

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RICHARD BALDWIN,

Plaintiff,

vs.

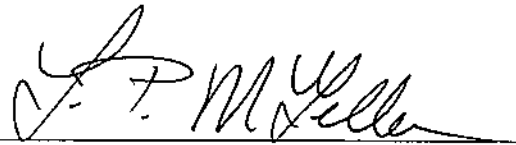
ATHENE ANNUITY AND LIFE
COMPANY, an Iowa corporation, a/k/a MLS
IOWA ATHENE, f/k/a AVIVA LIFE AND
ANNUITY,

Defendants.

CASE NO. CVCV054026

**STATEMENT OF THE CASE
AND
JURY INSTRUCTIONS**

The court provided the following statement of the case and jury instructions to the jury on
February 20, 2019.



Lawrence P. McLellan
Judge, Fifth Judicial District of Iowa

FILED
POLK COUNTY
2019 FEB 21 PM 1:01
CLERK DISTRICT COURT

STATEMENT OF THE CASE

Members of the Jury:

In this case the plaintiff, Richard Baldwin, brings the claims of malicious prosecution, intentional interference with prospective business advantage and identity theft against the defendant Athene Annuity and life Company formerly known as Aviva Life and Annuity (“Athene”).

Mr. Baldwin brings the claims of malicious prosecution and intentional interference with prospective business advantage based on his assertion that Athene reported his termination for cause to 20 state regulatory bodies, and his alleged fraud to the National Association of Insurance Commissioners, the Treasury Department’s Financial Crimes Enforcement Network, and the Utah Insurance Fraud Division.

Mr. Baldwin brings the identity theft claim based on his assertion that Athene fraudulently used his personal identification information without his authorization to do so, to his detriment and to Athene’s benefit.

Athene denies Mr. Baldwin’s claims and asserts as to all the claims it acted in good faith in making its reports and is therefore immune from liability under applicable state law.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will 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. You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice. You must not decide for or against anyone because you feel sorry for or angry at anyone.

INSTRUCTION NO. 2

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence.

When I tell you that a party has the burden of proof or that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

After weighing all of the evidence, if you decide that a fact is more likely true than not, then you must find that the fact has been proved. On the other hand, if you decide that the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved, and the party has therefore failed to meet its burden of proof to establish that fact.

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, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. A fact may be proved by direct or circumstantial evidence. Circumstantial evidence consists of facts that allow someone to reasonably infer the truth of the facts to be proved. For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact. You can determine state of mind by relying on upon both direct and circumstantial evidence.

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.

INSTRUCTION NO. 4

From time to time during the trial, I made rulings on objections or motions made by the lawyers. Lawyers on each side of a case have a right to object when the other side offers evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a party because the lawyer makes objections. You should not conclude from any ruling or comment that I made that I had any opinion about the merits of the case or that I favor one side or the other. And when a lawyer objected and I sustained the objection, you should disregard the question and any answer.

INSTRUCTION NO. 5

Testimony in this case was given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions. In evaluating the testimony of a witness, you may want to consider the following:

(1) Personal interest. Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?

(2) Bias. Do you believe the accuracy of the testimony was affected by any bias or prejudice?

(3) Demeanor. Is there anything about the witness's appearance, conduct or actions that causes you to give more or less weight to the testimony?

(4) Consistency. How does the testimony tend to support or not support other believable evidence that is offered in the case?

(5) Knowledge. Did the witness have a good opportunity to know what [he] is testifying about?

(6) Memory. Does the witness's memory appear to be reliable?

(7) Reasonableness. Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability.

INSTRUCTION NO. 6

You may believe that a witness, on another occasion, made a statement inconsistent with that witness's testimony given here.

If you find such statements were made, you may regard the statements as evidence in this case the same as if the statements had been made under oath during the trial.

If you find such statements were made and were inconsistent with the witness' testimony during the trial, you may also use the statements as a basis for disregarding all or any part of that

witness' testimony during the trial, but you are not required to do so. You should not disregard any person's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 7

You heard evidence claiming witnesses made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as if they were made at this trial. Decide whether to consider the earlier statements for any purpose and what weight to give them. However, you should not disregard the testimony if other believable evidence supports it or if for some other reason you believe it.

