IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

PAUL SPECHT, as administrator of the estate of Daniel Specht, Plaintiff, vs. KUBOTA TRACTOR CORPORATION et al., Defendants.	No. 16-CV-1012-LRR **JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

In the next few moments, I am going to give you instructions about this case and about your duties as jurors. I will also give you additional instructions at a later time. 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.

The instructions I am about to give you now are in writing and will be available to you in the jury room.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

This lawsuit is brought by Plaintiff Paul Specht, as Administrator of the Estate of Daniel Specht, deceased, who died on July 8, 2013, while attempting to move a hay bale on his farm. Daniel Specht was using a Model M9000 Kubota tractor equipped with a model LA1251 Kubota front end loader. Mr. Specht had positioned a large round hay bale on the front end loader. The plaintiff alleges that the lever that controls the upward and downward movement of the loader arms stuck in the "raise" position when Mr. Specht released the control lever, causing the hay bale to fall and strike Mr. Specht in the operator's compartment of the tractor, causing his immediate death.

The plaintiff claims the design of the loader was defective, alleging that it provided no reasonable method for lubricating the control joints.

Defendant Kubota denies the loader design was defective and contends the control joints were able to be lubricated without difficulty. The defendant claims Mr. Specht was at fault in failing to lubricate the control joints in accordance with lubrication instructions and not securing the hay bale on the front end loader.

This preliminary statement is given to you solely as a summary of the nature of the case and the claims and defenses of the parties. This summary is not evidence and is not intended to suggest to you that the court has any views one way or the other as to the claims and defenses of the parties.

INSTRUCTION NO. 3

It will be your duty to decide from the evidence whether the plaintiff is entitled to a verdict against the defendant. From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way 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 it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 4

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits and any facts that have been stipulated, that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts that are established by the evidence in the case.

Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, questions and comments by the lawyers representing the parties in the case are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. 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 be.
4. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

During the trial, documents and objects may be referred to but not admitted into evidence. In such a case, these items will not be available to you in the jury room during deliberations.

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 this occurs, and instruct you on the purposes for which the item can and cannot be used.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. 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.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who shall testify in this case. 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, or only part of it or none of it.

In deciding what testimony of any witness to believe, consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; the witness's memory, knowledge, education and experience; any motives the witness might have for testifying a certain way; how the witness acts while testifying; whether the witness said something different at an earlier time; whether the witness's testimony sounds reasonable; and whether or to what extent the witness's testimony is consistent with other evidence that 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; this may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

In the previous instruction, 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."

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; 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.

INSTRUCTION NO. 8

You may hear evidence claiming that certain witnesses made statements prior to this trial, while under oath, which are inconsistent with what such witnesses may say during this trial. If you find that these statements were made and are inconsistent with a witness's statements during trial, then you may consider them as part of the evidence, just as if they had been made during this trial.

You may also use these prior statements to help you decide if you believe the witness. You may disregard all or any part of a witness's testimony if you find that the statements were made and are inconsistent with the witness's testimony 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.

INSTRUCTION NO. 9

You may hear evidence claiming that a party to this case made statements prior to this trial, either under oath or not under oath.

If you find that such statements were made, you may regard such statements as evidence in this case just as if the party had made the statements under oath during this trial.

If you find that such statements were made and are inconsistent with the party's testimony during trial, you may also use the statement as a basis for disregarding all or part of the party's testimony during trial, but you are not required to do so. You should not disregard the party's testimony during the trial if other credible evidence supports it, or if you believe it for any other reason.

INSTRUCTION NO. 10

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

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.

INSTRUCTION NO. 11

Exhibits will be admitted into evidence and are to be considered along with all the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they are received by you.

Documents referred to but not admitted into evidence will not be available to you during deliberations.

INSTRUCTION NO. 12

The fact that a plaintiff or defendant in a case is a corporation should not affect your decisions. 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.

