

IN THE IOWA DISTRICT COURT IN AND FOR BENTON COUNTY

JAMES E. GETTY and)	
ANGELA M. GETTY,)	
)	
Plaintiffs,)	No. LACV009567
)	
vs.)	STATEMENT OF THE CASE and
)	INSTRUCTIONS TO THE JURY
FARM BUREAU PROPERTY &)	
CASUALTY COMPANY and)	
FARM BUREAU FINANCIAL)	
SERVICES,)	
)	
Defendants.)	

STATEMENT OF THE CASE

Members of the Jury: In this case James and Angela Getty claim that 64 head of cattle were stolen from their farm between June 17-18, 2017. The Gettys claim that they had insurance coverage for this loss with Defendant Farm Bureau. They have filed this lawsuit against Farm Bureau seeking damages for breach of contract and bad faith for Farm Bureau's delay in processing and failure to pay the claim.

Farm Bureau has denied the claims, asserting that there was no provable theft; that under the facts and circumstances of this loss an exclusion in the policy precludes coverage; and that the Gettys' claims are barred by their failure to submit to an examination under oath.

The Gettys have also made a claim against Farm Bureau for tortious interference with their contractual relationship with Farm Credit Services of America by failing to pay the claim and by providing an erroneous notice of policy cancellation to the bank. Farm Bureau has denied this claim.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I now give you.

INSTRUCTION NO. 1

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.

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.

INSTRUCTION NO. 2

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions. Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the Court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. Sometimes, during a trial, references are made to pretrial statements and reports, witnesses' depositions, or other miscellaneous items.

Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

Certain testimony has been read into evidence from a deposition. 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.

INSTRUCTION NO. 5

Farm Bureau served written requests on the Gettys for the admission of the truth of certain matters of fact. You will regard the matters admitted by the Gettys as being conclusively proven.

INSTRUCTION NO. 6

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony. There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 7

You have heard evidence claiming that a party made statements before this trial while under oath and while not under oath. If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial. If you find such a statement was made and was inconsistent with the party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of the party's testimony during the trial but you are not required to do so. You should not disregard the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 8

The fact that Farm Bureau is an insurance company should not affect your decision. All parties are equal before the law, and insurance companies, whether large or small, are entitled to the same fair and conscientious consideration by you as any other party.

INSTRUCTION NO. 9

On their claim for breach of contract under their policy with Farm Bureau, the Gettys must prove all of the following propositions:

1. The Gettys were insured by Farm Bureau for loss due to theft of cattle on the date of loss.
2. The Gettys had paid the premiums which were due. Farm Bureau concedes this element.
3. The Gettys had a loss by the theft of their cattle which was covered under the policy.
4. The Gettys gave Farm Bureau timely notice of their loss.
5. Farm Bureau did not pay the Gettys' claim.
6. The nature and extent of damage suffered by the Gettys.

If the Gettys have failed to prove any of these propositions, the Gettys are not entitled to damage. If the Gettys have proven all of these propositions, the Gettys are entitled to damages in some amount, unless you find that Farm Bureau has proven either of its affirmative defenses outlined in Instruction Nos. 12 and 13.

INSTRUCTION NO. 10

When theft is not defined in a policy of insurance, it has its popular meaning as a word of general and broad connotation covering any wrongful appropriation of another's property to the use of the taker. An insured need not prove the identity of the thief. Proof of theft requires more than proof of mere disappearance, but an inference of theft is justified when property disappears without the knowledge or authority of its owner in circumstances tending to show it was not accidentally mislaid or lost and did not stray by itself.

INSTRUCTION NO. 11

On their claim for bad faith, the Gettys must prove all of the following propositions:

1. Farm Bureau denied the Gettys' theft claim.
2. There was no reasonable basis for denying the Gettys' theft claim.
3. Farm Bureau knew or had reason to know there was no reasonable basis for denying the Gettys' theft claim.
4. The denial of the theft claim was a cause of damage to the Gettys.
5. The nature and extent of damage.

If the Gettys have failed to prove any of the above propositions, the Gettys are not entitled to damages. If the Gettys have proven all of these propositions, the Gettys are entitled to damages in some amount unless you find that Farm Bureau has proven either of its affirmative defenses outlined in Instruction Nos. 12 and 13.

INSTRUCTION NO. 12

The Gettys' insurance policy with Farm Bureau has an exclusion for theft coverage which reads as follows:

There is no coverage for loss of farm/ranch personal property or business personal property by losing, misplacing, mysterious disappearance or where the only evidence of loss is a shortage disclosed upon taking inventory.

