

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

JOSEPH J. HENDERSON & SON, INC.,

Plaintiff,

vs.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Defendant.

No. 3:16-cv-0048-JAJ

**FINAL INSTRUCTIONS
TO THE JURY**

INSTRUCTION NO. 1

INTRODUCTION/DUTIES

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions. You have to follow all of my instructions — the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of and during the trial.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

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 as a private individual. All persons, including corporations, and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice.

INSTRUCTION NO. 2

CREDIBILITY

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.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way, how a witness acted while testifying, whether a witness said something different at another time, whether a witness's testimony sounded reasonable, and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion. Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case

INSTRUCTION NO. 3

BURDEN OF PROOF

Whenever a party must prove something, it must be proved by the greater weight of the evidence. This is also sometimes referred to as the preponderance of the evidence. A fact has been proven by the greater weight of the evidence if you find that it is more likely true than not true. It does not depend on the number of witnesses testifying on one side or the other.

You probably have heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than the “greater weight of the evidence” standard. The “proof beyond a reasonable doubt” standard applies in criminal cases, but not in this civil case; so disregard it.

INSTRUCTION NO. 4

ELEMENTS OF RECOVERY

In this case Joseph J. Henderson & Son, Inc. sues Travelers Property Casualty Company of America for breach of contract. Henderson contends that Travelers breached the contract for insurance by refusing to pay for damage to the Bio Solids Waste Plant that occurred on June 16, 2014. In order to recover on its claim for breach of contract, Henderson must prove all of the following propositions by the greater weight of the evidence.

1. Henderson had an interest in the property that was damaged on June 16, 2014 meaning, the Bio Solids building was still under construction, erection, or fabrication at that time;
2. That the Bio Solids Building suffered damage that day;
3. Henderson performed all of the duties required of it by the insurance policy;
4. Travelers did not pay Henderson's claim; and
5. The amount of damage from Travelers' refusal to pay Henderson's claim.

If Henderson has failed to prove any of these propositions, Henderson is not entitled to damages. If Henderson has proved all of these propositions, then you must consider Travelers' defense that the sole proximate cause of the loss was defective workmanship.

Under Construction, Erection, or Fabrication

The insurance policy in this case is a "builder's risk" policy that covered the owner of the building, the City of Iowa City. It also covered the general contractor, Henderson, while it had an interest in the building. It had an interest in the building while it was under "construction, erection, or fabrication," but not after these activities were completed. In this case, the parties dispute whether the building had been completed by June 16, 2014. You must determine whether the building was still under construction, erection, or fabrication on that date. In doing so, you may consider whether and the extent to which it was occupied by the owner on that date, the existence and extent of a "punch list" and whether the project had been accepted by the City, along with all the other evidence in the case, in determining this issue.

Proximate Cause

The policy in this case provided coverage for losses sustained as a result of a windstorm. The policy excluded losses resulting from defective workmanship. Travelers has the burden to prove that the exclusion applies. When a loss is caused by a combination of covered and excluded risks, the loss is covered unless the excluded cause is the sole “proximate cause” of the loss. An event is considered a proximate cause of a loss if the event sets in motion other causes which, through an unbroken sequence and combination, result in the loss. There can be more than one proximate cause.

INSTRUCTION NO. 5

DAMAGES

If you find that Travelers breached the insurance policy, you must determine the amount of Henderson's damages. The amount of Henderson's damages for breach of contract is that amount that would place Henderson in the place it would have been if Travelers had not breached the insurance policy by refusing to provide coverage.

The policy at issue in this case provides that Travelers will pay for "direct physical loss", of or damage to the covered property from any covered cause of loss. In the event of such covered loss or damage, the value of the loss or damage will be determined by the cost of reasonably restoring covered property to its condition immediately before the loss or damage.

These are the damages that should have been paid if there is coverage for the June 16, 2014 loss. In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimate shall be your item damage.

INSTRUCTION NO. 6

DELIBERATIONS

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges — judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone — including me — how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdict, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.

DATED this 7th day of February, 2018.



JOHN A. JARVEY, Chief Judge
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VERDICT FORM

We, the jury, find the following verdict on the questions before us:

Question No. 1: Did Henderson have an interest in the Bio Solids Building on June 16, 2014 meaning, was it still under construction, erection, or fabrication on that day? Answer Yes or No.

Answer: _____

[If you answer “Yes,” move to Question No. 2. If you answer “No”, do not answer any more questions and sign the verdict form below.]

Question No. 2: Was the Bio Solids Building damaged by a windstorm? Answer Yes or No.

Answer: _____

[If you answer “Yes,” move to Question No. 3. If you answer “No”, do not answer any more questions and sign the verdict form below.]

Question No. 3: Did Travelers prove that defective workmanship was the sole proximate cause of the damage claimed by Henderson? Answer Yes or No.

Answer: _____

[If you answer “Yes,” do not answer any more questions and sign the verdict form below. If you answer “No”, move to Question No. 4]

Question No. 4: What amount of damages do you award to Henderson for Traveler’s breach of the insurance policy?

Answer: \$ _____

Date: February _____, 2018.

Foreperson*

**To be signed only if verdict is unanimous*

Juror**

***To be signed by the jurors agreeing thereto after six hours or more of deliberation.*

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**SUPPLEMENTAL JURY
INSTRUCTIONS**

Members of the jury,

I made a mistake in describing the verdict form.

You must attempt to reach a unanimous verdict. If every juror agrees the verdict, only the Foreperson will sign it.

After 6 hours of deliberation, a verdict can be returned by 7 out of the 8 jurors. In that case, each of the 7 jurors who agree to the verdict will sign it.

DATED this 7th day of February, 2018.



JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA