

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KENNY SHANNON,

Plaintiff,

Case No. 2:14-cv-14153

Hon. Victoria A. Roberts

vs.

Magistrate Judge Michael J. Hluchaniuk

STATE FARM FIRE & CASUALTY COMPANY,

Defendant.

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**JURY INSTRUCTIONS**

<b><u>Page</u></b>	<b><u>Instructions</u></b>
1	Faithful Performance of Duties; Jury to Follow Instructions
2	Facts to Be Determined from Evidence
3	Admission of Evidence
4	Corporations Entitled to Unprejudiced Treatment
5	Jury to Consider All the Evidence
6	Circumstantial Evidence
7	Jurors May Take Into Account Ordinary Experience and Observations
8	Prior Inconsistent Statement of Witness
9	Credibility of Witnesses
10	Weighing Conflicting Evidence – Number of Witnesses
11	Introduction and Burden of Proof

12	Stipulation of Facts
13	Joint Statement of the Case
14-15	Summary of Claims and Positions
16	Affirmative Defenses
17-18	Arson Defense
19-20	Fraud Defense
21	Reference to Crime
22	Exclusive Defenses
23	Stipulation to Damages
24-25	Jury Deliberations
26	Verdict

**FAITHFUL PERFORMANCE OF DUTIES; JURY TO FOLLOW INSTRUCTIONS**

Members of the jury, the evidence and argument in this case have been completed and I will now instruct you on the law. That is, I will explain the law that applies to this case.

Faithful performance by you of your duties is vital to the administration of justice.

The law you are to apply in this case is contained in these instructions, and it is your duty to follow them. In other words, you must take the law as I give it to you. You must consider them as a whole and not pick out one or some instructions and disregard others.

Following my instructions you will go to the jury room and deliberate and decide on your verdict.

**FACTS TO BE DETERMINED FROM EVIDENCE**

It is your duty to determine the facts from evidence received in open court. You are to apply the law to the facts and in this way decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

**ADMISSION OF EVIDENCE**

The evidence you are to consider consists of testimony of witnesses and exhibits offered and received. The admission of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit to which an objection was sustained or any testimony or exhibit which was ordered stricken.

**CORPORATIONS ENTITLED TO UNPREJUDICED TREATMENT**

The corporation defendant in this case is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.

**JURY TO CONSIDER ALL THE EVIDENCE**

In determining whether any fact has been proved, you shall consider all of the evidence bearing on that fact without regard to which party produced the evidence.

### **CIRCUMSTANTIAL EVIDENCE**

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water that would be circumstantial evidence that it is raining.

Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You must consider all the evidence, both direct and circumstantial.



**JURORS MAY TAKE INTO ACCOUNT ORDINARY  
EXPERIENCE AND OBSERVATIONS**

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life, and to take into account whether any particular evidence seems reasonable and probable. However, if you have personal knowledge of any particular fact in this case, that knowledge may not be used as evidence.

**PRIOR INCONSISTENT STATEMENT OF WITNESS**

If you decide that a witness said something earlier that is not consistent with what the witness said at this trial, you may consider the earlier statement in deciding whether to believe the witness, but you may not consider it as proof of the facts in this case.

However, there are exceptions. You may consider an earlier statement as proof of the facts in this case if:

- a. the statement was made by the plaintiff, the defendant, or an agent or employee of either party; or
- b. the statement was given under oath subject to the penalty of perjury at a trial, hearing, or in a deposition; or
- c. the witness testified during the trial that the earlier statement was true.

**CREDIBILITY OF WITNESSES**

You are the judges of the facts in this case, and you must determine which witnesses to believe and what weight to give to their testimony. In doing so you may consider each witness's ability and opportunity to observe, his or her memory, manner while testifying, any interest, bias or prejudice, and the reasonableness of the testimony considered in the light of all the evidence.

