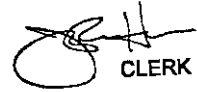


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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

PERLE O'DANIEL,
Plaintiff,

vs.

STROUD NA and
JUDY ROOSA,
Defendants.

CIV. 05-5089-LLP

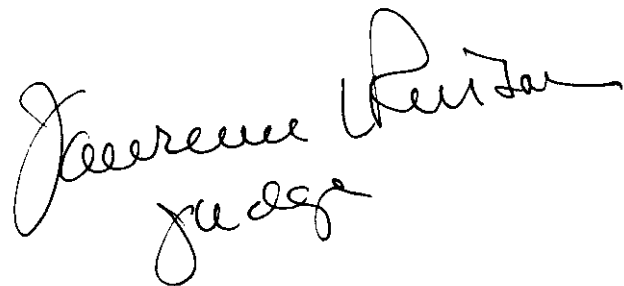
**FINAL
INSTRUCTIONS
TO THE JURY**

TABLE OF CONTENTS

FINAL INSTRUCTION

NO. 1 – INTRODUCTION AND DEFINITIONS	1
NO. 2 – IMPEACHMENT	2
NO. 3 – DEFINITION OF AGENCY	3
NO. 4 – LIABILITY OF PRINCIPAL AND AGENT	4
NO. 5 – DAMAGES NOT TO BE ALLOCATED BETWEEN DEFENDANTS	5
NO. 6 – BURDEN OF PROOF	6
NO. 7 – NEGLIGENT MISREPRESENTATION	7
NO. 8 – NEGLIGENT MISREPRESENTATION DAMAGES	8
NO. 9 – NEGLIGENT PROCUREMENT	9
NO. 10 – NEGLIGENT PROCUREMENT DAMAGES	11
NO. 11 – NO QUOTIENT VERDICT	12
NO. 12 – FAILURE TO READ INSURANCE POLICY	13
NO. 13 – PREJUDGMENT INTEREST	14
NO. 14 – DUTIES DURING DELIBERATIONS	15

VERDICT FORM


judge

FINAL INSTRUCTION NO. 1 – INTRODUCTION AND DEFINITIONS

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. This is true even though some of those I gave you at the beginning of and during the trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my oral instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

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. 2 – IMPEACHMENT

In Preliminary Instruction No. 3, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 3 – DEFINITION OF AGENCY

Agency is the representation of one called the principal by another called the agent in dealing with third persons.

FINAL INSTRUCTION NO. 4 – LIABILITY OF PRINCIPAL AND AGENT

The defendants are sued as principal and agent. Stroud NA is the principal and Judy Roosa is its agent. If you find the agent is liable, then you must find the principal is also liable. However, if you find the agent is not liable, then you must find that the principal is not liable.

**FINAL INSTRUCTION NO. 5 – DAMAGES NOT TO BE ALLOCATED
BETWEEN DEFENDANTS**

If you find that the plaintiff is entitled to recover against both defendants, you may not allocate the damages between them, but you must return a verdict in one single sum against both defendants whom you find to be liable.

FINAL INSTRUCTION NO. 6 – BURDEN OF PROOF

In civil actions, the party who asserts the affirmative of 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. In determining whether or not an issue has been proved by the 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. 7 – NEGLIGENT MISREPRESENTATION

Plaintiff Perle O’Daniel claims that defendants Judy Roosa and Stroud NA are liable because Roosa negligently misrepresented his insurance coverage. A negligent misrepresentation occurs when, during the course of a transaction in which a person has a financial interest, that person negligently supplies false information for the guidance of others. To show negligent misrepresentation, O’Daniel must prove by the greater convincing force of the evidence the following five elements:

First, Roosa supplied false information to O’Daniel;

Second, Roosa supplied such information in the course of a transaction in which the defendants had a financial interest;

Third, Roosa was negligent in obtaining or communicating the information;

Negligence is the failure to use reasonable care. It is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by evidence. That is for you to decide.

Fourth, Roosa supplied the information intending or knowing that O’Daniel would rely on the information; and

Fifth, O’Daniel acted reasonably in relying on the information, to his detriment.

If you find that O’Daniel has not proved these five elements by the greater convincing force of the evidence, enter your verdict for Roosa and Stroud NA on the verdict form. If you find that O’Daniel has proved these five elements by the greater convincing force of the evidence, proceed to Final Jury Instruction No. 8.

