

IN THE IOWA DISTRICT COURT IN AND FOR BENTON COUNTY IOWA

JAMES E. GETTY and		
ANGELA M. GETTY,		
		BENTON COUNTY CAUSE NO.
Plaintiffs		CASE NO. 06061 LACV009567
v.		
FARM BUREAU PROPERTY &		PLAINTIFFS & DEFENDANTS
CASUALTY COMPANY and		JOINTLY PROPOSED
FARM BUREAU FINANCIAL		JURY INSTRUCTIONS
SERVICES		
Defendants		

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COMR NOW, the PARTIES in the above captioned cause and for their JOINTLY

PROPOSED JURY INSTRUCTIONS, provide the following:

STATEMENT OF THE CASE

The Plaintiffs, James and Angela Getty, who farm near Vinton, Iowa, reported that sometime between June 17 and June 18, 2017, sixty-four head of cattle were stolen from their farm. The theft was reported to the Benton County Sheriff and to Farm Bureau, their insurance company. The Gettys assert a breach of contract and a first-party bad faith claim against Farm Bureau since it delayed and declined to pay the claim for the stolen cattle. Farm Bureau has denied the assertions by the Gettys and assert that there was no provable theft and that an exclusionary provision of the insurance policy precludes coverage.

Additionally, the Gettys, who have a banking relationship with Farm Credit Services of America, claim that Farm Bureau interfered with the Getty banking

relationship by failing to timely pay the claim, and by providing an erroneous Notice of policy cancellation to the bank. Farm Bureau has also denied this claim.

Do not consider this summary as either any proof of claim or as a defense to any claim. You are to decide this case upon the facts from the evidence and apply the law which I now provide to you.

[Special Note to the Court: The Plaintiffs drafted the above while keeping in mind the Court's desire for a short statement. While drafting the above the Plaintiff tried to embody language that would work for both parties and used some of the Defendants' proposed language. However, Plaintiffs felt that the Defendants had not included certain key elements. Regardless of these efforts, the Defendants have that they want to stand on the Statement of the Case that they originally provided, which, as noted above, do not include what Plaintiffs believe are key elements]

JOINTLY PROPOSED INSTRUCTIONS

<u>Proposed Jury Inst. No.</u>	<u>Title of Standard Instruction & Opposing Party Position</u>
100.2	Duties of Judge and Jury, Instructions as a Whole
100.3	Burden of Proof, Preponderance of Evidence
100.4	Evidence
100.5	Deposition Testimony
100.6	Interrogatories
100.7	Request for Admissions
100.8	Stipulated Testimony
100.9	Credibility of Witnesses
100.10	Viewing
100.11	Hypothetical Question, Expert Testimony
100.12	Opinion Evidence, Expert Witness

100.13	Contradictory Statement, Non Party, Witness Not Under Oath
100.14	Contradictory Statement, Non Party, Witness Under Oath
100.15	Statements by a Party Opponent
100.18	General Instruction to the Jury
100.20	Corporate Party
100.21	Cautionary Instruction – Juror’s Notes
100.23	Use of Electronic Devices
200.38	Quotient Verdict (PLAINTIFF OBJECTS AS INAPPROPRIATE)
210.1	Punitive Damages (DEFENDANT OBJECTS)
210.2	Special Interrogatory Punitive Damage (DEFENDANT OBJECTS)
210.4	Willful and Wanton Defined (DEFENDANT OBJECTS)
300.1	Return of Verdict-Forms of Verdict
1200.1	Intentional Interference With Contract-Essentials
1200.3	Interference With Contract-Definition (DEFENDANTS OBJECT)
1200.4	Interference With Contract -Knowledge (DEFENDANTS OBJECT)
1200.5	Interference With Contract-Improper (DEFENDANTS OBJECT)
1200.6	Intentional Interference (DEFENDANTS OBJECT)
1410.1	First-Party Bad Faith- Essentials (DEFENDANTS OBJECT)
1420.1	Insurance Contract-Essentials for Recovery (DEFENDANTS OBJECT)

ADDITIONAL INSTRUCTIONS PROPOSED BY THE PARTIES

PLAINTIFFS' PROPOSED

(The Below Items are Filed as
Plaintiffs' Amended & Proposed
Jury Instructions Pursuant to the
Final Pretrial Report and Order)