INSTRUCTION NO. 8

If you believe any witness has intentionally testified falsely about any important matter, you may disregard the entire testimony of that witness, or you may disregard only the intentionally false testimony.

INSTRUCTION NO. 9

Certain testimony was shown to you by video depositions. These video depositions are evidence. A deposition is testimony taken under oath before the trial and preserved by video. You should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

INSTRUCTION NO. 10

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.

In resolving any conflict that may exist in the testimony from the expert witnesses, you may compare and weigh the opinion of one against that of another. In doing this, you may consider the qualifications and credibility of each, as well as the reasons for each opinion and the facts on which the opinions are based.

INSTRUCTION NO. 11

The defendant in this case, Athene Annuity and Life Company, is a corporation. A corporation can only act through its officers, employees, and agents. Thus, any act or omission of an officer, employee, or agent within the scope of his or her employment is the act or omission of the corporation and if such act or omission is wrongful the corporation is liable for it.

INSTRUCTION NO. 12

The fact that Mr. Baldwin is a natural person and Athene is an insurance company cannot play any part in your deliberations. You must decide this case as if it were between individuals.

INSTRUCTION NO. 13

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, LinkedIn, YouTube, Twitter, Snapchat, 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.

INSTRUCTION NO. 14

Proximate cause is that cause which, in natural and continuous sequence, (unbroken by any new cause) produces the injury and without which the result would not have occurred. It is the efficient cause-the one that necessarily sets in operation the factors that accomplish the injury.

INSTRUCTION NO. 15

Athene, as an insurance company regulated by the state of Utah, was required to report its termination of Mr. Baldwin electronically to the Utah Department of Insurance using SIRCON or the National Insurance Producer Registry ("NIPR"). When the termination is "for cause" Athene was required to notify the Utah Department of Insurance using SIRCON or NIPR and also send information to the Utah Department of Insurance via facsimile or as a PDF attachment to an email that the termination was for cause and providing the specific circumstances causing the termination for cause.

MALICIOUS PROSECUTION**INSTRUCTION NO. 16**

Mr. Baldwin claims that Athene maliciously prosecuted him. "Malicious prosecution" means causing an unsuccessful criminal proceeding with malice and without probable cause. Mr. Baldwin must prove all of the following propositions:

1. Athene initiated or procured the initiation of criminal proceedings against a him;
2. There was an absence of probable cause for the proceeding;

3. Athene initiated proceedings primarily for a purpose other than the procurement of justice;
4. The proceedings terminated in favor of Mr. Baldwin;
5. The prosecution was a cause of Mr. Baldwin's damage; and,
6. The amount of damage.

If Mr. Baldwin failed to prove any of these propositions, he is not entitled to damages. If Mr. Baldwin proved all of these propositions, he is entitled to damages in some amount. If Mr. Baldwin proved all of these propositions, then you shall consider the defense of good faith immunity as explained in Instruction No. 33.

INSTRUCTION NO. 17

The term “criminal proceeding” in this case means the court action in which the Utah Attorney General sought to prosecute Mr. Baldwin. The criminal proceeding was instituted when the Utah Attorney General’s Office filed an information against him in the Utah District Court. Neither the investigation of the Utah Department of Insurance nor the investigation of Utah Assistant Attorney General Bell is a criminal proceeding.

INSTRUCTION NO. 18

A party initiates a criminal proceeding if it was “actively instrumental in putting the law in force.”

Merely providing information that a third party uses to initiate criminal proceedings against a defendant does not constitute the “initiation” or “procurement” of criminal proceedings.

In order to charge a private person with responsibility for the initiation of proceedings by a public official, plaintiff must prove:

1. that the private person desired the criminal proceedings to be initiated, expressed by direction, request or pressure of any kind, and that direction, request, or pressure was the determining factor in the official's decision to commence the criminal proceeding or,
2. that the information furnished by the private person upon which the official acted was known to the private person to be false.

INSTRUCTION NO. 19

In determining whether an individual caused a prosecution you may consider whether the prosecutor or other state official conducted their own separate investigation of the person's conduct before filing criminal charges and the nature and scope of the investigation conducted by the prosecutor or other state official.