INSTRUCTION NO. 13

To prevail on its claim that the defendant's product was defective in design, the plaintiff must prove all of the following elements by the greater weight of the evidence:

First, the defendant sold or distributed the Kubota loader;

Second, the defendant was engaged in the business of selling or distributing the Kubota loader;

Third, the Kubota loader was in a defective condition at the time it left the defendant's control, insofar as it failed to provide a reasonable method for introducing lubricant into the control lever bushing and into the control lever linkage;

Fourth, a reasonable alternative safer design could have been practically adopted at the time of sale or distribution;

Fifth, the alternative design would have reduced or avoided the foreseeable risks of harm posed by the Kubota loader;

Sixth, the omission of the alternative design renders the Kubota loader not reasonably safe;

Seventh, the alternative design would have reduced or prevented the plaintiff's harm;

Eighth, the design defect was a cause of the plaintiff's damages; and

Ninth, the amount of damage.

If the plaintiff fails to prove any of these elements, then the plaintiff is not entitled to damages. If the plaintiff proves all of these elements, then the plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 14

Regarding the fourth, fifth and sixth elements of Instruction No. 13, you may consider the following factors to determine whether an alternative design is reasonable and whether its omission renders the Kubota loader not reasonably safe:

1. The magnitude and probability of the foreseeable risks of harm;
2. The instructions and warnings accompanying the Kubota loader;
3. Consumer expectations about product performance and the dangers attendant to use of the Kubota loader, including expectations arising from product portrayal and marketing;
4. Whether the risk presented by the Kubota loader is open and obvious to, or generally known by, foreseeable users;
5. The technological feasibility and practicality of the alternative design;
6. Whether the alternative design could be implemented at a reasonable cost;
7. The relative advantages and disadvantages of the Kubota loader as designed and as it alternatively could have been designed;
8. The likely effects of the alternative design on product longevity, maintenance, repair, esthetics and on the efficiency and utility of the Kubota loader;
9. The range of consumer choice among similar products, with and without the alternative design;
10. The overall safety of the Kubota loader with and without the alternative design and whether the alternative design would introduce other dangers of equal or greater magnitude;
11. Custom and practice in the industry and how the defendant's design compares with other competing products in actual use; and
12. Any other factor shown by the evidence bearing on this question.

INSTRUCTION NO. 15

Regarding the eighth element of Instruction No. 13, a defect in a product is a proximate cause of the plaintiff's damage when the damage would not have happened except for the defect.

INSTRUCTION NO. 16

The defendant claims that the plaintiff was at fault based on negligence in one or more of the following ways:

1. Failing to lubricate the control joints of the control lever every ten hours of use as directed by the lubrication instruction label on the loader and the owner's manual;
2. Continuing to use the loader after becoming aware that the control lever was not functioning properly, and was sometimes sticking in the "raise" position;
3. Failing to service or seek repair of the control lever after becoming aware that it was not operating properly, before further use;
4. Failing to keep a proper lookout as to the position of the loader arms and the status of the hay bale that the plaintiff had placed on the loader arm pallet forks;
5. Failing to follow the "DANGER" label on the loader by not securing the hay bale with a spear, clamp or other method before attempting to move the bale.

To prevail on its defense that the plaintiff was at fault based on negligence, the defendant must prove each of the following elements by the greater weight of the evidence:

First, the plaintiff was at fault in one or more of the ways described above; and

Second, the plaintiff's fault was a cause of the accident and damage to the plaintiff.

If the defendant fails to prove either of these elements, then the defendant does not prove its defense. If the defendant proves each of these elements, then you must assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault that you will determine when you answer the questions on the Verdict Form.

INSTRUCTION NO. 17

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 18

"Negligence" means failure to use ordinary care. Ordinary care is the care that a reasonably careful person would use under similar circumstances. Therefore, "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.

INSTRUCTION NO. 19

The mere fact that an accident occurred or a party was injured does not mean that a party was negligent or at fault.

INSTRUCTION NO. 20

Your verdict depends on whether you find certain facts have been proved by the greater weight of the evidence. In order to find that a fact has been proved by the greater weight of the evidence, you must find that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

You have probably heard of the phrase "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 21

I will now provide you with certain instructions on determining what, if any, damages a party is entitled to receive. The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance, in the event that you should find that the plaintiff is entitled to damages in accord with the other instructions.

You must not award damages under these instructions by way of sympathy or punishment. Remember that, throughout your deliberations on damages, as on all other issues, you must not engage in any speculation, guess or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

In arriving at the amount of damages on a claim, you cannot establish a figure by taking down the estimate of each juror as to damage and agreeing in advance that the average of those estimates shall be your award of damages for that claim.

