

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

HANOVER AMERICAN INSURANCE)
COMPANY,)

Plaintiff/Counter-Defendant,)

v.)

TATTOOED MILLIONAIRE)
ENTERTAINMENT, INC.;)
CHRISTOPHER C. BROWN; DANIEL R.)
MOTT; and JOHN FALLS,)

Defendants/Counter-Plaintiffs.)

Case No. 2:16-cv-2817-JPM-tmp

JURY INSTRUCTIONS

I. GENERAL 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 on the rules of law that you must follow and apply in deciding this case.

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 must follow the law as I explain it to you whether you agree with it or not. 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.

A. Organization Not to Be Prejudiced

In this case, the plaintiff and one defendant are business organizations and/or corporations. The fact that the parties in the case are organizations must not influence you in your deliberations or in your verdict.

You may not discriminate between businesses, including corporations, and natural individuals. 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. An organization is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, governments, and government entities, stand equal before the law, and are to be dealt with as equals in a court of justice.

It is your duty to decide this case with the same impartiality you would use in deciding a case between individuals.

B. Organizations/Corporations Act Through Their Authorized Employees or Agents

While Hanover and Tattooed Millionaire Entertainment are two of the parties in this case, that does not mean that only the actions of each business organization as one body are to be considered by you in determining its claims or defenses. A corporation or business organization acts not only through the policies and decisions it makes, but also through its designated supervisory employees, such as its managers, officers, and others designated by the corporation to act on its behalf.

A person who is authorized to act for another organization, corporation, person, or in place of another person is an agent of that organization, corporation, or person. A person may be an agent whether or not payment is received for services for the authorized act.

Pay close attention to the remainder of these instructions. As you apply subsequent portions of these instructions, you will have to determine whether or not individual employees, managers, or agents were authorized to act on behalf of the party you are considering.

C. Individuals Act Through Their Authorized Agents

Individuals act not only through their individual actions but also through the actions they authorize others to make on their behalf. In that regard, you will have to determine whether or not a defendant's agent was authorized to take a specific action on that defendant's behalf.

D. 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 a party denies the material allegations of the other party's claims, the law places upon the party bringing a claim the burden of supporting and making out each element of each claim by the greater weight or preponderance of the evidence.

The 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.

You must consider all the evidence pertaining to every issue, regardless of which party presented it.

E. Credibility and Weighing of Evidence

You, the 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 appears before you and to give the testimony of the witnesses the weight, faith, credit, and value to which you think it is entitled.

You should consider the manner and demeanor of each witness while on the stand.

You must 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 should consider 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.

These are the rules that should guide you, along with your common judgment, your common experience, and your common observations gained by you in your various walks of life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict between the testimony of different 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 that you are not able to reconcile in accordance with these instructions, then you must determine which 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 preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set 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 you must find against the party upon whom the burden of proof has been cast in accordance with these instructions.

Remember, you are the sole and exclusive judges of the credibility or believability of the witnesses who testify in this case.

Ultimately, 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.

F. Impeachment – Inconsistent Statements or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe that any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves; you may, of course, accept any part you decide is true. This is all for you, the jury, to decide.

An act or omission is done "knowingly" if committed voluntarily and intentionally, and not because of mistake or accident, or some other innocent reason.

G. Direct and Circumstantial Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what a witness personally saw, heard, or did. Circumstantial evidence is indirect evidence—that 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.

H. Evidence

You are to decide this case only from the evidence that was received—that is, evidence that was presented for your consideration during the trial. The evidence consists of:

1. The sworn testimony of the witnesses who have testified;
2. The exhibits that were received and marked as evidence;
3. Any facts to which the lawyers for both sides have agreed or “stipulated.”

I. “Inferences” Defined

Although you are to consider only the evidence in this case, you are not limited to the statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions that reason and common sense lead you to make from facts established by the evidence in the case.