INSTRUCTION NO. 20

The phrase "primarily for a purpose other than that of bringing an offender to justice" denotes that the person initiating or procuring the criminal proceeding was motivated by some other purpose that played a more important part in influencing his decision than the motive of bringing an offender to justice.

The principal situations in which criminal proceedings are initiated for an improper purpose are,

- (1) when the accuser does not believe in the guilt of the accused,
- (2) when the proceedings are initiated primarily because of hostility or ill will toward the accused,

(3) when the proceedings are initiated for the purpose of obtaining a private advantage even though the advantage might legitimately have been obtained in civil proceedings.

INSTRUCTION NO. 21

Probable cause exists when a person has a reasonable basis for believing the accusation and subjectively believes the accusation to be true.

Probable cause does not require absolute certainty or proof beyond a reasonable doubt. It is to be determined by the factual and practical considerations of everyday life on which reasonable and careful persons not legal experts act.

INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

INSTRUCTION NO. 22

Mr. Baldwin claims that Athene intentionally interfered with his economic relations. To award damages for this claim, Mr. Baldwin must prove:

1. Athene intentionally interfered with a potential economic relationship that Mr. Baldwin had by reporting the termination for cause and/or reporting him for fraud;
2. Athene did so by improper means;
3. Athene's interference caused harm to him; and,
4. The nature and amount of damage.

If Mr. Baldwin failed to prove any of these propositions, he is not entitled to damages. If he proved all of these propositions, he is entitled to damages in some amount. Mr. Baldwin seeks economic and non-economic damages. If Mr. Baldwin proved all of these propositions, then you shall consider the defense of good faith immunity as explained in Instruction No. 33.

INSTRUCTION NO. 23

An economic relationship exists when Mr. Baldwin had a reasonable expectation of economic benefit from his relationship with one or more third parties. This expectation must be present at the time of the interference.

An economic relationship can be based upon an existing contract but does not have to be. It is enough if you find that there were either dealings or a course of conduct between Mr. Baldwin and others from which Mr. Baldwin had a reasonable expectation of economic benefit. The expected benefit must be likely to occur but does not have to be a certainty.

INSTRUCTION NO. 24

You must next determine whether Athene intentionally interfered with Mr. Baldwin's potential economic relationship. For Athene to have intentionally interfered with an existing or potential economic relationship of Mr. Baldwin, Athene must have:

1. acted for the purpose of interfering with that relationship; or
2. acted knowing that the interference was substantially certain to occur as a result of its actions.

INSTRUCTION NO. 25

The second element of Mr. Baldwin's claim is that Athene interfered with Mr. Baldwin's existing or potential economic relations by improper means. "Improper means" is defined as action that was contrary to law or violated an established standard of a trade or profession. Mr. Baldwin claims the improper means were reporting his termination for cause and/or making a fraud report.

INSTRUCTION NO. 26

Athene claims that its actions in interfering with Mr. Baldwin's economic relations were privileged. Athene claims that its conduct was privileged because it was entitled to terminate its business relationship with Mr. Baldwin and statutorily required to report that termination to the Utah Department of Insurance. To the extent you find Athene's actions were subject to a privilege, you cannot find those actions to be an "improper means."

INSTRUCTION NO. 27

Mr. Baldwin and Athene entered into an Independent Producer Agreement. The Agreement provided that Athene could terminate the parties' relationship at any time without cause and could terminate the parties' relationship with cause if Mr. Baldwin:

1. Subjects Athene to a liability;
2. Fails to comply with the laws, rules, or regulations of any federal, state or other governmental agency or body having jurisdiction over Mr. Baldwin or Athene, or with Athens's rules and operating procedures, including without limitation those rules and procedures set forth in Athene's Compliance Guide and OFAC and AML policies and procedures;
3. Commits a material breach of the Agreement;

4. Commits any fraud or material misrepresentation of fact including but not limited to misrepresentation of any fact on the application for the Agreement; or,
5. Engages directly or indirectly in rebating of commissions payable or paid in connection with the purchase of insurance contracts.

The termination by Athene of its relationship pursuant to the terms of the Independent Producer Agreement is not improper interference.

