

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Bloomfield Hills Country Club,
Birmingham Country Club, and
Bylen Golf Co., LLC d/b/a/ Pine Trace
Golf Course

No. 15-11290

Plaintiffs,

Hon. Nancy G. Edmunds

v.

Travelers Property Casualty Company of
America, Phoenix Insurance Company, and
Travelers Indemnity Company of America,

Defendants.

JURY INSTRUCTIONS

JOINT PROPOSED SET

Dated: July 3, 2019

**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 as to the law.

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. 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 or prejudice 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.

**Attorneys' Statements Not Evidence;
Admission by Attorney**

Arguments, statements and remarks of attorneys are not evidence, and you should disregard anything said by an attorney which is not supported by evidence or by your own general knowledge and experience. However, an admission of fact by an attorney is binding on his or her client.

Admission of a Party

One type of evidence is known as an admission of a party. The admission may be a statement made in the pleading filed in the case, a statement on the record during testimony, or a statement in a written exhibit. Attorneys may also make an admission on behalf of their clients.

Corporations Entitled to Unprejudiced Treatment

The parties in this case are corporations and they are 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.

Evidence Introduced for a Limited Purpose

Whenever evidence was received for a limited purpose or limited to certain parties, you must not consider it for any other purpose or as to any other parties.

Judge's Opinion as to Facts Is to Be Disregarded

I have not meant to indicate any opinion as to the facts by my rulings, conduct, or remarks, during the trial; but if you think I have, you should disregard it, because you are the sole judges of the facts.

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.

Direct and Circumstantial Evidence

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

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.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Opinion Evidence -- Expert Witnesses

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matters, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case and give it such weight, if any, as you may think it deserves.

You should consider the testimony of expert witnesses just as you consider other evidence in this case. If you should decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence (including that of other expert witnesses) you may disregard the opinion in part or in its entirety.

As I have told you several times, you—the jury—are the sole judges of the facts of this case.

**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, such knowledge may not be used as evidence.

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testified, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, demeanor, and manner while testifying. Consider each witness's ability to observe the facts as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may have with either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. 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.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you determine it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a large number of witnesses to the contrary.

Witness Who Has Been Interviewed by an Attorney

It has been brought out that an attorney, or a representative of an attorney, has talked with a witness. There is nothing wrong with an attorney, or a representative of an attorney, talking with a witness for the purpose of learning what the witness knows about the case and what testimony the witness will give.

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 which is inconsistent with the witness' present testimony.

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

If a witness is shown knowingly to have testified falsely concerning 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.

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

All Available Evidence Need Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Definitions Introduced

I shall now give you the definitions of some important legal terms. Please listen carefully to these definitions so that you will understand the terms when they are used later.

Preponderance of the Evidence

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits in evidence, regardless of who may have produced them.

ISSUES AND BURDENS

In this case Plaintiff, Bloomfield Hills Country Club, and Defendant Travelers Property Casualty Company of America, agree that a contract of insurance was in force between them. Plaintiff, Bloomfield Hills Country Club, claims that Defendant, Travelers Property Casualty Company of America, breached the contract of insurance by not paying a claim for damage to Plaintiffs' golf course greens that occurred during the winter of 2013 – 2014. With respect to this breach of contract claim, Plaintiff has the burden of proof with respect to each of the following propositions:

(1) That the damage to the Bloomfield Hills Country Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice.

(2) The amount of damages Bloomfield Hills Country Club is entitled to under the terms of the insurance contract.

With respect to the claim for breach of contract, your verdict will be for the plaintiff if you find that each of these propositions have been proven.

Your verdict will be for the defendant if you find that any of these propositions have not been proven.

Damages

If you find that the damage to the Bloomfield Hills Country Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice, then you must determine the amount of money, if any, to which Plaintiff, Bloomfield Hills Country Club is entitled to under the insurance contract with Travelers Property Casualty Insurance Company of America. The following instructions tell you how to do that. If you find that Plaintiff, Bloomfield Hills Country Club has not proven that the damage to the Bloomfield Hills Country Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice, then you do not need to consider the subject of damages.

To determine the amount of money, if any, to which Plaintiff, Bloomfield Hills Country Club is entitled to under the insurance contract with Travelers Property Casualty Insurance Company of America you must find the amount of money Plaintiff, Bloomfield Hills Country Club, necessarily spent to repair the damage to the golf course greens caused by the weight of ice during the winter of 2013 – 2014.

Bloomfield Hills Country Club must prove by a preponderance of the evidence the amount of any damages to be awarded. However, Bloomfield Hills Country Club is not required to prove its damages with mathematical precision because it is not always possible that a party can prove the exact amount of its damages. Therefore, it is necessary only that Bloomfield Hills Country Club prove its damages to a reasonable certainty or a reasonable probability. However, you may not award damages on the basis of guess,

speculation or conjecture.

ISSUES AND BURDENS

In this case Plaintiff, Pine Trace Golf Club, and Defendant Travelers Indemnity Company of America, agree that a contract of insurance was in force between them. Plaintiff, Pine Trace Golf Club, claims that Defendant, Travelers Indemnity Company of America, breached the contract of insurance by not paying a claim for damage to Plaintiffs' golf course greens that occurred during the winter of 2013 – 2014. With respect to this breach of contract claim, Plaintiff has the burden of proof with respect to each of the following propositions:

(1) That the damage to the Pine Trace Golf Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice.

