

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

TAMARIN LINDENBERG,
individually and as Natural
Guardian of her minor child
SML and ZACHARY LINDENBERG

Plaintiffs,

v.

JACKSON NATIONAL LIFE
INSURANCE COMPANY

Defendant.

No. 2:13-cv-02657-JPM-cgc

JURY INSTRUCTIONS

Ladies and gentlemen of the jury, we have now come to the point in the case when it is my duty to instruct you in the law that applies to the case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

All of the instructions are equally important. The order in which these instructions are given has no significance. You must follow all of the instructions and not single out some and ignore others.

I. GENERAL INSTRUCTIONS

A. Burden of Proof and Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the theories in the case.

When, as in this case, the Defendant denies the material allegations of the Plaintiff's claims, the law places upon the Plaintiff the burden of supporting and making out her claims upon every material issue in controversy by the greater weight or preponderance of the evidence.

At various points in the instructions the Court will instruct on whom the law places the burden of proof regarding each particular issue.

Preponderance of the evidence means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the

evidence on a particular issue appears to be equally balanced,
the party having the burden of proving that issue must fail.

B. Corporation Not to Be Prejudiced

In this case, Defendant Jackson National Life Insurance Company is a corporation. The fact that one of the parties is a corporation must not influence you in your deliberations or in your verdict.

You may not discriminate between corporations and natural individuals, such as Ms. Lindenberg. Each is a person in the eyes of the law, and each is entitled to the same fair and impartial consideration and to justice by the same legal standards.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

When a corporation is a party in a case, that does not mean that only one body can be considered by you in determining its claims or its liability in the case. A corporation acts not only through the policies and decisions that it makes, but also through its designated supervisory employees and others designated by the corporation to act on its behalf.

As you apply subsequent portions of these instructions you will have to determine whether or not individual corporate employees were authorized to act on behalf of the corporation when that individual did what he or she did.

C. Weighing the Evidence

You, members of the jury are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you and to give the testimony of the witnesses the weight, faith, credit, and value to which you think it is entitled.

You must consider all the evidence pertaining to every issue, regardless of who presented it. You are, however, the sole and exclusive judges of the credibility or believability of the witnesses who have testified in this case. You must decide which witnesses you believe and how important you think their testimony was. You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

In weighing the testimony of the witnesses who have appeared before you in this case, you should rely on your own common sense and everyday experience. You should note the manner and demeanor of witnesses while on the stand. You may also consider whether the witness impressed you as one who was

telling the truth or one who was telling a falsehood and whether or not the witness was a frank witness. You may consider, among other things, the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which ones of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular state of facts. Rather, it depends on the weight, credit, and value of the total evidence on either side of the issue, and of this you jurors are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then the jury must find against the party, upon whom the burden of proof has been cast in accordance with these instructions.

D. Direct and Circumstantial Evidence

There are two kinds of evidence - direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

E. (1) Limited Admission of Evidence - Parties or Purpose

Whenever evidence was admitted for a limited purpose, you must not consider it for any other purpose. You must, however, follow the limiting instructions I have given you. Your attention was called to these matters when the evidence was admitted.

E. (2) Judge's Questions to Witnesses

During the trial, I sometimes asked a witness questions. Please do not think I have any opinion about the subject matter of my questions. I may ask a question simply to clarify a matter, not to help one side of the case or harm another side.

Remember at all times that you, as jurors, are the sole judges of the facts of this case.

F. Statements of Counsel

You must not consider as evidence any statements of counsel made during the trial. If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the Court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

G. Opinion Testimony

Usually witnesses are not permitted to testify as to opinions or conclusions. However, a witness who has scientific, technical, or other specialized knowledge, skill, experience, training, or education may be permitted to give testimony in the form of an opinion.

You do not have to accept the opinion of such a witness. In deciding how much weight to give to an opinion, you should consider:

1. The education, qualifications, and experience of the witness;
2. The credibility of the witness;
3. The facts relied upon by the witness to support the opinion; and
4. The reasoning used by witness to arrive at the opinion.