J. Statements and Arguments 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 of a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

K. Totality of the Evidence

You should consider all of the 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. For example, matters and things that a decision maker is told may be considered for the purpose of explaining the basis upon which that person acted or made a decision. This, of course, is all for you, the jury, to decide.

L. Limited Admission of Evidence

You will recall that during the course of this trial, certain evidence was admitted for a limited purpose only. You must not consider such evidence for any other purpose. This includes some statements known as hearsay which have only been allowed to show notice.

Hearsay is:

1. A statement,
2. Made out of court,
3. That is admitted for the truth of the thing asserted by the statement.

As an example, let's say someone, not a witness, calls 9-1-1 and says, "There is a fire at the Orpheum." That statement does not prove in any way that there was, in fact, a fire at the Orpheum. The call is received into evidence for the limited purpose of establishing that the fire department received notice and that, as a result of that notice, it took certain actions in response.

When evidence has come up during the trial where I instructed you only to consider the statement for notice or the effect on the listener, that evidence cannot be used to prove the truth of the statement.

Similarly, you must not rely upon testimony interpreting these statements as evidence that the statements themselves are actually true.

M. Juror Notes

If you took notes, please remember that your notes are not evidence. You should keep your notes to yourself. They may only be used to help refresh your personal recollection of the evidence in this case. It is the evidence itself, and not your notes, that you should discuss with the other jurors.

If you cannot recall a particular piece of evidence, you should not be overly influenced by the fact that someone else on the jury appears to have a note regarding that evidence.

Remember, it is your recollection and the collective recollection of all of you upon which you should rely in deciding the facts in the case.

N. Comments by the Court

During the course of this trial, I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. Please do not assume that I hold any opinion on the matters to which my questions may have related. Remember that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

On the other hand, you are required to follow the Court's instructions on the law, whether you agree with these instructions or not.

O. Demonstrative Charts and Summaries

Certain demonstrative charts and summaries have been shown to you in order to help explain facts disclosed by books, records, and other documents that are in evidence in the case. These demonstrative charts and summaries are not themselves evidence or proof of any facts. If the demonstrative charts or summaries do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard the charts or summaries.

II. STATEMENT OF THE CASE AND STIPULATED FACTS

A. Statement of the Case

This lawsuit arises from insurance claims filed by or on behalf of the defendants and counter-plaintiffs in this case after a fire at a recording studio located in Memphis, Tennessee. Three of the defendants and counter-plaintiffs, Tattooed Millionaire Entertainment, LLC, Daniel Mott, and John Falls, had purchased separate insurance policies totaling in excess of 10 million dollars from the plaintiff and counter-defendant, Hanover American Insurance Company, which covered damages to, or theft of, certain music and recording equipment the defendants claim was located at the studio, potential income loss which would occur as a result of the fire, and damage to the recording studio itself. After making some initial payments to TME, Mott and Falls of more than \$2.8 million, Hanover filed this lawsuit against Tattooed Millionaire Entertainment, LLC, its sole owner and member, Christopher Caleb Brown, Daniel Mott, and John Falls, claiming that Hanover's investigation into the fire and the resulting damages revealed that the defendants had allegedly made material misrepresentations on their insurance applications and about their claims and damages which would nullify the insurance policies and entitle Hanover to recover the insurance proceeds which it had previously paid, and for Hanover to recover other damages. TME, Mott, and Falls have filed counterclaims against Hanover alleging that that Hanover owes them additional sums for their insurance claims, and other damages.

