which follow.

**FINAL INSTRUCTION NO. 10**

**Definitions**

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person which constitutes negligence.

"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.

**FINAL INSTRUCTION NO. 11**

**Essentials for Recovery – Defendant Schuelke**

In order to recover on his negligence claim against defendant Schuelke, plaintiff Strough must prove all of the following propositions:

1. Defendant Schuelke, was negligent in one or more of the following ways:
  - a. Defendant Schuelke was negligent in failing to notify the Bedford football coaches of plaintiff's condition so they would remove plaintiff from participation in athletic competition after plaintiff presented with signs, symptoms or behaviors consistent with a concussion or brain injury. The parties have stipulated that defendant Schuelke was negligent in this regard. The parties also have stipulated her negligence can be imputed to the Bedford Community School District.
  - b. Defendant Schuelke was negligent in failing to properly notify plaintiff's grandmother of his medical condition and his need to be seen by a physician.
  - c. Defendant Schuelke was negligent in failing to follow up with plaintiff's grandmother to determine whether he had been seen by a physician.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, he is not entitled to damages. If the plaintiff has proved all of these propositions, he is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 12**

**Negligence – Duty of a Nurse**

A school nurse must use the degree of skill, care and learning ordinarily possessed and exercised by other school nurses in similar circumstances.

A violation of this duty is negligence.

**FINAL INSTRUCTION NO. 13**

**Cause**

The conduct of a party is a cause of an injury when the injury would not have happened except for the conduct. There can be more than one cause of an injury or damage.

**FINAL INSTRUCTION NO. 14**

**Aggravation of Pre-Existing Condition**

If you find plaintiff Strough had a cavernous malformation before the trauma and the malformation bled because of the trauma causing further suffering and disability then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which he now has which were not caused by the defendants' actions.

COUNSEL: HOW SHOULD WE DEFINE THIS?

**FINAL INSTRUCTION NO. 15**

**Previous Infirm Condition**

If plaintiff Strough had a cavernous malformation making him more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by plaintiff Strough caused by defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.



**FINAL INSTRUCTION NO. 16**

**Incident/Investigation**

The mere fact an incident occurred does not mean a party is liable. Similarly, the fact that an external investigation, including by law enforcement, or internal investigation occurred does not mean a party is liable.

**FINAL INSTRUCTION NO. 17**

**Elements – Personal Injury Damage**

If you find Kacey Strough is entitled to recover damages, you shall consider the following items:

1. The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. The parties have stipulated this amount is \$141,832.14.

2. Physical and mental pain and suffering from the date of injury to the present time. Physical 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.

3. The present value of future physical and mental pain and suffering.

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

5. Future loss of function of the mind and body.

6. 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.

**PAGE TWO OF FINAL INSTRUCTION NO. 17**

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity and loss of function of the mind and body in the past and future 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 a party as proved by the evidence.

**FINAL INSTRUCTION NO. 18**

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.

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

With regard to actual damages (non-punitive damages), throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award actual damages by way of punishment or through sympathy.

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. 19**

**Punitive Damages**

Punitive damages may be awarded against only defendant Schuelke if the plaintiff Strough has proven by a preponderance of clear, convincing and satisfactory evidence that defendant Schuelke's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff Strough. Iowa law does not permit an award of punitive damages against the Bedford Community School District.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage defendant Schuelke and others from like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of defendant Schuelke's conduct.
2. The amount of punitive damages which will punish and discourage like conduct by defendant Schuelke in view of her financial condition.
3. The plaintiff Strough's actual damages.

**FINAL INSTRUCTION NO. 20**

**Clear Convincing and Satisfactory Evidence - Defined**

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

**FINAL INSTRUCTION NO. 21**

**Willful and Wanton – Defined**

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

**FINAL INSTRUCTION NO. 22**

**Mortality Tables – Personal Injury**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Kasey Strough is 59 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Kasey Strough's health, habits, occupation, and lifestyle, when deciding issues of future damages



**FINAL INSTRUCTION NO. 23**

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

**FINAL INSTRUCTION NO. 24**

The exhibits received into evidence in this case will be provided to you in the jury room during your deliberations. You will see that some of the exhibits have portions which are redacted or blacked out. Do not be concerned or speculate about the information which has been removed from these exhibits as the Court has prior to trial ruled that the redacted information is not relevant to the case.