1A Ambiguous Contract Language
2A When Theft is Not Defined in Policy
3A Standard Instruction No. 220.1
4A Special Interrogatories Re: Breach of Contract
5A Special Interrogatories Re: Bad Faith
6A Special Interrogatories Re: Tortious Interference
7A Special Interrogatories Re: Punitive Damages

DEFENDANTS' RESPONSE

DEFENDANT OBJECTS
DEFENDANT OBJECTS
DEFENDANT OBJECTS
DEFENDANT OBJECTS
DEFENDANT OBJECTS
DEFENDANT OBJECTS
DEFENDANT OBJECTS

DEFENDANTS' PROPOSED

1B (former Defendants' Proposed 2)
2B (former Defendants' Proposed 3)
3B (former Defendants' Proposed 4)

PLAINTIFFS' RESPONSE

Plaintiff Objects since this proposal
does not include the Plaintiffs' claim
for bad faith.

Plaintiff Objects since this proposal
contains embedded arguments by
the Defendant (see particularly
paragraphs 2 and 3 of the proposed
instruction); therefore, this proposal
significantly deviates from the
standard instruction and is improper.

Plaintiff Objects since this proposal
contains an improper and significant
argument that is embedded for the
exclusive benefit of the Defendants

(See particularly paragraph 3 of the proposed instruction).

4B (former Defendants' Proposed 5)

Plaintiff Objects since this proposal is an exclusive argument of the Defendants that is embedded as an instruction. There is no basis under Iowa law for such an instruction and no authority supports this proposal.

5B (former Defendants' Proposed 6)

Plaintiff Objects since this proposal is an exclusive argument of the Defendants that is embedded as an instruction. There is no basis under Iowa law for such an instruction and no authority supports this proposal

6B (former Defendants Proposed 7)

Plaintiff Objects since this proposal does not conform to Jury Instruction 1200.1. The narrative has an imbedded argument for the Defendant, which is Improper.

7B (former Special Interrogatories)

The Proposed Special Interrogatory relating to the "shortage disclosed upon inventory," and the alleged failure "to submit to an examination under oath" are imbedded arguments by the Defendants and are improper as Special Interrogatories.

Respectfully submitted
ON BEHALF OF PLAINTIFFS,

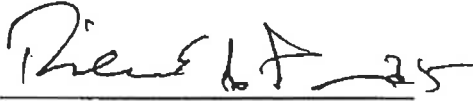

Leslie Stokke AT 0007523

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Respectfully submitted
ON BEHALF OF DEFENDANTS,


David Riley AT0006610

Swisher & Cohrt, P.L.C.
528 West Fourth Street
P.O. Box 1200
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(319) 232-6555

A handwritten signature in black ink, appearing to read "Richard A. Pundt", with a horizontal line drawn underneath it.

Richard A. Pundt AT 0006468
Pundt Law Office
4211 Glass Rd. NE, Suite 2-A
Cedar Rapids, IA 52401
(319) 361-2101

PURSUANT TO COURT ORDER DATED MAY 10, 2019, THE PROPOSED JURY INSTRUCTIONS, VERDICT FORMS, AND SPECIAL INTERROGATORIES ARE SEPARATELY NUMBERED AND ATTACHED IN WORD FORMAT WITH EACH ON A SINGLE PAGE. DISPUTED INSTRUCTIONS, AS NOTED ABOVE, (1A, ETC. FOR PLAINTIFF AND 1B, ETC., FOR DEFENDANTS ARE ALSO ATTACHED.

PROPOSED INSTRUCTION NO. 2: DUTIES OF JUDGE AND JURY, INSTRUCTIONS AS A WHOLE.

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.

Authority *Roushar v. Dixon*, 231 Iowa 993, 2 N.W.2d 660 (1942)

(See Model Instruction 100.2, Statement Of The Case)

100.3 BURDEN OF PROOF, PREPONDERANCE OF EVIDENCE.

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.

Authority *Mabrier v. A.M. Servicing Corporation of Raytown*, 161 N.W.2d 180 (1968)

(See Model Instruction 100.3, Preponderance of Evidence)

100.4 EVIDENCE.

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, and 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 pre-trial 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.

Authority Iowa Rules of Evidence.

(See Model Instruction 100.4, Evidence)

100.5 DEPOSITION TESTIMONY.

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.

