

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MIKE DALLY,

Plaintiff,

vs.

STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

4:23-CV-04175-RAL

FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I will repeat some of those instructions and give you additional instructions now. These instructions are in writing and will be available to you in the jury room.

You must follow all instructions whenever given by the court and whether in writing or not. You must not single out some instructions and ignore others because all are important.

FINAL INSTRUCTION NO. 2

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way 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.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

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.

FINAL INSTRUCTION NO. 3

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits. Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by any lawyer representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically told you otherwise during the trial.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

When you were instructed that evidence was received for a limited purpose only, you must follow that instruction.

FINAL INSTRUCTION NO. 4

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 the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that 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.

You should judge the testimony of the parties in the lawsuit in the same manner as you judge the testimony of the other witnesses.

FINAL INSTRUCTION NO. 5

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

FINAL INSTRUCTION NO. 6

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 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. 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 issues. 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

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

FINAL INSTRUCTION NO. 9

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

FINAL INSTRUCTION NO. 10

Dally claims that State Auto breached its contract by failing to fully pay what State Auto owed Dally under the insurance policy. To prevail on his breach of contract claim, Dally must prove each of the following elements by the greater convincing force of the evidence:

One, that State Auto's policy at issue contained an enforceable promise to Dally; specifically, that Dally was an insured under the policy for direct physical loss to his home;

Two, that Dally sustained direct physical loss to his home through a covered event, specifically hail and wind damage to his home in May of 2022;

Three, that State Auto breached that enforceable promise by failing or refusing to pay Dally the full amount owed under the policy for the covered loss; and

Four, that State Auto's breach legally caused Dally damage.

State Auto asserts that it is not liable for certain of Dally's claimed damages because of policy exclusions. The policy excludes coverage for loss caused by wear and tear, marring, deterioration, mechanical breakdown, or faulty or inadequate workmanship, repair, or maintenance. State Auto has the burden of proving that an exclusion applies to bar coverage for the disputed damages.

If you find that each of the four elements has been proved by the greater convincing force of the evidence and that State Auto has not proven a policy exclusion, your verdict on the breach of contract claim must be for Dally. If, on the other hand, any of these elements has not been proved by the greater convincing force of the evidence or State Auto has proven a policy exclusion, then your verdict must be for State Auto.

FINAL INSTRUCTION NO. 11

If you find that State Auto breached the policy, you must then fix the amount of money which will reasonably and fairly compensate Dally and the date the breach of contract damages were incurred.

The measure of damages for breach of contract is the amount that will compensate the aggrieved party for all detriment legally caused by the breach, or which, in the ordinary course of things, would be likely to result from the breach. Damages for breach of contract that are not clearly ascertainable in both their nature and origin are unrecoverable.

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. 12

If you find for Dally that State Auto breached its contract, then you must determine whether State Auto acted in bad faith. To establish that State Auto is liable for bad faith, Dally must prove each of the following three elements by the greater convincing force of the evidence:

- (1) State Auto did not have a reasonable basis for denying, in whole or in part, Dally's claim for policy benefits;
- (2) State Auto either knew it did not have a reasonable basis or acted recklessly in determining whether it had a reasonable basis for denying, in whole or in part, Dally's claim for policy benefits; and
- (3) As a result of State Auto's actions, Dally suffered damage.

An insurance company may challenge claims that are fairly debatable.

You may consider whether State Auto conducted a reasonable investigation of the claim in deciding whether the claim was fairly debatable, whether State Auto had a reasonable basis for its actions, and whether State Auto acted recklessly or knowing it lacked a reasonable basis.

If you find by the greater convincing force of evidence that State Auto acted in bad faith in denying, in whole or in part Dally's covered claims, then your verdict on the bad faith claim must be for Dally. If, on the other hand, you find no breach of the insurance policy or you find that any of these elements has not been proved by the greater convincing force of the evidence, your verdict on the bad faith claim must be for State Auto.

FINAL INSTRUCTION NO. 13

Your determination of whether State Auto acted in bad faith must be based upon the facts and law available to State Auto at the time it allegedly denied, in whole or in part, payment to Dally.

FINAL INSTRUCTION NO. 14

If you decide for Dally on the question of liability on his claim for bad faith, you must then fix the amount of money which will reasonably and fairly compensate Dally for any of the following elements of loss or harm proved by the evidence to have been legally caused by State Auto's conduct, whether such loss or harm could have been anticipated or not, namely:

- (1) Any out-of-pocket expenses Dally incurred as a result of State Auto's conduct that are separate and distinct from expenses that State Auto would be required to pay under the policy; and
- (2) Any other monetary harm Dally experienced as a result of State Auto's conduct that is separate and distinct from harm that State Auto would be required to pay under the policy.

To recover damages for mental and emotional harm, Dally must establish that he suffered a pecuniary loss because of the bad faith of State Auto. "Pecuniary loss" means loss of money or something having monetary value.

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

The term “legal cause” means an immediate cause which, in the natural or probable sequence, produced the harm complained of.

The legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the harm. However, for legal cause to exist, you must find that the conduct complained of was a substantial factor in bringing about the harm.

Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to the harm. State Auto’s conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of Dally’s harm.

FINAL INSTRUCTION NO. 16

The fact that I have instructed you as to the proper measure of damages should not be considered as suggesting any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of Dally from the greater convincing force of the evidence in accordance with the other instructions.

FINAL INSTRUCTION NO. 17

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 court services 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. 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

<p>MIKE DALLY, Plaintiff, vs. STATE AUTO PROPERTY & CASUALTY INSURANCE COMPANY, Defendant.</p>	<p>4:23-CV-04175-RAL VERDICT FORM</p>
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We, the jury, duly empaneled in the above-entitled action and sworn to try the issues, find as follows:

1. Breach of Contract Claim:

- a. Did State Auto breach the insurance contract by denying, in whole or in part, payment of Dally's claim for policy benefits?

Yes / No (Circle one)

- b. [If and only if you answered "yes" to question 1(a)] What amount of damages are attributable to that breach? \$ _____
- c. [If and only if you answered "yes" to question 1(a)] The date on which the breach of contract damages were sustained? _____

2. Bad Faith Claim [complete only if you found for Dally on the breach of contract]:

- a. Did State Auto commit bad faith in denying, in whole or in part, or in handling Dally's claim?

Yes / No (Circle one)

- b. [If and only if you answered "yes" to question 2(a)] What damages has Dally shown for the insurance bad faith?

- i. Pecuniary loss, including any out-of-pocket expenses and any other monetary harm, that Dally incurred as a result of State Auto's bad faith conduct beyond what you awarded for the breach of contract:

\$ _____

- ii. Mental and emotional damages: \$ _____

Dated this _____ day of May, 2026

Foreperson