INSTRUCTION NO. 28

If you find that Athene intentionally interfered with Mr. Baldwin's economic relations, then you should award him damages that will reasonably compensate for any harm he suffered because of the interference with economic relations.

Mr. Baldwin can only recover damages if the damages are caused by conduct of Athene that you find was improper.

IDENTITY THEFT

INSTRUCTION NO. 29

Mr. Baldwin claims that Athene engaged in identity theft. To recover on this claim, Mr. Baldwin must prove all of the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. Athene obtained identification information of Mr. Baldwin;
2. Athene fraudulently used or attempted to fraudulently use identification information of Mr. Baldwin;
3. With the intent to obtain credit, property, services, or other benefit;
4. Mr. Baldwin suffered a pecuniary loss as a result of the use of his identification information; and

5. The amount of damage.

If Mr. Baldwin failed to prove any of these propositions by a preponderance of clear, satisfactory and convincing evidence, he cannot recover damages for identity theft. If Mr. Baldwin proved all of these propositions by a preponderance of clear, satisfactory and convincing evidence, he is entitled to recover damages in some amount. If Mr. Baldwin proved all of these propositions, then you will consider the defense of good faith immunity as explained in Instruction No. 33.

INSTRUCTION NO. 30

Evidence is clear, satisfactory and convincing evidence if there is no serious or substantial uncertainty about the conclusions to be drawn from it.

INSTRUCTION NO. 31

“Identification information” as used in proposition No. 1 of Instruction No. 29 includes but is not limited to the name, address, date of birth, telephone number, driver’s license number, nonoperator’s identification card number, social security number, student identification number, military identification number, alien identification or citizenship status number, employer identification number, signature, electronic mail signature, electronic identifier or screen name, biometric identifier, genetic identification information, access device, logo, symbol, trademark, place of employment, employee identification number, parent’s legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

INSTRUCTION NO. 32

“Fraudulently used” or “fraudulently attempted to use” as used in proposition No. 2 of Instruction No. 29 means to use identification information knowing that its use was illegitimate

with the intent to deceive another person or entity as to the identity of the person using the identification information.

For the use of identification information to be fraudulent, the plaintiff must establish both that the person using the identification information knew its use was illegitimate and that the person used the identification information with the intent to deceive another person or entity that it was the person identified in the identification information.

DEFENSE OF GOOD FAITH IMMUNITY

INSTRUCTION NO. 33

Athene claims that it is immune from damages for the claims of malicious prosecution, intentional interference with prospective business relations and identity theft. Athene is immune from civil action, civil penalty, or damages when in good faith Athene:

1. cooperates with a department of insurance or a division of the department, a federal, state, or government agency established to detect and prevent insurance fraud, or a nonprofit organization established to detect and prevent insurance fraud;
2. furnishes evidence to the department of insurance or a division of the department, a federal, state, or government agency established to detect and prevent insurance fraud, or a nonprofit organization established to detect and prevent insurance fraud;
3. provides information regarding a suspected fraudulent insurance act to a department of insurance or a division of the department, a federal, state, or government agency established to detect and prevent insurance fraud, or a nonprofit organization established to detect and prevent insurance fraud; or,

4. submits a required report to the department of insurance.

If Athene proved all of these propositions you should answer Special Verdict No. 4.

INSTRUCTION NO. 34

A person acts in good faith when the person on the basis of a preponderance of the evidence has a reasonable belief that a fraudulent insurance act is being, will be, or has been committed.

INSTRUCTION NO. 35

To be entitled to damages, Mr. Baldwin must prove two points:

First, that damages occurred. There must be a reasonable probability, not just speculation, that Mr. Baldwin suffered damages from Athene's conduct.

Second, the amount of damages. The level of evidence required to prove the amount of damages is not as high as what is required to prove the occurrence of damages. There must still be evidence, not just speculation, that gives a reasonable estimate of the amount of damages, but the law does not require a mathematical certainty.

In other words, if Mr. Baldwin proved that he has been damaged and has established a reasonable estimate of those damages, Athene may not escape liability because of some uncertainty in the amount of damages.

INSTRUCTION NO. 36

Economic damages are the amount of money that will fairly and adequately compensate Mr. Baldwin for measurable losses of money caused by Athene's conduct.