Authority Iowa R. Civ. P. 1.704, *Farley v. Seiser*, 316 N.W.2d 857 (Iowa 1982)

(See Model Instruction 100.5, Deposition Testimony)

100.6 INTERROGATORIES.

During this trial, you have heard 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.

Authority Iowa R. Civ. P. 1.509

(See Model Instruction 100.6, Interrogatories)

100.7 REQUESTS FOR ADMISSIONS.

The PARTIES have served on each other certain written request for the admission of the truth of certain matters of fact. You will regard such matters as being conclusively proved all such matters of fact which were expressly admitted by the PARTY who has made the admission.

Authority Iowa R. Civ. P. 1.510, 1.511

(See Model Instruction 100.7, Requests for Admissions)

100.8 STIPULATED TESTIMONY.

Counsel has stipulated that if Jeffery Steffensmeier and Hal Hardke of Farm Credit were called as a witnesses they would testify as stipulated. Consider stipulated testimony as if it had been given in court.

(See Model Instruction 100.8, Stipulated Testimony)

100.9 CREDIBILITY OF WITNESSES.

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.

Authority *Burger v. Omaha & C.B. St. Ry. Co.*, 139 Iowa 645, 117 N.W.35 (1908)

(See Model Instruction 100.9, Credibility of Witnesses)

100.10 VIEWING.

You have looked at the Getty cattle facility to help you better understand the evidence. You must base your decision only on the evidence admitted in the courtroom as well as the Getty cattle facility.

Authority: Sloan v. City of Des Moines, 205 Iowa 823, 825; 218 N.W. 301, 302.

(See Model Instruction 100.10, Viewing)

100.11 HYPOTHETICAL QUESTION, EXPERT TESTIMONY.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

Authority *Cody v. Toller Drug Co.*, 232 Iowa 475, 5 N.W.2d 824 (1942)

(See Model Instruction 100.11, Hypothetical Question)

100.12 OPINION EVIDENCE, EXPERT WITNESS.

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion. Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority *Crouch v. National Livestock Remedy Co.*, 210 Iowa 849, 231 N.W. 323 (1930).

(See Model Instruction 100.12, Opinion Evidence, Expert)

100.13 Contradictory Statement, Non-party, Witness Not Under Oath.

You have heard evidence claiming [name of witness] made statements before this trial while not under oath which were inconsistent with what the witness said in this trial. Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness. Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

Authority: Iowa R. Evid. 5.613; State v. Barry, 549 N.W.2d 316, 318 (Iowa App. 1996) (A prior inconsistent statement of a witness not under oath may be considered for impeachment purposes only). Comment This instruction should be given when a non-party witness has made a prior inconsistent statement while not under oath. If the non-party witness made a prior inconsistent statement under oath, then Instruction 100.14 should be given. If the non-party witness has made prior inconsistent statements both under oath and not under oath, then both Instruction 100.13 and

100.14 Contradictory Statements, Non-Party, Witness Under Oath.

You have heard evidence claiming [name of witness] made statements before this trial while under oath which were inconsistent with what [name of witness] said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial. You may also use these statements to help you decide if you believe [name of non-party witness]. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Authority: A prior inconsistent statement of a witness given under oath is substantive evidence which may be considered for any purpose. State v. Thompson, 397 N.W.2d 679, 683 n.2 (Iowa 1986); Iowa R. Evid., 5.801(d)(1)(A). Comment This Instruction should be given when a non-party witness has made a prior inconsistent statement while under oath. If the non-party witness made a prior inconsistent statement while not under oath, then Instruction 100.13 should be given. If the non-party witness has made prior inconsistent statements both under oath and not under oath, then both Instruction 100.14 and Instruction 100.13 should be given to clarify and distinguish the two forms of statements for the jury.

100.15 Statements By A Party Opponent.

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

100.18 General Instruction To Jury.

Upon retiring you shall select a foreman or forewoman. 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.

100.20 Corporate Party.

The fact that a plaintiff or defendant is a corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Comment Note: If scope of employment is an issue, Iowa Civil Jury Instruction 730.1 and 730.2 may be useful.

100.21 Cautionary Instruction - Juror's Notes.

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.

Authority: Iowa R. Civ. P. 1.926 (1)

100.23 Use of Electronic Devices.

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, 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. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.] It is important that we have your full and undivided attention during this trial.