**FINAL INSTRUCTION NO. 25**

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

*First*, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the Court Security Officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

*Fourth*, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

**PAGE TWO OF FINAL INSTRUCTION NO. 25**

*Finally*, I am giving you a verdict form which is your written decision in this case. When you have all agreed on the verdict, your foreperson should complete and date the form. Each juror should then sign the form, indicating your unanimous agreement with the verdict. The foreperson should then place the completed verdict form in the envelope being supplied to you and marked "Verdict." The foreperson should seal the envelope and deliver it to the Court Security Officer.

Dated May 11, 2015.

  
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**HELEN C. ADAMS**  
**UNITED STATES MAGISTRATE JUDGE**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

KACEY STROUGH,

Plaintiff,

v.

BEDFORD COMMUNITY SCHOOL  
DISTRICT and ANDREA SCHUELKE,  
R.N., Individually and in her official  
capacity as school nurse,

Defendants.

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CIVIL NO. 4:13-cv-00147-HCA

**SPECIAL VERDICT FORM**

We, the jury, find the following verdict on the questions submitted to us:

**Section A:**

The parties have stipulated defendant Schuelke was negligent in failing to notify the Bedford football coaches of plaintiff's condition so they would remove plaintiff from participation in athletic competition after plaintiff presented with signs, symptoms or behaviors consistent with a concussion or brain injury. The parties also have stipulated that defendant Schuelke was negligent in failing to follow up with plaintiff Strough's grandmother to determine whether he had been seen by a physician. The parties also have stipulated her negligence is imputed to defendant Bedford Community School District.

**Question No. 1:** Was Defendant Schuelke's negligence as described above a cause of plaintiff Strough's brain bleeding from the cavernous malformation?

Answer "yes" or "no."

ANSWER: YES

**Question No. 2:** Was Defendant Schuelke negligent in failing to properly notify plaintiff Strough's grandmother of his medical condition and his need to be seen by a physician?

Answer "yes" or "no."

ANSWER: YES

**PAGE TWO OF SPECIAL VERDICT FORM**

**Question No. 3:** Was Defendant Schuelke's negligence as described in Question No. 2 a cause of plaintiff Strough's brain bleeding from the cavernous malformation?

Answer "yes" or "no."

ANSWER: NO

[If you answered "yes" to Question 1, or "yes" to Question Nos. 2 AND 3, you must proceed to answer Section B. If you answered "no" to Question No. 1, and "no" to Question No. 3, do not answer any further questions. The foreperson should sign and date the verdict form.]

**Section B**

State the amount of damages sustained by plaintiff Strough caused by defendants' fault as to each of the following items of damage. Any amounts you place in Section B will be against both defendant Bedford Community School District and defendant Schuelke. If plaintiff Strough has failed to prove any item of damage, or has failed to prove that any item of damage was caused by defendants' fault, enter 0 for that item.

1. Past medical expenses - stipulated	\$ 141,832.14
2. Past pain and suffering	\$ <u>300,000</u>
3. Future pain and suffering	\$ <u>100,000</u>
4. Past loss of mind and body	\$ <u>300,000</u>
5. Future loss of mind and body	\$ <u>100,000</u>
6. Loss of Future Earning Capacity	\$ <u>50,000</u>
 TOTAL (add the separate items of damage)	 \$ <u>991,832.14</u>

(If you find no damages, do not answer Section C. The foreperson should sign and date the verdict form. If you find plaintiff Strough is entitled to some amount of damages, answer Section C).

**PAGE THREE OF SPECIAL VERDICT FORM**

**Section C**

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant Schuelke constituted willful and wanton disregard for the rights or safety of another, as explained in Final Instruction No. 18?

Answer "Yes" or "No"

ANSWER:     No    

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3.]

Question No. 2: What amount of punitive damages, if any, do you award against defendant Schuelke?

ANSWER: \_\_\_\_\_

[If your answer to Question No. 2 is "None" do not answer Question No. 3.]

Question No. 3: Was the conduct of defendant Schuelke directed specifically at plaintiff Strough?

Answer "Yes" or "No"

ANSWER: \_\_\_\_\_

[The foreperson should sign and date the verdict form.]

*[Handwritten signatures: Kelly Gene, Richard Allright, and others]*

    Ted Larson      
FOREPERSON

    5-11-15    4:15 P.M.      
DATE AND TIME

*[Handwritten signatures: Mark Ward, Kelly Brand, Cassidy Small, Kevin Anderson, Shirley Boston, Rebecca Hall]*