**WEIGHING CONFLICTING EVIDENCE – NUMBER OF WITNESSES**

Although you may consider the number of witnesses testifying on one side or the other when you weigh the evidence as to a particular fact, the number of witnesses alone should not persuade you if the testimony of the lesser number of witnesses is more convincing

**BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE**

The burden is ordinarily on a plaintiff in a civil action, such as this, to prove every essential element of his or her claim, and to prove them by a preponderance of the evidence. The “elements” are the important ingredients of a claim. If the proof fails to establish any element of a plaintiff’s claim by a preponderance of the evidence in the case, then the jury would find in favor of the defendant.

In this case, however, Plaintiff’s basic claim is proven. The focus is upon the Defendant, who has presented a response in the form of “affirmative defenses” of arson and fraud. An affirmative defense is one that a defendant is required to prove by a preponderance of the evidence in order to succeed.

To prove something by a “preponderance of the evidence” means to prove that something is more likely true than not true. In other words, a “preponderance of the evidence” means evidence which, when it is considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that whatever was sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them. So even though Defendant, for example, may have the burden of proving something, you are not limited to considering just Defendant’s witnesses or documents. You may and should consider all the applicable evidence from whatever source.

**STIPULATION OF FACTS**

The parties have stipulated to the following facts:

1. The Rental Dwelling policy, numbered **92-B4-M355-6**, issued by State Farm insured the Plaintiff's company, Shannon Global Enterprises, LLC's interest in the rental premises located at 15090 Steel Street, Detroit, Michigan as well as the business property contained therein, and was in full force and effect on March 24, 2014, subject to all of the terms, conditions, limitations and exclusions set forth in the policy.

2. The subject insurance policy provided coverage in the following amounts:

Dwelling	\$96,800.00
Business Property	\$4,840.00
Loss Rents	"Actual"
Deductible	\$1,000.00

3. A fire occurred at the Steel Street premises on March 24, 2014.

4. Mr. Shannon executed a Sworn Statement in Proof of Loss on April 14, 2014 which was presented to State Farm in support of Shannon Global Enterprises' claim as follows:

Dwelling claim of	\$113,000.00
Business property of	\$500.00
Loss rental income of	\$2100.00

5. State Farm denied coverage for the claim by way of a letter addressed to the Shannon Global Enterprises, LLC dated July 18, 2014

**JOINT STATEMENT OF THE CASE**

This case involves a claim for damages following a March 24, 2014 fire at the residential property located at 15090 Steel Street, Detroit, Michigan. The property was insured under a rental dwelling policy issued by State Farm, insuring Shannon Global Enterprises' interest in the dwelling, business property/personal property and loss rents.

State Farm conducted a thorough investigation into the claim, which included retaining a private fire investigator to determine the origin and cause of the fire, as well, conducting the examination under oath of Kenny Shannon, the president and owner of Shannon Global Enterprises. After completing its investigation, State Farm formally denied liability to the Plaintiff under the policy's Intentional Acts exclusion and Concealment or Fraud provision related to its belief that Kenny Shannon or persons in connection with him had intentionally set and/or arranged for the setting of the March 24, 2014 fire. In addition, State Farm believed that Mr. Shannon misrepresented and concealed, among other things, his involvement with the fire and the true extent of loss sustained.

Thereafter, the Plaintiff filed suit for breach of the insurance contract and violation of Michigan's Uniform Trade Practices Act.

### **SUMMARY OF CLAIMS AND POSITIONS**

I will now give you a brief summary of the positions of the parties as I understand them to be. Of course, I am not endorsing the correctness of anything in these summaries.

This incident arose from a fire that occurred at Plaintiff's rental property located at 15090 Steel Street, Detroit, Michigan, on or about March 24, 2014. Plaintiff's claims that at the time of the fire damage, Plaintiff's real property, business personal property, and loss of rents as a result of the fire, were covered under the a valid rental policy issued by Defendant, State Farm. Plaintiff rented this property to a third-party tenant who left a hookah burning in his upstairs bedroom before leaving the home. Plaintiff further claims that during the course of discovery, it was determined that the hookah is the sole cause of origin, which is denied by State Farm. Plaintiff timely made a claim under the rental policy, which Plaintiff claims was wrongfully denied by State Farm, resulting in this lawsuit.