200.38 Quotient Verdict.

In arriving at an item of damage [or any percentage of fault] you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage [or a percentage of fault], and agreeing in advance that the average of those estimates shall be your item of damage [or percentage of fault].

Authority: Moose v. Rich, 253 N.W.2d 565 (Iowa 1977) Sheker v. Jensen, 241 Iowa 583, 41 N.W.2d 679 (1950) Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

210.1 Punitive Damages.

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff. Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries. There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors: 1. The nature of defendant's conduct that harmed the plaintiff. 2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay. 3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff. 4. The existence and frequency of prior similar conduct. If applicable, add: Although you may consider harm to others in determining the nature of defendant's conduct, you may not award punitive damages to punish the defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the defendant that is not similar to the conduct which caused the harm to the plaintiff in this case.

Authority Iowa Code section 668A.1 Philip Morris USA v. Williams, 127 S.Ct. 1057 (2007) State Farm Mutual Auto Ins. Co. v. Campbell, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) Larson v. Great West Cas. Co., 482 N.W.2d 170 (Iowa App. 1992) Suss v. Schammel, 375 N.W.2d 252 (Iowa 1985) Nelson v. Restaurants of Iowa, Inc., 338 N.W.2d 881 (Iowa 1983)

210.2 Special Interrogatories - Punitive Damages.

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No"

ANSWER: _____

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award?

ANSWER: _____

[If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at the Gettys?

Answer "Yes" or "No"

ANSWER: _____

Authority Iowa Code section 668A.1 Comment

210.4 Willful and Wanton - Defined.

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Authority: Fell v. Kewanee Farm Equipment Co., 457 N.W.2d 911 (Iowa 1990)
Kosmacek v. Farm Service Coop of Persia, 485 N.W.2d 99 (Iowa App. 1992)

300.1 Return Of Verdict - Forms Of Verdict.

I am giving you _____ verdict forms [and questions]. 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 [and answers to questions] must be signed by your foreman or forewoman. After deliberating for six hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) (six)* of you agree upon the answers to the questions. In that case, the verdict [and questions] must be signed by all (seven) (six)* jurors who agree. When you have agreed upon the verdict [and answers to questions] and appropriately signed it, tell the Court Attendant. Comment Note: *Use if a juror has been excused during the trial.

1200.1 Intentional Interference With Contract - Essentials For Recovery.

Mr. and Mrs. Getty must prove all of the following propositions:

1. The Gettys had a contract with Farm Credit Services of America.
2. Farm Bureau knew of the contract.
3. The Farm Bureau intentionally and improperly interfered with the contract between the Gettys and Farm Credit Services of America in one or more of the following ways:
 - (a) either by Farm Bureau failing to pay the Gettys for the stolen cattle so the Gettys could, in turn, pay Farm Credit Services of America;
OR
 - (b) Farm Bureau sending a Notice of Termination of insurance to Farm Credit Services of America in an improper manner.
4. And Either:
 - (a) The interference by Farm Bureau caused the Gettys to be unable to pay Farm Credit Services of America for the stolen cattle that were collateral for a loan from Farm Credit;
OR
 - (b) The interference caused the Gettys' performance of the contract with Farm Credit Services of America to be more burdensome or expensive.
5. The nature and amount of damage.

If the plaintiff has failed to prove any one or more of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority: *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751 (Iowa 1999) *Financial Marketing Services, Inc., v. Hawkeye Bank*, 588 N.W.2d 450 (Iowa 1999) *Nesler v. Fisher and Company, Inc.*, 452 N.W.2d 191 (Iowa 1990) *Wolfe v. Graether*, 389 N.W.2d 643 (Iowa 1986)

1200.3 Interference With Contract - Definition Of Contract.

A contract is an agreement between two or more persons to do or not to do something.

Authority: Compiano v. Kuntz, 226 N.W.2d 245 (Iowa 1975) Restatement (Second) of Torts, Section 766.

(See Model Instruction 1200.3 Contract Definition)

1200.4 Interference With Contract - Knowledge.

The Farm Bureau “knew” of the contract if Farm Bureau either had actual knowledge of the contract between the Gettys and Farm Credit Services of America or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between the Gettys and Farm Credit.

Authority: *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 764 (Iowa 1999)

(See Model Instruction 1200.4 Knowledge)

1200.5 Interference With Contract - Improper.

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.