INSTRUCTION NO. 22

If you find that the plaintiff is entitled to recover on its claim, it is your duty to determine the amount of recovery. In doing so, you shall consider the following items to determine an amount that fully compensates the plaintiff for the damages incurred:

1. The present value of the additional amounts that Daniel Specht would reasonably be expected to accumulate as a result of his own effort if he had lived out the term of his natural life; and
2. The interest on the reasonable burial expenses of Daniel Specht from the time of death until the time when those expenses would be paid. This amount cannot exceed the reasonable cost of the burial.

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.

The amounts, if any, you find for each of the above items will be used to answer questions on the Verdict Form.

INSTRUCTION NO. 23

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

INSTRUCTION NO. 24

A Standard Mortality Table indicates the normal remaining life expectancy of people who are the same age as Daniel Specht is 18.29 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all of the other evidence about Daniel Specht's health, habits, occupation and lifestyle when deciding issues of future damages.

INSTRUCTION NO. 25

At the end of the trial, you must make your decisions based on what you recall of the evidence. You will not have a written transcript to consult. Therefore, you must pay close attention to the testimony as it is given.

If you wish, you may take notes during the presentation of evidence to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let notetaking distract you so that you do not hear other answers by the witnesses.

During deliberations, in any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was.

Before we begin the evidence, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of trial and your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 26

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. If a bench conference is held in the courtroom, we will switch on what we refer to as "white noise" so that the jurors cannot hear what is being said by the lawyers and me. While the bench conferences are being conducted, you should feel free to stand and stretch and visit among yourselves about anything except the case.

INSTRUCTION NO. 27

During the course of the trial, to ensure 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 to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, do not use any electronic device or media, such as the telephone, a cell or smart phone, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog or website such as Facebook, YouTube or Twitter, to communicate to anyone any information about this case, or your opinions concerning it, until the trial has ended and you have been discharged as jurors.

Fourth, 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 your verdict has been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me through the Court Security Officer.

Fifth, 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 not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit 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 aroused. If any lawyer, party or witness does not speak to you when you pass in the hall or the like, it is because they are not supposed to talk or visit with you.

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Sixth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case, or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but, if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can 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, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Seventh, do not do any research or make any investigation about the case on your own. Do not consult any reference materials such as the Internet, books, magazines, dictionaries or encyclopedias. Do not contact anyone to ask them questions about issues that may arise in this case. Remember you are not permitted to talk to anyone (except your fellow jurors) about this case or anyone involved with it until the trial has ended and I have discharged you as jurors.

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

INSTRUCTION NO. 28

The trial will proceed in the following manner:

First, the attorney for the plaintiff will make an opening statement. Next, the attorney for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present its evidence and the attorney for the defendant may cross-examine the plaintiff's witnesses. Following the plaintiff's case, the defendant may, but does not have to, present evidence or call witnesses. If the defendant calls witnesses, the attorney for the plaintiff may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, the court will instruct you further regarding your deliberations, and you will retire to deliberate on your verdict.

Dated this 7th day of August, 2017.

Linda R. Reade, Judge
United States District Court
Northern District of Iowa

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

PAUL SPECHT, as administrator of the estate of Daniel Specht, Plaintiff, vs. KUBOTA TRACTOR CORPORATION et al., Defendants.	No. 16-CV-1012-LRR **JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions before you begin your deliberations.

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. This is true even though the instructions I gave you at the beginning of and during trial are not repeated here.

INSTRUCTION NO. 29

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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 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 decisions, 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 mind if your 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 your 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, you may send a note to me through the 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.

Finally, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NO. 30

Attached to these instructions you will find the Verdict Form. The Verdict Form is simply the written notice of the decisions that you reach in this case. The answers to the Verdict Form must be the unanimous decisions of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Form, your foreperson will fill out the Verdict Form, each juror will sign it, and your foreperson will date it and advise the Court Security Officer that you are ready to return to the courtroom.

Your foreperson should place the signed Verdict Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form in accord with the evidence and these instructions.

August 9, 2017
Date

Linda R. Reade, Judge
United States District Court
Northern District of Iowa