Plaintiff vehemently disputes any involvement with the fire, or its occurrence, and claims that the fire was accidental within the meaning of the policy. Further, Plaintiff denies having any knowledge or providing any consent to any other individual to cause or set the fire, and further states that he never concealed or misrepresented any such facts to State Farm during the course of its investigation of the claim, including, but not limited to, the amount of damages sustained.

Plaintiff contends that he is entitled to damages for the replacement cost of the dealing, his business property, and loss of rents, exclusive of interests, fees and costs.



Defendant has acknowledged that a policy of insurance was issued which covered the premises, and that there was a fire. Nonetheless, Defendant claims that it is not liable to pay any claim for the damages because of the behavior of the Plaintiff. Specifically, Defendant claims that the fire was arson, that is an intentionally set fire, and that the Plaintiff was involved in causing the fire to be set, and/or consented to and/or arranged the fire to be set.

Defendant also claims that the Plaintiff made materially false statements in pursuit of the insurance claim and otherwise engaged in fraudulent behavior.

Plaintiff denies that he engaged in wrongful behavior including arson and fraud.

Both parties agree that Plaintiff met his burden to prove that: (1) there was a policy of insurance covering the subject property; (2) that the premiums had been paid; and (3) there was a fire at the Steel Street property. Accordingly, the focus is on Defendant and its affirmative defenses.

Before deciding whether to honor a claim for insurance benefits, an insurance company has both the duty and the right to conduct a good faith investigation into the claim. An insurer is entitled to possess itself of all knowledge, and all information as to other sources and means of knowledge, in regard to the facts material to its rights, to enable the insurance company to decide upon its obligations, and to protect itself against false claims. In fact, under the law of the State of Michigan, an insurance company has a duty to defend against what it believes to be fraudulent claims.

**AFFIRMATIVE DEFENSES**

The Defendant insurance company can avoid the consequence of being required to pay for an insured loss if it proves the defense of arson and fraud.

**ARSON DEFENSE**

Members of the jury, State Farm has asserted in this case that the fire which occurred at the property located at 15090 Steel Street, Detroit, Michigan on March 24, 2012 was intentionally set by or at the direction of the Plaintiff, Kenny Shannon, or that Mr. Shannon knew of and consented to the setting of the fire for the fraudulent purpose of collecting money under the insurance policy issued by State Farm. If State Farm has proven this by a preponderance of the evidence, it is excused from payment under the policy.

The act of intentionally setting a fire as is claimed in this case is peculiarly one of secrecy. For this reason, the law does not require State Farm to produce an eyewitness to the setting of the fire nor is State Farm required to produce a witness to testify that Mr. Shannon had a wrongful connection with the fire.

In determining whether Kenny Shannon set or arranged for the setting of the fire, or whether he knew of and consented to the setting of the fire as claimed, you may consider every fact and circumstance, including motive and opportunity, which you believe may establish his involvement. You may also consider his conduct and statements and the consistency or inconsistency of those statements and conduct.

If you find after consideration of all the evidence, whether it be direct or circumstantial, that State Farm has established, by a preponderance of the evidence, that Kenny Shannon set or arranged for the setting of the fire, or that he knew of and consented to the setting of the fire, then your verdict will be in favor of State Farm.

On the other hand, if you find after consideration of all evidence, whether it be direct or circumstantial, that State Farm has not established by a preponderance of the evidence that Kenny Shannon set or arranged for the setting of the fire, or that he knew of and consented to the setting of the fire, then your verdict will be in favor of the Plaintiff on this question.

I charge you that this proceeding does not in any manner involve a question of punishment for violation of a criminal law. The sole question is whether the Plaintiff is entitled to coverage under the insurance policy sued upon.

### **FRAUD DEFENSE**

The insurance policy which is the subject matter of this action contains a provision reflecting that the policy is void if Kenny Shannon intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after the fire.

State Farm claims in this case that Kenny Shannon willfully concealed the truth and made false statements concerning his wrongful connection to the March 24, 2014 fire.