1200.6 Intentional Interference.

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.

Authority: Restatement (Second) of Torts, Section 766, comment j.

(See Model Instruction 1200.6 Intentional Interference)

1420.1 INSURANCE CONTRACT – ESSENTIALS FOR RECOVERY.

The plaintiff must prove all of the following propositions:

1. The Plaintiffs were insured by the Defendant for loss due to theft of cattle on the date of loss (June 18, 2017).

2. The Plaintiffs had paid the premiums within the grace period of the due date for the insurance.

3. The Plaintiffs had a loss by the theft of cattle from their farm which was covered by the insurance policy with the Defendants.

4. The Plaintiffs gave the Defendants a timely proof of loss.

5. The Defendants did not pay the Plaintiffs' claim.

6. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority *Watson v. National Sur. Corp.*, 468 N.W.2d 448, 451 (Iowa 1991)
American Guar. & Liability Ins. Co. v. Chandler Mfg. Co., 467 N.W.2d 226 (Iowa 1991).

(See Model Instruction 1420.1, Insurance Contract – Essentials)

PLAINTIFFS' PROPOSED INSTRUCTION NO. 1A

(Ambiguous Contract Language)

Under an objective test, the language of an insurance policy is ambiguous if the language is susceptible to two reasonable interpretations. The words in an insurance policy are to be applied to subjects that seem most properly related by context and applicability.

When interpreting ambiguous words in insurance contracts, the language should be interpreted from the viewpoint of an ordinary person. Where insurance contracts require interpretation, the construction most favorable to the insured should prevail. The construction and application of a standardized insurance contract should meet the reasonable expectations of the average member of the public who accepts it.

Authority:

Jones v. State Farm Mut. Auto. Ins. Co., 760 N.W.2d 186, at 188 (Iowa 2008);
Talen v. Emp'rs Mut. Cas. Co., 703 N.W.2d 395, 402 (Iowa 2005);
Benzer v. Iowa Mutual Tornado Insurance Ass'n., 216 N.W.2d 385, 388 (Iowa 1974);
City of Spencer v. Hawkeye Security Insurance Co., 216 N.W.2d 406, 408 (Iowa 1974);
CJ Fert., Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169, 176 (Iowa 1975).

PLAINTIFFS' PROPOSED INSTRUCTION NO. 2A

(When Theft is Not Defined in the Policy)

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. 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 and did not stray by itself.

Authority:

Long v. Glidden Mutual Insurance Association, 215 N.W.2d 271, 273 (Iowa 1974);
Rodman v. State Farm Mutual Automobile Ins. Co., 208 N.W.2d 903, 905-906 (Iowa 1973);
Weir v. Central Nat. F. Ins., 194 Iowa 446, 189 N.W. 794 (Iowa 1922);
5 Appleman, Insurance Law and Practice, §3171 at 490-491.

PLAINTIFFS' PROPOSED INSTRUCTION NO. 3A

220.1 Breach Of Contract Damages, Bad Faith, and/or Tortious Interference.

The measure of damages for breach of a contract, and/or bad faith, and/or tortious interference is an amount that would place Mr. and Mrs. Getty in as good a position as they would have enjoyed if the contract had been performed. The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract. In your consideration of the damages, you may consider the following:

- a. The loss of the cattle that were stolen, plus interest;
- b. The diminished value of the cattle and crops the Gettys were forced to sell when Farm Credit Services of America required that the Gettys liquidate the remaining cattle that they owned, plus interest;
- c. The value of the crop insurance that the Gettys were required to pay to Farm Credit Services of America on the loan balance instead of using those funds for the reduction of other loans and/or obligations, plus interest;
- d. The value of the dividends that the Gettys were required to pay to Farm Credit Services of America on the loan balance instead of using those funds for the reduction of other loans and/or obligations, plus interest;
- e. The funds borrowed against the retirement plans of James Getty and Angela that the Gettys were required to pay to Farm Credit Services of America on the loan balance instead of using those funds for the reduction of other loans and/or obligations, plus interest;
- f. The funds borrowed against the retirement plan of Angela Getty that the Gettys were required to pay to Farm Credit Services of America on the loan balance instead of using those funds for the reduction of other loans and/or obligations, plus interest;
- g. The additional funds that the Gettys were able to find and that the Gettys were required to pay to Farm Credit Services of America on the loan balance instead of using those funds for the reduction of other loans and/or obligations, plus interest;