You should consider each opinion and give it the weight, if any, that you think it deserves. You should also resolve conflicts in the testimony of different opinion witnesses.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

H. Hypothetical Question

A witness who is allowed to give an opinion in a case may be asked to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. You must determine if any fact assumed by the witness has not been established by the evidence and the effect of that omission, if any, upon the value of the opinion.

I. Deposition Testimony

Certain testimony has been presented by deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in person before you here in court.

J. Interrogatories

During the course of the trial you heard reference made to the word "interrogatory". An interrogatory is a written question that must be answered under oath in writing. You are to consider interrogatories and their answers as if the questions had been asked and answered in court.

K. Failure of Party to Testify Concerning Conversations
with Deceased Person

Thomas Lindenberg cannot be here to testify. The law does not permit any party or other person who has an interest to testify about transactions with the person who is now deceased. Therefore, you should not consider as favorable or unfavorable that the Plaintiff or any of her witnesses or the Defendant or any of its witnesses did not testify concerning such transactions with Thomas Lindenberg.

L. Decision Must Be Based on the Record

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

If either party has failed to call a witness, you must ask yourself if the witness was equally available to the other party. Neither party is required to call witnesses who are equally available to the other party.

"Equally available" simply means that there is no legal impediment to the witness talking to a party. Other than a party's employees, generally other witnesses are "equally available" under the law to all parties, despite the fact that it may be inconvenient or expensive for a party to obtain the witness' testimony.

In reaching your verdict you may consider only the evidence that was admitted. Remember that any questions, objections,

statements or arguments made by the attorneys during the trial are not evidence. You must not speculate about witnesses or documents that were not presented in the courtroom. If the attorneys have stipulated or agreed to any fact, however, you will regard that fact as having been proved.

Although you must only consider the evidence in this case in reaching your verdict, you are not required to set aside your common knowledge. You are permitted to weigh the evidence in the light of your common sense, observations and experience.

M. Totality of the Evidence

The jury may consider all evidence admitted in the case. Testimony and documents which the Court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. This, of course, is all for you, the jury, to decide.

N. Judicial Notice

In this case the Court has taken what is known as "Judicial Notice" of certain facts. The Court may take judicial notice of facts that cannot be the subject of reasonable dispute. The Court has taken judicial notice that the \$350,000 death benefit was paid to Plaintiff Tamarin Lindenberg pursuant to a May 19, 2014 Order of this Court. You must accept this fact as proven.

II. STIPULATED FACTS AND CONTENTIONS OF THE PARTIES

A. Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts in this action. As a result of this agreement, the Plaintiff and Defendant entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without either party presenting further proof on the matter. This procedure is often followed to save time in establishing facts which are undisputed.

The following facts have been stipulated by the parties:

1. In August of 2001, Thomas Lindenberg applied for the life insurance Policy at issue in this litigation. On or about January 23, 2002, Jackson issued the Policy to Mr. Lindenberg, at which time the application and all representations contained therein became a part of the Policy.

2. In his application, Mr. Lindenberg identifies Plaintiff Tamarin Lindenberg as the primary beneficiary who was to receive 100% of the Policy proceeds upon his death.

3. Mr. Lindenberg designated his "surviving children equally" as contingent beneficiaries. Sophie Lindenberg and Zachary Lindenberg are the adopted children of Thomas and Tamarin Lindenberg. Mr. Lindenberg had one other child, Mary Angela Williams, from a prior marriage.

4. Thomas and Tamarin Lindenberg executed a Marital Dissolution Agreement ("MDA") on or about November 16, 2005. On or about March 7, 2006, the Chancery Court entered a Final Decree of Absolute Divorce, wherein it incorporated the MDA in its entirety.

5. On or about January 22, 2013, Mr. Lindenberg died in New Jersey.

6. Tamarin Lindenberg submitted a claim for the death benefit that was received along with the death certificate, the MDA, and the Divorce Decree which was received by Defendant on February 6, 2013.