FINAL INSTRUCTION NO. 8 – NEGLIGENT MISREPRESENTATION DAMAGES

If you find that Roosa and Stroud NA are liable for making negligent misrepresentations to Mr. O'Daniel about the existence of the insurance coverage he had, then you should award Mr. O'Daniel damages for the insurance coverage he was led to believe he would receive even though what he was led to believe was not in fact the terms of the policy. If you find in favor of Mr. O'Daniel on both negligent procurement and negligent misrepresentation, then the damages awarded should not exceed Mr. O'Daniel's total pecuniary loss.

FINAL INSTRUCTION NO. 9 – NEGLIGENT PROCUREMENT

Plaintiff Perle O'Daniel claims that defendants Judy Roosa and Stroud NA are liable because Roosa negligently procured his insurance policy. To show negligent procurement, O'Daniel must prove by the greater convincing force of the evidence the following three elements:

First, Roosa owed a duty to O'Daniel;

An insurance agent has a duty to procure insurance of the kind and with the provisions specified by the insured. But an insurance agent has no duty to ask a client further questions if the client appeared clear about what he wanted.

If an insurance agent is unable to procure insurance coverage according to the client's instructions, the agent has a duty to notify the client of her failure to do so.

Second, Roosa breached her duty; and

Third, Roosa's breach was a legal cause of O'Daniel's injury.

The term "legal cause" means an immediate cause which, in the natural or probable sequence, produces the injury complained of. For legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of. In other words, liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. The defendant's conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of the plaintiff's injury.

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.

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 injury. However, for legal cause to exist, you must find that the conduct complained of was a substantial factor in bringing about the harm.

If you find that O'Daniel has not proved these three elements by the greater convincing force of evidence, enter your verdict for Roosa and Stroud NA on the verdict form. If you find that O'Daniel has proved these three elements by the greater convincing force of the evidence, proceed to Final Jury Instruction Number 10.

FINAL INSTRUCTION NO. 10 – NEGLIGENT PROCUREMENT DAMAGES

If you find that Roosa and Stroud NA are liable for negligent procurement, the measure of damages is the amount that the insurer would have paid to O’Daniel under the insurance policy had defendants procured the insurance coverage as O’Daniel claims he had requested.

FINAL INSTRUCTION NO. 11 - NO QUOTIENT VERDICT

If you determine that the plaintiff should recover a verdict, you should not return what is known as a quotient verdict. A quotient verdict is one which is reached pursuant to a prior agreement made by all the jurors to add up the amount which each of the several jurors would award and divide such sum by the number of jurors and treat the quotient or result as the amount of the verdict to be returned by the jury.

If you find in favor of the plaintiff, the verdict you are to return must be for such an amount as all of you agree upon as the proper amount in this case. A verdict reached by adding the amounts suggested by the several jurors and then dividing in the manner I have indicated would not be the judgment of the individual jurors and such a method is likely to produce a verdict at variance with the sound judgment of each member of the jury. The rights of the parties to a suit should never be finally determined in this manner. It is for you to determine by the use of your best judgment the verdict which you should return in this case without resort to chance or the method described above.

FINAL INSTRUCTION NO. 12 - FAILURE TO READ INSURANCE POLICY

It is disputed whether O'Daniel received a copy of the insurance policy. If you find that O'Daniel did receive a copy of the insurance policy, it is no defense in this action that O'Daniel failed to read the policy issued to ascertain the coverage provided under the policy if there is proof that the insurance agent has misrepresented to the insured that the policy delivered contains the coverage being requested, because the insured has the right to rely on the superior knowledge of the agent respecting insurance matters.

FINAL INSTRUCTION NO. 13 – PREJUDGMENT INTEREST

Any person who is entitled to recover damages is entitled to recover interest thereon from the day that the loss or damages occurred except:

1. During a period of time, the person liable for the damages was prevented by law, or an act of the person entitled to recover the damages from paying the damages, or

2. Interest is not recoverable on damages which will occur in the future, punitive damages, or intangible damages such as pain and suffering, emotional distress, loss of consortium, injury to credit, reputation or financial standing, loss of enjoyment of life, or loss of society and companionship.