B. Stipulated Facts

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

Facts stipulated to by the parties in this case include the following:

1. Brown formed Tattooed Millionaire Entertainment, Inc. (“TME,”) a music production company, on August 26, 2014, as the sole owner and member.
2. TME claims to have entered into an Equipment Lease with Brown “effective” January 1, 2015, for TME’s use of Brown’s Business Personal Property (“BPP,”) *i.e.*, music and recording equipment.
3. Hanover issued Policy No. ZZ5 A552202 to TME (the “TME Policy”). The TME Policy affords commercial property insurance for the period February 6, 2015 to February 6, 2016 subject to certain terms, conditions, exclusions, endorsements and limitations, including, but not limited to: \$4,650,000 in building coverage; \$5,500,000 in BPP coverage; and \$600,000 in business income loss coverage.
4. Falls claims to have entered into a Retail Space Lease with Brown on March 6, 2015, for use of Studio B.
5. Mott claims to have entered into a Retail Space Lease with Brown on March 6, 2015, for use of Studio C.

6. Falls claims to have entered into an Equipment Lease with Brown on March 12, 2015, for use of Brown's BPP, *i.e.*, music and recording equipment.

7. Mott claims to have entered into an Equipment Lease with Brown on March 12, 2015, for use of Brown's BPP, *i.e.*, music and recording equipment.

8. Hanover issued Policy No. ZZ5 A606514 00 to Falls (the "Falls Policy"). The Falls Policy affords commercial property insurance for the period April 9, 2015 to April 9, 2016, subject to certain terms, conditions, exclusions, endorsements and limitations, including, but not limited to: \$2,500,000 in BPP coverage; and \$500,000 in business income loss coverage.

9. Hanover issued Policy No. ZZ5 A608619 00 to Mott (the "Mott Policy"). The Mott Policy affords commercial property insurance for the period April 10, 2015 to April 10, 2016, subject to certain terms, conditions, exclusions, endorsements and limitations, including, but not limited to: \$2,500,000 in BPP coverage; and \$500,000 in business income loss coverage.

10. On November 5, 2015, an arson fire occurred at the Insured Premises, causing substantial damage to the building and BPP therein, *i.e.*, music and recording equipment.

11. Defendants demanded that Hanover pay policy limits under the TME Policy, the Falls Policy, and the Mott Policy.

12. Brown, on behalf of TME, sent an email on November 22, 2015, to Keith Hayman ("Hayman") of the Goodman-Gable-Gould Company ("GGG") with several documents including a purported Invoice from Automated Processes, Inc. ("API") for an alleged \$498,548 purchase of equipment by Brown on December 1, 2014; several invoices from Tour Supply, Inc., Sweetwater, and Vintage King Audio; and, a purported invoice from AMS Studios Liquidation Sale for an alleged \$629,794.23 purchase of equipment by Brown on July 28, 2014.

13. On November 30, 2015, Brown (on behalf of TME) sent an email to Hayman of GGG with several additional documents attached including a purported sales receipt

from the New York Liquidation Bureau for an alleged \$2,150,000 purchase of equipment by Brown on December 15, 2014.

14. On December 14, 2015, Hayman of GGG sent an email to Gary Barkman (“Barkman”) of Hanover with several documents, including:

- a. A purported sales receipt from the New York Liquidation Bureau for an alleged \$2,150,000 purchase of equipment by Brown on December 15, 2014.
- b. A purported Invoice from API for an alleged \$498,548 purchase of equipment by Brown on December 1, 2014;
- c. A purported invoice from AMS Studios Liquidation Sale for an alleged \$629,794.23 purchase of equipment by Brown on July 28, 2014; and,
- d. Several invoices from Tour Supply, Inc., Sweetwater, and Vintage King Audio.

15. On December 15, 2015, Hayman of GGG sent an email to Barkman of Hanover which included several more documents, including, but not limited to, the alleged New York Liquidation Invoice for an alleged \$2,150,000 which had previously been provided.

16. On December 15, 2015, Brown sent an email to Hayman of GGG entitled “TME – proof of payment - BPP.” On that same day, Hayman of GGG forwarded the email to Barkman of Hanover with several more documents, including a purported invoice from API showing receipt of a deposit for \$414,184.40 on November 4, 2014, as well as an account statement from Bank of America allegedly showing a wire transfer for \$414,184.40 on November 4, 2014.

