

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

BRYAN SMITH and CAROLS SMITH	:	
A/K/A CAROL SMITH,	:	
	:	
Plaintiffs,	:	CASE NO. 1:12-cv-00009-CFB
	:	
vs.	:	
	:	
STATE FARM FIRE & CASUALTY	:	PRELIMINARY JURY INSTRUCTIONS
COMPANY,	:	
	:	
Defendant.	:	

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**ADMONITION - Instruction No. 1**

Members of the jury, we are about to begin the trial of the case about which you have heard some details during the process of jury selection. There are certain instructions you should have in order to understand what will be presented before you, and how you should conduct yourselves during the trial. Later I will give you additional instructions. All instructions - both those I give you now, and any I give you later - are equally binding on you and must be followed. Do not single out some instructions and ignore others, because all the instructions are important. In considering these instructions, you will attach no importance or significance whatsoever to the order in which they are given.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial.

To decide the facts of this case, you should give careful attention to the testimony and evidence presented. I will instruct you concerning the manner in which you should determine the credibility, or "believability," of each witness and the weight to be given to testimony. During the trial you should keep an open mind, and should not form or express any opinion about the case one way or the other, until you have heard all the testimony and evidence, the closing arguments of the lawyers, and my additional instructions to you.

You must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. You should avoid reading newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial. Do not do any research or make any investigation about the case on your own, including research on the internet. Do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

The attorneys have a duty to object when they believe evidence is not admissible. You should not show prejudice against an attorney or client because the attorney has made objections. You should not think that due to any ruling or other comment I may make, or question I ask of anyone, that I have any opinions on the merits of the case favoring one side or the other. If I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

**DUTY OF JURORS - Instruction No. 2**

Your duty as jurors is to listen to the evidence, decide the facts, and then apply the facts to the law as stated in my instructions. You alone are the judges of the facts, but you must follow the law as I give it to you, even if you disagree with the law or do not like it.

Do not allow bias, sympathy, or prejudice to influence you in the performance of your duty as jurors. You are to reach a just verdict, unaffected by anything except for the evidence, your common sense, and the instructions.

The fact that defendant is a corporation should not affect your decision. All parties – including individuals, regardless of their status in society, and corporations, whether large or small – stand equal before the law, and are entitled to the same fair consideration and treatment by you.

**STATEMENT OF THE CASE - Instruction No. 3**

**Members of the Jury:**

This case arises out of a fire, which took place on August 10, 2011, at a home located at 3506 Twin City Drive, Council Bluffs, Iowa. Plaintiffs, Bryan and Carol Smith had a policy of homeowner's insurance on this property, which was issued by Defendant State Farm. After investigation, State Farm denied Plaintiffs' claim for benefits under their homeowners' insurance policy. Plaintiffs claim that a loss occurred under the policy, and that State Farm's denial of benefits is a breach of this insurance contract. Plaintiffs seek recovery of benefits allegedly owed under the contract. State Farm denies the allegations and claims that the policy is void because Plaintiffs intentionally set fire to the structure, and they misrepresented facts to State Farm. Do not consider this summary proof of any claim. Decide the facts from the evidence and apply the law, which I will now give you. The amount of the loss is not in dispute, and you will not be required to consider damages; you will only decide whether the insurance contract was breached.

**ORDER OF TRIAL - Instruction No. 4**

The trial will proceed in the following order:

After I finish reading the initial instructions, the lawyers will make opening statements. An opening statement is not evidence, but is simply a summary of what the lawyers expect the evidence to be. Plaintiffs will then present evidence, and counsel for the defendant may cross-examine witnesses. Following the plaintiffs' case, the defendant may present evidence, and the plaintiffs' counsel may cross-examine witnesses. Following the defendant's case, the plaintiffs may present additional evidence.

After the parties have presented their cases and the evidence is concluded, I will further instruct you on the law that you are to apply in reaching your verdict.

Next, the lawyers will make closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

You will then retire to deliberate on your verdict. Your verdict must be based solely on the evidence and on the law that I give you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. Until I accept your verdict, you may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog or website such as Facebook, My Space, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case.

**DEPOSITIONS, INTERROGATORIES, ADMISSIONS, COURT'S QUESTIONS -  
Instruction No. 5**

Certain testimony may be entered into evidence from depositions. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

You also may hear the term, "Request for Admission." A Request for Admission is just as it sounds: one party may ask the other to admit certain facts, and the other party must either admit or deny the fact. Consider interrogatories and Requests for Admission, and the answers to either of these, as if the questions had been asked and answered here in court.

During the course of the trial, I occasionally may ask questions of a witness or counsel. Do not assume that I hold any opinion on the matters to which my questions may relate. Neither in these instructions nor in any ruling, action, or remark that I make during this trial do I intend to give any opinion or suggestion as to what the facts are or what your verdict should be.