7. On March 11, 2013, Tom Maschmeyer, attorney for Tamarin Lindenberg, sent a letter to Jackson National seeking an expedited review of the claim and payment of proceeds to Tamarin Lindenberg. The letter also references Tennessee's bad faith statute.

8. Defendant had no standard company policy as it pertains to requiring guardianships and decides on a case by case basis which claims will require guardianships.

9. Jackson National stipulates that it does not have a standard company policy for the manner in which it handles all claims that concern the filing of interpleader actions. Rather, Jackson handles such claims on a case by case basis.

10. Jackson National stipulates that there was not a manager in its claims department who was specifically tasked with managing and overseeing the day-to-day activities of the claim at issue in this litigation

11. On May 29, 2014, by Order of the Court, Jackson National paid the face amount of the life insurance policy plus interest to Tamarin Lindenberg.

12. The parties agree and stipulate that legal fees of \$87,500 would be reasonable attorney fees for prosecution of a bad faith insurance claim and were incurred in connection with these claims. The parties do not agree as to whether any legal fees are payable in this case. The question of whether there has been a violation of T.C.A. § 56-7-105 is a matter for you the jury to determine.

B. Plaintiff's Contentions

Plaintiff Tamarin Lindenberg contends that she was the primary designated beneficiary and was entitled to the death benefit pursuant to the terms and conditions of the Policy. Ms. Lindenberg further contends that the decedent Mr. Lindenberg, intentionally never changed the beneficiary designation on the Policy because it was the agreement of the Lindenegs that each would remain the beneficiary of the other's life insurance policy after the divorce and each would be responsible for supporting the minor children in the event of the other's death.

Ms. Lindenberg also contends that the Marital Dissolution Agreement was not unclear. Ms. Lindenberg contends that Defendants never consulted Tennessee law before drafting the March 22, 2013 letter denying her status as the primary beneficiary and setting forth the procedure that had to be followed by Ms. Lindenberg in order for the death benefit to be paid to her. Additionally, Ms. Lindenberg contends that Tennessee is not a state that automatically revokes a beneficiary designation because of a divorce. Ms. Lindenberg further contends that Defendants were required to pay the death

benefit not later than two months after Ms. Lindenberg submitted the death certificate of Thomas Lindenberg.

Ms. Lindenberg further contends that Defendant breached the insurance contract because the death benefit was due to Ms. Lindenberg on or before April 6, 2013 or otherwise Defendant was required to file an Interpleader action advising the court it was unable to ascertain to whom it should be paid. Additionally, Ms. Lindenberg contends that Defendant's refusal to pay Ms. Lindenberg the death benefit and its demands that Ms. Lindenberg comply with requirements not found in the contract was not well-reasoned and was not in good faith. In this regard, Ms. Lindenberg contends that the requirements placed on Ms. Lindenberg by the insurance company were not reasonable and did not follow Tennessee law. Ms. Lindenberg contends further that the insurance company failed to conduct a proper investigation during the two month waiting period in the insurance policy. Ms. Lindenberg contends that Tamarin Lindenberg was forced to look for work out of state and leave her minor children with families they barely knew following the death of Thomas Lindenberg.

Ms. Lindenberg contends that the Defendant should pay punitive damages to the Plaintiff because of (1) the reprehensibility of its conduct, (2) the fact that it knew of the harm it was causing by refusing to pay, (3) the duration of its conduct; and (4) that it was motivated by a desire to avoid legal fees and expenses and place that burden on Ms. Lindenberg.

C. Defendant's Contentions

Defendant Jackson National Life Insurance Company contends that it had a good faith basis for questioning who should be entitled to the life insurance proceeds. Jackson National contends that it performed a reasonable investigation upon Tamarin Lindenberg making claim to the life insurance proceeds and provided Plaintiff reasonable options for resolving the question of who should be paid the life insurance proceeds. Additionally, Jackson National contends it believed that it was at risk of multiple liabilities for the life insurance proceeds without obtaining waivers from other claimants or a court order directing payment to the proper party as determined by the court.

