

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

BRETT WATERBURY,

Plaintiff,

vs.

PROGRESSIVE NORTHERN  
INSURANCE COMPANY,

Defendant.

No. C15-0112-LTS

**COURT'S PRELIMINARY  
INSTRUCTIONS  
TO THE JURY**

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## **INSTRUCTION NO. 1**

### **INTRODUCTION**

Congratulations on your selection as a juror!

I give you these instructions now to help you better understand the trial and your role in it. I may give you additional instructions during the trial, and I will give you additional instructions at the end of the trial before you begin your deliberations.

Consider these instructions, together with any oral or written instructions I give you during the trial or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

## **INSTRUCTION NO. 2**

### **STATEMENT OF THE CASE**

As I explained during jury selection, this is a civil case brought by the Plaintiff, Brett Waterbury, against the Defendant, Progressive Northern Insurance Company. Brett Waterbury claims a breach of contract and bad faith refusal to pay an insurance claim. Specifically, he claims that his boat was damaged during an accident and that he is entitled to compensation under an insurance policy provided by Progressive Northern Insurance Company. Progressive Northern Insurance Company denies the damage was covered by the insurance contract. Progressive contends the damage was caused by normal wear and tear. It will be your duty to decide from the evidence if the Plaintiff, Brett Waterbury, is entitled to a verdict against the Defendant, Progressive Northern Insurance Company.

## **INSTRUCTION NO. 3**

### **DUTY OF JURORS**

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law that I will give you in these preliminary instructions, any instruction given during the trial and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not.

This case must be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons are equal before the law. Corporations are entitled to the same fair and conscientious consideration by you as any other person.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

## **INSTRUCTION NO. 4**

### **ORDER OF TRIAL**

The trial will proceed as follows:

After I finish reading these instructions, the attorneys may make opening statements. An opening statement is not evidence. It is simply a summary of what the parties expect the evidence to be.

The Plaintiff then will present evidence. The Defendants may cross-examine the Plaintiff's witnesses. Following the Plaintiff's case, the Defendants may present evidence. The Plaintiff may cross-examine the Defendants' witnesses. Following the Defendants' case, the parties may present additional evidence.

After all evidence has been presented, I may give additional instructions to you. The attorneys will then make arguments summarizing and interpreting the evidence for you. As with opening statements, these arguments are not evidence. Then I will give you a final instruction on deliberations, and you will retire to deliberate on your verdict.

## **INSTRUCTION NO. 5**

### **BURDEN OF PROOF**

Your verdict will depend upon whether or not you find certain facts have been proved. The obligation to prove a fact, or "the burden of proof," is upon the party whose claim depends upon that fact. The party with the burden of proving a fact must prove the fact by "the greater weight of the evidence," which is proof that the fact is more likely true than not true. This is also called "the preponderance of the evidence."

To determine whether a fact has been proved by the greater weight of the evidence, you must consider the evidence in the case, decide which evidence is more believable, and then determine whether the fact is more likely true than not true. If you find a fact is more likely true than not true, then the fact has been proved by the greater weight of the evidence. If you find a fact is more likely not true than true, or you find the evidence on the fact is equally balanced, then the fact has not been proved by the greater weight of the evidence. The greater weight of the evidence is not determined by the number of witnesses or exhibits a party presents, but by your judgment as to the weight of all of the evidence.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this one.

## **INSTRUCTION NO. 6**

### **DEFINITION OF EVIDENCE**

You shall base your verdict only upon the evidence, these instructions and other instructions that I may give you during trial.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations, which are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. 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.

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. Opening statements, closing arguments and questions are not evidence.
2. Objections and rulings on objections are not evidence.
3. Testimony that I strike from the record, or tell you to disregard is evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

## **INSTRUCTION NO. 7**

### **CREDIBILITY OF WITNESSES**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says or only part of it or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

## **INSTRUCTION NO. 8**

### **STIPULATIONS**

The parties may agree to certain facts and reduce them to written or oral stipulations. You should treat stipulated facts as having been proved.