(2) The amount of damages Pine Trace Golf Club is entitled to under the terms of the insurance contract.

With respect to the claim for breach of contract, your verdict will be for the plaintiff if you find that each of these propositions have been proven.

Your verdict will be for the defendant if you find that any of these propositions have not been proven.

Damages

If you find that the damage to the Pine Trace Golf Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice, then you must determine the amount of money, if any, to which Plaintiff, Pine Trace Golf Club is entitled to under the insurance contract with Travelers Indemnity Company of America. The following instructions tell you how to do that. If you find that Plaintiff, Pine Trace Golf Club has not proven that the damage to the Pine Trace Golf Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice, then you do not need to consider the subject of damages.

To determine the amount of money, if any, to which Plaintiff, Pine Trace Golf Club is entitled to under the insurance contract with Travelers Indemnity Company of America you must find the amount of money Plaintiff, Pine Trace Golf Club, necessarily spent to repair the damage to the golf course greens caused by the weight of ice during the winter of 2013 – 2014.

Pine Trace Golf Club must prove by a preponderance of the evidence the amount of any damages to be awarded. However, Pine Trace Golf Club is not required to prove its damages with mathematical precision because it is not always possible that a party can prove the exact amount of its damages. Therefore, it is necessary only that Pine Trace Golf Club prove its damages to a reasonable certainty or a reasonable probability. However, you may not award damages on the basis of guess, speculation or conjecture.

ISSUES AND BURDENS

In this case Plaintiff, Birmingham Country Club, and Defendant, Phoenix Insurance Company, agree that a contract of insurance was in force between them. Plaintiff, Birmingham Country Club, claims that Defendant, Phoenix Insurance Company, breached the contract of insurance by not paying a claim for damage to Plaintiffs' golf course greens that occurred during the winter of 2013 – 2014. With respect to this breach of contract claim, Plaintiff has the burden of proof with respect to each of the following propositions:

(1) That the damage to the Birmingham Country Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice.

(2) The amount of damages Birmingham Country Club is entitled to under the terms of the insurance contract.

With respect to the claim for breach of contract, your verdict will be for the plaintiff if you find that each of these propositions have been proven.

Your verdict will be for the defendant if you find that any of these propositions have not been proven.

Damages

If you find that the damage to the Birmingham Country Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice, then you must determine the amount of money, if any, to which Plaintiff, Birmingham Country Club is entitled to under the insurance contract with Phoenix Insurance Company. The following instructions tell you how to do that. If you find that Plaintiff, Birmingham Country Club has not proven that the damage to the Birmingham Country Club golf course greens during the winter of 2013 – 2014 was caused by the weight of ice, then you do not need to consider the subject of damages.

To determine the amount of money, if any, to which Plaintiff, Birmingham Country Club is entitled to under the insurance contract with Phoenix Insurance Company you must find the amount of money Plaintiff, Birmingham Country Club, necessarily spent to repair the damage to the golf course greens caused by the weight of ice during the winter of 2013 – 2014.

Birmingham Country Club must prove by a preponderance of the evidence the amount of any damages to be awarded. However, Birmingham Country Club is not required to prove its damages with mathematical precision because it is not always possible that a party can prove the exact amount of its damages. Therefore, it is necessary only that Birmingham Country Club prove its damages to a reasonable certainty or a reasonable probability. However, you may not award damages on the basis of guess, speculation or

conjecture.

Deliberations

(to be given after closing arguments)

The following instructions concern the manner of your deliberations.

Election of Foreperson

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

A verdict form has been prepared for your convenience.

[Read verdict form.]

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the form which sets forth the verdict upon which you unanimously agree; and then return with your verdict to the courtroom.

**The Use of Electronic Technology
to Conduct Research on or Communicate about a Case**

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. 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 until I accept your verdict.

Verdict - Unanimous - Duty to Deliberate

When you go to the jury room, the foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

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 disregard for individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine 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 your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in this case.

Communications Between Court and Jury During Jury's Deliberations

If it becomes necessary during your deliberations to communicate with me, you may send a note by my court staff, signed by your foreperson. No member of the jury should ever attempt to communicate with me by any means other than a signed writing. I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

From the oath about to be taken by my court staff you will note that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person—not even to me—how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

When you reach an agreement as to the verdict, you should send a note to the staff, signed by the foreperson, on which you shall state only that a verdict has been reached.

Verdict Forms -- Jury's Responsibility

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

Juror Notes

If you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence.

You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

Whether you took notes or not, each of you must form your own opinion as to the facts of the case.

Jury Instructions

I will give you a copy of these instructions for your use while deliberating. It is available to each of you. If you have questions about the law or your duties as jurors, you should consult the copy of the instructions as given to you.

I am also sending in all of the exhibits with you for your use while deliberating.

Verdict

When you have reached agreement as to the answers in the verdict form, in accordance with these instructions, have your foreperson fill in the date and sign the form. 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.