17. On January 14, 2016, Hayman of GGG sent two more emails to Barkman of Hanover containing purported records from Brown’s Bank of America account showing advance payments made on the contracts as follows: Arsenic (\$140,000); One Word Records (\$280,000); Jason Culbertson (\$160,000); Marie Grande (\$170,000); and, Our Lady Records (\$150,000).

18. There were insurance contracts between Hanover and Tattooed Millionaire Entertainment, Hanover and Daniel Mott, and Hanover and John Falls.

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 the law to those facts, free from any bias, prejudice, or sympathy, either one way or the other.

B. Breach of Contract

An insurance policy is a contract. As a contract, an insurance policy is the law between the parties and, where the language of the policy is clear and unambiguous, it must be enforced as written.

In order to prevail on a breach of contract claim, the party bringing the claim has the burden of proving each of the following facts by a preponderance of the evidence:

1. The existence of a contract (it is undisputed that contracts existed between Hanover and Tattooed Millionaire Entertainment, Hanover and Mr. Mott, and Hanover and Mr. Falls);
2. A breach of the contract; and
3. Damages caused by the breach.

I will now explain the second and third elements of breach of contract to you.

C. Second Element – Breach of the Contract

When a valid contract has been established, you must determine whether the defending party breached the contract. To do so, you must first construe the contract's terms.

When construing or interpreting a contract's terms, common sense and good faith are the leading touchstones of this inquiry. All contracts should receive a sensible and reasonable construction and not one that will lead to an absurd consequence.

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. The intent and purport of a written contract must be gathered from the contents of the entire contract and not from any particular clause or provision. Every term contained in a contract must be given effect if possible. The rights of the parties to a contract must be measured by the contract the parties themselves made. The jury is not in the business of writing a contract for either party.

If the language of a contract is plain, unambiguous, and capable of only one reasonable interpretation, the contract's language determines its force and effect. When there is no ambiguity in a contract, it must be construed according to the terms which the parties have used, and the terms used in the contract should be taken and understood in their plain, ordinary, and popular sense.

If a party does not perform according to the contract terms as you have construed them, that party has committed a breach of the contract. A minor and insubstantial breach, however,

does not entitle the other party to reject the contract and avoid responsibility under its terms. To justify this, a breach must be “material.”

A material breach means a substantial breach that is more than a minor or insignificant failure of a party to perfectly meet the terms of the contract. A party who commits the first material breach of a contract cannot enforce the contract against the other party even if the other party later fails to abide by the terms of the contract. Factors you may consider in determining whether a breach is material include the following:

1. The extent to which the injured party will be deprived of the expected benefits under 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 (*i.e.*, a divestiture of specific property without compensation);
4. The likelihood that the non-performer will cure, that is, correct the failure or has cured 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 to standards of good faith and fair dealing.

None of these factors alone is decisive on the question of whether a breach is material, but they should guide your decision.

D. Third Element – Damages Caused by the Breach

A breach of contract causes damages when it leaves the non-breaching party in a worse position than it would have occupied had the contract been fulfilled in accordance with its terms. Therefore, even if the breach does not actually harm the non-breaching party, the non-breaching party still suffers damages if it would have been better off had the other party performed its obligations under the contract.

E. Hanover's Breach of Contract Claim Against Defendants

Plaintiff, Hanover American Insurance Company, contends that Defendants, Tattooed Millionaire Entertainment, LLC, its sole owner and member, Christopher Caleb Brown; Daniel R. Mott; and John Falls, all breached, and therefore voided, the three insurance policies Hanover issued to Defendants by making material misrepresentations in their applications and claims for loss. The insurance policies issued by Hanover to Defendants contains a provision that states:

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

F. Material Fact

A fact is material if a reasonable person would attach importance to its existence or nonexistence in determining his or her choice of action in the transaction in question.