Jackson National further contends that Tamarin Lindenberg acted unreasonably to repeatedly ask Jackson National not to interplead the life insurance proceeds and then file suit for bad faith refusal to pay benefits. Jackson National contends that it did not breach the insurance contract; that Plaintiff cannot establish reasonably foreseeable, incidental and consequential damages for breach of contract; and that Jackson National is not liable for punitive damages.

III. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

A. Legal Theories of the Case

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If a lawyer or party has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty, but it is your duty, and your duty alone, to determine what the facts are and after you have determined what the facts are, to apply those facts to the law as I give it to you, free from any bias, prejudice, or sympathy, either one way or the other.

B. Nature of Action

This is an action for breach of an insurance contract and statutory bad faith.

Tamarin Lindenberg seeks damages against Jackson National for withholding payment of the death benefit for allegedly over a year after the death benefit was due. Jackson National denies that it breached the insurance contract and asserts that there was a reasonable, good faith basis for withholding payment of the death benefit. To help you understand the evidence presented in this case, I will explain some of the relevant legal terms.

In this case, Ms. Lindenberg contends that Jackson National has breached the insurance contract. Ms. Lindenberg has the burden of proving by a preponderance of the evidence that Jackson National breached the insurance contract. Remember, preponderance of the evidence means that you must be persuaded by the evidence that it is more probably true than not true that Jackson National breached the contract.

The Court has previously ruled that Ms. Lindenberg was the

sole beneficiary of the insurance policy. The Court also ordered payment of the death benefit to Ms. Lindenberg, and Jackson National paid the full death benefit to Ms. Lindenberg at that time.

Ms. Lindenberg has brought three claims against Jackson National based on Jackson National's withholding of the death benefit. The first claim is for breach of contract. The second claim is for statutory bad faith. The third claim is for punitive damages based on a finding of breach of contract.

C. Breach of Contract

Plaintiff has alleged breach of contract by the Defendant. The essential elements of any breach of contract claim include (1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract.

The life insurance policy at issue in this case represents a valid, enforceable contract. If a party does not perform according to the contract terms, that party has committed a breach of the contract. Any unexcused breach of contract allows a non-breaching party to recover damages.

Insignificant or trivial deviations in performance do not amount to a breach. In order to be a "breach" under these instructions, the action or inaction by the non-performing party (the party "in breach" of the contract) must be material in the overall context of the contract terms you are considering. In determining whether a breach is material, the following factors should be considered: (1) the extent to which the injured party will be deprived of the expected benefit of the contract; (2)

the extent to which the injured party can be adequately compensated for loss of benefit; (3) the extent to which the non-performing party will suffer forfeiture; (4) the likelihood that the non-performer will cure the failure, taking into account the circumstances including any reasonable assurances; and (5) the extent to which the behavior of the non-performing party comports with standards of good faith and fair dealing.

D. Breach of Contract - Actual Damages

It is my duty to instruct you as to the proper measure of damages to be applied in this case for breach of contract. By instructing you regarding damages, I am not indicating, one way or the other, that I have any opinion regarding whether or not damages should be awarded in this case.

When a contract is breached, the plaintiff is entitled to be placed in as good a position as would have been occupied had the contract been fulfilled in accordance with its terms. The plaintiff is not entitled to be put in a better position by a recovery of damages for breach of contract than would have been realized had there been full performance. The damages to be awarded are those that may fairly and reasonably be considered as arising out of the breach or those that may reasonably have been in the contemplation of the parties when the contract was made. Damages that are remote or speculative may not be awarded.

In this case, the Defendant has already paid the Plaintiff the amount of the death benefit plus interest pursuant to court order. If you find the Defendant breached the insurance policy

because payment was due prior to the actual payment by Defendant on May 29, 2014, you may find that the actual damages of Defendant's breach amounted to the death benefit plus interest.

