

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

LEANNE RUBIN and WILLIAM RUBIN,

Plaintiffs,

-vs-

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, a WISCONSIN
CORPORATION,

Defendant.

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CIV. 4:08-cv-04150-RAL

FINAL
JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

FINAL INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL INSTRUCTION NO. 3

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 said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 5

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.

FINAL INSTRUCTION NO. 6

During the trial, certain evidence was presented to you by videotaped deposition. The witness testified under oath at the deposition, just as if the witness was in court, and you should consider this testimony together with all other evidence received.

FINAL INSTRUCTION NO. 7

The credibility of a witness may be attacked by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the witness's testimony in this case on a matter material to the issue. You may consider evidence of this kind in connection with all the other facts and circumstances in evidence in deciding the weight to give to the testimony of that witness.

FINAL INSTRUCTION NO. 8

A witness may qualify as an expert and give an opinion on a matter at issue if the witness has special knowledge, skill, experience, training, or education concerning the matter on which the expert testifies. In deciding the weight to give to the opinion, you should consider the expert's qualifications, credibility, and reasons for the opinion. You are not bound by the opinion. If you decide that the reasons for the expert's opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

FINAL INSTRUCTION NO. 9

This is a civil case, brought by the plaintiffs, Leanne Rubin and William Rubin, against the defendant, American Family Mutual Insurance Company, for certain insurance coverage. The Plaintiffs' claims arise from a motor vehicle accident that occurred on September 30, 2006, in which Plaintiff Leanne Rubin was a passenger. The Plaintiffs purchased an insurance policy from Defendant that provided coverage in the event of injury in an automobile accident. The issues to determine in this case are the extent of any injuries and the amount of any damages that the Plaintiffs sustained as a result of the motor vehicle accident.

INSTRUCTION NO. 10

The fact that one of the parties to this action is an insurance company is immaterial. Under the law of this state, the insurance company is an individual party to the lawsuit, and all parties are entitled to the same impartial treatment.

FINAL INSTRUCTION NO. 11

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it. The greater convincing force of the evidence is not necessarily determined by the greater number of witnesses or exhibits that a party has presented.

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

FINAL INSTRUCTION NO. 12

In this action, the plaintiffs have the burden of proving the following issues:

- (1) The amount of damages, if any, sustained by plaintiffs as a legal cause or legal result of the motor vehicle accident on September 30, 2006.

In determining whether or not an issue has been proved by greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

FINAL INSTRUCTION NO. 13

A legal cause is a cause that produces a result in a natural and probable sequence, and without which the result would not have occurred.

A legal cause does not need to be the only cause of a result. A legal cause may act in combination with other causes to produce a result.

FINAL JURY INSTRUCTION NO. 14

You must fix the amount of money which will reasonably and fairly compensate plaintiff Leanne Rubin for any of the following elements of loss or harm suffered in person or property proved by the evidence to have been legally caused by the motor vehicle accident on September 30, 2006, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

- (1) disability;
- (2) disfigurement;
- (3) the pain and suffering, mental anguish, and loss of capacity of the enjoyment of life experienced in the past and reasonably certain to be experienced in the future as a result of the injury; and
- (4) the reasonable value of necessary medical care, treatment, and services received to date.

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, or conjecture.

FINAL INSTRUCTION NO. 15

If you find that the defendant is liable to plaintiff Leanne Rubin for damages, you must then determine the amount of money which will reasonably compensate plaintiff William Rubin for any of the following elements of damage which you find were suffered by him and legally caused by the motor vehicle accident on September 30, 2006, in which Leanne Rubin was injured. Those damages are:

- (1) The reasonable value of the services, aid, comfort, society, companionship, and conjugal affections of Leanne Rubin which William Rubin has been deprived of in the past and the present cash value of the services, aid, comfort, society, companionship, and conjugal affections of the spouse which the plaintiff is reasonably certain to be deprived of in the future;
- (2) The reasonable value of home care provided by plaintiff to the spouse and the reasonable value of home care reasonably certain to be provided in the future together with the expenses incurred in rendering said care.

Whether any of the elements of damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, or conjecture.

FINAL INSTRUCTION NO. 16

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, because a verdict must be unanimous.

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 the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, 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. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

The 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 when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

LEANNE RUBIN and WILLIAM RUBIN,

CIV. 4:08-cv-04150-RAL

Plaintiffs,

VERDICT FORM

-vs-

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, a WISCONSIN
CORPORATION,

Defendant.

We, the jury, duly impaneled in the above-entitled action and sworn to try the issues herein, do hereby find the damages to be awarded to the Plaintiff Leanne Rubin as follows:

1. Medical Expenses: \$ _____

2. All Other Damages: \$ _____

Total for Leanne Rubin: \$ _____

We, the jury, duly impaneled in the above-entitled action and sworn to try the issues herein, do hereby find the damages to be awarded to the Plaintiff William Rubin as follows:

1. Loss of Consortium and Companionship: \$ _____

Dated this ____ day of January, 2011

Foreperson