Farm Bureau has the burden to prove the loss claimed by the Gettys was caused by an excluded event. If you find it has been proven, you should find that the Gettys are not entitled to recover on their breach of contract claim or bad faith claim against Farm Bureau.

INSTRUCTION NO. 13

The Gettys' insurance policy with Farm Bureau provides that the policyholders (the Gettys), if requested, shall submit to an examination under oath as a part of the investigation of their claim. Farm Bureau contends that it requested an examination under oath from the Gettys, and that they failed to submit to it.

The Gettys claim that they have substantially complied with Farm Bureau's request to submit to an examination under oath.

Substantial compliance, rather than strict compliance, with the examination under oath provision of an insurance policy is required. Neither recorded statements not under oath nor a proof of loss sworn before a notary meet the requirement of an examination under oath.

Consider the evidence you have heard on this issue. If you find that Farm Bureau requested an examination under oath, you must then decide if the Gettys substantially complied with that request. The Gettys have the burden of proof on substantial compliance.

If you find that the Gettys did not substantially comply with the obligation to submit to an examination under oath you should find that the Gettys are not entitled to recover on their breach of contract claim or bad faith claim against Farm Bureau.

INSTRUCTION NO. 14

The Gettys have made a claim that Farm Bureau Mutual Insurance Company has tortiously interfered with their contractual relationship with Farm Credit Services of America. To prevail on this claim, the Gettys must prove all of the following:

1. The Gettys had a contract with Farm Credit Services of America. Farm Bureau concedes this element.
2. Farm Bureau knew of the contract with Farm Credit Services of America. Farm Bureau concedes this element.
3. Farm Bureau intentionally and improperly interfered with the contract between the Gettys and Farm Credit Services of America.
4. The interference caused Farm Credit Services of America not to perform, or made performance more burdensome or expensive; and
5. Damage to Gettys resulted.

If the Gettys have failed to prove any of the above propositions, then they have not proven tortious interference with contract, and you should find that they are not entitled to recover under that theory. If the Gettys have proven all of the above propositions, then the Gettys have proven tortious interference with contract and the Gettys are entitled to damages in some amount.

INSTRUCTION NO. 15

In determining whether a Defendant's conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The Defendant's motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the defendant.
5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the other party.
6. The nearness or remoteness of the defendant's conduct to the interference.
7. The relations between the parties.

If you find that Farm Bureau was legally required to submit the notice in question to Farm Credit, you should find that there was nothing improper about the notice.

INSTRUCTION NO. 16

A Defendant's interference with a contract is intentional if the Defendant either interferes with the contract on purpose or knows the conduct is substantially certain to interfere with the contract.

INSTRUCTION NO. 17

If you find that the Gettys are entitled to recover damages on one or more of their claims, you shall consider the following items:

1. If you find for the Gettys on their breach of contract claim, the amount of damages suffered by the Gettys as a result of Farm Bureau's denial of the theft claim.
2. If you find for the Gettys on their bad faith claim, the amount of damages suffered by the Gettys as a result of Farm Bureau's bad faith denial of the theft claim.
3. If you find for the Gettys on their tortious interference claim, the amount of damages suffered by the Gettys as a result of Farm Bureau's tortious interference of the Gettys' relationship with Farm Credit Services of America.

The measure of damage for each claim is an amount that would place the Gettys in as good a position as they would have enjoyed if the contract had been performed by Farm Bureau, and/or Farm Bureau had not acted in bad faith, and/or Farm Bureau had not tortiously interfered with the Gettys' contractual relationship with Farm Credit. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow the amounts awarded under one item of damage to be included in any amount awarded under any other item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 18

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 estimates shall be your item of damage.

INSTRUCTION NO. 19

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete. Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 20

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, SnapChat, Instagram, LinkedIn, YouTube, Twitter, email, etc. Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial. This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 21

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 22

I am giving you one verdict form with several questions to answer. Follow the directions on that verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman. After deliberating for six hours from 3:52 p.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

DATED this 28th day of May, 2019.

/s/
CHAD A. KEPROS, JUDGE
SIXTH JUDICIAL DISTRICT OF IOWA



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
LACV009567	JAMES E GETTY ETAL VS FARM BUREAU PROPERTY ETAL

So Ordered

A handwritten signature in black ink that reads "Chad A. Kepros". The signature is written in a cursive style with a large initial "C".

Chad Kepros, District Court Judge,
Sixth Judicial District of Iowa