Each damage element is separate from the others. Actual damages arising from a breach of contract are separate from bad faith damages and punitive damages. You may not duplicate damages for any element by also including that same loss or harm in another element of damage.

E. Policy Shall Contain Entire Contract

Every policy of insurance, issued to or for the benefit of any citizen or resident of the State of Tennessee by any insurance company or association doing business in Tennessee, shall contain the entire contract of insurance between the parties to the contract, and every contract so issued shall be held as made in Tennessee and construed solely according to the laws of this state.

F. May 19, 2014 Court Order

On May 19, 2014, the Court entered an order that dismissed Defendant Jackson National Life Insurance Company's interpleader complaint and required Jackson National to pay Plaintiff Tamarin Lindenberg the death benefit of \$350,000 plus interest. The Court dismissed Jackson National's complaint for interpleader for two reasons. First, the Court found that the Marital Dissolution Agreement (MDA) did not change Tamarin Lindenberg's status as the primary beneficiary of the policy at issue in this case. Second, the Court found that Thomas Lindenberg's children were not adverse claimants to the Jackson National policy because they had waived their rights to the policy benefits. The Court concluded that Mary Angela Lindenberg Williams, Thomas Lindenberg's adult child, waived her rights based on the waiver she signed on April 7, 2013 and on the affidavit she signed on September 20, 2013. Zachary and Sophie Lindenberg waived their rights based on the waivers and affidavits signed by Zachary and Sophie Lindenberg's guardians ad litem James and Kimberly Griffith. Those waivers and affidavits were notarized on February 7, 2014.

In the Order, the Court did not decide whether Jackson National breached the insurance policy or whether Jackson National acted in bad faith. Those determinations are entirely for you to decide.

G. Bad Faith Insurance Claim

Ms. Lindenberg claims that Jackson National is liable for damages under the Tennessee Bad Faith Statute.

An insurance company owes to its policy holders the duty to use good faith and diligence in responding to claims. A penalty may be assessed against an insurance company that fails to act in good faith by refusing to pay a claim filed against an insurance policy.

Before a policy holder may recover a penalty for lack of good faith, the policy holder must show that (1) the policy of insurance has, by its terms, become due and payable, (2) a formal demand for payment was made, (3) the policy holder waited 60 days after making the formal demand before filing suit (unless there was a refusal to pay prior to the expiration of the 60 days), and (4) the refusal to pay was not in good faith.

An insurance company did not use good faith if it frivolously or unjustifiably refused to comply with the policy holder's demand to pay according to the terms of the policy. If there is any reasonable ground for the insurance company's

failure to pay the claim, the insurance company has acted in good faith. Negligence, which is the failure to use ordinary care, does not in itself constitute bad faith. The insurance company's negligence or lack of negligence, however, may be a factor in determining whether the insurance company failed to act in good faith.

The Plaintiff has the burden of proving the lack of good faith of the insurance company in denying payment on the insurance policy.

H. Bad Faith Insurance Claim - Damages

It is my duty to instruct you as to the proper measure of damages to be applied in this case for bad faith. By instructing you regarding damages, I am not indicating, one way or the other, that I have any opinion regarding whether or not damages should be awarded in this case.

If you find the insurance company failed to act in good faith, the Plaintiff may recover additional damages from the insurance company measured by the additional expense, loss, or injury including attorney fees inflicted on the Plaintiff by the insurance company's conduct. The additional amount cannot exceed 25% of the face value of the policy. In this case, the policy's face value is \$350,000. Therefore, the additional amount cannot exceed \$87,500.

Remember, each damage element is separate from the others. Damages arising from the Defendant's bad faith are separate from actual damages and punitive damages. You may not duplicate damages for any element by also including that same loss or harm in another element of damage.

I. Insurance Companies May Be Liable to Persons Not Listed on the Face of an Insurance Policy

When considering whether Defendant acted in good faith or bad faith, you should know that some courts have held that where a person who has died previously agreed to maintain insurance coverage on children or an ex-spouse through a marital dissolution agreement but failed to do so, those persons covered in that marital dissolution agreement could sue the insurance company for those proceeds despite others being named the beneficiaries of the policies.

