

INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INSTRUCTION NO. 2

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

INSTRUCTION NO. 3

In this case the defendant is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

INSTRUCTION NO. 4

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that a person would have given certain testimony.

INSTRUCTION NO. 5

During the trial, certain testimony was presented to you by the reading of a deposition. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.

INSTRUCTION NO. 6

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION NO. 7

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

INSTRUCTION NO. 8

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION NO. 9

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION NO. 10

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the witness's age; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION NO. 11

You may consider statements given by a party or by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

INSTRUCTION NO. 12

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION NO. 13

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION NO. 14

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

INSTRUCTION NO. 15

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

INSTRUCTION NO. 16

The Plaintiffs, Carolyn Williams, Valerius Williams, and Michaiiaella Bryant-Williams, claim that State Farm breached its insurance contract by failing to pay out insurance policy proceeds as required by the parties' insurance contract. The Williamses must prove their claims by a preponderance of the evidence.

State Farm denies the Williamses' claim. State Farm is not required to disprove the Williamses' claims.

State Farm has claimed certain defenses. First, that the Williamses were involved in arson, and second, that they engaged in fraud by intentionally concealing or misrepresenting material facts or circumstances relating to their insurance claim. State Farm must prove its defenses by a preponderance of the evidence.

INSTRUCTION NO. 17

To recover damages from State Farm, the Williamses must prove all of the following by a preponderance of the evidence:

- (1) the parties entered into a contract;
- (2) the Williamses performed their part of the contract;
- (3) State Farm failed to perform its part of the contract;
- (4) State Farm's breach of contract damaged the Williamses;
- (5) the parties reasonably anticipated those damages when they entered into the contract;
and
- (6) State Farm's breach of contract was a responsible cause of those damages.

If you find from your consideration of all the evidence that the Plaintiffs have proved each of these elements by a preponderance of the evidence, then your verdict should be for the Plaintiffs, unless you find that one of the affirmative defenses discussed in Instructions 21 and 22 has been proven by a preponderance of the evidence.

INSTRUCTION NO. 18

A contract is an agreement that arises from an offer made by one entity and acceptance of that offer by another person.

INSTRUCTION NO. 19

A breach of contract occurs when a party fails to perform all the duties it agreed to do.

INSTRUCTION NO. 20

In response to the Williamses' claim of breach of contract, State Farm has raised two affirmative defenses. State Farm has the burden of proving by a preponderance of the evidence allegations in its affirmative defenses. While State Farm has raised more than one defense, it is not required to prove each defense to defeat the Williamses' claim. Proof of any one of the defenses is sufficient to find for State Farm.

INSTRUCTION NO. 21

State Farm's first defense is arson. Arson may be proved by either direct or circumstantial evidence. The mere opportunity or suspicion, by themselves, do not establish an arson defense by a preponderance of the evidence, but are circumstantial evidence you may consider in reaching your decision.

To establish the defense of arson, State Farm must prove by a preponderance of the evidence both of the following facts:

- (1) That the fire was incendiary in origin; that is, that the fire did not occur through accident or negligence, but was deliberately and intentionally set by someone for the purpose of causing destruction of the property; and
- (2) That the Plaintiff is the person who intentionally and willfully set the fire, or solicited, procured, aided or counseled some other person to do so for the Plaintiff.

If you find by a preponderance of the evidence that the a Plaintiff, or those acting at his or her direction or on his or her behalf, intentionally set the fire at the Williams' residence, then you must return a verdict for State Farm and against the Williamses.

INSTRUCTION NO. 21

State Farm's second defense is that the Plaintiffs intentionally concealed or misrepresented material facts or circumstances relating to their insurance claim.

If you find from a preponderance of the evidence that any Plaintiff intentionally concealed or misrepresented any material fact or circumstance relating to their insurance claim, including the cause of the fire loss, then you must find for State Farm and against the Williamses.

State Farm is not able to avoid liability simply by showing something stated or omitted by the Plaintiffs was a misrepresentation. It must also show by a preponderance of the evidence either that the misrepresentation was made with actual intent to deceive or that the misrepresentation increased the risk of loss to the defendant insurance company.

INSTRUCTION NO. 23

If you decide that State Farm has breached the contract, the measure of the Williamses' damages is the amount that would put the Williamses in the same position they would have been in had the contract been fulfilled.

The Williamses may only recover the loss actually suffered and should not be placed in a better position than if State Farm had not breached the contract. You may not award damages on the mere basis of conjecture and speculation.

INSTRUCTION NO. 24

If you decide for State Farm on the question of liability, then you should not consider the question of damages.

INSTRUCTION NO. 25

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you. Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

INSTRUCTION NO. 26

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

INSTRUCTION NO. 27

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

**NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

CAROLYN WILLIAMS, VALERIUS)	
WILLIAMS, and MICHAIAELLA)	
BRYANT-WILLIAMS,)	
)	
Plaintiffs,)	
)	
v.)	2:09-CV-177-PPS
)	
STATE FARM INSURANCE)	
COMPANY,)	
)	
Defendant.)	

COURT'S FINAL INSTRUCTIONS

Date: November 18, 2011

/s/ Philip P. Simon
Philip P. Simon, Chief Judge
United States District Court