G. Reliance

A party seeking recovery for fraudulent misrepresentation must have relied upon the representation. In other words, Hanover would not have made payments to the Defendant you are considering but for that Defendant's misrepresentation. You must determine whether reliance upon that Defendant's representation substantially influenced Hanover's action, even though other influences operated as well.

Reliance upon a representation may be shown by direct evidence or may be inferred from the circumstances.

You must consider each Defendant separately and independently. Your verdict on one Defendant on one claim should not influence your verdict on another Defendant or claim.

H. Defense of Misrepresentation on Application for Insurance

To establish a defense of misrepresentation on an application for insurance, the insurance company must prove by a preponderance of the evidence that the policyholder's representations were:

1. False; and
2. Made with the intent to deceive.

In order to establish an intent to deceive it must be proved that the policyholder sought to influence the judgment of the insurance company in issuing the policy. An intent to deceive may be inferred from a knowing and willful misrepresentation.

A person acts “knowingly” if that person desires to act in a particular manner and is aware of the probable consequences of those actions. A person acts “willfully” if that person desires to act in a particular manner and to cause the result that actually occurs.

I. Misrepresentation as to Loss Voids the Policy

The insurance company refused to pay under the policy because it claims that the policyholder breached and voided the policy by making material misrepresentations in the claim for loss. To establish a defense of misrepresentation on proof of loss, the insurance company must show by a preponderance of the evidence:

1. A willful, substantial and false valuation of the property or amount of loss, and
2. An intent to deceive the insurance company by seeking to influence the judgment of the insurance company. An intent to deceive the insurer may be inferred from the insured's knowing or willful over-valuation of the property; or the insured's concealment of the nature or extent of the loss.

A person acts “knowingly” if that person desires to act in a particular manner and is aware of the probable consequences of those actions. A person acts “willfully” if that person desires to act in a particular manner and to cause the result that occurs.

An honest, good faith difference of opinion as to the value or amounts of loss is not a false and intentional misrepresentation. Slight or trivial misrepresentations or over-valuations do not void the policy.

J. Hanover's Cause of Action for Fraudulent Misrepresentation

Plaintiff, Hanover American Insurance Company, contends that Defendants, Tattooed Millionaire Entertainment, LLC, its sole owner and member, Christopher Caleb Brown; Daniel R. Mott, and John Falls, all made fraudulent misrepresentations to Hanover: (1) in order to induce Hanover to provide insurance coverage for business personal property, namely music and recording equipment, that Defendants knew was never purchased and was never at the recording studio; and (2) to induce Hanover to make insurance claim payments after the arson and alleged theft loss for items that never existed or were less than what Defendants claim they are worth.

Hanover contends that Defendants' misrepresentations were material because Hanover relied on Defendants' misrepresentations to its detriment and suffered damages by being induced to issue insurance policies to Defendants and by being induced to make advance payments to Defendants.

For Hanover to establish that a Defendant is liable for fraudulent misrepresentation, it must show that the: (1) the Defendant made a representation of a present or past material fact; (2) the representation was false; (3) the Defendant knew that the representation was false when it was made or the Defendant made the representation recklessly without knowing whether it was true or false; (4) the Defendant intended that Hanover rely upon the representation and act or not act in reliance on it; (5) Hanover did not know that the representation was false and was justified in relying upon the truth of the representation; and (6) as a result of Hanover's reliance upon the truth of the representation, it sustained damage.

K. Extent of Insurer's Duty to Make Independent Investigation

An insurer may justifiably rely on representations by the insured unless to do so would be utterly unreasonable, in light of information open to the insurer and its skill or experience.

Generally, insurance contracts require complete good faith. This doctrine is typically applied in cases where the insurer requests specific information from the insured and the insured misrepresents that information or conceals material information in response to such inquiry.

An insured owes a duty to an insurer to disclose information material to the risk which an insurer would not discover through common observation or the exercise of ordinary diligence.