J. Punitive Damages

Plaintiff has asked that you make an award of punitive damages, but this award may be made only under the following circumstances. You may consider an award of punitive damages only if you find that the plaintiff has suffered actual damage as a legal result of the defendant's fault and you have made an award for compensatory damages.

The purpose of punitive damages is not to further compensate the plaintiff but to punish a wrongdoer and deter others from committing similar wrongs in the future. Punitive damages are reserved for egregious conduct. Punitive damages may be considered if, and only if, the plaintiff has shown by clear and convincing evidence that a defendant has acted intentionally, recklessly, maliciously, or fraudulently.

Clear and convincing evidence is a higher standard than preponderance of the evidence. To prove an issue by clear and convincing evidence, the party having that burden of proof must show that the proposed conclusion is highly probable and that

there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

A person acts intentionally when it is the person's purpose or desire to do a wrongful act. A parties' intentional breach of contract by itself is not a wrongful act sufficient for awarding punitive damages. Rather, a wrongful act is an act done with a bad motive or so recklessly as to imply a disregard of social obligations.

A person acts recklessly when the person is aware of, but consciously disregards a substantial and unjustifiable risk of injury or damage to another. Disregarding the risk must be a gross deviation from the standard of care that an ordinary person would use under all the circumstances.

A person acts maliciously when the person is motivated by ill will, hatred or personal spite.

A person acts fraudulently when: (1) the person intentionally either misrepresents an existing material fact or causes a false impression of an existing material fact to mislead or to obtain an unfair or undue advantage; and (2) another person suffers injury or loss because of reasonable reliance upon that representation.

If you decide to award punitive damages, you will not assess an amount of punitive damages at this time. You will, however, report your finding to the court.

Each damage element is separate from the others. Punitive damages arising from a breach of contract are separate from actual damages and bad faith damages. You may not duplicate damages for any element by also including that same loss or harm in another element of damage.

K. Interpleader

You heard discussion in the proof about an interpleader. An interpleader is a special type of case that allows one party to resolve competing claims of two or more persons to a limited fund of money. It permits a party to avoid the possibility of being exposed to defending multiple claims to a limited fund or property. In an interpleader, the Court determines the respective rights of the claimants to the fund or property at stake.

IV. ROLE OF THE JURORS

Your attitude and conduct at the beginning of your deliberations are very important. It is rarely productive for any juror to immediately announce a determination to hold firm for a certain verdict before any deliberations or discussions take place. Taking that position might make it difficult for you to consider the opinions of your fellow jurors or change your mind, even if you later decide that you might be wrong. Please remember that you are not advocates for one party or another. You are the judges of the facts in this case.

V. VERDICT

Finally, ladies and gentlemen, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form that will reflect your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Each of you should deliberate and vote on each issue to be decided.

Before you return your verdict, however, each of you must agree on the answer to each question so that each of you will be able to state truthfully that the verdict is yours.

The verdict you return to the Court must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to each answer. Your verdict must be unanimous.

It is your duty to consult with one another and to reach an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is not correct. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case. You may have not seen all of these previously and they will be there for your review and consideration. You may take a break before you begin deliberating, but do not begin to deliberate and do not discuss the case at any time unless all of you are present together in

the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

If a question arises during deliberations and you need further instructions, please print your question on a sheet of paper, knock on the door of the jury room, and give the question to my court officer.

I will read your question and I may call you back into the courtroom for additional instructions. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence.

I remind you that you are to decide this case based only on the evidence you have heard in court and on the law I have given you. You are prohibited from considering any other information and you are not to consult any outside sources for information. You must not communicate with or provide any information, photographs or video to anyone by any means about this case or your deliberations. You may not use any electronic device or

media, such as a telephone, cell phone, smart phone or computer; the Internet, any text or instant messaging service; or any chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate with anyone or to conduct any research about this case.