Authority Yost v. City of Council Bluffs, 471 N.W. 2d 836 (Iowa 1991) Air Host Cedar Rapids v. Airport Commission, 464 N.W. 2d 450 (Iowa 1990) Hoffman v. National Medical Enterprises, Inc., 442 N.W. 2d 123 (Iowa 1989) Potter v. Oster, 426 N.W. 2d 148 (Iowa 1988) Ritam Corporation v. Applied Concepts, Inc., 387 N.W. 2d 619 (Iowa App. 1986)

(See Model Instruction 220.1 Damages)

PLAINTIFFS' PROPOSED INSTRUCTION NO. 4A

(Special Interrogatory Regarding Breach of Contract)

Special Interrogatory No. ____1____ To the Jury:

Did the Defendants, Farm Bureau Property & Casualty and Farm Bureau Financial Services breach their contract of insurance with James E. Getty and Angela M. Getty?

ANSWER: ____ YES
 ____ NO

If the Answer is yes, go to the next Interrogatory No. ____2____, and indicate the amount of damages. If the answer is No, go to Interrogatory No. ____3____.

Special Interrogatory No. ____2____ To the Jury:

We, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at dollars set forth below. As a result of the breach of contract by Farm Bureau Property & Casualty and Farm Bureau Financial Services, the following are the damages that we find should be paid to James E. Getty and Angela M. Getty, in each category identified:

Damages \$ _____

You may now go to Special Interrogatory No. ____3____

PLAINTIFFS' PROPOSED INSTRUCTION NO. 5A

(Special Interrogatory Regarding Bad Faith)

Special Interrogatory No. ____3____ To the Jury:

Did the Defendants, Farm Bureau Property & Casualty and Farm Bureau Financial Services engage in bad faith relative to the insurance contract it had with James E. Getty and Angela M. Getty?

ANSWER: ____ YES
 ____ NO

If the Answer is yes, go to the next Interrogatory No. ____4____, and indicate the amount of damages. If the answer is No, go to Interrogatory No. ____5____.

Special Interrogatory No. ____4____ To the Jury:

We, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at dollars set forth below. As a result of the first party bad faith by Farm Bureau Property & Casualty and Farm Bureau Financial Services, the following are the damages that we find should be paid to James E. Getty and Angela M. Getty, in each category identified:

Damages \$ _____

You may now go to Special Interrogatory No. ____5____

PLAINTIFFS' PROPOSED INSTRUCTION NO. 6A

(Special Interrogatory Regarding Tortious Interference)

Special Interrogatory No. ___5___ To the Jury:

Did the Defendants, Farm Bureau Property & Casualty and Farm Bureau Financial Services engage in tortious interference in regard to the banking contract that James E. Getty and Angela M. Getty had with Farm Credit Services of America?

ANSWER: ___ YES
 ___ NO

If the Answer is yes, go to the next Interrogatory No. ___6___, and indicate the amount of damages. If the answer is No, go to Interrogatory No. ___7___.

Special Interrogatory No. ___6___ To the Jury:

We, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at dollars set forth below. As a result of the tortious interference by Farm Bureau Property & Casualty and Farm Bureau Financial Services in regard to the Gettys' relationship with Farm Credit Services, the following are the damages that we find should be paid to James E. Getty and Angela M. Getty, in each category identified:

Damages \$ _____

PLAINTIFFS' PROPOSED INSTRUCTION NO. 7A

(Special Interrogatory Regarding Punitive Damages)

210.2 Special Interrogatories - Punitive Damages.

Special Interrogatory No. 7 To the Jury:

Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

ANSWER YES
 NO

If your answer to Special Interrogatory No. 7 is "Yes" go to Question 8 and 9. If your answer to Special Interrogatory 7 is "No" you do not need to answer Special Interrogatory 8 and 9.

Special Interrogatory No. 8 To the Jury:

What amount of punitive damages, if any, do you award?

ANSWER: \$

If your answer to Special Interrogatory 8 is "None" do not answer Special Interrogatory No. 9.

Special Interrogatory No. 9 To the Jury:

Was the conduct of the Defendant, Farm Bureau directed specifically at James and Angela Getty?

ANSWER YES
 NO

Authority Iowa Code section 668A.1