## **INSTRUCTION NO. 9**

### **INTERROGATORIES**

During the trial, you may hear the word “interrogatory.” An interrogatory is a written question one party can send to the other which the other party then must answer under oath and in writing. Consider interrogatories and the answers to them as if they were, respectively, questions asked and answered under oath here in court.

## **INSTRUCTION NO. 10**

### **DEPOSITIONS**

A deposition is testimony taken under oath before the trial and preserved in writing or electronically. Testimony from a deposition may be read into evidence or replayed from a video recording. Consider such testimony as if it had been given under oath here in court.

## **INSTRUCTION NO. 11**

### **OPINION EVIDENCE – EXPERT WITNESS**

You will hear testimony from witnesses described as experts. “Experts” are persons who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject expert testimony just like any other testimony. After considering the witness’ education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give an expert witness’ testimony whatever weight, if any, you think it deserves.

An expert witness may be asked to assume certain facts are true, and to give an opinion based on that assumption. This is called a hypothetical question. When deciding the weight, if any, to give to an expert witness’s testimony, if a fact assumed in a hypothetical question has not been proved by the evidence, you should consider the extent to which the falsely assumed fact affects the value of the opinion.

## **INSTRUCTION NO. 12**

### **OBJECTIONS**

During the trial, the parties may make objections. You should not hold it against the parties when they do this. A party may object when the other party offers testimony or other evidence the party believes is not admissible. If I sustain an objection to a question, you should not pay any attention to the question itself. Also, when I rule or comment on an objection or motion, you should not think I have any opinions about the case, favoring one side or the other.

## **INSTRUCTION NO. 13**

### **BENCH CONFERENCES**

During the trial, it may be necessary for me to talk with the attorneys out of your hearing, either by having a bench conference here, while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence and to avoid wasting your time. We will do what we can to keep the number and length of these conferences to a minimum.

## **INSTRUCTION NO. 14**

### **NOTE TAKING**

You may take notes during the trial if you wish. After the parties' opening statements, you will be given note pads and pens for this purpose.

If you choose to take notes, be sure it does not interfere with your ability to listen to the evidence. It is the responsibility of all jurors to listen carefully to the evidence. You cannot give this responsibility to another juror who may be taking notes. We depend on *all* members of the jury to remember and consider the evidence. Do not discuss your notes with anyone until you begin your deliberations.

A juror's notes are not evidence. They are no more reliable than the memory of a juror who chooses to listen carefully to the evidence without taking notes.

Do not take your notes with you when you leave the courtroom. Leave them on your chair in the courtroom, with only your name on the front page, and the Court Security Officer will safeguard them for you. Your notes will remain confidential throughout the trial and will be destroyed when the trial is over.

You will notice that we have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the record available for your use in reaching your decision.

## **INSTRUCTION NO. 15**

### **AGENCY**

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

The fact that the defendant is a corporation should not affect your decision. All persons 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.

## **INSTRUCTION NO. 16**

### **DEFINITION: BREACH**

A breach of the contract occurs when a party fails to perform a term of the contract.

## **INSTRUCTION NO. 17**

### **ELEMENTS OF BREACH OF CONTRACT**

Your verdict must be for the Plaintiff on the Plaintiff's breach of contract claim if all the following elements have been proved:

*First*, the Plaintiff was insured for loss due to collision by the Defendant on the date of loss.

*Second*, the Plaintiff had paid the premiums that were due.

*Third*, the Plaintiff had a loss by collision which was covered by the insurance policy with the Defendant.

*Fourth*, the Plaintiff gave the Defendant notice of loss as required by the policy.

*Fifth*, the Defendant did not pay the Plaintiff's claim.

*Sixth*, the amount of damage.

If Plaintiff has proved all of these elements, the Plaintiff is entitled to damages in some amount as set out in Instruction No. 21. If the Plaintiff has failed to prove any of the above elements, your verdict must be for the Defendant.

## **INSTRUCTION NO. 18**

### **ELEMENTS OF BAD FAITH REFUSAL TO PAY**

If you found in favor of the Plaintiff in Instruction No. 17, you may consider whether the Defendant acted in bad faith in refusing to pay the Plaintiff's claim. To prove bad faith refusal to pay, the Plaintiff must prove all of the following elements:

*First*, the Defendant denied the Plaintiff's claim.