L. Unlawful Insurance Acts under T.C.A. § 56-53-103

Plaintiff, Hanover American Insurance Company, also contends that Defendants, Tattooed Millionaire Entertainment, LLC; its sole owner and member, Christopher Caleb Brown; Daniel Mott, and John Falls, all committed unlawful insurance acts under Tennessee Code § 56-53-103.

To prove that a Defendant is liable for the commission of an unlawful insurance act under this Section 56-53-103, Hanover must show that the Defendant committed, participated in, or aided, abetted, or conspired to commit, or solicited another person to commit, or permitted its employees or its agents to commit, with the intent to induce reliance:

(1) The presentation or preparation any information that the Defendant knew to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or that withholds or conceals a material fact;

(2) With knowledge or belief that it will be presented, by or on his behalf to Hanover; and

(3) Concerning the application for an insurance policy; a claim for payment pursuant to any insurance policy, or payments made in accordance with the terms of any insurance policy.

M. Disregarding Corporate Entity

Hanover contends that Tattooed Millionaire Entertainment, LLC, is a sham company and that liability should be imposed upon both its sole owner and member, Christopher Caleb Brown. You may disregard the corporate entity, Tattooed Millionaire Entertainment, LLC, in order to impose liability against Christopher Caleb Brown, individually, if you find that the two are identical or indistinguishable, the company's separate existence has been used to work a fraud or injustice in contravention of public policy where necessary to accomplish justice.

The conditions under which the corporate entity will be disregarded vary according to the circumstances present in the case.

There are a number of factors to consider when deciding whether to remove the corporate protection. These include:

1. Whether the company was grossly undercapitalized;
2. The sole ownership by one individual
3. The use of the same office or business location;
4. The employment of the same employees or attorneys;
5. The use of the company as an instrumentality or business conduit for an individual or another company;
6. The use of the corporation as a subterfuge in illegal transactions;

7. The formation and use of the company to transfer to it the existing liability of another person or entity; and

8. The failure to maintain an arms-length relationship between the company and the individual.

No single factor among those listed is conclusive, nor is it required that all of these factors support disregarding the corporate entity.

N. Defendants/Counter-Plaintiffs' Cause of Action for Breach

The Defendants/Counter-Plaintiffs contend that Hanover has breached the contracts of insurance by failing to make further payments toward their claims pursuant to the terms of the policies.

The parties agree that valid insurance contracts were entered into. You must determine whether Hanover breached each insurance 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.

The breach of contract must be a material breach. A minor and insubstantial failure of a party to meet the terms of a contract does not entitle the other party to reject the contract and not be responsible under it. A party who commits the first uncured material breach of a contract cannot enforce the contract against the other party even if the other party later fails to abide by the terms of the contract.

With respect to insurance contracts, the policyholder has the initial burden of proving by a preponderance of the evidence a loss within the terms of the insurance policy. The insurance company has the burden of proving by a preponderance of the evidence that a provision of the insurance policy applies to prevent recovery.

O. Hanover's Response to Defendants/Counter-Plaintiffs' Breach Claims

Hanover contends that each Defendant/Counter-Plaintiff violated various provisions and conditions of the applicable policy and, as a result, it is not required to pay for the loss. Namely, Hanover claims that each Defendant/Counter-Plaintiff breached and voided his insurance policy by making material misrepresentations in the application as well as in the claims of loss.

P. Defense of Mitigation of Damages

A person or entity who claims to be injured by the wrongful or negligent act of another, whether by tort or breach of contract, is bound to exercise reasonable care and diligence to avoid loss or to minimize or lessen the resulting damage, and to the extent that damages are the result of his (or its) active and unreasonable enhancement thereof, or due to his failure to exercise such care and diligence, he cannot recover.