Economic damages include past lost earnings and future lost earning capacity.

Calculate past lost earnings from the date of the harm until the trial. Calculate future lost earning capacity from the date of trial forward.

Lost earning capacity means the lost potential to earn income. In determining lost earning capacity, you should consider:

- (1) Mr. Baldwin's actual earnings;
- (2) His work before and after Athene's conduct;
- (3) what he was capable of earning had he not been damaged; and
- (4) any other facts that relate to Mr. Baldwin's employment or occupation.

INSTRUCTION NO. 37

Noneconomic damages are the amount of money that will fairly and adequately compensate Mr. Baldwin for losses other than economic losses.

Noneconomic damages are not capable of being exactly measured, and there is no fixed rule, standard or formula for them. Noneconomic damage must still be awarded even though they may be difficult to compute. It is your duty to make this determination with calm and reasonable judgment. The law does not require the testimony of any witness to establish the amount of noneconomic damages.

In awarding noneconomic damages, among the things that you may consider are:

- (1) the emotional distress resulting from Athene's conduct.

Emotional distress includes humiliation, embarrassment and anxiety.

While you may not award damages based upon speculation, the law requires only that the evidence provide a reasonable basis for assessing the damages but does not require a mathematical certainty.

I will now instruct you on particular items of economic and noneconomic damages presented in this case.

DEFENSE OF MITIGATION OF DAMAGES

INSTRUCTION NO. 38

Mr. Baldwin has a duty to exercise reasonable diligence and ordinary care to minimize the damages caused by Athene's conduct. Any damages awarded to Mr. Baldwin should not include those that Mr. Baldwin could have avoided by taking reasonable steps. It is Athene's burden to prove that Mr. Baldwin could have minimized his damages, but failed to do so. If Mr. Baldwin made reasonable efforts to minimize his damages, then your award should include the amounts that he reasonably incurred to minimize them. This instruction only applies to any economic damages that you may award.

PUNITIVE DAMAGES

INSTRUCTION NO. 39

In addition to compensatory damages, Mr. Baldwin also seeks to recover punitive damages against Athene. Punitive damages are intended to punish a wrongdoer for extraordinary misconduct and to discourage others from similar conduct. They are not intended to compensate Mr. Baldwin for his loss. Punitive damages may only be awarded if Mr. Baldwin has proven by clear and convincing evidence that Athene's conduct:

- (1) was willful and malicious; or,
- (2) manifested a knowing and reckless indifference toward, and a disregard of, the rights of others, including Mr. Baldwin.

“Willful and malicious” means that the wrongdoer acted with such gross neglect of duty as to evince a reckless indifference of the rights of others, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness.

“Knowing and reckless indifference” means that (a) Athene knew that such conduct would, in a high degree of probability, result in substantial harm to another; and (b) the conduct must be highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger or harm would be apparent to a reasonable person.

INSTRUCTION NO. 40

Athene is liable for the punitive damages by reason of the acts of its employee or agent if one of the following occurred:

1. Athene or its managerial agent authorized the act and the way it was done; or
2. The agent or employee was employed in a managerial capacity and was acting in the scope of employment; or
3. Athene or its managerial agent ratified or approved the act.

INSTRUCTION NO. 41

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. 42

Occasionally, jurors have questions during deliberations about the jury instructions. I have tried to use language in these instructions that is generally understandable. Usually, questions about the instructions can be answered by carefully re-reading them. If, however, you deem it necessary to ask the court a question about the instructions, please do so in writing. After I receive any questions from you, I am required to confer with the attorneys before responding. That process, of course, takes time. My response to any question will be in writing. Return any written questions you presented and my written answers with your verdict. Questions about any other aspect of the case should also be handled in this manner.

Please do not ask the court attendant any questions about the instructions or otherwise discuss any aspects of this case with her.

INSTRUCTION NO. 43

During the trial, you were 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. 44

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. 45

I am giving you special verdicts and special interrogatories. 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 special verdicts and special interrogatories must be signed by your foreperson. After deliberating for six hours from _____ o'clock ____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, all seven jurors who agree must sign the special verdicts and special interrogatories.

When you have agreed upon the answers and appropriately signed them, tell the court attendant.