Concealment and misrepresentation requires something more than a mistake of fact or an honest misstatement. Misrepresentation occurs when an insured knowingly and intentionally states something of a material nature which is not true or makes a statement which the insured does not know to be true and which he or she has no reasonable grounds of believing is true. Concealment occurs when an insured knowingly and intentionally conceals something of a material nature.

The elements of the concealment and misrepresentation defense are as follows:

1. That the Plaintiff made material false representations or concealed material information;
2. That one or more of the representations was false or that the truth regarding these matters was concealed;
3. That the Plaintiff knew that the representations were false or the representations were made recklessly, without any knowledge of their truth or falsity, or the concealments were intentional; and

4. That the Plaintiff made these representations or concealed information with the intent to defraud State Farm.

If you find, after consideration of all the evidence, whether it be direct or circumstantial, that State Farm has established by a preponderance of the evidence that Kenny Shannon willfully concealed or misrepresented material facts or circumstances in one or more of the ways claimed by State Farm, then the insurance policy is void and your verdict should be in favor of State Farm.

On the other hand, if you find that State Farm has failed to establish by a preponderance of the evidence that Kenny Shannon misrepresented or concealed any material fact or circumstance in any of the ways claimed by State Farm, then your verdict shall be in favor of Kenny Shannon on this defense.

**REFERENCES TO “CRIME”**

You may have heard references to a “crime” or organizations which are involved with reporting and investigating criminal activity. You are to disregard any mentions of the word “crime” that may have been said during trial.

This is not a criminal case, and any such references are not to be part of your consideration in deciding whether either side met its burden of proof.

**EXCLUSIVE DEFENSES**

Members of the jury, it is not necessary for State Farm to establish each of its defenses to the Plaintiff's claims. If you find, after consideration of all of the evidence, that State Farm has established one or all of its defenses to Kenny Shannon's claims under the standards I have just given you, then your verdict will be in favor of the Defendant and against the Plaintiff.



**STIPULATION TO DAMAGES**

Ladies and gentlemen of the jury, the Parties have stipulated to and agreed to a certain sum of damages if Plaintiff prevails at trial. This will be addressed by the Parties and the Court at a later time.

## **JURY DELIBERATIONS**

You will be given a written copy of the final jury instructions for your use in the jury room for deliberation.

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. She or he should see to it that the discussion goes forward in an orderly fashion and that each juror has full opportunity to discuss the issues.

When each and every one of you agrees upon a verdict, it will be received as your verdict. In your deliberations, you should weigh the evidence with an open mind and consideration for each other's opinions.

If differences of opinion arise, you should discuss them in a spirit of fairness and frankness. You should express not only your opinion but also the facts and reasons upon which you base it.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced that it is wrong. However, none of you should surrender your honest conviction as to the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

During your deliberations, and before you reach a verdict, you must not disclose anything about your discussions to others outside the jury room, not even how your voting stands. Therefore, until you reach a verdict, do not disclose that information, even in the courtroom.

During your deliberations you may not communicate with persons outside the jury room (other than the Judge), or seek information by any means, including cellular telephones or other electronic devices.

If you discover a juror has violated my instructions, you should report it to me.

That concludes my instructions on the law. If you have any questions about these instructions at this point, please write them down and give them to the bailiff. The bailiff will then give them to me, and after consulting with counsel, I will address your questions.

It is now time for you to go into the jury room and begin your deliberations.

If you wish to communicate with me or examine the exhibits while you are deliberating, please have your foreperson write a note and give it to the bailiff. If you have any questions about my instructions on the law, please place those particular questions in a sealed envelope. Any questions or communications with me must be given to the bailiff, who will then pass them to me, and I will address the questions or communications with counsel and respond as appropriate.

**VERDICT**

A verdict form will be provided for you. You will take this form to the jury room and when you have reached agreement as to the answers, in accordance with these instructions, you will have your foreperson fill in the date and sign the form. You will then notify the Court's staff that you have reached a verdict, and bring the verdict form with you upon your return to the Court.