IV. DAMAGES

A. Consider Damages Only If Necessary

I will now instruct you on the law as it relates to damages. If a party has proven by a preponderance of the evidence that another party is liable on a claim, then you must determine the damages if any to which the party is entitled. You must do this only under the instructions I will give you as to how to calculate damages. You should not infer that either party is entitled to recover damages merely because I am instructing you on the elements of damages. It is exclusively your function to decide upon liability, and I am instructing you on damages only so that you will have guidance should you decide that either party is entitled to recovery.

B. Multiple Claims: No Duplicate Damages

At the outset, I instruct you that you cannot award compensatory damages more than once for the same loss, harm, or detriment. For example, if Hanover were to prevail on two claims and establish a total injury of one dollar, you could not award Hanover one dollar of compensatory damages on both claims; it is only entitled to be made whole again, not to recover more than it lost.

C. Prejudgment Interest

Prejudgment interest is the interest that money would have earned before the trial if the party who is entitled to that money received the money when it should have been received. In this case, the parties have agreed that the question of prejudgment interest, should it be applicable, should be answered by the Court after the trial. Therefore, you are instructed not to include prejudgment interest for any party in any award that you might make in your verdict form.

D. No Speculative Damages

You may not award remote or speculative damages. You may not, therefore, include any damages to compensate for losses or harms that, although possible, are based on conjecture, speculation, or are not reasonably certain.

To state this principle in another way, damages are prohibited as speculative when their existence is uncertain, but they are permitted when only their amount is uncertain. Mathematical certainty is not required. Instead, the amount of damages must be shown with such reasonable degree of certainty as the situation permits.

In determining whether the proof meets the requisite degree of certainty, you may consider whether a party is responsible for creating the difficulty in ascertaining the exact amount of damages. If you make that determination, then you may, but you are not required to, resolve any doubt about the amount of damages against the party responsible for the difficulty.

E. Reasonable Certainty

A party is not entitled to recover damages for a particular loss or type of harm unless the party proves that it is reasonably certain that the party has suffered such a loss or type of harm as a result of an action or inaction by the accused party. However, once a party proves that it is reasonably certain that the party has suffered a particular loss or type of harm as a result of an action or inaction by the accused party, the law does not require the party to prove the exact amount of that loss or harm.

If it is reasonably certain that the party has suffered a particular loss or type of harm as a result of a wrongful action or failure to act by the accused party, the injured party is entitled to recover damages for that loss or harm as long as there is some reasonable basis for estimating or approximating the amount of the loss or harm. A party may not be denied damages merely because the amount of the loss or harm is uncertain or difficult to determine.

F. Breach of Contract: Damages

You will recall that the causation of damages is the third element of a breach of contract claim, so if you determine that a party did not suffer any contract damages, you should find against it on its claim and not reach the question of damages. If you find for any party as to its breach of contract claim, however, then you must then determine the amount of damages that the complaining party should recover.

When a contract is breached, the complaining party is entitled to be placed in as good a position as it would have occupied had the contract been fulfilled in accordance with its terms. The complaining party is not entitled to be put in a better position than it would have occupied 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.

G. Damages for Fraudulent Misrepresentation

Where a party is injured by fraud, it should be compensated for the actual injuries sustained by placing it in the same position it would have been in had the fraud not occurred.

If Hanover has proven that the insurance policy it issued to the Defendant you are considering is void as a result of a material misrepresentation made by that Defendant on his insurance application and/or a material misrepresentation he made as to the loss, then Hanover is entitled to a return of all advanced payments it made to that Defendant.

Remember, a person is responsible not only for the representations that he makes, but also for the representations he authorizes others to make on his behalf.

H. Remedies Under T.C.A. § 56-53-107

If Hanover has proven that a Defendant has committed an unlawful insurance act under Tennessee Code § 56-53-103, Hanover is entitled to recover any payment it made to the Defendant resulting directly from the violation.

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 not have 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 write your question on a sheet of paper, knock on the door of the jury room, and give the question to the court security officer.

I will read your question and I may call you back into the courtroom to try to help you. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, that with regard to any message or question you might send me, you should not tell me your numerical division at the time.

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.

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