**CREDIBILITY - Instruction No. 6**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to see or hear the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the age and manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness and probability or improbability of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a contradiction is an innocent misrecollection or lapse of memory, or an intentional falsehood. This may depend on whether the contradiction has to do with an important fact or only a small detail.

If you believe from the evidence that a witness previously made a statement that is inconsistent with the witness's testimony at this trial, the only purpose for which you may consider the previous statement is for its bearing on the witness's credibility. It is not evidence that what the witness previously said was true. However, if you believe from the evidence that a witness who is a party made a previous statement that is inconsistent with the party's testimony at this trial, you may consider the previous statement both for its bearing on the party's credibility and as evidence that what the party previously said was true.

You may hear evidence of prior insurance claims by Plaintiffs, which were paid under those insurance contracts. You may only consider this evidence for the purpose of showing Plaintiffs' familiarity with the insurance claims process. You may not consider this evidence as proof of Plaintiffs' character, or as proof that in this case, either Plaintiff acted in accordance with a particular character trait.

**BURDEN OF PROOF - Instruction No. 7**

Unless otherwise instructed, your verdict depends on whether you find that certain facts have been proved by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all the evidence, and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that the issue has been proved.

The preponderance of the evidence is not determined by the greater number of witnesses or exhibits a party has presented.

You may have heard the term, “proof beyond a reasonable doubt.” That is a stricter standard, which applies only in criminal cases. It does not apply in civil cases such as this.

**EVIDENCE - Instruction No. 8**

You shall base your verdict only on the evidence and these and other instructions that I give you during the trial. Evidence is:

1. Testimony in person or testimony previously given, which includes depositions.
2. Exhibits received by the Court.
3. Stipulations, which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you do decide.

The following are not evidence:

1. Statements, arguments, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.
5. Pretrial statements, reports, depositions, or other miscellaneous materials referred to during the trial but not admitted into evidence.

**OPINION EVIDENCE, EXPERT WITNESS - Instruction No. 9**

You may hear testimony from witnesses described as experts. "Experts" are persons who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject expert testimony just like any other testimony. After considering the witnesses's education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give an expert witness's testimony whatever weight, if any, you think it deserves.

An expert witness may be asked to assume certain facts are true, and to give an opinion based on that assumption. This is called a hypothetical question. When deciding the weight, if any, to give to an expert witness's testimony, if a fact assumed in a hypothetical question has not been proved by the evidence, you should consider the extent to which the falsely assumed fact affects the value of the opinion.

**BREACH OF INSURANCE CONTRACT, FIRE LOSS CLAIM - Instruction No. 10**

For the plaintiffs to recover on their claim against State Farm for Breach of Insurance Contract for fire loss, the plaintiffs must prove all of the following propositions:

1. The plaintiffs were insured for direct loss by fire by State Farm on the date of the loss.
2. The plaintiffs had paid the premiums which were due.
3. The plaintiffs had a direct loss by fire which was covered by the insurance policy with State Farm.
4. The plaintiffs gave State Farm timely proof of loss.
5. State Farm did not pay the plaintiffs' claim.

If the plaintiffs have failed to prove one or more of these propositions, then they are not entitled to recover under the contract. If the plaintiffs have proved all of the propositions, then you will consider the defenses as explained in Instruction Nos. 11 and 12.

**AFFIRMATIVE DEFENSE: INTENTIONAL ACTS - Instruction No. 11**

State Farm's policy contains the following coverage condition:

*Intentional Acts.* If you or any person insured under this policy causes or procures a loss to property covered under this policy for the purpose of obtaining insurance benefits, then this policy is void and we will not pay you or any other insured for this loss.

To prevail on this defense, the defendant must prove:

1. That either or both plaintiffs caused or procured a loss to the property; and
2. That the purpose in causing or procuring a loss to the property was to obtain insurance benefits.

If the defendant has proved both of these propositions, then your verdict must be for the defendant.

**AFFIRMATIVE DEFENSE: CONCEALMENT OR FRAUD - Instruction No. 12**

State Farm's policy contains the following provision:

*Concealment, fraud.* This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

To prevail on this defense, against each plaintiff, State Farm must prove by a preponderance of the evidence:

1. That a specific plaintiff concealed or misrepresented any fact or circumstance relating to the insurance;
2. That such concealment or misrepresentation was intentional; and
3. That the fact or circumstance was material.

If the defendant has proved all of these propositions as to a specific plaintiff, then your verdict must be for the defendant as to that plaintiff. Consider this defense as to each plaintiff's claim separately.

In determining whether an insured's concealment or misrepresentation involves a material fact or circumstance, you will evaluate whether the concealment or misrepresentation pertains to facts that are relevant to the insurance company's rights to enable the company to decide upon its obligations and to protect itself against false claims. A concealment or misrepresentation may thus be material even if it does not ultimately prove to be significant to the disposition of the claim, so long as it was reasonably relevant to the insurer's investigation at the time.