You must decide:

1. The amount of damages (if any);
2. The amount of damages which are subject to prejudgment interest (if any); and
3. The date or dates on which the damages occurred.

If you return a verdict for O'Daniel, you must indicate on the verdict form whether you find O'Daniel is entitled to prejudgment interest, and if so, the amount of damages upon which interest is granted and the beginning date of such interest. Based upon your findings, the court will calculate the amount of interest O'Daniel is entitled to recover.

FINAL INSTRUCTION NO. 14 – DUTIES DURING DELIBERATIONS

In conducting 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 an 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 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. 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.

Finally, 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 court security officer that you are ready to return to the courtroom.

Dated April 24, 2009.

LAWRENCE L. PIERSOL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

PERLE O'DANIEL,
Plaintiff,

vs.

STROUD NA and JUDY ROOSA,
Defendants.

CIV. 05-5089-LLP

VERDICT FORM

Please return a verdict by placing an "X" or "√" or filling in the dollar amount in the spaces provided.

(1) NEGLIGENT MISREPRESENTATION	
1(a)	<p>Liability</p> <p>On plaintiff Perle O'Daniel's claim against defendants Judy Roosa and Stroud NA for negligent misrepresentation, as explained in Final Instruction Number 7, we find in favor of:</p> <p>_____ Perle O'Daniel _____ Judy Roosa and Stroud NA</p> <p>If you find in favor of Perle O'Daniel on his claim, go to Question #1(b).</p> <p>If you find in favor of Judy Roosa and Stroud NA, go to Question #2.</p>

<p>1(b)</p>	<p>Damages</p> <p>If you found in favor of Perle O’Daniel on the issue of liability for negligent misrepresentation, determine the total amount of damages, if any, as explained in Final Instruction Number 8. State the amount, or, if none, write the word “none.”</p> <p>If you awarded Perle O’Daniel damages, go to Question #1(c).</p> <p>If you did not award Perle O’Daniel any damages, go to Question #2.</p>	<p>\$ _____</p>
<p>1(c)</p>	<p>Prejudgment Interest</p> <p>If you found in favor of Perle O’Daniel on the issue of liability for negligent misrepresentation, you must also determine whether he is entitled to prejudgment interest on any portion, all, or none of those damages as explained in Final Instruction Number 12. If you award prejudgment interest, the court will compute the amount of prejudgment interest.</p> <p>State the amount, or, if none, write the word “none,” of damages on which Perle O’Daniel is entitled to recover prejudgment interest.</p> <p>State the time period during which Perle O’Daniel is entitled to receive interest on those damages.</p>	<p>\$ _____</p> <p>From _____</p> <p>To _____</p>

(2) NEGLIGENT PROCUREMENT	
2(a)	<p>Liability</p> <p>On plaintiff Perle O'Daniel's claim against defendants Judy Roosa and Stroud NA for negligent procurement, as explained in Final Instruction Number 9, we find in favor of:</p> <p>_____ Perle O'Daniel _____ Judy Roosa and Stroud NA</p> <p>If you find in favor of Perle O'Daniel on his claim, go to Question #2(b).</p> <p>If you find in favor of Judy Roosa and Stroud NA, please sign and date the verdict form.</p>
2(b)	<p>Damages</p> <p>If you found in favor of Perle O'Daniel on the issue of liability for negligent procurement, determine the total amount of damages, if any, as explained in Final Instruction Number 10. State the amount, or, if none, write the word "none."</p> <p>If you awarded Perle O'Daniel damages, go to Question #2(c).</p> <p>If you did not award Perle O'Daniel any damages, please sign and date the verdict form.</p>

2(c)	Prejudgment Interest If you found in favor of Perle O'Daniel on the issue of liability for negligent procurement, you must also determine whether he is entitled to prejudgment interest on any portion, all, or none of those damages as explained in Final Instruction Number 12. If you award prejudgment interest, the court will compute the amount of prejudgment interest. State the amount, or, if none, write the word "none," of damages on which Perle O'Daniel is entitled to recover prejudgment interest. State the time period during which Perle O'Daniel is entitled to receive interest on those damages. Please sign and date the verdict form.	\$ _____ From _____ To _____
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Dated this _____ day of April, 2009.

Foreperson.