*Second*, there was no reasonable basis for denying the claim.

*Third*, the Defendant knew or had reason to know that there was no reasonable basis for denying the claim.

*Fourth*, the denial was a cause of damage to the Plaintiff.

*Fifth*, 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.

## **INSTRUCTION NO. 19**

### **CONTRACT INTERPRETATION**

In determining the terms of the contract you may consider the following:

1. The intent of the parties along with a reasonable application of the surrounding circumstances.
2. The intent expressed in the language used prevails over any secret intention of either party.
3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it.

7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

## **INSTRUCTION NO. 20**

### **DAMAGES FOR BREACH OF CONTRACT**

If you find the Plaintiff has proven a breach of contract as set out in Instruction No. 17, the Plaintiff is entitled to damages. The measure of damages for the Plaintiff is the lowest of:

- 1) The amount necessary to replace the damaged property;
- 2) The amount necessary to repair the damaged property to its pre-loss condition; or
- 3) The agreed value for the “covered watercraft.”

## **INSTRUCTION NO. 21**

### **DAMAGES FOR BAD FAITH**

If you find in favor of the Plaintiff on his bad faith claim as set out in Instruction No. 18, you must award the Plaintiff such sum as you find by the greater weight of the evidence that will fairly and justly compensate the Plaintiff for damages, if any, that you find were proximately caused by the Defendant.

## **INSTRUCTION NO. 22**

### **CONDUCT OF JURORS DURING TRIAL**

You must decide this case solely on the evidence and your own observations, experiences, reason, common sense and the law in these instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers or witnesses, even to pass the time of day, so that there is no reason to be suspicious about your fairness. The lawyers, parties and witnesses are not supposed to talk to you either.
- You may need to tell your family, friends, teachers, co-workers or employer about your participation in this trial so that you can tell them

when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog or any website such as Facebook, YouTube or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research on the Internet, in libraries, in the newspapers, on social media, in dictionaries or other reference books or in any other way or make any investigation about this case, the law or the people involved 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.
- Do not read any news stories or articles, in print, on the Internet or on any blog, about this case or about anyone involved with it or listen to any radio or television reports about it or about anyone involved with it or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read additional instruction(s) at the end of the evidence.

## **INSTRUCTION NO. 23**

### **CONDUCT OF JURORS DURING DELIBERATIONS**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach 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.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more

jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my Instructions. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

Finally, I am giving you the Verdict Form. A verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and complete it when you have reached a verdict. Your decision must be unanimous. If you all agree, the verdict form must be signed by your foreperson and all members of the jury.

**IT IS SO ORDERED.**

**DATED** this 19th day of September, 2016.



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LEONARD T. STRAND  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

BRETT WATERBURY,

Plaintiff,

vs.

PROGRESSIVE NORTHERN  
INSURANCE COMPANY,

Defendant.

No. C15-0112-LTS

**VERDICT FORM**

We, the jury in the above-entitled case, return the following verdict:

**Question No. 1:** As set out in Instruction No. 17, did Defendant breach the contract?

(Answer “yes” or “no”)

**ANSWER:** \_\_\_\_\_

**If you answered “no” to Question No. 1, do not answer any further questions on this verdict form. If you answered “yes” to Question No. 1, answer Question No. 2.**

**Question No. 2:** Based on Instruction No. 20, what amount of damages is Plaintiff entitled to receive?

**ANSWER:** \$ \_\_\_\_\_

**Question No. 3:** As set out in in Instruction No. 18, did Defendant act in bad faith?

(Answer “yes” or “no”)

**ANSWER:** \_\_\_\_\_

**If you answered “no” to Question No. 3, skip Question No. 4. If you answered “yes” to Question No. 3, answer Question No. 4.**

**Question No. 4:** Based on Instruction No. 21, what amount of damages is Plaintiff entitled to receive?

**ANSWER:** \$ \_\_\_\_\_

Dated this \_\_\_\_\_ day of September, 2016.

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FOREPERSON

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Juror

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Juror

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Juror

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Juror

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Juror

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Juror

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Juror