**DAMAGES - Instruction No. 13**

The amount of the loss is not in dispute. You will only determine whether plaintiffs are entitled to recover under this insurance policy; you will not be asked to determine the amount of any damage award.

**NOTE TAKING - Instruction No. 14**

During this trial, I will permit you to take notes, so a word of caution is in order. There is a tendency to attach undue importance to matters that one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial, in light of all the evidence presented. Your notes are only a tool to aid your own individual memory. You should not compare your notes with the notes of other jurors in determining the content of any testimony, or in evaluating the importance of any evidence. Your notes are not evidence, and will not be a complete outline of the proceedings. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back testimony. You must pay close attention to the testimony as it is given.

**JUROR QUESTIONS FOR WITNESSES - Instruction No. 15**

You will have the opportunity to ask questions of the witnesses in writing. When a witness has been examined and cross-examined by counsel, and after I ask any clarifying questions of the witness, I will ask whether any juror has any further clarifying question for the witness.

If so, you will write your question on a piece of paper, and hand it to the Deputy Clerk. Do not discuss your question with any other juror at any point in this trial. I will review your question with counsel, at a sidebar, and determine whether your question is appropriate under the Rules of Evidence. If so, I will ask your question, although I might phrase it in my own words; the attorneys may then ask further questions. If the question is not permitted by the Rules of Evidence, it will not be asked, and you should not draw any conclusions about the fact that your question was not asked. It may be that the question you have will be discussed by a later witness, in which case we will let counsel cover the subject as they had planned.

If I ask your question, you should not give the answer to it any greater weight than you would give to any other testimony.

**JURORS' IMPARTIALITY - Instruction No. 16**

You will not be required to remain together while court is in recess. It is important that you obey the following instructions with reference to court recesses:

First, during the course of the trial, do not discuss the case, or anyone involved with it, either among yourselves or with anyone else, in person, by electronic message, or over the internet. This includes, but is not limited to, a prohibition on making posts to blogs, chat rooms, message boards, Twitter, and Facebook, and any other social media. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial. You should reach your conclusion only during your final deliberations after all evidence is in and you have heard the attorneys' summations, my instructions to you on the law, and an interchange of views with other jury members.

Second, do not permit anyone to discuss the case in your presence. If anyone does so despite your telling them not to, report that fact to the Court as soon as you are able. If you feel it necessary to bring a matter to the attention of the Court, ask to speak to the Court Security Officer or the Clerk of Court. Do not discuss this matter with other jurors.

Third, please do not speak, in or out of the courtroom, with any of the parties, their attorneys, or any witness about the case – or at all – even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Dated on this 29 day of April, 2013. 11:45 Am

  
\_\_\_\_\_  
CELESTE F. BREMER  
CHIEF UNITED STATES MAGISTRATE JUDGE



**INTRODUCTION - Instruction No. 17**

My duty is to tell you what the law is. Your duty is to accept and apply this law. You must consider all of the instructions together, because no one instruction includes all of the applicable law. Remember to review the Initial Instructions in addition to these instructions. You must not single out some instructions and ignore others, because all are important. This is true even though those I gave you at the beginning of, or during, the trial are not repeated here.

The order in which I give these instructions is not important. Your duty is to decide all fact questions. Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

**DUTY TO DELIBERATE - Instruction No. 18**

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

You are to follow all of the instructions in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any view of law other than that given in the instructions of the Court.

Requests regarding instructions are not encouraged. Questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court. If you need to communicate with me during your deliberations, you may send to me – through the Court Security Officer – a note signed by one or more jurors. I will respond in writing as soon as possible after conferring with counsel. Remember that you should not tell anyone – including me – how your votes stand numerically.

**COMPLETION OF VERDICT - Instruction No. 19**

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as Presiding Juror, or Foreperson. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court.

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

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as Presiding Juror.

Your response to each of the questions on the verdict form must represent the considered judgment of each juror. Your verdict must be unanimous. When you have agreed upon an appropriately signed verdict, you will inform the Court Security Officer outside the room.

From the evidence you will decide what the facts are. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as explained in the instructions.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case, or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth.

Dated this 1<sup>st</sup> day of May, 2013.

  
\_\_\_\_\_  
CELESTE F. BREMER  
CHIEF UNITED STATES MAGISTRATE JUDGE



Plaintiff willfully concealed or misrepresented a material fact during Defendant's investigation of

the fire loss, as explained in Instruction No. 12? If you answer "yes," your verdict is in favor of State Farm and against that Plaintiff on this defense to the contract.

**Bryan Smith:**

\_\_\_\_\_  
**YES**

\_\_\_\_\_  
**NO**

**Carol Smith:**

\_\_\_\_\_  
**YES**

\_\_\_\_\_  
**NO**

I certify that this is the unanimous verdict of all jurors.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRESIDING JUROR